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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Williamsburg County

George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-311 (S.C. Ct. App. filed Oct. 21, 2015)

10-GS-45-00269-00270.

THE STATE,

RESPONDENT,

V.

MARTY BAGGETT,

PETITIONER

APPELLATE CASE NO. 2016-000093

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Marty Baggett, Appellant.

Appellate Case No. 2011-204146

Appeal From Williamsburg County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-311
Heard October 6, 2014 – Filed June 24, 2015

REVERSED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia, for Respondent.

PER CURIAM: Marty Baggett appeals his conviction for felony driving under the influence (DUI), arguing the trial court erred in failing to direct a verdict of acquittal in his favor when the State failed to present evidence of video of his conduct at the incident site. We reverse.

We find the trial court erred in failing to direct a verdict of acquittal on the felony DUI charge. See S.C. Code Ann. § 56-5-2953(A) (2006)¹ (requiring video recording of the incident site when a person violates section 56-5-2945 of the South Carolina Code (Supp. 2014), the felony DUI statute); S.C. Code Ann. § 56-5-2953(A)(1)(a) (providing this recording generally must begin no later than the activation of the officer's blue lights; include advisement of *Miranda*² rights and any field sobriety tests administered; and conclude after the arrest of a person for a violation of section 56-5-2930 or section 56-5-2933, or a probable cause determination that the person violated section 56-5-2945); S.C. Code Ann. § 56-5-2953(B) (2006) ("[I]n circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the videotaping equipment has not been activated by blue lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the videotape based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the videotape."); *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011) (stating the purpose of section 56-5-2953 is to create direct evidence of a DUI arrest); *id.* at 348, 713 S.E.2d at 286 ("[T]he Legislature specifically provided for the dismissal of a DUI charge unless the law enforcement agency can justify its failure to produce a videotape of a DUI arrest."); *id.* at 349, 713 S.E.2d at 286 ("By requiring a law enforcement agency to videotape a DUI arrest, the Legislature clearly intended strict compliance with the provisions of section 56-5-2953 and, in turn, promulgated a severe sanction for noncompliance.").

The record contains no evidence to support the trial court's conclusion that the "totality of the circumstances" exception under section 56-5-2953(B) applies. The trial court explained the circumstances at the incident site did not immediately point to a DUI scenario and the law enforcement officers were investigating the

¹ Section 56-5-2953 was amended effective February 10, 2009. See Act No. 201, 2008 S.C. Acts 1682-85. The amended statute is not applicable to Baggett's March 8, 2007 arrest.

² *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

incident as a kidnapping and murder. However, Baggett was charged only with DUI on the night of the incident. Sergeant Ballard testified he charged Baggett with DUI based on the initial investigation of the case that Baggett appeared highly intoxicated and Baggett had admitted to Corporal Staggers that he was driving. Baggett was not charged with murder until a few days later after further investigation. Investigator Boston confirmed the State's inquiry that "at first it was a DUI that kind of morphed into something else." Pursuant to section 56-5-2953(B), law enforcement must begin the videotaping as soon as practicable, which was as soon as law enforcement believed Baggett had been driving while intoxicated. By the time Corporal Staggers first read Baggett his *Miranda* rights, he knew or should have known this was a DUI case and should have begun videotaping the incident site. Accordingly, the trial court erred in denying Baggett's motion to dismiss the charge of felony DUI due to the State's failure to produce a videotaping of the incident site.

REVERSED.

HUFF, SHORT, and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2011-204146

The State,

Respondent,

vs.

Marty Baggett,

Appellant.

PETITION FOR REHEARING

On June 24, 2015, this Court reversed the trial court's decision denying Appellant's motion for a directed verdict based on the fact the State did not produce a video recording of the incident scene pursuant to section 56-5-2953 of the South Carolina Code. This Court misapprehended or overlooked relevant law providing for "great deference" to the trial court in making findings of fact and determinations regarding the totality of the circumstances, as well as the facts presented at trial which clearly supported the trial court's conclusions. Further, this Court only references those facts supporting the Appellant's position and completely ignores significant testimony and other evidence which provides ineluctable support for the trial court's determination. Finally, this Court creates a definition of "as soon as practicable" that is solely tied to the type of crime involved and gives no consideration to the actual scene or "totality of the circumstances" the officers faced when they were investigating. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the trial

court properly considered the totality of the circumstances and refused to dismiss the case based on the failure to produce a video under section 56-5-2953, and affirm Appellant's conviction and sentence for felony DUI.

First, this Court incorrectly finds the trial court erred in failing to direct a verdict of acquittal on the felony DUI charge based on the lack of a video by the State. The production a video in compliance with section 56-5-2953 of the South Carolina Code is not an element of the crime of felony DUI the State is required to prove, and therefore, the lack of a video does not constitute a failure of competent evidence to prove the crime. See Rule 19, SCRCrimP ("On motion of the defendant . . . the court shall direct a verdict in the defendant's favor . . . if there is a failure of competent evidence tending to prove the charge in the indictment."). Instead, the production of a video is a collateral procedural requirement. While dismissal may be an appropriate remedy for the failure to produce a video recording which is not excused by one of the exceptions in subsection B of the statute, the trial court cannot be found to have erred in failing to direct a verdict based on the failure to produce a video. See City of Rock Hill v. Suchenski, 374 S.C. 12, 17, 646 S.E.2d 879, 881 (2007) (finding dismissal for failure to comply with section 56-5-2953 "an appropriate remedy"). Additionally, as the State maintained in its Brief, ample evidence was presented to the jury to support a conviction for felony DUI, and, as a result, the trial court properly denied a directed verdict motion.

Further, Appellant never moved for dismissal based on the failure to videotape the incident scene. Instead, he waited until the State had presented its case and rested prior to raising the issue to the trial court. Based on his actions, there is no evidence in this record indicating the beginning of video recording was practicable because the issue was

never addressed. The trial court ruled in the State's favor finding the totality of the circumstances allowed the case to proceed and so the State was not required to then present further evidence showing video recording was also not practicable as it was the successful party on the motion on a different theory. See e.g., I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 423, 526 S.E.2d 716, 725 (2000) ("However, when the lower court rules in one party's favor, it is not necessary for that party to return to the court and ask for a ruling on remaining issues and arguments in order to preserve those arguments for use in an appeal.").

Next, this Court appears to use an incorrect standard of review in determining whether the trial court properly found the failure to provide a video recording was excused by the totality of the circumstances. This Court does not take a *de novo* view of the evidence in the record. See State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). The trial court is the only court which has the ability to consider the facts and credibility of the witnesses and make its own findings of fact. This Court must give deference to those findings and uphold them if there is any evidence to support them. Id. at 6, 545 S.E.2d at 829 ("We are **bound** by the trial court's factual findings unless they are clearly erroneous.") (emphasis added). The Court is not free to insert its own opinion or view of the facts for that of the trial court. See e.g., State v. Barrs, 257 S.C. 193, 184 S.E.2d 708 (1971) ("It was [the trial court's] duty to judge the credibility of the witnesses and resolve the issue accordingly. He has done so, and **we have no authority to interfere with his finding.**").

This Court picked through the record to find some evidence supporting the arguments of Appellant but cleverly ignored pages of testimony supporting the trial

court's decision. This Court is tasked with determining whether any evidence supported the trial court's finding and, in doing so, is to give that finding the great deference it deserves. When all testimony and other evidence in the record is considered, evidence clearly exists supporting the trial court's finding, including the facts and testimony cited by the trial court in making the ruling on the post-trial motion. (R.360).

First, Appellant told several versions of what happened, but frequently claimed the victim was driving the truck and fell out of the vehicle. (R.132; 143; 150-152). Even at trial his counsel explained "consistently, throughout the course of this trial, Mr. Baggett has maintained, she fell out the truck?" (R.156). His own statements belie the argument the State was required to video record the scene because he maintains he was not driving the vehicle.¹ The officers were responding to a call involving a body in the road. The only person present at the time of the actual incident indicated multiple times the victim was the driver.² They were not responding to a DUI or even a typical accident scene involving a drunk driver. As a result, there was no reason for them to believe they needed to record the incident site pursuant to section 56-5-2953.

Additionally, the scene did not make it practical to begin a video recording under the statute. Officers testified fire and emergency medical personnel were already on the scene when they arrived. (R.129). According to Mr. Staggers, who was a corporal in the Williamsburg County Sheriff's Department at the time of the incident, roughly fifteen people arrived before he did including fire, voluntary fire, and medical personnel. (R.135-136). There were numerous individuals on scene, including Appellant's family.

¹ His driving the vehicle was a clear question for the jury and one they answered finding he was driving based on their guilty verdict for both felony DUI and reckless homicide.

² The State acknowledges there is also evidence in the record indicating he told Staggers he was driving as well as the fact the victim was hit by the vehicle on the passenger's side and not the driver's side.

(T.161-162; R.138-139). Investigator Boston also indicated numerous individuals were on scene, including Appellant's family. (R.168-169). The officers were more interested in securing the scene and investigating the homicide than they were a DUI. (T.77; 160; 198; 208; 211; 218; R.54; 137; 162; 172; 175; 182). Significantly, when asked about conducting field sobriety tests, Officer Staggers testified: "it was not safe to conduct that at the time." (T.160; R.137).

Even Appellant's counsel's own questions demonstrate why this was not a typical DUI investigation or even a DUI investigation after a traffic accident. This scene was considered more of a possible murder scene. Appellant's counsel asked Officer Scott: "You were there that night and you were going to determine whether this was an accident or a murder. Isn't that correct?" Officer Scott indicated he was merely there to process the scene for evidence. (T.95; R.72)(emphasis added). Later he was asked by Appellant's counsel: "That night you processed the scene like it might be a murder, correct?" Officer Scott responded: "I don't know what we had at the time . . . Processing the scene, it was based on what we had." (T.98-99; R.75-76)(emphasis added).

The trial court, in making its ruling that the totality of the circumstances excused the failure to provide a video, specifically found the testimony of Investigator Boston relevant and significant. This Court completely ignored the majority of the testimony of Investigator Boston which was relied on by the trial court and should be given great deference. Investigator Boston testified his main concern was not the DUI but was "the situation at the time." (R.149). That situation included a dead body, numerous people at the crime scene, Appellant's family being at the crime scene, and a scene in which it was not safe to perform field sobriety tests.

Appellant's counsel again asked a very poignant question: "Okay, now initially, you were investigating a murder. Isn't that right?" Investigator Boston testified he was initially 'investigating a murder. (T.198; R.162) (emphasis added). He specifically testified: "I was concentrating on the murder." (T.208; R.172). Appellant's counsel then asks: "Okay, because this case was investigated as a murder?" Investigator Boston responds: "That's right." (R.172) (emphasis added). He was not investigating a DUI and so he had no reason to institute the protocols for a DUI investigation instead of the much more serious murder investigation.

When questioned about Williamsburg County Sheriff's Department's failure to follow the law regarding a DUI, Investigator Boston indicated he "can't say not following the law . . . to investigate a murder." (T.211; R.175). Appellant's counsel responds: "but now that's not what we're doing here today." His response clearly acknowledges the investigation at the time of the incident was a murder investigation and subsequently the charges involved DUI. Clearly, the officers on the scene did not believe at the time they were investigating a DUI or a simple traffic accident. Instead they were investigating a possible homicide and so the video recording of the incident scene was not necessary.

This Court found several isolated portions of testimony to support Appellant's argument the State should have recorded the scene, and then completely ignored all the above testimony presented to the trial court to come to the conclusion "no evidence [supports] the trial court's conclusion that the 'totality of the circumstances' exception under section 56-5-2953(B) applies." This Court does not view the evidence *de novo*, nor does it substitute its view of the evidence for that of the trial court. It is apodictic the testimony from Investigator Boston, which was specifically listed in the trial court's

order as support for the court's conclusion to not dismiss the case, has to constitute some evidence indicating the totality of the circumstances supported the decision to allow the trial to proceed without a video recording. Couple that testimony with the testimony of Officers Staggers and Scott indicating the nature of the scene and the confusion as to what the actual situation involved, clearly the totality of the circumstances excused the failure to video tape.

Importantly, initiating the video recording would have accomplished nothing and been a purely futile act. Corporal Staggers indicated he read Appellant his Miranda warnings and placed him in his vehicle upon his arrival. Even assuming the camera could have been activated³ at the point in which they should have known he was drunk, nothing further would have been recorded except the general scene.⁴ As mentioned above, it was too dangerous at the scene to perform field sobriety tests, so once Appellant was placed in a vehicle, the camera would have only shown various people coming and going from the scene and offered no evidence relevant to the issue of Appellant's intoxication. See State v. Henkel, Op. No. 27541 (S.C. Sup. Ct. filed July 1, 2015). "Subsection (A) was intended to capture the interactions and field sobriety testing between the subject and the officer in a typical DUI traffic stop where there are no other witnesses." Id. citing Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011). (finding the purpose of § 56-5-2953 is to create direct evidence of a DUI arrest). Pursuant to the Supreme Court's recent opinion in Henkel, the State did not have to go back and do the Miranda warnings in front of the camera. Nothing else was even

³ This Court's opinion supposes the officers should have begun their recording by the time Corporal Staggers read Appellant his Miranda warnings.

⁴ As discussed above, because Appellant waited to make his motion as part of a directed verdict motion, we do not know if initiating the camera would have ever been practical, much less at what point it could have become practical.

required to be recorded by the statute. As discussed in Henkel, the video recording is relevant to establish Appellant's intoxication and the process of determining his intoxication. As in Henkel, there was sufficient testimony from numerous witnesses, including individuals not associated with law enforcement, to support a conclusion Appellant was intoxicated without resort to field sobriety tests or any other indicator. The video recording was not necessary to preserve the interactions between the lone individual and law enforcement as there were numerous individuals on scene, including Appellant's own family. As a result, the recording would have provided absolutely zero evidentiary value and certainly would not have supported the intent of the statute as discussed in Roberts and Henkel.

Finally, this Court has created its own definition of "as soon as practicable" which ties the requirement of videotaping to when the officers "knew or should have known this was a DUI case." The requirement does not take into account the scene described above, does not consider the officer's investigations and beliefs regarding what investigation they needed to conduct, and does not consider whether recording actually would have accomplished anything relevant pursuant to the intent of the statute. The determination of when recording becomes practical should be based on all the evidence before the court and not just when an officer should have known DUI was a possible charge.⁵ This Court's determination that the video recording became practical solely because the officer knew or should have known it was a DUI case ignores the reality of the scene, the investigation being performed by the officers, and the intent of the video recording statute itself.

⁵ It is important to note that while Appellant was initially charged with DUI, that charge was subsequently dropped and he was charged with murder and kidnapping. Those charges were then dropped and he was charged with reckless homicide and felony DUI both of which he was convicted.

In addition, the fact he was charged with DUI is not determinative of whether video recording was practical or even necessary. The officers were in the midst of an investigation regarding the possible murder of the victim. Appellant was subsequently charged with murder and kidnapping and the DUI charge dropped. Clearly, the DUI charge was not the primary focus of the officers. Further, even though this Court can point to a couple facts in the record which support the argument video recording should have been done, it does not require reversal of the trial court's determination because there is other evidence, and the State submits significantly more evidence, indicating the failure to videotape was properly excused based on the totality of the circumstances.⁶

⁶ This Court's holding, relying solely on evidence favorable to Appellant and ignoring evidence supporting the trial court's decision, is similar to "looking over the heads of the crowd and picking out its friends." Roper v. Simmons, 543 U.S. 551, 616, (2005) (SCALIA, J., dissenting).

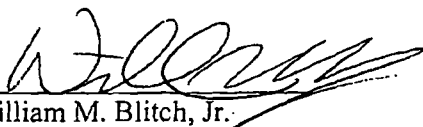
CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find there existed evidence in the record to support the trial court's finding the totality of the circumstances excused video recording, and affirm Appellant's convictions and sentences..

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 9, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2011-204146

The State,

Respondent,

vs.

Marty Baggett,

Appellant.

PROOF OF SERVICE

I, William M. Blitch, Jr., certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 9th day of July, 2015.



WILLIAM M. BLITCH, JR.
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The South Carolina Court of Appeals

The State, Respondent,

v.

Marty Baggett, Appellant.

Appellate Case No. 2011-204146

ORDER

The petition for rehearing is granted. We dispense with further briefing and argument. The attached opinion is substituted for the previous opinion, which is withdrawn.

Thomas C. Lee

J.

Paul E. Port, Jr.

J.

U. Ke

J.

Columbia, South Carolina

cc:

Susan Barber Hackett, Esquire

Alan McCrory Wilson, Esquire

William M. Blitch, Jr., Esquire

FILED

Oct 21, 2015 27

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Marty Baggett, Appellant.

Appellate Case No. 2011-204146

Appeal From Williamsburg County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-311
Heard October 6, 2014 – Filed June 24, 2015
Withdrawn, Substituted and Refiled October 21, 2015

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William M. Blich, Jr., both of
Columbia, for Respondent.

PER CURIAM: Marty Baggett appeals his conviction for felony driving under the influence (DUI), arguing the trial court erred in failing to direct a verdict of

acquittal in his favor when the State failed to present evidence of video of his conduct at the incident site. We affirm.

We find the trial court did not err in denying Baggett's motion to dismiss the felony DUI charge. See S.C. Code Ann. § 56-5-2953(A) (2006)¹ (requiring video recording of the incident site when a person violates section 56-5-2945 of the South Carolina Code (Supp. 2014), the felony DUI statute); S.C. Code Ann. § 56-5-2953(A)(1) (providing this recording at the incident site generally must begin no later than the activation of the officer's blue lights; include advisement of *Miranda*² rights before any field sobriety tests administered, if the tests are administered; and conclude after the arrest of a person for a violation of section 56-5-2930 or section 56-5-2933 of the South Carolina Code, or a probable cause determination that the person violated section 56-5-2945 of the South Carolina Code); S.C. Code Ann. § 56-5-2953(B) (2006) ("[I]n circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the videotaping equipment has not been activated by blue lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the videotape based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the videotape."); *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011) (stating the purpose of section 56-5-2953 is to create direct evidence of a DUI arrest); *State v. Henkel*, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015) ("Subsection (A) was intended to capture the interactions and field sobriety testing between the subject and the officer in a typical DUI traffic stop where there are no other witnesses."); *Roberts*, 393 S.C. at 348, 713 S.E.2d at 286 ("[T]he Legislature specifically provided for the dismissal of a DUI charge unless the law enforcement agency can justify its failure to produce a videotape of a DUI arrest.").

In this case, videotaping never became practicable. See *Henkel*, 413 S.C. at 15-16, 774 S.E.2d at 462 ("[W]e hold when an individual's conduct is videotaped during a

¹ Section 56-5-2953 was amended effective February 10, 2009. See Act No. 201, 2008 S.C. Acts 1682-85. The amended statute is not applicable to Baggett's March 8, 2007 arrest.

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

situation provided for in subsection (B), compliance with subsection (A) must begin at the time videotaping becomes practicable and continue until the arrest is complete."). The law enforcement officers were responding to the report of a dead body in the roadway. Therefore, the normal protocol for a traffic stop was not applicable. See *id.* at 14, 774 S.E.2d at 461 ("During a traffic stop, the subject, his vehicle, and his interaction with the officer can be videotaped by the car-mounted camera that is initiated by the officer's blue lights."). At least fifteen people, including Emergency Medical Service personnel, volunteer fire fighters, law enforcement officers, and members of Baggett's family, were present at the incident site. See *id.* at 15, 774 S.E.2d at 462 (finding "the legislative concerns with videotaping one-on-one traffic stops to capture the interactions between an officer and the subject are not present" when "[n]umerous officers and emergency personnel observed [the defendant's] conduct at the scene" and multiple officers described the defendant's symptoms of intoxication). Although Corporal Staggars stated he identified Baggett as the driver of the truck, he testified Baggett told him the victim had been driving and had fallen out of the truck. Corporal Staggars turned the investigation of the case over to Investigator Boston, who arrived on the scene as Corporal Staggars questioned Baggett. Investigator Boston testified Baggett was already in Corporal Staggars's patrol car when he arrived. Thus, Baggett would not have been within camera range of a car-mounted camera. Baggett also told Investigator Boston the victim was driving. Corporal Staggars testified he did not have Baggett perform any field sobriety tests due to safety concerns because Baggett was so unsteady on his feet. Accordingly, the videotaping requirements of section 56-5-2953(A)(1)(b) were not applicable. We find dismissal of the felony DUI charge was not required under the totality of the circumstances.

AFFIRMED.

HUFF, SHORT, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MARTY BAGGETT,

APPELLANT

Appellate Case No. 2011-204146

Appeal from Williamsburg County

George C. James, Jr., Circuit Court Judge

Opinion No. 2015-UP-311

PETITION FOR REHEARING

On June 24, 2015, this Court unanimously reversed Appellant's conviction for felony driving under the influence (DUI) in an unpublished opinion. State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed June 24, 2015). On July 9, 2015, the state filed a petition for rehearing. On October 21, 2015, this Court granted the petition for rehearing, dispensed with further briefing and argument, and substituted an opinion for the previously issued opinion. In the new opinion, this Court affirmed Appellant's conviction for felony DUI. State v. Baggett, Op. No. 2015-UP-311 (S.C. Ct. App. filed Oct. 21, 2015). Pursuant to Rule 221(a), Appellant files this petition for rehearing in light of the significant points overlooked and/or misapprehended by this Court in granting the state's petition for rehearing and issuing a new opinion explained more fully below.

First, this Court ignored the clear and unambiguous *facts* indicating the police officers were aware they were investigating a potential DUI prior to their arrival to the scene or, at a minimum, shortly after their arrival based upon their observations of and conversations with Appellant. Second, this Court relied heavily upon State v. Henkel, 413 S.C. 9, 774 S.E.2d 458 (2015). This reliance was misplaced. Third, the “exception” *created* by this Court in affirming Appellant’s conviction swallows the “rule” and denies the plain meaning of the statute.

Procedural history

In the opinion released on June 24, 2015, this Court unanimously held the trial court erred in failing to direct a verdict of acquittal on the felony DUI charge where law enforcement failed to abide by the statutory video requirement. Specifically, this Court held the record contained no evidence to support the trial court’s conclusion that the “totality of the circumstances” exception found within the statute was applicable to excuse law enforcement’s failure to comply. This Court rejected the trial court’s explanation that “the circumstances at the incident site did not immediately point to a DUI scenario and the law enforcement officers were investigating the incident as a kidnapping and murder.”

In rejecting the trial court’s explanation, this Court noted that Appellant was charged with DUI, *and only DUI*, on the night of the incident. Further, this Court relied upon testimony by multiple police officers that Appellant appeared “highly intoxicated” and had admitted to driving. In fact, a police investigator admitted that “at first it was a DUI that kind of morphed into something else.” Thus, law enforcement was required to begin videotaping “as soon as practicable” pursuant to the statute. As this Court explained, by the time the officer first read Appellant his rights, the officer knew or should have known that this was a DUI case and should have begun videotaping the

incident site. In light of the officer's failure to begin videotaping as soon as practicable, as required by the statute, this Court held the trial judge should have dismissed the felony DUI charge.

On July 9, 2015, the state filed a petition for rehearing. The state argued this court (1) failed to afford "great deference" to the trial court in making findings of fact and determinations regarding the totality of the circumstances, (2) only referred to facts supporting Appellant's position, and (3) created a definition of "as soon as practicable" tied solely to the type of crime involved and gave no consideration to the actual scene of "totality of the circumstances" the officer faced when they were investigating.

On October 21, 2015, this Court granted the state's petition, withdrew the previous opinion, and substituted a new opinion, in which this Court affirmed Appellant's conviction for felony DUI. Relying heavily on State v. Henkel, 413 S.C. 9, 774 S.E.2d 458 (2015), this Court held "videotaping never became practicable," the statutory videotaping requirements were not applicable, and that the "dismissal of the felony DUI charge was not required under the totality of the circumstances."

Undisputed record facts requiring statutory videotaping

According to this Court, statutorily-mandated videotaping was *not* required because the police were unaware they were investigating a felony DUI or a DUI; rather, "[t]he law enforcement officers were responding to the report of a dead body in the roadway." A review of the record reveals the police were aware from the *very* beginning that this matter involved a potential DUI. At a minimum, the officers were aware of the potential DUI charge when the officers smelled alcohol on Appellant and obtained admissions from Appellant that he was drinking and driving.

During the 911 call, Carolina Jones informed the dispatcher that Appellant, whom she called "the white guy," was acting like he was drunk. See 911 call transcript. The police were also aware that Appellant was driving the white truck at the scene according to the 911 call made by his father,

Ralph Baggett. See 911 call transcript. Further, the dispatcher inquired if Appellant “hit this person” and Appellant’s father responded, “I reckon, but I don’t know what happened.” See 911 call transcript. Based on this information, the dispatcher characterized the incident as an accident during radio discussions with law enforcement, emergency medical personnel, and the fire fighters. See 911 call transcript. There is *no doubt* that Juan Ballard, one of the first officers on the scene and the officer who charged Appellant with DUI, was in direct contact with the dispatcher and was aware of the nature of the call. R. 184, line 18 – R. 185, line 4. Boston testified that he “received a call from Sergeant Ballard in reference to a vehicle versus a pedestrian,” which prompted him to respond to the scene. R. 141, lines 12-14.

Staggers testified that Appellant “seemed to be unstable on his feet,” and “had a[n] odor of alcoholic beverages on his person.” R. 130, lines 10-14. In fact, Staggers told the jury Appellant “had been drinking.” R. 130, lines 14-15. Staggers also told the jury that he identified Appellant as the driver of the white truck on the scene. R. 130, lines 19-21. Staggers also advised Appellant of his rights. App. 130, line 24 – App. 131, line 1. Thereafter, Staggers took a statement from Appellant. App. 132, lines 13-21. Although Staggers claimed Appellant had been drinking alcohol and that Appellant had admitted to driving the truck, he did not administer any field sobriety tests. App. 137, lines 1-16; App. 138, lines 2-7. Staggers claimed that Appellant “was unsteady on his feet and it was not safe to conduct [field sobriety tests] at the time.” App. 137, lines 19-20; App. 138, line 7.

Sergeant Juan Ballard observed Appellant after Staggers had spoken to him. Although Appellant was sitting in Staggers’s car when Ballard initially approached him, the officers “pulled him out [of] the car” so that the police chief could speak to him before the investigator arrived. App. 182, line 20 – App. 183, line 4. Ballard saw that Appellant “was staggering around a little

bit.” App. 183, lines 5-9. Staggers advised Ballard that Appellant was driving the white truck at the scene. App. 183, lines 13-17. Ultimately, Ballard was the officer who charged Appellant for DUI in this case. App. 184, lines 23-25. His decision to charge Appellant with DUI was based on “the initial investigation.” App. 185, lines 3-5. He clarified that he decided to charge Appellant with DUI because (1) Appellant appeared to be highly intoxicated and (2) Appellant initially told Staggers that he was driving. App. 188, lines 9-19.

When Boston arrived, which was shortly after Staggers arrived, Staggers informed Boston of Appellant’s statements. App. 133, lines 17-23. Boston also advised Appellant of his rights. App. 141, lines 20-22. Boston testified that prior to speaking to Appellant, it was his understanding that Appellant was the driver of the white pick-up truck. App. 142, lines 1-3. Like Staggers, Boston claimed he “could smell alcohol” on Appellant. App. 144, lines 14-15. Boston said that Appellant’s “speech was slurred” and he was “slouched down in the back of the patrol car.” App. 144, lines 15-17. When Boston advised Appellant of his rights, Boston believed Appellant “was very intoxicated.” App. 144, lines 17-19. Thereafter, Boston, Staggers, and another officer took Appellant to the police department and continued questioning. App. 145, lines 3-8. When the interrogation ended, Appellant was charged with DUI and transported to the detention center. App. 147, lines 18-24. Boston based the DUI arrest on Appellant’s admission that he was drinking. App. 148, lines 2-17. According to Boston, “at first it was a DUI that kind of morphed into something else.” App. 149, lines 6-8. Further, Boston testified that the deceased’s head “looked like it had been run over by a tire.” App. 173, lines 10-13.

The clear, unambiguous, and undisputed facts showed the police were aware they were investigating a potential DUI involving a fatality. Based on the 911 call alone, the officers were aware (1) that a “dead body” was in the roadway, (2) that Appellant had been driving the truck

present at the scene, (3) that Appellant may have hit the person who was lying dead in the roadway, and (4) that Appellant may have been drinking. Contrary to this Court's assertion that "law enforcement officers were responding to the report of a dead body in the roadway," the uncontroverted facts show the officers were responding to a potential felony DUI and were aware of the nature of the incident prior to their arrival based on the 911 call.

At a minimum, the officers were aware of the potential DUI charge based upon their observations of Appellant at the scene and his alleged admissions. Stagers was aware of the nature of the investigation based on his observations of Appellant at the scene and his conversation with Appellant in which, according to Stagers, Appellant admitted he had been drinking and driving. Further, the uncontroverted facts show Boston, the lead investigator, was aware that he was responding to "a vehicle versus a pedestrian" situation prior to his arrival because of his telephone call from Ballard. Additionally, when he arrived, Stagers conveyed his observations and Appellant's alleged admissions to Boston. There can be no doubt the officers were well aware they were investigating a potential DUI involving a fatality.

Additionally, this Court held that because Appellant was in Stagers's patrol car when Boston arrived, Appellant "would not have been within camera range of a car-mounted camera." This is not supported by the record. Stagers testified to approaching Appellant, advising him of his rights, and interrogating him. Stagers never indicated where Appellant was during this encounter. R. 130, line 8 – R. 133, line 10. It seems unlikely that Appellant was sitting in a patrol car during the entirety of the interrogation because Stagers claimed *repeatedly* that Appellant was "unsteady on his feet." In order to make such an observation, Appellant would have had to have been "on his feet" at some point during the encounter. R. 137, lines 19-20; R. 138, line 7. While it is true that

Appellant was in Stagg's patrol car when Boston arrived, this was *after* officers were aware of the potential felony DUI charge. R. 141, lines 12-22.

Further, even if Appellant were not "within range of a car-mounted camera" because he was in Stagg's patrol car, there was no evidence in the record that Appellant was immobile or that the cameras were immobile. The officers could have easily moved Appellant to a position in which he would have been within range of a car-mounted camera. In fact, Ballard removed Appellant from Stagg's patrol car so that the police chief could speak to Appellant before Boston arrived. R. 182, line 22 – R. 183, line 4. If Appellant could be removed from the car in order for the police chief to interrogate him prior to the investigator's arrival, then he could have been moved in order for the police to comply with statutorily-mandated videotaping. Finally, this Court's opinion assumes the car-mounted cameras were immobile. The record is devoid of such evidence. Likely, the cameras swiveled to allow law enforcement to capture conduct of individuals in the rear passenger area.¹ Even if the cameras were forward facing only, then the cameras were still mobile by the fact that they were mounted on cars, which are by their nature mobile. The cars could have been moved to place Appellant within range of a forward facing only camera.

State v. Henkel, 413 S.C. 9, 774 S.E.2d 458 (2015)

This Court's reliance upon Henkel, *supra*, is misplaced. The South Carolina Supreme Court held "when an individual's conduct is videotaped during a situation provided for in subsection (B) [of S.C. Code Ann. § 56-5-2953], compliance with subsection (A) must begin at the time videotaping becomes practicable and continue until the arrest is complete." Henkel, 413 S.C. at 15-

¹ In State v. Henkel, 413 S.C. 9, 10 n. 2, 774 S.E.2d 458, 459 n.2 (2015), the Supreme Court noted that when the officer arrived at the scene, he activated his patrol car's video recording camera, but the "forward facing camera only recorded the highway" in front of the car. However, when the officer placed defendant in his patrol car following his DUI arrest, the officer "faced the in-car camera" toward the defendant. Id. at 11, 774 S.E.2d at 460.

16, 774 S.E.2d at 462. The trial judge's finding that the videotaping began as soon as practicable was not challenged on appeal. Id. at 12 n.5, 774 S.E.2d at 460 n. 5. The *precise* issue in this case is *when* did videotaping become practicable and was the failure to videotape excused; thus, Henkel has limited applicability to the case before this Court because Henkel involved whether the videotape in the case complied with the statutory requirements.

In Henkel, 413 S.C. at 10, 774 S.E.2d at 459, a witness saw a car being driven erratically and ultimately crashing. However, when the officer arrived on the scene, the driver had fled. Id. Several hours later, the same officer responded to a call regarding an individual walking down the same highway where the car crashed. Id. The officer found the individual receiving treatment in an ambulance. Id. The officer advised the individual of his rights and conducted a horizontal gaze nystagmus test. Id. at 10-11, 774 S.E.2d at 459. The officer also initiated his audio recording device during the administration of the test. Id. at 11, 774 S.E.2d at 459. Thereafter, the officer had the individual recite the alphabet, which was audio recorded. Id. at 11, 774 S.E.2d at 460. The advisement of rights and administration of tests were not captured on video. Id. When the officer placed the individual under arrest for DUI, the officer placed the individual in his patrol car and ensured the video captured the individual's conduct thereafter. Id.

In light of the fact that neither party appealed the trial judge's finding that videotaping began as soon as practicable, the only matter before the Court was whether the video that existed complied with the statute. See id. at 12 n. 5, 774 S.E.2d at 460 n. 5. The precise question was whether an officer would have to re-advise an individual of his rights and re-administer tests after videotaping began if those activities occurred prior to videotaping becoming practicable. Id. at 13, 774 S.E.2d at 461. The Court answered this question in the negative and explained that when the videotaping

became practicable, then the videotape had to capture the individual's conduct at the scene. Id. at 14, 774 S.E.2d at 461.

Henkel offers little help in determining when videotaping becomes practicable pursuant to the statute or when the videotaping requirement may be excused due to the "totality of the circumstances" pursuant to the statute as neither of those questions was addressed by the Court. Nevertheless, resolution of those two questions is necessary in order to adjudicate the issue raised on appeal in this matter. Therefore, this Court erred in relying upon Henkel, supra, in arriving at its conclusion that "videotaping never became practicable," the statutory videotaping requirements were not applicable, and that the "dismissal of the felony DUI charge was not required under the totality of the circumstances."

Plain meaning of the statute

The purpose of the videotaping requirement "is to create direct evidence of a DUI arrest." Roberts, 393 S.C. at 347, 713 S.E.2d at 285. "[T]he videotaping provisions of section 56-5-2953 are mandatory and not optional." Id. at 346, 713 S.E.2d at 285. "A law enforcement agency's failure to comply with [section 56-5-2953] is fatal to the prosecution of a DUI case." Id. In Murphy v. State, 392 S.C. 626, 631, 709 S.E.2d 685, 688 (Ct. App. 2011), this Court explained the plain language of section 56-5-2953(A)(1)(a)-(b) required the video recording to capture "(1) the accused's conduct and (2) Miranda warnings prior to field sobriety tests, if such tests occur." This Court defined "conduct" as one's behavior, action, or demeanor. Id.

This Court's opinion eviscerates the statutory requirement of videotaping by excusing it whenever there is a situation that would not be considered a "normal ... traffic stop," including a traffic accident. The statute specifically contemplates that a DUI investigation will occur outside of "a normal traffic stop" by noting that in some circumstances, such as traffic accident investigations,

an arrest will be made and the videotaping equipment will not be activated by the blue lights. Nevertheless, the statute requires videotaping to begin as soon as practicable even in those situations. See S.C. Code Ann. 56-5-2953(B)(2007). Taking this Court's conclusion that when officers respond to a situation in which "the normal protocol for a traffic stop [is] not applicable" the videotaping requirement does not arise to its logical end, there would never be the need to videotape in *any* traffic accident. Frankly, requiring compliance with the statutory videotaping requirement *only* in "normal traffic stops" would result in almost no videotapes because no two traffic stops are the same and some abnormality would always permit law enforcement to claim the normal protocols, including videotaping, were not followed as a result.

By finding the statutory videotaping requirement not applicable to the instant case because of the presence of other people at the scene, this Court's opinion further guts the statute. In arriving at this conclusion, this Court relied upon Henkel's proposition that the videotaping statute "was intended to capture the interactions and field sobriety testing between the subject and the officer in a typical DUI traffic stop where there are no other witnesses." See Henkel, 413 S.C. at 14, 774 S.E.2d at 461. Oddly, the Supreme Court cited Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 347, 713 S.E.2d 278, 285 (2011) to support this conclusion. Roberts provides no support for such a conclusion. The purpose of the videotaping requirement is "to create direct evidence of a DUI arrest" as the Court held in Roberts, 393 S.C. at 347, 713 S.E.2d at 285. The intent of the legislature to create direct evidence of a DUI arrest was not, and cannot, be limited to situations "where there are no other witnesses" because doing so would eliminate the videotaping requirement in all but the fewest DUI arrests, particularly those where there has been a traffic accident. By its very nature, a traffic accident will require the presence of personnel other than law enforcement – witnesses/bystanders, emergency medical personnel, fire and

rescue personnel. Certainly, the legislature was aware of the likelihood of the presence of others at traffic accidents, but still the legislature required videotaping as soon as practicable at traffic accident scenes when the investigation culminates in a DUI arrest.

The legislature was concerned with more than creating direct evidence only in “one-on-one traffic stops” as evidenced by the language chosen in the statute. See Henkel, 413 S.C. at 15, 774 S.E.2d at 462. Had the legislature been concerned only with “one-on-one traffic stops,” the legislature could have made this very point by requiring videotaping only in those circumstances. Instead, the legislature did the opposite and required videotaping in *all* DUI arrests, including those which by their nature would necessitate the presence of others, such as road blocks, traffic accidents, citizens’ arrests, and felony DUIs. Additionally, the legislature never carved out an exception, which would permit officers not to comply with the videotaping requirement when others were present on the scene. Such an exemption would have been easy to craft had the legislature actually intended for the videotaping requirement to exist only during “one-on-one traffic stops.” Based on the clear language of the statute – and most importantly, language not in the statute – the intent of the legislature was to create direct evidence of DUI arrests in every case. The purpose of the creation of direct evidence is to eliminate a “swearing match” among witnesses regarding what transpired at the incident site.

This Court’s opinion creates two exceptions to the videotaping requirement: (1) whenever the arrest is not the product of a “normal traffic stop” and (2) whenever the arrest occurs in the presence of others. The creation of these two exceptions swallows the rule because no videotaping will be required in any DUI arrest as all arrests will likely fall into one of these exceptions. Not only are the exceptions not within the statute, rendering them judicially created laws, the exceptions defy the clear and unambiguous language of the statute.

Statutory Exception

This Court failed to consider the exception that is *actually* contained within the statute. The statute allows courts to consider “any other valid reason for failure to produce the videotape based upon the totality of the circumstances.” S.C. Code Ann. § 56-5-2953(B)(2007). Oddly, this Court’s opinion uses the totality of the circumstances language, but appears to do so when reviewing the trial judge’s refusal to dismiss the felony DUI charge: “[T]he videotaping requirements of section 56-5-2953(A)(1)(b) were not applicable. We find dismissal of the felony DUI charge was not required under the totality of the circumstances.” Not only does the clear language used by the Court show the “totality of the circumstances” language is not being used to consider the statutory exception, but the juxtaposition of the “totality of the circumstances” language with the finding that the statutory videotaping requirement was “not applicable” demonstrates the Court was not considering the statutory exception to the videotaping requirement.

Had this Court reviewed the exception, this Court would have determined the record fails to support the trial judge’s finding that the totality of the circumstances excused law enforcement’s failure to video record Appellant’s conduct at the incident site. As demonstrated, the officers had ample notice of the potential felony DUI on the scene, and in fact, arrested Appellant for DUI within minutes of arriving. The failure by law enforcement to create the video denied the jury the ability to assess Appellant’s conduct. In light of the fact that law enforcement failed to conduct any chemical testing, which would have provided the jury with objective evidence of Appellant’s intoxication or lack of intoxication, the video would have been the only objective evidence for the jury to make a determination concerning whether Appellant engaged in felony DUI.

For all the foregoing reasons, Appellant respectfully requests this Court grant the petition for rehearing, withdraw the second opinion, and re-instate the initial opinion.

Respectfully submitted,

Susan B. Hackett
Susan B. Hackett
Appellate Defender

This 5th day of November, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTY BAGGETT,

APPELLANT

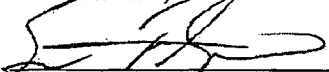
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blich, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Marty Baggett #216091, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 5th day of November, 2015.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 5th day
of November, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

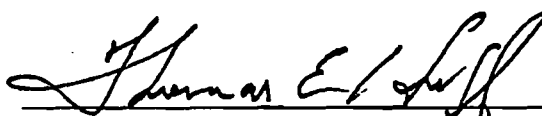
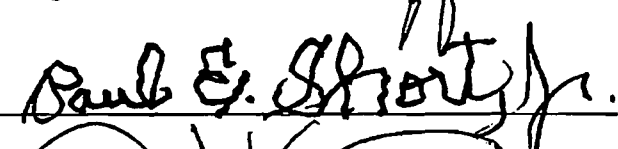
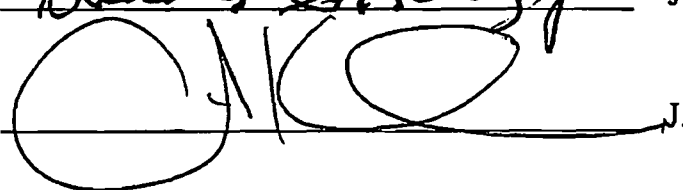
v.

Marty Baggett, Appellant.

Appellate Case No. 2011-204146

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

FILED

cc:

Susan Barber Hackett, Esquire
Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire
The Honorable George C. James, Jr.

December 17, 2015

RECEIVED

FEB - 1 2016

SC SUPREME COURT

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTY BAGGETT,

APPELLANT

APPELLATE CASE NO. 2011-204146

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT

STATE'S EXHIBIT # 20 (911 CALL)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF WILLIAMSBURG)

Marty Baggett,)
)
 PLAINTIFF,)
)
 v.)
)
 The State of South Carolina)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF RECORD
 C/A #: 2010-GS-45-00269
 2010-GS-45-00270

VOLUME ONE (PAGES 1-240)

Monday, July 18, 2011
 Tuesday, July 19, 2011
 Wednesday, July 20, 2011
 WILLIAMSBURG COUNTY COURTHOUSE
 KINGSTREE, SOUTH CAROLINA

BEFORE:

THE HONORABLE GEORGE C. JAMES, JR., PRESIDING

APPEARANCES:

Assistant Attorney General Dale Scott, Esquire
 Assistant Attorney General David Stumbo, Esquire
 Attorneys for The State of South Carolina

Sam Floyd, Esquire
 Attorney for Plaintiff, Marty Baggett

TAKEN BY MELISSA R. SINGLETARY
 CERTIFIED VERBATIM REPORTER

Marty Baggett vs. State of South Carolina

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1 Clerk: Have a seat for me up there and watch the step
2 please sir.

3 **DIRECT EXAMINATION OF MR. GARRIS BY MR. SCOTT:**

4 Q: Thank you. Could you state your full name for the
5 record?

6 A: Thomas Rod Garris, Jr.

7 The Court: Is that microphone on? Can you hear?

8 Alright.

9 Q: That was Thomas Garris.

10 A: Thomas Garris, Jr.

11 Q: And Mr. Garris, for everybody here, you've recently
12 undergone some oral surgery, is that correct?

13 A: Yes, I have tongue cancer.

14 Q: Okay. Mr. Garris, where are you from?

15 A: Johnsonville, South Carolina.

16 Q: How long have you lived in Johnsonville?

17 A: All my life.

18 Q: And Johnsonville's in Florence county?

19 A: Florence County. I lived in Myrtle Beach from '84
20 to '94.

21 Q: You lived in Myrtle Beach from 84 to?

22 A: 81.

23 Q: 81 to 94? Where were you living March 8, 2007?

24 A: I was at home.

25 Q: Okay, in Johnsonville?

Marty Baggett vs. State of South Carolina

23

- 1 A: Yeah.
- 2 Q: Okay.
- 3 A: Yes.
- 4 Q: Okay. You lived in Johnsonville March 8, 2007, is
- 5 that what you just stated?
- 6 A: Yes.
- 7 (Cell phone rings)
- 8 The Court: Just cut it off. Hand it to the Bailiff. He
- 9 will take it out in the hall. Thank you.
- 10 Q: Okay, Mr. Garris, 2007, March the 7th, you were
- 11 living in Johnsonville. Were you employed at the
- 12 time?
- 13 A: No sir I wasn't. I was taking care of my step father
- 14 because he was ill.
- 15 Q: Okay. Were you married?
- 16 A: I been married almost ...
- 17 Q: You are married?
- 18 A: No, I'm not.
- 19 Q: Were you married in March of 2007?
- 20 A: I was married. We got married in '05.
- 21 Q: Okay, a pastor married you, but you never went and
- 22 applied for a marriage certificate?
- 23 A: No. We did not.
- 24 Q: How long were you together?
- 25 A: Over thirteen years.

Marty Baggett vs. State of South Carolina

24

- 1 Q: Sixteen years?
- 2 A: Thirteen.
- 3 Q: Thirteen years. Did Ms. Turner live with you in
- 4 Johnsonville at the time?
- 5 A: She lived with her mother and I lived with my mother
- 6 in Johnsonville.
- 7 Q: Okay, you lived with your mother in Johnsonville and
- 8 she lived her mother where?
- 9 A: Down on Clare Road.
- 10 Q: Clare Road. And Clare Road is where?
- 11 A: In Williamsburg county.
- 12 Q: In Williamsburg county. Approximately how far a
- 13 part were your homes?
- 14 A: About three and a half miles.
- 15 Q: And why again did you live in separate homes?
- 16 A: Well, we lived in separate homes because here mama
- 17 didn't agree.
- 18 Q: Okay. I want to show you what we've marked as
- 19 State's exhibit number 1. Okay, Mr. Garris, are you
- 20 able to see this picture?
- 21 A: Yes sir. That was taken at the funeral.
- 22 Q: Okay that was taken at the funeral, is that what you
- 23 said?
- 24 A: At the funeral.
- 25 Q: And who are these people? Who are the people in

Marty Baggett vs. State of South Carolina

25

- 1 this picture?
- 2 A: That's me and Jean.
- 3 Q: Okay.
- 4 A: Jean and I.
- 5 Q: Okay. Now on March 8, 2007, the date I asked you
- 6 about earlier, did you see Jean Turner that day?
- 7 A: Did I see what?
- 8 Q: Did you see your wife that day?
- 9 A: Yes. About 3:00 she showed up at my house.
- 10 Q: Three o'clock she showed up to your home?
- 11 A: Yes.
- 12 Q: How'd she get there?
- 13 A: I believe her mother brought her to the house.
- 14 Q: Her mother took her there?
- 15 A: Yes sir.
- 16 Q: And what did y'all do next after she showed up at
- 17 your house in Johnsonville?
- 18 A: She wanted to go walking.
- 19 Q: Y'all went for a walk?
- 20 A: Yeah we went walking?
- 21 Q: And where did you walk?
- 22 A: We went up to the Kangaroo.
- 23 Q: Okay, what's the Kangaroo?
- 24 A: It's a convenient store.
- 25 Q: Okay, why did you go to the Kangaroo convenience

1 store?

2 A: We bought a couple of beers.

3 Q: Okay and March 8, 2007, that was a Wednesday? Is
4 that a Wednesday or Thursday?

5 A: Wednesday.

6 Q: Okay, was that typical for you and Ms. Garris, mid
7 afternoon on a weekday to be drinking beer?

8 A: Occasionally.

9 Q: Okay. Have you struggled, have you had issues with
10 alcohol in your past?

11 A: Yes, I have.

12 Q: Okay, have you ever, has it ever led to any kind of
13 legal troubles?

14 A: No.

15 Q: Have you ever had any kind of alcohol related
16 arrests?

17 A: Yes I have. They arrested a lot of people in Myrtle
18 Beach.

19 Q: On a what? I'm sorry.

20 A: They arrested a lot of people in Myrtle Beach.

21 Q: Okay, but you have had run ins with the law based on
22 your alcohol problems?

23 A: Yes sir.

24 Q: And you've had a DUI as well?

25 A: Yes sir. I had a DUI in 91.

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- 1 Q: Okay and Jean, did she ever struggle with alcohol?
- 2 A: Yes.
- 3 Q: Had she ever had any source of treatments for her
- 4 alcohol abuse?
- 5 A: She took treatments at Morris Village in Columbia.
- 6 Q: Did you say Morris Village? And that's an alcohol
- 7 rehabilitation center in Columbia? Okay. After you
- 8 were in the Kangaroo and bought a couple of beers,
- 9 where'd you go next?
- 10 A: Her cousin was at the beauty shop and we went over
- 11 on the back porch and drink some beer.
- 12 Q: Okay, you said you went to the back porch of a hobby
- 13 shop and drank your beers?
- 14 A: No sir, a beauty shop.
- 15 Q: A beauty shop. I'm sorry. Okay and how many beers
- 16 did each of you have? How many beers did you drink?
- 17 A: We drank one each.
- 18 Q: Okay and was this the first alcoholic beverage you'd
- 19 had that day to your recollection?
- 20 A: Yes it was.
- 21 Q: Alright, but you don't know what Jean had been doing
- 22 before that?
- 23 A: No.
- 24 Q: Okay. So you finished your beers behind the beauty
- 25 shop. What'd you do next?

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- 1 A: Well, we drank the beers and went to the place
2 across one road, Evan Brothers and I run in Hugh
3 Huggins and he gave us a ride to west side.
- 4 Q: Okay. Now, so I'm clear, after drinking behind the
5 beauty shop, you went across the street to Elett
6 brothers, is that what you said?
- 7 A: Evans.
- 8 Q: Evans brothers?
- 9 A: Right.
- 10 Q: And what'd you do back there?
- 11 A: We walked around the yard and got up with Hugh
12 Huggins and me and him and Jean we went to Westside
13 to get another beer.
- 14 Q: Alright, so you met, you met Hugh Huggins at Evans
15 brothers and he gave you a ride to West side.
16 Where's west side?
- 17 A: About three or four miles from Evans Brothers.
- 18 Q: Still in Williamsburg county?
- 19 A: Yes, sir.
- 20 Q: And west side, is that also a convenient store?
- 21 A: Excuse me?
- 22 Q: Is west side a convenient store as well?
- 23 A: Yes, sir.
- 24 Q: Why did you want to go to west side?
- 25 A: He said I'll drop you off and when I come back I'll

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- 1 pick you up.
- 2 Q: Okay. But what was your reason for wanting to go to
- 3 a convenient store? Were you wanting to get another
- 4 beer?
- 5 A: I was wanting to get another beer.
- 6 Q: Okay. And did you go in and buy a beer?
- 7 A: Yeah, I went in and got beer.
- 8 Q: How many did you buy?
- 9 A: One.
- 10 Q: Did you talk to anybody inside?
- 11 A: I didn't talk to anybody inside.
- 12 Q: You know who runs the west side convenience store?
- 13 Do you know who runs the place?
- 14 A: The old man who was running it.
- 15 Q: Alright, you go inside to west side and you buy
- 16 another beer. About what time of the day was it?
- 17 A: What time of day?
- 18 Q: Yes sir.
- 19 A: It was probably a little after four, four thirty.
- 20 Q: Okay, between four and four thirty in the afternoon?
- 21 A: Yes sir.
- 22 Q: Alright, did Jean Turner go inside with you?
- 23 A: No, she was standing outside.
- 24 Q: She stayed outside. Alright, tell me what happened
- 25 when you walked back outside after you bought your

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1 beer inside of west side.

2 A: Jean introduced me to Marty. She said Marty's going
3 next our house.

4 Q: Okay and when you say she introduced you to Marty,
5 who is Marty?

6 A: Marty Baggett.

7 Q: Okay, but you already knew Marty Baggett?

8 A: Yeah I drove his school bus.

9 Q: You drove his school bus?

10 A: Yes.

11 Q: And did you know where he, he lived at the time,
12 March 8, 2007?

13 A: Not at that time, but I knew where his cousin lived
14 right across the road.

15 Q: Okay and I believe you just stated that Jean and
16 Marty had worked out a deal where Marty was going to
17 take y'all to your home?

18 A: That's right.

19 Q: Because how far, well, going to take you to Jean
20 Turner's home?

21 A: Yes sir.

22 Q: How far is west side from Jean Turner's residence?

23 A: A couple of three and a half miles, three or four
24 miles.

25 Q: Three and a half miles. Okay and Jean Turner lived

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- 1 with her mother and what was the name of the road
2 they lived on?
- 3 A: That they lived on?
- 4 Q: That Jean Turner and her mother lived on.
- 5 A: Clare Road.
- 6 Q: Clare Road. Okay, and did you agree to get in, first
7 of all, what was Marty Baggett driving?
- 8 A: He was driving a white Chevrolet truck with a yellow
9 light on top.
- 10 Q: A white truck with a yellow light on top?
- 11 A: Right.
- 12 Q: Okay, when you walked outside, did he say anything
13 to you?
- 14 A: He said come on let's go to my house. We'll party a
15 little while.
- 16 Q: Okay.
- 17 A: And he pulled over to the liquor store.
- 18 Q: Okay, let's go to my house, we'll party a little
19 bit?
- 20 A: Yeah. He pulled over to the liquor store.
- 21 Q: Alright, where is the liquor store?
- 22 A: Right across from Westside.
- 23 Q: Okay, what's, what's the name of the liquor store
24 across from west side?
- 25 A: Hannah's.

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- 1 Q: Hannah's liquor store. Okay, now did you get in the
2 truck, all three of you got in Marty's truck and
3 drove across the street to Hannah's liquor store?
- 4 A: Right.
- 5 Q: And then what happened?
- 6 A: We went in to get the liquor and Jean told me at
7 that time she said, do you know what he asked me?
8 And I said no and she said how about, he asked me
9 about oral sex.
- 10 Q: Okay, Marty Baggett asked Jean Turner that while you
11 were inside west side grocery?
- 12 A: That's right.
- 13 Q: Okay.
- 14 A: He had been drinking and he had talked to her when I
15 came out of westside.
- 16 Q: Alright, how'd this make you feel somebody said
17 something like this to your wife?
- 18 A: Very shitting.
- 19 Q: I'm sorry?
- 20 A: Shitting.
- 21 Q: Alright you were mad. But you still needed a ride
22 home?
- 23 A: Yeah, I needed a ride.
- 24 Q: Okay, you go across the street to Hannah's liquor
25 store. Did you go inside to buy anything?

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- 1 A: No.
- 2 Q: Did Jean Turner go inside to buy anything?
- 3 A: No.
- 4 Q: Did Marty Baggett go inside?
- 5 A: Marty Baggett went inside.
- 6 Q: And you two stayed outside, you and Jean Turner?
- 7 A: Right.
- 8 Q: What did Marty Baggett go inside to buy?
- 9 A: He bought a fifth of Smirnoff.
- 10 Q: A fifth of Smirnoff?
- 11 A: Yes sir.
- 12 Q: And what is Smirnoff?
- 13 A: Smirnoff is vodka.
- 14 Q: Vodka, okay. What'd y'all do next? What'd y'all do
- 15 after that?
- 16 A: We left out from Hannah's liquor store, took Pine
- 17 Street all the way down to, he stopped at Springhill
- 18 Apartments and went behind the dumpsters and took a
- 19 leak.
- 20 Q: Alright. You go down Pine Street and then he stops
- 21 behind some apartments, gets outside, gets outside
- 22 the car and urinates?
- 23 A: Behind. Then when he came out he saw a black guy
- 24 with a white girl over there he knew and he talked
- 25 to them.

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- 1 Q: Okay, so he saw someone he knew at the apartments?
- 2 A: And he talked to them a while.
- 3 Q: Alright, and then what'd y'all do?
- 4 A: Then we got back in the truck and pulled back out on
- 5 Pine Road, Pine Road and went straight down to the
- 6 end of it.
- 7 Q: Went to the end of Pine Road.
- 8 A: Yeah, then took a right down Little Pond Road.
- 9 Q: Took a right on Little Pond Road.
- 10 A: Yeah, and went to the end to County Line Road.
- 11 Q: Okay, so you went to the end of Little Pond Road to
- 12 County Line Road?
- 13 A: Right and then took left.
- 14 Q: Okay.
- 15 A: Alright took County Line Road and took the road to
- 16 get to Clare Road.
- 17 Q: Alright. Was that, was that, was that the most
- 18 direct way to get to Clare Road?
- 19 A: Yes.
- 20 Q: Okay, did y'all make any stops after the apartment?
- 21 Did y'all stop at all to, did anybody else need to
- 22 go to the bathroom?
- 23 A: As we got to Baxley he said we're not going to stop
- 24 here. We're going to go see Kay Huggins(sic).
- 25 Q: Okay.

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- 1 A: I said Kay's working. I don't care, we going to
2 ride up there anyway.
- 3 Q: Alright, now he stops at Baxley so, he stopped at
4 Baxley, is that the road you said he stopped at?
- 5 A: I said he turned down Baxley, he went right on.
- 6 Q: But to get to Jean Turner's house, you're supposed
7 to turn down Baxley?
- 8 A: You turn down Baxley.
- 9 Q: Alright.
- 10 A: So he went all the way down to County Line Road and
11 passed Kay Huggin's house and come back on Deer
12 Field Road.
- 13 Q: Okay.
- 14 A: Back to the left on Deer Field Road.
- 15 Q: Okay, so now he's going out of his way?
- 16 A: He said ya'll not getting out this truck til you
17 drink the rest of the liquor.
- 18 Q: He said y'all aren't getting out of the truck til
19 you drink the rest of the liquor?
- 20 A: So we finished the liquor. He went up the hill and
21 took a right in the field. He had to take a leak
22 again.
- 23 Q: Okay, so you've stopped, alright at this point
24 you've gone out of your way. You're no where near
25 Clare Road at this point?

1 A: No.

2 Q: Okay. So he stops in a field and he gets out to
3 urinate?

4 A: Yeah, and she does too. One was on one side of the
5 truck and one was on the other side.

6 Q: Okay, cause everybody's been drinking?

7 A: Yes.

8 Q: Alright, what happened next?

9 A: They finished doing their thing and he hollered,
10 Marty said I dare you to come over here and I'll
11 show you what I got.

12 Q: I dare you to come over here. I want to show you
13 what I got.

14 A: I dare you. Jean didn't take the dare, she went on
15 the other side of the truck and laughed at him and
16 said man old man's got one longer than that.

17 Q: Alright, so he gets out to urinate and he makes a
18 comment come see what I've got. You say Jean laughs
19 and makes some statement. What was, what was Marty
20 Baggett's reaction to this?

21 A: Well he was mad.

22 Q: He seemed mad?

23 A: Yeah.

24 Q: Okay. Alright, then what happened? Did y'all get
25 back in the truck after this?

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- 1 A: Went back and got in the truck, went on down to,
2 come back down, I can't think of the name of it now.
- 3 Q: Well, okay, so y'all are driving around all over
4 Williamsburg county.
- 5 A: Well, yeah.
- 6 Q: Were you driving, were they driving fast?
- 7 A: No.
- 8 Q: Okay, did you ever get out to urinate?
- 9 A: Yeah, I did.
- 10 Q: Alright, tell me what happened when you did.
- 11 A: Pulled up about a hundred yards or so up the road
12 and I got out and he took off about a hundred foot
13 from me and stopped.
- 14 Q: Okay, so you're in the field urinating because
15 you've been drinking and he drives up fifty yards is
16 what you're saying? And then what does he do?
- 17 A: He backed up real quick and I had to jump into a
18 ditch.
- 19 Q: Okay.
- 20 A: And get out of his way.
- 21 Q: Alright he put the truck in reverse and backed it
22 towards you?
- 23 A: And I went to get back in the truck and he pulled up
24 some and he just, I think he said I'm just teasing.
- 25 Q: I'm just what?

- 1 A: Teasing.
- 2 Q: Teasing. Okay and what'd you say?
- 3 A: I didn't think it was funny myself.
- 4 Q: You didn't think that was funny when he backed the
5 car towards you fast? Alright. Okay, tell me did
6 y'all eventually, after riding around Hemmingway and
7 the near by areas ...
- 8 A: No, we never rode to Hemmingway.
- 9 Q: Well, Williamsburg county and around Clare Road, did
10 you eventually make your way to Clare Road?
- 11 A: Finally we come around County Line Road, we come off
12 on, he said I'm not going down Clare Road.
- 13 Q: He said he wasn't going to go down Clare Road?
- 14 A: He stopped off the shoulder of the road about twenty
15 foot from the driveway. I got out. I had her by the
16 hand.
- 17 Q: You had who by the hand?
- 18 A: I had Jean by the hand and I was going to help her
19 out the truck and he got Jean by the bra.
- 20 Q: He's got me by the what?
- 21 A: Bra.
- 22 Q: Bra?
- 23 A: And he pulled her trying to keep her in the truck
24 and I threw the beer in the ditch and tried to jerk
25 her out the truck. About that time he backed into

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1 my knees and through me off balance. I still had a
2 hold to her and he knocked my arm and knocked me
3 down and I seen the front tire coming over, I put my
4 left leg in the ditch. I didn't' have time to get
5 my other part of my body out of his way. He ran
6 across my arm right here on this part of my arm he
7 ran across it and took off and threw rocks all in my
8 face. I got up, I tried to get the tail gate but he
9 was moving too fast, so I went to the nearest curve
10 to see if they had wrecked because he was ...

11 Q: Okay, I just want to make sure I'm clear on what you
12 said. As you were getting out at Clare Road or near
13 Clare Road, you had Jean Turner by the arm and you
14 were helping her out, Marty Baggett put his truck in
15 reverse and knocked you down.

16 A: Yes.

17 Q: And the car hit you at some point.

18 A: The back tire, where the tire went by and hit me in
19 my head and my knee both.

20 Q: Alright, you fell backwards on the ground?

21 A: Yes sir.

22 Q: And then he accelerated forwards ...

23 A: Forward and kept on going.

24 Q: Alright and they're swerving down the road as
25 they're riding down the road.

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- 1 A: Yes.
- 2 Q: Okay and then you followed after them is what you
- 3 said, til you could see around the nearest curve.
- 4 A: I ran as far as I could and looking down the curve
- 5 and I couldn't see them anymore.
- 6 Q: And you stated, you stated you were trying to see if
- 7 they had gotten in a wreck?
- 8 A: Right.
- 9 Q: Okay, did you have a cell phone at that time?
- 10 A: No.
- 11 Q: Alright, what did you do next after you got around
- 12 the curve and you didn't see them?
- 13 A: I walked back to her mother's house.
- 14 Q: You walked to her mother's house and then what'd you
- 15 do?
- 16 A: I hung around. It was a little bit after seven.
- 17 Q: Okay, so once you got to Ms. Hughes house, what did
- 18 y'all do next?
- 19 A: What now?
- 20 Q: To Ms. Hughes house, what did you do next?
- 21 A: Jean wasn't with me.
- 22 Q: Well, you went to Jean's home after this occurred,
- 23 is that correct?
- 24 A: I went to her mother's house.
- 25 Q: Alright, and what's her mother's name?

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- 1 A: Glenda.
- 2 Q: Okay.
- 3 A: Hughes.
- 4 Q: Hughes. Alright, what did you and Ms. Hughes do?
- 5 A: We got in the truck and she took me home.
- 6 Q: Alright, did you call law enforcement?
- 7 A: We thought about calling law enforcement, and I
- 8 think she might have that night.
- 9 Q: Did you call law enforcement?
- 10 A: No, I did not.
- 11 Q: Okay, why not?
- 12 A: I figured it would be covered.
- 13 Q: Alright, what made you think it would be covered?
- 14 A: Well, I figured Jean's mama would get on the phone.
- 15 Q: Alright, were you ...
- 16 A: She was going to ride around and see if she could
- 17 find out anything.
- 18 Q: Were you drunk at that time?
- 19 A: I was high, I wasn't drunk.
- 20 Q: You were high?
- 21 A: High.
- 22 Q: What were you high on?
- 23 A: Vodka and one beer.
- 24 Q: Okay, now, now when you use the term high you mean
- 25 you were intoxicated by alcohol?

- 1 A: Yes.
- 2 Q: Okay, had you, had you done anything else that might
- 3 impair you?
- 4 A: No.
- 5 Q: Okay. Alright, after that point, did you ever see
- 6 Jean Turner alive again?
- 7 A: No I did not. The last thing she told me, I heard
- 8 from her he got me by the bra.
- 9 Q: What did you learn occurred after you last saw her?
- 10 A: Sir?
- 11 Q: Did you, did you find out what happened after you saw
- 12 her?
- 13 A: The next morning I got told then.
- 14 Q: Okay, you found out the next day?
- 15 A: The next day. I saw blood on the road.
- 16 Q: And you went to the scene and you saw blood on the
- 17 road.
- 18 A: She must have been running and got hit and run over,
- 19 and she started running.
- 20 Q: The road you saw the blood on, what was the name of
- 21 that road?
- 22 A: That was Clare Road.
- 23 Q: Clare Road.
- 24 A: At the opposite end.
- 25 Q: Alright. How has this effected you? The death of

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1 your wife and the way it occurred?

2 A: I would give a million dollars for her. I loved her

3 to death.

4 Q: Describe your relationship with Jean Turner.

5 Describe your relationship with Ms. Turner.

6 A: Yes.

7 Q: Would you please describe it? Would you describe

8 your relationship with Ms. Turner?

9 A: We had a good relationship. I've known her since

10 second grade.

11 Q: You've known her since second grade? Is that what you

12 said?

13 A: Yeah, we graduated together.

14 Q: And what schools did you go to?

15 A: (inaudible)

16 Q: And do you know what school Marty Baggett went to?

17 A: (inaudible)

18 Q: Okay. The State would offer State's exhibit 1 for

19 admission into evidence.

20 The Court: Objection?

21 Mr. Floyd: No objection Your Honor.

22 The Court: Alright. Is that already in or is that?

23 Okay.

24 (State's Exhibit Number One was marked)

25 Mr. Scott: That's all from the State. Please answer any

1 questions Mr. Floyd may have for you.

2 CROSS EXAMINATION OF MR. GARRIS BY MR. FLOYD:

3 Q: Mr. Garris, I want to ask you some questions about
4 this particular night. You loved your wife very much
5 didn't you?

6 A: Very much.

7 Q: And you said you've known her since the second grade
8 isn't that correct?

9 A: That's correct.

10 Q: So you knew her, her tendencies and how she behaved
11 in certain situations very well, didn't you?

12 A: Yes sir.

13 Q: And you would agree with me that you really don't
14 know somebody until you're married. For example, I
15 got married two years ago and I didn't know my wife
16 closed all the blinds before she went to bed at night
17 until after I married her. When you get married to
18 somebody, you learn how they behave in certain
19 situations. Would you agree with me on that?

20 A: I'd agree with you.

21 Q: Okay, well, do you recall coming down to the police
22 station and giving that gentlemen sitting up there in
23 the left hand corner, Officer Boston, a statement the
24 day after this event occurred? Do you remember taking
25 your statement? He and you knew at that time they

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1 were investigating your wife's death, isn't that
2 right? And they were trying to figure out what
3 happened. You understood that?

4 A: Right.

5 Q: And you wanted to know what happened, didn't you?

6 A: That's right.

7 Q: Okay do you recall giving them a statement, do you
8 remember that statement?

9 A: Yeah, I do.

10 Q: Okay, well, Officer, excuse me, Mr. Scott just asked
11 you while ago, why you didn't call the police. I'd
12 like to hand you, you got a copy of this? Is there a
13 stapler right there? I want to hand you a copy of
14 your statement to Mr. Boston the day after these
15 events occurred, when everything was fresh in your
16 mind. Okay? And I want you to turn with me to page
17 twenty three. Your Honor may I approach the witness?
18 I'm going to turn it for you to page twenty three and
19 on page twenty three, about line seventeen, I'm going
20 to read this question to you and I want you to tell
21 the ladies and gentlemen of the jury what you told
22 them then next day, right after your wife had died
23 and they were trying to figure out what happened.
24 The question is simply this, it says, what was your
25 reason for not calling the police when you already

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1 knew that Marty drove off, knowing that she didn't
2 want to go with him? And what was your answer? If you
3 would, publish your answer please.

4 A: She would jump out the truck.

5 Q: I couldn't understand you. You said because knowing
6 her ...

7 A: She would jump out the truck.

8 Q: Cause knowing her, she would jump out the truck. Is
9 that your answer?

10 A: Yeah.

11 Q: Okay and the next question was you think she would
12 jump out the truck and what was your answer?

13 A: Yeah.

14 Q: So the next day, when you were trying to explain to
15 the police what you thought happened, what might have
16 happened, you were telling them she probably jumped
17 out the truck weren't you?

18 A: Yeah.

19 Q: Okay and in fact ... but in fact, he dropped you off
20 on one end of Clare Road and we end up on the other
21 end of Clare Road in an accident and it very well
22 could have been just what you said, couldn't it?

23 A: I don't know.

24 Q: I understand that, but I'm saying it's, it's
25 certainly, it's certainly gelled with what you told

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1 them doesn't it? Your statement that day?

2 A: Yeah.

3 Q: I mean, you told them it was probable, she probably
4 jumped out the truck.

5 A: Anyone probably would have jumped out the truck.

6 Q: I understand, but we were specifically referring to,
7 they were asking you questions because this was your
8 wife and they knew that you would know her and what
9 she might or might not do, you understand that?

10 A: Yeah.

11 Q: Okay, now, while ago they were asking, you were
12 telling this story about all this stuff about Marty,
13 Mr. Baggett trying to back over you and about oral
14 sex and all these things. If you would please, turn
15 with me, in your statement to page eleven, of your
16 statement. You testified earlier that Mr. Baggett
17 wanted y'all to go to his house and party, but if you
18 would please turn to page eleven.

19 A: Eleven?

20 Q: Yes sir, please. And he asked you about in about line
21 nine, excuse me, seven, he said when he drove up,
22 what did he say or what did you say and how did y'all
23 begin to talk? And what did you say?

24 A: Yeah, he said come on ride with me and I'll give you
25 a ride home.

1 Q: That's right. He said come on and ride with me and
2 I'll give you a ride home. He didn't say anything
3 about any of that other stuff, did he? You didn't
4 tell them that that day. You didn't tell them
5 anywhere in your statement that day about oral sex,
6 about him trying to get oral sex from your wife, did
7 you?

8 A: No, I did not.

9 Q: You didn't tell them that that day, did you?

10 A: No, I did not.

11 Q: Well, don't you think, if this is your wife and they
12 trying to investigate her death, trying to figure out
13 what might or might not have happened. That's kind of
14 important isn't it? Don't you think that was the
15 kind of thing they would have wanted to know the next
16 day?

17 A: You know ...

18 Q: I understand

19 A: You know the truth.

20 Q: I understand. But you didn't tell them that the next
21 day, did you?

22 A: No, I didn't.

23 Q: Okay, if you would please, turn with me to page, page
24 sixteen if you would. If you would, look at the top
25 at the question, line three, line four and I'm going

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1 to ask you, it says, excuse me, excuse me, top of the
2 page. Question, previous answer was left back what
3 happened then? If you would, read what your
4 response, what your answer was on page sixteen.

5 A: Where?

6 Q: The question was at the very top of page line two,
7 the investigator's asking you and it's going through
8 where y'all had just left Deerfield Road and he says
9 what happened then? And what was your reply? What
10 was your response? Just publish your response if you
11 would please.

12 A: Says pulled off to take a leak.

13 Q: Says then we pulled off ...

14 A: ... he pulled off.

15 Q: To take a leak. You didn't say anything in your
16 response, the day after this event occurred ...

17 A: I don't recall.

18 Q: I understand that, but my question is, if you'll
19 allow me to finish my question.

20 A: I'm just answering the question.

21 Q: I understand that. You didn't say anywhere the day
22 after your wife had died and you were at the police
23 station, you never told police anything about him
24 trying to back up at you or, other than when they
25 dropped you off on Clare Road, about him trying to

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1 backing up real fast or anything like that, did you?

2 A: I just didn't think about it.

3 Q: You just didn't think about it.

4 A: No sir.

5 Q: Just never occurred to you that your wife was dead
6 and apparently something had happened, you just
7 didn't think about it huh?

8 A: No. I didn't think about that.

9 Q: I understand. Alright, now if you would please, turn
10 with me towards the very back, towards eighteen if
11 you would Mr. Garris.

12 A: What page? What page was that?

13 Q: Eighteen.

14 A: Eighteen. I don't have an eighteen.

15 Q: Well, just ...

16 A: I don't have an eighteen.

17 Q: You don't have an eighteen in there? Okay. Alright,
18 well if you would, did you ever or did they ever ask
19 you if you if Marty was drunk that night? Did law
20 enforcement ever ask you if Marty was drunk?

21 A: Law enforcement?

22 Q: Law enforcement, Mr. Boston, the guy that was
23 interviewing you. Do you ever recall him asking you
24 if he was drunk? If Marty was drunk, Mr. Baggett, the
25 gentlemen seated ...

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- 1 A: No, I don't recall him asking that question.
- 2 Q: You don't recall them asking you that question?
- 3 A: I don't remember everything that was said.
- 4 Q: Do you recall that?
- 5 A: We had been drinking.
- 6 Q: That's correct. Do you recall when they asked you if
- 7 he was drunk, your response was we had been drinking,
- 8 isn't that right?
- 9 A: We had been drinking.
- 10 Q: Right.
- 11 A: Right.
- 12 Q: But when they specifically asked you if he was drunk,
- 13 you said we had been drinking, isn't that correct?
- 14 A: What?
- 15 Q: I said when they specifically asked you if y'all were
- 16 drunk, your response was we had been drinking, all
- 17 three had been drinking. On page twenty seven, if you
- 18 would turn to that.
- 19 A: There's not a twenty seven.
- 20 Q: There's not a twenty seven? There should be a twenty
- 21 seven in there Mr. Garis.
- 22 The Court: Take a look at what he's got and compare
- 23 it to what you have.
- 24 Mr. Floyd: Okay.
- 25 Q: If you would look at page twenty seven at line

1 twenty.

2 A: Yeah, I see it.

3 Q: And what was the question, it says all three of you
4 had been drinking, right? And what was your response?

5 A: We were not drunk.

6 Q: But we were not drunk. Isn't that correct?

7 A: No. Marty was pilled up.

8 Q: Pardon?

9 A: Marty was pilled up.

10 Q: Marty was pilled up?

11 A: Yeah.

12 Q: Court's indulgence, Your Honor. Mr. Garris, you
13 stated earlier that Mr. Baggett came close to running
14 over you and stuff. Did you ever get a warrant for
15 him for trying to harm you or hurt you or have him
16 arrested for that?

17 A: No, I just, I didn't just tried to get him arrested.

18 Q: Pardon?

19 A: My arm was alright; it wasn't broken.

20 Q: But you didn't tell law enforcement, you didn't tell-
21 ...

22 A: I did, but it was wrote down.

23 Q: Pardon?

24 A: I told them, but it wasn't wrote down.

25 Q: You did tell them in your recorded statement? You

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- 1 sure about that?
- 2 A: That's what I said.
- 3 Q: You sure about that? You told them that? Turn to
- 4 page eighteen if you would. If you would look at line
- 5 nineteen; the question is what did he do and what was
- 6 your response?
- 7 A: He knocked me down ...
- 8 Q: Right, but you never told them that day that he threw
- 9 rocks in your face and ran over arm ...
- 10 A: He ran over my arm, he didn't run over my body.
- 11 Q: Or any of that kind of stuff, did you?
- 12 A: He didn't run over my body.
- 13 Q: I understand.
- 14 A: There would have been two dead if he ran over my
- 15 body.
- 16 Q: You had tire marks on the side of your head?
- 17 A: Yes.
- 18 Q: You didn't tell law enforcement about that in your
- 19 statement, did you?
- 20 A: He ran over my face.
- 21 Q: Pardon?
- 22 A: My ear ...
- 23 Q: But you never, they never signed a warrant or never
- 24 took any pictures of you or any of that stuff, did
- 25 they? Don't you think they would have done that if

- 1 you would have shown them this?
- 2 A: Who?
- 3 Q: Law enforcement; Office Boston sitting up top there.
- 4 A: When I went down there?
- 5 Q: Right. I mean isn't it true a lot of this story that
- 6 you coming up with now you kind of fabricated since
- 7 the night of this incident?
- 8 A: No.
- 9 Q: Now, after, after Mr. Baggett left with your wife,
- 10 you went to Ms. Ms. Turner's mother's house?
- 11 A: Right.
- 12 Q: Correct?
- 13 A: Right.
- 14 Q: Okay you told Ms. Turner what happened?
- 15 A: Yep.
- 16 Q: And y'all didn't go out looking for Mr. Baggett did
- 17 you?
- 18 A: Not at that point in time.
- 19 Q: Huh-uh, didn't call the law to go out and looking for
- 20 Mr. Baggett did you?
- 21 A: She carry me.
- 22 Q: Pardon?
- 23 A: She took me home after that.
- 24 Q: She, she carried you home after that, didn't she?
- 25 A: Yeah.

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- 1 Q: She, she took you home and y'all didn't even go on
2 down Clare Road where Mr. Baggett, the route he had
3 taken, to check on her, did you?
- 4 A: No.
- 5 Q: At all?
- 6 A: No.
- 7 Q: Okay, you said you drove Mr. Baggett's school bus
8 didn't you?
- 9 A: Yeah.
- 10 Q: Okay well you, surely you knew where he lived if you
11 took him home from school everyday? He lived right
12 beside his father doesn't he?
- 13 A: I let him off at his cousin's house.
- 14 Q: Oh, you let him off at his cousin's house. Now, in
15 your testimony, how much alcohol did you say Ms.
16 Turner had drank that day?
- 17 A: She had drink one beer.
- 18 Q: One beer.
- 19 A: With me, with me ...
- 20 Q: Okay.
- 21 A: And that one beer and three or four drinks of liquor.
- 22 Q: And three or four drinks of liquor. You were sitting
23 there and you heard my opening argument didn't you?
24 You heard my opening argument?
- 25 A: Yes.

1 Q: You're aware that her blood alcohol content was .387,
2 are you aware of that?

3 A: Yeah, I heard it.

4 Q: Are you aware that's almost five times the legal
5 limit ...

6 A: She drink.

7 Q: I understand. And it's your testimony today she had
8 one beer and two or three drinks and that was it?

9 A: It was a fifth.

10 Q: Right.

11 A: A fifth.

12 Q: Ain't a lot of liquor in a fifth, is there? I don't
13 have any further questions.

14 The Court: Re-direct?

15 Mr. Scott: Thank you Your Honor, briefly.

16 RE-DIRECT EXAMINATION OF MR. GARRIS BY MR. SCOTT:

17 Q: I have in my hand a copy of the statement that Mr.
18 Floyd was just talking about. I believe you have a
19 copy up there as well. Do you remember this statement
20 you gave law enforcement?

21 A: Yeah.

22 Q: And you gave this statement March 9, 2007 the day
23 after Ms. Turner died. Is that right?

24 A: Right.

25 Q: You spoke to law enforcement the day after Ms. Turner

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1 died.

2 A: Alright.

3 Q: That's right? So you gave this statement the same
4 time you learned your wife had died?

5 A: Yes.

6 Q: And what were you feeling when you found out your
7 wife had died?

8 A: Miserable.

9 Q: Possible you left some things out?

10 A: Yes sir.

11 Q: Would you describe yourself as being distraught?

12 A: Pardon?

13 Q: You were miserable upon finding out your wife had
14 died?

15 A: Yes.

16 Q: Did you have a clear mind at the time?

17 A: I thought I did.

18 Q: You thought you did? Your Honor under Rule 106, South
19 Carolina Rules of Evidence, the State would ...

20 The Court: ... 106?

21 Mr. Scott: That's correct Your Honor. Under the rule of
22 completeness, Your Honor, the State would offer exhibit
23 number 25 for admission into evidence. This is the entire
24 statement that Mr. Thomas Rod Garriss gave to investigator
25 Boston on March 9, 2007 Your Honor.

1 The Court: Alright, any objection Mr. Floyd?

2 (State's Exhibit Number 25 was marked - Statement)

3 Mr. Floyd: No objection Your Honor.

4 The Court: Alright, it's in with no objection.

5 Mr. Scott: Thank you. That's all from the State Your
6 Honor.

7 The Court: Anything else Mr. Floyd?

8 Mr. Floyd: Nothing further.

9 The Court: You can step down. Alright, it's 4:25 Mr.
10 Scott. Any, can you call a witness that
11 will move us up to five o'clock?

12 Mr. Scott: I've got one that will probably be all of
13 five, ten minutes maybe.

14 The Court: Is anybody, is there anyone on the jury
15 who needs to take a break, just raise your
16 hand. Alright we'll take a recess for about
17 five minutes and ladies and gentlemen, I
18 will remind you that when you go to your
19 jury room, you cannot discuss this case
20 with anyone or amongst yourselves at all.
21 Alright, thank you.

22 (Jury break was taken 4:23)

23 The Court: Alright bring in the jury.

24 (Jury enters courtroom 4:39)

25 The Court: Alright we're ready to move forward. You may

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1 call your next witness.

2 Mr. Scott: Thank you. The State calls Ned Nettles.

3 Clerk : Place your left hand on the Bible and raise your
4 right hand. Do you solemnly swear to tell the
5 truth, the whole truth, and not the truth, so
6 help you God?

7 A: Yes ma'am.

8 DIRECT EXAMINATION OF MR. NETTLES BY MR. SCOTT:

9 Q: Thank you Mr. Nettles, where you from?

10 A: Johnsonville sir.

11 Q: Is that Williamsburg County or Florence County?

12 A: Florence County.

13 Q: Okay and what do you do for a living?

14 A: I have several jobs over five years you know. Right
15 now I'm working for Fiber(sp).

16 Q: Okay, have you ever worked at a place called Westside
17 convenience store?

18 A: Yes.

19 Q: Okay, and where is Westside convenience store?

20 A: It's 341 going into Johnsonville.

21 Q: I'm going to show you what's been marked as State's
22 exhibit number 23. It's an ariel photograph, where is
23 this?

24 A: Westside Grocery is here.

25 Q: Okay, that's an ariel photograph of Westside Grocery?

1 A: Yeah.

2 Q: And is that a fair and accurate depiction of
3 Westside?

4 A: Yes.

5 Q: Let me hand you this marker. If you would, just sort
6 of draw an arrow to Westside and label it Westside,
7 just Westside is fine. Okay. Let the record show,
8 this building in the middle of this ariel photograph,
9 you've indicated this is Westside convenience store,
10 correct?

11 A: Correct.

12 Q: Okay, how long did you work at Westside?

13 A: Off and on, I started in 75 and I had several jobs in
14 between then and keep going back and forth to it.

15 Q: Alright. What exactly did you do at Westside?

16 A: I was the manager most of the time.

17 Q: Alright, what kind of duties did you have as manager
18 of Westside?

19 A: Well, you know, keeping things cleaned up and taking
20 care of the building and stuff.

21 Q: Were you working there March 8 of 2007?

22 A: Yes sir.

23 Q: Tell me what happened that day.

24 A: Well, I seen Rod and Jean they walked in the front.
25 Jean stood outside.

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- 1 Q: Hold on one second. You said Rod?
- 2 A: Yeah.
- 3 Q: And who's Rod?
- 4 A: I call him Rod.
- 5 Q: Motioning to Mr. Garris, the last witness who
- 6 testified? Okay. And who was the other person who
- 7 came up?
- 8 A: Rod come walking up and Jean she stayed outside.
- 9 Q: That's be Jean Turner?
- 10 A: Yes sir.
- 11 Q: Okay, what did Rod come in the store, what was the
- 12 reason he entered your store?
- 13 A: He come in and got him a beer.
- 14 Q: Alright.
- 15 A: He walked and got him a beer and a pack of
- 16 cigarettes.
- 17 Q: Okay.
- 18 A: And Jean was outside and Rod was getting a beer and
- 19 comes back and Marty drove up to the gas tank.
- 20 Q: What was he driving?
- 21 A: A white Ford truck.
- 22 Q: Okay, and he pulled up to the gas pumps?
- 23 A: Yes sir. He started pumping gas, he got and he
- 24 started pumping and he come over there was Jean was
- 25 and started talking to her and shaking his finger at

1 her, so he went back to his truck and got twenty
2 dollars worth of gas and Rod walked outside ...

3 Q: Wait a minute. I'm sorry, I didn't mean to interrupt
4 you. While Rod was inside buying a beer, did you say
5 anything to him?

6 A: Yeah, I told Rod I need you to go out there and check
7 on Jean, cause Marty's out there shaking his finger
8 in her face and I don't know what's going on and he
9 said well, that's Marty; it's alright.

10 Q: Did ...

11 A: So I said alright.

12 Q: Did you know, you knew Rod Garris at this time?

13 A: Yes sir.

14 Q: Did you know Jean Turner?

15 A: Yes sir.

16 Q: And did you know Marty Baggett?

17 A: Yes sir.

18 Q: How long had you known all these folks?

19 A: All, ever since they were little babies.

20 Q: Okay. You said that Marty was shaking his hand in
21 Jean's face?

22 A: Yes sir.

23 Q: Alright.

24 A: And Jean was doing was smiled at him.

25 Q: After Marty finished pumping gas and ...

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- 1 A: He come inside.
- 2 Q: Okay and he came inside. What was he in there to do?
- 3 A: He come inside to pay for the gas.
- 4 Q: Did he buy anything else?
- 5 A: No. And also he said that he was going to have oral
- 6 sex with her that night.
- 7 Q: Okay, he made that statement to you?
- 8 A: Yes sir, he did.
- 9 Q: Alright. Did you give a statement to law enforcement?
- 10 A: They didn't ask no questions like that. No, I didn't
- 11 want to get too involved right then, you know.
- 12 Q: You never, you never told law enforcement that?
- 13 A: No sir.
- 14 Q: Okay but you are under oath today?
- 15 A: Yes sir.
- 16 Q: And that's your testimony that he came in and told
- 17 you that he was going to have oral sex?
- 18 A: Back then he was kind of loud talking, you know,
- 19 boasting, he's loud talking, though.
- 20 Q: Okay. Alright, what'd they do after that?
- 21 A: They drove over to the liquor store. I watched them,
- 22 you know, through the window.
- 23 Q: Did they all get in the truck together and ride over
- 24 there across the street?
- 25 A: The rode over there.

- 1 Q: Where is, where is the liquor store?
- 2 A: Right straight across the road from the West side on
- 3 Pine Street.
- 4 Q: Let me get you to, I don't know what I did with it.
- 5 Do you still have that marker?
- 6 A: Yes sir.
- 7 Q: Could you just make an arrow that points to Westside
- 8 here?
- 9 A: That's the store right there.
- 10 Q: Okay.
- 11 A: Straight across.
- 12 Q: And would you label the liquor store, what's the name
- 13 of the liquor store?
- 14 A: Hannah's.
- 15 Q: Okay and also would you just draw another arrow that
- 16 points to Westside?
- 17 A: On the front door?
- 18 Q: No, just an arrow that ...
- 19 A: Alright, on the back door like that.
- 20 Q: Alright. So basically, what you've indicated is
- 21 Westside is really just a small, country road that
- 22 runs in between Westside convenience and Hannah ABC?
- 23 A: Hannah's, yeah.
- 24 Q: And you can see, out your window you can see Hannah's
- 25 liquor store?

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1 A: Oh yeah.

2 Q: I'm sorry? Okay.

3 A: Yes.

4 Q: Okay and after they drove over there in the pick up,
5 all three together, what did they do next?

6 A: Marty went in the store and got some stuff and come
7 back out and backed up and went down Pine Street.

8 Q: Okay. And that was the last you saw of them?

9 A: That was the last I saw of them.

10 Q: Okay. Well, Your Honor State would offer State's
11 exhibit number 23 for admission into evidence.

12 The Court: That's already in?

13 Mr. Floyd: No objection Your Honor.

14 The Court: Alright. Twenty three's in.

15 Q: Nothing more from the State. Please answer any
16 questions Mr. Floyd may have.

17 A: Alright.

18 CROSS EXAMINATION OF MR. NETTLES BY MR. FLOYD:

19 Q: Mr. Nettles, you, you look familiar. Is your brother
20 Snake?

21 A: That's my brother.

22 Q: That's your brother. I went to school with his son.
23 You don't know what Mr. Baggett and Ms. Turner were
24 saying on the outside to each other?

25 A: No sir, I couldn't hear through the window.

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1 Q: You don't have a clue what their conversation was?

2 A: No, I saw him shake his finger in her face.

3 Q: Right. So you don't know what she was saying to him
4 or what he was saying to her?

5 A: No.

6 Q: And you weren't, after they left you never saw them
7 again that night?

8 A: No.

9 Q: So you don't know what took place before they got
10 there and you don't know what took place after that?

11 A: No.

12 Q: I don't have anything further Your Honor.

13 The Court: Re-direct?

14 Mr. Scott: Nothing from the State Your Honor.

15 The Court: You can step down. Your Honor the State
16 would call Jimmy Hannah.

17 Clerk: Place your left hand on the Bible and raise your
18 right hand. Do you solemnly swear to tell the
19 truth, the whole truth and nothing but the
20 truth, so help you God?

21 A: I do.

22 Clerk: Have a seat.

23 DIRECT EXAMINATION OF MR. HANNAH BY MR. SCOTT:

24 Q: Mr. Hannah, where are you from?

25 A: Johnsonville.

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1 Q: You're from Johnsonville as well and do you know Mr.
2 Baggett?

3 A: Yeah, I do.

4 Q: And did you know Jean Turner?

5 A: I did.

6 Q: And do you know Rod Garris?

7 A: I didn't know Rod that good.

8 Q: Okay, did you, were you working, what do you do for a
9 living?

10 A: I run Hannah's Liquor store.

11 Q: Okay. Do you still run it to this day?

12 A: Yes, I do.

13 Q: Were you working there March 8, 2007?

14 A: I was.

15 Q: And did you have a chance to come across Mr. Garris,
16 Ms. Turner and Mr. Baggett?

17 A: I happened to notice they was standing outside in the
18 parking lot is all I seen.

19 Q: The parking lot of where?

20 A: Westside.

21 Q: Westside convenience store. You probably didn't see
22 this, State's exhibit number 23.

23 A: Huh-uh.

24 Q: We had it marked. This is Westside convenience here
25 in the middle and this is Hannah's liquor store.

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- 1 A: Right.
- 2 Q: And out of your window of Hannah's liquor store, you
- 3 could see the goings on at Westside convenience. Is
- 4 that correct?
- 5 A: Yes sir.
- 6 Q: And you just now stated you saw Ms. Turner and Mr.
- 7 Garris outside standing around the Westside parking
- 8 lot?
- 9 A: I saw them talking with Marty first time I noticed
- 10 them.
- 11 Q: Okay and then what happened?
- 12 A: They, Marty's pickup was parked on the side of
- 13 Westside store and I noticed that they got in it and
- 14 rode across to mine.
- 15 Q: Okay, what happened next?
- 16 A: Marty got out and walked in my store. He bought one
- 17 pint of Lord Calvert and walked back out.
- 18 Q: Okay. He bought a bottle of liquor. There was
- 19 testimony earlier that it was Smirnoff, but you think
- 20 it was Lord Calvert?
- 21 A: I knowed it was.
- 22 Q: Okay, but it was a quantity of liquor?
- 23 A: Yeah, a pint.
- 24 Q: A pint of liquor.
- 25 A: Uh-huh.

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1 Q: And then what happened?

2 A: They left.

3 Q: Okay.

4 A: I didn't see nothing else.

5 Q: How long have you known Marty Baggett?

6 A: About all his life.

7 Q: Okay, did you see him again that day?

8 A: No.

9 Q: He came in, bought a bottle of liquor and Marty
10 Baggett was the only one to come in your store. Is
11 that correct?

12 A: That's correct.

13 Mr. Scott: Okay, nothing else from the State Your Honor.

14 CROSS EXAMINATION OF MR. HANNAH BY MR. FLOYD:

15 Q: Mr. Hannah you said you run the liquor store?

16 A: Yes I do.

17 Q: And if somebody comes in your liquor store and they
18 are exceedingly drunk, you wouldn't sell them any
19 alcohol, would you?

20 A: No sir.

21 Q: So it's safe to say that when Marty came in your
22 liquor store to buy that pint of liquor, he wasn't
23 drunk?

24 A: Not that I could tell, no.

25 Q: Do you know Marty?

1 A: Yeah.

2 Q: You seen him drunk before?

3 A: Yeah.

4 Q: Okay and you've seen him sober before?

5 A: Yeah.

6 Q: And in your opinion he wasn't drunk that day?

7 A: No he wasn't.

8 Mr. Floyd: Nothing further.

9 The Court: Re-direct?

10 Mr. Scott: Just briefly Your Honor.

11 RE-DIRECT EXAMINATION OF MR. HANNAH BY MR. SCOTT:

12 Q: Marty, you said was driving. What was he driving?

13 A: A white Chevrolet pick up.

14 Q: When he came to your store.

15 A: Yes.

16 Q: Okay, he didn't appear intoxicated at that time?

17 A: No, he didn't.

18 Q: Okay, but that was the last time you saw him that
19 day, correct?

20 A: Right.

21 Q: You didn't see him after he drank the, your Lord
22 Calver or whatever else he may have had that
23 afternoon?

24 A: No, I didn't.

25 Q: Okay. Approximately what time was this?

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1 A: Probably about three thirty, four o'clock.

2 Mr. Scott: Okay, nothing further from the State Your
3 Honor.

4 The Court: Okay, re-direct?

5 Mr. Floyd: Nothing further Your Honor.

6 The Court: Alright, you can step down.

7 Mr. Floyd: Just, one question Your Honor. I have one quick

8 ...

9 RECROSS EXAMINATION OF MR. HANNAH BY MR. FLOYD:

10 Q: ... you said, you said it was a pint. Is that right?

11 A: Yep, three seventy five millileters.

12 Q: Okay and you're certain of that? Thank you.

13 The Court: Anything else for the State?

14 Mr. Scott: Your Honor I think this is probably a good
15 time to break.

16 The Court: Alright.

17 Mr. Scott: There's nothing more from the State today.

18 The Court: Alright, ladies and gentlemen we are going
19 to stop for today. You may go on about your
20 business for the rest of the day, rest of
21 the evening. I want to make sure you
22 understand my very strict instructions that
23 you are not to discuss this case amongst
24 yourselves or with anyone else. I will
25 again tell you, and I will tell you more

1 (Jury enters courtroom 10:20 a.m.)

2 The Court: Alright ladies and gentlemen we are ready to
3 move forward and the State is still presenting evidence
4 and Mr. Scott, Mr. Stumbo, you may call your next witness.

5 Mr. Scott: Thank you Your Honor. The State calls Jeff
6 Scott.

7 Clerk: Do you solemnly swear that the evidence and
8 testimony you will give this court and jury will
9 be the truth, the whole truth and nothing but
10 the truth, so help you God?

11 A: I do.

12 DIRECT EXAMINATION OF MR. SCOTT BY MR. SCOTT:

13 Q: Morning Mr. Scott. I see you're in uniform.

14 A: Yes.

15 Q: For the jury, would you please state where you're
16 employed?

17 A: I'm employed with the Williamsburg County Sheriff's
18 office.

19 Q: How long have you worked for Williamsburg county
20 sheriff's department?

21 A: Since 1999.

22 Q: Do you have any law enforcement experience prior to
23 that?

24 A: Yes, I've been in law enforcement since 1996.

25 Q: What was the other agency you worked with?

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- 1 A: I worked for a small town here in Williamsburg
2 county, Greeleyville for approximately a year; I
3 worked for Dorchester county sheriff's office for
4 about a year and I worked in Florence, and Columbia.
- 5 Q: And you're back home, from Williamsburg county?
- 6 A: I was born and raised here in Williamsburg county.
- 7 Q: Okay. What are your duties with the sheriff's
8 department here in Williamsburg?
- 9 A: I am the training officer for the department, I also
10 process crime scenes and collection and store
11 evidence, the evidence technician.
- 12 Q: Okay. What experience do you have as far as crime
13 scene investigation?
- 14 A: As far as education wise?
- 15 Q: Education wise, work wise.
- 16 A: Okay, I have an Associate degree in criminal justice,
17 I have a Bachelor's degree in Liberal Arts and I have
18 a Master's degree in criminal justice. I also have
19 extensive training in the area of crime scene
20 investigations, forensic pathology, blood stain
21 analysis, latent print processing and examination,
22 traffic accident investigation drug related labs. I'm
23 also a college professor and I teach in these areas.
- 24 Q: Okay. Let me ask you this, on March 8, 2007, were you
25 on duty?

1 A: Yes.

2 Q: And did you receive a call or did you respond to a
3 crime scene on Clare Road?

4 A: Yes I did.

5 Q: And where is Clare Road? Is that in Williamsburg
6 county?

7 A: Yes it is, it's in the Hemmingway area of
8 Williamsburg county.

9 Q: Okay what was, what was the call in regards to?

10 A: I believe it was a person possibly runned over by a
11 vehicle.

12 Q: Alright. Explain what you observed upon arrival.

13 A: Upon arrival to the scene, I observed that there was
14 a victim's body laying on one side of the dirt road,
15 which is Clare Road; a pick up truck light in color,
16 chevy on the right side. If I'm facing the scene,
17 coming in from Clare Road or Cow Head Road, looking
18 at the scene, the truck would have been on my right
19 hand side and the victim would have been on my left
20 hand side in the road portion.

21 Q: Were you able to sketch the scene in any way?

22 A: Yes I was.

23 Q: Let me show you what has been marked as State's
24 exhibit number 7. And Your Honor if I may, I'll call
25 the witness off the stand?

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1 The Court: Alright, Mr. Scott just make sure you keep
2 your voice way up.

3 A: Yes sir.

4 The Court: If y'all are referring to the diagram, Mr.
5 Floyd you get where you want to be and make
6 sure that, are you going to put it on that
7 machine?

8 Mr. Scott: Well, I think Your Honor I'm just going to
9 hold this one up.

10 The Court: Okay, just make sure everyone can see; if
11 you have to repeat yourself. Alright, you
12 can step down.

13 Q: Did you sketch this?

14 A: Yes, I did.

15 Q: And would you please show us what these sketches
16 entail.

17 A: Well, if we could flip it over like this, then you'll
18 have an accurate depiction and natural orientation.

19 The Court: Can you hear him Melissa? You'll need to
20 speak up please.

21 A: Can you hear me?

22 The Court: I, I can't ...

23 A: Okay, in this sketch, this is the natural
24 orientation. If I was coming in to Clare Road, which
25 this is Clare Road, I'd be coming in from Cow Head

1 Road, intersection and turn on and I'd be coming up
2 to the scene from off Clare Road and off of Cow Head.
3 What this scene depicts is, at the time we had a
4 cotton field, these are the cotton fields on the side
5 of the road, this is the scene itself. Item number
6 14, if you can tell, would be a depiction of the
7 vehicle, it's original orientation at the scene.
8 Number 12 is the, what we were just explaining about,
9 the victim the position and adjoining to the truck in
10 the scene.

11 The Court: Some of the jurors can't see.

12 A: These numbers and letters depict points for
13 measurement purposes on the road. The road was
14 fifteen feet wide, so the points were made so we can
15 measure different pieces of evidence on the road.
16 These points of interest right here, were blood,
17 spotting of stains that were found as well as a
18 cigarette butt. One, two, three and four; one and two
19 was stains, three was a cigarette butt and number
20 four was a stain, so that's what this is depicting
21 right here. At this point, up in the front, we have
22 the truck, which is number fourteen. Number five, is
23 consistent with a stain, number six was another
24 staining area. Number seven, if y'all can see it, is
25 another stain, so these are stains that have been

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1 falling into the dirt in the roadway. Number eight
2 was a paper-bag with a red stain material on it.
3 Number nine in this depiction was a screwdriver that
4 was found about mid ways between the victim and the
5 truck area. Number ten was this large pool of blood,
6 it was a stain. This was a large pool of blood in
7 this area right here, so we took a sample of this
8 large pool of blood, a DNA sample. Number eleven was
9 a red cup. Number twelve was depicted as the victim
10 in this case. Number thirteen was also blood drops
11 here and like I said, number fourteen was the truck
12 and fifteen and sixteen was items of interest inside
13 the vehicle, such as her pocketbook and a pocket
14 knife.

15 Q: Okay, while I have you down here, I want to show you,
16 it's been entered into evidence as State's exhibit
17 number nineteen, what is this?

18 A: This looks to be a overhead ariel photograph of the
19 scene with all the different groups that intersected
20 into this area, of the area itself. We have Cow Head
21 Road, that runs in this direction, west to east. We
22 also have Clare Road and this is the location where
23 the scene is at. This is the road that we're talking
24 about right here as we're talking about the scene.
25 Clare Road turns off of Cow Head, so just as I was

1 telling you about in the orientation drawing that we
2 had that we were showing you, when you turn off of
3 Cow Head Road, you'd be going up this road and in
4 that orientation you would be stopping about right in
5 there.

6 Q: We would offer this with a slight alteration. It has
7 been previously discussed with the defense attorney.
8 I want to ask that you just mark where the crime
9 scene was on this map and label it scene.

10 A: As we were coming up this little wooded area right
11 here, come up to about right in this area and you can
12 also see the cotton fields adjacent to the road area.
13 This is what we depicted in the sketch.

14 Q: Thank you. Okay, you can, you can take the witness
15 stand. What did you observe as far as any tire marks
16 or anything like that? Is that depicted in your
17 sketch?

18 A: Yes. Can everybody still see the sketch? At the
19 scene there was a tire impression, it was almost like
20 in a trench that ran down the side of the field and
21 came back out at one point, up and down in this area.
22 Inside the trench, the tire, the dirt was dug up
23 pretty good. It was very soft and real crumbly, but
24 you could tell that somebody had driven here. Some of
25 the dirt area right over here was kind of dug up like

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1 something had run across the top of it in the dirt,
2 it dug up the dirt in that area.

3 Q: Okay, approximately how far was the truck from Ms.
4 Turner?

5 A: The width of the road was fifteen feet. The truck was
6 probably, maybe seven to eight feet away.

7 Q: Okay.

8 A: Because of her position one side and the truck on one
9 side.

10 Q: Let me show you State's exhibit number 3. Can you see
11 from there?

12 A: Yes I can.

13 Q: What is this, what is this picture showing?

14 A: This picture is depicting the scene at the time. It's
15 got some little --- the photograph was taken with
16 what they call a process --- with light. Basically,
17 what we did was took the photograph where we could
18 see everything with as much light as we could, where
19 it illuminates the scenes so you can see everything
20 in that perspective. The truck, its relationship
21 pieces of evidence that were marked, the relationship
22 to the victim that was at the scene.

23 Q: And is this picture consistent with the sketch we
24 just showed?

25 A: Yes.

1 Q: And what are these yellow markers here?

2 A: The yellow markers are usually put down on the scene.
3 The scene is photographed with two cameras. We will
4 photograph it without markers to show its original
5 perspective of how everything was layed out. Then
6 once we do a general overview of the scene, we put
7 down markers. The markers indicate pieces of
8 evidence, like the vehicle, the victim, the points of
9 interest that are at the scene, paper bag, cup, blood
10 stain, it gives reference to where all our pieces of
11 evidence are in a crime scene. So we take the
12 photograph, such as the general road and then
13 photograph it again and shoot it just this
14 orientation, you can see all the pieces of evidence
15 from all the way out to where it comes the entire
16 scene so you'll know the way everything was laid out.

17 Q: Okay, I'm going to show you State's exhibit number 4.
18 Explain what this is.

19 A: This is another photograph of the scene. Like we
20 talked about when you come down Clare Road from Cow
21 Head Road, this is the orientation you see as you
22 were standing back. The scene is still done with a
23 photographing technique light. Putting the light
24 over the top of the scene where you can see
25 everything in its orientation. We have everything.

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1 from item one all the way down to the truck, the
2 victim and all the other items in this entire scene.

3 Q: Also want to show you what's been marked as State's
4 exhibit number 6. What is State's exhibit number 6
5 depict?

6 A: This depicts a large amount of pooled blood, just
7 above where the victim's feet were and her
8 positioning to the, if you're facing the truck and
9 the victim.

10 Q: Okay and how did you, how did you mark this
11 particular piece of evidence?

12 A: We marked it with item number ten marker to show this
13 pool in relationship to the other pieces of evidence.

14 Q: I want to show you State's exhibit number 5. What is
15 this?

16 A: This is another photograph of the same scene, but
17 it's shot from in front of the vehicle, just slightly
18 coming back down Clare Road from the opposite
19 direction, in front of the vehicle towards Cow Head
20 to my right side. It's showing the orientation of how
21 the victim was laying and other pieces of evidence,
22 it shows the markers in the scene such as the pool of
23 blood, number ten and other pieces as well as her.
24 Then her orientation towards the truck. How the truck
25 was positioned, and how she's positioned.

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1 Q: And this is number 10, this was the State's last
2 exhibit that was depicted.

3 A: That's right. That was the large pool of blood that
4 was just above her feet.

5 Q: What did that large pooling of blood indicate to you?

6 A: That was possible that was the impact point. There
7 was a large concentration of blood at one point, so
8 if it had something or the victim had to be there for
9 a period of time for that blood to be pooled, as well
10 as --- and that dark stain so it had to be there at
11 some time for it to pool there.

12 Q: Alright, after photographing the whole scene, what
13 did you do next?

14 A: After that, I went to Williamsburg County Detention
15 Center and photographed Mr. Baggett.

16 Q: Okay, what did you observe?

17 A: I observed some scratches on Mr. Baggett's body. We
18 photographed his upper torso and face, hands, arms
19 for any indication of possible trouble or injuries to
20 himself. He indicated that he had scratches we found
21 to his left and right cheek.

22 Q: Okay, hold on one second. I want to show you State's
23 exhibit number 8. What is State's exhibit number 8?

24 A: It should be his right earlobe. If you can see, just
25 under his eye in this right around his cheek bone,

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1 you can see what looks to be a scratch coming
2 straight down from his cheek bone to the side of his
3 face and ear where the mustache ends. Two small
4 scratches there and also it looks like he's got some
5 type of stain on the side of the head.

6 Q: Let me show you State's exhibit number 9. And what is
7 this State's exhibit number 9?

8 A: It's the same photograph, just a little bit closer up
9 where you can see where that scratching is from the
10 cheekbone down. Can ya'll see the long scratch, then
11 the little small scratch right there. That's what it
12 depicts showing that scratching area there.

13 Q: Okay. What else did you photograph?

14 A: We also photographed the left side and right side,
15 upper chest, arms and hands.

16 Q: Okay, let me show you State's exhibit number 11. What
17 is this?

18 A: This would be his upper left, or upper chest what was
19 looking at, if you look at the left side here and
20 looking at some scratching, if you can see it, coming
21 across his shoulder, underneath his neck and down
22 across to the mid section of his body. He was
23 covered in scratches right in this area.

24 Q: Okay. I'll show you State's exhibit number 10.

25 A: This is also showing the upper torso, the chest area

1 and in this one is you can still see from shoulder,
2 coming across the neck and chest up above the left
3 breast.

4 Q: Okay. This is State's exhibit number 12.

5 A: And that's a more close up view, using a scale.

6 Basically, why we use a scale is to show dimension of
7 how big the scratch is or how long it is. That's why
8 we use a scale.

9 Q: Okay. What did you do next as far as crime scene
10 investigation? Did you, were you able to photograph
11 the truck?

12 A: Yes.

13 Q: I'll show you State's exhibit number 13. What is
14 this?

15 A: This is the photograph that depicts the undercarriage
16 of the white Chevy pick up truck. The truck was put
17 on a set of lifts, basically to get the vehicle up
18 where we could look at the undercarriage of the
19 vehicle. And it was photographed where you could see
20 different points of view from the back, back to
21 front. Where you could see, in this one you could see
22 the catalyst converter, the large piece right there.

23 Q: What did you notice as far as the catalytic converter
24 in this photograph?

25 A: There was, it was very dirty underneath, but there

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1 was some scarring or scratching under the catalytic
2 converter like it dug away some of the dirt that was
3 already pre-existing so we photographed it just to
4 see.

5 Q: Alright. I'll show you State's exhibit number 14.
6 What is State's exhibit number 14?

7 A: This is a photograph of the upper front passenger
8 side wheel well. If you look at it where the frame
9 comes down into the wheel. The point of interest in
10 this photograph was the upper wheel well we found
11 some green material and some cotton that was stuck up
12 in there that was dug up, it had dirt and green
13 material and cotton all stuck underneath the wheel
14 well.

15 Q: Is that what you're referring to?

16 A: That's right, that was cotton material.

17 Q: Okay, tell me what else you found in the
18 undercarriage of Mr. Baggett's truck.

19 A: On the passenger side, I believe we photographed and
20 examined the undercarriage of his vehicle and the
21 passenger side where the wheel well comes just up
22 underneath the edge of the vehicle and makes that
23 little white part of the frame where the door closes.
24 Just under there there was some stains.

25 Q: Okay, let me show you State's exhibit number 15. What

1 is this?

2 A: This picture is showing what I was telling you about.

3 If you look at your vehicle where the door closes
4 you'll have a under well as far as the body fame that
5 goes underneath the car, and it's that lift that
6 comes up that makes that seal, right there. That's
7 the area where the stain and little small stain that
8 you see where the scale tape and right there is where
9 that was found. What it is, is where it lifts up when
10 the door closes, that under edge of the vehicle.

11 Q: Okay, once you found this reddish stain on the
12 underside of, you said the passenger door of the
13 vehicle, correct?

14 A: Yes, it was the passenger door.

15 Q: And how far, whereabouts on the passenger side of the
16 truck was it?

17 A: If you look at the front edge where it closes in the
18 back it was about midways up under the passenger lift
19 right there. Front edge to the back edge, right
20 there.

21 Q: After you found this, what did you do next?

22 A: It was photographed. We also took a small sample of
23 the stain and tested it with Phenol Saline and if you
24 want me to explain that to the jury I can.

25 Q: Yeah, briefly. What is the Phenol Saline?

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- 1 A: It's a presumptive test for blood. Basically, you
2 take a sample of blood and use Pphenol solution with
3 peroxide and when it hits blood, the blood turns pink
4 and the presumptive positive states, this is blood
5 and then that's what it's for. It doesn't destroy any
6 characteristics of the DNA so it can't be used for
7 testing, but it was sent to the lab.
- 8 Q: Okay and did you take, so I think you just stated you
9 did take a sample of this substance?
- 10 A: That's right for presumptive test.
- 11 Q: Okay. Let me show you State's exhibit 27. What is
12 this?
- 13 A: This is a swab that was taken from that material at
14 the scene and basically what I did was, when I took
15 the swab I actually diagramed the area underneath the
16 truck where it was taken from and this is where it
17 came from.
- 18 Q: Okay, did you assign it a number?
- 19 A: Yes, it was assigned number five.
- 20 Q: Was there another identifying number that was
21 assigned to it?
- 22 A: There is Sled information. They'll put their numbers
23 and their initials as well. It has a case number
24 that's their identification number for this item and
25 whoever handles it puts their initials.

1 Q: Okay. And after you take a sample like this, a sample
2 from the crime scene, what do you do with it?

3 A: It's preserved in that, such as that box and then it
4 is submitted to SLED for DNA analysis specific pieces
5 of evidence.

6 Q: And did you send this to SLED to be tested for DNA
7 analysis?

8 A: Yes, yes.

9 Q: Okay. Did you take any or were there any samples
10 taken to compare it to?

11 A: There were. From autopsy we collect different DNA
12 samples from the victims at a crime. One of them was
13 a blood swab or at that time it might have been two
14 with blood. We also submit such things as fingernail
15 scrapings, head hair, pubic hair and other types of
16 swabs that can be used for DNA purposes. That is all
17 collected by the forensic pathologist at MUSC and it
18 was transferred to us and forwarded to SLED for DNA
19 analysis.

20 Q: Let me show you what's been admitted into evidence as
21 State's number 26. What's this?

22 A: This will be the standard for Ms. Jean Turner. This
23 would be her corodic blood standard.

24 Q: Okay, what do you mean by standard?

25 A: This is a known standard, this is her DNA, cardiac

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1 blood standard. This is blood they drew from her at
2 autopsy. And then they either put it on a card such
3 as a blood spot stain card or they give it to us in a
4 tube of blood.

5 Q: What's the purpose of obtaining a blood standard?

6 A: That's for DNA purposes, such as the crime scene. We
7 are taking DNA samples at the crime scene like the
8 one I was talking to you about, that pool of blood.
9 We'll take a sample from there. The clothing that she
10 was wearing we'll submit that to SLED and if there
11 was any stains on that they might take samples of
12 that, but it has to have something to compare it to.
13 So it's important to get a cardiac blood standard
14 from the victim of the crime so they can do a DNA
15 comparison.

16 Q: You had no idea where this came from at the time of
17 the crime scene correct?

18 A: No.

19 Q: But we do know with a hundred percent certainty where
20 that blood standard came from.

21 A: Yes, this is actually the one collected from the
22 autopsy.

23 Q: And this was a blood standard from Jean Turner?

24 A: That is correct. It actually has the doctor's name
25 and number on it and also it has Jean Turner's name

1 and number on it.

2 Q: And Your Honor State's exhibit 26 and 27 had, had
3 been admitted, stipulation from defense attorney.

4 The Court: Is that right Mr. Floyd?

5 Mr. Floyd: That's correct Your Honor.

6 The Court: Okay.

7 Q: And did you, did you return to the crime scene the
8 next day?

9 A: I returned to the scene just a couple days right
10 after.

11 Q: Okay, why'd you do that?

12 A: Most crime scenes, what we do is we go back and re-
13 observe a crime scene during the day time hours.
14 This, this crime scene was at night, or it was during
15 the nighttime. A lot of times what we like to do is
16 go back to the scene in the day time to try to get
17 another perspective to see what we can in the day
18 that we might not be able to see like such as tree
19 lines or how far fields are or like a covert because
20 of night time.

21 Q: Okay, let me show you State's exhibit number 17. What
22 is this?

23 A: This is the same photograph of the original scene.
24 You can still see the area where the flat goes in
25 this trench and it comes off the road, goes up and

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1 then goes back on to the road. The same orientation,
2 same area where you can actually see the tracks go up
3 and down.

4 Q: Is that what you're referring to?

5 A: Yes. It's off the road, into the field and back onto
6 the road at the upper, upper end.

7 Q: Okay, really just to wrap up a couple of loose ends,
8 the samples we talked about just a minute ago,
9 State's 26 and 27, did you receive these back from
10 SLED at some point?

11 A: Yes I did.

12 Q: With results from their testing?

13 A: Yes.

14 Q: Okay and you haven't altered them or done anything
15 with them whatsoever at any point?

16 A: No, they have been sealed all the way up to trial.

17 Q: Okay. I may have asked you this, but this, State's
18 exhibit number 19, that we looked at a minute ago and
19 you marked Clare Road and you marked the scene of the
20 crime. Which county is this in?

21 A: Williamsburg.

22 Q: Thank you. Please answer any questions Mr. Floyd may
23 have for you.

24 CROSS EXAMINATION OF MR. SCOTT BY MR. FLOYD:

25 Q: Good morning Mr. Scott.

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1 A: Yes sir.

2 Q: I've got some questions for you regarding this crime
3 scene and I want you to answer for me to just try to
4 get an understanding in my mind. When you got to this
5 accident, you arrived on the accident scene.

6 A: Yes.

7 Q: You were there that night and you were going to
8 determine whether this was an accident or a murder.
9 Isn't that correct?

10 A: All I was doing was just processing the scene for
11 evidence.

12 Q: Well, you understand two days later he, Mr. Baggett
13 was charged with murder?

14 A: Yes, but I went there to collect evidence, what is
15 presented.

16 Q: Well, someone reviewed your evidence and decided it
17 was enough for murder. Is that a fair statement?

18 A: You'd have to talk with the investigators about that.

19 Q: I mean you're an investigator.

20 A: I'm the crime scene investigator, the processor
21 You'll have to ask them specifically.

22 Q: That's right and you're not telling this jury that
23 you don't talk to the arresting officer and the
24 person signing the warrant and making a
25 recommendation as to what the person should be

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1 charged with are you? I mean you go talk to Officer
2 Boston and you say Mr. Boston, I think you've got
3 enough here for murder. When I investigated I found
4 blood, I found a victim, I found all the things that
5 are required for murder. Isn't that basically what
6 happened?

7 A: I explain to them what's been founded and what we
8 have and what was considered evidence. Such as those
9 things we have at the scene.

10 Q: Alright.

11 A: I suspect.

12 Q: I understand.

13 A: It's their call.

14 Q: Well, I think, I think the State is offering you,
15 they put you up and put your education and stated
16 that you have a Master's degree in criminal justice
17 and all this stuff. I mean, I think your opinion is
18 the one they're relying on to determine what the
19 crime scene is and what it should be charged with. I
20 mean, that's why they put your education in evidence,
21 don't you think?

22 A: I suspect.

23 Q: Okay and you were aware that night that Mr. Baggett,
24 within three days he was charged with DUI that night,
25 you're aware of that?

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1 A: I'm not aware of all the charges of what he was
2 charged with. I'm not, all I was asked to do was come
3 and process a scene. I'm not aware of what he was
4 charged with at that time.

5 Q: So no one since the last four and a half years, when
6 you were going over to the jail house since Mr.
7 Baggett's been there. Nobody's ever mentioned to you
8 he was charged with kidnapping and murder and DUI?
9 Nobody ever told you that?

10 A: I knew that later. I mean, at the time when I was
11 processing ...

12 Q: Right.

13 A: I did not know what the charges were.

14 Q: But you know that now?

15 A: Yes.

16 Q: And you know that a lot of that charge is based on
17 your crime scene investigation, right?

18 A: On the evidence collected.

19 Q: Well, nobody else collected evidence other than you
20 did they? You the only one.

21 A: Yes sir.

22 Q: So it had to be done based on the evidence that you
23 collected?

24 A: That's correct.

25 Q: Okay. Well that charge doesn't exist anymore, does

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- 1 it? You got it wrong that time, didn't you?
- 2 A: I don't know. That's what the investigator did.
- 3 Q: Somebody did, right?
- 4 A: Yeah.
- 5 Q: Alright, well let's talk, let's talk a little bit
- 6 about this crime scene. You've been in law
- 7 enforcement a long time, right?
- 8 A: Yes sir.
- 9 Q: About this blood, let's talk about this blood. You
- 10 didn't collect this blood that night, did you?
- 11 A: On the vehicle?
- 12 Q: Yes sir.
- 13 A: That's what you mean?
- 14 Q: Yes sir.
- 15 A: No sir.
- 16 Q: No sir. It was four days later, isn't that right?
- 17 A: No.
- 18 Q: How many days later was it?
- 19 A: On the 9th.
- 20 Q: On the 9th?
- 21 A: That's correct.
- 22 Q: Okay. That night you processed the scene like it
- 23 might be a murder, correct?
- 24 A: I don't know what we had at the time ...
- 25 Q: Okay.

1 A: Processing the scene, it was based on what we had.

2 Q: I understand. Tell the ladies and gentlemen of the
3 jury what happened to the murder weapon that night,
4 where it went?

5 A: I don't personally know where it went. I didn't
6 release anything. I just released the scene back over
7 to investigations, but I don't release ...

8 Q: I understand. Are you aware of Mr. Ralph BAGgett,
9 Marty Baggett's father drove that truck home that
10 night aren't you?

11 A: No, I was not aware of that.

12 Q: Well, when you went to process it where was it
13 located?

14 A: It was on Clare Road.

15 Q: When you went to process it the next day?

16 A: No, not the next day; it was at the Foxworth's
17 Garage.

18 Q: Okay, but you've never been told that Mr. Baggett
19 drove it home that night?

20 A: I didn't know that anybody drove it home. I didn't
21 know.

22 Q: Would it surprise you to know that? Would it change
23 your opinion if you knew that?

24 A: I don't know. I don't know if he drove it home.

25 Q: Well you would agree with me that if he drove it

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1 home, certainly this evidence could have been
2 tainted. A lot of could have been, we don't know what
3 could have happened. These scratch marks you see up
4 underneath the truck, he could have run it through a
5 cotton field, couldn't he?

6 A: That's a possibility I guess. I don't know.

7 Q: Well do you know who would be responsible for finding
8 out where the truck would be?

9 A: Except for investigations. Like I said I was only
10 there to process the scene and then process the
11 truck.

12 Q: And process the truck, but I'm saying you didn't call
13 anybody that night with a rollback to come get this
14 truck and carry it to Foxworth's Garage did you?

15 A: No, the scene was turned back over to investigation
16 after I finished processing it.

17 Q: But I'm saying you were done, you weren't done
18 processing it, were you? You still had to look at
19 the truck.

20 A: At the scene I was.

21 Q: Right.

22 A: At that scene, yes I was finished with it.

23 Q: But you didn't make arrangements for this truck to
24 get to Foxworth's Garage where you could go look at
25 the next day ...

1 A: No, I didn't.

2 Q: ... without it being tampered with.

3 A: No, I didn't know that.

4 Q: But you the, you the scene processor and that's
5 considered part of the scene processing?

6 A: No, I didn't make the arrangements.

7 Q: Okay, you didn't do that?

8 A: No.

9 Q: You, let's talk a little bit about some of the other
10 stuff you investigated as a murder. You went to Dr.
11 Presnell where the autopsy was performed and while
12 you were there you asked Dr. Presnell to clip those
13 fingernails and send them off to SLED for an
14 analysis, didn't you?

15 A: Yes sir.

16 Q: And you were aware that Ms. Jean Turner's fingernails
17 came back and there was no fiber or no foreign DNA
18 under there?

19 A: Whatever the report says from SLED.

20 Q: Mr. Scott, I'm not, I'm not trying to be difficult
21 with you, but it was mailed directly to you. It's got
22 your address on it, it's sent to you. You've seen
23 that report.

24 A: Yes.

25 Q: That's right and your theory was when you put those

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- 1 scratches up there, that Ms. Jean Turner had been
2 scratching Mr. Baggett. That was your theory that
3 night; that's what you thought had happened?
- 4 A: We didn't know what had happened.
- 5 Q: I understand, but the reason you sent them off was to
6 determine if that happened, didn't you?
- 7 A: Yeah, if there was any foreign DNA under ... her
8 finger nails.
- 9 Q: What did Mr. Baggett tell you how he got scratched?
- 10 A: I didn't talk to him.
- 11 Q: Nobody ever told you Mr. Baggett said he got
12 scratched burning wood about two days before?
- 13 A: I didn't talk to him. I didn't personally talk to
14 him.
- 15 Q: Okay, but none of Ms. Jean Turner's fingernails came
16 back with any of Mr. Marty Baggett's DNA on them, did
17 they?
- 18 A: Whatever is stated in the report that's what
19 happened.
- 20 Q: Then obviously it didn't happen.
- 21 A: The report states it didn't.
- 22 Q: Right, so you were also wrong about your theory on
23 that. Isn't that correct? And what you thought might
24 have happened that night?
- 25 A: All I did was photographed and collected the

1 evidence.

2 Q: That's right and just then, when you said
3 photographed, you did just like that because you were
4 marking it because you thought it was scratches.

5 A: Anything that's visible we have to photograph, just
6 like we did.

7 Q: Well Mr. Baggett didn't have any gloves on him
8 whenever you got to him, did he?

9 A: No.

10 Q: Well, it would be logical if, Ms. Turner didn't have
11 any gloves on did she?

12 A: No.

13 Q: Okay well, it would be logical if he, if she had
14 scratched him she would have his DNA, his foreign
15 skin under her fingernails. Wouldn't that make sense?

16 A: Yes but it's left up to the DNA analysis to tell us
17 that.

18 Q: And they did tell you and there wasn't anything.

19 A: If the report states it.

20 Q: That's right. That's right. You sent off some other,
21 you asked them to send off some other things too.
22 You've got a, you've got a vaginal sample.

23 A: Yes sir.

24 Q: An oral sample.

25 A: Yes.

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- 1 Q: Anal sample.
- 2 A: Yes.
- 3 Q: All of that from Ms. Jean Turner, because you thought
- 4 Mr. Baggett had attacked her maybe, didn't you?
- 5 A: That's protocol.
- 6 Q: That's right.
- 7 A: That's what we do based on what the scene tells us.
- 8 Q: That's right.
- 9 A: ... what we see ...
- 10 Q: Because you were investigating a murder.
- 11 The Court: Let him answer please.
- 12 Mr. Floyd: I'm sorry Your Honor.
- 13 A: That's just protocol, based on what we see, you know,
- 14 information that is given they will do these things
- 15 just for testing purposes to make sure that wasn't
- 16 nothing like that happened or did happen.
- 17 Q: Or to see if it did happen.
- 18 A: Yes.
- 19 Q: But those came back negative too, didn't they?
- 20 A: If the report states they came back negative, that's
- 21 what it says.
- 22 Q: Alright, you also sent in, you took several, you took
- 23 a number of swabs of what you perceived to be blood
- 24 from up under this vehicle, didn't you?
- 25 A: Yes.

1 Q: Took one off the front bumper that you thought was
2 blood didn't you?

3 A: It had, there was a stain that was on the front
4 bumper, yes.

5 Q: And you thought it might have been blood where he had
6 run over her?

7 A: Yes.

8 Q: Okay and what did it come back?

9 A: I don't have the DNA report in front of me. I can't
10 tell you what it came back.

11 Q: It didn't come back positive did it?

12 A: I don't know.

13 Q: Would you like to see the DNA report?

14 A: I can't attest to it because I'm not an expert on
15 DNA.

16 Mr. Scott: Your Honor we just object to having this
17 witness testify to the findings made by
18 forensic blood analyst. I've got him to
19 come out later.

20 Q: I'll proceed with my line of questioning.

21 The Court: Sustained.

22 Q: Now, when you got to this crime scene or this
23 accident scene and you, you, you were showing the
24 jury a while ago this accident scene?

25 A: Yes.

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1 Q: Tell me where Mr. Baggett's dog is in this accident
2 scene. You don't know where he was do you? He's
3 running loose isn't he?

4 A: I guess.

5 Q: That's right, you know it. He's out running loose. I
6 mean, where are my exhibits? Defense exhibits? I want
7 to show you what's previously marked, for purpose of
8 identification only, the Defendant's exhibit 4. Now
9 what does that appear to be right there?

10 A: I can't tell.

11 Q: Let me put it on the screen. Hopefully I can get it
12 to work.

13 The Court: Alright, this is 4 for id?

14 Mr. Floyd: Come down here if you would Mr. Scott. Now,
15 what does that appear to be right there to you?

16 A: Can't hardly tell. I can see four legs and white
17 looking. It looks like an animal of some sort.

18 The Court: Keep your voice up please.

19 A: Looks like an animal of some sort, but can't really
20 tell from this point of view, because it's kind of
21 dark.

22 Q: So, it's got four legs and it's white.

23 A: I would say it's an animal of some sort, but I can't
24 really ...

25 Q: And it's standing around people. I mean ...

- 1 A: Yes.
- 2 Q: You would agree with me that, that's Mr. Baggett's
- 3 dog?
- 4 A: It's an animal. I don't know who's it could be or I
- 5 don't know who's that could be.
- 6 Q: Well, were you aware that other folks, scratch that.
- 7 You can have a seat. Well, let me ask you this, if
- 8 Mr. Baggett's dog were there and you're a hunter
- 9 right?
- 10 A: I am.
- 11 Q: You hunt a lot, you and I talk about it a lot.
- 12 A: Yes sir.
- 13 Q: You got dogs?
- 14 A: Small ones.
- 15 Q: Small ones. You've been hunting with hunting dogs?
- 16 A: Yes.
- 17 Q: Okay, what's the first thing a hunting dog will do
- 18 when some form of game is harvested and he comes up
- 19 to it?
- 20 A: Most times go up to it.
- 21 Q: Or get in the blood?
- 22 A: Yeah.
- 23 Q: Won't they?
- 24 A: Yes.
- 25 Q: That's right. So, it's not unforeseeable for Mr.

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1 Baggett's dog to have gotten out of the truck and
2 gone over there and gotten in the blood. Gotten in
3 Mr. Baggett's truck, crawled under Mr. Baggett's
4 truck and been all over the place before you got
5 there is it?

6 A: I don't know.

7 Q: It could have happened.

8 A: Again, I don't know.

9 Q: I understand. You don't know. Okay, also on this
10 scene, you failed to show me where all the other
11 people were that were there. There were a lot of
12 people there when you got there that night wasn't
13 there?

14 A: Yes.

15 Q: Mr. Ballard's incident report indicates that, said
16 that Griffin was there. Do you remember seeing him?

17 A: Not right off hand.

18 Q: How about Juan Ballard? You remember seeing him?

19 A: Yes.

20 Q: Remember seeing Investigator Boston?

21 A: Yes.

22 Q: Do you remember seeing Investigator Collins?

23 A: I believe so at one point.

24 Q: Okay do you remember seeing Trooper Paige?

25 A: I don't know about the trooper. I remember seeing

1 some of the others.

2 Q: Pardon?

3 A: I remember seeing some of the other that you
4 mentioned.

5 Q: Okay, do you remember seeing Trooper Rutledge?

6 A: Yes.

7 Q: Okay, how about the former sheriff of the county,
8 Sheriff Washington, do you remember seeing him?

9 A: I do.

10 Q: He was there too.

11 A: Yes sir.

12 Q: Okay. How about Deputy Dukes, you remember seeing
13 him?

14 A: Not right off.

15 Q: Okay and there was a lot of ambulance personnel there
16 too wasn't there?

17 A: That's correct.

18 Q: And all these folks, by the time you got there, had
19 been around this crime scene, isn't that correct? It
20 wasn't roped off yet right?

21 A: I don't know who had been there. Like I said, when I
22 got there about 8:57 so whoever was there I do not
23 know what went on prior to me getting there.

24 Q: I understand. Did you ever think at that time did you
25 ever, you know what the MAIT, is don't you?

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- 1 A: Yes.
- 2 Q: Okay, do you mind telling the ladies and gentlemen of
- 3 the jury what that stands for?
- 4 A: What it is is it is a highway patrol version of an
- 5 accident reconstruction team.
- 6 Q: That's right. It's the Multi Disciplinary Accident
- 7 Investigation Team, isn't that right?
- 8 A: Yes sir.
- 9 Q: It's a team of highly skilled, highly trained, highly
- 10 learned accident reconstruction experts, isn't that
- 11 correct?
- 12 A: They have training yes.
- 13 Q: Okay. And you had two highway patrolmen present at
- 14 the scene, isn't that correct?
- 15 A: I don't know who all was present before I got there
- 16 if they were there.
- 17 Q: Well, you saw highway patrolmen?
- 18 A: I didn't, I don't remember seeing them. Me
- 19 personally.
- 20 Q: I thought you just said while ago you remembered
- 21 seeing highway patrolmen, not exactly who it was?
- 22 A: Specific ones that you mentioned, not highway
- 23 patrolmen.
- 24 Q: Okay, but you never at any time during your
- 25 investigation, contacted the MAIT. The team of South

1 Carolina Highway Patrolmen that are hired and trained
2 to investigate these types of accidents did you?

3 A: That's not my call. I didn't call them.

4 Q: How is that not your call when you're the scene
5 process investigator, Mr. Scott?

6 A: Usually the sheriff calls in outside personnel such
7 as SLED, MAIT team, people like that.

8 Q: I got you.

9 A: That's usually their call to call in the outside.

10 Q: And the sheriff, you're not aware of the sheriff
11 calling anybody else?

12 A: Not that I know of.

13 Q: And the night you were investigating this accident
14 slash murder, you didn't call SLED in to come check
15 it out. Usually when you got a dead body, a lot of
16 times you call SLED don't you?

17 A: That's the sheriff's call.

18 Q: The sheriff didn't call SLED in did he?

19 A: No, not that I can tell.

20 Q: Well, aren't all these folks involved in this thing
21 down from around the sheriff's neck of the woods,
22 Hemmingway?

23 A: It happened in the Hemmingway area.

24 Q: Okay. And the deceased ...

25 A: I'm not sure where all these people are from, but it

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1 happened in the Hemmingway area.

2 Q: Didn't that make you kind of wonder why the sheriff
3 of the county, who's now a U.S. Marshall, the highest
4 ranking official in the State of South Carolina,
5 didn't call SLED and didn't call the MAIT Team in and
6 didn't call anybody to investigate this? I mean,
7 didn't that kind of make you pause for a minute?

8 A: That's his call. He can call whoever he wants to
9 call in.

10 Q: Pass the buck. It wasn't your fault, it was somebody
11 else's.

12 A: No, that's his call to call in the specific people.

13 Q: I understand, I understand. Let me ask you this, up
14 under this truck, you know, I want to go back to this
15 blood thing for just a little bit. I think in your
16 report you put there was pools of blood at the
17 victim's feet and at the victim's head. Isn't that
18 correct?

19 A: That's correct.

20 Q: There's pools of blood? Alright, you understand that
21 blood pools when you sitting still. It doesn't pool
22 upon impact. It pools whenever you're lying there.

23 A: That's correct.

24 Q: That's correct. So in other words, it's pretty
25 obvious this body at some point had been moved,

1 correct?

2 A: Yes because we have two pools; one in the front and
3 one in the back.

4 Q: Okay, so you don't know, you can't say for certain
5 how the body was laying after the accident. You
6 don't know what way the body was laying

7 A: I wasn't there at the time of the accident. I was
8 called in later. I do not know.

9 Q: That's right, you were not there ...

10 A: All I can tell you as far as when I was there.

11 Q: You weren't there at the time of the accident?

12 A: No.

13 Q: But you would agree with me it was an accident?

14 A: Agree it was a accident?

15 Q: Well, you just ...

16 A: I was not there at the scene when this occurred.

17 Q: I understand. Let me ask you this, in regards to
18 you, you, you went back the next day or several days
19 later and you photographed, you photographed this
20 scene and these tracks and stuff. That night did you
21 cast any dye, any dyes or anything like that?

22 A: No.

23 Q: To see what impressions it would make?

24 A: The impression that were left, there was no track
25 wear or thread wear, dirt was tore up real bad so

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1 there was no impression of what was left behind ...

2 Q: I understand. This was a dirt road this happened on
3 right?

4 A: Yes.

5 Q: And you can see the track clearly go off the side of
6 the road and come back up on to a dirt road, correct?

7 A: Yes, the area where you see a vehicle went off the
8 road and come back on the road.

9 Q: Right and so at some point where it starts coming
10 back on this dirt road, you would agree with me,
11 this tire would have to stop spinning and catch
12 traction and at that point it would leave, it would
13 leave an impression wouldn't it?

14 A: We don't know where or how far off. We focused on
15 the area he came in ...

16 Q: And so you just didn't follow up on that. You didn't
17 think that was significant enough to look into?

18 A: We looked at it and we could not find impressions
19 that would be of quality to cast.

20 Q: Okay, let me ask you this about this truck, when you
21 examined the under carriage of this truck, you
22 understand Ms. Turner, it's the opinion of the
23 pathologist, Ms. Turner died from a blunt trauma to
24 the head. You understand that?

25 A: I understand that.

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1 Q: Okay, when you looked up under the under carriage of
2 this truck, did you find any of Ms. Turner's hair
3 under there?

4 A: No.

5 Q: Did you look for Ms. Turner's hair?

6 A: We looked for any blood staining or any type of
7 tissue sample or anything. We did a walk through on
8 the vehicle. We looked for any of this type material
9 underneath the truck itself.

10 Q: Okay, so you would agree with me this accident
11 basically had to occur by the tire running over her
12 head, more so than the actual truck hitting her head.
13 Is that a fair statement based on your investigation?

14 A: Based on what the pathologist tells us. As far as how
15 she was crushed. You'd have to ask the pathologist
16 that question.

17 Q: And so it's possible, isn't it very possible that Ms.
18 Turner, in her inebriated state, riding down the
19 road, with a .387 blood alcohol, falls out the truck
20 and the tire runs over her? Now isn't that possible?

21 A: I don't know about that.

22 Q: But it could have.

23 A: I wasn't there when this happened.

24 Q: You don't have anything to show me today that that's
25 not how it happened do you?

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1 A: No I don't have anything.

2 Q: You're just like everybody else, you don't know what
3 happened, do you?

4 A: I don't know what happened at the scene. I was not
5 there when this happened.

6 Q: Let me ask you this Mr. Scott, this actually occurred
7 in March, my understanding from one of my witnesses
8 it was very cold that night. Do you recall that?

9 A: Chilly. I wouldn't say it was super cold.

10 Q: Pardon?

11 A: I said I wouldn't say it was cold. It might have
12 been chilly.

13 Q: Okay, well let me, let me take it a step further and
14 just kind of change gears a little bit. You examined
15 Mr. Baggett's truck; you examined the front bumper,
16 the back bumper, all the way around. Did you find
17 any indentions where it appeared there was any impact
18 where Mr. Baggett would have run into this lady?

19 A: It look like everything was pretty much intact.

20 Q: So, you're not here today testifying it looks like he
21 ran over her with the front bumper, you're not here
22 today saying it looks like he ran over her with the
23 back bumper, is that correct?

24 A: The bumper and everything were intact.

25 Q: They were intact.

1 A: Yes.

2 Q: Well, wouldn't it just make sense, I mean, doesn't
3 the questions I asked you, doesn't it just make sense
4 to you logically if the bumper in the front is intact
5 and the bumper in the back is intact and there's no
6 hair up under the under carriage, and Ms. Turner died
7 from blunt trauma to the head, doesn't it just make
8 sense, doesn't it sound like she fell out this truck
9 and get run over?

10 Mr. Scott: Objection Your Honor.

11 The Court: Yes sir?

12 Mr. Scott: He's calling for speculation from this
13 witness.

14 The Court: Mr. Floyd?

15 Mr. Floyd: Your Honor I can, I can, I can rephrase the
16 question if you'd like.

17 The Court: Try to and Mr. Scott listen carefully.
18 You can rephrase it.

19 Q: Would it be unreasonable to think that the only thing
20 happened here is that Ms. Turner fell out the truck
21 and the tire ran over her head, based on the evidence
22 that you have?

23 A: I don't know that that could have happened. I don't
24 know.

25 Q: You don't know what happened do you?

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1 A: No, I mean I don't. I don't know what happened at
2 this scene. I just know what we have.

3 Q: I got you. You know Mr. Baggett is being tried for
4 felony DUI?

5 A: Yes.

6 Q: And you were, you were a road officer for a long
7 time?

8 A: Yes.

9 Q: I mean you arrested people, you and I had cases
10 together, DUI and stuff, isn't that right? Right?

11 A: Yes.

12 Q: Okay and you were aware that he was charged with DUI
13 that night, right?

14 A: I know later that what he was charged, not that
15 night, I didn't know any charges that he had. Just
16 later on I know he was charged.

17 Q: Okay and you don't have any evidence of a breath
18 sample taken from him night do you?

19 A: No, I don't, that would be undertaken by another
20 officer ...

21 Q: You don't have any evidence.

22 The Court: Let him, let him finish.

23 Mr. Floyd: I'm sorry Your Honor, I apologize.

24 A: A blood sample, that would have been one of the other
25 officers.

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1 Q: You're not here to testify about that. Another
2 officer will need to testify about that?

3 A: That is correct.

4 Q: Fair statement?

5 A: If any samples were taken such as blood or breath,
6 you know, from him they would have to testify to
7 that.

8 Q: But you understand that by law, even though you
9 didn't take them, by law he's required to submit to a
10 blood test when there's a death. In other words they
11 can take him to the hospital, strap him down on a
12 gurny and withdraw his blood against his will, you
13 understand that don't you?

14 A: Yes.

15 Q: And you don't know if that was done?

16 A: No.

17 Q: I want to show you another photograph of the inside
18 of the truck. Now before we, I'd like to mark this
19 please for purpose of identification only.

20 The Court: 1?

21 Mr. Floyd: Yes sir.

22 (Defendant's Exhibit Number One was marked for ID)

23 Q: Before we get into that, I want to show you what's
24 previously been marked as Defendant's exhibit number
25 1. Come down here for just a minute if you would Mr.

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1 Scott. Now, does it appear, what does that appear to
2 be in the, on the first two in the crotch area of Ms.
3 Turner?

4 A: It's a fluid deposit and around the vaginal area
5 between her legs.

6 Q: It appears to be urine, doesn't it?

7 A: That's a possibility.

8 Q: And it was also on the front side of her whenever the
9 body was rolled over?

10 A: That is correct.

11 Q: It was a pretty large amount wasn't it?

12 A: That's correct.

13 Q: Okay so just based from the evidence, it looks as
14 though, either shortly before Ms. Turner's death or
15 right afterwards, she, she urinated.

16 A: It's a possibility.

17 Q: Right?

18 A: Bases on that, yes. It looks to be a urination stain
19 in that area.

20 Q: And based on the amount that was in her bladder, it
21 was a large amount?

22 A: Yes ...

23 Q: So ...

24 A: ... it was on the front and back.

25 Q: It appears she had to use the restroom.

1 A: It's a possibility, I don't know where it would have
2 been from trauma or before.

3 Q: I understand. Would --- sit. Would it be
4 unreasonable to think that Ms. Turner in her highly
5 inebriated state, she had to urinate that bad, that
6 she just stepped out the truck? Would that be an
7 unreasonable portion of the investigation for you to
8 investigate? Did you look into that? Did you ever,
9 did that ever cross your mind?

10 A: Her stepping out of the vehicle?

11 Q: Yeah.

12 A: Not step out the vehicle.

13 Q: Rolling out of a moving vehicle?

14 A: No.

15 Q: Okay, okay and you took, I'm going to show you what's
16 been marked as Plaintiff's exhibit 6 and what does
17 that appear to be?

18 The Court: Plaintiff's exhibit?

19 Q: Excuse me Your Honor, Defendant's exhibit.

20 The Court: For id?

21 Q: For identification only.

22 Defendant's Exhibit Number Six was marked for ID)

23 Q: And that turned out to be Ms. Turner's?

24 A: Yes.

25 Q: Mr. Scott I'm almost done, but you said you were the

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1 one to gather DNA from Mr. Baggett, correct?

2 A: Yes.

3 Q: You were the one who took, you were the one who took
4 the photographs?

5 A: Yes.

6 Q: Okay, but you're saying it's not your job to carry
7 him to get blood, breath or urine samples? That's
8 someone else's job?

9 A: Whoever might have made the charge for the DUI or
10 whatever they do the test for alcohol.

11 Q: Based on all the evidence that we've saw so far
12 today, you basically don't have an opinion as to how
13 this accident occurred? You don't know how it
14 occurred do you?

15 A: I wasn't there. I mean, I wasn't there, just looking
16 at the way the evidence lays out.

17 Q: You can't say, you can't say that it wasn't anything
18 other than an accident, can you?

19 A: I don't know.

20 Q: Sir?

21 A: I don't know.

22 Mr. Floyd: Court's indulgence Your Honor. I want to mark
23 this just for identification. I don't have anything
24 further.

25 The Court: Alright, re-direct.

RE-DIRECT EXAMINATION OF MR. SCOTT BY MR. SCOTT:

1 Q: Thank you Your Honor, briefly. Lt. Scott, you're not
2 a DNA analysis are you?

3 A: No sir.

4 Q: But you sent that off for someone else to analyze?

5 A: That is correct.

6 Q: But if there's a match, it's about a hundred percent
7 certain. If you get a DNA match from a known sample
8 from something taken from a crime scene, you can be
9 sure they came from the same source?

10 A: Yes. That's correct.

11 Q: But your experience, sometimes you can't get enough
12 of a sample to be able to analyze?

13 A: That is correct; that happens a lot.

14 Q: Matter of fact, this crime scene, there were other
15 samples taken, correct?

16 A: Yes.

17 Q: Were you able to take any other samples from the
18 under carriage of the truck?

19 A: Yes, there was seven swabs taken of the truck.

20 Q: But there was only one that had enough, there was
21 enough of a sample to be able to accurately analyze?

22 A: That's correct.

23 Q: Let me ask you this, did you note any dog hair around
24 any of these samples?
25

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- 1 A: No, there was no hair on anything of that nature. As
2 I did as the walk through, these are things to look
3 for, blood stains, hairs, even fibers would be looked
4 at.
- 5 Q: Okay, tell me one more time, where was that, the
6 blood sample that you did get a result back? It's
7 depicted here?
- 8 A: Yes.
- 9 Q: State's exhibit number 15. Where on the truck was
10 that blood sample obtained?
- 11 A: It's on the passenger side, underneath the door. When
12 the door closed, it's basically the under carriage,
13 it's part of the frame. It's like a molding. As it
14 comes up this little edge hits, right there the under
15 part, coming up towards the top. It was on the under
16 part.
- 17 Q: Was this closer to the front passenger tire or the
18 rear passenger tire?
- 19 A: It was more to the front, but midway the door under
20 that passenger side coming up from this angle.
- 21 Q: Alright. You're no doctor either?
- 22 A: No sir.
- 23 Q: But you were asked about you know, what may or may
24 not have been urine on the victim's pants?
- 25 A: That's correct.

1 Q: In your experience, investigating crime scenes, would
2 you say it's common for victim's of a violent death
3 to evacuate their bowels or their bladder?

4 A: Yes, that does happen. They possibly urinate or
5 defecate, based on the trauma.

6 Q: And you were asked to make a few speculations there,
7 just now ...

8 A: Yes.

9 Q: But your job is to investigate the crime scene as it
10 appears when you get there and document it?

11 A: That's right.

12 Q: Based on what you observed and based on your law
13 enforcement experience, and based on the evidence
14 that was collected, what was the scene consistent
15 with?

16 A: It was a trauma, a run over trauma.

17 Q: Okay, thank you. Nothing more from the State.

18 Mr. Floyd: One question.

19 The Court: One question.

20 Mr. Floyd: Okay.

21 RE-CROSS EXAMINATION OF MR. SCOTT BY MR. FLOYD:

22 Q: They can't urinate if their bladders aren't full
23 after their death, can they?

24 A: I don't know, I'm not a doctor. I can't, that's not
25 for me.

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1 Mr. Floyd: Nothing further, Your Honor.

2 The Court: Alright, you can step down. Thank you sir.

3 Alright ladies and gentlemen, we're going
4 to take a break at this point. Please go to
5 your jury room; you may not discuss this
6 case at all. There are soft drinks in
7 there. When you come back out, you can
8 bring your soft drink or your water or
9 whatever else is in there, you can bring
10 back out with you. Again, do no discuss the
11 case. We'll be, we'll take a break for
12 about fifteen minutes.

13 -JURY EXITS-

14 Mr. Stumbo: We're ready Your Honor.

15 The Court: Okay, bring in the jury. Alright, Mr.
16 Stumbo?

17 Mr. Stumbo: Thank you Your Honor. The State would call
18 Carolina Jones to the stand.

19 Clerk: Do you solemnly swear that the evidence and
20 testimony you will give this court and jury will
21 be the truth, the whole truth and not but the
22 truth, so help you God?

23 A: Yes ma'am.

24 Clerk: Okay.

25 DIRECT EXAMINATION OF MS. JONES BY MR. STUMBO:

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1 Q: Ms. Jones I was going to say good morning to you, but
2 it looks like it's good afternoon now.

3 A: Good afternoon sir.

4 Q: Ms. Jones, where do you live?

5 A: I live in Hemingway.

6 Q: Okay and you've lived in Hemmingway all your life?

7 A: No sir.

8 Q: Okay where have you ...

9 A: I lived in Johnsonville, South Carolina.

10 Q: And back in 2007, you were living at Bruces Road?

11 A: Yes sir.

12 Q: And do you have any children?

13 A: I do. I have five.

14 Q: They live with you?

15 A: Yes sir.

16 Q: Back in 2007, were you dating anybody at the time?

17 A: Yes sir.

18 Q: What was his name?

19 A: John C. Pickney, Jr.

20 Q: Okay. I'm going to take you back to 2007, the night
21 of March the 8th. Do you remember that night?

22 A: Yes sir.

23 Q: Do you recall what you were doing that night?

24 A: That afternoon I was taking my cousin, Iesha Nicols
25 some barbeque sauce.

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1 Q: Yes, that's during the afternoon?

2 A: Yes sir.

3 Q: You were driving from your house to take the barbeque
4 sauce to your cousin?

5 A: Yes sir.

6 Q: Okay and were your kids with you in the car at the
7 time?

8 A: Yes sir.

9 Q: And how do you get to your cousins house from your
10 house on Bruce's Road?

11 A: When I'm coming off Bruce's Road, I make a right back
12 on to Cow Head Road and I go down off of Cow Head, I
13 make a left back on Clare Road.

14 Q: Okay and Clare Road was a dirt road?

15 A: Yes sir.

16 Q: I'm going to show you what's in evidence as State's
17 exhibit 19. Can you see that?

18 A: Yes sir.

19 Q: Okay. And this, this is Bruce's Road, correct?

20 A: Yes sir.

21 Q: Okay, now this is, you just mentioned Cow Head Road,
22 you take a right down Cow Head Road and then a left
23 on, this is Clare Road, is that correct?

24 A: Yes sir.

25 Q: Is that the path you took?

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1 A: Yes sir.

2 Q: And if you could for me, please mark a circle on
3 Bruce's Road about how far down it is before that
4 turn.

5 A: You talking about where I live?

6 Q: Yeah, where your house is. Okay. Alright and write
7 Carolina Jones' residence. Is that correct?

8 A: Yes sir.

9 Q: Okay. And so that night you were taking your cousin
10 barbeque sauce, you came out and then took a right on
11 Cow Head Road then took a left on Clare. Could you
12 tell this jury, Ms. Jones, what you saw when you
13 turned onto Clare Road?

14 A: When I turned on Clare Road, I went down, it wasn't
15 too far from where I went down, it's a little curve
16 on that road, soon after you get off the curve, I
17 noticed Mr. Marty in a white pick up truck that was
18 crossing the road. I couldn't get by and at the time,
19 I pulled up, I blowed my horn and I asked him could I
20 get by and he said no, he found a dead body there.

21 Q: Okay, let me stop you right there. Who said no, I
22 can't get by, I found a dead body here? Who said
23 that?

24 A: Mr. Marty.

25 Q: And is he sitting in the courtroom?

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- 1 A: Yes sir.
- 2 Q: And where is he sitting?
- 3 A: Over to my left.
- 4 Q: Does he have a blue shirt on?
- 5 A: Yes sir.
- 6 Q: That's the same man you saw in the road that night?
- 7 A: Yes sir.
- 8 Q: Now when he told you that you can't get by and that
- 9 he had found a dead body, how did you respond?
- 10 A: Well, at first I thought it was like clothes and then
- 11 when I looked carefully, that's when I realized it
- 12 was a body there and he approached, he approached my
- 13 car, but I never put my window down all the way
- 14 because my kids were in the car. And because to me he
- 15 seemed like he was kind of like, you know, kind of
- 16 drunk and I asked him did you call 911? And he said
- 17 no and I said well I asked him several times may I
- 18 use his phone to call 911 and he stated to me, let me
- 19 call somebody else first.
- 20 Q: So he said he needed to call somebody else?
- 21 A: Yes.
- 22 Q: Now you said he looked kind of drunk. Can you
- 23 describe to this jury what you mean by that?
- 24 A: It was just how he was staggering around and he was
- 25 just really repeating the same thing over again about

1 the dead body and don't leave.

2 Q: And have you been around people before in your life
3 and in your experience that have been under the
4 influence of alcohol?

5 A: Yes sir.

6 Q: Okay and your observations of Mr. Baggett that night,
7 were they consistent with someone who had been under
8 the influence of alcohol?

9 A: Yes sir.

10 Q: Let me show you what's in evidence as State's exhibit
11 18. If I may approach the witness Your Honor? Do you
12 recognize that?

13 A: Yes sir.

14 Q: Okay did you draw that sketch?

15 A: I did.

16 Mr. Floyd: What number?

17 Mr. Scott: State's 18 Your Honor. Permission to
18 publish it to the jury?

19 The Court: Okay.

20 Q: Okay, if you could, is this the area you're talking
21 about where you see Marty Baggett and the truck?

22 A: Yes sir.

23 Q: And you got this stuff kind of scratched out on the
24 side of the road. What's on either side of the road?

25 A: It was like cotton, like a field.

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- 1 Q: A cotton field?
- 2 A: Both sides of the road, it's like they plant
- 3 different things.
- 4 Q: Okay, it looks like what you wrote here is my car.
- 5 That's where your car stops when ...
- 6 A: Yes.
- 7 Q: ... you pulled up? And you said you see Marty Baggett
- 8 out there. Is there anybody else out there except for
- 9 him?
- 10 A: The body that was laying in the road and his dog.
- 11 Q: Okay you saw a dog. Where was the dog when you drove
- 12 up?
- 13 A: The dog was on his front paws was on top of the
- 14 actual top of the truck, his truck.
- 15 Q: Okay, so he was still on the back of the truck. Is
- 16 that right?
- 17 A: Yes sir.
- 18 Q: Now you say the truck, describe the truck. What
- 19 color is the truck?
- 20 A: It was white truck.
- 21 Q: Okay. Let me show you what's been put into evidence
- 22 as State's number 4. I don't know if you can see
- 23 that, but that truck there, is that the one you saw
- 24 that night ...
- 25 A: Yes sir.

1 Q: ... appear to be? Okay and the dog's standing up in
2 the back of the truck, is that right?

3 A: Yes sir.

4 Q: And you say that when you drive up, what it looks
5 like here on the sketch is the truck is kind of
6 diagonal across the road. Is that how you saw it that
7 night?

8 A: Yes sir.

9 Q: Could you have gotten by that truck the way it was
10 positioned without going off the side of the road?

11 A: No sir.

12 Q: And this, what you thought at first to be a pile of
13 clothes?

14 A: Yes sir.

15 Q: Where was that? Could you see that?

16 A: Yes sir.

17 Q: And was it night time or day time at this point?

18 A: It was, it was like the sun was setting, but it
19 wasn't dark.

20 Q: Okay, it was turning dark?

21 A: Yes.

22 Q: And were the headlights of the truck pointed towards
23 the body or away from the body?

24 A: One of them, it was more like one of them was towards
25 here, because she was like balled up in the fetal

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1 position. I couldn't tell whether it was a man or a
2 woman, because I never saw like the front of her
3 because she was balled up. I couldn't see the hair.
4 It was like on her left side, laying on her left side
5 and how the truck was positioned, one headlight was
6 like on her and the other one was like the field.

7 Q: Okay.

8 A: Yeah.

9 Q: I'm going to, if I may approach the witness Your
10 Honor. I'm going to show you again what's been put in
11 as State's exhibit number 4. Now none of the tape or
12 the markers were there when you pulled up that night,
13 right?

14 A: No sir.

15 Q: Was there any law enforcement on the scene?

16 A: No sir.

17 Q: Okay, but based just strictly on the position of the
18 truck and the position of what appears to be the body
19 on State's exhibit 4, is that how those, the body and
20 the truck were positioned when you came up on the
21 scene?

22 A: No sir.

23 Q: Okay. Is it completely different?

24 A: Yes sir.

25 Q: And you say that the truck at the time, was actually

1 pointed more towards the victim's body, correct?

2 A: Yes sir.

3 Q: And you described the victim's body as being balled
4 up in the fetal position?

5 A: Yes sir.

6 Q: Let me show you one more Ms. Jones. This is in
7 evidence as State's 5. Now the position of that body
8 in State's 5, is that how you saw the body in the
9 road that night?

10 A: No sir.

11 Q: Okay, in the picture, she's more laid out correct?

12 A: Yes sir.

13 Q: But when you saw her she was in the fetal position?

14 A: Yes sir.

15 Q: Thank you Ms. Jones. Now did you ever get out of the
16 car, Ms. Jones?

17 A: No sir.

18 Q: And why, why, why didn't you get out of the car at
19 that point?

20 A: For one thing I had my kids in the car and I didn't
21 know what was going on and Marty, like I said, he
22 appeared to me to be like, you know, high, like
23 drunk.

24 Q: Were you scared to get out of the car?

25 A: Oh yes sir.

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- 1 Q: Did you notice anything on Mr. Baggett's face when he
2 came up to your car window?
- 3 A: At first I didn't, but then when I actually looked up
4 at him, on his right side, like on his ear, it looked
5 like some blood was coming down and he also had some
6 blood on his jeans.
- 7 Q: Did Mr. Baggett, while he was standing at the car or
8 anytime you observed him, did he ever call 911?
- 9 A: No, he, like I said, when I asked him for his cell
10 phone, I really don't remember actually how the cell
11 phone actually came out, but when I noticed he had
12 the phone, I asked him for the phone. Well, at first
13 I asked him did you call 911 and he was like no.
14 There's a dead body down here and I'm down here and I
15 don't want to get in trouble. So then I asked him can
16 I use your phone so I can call 911 and he was, you
17 know, to me he was pretending that he was dialing
18 numbers, but he wasn't and then I said, he said, well
19 let me call somebody else first.
- 20 Q: And he had the phone in his hand?
- 21 A: Yes sir.
- 22 Q: What did you do after that Ms. Jones?
- 23 A: I told Mr. Baggett that I was going home to call 911.
- 24 Q: Okay, did you do that?
- 25 A: Yes sir.

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1 Q: May I approach the witness Your Honor?

2 The Court: You may.

3 Q: I'm going to show you what's in evidence as State's
4 number 20. Did you put some context to that photo?

5 A: Yes sir.

6 Q: Did you put your initial on there?

7 A: Yes sir.

8 Q: Is this a fair and accurate representation of your
9 conversation on the phone with the 911 dispatcher
10 that night?

11 A: Yes sir.

12 Q: Your Honor State's 20 already into evidence. We would
13 ask permission to publish to the jury at this time.

14 The Court: Okay.

15 (911 TAPE PLAYED)

16 Q: No further questions of this witness Your Honor.

17 The Court: Mr. Floyd?

18 Mr. Floyd: Just a couple of follow up questions Your
19 Honor.

20 CROSS EXAMINATION OF MS. JONES BY MR. FLOYD:

21 Q: Ms. Jones?

22 A: Yes sir.

23 Q: When you got there, Mr. Baggett, he had every
24 opportunity after you left to leave the scene of the
25 crime didn't he?

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- 1 A: I guess so.
- 2 Q: Okay and when you got there he was, he was standing
3 over the body, is that correct?
- 4 A: Correct, he was standing up.
- 5 Q: Standing over the body.
- 6 A: Yes.
- 7 Q: Did you ever witness him reach down and try to scoop
8 her up?
- 9 A: Oh no sir.
- 10 Q: You never saw that?
- 11 A: No sir.
- 12 Q: But you would agree with me that he had blood on him
13 as well, didn't he?
- 14 A: Yes sir, he had blood on his jeans and he had blood
15 on the right side of his face, like coming from his
16 ear.
- 17 Q: Okay and he told you, he said stay here with me and
18 help me. He wanted, he didn't want you to leave, did
19 he?
- 20 A: He, wanted, yes, he said just stay here until I call
21 911.
- 22 Q: Right, I mean, he was wanting you to help and I
23 understand you were scared. I understand that, but it
24 did appear to you that he was wanting you to help
25 him?

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1 A: I wouldn't say that because the reason why I say that
2 because he had a cell phone in his hand and like I
3 said, I asked him several times to give me his phone
4 and call 911.

5 Q: I understand. Ms. Jones, what do you do for a living?

6 A: I am a, I'm a med tech at Anderson Oaks, it's
7 assisted living facility.

8 Q: Med tech?

9 A: Right.

10 Q: Okay. You're not a licensed physician?

11 A: Oh, CNA.

12 Q: CNA?

13 A: Yeah.

14 Q: Have you ever been in an emergency room or somewhere
15 and people coming in and they in shock? They've
16 experienced a very traumatic event. Have you ever
17 observed their activity? How they may be kind of
18 somewhat disoriented? Have you ever experienced that
19 in your line of work?

20 A: Yes sir.

21 Q: You have?

22 A: Yes sir.

23 Q: And you never rolled the window down, you can't, you
24 can't say that Mr. Baggett had alcohol on his breath
25 that night, can you?

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1 A: No, I can't say that. My window was not all the way
2 down. I just cracked it just a little.

3 Q: And you can't say for certain that he wasn't in shock
4 can you?

5 A: To me, he wasn't. He appeared not to be in shock to
6 me.

7 Q: Well you don't know that. You never got out to talk
8 to him. You just were talking to him through a
9 cracked window.

10 A: I was, you right, I was talking to him through a
11 window, but like I said, to me, he didn't appear like
12 he was in shock.

13 Q: Alright and this conversation was what, all of about
14 thirty seconds?

15 A: If that.

16 Q: If that. Okay, so in less than thirty seconds, you
17 were able to determine whether he was in shock or
18 drunk by talking to him through a cracked window, is
19 that what you're trying to tell me?

20 A: Well, he appeared to be, he appeared to be drunk to
21 me because of the way he was staggering to my car.

22 Q: I understand, but he wasn't, did it appear he had his
23 vehicle, according to that drawing, that the vehicle
24 was shining on the body, like if he were trying to
25 help it? I mean he could have rolled it out the way

1 couldn't he?

2 A: I mean I didn't see him do that, but I'm just saying
3 I only told what I saw. That's how the pick up was
4 positioned, I couldn't get by. I can't tell whether
5 he was trying to help her or not. He was standing
6 over her when I got there.

7 Q: But he didn't, he didn't come up to you and say
8 please don't tell anybody, I'm going, I'm leaving or
9 anything like that did he?

10 A: No he didn't.

11 Q: He didn't. He was trying to help her wasn't he? He
12 asked you to help.

13 A: He asked me to stay because he found a body down
14 here.

15 Q: Right, he was asking, he was, he was pleading with
16 you to get help.

17 A: I wouldn't say that. Like I said again, he asked me
18 to stay, but if he wanted help then he should have
19 called 911. He had a cell phone.

20 Q: I understand. No further questions Your Honor.

21 The Court: Re-direct?

22 Mr. Scott: Just a couple Your Honor.

23 RE-DIRECT EXAMINATION OF MS. JONES BY MR. STUMBO:

24 Q: Ms. Jones, you stated earlier he was staggering
25 right?

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1 A: Yes sir.

2 Q: And is there any way or any manner in which he was
3 speaking to you that indicated that he may have been
4 drunk?

5 A: He just, just kept on saying he found a dead body
6 down here and he don't want to get in trouble. He's
7 down here, a dead body's down here. You know, and
8 like I said, I kept asking him well let me use your
9 phone and he kept like, no, let me call someone else
10 first.

11 Q: Did he ever say he had accidentally run over that
12 body in the road?

13 A: No sir.

14 Q: Did he appear distraught in any way?

15 A: No sir.

16 Q: No further questions Your Honor.

17 The Court: Anything else?

18 RECROSS OF MS. JONES BY MR. FLOYD:

19 Q: And you made all this observations in less than
20 thirty seconds? All these determinations?

21 A: Yes.

22 Mr. Floyd: Nothing further.

23 The Court: Okay ma'am, you can step down. Alright
24 next witness.

25 Mr. Floyd: Your Honor the State calls Ralph Baggett.

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1 Clerk: Do you solemnly swear that the evidence and
2 testimony you give this court and jury will be
3 the truth, the whole truth and nothing but the
4 truth, so help you God?

5 A: Confirmed.

6 Clerk: He confirmed.

DIRECT EXAMINATION OF MR. BAGGETT BY MR. SCOTT:

7
8 Q: Good afternoon Mr. Baggett.

9 A: Afternoon.

10 Q: Tell us where you're from.

11 A: Johnsonville.

12 Q: Johnsonville?

13 A: Yes sir.

14 Q: And you know Marty Baggett?

15 A: Yes, sir.

16 Q: And how are you

17 A: That's my son.

18 Q: Okay. Do you remember March 8, 2007?

19 A: Some.

20 Q: Tell us what you were doing that afternoon. Late
21 afternoon, early evening.

22 A: Eating supper.

23 Q: Okay, did you receive a phone call at some point?

24 A: Yes.

25 Q: Okay, if I could, I would just ask you just to speak

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1 up a little bit or move the microphone closer to your
2 mouth. Just so everyone can hear you. Alright, you
3 said you were eating supper and you received a phone
4 call?

5 A: Yes sir.

6 Q: Alright, who called?

7 A: My son.

8 Q: And what did he say?

9 A: He called and he said Daddy I ran over somebody. I'm
10 down the dirt road.

11 Q: Okay, what'd you do?

12 A: Tobacco barn.

13 Q: I'm sorry?

14 A: Tobacco barn.

15 Q: You were by your back barn?

16 A: No, Tobacco barn.

17 Q: Okay, what did you, what did you do after you
18 received a phone call from your son Marty Baggett?

19 A: I got up and got in my truck and went down the dirt
20 road.

21 Q: What did you see when you got there?

22 A: I seen Marty standing up.

23 Q: And what else did you see?

24 A: A woman on the side of the road.

25 Q: Okay, she was deceased at this time?

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- 1 A: I don't know.
- 2 Q: Okay, did you end up calling 911?
- 3 A: No, his wife she called 911.
- 4 Q: Okay, so he called you and you all went out there to
- 5 the scene. Who else went with you to go to check on
- 6 Marty?
- 7 A: My granddaughter.
- 8 Q: You mentioned Marty's wife, did she go with you?
- 9 A: No, he called her.
- 10 Q: Okay. So all was there at the crime scene or the
- 11 scene on Clare Road whenever you were there?
- 12 A: Granddaughter, my other son came down there, his
- 13 wife.
- 14 Q: Okay, so Marty, his daughter, his wife and his
- 15 brother and you?
- 16 A: I think so, yeah.
- 17 Q: Okay. And 911 had not been contacted at that point is
- 18 that right?
- 19 A: He was trying to call 911.
- 20 Q: Okay, he was trying, he was trying to call 911?
- 21 A: Yeah. His wife took the phone and she called 911.
- 22 Q: Okay. And he eventually was able to call 911 after
- 23 he called you all?
- 24 A: Yeah, he, he, she took the phone and called 911.
- 25 Q: Okay. Did you speak with 911 a little bit?

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1 A: Yeah, I talked to them. I told them where to go.

2 Q: If I may Your Honor I'd publish State's exhibit 20,
3 the second portion of that exhibit to the jury. It's
4 911 call that followed Carolina Jones' 911 call.

5 The Court: Alright.

6 **(911 TAPE PLAYED)**

7 Q: Let me stop it right there. Who's voice was that we
8 just heard?

9 A: I don't know.

10 Q: You didn't recognize that voice?

11 A: No.

12 Q: Could that have been Marty Baggett's voice?

13 A: No, it can't.

14 Q: Okay.

15 **(911 TAPE PLAYED)**

16 Q: Who's the woman's voice sir?

17 A: Huh?

18 Q: Who's voice is that? The female voice we just heard
19 on the 911 call?

20 A: I don't know.

21 Q: Okay, she stated the truck's moving. Did you observe
22 the truck moving while you were there?

23 A: Huh-uh.

24 **(911 TAPE PLAYED)**

25 Q: I'm sorry?

1 A: That's me.

2 Q: That's your voice? Okay, thank you. So Mr. Baggett
3 at some point you got on the line with 911 to direct
4 them over there.

5 A: I was trying to show them where to go, which road to
6 turn on.

7 Q: Okay. At some point after that night, you gave a
8 statement to Williamsburg County Sheriff's Department
9 didn't you? Do you remember giving a statement to
10 Williamsburg sheriff's department?

11 A: I might a had. I don't know, it's kind of hard.

12 Q: Okay, do you recall a sheriff's deputy meeting with
13 you, matter of fact, it was Steve Boston who's
14 sitting right there on the steps and he spoke with
15 you a little bit and you told him what happened that
16 night. Do you remember that?

17 A: That's been a long time.

18 Q: Your Honor may I approach the witness?

19 The Court: Yes.

20 Q: You gave a statement and this was given March 15,
21 2007 ...

22 The Court: Let's mark it for id please.

23 Q: Oh, I'm sorry Your Honor.

24 The Court: 28?

25 **(State's Exhibit Number 28 was marked)**

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1 Q: Let me show you what's been marked as State's exhibit
2 number 28.

3 A: (Witness reviews).

4 Q: Sir, do you recognize this?

5 A: This whole thing?

6 Q: Yes sir. Well I've got an idea Mr. Baggett, if I
7 played you a audio cassette that has the interview
8 that you gave, would you recall it then?

9 A: Probably would.

10 Q: Alright. I'll play that interview ...

11 A: Sir.

12 Q: I'll play that interview for you, but before we get
13 to that, we have this marked as State's id number 29.

14 **(State's Exhibit Number 29 was marked)**

15 The Court: Can the lawyers come up for a second?

16 **(SIDE BAR)**

17 Q: Going back then, to the night of March 7, 2007, when
18 you're out on Clare Road, would you describe your son
19 that night? Please do so. How did he appear? How was
20 he acting?

21 A: He was standing up.

22 Q: Okay. Did he appear intoxicated at all?

23 A: Well, he might have been drinking.

24 Q: Would you say he was drunk?

25 A: No. He'd been drinking. I would say he was drunk.

1 Q: Have you seen him drink before?

2 A: Yes.

3 Q: Now this interview and what we have marked as State's
4 exhibit number 28 for id, if I could show it to you
5 just to maybe re-fresh your memory? The specific
6 part this is page 8. Do you recall saying this? That
7 line, I'm sorry Your Honor, this would be line,
8 question, line number 8. Going down to line number
9 25. Question is this, do you remember saying that?

10 The Court: The question is do you remember saying
11 that?

12 Q: That's correct Your Honor.

13 The Court: You can read it to yourself Mr. Baggett.

14 A: (Witness complies).

15 The Court: Just read it to yourself. And let the lawyer
16 know when you've finished reading it.

17 A: I don't remember none of this.

18 Q: Okay.

19 A: He said daddy I thought I run over something. No, I
20 don't remember that. I didn't say nothing like that.

21 Q: Marty BAgett is your son?

22 A: Yeah.

23 Q: You don't really want to be here today do you?

24 A: Huh?

25 Q: You don't really want to be here today do you?

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1 A: Yeah.

2 Q: Nothing further from the State. Please answer any
3 questions from Mr. Floyd.

4 The Court: Mr. Floyd?

5 CROSS EXAMINATION OF MR. BAGGETT BY MR. FLOYD:

6 Q: Court's indulgence Your Honor. Didn't Marty tell you
7 that he thought she fell out the truck?

8 A: Yeah.

9 Q: He tell you that that night?

10 A: Yeah, she fell out the truck.

11 Q: And has he told you that many, many times since then?

12 A: Yeah.

13 Q: Has he always told you that same story over the last
14 five years, when you've gone to see him in jail, has
15 he told you that same thing?

16 A: Yeah.

17 Q: I don't have anything further Your Honor.

18 The Court: Re-direct?

19 Mr. Stumbo: Nothing from the State Your Honor.

20 The Court: You can step down Mr. Baggett. Alright, it's
21 about quarter to one, do you have a witness who take us
22 past one o'clock?

23 Mr. Stumbo: I believe our next witness we could get done

24 ...

25 The Court: Alright.

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1 Mr. Stumbo: ... fairly short. Your Honor the State calls
2 Vincent Staggers to the stand.

3 Clerk: Do you solemnly swear that the evidence and
4 testimony you will give this court and jury will
5 be the truth, the whole truth and nothing but
6 the truth, so help you God?

7 A: I do.

8 DIRECT EXAMINATION OF MR. STAGGERS BY MR. STUMBO:

9 Q: Good afternoon Mr. Staggers, how are you doing today?

10 A: I'm fine sir.

11 Q: Mr. Staggers, what's your current line of work?

12 A: I work for myself.

13 Q: You're in construction?

14 A: No sir, I'm not employed anymore.

15 Q: Okay, what did you formerly do here in Williamsburg
16 county?

17 A: I worked for the Williamsburg County Sheriff's
18 Department.

19 Q: Okay, how long did you work for the sheriff's
20 department?

21 A: Twelve years.

22 Q: And did you just recently go into the private sector?

23 A: Yes sir.

24 Q: Back in March, March 8, 2007, were you working that
25 night with the sheriff's department?

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- 1 A: I was.
- 2 Q: What was your rank at the time?
- 3 A: Corporal.
- 4 Q: At the time you were Corporal Staggers?
- 5 A: Yes sir.
- 6 Q: Do you recall responding to a scene at Clare Road up
- 7 in the Hemmingway area that night?
- 8 A: Yes sir.
- 9 Q: Okay and when you arrived at the scene, I'm going to
- 10 show you what's been marked, or what's in evidence as
- 11 State's exhibit 4. Do you recall that?
- 12 A: Yes sir.
- 13 Q: Okay is that how you recall the truck and the body
- 14 that night being positioned when you rode up on the
- 15 scene?
- 16 A: Yes sir.
- 17 Q: Who was, who was there when you rode up? Can you tell
- 18 me who, who was there at the scene?
- 19 A: When I got there fire and rescue had already arrived,
- 20 the medics were there, specific, I don't know.
- 21 Q: Okay and did you help, help secure the scene when you
- 22 arrived on scene?
- 23 A: Yes sir.
- 24 Q: And it was you and a couple other officers, is that
- 25 correct?

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- 1 A: Yes sir, it was.
- 2 Q: And Seargent Ballard arrived at that point?
- 3 A: He got there shortly after I did.
- 4 Q: Okay, who was the first person in your team of guys
- 5 there who talked to the Defendant, Mr. Baggett?
- 6 A: I want to think there might have been Anthony Dukes,
- 7 I'm not certain.
- 8 Q: Okay and at any point did you speak with Mr. Baggett?
- 9 A: Yes sir I did.
- 10 Q: And could you tell this jury, just give your
- 11 observations of Mr. Baggett that night when you
- 12 approached him?
- 13 A: Yes sir. He seemed to be unstable on his feet. He
- 14 had a odor of alcoholic beverages on his person. He
- 15 had been drinking.
- 16 Q: You were close to him? Close enough to smell the odor
- 17 of alcohol?
- 18 A: Yes sir.
- 19 Q: Where you able to identify him as the driver of the
- 20 white truck that was there on the scene that night?
- 21 A: Yes sir.
- 22 Q: Did he indicate that was his truck?
- 23 A: He did.
- 24 Q: And Mr. Staggers, did you read Mr. Baggett his
- 25 rights?

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- 1 A: Yes sir, I did.
- 2 Q: Okay, did you do that as a precautionary measure?
- 3 A: Yes sir.
- 4 Q: Okay. Is that part of your training and experience to
- 5 read someone their Miranda Rights?
- 6 A: It is.
- 7 Q: Okay, how did you read him his Miranda Rights?
- 8 A: I carry them on my person at all times and I took
- 9 them out of my wallet and read them off to him.
- 10 Q: Okay, you still have that with you today?
- 11 A: Yes sir.
- 12 Q: Okay, if you could, tell us how you read the Miranda
- 13 Rights to Mr. Baggett that night.
- 14 A: I made contact with Mr. Baggett and I advised him of
- 15 his rights and I read them as such: You have the
- 16 right to remain silent, anything you say can and will
- 17 be used against you in a court of law. You have the
- 18 right to talk to an attorney and have him or her
- 19 present with you while you're being questioned. If
- 20 you cannot afford to hire an attorney, one will be
- 21 appointed to represent you if you wish. You can
- 22 decide at any time to exercise your right to not
- 23 answer any questions or make any statements. Then
- 24 read number 6. Do you understand these are your
- 25 rights as I have explained them to you? And he said

1 that he did. Then I read him number 7. Do you wish
2 to talk with us now and he stated that he would.

3 Q: At any point did he exercise his right to remain
4 silent?

5 A: No sir.

6 Q: At any point did he exercise his right to an attorney
7 at that point?

8 A: No sir.

9 Q: What did Mr. Baggett tell you Corporal Staggars as to
10 what happened?

11 A: He stated that he was in the vehicle with Ms. Turner
12 and I have to read it off ...

13 Q: Just re-fresh your recollection from what you have
14 then you can tell us what he said.

15 A: Alright. He stated that Ms. Turner was driving the
16 vehicle and that she suddenly fell out of the truck.
17 He also went on to say that he didn't beat her in the
18 head or anything and that he made an attempt to try
19 and help her up and that he was unable to help her
20 up. He went on to also say the fact that she
21 apparently had a heart attack or something.

22 Q: He said she must have fell out the driver's side of
23 the truck? Said she was driving?

24 A: Yes at that point. That's what his statement was.

25 Q: Did he say how he had come into contact with Ms.

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1 Turner that night?

2 A: I questioned him about that and he stated he picked
3 her up from a liquor store in Johnsonville.

4 Q: Okay, did he say anything about, about her state to
5 indicate she was homeless?

6 A: He stated that, yes sir, he stated she was homeless,
7 she didn't have any money and that he was taking her
8 to his residence.

9 Q: And then he said she just fell out of the truck?

10 A: Yes sir.

11 Q: Now at that point, had other personnel from the
12 sheriff's department arrived?

13 A: Yes sir.

14 Q: Okay and at that time when you were a corporal, were
15 you a uniformed corporal? Drove a marked unit?

16 A: Yes sir.

17 Q: And did the investigators arrive after that?

18 A: Yes sir, they did.

19 Q: And who was that?

20 A: Investigator Boston.

21 Q: Alright, did you advise him of what the story that
22 Mr. Baggett had given you at that point?

23 A: Yes sir.

24 Q: Okay and did you turn the investigation over to
25 Investigator Boston at that point?

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1 A: I did.

2 Q: Okay. Did you have any other contact or decision
3 making role in the investigation after the
4 investigators arrived?

5 A: No sir.

6 Q: Beg the Court's indulgence Your Honor. Just one final
7 question, Mr. Staggers. Did Mr. Baggett ever indicate
8 to you that he tried to move the body or any of that
9 in anything to that regard?

10 A: He said that he tried to stand her up, but he was
11 unsuccessful.

12 Q: Okay. Did he say how far away the body was from the
13 truck at the time he stopped the truck and got out?

14 A: Five to six feet.

15 Q: One last question Mr. Staggers, when you were on
16 scene at that time, you say you secured the scene as
17 your training and experience teaches you to do?

18 A: Yes sir.

19 Q: And did you alter or manipulate any of the evidence
20 there on the scene at any time?

21 A: No sir.

22 Q: And did you move the body?

23 A: No sir.

24 Q: Did you move the truck?

25 A: No sir.

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1 Q: Did you collect any evidence?

2 A: No sir.

3 Q: No further questions of this witness.

4 The Court: Mr. Floyd?

5 Mr. Floyd: Briefly Your Honor.

6 CROSS EXAMINATION OF MR. STAGGERS BY MR. FLOYD:

7 Q: Mr. Stagers, Mr. Stumbo asked you just now did you
8 secure the scene like you were trained to do and you said
9 you did that?

10 A: Yes sir.

11 Q: In Mr. Ballard's incident report I see notes, there's
12 a large group of fire personnel. About how many
13 people were there when you got there?

14 A: I'm not sure.

15 Q: Fifteen?

16 A: Roughly.

17 Q: Roughly fifteen. All fire personnel. Any volunteer
18 fire fighters?

19 A: volunteer firefighters were probably first.

20 Q: A lot of volunteer firefighters?

21 A: Right.

22 Q: In other words, a lot of people from out of the
23 community have rushed to this crime or accident scene
24 before you got there?

25 A: Yes, usually if there's an accident they call for

1 assistance.

2 Q: Yeah, them guys get in their pickup trucks and zip
3 down the road and a lot of times, they mess up
4 y'all's accident scenes don't they? Make it
5 difficult to interpret what happened because they
6 drive across the tracks and they tamper with the
7 evidence before you get there?

8 A: Well they get there trying to assist.

9 Q: Trying to assist. Okay. And you said there was about
10 fifteen of them there?

11 A: Yes, sir. Might have been.

12 Q: Okay and EMS personnel was there too?

13 A: Yes sir.

14 Q: Okay and you don't know what had been done to the
15 scene before you got there? You don't know if they
16 had driven across tracks? You don't know, you can't
17 say that these tracks right here didn't belong to one
18 of them, can you?

19 A: No, sir.

20 Q: You don't know that do you?

21 A: No sir.

22 Q: Any of them have four wheel drive pick ups?

23 A: I can't say.

24 Q: You don't recall?

25 A: No sir.

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- 1 Q: Okay well let me ask you something else. You said you
2 did what you were trained to do. You've been to the
3 academy and you know how to arrest people for DUI
4 don't you?
- 5 A: Yes sir.
- 6 Q: And Mr. Baggett came close to you and indicated that
7 was his truck didn't he?
- 8 A: Yes sir.
- 9 Q: Okay and you said you smelled the odor of alcohol on
10 him?
- 11 A: Yes sir.
- 12 Q: And my next question generally would be and then you
13 performed a field sobriety test on him didn't you?
- 14 A: No sir.
- 15 Q: Didn't do any field sobriety test?
- 16 A: No sir.
- 17 Q: Didn't do any follow the pen test to see how much
18 he'd been drinking?
- 19 A: No sir. He was unsteady on his feet and it was not
20 safe to conduct that at the time.
- 21 Q: I understand, but you had a scientific test whereby
22 you could have confirmed whether he was intoxicated
23 or not didn't you?
- 24 A: Yes sir.
- 25 Q: Okay, you didn't do that did you?

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1 A: No sir.

2 Q: Okay and you didn't do a one leg stand to see how
3 unsteady he was so you could tell the ladies and
4 gentlemen of the jury whether he fell left or whether
5 he fell right or how many times he fell. You didn't
6 do any of that did you?

7 A: No sir. He was unsteady on his feet.

8 Q: I understand that, but you understand he could have
9 been in shock? Couldn't he?

10 A: He could have been.

11 Q: He could have been.

12 Mr. Floyd: No further questions Your Honor.

13 Mr. Stumbo: Just briefly Your Honor.

14 RE-DIRECT EXAMINATION OF MR. STAGGERS BY MR. STUMBO:

15 Q: Mr. Staggars, did Mr. Baggett appear to have been in
16 shock?

17 A: No sir.

18 Q: And was it your, would it have been your decision at
19 that point, after the other investigators had
20 arrived, would it have been your decision to conduct
21 a DUI test that night on the scene?

22 A: No sir.

23 Q: And Mr. Floyd talked about all these other people out
24 there, these fifteen people. Was Mr. Baggett's family
25 member's out there as well?

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1 A: Yes sir.

2 Mr. Stumbo: No further questions Your Honor.

3 The Court: Anything else?

4 Mr. Floyd: Nothing further.

5 The Court: Sir you can step down. Alright ladies and
6 gentlemen of the jury, we're going to break for lunch now.

7 If you would please be back in your jury room no later
8 than 2:30. We'll start at that time, so no later than
9 2:30. Of course you may not discuss the case and you can't
10 undertake any type of fact finding or information
11 gathering on your own. See you back at 2:30.

12 (Jury lunch break 12:58)

13 The Court: We'll start right at 2:30. How many witnesses
14 will you get in this afternoon?

15 Mr. Stumbo: Five, Your Honor.

16 The Court: Any SLED folks today or any --- is Dr. Presnell
17 today or tomorrow?

18 Mr. Stumbo: Dr. Presnell will be the last witness today
19 Your Honor and I'd advise the SLED witness coming from
20 Columbia and he can be here first thing Wednesday morning.

21 The Court: Alright.

22 Mr. Stumbo: I just didn't know yesterday whether we'd be
23 able to get to ...

24 The Court: What time did you tell Dr. Presnell to
25 come here?

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1 but it simply gives you the role of being the spokesperson
2 for the jury. I will discuss with you at the end of the
3 case in the presence of the jury of course what your
4 responsibilities are, but in short, you will preside over
5 the deliberations, make sure that if any verdicts are
6 unanimous. That means all of you agree and during the
7 course of the trial, you're to relay to me through one of
8 the Bailiffs any concerns that the jury has. So if anybody
9 has a concern or a question, they can just go through the
10 foreperson and of course anything at all that you need to
11 bring to my attention you can do that through the Bailiff.
12 Alright the State is ready Mr. Scott?

13 Mr. Scott: Yes, sir.

14 The Court: Is the defense ready?

15 Mr. Floyd: Yes, sir.

16 The Court: Call your next witness.

17 Mr. Scott: The State calls Steve Boston.

18 **(Steve Boston was sworn in)**

19 **Examination of Mr. Steve Boston by Mr. Scott:**

20 Q: Mr. Boston, where are you employed?

21 A: I'm employed with the Kingstree Police Department.

22 Q: Okay how long have you worked with the police
23 department here?

24 A: Approximately eighteen years.

25 Q: You worked with the police department for eighteen

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1 years?

2 A: I'm sorry, I've been in law enforcement for eighteen
3 years.

4 Q: Okay.

5 A: The first time I worked at the Police Department for
6 eleven years and moved to the sheriff's department for
7 several more years and now I'm back at the police
8 department.

9 Q: Alright, March 8, 2007 where were you working?

10 A: Williamsburg County Sheriff's Department.

11 Q: Just tell us what happened that day.

12 A: I was the on call investigator. I received a call from
13 Sergeant Ballard in reference to a vehicle versus a
14 pedestrian. Upon my arrival, the investigator was
15 already there, fire personnel, couple other officers.
16 I also noticed a white in color pick up truck with a
17 yellow light on top parked to the side. I also noticed
18 a white female body on the left side. I spoke with
19 Corporal Staggers and he already had Marty Baggett in
20 the patrol car. He advised me that he advised Mr.
21 Marty Baggett of his Miranda Warnings. I also, advised
22 him of his Miranda before I talked to him.

23 Q: Okay, so Corporal Staggers, by the time you got there,
24 had already spoken with Marty Baggett?

25 A: That's correct.

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1 Q: And from your understanding, who was the driver of the
2 white pick up truck that you referenced?

3 A: My understanding Mr. Baggett was the driver.

4 Q: Okay, after Corporal Staggers spoke with you, you said
5 you Mirandized Marty Baggett?

6 A: Yes I did.

7 Q: And did, did you speak with him? Did he tell you
8 anything?

9 A: Yes, I did.

10 Q: Okay, tell me, tell me about y'all's conversation.

11 A: Once I mirandized him with my Miranda Warning card, I
12 advised him if he wanted to talk to me and he said he
13 would talk to me. He said I already know my rights.
14 I asked him what happened and he said he picked up an
15 unknown at that time, unknown person at the liquor
16 store. Said she was homeless and he was taking her
17 home to his residence to get her something to eat.

18 Q: Okay. Now, in the story he told you, he was driving
19 the truck?

20 A: No sir, not at the time. He said he was driving at
21 first when he picked her up he was driving.

22 Q: And he said that the person was homeless?

23 A: Yes sir.

24 Q: And he saw her at the liquor store so he gave her a
25 ride. Now, did he mention giving a ride to anyone

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1 else?

2 A: No sir, not at that time.

3 Q: Okay. And the homeless person he was referring to, was
4 that Jean Turner?

5 A: Yes.

6 Q: And Jean Turner was the name of the deceased?

7 A: Yes sir.

8 Q: Okay, alright tell me what he said next.

9 A: He said he was too drunk to drive, so he let Ms.
10 Turner drive and stated that once they went down Clare
11 Road, located in Williamsburg County, they like, he
12 said she just fell out of the truck and said he
13 reached over and put the truck in park and got out,
14 seen her on the ground and tried to lift her up, I
15 think about two or three times. He said she was not
16 responding.

17 Q: Okay. So, his story is that she's driving, because he
18 was too drunk she was the designated driver?

19 A: Yes.

20 Q: And she fell out of the driver's side?

21 A: Yes.

22 Q: And he reached over, put the car in park?

23 A: Yes.

24 Q: From the passenger seat?

25 A: Yes.

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1 Q: Where in relation to the body, was the truck?

2 A: Once I got there, the truck was facing sitting this
3 way because the truck was pointing in the north
4 direction and the body was on the side some three to
5 five feet.

6 Q: Okay, so the body was some five feet or so from the
7 truck as you saw it. Is that consistent with a moving
8 car being stopped from somebody in the passenger seat,
9 the distance from the body to the truck? Five feet? Is
10 that consistent with the story he told you?

11 A: No sir.

12 Q: Tell me your observations of Marty Baggett that night.

13 A: Like I said, he was already in the patrol car speaking
14 with Corporal Staggers at the time. I could smell
15 alcohol on him, he was, his speech was slurred and he
16 was kind of like slouched down in the back of the
17 patrol car. Like I said, I was advising him of his
18 Miranda Warnings and he blurted out I know my rights
19 and to me he was very intoxicated.

20 Q: Okay and your eighteen years of law enforcement you've
21 seen many levels of intoxication, you've seen many
22 people who were intoxicate?

23 A: Yes.

24 Q: Is that an accurate statement?

25 A: Yes it is.

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1 Q: And your experience, he was intoxicated that night?

2 A: Yes.

3 Q: So what happened next? Did you speak with him anymore
4 at the scene there?

5 A: No sir. Once I finished up there. Lt. Scott, Jeff
6 Scott, arrived on scene. Myself along with Corporal
7 Staggars along with Chief Todd, now Hemmingway Police
8 Department, took Mr. Baggett to the police department.

9 Q: Okay and what happened at the Hemmingway Police
10 Department?

11 A: We, I read him his Miranda Warnings again so he could
12 tell us you know, what happened at the scene.

13 Q: Okay. Did y'all take any pictures?

14 A: Yes, I did.

15 Q: And were you in here during the testimony of Lt. Jeff
16 Scott?

17 A: Yes sir.

18 Q: And did you get to see State's exhibit 12, 10, 11, and
19 9?

20 A: No sir, I didn't.

21 Q: You didn't get to see these? Let me put them on the
22 screen here. This is State's exhibit 9. What is this?

23 A: It appears to be a scratch to his right side.

24 Q: Okay is that consistent with what you observed on the
25 night of March 8, 2007?

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1 A: I can't recall that scratch.

2 Q: Okay, well tell me what you remember recalling.

3 A: I remember that the blood like on the side of his
4 right ear.

5 Q: Uh-huh.

6 A: And he had a scab on the back of his hand because once
7 I was talking to him at the police department, he
8 actually picked the scab and rubbed it on his pants
9 and started shaking the blood on the floor, which
10 Chief Todd didn't approve of that.

11 Q: Why was he doing that?

12 A: I asked him why and he didn't have an answer for me.

13 Q: Okay, did you ask him about his, his injuries?

14 A: Yes sir I did. I asked him about there was another
15 injury on his chest as well.

16 Q: Okay, well let me show you State's exhibit. This is
17 number 11. Is that consistent with what you observed
18 that night?

19 A: Yes sir.

20 Q: What did he tell you about the bloody ear and the
21 scratches on him?

22 A: He said that he had been doing some yard work and
23 those injuries probably came from some injuries out in
24 the yard.

25 Q: Okay. I think you were, you were saying that you

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1 Mirandized him again at the Hemmingway police
2 department?

3 A: Yes I did.

4 Q: What did he tell you this time?

5 A: Pretty much the same story; he was riding around
6 coming from work that day he met a homeless woman whom
7 he didn't know the name at the time. He was going to
8 take her home to get something to eat and he also said
9 that he picked up her along with another white male
10 and at that time I asked him who was the white male,
11 because he never mentioned that on the actual scene
12 and at that time he said he'd like to exercise his
13 rights and not talk to us anymore at that time.

14 Q: Okay. At that point he said he doesn't want to talk
15 anymore, after you questioned him about the other
16 white male that he hadn't said anything about before?

17 A: That's correct.

18 Q: What happened with Marty Baggett next?

19 A: He was transported to the Williamsburg County
20 Detention Center where we took photos of him, injuries
21 and injuries to his ear, his chest, and Lt. Scott came
22 later on and collected his clothes.

23 Q: Okay, what was he charged with?

24 A: At that time he was charged with DUI.

25 Q: Alright.

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1 A: Driving under the influence.

2 Q: What was the basis of the DUI charge?

3 A: The basis of the DUI charge, is he was, from my.
4 investigation, that he was drinking from his own
5 admittance at the time.

6 Q: He admitted to you that he was drinking? That he was
7 drunk?

8 A: Yes, sir.

9 Q: Okay. What did he say in regards to his level of
10 intoxication?

11 A: Yes, sir. Thee earlier statement he gave.

12 Q: I'm sorry, you said that he admitted to being drunk.
13 What did he say?

14 A: Yes sir. The earlier statement he gave me was that
15 when he let Ms. Jean Turner drive because she was the
16 designated driver and he was too drunk to drive and he
17 let her drive the vehicle.

18 Q: Okay. Were you able to speak with, interview other
19 people the next day? What was Marty Baggett
20 ultimately charged with?

21 A: Ultimately charges with murder.

22 Q: Okay, what happened to his DUI charge?

23 A: I have no idea. Corporal Ballard was the officer on
24 that.

25 Q: Okay. Let me ask you this, after you investigated the

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1 crime, and looked at the crime, was your main concern
2 the DUI or did you have other concerns about the case?

3 A: No sir, my main concern was the situation at the time.

4 Q: Okay.

5 A: Trying to find out what actually happened.

6 Q: So at first it was a DUI that kind of morphed into
7 something else?

8 A: Yes it was.

9 Q: It turned into a murder investigation?

10 A: Yes sir.

11 Q: Alright. Okay, so he's already been interviewed by
12 Corporal Staggers, he gives a version of what happened
13 to Corporal Staggers, you interview him at the scene
14 and he gives you a version of what happened?

15 A: Yes sir.

16 Q: He gives you a portion of the story, another story at
17 the Hemmingway Police Department?

18 A: Yes sir.

19 Q: Did you interview him anymore after that?

20 A: Yes sir, we decided to go over there at the
21 Williamsburg County Detention Center, myself and
22 Investigator Whack. We brought him over to the
23 Williamsburg Sheriff's office since he sobered up he
24 would be able to remember what happened.

25 Q: Okay. What did he tell you, what did he tell you,

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1 well, did you read him his Miranda rights?

2 A: Yes.

3 Q: And did he, did he waive his rights? He knew he could
4 have an attorney present?

5 A: Yes sir.

6 Q: Knew he could remain silent?

7 A: Yes sir.

8 Q: Knew he didn't have to talk with you correct?

9 A: That's correct.

10 Q: And he decided to talk with you anyway?

11 A: Yes, he did.

12 Q: And what'd he tell you at this point?

13 A: Pretty much the same story. He was riding around all
14 day looking for work and ran into Ms. Turner at the
15 Liquor store in Hemmingway along with a white male. I
16 asked him who the white male was and he said he didn't
17 know, but he heard Ms. Turner call him Rod. He stated
18 that while he was riding he was drinking all that day,
19 riding around in Hemmingway and said that Rod and Ms.
20 Turner had actually got into an argument inside of the
21 vehicle. It was actually stated that Ms. Turner had
22 told him, asked him to stop the vehicle so they could
23 put Rod out. He stated that they stopped to put Rod
24 out and like I said, he said that she was driving,
25 went down Clare Road in Williamsburg County and must

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1 have had a heart attack or something and fell out of
2 the truck. He state he pushed the truck in gear and
3 went over there to the body and tried to pick her up
4 and kept asking her to get up, get up but she did not
5 respond.

6 Q: Okay, so at this point, he's still saying she was
7 driving the truck?

8 A: Yes sir.

9 Q: And this, this would be, the State may refer to March
10 9, 2007 at the Williamsburg Sheriff's Department?

11 A: Yes sir.

12 Q: Beg the Court's indulgence.

13 Mr. Scott: Okay, let me show you what's been marked as
14 State's exhibit 21A. Do you recognize that?

15 A: Yes sir.

16 Q: Okay, what is that?

17 A: It's a transcribed, excuse me, a transcribed statement
18 of myself and Marty Baggett.

19 Q: Okay, is that a fair and accurate representation of
20 the conversation you had with Mr. Baggett on March 9,
21 2007?

22 A: Yes sir, it is.

23 Q: Okay. His story to you on March 9th was that she was
24 driving the car, they were driving down Clare Road and
25 she fell out of the driver's side door?

- 1 A: Yes.
- 2 Q: Okay. Then he got out and he kept trying to pick her
- 3 up and you said he was falling over?
- 4 A: Once he threw the truck into park, then he jumped out,
- 5 he went over to her and tried to pick her up two or
- 6 three times and kept asking her, telling her to get
- 7 up, but she did not respond.
- 8 Q: Okay. Did he describe his state at that point? Did he
- 9 describe anything about his level of intoxication?
- 10 A: I can't remember if he did or not.
- 11 Q: Let me, if I could, let me approach, I'd ask to
- 12 approach the witness Your Honor and refresh his memory
- 13 with page seventeen of 21A.
- 14 The Court: Alright.
- 15 A: Yes, sir. I see it in the statement there.
- 16 Q: Okay, so what was he saying?
- 17 A: He said he tried to pick her up two or three times,
- 18 but he don't actually remember what happened because
- 19 he was too drunk.
- 20 Q: Okay. Do you remember him saying anything about
- 21 falling over every time he tried to pick her up?
- 22 A: No, sir.
- 23 Q: Okay. March 12 of 2007, were you able to interview
- 24 Marty Baggett's father, Ralph Baggett?
- 25 A: Yes.

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1 Q: Do you recall asking Ralph Baggett to describe his son
2 the night of the incident we're here today on?

3 A: Yes.

4 Q: And how did he describe his son that night?

5 A: If I can look at the paper.

6 The Court: Is that for id?

7 Mr. Scott: Your Honor this is State's 28.

8 The Court: For id?

9 Court Reporter: Yes sir.

10 Q: And I'm just going to use it to refresh his memory.
11 It's page 8 on exhibit 28.

12 A: Alright I asked him a question of how did Marty
13 Baggett act at the time and he answered crazy and
14 drunk.

15 Q: Crazy and drunk?

16 A: Yes sir.

17 Q: And he was referring to Marty Baggett on the night of
18 March 7, March 8, 2007?

19 A: Yes.

20 Q: Okay did you ask him if Marty told him what had
21 happened?

22 A: Yes sir.

23 Q: And what did he say about that?

24 A: He said that he asked Marty what happened, said Marty
25 told him that he thought that he had run over her.

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1 Q: Okay, thank you. Okay, nothing more from the State.

2 Please answer any questions the defense has.

3 The Court: Mr. Floyd?

4 Mr. Floyd: Thank you Your Honor, may it please the Court?

5 **CROSS EXAMINATION OF MR. BOSTON BY MR. FLOYD:**

6 Q: Mr. Boston, how are you today?

7 A: Good sir.

8 Q: I've just got a few questions for you Mr. Boston. You
9 heard testimony from Mr. Garris yesterday didn't you?

10 A: Yes sir.

11 Q: You heard Mr. Garris in here saying that he had tire
12 marks on the side of his head, his arm was run over
13 and all that stuff. Did you hear that?

14 A: Yes.

15 Q: Did you visually inspect Mr. Garris the day after this
16 interview? It was in the daytime wasn't it?

17 A: Yes it was in the daytime.

18 Q: Did he point any of that stuff out to you?

19 A: No sir.

20 Q: Did you, were you able to see the side of his face?

21 A: Yes sir.

22 Q: And did you see any of that stuff?

23 A: No sir.

24 Q: Did you see any tire marks on his arm?

25 A: No sir.

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1 Q: Was yesterday the first time you ever heard anything
2 about any of that?

3 A: That was the first time.

4 Q: Okay so you didn't see any of that stuff on him did
5 you?

6 A: No sir.

7 Q: You were present and if it would have been there, it
8 would have been the kind of thing you would have
9 picked up on being a seasoned investigator isn't it?

10 A: Yes sir.

11 Q: And you would have asked him about it?

12 A: Yes sir.

13 Q: But it wasn't there?

14 A: No sir.

15 Q: Okay, I just wanted to clarify that. Mr. Scott asked
16 you a question a while ago and I wrote it down, what
17 your answer was, about Mr. Baggett, when I say Mr.
18 Baggett I'm going to do like Judge James did a minute
19 ago, Mr. Baggett, Sr. I'm going to refer to them as
20 Mr. Baggett, Sr. And Mr. Baggett, Jr. So we can keep
21 them straight, okay?

22 A: Alright.

23 Q: Mr. Baggett about what happened, he said Marty said he
24 thought he ran over her?

25 A: Yes.

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1 Q: That was your response right?

2 A: Yes.

3 Q: But there was no elaboration as to how he ran over her
4 was there?

5 A: No sir, not that I recall.

6 Q: And consistently, throughout the course of this trial,
7 Mr. Baggett has maintained, she fell out the truck?

8 A: Yes sir.

9 Q: Is that right?

10 A: Yes sir.

11 Q: Okay, when you first got to the scene, Mr. Baggett had
12 talked to, he had talked to Corporal Dukes?

13 A: Staggers.

14 Q: I thought your incident report said, maybe that was
15 Ballard's incident report that said that. I'm sorry.
16 He had talked to some officers there?

17 A: Yes sir.

18 Q: And you don't know whether he had talked to Dukes or
19 not, but he had definitely talked to Mr. Staggers?

20 A: Yes sir.

21 Q: He told Mr. Staggers she fell out the truck?

22 A: Yes sir.

23 Q: And then you Mirandised him and asked him what
24 happened and he told you she fell out the truck?

25 A: Yes sir.

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1 Q: Okay and he also told you that she was, she was, that
2 she was driving?

3 A: Yes.

4 Q: Okay and I would submit to you today, the evidence may
5 or may not suggest that. Did you do anything to follow
6 up, to check and see who was driving?

7 A: Just pretty much took statements of different people.

8 Q: Took statements. What would have been one thing that
9 you or Lt. Scott could have done to determine who's
10 hands were on that wheel at the time that accident
11 occurred?

12 A: Dust for prints.

13 Q: Pardon?

14 A: Dusted for prints.

15 Q: Dusted for prints and dusted the door handle thing?

16 A: Yes sir.

17 Q: And do you have any evidence here today where you or
18 Lt. Scott dusted any steering wheel or door handle for
19 fingerprints?

20 A: No, I didn't.

21 Q: Don't have any evidence of that?

22 A: No sir.

23 Q: We could answer that question just like that couldn't
24 we? Solve that mystery?

25 A: Yes sir.

1 Q: Okay and we didn't do that.

2 A: No sir, I didn't.

3 Q: Okay, so even though the evidence may not point to
4 whether or not Ms. Turner was driving, it certainly
5 don't have anything to negate it do we?

6 A: About her driving?

7 Q: Right.

8 A: No sir, just what Mr. Baggett told me.

9 Q: Just the statement. I understand. Alright, back to
10 this falling out the truck, he, he also, you also, and
11 I understand what you said a while ago about Marty
12 said he thought he ran over her, but you placed in
13 your incident report, you did an incident report that
14 night?

15 A: Yes.

16 Q: Okay and the incident, tell the ladies and gentlemen
17 of the jury, this is when things are fresh in your
18 head, what an incident report is please if you would.

19 A: Yes, pretty much ...

20 Q: Just briefly what it is.

21 A: Pretty much the incident happens and we write down our
22 field notes and our field notes and then our field
23 notes we put down on the incident report the actual
24 events of what happened according to the witnesses ...

25 Q: Okay and on the second page of that, you would agree

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1 with me, that it states, and I'm about two thirds, may
2 I approach the witness Your Honor?

3 The Court: Yes.

4 Q: About two thirds of the way down. In fact, I'll just
5 hand you my copy if that's okay with you. If that's
6 okay and no objection from Mr. Scott. And I've just
7 underlined it for convenience purposes. What did you
8 put in your incident report that Mr. Baggett and I say
9 Mr. Baggett, Sr. said to you?

10 A: Mr. Baggett stated that she fell out of the truck.
11 Investigator did ask, investigator ask who she the
12 victim was and Marty Baggett stated he didn't know who
13 the victim was at the time.

14 Q: Okay, now it actually says, what it actually says is
15 Mr. Baggett stated Marty said that she fell out of the
16 truck.

17 A: Yes sir.

18 Q: Okay, so that's when you were interviewing Mr.
19 Baggett, Sr. and at that time he was telling you that
20 Marty had told him she fell out of the truck?

21 A: Yes sir.

22 Q: Okay. And you also noted in your incident report that
23 you talked to Ms. Ann Baggett and she told you the
24 same thing, didn't you?

25 A: Yes sir.

1 Q: And that's, that's Mr. Baggett's wife?

2 A: Yes.

3 Q: And you indicated in this report you talked with Mr.
4 Steve Baggett, Mr. Baggett's brother and he told you
5 the same thing didn't he?

6 A: Yes sir.

7 Q: And so throughout the course of this entire
8 investigation, isn't it true that Mr. Baggett has
9 never waived from the fact, when he talked to anybody,
10 his family member or anybody is what happened is she
11 fell out the truck?

12 A: Yes sir from my investigation.

13 Q: Now, you were the lead investigating officer on the
14 scene that night, isn't that correct?

15 A: Yes sir.

16 Q: Let's talk about this truck for a minute. What
17 happened to that truck? Where did it go that night?

18 A: Once I finished with Mr. Baggett I felt like I said,
19 Corporate Stagers took him over to the Hemmingway
20 Police Department while the crime scene was turned
21 over to Lt. Scott to process the scene. I can tell
22 you what I was told where the truck went but I don't
23 know exactly, I wasn't there.

24 Q: So you, you don't know where the truck went to?

25 A: Not at that time.

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1 Q: Do you know where the truck was recovered from the
2 next day?

3 A: My understanding from the Baggett's residence.

4 Q: From Mr. Baggett's house?

5 A: Yes.

6 Q: But you don't know who told Mr. Baggett to take the
7 truck home, but you know you and Lt. Scott both left
8 and for whatever reason neither one of you impounded
9 the truck?

10 A: No sir, when I left he was still on the scene. Matter
11 of fact, he had just come on scene and I took Mr.
12 Baggett, took him to the police department to do an
13 interview on him.

14 Q: I got you. Mr. Scott testified earlier it wasn't his
15 job too process the scene and impound the truck. Now
16 you're telling me today it's not your job to impound
17 the truck. Tell the ladies and gentlemen of the jury
18 who's job it is at the Williamsburg County Sheriff's
19 Department to impound a truck when it's being, when
20 it's being investigated for murder?

21 A: That would be the evidence custodian. That truck was
22 part of evidence and that was for him.

23 Q: Okay and who was the evidence custodian?

24 A: Lt. Scott.

25 Q: Lt. Scott was?

- 1 A: Yes sir.
- 2 Q: So you're saying today that would have been his job?
- 3 A: Yes sir.
- 4 Q: Okay. And you would agree with me, once that truck
- 5 left there, whatever evidence that is on it may or may
- 6 not be tainted wouldn't it?
- 7 A: That's possible.
- 8 Q: I mean there's a purpose behind having a evidence
- 9 custodian to keep evidence from becoming tainted isn't
- 10 it?
- 11 A: Yes sir.
- 12 Q: And you have to have a chain of custody to show that
- 13 no one else has tampered with the evidence and nothing
- 14 else has happened to it, correct?
- 15 A: That's correct.
- 16 Q: Okay and that wasn't done in this case in regards to
- 17 the blood on this truck and the scrapes and the cotton
- 18 and all that stuff. None of that was done by the
- 19 sheriff's department, was it?
- 20 A: Not to my knowledge.
- 21 Q: Okay, now initially, you were investigating a murder.
- 22 Isn't that right?
- 23 A: Yes sir.
- 24 Q: Okay, but it turned out, the evidence in this case, in
- 25 regards to a murder, pointed in the favor of Mr.

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1 Baggett, most of what he was telling you ended up to
2 be so, didn't it?

3 A: Well ...

4 Q: Yeah, I mean, you suspected they eloquently left these
5 scratches up here, I guess convenient for me to use.
6 You suspected that was the result of a fight with Ms.
7 Turner didn't you?

8 A: Yes sir at the time.

9 Q: But it didn't turn out that way. No evidence of it
10 anyway, was it?

11 A: No sir, no evidence.

12 Q: Okay and you suspected that you were going to find
13 damage to the front or the back of the truck where he
14 ran over her. Didn't find any of that did you?

15 A: No, I didn't process the truck.

16 Q: You didn't process the truck. Well, let me ask you
17 this, did you find evidence of anything other than the
18 fact of what Mr. Baggett said that she fell out the
19 truck?

20 A: No sir.

21 Q: You didn't find evidence to anything else did you?

22 A: No sir.

23 Q: Nothing to, nothing to discredit his story?

24 A: Not on my investigation.

25 Q: Okay. In fact, let's go through some of the things he

1 talked to you about. Court's indulgence Your Honor. He
2 told you that he was drinking Lord Calvert, didn't he?

3 A: Yes sir.

4 Q: You heard Mr. Hannah come in and say that's what he
5 bought. He told you that, didn't he?

6 A: Yes sir.

7 Q: Okay, he gave his address and social security number
8 and his date of birth. That proved to be true, didn't
9 it?

10 A: That's correct.

11 Q: Okay, and did you check out where he had said he had
12 been prior to this accident about the tennis courts
13 and all that? Did you find any lies in regards to what
14 he was doing then?

15 A: No sir, we went to a couple of the liquor stores and
16 talked to them. One in Johnsonville and Hemmingway and
17 talked with a couple of people and verified he was
18 there along with Jean Turner and Mr. Garris.

19 Q: Okay and during, during the course of that he told you
20 he went home to get a dog and in fact, there was a dog
21 at the accident scene wasn't there?

22 A: Yes sir, there was a dog.

23 Q: It was his dog.

24 A: Yes sir.

25 Q: And he was running loose?

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1 A: No, he wasn't running loose once I got there. He was
2 on the back of the truck.

3 Q: He was on the back of the truck?

4 A: Yes sir.

5 Q: Okay. Okay, and he also told you that when she fell
6 out the truck, the truck was probably idling didn't
7 he?

8 A: No sir, not to my recollection. What he said was when
9 she fell out, he reached over and threw it into park
10 and he got out of the truck ...

11 Q: You don't recall that?

12 A: No sir.

13 Q: May I approach the witness Your Honor?

14 The Court: Yes sir.

15 Q: I want you to turn your attention to page twenty six
16 and go to line ten and just read out the questions and
17 answers if you would.

18 A: It says do you know how she got out of the truck? His
19 answer was I don't know. I think she fell out of the
20 door. I couldn't say that, because I'm not sure and
21 my question to him: How fast was the truck going and
22 he said probably just idling along, but I don't know.

23 Q: Okay, may I have that back please? Thank you. So he
24 did tell you the truck was idling?

25 A: Yes sir.

1 Q: Okay and we don't have any evidence inconsistent with
2 that. In other words, we don't have any blunt impact
3 to the front of that truck or blunt impact to the back
4 of that truck or anywhere else, do we?

5 A: Like I said, I wouldn't know that. You'd have to ask
6 Lt. Scott.

7 Q: But you haven't seen any?

8 A: No sir, I haven't.

9 Q: So, pretty well what he's told you, best he can
10 remember, has been right accurate, hadn't it?

11 A: Yes pretty much.

12 Q: He told you he thought the guy's name was Rod. He
13 didn't hardly know him and it turned out that was his
14 name wasn't it?

15 A: Yes, he told us that on the next interview.

16 Q: And the next day when you were, when you went by there
17 he told you she fell out, didn't he?

18 A: The third interview?

19 Q: Right, the second, no excuse me, the second interview.
20 The third interview you didn't speak with him right?

21 A: That's right.

22 Q: That's right, I'm sorry. He told you he remembered
23 somebody coming to the scene, but he didn't know who
24 it was, didn't he?

25 A: Yes sir. He said that he seen a truck come up then

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1 back out.

2 Q: Okay and that's been substantiated today through the
3 testimony of Ms. Jones?

4 A: Yes sir.

5 Q: Okay. Now, let me ask you about this investigation.
6 Now, he didn't, strike that. You've got there you, you
7 carried him to the Hemmingway police department first
8 of all?

9 A: Yes sir.

10 Q: While you were at the Hemmingway police department,
11 your incident report notes that you watched him pull
12 some scabs off his hands?

13 A: That's correct.

14 Q: Okay, it would have been consistent...

15 A: That's correct.

16 Q: ... with what he told you about scratches on him.
17 Isn't that right?

18 A: Yes sir.

19 Q: He got scratched, I think you said doing gardener
20 work, but what he actually said was burning woods. You
21 know, people burn woods in March and April around here
22 don't they?

23 A: That's right.

24 Q: Okay so that would have been consistent. Alright, now,
25 when you were there that night, ya'll never, never

1 called in SLED to investigate did you?

2 A: No sir, not to my knowledge.

3 Q: And never called the MAIT team? You know what the
4 MAIT team is?

5 A: Yes sir.

6 Q: Okay they were never called?

7 A: Not to my knowledge.

8 Q: Who's job is it to do that?

9 A: Like Lt. Scott said, the Sheriff makes the call on any
10 outside assistance.

11 Q: Okay, do you recall who all was there that night when
12 you got there?

13 A: I remember a group of firefighters, volunteer
14 firefighters, a couple of EMS workers were there,
15 Marty Baggett's family was also there.

16 Q: Do you remember Cpl. Ballard being there?

17 A: Yes sir, I remember him being there.

18 Q: And do you remember Cpl. Staggers being there?

19 A: Yes sir.

20 Q: Do you remember Deputy Dukes being there?

21 A: Yes sir.

22 Q: Do you remember Investigator Collins being there?

23 A: Yes sir.

24 Q: And do you remember Lt. Scott being there?

25 A: Yes sir, he came up.

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1 Q: Do you remember Trooper Page and Trooper Rutledge
2 being there?

3 A: No, I never seen them.

4 Q: Don't remember? Okay, do you remember Sheriff
5 Washington being there?

6 A: Yes.

7 Q: Now, you picked, you carried Mr. Baggett down to the
8 Hemmingway Police Department and when you got there
9 Chief Todd was there?

10 A: Actually, he was out there with us and ...

11 Q: So he was at, he was at the accident as well?

12 A: Yes and he said that we could use his office to talk
13 to him. To talk to Marty Baggett.

14 Q: So we have a number of investigators, a number of
15 deputies, the chief of police for the town of
16 Hemmingway, Sheriff Washington who is now Marshall
17 Washington?

18 A: Yes sir.

19 Q: At any time, did y'all ever go to the hospital to
20 extract blood from Mr. Baggett?

21 A: Like I said, once I finished my interview, I turned
22 everything over to the evidence custodian.

23 Q: I understand. It's the evidence custodian's job to do
24 that?

25 A: Yes sir.

- 1 Q: That's right. You arrest people for DUI don't you?
- 2 A: Yes sir.
- 3 Q: You and I have had a lot of cases together, haven't
- 4 we?
- 5 A: Oh yeah.
- 6 Q: You're aware that Code Section 56-5-2946 states in
- 7 part, that a person must submit, not they may submit,
- 8 they must submit to either a combination of chemical
- 9 tests of breath, blood or urine for the purpose of
- 10 determining the presence of alcohol, drugs and or a
- 11 combination of alcohol and drugs in a felony DUI
- 12 charge?
- 13 A: Yes sir.
- 14 Q: Isn't that right?
- 15 A: Yes sir.
- 16 Q: And who transported Mr. Baggett back to Kingstree? Do
- 17 you know?
- 18 A: I can't remember, I think it was Cpl. Staggers who had
- 19 a K-9 unit.
- 20 Q: You were Cpl. Staggers supervising officer that night?
- 21 A: Actually, I think Cpl. Staggers was actually getting
- 22 off and Sergeant Ballard ...
- 23 Q: Okay, were you Sergeant Ballard's supervising officer
- 24 that night?
- 25 A: Yes sir.

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- 1 Q: And you didn't direct him to carry him by the hospital
2 and get blood from him, did you?
- 3 A: No sir.
- 4 Q: And you arrest people for DUI. That night he was
5 charged with DUI?
- 6 A: Yes sir.
- 7 Q: Okay and you aware that 56-5-2950, if I'm not
8 mistaken, the DUI statute, says that when a person is
9 arrested for DUI, they must be offered a breath test?
- 10 A: Yes.
- 11 Q: They can refuse that one just for DUI correct?
- 12 A: That's correct.
- 13 Q: He was never even offered a test was he?
- 14 A: No sir.
- 15 Q: Not by you?
- 16 A: No sir, not by me.
- 17 Q: In fact, the DUI case was dropped, wasn't it?
- 18 A: My understanding it was.
- 19 Q: Your understanding? Well now, you're the lead
20 investigator ...
- 21 A: That's right.
- 22 Q: I would think most the shots would come through you?
- 23 A: Yes they did.
- 24 Q: Okay, so it was dropped with your approval wasn't it?
- 25 A: No sir.

1 Q: No sir?

2 A: I, like I said, I was concentrating on the murder. I
3 just recently found out it was dropped.

4 Q: Okay, because this case was investigated as a murder?

5 A: That's right.

6 Q: And it really was an accident. It's being prosecuted
7 like a DUI, isn't that about right?

8 A: It's possible.

9 Q: It's possible, I understand. Mr. Baggett told you that
10 he picked Ms. Turner up at a liquor store. That turned
11 out to be true, didn't it?

12 A: That's correct.

13 Q: Mr. Baggett told you that the accident, that they were
14 on Clare Road. That turned out to be true, didn't it?

15 A: That's correct.

16 Q: Officer Boston, do you have any evidence to suggest
17 this accident happened any way other than the way Mr.
18 Baggett said?

19 A: No sir, I don't have any evidence.

20 Q: You don't have any evidence do you? Okay. Did you have
21 the opportunity to observe Ms. Turner's body that
22 night?

23 A: I just, not really. I just, you know, kind of went
24 over there to talk to Mr. Baggett.

25 Q: Pardon?

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1 A: I said I kind of briefly looked at it, but I went over
2 there and talked with Mr. Baggett at the time.

3 Q: Alright, if Mr. Baggett would have been, the scene
4 that night was somewhat horrific, wasn't it? It was
5 somewhat horrific, wasn't it?

6 A: Yes sir.

7 Q: I've had the mis-fortune of seeing the photos and it
8 was not a pleasant scene was it?

9 A: That's correct.

10 Q: It was, I mean, I don't want to be too specific, but
11 Ms. Turner's head looked like it had been run over by
12 a tire didn't it?

13 A: From the pictures, yes.

14 Q: That's what it looked like. Would it be unreasonable
15 if something like that happened to somebody for
16 somebody to be in shock? I mean, if someone was
17 riding with you and that happened, would it be
18 unreasonable for a person to go into a state of shock?

19 A: If ...

20 Q: If that had just happened. Someone were riding with
21 you and they had fallen out or had went to get out to
22 go to the bathroom or for whatever reason had fallen
23 under the tire and you run over their head, would it
24 be unreasonable for someone to go into a state of
25 shock?

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1 A: I wouldn't think it would be.

2 Q: I wouldn't either. That question could have been
3 answered had Cpl. Ballard followed Code Section 56-5-
4 29-46, cause they would have had to go to the hospital
5 to give blood, isn't that right?

6 A: That's correct.

7 Q: And we'd a had a physician examine Mr. Ballard, not
8 Mr. Ballard, excuse me, Mr. Baggett.

9 A: Yes sir.

10 Q: And a physician could have come in and told the ladies
11 and gentlemen of the jury just what was going on with
12 him?

13 A: Yes.

14 Q: We could have told exactly how much blood alcohol, how
15 much alcohol he had in his system?

16 A: That's correct.

17 Q: Could have seen if he had any drugs in his system?

18 A: That's correct.

19 Q: Could have seen if he was suffering from some form of
20 a diabetic, going into a diabetic coma?

21 A: Yes sir.

22 Q: Could have seen if he had over medicated or under
23 medicated from something?

24 A: That's correct.

25 Q: We could have answered all these questions, none of

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1 which have been answered.

2 A: That's correct.

3 Q: Simply because the Williamsburg County Sheriff's
4 Department did not follow the law. Isn't that right?

5 A: I can't say not following the law ...

6 Q: I understand ...

7 A: ... to investigate a murder.

8 Q: ... but now that's not what we're doing here today.

9 We're here for a felony DUI, reckless homicide. If you
10 were prosecuting somebody for felony DUI, you supposed
11 to get his blood aren't you?

12 A: That's correct.

13 Mr. Floyd: I don't have any further questions.

14 The Court: Re-direct?

15 RE-DIRECT EXAMINATION OF MR. BOSTON BY MR. SCOTT:

16 Q: Mr. Boston, I'm sorry. You were asked about Rod Garris
17 and some tire dust or some dirt that he described
18 earlier on the side of his head?

19 A: Yes.

20 Q: You said you didn't observe that?

21 A: That's correct.

22 Q: Matter of fact, you interviewed Rod Garris the day
23 after this occurred correct?

24 A: Yes.

25 Q: Okay. I think Mr. Floyd said there was no evidence.

1 You have no evidence whatsoever that Marty Baggett was
2 driving?

3 A: That's correct, except for when he told me in that
4 statement.

5 Q: I want to get to that, but there was, you did find
6 blood under the passenger side door right?

7 A: From what I was told.

8 Q: So there was evidence that he was driving the truck?

9 A: Yes.

10 Q: Matter of fact, there is consistency that he states
11 that she fell out of the truck in four different
12 versions of the story, but were each of those versions
13 of the story consistent with one another?

14 A: No.

15 Q: He told four different versions of what happened that
16 night?

17 A: That's right.

18 Q: And in the first version, he said she, I'm sorry, he
19 said he was driving?

20 A: Correct.

21 Q: Thereafter, he changed it and said she was driving?

22 A: That's right.

23 Q: And she was just driving down the road and while's
24 she's working the steering wheel she just falls out
25 the door?

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1 A: That's correct.

2 Q: In your eighteen years of law enforcement, have you
3 ever investigated a case where somebody just fell out
4 of a moving car?

5 A: No sir.

6 Q: First version given to Cpl. Staggers, he was driving.
7 She was homeless and he was going to take her home to
8 feed her?

9 A: Yes.

10 Q: Second version, he told you they went driving around.
11 He was too drunk to drive, so he had her drive?

12 A: That's correct.

13 Q: She fell out of the car, even though he's too drunk to
14 drive, and he makes multiple statements of being
15 intoxicated, he was able to reach over, put the car
16 into park?

17 A: Yes sir.

18 Q: Some five feet away from a body that had just fallen
19 out of a car?

20 A: Yes sir.

21 Q: And the third version, he suddenly remembers another
22 man that he picked up?

23 A: That's correct.

24 Q: And after you asked him about that, he ended the
25 interview?

1 A: Yes sir.

2 Q: The fourth version, he was driving around Georgetown
3 and then eventually comes into Hemmingway, buying some
4 liquor, gave somebody a bike, eventually gets to the
5 liquor store. He runs into Rod Garris and Jean Turner.
6 Gives them a ride, decides at some point he wants her
7 to drive?

8 A: Yes sir.

9 Q: And in this story, she falls out of the driver's side?

10 A: Yes.

11 Q: And again, you said there was blood evidence or there
12 was some red staining that they took samples of under
13 the passenger door?

14 A: Yes sir.

15 Q: And in eighteen years in law enforcement, as you said
16 earlier, you've seen, you've had a chance to see
17 plenty of intoxicated people?

18 A: Yes sir.

19 Q: You're observations that night, and with all of your
20 experience, would you term Mr. Baggett, Mr. Marty
21 Baggett to be intoxicated or in shock?

22 A: Intoxicated.

23 Q: You've seen both of these states haven't you? You've
24 seen somebody in shock and you've seen somebody
25 intoxicated?

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1 A: Yes sir.

2 Q: And you would classify him as intoxicated that night?

3 A: Yes sir.

4 Q: Again, all your observations that night, as you saw
5 them, did your observations support Marty Baggett's
6 version of what happened? That she was driving down
7 the road, fell out, he reached over and put it into
8 park?

9 A: No sir, it doesn't.

10 Q: Thank you, that's all from the State Your Honor.

11 The Court: Any recross on the questions he asked, Mr.
12 Floyd?

13 Mr. Floyd: Just real quick Your Honor.

14 RE-CROSS EXAMINATION OF MR. BOSTON BY MR. FLOYD:

15 Q: But you don't have any evidence to dispute the fact
16 other than the blood being on the opposite side of the
17 car? Marty Baggett's always said she fell out the
18 truck. You don't have any evidence to show that that's
19 not exactly how it happened that she fell out the
20 truck?

21 A: No, she, not --- I don't know how it happened, I don't
22 have any evidence as far as that part.

23 Q: Exactly, you don't know how it happened do you?

24 A: I don't know how it happened.

25 Q: Not a clue?

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1 A: No sir.

2 Q: Nothing further.

3 The Court: Alright, you can step down. Everybody in the
4 jury okay? Anybody need anything to drink? Anybody?
5 Okay, thank you.

6 Mr. Scott: Your Honor the State calls Sargent Juan
7 Ballard to the stand.

8 Clerk: Do you solemnly swear that the evidence and
9 testimony you will give to this Court and jury will be
10 the truth, the whole truth and nothing but the truth,
11 so help you God?

12 A: Yes ma'am.

13 DIRECT EXAMINATION OF MR. BALLARD BY MR. STUMBO:

14 Q: Good afternoon Sargent Ballard.

15 A: Good afternoon, sir.

16 Q: Are you still employed with Williamsburg County
17 Sheriff's Department?

18 A: Yes sir.

19 Q: And your rank is sheriff? I'm sorry, Sargent?

20 A: Investigator.

21 Q: Investigator now?

22 A: Yes sir.

23 Q: Were you a Sargent back in 2007?

24 A: Corporal.

25 Q: Corporal, so when this incident occurred, March 8,

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1 2007, you were a corporal with the sheriff's
2 department?

3 A: Yes sir.

4 Q: And how long had you been in law enforcement?

5 A: Thirteen years.

6 Q: On the evening of March 8, 2007, the night of this
7 incident, what were your duties that night as
8 corporal?

9 A: I was shift supervisor.

10 Q: Okay, did you have occasion to respond to a call out
11 on Clare Road?

12 A: Yes sir, I did.

13 Q: And did you respond to Clare Road?

14 A: Yes, I did.

15 Q: And what did you see when you got there?

16 A: I saw a number of fire trucks, fire personnel, EMS,
17 some other people walking around and other deputies.

18 Q: Who from your department was already there on the
19 scene?

20 A: Corporal Staggers, Deputy Dukes.

21 Q: Okay, were you able to determine when you got there,
22 or where you advised by Corporal Staggers and the
23 other officers what was going on?

24 A: Yes sir.

25 Q: And had any of them at that point, talked to the

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1 Defendant Marty Baggett?

2 A: Yes sir, to my understanding.

3 Q: Okay and who, who advised you that he had talked to
4 Mr. Baggett?

5 A: Corporal Staggers.

6 Q: Okay, now as part of your duties, when you come onto a
7 crime scene such as what you came across that night,
8 as part of your duties as corporal, to secure the
9 scene?

10 A: Yes sir.

11 Q: As shift supervisor?

12 A: Yes sir.

13 Q: Okay, did you all do that?

14 A: Yes sir, we did.

15 Q: And in the time that you're on the crime scene there,
16 did you or anyone under your supervision to your
17 knowledge, alter or manipulate any of the evidence on
18 scene?

19 A: No sir.

20 Q: What were your observations of the Defendant at the
21 scene that night? Mr. Baggett?

22 A: Well, when I first arrived, he initially was sitting
23 in the back of the patrol car.

24 Q: Yes sir.

25 A: And we came up and Corporal Staggers advised me of

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1 what was going on. We pulled him out the car and he
2 put down because he was about to faint about that
3 time, Chief Todd came up and so he could speak to him
4 before the Investigator.

5 Q: Okay, did you observe any physical characteristics of
6 Mr. Baggett? Was he of sound mind and body?

7 A: Other than he was staggering around a little bit.

8 Q: He was staggering?

9 A: Yes sir.

10 Q: Did you ever come face to face to talk to Mr. Baggett
11 on the scene that night?

12 A: Yes, I came between two and three feet from him.

13 Q: Now, based on your, your investigation there, just
14 initially at the scene, were you able to determine who
15 was driving the white truck that was there?

16 A: Initially I was advised by Corporal Staggers that Mr.
17 Baggett said he was driving.

18 Q: And were you in the courtroom earlier when the 911
19 tape was played? Were you the one in communication
20 with the dispatcher?

21 A: Part of it, part of it.

22 Q: And she, she did advise you of what the scene was that
23 you were going to?

24 A: It was initially given out as an assault.

25 Q: Okay, when you arrived, what did you find? Was it an

1 assault?

2 A: It initially was given as an assault, but as I was in
3 route, they said it was a dead body on the side of the
4 road.

5 Q: Now, how long did it take after you got to the scene
6 for Investigator Boston to come take over the
7 investigation in this case?

8 A: No more than ten minutes.

9 Q: Okay, when he got there who was in charge? You or him?

10 A: Corporal Staggers, being he was the first supervisor
11 on the scene, he was in command at that time.

12 Q: Okay, when the investigators get on scene, who's in
13 charge at that point?

14 A: The investigator.

15 Q: Okay and that was investigator Boston?

16 A: Correct.

17 Q: Now at that point, is it your job to make a
18 determination of doing a DUI test?

19 A: You said when, can you repeat that question?

20 Q: Would it have been your call once the investigators
21 arrived, to do DUI testing on the suspect?

22 A: It would have been my call, yes.

23 Q: Okay and were you, did you ultimately give a ticket in
24 this case for DUI?

25 A: Yes sir.

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- 1 Q: Okay, you got the ticket?
- 2 A: I wrote the ticket, yes sir.
- 3 Q: And that was based on the evidence gathered in the
- 4 investigation correct?
- 5 A: Right, the initial investigation, yes.
- 6 Q: And then he was also charged with murder and kidnaping
- 7 after that, right?
- 8 A: Yes sir.
- 9 Q: And you, did you do that?
- 10 A: No sir.
- 11 Q: Who, who got those warrants?
- 12 A: I think investigator Boston did.
- 13 Q: What happened to the DUI ticket?
- 14 A: It was eventually nolle posse.
- 15 Q: Okay. Who makes the prosecutorial decisions on a
- 16 magistrate level DUI cases for the county?
- 17 A: The officer who wrote it.
- 18 Q: Alright, who wrote the ticket Sargent Ballard?
- 19 A: I did.
- 20 Q: Alright and when was that charge dismissed?
- 21 A: On April the 4th, 2007.
- 22 Q: 2007?
- 23 A: Yes sir.
- 24 Q: So that's less than a month after the incident date,
- 25 correct?

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- 1 A: Yes sir.
- 2 Q: And who prosecutes those magistrate level DUI tickets
- 3 in Williamsburg county?
- 4 A: The officer who wrote the ticket.
- 5 Q: Okay, so it would have been your job to bring it to
- 6 court and prosecute the case with Mr. Baggett in
- 7 magistrate's court, if, if it were to go to court
- 8 correct?
- 9 A: Yes sir.
- 10 Q: Okay. But less than a month later the decision was
- 11 made to not go forward on that ticket, right?
- 12 A: Yes sir.
- 13 Q: So it wasn't dismissed by a judge right?
- 14 A: Yeah, it had to go through a judge to be dismissed by
- 15 the officer.
- 16 Q: Okay, but, you were the one ...
- 17 A: Yeah.
- 18 Q: ... That recommended dismissal of the ticket correct?
- 19 A: Yes sir.
- 20 Q: Okay. Now, to your recollection at the time, Sargent
- 21 Ballard, what was the reason for that?
- 22 A: Well, the next day he was charged with murder and we
- 23 felt that murder superceded DUI so we just went ahead
- 24 discussed it to nolle posse.
- 25 Q: Okay, was it because you didn't have evidence of DUI?

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- 1 A: Not any blood anything like Breathalyzer blood
2 alcohol, no sir.
- 3 Q: Alright, but the decision was made at the time, that
4 it superceded the DUI, is that correct?
- 5 A: Yes sir.
- 6 Q: And that was a decision that you would have made in
7 consultation with the lead investigator right?
- 8 A: I can't recall exactly who it was.
- 9 Q: And who was that at the time? Who was the agent in
10 charge? The case on Mr. Baggett?
- 11 A: I'm not sure it was Investigator Boston.
- 12 Q: It was investigator Boston?
- 13 A: Yes sir.
- 14 Q: And at that time, to your knowledge, had the case the
15 burglary, kidnaping charges that, that Mr. Floyd keeps
16 eluding to, had those cases been transferred over to
17 the prosecutor yet?
- 18 A: I'm not sure at the time.
- 19 Q: Okay and who would the prosecutor have been at that
20 time?
- 21 A: Um.
- 22 Q: Who prosecutes your cases in Williamsburg?
- 23 A: At that time it was attorney Sabb.
- 24 Q: The Solicitor's office?
- 25 A: The Solicitor's office, yeah.

1 Q: And when was the first time you heard from the
2 Attorney General's office about this case or were
3 contacted about this case? Was that back in 2007?

4 A: I don't think ...

5 Q: More recently?

6 A: Like last year maybe.

7 Q: Beg the Court's indulgence Your Honor.

8 The Court: Alright.

9 Q: Just in follow up. Just so I can understand this. You
10 charged him with DUI and that was based on evidence
11 that had been gathered in this investigation, correct?

12 A: The initial investigation.

13 Q: Okay, and what was that evidence that you used to
14 charge him?

15 A: That he was, appeared to be highly intoxicated and he
16 told, he initially told Corporal Staggers that he was
17 driving.

18 Q: He admitted it?

19 A: Yeah.

20 Q: And you had eye witnesses who gave statements,
21 correct?

22 A: Yes sir.

23 Q: No further questions of this witness at this time Your
24 Honor.

25 The Court: Mr. Floyd?

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CROSS EXAMINATION OF MR. BALLARD BY MR. FLOYD:

1

Q: You're a corporal Mr. Ballard?

2

3

A: No, I'm an investigator now.

4

Q: Investigator now. I thought you got a promotion.

5

Investigator Ballard, Mr. Stumbo was asking you, or

6

Assistant Attorney General Stumbo was asking you while

7

ago, about when you arrived at this accident scene,

8

you charged him that night with DUI?

9

A: Yes sir.

10

Q: Okay and a couple of days later, it was decided y'all

11

were going to prosecute the case for murder and

12

kidnaping, isn't that correct?

13

A: I don't think it was a couple of days. I think it

14

might have been the next day.

15

Q: The next day?

16

A: or the next afternoon.

17

Q: Alright, next afternoon, but the decision wasn't,

18

wasn't made that night y'all were going to just charge

19

him with murder was it?

20

A: I wasn't aware of that.

21

Q: Okay, so that night, as far as you were concerned, you

22

were doing a DUI investigation?

23

A: Well ...

24

Q: I mean that's what you charged him with right?

25

A: Yeah.

1 Q: I mean you wrote him a ticket didn't you?

2 A: Yes sir.

3 Q: Then you came back on the court date that you put on
4 his ticket was April the 4th and you dis, you dismiss
5 it?

6 A: Yes sir.

7 Q: Okay, and you signed it. It says nolle posse requested
8 by and that's your signature isn't it?

9 A: Yes sir.

10 Q: On the back of the ticket. May I approach the witness
11 Your Honor?

12 The Court: Yes.

13 Q: That's your signature?

14 A: Yes.

15 Q: Well, you're aware that Code Section 56-5-29-50 it
16 states, "when a person is arrested for DUI," not DUI
17 felony, just regular DUI, somebody gets drunk driving
18 down the road.

19 A: Yes.

20 Q: You're aware of the fact that it says a breath test
21 must be administered at the direction of the law
22 enforcement officer who has arrested the person for
23 driving the motor vehicle in this state, while under
24 the influence of alcohol, drugs or a combination of
25 alcohol and drugs? It doesn't say may, it doesn't say

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- 1 maybe, it says must doesn't it?
- 2 A: That's correct.
- 3 Q: You didn't do that did you?
- 4 A: No sir, the BA machine, I think was down at that time.
- 5 Q: Okay, well you --- that's a good point. They were down
- 6 in both Hemmingway and Kingstree?
- 7 A: I'm not familiar with Hemmingway. I work in Kingstree.
- 8 Q: Okay, well you're familiar. They got a B.A. machine in
- 9 Hemmingway don't they?
- 10 A: I think.
- 11 Q: -----You know they do. They got a B.A. machine in
- 12 Kingstree. You went to two places where there was a
- 13 B.A. machine. You talked to him, he stayed in
- 14 Hemmingway. In fact, the law says that you got to give
- 15 him that test within two hours doesn't it?
- 16 A: Yes sir, I never went to Hemmingway.
- 17 Q: You never went to Hemmingway?
- 18 A: I never ...
- 19 Q: But the law says you got to give him that test within
- 20 two hours doesn't it?
- 21 A: Yes sir.
- 22 Q: Cause they want a valid sample. They want, they want
- 23 the jury, the jury deserves to know for certain, what
- 24 a person's blood alcohol content is don't they?
- 25 A: Yes sir.

1 Q: It's not fair to the jury to have to make
2 determinations about a person's blood alcohol content
3 when you got a machine that can determine and you can
4 show them a piece of paper and they'll know and they
5 won't have to question whether the person was drinking
6 alcohol or wonder whether he was in shock or wonder
7 whether he was going into a diabetic coma or any of
8 that kind of stuff. Isn't that the purpose behind it?

9 A: Correct sir.

10 Q: Okay, but you didn't do that did you?

11 A: No, I did not.

12 Q: And the law goes a step further and it says if they
13 are unable to give a valid breath sample, in a regular
14 DUI, we're not talking about a felony DUI, I'm talking
15 about ...

16 Mr. Stumbo: Your Honor I'm going to object to his stating
17 the law. He's not the judge of the law in this case.

18 Mr. Floyd: I can rephrase my question.

19 The Court: Alright. Let's do this, ladies and gentlemen
20 of the jury, please step in the jury room. You may not
21 discuss the case. We'll use this as our period to have
22 an afternoon break. Thank you.

23 (JURY EXITS)

24 The Court: I've got some questions about ...

25 Clerk: Is the door closed? Is the door closed?

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1 The Court: Close the door please. Mr. Floyd, for most
2 of the afternoon, when questioning witnesses whether
3 it be Mr. Boston or --- witnessing the DUI statute.
4 Now, you object saying that's for me. Mr. Floyd,
5 what's, what's, first of all, what's the relevance of
6 the question on the law? Is it to educate the jury on
7 the law or is it to educate the jury on the
8 investigation?

9 Mr. Floyd: It's both Your Honor. It's twofold. It's to
10 educate ...

11 The Court: I'll educate them on the law if it's
12 applicable. So tell me about why you're trying to educate
13 the jury about the investigation?

14 Mr. Floyd: To educate them to show that the law was not
15 followed. To show that he did not do what he was
16 supposed to do that night and if he had done what he
17 was supposed to do, this question of Mr. Baggett's
18 level of intoxication wouldn't be up in the air for
19 questioning. We'd know.

20 The Court: Alright Mr. Stumbo, isn't it appropriate, this
21 is a felony DUI case ...

22 Mr. Stumbo: Yes sir.

23 The Court: One of the, some of the pieces of your case
24 would be a blood alcohol reading, if you had one.

25 Mr. Stumbo: Correct.

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1 The Court: By way of data master, urine or blood. Some
2 type of reading would be the center piece to your
3 case. Mr. Floyd's questions about certain things that
4 could have been known in some way, the statute makes
5 mandatory, don't go shed some light on the, the
6 perhaps lack of a piece of evidence about blood
7 alcohol content?

8 Mr. Stumbo: I believe they do Your Honor. Here's the,
9 here's the crux of my objection; it's not, it's not
10 that he's, he's already asked Sargent Ballard and
11 Investigator Boston the questions of doesn't the law
12 require you to do a breath test and they've said yes
13 and did you do it? No. And I think that should be the
14 extent of what he can ask them about it.

15 The Court: On a different note, you can't tell them
16 what the law is, you've got to ask him a question.

17 Mr. Floyd: I understand.

18 The Court: In other words, you're starting to speechify
19 a little too much.

20 Mr. Floyd: I understand.

21 The Court: You've got to, first of all, ask questions.

22 Mr. Floyd: I understand.

23 The Court: Isn't it true that, and you of course, as
24 cross you challenge but you can't ...

25 Mr. Floyd: I, I, honestly Judge, I'm not saying this

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1 because you stopped me, because I was almost done. The
2 only thing I was going to ask him about was if the law
3 takes, isn't it true that the law takes it a step
4 further when someone's incapacitated and allow you to
5 draw blood and that's all I was going to ask.

6 The Court: I think that's appropriate in the context of
7 this case, especially since we have a DUI charge in
8 place.

9 Mr. Stumbo: Yes sir.

10 The Court: And now it's become a greater DUI accusation
11 and those things were not done for whatever reason. My
12 question is going to be, and y'all will have to help
13 me out with it, is felony DUI statute says that a
14 person must submit to the testing. There is no case
15 law on it, I know. That's in the context of if they're
16 asking or telling, he's got to do it. What happens if
17 nothing's done? I think 56 529 46 undoubtedly is aimed
18 at someone who is a Defendant who refuses. I'm not
19 giving blood, I'm not giving urine and I'm not blowing
20 into that machine. Because that says he must. What
21 does the law say about felony DUI charge when the
22 "opportunity" to give those things was never given?
23 Can a felony DUI charge survive it?

24 Mr. Stumbo: And that's one thing we're going to have to
25 really, I think, argue out on the legal side of

1 things. I anticipate we'll probably do that at some
2 point.

3 The Court: Alright, let's do this, we'll take about
4 five minutes. Mr. Ballard, you can step down. I'll
5 instruct you that you may not discuss your testimony
6 with anyone, that includes any human being in the
7 world, okay?

8 Mr. Ballard: Yes sir.

9 The Court: All right. Thank you.

10 Mr. Floyd: Thank you Your Honor.

11 (Court Break)

12 The Court: Alright, Mr. Scott y'all ready?

13 Mr. Scott: We are Your Honor.

14 The Court: Alright, Mr. Floyd, you going to continue
15 with Mr. Ballard and your assurance that you're about
16 to finish, I'm not going to sustain the objection that
17 not ...

18 Mr. Floyd: I'm finished with him Your Honor.

19 The Court: You can ask him certain things that have
20 been done or perhaps should have been done if they
21 wanted to fulfil a DUI charge, but let's, lets ...

22 Mr. Floyd: My next question would have been predicated upon
23 a condition that didn't occur, so it's really
24 irrelevant. I'm just not even going to ask it Your
25 Honor.

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1 The Court: Alright.

2 Mr. Floyd: Okay?

3 The Court: You can have a seat. You ready for the jury

4 Mr. Floyd?

5 Mr. Floyd: I am Your Honor.

6 The Court: Bring the jury in.

7 (Jury enters the Courtroom)

8 The Court: If the Bailiff ever comes to the door to

9 tell you that we're ready, if y'all aren't ready,

10 we'll go by y'all.

11 Ms. Stewart: Alright.

12 The Court: So you just let him know that. Okay,

13 alright. Mr. Ballard is still being questioned. Mr.

14 Floyd, you can continue.

15 Mr. Floyd: Your Honor I don't have any further questions of

16 this witness at this time.

17 The Court: Okay, re-direct?

18 Mr. Stumbo: Thank you Your Honor. Just briefly.

19 RE-DIRECT EXAMINATION OF MR. BALLARD BY MR. STUMBO:

20 Q: Sargent Ballard, I believe Mr. Floyd asked you a

21 question in regards to taking a blood sample or

22 offering a breathalyze test?

23 A: Yes sir.

24 Q: And you didn't make the decision that night whether to

25 do that or not to do that?

1 A: No sir.

2 Q: That was made by the investigator?

3 A: Yes sir.

4 Q: Okay and at that point you testified the focus was on
5 the kidnaping and murder charges, not the DUI charge.
6 Is that correct?

7 A: Yes sir.

8 Mr. Stumbo: No further questions of this witness.

9 RE-CROSS EXAMINATION OF MR. BALLARD BY MR. FLOYD:

10 Q: You were the arresting officer on the DUI?

11 A: Yes sir.

12 Q: Okay you wrote the ticket?

13 A: Yes sir.

14 Q: So it's, isn't it your responsibility to see to it
15 that the Defendant has a breath test done?

16 A: Yeah, yes sir.

17 Q: Yeah, cause you going to be the one prosecuting the
18 case, isn't that correct?

19 A: Yes sir.

20 Q: Okay. Nothing further.

21 The Court: Alright, you can step down. Next witness?

22 Mr. Stumbo: Your Honor the State calls investigator Justin
23 Whack to the stand.

24 Clerk: Do you solemnly swear that the evidence and
25 testimony you give this Court and jury will be the

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1 truth, the whole truth and nothing but the truth, so
2 help you God?

3 A: I do.

4 DIRECT EXAMINATION OF MR. WHACK BY MR. STUMBO:

5 Q: Good afternoon investigator Whack.

6 A: Good afternoon.

7 Q: How long you been in law enforcement?

8 A: Eleven years.

9 Q: And you work for the Williamsburg County Sheriff's
10 Department, is that correct?

11 A: Yes sir.

12 Q: And were you, did you have an occasion to be involved
13 in the investigation of Mr. Baggett, the Defendant?

14 A: Yes sir.

15 Q: And that was in March of 2007?

16 A: Yes sir.

17 Q: Okay, now investigator Whack, what was your role in on
18 the investigative team at this time?

19 A: I assisted with interviews with Mr. Baggett and Mr.
20 Jones.

21 Q: Okay, so you sat in on the interviews of Mr. Baggett?

22 A: Yes sir.

23 Q: And who was that? Who conducted the interviews? Who
24 was the lead?

25 A: Investigator Boston.

1 Q: Okay, and he was the agent in charge on the case?

2 A: Yes sir.

3 Q: May I approach the witness Your Honor?

4 The Court: Yes sir.

5 Q: Let me show you this just in case you need to refresh
6 your recollection. Did you ever have an occasion to
7 Mirandize the Defendant?

8 A: Yes sir.

9 Q: And did you advise him of his rights?

10 A: Yes sir, I did.

11 Q: And what date did you do that?

12 A: March the 9th, 2007.

13 Q: March the 9th?

14 A: Yes sir.

15 Q: And did Mr. Baggett give a statement after that ...

16 A: Yes sir, he did ...

17 Q: ... to either you or investigator Boston?

18 A: Yes sir.

19 Q: And that's the statement that's recorded, that's been
20 offered into evidence as State's 29? Mr. Whack, let
21 me look at that.

22 A: Yes sir, that's it.

23 Q: At any time, did you put any pressure on Mr. Baggett
24 to give a statement?

25 A: No sir.

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1 Q: Did you force him or coerce him in any way?

2 A: No sir.

3 Q: And he spoke to you and Investigator Boston freely and
4 voluntarily?

5 A: Yes sir.

6 Q: And what version of the facts do you remember him
7 giving that night? What did he tell y'all happened?

8 A: If I remember correctly, he said that they were
9 traveling on Clare Road, if I'm not mistaken he said
10 that she was driving the vehicle and she fell out the
11 vehicle.

12 The Court: What number exhibit are you talking about?

13 Mr. Stumbo: Number 29.

14 Court Reporter: It's 21.

15 Mr. Stumbo: Excuse me Your Honor. I mis-spoke, 21A.

16 The Court: 21A?

17 Mr. Stumbo: 21A.

18 The Court: Alright.

19 Q: And investigator Whack, did you find the story that
20 the victim was driving the vehicle and just fell out
21 of the car, was that consistent with the other
22 evidence that had been gathered in this case?

23 A: I didn't, that's the only thing I did with Mr.
24 Baggett, but from, all I did was speak to him and Mr.
25 Jones. As far as the evidence and collection of

1 evidence, no.

2 Q: You're an eleven year veteran of law enforcement
3 though, correct Investigator Whack.

4 A: Yes sir.

5 Q: Have you ever heard a story that when you have a dead
6 body that involves someone falling out of a truck ...

7 A: No sir ...

8 Q: That was driving the truck?

9 A: No sir.

10 Q: And was run, their head was run over?

11 A: No sir.

12 Q: So, did that story, did you find that story
13 believable?

14 A: No sir.

15 Q: No further questions at this time Your Honor.

16 The Court: Mr Floyd?

17 **CROSS EXAMINATION OF MR. WHACK BY MR. FLOYD:**

18 Q: Investigator Whack, you worked patrol for a while too,
19 didn't you?

20 A: Yes sir.

21 Q: Arrested people for DUI didn't you?

22 A: No sir.

23 Q: Never did?

24 A: No sir.

25 Q: Okay, have you ever been involved in a case with a

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1 A: I read it to him as well.

2 Q: And he trusted you to tell him the truth didn't he?

3 A: Yes sir.

4 Q: He co-operated?

5 A: Yes sir.

6 Q: Okay, he didn't demand to go get his glasses or
7 anything, he took you for your word. Isn't that right?

8 A: Yes sir.

9 Q: Okay. Nothing further.

10 The Court: Re-direct?

11 RE-DIRECT EXAMINATION OF MR. WHACK BY MR. STUMBO:

12 Q: Did he exercise his right to remain silent and the
13 right to a lawyer?

14 A: No sir.

15 Q: Not at any time did he say he wanted to stop talking
16 to y'all?

17 A: No sir, he did not.

18 Q: Did you twist his arm behind his back and make him
19 give you that statement?

20 A: No sir.

21 Q: No further questions Your Honor.

22 The Court: Alright, you can step down.

23 Mr. Scott: Your Honor the State calls William Foxworth.

24 I believe he's out in the hall here.

25 The Court: While he's coming, let me see y'all up here

1 real quick.

2 (Sidebar)

3 Clerk: Place your left hand on the Bible. Do you
4 solemnly swear that the testimony and evidence you
5 give this Court and jury will be the truth, the whole
6 truth and nothing but the truth, so help you God?

7 A: Yes ma'am.

8 Clerk: Have a seat.

9 DIRECT EXAMINATION OF MR. FOXWORTH BY MR. SCOTT:

10 Q: Mr. Foxworth, I notice you're in a jumpsuit. Where do
11 you currently live?

12 A: Manning Correctional Institution.

13 Q: Okay so you're an inmate at the Manning Correctional
14 Institute?

15 A: Yes sir.

16 Q: Okay and what charges are you serving time on?

17 A: Third degree burglary.

18 Q: Okay, at some point during your incarceration, have
19 you had occasion to share a cell with Marty Baggett?

20 A: Yes sir.

21 Q: Okay, and did you and he speak about your charges?

22 A: About my charges?

23 Q: Did you speak about your charges?

24 A: No, we never. I just told him what I was locked up for
25 and that was it.

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1 Q: Did he tell you what he was locked up for?

2 A: Yes sir.

3 Q: Okay, did he tell you, what did he tell you happened?

4 A: He just said that he was locked up for murder,
5 kidnaping, said that Tom Garriss, him and Jean riding
6 around and she got killed, run over and killed.

7 Q: Okay, did he explain to you how that happened? Did he
8 tell you the story he remembered happening?

9 A: He said that they had been riding around drinking and
10 they dropped Tom off somewhere, I'm not sure where and
11 that said, that they was on a dirt road, him and her
12 was on a dirt road somewhere, I don't know where at
13 but, said that something about sex come up and she got
14 out the car and started walking and he cranked the
15 truck up and the truck, and he started backing up and
16 run over her. I don't know if it was intentional or
17 accident or not, he didn't say.

18 Q: Okay, was that his original story to you? Did he ever
19 told you about her just falling out of the car?

20 A: Yeah, yeah he did say something about she did to start
21 off with that she was driving and backing up and the
22 door malfunctioned and flew open and she fell out the
23 truck and run over like that to start off with and
24 we'd be sitting around like just in the cell, and he
25 would just start talking about it, you know came out

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1 the blue said it was an accident or he didn't mean it
2 or something like that. And then I told him one day, I
3 said man, you know, if you want to talk about
4 something, you know, just talk and that's when he
5 started telling me about the story.

6 Q: And so his story after that was topic of sex came up,
7 he wanted to have sex with her?

8 A: Yeah.

9 Q: Is that what you said?

10 A: Yes sir.

11 Q: And she didn't want to?

12 A: No sir, they must a didn't.

13 Q: Well, did they fight at any time? Was that his version
14 of the story?

15 A: He said they was fussing at a store. They went to a
16 liquor store or a beer store and they started fussing
17 there to start off with and then after that they went
18 down the dirt road, down the dirt road and said they
19 had been fussing the whole time or something and said
20 that when the topic of sex come up, she got out the
21 truck and started walking behind the truck.

22 Q: And then what happened?

23 A: He cranked the truck up and backed up, I'm not sure if
24 he was just trying to catch her, but he run her over.

25 Q: And where did he run her over?

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- 1 A: What you talking about?
- 2 Q: What part of her body was it?
- 3 A: Her head.
- 4 Q: That's what he told you? Okay, is that common for
- 5 cell mates to share what they're locked up for?
- 6 A: Yeah it is, you know, sometimes people talk about it
- 7 and some people won't.
- 8 Q: Well, you've been locked up before?
- 9 A: Oh yeah.
- 10 Q: Looks like you have a, let's see a prior accessory
- 11 charge and this burglary third and an assault and
- 12 battery?
- 13 A: Yes.
- 14 Q: Okay, so you've been locked up before and it's your
- 15 experience that cell mate's talk, talk about what
- 16 they're in there for, what they did to get locked up.
- 17 A: Sometimes they will, but like I say, some people
- 18 won't. Most people do, you know, I reckon just ---I
- 19 reckon.
- 20 Q: Okay and you came forward after hearing this, and told
- 21 the authorities what he had told you?
- 22 A: Yeah, I mean, that's somebody's sister or mama or
- 23 something. That's, you know, that's not right to kill
- 24 somebody you know.
- 25 Q: Now let me be clear, you didn't go forward and tell

1 them because you were offered anything?

2 A: No, I didn't get nothing. They didn't offer me
3 anything.

4 Q: As you sit there today, you have nothing to gain from
5 this?

6 A: Not one thing. I'm done sentenced.

7 Q: You have been offered no, nothing in return for this
8 testimony? Not by me or the Solicitor's office here,
9 the Sheriff's department or anywhere?

10 A: No sir, nothing.

11 Q: Thank you. Please answer any questions Mr. Floyd may
12 have.

13 CROSS EXAMINATION OF MR. FOXWORTH BY MR. FLOYD:

14 Q: Mr. Foxworth, you said it's not uncommon for cell
15 mates to talk right?

16 A: No, it's not.

17 Q: But it's uncommon for one to snitch isn't it?

18 A: No, not really.

19 Q: I mean life can be pretty tough in prison whenever you
20 snitch on somebody. You get labeled a snitch it's
21 going to be bad news when you in there isn't it?

22 A: I don't really call it a snitch when somebody, when
23 somebody cares.

24 Q: I understand. But let's, about forty five days after
25 you came up with this story, you came to court and

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1 pled to a burglary third and were given probation
2 weren't you?

3 A: Is it uncommon for burglary third to get probation?
4 Is that uncommon?

5 Q: I would say it's uncommon for someone with a felony
6 record like yours, a felony after the fact, burglary
7 third. In fact, you were locked up after that on
8 probation for assault and battery second degree
9 weren't you?

10 A: That's what I'm sentenced for right now.

11 Q: That's right. So, you're not here telling this jury
12 you're some sort of self righteous choir boy now are
13 you?

14 A: I never claimed to be.

15 Q: Okay, I just want to make sure. I mean, isn't it true,
16 come on, you can tell the truth, you're under oath,
17 tell the truth. They offered you a deal and you went
18 in there, made up a story, came out and you're here
19 today to throw Marty Baggett under the bus so you can
20 get probation, but it didn't work out for you did it?

21 A: Well, to tell the truth, nobody offered me a deal and
22 I had probation, but it's, it's, it's cause of my
23 actions. I violated probation. If I, if I, if it could
24 have got me off, I probably wouldn't be in prison
25 right now if they offered me a deal, but they never

1 offered me anything.

2 Q: It did get you off. You got probation didn't you?

3 A: If you, whatever you want to say.

4 Q: Well, I mean, isn't that the ultimate goal of

5 basically anyone inside is to get probation and get

6 outside, isn't that right?

7 A: I reckon anybody that's in jail wants to go home, but

8 that's not the reason I come forward.

9 Q: And you would do desperate things to do that, isn't

10 that right?

11 A: No, I wouldn't.

12 Q: Do you recall, during this interview, investigators

13 questioning you, turning the tape off and then talking

14 to you and then turning it back on?

15 A: Yeah.

16 Q: Yeah and that was so they could tell you, hey you not

17 saying what you need to say. You not going to get the

18 deal that we promising you if you don't get the story

19 straight. Isn't that what they were telling you?

20 A: No sir, nary a time.

21 Q: They didn't tell you that?

22 A: Nary a time.

23 Q: You were finished.

24 A: Cause a deal, a deal had never been brought to the

25 table to start off with.

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1 Q: Okay. Nothing further Your Honor.

2 The Court: Re-direct?

3 RE-DIRECT EXAMINATION OF MR. FOXWORTH BY MR. STUMBO:

4 Q: I just want to be clear, because I've never heard of a
5 deal. There has been no deal offered to you at any
6 point has there?

7 A: No, not nary a point.

8 Q: Have you ever seen me before today?

9 A: First time ever.

10 Q: Have you ever spoken with me?

11 A: No sir.

12 Q: Have you spoke with anyone from the Solicitor's office
13 about a deal?

14 A: No sir.

15 Q: Matter of fact, unless you just showed up wearing that
16 jumpsuit, you're still incarcerated?

17 A: That's right.

18 Q: How much time do you have?

19 A: September 2012.

20 Q: Okay. When did you speak with the Sheriff's department
21 about this?

22 A: First, you talking about when I give the statement?

23 Q: That's correct.

24 A: About the first of April 2010.

25 Q: Okay, over a year ago?

1 A: Oh yeah.

2 Q: And you're still locked up?

3 A: Yes sir.

4 Q: Never been promised anything?

5 A: No sir.

6 Q: Okay, I just wanted to be clear on that.

7 The Court: Anything else?

8 Mr. Floyd: Briefly.

9 RE-CROSS EXAMINATION OF MR. FOXWORTH BY MR. FLOYD:

10 Q: You still locked up now, but on May the 24th, 2010 you
11 got probation and got out? Yeah.

12 A: Because I plead guilty.

13 Q: About forty five days after you gave that statement.
14 Isn't that right?

15 A: When I pled guilty ...

16 Q: I understand and then you violated your probation and
17 now you're back?

18 A: Uh-huh.

19 Q: But you achieved your ultimate goal, you got out
20 didn't you?

21 A: If I achieved my goal, I wouldn't be in here now,
22 would I? There wasn't no, there's wasn't no, there
23 wasn't no deal achieved, no goal to achieve.

24 Q: Nothing further.

25 The Court: Alright, you can step down. Thank you sir.

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1 Mr. Stumbo: Your Honor we ask permission for Mr. Foxworth
2 to be released back to the department of corrections
3 can get out of here.

4 The Court: Okay. Next witness?

5 Mr. Stumbo: Your Honor the State calls Doctor Erin
6 Presnell.

7 Clerk: Do you solemnly swear that the evidence and
8 testimony you give this Court and jury will be the
9 truth, the whole truth and nothing but the truth, so
10 help you God?

11 A: Yes ma'am.

12 DIRECT EXAMINATION OF DR. PRESNELL BY MR. STUMBO:

13 Q: Now Dr. Presnell, before we start, it's my
14 understanding Mr. Floyd's stipulated to your
15 qualifications and education so we're not going to
16 spend a lot of time on that.

17 Mr. Floyd: That's correct Your Honor.

18 The Court: Okay.

19 Q: Thank you Judge, we would just ask, well let me ask a
20 couple of preliminary questions Judge. Dr. Presnell,
21 isn't it true you've been a licensed, board certified
22 forensic pathologist for the State since 1999?

23 A: Yes, I have.

24 Q: And you're currently a forensic pathologist at the
25 Medical University of South Carolina down in

1 Charleston?

2 A: Yes I am.

3 Q: And a forensic pathologist's job is to generally do
4 autopsies on dead bodies correct?

5 A: Yes.

6 Q: And to examine those bodies for issues, such as cause
7 of death and that sort of thing. Is that right?

8 A: Yes, we evaluate, well, just to kind of summarize and
9 everyone is getting familiar with the field of
10 forensic pathology with all the t.v. shows and all,
11 but forensics is actually a subspeciality of the broad
12 field of Pathology is the study of disease and a
13 pathologist which are doctors, they're the ones that
14 look at the tissues that any of your other doctors can
15 proctor so say you get a skin biopsy, pap smear or a
16 breast biopsy or some type of surgery, that tissue
17 goes to the pathologist. They look at it under the
18 microscope, they diagnose, you know is it cancer or
19 not, is it infection or not? So I'm trained as a
20 dental pathologist, but then I went into the sub
21 specialty of forensics and so that is we're not just
22 looking at a piece of tissue or organ or whatnot.
23 We're looking at the whole, entire individual and
24 we're not just looking for disease, which is something
25 that we look for too, but we're also looking at

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1 trauma. Not just ultimately to find the cause and
2 manner of death, but also to interpret that trauma.
3 Like you know, what possibly could have caused that
4 trauma and not just that person has a blunt head
5 trauma and is diseased, but what might be the way that
6 that happened. So, all of that ultimately has gone
7 through the process of autopsy and then come up with
8 the autopsy report and we analyze it that way.

9 Q: And in your career as a pathologist, about how many
10 autopsies have you done?

11 A: I estimate around two thousand.

12 Q: And how many times have you testified in the courts of
13 this State as an expert in the field of forensic
14 pathology?

15 A: Again, an estimate of eighty.

16 Mr. Stumbo: Your Honor based on Dr. Presnell's testimony,
17 no objection from the defense, we would ask the Court
18 recognize Dr. Presnell as an expert in the field of
19 forensic pathology.

20 Mr. Floyd: No objection, no objection.

21 The Court: Alright, ladies and gentlemen let me have
22 your attention for a moment. Typically, the Rules of
23 Evidence allow someone to testify as to what that
24 person saw or heard or smelled or touched. There's an
25 exception in the Rules of Evidence for someone who is

1 qualified by reason of education, training or
2 experience in a particular field. That person that is
3 qualified as an expert in that field, can give
4 testimony, can give opinion. They can give the reasons
5 for those opinions. Now, I may not have mentioned this
6 to you in the beginning, but when a witness testifies,
7 you can believe every word of what a witness says, you
8 can dis-believe every word or you can believe parts
9 and reject the rest. The same goes for an expert; you
10 can give the testimony, give the testimony of this
11 expert the weight that you think it deserves. That
12 will be left entirely up to your judgment. But the
13 witness is qualified as an expert in the field of
14 forensic pathology.

15 Mr. Stumbo: Thank you Your Honor. Dr. Presnell, did you
16 have an occasion to perform an autopsy on the victim
17 in this case, Ms. Jean Turner?

18 A: Yes, I did an autopsy on March 9, 2007.

19 Q: And what was the purpose of that autopsy that day,
20 generally?

21 A: Well, in South Carolina, the coroner will respond.
22 The coroner of that County will respond to the
23 incident and then decided whether or not they would
24 like forensic pathologist to do thee autopsy in this
25 case, Mr. McKnight, the coroner of Williamsburg, would

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1 send Ms. Turner to us and again the ultimate reason is
2 the interpretation of injuries, disease and statute
3 cause of death.

4 Q: Okay and if you could, just give the jury some of your
5 initial observations of when you began to examine Ms.
6 Turner's body.

7 A: Well, I'll just kind of summarize overall. The
8 majority of the trauma was to her head, but we'll
9 start elsewhere. She did have, on her left leg she had
10 a couple of what we call abrasions, which are
11 scratches where the skin is scraped off. So a couple
12 of small abrasions on the left leg. She also had a
13 couple of bruises on the, small bruises on the left
14 hip and the right leg as well. She had a couple of
15 bruises on the left arm and a couple of abrasions, not
16 large, not large abrasions, but scratches on the right
17 arm and shoulder. She had a bruise on her chest and
18 some rib fractures on the right and that was the
19 extent of her injuries on the torso and her
20 extremities. However, on her head, externally, she had
21 extensive abrasions. It's basically, the left side,
22 the whole cheek is abrase it has a kind of a linear
23 direction which suggests to us a road rash type
24 appearance, being like it scraped against something
25 rough and flat like a road, whether it be dirt or not.

1 She had abrasions across the left cheek, she had it
2 across the right cheek and the ear, she had it across
3 her forehead and down across her nose. Now,
4 internally, you could actually kind of palpate the
5 fracture extensive skull fractures. She had fractures
6 of her upper jaw, her cheek bones, her orbital ridges
7 which are the bone above and below your eyes and then
8 internally, I mean, your skull is up here and your
9 brain sits in it. If you take the brain out and look
10 at the base of the skull, she had fractures on both
11 the right and left sides on the front of it, the
12 middle of it and the back. It's pretty extensive skull
13 fractures and the base of the skull is relatively
14 thick too, so again they're pretty bad, pretty high
15 force into it to cause that. Along with that, she had
16 some scalp hemorrhages and some bleeding of the brain
17 and some bleeding the brain. So putting that all that
18 again, with the majority of her injuries concentrated
19 on her head, the cause of death was a lot of head
20 trauma. Now, as for the next step, blunt head trauma
21 to the head due to what? We relied largely on the
22 investigation. We were provided the information of the
23 dirt road and the truck and that there was her blood
24 underneath the truck. With the extent of her injuries,
25 we were, we were pretty comfortable with the autopsy

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1 report that the blunt head trauma was most likely from
2 the vehicle running over Ms. Turner. Now, one other
3 thing we did, I want to mention this, we tried to
4 classify the manner of death. So meaning accident,
5 suicide, homicide or natural? Obviously, it's not a
6 natural death and it wasn't a suicide. That left us
7 the choice between accident and homicide. Well and
8 then there's undetermined and actually we picked
9 undetermined because I couldn't tell at the time
10 whether or not it was an accident or homicide. Just by
11 her background information, traditionally, from motor
12 vehicle crashes, we call most of those accidents. No
13 matter if it's hit or run somebody's on a bicycle,
14 whatever, we call them accidents. Unless we know that
15 somebody or we have information that the driver
16 specifically aimed that car at somebody to run them
17 over. So unless have had intent, known intent to
18 actually strike that person. At that point we would
19 cross over the bar to call it a homicide but this
20 case, at the time we just didn't have the information
21 to know that and so we called, accident versus
22 homicide.

23 Q: And just to follow up that Dr. Presnell, have you ever
24 conducted an autopsy on a case that involved driving
25 under the influence related deaths?

- 1 A: Well, of course with once, well, yes, yes we have. I
2 was thinking, you know, as far as something in being a
3 pedestrian being hit we don't see pedestrians, when
4 person driving the vehicle but certainly plenty of
5 cases where the person driving the vehicle was also
6 the person with high alcohol in blood stream.
- 7 Q: So, what you're telling the jury here is you would not
8 classify an intentional homicide, in other words, a
9 vehicle intentionally running over someone, unless you
10 had evidence from law enforcement that was in fact the
11 case?
- 12 A: Right or the coroner, witnesses or yes the information
13 around of what happened.
- 14 Q: And law enforcement here did not provide you with any
15 information that it was an intentional running down of
16 this victim?
- 17 A: Right, well, at the time of autopsy, I don't think you
18 can give ...
- 19 Q: So when you use the term accident versus homicide, the
20 term accident in the medical community is not
21 necessarily apples to apples with the legal
22 terminology of accident, correct?
- 23 A: Well, you know, when you guys get into medical, legal,
24 excuse me, legal terminology, you start talking over
25 my head, so there goes --- you know there's a lot of

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1 grey areas in the medical world as well. You know, the
2 homicide is defined as the death at the hands of
3 another. So, it's not somebody striking another person
4 with a vehicle, regardless of intent, is that not a
5 homicide? Well, you know, again, the grey area. By
6 tradition, in South Carolina, we classify those as
7 accidents.

8 Q: Even if there may be a criminal case later?

9 A: Right.

10 Q: It's still classified as an accident for the purposes
11 of your autopsy correct?

12 A: Oh yes, yes.

13 Q: Now, you indicated, Dr. Presnell, the victim's cheek
14 was completely abrase and talked about multiple skull
15 fractures and facial fractures. How, how many
16 fractures are we talking about here? How many
17 fractures to her skull and facial?

18 A: Well, okay, so, so for the facial fractures it was, we
19 didn't actually lift the skin from the face, press on
20 the bones and I also don't know exactly, which
21 specifically if it was like four or one or I do know
22 that again, the upper jaw, the cheek bones and the
23 orbital ridges of both eyes were all fractured and
24 then across the base of the skull, they all intersect.
25 I mean it's a complex fracture and they all pretty

1 much join up to each other, so I don't --- I don't
2 know how to enumerate it.

3 Q: In other words, there were many, there were multiple
4 fractures?

5 A: Yes, that all interconnected.

6 Q: Enough to where the bones were soft to the touch?

7 A: Well, the ligaments were, yes.

8 Q: Dr. Presnell, would the injuries to the victim's head,
9 would those be consistent with being run over by a
10 vehicle type?

11 A: Well, yeah, well yes, certainly her injuries are
12 consistent and we believe that she was run over by the
13 vehicle especially by the vehicle in which much of her
14 blood on the underside of the vehicle. Whether it was
15 the tire, it had no distinct tire prints, not tire
16 markings on her, although you don't necessarily need
17 that, it may have been something protruding from
18 underneath the vehicle. Some other type of metal
19 thing.

20 Q: So, you indicated about the blood underneath. You were
21 provided that information during the course of your
22 autopsy here?

23 A: Yes, subsequent to the autopsy.

24 Q: So subsequent to your written report?

25 A: No, prior to my written report. The autopsy ends up

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1 taking about four weeks to finalize because we have to
2 get back toxicology results and any of the tissues
3 that we take to look under the microscope, that takes
4 time to come back and so the whole process takes about
5 four weeks.

6 Q: And in the course of your work in this case, even
7 leading up to trial, have you been provided with other
8 information about who's blood was under that car?

9 A: Well, yes. The blood was confirmed to be Ms. Turner's.

10 Q: Through forensic DNA analysis?

11 A: Yes.

12 Q: And why is that relevant of, in your determination
13 here of whether it was the outside of the truck that
14 crushed her head or the tire actually ran over her
15 head in terms of distinguishing those things? Does the
16 DNA analysis important?

17 A: No, I don't think it's relevant. I'm just saying that
18 I, I can't say that it's the tire and not some other
19 protruding portion of the vehicle underneath it. I
20 can't tell that necessarily from the autopsy.

21 Q: With the injuries to the victim's skull in this case,
22 in to her head, would the vehicle, if it was not the
23 tire that did it, if it were the outside of the front
24 of the truck or the bumper back of the truck, the
25 bumper of the truck that caused the injuries, how

1 fast, just estimation wise, would the truck had to
2 been going to cause those type of injuries to her
3 head? The high rate of speed or?

4 A: If the truck went over her, it doesn't, I mean, I
5 don't think it's an issue of speed. It's you know,
6 it's just a huge amount of weight.

7 Q: If the tire ran over her?

8 A: I guess maybe I'm misunderstanding you, but my
9 impression is the bottom of the undercarriage of the
10 vehicle wasn't just, you know, two foot gap that
11 there's protruding, the oil canister, metal things
12 protruding out and so there's variable space in
13 between the bottom of the vehicle and the ground. So
14 whether it would have been, I'm telling you, I can't
15 tell a difference from autopsy whether it's the actual
16 tire that went over her or whether it was another
17 protruding object under the undercarriage that
18 crushed, smushed, that did the blunt trauma to her
19 head. Either those scenarios are possible.

20 Q: Okay, now where you given any information as to Ms.
21 Turner's blood alcohol level?

22 A: Well, we drew blood at the time of autopsy and her
23 blood alcohol level came back at .387.

24 Q: Okay and in your experience, have you ever encountered
25 those in the hospital that have blood alcohol levels

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1 that high or higher?

2 A: You mean my experience as a forensic pathologist?

3 Q: Or in your entire medical career being in and around
4 hospitals.

5 A: Well, the interpretation that of blood alcohol of
6 .387, that's pretty high. For somebody that's a
7 novices drinker or not tolerant to continuous alcohol
8 use, that can actually be close to a lethal, it can be
9 lethal, however, for chronic alcoholics who use
10 alcohol over a long period of time, that level maybe
11 tolerated. I don't personally have, I haven't had a
12 patient through medical school at all that I know a
13 level that high, but there have certainly been
14 patients in the in the emergency room that have had
15 levels that high. There's been people that chronic
16 alcoholics that are not at levels that high.

17 Q: And in your experience, have you seen experienced or
18 chronic drinkers who have had levels that high and
19 still be conscience and able to function?

20 A: Well, I don't see them conscience and functioning
21 ones. I do see levels that come in and they are
22 deceased for another reason. As far as my practice of
23 forensic pathology.

24 Q: Okay, and was there any, so essentially, more
25 experienced drinkers or chronic alcoholics would be

1 able to function at higher levels of blood alcohol
2 content correct?

3 A: They can. Let's say if the chronic alcoholics at .15,
4 they may not look intoxicated at all. At .387, there
5 was probably signs of noticeable change, but, but as
6 far as tolerating whether it's lethal or not,
7 somebody's that's a chronic alcoholic may be able ...

8 Q: Okay, was there any evidence in this case, based on
9 your examination of Ms. Turner or other information
10 that she had a history of drinking?

11 A: Well, I, we were given the information that they had
12 been drinking prior to the incident and then at
13 autopsy we do have signs of chronic use of alcohol,
14 which liver and someone who uses alcohol over a long
15 period of time it can start changing the liver in to
16 fact that's prior to you actually start getting
17 psoriasis of the liver.

18 Q: And so you did examine her liver?

19 A: I did.

20 Q: In the course of her autopsy?

21 A: Yes.

22 Q: Is it consistent with an individual who had had a
23 drinking problem?

24 A: Well, it's consistent with chronic alcohol abuse.

25 Q: Was there any evidence of a heart attack, a pre mortem

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1 heart attack?

2 A: No.

3 Q: Not any, there was no notation of that in your report,
4 but my question is was there any that you could tell?

5 A: No, if we, if we had found something or anything else,
6 anything we do find we document she had some coronary
7 artery disease, and she had some narrowing of the
8 coronary arteries, and she had a yellow, big liver and
9 she had some psoriasis next to her palm other than the
10 trauma, these are the other findings that we had.

11 Q: Just one last question Dr. Prenell, based on the
12 totality of the circumstances of what you reviewed in
13 your autopsy, do you have an opinion with a reasonable
14 degree of medical certainty as to how Ms. Jean Turner
15 died?

16 A: Well, she died from blunt head trauma. The most likely
17 scenario is being run over by a vehicle, based on the
18 circumstances of this case.

19 Q: Beg the Court's indulgence Your Honor.

20 The Court: Yes sir.

21 Mr. Stumbo: Thank you very much Dr. Presnell. Please answer
22 any questions that Mr. Floyd may have for you.

23 CROSS EXAMINATION OF DR. PRESNELL BY MR. FLOYD:

24 Q: Good afternoon Dr. Presnell. I believe you traveled a
25 long way and probably anxious to get back to your

1 family, so I'm going to try to be as brief with you as
2 possible. It's approaching five o'clock. You just
3 stated the most likely scenario being run over by a
4 vehicle?

5 A: Yes.

6 Q: Let's get into, let's talk a little bit about that.

7 A: In these circumstances.

8 Q: Ma'am?

9 A: With these circumstances that surround the case.

10 Q: With these circumstances and earlier you stated, and I
11 certainly understand that we have family members in
12 the courtroom, but her head was crushed pretty well.
13 Is that correct?

14 A: It, I didn't, it wasn't actually malformed, like
15 flattened, but it did have again the facial fractures
16 and the skull fractures which, again the base of the
17 skull is pretty thick.

18 Q: It was, I mean it was a very, it was a very severe
19 lick or an enormous amount of weight was placed on her
20 skull to get in that condition, wasn't it?

21 A: Yes sir.

22 Q: Okay, now in your autopsy you say probable pedestrian
23 versus truck?

24 A: Yes.

25 Q: Probable pedestrian versus truck right?

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1 A: Yes, yes sir.

2 Q: Okay, pedestrian walking down the street, okay? If she
3 had been run over, let me strike that. The majority of
4 Ms. Turner's injuries were from about here up correct?

5 A: Yes.

6 Q: Okay, if a pedestrian walking down the street, you
7 would expect, and a truck hit her with enough impact
8 to cause that damage, you would expect there to be
9 injuries to the lower half of her body wouldn't you?

10 A: Yes, this is a good point. Now, two things; when I
11 say pedestrian, I don't mean a walking pedestrian. I
12 mean someone outside the vehicle as opposed to being
13 inside another vehicle, either in another vehicle, a
14 pedestrian to me is someone outside the vehicle. If
15 this person was standing upright, if the, if the truck
16 hit with any significant force, I would expect leg
17 injuries or maybe even a little bit higher. We call
18 them bumper fractures where if you got actual
19 fractures it leaves pretty significant contusions
20 where the bumper would strike the individual.
21 Potentially, Ms. Turner was upright and it was a slow
22 moving vehicle, that knocked over and then run over
23 her, that's a possible scenario.

24 Q: Okay, another possible scenario is that her
25 intoxicated state of mind she could have fallen out

1 the door and the tire could have run over her, isn't
2 it?

3 A: If she, yes she could have fallen out the car and then
4 subsequently be run over, yes.

5 Q: or she could have been in a very inebriated state and
6 went to get out the vehicle as it was moving couldn't
7 she?

8 A: Well, another potential scenario, usually somebody
9 falling out of a slow moving vehicle isn't going to
10 sustain as massive amounts of damage. A faster moving
11 vehicle maybe. She, we were pointing out that the
12 injuries were mostly from here up. Usually somebody
13 that's ejected from a vehicle and bounces across the
14 road, has more road rash injuries on other parts of
15 the body. Now, she was wearing clothing, so that could
16 protect the skin somewhat, but she didn't really have
17 any other signs of road rash type injuries except for
18 the face and neck area.

19 Q: So the injuries were basically consistent to a certain
20 degree, with just a tire rolling across her head?

21 A: The tire, or again, like I was trying to maybe, but
22 like I was trying to say earlier, something on your
23 head under pressure.

24 Q: Okay, I noticed a, you know, as a lawyer, you're not
25 supposed to ask a question you don't know the answer

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- 1 to, but I noticed in your examination you found a
2 folded, yellow sock under the area of the urethra.
- 3 A: Yes.
- 4 Q: What was that all about?
- 5 A: Well, sometimes older women that are, have some degree
6 of incontinence, will put, instead of padding, they
7 might put some other type of clothing where they would
8 put a pad to stop any leakage from catching the
9 leakage.
- 10 Q: Okay and isn't one of the things that could cause
11 incontinence gross intoxication?
- 12 A: If they don't go to the bathroom I suppose that they
13 would urinate on themselves.
- 14 Q: Okay, but you would agree with me that that's one of
15 the symptoms?
- 16 A: Well, the alcohol will cause ...
- 17 Q: Go ahead.
- 18 A: The alcohol will cause the, will cause someone to
19 urinate more frequently, because it causes the body to
20 dehydrate and urinate out a lot of your --- yes
21 alcohol will cause you to urinate more frequently
- 22 Q: Okay, and the effects of alcohol are greater in a
23 female person than it would be in a male person, isn't
24 that correct?
- 25 A: It can be, yes.

1 Q: Okay and the reason, the reason for that?

2 A: Well, women are smaller, tend to be smaller and so
3 that might have a bigger effect.

4 Q: Well, isn't the reason that the effect is that the
5 alcohol passes through the throat and into the stomach
6 and then the small intestine and then in the blood
7 stream? Isn't that correct?

8 A: Yes.

9 Q: Okay and, and, and typically women have a tendency to
10 have more body fat and less water in their body, isn't
11 that correct?

12 A: Yes and actually we're going to go down a road that I
13 really haven't read up on recently, so I'm going to
14 have claim beyond what the possible effects could be
15 and not educate on why women are more effected by
16 certain ...

17 Q: Well, you, you will agree because you're educated
18 enough to say that a .387 could be a lethal, toxic,
19 deadly amount of alcohol in a five foot, one hundred
20 and forty pound, hundred fifty pound Caucasian female?

21 A: Yes it could have.

22 Q: Okay, so we don't know, she might not have even died
23 that night from that level, do we?

24 A: Excuse me?

25 Q: We don't know that she would have died later on that

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1 night do we?

2 A: Later on that night? I, I, I couldn't predict that.

3 Q: And you understand the, the legal amount in the state
4 of South Carolina is .08 to drive a motor vehicle?

5 A: Yes it is .08.

6 Q: And Ms. Turner had .387 which is roughly five times
7 the legal amount in her body?

8 A: I was hoping you weren't going to ask me to calculate
9 it, but yes it's a significantly bigger amount.

10 Q: It's a lot greater isn't it?

11 A: Yes it is.

12 Q: Very, very high.

13 A: .387 is very high.

14 Q: Okay and you would expect someone at .387 to be acting
15 irrational?

16 A: Again, it depends on the degree of tolerance, although
17 at .387 regardless I expect that you could tell that
18 she had been drinking.

19 Q: Could they be hallucinogenic?

20 A: Possibly.

21 Q: Could they be riding in a moving vehicle and have to
22 go to the restroom and just step out?

23 A: Yes.

24 Q: I have no further questions Your Honor.

25 RE-DIRECT EXAMINATION OF MS. PRESNELL BY MR. STUMBO:

- 1 Q: Mr. Floyd asked you if, if being drunk could cause
2 someone to have to urinate. I think you agreed that it
3 could cause that. Have you ever examined bodies that
4 had soiled, individuals that had soiled themselves in
5 a traumatic situation pre-death? Could that be a ...
- 6 A: I would estimate about half of the cases that we
7 examine, whether trauma or not, have soiled
8 themselves.
- 9 Q: Now, you also indicated to Mr. Floyd that there was no
10 significant road rash on her body, that you could
11 discern correct?
- 12 A: Right, mostly it's just on her face and head.
- 13 Q: And would you expect an individual who jumped out or
14 fell out of a moving vehicle to have a, some road
15 rash?
- 16 A: Well, again it depends on fact the vehicle is moving.
17 If it's moving relatively slow and she's clothed, you
18 may not actually get any significant findings.
- 19 Q: And if someone just fell out of a moving vehicle,
20 that's moving forward, would it probably result in
21 blood on the back part of the vehicle? Near the back
22 tire?
- 23 A: Well, if somebody falls out of the vehicle, and I
24 don't know what scenario you could come up with, they
25 may sustain some injuries, but again, whether or not,

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1 I'm not sure of the question. I'm not sure when that
2 person ...

3 Q: I'll move on. Let me withdraw that. That one was a
4 little bit confusing and I apologize for that. If, as
5 Mr. Floyd suggested to you just a moment ago, that she
6 needed to use the bathroom, and just jumped out of the
7 vehicle, would you expect that individual to had, to
8 be run over by the tire of the vehicle by doing that,
9 by just jumping out of a moving vehicle? Would that
10 be consistent with being run over by a tire?

11 A: I think that's kind of ... the same question. If she
12 came out of the vehicle, again, depending on how slow
13 the vehicle goes, and did she pull the, if she's
14 driving did the steering wheel get pulled angling the
15 car? I mean it possibly, it possibly could have
16 happened or you know, that's the kind of thing that's
17 really specific circumstance, but there could also be
18 a possibility that she came out of the vehicle however
19 and then subsequently was run over.

20 Q: Is the physical evidence that you've been provided in
21 this case consistent with her falling out of the
22 driver's side of the vehicle?

23 A: It doesn't, the, the injuries on her, again, mostly
24 reflect the scenario of the truck going over her. It
25 doesn't support whether she fell out of the vehicle,

1 on a slow moving vehicle on the right side, on the
2 left side, whether she fell out at all, whether she
3 jumped out, whether she was standing somewhere else.
4 The findings that I have to go on doesn't show one way
5 or the other which scenario that is but I've heard
6 enough.

7 Q: But you were also provided information of the blood
8 that was found on the passenger side of the vehicle,
9 not the driver's side correct?

10 A: Yes, on the undercarriage, yes.

11 Q: No further questions Your Honor.

12 Mr. Floyd: One further question Your Honor.

13 RE-CROSS OF MS. PRESNELL BY MR. FLOYD:

14 Q: One drop of blood that was provided to you it was
15 shown on the passenger side?

16 A: On the undercarriage.

17 Q: One drop?

18 A: I don't know how many drops.

19 Q: You don't know how much?

20 A: No.

21 Q: I don't have any, any further questions.

22 The Court: You can step down. Thank you. Does the
23 State want to conclude for today or do you have
24 another witness?

25 Mr. Scott: We'll do it today Your Honor.

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1 Mr. Floyd: The first one.

2 The Court: Okay. I guess y'all have to find it. I can
3 pull it up on the computer and I'll just leave it up
4 to y'all to get a copy of it. Alright, you printed out
5 a copy of section 2-9 of Judge Anderson's charge.
6 There's the reckless homicide and then there's a star
7 at the bottom, recklessness distinguished from
8 negligence. Are you asking for that whole page?

9 Mr. Floyd: No, stop right there at the top where that star
10 is.

11 The Court: But I, I, I do plan to explain the
12 difference between recklessness and negligence. I
13 would like to. So, can I get a copy of page fifty
14 five?

15 Mr. Floyd: Sure.

16 The Court: Alright. Alright has either side, has the
17 State given any thought to a lesser included on either
18 felony DUI or reckless homicide?

19 Mr. Stumbo: We have Your Honor and I don't believe, in my
20 view, if it is a DUI in this case, then I think the
21 facts are sufficient for felony DUI by virtue of that
22 and I agree with what Your Honor indicated yesterday.
23 I don't believe the jury could come back with, based
24 on the facts that are presented, with just a DUI and
25 it not be a felony DUI.

1 Mr. Floyd: Your Honor I would argue that it could. It could
2 come back to being a DUI and an accident with no
3 recklessness involved.

4 Mr. Stumbo: Your Honor I will submit that felony DUI
5 statute would require recklessness. It would require
6 it, simply requires a violation of duties imposed by
7 law which here reads duty to exercise due care.

8 Mr. Floyd: And they could well come back with ...

9 The Court: Let's, let's just let me hear everybody out
10 fully before, so we don't turn this into a t.v. show.
11 Go ahead.

12 Mr. Stumbo: Yes sir. My point to that would be there is no
13 requirement for recklessness in the DUI statute and
14 that's really why reckless homicide is not lesser
15 included defense to felony DUI. Because the elements
16 are different. All felony DUI, the felony DUI statute,
17 29565-2945, all it requires is the duty imposed by law
18 that you do not observe while driving the vehicle,
19 while under the influence of alcohol and as a result
20 of that, approximate causes ...

21 The Court: Approximate causes

22 Mr. Stumbo: ... that someone die. And I don't believe
23 there's any dispute here of the facts that Ms. Turner
24 approximately was killed by this vehicle. I think
25 that's pretty clear, so if there's anything to dispute

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1 here, I think it's, as Your Honor said yesterday,
2 there's a disposition whether he was driving or not
3 driving based on his statement or if there's dispute
4 of whether he was under the influence of alcohol, but
5 I don't believe the facts are disputed in the sense
6 that Ms. Turner died as a result of being run over by
7 this truck. So, if he is convicted of driving under
8 the influence on Clare Road that night, I believe that
9 it's a felony DUI because Ms. Turner approximately
10 died as a result of that.

11 The Court: Is DUI never a lesser included of felony
12 DUI?

13 Mr. Stumbo: I think it could be Your Honor under the
14 circumstances, for example, if you have facts that
15 say, there's some question of whether the injuries
16 from the accident approximately caused the death of
17 the person.

18 The Court: That's something, yeah.

19 Mr. Stumbo: If they're injured in some other way, they have
20 a heart attack before, before a crash or they go to
21 the hospital and get a staph infection and die as a
22 result of that, it's not approximately causes by the
23 wreck and I envision where there would be
24 circumstances where that would cause to be an issue.

25 The Court: I think it all boils down to whether or not

1 or how the issue of approximate cause is handled,
2 because we've heard versions if you will, I'm just
3 saying A, B, C and D of how this happened. Your version
4 is circumstantially they drove off together blood was
5 on the inner lip of that door frame. All and all so
6 according to you that she was at least struck by
7 something in that vicinity of the car. Based on your
8 theory, I don't know how she was necessarily a
9 passenger just before she fell out, except you argue
10 that, that if she had fallen out of the driver's door,
11 the impact would have occurred right there and blood
12 couldn't have been completely on the other side of the
13 car or the vehicle. Is there any room for this jury
14 to conclude that Mr. Baggett was driving, and was
15 driving under the influence, but that nothing he did,
16 forget about the cause of death, we know the cause was
17 by impact. Nothing that he did was a proximate cause
18 of her death?

19 Mr. Stumbo: I see your point there. I do know we have
20 evidence presented to this jury that Mr. Floyd
21 suggested in his cross examination that she may have
22 voluntarily jumped out of the vehicle. If that is the
23 case, I can see your point there. The causation would
24 not be his driving.

25 The Court: Jumping out of, jumping out of the passenger

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1 side?

2 Mr. Stumbo: Correct.

3 The Court: Wasn't that, wasn't that one of his
4 versions?

5 Mr. Floyd: It is Your Honor and while you're, if I may?

6 The Court: Sure.

7 Mr. Floyd: While you're on that, I would like to add that
8 one other charge to the felony DUI is the State versus
9 Grampus.

10 The Court: The State versus who?

11 Mr. Floyd: Grampus. G-R-A-M-P-U-S. It's 288 SC 395 and I
12 will read to you a quote that says felony DUI is not
13 committed simply by causing the death while operating
14 a vehicle while under the influence of alcohol or
15 drugs. For example, even though under the influence,
16 one would not have committed this offense when
17 otherwise driving within the law, he ran over and
18 killed a pedestrian who suddenly darted immediately
19 into the path of the vehicle or behind a parked
20 vehicle.

21 The Court: In other words, even though he may have been
22 grossly intoxicated and his faculties to drive were
23 impaired, if it was a sudden emergency of that kind,
24 there's a possibility it could just be DUI or nothing
25 is what I'm looking for. Is it felony DUI or nothing

1 or felony DUI or DUI or nothing.

2 Mr. Floyd: I think it's felony DUI, DUI or nothing.

3 The Court: Is that what Grampus says?

4 Mr. Floyd: I think that's what it says Your Honor. If you
5 listen to it, it says, it says felony DUI is not
6 committed simply by causing death while operating a
7 vehicle while under the influence can of alcohol. I
8 think that lends credence to ...

9 The Court: What year is that?

10 Mr. Floyd: That is a 1986 case.

11 The Court: What is the felony DUI statute?

12 Mr. Floyd: Now, I must in all candor to the Court Your
13 Honor, it says after that it was over ruled by State
14 vs. Easte(sp) on a double jeopardy issue, not on that
15 issue

16 The Court: Well that's, that's , what would have happened
17 if somebody in Mr. Baggett's behalf had gone on down
18 to the sheriff's office and paid the DUI ticket? Is it
19 jeopardy or have y'all prosecuted him now for felony
20 DUI. I'm just curious?

21 Mr. Stumbo: I think that would have been problematic
22 provided they would resolve the DUI charge but my
23 understanding was it was dismissed by the prosecutors and I
24 don't think the penalty would attach under those
25 circumstances just as it would not have attached to a

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1 magistrate had thrown the case out at preliminary hearing.

2 The Court: Right.

3 Mr. Stumbo: And I would agree with that.

4 The Court: What's your response to what Grampus says if
5 it says what he says it says? Felony DUI is not
6 causes just by ...

7 Mr. Stumbo: I would say the evidence that's been presented
8 here that Ms. Turner was the one ...

9 The Court: Okay.

10 Mr. Stumbo: Well, pre-exist, Your Honor. I agree with that.
11 I know if, if, if the jury were to believe Mr.
12 Baggett's story ...

13 The Court: Well, one of them.

14 Mr. Stumbo: That's right, one of his versions that she fell
15 out of the vehicle just on her own, because of her
16 intoxication ...

17 The Court: Okay, we'll, but you agree that DUI is
18 appropriate, has it's appropriate place on the verdict
19 form?

20 Mr. Stumbo: Yes sir. I would consider that.

21 The Court: Alright, now Mr. Floyd, that brings up one thing
22 that I'll go ahead and bring up on my own. You are
23 questioning Dr. Presnell yesterday about the condition
24 of her liver and her state of intoxication at the time
25 and you said it could well be that she might not even

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1 The Court: Okay. I don't know what the problem is. I
2 guess ten thirty doesn't mean ten thirty. Alright, is
3 the State ready?

4 Mr. Stumbo: The State is ready Your Honor.

5 The Court: Mr. Floyd?

6 Mr. Floyd: The defense is ready Your Honor.

7 The Court: Okay, you can bring in the jury.

8 (Jury enters Courtroom)

9 The Court: Y'all don't need to stand up or anything,
10 unless you just want to. Alright, we're ready to move
11 forward. The State would call it's next witness.

12 Mr. Stumbo: Thank you Your Honor. The State would call
13 Jasper Humbert to the stand.

14 Clerk: Place your left hand on the Bible and raise your
15 right hand. Right here sir. Do you solemnly swear that
16 the evidence and testimony that you give this Court
17 and jury will be the truth, the whole truth and
18 nothing but the truth, so help you God?

19 A: I do.

20 **DIRECT EXAMINATION OF MR. HUMBERT BY MR. STUMBO:**

21 Q: Good morning Mr. Humbert.

22 A: Good morning.

23 Q: Are from Columbia?

24 A: Yes.

25 Q: And from my understanding in talking to you before,

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1 you have a small business or about to start a small
2 business?

3 A: Soon, very soon.

4 Q: Okay, where were you employed before you went out to
5 start your business?

6 A: I was employed at the South Carolina Law Enforcement
7 Division also known as SLED.

8 Q: Okay, how long were you with SLED?

9 A: Approximately four and a half years.

10 Q: And in your time at SLED, Mr. Humbert, what was your,
11 what was your primary role there at SLED?

12 A: I was a forensic DNA analysis in the DNA department.

13 Q: Did you work in the DNA or the forensic lab the entire
14 time you were at SLED?

15 A: Yes, I did.

16 Q: Could you just give the jury a brief summary of your
17 educational background? Required of SLED.

18 A: I have a Bachelor's of Science degree from Armstrong
19 Atlantic State University in Savannah, Georgia. I have
20 a Master's degree in biological sciences from the
21 University of Iowa. I have three years in a genetics
22 PHD program in Penn State Medical College.

23 Q: And could you tell the jury about any certifications
24 you may have, or licenses you may have gone through to
25 become a forensic DNA analyst at SLED?

1 A: Sure, at SLED I trained under a qualified DNA analyst
2 where I tested hundreds of samples and did probably
3 forty or fifty cases under her direction. Once I did
4 that, I did training samples and proficiency, where I
5 was then certified to do my own cases. Once that
6 occurred, I probably did three hundred or more cases
7 in my time as a DNA analyst at SLED.

8 Q: So you were certified to conduct those tests and to
9 come into court and testify about those results?

10 A: Yes I was.

11 Q: And as far as analyzing blood samples, are you
12 qualified to, based upon your training and your
13 experience, to analyze whether an item, a fluid is
14 blood or not blood?

15 A: We were trained in, basically it's called serology
16 where you test body fluids and I was, I did
17 proficiency tests every year to make sure that I was
18 able to do that and I was training and testing.

19 Q: Have you done both a serology test and DNA analysis
20 tests during your time at SLED?

21 A: Yes I have.

22 Q: How many? Just approximate.

23 A: Probably hundreds to thousands.

24 Q: Over a thousand?

25 A: Oh yes sir.

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1 Q: Have you ever been qualified as an expert in the
2 court's of this state in the field of serology and
3 forensic DNA analysis?

4 A: Yes I have.

5 Q: About how many times?

6 A: Approximately fifteen times.

7 Q: How many times just this year?

8 A: Four times this year.

9 Q: Your Honor at this time, the State would offer Mr.
10 Humbert as an expert in the fields of serology and
11 forensic DNA analysis.

12 The Court: Any questions to the witness?

13 Mr. Floyd: No questions Your Honor.

14 The Court: Any objections to him qualifying?

15 Mr. Floyd: What was it, DNA analysis and what?

16 Mr. Stumbo: Serology.

17 The Court: DNA analysis and serology.

18 Mr. Floyd: No objection.

19 The Court: Alright, ladies and gentlemen, this witness is
20 qualified as an expert in the field of serology and in
21 the field of forensic DNA analysis. As I instructed
22 you yesterday, you are to give the testimony of this
23 witness the weight you think it deserves and I will
24 instruct you further in that regard later.

25 Q: Okay, Mr. Humbert, when you're given a sample of

1 what's alleged to be blood, what kind of test, you
2 said you do a serology test on it. Explain to the jury
3 what a serology test involves.

4 A: Basically the test for blood that's known at SLED,
5 it's a chemical test. You basically swab what you
6 think is blood. You cut a section of it and expose it
7 into a heme. If blood reacts very, very quickly with
8 a chemical called Phenosaline and it turns a bright
9 pink color, which is very visible to someone who's
10 doing serology testing, and if it turns that color,
11 DNA analyst or serologist will say blood is indicated
12 because it gave a strong indication of blood.

13 Q: And then after you do the serology test and confirmed
14 that it is indeed blood, can you explain to the jury
15 in general terms how you do a DNA analysis on those
16 samples?

17 A: Sure. After basically, determining that there's
18 possible blood there, potential blood, then DNA is
19 extracted from the blood or potential blood. Once that
20 is done, the DNA analyst basically goes through a
21 series of steps where he develops a DNA profile from
22 that amount and a DNA profile is basically a series of
23 numbers that the DNS analyst gets by testing an item.
24 Whether it be an evidence item or a standard from a
25 person.

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1 Q: So, what are, can you give DNA numbers from blood?

2 A: What's that?

3 Q: You can get DNA profiles from blood?

4 A: Yes.

5 Q: You can get DNA profiles from other human material?

6 A: Basically, almost all human cells, you can get DNA
7 from. Whether it be saliva or occasionally, DNA from
8 someone's skin or any number of body fluids.

9 Q: Hairs?

10 A: The roots of hairs you can definitely get DNA from and
11 the shaft as well.

12 Q: Now, in, did you have occasion to analyze blood
13 samples related to the case we're here for today
14 against Mr. Marty Baggett?

15 A: Yes I was.

16 Q: Okay and what tests did you perform on the samples
17 that you received in this case?

18 A: Basically, I did the test that I outlined earlier. The
19 test for blood, the chemical test for blood.

20 Q: Okay and that's the serology test, the serology
21 analysis.

22 A: I did them

23 Q: Okay and after that, did you, did you do a DNA
24 comparison on the items that were able to be
25 identified?

1 A: Yes I did.

2 Q: Okay. I'm going to, if I may approach the witness Your
3 Honor?

4 The Court: Yes.

5 Q: Hand you up what's already in evidence as State's
6 exhibit 26 and State's exhibit 27. If you could take a
7 look at those and when you're done let me know. Do you
8 recognize State's 26 and State's 27?

9 A: I do.

10 Q: And have you ever handled these two pieces of evidence
11 before?

12 A: Yes I did.

13 Q: If you could, what's been marked as State's 26, could
14 you explain to they jury what that is?

15 A: This is a blood standard from Jean Turner.

16 Q: Was that given a number when it came into SLED?

17 A: Yes, it was given SLED item number 8, which is, I have
18 on my report, is also on the item.

19 Q: Now, when items of evidence come into SLED, let me
20 back up a little bit here, who are they typically
21 brought by?

22 A: They're typically brought by the agency that's
23 submitting the case.

24 Q: Okay and what agency submitted this evidence for your
25 review?

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1 A: It's noted the Williamsburg County Sheriff's
2 Department.

3 Q: And when it comes into SLED, does it come straight to
4 you or does it pass through other people?

5 A: It goes through quite a number of people before it
6 would get to me. There's an intake area where they log
7 all the evidence in and then it goes through other
8 people to get up to me later.

9 Q: Okay. Now, how does SLED maintain the records of which
10 items of evidence, how do they maintain the record,
11 let me withdraw that and re-ask the question.

12 A: Basically ...

13 Q: How does SLED record who has the evidence in their
14 possession?

15 A: Basically, all the people who handle evidence at SLED,
16 they have bar codes that basically go with the person.
17 So, whenever I would get evidence, I would scan the
18 item and then I would scan my bar code to put it into
19 my custody, so there's a trail of who has it at any
20 given time.

21 Q: So, that any one piece of evidence that comes in the
22 door, it's given a bar code, a sticker is put on the
23 evidence. Is that correct?

24 A: Yes it is and if you look at the item you can see the
25 series of dashes, that's the bar code that is

1 basically given to an item.

2 Q: Whenever someone even takes a piece of evidence to
3 point A to point B, they would scan that in to, to
4 document that they had it in their possession correct?

5 A: That is correct.

6 Q: And that's called chain of custody?

7 A: Yes.

8 Q: Now, if you could, permission to approach the witness
9 Your Honor? Does that refresh your recollection? Can
10 you tell us on State's 26 and State's 27 who handled
11 those pieces of evidence before they came to you there
12 at SLED?

13 A: Item 26 was handled by several people at SLED before
14 it got to me. Rhonda Williams who is one of the intake
15 person, Nicky Hughes is also another intake person,
16 Sheri Brown who is a technician in the DNA department
17 who would carry items up to the DNA analyst. It was
18 also given to Robin Taylor, who poured this blood,
19 which has her initials on it and then I later got it
20 to work the case.

21 Q: Okay, now, all of those individuals worked at SLED at
22 the time you were there, correct?

23 A: They did at the time I was there, yes.

24 Q: Most of them are still there correct?

25 A: Most of them, yes.

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1 Q: Now, as the analyst, if you're given a sample,
2 typically, would you be the first one to handle, to
3 unseal the package?

4 A: Typically, yes.

5 Q: Okay and in this case, were you, did you unseal the
6 packages as they came from the originating agency?

7 A: Well, this was originally poured by one of the other
8 DNA analyst, which is revealed in the chain, but I got
9 it after them and it has their initials and date of
10 when they poured it. So, there was no reason for me to
11 have any suspicion about the item.

12 Q: And that was Lt. Taylor?

13 A: Yeah.

14 Q: She was your supervisor?

15 A: Supervisor, yes.

16 Q: She supervised the DNA unit?

17 A: Yes she is.

18 Q: Now at the time it was in custody of SLED to your
19 knowledge, were these samples altered or manipulated
20 or changed in any way at all?

21 A: So, no. I didn't see any reason to indicate ...

22 Q: If there was any evidence ...

23 A: ... that happened.

24 Q: ... or if there was any indication that it had been
25 altered or manipulated, would you have done testing on

1 it?

2 A: No, I wouldn't have.

3 Q: And why is that?

4 A: Because it is important that the item is intact when I
5 get it and that nothings been done to it or
6 manipulated.

7 Q: And that's to maintain the integrity of the evidence.
8 Is that right?

9 A: That's correct.

10 Q: Alright now, you indicated before that State's 26 was
11 given SLED number 8 and that's a blood standard from
12 Jean Turner. That's the in the yellow envelope there,
13 correct?

14 A: That's correct.

15 Q: Alright State's 27, which is in the white box, what,
16 was that given a SLED number?

17 A: Yes it was.

18 Q: And what's the number on that?

19 A: It was given item 31.5 and I gave it that number and
20 here's basically my initials, the item number and the
21 case number.

22 Q: Okay now, after you did the serology test on those
23 items, was blood indicated on both of these items?

24 A: Well, the blood standard I didn't do serology on,
25 because there really is no point. I know it's a blood

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1 standard from someone else, so there was no point.

2 Q: That was identified as it came in the door as a blood
3 sample from a person.

4 A: Yeah of a standard from a person, yeah, from a person.
5 From Jean Turner. And item 31.5, swab and it was
6 labeled passenger door, under door opening and I
7 tested it for blood and it came back as a positive.
8 The blood was indicated and then I did DNA analysis on
9 it.

10 Q: When you did, did you have other swabs where blood was
11 indicated the serology test?

12 A: Yes, I had several.

13 Q: Okay, how many swabs, if you could, describe how those
14 swabs were labeled when they came to you, where
15 positive for blood.

16 A: There were several items. Item 27 that I received was
17 a paper-bag with stains; blood was indicated. Item 28
18 was generically labeled swab. A cup with stains, which
19 was item number 29, item 31.1 which was a swab labeled
20 passenger door floor panel, under door opening tested
21 positive for blood. Item 31.2 swab labeled panel under
22 door opening passenger side. 31.3 swab labeled
23 passenger side under door opening. 31.4 swab labeled
24 passenger panel under door opening and 31.5 which we
25 already mentioned, 31.6 which is swab labeled

1 passenger side under door opening. Those gave a
2 positive test for blood when I did serology testing.

3 Q: So, Mr. Humbert, if my math's correct, there would be
4 six swabs that came to you that were labeled as swabs
5 from under the passenger side door that came back
6 positive for blood?

7 A: That's correct. 31.1 thru 31.6 gave a positive test
8 for blood.

9 Q: And they were all separate swabs for what were labeled
10 for different spots?

11 A: Yes, that's correct and here's how I, why I said they
12 were labeled something. I read what was written on the
13 side of the swab, indicating that.

14 Q: I'm sorry for talking over you. And that's provided by
15 the originating agency, which in this case was
16 Williamsburg county?

17 A: That is correct.

18 Q: Okay now, did you ultimately test new DNA analysis for
19 a comparative test on these items?

20 A: Yes I did.

21 Q: Okay. May I approach the witness Your Honor? I'm going
22 to show you what's been put into evidence as State's
23 exhibit 24. Can you see that?

24 A: Yes I can.

25 Q: Okay, now can you explain to the jury just briefly

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1 what these columns represent?

2 The Court: Let me see it.

3 A: Basically, the columns represent a different place on
4 the DNA that I tested and I get a series of numbers
5 based on where I test, so at that one location which
6 is named based on where it's located on the person's
7 DNA, I got Jean Turner front left 1314.

8 Q: Are we talking about this box here?

9 A: That box right there.

10 Q: Okay.

11 A: And that's why I said again a profile, a series of
12 numbers. You see that I got those two numbers at that
13 location when I got her DNA profile.

14 Q: And what are those numbers relate to places on the DNA
15 ...

16 A: Yeah, they relate to a number ...

17 Q: Go ahead.

18 A: The numbers are a number of repeated regions in DNA
19 and the top part is the location on the DNA, so Jean
20 Turner had a 13 repeat and a 14 repeat and the reason
21 for that is that we have two of each chromosome. We
22 get half from her mom and half from her dad or half
23 from mom, half from dad, sorry. And Jean Turner would
24 have gotten 13 from her mom or her dad and 14 from her
25 mom or dad and that's where this DNA profile comes

1 from. If they have one number and they got the same
2 number from mom and dad. So that's why you see the
3 30? It's because she got a 30 at that location from
4 her mom and her dad. So that's why there's one number.
5 And basically, this is from her standard and I used
6 that DNA profile given from her standard to compare to
7 evidence items. So, like if you look down at number
8 28, right there, where I hit a match, I put a match in
9 my report. You can look and see that the numbers are
10 identical, so Jean Turner 1314, number 28, 1314, if
11 you go down, all the way down this profile, which is
12 15 different locations on the DNA, you'll see that
13 they match every single location. And you'll also see
14 that there's a sex, this determines the sex
15 chromosome. Females are XX, that's why you see an X
16 and males are BY, so she's an X. There's the X.

17 Q: For example, you have 24 here that you analyzed noted
18 and put in baggies.

19 A: Yes.

20 Q: And that was a sample that was submitted that was
21 labeled from the Defendant correct?

22 A: Yes, that's his standard and he's BY, so you can tell
23 that's the male.

24 Q: So, you were ready to develop a profile for both Jean
25 Turner and Marty Baggett, correct?

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1 A: That is correct and also, an item, there are two items
2 that I did a match statement to item 8. 31.5 I also
3 did a match. You'll see that her DNA profile is
4 present in this DNA profile at every location and
5 that's how I do a match.

6 Q: Alright, so this 31.5 reflects these numbers down here
7 which are a perfect match to item 8, which is Jean
8 Turner? Those are the two items that are sitting in
9 front of you right now?

10 A: That is correct.

11 Q: And that would be State's 26 and State's 27?

12 A: That is correct.

13 Q: And so, State's 26 is Ms. Turner's blood correct?

14 A: That is correct.

15 Q: And it was a perfect match on the DNA to her ...

16 A: Yes, her DNA profile was present at every location,
17 they matched.

18 Q: Ok. And it was also present in another swab that was
19 submitted, item number ...

20 A: Yes, item 28.

21 Q: Now these other ones 31.1, .2, .3, .4 and .6 there's a
22 lot of blanks here. What does that mean?

23 A: Anywhere that there's a blank means that I didn't get
24 enough DNA to amplify. So, when I tried to amplify, I
25 didn't anything back. That's why you see dashes. Some

1 of them have more dashes than others and if there's
2 too many I'll say it's insufficient, but some of them
3 have a large number of the numbers present and very
4 few dashes and I can say that that's consistent with a
5 match.

6 Q: So 31.6, even though you have, you are telling me you
7 have nine of the fifteen sectors matching, you would
8 say that's it's not sufficient for the DNA match
9 correct?

10 A: Well, I could say, well, I can say that it also
11 matches with that number.

12 Q: It's a partial?

13 A: It's a partial, because all the nine locations, all
14 matched her. The ones that are the dashes, there's no
15 result there. So I can't match them.

16 Q: And there's no question that the 31.5 matched Jean
17 Turner and not, the sample, and not Marty Baggett's
18 sample?

19 A: That is correct.

20 Q: Now, a lot of times, I've heard from DNA analysis, you
21 guys like to talk about probabilities. Would you tell
22 this jury, Mr. Humbert, how likely it is that 31, the
23 blood sample in 31.5 is not Jean Turner's blood?

24 A: I can tell you the probability of a random person
25 matching that DNA profile. The DNA profile developed

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1 from items of 28 and 31.5, both of them match, matched
2 the DNA profile of Jean Turner. The probability of a
3 randomly selecting an unrelated individual having a
4 DNA profile matching these items is approximately one
5 in thirty eight quadrillion.

6 Q: One in thirty eight quadrillion. How many zeros is
7 that?

8 A: That's approximately fifteen zeros.

9 Q: Fifteen zeros behind the thirty eight?

10 A: Behind the, just, if you do the three, there would be
11 fifteen numbers after that the three or the thirty
12 eight.

13 Q: It's about how many, how much larger is that number
14 than the population of the entire Earth?

15 A: Well, there's approximately six billion people on
16 Earth, so that would be approximately six million
17 times more than that. So six more zeros.

18 Q: It's safe to say it's virtually impossible for it to
19 be someone else's blood other than Ms. Turner?

20 A: It's extremely, extremely, extremely unlikely, based
21 on the probabilities that was given.

22 Q: And that blood sample was labeled as passenger door,
23 under door opening on 31.5 correct?

24 A: That is correct.

25 Q: That matched Ms. Turner's blood?

1 A: That is correct.

2 Q: No further questions of this witness Your Honor.

3 The Court: Mr. Floyd.

4 CROSS EXAMINATION OF MR. HUMBERT BY MR. FLOYD:

5 Q: Mr. Humbert, good morning.

6 A: Good morning.

7 Q: I want to ask you a couple of questions in
8 Williamsburg county terms if I may? Didn't you just
9 testify you found six spots of blood and one of them
10 belonged to Ms. Turner?

11 A: I testified that the DNA profile developed from item
12 31.5 was a positive test for blood was a match. The
13 DNA profile that matched Jean Turner.

14 Q: Right, you had six, but you found six spots of blood,
15 tested positive for blood?

16 A: They tested positive for blood.

17 Q: One of them tested positive for Ms. Turner?

18 A: I didn't get enough of a DNA profile from the other
19 ones to make a conclusion on several of them.

20 Q: Well.

21 A: The one I got from 31.6, which was swab labeled
22 passenger side door under opening. That was the one
23 shown at the bottom as a partial, that was a partial.
24 The other four were insufficient for interpretation,
25 because I didn't get enough DNA from them to make a

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1 match statement.

2 Q: Do you, do you know if that's because they were
3 contaminated or do you have an opinion on that?

4 A: My opinion is there probably just wasn't enough sample
5 there. If you thought something was contaminated, you
6 would expect to see more DNA or more of another DNA
7 profile there. It just, I didn't get enough DNA from
8 it to make it conclude.

9 Q: And you also took a DNA sample off the front bumper
10 truck that came back inconclusive didn't it?

11 A: I didn't take any samples. The one I tested, which
12 sample is it.

13 Q: There is no blood off the front bumper.

14 A: 31.7, which is swab labeled front side bumper under
15 headlight. I got no blood indicated.

16 Q: Got no blood off the front. None, correct?

17 A: Off of that swab that was labeled that, I got a
18 negative test for blood.

19 Q: Okay, so out of all this, we got one drop of blood
20 that we can positively identify under this truck and
21 it belongs to Ms. Jean Turner. Is that what you're
22 saying?

23 A: I had two swabs from that 31.5 and 31.6, which was a
24 partial, both of those matched her.

25 Q: 31.6 was a partial match correct?

- 1 A: That's correct.
- 2 Q: So we only have one positive match?
- 3 A: We have only one a hundred percent match ...
- 4 Q: Interesting.
- 5 A: ... at those all fifty locations. Those other nine
- 6 locations, they also matched, but there were six
- 7 locations where I got no DNA result.
- 8 Q: And you did some other DNA testing as well, didn't
- 9 you? You checked under, they sent you some
- 10 fingernails that belonged to Ms. Turner?
- 11 A: That is correct.
- 12 Q: And what did you find?
- 13 A: No DNA profile for Jean Turner was obtained from items
- 14 11.1, 11.2, which were fingernail scrapings.
- 15 Q: You didn't find any of Mr. Baggett's skin up under her
- 16 nails is what you're saying?
- 17 A: The only thing I got was her DNA.
- 18 Q: Okay. And you also did a rectal swab and a vaginal
- 19 swab.
- 20 A: I did serology on those, yes.
- 21 Q: Well, I'm reading from the report. It says rectal
- 22 swabs from Jean Turner. I mean, I'm not, you know,
- 23 padding ...
- 24 A: I did serology on them and I didn't get any, no semen
- 25 identified on any of those. The rectal, vaginal or

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1 oral swabs from Jean Turner.

2 Q: You also tested, I think they sent you a hammer to be
3 tested for some, DNA for some blood or something. Did
4 you get anything on it?

5 A: Could you tell me which item number?

6 Q: 30.1.

7 A: No blood was indicated from the hammer.

8 Q: Court's indulgence Your Honor.

9 The Court: Alright.

10 Q: You also got some, I'm not sure what this is about,
11 some known head hairs from Jean Turner. It says no
12 analysis performed, what's that about?

13 A: Those are hairs from her own head. So, really I
14 expected them to match her, but they just pulled them
15 from her own scalp.

16 Q: But it says no analysis performed. I guess my question
17 is why would they pull head hair and send it to you
18 and then not be an analysis done?

19 A: Because when they do the rape kit, they have a series
20 of things they take and head hairs is one of the
21 things that are listed.

22 Q: Oh, so you were investigating a rape? You were
23 looking to see if she was raped, and when you found
24 out your oral and your vaginal and your anal swabs
25 came back negative, you just didn't go any further.

1 Ain't that about right?

2 A: I usually don't do head hairs regardless, but yeah,
3 whenever I get a rape kit is performed, I typically
4 test it to see if I find any semen on them and there
5 was one taken, that's why I looked at the items.

6 Q: I don't have any further questions Your Honor.

7 The Court: Re-direct?

8 Mr. Stumbo: Just a couple Your Honor.

9 RE-DIRECT EXAMINATION OF MR. HUMBERT BY MR. STUMBO:

10 Q: Mr. Humbert, Mr. Floyd indicated that only one
11 matched, but in fact you had one complete match and
12 one that was enough to say it was a partial match
13 correct?

14 A: That's correct.

15 Q: Now the other ones, the other four that were labeled,
16 or I guess the other five, one of four that were under
17 the truck front passenger side that indicated blood.
18 Is it common that you not have enough of a sample to
19 get, to develop a DNA profile?

20 A: That's correct.

21 Q: So, it's not guaranteed just because you find blood,
22 that you're going to find a complete DNA profile,
23 correct?

24 A: That's correct.

25 Q: And that could just be from the amount of material

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1 that's on the swab? Is that right?

2 A: I really have no idea why it might not. You know, it
3 could be the amount of the material, I don't know if
4 there's chemical on it that degraded DNA. I don't
5 know. Why it would not, it could be any number of
6 reasons.

7 Q: There also is a question about fingernails which you
8 analyzed here and the DNA that you obtained from
9 fingernails were Ms. Turner's DNA correct?

10 A: That's correct.

11 Q: They were her fingernails right?

12 A: That's correct. That's why I didn't do a statistic or
13 a match on it, because it's not unusual to have your
14 DNA on your fingernails, so it really doesn't tell you
15 anything.

16 Q: Now, is there any one hundred percent guarantee that
17 if a persons's fingernails had contact with another
18 person, that it's going to leave enough material for a
19 DNA reading?

20 A: I wouldn't know. You, it's possible that if you didn't
21 scratch deep enough or get, you know, because the
22 outside of your skin doesn't have that much DNA on it.
23 If they scratched and got blood or something deeper
24 maybe, but if someone scratches someone or doesn't
25 scratch deeply, it's not guaranteed to get anything

1 and all if you do fingernail scrapings and all that I
2 get back is your own DNA, it doesn't really say much.
3 You know?

4 Q: In other words, if I were to scratch Mr. Scott's hand
5 with my fingernails and tomorrow someone clipped them
6 and brought them in to you. Would there be any
7 guarantee that there'd be some of Mr. Scott's DNA on
8 my fingernails.

9 A: There would be no guarantee.

10 Q: No further questions.

11 The Court: Alright anything else?

12 Mr. Floyd: No Your Honor.

13 The Court: You can step down. State's next witness?

14 Mr. Stumbo: The State rests.

15 The Court: Alright, ladies and gentlemen, the rules that we
16 operate under require me to take a recess at this
17 time, so I'm going to send you to your jury room. You
18 are not permitted to discuss the case at all. We'll
19 begin shortly and again do not discuss the case. When
20 the Bailiff comes to the door to ask you to come back
21 out and you're not ready, if everybody's not ready,
22 you just let him know Alright? or let her know
23 alright? Thank you.

24 (Jury leaves courtroom for break)

25 Mr. Floyd: Your Honor, at this time we would make a motion

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1 of directed verdict in regards to the felony DUI-DUI.
2 I would respectfully move for a directed verdict under
3 Rule 19 of the South Carolina Rules of Criminal
4 Procedure. I would move for a directed verdict
5 pursuant to applicable case law, specifically Section
6 56-5-2950, 56-5-2946, which are the implied consent,
7 testing for alcohol and drug procedures and a
8 submission to testing for alcohol or drugs. I would
9 refer to the case of the town of Mount Pleasant versus
10 Roberts and the City of Rockhill versus Suchenski and
11 argue the State has not met its burden of proof, Your
12 Honor. In this case the officer has arrested the
13 Defendant for DUI on March the 8th, 2007. Code Section
14 56-5-2950 clearly states that he must, it does not say
15 he may, it says he must ...

16 The Court: Who's he?

17 Mr. Floyd: The Defendant. The Defendant must be
18 administered at the direction of the law enforcement
19 officer who has arrested a person for driving a motor
20 vehicle while under the influence ...

21 The Court: You've got to read slow.

22 Mr. Floyd: I'm sorry Your Honor.

23 The Court: I need to hear it.

24 Mr. Floyd: I'm sorry.

25 The Court: Alright, let me read 29 ...

1 Mr. Floyd: 56-5-2950.

2 The Court: Alright.

3 Mr. Floyd: This is when someone's been arrested for DUI.

4 The Court: Okay, read slowly.

5 Mr. Floyd: It says that he must be administered at the
6 direction of a law enforcement officer who has
7 arrested a person for driving a motor vehicle in this
8 state, while under the influence of alcohol, drugs or
9 a combination of alcohol and drugs at the direction of
10 the arresting officer, the person first must be
11 offered a breath test to determine the person's
12 alcohol concentration. It goes on to give an
13 alternative, it says if the person is physically
14 unable to provide an acceptable breath sample, which
15 was not the case here, because he has an injured
16 mouth, is un-conscience or dead, which is not the case
17 here, or for any reason considered acceptable by a
18 licensed, medical personnel, which we have no evidence
19 of, the arresting officer may request a blood sample
20 to be taken.

21 The Court: Are you reading under A?

22 Mr. Floyd: Yes sir.

23 The Court: Alright.

24 Mr. Floyd: I have it highlighted if you'd like to look at
25 it.

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1 The Court: No, that's ok.

2 Mr. Floyd: So, in other words, it says he must be offered a
3 breath sample, unless one of a couple of things has
4 occurred; he's physically unable, which we don't have;
5 his mouth is injured, he's un-conscience or dead or a
6 licensed medical professional says why he can't do it
7 okay? Now, furthermore it states, it must be taken in
8 two hours.

9 The Court: Where does it say that?

10 Mr. Floyd: Further down Your Honor. If I may? Three hours.
11 Taken two hours. I'm sorry. Breath sample taken for
12 test must be collected within two hours of arrest. Any
13 additional tests to collect other samples administered
14 by a person trained and certified in South Carolina
15 within three hours.

16 The Court: Any additional attempts to collect other
17 samples must be collected within three hours of the
18 arrest.

19 Mr. Floyd: Right, that's what it says.

20 The Court: Okay, so you're saying you're entitled to
21 directed verdict because they didn't do the breath
22 test?

23 Mr. Floyd: They didn't offer him a breath test.

24 The Court: Alright.

25 Mr. Floyd: That's correct and I'm going to get into it a

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1 little further, but on felony DUI, as you well know, a
2 crucial element of felony DUI is the DUI itself and
3 before the DUI you have to be offered a breath test.

4 The Court: 2946, I think 2945 will incorporate 2950, I
5 believe, at least the requirements.

6 Mr. Floyd: 2946. 2946 Your Honor, I think differentiates
7 that you can give breath, blood or urine, not just the
8 breath. I think the first, the former states you must
9 ...

10 The Court: No, 2946 says the provisions of 2950
11 relating to the administration of tests also extended
12 the officer. Let me, hold on just a second.
13 Provisions of 2950 are applicable to this section is
14 what it says.

15 Mr. Floyd: Your Honor I think it was established in the
16 case in chief he was never offered any tests and he
17 was carried to two facilities where there were Data
18 masters available.

19 The Court: Well, one of them broke, the county jail was
20 broke. Anyway, he said he didn't even know if they had
21 one. You said you knew there was, but you're not a
22 witness.

23 Mr. Floyd: Well, he said it was broken, but I think they
24 would be required to provide and affidavit of that
25 effect.

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1 The Court: Alright.

2 Mr. Floyd: That hasn't been done as well. Your Honor in
3 Roberts case, the Defendant was arrested for DUI and
4 transported with no road signs reporting a traffic
5 stop complete a sobriety test when arrested. In other
6 words, Section 56-5-2953, says you have to report a
7 roadside arrest. You have to have a recording done.
8 It wasn't done. The counsel sent discovery in,
9 discovery was responded to and the State relied upon
10 sub-section G that says once law enforcement vehicle
11 is equipped with video tape device they can do it.
12 Roberts argued they had more DUI arrests and less
13 cameras claiming they willfully aborted compliance by
14 not installing the cameras. He judge ruled there is no
15 requirement in the town of, this is municipal court
16 Judge, in the town of Mount Pleasant to obtain any
17 video cameras and the statute only provides what the
18 town must do once they get video cameras on board.
19 The circuit court reversed dismissed the charge.

20 The Court: What page?

21 Mr. Floyd: If you turn to page 117 Your Honor.

22 The Court: Okay.

23 Mr. Floyd: Alright.

24 The Court: Of the copy you just handed me?

25 Mr. Floyd: Sir?

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1 The Court: Of the copy you just handed me?

2 Mr. Floyd: The copy I just handed you Your Honor.

3 The Court: Alright.

4 Mr. Floyd: If you look just, right here, first
5 paragraph.

6 The Court: When a statute penal in nature it must be
7 strictly construed against the State.

8 Mr. Floyd: Relying on State versus Black. Clearly, in this
9 case we have a statute that's penal in nature. There's
10 no question about that. The Court further ruled, or
11 further reasoned, Court's indulgence Your Honor. Okay,
12 on 121, bottom paragraph. Our appellant courts have
13 strictly construed Section 56-5-2953 and found that
14 law enforcement agencies failure to comply with these
15 provision is fatal to the prosecution of a DUI.

16 The Court: Well, is 2953 at play in this case?

17 Mr. Floyd: Pardon?

18 The Court: Is 2953 in play in this case?

19 Mr. Floyd: I would argue two fold. One, yes because it
20 hasn't presented any evidence of a video and I'd ...

21 The Court: So you're talking about video now?

22 Mr. Floyd: I'm talking about both. Requesting a video that
23 was never provided okay? Two, if you look at 2956,
24 2950, the same language, it's the same intent of the
25 legislature that says you must do these things. It's

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1 telling law enforcement what you have to do in a DUI
2 arrest. You have to give them a breath test, you have
3 to video them, you have to Mirandize them. There's a
4 whole laundry list of things that must be done and
5 that portion of the case is saying if you don't do it,
6 failure to comply is fatal. That's the Court's reason
7 and they're following the logic that they've been
8 following. This case is only about a week old, this
9 was July the 11th of 2011.

10 The Court: But isn't there some, doesn't the Roberts
11 case take into account, doesn't it say that the judge
12 can still take into account excusable non-compliance
13 about how many DUI arrests they have here in
14 comparison to other localities and things of that
15 nature as far as video cameras are concerned? Page
16 119 says under heading C, if the legislature and this
17 is a fundamental question specifically analyzing 2953,
18 if the legislature imposes a statutory obligation on
19 the State to create evidence, and provides a sanction
20 for inexcusable non-compliance, does the State failure
21 to do so necessarily warrant a per se dismissal of the
22 accused case and this is the context of cameras.
23 Doesn't that say that, that the State can offer up
24 reasons for excusable non-compliance?

25 Mr. Floyd: No sir. I think if you turn to page 123, I would

1 argue that their conclusion is, that they're posing a
2 question in that paragraph and the conclusion is the
3 bottom paragraph it says, as evidenced by this Court's
4 decision in --- the legislature clearly intended for a
5 per se dismissal in the event a law enforcement agency
6 violates the mandatory provisions of Section 56-5-
7 2953.

8 The Court: Alright, well I haven't read 2953 and it's
9 fairly lengthy. Alright, Mr. Floyd you can continue.

10 Mr. Floyd: Your Honor since we're on this page, if you'll
11 just look up at the top, first paragraph, the last
12 sentence. It says that moreover the town's
13 interpretation of sub section G is non-seismical as
14 the requirements of section 56-5-2953 could be
15 circumvented in perpetuity if the law enforcement
16 agency purposefully does not request additional
17 cameras. What they're saying there Your Honor is if we
18 don't request the cameras, we can use the law to hide
19 behind it and say, well we don't have it. Okay? And so
20 they're saying you can't do that in same fashion a law
21 enforcement officer can pick somebody up for DUI and
22 say well, I don't know if he would blow high enough or
23 not, we'll just look at his actions, whether he
24 stumbles or what he does and how he acts. We won't
25 give him a breath test and it lends credence to that.

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1 They can do the same thing, the perpetuity of it and
2 so the State is coming in and saying it's fatal not to
3 do these things. You have to do it, it is, it is per
4 se dismissal if you don't do them. And Your Honor I
5 think that the legislature ...

6 The Court: What, you think the analysis is the same for
7 the failure to offer a breath test?

8 Mr. Floyd: I do. Absolutely.

9 The Court: Alright, anything else on that? On the
10 felony DUI case?

11 Mr. Floyd: Your Honor I would just, I would just continue
12 to argue and just, just say that you know, if the
13 Court thinks it's important enough to have a video to
14 avoid a suspension and thirty days in jail, surely
15 they think it's important enough to have a breath,
16 blood or urine sample when a man's looking at twenty
17 five years.

18 The Court: And it would have to be a breath, blood or
19 urine sample. Under the DUI statute, the breath test
20 has to be offered.

21 Mr. Floyd: Right and it wasn't.

22 The Court: Under felony DUI there's got to be or he
23 must submit to a blood sample.

24 Mr. Floyd: He doesn't have the right to refuse it.

25 The Court: Right. I mean that's what I was talking

1 about yesterday. If he must submit, is that
2 necessarily and automatically mean they must get it in
3 order to prosecute a felony DUI? That's what I was
4 looking at yesterday.

5 Mr. Floyd: And I understand your logic on that, because say
6 it's too late, but in this case it's unique because he
7 had a DUI that night. An essential element of felony
8 DUI is DUI and they failed to establish it that night.
9 They failed to comply. So the motion would be,
10 directed verdict on the DUI. Without the DUI there is
11 no felony DUI.

12 The Court: Answer this hypothetical.

13 Mr. Floyd: Okay.

14 The Court: Let's just say that an unknown driver
15 driving around in a white pick up truck hits a
16 pedestrian walking down the highway and he leaves the
17 scene and is later found by way of, let's say the
18 driver confessed to a friend, I think I just hit
19 somebody and they get to him that way and a week goes
20 by. The video camera is out of the question, because
21 they didn't come to a scene and he was there. If you
22 look at the statue, technically, no blood test was
23 done, no breath test was offered, could he be
24 prosecuted for felony DUI then?

25 Mr. Floyd: I would say he could.

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1 The Court: And why is that?

2 Mr. Floyd: From that situation. A felony DUI okay, the time
3 frame in which to, to extract what they needed to
4 prosecute had lapsed. In a, in a DUI, in this
5 situation, the time frame had not lapsed. They had
6 him, they had the opportunity and it says you must get
7 this blood within, this breath within X number of
8 hours and they had him and they had the opportunity
9 and it's fatal.

10 The Court: Well, that's one of the things that I'm not
11 quite sure I understand is why would law enforcement
12 ticket him for DUI, but they just kind of put it aside
13 because they thought it was going to be murder.
14 They're reasoning for that is, raises a question about
15 why? What is your response Mr. Scott or Mr. Stumbo?
16 First of all does Roberts apply to the breath sample
17 side? Forget about the camera for a minute. Does
18 Roberts apply to the breath sample?

19 Mr. Stumbo: Well, Your Honor ...

20 The Court: If not, if not, well, does Roberts apply to
21 the breath sample?

22 Mr. Stumbo: I believe Your Honor, Roberts recognizes and if
23 you look at the Roberts case and you look on page 122.

24 The Court: And just for the record, we're going off
25 what is probably a page number in the advance sheet as

1 a whole when we say 122.

2 Mr. Stumbo: Correct, I doubt this is even published yet
3 Your Honor, but page 122 of the advance sheet, it
4 indicates that the Court recognizes this catch all
5 exception in 2953 at least in the vide tape and as far
6 as the breath sample, I don't know that Roberts
7 addresses the breath sample.

8 The Court: It doesn't, but he's saying that if it's to
9 be strictly construed against the State in favor of
10 the Defendant, then that's across the board. That's
11 what he's saying.

12 Mr. Stumbo: He's saying the proposition that the procedural
13 requirements of the DUI law should be strictly
14 construed across the board.

15 The Court: Right, he's saying that just kind of throws
16 a blanket over all of the DUI law.

17 Mr. Stumbo: Well, Your Honor I, I don't, I don't read
18 Roberts that way and it appears to me that the holding
19 in Roberts directly related to the facts of Roberts,
20 which talk about the facts that there was a lack of a
21 camera in the officer's car when they made that
22 arrest. It would be the State's position that Roberts
23 does not apply. Roberts is directly applicable to the
24 video tape requirement of 2953. It's not directly
25 applicable to the implied consent and the collection

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1 of standard ...

2 The Court: You can sit down Mr. Floyd. I know you're
3 attempted to respond, but I'm not going to let you
4 until he finishes.

5 Mr. Stumbo: In 2946 Your Honor, and also 2950, the implied
6 consent of the statue. That would be our position as
7 to the breathalyser test and Roberts applicability
8 too.

9 The Court: Alright, how about what we talked about
10 yesterday a revival if you will three years later on
11 the DUI charge on the fact that just on its face no
12 breath test was ever offered putting Roberts aside and
13 keeping in mind the penal statues, by law, are
14 strictly construed against the State, the DUI statute
15 2950 says the person must be, the person first must be
16 offered a breath test to determine the person's
17 alcohol concentration. That's what it says and that
18 wasn't done.

19 Mr. Stumbo: That's correct Your Honor, but I, I would cross
20 reference 56-5-2950 which is the implied consent
21 portion of this, with 56-5-2946, Your Honor because I
22 believe 2946 is directly applicable to the felony DUI
23 statute. I do believe implied consent in 2950 is also
24 considered across the board, not just a felony DUI or
25 base the DUI under 2930 that being said Your Honor,

1 the State's position would be as follows to that a
2 issue. First of all, just strictly looking at the
3 2946 and my, the State's reading on this would be as
4 follows: it says a person, not withstanding any other
5 provision of law, a person must submit to either one
6 or a combination of chemical tests of breath, blood or
7 urine. I think 2946 Your Honor, basically is the
8 requirement that the Defendant must submit to it if
9 law enforcement administers the test.

10 The Court: Demands it.

11 Mr. Stumbo: But, my reading of that in the second
12 paragraph, I don't know if the seventeen paragraph of
13 the test must be administered at the direction of the
14 law enforcement officer who has probable cause to
15 believe the person violated or was under arrest for
16 violations 56-5-2945.

17 The Court: Which is felony DUI.

18 Mr. Stumbo: Correct, so I think that directly referenced
19 the charge here.

20 The Court: How about the first sentence of the third
21 paragraph?

22 Mr. Stumbo: Which, which brings in the implied consent
23 statute of 2950.

24 The Court: It says the provision of 2950 relating to
25 the administration of tests is applicable to this

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1 section.

2 Mr. Stumbo: That's correct.

3 The Court: So, is it fatal to a DUI case that the test
4 required be offered by 2950 was not offered?

5 Mr. Stumbo: Your Honor one of the reasons why we would cite
6 this case and I have copies for both you and Mr.
7 Floyd, Your Honor, this appears to still be good law.
8 We've researched it, it doesn't appear to ever to have
9 been over turned. It's a court of appeals case from
10 1991, State v. Melvin. The cite on this case is 406
11 SE2nd 391. And it's a South Carolina Court of Appeals
12 case from '91. If I may approach Your Honor. I just
13 provided a copy to Mr. Floyd as well.

14 The Court: Thank you.

15 Mr. Stumbo: Your Honor the facts in this case are not all
16 that different from what we have here. Your Honor in
17 the case there was no blood or alcohol or excuse me,
18 blood or breath results later blood alcohol test
19 results offered as proof in that case and it's a
20 felony DUI conviction. In that case, essentially what
21 you have are eye witnesses talking about the Defendant
22 driving erratically at a high rate of speed just
23 moments before the incident and also some expert
24 testimony in that particular case about the accident
25 reconstruction a few years ago. There were other

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1 facts that the jury could consider on the issue of, of
2 whether the Defendant was impaired or not and the
3 Court did not require in that case that the blood test
4 or breath test be offered into evidence to sustain
5 that conviction.

6 The Court: Is that discussed in here the failure to
7 offer a test?

8 Mr. Stumbo: The failure to offer is not discussed Your
9 Honor in terms of the breath test but what we would,
10 one thing we can cite as to the video tape Your Honor,
11 as Mr. Floyd states, there's some sort of a
12 relationship here between the video tape statute and
13 the ...

14 The Court: I hadn't got there yet.

15 Mr. Stumbo: Yes sir.

16 The Court: I'm just talking about putting Roberts
17 aside, it's not on all focus, but he's just saying it
18 just makes sense I'm going to talk about Roberts. I'm
19 just talking about the failure to offer the test, is
20 it fatal? Of course Mr. Floyd will never answer the
21 question, because he'll say he can't answer it because
22 it was never offered. What would Mr. Baggett have done
23 if he was offered the test? He may well have refused,
24 but the statute would be complied with because he was
25 offered the test. So, that gets me back to the

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1 original question, is the failure to offer the test
2 fatal to a DUI and therefore a felony DUI?

3 Mr. Stumbo: Your Honor our position would be it's not fatal
4 under certain circumstances. The circumstances here
5 are such that Mr. Baggett was not initially taken into
6 custody, investigated that night for a DUI charge
7 under title 56. Now he eventually was charged at some
8 time later with the DUI charge ...

9 The Court: I thought they wrote the ticket that night?

10 Mr. Stumbo: I'm not sure it was written that night Your
11 Honor or the next day. I may be ...

12 The Court: I don't know. It's in evidence if it is.

13 Mr. Stumbo: The testimony from investigator Boston and
14 Sargent Ballard, Sargent Ballard was the officer on
15 scene and Investigator Boston came on the scene later.

16 The Court: Didn't Mr. Staggers write the ticket? Who
17 wrote the ticket?

18 Mr. Stumbo: It was Sargent Ballard.

19 The Court: Alright.

20 Mr. Stumbo: It was Corporal Ballard at the time, I'm sorry,
21 Your Honor. He indicated to the Court that in review
22 of the investigative team, this is what I'm gathering
23 from the testimony of all of the officers on the scene
24 that night who were making decisions on this case is
25 that it was their view that this was a murder

1 investigation he would to take into custody as a
2 suspect in a murder case and they, to some degree,
3 until later on the next day were not, the DUI aspect
4 was not really on the radar. Despite the fact that he
5 appeared drunk, despite the fact that he admitted to
6 Investigator Boston that night that he was too drunk
7 to drive. And for reasons that they've given, and
8 there again Your Honor, I don't know if all the
9 reasons question reasons, but they were not arresting
10 Mr. Baggett that night in light of the procedural
11 requirements of title 56. They were arresting him
12 that night as a suspect in a murder case and you know,
13 I don't know how you kind of un-ring the bell, if you
14 will, when those tests are not done on the front end.
15 Where clearly here he was admitting to be drunk. So
16 there's evidence of his intoxication and I believe
17 under the State v. Goude case enough facts have been
18 presented here this week to get it passed and get it
19 to the jury. I would say that the legislative intent
20 here was to still allow the judges to have some
21 discretion based on the circumstances of to not throw
22 out a case such as this on the fact that he wasn't
23 given a breath test. I think Sergeant Ballard
24 testified on cross that the Hemmingway police
25 department Breathalyzer was broken.

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1 The Court: No, he said the Williamsburg ...

2 Mr. Stumbo: Williamsburg was broken.

3 The Court: He didn't know if Hemmingway had one.

4 Mr. Stumbo: Okay. He did testify at one point that where he
5 was taken into custody it was broken. So, I think
6 here, there again, I think it's a totality of the
7 circumstances analysis that the Defendant comply. I
8 don't believe that the Court is compelled if it's a
9 per se dismissal of a case if there's no Breathalyzer
10 given or offered the night of the incident.

11 The Court: Offered is the key.

12 Mr. Stumbo: Correct.

13 The Court: Alright and you say Roberts is a video
14 camera and ...

15 Mr. Stumbo: Correct.

16 The Court: Specifically with regard to video camera.

17 Mr. Stumbo: We, we would, that would be our position of
18 Roberts applicable only to 29b.

19 The Court: And Mr. Floyd says it only makes sense, if
20 you're talking about something that's required under
21 the DUI statute and the Supreme Court said in regard
22 to cameras that's a requirement of the State to obtain
23 evidence. They can't just hide behind the fact that we
24 don't have cameras in these cars so we don't have the
25 video. They say hold on no it's not that easy and Mr.

1 Floyd says the Supreme Court will also say hey it's
2 not so easy that you can just wait for a year to
3 charge a felony DUI and get around the failure to
4 offer a breath test. Alright, anything else Mr. Stumbo
5 on Mr. Floyd's arguments?

6 Mr. Stumbo: Judge, just in 2950, if you could point me to,
7 you indicated just a second ago that, that the line
8 where it requires that it be offered? I have 2950 in
9 front of me, I just ...

10 The Court: Okay.

11 Mr. Stumbo: ... want to know specifically where you are
12 referring to.

13 The Court: Let me find it. My copy of the statute it's
14 about the eighth or ninth line down in the very middle
15 of the page. At the direction of the arresting
16 officer, the person must, excuse me, the person first
17 must be offered a breath test.

18 Mr. Stumbo: Okay. Your Honor just one other place and this
19 may be another point that the State would raise here
20 and I think we covered this ground a second ago, but
21 the, would Your Honor's position on this be ...

22 The Court: I don't have a position yet.

23 Mr. Stumbo: Yes sir. I, I probably stated that wrong. The
24 third paragraph 2946, which refers to 2950, that's
25 what would make the requirement of the breath test be

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1 offered ...

2 The Court: That's what he says.

3 Mr. Stumbo: Right.

4 The Court: And because, 2946, the third paragraph is
5 kind of mushy. It says the provisions of 2950 relating
6 to the administration of the test, additional test and
7 availability of other evidence and so forth is
8 applicable to this section. Now, the words relating to
9 the administration of tests, Mr. Floyd says that
10 includes offering the test reasonable minds can
11 differ.

12 Mr. Stumbo: Right, well Your Honor, our position on this
13 would be that the implied consent laws in 2946, just
14 reading them as a whole, even in light of the line
15 where it says at the direction of the arresting
16 officer, the person must be offered a breath test,
17 that those requirements do not fit the confines of
18 this case in the sense that ...

19 The Court: Alright, how about, I understand what you're
20 saying. How about the fact that his car wasn't
21 equipped, none of the responding vehicles were
22 equipped with video cameras?

23 Mr. Stumbo: Your Honor, if I may, on the video cameras as
24 stated there is an exception to 2953, the Roberts case
25 does address this and this is where I was referring to

1 a moment ago on page 122 of the advance sheets on the
2 State v. Roberts case or the Town of Mt. Pleasant v.
3 Roberts. Roberts court Your Honor, did acknowledge
4 that in 2953, there was kind of a catchall exception
5 for the Court to consider if there are valid reasons.
6 It says, and I'm reading from 2953, it says, nothing
7 in this section prohibits the court from considering
8 any other valid reason for failure to produce a video
9 recording, based on the totality of the circumstances.
10 And Your Honor, it would be the State's position that
11 based on the evidence that's been presented in court
12 this week, that this exception would apply. And Your
13 Honor, essentially to apply this exception to the
14 failure of this case to produce a video tape. In
15 totality, the circumstances which I referred to Your
16 Honor, are the way that this investigation occurred.
17 Essentially, law enforcement was responding to a dead
18 body on the open road out in a rural part of
19 Williamsburg county. That is a completely different
20 scenario than you see in probably 99 percent of the
21 DUI cases in this state, where an officer pulls over a
22 vehicle for, even pulls over a vehicle for suspected
23 DUI or arrives on an accident scene where there is
24 injured people and people inside a car, where there's
25 a smell of alcohol. Here, you had a individual who was

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1 deceased on the side of the road and at that point,
2 the officers, essentially, Your Honor, from their
3 testimony on the stand, I believe that they would say
4 they were looking at this as a dead body, is this a
5 murder or is this an accident or what is this? And
6 they were trying to wrap their arms, at that point,
7 around what they were investigating. And Your Honor a
8 lot of the procedural requirements that are built into
9 the statute here, particularly video tape requirement,
10 Your Honor, I believe under the totality of the
11 circumstances, was not, was not at play here. I
12 believe that's a valid reason why Your Honor could
13 essentially give Williamsburg county sheriff's
14 department a pass here for not having a video tape of
15 this crime scene, based on what had happened. Judge,
16 quite simply, after the fact, when they realized that
17 Mr. Baggett himself said he was drunk and they had
18 other witnesses there to talk to during the course of
19 the next day or so that confirmed that, that they
20 thought at that point, okay, maybe we have a DUI on
21 our hands as well and he was ticketed for DUI. Judge,
22 I would submit that that exception, which is
23 recognized in the Roberts case, and again I point to
24 page 122 ...

25 The Court: . Because of valid reason for not ...

1 Mr. Stumbo: Yes.

2 The Court: ... complying with the mandatory video taping?

3 Mr. Stumbo: Correct. In other words, it leaves that

4 discretion with the Court to find that there were

5 valid reasons for not having a video tape.

6 The Court: Alright, Mr. Floyd do you have any, without

7 rehashing your argument, which I'm sure you perhaps

8 may have to do some, without just reciting it again in

9 repetition, do you have any responses to what he has

10 to say in any order that you want?

11 Mr. Floyd: I'll be brief Your Honor. There is a catchall

12 exception to the 53 statute.

13 The Court: 53? 2953, you mean?

14 Mr. Floyd: Yes. Yeah, but I am unaware of any catchall

15 statute in 2950. It elaborates and it says, if he can't

16 give a sample, unable to provide a sample he didn't have

17 that in your unconscious or dead or any other reason

18 considered by a licensed, medical personnel, so it gives

19 them an out. They haven't completed that out. Also, Your

20 Honor, section 53, suppose the cameras weren't working in

21 the car? Certainly if they took him in there to offer him a

22 breath test, it requires he be videoed in the BA room. That

23 camera would have been working and quite frankly, they

24 could have made their case with him saying I'm drunk the

25 jury could have seen it. What serves as their sword can

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1 also serve as our shield. I mean, it, from their stand
2 point, they would have wanted that.

3 The Court: Well, that presupposes that he knew would
4 have repeated that after ...

5 Mr. Floyd: I understand, I understand, but clearly, the
6 case that he cites is a 91 case Your Honor. That's ten
7 years old. I mean ...

8 The Court: Twenty years ago.

9 Mr. Floyd: Twenty years ago. The case that I'm citing is
10 ten days old and the courts all this stuff about these
11 requirements weren't in place in that old case.
12 Recently, clearly, Suchenski, the Schmerber case,
13 there's a Kirkcheck case, all these cases are dealing
14 with what you have, you have to follow these rules.
15 You have to, when you arrest them you have to activate
16 your camera no later than the activation of the blue
17 light. You have to video the breath site. You have to
18 video the road site. You have to give the test within
19 two hours. You have to offer the test. If he can't
20 take the test for certain reasons, there's just a
21 laundry list of things you have to do and the Court
22 has consistently, over the last couple of years said,
23 if you fail to meet one of those steps, it's fatal,
24 it's per se, it's not optional.

25 The Court: Now you're getting ahead of yourself on the

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1 integrity of the equipment and the protocol at the
2 site, the testing site, because that assumes that he's
3 going to submit.

4 Mr. Floyd: No it doesn't Your Honor.

5 The Court: Well, yeah you just said that. You said that
6 there would be cameras at the test site, there would
7 be protocol they would have to go through to make sure
8 the machine was working right, you didn't just say all
9 that?

10 Mr. Floyd: No, what I said was he would be filmed while
11 they were doing that protocol.

12 The Court: I know, but that assumes that he would have
13 agreed to take the test.

14 Mr. Floyd: No it doesn't. It does not.

15 The Court: Are you talking about at the arrest site?

16 Mr. Floyd: No sir. When you're arrested for DUI, you're
17 carried into the room.

18 The Court: Oh, they film you in ...

19 Mr. Floyd: The time you walk in, when they start doing all
20 that procedure, you're being filmed and a lot of cases
21 are made during that filming because guys are in there
22 (makes sound) and looking up at the sky, and doing
23 stuff, but then you have other clients who are sitting
24 there just stout and sober, looking good. He's,
25 there's a twenty minute required waiting period when

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1 he's supposed to be filmed. So, the jury can see what
2 he looks like.

3 The Court: Even if he refuses?

4 Mr. Floyd: Even if he refuses. Now, let me say this Your
5 Honor, I have not, from my understanding the Kirkcheck
6 case says that and I have not read it, so I will rely
7 on that case. I tried to look it up this morning, but
8 wasn't able to get it. That's my understanding is what
9 that says, but I have not read that case.

10 The Court: Alright, what's your response to their
11 argument that Roberts doesn't apply? I think you may
12 have addressed that at the very beginning. You said
13 even if Roberts doesn't apply, or well, I won't put
14 words in your mouth. What's your response to their
15 argument that Roberts does not apply?

16 Mr. Floyd: I would say it absolutely applies, because
17 the ticket was written that night and he was being
18 investigated for DUI and of all things, I think
19 they're missing the point. They're wanting to jump
20 ahead to the felony DUI and I want to stay on the DUI.
21 If you are doing a DUI arrest, you are required to do
22 all these things. I have cases right now Your Honor, I
23 have a case pending, one car accident, Sumter county.
24 Trooper comes to the scene and within two hours she's
25 in Richland county asking that blood be withdrawn.

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1 It's required; you have to do it or your case is over.

2 It's not ...

3 The Court: Felony DUI?

4 Mr. Floyd: No sir. It's a one car wreck. Just a regular DUI
5 and I think that's where Mr. Stumbo is in, is not
6 understanding or maybe circumventing this was a DUI
7 and because they did not comply with the statute on
8 the DUI. Well, you can't get to felony DUI without
9 the DUI. You've got to have it.

10 The Court: Alright, how about the part 2946 that says
11 the provisions of section 56-5-2950, relating to the
12 administration of test in determining a person's
13 alcohol concentration, does that include the offering
14 of the test? It could include how the test is
15 administered, but does it include the offering of the
16 test under 2950?

17 Mr. Floyd: I don't think, I wouldn't, will you give me just
18 a second to read it Your Honor?

19 The Court: Yes, sir. There's a case called State versus
20 Baker, which is in the court of appeals case in 1993.
21 It says police officers do not have an affirmative
22 duty, under the implied consent statute, to offer a
23 breath test to all persons physically capable of
24 providing a breath sample and thus the State would not
25 be precluded from prosecuting an under the influence

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1 case because the officers fail to offer the Defendant
2 a breath test at the time of his arrest. I guess they
3 would have to get ... that's 310 SC 510. I guess it
4 included perhaps a distinction between unlawful
5 alcohol concentration and under the influence.

6 Mr. Floyd: Your Honor what year was that case?

7 The Court: 1993.

8 Mr. Floyd: Ninety?

9 The Court: Ninety-three.

10 Mr. Floyd: I would argue that that case, Your Honor
11 wouldn't apply here, because there's been, it
12 represents that - that says it has to be strict
13 compliance with the statutes and these statutes have
14 been re-drafted so strictly since then. All these
15 requirements weren't in place then. This, this stuff
16 has changed so much since I started practicing law. I
17 mean, none of the things that are in there now were in
18 there when I started and so that is inapplicable and
19 the most recent rulings of the Court that it is fatal
20 not to comply. It is a per se violation that you have
21 to comply Your Honor.

22 The Court: Video taping. And you're saying that by
23 extension applies to all of it?

24 Mr. Floyd: That's what I would argue.

25 The Court: Alright, anything else?

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1 Mr. Floyd: Nothing further.

2 The Court: Alright, let me mention this. It's twelve
3 o'clock. The jury's been out for forty five minutes.
4 It would not be feasible, I don't think, for me to,
5 I'll have to read this material y'all presented to me.
6 Does anybody have a problem with me excusing the jury
7 until one fifteen and we can argue and charge then?
8 Any problem?

9 Mr. Stumbo: No problem.

10 The Court: Mr. Floyd?

11 Mr. Floyd: No sir, Your Honor.

12 The Court: Alright, now, alright there's a note that
13 juror number 38, Ms. Cooley, who frankly is the one
14 who's been late three times, isn't feeling well. I
15 have my own thoughts about that. About whether or not
16 that's a valid complaint. What does the State suggest
17 that I do?

18 Mr. Stumbo: Your Honor, we don't have any problem with
19 seeking one of the alternates.

20 Mr. Floyd: Your Honor, I'll be honest with you. I didn't
21 hear what you said.

22 The Court: She isn't feeling well.

23 Mr. Floyd: Okay, well, it is what it is.

24 The Court: Alright, I'm going to bring her in. I'm
25 going to excuse her, but I'm going to ask her quite

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1 pointedly why she's been late three times. I mean,
2 depending upon her response, well, I'm going to excuse
3 her if she says she's not feeling well. Will you bring
4 Ms. Cooley in?

5 (Ms. Cooley enters courtroom)

6 The Court: What's your issue?

7 Ms. Cooley: I'm not feeling well.

8 The Court: Alright, since when?

9 Ms. Cooley: This morning.

10 The Court: Okay, well you've been a little bit tardy a
11 few times, right? And why was that?

12 Ms. Cooley: I didn't have a ride and I have car issues.

13 The Court: Okay you could have called up here to let
14 somebody know, because we have had to wait on you a
15 few times. Do you have a pocketbook or anything you
16 need to take with you?

17 Ms. Cooley: Yes.

18 The Court: Alright, get one of the bailiffs to go in
19 there and get it. Anything else beside the pocketbook?

20 Ms. Cooley: No.

21 The Court: Alright, I'm going to excuse you and you
22 don't need to come back anymore. Do you understand
23 that?

24 Ms. Cooley: I don't have a ride, Your Honor.

25 The Court: Alright, do you need a ride somewhere?

1 Ms. Cooley: No.

2 The Court: Alright, you're excused. Alright, at least
3 we won't have to worry about that anymore, taking
4 fifteen minutes each time. Alright, I'm going to ask
5 the jury to come in and I'm going to excuse them until
6 one fifteen and tell them not to discuss the case and
7 I'll have Ms. Williams pick one of these folded pieces
8 of paper with either the name of Ms. Day or Ms. Brown
9 on them. That will be the next seated juror. Alright,
10 any objection to that from the State?

11 Mr. Stumbo: None from the State Your Honor.

12 The Court: Defendant?

13 Mr. Floyd: None from the Defendant Your Honor.

14 The Court: Alright and, and you won't be doing much
15 lunch, because we have more issues to go over. Okay?
16 Alright you can bring in the jury.

17 The Court: Just pick out one of those pieces of paper.
18 Who's going be your next juror?

19 Clerk: Ms. Day.

20 The Court: Ms. Day will now be seated. They don't need
21 to come and have a seat. They can all congregate on
22 the steps. I'm going to make it one thirty. I'm just
23 not going to make everybody have a seat. I'm going to
24 be releasing y'all. Come on down ma'am. There you go.
25 As long as we got everybody in her to keep y'all from

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1 having to take a seat. Is that everybody? Alright, a
2 couple of issues ladies and gentlemen. First of all, I
3 have released one of the jurors because she said she
4 wasn't feeling well, so Ms. Day. Where's Ms. Day?
5 Where's Ms. Day? You will be now, not in an alternate
6 seat. I'm going to release you ladies and gentlemen to
7 go to lunch. You may not discuss the case. Please be
8 back in your jury room at one thirty and we'll,
9 please, please be back at one thirty. So we'll proceed
10 promptly at that time. Thank you very much for your
11 patience.

12 (Jury exits courtroom)

13 The Court: Alright, any other directed verdict motions
14 pertaining to felony DUI or reckless homicide?

15 Mr. Floyd: No sir.

16 The Court: Alright. As far as the Defendant, would you
17 come up please?

18 Mr. Floyd: Sure.

19 The Court: And be sworn. Put your left hand on the
20 Bible and raise your right hand.

21 Clerk: Do you solemnly swear to tell the truth, the
22 whole truth and nothing but the truth, so help you
23 God?

24 Mr. Baggett: I do.

25 The Court: Alright, your name sir?

1 motion. Okay?

2 Mr. Stumbo: Thank you Judge.

3 (Court Break)

4 The Court: Any other argument Mr. Floyd?

5 Mr. Floyd: No sir, Your Honor.

6 The Court: Anything else from the State?

7 Mr. Stumbo: None from the State.

8 The Court: Alright, on the issue of the Defendant's

9 motion for a directed verdict on the felony DUI

10 charge, what I'm looking at is the advance sheets page

11 number 141 in the appending talking about Suchenski.

12 For the Court Reporter's benefit, it's spelled S-U-C-

13 H-E-N-S-K-I. Although the decision in Suchenski

14 indisputably established that the video taping

15 provisions are mandatory and not optional, you did not

16 address the failure to comply with the statute could

17 be excusable if the law enforcement vehicle was never

18 equipped with a camera. Specifically, we are not

19 required to assess the import of sub section G with

20 respect to the statutory exception to sub section B.

21 Those say non compliance with the video taping

22 requirement is excusable with four exceptions. Mr.

23 Stumbo is already at number four, is that right Mr.

24 Stumbo? Any other valid reason for the failure to

25 produce a video in court based on the totality of the

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1 circumstances?

2 Mr. Stumbo: That's correct Your Honor.

3 The Court: And that would be what in this case?

4 Mr. Stumbo: Your Honor it's the State's position would be
5 the valid reason is the scenario law enforcement was
6 faced with when they arrived on the scene that night.
7 When they arrived on scene, I think they had no
8 thought of video camera taping or anything else
9 relating to the DUI requirements. They had a dead body
10 on the side of the road. They were trying to figure
11 out how to investigate a homicide. In our view those
12 circumstances, in those circumstances we would not
13 expect the county sheriff's department to be thinking
14 about the procedural rigors of the DUI statute.

15 The Court: Procedural rigors exist none the less.

16 Mr. Stumbo: They do Your Honor.

17 The Court: And I'm sure Mr. Floyd will say it had to be
18 in their mind set because they wrote him a ticket and
19 that's when I asked when did they write him the ticket
20 and I don't think that's in the record. Exactly when?
21 They can arrest him for DUI and write the ticket
22 later, but is there anything in the record as to when
23 he was arrested for DUI?

24 Mr. Floyd: Your Honor, if I may, I had, it's my
25 recollection is the ticket was written that night and

1 ...

2 The Court: Oh, the testimony was clear that it was
3 written that night.

4 Mr. Floyd: Okay.

5 The Court: But I don't know if it makes a difference.
6 I want to know whether he was arrested for it.

7 Mr. Floyd: Well, officer Boston's incident report reflects
8 that he was charged with DUI that night. He came to
9 jail that night and they went over the next morning
10 and whenever officer Boston went to get a statement,
11 the next morning he said Marty have you sobered up
12 enough to talk to us now. So he, obviously was in jail
13 from then until the next morning.

14 Mr. Stumbo: There again, Your Honor I don't believe there's
15 any testimony specifically when he was served that
16 ticket for DUI. I mean, I, essentially, from the
17 testimony that was presented to this jury, from the
18 witness stand, investigator Boston, from my
19 recollection essentially said at that point we felt
20 like we were investigating a murder kidnaping and he
21 let officer Ballard handle any DUI aspect of that. So
22 I don't believe it's in Boston's report reflected
23 wasn't DUI not to my recollection and the report
24 wasn't put in the record, so ...

25 The Court: Mr. Floyd, your argument may ultimately be

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1 carried today depending on what this jury does, but my
2 finding at this point is that they taking into account
3 the totality of the circumstances mandatory video
4 taping requirement is excusable. The sticking point is
5 going to be, at least from this nine day old case,
6 that there is now a duty to create the evidence under
7 the, I think Baker case, that I cited earlier,
8 otherwise we going to offer --- but I'm going to let
9 this go to the jury. Of course, if he is convicted of
10 felony DUI you can bring up the same argument as part
11 of your post trial motions and I may have to re-
12 consider that matter. Alright, is everybody here?

13 Bailiff: Yes sir.

14 The Court: Alright. Alright Mr. Floyd are you ready for
15 the jury?

16 Mr. Floyd: We're ready Your Honor.

17 The Court: Alright Mr. Stumbo, Mr. Scott, y'all ready?

18 Mr. Stumbo: We are Your Honor.

19 The Court: Any objection to me when the the jury comes
20 in telling them that the state has rested and then
21 asking you will the Defendant be producing any
22 evidence?

23 Mr. Floyd: I don't have an objection.

24 The Court: Alright, well then once you, once you
25 formally rest, I will know at that time, that any and

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1 all proper motions have been made and that would be
2 your re-newal of motions that we spent a considerable
3 amount of time on.

4 Mr. Floyd: Do you just want me basically to say I re-new my
5 motion for directed verdict, based on the grounds I
6 stated earlier.

7 The Court: I'll just note, I will just note that all
8 motions, yeah, why don't you do that and protect the
9 record?

10 Mr. Floyd: Okay.

11 The Court: Alright, now, we will go straight into the
12 arguments. Does that suit everybody?

13 Mr. Stumbo: That, that will be fine Your Honor. Mr. Scott's
14 going to present closing for the State.

15 The Court: Alright and the verdict form, both sides
16 have a copy of that? I believe y'all both have a copy
17 of that, but if you would be so kind, don't put the
18 verdict form on the projector.

19 Mr. Stumbo: Okay.

20 The Court: I would prefer you not, I've had some
21 lawyers try to do that and ...

22 Mr. Stumbo: No, I'm not going to do that.

23 The Court: In other words, don't put it up there and
24 fill it out for them. Okay, anything else? Okay you
25 can bring in the jury.

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1 (Jury enters courtroom 1:31 p.m.)

2 The Court: Alright, Ms. Day, you're no longer an
3 alternate, okay? Alright, the State has rested. Mr.
4 Floyd, will the Defendant be presenting any evidence?

5 Mr. Floyd: The Defendant will not be presenting any
6 evidence Your Honor.

7 The Court: Alright, any other motions from either side?

8 Mr. Scott: None from the State Your Honor.

9 Mr. Floyd: We re-new our motions.

10 The Court: Alright, so those motions are noted. Okay,
11 ladies and gentlemen, here's where we sit during the
12 process as I described to you during the beginning of
13 the case, the State presented its case in chief and
14 rested and the Defendant rested. That means that all
15 the evidence that has been introduced or was going to
16 be introduced, has been introduced. The next portion
17 of the trial is going to be the closing arguments.
18 That is when the lawyers for each side stand up and
19 argue to you the conclusions that they feel the
20 evidence or lack of evidence compels you to reach. So,
21 in that regard you have to give the lawyers your
22 undivided attention. Because this is a very important
23 part of the trial. The State, under the rules, the
24 State will present the first argument and then the
25 Defendant will present the last argument. I don't put

1 minutes, so what we're going to do is take a very
2 brief recess. Of course you may not discuss the case
3 during the break and I will have you back out in just
4 a few minutes. If you want to bring your drinks back
5 out with you, that's perfectly fine.

6 (Jury Break was taken 2:29)

7 Mr. Floyd: Your Honor one quick question. You were going to
8 charge. I didn't see it on the list and I'm sure you
9 said it, but I didn't hear it about him not
10 testifying?

11 The Court: Yes sir.

12 Mr. Floyd: Yes sir, I just wanted to make sure.

13 The Court: Alright.

14 (Court Break)

15 The Court: Bring the jury in.

16 (Jury enters Courtroom at 2:43)

17 JUDGES CHARGE TO THE JURY:

18 The Court: Alright ladies and gentlemen, we are ready
19 to move forward and what I'm going to do now is give
20 you what is called the charge on the law. Some of you
21 may have been on a jury before, may have been through
22 a jury charge, but just sit back and relax because
23 it's going to take a while. I want to tell you up
24 front that two things will occur in the context of the
25 charge. A lot of the information that I will give you

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1 will be new to you. This is not something you need to
2 memorize. Just try to lock in on one thing because you
3 think you've heard, you need to listen to it all. In
4 that regard, one thing for certain I will repeat
5 myself. That is not because I've lost my place or I
6 don't know what I'm talking about. That is because I
7 will be talking to you about legal principals and
8 these include, but they are not limited to the
9 presumption of innocence, reasonable doubt, the burden
10 of proof, credibility of witnesses, the elements of
11 the charged offenses. If I talk about a legal
12 principal in one point in the charge and I talk about
13 it later, I don't mean to give it any greater
14 emphasis, it's simply that that principal may apply to
15 one or more or three or four or five different places
16 during the charge. So don't think that I'm giving you
17 undue emphasis. I'm simply trying to make sure that I
18 give a complete charge of the law. What you should do
19 is sit back and receive this information in your good
20 common sense. Because that is what you come to this
21 courtroom armed with as I mentioned at the beginning
22 of the trial. You are to take the evidence, and your
23 view of the evidence and the law as I give it to you
24 and reach verdicts that speaks the truth. Now, your
25 deliberations in the case will end with your

1 foreperson's completion and signature on this verdict
2 form. I'll talk to you in detail about how to get
3 there as we go through the charge. Your verdicts must
4 be unanimous. That means all of you have to agree.
5 This is not going to be a situation where a seven to
6 five vote or eight to three or even eleven to one will
7 suit. Your verdict must be completely unanimous and
8 again that means all of you have to agree. Now
9 ladies and gentlemen, obviously during the course of
10 this trial, you and I have had certain duties put
11 before us, your responsibility is to be the judges of
12 the facts. My responsibility is to be the judge of the
13 law. In that regard, it's your responsibility to reach
14 a verdict based on the evidence and the law. You are
15 the only people in the world who can decide what the
16 verdict will be in this case. That is your job and
17 your job alone. Now, as presiding judge, I have to
18 charge you on the law. You are required given your
19 oath to accept the law exactly as I give it to you.
20 If you come into the case with a preconceived notion
21 of what the law is or what you think the law ought to
22 be, you have to put that out of your mind. Because the
23 system does not tolerate a jury that basis a verdict
24 on its own substituted version of the law. So again,
25 you have to accept the law as I give it to you. Now,

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1 what you can consider in the way of evidence is the
2 testimony that has been introduced and the exhibits
3 that have been introduced and the stipulations or
4 agreements between the attorneys that have been made
5 known to you. That is the only evidence that you can
6 consider. Now ladies and gentlemen, if you think that
7 I have said or done anything during the course of the
8 trial that makes you think that I favor one side over
9 another, as I mentioned to you many times, you can put
10 that out of your mind, because I don't. I don't have
11 a view on what your verdict ought to be. I do have a
12 concern that you make sure that your verdict does
13 speak the truth. Now, during the course of this trial,
14 you may have seen me taking notes. That does not mean
15 that when somebody says something or some evidence is
16 in that I write it down because that's important. If
17 you've seen me taking notes, that's because what I do,
18 along with the Court Reporter, is I'm making a note
19 perhaps the time of day perhaps an exhibit came in.
20 The time of day that certain thing may have been
21 mentioned. That's just in case you want something read
22 back to you, I know what time it was. It's not because
23 I thought it was important. Its's because I was just
24 making notes, kind of a log if you will, as to when
25 certain items came into evidence and when we took a

1 break and things of that nature. Now, ladies and
2 gentlemen, in this particular case, and in any case,
3 the fact that a person has been arrested or charged or
4 indicted is not evidence of anything. In this case,
5 the indictments and there are two of them, they charge
6 the Defendant with reckless homicide and felony
7 driving under the influence. I will remind you of the
8 fact that the Defendant is arrested, charged and
9 indicted is not evidence and is not proof of guilt and
10 you are to keep in mind that these indictments solely
11 for written instruments which contain the charges made
12 against the Defendant. In other words, it's the formal
13 documents that come into the courtroom. Now, ladies
14 and gentlemen, there are two charges as you know.
15 There is a charge of reckless homicide and a charge of
16 felony DUI. I will put these over here separately and
17 that's how you are to consider them. Your verdict on
18 one does not control your verdict on the other. You
19 may find the Defendant not guilty on both or guilty on
20 both or not guilty on one but guilty on the other.

21 That depends upon your view of the evidence, again in
22 conjunction with the law as I charge it to you. So,
23 the verdict form, it's just one, it's got both charges
24 on the same verdict form, but you consider each charge
25 completely separate from the other. Alright now,

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1 ladies and gentlemen, I talked to you, or I did at the
2 beginning of the case about the different ways
3 evidence comes in. Testimony, exhibits and
4 stipulations. Those are the ways evidence comes in.
5 Now, just to change up a little bit, there are two
6 types of evidence that are normally presented during a
7 trial and these are direct evidence and circumstantial
8 evidence. Direct evidence is the testimony of a person
9 who claims to have actual knowledge of a fact. An
10 example of that is an eye witness. Direct evidence is
11 evidence that immediately establishes the main fact to
12 be true. For example, I saw the light over the door.
13 That's direct evidence because I said I saw it. You
14 can believe it if you want, but that's direct
15 evidence. Now circumstantial evidence is proof of a
16 chain of facts and circumstances indicating the
17 existence of a fact. Circumstantial evidence is
18 evidence that immediately establishes collateral facts
19 from which the main fact may be concurred. So
20 circumstantial evidence is based on inference and not
21 based on personal knowledge or observations. Now, the
22 law makes absolutely no distinction between the weight
23 or value that you are to give either direct or
24 circumstantial evidence, nor is a greater degree of
25 certainty required circumstantial evidence than of

1 direct evidence. In other words, has all the evidence
2 in this case and after you weigh all of the evidence,
3 if you are not convinced of the guilt of the
4 Defendant, beyond a reasonable doubt, you must find
5 the Defendant not guilty. If, on the other hand, after
6 you weigh all the evidence in the case and you are
7 convinced of the guilt of the Defendant beyond a
8 reasonable doubt, you must find him guilty. Now,
9 ladies and gentlemen, I want to talk to you now about
10 the credibility of a witness. You are the fact
11 finders, so you have to determine whether or not you
12 believe the testimony of a witness, who have
13 testified. That's part of your responsibility. The
14 word credibility means believability. And again, it's
15 your duty to analyze and evaluate the evidence,
16 including the testimony to determine which evidence
17 convinces you of its truth. Now, you can believe one
18 witness over a hundred if that's what you think is
19 appropriate and common sense. You can believe a
20 hundred over one, you can believe every word that has
21 come out of a witness' mouth, you can disbelieve every
22 word or you can believe parts and reject the rest.
23 What you don't do when searching for the truth is to
24 simply count up the number of witnesses and say hey,
25 you go with them because there are just more of them.

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1 Now ladies and gentlemen, you can take into account
2 when you determine whether or not you believe a
3 witness the same things that you take into account
4 with your good common sense, when you listen to
5 anybody talking to you and relaying any set of facts.
6 You can take into account that person's demeanor,
7 which means their appearance on the stand. Was the
8 witness hesitant or straight forward when answering
9 questions? You can take into account whether or not
10 you believe that witness has a bias or prejudice. In
11 other words, a reason to give testimony that helps or
12 hurts one side over the other. So you can take into
13 account whether or not that witnesses' testimony was
14 strengthened or weakened by other evidence that's in
15 the record. Now ladies and gentlemen, a person who has
16 a past criminal record is competent to testify during
17 a trial and the past record does not affect the
18 witnesses' ability to testify and that record may be
19 considered by you only if at all, in determining the
20 witnesses' believability. As I previously mentioned to
21 you, the rule of evidence ordinarily don't permit a
22 witness to give opinions or conclusions. There is an
23 exception for witnesses that we call expert witnesses
24 and as I explained to you earlier, a witness who by
25 education, training or experience, has become an

1 expert in some particular field, they can state an
2 opinion as to relevant and material matters and they
3 also give the reasons for those opinions. As I
4 mentioned to you, you consider any expert opinion just
5 like any other evidence and you give it the weight you
6 think it deserves. If you think that the expert's
7 opinion is not based on sufficient education or
8 experience or if you conclude that the reasons given
9 for the opinion are not sufficient or sound, you can
10 disregard the opinion entirely and the expert's
11 opinion is to be given no greater weight just because
12 it comes from an expert and you are not required to
13 accept the expert's opinion, even though it might be
14 uncontradicted. Alright now, what I'm going to do is
15 talk to you about the presumption of innocence and
16 then I'll go over each of them and tell you what those
17 things mean. The Defendant has pled not guilty to the
18 two indictments and that plea puts the burden of proof
19 on the State to prove the Defendant guilty beyond a
20 reasonable doubt. A person charged with a criminal
21 offense is never required to prove himself not guilty,
22 never required to prove himself innocent. It is a very
23 important rule of law that the Defendant in any
24 criminal trial, doesn't matter what the charge is, is
25 always presumed to be innocent of the crimes for which

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1 the indictment has been issued, unless the guilt has
2 been proven or presented by the State by evidence
3 satisfying you of that guilt beyond a reasonable
4 doubt. The presumption of innocence does not end when
5 you stand up in a few minutes and walk back to that
6 jury room and begin to deliberate. The presumption of
7 innocence accompanies the Defendant until you reach a
8 verdict of guilt based on evidence to satisfy you of
9 guilt beyond a reasonable doubt. Now some people have
10 described the presumption of innocence to be like a
11 robe of righteousness around the Defendant's shoulders
12 and it stays on his shoulders until it is stripped
13 away by evidence, again satisfying you of guilt beyond
14 a reasonable doubt. So, to sum up the presumption of
15 innocence is not a casual theory. It's not a catch
16 phrase that we toss around. The presumption of
17 innocence is a substantial right in which every
18 Defendant is entitled. Again, unless you the jury are
19 satisfied from the evidence of guilt beyond a
20 reasonable doubt. I have probably used the words
21 reasonable doubt twenty times during the course of
22 this charge and now I'm going to talk to you about
23 that. Reasonable doubt in the law is the kind of
24 doubt that would cause an honest and a sincere juror
25 in search of the truth to hesitate to act. As I

1 mentioned, the State has the burden of proving the
2 Defendant guilty beyond a reasonable doubt. You may
3 have been on a jury in a civil case, of course this is
4 a criminal case. You may have been on a jury in a
5 simple case where you were told that the burden of
6 proof was by the greater weight of the evidence. The
7 scales are even and the person with the burden has to
8 tip the scales ever so slightly. That is called a
9 preponderance of the evidence. In criminal cases, the
10 State's proof must be more powerful than that. It must
11 be proof beyond a reasonable doubt. Proof beyond a
12 reasonable doubt is proof that leaves you firmly
13 convinced of the Defendant's guilt. Now, I will say
14 that there are very few things in this world or on
15 this earth that we know with absolute certainty and in
16 criminal cases, the law does not require proof that
17 overcomes every possible doubt. It requires proof that
18 overcomes reasonable doubt. If, based on your
19 consideration of the evidence, you are firmly
20 convinced that the Defendant is guilty of the charge
21 that you are considering at that time, you must find
22 him guilty. If, on the other hand, you are not firmly
23 convinced that the Defendant is guilty of the crime
24 that you're considering at that time, you must give
25 the Defendant the benefit of the doubt and find him

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1 not guilty. Alright now ladies and gentlemen, I
2 instruct you and I emphasis to you that the fact that
3 the Defendant did not testify in this case is not a
4 factor to be considered by you in any way in your
5 deliberations or in considerations of the question of
6 whether or not the Defendant is guilty or not guilty.
7 You can not think about it, you can not talk about it
8 and you can not consider it in any way in the course
9 of your deliberations. I repeat, on your oath to
10 follow the law as I give it to you, you're to draw no
11 conclusions whatsoever from the fact that the
12 Defendant did not testify in this case. Now ladies and
13 gentlemen, that is because the Defendant is never
14 required to prove himself not guilty, never required
15 to prove himself innocent. The burden remains on the
16 State to prove the Defendant guilty beyond a
17 reasonable doubt. Alright now I'm going to talk to you
18 specifically, and we are drawing near the end of the
19 charge, I'm going to talk to you specifically now
20 about these charges on these two indictments. First,
21 I'm going to go to reckless homicide because it's what
22 I've got first in my stack that's right here. Now the
23 Defendant is charged with reckless homicide. There's
24 code section in one of these books back here and I
25 pulled it out, I did have it out in what they call

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1 Title 56. It's got all of the automobile statutes in
2 it. 56-5-2910A provides that when the death of a
3 person ensues or occurs within three years as a
4 proximate result of injury received by the driving of
5 a vehicle in reckless disregard for the safety of
6 others, a person operating the vehicle is guilty of
7 reckless homicide. That's what the statute says. Now,
8 in that regard, that statute, the State must prove
9 beyond a reasonable doubt these things; there must be
10 a driving of a vehicle by the Defendant. The driving
11 must have been such as to show a reckless disregard
12 for the safety of others and injury was received by
13 the deceased as a result of, or a proximate cause of
14 the driver. The deceased died as a result of the
15 injury and the death occurred within three years of
16 the date of the injury. Now ladies and gentlemen, that
17 brings up other things in that statute under the
18 umbrella of reckless homicide that I must define for
19 you. Reckless disregard for the safety of others in
20 the context that I just read to you, means an
21 indifference to the consequences or results of one's
22 actions. It means a conscience indifference to the
23 rights and safety of others. It means a conscience
24 failure to exercise ordinary care. Now, there are two
25 things along those lines. Negligence is what we call

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1 simple carelessness. It's the failure to do something
2 that an ordinary person would have done or an ordinary
3 and prudent person would have done under similar
4 circumstances. or it is the failure to do something
5 that an ordinary and prudent person would have done
6 under the circumstances. Now recklessness is more
7 than mere negligence. It's more than mere
8 carelessness. It is the conscience failure to exercise
9 due care. As I mentioned, recklessness is a
10 conscience failure to exercise due care and conscience
11 indifference to the rights and safety of others. Now
12 ladies and gentlemen, I also mentioned during those
13 five elements the State must prove that the deceased
14 died as a result of or a proximate result of the
15 Defendant's reckless disregard. I'll talk to you in
16 that context about proximate cause. Proximate cause
17 is the direct cause; it is the immediate cause; it is
18 the efficient cause, it is a contributing cause, it is
19 that cause without which the death of the victim would
20 not have resulted. Proximate cause does not
21 necessarily mean that it occurred immediately prior to
22 the death. The proximate cause, the act of the
23 Defendant does not have to be the sole cause of the
24 death and the fact that other causes contributed to
25 the death would not relieve the Defendant of the

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1 responsibility. Alright ladies and gentlemen, that
2 takes care of reckless homicide. As I told you, you
3 can consider reckless homicide separately from felony
4 DUI. Felony DUI, driving under the influence is also
5 covered under our statutory laws in title 56 and the
6 State must first prove beyond a reasonable doubt that
7 the Defendant drove a vehicle while under the
8 influence of alcohol and or drugs. The word drive a
9 motor vehicle means the vehicle was in motion and that
10 may be proven as anything else may be proven. By
11 either direct or circumstantial evidence. Now ladies
12 and gentlemen a movement of the vehicle might occur
13 without any affirmative action by the driver or in
14 fact, by any person. If a vehicle is moved by some
15 power beyond the control of the Defendant or by
16 accident, this would not be driving. Now, the State
17 must also prove beyond a reasonable doubt that the
18 Defendant was sufficiently under the influence so as
19 to materially impair his ability to drive with
20 reasonable care, with due regard for others and
21 himself or as a reasonably prudent person would drive.
22 It is not necessary to show that the Defendant was in
23 a helpless position or passed out or even intoxicated.
24 On the other hand, the fact that the Defendant at some
25 time prior to the incident, drank an alcoholic

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1 beverage or took a drug does not prove the Defendant
2 was driving under the influence. Next the State must
3 prove beyond a reasonable doubt that while driving,
4 the Defendant did an act forbidden by law or that he
5 neglected duty imposed by law. In this particular
6 case, the indictment alleged two things that the State
7 contends that the Defendant did in the context of an
8 act forbidden by law or neglecting a duty imposed by
9 law. The State contends that the Defendant drove
10 recklessly or was driving recklessly. Driving
11 recklessly is driving a vehicle in any manner showing
12 willful or wrongful disregard for the safety of
13 persons or property. The words willful or wrongful
14 means conscience failure to exercise due care and
15 whether the Defendant was driving recklessly is to be
16 decided based on all surrounding circumstances. What
17 is reckless driving in some conditions, may not be
18 reckless driving under other conditions. Now, in
19 deciding whether or not the Defendant is guilty or did
20 recklessly drive, you should consider the manner of
21 the driving perspective of the driving time and place
22 of the alleged act, the width and condition of the
23 highway, weather conditions as to light and darkness,
24 the positions of others on the highways, the rate and
25 the load of the Defendant's vehicle and the

1 opportunity for observation and familiarity with the
2 highway and the chance of being able to stop or avoid
3 a collision. Now something more than mere negligence
4 and mere carelessness is operating, excuse me, in
5 operating a motor vehicle, is necessary to show that
6 the Defendant is driving reckless. The State must also
7 show beyond a reasonable doubt that he knew he was
8 driving with negligence and that he continued driving
9 with a conscience disregard of the consequences of his
10 negligence. Now the second thing within the context of
11 felony DUI with regard to the acts forbidden by law or
12 duty neglected is the obligation of all operators of
13 vehicles on highways used due care and the statute
14 says every driver of a vehicle shall exercise due care
15 to the avoid colliding with any pedestrian on the
16 highway. Now ladies and gentlemen, I've talked to you
17 about the felony DUI the State has to prove. Another
18 element under felony DUI is that the State must prove
19 beyond a reasonable doubt that the act or the neglect
20 of the Defendant proximately caused the death of Jean
21 Turner. Approximate cause, as I mentioned earlier, is
22 the direct cause, it's the immediate cause, it's the
23 efficient cause, it's that cause without which, the
24 death of Jean Turner would not have resulted. There
25 must be a chain of causation from the time of the

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1 injury inflicted by the Defendant until the time of
2 Jean Turners death. Approximate cause does not
3 necessarily mean that it occurred immediately prior to
4 death. Further ladies and gentlemen, there may be more
5 than one approximate cause. The acts of two or more
6 persons may combine together for the approximate cause
7 of the death of a person. The Defendant's act may be
8 regarded as the approximate cause if it is a
9 contributing cause of the death of the victim and the
10 fact that others also contributed to the death of the
11 victim, does not relieve the Defendant from
12 responsibility. The Defendant's act need not be the
13 sole cause of the death, but it must be approximate
14 cause contributing to the death. Now ladies and
15 gentlemen, on the verdict form, under the felony DUI
16 count there is a lesser included offense discussed
17 which is driving under the influence. If, when you go
18 to the verdict form, if you have found the Defendant
19 not guilty of felony, let me back up. If you have
20 found the Defendant guilty of felony DUI, you don't
21 have to consider the lesser offense of DUI. If you
22 find the Defendant not guilty of felony DUI, you must
23 consider whether or not the Defendant is guilty or not
24 guilty of DUI and that's because DUI is a lesser
25 included offense of felony DUI. It essentially

1 contains all of the elements of felony DUI, except for
2 the Defendant doing an act forbidden by law or
3 neglecting a duty imposed by law. It does not include
4 the death of a person or bodily injury, great bodily
5 injury of a person that does not include any of the
6 elements of approximate cause that I discussed. In
7 other words, it is the driving of a motor vehicle,
8 while under the influence of alcohol and or drugs to
9 the extent that your ability to drive is materially
10 impaired. So then on your verdict form, if you find
11 the Defendant guilty of felony DUI, you don't consider
12 the DUI, only consider the DUI if you have found the
13 Defendant not guilty of felony DUI. Alright, lastly
14 ladies and gentlemen, as far as the charge is
15 concerned, in order to establish criminal liability,
16 criminal intent always must be proven by the State
17 beyond a reasonable doubt. The State required to
18 prove criminal intent might be purpose, intent,
19 knowledge, recklessness or criminal negligence. Again,
20 it must always be proven beyond a reasonable doubt.
21 There is no way to prove intent with mathematical
22 certainty. There's no way that medical science can
23 dissect a person's brain to determine what, if
24 anything, that person was planning to do at any given
25 time. So the law says criminal intent may be inferred

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1 through circumstances shown to exist. It's not
2 necessary to establish criminal intent by direct or
3 positive evidence, but criminal intent may be
4 established by circumstantial evidence --- so criminal
5 intent is a mental state and it's up to you to
6 determine what, if anything, the Defendant intended to
7 do, based on circumstances shown to have existed and
8 criminal intent can arise from the action or failure
9 to act or from recklessness or an indifference to
10 duty or a conscience failure to exercise due care.
11 Alright ladies and gentlemen, there are several
12 exhibits that have been introduced that you will have
13 with you in your jury room. One of those is a cassette
14 tape. The cassette tape will be back there with you.
15 However, if you want to listen to it, you'll have to
16 come back out here and listen to it, because I think
17 this is the only equipment that can play it and I
18 think that the lawyers for both sides know where
19 whatever's on that tape and they know how to get to
20 it. So if you want to listen to that tape, make sure
21 that you let us know and we'll bring you out here and
22 we can do that. Also as I mentioned, you have any
23 concerns about any evidence that came in that perhaps
24 can be read back or played back for you. Your
25 responsibility right now is to use your good, common

1 sense and determine whether or not the State has met
2 its burden of proof on these two counts. Your job is
3 just beginning and in that regard ladies and gentlemen
4 I don't have any concern about what your verdicts are
5 going to be. I just want to make sure that you
6 understand that the State of South Carolina and the
7 Defendant expect and they are entitled to a fair and
8 impartial trial at your hand. The only way that you
9 can give them what you have sworn to do, is to give
10 the issues in this case the complete discussion that
11 you think they deserve and that you make sure that you
12 render a verdict that speaks the truth. Now, madam
13 forelady, as I mentioned, you don't have any greater
14 authority in that jury room than anybody else, but it
15 is your responsibility to make sure that the
16 deliberations are conducted in an orderly and complete
17 manner. If someone wants to simply tell you what their
18 decision is, you don't have the right to demand an
19 explanation nor does anybody else. If, however,
20 someone wants to talk about the case, you don't have
21 the authority to cut them off and say you've talked
22 long enough. In other words, you are orchestrate and
23 coordinate the deliberations, but you don't have any
24 authority to cut somebody off or make somebody talk.
25 Now, if someone wants to use the phone, first of all,

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1 you got to get permission. If somebody does leave the
2 jury room for any reason, you got to stop your
3 deliberations. If someone excuses himself or herself
4 to step into the restroom, stop your deliberations
5 until that person comes back. If you have any
6 questions, you write those down on a notepad that will
7 be in the jury room and you send the question out to
8 the Bailiff and the law will dictate if I can respond
9 and number two how I can respond. So, in that regard,
10 I think you have everything you should need. If you
11 have any questions at all, don't hesitate to ask.
12 Alright, right now ladies and gentlemen, I'm going to
13 ask you to go to your jury room and don't start
14 deliberations yet. The rules require me to ask the
15 lawyers if I've left anything out or if I've said
16 anything incorrectly. So your signal to deliberate
17 will be when the Bailiff comes to your door with the
18 exhibits and the verdict form and tells you to begin.
19 Alright, please go to your jury room and don't begin
20 deliberating yet.

21 (Jury exits courtroom 3:15)

22 The Court: Anything from the State ?

23 Mr. Stumbo: Not from the State.

24 The Court: From the Defendant?

25 Mr. Floyd: Nothing Your Honor.

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1 The Court: Alright, y'all please get together with
2 Melissa and make sure all the exhibits are in order.
3 How about, anybody have any last thoughts on the law.
4 You said you agree?

5 Mr. Stumbo: That's fine Your Honor.

6 The Court: How about you Mr. Floyd?

7 Mr. Floyd: Yep.

8 The Court: If a juror has to be excused let me ask you
9 whether or not you'll go with less than twelve.

10 Mr. Floyd: Okay, I don't have any problem with that.

11 The Court: Okay, everything in order?

12 Mr. Stumbo: Yes it is Your Honor.

13 (Jury deliberations begin 3:20)

14 The Court: Alright, y'all can note the time as three
15 twenty. I will go ahead and tell the folks who are
16 here on both sides when we do have a question or a
17 verdict, I'll certainly wait a reasonable time for you
18 to come back, but I won't, I won't keep the jury
19 waiting terribly long time. So make sure that you stay
20 close at hand or at least give either Mr. Floyd or
21 clerk a number to call and also Mr. Stumbo and Mr.
22 Scott a number to call to get them back. Alright,
23 thank y'all for your, thank the lawyers for the way
24 you tried the case. I really appreciate it and you did
25 an excellent job.

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1 Mr. Stumbo: Thank you Your Honor.

2 Mr. Floyd: Thank you Your Honor.

3 (Court break)

4 The Court: The jury does have a question. I guess
5 they're probably wondering what happens if they've
6 been back there for close to 45 minutes. I'm not
7 going to say yes, no, maybe specifically to these
8 questions, because we are getting into that directed
9 verdict stage. Not what I particularly charged them.

10 Mr. Stumbo: We're satisfied with that Judge.

11 The Court: Alright. You can bring in the jury.

12 (Jury in with question 4:21)

13 The Court: Alright, thank you for your patience ladies and
14 gentlemen, we were actually selecting a jury in another
15 case and we finished that. Now that jury has been selected
16 and they're gone and the rest of the rest of the panel is
17 gone, they're calling back later. I have your question and
18 I'll read it to you. Of course you know what it is, you
19 wrote it. It says 2a, is a test, you find that breath/blood
20 need to be done in order to prove felony DUI? 2b same
21 question for DUI or are witness observations enough? I
22 will, let me answer the question this way ladies and
23 gentlemen, during my charge I explained to you the, the
24 points or the elements that the State had to prove beyond a
25 reasonable doubt on felony DUI and DUI. If you want me to

1 go through those again, I will be happy to do that if you
2 are satisfied with what I previously charged, that is fine
3 as well, but if you want to hear that charge again, I'll be
4 glad to do that. Is that what you want to do?

5 Foreperson: If you will, please.

6 The Court: Alright, as I explained, if I repeat myself
7 I apologize, but I want to put this in the context it
8 deserves. Of course I've already charged you on
9 reckless homicide and that's a separate indictment.
10 The Defendant is charged with felony driving under the
11 influence. In that regard, the State must first prove
12 beyond a reasonable doubt that the Defendant drove a
13 vehicle while under the influence of alcohol and or
14 drugs. Driving a motor vehicle means that the vehicle
15 was in motion and that, as well as any other fact, may
16 be proven by direct or circumstantial evidence. Now,
17 in the context of the vehicle being in motion, a
18 movement of the vehicle might occur without any
19 affirmative act by a driver or by any person if a
20 vehicle is moving by some power beyond the control of
21 the Defendant or by accident, that would not be
22 driving. Now, the State must also prove beyond a
23 reasonable doubt that the Defendant was sufficiently
24 under the influence of alcohol and or drugs to
25 materially impair his ability to drive with reasonable

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1 care and with due regard for others. Let me back up,
2 the State must prove beyond a reasonable doubt that
3 the Defendant was sufficiently under the influence to
4 materially impair his ability to drive with reasonable
5 care with due regard for others, for himself or as a
6 reasonably prudent person would drive. It is not
7 necessary to show that the Defendant was in a helpless
8 position, passed out or even intoxicated. On the other
9 hand, the fact that the Defendant at some time prior
10 to this incident drank an alcoholic beverage, does not
11 prove that the Defendant was driving under the
12 influence. Now, next the State must prove beyond a
13 reasonable doubt that the Defendant, while driving,
14 did an act, or the Defendant did an act forbidden by
15 law or neglected a duty imposed by law. In that
16 regards, I told you earlier, the State has alleged two
17 separate acts forbidden by law or neglected duty
18 imposed by law and these are the reckless driving and
19 the duty to exercise due care. Driving recklessly is
20 driving a vehicle in a manner showing a willful or
21 wanton disregard for the safety of persons or
22 property. The words willful and wanton mean the
23 conscience failure to exercise due care. And whether
24 the Defendant was driving recklessly is to be decided
25 based on all surrounding circumstances and what is

1 reckless driving may not, under some conditions, may
2 not be reckless driving under other conditions. In
3 deciding whether or not the Defendant was driving
4 recklessly, in the context of the felony DUI statute,
5 you should consider the manner of his driving with
6 respect to the time and place of the alleged
7 violation, the width, character and condition of the
8 highway, weather conditions as to light or darkness,
9 positions of others on the road, the weight and load
10 of the vehicle, the opportunity for observation and
11 familiarity of the highway and the chance of being
12 able to stop or avoid a collision. Something more than
13 mere negligence, carelessness when operating a vehicle
14 is necessary to show reckless driving and the State
15 must prove that the Defendant knew his driving was
16 negligent and that he continued driving with a
17 conscience disregard of the consequences of his
18 negligence. Now, within the context of felony DUI, the
19 State also claims that the Defendant violated the
20 statute requiring the driver of every vehicle to
21 exercise due care to avoid colliding with pedestrians
22 on the highway. Alright ladies and gentlemen, with
23 respect to felony DUI, the State must also prove
24 beyond a reasonable doubt the element of proximate
25 cause, which means that the State must prove beyond a

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1 reasonable doubt that the act or neglect of the
2 Defendant approximately caused the death of Jean
3 Turner. Approximate cause is the direct cause, is the
4 immediate cause, the efficient cause without which the
5 death would not have resulted. It must be a chain on
6 causation from the time of the injury inflicted by the
7 Defendant until the time of death. Approximate cause
8 does not necessarily mean that it occurred immediately
9 prior to death. There may be more than one approximate
10 cause. The acts of two or more people may combine
11 together to be approximate cause of the death of a
12 person. The Defendant's act may be regarded as to
13 approximate cause if the contributing factor is death
14 of Jean Turner. The fact that other causes also
15 contributed to the death does not relieve the
16 Defendant from responsibility. The Defendant's act
17 does not, or need not be the sole cause of the death,
18 but must be approximate cause contributing to the
19 death. Now, as I mentioned, if you find him not guilty
20 of felony DUI, you must consider the lesser offense of
21 DUI and that has all of the elements of felony DUI
22 except what I discussed about the violation of a
23 particular statute such as reckless driving or driving
24 without due care to pedestrians. It also does not have
25 the elements of the death of an individual or the

1 element of proximate cause. Alright, that is a re-
2 charge on those two points and if you would please go
3 back into your jury room, if you have additional
4 question don't hesitate to ask, alright? Thank you.

5 (Jury deliberations continue 4:28)

6 The Court: Any objections from the State ?

7 Mr. Stumbo: None from the State Your Honor .

8 The Court: From the Defendant ?

9 Mr. Floyd: Nothing from the Defendant.

10 The Court: Alright, we'll continue to wait. It's four
11 thirty and if y'all go anywhere, don't go far.

12 Alright.

13 (Court break)

14 The Court: Alright, I understand the jury has a
15 verdict. Is the State ready?

16 Mr. Stumbo: We are Your Honor.

17 The Court: Is the Defendant ready?

18 Mr. Floyd: We are Your Honor.

19 The Court: Okay, I will note this for the folks in the
20 courtroom, please follow my orders. Whatever the
21 verdict is, whether you are in agreement with it or
22 opposed to it, I do not want there to be any visible
23 or audible reaction. In other words, don't say or do
24 anything, don't let your breath out, no, no reaction
25 at all to maintain order and peace. If you think you

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1 can't handle that I understand that in some
2 circumstances folks may not be able to, so if you
3 think you can't, you can go ahead and leave if that's
4 what you'd like to do. Alright.

5 (Jury enters courtroom 4:34)

6 Clerk: Madam Forelady, have you reached a verdict?

7 Foreman: Yes we have.

8 Clerk: It's unanimous?

9 Foreman: Yes ma'am.

10 The Court: Alright Mr. Baggett please stand.

11 Clerk: The State versus Marty Baggett as to the charge
12 of reckless homicide, we the jury unanimously find the
13 Defendant guilty. As to the charge of felony driving
14 under the influence, we the jury unanimously find the
15 Defendant guilty. If these are your verdicts so say
16 you all please let it be known by raising your right
17 hands.

18 The Court: Alright, the record will show that all
19 twelve jurors raised their right hands. Alright have a
20 seat. Alright, anything before the State or anything
21 from the State before the jury is released?

22 Mr. Stumbo: Nothing from the State Your Honor.

23 The Court: Anything from the Defendant before the jury
24 is released?

25 Mr. Floyd: Nothing Your Honor.

1 been very, very courteous and orderly this week. I
2 don't know what kind of circumstances might be between
3 folks on the right and folks on the left. Just make
4 sure that you don't have any hereafter, especially at
5 the courthouse or on the courthouse grounds, okay?
6 We're going to recess for about five minutes.

7 (Court recess)

8 The Court: Alright Mr. Stumbo?

9 Mr. Stumbo: Thank you Your Honor. May it please the Court?

10 I'm going to be brief Your Honor. You've heard all the
11 facts in this case of the rather disturbing and tragic
12 death of Ms. Jean Turner. There's been a number of her
13 family sitting here patiently in this courtroom this
14 entire week and had to listen to this trial. Your
15 Honor three of them have decided they'd like to
16 address Your Honor today. Also, I have the Defendant's
17 prior record. Would you like for me to give you his
18 prior record first?

19 The Court: Yes.

20 Mr. Stumbo: Your Honor, Mr. Baggett's long criminal history
21 started back in 1983 with a DUI first conviction; in
22 1992 he had another DUI conviction; 1993 he was
23 convicted of assault and battery of a high and
24 aggravated nature, an ABHAN; Judge he was also
25 convicted in 1994 for a third driving under the

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1 influence third offense and an ABHAN charge at the
2 same time in 1994. Your Honor in 2003 he was convicted
3 for unlawful conduct towards a child; his final
4 conviction Your Honor in 2006 Mr. Baggett was
5 convicted for threatening the life, person or family
6 of a public official. In 2006 Your Honor he was
7 obviously, he was arrested in 2007 on these charges
8 and has been incarcerated ever since. Your Honor, if
9 Your Honor is ready for the victim impact?

10 The Court: Yes sir I would note that anyone who does
11 choose to speak, they would have to address their
12 comments to me. I will not permit any comments to be
13 directed personally to the Defendant. So anything that
14 you want to say, you'll have to say to me. Alright?

15 Mr. Stumbo: Your Honor first of all we have Mr. Talmage
16 Turner; he's one of Ms. Jean Turner's two surviving
17 sons and he would like to address Your Honor at this
18 time.

19 The Court: Alright Mr. Turner.

20 Mr. Turner: Thank you Your Honor. First off, I want to
21 start by saying it's been a long road for everybody.
22 All I know is I woke up one day to a phone call saying
23 your mom's been killed. And I know for the past five
24 mother's days we visit her at her grave site. And I
25 know Marty Baggett personally. All I ask is to be fair

1 many more years left here in my body and my husband
2 neither and I just pray that you'd have mercy on my
3 son. It was an accident and I'm so sorry about that,
4 because she was her mother's daughter and I know that
5 each day hurts, but I don't want to die and have my
6 son in jail. Thank you Your Honor for listening to
7 me.

8 Clerk: She's passing out.

9 Bailiff: Lay her straight back.

10 Clerk: Should we call 911?

11 (Court break)

12 The Court: Alright, Mr. Floyd anything else?

13 Mr. Floyd: Nothing further Your Honor.

14 The Court: Alright, sometimes people expect words of
15 wisdom when there's a sentence being passed down and
16 there's nothing, as everybody knows, that will bring
17 Ms. Turner back. Both families have been rocked by
18 this tragedy for different reasons and whatever
19 occurred that night, the jury's spoken and they found
20 that Mr. Baggett was operating that vehicle while
21 under the influence of alcohol to the extent that his
22 ability to drive was materially impaired and that his
23 conduct, in the context of reckless driving or
24 otherwise, caused a death. We've spent a good bit in
25 jail since this happened?

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1 Mr. Floyd: Every day Your Honor.

2 The Court: Well obviously on both of these, I'm sure
3 that the family of Ms. Turner understands that when I
4 sentence him he gets credit for every day of that and
5 a lot of folks don't understand that, but obviously is
6 the law and makes practical sense. I am going to
7 impose a concurrent sentence, which means he can serve
8 them together at the same time. On the reckless
9 homicide that carried up to ten years and or a fine of
10 a thousand dollars to five thousand dollars, I'm going
11 to impose the sentence of ten years in the Department
12 of Corrections. I'm going to put on the sentencing
13 sheet that he continues to receive care for any
14 psychiatric conditions. I especially appreciate the
15 words of Ms. Turner's mother. I think she's the one
16 that mentioned that she knows that Mr. Baggett is
17 somebody's daughter, I mean somebody's son and she
18 handled herself up here standing better than most
19 mothers would and I certainly commend her for her
20 grace in that regard. Whatever the sentence is, nobody
21 can bring Ms. Turner back and as Mr. Stumbo said and
22 as Mr. Scott said in his closing arguments, she didn't
23 deserve to die. Regardless of what her blood alcohol
24 level was. I don't know whether folks will agree or
25 disagree with my sentence, but felony DUI carries one

1 to twenty five years. That's a remarkable range and it
2 carries a mandatory minimal fine of one hundred
3 dollars and a maximum fine of twenty five thousand,
4 one hundred dollars. There's not any victory in it
5 for either side. Concurrently, with the ten year
6 reckless homicide sentence, I'm committing Mr. Baggett
7 to the South Carolina Department of Corrections for a
8 period of twenty years and I'm fining him twenty five
9 thousand dollars. Having said all of that, I don't
10 know what the intricacies of any appeal will be, but
11 Mr. Floyd, as I mentioned, the first stage of that
12 will be your motion for a verdict in res of judgment,
13 whatever the rules characterize it as and you can get
14 that filed and served on Mr. Stumbo and a copy to me
15 within ten days. And if you would Mr. Stumbo, Mr.
16 Floyd I assume your letterhead will have your email
17 address on it?

18 Mr. Floyd: It will Your Honor.

19 The Court: And Mr. Stumbo, if you could send me a test
20 email so I will have yours, a copy of Mr. Scott's
21 letterhead on that so if I need to have a hearing I
22 can correspond by email on that. If he files his
23 motion, of course you will file a memo. If you need
24 more than ten days to do that, just contact me. The
25 motion is the key, filing the motion, because you have

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG) DOCKET # 2010-GS-45-0270 & 0269

The State,

vs.

Marty Baggett,

Defendant.

NOTICE OF MOTION AND
MOTION FOR A NEW TRIAL

A CERTIFIED TRUE COPY
Carolyn F. Williams
 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

PLEASE TAKE NOTICE that the undersigned as attorney for the Defendant, Marty Baggett, will move before the Presiding Judge for Williamsburg County, ten (10) days after the service hereof, or as soon thereafter as counsel may be heard for an Order granting the Defendant a new trial.

Said motion will be based upon the following grounds:

1. The Defendant was charged with Felony DUI and Reckless Homicide. Trial commenced on July 18, 2011 in the Third Judicial Circuit before the Honorable George C. James. The State of South Carolina was represented by the Attorney General's Office, Assistant Attorney General David Stumbo and Special Assistant Attorney General Dale Scott. The Defendant was represented by Samuel L. Floyd of the Williamsburg County Bar.

At the close of the State's case, the Defendant's attorney made a Motion for Directed Verdict as to the Felony DUI charge which the Honorable Court denied.

The Defendant did not offer any evidence. The Defendant's attorney again made a Motion for a Directed Verdict which the Honorable Court denied. On July 20, 2011 the Defendant was found guilty of Felony DUI and Reckless Homicide whereby the Honorable Court sentenced him to 20 years for Felony DUI and 10 years for Reckless Homicide with the sentences to run concurrently.

The Defendant, by and through his attorney, Samuel L. Floyd, hereby files this Motion for a New Trial pursuant to rule 29 (SCRCP). The evidence presented by the State indicated the deceased, Ms. Jean Turner, was riding with the defendant, Marty Baggett on March 8, 2007, when the Defendant somehow ran over Turner with his pickup resulting in her death. The night of the incident Mr. Baggett was arrested and charged with DUI by Corporal Juan Ballard of the Williamsburg County Sheriff's Department. Two days later, on April 10, 2008, the Defendant was charged with Murder and Kidnapping. On October 13, 2008 the Defendant was formerly indicted for Kidnapping, Voluntary Manslaughter and Murder. Those charges were dismissed, and on October 7, 2010, the Defendant was indicted for Felony DUI, Section 56-5-2945 (A)(2) and Reckless Homicide under Section 56-5-2910, South Carolina Code of Law Ann.

The Defense argued for a directed verdict on the following grounds:

- 1) the statutes were penal in nature
- 2) the Statute must be strictly construed and not doing so is fatal to the State's case.
- 3) Failure to comply with the provisions of those statutes 56-5-2950 and 56-5-2946 is fatal to the prosecution's case.

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Carolyn F. Williams

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

- 4) that the Legislature clearly intended for a per se dismissal in the event that the law enforcement agency did not comply with the statute, and
- 5) the statute could be circumvented in perpetuity should law enforcement agency purposely not adhere to the same.

Mr. Floyd argued that the facts of this case are directly on point with the most recent State of South Carolina Supreme Court ruling in the case of The Town of Mount Pleasant vs. Treva Roberts, Opinion No. 27005 (July 11, 2011). In Roberts, the Town of Mount Pleasant did not comply with SC Code, section 56-5-2953. This section requires the videotaping of the incident site. In this case, the Town failed to equip the patrol cars with video cameras, a video roadside arrest site and breath test sites. Roberts asserted section 56-5-2953, SC Code of Law, conferred upon her a statutory right to have the road side arrest videotaped.

The Town relying on Subsection (G) of that statute argued that "the videotaping requirement took effect only once the law enforcement vehicle is equipped with a videotaping devise". Subsection (G) provides in pertinent part:

The provisions contained in Section 56-5-2953 (A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement once the law enforcement vehicle is equipped with a videotaping device. Id. § 56-5-2953 (G)

The Town asserted that it had no affirmative duty to equip each vehicle with the video equipment. The Municipal Court ruled "there is no requirement that the Town of Mount Pleasant obtain any video cameras and that the statute only provides what the town must do once they get the video cameras on board."

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 CLERK OF COURT
 WILLIAMSBURG COUNTY

The Circuit Court reversed and the Supreme Court confirmed, finding that "we find the Town's prolonged failure to equip it's patrol cars with video cameras defeats the intent of the legislature, therefore the Town should not be able to avoid its statutory created obligation to produce a video tape by repeatedly relying on subsection G of section 56-5-2953. Because the Town failed to establish any statutory exception to excuse it's noncompliance, we hold the Circuit Court Judge correctly reversed Roberts DUI conviction and dismissed the charge accordingly and affirm as modified the decision of the Circuit Court Judge. The court relied upon previous precedence.

The Court in Roberts stated:

1. When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant. State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991).
2. Our appellate courts have strictly construed section 56-5-2953 and found that a law enforcement agency's failure to comply with these provisions is fatal to the prosecution of a DUI case. See Suchenski, 374 S.C. at 17, 646 S.E.2d at 881.
3. As evidenced by this Court's decision in Suchenski, the Legislature clearly intended for a per se dismissal in the event a law enforcement agency violates the mandatory provisions of section 56-5-2953. Notably, the Legislature specifically provided for the dismissal of a DUI charge unless the law enforcement agency can justify its failure to produce a videotape of a DUI arrest. Id. § 56-5-2953(B)
4. Moreover, the Town's interpretation of subsection (G) is nonsensical as the requirements of section 56-5-2953 could be circumvented in perpetuity if a law enforcement agency purposefully does not request additional video cameras.

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In this case the arresting officer, Juan Ballard, and the lead Investigator, Steve Boston, admitted to never offering Mr. Baggett a Breath Test, Blood Test, or Urine Test. There appears to be no video of the Incident site or Breath site.

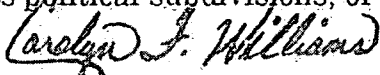
Clearly the intent of the legislation in 56-5-2950 requires that the person arrested for Driving Under the Influence be given the opportunity to have his breath, blood, or urine sample. Section 56-5-2950 (A) [DUI] provides in part:

"A breath test must be administered at the direction of a law enforcement officer who has arrested a person for driving a motor vehicle in this State while under the influence of alcohol, drugs or a combination of alcohol and drugs. At the direction of the arresting officer, the person first must be offered a breath test to determine the person's alcohol concentration. If the person is physically unable to provide an acceptable breath sample because he has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken. If the officer has reasonable suspicion that the person is under the influence of drugs other than alcohol, or under the influence of a combination of alcohol and drugs, the officer may order that a urine sample be taken for testing."

Section 56-5-2946 [Felony DUI] states in part:

"Notwithstanding 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 person violated or is under arrest for a violation of Section 56-5-2945."

"The provisions of Section 56-5-2950, relating to the administration of tests to determine a person's alcohol concentration, additional tests at the person's expense, the availability of other evidence on the question of whether or not the person was under the influence of alcohol, drugs or a combination of them, availability of test information to the person or his attorney, and the liability of medical institutions and persons administering the tests are applicable to this section and also extend to the officer requesting the test, the State or its political subdivisions, or

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 CLERK OF COURT
 WILLIAMSBURG COUNTY

governmental agency, or entity which employs the officer making the request, and the agency, institution, or employer, either governmental or private, of persons administering the tests. Notwithstanding any other provision of state law pertaining to confidentiality of hospital records or other medical records, information regarding tests performed pursuant to this section must be released, upon subpoena, to a court, prosecuting attorney, defense attorney or law enforcement officer in connection with an alleged violation of Section 56-5-2945."

Section 56-5-2953 (A) states:

"A person who violates Section 56-5-2930, 56-5-2933 or 56-5-2945 must have his conduct at the incident site and the breath test site video recorded."

In this case it was established that these tests were never offered. It was shown at trial that the incident site was not videoed, and no breath, blood, or urine sample tests were offered. Following the logic in the Courts' strict interpretation in Roberts, this Court should grant a new trial resulting in a per se dismissal of the Felony DUI charge. With no video, breath, blood or urine test offered pursuant to Section 56-5-2946, the charge of DUI is fatal.

Lastly, the Defendant would argue that without the provision of 56-5-2950 there is no DUI of which is an essential element to the Felony DUI which could not exist.

In this case the Honorable Judge James seemed to hinge the denial of the directed verdict motion on the subsection B of 56-5-2953. The State argued a totality of the circumstances could excuse 56-5-2953 noncompliance relying on subsection B of 56-5-2953. However, there is no provision under 56-5-2950 or 56-5-2946 for a totality of circumstance argument. There is not totality of the

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Carolyn F. Williams
 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

strict interpretation and therefore strict compliance with of the law in § 56-5-2950 and 56-5-2946.

1. Clearly, §56-5-2950 and 56-5-2946 and 29-5-5023 are penal in nature.
2. The language of these DUI statutes pursuant to recent case law as well as Roberts are to be strictly constructed.
3. Roberts citing Suchenski emphasized that noncompliance with the requirements set out by the legislative should result in a per se dismissal.
4. No question that noncompliance could result in a circumvention of the Legislature's intent.

The above arguments state sufficient facts to constitute a new trial and a dismissal of the Felony DUI charge. Therefore, based upon the foregoing, the defendant prays for a new trial.

Respectfully submitted,

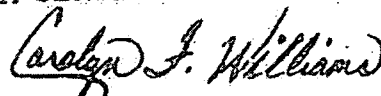
Kingstree, SC

July 29, 2011



Samuel L. Floyd
Attorney for the Defendant
15 Courthouse Square
Kingstree, SC 29556
(843) 355-9000
Fax: (843) 355-9000

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CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

STATE OF SOUTH CAROLINA,

v.

Marty Baggett,

Defendant.

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

2010-GS-45-269; -270

STATE'S REPLY
IN OPPOSITION TO
DEFENDANT'S MOTION
FOR A NEW TRIAL

This matter comes before the Court on a Motion for a New Trial filed by Defendant Marty Baggett on July 29, 2011. The Defendant was found guilty by a Williamsburg County jury of one count of Felony Driving Under the Influence (DUI), Death Results and one count of Reckless Homicide, after a three day trial held on July 18 - 20, 2011. The State was represented by Assistant Deputy Attorney General David M. Stumbo and Special Assistant Attorney General C. Dale Scott. Samuel L. Floyd, Esquire of the Williamsburg County Bar represented the Defendant.

The Defendant moved for a Directed Verdict of not guilty on both indictments at the conclusion of the State's case. After hearing argument by both sides on the matter, this Honorable Court denied the Defendant's motions, finding that the State had presented more than sufficient evidence by which a jury could reasonably infer the Defendant's guilt as to each and every element of the indicted offenses. After choosing not to offer any evidence in support of his case, the Defendant renewed his motions for Directed Verdict, which the Court again denied on the same basis. After an hour of deliberation, the jury returned guilty verdicts on both

indictments. Following his conviction, the Defendant filed a Motion for a New Trial on July 29, 2011, in which he argued that the Felony DUI conviction should be *per se* dismissed because of the State's failure to comply with procedural requirements in the DUI statutes.

In response to the Defendant's Motion, the State argues that this Honorable Court properly denied Defendant's Motion for Directed Verdict at the conclusion of the State's case, and should likewise deny the Defendant's Motion for a New Trial. When considering a motion for a Directed Verdict, a trial court is concerned only with the existence of evidence, not its weight. State v. Stuckey, 347 S.C. 484, 498, 556 S.E.2d 403, 410 (Ct. App. 2001). Grant of a motion for Directed Verdict of acquittal is proper only "if there is a failure of competent evidence tending to prove the charge." Rule 19(a), SCRCrimP; State v. Jenkins, 278 S.C. 219, 222, 294 S.E.2d 44, 46 (1982). A trial court must submit the case to the jury if any direct or substantial circumstantial evidence has been presented that reasonably tends to prove the defendant's guilt or from which his guilt may be fairly and logically deduced. State v. Fennell, 340 S.C. 266, 270, 531 S.E.2d 512, 514 (2000).

Viewed in a light most favorable to the State, the evidence presented at trial by the State was more than sufficient to allow the jury to find Defendant guilty of both indictments, Felony Driving Under the Influence, Death Results (2010-GS-45-270) and Reckless Homicide (2010-GS-45-269). Rod Garris, common law husband of the deceased victim Jean Turner, testified that on the night of the incident he witnessed Defendant purchase a bottle of liquor at the Hanna's liquor store in Hemingway in the late afternoon of March 7, 2007. This was corroborated by another witness, Jimmy Hanna, owner of Hanna's liquor store, who sold Defendant to his recollection a bottle of Lord Calvert's whiskey on the afternoon of March 7, 2007. Defendant, Ms. Turner (victim), and Mr. Garris proceeded to ride around in Defendant's truck and all three

were drinking straight liquor from the bottle. Mr. Garris testified that only Defendant drove the truck. At one point, the Defendant informed Mr. Garris and Ms. Turner that they were not getting out of the truck until the liquor was finished.

Mr. Garris testified that Defendant made several sexually charged comments towards Ms. Turner that day. This was corroborated by the testimony of Mr. Ned Nettles, employee of Westside convenience store. Defendant boasted to Mr. Nettles that he was going to have oral sex that night with Ms. Turner. Mr. Nettles then observed the truck being driven by Defendant across the street to Hanna's liquor store, with Ms. Turner and Mr. Garris as passengers. Mr. Garris testified that he later he stepped out of the truck to urinate and was almost run over by Defendant. He was forced to jump into a ditch to get out of the way, causing the Defendant to laugh about the incident. Mr. Garris testified that a second time when he and Ms. Turner tried to get out of Defendant's truck near Clare Road, Defendant grabbed Ms. Turner, forcing her back into the truck, and backed up quickly, knocking Mr. Garris to the ground and running over his arm in the process. Mr. Garris testified that he observed Defendant driving away in a very erratic manner swerving along the roadway, and he could see Ms. Turner struggling with Defendant as he drove away.

An eyewitness, Carolina Jones, drove up on a horrific scene on Clare Road a few minutes later on the evening of March 7, 2007. She observed Defendant's white pickup truck parked across the road blocking her path and Defendant was walking around the scene outside the truck with his cell phone in his hand. Ms Jones testified that as Defendant approached her car window, she observed him to be visibly intoxicated. She also observed what appeared to be a pile of clothes, but was later determined to be the deceased body of Jean Turner on the side of the dirt road. According to the testimony of the medical examiner, Ms. Turner's fatal head wounds were

consistent with having been run over by the tire of the truck.

Investigator Steve Boston and Vincent Staggers spoke directly to and in close proximity with Defendant, and observed Defendant at the scene. Boston and Staggers testified that Defendant had a strong smell of alcohol on his breath, was unsteady on his feet, and his actions were consistent with an individual who was visibly intoxicated. Based on the physical evidence presented, including the victim's blood on the underside of the passenger door, Defendant's initial story that Ms. Turner was driving his truck is simply not credible. Defendant's other versions of what happened that night put him behind the wheel of the truck.

Most importantly, Defendant admitted to Investigator Boston in a post-Miranda interview on March 9, 2007 that he was too drunk to drive that night and blanked out at some point, but only remembers putting the gear shift into park and getting out of the vehicle when he realized Ms. Turner had fallen out of the truck. In contrast, Defendant admitted to William Foxworth, a roommate at the Williamsburg County jail, that when Ms. Turner refused to have sex with him, Defendant backed-up and accidentally ran over Ms. Turner's head when she exited his truck.

Viewing this plethora of evidence in a light most favorable to the State, the evidence was sufficient for the jury to conclude beyond a reasonable doubt that the Defendant proximately caused the death of Ms. Turner on March 7, 2007, by driving a motor vehicle in violation of the law (failure to exercise due care) while being under the influence of, and appreciably impaired by, the consumption of alcohol. The elements of the crime of Felony DUI (Death) as laid out in S.C. Code Section 56-5-2945(A) were clearly met in this case. Accordingly, the motion for Directed Verdict was properly denied by this Honorable Court at trial, and Defendant's Motion for a New Trial should likewise be denied.

The Defendant's Motion centers entirely around the notion that a Felony DUI indictment, charged under §56-5-2945(A), S.C. Code of Laws, 1976 (as amended), should be *per se* dismissed in any instance where the State lacks evidence of a videotape of the incident location as required under §56-5-2953, or where the State lacks the offer and evidence of a breath, blood or urine test as addressed in §56-5-2946 and -2950(A). This argument fails to recognize that our judiciary continues to have discretion under a totality of the circumstances analysis to allow juries to make decisions on critical questions of fact that have been presented at trial. The aforementioned procedural requirements are a means to that end - to safeguard the legal rights of citizens who are suspected of driving a vehicle under the influence of drugs or alcohol (DUI) - such procedural steps must never be viewed as an end in and of themselves. The Legislature, by including reasonable statutory exceptions for the various procedural requirements, and our Courts, through jurisprudence on DUI cases (including cases cited in Defendant's Motion), demonstrates that judicial discretion in these matters is still recognized by South Carolina law.

I. Videotape requirement

The record is clear that the Williamsburg County investigators failed to document the Clare Road crime scene by videotape recording on the night of March 7, 2007. S.C. Code Ann. §56-5-2953(B), is clear however that "Failure by the arresting officer to produce the video tape recording required by this section is **not alone** a ground for dismissal of any charge made pursuant to Sections 56-5-2930, -2933, or 56-5-2945." (emphasis added). Section 56-5-2953(B) further provides that noncompliance with the general requirement that a videotape be produced may be excused if, under the "totality of the circumstances" surrounding the investigation and arrest, it was not reasonable to expect law enforcement to produce such videotape evidence of the incident location. *Id.* The facts and circumstances of the night of March 7, 2007 on Clare Road

place the Felony DUI charge against the Defendant squarely under the “totality of the circumstances” exception of Section 56-5-2953(B).

Investigator Boston testified at trial that he and his colleagues were investigating this as a homicide scene, and a potential murder and kidnapping, based on their observations of the crime scene and other evidence gathered the night of the incident. The record at trial reflects that a number of law enforcement officers from multiple agencies responded to the call that night when Ms. Turner’s deceased body was found lying on the side of Clare Road. The layout of the crime scene and statements by a witness Carolina Jones clearly gave the investigators some reason to believe that the Defendant Marty Baggett may have intentionally run over the victim Ms. Jean Turner with his truck. Investigator Boston made an initial decision based on the information available to him at the time to proceed with this investigation as a homicide case. The investigators were clearly not following standard operating procedure typically observed in a DUI traffic stop and arrest. Accordingly, the Sheriff’s Department was justified in not producing a videotape, as is generally required by Section 56-5-2953(B). t

The Defendant cites both City of Rock Hill v. Suchenski, 646 S.E. 2d 879 (2007) and Town of Mt. Pleasant v. Treva Roberts, Opinion No. 27005 (July 11, 2011), in support of his motion. These cases, however, are distinctly different and distinguishable from the case at bar based on the facts. Both Suchenski and Roberts involved roadside, probable cause traffic stops by municipal police officers of drivers suspected of driving under the influence. The “totality of the circumstances” exception of Section 56-5-2953(B) (which is recognized and discussed in the Roberts opinion) was clearly not triggered by the facts presented in Suchenski and Roberts.

II. Offer of Blood, Breath, or Urine tests

It is also indisputable that the investigating officers failed to document the offer for, or collection of, any breath, blood, or urine samples from the Defendant on the night of the incident,

as are addressed in the implied consent portion of the DUI statute. S.C. Code Ann. §§ 56-5-2946 and 56-5-2950(A). The referenced sections focus on the requirement, particularly in a Felony DUI case as provided in Section 56-5-2946, that a suspect must submit to tests when offered. The statutes do not address situations in which the investigating officers choose, in their discretion, not to conduct the blood alcohol concentration (BAC) tests.

Indeed, Sgt. Juan Ballard of the Sheriff's Department testified that he booked the Defendant the morning after the incident on a misdemeanor DUI ticket. However, Sgt. Ballard could not recall a reason why he did not conduct BAC testing on Defendant the night of the incident. Investigator Boston then charged the Defendant with murder and kidnapping warrants on the same day, March 8, 2007. The DUI ticket was inexplicably dismissed in the Williamsburg County Magistrate's Court about a month later in April 2007. Based on this chain of events, it is clear that Defendant's BAC level was not the primary concern of the investigators on the night of the incident, and no BAC was documented by the investigating officers on March 7, 2007 despite Defendant's obvious and observable intoxication at the scene.

The South Carolina Court of Appeals addressed a similar scenario in State v. Goode, 406 S.E. 2d 391 (S.C. App. 1991). The Goode court upheld a DUI conviction where no evidence of the defendant's blood alcohol concentration was offered by the State at trial, stating that sufficient evidence was presented, including strong odor of alcohol on his breath and erratic driving, by which a jury could find the Defendant guilty of DUI. Id at 393, 394.

The South Carolina Supreme Court in State v. Baker, 427 S.E. 2d 670 (1993) likewise upheld a DUI conviction in the where the arresting officers did not give Defendant an opportunity to take a breath test as required by Section 56-5-1950(a). The Baker court held that, "[A]rresting officers are not required to offer breath tests to persons charged with driving under

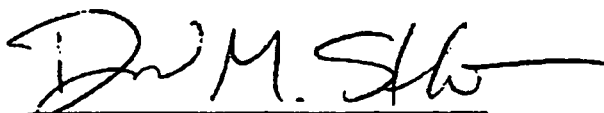
the influence of alcohol as a prerequisite to prosecution.” 427 S.E. 2d at 672. The Court also put in proper perspective the Legislative intent of the implied consent statute:

Section 56-5-2950(b) provides that ‘[t]he provisions of this section must not be construed as limiting the introduction of any other competent evidence...’ Clearly, the Legislature intended for evidence collected under the implied consent statute to augment, not replace, existing methods of establishing intoxication in criminal prosecutions of persons charged with driving under the influence.

Id.

Defendant’s position that there should be arbitrary, *per se* dismissal of all DUI charges in the absence of videotape evidence or blood alcohol concentration (BAC) evidence is simply inconsistent with the DUI statutes and case law. Judicial discretion in DUI is still recognized in South Carolina, and this Honorable Court properly exercised its discretion in denying the motions for Directed Verdict at trial. Thus, Defendant’s Motion for a New Trial should likewise be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D.M. Stumbo", with a long horizontal flourish extending to the right.

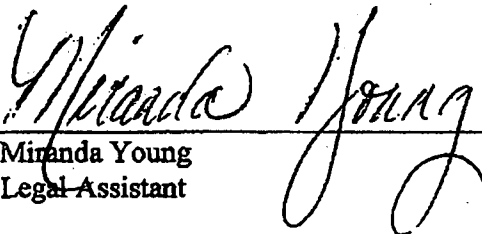
DAVID M. STUMBO
Assistant Deputy Attorney General
Post office Box 11549
Columbia, SC 29211-1549

October 10, 2011

CERTIFICATE OF SERVICE

I, Miranda Young, an employee of the S.C. Attorney General's Office, on behalf of David M. Stumbo, Attorney for the State of South Carolina, do hereby certify that on the 10th day of October, 2011, served the Attorney for the Defendant with the State's Reply in Opposition to Defendant's Motion for a New Trial, by mailing a copy of same by the United States Mail, with sufficient postage attached to:

Samuel L. Floyd, Esquire
15 Courthouse Square
Kingstree, South Carolina 29556


Miranda Young
Legal Assistant

STATE OF SOUTH CAROLINA)

General Sessions
IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

COUNTY OF WILLIAMSBURG)

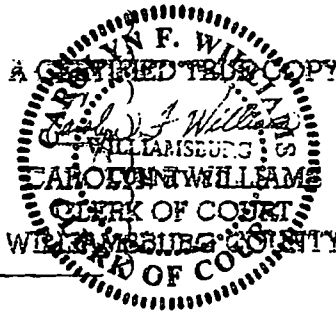
Case No: 2010-GS-45-0269; -0279

State of South Carolina

vs.

Marty Baggett,

Defendant.



ORDER

FILED
02 DEC 2011 PM 03:07Williamsburg County
Clerk of Court
Kingstree SC

This matter is before the court pursuant to the defendant's timely motion for a new trial. The initial trial came before this court the week of July 18, 2011. The defendant was represented by Mr. Samuel L. Floyd and the case was prosecuted by Assistant Attorney General David M. Stumbo and Special Assistant Attorney General C. Dale Scott. The defendant was found guilty by a jury of both Felony DUI under S.C. Code §56-5-2945 and Reckless Homicide.

The defendant argues a new trial should be granted on the Felony DUI charge due to the Williamsburg County Sheriff Department's failure to strictly adhere to §§56-5-2946, 56-5-2950, and 56-5-2953. The defendant interprets these sections to require, in part, that a Blood Alcohol Concentration (BAC) test be offered and that the incident and BAC test sites be videotaped when a DUI law is violated. In this case, the defendant's conduct at the incident site was not taped, and he was not offered a BAC test. The defendant believes this requires a *per se* dismissal of any DUI charge under The Town of Mount Pleasant vs. Treva Roberts, 393 S.C. 332, 713 S.E.2d 278 (2011). The court denied the defendant's directed verdict motions on these points. The defendant's new trial motion is based on the same grounds.

The court will first address the defendant's contention that §56-5-2946 requires the arresting officer to offer a DUI arrestee a BAC test. The State argues BAC evidence is not a requirement in DUI cases and that law enforcement may decide whether to administer BAC tests

on a case by case basis. The court agrees with the State. §56-5-2946 does not require the arresting officer to offer a BAC test to a person charged with DUI. State v. Baker, 310 S.C. 510, 427 S.E.2d 670 (1993).

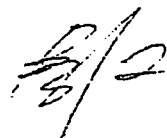
As to the requirement under §56-5-2953(B) that the defendant's conduct at the incident site be videotaped, the court finds that the "totality of the circumstances" exception under §56-5-2953(B) applies. This exception permits the court to consider any valid reason for law enforcement's failure to produce a videotape "based on the totality of the circumstances." In this case, law enforcement was dispatched to the scene and encountered the defendant, his truck, the victim's body, and other circumstances that did not immediately point to a DUI scenario. It is true that the defendant was noted to be visibly intoxicated and was charged at some point with DUI, but Investigator Boston testified that he and others were investigating the matter as a possible kidnapping and murder. The defendant's reliance upon City of Rockhill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007) and Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (2011) is misplaced. In Suchenski, the Court of Appeals ruled that the issue of totality of circumstances had not been raised in the trial court, so that issue was not addressed by the Court. In Roberts, the Supreme Court did address a totality of circumstances argument, but simply ruled that under the facts of that case, the totality of the circumstances did not excuse the failure to tape the defendant at the incident site. In the instant case, as noted above, the totality of the circumstances excuses the videotaping requirement.

For the reasons set forth herein, the defendant's motion is DENIED.

AND IT IS SO ORDERED.

November 30, 2011


The Honorable George C. James, Jr.
Presiding Judge, Third Judicial Circuit



WITNESSES

S/A

Docket Number 2010-GS-45-0270**The State of South Carolina
County of Williamsburg**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant**ARREST WARRANT NUMBER****COURT OF GENERAL SESSIONS**

D.P.

OCTOBER 2010 TermI, _____
hereby appear in my own proper person
and plead guilty to the within indictment
or to**THE STATE**

vs.

MARTY BAGGETT**DEFENDANT**Defendant

Witness: _____

ACTION OF GRAND JURYC.C.C. Pls. And G.S.Foreperson of Grand Jury
Date: 10-7-10**VERDICT****INDICTMENT FOR****FELONY DUI****S.C. CODE §56-5-2945(A)(2)
CDR Code: 395
FELONY (Class B)**Foreperson of Petit Jury
Date:CLERK OF COURT
KIMBERLY S. G.
COUNTY OF WILLIAMSBURG

10 OCT -7 PM 12:58

P. 11 11 PM

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF WILLIAMSBURG)

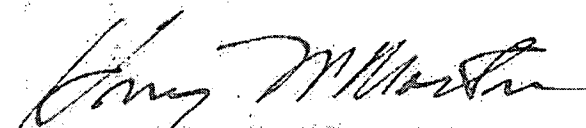
INDICTMENT

At a Court of General Sessions, convened on Oct. 7, 2010, the Grand Jurors of Williamsburg County present upon their oath:

FELONY DUI

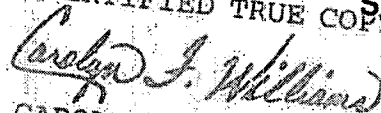
That Marty Baggett did in Williamsburg County on or about March 8, 2007, drive a vehicle, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, and violated an act forbidden by law in the driving of the vehicle, to-wit: Reckless Driving (§56-5-2920); and/or Failure to Exercise Due Care (§56-5-3230), or neglected any duty imposed by law in the driving of the vehicle, to-wit: by failing to use due care in the operation of the vehicle with regards to the safety of others, in that he drove his vehicle recklessly and while intoxicated. The violation of these acts or neglect of duty approximately caused the death of Jean Turner, in violation of §56-5-2945 of the *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



HENRY MCMASTER (CDS)
 SOUTH CAROLINA ATTORNEY

A CERTIFIED TRUE COPY


 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

10 OCT -7 PM 12:58

CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg
STATE VS.Marty Baggett

AKA:

Race: 1 Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Hemingway, SC 29554DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, death resultsin violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

General Attorney73081

SC Bar#

Defendant

Sam Floyd

Attorney for Defendant

16677

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 ~~months~~ years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$ 25,000.00; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Reckless Driving☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

\$25,000.00

§ 14-1-206 (Assessments 107.5 %)

\$26,875.00

§ 14-1-211(A)(1) (Conv. Surcharge)

S100

\$100.00

§ 14-1-211(A)(2) (DUI Surcharge)

S100

\$100.00

§ 56-5-2995 (DUI Assessment)

S12

\$12.00

§ 56-1-286 (DUI Breath Test)

S25

\$25.00

Proviso 47.9 (Public Def/Prob)

S500

\$

§ 14-1-212 (Law Enforce. Funding)

S25

\$25.00

§ 14-1-213 (Drug Court Surcharge)

S150

\$

§ 50-21-114 (BUI Breath Test Fee)

S50

\$50.00

§ 56-5-2942(J) (Vehicle Assessment)

S40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

S5

\$5.00

§ 44-53-450(C) (Conditional Discharge)

S350

\$

3% to County (if paid in installments)

\$1565.76

TOTAL

\$53,757.76Clerk of Court/ Deputy Clerk: Carolyn J. WilliamsCourt Reporter: Melissa Singletary

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

363

INDICTMENT/CASE#: 2010-GS-45-0269A/W#: DIR00002Date of Offense: 3/8/2007S.C. Code §: 56-05-2945(A)(2)CDR Code #: 0395

SENTENCE SHEET

☒ CONVICTED OF or☐ PLEADS① up to 25 years
② Not less than one year
③ \$10,100 - \$35,100 fine

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W.E. beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing WILLIAMSFine may be pd. in equal consecutive weekly/monthly pmts. of \$ \$ paid to Public Defender FundOther: ☐ Condition Discharge, § 44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2143Sentence Date: 7/25/11

WITNESSES

S/A

Docket Number 2010-GS-45-0269

The State of South Carolina
County of Williamsburg

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

ARREST WARRANT NUMBER

COURT OF GENERAL SESSIONS

OCTOBER 2010 Term

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment
or to

D.P.

THE STATE

vs.

MARTY BAGGETT

DEFENDANT

Defendant

ACTION OF GRAND JURY

Witness:

C.C.C. Pls. And G.S.

True Bill

Marked J. Pitt

Foreperson of Grand Jury

Date: 10-7-10

VERDICT

INDICTMENT FOR

RECKLESS HOMICIDE

S.C. CODE §56-5-2910

CDR Code: 3097

FELONY (Class E)

A CERTIFIED TRUE COPY

Carolyn F. Williams

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

10 OCT -7 PM 12:58

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF WILLIAMSBURG)

INDICTMENT

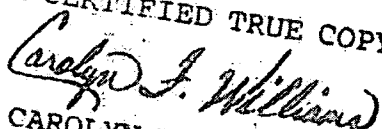
At a Court of General Sessions, convened on Oct. 7, 2010, the Grand Jurors of Williamsburg County present upon their oath:

RECKLESS HOMICIDE

Marty Baggett did in Williamsburg County on or about March 8, 2007, drive a motor vehicle in reckless disregard for the safety of others and such driving proximately caused the death of Jean Turner, in violation of §56-5-2910, THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


 HENRY MCMASTER (CDS)
 SOUTH CAROLINA ATTORNEY

A CERTIFIED TRUE COPY

 CAROLYN F. WILLIAMS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

CLERK OF COURT
 WILLIAMSBURG COUNTY
 10 OCT -7 PM 12:58

10 OCT -7 PM 12:58

STATE OF SOUTH CAROLINA

COUNTY OF 366
STATE

Williamsburg

VS.

Marty Baggett

AKA:

Race: 1 Sex: M Age: 48DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Hemingway, SC 29554DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Homicide / Reckless Homicide, death results within 3 yrs. caused by injury from vehiclein violation of § 56-05-2910 of the S.C. Code of Laws, bearing CDR Code # 3097☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: C. Scott 73081

General, Attorney

SC Bar#

Defendant

Sam Floyd
Attorney for Defendant16677
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Fel. D + I sentence☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ § 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ § 44-53-450(C) (Conditional Discharge) \$350 \$ 3% to County (if paid in installments) \$ TOTAL \$

Clerk of Court/Deputy Clerk

Court Reporter: Melissa Singleton

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-45-0270A/W#: DIR00001Date of Offense: 3/8/2007S.C. Code § 56-05-2910CDR Code #: 3097

SENTENCE SHEET

① Up to 10 year
② \$1000 - \$5000
Fine☒ CONVICTED OF or ☐ PLEADSof the S.C. Code of Laws, bearing CDR Code # 3097☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.Sam Floyd
Attorney for Defendant16677
SC Bar#PTUP days/hours Public Service Employment
Obtain GED Carolyn F. Williams
Attend Voc. Rehab. or Job Corp. WILLIAMS
May serve W/E beginning CLERK OF COURT
Substance Abuse Counseling WILLIAMS
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: Continue to receive case by
provisional conditionFine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender Fund

Other:

Continue to receive case by
provisional condition☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

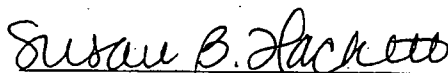
Sentence Date:

2143
7/20/11

CERTIFICATE OF COUNSEL FOR APPELLANT

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

January 3rd, 2014



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

20837

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTY BAGGETT,

APPELLANT

APPELLATE CASE NO. 2011-204146

SUPPLEMENTAL RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

WILLIAM M. BLITCH, JR.
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorney for Appellant

Attorneys for Respondent

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CERTIFICATE OF COUNSEL.....	2

Marty Baggett v s. State of South Carolina

239

1 deceased or a Defendant that had a blood alcohol
2 content of a .387?

3 A: No sir.

4 Q: Never been around, never had a case with anyone,
5 whether it was deceased or the Defendant with a blood
6 alcohol content that high have you?

7 A: Not that I can recall.

8 Q: Okay, so that makes two firsts in this case for you
9 doesn't it?

10 A: Yes sir.

11 Q: Okay. I'm assuming that what attorney Stumbo was
12 asking you about was the statement that you and
13 officer Boston got from Mr. Baggett. When he was
14 asking you about the signing of the waiver of Miranda
15 rights?

16 A: Yes sir.

17 Q: Now, before he signed that, he, he advised you that he
18 couldn't read it without his glasses and he didn't
19 have his glasses didn't he?

20 A: Yes sir.

21 Q: He told you that?

22 A: Yes sir.

23 Q: So, it may not have been a completely, 100% voluntary,
24 because it's kind of hard to sign something if you
25 don't, can't read it. Isn't that right?

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 6, 2014

Susan B. Hackett

Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2011-204146

The State,

Respondent,

vs.

Marty Baggett,

Appellant.

MOTION TO ACCEPT TRANSCRIPT IN LIEU OF AUDIO RECORDING

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

A copy of the audio recording of the 911 call designated by Appellant was previously transported to the Court in March 2014. This recording is not in the file and not other copy of the recording can be located from either defense counsel or prosecution.

II.

The State has a copy of a transcript of the 911 audio recording. Appellant's counsel also has a copy of the transcript. The parties agree to admit the transcript as an exhibit before the Court in lieu of the missing audio recording of the 911 call. The parties believe it is a sufficient transcript for the Court to be able to render its decision in light of the lack of the audio recording.

III.

WHEREFORE, Respondent prays that the Court accept this transcript filed concomitant with this motion in lieu of a copy of the audio recording of the 911 call; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General



WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

October 21, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2011-204146

The State,

Respondent,

vs.

Marty Baggett,

Appellant.

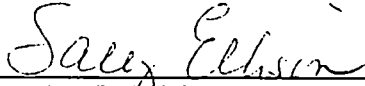
PROOF OF SERVICE

I, Sally Ellison, certify that I have served the Motion to Accept Transcript in Lieu of Audio Recording on Appellant by depositing a copy of same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.

This 21st day of October, 2014.



SALLY ELLISON
Office of Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3727

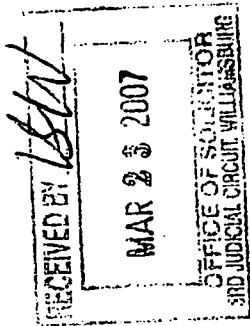
1 This is a call that came into Williamsburg County E-
2 911 Center on March 8, 2007 around 1900 hours.

3 Dispatcher 911.

4 Carolina Jones Hi, how are you.

5 Dispatcher Fine, how are you.

6 Carolina Jones My name is Carolina Jones, and I live on Bruce
7 Road, but I was just on Clair Road in Hemingway,
8 South Carolina, and I went down there to take my
9 cousin her barbecue sauce, and it's a white guy
10 standing up there in a white pickup and a body
11 is laying on the ground. I never approached the
12 body. The guy came up to me, and asked me would
13 I stay here with him until he called 911, because
14 he thought the guy was dead. I told him, no, I was
15 coming home and call the police.



16 Dispatcher On Clair Road.

17 Carolina Jones On Clair Road. The white guy that is standing up it
18 looks like blood is coming from his out of his right
19 ear, the guy that was standing up. Me and my five
20 kids were just down there on Clair road.

21 Dispatcher Okay, sweetheart, calm down. You are Janice
22 Graham.

23 Carolina Jones No, this is my house, but I'm calling from Janice
24 Graham's number but I am Carolina Jones.

25 Dispatcher Hold on, I've got to type this in.

1 Carolina Jones My phone is in my cousin's name.

2 Dispatcher Carolina Jones, right.

3 Carolina Jones Yes, ma'am.

4 Dispatcher And it's going to be on Clair Road?

5 Carolina Jones Yes, ma'am.

6 Dispatcher How far on Clair?

7 Carolina Jones I don't even know. As soon as you get down Clair

8 Road you can see his pickup and the white guy

9 standing up and it looks like a body laying in the

10 road.

11 Dispatcher Turning off from Baxley?

12 Carolina Jones I don't know no street signs, all I know it's coming

13 off of Cowhead because I live off of Cowhead. Oh,

14 Jesus.

15 Dispatcher Just hold on, okay.

16 Carolina Jones Okay. He said he was going to call 911 but I don't

17 know if he called 911 or not. I told him I was going

18 home and I was calling the police. I didn't get out

19 of my car.

20 Dispatcher I want you to stay on the line with me. I am going to

21 try to give it to my officers, okay.

22 Carolina Jones Okay.

23 Dispatcher 509 Central.

24 Officer Central.

25 Dispatcher 10/4, 509. We have a possible 10/76 complaint

1 Road on Clair Road. The caller is Ms. Carolina
2 Jones, and she stated that she was passing two
3 subjects, one that was lying on the ground, and the
4 other was standing by a white pickup truck, and he
5 asked her to stay there for a while so that he could
6 dial 911. We never received that call. It should be
7 on Clair Road, and she said just after you turn off
8 onto Clair Road.

9 Officer Copy, 10/76.

10 Dispatcher 10/76, possible 10/83 had already occurred.

11 Officer 10/4, copy. Which end of Clair Road did they turn
12 in on, the Cowhead end or the other end.

13 Dispatcher It should be closest to Cowhead, and I still have the
14 caller on 10/21.

15 (No response)

16 (Line appears to be open and you can hear people
17 talking and children in the background.)

18 Dispatcher Clair Road. You said it should be closest to
19 Cowhead?

20 Carolina Jones Yes, ma'am. The way I take it when I am coming
21 out of my lane on Bruce's Lane at the church, I
22 make a right like I am going next Brunson and that's
23 Cowhead Road and I turned on Clair Road, and
24 when you are on the dirt road it's not far.

25 Dispatcher Okay, calm down honey. I've got you some help

1 coming.

2 Carolina Jones The white guy that's standing up there he acts like
3 he's drunk or something.

4 Dispatcher You said he's acting like he's drunk.

5 Carolina Jones He's acting like he's drunk because he was walking
6 up to my car.

7 Dispatcher Are you going to be there at this residence awhile.

8 Carolina Jones Yes, ma'am.

9 Dispatcher You just stay right there so I can contact you if I
10 need you, okay.

11 Carolina Jones Okay.

12 Dispatcher And you said it was a white pickup?

13 Carolina Jones Yes, ma'am, a white pickup.

14 Dispatcher With a white male?

15 Carolina Jones Yes, ma'am, a white male. He had on a jean coat
16 and a jean pair of pants also. He has a dog box on
17 the back, and there's a dog on the back of the truck
18 also.

19 Dispatcher But he didn't say what happened.

20 Carolina Jones He didn't say what happened, he just said will you
21 stay here while I call 911, and I said can I get by,
22 and he said no, because there's a body here. I said
23 let me hold your phone and I'll call 911, and he said
24 no, I'll call 911, and when he said that I backed up.
25 I said no, I'm going home, and I'm going to call

1 911.

2 Dispatcher Okay, sweetheart, I'm going to hang up, but you stay
3 right at that residence, okay.

4 Carolina Jones Okay.

5 Dispatcher Thank you.

6 Carolina Jones Okay.

7 (Ringing)

8 Dispatcher 2 Williamsburg County 911.

9 Man Ma'am, we've got a dead body out here.

10 Dispatcher 2 Sir, what is your location.

11 Man Talk to them.

12 Woman I don't know the name of this road ma'am. I am
13 trying to find out the name of this road.

14 Dispatcher 2 Are you sure that he's not breathing, and not
15 moving.

16 Woman I don't think she's moving.

17 Dispatcher 2 Has anybody walked over to check the victim?

18 Woman The truck's moving.

19 Dispatcher 2 Ma'am, has anybody checked on him to make sure
20 he's not breathing?

21 Woman No, ma'am, I haven't. I can't do it. There's a girl
22 over on the road. Tell them what road we're on.

23 Ralph Baggett You come off Cowhead Road, on a dirt road.

24 Dispatcher 2 Sir.

25 Ralph Baggett Go to Rohobeth Church.

1 Dispatcher 2 Rohobeth Church?

2 Ralph Baggett Rohobeth Church, yes.

3 Dispatcher 2 Has anybody been able to walk over and see if this

4 lady is alive, and she's breathing.

5 Ralph Baggett No.

6 Dispatcher 2 No, does she...

7 Ralph Baggett It's the same road near Rohobeth Church, right

8 down rom Rohobeth Church.

9 Dispatcher 2 It's the dirt road right down from the church.

10 Ralph Baggett Yeah.

11 Dispatcher 2 Can you spell the name of that church for me.

12 Dispatcher 1 Is this where the person is?

13 Ralph Baggett Yes, down the road from Rohobeth Church.

14 Dispatcher 1 So the person isn't breathing?

15 Ralph Baggett No.

16 Dispatcher 1 No.

17 Ralph Baggett I don't think so.

18 Dispatcher 1 Okay, were you the gentleman that was driving the

19 white truck?

20 Ralph Baggett No, that's my son. I am going to walk out to the

21 road...

22 Dispatcher 1 He called you and let you know or you went down

23 there?

24 Ralph Baggett Yeah, he called and let us know.

25 Dispatcher 1 And what's your name darling.

1 Ralph Baggett My name is Ralph Baggett. My son is Marty
2 Baggett. I am going to walk down to the road. I'm
3 going to walk down to the end of the road.
4 Dispatcher 1 At Rohobeth Pentecostal Holiness Church, right.
5 Ralph Baggett Yes, on Cowhead Road.
6 Dispatcher 1 And you are walking.
7 Ralph Baggett I'm walking right now. I'm going on down the road.
8 Dispatcher 1 Okay. Is it his girlfriend?
9 Ralph Baggett No, it's a girl that was on the road. I just got here
10 and I don't know what happened.
11 Dispatcher 1 Okay.
12 Ralph Baggett He just called us.
13 Dispatcher 1 So he hit this person.
14 Ralph Baggett I reckon, but I don't know what happened.
15 Dispatcher 1 Alright.
16 (Tone)
17 Dispatcher 1 509 Central.
18 Officer Yes.
19 Dispatcher 1 We just received a 10/21 from a Mr. Ralph Baggett,
20 stating that his son Marty gave him that 10/21 in
21 reference to that subject possibly 10/7.
22 Officer 10/4, copy.
23 (Tone)
24 Dispatcher 2 Attention Medic 2 respond to Unit for a call,
25 respond to Unit for a call, signal 8 on the Clair

1 Road.

2 Medic 2 10/4 Central, copy.

3 (Noise)

4 Dispatcher Are you trying to reach Central.

5 (Noise)

6 Dispatcher 10/4, I am calling in reference to a call that I got

7 earlier in reference to it might have been a 10/76,

8 10/83 occurred. From what we are gathering now it

9 might have been an automobile accident, and we are

10 also going to call the Highway Patrol. The father

11 just gave us a 10/21, and stated that it's his son that

12 is there at the end of Clair Road. The victim is a

13 female subject.

14 Medic 2 Central I copy. Central do you have any information

15 on the Signal 8 for Medic 2?

16 Dispatcher Caller the patient is lying in the middle of the road

17 down from Rohobeth Pentecostal Holiness Church,

18 and also the information that we can get at this time

19 is that the patient is 10/7.

20 Medic 2 10/3.

21 Dispatcher Medic 2, correction on the...this is possibly 10/50

22 pedestrian.

23 Medic 2 10/4, and call the fire department please.

24 Dispatcher 10/4.

25 (Tone)

1 (Noise)
2 (Tone)
3 (Noise)
4 Central Attention Station 4, Station 5 personnel respond to
5 Clair Road at Rohobeth Pentecostal Holiness
6 Church for 10/50, car versus pedestrian.
7 Fireman 10/4, Central, Engine 5 and service responding.
8 Central 10/4, 19/19.
9 Officer Central 515.
10 Central Central, go ahead.
11 Officer 10/4 in reference to the subject that was standing
12 over the subject on Clair road, is the subject
13 standing the person that called or is this a different
14 individual, and if so could they give a description.
15 Central 10/4, first caller gave a Whiskey Mike that was
16 standing, the second caller gave a Whiskey Mike
17 which was his son, and gave him a 10/21 and stated
18 that 10/50 with a vehicle, female subject. The father
19 is walking to that location at this time. Medic 2 is
20 on scene.
21 Officer 10/4, we should be there in a minute or so.
22 Medic 2 Medic unit has arrived.
23 Central Waiting on that at this time. Medic 2, Central go
24 ahead.
25 Medic 2 10/...at this location.

1 Central 10/4, they are 10/17 continue to advise.

2 Medic 2 Central, this patient has been here approximately 30

3 minutes, and they say they didn't want to call 911

4 and we need to get law enforcement out here.

5 Central 10/4, they are 10/17 should be to you shortly. Medic

6 2 wants you to come on in, and the patient has been

7 out there approximately 30 mikes, and please advise

8 you to please come on in.

9 Officer Central, 505, 517 approximately 10/23.

10 Central Copy. 515 I copy your 10/23 with Medic 2.

11 Officer 10/4.

12 Central I copy 515 and 517, 10/23 with Medic 2.

13 Officer It's 515, 508.

14 Central 10/4, copy.

15 Officer What road.

16 Officer Clair Road. Evaluate the situation and call me back.

17 Officer Copy.

18 Central Medic 2, 10/60 has been notified.

19 Medic 2 Central, 509.

20 Central Go ahead sir.

21 Officer We are waiting on our on call investigator.

22 Central 10/4, he has been advised.

23 Officer Say again.

24 Central 10/4, he's been advised.

25 (Sirens)

1 (Noise)
2 Central Boston.
3 Officer Central, 517 going 10/23.
4 Central 10/4.
5 Officer ...bring it up. Central I am 10/23.
6 Central 10/4. What is your file number.
7 Officer Do we have 10/50 on Clair Road.
8 Central 10/4, on Clair Road.
9 Officer I'm not 10/23.
10 (Noise)
11 Officer It looks like somebody might have been 10/7. I'm
12 17 on. Central, I am 10/23.
13 Central 10/4.
14 Officer 53...
15 Officer 10/4, do you have an ETA.
16 Officer I'm getting there, I'm 17 now.
17 Officer 10/4.
18 (Noise)
19 Central Central.
20 Officer (Noise)
21 Central 10/4.
22 (Noise)
23 Officer I'm en route shortly, and I should be there within the
24 hour.
25 Officer 509...

1	Central	Go ahead.
2	Officer	I'm on Cowhead, and Clair Road is going to be the
3		road to my right, that rock road.
4	Central	Affirmative.
5	Officer	10/4. Central, I...
6	Central	10/4.
7		(Noise)
8	Central	Central. Go ahead.
9		(Noise)
10	Central	Are you coming from Kingstree.
11	Officer	I'm on 52 south coming up to Kingstree.
12	Central	10/4, central.
13	Officer	How far do I have to go down.
14	Central	Let me check the map for you. I am unsure on
15		mileage, but it should be a Pentecostal Holiness
16		Church approximately a mile or so, or in that range
17		on the right.
18	Officer	10/4. Look for...
19		(Noise)
20	Central	Central.
21	Officer	We are going 10/23.
22	Central	10/4.
23	Officer	Central.
24	Central	Central.
25	Officer	I'm curious....

1 Officer (noise) make sure they put detain on him to hold
2 him, and we won't go before a judge until in the
3 morning.
4 Officer 10/4, I am glad...525...
5 Officer (Noise)
6 Officer 2509...
7 (Noise)
8 Officer Are you coming out.
9 Officer Affirmative.
10 Officer Central, I am going to be 10/8
11 Central 10/4.
12 Officer 515, 509, is anybody close to the signal...
13 Officer ...until you are 10/36 as soon as you can.
14 Central Central, go ahead.
15 Officer I am going to be 10/8.
16 Central 10/4.
17 (Noise)
18 Central Central.
19 Officer We are clear for Clair Road.
20 Central 10/4.

RECEIVE

FEB - 1 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

SC SUPREME CO

Appeal from Williamsburg County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTY BAGGETT,

APPELLANT

Appellate Case No. 2011-204146

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in failing to direct a verdict of acquittal in Appellant's favor on the charge of felony driving under the influence where the prosecution failed to present evidence of video of his conduct at the incident site?

STATEMENT OF THE CASE

A Williamsburg County grand jury indicted Appellant for reckless homicide (2010-GS-45-0269) and felony driving under the influence (DUI) (2010-GS-45-0270) during its October 2010 term. R.361 (Indictments). The case proceeded to trial on July 18, 2011, before the Honorable George C James, and a jury. R. 1. David Stumbo and Dale Scott of the Attorney Gen.'s office prosecuted the case. Sam Floyd represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 337, lines 11 – 17. Judge James sentenced Appellant to 10 years imprisonment on the reckless homicide conviction. R. 341, lines 8 – 12. Judge James sentenced Appellant to 20 years imprisonment and a fine of \$25,000 on the felony DUI conviction. He ordered the sentences to be served concurrently. R. 342, lines 5 through 9. Appellant filed a motion for new trial on July 29, 2011. R. 343 (Motion). By order filed December 2, 2011, Judge James denied Appellant's motion. R.359 (Order).

Appellant filed a timely notice of new trial. This brief follows.

STATEMENT OF FACTS

Thomas "Rod" Garris was romantically involved with Jean Turner for thirteen years. R. 3, line 19 – R. 4, line 2. On March 8, 2007, Garris and Turner began drinking beer around three o'clock in the afternoon. R. 5, lines 5 – 11; R. 5, line 21 – R. 6, line 8. Turner suffered from alcoholism and had received treatment for alcohol abuse in the past. R. 7, lines 1 – 5. Garris and Turner met Appellant at a convenience store where all three agreed to return to Appellant's house. On the way to Appellant's house, they stopped at a liquor store. R. 10, line 2 – R. 11, line 20; R. 39, lines 16-18; R. 40, lines 21-22; R. 41, lines 11-23; R. 43, lines 20-25. Garris claimed Appellant purchased a fifth of Smirnoff vodka at the liquor store, R. 13, lines 8 – 13, but the owner of the store testified Appellant purchased one pint of Lord Calvert, R. 48, lines 11-25.

According to Garris, Appellant drove out of his way to take them to Turner's house, and while in the car informed them they would not get out of the truck until they drank the rest of the liquor. R. 15, lines 3 – 17. Thereafter, they "finished the liquor." R. 15, line 20. The trio continued driving "all over Williamsburg County." R. 17, lines 3 – 5.

Garris claimed that while he was urinating in a field, Appellant drove his truck approximately one hundred yards from Garris and then backed up real quick, causing Garris to jump into a ditch to get out of his way. Despite this alleged act of aggression, Garris returned to the cab of the truck. R. 17, lines 8-24. Garris further admitted that his statement to police did not include anything about Appellant allegedly trying to back over him. R. 29, line 21 – R. 30, lines 2.

When Appellant stopped the truck on the shoulder of the road about twenty feet from Turner's driveway, Garris exited the truck. Garris claimed he had Turner by the hand and was assisting her getting out of the truck. According to Garris, Appellant grabbed Turner by the arm to prevent her from leaving the truck. Garris threw his beer in the ditch and tried to jerk Turner out of the truck. Appellant then ran over Garris's arm and left. R. 18, line 14 – R. 19, line 8. Although the Garris claimed Appellant ran over his arm with his truck, Garris's arm was not broken. R. 32, line 19.¹ Garris walked to Turner's mother's house. Turner's mother took Garris home. Garris did not call law enforcement. Garris admitted that he was high at the time, but denied that he was drunk. R. 20, line 11 – R. 21, line 23.

When questioned by police the following day, Garris stated that he believed Turner probably jumped out the truck. R. 26, lines 1 – 18. When law enforcement asked if Appellant had been drunk, Garris told law enforcement, "they had been drinking." R. 30, lines 17 – R. 31, line 9. Garris specifically told law enforcement they were not drunk. R. 32, lines 3 – 11. Garris testified that Turner drank one beer and three or four drinks of liquor that day. R. 35, lines 14 – 21.

Hanna confirmed that Appellant was not drunk when he entered the liquor store. R. 49, lines 15 – 24; R. 50, lines 16 – 17.

On the afternoon of March 8, 2007, Carolina Jones turned onto Clare Road. She saw the road was blocked by Appellant in a white pickup. When she asked to get by, Appellant refused and stated he had found a dead body. Jones observed Appellant

¹ The police officer who interviewed Garris testified that he did not observe any injuries to Garris and that Garris did not tell the police that Appellant allegedly tried to run over him. R. 154, lines 8 – 25; R. 155, lines 1 – 6.

standing over the body. R. 106, line 9 – R. 107, line 7; R. 115, lines 2-6. Jones testified that Appellant seemed kind of drunk because he was staggering and repeating himself, but she did not detect alcohol on his breath. R. 107, lines 15 – 16; R. 107, lines 22 – 25. Jones left the area, returned home, and called 911. R. 113, lines 23 – 25.

Ralph Baggett received a phone call on March 8, 2007 from his son, Appellant. R. 120, lines 18 – R. 121, line 10. Ralph testified Appellant was not drunk. R. 125, lines 17 – 25. Ralph testified that he did not remember telling the police that Appellant said he thought he had run over some person. R. 126, lines 19 – 20.

Vincent Staggars, employed by the Williamsburg County Sheriff's Department, responded to the scene. R. 128, lines 15 – 21; R. 129, lines 6 – 8. Staggars claimed Appellant was unstable on his feet and had an odor of alcoholic beverage on his person. R. 130, lines 10 – 15. Despite his belief that Appellant was intoxicated, Staggars did not perform a field sobriety test on Appellant. R. 137, lines 12-16. He conducted no scientific testing to determine if Appellant had been drinking. R. 137, line 21 – R. 138, line 1. According to Staggars, Appellant stated Turner was driving the vehicle when she suddenly fell out of the truck. Appellant then tried to help her. R. 132, lines 9-21.

Steve Boston, another employee of the Williamsburg County Sheriff's Department, responded to the scene. Boston advised Appellant of his rights. R. 141, lines 9 – 22. Boston claimed that Appellant stated that he picked up an unknown woman, who was homeless, at the liquor store. R. 142, lines 10 – 17. According to Boston, Appellant stated that he was too drunk to drive so he let the woman drive. As they were traveling down Clare Road, "she just fell out of the truck." R. 143, lines 8 – 16. Boston testified that he could smell alcohol on Appellant, whose speech was slurred. Boston described

Appellant as "very intoxicated." R. 144, lines 12 – 19; R. 178, lines 19-22. Thereafter, Appellant was transported to the police department. R. 145, lines 3 – 8.

At the police department, Appellant allegedly told Boston that he had picked up a homeless woman and a white male. Thereafter, Appellant invoked his right to silence. R. 147, lines 5 – 13. Appellant was charged with DUI. R. 147, lines 23 – 24.² Boston testified that the arrest was based upon Appellant allegedly admitting to being drunk. R. 148, lines 2 – 5. Boston testified that Appellant was ultimately charged with murder, and Boston was unaware of what happened to the DUI charge, as he was not the investigating officer concerning the charge. R. 148, lines 18 – 24.

Boston claimed that Appellant gave a subsequent statement. Appellant ran into Turner and a white male at the liquor store. Appellant stated that while he was riding he had been drinking all day. Turner and the white male argued while in the vehicle, and Turner asked Appellant to stop so the man could get out. Appellant stopped the vehicle and the man got out. Then, Turner was driving the truck. As they went down Clare Road, Turner fell out of the truck. R. 150, lines 12 – R. 151, line 5; R. 152, 15 – 19. Boston admitted that he found no evidence of anything other than the fact of what Appellant said - Turner fell out of the truck. R. 163, lines 16 – 20; R. 179, line 15 – R. 180, line 1.

Juan Ballard, an officer with the Williamsburg County Sheriff's Office, responded to Clare Road as well. R. 180, line 16 – R. 181, line 14. When Ballard arrived on the

² Boston explained that he did not take Appellant to the hospital in an attempt to draw blood, and that it would have been job of the evidence custodian to do that. R. 169, lines 19-25. He was aware of the statutory requirement that a person must submit to a blood draw if there is probable cause to believe the person engaged in felony DUI. R. 170, lines 6-15; R. 175, lines 8-12.

scene, Appellant was in the back of a patrol car. R. 182, lines 22-23. Appellant was “staggering around a little bit.” R. 183, lines 5-9. Ballard testified that it would have been his call “to do DUI testing on the suspect.” R. 184, lines 20-22. Ballard arrested Appellant for DUI based upon Appellant appearing highly intoxicated and allegedly admitting to Staggers that he had been driving. R. 184, lines 23-25; R. 188, lines 13-19. Less than a month later, Ballard dropped the ticket. R. 185, line 13 – R. 186, line 1. Ballard dropped the DUI charge because Appellant was charged with murder the following day and he did not have “any blood anything like Breathalyzer blood alcohol” to support the charge. R. 186, lines 20-24; R. 186, line 25 – R. 187, line 2. Regarding testing for DUI, Ballard testified he thought “the BA machine ... was down at that time” in Kingtree. R. 191, lines 4-7. He further testified he thought Hemmingway had a BA machine, but he was uncertain. He denied ever going to Hemmingway to determine if the machine was in working order and available. R. 191, lines 8-18. In direct contradiction of his earlier testimony, Ballard testified that the investigator in charge, presumably Boston, made the decision not to administer breathalyzer test or take blood sample. R. 197, line 20 – R. 198, line 3.

William Foxworth, an inmate in the Department of Corrections, testified that he shared a cell with Appellant. R. 204, lines 10-20.³ Despite Foxworth not being forthcoming about his charges, he claimed Appellant shared intimate details of his. He claimed Appellant stated that he, Garris, and Turner had been riding around drinking and

³ Foxworth’s prior record included accessory, burglary third degree, and assault and battery. R. 207, lines 10-13. Foxworth claimed he received nothing in exchange for his testimony, R. 207, line 20 – R. 208, line 10, but on cross-examination, he admitted that forty-five days after he told the police what he claimed Appellant told him that he went to court on his burglary charge and received probation. R. 208, line 24 – R. 209, line 4.

they dropped Garris off somewhere. Then Appellant and Turner were on a dirt road when the subject of sex came up. Turner then got out of the truck and started walking. Appellant cranked the truck up and backed up over Turner. Foxworth testified that Appellant did not say if it was intentional or accidental. R. 204, lines 21-25; R. 205, lines 4-17. Upon questioning by the prosecutor, Foxworth elaborated that Appellant said he and Turner started fussing at a store and the fussing continued while the subject of sex came up until Turner got out of the truck and started walking. R. 206, lines 13-21. Appellant then cranked up the truck and backed up. Foxworth was "not sure if he was just trying to catch her, but he run her over." R. 206, line 22-24.

Dr. Erin Presnell, a forensic pathologist performed an autopsy on Turner on March 9, 2007. R. 216, lines 15-18. She determined the cause of death was a lot of head trauma. Relying upon the investigation, Dr. Presnell determined Turner's blunt head trauma was most likely caused by a vehicle running over her. However, Dr. Presnell could not determine manner of death – homicide or accident. R. 218, line 3 – R. 219, line 22. Her scientific results were inconclusive in that regard. Dr. Presnell drew Turner's blood at the time of the autopsy as part of her standard procedure. Turner's blood alcohol level was 0.387. R. 224, lines 20-23. Further, examination of Turner's liver revealed it was consistent with someone who suffered from chronic alcohol abuse. R. 226, lines 8-24.

Dr. Presnell explained that if Turner had been standing upright outside the truck, she would expect to see leg injuries, often called "bumper fractures." She found no such injuries on Turner. She admitted that one possible scenario was that Turner was upright

and a slow moving vehicle knocked her over and then ran her over. R. 229, lines 6-23. However, she explained an equally possible scenario was that Turner fell out the car and was run over, just as Appellant said. R. 229, line 24 – R. 230, line 4.

Jeff Scott, an employee with the Williamsburg County Sheriff's Office, responded to the crime scene on Clare Road. R. 52, lines 15 – 18; R. 53, line 24 – R. 54, line 8. Scott processed the truck several days after the accident, and while the truck was at a private garage. R. 76, lines 8 – 21. Scott admitted he was not aware of how the truck was transported to the private garage. R. 77, line 23 – R. 78, line 1.⁴ While processing the truck, Scott found a small stain on the undercarriage of the truck. R. 66, lines 2 – 14. Scott swabbed the area. R. 67, lines 11 – 17. Scott did not find any of Turner's hair under the truck. R. 92, lines 1 – 4. Scott's examination of the truck revealed no indentations or impact marks. R. 93, lines 13 – 24. He testified that the bumper and everything were intact. R. 93, line 24.

Jasper Humbert, a former employee of SLED in the forensic DNA department, analyzed blood samples he received in this case. Humbert's testing of six swabs taken from under the passenger door of Appellant's truck revealed the presence of blood. Thereafter, Humbert conducted DNA analysis on the six swabs. Humbert testified that based on his DNA analysis, he concluded Turner's blood was found on one of the swabs taken from under the passenger door. R. 245, lines 4-12; R. 249, lines 12-22; R. 255,

⁴ Boston, the investigator on the case, was unaware of how the truck left the crime scene, but he was aware that the truck was recovered the following day from the Baggett's residence. R. 160, line 16 – R. 161, line 5. In other words, the police did not maintain custody and control over the truck prior to processing it for evidence. Although Boston was the investigator over the case, he testified that it would then the decision of the evidence custodian, Scott, to determine whether to impound the truck. R. 161, lines 14 – 24.

lines 5-9; R. 255, line 16 – R. 256, line 8; R. 259, lines 1-10; R. 260, lines 16-19. Humbert also tested a swab taken from the front side bumper under the headlight. This sample was negative for blood. R. 263, lines 9-18.

At the close of the state's case, Appellant moved for a directed verdict regarding the charge of felony DUI. Appellant relied upon Section 56-5-2953 of the South Carolina Code to support his position that Appellant was entitled to a directed verdict because the state failed to produce a video of Appellant's roadside arrest. Additionally, Appellant relied upon case law, primarily Town of Mount Pleasant v. Roberts and City of Rock Hill v Suchenski, to support his motion. R. 273, lines 5-19; R. 275, lines 8-15; R. 274, line 22 – R. 275, line 9; R. 276, line 10 – R. 277, line 5.

The prosecution argued that the video requirement of section 56-5-2953 provided for an exception. He relied upon the portion of the statute providing "nothing in this section prohibits the court from considering any other valid reason for failure to produce a video recording, based on the totality of the circumstances." The prosecutor argued the exception applied based upon the evidence presented. Specifically, the prosecutor argued that because law enforcement "was responding to a dead body on the open road out in the rural part of Williamsburg County" the exception applied. He claimed this case was

[A] completely different scenario than ... in probably 99 percent of the DUI cases in this state, where an officer pulls over a vehicle for, even pulls over a vehicle for suspected DUI or arrives on an accident scene where there [are] injured people and people inside a car, where there's a smell of alcohol. Here you had an individual who was deceased on the side of the road and at that point, the officers, ..., from their testimony on the stand, I believe that they would say they were looking at this dead body, is this a murder or is this an accident or what is this? And they were trying to wrap their arms, at that point, around what they were investigating.... [A] lot of the procedural requirements that are built into the statute here, particularly video tape requirement, ..., I believe under the totality of the circumstances, was not, was not at play here. I believe

that's a valid reason why Your Honor could essentially give Williamsburg County Sheriff's Department a pass here for not having a video tape of this crime scene, based on what had happened. ... [A]fter the fact, when they realized that [Appellant] himself said he was drunk and they had other witnesses there to talk to during the course of the next day or so that confirmed that, that they thought at that point, okay, maybe we have a DUI on our hands as well and he was ticketed for DUI.

R. 289, line 23 – R. 291, line 24.

The prosecutor continued this rationale later when he argued the police had “no thought of video camera taping or anything else relating to the DUI requirements” when they arrived on the scene because there was a dead body on the side of the road and “[t]hey were trying to figure out how to investigate a homicide.” In the prosecutor’s view, the police could not be expected “to be thinking about the procedural rigors of the DUI statute.” R. 303, lines 4-14. Essentially, the state conceded the videotaping requirements applied to Appellant’s case, but argued their failure was excused.

Appellant countered that the statutory requirements and the case law were clear – the police were required to video the road site. Failure to do so was fatal to the prosecution’s case of Appellant. R. 293, lines 9-24.

The judge denied Appellant’s motion for a directed verdict on the felony DUI charge. Relying upon City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007), the judge found the appellate courts “indisputably established that the videotaping provisions [were] mandatory and not optional.” R. 302, line 8 – R. 303, line 1. He found the totality of the circumstances excused the mandatory videotaping requirement. R. 304, line 25 – R. 305, line 12.

After the judge charged the jury on the law, the jury asked the judge whether chemical testing was necessary in order to prove felony DUI and/or DUI. The judge

responded that he had instructed the jury on the elements of both charges, which was all the prosecution was required to prove. The jury asked to be re-instructed as to both, and the judge complied. R. 331, line 13 – R. 336, line 1.

The jury ultimately found Appellant guilty of reckless homicide and felony driving under the influence. R. 337, lines 11-17. The judge sentenced Appellant to ten years' imprisonment for the reckless homicide conviction. He sentenced Appellant to twenty years' imprisonment on the felony DUI conviction and ordered him to pay a fine of \$25,000. He ordered the sentences to run concurrently. R. 341, lines 8-14; R. 342, lines 5-9.

After the trial, Appellant filed a motion for new trial. He challenged the prosecution's failure to present videotaping of the incident site. He cited the South Carolina Supreme Court's case of Town of Mount Pleasant v. Roberts, 393 S.C. 332, 713 S.E.2d 278 (2011) as supporting his position. Based upon the failure of the state to produce a video of the incident site, Appellant moved for a new trial resulting in a dismissal of the charge. R. 343 (Motion).

By order dated November 30, 2011, Judge James held the videotaping requirements applied to Appellant's case, but that the failure to videotape the incident site was excused based on the totality of the circumstances exception under section 56-5-2953(B). Judge James concluded that "law enforcement was dispatched to the scene and encountered [Appellant], his truck, the victim's body, and other circumstances that did not immediately point to a DUI scenario." He acknowledged the police testified Appellant was "visibly intoxicated" and "charged at some point with DUI." But, he relied upon Investigator

Boston's testimony that the incident was being investigated as a possible kidnapping and murder to excuse the officer's failings. R. 359 (Order).

ARGUMENT

I. The trial judge erred in failing to direct a verdict of acquittal in Appellant's favor on the charge of felony driving under the influence where the prosecution failed to present evidence of video recording of his conduct at the incident site.

In 2007, at the time of the accident, South Carolina law concerning the offense of felony DUI provided as follows:

A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a vehicle and when driving does any act forbidden by law or neglects any duty imposed by law in the driving of the vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself is guilty of a felony.

S.C. Code Ann. § 56-5-2945(A)(2007). Thus, felony DUI required proof of three elements: (1) the person drove a vehicle while under the influence of alcohol and/or drugs; (2) the person engaged in an act forbidden by law or neglected a duty imposed by law; and (3) the act or neglect proximately caused great bodily injury or death to another person. State v. Grampus, 288 S.C. 395, 397, 343 S.E.2d 26, 27 (1986) abrogated on other grounds by State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997).

South Carolina statutory law also provided that a person who violated section 56-5-2945 “must have his conduct at the incident site and breath site videotaped.” S.C. Code Ann. § 56-5-2953(A)(2007). The statute provided that the videotaping at the incident site:

must begin not later than the activation of the officer's blue lights and conclude after ... a probable cause determination that the person violated Section 56-5-2945; and include the person being advised of his Miranda⁵ rights before any field sobriety tests are administered, if the tests are administered.

⁵ Miranda v. Arizona, 384 U.S. 426 (1966).

Id. The statute excused failure to produce the videos where the officer submitted sworn affidavits regarding inoperable equipment. The statute also provided that in accident investigations, where an arrest was made and the videotaping equipment was not activated by blue lights. However, the statute required “as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section.” Additionally, the statute allowed court to consider “any other valid reason for failure to produce the videotape based upon the totality of the circumstances.” S.C. Code Ann. § 56-5-2953(B)(2007).

The purpose of the videotaping requirement “is to create direct evidence of a DUI arrest.” Roberts, 393 S.C. at 347, 713 S.E.2d at 285. “[T]he videotaping provisions of section 56-5-2953 are mandatory and not optional.” Id. at 346, 713 S.E.2d at 285. “A law enforcement agency’s failure to comply with [section 56-5-2953] is fatal to the prosecution of a DUI case.” Id. In Murphy v. State, 392 S.C. 626, 631, 709 S.E.2d 685, 688 (Ct. App. 2011), this Court explained the plain language of section 56-5-2953(A)(1)(a)-(b) required the video recording to capture “(1) the accused’s conduct and (2) Miranda warnings prior to field sobriety tests, if such tests occur.” This Court defined “conduct” as one’s behavior, action, or demeanor. Id.

In City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007), the Supreme Court held that a violation of the videotaping requirement of section 56-5-2953(A) may result in the dismissal of the charges if no exceptions apply. In light of the trial judge’s order not addressing of the exceptions and the prosecution’s failure to seek a ruling on the potential applicability of the statutory exceptions, the Court did not review the case to determine if any exceptions applied. Id. at 16-17, 646 S.E.2d at 880-881.

Recently, the Supreme Court examined the videotaping requirement of section 56-5-2953 in State v. Elwell, 403 S.C. 606, 743 S.E.2d 802 (2013). The Court concluded that if a person refuses a breath test, the officer is not required to videotape the twenty-minute pre-test waiting period. Id. In a companion case decided the same day, State v. Hercheck, 403 S.C. 597, 743 S.E.2d 798 (2013), the Court likewise concluded that law enforcement was not required to videotape the entire pre-test waiting period where the arrestee refused a breath test. The Court noted that the “purpose of section 56-5-2953 is to create direct evidence of a DUI arrest.” Id. (quoting Roberts, 393 S.C. at 347, 713 S.E.2d at 285). The Court found that when “an arrestee refuses the breath test, the evidence gathering portion is over.” Id.

Even more recently, this Court examined the statutory videotaping requirements in DUI cases. State v. Henkel, 404 S.C. 626, 746 S.E.2d 347 (Ct. App. 2013). A motorist called 911 to report an individual driving a truck erratically. The motorist followed the truck until it hit a bridge and overturned into a ditch. The motorist observed the driver run from the scene. An officer arrived and began to search for the driver. Three or four hours later, the officer responded to a call indicating the driver may have been located. The driver was being examined by EMS. The officer got into the ambulance with the driver and could smell alcohol. The officer advised the driver of his rights and performed a sobriety test inside the ambulance. The officer concluded the driver was under the influence and placed him beside his patrol car. The driver failed to recite the alphabet correctly beside the car. The officer then placed the driver inside the car. Then the officer turned on his camera and read the driver his rights again.

At trial, the officer testified that he activated his video camera and microphone by remote after he read his rights to the driver in the ambulance, but before he administered the first field sobriety test. Thus, the evidence presented did not include any video or audio of the initial advisement of rights or any video of the two field sobriety tests. After finding the videotaping equipment was not activated by blue lights, the trial court made a factual finding that the video was activated as soon as practicable. This Court found there was evidence to support the trial court's finding. However, this Court found the video failed to conform to the requirements of section 56-5-2953(A)(1)(b) as required even under 56-5-2953(B) because the video failed to include the officer advising the driver of his rights. Id.

Without question, the prosecution presented no video of Appellant's conduct at the incident site. The trial judge agreed with the prosecutor's argument that although the videotaping requirements applied, the failure to create a video was excused based upon the totality of the circumstances. The record failed to support the conclusion that the officers were not aware of what they were investigating and as a result, the police were not considering the procedural rigors of DUI law. The 911 calls in evidence provide ample support that the police were aware of a potential felony DUI prior to and upon their arrival. Carolina Jones testified that she believed Appellant had been drinking when she arrived at the scene prior to the police arriving. In her call to 911, she informed the dispatcher that she saw a white man near a dead body and the white man was drunk.⁶ Additionally, Appellant's father spoke to the 911 dispatcher and explained that he believed his son, whom he identified by name, had hit the person who was lying in the road. The emergency calls alone placed officers on notice that a potential felony DUI was afoot. The first officer on

⁶ The recording of the 911 call is on file with this Court.

the scene, Stagers, spoke to Appellant within moments of his arrival. His initial observations of Appellant were that Appellant was unstable on his feet and had "an odor of alcoholic beverages on his person." Stagers concluded quickly that Appellant "had been drinking." R. 130, lines 10-15. Stagers also testified that he identified Appellant as the driver of the white truck that was present on the scene. R. 130, lines 19-23. Recognizing the direction the investigation was taking, Stagers advised Appellant of his rights. R. 130, line 24 – R. 131, line 3. Appellant then gave a statement indicating that the truck ran over Turner after she fell out of it.

When Ballard arrived, he initially spoke to Stagers of what was going on. R. 181, lines 21-24. After speaking with Stagers, Ballard pulled Appellant from the car. He observed Appellant was staggering. R. 183, lines 1-9. Stagers advised Ballard that Appellant was driving the truck on the scene. R. 183, lines 13-17. Ballard further testified that he was in communication with the dispatcher as evidenced by the 911 tape. R. 183, lines 18-21. Based on the observations made by police, Ballard issued Appellant a ticket for DUI. R. 184, lines 23-25; R. 185, lines 2-5. Specifically, Ballard testified the charge was based upon Appellant appearing highly intoxicated and telling Stagers he was driving. R. 188, lines 13-19.

When Boston arrived, he initially spoke to Stagers who relayed all information he had. Boston's understanding was that Appellant was the driver of the truck that ran over Turner. R. 141, line 12 – R. 142, line 3. Boston claimed Appellant admitted to being too drunk to drive and asking Turner to drive. It was while Turner was driving that she fell out of the truck and was run over. R. 143, lines 9-16. When Boston arrived, Appellant was already in the patrol car speaking to Stagers. Boston immediately detected alcohol on

Appellant and noticed his speech was slurred. Boston opined that Appellant was "very intoxicated." R. 144, lines 13-19. Thereafter, Appellant was transported to the police department. R. 145, lines 5-8. Boston admitted that what began as a DUI investigation "morphed into something else." R. 149, lines 6-8. In fact, Boston testified to interviewing Appellant the following day "since he sobered up he would be able to remember what happened." R. 149, lines 19-24.

The record fails to support the trial judge's finding that the totality of the circumstances excused law enforcement's failure to video record Appellant's conduct at the incident site. As demonstrated, the officers had ample notice of the potential felony DUI on the scene, and in fact, arrested Appellant for DUI within minutes of arriving. The failure by law enforcement to create the video denied the jury the ability to assess Appellant's conduct. In light of the fact that law enforcement failed to conduct any chemical testing, which would have provided the jury with objective evidence of Appellant's intoxication or lack of intoxication, the video would have been the only objective evidence for the jury to make a determination concerning whether Appellant engaged in felony DUI.

CONCLUSION

Appellant respectfully requests this Court direct a verdict of acquittal in Appellant's favor on the charge of felony DUI due to the prosecution's failure to videotape Appellant's conduct at the incident site.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Williamsburg County
George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

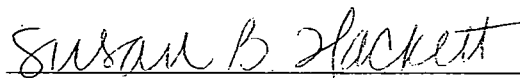
V.

MARTY BAGGETT,

APPELLANT

CERTIFICATE OF SERVICE

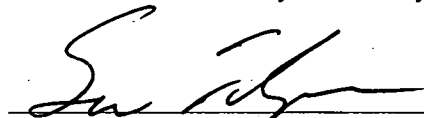
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 23rd day of January, 2014.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO
before me this 23rd day of January, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

RECEIVED

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SC SUPREME COURT

Appeal from Williamsburg County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2011-204146

The State,

Respondent,

vs.

Marty Baggett,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly denied the directed verdict motion when the State failed to produce a video and the trial court properly considered the totality of the circumstances in allowing the case to proceed.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

- I. The trial court properly denied the directed verdict motion and the motion for a new trial when the State failed to produce a video but the trial court properly considered the totality of the circumstances in allowing the case to proceed.**

Appellant contends the trial court erred in denying his motion for directed verdict as to the Felony DUI charge based on the State's failure to provide a proper video recording of Appellant's conduct pursuant to section 56-5-2953(A) of the South Carolina Code (Supp. 2010).¹ First, there is ample evidence in the record to support the trial court's decision to deny the directed verdict as to felony DUI. To the extent the argument is for dismissal of the charge based on the failure to produce a video recording, Section 56-5-2953(B) contains an exception which allows the trial court to consider the totality of the circumstances regarding the failure to produce a video recording. The trial court in this case correctly determined the totality of the circumstances excused the failure to produce a videotape, and he correctly denied Appellant's motion for a directed verdict.

Directed Verdict

Appellant made a motion for directed verdict on the felony DUI charge. The trial court had ample evidence in the record supporting his decision to allow the charge to go forward to the jury. "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a

¹ It should be noted counsel did not raise a motion related to the reckless homicide charge, and that charge is not the subject of any appeal. As a result, his conviction and sentence of ten years on that charge are the law of the case.

directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593-593, 606 S.E.2d 475, 477-478 (2004). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” Id. A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

Pursuant to section 56-5-2945 of the South Carolina Code (Supp. 2010):

A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony driving under the influence.

The State presented testimony demonstrating Appellant was driving the vehicle. First, Officer Staggers testified Appellant was driving the vehicle. (T.153; R.130). Additionally, Investigator Boston indicated Appellant’s first story was that Appellant was driving the vehicle. (T.213; R.177). Appellant’s story changed to indicate the victim was driving the vehicle. Further, blood stains were found under the passenger door and material was located in the passenger wheel well indicating the victim was struck on the passenger side of the vehicle, and not the driver side, when she fell out of the truck. (T.88-90; 302; R.65-67; 256). The blood tested positive for the victim. (T.306-307; R.260-261).

Most significantly, Appellant has not challenged his conviction for reckless homicide. As a result, the jury's conclusion Appellant was driving in order to convict him of reckless homicide is the law of the case. See S.C. Code Ann. § 56-5-2910(A) (Supp. 2010); State v. Watson, 349 S.C. 372, 563 S.E.2d 336 (2002) (finding reckless homicide requires proof that the defendant (1) operated an automobile; (2) in reckless disregard for the safety of others; (3) the defendant's conduct proximately caused injury to the victim; and (4) within three years, the victim died as a result of these injuries).

Numerous witnesses testified Appellant was intoxicated both at the time of the discovery of the accident and at his arrest. Most significant is the testimony of Carolina Jones, the woman who first came across Appellant and the victim. She testified she came across the truck blocking the road and Appellant indicating he found a dead body. She asked him if he had called 911, and he said no. She testified he was "kind of drunk," "staggering around," and "repeating the same thing over again." She testified she believed he was under the influence of alcohol. (T.129-130; R.106-107).

Officer Staggers was one of the initial officers to arrive on scene. He testified he spoke with Appellant. He indicated Appellant "had a[n] odor of alcoholic beverages on his person. He had been drinking." (T.152-153; R. 129-130). He also testified Appellant was "unsteady on his feet." (T.160; R.137).

Investigator Boston arrived at the scene and also talked with Appellant. He indicated Appellant claimed to be too drunk to drive so the victim was driving. (T.177; R.143). Investigator Boston further testified he could smell alcohol on Appellant, Appellant's "speech was slurred," and Appellant was "slouched down in the back of the patrol car." He then stated: "I was advising him of his Miranda Warnings and he blurted

out I know my rights and to me he was very intoxicated.” (T.178; R.144). Investigator Boston testified based on his experience, Appellant was intoxicated. (T.179; R.145). He indicated the basis for the original DUI charge against Appellant was Appellant’s admission he was drinking. (T.182; R.148). Investigator Boston also took a statement from Appellant’s father who described his son as “crazy and drunk.” (T.189; R.153). Appellant’s father then told Investigator Boston Appellant indicated “he had run over [the victim].” (T.189; R.153). Finally, Investigator Boston testified Appellant did not appear in shock at the scene of the homicide, instead he appeared intoxicated. (T.214; R.178).

The State presented evidence Appellant was driving the truck while intoxicated. The victim died as a result of Appellant’s failure to exercise due care while driving intoxicated. The cause of death was found to be blunt force trauma from being run over. (T.259-261; R.222-224). As a result, the State presented sufficient evidence to sustain the trial court’s decision to deny the motion for a directed verdict.

Dismiss for Failure to Produce Video

Appellant seems to maintain the felony DUI charge should have been dismissed because no video recording of the incident site or breath test site was produced. At the incident site, the officers were not investigating a DUI, but were instead investigating a possible homicide. Further, it was never practicable to begin video recording or to offer Appellant field sobriety tests. Finally, the officers did not offer a breath test, and so no breath test site video need be produced.

Pursuant to section 56-5-2953:

(A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site videotaped.

(1) The videotaping at the incident site must:

- (a) begin not later than the activation of the officer's blue lights and conclude after the arrest of the person for a violation of Section 56-5-2930, 56-5-2933, or a probable cause determination that the person violated Section 56-5-2945; and
- (b) include the person being advised of his Miranda rights before any field sobriety tests are administered, if the tests are administered.

(2) The videotaping at the breath site:

- (a) must be completed within three hours of the person's arrest for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 or a probable cause determination that the person violated Section 56-5-2945, unless compliance is not possible because the person needs emergency medical treatment considered necessary by licensed medical personnel;
- (b) must include the reading of Miranda rights, the entire breath test procedure, the person being informed that he is being videotaped, and that he has the right to refuse the test;
- (c) must include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test;
- (d) must also include the person's conduct during the required twenty-minute pre-test waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to videotape this waiting period. However, if the arresting officer administers the breath test, the person's conduct during the twenty-minute pre-test waiting period must be videotaped.

The videotapes of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

S.C. Code Ann. § 56-5-2953(A) (Supp. 2010).

Additionally, the statute provides:

[I]n circumstances including, . . . traffic accident investigations . . . where an arrest has been made and the

videotaping equipment has not been activated by blue lights, the failure by the arresting officer to produce the videotapes required by this section is not alone a ground for dismissal. However, as soon as videotaping is practicable in these circumstances, videotaping must begin and conform with the provisions of this section.

S.C. Code Ann. § 56-5-2953(B) (Supp. 2010).

The testimony at trial, as well as the facts and circumstances of the scene, indicated the officers were investigating a homicide or accident and not a DUI. Clearly, this was not a routine traffic stop in which the provisions and requirements of 56-5-2953(A) automatically apply. The officers investigated a report of a dead body and not a DUI.

There was no testimony regarding when it was practicable for the officers to initiate video recording given the nature of the scene and the fact they believed they were investigating either an accident or a homicide, not a felony DUI. There were numerous individuals on scene, including Appellant's family. (T.161-162; R.224-225). The officers were more interested in securing the scene and investigating the homicide than they were a DUI. (T.77; 160; 198; 208; 211; 218; R.54; 137; 162; 172; 175; 182). Significantly, when asked about conducting field sobriety tests, Officer Staggers testified: "it was not safe to conduct that at the time." (T.160; R.137).

Officer Scott responded to a call that a person was possibly run over by a vehicle. (T.77; R.54). Appellant's counsel asked Officer Scott: "You were there that night and you were going to determine whether this was an accident or a murder. Isn't that correct?" Officer Scott indicated he was merely there to process the scene for evidence. (T.95; R.72). Later he was asked by Appellant's counsel: "That night you processed the scene like it might be a murder, correct?" Officer Scott responded: "I don't know what

we had at the time . . . Processing the scene, it was based on what we had.” (T.98-99; R.75-76). Counsel’s questions and Officer Scott’s responses demonstrate why this was not a typical DUI investigation or even a DUI investigation after a traffic accident. This scene was considered more of a possible murder scene.

Investigator Boston testified he was initially investigating a murder. (T.198; R.162). He specifically testified: “I was concentrating on the murder.” (T.208; R.172). He was not investigating a DUI and so he had no reason to institute the protocols for a DUI investigation instead of the much more serious murder investigation. When questions about Williamsburg County Sheriff’s Department’s failure to follow the law regarding a DUI, he indicated he “can’t say not following the law . . . to investigate a murder.” (T.211; R.175). Clearly, the officers on the scene did not believe at the time they were investigating a DUI or a simple traffic accident. Instead they were investigation a possible homicide and so the video recording of the incident scene was not necessary.

Further, under the totality of the circumstances, the trial court properly allowed the trial to continue even taking into account the failure to produce a video recording of the incident scene. Witness testimony clearly indicated Appellant’s intoxication. The scene dictated an investigation as a possible homicide and not for DUI. Further, Appellant made his motion after the State’s case was presented as a directed verdict motion and not as a motion to dismiss in which the State could present additional testimony from the officers to explain why they did not follow the statute. As a result, the trial court properly considered the totality of the circumstances in allowing the trial to proceed and in denying Appellant’s motion for dismissal or directed verdict.

Additionally, the State did not conduct a breath test and so no breath test site video need be produced. As the Supreme Court found:

There is no indication from the plain language of the statute (Section 56-5-2950 of the South Carolina Code) that the Legislature intended to encumber arresting officers with an affirmative duty to offer breath tests to all persons arrested for driving under the influence who physically are capable of providing a breath sample.

State v. Baker, 310 S.C. 510, 512, 427 S.E.2d 670, 672 (1993). The Court further explained: “We hold that arresting officers are not required to offer breath tests to persons charged with driving under the influence of alcohol as a prerequisite to prosecution. This result uniformly has been reached by other courts addressing this issue.” Id. at 513, 427 S.E.2d at 672.

Further, the analysis of this Court and the Supreme Court in determining whether to record the twenty minute pre-test waiting period when not test is given would be analogous. See State v. Elwell, 403 S.C. 606, 743 S.E.2d 802 (2013); State v. Elwell, 396 S.C. 330, 333, 721 S.E.2d 451, 452 (Ct. App. 2011). This Court explained the purpose of the recording at the breath test was to ensure the reliability of the breath test and to reduce the number of swearing contests regarding the reliability of the test offered. Elwell, 396 S.C. at 336, 721 S.E.2d at 454. If no breath test is offered, then there clearly is no basis for requiring the video recording of the breath test site.

Accordingly, the trial court properly concluded the failure to produce a video recording of the incident and breath test sites did not require dismissal of the felony DUI charge.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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January 10, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2011-204146

The State,

Respondent,

vs.

Marty Baggett,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR RESPONDENT

January 10, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County
Honorable George C. James, Jr., Circuit Court Judge
Appellate Case Tracking No. 2011-204146

The State,

Respondent,

vs.

Marty Baggett,

Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 10th day of January 2014.



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