

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

AUG 03 2015

Alison Renee Lee, Circuit Court Judge

SC Court of Appeals

Case No. 2013-CP-23-05261

The City of Greer,

Respondent,

vs.

Michael Edward Schulz,

Appellant.

**MOTION TO STRIKE
APPELLANT'S DESIGNATION OF MATTER**

Daniel R. Hughes
Duggan & Hughes, LLC
P.O. Box 449
Greer, South Carolina 29652-0449
Telephone: (864) 334-2500
Attorney for Respondent

Other Counsel of Record;
Daniel J. Farnsworth, Jr.
Farnsworth Law Offices, LLC
P.O. Box 871
Greenville, South Carolina 29604

Please take notice that Respondent, City of Greer, by and through its undersigned counsel, moves before this Court to strike Item No. 4 entitled “NHTSA Study titled ‘Blue Print for Ending Distracted Driving’” from the Record on Appeal. The basis for Respondent’s Motion to Strike is as follows:

During cross-examination of the arresting officer, Sergeant Patrick Fortenberry, Appellant sought to introduce findings from what Appellant refers to as a “NHTSA study” into the record to impeach Sergeant Fortenberry. Respondent objected on the bases of hearsay and that it violated Respondent’s Request for Disclosure (Tr. p. 105, ln. 3 and Tr. p. 113, ln. 17-19).

Appellant neither served Respondent with a copy of the document prior to trial nor made a pretrial motion *in limine* regarding the admissibility of the document. On June 5, 2012, approximately fifteen (15) months prior to trial, Respondent served Appellant with a reciprocal Request for Disclosure, a copy of which is attached hereto as Exhibit “A,” in which Respondent requested “[a]ny books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Defendant, and which are material to the preparation of said Defendant’s defense or are intended for use by the Defendant case in chief at the trial of the above referenced cause of action.”

Appellant’s primary defense to the crime was that his poor driving was due to “texting and driving” rather than “impaired driving.” According to Appellant, the findings and/or opinions contained in the document were material to his defense, and therefore, Appellant’s failure to timely serve Respondent with a copy prior to trial violated the Request for Disclosure.

Therefore, prior to reaching an analysis of the document’s admissibility, the document should have been excluded because it violated Respondent’s timely served Request for Disclosure.

Moreover, Appellant failed to properly preserve the NHTSA document for appeal because Appellant never introduced the document into the record by way of a Court or Defense exhibit. During a proffer of the document outside the presence of the jury, the Court allowed Appellant sufficient opportunity to lay a foundation to prove admissibility (Tr. p. 119, ln. 8 – p. 122, ln. 14). Prior to the proffer, the parties thoroughly argued their position as to the document’s admissibility (Tr. p. 108, ln. 11 – Tr. p. 119, p.6). Appellant never introduced the document into the record. Appellant also never introduced the NHTSA document on appeal to the circuit court judge. Finally, Appellant never served Respondent, with a copy of the document.

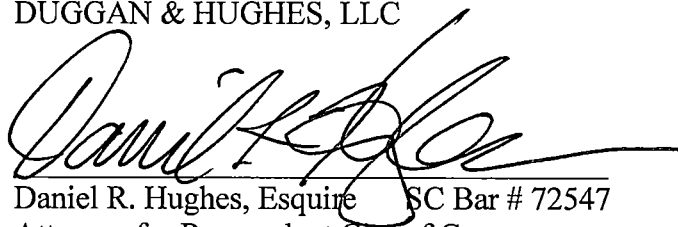
Therefore, this Court and Respondent cannot determine if the NHTSA document Appellant seeks to introduce into the Designation of Matter is the same document Appellant sought to introduce at trial.

For the foregoing reasons, the NHTSA document was not properly preserved for review on Appeal and should be struck from Appellant’s Designation of Matter on Appeal.

I hereby certify that this Motion is meritorious and not intended for delay.

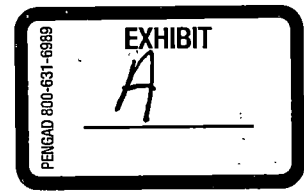
Respectfully submitted,

DUGGAN & HUGHES, LLC



Daniel R. Hughes, Esquire SC Bar # 72547
Attorney for Respondent City of Greer
457-B Pennsylvania Ave.
Greer, South Carolina 29650
Telephone (864) 334-2501
Facsimile (864) 879-0149

July 29, 2015



STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 City of Greer,)
)
 Plaintiff,)
)
 vs.)
)
 Michael Edward Schulz,)
)
 Defendant.)
 _____)

IN THE MUNICIPAL COURT

REQUEST FOR DISCLOSURE

To: Daniel J. Farnsworth, Jr., Attorney for Defendant

WHEREAS, you as Attorney for the above mentioned Defendant, have requested disclosure of evidence and related information in regard to the above referenced cause of action pursuant to the provisions of Rule 5, South Carolina Rules of Criminal Procedure, and

WHEREAS, the **City of Greer** has complied with such request;

YOU WILL PLEASE TAKE NOTICE that the **City of Greer**, pursuant to said Rule 5, does hereby request disclosure of evidence and related information and for permission to inspect, copy and photograph such evidence and related information in regard to the above reference cause of action as follows:

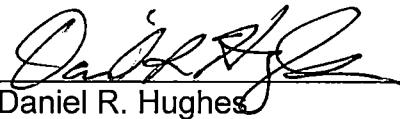
- (a) Any books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Defendant, and which are material to the preparation of said Defendant's defense or are intended for use by the Defendant as evidence in chief at the trial of the above referenced cause of action; and
- (b) Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are or were made in connection with this particular case within the possession, custody, or control of the Defendant, the existence of which is known, or by the exercise of due diligence may become know, to the attorney for the Defendant and which are material to the preparation of the defense or are intended for use by the

Defendant as evidence in chief at the trial of the within matter.

- (c) Defense of Insanity - As to this defense, the State requests that the Defendant submit written notice of his intent to use the defense of insanity. Such notice should include all of the matters subject to disclosure pursuant to Rule 5 including, but not limited to, the expert witnesses who have interviewed the Defendant, who the Defendant expects to call as witnesses at his trial, the date of the interview and/or examination of the Defendant, and their findings in regard to the Defendant's sanity.
- (d) Defense of Alibi - As to this defense, the State requests that the Defendant submit written notice of his intent to offer an alibi defense. Said notice shall include all matters subject to disclosure pursuant to Rule 5, including, but not limited to, the specific place or places the Defendant claims to have been at the time, or around the time, the alleged offense was committed, the names and addresses of witness upon whom he intends to rely to establish this defense, and any documents or physical evidence which would support this defense.
- (5) Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case or may be qualified as an expert and whom you intend to call as a witness in the trial of this case.

The offense with which the Defendant is charged in Warrant/Ticket No(s): 10422FI occurred on or about 04/28/2012 in the **City of Greer**, State of South Carolina.

DUGGAN & HUGHES, LLC



Daniel R. Hughes
Prosecutor for the City of Greer
457-B Pennsylvania Avenue (29650)
(Mailing) P.O. Box 449
Greer, South Carolina 29652-0449
Telephone 864/879-0144
Facsimile 864/879-0149

Dated: 6/5, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
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City of Greer,)
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Plaintiff,)
)
)
vs.)
)
Michael Edward Schulz,)
)
)
Defendant.)
_____)

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date below, I served upon the Defendant named- above, by way of his/her attorney, by depositing in the United States mail, with proper postage attached, a true and correct copy of the **City of Greer's Responses to Defendant's Rule 5 and Brady Requests and the City of Greer's Request for Disclosure** as follows:

Daniel J. Farnsworth, Jr., Esquire
FARNSWROTH LAW OFFICES, LLC
P.O. Box 8719
Greenville, SC 29604

DUGGAN & HUGHES, LLC

By: Susan E. Guest
Susan E. Guest
Prosecution Paralegal for the City of Greer
457-B Pennsylvania Avenue (29650)
(Mailing) P.O. Box 449
Greer, South Carolina 29652-0449
Telephone 864/879-0144
Facsimile 864/879-0149

Dated: _____, 2012
Greenville, South Carolina

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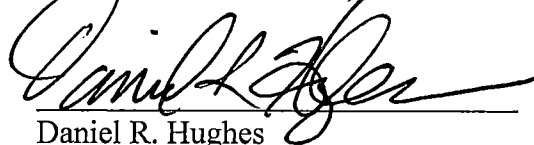
Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief and Motion to Strike on Michael Edward Schulz by depositing a copy of it in the United States Mail, postage prepaid on July 29, 2015, addressed to his attorney of record, Daniel J. Farnsworth, Jr., P.O. Box 8719, Greenville, South Carolina 29604.

DUGGAN & HUGHES, LLC

Date: 7/29, 2015



Daniel R. Hughes
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Greer, South Carolina 29652-0449
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Attorney for Respondent