

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Clarendon County

Honorable H. Steven DeBerry IV, Circuit Court Judge

TAMMY D. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000763

APPENDIX

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1 usually the cars are being driven by somebody into another
2 car or they hook them to cables and pull them into each
3 other. So they know exactly how fast the cars are going.

4 Q And your job was to use the tools that you have to
5 try and come up the speeds that that they knew that the
6 vehicles were traveling a distance and so forth?

7 A Yes, sir.

8 Q And did you pass that test?

9 A I did. It does have a 70 percent fail right on
10 average. And I was fortunate that I did pass my first
11 time.

12 Q And so you been accredited by that national board?

13 A It is national board. However, they are
14 international members. I do know there's some members
15 from Spain and Australia. And there's a few other
16 countries that I've met at one of our last meetings.

17 Q And you been a member since 2011?

18 A Yes, sir.

19 Q Okay. Does your training with SLED -- I'm sorry your
20 training with accident reconstruction involved the
21 preparation of what -- of computer assisted drawing with
22 what's commonly referred to as CADS?

23 A Yes, sir. they do.

24 Q Now, do you have additional training in animation?

25 A I do. Matter of fact, I was teaching animation

1 course at one point.

2 Q Tell the jury what animation is?

3 A Animation is a 3D moving rendering of the collision
4 itself. We get all the information from forensically
5 mapping the scene. And then we can put the vehicles back
6 on the evidence. It's a scale image. We have scaled
7 vehicles. We have the evidence that's forensically
8 mapped, so it's also scaled. And then it's kind of like,
9 I guess, the best way to put it it's a moving image of the
10 collision.

11 Q Okay. And it is based on mapping done at the scene
12 and this computer assisted drawing?

13 A Yes, sir.

14 Q Okay. Tell the jury a little bit more about the
15 mapping that's done at the scene and how that works?

16 A Mapping is we use equipment basically so everybody
17 seen it when they surveying on the side of the roadway.
18 We use the same equipment. It sends out a -- keep it
19 brief essentially a laser. It's a infrared beam. That
20 it's either a prism or a cone that we have a reflective
21 sticker on it. It measures the waive length of that beam
22 coming back to the equipment and that determines how far
23 away an object is from the total station.

24 Q It's surveying equipment?

25 A It's exact same equipment as surveying.

1 Q You been trained to use that equipment?

2 A Yes, sir, I have.

3 Q And, I guess, this probably goes without saying, but
4 you've had occasion I assume with MAIT to investigate
5 accidents concerning automobiles?

6 A Yes, I get a lot of ---

7 Q How many times?

8 A From MAIT in particular or throughout my career?

9 Q Well, since you been on the MAIT team?

10 A Since I been on the MAIT team we average about 130
11 major collisions a year in my team. Sometimes I will
12 assist with other teams and I'm also a member of our
13 emergency response team. So if we have a special
14 circumstance come up, then I've got to go take care of
15 that case.

16 Q So you mention that there's several different teams
17 throughout. How many teams are there?

18 A We have four teams and then if you add our
19 substations, we got six groups of MAIT members.

20 Q Is each team assign to a particular area of the
21 State?

22 A Yes, sir, the team I'm assign to Midlands we cover 14
23 counties.

24 Q And that includes Clarendon County?

25 A Clarendon County is one of my counties, yes.

1 Q What is this emergency response team you talk about?

2 A Any time we get a major -- let's just say for
3 instance -- well, I've done airplane crashes, train
4 crashes assisted with those. But any time we get a major
5 incident -- well, like say one of the with governor's kids
6 was involved in a collision, the emergency response team
7 would go out to work that. We go out we have specialize
8 members that are dedicated to certain disciplines within
9 collision reconstruction. Mine is actually CAD and
10 animation. And we have to go and get that case
11 investigated from beginning to end before day is out.

12 Q How many members are on this emergency response team?

13 A Six.

14 Q Six. And you are one of the six members in the state
15 that's assign to that team?

16 A Yes, sir.

17 Q And your particular responsibility on that team is
18 computer assisted drawings and animation?

19 A Yes, sir.

20 Q Okay. Officer Ridgeway, have you previously been
21 qualified as an expert witness in South Carolina court?

22 A I have.

23 Q How many times?

24 A Four times.

25 Q Four times?

1 A Yes, sir.

2 Q In what field?

3 A Four times in general sessions while on MAIT. It's
4 been a couple times before that for magistrate's court as
5 well.

6 Q In what field have you been qualified as an expert?

7 A Both collision reconstruction and animation.

8 MR. DURANT: Your Honor, at this time the State
9 would offer Lance Corporal Ridgeway of the South Carolina
10 Highway Patrol MAIT team as an expert witness in the field
11 of accident reconstruction and animation.

12 THE COURT: What says the defense?

13 MR. BARR: I just got few questions, Judge.

14 THE COURT: Okay.

15 VOIR DIRE

16 BY MR. BARR:

17 Q With respect to the reconstruction and animation, you
18 indicated that you testified as an expert in general
19 sessions court approximately four times?

20 A Four times, yes, sir.

21 Q And have you testified in any cases as an expert in
22 general sessions court involving death?

23 A That's what my team does, yes, sir. Those are the
24 cases we handle.

25 Q Those are the cases you handle?

1 A Yes, sir.

2 MR. BARR: Your Honor, I don't challenge Officer
3 Ridgeway's qualifications as an expert in the field of
4 accident reconstruction and animation.

5 THE COURT: All right. The Court so find he's
6 an expert. Solicitor.

7 MR. DURANT: Thank you, Your Honor.

8 BY MR. DURANT:

9 Q Officer Ridgeway, did you have occasion to
10 investigate an accident that occurred on August the 30th
11 2014 on Highway 261 in Clarendon County?

12 A Yes, sir, I did.

13 Q When did you actually arrive -- did you come to the
14 scene of the accident?

15 A I did. I arrived at two a.m. that morning.

16 Q Two a.m. that morning. So that would have been --
17 the accident occurred just before midnight on the 30th.
18 This would have been on the 31st at two a.m. that you
19 arrived?

20 A Yes, sir.

21 Q Okay. Tell the jury what you observed when you
22 initially arrived on scene?

23 A The first thing I observed was the Hyundai Tiburon in
24 the roadway with skid marks leading up to that. Then I
25 noticed the Dodge Dakota off the right shoulder of the

1 roadway up against the tree.

2 Q What were your initial impressions about the accident
3 when you arrived there?

4 A Based on the damage to both vehicles that the Dodge
5 had been struck in the rear by the Hyundai.

6 Q Walk us through your investigation. You come out to
7 the scene. You make an initial inspection of the vehicles
8 and then walk the jury through -- what do you do next?

9 A Usually the first thing I do when I arrive on the
10 scene is I approach the -- either the primary
11 investigating officer which is the trooper that works the
12 road. They're usually the first ones on the scene or the
13 supervisor -- the road supervisor that is over the scene
14 and I try to get the details of what was involved in the
15 collision and any variables that I can't tell just from
16 looking at it. Also, what they maybe looking for. Again,
17 if it is a DUI type situation, if they're looking at
18 speed, drugs anything they might find in the car, that I
19 need to pay particular attention to. It is just the
20 circumstances that they have found before I've gotten
21 there. Once I do that, I usually go ahead and photograph
22 the scene before anything has a chance to be disturb. And
23 then as team members arrive like in this case, Corporal
24 LeDonald and Sergeant Farmer arrived after I did. Then we
25 designate different jobs for each one of us to do on that

1 collision.

2 Q Okay. And did you actually photograph this scene?

3 A I did.

4 Q Okay. I'm going to walk you through some photographs
5 and ask you about them.

6 MR. DURANT: First of all, I got State's Exhibit
7 1 through 45 I believe they're in without objection, Your
8 Honor.

9 THE COURT: Okay.

10 MR. DURANT: And I've also got what's been
11 marked as Defendant's Exhibit 1 through 5 and I'm going to
12 admit these into evidence myself I assume without
13 objection?

14 THE COURT: You have any objection?

15 MR. BARR: No, sir.

16 THE COURT: I'm sorry Defense 1 through 5?

17 MR. DURANT: Yes, sir.

18 THE COURT: Okay. Go ahead.

19 (WHEREUPON, State's Exhibits Nos. 1-45 were
20 admitted into evidence.)

21 (WHEREUPON, State's Exhibits Nos. 67-71 were
22 admitted into evidence.)

23 BY MR. DURANT:

24 Q Let me just walk you through these photographs,
25 Corporal Ridgeway. If you would just kind of describe to

1 the jury what you see here?

2 A That is the view -- actually that was the view that I
3 arrived on the scene as well. That's walking up towards
4 the impact area. You could see the skid marks coming in.
5 There's two parallel skid marks. And then right there
6 where the scratches are in the right almost in the center
7 of the lane would be the impact location. And then
8 there's the skid marks continue pass that. You can see
9 where the tires load right there at the impact location.
10 It kind of gets lighter, gets a little bit fatter. And
11 then the skid marks leading up to the final rest position
12 with the Hyundai Tiburon.

13 Q So this would have been -- this is coming Paxville
14 towards Manning again?

15 A Yes, sir.

16 Q And this would have been the view that you observed
17 when you arrived on the scene if you approach the accident
18 scene?

19 A Yes, sir.

20 Q Okay. And there's a road off to the right here. Do
21 you know which highway that is?

22 A I believe that's Boyd Road.

23 Q And there's another road that has been mentioned in
24 regard to the location that's Home Branch Road. Where
25 would that be in relation to that photo?

1 A Home Branch is behind this photo to the left.

2 Q So behind these markings on the highway to the left?

3 A Yes, sir.

4 Q Okay. And I want to ask you again you described some
5 tire markings on the roadway in an area here. Tell the
6 jury about those areas?

7 A Again, the tire marks indicate that the vehicle, of
8 course, rapidly decelerating. And then the area that's
9 designated as the area of impact is those gauges in the
10 roadway. Essentially, for this collision based on the
11 evidence on the front of the car, the hood of the car and
12 the rear and underneath the truck, the car under rode the
13 the truck which the weight of the truck then pushes down
14 on the front of the car. So all that metal that's
15 underneath the vehicle is what gauges into that payment at
16 least. And that's also why you see the tires kind of
17 getting fatter and a little bit lighter because those
18 tires are also getting pressed down in the pavement at
19 that same point.

20 Q I have some gauge marks ones a little bit closer.
21 This area with the orange markings around -- the orange
22 paint around it is those the gauge marks you're talking
23 about?

24 A Yes, sir, it is.

25 Q And then what are these again skid marks?

1 A Skid marks, tire marks, skid marks.

2 Q And what causes that?

3 A Basically the tires begin to lock and just slid into
4 friction that's rubbing off the -- it's a technical term
5 it's called bituminous layer of the tire asphalt, but it
6 is rubber rubbing off onto the concrete or the asphalt
7 surface?

8 Q Is this caused by locking the breaks?

9 A Yes, sir, it is.

10 Q Okay. Let me show you another photo of the -- these
11 are the gauge marks you describe?

12 A Yes, sir.

13 Q Tell the jury again what exactly what cause the gauge
14 marks in the highway?

15 A This particular set would be from the under carriage
16 of the car the Hyundai Tiburon being pushed down into the
17 asphalt. Basically your shocks compress and then the
18 front of your car gets slammed down into the asphalt.
19 And, you know, you have a lot of metal under there, so
20 it's gauging out the asphalt which leaves those marks.

21 Q What would cause the front of that Hyundai to push
22 down into the roadway and make gauge marks?

23 A When it hits the rear of this Dodge. Of course, the
24 Dodge is sitting a little bit higher than the Hyundai so
25 it under rides, it goes up underneath the back bumper. So

1 you have all that weight pressing down from the rear of
2 the Dodge. It's pressing down into the -- onto the hood
3 of the car. You have to understand that because the car's
4 rapidly breaking and I'm sure we've all seen this. When
5 you slam on your breaks, the front of your car goes down.
6 So the front of the car's going down and as the rear of
7 the Dodge is also pushing it down.

8 Q So with respect to the sequence of this accident,
9 what is the significance of the gauge marks in the
10 roadway.

11 A It tells us where the area of impact was, where it
12 happened.

13 Q The first area point of impact?

14 A Yes, sir.

15 Q The point of impact of the two vehicles?

16 A Yes, sir.

17 Q So is it your opinion then, Trooper Ridgeway, that
18 the first area of impact between these two vehicles is
19 where those gauge marks are between Home Branch Road and
20 Boyd Road?

21 A Yes, sir, that's the area of impact.

22 Q This would be the area then that the white vehicle
23 would have struck the rear of the black vehicle; is that
24 right?

25 A That's correct.

1 Q Okay. Show you a couple more photos just walk
2 through them all real quickly. Some of them are redundant
3 somewhat. Get a little bit closer to the white vehicle
4 here. This the condition in which you found it when you
5 arrived on scene?

6 A It is.

7 Q Okay. And again here -- now, there's some orange
8 paint, some dots going behind the white vehicle in the
9 parallel lines?

10 A Yes, sir.

11 Q What's the significance of those markings?

12 A These are marking the tires mark out there because we
13 were there right after the collision. We can still see
14 the tire marks. However, tire marks do tend to fade fast
15 especially in heat as it was in August. So we're painting
16 them in case we ever have to come back to a scene. We do
17 that on every scene. It is just recorded evidence. And
18 that's why it was there and done there off the -- it is a
19 little hard to see where Sergeant Farmer is standing.
20 There's another set of orange paint. Also the left side
21 of the car we're marking where the tires were on the car.
22 So once that car is towed away from the scene, we would
23 still be able to come back and place that car back at that
24 location if we have to.

25 Q While we are talking about this area was there a

1 debris field associated with the impact of these vehicles?

2 A There is. Of course, you can see several different
3 pieces. Actually right there where Sergeant Farmer is
4 crouching down, she's recording tire measurements while
5 doing general vehicle exam. That box that is coming off
6 the right side of the car is actually the tool box that
7 was in the bed of the Dodge pickup truck.

8 Q Would it be unusual for the tool box to fall off -- I
9 guess debris field with the extended some point past the
10 point of impact that you testified to earlier?

11 A Not particularly unusual because we always have parts
12 coming off of cars or off of vehicles. And since the
13 direction of force is going towards where the truck ends
14 up, all the debris is going to continue going that
15 direction as well.

16 Q Objects i motion tend stay in motion?

17 A Yes, sir. It is unusual to see a tool box laying
18 there near the scene of impact.

19 Q Okay. It's unusual for a tool box to be ejected off
20 the back of vehicle?

21 A Yes, sir, we don't really see that.

22 Q What is the significance of that?

23 A That it was an extremely hard hit.

24 Q A great deal of force?

25 A Yes, sir, a lot of force.

1 Q Okay. As we get little bit closer to the white
2 vehicle. This is another member of the MAIT team you're
3 standing beside?

4 A That's Sergeant Farmer, yes, sir.

5 Q There's some markings around the base of the tires of
6 the vehicle. Is that something highway patrol did as
7 well?

8 A Yes, sir, again that's recorded where the final rest
9 of the vehicle was.

10 Q Okay. While we're the on subject, how do we know
11 that that's the final resting place of the vehicle?

12 A And this one is really easy because the tire marks
13 lead right up to tires and they don't go any further.
14 They don't stop short. They go to the tires. They stop,
15 that would be the final resting position of that vehicle.

16 Q So the car is parked arrived at the end of the tire
17 marks at the end of skid marks?

18 A Yes, sir.

19 Q Okay. And did the skid marks actually continue all
20 the way up into the tires?

21 A They do. They go underneath the tires.

22 Q All right. Show you another photo here. This is the
23 front side of the white vehicle?

24 A Yes, sir.

25 Q Okay. Anything significant about the damage to the

1 front of that vehicle?

2 A Again, that indicates that the front of that vehicle
3 struck the rear of the other vehicle, but you can also see
4 where the rear bumper went up on the hood has that
5 horizontal line going right there across the hood.

6 Q Here?

7 A Yes, sir. So that tell us it was definitely under
8 ride situation and you can also see the front bumpers kind
9 of push down.

10 Q If this had been a head on collision, how would the
11 damage to the front of that vehicle be different?

12 A Probably be depending on the vehicle that is coming
13 head on, the speed of the vehicle coming head on with it.
14 In this area, I would expect it to be greater. You also
15 wouldn't get that under ride because the front of a truck
16 is blunt where's back of it is typically sloped because
17 you have the bed right there. So you wouldn't expect to
18 see that much under ride from a frontal collision, head on
19 collision at that.

20 Q Okay. And again that under ride that causes that
21 horizontal line you were talking about on the hood of the
22 car?

23 A Yes, sir, and also gauging on the pavement.

24 Q Okay. Another photo of the side of the vehicle.
25 Again these are markings that you all -- that highway

1 patrol made?

2 A Yes, sir.

3 Q At the scene these are the skid marks going all the
4 way up to the tires; is that right?

5 A That's correct.

6 Q Okay. Before we go any further, I want to show you a
7 couple more photos what you already testified to. What
8 are we looking at here?

9 A Those are tire marks. Now, this is looking back
10 toward Paxville, so that's Home Branch off to the right
11 side of the photograph. Those tire marks going through
12 the area impact and again those are the gauges at the area
13 of impact.

14 Q So this Home Branch Road here?

15 A Yes, sir, it is.

16 Q So this looking back from the white vehicle where you
17 showed the photos of the back towards where you approach
18 from towards Paxville?

19 A Yes, sir, that's correct.

20 Q And again are these the gauge marks you're speaking
21 of?

22 A They are.

23 Q In between Boyd Road and Home Branch?

24 A Yes, sir.

25 Q And it's your testimony that that is the point of

1 impact?

2 A That's correct.

3 Q Okay. A few more photos of the white vehicle. I'm
4 going to show you here. This is a condition in which you
5 found the vehicle when you arrived on scene?

6 A That's correct.

7 Q Okay. Show you the interior of the white vehicle.
8 What is this white clothe coming off of the steering while
9 there?

10 A That's the airbag.

11 Q So the airbag deployed in the white vehicle?

12 A That's correct they did.

13 Q Do you recall whether or not the pickup truck
14 deployed air bags -- whether or not they deployed?

15 A They did not deploy.

16 Q Did not deploy?

17 A No.

18 Q Okay. Again, the interior of the white vehicle?

19 A Yes, sir.

20 Q Okay. Did you take all these photos?

21 A I took them all.

22 Q Do you remember seeing a white or clear soda cup in
23 the vehicle?

24 A Yes, sir, I do.

25 Q Okay. And based on -- did you pick it up and smell

1 it?

2 A I did.

3 Q And based on your experience of -- your 19 years of
4 experience with the highway patrol, do you have an opinion
5 as to whether or not that cup contain alcohol?

6 A It did smell like an alcoholic beverage.

7 Q Okay. Tell me where we are in the accident scene
8 here?

9 A This is just pass that final rest position or final
10 rest of the Hyundai and leading up towards the final rest
11 of the Dodge pickup.

12 Q So we're still looking towards Manning here coming
13 from Paxville?

14 A Yes, sir.

15 Q Just left of the white vehicle. Who is that walking
16 in the roadway can you tell?

17 A Yes, that is Trooper Macoon.

18 Q With highway patrol obviously?

19 A He is.

20 Q Just another photo in that sequence?

21 A Yes, sir.

22 Q Okay. I guess before we go any further what is this
23 -- there's some type of liquid substances appear to be a
24 spill on the roadway there. Anything significance about
25 that?

1 A That's just on the front of the vehicle. That's the
2 different fluids in the engine department. Usually
3 radiator fluids, transmission and oil we see coming out
4 on.

5 Q Anything significant about the direction that it is
6 draining?

7 A Just indicating that there's a slight grade going off
8 the roadway. All roads are crown in the middle so that
9 rain runs off the roadway.

10 Q Actually drain off the right-hand side?

11 A Yes, sir.

12 Q Okay. Another photo approaching the black pick up
13 truck?

14 A Yes, and I'm actually walking the post-impact travel
15 path of the Dodge pickup truck when I'm taking these
16 photos.

17 Q Again this would have been one of the first things
18 you did when you arrived on scene?

19 A Yes, sir.

20 Q Okay. Tell the jury about this photo?

21 A This is the Dodge pickup truck at the final rest.

22 Q Is this the condition again in which you found the
23 pickup truck that evening?

24 A Yes, that's exactly how I found it.

25 Q It's a view from the other side?

1 A Yes, sir.

2 Q What are we looking at here?

3 A The driver side or the left side of that Dodge pickup
4 at final rest.

5 Q Okay. This is another photo the jury seen. Was the
6 driver of that Dodge pickup was he still in the vehicle
7 when you arrived on scene?

8 A No, he been extricated before I arrived on scene.

9 Q So this is the photo that the other troopers took
10 before you arrive?

11 A Yes, sir.

12 Q Okay. Tell the jury about the damage to the rear of
13 that Dodge pickup truck?

14 A And actually still remember the damage because it's
15 pretty extreme and it still shocks me. I've never seen a
16 frame where that frame's bent at 90 degrees. That's
17 essentially a steel beam that runs from the front to the
18 rear of the vehicle. They're very strong naturally as the
19 framing of the vehicle. And this one has been bent in
20 half. Also, you can see the springs on this picture. You
21 can see that the springs are deformed for the rear axle.
22 And again everything's crush towards the front of the
23 pickup or front of the cab of the truck. You can see
24 where the bed gets into the cab right there on that
25 vertical line separating the two. So it's -- this told me

1 then and it's telling me now this was a high energy, high
2 speed collision.

3 Q Okay. Is there any way that damage to the rear of
4 that truck had been caused by a head on collision?

5 A No. It had force coming in from the rear of the
6 vehicle.

7 Q Okay. One more photo of the damage to the rear of
8 the vehicle is this taken from the same side?

9 A Yes, sir, it sure is.

10 Q Okay. Is this the steel beam that the frame of the
11 pickup truck you were talking about?

12 A Yes, sir, it is. It should be straight.

13 Q Okay. What are we looking at here?

14 A This is the -- looks like the same shot from the
15 right side of the vehicle.

16 Q Okay. This is on the other side closest to the
17 woods?

18 A Yes, sir. And that's also letting me know that this
19 collision is pretty much centered on the rear of that
20 vehicle. Both frame rails had the same amount damage to
21 them. If it was all set, you would expect one to be
22 normal or prior to being deformed and then the other one
23 should be damaged.

24 Q Okay. So if the black pickup truck had just pulled
25 out from say Boyd Road, he just pulled out and she kind of

1 hit him in the side of the rear of the truck, you expect
2 to see the damage would look different?

3 A Yes, sir, it look a lot differently.

4 Q He wouldn't expect both sides to be kind of
5 uniformly deformed as they are here?

6 A No, not at all.

7 Q Okay. Is this the right side of the pickup truck as
8 well?

9 A It is.

10 Q And tell me what this photo shows?

11 A That is the spring -- the rear springs on the truck
12 that had been deformed and looks like it separated from
13 its mounted bracket.

14 Q Okay. What are we looking at here?

15 A This is the front of the truck, the hood and the
16 motor area. That's where it struck the tree at.

17 Q This is where it struck the tree?

18 A Yes, sir, the tree is right there in front of it.
19 It's kind of hard to tell with all the green.

20 Q This the interior of the truck?

21 A Yes, sir, from the passenger side.

22 Q Okay. And here?

23 A Yes, sir.

24 Q Okay. Anything significant about the seats in the
25 truck?

1 A I can't tell on this photograph so much about the
2 passenger seat, but it looks like the drivers seat has
3 been pushed back.

4 Q The back of the seat?

5 A The back of the seat, yes.

6 Q And what type of force would cause that?

7 A A force coming in from the rear. The thing is, you
8 know, whenever you have a force on you, you go in the
9 direction of the force. And in this case it would be the
10 occupant's body is -- the truck is basically being pushed
11 out from underneath occupant. So the occupant wants to
12 stay in place, but the truck is being pushed. So that
13 makes it seem like they're going backwards same that we
14 see in every rear-end collision.

15 Q In your experience in high impact collision such as
16 this with impact from the rear, you mention that the
17 person wants to stay in place and the truck's pushed out
18 from under. What kind of impact is that cause on a
19 person's body?

20 A From a rear of the collision?

21 Q Yes, sir?

22 A Typically what we see are a lot of head and neck
23 injuries especially if we don't have the headrest adjusted
24 properly because the same thing when your body gets pushed
25 out, your head wants to stay in place. So it also goes

1 backwards.

2 Q Is this the driver seat here?

3 A It is.

4 Q Is that pushed back as you discussed?

5 A Yes, sir.

6 Q Okay. I want to finish with the photographs real
7 quick. There were somewhat out of order, so I'm going to
8 kind of walk back through the accident scene with you.
9 This had been your approach to the accident scene that
10 evening?

11 A Yes, sir, that's correct.

12 Q What highway is this off to the left-hand side?

13 A Home Branch.

14 Q And where would the vehicle be in relation to this
15 photo?

16 A My vehicle is the one diagonal across the roadway.

17 Q Here?

18 A Yes, sir. The Hyundai is right in front on the other
19 side of that. And then where you see that big bright area
20 on the right side of the road fire department had their
21 truck there with the lights lighted it up for us. That's
22 the final rest of the Dodge.

23 Q Okay. As we get closer to your vehicle, there's some
24 marks -- is this still your vehicle in the roadway here?

25 A It is.

1 Q And there's some markings, some paint markings in the
2 roadway there. What are those for?

3 A That was the first area that we can see the skidding
4 beginning leading up to the Hyundai.

5 Q Okay. So skid marks would have begin -- look back to
6 where your truck was before you actually get to your
7 vehicle kind of right in line with Home Branch Road?

8 A Yes, sir, I believe they were right around the center
9 of Home Branch Road.

10 Q Okay. This is Home Branch Road off the left-hand
11 side there?

12 A That's correct.

13 Q Was that street light operating when you arrived on
14 scene?

15 A Yes, sir, this is exactly how I found it.

16 Q Okay. What is this view from?

17 A That is from Home Branch Road coming up on 261.

18 Q Okay. And this the sign from Home Branch Road?

19 A Yes, sir.

20 Q Okay. What is the view here?

21 A Looking back down Home Branch Road.

22 Q Okay. And here?

23 A This is looking back. This is the direction that I
24 came from. The direction that the tire marks indicate
25 that the Hyundai was coming from and we had a trooper up

1 at the top of that hill as well try to slow down traffic.

2 Q Okay. So this is Home Branch Road looking back
3 towards Paxville?

4 A Back towards Paxville, yes, sir.

5 Q And there's a trooper parked at the crest of the hill
6 here?

7 A Yes, sir.

8 Q To direct traffic?

9 A To keep them from cresting that hill and seeing us
10 there, yeah.

11 Q Okay. So this another trooper lights?

12 A Yes, sir.

13 Q Okay. Tell me about this photo?

14 A This photo is coming up on Home Branch. It is
15 indicating that the 45 mile an hour cautionary sign.

16 Q That's a speed limit?

17 A That is a speed limit, yes, sir.

18 Q Okay. All right. Trooper, while I go through the
19 photograph, can you provide us kind of a baseline for your
20 testimony so you photograph the accident scene and then
21 what do you do?

22 A Once I photograph the scene, I went through and
23 started setting up the total station equipment, which is
24 the equipment. Again, it's like surveying equipment on
25 the side of the road. Setting that up and getting ready

1 to do a forensic mapping of the scene.

2 Q You did map the scene?

3 A Yes, sir, I did.

4 Q Do you remember about how many points you mapped?

5 A I do not recall the number. It's a lot of points.

6 Q Okay. All right. Is it more than 50, more than 100?

7 A I can pull it up on the computer and tell you, but
8 it's far more than that. Our scenes are generally about
9 300 points.

10 Q Okay. I may have asked you this question earlier,
11 but how accurate is that mapping equipment?

12 A Our equipment has been calibrated and it is accurate
13 to a quarter of an inch and a thousand feet.

14 Q Okay. And tell the jury about the kind of things
15 that your mapping when you use this equipment?

16 A When we're mapping the edge of the roadway, we're
17 also mapping the roadway lines, any driveways. It really
18 depends on the scene. In this one, I remember mapping all
19 the roadway. The roadway itself is the edge of the
20 pavements. You paint fault lines any yellow lines. Also
21 any driveways or roadways coming off the roadway. And it
22 will map the -- it will hit points for the actual evidence
23 left on the roadway during the collision.

24 Q So you're mapping where everything is in relation to
25 one another?

1 A Yes, sir.

2 Q And what's the purpose, the end purpose of doing
3 that?

4 A It's to be able to give us a scale. It's recording
5 the scene. So we're able to record the scene in a -- and
6 produce scale diagram. So if we ever have to go back out
7 there, you can take measurements from the diagram and
8 actually put the vehicles in evidence exactly right back
9 on the road as we found it.

10 Q And based upon these points mapping the scene, you
11 actually create scale diagram of the accident scene?

12 A Yes, sir, I did.

13 Q And what are those referred to?

14 A Generally CADS computer aided drawings.

15 Q I'm going to show you what's been marked as State's
16 Exhibit 60 through 64. And do you recognize these?

17 A Yes, sir, these are the CADs I produced.

18 Q These are the CADS you produced based upon the points
19 that you map at the scene?

20 A That's correct.

21 Q Is there any other information that's input to allow
22 you to make the CAD drawings?

23 A Not really. I mean, the only thing I do is surface
24 between the CADs. So it actually looks more like a
25 roadway instead of just a stick roadway. So the only

1 thing I add that is not mapped is literally coloring for
2 the grass and for the asphalt as well. And then I will --
3 like in this one, I also had 3D use of the vehicle at the
4 final rest?

5 MR. DURANT: Your Honor, the State would offer
6 State's Exhibit 60 through 64 into evidence.

7 THE COURT: What says the defense?

8 MR. BARR: No objection.

9 THE COURT: All right they are in without
10 objection.

11 (WHEREUPON, State's Exhibit Nos. 60-64 were
12 admitted into evidence.)

13 BY MR. DURANT:

14 Q First of all, let me show you State's Exhibit 60.
15 What does this drawing show?

16 A This is the roadway layer. We make several different
17 CAD plates. This would the be roadway lawyer, just the
18 roadway without any evidence or vehicles on it.

19 Q So this is just showing the distances in relations of
20 the roads. The roads coming on to 261 and off of it?

21 A Yes, sir.

22 Q Okay. This Home Branch Road here?

23 A That is.

24 Q And which one of these two areas is Boyd Road?

25 A The wider one down more towards the bottom.

- 1 Q What is this?
- 2 A I believe that was just a driveway.
- 3 Q A private drive?
- 4 A Yes, sir.
- 5 Q Okay. Can you tell from this CAD where the point of
6 impact was?
- 7 A Not from this CAD. It's not on here.
- 8 Q Okay. All right. I'm going to show you State's
9 Exhibit 63 next. There were some additional inputs into
10 this CAD. Tell the jury about those?
- 11 A This is the evidence of the final rest CAD. So this
12 is view of all the evidence that we had mapped as well as
13 the final rest locations of the vehicles.
- 14 Q Okay. So this shows where the final resting place
15 for each vehicle in relation to the roadway?
- 16 A That's correct.
- 17 Q Okay. I don't know if the jury can see it, but there
18 I try to zoom in, but there appears to be some red or
19 orange lines coming off behind the white vehicle?
- 20 A Yes, sir, they're red.
- 21 Q Can you tell the jury about those?
- 22 A Those are the skid marks leading up to the Hyundai.
- 23 Q Did you actually map the skid marks as well?
- 24 A Yes, sir.
- 25 Q This is a scale drawing of the location of the

1 vehicles and the skid marks leading up to them?

2 A Yes, sir.

3 Q Okay. State's Exhibit 62 tell the jury about this
4 photo or this CAD and how it is prepared?

5 A This is the impact layer of the CAD. To create this
6 one, I took scale models of the actual vehicles that were
7 involved in the collision, also had the skid marks. You
8 can see I added a 3D because sometimes it's a little
9 harder to see from top down. And that's a great thing
10 about this -- the mapping equipment is it records
11 essentially three axes (sic) for each point. So it also
12 has an elevation axes (sic) so which allows me to create
13 three environments based on the actual points taken which
14 is what that blow out box is representing, but I placed
15 the vehicles or the models -- scale models back at the
16 area of impact essentially to show where the impact was.

17 Q So was it your testimony in your opinion that this
18 drawing represents the point of impact of these two
19 vehicles in this accident?

20 A Yes, I used the area where the tire marks as I
21 pointed out during the photographs where the tire marks
22 kind of spread out flat and have that gauging right in the
23 pavement. I placed the vehicles right back in top of
24 that.

25 Q Okay. And again this will be between Home Branch and

1 Boyd Road?

2 A That's correct.

3 Q Okay. Before we go any further with the CAD
4 drawings, tell the jury about the types of methodology or
5 formulas you use to calculate distances and speed and
6 velocity and so forth of an accident scene?

7 A Essentially everything that we do is base off
8 physics. So we use several different mathematical
9 disciplines to come up with our equations and use those
10 equations to determine speeds or distances or times or
11 even energy for vehicles -- things that happen in a
12 vehicle collision, but everything is physics based.

13 Q And as part of your training and experience, is there
14 anything that's done to verify the accuracy and
15 reliability of these formulas this methodology that you're
16 using at the scene?

17 A Yes, that's actually the fun part of my job. During
18 the conferences that we attend, we have vehicles donated
19 to us or donated to the hosting party for the conference.
20 And we'll crash those vehicles into each other and crash
21 them into telephone polls, dummies, pigs. We run into
22 shopping carts, mopeds, bicycles. So essentially the same
23 thing that they did to set up the testing for the ATTAR
24 (sic) exam. That's what we're doing at these different
25 conferences because we can put the equipment in the

1 vehicles and be able to tell exactly how fast that vehicle
2 was going and what kind of energy that vehicle felt. You
3 know, they're putting accelerometers in the vehicles, GPS.
4 We're doing video analysis of the collision. And then
5 we're are to take -- we also once the collision happens we
6 record how far the vehicle go, what angle does the vehicle
7 go off at. And we will use that -- we already know what
8 the cars are doing because we're telling what to do. So
9 we're then taking data and putting it back into our
10 different formulas and we're having to come up with the
11 same results and that's verifying that the formulas are
12 accurate. They're applicable to different types of
13 collisions that we use.

14 Q So when you do that, again, you know the inputs. You
15 know based on the information -- the equipment you had in
16 the vehicle. You know how fast it was going. You know
17 both vehicles and have the distance it traveled and so
18 forth?

19 A That's correct.

20 Q And your job is to use the physics to use these
21 mathematical formulas to trace it back and come up with
22 same result?

23 A That's correct.

24 Q Have you done that on a regular basis as part of your
25 training?

1 A At least yearly sometimes more.

2 Q Okay. Is there -- do you vehicles themselves ever
3 have that type of equipment in them already installed by
4 factory to help you track how fast they were going in a
5 collision?

6 A Yes, in a way they do.

7 Q What's that called?

8 A It's called the airbag control module. We call
9 them -- some of them are -- it depends on who the
10 manufacturer is. Generally, we'll just call it an airbag
11 control module or an ACM. So that's what I refer to all
12 of them as until we get into the heavy trucks. Some of
13 the call them event data recorders EDRs. It's also ECM's
14 electronic control modules. Essentially what that is
15 doing it records the airbag. All the data -- airbags are
16 very smart. So when you hit something, an airbag just
17 doesn't come out. Something has to tell the airbag that
18 this wreck's about to be really bad. And it tells that
19 airbag you need to come out at this time and it's broken
20 down by milliseconds. You need to to come out at this
21 speed. You need to stay inflated for this amount of time.
22 And it's based on the data that it's getting from the
23 engine speed, the accelerometer that's inside of this air
24 bag control module. And all that data that it uses to
25 determine whether or not the air bag needs to come out, it

1 locks it into that module and we have the computer system
2 that we can then plug into it and image that data.

3 Q Are either one of these vehicles equip with these
4 airbag control modules?

5 A Unfortunately they were not. They were too old.

6 Q Even if the vehicles had been equipped with those
7 modules typically, give you a reading as to speed and so
8 forth. Would you have still done the math?

9 A Yes, we always back up that module with the math.

10 Q And I guess during your time with MAIT team, you
11 probably had a lot of accidents that have had the vehicles
12 had been supported by those ACM's?

13 A Yes.

14 Q Have you ever done the math and found disparity
15 between your calculations and the information provided by
16 ACM's?

17 A I never have.

18 Q Never have?

19 A No, sir.

20 Q Okay. So tell the jury where would you start in this
21 accident. This accident scene you trying -- the end
22 result is to try to figure out where these cars are in
23 relation to each other speed and time and so forth. Where
24 would you start when you trying to investigate this
25 accident scene, trying to reconstruct this accident scene

1 rather and you don't have those ACM's to rely on?

2 A In this case because we're looking for the unknown,
3 which essentially the unknown is the speeds that we're at
4 impact. So I can start at the last the event, which I'm
5 able to then determine what that speed was and I work it
6 to in several segments back to the impact to be able to
7 get that speed. So the last event here was the Durango or
8 the Dakota striking that large oak tree. So I started
9 there and worked back towards the collision.

10 Q You start with last known event and work backwards?

11 A That's correct.

12 Q That would have been where the pickup truck struck
13 the tree?

14 A Yes, sir.

15 Q What type of calculations did you make based on that?

16 A On this one in addition to mapping the scene, I also
17 had the wrecker driver when we got to the Dodge, I had to
18 pull in front of my mapping equipment and I map the front
19 or the damage profile of the pickup truck. That way I can
20 get those measurements of how far he was crushed in. And
21 I'm using essentially a crush equation, that's able to
22 determine what amount of speed would be necessary to cause
23 that amount of crush.

24 MR. DURANT: Beg the Court's indulgence.

25

1 BY MR. DURANT:

2 Q Officer Ridgeway, I show you what has been marked as
3 State's Exhibit 65 tell me what that is?

4 A I also prepared this as the damage profile
5 measurements that I mapped off the vehicle.

6 Q This is mapped off the front of that Dodge pickup
7 truck where it would have impacted the tree?

8 A Yes, sir.

9 MR. DURANT: Your Honor, I offer State's Exhibit
10 65 into evidence.

11 MR. BARR: Without objection.

12 THE COURT: It's in without objection.

13 (WHEREUPON, State's Exhibit No. 65 was admitted
14 into evidence.)

15 BY MR. DURANT:

16 Q Officer Ridgeway, tell the jury about the mapping you
17 did in front of that Dodge pick up truck?

18 A On this one, I actually map two spots. I mapped the
19 area around the bumper and the frame rails. And then also
20 mapped up around the hood area. The hood area I
21 discounted because that's really soft metal, doesn't take
22 a whole lot to crumble that. So I what I wanted to
23 concentrate was the hardened areas of the vehicle, which
24 is bumper and the frame rail.

25 Q Okay. So you measured the damage area of the front

1 of that pickup truck?

2 A Yes, sir.

3 Q Okay. What's the purpose in doing that?

4 A That tells me how much this vehicle was crushed in or
5 much that metal was crushed in, which I can then take for
6 the known crush factors for a Dodge Dakota and apply that
7 to determine how much energy it takes to crush in that
8 metal which also tells me how much speed is necessary to
9 exert that amount of energy.

10 Q Before we get to that speed, you mention that one of
11 the variables that you're taking into account is known
12 crush factors with regard to that specific vehicle?

13 A Yes, that's correct.

14 Q Tell us about that?

15 A All right, every vehicle that's driven on the roadway
16 has been tested by the National Traffic Highway Safety
17 Administration. They go through and that's where you'll
18 see sometimes this vehicle has a five-star rating.
19 They'll go through and they'll take that vehicle and run
20 into a wall or a pillar some kind of immovable barrier and
21 determine how much energy it can take. They also not --
22 not really related to this, but they'll put dummies in the
23 vehicles because they want to test it with forces that are
24 acting on the dummies, make sure the seat belts are
25 appropriate, the airbag are appropriate. They're also

1 going through to make sure there's no fuel line ruptured,
2 anything that would cause a vehicle fire in a collision,
3 but some of data that they get out of this is they'll then
4 measure the amount crush that is done to that vehicle and
5 it determines again the safety of that car.

6 Q So then each vehicle has been tested by the National
7 Highway Traffic Safety Administration to determine how it
8 responds to certain degrees of force?

9 A Yes, all those reports are available on the web site.

10 Q You made these calculations?

11 A I use that data both to help me with the calculations
12 and to verify the results that I get. And I did download
13 two reports from NIDSA (sic) on Dodge Dakota's for this
14 collision.

15 Q Okay. And based upon that information that's
16 available and your calculation, were you able to determine
17 what degree of force would cause the damage to Dodge
18 pickup -- the front end damage?

19 A Yes.

20 Q And what was that degree of force?

21 A You want the force or the speed?

22 Q Well, does the force equal speed to get the speed
23 from the force?

24 A We can use the energy or the force. We can use the
25 energy to get an equivalent barrier speed.

1 Q Obviously, this one you got to take into account that
2 the tree is stationary, right?

3 A That's correct, which is easier actually.

4 Q Would be easier ---

5 A Yes.

6 Q --- if there was some other vehicle that impact head
7 on and get another speed?

8 A That's correct because then you have more variables
9 that you have to account for.

10 Q So since you knew that this truck had impacted that
11 tree you had a known and could you -- you create a force
12 and the transfer that into a miles per hour?

13 A Yes, sir.

14 Q Tell the jury what the -- how fast in miles per hour
15 that Dodge Dakota was traveling when it impacted the tree?

16 A The impact of the tree and miles per hour 15.91 miles
17 per hour.

18 Q 15.91 miles per hour when the Dodge Dakota pickup
19 truck impacted that tree?

20 A Yes, sir.

21 Q 15.91 mile per hour impacted that tree?

22 A Yes, sir.

23 Q Okay. And I know you been doing this for a while,
24 but, I guess, in relatively speaking is a 15.9 or 16 mile
25 per hour collision into a tree is that a particularly high

1 risk for fatality?

2 A No, that's -- we see speeds much greater than that on
3 a average fender bender out on the highway pass every day.
4 It's not a particularly large or high speed.

5 Q Okay. All right. So after determine how fast this
6 Dodge Dakota is traveling when it impacts the tree, where
7 we go from there?

8 A On this one once I determine or once I was able to
9 great that value, I then go to the next segment which was
10 the vehicle free rolling until it impacted the tree or the
11 Dodge rolling to impact.

12 Q And what do you mean?

13 A We can see it on the photos earlier. It's basically
14 where the car stops and the tire marks stop. And then
15 kind of see the path as the truck's going of the roadway
16 up until the tree. So I'm taking the measurements from
17 where the vehicle comes a final rest and where the truck
18 impacts the tree. I'm determining how much speed that
19 vehicle would have loose to travel that distance.

20 Q Okay. Do you take into factors like the roadway for
21 instance any friction it would cause the vehicle to slow
22 down?

23 A Yes. I did not do the roadway friction for this area
24 because there's no indication that the vehicle's breaking.
25 There was one area of gauging off the right side of the

1 roadway that was in line with the path of the travel.
2 However -- here's the deal, whenever we do calculations,
3 we use the most conservative method, most conservative
4 values that we can to benefit the driver that we're
5 looking at. So I did not even count in the speed that
6 would have been lost gauging into that pavement. In this
7 one to answer your question, I did not account for any
8 roadway friction in here. If I account for roadway
9 friction, the speed starts going up. So I did this just
10 as a free rolling vehicle. And the only friction values
11 that I counted for use was the drive axle and a non-drive
12 axle just to gear the friction that's created from the
13 gears as they're turning.

14 Q So at this point you're -- I guess before I ask that
15 is there any indication that the victims in this black
16 pickup had control over the vehicle after -- at this in
17 the sequence of the accident after separation from the
18 white vehicle until they hit the tree?

19 A There's no evidence to indicate that the vehicle was
20 controlled in any.

21 Q Okay. And so you're essentially assuming that the
22 victims did not -- they didn't break from that point
23 forward?

24 A That's correct.

25 Q They didn't hit the breaks from the time they left

1 the white vehicle until they impacted the tree?

2 A That's correct. There's no indication of any
3 breaking anywhere out there.

4 Q If they had hit the breaks during that period of
5 time, what does that mean down the line about their speed
6 before that and the defendant's speed when she impacted
7 their vehicle?

8 A That means that during the impact more energy would
9 have had been brung into the collision, which then in
10 order to bring in the energy you have to increase the
11 speed.

12 Q Okay. So you mention that you're making it a
13 conservative estimate and when you make this assumption
14 again, there's no evidence that it was any control?

15 A That's correct.

16 Q But the assumption that there was no breaking, it's
17 really in Ms. Brown's favor?

18 A Yes, everything's done in her favor.

19 Q Because if they had -- if they were breaking and they
20 were going faster which means that Brown was going faster
21 when she hit him; is that right?

22 A That's correct.

23 Q Okay. So you -- the end result of this point of your
24 calculation is you're trying to calculate the Dodge speed
25 at the point of separation; is that right?

1 A Yes, I'm trying to work my way back up to the impact
2 point. So I already know that the Dodge struck the tree.
3 And we round down, so I know 15.91 is closer to 16, but I
4 would say 15 miles an hour is done conservatively in favor
5 of whatever vehicle we're looking at and so I'm going to
6 refer to it that way as 15 miles an hour. That's how we
7 do it. So I know it's a 15 mile an hour impact with the
8 tree. And then I want to see, well, how much did the
9 truck slow down before it got to that point and what was
10 speed at the beginning of that point at the point that it
11 started to slow as it's traveling to the tree.

12 Q Okay. And you're trying -- you're backing up to what
13 point in this sequence of the accident?

14 A Back towards the impact itself.

15 Q Okay. Based upon the laws of physics, your
16 calculation, your training experience, were you able to
17 formulate an opinion to arrive at the Dodge's -- the speed
18 of the Dodge pickup truck when it separated from the white
19 vehicle?

20 A Yes, and I'm trying to -- unfortunately, I did not
21 write it down on here, so it's going to -- I can convert
22 if necessary. But the vehicle that the Dodge separated
23 from the Hyundai which is also the final rest of the
24 Hyundai, that puts the speed of the Dodge at that point
25 would be 47.6 feet per second.

1 Q Okay. What does that mean in miles per hour?

2 A To get accurate, I need to grab calculator real
3 quick. I got one in my bag. I worked everything feet per
4 second until I got up to the impact and then had converted
5 it to miles per hour at that point. It's an easy
6 conversion.

7 MR. DURANT: With the Court's permission, I like
8 to offer him a cell phone just use the calculator.

9 THE COURT: Okay.

10 A I've also got my calculator in my bag. It's in the
11 front pocket up there, which is on that first row. Let's
12 see it is 37.6., 32.46 miles per hour.

13 Q 32 miles per hour. At which point now again in the
14 point of sequence of this accident?

15 A That still separates it from the Hyundai.

16 Q Separation from the Hyundai?

17 A Yes, sir.

18 Q Okay. When would separation from the Hyundai have
19 occurred in the sequence of this accident?

20 A When the Hyundai stopped.

21 Q When the Hyundai what?

22 A When the Hyundai stopped.

23 Q When the Hyundai stopped?

24 A When it expelled all of its energy and came to a
25 stop, which is the final rest location that we've

1 indicated before.

2 Q So at the final resting place of the Hyundai where
3 the Hyundai was parked here -- when you arrive?

4 A Yes, sir.

5 Q And that's the point of which the vehicles would have
6 separated from each other?

7 A That's correct.

8 Q And the Dodge at that point is traveling 32 miles per
9 hour?

10 A Yes.

11 Q It would have slowed down to 16 when it impacted the
12 tree?

13 A Fifteen, yes, sir.

14 Q Fifteen, sorry.

15 A Or .15.9.

16 Q 15.9?

17 A Yeah.

18 Q Okay. Tell the jury where you go from here?

19 A I then want to know -- if I know that it's doing 32
20 miles an hour at that point, I want to know how much
21 energy was lost when the vehicles were together, which
22 tell us how much energy that the Hyundai is bringing into
23 the collision. So that is essentially that area from --
24 that we saw earlier from where the gauging is in the
25 roadway, the area impact up to the final rest position of

1 the Hyundai.

2 Q Okay. And did you measure that distance?

3 A I did. I had the measurements from the CAD again.
4 Every point on the CAD is scaled and exactly where it is
5 on the scene. So I can use that to get very detailed,
6 very precise measurements to use in these equations.

7 Q What is the number that you're trying to get you --
8 what is the end result end goal of this particular
9 formula?

10 A I'm trying to find out what the impact speed was of
11 the Hyundai.

12 Q Trying to find out how fast the Hyundai was traveling
13 when it impacted the Dodge Dakota pickup truck?

14 A Yes, sir.

15 Q Okay. Do you take into account at this point other
16 factors such as the friction of the roadway and so forth?

17 A Yes, during this section because we had skid marks
18 going through the point of impact to the final rest. Then
19 we know that the tires are interacting with the roadway
20 and therefore the roadway friction then becomes important.

21 Q Okay. How do you take into account the friction on
22 the roadway?

23 A Two methods and we use both methods in this collision
24 is we have a -- what's called a drag sled, it's a tire
25 because we have tires skidding on surfaces. So we have a

1 tire and then we fill it full of concrete, so that we know
2 the weight of that tire. And, of course, we weigh it
3 every time. And then we will drag that tire in the
4 direction that the vehicles are skidding again to account
5 for any changes in the elevation or grade of the roadway.
6 That give us a -- tell us how many pounds are needed to
7 pull our tires 35 pounds. It may fluctuate slightly
8 depend then on humidity. Every time I've used it it's
9 been 35 pounds. So I want to know how much force it takes
10 to pull a 35 pound tire on the roadway in the direction
11 that the vehicle was skidding. We then average out those
12 forces. It's a series of ten pulls. We'll average out
13 those pulls and divide that by the weight of the tire
14 which gives us a friction of the roadway. The second
15 method and I do it on this one is I have an accelerometer.
16 It's actually on the same equipment that we use to map
17 it -- map scenes with. And I have a windshield mount for
18 my vehicle. We like to do these in the vehicles that are
19 actually involved in the collision and we'll take that
20 vehicle up to a non-speed, slam on the breaks, kind of
21 skid through. We won't skid through the scene because we
22 don't want to disturb. So they're usually adjacent to it.
23 And we will see how -- what the G's are on that vehicle
24 which will then give us a coefficient of friction. So I
25 did both ways on this.

1 Q You didn't have to move these vehicles?

2 A No, I did not. They were too damaged. We can't use
3 them.

4 Q Okay. Do you also take into account other factors
5 such as the weight of the vehicles?

6 A Yes, for any energy equation I have to take into
7 account the weight of the vehicles and the weight of
8 occupants in the vehicles.

9 Q You mention for energy equation, that's what this is
10 essentially is to tell you how much energy was lost?

11 A Essentially all my equations are based on energy. I
12 mean, it takes a certain amount of force to push or pull
13 an object. And we're just trying to figure out how much
14 force does it take to do that.

15 Q Does this formula -- is it take into account how fast
16 you had already determine the Dodge pickup truck to be
17 traveling at point of separation?

18 A Let me see which one I used for her. Yes, it does.

19 Q Okay. Go ahead and tell the jury how fast -- were
20 you able to arrive at value as to how fast the white
21 vehicle would have been traveling at the point of impact
22 when it actually struck the rear end of Dodge pickup?

23 A Yes, I determine that it would take 453,360.944 foot
24 pounds of energy to move those vehicles that distance,
25 which was 105 feet together, inputted that using the

1 initial speed of the truck upon separation and that puts
2 us up to 81.99 feet per second, which gives us 55.92 miles
3 per hour.

4 Q 55.92 miles per hour when the white vehicle impacted,
5 when it hit the Dodge Dakota pickup truck between Home
6 Branch and Boyd Road?

7 A That's how much energy came into the collision at
8 impact.

9 Q That's how much energy came into the collision?

10 A At impact.

11 Q And again you mention that this was a conservative
12 number. What other assumptions are unknowns are taken
13 into account would change the speed?

14 A The amount of crush that was done to the rear of the
15 vehicle would increase the speed.

16 Q Okay. Is this --

17 MR. BARR: Judge, the prosecution is leading the
18 witness and that portion of the testimony where the
19 prosecutor indicated that it would have taken that much
20 speed from Home Branch to -- there has been no testimony
21 and this officer has not testified that the vehicle came
22 from Home Branch Road. So it's a leading question and I
23 move to strike the answer.

24 MR. DURANT: Your Honor, my question in which
25 just a point of clarify as to the point of impact, a point

1 in which the speed, this calculation was based off of and
2 I said between Home Branch and Boyd Road. So at that
3 point that's where the vehicle was travel 55.92 miles per
4 hour.

5 THE COURT: Your question was?

6 MR. BARR: I'll withdraw the objection.

7 THE COURT: Okay, go ahead.

8 BY MR. DURANT:

9 Q So again, Trooper Ridgeway, to clarify at the point
10 of impact at those gauge marks that we seen the photos of
11 and you testified to is that the point in which in your
12 opinion Ms. Brown's vehicle was traveling at least 55.92
13 miles per hour?

14 A At least 55, yes?

15 Q At least 55.92. And based upon your inspection of
16 the scene, what is the speed limit for that area?

17 A 45.

18 Q 45. Okay. So she's traveling at least ten miles per
19 hour over speed limit when she hits the black pickup
20 truck?

21 A That's correct.

22 Q Is that your opinion?

23 A Yes.

24 Q Okay. Now, Officer Ridgeway, is there any evidence
25 as to whether or not before Ms. Brown's vehicle, the white

1 vehicle struck the black pickup truck, it had applied the
2 breaks?

3 A Yes, it had decelerated prior to striking the rear of
4 the Dodge.

5 Q Okay. So would I be correct in my understanding that
6 the 55.92 miles per hour then it's a speed at the point of
7 impact, but after Ms. Brown had locked up the brakes?

8 A That's correct.

9 Q Okay. Were you able to determine based upon the laws
10 of physics and your methodology as to how fast Ms. Brown
11 would have been travel before she hit the breaks?

12 A Yes, sir. Again because that's the speed at impact
13 and we know that we have 53 feet of skid marks before that
14 point. I wanted to know what she's doing at the beginning
15 of the skidding section and these calculations. So
16 essentially what I do is because the vehicle decelerated,
17 but I'm going backwards in the sequence of events, so I
18 want to accelerate the vehicle in order to determine what
19 it was doing before it started decelerating, which I did
20 do. And that was -- should be 94.73 feet per second. So
21 it gives us 64.6 miles per an hour.

22 Q 64.6 miles per hour when she hit the breaks; is that
23 right?

24 A That's correct.

25 Q And in terms of distance or feet, how long before

1 this point of impact would Ms. Brown have hit the breaks?

2 A I'm not sure I understand your question. Are you
3 asking how long it takes to go from skid into impact?

4 Q Right, how far away was she?

5 A That would be .6 seconds.

6 Q .6 seconds from the time she hits the breaks until
7 point of impact?

8 A Yes .6 seconds, 3.6 feet.

9 Q That's how many feet?

10 A 53.6.

11 Q 53.6 speed?

12 A Yes, sir.

13 Q Are you able to determine where Ms. Brown would have
14 been in relation to the roadway at the point that she hit
15 break?

16 A On as far as where she actually hit the -- which
17 roadway?

18 Q Here's what I'm getting at, was Ms. Brown at the 45
19 mile per hour zone when she hit the breaks?

20 A Yes.

21 Q Okay. So would it be your opinion that Ms. Brown was
22 traveling again you said at least conservatively if she
23 was traveling at least 64.67 miles per hour in that 45
24 mile per hour zone?

25 A At a bare minimum, it would be 64 miles per hour in a

1 45 zone, yes.

2 Q At a bare minimum. So you say conservatively
3 speaking 19 miles per over the speed limit, but .6 seconds
4 before this collision?

5 A That's correct.

6 Q Okay. Corporal Ridgeway, did you receive any
7 information from other highway patrol at the scene as to
8 where the victim's vehicle may have been coming from that
9 evening?

10 A Yes, it was indicated to me that they were making
11 left turn off of Home Branch onto 261 before the impact.

12 Q Okay. And did you make any calculations to determine
13 for instance where Ms. Brown's vehicle may have been in
14 relation to the black pickup truck when it turned off of
15 Home Branch Road?

16 A Yes, because -- it's natural and important any time a
17 vehicle's turning and then they get hit, I wanted to know
18 if the -- especially in light of this area as we showed on
19 the pictures, one of the things I notice was there's a
20 hill crest before you get to this intersection hence the
21 reason it's a 45 mile an hour zone. So I wanted to know
22 was the Hyundai visible, was it able to be seen when the
23 vehicles pulled out. That's a question I have to answer
24 any time we have a collision of this sort.

25 Q Okay. What type calculations do you to determine

1 that?

2 A I would want to know how long it takes for a vehicle
3 to accelerate from a stop bar or from the intersection,
4 out to the area that they were hit at. And then I'll back
5 up the vehicle using a constant speed. In this case, I
6 use a constant speed of 64 miles an hour for that distance
7 or for the amount of time that it takes them to pull out
8 to get to that point, then I will back their vehicle up
9 the same amount of time, so I can tell where they were at
10 when the vehicle starts going.

11 Q Okay. So you're looking at how long it would have
12 taken the Dodge Dakota to get from the stop bar at Home
13 Branch Road to the point of impact in the roadway?

14 A That's correct.

15 Q And then once you figure out that time based on her
16 conservative speed of 64.67 miles per hour, you see how
17 much distance she would have traveled during that period
18 of time?

19 A Yes.

20 Q Which gives you a location in the roadway of her
21 vehicle when the Dodge Dakota would have pulled out; is
22 that right?

23 A That's correct.

24 Q What was your determination as to when -- as to how
25 he would have taken that Dodge Dakota pickup truck to turn

1 from Home Branch Road and get to the point of impact of
2 these vehicles?

3 A 6.36 seconds.

4 Q 6.3 seconds.

5 A Which is 97 feet.

6 Q Based upon her speed, her conservative speed again of
7 64.67 seconds, how far away would she have been 6.3
8 seconds earlier when the Dodge Dakota had pulled out?

9 A When the Dodge Dakota pulls out -- how far away she
10 would be from impact?

11 Q Yes, sir.

12 A Be 545.122 feet.

13 Q Okay. When you map the scene, you mention that
14 there's this area over the hill crest at which point
15 visible -- vehicles are not visible from Home Branch Road.
16 So if you pulling out from Home Branch Road, you can only
17 see so far down 261?

18 A Yes.

19 Q You can only to the top of that hill crest. Beyond
20 that, oncoming traffic is not visible?

21 A That's correct.

22 Q So my question is based upon her speed, how far away
23 she would have been when he pulled out, can you tell this
24 jury -- can you give an opinion as to whether or not
25 Ms. Brown's vehicle would have been visible by the driver

1 of the black pickup truck?

2 A And that's -- I did physically map the area where you
3 can first notice a car coming over that hill crest. So we
4 know the measurements of that. And based a time that it
5 would take you -- to take to pull out from Home Branch to
6 the impact area, that 545 feet -- and I'm sorry that
7 545 feet is actually to the point where she starts to skid
8 instead of another 53 feet, but by the way, it places her
9 vehicle on the other side of that hill crest which
10 indicates that the Hyundai would not have been visible
11 when the Dodge starts to go. I also added an
12 additional -- and again I kept it really conservative. I
13 gave one it an additional one second because before we
14 pull out, we don't immediately just look and then punch
15 the gas. It takes your mind a little bit of time to say
16 okay it's clear, let's go from the break to the gas and
17 then you have a little bit of lag when you start to go.
18 So again I did a very conservative number of one second
19 which adds an additional 94 feet. So that's a total of
20 639 feet from the -- from there to the vehicle started
21 skidding which was on the other side, of course, still on
22 the other side of the hill crest.

23 Q All right. Based on additional input, I just want go
24 ahead and walk you through the remaining CAD sheets you
25 prepared?

1 A Yes, sir.

2 Q Some additional inputs on this sheet, what do we have
3 here?

4 A This is the sequence of events. So it has the
5 vehicles that they pre-impact locations. Then we have the
6 bottom 3D impact. The next as we're going to the right of
7 the CAD, that next section is where the car comes to a
8 final rest and the Dodge separates. The next one was just
9 the Dodge pickup truck by itself it where it goes off
10 roadway based on the tire marks going into the grass. And
11 then the next one which is also shown on the 3D view is
12 the final rest of the Dodge pickup.

13 Q Okay. Show you State's Number 61?

14 A Yes, sir.

15 Q What's depicted here?

16 A That's our pre-impact.

17 Q Pre-impact. This is the location of the Dodge Dakota
18 pickup truck stop at Home Branch Road. Is the white
19 Tiburon is that visible in this one?

20 A It is not. It's outside of it.

21 Q Okay. Officer Ridgeway, I'm going to show you
22 State's Exhibit 66. Do you recognize this one?

23 A Yes, sir, that's my calculation CAD.

24 Q The calculation CAD and this is based off of the
25 numbers and the time, the distances that you've already

1 testified to?

2 A That's correct. That list all the information that I
3 use for the calculations as well as the results that were
4 derived from those calculations.

5 MR. DURANT: Your Honor, I'd offer State's
6 Exhibit 66 into evidence.

7 MR. BARR: No objection.

8 THE COURT: It is in without objection.

9 (WHEREUPON, State's Exhibit No. 66 was admitted
10 into evidence.)

11 BY MR. DURANT:

12 Q Officer Ridgeway, I'm going to go over this document
13 with you. And, I guess, we'll start at the end of the
14 accident sequence that you did with your calculations.
15 Tell the jury just walk us through it again your
16 calculations and how it depicted on the CAD?

17 A Yes. Essentially on this CAD you can see each one of
18 the sections that I just spoke about during the different
19 calculations for each individual section. So we have the
20 bottom right is at the impact of the tree and that's the
21 23 feet per second which is the 15.91 miles an hour.
22 Going back up to the next section that 168 feet before it
23 struck the tree, which would be the final rest location of
24 the car, as well as where the Dakota separate or the
25 Dakota separates from that vehicle. I then want to know

1 what energy it takes to go a distance as a combined unit
2 with both weights. So that's that 105 feet which bumps it
3 up to the 81.9 feet per second which again was 55 miles an
4 hour. And that is also the area of impact location. Then
5 we still had that remaining 53 feet to the beginning of
6 the skid marks. So I wanted to determine how much speed
7 the vehicle would have lost during that section which
8 bumps it up to the 64 miles per hour at that area.

9 Q And just to be clear again, the skid marks begin
10 right here in front of Home Branch Road; is that right?

11 A That's correct. I placed that scaled model of the
12 Hyundai Tiburon on top of the skid marks.

13 Q So would it be your opinion that the driver of that
14 white Tiburon is identified as Ms. Brown, did not hit the
15 breaks of her vehicle until she was directly in front of
16 Home Branch Road?

17 A No. I can't tell you how far, but whenever you hit
18 your breaks on your vehicle, they don't immediately start
19 skidding. Usually, we'll see a little bit of shadowing
20 and some of that was painted out there, but we can't see
21 all the shadowing and of course a vehicle will -- your
22 most efficient breaking is before you start skidding.
23 Once you start skidding, then you see the drag factors
24 start to go down a little bit. And that's why ABS stops
25 so well because it's designed to keep the tires from

1 skidding to give you that optimum gravitational roadway
2 friction by you, but I cannot account for that without an
3 ACM that shows me what time the breaks were applied. So I
4 just -- I total the number for that section for this.
5 Again I want to give the most conservative values that I
6 can. So I -- it would start -- the breaking would start
7 before the skid marks actually start, but I cannot account
8 for them.

9 Q As part of you pressing your break paddle, the more
10 that they lock up, the more the breaks are engaged?

11 A That's right. I mean, we stop our cars every day
12 without skidding. And it takes a moment to get to that
13 point.

14 Q Okay. So again if you driving 64.67 miles per hour
15 at this point is this your opinion?

16 A Yes, that is at least 64 point.

17 Q At least 64?

18 A That's correct.

19 Q And this would be 142 feet before the skid marks; is
20 that right? Am I reading that correctly?

21 A That is the section that we -- it's listed as PRD,
22 which is perception reaction distance. And then the PRT,
23 which is the perception reaction time that I used. Again,
24 as I discussed with pulling out making the decision to go,
25 there's also a decision to hit your breaks. So

1 essentially what has to happen is your mind sees threat.
2 And then your mind tells your body this is about to be
3 bad. We need to come off the gas go to the break and push
4 the break and then your vehicle starts slowing. That's
5 not an instantaneous action. It takes a little while for
6 the message to get from our brain to our foot, to come off
7 the gas, go on to breaking. You have some lag time from
8 when the break is pressed until your break pressure builds
9 up and sends it to your calipers on your vehicle which
10 then can press the breaks against the rubber. So all that
11 takes a little bit of time. I've attended and I've known
12 him for quit a while. Jeff -- it's Dr. Jeff Uter does
13 numerous studies with what the average perception reaction
14 time of a person is. Again he's got his doctorate and his
15 doctorate is in that field. And I have attended several
16 lectures by him, several classes by him. I've watch all
17 his studies. Everything is videotaped and the days made
18 available to us. And the average perception reaction time
19 for a person is 1.5 seconds. There's some variables that
20 may slow down a person's reaction again to give ---

21 Q Is alcohol one of those?

22 A Yes. It will severely slow down reactions or your
23 reaction time. So trying to use the most conservative, I
24 give what an average person would take which was that 1.5
25 seconds, which would indicate that at 64.67 miles per hour

1 the vehicle would travel 142 feet. So that would be that
2 the location -- that would be the location that they first
3 see the hazard that tells them they need to make some kind
4 of evasive maneuverer. Once again was the 142 feet prior
5 to the beginning of the skid marks not accounting for any
6 tire marks that would count.

7 Q So this is where the vehicle would have been for a
8 person traveling at that speed when they proceed the need
9 to stop?

10 A That's correct.

11 Q And obviously you would cover more ground or cover
12 the ground in a fast a period of time if you driving
13 faster?

14 A Yes.

15 Q Okay. So if she's driving slower, then would she
16 have further away if she perceive the need to stop?

17 A If she was driving slower. Say would she be further
18 away. If she was driving slower, then, no, she would be
19 closer.

20 Q Okay. Tell us again about the -- when the Dodge
21 Dakota pulled out from -- the time it would have taken the
22 Dodge Dakota to pull out from Home Branch Road onto 261?

23 A Okay. That's that 6.63 seconds. And essentially
24 where I came up that was the -- I want to know what the
25 average acceleration rate of the Dodge Dakota is. So I

1 have all the numbers publish. And again I have all this
2 information that tells me what that acceleration rate is.
3 And I can use that to determine going from a stop at that
4 acceleration rate for the distance which was measured to
5 be 97.11 feet how much time does it take to travel that
6 distance.

7 Q Okay. And based upon how the conservative estimate
8 as to how fast Ms. Brown's vehicle was traveling, where
9 would her vehicle as it show on the CAD where her vehicle
10 would have been in relation to the Dodge pickup truck when
11 it pulled out?

12 A Again that's the -- I'll take that time along with
13 the PRD time and the time that it took to slide. All
14 those times and I will then see well where was the Hyundai
15 Tiburon at that point in which puts it -- that is the
16 second vehicle from the left. We kind of see that grayed
17 out area, that grayed out area is the area that cannot be
18 seen from Home Branch Road.

19 Q Again to clarify your opinion is that when the Dodge
20 Dakota pulled out, Ms. Brown's vehicle would not have been
21 visible from the stop bar of Home Branch Road?

22 A That's correct.

23 Q Officer Ridgeway, did you -- you mentioned animation
24 earlier and we had you qualified as an expert in
25 animation, did you prepare based upon mapping of the scene

1 and the CAD, did you prepare an animation in this case?

2 A I did based on the mapping and the calculations. I
3 did create an animation for this collision.

4 Q I'm going to show you what's been marked as State's
5 Exhibit 59. Do you recognize it?

6 A Yes, sir, that's the animation for this collision.

7 MR. DURANT: Your Honor, at this point the State
8 would offer State's Exhibit 59 into evidence.

9 THE COURT: What says the defense?

10 MR. BARR: Judge, we may we approach the bench?

11 THE COURT: Yes, sir.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury, but out of the hearing of the
14 jury.)

15 MR. BARR: Your Honor, we object to the
16 presentation of the animation to the jury because there
17 are a number of foundational points that we disagree which
18 the animation itself has been based. Of course, I believe
19 that most of those would probably be or at least some of
20 it will be explored on cross-examination, but at this time
21 we do from defense standpoint object to the introduction
22 of the animation.

23 THE COURT: Okay.

24 MR. DURANT: Your Honor, the State's position is
25 that the foundation has been laid. The officer has

1 already testified as to the points the animation is based
2 off of. At this point because the testimony is already in
3 the record, we believe that the animation should be
4 admitted.

5 THE COURT: And I think the proper foundation
6 has been laid. I will overrule your objection. You may
7 present it.

8 BY MR. DURANT:

9 Q Officer Ridgeway, actually before we get to the
10 animation, did you happen to prepare a video of the
11 accident scene where you walked around with a camera
12 showing the vehicles on the night of the accident during
13 your investigation?

14 A I started it and then I had Trooper Macoon, I handed
15 him my camera.

16 Q You had an opportunity to review the video?

17 A I have.

18 Q Is it a fair and accurate representation of that
19 accident scene that evening?

20 A It's the exact same thing. He was going with me
21 while I was photographing the scene.

22 Q Does the video also include a drive through of the
23 accident scene at the conclusion of your investigation?

24 A It does after everybody left, I then actually drove
25 through going the direction that the Hyundai was going and

1 the Dodge.

2 MR. DURANT: Your Honor, I offer State's Exhibit
3 58 into evidence as well.

4 THE COURT: What says the defense?

5 MR. BARR: We don't object to that.

6 THE COURT: Fifty-eight is in without objection.

7 (WHEREUPON, State's Exhibit No. 58 and 59 was
8 admitted into evidence.)

9 BY MR. DURANT:

10 Q I'm going to show you that video first. There's no
11 audio on this video, is there?

12 A It should not be. We always cut audio off.

13 (WHEREUPON, video played for jury.)

14 BY MR. DURANT:

15 Q Trooper Macoon (sic) or the drive through portion of
16 the video when was that prepared?

17 A After everybody left the scene before after I went
18 home.

19 Q The sun had begun to come up at that point?

20 A Yes, sir.

21 Q Do you actually remember making the drive through?

22 A I do.

23 Q Anything significant about the drive through that you
24 remember?

25 A The most significant thing is I did it at two

1 different speeds. The first one which is we really slow.
2 You kind of get an idea of the recording idea of the area.
3 And then I did it at 55 miles an hour. I actually got up
4 to 55 miles an hour set my cruise control and recorded
5 driving through it. But I even notated in my notes. One
6 of the most significant things that came out to me was
7 when I top the hill, there was a truck that had obviously
8 already made a left turn. There was nobody in front of me
9 when I started my maneuver. And when I top that hill,
10 there was a truck that was just completing what look like
11 a left turn off of Home Branch Road. And I was coming up
12 on him kind of quick. I did have to hit my breaks and
13 slow down, but I notice that had I not hit my breaks, that
14 area between the skidding and the point of impact I would
15 have struck the rear of his vehicle.

16 Q And that's when you were driving 55?

17 A That was just at 55.

18 Q So you were over the speed limit at that point?

19 A Yes, sir, I was ten miles over at that point.

20 Q I'm going to ask you to step down quickly. I'm going
21 to ask you question about. The video is almost over. One
22 second of the video we just watched. What are we looking
23 at here?

24 A This is looking back up towards Paxville which is the
25 direction of travel for the Hyundai.

1 Q Your part of the south bar on Home Branch Road?

2 A Yes. She would have toping this hill coming up on
3 Home Branch.

4 Q So beyond that hill would be the area there's no
5 visibility?

6 A That's correct. And this is looking back towards
7 Manning.

8 Q Towards Boyd Road?

9 A Yes. Boyd Road was that next road off to the right.

10 Q Okay.

11 A And that's another thing we look at when we're doing
12 these. We want to notation any vision of obstructions and
13 this is when I'm getting up to 55 driving through in the
14 direction the Hyundai would have been traveling. We just
15 -- the reason I turned on my signal is I know I'm doing
16 ten miles an hour, but I also got the emergency equipment
17 on my truck, that's whey he turn his signal and I shut it
18 off, so he wouldn't.

19 Q Thank you.

20 A Yes, sir.

21 Q I'm going to publish quickly the animation for the
22 jury and then I'll ask a couple of follow up questions. I
23 know everybody needs a break, so I'm almost finish. This
24 is a take short animation. And then with the Court's
25 permission take a break.

1 (WHEREUPON, animation played for the jury.)

2 BY MR. DURANT:

3 Q Officer Ridgeway, you mention that when you did the
4 drive through, that another vehicle happen to pull out
5 from Home Branch Road and that because you were exceeding
6 the speed limit, you would have had to break -- you had to
7 break to avoid a collision?

8 A That's correct.

9 Q In your opinion, based upon your calculation and your
10 review of this accident scene and your expertise, do you
11 have an opinion as to whether or not if the Defendant
12 Tammy Brown had been driving the speed limit whether this
13 accident would have occurred?

14 A Based on the numbers, the distances and the times at
15 45 miles an hour, you would not have to -- you wouldn't
16 even have to break and you would have avoided hitting the
17 vehicle in front of you.

18 Q So no accident would have occurred, no collision
19 would have occurred?

20 A That's correct.

21 Q And no breaking would have been necessary by Ms.
22 Brown had she been driving the speed limit?

23 A That's correct.

24 Q Finally, Trooper Ridgeway, do you have an opinion as
25 to whether or not the driver of the black Dodge pickup

1 truck failed to yield the right of way?

2 A Based on the data that we have, the evidence at the
3 scene, the vehicle did not fail to yield the right of way.

4 MR. DURANT: And that's all the questions I
5 have.

6 THE COURT: Okay. Before you start, we going to
7 take a break.

8 Ladies and gentlemen, we been out a little
9 while.

10 MR. BARR: Judge, may we approach the bench?

11 THE COURT: Yes, sir.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury, but out of the hearing of the
14 jury.)

15 THE COURT: Ladies and gentlemen, I'm going to
16 send you to the jury room for a few minutes. Don't
17 discuss the case yet. I'll get you back out. Thank you.

18 (WHEREUPON, the jury retire to the jury room.)

19 THE COURT: Trooper Ridgeway, you can step down,
20 but you just can't discuss your testimony. We will be in
21 recess a minute.

22 (WHEREUPON, a break was taken.)

23 THE COURT: We ready for the jury.

24 (WHEREUPON, the jury came into open court.)

25 THE COURT: Ladies and gentlemen, after

1 conferring with the lawyers now is probably the best time
2 we break for lunch. So we'll going to lunch and ask you
3 to be back at 1:30 in the jury room and we're going to
4 continue with this trial. Have a nice lunch and don't
5 discuss this case. We'll see you at 1:30.

6 (WHEREUPON, the jury excused for lunch.)

7 THE COURT: I've talked to the sheriff. He's
8 gone try to get a school bus and a school bus driver from
9 the school to take the whole jury at one time. I propose
10 to send a deputy out there to lead the school bus. And
11 I'll get a deputy up here and the school bus driver to
12 explain the rule we want to tell them what we want them to
13 do. One problem is the way the time is gone fall out,
14 it's going to be the time the school bus is on the road
15 taking kids home. He's going to call the school district
16 and see if they can get an activity bus. He'll let me
17 know something hopefully by 1:30 or two, so when we get
18 back from lunch. I just -- if you all can think about it,
19 the best I can give them as to what time we need them up
20 here to do this. So if you will think back that over
21 lunch and any potential charges. We'll break for lunch.
22 And I'll see you all back at 1:30.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: Okay.

25 MR. BARR: Judge, may we approach the bench?

1 THE COURT: Yes, sir.

2 (WHEREUPON, a bench conference was held in the
3 presence of the jury, but out of the hearing of the
4 jury.)

5 (WHEREUPON, a pause in the proceedings.)

6 MR. BARR: Judge, we ready.

7 THE COURT: We ready?

8 MR. BARR: Yes, sir.

9 THE COURT: Witness come back on the stand.
10 Bring me the jury.

11 (WHEREUPON, the jury came into open court.)

12 THE COURT: Okay. Mr. Barr, you may examine the
13 witness.

14 MR. BARR: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. BARR:

17 Q Corporal Ridgeway, I think I've introduce myself to
18 you earlier during one of the breaks and I complimented
19 you on your thoroughness of which you conducted your
20 investigation, but I do have some concerns and I'm going
21 to express them to you now about some of the testimony.
22 And the first thing -- the first place I want to start
23 with the that you arrived and you claimed that you -- I
24 believe you said you got on the scene about two o'clock
25 a.m.?

1 A Two a.m., yes, sir.

2 Q And were you accompanied by any other highway
3 patrolman, when you arrived? Did they have anybody else
4 -- any members of your team come in with you?

5 A They were on the way. They were out that Friday.

6 Q But you got there before they did?

7 A Yes, sir.

8 Q And if I am not mistaken, you know, sometimes when
9 you go to see your doctor before they start with any
10 treatment they want a history. And it seems to me that
11 the way you approach this investigation is almost
12 analogist to that kind of methodology. Again as much as
13 you did start with a little bit of history. And when I
14 say a little bit of history, I'm talking about you
15 indicated in response to a question that was asked to you
16 by the Solicitor that you had gotten some information that
17 one of the vehicles that was involve in the accident --
18 well, let me stop here before I go any further with that.
19 Did you get any background information concerning the
20 vehicle that the white Hyundai and the driver and where
21 driver was coming from where the driver was going to?
22 A I do not recall specifically. I could look at the
23 evidence and tell the direction, but not like --
24 particularly whether or not she was coming from -- I
25 didn't even know if it was female or male, but whether or

1 not the driver was coming from particular place or going
2 to.

3 Q But you did conclude that the driver of the Hyundai
4 was on Highway 261?

5 A Yes, sir.

6 Q Which would have been the primary highway?

7 A Yes, sir.

8 Q And was traveling east on Highway 261.

9 A Yes, sir, it is.

10 Q All right. So now that puts the driver of the
11 Hyundai whether she was drive under the influence or
12 whether she was driving extensive rate of speed, she was
13 traveling east on Highway 261?

14 A Regardless of what she was doing she was traveling
15 east on 261.

16 Q Now, and I think as you indicated that you got some
17 information that led you to conclude or to initiate your
18 investigation from perspective that the other vehicle had
19 come on to Highway 261 from Home Branch Road?

20 A That's correct.

21 Q Okay. Now, of course, would you agree that with
22 respect to as thorough as you been as it relates to all
23 the factors that went into your computations and your
24 animations, you did start with a proposition that the
25 truck came from Highway 261; is that correct?

1 A Not necessarily, no, sir.

2 Q Not necessarily. I'm sorry not Highway 261 but from
3 Home Branch Road?

4 A I started with a pickup truck got hit in the rear at
5 great speed by a Hyundai Tiburon, that's where I started.
6 Her best case scenario is that the vehicle was then coming
7 off Home Branch Road, was making a left turn on Home
8 Branch Road which is also the information that was relayed
9 to me.

10 Q Can you tell me where you got that information?

11 A That was from -- he is now the captain, but it would
12 BK Floyd. He would have been the senior supervisor out
13 there at that time. I believe he was a first sergeant in
14 2014 over Sumter and Clarendon.

15 Q And, of course, you hadn't done any of the
16 investigation to find out where he got that from?

17 A No, that's -- initially upon arriving on the scene, I
18 approach him, hey, what do you have. This is what we
19 have. He told me that, okay. And then I started the
20 investigation.

21 Q But it just seems that somebody as serious as this
22 collision was, would have taken a step further and get
23 some confirmation of where the truck was coming from or
24 the direction that the truck was coming from because you
25 start with the claim that it was coming Home Branch Road

1 on to Highway 261. Were you in the courtroom yesterday
2 when Ms. Gutierrez testified?

3 A I don't know her name. Was the last person?

4 Q Yes, sir.

5 A Yes, sir, I was here.

6 Q According her -- and I'm not asking you compare, but
7 according to her, there was a party on Home Branch Road or
8 a cookout on Home Branch Road where she said that that's
9 the last time she spoke to the passenger in the vehicle?

10 A I heard that, yes, sir.

11 Q Okay. Now, of course, at a cookout or a barbecue
12 there must been a bunch of people there?

13 A I would assume so. I don't know how large it was.

14 Q Should not have been too hard to confirm that he was
15 coming from the direction of Home Branch Road on to
16 Highway 261 with all the those people there. Somebody
17 should have -- it seems that -- has it struck you as kind
18 of odd that we not heard somewhere in this court room that
19 this man was coming off of Home Branch Road?

20 A As far as what I do, it really does not factor in. I
21 only look at the facts based on the circumstances or based
22 on the evidence that's on the roadway?

23 Q Well, I thought I heard you testify at some point
24 concerning the amount of time that it would take to get
25 from the location on Home Branch Road coming off of Home

1 Branch on to Highway 261 I didn't hear that?

2 A I did, yes, sir. You did.

3 Q And do you remember how much time you said it took,
4 was it 6.2 seconds?

5 A Something roughly that.

6 Q 6.2 seconds?

7 A 6.361 seconds.

8 Q 6 point what now?

9 A 6.3.

10 Q 6.3 seconds to come from Home Branch Road to get in a
11 position where he was, but if you came from somewhere
12 else, you would agree that 6.2 seconds would probably not
13 apply here, if he came from somewhere else. I'm just
14 saying if he came from somewhere else?

15 A I don't where else he would come from, that was the
16 only road right there.

17 Q Well, you know what I kept trying to figure this
18 thing out a long time. And I think I finally got it
19 because Ms. Brown claims that the vehicle entered the road
20 from the right side?

21 MR. DURANT: Objection, Your Honor.

22 THE COURT: Sustain.

23 BY MR. BARR:

24 Q All right. Well, I'm gone tell you what if she
25 testifies and I believe she will, I think that's what she

1 would ---

2 MR. DURANT: Objection, Your Honor.

3 MR. BARR: Your Honor ---

4 MR. DURANT: He can't backdoor his client's
5 statement without putting her on the stand.

6 THE COURT: I understand. You can't -- it's not
7 in evidence.

8 BY MR. BARR:

9 Q Okay. Well, I tell you what let's come down here and
10 let's look at this first video -- look at the video that
11 you showed when you went through, that's the one I want to
12 see. I'll tell you what exhibit number it is.

13 MR. DURANT: The drive through?

14 MR. BARR: The drive through.

15 (WHEREUPON, a pause in the proceedings.)

16 MR. DURANT: Mr. Barr, you want to start at the
17 drive through portion?

18 MR. BARR: Yes, sir. Now, that's the same video
19 you showed from over here?

20 MR. DURANT: Yes, sir.

21 MR. BARR: All right.

22 (WHEREUPON, video being played.)

23 MR. BARR: We can stop the video. What I'm
24 looking for is when he approached Home Branch Road.

25 MR. DURANT: You want me to rewind it?

1 MR. BARR: Yes, sir.

2 MR. DURANT: It's another view after this and
3 coming back through.

4 MR. BARR: All right. Maybe it is on the next
5 one.

6 BY MR. BARR:

7 Q Now, I think you at Home Branch Road looking to your
8 right?

9 A Yes, sir.

10 Q Okay. Now, if you turn left, you will be turning
11 left on -- stop it right there and back up just a little
12 bit please to where you show -- hold it right there. You
13 went a little bit too far, back it up little bit. Now,
14 stop it right there. Now, Officer Ridgeway, do you notice
15 the sign that says Home Branch Road or it says Boyd Road
16 goes off to the right; is that right?

17 A Yes, sir, it does.

18 Q Now, you never been down Boyd Road, have you?

19 A I've never been down Boyd Road.

20 Q You never gone down that?

21 A No, sir.

22 Q Well, apparently -- I've been down there, but I've
23 never -- Ms. Gutierrez told us yesterday that that's where
24 she lives?

25 A That's where what I heard, yes, sir.

1 Q And her boyfriend -- when you come out of Boyd Road,
2 do you notice that there's another road that comes on to
3 Highway 261?

4 A It's a little dirt drive.

5 Q It's a little dirt road?

6 A Yes, sir.

7 Q The first time I went in there you know where I came
8 out at? I came out on the dirt road.

9 A Okay.

10 Q Coming from down on Boyd Road? I didn't come to the
11 stop sign here. I came out right here.

12 A That little dirt road is actually like a little U.
13 It connects to Boyd Road and goes by junction box and ---

14 Q Go back by the junction box and comes right on
15 Highway 261?

16 A Yes, sir.

17 Q Okay. Now, of course, you for purposes of your
18 investigation, you never ever gone through the
19 calculations to determine how long it would take somebody
20 coming out of that road to get to where you said the
21 impact or collision occurred, have they?

22 A Have I done calculations for the time?

23 Q For the time?

24 A The time would be irrelevant in that.

25 Q The time would be irrelevant?

1 A Uh-huh.

2 Q How about the position of the vehicle?

3 A Yes, I'd have to examine where the position of the
4 vehicle was.

5 Q The position of the vehicle would be very very
6 relevant, wouldn't it?

7 A It would be, but it would not fit the dynamics of
8 this collision.

9 Q It wouldn't fit the dynamics of it?

10 A Because the impact is right there at that driveway.
11 It's like in the center of where that driveway is.

12 Q The impact is -- the impact according to you occurred
13 before you get down to the sign where Boyd Road?

14 A It is -- again, you can look at the CADs. It is
15 right there almost immediately in the center of that
16 driveway. So what -- giving the time the car coming out
17 of there would be irrelevant to this collision.

18 Q Well, of course, if the car came out that driveway
19 and turned right, but you said you never -- you know, I
20 looked at the -- this is Defendant's Exhibit Number 5,
21 that's what it was marked for identification, but it has
22 been entered into evidence as a prosecution exhibit. But
23 now according to your testimony, these are -- that area
24 where we see -- incidentally, if you covered the ridge
25 marks with the charts they all look white?

1 A That's because all that's been scooped out. That's
2 the actual appearance of them.

3 Q That's the actual appearance?

4 A Yeah.

5 Q In other words, that way you said the collision
6 occurred?

7 A That is where the impact occurred.

8 Q Impact. Now, you not suggesting that -- and do you
9 see that little area of the concrete -- a little area
10 right down on the right?

11 A Yes, sir.

12 Q That goes into that same road as we're just looking
13 at, doesn't it?

14 A That is that driveway.

15 Q That driveway?

16 A Yes, sir.

17 Q Now, if you came out of that driveway out in the
18 middle of the driveway and turned -- and turned right, you
19 would probably be -- are you telling us that somebody
20 couldn't hit you straight on from that position if you
21 came out there and turn right?

22 A There's several problems with that assumption.

23 Q Pardon me.

24 A There are several problems with that assumption.

25 Q Well, I guess there's a problem with it. I'm sure

1 there's a problem. Believe it or not as good as your
2 presentation was, I got some problems with it. So there's
3 probably some problems with it, but, I mean, in term of
4 whether or not that happen somebody could have came out
5 there and turn right. It seems possible, doesn't it?

6 A Well, the problem is there's no tire tracks from the
7 sand onto the road right there. And you can see the tire
8 tracks making a left turn, but you see none making a right
9 turn, see where the sands coming across the screen and you
10 clearly see -- I see one, two, three, four tire marks
11 coming out of that driveway to the left.

12 Q Do you know who went in there and came out made those
13 tires print?

14 A I have no idea.

15 Q Do you know when they were made?

16 A I do not know when they were made. And then you're
17 also assuming that the vehicle turns out of there and is
18 able get there vehicle completely turned in the road. So
19 it's facing straight down the road before they
20 immediately -- that would have been an immediate hit.

21 Q You don't think that could have happen?

22 A You don't want that to happen.

23 Q Pardon me.

24 A You wouldn't want that to happen.

25 Q Well, I mean, you may not want it to happen, but I'm

1 just -- I'm trying to figure out how the vehicle could
2 have gotten where it was and how your marks could have
3 gotten where it was if the vehicle came on to the road
4 somewhere else other than from Home Branch Road.

5 A Where the logical assumption would be that, yes, the
6 next available spot for it to come on to 261 would be that
7 driveway, but again you would be assuming that the vehicle
8 immediately is able to turn and get straight in the
9 roadway. I mean, that's what a foot. And then ---

10 Q Well, it seems to be more than a foot. Did you
11 measure it?

12 A We got scale diagram right here.

13 Q Well, what I'm saying is from where -- if you don't
14 know where the vehicle came out, do you, on to 261?

15 A I just know it was straight on 261.

16 Q On 261?

17 A Yes, sir.

18 Q All right. Now, I'm thinking that -- now there's no
19 -- you talked about -- you talked about earlier about a
20 debris field. And tell ladies and gentlemen of this jury
21 what a debris field is?

22 A The debris field is the pieces and parts coming off
23 of the vehicles, whether it be body panels, glass,
24 mirrors, lenses or in this case a tool box and everything
25 that was in the tool box. It is stuff that's coming off

1 the vehicle at impact and basically spreading out.

2 Q An impact spread out?

3 A Yes, sir.

4 Q Now, assuming that nobody has cleaned up the highway
5 and tampered with any evidence, the front of the vehicle
6 being driven by Ms. Brown it just seems pretty much torn
7 up, doesn't it? A lot of damage?

8 A Yes.

9 Q Okay. And that's where the metal starts bending. I
10 mean, that's where two vehicles you said made contact?

11 A That's correct.

12 Q Okay. Now, and I understand your explanation you
13 said that the force from the impact would carry -- well, I
14 may be I better not try to say it because quite frankly I
15 don't know. But there's absolutely doesn't appear to be
16 any debris, nothing?

17 A Well, there's a ton of debris.

18 Q Oh, there is. Is it depicted on this photograph?

19 A You might need another photograph, but there is
20 debris up there especially around the car.

21 Q Well, what I'm talking about where the two vehicles
22 would have -- where the impact would have occurred.
23 There's not. I mean, it seems to be -- it would seem -- I
24 mean, when the two vehicles collide something would have
25 fallen off?

1 A No.

2 Q With all that damage?

3 A Not always, no. It does. I mean, you got to think
4 these collision are happen -- the average collision time
5 is about 20 milliseconds. And then if you have vehicles
6 going at the speed these vehicle were going, you have the
7 impact, but then you have those vehicles pushing
8 everything out in of front of them as well. It's -- we do
9 some testing in some of our crash test where we'll have
10 basically they're paint guns lined up on the car. Like if
11 we wanted to do a drag testing on a car, then we'll get
12 the car up to a certain speed. And it's design so when we
13 hit the breaks, it fires the paint ball under the
14 pavement, that way we can get a measurement of exactly
15 where we hit the breaks at and the length that it took to
16 stop the car. We don't ride around in the cars with
17 paintballs on them. So when everything's happening, it's
18 not like something immediately dropping right down.
19 Everything -- you figure the heading of the car everything
20 is also going that direction. So when there's an impact,
21 it's not like -- I mean, there's no magical wall that
22 stops it and it drops right there. It's also going at the
23 same speed as the car's going. So it's being projected it
24 front of the of the collision.

25 Q And you just get clean space with nothing in the

1 road?

2 A Well, it's hard to tell on this photograph. There's
3 other photographs available where that section of the
4 roadway past the gauge mark is lighter.

5 Q Well, that debris down there. Now, of course, I
6 think you can see a little bit better on the exhibit what
7 we marked as identification for identification purposes.
8 This is Defendant's Exhibit Number 1, but now from the
9 point of impact all the way down to where the Hyundai came
10 to rest. Well, I assume if there was debris somewhere
11 between where the impact occurred and where the Hyundai
12 came to rest somebody would have cataloged it with a
13 marker?

14 A No.

15 Q Nobody would mark it and say this came from -- maybe,
16 I'm thinking about ---

17 A If this were a hit and run with a pedestrian where we
18 go out there and collect every part that comes off of a
19 car so we can identify a car, then, yes, we would mark
20 those, photograph those, collect them, examine them, try
21 to link them to a specific vehicle. On this one, there's
22 no question where the area of impact is because you have
23 the gauges. The little pieces coming off the car are not
24 important for what we do not in this type ---

25 Q I understand that it's not important for what you do

1 per se, but we doing something a little bit different and
2 I'm just wondering about those little pieces. And, of
3 course, I'm more accustom to investigating scenes
4 involving some other type criminal activity where the
5 officers go in and you know how they mark everything ---

6 A Pick up cigarette butt.

7 Q Every cigarette butt and every spint gun shell.

8 A That's right.

9 Q And I'm just thinking that that since it just seems
10 that nothing absolutely on the highway either somebody
11 picked it up or nothing fell off?

12 A Well, I can't tell that either. You have to zoom in
13 on the photograph. I mean, there may be little pieces of
14 glass between there and I can't tell on this photograph.
15 Nor do I remember ---

16 Q But you would agree in terms of what we can see it
17 doesn't appear to be anything until we get all the way up
18 to where the tool box came off?

19 A I mean, I see some stuff in the roadway. I don't
20 know what it is from this view, so I couldn't say that for
21 sure.

22 Q Well, let me get another -- this is exhibit
23 number four, which is a little different doesn't have all
24 obstruction. Number four is a little bit clearer and it's
25 still -- well, I don't know if there's anything on number

1 four?

2 A I mean, I'm seeing things that do not look like part
3 of the roadway, so what they are I can't tell you.

4 Q Well, do you know whether or not they had any
5 connection with this collision? Of course, you don't
6 write that down?

7 A It's not important.

8 Q All right. Now, I'm going to let you take a look at
9 the actual photograph Defense Number 2 for identification
10 and State's Exhibit Number 1 like a whole lot of going in
11 and coming out of Boyd Road?

12 A On Boyd Road?

13 Q Yes, sir. Do you know who did all that?

14 A I don't how long it been there either.

15 Q Don't know how long it's been there?

16 A No, sir.

17 Q Okay. Now, I'm going to when you first arrived at
18 the scene and this was before you did your walk through of
19 the photographs and you said you designated different
20 jobs. Who designated the job to look at the ridge marks
21 in the highway, do you remember?

22 A All team members walk through the evidence.

23 Q Sir?

24 A All the team members out there from the MAIT team
25 that appear on the scene, we all upon arriving do an

1 initial walk through. So we would have all looked at it.

2 Q I see.

3 A The task are whether photographing, vehicle exams,
4 mechanical exams, vehicle imaging or architect or forensic
5 mapping, those will be assigned tasks, but we all look at
6 the entire scene together.

7 Q Okay. And just for confirmation, you never do any
8 kind of or did you do any kind of forensic tests to make
9 sure that the ridge mark in the highway were connected
10 with this accident?

11 A I mean, I can look at them and tell they're connected
12 to it.

13 Q You can just look at them and tell that?

14 A Yeah, you can. Everything is based on physics.

15 Q Well, based on physics?

16 A Yes.

17 Q Well, I tell you I'm always bad in physics maybe
18 that's why I chose law.

19 A It wasn't my favorite topic either.

20 Q You had to be very good at physics all these number
21 you get, yes, sir, chemistry too. Now, on the chemistry
22 part of it, you're saying you can just look at this and
23 make a decision and make a determination that these marks
24 were done in connection with this automobile collision?

25 A I mean, there's no chemical analysis performed on it

1 again.

2 Q Well, I mean, you can test paint or something off the
3 front of a vehicle or you could do something to determine
4 that this is in fact connected with this particular -- I
5 mean, examine it and make sure that this was -- this is
6 part of the car or it came from the car or came from the
7 truck or you don't do any of that?

8 A That be like testing the DNA of everybody I stop. I
9 mean, it's common sense you can tell that the skid marks
10 go right through it. And then you see can where they
11 fatten out and get push down as they're right there at
12 that area.

13 Q Well, we can see make that and we can make an
14 assumption, but we just -- even when we look at and just
15 assume are we just sure about it or we just we making an
16 assumption?

17 A No, it's the laws of physics. I mean, they are
18 every -- they are the same every time no matter what
19 circumstance it is. Something caused her tires to be
20 pushed down and to spread out at that location and only
21 thing it can be is running into back of that truck.

22 Q Well, I mean, I understand what you're saying, but
23 you said something caused it. You didn't see it cause it
24 and I didn't see it cause it. And, of course, you say
25 that in your opinion it did cause it and I'm just asking

1 how can we be sure? Could we have been sure?

2 A One of Newton's laws are that a vehicle in motion
3 will remain in motion in a constant rate and constant
4 speed unless acted upon by an outside force.

5 Q I remember Newton's law.

6 A Clearly, this is a perfect example. You can see the
7 tire marks coming into it. You see how they're perfectly
8 straight, perfect ridges from the tread mark. And then
9 right there at that gauge, you see how they kind of move
10 off to the left and then they spatter and they start
11 getting lighter right there. So based on Newton's laws
12 had it not struck something and there's no other car out
13 there except for the Dodge pickup truck and her car and
14 the damage matches up to both of them.

15 Q Yes, sir.

16 A She had to hit something right there exactly at that
17 point to cause her vehicle to do that. There's just no
18 other way to do it.

19 Q Okay. Looks like a whole lot of tires went across
20 here. Of course, you don't know who did that, who drove
21 across there?

22 A I do not. I mean, it could have been EMS, could have
23 been the fire department or it could have been out there
24 since the last time it rained. I don't know.

25 Q And I think you testified earlier that in your

1 opinion those gauges in the highway came from the under
2 carriage of the Hyundai?

3 A It would be components from the under carriage of the
4 Hyundai.

5 Q Pardon me.

6 A It would be components from the under carriage of the
7 Hyundai.

8 Q Okay. And, of course, there wouldn't be any fluids
9 -- you would get that until the car stopped and it start
10 leaking that way?

11 A No, I actually like to bring that up. You can see
12 fluid trail start right at the end of the gauge marks.
13 You see that dark area right there in front of the center
14 gauge mark, that's where the fluid trail starts and leads
15 up underneath the car. I didn't even think about it
16 that's another way that you can tell that that's an area
17 of impact.

18 Q Okay. Now, I want to talk about the truck that
19 crashed into the tree. And as I understand it when you
20 started the testimony, you indicated that insofar as
21 during the various calculations and which ultimately leads
22 determining the speed of the vehicle that made contact
23 with the truck, it started with examining the tree and the
24 truck?

25 A That's where I start my examinations, that's correct

1 and move backwards from there.

2 Q You want to find out what the crush factor is for the
3 truck?

4 A Yes.

5 Q And you said that you look at the entire front of the
6 truck?

7 A I actually map the entire front of the truck.

8 Q Map the front?

9 A Yes, sir.

10 Q You make measurements to determine the compression

11 ---

12 A That's correct.

13 Q --- made by the tree?

14 A Yes.

15 Q Okay. And I believe that you indicated that
16 ultimately you get or you can get the force that it took
17 to send the truck into the tree?

18 A The force it took to cause that amount of damage, to
19 cause that amount of crush to the truck which gives me
20 equivalent barrier speed, which is then the speed that
21 truck hit that tree at.

22 Q So then that's the force that was applied to the
23 truck. Does it take into consideration the speed of the
24 truck?

25 A That -- I mean, the speed of the truck when you're

1 talking about energy, unless you have it slowing down on
2 the roadway, there's only two variables for energy and
3 that's the weight of the truck and the velocity of the
4 truck.

5 Q Yes, sir.

6 A So in order adjust your energy that's going into a
7 system, you either have to change the weight or the
8 velocity. The trucks don't gain or shed pounds driving
9 down the roadway. So then the only variable that you have
10 left is your velocity.

11 Q So now tell me what -- did you -- do you know what
12 kind of tools are in the tool box?

13 A I do not everything was scattered out.

14 Q You so don't know what tools, full of tools or heavy
15 tools or light tools?

16 A I do not know.

17 Q And, of course, the weight of the tool box -- well,
18 you said you didn't know what the weight of it was?

19 A The tool box was not part of the collision after the
20 impact. It was laying beside the car. So the weight of
21 it is again irrelevant to my analysis.

22 Q When did the tool box come off there?

23 A It would have been right around the impact. It's
24 laying right beside the car at the final rest.

25 Q Right around the impact?

1 A Yes. And like all the other debris, it's going to
2 travel in the direction of the baring of the vehicles.

3 Q Okay. Now, the impact -- the photograph we just
4 looked at the vehicle up the road and tool box up the
5 road?

6 A Uh-huh.

7 Q And you said when it came off at the impact?

8 A It's going to start to come off. The major force is
9 knocking it off. Again, like everything else, it's not
10 going to drop right down on the road where the impact is.

11 Q The fact -- the impact occurred here and the tool box
12 is all the way down by the door of the Hyundai?

13 A Well, there's another factor you're not considering.

14 Q Pardon me.

15 A There's another factor you're not considering.

16 Q What is that?

17 A Well, the tool box is going to come straight back.
18 It may have been on the hood of that car until the car
19 stopped. I mean, the only thing between ---

20 Q That's how calculated it as the tool box being on top
21 the car?

22 A Again, the tool box does not matter to me. I don't
23 -- as far as my analysis, it doesn't matter. The tool box
24 could have been in another county, it does not matter.

25 Q Well, how about if they were five people in the truck

1 instead of two would that matter to you?

2 A Yes, I would account for that.

3 Q And how about accounted for two instead of one?

4 A Yes. I mean, it's very minor when you're talking
5 about the weight of the vehicle it's very minor, but I do
6 account for it.

7 Q It would change -- it would change the dynamics of
8 your numbers though would it not to some degree?

9 A I mean to a miniscule amount ---

10 Q Miniscule amount.

11 A --- it may.

12 Q You know what else I thought about in terms when you
13 telling us about the speed of the truck. You know when I
14 went out there look at that shoulder of that road where
15 the imprints that the truck made, oh, it's boggy?

16 A It is a little boggy.

17 Q Kind of boggy?

18 A Uh-huh.

19 Q Messed up my shoes.

20 A It could.

21 Q I'm trying to figure out how you can compensate. You
22 said that there's no drag and almost take a tractor to go
23 through there to get down into where that tree at. I
24 mean, if you going down on the side of road, doesn't it?

25 A Yeah, it could. I mean, it's -- it would

1 significantly impede the speed of the truck which is bad

2 ---

3 Q It would have to. I would have to.

4 A Yeah.

5 Q And I think you said in your calculation you just
6 didn't do any kind of compensation for that. I mean, you
7 said that what did you say -- I wrote it done down. You
8 compared it to rolling a tire, pulling a tire. Well, I
9 guess, if you were on a flat surface, I guess, it would
10 probably be pretty easy to calculate -- to say what
11 effect, if any, the surface of the road would have on
12 determining the speed of the vehicle?

13 A Flat surfaces are easier. Asphalts easier.

14 Q You would agree in terms of the surface that this
15 truck traveled on -- you just can't do it, can you?

16 A Well, I can do it, but for the benefit of your
17 client, I left that out, that raises her speed.

18 Q Raises her speed?

19 A Yes. Like I said, I did the most conservative
20 analysis that I could. Anything that I add to it raises
21 her speed.

22 Q Well, I thought we were just kind of doing it taking
23 it as we find it and not necessarily -- well, if you say
24 so. I mean, I'm just -- here's what I'm trying to
25 determine whether or not because ultimately you testified

1 that -- and, of course, this was to a degree that coming
2 from Home Branch Road and looking down the road and at the
3 speed that Ms. Brown was traveling at, that whoever came
4 from Home Branch Road would not have been able to see her
5 vehicle?

6 A That's correct.

7 Q And, of course, what I'm trying to determine is how
8 these numbers could possibly change depending upon first
9 of all whether or not the person came off Home Branch Road
10 where you said they would have been looking from. And if
11 they were looking instead from the driveway by Boyd Road,
12 I mean, I know that would change things. I mean, I know
13 you've told us how it happens, but we just -- we're trying
14 to make sense of it.

15 A I understand.

16 Q Now, you also said that there was no evidence to
17 indicate as far as the truck that the breaks had been
18 applied. Did you say that?

19 A That's correct, yes, sir.

20 Q Driver struck from the rear, the truck leaves the
21 road and headed toward the tree. Now, you also indicated
22 that centrifugal force would have thrown the passenger
23 backwards, right?

24 A The force coming in, yes, it would have thrown the
25 occupants of the truck. Essentially, the truck gets

1 pushed out from under them. So it would go to the back,
2 yes.

3 Q Okay. No -- nothing to suggest the injury to the
4 occupants of the truck, but that had occurred at the
5 collision when the vehicles made contact or when they made
6 contact with the tree?

7 A The injuries that I know about based on my
8 experience, training and the thousands of collisions that
9 I've seen would have been at the point of impact. The
10 majority -- the most varying injuries would be at the
11 point of impact.

12 Q Point of impact.

13 A That's when you're getting the most energy through
14 that vehicle.

15 Q Okay. I see. Point of impact. That's where the car
16 and the truck came together?

17 A Yes, sir, where the car hits the rear end of the
18 truck.

19 Q Okay. Well, we had a doctor come in here and talk
20 about the injuries. I can't remember what day that was.
21 And, of course, you never seen the autopsy or anything
22 from the young man that died?

23 A I just seen the coroner's report.

24 Q Okay. I think when they found -- they had to cut --
25 the fire department had take the passenger from under the

1 seat down in between the dashboard and the seat. And then
2 the other driver was down up under the steering wheel?

3 A I know about the driver. I never saw the passenger.

4 Q Now, you think that based on your -- he got there
5 when the collision occurred or when he hit the tree?

6 A They would go -- they got down underneath at the
7 impact of the tree.

8 Q I was thinking that.

9 A You have two directions of forces here?

10 Q From the impact of the tree. So now, of course --
11 but you said there's nothing to indicate that anybody --
12 there was no breaking activity on the truck between the
13 time of the collision and the time of the tree?

14 A There were skid marks on the road. There were no --
15 the grass was not gauged out as it traveled through the
16 boggy area that you describe.

17 Q Yes, sir.

18 A It's just tire marks rolling down the grass.
19 Nothing's chewed up like the breaks are locked going
20 through there. The tire marks are straight. It's not
21 like anything swerving like this. So there was no input
22 once the Hyundai collided with the rear end of the Dodge.

23 Q And the breaks were operable, right?

24 A As far as we know the breaks were operable.

25 Q Anybody examine the vehicle?

1 A They had a general vehicle exam done on the vehicle.

2 Q General vehicle exam. Who did that?

3 A That was actually our mechanic which is Corporal
4 O'Donald.

5 Q So somebody had to apply the break, they probably
6 would have worked if they wanted to try to stop the
7 vehicle?

8 A I mean, based on the condition of the vehicle at
9 least the front breaks would have. You saw the damage to
10 the rear axle. I am not sure that the -- I don't know
11 whether or not any break lines -- I know the shock towers
12 were actually pulled a part back there. I don't know if
13 the break lines were still intact for the rear of the
14 vehicle.

15 Q So for whatever reason, the driver of the vehicle
16 between the time of the impact with the vehicle and time
17 impact of the collision never applied the breaks?

18 A That is what the evidence indicates.

19 Q Would you think that would contribute to the force of
20 the impact against the tree? The fact that the breaks
21 were never applied.

22 A Yes, actually that would mean that the truck had to
23 slow down more until it got to that point which again
24 raises your client's initial impact speed. I only gave it
25 rolling resistance, you know, to give her every benefit

1 that I could. So, yes, it would, but it would increase
2 the speed of the truck which increases the speed of the
3 Hyundai that strikes the truck.

4 Q Well, it either increases the speed of the Hyundai
5 will make you wonder why the man didn't apply the breaks,
6 right?

7 A He got hit in the rear when you saw the damage to the
8 truck.

9 Q I saw the damage to the truck from the rear and from
10 the front and from the tree?

11 A Yeah. From the rear end, I've seen a handful of
12 collisions with that much damage to the rear. And in
13 every instance, there's no breaking post impact because
14 the occupants cannot break post. They either don't have
15 their wits about them or usually they're deceased.

16 Q Or may be intoxicated. I mean, you never know?

17 A Every time I've seen them, then they usually been
18 deceased or they're unconscious.

19 Q All right. Now, of course, in terms of concluding
20 again the speed of Ms. Brown's vehicle and now moving back
21 from the collision with the tree and I believe you would
22 agree that with respect to the calculation that we've come
23 up with or that you came up with as far as the amount of
24 force that it could have taken because the amount of crush
25 to the front of the vehicle, you still moving backward to

1 determine the amount of speed?

2 A That's correct. I'm moving backwards through those
3 sections.

4 Q And, of course, there you are looking at the weight
5 of the vehicle. Did you factor in the weight of the
6 vehicle?

7 A Through one segment of it I did.

8 Q Sir?

9 A Through one of the segments, yes, I did.

10 Q And you did factor in determining the speed of the
11 vehicle or -- well, the lighter the vehicle the harder it
12 is to stop them?

13 A No, the lighter the vehicle, the easier it is to
14 push.

15 Q Easier it is to push?

16 A Yes.

17 Q But when you apply your breaks in a lighter
18 automobile, it just doesn't make a difference?

19 A Most cars stop in about the same distance. Now,
20 would a big truck, you know, commercial motor vehicle will
21 not as fast as a car will because they do have more weight
22 and they have a different breaking system, but most
23 breaking systems on automobiles whether or not they be
24 cars or trucks, react about the same. Matter of fact, one
25 of the equations that we use and I didn't work it out on

1 this is if your client hit the breaks and hit absolutely
2 nothing until she came to stop, then her speed is 55 miles
3 an hour for that distance hitting absolutely nothing.
4 That equation does not account for the weight of her
5 vehicle because it's factored out in the derivation for
6 that formula. So it has a constant number which in that
7 is -- I mean, it's the square root of 30 times the
8 distance times the roadway friction, but the weight is
9 derivated out of it. So, no, I can use that number for a
10 car. I could use it for a truck. If I do some
11 adjustments to the roadway friction for the different
12 breaking system on commercial motor vehicle, I can even
13 use it for a large truck. So in some instances the weight
14 does matter a little bit and I make sure in case you ask
15 that question to actually use the weights of the vehicle
16 for the third section of my analysis, but I can take that
17 weight out. I could work it with the weight and I can
18 take the weight out and just do 30DF on it and come up
19 with the exact same number.

20 Q It's amazing. You would think that the weight of the
21 vehicle would add to the drag?

22 A No. They both have tires. It's interaction of the
23 tires with the roadway.

24 Q Okay. And the fact that I'm driving a vehicle versus
25 a 500 pound man doesn't make a difference?

1 A Not necessarily. I mean, it's very miniscule because
2 you figure average car is anywhere from 2500 to 5,000
3 pounds for your larger cars. If you get a truck like
4 mine, I think my truck is 7500 pounds. It's a large
5 truck. But when you put that in comparison to a 150
6 pounds or 250 pounds, you know that number is very
7 miniscule when you're talking thousands of pounds. So,
8 no, it does not make that large of a difference.

9 Q I see. So then coming back from the collision with
10 the tree, back to the crush of the vehicle, back to the
11 impact of the force that was taken, and then you going to
12 the speed of the vehicle?

13 A Well, after the impact, then I'm going through that
14 extra 50 something feet. It's 58 feet -- 53 feet of skid
15 marks and going to what the speed was before. We're
16 saying that the vehicle really started decelerating to an
17 impact.

18 Q Now, the skid marks you said you measured 53 feet of
19 skid marks?

20 A Prior to the collision ---

21 Q Yes, sir.

22 A --- is 53.61 and then after the collision is another
23 105.03. So we're looking at another 158 feet of skid
24 marks in total.

25 Q So you've got breaking after the collision?

1 A Yes, from the Hyundai.

2 Q After she collided with the vehicle or the truck, you
3 got breaking on the vehicle. It seems to me that that
4 whole front end was torn up after -- what kind of breaks
5 are you talking about then?

6 A What do you mean?

7 Q Well, are they rotary drum breaks or rotary on the
8 front of the vehicle?

9 A Her vehicle had rotary breaks. I believe it was
10 four-wheel disc breaks on her vehicle.

11 Q So you got disc breaks. And now if she was on the
12 breaks, the breaks didn't lock or they would have locked
13 if she was on the breaks?

14 A Well, they lock let go lock, let go lock for the
15 antilock, yes. But they don't ever really let it go.
16 It's still --

17 Q They slowing the vehicle down?

18 A Yes, it is.

19 Q Are they still making a tread mark?

20 A Yes, they still would.

21 Q So based on your analysis, she would have still been
22 on the break even though she would have collided and even
23 though you had the damage that was shown from the front of
24 the vehicle with front breaks -- rotary breaks, the breaks
25 was still operating?

1 A I mean, we could see the skid marks going right up to
2 the car, so yes, sir, she is still decelerating by
3 breaking through that entire section.

4 Q Okay. Now, you measured skid marks from where
5 vehicle came to rest back to where you claim the collision
6 occurred?

7 A I measure them through the whole length of them.
8 From the first visible point to the last visible point
9 they're measured.

10 Q Okay. Now, do you know what the distance is from
11 where you said the collision occurred to the peek of the
12 hill?

13 A Yes, actually from the collision occurred see we're
14 looking at 53. Well, I can tell you we're just past the
15 peek of the hill. You looking at 53 feet from the point
16 of impact to the beginning of the skid. And then you have
17 another 545 feet which will be just on that other side of
18 the hill crest. If you have a ruler, I can actually get
19 you close to the speed. I just have to measure this
20 distance and apply it to the scale. But from my
21 calculations, you're looking 598 feet roughly.

22 Q Okay. I believe you indicated the speed of the
23 vehicle, the truck at the time of the collision?

24 A Uh-huh.

25 Q What was that?

1 A Based on the average acceleration rate for that make
2 and model and year of the vehicle is for 97.11 feet would
3 be 20.28 miles per hour.

4 Q Okay. Now, would that not depend on where the
5 vehicle was coming from?

6 A Certainly, it would depend on that.

7 Q Okay.

8 A That's the measurement taken from the stop bar of
9 Home Branch.

10 Q That's Home Branch?

11 A Yes, the stop bar from Home Branch to the impact
12 scene.

13 Q Okay. So now if it didn't start from Home Branch,
14 which I know, but, I mean, that would change the whole
15 dynamics of it?

16 A Certainly, it would.

17 MR. BARR: All right. Thank you, sir. I have
18 no further questions.

19 THE COURT: Anything further?

20 MR. DURANT: Yes, sir, I'll be brief.

21 REDIRECT EXAMINATION

22 BY MR. DURANT:

23 Q Officer Ridgeway, there were some -- number of
24 questions to you pose to you about some variables that may
25 have could have been accounted for that weren't -- one of

1 which is Mr. Barr ask about the road side had been --
2 would have impeded the speed of the pickup truck as it
3 approached the tree. And I believe you responded to that
4 question to Mr. Barr that that would be bad for him or bad
5 for his client testimony. Tell the jury what you meant by
6 that?

7 A Basically if you think about it you ever had to push
8 a vehicle or a heavy object, right. If it's on the
9 asphalt, it's easy to push. What you're doing is you're
10 applying a force to it and that's all we're calculating
11 here or we're taking into account. There's an amount of
12 force that a vehicle has coming in also I refer to it
13 energy as well. Well, you know if you push it on a flat
14 surface, it take a lot less force to push that vehicle.
15 You try pushing it through sand or through boggy grass, it
16 takes more force to push that vehicle, but the only place
17 that force comes in here is through speed. So if I
18 account for that, it raises the speed of the truck which
19 the speed of the truck is getting the energy basic physics
20 energy in equals energy out, okay. So if we know what the
21 energy out is, the only way that the energy is coming in
22 in this collision is through the defendant's vehicle. So
23 if I raise the speed on the truck, which is raising the
24 energy, then I've got to raise her speed as well.

25 Q So the end result is if that means she's going

1 faster?

2 A Yes.

3 Q In the 55.9 mile an hour that you testified to
4 earlier in the 64.67 miles an hour even?

5 A Yes, sir, that's correct.

6 Q In a 45 mile per hour zone?

7 A That's correct.

8 Q There were some questions pose to you about two
9 points the impacts one being in the roadway between the
10 two vehicles and then with a pickup truck and the tree on
11 the side of the road, Mr. Barr asked you several questions
12 about whether not somebody would be able to break after
13 the impact on the roadway. And I think you testified that
14 in your experience -- they usually deceased with that type
15 of impact based on that degree of force to the rear of the
16 vehicle; is that right?

17 A That is a massive amount of energy coming into the
18 rear of that vehicle and normally -- even at low speeds
19 collision you start seeing whiplash. I mean, that's what
20 causes whiplash getting hit from behind. So and that's a
21 low speed collision. You start you -- I mean, you get up
22 around 50, 55 miles an hour or above, I mean, whiplash
23 turns into broken necks.

24 Q Okay. Of course, the seats were broken in this case;
25 is that correct?

1 A That's correct.

2 Q Okay. He ask you whether or not you seen an autopsy
3 report. I think you said you seen a coroner's reporting
4 this?

5 A Yes.

6 Q Okay. Based upon your training and your expertise
7 and your view of the coroner's report, is this accident
8 consistent with death and great bodily injury at the point
9 of impact?

10 A Yes, it is.

11 Q I ask a couple more questions and I'll finish up.
12 Mr. Barr he obviously proposed a couple of alternative
13 explanations, new theories for how this accident occurred.
14 One of which was that the car now is now longer -- pulling
15 out of Boyd Road, but on the private drive before you get
16 to Boyd Road?

17 A Yes.

18 Q I think you said that wouldn't fit the dynamics of
19 this collision. What did you mean by that?

20 A Essentially, if we assume that the car is coming out
21 of this little driveway right there, then you would have
22 to suppose that the car or the truck is able to
23 immediately turn and get its vehicle centered in the
24 roadway before it is immediately hit in the rear end by
25 the Hyundai because we can see on the frame rails that the

1 damage is equal on both sides. So the car has to be
2 getting hit straight on. If it is hit at an angle, you'll
3 have directionality of the impact. You know everything is
4 crushed towards the cab towards the front. It's not going
5 off to the right. It's not going off to the left. So the
6 only place that it could come from is getting directly hit
7 from behind.

8 Q And I think when you discussed this with Mr. Barr --
9 I'm sorry.

10 A That's just too short of a distance to swing -- I
11 don't know that you can swing a little car out. I mean,
12 you can get centered up in the roadway there.

13 Q And I think when you were discussing this with
14 Mr. Barr, you said it was possible to get a vehicle
15 positioned that way and you testified that to him you
16 don't want that to happen?

17 A That's correct.

18 Q What do you mean by that?

19 A Well, because I've actually looked at that as well.
20 If you were going to present that the vehicle turns out of
21 that driveway and we can all see that -- I mean, that's a
22 very short distance. So you're not going to expect lot of
23 speed at that point. I mean, you have to assume that the
24 vehicle as soon as it turns out gets hit in the rear. Sop
25 a speed is closer to zero. Again energy out is equal to

1 energy in. So if you do the math on that going with the
2 in-line energy equation, then that puts her car at 98
3 miles an hour at impact.

4 Q So if the speed of the black pickup truck is closer
5 to zero, if he just pulled out from Boyd Road and square
6 his vehicle and he's going just zero or just above, the
7 speed is not of her vehicle, then is 98 miles an hour?

8 A That's correct.

9 Q In a 45 mile per hour?

10 A That's correct.

11 Q So according to her new her theory, Mr. Barr's new
12 theory, if we're to believe that, then at the point of
13 impact of these two vehicles, she's driving her vehicle
14 under the influence alcohol at a .21 blood alcohol content
15 at 98 miles an hour in a 45 mile per hour zone?

16 A That's why I said I did the most conservative thing
17 that I could to give her best. I mean, based on the
18 evidence and what I can do, I gave her the best scenario.

19 Q You testified a minute ago to Mr. Barr her best case
20 scenario was that the victims turned off Home Branch Road;
21 is that correct?

22 A That's correct.

23 MR. DURANT: No further questions.

24 THE COURT: Thank you, sir. You can step down.

25 (WHEREUPON, the witness leaves the witness

1 stand.)

2 MR. DURANT: Your Honor, the State would rest?

3 THE COURT: Ladies and gentlemen, we're going to
4 take a break. The State has rested their case. I'll get
5 you back out in a few minutes. One thing you can do for
6 me while you're back there. You spent the week together.
7 I need you to select a foreperson in this case. It needs
8 to be from original 12, that person doesn't have any
9 greater vote than anyone else. They simply preside over
10 the deliberations and sign verdict form. So while you're
11 back there, if you'll select a foreperson and I'll get you
12 back you out in about ten or 15 minutes and you tell me
13 who that is. And we'll continue this case, but don't talk
14 about the case until I tell you. You can just select a
15 foreperson. We'll be in recess.

16 (WHEREUPON, the jury retire to the jury room.)

17 THE COURT: Anything we need to do before we
18 take a break?

19 MR. BARR: You going to hear motions?

20 THE COURT: I can.

21 MR. BARR: Judge, it would be the defense's
22 position that we would move for a directed verdict with
23 respect to the felony DUI first count of the indictment
24 resulting in murder, resulting in death as well as the
25 second count which resulted in great bodily injury. It

1 would be our considered position that with respect to the
2 elements of the offense that is that the defendant while
3 operating a vehicle in South Carolina in Clarendon County
4 under the influence and, of course, we realize that the
5 jury could very well conclude based on the evidence
6 presented by way of the blood test result, the jury could
7 conclude that she was under influence.

8 However, the elements also include that the
9 prosecution will show that she -- that she either
10 disobeyed some law or refused to comply with some duty
11 that was imposed. And moreover that not the driving under
12 the influence, but her failure to commit or to do such an
13 act was the actual proximate cause of the death or in the
14 other case the energy. And we would -- it would be our
15 position that such an act -- there is no evidence that she
16 committed such an act as a to proximate cause of the death
17 or as proximate cause of great bodily injury.

18 THE COURT: Mr. Barr, I think there is
19 sufficient evidence in this case -- it goes to the jury.
20 The State has presented evidence that she had a blood
21 alcohol of 21. And also presented evidence that at the
22 time of the impact she was exceeding the speed limit. And
23 as a result of that impact and based upon testimony, that
24 the impact it in fact was likely to cause the death of the
25 driver and the serious injury of the passenger. And at

1 this stage is existence of the evidence. The jury will
2 give it whatever weight it determines is appropriate. I
3 think there's sufficient evidence to give this case to the
4 jury. I respectfully deny your motion. Anything else?

5 MR. BARR: No, sir.

6 THE COURT: I need to call the sheriff and give
7 him 15 minutes notice or a little longer if you still want
8 the jury to go to the scene?

9 MR. BARR: Yes, sir.

10 THE COURT: Can you give me an idea about what
11 time you want me to take jury out there. Now, it's on
12 you. The State has rested. How long your case is going
13 to take?

14 MR. BARR: Is four o'clock too late?

15 THE COURT: No, sir. I need to get him up here
16 and give him some instructions of where to take them and
17 what you want them to see.

18 MR. BARR: Yes, sir.

19 THE COURT: So you want him in here at four
20 o'clock?

21 MR. BARR: Yes, sir.

22 THE COURT: Okay. All right. He'll be here at
23 four o'clock. He's got a van that will carry 14 people
24 plus the driver. We'll take a few minute recess and come
25 back and begin your case.

1 MR. BARR: All right.

2 (WHEREUPON, a break was taken.)

3 THE COURT: You all can be seated. You ready,

4 Mr. Barr.

5 MR. BARR: Yes, sir.

6 THE COURT: Bring me the jury please, sir.

7 (WHEREUPON, the jury came into open court.)

8 THE COURT: You all selected a foreperson?

9 JUROR: Yes, sir.

10 THE COURT: Who is it?

11 JUROR: Barbara Shumpert.

12 THE COURT: All right. Thank you, ma'am.

13 All right, Mr. Barr.

14 MR. BARR: Please the Court, Judge. The defense
15 calls Ms. Tammy Dianne Brown.

16 THE COURT: Come around and place your left hand
17 on the Bible and raise your right.

18 THE CLERK: Raise your right hand please and
19 repeat name please?

20 THE DEFENDANT: Tammy Dianne Brown.

21 THE CLERK: You solemnly swear the testimony you
22 give to be the truth and nothing but the truth so help you
23 God?

24 THE DEFENDANT: Yes, ma'am.

25 DIRECT EXAMINATION

1 BY MR. BARR:

2 Q Ms. Brown, state your full name for the record
3 please?

4 A Tammy Dianne Brown.

5 Q And where do you live?

6 A Manning, South Carolina.

7 Q And what is your address?

8 A [REDACTED] Winters Hill Road Manning, South Carolina.

9 Q Now, are you married or single?

10 A I'm single.

11 Q Have any children?

12 A Yes, sir.

13 Q How many?

14 A Two.

15 Q What are their ages?

16 A Twenty-four and 26.

17 Q And what do they do?

18 A My daughter -- my oldest daughter works at K Jewels
19 and my other daughter works at the convenient store on
20 261.

21 Q And are you employed?

22 A Yes, sir.

23 Q What kind employment?

24 A I work at Eaton.

25 Q At where?

1 A Eaton Cutler Hammer. I work on the box line Eaton
2 Culter Hammer in Sumter.

3 Q All right. Now, if you would please, ma'am, you
4 given us your address. Tell us where in Manning is your
5 home located?

6 A My home is located almost two miles from Home Branch
7 mile.

8 Q And when you say almost two miles from Home Branch
9 Road, can you be more specific as to where your house is?

10 A My house is -- if you familiar with Hen (sic) Lucas
11 shop my house is right on Winter Hill Road. As you first
12 turn in, my house is like the third house on -- that'll be
13 on my right.

14 Q Now, I believe you were involved in an incident on
15 August 30th of 2014; is that correct?

16 A Yes, sir.

17 Q Car collision, car wreck?

18 A Yes, sir.

19 Q Now, do you remember what you did on August 30th of
20 2014?

21 A Yes, sir, at the time I was employed at Pilgrim Pride
22 third shift and I just got off from work and I went home.

23 Q And what time did you get home?

24 A I got home around about seven -- no, we get off at
25 8:20.

1 Q Okay. And what did you do after that?

2 A I clean the house a little bit, took a shower, eat
3 something kind of laid down for a little while.

4 Q And tells us what happened after that?

5 A Well, me and my boyfriend was suppose to go my family
6 in Charleston really and we suppose to go back home to
7 visit my sisters and brothers. And he didn't -- he
8 decided he didn't want to go now. So my girlfriend,
9 Debbie, from Summerville ask me to come to her mother's
10 birthday party. And I was like, well, you know I work
11 hard and everything, so I don't do anything on the weekend
12 any way so I go head on out there to her mother's birthday
13 party.

14 Q And where did you go to the birthday party?

15 A Her mother birthday party was in Pine Wood at her
16 house.

17 Q And did you go to -- you went to the birthday party
18 in Pine Wood. How did you get to Pine Wood from your
19 house?

20 A I drove.

21 Q What direction did you go in -- what route did you
22 take?

23 A I left home and I made the -- that be the left turn
24 going towards Paxville.

25 Q And that's on Highway 261?

1 A Yes, sir.

2 Q Okay. And you went to your girlfriend's house in
3 Pineville?

4 A Pine Wood.

5 Q Pine Wood?

6 A Yes, sir.

7 Q Okay. All right. Now, was there any drinking going
8 on or did you have anything to drink at your girlfriend's
9 house?

10 A Yes, sir.

11 Q Tell us about that please, ma'am?

12 A When I got there, me and her actually had on the same
13 outfit and we was just standing there talking or whatever.
14 And she ask me did I want a drink and we had some wine
15 coolers and stuff in a cooler and she gave me one. At
16 first she gave me one. Then we talk some more. Then we
17 start doing a little dancing.

18 Q Now, with respect to what you dranked, is it your
19 testimony that you drank one wine cooler?

20 A Two.

21 Q All right. And do you specifically remember drinking
22 too wine coolers?

23 A Well, yes, it was two because when I was dancing or
24 whatever, I was -- when I first got there, she gave me
25 one. Then we were dancing whatever and then she gave me

1 another one and that was it and went in the house and sat
2 down.

3 Q Now, you heard -- you been in this courtroom
4 throughout this trial?

5 A Yes, sir.

6 Q It is Thursday now. You been here since Monday?

7 A Yes.

8 Q You heard some conversation and testimony in here
9 that you got one for the road. Now, tell us if you would
10 please, ma'am, first of all other than the two wine
11 coolers that you mentioned, did you get anything else to
12 drink?

13 A No, sir.

14 Q Did you carry anything out of the house to drink?

15 A I put a cup of ice because when we was sitting there
16 talking to her mother them at the kitchen table and I was
17 getting ready to go and I told her to get me some ice for
18 the road, but that's how I usually do after work working
19 third shift or whatever. So she gave me some ice in a cup
20 that.

21 Q That's the same cup that you were drinking out of?

22 A Yes, sir.

23 Q Did you tell Mr. Minnix or Trooper Minnix that you
24 got -- you had one for the road?

25 A No, sir, I never remember seeing him.

1 Q Now, tell us if you would please, ma'am, it did come
2 a time when you left your girlfriend's house?

3 A Yes.

4 Q In Pine Wood?

5 A Yes, sir.

6 Q Well, tell us about what you did out there when you
7 left?

8 A Okay, I left my girlfriend's house. I left Debbie
9 house and I was coming towards home. And I was coming
10 towards home, I was coming up this hill.

11 Q What road were you traveling on?

12 A The same road I think they call 521 -- 261 that's
13 what it's called I think.

14 Q All right?

15 A Okay, I was coming towards home. I called my
16 daughter and I told my daughter ask her I say Cici did you
17 get Corsey (sic) ready for church in the morning and she
18 said, yeah, Ma, so she hung up and I hung up. And after I
19 hung up from her, that's when I seen the 18 wheeler was
20 coming this lane right here. I'm coming up the hill --
21 I'm coming down the hill, the 18 wheeler with bright
22 lights on just coming like. It had real bright lights and
23 it's coming down the hill like this. And I was like -- I
24 got contacts, so I'm like, you know, trying not to look
25 directly into the lights and stuff so. As I was coming

1 down the hill and the 18 wheeler was going up the hill.
2 Soon as the 18 wheeler passed me, I seen this dim light
3 just dipped in, I say -- all of a sudden I just like what
4 the hell like that and I just (clap hand).

5 Q Well, we don't understand the clapping?

6 A Skid, I'm sorry, but it just and I skid. When I skid
7 and my airbags just came out and just threw me back like
8 this. And I look forward and I seen like a bumper thing,
9 so now I'm mad because I got this car on the road like two
10 weeks before the accident happen. So I'm getting out, I
11 got new seat belts on my car. I just got this car back on
12 the road and everything like that, so I'm loosening my
13 seat belt because now the airbag is coming out and I'm
14 itching, I'm itching. So I got out the car. When I got out
15 the car, I'm looking around, I'm like what happened, what
16 happened, you know.

17 Q Did you know where you were physically, geography or
18 do you recognize any place when you -- after the
19 collision?

20 A Not really because I never seen that -- you know, I
21 never really seen that road there before. I travel every
22 day.

23 Q What road is that?

24 A That little road, that little side road right there,
25 the only road I know from the side when I take my trash

1 off further up. I never did paid attention to that little
2 road right there.

3 Q Now, let's show down a second. Now, as you were
4 coming, traveling east on Highway 261, you said you
5 collided with something. At the time did you know what
6 you collided with?

7 A No, sir.

8 Q Okay. Did you know -- you did not know it was
9 another vehicle?

10 A No, sir.

11 Q Okay. Did you notice whether or not the vehicle had
12 any lights or how it was traveling?

13 A I didn't see any.

14 Q Now, you said the vehicle came in front of you; is
15 that correct?

16 A No, I said -- yeah, it came directly like that and
17 that's when I put my breaks down.

18 Q Now, where did it come from?

19 A It came from the side road. It came from the side of
20 me. It came from my right side.

21 Q The right side?

22 A Yes, sir, came off the right side.

23 Q Okay. Now, are you sure about that?

24 A Okay, I'm coming this way right here. See that
25 little lane right there, as I was coming down the hill at

1 that right there, the 18 wheeler was coming up the hill
2 like this. And I see a little something dimmed dodge
3 right in the front and I just put my breaks down and I got
4 thrown back by my air bags.

5 Q Now, you know where Home Branch Road is?

6 A Yes, sir, it's further back that way -- this way
7 right here.

8 Q And Home Branch Road was on your left?

9 A Yes, sir.

10 Q Now, Ms. Brown, are you sure the vehicle that you
11 collided with did not come from Home Branch Road?

12 A It couldn't have because a 18 wheeler had just pass
13 me. I had just got my eyes back looking like this right
14 here and a 18 wheeler had just pass, so ain't no way that
15 it could have came from that way because if it did, it
16 would have ran straight into the 18 wheeler. That 18
17 wheeler had just pass me.

18 Q Did you know it was another vehicle that you collided
19 with?

20 A No, not at the time, no.

21 Q Okay. And you say that you didn't notice any lights
22 on back of that?

23 A Well, whenever I hit -- when we collided in the back
24 like this and after I came back up and look like this
25 here, I looked up, we looking for my seat belt locked.

1 That's when I seen like a bumper thing. So now I'm mad
2 because now I know it's a vehicle, so I'm getting out.
3 I'm mad to confront this person say like why did you pull
4 out dadada. So I'm getting ready to confront this person
5 and now I don't see anything. So now I'm really, you
6 know, confused now like I know something was here at
7 first, but now I don't know now.

8 Q Well, now there did come a time when you were
9 approached by some law enforcement officials at the
10 accident scene, do you remember that?

11 A No, because when I got out the car and call my
12 daughter and told her what had happened. And I'm still
13 walk around waiting for her to get there. All of sudden
14 people just started -- one girl came up and she was saying
15 something. Then after that a lot people just start
16 coming, coming, coming, coming, coming and now I'm just
17 like don't know now what's going on now. I'm just like --
18 I heard somebody say are you hurt, I'm like no. You go to
19 the restroom, I say no. I say I want to talk to my
20 daughter, she's right there. And next thing I know I was
21 in the ambulance and everything is kind of like in and out
22 from there.

23 Q How did you get in the ambulance?

24 A One of the lady's told me to come and lay down on the
25 little thingy -- she -- come lay down on the thingy. I'm

1 kind of confused because like I say everything was
2 happening so fast, so many lights and stuff was happening
3 so fast. People was talking from everywhere. It was just
4 confusing at that time.

5 Q Now, while you were in the ambulance, do you remember
6 having a conversation with Trooper Minnix?

7 A No, sir.

8 Q Okay. You never recall him coming into the EMS
9 vehicle and you telling him that you had two drinks and
10 one for the road or do you recall a conversation -- having
11 a conversation with him?

12 A No. No.

13 Q Okay. Are you sure about that?

14 A I'm sure.

15 Q Okay. He was never in the...

16 A I never seen him.

17 Q Well, what was the next thing that happen to you
18 after you -- while after you got into the EMS vehicle?

19 A Like I said, everything happening so fast. Next
20 thing I know I was at the hospital still asking for CiCi
21 to come with me whatever. They was telling me she
22 couldn't come in the room with me whatever. And people
23 was asking me, you know -- they was just saying a lot of
24 stuff. People was coming in and out. And then now
25 everything for me now in and out also. And my main thing

1 was just to get my daughter to me. And they was asking
2 can they take my blood and stuff like that.

3 Q Now, you did -- did you have a conversation at the
4 hospital with Trooper Minnix?

5 A Like I say, I don't even remember him. I just
6 remember nurses talking to me. I don't even remember him
7 at all.

8 Q Well, did you ask him anything about bringing your
9 daughter with you into emergency room?

10 A Yes, sir.

11 Q Okay.

12 A I told the nurse to bring -- can I have my daughter
13 in the room with me because I know that she was out there
14 with them too because she was right at home at the time
15 when I called and told her what happened, so she came
16 straight on.

17 Q At some point you had discussion I believe with a
18 nurse about giving a blood sample, did you not?

19 A Yes, sir.

20 Q And tell us about that please?

21 A Well, at first they was telling me that they needed
22 my blood and stuff like that. And I was like for what I'm
23 not even hurt, why y'all want to be taking my blood, can I
24 talk to my daughter and everything like that and that's
25 what.

1 Q At that point did you know a person had been killed
2 in this collision?

3 A No, sir.

4 Q When did you find that out?

5 A They was telling me -- they were telling me that like
6 we need your blood because this happen, you kill somebody.
7 I was like I ain't kill nobody, what you mean, who did I
8 kill. I mean, I didn't even see anybody, what are you
9 talking about I'm killing somebody, who did I kill.

10 Q Did you ever tell Trooper Minnix or anybody else that
11 you had a head on collision with anybody?

12 A No. No. I told him that something -- the 18 wheeler
13 was coming in front of me head on like this. I never said
14 he hit me head on. I said it was coming head on this way
15 and the thing pull out that way, that's what I was telling
16 people. I don't know who it was I was telling it to, but
17 that's when I said it, that's what I was saying.

18 Q Okay. Now, you did have a discussion with some
19 people at the hospital regarding giving a blood sample,
20 did you not?

21 A Yes, sir.

22 Q Tell us what happened with that?

23 A Like I said, a lot of people was coming in and out
24 the room. I really couldn't identify who is who. All I
25 know was they was asking for my blood and I was asking for

1 my daughter. Then they was like, oh, you got to give your
2 blood because you kill somebody or whatever. And I'm
3 still asking them like who did I kill dadada. So after
4 that, everything just in bits and pieces and...

5 Q Okay. Well, did you -- the person that drew your
6 blood, did you have a conversation with them?

7 A Yeah, she was later on I don't know how long it took
8 or whatever, but she came back and like we got to take
9 your blood and stuff like that and I was look okay. You
10 know, I was like okay, you know what I'm just ready to go
11 home, just go ahead and take the blood or whatever y'all
12 do. I'm like I'm just tired right now because I don't
13 even know what really, you know. Now, they saying that I
14 kill someone whatever.

15 Q Did you have a discussion with anybody about an
16 independent blood test?

17 A Repeat that, sir?

18 Q Did you have a discussion about with anybody in the
19 hospital independent blood test?

20 A Yeah, she told me she said I could get my own. I
21 said I want -- she said you could get your own blood and
22 everything and I said okay fine. I say y'all just do what
23 y'all do because I'm just tired.

24 Q Who told you that to?

25 A The nurse told me that I could have got my own blood

1 or whatever to be tested by someone else.

2 Q Have you seen that person in court this week?

3 A No, sir, I haven't seen them.

4 Q You have not seen the person in court this week?

5 A I don't remember who she was. Like I said, it was so
6 many people coming in and out and I just like tell her to
7 go ahead and just take it and stuff like that. Maybe her
8 hair was different, I don't know.

9 Q Okay. Now, do you remember how fast you were driving
10 when you had this collision?

11 A I was almost home. I didn't even have no reason to
12 even be driving fast. I don't even...

13 Q How far were you away from your house?

14 A About half a mile down the road. I just talk to my
15 daughter ask her did she get my grandson ready for church
16 in the morning. And she said, yeah, ma and she hung up
17 and I hung up.

18 Q Now, as you were on your way home up 261, did the
19 vehicle that came -- after you find out where the vehicle
20 that pulled in front of you now, do you know or did you at
21 the time know that it was an automobile?

22 A Okay, when we actually collided -- when it after --
23 when it first like, when the dim thing first pull out like
24 this here, I didn't know what it was, but whenever we
25 collided and I went came back and I came back up and I

1 tried look at my seat belt, I looked up I did see a
2 bumper, that's why I knew it was a vehicle that's why I
3 got out to confront this person ask them why did you pull
4 out, but I didn't see anyone.

5 Q Was there in anyway you could avoid running into the
6 back of whatever it was you ran into?

7 A I tried. Whatever it was, I try to miss it. I don't
8 know if it was a deer, all I saw was a dim light or
9 whatever. Whatever it is like I say when an 18 wheeler
10 pass me all the lights and everything going this way and I
11 was coming down like this and I see a little dim thing
12 pull out and I just say what the hell and I slam my breaks
13 down like that because I was like -- I seen the thing pull
14 out like what the hell like this.

15 Q Did not have taillights or any lights on the back?

16 A None, nothing. Just something dim in the middle of
17 the road and I was like...

18 MR. BARR: Would you answer any questions that
19 the prosecutor may have for you.

20 MR. DURANT: Your Honor, may it please the
21 Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. DURANT:

25 Q Ms. Brown, good afternoon.

1 A Hey, good afternoon.

2 Q You mention that you had had a -- that you were
3 living on Winters Hill Road at the time; is that right?

4 A Yes, sir.

5 Q I just want clarify not a major point, but you said
6 at some point you live about two miles from Home Branch
7 which is where this accident occurred and that later said
8 that you were half a mile away from home. How far away
9 were you exactly?

10 A Well, Home Branch is right there on the other side.
11 My daughter's boyfriend house is right there and I think I
12 say it don't take me about two minutes to get to the
13 house, about two minutes to get to the house.

14 Q So about two minute away, not necessarily two miles
15 but two minutes away?

16 A Yeah, two minutes.

17 Q And you were working at Pilgrim Pride at the time?

18 A Yes, sir.

19 Q Third shift?

20 A Yes.

21 Q You said you went home at about 8:20; is that right?

22 A Yes.

23 Q Okay. And then at some point you left home and went
24 back -- you went to Pine Wood; is that right?

25 A Yes, I went to my girlfriend house.

1 Q You went to your girlfriend's house in Pine Wood?

2 A Yes.

3 Q You mention there was some drinking and dancing going
4 on there. How many people were at the party?

5 A About -- probably about 25, 30 I'm not sure, but some
6 people was on the offset and stuff like that. Some people
7 was in the house, some people was around the house.

8 Q Okay. And you were very clear about what you had to
9 drink at the party it was two wine coolers; is that right?

10 A Yes, sir.

11 Q Okay. Of course, you been in court all week long for
12 this trial. You've heard all the officers testify and I
13 believe your testimony to Mr. Barr you never actually meet
14 with Trooper Minnix. You don't remember him at all?

15 A I remember him when he came to my house after I got
16 out of jail and he ask me did I have anything -- he said
17 he came to my house I was in the living room. And he came
18 to the door, I was just got out of jail. And some tall
19 white guy came to the door he was like Tammy Brown here.
20 My daughter say, Ma, someone at the door for you like
21 this. So I went to the door and here he standing up there
22 he say, well, I ain't know you was out of jail. I said
23 what do you want. He said you want to speak to me, I
24 said, no, sir, and he left. That's the only time I ever
25 seen that man.

1 Q That's the only time you met with him?

2 A That's the only time I remember seeing him.

3 Q Remember seeing him?

4 A Yes.

5 Q But you were here when he testified this week
6 specifically he as to conversations he had with you in the
7 back of the ambulance?

8 A That's what he said. I don't remember him.

9 Q And he said that you admitted that you had been
10 drinking. You remember what kind of drinks he said that
11 you told him you had?

12 A He said tequila. I don't even know -- I never ever
13 -- I don't even know how whatever that is -- does or is.

14 Q Well, he said tequila.

15 A I heard of it.

16 Q You had tequila, but didn't he also say that you
17 changed your story and told him that you had two wine
18 coolers?

19 A I don't remember talking to him, so I don't even know
20 what he talking about.

21 Q Well, I understand you don't remember talking to him,
22 but the point is that somehow Trooper Minnix -- if you're
23 to be believed today, then somehow Trooper Minnix got it
24 right. Somehow even though he didn't talk to you, if
25 you're telling the jury the truth right now, somehow

1 Trooper Minnix got it right, that the drinks you had were
2 two wine coolers would you agree with that somehow?

3 A I don't remember talking to him, I don't remember his
4 face personally. There was a lot people coming in and out
5 like that, so I don't remember him like facial facial.

6 Q I understand you don't remember him, but you would
7 agree though somehow even though y'all didn't talk that
8 night, somehow he got it right when he said that the
9 drinks you had at the party were two wine coolers?

10 A Well, it might have been him, but I don't remember
11 his face face.

12 Q Well, wait a minute now. I thought you said you
13 don't remember anybody coming in?

14 A You said that do I remember talking to Minnix. I
15 told you three times that I don't remember is facial
16 features of who he was.

17 Q Maybe that's what I said, but now what I'm saying is
18 -- now what I'm asking is do you remember talking to
19 anybody in the ambulance because you told Mr. Barr a few
20 minutes ago that you didn't. Now, I'm asking you is that
21 still the truth?

22 A I said I was talking to the people inside the
23 ambulance that was asking me questions.

24 Q Who were the people inside the ambulance?

25 A The ambulance workers. They had me laying back. He

1 was in my face like this right here. I didn't even look
2 at them long enough to recognize who was who.

3 Q Okay. So whoever you were talking to somehow it got
4 back to Trooper Minnix that you had two wine coolers; is
5 that fair to say?

6 A That's what you say they say.

7 Q Well, that's not what I say they say. You been
8 sitting here in court all week, hadn't you?

9 A Yes, sir.

10 Q Okay. You heard him testify, didn't you?

11 A Yes, I did.

12 Q Okay. Didn't he say that you changed your story and
13 told him you had two wine coolers?

14 A That's what he said. He said that I change my story.
15 That's what you said he said.

16 Q Okay. And even though somehow he got it right about
17 that, about the two wine coolers somehow he got that
18 information from you. It's your testimony that you did
19 not tell him you had a drink for the road -- an alcoholic
20 drink for road?

21 A I did not tell him that. I told him -- whoever I
22 told it to, I told that -- I told that my girlfriend gave
23 me ice in the cup.

24 Q Okay. And that's what you would have told him at the
25 scene?

1 A Excuse me.

2 Q That's what you would have told him that night that
3 the girlfriend gave you ice?

4 A That's what I would have told whoever it was asking
5 me that, that's what I would have told them.

6 Q So they must have -- they got the part right about
7 the two wine coolers, but then they changed the part about
8 the cup for the road?

9 A I can't speak for them, I can only speak for me.

10 Q You can't speak for them, but you're telling the jury
11 that you wouldn't have told them that?

12 A What? I wouldn't tell them what?

13 Q You didn't tell them that you had an open container
14 alcohol?

15 A I did not tell nobody. I told them that my
16 girlfriend gave me ice in the cup to take home.

17 Q Okay. I believe you told Mr. Barr that when you were
18 in the ambulance you were kind in and out from there is
19 what I wrote down. What did you mean by that?

20 A You know, people coming over you. They got you laid
21 back and everything like that. This person talking you
22 lay this way. This person telling you to lay that way in
23 and out. You know, just answering questions with
24 different people. You don't know who they are, but it's
25 just repetitive questions and people just coming at you

1 with spontaneous type questions.

2 Q So that didn't mean in and out of consciousness?

3 A No, definitely not in and out of consciousness.

4 Q In and out of?

5 A Conversation in and out of conversation.

6 Q In and out of conversation with different people?

7 A Yes.

8 Q None of which were Trooper Minnix by the way?

9 A I do not remember facial features on people.

10 Q I mean, he's a big tall white guy. And you remember
11 meeting him at your house?

12 A Because he's at my front door.

13 Q Okay, but not before that. You don't remember him
14 before that?

15 A No.

16 Q Okay. You mentioned to Mr. Barr that you saw an 18
17 wheel with bright lights coming up the hill towards you;
18 is that right?

19 A Oh, yes, the 18 wheeler was coming this way and I was
20 going down that way.

21 Q Okay. So on a Saturday night in August at around
22 midnight there was an 18 wheeler coming up the hill
23 towards Paxville; is that right? Towards you as you
24 crested the hill on Home Branch?

25 A I was going back towards home from Pine Wood. The 18

1 wheeler was coming ---

2 Q It was going towards Pine passing you?

3 A It was going towards that way passing me, yes.

4 Q So there was a 18 wheeler that passed you that night
5 just before this accident, but the truth is and 'til this
6 moment and 'til today you never told anybody about that 18
7 wheeler?

8 A Nobody ever asked me.

9 Q Nobody ever asked you.

10 A I told my daughter.

11 Q Okay, so you told your daughter. Then you would
12 agree with me then because the reasons -- I understand the
13 reasons because nobody asked you, but the answer to the
14 question is, no, you didn't -- you never told anybody in
15 this world, no highway patrolmen, no investigator, nobody
16 about an 18 wheeler that was passing you just before this
17 accident. This is the first time you told anybody; isn't
18 that right?

19 A Anybody like -- I told my daughter. They never -- no
20 officer ever ask me what was on the road. At that time on
21 the road was me and an 18 wheeler at that present time
22 before the thing dodge out in front of. No one ever ask
23 me said, well, what kind of car was passing you. No one
24 ever ask me that. No one ever ask me anything another
25 vehicle on the road at all.

1 Q So -- but at some point they talk to you. They got
2 the information that you had two wine coolers, but because
3 nobody asked you specifically whether or not an 18 wheeler
4 was passing you. You just never told anybody.

5 A No one ever had a straight conversation with me about
6 that. No ever had. People was asking me questions about
7 my health are you okay you need help. No, I don't need
8 any help.

9 Q But you were in and out of conversations all night.

10 A Yes, I was.

11 Q And you didn't tell anybody about an 18 wheeler
12 passing you?

13 A Okay. I'm laying down in the ambulance, that
14 conversation -- their conversation is how I'm doing. It's
15 not like what happened. It's like how am I doing. The
16 conversation is about how I'm doing not what happened.

17 Q So they just ask you how you were doing?

18 A Yes, sir, they were asking me how am I doing.

19 Q It's a pretty long period of time between when this
20 accident happened and when you got arrested and were
21 transported to the jail that night, would you agree with
22 me there?

23 A Yes, it was a pretty long time, yes, sir.

24 Q Okay. So it been testimony I think that it was about
25 3:20 in the morning that your blood was drawn. It was

1 after that you taken to jail, wasn't it?

2 A I guess, I don't remember. It was a long time.

3 Q This happened just before midnight, so I just want to
4 be clear in that three and a half hour period that you are
5 in and out of conversations with -- and you don't remember
6 who not with Trooper Minnix. You don't remember him at
7 all. You in and out of conversations and you never told
8 anybody. You didn't tell a soul about this 18 wheeler
9 that was allegedly passing you that caused you not to see
10 the car in front of you. You didn't share that
11 information with anybody not in the three and a half years
12 since this accident. You never told anybody about that
13 until ten minutes ago in open court?

14 A How do you know? I was telling people that the whole
15 time. People like my friends. I was telling people the
16 whole time this is what happened. I even had told the
17 lawyer I had before this what happened, that it was coming
18 towards me. So you don't know who I told who because no
19 one ever ask me ---

20 Q You right, I don't know what you told who. Did any
21 of your friends, any of your friends, your relatives that
22 you told this information did any them ever come forward
23 and say wait a minute highway patrol y'all got it wrong.
24 You guys have got it wrong. There's another part that
25 plays in here that you not taking into account. My mama

1 or my sister when she was driving down 261 towards
2 Manning, towards home, a big 18 wheeler was passing her.
3 Y'all never asked her about that. I want to correct this
4 story. That never happen, did it?

5 A Who is they? Who are you talking about? You are
6 confusing me now who are you talking about?

7 Q The people that you told about this 18 wheeler?

8 A What people? I don't even -- is that after the
9 accident?

10 Q I don't know what people you tell me?

11 A After the accident, I was home. Only people I talk
12 the accident to was my immediate friends and my pastor.
13 No one from the police department ever came and ask me any
14 direct questions, well, Ms. Brown, what was in the road
15 when you were passing or we was going home. No official
16 have ever come to me and ask me anything so why should I
17 offer something no one ever came to me and ask me.

18 Q They never came to you and asked you. And you never
19 went to them and told them, did you?

20 A For what, I had an attorney. I had to speak to him
21 who else I suppose to talk to.

22 Q For what? For what? They asked you about the blood
23 draw. I just to make sure that I understand the story
24 correct because you don't remember speaking to Trooper
25 Minnix at all at the hospital or at all that evening. You

1 remember speaking to any other highway patrolman?

2 A At the hospital?

3 Q Yes, ma'am.

4 A No, like I say people was coming in and out
5 everything was so busy. I was just shock. I was
6 traumatize and stuff like that. I don't care -- I can't
7 put faces to who. I cannot tell you how they look, what
8 color their hair or anything like that. I cannot tell how
9 they look, what color their hair or anything like that
10 because it was just voices and things going -- moving
11 around the room.

12 Q Okay. Well, I just want to be clear. Would you
13 agree with me then though if you can't remember talking to
14 the highway patrolman at the hospital, then obviously you
15 can't remember telling a highway patrolman that you want
16 an independent sample of your blood?

17 A I told it to the nurse that was taking my blood. She
18 told me this. She told me this. They was standing around
19 me. She was talk directly to me.

20 Q I understand that. I understand, but I just want to
21 be sure we're clear. If you told it to a nurse and you
22 don't remember speaking to highway patrol, then obviously
23 you can't remember telling highway patrol that you wanted
24 this independent sample?

25 A You telling me what I can't remember. I'm telling

1 you what I'm remembering.

2 Q Okay. I'm asking you do you remember telling a
3 highway patrolman that you wanted an independent sample?

4 A I told the nurse that. She told me that I can have
5 one. I told her that -- like I told you, I do not
6 remember Minnix at all, but when we came to my front door
7 after I came home from jail.

8 Q So the answer to my question is, no, you don't
9 remember telling highway patrol you told the nurse?

10 A I don't remember telling the highway patrol, I
11 remember telling the nurse.

12 Q Tell me about that conversation with the nurse again?

13 A Like I told you, they were asking me questions and
14 questions and questions about blood. I was asking them
15 can I see my daughter, why do I have to have blood drawn,
16 I am not hurt. You don't see anything on me, anything
17 like that. You see I had on a black jumper. It was
18 spaghetti strap. You don't see anything on me can I just
19 please see my daughter, so she can see what's going back
20 here with me also. So that was the conversation about
21 mainly about.

22 Q Okay. That was conversation with the nurse -- I
23 think my question was about the specific point in the
24 conversation that there was some discussion about an
25 independent sample. Tell the jury when that came into

1 play?

2 A Okay, four years -- almost four years ago, let me try
3 to remember this. I remember some people nurse, whatever
4 ask me can she drawn some blood. At first I said, no, can
5 I have my daughter in here with me. Then later on, later
6 on she was like I don't how many times I left, I don't
7 when it happened whatever, but someone say, well, you can
8 have your own test and I say fine. That's the last I
9 heard about blood or anything after that. I can't tell
10 you any more. I can't make anything up. I'm telling you
11 what you ask me and that's all I know.

12 Q Don't make anything up, but again -- so the response
13 was when you were told that you can have a sample of your
14 blood taken, you said fine?

15 A Yes, sir.

16 Q Is that right?

17 A Uh-huh.

18 Q Did you say anything else besides fine?

19 A No, because that's their procedure. I can't question
20 their procedures, that's what they do, that's what they
21 do.

22 Q So you didn't say, yeah, I want my own sample. I
23 want to send it -- this doctor that I thrust or this
24 laboratory. You just said -- and you don't remember who
25 not highway a patrolman, a nurse. She said you can have

1 your own sample and you just said fine?

2 A This is the first time anyone ever offered me my own
3 blood sample.

4 Q I understand that.

5 A This the only time. Usually, they just take the
6 blood and go. She said I can have my own blood sample and
7 I never seen it.

8 Q You just said fine?

9 A Yes, that's what she said.

10 Q Fine, okay, that's it?

11 A Yes. Yes. And after that I was in jail, so where I
12 suppose to get the blood from.

13 Q You remember testifying earlier in court in this
14 hearing or in this trial in a pretrial hearing. You
15 remember that?

16 A Excuse me repeat that, sir?

17 Q Do you remember testifying in court earlier outside
18 the jury's presence in a pretrial hearing in this case
19 earlier this week, do you remember that?

20 A What day?

21 Q I think it was Tuesday, Tuesday morning same chair
22 you're sitting in now.

23 A I don't remember Tuesday. So much going on in this
24 courthouse, I don't remember Tuesday.

25 Q I was probably standing about right here asking you a

1 series of questions.

2 A Well, what was the question.

3 Q Well, the question that I asked you then was to tell
4 me the entirety of your conversation with this nurse when
5 you allege that you asked for an independent sample of
6 your blood. You remember me asking you that question?

7 A You said on a Tuesday. I don't remember Tuesday. If
8 we was in court now since Monday, it's Thursday. I don't
9 remember it was Tuesday, Wednesday or Monday.

10 Q Oh, I understand that, but you hadn't had to do a
11 whole lot of talking this trial. I done a whole lot, but
12 but you can't remember what -- the on other time you been
13 on that witness stand you can't remember what you said.
14 Is that what you're telling me now?

15 A This is stressful, okay.

16 Q I understand that.

17 A I cannot remember everything under stress.

18 Q Here's the point, do you remember me asking you to
19 tell me the entirety of that conversation and you said
20 that the nurse told you to get a sample of your own blood
21 and that you turn your head and said okay?

22 A Yeah, I said okay because like I say I don't like my
23 blood drawn because I don't like to see my blood coming
24 out of my body. So I was like okay. And she said you can
25 have your own. I said fine. And after that I was -- the

1 next thing I know I was in jail or whatever. So I don't
2 know what they did with the blood. They never gave it to
3 me before I left the hospital. So how I suppose to know
4 what they did with it.

5 Q That was the extent of the interaction with the nurse
6 was you just turn your head and said okay fine. Not, yes,
7 I do want that. Yes, I accept that offer just okay fine?

8 A They never came back and gave me the blood they say I
9 was gone receive, so what I suppose to do run behind them
10 to get it.

11 Q Wait a minute now. Wait a minute now. When you say
12 you were going to receive it cause you just told me that
13 the only conversation about that was when the nurse said
14 you can have a sample and you turn your head and said
15 okay.

16 A Yes.

17 Q So now you're saying there was another part where
18 they said you can get the sample that you just requested?

19 A No, no, I said -- don't put words in my mouth. I
20 said they said that I'm entitled to have my own
21 independent blood test drawn. I said fine. I never seen
22 anyone after that or heard any of that after a while.
23 Next thing I know I was in jail, that's the only
24 conversation we had about the blood that I can have my
25 own. They had -- no one ever came to me and said, okay,

1 Tammy, here is your sample anything like that. They did
2 they thing and they left.

3 Q I think we beat this horse to death pretty good, so
4 let me move on. I just want to ask you just a couple
5 quick questions before we go. You said that when you were
6 describing this accident again, this 18 wheeler that was
7 passing you that you never mention before today, was
8 coming up the hill towards you. And you say something dim
9 come out in front of you from the right side; is that
10 right?

11 A Okay, like I said again, I was going home downhill.
12 And I was going home downhill, an 18 wheeler was coming up
13 hill going towards Paxville. So as it was coming towards
14 this way right here, I got my contacts on trying not to
15 look directly in the light cause contacts they give off a
16 blur. So I'm just looking this way like this. And as
17 soon the 18 wheeler actually pass me, I see the little dim
18 the thing pull out like that. I said -- I looked a little
19 bit I say what the hell like this and I did that. And my
20 car just slid, airbags came out. I got threw backwards.
21 I came up, I saw a bumper. And I got out my car. I
22 looked around, I didn't see anything. I reached back in
23 the car and I grab my cell phone. I call CiCi. Cici this
24 is what happened come here and everything else went, you
25 know.

1 Q Usually when you say dim it's used in the context ---

2 A Something blur.

3 Q You mean something blurry?

4 A Yeah, something blurry.

5 Q It was like light coming from it, it was jury blurry.

6 A It was like -- I couldn't make out what it was. It
7 was like something -- like I say dim is dim. Blur is the
8 same thing to me dim and blur.

9 Q And I think you told Mr. Barr that at that point you
10 slam on breaks and you skid into a stop?

11 A I say what the hell like that and after a while, next
12 thing I know -- at the time I didn't know that I was
13 sliding or not. All I knew my airbags came out and it
14 threw me back like this and I came up. I looked up and I
15 saw like a little bump on my thing. I reach down for -- I
16 loosen my seat belt. I came back up like this and I got
17 out the car because I was itching the airbag was itching
18 me. I was cuffing or whatever, got out looked around and
19 see nothing. Later on, I went back in the car, grab my
20 cell phone and call my daughter.

21 Q Okay. You remember being in court all week, I know
22 it's been a long week, but remember that there was a video
23 that's been shown to the jury and seen it a few times of a
24 recording of you in a patrol car. You were taken from the
25 hospital to the jail. Do you remember being in the patrol

1 car going to the jail?

2 A Not -- like I said not really. Thing was happening
3 so fast, I really didn't know because the first time I
4 seen that video, I know a video was taken of me when my
5 former attorney showed it to me.

6 Q Okay. And coincidentally the officer you remember
7 meeting with that night was driving a car taking you to
8 the jail Trooper Minnix. But here's the question, so you
9 told the jury that this 18 wheeler was coming, something
10 blurry comes from the side. You slam on breaks. There's
11 a collision. You skid to a stop.

12 A I mash my breaks and airbags came out and got thrown
13 backwards came forward.

14 Q Do you remember saying -- telling the officers on the
15 way to the jail that someone hit me several -- pull my car
16 up something hit me several times. And then here's the
17 kicker, at the 231 mark you said passing another car,
18 going fast and hit me?

19 A You said do I remember?

20 Q You don't remember saying that?

21 A I don't remember until I seen the video. I don't
22 remember anything. The only time I can actually say I
23 seen that was when my former attorney showed it to me. I
24 don't remember seeing that until I actually seen it.

25 Q Well, you remember now or you need to see the video

1 again?

2 A Yeah, I seen it, yeah. I was traumatize and I was --
3 I was saying that something was coming towards me. I'm
4 going to jail, so I'm just. You know, I'm just...

5 Q But you would agree with me that on the video you
6 said they were passing another car?

7 A I was talking out my head. I was saying ---

8 MR. BARR: Your Honor, Your Honor, Your Honor,
9 objection.

10 A That's the first time I seen that.

11 THE COURT: Hold on, hold on.

12 MR. BARR: If he wants to impeach the witness on
13 a prior inconsistent statement, he have to let her see the
14 statement and then ask whether or not the statement was
15 made. This is improper impeachment.

16 THE COURT: I understand. And he offered to
17 show her the statement and she said she remembered it?

18 A I said I remembered it when my former attorney -- I
19 had never seen it before until my former attorney showed
20 it to me the first time. I never seen it before in March.
21 The first time I seen it was in March.

22 Q So that's what you told them? That's what passing --
23 you've heard it now?

24 A Yeah, I heard it, yeah.

25 Q You've heard it and that's what you say is passing

1 another car?

2 A Yeah, Uh-huh.

3 Q And I know you say that you're traumatized, but you
4 would agree with me that your memory as what happened was
5 probably better three and a half years ago than it is
6 today?

7 A That what you think?

8 Q Well, I'm asking you is that not the case? Do you
9 remember better today than you -- a minute ago you said
10 that you were having trouble remembering because it been
11 four years?

12 A No, I said I remember bits and pieces of the
13 accident. The only familiar thing that I know now I
14 remember the accident -- the accident was so extreme who
15 can forget something like that. I remember people and
16 faces. I remember actions.

17 Q But now you do at this point remember because you
18 seen the video this week you remember that you said that?

19 A I heard it. I heard it. I seen it and I heard it.
20 I don't remember. I didn't actually see it until in
21 March -- the first time I seen the video was in March in
22 my former attorney's office.

23 Q But that's you?

24 A Yeah, that's me.

25 Q And that's you talking?

1 A Yes, sir.

2 Q Okay. And I'm going to finish up here. But there's
3 one more thing you said that you skidded to a stop. Do
4 you remember saying towards the end of that video that
5 someone hit me. They all hit me and I spun around.
6 You remember saying I spun around?

7 A The video said I say that, I said that, okay, but
8 like I said I was traumatized. I was talking and talking
9 and talking trying to gather my thoughts because things
10 was happening so fast.

11 Q Do you remember saying I spun around?

12 A Do I remember saying that to the officer in the car?

13 Q In the car?

14 A No, I don't remember saying that. The video said I
15 said it, but I don't remember.

16 Q You don't remember it?

17 A No, no, you said do I remember. I said, no, I don't,
18 but the video said I do.

19 Q All right.

20 (WHEREUPON, video played for the jury.)

21 A When I say spin around, I mean everything was
22 spinning around like, you know, everything was just ---

23 Q Okay, that's what you mean because if your car is
24 spinning around you agree with me that the would be
25 inconsistent with your description of the accident as

1 given to Mr. Barr on direct examination?

2 A No, say that again? Say it again?

3 Q Would you agree with me that you told Mr. Barr
4 something else? You didn't tell him or anybody at this
5 point that your car spun around?

6 A You see me in that video, I am traumatized. I was
7 talking out my head. I was saying bits and pieces in that
8 video right there.

9 Q I understand you are traumatized. This is a yes or
10 no question. Do you agree with me that that's a different
11 story than what you told earlier?

12 A Do I agree that that's a different story that I told
13 earlier. What did I told earlier?

14 Q On the witness stand ten minutes ago?

15 A Be specific -- I tell a lot of stuff up here today.

16 Q All right. Let me rephrase that question, would you
17 agree with me yes or no that you did not say earlier that
18 you car spun around?

19 A I said that when I was coming down the hill a truck
20 was coming up the hill. Something turn in front of me.

21 Q But you did say you spun around, did you?

22 A On the video, that's what they say I'm saying, but I
23 don't remember telling no one that personally. I didn't
24 even know I was being videotaped.

25 Q That's not my question. In court today, did you tell

1 this jury that you spinned around?

2 A I did not tell the jury I spinned around. I didn't.

3 MR. DURANT: Thank you. No further questions.

4 THE COURT: Mr. Barr, any further questions?

5 MR. BARR: No, sir, Judge.

6 THE COURT: All right. You can step down.

7 (WHEREUPON, the witness leaves the witness
8 stand.)

9 THE COURT: You got any other witnesses, Mr.
10 Barr?

11 MR. BARR: No, sir.

12 THE COURT: Ladies and gentlemen, I need you to
13 step to the jury room. I need to deal with a matter.
14 I'll get you back in just a few minutes. Don't discuss
15 the case.

16 (WHEREUPON, the jury retire to the jury room.)

17 THE COURT: Does the State have any reply
18 witnesses?

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

20 THE COURT: Okay, Mr. Barr.

21 MR. BARR: Of course, let the record reflect
22 that we renew our motion for previous motion regarding
23 directed verdict.

24 THE COURT: I understand that motion is denied.
25 There's sufficient evidence. My understanding is that

1 requested that the jury be taken to the scene; is that
2 correct?

3 MR. BARR: Visual inspection, yes.

4 THE COURT: All right. I have someone here the
5 van is going to take them. I propose to bring them out
6 here and discuss with them the perimeters of that visual.
7 And that they can't talk about this case because there
8 because it's just like they in the jury room. They can't
9 form or express an opinion with each other yet. And that
10 no one will talk to them. Come on in. This officer is
11 going to drive the van. And at least from my knowledge of
12 this roll, my understanding you want them to be coming in
13 the same direction that your client coming in from
14 Paxville back toward Manning.

15 MR. BARR: Yes, sir.

16 THE COURT: You want -- did you still want them
17 to stop at Boyd Road?

18 MR. BARR: Yes, sir.

19 THE COURT: After they stop at Boyd Road, where
20 do you want them to go?

21 MR. BARR: Come back to Manning.

22 THE COURT: Okay. And I propose that he drive
23 to the top of the hill to the church. The same way the
24 trooper -- it's the safest place to turn around.

25 MR. BARR: It is.

1 THE COURT: And then turn and come back down
2 those two hills, stop Boyd Road.

3 MR. BARR: Now, they got a chain up across the
4 gate at the church.

5 THE COURT: Right. You can't turn in there.

6 MR. BARR: So you not gone be able to turn
7 around in there. He probably going to have to go down to
8 the school.

9 THE COURT: You understand what he's talking. I
10 just need you to turn safely and then head back down the
11 hill and pull over to Boyd Road and stop.

12 OFFICER: I'll have a vehicle behind, so I can
13 get him to stop traffic.

14 THE COURT: That be good. You can't tell the
15 jury anything as far as this case is concern. You can
16 have a conversation about the weather and anything else,
17 that's one thing. I'll tell them that and then I need you
18 just to bring them back to this courtroom. The whole
19 thing should take very long at all. Now, I propose to
20 bring the jury out and explain to them what we're fixing
21 to do. You got any objection?

22 MR. DURANT: Your Honor, I don't. I understand
23 it's discretionary. I guess, because there's such --
24 there's so much evidence in the case including a drive
25 through video, Judge. I would ask you to note that the

1 defense is requesting that they visit the incident scene.

2 THE COURT: Okay. You got any objection to
3 that, Mr. Barr?

4 MR. BARR: No, sir.

5 THE COURT: Mr. Barr, I was just told that there
6 is a memorial cross at the scene of where the truck was.
7 I wanted you to be aware of that.

8 MR. BARR: I thought about it, Judge, and I
9 thought about whether or not what that would actually do,
10 but I'm prepared to accept the consequences of it. They
11 have the cross, they even got the man's name on it.

12 THE COURT: Okay. I was not aware of that. The
13 officer knew that. I just want to let you know the
14 officer told me.

15 MR. BARR: Yes, sir.

16 THE COURT: Bring me the jury. And I propose to
17 send them home after that.

18 (WHEREUPON, the jury came into open court.)

19 THE COURT: Okay, ladies and gentlemen, you have
20 heard all of the evidence that you are going to hear in
21 this case. The defense counsel has asked that you go see
22 the scene yourself. I have got a deputy and a van.
23 They're going to take you to the scene. Simply drive you
24 through the process. You will be the only ones there and
25 the officer. You can't discuss this case among you.

1 Especially your opinions. You're simply to observe. No
2 one will say anything to you because it's not on the
3 record. The court reporter won't be there. So there'll
4 be no evidence or testimony given to you in this scene.
5 You will simply be driven out there toward Paxville for a
6 safe place the officer can turn and around come back down
7 through this scene, stop at Boyd Road for a few minutes,
8 then bring you back to Manning. It should not take very
9 long. And as I say, you can't ask any questions of the
10 driver. He doesn't know anything. And you can't talk
11 about what you saw. This is simply to observe the
12 physical scene yourself. When you get back, I will send
13 you home for the evening. We'll be back at 9:30 in the
14 morning to finish this case, okay. If you all will follow
15 those instructions, I'll see you back here in a few
16 minutes.

17 (WHEREUPON, the jury is excused to go view the
18 scene.)

19 THE COURT: We'll take a recess until they get.
20 Do you have any problems that I need to deal with outside
21 of this case?

22 MR. DURANT: No, sir, Your Honor.

23 MR. BARR: No, sir.

24 THE COURT: We'll will be in recess until the
25 jury gets back.

1 (WHEREUPON, a break was taken.)

2 THE COURT: I understand the jury is back, Mr.
3 Barr. I'm going to let them go and bring them back at
4 9:30. Is that your understanding?

5 MR. BARR: Sir?

6 THE COURT: I'm bringing the jury in and
7 excusing them until 9:30 in the morning.

8 MR. BARR: Okay.

9 THE COURT: And if y'all have any particular
10 charges you want me to deal with, you need to get them
11 together tonight, and we'll talk about them first thing in
12 the morning. I'll be here by 9:15 where we can go over
13 it. Bring them out.

14 (WHEREUPON, the jury came into open court.)

15 THE COURT: Okay, ladies and gentlemen, you've
16 heard all the evidence you going to hear in this case.
17 It's five o'clock. We not going to stay the night and
18 finish it, but we may be here all night. I'm going to
19 send you all home. And ask you to be back at 9:30 in the
20 morning. In the morning, the lawyers will do their
21 closing arguments to you. I will charge you on the law
22 and give you this case to decide. Don't talk about this
23 case, don't read anything about this case. Don't do any
24 research. Don't talk to anybody in the family. Tomorrow
25 night you can tell anybody you want to about this case,

1 but tonight you got to keep it to yourselves. I'll see
2 you at 9:30. If you have an emergency, please call us. I
3 hope you have a good evening. Thank you.

4 (WHEREUPON, the jury was excused for the day.)

5 THE COURT: Okay. I'll see you all in the
6 morning. I'll be here about nine or 9:15. Thank you.
7 See you in the morning.

8 (WHEREUPON, the proceedings were concluded for
9 the day to be reconvened on May 18, 2018.)

10 THE COURT: Yes, sir.

11 MR. DURANT: Judge, we certainly can handle
12 whatever business, Your Honor, intend to handle first, but
13 I was going to address the order of arguments.

14 THE COURT: Okay.

15 MR. DURANT: It's my understanding under State
16 vs. Beatty and the new opinion that's been issued as well
17 as the old opinion that the law in South Carolina is now
18 that if the defense request it in any -- in such cases
19 when the defense puts up evidence, the State has the right
20 to last closing. The defense can request or require the
21 State to open fully on the facts and the law and then be
22 limited to a reply following the defendant's argument. Of
23 course, again it is my understanding that's upon the
24 defendant request. I just ask, Your Honor, to just defer
25 to Mr. Barr just give the State an indication of the order

1 of argument.

2 THE COURT: All right. Mr. Barr, you want to
3 address that?

4 MR. BARR: Okay. I made a request I thought I
5 did.

6 THE COURT: All right. The question now is he
7 opening in full?

8 MR. BARR: Sir?

9 THE COURT: Are you requesting now that the
10 State open in full?

11 MR. BARR: I'm requesting they open in full,
12 Judge.

13 THE COURT: On the law and the facts?

14 MR. BARR: Yes, sir.

15 THE COURT: Then you will present your closing
16 argument and then the State has a right to reply any new
17 thing you bring up. That's my understanding. You all
18 agree with that?

19 MR. BARR: Yes, sir.

20 THE COURT: Okay. Now, on your charges, the
21 first charge you requested the statute my understanding
22 56-5-40. Is that you have there?

23 MR. BARR: Yes, sir.

24 THE COURT: That deals with the atomic energy
25 commission in Allendale, Aiken and Barnwell. What is that

1 got to do with this case?

2 MR. BARR: What now?

3 THE COURT: 56-5-40 is applicable to the charge
4 on the atomic energy commission land.

5 MR. BARR: Judge, that must be an error.

6 THE COURT: Okay. You know since the charges
7 has numbers I want to be sure we are on the same page as
8 far as -- and the next charge is 56-5-580 the right of
9 way. And the next one is 56-5-2320, which is vehicle
10 turning left and then 2350 is the vehicle entering the
11 roadway.

12 MR. BARR: Yes, sir.

13 THE COURT: Okay. And then I guess the next one
14 is 2953 which is a video recording. Does the State want
15 to respond to that?

16 MR. DURANT: Your Honor, the video recording
17 requirements?

18 THE COURT: Yes, that's the statute he's asking.

19 MR. DURANT: Your Honor, I thought we had come
20 to an understanding back in chambers that, Your Honor,
21 wasn't going to charge the implied consent law or the
22 video, I guess, the video taping requirement maybe
23 separate. Your Honor, I've already ruled on that and
24 that's a legal. That's a question of law for Your Honor
25 decide. As, Your Honor, is already ruled on it, I think

1 it would be inappropriate to charge to the jury which
2 suggest to the jury that they have to make a determination
3 as to whether or not that statute was complied with.

4 THE COURT: Okay. That is not a jury issue.
5 Once I rule, but I will continue to look at this case and
6 let you all know right before I charge. I don't think
7 that is a jury issue.

8 MR. DURANT: Judge, I guess respectfully I would
9 request a final ruling from Your Honor before closing
10 arguments, so I can address the matter appropriately in my
11 argument if it is going to be charged.

12 THE COURT: Okay. My ruling is it's not a jury
13 issue and I won't charge it. But I'll charge right away
14 vehicle, turning left in the vehicle and in the roadway
15 and then other stuff we discussed. All right. Anything
16 else?

17 MR. DURANT: Not from the State, Your Honor.

18 MR. BARR: No, sir.

19 THE COURT: All right, bring me the jury.

20 (WHEREUPON, the jury came into open court.)

21 THE COURT: Good morning, ladies and gentlemen.

22 We've now reach this point of the trial as I told you
23 yesterday you've heard all the evidence. The attorneys
24 will get up and make their closing argument to you. And
25 I'm going to charge you on the law that applies to this

1 case and give you this case to decide. So if you'll pay
2 close attention, the attorneys will make their closing
3 argument.

4 Mr. Solicitor.

5 MR. DURANT: Thank you, Your Honor. May it
6 please the Court.

7 THE COURT: Yes, sir.

8 MR. DURANT: Ladies and gentlemen of the jury,
9 good morning. First of all, thank you. Thank you for
10 your time, for your patience and your attentiveness this
11 week. Mr. Barr said in his opening statements that the
12 State shouldn't make promises they can't keep. I think he
13 was talking about the evidence that I told you would be
14 admitted in this trial. And I submit to you that if you
15 heard all that evidence -- but I did make a promise to you
16 or made a statement to you I didn't keep this week and I
17 told you this case was going to last about three days.
18 And we been here for five, so I'm sorry. I apologize to
19 y'all for that. I know we took you away from your other
20 responsibilities from your families, from a 100 other
21 things you probably rather be doing than sitting here
22 listening to me. But this is an important case and I
23 appreciate y'all for being here and being so attentive
24 throughout this course of this trial.

25 Guillermo Lopez-Arenas and Arturo Murrieta-Blas

1 stepfather, brother, a fiance, loved ones. These are real
2 people whose lives were taken or dramatically altered
3 permanently on a highway that happen in South Carolina in
4 Clarendon County back on August 30th of 2014 in a traffic
5 accident. And I say accident and I use the word accident
6 throughout the course of this trial and the officer use
7 the word accident. This may come as a bit of surprise to
8 you, but we are not of the position -- it is not our
9 position that Tammy Dianne Brown intentionally killed or
10 injured anyone that evening. Nobody here believed she
11 meant to do it. That's not an element of this case.
12 That's why we're here. We're not because she meant to do
13 it, that's not something the State has to prove. We are
14 here because of the decisions that she made. We are here
15 because of reckless acts, which claim the life of a
16 39-year-old man and permanent disabled a 36 year old.

17 The defense wants to turn into something else.
18 They want talk about videotaping requirements and search
19 warrants, affidavits and checks on a form and independent
20 samples. Ladies and gentlemen of the jury, that's meant
21 all meant to distract you, that's muddy the waters. And
22 they're important like I told you at the outset, this was
23 going to take little a while because the defendant has
24 important rights that have to protected by court, by the
25 judge. They are important legal questions.

1 Mr. Barr mention to you and during his
2 examination of one of the witnesses that there was a
3 suppression hearing outside of your presence before the
4 judge where they had testimony taken. The legal questions
5 have to be answered, but they're not for me or Mr. Barr or
6 for you to answer. They're for the, Judge.

7 I told you at the outset that Judge Cothran --
8 if I say anything that contradict what Judge Cothran says,
9 disregard what I say and apply the law as you get it from
10 Judge Cothran because he is the gatekeeper. He is the
11 sole judge of the law. He has the duty and the great
12 burden and responsibility of ruling on the admissibility
13 of evidence. And that would be the remedy, there be a
14 violation. The evidence wouldn't come in. Judge Cothran
15 has heard the testimony and it was his job to rule on the
16 admissibility of evidence as to what evidence you get to
17 hear and the evidence before you has been ruled
18 admissible, that's why you got to hear it. You are not
19 the judge of the. It's not your job determine these legal
20 -- the answers to these legal questions, but you serve a
21 very important rule. You're the judge of the facts.
22 Collectively as a group, you all are the judges of the
23 facts in this case. That's your burden, your
24 responsibility. You're the judge of the facts in this
25 case. The facts of what happened on that highway and

1 before that. That's what this case is about.

2 This case is about what happened Highway 261
3 back on August 30th of 2014 and what happen before it
4 when Tammy Dianne Brown went to a party and was drinking
5 and made the decision to get behind wheel of her
6 automobile and drive home. That's what this case is
7 about. Don't be distracted. Don't be distracted from
8 your job.

9 In a little while we're going to -- after I
10 finish speaking to you, Mr. Barr speaks to you and Judge
11 Cothran charges you on the law of this case. You're going
12 to be sent to the jury room with a verdict form. You are
13 going to be asked to deliberate about this case and come
14 to a unanimous verdict. A verdict of guilty or not
15 guilty. It is simple as that. Verdict comes from a Latin
16 word which means veredictum, which means to speak the
17 truth, to speak the truth in this case. Make no mistake
18 about it that's what I'm going to ask you to do is to
19 render a verdict that speaks the truth.

20 So let's just review the evidence. Where is the
21 truth in this case, what have we learned to be true in
22 this case. One, I submit to you we have learned to be is
23 that Tammy Dianne Brown was drinking and driving that
24 night. She was drinking and driving that night. The
25 officer smelled it on her as soon as they approached her.

1 She admitted to you she had two drinks. Now, ladies and
2 gentlemen of the jury, she admitted it to Trooper Minnix
3 in the back of that ambulance, even though she denies
4 talking to him. She said I don't remember him. She
5 denies talking to him or don't remember him along with
6 incidentally a lot of other things that night she doesn't
7 remember. Even though she denies talking to him or don't
8 remember talking to him, somehow he got her story.

9 Somehow he learned from her that she had these
10 two wine coolers. And he testified that she said two
11 tequila shots first and changed it to two wine coolers.
12 And by the way, he noted that in his handwritten notes
13 from August 30th of 2014, from the middle of the night and
14 his handwritten notes, he noted that she told him tequila
15 shots and then changed it to wine coolers. He got that
16 information from her. She denies talking him. He got
17 that information from her. And there was an open
18 container in her car. But she would have you believe that
19 even though Trooper Minnix somehow he got that information
20 from her about the two wine coolers and he accurately
21 recorded that limited it to two. He didn't say she told
22 me it was four or six. He said it was two, she said two
23 wine coolers, that's what he wrote down, that's what he
24 told you all.

25 She would have you believe that even though he

1 got that story, that part of the story straight that he
2 just made up the part about her admitting taking a drink
3 for the road. I can't even believe he just made that up.
4 She said it was a cup of ice. She would have never told
5 anybody it was drink for the road. It was just a cup of
6 ice. You heard from Trooper Minnix he smelled it.
7 There's a big difference between ice and a wine cooler.
8 You don't have to be an expert. You all can make that
9 determination. Trooper Minnix smelled it said it's
10 alcohol. And then what happened after that two officers
11 Dubose and Ridgeway, the MAIT guy, with a combined 35
12 years experience they smelled it too and both said that's
13 alcohol. She had an open container of alcohol in the car
14 with her. She denies it, but they just made that part up.

15 Ladies and gentlemen of the jury, we know to be
16 true that she was drinking and driving that night. What
17 else we learned in this case, we learn she was heavily
18 intoxicated. That she was highly impaired that evening.
19 I submit to you the first evidence of that is her
20 demeanor. That's testified to by the two troopers Dubose
21 and Minnix. They talk to you about the demeanor at the
22 scene, in the hospital. She was agitated and belligerent
23 one minute. And she told you she was mad. She said she
24 was mad, that was her first response she was mad after
25 this accident. So she's agitated. She's belligerent.

1 She's mad one minute and then she's emotional the next.
2 You got a video of her that shows her demeanor from the
3 hospital to the jail. Ladies and gentlemen, I submit to
4 you that's evidence of her demeanor of her impairment.
5 Watch the video again.

6 And how else do we know that she was highly
7 impair that night a blood sample. And while we're on the
8 subject, I don't know how the check mark got there. I
9 don't know I wasn't there. I don't know how the check
10 mark got on that form, but what I do know is that
11 everybody that was in the room Dubose, Minnix, and the
12 nurse all say that she didn't request it. Anybody that
13 remembers being in the room says she didn't request it.
14 She got on the stand and said she doesn't remember who was
15 there. She didn't even remember talking to the officers,
16 but everybody that was there says that she didn't request
17 an independent sample.

18 Ladies and gentlemen, I submit to you that
19 according to her own testimony, according to the words
20 that came out of Tammy Brown's mouth when she was sitting
21 in this chair, she didn't request it. I asked her I
22 wanted to be sure give us the details of this
23 conversation. And she was very clear that when the nurse
24 was sticking the needle in her arm, not to an officer, not
25 to anybody else. The nurse was getting ready to stick a

1 needle in her arm, that it was mention to her that she can
2 get her own sample and her only response was to turn her
3 head and say okay. That's what she said. That's how she
4 told you that she requested independent sample. She was
5 told as the nurse was getting ready to put the needle in
6 her arm that she get one. And she turned her head and
7 said okay. That's it. Is that clear and unequivocal
8 request for a sample, certainly not. Not when she been
9 there for three and a half hours and been read those
10 rights hours before and never mentioned it.

11 And by the way, didn't tell an officer according
12 to her own testimony. She denies even speaking with
13 highway patrol that night. She doesn't remember it. If
14 she can't remember talking to them, then obviously she
15 doesn't remember telling them that she wanted this
16 additional sample. But here's the kicker, even if she
17 did, even if she requested the sample, the officers did
18 everything they were suppose to do. Even if she requested
19 it, they did everything the law requires them to do. She
20 was at the hospital. Her blood was drawn. And it was
21 sent to SLED. The experts two vials of blood sent to the
22 experts at SLED. And Mr. Barr questioning witnesses about
23 why they didn't make these certain tests and sending it to
24 SLED to be tested. Why do you send a cup to SLED to be
25 tested. That's where the experts are. They can do some

1 amazing things. They can do some serious stuff. SLED can
2 do some serious stuff.

3 And guess what, ladies and gentlemen, they took
4 her blood in that hospital. They went to painstaking
5 measures to ensure -- and I know that testimony was kind
6 of dry. They had to carry all that chain of custody
7 testimony. They went to painstaking measures to ensure
8 the integrity of that sample, to ensure that it wasn't
9 tampered with in the hospital, to highway patrol, to SLED.
10 It was sealed once, twice, three, four times before it was
11 ever tested. None of the seals had been broken. They
12 went to all these lengths to ensure the integrity of that
13 sample. Then it was tested by three individuals, three
14 chemist at SLED to ensure the accuracy of those results.
15 Verified all three of them.

16 It was determine that her blood alcohol
17 concentration was .210. That's how we know she was too
18 impaired. She was intoxicated, too impaired to drive.
19 .210 blood alcohol concentration. You're going to hear in
20 just a little while that when the judge charges you on the
21 law, that there's an inference in South Carolina we prefer
22 to this as the legal limit as .08. After that, there's an
23 inference that if your blood alcohol concentration is over
24 .08, then it's inferred that you're under the influence.
25 You are too impaired to drive at that point. That's what

1 Dr. Grambow talked to you about. He said between .05 and
2 .08 you begin to get too impaired to safely operate an
3 automobile.

4 And you heard about his training and experience
5 and all the conferences and all the teaching and the study
6 that he's done between that range .05, .08 you begin to
7 get too intoxicated, too impaired to drive. Her blood
8 alcohol concentration is verified by three chemist was
9 .21, that's two and half times .08, two and a half times
10 the legal limit. He talked to you about the affects that
11 expect to see on a person as consuming alcohol about how
12 they're processing their reaction time to be significantly
13 affected and delay, how they would have difficulty
14 maintaining concentration. Doesn't that sound familiar.
15 Difficulty maintaining concentration. He said that would
16 be a result and affect of alcohol on a person. That sound
17 familiar difficulty maintaining concentration as Ms. Brown
18 relay to you back her recollection of that evening. He
19 said .21 the impairment has increase by vast amounts. He
20 said .08 that's when you begin to get too impaired to
21 drive. At .21 that impairment has increased by vast
22 amounts, that was his testimony.

23 And then when was that sample taken -- that
24 blood sample that you had a blood alcohol concentration of
25 .21. By the way, you heard testimony that sample was

1 taken at 3:21 a.m. You all know from your experience,
2 from your common sense, your knowledge that blood -- the
3 expert testified to that blood dissipates, the alcohol
4 metabolizes three and half hours later is when the blood
5 sample was taken. And the end resulted in .21. Her blood
6 alcohol concentration when she was driving this vehicle,
7 when she got in the wreck that night was likely
8 significantly higher than .21. .21 was three and a half
9 hours later at 3:21 that's when her blood was drawn. Does
10 that sound to you like somebody that had only two wine
11 coolers and a cup of ice.

12 And I submit to you that we have evidence of her
13 impairment for intoxication from her testimony itself from
14 Tammy Brown's own testimony in which couldn't remember a
15 whole lot. I submit to you to listen to her testimony.
16 It is evident that she was black out drunk that evening.
17 Let's remember I think she told you, she testified to
18 everything was going so fast. She was in and out, had
19 trouble maintaining concentration in and out, doesn't
20 remember faces, who she talk to. She doesn't even Trooper
21 Minnix who was a very identifiable person. He filled out
22 that box, doesn't even remember him after spending three
23 and a half hours with him that night. She didn't remember
24 him. She simply didn't remember talking to him.

25 Everything was going to fast she was in and out.

1 Didn't remember faces or who she talked to truck came out
2 of nowhere. It was a blur. They're dim. Some dim object
3 came out of nowhere with a blur, didn't even know what she
4 hit. Didn't even know what she hit, that's what she
5 testified to. Ladies and gentlemen, that's a testimony
6 that somebody who was blacked out drunk. She didn't have
7 a memory of what happened that evening because she was so
8 drunk. She was too drunk to remember what happened that
9 evening. Listening to her, watching the video, the
10 officer's testimony, she was heavily intoxicated, highly
11 impaired that evening. You learn that to be true in this
12 case. What else we learn to be true and that's this
13 accident was cause by her actions.

14 You heard from the Lance Corporal Ridgeway of
15 the MAIT team who is according to his qualifications he's
16 one of the foremost experts in South Carolina in accident
17 reconstruction. Of all the MAIT guys in South Carolina,
18 he's one of six that's been selected to serve on this
19 emergency response team. So if there's a collision of
20 high interest, then he's one six that comes off these
21 other teams that go. He's the all star that goes and
22 investigates these accidents. And he was assign to
23 investigate this one. He told you that he immediately
24 impaired -- that the black pickup truck had been struck
25 from the rear at a great deal of speed. The speed was a

1 major factor. And then he went through all his
2 qualifications. And I know that testimony was dry as well
3 and kind of listening to him and trying to explain his
4 methodology. That's why we ask questions and understand
5 appropriately that, but I want you to see the measures,
6 the lengths that they go to ensure the integrity, the
7 accuracy of his calculations.

8 And the end result is that he testified that at
9 the point -- and by the way this is before we get to where
10 the car is coming from. We're not even there. At the
11 point of impact between Home Branch and Boyd Road at the
12 point of impact in the middle of that 45 mile per hour
13 zone at the point of impact, Ms. Brown is traveling 55.92
14 miles an hour. And you can say, well, that's
15 conservative. I said 56. He said, no, no, it's 55. It
16 is 55 we don't round up. And he went through all the
17 steps in the process and about how everything is in her
18 favor. The assumptions that they make are in her favor.
19 They give her the benefit of the doubt of all these steps
20 in the process.

21 He testified that backs up from there and that
22 her speed in 55.9 miles an hour is after she locked up the
23 breaks. That's after some period of time the skid marks
24 that you saw, after she locked up the breaks. 64.67 miles
25 per hour is how fast she was going before she hit the

1 breaks in a 45 mile per hour zone. 20 miles an hour over
2 the speed limit, at least he said. I think of actually
3 his quote a bare minimum of 64.67 miles per hour at a bare
4 minimum. He testified as to the damage that was caused
5 that was immediately apparent to him when we got to the
6 scene that the black pickup truck had been struck in the
7 rear with a great deal of force and a great deal of speed.
8 He testified that usually when I see that type of impact,
9 the occupants of the vehicle that was struck from behind
10 are deceased. That fatality occurs at the point of impact
11 based on his experiences, 19 years experience. That's
12 when death occurs at the point of impact when struck in
13 the rear or that much force to bend that frame 90 degrees,
14 bend the frame of a pickup truck 90 degrees.

15 But what is the only witness say about the
16 accident. What is the only witness as Mr. Barr said, it
17 was only one witness and I submit to you that this would
18 have been the only witness that survived and has the
19 ability to communicate about what happen, but what is the
20 only witness' theory as to what happened, what is her
21 story. I thought it was interesting when Mr. Ridgeway was
22 being questioned by Mr. Barr, at some point the comment
23 was made by Mr. Barr that he been working on this thing,
24 that I been working on this thing and I think I finally
25 figured it out. I been working on this thing and I think

1 I finally figured it out. He had. He been trying to
2 figure it out how it happened, trying to come up with a
3 theory to explain what happened.

4 Ladies and gentlemen, and then he told you that
5 she would get on the stand and say that the vehicle was
6 coming from the right side of the road and pulled out in
7 front of her. If that's her story, if that's her story,
8 it's certainly significant different than the story she
9 told that night. That story has changed significantly.
10 That's not the same story that night. She said that car
11 was passing another car going fast and hit her, kept
12 saying over and over again. You can listen -- you can
13 watch the video, that's all in evidence. You can take
14 back to the jury room with you. That car was going
15 passing another car and going fast and hit me. She didn't
16 mention anything about the car coming from the right side.
17 Didn't mention anything about an 18 wheeler passing
18 another car, going fast and hit me. That's her story.
19 And that's significantly different than the story that her
20 and Mr. Barr came up with in trial. She's all over the
21 place.

22 She says in the video that she was -- after they
23 hit her, she spinned around. She spun around. It is not
24 what she said on the witness stand. Passing another car
25 going fast, hit her and she spun around. That is a

1 different story. And so what do we know to be true is
2 that in one of these instances either what she said that
3 night or what she said in court. One of them is not true.
4 So we know also to be true is the Tammy Dianne Brown has
5 lied about this incident at some point. She lied about
6 what happened. Either that night or this witness stand
7 she lied. I don't know which one. You don't know which
8 one, but what our concern to is that Tammy Brown is a
9 liar, is that she's lied about what happened. Why we make
10 up a false story, why do we make up a what we call an
11 exculpatory story, a story to try to get us out of
12 something. We do that because we're conscious of our
13 guilt because we are aware of our guilt. That's why we
14 make up a story and try to get out of something. She is
15 all over the place. They're countless inconsistencies in
16 her story. She hadn't told the same story twice. What
17 about that 18 wheeler. That 18 wheeler that she said that
18 was -- had the bright lights on. She couldn't see. The
19 first time you heard her confirm to me that the first time
20 she had ever told that story was here in court. She said
21 she told her family at some point, but she had never told
22 the officer -- she didn't even remember meeting with the
23 officer. And I tried to get to the bottom of that, well,
24 why didn't you tell them. Said, well, they didn't ask me
25 the right questions. Didn't ask her the right questions

1 about that story. The first time she ever told highway
2 patrol in the three and a half years that this case has
3 been pending was in courts. That's the first time anybody
4 has every heard about an 18 wheeler. She make that up for
5 trial.

6 Ladies and gentlemen, her story doesn't fit the
7 evidence. It doesn't fit the evidence. You heard
8 Corporal Ridgeway was being cross-examined as to these
9 different theories as to how, what if, the vehicle was
10 coming from Boyd Road -- and by the way that was the first
11 theory when Corporal Minnix was on the stand and that's
12 been a long time, that was Tuesday I think when Corporal
13 Minnix was on the stand. The first theory was how do you
14 know the vehicle didn't come from Boyd Road. Well, then
15 after we establish that the point impact was before you
16 get to Boyd Road between Home Branch and Boyd Road, well,
17 now the theory is that it was coming from this private
18 drive to get to the electrical box over there. How do you
19 know he wasn't pulling out from that private driveway at
20 12 a.m.

21 Corporal Minnix told you -- Corporal Ridgeway
22 rather says that doesn't fit the evidence. He said -- his
23 exact words, well, that didn't fit the dynamics of this
24 collision. He said several times as he was being asked to
25 address these potentials as to whether or not these things

1 could happen. He said several times. You don't want that
2 to happen, that wouldn't be good for your client. You
3 don't want that to be true. I have given her the benefit.
4 He said very clearly that Home Branch Road -- that the
5 vehicle was coming from Home Branch Road. There's
6 evidence in the record that that's where they were that
7 night. It was a party. There was cookout going on. You
8 heard that there was family members at the scene of the
9 accident that spoke with highway patrol. They were coming
10 from Home Branch Road, but Lance Corporal Ridgeway said
11 that Home Branch Road is her best case scenario. Those
12 were his word not mine. His said her best case scenario
13 is that they were coming from Home Branch Road. And why
14 is that. Because if they pulled out in front of her from
15 the right side of the road, it means they were going
16 slower, they hadn't had that period of time to gain speed
17 as they would have to get to the point of impact from Home
18 Branch Road. What that means is that they're going
19 slower. That the victim's vehicle by the pickup truck is
20 going slower at the point of impact. And you heard very
21 clearly from Officer Ridgeway that the slower the victim's
22 vehicle is going based on the degree of force, the impact
23 that he measured to those vehicles and the re-enforce and
24 he does those numbers and based upon all that, the slower
25 they're, the faster she's got to be going.

1 So if her story is to be believed and that's
2 what he said 64.67 is the bare minimum. If her story is
3 to be believed that they pulled out on her and pulling of
4 the road and they're going slower, that she's going
5 significantly faster. He told you if they're zero miles
6 per hour, which essentially they would be doing if they
7 had come out from that driveway and square the vehicle and
8 from that point of impact, they are going very slowly. He
9 said they're going zero, she's driving 98 miles an hour
10 because that damage -- that's a force upon that pickup
11 truck, 98 miles an hour times zero. He best case scenario
12 Home Branch, it's supported by the evidence, but her
13 theory, under her theory she was driving recklessly at 90
14 miles an hour, with a .21 blood alcohol level, vast
15 impairment, significantly impaired her decision making,
16 her reaction times, significantly impaired driving that
17 fast in the middle of the night on Highway 261.

18 Ladies and gentlemen of the jury, Officer
19 Ridgeway was very clear, I asked him specifically I said
20 is there any evidence, is there any evidence that the
21 driver of the black pickup truck failed to yield the right
22 of way to Ms. Brown and he said unequivocally no there is
23 not. There is no evidence from this expert, that's what
24 he said on this witness stand unequivocally is there any
25 evidence the driver of that black pickup truck failed to

1 yield the right of way to Ms. Brown. He said, no, there
2 is not. Would the black pickup truck had been able to see
3 Ms. Brown from the time they pulled out from Boyd Road.
4 They would not have coming from Home Branch Road. They
5 would not have. I ask if she had not been speeding would
6 this accident had occurred. And what did he say. She
7 wouldn't have even had to hit the breaks. She wouldn't
8 even had to hit the breaks, she hadn't been speeding.
9 Evidently you have heard all this and I submit to you
10 these are things that we have learned to be true in this
11 case. A few minutes you're going to be sent back a
12 verdict to the jury room to render a verdict. And I would
13 just charge that to render a verdict in this case that
14 speaks the truth. The truth is that Tammy Dianne Brown is
15 guilty of felony DUI driving under the influence. Thank
16 you.

17 THE COURT: Mr. Barr.

18 MR. BARR: Please the Court, Judge.

19 Mr. Solicitor, madam forelady and ladies and gentlemen of
20 the jury, I certainly want to begin by thanking you again
21 for your service, that is your jury service. A lot times
22 when get people get a summons to come for jury service
23 they find all kind of other things to do. Sometimes they
24 make all kinds of excuses, so that they don't have to show
25 up for jury service. But on behalf of the judicial

1 system, on behalf of Ms. Brown, we certainly thank you for
2 honoring your requirement to come to jury service.

3 Now, I certainly hope that from a civic
4 standpoint that something has occurred in this trial
5 whereby you would learned something that you otherwise
6 would not have known as a result of being in this trial.
7 Now, you know, while I'm thinking about it, I heard the
8 Solicitor say that, well, Mr. Barr told you in his opening
9 statement that don't make promises to a jury that you
10 can't keep. And if I remember correctly, I said that
11 because the Solicitor was talking about what the evidence
12 intended to show. Now, while I'm thinking about -- let me
13 just tell you his honor is going to charge you -- and then
14 sometimes you will have to make a decision not so much
15 based on the evidence that's presented, but the evidence
16 that should have been presented and was not presented.
17 And I think in this case you will find that what's in
18 evidence that should have presented -- if the prosecutors
19 want you to find Ms. Brown guilty of driving under the
20 influence and which is felony DUI and felon DUI involving
21 great injury, then they should have presented the evidence
22 to establish it. And to establish it to you by a standard
23 beyond a reasonable doubt.

24 Now, I am tempted, I am tempted to go down this
25 trail that the Solicitor set some bread crumbs out and

1 seem to be enticing me to go down, that is to get into
2 this business of trying to contradict each and everything
3 that he said as it relates what the witnesses testified
4 to. Now, let me give you an example say for instance he
5 told you that Ms. Brown said that she had a head on
6 collision with another vehicle. Ladies and gentlemen, now
7 if you could recall the fact different from the way I do,
8 please don't hold it against my client. And as far as the
9 law, Your Honor, is gone give you the law. So if I recall
10 something a little bit different from you, then rely on
11 how you recall it and not how -- and I don't remember on
12 the video, on any video and they didn't have any audio
13 other than the trip to the lock up. I don't remember that
14 woman specifically saying that she had a head on
15 collision.

16 Now, if you recall that evidence having been
17 presented, then that one thing. And here's something else
18 that I don't remember. And I'm going to tell you about
19 this and I'm going to come back it. Here is what I don't
20 remember. The Mr. Ridgeway, Trooper Ridgeway's
21 calculations were all based on the fact that he started
22 his calculations with the black pickup being in the road
23 and having turned off of Home Branch Road.

24 Now, I don't remember one witness coming to this
25 courtroom and telling anybody on this jury that the black

1 pickup was at a party or at a cookout on Home Branch Road.
2 Now, Ms. Gutierrez said that the passenger told her that
3 that's where he was going, that was at seven o'clock.
4 That was at seven o'clock. Now, somehow by some kind of
5 osmosis or whatever or maybe it was communicating things
6 the same way that -- I said I was tempted to go down this
7 road and I said I wasn't going. I may have to go a little
8 piece.

9 The Solicitor told you about Ms. Brown and what
10 transpired when her blood was about to be drawn. And
11 somehow some mysterious person told her that she was
12 entitled to an independent test. Now, ain't no question
13 that Ms. Brown -- and if I remember, I handed the blood
14 test form to you so you can look at it and you can look at
15 the check mark that was made on that form indicating that
16 she had requested an independent test. Well now she
17 didn't even sign it, she refused to sign it, but now
18 somehow with Officer Dubose and Minnix, they all seem to
19 feel that, well, we don't know how that got on there. It
20 got be on there by error. Now, if you remember the error,
21 Ms. Boyd or Ms. Floyd came in here to court and got on
22 this witness stand and I asked her how did she find out
23 about that. I knew exactly how she find out about it to
24 begin with, but I want see to whether or not the truth was
25 going to be told. And if you remember somehow she got a

1 text message, she got text message that said that she had
2 made an error. And I asked her about where the text
3 message came from and she finally admitted that it came
4 from right here. It came from right here from the
5 prosecutor.

6 Now, tell me how in the world you gone get text
7 message telling you that you made an error on the blood
8 test report with no text. So well all I got was the form,
9 gave me a break. You got the form and you got the
10 instructions, and you got whatever else you need to come
11 to court and say, no, I made an error. Now, she said
12 listen, I never thought about it. I never saw it. Do you
13 think that all of a sudden she's gone realize, well, I
14 made an error and I need to run down to Clarendon County
15 and se it.

16 Now, it would seem to me that somebody would
17 know that y'all know better than that and not even bring
18 anything. And as I said, I don't want to go down this
19 road, but I'm tempted to at least go down it at least a
20 little bit. Now, I'm not gone get into trying to refute
21 everything that the Solicitor has said because I think
22 there's more important things for you to look at in this
23 case. In other words, I'm not gone insult your
24 intelligence as jurors you are called upon to decide
25 whether or not the prosecution has proven their case

1 against Ms. Brown and proven it beyond a reasonable doubt
2 because right now his honor will instruct you that the law
3 in South Carolina is that right now she is presumed
4 innocent. And that presumption of innocence will remain
5 with her throughout the course of this trial. It is only
6 when you and your collective wisdom decide that the
7 evidence has convinced you and convinced you beyond a
8 reasonable doubt that she did commit each and every
9 element of the offense that she's charged, that is she was
10 driving a vehicle under influence, that she did not do
11 some act that the law required that she do or that she
12 performed some duty that the law requires that she
13 perform. And as a result of such, such was the proximate
14 cause of the death or either the serious bodily injury.

15 Now, I hated to make you get on the school bus
16 yesterday and ride down to -- ride down the road down
17 there to the scene, but there two things I wanted you to
18 see. And you know, ladies and gentlemen, let me tell you
19 something, I got all respect for Trooper Ridgeway. I
20 mean, he's a very good law enforcement. I think he's a
21 good scientist. I got respect for the young man who got
22 on the witness stand and told me about the alcohol and the
23 kind of affects that either have or doesn't not have on
24 people. And, of course, but the thing about it is and I'm
25 not gone tell you that I'm free from the taking of

1 alcohol, but now and I don't know what y'all do and I'm
2 not gone try to get into your business, but I think
3 sometimes a picture is worth more than thousands words.

4 Now, his honor gone tell you even though you're
5 not an expert, he's gone tell you why experts are able to
6 come into this court and give their opinions. But, ladies
7 and gentlemen, I would submit to you that you don't have
8 to be an expert. One of the things that you can use in
9 this case that enable you to come up with some decisions
10 that are more accurate than anything else would be your
11 good common sense. That's your good common sense. And I
12 would submit to you that if you use your good common
13 sense, you will be able to see some thing in this case
14 that the prostitution really don't want you to see because
15 number one -- and I'll say it and I'll say it until I
16 leak, there was one witness, one eyewitness that came to
17 this courtroom and told how this incident occurred. Now,
18 there was another witness, the passenger in the vehicle.
19 I don't know where he is. I am glad they didn't bring
20 him. If he's gone say what I think he might say, but the
21 simply fact of the matter is we don't know what he's gone
22 say because he is not here.

23 Now, if he can tell us how this accident
24 occurred different from what Ms. Brown said it occurred,
25 then I guarantee you perhaps the prosecution would have

1 had him here, but now according to the Solicitor, the very
2 first time that Ms. Brown told anybody about how the
3 accident occurred, that is involving somebody coming in
4 from the right said it occurred on this witness stand.
5 Well, Ms. Brown's response was, well, I told my lawyer. I
6 told my lawyer the gentleman that represented me at -- I
7 told him, well, guess what nobody else went to her and
8 asked her. Tell you something most people scared of the
9 police. That's just the truth of the matter of it. When
10 you see police coming, you want to be going to the other
11 side. And in this case what did they expect, they expect
12 her to give them a metal for coming to the jail or coming
13 to the hospital and putting handcuffs on her and carrying
14 her to jail. You gone be leery. You gone leery of that.
15 She didn't ask anybody else about why you didn't give me a
16 sample, a blood sample so I can take... After being told
17 that she had the right to an independent sample, she
18 thought she did in order to have an independent test done,
19 she thought she did. But nobody else told her, his honor
20 is gone instruct you that the arresting officer in that
21 kind of situation, they have an affirmative duty to assist
22 you in making contact with somebody else that can do an
23 independent test. That's a known. But now the
24 prosecution would have you believe that somehow Ms. Brown
25 manufactured that. She didn't manufacture it. I asked

1 Trooper Dubose I said listen, did you read this before you
2 signed it. I know she read it. Well, I handed it back to
3 the nurse and then nurse did this. And then here comes
4 the nurse and the nurse said that, well, I put it on there
5 and I wrote it on there by mistake.

6 Now, the reason I wanted to -- I wanted you all
7 to go down to that incident scene, that are primarily two
8 things. The first is coming back from Paxville, the speed
9 limit until you get to the area where this incident
10 occurred, the speed limit is 55, but there is a sign that
11 says -- and it's actually a warning sign, but it's got a
12 speed limit on it and his honor gone tell you that that
13 speed limit you have to honor that, but I wanted you to
14 see that. But I wanted you to see where it was in terms
15 of where Ms. Brown was coming from at the time that she
16 observed what she later found out could be a vehicle with
17 no lights on the back, came out in the road in front of
18 her.

19 Now, I challenge, I challenge the prosecution
20 who has not brought one witness to this courtroom. If I
21 remember correctly, I heard somebody say, well, the family
22 said that were coming. What family. No family came in
23 here and told you that. And that's what Trooper Ridgeway
24 all his analysis is based on the assertion that the black
25 pickup turned off of Home Branch Road. And there's just

1 no evidence of that. Even now give me the name of one
2 person that's brought to this courtroom that said that
3 that's where that vehicle came from. I just don't know of
4 any. And guess what, the horse out of the gate now. The
5 Solicitor's office can't present -- they present all the
6 evidence that they intend to present. And now, you know,
7 I think people ought always be courteous. I won't get
8 another opportunity to come back and talk to you again.
9 In other words, the Solicitor's gone come back and based
10 on something that he think that I said and he feel like
11 you ought not take into consideration might cause you to
12 not find that they proven this woman's guilt beyond a
13 reasonable doubt. He's gone mention it to you. And under
14 our system, under our system, that is under our rules, I
15 don't get to come back and respond to any of those.
16 However, however as it relates to the issue of the black
17 truck, taken at six point some odd seconds that Trooper
18 Ridgeway said it took to come from Home Branch Road and
19 get on to Highway 261. To see ain't no question His
20 Honor's gone tell you that Ms. Brown had the right of way.
21 I mean, anybody that drives know that. You on Highway
22 261, she had the right of way and anything coming under
23 her path is required to yield anything -- in other words,
24 if anything is close enough to you whereby it create some
25 risk as to whether or not you can get out in the highway

1 safely, you suppose to yield to it. Now, why did not that
2 vehicle yield. We know for a fact that there were two
3 people in the vehicle. Now, we hadn't talked about it a
4 whole lot, but according to -- you about (inaudible).
5 Those are the words the prosecutor used in describing Ms.
6 Brown, but now talk about drunk, the two people in that
7 vehicle was drunk.

8 Now, what in the world would they be doing in
9 the road and see the Solicitor doesn't know either. They
10 don't whether or not they came out there in the road and
11 stopped. They don't know how long they had been out
12 there. And they don't know where they came from. If they
13 know where they came from, then as I said I want you to be
14 courteous and I want you to listen to everything the
15 Solicitor got to say to you. But I don't want you to
16 consider that as a good reason to convict Ms. Brown,
17 unless he explain to you where in this evidence that been
18 present or hadn't been presented, how they prove that the
19 black truck came off of Home Branch Road.

20 Now, I know that he's gone say something, but
21 now what I want you to think in your mind is who was the
22 witness that came to this courtroom and said that that
23 truck came off Home Branch Road. Now, what I think -- and
24 he's absolutely right I didn't see it until Ms. Gutierrez
25 got on the witness stand because Ms. Brown constantly

1 maintain that the vehicle that she had collision with came
2 from her right, which would have been Boyd Road on some
3 area immediately in there. And there's something I want
4 to show you. I've already told you about the first thing
5 I wanted you to see. There's one photograph that I
6 thought illustrated it better than any of the others.
7 Cause what it does is it actually shows a portion of that
8 road that's right by Boyd Road that accesses Highway 261.
9 I don't see it now. Well, maybe you'll be able to find it
10 when you go to the jury room here's what it shows. If you
11 went down there, y'all went down there yesterday. That
12 Boyd Road those goes into a little community. And, of
13 course, Ms. Gutierrez told us yesterday that that's where
14 she lives down off of Boyd Road. But when you come out of
15 Boyd Road, there is an opening here that really goes to a
16 private driveway, but a lot of people including me when I
17 came out, I didn't come out Boyd Road. I came out on that
18 little side roadway that actually goes to somebody else.
19 If you look at where -- and what my concern was that I
20 could not grasp was if I believe the officer's testimony
21 regarding where the accident occurred, how was the ridges
22 mark in the road that far from Boyd Road. Well, I saw
23 yesterday and that's why I wanted you go down there
24 because if you go -- if you went down there, you could see
25 that coming in off of that road, you got enough

1 maneuverability to turn get and straight on to Highway 261
2 and that's where these people came from. And you know
3 where I believe they were coming from, from his
4 girlfriend's house. Wasn't coming from no party. Not at
5 the time this incident occurred. I believe they were
6 coming from the girlfriend's house.

7 Ladies and gentlemen, I'm not gone debate with
8 y'all and argue with you about whether or not Ms. Brown
9 had consumed. Yeah, she had consumed alcohol. Now, his
10 honor's gone instruct you that you can even infer that she
11 was under the influence, but I would submit to you that
12 the statute requires more than being under the influence.
13 It requires more than being under the influence in order
14 to be guilty of felony DUI. I mention to you earlier in
15 addition to being under the influence while that person is
16 driving a vehicle. And under the influence, you must
17 either do some act that you're forbidden by the law or
18 fail to perform some duty that you're obligated to
19 perform. And as a result of such failure or such action,
20 that becomes the proximate cause. Ladies and gentlemen,
21 tell me one qualified position that has come to this
22 courtroom and tell you what caused the driver of the black
23 vehicle to bend.

24 Everybody assume that he died in the accident.
25 Now, according to a person that's not qualified to tell

1 you when he died, Trooper Ridgeway said they died -- the
2 injure occurred on impact. Well, I don't know about
3 Trooper Ridgeway because when you look at the photograph,
4 you will see that the driver of the vehicle was actually
5 under the steering column. And the passenger of the
6 vehicle had to be extracted by the fire department. Well,
7 I don't know when -- if the driver -- if the driver died,
8 quite frankly I don't know when he died. I don't know
9 what the cause -- the official cause of death was.
10 Prosecution just assume that we just gone take what they
11 say for all of that. I'm not gone do that. I know
12 better. They are -- there is a forensic pathologist
13 right there at the medical university in Charleston that
14 could have come in here and tell you exactly the person
15 that died -- tell you exactly what cause his death. You
16 might be tempted to say, well, his death was caused by --
17 well, that's not the way it goes. You know as lawyers we
18 don't just assume anything. We don't just assume that a
19 wife didn't like it and she put him in the vehicle and
20 somebody crashed into him. Now, I'm not suggesting that,
21 but I'm trying to get you to see is this is an assumption
22 that you ought not just be making. I said earlier that
23 sometimes the prosecution instead of not proving a
24 defendant's guilt beyond a reasonable doubt with evidence.
25 Sometimes it is a lack of evidence that shows you that

1 this has not occurred.

2 Now, ladies and gentlemen, I am not gone stay up
3 here all day. I'm going to sit down now. As I said, keep
4 in mind that I'm not arguing about how much this --
5 whether or not this woman was -- I am not even arguing how
6 much she was under the influence, but I am arguing about
7 whether or not such act or such act that she did not do
8 that had a duty to do whether that was the proximate cause
9 of the person's death and that hadn't been shown to you or
10 the serious bodily injury.

11 Now, the serious bodily injury probably comes
12 closer, but his honors gone charge you on what proximate
13 cause means in a legal sense. He's gone tell you it's the
14 operating cause. It's the direct cause. Now, I tell
15 you that the direct cause quite frankly of this wreck is
16 the driver of the black truck pull out the driveway.

17 Now, if you remember one of the first things
18 that the Solicitor said in his opening statement is that
19 they were mighty mighty drunk. Now, he didn't say it in
20 those words, but that's what he said. That's what he
21 said. So now here you got two people in a vehicle, that's
22 mighty mighty drunk. And you got one person here
23 Ms. Brown who by everybody's account said she was unsaid
24 the influence. And we believe that her being under the
25 influence and her driving too fast was the proximate cause

1 of this accident. And as a result of the accident even
2 though we don't know it, but as a result of the accident,
3 a man died and another man was seriously injured.

4 Well, I've been thinking about this thing, her,
5 I am talking about Ms. Brown, the two people that got
6 injured and the fact that maybe they all could have been
7 drunk. The thing about it is, the person is deceased.
8 One seriously injured and one charge with doing it all.
9 Even though for all we know they could have been five
10 times drunker than she was, if she was, but she is here.
11 And the prosecution is decided, well, this is the one we
12 gone get. And we gone prosecute her.

13 I'm gone leave you with a parable that I'm
14 reminded of when I thought about this whole scenario,
15 Trooper Ridgeway, the toxicologist. It all boils down to
16 this and I don't care what the Solicitor come and say at
17 this point. As I said, he cannot change anything. And
18 the fact that they have not presented the evidence in this
19 case, it doesn't change anything. It is too late to
20 present it. And I refuse to concede that everything --
21 the Trooper Ridgeway said was based on one premise, he
22 came to the scene and he said somebody told me that -- and
23 I think I heard somebody say, well, Mr. Ham said and then
24 now -- here come well the family members. Well, what
25 family members. That would be hearsay. Moreover, why

1 not bring one family member from the big party or the big
2 cookout to this courtroom and say here's when they left.

3 Now, I refuse to believe that investigators
4 seriously investigating this incident would have not done
5 that at a minimum, but it wasn't done. Trooper Ridgeway
6 just came and piled on whatever he had to pile on right on
7 top of that unsupported assumption. Here's what I thought
8 about, here's what I thought about, and here's what I want
9 you to think about. There is a parable in scripture
10 where a woman was caught in the act of adultery. They
11 said she was caught in the act. And, of course, the
12 Pharisees they wanted to see what Jesus was going to do. They
13 didn't like Jesus. Now, they brought the woman to Jesus.
14 They didn't bring the man. I don't know where he was.
15 Now, if she was caught in the act, they must have caught
16 him too, but I don't know where he went. So they brought
17 him -- they said now here she is. She's caught in the
18 act. What are you going to do. They said Jesus got on
19 the ground and started making some marks on the ground.
20 Then after while, he said who is without sin cast the
21 first stone and the rocks started falling. The rocks
22 started falling until after while, they weren't any
23 accusers left. And you know what Jesus said where woman
24 where art thou accusers. She said there are none. He
25 said go your way and sin no more. Thank you, ladies and

1 gentlemen.

2 MR. DURANT: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. DURANT: Ladies and gentlemen of the jury,
5 as I listen to Mr. Barr passionately advocate on his
6 client's behalf just now I remember quote I read along
7 time said that the strong and bitter words often indicate
8 a weak cause. The strong and bitter word indicate weak
9 cause. Mr. Barr said that I couldn't get up here and tell
10 you -- and give you additional evidence, I can't do that.
11 Can't give you any additional evidence, but what I can do
12 is correct some things he said. What I can do is point
13 you to the evidence that you've already heard in this
14 case. Before do that, I want to address the comments he
15 made about the text message issue to one of the witnesses,
16 giving her as she said a copy of her form that she signed
17 before the trial. And she told you there was no words
18 exchanged about that form or what she was to say about it.
19 The text message with that form which she testified to it,
20 I'll go ahead and fill you in. I talk to all my witnesses
21 before trial. I talk to every one of them. I wouldn't be
22 responsibility lawyer if I didn't. If I didn't talk to my
23 witnesses to find what they knew, what they said, what
24 they heard, what they observed in the case. And whether
25 it's admissible within our rules of evidence. I wouldn't

1 be very responsible if I didn't talk to my witnesses.

2 MR. BARR: Judge, I hate to object, but I think
3 we're now arguing facts that are not in evidence.

4 THE COURT: I understand. This is closing
5 arguments. You put a number of things in there that you
6 believe weren't in evidence. I don't think it's improper.
7 I'll allow it continue.

8 MR. DURANT: I think the point's already been
9 made. I wouldn't be very responsible if I didn't talk to
10 my witnesses. He told her I didn't tell her what to say.
11 Even if his client -- and that's sort of what it boils
12 down to, if his request that additional test and her own
13 words, she told you she didn't. She just said okay when
14 the nurse came with a needle put in her arm, that was the
15 only conversation. She didn't even remember having a
16 conversation highway patrol that night. She spent three
17 and a half hours in a room with Trooper Minnix and said
18 she never seen him until he came into the courtroom. Then
19 she later said, well, he did come to my house two weeks
20 after this case happen. By the way, Mr. Barr talked about
21 that 18 wheeler, that first came into play in this case
22 and why would she tell the officer that if they didn't ask
23 those exact -- ask her those exact questions why would she
24 tell him that, wouldn't you. She said the officer came to
25 her house and what did she say. I got nothing to say to

1 you. I got nothing to say to you. She didn't tell him
2 that story. She never told anybody that story until her
3 and Mr. Barr came up with it and they brought it in this
4 courtroom.

5 Mr. Barr talked to you about the cause of the
6 driver's death and he told you in his opening remarks in
7 this case, that he wasn't gone concede a thing. He wasn't
8 even gone concede that anybody died out there which
9 incidentally is what his client did that night. Heavily
10 intoxicated, belligerent with the officers. Ain't nobody
11 died out there she said over and over again ain't nobody
12 died out there because she didn't even know what she hit
13 because she was so drunk she didn't even know what she
14 hit. Ain't nobody died out there is what she said over
15 and over again. Now, that story continues, that's part of
16 her defense now ain't nobody died out there. How you know
17 ain't nobody died out there. Come on, the coroner said
18 that of death was determined to be 11:56 p.m., that's when
19 the time of death was determine to be the time that
20 Guillermo Lopez-Arenas passed away was 11:56 p.m. on
21 August 30th 2014 here Clarendon County. That's when he
22 went to meet his maker.

23 Coincidentally, the time of this accident
24 according to every witness here on that witness stand was
25 11:56 p.m. on August 30th 2014 on Highway 261 in Clarendon

1 County. The time of the accident and that's the time of
2 death. Barr said they ain't even prove he died in this
3 accident. Ain't nobody died out there. Use your common
4 sense, ladies and gentlemen. I mean, this isn't new
5 evidence. I am reminding you of the evidence that you
6 heard in this case. Don't be distracted as I told you in
7 my opening remark, don't be distracted, let me remind you
8 of the evidence that you've heard.

9 We talked about the head on collision. I told
10 you she said it was a head on collision. I submit to you
11 that evidence is indirectly -- the officer testified to
12 it. And if you go listen to her video, what does she
13 describe going fast, passing another car and they hit me.
14 After you pass another car in a two-lane road, you drive
15 around it. What are the only options there. How do they
16 hit her by passing another car. Either they pass that
17 other car or they struck her in the side or the rear or
18 they were coming toward her and they were passing another
19 car drive fast and they hit her head on. Those are her
20 words passing another car, driving fast and they hit me.
21 And I'm going to jail, are you serious, that's what she
22 said.

23 Mr. Barr told you a minute ago that Tammy Dianne
24 Brown constantly maintains, she has constantly maintain
25 what happened in this accident. Everybody's been in the

1 courtroom this week knows that's not the case, constantly
2 maintains. She doesn't constantly maintain from one day
3 to the next what happened. When I tried to ask her about
4 the difference in her testimony from Thursday to Tuesday,
5 she said, well, that's been a long time. I don't remember
6 Tuesday. She can't get her story straight. She ain't
7 constantly maintain a word in her life. Constantly
8 maintain, how does she describe the accident on the video.
9 She constantly maintains in the video passing another car,
10 driving fast. They hit me. She doesn't mention a word
11 about pulling out from the right side of the road.
12 Doesn't mention a word about the alleged 18 wheeler.
13 She's constantly maintained since they came up with that
14 theory yesterday, but before that she constantly maintain
15 something else.

16 Mr. Barr mention that there was only one eye
17 witness that told how the accident occurred. The State
18 didn't bring the passenger to tell you how the accident
19 occurred. Of course, I don't need to tell you if you all
20 hear and heard that the passenger that survived doesn't
21 have the ability to carry on an adult conversation
22 anymore. He suffered a traumatic brain injury. He is
23 severally disabled. The fiance described him as like a
24 child. Mr. Barr wants to hold it against the State of
25 South Carolina for not putting that child in a man's body

1 up on that witness stand and asking him to try to recount
2 to you the events that put him in that condition. Guess
3 what, ladies and gentlemen of the jury, if they thought it
4 would help them so much, they could have brought him here.

5 MR. BARR: Objection, Judge. He shifting the
6 burden of proof. We're aren't required to prove anything.
7 We are not obligated to bring anybody here. She's
8 presumed innocent. He shifting the burden of proof.

9 MR. DURANT: Your Honor, the law is very clear
10 when he comments on the State's failure to call a witness
11 and he put his client on the stand, the State can then in
12 turn comment on his failure to bring that same witness to
13 court.

14 THE COURT: I will overrule your objection. Go
15 ahead.

16 MR. DURANT: Only one eye witness that has the
17 ability to talk about what happened that night. And that
18 one eyewitness can't get here story straight. Finally, I
19 want to talk to you about the Home Branch Road issue
20 because that seems to be the basis for their defense.
21 Everything arises out of Home Branch Road, the State can't
22 show they were coming from Home Branch Road. He said and
23 Mr. Barr quoted him and I quote him that Ridgeway's
24 calculations started with the black pickup turning from
25 Home Branch Road. He said they started there. Did you

1 listen to Ridgeway's testimony. It's very clearly that's
2 not where it started. His calculations started at the
3 pine tree. His calculations started at the pine tree.
4 They determined it, measured it, measure the area,
5 determine the impact to the front of that pickup truck.
6 And therefore how fast it was going when it hit the pickup
7 truck. And then the speed it would have lost before it
8 got there. When he gave you the speed at the point
9 separation between the two vehicles, are 32 miles per
10 hour. Then using all those factors, all those formulas
11 taking into account the weight of the vehicle, the
12 friction on roadway these coefficients that he mention to
13 you. He told you the speed of the pickup truck -- the
14 vehicles at the point of impact. He ain't got to Home
15 Branch Road yet. He started from the back -- from the end
16 of the accident and worked his way backwards. He didn't
17 start at Home Branch Road. Before there was any
18 discussion about Home Branch Road with Trooper Ridgeway,
19 he told you very clearly unequivocally that at the time
20 she locked up her breaks, she was driving at least at a
21 bare minimum of 64.67 miles per hour, 20 miles per hour
22 over speed limit before any discussion of Home Branch Road
23 came into this case from Trooper Ridgeway. She was
24 driving 20 miles per hour over the speed limit at a bare
25 minimum he said, at a bare minimum. At least giving her

1 every benefit of the doubt. We hadn't even talked about
2 Home Branch Road. She's driving 20 miles per hour over
3 the speed limit, 65 in a 45 mile per hour zone. Mr. Barr
4 said how do you know they weren't just stopped in the
5 roadway. They hadn't just come in the road and stop. We
6 don't know how long they been there. What if they had
7 stopped in the roadway. What did Trooper Ridgeway tell
8 you. If they had been stopped in the roadway, then the
9 Defendant Tammy Dianne Brown was driving her vehicle at 98
10 miles an hour that cause that damage -- to exert that
11 degree of force upon the black pickup truck and this
12 without any discussion of Home Branch Road.

13 MR. BARR: Your Honor, that's not in evidence.
14 Ridgeway said that when I asked him about coming out of
15 that other driveway. I didn't say anything about being
16 stopped in the roadway.

17 MR. DURANT: You told the jury that.

18 THE COURT: I understand your argument. The
19 jury can recall the evidence that they heard in this case.
20 And I think based his analogies in closing argument, I'll
21 overrule your objection.

22 MR. DURANT: Ladies and gentlemen, I'm going to
23 finish up here, but the point was Officer Ridgeway -- Mr.
24 Barr proposed to you a new theory a minute ago that what
25 if the victim's are parked in the roadway or they just

1 come in the roadway and stop. That means they're going
2 zero miles per hour. Corporal Ridgeway testified that if
3 they're going zero, remember he said that wouldn't be good
4 for you. Mr. Barr that wouldn't be good for your client
5 if they are going zero. Ms. Ridgeway -- Ms. Brown rather
6 had been traveling 98 miles an hour. The best case
7 scenario for her again according to the expert with 1200
8 hours of accident reconstruction, the best case scenario,
9 the slowest speed she's traveling is based on that
10 assumption supported by the family member because she's
11 coming from Home Branch Road. The best case scenario for
12 her is 55 miles an hour. These other theories means she's
13 going faster. She's driving even more reckless. We
14 present it to you on this day.

15 Ladies and gentlemen of the jury, you've heard
16 all the evidence you need to decide this case. You're
17 tasked with a great responsibility in rendering a verdict
18 in this case that speaks the truth. Ladies and gentlemen,
19 it's very clear in this case, the truth is Tammy Dianne
20 Brown is guilty of felony driving under the influence in
21 causing death and great bodily injury. Thank you.

22 THE COURT: Ladies and gentlemen, we been at
23 this about two hours. We going to take about a ten or 15
24 minute break. I'll bring you back out and charge you on
25 the law and give you this case to decide. Go in your jury

1 room, but don't discuss the case yet. I'll bring you back
2 out in a few minutes.

3 (WHEREUPON, the jury retire to the jury room.)

4 THE COURT: All right. We'll be in recess ten
5 minutes.

6 (WHEREUPON, a break was taken.)

7 THE COURT: One thing we are going to do since
8 my voice is about gone. When I do closing argument,
9 nobody can leave. So if you got to go, you better go now.
10 So lock the doors and don't let nobody come or go, unless
11 the fire alarm goes off. The State ready?

12 MR. DURANT: Yes, sir.

13 THE COURT: Defense ready?

14 MR. BARR: Yes, sir.

15 THE COURT: Bring me the jury.

16 (WHEREUPON, the jury came into open court.)

17 THE COURT: Okay. Ladies and gentlemen, as you
18 all probably can tell all week, I have something going on
19 and my voice is about gone. So I'm going to try and speak
20 slowly. If you can't hear me or understand me, please let
21 me know. I normally don't talk like this. But now that
22 you've heard all the evidence in this case as well as
23 arguments of both the State and the defendant, I am going
24 to charge you on the law that you're to apply in this
25 case.

1 Under our constitution and the code of laws of
2 this state, I am not allowed to have an opinion about the
3 facts of this case. The facts in this case is totally
4 your decision. So if I said anything or done anything
5 throughout this trial that you think I have an opinion
6 about the facts, you are to disregard that because only
7 you can determine what the facts are in this case. That
8 same law, that same constitution that makes you the
9 exclusive judge of the facts, makes me the exclusive judge
10 of the law. So if you have an opinion as to what you
11 think the law is or what you think the law ought to be, it
12 is difficult, but I now tell you the law is. Under your
13 oath, you are to disregard that opinion and apply the law
14 exactly as I give it to you.

15 Now, the fact that this defendant was arrested,
16 charged and indicted in this case is not evidence in this
17 case and cannot be considered by you as evidence of guilt
18 in this case. Nor does it create any presumption or
19 inference of guilt. This indictment is simply a formal
20 legal document that bring the charges against this
21 defendant into this court and process the court
22 proceedings. It is not evidence.

23 The defendant has entered a plea of not guilty
24 to the indictment and that plea cast the burden upon the
25 State of South Carolina to prove each and every element of

1 that indictment to you beyond a reasonable doubt. A
2 person charged with committing a criminal offense in South
3 Carolina is never required to prove himself or herself
4 innocent. It is an important rule of law in this country
5 that a defendant in a criminal trial will always be
6 presumed innocent of the crime of which he or she is
7 indicted, unless and until her guilt has been proven by
8 evidence that satisfies you of that guilt beyond a
9 reasonable doubt.

10 The presumption of innocence is not a mere legal
11 theory. It is not just a legal phrase. It is a
12 substantial constitutional right to which every defendant
13 is entitled. The presumption of innocence accompanies the
14 defendant from the time she's charged, throughout the
15 trial until you reach a verdict of guilt based upon
16 evidence that satisfies you of that guilt beyond a
17 reasonable doubt. A reasonable doubt is a doubt which
18 makes an honest, sincere, conscientious juror in search of
19 the ruth to hesitate to act.

20 Proof beyond a reasonable doubt must be proved
21 by such a convincing character that a reasonable person
22 would not hesitate to rely upon and act upon it in the
23 most important of his or her own affairs. Now, proof
24 beyond a reasonable doubt may also be described as proof
25 that leaves you firmly convinced of the defendant's guilt.

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

10 In determining what the facts in a case are, you
11 must necessarily or the facts you must necessarily pass
12 upon the credibility, which simply means the believability
13 of the witnesses and the value of weight to be given to
14 their testimony. Making these decisions, there are many
15 things that you should take into consideration such as the
16 manner of the witness on the stand sometimes referred to
17 as the demeanor of the witness. Was the witness
18 forthright or hesitant. Was the witness' testimony
19 consistent or did it contain discrepancies. What was the
20 ability of the witness to know the facts about which he or
21 she testified. Did the witness have cause or reason to be
22 bias or prejudice in favor of their testimony. Was the
23 witness' testimony corroborated or made stronger by other
24 testimony or evidence or was it made weaker or impeached
25 by such other evidence or testimony.

1 The rules of evidence do not ordinary permit a
2 witness to testify to opinions or conclusions. An
3 exception to this rule exist for witnesses we call expert
4 witnesses. A witness who by education and experience has
5 become an expert in some art, science, profession or
6 calling may state an opinion as to relevant material
7 matters in which the witness claims to be an expert. May
8 also state the reasons for that opinion. You should
9 consider an expert's opinion received into evidence in
10 this case by any other evidence, give it the weight you
11 think it deserves. If you decide that the opinion of an
12 expert is not based on sufficient education and experience
13 or if you conclude that the reasons given in support of
14 the opinion are not sound or that the opinion is
15 outweighed by other evidence, you may disregard their
16 opinion in its entirety. An expert opinion is to be given
17 no greater weight then that of any other witness simply
18 because the witness is an expert. I further instruct you
19 that you're not required to set the expert's opinion even
20 though it is not contradicted.

21 As jurors you have a right to believe a small
22 portion of testimony or witness' testimony and disregard
23 the larger or vice versa. You may believe all the
24 witness' testimony or none. You may believe the testimony
25 of a single witness against that of many or the other way

1 around.

2 Now, there are two types of evidence that are
3 generally presented during a trial direct evidence and
4 circumstantial evidence. Direct evidence can directly
5 prove the existence of a fact and does not require
6 deduction. Circumstantial evidence is proven by a chain
7 of facts and circumstances indicating the existence of a
8 fact. Crimes may be proven by circumstantial evidence if
9 the law makes no distinction to the weight or value to be
10 given either by direct or circumstantial evidence.

11 However, to the extent the State relies on
12 circumstantial evidence, all of the circumstances must be
13 consistent with each other. And when taken together for a
14 conclusory to the guilt of the accused beyond a reasonable
15 doubt if these circumstances merely portray the
16 defendant's behavior as suspicious, the proof has failed.
17 The State has the burden of proving the defendant guilty
18 beyond a reasonable doubt and this rests with the State
19 regardless of whether the State relies on direct evidence,
20 circumstantial evidence or a combination of the two.

21 Now, criminal intent is a necessary element of
22 each crime that must be proven by the State beyond a
23 reasonable doubt. Criminal intent is always a matter that
24 must be determined by the jury on the circumstances
25 surrounding the situation. There's no way to prove

1 criminal intent to a mathematical certainty. There is no
2 way medical science can dissect a person's brain and
3 determine what or she had in mind. The law states
4 criminal intent may be inferred from the circumstances
5 shown to have existed both before and after the fact. And
6 this is how you, the jury, make a determination of whether
7 or not the element of intent was present.

8 Criminal intent is a state of mind that operates
9 jointly with an act or omission of an act in commission of
10 a crime. Criminal intent is a mental state of conscious
11 wrongdoing. It is up to you, the jury, to determine what
12 the defendant had in mind based on the circumstances shown
13 to have existed at the time. And I tell you that criminal
14 intent must be proven beyond a reasonable doubt, just as
15 every element must be proven beyond a reasonable doubt.

16 Now, I'm going to give you certain statutes and
17 rules that you may determine apply in this case. Under
18 our code of laws right of way is the right of one vehicle
19 or pedestrian to proceed in a lawful manner in preface of
20 another vehicle or pedestrian, approaching under such
21 circumstances of direction, speed, proximity as to give
22 rise to the danger of a collision unless one grass presses
23 to the other.

24 Now, the driver of a vehicle intending to turn
25 to the left within an intersection or into an alley,

1 private road or driveway shall yield the right of way to
2 any vehicle approaching from the opposite direction which
3 is within the direct -- within the intersection or so
4 close that it constitutes an immediate hazard.

5 The driver of a vehicle about to enter or cross
6 the roadway from any place other than another roadway,
7 shall yield the right of way to all vehicles approaching
8 on the roadway or that road to be crossed.

9 Now, the State must prove to you beyond a
10 reasonable doubt that the defendant was speeding at the
11 time of the collision. A person shall not drive a vehicle
12 on a highway at a speed credit that is reasonable and
13 prudent under the condition of having -- regarding to the
14 actual and potential hazards that exist. Speed must be so
15 controlled as to avoid a collision with a person, vehicle
16 or other things or entering the highway in compliance with
17 the legal requirements and the duty of a person to use
18 care. The driver of a vehicle shall drive at an
19 appropriate reduce speed when approaching and crossing the
20 intersection or a railway grading crossing when
21 approaching and going through around the curve,
22 approaching a hill crest when traveling upon any now
23 bridge now or winding roadway or when a special hazard
24 exist with respect to pedestrians or other traffic by
25 reasons of weather or highway condition.

1 All official traffic control devices are defined
2 as all signs, signals, markings and devices placed or
3 rendered by authority for a public body or official having
4 jurisdiction of the purpose of regulating or guiding
5 traffic or official traffic control devices. The driver
6 of any vehicle shall obey the instructions of any official
7 traffic control device unless otherwise directed by a
8 police officer. Signs directed by the highway department
9 in accordance statutory authority or official traffic
10 control devices and drivers are required to comply with
11 instructions on those signs. A posted numerical speed on
12 a sign posted by the highway department is the speed limit
13 no matter what color the sign is.

14 In criminal prosecution for a felony DUI, the
15 alcohol concentration at the time of the test is shown by
16 chemical analysis of a person's breathe, blood or urine
17 gives rise to the following: If the alcohol concentration
18 was at the time five one hundreds or one percent or less,
19 that's the point .05 or less. It is conclusively presumed
20 that the person was not under the influence of alcohol.
21 If the alcohol concentration was at the time in excess of
22 five one hundreds of one percent, which is .05, but less
23 than eight one hundreds of one percent, which is .08 that
24 fact does not give rise to any inference that the person
25 was or was not under the influence of alcohol. This stack

1 may be considered with other evidence to determine the
2 guilt or innocence of a person.

3 If the alcohol concentration was at the time
4 eight one hundreds of one percent or .08, it may be
5 inferred that that person was under the influence of
6 alcohol.

7 Now, the defendant has been charged with felony
8 driving under the influence. The State must prove beyond
9 a reasonable doubt that the defendant drove a vehicle
10 while under the influence of alcohol or drugs. The driver
11 in a motor vehicle means the vehicle was in motion. This
12 may be proven by direct or circumstantial evidence. The
13 movement of a vehicle might occur without any affirmative
14 act by the driver or in fact by any person if the vehicle
15 is moving by somehow beyond the control of the defendant
16 or by the defendant -- by the defendant or by an act which
17 would not -- this would not be driving.

18 If a vehicle is moving outside of the control of
19 the driver or as a result of some other accident, that's
20 not considered driving. The State must prove beyond a
21 reasonable doubt that the defendant was sufficiently under
22 the influence to impair his or her ability to drive with
23 reasonable care with due regard for others and herself as
24 a reasonable prudent person would drive. Is not necessary
25 to show that the defendant was in a helpless condition,

1 passed out or even intoxicated. On the other hand, the
2 fact that the defendant at some time prior to the incident
3 drank an alcohol beverage or took drugs, does not prove
4 the defendant was driving under the influence.

5 Next, the State must prove beyond a reasonable
6 doubt that while driving the defendant did an act
7 forbidden by the law or neglected to do a duty imposed by
8 law. And finally the State must prove beyond a reasonable
9 doubt that the act or negligence of the defendant
10 proximately cause great bodily injury or death to another
11 person.

12 Proximate cause is the direct cause. It is the
13 immediate cause. It is the official cause. It is the
14 cause without which the injury to or death of the victim
15 would not have resulted.

16 There may be more than one proximate cause. The
17 fact that the acts of two or more persons may be combined
18 together to be the proximate cause to jury or death of
19 another person. The defendant may act -- the defendant
20 acts may be regarded as the proximate cause. If it is the
21 contributed cause of injuries to another person or the
22 death to another person, the fact that other causes also
23 contributed to the jury or death of the victim does not
24 relieve the defendant from the responsibility. The
25 defendant acts need not be the sole cause of the jury or

1 death, but it must be the approximately contributing -- it
2 must be the proximate cause contributed to the injury or
3 death of the victim.

4 It is not a defense to show that the victim
5 might have recovered if he or she had been treated
6 according to the most approved surgical or medical
7 standards or a reasonable prudent doctor would have
8 treated in this case or in other case showing that the
9 treatment was negligent. If however that was caused by
10 the wound of the injury, that the victim had because of a
11 gross, erroneous, willful and deliberate treatment, the
12 defendant would not be viable. In other words, negligence
13 on the part of someone else would not believe the
14 defendant liability of the injury, if you determine that
15 the defendant's action was the proximate cause of the
16 defendant's death.

17 Great bodily injury means injury which creates a
18 substantial risk of death or which causes serious
19 permanent disfigurement or extended loss of impairment of
20 functions of any body member or organ.

21 Now, ladies and gentlemen, you are not advocates
22 for the State of South Carolina or this defendant. You
23 are not serve as juror to reward your friends or punish
24 your enemies, that system of justice would be tolerated.
25 You have been selected by the defendant and the State to

1 be fair and impartial jurors. It is your duty then by
2 your joint deliberation to determine the facts in this
3 case and to give this defendant the benefit of every
4 reasonable doubt on each and every issue. Then to the
5 facts that you determine in this case to be correct use to
6 apply the law that I given to you and reach a verdict in
7 this case.

8 It is your responsibility as jurors to be fair
9 and impartial to both sides and apply this law and reach a
10 verdict based on the facts that you been given in this
11 case. When you have done that, madam forelady, you are to
12 sign this verdict form. It must be unanimous. All 12 of
13 you must agree before you can sign it. And the verdict
14 form is simply the caption of the case. It's the State of
15 South Carolina vs. Tammy Dianne Brown. And these possibly
16 verdicts you can reach. As to the charge of felony
17 driving under the influence resulting in death, we, the,
18 jury unanimously find the defendant the guilty or not
19 guilty. And you are to check whatever box that you all
20 make an unanimous finding.

21 As far as the charge of driving under the
22 influence resulting in great bodily injure, we, the jury,
23 unanimously find the defendant guilty or not guilty.
24 You're to check whatever those box you reach. Then you're
25 to sign your name and date it, knock on the door and tell

1 us that you reached a verdict and we will bring you back
2 out and receive that verdict. That verdict must be
3 unanimous. It must be the verdict of all 12 of you.

4 Now, if any time during your deliberations, one
5 of you need to be excused, you need to go to the restroom
6 or you leave the jury room, you got to stop talking about
7 the case. You can only talk about the case when all 12 of
8 you are present in that room. Like I say, your verdict
9 must be unanimous. All 12 of you must agree. The order
10 that my law clerk has put these in, you should draw no
11 conclusion whatsoever. We had to put them in some order.

12 I've got to talk to the attorneys to be sure I
13 have covered everything. If left out some charge of the
14 law, then I will bring you back out and charge you further
15 on the law. If I've covered everything, then I will send
16 this verdict form along with evidence in the courtroom --
17 I mean, in the jury room. When you get the verdict form
18 and evidence, that will be your indicator begin your
19 deliberations.

20 I understand it's 12 o'clock. The clerk has
21 ordered lunch for you all. So at sometime as you -- I'll
22 have the bailiff knock on the door and bring it in. You
23 can stop deliberating and eat or you can talk and eat at
24 the same time, it's up to you all. When you reach a
25 verdict, just knock on the door and let us know. And let

1 me check with the lawyers bring either I'll bring you back
2 out or send the stuff in. Once you get it, you can start
3 your deliberations, okay. The two alternates you all need
4 to stay with me. The only reason I may need you all if
5 somebody got sick. Looks like everybody's gone make it,
6 so you all stay with me. And the rest of you all go to
7 the jury room and I'll let you know something in just a
8 minute.

9 (WHEREUPON, the jury retire to the jury room at
10 12:04.)

11 THE COURT: Are there any exceptions at least on
12 behalf of the State?

13 MR. DURANT: No, sir, Your Honor.

14 THE COURT: On behalf of the defense?

15 MR. BARR: No, sir, Judge.

16 THE COURT: All right. Gentlemen, if you all
17 will make sure all the evidence is together with the court
18 reporter to send it in.

19 MR. DURANT: Thank you, Judge.

20 THE COURT: Now, you all been sitting here all
21 week and you not going to get to decide this case. And
22 you're free to go. You can stay if you want to or you can
23 go if you want to. I been telling you you can't talk
24 about this case. Now, you can talk about it with anybody
25 you want to. You don't have to. And I'm sorry you had to

1 sit all week and not get to deliberate, but I just needed
2 you if something happen to the. I hope it's been somewhat
3 educational to you. I enjoyed having you. It's been a
4 long complicated case and I appreciate your willingness to
5 serve. Like I said, you're free to go if you want to or
6 you can hang around. It's up to you. Thank you so much.

7 (WHEREUPON, the alternates were excused.)

8 THE COURT: All right. Get the evidence
9 together.

10 (WHEREUPON, the jury began deliberations at
11 12:07.)

12 THE COURT: I got a jury question. I got a
13 question from the jury. We would like to read the actual
14 law.

15 MR. BARR: They what?

16 THE COURT: They want to read the law. I don't
17 send my charges back in light of the Supreme Court and
18 Court of Appeals. My understanding of their ruling is
19 that it's not recommended. A couple judges have done it
20 and they didn't reverse them, but they told them not to do
21 it again. I'll be glad to bring them back out and
22 recharge them, but I'm not sending my charge to the jury.
23 Either one of you all want to be heard on it.

24 MR. DURANT: No, sir, Your Honor.

25 MR. BARR: No, sir.

1 THE COURT: Bring them out.

2 (WHEREUPON, the jury came into open court at
3 12:53 p.m.)

4 (WHEREUPON, Court's Exhibit No. 6 was admitted
5 marked for the record.)

6 THE COURT: Madam forelady, I got a note from
7 you all that you want to read the actual log. Under my
8 rules, I can't send you my charge back there in writing.
9 I can recharge you. I understand my voice is terrible. I
10 can go through my whole charge again or any portion you
11 like to hear, but I can't send it back to you in writing,
12 okay. Do you want to talk about it or you want me to read
13 any portion thereof?

14 FOREPERSON: Just a portion of it.

15 THE COURT: Which portion.

16 FOREPERSON: The word about the specifics of
17 that the State needs to prove to have the conviction.

18 THE COURT: So you want the felony DUI what this
19 person is charged with?

20 FOREPERSON: Yes.

21 THE COURT: The defendant is charged with felony
22 driving under the influence. The State must prove beyond
23 a reasonable doubt, that the defendant drove a vehicle
24 following under the influence of alcohol and drugs. The
25 driver of the motor vehicle that means the driver of a

1 vehicle is in motion and the defendant is doing something
2 to call in motion of the vehicle. In that motion occur by
3 the driver of the individual is not some car rolling on
4 it's onto someone or somebody's pushing it, okay.

5 The State must prove beyond a reasonable doubt
6 that the defendant was sufficiently under the influence to
7 impair her ability to drive the vehicle with reasonable
8 care. With due regard, she must have enough care for the
9 due regard of theirs and herself as a reasonable prudent
10 person would drive. It is not necessary to show that the
11 defendant was in a helpless condition, passed out or even
12 intoxicated. On the other hand, the fact that the
13 defendant at some time prior to this incident drank an
14 alcoholic beverage or took drugs, does not prove the
15 defendant was driving under the influence.

16 Their ability to drive must be impaired by the
17 consumption of some alcohol or drug. The other thing the
18 State must prove beyond a reasonable doubt that while the
19 defendant was driving a vehicle under the influence of
20 some alcohol or drug, they did some act or omission of an
21 act. They had a duty to do and the act caused a proximate
22 injuries of another person or death. So had to drive a
23 vehicle under the influence and violated some other law or
24 did some other act that they had a duty to do. Those are
25 basically the three things, okay.

1 Is that clear up -- and then I explain proximate
2 cause to you that that act had to cause the injuries or
3 the death of the parties in this case. If their death or
4 injury was cause by some other act or some other reason,
5 then the State has not met its burden. But basically
6 those are the three burdens they have to prove to you
7 beyond a reasonable doubt. The defendant was driver a car
8 under the influence and violated some law, created some
9 act or some duty and they didn't follow in the violation
10 of that cause the death or injury to another person. Is
11 that -- you need anything else?

12 FOREPERSON: No, sir.

13 THE COURT: Let us know if you have another
14 question.

15 (WHEREUPON, the jury retire to the jury room at
16 12:57 to continue deliberations.)

17 THE COURT: Any exceptions at least on behalf of
18 the State?

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

20 THE COURT: Defense?

21 MR. BARR: No, sir.

22 THE COURT: All right. We'll go back to what we
23 were doing until we hear something new.

24 (WHEREUPON, court awaiting verdict.)

25 THE COURT: My understanding we got a verdict.

1 Bring them in please, sir.

2 (WHEREUPON, jury come into courtroom with a
3 verdict at 1:18 pm.)

4 THE CLERK: Have you reached a verdict
5 unanimously?

6 FOREPERSON: Yes.

7 THE COURT: Okay. Read the verdict please. You
8 may publish the verdict.

9 THE CLERK: On indictment number
10 2014-GS-14-0408, the State of South Carolina vs. Tammy
11 Dianne Brown, as to the charge of felony driving under the
12 influence resulting in death: We, the jury, unanimously
13 find the defendant guilty. As to the charge of felony
14 driving under the influence resulting in great bodily
15 injury: We, the jury, unanimously find the defendant
16 guilty. Sign by the Barbara S. Shumpert foreperson dated
17 May 18th 2018.

18 THE COURT: Thank you. Madam forelady, this
19 verdict is unanimous?

20 FOREPERSON: Yes, sir.

21 THE COURT: Anything further from the State?

22 MR. DURANT: No, sir, Your Honor.

23 THE COURT: From defense?

24 MR. BARR: Poll the jury.

25 THE COURT: All right, madam clerk poll the

1 jury.

2 THE CLERK: Ladies and gentlemen of the jury,
3 beginning with the foreman when I call your name, I'm
4 going to ask you two questions. I would you to stand
5 please, okay. Starting with our foreperson, Ms. Barbara
6 S. Shumpert, would you stand please. Is this your
7 verdict?

8 FOREPERSON: Yes, ma'am.

9 THE CLERK: And still your verdict?

10 FOREPERSON: Yes.

11 THE CLERK: Thank you. You may be seated.

12 Tiffany L. Lancaster. Is this your verdict?

13 JUROR: Yes, ma'am.

14 THE CLERK: And still your verdict?

15 JUROR: Yes, ma'am.

16 THE CLERK: Thank you.

17 Joy S. Joyner. Is this your verdict?

18 JUROR: Yes, ma'am.

19 THE COURT: And still your verdict?

20 JUROR: Yes, ma'am.

21 THE CLERK: Thank you.

22 Stephanie Walker, is this your verdict?

23 JUROR: Yes, ma'am.

24 THE CLERK: And still your verdict?

25 JUROR: Yes, ma'am.

1 THE CLERK: Thank you.
2 Talbrick D. McKenzie, is this your verdict?
3 JUROR: Yes, ma'am.
4 THE CLERK: And still your verdict?
5 JUROR: Yes, ma'am.
6 THE CLERK: Jakkia L. Lawson, is this jury
7 verdict?
8 JUROR: Yes, ma'am.
9 THE CLERK: And still your verdict?
10 JUROR: Yes, ma'am.
11 THE CLERK: Thank you.
12 Justin K. Mooneyham, is this your verdict?
13 JUROR: Yes, ma'am.
14 THE CLERK: And still your verdict?
15 JUROR: Yes, ma'am.
16 THE CLERK: Thank you.
17 Joshua M. Graham, is this your verdict?
18 JUROR: Yes, ma'am.
19 THE CLERK: And still your verdict?
20 JUROR: Yes, ma'am.
21 THE CLERK: Nikasha C. Lang, is this your
22 verdict?
23 JUROR: Yes, ma'am.
24 THE CLERK: And still your verdict?
25 JUROR: Yes, ma'am.

1 THE CLERK: Thank you.

2 Frank C. Bleasdale, III, is this your verdict?

3 JUROR: Yes, ma'am.

4 THE CLERK: And still your verdict?

5 JUROR: Yes, ma'am.

6 THE CLERK: Keenan D. Miller, is this your
7 verdict?

8 JUROR: Yes, ma'am.

9 THE CLERK: And still your verdict?

10 JUROR: Yes, ma'am.

11 THE CLERK: William T. Floyd, is this your
12 verdict?

13 JUROR: Yes, ma'am.

14 THE CLERK: And still your verdict?

15 JUROR: Yes, ma'am.

16 THE CLERK: Thank you very much.

17 THE COURT: Anything further from either side?

18 MR. DURANT: No, sir, Your Honor.

19 THE COURT: Okay. Ladies and gentlemen, I want
20 to thank you for your service this week. You had a long
21 heard week. You paid close attention throughout this
22 trial and I appreciate your services as citizens of this
23 county. You don't have to do this again for three years.
24 If you need a work excuse just, the clerk office provide
25 you one. And we will send you a check. It won't any way

1 compensate you for what you done. If it did, you couldn't
2 pay your property taxes and I appreciate it.

3 I been telling you you couldn't talk about this
4 case. And now you can talk about it to anybody you want
5 to. You can go tell your family what you were doing all
6 week. You don't have to talk about it if you don't want
7 to either. You are free to go home if you want to. You
8 can sit in the audience. I'll listen to any mitigation
9 from the attorneys in passing sentence in this case. You
10 can sit for that or you can go home, but I thank you so
11 much for your service. I hope at least you have an
12 understanding of our judicial system maybe you learn
13 something this week. I hope so. Thank you so much.

14 (WHEREUPON, the jury is dismissed.)

15 MR. DURANT: Beg the Court's indulgence to get
16 the paperwork.

17 (WHEREUPON, a pause in the proceedings.)

18 MR. BARR: Posttrial motions, Judge.

19 THE COURT: Okay.

20 MR. BARR: Posttrial motions.

21 THE COURT: Oh, yes, sir.

22 MR. BARR: We respectfully move for a judgment
23 on the verdict on the alternative for new trial. And, of
24 course, our motion would be based on the exceptions or
25 objections that are on the record. And the defense's

1 position that the jury verdict is not admissibility of
2 evidence. And we would respectfully move for judgment in
3 the rest of the verdict or in the alternative a new trial.

4 THE COURT: All right. I think that there is
5 sufficient evidence in this case to a support jury verdict
6 and I respectfully deny your motion.

7 MR. BARR: All right, sir.

8 THE COURT: Anything from the State? She had a
9 prior record?

10 MR. DURANT: She has a prior conviction in 1999
11 for food stamp fraud. I believe, she received a
12 probationary sentence for. Beyond that, Your Honor,
13 certainly there -- you're familiar with the facts of this
14 case and sat through a five day trial. We refer to Your
15 Honor for sentencing.

16 THE COURT: Mr. Barr.

17 MR. BARR: Judge, for the first time in a long
18 time I'm incline to agree with the Solicitor with the
19 respect to the information that's available to the Court
20 by way of mitigation. The defendant has no substantial
21 criminal record. She's already -- I think she's indicated
22 her age. She's gainfully employed. She has two young
23 children. She takes care of her mother. I'm not aware of
24 anything else on her record other what's been represented
25 to you. And as far as the facts and the circumstances of

1 this case, Judge, I think you've heard pretty much
2 everything that I can tell you as it relates to the nature
3 of how the incident occurred.

4 THE COURT: All right. On count one of the
5 indictment, felony driving under the influence resulting
6 in death, sentence of the Court is you be committed to the
7 state department of corrections for a term of 15 years.
8 On count two, sentence is 12 years to run concurrent with
9 each, credit for time served.

10 END OF REQUESTED TRANSCRIPT

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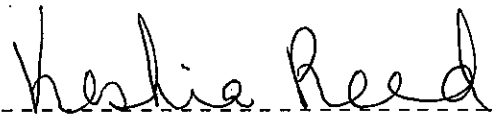
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 742, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Clarendon County, South Carolina, on the days of May 14-18, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 24th day of March 2019.


Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County

Honorable R. Ferrell Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAMMY DIANNE BROWN,

APPELLANT

APPELLATE CASE NO 2018-000988

FINAL BRIEF OF APPELLANT

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RECEIVED

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred in refusing to quash or dismiss the indictments against Appellant for Felony DUI resulting in death and great bodily injury where they did not allege the particular traffic violation that the state sought to prove as an essential element of each offense?

2.

Whether the court erred in admitting the blood sample taken from Appellant at the hospital where she requested an independent sample and was not offered affirmative assistance by law enforcement in obtaining an independent sample in violation of S.C. Code Ann. § 56-5-2950 (E)?

3.

Whether the court erred in admitting testimony regarding Appellant's blood alcohol level from a blood sample obtained by law enforcement at the hospital where it was not video recorded and therefore violated S.C. Code Ann. § 56-5-2950 (B)?

STATEMENT OF THE CASE

Appellant was indicted by the Clarendon County grand jury for the offenses of felony DUI resulting in death and felony DUI resulting in great bodily injury. R. 710-711. Appellant's jury trial was held before the Honorable R. Ferrell Cothran from May 14, 2018 through May 18, 2018. Appellant was represented by Charles Barr and the state was represented by Christopher Durant. R. 1.

The jury found Appellant guilty as charged and the court sentenced her to concurrent terms of imprisonment of fifteen years for the felony DUI resulting in death and twelve years for the felony DUI resulting in great bodily injury.

This appeal follows.

STATEMENT OF FACTS

On August 30, 2014 at around midnight, Appellant was involved in fatal car accident while traveling east on S.C. Highway 261 between Paxville and Manning, S.C. Appellant was driving a white sedan that hit a black pickup truck from behind when the truck had just pulled out onto the highway in front of Appellant. R. 204, ll. 23 – 25; R. 466, l. 21 – 467, l. 5; R. 515, ll. 6 – 11. The driver of the truck was pronounced dead on the scene. R. 56, l. 17 – 57, l. 3. The passenger of the truck survived but with permanent disabilities. R. 195, l. 11 – 198, l. 24.

Jeffrey Minnix, who was a Trooper with the Highway Patrol, testified that Appellant was inside of an ambulance when he arrived on the scene. R. 204, ll. 17 – 23. Minnix claimed that Appellant told him she was coming from a friend's house and that "[a]t that point in time you could smell a strong odor of some sort of alcohol beverage coming from her person." R. 205, ll. 1 – 4.

Prior to reading Appellant her Miranda¹ warnings, Minnix said that he asked her if she had been drinking and she admitted to drinking "two wine coolers." R. 205, ll. 4 – 9. EMS informed Minnix that they needed to transport Appellant to the hospital. R. 205, ll. 11 – 12. Even though Minnix's patrol car was equipped with dash cam video and audio, none of this interaction with Appellant was captured on either. R. 207, l. 10 – 15; R. 208, ll. 15 – 21.

Minnix and his supervisor went to the hospital to continue questioning Appellant. R. 205, l. 23 – 206, l. 4. Once again, prior to reading Appellant her Miranda warnings, Minnix and his supervisor questioned Appellant about the incident. R. 222, ll. 14 – 19. After questioning Appellant a second time, she was placed under arrest for driving under the influence and was read her Miranda rights and implied consent rights. R. 222, ll. 19 – 22.

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

Appellant initially agreed to provide a blood sample but after she was told she was under arrest for felony DUI she revoked her consent. R. 222, l. 22 – 223, l. 3. Law enforcement then obtained a search warrant for a blood sample from Appellant. R. 226, ll. 7 – 10. A blood sample and urine sample were both obtained from Appellant while at the hospital. R. 226, ll. 11 – 19. None of Appellant's interactions with law enforcement at the hospital were video recorded, including the obtaining of the blood sample or the reading of her Miranda rights or implied consent warnings.

The state called Stacy Matthew as an expert in forensic toxicology who testified, over Appellant's objection, that the blood sample taken from Appellant at the hospital showed she had a blood alcohol concentration of .210. R. 393, l. 22 – 394, l. 7; R. 408, ll. 15 – 19; R. 418, ll. 17 – 25.

The state also called Bryan Ridgeway, an employee with the South Carolina Highway Patrol MAIT² team, who was qualified as an expert in the fields of accident reconstruction and animation. R. 465, l. 8 – 466, l. 6. Ridgeway testified extensively as to his methodology and calculations that he used to reconstruct the accident. He created several drawings and animations of the accident scene to demonstrate what, in his opinion, happened. R. 703. The drawings created by Ridgeway showed that Appellant was traveling down Highway 261 from Paxville towards Manning in an east bound direction. R. 703. According to Ridgeway's drawings, the decedent was stopped at a stop sign on Home Branch Road and then turned left onto Highway 261 traveling in the same direction as Appellant. R. 703. Appellant struck the rear of the decedent's vehicle, which caused it to careen off the roadway into a tree. R. 703.

² MAIT stands for multidisciplinary accident investigation. R. 457, ll. 24 – 25.

Ridgeway ultimately opined that Appellant was driving approximately sixty-five miles per hour prior to initiating her brakes and approximately fifty-five miles per hour at the point of impact with the black truck driven by the decedent. R. 513, ll. 9 – 21; R. 510, l. 19 – 511, l. 3. The posted speed limit at the crash site was forty-five miles per hour. R. 512, ll. 15 – 17. Ridgeway also opined that Appellant's vehicle would not have been visible to the driver of the black truck prior to his pulling out into the highway. R. 517, l. 13 – 518, l. 22.

STANDARD OF REVIEW

The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support. Id. Accordingly, an appellate court is bound by the trial court's factual findings when the findings are supported by the evidence and not controlled by error of law. Id.

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion.” State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) (quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)).

ARGUMENT

1.

The court erred in refusing to quash or dismiss the indictments against Appellant for Felony DUI resulting in death and great bodily injury because they did not allege the particular traffic violation that the state sought to prove as an essential element of each offense.

Relevant Facts

Prior to the swearing in of the jury, defense counsel moved to dismiss the indictments against Appellant for being insufficient. R. 11, l. 25 – 12, l. 3. Counsel argued that both of the indictments against Appellant failed to state with particularity what alleged act she had done that was forbidden by law which would form the basis for the state’s case against her. R. 12, l. 3 – 13, l. 10. Counsel cited to State v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986), which held that the defendant’s right to be free from double jeopardy was violated when the state based its felony DUI prosecution on the same traffic violation for which the defendant had already been convicted in magistrate court.

The assistant solicitor argued that both of the indictments charged the language of the statute and then he said: “It’s never been my understanding that the State would require [sic] to allege in the indictment particular act or law alleged [sic] to have been violated by the defendant with traffic violation [sic].” R. 13, ll. 13 – 22. The assistant solicitor further argued that “it’s certainly no secret that the law that [Appellant] violated is speed.” R. 13, ll. 22 – 24.

Defense counsel argued that Grampus supported his argument that if the state intended to rely on speed as the traffic violation to satisfy a necessary element of the offense of felony DUI then the indictment must state that with particularity. R. 14, l. 12 – 15, l. 9.

Ultimately the court denied Appellant's motion to dismiss the indictment by relying on State v. Campbell, 361 S.C. 529, 605 S.E.2d 576 (Ct. App. 2004). The court noted that Appellant had preserved the issue pursuant to State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) by making her motion prior to the swearing of the jury. R. 18, ll. 2 – 21.

Discussion

The court erred in denying Appellant's motion to dismiss the indictments by improperly relying on State v. Campbell. In Campbell, the defendant argued that the indictment *to which she pleaded guilty* was insufficient to confer subject matter jurisdiction on the Court. Campbell, 361 S.C. at 531, 605 S.E.2d at 577. Campbell was overruled by State v. Gentry which made a critical distinction between the concepts of subject matter jurisdiction and the sufficiency of an indictment.

The Gentry Court noted, "subject matter jurisdiction of the circuit court and the sufficiency of the indictment are two distinct concepts and the blending of these concepts serves only to confuse the issue." Gentry, 363 S.C. at 101, 610 S.E.2d at 499. Although Campbell held that an indictment for felony DUI was sufficient to confer subject matter jurisdiction on the circuit court even though it did not state with particularity the underlying traffic offense which the state intended to rely on in establishing an essential element of that offense, it did so only in the context of a guilty plea. Campbell, 361 S.C. at 533, 605 S.E.2d at 579. Furthermore, Campbell was overruled for conflating subject matter jurisdiction and sufficiency of the indictment by Gentry, which stands for the proposition that a criminal defendant *must object to the sufficiency of the indictment prior to the swearing of the jury*. Gentry, 363 S.C. at 103, 610 S.E.2d at 500. The Gentry Court further noted that if a defendant does not object to the

sufficiency of the indictment then he has waived that objection. Id. at 102, 610 S.E.2d at 499 n.6.

Appellant's case is distinguishable from Campbell because she did not plead guilty and she objected to the sufficiency of the indictment prior to the swearing of the jury. Contrary to the court's assertion that Campbell was directly on point, by not pleading guilty and challenging the sufficiency of the indictment Appellant in no way conceded this issue as was the case in Campbell. If a defendant pleads guilty on an indictment "it is clear she was aware of the nature of the charge against her." Campbell, 361 S.C. at 533, 605 S.E.2d at 579.

The objection Appellant made was to notice, not subject matter jurisdiction. In order to determine whether an indictment is sufficient, the court must determine, in part, whether the defendant was apprised of the elements of the offense and what she was called upon to answer at trial. Gentry, 363 S.C. at 102-103, 610 S.E.2d at 500.

The indictments against Appellant read as follows:

Count One – Felony Driving Under the Influence, Death Results: That in Clarendon County, South Carolina, on or about August 30, 2014, while driving a vehicle under the influence of alcohol, drugs or a combination of alcohol and drugs, the Defendant, Tammy Dianne Brown *did an act forbidden by law or neglected a duty imposed by law in the driving of said vehicle*; and such act proximately caused the death of Guillermo Lopez-Arenas . . .

Count Two – Felony Driving Under the Influence, Great Bodily Injury Results: That in Clarendon County, South Carolina, on or about August 30, 2014 while driving a vehicle under the influence of alcohol, drugs or a combination of alcohol and drugs, the Defendant, Tammy Dianne Brown *did an act forbidden by law or neglected a duty imposed by law in the driving of said vehicle*; and such act proximately caused great bodily injury to Arturo Murrieta-Blas . . .

R. 710-711 (emphasis added). The emphasized language above told Appellant nothing about what she would be called upon to answer at trial.

Defense counsel argued that in a prosecution for Felony DUI, the state must charge in the body of the indictment what the underlying traffic offense it intends to rely on in establishing that element of the offense in order to satisfy the notice requirement. Appellant cited to State v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986) (overruled on other grounds), which noted that in a prosecution for felony DUI, “the indictment must state with particularity the ‘act forbidden by law or . . . duty imposed by law’ which will be relied on by the State to support the felony DUI charge.” Grampus, 288 S.C. at 397, 343 S.E.2d at 27 n.2.

Grampus was a case decided only on double jeopardy grounds because the defendant in that case, did not challenge the sufficiency of the indictment. The Court still made the point, however, that an indictment in a felony DUI case must include the underlying traffic offense the state intends to rely on. This requirement serves the end that a criminal defendant is apprised of the elements of the offense *and what she is called upon to answer at trial*. Because the indictments against Appellant did not state with particularity the “act forbidden by law” on which the state would rely, Appellant was not sufficiently notified of what she would be required to defend at trial.

Accordingly, Appellant’s conviction should be reversed because the trial court erred in holding that the indictments against Appellant were sufficient. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. Campbell, 361 S.C. 529, 605 S.E.2d 576 (Ct. App. 2004); State v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986).

2.

The court erred in admitting the blood sample taken from Appellant at the hospital because she requested an independent sample and was not offered affirmative assistance by law enforcement in obtaining an independent sample in violation of S.C. Code Ann. §56-5-2950 (E).

Relevant Facts

After the first two witnesses testified in Appellant's trial, the court held a hearing on Appellant's motion to suppress the blood sample outside of the jury's presence. The state called Troopers Minnix and Dubose. Appellant also testified on her own behalf.

Minnix admitted that he did not do anything to assist Appellant in obtaining an independent test on her blood. R. 99, ll. 4 – 24. He also admitted that even though two blood samples were taken from Appellant, neither of them was given to her. R. 100, l. 23 – 101, l. 8.

Dubose also admitted that she did "[n]othing" to affirmatively assist Appellant in getting an independent test on her blood. R. 139, ll. 17 – 21. On the SLED blood collection report that was filled out regarding Appellant's blood, there is a box checked that reads: "A blood sample is requested by the subject for his/her own independent test." R. 702. Dubose claimed that Appellant never requested an independent test and that she believed the check mark on the SLED blood collection report was a mistake. R. 140, ll. 4 – 25.

Appellant testified that when she was getting her blood drawn she told them she needed "[her] proof. . . . [Her] sample." R. 161, ll. 16 – 21. Appellant said that she did not trust the hospital to provide an accurate test and that she needed her own. R. 162, ll. 8 – 13. Appellant testified that neither of the officers helped her to get an independent test. R. 162, ll. 19 – 24.

Defense counsel then moved to suppress the blood sample that was taken from Appellant at the hospital based on law enforcement's failure to provide her with affirmative assistance in

getting an independent test done on her blood as required by S.C. Code Ann. §56-5-2950(E). R. 171, l. 11 – 172, l. 19. Defense counsel argued that both Dubose and Minnix, who were present at the hospital with Appellant after the car accident, were on notice that she wanted an independent sample because the box requesting an independent sample on the SLED blood collection report was checked. R. 172, ll. 1 – 9; R. 702. Counsel argued that the officers did nothing to assist Appellant in getting an independent sample even though they were required to do so. R. 172, ll. 15 – 20.

The assistant solicitor argued that Appellant failed to make a clear and unambiguous request for an independent test and that the check mark on the form indicating that Appellant had requested an independent test was simply a mistake. R. 180, l. 8 – 181, l. 10. The assistant solicitor further argued that even if Appellant was entitled to receive affirmative assistance in getting an independent test done on her blood, that the officers had given her such assistance because she was already at a hospital and that if the subject does not request the independent test to be performed by a particular person the default is for SLED to test it. R. 181, l. 11 – 182, l. 2. Appellant's blood sample was in fact tested by SLED in this case. R. 182, ll. 1 – 3.

The court ruled that law enforcement “complied with the statute as far as giving her substantial assistance” and denied Appellant's motion to suppress the blood sample. R. 190, ll. 11 – 17.

Discussion

A person who submits to blood or breath tests under South Carolina's implied consent law has a right to have an independent test performed on their blood at their expense. S.C. Code Ann. §56-5-2950(B)(3). This statute further provides that:

The arresting officer shall provide affirmative assistance to the person to contact a qualified person to conduct and obtain

additional tests. Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which performs blood tests to determine a person's alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood sample to determine the person's alcohol concentration, SLED shall test the blood sample and provide the result to the person and to the arresting officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in a judicial or administrative proceeding.

S.C. Code Ann. §56-5-2950(E).

In State v. Wickenhauser, 309 S.C. 377, 423 S.E.2d 344 (1992), the Court held that the defendant was given reasonable assistance when the arresting officer transported him to the Lexington Medical Center to get a blood sample *and the sample was given to him*. Wickenhauser, 309 S.C. at 380, 423 S.E.2d at 346. The Court further held that it was a jury question as to whether law enforcement's affirmative assistance was negated when the jail was unable to locate the blood sample which had been provided to the defendant. Id.

In State v. Knighton, 334 S.C. 125, 512 S.E.2d 117 (Ct. App. 1999) the defendant submitted to a breathalyzer and then requested an independent blood test. Knighton, 334 S.C. at 128, 512 S.E.2d at 118. The arresting officer called a local hospital and was informed that a blood test would cost fifty-two dollars. Id. Knighton was also informed that he needed to have a family doctor order the test. Id. Knighton did not have a family doctor or enough money to pay for the test and therefore did not get a blood test done. Id. The Knighton Court held that the officers were not required to obtain money or a doctor's order to authorize the defendant's blood test for him. Id. at 133, 512 S.E.2d at 121.

Here, Appellant testified that she requested a sample for an independent test because she did not trust the hospital to do an accurate test. She further asserted that she was informed by the nurse drawing her blood that she would get her own sample. However, instead of giving

Appellant her own sample, the officers collected both of the blood samples that were taken from her and retained them for themselves.

The fact that Appellant was already at the hospital is not dispositive because that is what §56-5-2950(E) requires *at a minimum*. Appellant's request for an independent test was corroborated by the check mark on the SLED blood collection report. The officers showed a flagrant disregard for Appellant's request by completely ignoring this. Their testimony that they believed the check mark was a mistake was pure conjecture and they never followed up with Appellant to ask if she wanted her own sample done. Defense counsel argued to the lower court: "[the officers] both signed this report and they would have . . . if they read it, they would have had to see that [Appellant] had requested an independent test." R. 172, ll. 4 – 6. Defense counsel continued: "[T]hey assisted [Appellant] in reading it. So they can't come to court today and say, well, no, she never asked us." R. 172, ll. 14 – 16.

The officers should have ensured that Appellant was provided her own sample to take to a qualified testing site of her choosing. Instead, they retained both vials of blood that were taken from Appellant and therefore denied her the right to an independent test.

The court erred in finding that Minnix and Dubose complied with the statute in providing Appellant with affirmative assistance when they retained both samples that were taken from her. The blood sample results should have been suppressed pursuant to S.C. Code Ann. §56-5-2950(E).

3.

The court erred in admitting testimony regarding Appellant's blood alcohol level from a blood sample obtained by law enforcement at the hospital because it was not video recorded and therefore violated S.C. Code Ann. § 56-5-2950 (B).

Relevant Facts

When the state asked its forensic toxicologist, Stacy Matthew, what Appellant's blood alcohol concentration was, defense counsel objected. R. 408, l. 15 – 18. Counsel argued that S.C. Code Ann. § 56-5-2950 (B) requires that any blood sample that is obtained by a suspect of felony DUI must be obtained on videotape. R. 409, l. 5 – 410, l. 19. Counsel specifically cited to the language in that section which provides that “no test may be administered or samples obtained unless upon activation of the video recording equipment and prior to the commencement of the testing procedure.” R. 410, ll. 4 – 8. The court responded that was not its interpretation of the statute and it had never seen a case where the blood draw itself was videotaped. R. 411, l. 23 – 412, l. 1.

The assistant solicitor argued that the language regarding video recording in § 56-5-2950 was actually related back to S.C. Code Ann. § 56-5-2953 which dealt only with video recording at the incident site and at the breath test site. R. 412, ll. 12 – 15. The assistant solicitor then argued that § 56-5-2953 has a number of exceptions to the video requirement including when the defendant needs emergency medical treatment. R. 412, ll. 15 – 20.

The court allowed the testimony about Appellant's blood alcohol concentration over her objection. R. 417, l. 18 – 418, l. 2. Matthew testified that Appellant's blood alcohol concentration was .210. R. 418, ll. 17 – 25.

Discussion

S.C. Code Ann. § 56-5-2950 is South Carolina's "Implied Consent" statute. It provides in relevant part that:

A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or the combination of alcohol and drugs, if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. . . . Blood and urine samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, and other medical personnel trained to obtain the samples in a licensed medical facility. Blood and urine samples must be obtained and handled in accordance with procedures approved by SLED.

S.C. Code Ann. § 56-5-2950 (A). This statute also mandates:

No tests may be administered or samples obtained unless, *upon activation of the video recording equipment and prior to the commencement of the testing procedure*, the person has been given a written copy of and verbally informed that: . . .

S.C. Code Ann. § 56-5-2950 (B) (emphasis added).

The emphasized language above was added to this statute on February 10, 2009. Up until that date, this section simply provided that "[n]o tests may be administered or samples obtained unless the person has been informed in writing that:" S.C. Code Ann. § 56-5-2950 (a) (effective to February 9, 2009). Beginning in 2009, then, the South Carolina General Assembly added language to this section of the statute to provide that no tests or samples could be obtained unless video recording equipment was activated prior to the commencement of the testing procedure.

"It is never to be supposed that a single word was inserted in the law of this state without the intention of thereby conveying some meaning." Davenport v. City of Rock Hill, 315 S.C.

114, 117, 432 S.E.2d 451, 453 (1993). The primary rule of statutory construction is to give affect to the intention of the legislature. State v. Hercheck, 403 S.C. 597, 602, 743 S.E.2d 798, 800 (2013). The text of the statute itself is the best evidence of what the legislature intended. Id.

Here, the plain language of the statute requires that tests and samples which are intended to test a person's blood alcohol concentration may not be collected until video recording equipment is activated. This requirement was only added to the statute in 2009 and it is most likely that the South Carolina General Assembly added these words to mean exactly what they say.

Furthermore, the state's argument that the new language added to § 56-5-2950 (B) is meant only to refer to § 56-5-2953 belies the plain reading of the text. Nothing in §56-5-2950 makes a cross reference to § 56-5-2953. In fact, §56-5-2950 (B) which states that "*no tests may be administered or samples obtained*," is referring to all tests and samples taken pursuant to the implied consent law. The language in § 56-5-2953, on the other hand, refers specifically to conduct at the incident site and breath tests only. There is no such limitation in the language of §56-5-2950 (B) and thus the implied consent statute cannot be read to be limited by the exceptions in § 56-5-2953 which deals only with the incident site and breath tests.

The court erred in allowing the state to introduce testimony regarding Appellant's blood alcohol concentration because her blood sample was obtained without the officers activating video recording equipment to capture the collection of the samples. Consequently, Appellant's conviction should be reversed and remanded for a new trial. See S.C. Code Ann. §56-5-2950.

CONCLUSION

By reason of the foregoing argument, Appellant's conviction should be reversed, and this case remanded to the Clarendon County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read 'Adam Sinclair Ruffin', written over a horizontal line.

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of January, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 9, 2020



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SC Court of Appeals

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
The Honorable R. Ferrell Cothran, Circuit Court Judge

Appellate Case No. 2018-000988

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SC Court of Appeals

THE STATE,

Respondent,

v.

TAMMY DIANE BROWN,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

Whether the trial judge properly refused to quash or dismiss Appellant's indictments when the indictments closely mirrored the language of S.C. Code § 56-5-2945 and notified Appellant of what charge she was called to answer at trial?

II.

Whether the trial judge properly admitted the results of the analysis performed on Appellant's blood sample into evidence when Appellant never requested an independent sample of her blood and even if she had, whether law enforcement already provided Appellant affirmative assistance under S.C. Code § 56-5-2950(E) by transporting her to the local hospital?

III.

Whether the trial judge properly admitted testimony regarding Appellant's blood alcohol level when neither S.C. Code § 56-5-2950 nor S.C. Code § 56-5-2953 requires the State to video record the taking of a defendant's blood sample? And if the statutes had such a requirement, whether S.C. Code § 56-5-2953(B) provides an exception to the video recording requirement when an defendant requires emergency medical treatment?

STATEMENT OF THE CASE

In March 2018, the Clarendon County Grand Jury indicted Appellant for one count of felony driving under the influence resulting in death and one count of felony driving under the influence resulting in great bodily injury (R. 710-11). On May 14-18, 2018, a jury trial was held in the Clarendon County Court of General Sessions with the Honorable R. Ferrell Cothran presiding. Appellant was represented by Charles David Barr, Esq. The State was represented by Assistant Solicitors Chris Durant and Hugh McMillian. At the conclusion of trial, the jury convicted Appellant of both counts. Following the verdict, the trial judge sentenced Appellant to a term of fifteen years' imprisonment for felony driving under the influence resulting in death and twelve years' imprisonment for felony driving under the influence resulting in great bodily injury. The sentences ran concurrently with each other resulting in an aggregate sentence of fifteen years' imprisonment. Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

Just before midnight on August 30, 2014, Appellant drove her White Hyundai Tiburon east on Highway 261 from Paxville towards Manning. (R. 212). Around the same time, Guillermo Lopez-Arenas was driving a black Dodge Dakota pickup truck along with his passenger Arturo Murrieta-Blas. The black truck turned from Home Branch Road onto Highway 261 to head east. As the black pickup turned, Appellant's vehicle collided with the rear end of the pickup and caused the truck to crash into a tree. (R. 274, 467, 703). Arenas was pronounced dead on the scene by Coroner, Hayes Samuels. (R. 220-21, 327-28). Blas was transported by helicopter to the hospital in Florence where he underwent emergency surgery. (R. 194-97, 220-21). Blas spent the next two months in the hospital. (R. 195).

The driver of the white Hyundai was identified as Appellant. (R. 209). When Trooper Jeffrey Minnix of the South Carolina Highway Patrol arrived at the scene of the wreck, Appellant was already in the back of an ambulance receiving treatment from EMS. (R. 209). Minnix positioned his car as close as possible to the wreck but was unable to get very close because of the way the vehicles of other first responders were parked at the scene. (R. 203). Because of the distance of Minnix's car from the ambulance and the limited capabilities of his car's camera system, Minnix's interaction with Appellant was not recorded. (R. 207-09). Minnix interviewed Appellant in the back of the ambulance. (R. 216-17). While interviewing Appellant, EMS informed Minnix that Appellant needed to be transported to the hospital. Therefore, Minnix did not request Appellant to perform any field sobriety tests. (R. 95, 219). Minnix observed that Appellant's eyes were bloodshot and she had an odor of alcohol coming from her person. (R. 216-17). Appellant initially told Minnix she had consumed two shots of tequila, but then revised her statement and said she drank wine coolers instead. (R. 205, 217-18). Appellant admitted that

the clear cup in the floorboard of her car previously contained a wine cooler that her friend made her for the road. (R. 205).

Appellant was transported to Clarendon Memorial Hospital for evaluation. At the hospital, she was interviewed again by Minnix and Trooper Paige Dubose. (R. 222, 314-15). Appellant was placed under arrest at the hospital and was read her Miranda rights and her implied consent rights. (R. 224, 315, 708). Appellant declined to voluntarily provide Minnix and Dubose with a blood sample. (R. 225). Minnix remained with Appellant at the hospital while Dubose left to obtain a search warrant for Appellant's blood sample from the on call magistrate. Dubose met with Judge Robin Locklair at Locklair's home where she provided sworn oral testimony to establish probable cause for the search warrant. (R. 152-53, 318-19). Judge Locklair issued the search warrant. (R. 154, 704-07).

Dubose returned to the hospital with the search warrant and Minnix asked for the assistance of hospital phlebotomist, Angela Floyd, to draw the blood sample. (R. 228). Minnix utilized the SLED blood and urine collection form to inform Appellant of her right to an independent blood sample. (R. 228-32, 702). Appellant refused to sign the blood collection report. (R. 231, 324). Two vials of Appellant's blood were collected and given to Minnix. (R. 234, 381-83). The portion of the blood collection report regarding Appellant's right to an independent blood test was checked in error by Floyd. (R. 378-79, 384, 702). According to Floyd, Minnix, and Dubose, Appellant never requested an independent blood sample in their presence. (R. 232-33, 325-26, 380, 385). Appellant acknowledged at trial that she never made a direct request to law enforcement for an independent sample. (R. 167). Appellant's blood was transported to SLED where it was analyzed by forensic toxicologist Kelly Budgen. According to Budgen's analysis, Appellant had a .210 blood alcohol concentration. (R. 423).

At trial, the State called Lance Corporal Bryan Ridgeway of the South Carolina Highway Patrol as an expert witness in accident reconstruction. (R. 465-66). The speed limit in the intersection where the accident occurred was 45 miles per hour. (R. 212-14). Ridgeway estimated that Appellant's vehicle was traveling at 64.6 miles per hour when she began to break and 55.92 miles per hour when her vehicle hit the black pickup truck. (R. 511, 513). According to Ridgeway, the wreck would not have occurred if Appellant had been traveling within the posted speed limit. (R. 531). Appellant was convicted of both counts at the conclusion of trial.

STANDARD OF REVIEW

I.

“The trial court’s factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Tumbleston, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App. 2007).

II., III.

“The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

ARGUMENT

I.

The trial judge properly refused to quash or dismiss Appellant's indictments when the indictments closely mirrored the language of S.C. Code § 56-5-2945 and notified Appellant of what charge she was called to answer at trial.

Appellant initially argues the trial judge erred in refusing to quash or dismiss Appellant's indictments because they did not specifically allege which traffic law Appellant violated to proximately cause the respective death and great bodily injury of the two victims. Accordingly, Appellant asserts she "was not sufficiently notified of what she would be required to defend at trial." (Initial Brief of Appellant 10). Appellant's argument is without merit. The language in Appellant's indictments closely mirrors the language of the statute Appellant is charged with violating, S.C. Code § 56-5-2945. The plain language in the indictment notified Appellant of what charge she would be called to defend against at trial and it notified the trial judge what judgement he should pronounce. Therefore, the trial judge did not abuse his discretion in refusing to quash or dismiss Appellant's indictments.

An indictment is a notice document. State v. Gentry, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). "Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime." S.C. Code § 17-19-20. A trial judge should judge the sufficiency of an indictment by determining whether "the offense is stated with sufficient certainty and particularity to enable the court to know what judgement to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon." Gentry, 363 S.C. at 102-103, 610 S.E.2d at 500.

Secondly, the trial judge should determine whether the indictment "apprises the defendant of the

elements of the offense that is intended to be charged.” Gentry, 363 S.C. at 103, 610 S.E.2d at 500. “In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances.” Id. “[W]hether the indictment could be more definite or certain is irrelevant.” Id. “[T]he true test of an indictment’s validity is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet.” State v. Smalls, 336 S.C. 301, 307, 519 S.E.2d 793, 796 (Ct. App. 1999).

Here, Appellant was charged with one count of felony driving under the influence resulting in death and one count of felony driving under the influence resulting in great bodily injury pursuant to S.C. Code § 56-5-2945. S.C. Code § 56-5-2945(A) provides:

A person who, while under the influence of alcohol, drugs, or the combination 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 a 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 § 56-5-2945(A). Appellant was indicted for two counts of violating the aforementioned statute. Appellant’s indictment contained the following language:

That in Clarendon County, South Carolina, on or about August 30, 2014, while driving a vehicle under the influence of alcohol, drugs or a combination of alcohol and drugs, [Appellant] did an act forbidden by law or neglected a duty imposed by law in the driving of said vehicle; and such act proximately caused the death of Guillermo Lopez-Arenas; all in violation of Section 56-5-2945, S.C. Code of Laws (1976, as amended).

(R. 711). The second count of Appellant’s indictment contains identical language to the first count except it alleges that Appellant “caused great bodily injury to Arturo Murrieta-Blas.” (R. 711).

Appellant's indictments notified Appellant that she was charged with violating S.C. Code § 56-5-2945 and that by violating § 56-5-2945 she committed the offenses of felony driving under the influence resulting in death and great bodily injury. The indictments closely resembled the language of the statute and enabled Appellant to know what she was called upon to answer. While the State could have added more detail to the indictment by specifically alleging what act Appellant did in her motor vehicle or what duty she neglected, the State was not required to do so. The indictment informed Appellant that she was called to answer the charge of felony driving under the influence resulting in death and great bodily injury. Appellant was not called upon to answer the charge of speeding. Had the State included language within the indictment accusing Appellant of speeding, the indictment may have been more specific but it would not have changed the nature of the offense that Appellant was charged with nor would it have changed the statute which Appellant was charged with violating. Appellant knew she was in court to answer whether she killed one motorist and greatly injured another while driving under the influence of alcohol or drugs. Therefore, the trial judge did not abuse his discretion in refusing to quash or dismiss Appellant's indictments prior to trial. Appellant's convictions and sentences should be affirmed.

II.

The trial judge properly admitted the results of the analysis performed on Appellant's blood sample into evidence when Appellant never requested an independent sample of her blood and even if she had, law enforcement already provided Appellant affirmative assistance under S.C. Code § 56-5-2950(E) by transporting her to the local hospital.

Appellant next argues the trial judge erred in admitting the results of the analysis of her blood sample performed by SLED because Appellant requested an independent sample of her blood and was not given affirmative assistance by law enforcement. On the contrary, Appellant

did not request an independent blood sample be taken for analysis. However, even if Appellant had requested an independent sample, law enforcement was not required to provide Appellant any further assistance to obtain a sample because Appellant was already at a hospital. Because Appellant was already at a hospital, law enforcement satisfied the affirmative assistance requirement articulated in S.C. Code § 56-5-2950(E). Therefore, the trial judge did not abuse his discretion in admitting the analysis of Appellant's blood sample.

S.C. Code § 56-5-2950(A) states that anyone who drives a motor vehicle in the State of South Carolina "is considered to have given consent to chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or the combination or alcohol and drugs" if they are arrested for a DUI related offense. S.C. Code § 56-5-2950(A). The statute also mandates that a person arrested for DUI must be offered a breath test first, but "if the person is physically unable to provide an acceptable breath sample because the person has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting office may request a blood sample to be taken" S.C. Code § 56-5-2950(A). However, in the case of a felony DUI our Supreme Court has held that law enforcement may order a person suspected of felony DUI to submit to a chemical test before offering a breath test. State v. Long, 363 S.C. 360, 364, 610 S.E.2d 809, 812 (2005). Before law enforcement may administer a breath test or take a blood sample, the person must be informed verbally and given a written copy of rights that specify, among other things, that "the person has the right to have a qualified person of the person's own choosing conduct additional independent tests at the person's expense." S.C. Code § 56-5-2950(B)(3). Law enforcement must provide affirmative assistance to a person who requests independent testing.

S.C. Code § 56-5-2950(E) defines what affirmative assistance entails. S.C. Code § 56-5-2950(E) provides:

(E) ...Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which performs blood tests to determine a person's alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood sample to determine the person's alcohol concentration, SLED shall test the blood sample and provide the result to the person and to the arresting officer.

S.C. Code § 56-5-2950(E).

Here, Appellant's argument fails for two reasons. First, Appellant did not request an independent blood sample. Prior to drawing a blood sample from Appellant, Minnix read Appellant's implied consent rights to her using the SLED implied consent rights form. (R. 224, 315, 708). The rights on the SLED form included the following "You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance." (R. 708). Minnix also filled out a SLED urine/blood collection report form before taking Appellant's blood sample. (R. 228-32, 702). A box on the SLED form which reads "A blood sample is requested by the subject for his/her own independent test" was checked in error by Floyd. (R. 378-79, 384, 702). Appellant refused to sign the form and otherwise made no markings on the form. (R. 231, 324). In fact, Dubose, Minnix, and Floyd each testified that Appellant never made a request for an independent sample in their presence. (R. 232-33, 325-26, 380, 385). Appellant acknowledged at trial that she thought about getting an independent test, but never communicated that request to law enforcement. (R. 167). Because Appellant never requested an independent sample of her blood to be taken, the trial judge did not err in admitting the results of the analysis of her blood performed by SLED.

Secondly, even if Appellant requested an independent sample of her blood, law enforcement had already met their obligation to provide Appellant affirmative assistance to obtain the sample. Appellant was being treated for her injuries at Clarendon Memorial Hospital at the time her blood was taken. Because Appellant was being treated at a hospital, she was already at the nearest medical facility. Therefore, law enforcement had already satisfied the affirmative assistance requirement mandated by S.C. Code § 56-5-2950(E) that a person being tested be transported to the nearest medical facility. Accordingly, law enforcement was not required to provide Appellant with any further assistance to obtain an independent blood sample. Appellant's convictions and sentences should be affirmed.

III.

The trial judge properly admitted testimony regarding Appellant's blood alcohol level because neither S.C. Code § 56-5-2950 nor S.C. Code § 56-5-2953 requires the State to video record the taking of a defendant's blood sample and even if either statute had such a requirement, S.C. Code § 56-5-2953(B) provides an exception to the video recording requirement when an defendant requires emergency medical treatment.

Finally, Appellant argues the trial judge erred in admitting Appellant's blood sample into evidence because the taking of the blood sample was not recorded on video. In support of her argument, Appellant contends that § 56-5-2950(B) requires the State to video record the taking of all blood samples¹, notwithstanding the exceptions provided in S.C. Code § 56-5-2953(B). Appellant's argument is meritless. Appellant's argument ignores the complete text of § 56-5-2950(B) and proposes an interpretation of the statute that was not intended by the Legislature. S.C. Code § 56-5-2950(B) mandates that law enforcement must advise a defendant of their implied consent rights on video in normal circumstances. S.C. Code § 56-5-2950(B) says nothing

¹ Appellant's broad assertion that "the plain language of the statute requires that test and samples which are intended to test a person's blood alcohol concentration may not be collected until video recording equipment is activated" (Initial Brief of Appellant 17) would logically apply to recording the taking of urine samples as well.

about videotaping the actual blood draw or taking of a urine sample and is therefore inapplicable to the question of whether a blood draw must be recorded. Furthermore, S.C. Code § 56-5-2953(B) provides an explicit exception to the video recording requirement if a defendant requires emergency medical treatment. Finally, it is unlikely the legislature intended law enforcement to record the taking of blood draws and collecting of urine samples, because such a practice would infringe on the privacy of citizens.

S.C. Code § 56-5-2953 is entitled “Incident site and breath test site video recording.” S.C. Code § 56-5-2953(A) provides that “A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site video recorded.” The statute further clarifies that the recording at the incident site must include “any field sobriety tests administered”, the arrest of the defendant, and “show the person being advised of his Miranda rights.” S.C. Code § 56-5-2953(A)(1)(a)(ii-iii). The statute also identifies which specific actions must be recorded at the breath testing site, S.C. Code § 56-5-2953(A)(2)(a-c). However, subsection B of 56-5-2953 outlines a number of exceptions that excuse noncompliance with the mandatory requirements of subsection A:

(B) Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the times of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment or exigent circumstances existed. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens’ arrests, where an arrest has been made and the video equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a grounds for dismissal.

S.C. Code § 56-5-2953(B).

“[T]he legislature is presumed to intend that its statutes accomplish something.” Long, 363 S.C. at 364, 610 S.E.2d at 811. “Under our principles of statutory construction, the court must ‘look to the plain language of the statute’ to determine its meaning.” State v. Elwell, 396 S.C. 330, 333, 721 S.E.2d 451, 453 (Ct. App. 2011)(quoting State v. Branham, 392 S.C. 225, 231, 708 S.E.2d 806, 810 (Ct. App. 2011)). “A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Sweat, 386 S.C. 339, 350, 699 S.E.2d 569, 575 (2010). “Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.” Sweat 386 S.C. at 351, 688 S.E.2d at 575.

Here, Appellant is asking this Court to conflate the video recording requirement for implied consent rights contained in § 56-5-2950(B) and the video recording requirement for Appellant’s conduct at the incident and breath testing site contained in S.C. Code § 56-5-2953(A) all while ignoring the exceptions to the video recording requirement enumerated in S.C. Code § 56-5-2953(B). The passage that Appellant exclusively relies on in § 56-5-2950(B) contains the following language:

(B) No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that²:

S.C. Code § 56-5-2950(B). Appellant correctly asserts that this portion of the statute requires the State to activate video recording equipment to record a defendant being read their

² The statute goes on to enumerate each implied consent right that must be read to a defendant. Each of the rights included in the statute were read to Appellant and are included in the SLED implied consent rights form. (R. 708).

implied consent rights. However, this portion of the statute does not require the State to record a blood draw, a breath test, any field sobriety test, or any other conduct of a defendant during an arrest. However, a different statute, S.C. Code § 56-5-2953(A), does articulate specific tests and actions of a defendant and law enforcement that must be recorded. S.C. Code § 56-5-2953(A) does not include the taking of a blood or urine sample as actions that must be video recorded.

The only reference in either § 56-5-2950 or § 56-5-2953 to the taking of a blood or a urine sample occurs in § 56-5-2950(A). The relevant language reads as follows:

If the person is physically unable to provide an acceptable breath sample because the person has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken. If the officer has reasonable suspicion that the person is under the influence of drugs other than alcohol, or is under the influence of a combination of alcohol and drugs, the officer may order that a urine sample be taken for testing.

S.C. Code § 56-5-2950(A). Nowhere in the preceding language does the Legislature indicate that a blood test or a urine test has to be recorded. In fact in the entirety of both § 56-5-2950 and § 56-5-2953, there is no requirement that blood tests or urine tests be video recorded. Therefore, the Legislature did not intend for blood draws and urine collections to be video recorded.

However, even if we assume for the sake of argument that the Legislature did intend for such tests to be recorded, they also included specific exceptions to that requirement in S.C. Code § 56-5-2953(B). Here, EMS personnel informed Minnix that Appellant required emergency medical treatment at Clarendon Memorial Hospital. (R. 95, 219). Therefore, the State was not required to video tape Appellant's conduct at the incident site or elsewhere pursuant to S.C. Code § 56-5-2953(B). The State produced a sworn affidavit as required by § 56-5-2953(B) and submitted it to the trial judge. (R. 709).

If this Court follows Appellant's argument to its logical conclusion, the State would be required to take a camera into a defendant's hospital room to film the taking of a blood sample as well as a urine sample. Our Legislature could not have possibly intended to require law enforcement to infringe on citizens' privacy interests by recording such intimate medical procedures in order to investigate DUI cases. Such an invasive search would be offensive to the United States Constitution, the South Carolina Constitution, and possibly violate federal legislation protecting the privacy of citizen's private medical information such as HIPAA. See U.S. Const. amend. IV; S.C. Const. art. I, § 10; 42 U.S.C. 1320d. Such an absurd result could not have been intended by the Legislature. Appellant's convictions and sentences should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the sentences and convictions of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

December 27, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CLARENDON COUNTY
The Honorable R. Ferrell Cothran, Circuit Court Judge

Appellate Case No. 2018-000988

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v.

TAMMY DIANE BROWN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Final Brief of Respondent complies with Rule
211(b), SCACR.

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In The Court of Appeals

The State, Respondent,

v.

Tammy Dianne Brown, Appellant.

Appellate Case No. 2018-000988

Appeal From Clarendon County
R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 5914
Heard September 15, 2021 – Filed May 25, 2022

AFFIRMED

Appellate Defender Adam Sinclair Ruffin, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jonathan Scott Matthews, both of
Columbia; and Solicitor Ernest Adolphus Finney, III, of
Sumter, for Respondent.

KONDUROS, J.: Tammy Dianne Brown appeals her convictions and sentences for felony driving under the influence (DUI) resulting in death and felony DUI resulting in great bodily injury. On appeal, Brown argues the trial court erred in (1) refusing to quash or dismiss the indictments against her because they did not allege the particular traffic violation the State sought to prove as an essential element of each offense; (2) admitting into evidence the blood sample taken from her at the hospital because she was not provided an independent sample and law

enforcement did not offer her affirmative assistance; and (3) allowing testimony regarding her blood alcohol level from a sample obtained by law enforcement at the hospital when the collection of the sample was not recorded by video. We affirm.

FACTS/PROCEDURAL HISTORY

On August 30, 2014, around 11:56 p.m, Brown was driving a vehicle involved in a two-car collision in Clarendon County. The driver of the other vehicle died at the scene of the accident, and the passenger of that vehicle was unresponsive but breathing at the scene and was transported to a hospital.

As a result of the accident, a Clarendon County grand jury indicted Brown for felony DUI resulting in death and felony DUI resulting in great bodily injury. Prior to the jury being sworn, Brown "move[d] to dismiss the indictment[s] for reasons concerning the sufficiency of the indictment[s] as it relate[d] to due process." The indictments alleged "while driving a vehicle under the influence of alcohol, drugs, or a combination . . . Brown did an act forbidden by law or neglected a duty imposed by law in the driving of said vehicle . . . all in violation of [s]ection 56-5-2945" of the South Carolina Code (2018). Brown argued the indictments were required to have "state[d] with particularity the act forbidden by law or duty imposed by law" on which the State planned to rely to support the charges. Brown asserted that because the indictments did not specifically point to the act on which the State would rely, the indictments were flawed and should be dismissed. The State countered, asserting an indictment's language was sufficient if it tracked the language of a statute and both of Brown's indictments tracked the statute she was charged with violating. The trial court denied Brown's motion to quash or dismiss the indictments, finding that as long as an indictment tracked the language of a statute, it was sufficient and both Brown's indictments tracked the statute.

The trial court conducted a suppression hearing regarding Brown's blood sample and the voluntariness of her statements to law enforcement.¹ Trooper Jeffrey Minnix, of the South Carolina Highway Patrol, testified he was the investigating trooper assigned to work the accident. He stated that when he arrived on scene, he activated his body microphone and his camera and went to the truck involved in

¹ The suppression hearing was conducted on the second day of trial, after a few witnesses testified, instead of at the beginning of trial because the trial court wished to accommodate the jury.

the accident. Trooper Minnix indicated that an individual with the fire department informed him the driver of the truck was dead on arrival and the passenger was being extricated from the truck. He stated he walked towards Brown's car, which was some distance away, and someone from the fire department informed him Brown was in an ambulance further down the road. He asserted he went to the ambulance and as emergency medical services (EMS) attended to Brown, he spoke with her to determine how the collision occurred. Trooper Minnix recounted his conversation with Brown, stating:

[Brown] told me she [was] coming from a friend's house. At that point in time I [could] smell a strong odor of alcohol[ic] beverage coming from her person. I asked her if she had anything to drink. She said, yes, she had two tequila shots. Then she quickly changed it to, no, she had two wine coolers instead. . . . I asked her what was in the clear cup in the vehicle at the time. And she said a friend of hers made her a drink to go. She believed it was a wine cooler. . . . At that point in time EMS was ready to take her to the ER

He confirmed he had not advised Brown of her *Miranda*² rights at that time because she was not in custody. He recalled Brown had several scrapes and scratches but needed to be brought to the hospital to ensure she had no internal trauma. Trooper Minnix asserted he stayed at the scene, finished his investigation, and then went to the hospital to speak with Brown again. He testified that at the hospital, Brown told him the accident occurred because the individuals in the truck were attempting to pass someone and they hit her head on. He confirmed that at the time Brown told him this, she still had not been placed under arrest and therefore had not been advised of her *Miranda* rights. Trooper Minnix stated that after Brown recounted her story, she was placed under arrest for felony DUI and advised of her *Miranda* rights and her implied consent rights. He asserted although Brown had previously agreed to give a blood sample, after she was placed under arrest, she no longer wanted to provide a sample and became "belligerent" and started yelling. Trooper Minnix testified Brown appeared to understand the rights as they were read to her and continued to speak after she had been advised of those rights. He stated Corporal Jennifer Paige Dubose, also with South Carolina Highway Patrol and with him at the hospital, left to obtain a search warrant for Brown's blood and urine samples. He confirmed the search warrant

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

was obtained and blood and urine samples were taken from Brown. Trooper Minnix testified the blood sample was taken in his presence and the urine sample was taken in Corporal Dubose's presence.

On cross-examination, Trooper Minnix stated that although he had turned his body microphone on when he arrived at the scene, the microphone did not record his conversation with Brown because his vehicle was too far away. He confirmed Brown initially told him she had two tequila shots but she then stated she had two wine coolers instead. He stated he did not conduct a field sobriety test at the scene because Brown was in the back of an ambulance and EMS wanted to transport her to the hospital. He testified he did not offer Brown additional affirmative assistance to obtain an independent blood sample because she was at the hospital. He asserted because Brown was already at the hospital, she only needed to ask the nurse to provide her with an independent sample.

On recross-examination, Trooper Minnix identified the implied consent form he read to Brown and acknowledged Brown refused to sign the form.

Corporal Dubose testified she was Trooper Minnix's training officer and arrived at the scene of the vehicle collision with him. Corporal Dubose stated Trooper Minnix informed her he smelled alcohol coming from Brown and Brown admitted she had been drinking and the amount of alcohol she had consumed. Corporal Dubose asserted that when she and Trooper Minnix initially spoke to Brown at the hospital, Brown was not in custody at the time because she wanted to confirm that Brown was impaired by alcohol. Corporal Dubose averred they both made the determination Brown was impaired. Corporal Dubose recalled that once they read Brown her implied consent rights, Brown became irritated and refused to voluntarily provide a blood sample. Corporal Dubose confirmed she secured the search warrant to obtain Brown's blood sample. Corporal Dubose indicated two vials of blood and one container of urine were obtained from Brown. Corporal Dubose testified Brown never verbalized a request to have someone conduct an independent test of her blood or asked for assistance in obtaining an independent test. Corporal Dubose acknowledged that on the South Carolina Law Enforcement Division (SLED) urine/blood collection report (the collection report), the line that stated "a blood sample is requested by the subject for an independent test" had a check mark beside it. However, Corporal Dubose stated Angela Floyd, the phlebotomist who took the samples, checked the box by mistake. Corporal Dubose reiterated Brown did not verbalize any request to have an independent test conducted on her blood. Corporal Dubose testified that to her knowledge, Brown

never contacted highway patrol again to inquire whether or not she could have an independent analysis performed on her blood sample.

Brown testified the person who drew her blood at the hospital told her she could get a sample of her blood and she said "okay." She stated she wanted her own sample because she did not really trust the hospital. Brown asserted that neither Trooper Minnix nor Corporal Dubose assisted her in obtaining an independent test of her blood sample. On cross-examination, Brown stated she gave the nurse permission to obtain a blood sample. Brown testified the nurse told her "that they were [going to take] some blood samples and I [could] have my own done. . . . I already knew I was go[ing to] let [my doctor] do it" She stated law enforcement told her they were going to take her blood and she had a right to have her own test done, and she said "okay" and then turned her head away from the blood being drawn.

At the conclusion of the suppression hearing, the trial court found Brown voluntarily made her statement and was not coerced or threatened in any way. The trial court also found law enforcement provided Brown with substantial assistance and Brown did not ask for an independent blood test. The court indicated Brown could argue to the jury that she had checked the box for an independent blood test and had not gotten it.

At trial, Billy Ward, a firefighter, testified he responded to a vehicle collision on August 30, 2014. He stated two individuals were in a truck and Brown was at a sedan. He asserted the driver of the truck was "unconscious, unresponsive[, and] not breathing" and the passenger of the truck was unresponsive but breathing. Ward testified Brown was out of her vehicle and able to walk around.

Bucky Mock was the coroner of Clarendon County at the time of trial. He testified the previous coroner, Hayes Samuels, had responded to the scene of the accident. Mock stated Samuels pronounced the driver of the truck dead at 11:56 p.m. at the scene of the accident.

Dr. Mark Reynolds, an expert in trauma surgery, stated that at the hospital on August 31, 2014, he attended to the passenger from the truck for multiple traumas resulting from a vehicular crash. Dr. Reynolds testified the passenger suffered severe traumatic brain injuries as a result of the crash but survived.

Trooper Minnix testified to the same information he provided in the suppression hearing. He explained he read Brown her *Miranda* rights and implied consent

rights at the hospital and informed her she was under arrest for felony DUI. He reiterated Brown initially agreed to provide a blood sample; however, she refused once she was arrested. Trooper Minnix acknowledged that one of the advisements on the implied consent rights form was that a suspect had the right to have an additional, independent test administered if the suspect wanted one. He explained that if a suspect wanted an independent test, the highway patrol would provide affirmative assistance and transport the suspect to the closest medical facility. Trooper Minnix stated that in this case, he did not need to provide additional affirmative assistance because Brown was already at the hospital. He asserted Brown did not convey any desire to have an additional independent test done. He stated the highway patrol provided Brown with the collection report and she refused to sign it. Trooper Minnix confirmed that during the course of advising Brown of her rights, she was notified of her right to obtain an independent test of her blood. He reasserted Brown did not indicate to him or anyone in his presence that she wanted an independent test.

On cross-examination, Trooper Minnix confirmed that the collection report had a check mark on it next to the sentence that indicated Brown requested a sample of blood for her own independent test; however, he stated law enforcement did not make the check mark and Brown never asked him or Corporal Dubose for a sample to obtain an independent test. He testified the nurse who took the blood sample "may have inadvertently checked the box."

On redirect, Trooper Minnix stated that if requested, the highway patrol had the responsibility to assist an individual who had been arrested for DUI in obtaining an individual sample of the person's blood by taking them to the nearest medical facility. He confirmed that was the only assistance the highway patrol had a responsibility to provide regarding a blood sample.

Floyd testified she worked at Clarendon Memorial Hospital in 2014 and took the sample of Brown's blood. She confirmed she filled out part of the collection report. She testified she made the check mark indicating Brown requested an independent blood sample in error. Floyd asserted Brown never indicated in her presence she wanted a blood sample for an independent test.

Stacey Matthew, an expert in toxicology, testified that while she worked for SLED, she received Brown's blood and urine specimens. She confirmed the samples remained in the proper chain of custody and no one had tampered with the evidence. Brown objected to Matthew testifying to the blood alcohol concentration of her samples, stating two breaks in the chain of custody had

occurred. Additionally, Brown argued the samples were inadmissible because the act of the blood being drawn was not videotaped, which she asserted section 56-5-2950(B) of the South Carolina Code (2018) required. The State asserted the video recording section 56-5-2950(B) mentioned related to section 56-5-2953 of the South Carolina Code (2018), the statute concerning incident site and breath test site and video recording. The trial court held the State met its burden concerning the chain of custody and the statute did not require the blood draw to be videotaped. Matthew testified she found Brown's alcohol concentration to be 0.210.

Kelly Bugden, an expert in toxicology employed by SLED, testified she analyzed Brown's blood sample and determined it had a blood alcohol concentration of 0.210. She confirmed there was correlation between a person's blood alcohol concentration and intoxication.

Timothy Grambow, an expert in forensic toxicology and a senior toxicologist at SLED, testified he analyzed Brown's blood sample and reported a blood alcohol level of 0.210 and a positive result for Xanax. Brown objected to Grambow testifying regarding the "condition of a person in general where their blood concentration level was at [0.210]." The trial court overruled the objection. Grambow stated that anyone, regardless of age, sex, or size, would have been too impaired to drive at a 0.210 blood alcohol level.

Brown testified she did not remember having a conversation with Trooper Minnix at the hospital. She stated a nurse informed her they needed to take her blood because she "kill[ed] somebody." Brown stated she told the nurse to take the blood because she was tired and ready to go home. Brown confirmed the nurse informed her she could obtain her own blood sample "to be tested by someone else."

On cross-examination, the State asked Brown if she remembered telling a highway patrolman that she wanted an independent sample of blood and Brown stated she "told the nurse that." Brown recalled the conversation with the nurse, stating "I remember some people nurse, whatever ask me can she draw[] some blood. At first I said, no Then later on, later on . . . someone say, well, you can have your own test and I say fine." When asked if she said anything other than fine, Brown answered, "No, because that's their procedure. I can't question their procedures, that's what they do, that's what they do." Brown asserted the nurse told Brown she could have her own blood sample but she never saw a sample. Brown testified someone informed her she was entitled to have her own independent blood test drawn and she said "fine."

The jury found Brown guilty as indicted. The trial court sentenced Brown to concurrent sentences of fifteen years' imprisonment for felony DUI resulting in death and twelve years' imprisonment for felony DUI resulting in great bodily injury. This appeal followed.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate "[c]ourt is bound by the trial court's factual findings unless they are clearly erroneous." *Id.*

LAW/ANALYSIS

I. Indictments

Brown argues the trial court erred by denying her motion to dismiss the indictments against her by improperly relying on *State v. Campbell*.³ Brown asserts *Campbell* held "an indictment for felony DUI was sufficient to confer subject matter jurisdiction . . . even though it did not state with particularity the underlying traffic offense [on] which the [S]tate intended to rely" but applied "only in the context of a guilty plea." Brown contends the trial court should have instead relied on *State v. Grampus*,⁴ which noted "that an indictment in a felony DUI case must include the underlying traffic offense the [S]tate intends to rely on." Brown argues that because her indictment "did not state with particularity 'the act forbidden by law' on which the State would rely, [she] was not sufficiently notified of what she would be required to defend at trial." We disagree.

"The trial court's factual conclusions as to the sufficiency of an indictment will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion." *State v. Tumbleston*, 376 S.C. 90, 94, 654 S.E.2d 849, 851 (Ct. App.

³ 361 S.C. 529, 605 S.E.2d 576 (Ct. App. 2004), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (overruling cases to the extent they combine the concept of the sufficiency of an indictment and the concept of subject matter jurisdiction).

⁴ 288 S.C. 395, 343 S.E.2d 26 (1986), *abrogated on other grounds by State v. Easler*, 327 S.C. 121, 489 S.E.2d 617 (1997), *overruled on other grounds by State v. Greene*, 423 S.C. 263, 814 S.E.2d 496 (2018).

2007). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion without evidentiary support." *Id.*

Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided.

S.C. Code Ann. § 17-19-20 (2014). "An indictment is sufficient when it uses substantially the same language contained in the statute prohibiting the crime charged, or when it is described in such a way that the nature of the charge is plainly understood." *Campbell*, 361 S.C. at 533, 605 S.E.2d at 579.

"A challenge to the sufficiency of an indictment must be made before the jury is sworn." *Tumbleston*, 376 S.C. at 96, 654 S.E.2d at 852.

If the objection is timely made, the [trial] court should evaluate the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense intended to be charged.

Id. at 96-97, 654 S.E.2d at 852.

"In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances." *Gentry*, 363 S.C. at 103, 610 S.E.2d at 500. An indictment is sufficient if "it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." *Campbell*, 361 S.C. at 533, 605 S.E.2d at 579 (quoting *Browning v. State*, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995), *overruled on other grounds by*

Gentry, 363 S.C. at 105-06, 610 S.E.2d at 501-02 (overruling to the extent it combined the concepts of the sufficiency of an indictment and subject matter jurisdiction)). "[W]hether the indictment could be more definite or certain is irrelevant." *Gentry*, 363 S.C. at 103, 610 S.E.2d at 500. "Therefore, an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." *Tumbleston*, 376 S.C. at 98, 654 S.E.2d at 853.

"The indictment must state the offense with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer." *State v. Reddick*, 348 S.C. 631, 635, 560 S.E.2d 441, 443 (Ct. App. 2002). "The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." *Id.* (quoting *State v. Beam*, 336 S.C. 45, 50, 518 S.E.2d 297, 300 (Ct. App. 1999)).

In the present case, Brown was indicted for felony DUI resulting in death and felony DUI resulting in great bodily injury. The language of both indictments included the following: "while driving a vehicle under the influence of alcohol, drugs, or a combination . . . Brown did an act forbidden by law or neglected a duty imposed by law in the driving of said vehicle . . . all in violation of [s]ection 56-5-2945" of the South Carolina Code. Section 56-5-2945, the section Brown was indicted for violating, states:

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) (2018).

Because the indictments followed the language of the statutes prohibiting the crimes, the trial court did not err in denying Brown's motion to dismiss or quash the indictments. The indictments were sufficient to make Brown aware she was being charged with the crimes of felony DUI resulting in death and felony DUI

resulting in great bodily injury. The language of the indictments followed the language of the statute, and the indictments were sufficient to enable the trial court to know what judgment to pronounce and Brown to know what to answer to at trial and the elements of the offense with which she was charged.

Further, the trial court did not err in relying on *Campbell*. Like Brown, the defendant in *Campbell* was charged with felony DUI resulting in death. 361 S.C. at 531, 605 S.E.2d at 578. In *Campbell*, the court held an indictment was sufficient if it tracked the language of the statute. *Id.* at 533, 605 S.E.2d at 579. Here, both of Brown's indictments tracked the language of section 56-5-2945(A). Brown argues the *Campbell* holding was limited to guilty pleas; however, the *Campbell* court did not appear to limit its holding to guilty pleas but instead seemed to rely on the fact that the defendant pled guilty as an additional reason she was aware of the charge against her. *See id.* ("Even a cursory reading of the indictment . . . shows it contains virtually identical language to that contained in the statute defining the offense. *In addition, because Campbell pled guilty*, it is clear she was aware of the nature of the charge against her." (emphasis added)).

Moreover, despite the fact that *Gentry* overturned *Campbell* on other grounds, *Gentry*, which did involve a trial, reiterated the same language from *Campbell*. *Compare Gentry*, 363 S.C. at 102-03, 610 S.E.2d at 500 ("[T]he [trial] court should judge the sufficiency of the indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged."), *and id.* at 103, 610 S.E.2d at 500 ("[W]hether the indictment could be more definite or certain is irrelevant."), *with Campbell*, 361 S.C. at 533, 605 S.E.2d at 578-79 ("The general rule regarding the adequacy of an indictment is that '[a]n indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon.' Furthermore, '[t]he true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." (alterations by court) (first quoting *State v. Adams*, 354 S.C. 361, 364, 580 S.E.2d 785, 791 (Ct. App. 2003); then quoting *Browning*, 320 S.C. at 368, 465 S.E.2d at 359)).

This court in *Tumbleston*, which involved a jury trial and was decided after *Gentry*, also used similar language as that from *Campbell*. *Compare Tumbleston*, 376 S.C. at 98, 654 S.E.2d at 853 ("[A]n indictment passes legal muster when it charges the crime *substantially in the language of the statute* prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." (emphasis added)), *with Campbell*, 361 S.C. at 533, 605 S.E.2d at 579 ("An indictment is sufficient when it uses *substantially the same language contained in the statute* prohibiting the crime charged, or when it is described in such a way that the nature of the charge is plainly understood." (emphasis added)). Thus, the trial court did not err in relying on *Campbell*.

Additionally, *Grampus*, the case on which Brown asserts the trial court should have relied, did not hold in the body of the opinion that an indictment "must include the underlying traffic offense." Instead, the *Grampus* court mentioned the sufficiency of an indictment in a footnote, noting *Grampus* did not argue the issue of the sufficiency of the indictment on its face. 288 S.C. at 397 n.2, 343 S.E.2d at 27 n.2 ("Appellant has not argued the sufficiency of the indictment on its face; however, we note that the indictment must state with particularity the 'act forbidden by law or . . . duty imposed by law' which will be relied on by the State to support the felony D.U.I. charge." (alteration by court) (quoting § 56-5-2945)).

Accordingly, the trial court did not err in finding Brown's indictments were sufficient.

II. Affirmative Assistance

Brown argues the trial court erred in admitting her blood sample into evidence because she requested an independent sample and law enforcement did not offer her affirmative assistance to obtain the sample. Brown contends she testified she requested a sample for an independent test and the fact that the collection report had a check mark next to the line stating she requested a sample for an independent test corroborated her testimony. She asserts that despite the fact she was already at the hospital, Trooper Minnix and Corporal Dubose failed to provide the required affirmative assistance because they should have ensured she was provided with her own sample to take to a testing location of her choosing. We disagree.

"A trial [court]'s decision to admit or exclude evidence is within [its] discretion and will not be disturbed on appeal absent an abuse of discretion." *State v. Frey*, 362 S.C. 511, 515-16, 608 S.E.2d 874, 877 (Ct. App. 2005). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are

controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

The arresting officer shall provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which performs blood tests to determine a person's alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood sample to determine the person's alcohol concentration, SLED shall test the blood sample and provide the result to the person and to the arresting officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in a judicial or administrative proceeding.

S.C. Code Ann. § 56-5-2950(E) (2018).

The person tested or giving samples for testing may have a qualified person of the person's own choosing conduct additional tests at the person's expense and must be notified in writing of that right. A person's request or failure to request additional blood or urine tests is not admissible against the person in the criminal trial. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples obtained at the direction of the law enforcement officer.

S.C. Code Ann. § 56-5-2950(D) (2018).

"The purpose of . . . [section] 56-5-2950[(E)] 'is to permit an accused person to gather independent evidence to submit in reply to that of the prosecuting authority.'" *State v. Harris*, 311 S.C. 162, 166, 427 S.E.2d 909, 911 (Ct. App. 1993) (quoting *Town of Fairfax v. Smith*, 285 S.C. 458, 460, 330 S.E.2d 290, 290 (1985)). "Whether one receives affirmative assistance [that] is reasonable under the statute depends on the circumstances of each case." *State v. Knighton*, 334 S.C. 125, 131, 512 S.E.2d 117, 120 (Ct. App. 1999).

The trial court did not err by admitting into evidence the analysis of Brown's blood sample. Trooper Minnix and Corporal Dubose provided Brown with affirmative assistance as required by section 56-5-2950(E). Although the collection report had a check mark that indicated Brown requested an independent blood sample, Floyd, Trooper Minnix, and Corporal Dubose's testimonies indicated it was checked in error. Brown was informed she could obtain an independent sample of her blood to take to a testing location of her choosing, and she acknowledged she told the nurse "fine" and "okay." Trooper Minnix and Corporal Dubose testified Brown did not request an independent blood sample in their presence. Additionally, Floyd stated Brown never requested an independent sample when she took Brown's blood. Based on all of the testimony and the fact that Brown refused to sign the collection report, the trial court did not abuse its discretion in finding Brown did not request an independent blood sample.

Moreover, Trooper Minnix and Corporal Dubose provided affirmative assistance to Brown to obtain an independent blood sample because they informed Brown of her rights, she was present at a hospital where she could have requested a sample of her blood, and they did not do anything to prevent Brown from obtaining an independent sample. *See* § 56-5-2590(E) ("Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which performs blood tests to determine a person's alcohol concentration."); *Knighton*, 334 S.C. at 131, 512 S.E.2d at 120 ("Whether one receives affirmative assistance [that] is reasonable under the statute depends on the circumstances of each case."). Thus, the trial court did not err in denying Brown's motion to suppress the results of Brown's blood sample analysis on this basis because Trooper Minnix and Corporal Dubose provided Brown with the required affirmative assistance for obtaining an independent blood sample.

III. VIDEO RECORDING REQUIREMENTS

Brown argues the trial court erred in allowing testimony regarding her blood alcohol level from a blood sample obtained at the hospital. She contends that law enforcement violated section 56-5-2950(B) by not video recording the act of drawing her blood. Brown asserts the statute "provide[s] that no tests or samples could be obtained unless video recording equipment was activated prior to the commencement of the testing procedure." We disagree.

"A trial [court]'s decision to admit or exclude evidence is within [its] discretion and will not be disturbed on appeal absent an abuse of discretion." *Frey*, 362 S.C. at

515-16, 608 S.E.2d at 877. "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Pagan*, 369 S.C. at 208, 631 S.E.2d at 265.

The implied consent statute provides: "No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed" of his or her implied consent rights.⁵ S.C. Code Ann. § 56-5-2950(B) (2018).

Section 56-5-2953 mandates the video recording of a driver's "conduct at the incident site and the breath test site" if the driver violates section 56-5-2930, -2933, or -2945 of the South Carolina Code (2018). S.C. Code Ann. § 56-5-2953(A) (2018). The statute provides the following requirements for the recording:

(1)(a) The video recording at the incident site must:

(i) not begin later than the activation of the officer's blue lights;

(ii) include any field sobriety tests administered; and

(iii) include the arrest of a person for a violation of [s]ection 56-5-2930 or [s]ection 56-5-2933, or a probable cause determination in that the person violated [s]ection 56-5-2945, and show the person being advised of his [*Miranda*] rights.

⁵ Those rights are the person does not have to take the test or give the samples, but if the person refuses, the person's privilege to drive must be suspended and the refusal may be used in court; if the person takes the test or gives the samples and has a certain alcohol concentration, the person's privilege to drive must be suspended for at least one month; the person has the right to have independent tests conducted and to request a contested case hearing; and if the person does not request a contested case hearing or if the suspension is upheld, the person shall enroll in an alcohol and drug program. *See* § 56-5-2950(B).

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

(2) The video recording at the breath test site must:

(a) include the entire breath test procedure, the person being informed that he is being video recorded, and that he has the right to refuse the test;

(b) include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test; and

(c) also include the person's conduct during the required twenty-minute pre-test waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to video record this waiting period.

§ 56-5-2953(A).

"Whe[n] the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *State v. Jacobs*, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "In interpreting a statute, '[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.'" *State v. Gordon*, 414 S.C. 94, 98, 777 S.E.2d 376, 378 (2015) (alteration by court) (quoting *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007)). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." *State v. Hilton*, 406 S.C. 580, 585, 752 S.E.2d 549, 551 (Ct. App. 2013) (quoting *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010)). "Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would

defeat the plain legislative intention." *Sweat*, 386 S.C. at 351, 688 S.E.2d at 575. "The legislature is presumed to intend that its statutes accomplish something." *State v. Long*, 363 S.C. 360, 364, 610 S.E.2d 809, 811 (2005). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *Sweat*, 386 S.C. at 351, 688 S.E.2d at 575 (quoting *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)).

"Statutes must be read as a whole and sections that are part of the same general statutory scheme must be construed together and each given effect, if reasonable." *State v. Prince*, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct. App. 1999). A court "should consider, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law." *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505-06 (Ct. App. 2004).

In 2008, the legislature amended section 56-5-2950 to add the phrase on which Brown relies—"upon activation of the video recording equipment and prior to the commencement of the testing procedure."^{6, 7, 8} Act No. 201, 2008 S.C. Acts 1644, 1674. The act that amended section 56-5-2950 in no way suggests the legislature intended to mandate videotaping of blood and urine tests. *See* Act No. 201, 2008 S.C. Acts 1644, 1674. The amended version simply specifies the time frame when the implied consent rights⁹ must be provided, both in written form and orally, to a driver—before the testing procedure begins. § 56-5-2950(B). This clause does not create a requirement to video record all types of samples being taken. The purpose of subsection B was to lay out certain rights a driver has relating to implied consent.

⁶ Prior to the amendment, the portion of the statute this phrase was added to stated: "No tests may be administered or samples obtained unless the person has been informed in writing" of his or her implied consent rights. S.C. Code Ann. § 56-5-2950(a) (2006).

⁷ The act also added that a driver must be verbally informed of his or her implied consent rights, in addition to being given a written copy, whereas before a driver only had to be given a written copy. Act No. 201, 2008 S.C. Acts 1644, 1674.

⁸ The statute was again amended in 2014 but made no changes relevant to the issue here. *See* Act 158, 2014 S.C. Acts 1994, 2027.

⁹ At trial, Brown's counsel stated he understood Brown had received the implied consent warnings.

Section 56-5-2953 specifies in detail that a recording must be done for breath testing at the incident site. In stating what the act amended in section 56-5-2950, the act did not indicate it was creating a new requirement to record tests in addition to breath testing at the incident site.¹⁰ If the legislature had intended to establish video recording for all tests, including blood and urine samples, it would have done so in a more explicit way, including laying out the procedures as it did in section 56-5-2953. *See Creswick v. Univ. of S.C.*, 434 S.C. 77, 82-83, 862 S.E.2d 706, 708-09 (2021) (recognizing that the legislature was "capable of drafting a provision prohibiting all mask mandates" when one proviso applying to public K-12 schools clearly demonstrated the legislature's intent to prohibit the use of state funds to require any mask mandate in those settings, but another provision applying to public institutions of higher education used different language that left "little doubt that [the higher education proviso] was not intended to prohibit all mask mandates at public institutions of higher education, but only, as its terms specifically provide, mask mandates for the unvaccinated"); *Byrd v. Irmo High Sch.*, 321 S.C. 426, 433-

¹⁰ The act stated it was

amend[ing] section 56-5-2950, relating to a driver's implied consent to testing for alcohol or drugs, so as to make technical changes, to provide when breath samples must be collected under this provision, to delete the provision that provides that an officer may not require additional tests of a person under certain circumstances, to delete the term "Department of Public Safety" and replace it with the term "South Carolina Criminal Justice Academy[,"] to revise the provisions that provide the procedures for administering breath tests or obtaining samples, to revise the information that a person charged with violating this provision must be given, to provide the circumstances in which a person must pay for the cost of tests performed under this section and provide for the disbursement of these monies, to delete the provision that provides that a certain level of alcohol concentration is a violation of section 56-5-2933, and to revise the circumstances in which certain evidence may be excluded in a proceeding that occurs under this section

34, 468 S.E.2d 861, 865 (1996) (holding when one provision does not include a right that is included in a related provision, a right will not be implied when it does not exist); *Est. of Guide v. Spooner*, 318 S.C. 335, 338, 457 S.E.2d 623, 624 (Ct. App. 1995) (noting that a "provision expressly applie[d] to a 'formal testacy or appointment proceeding commenced in this state' as opposed to an informal proceeding" because "[i]t is reasonable to assume that if the legislature had intended the statute to apply to both formal and informal proceedings, it would have said so either by stating that it applied to any testacy or appointment proceeding, or by expressly including informal proceedings in the first sentence"). Accordingly, the trial court did not err in finding section 56-5-2950 did not require video recording the taking of the blood sample. Therefore, the trial court did not abuse its discretion in admitting the blood sample as evidence, and we affirm that decision.

CONCLUSION

Based on the foregoing, the trial court did not err in denying Brown's motion to quash the indictment. Additionally, the trial court did not abuse its discretion in denying Brown's motion to suppress the blood sample. Therefore, Brown's convictions of felony DUI resulting in death and felony DUI resulting in great bodily injury are

AFFIRMED.

HILL and HEWITT, JJ., concur.

The Supreme Court of South Carolina

The State, Respondent,

v.

Tammy Dianne Brown, Petitioner.

Appellate Case No. 2022-001025

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY Patricia A. Howard
CLERK

Hill, J., not participating

Columbia, South Carolina

June 27, 2023

cc:

Alan McCrory Wilson, Esquire

William M. Blicht, Jr., Esquire

Ernest Adolphus Finney, III, Esquire

David Alexander, Esquire

The Honorable Jenny Abbott Kitchings

FORM 5

STATE OF SOUTH CAROLINA)

County of)

Clarendon)

Tammy Dianne Brown)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

CASE # 2023-CP-14-00248
IN THE COURT OF COMMON PLEAS

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 verified (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 the 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 Leath Correctional Institution
Greenwood, S.C. 29649
2. Name and location of Court which imposed sentence Manning Court
Manning, S.C.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-14-0408
 - (b) _____

**CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE**

DATE 7/14/2023
Beulah B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 18, 2018 15 years
- (b) _____
- (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. Court of Appeals of South Carolina
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed May 28, 2022
- ii. Certiorari Denied June 27, 2023
- iii. _____
- (c) the date of each such result:
- i. Heard - September 15, 2021
- ii. Filed - May 28, 2022 (Affirmed)
- iii. Rehearing denied June 23, 2022
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No errors made
- ii. stated that my indictment was insufficient
- iii. insufficient warrant
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

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

- (a) Ineffective Assistance of Counsel
- (b) Tampered Evidence
- (c) Based on new evidence I am innocent
Bias by Trial Judge

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

- (a) Did Not Submit Sufficient evidence
- (b) Not allow independent blood test when asked for
- (c) Recording of Speed Limit from SCDOT

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

- (a) any petition in a State Court under South Carolina Law? _____
- (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)? Only for petition to Supreme Court
- (d) any other petitions, motions or applications in this or any other Court? Yes

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. Supreme Court denied Certiorari after affirmed Appeal
- ii. _____
- iii. _____
- iv. _____

- (b) the name and location of the Court in which each was filed:

- i. South Carolina Courts of Appeals
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- 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?

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- 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) evidence that was presented at trial
 (b) Denied Jury trial in magistrates court
 (c) Solicitor Durant tampered with evidence

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

(a) your arraignment and plea? _____
 (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. Charles David Barr
 ii. Adam Sinclair Ruffin
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Charles David Barr - trial attorney
 ii. Adam Sinclair Ruffin - Appellate Attorney
 iii. _____

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

Time Serve
Sentence reduction

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, Jimmy D. Brown, 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.

Jimmy D. Brown

SWORN to and subscribed before me this 11 day of July, 2023

Cassandra Y. Kelly (L.S.)
 Notary Public

My Commission Expires: 6/16/24

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

I, Jimmy D. Brown, 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.

Jimmy D. Brown
Applicant

SWORN or affirmed to and subscribed before me this

11 day of July 2023

[Signature]
Notary Public

My Commission Expires: 6/16/24

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
	)	
Tammy D. Brown, SCDC #376553,	)	Case No. 2023-CP-14-00248
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION
	)	FOR MORE DEFINITE STATEMENT
	)	(COUNSEL APPOINTED)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Tammy D. Brown (Applicant) on July 14, 2023, the State makes this return¹:

FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clarendon County Clerk of Court. During its December 2014 term, the Clarendon County Grand Jury indicted Applicant for felony driving under the influence, death results and felony driving under the influence, great bodily injury results (2014-GS-14-0408,

¹ Respondent's return to the application were due to be filed within ninety days of receipt. See Rule 12(a), SCRCF ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial.") Now, having completed the returns required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept these returns as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

Counts 1&2). Applicant was represented by Charles David Barr, esquire. The case was prosecuted by Assistant Solicitors Christopher DuRant and Hugh McMillian.

On May 14-18, 2018, Applicant proceeded to trial before the Honorable R. Ferrell Cothran Jr., and a jury. The jury Applicant guilty as indicted. On May 18, 2018, Judge Cothran Jr. sentenced Applicant to fifteen years imprisonment for felony driving under the influence, death results and twelve years' imprisonment for felony driving under the influence, great and bodily injury results. Applicant filed a timely notice of appeal. The appeal was perfected by Appellate Defender Adam S. Ruffin. In a published opinion, the South Carolina Court of Appeals affirmed Applicant's conviction. State v. Brown, 436 S.C. 505, 873 S.E.2d 445 (Ct. App. 2022), reh'g denied (June 23, 2022), cert. denied (June 27, 2023). Applicant filed a petition for rehearing which was denied on June 23, 2022. Applicant filed a petition for writ of certiorari in the Supreme Court which was denied on June 27, 2023. The remittitur was submitted on June 28, 2023.

Facts²

Just before midnight on August 30, 2014, Appellant drove her White Hyundai Tiburon east on Highway 261 from Paxville towards Manning. (R. 212). Around the same time, Guillermo Lopez-Arenas was driving a black Dodge Dakota pickup truck along with his passenger Arturo Murrieta-Blas. The black truck turned from Home Branch Road onto Highway 261 to head east. As the black pickup turned, Appellant's vehicle collided with the rear end of the pickup and caused the truck to crash into a tree. (R. 274, 467, 703). Arenas was pronounced dead on the scene by Coroner, Hayes Samuels. (R. 220-21, 327-28). Blas was transported by helicopter to the hospital in Florence where he underwent emergency surgery. (R. 194-97, 220-21). Blas spent the next two months in the hospital. (R. 195).

² This section was summarized from the Statement of the Facts presented in the Final Brief of Respondent from Applicant's direct appeal. (FBOR.pp.3 – 5).

The driver of the white Hyundai was identified as Appellant. (R. 209). When Trooper Jeffrey Minnix of the South Carolina Highway Patrol arrived at the scene of the wreck, Appellant was already in the back of an ambulance receiving treatment from EMS. (R. 209). Minnix positioned his car as close as possible to the wreck but was unable to get very close because of the way the vehicles of other first responders were parked at the scene. (R. 203). Because of the distance of Minnix's car from the ambulance and the limited capabilities of his car's camera system, Minnix's interaction with Appellant was not recorded. (R. 207-09). Minnix interviewed Appellant in the back of the ambulance. (R. 216-17). While interviewing Appellant, EMS informed Minnix that Appellant needed to be transported to the hospital. Therefore, Minnix did not request Appellant to perform any field sobriety tests. (R. 95, 219). Minnix observed that Appellant's eyes were bloodshot and she had an odor of alcohol coming from her person. (R. 216-17). Appellant initially told Minnix she had consumed two shots of tequila, but then revised her statement and said she drank wine coolers instead. (R. 205, 217-18). Appellant admitted that the clear cup in the floorboard of her car previously contained a wine cooler that her friend made her for the road. (R. 205).

Appellant was transported to Clarendon Memorial Hospital for evaluation. At the hospital, she was interviewed again by Minnix and Trooper Paige Dubose. (R. 222, 314-15). Appellant was placed under arrest at the hospital and was read her Miranda rights and her implied consent rights. (R. 224, 315, 708). Appellant declined to voluntarily provide Minnix and Dubose with a blood sample. (R. 225). Minnix remained with Appellant at the hospital while Dubose left to obtain a search warrant for Appellant's blood sample from the on call magistrate. Dubose met with Judge Robin Locklair at Locklair's home where she provided sworn oral testimony to establish probable

cause for the search warrant. (R. 152-53, 318-19). Judge Locklair issued the search warrant. (R. 154, 704-07).

Dubose returned to the hospital with the search warrant and Minnix asked for the assistance of hospital phlebotomist, Angela Floyd, to draw the blood sample. (R. 228). Minnix utilized the SLED blood and urine collection form to inform Appellant of her right to an independent blood sample. (R. 228-32, 702). Appellant refused to sign the blood collection report. (R. 231, 324). Two vials of Appellant's blood were collected and given to Minnix. (R. 234, 381-83). The portion of the blood collection report regarding Appellant's right to an independent blood test was checked in error by Floyd. (R. 378-79, 384, 702). According to Floyd, Minnix, and Dubose, Appellant never requested an independent blood sample in their presence. (R. 232-33, 325-26, 380, 385). Appellant acknowledged at trial that she never made a direct request to law enforcement for an independent sample. (R. 167). Appellant's blood was transported to SLED where it was analyzed by forensic toxicologist Kelly Budgen. According to Budgen's analysis, Appellant had a .210 blood alcohol concentration. (R. 423).

At trial, the State called Lance Corporal Bryan Ridgeway of the South Carolina Highway Patrol as an expert witness in accident reconstruction. (R. 465-66). The speed limit in the intersection where the accident occurred was 45 miles per hour. (R. 212-14). Ridgeway estimated that Appellant's vehicle was traveling at 64.6 miles per hour when she began to break and 55.92 miles per hour when her vehicle hit the black pickup truck. (R. 511, 513). According to Ridgeway, the wreck would not have occurred if Appellant had been traveling within the posted speed limit. (R. 531). Appellant was convicted of both counts at the conclusion of trial.

CURRENT APPLICATION

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Counsel
 - a. "Did not submit sufficient evidence."
2. "Tampered evidence."
 - a. "Not allowed independent blood test when asked for recording of speed limit from SCDOT."
 - b. "Based on how evidence I am innocent."
3. "Bias by Judge."

Applicant requests relief as follows:

"Time serve, sentence reduction."

Attached to this return and incorporated by reference are the Clarendon County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records from Applicant's direct appeal, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial 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; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Id. The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial

inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance 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. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Strickland at 696. Moreover, “there is no reason for a court deciding an

ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Strickland at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.”

Applicant alleges counsel was ineffective for failing to submit sufficient evidence. Applicant has not alleged with any specificity what evidence Counsel should have submitted that would have resulted in a different outcome at trial. Due to the vagueness of Applicant’s allegations, Respondent cannot sufficiently respond without additional information. Thus, Respondent requests Applicant, through appointed counsel, amend his application to provide supporting facts for these claims. To the extent Applicant’s allegations are not conclusively refuted by the record, the State requests an evidentiary hearing be held to fully resolve those issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

MOTION FOR MORE DEFINITE STATEMENT

In her application, Applicant fails to list specific facts to support her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” S.C. Code Ann. Section 17-27-50. In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965);

Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). See also Rule 8(a)(2), SCRPC (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRPC (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). “[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient.” *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Applicant has failed to state with any specificity the facts supporting these allegations she wishes to pursue on post-conviction relief. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant, through her appointed counsel, to provide a more definite statement of her allegations by filing an amended application **before** the scheduling of any hearing(s) in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . .

would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; see also Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

CONCLUSION

WHEREFORE, the State moves for a more definite statement on the claims of ineffective assistance of counsel and thereafter requests an evidentiary hearing be held on the amended claims.

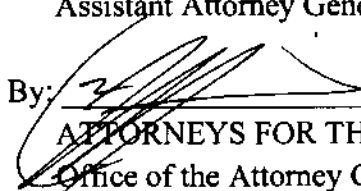
Respectfully submitted,

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Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
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January 8, 2024

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

Tammy D. Brown, #376553

Applicant,

V.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2023-CP-14-00248

Certificate 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 to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Timothy L. Griffith, Esquire
2338 Mount Vernon Dr
Sumter, SC 29154

DATED this 8th day of January, 2024.

Blue Man

**Blake Means, Legal Assistant
For Respondent**

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

Tammy Brown, #376553,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Case No. 2023-CP-14-00248

ORDER FOR CONTINUANCE

This matter comes before the Court by way of an application for post-conviction relief filed on July 14, 2023. An evidentiary hearing into the matter is scheduled for July 22, 2024, at the Sumter County Courthouse. Applicant's counsel, Timothy Griffith, is having difficulty communicating with Applicant who is incarcerated in SCDC and, as a result, requires additional time in which to prepare for an evidentiary hearing. Therefore, Applicant moves to continue this matter to the next regularly scheduled term of court for post-conviction relief for the Third Judicial Circuit. The State does not object to this continuance request. This Court finds that this matter should be continued until the next regularly scheduled term of court for post-conviction relief matters in the Third Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and rescheduled for the next regularly scheduled term of court for post-conviction relief for the Third Judicial Circuit; and
2. The Applicant shall remain in the custody of the State.

2024 AUG 29 PM 2:51
Beulah Roberts, Clerk-Clarendon S.C.

AND IT IS SO ORDERED this 18th day of July, 2024.

Kristi F. Curtis

The Honorable Kristi F. Curtis
Chief Administrative Judge
Third Judicial Circuit

Sumter

, South Carolina

State of South Carolina) In the Court of General Sessions
) Third Judicial Circuit
 County of Clarendon) 2023-CP-14-00248

Tammy Dianne Brown,)
)
)
) vs.) Transcript of Record
)
 The State of South Carolina.)
 _____)

August 18, 2025
 Clarendon, South Carolina

B E F O R E:

The Honorable Steven H. DeBerry, IV, Judge

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

Timothy Griffith, Esquire
 Attorney for the Applicant

Travis Cruise Mitchell, Esquire
 Attorney for the Respondent

Jackson Alexander
 Transcriber

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I N D E X

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1 PROCEEDINGS - AUGUST 18, 2025.

2 THE COURT: All right. Good morning.

3 MR. MITCHELL: Morning, your Honor.

4 MR. GRIFFITH: Good morning.

5 THE COURT: All right. So are we here on the -- on the
6 very first matter; is that right?

7 MR. MITCHELL: Yes, your Honor.

8 THE COURT: Okay. And that's 23-CP-14-278, Tammy
9 Brown; is that right?

10 MR. MITCHELL: That's correct, your Honor.

11 THE COURT: All right. Is everybody ready to proceed?

12 MR. MITCHELL: Yes, your Honor.

13 MR. GRIFFITH: We're ready, your Honor.

14 THE COURT: All right. Well, if -- if that's the case
15 -- and the witnesses are present?

16 MR. MITCHELL: Yes, your Honor.

17 THE COURT: Okay. I'd be happy to hear from you.

18 MR. MITCHELL: Your Honor, this is the post-conviction
19 relief matter of Tammy Brown. During its December 2014 term,
20 Clarendon County Grand Jury indicted Ms. Brown for felony
21 driving under the influence resulting in death, and felony
22 driving under the influence resulting in great bodily injury.

23 Ms. Brown was represented by Charles David Barr, then
24 the case was prosecuted by then Assistant Solicitor
25 Christopher Durant. On May 14 through the 18, 2018, Ms.

1 Brown proceeded to a jury trial before the Honorable R.
2 Ferrell Cothran, Jr. The jury found Applicant guilty as
3 indicted. On May 18, 2018, Judge Cothran sentenced Ms. Brown
4 to 15 years imprisonment for felony driving under the
5 influence resulting in death, and 12 years imprisonment for
6 felony -- felony driving under the influence resulting in
7 great bodily injury.

8 Ms. Brown filed a timely notice of appeal. The appeal
9 was perfected by Appellate Defender Adam S. Ruffin. In a
10 published opinion, the South Carolina Court of Appeals
11 affirmed Applicant's conviction. Applicant filed a petition
12 for rehearing, which was denied on June 23, 2022. Applicant
13 then filed a petition for writ of certiorari in the Supreme
14 Court, which was denied on June 27, 2023. The remittitur was
15 issued on June 28, 2023. And with that, your Honor, I'll
16 turn it over to Mr Griffith for his case.

17 THE COURT: All right. Mr Griffith?

18 MR. GRIFFITH: May it please the Court, your Honor? We
19 would call Tammy Brown to the stand.

20 THE COURT: All right.

21 MR. GRIFFITH: Tammy, you want to go sit over there on
22 that side over there.

23 MS. BROWN: Where?

24 MR. GRIFFITH: Where that gentleman is.

25 THE BAILIFF: Place your left hand on the Bible, raise

1 your right hand and state your name.

2 MS. BROWN: Tammy Dianne Brown.

3 TAMMY DIANNE BROWN,

4 being duly sworn, testified as follows:

5 THE BAILIFF: Thank you. Step around while I set that
6 up for you, please. State your complete name and spell your
7 last name for the record.

8 THE WITNESS: Tammy Dianne Brown, B-R-O-W-N.

9 MR. GRIFFITH: May it please the Court, your Honor?

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. GRIFFITH:

13 Q. Ms. Brown, I know that you're nervous, but try not
14 to be too nervous. We're -- we're going to just go over what
15 you and I have talked about for some time. And let the Judge
16 hear from you the grounds for your PCR. Now, do you have
17 that piece of paper with you that --?

18 A. It's on the desk. I missed and left it right
19 there. That's right there.

20 MR. GRIFFITH: Let me get that for you. Looks like
21 it's right on the top. If I may approach?

22 THE COURT: Sure, absolutely.

23 THE WITNESS: Okay.

24 BY MR. GRIFFITH:

25 Q. Now, Ms. Brown, when we were talking about your

1 grounds for PCR -- first let me say and remind you that at
2 one point, you told me that there was an offer made to you
3 prior to the trial; is that right?

4 A. Yes, sir.

5 Q. Do you remember how much that -- what that was
6 offered for?

7 A. It was five years.

8 Q. Okay. And you ended up with 15 years altogether,
9 right?

10 A. Yes.

11 Q. Okay. And so how long have you been there in the
12 prison now?

13 A. Seven and three months.

14 Q. Seven years and three months? And now you're at
15 Goodman?

16 A. Yes.

17 Q. Okay. And so one of the first things we talked
18 about is your attorney did not submit proof that the speed
19 limit at the time was 55 and not 35 as the State claimed,
20 even though the jury went to the scene. Tell us about that.

21 A. Well, me and Mr. Barr, we went to the accident
22 scene the night before trial. That had a Mother's Day night.
23 And -- and we went to the scene. We saw the speed limit, and
24 -- and we was fine. I thought we was fine with that. And --
25 but at trial, he went in a room with the judge and solicitor

1 and came back. And he said, "Tammy, the judge said that the
2 attorney general said the speed limit has changed to 35, not
3 55," and I couldn't believe what he said.

4 Q. And -- and the -- the way I understand it, there
5 was -- you're driving, and there was like a curve. And it
6 was one of those signs, yellow signs, that said -- show the
7 curve, and then the -- the suggested speed limit of 45 or 35,
8 whatever it was?

9 A. Was -- I lived on that road. I worked on the road
10 for 30-something years. I worked there at the time. I
11 worked at Eaton, Cutler-Hammer in Sumter -- here in Sumter.
12 And I lived on that road on Winters Hill Road also. And I
13 also -- Pilgrim's Pride too. So -- and all -- I lived -- I
14 worked on that road for almost all my life. And on that
15 road, it's -- from the truck stop, coming back towards
16 Paxville, it's 55. And then it goes down to 45 and into the
17 Paxville before we enter on Highway 15, going towards -- back
18 towards Sumter -- towards Sumter.

19 Q. Okay.

20 A. It doesn't -- it doesn't change until -- it
21 doesn't change until it gets to Paxville.

22 Q. Okay. At that time?

23 A. Yeah. 2018, yeah.

24 Q. All right. Well, can you tell us why you feel
25 that is grounds for a new trial?

1 A. Yes, sir. Because I have no -- I -- I was never
2 cited for speeding. And I was only cited for open container,
3 simple violation. And I had no reason to speed that night,
4 because I was almost home. I called my daughter, and I told
5 her to open the back door, because I'm almost to the house.
6 And she had my grandson ready for church the next day. And
7 she said, "Mom, okay. I'm going to open the door for you."
8 And I said, "Okay." And so I had no reason to speed. I
9 mean, I could see my house from where I was at, so why would
10 I even have to speed? I wasn't speeding.

11 Q. Okay.

12 A. I was going the speed limit.

13 Q. Well, what we're trying to establish is you're
14 saying that it was an ineffective assistance by your
15 attorney. How was he ineffective when it comes to that
16 particular...?

17 A. Because he -- he did not submit the correct speed
18 limit at trial, what I thought he was going to do. I had a
19 recording from the South Carolina Transportation that was
20 saying what the speed limit on the highway were -- was at my
21 trial. And he refused to even hear the -- the audio
22 recording of that employee from South Carolina Department of
23 Transportation, employee that I had recorded.

24 Q. Okay. All right. Now, next on our list --
25 unless, yeah -- yeah, do you want to say anything else about

1 that?

2 A. The speed limit, because the -- the Solicitor kept
3 saying in his opening and closing statement that the accident
4 wouldn't have happened if I wasn't speeding. And I wasn't
5 speeding. And --

6 Q. Okay. Well, let's look at the -- let's move on
7 down the next one. The trial attorney, your attorney, Mr.
8 Barr, didn't reject jurors who informed the court that they
9 were related to the assistant solicitor. Now, who was the
10 assistant solicitor? Do you remember?

11 A. I think it was Durant -- Mr. Durant.

12 Q. Chris Durant, that's correct. And so you're
13 saying that your attorney didn't reject jurors that said they
14 were related to Mr. Durant. Is that what you're saying?

15 A. Yes, sir, he did not. It was two jurors that were
16 related to Mr. Durant. One juror that he said he didn't want
17 to be part of the jury. He just couldn't do it. And the
18 other one said that he would be able to do it. And I -- I
19 said, "Mr. Barr, this is the man" -- they said how was he
20 related to Mr. Durant? And the guy said, "Well, me and his
21 grandmama" -- "his grandmama and my grandmama are sisters and
22 brothers." I said, "Mr. Barr, that's his cousin." He was
23 like -- and he ignored me like that, right?

24 So the next juror came up. And he's a young black guy
25 named "Todd McKenzie." He's the guy that actually booked me

1 in that night of my arrest. And I said -- when he -- and he
2 started to say -- he was in the courthouse, and the judge,
3 he's like asking something -- he -- something about me, and
4 he said, "Yeah, but I remember her, though."

5 I was like, "Mr. Barr, he booked me in that night. So
6 he knew about my case before it even happened." And I said
7 -- and he said, "We can't strike them all." I'm like, "But
8 this guy" -- "this guy is the one that took my picture,
9 booked me in and everything that night," and he sit on -- sat
10 on the jury anyway.

11 Q. And so you feel like your attorney should have
12 rejected these?

13 A. Yes, sir. I -- I felt like he should, because he
14 knew about -- I mean, he even said he knew my kids and
15 everything from school.

16 Q. Okay. Can you tell us any more about that?

17 A. It's just the fact -- I mean, I think that had a
18 lot to do with -- to have a fair trial, because it was like
19 they went inside a gable and picked Mr. Durant's friends and
20 family as my jury.

21 Q. Okay. Well, next thing it says you weren't
22 convicted of not wearing a seat belt; is that correct?

23 A. No, this -- this is what happened. I -- I -- I
24 applied for a jury trial on my old belt -- on --

25 Q. Seat belt.

1 A. Seat belt. Over to the violation. And at that
2 time, Mr. King Cutter was my -- Lewis King Cutter was my
3 public defender. And he was -- and he just kept trying to
4 get me to plea. And I said, "I want a jury trial." So the
5 day of, he called -- he sent me a letter. And he sent a
6 letter I thought was going to answer roll call. Come to find
7 out that I was going to have an actual hearing.

8 And he said, "Well, the State of South Carolina would
9 not allow me to represent you." I'm like, "Well, you're my
10 lawyer." He said, "Well, I can't represent you." And the
11 judge said -- well, at the time -- her name was "Robin
12 Locklear." She's a witness at my trial also for solicitor.
13 And she said -- because I had a picture of the seat belt burn
14 on my shoulder, and the cup was never tested, and there was
15 no liquid on the floorboard, nor in the cup.

16 There was no evidence against me -- against me, just
17 paid a \$65 fine or all bets are off. I paid a \$65 fine. I
18 got home. I called a friend. He said, "Tammy, you should
19 have never paid that fine if -- if -- if you were found
20 innocent." I said, "But I was." And that's when I found out
21 that -- that I was wrongly convicted in traffic court.

22 Q. Uh-huh. And so --

23 A. And that's when I fired him and fired Mr. Barr.

24 Q. Okay. And so had you known at the time that
25 pleading guilty to wearing a seat belt was later going to

1 come up, you would have not done it; is that correct?

2 A. Well, Mr. Cutter said that the violation was
3 supposed to come or had to come before the criminal trial
4 because it would have had a great impact on the criminal
5 trial if I'd be found guilty, if I didn't go take it to -- if
6 this -- if the violation had come before the criminal trial.
7 But it did not come before the criminal trial, which I felt
8 like double jeopardy.

9 Q. Now, when -- when you were taken to the hospital,
10 they took a blood test, right?

11 A. Yes.

12 Q. Now, according to your application, your attorney
13 didn't show you the urine sample or discuss it with you; is
14 that correct?

15 A. Well, what happened was, I was taken to the BA
16 room, blood alcohol room, because they didn't give me a blood
17 test at the scene. I was standing up after the accident,
18 standing looking around. And they did not give me a breath
19 test at the scene. But I was taken to the BA room, had a
20 blood -- had a breath test done. But he didn't have the
21 results of that, nor the urine sample either from the
22 solicitor.

23 Q. Okay. Now, were you at the time on Xanax?

24 A. Oh, yes, I was taking Xanax off and on for about
25 -- since my son passed away in 2004, as needed. And it was

1 August that year, so I should have been taking it during that
2 time, because it has the anniversary of his death. So yes, I
3 was -- I was prescribed that for that depression.

4 Q. Okay. And do you think that affected you as far
5 as anything --?

6 A. No, because I think I met -- I didn't -- I don't
7 remember when I actually took it. I didn't take it -- I
8 don't remember taking it that day. I knew I was taking it
9 along the way, year before, after his anniversary of his
10 death, as needed throughout the years. Years, not months,
11 not days, but years.

12 Q. Okay. And so -- but you wanted to see the results
13 of that urine sample, but your attorney didn't show it to
14 you; is that what you're telling us?

15 A. I don't think he had it.

16 Q. Okay.

17 A. I don't know if he had it or not. He didn't
18 discuss that with me. I know that it wasn't submitted in
19 court.

20 Q. Okay. Did you get a chance to see the -- the
21 results of the blood test before the trial?

22 A. I heard about it. I've seen them, yeah.

23 Q. Okay. All right. And now, let's talk about some
24 of the things that happened at the trial, as far as the
25 prosecutor. Mr. Durant -- you're saying that -- you're

1 talking about a nurse. When -- when you went to the
2 hospital, evidently you wanted an independent blood test; is
3 that correct?

4 A. Yes, because the -- the officer didn't say
5 anything about it, but the nurse did. And she said, "You can
6 have an independent test." I said, "What's that?" She said,
7 "A test for you if you're going to" -- "if you" -- "if you
8 have to dispute it later on in court." And I said -- I
9 refused at first, because I'm afraid of needles. I said,
10 "Can my daughter come in with me?" And she said -- and the
11 officer said, "No, she cannot come back here with you."

12 And that's when they went -- and I guess they went and
13 got a warrant to take my blood from me. And when they was
14 taking the blood, I -- I think I signed. It was --
15 everything is in business pieces now. I think I signed some
16 papers. Oh, yeah, I asked him -- I heard my -- my doctor's -
17 - doctor's side voice in the hospital somewhere, another
18 room, whatever. I said, "Well, can he do it for me?" No one
19 ever responded to anything that I asked them to do, not even
20 had my daughter come back there with me to see what's going
21 on with me back there.

22 So I turned my head, and they drew my blood, but I
23 wasn't given an independent sample. And so at trial, when
24 Mr. Barr talked about on the independent sample, and he said
25 -- and he said, "Well, why" -- "didn't she ask for one?" And

1 she said she don't remember, but she said she remember
2 drawing one vial, but not two vials. And he actually said --
3 and they said -- well, an officer said that they -- they
4 checked the box by mistake.

5 And Mr. Barr said, "Well, after three and a half years
6 or four years, you just magically say that you made a mistake
7 and checked an independent box for Ms. Brown?" And she said,
8 "No." And he -- and she said she didn't know until Solicitor
9 Durant found her, took a picture of the independent blood
10 sample check box, and told her that she made a mistake. Then
11 Mr. Barr said, "So you did not know that you could have made
12 a mistake in three and a half years about an independent
13 blood sample if he wouldn't notify you through a text
14 message?" She said she wouldn't have.

15 Q. So as far as prosecutorial misconduct, you -- what
16 you're saying is that he influenced that witness --

17 A. Yes, sir.

18 Q. -- to say that she did not check that on purpose?

19 A. Yes, tampering with evidence, I believe.

20 Q. All right. And basically influenced that witness
21 to --

22 A. Yes, sir.

23 Q. -- perjure herself --

24 A. Yes.

25 Q. -- or change her testimony?

1 A. Yes.

2 Q. And had that not happened, you think that would
3 have made a big difference in the trial?

4 A. Yes, because when I went back over my trial notes,
5 the -- the -- the blood samples case numbers were actually
6 different. And -- and they were actually totally different
7 in numbers and in letters. I checked it three times. That's
8 why I feel like it might have mixed them up or switched them
9 up so much -- so many other stuff was going on underhand.
10 That's why I felt like a lot of this stuff here was just --
11 could be done the same way too, because the -- the sample
12 didn't match.

13 Even at trial, when the -- when the -- so witness was
14 calling out the number to the case number, Mr. Barr said,
15 "Huh?" And he -- and Mr. Barr repeated, gave him the actual
16 case number himself off his own piece of paper, not off the
17 paper of the other person -- the witness had.

18 Q. Uh-huh. Okay. And under prosecutorial
19 misconduct, we also said -- you -- you had some questions
20 about the warrant?

21 A. Yes.

22 Q. Tell us about that.

23 A. Well, the judge -- trial judge said that the
24 warrant was defective -- defective on its face, and there was
25 no probable cause. And even the solicitor said it also. But

1 the judge said that he would supplement the oral statement of
2 the officer for that affidavit. But I feel like he made --
3 he erred in that because the solicitor's office prepared the
4 affidavit, not the troopers.

5 Q. Okay. Then you talk about the -- the prosecutor,
6 Mr. Durant, abuses discretion. He did not present a urine
7 sample or the analysis. What -- why do you feel that would
8 be prosecutorial misconduct?

9 A. Say that again, repeat that.

10 Q. The prosecutor did not -- he did not present the
11 urine sample or the analysis of it. Abuse of discretion, you
12 had that in there.

13 A. Yes.

14 Q. Tell us about that.

15 A. Because they -- I don't -- I'm not sure which one
16 is more accurate. The breath test at the scene would have
17 been more accurate, and the urine sample, because even the
18 witness said that -- Minnix said that he did not -- when he
19 put the urine sample in the box with the blood, he did not
20 sign it or dated it. So it could have gotten mixed up
21 anywhere and within the SLED agency, I don't know. But he
22 said he did not -- before he put it in the box, he did not
23 date it, nor sign it.

24 Q. Okay. And then, you -- you did want to talk a
25 little bit about the -- the judge having a family member who

1 was injured by a drunk driver. Tell us about that.

2 A. Well, before that, Mr. Cutter, he took me to two
3 of Judge Cothran's DUI cases. And he actually sentenced the
4 two cases -- persons the same, 11 years, regardless of the
5 circumstances, or situations surrounding the circumstances.
6 And within my case, when I was in prison -- when I'm in
7 prison now, and I came upon Westlaw, and I saw his name
8 popped up. And it was under -- he -- he sued a person -- a
9 state for a case almost identical to mine.

10 And that's why I feel like he shouldn't have been on my
11 trial because he had a family member that lost himself
12 looking for his dog on a highway when a car hit him, thinking
13 that they were in the wrong lane. And that's why I feel like
14 he was -- he -- he was just too close for that scenario to be
15 on my trial.

16 And before that, when Mr. -- I had Mr. Cutter at the --
17 still yet as my attorney, and I -- I had (inaudible) case
18 going the same time. And I -- and I fired Mr. John Land for
19 my -- for my case, because he didn't want to represent me
20 right. He didn't care if I go sit in the corner with my \$5
21 on food stamps or whatever, that's what he told me. So I
22 fired him on the way to Camden. And Mr. Cutter said, "Well,
23 Tammy, you shouldn't have done that because he's going to be
24 over your trial. And -- and him and -- John Land and the
25 judge play golf together. And they're going to discuss your

1 case."

2 Q. Okay. Now, do you have anything else you want to
3 express to the judge -- to the Court as to why you should
4 have a new trial?

5 A. Yes, sir. It's because I -- within my transcript,
6 I'm reading everything. And I'm feeling like I tried my best
7 that night when they pulled out the stop. We actually lived
8 in the -- in the same area on our way home. And -- and all I
9 remember is just -- I get to phone my daughter. And -- and
10 as soon as I got the phone with her, an 18-wheeler was coming
11 this way, I was going that way over the hill.

12 And as soon as I got to Boyd Road, that's when I -- the
13 18-wheeler just had its lights on and it was blowing its
14 horn. And as soon as I seen the silver thing in the road, I
15 pulled, I -- I slammed down my brakes, and my car just skid.
16 And I thought it was going to stop. And I got out. When I
17 got out of the car, the airbags and stuff were just going.
18 And I got out of the car. And I didn't see nobody.

19 And I'm like, "Now my mind is playing tricks." I was
20 like, "I knew someone was just in front of me. I just don't
21 know what happened. I can't see where he's at." And then I
22 reach in the car. And I found my cell phone. I called my
23 daughter out to see if she'd come down here because someone
24 pulled out in the highway, and I can't -- I don't know where
25 the person is at.

1 Q. It's okay. Take your time.

2 A. And I don't know where the person is at. And then
3 -- so she came and trooper tell her -- and say I'm going to
4 spend 25 years in jail. And -- and every day I would just go
5 to work. And I -- and I would go to that site and ask God to
6 show me what I'm missing -- to show me what I'm missing
7 because -- because I lost a child before, and I know how it
8 feels for someone to lose somebody. And I didn't want to be
9 the cause of someone losing someone. And I just wanted the
10 truth to come out from everything. Sorry. And I thought
11 that police department was going to help me figure stuff out.

12 Q. I understand.

13 A. Because I did not want nobody to lose their life.
14 And I didn't want to be responsible for it because I just
15 kept going out there trying to figure out what I missed,
16 anything. And ask God to show me because I didn't want that
17 -- I didn't want that person to have a grave like my son do.
18 And I just feel like I tried. I tried for us, for me and --
19 and them to get home. And I didn't want nobody to get hurt.

20 Q. Let's -- let's talk about one more thing. Mr.
21 Barr -- you said that you had an offer of five years if you
22 wanted to plead guilty. Did Mr. Barr talk to you about that
23 at all, about whether or not you should take that?

24 A. Well, he did not. He just -- at the fourth day of
25 -- fifth -- fourth day of trial, he -- he -- we entered the

1 room and he was like, "Tammy, they offered you five years."
2 I said, "Mr. Barr, you know what happened. You know the" --
3 "the" -- "the" -- "the" -- "the truck was on top of my car.
4 I don't know how it moved from there from when we first made
5 contact." And he even said they hit the gas or whatever.
6 And I'm like, "Mr. Barr, you're doing good. You're doing
7 good."

8 He said, "Tammy, it's not a matter of me doing good."
9 He said, "You know, this is the state you're in and the
10 county you're in. You need to go ahead and just do this."
11 I'm like -- my cousin Angie was there. And she said, "Well,
12 Mr. Barr, how much time is she going to do out of five
13 years?" And he didn't answer her.

14 So -- and with that, I felt like -- after he said that
15 the judge said the solicitor -- after he said that the judge
16 said that the attorney general changed the speed limit, I --
17 I didn't trust him anymore or anything because he betrayed
18 me. He -- he just -- he just betrayed me. He just threw me
19 away. He just didn't do what he said he was going to do. He
20 was going to help me. And I didn't trust him no more than I
21 thought I would. He just left me by myself.

22 Q. So if you had known -- if he had taken the time to
23 tell you a little bit more about why he thought you should
24 take that five-year offer, do you think you would have taken
25 it?

1 A. Yeah, because I know that we were out there. And
2 -- and we didn't mean for none of that to even encounter with
3 each other. And -- and I'm so sorry because I just -- my
4 best wasn't good enough. And I just felt like, yeah, if he
5 would have explained to me more, I -- I would -- I would
6 have. I would have had to suck it up and say to him -- you
7 know -- you know, you were out there, this happened. You
8 didn't mean it to happen. Let's just get it over with. You
9 know, I was just not wanting to -- it was so much that was so
10 unclear to me. And I just wanted answers. I just wanted to
11 fill in the blanks.

12 Q. Is there anything else you want to let the judge
13 know before we have the attorney general question you?

14 A. Yeah. So far, I know people don't care what
15 happens in prison, but I was selected by the State to
16 participate complete ATU, which is a drug alcohol program for
17 six months. At first, I must admit that I fight it, I
18 kicked, I cried, I thought it wasn't going to benefit me, but
19 it did. Thank God it did.

20 It helped me to -- a lot -- accept a lot of things, and
21 bury a lot of things at the same time, which now that I can
22 actually go home and feel like I can do this now, I can live
23 and put the past behind me and be a better person. So my
24 family, my grandkids, and my children, they benefit me a lot.
25 I thank God for the State to pull me in when I didn't -- when

1 I wasn't court-ordered.

2 MR. GRIFFITH: Okay, I understand. Now, the attorney
3 general is going to ask you some questions, possibly.

4 THE WITNESS: Okay.

5 MR. GRIFFITH: Please answer those, okay?

6 THE WITNESS: Okay.

7 MR. MITCHELL: Just very briefly, your Honor.

8 THE COURT: Sure.

9 CROSS-EXAMINATION

10 BY MR. MITCHELL:

11 Q. Ms. Brown, you were represented by Mr. Barr,
12 correct?

13 A. Yes, sir.

14 Q. And Mr. Barr made several pretrial objections; is
15 that correct?

16 A. Yes, he did.

17 Q. And was one of those -- he -- he moved to suppress
18 the -- the blood sample, correct?

19 A. Yes.

20 Q. And one of the reasons he did that was because you
21 had requested this independent blood test?

22 A. Yes.

23 Q. And so he -- he objected on that basis, right?

24 A. Excuse me?

25 Q. Mr. Barr objected to the blood sample based on you

1 requesting the independent blood test?

2 A. His request was denied, is that what you're
3 saying?

4 Q. Yes.

5 A. Yes.

6 Q. And Mr. Barr also objected for the -- the
7 defective search warrant as well; is that correct?

8 A. Yes.

9 Q. And, Ms. Brown, was your -- was your urine
10 analysis ever admitted in court?

11 A. I'm not sure. I -- I'm not sure. I mean, I'm not
12 sure.

13 Q. You testified at trial, correct?

14 A. Yes.

15 Q. And you testified as to the -- the 18-wheeler
16 pulling in front of you?

17 A. The 18-wheeler in the opposite lane of me. He was
18 -- yeah, he was coming -- he was coming this way, and I was
19 going on the hill. I was coming back with next towards my
20 house, next towards Manning. He was going towards Paxville,
21 I was going towards Manning.

22 Q. And you testified to that at trial, correct?

23 A. Yes.

24 Q. And Mr. Barr offered you -- I mean, told you about
25 the five-year plea offer during trial?

1 A. He did briefly, sir. Yes, he did. He mentioned
2 it.

3 MR. MITCHELL: I think that's all I have for you, Ms.
4 Brown.

5 THE WITNESS: Okay.

6 MR. GRIFFITH: Ms. Brown, you can come back over here.
7 Unless the judge has any questions.

8 THE COURT: I don't have any questions. Thank you so
9 much.

10 MR. GRIFFITH: I have no further witnesses, your Honor.

11 THE COURT: All right. Is State calling any witnesses?

12 MR. MITCHELL: Yes, your Honor. The State will call
13 Mr. Charles David Barr.

14 THE COURT: All right.

15 THE BAILIFF: Place your left hand on the Bible and
16 raise your right hand and state your name.

17 MR. BARR: Charles David Barr.

18 CHARLES DAVID BARR,

19 being duly sworn, testified as follows:

20 THE BAILIFF: Thank you. You may step -- step around,
21 please. You will need this?

22 THE WITNESS: I mean, if I need it, I'll just reach
23 over and get it. I mean -- I don't know.

24 THE BAILIFF: State your complete name and spell your
25 last name for the record.

1 THE WITNESS: Charles David Barr, B-A-R-R.

2 DIRECT EXAMINATION

3 BY MR. MITCHELL:

4 Q. Good morning, Mr. Barr.

5 A. How are you this morning?

6 Q. I'm good. How are you?

7 A. I'm blessed.

8 Q. Mr. Barr, how long have you been practicing law?

9 A. 48 years.

10 Q. 48 years. And has a lot of that been in criminal
11 law?

12 A. Yes, sir.

13 Q. And, Mr. Barr, were you retained to represent Ms.
14 Brown?

15 A. I was hired.

16 Q. And did you meet with Ms. Brown prior to trial?

17 A. Yes, I did.

18 Q. And to the best of your recollection, Mr. -- Mr.
19 Barr, can you briefly explain the facts in the case and the
20 State's evidence?

21 A. It's -- it's been such a long time ago. She was
22 -- she was tried for felony DUI. And I think she and I, as
23 she -- as she indicated on the -- on the direct examination,
24 we -- we went over -- this was right before the -- the trial,
25 and we went over the route that she took. Of course, I was

1 -- I was familiar with the route. I commuted and drove that
2 -- that -- that route for 10 years every day when -- when I
3 lived in Columbia and commuted to Kingstree.

4 But we went -- we went back over it, and I got her
5 involvement as to what took place. And I think we went to
6 her house, to the -- the residence where the -- the -- the
7 young man had got killed and then -- and then one had got
8 injured. Looked over the accident scene.

9 Q. And prior to trial, Mr. Barr, did you -- do you
10 recall any motions you made?

11 A. I -- I -- I don't recall. I -- I know that
12 whatever motions I made, they -- they send a record. And you
13 sent me a copy of the record yesterday. I didn't get a
14 chance to go through all of it.

15 Q. And if the record reflects that you objected to
16 the blood sample on the basis of Ms. Brown requesting an
17 independent blood test?

18 A. Well, the record would reflect what our position
19 was as it relates to what would have been more favorable to
20 her. And it would have been favorable to keep the results of
21 any blood tests out of evidence.

22 MR. MITCHELL: Beg the Court's indulgence, your Honor?

23 THE COURT: Yes, sir.

24 BY MR. MITCHELL:

25 Q. And do you have any recollection about the search

1 warrant issues in this case?

2 A. I'd -- I'd have to just rely on -- on what -- what
3 is stated in the record, because I know that -- I -- I do
4 remember that -- that we filed a pretrial motion to suppress,
5 but the details of it, as I said, it would -- it would have
6 been spelled out in the -- in the -- in the trial record.
7 It's been such a long time ago, I just don't remember. I've
8 tried a lot of cases from -- from -- from that case until
9 now, and I -- I can't remember the details of all of them.
10 But it's in -- it's set forth in the record.

11 Q. And do you remember the issue with the speed limit
12 coming up at trial?

13 A. The issue did come up. We did quite a bit of
14 work, including -- I think, we -- we got the -- the new
15 handbook. That -- that speeding issue was -- was -- was
16 problematic. But here -- here -- here is it, and I mentioned
17 it to you. The -- the problem with -- with -- visually, the
18 -- the impact from the collision bit the chassis of the -- of
19 the little truck into an L.

20 That's -- that's not -- you know, that's -- that's --
21 that's -- that's a collision. I've never seen that done
22 before. But that's -- in -- in -- in my assessment, that was
23 probably the thing that -- one of the things. And besides
24 that, the -- the agents that -- the experts that -- main
25 team, they were as good as I've ever seen anybody. Those men

1 were -- were sharp.

2 And -- and, of course, they testified, at least the one
3 that prepared the case regarding the speed issue, he -- he --
4 he -- he testified. And -- and they were -- they were just
5 -- and -- and that's part of what -- that's part of what I
6 tried -- why I tried to get Ms. -- Ms. Brown. I don't know
7 what her memory is now to accept five years. But there was
8 somebody in the room with her, I thought it was her daughter,
9 that I felt like influenced her and persuaded her.

10 She felt like the evidence was -- was -- was such that
11 the jury could find her not guilty. But -- I mean, that's --
12 I've tried a lot of cases. You -- you can't ever tell what a
13 jury is going to do. I thought it would have been in her
14 best interest to go ahead and accept the plea offer. And I
15 tried to convey that to her. But I -- I learned today that
16 she's -- she distrusts me. So -- I mean, that's -- that's
17 part of practicing law.

18 Q. But the plea offer was conveyed to Ms. Brown?

19 A. Oh, yeah. The plea -- the plea offer -- the last
20 plea offer, we stopped the trial. And Judge Cothran allowed
21 us to go to a conference room and -- and discuss it. This
22 was -- we were near the end of the trial. And we went in the
23 conference room right off from the -- the courtroom. And
24 Ms. Brown and -- and myself and there's somebody else in
25 there, like I said, I thought it was her daughter in there

1 with her. That's my recollection. But I -- I know that
2 person was very persuasive in -- in what they had to say to
3 Ms. Brown about whether or not she should accept -- not
4 accept -- she -- not accept the plea offer, and she didn't
5 accept it.

6 Q. And that was her own choice?

7 A. Her own choice, yeah.

8 Q. And, Mr. Barr, do you -- do you recall making a
9 directed verdict motion in this case?

10 A. I'm sure I did.

11 Q. And do you remember arguing that -- in your
12 directed verdict motion that the State has failed to present
13 evidence of -- that Ms. Brown neglected to do any duty
14 imposed upon her by law?

15 A. We -- we -- we always do that. I mean, that's --
16 that's the cardinal rule in a criminal trial.

17 Q. And regarding the speed limit issue, do you recall
18 asking the jury to go visit the crime scene?

19 A. We asked the judge for -- and he granted us a
20 motion to allow the -- to allow a visual inspection.

21 Q. And do you remember what your strategy was for
22 that?

23 A. If I'm not mistaken, I think we had to change
24 where the -- the little truck that got hit, where they were
25 actually going. There was another road that was very close

1 to the intersection where the collision took place. And the
2 evidence was such at that point that I didn't think we had a
3 chance saying that -- that the little truck was coming from
4 -- from where Ms. Brown said it was coming from, or going
5 where she said it was going.

6 There was another road there. And we even -- we took a
7 van, I believe, and -- and -- and turned around in the road
8 when we went out to do the visual inspection. But -- but
9 that was -- that was an issue in the case. And -- and -- but
10 I thought we offered an explanation -- a reasonable
11 explanation, as to where -- where the -- the vehicle with the
12 two men in it, where -- where they were actually attempting
13 to turn.

14 Q. And also, Mr. Barr, in -- in your closing, you
15 stated that you wanted the jury to see it so they could see
16 the speed limit sign for themselves as well, do you recall
17 that?

18 A. Well, we -- we -- we -- we went down and -- and --
19 and the jury saw -- they -- they saw the speed limit signs.

20 Q. And you testified earlier about the main experts
21 testifying?

22 A. Yes.

23 Q. And do you recall the speed that they estimated
24 Ms. Brown to be traveling at?

25 A. I think -- I think -- I think one of the experts

1 said 65. I -- I believe that's what he said, I'm not sure.
2 But it certainly was not 35, or...

3 Q. Mr. Barr, do you recall objecting to the State not
4 establishing a chain of custody as to the blood?

5 A. I believe -- I believe that was one of our -- one
6 of our objections.

7 MR. MITCHELL: Beg the Court's indulgence, your Honor?
8 BY MR. MITCHELL:

9 Q. And as far as the jurors are concerned, do you
10 have any recollection of --?

11 A. Well, we -- we -- we would have -- you know, I
12 don't -- I -- I don't ever -- during jury selection, I always
13 consult with my clients about whether or not we ought to put
14 somebody on the -- on the -- on the jury. And -- and I have
15 never ever, since I've been practicing law, if -- if I've got
16 a client that in spite of my rationale for not putting
17 somebody on the jury, if my client says, "I don't want that
18 person on there," then I'm going to -- I'm going to strike
19 them. If I've got any more strikes, I'm going to utilize a
20 -- peremptory utilize a strike to get that person on.

21 Q. So if Ms. Brown requested you to strike a jury,
22 you would have?

23 A. Yes, sir.

24 MR. MITCHELL: Mr. Barr, I think that's all I have for
25 you.

1 THE COURT: Thank you, sir. Mr. Griffith?

2 MR. GRIFFITH: May it please the Court, your Honor?

3 CROSS-EXAMINATION

4 BY MR. GRIFFITH:

5 Q. Mr. Barr?

6 A. Yes, sir.

7 Q. Good day, sir?

8 A. How are you this morning?

9 Q. So far, so good. I just have a few questions for
10 you, Mr. Barr. Do you remember in that trial, the victims of
11 this tragedy, they were -- they were also ticketed, correct?

12 A. They were what now?

13 Q. Ticketed? Received tickets?

14 A. I -- I -- I just -- I don't remember.

15 Q. Now, on the five-year offer, did you have time to
16 explain to her that -- what you felt like her chances were on
17 this jury?

18 A. I most certainly did. Judge Cothran gave us all
19 the time we wanted.

20 Q. I'm sorry, I missed that.

21 A. I said, "Judge Cothran gave us all the time we
22 wanted." And -- and I took the time to explain to her my
23 rationale for recommending that she accept the plea offer.

24 Q. Do you think that she was capable of making that
25 decision at that time?

1 A. Absolutely, she was.

2 Q. And -- and as far as the jurors -- of course, you
3 know, you don't get so many strikes, but she said that you
4 didn't reject certain jurors that she wanted you to reject.
5 What's -- what can we -- can you help us with that?

6 A. Well, maybe she can explain it to you. But -- I
7 mean, I wouldn't have done -- if she wanted the jury --
8 jurors struck, it's -- it's my policy as a defense lawyer,
9 even though I may have what I consider to be judgmentally a
10 good reason for not putting somebody on the jury, if my
11 client says, "I don't want that person on" -- I mean, unless
12 it violates Batson or something like that, I'm going to --
13 I'm going to usually do what -- what they want, because after
14 all, they're going to be the ones that are going to complain.

15 MR. GRIFFITH: Right. I have no further questions,
16 sir.

17 THE COURT: Anything further?

18 MR. MITCHELL: No re-direct, your Honor.

19 THE COURT: All right. Thank you, Mr. Barr.

20 MR. BARR: Thank you, Judge.

21 MR. MITCHELL: Your Honor, the State would just briefly
22 call Mr. Christopher Durant.

23 THE COURT: All right.

24 MR. MITCHELL: Your Honor, may Mr. Barr be excused?

25 THE COURT: I don't have any issue. Mr. Griffith, any

1 reason you think Mr. Barr shouldn't be excused?

2 MR. GRIFFITH: No, your Honor, Mr. Barr should be
3 excused. Thank you.

4 MR. BARR: Thank you, Judge.

5 THE COURT: Yes, sir. Have a good day.

6 THE BAILIFF: Place your left hand on the Bible and
7 raise your right hand and state your name.

8 MR. DURANT: Chris Durant.

9 CHRISTOPHER RYAN DURANT,
10 being duly sworn, testified as follows:

11 THE BAILIFF: Please have a seat, please. State your
12 complete name and spell your last name for the record.

13 THE WITNESS: Christopher Ryan Durant. Last name is
14 D-U-R-A-N-T.

15 DIRECT EXAMINATION

16 BY MR. MITCHELL:

17 Q. Good morning, Mr. Durant.

18 A. Good morning.

19 Q. Mr. Durant, where are you currently employed?

20 A. I'm in private practice at Johnson Durant based
21 out of Manning.

22 Q. And at the time of Ms. Brown's trial in 2018,
23 where were you employed?

24 A. I was employed part-time as an assistant solicitor
25 in the Third Circuit.

1 Q. And did you prosecute Ms. Brown's case?

2 A. I did.

3 Q. Mr. Durant, you were present for the testimony
4 regarding the independent blood test?

5 A. Yes.

6 Q. Do you have any recollection -- first of all, was
7 there a pretrial objection made to the independent blood
8 test?

9 A. Yes -- yes, I believe testimony was actually
10 proffered by Ms. Brown. That's -- that issue.

11 Q. And do you recall the nature of her testimony on
12 the record?

13 A. I believe in her proffered testimony that she
14 acknowledged that she did not in fact ask the nurse for an
15 independent sample.

16 Q. And the -- the nurse testified at Ms. Brown's
17 trial too; is that correct?

18 A. Correct.

19 Q. And there's been an allegation that you pressured
20 the nurse to falsely testify that she erroneously checked off
21 the box. Is that what happened?

22 A. No -- no.

23 Q. And as to the form, do you remember what the nurse
24 testified to?

25 A. My recollection, the nurse testified that she had

1 checked that box in error. My recollection is actually that
2 the -- the check mark was somewhat of a stray mark, but it
3 was close to the box, pursuant to which the -- the suspect
4 would request an independent sample. But I believe the nurse
5 testified that that box was checked in error.

6 Q. And that was the nurse's own testimony?

7 A. Yes.

8 Q. And do you recall a pretrial objection on the
9 search warrant?

10 A. Yes.

11 Q. Do you recall the issue regarding the defective
12 nature of the search warrant and how the judge went and
13 ruled?

14 A. Yes, I think the allegation was that the -- or the
15 argument rather, was that the -- the search warrant affidavit
16 did not contain probable cause. It was more conclusory. And
17 so there was testimony from both the officers and, I think,
18 the magistrate judge as well, regarding -- regarding actual
19 verbal comments that were made when the search warrant was
20 acquired.

21 Q. And the trial -- the trial judge denied that
22 motion, Mr. Barr's motion --

23 A. That's correct.

24 Q. -- for suppression of evidence?

25 A. Yes.

1 Q. Mr. Durant, do you remember presenting testimony
2 regarding the speed limit in this case?

3 A. Yes, I remember the speed limit issue. As Mr.
4 Griffith described the -- this was a -- the -- it's Highway
5 261 going from Manning towards Paxville. And the -- the
6 speed limit for that highway is 55 miles per hour. And there
7 was a curve wherein this accident occurred, and there was a
8 yellow sign in advance of that curve.

9 And that yellow sign had the -- the arrow describing
10 the -- the nature of the curve. And within the yellow sign,
11 it reduced the speed limit to 45. So the speed limit was
12 reduced from 55 to 45 in the area in which the accident
13 occurred. I remember there being conversation about whether
14 or not that yellow sign is actually just kind of an advisory
15 to reduce your speed in that area, whether it amounts to an
16 actual reduction of the speed limit.

17 Q. And did a main expert testify in this case?

18 A. Yes.

19 Q. And do you recall his -- in his actual opinion how
20 fast Ms. -- Ms. Brown was traveling?

21 A. I didn't have any independent recollection, but 65
22 I think is what was testified to earlier in this hearing, and
23 that's -- that's consistent with the recollection that I do
24 have. Greater than the 55-mile-per-hour speed limit that it
25 would have been if this 45-mile-per-hour sign didn't actually

1 reduce the speed limit.

2 MR. MITCHELL: I think that's all I have for you,
3 Mr. Durant. Thank you.

4 THE COURT: Mr. Griffith?

5 MR. GRIFFITH: May it please the Court, your Honor?

6 CROSS-EXAMINATION

7 BY MR. GRIFFITH:

8 Q. Mr. Durant?

9 A. Morning.

10 Q. I had asked Mr. Barr if he recalled whether the --
11 the victims had also been ticketed, or if it was known
12 whether they -- they had also been intoxicated. Were you
13 aware of any of that?

14 A. Well, I don't think they were ticketed. One --
15 one died at the scene, or very shortly thereafter, and I
16 can't remember whether it was the driver or the passenger
17 that -- that died, and the other received very serious
18 injuries. I don't believe either was ticketed. I wouldn't
19 say it was the driver that died, but I -- I -- I do think
20 that there was some evidence that they were impaired as well.

21 Q. Okay. I wanted to ask you that. Now, as far as
22 the nurse, did you talk to her at pretrial?

23 A. I'm sure we had a conversation before her
24 testimony.

25 Q. And at some point, did the mark on this form --

1 you discussed with her this mark?

2 A. It's possible. You know, we -- I had a
3 conversation like I do with any witness that -- you know,
4 would call and testify as to these issues.

5 Q. And is it true that before your conversation, she
6 felt like she had checked the mark for an independent
7 examination; is that right?

8 A. Is it true that before I spoke to her the nurse
9 --?

10 Q. Her opinion was that she had checked; is that
11 correct? It was checked?

12 A. No -- no. I -- I did not ask the nurse to change
13 her opinion or her testimony. I did not try to convince her
14 to do that either.

15 Q. Now, as far as this sign, you're going down the
16 road, it's 55 miles an hour, you come to this yellow sign
17 that says there's a curve. Now, there's not always a
18 suggested speed limit on those. Those are just warning you
19 that there's a curve, correct?

20 A. Well, I -- I think, as was alluded to earlier, we
21 had discussed this issue. I had offered the court an
22 attorney general's advisory opinion pursuant to which the
23 AG's office is of the opinion that the sign actually does
24 reduce the speed limit, that it reduces the -- the legal
25 requirement that you drive 45 miles per hour in that zone.

1 Q. Right. And so, if it says 45 on it, you're saying
2 that the attorney general has determined that that means the
3 speed limit goes down to 45, right?

4 A. That's my understanding, yes.

5 Q. And -- but, when you were talking to the judge
6 about it, didn't the judge also think that was just a
7 suggestion? Judge Cothran?

8 A. That may have been --

9 MR. MITCHELL: Your Honor, how would Mr. Durant feel
10 after he testifies as to what Judge Cothran --?

11 MR. GRIFFITH: Well, that is -- they discussed it.

12 BY MR. GRIFFITH:

13 Q. And in their discussion, did he state that that --
14 that he thought that that was just a suggestion?

15 A. There was some conversation in chambers, and --
16 and it would just be -- I don't feel comfortable enough
17 reciting the details of that conversation now seven years
18 later.

19 Q. Okay. Just -- just checking. Now, as to the
20 jurors, one of the jurors was, in fact, your cousin; is that
21 correct?

22 A. I believe so, that there was a -- a juror by the
23 last name "Bleasdale," who was a third cousin or second
24 cousin once removed, or whatever the terminology is.

25 Q. Did the judge ask him prior to being selected that

1 he could be impartial?

2 A. Yes, my recollection is he didn't even know how we
3 were related.

4 Q. Okay. But it did come up that you may be related?

5 A. It was disclosed, yes. Yeah.

6 Q. Okay.

7 A. And it came up during jury selection. Yeah.

8 Q. Did the judge ask if he could be impartial?

9 A. Yes, and evidently he replied that he could.

10 Q. Okay. And so also, there was the former
11 corrections officer that was on the jury. Do you recall
12 that?

13 A. I do not recall that.

14 Q. Okay. Let me see. Now, as far as this warrant,
15 initially you signed the warrant; is that correct?

16 A. No.

17 Q. Okay.

18 A. Signed the search warrant?

19 Q. No -- no, the warrant for her arrest. Probable
20 cause.

21 A. No, I have never signed an arrest warrant in my
22 life.

23 Q. Okay. I just had to ask that.

24 A. Only a magistrate judge has to sign an arrest
25 warrant.

1 MR. GRIFFITH: Exactly. I have no further questions
2 for you.

3 THE COURT: All right.

4 MR. MITCHELL: No re-direct, your Honor.

5 THE COURT: Okay. Thank you, sir.

6 MR. DURANT: Thank you.

7 MR. MITCHELL: Your Honor, that's the State's case in
8 this matter.

9 THE COURT: All right. Anything further from the
10 Applicant, Mr. Mitchell? I'm sorry, Mr. Griffith?

11 MR. GRIFFITH: I have nothing further, your Honor.

12 THE COURT: All right. Is there any objection to
13 Mr. Durant being excused?

14 MR. GRIFFITH: No.

15 MR. MITCHELL: No objection, your Honor.

16 THE COURT: All right.

17 MR. GRIFFITH: No objection.

18 THE COURT: Thank you, sir.

19 MR. DURANT: Thank you.

20 THE COURT: All right. Well, if that's the
21 presentation of all evidence, I'd be happy to hear closing,
22 if you'd like -- if you like.

23 MR. MITCHELL: Your Honor, I would -- the State submits
24 that Ms. Brown has failed to meet her burden of establishing
25 ineffective assistance of counsel. Regarding the speed limit

1 issue, your Honor, Mr. Barr was clearly not deficient.

2 Mr. Barr cross-examined multiple witnesses throughout trial
3 regarding the -- the speed limit. Mr. Barr, in his directed
4 verdict motion, argued to the trial judge that the State had
5 failed to present sufficient evidence that Ms. Brown
6 neglected a duty imposed upon her by law.

7 The trial court, in his ruling, denied the directed
8 verdict motion, stated that the State had presented evidence
9 that Ms. Brown was, in fact, speeding. Mr. Barr got the jury
10 to go visit the scene. He argued in closing he did that so
11 they could see for themselves that it was clearly a
12 55-mile-per-hour speed limit. All this information was in
13 front of the jury.

14 And, your Honor, notwithstanding the lack of deficiency
15 on this issue, the main expert at trial testified that
16 Ms. Brown was traveling at a mere minimum of 64 miles per
17 hour. And so whether the speed limit is 45 or 55, she's
18 still violating the law by speeding according to the main
19 expert. Additionally, Ms. Brown hasn't presented any
20 testimony besides her own that the speed limit was, in fact,
21 45 miles per hour.

22 Regarding the urine sample issue, your Honor, it was
23 never admitted into evidence by the State. Ms. Brown has
24 failed to show how that urine sample would have benefitted
25 her defense. Ms. Brown's blood was tested by SLED. It came

1 back at 0.21 BAC. She made statements that -- admitting to
2 drinking, one of the officers found a cup in her vehicle
3 which smelled of alcohol. The only reasonable inference that
4 could be made is -- is that any admission of her urine
5 analysis from that night would have been detrimental rather
6 than beneficial to her defense.

7 Mr. Barr also objected to the chain of custody
8 regarding the blood and the urine they were packaged
9 together. The trial court denied the motion and -- and ruled
10 that the State had established chain of custody, which would
11 make that a direct appeal issue. Same analysis applies with
12 the independent blood test issue in this case. Ms. Brown
13 argued this in pretrial motion.

14 Trooper Minnix -- I believe Mr. Dubose, all testified
15 in a pretrial hearing that Ms. Brown never requested an
16 independent blood test. The nurse testified at trial that
17 she erroneously marked the independent blood test box.
18 Mr. Durant testified that he did not coerce the nurse into
19 making that testimony, that that was her own free testimony.

20 Again, regarding the search warrant, your Honor,
21 Mr. Barr did object to move to suppress based on the search
22 warrant affidavit. The trial court ruled that the
23 supplemental oral testimony from the pretrial hearing,
24 including that of the magistrate judge and the trooper who
25 signed the affidavit, was sufficient to establish probable

1 cause in this case.

2 Your Honor, Mr. Barr testified that he conveyed the
3 five-year plea offer to Ms. Brown, the judge gave him all the
4 time to explain it. He explained it. In fact, he was the
5 one advising her to take it, and Ms. Brown was the one who
6 refused.

7 And regarding the jurors, your Honor, there -- there
8 was a relative of Mr. -- Mr. Durant, but as Mr. Durant
9 testified to, he was a third cousin or fifth cousin who
10 didn't even know how they were related. He testified that he
11 could be fair and impartial. Your Honor, the Supreme Court
12 has held in State v. Patterson, 324 S.C.5, that a defendant
13 has no right to a trial by a particular jury, but only a
14 competent and impartial jury.

15 And the Supreme Court has also held that an applicant
16 in a post-conviction relief action must present credible
17 evidence that -- that refusal to strike the juror somehow
18 prejudiced the defense. There's been no credible evidence in
19 this case establishing that any juror acted under any bias.

20 The correctional officer, that was disclosed during the
21 voir dire about him working at the correctional facility.
22 When Ms. Brown was arrested, he had no recollection of her at
23 all and also testified he could be fair and impartial. Mr.
24 Barr testified that as a matter of practice, he will always
25 strike a juror if they so -- if his client requests it. He

1 -- he testified that that did not occur in this case.

2 Therefore, Ms. Barr (sic) has failed to meet her burden of
3 establishing ineffective assistance counsel, and her
4 application should be denied.

5 THE COURT: All right. Thank you, sir.

6 MR. MITCHELL: Thank you.

7 THE COURT: Mr. Griffith?

8 MR. GRIFFITH: May it please the Court, your Honor?

9 Ms. Brown, of course, she and I have talked over some period
10 of time, and I was trying to help her understand certain
11 things are appeal issues and certain things are PCR issues,
12 and so, of course, I wanted her to have the opportunity -- to
13 have the opportunity to tell the Court everything that she
14 felt like she wanted to tell the Court.

15 But as far as the -- the jurors, the person that
16 admitted that they were a corrections officer, Ms. Brown
17 tells me that he was the corrections officer that -- that
18 clocked her in, and so he said he didn't remember her. I'm
19 sure he clocked in a lot of people. But, your Honor, just
20 saying that he could be impartial, a corrections officer --
21 usually a corrections officer is given the opportunity to not
22 have to go to jury duty.

23 But, your Honor, the -- one of the things the five-year
24 offer, Ms. Brown didn't understand -- she was not -- of
25 course, she's not an attorney, and she didn't understand when

1 Mr. Barr was trying to explain to her that -- and I'm sure
2 that he did try to explain to her that were she to go forward
3 with the trial, there was probably a -- a good chance that
4 she may be found guilty. But she never felt like she was
5 guilty, of course, and she was pretty certain that she would
6 be found not guilty.

7 The five-year offer, so really she didn't understand
8 the implications that -- of the five-year offer, I don't
9 believe. And had she understood it, of course, she would
10 have taken a plea rather than going to trial. Your Honor, as
11 -- in fact, the -- as far as the -- the warrant is concerned,
12 Ms. Brown is of the opinion that it was not a valid warrant,
13 it was signed incorrectly, but of course, the testimony said
14 that it was -- and the -- and the Court can take that for
15 what it is. But we would ask that the Court consider these
16 things and grant her a new trial.

17 She's been in the jail now for seven and a half years.
18 She still has -- I mean, the total was 15 years and 12 years
19 served concurrently. So she's -- she moved along through
20 that, but of course if she had opportunity, she may see
21 things differently, your Honor, and we would ask that a PCR
22 be granted.

23 THE COURT: All right. Thank you, sir. Anything
24 further?

25 MR. MITCHELL: Nothing further from the State, your

1 Honor.

2 THE COURT: All right. Well, I appreciate everybody's
3 participation here today. Certainly, I want to take a look
4 at everything that's before me, read the trial transcript,
5 study the issues that are relatable to post-conviction
6 relief, and I'll let you know my decision as soon as I do so.
7 Okay?

8 MR. MITCHELL: Thank you, your Honor.

9 THE COURT: Thank you.

10 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED AT
11 11:10 A.M.)

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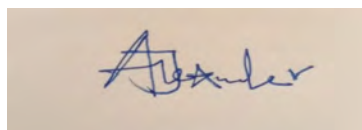
CERTIFICATE OF TRANSCRIBER

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I, JACKSON ALEXANDER, a court-approved transcriber, 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 South Carolina Circuit Court 3 of Clarendon County, South Carolina, on August 18, 2025.

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

May 13, 2026.

A rectangular box containing a handwritten signature in blue ink. The signature appears to be "Alexander" written in a cursive, stylized script.

JACKSON ALEXANDER
Transcriber

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
	)	
Tammy D. Brown, SCDC #376555,	)	Case No. 2023-CP-14-00248
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

INTRODUCTION

The matter before this Court is an action for post-conviction relief (PCR) commenced by Tammy D. Brown ("Applicant") on July 14, 2023. On August 18, 2025, a hearing into the matter was convened before the Honorable H. Steven DeBerry, IV, at the Sumter County Courthouse. Applicant was present and represented by Timothy L. Griffith, Esquire. Assistant Attorney General Cruise Mitchell represented the State. At the evidentiary hearing, testimony was taken from Applicant, Charles D. Barr, Esquire ("Counsel"), and Christopher R. DuRant, Esquire ("Solicitor").

After hearing the testimony at the PCR hearing and upon full review of the record, this Court finds Applicant's allegations regarding ineffective assistance of counsel are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Clarendon County Clerk of Court. During its December 2014 term, the Clarendon County Grand Jury indicted Applicant for felony driving under the influence,

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death results and felony driving under the influence, great bodily injury results (2014-GS-14-0408, Counts 1&2). Applicant was represented by Charles David Barr, esquire. The case was prosecuted by Assistant Solicitors Christopher DuRant and Hugh McMillian.

On May 14-18, 2018, Applicant proceeded to trial before the Honorable R. Ferrell Cothran Jr., and a jury. The jury found Applicant guilty as indicted. On May 18, 2018, Judge Cothran Jr. sentenced Applicant to fifteen years imprisonment for felony driving under the influence, death results and twelve years' imprisonment for felony driving under the influence, great and bodily injury results. Applicant filed a timely notice of appeal. The appeal was perfected by Appellate Defender Adam S. Ruffin. In a published opinion, the South Carolina Court of Appeals affirmed Applicant's conviction. *State v. Brown*, 436 S.C. 505, 873 S.E.2d 445 (Ct. App. 2022), reh'g denied (June 23, 2022), cert. denied (June 27, 2023). Applicant filed a petition for rehearing which was denied on June 23, 2022. Applicant filed a petition for writ of certiorari in the Supreme Court which was denied on June 27, 2023. The remittitur was submitted on June 28, 2023.

Facts¹

Just before midnight on August 30, 2014, Appellant drove her White Hyundai Tiburon east on Highway 261 from Paxville towards Manning. (R. 212). Around the same time, Guillermo Lopez-Arenas was driving a black Dodge Dakota pickup truck along with his passenger Arturo Murrieta-Blas. The black truck turned from Home Branch Road onto Highway 261 to head east. As the black pickup turned, Appellant's vehicle collided with the rear end of the pickup and caused the truck to crash into a tree. (R. 274, 467, 703). Arenas was pronounced dead on the scene by Coroner, Hayes Samuels. (R. 220-21, 327-28). Blas was transported by helicopter to the hospital

¹ This section was summarized from the Statement of the Facts presented in the Final Brief of Respondent from Applicant's direct appeal. (FBOR.pp.3 – 5).

in Florence where he underwent emergency surgery. (R. 194-97, 220-21). Blas spent the next two months in the hospital. (R. 195).

The driver of the white Hyundai was identified as Appellant. (R. 209). When Trooper Jeffrey Minnix of the South Carolina Highway Patrol arrived at the scene of the wreck, Appellant was already in the back of an ambulance receiving treatment from EMS. (R. 209). Minnix positioned his car as close as possible to the wreck but was unable to get very close because of the way the vehicles of other first responders were parked at the scene. (R. 203). Because of the distance of Minnix's car from the ambulance and the limited capabilities of his car's camera system, Minnix's interaction with Appellant was not recorded. (R. 207-09). Minnix interviewed Appellant in the back of the ambulance. (R. 216-17). While interviewing Appellant, EMS informed Minnix that Appellant needed to be transported to the hospital. Therefore, Minnix did not request Appellant to perform any field sobriety tests. (R. 95, 219). Minnix observed that Appellant's eyes were bloodshot and she had an odor of alcohol coming from her person. (R. 216-17). Appellant initially told Minnix she had consumed two shots of tequila, but then revised her statement and said she drank wine coolers instead. (R. 205, 217-18). Appellant admitted that the clear cup in the floorboard of her car previously contained a wine cooler that her friend made her for the road. (R. 205).

Appellant was transported to Clarendon Memorial Hospital for evaluation. At the hospital, she was interviewed again by Minnix and Trooper Paige Dubose. (R. 222, 314-15). Appellant was placed under arrest at the hospital and was read her Miranda rights and her implied consent rights. (R. 224, 315, 708). Appellant declined to voluntarily provide Minnix and Dubose with a blood sample. (R. 225). Minnix remained with Appellant at the hospital while Dubose left to obtain a search warrant for Appellant's blood sample from the on call magistrate. Dubose met with Judge

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Robin Locklair at Locklair's home where she provided sworn oral testimony to establish probable cause for the search warrant. (R. 152-53, 318-19). Judge Locklair issued the search warrant. (R. 154, 704-07).

Dubose returned to the hospital with the search warrant and Minnix asked for the assistance of hospital phlebotomist, Angela Floyd, to draw the blood sample. (R. 228). Minnix utilized the SLED blood and urine collection form to inform Appellant of her right to an independent blood sample. (R. 228-32, 702). Appellant refused to sign the blood collection report. (R. 231, 324). Two vials of Appellant's blood were collected and given to Minnix. (R. 234, 381-83). The portion of the blood collection report regarding Appellant's right to an independent blood test was checked in error by Floyd. (R. 378-79, 384, 702). According to Floyd, Minnix, and Dubose, Appellant never requested an independent blood sample in their presence. (R. 232-33, 325-26, 380, 385). Appellant acknowledged at trial that she never made a direct request to law enforcement for an independent sample. (R. 167). Appellant's blood was transported to SLED where it was analyzed by forensic toxicologist Kelly Budgen. According to Budgen's analysis, Appellant had a .210 blood alcohol concentration. (R. 423).

At trial, the State called Lance Corporal Bryan Ridgeway of the South Carolina Highway Patrol as an expert witness in accident reconstruction. (R. 465-66). The speed limit in the intersection where the accident occurred was 45 miles per hour. (R. 212-14). Ridgeway estimated that Appellant's vehicle was traveling at 64.6 miles per hour when she began to break and 55.92 miles per hour when her vehicle hit the black pickup truck. (R. 511, 513). According to Ridgeway, the wreck would not have occurred if Appellant had been traveling within the posted speed limit. (R. 531). Appellant was convicted of both counts at the conclusion of trial.

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CURRENT APPLICATION

In her application for post-conviction relief, Applicant alleges she is being held in custody unlawfully based on the following:

1. Ineffective Assistance of Counsel
 - a. "Did not submit sufficient evidence."
2. "Tampered evidence."
 - a. "Not allowed independent blood test when asked for recording of speed limit from SCDOT."
 - b. "Based on how evidence I am innocent."
3. "Bias by Judge."

Applicant amended her application to include the following allegations:

1. Ineffective Assistance of Counsel
 - a. Trial Attny did not submit proof that the speed limit sign was 55 and not 35 as the state claimed even though the jury went to the scene. Did not focus on the speed limit sign.
 - b. Trial Attny did not reject jurors who informed the Court that they were related to the Assistant Solicitor.
 - c. Appointed, but not trial Attny, King Cutter of the Clarendon Co PD office, did not represent her as appointed to do so, at the magistrate level case for failure to wear a seatbelt. At that hearing the Judge said there was no proof but Mr. Cutter has her pay the fine anyway.
 - d. Her attorney did not show her the urine sample data or discuss it with her? There was a break in the chain of custody as to the urine sample. Did not match original case numbers.
 - e. (See case for Adam Rowell, or Mayfield Edwards and co-defendants PCR by Shawn Kent), Talbert McKinsey the CO who had signed her into the jail was also allowed to be on the jury with no objection by her Trial attorney.
 - f. APPEAL ATTNY (Adam Sinclair Ruffin) – did not use the speed limit recording from SCDOT. Tammy had recorded the SCDOT telling her the speed limit was 55 there.
2. Prosecutorial Misconduct
 - a. Assistant Solicitor Durant convinced nurse who had checked the box at the hospital showing Defendant wanted an independent blood test, to testify that she had checked the box by accident, when independent blood sample was not taken from defendant to be tested independently. The trial was almost four years after the fact and nurse testified under the influence of the Assistant Solicitor.
 - b. Assistant Solicitor did not get the warrant or affidavit signed by a judge and he himself signed the affidavits and warrant, and the judge in the case said the warrant was deficient.
 - c. Abuse of discretion by the Assistant Solicitor in that they did not present the urine sample or the analysis of it.

- d. Speeding was not in evidence and SOL brought it up in opening and closing and Mr. Barr did not object.
 - e. EMS who attended scene was on the jury.
 - f. APPEAL ATTORNEY ineffective
 - g. Did not submit issues pointed out by the Applicant.
3. Judicial Misconduct
- a. Judicial Bias : The trial Judge did not recuse himself even though he had lost family members to a drunk driver. Attnys had conf with Judge and came out and said the AT Gen said the speed limit was not 55 it was 35.
4. New Evidence
- a. A recording, from an SCDOT (appeal attorney should have this as provided by Ms. Brown) employee stating the actual speed limit at the location which is different from what was presented in Court. This was sent to her Appeal attorney so should be in his possession.

Applicant requests relief as follows:

“Time serve, sentence reduction.”

Before this Court are the Clarendon County Clerk of Court records regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, the records from Applicant’s direct appeal, and the records of the current PCR action.

INEFFECTIVE ASSISTANCE OF COUNSEL, GENERALLY

In a PCR action, Applicant bears the burden of proving the allegations in his application by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985); Rule 71.1(e), SCRCF. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel’s performance was deficient. *Strickland*, 466 U.S. at 687; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its

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“reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel’s deficient performance must have prejudiced 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 (quoting *Strickland*, 466 U.S. at 694). “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on

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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.

FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised in the application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

Counsels' Alleged Failure to Submit Proof the Speed Limit was 55 mph and Newly Discovered Evidence

Applicant alleges Counsel was ineffective for failing to submit proof that the speed limit sign was 55 and not 35 as the state claimed even though the jury went to scene. Applicant also alleges Appellate Counsel Adam Ruffin was ineffective for failing to use an alleged recording from a SCDOT employee stating the speed limit was 55 mph. Applicant contends this recording is newly discovered evidence. These allegations are without merit.

1. PCR Testimony

At the evidentiary hearing, Applicant testified she lived on the road where the incident occurred her entire life. She stated the speed limit is 55 mph, then goes down to 45 mph before Highway 15. She explained she was never cited for speeding and she was traveling the speed limit at the time of the collision. She further claimed she was in possession of a recording of an SCDOT employee stating the speed limit on that road was 55 mph.

Counsel Barr testified that the speeding issue was problematic for the defense. He noted that the MAIT team witness was very good and testified that Applicant had been traveling at an estimated speed of 65 mph. Counsel further explained that the collision bent the victim's truck chassis into an L-shaped, creating a visually damaging impression for the defense.

Solicitor DuRant testified that the collision occurred on the highway to Manning/Pikesville. He indicated that a yellow sign in that area displayed a reduced speed of 45 mph. He further explained that there was a dispute as to whether the yellow sign was merely advisory or constituted an actual reduction of the speed limit. Solicitor testified he recalled an Attorney General's opinion concluding that such a sign does, in fact, operate to reduce the speed limit.

2. Discussion

This Court finds Counsel was not deficient for failing to properly address the speed limit issue. At Applicant's trial, Counsel argued in his opening statement that he did not believe the evidence was going to show the speed limit was 45 mph and that "Ms. Brown was probably driving at a reasonable speed when she made contact with [victim's] vehicle." (R. 35). Counsel cross-examined Trooper Paige DuBose regarding the discrepancy in the posted speed limit, and successfully elicited testimony that speed was not a major factor in this case. (R. 362-365). Additionally, Counsel cross-examined Trooper Joseph Ham concerning the uniformity of speed

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limit signage in South Carolina. (Trial Tr. p. 420–421). These cross-examinations aimed to create reasonable doubt regarding both the actual speed limit in the area and whether Applicant was exceeding it at the time of the collision. Additionally, Counsel requested that the jury visit the scene of the collision and explained in his closing argument that he wanted them to see that the posted speed limit was 55 mph just before the area of the collision. (Trial Tr. p. 698). This Court finds Counsel adequately addressed the issue of the speed limit during Applicant's trial; thus, he was not deficient.

Notwithstanding lack of deficiency, Applicant has further failed to prove prejudice as to this allegation. First, the evidence presented at trial clearly demonstrates that the speed limit where the collision occurred was 45 mph. Trooper Jeffrey Minix testified that, in the area where the collision occurred, SCDOT placed a cautionary speed limit sign lowering the limit to 45 mph from 55 mph. Minix further explained that it was against the law to travel faster than 45 mph in that area. (Trial Tr. pp. 234–235). MAIT reconstruction expert Bryan Ridgeway likewise testified the speed limit in this area is 45 mph. (Trial Tr. p. 527). Furthermore, although the SCDOT sign was not black and white and was posted as a cautionary speed limit, it nevertheless established the legal maximum speed at which a person may travel. *See Rochester v. Bussey*, 251 S.C. 347, 162 S.E.2d 841 (1968) (holding that “where ‘M.P.H’ sign was erected by Highway Department after Department determined that hazard existed which made speed in excess of that posted unsafe under average conditions, 35 miles per hour was maximum permissible speed...”).

Next, the evidence at Applicant's trial showed she was traveling at least 64.67 mph before braking. (Trial Tr. pp. 554–555). Thus, even if her argument were correct and the speed limit was 55 mph, she was still exceeding it by nearly 10 mph. For these reasons, this Court finds Applicant

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has failed to show a reasonable probability the outcome of her trial would have been different had Counsel more thoroughly addressed the speed limit issue.

Accordingly, this Court finds this allegation is DENIED.

Regarding the allegations pertaining to the SCDOT recording, this Court finds both that Applicant has failed to meet her burden demonstrating Appellate Counsel Ruffin was ineffective and she has failed to make a prima facie case of newly discovered evidence. Applicant has failed to present any evidence of the alleged recording at the evidentiary hearing; thus, she has failed to prove prejudice as to this allegation. Furthermore, as stated above, the evidence at Applicant's trial showed she was traveling at 64.67 mph before braking, so any recording demonstrating the speed limit was 55 mph in that area would not have been beneficial to her defense. This Court finds Applicant has failed to meet her burden entitling her to post-conviction relief as to these allegations.

Accordingly, this Court finds these allegations are DENIED.

Counsel's Alleged Failure to Strike Jurors

Applicant alleges Counsel was ineffective for failing to reject jurors who informed the Court that they were related to the Assistant Solicitor. This Court finds this allegation is without merit. At Applicant's trial three potential jurors indicated they were in some way related to Solicitor DuRant. Juror number 21 explained that he and Solicitor were fourth or fifth cousins. (Trial Tr. p. 12). He swore he could be fair and impartial despite this relationship. (Trial Tr. p. 13). Juror number 124 explained he is family and friend of Solicitor. (Trial Tr. p. 13). He swore this relationship would not affect his ability to be fair and impartial. (Trial (Tr. p. 13). Juror number 6 explained that her husband and Solicitor's father are cousins. (Trial Tr. p. 13). This juror swore this relationship would not affect her ability to be fair and impartial. (Trial Tr. p. 13). Juror number

6 was struck by Counsel. (Trial Tr. p. 26). Juror number 123 testified he was working at the Clarendon County detention center while Applicant was incarcerated there. He testified he did not remember and no longer worked there at the time of trial. (Trial Tr. p. 17). He further swore this would not affect his ability to be fair and impartial. (Trial Tr. p. 17).

Here, all jurors affirmed to the trial court that their respective relationships with Solicitor would not affect their ability to be fair and impartial. Additionally, the juror who worked at the Clarendon County Detention Center testified he had no recollection of Applicant and his employment at the time would not affect his ability to be fair and impartial. Thus, this Court finds Applicant has not met her burden establishing Counsel was deficient for failing to strike them. Additionally, this Court finds Applicant has failed to prove she was prejudiced by any alleged deficiency. This Court finds Applicant has failed to "provide credible evidence that the trial attorney's refusal to strike a juror prejudiced the defense." *Palacio v. State*, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999).

Accordingly, this Court finds this allegation is DENIED.

Counsel's Alleged Failure to Discuss Urine Sample and Failure to Object to Chain of Custody

Applicant alleges Counsel was ineffective for failing to discuss urine sample data with her and object to break in chain of custody as the urine and blood sample. This Court finds these allegations are without merit. At the evidentiary hearing, Applicant testified Counsel did not have the results of either the breath test or the urine sample. Applicant avers the urine sample was not signed and dated so it could have been mixed up.

As an initial matter, Applicant's urine sample was never admitted into evidence by the State and there is no evidence in the record that her urine was even tested. In fact, it can be inferred from the record Applicant's urine was not analyzed and Counsel was aware of that. (Trial Tr. p.

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130). Therefore, Applicant has failed to prove Counsel was deficient for failing to discuss the results of the urine sample.

Furthermore, to the extent Applicant is alleging Counsel was ineffective for failing to object to the chain of custody of the blood, this allegation is without merit. At Applicant's trial, Counsel objected to the break in the chain of custody (Trial Tr. p. 449) and moved to suppress the blood sample on the basis that the taking of the blood should have been vidcotaped (Trial Tr. p. 450). Therefore, this Court finds Counsel was not deficient for failing to object to the chain of custody.

Additionally, Applicant has failed to prove prejudice regarding this allegation. Applicant failed to present any credible evidence that the urine analysis would have aided her defense. Based on the evidence presented by the State at Applicant's trial, it is far more likely any urine analysis would have produced additional corroborating evidence of Applicant's intoxication. The State presented overwhelming evidence of Applicant's intoxication at the time of the collision. Law enforcement found a plastic cup on the floorboard of Applicant's vehicle that emitted a strong odor of alcohol. (Trial Tr. p. 225; 334). While in the back of the ambulance, Applicant stated to law enforcement that she had two shots of tequila but quickly changed her account to two wine coolers. (Trial Tr. p. 226). She also admitted that the plastic cup on the floorboard had contained a wine cooler she made for the road. (Trial Tr. p. 226). After she was transported to the hospital, a blood sample was collected and later analyzed by a forensic toxicologist, who determined her blood alcohol concentration was .210. (Trial Tr. p. 458). Therefore, this Court finds Applicant has failed to prove she was prejudiced as to this allegation. Thus, this Court finds Applicant has failed to prove prejudice as to this allegation.

Accordingly, this allegation is DENIED.

Allegations of Prosecutorial Misconduct

Applicant makes various allegations of prosecutorial misconduct. First, Applicant alleges Solicitor DuRant coerced the nurse to testify that she mistakenly checked the box indicating Applicant requested an independent blood test. This allegation is without merit.

At Applicant's trial, the phlebotomist, Angela Floyd, testified to the following:

Q. Okay. And then this section here which is checked the correct one, only one can apply who fills that out?

A. They show us the boxes to check and we check those. And then I sign my name and then you print your name up under that.

Q. Okay. So you signed and print your name here. There's a check mark - - and then before you there, there's another box section down here - - with some other check marks and your name. Did you fill out this section?

A. You have to check off their, that would be my part checking off there.

Q. Okay. Now, let's go through that first. This is the part that you checked off here states the first one you checked is using a non-ethanol prep. A blood sample was collected into an unused uncontaminated vial and given directly to the arresting officer or to the subject requesting a sample for her - - his or her independent test after collection. You check that?

A. That was done in error.

(Trial Tr. pp. 398-399)

...

Q. Okay. How many of the check marks on this page in its entirety were made by you?

A. Three.

Q. Three. Okay. So there's one up here in this section that says correct the correct one. A blood sample was requested by the subject for his or her own independent test. And then down here about using the non-ethanol prep collected using uncontaminated vial. And then about the urine sample. You said one of them was made in error. Which one was made in error?

- A. Where the blood sample is requested by the subject for his or her own independent test.

(Trial Tr. p. 400).

Applicant avers that Solicitor DuRant improperly influenced Ms. Floyd into making this testimony. This is wholly without merit. At the evidentiary hearing, Solicitor testified he did not pressure Ms. Floyd to give false testimony. This Court finds Solicitor's testimony on this matter to be credible and Applicant's testimony not credible. This Court finds Applicant has failed to present any credible evidence demonstrating that Ms. Floyd gave false testimony or that Solicitor DuRant coerced her into doing so. Thus, this Court finds Solicitor DuRant did not engage in prosecutorial misconduct regarding the testimony of Ms. Angela Floyd.

Accordingly, this allegation is DENIED.

Applicant next asserts that Solicitor DuRant failed to obtain a judge's signature on the warrant and affidavit, claiming he signed them himself, and the trial judge later found the warrant deficient. This allegation is without merit. At the evidentiary hearing, Solicitor DuRant testified he did not sign the search warrant; rather, it was signed by the magistrate judge. During Applicant's pre-trial suppression hearing, Magistrate Judge Robin Locklair also testified that she signed and dated the search warrant. (Trial Tr. p. 180). The record therefore conclusively refutes this allegation.

To the extent Applicant is alleging the search warrant was defective, this issue was properly preserved for direct appeal and is therefore not a cognizable post-conviction relief claim. At Applicant's trial, Counsel moved to suppress the blood sample on the ground the search warrant was defective. (Trial Tr. p. 90). Solicitor DuRant acknowledged that the search warrant affidavit was facially defective but contended that it was properly supplemented with sworn oral testimony of law enforcement. (Trial Tr. pp. 198-199). The trial court agreed, finding that sufficient probable

cause existed despite the facial defect. (Trial Tr. pp. 211-212). Therefore, this Court finds this issue was properly raised at Applicant's trial and was preserved for direct appeal.

Accordingly, this allegation is DENIED.

Applicant next argues that Solicitor DuRant committed prosecutorial misconduct by failing to present the urine sample or an analysis of it. This allegation is without merit. The record establishes that Applicant's urine sample was never analyzed. (Trial Tr. p. 130). Thus, no urine analysis existed for Solicitor DuRant to present. Moreover, as previously discussed, Applicant presented no evidence at the evidentiary hearing showing how any urine analysis would have benefitted her defense. Therefore, this Court finds she has failed to prove prejudice.

Additionally, even if a urine analysis had existed, prosecutors are entitled to present their cases as they see fit. *See Terry v. State*, 394 S.C. 62, 714 S.E.2d 326 (2011) (holding that prosecutor's decision not to introduce during guilt phase defendant's inculpatory statements to police officer was matter of prosecutorial discretion and strategy, and not prosecutorial misconduct.); *see also Old Chief v. U.S.*, 519 U.S. 172, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997) (it is "unquestionably true as a general matter" that "the prosecution is entitled to prove its case by evidence of its own choice...").

Accordingly, this Court finds this allegation is DENIED.

Next, Applicant contends Solicitor DuRant improperly argued Applicant was speeding in his opening and closing arguments even though speeding was not in evidence. As previously discussed, this Court finds the State presented ample evidence that Applicant was speeding at the time of the collision.

Accordingly, this Court finds this allegation is DENIED.

Allegation Regarding Seat Belt Violation and Alleged Ineffectiveness of King Cutter

Applicant alleges Counsel King Cutter, who represented her on her seatbelt/open container violations, was ineffective because there was allegedly no proof of the violation. Applicant was sentenced to a fine on this violation. Therefore, this Court finds Applicant was not entitled to a 6th Amendment right to effective assistance of counsel on violations that do not lead to actual imprisonment. *See Scott v. Illinois*, 440 U.S. 367, 99 S. Ct. 1158 (1979) (holding that the right to appointed counsel only applies to offenses that actually leads to imprisonment.).

Accordingly, this Court finds this allegation is DENIED.

CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant must remain in the custody of the State.

AND IT IS SO ORDERED this 24 day of Nov., 2025.



H. STEVEN DEBERRY, IV

Presiding Judge

Third Judicial Circuit

Florence, South Carolina

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Clarendon County Magistrate

CASE HISTORY FOR CASE H070604

The State of South Carolina VS Tammy Dianne Brown

FILED DATE: 8/31/2014

CASE TYPE: TR

STATUS: Disposed

ASSIGNED JUDGE: Clarendon Central Traffic Court

DISPOSITION JUDGE: Frye, Marcia N.

ARRESTING AGENCY: S C Highway Patrol

CASE PARTIES:

Defendant Brown, Tammy Dianne

[REDACTED] Manning, SC 29102-8634

Officer Minnix, Jeffrey K

520 South Pike East, Sumter, SC 29150

Bond Entity Brown, Tammy Dianne

[REDACTED] Manning, SC 29102-8634

CASE HISTORY FOR CASE H070604

Brown, Tammy Dianne

Age: 57

DOB: [REDACTED] 1969

DL#: [REDACTED]

SSN: [REDACTED]

Manning, SC 29102-8634

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0607 Alcohol / Transport alcohol in motor vehicle with seal broken	8/31/2014	Guilty Bench Trial	2/23/2018

SENTENCING:

Fine

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
Charge: Alcohol / Transport alcohol in motor vehicle with seal broken				
Fine to General Fund	\$2.41	\$0.00	\$2.41	999
Victim Services Asm 38.0013% / 5.783	0.29	0.00	0.29	999
Victim Conviction Surcharge \$100 / \$21	25.00	0.00	25.00	999
Law Enforcement Funding Surcharge \$:	25.00	0.00	25.00	999
State Assessment	2.30	0.00	2.30	999
Total:	\$55.00	\$0.00	\$55.00	

DATE	TIME	EVENT DESCRIPTION
8/31/2014	5:30 PM	Court event: Bond Hearing
8/31/2014	12:00 AM	Bond 3 was set in the amount of 0 by Goodwin, Patrick Gary
10/15/2014	12:00 AM	C14GEDENS recorded the following Case Note: ***** JURY TRIAL REQUESTED *****
10/15/2014	2:00 PM	Court event: Traffic Court
10/15/2014	3:54 PM	Filing recorded: Jury Trial Requested
3/14/2017	12:00 AM	Filing recorded: Archived Paretta Warnings

Print Date: 07/27/2026

Print Time: 3:05:29PM

Requested By: C14SMCDOWE

CaseHistory.rpt V6.1

Page 1 of 2

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CASE HISTORY FOR CASE H070604

6/13/2017	12:00 AM	C14SBENNET recorded the following Case Note: DEFENDANT HAS OTHER CHARGES THAT ARE GENERAL SESSION CHARGES THAT RELATE TO THIS TRAFFIC TICKET. THE DEFENDANT HAS BEEN ADVISED BY HER PUBLIC DEFENDER NO TO PLEA TO ANY OF THESE CHARGES DUE TO THE GENRAL SESSION CHARGES THAT ARE STILL PENDING. THE CASE HAS BEEN CONTINUED THREE TIMES NOW AND DEFENDANT HAS BEEN ADVISE TO HAVE HER ATTORNEY SEND OVER SOMETHING IN REGARDS TO REPRESENTAION.
7/11/2017	2:00 PM	Court event: Criminal/Traffic Rescheduled
8/8/2017	2:00 PM	Court event: Criminal/Traffic Rescheduled
11/28/2017	12:00 AM	C14SMCDOWE recorded the following Case Note: PD APPLICATION SENT W/NOTIFICATION OF NEW TRIAL DATE
11/28/2017	12:00 AM	Filing recorded: Archived Court Summons
12/7/2017	2:00 PM	Court event: Criminal/Traffic Rescheduled
1/9/2018	12:00 AM	Filing recorded: Archived Faretta Warnings
2/22/2018	11:40 AM	Received payment of \$55 from Tammy Dianne Brown for Tammy Dianne Brown. Printed receipt #711704.
2/22/2018	10:00 AM	Court event: Criminal/Traffic Rescheduled

2 / 5

901

06-19-2013

08:59:42 a.m.

WITNESSES

JK Minnix S C Highway Patrol

DOCKET NO. 2014-GS-14-0408

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

March TERM 2018

THE STATE

vs.

TAMMY DIANNE BROWN

ARREST WARRANT NUMBER

2014A1410200060 2014A1410200061

(Amended) Indictment for

1. DUI / FELONY DRIVING UNDER THE INFLUENCE, DEATH RESULTS
2. DUI / FELONY DRIVING UNDER THE INFLUENCE, GREAT BODILY INJURY RESULTS

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

(AMENDED) INDICTMENT FOR

1. DUI / FELONY DRIVING UNDER THE INFLUENCE,
DEATH RESULTS
2. DUI / FELONY DRIVING UNDER THE INFLUENCE,
GREAT BODILY INJURY RESULTS

At a Court of General Sessions convened on December 11, 2014, the Grand Jurors of
CLARENDON County present upon their oath:

COUNT ONE – FELONY DRIVING UNDER THE INFLUENCE, DEATH RESULTS

That in Clarendon County, South Carolina, on or about August 30, 2014, while driving a vehicle under the influence of alcohol, drugs or a combination of alcohol and drugs, the Defendant, Tammy Dianne Brown did an act forbidden by law or neglected a duty imposed by law in the driving of said vehicle; and such act proximately caused the death of Guillermo Lopez-Arenas; all in violation of Section 56-5-2945, S.C. Code of Laws (1976, as amended).

**COUNT TWO – FELONY DRIVING UNDER THE INFLUENCE,
GREAT BODILY INJURY RESULTS**

That in Clarendon County, South Carolina, on or about August 30, 2014, while driving a vehicle under the influence of alcohol, drugs or a combination of alcohol and drugs, the Defendant, Tammy Dianne Brown did an act forbidden by law or neglected a duty imposed by law in the driving of said vehicle; and such act proximately caused great bodily injury to Arturo Murrieta-Blas; all in violation of Section 56-5-2945, S.C. Code of Laws (1976, as amended).

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

Solicitor

