

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 04 2013

APPEAL FROM ORANGEBURG COUNTY

SC Court of Appeals

Honorable Edgar Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

DAISY LYNNE MIMMS,

APPELLANT.

Appellate Case No. 2012-212931

RECORD ON APPEAL

MARK WISE
Public Defender

ALAN WILSON
Attorney General

First Circuit Public Defender Office
P.O. Box 1112
Orangeburg, SC 29116
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Attorney for Appellant

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Senior Assistant Deputy Attorney General
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Columbia, SC 29211
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Attorneys for Respondent

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*** Electronic Recording of Trial on File in Clerk of Court's Office ***

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF ORANGEBURG)
)
)
 STATE OF SOUTH CAROLINA)
 PLAINTIFF,)
)
 -VS-)
)
 DAISY LYNNE MIMMS)
 DEFENDANT,)

IN THE COURT OF COMMON PLEAS

MAGISTRATE'S RETURN
 OF CRIMINAL APPEAL

CASE NO. 2011-CP-38-00486

The attached papers comprise the court record which is transmitted to the circuit court pursuant to S.C. Code Ann. 18-3-40.

1. Uniform Traffic Ticket
2. Pretrial motions and responses
3. Jury list and jury selection, record of strikes, cause and/or peremptory.
4. The trial transcript was recorded electronically and is available online via the County IT Dept. The transcript is not transmitted in this record.
5. Jury Verdict
6. Notice of Appeal

Respectfully submitted,

Merce D. Williamson
 Magistrate

Orangeburg, South Carolina
 May 11, 2011

FILED FOR RECORD
 MINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC

2011 MAY 11 P 2:03

[Handwritten signature]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ORANGEBURG	)	MAGISTRATE'S RETURN
	)	OF CRIMINAL APPEAL
	)	
STATE OF SOUTH CAROLINA	)	CASE NO. 2011-CP-38-00486
PLAINTIFF,	)	
	)	
-vs-	)	
	)	
DAISY LYNNE MIMMS	)	
DEFENDANT,	)	

This matter is on appeal from the Magistrate Court of Orangeburg County, the Honorable Meree D. Williamson, and Presiding Judge.

The Defendant, Daisy Lynne Mimms, was charged with violating the S.C. Code Ann. 56-5-2930, which is commonly referred to as driving under the influence on October 23, 2010. A jury trial was requested by Attorney Mark Wise, on November 10, 2010. A pretrial conference was held on April 6, 2011. The jury list was prepared pursuant to S.C. Code Ann. 22-2-90, selection of jury list for scheduled terms of jury trials. The Defendant and the State were given an opportunity to exercise peremptory challenges on April 11, 2011. The trial by jury was held on April 11, 2011 at 2:00 p.m. The Notice of Appeal was filed on April 20, 2011. The proceedings were recorded electronically.

The State called the following witness:

1. Trooper Jamie Burris

A summary of his testimony is attached.

The Defense did not call any witnesses.

The State did not make any motions.

The Defense made the following motions

1. Pretrial motion to suppress the data master video

A summary of the Defendant's and the State's position on each motion and the Court's ruling is attached.

The State offered the following items into evidence:

1. Videotape at incident site

The Defense raised the following objections to the items offered into evidence.

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 CLERK OF COURT
 ORANGEBURG, SC
 2011 MAY 11 P 2:03

The Defense did not produce any items into evidence.

The Defense requested the following charge.

The Defense requested that the judge charge the jury on criminal intent.

Upon examination of the charge, the court ruled that the charge was neither supported by law nor sufficient evidence. Request to charge criminal intent was denied.

The Defendant was found guilty of violating S.C. Code Ann. 56-5-2930, commonly known as driving under the influence and the court imposed the following sentence:
30 days in jail suspended upon the payment of a fine of \$997.00.

Attached are the following items.

- Attachment I Uniform Traffic Ticket E396483
- Attachment II Pretrial motions and responses
- Attachment III Jury list, and jury selection including the record of strikes
- Attachment IV Jury Verdict
- Attachment V Notice of Appeal
- Attachment VI Summary of the witness' testimony
- Attachment VII List of motions, a summary of the parties' positions, and the court's ruling.

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ORANGEBURG, SC
2011 MAY 11 P 2:03

Attachment I Uniform Traffic Ticket E396483

Form 438
Rev 12/08

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS **B577**

FIRST NAME **Davis** MIDDLE NAME **Lynn** LAST NAME **Mims**

STREET AND NO. **[REDACTED]** CITY **[REDACTED]** STATE **[REDACTED]** ZIP CODE **[REDACTED]**

STATE LICENSED **SC** DRIVER'S LICENSE NO. **[REDACTED]** CDL ☐ YES ☒ NO DFI LIC CLASS **D**

VEH. LIC. NO. **[REDACTED]** STATE **SC** MAKE OF VEH **CADILLAC** YEAR **2000** COM. VEH ☐ HAZ. MT. ☐ AUTO ☐ MOPED ☐ MTRCYCL ☐ OTHER ☐

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER **Traffic Court** STREET AND NO. **1540 ELLIS AVE**

DATE **11/10/10** OF TRIAL **11/10/10** TIME OF TRIAL **11 AM** CITY **Orangeburg** STATE **SC** ZIP CODE **29116**

VIOLATION - COURT APPEARANCE REQUIRED **CYBER** NO. **D.U.I. 1L** VIOLATION SECTION NO. **56-5-2930**

OWNER OF VEHICLE **D.L. Mims** DATE OF ARREST **10/23/10**

ADDRESS OF OWNER **M.T. Picaia - SC** DATE OF VIOLATION **10/23/10**

BAIL DEPOSITED **\$0.1L** NAME OF ARRESTING OFFICER **J. H. Burris** RANK **1st**

DESCRIPTION OF ACCUSED **W.F. Davis** HT **5'5"** WT **117** EYES **Blue** COUNTY **Orangeburg** MAG. **30**

DATE BAIL REC'D **11/10/10** BY **[REDACTED]** BADGE **575** DISTRICT **7**

CASE BEFORE: MAGISTRATE ☒ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER **Traffic Court** IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☒

NOLLE PROSSED ☐ DISPOSITION: GUILTY ☒ QUITY ☐ FORFEITED BOND ☐ PLED NOLO CONTENDERE ☐

TRIAL BY: TRIAL OFFICER ☐ JURY ☒

VERDICT OF TRIAL IF ANY: GUILTY ☒ NOT GUILTY ☐

JAIL **300** SUSPENSE **997** FINE **997** AMT COLLECTED **997** AMT SUSPENDED **997**

COMMITTED TO: **[REDACTED]** Vehicle Searched **Y** Arrest as Result of Collision **W**

CERTIFIED CORRECT: **Merced D. Williams** DATE **4/11/11** E **505200**

TRIAL OFFICER'S COPY

due 15 days within
Burris put
PW in amt

FOR RECORD
JIM A. B. CLARK
CLERK OF COURT
COLUMBIA, SC

2:11 PM 11 P 2:03

Attachment I Uniform Traffic Ticket E396483

Form 438
Rev. 12/06SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

B557

FIRST NAME MIDDLE NAME LAST NAME

D.A. S. L. Y. M. M. M. S.

STREET AND NO. CITY STATE ZIP CODE

STATE LICENSED DRIVER'S LICENSE NO. CDL DRL LIC CLASS

SC [REDACTED] YES NO D

VEH. LIC. NO. STATE MAKE OF VEH YEAR COM. VEH. AUTO. BPSGR. VEH. COMB.

SC K105 10 HAZ. MT. MOPED MTRCYCL. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER STREET AND NO.

Traffic Co. 7 1540 E. Ellis Ave

DATE OF TRIAL OF TRIAL TIME OF TRIAL CITY STATE ZIP CODE

11 10 2010 11AM Orangeburg SC 2916

VIOLATION - COURT APPEARANCE REQUIRED (YES/NO) VIOLATION SECTION NO.

D.U.I. 1 56-5-2930

OWNER OF VEHICLE DATE OF ARREST

D.L. M. M. S. 10 23 2010

ADDRESS OF OWNER DATE OF VIOLATION

M.T. P. P. C. S. C. 10 23 2010

BAIL DEPOSITED NAME OF ARRESTING OFFICER RANK

50.16 J. H. Burris 1st

DESCRIPTION OF ACCUSED COUNTY NUMBER

RACE SEX HT. WT. EYES HAIR MT. 5'6" 170 6'4" Orangeburg 38

DATE BAIL REGD. BY BADGE DISTRICT

20 579 7

CASE BEFORE MAGISTRATE MUN. COURT

CIRCUIT COURT FAMILY COURT FEDERAL COURT

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR APPEARED

NOLLE PROSSED GUILTY

FORFEITED BOND PLED: NOLLO CONTENDERE

TRIAL BY: TRIAL OFFICER JURY

VERDICT OF GUILTY DATE OF TRIAL IF ANY

TRIAL IF ANY NOT GUILTY 4 11 2010

JAIL SUSPEND FINE AMT COLLECTED AMT SUSPENDED

300 997

COMMITTED TO. Vehicle Searched Arrest as Result of Collision

CERTIFIED CORRECT DATE

Merced D. W. [REDACTED] 4 11 11

E 505200

TRIAL OFFICER'S COPY

due 15 days/ Burris put

within BW in amt

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Attachment II Pretrial motions and responses

1. The Defense made the motion to suppress the data master evidence.

With no objection from the State, Judge Willie Robinson granted the motion to suppress the data master evidence.

Attachment III Jury list, and jury selection including the record of strikes

Orangeburg County Summary Court RANDOM STRIKE SHEET

8

JUDGE NAME :

TRIAL TYPE :

PANEL ID : E505200-E505202

COURTROOM CTRM

DESCRIPTION : Daisy L. Mimms

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Summers, Catherine L	82	B	F	()	()	()	J1
2 Antley, Randall D	7	W	M	()	~~X~~	()	J2
3 Adkins, Steve M	1	W	M	()	()	()	J2
4 Dash, Otis J	18	B	M	()	()	~~X~~	J3
5 Delk, Allyson D	20	W	F	()	()	()	J3
6 Sandifer, Jack G JR	73	W	M	()	~~X~~	()	~~⓪~~
7 Williams, Sandy J	96	B	M	()	~~X~~	()	
8 Anderson, Mary A	4	B	F	()	()	~~X~~	
9 Reese, Michael P	66	W	M	()	~~X~~	()	
10 Felder, Lindy P	22	W	F	()	()	~~X~~	
11 Brown, Stacey L	10	B	F	()	()	()	J4
12 Knight, James Lee	46	B	M	()	~~X~~	()	
13 Hamilton, Latoyia S	31	B	F	~~X~~	()	()	
14 Jacobs, Jimmie E	39	W	M	~~X~~	()	()	
15 Proveaux, Chad R	62	W	M	()	()	()	J5
16 Perry, Brittany S	57	B	F	()	()	()	J6
17 Johnson, Harry	43	B	M	()	()	~~X~~	
18 Hughes, Chris G	36	W	M	()	()	()	
19 Walker, Julia F	86	B	F	()	~~X~~	()	
20 Disher, Patricia Ann	21	B	F	()	~~X~~	()	
21 Leysath, Louis L	48	B	M	()	()	()	
22 Yates, Jean E	99	W	F	()	()	()	
23 Weaver, Mary E	89	W	F	()	()	()	

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 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC
 MAY 11 2012

9

Trial

**** END OF REPORT ****

1
THE
HALL
OF
COURT
COURT

Roll call list for Jurors Present

Filtered by: Panel ID, Court Agency Code

Sorted by: Juror Name

SEQ#	SSN	NAME	JUR#	RACE	SEX	DOB	#XFER	DEFERRED	DTE	CMNT/PAY
1	6749	Adkins, Steve M	370	W	M		0	retired - car		homemaker
4	4298	Anderson, Mary A	970	B	F		0	unemployed -		
- (7)	4785	Antley, Randall D - LE	1113	W	M		0	F Serv. /		home mwr
- 10	3600	Brown, Stacey L	6582	B	F		0	* Student @ D Tech		
- (12)	4533	Butler, Howard ^{limited} ^{(read or} ^{writing)}	7572	B	M		0	unemployed		
- (13)	1683	Butler, Larrie B JR	7603	B	M		0	SC State; DSS		
- (14)	8317	Capers, Sharon F	8244	B	F		0	Bank, self-emp		
- 16	4878	Chew, Jason A	9113	W	M		0	desk clerk		
- (18)	6996	Dash, Otis J ^{Mag}	11919	B	M		0	foreman - HM		
19	9998	Davis, Howette S	12318	B	F		0	SCSU / SC Voc		
- 20	4661	Delk, Allyson D	12966	W	F		0	acct man / RPH		
- 21	8013	Disher, Patricia Ann	13294	B	F		0	Neural health		
- (27)	4165	Felder, Lindy P	15414	W	F		0	farmer		
- 26	4693	Govan, Samuel Razel L	19928	B	M		0	CC Party - un		
- 31	6788	Hamilton, Latoyia S	21773	B	F		0	Sheld gas st		
- 36	1796	Hughes, Chris G	25144	W	M		0	SC DOT, unemp		
- 39	7366	Jacobs, Jimmie E	26290	W	M		0	retired - used cars		
42	1439	Johnson, Carolyn M	28189	B	F		0	SC DTS Beard / SDO		
- 43	3561	Johnson, Harry	28424	B	M		0	Koyo -		
- (44)	4886	Johnson, Herbert C ^{school}	28444	B	M		0	retired, SCOS, value Sch		
- 46	2764	Knight, James Lee	31115	B	M		0	Mitco Light - school		
48	0601	Leysath, Louis L	32176	B	M		0	retired school W		
49	6327	Mack, Shelia S	33293	B	F		0	retired teacher / M. op.		
- 57	8022	Perry, Brittany S	39791	B	F		0	* Student OC Tea		
- 62	0514	Proveaux, Chad R	41051	W	M		0	drive / saler		
- (63)	9547	Rast, Stella L	41446	W	F		0	unemployed / Chem		
- (65)	9241	Reed, Vessie C	41808	W	F		0	SC All op / TD		
- (66)	3817	Reese, Michael P ^{Police} ^{Wing off}	41825	W	M		0	health care / Hor		
- 73	8763	Sandifer, Jack G JR	44569	W	M		0	USDA; self-emp		
- 79	9179	Shuler, Jackie L	45905	B	M		0	chemical / SCSU		
- 82	5060	Summers, Catherine L	49371	B	F		0	SCSU		
- 84	0851	Thornton, Shawn J	50888	W	M		0	EMT; part time PD. / HM		
- (86)	8912	Walker, Julia F -	52307	B	F		0	HME -		
89	7822	Weaver, Mary E	53559	W	F		0	RN; student		
- 96	4686	Williams, Sandy J	55727	B	M		0	Correct Office / LeYMCA		
98	5566	Wright, Gladys H	56834	B	F		0	teacher assist / OCPB		
99	0601	Yates, Jean E	57103	W	F		0	Martin B. / retired NA		

Orangeburg County Summary Court

Jurors by Barcode Report



32

Sorted By Seq Nbr

11-11

UROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
1	Adkins, Steve M	W	M			
2	Allen, Lakeshia Q	B	F			
3	Alston, Monique Y	B	F			
4	Anderson, Mary A	B	F			 37 
5	Anderson, Melonie Ann	W	F			
6	Anderson, Rashad	B	M			
7	Antley, Randall D	W	M			 5 

234842

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

4-11-11

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
8	Bradley, Alana M	W	F			
9	Brown, Cheryl K	B	F			
					Called 4/11/11 & came in 4/12/11	
10	Brown, Stacey L	B	F			25
11	Butler, Catherine A	B	F			
12	Butler, Howard	B	M			12 miles
13	Butler, Larrie B JR	B	M			2
14	Capers, Sharon F	B	F			25

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

-11-11

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
15	Carson, Heather A	W	F	1		
16	Chew, Jason A	W	M	1		 20 
17	Clark, Evelyn R	B	F	6		
18	Dash, Otis J	B	M	8		 26 
19	Davis, Howette S	B	F	2		 15 
20	Delk, Allyson D	W	F	1		 30 
21	Disher, Patricia Ann	B	F	1		 13 

Orangeburg County Summary Court

4-11-11

Jurors by Barcode Report

Sorted By Seq Nbr

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
22	Felder, Lindy P	W	F			
23	Floyd, Efrim J	B	M			
24	Floyd, Joyce B	W	F			
25	Gibson, Kristyna P	W	F			
26	Govan, Samuel Razel L	B	M			
27	Gray, Princess P	B	F			
28	Green, Mary R	B	F			

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

-11-11

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
29	Greene, Donald R	B	M			
30	Hamilton, Alicia R	B	F			
Alice Lawson mother (Disabled) called 3/28/11 (lost summons)						
31	Hamilton, Latoyia S	B	F			3
32	Haynes, Sadie	B	F			
33	Hill, Timothy A	B	M			9117
34	Horrell, Donnie R	W	M			
35	Huggins, Tonia D	B	F			

Orangeburg County Summary Court

Jurors by Barcode Report

4-11-11

Sorted By Seq Nbr

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
36	Hughes, Chris G	W	M			
37	Hughes, Mary H	W	F			
38	Jackson, Jannie F	B	F			
39	Jacobs, Jimmie E	W	M			
40	Jenkins, Rosa L	B	F			
41	Jennings, Esther R	W	F			
42	Johnson, Carolyn M	B	F			

11

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

4-11-11

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
43	Johnson, Harry	B	M			(3) [REDACTED]
44	Johnson, Herbert C	B	M			[REDACTED]
45	Kirby, Paula T	W	F			[REDACTED]
46	Knight, James Lee	B	M			[REDACTED]
47	Kuck, Steven L	W	M			[REDACTED]
48	Leysath, Louis L	B	M			0 [REDACTED]
49	Mack, Shelia S	B	F			7 [REDACTED]

4-11-11

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

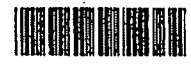
JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
50	Mcgee, Stephen T	B	M			
51	Mcpherson, Christina M	W	F			
52	Mcrae, Cecil K II	W	M			
53	Middleton, Evelyn	B	F			
54	Nelson, Colin	B	M			
55	Nix, Wendy H	W	F			
56	Patel, Ritanben K	A	F			

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

1-11-11

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
57	Perry, Brittany S	B	F			 
58	Phelps, Rosa Mae	B	F			
59	Phoenix, Bernicesha J	B	F			
60	Pleasant, Josephine	B	F			15 
61	Porterfield, Dalfred SR	B	M			
62	Proveaux, Chad R	W	M			15  
63	Rast, Stella L Bozard	W	F			45  

Orangeburg County Summary Court

4-11-11

Jurors by Barcode Report

Sorted By Seq Nbr

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
64	Reaume, Rachel L	W	F			
65	Reed, Vessie C	W	F			 35 
66	Reese, Michael P	W	M			
67	Rickenbacker, Miriam M	B	F			
68	Rivers, Linda J	B	F			
69	Robinson, Jackie	B	M			
70	Robinson, James A	W	M			

4-11-11

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

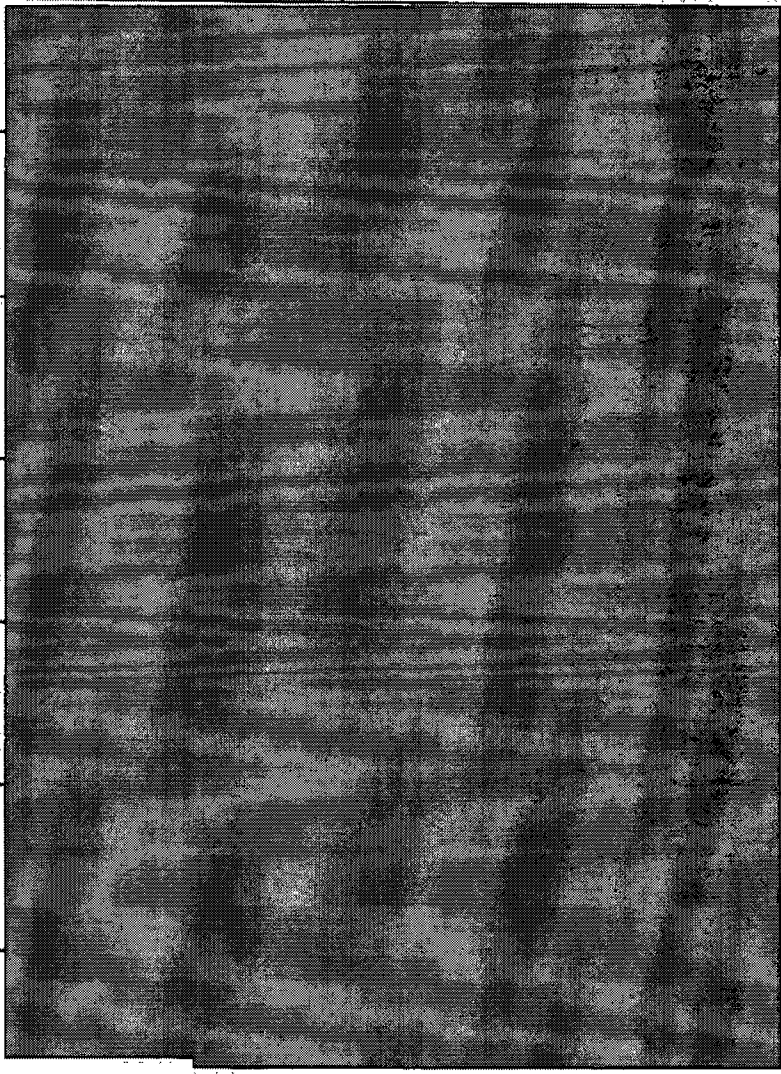
JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
71	Robinson, Katrina E	B	F			
72	Sago, William A	B	M			
73	Sandifer, Jack G JR	W	M			 15 
74	Schuler, Thomas	B	M			
75	Scott, Earnest D JR	B	M			
76	Sellers, Janie L	B	F			
77	Shifflett, Whitney R	W	F			

4-11-11

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
21 78	Shingler, Laquanda M	B	F			
79	Shuler, Jackie L	B	M			 25 
80	Shuler, Mamie L	B	F			
81	Sorrell-Gibson, Ashley	B	F			
82	Summers, Catherine L	B	F			 1 mile 
83	Terrell, Theresa Y	B	F			
84	Thornton, Shawn J	W	M			 3 

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

1-11-11

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
85	Till, George Anne	W	F			
86	Walker, Julia F	B	F			 25 (w)  (H)
87	Washington, Elnora	B	F			
88	Watson, Henry S	W	M			
89	Weaver, Mary E	W	F			5  (1) 
90	Welfare, Benjamin SR	B	M			
91	Whetsell, Reggie M	W	M			

Orangeburg County Summary Court

4-11-11

Jurors by Barcode Report

Sorted By Seq Nbr

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
24 92	Whisenhunt, Charles S	W	M			
93	White, Janneka D	B	F			
94	Williams, Elizabeth D	B	F			
95	Williams, Johnny J	B	M			
96	Williams, Sandy J	B	M			
97	Willis, Erica M	B	F			
98	Wright, Gladys H	B	F			

Orangeburg County Summary Court

Jurors by Barcode Report

Sorted By Seq Nbr

-11-11

JUROR#	NAME	RACE	SEX	DOB	ADDRESS	Barcode
99	Yates, Jean E	W	F			
100	Young, Ivory L	B	F			

Total Number of Jurors: 100

Attachment IV Jury Verdict

State of South Carolina) In The Court of Central Traffic
County of Orangeburg) Ticket No.: E505200
Municipality of _____)
The State,)
Vs.) Jury Verdict
Daisy Lynne Mimms)
Defendant)
Attorney Mark Wise)

We the Jury find the Defendant:

☐ Not Guilty

☒ Guilty of Driving Under the Influence (DUI) / ~~Driving with Unlawful Alcohol Concentration~~
(~~DUAC~~)

4/11/11
Date

Lucia L. Leyva
Name of Foreperson

THE STATE OF SOUTH CAROLINA)
 COUNTY OF ORANGEBURG)

THE COUNTY)

v.)

DAISY LYNNE MIMMS,)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS

Charge(s): DUI / Driving under the Influence, less
 than .10, 1st Offense

Warrant/Indictment Nos.: E-505200

NOTICE OF APPEAL

Defendant Daisy Lynne Mimms, by and through her attorney, is hereby appealing the conviction of the above-referenced warrant entered on April 11, 2011. As required by S.C. Statute 22-3-790, please file this notice, together with the record, a statement of all the proceedings in the case, and the testimony taken at the trial in the office of Clerk of Circuit Court within (10) days from today. Following this notice is a statement of the grounds for the appeal.

The defendant requests that the Court of Common Pleas grant oral argument, overturn the conviction, and remand the case for a new trial.

Respectfully Submitted:

April 20th, 2011

Mark Wise

Mark Wise
 Assistant Public Defender

ATTEST:

CLERK OF
 ORANGEBURG

FILED FOR RECORD
 WINNIFAB CLARK
 CLERK OF COURT
 ORANGEBURG, SC
 2011 APR 20 P 4:25

STATEMENT OF GROUNDS FOR APPEAL

Procedural History:

The defendant, Daisy Mimms ("Mimms"), was arrested on October 23, 2010 and charged with operating a motor vehicle while under the influence of alcohol or drugs.

The case was tried before a jury in the Magistrate's Court on April 11, 2011.

At the trial the evidence revealed that Trooper James Burriss was on routine patrol and received information of a driver driving erratically. He subsequently saw Ms. Mimms vehicle which fit the description traveling on Interstate 26. He was behind Ms. Mimms vehicle and saw her right tires cross over the white lines on the roadway. He stopped Ms. Mimms. He offered Ms. Mimms the horizontal gaze nystagmus test. As a result thereof he placed her under arrest. Ms. Mimms refused the breathalyzer test.

On the video at the scene, Ms. Mimms indicated she had consumed one beer at a party earlier in the evening. The evidence also revealed that Ms. Mimms has cancer and was taking medication for her cancer.

At the conclusion of the state's case, counsel moved for a directed verdict as there was no evidence of impaired driving. The only evidence being that Ms. Mimms' tires traveled slightly over the white lines on the right side of the road. The motion was denied.

Ms. Mimms did not testify at trial.

Prior to the jury deliberating counsel requested the court give the jury the standard jury instruction on criminal intent. The court refused to do so. After the jury was instructed, counsel again requested the jury instruction. The request was denied.

Issue on Appeal:

1. Did the trial court err in refusing to charge the jury on criminal intent?

The issue at trial was whether Ms. Mimms' knowingly and intentionally engaged in any criminal conduct. Any impairment that she may have suffered was the result of the interaction between the beer she consumed and the cancer medication. She was not aware of the impact a beer and the cancer medication would have on her faculties. The jury should have been allowed to consider whether Ms. Mimms' engaged in conscious wrong doing.

2. Did the trial court err in denying the motion for a directed verdict as a result of the state's failure to prove impaired driving?

ATTEST
Clerk of Court
ORANGE COUNTY, FLORIDA

The testimony was clear, both by way of oral testimony from Trooper Burriss and the video from the vehicle, that Ms. Mimms' vehicle only veered slightly, on one occasion, from the main lane of travel. Her vehicle did not leave the roadway nor did it cross over the yellow lines into the left lane.

This is insufficient to show impaired driving. This is a normal occurrence by drivers and does not indicate the driver's ability to operate a vehicle is impaired.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests the Court overturn the conviction and remand the case to Magistrate's Court for a new trial.

Respectfully Submitted:

April 20th, 2011

Mark Wise

Mark Wise
Assistant Public Defender

Attachment VI Summary of the witness' testimony

The State's only witness was Trooper Jamie Burris. After being sworn Burris stated that he was responding to a dispatch call to look out for a driver who was reported driving erratically. Trooper Burris saw a car fitting the description and upon coming off the ramp onto the interstate the vehicle ran off the roadway. The trooper proceeded with the traffic stop. The trooper stated he smelled a strong odor of alcohol and proceeded to have the defendant get out of the car. The roadside video was put into evidence and the horizontal gaze nystagmus test was performed. Burris stated that the defendant was unable to keep her balance and felt the roadside was unsafe to administer any further field sobriety tests. The trooper stated that by the defendant's mannerisms and appearance she appeared to be under the influence of alcohol. He also stated that the defendant did tell him she was also taking medication. The video tape included testimony by the defendant she had consumed alcohol and that she has cancer. Upon cross-examination the trooper explained in detail the three elements used in the HGN test to determine if the defendant was under the influence.

Attachment VII List of motions, a summary of the parties' positions, and the court's ruling.

Defense motions:

1. A motion was made for a directed verdict of not guilty as there was no evidence of impaired driving.

Defense position- The defense stated that Ms. Mimms only went off the road slightly.

State's position- The defendant ran off the roadway. This was sufficient evidence for the stop.

Court's ruling- The State had probable cause for the stop. The extent of *impairment* lies with the state to prove the person's faculties to drive a motor vehicle are materially and appreciably impaired. The impairment is proved with the presentation of additional evidence.

2. A motion was made for a directed verdict on the grounds that the State failed to prove criminal intent.

Defense's position- Ms. Mimms did not knowingly engage in criminal conduct.

State's position- There is no criminal intent in the statute charged.

Court's position- Criminal intent is not an element of SC Code Ann. 56-5-2930.
Motion denied.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

APPELLATE CASE NO. 2012-212931

STATE OF SOUTH CAROLINA

versus

DAISY LYNNE MIMMS,

DEFENDANT

)
) APPEAL FROM
) MAGISTRATE'S COURT
) TRANSCRIPT OF RECORD

) DATE:

) JANUARY 5, 2012
)

BEFORE:

HONORABLE EDGAR W. DICKSON, PRESIDING JUDGE

APPEARANCES:

ANNE PETERSON HUTTO, ESQUIRE

ASSISTANT SOLICITOR

FOR THE STATE

MARK WISE, ESQUIRE

PUBLIC DEFENDER

FOR THE DEFENDANT

FEB -5 2013

SCANNED

DATE: 2/6/13

INITIALS: LK

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

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E X H I B I T S

NONE

1 DATE:

2 JANUARY 5, 2012

3 THE COURT: State of South Carolina versus Daisy Lynne
4 Mimms, Civil Action Number 2011-CP-38-486. Mr. Wise
5 appealed a Magistrate's Court decision of Judge Williamson,
6 and this is a -- this went to a jury trial?

7 MR. WISE: Yes, sir.

8 THE COURT: Okay. Did you represent her at the trial?

9 MR. WISE: I did, Your Honor.

10 THE COURT: Okay, alright, sir. Ms. Hutto, did you
11 represent the State?

12 MS. HUTTO: I did not. I believe this was, what, a
13 week before I think I started at the Solicitor's office, so
14 I did not, the trooper handled it himself.

15 THE COURT: Alright.

16 COURT REPORTER: What number is this, Judge?

17 THE COURT: Ms. Harry Dot, this was originally
18 scheduled, let's see, that was this morning, and we kept ...

19 MS. HUTTO: Ten a.m. this morning, Your Honor.

20 THE COURT: Yeah. Oh, yeah, Ms. Harry Dot, it was
21 Number Seven on my list for January Fifth, is that the
22 updated list number, Ms. Hutto?

23 MS. HUTTO: Actually, on Page Three, Number Four.

24 THE COURT: It may be Number Four on yours.

25 COURT REPORTER: Okay.

1 THE COURT: Have you got it?

2 COURT REPORTER: Yes, sir.

3 THE COURT: Okay. Alright, and it's 2011-CP-38-486,
4 appeal from a conviction on a DUI.

5 Mr. Wise.

6 MR. WISE: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 ARGUMENT BY MR. WISE:

9 Your Honor, if it please the Court, there are two
10 issues that I raised in this appeal. The first issue is
11 whether or not the Trial Court should have given an
12 instruction to the jury on criminal intent. And the second
13 issue was whether or not there was evidence that Ms. Mimms's
14 driving was materially and appreciably impaired.

15 Very briefly, at trial the evidence was that Trooper
16 Burris was behind Ms. Mimms and observed the right wheels of
17 her vehicle veer out of her lane of travel and then back
18 into her lane, but that occurred one time and then he pulled
19 her over. As part of the traffic stop the testimony
20 revealed that Ms. Mimms has cancer and at the time was
21 receiving chemotherapy, and that came out because on the day
22 this happened she didn't have any hair and Mr., and Trooper
23 Burris recognized what was going on and so there was a lot
24 of conversation about that. The testimony revealed that she
25 had consumed a beer earlier in the evening. There was no

1 testimony that she knew that having a beer while on
2 chemotherapy would affect her ability to drive. So, that
3 was the factual landscape before the case went to the jury.

4 As to the first issue I offered to Judge Anderson -- a
5 criminal intent instruction to Judge Williamson to be given
6 to the jury. The Court would not give that instruction,
7 ruling that in effect Fifty-six/Five/Twenty-nine/Thirty is a
8 strict liability statute. I submit that it's not, Your
9 Honor. I submit to the Court that the issue of criminal
10 intent is, the issue of mens rea is one of the most
11 important aspects of our criminal jurisprudence, and the
12 legislative intent to do away with it, to do away with the
13 mens rea requirement shouldn't be lightly inferred. And I
14 submit to the Court that when the issue of a lack of
15 criminal intent is raised by the evidence, as it was in this
16 case, that due process requires that the jury be instructed
17 on criminal intent and be allowed to consider whether or not
18 there is any mens rea. I submit to the Court that merely
19 because the statute is silent doesn't mean that a mens rea
20 requirement is eliminated, and that the Courts can impose a
21 mens rea requirement.

22 I call to the Court's attention two cases. The first
23 is a United States Supreme Court case, it's Morrisette
24 against the United States, and I have a copy for the Court.

25 THE COURT: Thank you. Thank you, sir.

1 MR. WISE: And in the Morrisette case the defendant,
2 it's a criminal case, a federal criminal case, the defendant
3 was charged with violating a criminal statute. The statute
4 as it was written did not have a mens rea or criminal intent
5 requirement. The Government argued, and the Lower Court
6 agreed that if there is no mens rea in the statute then
7 there is no mens rea requirement. The Supreme Court held
8 that a Court could impose a mens rea requirement where one
9 did not appear in the statute.

10 There is a state case, State against Ferguson, and I
11 have a copy of that, this is a State Supreme Court case.
12 The defendant in this case was charged with the distribution
13 of cocaine. The Trial Court ruled that there was no mens
14 rea requirement for the offense of distribution of cocaine,
15 and the Supreme Court determined that even though a mental
16 state was not included in the statute the Court could
17 determine the required mental state.

18 I submit to the Court, the reason the Courts, our
19 Supreme Court and the United States Supreme Court, have made
20 these determinations is because it is the Court's job to
21 insure the Constitutional protections to those that appear
22 before it. I submit that once we begin eliminating a mens
23 rea requirement, which I think is what the arguments have
24 been in this case, that what we're really doing is starting
25 on a slippery slope toward the erosion of the presumption of

1 innocence. And obviously, I would argue the Court should be
2 reluctant to do that.

3 The State's argument at the trial was, and the Court
4 agreed, that DUI is a traffic statute and therefore, like
5 most traffic statutes, it's a strict liability statute. At
6 the trial indeed the analogy was drawn to speeding, the
7 argument being if you are above the speed limit it doesn't
8 matter whether or not you know you are speeding. But DUI, I
9 submit, is different from speeding and traffic offenses,
10 especially where, as here, especially where the issue is one
11 of drug consumption versus pure consumption of alcohol.
12 Most speeding cases, Your Honor, the consequence is there
13 is a fine. A DUI case is much more significant, it can
14 carry a minimum sentence of a year in prison that can't be
15 suspended, it can carry a maximum sentence of five years,
16 and a felony DUI can carry a sentence of Twenty-five years.
17 So, this issue of mens rea requirement in DUI cases is not a
18 minor issue. The consequences of a DUI conviction are
19 significant. And I submit to the Court that we should not
20 eliminate the criminal justice bedrock of requiring an evil
21 mind accompany an evil act.

22 So, what we're asking the Court to do is order a new
23 trial and give the jury the opportunity to consider the
24 issue of any criminal intent of Ms. Mimms.

25 THE COURT: And Mr. Wise, let me ask you a question

1 about that. The reason -- let's see, I believe I saw in the
2 Return that the data master -- you got that suppressed, is
3 that correct?

4 MR. WISE: It was no -- I can't remember if I got it
5 suppressed or -- I know there was a refusal.

6 THE COURT: Well, it says, the defense made the motion,
7 I assume that would be you, - - -

8 MR. WISE: That would be me.

9 THE COURT: --- motion to suppress the data master
10 evidence with no objection from the State. Judge Robinson
11 granted the motion to suppress that. You must have made that
12 motion earlier before trial.

13 MR. WISE: Yes, yes, that's when I would have.

14 THE COURT: Okay. So, there was no evidence at trial
15 about blood alcohol or anything?

16 MR. WISE: No, no, there was not.

17 THE COURT: Okay. So, the only -- and I'm looking over
18 the Return, and I guess what I have here, this is the tape
19 of it?

20 MR. WISE: Probably, Your Honor.

21 THE COURT: Okay. I have this, the summary of Trooper
22 Burris's testimony, but then there were no -- Ms. Mimms did
23 not take the stand?

24 MR. WISE: She did not.

25 THE COURT: Okay. There was a video tape at the

1 incident site, was the video -- was the video shown?

2 MR. WISE: It was, Your Honor.

3 THE COURT: Okay. Okay. And could you hear the audio
4 on the video?

5 MR. WISE: Yes, you could.

6 THE COURT: Okay. Okay, so the trooper testified, --
7 you saw the video?

8 MR. WISE: Yes, Your Honor.

9 THE COURT: There was nothing about blood alcohol
10 level?

11 MR. WISE: No.

12 THE COURT: Okay. Okay. And your argument regarding
13 mens rea in this is not -- had she not been on drugs for
14 chemo, and she had drank, let's say she drank, instead of
15 one beer she drank -- because what you're talking about,
16 it's a combination of drinking the beer, having some
17 reaction on the drugs she was taking, I'm assuming that's
18 part, that's your defense?

19 MR. WISE: Exactly, sir.

20 THE COURT: Okay. Had she drank a six pack of beer
21 would you still be arguing the necessity of mens rea in a
22 DUI case?

23 MR. WISE: It would be, I would have a different
24 argument. And I don't know that I would because the, I
25 think when you look at -- and this is a little off track,

1 but when you look at the DUI statute, if you look at what
2 the mens rea requirement would be, I would say it would be a
3 purpose standard, which means that a person does something
4 that's likely to produce a result that will hold them
5 responsible for. So, when a person drinks six beers or some
6 number that, you know, we would fight about, then I think
7 it's different. But we know that a person can drink one
8 beer...

9 THE COURT: Well, let me ask you a question, how did,--
10 was there any evidence of how much she drank in the record?

11 MR. WISE: The only evidence was the conversation
12 between her and the trooper that she had one beer.

13 THE COURT: At the time of her arrest it was on the
14 video?

15 MR. WISE: Right, exactly so. She had one beer, she
16 was undergoing chemotherapy, and that's what this case was
17 about.

18 THE COURT: Okay. Alright, okay, I'm sorry. Go ahead.

19 MR. WISE: Thank you, Your Honor. That's as to the
20 first issue. As to the second issue, I would argue to the
21 Court that there was no evidence of any impaired driving.
22 The only evidence of impaired driving was the fact that Ms.
23 Mimms's vehicle veered over the right line of the roadway
24 and that this occurred only once, that she did not leave the
25 paved portion of the roadway, and she never veered over the

1 left yellow line. So, it was over the white line once, back
2 on, and then Trooper Burris pulled her over. His position
3 at the trial was, once you cross the white line, that's it,
4 that's all I need. Our position is that veering over the
5 while line one time is, I'd submit to the Court as a matter
6 of law not impaired driving. Even the traffic statutes
7 don't make it a crime to go over those white lines one time.
8 There is really ...

9 THE COURT: What do the traffic, what do they say?

10 MR. WISE: I have this.

11 THE COURT: Well, give me that. Good, thank you, sir.

12 MR. WISE: This is the relevant statute, and if you
13 just jump down to Clause A, "A vehicle shall be driven as
14 nearly as practicable entirely within a single lane, and
15 should not be moved from the lane until the driver has first
16 ascertained that such movement can be made with safety."
17 So, it uses the language, as nearly as practicable within
18 the lane. So, I'd submit to the Court, even the statute
19 doesn't say it's an offense to leave your lane, because I
20 think if the legislature wanted you to stay within your lane
21 and made going out of your lane one time punishable it would
22 say so. So, and it kind of makes sense when you think about
23 it, Your Honor, because drivers unfortunately routinely veer
24 over those white lines.

25 THE COURT: But hopefully it's because there's a pot

1 hole or something on the side of the road, or things like
2 that.

3 MR. WISE: Exactly. Well, ...

4 THE COURT: But you could do it for any reason is what
5 you're saying. You get at least one drive over, like you
6 used to be able to get a one bite in a dog case, you get one
7 drive over the dotted line, you've got to get at least two?

8 MR. WISE: I practiced in jurisdictions where they say
9 you have to cross those lines three times..

10 THE COURT: Oh, really?

11 MR. WISE: If you don't cross them three times then ...

12 THE COURT: So, you've got to get three strikes.
13 Where was that?

14 MR. WISE: In Virginia.

15 THE COURT: In Virginia?

16 MR. WISE: Uh-huh. Because here's what happens,...

17 THE COURT: Well, let me ask you a question, does the
18 Virginia statute read that way?

19 MR. WISE: I don't know.

20 THE COURT: Okay.

21 MR. WISE: I don't know.

22 THE COURT: I was just kind of curious.

23 MR. WISE: But, you know, what happens is, and we see
24 it all the time, we, you know, the Court's probably been on
25 the road, the phone rings, something's happening in the car,

1 and you go over those lines. And I submit to the Court,
2 that's why they have those little rumble strips on those
3 lines.

4 THE COURT: To remind you?

5 MR. WISE: Exactly. Okay, move back over, because
6 that's going to happen. But I don't think that going over
7 that line one time means that -- I don't think going over
8 that line one time is a violation of the traffic offense,
9 and certainly, I don't think going over it one time means
10 your ability to operate is materially and appreciably
11 impaired.

12 THE COURT: Well, how about, would it matter as to how
13 you went over that line?

14 MR. WISE: Oh, indeed. I would submit to the Court if
15 she went over the line and, you know, ended up off the paved
16 roadway or, you know, any number of things.

17 THE COURT: Whether it's one time or not?

18 MR. WISE: It could be a problem.

19 THE COURT: Okay.

20 MR. WISE: But I think, you know, she veered over, she
21 veered back, and that was his testimony.

22 THE COURT: Okay. Alright.

23 MR. WISE: So, as I've indicated, I think we don't -- I
24 submit that we don't charge somebody with a driving offense
25 mainly because they drift off the road. And since that's

1 the only driving we have here, I submit to the Court that my
2 motion for direct verdict should have been granted. And at
3 this point that's what I'm asking the Court to so hold.

4 THE COURT: Okay. And Mr. Wise, did you ask Judge
5 Williamson to charge the statute, Subsection A?

6 MR. WISE: No, I did not.

7 THE COURT: Okay. Alright. What else?

8 MR. WISE: That's it.

9 THE COURT: Okay. Alright, Ms. Hutto.

10 MS. HUTTO: May it please the Court, Your Honor.

11 ARGUMENT BY MS. WISE:

12 I am going to address Mr. Wise's second issue first, -
13 - -

14 THE COURT: Okay.

15 MS. HUTTO: --- because I think that's what I can do
16 more concisely. The issue of Ms. Mimms veering over the
17 white line, it's not did she violate a traffic statute. It's
18 not did she seem to be materially and appreciably impaired
19 by veering over once. The question in the bad driving is
20 probable cause for the stop, and veering over the white line
21 is probable cause for a stop. Certainly, there's no
22 evidence in the record that there was a reason for her to
23 veer from the roadway. There's no indication there was an
24 animal, a pot hole or anything, all it is is that she
25 veered. That by itself is reason enough for the trooper to

1 have stopped her, which he did in this case.

2 Materially and appreciably impaired goes to then what
3 the trooper observes and what is on the video when Ms.
4 Mimms's mental state is observed. I find it interesting
5 that Mr. Wise uses the expression, slippery slope in
6 discussing this issue, since the real slippery slope, if we
7 get into a discussion of mens rea and intent in Fifty-
8 six/Five Twenty-nine/Thirty is, you're going to have a lot
9 of defendants then claiming, well, I didn't really intend to
10 get drunk, I just had a, you know, a six pack or a Twelve
11 pack, or one of those suitcases. The statute is pretty
12 clear, and it says that, "A person who is materially and
13 appreciably impaired, and if that impairment is the result
14 of alcohol or drugs, or drugs and alcohol," it doesn't say
15 that they have to be on legal drugs, it doesn't say what
16 drugs, it says materially and appreciably impaired because
17 of drugs, alcohol, or both. And in this case where it's a
18 drug that she was prescribed, we certainly know that there
19 are lots of good prescription drugs out there that when you
20 take you can't drive. We know there are lots of prescription
21 drugs out there that when you take you can't then turn
22 around and drink on top of them. The jury looked at the
23 video, they looked at the driving, they determined the
24 facts. They were the fact finders, and their fact finding
25 should be upheld on this. It is not, it is simply not an

1 intent statute. It is, for lack of a better term, strict
2 liability. If you are impaired, and the jury found she was
3 impaired, and that impairment is the result of drugs and
4 alcohol, or drugs or alcohol, then you are guilty of DUI.

5 There is simply no indication that intent is necessary,
6 and I would submit to you that quite frankly saying that
7 intent should be necessary is going to throw up a whole new
8 line of defense that I don't think we want to start in this
9 State. The two cases that Mr. Wise provides to you from
10 the Supreme Court deal with vastly different crimes. One
11 is -- and this is reading them at a glance while I sit
12 here, deals with government property and basically the
13 guy not realizing what he had is really a quite different
14 and somewhat complicated crime. And then, you have
15 distribution of cocaine. Arguably, yes, you've got to
16 know that in order to do it. Here, once you drink and you
17 are impaired then you are guilty of DUI. If you take
18 drugs and you are impaired you're guilty of DUI. You don't
19 need the intent. The danger of inserting intent is just
20 that, it's very dangerous, and therefore, I would ask that
21 you deny the appeal in this case and let the conviction
22 stand.

23 THE COURT: Okay, thank you, ma'am.

24 And Mr. Wise, anything else?

25 MR. WISE: Very briefly, Your Honor.

1 THE COURT: Yes, sir.

2 ARGUMENT IN REPLY BY MR. WISE:

3 As to the veering, I think the State's position is that
4 is probable cause for the stop, I'd submit to the Court that
5 an action that is not unlawful can't be probable cause. And
6 I've discussed why I say that the veering off the road
7 wouldn't be enough for probable cause because it is lawful.

8 THE COURT: But that's usually up to the officer to
9 determine, right?

10 MR. WISE: Well, no, Your Honor, I think a Court can
11 take a look at the facts in the case and make a ...

12 THE COURT: No, I understand that I should review it,
13 just like whenever there is any kind of probable cause, I
14 can review it and see whether I believe there's probable
15 cause.

16 MR. WISE: Right.

17 THE COURT: Supposedly, the officer making the arrest
18 makes the determination about whether there's probable cause
19 in that situation or not.

20 MR. WISE: That's correct, that's correct.

21 THE COURT: Okay. Yeah, okay. And can I ask you
22 another question, Mr. Wise? Was there a field sobriety
23 test?

24 MR. WISE: No -- well, I believe there were, I believe
25 there were.

1 THE COURT: Okay.

2 MR. WISE: Yeah.

3 THE COURT: Thank you, sir. Now go ahead.

4 MR. WISE: The second issue that was raised was the
5 potential for defendants to say they didn't intend to get
6 drunk, and I understand that. And we kind of touched on
7 that a little bit. I'd submit to the Court that in certain
8 circumstances the Court is going to make a determination.
9 Even when you say you didn't intend to get drunk the facts
10 of the case are not going to allow you to get the criminal
11 intent statute. As the Court posed to me, you have five
12 drinks -- if I represent somebody who's had five drinks,
13 maybe even three drinks. I'm probably not going to ask for
14 the criminal intent statute, because I think at that point
15 looking at the kind of mens rea that exists, I think that's
16 a reasonable issue. But when you have a situation where a
17 person is engaged in activity which really would be lawful,
18 having a beer is okay, chemotherapy is okay, the combination
19 is an issue. Now, certainly I recognize the jury could have
20 said, you know what, you're on chemotherapy, you had a beer,
21 you should have known better, but ...

22 THE COURT: And they could have said, but it's not DUI.
23 The jury after listening to all that could have said, good
24 enough excuse for me.

25 MR. WISE: But they didn't, they didn't even have the

1 opportunity to think about whether or not she had to have
2 known that this was going to be the issue. And that's the
3 only thing I was arguing, just let them consider it. If they
4 reject it, they reject it, and that's fine.

5 The issue of whether or not it would be a problem with
6 prescription drugs, we know that there are prescription
7 drugs that you can take and drive. So, I submit to the
8 Court, yes, that there are some times when you could take
9 prescription drugs that this would be an issue. If you know
10 that this is going to affect you this way, yes, that's an
11 appropriate issue for the Court to charge criminal intent.
12 And I'm not arguing to the Court it's going to be in every
13 case, but the facts of this case warrant, and I think due
14 process requires under the facts of this case that they at
15 least be allowed to consider that.

16 And as to the last issue, the cases that I passed up,
17 the only point of those cases is to make the Court aware
18 that the United States Supreme Court and the State Supreme
19 Court has said, you know what, even if the statute doesn't
20 have a mens rea requirement, we can put one in. The Courts
21 are empowered to do that. The fact that the legislature
22 doesn't include one isn't the end of the issue as to mens
23 rea in criminal statutes.

24 THE COURT: Thank you, sir.

25 MR. WISE: Thank you.

1 THE COURT: Alright, what I'll do is, I will read over
2 these and I will contact y'all about my decision. Okay?
3 Thank y'all very much.

4 MS. HUTTO: Thank you, Your Honor.

5 MR. WISE: Thank you, Your Honor.

6 (END OF TRANSCRIPT)

CERTIFICATE

I, the undersigned, Mrs. Harry A. Walker, of Rowesville, South Carolina, Official Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned cause, relative to appeal, in the Court of General Sessions for Orangeburg County, South Carolina, on the Fifth day of January, 2012.

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

DATE: February 2, 2013

Harry A. Walker
(MRS.) HARRY A. WALKER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 STATE OF SOUTH CAROLINA)
)
 Plaintiff,)
)
 vs.)
)
 DAISY LYNNE MIMMS)
)
 Defendant.)
)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT
 2011-CP-38-00486

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SEP 11 2012

ORDER DENYING APPEAL

THIS MATTER came before me on January 5, 2012 pursuant to a Notice of Appeal filed by the Defendant.

IT APPEARING that there are no legal or factual grounds that would constitute error in the Magistrate's decision.

NOW, THEREFORE, it is hereby:

ORDERED, ADJUDGED, AND DECREED that the Defendant's Appeal be dismissed with prejudice.

AND IT IS SO ORDERED.

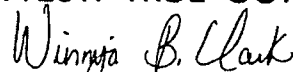


Edgar Warren Dickson
 PRESIDING JUDGE
 FIRST JUDICIAL CIRCUIT

Orangeburg, South Carolina

September 6, 2012

ATTEST: TRUE COPY



CLERK OF COURT
 ORANGEBURG COUNTY, SC

2012 SEP - 7 PM 6: 58
 FILED FOR RECORD
 WINNIE B. CLARK
 CLERK OF COURT
 ORANGEBURG, SC

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that his Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November ¹⁴th, 2013

Mark Wise

Mark Wise
Assistant Public Defender

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Orangeburg, SC 29116
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