

ORIGINAL

RECEIVED

JUL 09 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable Letitia H. Verdin, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

CHRISTINA REECE,

APPELLANT.

APPELLATE CASE NO. 2013-000656

MOTION TO VACATE CONVICTIONS, REMAND FOR A NEW TRIAL
AND
TO DISMISS THE APPEAL

1. Appellant Christina Reece was indicted on June 19, 2012 for three counts of felony DUI resulting in great bodily injury.
2. A suppression hearing was held before Judge Letitia H. Verdin on January 28, 2013. Richard Warder represented appellant, and Lisa Bentley was the assistant solicitor. Counsel Warder argued that the results of the blood evidence ordered taken from appellant had to be suppressed. Counsel noted that the probable cause determination had been made by Officer James Greer and not a neutral and detached Magistrate. Counsel reminded the judge that he had urged her to defer ruling on this right to a drug draw without a warrant in a felony DUI case because the United States Supreme Court had heard arguments on the issue on January 13, 2013. See Missouri v. McNeely, 133 S.Ct. 1552 (April 17, 2013). The judge ruled "under the law as it is today

[January 28, 2013], I find there was probable cause that a reasonable officer would have in that circumstance believe[d] that a blood draw was necessary.” Tr. 39, ll. 5-9; tr. 53-57. (See Exhibit A). The judge issued a written order dated February 26, 2013 denying the Motion to Suppress (Exhibit B).

3. Defense counsel then filed a Notice of Intent to Appeal from the judge’s pre-trial refusal to suppress the results of appellant’s seized blood by the police which was served on counsel’s paralegal, Teresa Pilgrim, on March 12, 2013. Counsel filed that notice of intent to appeal to the Supreme Court on March 13, 2013. (See Exhibit B certificate of service and Exhibit C).

4. On March 19, 2013 the Supreme Court issued an order dismissing the appeal without prejudice as interlocutory since appellant had not been sentenced. (Exhibit D).

5. Appellant’s trial started the same day the Supreme Court dismissed the appeal, March 19, 2013. Defense counsel Warder objected to the trial going forward since he had filed a notice of intent to appeal the judge’s refusal to suppress appellant’s blood sample. The judge noted that appellant argued the case was stayed while it was on appeal, but that she concluded the appeal was interlocutory. “In fact, this case is not concluded until there’s either – there’s some – either a finding of guilty or not guilty in this case. But your record is protected that you certainly did make that motion.” Supp. Tr. 8, l. 16 – 10, l. 1). (Exhibit E). Defense counsel then moved for the judge to find the felony DUI statute unconstitutional inasmuch as it allows a police officer and not a neutral and detached Magistrate to make a determination of probable cause to order a defendant’s blood drawn from her. The judge denied the motion. Appellant then waived her right to a jury trial, and she was convicted of three counts of felony DUI resulting in great bodily harm on March 20, 2013. She was sentenced to ten years imprisonment. Supp. Tr. 1-11; tr. 14; tr. 257; tr. 263. (Exhibit E).

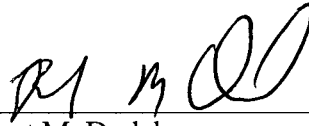
6. However, it was not until April 4, 2013 that the remittitur in this case was sent from the Supreme Court to Pickens County returning jurisdiction to the trial court. (Exhibit F).

7. Undersigned appellate counsel this week discovered the trial court's lack of jurisdiction during appellant's March 19-20, 2013 trial while working on this case to file the brief and designation of matter this week.

8. Since the trial court was without jurisdiction because the remittitur had not been issued by the appellate court until April 4, 2013, the March 19-20, 2013 trial in this case was a nullity and appellant's convictions are void. See Rule 205 & Rule 221 (b), SCACR; Bunkum v. Manor Properties, 321 S.C. 95, 98-99, 467 S.E.2d 758, 760 (Ct.App. 1996). Although defense counsel timely objected to the trial going forward, the trial court overruled the objection. Regardless, lack of subject matter jurisdiction can be raised at any time as undersigned counsel has again done upon this discovery as noted above in paragraph seven. See State v. Sheppard, 391 S.C. 415, 422, 706 S.E.2d 16, 19 (2011).

WHEREFORE, appellant respectfully requests that this Court issue an order vacating her convictions, remanding her case to the Pickens County Court of General Sessions for a new trial, and dismissing her appeal without prejudice. Counsel also requests that the time limits in this appeal be held in abeyance pending this Court's ruling on this motion.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1343
ATTORNEY FOR APPELLANT

This 3rd day of July, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Honorable Letitia H. Verdin, Circuit Court Judge

RECEIVED

JUL 03 2014

STATE OF SOUTH CAROLINA,

RESPONDENT,

SC Court of Appeals

V.

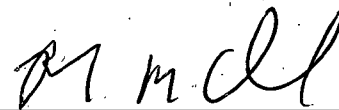
CHRISTINA REECE,

APPELLANT.

APPELLATE CASE NO. 2013-000656

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to Vacate Convictions, Remand for a New Trial and to Dismiss the Appeal in the above-referenced case has been served upon opposing counsel, Salley W. Elliott, Esquire at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and upon Christina Reece, #354812 at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 3rd day of July, 2014.



Robert M. Dudek
Chief Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 3rd day of July, 2014.

Rhonda Denise Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021

EXHIBIT A

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
)	
COUNTY OF PICKENS	)	Case No(s) : 2012GS3900946,
	)	2012GS3900947,
State of South Carolina,	)	2012GS3900948,
	)	2012GS3900949,
Plaintiff,	)	2012GS3900950
)	
-VS-	)	TRANSCRIPT OF RECORD
)	
Christina Reece,)	
)	
Defendant.)	
)	

January 28, 2013
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

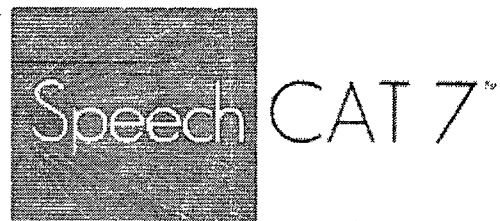
A P P E A R A N C E S:

LISA A. BENTLEY, Esquire
Assistant Solicitor

RICHARD WARDER, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



1 some arrest warrants in the vehicle. I think the
2 warrants for -- I got them right here. Referring off of
3 memory, I think they were three days prior to the
4 collision for Possession of Methamphetamine and
5 Possession of a Substance of Methamphetamine. Based off
6 of that, the beer cans and the methamphetamine pipe,
7 based off the accident itself by the way I testified to
8 earlier, that was my determining factor right there that
9 I felt gave me probable cause to do a blood draw.

10 Q Okay. No testimony at all about her condition?
11 Anybody seen her under the influence? She acted under
12 the influence? She said anything under the influence?

13 A I never had any conversation with her. She
14 was, like I said earlier, unconscious, sedated, something
15 to that effect, in the trauma bay.

16 Q I'm just trying to narrow down if there was
17 nobody anywhere that gave you information that they seen
18 her and she appeared to be under the influence.

19 A I can only testify to what I've seen. I didn't
20 see that.

21 Q You made the decision and my question is that
22 you didn't have information that anybody had seen her
23 under the influence? The information you had is what I'm
24 asking you about.

25 A Nobody had gave any kind of call to dispatch

1 **THE COURT:** Anything else?

2 **MS. BENTLEY:** No redirect, Your Honor.

3 **THE COURT:** Sir, you can step down.

4 **THE WITNESS:** Thank you.

5 **MS. BENTLEY:** Your Honor, that conclude the
6 State's -- the evidence the State would present in
7 supporting a determination for probable cause for
8 the blood draw in this case.

9 **THE COURT:** All right. Anything you want to
10 say in support of that? Any argument you want to
11 make?

12 **MS. BENTLEY:** Essentially, Your Honor, I
13 believe the State has met the burden for proving
14 that there was probable cause in this case. Both
15 Trooper Baldwin and Corporal Mayfield testified that
16 they had knowledge of what happened at the scene.
17 Trooper Baldwin was the very first law enforcement
18 to arrive from the Highway Patrol investigating the
19 scene. He sees a head-on collision where a vehicle
20 driven, later determined by Ms. Reece, has crossed
21 the center line. It's a clear day. No impediments
22 in the road. Sun to her back. Uh, there's no
23 explainable reason that he can find for this wreck.

24 As law enforcement searches the scene, they
25 find used beer cans, they find methamphetamine pipe

1 or a pipe used to smoke drugs. And they also find
2 fairly recent arrest warrants with her name in close
3 proximity to those things. Based on all those, I
4 believe that they had probable cause to draw her
5 blood and to investigate further. The probable
6 cause standard is what a reasonable person would do,
7 law enforcement in that situation. Here, they have
8 a horrible wreck, they have bodily injury and I
9 believe that they had probable cause to investigate
10 further by drawing her blood.

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

12 Yes, sir.

13 **MR. WARDER:** I take it we are now limited and
14 we are addressing probable cause as defined in the
15 statute, is that right?

16 **THE COURT:** Yes, sir.

17 **MR. WARDER:** Now, this is a case where the
18 legislature has changed the probable cause that
19 normally would be found through a magistrate. To do
20 away with that, the officer could make a probable
21 cause determination. Now, this is a case that has
22 four days prior, I believe, three or four days
23 prior, an arrest warrant. I think those papers also
24 indicated that she was not incarcerated. They found
25 trash on the road, trash in the truck and three

1 squished, crushed beer cans that we have no reason
2 to believe are cold or anything like that.

3 So based upon that, they ordered an evasive
4 test of probably the thing we have the most
5 expectation of privacy, which is what's in our
6 bodies. I think if there's anybody -- any place we
7 don't expect to be through the peering eyes of the
8 police, it's, uh, what an analysis of our body
9 shows. And that is ordered on the basis of nothing
10 to indicate the person is under the influence. Only
11 that transporting with her was a prior piece of
12 paper that said on another time, at another place on
13 another occasion, she may have violated the drug law
14 and a pipe that there was no reason to believe was
15 used involved. In fact, it was wrapped up in paper
16 in her purse. No reason to believe it hadn't been
17 there for some time.

18 You have the warrants, the beer cans and the
19 pipe. That's what this probable cause to search is
20 about. And the mere speculation adds nothing more
21 to it that we don't know the cause of this accident
22 some 20 minutes after it's happened. It's
23 unexplainable to us at this -- I mean, every
24 accident is that way. I can't imagine the accidents
25 that they know what caused them 20 minutes before

1 they've even had chance to interview her or
2 anything. So I mean, I don't think the unexpected
3 nature makes a bigger probable cause.

4 The question is do those three factors add up
5 to anything that could amount to probable cause for
6 a search of your body. I think, no question in my
7 mind, that if it went before a neutral and detached
8 magistrate, we'd have a different result. So the
9 question is in the hearing today, can we now go back
10 and say, well, that was a decision that met the
11 statutory burden for the officer. I submit it
12 doesn't and the State's failed to do it.

13 I'll be honest. What bothers me about this
14 case when we were rushing it through is that the
15 issue is before the United States Supreme Court
16 right now. It was argued orally on the 13th of
17 January. Uh, they were going to address this whole
18 issue, I think, of what relevancy Schmerber would
19 have in today's world and whether or not you can
20 ever take a blood sample.

21 But I think in this case, it's just
22 speculation. We don't know what happened. People
23 were hurt bad. What we're going to do is we're
24 going to take her blood and send it down and if it
25 comes back, we'll charge her. That is improper.

1 **THE COURT:** I appreciate your argument on
2 behalf of your client and you've argued vigorously
3 on her behalf. I do not know if in my ruling today
4 does not reflect what it might have been in prior
5 law. But under the law as it is today, I find that
6 there was probable cause that a reasonable officer
7 would have in that circumstance believe that a blood
8 draw was necessary.

9 I base that not on the arrest warrants,
10 although that might have given an officer some more
11 confirmation about suspicions. But a meth pipe in
12 personal belongings of the defendant as well as --
13 who was the driver, as well as beer cans in the
14 truck, I believe do give probable cause to draw
15 blood in the circumstance. All right. Anything
16 else we need to take up?

17 **MS. BENTLEY:** Nothing from the State at this
18 time.

19 **THE COURT:** All right. You want to do me an
20 order, a proposed order, and you can send it to Mr.
21 Warder to see if it complies with my oral ruling
22 here today?

23 **MS. BENTLEY:** Yes.

24 **THE COURT:** Thank you.

25 **MS. BENTLEY:** Thank you.

EXHIBIT B

STATE OF SOUTH CAROLINA)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF
GENERAL SESSIONS
2012-GS-39-00946—0950

COUNTY OF PICKENS

STATE OF SOUTH CAROLINA) MAR -4) 2: 50

v.)

ORDER

CHRISTINA REECE
Defendant.

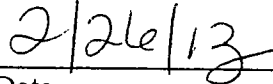
This matter came before me on the motion of Assistant Solicitor Lisa Bentley, moving for a finding of probable cause to conduct a legal blood draw in the above-captioned case. The defendant was present and represented by her attorney Richard Warder. Upon hearing testimony from Eric Patterson and Brad West from Pickens County EMS and Troopers James Greer, Joey Baldwin and Brian Mayfield from the South Carolina Highway Patrol and hearing the arguments of counsel I ruled that probable cause did exist at the time of the blood draw. I find that based on the circumstances of the collision on April 30, 2011 combined with the presence of the arrest warrants for the Defendant along with beer cans and pipe used for smoking drugs that a reasonable officer in Trooper Baldwin's position would have requested a blood sample for further analysis.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT probable cause to obtain a blood sample from the Defendant in this case existed at the time the sample was requested.

IT IS SO ORDERED.



Signature of Judge



Date

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF PICKENS) THIRTEENTH JUDICIAL CIRCUIT

The State of South Carolina,)
)
)

Vs.)

Christina Reece,)
)

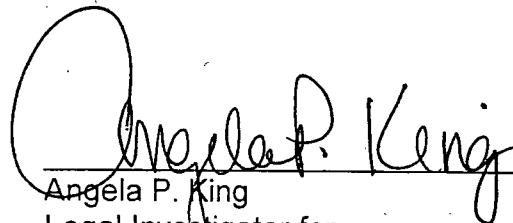
Defendant.)

CERTIFICATE OF SERVICE
Indictment No. 2012GS3900946 - 00950

Due and legal service of the within Order regarding legal blood draw was served upon counsel for the Defendant as follows:

Richard Warder, Esquire

By service upon Teresa Pilgrim at the Pickens County Court House, 214 E. Main Street, Pickens, South Carolina on the 12th day of March, 2014.



Angela P. King
Legal Investigator for
Lisa Bentley, Asst. Solicitor
Office of the Thirteenth Circuit Solicitor
Pickens County Court House
214 E. Main Street
Pickens, South Carolina 29671

EXHIBIT C

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM PICKENS COUNTY
COURT OF GENERAL SESSIONS

HONORABLE LETITIA H. VERDIN, CIRCUIT COURT JUDGE
CASE NUMBER: 2012-GS-39-00946-0950

State of South CarolinaRespondent

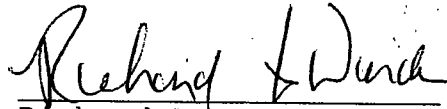
v.

CHRISTINA REECE.....Appellant

NOTICE OF INTENT TO APPEAL

Christina Reece, appeals the Order signed by the Honorable
Letitia H. Verdin signed, on February 26, 2013.

Respectfully Submitted



Richard H. Warder
Attorney at Law
P.O. Box 26133
Greenville, SC 29676
(864) 271-9955

March 13, 2013

Other counsel of record:
Lisa Bentley
Pickens County Solicitors Office
214 Main Street
Pickens, South Carolina 29671

Greenville County Solicitors Office
305 E. North Street
Greenville, South Carolina 29601

RECEIVED
MAR 18 2013
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Case Number: 2012-GS-39-00946-0950

STATE OF SOUTH CAROLINA)
)
RESPONDENT)
-vs-)
CHRISTINA REECE)
APPELLANT)

CERTIFICATE OF MAILING

This is to certify that the undersigned attorney Richard H. Warder, attorney for the Appellant did cause a Notice of Intent to Appeal to be served upon the Respondent, by mailing a copy of the same in an envelope addressed as shown below and depositing same in the United States Mail, proper postage affixed thereto, on the _____ day of March, 2013.

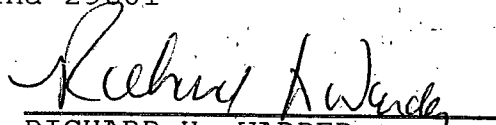
Lisa Bentley
Pickens County Solicitors Office
214 Main Street
Pickens, South Carolina 29671

Lisa Bentley
Greenville County Solicitors Office
305 E. North Street
Greenville, South Carolina 29601

RECEIVED

MAR 18 2013

S.C. SUPREME COURT



RICHARD H. WARDER
POST OFFICE BOX 26133
GREENVILLE, S.C. 29616
ATTORNEY FOR APPELLANT

SWORN to before me this
13th day of March, 2013

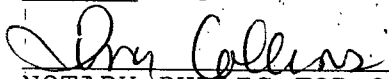

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 10-31-13

EXHIBIT D

The Supreme Court of South Carolina

The State, Respondent,

v.

Christine Reece, Appellant.

Appellate Case No. 2013-000537

ORDER

Appellant has served and filed a notice of appeal from an order finding that there was probable cause to take a blood sample from her. Since appellant has not been sentenced on any of the indictments listed in the notice of appeal, any appeal is premature.¹ State v. Miller, 289 S.C. 426, 346 S.E.2d 705 (1986) (a criminal defendant may not appeal until sentenced); Parsons v. State, 289 S.C. 542, 347 S.E.2d 504 (1986) (same); State v. Washington, 285 S.C. 457, 330 S.E.2d 289 (1985) (same).

Accordingly, the notice of appeal is dismissed without prejudice. The remittitur will be sent as provided by Rule 221, SCACR.


C.J.
FOR THE COURT

Columbia, South Carolina
March 19, 2013

cc: Richard Harold Warder, Esquire
Office of the Attorney General
Lisa Ann Bentley, Esquire

¹ According to the public case index for Pickens County, Indictment Numbers 2012-GS-39-000946 and 2012-GS-329-000947 were disposed in August 2012 based on pleas to other charges. For Indictment Numbers 2012-GS-000948, 2012-GS-39-39-000949 and 2012-GS-39-000950, the public index shows that these indictments are pending and no sentence has been imposed on any of these indictments.

EXHIBIT E

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
)	
COUNTY OF PICKENS	)	Case No(s) .: 2012GS3900948,
	)	2012GS3900949,
State of South Carolina,	)	2012GS3900950
)	
Plaintiff,)	
)	
-VS-	)	TRANSCRIPT OF RECORD
)	
Christina Reece,)	
)	
Defendant.)	
)	

March 19 - 20, 2013
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

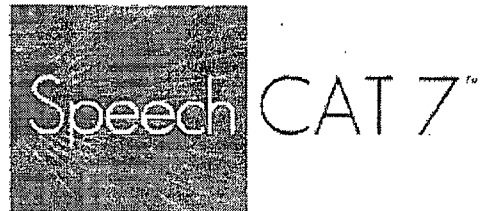
A P P E A R A N C E S:

LISA A. BENTLEY, Esquire
D. GRAHAM BUCKNER, Esquire
Assistant Solicitors

RICHARD WARDER, Esquire
Attorney for Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



I N D E X

DIRECT CROSS REDIRECT RECROSS

March 19, 2013

Motions	4		
<u>Jackson v. Deno</u>			
David Andis			
by Ms. Bentley	15		
by Mr. Warder		20	
Motion to Sequester	22		
Opening Statement			
by Mr. Buckner	24		
by Mr. Warder	30		
Joey Baldwin			
by Ms. Bentley	31		
by Mr. Warder		65	
Heather Carroll			
by Mr. Buckner	70		
by Mr. Warder		75	
James Greer			
by Ms. Bentley	78		
by Mr. Warder		89	
B.W. Mayfield			
by Mr. Buckner	91		
by Mr. Warder		99	

I N D E X

DIRECT CROSS REDIRECT RECROSS

March 19, 2013 (con't)

Phillip Odom

by Mr. Buckner 102

by Mr. Warder 105

Mendel Rivers

by Mr. Buckner 106

by Mr. Warder 107

Mike Pelfrey

by Mr. Buckner 108

S.G. Adcox

by Mr. Buckner 114

Brad West

by Mr. Buckner 117

Amy Stephens

by Ms. Bentley 123

Kimberly Mears

by Ms. Bentley 127

Maribeth Coleman

by Ms. Bentley 130

by Mr. Warder 133

Toni Broome

by Ms. Bentley 136

by Mr. Warder 142

I N D E X

DIRECT CROSS REDIRECT RECROSS

March 19, 2013 (con't)

Quintus Young

by Ms. Bentley 150

by Mr. Warder 162

by Ms. Bentley 165

Dr. Bradley Snow

by Ms. Bentley 166

Dr. Brian Dach

by Ms. Bentley 171

David Andis

by Mr. Buckner 178

Neal Nimmons

by Ms. Bentley 185

by Mr. Warder 196

Hayden Medgysey

by Ms. Bentley 198

I N D E X

DIRECT CROSS REDIRECT RECROSS

March 20, 2013

Kimberly Medgysey			
by Ms. Bentley	203		
Matthew Medgysey			
by Ms. Bentley	210		
Dr. Randel Abrams			
by Ms. Bentley	220		
State Rests	222		
Motions	222		
Court Remarks to Defendant	224		
Christina Reece			
by Mr. Warder	226		
by Ms. Bentley		237	
by Mr. Warder			245
Motions	246		
Closing Argument			
by Ms. Bentley	247		
by Mr. Warder	249		
Deliberation of the Court	255		
Verdict	255		
Sentencing of the Court	258		
Certificate of Reporter	264		

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
STATE EXHIBITS			
S-1	Photo	27	35
S-2	Photo	27	35
S-3	Photo	27	35
S-4	Photo	27	35
S-5	Photo	27	35
S-6	Photo	27	35
S-7	Photo	27	35
S-8	Photo	27	82
S-9	Photo	27	87
S-10	Meth pipe	27	46
S-11	Beer cans	27	46
S-12	Consent form	27	50
S-13	Urine blood collection	27	74
S-14	GHS- Chain of Custody	27	75
S-15	Forensic request	27	
S-16	DVD - In-car	27	64
S-17	DVD - MAIT	27	183
S-18	Lab Report	27	
S-19	Vehicle Inspection	27	
S-20	Photo	27	
S-21	Photo	27	
S-22	SCDPS - Chain of Custody	27	

EXHIBITS PAGE (con't)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
STATE EXHIBITS (con't)			
S-23	Photo	27	214
S-24	Arrest Warrant	27	

DEFENSE EXHIBITS

D-1	Chain of Custody	75	77
D-2	Collection Report	75	77
D-3	Chain of Custody	101	101
D-4	Destruction of Evidence Form	101	101

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

1
2 (WHEREUPON, the proceedings begin on the 19th day of
3 March, 2013 at approximately 9:38 a.m.)

4 THE COURT: All right. And it's my
5 understanding that the State is ready to call the
6 State of South Carolina versus Christina Ann Reece
7 on three counts of Felony DUI resulting in Great
8 Bodily Injury, 2012-GS-39-950, 949 and 948. Is
9 that correct?

10 MS. BENTLEY: Yes, Your Honor.

11 THE COURT: All right. Yes, sir. Anything
12 we need to take up before we get started?

13 MR. WARDER: Yes, Your Honor. At least, we
14 need to put some stuff on the record.

15 THE COURT: Sure.

16 MR. WARDER: If it please the Court, Your
17 Honor. Uh, we had a proceeding last, I guess it
18 was last week, wherein you made a finding that the
19 officer's determination of probable cause under 15-
20 5-2946 was, I guess, either reasonable or proper.
21 We presented testimony of that in a hearing that
22 was held and the officers testified and Your Honor
23 issued a written order. We had filed Notice of
24 Intent to Appeal from that order.

25 THE COURT: Yes, sir.

1 **MR. WARDER:** I think it was maybe Monday
2 afternoon that Your Honor decided that we could go
3 ahead with the hearing today and we should proceed
4 today despite the fact that I've appealed.

5 **THE COURT:** Yes, sir.

6 **MR. WARDER:** I wanted to put on the record
7 that that had happened. We object to going
8 forward ---

9 **THE COURT:** Certainly.

10 **MR. WARDER:** --- still under the same
11 original ground ---

12 **THE COURT:** And let's just --

13 **MR. WARDER:** --- that we filed on appeal.

14 **THE COURT:** Sure. Let's just say that for
15 the record that you made a motion to stay this
16 pending your appeal. Defense counsel argued that,
17 uh, -- defense counsel argued that this order was,
18 in fact, somewhat dispositive of this case and,
19 therefore, it was immediately appealable.

20 However, after reviewing the case law on this
21 area, I find that it was an interlocutory order
22 that was not subject to immediate appeal. In fact,
23 this case is not concluded until there's either --
24 there's some -- either a finding of guilty or not
25 guilty in this case. But your record is protected

1 that you certainly did make that motion.

2 **MR. WARDER:** Thank you. And, uh, I don't
3 know. When do you want to proceed -- this case, as
4 Your Honor is well aware of, is a result of a
5 warrant that was searched wherein the blood of my
6 client was seized. Whenever that's offered, we
7 want to be heard upon the, uh, --

8 **THE COURT:** Certainly. Certainly. We'll
9 make sure we take the time to put any objection you
10 have to anything and preserve that issue. All
11 right.

12 **MR. WARDER:** I also want to move that Your
13 Honor find that the statute 56-5-2926 is
14 unconstitutional and that that statute attempts to
15 shift the burden of finding probable cause to the
16 discretion of the officer as it quotes to a neutral
17 detached magistrate. I think because of that, uh,
18 vesting in the officer under the statute of that
19 that that ultimately renders that statute
20 unconstitutional. We would ask Your Honor to rule
21 upon that at some time.

22 **THE COURT:** All right. And your motion on
23 that ground is respectfully denied as well. I
24 think we took that up at the hearing, but I think
25 we needed to revisit it for trial. It is

1 respectfully denied.

2 MR. WARDER: Okay.

3 THE COURT: All right. Anything else we
4 need to take up?

5 MR. WARDER: Probably for housekeeping, we
6 should note on the record that I discussed the
7 rights of a jury trial with my client. I discussed
8 the rights she gives up when she waives them to
9 have Your Honor be the decider of fact and the
10 decider of the law. She freely, voluntarily does
11 that. We've talked. She's not under the influence
12 of any coercion or anything like that.

13 THE COURT: Why don't we question her on the
14 record? I have no doubt that you've talked to her
15 at length about it.

16 Ma'am, will you raise your right hand please.

17 (WHEREUPON, Christina Ann Reece is first duly
18 sworn.)

19 THE COURT: Okay. You can put your hand
20 down. Would you tell your full name please?

21 MR. FIELD: Christina Ann Reece.

22 THE COURT: All right. Ms. Reece, you
23 understand we were here today for a jury trial on
24 this matter. Do you know that?

25 MR. FIELD: Yes, ma'am.

1 **MR. WARDER:** No, Your Honor. I think that
2 would put it in the record.

3 **THE COURT:** All right. I find that she is
4 freely and voluntarily waiving her right to a jury
5 trial and she's doing so with the advice of
6 extremely competent counsel with whom she's real
7 satisfied. All right. Thank you so much.

8 Yes, ma'am.

9 **MS. BENTLEY:** Your Honor, there are a few
10 housekeeping matters for the State. We have two
11 statements from the defendant that we need to have
12 a Jackson v. Deno hearing on.

13 **THE COURT:** All right.

14 **MS. BENTLEY:** We also have one evidentiary
15 issue that we'll take up after those if it pleases
16 the Court.

17 **THE COURT:** All right. All right then.
18 Proceed.

19 **MS. BENTLEY:** The State would first call
20 D.C. Andis.

21 **THE COURT:** Before we proceed, let me just
22 say that the cameras in the courtroom, unless it's
23 a member of the media, I can't allow -- I have to
24 sign a consent for there to be a camera in the
25 courtroom. I'm not going to be able to allow you

1 in fact, under the influence at the time that this
2 wreck occurred and that is because it appears that
3 her faculties were impaired to drive that she would
4 make such a decision on a two-lane road going in, as
5 we said, no other circumstances or reasons that
6 would seem to contribute to the wreck in any way,
7 and that that act proximately caused the accident,
8 which resulted in the injuries. I think there was
9 no question about that. Even Ms. Reece admits that
10 her turning around or whatever else was -- the cause
11 of this is what resulted in the injury to all three
12 victims.

13 As such, I find that the State has met their
14 burden and has proved Ms. Reece's guilt beyond a
15 reasonable doubt on each count of Felony DUI, docket
16 number 2012-GS-20 -- excuse me -- GS-39-950, 949 and
17 948.

18 Next, we need to move to the sentencing phase.
19 Mr. Warder, do you need a few minutes before moving
20 to the sentencing phase or would you like to do that
21 now?

22 **MR. WARDER:** I think we'd like to do it now.

23 **THE COURT:** Okay. All right. Let's move
24 directly to that. Y'all want to approach and do it
25 as we do -- we do normally a guilty plea?

1 account the affect that your conduct had on other
2 folks who lived good and decent lives and were doing
3 what they were supposed to be doing. I can't --
4 there's just not -- if that was the sole deciding
5 factor, there's not a punishment I can give you
6 really that would make up for what you've done to
7 these people ---

8 **MS. REECE:** I understand.

9 **THE COURT:** --- and to this family. I take
10 into account your very limited prior record. It is
11 very limited. I take all those things into account.
12 And the sentence of the court, concurrent on each of
13 them, is 10 years. Good luck to you. Thank you.

14 I wish you all the best of luck.

15

16 **(WHEREUPON, the proceedings conclude at**
17 **approximately 12:18 p.m.)**

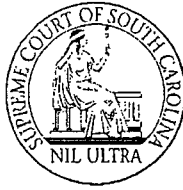
18

19

20

21

EXHIBIT F



RICHARD WARDER

APR - 8 2013

RECEIVED

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211
1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

April 4, 2013

The Honorable Harold P. Welborn, Jr.
Clerk of Court, Pickens County
PO Box 215
Pickens SC 29671-0215

REMITTITUR

Re: The State v. Christine Reece
Lower Court Case No. 2012GS3900946, 2012GS3900947,
2012GS3900948, 2012GS3900949, 2012GS3900950
Appellate Case No. 2013-000537

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Daniel E. Shearouse
DS

CLERK

cc:

Richard Harold Warder, Esquire

Lisa Ann Bentley, Esquire

Office of the Attorney General



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

July 3, 2014

Honorable Jenny Abbott Kitchings
Clerk, Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: The State v. Christina Reece, Appellate Case No. 2013-000656

Dear Ms. Kitchings:

Enclosed are an original and six copies of the Motion to Vacate Convictions, Remand for a new Trial, to Dismiss the Appeal in the above-captioned case. Thank you for your assistance in this matter.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/rd

Enclosure

cc: Salley W. Elliott, Esquire

RECEIVED

JUL 03 2014

SC Court of Appeals