

VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

SHANA ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002216

APPENDIX

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1 till 7 or 7:15, all right. Shana has had two drinks at
2 this point between 5:00 and about 7 o'clock. According
3 to a forensic toxicologist both of those drinks would
4 have been out of her system or very close to out of her
5 system by that time, okay.

6 Then she went on -- now I do want to point this out
7 when they left Applebee's I think that's the last sort of
8 thing that Brittany remembers. Brittany also -- I think
9 her traumatic brain injury was maybe worse than Shana's
10 because that was like the last thing she remembered and I
11 think there are bigger gaps for her but she also had
12 bleeding on the brain, which Doctor Montgomery testified
13 to. I mean this isn't some hokey defense theory that I
14 contrived. This is -- Doctor Montgomery from MUSC says
15 what happened.

16 So anyway, Brittany one of the last things she
17 remembers is leaving the parking lot in Applebee's. I
18 asked her specifically I said was Shana impaired? I mean
19 had y'all had too much to drink? No, no, no, no. Would
20 you have gotten in the car with someone who had had too
21 much to drink? No. I mean so then they left there and
22 they went on to maybe five or ten minutes later. I
23 don't know how long it takes; I'm from Charleston but
24 hopefully y'all know better, from Applebee's to a place
25 called Geronimo's, which it's my understanding it is

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1 between here and Applebee's. So five or ten minutes they
2 get to Geronimo's. And the testimony is that she --
3 Shana comes in and sits down beside Jeff Forinash, former
4 U.S. Air Force retired, a very respectable guy. I can't
5 imagine him being a part of a conspiracy. And he came in
6 and testified when he talked to her she had one drink. I
7 think he testified that she drank it over about 20 or 30
8 minutes sitting there right beside him, and that she was
9 not impaired, didn't seem impaired, seemed perfectly
10 normal, seemed perfectly sober, okay.

11 I think Mr. Forinash is a very good witness. I
12 don't know what on earth sort of bias he would have. At
13 Geronimo's -- and you know Shana didn't remember talking
14 to him. It wasn't something that came up for us. It
15 wasn't convenient for her not to know that. We very much
16 would have liked to know a year ago that Jeff Forinash
17 had witnessed this, right, or two years ago. But Shana
18 didn't know it. When Shana testified she still testified
19 she didn't remember it.

20 So I would say contrary to what the State is trying
21 to have you believe Shana's memory is not selective,
22 okay. She is not choosing to remember the things that
23 help her. She is trying to grasp at anything that pops
24 back in her head from that night, okay. The same is true
25 for her conversation with Janet Jurosko, the town Auditor

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1 of 25 years, who seemed very nice. And like Jeff
2 Forinash I can't imagine her being part of a conspiracy
3 but anyway she testified that she talked to Shana at some
4 length. She said that she knows Shana -- they are
5 regular at the church together, that Shana was not
6 exhibiting any sort of signs of impairment; no slurred
7 speech, you know, stable on her feet and this sort of
8 thing.

9 And so I said specifically to her Ms. Jurosko if
10 Shana had seemed impaired at all would you have let her
11 drive? No, I wouldn't. Ms. Jurosko didn't express any
12 sort of guilt over oh, if only I had stopped her. She
13 struck me as someone who would have said something like
14 that, who would have had those feelings. She struck me
15 as a responsible person. She knows this accident was not
16 Shana's fault. She knows it was not caused by
17 impairment.

18 Okay, who else did she see at Geronimo's? Rob, Rob
19 Mittelstadt, the bartender. Now Rob's testimony was he
20 served her a vodka cranberry, right, and that she drank
21 that and I don't know if he offered her another one or
22 filled up another one or something like this. Ask
23 yourselves, does a drunk person turn down a drink?
24 Because Shana turned down that drink. Rob testified yes,
25 she didn't take it. I ended up just adding it up as

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1 waste and poured it out. Y'all, when I went to college
2 there was a lot of drinking there; I've never seen a
3 drunk person turn down a drink. Shana exercised good
4 judgment in Geronimo's.

5 And, okay they're talking about bias, Rob
6 Mittelstadt. He testified I said when is the last time
7 you talked to Shana? Two plus years ago. That's no kind
8 of connection to have bias about. He's done forgot about
9 her, he's gone on with his life, he could care less what
10 happens to her. I mean he's coming here to tell the
11 truth but that's it.

12 Okay, also in that area who do we have -- oh, Chuck
13 from this morning, also a bartender but not a bartender
14 that night, saw Shana, knows Shana and said Shana was not
15 impaired, okay. Shana went next door at the time this
16 was a tiny miniature strip mall; you know like a two
17 store strip mall. On the one side was Geronimo's Bar and
18 Grill and on the other side was this kind of exercise gym
19 little thing for kids.

20 That's where Rece Bucknor who you heard this morning
21 testified that he is a wrestling coach at. He and
22 Michelle Metts a.k.a. Mickie Metts -- Mickie testified a
23 couple of days ago and said that she was in there with
24 her kid doing wrestling practice with Rece when Shana
25 came in. I don't think that Michelle and Rece discussed

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1 this but they were absolutely consistent that Shana was
2 not drinking at the time over there on that side of the
3 little two -- the two businesses there. They were
4 consistent that she was not drinking there, that she was
5 not impaired, that she did not smell of alcohol, that she
6 was sober.

7 And what Mom is going to want some drunk lady around
8 her kid, anyway. Michelle Metts testified that she was
9 talking to Shana for like 20 minutes or something, just
10 talking. Shana's a talker, you may not have that
11 impression but Shana is a talker and that's what they
12 were doing. They were over catching up a little bit.

13 So after Geronimo's -- so Shana did remember talking
14 to Mickie, Shana did not remember talking to Chuck who
15 testified this morning first with the tie on, did not
16 remember talking to Jeff Forinash. I don't know who else
17 but certainly that wasn't convenient for her not to
18 remember that.

19 She did remember talking to Mickie and I think it
20 was shortly after talking to Mickie is when she left. So
21 in trying to piece this back together as we've been
22 forced to do it seems to me that what happened was Shana
23 and Brittany got to Geronimo's Bar and Grill sat down and
24 had a drink, finished a drink, started talking to people,
25 talked to Jurosko, talked to Michelle Metts next door. I

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1 mean Ms. Jurosko said they talked for maybe fifteen
2 minutes too. So after Shana had her drink at Geronimo's
3 you've got fifteen minutes with Jurosko, let's be
4 conservative and call it just fifteen minutes with
5 Michelle Metts. So you've got 30 minutes where after
6 Shana finished her drink at Geronimo's she was still
7 there just hanging out, not drinking, just catching up.

8 So Shana like I said does remember talking to
9 Michelle Metts. She does remember leaving Geronimo's Bar
10 and Grill. She does not remember traveling from
11 Geronimo's to the Scotchman, which apparently was some
12 sort of big deal for the prosecution; I don't know why.
13 But I don't think there was an incident during that time
14 or anything but it's just that's what she remembers. She
15 just remembers getting in the car. I asked Shana were
16 you impaired. No, she wasn't impaired.

17 Now, does Shana have a lot on the line? Yes, Shana
18 has a lot on the line, okay. But if she were spouting
19 B.S. we would have resolved this case. I believe her and
20 I've believed her for two plus years. I've believed her
21 for two and half years, okay. I've got a pretty good
22 B.S. meter and Shana is not on it, okay. So Shana gets
23 to the Scotchman. At some point at the Scotchman she has
24 another flash memory. She overhears some sort of
25 conversation between a third party and Brittany. Shana,

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1 do you remember that conversation and do you remember how
2 you felt? Yes. How did you feel? Were you drunk then?
3 Did you get drunk between Geronimo's and the Scotchman a
4 mile down the road ten minutes later? No, Aaron I
5 didn't. So the Scotchman I've passed it every day this
6 week. It's right here on the corner of Main Street and
7 Broughton Road, okay. It was the last place she stopped
8 before this accident.

9 Now I want to get in a little more detail now to
10 this first discrepancy okay, this blood alcohol thing.
11 Why didn't the sample taken from Shana's body four hours
12 after the accident why didn't that sample match up with
13 what these six witnesses from before the accident said
14 and the two medical staff witnesses from after the
15 accident said; all eight of whom again said she was not
16 drunk, okay.

17 Why didn't it match up? It didn't match up because
18 she had major abdominal surgery. She was given eighteen
19 medications. She was given ten different fluids. That's
20 28 things. I asked the State's toxicologist I said how
21 are those preserved? Alcohol is a major preservative.
22 How are those preserved? Can you say with certainty that
23 nothing in any of those things that was preserved -- a
24 preservative caused her blood alcohol to increase. Tracy
25 McKinnon from SLED, he drove here from Columbia, the

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1 State's witness. I can't say that. I can't say that he
2 says. Guys, any doubt in this case has to be resolved in
3 favor of Shana. Shana gets the benefit of the doubt.
4 You need to be firmly convinced that Shana was impaired
5 and that Shana's impairment is what caused this accident.
6 All doubts have to be resolved in Shana's favor guys.

7 This was four hours, this blood draw was four hours
8 after the accident. Mr. West told you in his opening
9 statement it was right after the accident. That is so
10 not true unless his perception of time is way different
11 than mine, but if I'm waiting four hours that's a long
12 time; it's not right after the accident.

13 And guys if that's me -- our country is celebrating
14 the 70th anniversary of D-Day this week, okay. That
15 represents a fight for everything that we believe in as
16 Americans, okay, the right to a fair trial, the right to
17 address the evidence against you and all that stuff,
18 okay. But those concepts have not been embodied in this
19 investigation.

20 This blood test was not done right after. It had
21 been four hours later. The nurse in the purple shirt,
22 the guy in the purple shirt didn't remember what type of
23 swab he used on Shana's arm. He didn't remember where he
24 stuck her. Did you use the swab that came in the packet?
25 I don't know. Do you have a distinct memory of what you

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1 used? No. He's in med school now he doesn't care. What
2 did you use? I don't know. I mean I might have used
3 Betadine. Was there alcohol swabs around there? Yes,
4 there would have been. He doesn't care. He doesn't
5 care.

6 How would that alcohol swab, if it had been an
7 ethanol swab, very common, if that had been an ethanol
8 alcohol swab how would that have affected the blood
9 result, okay? This is something that is very clear from
10 both toxicologists; it would have affected it. Doctor
11 Bennett testified it would have affected it dramatically.
12 It's a small amount of blood. The needle punctures the
13 skin where the alcohol would have been. That would
14 account for the discrepancy right there by itself, okay.

15 Now I understand -- I'm not criticizing this nurse.
16 I'm not criticizing the hospital, okay, I understand.
17 The priority is to save lives, take care of people and
18 everything else. But when the priority changes into a
19 criminal investigation with this serious of a nature they
20 need to be able to say with certainty the little things
21 like this that matter. If they can't say with certainty
22 they shouldn't say at all. They've got this nurse up
23 here saying maybe I did. These doubts have to be
24 resolved in Shana's favor guys. Okay, the nurse, the
25 nurse and the transfusions. Shana got something like six

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1 liters of blood. Stephanie McDonald [sic] testified to
2 that. She also testified there is a lot more fluid than
3 that in the body, but the six liters or so is what
4 circulates in the veins. Six liters of -- I don't mean
5 to say she got six liters of blood, she got six liters of
6 fluids; some of which was blood and some of which was
7 other stuff, right.

8 At the time -- Shana -- not Shana, Stephanie
9 McDonald [sic] the doctor from MUSC testified that at the
10 time of the blood draw Shana was having a transfusion of
11 blood from another human being, okay. She also, that
12 doctor testified -- again who is not biased and was not
13 paid by me at all came and testified Shana had had prior
14 transfusions that day between the time of the accident
15 and the time of the blood draw. How many transfusions?
16 I don't know, several. This wasn't the first one. How
17 many different human's blood was circulating in Shana's
18 veins when this blood draw was done because it wasn't
19 just hers?

20 Why does it matter? Well, Stephanie McDonald [sic]
21 the doctor from MUSC said alcohol could be collected
22 during blood draw. It would stay in that blood. It
23 would be passed on to the patient who received that
24 blood. Yes, they screen the blood for hepatitis and AIDS
25 but they don't screen it for alcohol, okay. I don't

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1 know. I don't know. But the nurse did testify, and I
2 think the nurse and doctor differed on this point. The
3 nurse, the guy again in the purple shirt, testified that
4 the transfusion was done before the blood draw. He said
5 something like the transfusion started at 12:30 at night,
6 okay, and -- oh, she was in intensive care and we were
7 pumping through blah, blah, blah it would have been done
8 fifteen minutes later when we took the blood. I said
9 okay, you know; I don't know.

10 Then the doctor got up and said looked at the same
11 sheet the nurse was looking at and said no, that's not
12 right. I mean she didn't say that because she didn't
13 know what the nurse testified to, but she said the blood
14 transfusion started at 12:30 at night and did not end
15 until 1:10. And remember she did her little math up
16 there that's 40 minutes, that's 12:30 to 1:10.

17 It's a significant window of time because it's when
18 the blood was drawn from Shana's arm, okay. Where do you
19 put an IV to give them blood at? In her vein up here in
20 her hand? I don't know. We don't have testimony as to
21 that. So it's possible that the IV blood was going in
22 her hand and the nurse was taking a blood draw from her
23 arm. He did say he would have taken it from her arm. He
24 didn't say he remembered specifically taking it from her
25 arm but he did say he would have done that. I mean I'm

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1 no doctor but the way I see it if the blood is going in
2 here [indicates] and it's getting to the rest of the body
3 it's got to pass through this juncture here [indicates],
4 okay. And so I got a serious problem with whose blood
5 did they test? They didn't do D-N-A analysis on it.

6 They didn't say oh, this is Shana's D-N-A. All this
7 blood is Shana's D-N-A. They didn't do that. They don't
8 know if it is Joe Smith's D-N-A. They don't know if it
9 is Bob Holmes D-N-A. They don't know whose D-N-A it was.
10 They don't know whose blood it was, but they are trying
11 to stick it to Shana, okay. Those doubts have to be
12 resolved in Shana's favor guys. There is too much on the
13 line. There is too much on the line to get this wrong.

14 Mr. McKinnon, the State's toxicologist, I was asking
15 him about preservatives in the vial, the tube of blood,
16 the tubes that are used for blood collection. I was
17 asking him about the expiration date, which he knew
18 nothing about; it's crazy.

19 But I was asking him about the preservatives and he
20 said you can have sodium, I think sodium fluoride and
21 potassium oxide. What amounts? They come in the test
22 tube; it's magic. We just test it. All right. Well,
23 I'm not going to hold him to account for every aspect of
24 his profession but it's significant because as you heard
25 Doctor Bennett testify it's got to be mixed right, okay.

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1 That blood has to be mixed right to be preserved. If
2 that preservative is either -- if there is too little of
3 it then it's going to allow the growth of a yeast called
4 Candida, which again Tracy McKinnon had never heard of.
5 Candida is a common yeast commonly found in blood and can
6 cause a fermentation process to occur in the test tube in
7 the tube of blood.

8 That can happen when either too little preservative
9 is input in the test tube in the first place or if the
10 test tube is not adequately mixed with that preservative,
11 okay. There was no testimony as to the mixing of that.
12 There was no testimony to make sure that that was done
13 properly, okay. Doctor Bennett -- I said Doctor Bennett
14 what is the proper way to do this? He said you got to go
15 like this [indicates] for a minute, you've got to mix
16 that up. I said can you shake it? He said no, don't
17 shake it; it will mess it up. You've got to go like this
18 [indicates].

19 The nurse said nothing about going like this
20 [indicates]. So the question remains is was that blood
21 properly preserved in that vial? If it wasn't it would
22 account for the discrepancy right there because that
23 Candida that's fermentation. It's -- well, let me give
24 you an example. The other important part of preserving
25 this blood Doctor Bennett testified is not just the

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1 preservative but the refrigeration. I mean that's a big
2 advance in human technology, right? Refrigeration. And
3 that helps preserve food. It helps preserve all sorts of
4 biological materials. Refrigeration is very important.
5 Doctor Bennett testified that the colder the better. Go
6 all the way down to freezing, the colder the better,
7 okay.

8 There was no testimony about what the refrigeration
9 was for this blood sample between the time it was drawn
10 at MUSC to the time that it was tested. Yes, Tracy
11 McKinnon pulled it out of the refrigeration when he
12 tested it, okay. Mr. West is going to read to you a
13 stipulation of agreement, chain of custody agreement
14 about this blood that I agreed to and he agreed to. It
15 talks about whose hands the blood was in.

16 It says nothing about whether they refrigerated it,
17 whether they did it properly, how long it was out of the
18 refrigerator for, what kind of temperature it was kept
19 in, okay. Here's what happened to that blood, that blood
20 sample. It had to be transported from MUSC to Columbia.
21 The State troopers did it themselves. So a couple of
22 them, one of them took it from MUSC and gave it to
23 another one. At some point that one got into the local
24 Highway Patrol refrigerator. We don't know how long that
25 was, we don't know how long that took. Then at some

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1 point a few days later, I think it was five days later,
2 three more troopers handed this blood off passing it on
3 the way to Columbia, all right; from here to Columbia.

4 One of them got it out of the refrigerator locally,
5 put it in his car. We heard no testimony about where he
6 went or if he was just working his regular shift and kind
7 of trying to meet up with another trooper at some point
8 to pass this blood on or if he went direct and recognized
9 the importance of this refrigeration issue and went
10 direct to the next trooper and said like a baton, go; get
11 it in that frig.

12 There were three of them in that chain. It went to
13 the next trooper. Did he say, hey your turn, go. Or did
14 he kind of meander about his usual patrol clocking people
15 and whatever else they do while that blood is sitting in
16 his trunk. I don't know. We've heard no testimony on
17 that.

18 Here's what I do know. I have left milk out of the
19 frig before and I have been very disappointed when I
20 found that I had left the milk out of the frig and I go
21 to smell it and it's been three or four hours and I got
22 to throw that milk out because my wife would be disgusted
23 with me for trying to drink that, okay. Milk is
24 preserved. Milk has to be refrigerated. It's the same
25 with this blood guys. And when it is not refrigerated or

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1 when it's not properly preserved it allows an opening for
2 Candida, it allows an opening for the bacteria in there
3 to grow. And the problem with that in this case is that
4 bacteria ferments and causes an artificially high alcohol
5 reading, okay. We don't know what these troopers do with
6 it and we don't know how long it was out of the
7 refrigerator. That's a doubt and in my mind that is a
8 significant doubt. And that doubt needs to be resolved
9 in Shana's favor.

10 Let's talk about the prescription drugs and the
11 test. This test was taken four hours after the accident,
12 after surgery, after medical treatment. There were
13 several drugs on this blood screen that should not be in
14 somebody's bloodstream, okay. Ketamine, Hydromorphone;
15 those are two of the pain killers that were used in the
16 hospital. Lidocaine is on there. The only three that
17 seem to be an issue are Benadryl okay.

18 Now Mr. McKinnon testified that oh, Benadryl that
19 will really mess you up. That has not been my
20 experience. I imagine some of y'all have taken Benadryl
21 and you've had your own experiences with it. But also
22 Mr. McKinnon is trying to assume that Shana is impaired
23 at that point to a .09 level, okay; which was simply not
24 the case. So McKinnon was up here testifying well,
25 Benadryl and alcohol they really don't mix. It's like

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1 exponentially more impaired. Number one, I'm not buying
2 that. Number two, Shana was not -- she didn't have that
3 alcohol in her system, okay.

4 Now on the Benadryl Shana has got this skin disease.
5 You can see it on her face. She testified she may have
6 been taking Benadryl around the time. She would have
7 taken it the night before she thinks with her other
8 medicines. Doctor Bennett testified that would not be
9 inconsistent with the result because if you took a couple
10 of doses 12 or 18 hours before this blood test then that
11 would result in the .06 reading.

12 I mean guys don't convict Shana for felony D-U-I
13 because she took Benadryl. That would be crazy, okay.
14 This was not like ten times the prescribed dose of
15 Benadryl. This was consistent with a therapeutic dose of
16 Benadryl. Clonazepam, .01 was her reading of Clonazepam.
17 Shana testified that is something that she takes to
18 sleep, that and Trazadone to sleep.

19 Shana has got sleep issues. I've had sleep issues
20 before in my life. Not anymore but you take what you got
21 to take to sleep. Sleep is important and when you wake
22 up the next day from taking something like that, okay,
23 maybe you feel a little groggy. Maybe you're not as
24 mentally acute as you would ideally be. But by that next
25 evening, probably by noon that next day you're back on.

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1 You're not like still tired, okay. I mean guys, don't
2 buy what the State is selling you. And certainly don't
3 do it in a vacuum. Use your life experiences. Use your
4 life experiences. Analyze this stuff. This doesn't make
5 sense to me.

6 Let's go back to the chronology. So any of those --
7 on the alcohol still, any of those things would account
8 for the discrepancy between eight witnesses who say she
9 is sober and some off the chart crazy blood test done
10 four hours later. Who are you going to believe? You've
11 got eight people sitting her telling you this is what
12 happened. Two completely impartial and I would say five
13 completely impartial.

14 All right, back up to the chronology. Back up to
15 the Scotchman. Pick up at the Scotchman, okay. They are
16 there five to ten minutes after Geronimo's. Shana again
17 overheard a conversation. How did you feel? I felt
18 okay, not drunk. That's consistent with what Chelsea
19 Arrowood would say that she experienced with Shana.

20 Chelsea Arrowood being an EMT was the first
21 responder on the scene. That's consistent with what she
22 said she experienced with Shana 30 minutes later. She's
23 not making that up. Chelsea Arrowood is not making that
24 up. She doesn't know Shana from Joe; she doesn't know
25 Shana. Shana does not remember the drive from the

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1 Scotchman up. She testified at the beginning she's
2 driving a stick shift. She has driven this road probably
3 a thousand times. She's lived here, she's been driving
4 this road for 20 years. It's the only way to get to her
5 house. She testified there is a 35 mile per hour zone
6 and it goes to 55 miles per hour zone. It's a country
7 road. It's a wide open road, okay. It's a straight
8 away, okay.

9 Are we all angels? Do we all follow the speed
10 limit? No. Does that mean we need to be convicted of
11 felony D-U-I? Heck, no, okay. A country road I mean...
12 All right she's behind some big pickup truck a Ford
13 F-250. I forget if he said it was diesel or not. Most
14 of those vehicles I'm familiar with are God awful slow.
15 She's got a sporty little BMW. She says I'm not waiting
16 for this guy. She goes past this guy. She just blast
17 past him. So what? She's allowed to drive. It's a
18 passing zone. She didn't do anything wrong.

19 I asked Mr. Sasnett I said was she swerving? Did
20 she seem -- was there any other problem besides she past
21 you too fast? No. Drunk people swerve. That's what
22 they are accusing her of she swerved in her own lane.
23 That's not what she did. Around the time that she got to
24 Lois Circle, which is where Joshua Witty lives on the
25 right side down Lois Circle and on the left side Mr.

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1 Allen Myers lives. Joshua Witty said well, I heard an
2 engine revving and guessed -- oh, wait no that's what Mr.
3 Myers said. He guessed Shana's speed about 75 miles per
4 hour, okay. He heard her car before he saw her. I said
5 did you hear an engine noise because Mr. Witty just
6 testified about there being this loud revving. No, it
7 wasn't engine noise it was more like wind he said if that
8 makes sense. It's like road noise is what he heard. He
9 didn't hear a race car going down there. He heard a car
10 going down there.

11 Mr. Witty says that's also about the time that he
12 heard a loud engine noise. Maybe he said the engine
13 noise got louder when she passed. I don't know. Mr.
14 Myers testified it was about a quarter mile from his
15 place around the Lois Circle insertion there on Broughton
16 Road to where that big curve is; about a quarter mile,
17 okay.

18 We all know what a quarter mile is. A quarter mile
19 is hey, there's an exit coming up I'm going to get over.
20 If I'm driving I'm going to get over and turn off my
21 cruise control and then half the time I'm going to be
22 annoyed that I am going too slow by the time I get off
23 the exit because that quarter mile is longer than you
24 think, okay. So at the quarter mile point from this
25 curve that's where these witnesses saw Shana's car go by

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1 and then Mr. Witty hears a loud engine noise. It's a
2 stick shift. Shana how do you drive this thing? I
3 downshift. It's very possible I downshifted. Josh Witty
4 said well, I seen brake lights. Well, that's consistent
5 with her downshifting. That's consistent with the louder
6 engine noise. What happens when you take it from 4th to
7 3rd? Vroom. I don't have a stick anymore but that was a
8 fun noise to hear.

9 So okay what else would possibly explain Shana not
10 braking for this curve? Josh Witty didn't see brake
11 lights. All right, two things. He testified very
12 clearly there is a small curve before the big curve,
13 okay. There is a small curve around which he couldn't
14 see. There is a straightaway between that small curve
15 and the big curve. Not a straightaway you would
16 accelerate on, a straightaway that you break on before
17 the big curve. He couldn't have seen brake lights even
18 if they had illuminated. He couldn't have seen that
19 because she already went around that small curve.

20 The other explanation is the MAIT team found three
21 recalls on Shana's brake lights. I think that's because
22 there are three brake lights on her car. One on each
23 side and the middle. I don't know. The recall had just
24 been started the month before. Shana was not living in
25 her condo because she was caring for her Mom who was in

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1 grief at her house. She was keeping her company. There
2 is no way that she was negligent by not getting this
3 recall done in time. It wasn't even a safety recall. It
4 was just on brake lights as to whether they illuminated.

5 But it may explain if you think Josh Witty can see
6 around the corner it may explain why he didn't see brake
7 lights. I don't think he can see around the corner
8 because it's got trees there and it's got a house there.
9 But any doubt about this stuff guys and the doubt will
10 carry all the way through if there are doubts, if it is
11 unclear about something the law requires you to resolve
12 those doubts in Shana's favor.

13 Okay, the last thing that Witty and Myers testified
14 to is they both heard like a EEEK, like a screech;
15 obviously I'm sorry I'm not a good mimic, but they heard
16 a screech before the accident. They were close enough to
17 the accident to hear the tires screech or the tire
18 screech was loud enough to carry through the November
19 woods where they could hear it.

20 They both heard the impact an instant later. Now a
21 car crash is a violent thing at most any speed. Maybe
22 some of you guys have heard low speed car crashes. I
23 mean I've heard a bump and you look out the window and
24 you think it's going to be this terrible nightmare event
25 out there and it's not even a fender bender; it's two

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1 cars that bumped. And it creates a very loud noise
2 because these are very heavy steel objects crashing
3 together that we are not accustomed to experiencing in a
4 normal everyday life.

5 So those sounds are loud. Those masses of those
6 vehicles are large and the forces at work are high so
7 they project. But oddly enough even though both of the
8 State's witnesses heard those tires screech the MAIT
9 report didn't mark any tire marks. They didn't mark any
10 tire marks.

11 And that takes us to our second discrepancy is the
12 MAIT report. I am so sorry to talk about this again.
13 The problems in this MAIT report started from the very
14 beginning with the trooper's investigation; yes, I put
15 that in air quotes. Poston says he smelled alcohol
16 coming from the car. I don't doubt that he smelled
17 alcohol coming from the car. I want y'all to examine
18 defense exhibit number 2 specifically. It's marked, yes
19 it's this beer can here [indicates] defense exhibit
20 number 2.

21 It's a punctured beer can all right. This thing was
22 shaken up in a car that rolled over that smashed together
23 and rolled over and sprayed everywhere, okay. Have you
24 ever had a mean friend kind of a nasty friend that takes
25 a coke or something and shakes it up and sprays it at

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1 you. This is that times ten. This is your friend being
2 in something that is taking him upside down and just
3 spraying all around. The beer that is not in that can
4 anymore went everywhere throughout that car. That's what
5 Trooper Poston smelled. I don't fault him for smelling
6 that. There's nothing wrong with smelling that. He used
7 that to determine there was beer in the car, okay.

8 When the problem comes in is he determined, he
9 testified he determined there were no open beers in the
10 car. Now these troopers testified oh, we couldn't get in
11 the car. No, no, no, that was biohazard, all right. I'm
12 calling B.S. on that.

13 These guys were in the car and they confirmed that
14 there was not an open beer can in there okay because you
15 know what? If there had been an open beer can in there
16 he testified yes, I would have collected that; that would
17 have been evidence. It would have been evidence of
18 potential guilt.

19 The eighteen beer cans and the box that were in the
20 car that remained in the car for days later guess what
21 they were evidence of? Not guilt. They were evidence
22 that none of those beer cans was open. Did they get
23 collected? No. Was that investigation impartial? No
24 way, Jose. Who got those beers cans out? Days later
25 after the police investigated after they had been all

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1 through the car with whatever biological protective
2 materials they may have needed Shana's Mom went in and
3 was allowed into the car to get some of her things and
4 said hey, this might be important. Yes, it is. She
5 brought it to me and I have it here for you to examine,
6 okay.

7 We already talked a little bit about Shana and her
8 interactions with Chelsea Arrowood. But these
9 interactions occurred right after the accident. Arrowood
10 testified that Shana was able to answer basic questions,
11 did not seem impaired, that if she had seemed impaired or
12 intoxicated or drunk she would have, she, Chelsea
13 Arrowood, would have made a note of that in her notes.
14 There is no such note.

15 Shana testified that she had a flash of memory there
16 and remembered being asked who is the President. What
17 day is it and if you have any allergies. If someone asks
18 if you have allergies to pain medicine Shana would have
19 told them about her Stevens Johnson syndrome and has her
20 allergic to most everything.

21 It was her and Montgomery who were in close
22 proximity. No slurred speech. Doctor Montgomery we're
23 talking about this GSC scale, Glasgow Coma Scale and how
24 articulate is the person. One of the three categories is
25 verbal, okay. How articulate is she? It is not

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1 measuring if someone is going to give a speech to an
2 audience or a graduation. It's measuring hey, can you
3 express an idea without slurring your words, without
4 biting your tongue, without falling off your chair, okay.

5 Shana was coherent all the times that the medical
6 staff routine repeatedly gave Shana this Glasgow Coma
7 Scale test. She passed it and she passed it with the
8 highest score, okay. That to me says something.

9 Contrast that now with Trooper Southerland. This is the
10 guy who was waiting at MUSC.

11 Trooper Southerland says four hours after the wreck
12 when he went in to see Shana after her major abdominal
13 surgery, after she had general anesthesia he goes in
14 there and says well, she's not coherent. This is bad. I
15 don't know I mean I've had general anesthesia. General
16 anesthesia you heard the doctor testify it knocks you
17 out. Different people come back from it at different
18 rates of speed but it knocks you out.

19 They let him in there to talk to her in the
20 immediate aftermath of this major surgery. They let him
21 in only because he was law enforcement I'm certain.
22 They wouldn't have let anyone else in while she is
23 recovering there. So he's got unusual access because
24 he's law enforcement. He's in there right at the tail
25 end of the surgery. She smells like alcohol. She's

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1 incoherent. If I were in a car where a beer can
2 basically exploded and sprayed beer everywhere and I had
3 long hair and no one washed me up good I'd probably smell
4 like alcohol four hours later too. It doesn't mean I was
5 drinking. And the incoherent thing I mean that's just
6 out there.

7 The MAIT investigation continues. I'm sorry, that
8 was a long detour with these troopers. There were two
9 cars involved in this accident guys. Again, this
10 accident did not occur in a vacuum. This accident
11 occurred in the real world, okay. Ms. Zoll, the
12 deceased, was driving that other car. I'm so sorry that
13 she lost her life. Shana is so sorry that she lost her
14 life. This was a terrible tragic accident. Now I'm
15 going to have to figure out what happened. And I mean no
16 disrespect when I analyze what was going on in that car.

17 Ms. Zoll was in someone else's car. She was in a
18 car owned by someone named Patricia Malphrus. Had she
19 driven that car before or was this the first time? How
20 familiar was she with this car? Was she trying to figure
21 out the controls of this car while she was driving down
22 the highway? What condition was that car in? There was
23 testimony from the MAIT guy that there had been an
24 incident with the black box, the airbag incident report
25 of 179 ignition cycles prior to the accident here in

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1 question. 179; or call it 180. Ignition cycles is when
2 you turn the car on right. So if you turn your car on
3 twice a day okay that's 90 days. That's three months.
4 That car had been in some sort of event three months
5 before this accident, okay.

6 Could it have been a pothole? He says a big one.
7 Maybe. Could have been a fender bender. Maybe. Did
8 whatever happened to that car in that prior accident
9 contribute to not being able to control that car during
10 this accident? I'm talking about the Saturn now. I'm
11 not talking about Shana's car. I'm talking about the
12 Saturn.

13 We know the fuel gauge was busted because there is a
14 photograph of it. We don't know when the needle busted.
15 We don't know if this was some old junker that Ms.
16 Malphrus said hey, Ms. Zoll, you need a car? Take this
17 thing. I was about to donate it anyway. We don't know
18 in what condition that car is. But if they're going to
19 call in question the condition of Shana's car what was
20 the condition of this car?

21 There was no mechanical inspection done on the
22 Saturn. MAIT expert from the State testified it's
23 important to do mechanical inspections on cars involved
24 in an accident. Did you do one? Well, we kind of did
25 one on the BMW. They did nothing on the Saturn. Maybe

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1 the Saturn suffered a mechanical error, okay. Shana
2 testified that the last thing that she remembered before
3 the accident is coming around the curve and seeing
4 headlights in her lane, okay. What happened next? She
5 doesn't know.

6 Y'all what she wouldn't give to remember this
7 accident? You heard her say she has to drive that curve
8 every time she goes home. She has to think about that
9 and send a little prayer -- she sends a little prayer to
10 Candy Zoll each time and it's awful. How many times
11 Shana have you tried to remember what happened? Every
12 day. Every day. This has been hanging over Shana's head
13 for two and half years every day what happened? I don't
14 know. I don't know.

15 So did that Saturn have a mechanical malfunction? I
16 don't know. Did Ms. Zoll have a valid driver's license?
17 Was she a safe driver? Poston thought she did but he
18 couldn't say for sure. She had a dog in the front seat
19 with her. We heard fire Chief Scott Lee testify to that.
20 He was called in to remove the dog from the passenger
21 side of the car.

22 We don't know if that was a rambunctious dog. We
23 don't know if that was a calm dog. What about if that
24 dog leaped over on Ms. Zoll's lap and distracted her?
25 What about if that dog sat quietly and cooed over in the

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1 passenger seat? I love animals. I love people. This
2 accident makes me so sad. But it doesn't help me
3 understand what happened in that car.

4 The State drew Ms. Zoll's blood immediately after
5 the accident. She was not given any substances. She was
6 not operated on. She did not receive six plus liters of
7 fluid. She did not receive 28 different medications and
8 fluids. She did not receive an injection of THC. That
9 was in her system when she was driving that car. She was
10 high when she was driving that car.

11 She may not have been wearing a seat belt, okay. I
12 don't know that that would have contributed to the
13 accident and contributed to her distraction. My wife has
14 gotten on me because I'm sometimes in the habit of
15 getting going or arriving at a place and either putting
16 my seat belt on as I'm going or taking my seat belt off
17 before I put the car in park.

18 We all have different habits. It's something that
19 we all do. We all drive. That's our society. That's
20 our culture. It's something we learn about ourselves.
21 But we all have different habits about that. So was she
22 trying to buckle up? I mean what was going on in that
23 car? Then the question becomes -- Ms. Heather Onezine.
24 This is the woman who is the volunteer fire fighter up
25 here. She is the one who was with Ms. Zoll when they had

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1 to cut her out of that car. She was one of the first
2 people to respond. She testified that they had to cut
3 the seat belt off her, okay. She testified that they had
4 to cut the seat belt off her. I said are you sure? Yes,
5 we had to cut that seat belt off.

6 The MAIT investigation downloaded the airbag
7 information from that Saturn, which they say was from the
8 Saturn, and that information said that that seat belt was
9 buckled. We'll get back to that. Well, let's do it now.
10 So that brings us a little bit to some of these MAIT
11 errors; clerical errors if you will, okay. They made a
12 bunch of them.

13 The only thing on the airbag download paper that
14 they used in their MAIT investigation that identified
15 which car that download came from was input from a human
16 being. It was not on the computer that was downloaded
17 from the car. It didn't say hey, this airbag monitor is
18 associated with this VIN number. There was no computer
19 connection. It was a human being. And is it possible
20 that among their other mistakes they wrote in the wrong
21 VIN number. Is that possible? The answer is yes. The
22 answer is yes. And that would explain why that airbag
23 download would say there was no seatbelt on her but a
24 rescue person would say there was absolutely a seat belt
25 on her. It would explain it because the actual download

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1 they would have done would have been from Shana's car.
2 What would that mean? That would mean they have the
3 speeds all wrong from the beginning. All these doubts
4 guys have to be resolved in Shana's favor, okay.

5 What other mistakes did the MAIT investigation make,
6 okay? Trooper Poston wrote the wrong date on the ticket,
7 okay. He gave her two tickets he testified the night of
8 November 11th. One of the tickets said it was November
9 11th and one of the tickets said it November 14th, okay.
10 The MAIT report, the big report put out by the MAIT team
11 first version of the report had Shana driving a BMW 650.
12 Doesn't she wish all right? That's a nice car. A big
13 old BMW 650, a black one. That's not what she drove.
14 She drove a BMW 325i and she drove a silver one.

15 I'm not saying it's significant, I'm just saying
16 mistakes are made, its human input. Is that what
17 happened to the black box download, okay? They did not
18 do a complete mechanical inspection. They didn't even
19 attempt one on the Saturn. They did not do a complete
20 one on the BMW. They testified that they did half of the
21 car and did not look at the other half, okay. They did
22 not run any pressure tests on the BMW brakes. They were
23 unable to determine if the car was braking evenly, okay.
24 When we're driving our cars we don't typically get into
25 heavy braking. But when we do that's when we know if it

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1 pulls to one side or not, okay. They were unable to say
2 whether Shana's car would have pulled strongly to one
3 side or not with heavy braking because they failed to do
4 the proper mechanical inspection that they should have
5 done under the way they are supposed to investigate an
6 accident, okay.

7 At the scene of the accident, okay, I'm not going to
8 fault them too much for this, but they had heavy
9 equipment driving through there. We saw a photograph
10 where at the dead end side of Broughton Road there is a
11 huge fire truck. The only way for that fire truck to get
12 there was through Broughton Road through the site of the
13 accident, okay. That was before the MAIT team had an
14 opportunity to paint that area up. It was before they
15 had an opportunity to analyze what gouges were in the
16 road; before all that stuff.

17 But the MAIT team did not inspect the tires on the
18 cars to match them up with whatever tire marks might have
19 been on the road, okay. They didn't mark the road and
20 they didn't inspect the tires. They didn't inspect the
21 undercarriages of the vehicles to determine where the
22 metal from underneath, how it was oriented and how it
23 made those marks in the asphalt. They didn't test the
24 critical speed of the curve. They have an accelerometer;
25 they could have done that. That sounds very highly

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1 scientific to us but it's something they do on a regular
2 basis in a regular course of a thorough investigation.
3 They just assumed what the critical speed of the curve
4 was.

5 They didn't determine departure angles for the
6 vehicles, departure angles for the vehicles. They didn't
7 measure an approach angle. They just said it was head-
8 on. Yes, I eyeballed it. It was head-on. You know
9 what? You're busy, I get that. But this is way too
10 serious to shoot from the hip all right. They needed to
11 measure those approach angles. The MAIT guy agreed with
12 me. He said yes, it wasn't perfectly a zero degree
13 approach angle. It was not the perfect -- it was maybe
14 five degrees, okay. Measure it. You can't tell that
15 stuff with your eyeballs. Those degrees are too slim.
16 You've got to get that. You've got to use a computer,
17 you've got to use a protractor and measure that. Like
18 David Hill did all right.

19 Mr. Hill came in and testified that he used their
20 very same diagram. He used a protractor. Maybe y'all
21 remember that from high school geometry; I vaguely do.
22 But it's something you can use to measure the angle if
23 you lay it down on a sheet of paper. And he got
24 consistently, consistently using MAIT's own diagram he
25 got 12 degrees, okay. Why is that significant, 12

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1 degrees? Okay, well it's relevant to which formula you
2 use. Are you dividing or are you multiplying, okay? Two
3 divided by two is one. Two times two is four. It's a
4 big difference all right.

5 The MAIT guy, Mr. Lee, testified that the proper
6 time to switch formulas is when the angle of approach is
7 greater than five degrees. That's what he testified to.
8 When it's greater than five degrees, that's their expert
9 okay; require you to use the angle formula. Is it a
10 mistake I asked to use an angle formula for less than
11 five degrees? No, but that formula is complicated; it's
12 a lot easier just to use inline formula. That's what I
13 got out of it. That's what I heard. It's a lot easier
14 to use inline formula.

15 Cutting corners doesn't mean anything to the MAIT
16 team because you know what? They go home to their
17 families. They're not looking at prison. Cutting
18 corners is unacceptable here. Mr. Hill also said that
19 the threshold to change formulas was five degrees. He
20 said yes, they say the safest time to change formulas is
21 five degrees. Can you do it at ten? Yes, you can do it
22 at ten. What is the difference? Mr. West seemed to say
23 when he questioned Mr. Hill it's just two degrees. He
24 could have used that inline formula all the way up to ten
25 degrees of angle of approach and this was just 12

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1 degrees. It's just two degrees. No because the inline
2 formula assumes it's zero degrees, but they allow them to
3 use it. They allow that margin up to five degrees is
4 appropriate. What's the difference in the numbers?
5 Thirty miles an hour difference in the numbers guys. 79
6 miles an hour is what they put Shana at. That is
7 outrageous. With all the assumptions that they made that
8 is so unfair.

9 David Hill did that calculation correctly. He got
10 47 miles an hour. Is my math wrong? That's 30 miles an
11 hour difference. I mean that changes everything. Their
12 whole theory of this case is that Shana was messed up,
13 driving too fast and couldn't hold her lane, drifted into
14 this other lane.

15 I asked Mr. Hill I said Mr. Hill -- remember he
16 offered it himself I wouldn't be here saying this if I
17 didn't believe it. That's what he said. He said I would
18 told Aaron, that's me by the way, I would told Aaron no,
19 I can't help you buddy. You are SOL. That's what he
20 said. He said I would have done that. I said you're on
21 a flat fee you would have liked to do that wouldn't you
22 and he said yep. But he didn't do that. Do you know
23 why? Because he has a native curiosity that made him
24 wonder what did his old team do wrong in this situation.
25 They used the wrong formula. They're about to convict an

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1 innocent woman. He's not going to let that happen. He's
2 going to speak up. He's just telling you the truth. And
3 I would submit he knows his stuff way better than that
4 MAIT team does and he cares way more.

5 I don't know if it's because he's not a government
6 employee anymore because he's got to make it out here or
7 what, but he cares. And he wanted to get to the bottom
8 of why that number was so wrong. He wanted to get to the
9 bottom of why that didn't jibe.

10 You saw the State's cartoon animation of this
11 accident. Guys, it's like Mr. Hill said garbage in,
12 garbage out. That's what they want you to believe
13 happened in this accident. That's not what happened.
14 That's taking all their errors, all their bad
15 assumptions, all their wrong formulas and saying there's
16 the God's honest truth. Don't believe it okay. Don't
17 believe it. It was entertaining but that's all it was,
18 okay.

19 They didn't map the crush zones of the vehicles,
20 okay. How long have I been talking about the stuff they
21 didn't do? And then I asked Mr. Lee I said what's y'all's
22 margin of error? We're perfect. There is no margin of
23 error here; this is scientific. Guys, if there weren't
24 so much on the line it would make me laugh, but it's just
25 crazy the way it is here. If they had charted the damage

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1 to the vehicles, if they had compared the indentations
2 from one vehicle with the indentations or protrusions on
3 the other vehicle they would have seen the way these
4 vehicles collided, okay. That's what Mr. Hill did.
5 These things, these vehicles smashed together somehow,
6 okay. The State says it was like this [indicates]. Mr.
7 Hill says it was more like this [indicates]. Which
8 puzzle pieces fit? What jibes with your common sense?

9 Mr. Hill reviewed the MAIT report. He investigated
10 the scene more than once. He said he went out there in
11 the daytime, nighttime and took measurements. He
12 carefully analyzed the photographs and diagrams and
13 measured the angle of impact a couple of different ways
14 using the protractor and using his computer program; the
15 same one that MAIT uses.

16 He held up that big diagram, which I kind of hoped
17 he would draw on but he didn't because I didn't have a
18 big ruler to draw a straight line with, but you saw where
19 the center mass of those vehicles is represented in that
20 diagram. And there is a small version of that diagram in
21 the MAIT report that you will have back in the
22 deliberation room. You got to measure where those
23 vehicles go based on that center mass and that's exactly
24 what David Hill did, okay. He consistently identified
25 the angle of approach as 12 degrees. He used the correct

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1 formula to calculate Shana's speed okay. I asked him or
2 he was asked, I forget who asked it, but his answer was
3 79 miles an hour is absolutely wrong. It's a quote from
4 the expert. He calculated Shana's speed to be 47 miles
5 an hour plus or minus three. I think he did things very
6 meticulously. What's your margin of error Mr. Hill?
7 Plus or minus three.

8 I mean nobody's perfect. He's real, okay. Mr.
9 West, wisely, did not even attempt to argue with Mr.
10 Hill's calculations. Its conclusive to me; I hope its
11 conclusive to you. It's compelling, it makes sense. I
12 asked him how confident are you? Very. He identified,
13 Mr. Hill did, the exact puzzle pieces of how these cars
14 impacted.

15 Mr. Hill testified that okay, this [indicates] is
16 the Saturn. This [indicates] is the front end of the
17 Saturn, this [indicates] is the driver's side of the
18 Saturn. Mr. Hill testified that Shana's driver's side,
19 her bumper shock is what left this mark [indicates]. He
20 matched it up using the photographs and comparing -- this
21 is the area [indicates] that impacted that spot we just
22 saw on the Saturn. This [indicates] is where that bumper
23 shock impacted, and this [indicates] is where the bumper
24 shock was crushed. And this [indicates] is the bumper
25 shock that did not hit Ms. Zoll's car. It's still

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1 sticking out; you can see it. It did not get crushed.
2 It did not hit her car. Look at the damage over here
3 [indicates]. This car then rolled over. Ms. Zoll's car
4 then was torn apart by emergency responders. What can
5 you count on about this the way this impacted? You can
6 count on the map here. Where does the puzzle piece fit?

7 In evidence there is defendant's exhibit 42. It's
8 actually the picture of that shock absorber that was
9 removed, okay. It was removed from here [indicates] and
10 that's what caused that indent in the Saturn over there.
11 So what do we know? We know from Mr. Hill that speed had
12 nothing to do with Shana's crossing that yellow line. I
13 asked Mr. Hill I said -- or somebody did, I think it was
14 me said how confident are you that it wasn't speed that
15 caused her to cross that center line. He said it was
16 absolutely not Shana's speed that caused her to cross
17 that center line, okay.

18 So if it wasn't her speed that caused her to cross
19 that center line what did? Because the State's theory is
20 that she was drunk or impaired. They are going to try to
21 sell you on a tiny amount of impairment. Guys don't let
22 it be Benadryl from the night before. They're going to
23 try and sell you on a tiny amount of impairment and they
24 are going to try to tell you she was impaired and she
25 drove too fast because she was impaired and caused this

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1 wreck. That is not what Mr. Hill said. Mr. Hill said
2 this wreck did not occur because of Shana's speed. Their
3 theory ends right there. That's it, that's the end of
4 their theory. That's not guilty. That's an acquittal.

5 Why does it end right there? Because there is no
6 other connection to Shana's alleged impairment, her
7 imaginary impairment I would submit, and this accident.
8 They have to prove to you that it was her impairment that
9 caused this accident. It wasn't her speed, okay. Mr.
10 West is going to get up here and jump up and down and say
11 this accident occurred in the other lane of travel.
12 That's all you need to know. Don't worry about the speed,
13 it doesn't matter. She was in the wrong lane, she
14 crossed double yellow.

15 Why did she cross that double yellow line, guys?
16 Why did she do that? She wasn't drunk. She wasn't
17 impaired. You've heard from eight witnesses. Eight
18 witnesses. Not one, not her buddy Brittany, eight
19 witnesses who say that Shana was not drunk, that she was
20 sober at the time of this accident. Immediately before
21 and immediately after the accident she was sober. Why
22 did the wreck occur in Ms. Zoll's lane of travel in the
23 other lane of travel? I'm not asking you to figure it
24 out. I can't figure it out and the State can't figure it
25 out, okay. Nobody knows what happened out there on the

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1 curve that night. It's a country road. There are
2 probably deer out there. Could be a deer leaped in front
3 of Ms. Zoll. She's an animal lover and tried to avoid
4 it. Shana's sees the car in her lane and tries to avoid
5 that car. I don't know what happened.

6 What I know is this; Shana was not impaired, not on
7 prescription drugs, not on alcohol. Not on anything,
8 okay. She was driving that curve the way she did a
9 thousand times before. She's coming around the curve and
10 she sees someone in her lane. I don't know what happened
11 next but I will submit this. What is reasonable to do
12 when there is a car coming at you in your own lane? On
13 the one side she's got the dike. That's the side of the
14 hill, the little side of the hill that goes up to the
15 road that leads to those football playing fields on the
16 right.

17 On the left she's got a pretty steep ditch, okay.
18 If it's me and there is a car coming at me on a curve in
19 that situation, I'm a reasonable person, to me I'm going
20 to try to avoid that car. I'm not going to well, maybe
21 they will move. They are in my lane, it's my lane; they
22 should move. I'm just going to keep my lane. I wouldn't
23 do that. There is no way. Uh Uh. I would say whoa.
24 You don't have time to think in a situation like that.
25 It's just your reaction. It's just your reaction. What

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1 can you do? There's a car. Whoa. That's probably all
2 that Shana did. You've got to be firmly convinced if
3 you're going to find against Shana in there. You've got
4 to be firmly convinced.

5 This would be a huge, huge mistake. This would be a
6 terrible miscarriage of justice to find her guilty. If
7 they had done the blood test immediately after, if they
8 had gotten that same result without the surgery, without
9 all the other crazy stuff we wouldn't be here. If they
10 had done the blood test after and gotten the result that
11 I believe they would have gotten zero to .01, which is
12 what Doctor Bennett testified it would have been based on
13 three drinks one drink an hour in the time prior we
14 wouldn't be here either.

15 It's not fair -- it's not fair to put on her, to put
16 on her future whatever was given to her while she was
17 unconscious in the hospital, okay. Twenty-eight
18 different fluids, a tetanus shot, 18 medicines, ten
19 fluids, blood and everything else; it's not fair guys.
20 It's not even reasonable. I mean what the State is
21 holding Shana to is was her driving unreasonable? Her
22 driving was reasonable but this prosecution isn't. When
23 there is an emergency or an exigent circumstance or when
24 there is somebody in your lane of travel and you're
25 trying to avoid a traffic accident the normal rules of

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1 the road they go out the window. Any officer will tell
2 you that, okay. You do not have to stay in your lane
3 when a car is coming at you. You don't have to do it.

4 I don't know what happened out there but here's what
5 we know. David Hill says it wasn't her speed. Eight
6 people say she wasn't impaired, okay. Please, please,
7 please do the right thing here. Find her not guilty.
8 This has been terrible for her. She is going to live
9 with this for the rest of her life. Please acquit her.
10 Any doubt you have about any of those points along the
11 way, please resolve them in her favor.

12 THE COURT: Mr. Foreman, ladies and gentlemen we're
13 going to take advantage of this break and take a very
14 brief restroom break. During the break please do not
15 discuss the case in any manner whatsoever and please
16 leave your notepads in your seats. As soon as you are
17 done we will resume argument.

18 [Whereupon, the jury exits at 11:56 a.m.]

19 THE COURT: Is there anything before we break for
20 the restroom from the state?

21 MR. WEST: Nothing from the State, Your Honor.

22 THE COURT: From the defense?

23 MR. MAYER: No, Judge.

24 THE COURT: I'll be giving an additional
25 instruction regarding records as to punishment as that is

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1 inappropriate for a jury to consider. Jail time is
2 inappropriate for a jury to consider as well as any
3 references to potential punishment. That's a matter of
4 law for the court so I would supplement my instructions
5 with that. We'll be at ease until the jury is done using
6 the restroom.

7 [Whereupon, court is in recess from 11:57 a.m. to
8 12:05 p.m.]

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1 THE COURT: Is the State ready to proceed?

2 MR. WEST: Yes, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. MAYER: Yes, Judge.

5 THE COURT: Please bring in the jury.

6 [Whereupon, the jury enters at 12:09 p.m.]

7 THE COURT: Ladies and gentlemen we will now resume
8 argument. I'd ask that you give counsel your attention.
9 You may proceed, Mr. West.

10 MR. WEST: Thank you, Your Honor. May it please
11 the court?

12 THE COURT: Yes, sir.

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1 REPLY-CLOSING ARGUMENT

2 BY MR. WEST:

3 We've heard a lot during argument and testimony this
4 week so I want to recap a few things with you first off.
5 And some of the main things I want to recap are some of
6 the things that we know with absolute certainty in this
7 case, some of the things that neither the State nor the
8 defense disagree about.

9 And I am going to list those out and I want to make
10 perfectly clear that some of these things absolutely go
11 to some of the elements of the crime of felony D-U-I for
12 which Shana Robinson is charged. One of the first things
13 you're going to hear is a stipulation agreement between
14 the State and the defendant. This is an agreement by
15 both parties that was thoroughly examined before, agreed
16 to and signed and is going to be read into evidence as
17 part of something you can take back with you.

18 One of the topics in the stipulation agreement is
19 the chain of custody of the blood sample taken from this
20 defendant. Now one of the things that is key right there
21 is that it was taken from this defendant. If what Mr.
22 Mayer argued is true; that if we don't even know who this
23 blood sample came from he wouldn't have signed the
24 agreement that says that this blood came from Shana
25 Robinson. Now another part that he argued during his

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1 close was that it was not transported correctly to SLED,
2 they didn't put it in a refrigerator, the cop had it in
3 the back of his car for three days.

4 Now just use your common sense when reading this
5 agreement, which I'm about to read to you, and just think
6 would that fit within the definitions of a proper chain
7 of custody? Would that fit within the definitions of
8 the agreement signed between the parties that says both
9 of us agree that it was properly handled, sealed, stored,
10 and refrigerated.

11 Now he made a big deal about there is no
12 refrigerator in the back of the trunk of the car. But
13 guess what? The agreement specifically will say that it
14 was transported straight from the Highway Patrol to SLED.
15 There is not a refrigerator in the back of a trunk so
16 yes; it did spend a little time in the back of a car.
17 But one of the things that is important is that when it
18 could have been refrigerated it was. When it was handled
19 it was handled properly. It was exchanged properly
20 between parties and it was tested properly.

21 So that is something you're going to have to keep in
22 mind when you have this agreement back there with you.
23 So the importance of me bringing this out first thing is
24 the defense wants you to chase rabbits. Have you ever
25 heard the old saying chasing rabbits comes from Alice in

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1 Wonderland chasing rabbits down a hole. Rabbits will
2 chase you in -- rabbits will run in circles. You can run
3 around chasing rabbits all day but what's the importance
4 of it? There isn't any because he's just trying to
5 distract you. He's trying to distract you from the very
6 agreement and the things that he can't refute, okay.

7 So there are certain things in evidence that are
8 indisputable and this is one of them. The first thing
9 that is indisputable in this case is that Candy Zoll died
10 as a result of this collision. Now I'm going to read
11 this part for you. The decedent victim in this case, Ms.
12 Candy Zoll, was pronounced dead at 9:45 p.m. Eastern
13 Standard Time at Roper Hospital in Moncks Corner, South
14 Carolina by Doctor Carl Potts, M.D.

15 And her death, her death, which is one of the
16 elements of the crime, the death of Candy Zoll being a
17 result of the collision. That means this collision
18 caused her death. So there is no argument that she
19 didn't die because these two cars collided, her death
20 being a result of the collision between her vehicle and
21 the vehicle driven by the defendant, Shana Robinson.

22 So that eliminates another element the State has to
23 prove. One of the things as you heard from Mr. Alfaro is
24 the State has to prove that Shana Robinson was in fact
25 the driver. Well, we put up testimony that Shana

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1 Robinson was the driver from Brittany Hartley, Shana
2 testified herself; the EMT's found her in the driver's
3 seat. Those things, while it seems a little bit
4 repetitive, the State bears the burden of proof. So if
5 we didn't present that testimony he would be saying the
6 same things about why didn't we hear from so and so? Why
7 didn't we hear from him? Why didn't we hear from her?

8 Well, the truth of the matter is some facts are
9 indisputable but he is still going to try to make you
10 chase rabbits, okay. So the State and the defendant
11 agree as to the proper chain of custody regarding the
12 blood sample taken from the defendant, so this whole
13 conspiracy that this blood was from the defendant
14 debunked exactly by the wording that defense counsel
15 agreed to, taken on November 11th at 12:45 a.m. Eastern
16 Standard time while at the Medical University of South
17 Carolina in Charleston, South Carolina.

18 That means when he gets up there and argues about
19 when was the blood drawn, when was all this, when was the
20 trooper there, when was the nurse there it's another
21 rabbit. He's agreed that it was at 12:45. The booking
22 report says that it was 12:45. The custody report of the
23 blood sample says that it was 12:45. It was 12:45. It's
24 one of the things that is indisputable in this case. He
25 can't argue that yet he still tries to make you chase a

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1 rabbit. Further, the aforementioned blood sample was
2 properly sealed and stored. Properly sealed and stored.
3 So when he gets into all this stuff about was it an
4 expired vial is that a big deal? No, he agreed it
5 wasn't. It's not a big deal.

6 So the blood seal [sic] was properly sealed and
7 stored until transported to the South Carolina Law
8 Enforcement Division. So that means the people from the
9 hospital, the nurse, Trooper Southerland, everybody in
10 between at the highway patrol all the way to SLED
11 everything was properly sealed, stored, and transported.
12 So why does he bring this stuff up to you if he knows
13 it's true and he's already agreed to it? Because he's
14 trying to distract you from the things that he can't
15 refute.

16 In addition the chain of custody testimony would
17 have consisted of sworn testimony regarding the exchange
18 of the sealed sample from Trooper Southerland to Corporal
19 Pearson, who is another one of the witnesses you heard
20 and you're going to hear some names of people you didn't
21 hear from because he already agreed that they properly
22 handled it and it was sealed and it was stored properly.
23 So from Corporal Pearson to the evidence refrigerator,
24 which again in his argument he made a big deal about how
25 it was stored, whether it was properly refrigerated..

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1 Well it tells you right there it was in an evidence
2 refrigerator at the South Carolina Highway Patrol Troop
3 6, post day from the refrigerator, again in a
4 refrigerator at the South Carolina Highway Patrol to
5 Trooper Gadsden, from her to Trooper Elliott, from
6 Trooper Elliott to Trooper Frick, from Trooper Frick to
7 the headquarters in Columbia to Mendell Rivers.

8 Now, again I'm not going to read it word for word
9 because you're going to have this back there with you.
10 But you get the general idea that he has already agreed
11 to this. He's already agreed to this, indisputable
12 facts, ladies and gentlemen, indisputable facts.

13 Subsequent to the proper handling by the Highway
14 Patrol, proper handling, members of the South Carolina
15 Law Enforcement Division also handled the aforementioned
16 blood sample from the defendant in accordance with a
17 proper chain of custody.

18 You heard so much testimony about how this thing got
19 to Tracy McKinnon and he agreed to how it was handled.
20 Why is he doing that? I would submit to you he's just
21 trying to waste your time. He's trying to make you chase
22 rabbits. So the sample first being taken from the
23 custody of Mendell Rivers of the Highway Patrol to a
24 technician at SLED and it talks about the time that it
25 was checked in all the way until it gets to Tracy

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1 McKinnon. So that debunks any argument as to how this
2 blood sample was taken, who it was taken from, when it
3 was taken, how it was handled from the time it was at the
4 hospital, from the time it was at the hospital to the
5 time it got in the vial, from the time the vial was put
6 in a police car to the time that it was taken all the way
7 up to Tracy McKinnon who tested the blood sample taken
8 from this defendant four hours after the accident.

9 So the next thing that he made a big deal about that
10 is also a rabbit is the fact that it was taken at 12:45.
11 When could the troopers have taken her blood sample?
12 When she was being escorted out of her car that had just
13 been in a major wreck? When she was in the back of an
14 ambulance? When she was in a helicopter in the air?
15 When she was having major surgery? You heard Trooper
16 Southerland testify he couldn't get to her. You know
17 when he got to her? The first time he was able to. He
18 got that blood sample as soon as he could.

19 He stomped up here and told you it would be more
20 accurate if he got it sooner. Well you know what? The
21 fact that it was taken four hours later that actually
22 helps Ms. Robinson. Do you know why it helps Ms.
23 Robinson? Because we heard testimony that the fact that
24 alcohol is in the system at a .09 that shows that four
25 hours before that it would have been a .15. Alcohol

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1 metabolizes. These things eliminate from the blood
2 system. So if this blood vial taken from this defendant
3 was taken four hours after the accident we know with
4 scientific certainty that the alcohol level at the time
5 of the collision would have been higher than what we're
6 even trying to allege. We're showing that the sample
7 shows .09, .09 is significant because it is higher than a
8 .08, okay.

9 I'm going to get to that a little bit later because
10 that deals a little bit more with the law. But I wanted
11 to make some things perfectly clear about what is
12 undisputed in this case and what is a rabbit from Alice
13 in Wonderland. So the next thing that we know is that
14 there was a wreck. This [indicates] is the scene of the
15 collision. Now there are a couple of things you can just
16 look at it with common sense and understand that happened
17 in this wreck.

18 If Shana Robinson was coming from Broughton Road at
19 the head of Moncks Corner towards Lyons Beach her lane of
20 travel is the right lane. If Candy Zoll is coming away
21 from Lyons Beach towards Moncks Corner her lane is the
22 left lane. Her car is over here [indicates] in the
23 embankment; her being this defendant, Shana Robinson.
24 This car did not jump over the lane of travel, it didn't
25 hop over the lane of travel, it didn't roll over the lane

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1 of travel. It did not maintain its lane of travel, it
2 crossed Candy Zoll's lane of travel. And you know the
3 other thing we know about that crossing over the lane of
4 travel is it didn't cross it without hitting a car. It
5 hit a car that had a person that died as a result of her
6 [indicates] hitting her car.

7 Her testimony from her expert says that this
8 collision happened in Candy Zoll's lane of travel. Now
9 you heard all of this scientific formula from this expert
10 that he put up and paid to come here and tell you how
11 much speed was involved in the collision. You notice I
12 didn't ask him too much. And one of the reasons I didn't
13 ask him too much is because let's take my expert, the
14 State's expert, out of the equation. If we take the
15 State's expert out of the equation and the State calls
16 David Hill as its expert guess what we have? We have a
17 charge of felony D-U-I because his expert testifies that
18 the collision was in the lane of Candy Zoll's travel.

19 You know what else he testifies to? Forty seven is
20 greater than 35. That's still speeding. So this whole
21 defense if you want to even call it that that she was
22 just a little bit drunk or she was just speeding a little
23 bit that's not a defense. Speeding just a little bit and
24 being just a little bit drunk does not relieve you of
25 criminal liability. Under the eyes of the law you are

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1 still guilty of the charge of felony D-U-I. So I am
2 going to explain a lot about David Hill's testimony a
3 little bit later. But I want you to know that this
4 whole argument that the MAIT report was, you know, it
5 messed up. There is nothing you can believe about it.
6 If you don't believe it believe David Hill. And David
7 Hill testified to the exact same things that we need as
8 elements for the charge of felony D-U-I.

9 So a couple of things are indisputable in this case.
10 The wreck happened in Candy Zoll's lane. Now the other
11 thing that is indisputable both from David Lee and David
12 Hill is where in the left lane this happened. Look at
13 this photograph right here [indicates]. It tells you
14 everything you need to know. This wasn't a little bit on
15 the left lane. Here [indicates] is the center yellow
16 line. It was all the way over towards the fog line.
17 Shana Robinson didn't just swerve a little bit. She went
18 all the way in.

19 And you know how else she went all the way in is
20 because her car ended up over here [indicates] off the
21 ditch. I mean it doesn't take much more common sense to
22 understand that the wreck happened where the marks in the
23 roads are, that the wreck happened in the lane that Candy
24 Zoll had a right to be in; not Shana Robinson. And it
25 doesn't make much sense to think that this accident

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1 didn't happen because she didn't commit some act in
2 violation of the law. So we know a couple of things
3 right there.

4 Another indisputable fact is that alcohol was
5 involved. The defendant testified that she drank vodka.
6 Her best friend and roommate put vodka in her hands. So
7 this argument that the ethanol found in her bloodstream
8 is not from the vodka that she drank at the two different
9 bars that she was at before she killed Candy Zoll just
10 doesn't make sense.

11 The only thing that they have to argue is the amount
12 of drinks that were taken by this defendant at the bars.
13 And guess what? The only way they got the numbers
14 they've got is from people who can't remember anything
15 about what happened. You heard Brittany Hartley who has
16 been sitting on Shana Robinson's side this whole trial
17 because she has her back through thick and thick tell you
18 that she only had two drinks at Applebee's.

19 She only had one drink at Geronimo's. Two drinks
20 plus one drink equals three drinks, equals a drink,
21 equals vodka. Vodka is ethanol, ethanol in her blood
22 stream. He put up some Internet doctor to come tell you
23 well this alcohol would have been out of her bloodstream.
24 I don't know if you can believe anything he said because
25 you know how he was trained? He looks at the Internet.

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1 He reads books. He didn't have anything to tell you that
2 meant anything. Everything he found was a rough
3 approximation based on things that Shana Robinson and
4 Brittany Hartley told him. And what do they remember?
5 Everything that is convenient for them to remember.

6 Now I'm going to move on a little bit. One of the
7 things that I think is really important here to hear is
8 how the witnesses were presented. We know that a couple
9 of things are in dispute. The speed. Everybody wants to
10 know how fast somebody was driving when a wreck happens.
11 So we have to present evidence of speed. His expert says
12 one thing, our expert says another. Both agree it was
13 greater than 35. Both agree it was greater than 35.

14 The next thing is the level of intoxication. So how
15 do we determine the level of intoxication and the speed?
16 Well, we have three eyewitnesses. Eyewitnesses that
17 admittedly did not see the actual collision but things
18 that they did see is extremely relevant to what the speed
19 was at the time of the collision.

20 There is not one single person to corroborate 47
21 miles an hour; not one single person. Now think about
22 how they were presented. The first person that was
23 presented was Joshua Witty. Joshua Witty says he hears
24 the car before it gets to him. That right there tells
25 you this car is flying. He says he hears the car before

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1 it gets to him and when he passes it -- or when it passes
2 him he says that car ain't going to make that curve.
3 That car ain't going to make that curve. He knows that
4 curve. Shana professes to know that curve. She didn't
5 make that curve. And he said it before he even had to
6 see the collision. And the reason he said it because he
7 knew the speed she was going would not fit the bill for
8 how she was supposed to maintain her lane of travel,
9 okay.

10 So the other thing he says is that he gave a rough
11 approximation as to what the speed was just from general
12 experience. Everybody has seen a car drive by and
13 especially if you live near a certain speed zone you can
14 probably guess how far a car is driving. He guessed 80.
15 He guessed between 70 and 80. I think the other guy he's
16 the one that guessed actually 80. But what's important
17 about that is it's not 47. It's not 47, okay.

18 So there is a big difference between people seeing a
19 car and thinking its going 47 and people seeing a car and
20 thinking it's going 80. The next thing he said was that
21 it was like a bomb going off; an explosion. That means
22 that this wasn't a fender bender as Mr. Mayer suggested.
23 This wasn't the actual thump that he is trying to get you
24 to believe it was. And I don't even have to really argue
25 about that because you can just look at the pictures of

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1 the cars and tell this was a high speed collision. Now
2 there are certain things that Mr. Sasnett said that are
3 important for you to key in on. Mr. Sasnett is one of
4 the guys that was driving the F-250. He said he was
5 going at least 60 miles an hour. Common sense tells you
6 in order to pass somebody going 60 you have to go faster
7 than 60.

8 Now how come Mr. Sasnett didn't see the crash? He
9 didn't see the crash because the car in front of him left
10 him. That car was speeding so fast wouldn't you think he
11 would be one of the first people on the scene if he was
12 following right behind her. But he couldn't because he
13 couldn't keep up with her. He couldn't keep up with her
14 because she was going almost 80 miles an hour; not 47
15 miles an hour. So that's what the eyewitnesses say,
16 eyewitness testimony to the fact that this defendant was
17 speeding.

18 Now you heard from the EMS persons Arrowood and
19 Jenkins. Now this was admittedly a collision that
20 happened November 10th of 2011. That's a long time ago.
21 Everybody is not going to remember everything but certain
22 things don't change, okay. Certain things don't change
23 because they are in reports. They are written in
24 reports. One of the things that you need to know from
25 their testimony is they didn't give her any medication.

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1 They didn't give her any medications. And I want you to
2 think back to when these people were testifying
3 especially Monty Jenkins because Mr. Mayer asked a line
4 of questioning that tried to make you think that some
5 stranger off the road would go into an ambulance and
6 steal medicine from emergency personnel and put it into
7 someone's IV. Is that not the most ridiculous thing
8 you've ever heard? Don't you think somebody would have
9 noticed somebody going into an ambulance and stealing
10 medication, okay?

11 Well, he made this argument about this medication
12 that might have been stolen. Well, we know that there is
13 not real argument about what medications are in her
14 bloodstream. So what is the whole point of somebody
15 slipping something into her IV? There's no point. It's
16 a rabbit. It's a rabbit that he is trying to get you to
17 chase to avoid the real issues.

18 So the only thing that he could be saying is
19 somebody poured alcohol into her IV. Somebody might have
20 ran into the ambulance and poured alcohol into her arm?
21 That is just not reasonable. That is the most ridiculous
22 rabbit that you might see in this entire trial. So
23 another thing from them is that they gave her an IV.
24 What's the importance of the IV? Mr. Mayer wants you to
25 believe the fact that she had over six liters of IV

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1 fluid, water, and saline solution that somehow that water
2 and saline solution would distort the fact that she had
3 alcohol in her system. If anything water and saline
4 solution dilutes the blood. Again, an argument that none
5 the less helps the State.

6 There is nothing in scientific certainty or from
7 anything that these witnesses testified to, especially
8 Tracy McKinnon because asked him. I asked him what in
9 the world would an IV do to a blood alcohol level. He
10 said it would lower it, okay. So again, the State is
11 alleging she had a .09. What does Mr. Mayer want us to
12 suggest. So that's the importance of the EMS workers.

13 The next person you heard from is Mark Garrick. He
14 was on the helicopter. Again, the trooper didn't have
15 access to her because she's on a helicopter. But what he
16 did testify to is that he gave her certain medications.
17 We know that he gave her Fentanyl, Zofran, and Lidocaine.
18 Now, Mr. McKinnon testified that some of his toxicology
19 results would not show up with certain drugs because he's
20 not looking for certain drugs. He's not looking for
21 Fentanyl and Zofran because Fentanyl and Zofran aren't
22 some things that people can take. Lidocaine showed up in
23 her bloodstream because it was given by EMS and Mr.
24 Garrick. Lidocaine is one of those things that will show
25 up on the tox screen. How do we know her blood alcohol

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1 results are correct? Because the things people say are
2 in her system because they gave them are in her system.
3 She had Lidocaine in her system and that's one of the
4 first things you need to pick up on when you're looking
5 at these blood test results. What can you corroborate?
6 What can you corroborate with the evidence that has been
7 presented by the witness stand and Mr. Garrick
8 specifically testified he gave her Lidocaine.

9 The next people you heard from is Chief Lee, Mark
10 Dirks, and Heather Onezine. These are fire personnel.
11 The importance of them was not necessarily for you to
12 understand the chaos. Obviously you can understand the
13 chaos that is going out there between emergency
14 personnel, fireman, troopers, witnesses, bystanders,
15 family; everybody going to a collision.

16 But what you need to understand from them is that
17 they report that there is such extensive damage done to
18 Candy Zoll's car that she had to be extricated. This
19 wasn't 47 miles per hour. She had to be pulled out of
20 her car with the Jaws of Life. The roof to her car was
21 completely removed. They couldn't get to her before they
22 had to cut the doors to her vehicle off. She was
23 entirely schmushed into her driving compartment. So when
24 you see the pictures of the Saturn this is important
25 because it corroborates the fact the State is not hiding

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1 anything. We're not trying to say this collision made
2 the roof come off. We're not trying to say the collision
3 made the doors come off. But what we are saying is that
4 the entire driver's compartment was completely crushed
5 into where Candy Zoll was sitting. And that's the
6 importance of their testimony.

7 Now one of the things that was an argument by Mr.
8 Mayer that is important for you to not chase because it's
9 another rabbit is the fact that she had a dog. The dog
10 was found in the front passenger floorboard. The front
11 passenger floorboard. Is he trying to say that the dog
12 barked and made her do what? Because we don't have any
13 evidence that she swerved. We don't have anything but
14 the testimony from this defendant that she saw
15 headlights. And I'll get to those headlights in a
16 minute. But what we know is a dog was found and Mr.
17 Mayer is not unfamiliar with making you chase rabbits.

18 So we see in this picture right here [indicates]
19 that the roof was peeled back, the doors were cut off,
20 and this [indicates] is where Candy Zoll had room to sit,
21 okay. This seat [indicates] is laid back because she had
22 to be taken out. She couldn't wiggle out on her own.
23 She couldn't get out under her own strength because she
24 was crushed from the impact that led all the way up to
25 the tire wells that schmushed the steering wheel up into

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1 the driver's compartment. If you lay this seat up
2 straight right here [indicates] and I'll show you another
3 picture later about that seat being straight up, look how
4 much room she had to sit. Would a seat belt have
5 anything to do with the crash? It doesn't matter if
6 you're wearing a seat belt or not, this collision is
7 keeping you in that car. She was not ejected. What a
8 seatbelt does is keep you from being thrown out the
9 windshield of a car.

10 That wasn't what happened here. And I'm going to
11 get to proximate cause later, but one of the things that
12 he keeps making you try to chase is rabbits. Now, the
13 next people we hear from are nurse Young and Trooper
14 Southerland. I'm not going to belabor the point. Mr.
15 Mayer has agreed that everything was taken and properly
16 stored and sealed. So the fact that he brought up all
17 kind of things about how nurse Young took this blood
18 sample is another rabbit.

19 But what we know is that he drew blood from this
20 defendant. The same blood that you saw in the vials, the
21 same blood you'll see in the pictures of the vials that
22 we have in evidence. This is the blood [indicates] taken
23 from this defendant and that's what is tested later. So
24 these are in evidence, State's number 75 clearly shows
25 Daniel Young's signature on the vial that was signed by

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1 him 11/11/11 at 12:45. The vial says the same thing as
2 the collection report. The collection report
3 corroborates that this defendant's blood was taken on the
4 date and time that it was.

5 Now another thing that is stressed about how this
6 blood was taken the blood was taken as you have heard
7 both from the nurse, the trooper, and Mr. McKinnon from
8 SLED. These blood draw kits are custom. They are
9 standard. They are standard issue. They are boxes and
10 you heard this it's a box that has gloves, that has a
11 needle, that has vials; everything is standard.

12 So when the blood is actually taken it's taken with
13 a needle from the kit, with gloves from the kit, with the
14 vials from the kit, with the vials that are standard from
15 SLED, which you heard was the superior method of testing
16 things. You heard that it was the most reliable thing
17 and that comes from his Internet doctor that came in here
18 yesterday.

19 Those preservatives in those vials they are the
20 accurate amount. Everything comes the same in every kit,
21 so this whole idea of a vacuum seal or the preservative
22 amounts throwing off the alcohol think about that. Think
23 about how would preservative amounts throw off alcohol?
24 If you had too much preservative in a blood vial well
25 wouldn't that make sense that the preservative they put

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1 in those vials wouldn't affect the stuff they are trying
2 to read? Just think about that. Why would they put some
3 substance in a vial in which they test across the State
4 that would affect how the blood was read? It doesn't
5 make any sense. It's another rabbit.

6 Now one of the other things that he says what about
7 an alcohol swab, did nurse Young use an alcohol swab.
8 Well you're going to see in the blood collection report
9 that he didn't because he signed off on something that
10 says that he properly collected the blood, State's
11 exhibit 72, using a non-ethanol prep a blood sample was
12 collected into an unused, uncontaminated vial and given
13 directly to the arresting officer. It's in evidence
14 ladies and gentlemen. It's another rabbit.

15 What he used was the Betadine prep. We know that
16 because that's what comes in the kit. That's what he
17 testified that he uses. That's what Tracy McKinnon says
18 it there and that's what Trooper Southerland says is
19 there. So the fact that an alcohol swab may or may not
20 have affected anything is just another rabbit.

21 But what you have to understand is he is trying to
22 argue that rubbing alcohol is the same thing as drinking
23 alcohol. Think about that. Are they one in the same?
24 Are people going to try to clean cuts or anything with a
25 beer? No, they're not. They're going to try to clean it

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1 with isopropyl alcohol. And what you've heard from both
2 the doctor, both experts was that this was isopropyl
3 alcohol. While this doesn't really matter because
4 isopropyl alcohol was not used it's something that he's
5 trying to bring up because he's trying to confuse you.
6 He's trying to confuse you because the fact of the matter
7 is the blood was properly taken. Again, he signed an
8 agreement that says that the blood was properly taken,
9 stored, sealed, and transported.

10 Doctor Stephanie Montgomery she treated the
11 defendant. She confirmed that Hydromorphone, Ketamine,
12 and Lidocaine were given at the hospital. Again,
13 corroborative evidence that the things we know were given
14 are in the blood results. What is he trying to argue
15 that is incorrect about the blood results? The alcohol
16 level; because everything else in the blood results seems
17 to be accurate. Everything that the defendant was listed
18 as given has shown up in her blood results.

19 But he wants you to believe that somehow the
20 alcohol, which is the only thing that he has any leg to
21 stand on, is incorrect. I submit to you that that's
22 another rabbit. What else did it confirm? It confirmed
23 the same things that Shana Robinson testified to and the
24 fact that she has certain prescriptions. She has a
25 Clonazepam and a Trazadone prescription and that she

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1 takes Benadryl. That shows up in the blood screen. That
2 shows up in the blood screen. How much corroborative
3 evidence can there be when everything that the doctor
4 says is in the bloodstream, the defendant says is in her
5 bloodstream actually shows up on the most accurate and
6 superior method of testing blood.

7 Here's another thing I want you to think about; the
8 blood transfusion. Doctor Montgomery testified that in
9 an ordinary Styrofoam cup about that much [indicates]
10 blood would have been transfused between the time that
11 the blood transfusion started and the blood from this
12 defendant was taken. Is it really a reasonable argument
13 to think that a hospital like MUSC would give somebody
14 drunk blood?

15 Is it just coincidence that the same blood that is
16 supposedly so tainted because of the way they store them
17 at MUSC shows exactly what the defendant says she has in
18 it, exactly what Doctor Montgomery says she has in it and
19 alcohol. Is it really reasonable to believe that a
20 hospital would give somebody drunk blood? Again, I
21 talked about the six liters of IV fluid. IV fluid, again
22 going back to the EMS workers and the helicopter nurse
23 all it would do was dilute the blood. And if it diluted
24 the blood, it diluted the alcohol and it made it less
25 than what we are alleging or what would have been the

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1 level had it been earlier. Here's another rabbit; the
2 Glasgow Coma Scale. What does that even mean in relation
3 to what is important in this case?

4 Doctor Montgomery's testimony said that even a dead
5 person can get a three. Does a dead person have any
6 motor function? Can a dead person verbal -- I mean, what
7 does that have to do with anything? But she also said
8 that an intoxicated person can have a 15. That's
9 important because even though Shana Robinson scored a 15
10 it doesn't mean anything about what her level of
11 intoxication was.

12 Here's another interesting thing he brought up with
13 Doctor Montgomery that I want you to pay close attention
14 to. He asked her, and he really asked her this, would
15 the stitches you use when you sew somebody up be soaked
16 in alcohol. Is he really trying to say that the alcohol
17 that she had in her system came from the stitches from
18 her surgery? Is that really a reasonable argument?

19 Did he really ask somebody on the stand that the
20 stitches from a surgery would make you have a reading of
21 alcohol which is against the law? Is that what he is
22 saying caused this misleading information from SLED?
23 Stitches? Tracy McKinnon. Tracy McKinnon is a very
24 important witness. Tracy McKinnon is the person that
25 tested the blood. He said that it was in the correct

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1 kit. The correct kit which came with the same vials that
2 were correctly properly stored, sealed, and transported,
3 okay. So the correct kit gave the toxicology results.
4 And what do we know from the toxicology results? She had
5 a .09.

6 This is where I want to talk a little bit about the
7 law. What does a .09 mean? The State legislature has
8 specifically defined the amount of alcohol that a jury
9 can give an inference to, an inference means that you can
10 allow that percentage to lead you to the conclusion that
11 that person was impaired. This level of alcohol in Shana
12 Robinson's system was a .09. Obviously higher than a
13 .08; .08 being the inference for impairment.

14 What does that give you as a juror? It gives you
15 the ability to infer only from that that she was
16 impaired. You need no other evidence of any other drugs
17 for you as a jury to properly infer that Shana Robinson
18 was intoxicated and impaired at the time of the
19 collision.

20 So the next thing that is important about .09 is the
21 fact that there is a calculation that can be done called
22 a back extrapolation. This is a scientifically
23 recognized method of counting back the level of alcohol
24 in a person's bloodstream. The scientifically accepted
25 method we've heard testimony was that you can count back

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1 from .015 up to .02. If you do the math that means that
2 you can get from four hours, four hours we know the blood
3 was drawn after the accident, four times two is eight,
4 eight, nine, seventeen. That's really high. If .08 is
5 where a jury can infer somebody is legally impaired what
6 does it mean when somebody is a .17? If you take the
7 average of the back extrapolation what does it mean when
8 a person is a .15?

9 You know in order to get to those numbers you have
10 to make certain conclusions. You have to believe the
11 testimony of the experts that told you about the
12 calculations and how you got them. If you choose to
13 believe them then it is your duty to apply the
14 calculation and choose to believe that Shana Robinson had
15 on average a .15 at the time of the collision.

16 If you don't believe in the back extrapolation she
17 still has a .09. She still has a .09 and .09 is greater
18 than .08 which gets you to the inference level. You need
19 no other evidence of impairment other than the inference
20 level. That's important. That's important because one
21 of the elements of felony D-U-I is that the State must
22 prove impairment. And if you can infer by one little
23 piece of evidence -- and again, I say the word little
24 piece of evidence; I don't think it's a little piece of
25 evidence. I think it speaks strongly to the conclusion

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1 that you should find Shana Robinson guilty of felony
2 D-U-I. So what else do we know about the toxicology
3 results? He testified that the drugs found in her system
4 certain of them being excluded.

5 The State has never tried to say that Ketamine or
6 Hydromorphone or other things found in the hospital were
7 what contributed to her impairment. Look who is trying
8 to make you chase rabbits and look who is trying to make
9 you be honest. The State is only saying that the
10 Diphenhydramine, the alcohol, the Trazadone, and the
11 Clonazepam contributed to the collision.

12 Well, guess what? Shana Robinson takes those drugs.
13 She said it herself. The drugs were found in her blood.
14 If she says she takes the drugs, the drugs are found in
15 her blood, and if Tracy McKinnon testifies that he found
16 them in her blood doesn't that add up to the fact that it
17 was in her bloodstream and it contributed to her state of
18 mind?

19 Now some of the drugs the he testified about he
20 testified about their effects. He testified that
21 Trazadone in particular, Trazadone is a higher level in
22 Shana Robinson's bloodstream than you will than any of
23 the other prescription medications. It's at a .08. So
24 what that means to you is that you have to see what you
25 would believe about how the Trazadone in itself would

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1 affect the driver of a motor vehicle. If you believe
2 that a .08 of Trazadone would contribute to an accident,
3 would it cause a person to be impaired then you have a
4 legal duty to find that element as true.

5 What did he testify as to the effects of Trazadone?
6 This wasn't the same as calculating something as alcohol.
7 You can't just use the .08. I'm not trying to suggest to
8 you that a .08 of Trazadone is the same thing as a .08 of
9 alcohol. And the reason I'm not trying to explain it as
10 that is because Tracy McKinnon testified that one plus
11 one does not equal two with Trazadone. One plus one can
12 equal five. One plus one can equal six. One plus one
13 can equal seven.

14 The multiplied affects of Trazadone in combination
15 with Clonazepam, Diphenhydramine, and alcohol give you
16 the ability to understand the impairment that caused
17 Shana Robinson to cross the center line and kill Candy
18 Zoll. Look at what was in her blood. People remember
19 different things. People have motive to lie. People
20 from bars can come in and tell you exactly how many
21 drinks somebody had from almost three years ago. But the
22 blood, is the blood, is the blood. Those numbers have
23 never changed from the minute they were taken. Those
24 numbers are consistent with the impairment of a driver.
25 Those numbers do not have bias. Those numbers do not

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1 love Shana Robinson like a daughter. Remember Ms.
2 Jurosko's testimony; I've loved her all my life. We're
3 friends. I love her like a daughter. Brittany Hartley
4 let me get started on Brittany Hartley.

5 Brittany Hartley specifically places alcohol in
6 Shana Robinson's hands. If we know she specifically
7 places alcohol in Shana Robinson's hands she is best
8 friends roommates with her then you can take some
9 inference that what she is saying is somewhat true. But
10 what you have to understand is that Brittany Hartley is
11 going to have her back. Brittany Hartley is going to
12 tell you what Shana Robinson wants to hear.

13 Brittany Hartley came in here, and I hope you picked
14 up on this, Brittany Hartley came in here and testified
15 that she remembers nothing about the collision. She
16 remembers nothing about the collision except when I
17 crossed her and when Aaron Mayer asked her who do you
18 think is at fault? It wasn't Shana Robinson.

19 Well, how do you know who is at fault when you don't
20 remember who the accident was, or where the accident was,
21 or when the accident was, what happened in the accident.
22 She lost five days of her memory but she is going to come
23 in here and tell you exactly how many drinks Shana
24 Robinson had. She's going to tell you exactly what
25 happened in the accident when she has no memory

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1 whatsoever. So I'm kind of jumping around but I want to
2 get back to some of the things that Tracy McKinnon said
3 and what are some of the things that are rabbits that Mr.
4 Mayer wants you to believe.

5 One of his arguments was that the machine at SLED
6 was too close to a window. Do you remember him asking
7 Mr. McKinnon where the machine was at SLED and Mr.
8 McKinnon said well, I can draw it out for you if you want
9 but it's close to a window. And he said oh, close to a
10 window, huh? What does that mean? Do you think the
11 people at SLED would keep the machine close to a window
12 if being close to a window had anything to do with
13 anything? Ever law enforcement agency in this State uses
14 SLED to test their evidence. If that had anything to do
15 with anything they would move it. But they haven't
16 because it hasn't had anything to do with the way these
17 things are tested.

18 Now, again the ratio preservatives and everything
19 else up here is really just rabbits for you to chase.
20 This whole thing about Candida, which Tracy McKinnon
21 didn't understand what it was. Mr. Mayer had a big
22 encyclopedia in front of him to kind of read what Candida
23 was. And then the Internet doctor came in and testified
24 about what Candida was. If Candida happened in this case
25 would Mr. Mayer have signed an agreement that states

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1 things were properly sealed and stored until testing?
2 Think about that. Why would he ask you that? The only
3 reason he would ask you that is to distract you from the
4 true issues in the case.

5 One of the things that he asked, and it was a quick
6 little question, was does the liver produce alcohol?
7 Anybody with any education in any sort of biological
8 classroom knows that the liver isn't going to produce
9 alcohol. Why would something in your body produce
10 alcohol if alcohol is going to impair the way the mind
11 works? It just doesn't make any sense.

12 Some of the other people you heard from were Trooper
13 Pearson and Poston. They were the troopers on scene.
14 Now the important part that they get out were that they
15 took photographs; all the photographs you're going to
16 have with you in the back came from either Poston or
17 someone on the MAIT team.

18 They found alcohol in her car. Why is that
19 important? Well, in order for Mr. Mayer to bring the
20 alcohol he had to get Shana Robinson's Mom to come
21 testify on the stand. Is the alcohol found in the car
22 important? Is that a big question? Not really because
23 we know she had vodka at the bars. We know she had two
24 drinks at Applebee's and one drink at Geronimo's. We
25 know this was self ingested alcohol. So what does the

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1 beer contribute to? The beer left a smell in the car
2 that led them to believe that blood needed to be taken.
3 In order for an arrest to happen and in order for blood
4 to be taken they had to have some reason to believe that
5 this wasn't just an ordinary wreck. Well, the alcohol
6 led them to believe that this wasn't just an ordinary
7 wreck. Why is that important? Why does he keep bringing
8 up things that doesn't matter.

9 Now, they painted the scene and they took
10 photographs. They marked the roads. You have seen
11 several pictures of paint marks in the road, scrapings,
12 and the like. That's all their testimony really goes to
13 is preparing you to understand what is later tested by
14 the MAIT team. We need to understand what the general
15 scene looked like that night in order to get to the
16 things that matter.

17 What did we learn from the general pictures that we
18 learned from the scene that night? One of the things I
19 first started with is that the BMW was on the left side
20 of the road. We know that that was the final resting
21 spot after the collision. Why is that important? Why
22 was final rest so important? Because final rest is how
23 you determine speed in an accident. It is one of the
24 marking points that the MAIT team uses in order to
25 calculate how fast somebody was going. So what do they

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1 need to determine? They need to determine where the cars
2 were after the wreck. The other thing they paint is the
3 collision site. One of the things that needs to be very
4 clear when you go back to deliberate is that the
5 collision site is not something that is in dispute. We
6 know the collision happened where Shana Robinson wasn't
7 supposed to be. There is indisputable evidence that the
8 collision occurred on the left side of the road. This is
9 demonstrated through photographs and through testimony.

10 David Lee. This is where I'll start a little bit
11 about the MAIT report. Your job as jurors is to evaluate
12 what people are saying and why people are saying it. And
13 to determine what the facts in a case are. That's all
14 the State is asking you to do. Remember in my opening I
15 told you all I wanted you to do is apply the law to the
16 facts of the case. Well, what do we find from the
17 indisputable evidence on scene that we've just described?
18 We find a final resting point and we find a collision
19 site.

20 What do we know about the general scene? It was on
21 a curve. It was on a curve that started on a
22 straightaway and turned into a straightaway. Why is it
23 impossible to believe that somebody can't go around a
24 curve and eventually straighten out? Why is it such a
25 big deal that this was on a curve to David Hill? Well,

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1 one of the things that we know through David Hill's
2 testimony and through Sergeant Lee's testimony is that in
3 order to come up with any sort of angle or calculation
4 you had to know a couple of things; where one of the cars
5 was at the point of impact.

6 One of the cars at the point of impact was the
7 Saturn. The Saturn on all diagrams is completely within
8 its lane. Now notice he came up with his angles using
9 the MAIT reports, which said maybe she was a little
10 closer to the left, maybe she was a little turned.
11 Everything that he based his calculations on shows the
12 victim's vehicle in the right lane. So what's the big
13 deal about the angle? Now Mr. Mayer said well, it's only
14 two degrees.

15 Well, here's the major point of all the MAIT
16 testimony. All the MAIT testimony shows that a violent
17 collision occurred. It shows that a violent collision
18 occurs in the victim's lane of travel. And it shows that
19 the speed at the time of impact no matter what you do is
20 going to be higher than the allowed limits of speed.

21 This leads a little bit into what proximate cause
22 is. One of the elements the State must prove in order to
23 convict the defendant of felony D-U-I is that some act of
24 neglect or action by this defendant proximately caused
25 the collision. What is proximate cause? Proximate cause

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1 does not have to be the sole cause. If Shana Robinson's
2 actions contributed to the collision then she is the
3 proximate cause of the collision. You will hear from the
4 Judge that there can be two proximate causes and the
5 defendant can still be found guilty because the action of
6 one does not relieve the liability of the other.

7 So this is important because we're talking about
8 speed this whole time and one of the calculations that is
9 used to measure the speed is the 42 of Candy Zoll. Forty
10 two is above 35, but that's okay. It's okay because
11 proximate cause does not have to be the only cause. So
12 if you believe that Candy Zoll is speeding I would argue
13 seven miles an hour versus somebody being from 35 to 80
14 is a little bit of a drastic change in what an actual
15 speed is but no matter what you find there the proximate
16 cause of the collision is still some act by Shana
17 Robinson.

18 Whether it be going into the lane of Candy Zoll,
19 whether it be speeding, whether it be the exercise of due
20 care, the reason the accident happened is because Shana
21 Robinson was in the left lane. If Shana Robinson was in
22 the right lane, no accident. If Candy Zoll was in her
23 lane and Shana Robinson didn't cross into her lane we
24 still would have no death and we'd have no felony D-U-I.
25 So why is that important? Because again proximate cause

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1 is something the State has to prove. In order for the
2 State to prove every element of the crime you have to
3 find some act or neglect by Shana Robinson. It is a
4 driver's duty to not only maintain her lane of travel; it
5 is a driver's duty to not cross the center line. It is a
6 driver's duty not to exceed the speed limit, and it's a
7 driver's duty to especially avoid collisions.

8 That didn't happen in this case. That's some act or
9 neglect. That's some act or neglect that proximately
10 caused the death of Candy Zoll. Prior wreck. Does it
11 matter if the car was in a prior wreck if the proximate
12 cause was such that in any way Shana Robinson contributed
13 to the accident? No. Does it matter if the A-C-M
14 download was in some way damaged?

15 Well, what do you have when you calculate speed
16 without the A-C-M? What they do, which you heard from
17 David Lee was they substitute one of the speeds as the
18 speed limit. And you also heard from David Lee that if
19 you didn't the A-C-M you would put 35 in the formula.

20 If you put 35 in the formula for Shana Robinson
21 Shana Robinson would have come less than 79. It wouldn't
22 have made the 79 go up. So the fact that Candy Zoll is
23 speeding at all just changes Shana Robinson's
24 calculations kind of equivalent; they go together, they
25 move together. That's how the formula works. David

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1 Hill. David Hill testified for a while and Mr. Mayer
2 makes a big deal of how the MAIT report was collected.
3 Again, I said it already before, the State could very
4 well have had David Hill as its own expert because the
5 collision happened in the left lane and there was still
6 speeding.

7 But where does he get his assumptions to start any
8 of his calculations? Where he started yesterday was a
9 reaction time. The reaction time is based on some
10 formula of 2.5 seconds to react. What do we know about
11 the collision? It happened at a curve and so how do we
12 know Candy Zoll wasn't just braking for the curve and
13 never saw Shana Robinson.

14 How do we know that the front end didn't push the
15 brakes into Candy Zoll and that's what caused the braking
16 that's in the A-C-M download? We don't. We don't know
17 those things. But the State, doesn't have to prove those
18 things. But what the State has to prove is where the
19 collision happened and that somehow speed contributed to
20 the death of Candy Zoll.

21 Now one of the things that is important about this
22 reaction time is that David Lee testified yesterday that
23 you couldn't see headlights. You couldn't see headlights
24 around that curve because if you could see headlights the
25 reaction times would have been different and all the

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1 formulas would have been off. That's what Shana Robinson
2 testified to; she saw headlights.

3 I'm going to show you State's number 1.

4 [Whereupon, the photograph is shown].

5 MR. WEST: That's State's number 1. This is the
6 same picture I got Shana Robinson to point out yesterday.
7 She said she was right around here [indicates] when she
8 first saw the lights and that Candy was somewhere down
9 over here [indicates]. Well, that sort of flies in the
10 face of everything that David Hill said about reaction
11 time. So either you believe one or you believe the
12 other. But you can't have both. You can't have a
13 reaction time of headlights if you can't see the
14 headlights.

15 I'm going to show you some other things from David
16 Hill too that are important for you to remember. He
17 testified as to the speed being plus or minus three. No
18 matter what it is greater than 35. And without a doubt
19 100 percent certainty the crash happened in the victim's
20 lane. Excuse me just for one minute.

21 [Whereupon, Mr. West reviews photographs]

22 MR. WEST: When you get back in the jury room
23 you're going to see a picture of the view from Broughton
24 Road heading towards Lyons Beach. And you're going to
25 see the ballpark road that was made a big deal out of on

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1 Shana Robinson's testimony. Now she, even though she
2 testified that she saw headlights she can't remember
3 anything else. She doesn't remember swerving, she
4 doesn't remember a deer; she doesn't remember any of
5 this. But she testified that she was going -- or
6 according to her expert, around 47 miles an hour.

7 Now Mr. Mayer makes it seem like that there was no
8 possibility to avoid the collision. But one thing we
9 know is that she definitely did not slam on brakes when
10 she allegedly saw somebody in her lane. And the other
11 thing we know is there is a safe way to turn taking a
12 right to avoid a collision, if you believe that she saw
13 the headlights when she says she sees them.

14 Look at the evidence, and I'm sorry I couldn't find
15 the picture right now, but one of the things that is
16 important is that you evaluate the reliability of the
17 testimony from which witnesses you hear. So what other
18 witnesses have we heard from? We heard from Brittany
19 Hartley. We went over that just a little while ago. We
20 went over Janet Jurosko; she's like a daughter to me.

21 The other witnesses; Forinash. Mr. Mayer seemed
22 like they didn't know each other at all but his son wants
23 to buy a condo from her. The bartender who served
24 hundreds of thousands of drinks over his career remembers
25 exactly how many drinks he served her. And then we get

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1 to Doctor Bennett. Doctor Bennett, if you want to call
2 him a doctor, came and testified that everything that he
3 testified about was based on the testimony of someone
4 else. He didn't do a tests, he didn't do any reports.
5 He might be getting 1500 bucks but they can't even agree
6 on how much he is going to get paid so I don't if they
7 can agree on what he is supposed to testify about.

8 But what is true about his testimony is that even
9 though he tries to sell you a bunch of stuff one of the
10 things he can't refute is that the way SLED does things
11 is the most superior method of testing, and the most
12 accurate way to test a blood sample. And I put the last
13 sentence on there because he obviously testified about
14 where he got all his expertise and there is a little
15 commercial out there that says you can't put anything on
16 the Internet that isn't true.

17 So obviously he believes that. Shana Robinson's
18 testimony was important. You have to evaluate why people
19 would say certain things and whether you believe them.
20 That's your job; that's not anybody else's job. You can
21 discern things like demeanor, the reasons for saying what
22 they can and that sort of thing. But one of the things
23 that she does is she corroborates some of the State's
24 testimony. She corroborates the Trazadone, the Benadryl,
25 the Zoloft, and Clonazepam. Now again just to be upfront

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1 the State never said anything about Zoloft contributing
2 to the accident. It's in the tox screen and we know she
3 takes it, but we're not saying that contributed to the
4 accident because that's not what Tracy McKinnon said.
5 Tracy McKinnon said it has no sedative effects and has no
6 adverse affects on the driver.

7 Okay, so if she drives down Broughton Road everyday
8 of her life, she lives down there, and she has driven it
9 so many times she is comfortable with the road and if she
10 only took it 47 miles an hour what made her cross the
11 center line? I would submit to you that the only thing
12 that you can conclude from that is that she was impaired.
13 She was drunk. She had been drinking at a bar. She had
14 been with friends and that she drove her vehicle straight
15 into Candy Zoll's lane and crushed her car and killed
16 her.

17 Again I just talked about the headlights and how you
18 can't see around the curve and that was one of the big
19 things that David Hill testified about. This photo
20 [indicates] should tell you almost everything you need to
21 know about the collision. What you can see from this
22 photo is that the entire front end of this car
23 [indicates] is demolished. This isn't 47 miles an hour.
24 This isn't a little bit in the left lane. This is a
25 head-on collision that caused somebody to die. This

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1 photo tells a story that a common sense person would be
2 able to apply in light of the testimony, in light of the
3 facts that have been presented and in light of the
4 evidence.

5 So I'm going to go through a scenario with you that
6 goes through the whole story of what the defense wants
7 you to believe in this case. And you can spin it which
8 way you like but this is the story that I've heard from
9 the defense.

10 Shana Robinson is the most unlucky person in the
11 entire world because on November 10th, 2011 a day when
12 she started by not taking any pills, she didn't drink any
13 alcohol before 5 o'clock and she didn't drink any alcohol
14 prior to meeting Brittany. But she went to Applebee's at
15 which time her and Brittany sat casually talking about
16 the weather and sipping on two vodka cranberry drinks who
17 though calculations of some Internet doctor are
18 completely eliminated from the system by the time you're
19 done drinking them.

20 She then drives to a second bar where she orders two
21 drinks, sees a lot of her old high school friends and
22 some lady who loves her like a daughter. She pays for
23 both drinks but was in such a rush to get back and watch
24 football with her Mom that she throws the other away.
25 She then gets in her car and drives some way through

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1 Moncks Corner to buy beer. She slowly approaches a
2 stranger in an F-250 who was going so much under the
3 speed limit that she needs to pass him. She slows down,
4 not by braking but by downshifting, a horrible wind and
5 engine noise come from some unknown source but
6 coincidentally coincides with her sporty BMW coming down
7 the road.

8 Two people see her car from some inaccurate vantage
9 point and have such little life experience so as to
10 distinguish 40 from 80 miles an hour on a road they both
11 live on. Before she gets around a curve she either can
12 or can't see around she has slowed down once again, not
13 by braking but by downshifting. Headlights show up
14 somewhere down the road so she crosses into the oncoming
15 lane of travel at only about 15 miles over the speed
16 limit where Candy Zoll drove right smack into her.

17 Beer, in an unopened glued box, bust out of the box
18 and sprays all over her explaining why she smelled like
19 alcohol. The car Candy Zoll was driving was made in such
20 a poor state that the front end during this low impact
21 collision crushes the entire driver's compartment. 911
22 arrives and because they do such a poor job with their
23 patients a stranger goes into the ambulance and takes
24 alcohol and other intoxicants and puts it into her IV.
25 She flies to the hospital where the staff wipe her down

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1 with so much isopropyl alcohol that the isopropyl alcohol
2 somehow converts into her bloodstream into an entirely
3 different substance that is ethanol.

4 Doctor Montgomery sews her up with alcohol laden
5 sutures, which test positive in the drug screen. She is
6 then given a blood transfusion using a bag of drunk blood
7 and the nurse in the trauma bay gets the one SLED kit
8 test kit that has an expired vacuum seal and an incorrect
9 amount of preservatives.

10 He then again rubs her down with isopropyl alcohol
11 such that it would get into the blood reading and that
12 isopropyl alcohol again changes from isopropyl alcohol to
13 ethanol while in the tube. He and the trooper conspire
14 to lie about their collection process and they turn over
15 a contaminated vial to SLED.

16 SLED tests the vial that has a yeast infection
17 called Candida and using the most accurate testing
18 procedures available some outside radio frequency near
19 the window causes the machine to not work properly. None
20 of the at least three people that peer review Tracy's
21 work notice the yeast or radio frequencies. So they go
22 ahead and sign off on the report anyway. Tracy McKinnon
23 then perjures himself on the stand because there is some
24 great conspiracy against Shana Robinson. Now does that
25 sound like a version of events that is even possible? Or

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1 does the story that starts off with Shana being under a
2 little stress because of the death in her family she
3 decides she wants to take the edge off so she calls one
4 of her best friends, Brittany Hartley to go drink with
5 her.

6 She goes to Applebee's and starts drinking vodka.
7 The pills she took earlier start to make her feel good so
8 she orders another and another. They decided they wanted
9 to drink some more but Applebee's crown was lame so they
10 leave to go to a private bar where they know everyone.
11 She knows the bartender so he hooks her up with two good
12 drinks. She drinks that vodka and realizes she was
13 supposed to meet her Mom to watch a game.

14 She rushes over to the Scotchman because the party
15 hasn't stopped. She gets behind an F-250 going 60 and
16 wants to show off her BMW. She speeds around him and
17 flies the rest of the way down Broughton Road. She
18 passes two people who say to themselves she's not going
19 to make that curve. And she doesn't.

20 Even though she's lived back there her whole life
21 and knows that road like the back of her hand something
22 was different about that night. She was drunk. And
23 because she was drunk and she didn't realize she was
24 going as fast as she was around that curve she tries to
25 over correct at the last second but it's too late because

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1 by that time the bomb had already exploded. She smashed
2 into Candy Zoll's car head-on before Candy even knew how
3 to react. She crushed the front end of Candy's car so
4 much that Candy had nowhere to go and she died.

5 Emergency personnel show up and try to save Shana's
6 life. She's losing a lot of blood so they put an IV in
7 her which starts to dilute her blood. She is flown to
8 MUSC where trained and experienced staff operate on her.
9 When she gets out, law enforcement suspect her of felony
10 D-U-I so they take a sample of blood to confirm. The
11 nurse and troopers use a properly sealed and maintained
12 kit that has two vials.

13 They do their jobs as they are trained and collect a
14 sample of blood. That blood is taken to SLED and tested.
15 Law enforcement suspicions are confirmed and they find a
16 .09 blood alcohol reading from four hours after the
17 accident. An expert does the calculations which shows
18 that even though the blood was extremely diluted from the
19 fluids she was given they come up with at least a .15
20 B-A-C.

21 McKinnon comes in here to testify about the effects
22 of those drugs and alcohol which match up exactly to the
23 sort of reaction times and the levels of awareness that
24 would take for someone who had driven that road so many
25 times and never wrecked. But the one time she drinks too

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1 much and takes too many pills it causes her to go into an
2 oncoming lane of travel and kill someone. Which story
3 sounds more reasonable?

4 Reasonable doubt, ladies and gentlemen, your job is
5 to be reasonable with the facts. That's what happened
6 ladies and gentlemen. This isn't some great conspiracy.
7 Everyone did what they were trained to do. They
8 testified accordingly. The witnesses saw what they saw.

9 Now is the time to make a decision. And as I've
10 said many times before your duty is to simply apply the
11 law to the facts of the case. At this point in time
12 you've heard all the testimony. You've seen all the
13 evidence and I just ask you do your job. The evidence
14 shows that Shana Robinson clearly threw caution to the
15 wind hurdled down Broughton Road and took the life of an
16 unsuspecting Candy Zoll.

17 Remember that when you are deliberating if Candy
18 Zoll wasn't dead because of the actions of the defendant,
19 we wouldn't be here. But I submit to you that that's
20 only a reason you're here. The reason we are here is
21 because Shana Robinson killed Candy Zoll and as such you
22 must find her guilty of felony D-U-I.

23 THE COURT: Mr. Foreman and ladies and gentlemen,
24 we're going to take our lunch recess. I appreciate you
25 all allowing us to go beyond 1 o'clock. Your lunch has

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1 arrived. It is in the jury room. We are going to take
2 probably about anywhere from 30 to 40 minutes to allow
3 you all to eat and stretch your legs. If you would like
4 to go outside after you've eaten let the bailiffs know
5 and they will take you outside so again you can stretch,
6 get some air, get your circulation going. If anyone
7 needs to make phone calls please let the bailiffs know as
8 well and they will accommodate your request.

9 During this break please do not discuss the case in
10 any manner whatsoever. Once you have completed lunch we
11 will resume with the court's instructions on the law and
12 after that you will be allowed to deliberate regarding
13 this case. Enjoy your lunch. Again, we appreciate your
14 patience.

15 [Whereupon, the jury exits at 1:30 p.m.]

16 THE COURT: We will be at ease until 2:05. Is
17 there anything we need to take up before adjourning from
18 the State?

19 MR. WEST: Nothing from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. MAYER: No, Judge.

22 THE COURT: All right. Have a good lunch. I'll
23 see y'all all at 2:05.

24 [Whereupon, court is in recess from 1:30 p.m. to
25 2:17 p.m.]

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1 THE COURT: Is the State ready to proceed?
2 MR. WEST: Yes, Your Honor.
3 THE COURT: Is the defense ready to proceed?
4 MR. MAYER: Yes, Judge.
5 THE COURT: Please bring in the jury.
6 [Whereupon, the jury enters at 2:17 p.m.]
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JURY CHARGE

THE COURT: Ladies and gentlemen, I hope that you all had a pleasant lunch. As I instructed prior to us breaking both the State and the defense made their closing arguments and at this time the court will instruct you on the law.

During this trial ladies and gentlemen you and I have certain duties to perform. Bear with me just one second. I apologize.

[Off the record momentarily]

THE COURT: As I've instructed, you and I have certain duties to perform. As the trial Judge it is my responsibility to preside over the trial of this case. I also have the duty to rule upon or pass upon the admissibility of evidence offered during this trial.

Ladies and gentlemen, you are to consider only the competent evidence that is before you. And you are to disregard and disabuse from your mind any testimony which I've ordered stricken from the record in this case if there has been any. You are to consider only the testimony which has been presented from the witness stand together with any exhibits which have been made a part of the record in this case, and any stipulations of counsel made into the record. Ladies and gentlemen, I instruct you that a stipulation is an agreement between the

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1 parties and it requires no further proof. I have the
2 additional duty to charge you on the law applicable to
3 this case. As the presiding Judge I am the sole Judge of
4 the law of this case. And it is your duty as jurors to
5 accept and apply the law as I now state it to you.

6 If you have a preconceived idea as to what the law
7 is or what the law ought to be in a case or in this case
8 and it should not agree with what I now tell you the law
9 is you are obligated under the oath which you have taken
10 to abandon this preconception on your part because you
11 are sworn to accept the law and apply the law precisely
12 as I now state it to you.

13 In every case tried in this court before a jury the
14 jury becomes the sole and exclusive judges of the facts.
15 You, the jury, are the judges of the facts in this case.
16 This court is the Judge of the law. The Constitution of
17 our State has declared that a trial Judge shall not
18 intimate, state, comment upon, or make any statement to a
19 trial jury about the facts in a case.

20 Since you, the jury, are the sole judges of the
21 facts in this case you are not to infer anything from
22 what I have said during the progress of this trial and
23 ruling upon the admissibility of evidence or otherwise or
24 anything that I say to you now during the course of this
25 instruction that I have any opinion about the facts. The

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1 law does not allow me to have an opinion about the facts.
2 This is a matter solely for you, the jury, to determine.
3 As jurors then it is your duty as I have instructed you
4 to determine the effect, the value, the weight, and the
5 truth of the evidence presented during this trial.

6 Necessarily you must assess the creditability of
7 witnesses who have testified in this case. Creditability
8 is simply a legalistic term meaning believability. It
9 becomes your duty as jurors to analyze and to evaluate
10 the evidence and determine that evidence which convinces
11 you of its truth.

12 Some of the things you may consider as you decide
13 whether or not to believe a witness's testimony about a
14 particular matter include, what was the manner and
15 appearance of the witness who testified? Was he or she
16 straight forward or hesitant in answering? Was the
17 testimony of a witness consistent or inconsistent?

18 How did the witness come to know the facts that he
19 or she testified to or what was his or her ability to
20 know these facts? Is there some reason a witness would
21 want to give testimony which would help or hurt one side
22 or the other. In other words was the witness biased or
23 prejudiced? And was the testimony of a witness
24 strengthened or weakened by other testimony or evidence?
25 You can believe as much or as little of each witness's

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1 testimony as you think proper. You may believe the
2 testimony of a single witness against that of many
3 witnesses or just the opposite.

4 I further instruct you ladies and gentlemen that in
5 determining the question of creditability or
6 believability of witnesses who have testified in this
7 case you may believe a part of the testimony of a witness
8 and reject the remaining part of the testimony of that
9 same witness. If you have a good and sound reason you
10 may believe the testimony of a witness in its entirety or
11 reject the testimony of a witness in its entirety.

12 You may consider the demeanor of a witness; that is
13 the appearance and manner of the witness from the witness
14 stand. You can believe as much or as little of each
15 witnesses testimony as you think appropriate. Ladies and
16 gentlemen, throughout this process you have but one
17 objective; to seek the truth regardless of its source.

18 I further instruct you that a person who has a past
19 criminal record is competent to testify in a trial. A
20 past record does not affect the ability of that witness
21 to testify. The past record may only be considered by
22 you, if at all, in determining the witness's
23 believability. Remember ladies and gentlemen, you are
24 the sole judges of the facts in this case and of the
25 believability of any and all of the witnesses. I further

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1 instruct you that our Rules of Evidence ordinarily do not
2 permit witnesses to testify to opinions or conclusions.
3 An exception to this Rule exists for witnesses we call
4 expert witnesses. A witness who by their education,
5 training, and experience has become an expert in some
6 art, science, or profession, or calling may state an
7 opinion as to relevant and material matters in which the
8 witness claims to be an expert and may also state the
9 reasons for that opinion.

10 You should consider any expert opinion received in
11 evidence in this case like any other evidence; give it
12 the weight you think it deserves. If you decide that the
13 opinion of an expert witness is not based on sufficient
14 education, training, and experience or if you conclude
15 that the reasons given in support of the opinion are not
16 sound or that the opinion is outweighed by other evidence
17 you may disregard the opinion entirely.

18 An expert witness's testimony is to be given no
19 greater weight than that of other witnesses simply
20 because the witness is an expert. And further you are
21 not required to accept an expert's opinion even though it
22 is not contradicted. Ladies and gentlemen, there are two
23 types of evidence which are generally presented during a
24 trial; direct evidence and circumstantial evidence.
25 Direct evidence is the testimony of a person who asserts

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1 or claims to have actual knowledge of a fact such as an
2 eyewitness. Circumstantial evidence is proof of a chain
3 of facts and circumstances indicating the existence of a
4 fact.

5 The law makes absolutely no distinction between the
6 weight or value to be given to either direct or
7 circumstantial evidence nor is a greater degree of
8 certainty required of circumstantial evidence than of
9 direct evidence. You should weigh all of the evidence in
10 this case. After weighing all of the evidence if you're
11 not convinced of the guilt of the defendant beyond a
12 reasonable doubt you must find the defendant not guilty.
13 If on the other hand you are convinced of the guilt of
14 the defendant beyond a reasonable doubt then you must
15 find her guilty.

16 I instruct you, ladies and gentlemen, that the fact
17 that the defendant was arrested, charged, and indicted is
18 not evidence in this case and cannot be considered by you
19 as evidence of guilt in this case nor does it create any
20 presumption or inference of guilt. This documentation,
21 ladies and gentlemen, is simply the formal written
22 instrument which contains the charge or charges made
23 against a defendant. It simply serves as the formal
24 document by which this case is processed or brought into
25 the court. The defendant has pled not guilty to the

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1 indictment and that plea casts the burden on the State to
2 prove the defendant guilty because a person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself innocent.

5 I charge you, Madame Forelady [sic], ladies and
6 gentlemen of the jury that it is a cardinal and important
7 rule of the law of evidence that the defendant in a
8 criminal trial no matter what the seriousness of the
9 charge made against him may be will always be presumed to
10 be innocent of the crime for which he is indicted unless
11 his guilt has been proven by evidence satisfying you of
12 that guilt beyond a reasonable doubt.

13 This presumption of innocence does not cease when
14 you retire to deliberate but it accompanies the defendant
15 from the time of his appearance throughout the trial
16 until you reach a verdict in this case.

17 Our Supreme Court has said that the presumption of
18 innocence is like a robe of righteousness placed about
19 the shoulders of the defendant and it remains with him
20 and assigns him to that class, the innocent, until that
21 presumptive robe of righteousness has been stripped from
22 his person by evidence satisfying you of that guilt
23 beyond a reasonable doubt. Mr. Foreman, and ladies and
24 gentlemen the presumption of innocence is not mere legal
25 theory. It is not just a legal phrase. It is a

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1 substantial right to which every defendant is entitled
2 unless you, the jury, are satisfied from the evidence of
3 his guilt beyond a reasonable doubt.

4 The State has the burden of proving the defendant
5 guilty beyond a reasonable doubt. Some of you may have
6 served as jurors in civil cases where you were told that
7 it is only necessary to prove that a fact is more likely
8 true than not true such as by the greater weight or
9 preponderance of the evidence.

10 In criminal cases the State's proof must be more
11 powerful than that. It must be beyond a reasonable
12 doubt. Proof beyond a reasonable doubt is proof that
13 leaves you firmly convinced of the defendant's guilt.
14 There are very few things in this world that we know with
15 absolute certainty, and in criminal cases the law does
16 not require proof that overcomes every possible doubt.

17 If based on your consideration of the evidence you
18 are firmly convinced that the defendant is guilty of the
19 crime charged you must find the defendant guilty. If, on
20 the other hand, you think there is a real possibility
21 that the defendant is not guilty you must give her the
22 benefit of this doubt and find her not guilty. The
23 defendant in this case is charged with felony driving
24 under the influence. The State must prove beyond a
25 reasonable doubt that the defendant drove a vehicle while

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1 under the influence of alcohol and or drugs. Driving a
2 motor vehicle means that the vehicle was in motion. This
3 may be proven by direct or circumstantial evidence. A
4 movement of the vehicle might occur without any
5 affirmative act by a driver, or in fact by any person.

6 If a vehicle is moved by some power beyond the
7 control of the defendant or by accident, this would not
8 be driving. The State must prove beyond a reasonable
9 doubt that the defendant was sufficiently under the
10 influence to impair her ability to drive with reasonable
11 care with due regard for others and himself or as a
12 reasonably prudent person would drive. It is not
13 necessary to show that the defendant was in a helpless
14 condition, passed out, or even intoxicated.

15 On the other hand the fact that the defendant at
16 some time prior to the incident drank an alcoholic
17 beverage or took a drug does not prove that the defendant
18 was driving under the influence. Next the State must
19 prove beyond a reasonable doubt that while driving the
20 defendant did an act forbidden by law or neglected a duty
21 imposed by law. In that regard I instruct you as
22 follows: That under our common law the driver of an
23 automobile has the duty to keep the automobile under
24 proper control so that the driver is able to slow down,
25 stop, or turn the automobile to avoid colliding with

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1 other vehicles, pedestrians, and objects lawfully on the
2 road. I further instruct you that a driver has the duty
3 that is operating a motor vehicle on the public roads of
4 this State owes a duty to keep a proper lookout for other
5 vehicles upon the highway. This duty is not merely one
6 of looking but one of observation. I instruct you that a
7 motorist must look in such an intelligent and careful
8 manner as to enable him to see a vehicle, a person upon
9 the highway and to exercise ordinary care or caution for
10 the safety of himself and others.

11 I further instruct you that our State's statutes
12 also provide certain standards. And 56-5-320 provides --
13 3230 duty to maintain care provides as follows:
14 Notwithstanding other provisions of any local ordinance
15 every driver of a vehicle shall exercise due care to
16 avoid colliding with any pedestrian or any person
17 propelling a human-powered vehicle, and code section
18 56-5-2920 reckless driving. Any person who drives any
19 vehicle in such a manner as to indicate either a willful
20 or wanton disregard for the safety of persons or property
21 is guilty of reckless driving.

22 And code section 56-5-1900 driving on roadways lane
23 for traffic. Whenever any roadway has been divided into
24 two or more clearly marked lanes for traffic the
25 following rules in addition to all others consistent

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1 herewith shall apply: A vehicle shall be driven as
2 nearly as practicable entirely within a single lane and
3 shall not be moved from the lane until the driver has
4 first ascertained that such movement can be made with
5 safety, and code section 56-5-1520 speeding, a person
6 shall not drive a vehicle on a highway at a speed greater
7 than is reasonable and prudent under the conditions and
8 having regard to the total and potential hazards then
9 existing.

10 Speed must be so controlled to avoid colliding with
11 a person, vehicle, or other conveyance on or entering the
12 highway in compliance with legal requirements and the
13 duty of a person to use care, except when a special
14 hazard exists that requires lower speed for compliance
15 with subsection (a) the limit specified in this section
16 or established as hereinafter authorized are maximum
17 lawful speeds.

18 And a person shall not drive a vehicle on a highway
19 at a speed in excess of these maximum limits. And the
20 driver of a vehicle shall drive consistent with the
21 requirements of subsection (a) at an appropriate reduced
22 speed when approaching and crossing an intersection or
23 railway grade crossing, when approaching and going around
24 a curve, approaching a hillcrest, on travelling upon any
25 narrow bridge, narrow or winding roadways, and when

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1 special hazards exist with respect to pedestrians or
2 other traffic or by reason of weather or highway
3 conditions.

4 And Berkeley County ordinance 38-31, which is
5 careless driving, it shall be unlawful for any person to
6 operate any vehicle without care and caution, without
7 full regard for the safety of persons or property, or
8 when the vehicle or its appliances are not in proper or
9 safe condition.

10 And code section 56-5-2930 operating a motor vehicle
11 while under the influence and or drugs, it is unlawful
12 for a person to drive a motor vehicle within this State
13 while under the influence of alcohol to the extent that
14 the person's faculties to drive are materially and
15 appreciably impaired, under the influence of any drug or
16 a combination of other drugs or substances which cause
17 impairment to the extent that the person's faculties to
18 drive are materially and appreciably impaired, or under
19 the combined influence of alcohol and or any other drug
20 or drugs or substances which cause impairment to the
21 extent that the person's faculties to drive are
22 materially and appreciably impaired.

23 I instruct you that code section 56-5-2950
24 subsection (b) provides that the amount of alcohol in the
25 defendant's blood at the time of the alleged violation as

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1 shown by chemical analysis of the defendant's breath or
2 other bodily fluids may be considered by you in deciding
3 whether the defendant was under the influence.

4 If the alcohol concentration was .08 or eight one
5 hundredths of one percent or more it may be inferred that
6 the defendant was under the influence. This inference,
7 ladies and gentlemen, is simply an evidentiary fact to be
8 considered by you along with the other evidence in the
9 case and you may give it the weight, value, and effect
10 you decide it should receive.

11 Finally, the State must prove beyond a reasonable
12 doubt that the act or neglect of the defendant
13 proximately caused death to another person. Proximate
14 cause is the direct cause. It is the immediate cause.
15 It is the efficient cause. It is that cause without
16 which the death of the victim would not have resulted.
17 There must be a chain of causation from the time of the
18 injury inflicted by the defendant until the time of the
19 victim's death.

20 Proximate cause does not necessarily mean that it
21 occurred immediately prior to death. There may be more
22 than one proximate cause. The act of two or more persons
23 may combine together to be a proximate cause of the death
24 of a person. The defendant's act may be regarded as the
25 proximate cause if it is a contributing cause of the

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

6 Ladies and gentlemen, I further instruct that you
7 have heard argument concerning the potential for a
8 penalty for the crime alleged in the indictment. In
9 determining the guilt or the innocence of the defendant
10 you cannot consider any possible or potential for penalty
11 for any particular crime.

12 The potential for punishment or penalty for the
13 crime is a matter of law for the court to determine and
14 should never be considered by you in any manner,
15 whatsoever in arriving at a fair and impartial verdict as
16 to the guilt or innocence of the defendant and should not
17 be discussed in any manner whatsoever during the course
18 of your deliberations.

19 Ladies and gentlemen, there are two possible
20 verdicts in this case. There is no significance
21 whatsoever to the order in which I state them it is; it
22 is simply that one must be stated first and it is as
23 follows, and you don't have to try to write this down
24 because it will go into the jury room with you. As to
25 indictment 2014-GS-08-313 we, the jury, by unanimous

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1 consent find the defendant guilty of felony driving under
2 the influence involving death or not guilty. Again there
3 is no significance whatsoever to the order in which I
4 state these potential verdicts. It is simply that one
5 must be stated first.

6 Ladies and gentlemen, your verdict must be a
7 unanimous one, which means that all 12 of you must agree
8 in order to reach a verdict. Again, your verdict must be
9 unanimous which means that all 12 of you must agree. Mr.
10 Foreman, when the jury has reached a verdict it is your
11 responsibility to fill out the verdict form, to sign and
12 date it, and to knock on the door and advise the bailiffs
13 that the jury has reached a verdict. If the jury has any
14 questions during deliberations, it is also your
15 responsibility to write out those questions and follow
16 the same procedure by knocking on the door and advising
17 the bailiffs that the jury has a question.

18 Ladies and gentlemen please know that if you have
19 any questions during deliberations there will be a delay
20 in our response and that is because there is a procedure
21 that we must follow in answering your questions. So know
22 that if there is a question there will be a delay because
23 we have to follow that process before answering you.
24 Again, ladies and gentlemen in order to reach a verdict
25 all 12 of you must agree and your verdict must be

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1 unanimous. I'm going to ask that you return to your jury
2 room but do not yet begin your deliberations. I have
3 some matters of law that I need to take up with the
4 attorneys that may require further instruction or
5 clarification of an instruction.

6 However, if there is no further instruction we will
7 send in your notepads, the verdict form, the evidence and
8 at that time we will also excuse the alternate so that
9 you will be allowed to begin your deliberations. Again,
10 do not yet begin your deliberations until advised to do
11 so. If you will, leave your notepads in your seats and
12 please go with the bailiff for me.

13 [Whereupon, the jury exits at 2:40 p.m.]

14 THE COURT: Are there any exceptions from the
15 State?

16 MR. WEST: Nothing from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. MAYER: Judge, just on the inference that was
19 instructed. I got the impression that the jury may think
20 they have to ---

21 THE COURT: --- I said it's simply an evidentiary
22 fact for them to consider and give it the weight, value,
23 and effect they think it should be receive. So that
24 means they can disregard it, they can take it into
25 account, it is simply an inference but they don't have to

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1 it's for them to give it the weight they think it should
2 deserve.

3 MR. MAYER: I just was concerned ---

4 THE COURT: --- but I had to address the inferences
5 in State law.

6 MR. MAYER: Sure, okay.

7 THE COURT: I can't just leave it hanging out
8 there. When you give information I have to give them a
9 bench mark of which how they would judge that
10 information. You can't have the testimony that her blood
11 level is a .09 and just leave that out there for them to
12 try to figure out what the barometer is of that reading.

13 MR. MAYER: But Judge ---

14 THE COURT: --- I have to tell them that State law
15 is, and it is State law, that the presumption is a .08
16 that it creates an inference, but that inference is no
17 different than any other evidence and for them to give it
18 the weight they think it deserves.

19 MR. MAYER: It was my understanding that the
20 presumption is a .10.

21 THE COURT: The law changed a long time ago. It's
22 .08.

23 MR. MAYER: I just was concerned ---

24 THE COURT: --- and it's about to change to .05 if
25 the Federal government has its way.

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1 MR. MAYER: I just was concerned about the use of
2 the word fact in there with that sentence like they are
3 going to think that because it was above .08 as measured
4 four hours later then it is therefore ---

5 THE COURT: --- no, I used the exact language
6 approved by the Supreme Court, which is that it is an
7 inference by State law but that you're not bound by that
8 inference. It's simply that, that is the benchmark.

9 You can disregard it, you can use it, you cannot use
10 it and that's why they are told it is simply an
11 evidentiary fact just like any other testimony in the
12 case and they can give it the weight they think it
13 deserves. I'll note your exception for the record.
14 Anything further for the record from the State?

15 MR. WEST: Nothing from the State, Your Honor.

16 THE COURT: From the defense?

17 MR. MAYER: No, Judge.

18 THE COURT: Okay. Please make sure all the
19 evidence is in place before we send it back to the jury
20 and before I -- if y'all could go ahead and collect the
21 notebooks except for the alternate's. Put the
22 alternate's notes on the end of the bench so they can --
23 we can destroy those.

24 [Whereupon, the jury notepads are collected by the
25 bailiff]

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1 [Whereupon, all counsel review evidence with the
2 court reporter]

3 THE COURT: Everything?

4 THE COURT REPORTER: Yes, sir.

5 THE COURT: You all can go ahead and take in the
6 evidence, the verdict form, the notes, and bring out the
7 alternate for me please.

8 [Whereupon, evidence went out to the jury and
9 deliberations commenced at 2:47 p.m.]

10 [Whereupon, the alternate jurors are dismissed at
11 2:50 p.m.]

12 THE COURT: The record should reflect that the jury
13 began its deliberations at 2:44. We will be at ease
14 until we receive further instructions from the jury.

15 [Whereupon, court is in recess awaiting verdict]
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1 [Whereupon, the court receives a note from the jury]

2 THE COURT: We have a note from the jury.

3 [Reading] May we have all records of Shana Robinson's
4 blood transfusions and times. And signed by the
5 Foreperson.

6 The response would be Mr. Foreman, and ladies and
7 gentlemen of the jury, you may consider the testimony and
8 evidence that has been submitted into the record for the
9 purposes of your deliberations. All of the documents
10 that you are entitled to review are with you in the jury
11 room. You are not to speculate or draw any inferences or
12 conclusions as to why the document or documents have not
13 been sent with you for purposes of your deliberations.
14 If you desire to have any of the testimony replayed,
15 please advise the bailiff and we will accommodate your
16 request. Is there any exception to that response from
17 the State?

18 MR. WEST: No, Your Honor.

19 THE COURT: From the defense?

20 MR. MAYER: No, Judge.

21 THE COURT: And I don't recall were her -- I don't
22 recall whether those records were submitted. Were they
23 or were they not? I thought some portion of it was.

24 MR. MAYER: Judge, I think the doctor had them to
25 refresh her recollection.

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1 THE COURT: That's what I thought. But it wouldn't
2 have been admissible anyway. I'm going to have the court
3 reporter mark the note as a court's exhibit and have the
4 bailiff to instruct the jury that they are to keep the
5 note and make it part of the other exhibits and not to
6 discard it.

7 [Whereupon, court's exhibit number 4 is marked by
8 the court reporter]

9 [Whereupon, court is in recess awaiting verdict]

10 [Whereupon, the court receives an additional note
11 from the jury]

12 [Whereupon, court's exhibit number 5 is marked by
13 the court reporter]

14 THE COURT: We have another note that reads as
15 follows: Could we get -- and I read the other note to
16 you didn't I?

17 MR. MAYER: Yes, Judge.

18 THE COURT: Okay. And I'm going to have the court
19 reporter play back that testimony for them. Is there any
20 exception from the State?

21 MR. WEST: No, Judge.

22 THE COURT: From the defense?

23 MR. MAYER: Just to clarify Judge that would be the
24 testimony as recorded from our own voices, yes?

25 THE COURT: Yes, how else would...

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1 MR. MAYER: Okay. Just making sure.

2 THE COURT: She can't transcribe it that quick.

3 MR. MAYER: I didn't know.

4 THE COURT: Yes, it's the tape -- the digital
5 recording will be played back to them.

6 [Whereupon, the court receives an addition note from
7 the jury]

8 THE COURT: All right. The third note: Can we get
9 a copy of law 56-5-2950 and 56-5-1520 (a) and (f) and 56-
10 5-2920, which for the record 2920 is reckless driving,
11 1520 is speeding, and 2950 is blood alcohol inferences.
12 I would respond to them as follows: Ladies and gentlemen
13 of the jury, our procedures do not allow for a copy of
14 the Jury Charge slash instructions be given to you. If
15 there is a specific instruction that you would like given
16 again or the entire instruction please advise us and I
17 will accommodate your request immediately. Any
18 exception from the State?

19 MR. WEST: No, Judge.

20 THE COURT: From the defense?

21 MR. MAYER: No, Judge.

22 THE COURT: All right.

23 [Whereupon, court's exhibit number 6 is marked by
24 the court reporter]

25 [Whereupon, the court's response to the note is

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1 provided to the jury and they continue their
2 deliberations]

3 THE COURT: The court reporter will be sent into
4 the jury room with her equipment to replay the testimony.
5 A bailiff will accompany her to ensure that no
6 deliberation goes on while that testimony is being
7 replayed. That should take, according to my notes that
8 testimony was from 4:40 through -- was from 4:41 to 5:40;
9 so just about an hour.

10 Sometimes the jury does have the ability if they
11 want to stop the court reporter at any point during the
12 playing of the testimony. And if they do that I am
13 instructing her because sometimes they are listening for
14 something very specific and once they've heard it they
15 don't want to hear anymore, which is their prerogative.

16 So I will instruct her that if any of them do that
17 to stop the recording and then exit the jury room.
18 Again, the bailiffs are instructed that you are to make
19 sure and ensure that there is no deliberation that goes
20 on while the testimony is being replayed. And if you can
21 bring the Foreperson out for me so I can reinforce that
22 with him.

23 Then if you all want to walk around you are free to
24 but I would leave us with your cell phone numbers. I
25 know an hour is a long time to sit but sometimes they

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1 listen to ten minutes of it -- so I don't y'all to go too
2 far just in case that happens.

3 [Whereupon, the Foreperson enters the courtroom]

4 THE COURT: Mr. Foreman, we're going to send the
5 court reporter in to replay the testimony the jury has
6 requested. It is no different that if you all were
7 sitting out here listening to it. The equipment that we
8 have it is much better acoustically for you all to hear
9 it in the jury room so that you can hear it all without
10 the echo and the vacuum.

11 I need to ensure, however and the bailiffs will be
12 in the jury room with you during that process there can
13 be no deliberation while the testimony is being replayed.
14 If at any time the jury decides they have heard all that
15 they want to hear of the replay, please make the court
16 reporter aware of it and at that time she will stop the
17 recording.

18 But you all cannot deliberate while the testimony is
19 being replayed. And the bailiffs were ensure that, but I
20 need to instruct you of that so that you can make sure
21 the jury abides by those instructions.

22 THE FOREPERSON: Okay.

23 THE COURT: Thank you. And she will be right in.
24 All right. Is there anything else we need to take up
25 before the court reporter goes in to replay the testimony

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1 from the State?

2 MR. WEST: No, Judge.

3 THE COURT: From the defense?

4 MR. MAYER: No, Judge.

5 THE COURT: All right. We'll be at ease for
6 however long it takes -- at least an hour I am thinking
7 but it is possible that it may take less so you all could
8 stick close and if you all could leave us with cell phone
9 numbers just in event that you leave...

10 [Whereupon, court is in recess]

11 [Whereupon, at the direction of the court the
12 testimony of Doctor Stephanie Montgomery was played for
13 the jury in the jury room by the court reporter]

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State v Shana Robinson
Verdict
June 6, 2014

1 VERDICT
2 [Whereupon, the jury reaches a verdict at 5:33 p.m.]
3 THE COURT: The jury has reached a verdict. Is
4 there anything before we bring in the jury from the
5 State?
6 MR. WEST: No, Your Honor.
7 THE COURT: From the defense?
8 MR. MAYER: No, Judge.
9 THE COURT: Please bring in the jury.
10 [Whereupon, the jury enters at 5:42 p.m.]
11 THE COURT: Mr. Foreman, is it correct that the
12 jury has reached a verdict?
13 THE FOREPERSON: Yes.
14 THE COURT: If you will, give the verdict form to
15 the bailiff for me please.
16 [Whereupon, the Foreperson provides the verdict form.
17 to the bailiff]
18 [Whereupon, the bailiff provides the verdict form to
19 the court]
20 THE COURT: Madame Clerk, if you will publish the
21 verdict.
22 [Whereupon, the verdict form is given to the Clerk]
23 THE COURT: Ma'am, if you will stand for me please
24 for publication of the verdict.
25 [Whereupon, the defendant stands]

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1 CLERK OF COURT: The State of South Carolina County
2 of Berkeley versus Shana Ceciel Robinson. As to the
3 indictment 2014-GS-08-0313 we, the jury, by unanimous
4 consent find the defendant guilty of felony driving under
5 the influence, death. It is signed by the Foreperson.
6 Mr. Foreperson, and ladies and gentlemen of the jury, if
7 this is your verdict please signify by raising your right
8 hand at this time.

9 [Whereupon, each juror raises their right hand]

10 CLERK OF COURT: Thank you very much.

11 THE COURT: Is there any request to poll the jury
12 from the State?

13 MR. WEST: No, Your Honor.

14 THE COURT: From the defense?

15 MR. MAYER: No, Judge.

16 THE COURT: You may take your seat. Mr. Foreman,
17 ladies and gentlemen, we thank you for your time and your
18 attention to this case. We know that jury service by
19 large measure is thankless especially if you look at what
20 we pay you. Frankly, I'm a little embarrassed but that
21 is a little outside of my pay grade to correct. The
22 legislature would have to increase the amount that jurors
23 are paid regarding their service. But I hope you know
24 how very much we value you and I hope you've learned that
25 real court is nothing like what you see on television.

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1 It's nothing like Judge Judy, Judge Joe Brown, Peoples
2 Court, Judge Mathis or any of those other shows. Our
3 system is the only kind in the world where 12 ordinary
4 people listen to a case, decide what the facts are, apply
5 the law to those facts, and render verdicts.

6 South Carolina has one of the highest case filings
7 per capita per judge in the nation and over 5,000 case
8 filing per Judge. We have about 46 circuit judges who
9 travel throughout 16 circuits throughout the State and
10 hear cases every day. Even with that unbelievable case
11 load we still dispose of cases more quickly than States
12 that have a great more resources than we do.

13 You are welcome to discuss this case if you would
14 like. Often times lawyers will contact you because they
15 would like to know how they can do something better.
16 Often times they really just need the benefit of a lay
17 person's perspective regarding the case. So you should
18 not be surprised if you are contacted by any of the
19 lawyers in this case seeking direction or your input I
20 guess for lack of a better way of putting it.

21 You certainly are welcome to discuss the case if you
22 would like, however if you do not want to discuss the
23 case you are not obligated to. And if someone should
24 persist in speaking with you and it exceeds your comfort
25 level please advise the Clerk's office so we can take the

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1 appropriate action to maintain your privacy and protect
2 your privacy. The Clerk's office has your checks as well
3 as your work excuses and those will be given to you as
4 you leave this afternoon.

5 You are welcome to remain with us for sentencing if
6 you would like. If you want to please let the bailiffs
7 know and they will -- you can actually remain in the
8 courtroom if you'd like. If you don't, you are excused
9 with the court's profound thanks.

10 [Whereupon, the jury is excused and exits the
11 courtroom at 5:46 p.m.]

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State v Shana Robinson
Proceedings
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1 THE COURT: I assume Mr. Alfaro went to get the
2 sentencing sheet?

3 MR. WEST: That's correct, Your Honor.

4 THE COURT: While we are waiting for Mr. Alfaro are
5 there any motions from the State?

6 MR. WEST: Nothing from the State, Your Honor.

7 THE COURT: From the defense?

8 MR. MAYER: Judge, the defense because of Shana's
9 medically diagnosed disability we would ask that there be
10 some sort of inquiry into suitability to confine her like
11 a presentencing report or something like that.

12 THE COURT: I'm going to deal with sentencing in a
13 moment. I don't know that a presentencing hearing is
14 going to make any appreciable difference. The Department
15 of Corrections deals with a myriad of conditions and
16 under the circumstances I don't know any alternatives
17 that would be suitable along what I am assuming you want
18 to suggest.

19 But in this instance I don't see the necessity for
20 any type of presentencing report or the benefit of it.
21 Usually we do that with very young offenders to determine
22 if they will benefit from the youthful offender system.
23 But under these circumstances I don't think that
24 statutory provision would aid the court in sentencing.
25 But I need to know to know if there are any post-trial

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1 motions regarding the trial that you would like to make
2 at this time.

3 MR. MAYER: No, Judge.

4 THE COURT: Okay. What was Ms. Zoll's age at the
5 time of her death?

6 MR. WEST: Forty seven, Your Honor.

7 THE COURT: It is my understanding that Ms.
8 Robinson has no criminal history correct?

9 MR. WEST: That's correct, Your Honor.

10 THE COURT: And it's also my understanding that the
11 minimum pursuant to 56-5-2945 is one year and the maximum
12 is 25 years, correct?

13 MR. WEST: That's correct, Your Honor.

14 THE COURT: And the minimum fine is 10,100 dollars
15 with the maximum fine being 25,100 dollars?

16 MR. WEST: To my understanding.

17 THE COURT: Is that your understanding Mr. Mayer?

18 MR. MAYER: Judge, I actually don't know what the
19 fine amounts are. I'd have to look that up.

20 THE COURT: Yes, I'm pretty sure that's accurate.
21 I know it ends up being about triple that once they add
22 all the surcharges. I know the minimum ends up being
23 about 30,000 dollars.

24 [Whereupon, Mr. Mayer reviews documents]

25 MR. MAYER: Yes Judge, that's right.

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1 THE COURT: That's your understanding?

2 MR. MAYER: Yes, Judge.

3 [Off the record momentarily]

4 MR. ALFARO: Can I approach, Your Honor?

5 THE COURT: Yes.

6 [Whereupon, an off the record bench conference is
7 held]

8 THE COURT: Madame Clerk, do you have any blank
9 sentencing sheets? Their computer system is not
10 printing.

11 MR. WEST: I think I got one.

12 THE COURT: You got one?

13 MR. ALFARO: Yes.

14 [Whereupon, Mr. West completes the verdict form]

15 MR. WEST: Your Honor, I completed the form.

16 [Whereupon, Mr. West provides document to the court]

17 THE COURT: Is there anything further from the
18 State regarding sentencing?

19 MR. WEST: Your Honor, at the appropriate time the
20 victim's family would like to be heard.

21 THE COURT: This is the appropriate time.

22 [Whereupon, individuals come forward]

23 THE COURT: Ma'am, if you could tell us your name
24 for the record.

25 MS. TREVA ZOLL: My name is Treva Zoll.

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1 THE COURT: If you could spell your first name for
2 us?

3 MS. TREVA ZOLL: Z-O-L-L.

4 THE COURT: And your first name as well?

5 MS. TREVA ZOLL: Treva, T-R-E-V-A.

6 THE COURT: Thank you, ma'am. You may proceed.

7 MS. TREVA ZOLL: My name is Treva Zoll. I am the
8 sister of the woman killed, Candy as well as her ten year
9 old Beagle, Bosco. I'm also here to speak for my brother
10 Tony who is an on the road truck driver and currently
11 Texas and was unable to make it home. He asked me to let
12 everybody know he is a recovering alcoholic as well as an
13 addict and just passed 25 years of sobriety. And only by
14 the grace of God is he alive today.

15 And he knows first-hand the type of destruction that
16 drunk driving can have. This [indicates] is the last
17 picture I have of my sister, and this teardrop
18 [indicates] holds the ashes of her and Bosco.

19 Driving under the influence is a choice; never a
20 mistake, never an accident and the result is a lifelong
21 sentence of pain and suffering for the friends and
22 families left behind by the innocent person who was so
23 needlessly killed. Because of Shana Robinson our lives
24 were forever shattered on November 10th, 2011 at
25 approximately 8:45 when she crossed that center line and

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1 drove into my sister's lane and murdered her and Bosco.
2 She chose to drink alcohol that day. She chose to be
3 incredibly irresponsible and reckless and get behind the
4 wheel of her BMW and she chose to take the chance that
5 she could kill someone by her actions. Because of those
6 choices our sister, Candy and Bosco were killed.

7 Drinking and driving is the conscious choice she
8 made; not an accident. She intentionally drove down
9 Broughton Road at approximately 79 miles per hour. She
10 has driven that road her entire life and she knew the
11 curves and how dangerous it was. But that didn't stop
12 her from drinking that day and then getting into her car
13 with Brittany Hartley.

14 Neither one of them stopped for one second to
15 consider the lives that would be taken and the pain she
16 would cause the friends and family left behind and who
17 will have to forever mourn her death. Our sister was a
18 free spirit who loved life.

19 She absolutely loved that dog. He was her co-pilot
20 and Bosco loved nothing more than riding with Candy on
21 his blanket looking out the window. That dog went
22 everywhere with her. She loved him with all her heart
23 and she would do anything for him. She loved planting
24 flowers, she loved floating the Edisto River with Bosco
25 and her friends, and that dog even had his own float.

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1 She loved the lake sunrises and would send me pictures.
2 Our sister, Candy will never see another sunrise or
3 sunset, but Shana Robinson will. She will never see
4 another birthday, Christmas, New Year's, or any other
5 holiday because of her. While she has enjoyed these
6 holidays these last two and half years we've had to spend
7 ours with only her ashes instead of her laughter and
8 love.

9 Shana Robinson's selfish decision to drink and drive
10 has robbed this world and my family of a truly amazing
11 woman and left people with bitterness and hatred that I
12 never in a million years thought I would be capable of
13 feeling. I wish every single day that it would have been
14 me hit. Then in the next ten seconds I stop and think
15 this should have been Shana Robinson who should have been
16 crushed to death in that vehicle that night; not my
17 sister.

18 And I pray every night for some type of inner peace
19 and to be able to forgive. We will forever think how it
20 must have felt for her to be crushed against that
21 steering wheel barely breathing waiting for the roof and
22 what was left of that side of the car to be cut off for
23 her to be freed only to take her last breath and die
24 barely a few feet away from where she crossed into her
25 lane and hit her head-on. I have this nightmare every

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1 single night. I can picture her face and the tears she
2 must have shed. She must have known she was dying and
3 just waiting in unimaginable pain for that last breath to
4 come. I wonder if Shana Robinson even cares about the
5 pain she has caused, but judging by her actions during
6 this hearing I don't think so.

7 And I know in my heart that she really doesn't. She
8 has shown no emotion. Her life is a cut to the core and
9 I sat in disbelief. But I have faith that God will deal
10 with her in any manner to be -- for the pain and
11 suffering that she has put everybody through. I don't
12 sleep and to this day I feel that someone is ripping my
13 heart out of my chest and I feel like I am slowly being
14 strangled and I can hardly breathe at times.

15 I've joined Mothers against Drunk Driving and AVID,
16 Advocates of Victim's of Impaired Driving and they have
17 both been wonderfully supportive through this whole
18 ordeal. I will never be the same person. I worked law
19 enforcement in the United States Air Force and I have
20 seen my share of D-U-I's and the death that they can
21 cause.

22 With this experience I thought I would be able to
23 deal with this a lot better than the normal person but I
24 haven't. No one can tell you I know how you feel unless
25 they have lost someone to a drunk driver. I have come to

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1 absolutely detest that sentence it was God's will and I
2 cringe every time I hear it. But I will never believe
3 that God intended for Shana Robinson to mix alcohol with
4 drugs and to drive her car head-on into my sister
5 crushing her and making her suffer this type of slow
6 agonizing death.

7 I've always hated drinking and driving but I hate it
8 even more now that it has changed my life forever. My
9 only hope is that the maximum penalty will be imposed in
10 accordance with the felony D-U-I charge and she will be
11 sent to prison for as long as possible. The friends and
12 family of Candy Sue Zoll have waited for over two and
13 half years for this trial while Shana Robinson has been
14 living life as if nothing has happened. She is alive and
15 breathing and Candy isn't.

16 What we have left of our sister are stored in two
17 teardrops with her and Bosco's ashes. We are all hoping
18 and praying for justice. Please don't let her make
19 another family go through this pain and suffering that we
20 have been forced to live with every since November 10th,
21 2011 because no one deserves to endure this kind of
22 constant agony. The pain never gets easier and it
23 doesn't subside. So I am personally begging the court
24 for justice for the death of my sister. And we would
25 also like to express our appreciation for the Solicitor,

State v Shana Robinson
Proceedings
June 6, 2014

1 Mr. West and his entire staff, as well as the victim's
2 advocate, Ms. Robin Hauser [phonetic]. We also would
3 like to thank the jury for giving up their time and
4 putting their lives on hold to hear this case, and to the
5 countless fireman, paramedics, police officers, and
6 sheriff's deputies that have testified and sat in court.

7 We're so very grateful that they have done such a
8 wonderful job and they have been so thorough. And they
9 do a very thankless job and we just want them to know how
10 appreciative my family is for all their efforts. Thank
11 you for letting me read this statement in the court.

12 THE COURT: You're welcome, ma'am. Anything
13 further from the State?

14 MR. WEST: Your Honor, you've heard the facts of
15 the case, you heard the speeds and ---

16 THE COURT: --- I need you to speak up a little bit
17 more for me.

18 MR. WEST: You've heard the facts of the case.
19 You've heard the speeds and the impact during the
20 collision. You've heard from the victim's family in
21 this. If Your Honor is not inclined to give the maximum
22 sentence the State would at least ask that the sentence
23 be somewhere between 20 and 25 years.

24 THE COURT: Are you ready to proceed, Mr. Mayer?

25 MR. MAYER: Thank you, Judge. May it please the

State v Shana Robinson
Proceedings
June 6, 2014

1 court?

2 THE COURT: Yes, sir. You may proceed.

3 MR. MAYER: Ms. Robinson had -- this is her first
4 offense with the law, her first run-in, with the law. She
5 has a pretty significant education, Judge. And she has a
6 very solid work history. She, until this incident, has
7 been an upstanding member of the community.

8 In fact working in the medical field herself she
9 feels extreme remorse over this whole thing and will be
10 saddled with this for the rest of her life no matter what
11 the sentence is. I know that from having a relationship
12 with her now. And I would ask the court to consider her
13 medical conditions.

14 I would ask the court to consider the fact that she
15 is an unusual person in the system in that she has a high
16 degree of education, a relatively high achievement level,
17 that she is someone who is capable of learning from her
18 mistakes, Judge, and that if the court were to impose a
19 sentence towards the lower range no matter what the
20 sentence, however low, I am confident that Shana has
21 learned her lesson, that this never, ever could happen
22 again.

23 Additionally, whatever sentence is imposed the
24 Statute requires a further suspension of five additional
25 years of her license, Judge, so even under a one year

State v Shana Robinson
Proceedings
June 6, 2014

1 sentence for example Judge, her license would be
2 suspended through and until she is forty or actually
3 until she is 42.

4 Judge, I feel like 40 is kind of an important number
5 in a person's life. I'm staring it down myself now and I
6 feel like a lot of tempering goes on in the late 30's and
7 a lot of mellowing and a lot of personal growth. And
8 that is only compounded when someone goes through the
9 crucible of a criminal trial the way that Shana has.

10 I know that she is engaged in a ton of reflection, a
11 ton of therapy, a ton of counseling. And that is not to
12 garner the court's sympathies, that's not to portray
13 herself in any particular light; that's just what she has
14 done. And I'm confident that whatever the sentence of
15 the court she will continue to be on the right path
16 there.

17 I would ask, Judge the court heard from all those
18 witnesses who said that she was not grossly impaired. I
19 would ask the court to consider that in terms of how
20 outrageous or less outrageous this may have been. I
21 would ask the court to consider the fact that Shana is a
22 very loving person, is someone who has suffered deeply,
23 very deep psychological effects from this already, and I
24 imagine that her Mom would like to also address the court
25 at the appropriate time.

State v Shana Robinson
Proceedings
June 6, 2014

1 THE COURT: Is there anything she would like to
2 state for the record on her own behalf?

3 THE DEFENDANT: Your Honor, there is not a day that
4 has gone by since this accident that I haven't thought
5 about everything. I don't know what happened but I know
6 it was an accident. Every year of the date we go out to
7 that site. The first year we made a plaque that said
8 Rest in Peace Candy Zoll and Bosco and staked it in the
9 ground. This past year we went out and released balloons
10 in her memory. We've put countless flowers out there.

11 This is something I've had to live with for the last
12 two and half years as well as many other people. And I
13 know so many lives were changed, including my own,
14 including Candy Zoll's family, which I can never, ever
15 tell them or understand how they feel other than I have
16 to live with the fact that I know that someone died in an
17 accident that I was involved in. And it breaks my heart
18 every day.

19 I just -- I don't know how else to say it. I just,
20 I've had a hard time with this. I haven't been able to
21 get out the bed. I've put myself in a state of deep
22 depression and I can't say how sorry I am to the family
23 of the deceased. I never got to meet Candy. I heard she
24 was a great person. Bosco, I knew that he was very
25 important to her. I've done a lot of research and really

State v Shana Robinson
Proceedings
June 6, 2014

1 a lot of reflection on this. This has been the worse
2 three years of my life. That's all, Your Honor.

3 THE COURT: Thank you, ma'am. Anything further
4 Mr. Mayer?

5 MR. MAYER: No Judge, I don't think so. Okay, Ms.
6 Robinson's father would like to ---

7 THE COURT: --- ma'am, you can take your seat.

8 [Whereupon, the defendant complies]

9 THE COURT: Sir, if you will tell us your name for
10 the record.

11 MR. ROBINSON: My name is Dan Robinson. You want me
12 to come up there?

13 THE COURT: You can come right to where the
14 deputies stand. Yes sir, tell us ---

15 MR. ROBINSON: --- my name is Dan Robinson.

16 THE COURT: Dan?

17 MR. ROBINSON: Dan Robinson.

18 THE COURT: Yes, sir.

19 MR. ROBINSON: R-O-B-I-N-S-O-N. I'm Shana's
20 biological father. And I really would like the court to
21 understand what type of person Shana really is; a caring
22 and loving person that made a terrible mistake this time.
23 I would hate to see something as far as retribution or
24 retaliation to reflect on this. And as far as taking
25 away one life that was needlessly lost and I am so sorry

State v Shana Robinson
Proceedings
June 6, 2014

1 that that happened, but another one is not wasted because
2 of it. I know and understand that she feels sorry for
3 what she has done -- and she will for the rest of her
4 life. That's really all I have to say.

5 THE COURT: Thank you so very much, sir. Anything
6 further Mr. Mayer?

7 MR. MAYER: No, Judge.

8 THE COURT: Anything further from the State?

9 MR. WEST: No, Judge.

10 THE COURT: Okay. Give me a few moments, please.
11 And how old is your client, Mr. Mayer?

12 MR. MAYER: Thirty-six, Judge.

13 [Whereupon, the court reviews documents]

14 THE COURT: This is classified as serious and
15 violent, correct, which is served at 85 percent?

16 MR. WEST: Yes, Your Honor.

17 [Whereupon, the court reviews documents]

18

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State v Shana Robinson
Sentencing
June 6, 2014

1 I think the State would echo the court's comment that it
2 is not seeking retribution in this case nor would it be
3 appropriate to seek retribution in this case.

4 Again, I would commend Ms. Zoll's sister for her
5 heartfelt comments on behalf of her family. And the
6 court has taken those into consideration in sentencing
7 and we thank you for your candor in speaking today with
8 the court as well as those comments of Ms. Robinson
9 regarding her remorse regarding this incident having
10 taken place and the loss of the life of Ms. Zoll and her
11 dog at the time of this really just grossly unfortunate
12 situation.

13 I don't think there is any other way to describe it
14 because now the court is left with the loss of two lives;
15 that of Ms. Robinson at a young age and that of Ms. Zoll
16 at a very young age to have lost her life in such a
17 tragic way.

18 As such the court finds it appropriate that you be
19 sentenced to the State Department of Corrections for a
20 period of 17 years. You will get credit for any time
21 that you've served to be calculated and applied pursuant
22 to 24-13-40, which will be calculated and applied by the
23 Department of Corrections.

24 Thank y'all very much for your professionalism in
25 trying the case. It has been a pleasure. Unfortunate

State v Shana Robinson
Sentencing
June 6, 2014

1 circumstances but the court again appreciates, and I'm
2 speaking to counsel, your professionalism in trying this
3 matter. I hope y'all have a good weekend.

4 [Whereupon, the jury trial concludes at 6:30 p.m.]

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State v Shana Robinson
Certificate of the Court Reporter
June 6, 2014

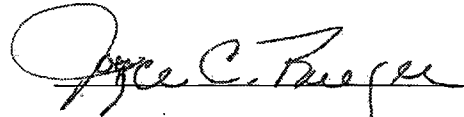
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Berkeley County, South
Carolina on the 6th day of June, 2014.

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

September 12, 2014



Joyce C. Rueger, CVR-M

Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Berkeley)
)
Shava Robinson #360268)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2016-CP-08-300

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Camille G. Graham Correctional Inst.
2. Name and location of Court which imposed sentence The Court of General Sessions, Berkeley County, Mas
3. Name(s) of co-defendant(s) (if any) N/A Carri SC
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014GS0800313 - Indictment for
 - ~~##~~ Felony driving under the influence - death
 - ~~##~~ in violation of § 56-05-2945(A)(2) CDR code
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6/6/14 - 17 years committed to the
 - ~~##~~ State Dept. of corrections.

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

yes _____

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

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

i. South Carolina Court of Appeals _____

ii. _____

iii. _____

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

i. appeal dismissed _____

ii. _____

iii. _____

(c) the date of each such result:

i. 1/20/16 _____

ii. _____

iii. _____

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

i. Unpublished Opinion No. 2016-UP-036 _____

ii. _____

iii. _____

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

(a) N/A _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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

(a) ineffective assistance of counsel
 (b) prejudicial testimony was allowed that
 (c) should have been disregarded and
prejudicial asst. prosecuting atty with hx of
family matter

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

(a) Counsel was ineffective in failing to
 (b) subpoena the records custodian from
 (c) Verizon Wireless in order to introduce
cell phone records of decedent showing that

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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

- (a) the specific nature thereof:
 - i. Appeal submitted to SC court of appeals.
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. SC Court of Appeals - Columbia, SC
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Appeal dismissed.
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. 1/20/16

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Unpublished Opinion No. 2016-UP-036

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. prejudicial testimony was allowed

ii. that should have been disregarded

iii. _____

(b) the proceedings in which each ground was raised:

i. appeal

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) not allowed to be addressed in

(b) appeal.

(c) _____

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

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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

- (a) the name and address of each attorney who represented you:
 - i. Arnon Mayer, Charleston, SC
 - ii. Katherine Hudgins, Columbia, SC
 - iii. _____

- (b) the proceedings at which each such attorney represented you:
 - i. Arnon Mayer - arraignment, trial,
 - ii. and sentencing.
 - iii. Katherine Hudgins - appeal, preparation and consideration of application to appellate court.

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

Sentence reversed and new trial, mistrial, possible reconsideration of sentence, reduced sentence
 20. Are you now under sentence from any other court that you have not challenged? any relief available
NO

STATE OF SOUTH CAROLINA)
County of Berkeley)
Shawn Robinson)

VERIFICATION

I, Shawn Robinson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Shawn Robinson

SWORN to and subscribed before me this 2
day of February, 2016.

Samuel Martin (L.S.)
Notary Public

My Commission Expires: 3/19/2025

2016 FEB -5 PM 4:48
CLERK OF COURT
BERKELEY COUNTY, SC

TSM

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

I, Shana Robinson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Shana Robinson
Applicant

SWORN or affirmed to and subscribed before me this
2 day of February, 2016.

Lana Clarke Martin
Notary Public

My Commission Expires: 5/19/25

2016 FEB -5 PM 4:48
CLERK OF COURT
BERNARD COUNTY, SC

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STATE OF SOUTH CAROLINA)
 COUNTY OF BERKELEY)
)
)
 Shana Robinson, #360268,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

2016-CP-08-300

RETURN

In response to the post-conviction relief application filed on February 5, 2016, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Beaufort County Clerk of Court’s orders of commitment. The Applicant was indicted by the April 2014 term of the Charleston County Grand Jury for Felony DUI- Death (2014-GS-08-313). Aaron Mayer, Esquire, represented him. On June 2, 2014, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for seventeen (17) years.

A notice of appeal was filed on Applicant’s behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed the Applicant’s appeal. State v. Robinson, Op. No. 2016-UP-036 (filed on January 20, 2016). The Remittitur was issued on February 8, 2016.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
 - a. "Prejudicial testimony was allowed that should have been disregarded and prejudicial asst (sic) prosecuting atty (sic) with hx (sic) of family matter"
 - b. "Counsel was ineffective in failing to subpoena the records custodial from Verizon Wireless in order to introduce cell phone records of decedent showing that (sic)"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegations as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 13, 2016

STATE OF SOUTH CAROLINA)
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 COUNTY OF BERKELEY)
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 SHANA ROBINSON, #360268)
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 Applicant,)
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 STATE OF SOUTH CAROLINA,)
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 Respondent.)
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IN THE COURT OF COMMON PLEAS

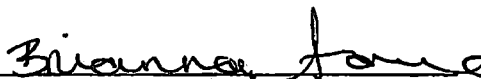
2016-CP-08-0300

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esquire
 Lowcountry Law Office
 4000 Faber Place Drive, Suite 300
 Charleston, South Carolina 29405

DATED this 13th day of June, 2016.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY)	2016-CP-08-00300
SHANA ROBINSON,)	
)	
Applicant,)	Transcript of Record
)	Post-Conviction Relief
vs.)	
)	October 1, 2018
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

B E F O R E:

Honorable Michael G. Nettles
 Berkeley County Courthouse
 Monks Corner, South Carolina

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

Lance S. Boozer, Esquire
Attorney for Applicant

Johnny E. James, Jr., Esquire
Attorney for Respondent

Kay H. Richardson
Circuit Court Reporter

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I N D E X

<u>OCTOBER 1, 2018</u>	<u>Pg.</u>
By the Court	3
Shana Ceciel Robinson	
Direct by Boozer	6
Cross by James	25
Aaron Cole Mayer	
Direct by James	29
Cross by Boozer	48
Redirect by James	53
By the Court	54
Certificate of Court Reporter	56

E X H I B I T S

<u>No.</u>	<u>ID</u>	<u>EV</u>
------------	-----------	-----------

(No exhibits were marked or admitted.)

Robinson v. State - 2016-CP-08-00300
BY THE COURT

3

1 OCTOBER 1, 2018 - 2:10 P.M.

2 BY THE COURT:

3 THE COURT: Yes, sir. You are recognized.

4 MR. JAMES: May it please the Court? Your Honor, this is
5 the matter of Shana Robinson versus State of South Carolina,
6 docket number 2016-CP-08-00300. Ms. Robinson is present here
7 today in the courtroom and is represented by Mr. Lance Boozer,
8 Esquire.

9 Ms. Robinson was indicted at the April 2014 term of the
10 Berkeley County Grand Jury -- I apologize, there is a typo on
11 the state's return -- for felony DUI resulting in death. Ms.
12 Robinson was represented on that charge by Mr. Aaron Mayer,
13 Esquire, who is present here in the courtroom today. Ms.
14 Robinson proceeded to trial before a jury of her peers on June
15 22nd, 2014, at which she was found guilty as indicted. The
16 Honorable Deadre L. Jefferson sentenced Applicant to
17 confinement for a term of 17 years. She filed a notice of
18 appeal. That appeal was perfected by submission of a brief
19 pursuant to *Anders v. California*. South Carolina Court of
20 Appeals dismissed the appeal on January 20th, 2016 and the
21 remittitur was issued February 8th of 2016.

22 Your Honor, I will bring to your attention that in
23 addition to the allegations as prestated in the state's
24 return, late last week we received a late amendment to the
25 application for post-conviction relief. I don't have a

Robinson v. State - 2016-CP-08-00300
BY THE COURT

4

1 clocked copy of that amendment at this time but an unlocked
2 copy provided to me by opposing counsel has been placed in the
3 judge's packet before you up there on the bench.

4 With that stated, the state is ready to proceed and I
5 cede the floor over to Mr. Boozer.

6 THE COURT: Very good.

7 Mr. Boozer, you're recognized.

8 MR. BOOZER: Thank you, Your Honor. If it pleases the
9 Court? Judge would you prefer me to outlay the allegations?

10 THE COURT: Yeah, if you could.

11 MR. BOOZER: Thank you, Your Honor.

12 As Your Honor is aware, this stems from a trial in which
13 my client was convicted of felony DUI. Your Honor, in the
14 original application my client filed on her own, she alleged
15 that there was prejudicial testimony that was allowed that
16 should've been disregarded and the assistant prosecuting
17 attorney had a history of a family matter. I'll clarify that
18 in a moment in my amendment. She had a second allegation that
19 counsel was ineffective in failing to subpoena the records
20 custodian from Verizon Wireless in order to introduce some
21 cell phone records of the deceased. By amendment, which I
22 amended and provided to opposing counsel, as he indicated, I
23 have that counsel was ineffective in his calling of an expert
24 witness, who was named Mr. Robert Bennett, that we'll get
25 into. I've also got an allegation that the applicant believes

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1 her attorney was ineffective for failing to secure and
2 preserve a final ruling as to the questioning of a witness
3 regarding marijuana. There was a pretrial agreement where
4 there was something found in Shana's car that may or may not
5 have been marijuana, to not bring that up. We'll get into
6 that and point that to Your Honor's attention where that comes
7 into play. Applicant believes that her attorney should've
8 challenged the chain of custody of certain blood samples.
9 Counsel failed to highlight throughout the trial the presence
10 of marijuana in the other driver's system and that the other
11 driver was otherwise distracted. My client believes that her
12 attorney should've requested that the prosecuting attorney
13 from the solicitor's office be removed from -- due to a
14 conflict of interest, which my client will describe. As well
15 as, my client believes her attorneys should've objected to
16 jury instructions regarding a motorist duties that were given.
17 And I -- of course, it will be given through the testimony
18 would point to citations in the record. That's an outline of
19 the allegations we'll be moving forward on today.

20 THE COURT: Very good. You may call your first witness.

21 MR. BOOZER: Thank you, Your Honor. If it pleases the
22 Court, we will call Shana Robinson.

23 THE COURT: Yes, ma'am. Please come forward. I'm gonna
24 ask if you could to come around as best you can. Watch your
25 step. Have a seat in this witness chair. And before you do

1 that, place your left hand on the Bible and raise your right
2 hand as the clerk administers the oath.

3 SHANA CECIEL ROBINSON, HAVING BEEN
4 DULY SWORN, TESTIFIED AS FOLLOWS:

5 CLERK: Thank you. You may be seated. State your full
6 name for the record and spell your last name.

7 THE COURT: Pull up real close to that microphone and
8 speak loudly, clearly, and slowly in order that we can hear
9 everything that you have to say. Let's start with your full
10 name, please, ma'am.

11 MS. ROBINSON: Yes, sir. My name is Shana Ceciel
12 Robinson. And you said you'd like me to spell it? S-H-A-N-A,
13 C-E-C-I-E-L, R-O-B-I-N-S-O-N.

14 THE COURT: Very good. Pay very close attention to your
15 lawyer and answer his questions.

16 MS. ROBINSON: Yes, sir.

17 MR. BOOZER: Thank you, Your Honor.

18 DIRECT EXAMINATION OF SHANA CECIEL ROBINSON BY MR. BOOZER:

19 Q: Ms. Robinson ---

20 A: Yes, sir.

21 Q: How are you doing today?

22 A: I'm doing well; thank you.

23 Q: Okay. Ms. Robinson, do you know what it is that we're
24 doing here today?

25 A: Yes, sir. I have applied for post-conviction relief.

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1 Q: Okay. And Ms. Robinson, what is your understanding of
2 what a post-conviction relief application is?

3 A: Basically, I was -- my understanding is basically that
4 there was some things that I was unhappy with, with the way
5 that the trial went. And with the way that I was represented
6 and some things that I was not, you know -- the way that, I
7 guess, that my attorney, that my attorney did I felt like I
8 had ---

9 Q: Let me jump in here and interrupt you, I'm sorry.

10 A: I guess I didn't -- I don't want to mis -- you know,
11 ineffective assistance of counsel in some respects.

12 Q: Okay. Now, you and I certainly have discussed this,
13 probably at length ---

14 A: Sure, absolutely.

15 Q: --- and maybe a little too much if you would.

16 A: Sure.

17 Q: Madame Court Reporter has to take down everything I'm
18 saying and everything you're saying.

19 A: Sure.

20 Q: So, wait for me to finish a question before you speak and
21 I'll do ---

22 A: Sure. Sorry.

23 Q: Ms. Robinson, do you understand that a post-conviction
24 relief action that the only thing that this Court can do for
25 you is to give you a new trial?

1 A: Absolutely.

2 Q: You understand that this Court cannot reduce your
3 sentence, modify your time, let you out early, or anything
4 like that?

5 A: I'm very aware of that; yes, sir.

6 Q: Okay. And you and I certainly have discussed there are
7 both benefits to going back on a new trial and there are also
8 some risks in going back; do you understand that?

9 A: I'm very aware of that; yes, sir.

10 Q: Okay. And do you understand that, if you were to go back
11 to trial, there are certain scenarios where you can be found
12 guilty?

13 A: Absolutely.

14 Q: You could be found not guilty?

15 A: Yes, sir.

16 Q: You could get a sentence that is more than the sentence
17 you received the first go-round?

18 A: Yes, sir.

19 Q: You could get a sentence that is more than the amount of
20 time you have left to serve on your sentence now?

21 A: Yes, sir.

22 Q: You could get a sentence that is less if you go -- if you
23 were found guilty at trial?

24 A: Yes, sir.

25 Q: And knowing all that, is it your decision to still move

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1 forward with your PCR application?

2 A: It is.

3 Q: Okay. Now, who was your trial attorney?

4 A: My trial attorney was Aaron Mayer.

5 Q: All right. How did -- let me ask you this, when did you
6 first get arrested?

7 A: The arrest date was November the 10th, 2011.

8 Q: Okay. So, that's been some time ago?

9 A: Yes, sir.

10 Q: When did Mr. Mayer come onto your case or when did you
11 hire him?

12 A: Aaron Mayer was on immediately. My mother -- it was my
13 understanding that my mother contacted him immediately. Once
14 I was in the hospital, it was my understanding that my mother
15 called him because he had been a lawyer of our family's. And
16 so I know that the accident happened on Thursday. And to the
17 best of my recollection, he was there Friday questioning and
18 talking to me.

19 Q: Okay. Now, he was the only lawyer you had throughout
20 your entire case, other than on the appeal?

21 A: Correct.

22 Q: Okay. How many times do you think in total you would've
23 met Mr. Mayer?

24 A: I would have to guess.

25 Q: Let's not guess. Do you have an estimate, that we won't

1 hold you to but ---

2 A: A hundred or more, I mean.

3 Q: So, it's safe to say you met with him quite a bit?

4 A: Absolutely.

5 Q: Okay. When you were meeting with him, were y'all
6 preparing for a trial the entire time or were y'all looking at
7 a plea? Tell me about sort of what those meetings consisted
8 of and what you were kind of working towards.

9 A: You know, we were talking through everything and it was
10 my understanding as well as my mother's and, you know, I think
11 that just the whole time, it was our understanding that with
12 all the evidence that was -- that was showing up, that I
13 wouldn't see a day of jail time.

14 Q: Okay. What was your understanding of what the penalty is
15 for the charge that you faced?

16 A: You know, at that point, I had no understanding.

17 Q: How about now?

18 A: Now, it's one to 25 years.

19 Q: Okay. Is it zero to 25; is that your understanding?

20 A: Maybe. I know it's up to 25.

21 Q: Okay. At the time, were you being told anything about
22 what to expect if you went to trial?

23 A: I wasn't.

24 Q: Well, were you being told if you get convicted you might
25 get 10 years or you may not get any time or what was ---

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1 A: We weren't talking about trial at all at that point
2 because there were so many things that were -- you know, I
3 wasn't walking. I was going through so many surgeries, I was
4 -- I think that was an afterthought.

5 Q: Well, let's talk about -- you and I have certainly had
6 some discussions ---

7 A: Sure.

8 Q: I want to make sure that we're covering everything you
9 went over with me.

10 A: Sure, sure.

11 Q: Were you ever told that you would not see any jail time?

12 A: Yes, sir. I stated -- yes, sir; I just stated that.

13 Q: Okay. Let's delve into that a little bit.

14 A: Yes, sir.

15 Q: Even if you were convicted, you did not believe that you
16 would be going to prison?

17 A: I was -- it was my understanding I wouldn't see any jail
18 time. You know, and just the more the facts that came out, it
19 was how things were happening. You know, there were specific
20 things that came out that was like, oh, no, with this specific
21 scenario, there's no way you'll see any jail time; oh, with
22 this specific thing, you will never see any jail time; with
23 this happening, you won't see any jail time.

24 Q: Was that coming from your lawyer?

25 A: Right.

- 1 Q: Okay. Let me ask you this, in the record, there is a --
2 there's a discussion that there was a plea offer that'd been
3 conveyed to you.
- 4 A: Uh-huh, (affirmative response).
- 5 Q: What was that plea offer?
- 6 A: The plea offer was 15 years.
- 7 Q: Okay. And did you decline that plea offer?
- 8 A: Uh-huh, (affirmative response).
- 9 Q: And did your lawyer advise you to decline that?
- 10 A: Uh-huh, (affirmative response).
- 11 Q: Say yes or no.
- 12 A: I'm sorry, yes. I apologize. Yes.
- 13 Q: And in fact, in the transcript, does the record not
14 reflect that your lawyer indicates that you were declining
15 that based on his advice?
- 16 A: Yes.
- 17 Q: All right. You had a very lengthy trial; do you recall
18 that?
- 19 A: Yes.
- 20 Q: Prior to the trial, what sort of preparations did you and
21 your lawyer make for the trial?
- 22 A: We had talked at length medically because that's kind of
23 my background.
- 24 Q: Tell us a little bit about your background.
- 25 A: Okay. My background, I went to school for dental

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1 assisting, specializing in oral maxillofacial surgery. And I
2 also was certified in advanced cardiac life support. And went
3 to school for sedation techniques and different things like
4 that. So, it helped me with -- with a lot of the medications
5 and different things that were used in my surgery specifically
6 and a lot of the techniques and different things that were
7 used in the surgery in the different things that I went
8 through.

9 Q: Okay. What was your defense at trial? Was it simply the
10 -- was it the accident occurred, it wasn't your fault, and you
11 were not intoxicated; was that the overall defense?

12 A: I was not intoxicated; that is the main defense.

13 Q: Okay. And you actually had a number of witnesses who had
14 seen you prior to the accident.

15 A: Correct.

16 Q: They were able to testify that they saw you and that you
17 were not impaired; is that right?

18 A: Correct. I have eight.

19 Q: And they all testified at your trial?

20 A: I have eight sobriety witnesses that said I was not
21 intoxicated.

22 Q: Did you have any discussion -- let's get into some of
23 your allegations.

24 A: Yes, sir.

25 Q: You heard me recite those allegations for His Honor; are

1 those your allegations?

2 A: Yes, sir

3 Q: Okay. Let's talk about that you believe that your lawyer
4 was ineffective in calling an expert witness on your behalf by
5 the name of Robert Bennett.

6 A: Okay.

7 Q: Prior to the trial, did you have any discussion with your
8 attorney about calling Robert Bennett as a witness or engaging
9 him?

10 A: He had told me he had found Robert Bennett and had told
11 me a little bit about him, but other than that we did not
12 discuss anything specifically more so than that, no, sir.

13 MR. BOOZER: And Your Honor, as I'm going through this
14 line of questioning, Mr. Bennett's testimony begins on Page
15 873.

16 THE COURT: Okay.

17 BY MR. BOOZER:

18 Q: Did you know anything about Mr. Bennett's background?

19 A: Nothing more than what Mr. Mayer had told me.

20 Q: What did he tell you?

21 A: He had told me that he had a background in pharmacology
22 and toxicology. And so I'm ashamed to say that I didn't do
23 more due diligence in checking the background than I probably
24 would have, but again I was doing -- I was healing and not
25 walking and stuff at that point, so I really didn't do the due

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1 diligence and checkup like I should have probably at that
2 point, but -- so I, you know, I just went with that and was
3 okay with that.

4 Q: Okay. During the trial -- Your Honor, I'm looking
5 specifically at Page 885 of the transcript.

6 THE COURT: Okay.

7 MR. BOOZER: And that's Volume 2.

8 THE COURT: Okay.

9 BY MR. BOOZER:

10 Q: Shana, are you pretty familiar, since you obviously went
11 through this trial, are you pretty familiar with the trial
12 transcript?

13 A: Pretty familiar, yes, sir.

14 Q: Okay. Do you recall on Page 885, beginning at Line 7
15 that Mr. Bennett testified he would give a scientific
16 estimation as to what that would be a five to 10 percent
17 impairment rate level at that amount of alcohol, talking about
18 what your impairment rating would've been at the time of the
19 accident?

20 A: Yes, sir.

21 Q: Okay. Was your entire defense was that you were not
22 impaired whatsoever?

23 A: Yes.

24 Q: Okay. Do you know why or did you have any discussion
25 with your lawyer that Mr. Bennett had made that type of

1 finding that you were five to 10 percent impaired at the time
2 of the accident?

3 A: No.

4 Q: Okay. During the -- do you recall the state's cross
5 examination of Mr. Bennett?

6 A: My honest answer is I remember it being a train wreck.

7 Q: Okay. And we'll get into that with your lawyer. But you
8 recall that cross examination did not go very well for Mr.
9 Bennett?

10 A: Yes, sir.

11 Q: And would you agree with me that he had been discredited
12 quite a bit?

13 A: Absolutely.

14 Q: Did you know anything that was elicited in that
15 background of his prior to y'all engaging him?

16 A: Seems like he had been maybe disbarred or had not been
17 practicing for a while or something to that effect.

18 Q: Okay.

19 A: Correct me if I'm wrong. I don't recall.

20 Q: We'll get into that a little bit more.

21 A: Yes, sir.

22 Q: There was some items that came out whereby the South
23 Carolina Board of Pharmacy had issued a cease and desist
24 letter to ---

25 A: Yes, sir.

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1 Q: --- him as holding himself out as a licensed pharmacist?

2 A: Correct; yes, sir.

3 Q: Okay. And then also there was some negative news
4 articles about Mr. Bennett in the Post and Courier?

5 A: Yes, sir.

6 Q: And those were brought out; is that right?

7 A: Yes, sir.

8 Q: Okay. Had you known any of that, would you have wanted
9 him to be a part of your trial?

10 A: Absolutely not.

11 Q: All right. Now, you've also got an allegation that your
12 lawyer was ineffective for failing to secure and preserve a
13 final ruling as to the questioning of a witness regarding
14 marijuana when there was an agreement between the state and
15 defense counsel that it wouldn't be brought up. Was there an
16 allegation that an EMS worker or someone like that had removed
17 something they thought to have been marijuana from you at the
18 scene of the accident?

19 A: Correct.

20 Q: Okay. It -- on Page 200 of the transcript -- which would
21 be Volume 1, Your Honor. Beginning at Line 7, do you recall
22 your lawyer entering into an agreement that was heard by the
23 Court where neither the state nor the defense would talk about
24 this supposed marijuana?

25 A: Yes, sir.

- 1 Q: All right. Now, later on in your trial on 497, during
2 the testimony with one of the officers -- I beg the Court's
3 indulgence, Your Honor. On 497, do you recall one of the
4 investigating officers stating -- this is the bottom of 496,
5 talking about you, she was on the wrong side of the road,
6 there was beer all inside the car, there was a green leafy
7 material that was believed to be --- question, I'm gonna stop
8 you right there -- the solicitor says, I'm gonna stop you
9 right there. Your lawyer says objection and there's an off-
10 the-record bench conference held. There was no final ruling
11 or anything else done as to -- as far as that testimony. Do
12 you recall that?
- 13 A: Correct.
- 14 Q: Okay. Did you think your lawyer should've done something
15 at that point?
- 16 A: No, I do recall him objecting. I just felt like ---
- 17 Q: Was there a final ruling made?
- 18 A: There was never a final ruling made.
- 19 Q: Was there a motion for mistrial, maybe?
- 20 A: No.
- 21 Q: Okay. Were there curative instruction requested?
- 22 A: I have no idea what that is, but the only thing that I
23 recall was an objection and I was just waiting for, you know,
24 something to happen.
- 25 Q: Now, you've also got an allegation that you believe your

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1 lawyer should've challenged the chain of custody of some of
2 the blood samples. Explain that to the Court.

3 A: It's my understanding that the blood sample -- I know
4 that the blood sample -- I want to say this right way, so
5 please bear with me. It's my understanding that the blood
6 sample reached SLED hours after the time limit.

7 Q: And y'all in fact made a motion to keep that evidence out
8 because of that time limit?

9 A: Correct.

10 Q: The four-hour time limit?

11 A: Correct.

12 Q: Okay.

13 A: So, I guess my question later was why -- once I thought
14 about that then why did we then agree to the chain of custody.
15 I didn't understand. That was my question.

16 Q: Did you have any discussion with your lawyer about
17 challenging the chain of custody?

18 A: Not at the time. You know, should've, would've,
19 could've; later I questioned this. You know you go back later
20 and then you question all this stuff, you know. At the time I
21 never questioned it, but later -- now, I question everything.
22 You know, but at the time I didn't understand -- you know, now
23 I question everything. Then I didn't know why -- I don't
24 know. I guess I'm not saying this properly and I don't want
25 misconstrue what I'm trying to say, but no I did not question

1 it at the time.

2 Q: Okay.

3 A: Now, I do question it.

4 Q: You also had the allegation that you believe your lawyer
5 failed to highlight throughout the trial the presence of
6 marijuana in the other driver's system and that the other
7 driver was otherwise distracted?

8 A: Yes.

9 Q: Explain that and the conversations, if any, that you had
10 with your lawyer about these issues.

11 A: I don't want this to come across because I'm not here to
12 bash anyone and that's not what I'm here for, Your Honor. I
13 just felt like it was only fair that it be told that she was
14 high on marijuana, too. That she had her dog maybe on her lap
15 as well, and that she was on her cell phone, too, and that
16 that be a part of it, that she was a distracted driver, and
17 that she was swerving, and that wasn't taken into
18 consideration and that was all I was saying.

19 Q: Did you discuss that aspect with your lawyer?

20 A: I'm sorry.

21 Q: Take your time.

22 A: I did. But I know that it -- regardless of how it sounds
23 it wasn't gonna come out right. It just sounds like I'm
24 blaming and I'm not blaming. It was an accident, it was a car
25 accident. I'm sorry.

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1 Q: Just take a moment and let me know when you're ready.

2 I'm gonna ask you some additional questions. You just let me
3 know when you're ready to move forward.

4 A: I can never give her family back their loved one, and I
5 can never give my family back -- I'm sorry.

6 Q: Let's talk a little bit more about your -- about your
7 application, some of your other issues.

8 A: Yes, sir.

9 Q: You've got an allegation that you believe your lawyer
10 should've requested the lawyer from the solicitor's office who
11 was prosecuting the case should've been removed due to a
12 conflict of interest.

13 A: Yes, sir.

14 Q: Who was the prosecuting attorney?

15 A: The prosecuting attorney was Mason West and the assistant
16 prosecuting attorney was Bryan Alfaro.

17 Q: Okay. Before we get to that, you had indicated that Mr.
18 Mayer was your lawyer. Did you have anyone else who kind of
19 stepped in to assist at any point?

20 A: Yes.

21 Q: Who was that?

22 A: That was ---

23 Q: Was it Mr. Seaton?

24 A: Yes, I'm sorry, Grover Seaton.

25 Q: Who asked Mr. Seaton to assist in the case?

1 A: My family and myself.

2 Q: All right. What happened with Mr. Seaton?

3 A: The prosecution said that it was a conflict of interest
4 and that -- asked that he be removed.

5 Q: Why was there a conflict of interest with Mr. Seaton?

6 A: Because evidently he had written a letter for the
7 victim's family, never having signed on with the victim but he
8 had written a letter for the family in the past, they didn't
9 want any issues or problems, so he just said okay and decided
10 not to contend with anything -- you know, have any problems
11 there.

12 Q: Okay. So, he came off your case?

13 A: He bowed out gracefully.

14 Q: Okay. So, going back to Mr. Alfero and the prosecuting
15 attorneys, why do you believe that there was a conflict of
16 interest with them?

17 A: Because my sister and Mr. Alfero's nephew had a
18 relationship so much so that there was a paternity test done
19 on my niece and they were thinking that my niece was Mr.
20 Alfero's nephew's daughter.

21 MR. JAMES: Objection, hearsay.

22 THE COURT: Go ahead.

23 MR. BOOZER: Argument, Judge?

24 THE COURT: Go ahead.

25 MR. BOOZER: Continue the questioning?

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23

1 THE COURT: Yes.

2 MR. BOOZER: I'm sorry. Thank you, Your Honor.

3 BY MR. BOOZER:

4 Q: Did you bring that to your lawyer's attention?

5 A: I did.

6 Q: And what was his response?

7 A: It'll be okay. There's nothing we can really do about
8 it, I guess. I don't know, it was just kind of blown over, I
9 guess.

10 Q: You also have an allegation that you believe your lawyer
11 should've objected to certain jury instructions. I think I
12 captured this right based on my understanding of your
13 description of it, the way that the jury was charged on the
14 motorist duties with regard to the center line; do you recall
15 that? With whether -- let me clarify that. Do you recall
16 that you believed there was an issue with if you crossed the
17 center line you were guilty, if she didn't -- if she crossed
18 the center line she wasn't at fault; do you recall anything
19 like that?

20 A: Well, we had -- right. Yes. The -- basically, the
21 Judge's instructions stated that if the center line was
22 crossed, that I must be convicted, but the issue was that she
23 was already in my lane initially. So, that was my -- that was
24 my whole charge, the original charge was she was already in my
25 lane and to the right of me was a dike. I couldn't go up a

1 dike. That was my concern so that was -- that was the issue
2 that I had.

3 Q: Okay. Now, obviously, you've waited quite a long time
4 for this day for your PCR hearing.

5 A: Yes, sir.

6 Q: And this is your day in court and I want to make sure
7 that we've captured all of your allegations knowing that your
8 lawyer will be testifying momentarily.

9 A: Yes, sir.

10 Q: Is there anything that we've left out or that you want to
11 bring to this Court's attention about your PCR application and
12 your lawyer's representation?

13 A: Well, I do want to say this, my -- it's -- I'm not here
14 to bash Aaron. Aaron is a wonderful guy. He did -- he put
15 his whole heart and soul into this for me and I appreciate
16 everything that he did for me, and I know that he tried his
17 best. I just know that there was a lot coming from all
18 directions, too, and there were things that should've been
19 differently. And I think that he'll agree with that. I hope
20 he will. But anyway, that being said, I don't know -- I'm not
21 sure what he's gonna testify to, so we'll see how that goes.
22 But, there are definitely things that could've been done
23 differently. But I'm not here to bash the Zoll family or to
24 mock Candy's name or anything, because there's not a day that
25 goes by that I don't pray for your guys or her or wish that

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1 things could've been different. And I'm so sorry that things
2 happened like they did.

3 Q: Ms. Robinson, if you would, please answer any questions
4 the state may have for you.

5 A: I'd be happy to.

6 CROSS EXAMINATION OF SHANA CECIEL ROBINSON BY MR. JAMES:

7 Q: Good afternoon, Ms. Robinson.

8 A: Good afternoon.

9 Q: You were grievously injured as a result of this
10 collision; is that correct?

11 A: Yes, sir.

12 Q: And you cannot remember all of the details of that night
13 as a result of the collision; is that correct?

14 A: Initially, I could not.

15 Q: At what point would you say that your memory of the
16 events the night in question -- when did your memory begin to
17 improve?

18 MR. BOOZER: Objection, Your Honor.

19 THE COURT: Overruled.

20 A: I would say once my short-term memory started coming
21 back, I would say that that ---

22 BY MR. JAMES:

23 Q: Was that before, during, or after your trial?

24 A: Obviously, after the trial.

25 Q: So, you met with your attorney on an extraordinary number

1 of occasions. I believe you said over a hundred; is that
2 correct?

3 A: That was a guesstimate; yes, sir.

4 Q: But many, many times to say the least?

5 A: Yes, sir.

6 Q: Did you have any difficulty recalling the events of that
7 night and discussing the collision with your attorney?

8 A: I told him to the best of my ability what I remembered at
9 the -- at that time.

10 Q: But you did have to admit to him that there were portions
11 of the night that you could no longer remember?

12 A: I'm trying to remember if I remembered at that point. I
13 think at that point the only thing that I wasn't positive on
14 was the exact -- the exact drive that I took home.

15 Q: Is it true that, in discussing this case with your
16 attorney, you could recall being at Applebee's with your
17 friend?

18 A: Uh-huh, (affirmative response).

19 Q: Is it true that at the time of your representation by
20 counsel, you could recall having two vodka martinis at
21 Applebee's with your friend?

22 A: Yes, sir.

23 Q: Is it true that you could recall stopping at a gas
24 station in order to pick up some additional supplies, some
25 beer for later with your friend?

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1 A: Uh-huh, (affirmative response).

2 Q: Is it true that after that gas station pit stop, the
3 memory becomes hazy because the collision occurred?

4 A: No.

5 Q: No? At what point in time did your memory begin to
6 weaken in your recollection of the event? Do you remember the
7 collision?

8 A: Yes.

9 Q: Did you remember the collision at the time of your
10 representation by counsel?

11 A: I remember exactly how everything happened. I mean, now
12 I do, if that's what you're asking.

13 Q: I'm asking if you remembered back then before trial while
14 you were represented by Mr. Mayer?

15 A: I'd have to read my transcripts to be exact.) I can't
16 recall if I remembered or not. It's four and half years ago;
17 I'm sorry, I can't remember if I remembered or not.

18 Q: I understand. I have a hard time remembering the facts
19 of the cases that we handled this morning.

20 A moment of the Court's indulgence.

21 Ms. Robinson, you were clearly emotional a few moments
22 ago ---

23 A: Yes, sir.

24 Q: --- when discussing the alleged contribution by the
25 victim to collision. Would you agree that it is a delicate

1 matter in discussing the extent to which the victim may or may
2 not contributed to the accident?

3 MR. BOOZER: Objection, Your Honor. I'll be happy to
4 state the reasons.

5 THE COURT: What is the reason?

6 MR. BOOZER: Judge, we've laid out a number of specific
7 allegations with regard to counsel's representation at trial.
8 I'm not sure what the relevance of this line of questioning
9 has to do with any of that.

10 MR. JAMES: This particular line of questioning was
11 setting up into questioning that I intend to go into with
12 counsel, Your Honor, as to Allegation 4 in the amendment,
13 counsel failed to highlight throughout the trial the presence
14 of marijuana in the other driver's system and that the driver
15 was otherwise distracted. What I'm endeavoring to establish
16 is that the extent to which the other driver may've had
17 marijuana in her system was a matter of delicate concern at
18 trial.

19 THE COURT: Okay. I'll sustain the objection. You can
20 move on.

21 MR. BOOZER: Thank you, Your Honor.

22 MR. JAMES: I have no further questions for this witness,
23 Your Honor.

24 THE COURT: Any redirect?

25 MR. BOOZER: No redirect, Your Honor.

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1 THE COURT: You may step down. Thank you, ma'am.

2 MS. ROBINSON: Thank you, sir.

3 THE COURT: You may call your next witness.

4 MR. BOOZER: No further witnesses, Your Honor.

5 THE COURT: All right.

6 State, you're recognized.

7 MR. JAMES: The state calls Mr. Aaron Mayer.

8 THE COURT: All right. Mr. Mayer, please come forward.

9 I'm gonna ask if you could to come approach the clerk and
10 place your left hand on the Bible and raise your right hand as
11 she administers the oath.

12 AARON COLE MAYER, HAVING BEEN DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 CLERK: Thank you. You may be seated. State your full
15 name for the record.

16 THE COURT: Have a seat in the witness chair. Pull up
17 real close to that microphone and speak, loudly, clearly, and
18 slowly in order that we can hear everything that you have to
19 say. And let's start with your full name.

20 MR. MAYER: Aaron Cole Mayer.

21 THE COURT: Very good.

22 Yes, sir?

23 DIRECT EXAMINATION OF AARON COLE MAYER BY MR. JAMES:

24 Q: Mr. Mayer, thank you for sticking with us this afternoon.

25 A: Sure.

1 Q: How many years of experience do you have in criminal
2 practice?

3 A: As of today?

4 Q: As of the time of trial.

5 A: I started my criminal practice in mid-2011, and I believe
6 this trial was mid-2014; so, about three.

7 Q: Are there any other fields of law in which you were
8 engaged in practice at the time?

9 A: Yes, I did a lot of family law proportionately, and I did
10 some personal injury, and the odd immigration case here and
11 there.

12 Q: How did you come to represent Ms. Robinson?

13 A: I believe that I had represented a family friend of
14 theirs named James McKitrick in a family court matter. I
15 think I had met them through them, through Mr. McKitrick.

16 Q: Do you recall about how many times you met with Ms.
17 Robinson in the course of your representation?

18 A: I know we had pretty good communication. I don't think
19 it was close to a hundred times actual meetings. But if you
20 count telephone or text contact, that's probably an accurate
21 number. In person, I don't know, I would guess something less
22 than 20.

23 Q: Did you file a motion pursuant to Rule 5 and *Brady*?

24 A: Yes.

25 Q: Were there any deficiencies or missing documents of which

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1 you were aware from the materials that you received pursuant
2 to those motions?

3 A: Well, there's a lot of material in this case. There was
4 the MAIT report, there were hospital records -- I mean, to my
5 knowledge, there was nothing deficit to my knowledge. As to
6 whether something was missing or absent, not that I could
7 tell.

8 Q: Did you review those materials that you received?

9 A: Yes.

10 Q: Did you discuss them with your client?

11 A: I don't know that I discussed each minutia, but I think
12 we discussed all the main portions of the different things
13 that came out.

14 Q: At least discussed with broad-stroke conclusions that you
15 would draw from them?

16 A: Right.

17 Q: There was some discussion of plea negotiations earlier.
18 Is it accurate that there was an offer of 15 years?

19 A: If that's what the record reflects. I mean, I don't
20 recall offhand.

21 Q: Do you recall engaging in plea negotiations with the
22 state or receiving any offers?

23 A: I do, and I recall the offers being, what I felt like at
24 the time, to be very high.

25 Q: Did you advise your client as much?

1 A: Yes.

2 Q: Can you humor me for a moment and -- I'll revise that
3 question. What is your recollection of the underlying facts
4 of this case?

5 A: As I recall, Shana and her friend -- Shana had picked her
6 friend up from one of the technical schools after an exam.
7 They had stopped at Applebee's and shared a drink or two. And
8 then they continued on to Broughten Road, which is right
9 outside here, of course, and stopped at the Scotchman here on
10 the corner. They had bought a case of beer, and I forget now,
11 I think it was a 12-pack, and they'd gone on down Broughten
12 Road to go back to Shana's house. I believe they had plans to
13 play a board game or something with the family, and -- but the
14 wreck intervened. And then as the facts developed, we knew
15 initially that there was a dog in the car with Ms. Zoll and we
16 had questions about the character of the dog, if the dog was
17 calm and just kind of sit in the seat next to her or if the
18 dog was more of the more hyper dogs and was bouncing around
19 and would've been a distraction. I talked to a witness at one
20 point who, I believe, was on the phone with Ms. Zoll at the
21 time of the collision. I was never able to find that person
22 again. I tried to make do with the phone records instead.
23 And then somewhere along the line it came out that Ms. Zoll
24 had marijuana in her system where the metabolites, the
25 cannabis metabolites showed that she was actively high at the

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1 time. It showed two things. It showed that she was a routine
2 user of marijuana but also that she was actively high at the
3 moment of her collision. And at the time, as I recall,
4 Shana's memory of the actual collision was very bad. Many,
5 many months went by and she couldn't remember anything. And
6 then I do think she remembered a couple newer snippets, you
7 know, a year or 18 months later. But, if she has a memory of
8 now, that's not what she had at the time that I represented
9 her.

10 Q: All right. There were two points, and we're gonna go a
11 little bit out of order here but we're gonna touch on them
12 since they've come up. You indicated three elements of
13 distraction of concern to you and your client on the part of
14 the victim.

15 A: Right.

16 Q: There was a dog in the car, that somebody had been on the
17 phone with her at the time of the collision, and that she'd
18 been under the influence of marijuana.

19 A: Correct.

20 Q: How did you go about bringing out those elements at
21 trial?

22 A: Well, with the marijuana, it was a medical test, and
23 there were medical records showing the result. And I believe
24 that the relevant page was admitted, that's my memory of that,
25 or if it wasn't admitted then it was testified to. With

1 regard to the dog, I believe it was one of the police officers
2 that testified that there was a dog in the car at the time.
3 And I believe that at the time the location of the dog was
4 also in that testimony. The -- well, where they found the
5 dog. And then as to the phone, being on the phone, as I
6 mentioned, I was never able to find that witness again. And
7 that's something that I have a lot of regret about, about
8 failing to -- failing to do that. The phone records that I
9 thought would be, you know, some sort of proxy for that
10 witness, Judge Jefferson, which I guess is consistent with
11 South Carolina case law at the time, but Judge Jefferson was
12 gonna -- I didn't expect this but during the trial, she was
13 gonna require the actual presence of the phone company's
14 records custodian to be flown down from New Jersey or
15 someplace even though we had a certificate of authenticity and
16 all this stuff that I would've thought we would've needed.
17 So, I felt like -- I felt like it was a real disservice to
18 Shana not to get the information about the phone call and -- I
19 mean, we're all taught and even driving down the road these
20 days you see don't be on the phone and drive because it's like
21 driving impaired. And there are many -- there are many people
22 who comment on that. You know, you drive from point A to
23 point B on the phone and you don't remember much of your trip.
24 And so, it's comparable to driving while impaired. And so for
25 those facts not to have come in, I just -- I felt like that

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1 was a real problem.

2 Q: Why didn't you spend more time hammering the point that
3 the victim may have been under the influence of marijuana in
4 the course of trial?

5 A: Honestly, my, my approach to that at the time, which I
6 believe was a failure, but my approach to that at the time
7 that this was a fact that was so incendiary that when the jury
8 heard it, they wouldn't need to hear it a lot more. Right? I
9 mean, this was -- this was to me just a huge mitigating issue
10 in who caused this wreck. And so, I didn't want to, you know,
11 drag Ms. Zoll's name through the mud. I didn't want to do
12 anything to disrespect the family. I felt like the facts --
13 the fact of that would stand on its own. I felt like it would
14 speak for itself. I felt like after, after it came out, I
15 felt like the ramifications would be commonsensical, but I
16 think that I miscalculated that. I think that I should've --
17 I think that I should've been more of the black hat advocate
18 and said, you know, all the things that that meant about the
19 victim's driving and everything else, and I didn't communicate
20 that.

21 Q: And that's your opinion looking back in retrospect with
22 some advantage of having time to dwell on it?

23 A: I would do it differently today.

24 Q: But at the time, you would agree it's accurate to say
25 that you were trying to balance showing the victim's

1 contribution without blaming her and dragging her through the
2 mud, perhaps looking like a bully?

3 A: Right.

4 Q: We touched on the fact that your client's memory of the
5 collision was very, very bad. What if anything did she
6 actually remember about the collision and the events of the
7 night in question?

8 A: For the first year that I represented her, nothing. And
9 then I think that in talking to her friend, who was in the car
10 with her, I think that triggered some independent memories of,
11 oh, yeah, I went picked her up from her school. You know, we
12 went to Applebee's and we, you know, we stopped and -- stopped
13 at the gas station. And I think as she dwelled on it and
14 thought about it and, and reflected on it, I think that her
15 memories, you know, came back very, very slowly. But as of
16 the time of the trial, she did not remember the full wreck
17 clearly. I think she had a snippet or two of the actual
18 wreck, you know, like a, like a snapshot type of memory is how
19 I remember thinking about her memory at the time.

20 Q: How would you describe your overarching strategy
21 representing Ms. Robinson at trial?

22 A: Well, you know, our, our objective as criminal defense
23 lawyers is to talk about reasonable doubt and to show the jury
24 based on the facts of the particular case, that reasonable
25 doubt exists. And here, as these facts came out through the

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1 investigation and discovery process of Ms. Zoll's impairment,
2 her talking on the phone at the time of the collision, not a
3 minute before, but at the time of the collision, and her also
4 having her dog in the car with her. Now, I never did --
5 actually, I do think I learned more about the character of the
6 dog, but I forget if the character of the dog was more hyper
7 or more calm now, but I think I knew at the time what the
8 character of the dog was. And I never did get a witness to
9 come and testify about that. That's one of the hardest things
10 about trial is getting people to -- finding them and getting
11 them to show up. But, my -- I mean, it seemed like the
12 trifecta of reasonable doubt to me, I mean, it seemed like any
13 one of those things would be enough to cast doubt on whether,
14 whether Shana was impaired and what was going on. But with
15 all three of them, I just -- I really felt -- as you heard
16 Shana testify to in my communication with her, I felt very
17 strongly that the state would not be able to carry its burden.
18 And I obviously led her wrong -- led her astray in that and
19 I'm very, very sorry about that. I, I sincerely believed that
20 between those three factors, I just didn't see how they could
21 convict her.

22 Q: When you say those three factors, you're referring the
23 factors of ---

24 A: Those three facts. Yeah, sorry, those three facts, yeah.

25 Q: And parallel to that, you were also trying to show that

1 Ms. Robinson was not under the influence as far as the law is
2 concerned?

3 A: Correct.

4 Q: And in fact, you had quite a number of witnesses come
5 testify at trial that Ms. Robinson was not visibly inebriated
6 upon her departure from the Applebee's; is that correct?

7 A: Everyone was in agreement about that.

8 Q: How did you come to discover Mr. Robert Bennett?

9 A: Oh, from my work in family court. It was interesting
10 because this guy, this guy provided the textbook cross
11 examination -- he was just completely destroyed on cross
12 examination. It was one of the worst moments of my
13 professional career. But somehow, before and since, he is so
14 highly regarded in the family court bar as the toxicologist to
15 use. He is the guy, he does the tests right, from what other
16 family court lawyers say and have expressed to me before and
17 since, he has the respect of the family court judges, and if a
18 judge orders an independent -- if a judge around here, family
19 court judge around here orders an independent toxicology test
20 or alcohol test or drug test, there's a very good chance
21 they're gonna send those litigants to Dr. Bennett. And
22 consequently, I didn't do much of a background investigation.
23 That was my background investigation was this guy's reputation
24 is stellar. And I don't know how it doesn't come up in his
25 family court work, all the things that were raised on cross,

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1 but, yeah, he was terrible choice.

2 Q: By many references to his reputation among the family
3 court bar, did you actually go out and speak to people about
4 him before bringing him on or ---

5 A: Absolutely, yeah. I mean, his name was well known to me
6 at the time we needed a toxicologist. I mean, and because he
7 was local, his price was much more affordable. So, it felt
8 like it was, you know, kind of a win-win before he testified.

9 Q: Do you recall about how many people you spoke with
10 regarding his ---

11 A: It wasn't -- it wasn't an investigation I did for the
12 purposes of Shana's case; it was just my knowledge of other
13 family court practitioners and their experiences in getting
14 drug tests done, toxicology issues, and that sort of stuff.
15 And this was a guy whose name I had already known.

16 Q: Had you used him in the past as an expert witness?

17 A: He might've been used in one or more of the family court
18 cases that I had dealt with. I feel like I knew him -- my
19 memory is that I knew of him and knew him as a fellow
20 professional only before we used him for Shana's case.

21 Q: And at no point prior to trial did you have any
22 indication from anybody from the family court bar or the
23 family court bench or in your professional connections that
24 Mr. Bennett had deficiencies that you should be aware of?

25 A: You know, I have a vague memory of Grover Seaton saying

1 something like, why are you using that guy or don't use that
2 guy. But I don't think he had an alternative. He just was
3 like, don't use that guy. And I was like, why, but I didn't
4 -- I don't remember -- as I remember it, he didn't articulate
5 any reason as to why I shouldn't use Dr. Bennett or why Dr.
6 Bennett was a poor choice. But there was some word of caution
7 from Grover Seaton about it. If he'd have said, the guy is
8 known as a quack and he might be good in family court but not
9 in circuit court, I probably would've heeded his advice. But
10 as I recall, he couldn't give me any reason not to go forward
11 with Bennett. He just said don't.

12 Q: How did Mr. Seaton come onto the case?

13 A: Ms. Robinson's family, I think, had been in touch with
14 him. He's a far more experienced lawyer. He's local here.
15 He would've known more about the jury composition. I think --
16 I think that's a big weak point in Shana's case was our jury
17 selection, and I feel like Grover could've done a much more
18 thorough job of weeding out potential -- people who
19 potentially weren't open minded.

20 Q: But ultimately he was removed from the case before trial?

21 A: Within like a week of his appearance he was removed from
22 the case, I believe. He was not on the case long. It was a
23 shame.

24 Q: Was this your first time in court attempting to introduce
25 cell phone records?

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1 A: Very possibly. It would've been a different standard, I
2 think, in Shana's trial than other places that I would've done
3 it, I believe. I'm not sure I can answer more specifically.

4 Q: But you did try and introduce them?

5 A: I did.

6 Q: And you did try to provide business records to support
7 their authenticity and lay a foundation that they were what
8 they purported to be?

9 A: Yeah, but -- that's right, but I apparently didn't comply
10 with the South Carolina law on it.

11 Q: Do you have a copy of the transcript up there?

12 A: I was mailed this stuff like a year or 18 months ago and
13 I've moved my office since; I do not have a copy.

14 Q: Do you recall Ms. Robinson's possession of marijuana very
15 briefly slipping out during the testimony of Chad McPearson
16 (spelled phonetically) as previously discussed on the direct
17 examination of Ms. Robinson?

18 A: I remember the highway patrol officers trying to put the
19 squeeze to her in general and that sounds right about the
20 green plant material or whatever he was going on about. They
21 should've known not to say anything about that.

22 Q: Do you recall your objection to it?

23 A: I believe that I would've objected.

24 Q: Do you recall it?

25 A: No.

1 Q: Okay.

2 May I approach the witness?

3 I'm handing you a copy of the trial transcript turned to
4 Page 497. I've highlighted a portion ranging from Lines 1
5 through Line 8. I'd like to go ahead and refresh your memory
6 reading from Line 1 on down to -- well frankly, Line 13.

7 A: Okay. This is an answer -- it begins off with an answer
8 from the highway patrolman. He says, There was beer all
9 inside the car. There was a green leaf material that was
10 believed to be -- and the question is, not from me, I'm going
11 to stop you right there, and then I say objection. Then
12 there's a question from Mr. West, okay, was there -- The
13 Court, Are you withdrawing your objection? I said, Well, can
14 we approach, Your Honor? And the Court let us approach. The
15 Court, You may proceed. And the question by Mr. West was,
16 When did you make the decision to arrest this defendant?

17 Q: Do you recall the substance of that off-the-record bench
18 conference?

19 A: No, it should've been -- it should've been on the record
20 outside the presence of the jury, I just don't remember what
21 was said. I remember having concerns about the jury not being
22 stupid and knowing darn well what the highway patrolman was
23 talking about. I remember trying to balance asking for a
24 curative instruction with highlighting further what the
25 highway patrolman was trying to talk about or insinuate. I

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1 should've moved for a mistrial, I feel, but I didn't do that
2 in the moment. It wasn't something that I felt like I needed
3 to do at the moment.

4 Q: In order to move for the mistrial, you would've had to
5 get a cure and then seek a mistrial after that; is that
6 correct?

7 A: I honestly have never asked for a mistrial, I probably
8 would've done it wrong. I probably would've just asked --
9 made a motion for mistrial.

10 Q: But you indicated that you were trying to balance the
11 benefit of a cure against the prejudice of bringing a
12 spotlight to this fleeting remark that was cut off?

13 A: Correct.

14 Q: And as evident by the absence of a cure in the
15 transcript, you opted against requesting a cure?

16 A: Correct.

17 Q: Did you have any concerns about the validity of the chain
18 of custody of the blood samples drawn from your client?

19 A: My concerns around those involved the delay. And the
20 ramifications on the testing that a delay would've had. I had
21 no concerns that the samples were from someone else or tainted
22 in some way or, or had been adulterated somehow. My concern
23 was what did this delay in drawing the blood, what effect did
24 that have if any on the readings that were taken from that
25 sample. So, I didn't have a concern on did they get from

1 Trooper A to Trooper B, and did they put it in their
2 refrigerator. I didn't have concerns about that. I mean, I
3 talked through those issues with the trooper, with the
4 custodian at SLED, with those people before I stipulated to
5 that stuff. My concerns were really about how does the blood
6 change when it sits around for a while, those kind of
7 toxicology questions.

8 Q: Your concern was whether the blood alcohol reading might
9 go up, might go down ---

10 A: Exactly.

11 Q: --- might go left, right?

12 A: Yes.

13 Q: And you investigated the chain of custody by speaking
14 with the investigators at SLED before you stipulated to its
15 validity?

16 A: As I recall.

17 THE COURT: Blood alcohol level was what again?

18 MR. JAMES: I apologize Your Honor, it's escaping me.

19 BY MR. JAMES:

20 Q: Do you recall what the blood alcohol level of your client
21 was at time of the drawing?

22 A: I don't recall.

23 MR. JAMES: A moment of the Court's indulgence.

24 MR. BOOZER: I believe it was .09, Your Honor.

25 THE COURT: Okay.

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1 MR. JAMES: I apologize for that, Your Honor.

2 THE COURT: Pardon?

3 MR. JAMES: I said I apologize for that, Your Honor.

4 THE COURT: Okay.

5 BY MR. JAMES:

6 Q: What did Ms. Robinson tell you with respect to the
7 potential relations of one of the solicitors prosecuting her
8 case to other members of her family?

9 A: I don't recall specifically what she said at the time. I
10 remember she raised the specter of a conflict. And, and I
11 felt like it was not an issue. I mean, it's not that I didn't
12 feel like he had a reason to, to -- I don't know -- prosecute
13 her worse, so to speak, but I just -- my impression of the
14 situation was then and is now that he's a prosecutor, he's
15 gonna do everything he can to prosecute her whether he also
16 has some personal feelings about her or her family or whether
17 he doesn't. So, I just -- I felt like that was not an issue
18 that was gonna help get her any relief.

19 Q: Did you discern any undue animus on the part of the state
20 towards your client?

21 A: Um ---

22 Q: Aside from the fact that they were accusing her of a very
23 serious crime?

24 A: Well, I mean, I just -- I felt like their offer was very
25 high. I felt like it was not reasonable considering the facts

1 we've already talked about.

2 Q: Did you submit any proposed plea deals on your end to the
3 state?

4 A: We -- you know, my approach to the plea deal stuff is
5 generally that I don't want to kind of bid against ourselves.
6 I mean, like we were so far apart in terms of what our side
7 felt like would've been palatable versus the range that the
8 state was in. I feel like -- what I often will do and what I
9 may have done in Shana's case is, you know, I'll try and work
10 them down off their number and I'll say stuff like, hey, you
11 know, if you'd come down to 12 or 13, you know, I really might
12 be able to get this deal done type of thing. I don't even
13 know if I would've had that conversation here because we were
14 just -- I felt like we were so far off. I mean, I -- I
15 couldn't have imagined at the time of negotiating this plea
16 deal or trying to negotiate a plea deal, I couldn't have
17 imagined recommending something above nine years for Shana to
18 plead to. And they -- I just feel like they weren't -- as I
19 recall, they weren't coming anywhere near that.

20 Q: Did Ms. Robinson ever indicate to you a desire to plea or
21 a particular term that would've been -- term that would have
22 been amenable to her?

23 A: You know, I may have curtailed that conversation by my
24 misplaced confidence in the facts of the case. That's
25 probably a conversation that we should've had.

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1 Q: There were multiple prosecutors on this case, do you
2 recall which one was the lead prosecutor?

3 A: I believe it was Mr. West. Although, Mr. Alfaro was his
4 boss. I think he was deputy solicitor over here at the time.

5 MR. JAMES: A moment of the Court's indulgence.

6 BY MR. JAMES:

7 Q: Applicant alleges in her most recent amendment that you
8 should've objected to jury instructions regarding a motorist's
9 duties. Do you recall the jury instructions and having any
10 concerns whether or not you should object to any part of it?

11 A: I just -- I don't recall. I just -- I probably
12 should've. I mean, my feeling at the time was where the wreck
13 occurred wasn't dispositive because we just knew so little
14 about what had happened in the instance, in the moments before
15 the wreck. We didn't know if, at the time, if Shana was
16 trying to swerve to avoid something in her lane or if Ms. Zoll
17 was trying to avoid something in her lane or what was going
18 on.

19 Q: In fact, in your case in defense of Ms. Robinson, you
20 presented testimony to argue that she had swerved in order to
21 avoid the victim being in her lane.

22 A: I believe that that was part of the testimony.

23 Q: My final question, Mr. Mayer, are you presently engaged
24 in the practice of law?

25 A: Not in South Carolina.

1 Q: I have no further questions.

2 THE COURT: Redirect?

3 MR. BOOZER: Thank you, Your Honor.

4 CROSS EXAMINATION OF AARON COLE MAYER BY MR. BOOZER:

5 Q: Mr. Mayer, I think a number of my questions have been
6 answered with your testimony on direct, so I will try to cut
7 straight to the chase. The -- with regard to Mr. Bennett,
8 there were a number of items that you were referencing that
9 came out during the cross examination, such as the SC Pharmacy
10 Board issued a cease and desist order to him to stop calling
11 himself a pharmacist; do you recall that?

12 A: I recall it coming out, yeah.

13 Q: And then that he had previously attempted to testify as
14 an expert in court where the judge had ruled he wasn't
15 qualified to testify as an expert, that was one ---

16 A: I believe it.

17 Q: Also, that there was a Post and Courier article that said
18 his credentials, his methods, and the reliability of his
19 findings were suspect or controversial?

20 A: It sounds like something that would've come out on that
21 cross.

22 Q: Okay. And there was an article that says his words can
23 ruin reputations, wrest children from their parents, and cost
24 people their jobs; do you remember that?

25 A: That sounds right.

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AARON COLE MAYER - CROSS BY BOOZER

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1 Q: And also that he admitted that most of his training was
2 in some other fields had come basically through reading
3 journals and books?

4 A: Okay.

5 Q: And you agree that he just got blasted on cross?

6 A: It was horrible.

7 Q: Okay. Had you known that aspect to his background, would
8 you have called him as an expert?

9 A: No, no. I'm sure that we would not have.

10 Q: Okay.

11 A: I'm sure we would've used somebody who would've passed
12 muster on a background check.

13 Q: And do you recall him testifying that he believed, based
14 on information he was provided, about the number of drinks
15 Shana would've had that he came up with something like a five
16 to 10 percent impairment. Do you recall hearing that?

17 A: I recall that his testimony on the impairment stuff was
18 so confusing, I don't -- I don't think that we had talked
19 about that aspect of what he was gonna say. I asked him about
20 all his opinions ahead of time and I do not believe that that
21 was in there. I could be mistaken, but I recall myself being
22 confused while he was on the stand if he was talking five to
23 10 percent impairment out of a hundred percent, or was he
24 talking about blood alcohol levels impairment stuff which, you
25 know, also could be read as percentages, and would mean very

1 different things.

2 Q: Y'all's whole defense was she wasn't impaired; would that
3 be fair to say?

4 A: Yes.

5 Q: Okay. Y'all had the unique aspect of having a number of
6 witnesses who testified we saw her right before the accident
7 and she was not impaired.

8 A: Right.

9 Q: So, would you agree with me that by him stating, well,
10 actually based on my calculation she would've been impaired,
11 whether it was a low percentage or not, that goes against your
12 overall defense in the case?

13 A: I think -- yeah, well, definitely, but I think also that
14 it was -- it was such confusing testimony, I mean, you know, I
15 was so familiar with the medical records in this case at the
16 time, and it confused -- his testimony confused me, and I had
17 talked to him about it beforehand, probably more than once.
18 And so, you know, did it confuse the jury, I mean, I'm sure it
19 did. I don't know if it was ever cleared up or not. I mean,
20 you know, it seems to me -- I haven't done a ton of jury
21 trials still, but it seems to me that in the trials that I've
22 done that they jury, they don't want to walk through the weeds
23 with you. You know, they want it black and white and they
24 don't want to have to parse the gray area. And so, did they
25 want to take the time to care about if it was five to 10

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1 percent out of a hundred, and she was just, you know, a
2 smidge, you know, a smidge off her game where it would've, you
3 know, not made any difference at all or would they've just
4 thought, oh, five to 10 percent, that's that blood alcohol
5 thing. If that's 10 percent, then she was smashed. You know,
6 like I just worry that they didn't care to make that
7 distinction or figure it out.

8 Q: Turning to the marijuana that was found and there was
9 this agreement to not talk about it. You'd indicated that you
10 should've moved for a mistrial whether it was right then or
11 right when you request a curative, however the procedure
12 should go, you should've requested a mistrial?

13 A: Yes.

14 Q: Okay. Going to the three sorts of points of, I guess,
15 the strategy that y'all were looking at, the marijuana, the
16 dog, and the phone, I think you had indicated that you
17 should've brought out some of that a little bit more. Looking
18 back, how would you have gone about that?

19 A: Well, when I first was on the case, hired on the case, I
20 didn't have much staff. I never did have like an investigator
21 who was like full-time with me ---

22 MR. JAMES: Your Honor, we'd respectfully object to this
23 question and the line of this answer is just calling for
24 hindsight, speculation as to what he could've, would've,
25 should've done better had he had more resources. We more

1 concerned with what he could've done at the time.

2 THE COURT: It's really one of the issues that we're
3 dealing with here. Overruled.

4 A: You know, so for me, if -- I've had the benefit of having
5 an investigator through co-counsel on other cases and the
6 difference is night and day. I mean, these guys keep up with
7 witnesses, they corral them for you. And they handle the
8 investigative stuff, which isn't a small part of it. And so,
9 you know, if we'd have had the witness who had been on the
10 phone with Ms. Zoll at the time come in and testify, that
11 would've been something. If we'd have had somebody come in
12 and talk about the disposition or temperament of her dog, I
13 feel like that would've been something. You know, maybe we
14 should've had somebody else come in and talk about the effects
15 of marijuana on the mind when Dr. Bennett was discredited, you
16 know.

17 BY MR. BOOZER:

18 Q: Do you recall ever telling Shana that there was no way
19 she would go to jail or prison as a result of this case?

20 A: I do recall saying that multiple times, not as a
21 guarantee but more as an opinion.

22 Q: Okay. Did you think that that opinion, looking back at
23 it, that that was maybe an off opinion or one that wasn't well
24 founded?

25 A: It shouldn't have been offered. I should not have

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AARON COLE MAYER - REDIRECT BY JAMES

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1 offered her that opinion. I think not only did I give her
2 false hopes, her hopes that have turned out to be false, but
3 as we mentioned, we probably forestalled more serious
4 settlement negotiations or talks between she and I.

5 MR. BOOZER: Beg the Court's indulgence, Your Honor.

6 BY MR. BOOZER:

7 Q: Thank you, sir. That's all the questions I have.

8 THE COURT: You may step down.

9 MR. JAMES: Your Honor, if I may redirect very briefly.

10 THE COURT: Did you call him as a witness first?

11 MR. BOOZER: No, Your Honor.

12 THE COURT: Okay. Go ahead. You may.

13 REDIRECT EXAMINATION OF AARON C. MAYER BY MR. JAMES:

14 Q: You indicated that you didn't expect the percentage
15 testimony as it was offered by Bennett at trial despite having
16 spoken with him prior to trial; is that correct?

17 A: Correct.

18 Q: And so was the testimony that he offered at trial
19 different from the testimony that you were alleged to believe
20 that he would give?

21 A: It was like supplemental. So, he provided in this
22 testimony the opinion that he and I had talked about that I
23 was familiar with and then -- this is -- now, this is my
24 recollection, right, but then this other stuff came out as
25 well that his opinion was about these percentages and things

1 which as I recall that was new to me. That was news to me.
2 And the reason that I still think that is that it was
3 confusing to me and I wouldn't have -- I wouldn't have put on
4 a witness, an expert witness that was -- whose testimony I
5 didn't understand.

6 Q: But you had spoken to him prior to trial?

7 A: Yes.

8 Q: And his testimony that you expected him to give was
9 consistent with the records that you'd reviewed?

10 A: I'm sorry?

11 Q: Allow me to rephrase that question. Did his -- the
12 testimony that you expected him to give, did that make sense
13 to you before you actually called him as a witness?

14 A: Yes.

15 MR. JAMES: No further questions, Your Honor.

16 THE COURT: All right. You may step down.

17 MR. MAYER: Thank you, Judge.

18 THE COURT: Any further testimony from anybody?

19 MR. JAMES: Nothing further from the state, Your Honor.

20 MR. BOOZER: No, Your Honor.

21 BY THE COURT:

22 THE COURT: This is a case, you know, it obviously was a
23 very long trial and it's a very important case, and I want to
24 have the opportunity to review the transcripts, and I have a
25 good grasp what the issues are. And I'm gonna ask counsel for

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BY THE COURT

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1 the applicant and counsel for the state to submit proposed
2 orders.

3 Anything further?

4 MR. BOOZER: No, Your Honor.

5 MR. JAMES: Nothing further, Your Honor.

6 THE COURT: Very good. Good luck to you.

7 MR. BOOZER: Thank you, Judge.

8 MR. JAMES: Thank you, Your Honor.

9 ADJOURNED - 3:41 P.M.

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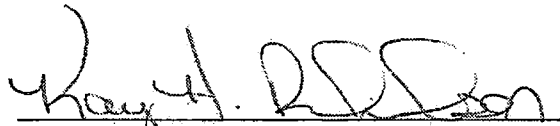
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Shana Robinson v. State of South Carolina, held in the Court of Common Pleas for Berkeley County, Berkeley County Courthouse, Monks Corner, South Carolina, on October 1, 2018.

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



Kay H. Richardson
Official Court Reporter

February 27, 2019.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)
)

Shana Robinson,
S.C.D.C. No. 360268,

) Case No.: 2016-CP-08-00300
)
)

Applicant,

) **ORDER OF DISMISSAL**
)
)

v.

State of South Carolina,

Respondent.

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2018 DEC 13 PM 1:14

FILED
AD

This matter comes before the Court by way of an application for post-conviction relief filed by Shana Robinson ("Applicant") on February 5, 2016. Respondent made its return on or about June 13, 2016. The Court convened an evidentiary hearing into the matter on Monday, October 1, 2018, at the Berkeley County Courthouse in Moncks Corner, South Carolina. Applicant was present at the hearing and represented by Lance S. Boozer, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Aaron C. Mayer ("Counsel") also testified. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. Applicant was indicted at the April 2014 term of the Berkeley County Grand Jury for felony driving under the influence resulting in death (2014-GS-08-00313). Aaron C. Mayer represented Applicant. Mason West, Esq., and Bryan

Alfaro, Esq., of the Ninth Circuit Solicitor's Office, prosecuted the case. On June 2, 2014, Applicant proceeded to trial before the Honorable Deadra L. Jefferson and a jury. The jury found Applicant guilty as indicted on June 6, 2014. Judge Jefferson sentenced Applicant to imprisonment for a term of 17 years.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Kathrine H. Hudgins, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Robinson, Op. No. 2016-UP-036 (S.C. Ct. App. filed Jan. 20, 2016). The Remittitur was issued on February 5, 2016.

Present Application

In her post-conviction relief application, amended by and through PCR counsel by filing dated September 27, 2018,¹ Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that:
 - a. "Prejudicial testimony was allowed that should have been disregarded and prejudicial asst [sic] prosecution atty [sic] with hx [sic] of family matter"
 - b. "Counsel was in failing to subpoena the records custodian from Verizon Wireless in order to introduce cell phone records of decedent showing that [sic]"
 - c. "Counsel was ineffective in his calling of an expert witness."
 - d. "Applicant believes counsel was ineffective for failing to secure and preserve a final ruling as to the questiouing of a witness regarding marijuana when there [was] an agreement between the State and Defendant to not discuss this information."
 - e. "Applicant believes counsel should have challenged the chain of custody of the blood samples."
 - f. "Counsel failed to highlight throughout trial the presence of marijuana in the other driver's system and that the driver was otherwise distracted."

¹ The amendment was not actually filed until October 2, 2018, after the hearing. However, the parties agreed upon the allegations at the outset of the hearing.

- g. "Applicant believes counsel should have requested that the prosecuting attorney be removed due to a conflict of interest."
- h. "Applicant believes counsel should have objected to jury instructions regarding a motorist's duties. (App. p. 1104-1107)."

This Court interprets the first allegation, restated above as 1.a., to be subsumed by the subsequent amendments, in particular 1.d and 1.g.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler, 286 S.C. at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler, 286 S.C. at 442, 334 S.E.2d at 814 (quoting Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

“Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Id. at 696-97.

1. Failure to Subpoena Records Custodian for Cell Phone Records

Applicant alleges Counsel was ineffective in failing to subpoena a records custodian to lay a foundation for the Victim's cell phone records. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801, SCRE. "Hearsay is not admissible except as provided" by the Rules of Evidence, or by other rules prescribed by the South Carolina Supreme Court, or as permitted by statute. Rule 802, SCRE. Records "kept in the course of a regularly conducted business activity" may be admissible under an exception to the rule prohibiting hearsay if a foundation is properly laid "by the testimony of the custodian or other qualified witness[.]" Rule 803(6), SCRE.

However, the Supreme Court has repeatedly held "a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 304, 509 S.E.2d 807, 809 (1998) (citations and emphasis omitted). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. (quoting Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995)).

At trial, Counsel called his paralegal, Christopher Robertson, as a witness to testify that he had obtained certified records from Victim's cell phone provider; the State objected. (Tr. 789-91). The trial court instructed Counsel that the paralegal could not pull certified records, and that "[t]he only person that can testify as to [Victim's] phone records would be somebody from the cell phone company who would then give an exception under the hearsay rule." (Tr. 791, ll. 16-19). Counsel contested that the records were certified such that they "did not need a sponsoring witness." (Tr. 792, ll. 13-15). The trial court shot down Counsel's assertion, and

further explained the records did not appear to be relevant in the absence of any testimony to show Victim had left her lane such that she contributed to the accident. (Tr. 792-803). Counsel thereafter proffered the testimony and records he sought to introduce. (Tr. 804-09). After brief argument, the trial court sustained the State's objection, finding the testimony was neither relevant nor admissible under any exception to the rule prohibiting hearsay. (Tr. 810-13).

At the evidentiary hearing, Counsel admitted the case was possibly his first attempt to try and introduce phone call logs in a trial, and that he had genuinely believed a certification from Verizon Wireless was adequate to indicate the truthfulness and authenticity of the records. Counsel also noted that he had found the witness who had been on the phone with Applicant at the time of the collision, but was unable to secure her presence at trial.

The Court finds Applicant has failed to meet his burden of showing prejudice. No records custodian was presented at the PCR hearing, and this Court cannot assume any such custodian would have affirmed the authenticity of the records any more than the trial court could have. As such, Applicant's request for relief by way of this allegation is DENIED.

2. Calling of Expert Witness Dr. Robert Bennett

Applicant alleges Counsel was ineffective in calling Dr. Robert Bennett as an expert witness in his defense. As noted above, "when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith, 386 S.C. at 567, 689 S.E.2d at 632. However, "strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgment supports the limitations on the investigation." McKnight v. State, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (quoting Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004)). Calling a witness where said witness contradicts the defense's theory of the case may constitute ineffective assistance. Ingle v. State, 348 S.C. 467, 560 S.E.2d 402 (2002) (finding ineffective

assistance of counsel where defense counsel called a witness whose testimony contradicted the defense's theory of the case).

Trial

At trial, Applicant took the stand in her own defense. (Tr. 823-72). Applicant testified that she met with a friend at Applebee's and ordered drinks starting "just before 5 o'clock[.]" (Tr. 832-33). Applicant ordered two vodka cranberries. (Tr. 833-34). Applicant ordered a third vodka cranberry around 7:15 P.M. at Geronimo's Bar and Grill, but could not recall much else of what she did there. (Tr. 835, ll. 1-17). Despite the three drinks in two hours, Applicant asserted she was not impaired at all after the third drink. (Tr. 835-36). Applicant and Victim's vehicles collided at around 8:30 P.M. (Tr. 237-42).

At trial, Counsel called as a witness Dr. Robert Bennett. (Tr. 872-927). Bennett testified to receiving a pharmacy degree from the Medical University of South Carolina in 1980 and that he worked full time as a forensic toxicologist. (Tr. 873, ll. 6-16). Bennett noted he had been qualified as an expert in "[m]any, many other cases." (Tr. 873, ll. 17-22). Upon voir dire by the State, Bennett indicated he regularly read "toxicology and scientific journals as a regular part of my practice" but that he had not attended any classes since graduating in 1991. (Tr. 876-77). The State asked if Bennett's work had been subject to peer review and, after some initial confusion, Bennett offered that anybody could review his work. (Tr. 877-78). Bennett offered that he speaks at seminars and trainings, most commonly to lawyers. (Tr. 878-89). The State did not object to Bennett's qualification as an expert in forensic toxicology, and he was so qualified. (Tr. 879, ll. 12-17).

Bennett denied specifically testing Applicant's blood alcohol level, but approximated her BAC to be "anywhere between zero and .01, .015" given the number of drinks she had consumed, her size, and the time that had passed. (Tr. 880-84). Asked how such a BAC would

impact a person, Bennett testified “[i]t would make them impaired to a slight degree. Any amount of alcohol is going to cause some amount of impairment.” (Tr. 884, ll. 9-14). Bennett thereafter testified that on “an impairment scale of zero to 100 percent” where zero is full function and 100 is comatose, Applicant would have clocked in at a “five, ten percent impairment rate level at that amount of alcohol.” (Appx. 884-85). Counsel asked if a person would even notice such a low impairment, and Bennett agreed that a person’s “self-perception of impairment would be that they feel not impaired because the level of impairment is not that high.” (Tr. 885, ll. 10-14). Asked if Applicant would be capable of safely driving a vehicle at that level of impairment, Bennett declined to answer conclusively as to Applicant specifically, but offered that most people would be able to drive a vehicle, and noted the legal limit for intoxication was set at .08. (Tr. 886, ll. 8-20). Counsel noted SLED’s testing produced a different BAC result,² and Bennett noted Applicant had a cyst on her liver, that SLED may have swabbed the blood draw site with ethanol, and that Applicant received blood transfusions at the hospital after the accident. (Tr. 886-90). Bennett also postulated Applicant’s blood could have fermented in the vial. (Tr. 890-95).

After a successful proffer, Counsel elicited through Bennett that Victim’s blood tested positive for marijuana. (Tr. 910-13). Bennett testified Victim would have been impaired by her level of marijuana intoxication at the time of the collision. (Tr. 913, ll. 6-22).

On cross-examination, Bennett testified he did not prepare any report pursuant to Counsel’s request, and that though he had not yet produced a bill that he charges \$300 per hour for his services. (Tr. 915, ll. 3-22). Bennett agreed the elimination rate of alcohol through the body is somewhere between .015 and .02 per hour. (Tr. 916, ll. 17-22). Bennett agreed that a

² SLED testing found Applicant had a blood alcohol concentration of .09 about four hours after the collision, from which they estimated Applicant had a BAC of 0.15 at the time of the collision. (Tr. 377, ll. 12-13; Tr. 389, ll. 3-22).

person with a blood alcohol content of .15 would be significantly impaired. (Tr. 916-17). Bennett agreed his conclusions as to Applicant's intoxication were based on her reporting the consumption of three standard drinks, and that where mixed drinks were involved, the amount of vodka in the drink would dramatically affect the accuracy of his calculations. (Tr. 917, ll. 6-18). Bennett, upon prompting by the State, explained that alcohol, as well as all of the other drugs found in Applicant's system, were depressants, which reduce a person's ability to respond to stimuli. (Tr. 917-18). Bennett agreed the use of a Betadine wipe to clean the draw site would not impact the accuracy of SLED's blood draw. (Tr. 918-19).

Bennett admitted to having never worked in law enforcement or attending the South Carolina Criminal Justice academy, and the State noted his curricula vitae indicated experience in crime scene analysis, fingerprinting, and gunshot residue. (Tr. 919-20). Bennett admitted to representing himself as a registered pharmacist for a decade despite the expiration of his license in 1999. (Tr. 920-21). Bennett admitted the South Carolina Board of Pharmacy had issued him a cease and desist order to stop calling himself a registered pharmacist, but offered that he was still registered with the South Carolina Board of Pharmacy, inactive though his license may be. (Tr. 921, ll. 8-17). Bennett acknowledged an article from the Charleston Post and Courier describing the reliability of his findings as suspect or controversial, and that most of his training in other fields was self-taught from reading journals and books. (Tr. 921-22). The State confronted Bennett with a case where a mother temporarily lost custody based upon his findings, which were later contested by a physician. (Tr. 922, ll. 7-11). Bennett testified "[t]here are constantly questions about the practice that I have. Questions do not implicate a wrong doing; it's just questions." (Tr. 923, ll. 2-4). Bennett rejected the condemnation of the Post and Courier, arguing the newspaper's job was "to sell newspapers." (Tr. 923, ll. 9-11).

On redirect, Counsel emphasized SLED performed the tests in question and did so in an accurate fashion. (Tr. 924-25). Bennett again asserted that "keeping up with the licensure is necessary if you fill prescriptions at a pharmacy and that's all." (Tr. 926, ll. 1-8). Bennett noted that subsequent to his training as a pharmacist, he had studied and received a Ph.D. "in pharmaceutical drug sciences, which includes toxicology and pharmacology." (Tr. 926, ll. 16-22).

In closing argument, Counsel laid blame for the collision upon Victim:

The State drew Ms. Zoll's blood immediately after the accident. She was not given any substances. She was not operated on. She did not receive six plus liters of fluid. She did not receive 28 different medications and fluids. She did not receive an injection of THC. That was in her system when she was driving that car. She was high when she was driving that car.

(Tr. 1030, ll. 4-10).

Testimony at PCR Hearing

At the evidentiary hearing, Applicant testified she very frequently met with Counsel but that they did not much discuss Bennett, and that Counsel had simply found him to testify in her defense. Applicant testified the defense strategy for trial was that she was not intoxicated at the time of the collision. Applicant recalled the cross-examination of Bennett was a train wreck, and that he was completely discredited. Nonetheless, Applicant expressed her opinion that Counsel "put his heart and soul into this case." Separately, Applicant recalled that Grover Seaton, Esq.,³ briefly assisted Counsel in her defense but was promptly at an early stage removed from the case due to a conflict of interest.

Counsel testified he received voluminous discovery in the case, including the MAIT report and hospital records. Counsel noted Applicant's memory of the collision was very, very

³ No testimony clearly indicated whether this was the elder or junior Seaton.

bad, such that she had a very limited recollection of what occurred the night of the collision. Counsel described his strategy as “reasonable doubt,” and that he felt strongly that he could show Victim was under the influence of marijuana, and was further distracted by a phone call and her dog.

Counsel testified he knew of Bennett from his work in family court, and described Bennett as a heralded expert witness in family court matters, such that he commands the respect of the family court bench and is often specifically requested by judges. Counsel explained that his background investigation of Bennett was circumscribed by that sterling reputation, but noted that he did speak to others before hiring Bennett, and that he may have used Bennett in the past in his family court practice. Counsel vaguely recalled Seaton telling him not to use Bennett as an expert, but that Seaton did not articulate a reason why he shouldn't, only telling him “don't.” Nonetheless, Counsel acknowledged Bennett was a “terrible choice.” On cross-examination, Counsel testified he would not have called Bennett had he known about his deficiencies. Counsel noted that despite prior preparation, Bennett had never brought up the percentage-scale portion of his testimony, and that it was very confusing when he did bring it out at trial. On re-direct, Counsel explained that Bennett's testimony at trial, as compared to their pre-trial discussions, was new, “supplemental” testimony.

Findings

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant. The Court observes that the present case is not an instance where defense counsel failed to investigate an expert witness at all, but that the scope of his investigation did not reveal the information relied upon by the State at trial. Counsel discussed the use of Bennett with others and evidently found him to be well regarded. A cursory search of South Carolina caselaw would appear to support Counsel's report of a positive reputation. See, e.g. Hall v. Desert Aire, Inc.,

276 S.C. 338, 354-56, 656 S.E.2d 753, 761-62 (Ct. App. 2007) (noting in a worker's compensation case the great weight afforded to Dr. Bennett's opinion as to intoxication, to the benefit of the injured worker who offered him). No such similarly negative result there appears. The case cited by the State during trial, Boyd v. ExamOne World Wide, Inc., 2010-CP-10-09670, appears to have been a trial matter in which the affidavit referred to by the State was deeply buried. The Court finds that Dr. Bennett is well-regarded by many members of the bench and bar.

The Court finds Applicant has not shown precisely how Counsel could have known of Bennett's alleged deficiencies as a witness, or that he should have been on notice to look for them. Counsel did note a vague word of caution from Seaton that he should not use Bennett, but in the absence of some explanation as to why he should not have done so, the warning was insubstantial. The State, at trial, referred to an article out of the Charleston Post and Courier which was evidently critical of Bennett. Notwithstanding this Court's taking of judicial notice of the article,⁴ this Court observes no reason why Counsel could have or should have been aware of a single newspaper article published eight years prior. The Court finds Counsel's investigation into the background of Dr. Bennett was reasonable under the circumstances and, as such, he was not deficient in that investigation and subsequent calling of Dr. Bennett as a witness.

The Court finds Counsel had no notice of the allegedly confusing characteristics of Dr. Bennett's testimony. Counsel credibly testified that although he had conversed with Dr. Bennett in preparing for trial, and discussed his findings, that Dr. Bennett made no indication that he would testify as to his zero-to-one-hundred scale of intoxication. Counsel did not and could not have known that Dr. Bennett would have testified in a fashion beyond the scope of their pre-trial

⁴ The article referenced by the State was not offered at the hearing, but the Court takes judicial notice that the Charleston Post and Courier published such an article in July 2006 containing the substance of the prosecution's cross-examination.

discussions. As such, the Court finds Counsel was not deficient in calling Dr. Bennett as a witness due to his unexpected testimony.

The Court also can find no prejudice to Applicant resulting from the alleged deficiency. Assuming, *ad arguendo*, that the prosecution's cross-examination of Dr. Bennett totally discredited him, as asserted by Applicant, then the jury would have given little to no consideration to his testimony argued to be confusing or harmful to Applicant. If Dr. Bennett was otherwise held credible by the jury, then it could have considered his testimony that Applicant's level of intoxication was minimal, that Applicant's BAC should have been much lower than indicated in the blood draw, that a person at her level of intoxication could safely drive a vehicle, and perhaps most importantly, that Victim was substantially under the influence of marijuana at the time of the accident. Given Applicant's own admission to having *some* amount of alcohol that evening prior to the collision, the Court does not find Dr. Bennett's admission of *some* effect to be contrary to trial strategy—indeed, had he doubled-down on her own assertions of “no impairment” despite at least⁵ three alcoholic beverages in the preceding hours, he would have discredited himself.

The Court finds Dr. Bennett's testimony was consistent with trial strategy. The strategy was, as Counsel articulated, “reasonable doubt,” with a mind to Victim's status leading into the collision, as articulated by both Counsel and in Applicant's Anders brief. Dr. Bennett effectively testified in a manner so as to give the jury *some* evidence as to minimize Applicant's level of intoxication at the time of the accident. Dr. Bennett testified that Victim was under the influence of marijuana at the time of the accident. Absent Dr. Bennett's testimony to that effect, Applicant would not have had that argument before the jury at all. That the witness was something less

⁵ As noted at trial, the drinks were all mixed-drinks, and there was no testimony as to the precise strength of the beverages. The abandonment of mini-bottles in favor of free-pour drinks in this State renders the potency of such drinks entirely uncertain. They could have been largely cranberries or they could have been barely flavored vodka.

than Saint Albert, and that the State was able to find means of effective cross-examination, does not diminish the import and value of his testimony in the context of Counsel's intended strategy.

The sum total of the allegation before the Court is that an imperfect expert witness provided imperfect testimony in a case that offered Applicant imperfect facts for a defense. No witness is perfect, and where a defendant's expert witness has testified numerous times over a career it is unlikely the prosecution will be unable to obtain some valid means of challenging their credibility. Here, Dr. Bennett provided testimony consistent with defense strategy, freckled by a zealous prosecutorial effort to discredit him. Counsel is not rendered ineffective thereby. For all the reasons set forth above, Applicant has failed to meet her burden as to either prong of Strickland, and her request for relief by way of this allegation is **DENIED**.

3. Failure to Secure Final Ruling Regarding Marijuana Testimony

Applicant alleges Counsel was ineffective in failing to secure a final ruling as to the admissibility of testimony that marijuana was found on Applicant's person by a paramedic after the collision.

During pre-trial testimony, Officer John Poston testified marijuana was recovered from Applicant's person after the collision by a paramedic.⁶ (Tr. 82-83; Tr. 89-90; Tr. 106-07; Tr. 112, ll. 3-6). After extensive pre-trial motions, and discussions off-the-record between Counsel and the prosecution, the State "agreed to instruct [its] witnesses that we are not going to mention the marijuana collected from the defendant's pocket." (Tr. 200, ll. 7-25). Thus, the only substantive testimony to this end before the jury was a fleeting, vague reference to "a green leaf material" properly objected to by Counsel before the witness could slip in that it looked like marijuana. (Appx. 496-97). At the evidentiary hearing, Counsel testified that he did not seek

⁶ The paramedic wound up charged and fired for possession of the marijuana. (Tr. 90, ll. 2-9).

further cure of the testimony after balancing the benefit of the cure against the prejudice of highlighting the testimony in question.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant by way of the alleged error. The marijuana was kept out by stipulation and no meaningful testimony was introduced to that effect. To the extent that a witness almost testified to the marijuana found on Applicant, Counsel articulated a valid strategic reason to not seek a cure of the testimony to which he objected. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

4. Failure to Challenge Blood Sample Chain of Custody

Applicant alleges Counsel was ineffective in failing to challenge the chain of custody of her blood samples. At the evidentiary hearing, Applicant testified she did not understand why there was no challenge to the chain of custody of her blood samples, but that she did not question her attorney's decision at the time. Counsel testified that his concerns about the blood samples was the long delay between the collision and the blood draw, not the chain of custody. Counsel talked through the chain of custody with SLED and had no concerns that the samples were adulterated.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant by way of this alleged error. First, there is no evidence before this Court to show any deficiencies in the chain of custody of Applicant's blood samples. No witnesses even speculated as to what may have been wrong with the chain, such that the Court has even less than the "mere speculation" that would be insufficient to support a grant of relief. Second, the Court finds credible Counsel's testimony that he reviewed the chain of custody and found no deficiencies or concerns. Accordingly, Applicant has failed to meet her burden under either prong of Strickland, and her request for relief by way of this allegation is **DENIED**.

5. Failure to Emphasize Victim's Contributory Negligence: Marijuana, Distractions

Applicant alleges Counsel was ineffective in failing to adequately emphasize Victim's deficiencies in operating her own vehicle; to wit: her intoxication by marijuana, and her distractions from a phone call and a dog purportedly in the vehicle at the time of the accident.

At trial, Counsel dedicated a portion of his opening statement to explaining that Victim was potentially at fault for the collision:

So what we've tried to do is tried to go back and figure out what did happen. In the other car, not my client's car, in the other car we have evidence that would suggest the driver was on the phone, that there was a dog in the car, that she was driving someone else's car that she may not have been familiar with, and that she just recently had gotten back her drivers license. There may be some other evidence to as to what was going on in the car but hopefully the witnesses will bring that out.

(Tr. 220, ll. 1-9).

Counsel elicited some of the predicted testimony at points throughout trial. Scott Lee, of the Moncks Corner Rural Fire Department, testified on cross-examination that a dog was pulled from the passenger floorboard of Victim's car after the collision. (Tr. 270-71). Montorony Jenkins, station supervisor for Berkeley County EMS, also testified a dog was found in Victim's vehicle. (Tr. 294, ll. 19-22).

Counsel approached Victim's marijuana impairment gingerly under regular skepticism from the trial court. On cross-examination, Tracy McKinnon, the State's forensic toxicologist, testified no marijuana was found in Applicant's blood sample, but further testified that the active component of marijuana, THC, "acts similar to the way ethanol would as a central nervous system depressant." (Tr. 434, ll. 3-13). Counsel attempted to question further as to impairment thresholds, but was cut short by a sustained objection from the prosecution. (Tr. 434, ll. 14-23). During the defense case, as was the case during pre-trial motions, the trial court expressed its

opinion that she hadn't "heard any testimony that would make any marijuana use germane. The only testimony that is uncontroverted at this point is that the incident impact took place in [Victim's] lane." (Tr. 773, ll. 10-16). The trial court described Victim's marijuana use as not relevant and misleading, but declined to "deal with it right now." (Tr. 773, ll. 17-21). Discussing the forthcoming testimony of Dr. Bennett, the State again argued its opposition to "the introduction of any evidence or elicit any testimony on the subject of marijuana as nothing has been brought to the court's attention that would make that in any way probative." (Tr. 815, ll. 6-15). Only after Applicant testified to seeing lights in her lane, and only after a proffer of Dr. Bennett's testimony, did the trial court finally find that evidence of Victim's marijuana intoxication was relevant and admissible. (Tr. 907, ll. 1-14). However, the trial court circumscribed testimony on the subject, explaining "that expert witnesses are not to testify specifically as to any particular party" and that Dr. Bennet could not "testify what it would do in [Victim's] body. He can only say generally what happens." (Tr. 907-08). Immediately after the jury was returned to the courtroom after a brief, mid-testimony departure, Dr. Bennett testified Victim tested "[s]pecifically positive for marijuana" with a "quantitative measurement of 7.1 micrograms per liter." (Tr. 912-13). Dr. Bennett testified that Victim's THC concentration level was associated with impairment, and explained "[i]t could affect someone's ability to respond to stimuli around them. It could affect their reaction time. It could affect their judgment. It could affect their skill level. It could affect their cognitive function, their mental functioning." (Tr. 913, ll. 8-20).

Counsel was less successful with respect to the phone. Officer John Poston, of the South Carolina Highway Patrol, denied recovering a cell phone from Victim's vehicle. (Tr. 549-50). As previously discussed, Counsel's efforts to bring in call logs from Verizon Wireless for Victim's phone number were unsuccessful. (Tr. 789-814). David Hill, Applicant's accident

reconstruction expert, agreed with Counsel that a driver's reaction time would potentially be longer if they were on a cell phone or if they were distracted by a dog in a car. (Tr. 726, ll. 9-20).

In closing arguments, Counsel noted Victim "had a dog in the front seat with her." (Tr. 1029, ll. 18-19). Counsel questioned whether the dog was rambunctious or calm, and whether the dog leaped onto Victim's lap or sat quietly in the passenger's seat. (Tr. 1029-30). Counsel thereafter noted Victim's blood draw, and emphasized Victim "was high when she was driving that car." (Tr. 1030, ll. 4-10). The State, in reply, noted "[t]he dog was found in the front passenger floorboard." (Tr. 1064, ll. 7-11). The prosecutor questioned if Counsel was arguing the dog barked, and emphasized there was no evidence that Victim swerved into Applicant's lane. (Tr. 1064, ll. 11-17).

At the evidentiary hearing, Applicant emotionally testified that she did not want to bash the Victim. Counsel testified that he thought Victim's use and intoxication by marijuana was so incendiary that he only needed to get the subject in once. Counsel expressed concern about dragging Victim "through mud," but offered his retrospective thought that he miscalculated. Counsel explained he did not wish to look like a bully before the jury. As to the phone, Counsel admitted the case was possibly his first attempt to try and introduce phone call logs in a trial, and that he had genuinely believed a certification from Verizon Wireless was adequate to indicate the truthfulness and authenticity of the records. Counsel also noted that he had found the witness who had been on the phone with Applicant at the time of the collision, but was unable to secure her presence at trial.

The Court finds no deficiency on the part of Counsel, nor any prejudice to Applicant by way of his treatment of the distractions at trial. The Court finds Counsel effectively and adequately elicited testimony to establish, to the extent possible, that Victim had a dog in her

vehicle which could have distracted her, and that Victim was under the influence of marijuana at the time of the accident. Under the trial court's rulings, Counsel was unable to more substantively approach the subject of Victim's intoxication prior to Applicant's testimony because there was no evidence Victim had exited her lane until Applicant testified to seeing oncoming lights in her own lane. Once that anchor was lifted, Counsel promptly went into the subject with Dr. Bennett. Counsel argued both the marijuana intoxication and the dog in his closing arguments. The Court finds Counsel articulated valid strategic reasons and considerations he weighed in determining how vociferously he should approach the subjects, and exercised valid judgment in determining the evidence of marijuana intoxication while driving was so inflammatory that he did not have to more loudly beat that drum. Indeed, Applicant's own emotional response at the evidentiary hearing on the subject of attaching blame to Victim is evidence to show the risks inherent in victim-blaming in any case. As to Victim's use of a phone, the Court is again constrained by the absence of testimony at the evidentiary hearing of either (1) a records custodian from Verizon Wireless sufficient to show testimony that would have supported the admission of Victim's call logs at trial or (2) the testimony of the witness whose presence Counsel was unable to obtain. The Court is left with mere speculation as to the potential distraction of Victim's phone. For all of these reasons, Applicant has failed to show either deficiency on the part of Counsel, or any prejudice to Applicant, and her request for relief by way of this allegation is **DENIED**.

6. Failure to Seek Recusal of Prosecuting Attorney

Applicant alleges Counsel was ineffective in failing to seek the recusal of prosecutor Bryan Alfaro, Esq., on the basis of a conflict of interest. Applicant testified at the evidentiary hearing that Alfaro was in a relationship with a distant relative such that he had a role in a

paternity dispute with said distant relative. Counsel testified Applicant raised the concern to him before trial but that he perceived no conflict or animus on the part of the State.

The Court agrees with Counsel's judgment and can also discern no conflict of interest or animus on the part of the prosecution. Applicant offered only her own fleeting, less-than-clear testimony on the subject, and no other witnesses testified to the existence of any dispute sufficient to give rise to a conflict of interest. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

7. Failure to Object to Jury Instruction: Motorist's Duties

Applicant alleges Counsel was ineffective in failing to object to the trial court's instructions to the jury relating to a motorist's duties. "The law to be charged to the jury is to be determined by the evidence presented at trial." State v. Lee, 298 S.C. 362, 364, 380 S.E.2d 834, 836 (1989) (citations omitted). "The trial judge should only charge the law applicable to the case." Id., 298 S.C. at 364, 380 S.E.2d at 836 (citations omitted). "The purpose of a jury instruction is 'to enlighten the jury and to aid it in arriving at a correct verdict. It is error to give instructions which are calculated to confuse or mislead the jury.'" State v. Blurton, 352 S.C. 203, 207-08, 573 S.E.2d 802, 804 (2002) (quoting State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987)). "The trial court commits reversible error when it fails to give a requested charge on an issue raised by the indictment and evidence presented." Lee, 298 S.C. at 364, 380 S.E.2d at 836 (citations omitted).

Applicant was indicted for felony driving under the influence resulting in death. The law prohibits that act as follows:

A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does *any act forbidden by law or neglects any duty imposed by law* in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or

death to another person, is guilty of the offense of felony driving under the influence[.]

S.C. Code Ann. § 56-5-2945(A) (emphasis added).

The trial court instructed the jury at some length regarding the duties imposed by law and the acts forbidden by law in the context of the operation of a motor vehicle. (Tr. 1104-07). This Court perceives no errors in the instructions, nor confusing or misleading elements, and upon consideration of the trial record as a whole, finds the instructions were well given. As such, there was no basis for objection on the part of Counsel. Accordingly, Applicant cannot meet either prong of Strickland by way of this allegation, and her request for relief is **DENIED**.

[Conclusion and signature on following page]

III. CONCLUSION

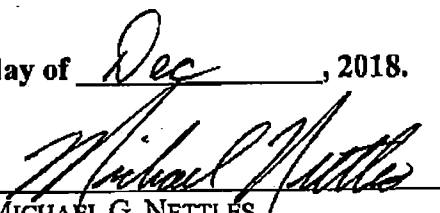
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 5 day of Dec, 2018.


 MICHAEL G. NETTLES
 Presiding Judge
 Ninth Judicial Circuit

J. Lawrence, South Carolina

WST2011-11-01677

WITNESSES

SC Highway Patrol

Kv Welch / First Sergeant

AGENCY CASE NUMBER

1993-078637

ARREST WARRANT NUMBER

2014GS0800313

DATE OF ARREST

November 11, 2011

ACTION OF GRAND JURY

True Bill

Thomas Martin J.
Foreperson of Grand Jury

Date: 4-15-14

VERDICT

Guilty

BJ

6/6/14

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS0800313

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

April Term

THE STATE

vs.

SHANA CECIEL ROBINSON

DOB: [REDACTED]
W/F

Indictment for

Felony Driving Under the Influence - Death

§56-05-2945(A)(2)
CDR: 0395

1234

14 APR 15 PM 12:21
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

JH

JH

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Berkeley
STATE VS.

INDICTMENT/CASE#:

Shana Robinson

2014 -GS- 08 - 0313

AKA:

AW#: Direct Indict

Race: W Sex: F Age: 36

Date of Offense: 11/10/13

DOB: [REDACTED]

S.C. Code #: 56-5-2945(A)(2)

Address: [REDACTED]

CDR Code #: 0395 / / /

City, State, Zip Moncks Corner, SC 29401

CASE RESTORED

DL# [REDACTED] SID# [REDACTED]

SENTENCE:

PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Felony DUI with Death

in violation of § 56-5-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395 / /

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-46

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

E. Mason
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 17 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-136.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered

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

Payment Terms: _____

set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00

\$56-5-2995 (DUI Assessment) \$12 \$ 12.00

\$ 35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 18 TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 18 TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 7.11

TOTAL \$ 244.11

PTUP _____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE W. Jefferson

Judge Code: 2110

Sentence Date: June 6, 2014

SCCA/217 (2/2006)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

KWM

CERTIFIED TRUE COPIES OF RECORD
M. O. P. R. J. S. S.
CLERK OF COURT, P.P.S.
BERKELEY COUNTY, S.C.
DATE: 10.14.14