STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2013-000656

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

CHRISTINA REECE,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant was indicted in June 2012 in Pickens County for three counts of felony driving under the influence resulting in great bodily injury. A suppression hearing was held before the Honorable Letitia H. Verdin on January 28, 2013. Judge Verdin denied the motion to suppress by order dated February 26, 2013.[1] On March 19, 2013, Appellant's case was called for trial. Appellant waived her right to a jury trial and elected to proceed with a bench trial. After hearing all the evidence, Judge Verdin found Appellant guilty on all three counts and sentenced Appellant to ten years, concurrent, for each offense. A timely notice of appeal was served and filed.

[1] Defense counsel filed an improper interlocutory appeal following the Feb. 26, 2013 order. This appeal was dismissed by the South Carolina Supreme Court on March 19, 2013. The improper interlocutory appeal issue is discussed in greater detail in Section II of this Brief.

ARGUMENT

Background Facts

On April 30, 2011, Appellant was driving a 1986 Nissan pickup truck along Saluda Dam Road in Pickens County. (Trial Transcript p. 33; p. 35-37; p. 231-32). There were three other passengers in her vehicle: Appellant's adult female friend, Appellant's three-year-old son, and an eighteen-month-old child. (Trial Transcript p. 227). Appellant's friend was seated in the bed area of the truck. (Trial Transcript p. 231-32; p. 237). Around 5:35 pm, Appellant crossed the center line and struck the Medgysey car. (Trial Transcript p. 35-36; p. 207). Matthew Medgysey was driving, and his wife and young son were passengers. (Trial Transcript p. 207-208; p. 212). All parties except the eighteen-month-old child were injured and had to be transported to Greenville Memorial Hospital.[1] (Trial Transcript p. 34; p. 38; p. 234). Appellant had to be extricated from the driver's seat of her truck. (Trial Transcript p. 118-120). When highway patrol officers arrived, they discovered that Appellant's truck was inoperable and would have to be towed away. (Suppr. Hrg. Tr. p. 20; p. 47). The inventory search revealed several beer cans in the bed of the truck and behind the seat of the truck, two

[1] The injuries of the three victims in the Medgysey car were not disputed at trial, nor was the fact that Appellant caused the collision and resulting injuries by crossing left of center. (See Trial Transcript p. 247-49). Victim Kimberly Medgysey was initially diagnosed with a broken ankle and had surgery. (Trial Transcript p. 216). However, it was soon discovered that she had also suffered a perforated small intestine. (Trial Transcript p. 216). A couple of hours after having surgery regarding the perforated intestine, she had three successive strokes and remained unconscious for the next month. (Trial Transcript p. 216-17). Thereafter, she had to stay in a rehabilitation center for about seven weeks. (Trial Transcript p. 217). She was in a wheelchair for a while after leaving the rehabilitation center and continued to receive medical care at home as well as physical, occupational, and speech therapy. (Trial Transcript p. 218-19). Matthew Medgysey suffered a broken foot and as a result had limited activity for about a month and a half. (Trial Transcript p. 214). Kimberly and Matthew's son, who was age ten at the time of trial, suffered a broken collarbone, a sprained wrist, a punctured lung, and fractured ribs. (Trial Transcript p. 198; p. 215).

previously-served arrest warrants for methamphetamine charges, and a pipe commonly used for smoking methamphetamine.[2] (Suppr. Hrg. Tr. p.19-21).

Upon investigation of the accident, officers discovered that there was no observable cause for the crash, i.e., no weather concerns, no roadway or visual impediments, no mechanical issues with Appellant's vehicle, and no sudden emergency conditions. (Trial Transcript p. 35-37; p. 188-95). Also, the sun would have been at Appellant's back at the time of the collision. (Trial Transcript p. 37). Occupants of the Medgysey car stated Appellant simply crossed the center line and hit their car for no apparent reason. (Trial Transcript p. 42-43; p. 207; p. 212). After assessing all the information they were able to obtain that evening, officers determined they had probable cause to take a blood sample from Appellant pursuant to the felony DUI statute. (Suppr. Hrg. Tr. p. 33-37). One of the highway patrolmen asked hospital personnel to draw Appellant's blood using a standard blood collection kit. (Suppr. Hrg. Tr. p. 37).

The blood test revealed that Appellant had THC metabolite in her blood, indicating she had "past exposure" to marijuana most likely in the last thirty-six hours. (Trial Transcript p. 156-57). Appellant also had ".29 milligrams per liter" of methamphetamine in her system. (Trial Transcript p. 157, lines 16-23). The forensic toxicologist, who was qualified as an expert without objection, testified that methamphetamine was present in Appellant's system and was "definitely acting on the body" and causing impairment. (Trial Transcript p. 152; p. 159; p. 160-61). He also testified that the fact that amphetamine, a by-product of methamphetamine, was not

[2] At the bench trial, the judge decided to exclude - for purposes of the trial only and not the suppression hearing - the arrest warrants and the "meth pipe," stating that they were "irrelevant" to the issue of guilt and also that the officers were required to get a warrant before searching the bag in which those items were discovered. (Trial Transcript p. 135, line 5 – p. 136, line 7; see also p. 84-85).

found in Appellant's blood sample indicated more recent use of methamphetamine since the methamphetamine had not yet had a chance to break down in Appellant's system. (Trial Transcript p. 163, lines 3-13; p. 166, lines 2-6). The expert testified that the "crashing effects" of coming down off of methamphetamine would also have "an impairing effect." (Trial Transcript p. 162, lines 2-5).

Appellant testified at trial and admitted she had been a methamphetamine user prior to the collision, "since [her] child had been born." (Trial Transcript p. 235-37). She acknowledged she had been addicted to methamphetamine for "more than two years." (Trial Transcript p. 238, lines 1-14). She admitted she typically purchased and used methamphetamine "every two or three days." (Trial Transcript p. 239, lines 9-14). However, Appellant claimed that she had not used methamphetamine in the "three or four days" prior to the accident and that she did not "feel like" she was under the influence of it at the time of the crash. (Trial Transcript p. 236). Appellant asserted that the collision was a result of her "being stupid" and turning her attention away from the road to talk to her friend who was sitting in the truck bed. (Trial Transcript p. 237, lines 9-16). Appellant was the only defense witness presented. (See Trial Transcript p. 226-46).

After hearing all the evidence and deliberating for approximately one hour, the trial judge found Appellant guilty of three counts of felony driving under the influence. (Trial Transcript p. 254-57). The judge sentenced Appellant to ten years, concurrent, on each offense. (Trial Transcript p. 263, lines 11-13).

I. **Appellant's issue regarding admission of her blood test results is not preserved for appellate review where no Fourth Amendment issues were properly raised to the trial judge; where the trial judge did not rule on any Fourth Amendment issues but instead ruled only on probable cause pursuant to the felony DUI statute; and where Appellant made no contemporaneous objections when the blood test results were admitted at trial. Preservation concerns aside, Appellant's Fourth Amendment rights were not violated and her blood test results were properly admitted where an exigency existed pursuant to Schmerber v. California; where South Carolina's implied consent laws are reasonable under the Fourth Amendment and thus constitutional; and where the good faith exception would preclude suppression in any event.**

Relevant Facts

Prior to trial, on January 28, 2013, the State requested a hearing for the judge to make a determination regarding whether or not law enforcement had probable cause under the implied consent statute to take a sample of blood from Appellant. (See Suppr. Hrg. Tr. p. 4). During this hearing, the State presented the testimony of two EMS workers and three highway patrolmen. (See Suppr. Hrg. p. 7-52). EMS worker Eric Patterson testified that he responded to a two-car head-on collision on April 30, 2011. (R. p. 7). Patterson took his patient, Kim Medygyesy, and another adult female to the hospital in his ambulance. (Suppr. Hrg. p. 9-10). Brad West, Patterson's partner, testified that the collision occurred around 5:00 pm. (Suppr. Hrg. p. 12). He observed the driver of the first truck, Appellant, being extricated from her vehicle. (Suppr. Hrg. p. 13). Appellant had a leg injury and it was medically necessary for her to be transported from the scene in an ambulance. (Suppr. Hrg. p. 14). Later, at the hospital, West advised Officer Baldwin that Appellant was the driver of one of the vehicles involved in the collision. (Suppr. Hrg. p. 15-16). Appellant was in the trauma bay at that time. (Suppr. Hrg. p. 16).

Lance Corporal James Greer of the South Carolina Highway Patrol testified that he also responded to the motor vehicle collision on April 30, 2011. (Suppr. Hrg. p. 17-18). He took pictures of the scene and observed "a good bit of clutter" in the pickup truck Appellant had been driving and noticed "several beer cans" in the bed of the truck and also behind the seat of the truck. (R. p. 19). He collected three crushed up beer cans as evidence. (Suppr. Hrg. p. 20; p. 40). By that time, Corporal Mayfield, Greer's supervisor at the time, had arrived on the scene and determined that "we did have a felony DUI situation." (Suppr. Hrg. p. 20). At that point law enforcement began to inventory the vehicles before they were towed from the scene. (Suppr Hrg. p. 20). Inside a bag found in Appellant's pickup truck, Greer found two arrest warrants for Appellant for possession of methamphetamine and manufacturing methamphetamine. (Suppr. Hrg. p. 21). The arrest warrants were three or four days old. (R. p. 43). In that same bag was a methamphetamine pipe wrapped up in a brown paper towel. (R. p. 21). The pipe was also collected as evidence. (Suppr. Hrg. p. 21). Corporal Mayfield examined these items while he was on the scene. (Suppr. Hrg. p. 22-23).

Trooper Joey Baldwin of the South Carolina Highway Patrol also responded to the collision scene. (Suppr. Hrg. p. 24). He reported the time of the collision as 5:35 pm. (Suppr. Hrg. p. 25, lines 1-2). By the time he arrived around 6:09 pm, all of the occupants of the vehicles had been transported to the hospital. (Suppr. Hrg. p. 26). Trooper Baldwin noted that it was a clear, sunny day and there were no impediments in the roadway. (Suppr. Hrg. p. 27, lines 6-11). He determined that the truck Appellant had been driving was headed toward Greenville and the vehicle she hit was headed in the opposite direction toward Easley. (Suppr. Hrg. p. 27, lines 15-23). The final resting

place of Appellant's vehicle was left of center in the opposite lane. (R. p. 28). Trooper Baldwin noted that the sun would have been behind Appellant at the time of the collision considering her direction of travel. (Suppr. Hrg. p. 28, lines 21-25). Additionally, there were no indications that Appellant had dropped off the right or left side of the roadway prior to the collision. (Suppr. Hrg. p. 29, lines 15-17). There did not appear to be any witnesses to the collision. (Suppr. Hrg. p. 30).

After making his observations and taking a few pictures, Trooper Baldwin was directed to go to Greenville Memorial Hospital. (Suppr. Hrg. p. 29-30). He briefly met with EMS worker Brad West in the trauma bay and West informed him that Appellant had been the driver of the pickup truck involved in the collision. (Suppr. Hrg. p. 31). Appellant was unconscious or sedated when she was in the trauma bay and Baldwin was not able to have any conversation with her. (Suppr. Hrg. p. 39). Trooper Baldwin then began gathering information regarding the injuries of the occupants of the vehicles. (Suppr. Hrg. p. 31-32). He learned that there were a total of four occupants in Appellant's vehicle at the time of the collision: Appellant, another adult female, and two children. (Suppr. Hrg. p. 32). The children were too young to articulate any information regarding the accident. (Suppr. Hrg. p. 32, lines 20-22). Trooper Baldwin then went to touch base with the occupants of the vehicle Appellant hit. (Suppr. Hrg. p. 32-33). Those occupants were all injured fairly severely. (See Suppr. Hrg. p. 33-34). They reported that Appellant "just drove left of center and hit them." (Suppr. Hrg. p. 44, lines 6-8). As Trooper Baldwin gathered this information, he relayed it to Corporal Mayfield over the phone. (Suppr. Hrg. p. 34-35). Corporal Mayfield told Trooper Baldwin about the incriminating items found in Appellant's vehicle, including the arrest warrants for

methamphetamine offenses, the methamphetamine pipe, and the beer cans. (Suppr. Hrg. p. 35; p. 39). At that point, considering the fact that there appeared to be no observable cause for the accident, the officers suspected that Appellant's intoxication may have caused it. (Suppr. Hrg. p. 36-37). Accordingly, they determined they had probable cause for a blood draw pursuant to the felony DUI statute. (Suppr. Hrg. p. 37). Trooper Baldwin proceeded to the trauma bay with a blood kit and hospital personnel drew Appellant's blood.[3] (Suppr. Hrg. p. 37-38).

Corporal Brian Mayfield of the South Carolina Highway Patrol testified that he also responded to the collision scene on April 30, 2011. (Suppr. Hrg. p. 45-46). When he arrived he found two vehicles in the roadway, a pickup truck and small car, and the vehicles had been involved in a head-on collision. (Suppr. Hrg. p. 46). It appeared that the pickup truck went left of center and hit the other vehicle. (Suppr. Hrg. p. 46). All the occupants of the vehicles had been transported to the hospital by the time Mayfield arrived. (Suppr. Hrg. p. 46). Appellant's truck was not in a drivable condition and it was going to have to be towed away. (Suppr. Hrg. p. 47). Consequently, the vehicle was inventoried. (Suppr. Hrg. p. 47). Several troopers participated in the inventory. (Suppr. Hrg. p. 48). The previously-mentioned beer cans, methamphetamine pipe, and arrest warrants were found. (Suppr. Hrg. p. 48). Corporal Mayfield relayed all the information gleaned at the scene to Trooper Baldwin, who was at the hospital. (Suppr. Hrg. p. 48-49). Based on his twenty-two years of experience in highway patrol, and based on the evidence found at the scene, including the lack of any apparent cause of the crash, Corporal Mayfield suspected that Appellant's intoxication may have caused the collision.

[3] The chain of custody form for the blood draw, which was later admitted at trial as State's Exhibit # 14, reflected that the blood was drawn at 8:10 pm. (See State's Exhibit # 14).

(Suppr. Hrg. p. 49-50). In light of the serious injuries that the occupants of both vehicles sustained, Corporal Mayfield and Trooper Baldwin decided that "it looked like a felony DUI" and that they had probable cause to have Appellant's blood drawn. (Suppr. Hrg. p. 50-51).

At the conclusion of Mayfield's testimony, the solicitor informed the judge that her presentation "supporting a determination for probable cause for the blood draw" was complete. (Suppr. Hrg. p. 53, lines 5-8). The solicitor then argued that the State had met its burden under the statute to show probable cause for the blood draw in light of the officers' knowledge of what happened at the scene of the collision, the fact that there was no explainable cause for the crash, the items found in Appellant's vehicle including the beer cans, methamphetamine pipe, and recent arrest warrants for methamphetamine offenses, and considering the bodily injury resulting from the collision. (Suppr. Hrg. p. 53-54). In response, defense counsel argued that officers did not have probable cause under the statute because the arrest warrants were a few days old and that there was no reason to believe the beer cans found in Appellant's truck were cold. (Suppr. Hrg. p. 54, line 17 – p. 55, line 2). He also argued there was no reason to believe the methamphetamine pipe had been recently used because "it was wrapped up in paper in her purse." (Suppr. Hrg. p. 55, line 14-17). He further argued that the blood draw was ordered "on the basis of nothing to indicate [Appellant] is under the influence." (Suppr. Hrg. p. 55, lines 3-10). He asserted it was "mere speculation" and that if the issue went before a neutral and detached magistrate, "we'd have a different result." (Suppr. Hrg. p. 55-56). Defense counsel further stated:

> I'll be honest. What bothers me about this case when we were rushing it through is that the issue is before the United States Supreme Court right

> now. It was argued orally on the 13th of January. Uh, they were going to address this whole issue, I think, of what relevancy Schmerber would have in today's world and whether or not you can ever take a blood sample.

He then reiterated his probable cause argument:

> But I think in this case, it's just speculation. We don't know what happened. People were hurt bad. What we're going to do is we're going to take her blood and send it down and if it comes back, we'll charge her. That is improper. (Suppr. Hrg. p. 56, lines 21-25).

The trial judge then ruled as follows:

> I appreciate your argument on behalf of your client and you've argued vigorously on her behalf. I do not know if in my ruling today does not reflect what it might have been in prior law. But under the law as it is today, I find that there was probable cause that a reasonable officer would have in that circumstance believe a blood draw was necessary. I base that not on arrest warrants, although that might have given an officer some more confirmation about his suspicions. But a meth pipe in personal belongings of the defendant as well as – who was the driver, as well as beer cans in the truck, I believe do give probable cause to draw blood in the circumstance. (Suppr. Hrg. p. 57, lines 1-15).

On February 26, 2013, the trial judge issued an order confirming the oral ruling. (See Order dated 2/26/13). This order addressed **only** whether or not law enforcement had probable cause for the blood draw pursuant to the statute and made no mention of the Fourth Amendment or the case of Missouri v. McNeely, __ U.S. __, 133 S.Ct. 1552, (2013). Defense counsel did not file a motion for reconsideration asking the judge to rule on additional issues.

Defense counsel filed an improper interlocutory appeal from the February 26, 2013 order which was dismissed by the South Carolina Supreme Court on March 19, 2013. (See Notice of Appeal and Order Dismissing Appeal). Appellant's case was called for trial that same day in the circuit court, although it appears the parties were not yet aware of the Supreme Court's dismissal order. (See Trial Transcript, p. 8-9). At the

beginning of trial, defense counsel stated he objected to going forward with the trial despite the fact that he filed an appeal. (Trial Transcript p. 9). The judge ruled that the trial could go forward because the appeal was an improper interlocutory appeal. (Trial Transcript p. 9, lines 14-25). Defense counsel then noted that he wished to be able to place his objections to the blood which was "seized" from Appellant "whenever that's offered." (Trial Transcript p. 10, lines 2-7). The judge stated that she would "make sure we take the time to put any objection you have to anything and preserve that issue." (Trial Transcript p. 10, lines 8-11). Defense counsel also made a motion that the court find S.C. Code § 56-5-2946 unconstitutional because "that statute attempts to shift the burden of finding probable cause to the discretion of the officer as it quotes to a neutral detached magistrate." (Trial Transcript p. 10, lines 12-17). He added that, "I think because of that, uh, vesting in the officer under the statute of that that that ultimately renders that statute unconstitutional." (Trial Transcript p. 10, lines 17-20). The trial judge denied the motion. (Trial Transcript p. 10, line 22 – p. 11, line 1).

Much later in trial, forensic toxicologist Toni Broome of the South Carolina Law Enforcement Division ("SLED") testified that Appellant's blood came back positive "for THC and methamphetamine." (Trial Transcript p. 141, lines 15-17). There was no objection by defense counsel. Subsequently, another SLED forensic toxicologist, Quintus Young, testified that Appellant's sample "screened positive" for methamphetamine and THC metabolite. (Trial Transcript p. 156, lines 17-20). He further stated that both substances were "confirmed" in this case. (Trial Transcript p. 156, line 20). Defense counsel did not object to this testimony. In addition, defense counsel's only objection to the admission of Young's report was that it would "just be

cumulative to his testimony." (See Trial Transcript p. 156, lines 3-8). Defense counsel did not mention the blood draw issue at the directed verdict stage or at the end of trial. (Trial Transcript p. 222-23; p. 246-47; p. 257-63).

Issue Preservation

On appeal, Appellant does not argue, as he did in the pretrial hearing, that officers lacked probable cause under the felony DUI blood draw statute, S.C. Code § 56-5-2946. (See Suppr. Hrg. p. 54-58). He also does not argue, as he did just before trial commenced, that the statute itself is unconstitutional because it gives discretion to officers to determine probable cause. (See Trial Transcript p. 10). Instead, on appeal, Appellant makes the new and distinct argument that her Fourth Amendment rights were violated because "the police ordered her blood drawn after a car accident, without a warrant, since the belief of a police officer that alcohol may be present in the suspect's blood stream does not create a *per se* exception to the Fourth Amendment's search warrant requirement allowing a non-consensual blood draw, in violation of Missouri v. McNeely, 133 S.Ct. 1552 (2013)." (See Brief of Appellant, p. 4).

Appellant's McNeely argument, raised for the first time on appeal, is not preserved for appellate review. First, no Fourth Amendment issue was properly raised to the trial judge below. The pretrial hearing was requested by the State to allow the trial judge to make a finding regarding probable cause for the blood draw pursuant to the felony DUI statute. The pretrial hearing was focused on that issue. Appellant's mere mention at the end of the pretrial hearing that a similar case was pending in the United States Supreme Court – without making any specific Fourth Amendment arguments – was wholly insufficient to preserve the issue. See, e.g., Wilder Corp. v. Wilke, 330 S.C.

71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." (citations omitted)); State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."); State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) (an appellant is limited to the arguments he makes at trial); State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (finding an issue not properly preserved for appeal where one ground was raised below and another ground was raised on appeal); State v. Baker, 390 S.C. 56, 65, 700 S.E.2d 440, 444 (Ct. App. 2010) (even constitutional claims must be raised at trial to be preserved for review).

Second, the trial judge never ruled on any Fourth Amendment issues in her oral pronouncement or in her written order, and Appellant did not subsequently request that the judge made a specific Fourth Amendment ruling in addition to her ruling regarding probable cause under the statute. See State v. Watts, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct. App. 1996) (to be preserved for appellate review, an issue must be both presented to **and passed upon** by the trial judge; if an issue is raised but not ruled upon, it is not preserved (emphasis added)); State v. Hudgins, 319 S.C. 233, 236, 460 S.E.2d 388, 390 (1995) (although appellant objected, the trial judge did not rule on the objection and appellant did not object further or request curative instructions; therefore, this issue was not preserved for review), *overruled on other grounds by* State v. Collins, 329 S.C. 23, 495 S.E.2d 202 (1998); Harkins v. Greenville County, 340 S.C. 606, 620, 533 S.E.2d

886, 893 (2000) ("In order to be preserved for review, the lower court must rule upon the issue."); see also Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012) (pointing out that "error preservation has been a critical part of appellate practice in this State for a long time, serving to ensure . . . that we do not reach issues which were not ruled upon by the trial court"); State v. Gee, 262 S.C. 373, 379, 204 S.E.2d 727, 729 (1974) ("Only matter that has been ruled on below can be reviewed, otherwise, the appellate court would be exercising original jurisdiction rather than being a reviewing court. Since the trial judge was not requested to rule upon the foregoing question, and made no ruling thereabout, it is not properly before this Court for consideration." (citations omitted)).

Third and finally, Appellant failed to make a contemporaneous objection to the blood test results when they were offered into evidence at trial.[4] See, e.g., State v. Griffin, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000) ("[A]n in limine ruling is not final and does not preserve the issue for appeal."); State v. Smith, 337 S.C. 27, 33, 522 S.E.2d 598, 600 (1999) ("A pretrial ruling on the admissibility of evidence is preliminary and is subject to change based on developments at trial."); State v. Mitchell, 330 S.C. 189, 498 S.E.2d 642, 644 n. 3 (1998) (unless a contemporaneous objection is made at the time the evidence is offered at trial and a final ruling made, the issue is not preserved for review).

For all of these reasons, the McNeely issue raised on appeal is not preserved for appellate review. See State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005) ("If a party fails to properly object, the party is procedurally barred from raising the issue

[4] Appellant failed to make a contemporaneous objection at trial despite the fact that defense counsel previously stated his intention to object at the appropriate time and despite the fact that the trial judge assured him he would be given the opportunity to object and preserve his issue. (Trial Transcript p. 10, lines 2-11).

on appeal."); see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it considered all relevant facts, law, and arguments."). Accordingly, this Court should dismiss this issue on procedural grounds.

Discussion

Standard of Review/Applicable Law

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is any evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004); see State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000) ("[W]e will review the trial court's ruling like any other factual finding and reverse if there is clear error. We will affirm if there is any evidence to support the ruling."). The reviewing court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence. State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, the appellate court must affirm the trial court if there is any evidence in the record to support the ruling. State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005). The appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009), *overruled in part on other grounds by* State v. Provet, 405 S.C. 101, 108, 747 S.E.2d 453, 457 (2013) (citations omitted).

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The Fourteenth Amendment extends this constitutional guarantee to searches and seizures by state officers. Elkins v. United States, 364 U.S. 206, 213 (1960). "The touchstone of the Fourth Amendment is reasonableness." Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) ("It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]"). Significantly, "[t]he purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.' " United States v. Mendenhall, 446 U.S. 544, 553-554 (1980) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)).

The well-settled rule is warrantless searches are unreasonable *per se* unless they fall under an exception to the Fourth Amendment's warrant requirement. State v. Peters, 271 S.C. 498, 501, 248 S.E.2d 475, 476 (1978). "[W]arrantless searches are allowed when the circumstances made it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement." Kentucky v. King, __ U.S. __, 131 S.Ct. 1849, 1858 (2011). There are several recognized exceptions to the warrant requirement. State v. Bailey, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981). Exceptions to the Fourth Amendment's warrant requirement include, among other things, consent, Schneckloth v. Bustamonte, 412 U.S. 218, 222, 93 S.Ct. 2041, 2045, 36 L.Ed.2d

854 (1973), search incident to a lawful arrest, Arizona v. Gant, 556 U.S. 332, 338, 129 S.Ct. 1710, 1716, 173 L.Ed.2d 485 (2009), and exigent circumstances, Mincey v. Arizona, 437 U.S. 385, 393–94, 98 S.Ct. 2408, 2414, 57 L.Ed.2d 290 (1978). "It is well-established that 'exigent circumstances,' including the need to prevent the destruction of evidence, permit police officers to conduct and otherwise permissible search without first obtaining a warrant." Kentucky v. King, 131 S.Ct. at 1853-54. Aside from the above-mentioned exceptions, the United States Supreme Court has also recognized additional exceptions to the warrant requirement when special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like render a warrantless search or seizure reasonable." Illinois v. McArthur, 531 U.S. 326 (2001); Maryland v. King, __ U.S. __, 133 S.Ct. 1958, 1969 (2013). Such special circumstances diminish the need for a warrant either because the public interest is such that a warrant or probable cause is not required, or because an individual is already on notice that some reasonable police intrusion on his privacy is to be expected. King at 1969. To determine the constitutionality of a particular search, the Court "must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." United States v. Place, 462 U.S. 696, 703 (1983). "The reasonableness of a search depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations." Grady v. North Carolina, 135 S.Ct. 1368, 1371 (2015).

The Limited Scope of McNeely

In Missouri v. McNeely, __ U.S. __, 133 S.Ct. 1552, (2013),[5] the defendant was stopped around 2:08 am by highway patrol after he was observed speeding and repeatedly crossing the center line. McNeely at 1556. The officer observed several signs of intoxication, and the defendant admitting he had consumed beer. Id. After the defendant performed poorly on field-sobriety tests and declined a portable breath test, the officer arrested him. Id. at 1556-57. While being transported to the police station for a breath sample, the defendant told the officer he would again refuse to provide a sample. Id. At that point, without securing a warrant, the officer decided to take the defendant to the hospital for a blood test. Id. Reading from a standard implied consent form, the officer explained to the defendant that refusal to submit to the test would lead to revocation of his driver's license and could be used against him in a future prosecution. Id. The defendant still refused, and the officer directed hospital personnel to take a blood sample. Id. The sample was secured at 2:35 am. Id.

At trial, the defendant moved to suppress the blood test results, arguing that taking his blood for chemical testing without first obtaining a search warrant violated his rights under the Fourth Amendment. Id. The trial court agreed, concluding that there were no exigent circumstances other than the fact that alcohol was being metabolized by the defendant's liver. Id. The Missouri Supreme Court affirmed, ruling that exigency depends heavily on the existence of special facts, such as whether an officer was delayed by the need to investigate an accident and transport an injured suspect to the hospital, as

[5] Five justices – Justices Sotomayor, Scalia, Kennedy, Ginsburg, and Kagan – joined the majority opinion. In addition, four of those justices – Justices Sotomayor, Scalia, Ginsburg, and Kagan – issued a plurality opinion, and Justice Kennedy issued a concurring opinion. Chief Justice Roberts – joined by Justices Breyer and Alito – issued an opinion concurring in part and dissenting in part. Justice Thomas issued a dissenting opinion.

had been the case in Schmerber. Id. Finding there were no "special facts" in McNeely's case, since it was unquestionably a "routine" driving under the influence case, the court affirmed the suppression of the blood test results. Id. The state appealed to the United States Supreme Court, arguing that the natural dissipation of alcohol in the bloodstream establishes a *per se* exigency that justifies, on its own, an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk driving cases. Id. at 1558. The state presented only this narrow question and did **not** argue that any other exceptions to the warrant exception applied. See id. at 1560.

Acknowledging there was a "split of authority,"[6] the United States Supreme Court granted certiorari to resolve the narrow question before it. Id. at 1558. The Court pointed out that the totality of the circumstances in Schmerber v. California, 384 U.S. 757 (1966), supported an exigency because the defendant was involved in a car accident which had to be investigated; the defendant suffered injuries in the accident and had to be taken to the hospital; and, under these circumstances, the officer might reasonably have believed he was confronted with an emergency and that the delay necessary to obtain a warrant threatened the destruction of evidence due to the natural dissipation of alcohol in the defendant's blood. Id. at 1559-60. The Court ultimately determined that a *per se* exigency did not exist under the circumstances of McNeely's case – where the **only** "exigency" was the natural dissipation of alcohol in the defendant's blood – and instead upheld the "totality of the circumstances" analysis as applied in Schmerber. Id. at 1559-

[6] Like many jurisdictions, South Carolina interpreted Schmerber v. California, 384 U.S. 757 (1966), to mean that the natural metabolism of alcohol in a person's bloodstream was an exigent circumstance justifying an exception to the usual warrant requirement. See State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989); see also State v. Shriner, 751 N.W.2d 538 (Minn. 2008); State v. Bohling, 494 N.W.2d 399 (Wis. 1993); State v. Woolery, 775 P.2d 1210 (Idaho 1989); State v. Dyal, 97 N.J. 229, 478 A/2d 390 (1984).

61. The Court pointed out, however, that the dissipation of alcohol remains an essential factor to be considered in the totality of the circumstances because "a significant delay in testing will negatively affect the probative value of the results." Id. at 1560-61. The Court also noted that advances in technology as relevant to obtaining warrants since the time Schmerber was decided may be relevant to an assessment of exigency. Id. at 1562-63. In conclusion, the Court stated that "[i]n short, while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, as it did in Schmerber, it does not do so categorically." Id. at 1563.

In part III of the opinion, a plurality of the Court recognized that the McNeely opinion was limited to addressing the "exigency" exception by pointing out that "consent" is a separate exception:

> States have a broad range of legal tools to enforce their drunk-driving laws and to secure BAC evidence without undertaking warrantless nonconsensual blood draws. For example, all 50 States have adopted implied consent laws that require motorists, as a condition of operating a motor vehicle within the State, to consent to BAC testing if they are arrested or otherwise detained on suspicion of a drunk-driving offense. Such laws impose significant consequences when a motorist withdraws consent; typically the motorist's driver's license is immediately suspended or revoked, and most States allow the motorist's refusal to take a BAC test to be used as evidence against him in a subsequent criminal prosecution. (citations omitted).

The most important points to be gleaned from McNeely can be summarized as follows:

(1) McNeely addressed only the narrow question before the Court which involved the exigency exception to the warrant requirement and no other exception or justification;

(2) McNeely is different from Schmerber because McNeely was a "routine" driving under the influence case while Schmerber – which remains good law – involved a car accident and injuries requiring hospitalization;

(3) The natural dissipation of alcohol in the blood continues to be an important factor in a totality of the circumstances analysis under the exigent circumstances exception to the warrant requirement;

(4) A plurality of the Court seemed to cite with approval the "implied consent" statutes which exist in some form in every state.

Admission of the Blood Test Results was Proper

(1) Exigent Circumstances and *Schmerber*

As discussed above, the McNeely court expressly upheld Schmerber, which concluded that the totality of the circumstances warranted a nonconsensual test of the defendant's blood under the exigency exception. The facts in Appellant's case reveal an even greater exigency than the facts in Schmerber; therefore, admission of Appellant's blood draw should be upheld under the totality of the circumstances test.

In Schmerber, the defendant, who was intoxicated, crossed the road and drove into a tree. Schmerber at 384 us 757, 758-9 & 768-69. Both the defendant and his passenger were injured in the accident and were taken to the hospital. Id. at 759 n2. Within about two hours of the accident, and after law enforcement observed several indicators he was intoxicated, the defendant was arrested at the hospital for driving under the influence of intoxicating liquor. Id. at 768-69. Then, at the direction of a police officer, the defendant's blood was drawn by a physician at the hospital. Id. at 758-59. The defendant expressly refused to consent to this blood draw on the advice of his attorney. Id. at 759. The subsequent chemical analysis revealed a blood-alcohol concentration consistent with intoxication, and the results of the analysis were admitted at trial over the defendant's objection. Id. The state appellate court affirmed, and the United States Supreme Court granted certiorari. Id.

The Supreme Court stated that the Fourth Amendment question squarely presented was "whether the chemical analysis introduced in evidence in this case should have been excluded as the product of an unconstitutional search and seizure." Id. at 766-67. After concluding that the blood draw resulted from the seizure of a person and the blood test plainly constituted a search, the Court held that the issues to be determined were whether or not the police were justified in requiring the defendant to submit to the blood test and whether the means and procedures employed in taking his blood met Fourth Amendment standards of reasonableness. Id. at 768. Further, while it was clear there was probable cause for the defendant's arrest, and that the blood test would likely produce relevant evidence, the question remained whether the officer was permitted to draw these inferences himself or whether he was required to procure a warrant first. Id. at 770. The Court ultimately held that the officer in the defendant's case was not required to first obtain a warrant because he "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence.'" Id (citation omitted). Therefore, the exigency exception applied since there was "no time to seek out a magistrate and secure a warrant" in light of the "special facts" presented: (1) the natural dissipation of alcohol in the defendant's system; (2) the fact that time had to be taken to investigate the car accident; and (3) the fact that time had to be taken to bring the accused to the hospital. Id. at 770-71. Accordingly, the Court concluded "that the present record shows no violation of Petitioner's right under the Fourth and Fourteenth Amendments to be free of unreasonable searches and seizures." Id.

The facts in Appellant's case are even more egregious than those in Schmerber – and even more illustrative of exigent circumstances.[7] Here, Appellant was the driver of a truck which crossed the center line and had a head-on collision with a car containing three occupants. (Trial Transcript p. 208, lines 11-13). Most of the vehicles' occupants, including Appellant and including three young children, were injured, some very seriously, and everyone involved in the collision was transported to the hospital. The highway patrol officers did not even arrive at the scene the occupants had all been removed via ambulance, and some officers had to assist with traffic control since the accident occurred at an intersection. (R. p. 12, lines 11-12; Trial Transcript p. 33-34; p. 79; p. 93). In preparation for towing Appellant's inoperable vehicle, officers discovered warrants for methamphetamine offenses and a methamphetamine pipe in a bag with Appellant's personal belongings. Furthermore, there were beer cans in Appellant's vehicle, not only in the truck bed but behind the seats as well. Upon investigation of the scene, and after speaking with some of the occupants at the hospital, officers discovered that there was no observable cause of the accident, i.e., no weather concerns, no roadway or visual impediments, no mechanical issues with Appellant's vehicle, and no sudden emergency conditions.

By the time officers felt they had developed probable cause that Appellant committed felony DUI, over two and a half hours had passed. (See State's Exhibit # 14). Appellant was unconscious or sedated so it was impossible for officers to request her consent. (Trial Transcript p. 39, lines 13-15). Highly probative blood evidence had been

[7] To the extent the underlying facts regarding time frames and procedures for obtaining a search warrant are not fleshed out in the record below, this is a direct result of Appellant failing to raise any specific Fourth Amendment issues to the trial judge, as discussed above in the issue preservation section. Regardless, the State would note that there is no expedited warrant procedure authorized in South Carolina. See S.C. Code § 17-13-140; State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678 (S.C. 2000).

diminishing during the more than two-and-a-half hours since the crash and was continuing to diminish. As in Schmerber, any further delay at that point would have threatened the destruction of evidence. Also as in Schmerber, there was no time to seek out a magistrate and secure a warrant in light of the "special facts" presented: (1) the natural dissipation of alcohol in the defendant's system; (2) the fact that time had to be taken to investigate the car accident; and (3) the fact that time had to be taken to bring the accused to the hospital. See Schmerber at 770-71. Accordingly, due to the exigent circumstances existing at the time, officers were not required to obtain a warrant before obtaining Appellant's blood sample. Cf. State v. Jones, 96 A.3d 297, 305 (N.J. Super. Ct. App. Div., 2014) (finding that the defendant's suppression motion should have been denied because the same "special facts" that supported a warrantless blood sample in Schmerber – which were absent in the McNeely case – were present in this case: an accident, injuries requiring hospitalization, and an hours-long police investigation; therefore, it was not necessary for the officers to shoulder the further delay entailed in securing a warrant that would have threatened the destruction of the blood alcohol evidence). Appellant's Fourth Amendment rights were not violated.

(2) The Blood Draw was Reasonable Under the Fourth Amendment Pursuant to South Carolina's Implied Consent Laws

Balancing Test

It is beyond dispute that the "touchstone" of the Fourth Amendment is reasonableness. To determine the constitutionality of a particular search, the Court "must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the

intrusion." United States v. Place, 462 U.S. 696, 703 (1983). In Wyoming v. Houghton, 526 U.S. 295, 299-300 (1999), the United States Supreme Court stated as follows:

> The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In determining whether a particular governmental action violates this provision, we inquire first whether the action was regarded as an unlawful search or seizure under the common law when the Amendment was framed. Where that inquiry yields no answer, we must evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests (citations omitted).

In Kentucky v. King, __ U.S. __, 131 S.Ct. 1849, 1858 (2011), the United States Supreme Court reiterated these principles and stated that "warrantless searches are allowed when the circumstances make it reasonable, within the meaning of the Fourth Amendment, to dispense with the warrant requirement." Two years later, in holding that taking and analyzing a cheek swab of an arrestee's DNA is a legitimate police booking procedure that is reasonable under the Fourth Amendment, the United States Supreme Court explained:

> In some circumstances, such as "[w]hen faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable." Those circumstances diminish the need for a warrant, either because "the public interest is such that neither a warrant nor probable cause is required," or because an individual is already on notice, for instance because of his employment, or the conditions of his release from government custody, that some reasonable police intrusion on his privacy is to be expected. The need for a warrant is perhaps least when the search involves no discretion that could properly be limited by the "interpo[lation of] a neutral magistrate between the citizen and the law enforcement officer" (citations omitted).

Maryland v. King, 133 S.Ct. 1958, 1969-70 (2013). "The reasonableness of a search depends on the totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations." Grady v. North Carolina, 135 S.Ct. 1368, 1371 (2015).

South Carolina's Implied Consent Laws

It is well-settled in South Carolina that driving on a roadway is a privilege, not a right. Peake v. South Carolina Dept. of Motor Vehicles, 375 S.C. 589, 595, 654 S.E.2d 284, 288 (Ct. App. 2007); South Carolina State Highway Dept. v. Harbin, 226 S.C. 585, 86 S.E.2d 466 (1955). This privilege is "subject to reasonable regulations under the police power in the interest of the public safety and welfare." Peake, 375 S.C. at 595, 654 S.E.2d at 288 (citations omitted). "As part of this privilege, individuals operating motor vehicles implicitly consent to chemical tests of their breath, blood, or urine to determine whether they are under the influence of drugs or alcohol." Taylor v. South Carolina Dept. of Motor Vehicles, 368 S.C. 33, 36-37, 627 S.E.2d 751, 753; (Ct. App. 2006); *aff'd by* Taylor v. South Carolina Dept. of Motor Vehicles, 382 S.C. 567, 677 S.E.2d 588 (2009).

Several decades ago, our legislature, in an attempt to combat the drunk driving problem in our state, determined that people who choose to drive on South Carolina roadways have impliedly given consent for chemical testing of their breath, blood, or urine when it is believed they were driving under the influence. The current version of the statute, in pertinent part, states as follows:

> 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.

S.C. Code § 56-5-2950 (A). Generally, a person may refuse to provide a sample. S.C. Code § 56-5-2950 (B)(1). However, a person who refuses to provide a sample will have his or her driver's license suspended and the refusal can be used against the person in court. Id.

In 1998, our legislature enacted S.C. Code §56-5-2946. This statute provides that "[n]otwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs if there is probable cause to believe that the person violated or is under arrest for a violation of [the felony DUI statute]." S.C. Code § 556-5-2946 (A). Accordingly, a person suspected of felony DUI may not refuse to submit to chemical testing and a mandatory blood draw may be taken if there is sufficient probable cause.

Our Implied Consent Laws are Constitutional

The blood draw in this case was valid because it was conducted pursuant to South Carolina's felony DUI mandatory blood draw statute, which is a constitutionally valid alternative to the warrant requirement since statutory schemes of this type are reasonable under the Fourth Amendment.[8] Balancing the State's legitimate interests against the

[8] Contrary to Appellant's implicit argument, and as discussed above, McNeely did not categorically invalidate implied consent laws. As mentioned previously, McNeely removed only one legal justification for upholding the constitutionality of search under the implied consent laws, since McNeely addressed only the narrow question of whether the dissipation of alcohol in the bloodstream establishes a *per se* exigent-circumstances exception to the warrant requirement for nonconsensual blood draws in DUI arrests. The majority opinion in McNeely did not address other potential exceptions to the warrant requirement or the validity of implied consent statutes. Significantly however, the pluarilty opinion actually cited with approval the implied consent laws of "all 50 States." See McNeely, 133 S.Ct. at 1556. Indeed, the United States Supreme Court has previously cited implied consent laws with approval. See Breithaupt v. Abram,

degree to which blood tests intrude upon personal privacy interests, obtaining a driver's blood sample for testing under the circumstances and procedures set forth in the implied consent statutes is reasonable and does not violate the Fourth Amendment. The State's interest in securing the safety of people traveling on the public roadways and ridding the highways of drunk drivers is undoubtedly legitimate, strong, compelling.[9] See e.g., Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 451 (1990) ("No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it."); South Dakota v. Neville, 459 U.S. 553, 558 (1983) ("The carnage caused by drunk drivers is well documented and needs no detailed recitation here. This Court, although not having the daily contact with the problem that the state courts have, has repeatedly lamented the tragedy."); McNeely, 133 S.Ct. at 1565 ("While some progress has been made, drunk driving continues to exact a terrible toll on our society.").

On the other hand, the intrusion on one's personal privacy caused by a blood test is minimal. First, only a driver subject to arrest on probable cause of felony DUI is subject to a blood test. Such a person would already have a diminished expectation of privacy, particularly while driving on public roads. See King, 133 S.Ct. at 1978 (individuals taken into custody have diminished expectations of privacy); California v. Carney, 471 U.S. 386, 391 (1985) (holding that there is a reduced expectation of privacy stemming from a motor vehicle's use as a licensed motor vehicle subject to pervasive

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352 U.S. 432 (1957); Mackey v. Montrym, 443 U.S. 1 (1979); South Dakota v. Neville, 459 U.S. 553 (1983).

[9] According to the National Highway Traffic Safety Association, in 2013, 44% of all traffic fatalities in South Carolina were caused by alcohol-impaired driving. See http://www-nrd.nhtsa.dot.gov/Pubs/812101.pdf; see also http://responsibility.org/get-the-facts/state-map/?state=south-carolina. This is substantially higher than the national average of 31% and was the **highest percentage of all the states** in 2013. Id. It is also noteworthy that in that same year, approximately 14,742 people were arrested on DUI charges in South Carolina. See http://www.statisticbrain.com/number-of-dui-arrests-per-state/. A different website reports the number of DUI arrests in 2013 as 18,919. http://responsibility.org/get-the-facts/state-map/?state=south-carolina.

police regulation); Stovall et al. v. Sawyer, 181 S.C. 379, 187 S.E. 821, 824 (1936) ("Motor vehicles are dangerous instrumentalities and are, therefore, a proper subject of police regulation.") (citation omitted); cf. Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 627 (1989) (the expectations of privacy of covered employees are diminished by reason of their participation in an industry that is regulated pervasively to ensure safety). Second, a driver's objective expectation of privacy is further diminished (if not totally extinguished) in light of the implied consent laws, which gives all drivers in South Carolina notice that if arrested for felony DUI, they are subject to a mandatory blood draw.[10] See, e.g., Labruce v. City of North Charleston, 268 S.C. 465, 467, 234 S.E.2d 866, 867 (1977) ("Citizens are charged with knowledge of existing law."). In other words, the people of South Carolina have spoken, through their legislators, regarding the diminished level of privacy they expect if caught driving in an impaired condition. Third, the blood draw itself if minimally intrusive. Blood draws are "commonplace," extract a "minimal" amount of blood, and involve "virtually no risk, trauma, or pain." See Schmerber, 384 U.S. at 771; see also Neville, 459 U.S. at 563 ("The simple blood-alcohol test is so safe, painless, and commonplace, that respondent concedes, as he must, that the state could legitimately compel the suspect, against his will, to accede to the test."). The statutory framework ensures that a blood draw is performed by a medical professional in an appropriate manner. See S.C. Code 56-5-2950; -2946. Moreover, the test of the blood is conducted only after the sample is sent through a strict chain of custody, and the blood is analyzed only for the presence of a

[10] Notably, the purpose of the statute would be defeated if a driver could freely revoke his or her implied consent to a blood test – after having voluntarily chosen to accept the benefits of driving on South Carolina roadways – at the only relevant time period. People who wish to avoid the inconvenience of a warrantless blood draw can do so easily by choosing not to drive if they become impaired by alcohol or drugs.

distinct panel of substances that could cause impairment. (See Trial Transcript p. 56; p. 70-76; p. 97-101; p. 102-117; p. 123-34; p. 136-66). See http://www.sled.sc.gov/documents/Forensics/EvidenceSubmissionManual.pdf at pages 63-73.

Considering the decreased expectation of privacy and the minimal invasiveness of the blood test against against the State's compelling and legitimate interest in reducing drunk driving and thereby promoting the safety of its citizens, it becomes clear that a blood test conducted pursuant to the felony DUI statute is reasonable under the Fourth Amendment. Cf. Stevens v. Commissioner of Public Safety, 850 N.W.2d 717, 730 (Minn. Ct. App. 2014) ("[W]e conclude that the state's strong interest in ensuring the safety of its roads and highways outweighs a driver's diminished privacy interests in avoiding a search following an arrest for DWI. Thus, if we assume that the implied-consent statute authorizes a search of a driver's blood, breath, or urine, such a search would not violate the Fourth Amendment."); State v. Yong Shik Won, 134 Hawai'i 59, 77-80, 332 P.3d 661, 680-82 (Haw. Ct. App. 2014) (using Fourth Amendment balancing test to hold that Hawaii's statutory implied consent scheme is reasonable and constitutional); Williams v. State, __ So.3d __, 2015 WL 3511222 (Fla. Dist. Ct. App. 2015) (finding a warrantless post-arrest breath test pursuant to Florida's implied consent statutes would be constitutional under a general Fourth Amendment reasonableness test); Maryland v. King, 133 S.Ct. 1958 (2013) (using Fourth Amendment balancing test to conclude that taking and analyzing a cheek swab of the arrestee's DNA is a legitimate police booking procedure that is reasonable under the Fourth Amendment); United States v. Knights, 534 U.S. 112, 118 (2001) (using a "reasonableness" Fourth Amendment balancing test to uphold a warrantless search of a probationer's home, when the search was authorized by the terms and conditions of his probation); Samson v. California, 547

U.S. 843 (2006) (using the same reasonableness balancing test to conclude that the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee); U.S. v. Biswell, 406 U.S. 311 (1972) (using a balancing test to find that warrantless searches pursuant to the Gun Control Act, a federal statutory scheme regulating firearms dealers, are reasonable under the Fourth Amendment); see also Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602 (1989) (upholding warrantless drug testing of certain railway employees); National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989) (upholding urinalysis testing of certain customs employees); Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995) (upholding drug testing of student athletes).

Our implied consent statutes contain substantial safeguards which ensure its reasonable operation consistent with the Fourth Amendment. Moreover, defendants may demand that a trial judge exercise independent judicial review over whether or not law enforcement complied with the terms of the statutes, including whether or not there was probable cause for arrest. The implied consent statutes, including S.C. Code § 56-5-2946, are a valid and constitutional exercise of South Carolina's police power, in the interest of public safety and welfare, over people who elect to drive motor vehicles in this state. See Shumpert v. South Carolina Dept. of Highways and Public Transp., 306 S.C. 64, 409 S.E.2d 771 (1991) ("Clearly, the State has the authority, under its police power, to impose reasonable regulations upon the conduct of drivers."). Accordingly, Appellant's blood draw was reasonable under the Fourth Amendment, and the trial judge properly admitted the results of Appellant's blood test at trial.

(3) The Good Faith Exception Precludes Suppression

However, even assuming for argument's sake that there was a constitutional violation regarding the taking of Appellant's blood, the exclusionary rule should not apply since the officers were acting in good faith when they obtained Appellant's blood sample. In Illinois v. Krull, 480 U.S. 340 (1987), the United States Supreme Court held that the exclusionary rule does not apply where officers act in objectively reasonable reliance upon a statute authorizing a particular warrantless search but the statute is later found to violate the Fourth Amendment. The Court stated:

> When evidence is obtained in violation of the Fourth Amendment, the judicially developed exclusionary rule usually precludes its use in a criminal proceeding against the victim of the illegal search and seizure. Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914); Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). The Court has stressed that the "prime purpose" of the exclusionary rule "is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." United States v. Calandra, 414 U.S. 338, 347, 94 S.Ct. 613, 619, 38 L.Ed.2d 561 (1974). Application of the exclusionary rule "is neither intended nor able to 'cure the invasion of the defendant's rights which he has already suffered.' " United States v. Leon, 468 U.S., at 906, 104 S.Ct., at 3412, quoting Stone v. Powell, 428 U.S. 465, 540, 96 S.Ct. 3037, 3074, 49 L.Ed.2d 1067 (1976) (WHITE, J., dissenting). Rather, the rule "operates as 'a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.' " 468 U.S., at 906, 104 S.Ct., at 3412, quoting United States v. Calandra, 414 U.S., at 348, 94 S.Ct., at 620. As with any remedial device, application of the exclusionary rule properly has been restricted to those situations in which its remedial purpose is effectively advanced. Thus, in various circumstances, the Court has examined whether the rule's deterrent effect will be achieved, and has weighed the likelihood of such deterrence against the costs of withholding reliable information from the truth-seeking process.

Krull, 480 U.S. at 347. The Court further explained:

> Unless a statute is clearly unconstitutional, an officer cannot be expected to question the judgment of the legislature that passed the law. If the

> statute is subsequently declared unconstitutional, excluding evidence obtained pursuant to it prior to such a judicial declaration will not deter future Fourth Amendment violations by an officer who has simply fulfilled his responsibility to enforce the statute as written.

Id. at 349-50. The Court also pointed out that state legislators are required to take an oath to support the Federal Constitution and that "courts presume that legislatures act in a constitutional manner." Id. at 351. However, the Court did recognize that "[a] statute cannot support objectively reasonable reliance if, in passing the statute, the legislature wholly abandoned its responsibility to enact constitutional laws. Nor can a law enforcement officer be said to have acted in good-faith reliance upon a statute if its provisions are such that a reasonable officer should have known that the statute was unconstitutional." Id. at 355. This "standard of reasonableness we adopt is an objective one; the standard does not turn on the subjective good faith of individual officers." Id.

Furthermore, the United States Supreme Court and the South Carolina Supreme Court have recognized an exception to the exclusionary rule where an officer relies in good faith on existing appellate precedent. See Davis v. U.S., __ U.S. __, 131 S.Ct. 2419, 2434 (2011) ("It is one thing for the criminal 'to go free because the constable has blundered.' It is quite another to set the criminal free because the constable has scrupulously adhered to the governing law. Excluding evidence in such cases deters no police misconduct and imposes substantial social costs.") (citation omitted); State v. Brown, 401 S.C. 82, 95, 736 S.E.2d 263, 270 (2012) (holding that the exclusionary rule should not be applied where the officers carried out their search in accordance with existing appellate precedent, since excluding the evidence would serve no deterrent purpose); Narciso v. State, 397 S.C. 24, 32, 723 S.E.2d 369, 373 (2012) ("[E]xcluding the evidence against Petitioner would not deter police misconduct because the police in this

instance conducted a search incident to arrest pursuant to binding appellate precedent. Moreover, exclusion of the evidence in this case would result in severe social costs, including the articulation of an inexplicable and undecipherable message to law enforcement regarding how to conduct a legal search. The protection of the Fourth Amendment can only be realized if police are acting under a set of rules which make it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement.").

In this case, Appellant's blood sample was taken on April 30, 2011, approximately two years before McNeely was decided. The officers involved were relying on S.C. Code § 56-5-2946, which had been in existence since 1998. See Curtis v. State, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001) (all statutes are presumed constitutional and will generally be construed to render them valid); see also Life & Casualty Ins. Co. v. McCray, 291 U.S. 566, 572 (1934) ("The presumption of validity which applies to legislation generally is fortified by acquiescence continued through the years."). Notably, implied consent laws like South Carolina's have existed in most states for decades, and, as mentioned previously, the United States Supreme Court itself issued opinions after Schmerber which appeared to approve of implied consent laws. See e.g., Neville, 459 U.S. at 559 ("*Schmerber,* then, clearly allows a State to force a person suspected of driving while intoxicated to submit to a blood alcohol test."). It is undisputed on appeal that the officers had probable cause pursuant to this statute and properly followed the provisions of the statute. See Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (an unappealed ruling, right or wrong, is the law of the case).

In addition, at the time of the blood draw, South Carolina – along with many other jurisdictions – had interpreted Schmerber to mean that a warrant for a suspect's blood was not required as long as the police had probable cause to arrest. See State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989); see also McNeely at 1558 ("We granted certiorari to resolve a *split of authority* on the question . . . ." (emphasis added)); cf. State v. Jones, 437 N.J. Super. 68, 76, 96 A.3d 297, 302 (N.J. Super. Ct. App. Div. 2014) (pointing out that McNeely marked a "clear departure" from New Jersey precedent interpreting Schmerber). At the time Appellant's blood was drawn, the officers were justified in relying on the statute and on binding South Carolina precedent reasonably interpreting Schmerber. The officers followed the requirements of the statute and acted in an objectively reasonable and good faith belief that a warrant was not required. The officers had absolutely no reason to doubt the statute's constitutionality. Accordingly, the good faith exception applies in this case. See United States v. Lechliter, 3 F. Supp. 3d 400 (D. Md 2014); Byars v. State, 336 P. 3d 939 (Nev. 2014); State v. Foster, 360 Wis.2d 12, 856 N.W.2d 847 (Wis. 2014); State v. Edwards, 853 N.W.2d 246, 252 (S.D. 2014); State v. Harris, 234 Cal. App. 4th 671, 184 Cal. Rptr. 3d 198 (Cal. Ct. App. 2015) (all applying good faith exception in similar scenarios). Appellant's blood test results were properly admitted at trial.

II. Appellant's improper interlocutory appeal to the South Carolina Supreme Court from the denial of his pretrial suppression motion did not divest the trial court of jurisdiction over the case.

Relevant Facts

On January 28, 2013, the trial judge held a pretrial hearing on Appellant's motion to suppress the results of the blood evidence. (See 1/28/13 Transcript). The judge issued

an order denying the motion on February 26, 2013. (See Order dated 2/26/13). This order was filed on March 4, 2013. Subsequently, Appellant filed a notice of appeal from this order in the South Carolina Supreme Court. (See Notice of Appeal dated 3/13/13). It appears the notice of appeal was served on March 13, 2013. (See Certificate of Mailing, notarized on 3/13/13). On March 19, 2013, the South Carolina Supreme Court issued an order finding the appeal was premature because Appellant had not yet been sentenced. (See Supreme Court Order dated 3/19/13). The order dismissed the notice of appeal without prejudice. (See Order). On April 4, 2013, a remittitur was issued. (See Remittitur dated 4/4/13).

Appellant's trial in the circuit court took place on March 19-20, 2013, during the time period after the Supreme Court issued its order dismissing the improper notice of appeal but before the remittitur was issued. Following her conviction, Appellant filed a notice of appeal on March 26, 2013. On July 3, 2014, Appellant filed a motion to vacate her convictions, remand her case for a new trial, and to dismiss the appeal, asserting that the trial court did not have jurisdiction to try her case because the remittitur in the appeal from the pretrial order had not yet been issued. (See Motion dated 7/3/14). The State submitted a response on July 11, 2014, arguing that the improper appeal did not divest the trial court of jurisdiction over the case. (See Return dated 7/11/14). On August 28, 2014, this Court issued an order denying Appellant's motion. (See Order dated 8/28/14). Appellant's petition for rehearing was returned on September 26, 2014. (See 9/26/14 Letter).

Discussion

In South Carolina, the right to appeal is conferred by S.C. Code Ann. § 14-3-330. State v. Miller, 289 S.C. 426, 426, 346 S.E.2d 705, 705 (1986). Generally, a judgment or order must be final or otherwise satisfy the terms of Section 14-3-330 before it can be appealed. State v. Wilson, 387 S.C. 597, 599, 693 S.E.2d 923, 924 (2010); see State v. Miller, 289 S.C. at 426, 346 S.E.2d at 705 ("In order to exercise his statutory right to appeal, a defendant must come within the terms of the applicable statute."); Hagood v. Sommerville, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) ("An appeal ordinarily may be pursued only after a party has obtained a final judgment."); see also Rule 201, SCACR (stating "[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision."). It is axiomatic that in criminal cases, a defendant may not appeal until the judgment becomes final, which occurs when a sentence is imposed. State v. Robinson, 287 S.C. 173, 174, 337 S.E.2d 204, 204 (1985); see Berman v. United States, 302 U.S. 211, 212 (1937) ("Final judgment in a criminal case means sentence. The sentence is the judgment."). Thus, a criminal defendant may not appeal until after a sentence has been imposed. Parsons v. State, 289 S.C. 542, 542, 347 S.E.2d 504, 504 (1986).

In Appellant's case, the South Carolina Supreme Court has already correctly determined that Appellant's appeal from the pretrial order was an improper, interlocutory appeal. Indeed, it has long been clear in South Carolina that orders denying pretrial motions to suppress evidence are not immediately appealable. See, e.g., State v. Hubbard, 277 S.C. 568, 569, 290 S.E.2d 817, 817 (1982) (defendants appealed from the trial court's denial of their pretrial suppression motion; the Supreme Court held that the

appeal was an improper interlocuatory appeal because "[t]he appellants have not yet gone to trial. An appeal in a criminal case must attend the final judgment rendered on the indictment." (citations omitted)); see also Butler v. State, 311 Ark. 334, 842 S.W.2d 435 (1992); In re Soloman, 465 F.3d 114, 122-23 (3rd Cir. 2006).

Because Appellant's interlocuatory appeal was improper, the service and filing of the notice of appeal did not transfer jurisdiction of the case to the appellate court and did not stay the proceedings in the trial court.[11] State v. Dingle, 279 S.C. 278, 282, 306 S.E.2d 223, 225 (1983) ("We hold that the order is interlocutory in nature and thus not appealable. Since the order is not appealable until final judgment is rendered, the trial court had continuing jurisdiction over the subject matter of the case."), *abrogated on other grounds by* Horton v. California, 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990); Tatnall v. Gardner, 350 S.C. 135, 137-38, 564 S.E.2d 377, 378-79 (Ct. App. 2002) (recognizing that the appellate court did not have jurisdiction because the appeal was an improper interlocutory appeal); South Carolina Public Service Authority v. Arnold, 287 S.C. 584, 585-86, 340 S.E.2d 535, 536 (1986) ("Appellant first argues the lower court was without jurisdiction to try the case prior to this Court's issuance of the remittitur, since the filing of the notice of intent to appeal vested this Court with exclusive jurisdiction. Although this is the general rule, the instant case falls within a recognized exception. Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay

[11] Although Appellant has framed this issue as one of "subject matter jurisdiction," it is more properly couched as an issue of appellate jurisdiction. Allison v. W.L. Gore & Associates, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011); see also Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 343-44, 713 S.E.2d 278, 283-84 (2011). Obviously, circuit courts in South Carolina always have subject matter jurisdiction to try criminal cases. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (under the South Carolina Constitution, circuit courts in South Carolina have subject matter jurisdiction to try criminal matters).

further proceedings in the lower court. Since this Court granted respondents' motion to dismiss on the grounds that the consolidation order was interlocutory, and not appealable, the Circuit Court never lost jurisdiction and properly proceeded to trial. Therefore, appellant's first argument fails." (citations omitted)); Crout v. South Carolina Nat. Bank, 278 S.C. 120, 124, 293 S.E.2d 422, 424 (1982) ("The administrative judge's order refusing appellant's motion for a continuance or a voluntary dismissal was not appealable because it was an intermediate order not involving the merits. Therefore, the notice of appeal from that order did not transfer jurisdiction to this Court or stay further proceedings in the trial court. The administrative judge's order did not become appealable until after final judgment in the trial court."); see also State v. Lobato, 139 N.M. 431, 438, 134 P.3d 122, 129 (N.M. Ct. App. 2006) ("Where a non-final order is improperly appealed, the trial court is not divested of jurisdiction."); Meldoc Properties v. Prezell, 158 Ill.App.3d 212, 215, 511 N.E.2d 861, 864 (Ill. App. Ct. 1987) ("The defendant's appeal was from a nonfinal order not encompassed by . . . the rules which allow interlocutory appeals under certain circumstances. Therefore, the appeal was improper and did not confer jurisdiction on this court.").

Accordingly, Appellant's trial could proceed as scheduled despite the fact the remittitur had not yet been sent from the Supreme Court. The remittitur issued from the premature appeal merely forwarded the order dismissing the appeal; it did not "return" jurisdiction to the circuit court because the circuit court never lost jurisdiction.[12] It would

[12] The cases cited by Appellant on page 13 of his Brief are completely distinguishable because those cases dealt with *properly filed* appeals. See Lancaster v. Georgia–Pacific Corp., 403 S.C. 136, 742 S.E.2d 867 (2013); Tillman v. Oakes, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012); Bunkum v. Manor Properties, 321 S.C. 95, 467 S.E.2d 758 (Ct. App. 1996); Thomas et al. v. Lynch et al., 87 S.C. 44, 68 S.E. 817 (1910). Note that Appellant admits in her Brief that an appellate court obtains exclusive jurisdiction over a case by way of a "properly filed" notice of intent to appeal. (See Brief of Appellant, p. 13).

be totally nonsensical to allow a litigant to deprive a trial court of jurisdiction simply by filing a clearly improper interlocutory appeal. See Hodgson v. Mahoney, 460 F.2d 326 (1st Cir. 1972) ("While filing a notice of appeal generally deprives the district court of jurisdiction, where the notice is manifestly deficient, e. g. by reason of reference to a nonappealable order, the district court may disregard it and proceed with the case. **Otherwise, a litigant could temporarily deprive a court of jurisdiction at any and every critical juncture.**" (citations omitted and emphasis added)). For the foregoing reasons, the trial court had proper jurisdiction over Appellant's case when it was called for trial, and Appellant's convictions and sentences are valid.

III. Appellant's directed verdict motion was properly denied where Appellant had a substantial level of methamphetamine present in her blood; where the methamphetamine had not yet begun to break down in Appellant's system, indicating recent use; and where the expert forensic toxicologist testified that the methamphetamine present in Appellant's system was definitely acting on the body and causing impairment.

Relevant Facts

Around 5:30 pm on the date in question, Appellant crossed the center line and struck the victims' car, seriously injuring the occupants. (Trial Transcript p. 35-36; p. 207). Upon investigation of the accident, officers discovered that there was no observable cause for the crash, i.e., no weather concerns, no roadway or visual impediments, no mechanical issues with Appellant's vehicle, and no sudden emergency conditions. (Trial Transcript p. 35-37; p. 188-95). Also, the sun would have been at Appellant's back at the time of the collision. (Trial Transcript p. 37). The victims stated Appellant simply crossed the center line and hit their car for no apparent reason. (Trial Transcript p. 42-43; p. 207; p. 212).

Appellant's blood test revealed that Appellant had THC metabolite in her blood, indicating she had "past exposure" to marijuana most likely in the last thirty-six hours. (Trial Transcript p. 156-57). Appellant also had ".29 milligrams per liter" of methamphetamine in her system. (Trial Transcript p. 157, lines 16-23). The normal therapeutic dose of a drug containing some type of methamphetamine (such as ADHD medication or an appetite suppressant) would be .02 to .05 milligrams per liter. (Trial Transcript p. 157-58). The forensic toxicologist, who was qualified as an expert without objection, testified that methamphetamine was present in Appellant's system and was "definitely acting on the body" and causing impairment. (Trial Transcript p. 152; p. 159; p. 160-61). He also testified that the fact that amphetamine, a by-product of methamphetamine, was not found in Appellant's blood sample indicated more recent use of methamphetamine since the methamphetamine had not yet had a chance to break down in Appellant's system. (Trial Transcript p. 163, lines 3-13; p. 166, lines 2-6). He further explained that methamphetamine is a "central nervous system stimulant" that would cause a person to be agitated and paranoid with very rapid thoughts passing through his or her head all at once. (Trial Transcript p. 160). Methamphetamine also dilates the pupils which affects how light is transmitted into the eye. (Trial Transcript p. 160, lines 15-17). The expert testified that the "crashing effects" of coming down off of methamphetamine would also have "an impairing effect." (Trial Transcript p. 162, lines 2-5).

Appellant testified in her defense and admitted she had been a methamphetamine user prior to the collision, "since [her] child had been born." (Trial Transcript p. 235-37). She acknowledged she had been addicted to methamphetamine for "more than two

years." (Trial Transcript p. 238, lines 1-14). She admitted she typically purchased and used methamphetamine "every two or three days." (Trial Transcript p. 239, lines 9-14). However, Appellant claimed that she had not used methamphetamine in the "three or four days" prior to the accident and that she did not "feel like" she was under the influence of it at the time of the crash. (Trial Transcript p. 236). Appellant asserted that the collision was a result of her "being stupid" and turning her attention away from the two-lane road to talk to her friend who was sitting in the truck bed. (Trial Transcript p. 237, lines 9-16).

Applicable Law

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). If the State presents direct or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, including evidence from which his guilt can be logically deduced, the defendant's directed verdict motion is properly denied. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). This Court has stated that the appropriate test to be applied when reviewing a directed verdict motion in a case relying solely on circumstantial evidence is as follows:

> When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, **a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.**

State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004) (citations omitted) (emphasis in original). On appeal from the denial of a motion for a directed verdict, the appellate court may only reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

Discussion

Appellant argues that the trial judge erred by refusing to grant a directed verdict of acquittal because there was no direct or substantial circumstantial evidence showing Appellant was under the influence at the time of the collision and that it was "pure speculation" that Appellant may have been under the influence.[13] (See Brief of Appellant, p. 18). To the contrary, there was substantial evidence presented establishing Appellant was under the influence of methamphetamine. As mentioned above, the expert forensic toxicologist testified that Appellant had ".29 milligrams per liter" of methamphetamine in her system, an amount *at least* five times the maximum therapeutic dose of a legal drug containing methamphetamine. The forensic toxicologist explained that methamphetamine is a "central nervous system stimulant" that would cause a person to be agitated and paranoid with rapid thoughts, and methamphetamine also dilates the pupils, which could obviously affect one's driving. The forensic toxicologist testified that the methamphetamine in Appellant's system was "definitely acting on the body" and causing impairment. He stated that the "crashing effects" of coming down off of

[13] S.C. Code § 56-5-2945 states that a person is guilty of felony DUI if the person, "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." As mentioned previously, Appellant has never disputed the other elements of felony DUI, including that she did an act forbidden by law and that this act caused the collision and the resulting injuries to the victims. (See Brief of Appellant, p. 15).

methamphetamine would likewise have "an impairing effect." (Trial Transcript p. 162, lines 2-5). Most importantly, he also testified that Appellant's blood sample indicated more recent use of methamphetamine since **the methamphetamine had not yet begun to break down in Appellant's system.**

Based on the above evidence of impairment – in conjunction with the fact that the collision had no readily observable cause where Appellant simply crossed the center line and struck the victims head on with no attempt to swerve or apply brakes – a reasonable factfinder could properly reject Appellant's testimony that she had not used methamphetamine in three or four days[14] and instead conclude that Appellant was under the influence of methamphetamine at the time of the crash. Contrary to Appellant's contentions, the evidence presented rose above the level of mere suspicion and speculation and constituted sufficient evidence to prove her guilt beyond a reasonable doubt. Cf. State v. McNeal, 98 Wash. App. 585, 592-93, 991 P.2d 649, 653 (Wash. Ct. App. 1999) (rejecting defendant's contention that the evidence was insufficient to show he was under the influence of drugs at the time of the collision where his blood contained .31 milliliters per liter of methamphetamine; the state's expert testified that methamphetamine could produce symptoms that impair the ability to drive; and where the defendant's driving itself indicated impairment in that he crossed into oncoming traffic; the state's expert testified that "[i]n an extensive study of accidents caused by drivers under the influence of methamphetamine . . . 85% of the drivers had left their lane of travel, which was the most common cause of the accident."); Hoyle v. State, 371 Ark. 495, 268 S.W.3d 313 (Ark. 2007) (upholding the denial of the defendant's directed

[14] Again, Appellant testified that during her methamphetamine addiction, she would typically purchase and use methamphetamine "every two or three days." (Trial Transcript p. 239, lines 9-14).

verdict motions on charges of manslaughter and first-degree battery arising out of an automobile collision, and stating "[w]e simply do not agree that the jury had to resort to speculation or conjecture in order to conclude that the methamphetamine in his system so altered his motor skills that it was the cause of the wreck," where the defendant's blood test revealed he had .221 micrograms per milliliter of methamphetamine in his system; where an expert testified that the therapeutic level of drugs would contain only .02 to .03 micrograms per milliliter; where the expert testified about the effects of methamphetamine on a person and testified the defendant's level of methamphetamine would have caused impairment; and where the evidence reflected that the defendant's vehicle crossed the center line, hit an oncoming vehicle, and never attempted to brake or return to his proper lane prior to the collision); Geoffrion v. State, 224 Ga.App. 775, 775-79, 482 S.E.2d 450, 452-55 (Ga. Ct. App. 1997) (finding the state presented sufficient evidence on the charge of driving under the influence of methamphetamine where the defendant's urine specimen was "positive for methamphetamine" and he repeatedly crossed the center line), *overruled in part on other grounds by* Mullins v. State, 270 Ga. 450, 511 S.E.2d 165 (1999); see also State v. Franchetta, 394 N.J. Super. 200, 925 A.2d 745 (N.J. Super. Ct. App. Div. 2007) (upholding defendant's conviction for driving under the influence of cocaine where, although the cocaine the defendant ingested previously was not "pharmacologically active" at the time he was apprehended – that is, the defendant was not on a "high" at the time – he was nevertheless physically impaired as a result of ingesting cocaine).

Based on the foregoing, the trial judge properly denied Appellant's directed verdict motion. See e.g., Gaster, 349 S.C. at 555, 564 S.E.2d at 93 ("On an appeal from

the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling."); State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the appellate court must find the case was properly submitted to the factfinder). Appellant's convictions should be affirmed.

CONCLUSION

For the reasons discussed above, the State requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

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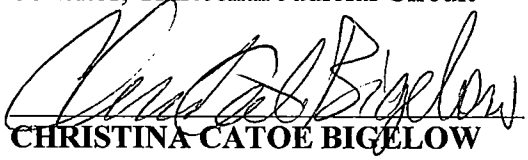

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June 22, 2015

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions

The Honorable Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2013-000656

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

CHRISTINA REECE,

APPELLANT.

PROOF OF SERVICE

The undersigned attorney hereby certifies that the **Initial Brief of Respondent** and **Designation of Matter** in the above-referenced case has been served upon **Robert M. Dudek,** South Carolina Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **22nd** day of **June, 2015.**

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June 22, 2015

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State of South Carolina v. Christina Reece
Appellate Case No. 2013-000656

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent,** along with the **Designation of Matter** and **Proof of Service,** in the above-referenced appeal, which I am serving on opposing counsel today.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina Catoe Bigelow
Assistant Attorney General
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cc: Robert M. Dudek, Esquire
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