

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

**RECEIVED**

APR 18 2016

SG Court of Appeals

THE STATE,

RESPONDENT,

V.

**RECEIVED**

APR 18 2016

BRYAN REARICK,

SC SUPREME COURT

APPELLANT

APPELLATE CASE NO. 2014-001692

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA  
14TH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT  
COURT OF GENERAL SESSIONS  
CASE NUMBER 2010-GS-07-01469

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

**JANUARY 30, 2014**

**PARTIAL TRANSCRIPT OF BENCH TRIAL**

**BEAUFORT, SOUTH CAROLINA**

BRYAN REARICK

DEFENDANT

---

B E F O R E:

**HON. CARMEN T. MULLEN, JUDGE**

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1 DAY ONE, THURSDAY, JANUARY 30

2 2014, BEGINNING 12:00 P.M.

3 BY THE COURT:

4 PRETRIAL HEARINGS:

5 BAILIFF: All rise. Court will be in session.

6 THE COURT: Thank you all. Please be seated.

7 Please be seated. Thank you.

8 MR. RUSSO: Apologies, your Honor.

9 THE COURT: Thank you. I appreciate it. All  
10 right. I understand we have some pretrial motions to  
11 start.

12 MS. CARROWAY: That's correct, your Honor.

13 THE COURT: Okay. Mr. Russo, do we need to wait  
14 for anyone else, or are we good?

15 MR. RUSSO: Let me see. I think -- I think we  
16 should be good. The motions, as I understand them, are  
17 going to be the *Jackson versus Denno, Missouri versus*  
18 *McNeely*. What was the other one?

19 THE COURT: I thought there were no statements.

20 MS. CARROWAY: Your Honor, there were some oral  
21 statements that he seeks to introduce.

22 THE COURT: Yes, you are going to use those?

23 MR. RUSSO: Yes, your Honor.

24 THE COURT: Or attempt to. Okay. So, we'll do a  
25 *Jackson v. Denno, Missouri versus McNeely*. What else?

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1 MS. CARROWAY: Your Honor, I also have a motion to  
2 dismiss for failure to comply with 56-5-2953 in  
3 Suchenski.

4 THE COURT: Okay.

5 MS. CARROWAY: And 2950.

6 THE COURT: And did you say 2946 and 2950?

7 MS. CARROWAY: 3.

8 MR. RUSSO: 2953 and 2950.

9 MS. CARROWAY: '53 and '50.

10 MR. RUSSO: 2950.

11 THE COURT: Got it. Okay. All right. And I  
12 appreciate both of your all's pretrials. All right.  
13 Where do you want to start, Lauren?

14 MS. CARROWAY: Your Honor, I think the easiest  
15 place to start would be with the motion to dismiss.

16 MR. RUSSO: Which one?

17 MS. CARROWAY: For the violation of 2953.

18 THE COURT: Okay.

19 MS. CARROWAY: Your Honor, that statute states, in  
20 short, that you must be videotaped from the time of blue  
21 lights to the time of arrest. It follows that failure  
22 to do so is not alone a grounds for dismissal, as long  
23 as you meet one of the following exceptions, one of  
24 which is producing an affidavit stating that it was  
25 physically impossible to use -- to record the video

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1 because the person needed emergency medical treatment.

2 THE COURT: Okay. So, just for clarification  
3 purposes, my understanding is this was an accident that  
4 occurred.

5 MS. CARROWAY: Yeah.

6 THE COURT: So, I'm going to assume no one was  
7 pulled over. I'm going to go ahead -- you need to give  
8 me the background, the background of how the police  
9 officers got there.

10 MS. CARROWAY: Oh, I'm sorry, your Honor.

11 THE COURT: At what point they got there.

12 MS. CARROWAY: I apologize.

13 THE COURT: And who was the responding officer and  
14 who was the first one on the scene. Okay?

15 MS. CARROWAY: Your Honor, I apologize. I think  
16 part of my motion is -- one motion I have is, I believe  
17 the first on the scene was Beaufort County Sheriff's  
18 Office.

19 THE COURT: Okay.

20 MS. CARROWAY: From my investigation in prepping  
21 for today. However, I have nothing from Beaufort County  
22 Sheriff's Office. Not who was there, who might have  
23 been there, who wasn't there. I mean.

24 THE COURT: Are we going to have any testimony from  
25 the MAIT Team that is going to say that they were called

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1 out there because there was a death, is what I'm going  
2 to assume. Again, all this is assumption. I don't  
3 know. Someone needs to give me the background and,  
4 also, maybe a report. Obviously, it would normally come  
5 in, in the trial of the case, but I certainly can  
6 understand and realize that I'm certainly not bound by  
7 any opinions which is by the officers in the case.

8 MS. CARROWAY: Your Honor, the only report that I  
9 received in this matter from a police officer was from  
10 Corporal Summers. I'm happy -- do you want me to give  
11 her mine?

12 THE COURT: Okay.

13 MS. CARROWAY: What happened on May the 30th in  
14 2010, late at night, early in the evening of the 31st,  
15 your Honor, there was an accident on 278, wherein my  
16 client, Mr. Rearick, was headed -- was bound towards  
17 Bluffton.

18 THE COURT: Okay.

19 MS. CARROWAY: The other party in the case, Mr.  
20 Vallejos, --

21 MR. RUSSO: Vallejos.

22 MS. CARROWAY: Vallejos.

23 THE COURT: Was pulling out of the Crazy Crab.

24 MS. CARROWAY: Was pulling out of the Crazy Crab.

25 THE COURT: Okay. And he was attempting to go to

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1 Hilton Head.

2 MS. CARROWAY: Yes, ma'am. He was heading towards  
3 Hilton Head.

4 THE COURT: Towards Hilton Head. Okay.

5 MS. CARROWAY: They ended in a head-on collision.

6 THE COURT: Okay.

7 MS. CARROWAY: The allegations from the State are  
8 that my client crossed over the centerline, into the  
9 eastbound lane.

10 THE COURT: Is there a median there?

11 MS. CARROWAY: It's a concrete median. It's not a  
12 raised median. It's just, you know, there's lines.  
13 There is, like, a median where you could sit if you were  
14 trying to turn. Well, --

15 THE COURT: That's what I'm asking you. Is it a  
16 full lane?

17 MS. CARROWAY: Yes, ma'am.

18 THE COURT: Okay. So, it would be a full lane on.  
19 Okay.

20 MS. CARROWAY: And the allegation from, like I  
21 said, from the State would be, like I said, my client  
22 crossed over into the eastbound lane, where he hit head-  
23 on.

24 THE COURT: So, not just the median, but onto the  
25 eastbound lane?

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1 MS. CARROWAY: I believe that's what he contends.

2 THE COURT: Okay. Mr. Russo. Okay.

3 MS. CARROWAY: My position would be a little  
4 different, that Mr. Vallejos -- and I believe that the  
5 officers from MAIT will testify to this -- that he ran  
6 through the stop sign at a speed consistent with what  
7 Mr. Rearick was traveling.

8 THE COURT: What did the officer say where the  
9 collision occurred?

10 MS. CARROWAY: The officers say that the collision  
11 occurred, according to the MAIT report, in the lane  
12 closest -- the eastbound -- the eastbound lane closest  
13 to the median.

14 THE COURT: Eastbound. So, the lane heading  
15 towards -- the inside lane heading towards Hilton Head?

16 MS. CARROWAY: Yes, ma'am.

17 THE COURT: Okay. Okay.

18 MS. CARROWAY: And the officers also say that --  
19 particularly Ashe, from MAIT, says that the victim in  
20 this case was traveling at such a high rate of speed  
21 that there was no way he could have stopped at the stop  
22 sign. He believes the victim's speed was consistent  
23 with Mr. Rearick's speed, based on where the vehicles  
24 landed; and that Ashe, in his oral notes, that if -- if  
25 he had not struck Mr. Rearick's car, he was going so

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1 fast, he believes he would have continued to travel into  
2 the median, and possibly into the other side of the  
3 road. So, if that's enough factual --

4 THE COURT: Okay. I think that's enough factual.  
5 And I'm assuming you're going to disagree with the  
6 facts, or?

7 MR. RUSSO: The State would only dispute the fact  
8 that there -- I believe the testimony of Officer Ashe is  
9 going to be they were not traveling at the same speed.  
10 Mr. Rearick was driving slightly faster. And secondly,  
11 that this wreck was pretty much in the dead center of  
12 the two eastbound lanes, going towards Hilton Head.

13 THE COURT: Okay. So, in a lane that the victim  
14 should have had, correct? He was rightfully in that  
15 lane?

16 MR. RUSSO: More or less. If you would, the front  
17 driver's side corner of his vehicle, if you would, was  
18 just hanging over the dash line that separates the two  
19 eastbound lanes on 278, towards Hilton Head Island, but  
20 that's it.

21 THE COURT: Okay. So, I'm not clear exactly where  
22 it occurred, then. So, if we're going to go ahead and  
23 draw -- have you already drawn anything yet, or?

24 MS. CARROWAY: No, ma'am.

25 THE COURT: Okay. So, again, my question will

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1       become -- I'm going to have the officers, obviously,  
2       clearly tell me where they believe, and if you contest  
3       it, where this accident occurred; if it occurred inside  
4       eastbound lane.

5             MS. CARROWAY: I have a picture, your Honor, from  
6       the MAIT report. Is that --

7             THE COURT: Okay.

8             MS. CARROWAY: Would you like to see that?

9             THE COURT: Sure.

10            MS. CARROWAY: And like I said, this is not my  
11       picture; not that this is from me.

12            THE COURT: And again, I'm asking you if you're  
13       agreeing to where the accident occurred.

14            MR. RUSSO: And your Honor, --

15            THE COURT: Okay.

16            MR. RUSSO: -- I also have two photographs of the  
17       scene that night. Ms. Carroway's already seen them. If  
18       I could approach, they may help.

19            THE COURT: Sure. It appears they were both  
20       driving trucks. Is that correct?

21            MS. CARROWAY: Yes, ma'am.

22            THE COURT: Okay.

23            MS. CARROWAY: My client was driving an Expedition,  
24       and I think the other party was driving --

25            THE COURT: The pickup truck?

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1 MS. CARROWAY: -- the pickup truck.

2 MR. RUSSO: The Dodge Dakota.

3 THE COURT: Okay. So, is there any evidence or any  
4 evidence at all that the pickup truck, the victim's  
5 pickup truck, ever entered the median or was in the I  
6 guess it would be westbound lane? Is there any  
7 testimony to that effect?

8 MR. RUSSO: No, your Honor.

9 THE COURT: Okay.

10 MR. RUSSO: I don't believe there will be.

11 THE COURT: Okay.

12 MS. CARROWAY: I'll just say, your Honor, that the  
13 facts I was relating that the MAIT team individual,  
14 Ashe, stated, those are word-for-word from his oral  
15 notes. They are no conclusions that I drew as far as  
16 the victim.

17 THE COURT: I mean, and that's fine. I'll hear  
18 their testimony. I'm just trying to figure out exactly.  
19 Okay. So, we need to go back to, based on your first  
20 motion, for failure to videotape. So, we don't know who  
21 came upon the scene first. You're not sure if Beaufort  
22 County Sheriff's Office came first, or you believe  
23 someone did.

24 MS. CARROWAY: Well, according to Trooper Summers  
25 and one of the lay witnesses that was there that was

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1 first on the scene that witnessed the actual accident, a  
2 number of Beaufort County Sheriff's officers were out  
3 there. Summers says, in his report, that he was called  
4 to the scene not by Dispatch, but by Beaufort County, to  
5 say this is a really bad wreck; you all might need to  
6 come done here.

7 THE COURT: You all, I'm wondering if the better  
8 way to go about this is, is to take their testimony.

9 MS. CARROWAY: Sure.

10 THE COURT: Because we can sit here all day long  
11 and hear it, but for me to be able to figure out whether  
12 or not there is a violation of 2950 and failure to  
13 videotape, I need to know what they came upon; what they  
14 saw.

15 MS. CARROWAY: Sure.

16 THE COURT: So, I'm wondering if we just need to go  
17 ahead and maybe put up that testimony to begin.

18 MS. CARROWAY: Okay.

19 THE COURT: Okay? Mr. Russo, how do you think it's  
20 best to proceed? Should we put up your officers; or go  
21 ahead and first put up, on behalf of the State, whoever  
22 came upon the scene, get all of their testimony in? And  
23 then, we can continue with any eyewitness testimony?

24 MR. RUSSO: I think that second way would be  
25 better, your Honor. I think if we called Trooper

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1 Summers, who's here, he was the primary investigating  
2 and arresting officer in this case.

3 THE COURT: Okay.

4 MR. RUSSO: And he would be able to -- I think his  
5 testimony probably will eventually clear up the 2953  
6 issue.

7 THE COURT: Okay. Well, then, let's call him, and  
8 let's go ahead and put it all up there, if we can.  
9 Okay?

10 MR. RUSSO: State calls Trooper Tom Summers.

11 THE COURT: Come on forward, Trooper Summers. Good  
12 morning. And Wanda, you have, obviously, for the record  
13 the case number. Obviously, I'm bench-trying this by  
14 agreement, and let's just start with that. I just want  
15 to make sure we put on the record that you all had asked  
16 me to bench-try this, and the defendant has waived his  
17 right to a jury trial.

18 MS. CARROWAY: Yes, ma'am. That's correct.

19 THE COURT: Is that correct? Is that correct, Mr.  
20 Rearick, as well?

21 DEFENDANT REARICK: Yes, ma'am, your Honor.

22 THE COURT: All right, sir. I just want to make  
23 sure that that's the choice that you made. Is that  
24 correct?

25 DEFENDANT REARICK: Yes, ma'am, your Honor.

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1 THE COURT: Because everyone has a constitutional  
2 right to a jury trial of your peers, twelve persons,  
3 that would decide. I want to make sure that you want to  
4 waive that right, and you want me to bench try and hear  
5 your case today.

6 DEFENDANT REARICK: Yes, ma'am, your Honor.

7 THE COURT: All right. Thank you, sir.

8 MADAM CLERK: Would you place your left hand on the  
9 Bible and raise your right hand for me, please. Do you  
10 solemnly swear to truthfully answer all questions asked  
11 of you by this court, so help you God?

12 TROOPER THOMAS SHADRACH SUMMERS III: I do.

13 MADAM CLERK: Please be seated. State your name  
14 and spell it for the record.

15 THE COURT: And Mr. Rearick, I need to, again, and  
16 I apologize, I didn't swear you in, sir. Do you swear  
17 or affirm the testimony you give will be the truth, so  
18 help you God?

19 DEFENDANT REARICK: Yes, ma'am, your Honor.

20 THE COURT: And sir, having sworn you in now,  
21 everything you just told me, is that true and accurate  
22 under the oath that I just gave you, sir?

23 DEFENDANT REARICK: Yes, ma'am, your Honor.

24 THE COURT: I appreciate it, Mr. Rearick. Go ahead  
25 and take a seat.

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1 COURT REPORTER: Spell your name for me, please.

2 TROOPER THOMAS SHADRACH SUMMERS III.

3 COURT REPORTER: Spell it, please.

4 TROOPER THOMAS SHADRACH SUMMERS III: T/h/o/m/a/s.

5 THE COURT: And I apologize, Ms. Carroway. Before  
6 we begin this, I also saw that you possibly have a  
7 motion to suppress, if we get to the trial of this case,  
8 I'm sorry, to sequester witnesses. Would you like them  
9 sequestered at this time, which might make sense?

10 MS. CARROWAY: Yes, ma'am. The lay witnesses.

11 THE COURT: The lay witnesses. All right. And who  
12 would that be?

13 MS. CARROWAY: Your Honor, according to Adam, it  
14 would be Lorenzo Quinn, Bryan Derasz.

15 MR. RUSSO: Derasz.

16 MS. CARROWAY: I apologize.

17 MS. CARROWAY: That should be all, your Honor. And  
18 I think those are the only two lay witnesses.

19 THE COURT: Okay. All right. We'll make sure that  
20 they are removed from the courtroom, you all. I don't  
21 know who they are.

22 COURT REPORTER: Spell your name. Thomas Shad?  
23 S/h/a/d?

24 TROOPER THOMAS SHADRACH SUMMERS III: r/a/c/h,  
25 S/u/m/m/e/r/s III.

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DIRECT TROOPER SUMMERS

1 COURT REPORTER: Thank you.

2 THE COURT: All right. Mr. Russo, why don't you go  
3 ahead and begin?

4 MR. RUSSO: All right.

5 TROOPER THOMAS SHADRACH SUMMERS III

6 DIRECT EXAMINATION BY MR. RUSSO:

7 Q Trooper Summers, okay, you were the investigating  
8 officer for this wreck, correct? For the Highway  
9 Patrol?

10 A One of them, yes.

11 Q Okay. When did you get to the scene that night,  
12 roughly?

13 A Somewhere around 1:00 -- 1:00 -- 1:00 o'clock.

14 Q Okay. At the time that you arrived at the scene,  
15 where was Mr. Rearick?

16 A He was in the back of an ambulance.

17 Q Okay. How long would you say that he --

18 THE COURT: I'm sorry. Back up just a moment. You  
19 said he was where?

20 A In the back of the ambulance.

21 THE COURT: He was in the back of an ambulance. Is  
22 his microphone on, you all? I'm sorry. I'm just having  
23 a hard time. Okay. But he was in the back of an  
24 ambulance when you got there, that was Mr. Rearick.  
25 Okay.

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THE COURT - TROOPER SUMMERS

1 A That's correct.

2 THE COURT: Thank you.

3 A All right.

4 BY MR. RUSSO:

5 Q All right. How long was Mr. Rearick at the scene,  
6 prior to his removal by the ambulance?

7 A They were working on both individuals in the back  
8 of two different ambulances, and I don't know exactly  
9 how long they were at the scene, but they weren't there  
10 long.

11 Q Okay. All right. Did you ever videotape anything  
12 when you got there?

13 A My video camera was running.

14 Q It was running.

15 A Yes.

16 MR. RUSSO: Okay. All right. Nothing further.

17 TROOPER THOMAS SHADRACH SUMMERS III

18 EXAMINATION BY THE COURT:

19 THE COURT: Okay. Hold on a second. When you got  
20 there, who else was there before you? Any other --  
21 obviously, EMS was there. Were there any other officers  
22 there? Anyone from Beaufort County Sheriff's Office or  
23 any other troopers?

24 A There were -- I believe there was a deputy there,  
25 but I don't recall who.

1 THE COURT: Was it Beaufort County?

2 A Yes, ma'am.

3 THE COURT: Okay. Okay. How did you get called  
4 out there?

5 A According to my report, I remember -- according to  
6 my report, a deputy called me by phone. And then, I  
7 notified my dispatch if they had had any -- any calls on  
8 it yet, and they haven't. And that's about the same  
9 time as when they actually -- Beaufort County notified  
10 them through 911.

11 THE COURT: Okay.

12 A So, we're not linked with 911.

13 THE COURT: Right.

14 A So.

15 THE COURT: I knew you had to be called out  
16 somehow.

17 A Right.

18 THE COURT: Okay.

19 A And then, one of the deputies, which, he called me  
20 by phone. He had a phone.

21 THE COURT: A deputy. Do you remember who that  
22 was?

23 A I do not.

24 THE COURT: Do you believe that was the deputy that  
25 was on site, or would it have been a different deputy?

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CROSS - TROOPER SUMMERS

1 A I don't know if he was on site with it yet or if he  
2 was calling because he had heard about it through their  
3 911 system.

4 THE COURT: Okay.

5 A But we were all working in there that night. We  
6 were all in, kind of, communication with each other.

7 THE COURT: Okay. Thank you.

8 A Um-hmm.

9 THE COURT: All right. Ms. Carroway.

10 MS. CARROWAY: I just have a couple questions.

11 A Yes.

12 TROOPER THOMAS SHADRACH SUMMERS III

13 CROSS-EXAMINATION BY MS. CARROWAY:

14 Q Trooper Summers, you indicated your video in-car  
15 camera was running?

16 A It was running.

17 Q Was that placed into evidence?

18 A Maybe it -- it runs when my blue lights are on. My  
19 blue lights were on.

20 Q Okay.

21 A I don't know if -- because I'm not dealing with any  
22 particular person on-scene, whether I had cut it off,  
23 but I know there was -- my camera runs.

24 Q It was running.

25 A Running with the blue lights, right.

1 Q So, the answer is, no, it wasn't placed into  
2 evidence?

3 A I don't -- I don't recall if it was or wasn't. If  
4 it was, Russo would have it.

5 Q Okay.

6 THE COURT: Who would have it?

7 MS. CARROWAY: Adam, Mr. Russo.

8 THE COURT: Oh, Mr. Russo. Sorry. Okay.

9 A Russo.

10 BY MS. CARROWAY:

11 Q When you arrived there, how many police officers  
12 were there?

13 A I don't recall.

14 Q Well, how about this? Was it one or more than one?

15 A It might have been one.

16 Q Might have been one. One officer on-scene when you  
17 arrived.

18 A Right.

19 Q Who else was on-scene?

20 A EMS and fire department.

21 Q And the one officer that was on-scene, you believe  
22 one officer was a Beaufort County Sheriff's officer.

23 A And bear with me with this. This has been several  
24 years ago.

25 Q Sure. I know.

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THE COURT - TROOPER SUMMERS

1 A And I've worked many since then. I was working on  
2 the Island that night, so the Island's fairly small.  
3 That time of night, you can get around pretty quick on  
4 Hilton Head, with the exception of a certain amount of  
5 traffic.

6 But I was there rather quickly. And I don't know  
7 what officer, but I know I got a phone call from an  
8 officer about a wreck. I don't know if I got there  
9 before him, or he was already there, but I know that I  
10 was right there pretty quick on-scene, and EMS was  
11 already there.

12 Q Okay. Well, you -- you prepared a report in this  
13 matter?

14 A Yes, ma'am, my report.

15 Q Your report.

16 THE COURT: Trooper -- I'm sorry to interrupt you,  
17 Ms. Carroway, but I have a couple of questions I have to  
18 ask you.

19 MS. CARROWAY: Sure.

20 TROOPER THOMAS SHADRACH SUMMERS III

21 EXAMINATION BY THE COURT:

22 THE COURT: So, what is your typical protocol if  
23 you didn't have video going?

24 A Um-hmm.

25 THE COURT: And regardless of whether or not it was

1 on, and then you turned it off. Is that not something  
2 that you, as a matter of course, just turn over as far  
3 as evidence in this case, or do you have to be asked for  
4 it? Or how does that work for you all?

5 A Well, in this particular case, arriving on-scene, I  
6 knew that both individuals were in the back of the  
7 ambulance, and they both were in serious condition. It  
8 wasn't like I was going to be able to do a standardized  
9 field sobriety test on either one of them.

10 THE COURT: Right.

11 A So, all I was going to do was video a bunch of  
12 lights. So, when I'm not dealing with anybody other  
13 than the, you know, EMS, or if I'm dealing with  
14 somebody, it's our policy to have the camera going. But  
15 when I'm not, you know, talking to firemen, EMS, I'm not  
16 required to video that.

17 THE COURT: Right. Okay.

18 A And that's the situation I drove up on. I didn't  
19 have -- I wasn't interviewing anybody at the scene  
20 because they were --

21 THE COURT: Right. You weren't looking or trying  
22 to show evidence of bad driving.

23 A No.

24 THE COURT: Which is why, if you follow someone and  
25 actually pull them, you want to have on videotape any

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1      potential evidence of bad driving.

2      A      That's correct.

3              THE COURT:    And also, a field sobriety test.    And  
4      so, other than just whatever your subjective opinion is,  
5      you can see it on video.    Is that correct?

6      A      That's correct.

7              THE COURT:    And both of these people were already  
8      in the back of ambulances.

9      A      That's correct.

10             THE COURT:    Okay.    Go ahead Ms. Carroway.

11             MS. CARROWAY:    Thank you, your Honor.

12             TROOPER THOMAS SHADRACH SUMMERS III

13             CONTINUE CROSS-EXAMINATION BY MS. CARROWAY:

14      Q      So, you said you prepared a report in this matter.

15      A      I did.

16      Q      And you would agree with me that the information in  
17      that report is probably the best evidence of what  
18      happened that night.    You just testified was almost four  
19      years ago.

20      A      That's correct.

21      Q      If I handed you this report to review, would it  
22      help refresh your recollection as to how you arrived on  
23      the scene and who was there?

24      A      Yes.    So far, I'm correct in my report, except for  
25      the time.

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1        Q        Okay.

2        A        It was 12:50, not 1:00 o'clock.

3        Q        Okay.

4        A        My arrival time was 1:00 o'clock. Okay. I'm  
5        sorry.

6        Q        That's all right.

7        A        I got the information at 12:50 from the phone call.

8        Q        Okay.

9        A        What else do you need in there?

10       Q        I wanted to know who was at the scene when you  
11       arrived.

12       A        Fire and EMS were already on-scene.

13       Q        Okay.

14       A        And that's what it says. Later, we had another  
15       trooper arrive on-scene.

16       Q        And who was that?

17       A        Sergeant Gregory.

18       Q        Gregory. Okay. So, to the best --

19       A        It says --

20       Q        To the best of your recollection, all you can  
21       remember is that there was one sheriff's deputy at the  
22       scene when you arrived?

23       A        And according to my report. And evidently they had  
24       established witnesses on -- on the scene.

25       Q        Okay. Who did you speak with first when you

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CONTINUE CROSS - TROOPER SUMMERS

1 arrived on the scene?

2 A Seems like I had spoke with a fireman.

3 Q Okay.

4 A To find out about the extent of the injuries and  
5 where they -- where they were located.

6 Q Okay. When did you first speak with Mr. Rearick?

7 A In the course of the collision?

8 Q The first time you talked to him.

9 A It was -- I stuck my head in the ambulance once I  
10 found out where the respective drivers, what ambulance  
11 they were in. I'm not sure how long that was, but it  
12 was before they left.

13 Q So, you spoke with him at the scene.

14 A I don't know if I spoke with him. I know I stuck  
15 my head in and identified him. It just, you know --

16 Q Does your report indicate that you got his driver's  
17 license and information from him at the scene?

18 A I don't see that in here. Maybe I'm over-reading  
19 it here. I'm not --

20 Q You know what, Corporal Summers, I could have  
21 gotten that information from your oral notes. I  
22 apologize.

23 A Right.

24 Q Your oral interview that you gave.

25 A It is -- I know for a fact, the first thing I try

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1 to do when I go to a scene is obtain -- get their  
2 license.

3 Q Okay.

4 A Because sometimes that stuff gets lost. And so,  
5 that would have been my personal protocol to get that in  
6 hand before I do anything, is to get license.

7 Q Get a license and registration?

8 A Yeah.

9 THE COURT: Trooper Summers, let me ask you.

10 A All right.

11 THE COURT: Have you had an opportunity this  
12 morning to review your report, as well as your  
13 handwritten notes?

14 A I have not. I have not

15 THE COURT: Can we do this, you all? I want to go  
16 ahead and take ten minutes. Obviously, a trial is a  
17 search for the truth, and I don't need someone cross-  
18 examining saying you say one thing, and then you go back  
19 -- oh, yeah, that's right, on my notes. We just want to  
20 make sure we get it all out there and what we need to  
21 hear.

22 So, if you don't mind, we're going to go ahead and  
23 break for about ten minutes. I want him to be able to  
24 review. And I don't know if he's the one that took the  
25 pictures or if he relied on those pictures, but whatever.

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1       he relied on and whatever the basis of his testimony is,  
2       I want him to have an opportunity to look at all of that  
3       before he testifies. Okay?

4       A     Thank you.

5           THE COURT: Absolutely. Let's take ten minutes or  
6       so if you want.

7       A     Yes, ma'am.

8           THE COURT: If we can maybe turn on some lights,  
9       Ken, back there.

10       BAILIFF: Yes, ma'am.

11       THE COURT: If he wants to go back there. Okay?  
12       The one thing I do have to tell you, Trooper Summers,  
13       you actually have started testifying; I can't have you  
14       talking to Mr. Russo, or really, any lawyers, about what  
15       your testimony is. I'm just giving you an opportunity  
16       to review what it is you have submitted. Okay?

17       A     Can I ask -- can I get a copy of the wreck report?  
18       I asked for that already.

19       THE COURT: Absolutely. And do you need a copy of  
20       anything else?

21       MS. CARROWAY: Trooper Summers, I have a copy of  
22       the oral, of the DVD, the interview that you gave to  
23       Public Safety over the phone.

24       A     Okay.

25       MS. CARROWAY: If you want to, he can use mine.

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1 THE COURT: Absolutely. He needs that, too.

2 Absolutely.

3 A Yeah, anything that can help me here, because I --

4 MS. CARROWAY: Yeah, I'll let you look through  
5 that.

6 THE COURT: How many have you -- I mean, I know  
7 this is 2010. How many of these have you probably  
8 investigated since 2010?

9 A Since this one here, I've had 20.

10 THE COURT: Okay. All right. So, let's go ahead  
11 and step down. Just everything he needs. Okay? Okay?  
12 So, they'll go ahead, and if you have any problems with  
13 being able to hear something, cue something up, anything  
14 that you need as far as evidence, they're going to give  
15 you. Okay?

16 A Okay. Yes, ma'am. Thank you.

17 THE COURT: All right. I appreciate it. We'll go  
18 ahead and take, like I said, ten, 15 minutes or so.  
19 Okay? I would like an extra copy of the report, as  
20 well. I think, Lauren, you gave me the --

21 MS. CARROWAY: Picture.

22 THE COURT: You gave me a picture with the MAIT  
23 report.

24 MS. CARROWAY: Do you want the MAIT report and  
25 Summers' report?

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1 THE COURT: Um-hmm. Obviously, we're not admitting  
2 it into evidence. Obviously, because we're bench-trying  
3 this, I can only consider what is appropriate. Okay.

4 MS. CARROWAY: I've got it right here somewhere.

5 THE COURT: Mr. Russo, you also need to let him  
6 look at the photographs that were taken on-scene. I'm  
7 not sure, again, who took them, but.

8 MR. RUSSO: May I approach, your Honor?

9 THE COURT: He needs an opportunity to -- Wanda,  
10 will you give those to Mr. Russo? All right. We'll be  
11 at ease.

12 OFF THE RECORD 12:31 P.M.

13 BACK ON THE RECORD 1:12 P.M.

14 BY THE COURT:

15 BAILIFF: All rise. Come to order.

16 THE COURT: Thank you all. Please be seated.  
17 Okay. Hopefully, everyone has had more than enough  
18 time. All right. We'll go ahead and mark this as an  
19 exhibit. This is your motion, your pretrial motions.  
20 Is that correct?

21 MS. CARROWAY: Yes, your Honor.

22 THE COURT: Okay.

23 ITEM IDENTIFIED AS PRETRIAL

24 MOTIONS MARKED COURT'S EXHIBIT

25 NUMBER 1.

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1            THE COURT: All right. Are we ready to go?

2            Trooper Summers, you want to come back up? Come on.

3            MS. CARROWAY: Ready for me?

4            TROOPER THOMAS SHADRACH SUMMERS III

5            CONTINUE CROSS-EXAMINATION BY MS. CARROWAY:

6            Q All right, Trooper Summers. Now, after having a  
7 chance to report your -- review your report, when you  
8 arrived on the scene, there were a number of Beaufort  
9 County deputies there.

10          A There were some deputies there, yes.

11          Q More than one.

12          A More than one.

13          Q And you spoke with Mr. Rearick at the scene.

14          A I did.

15          Q You did. How long do you think you were at the  
16 scene?

17          A Thirty, 45 minutes, maybe.

18          Q And how long after arriving at the scene did you  
19 speak with Mr. Rearick? Estimate.

20          A Maybe 20, 25 minutes.

21            MS. CARROWAY: Your Honor, I think, for purposes of  
22 this motion, that's all the questions I have.

23            THE COURT: Okay. Anything further, Mr. Russo?

24            MR. RUSSO: Just a few questions, your Honor.

25            THE COURT: Okay.

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RE-DIRECT - TROOPER SUMMERS

1 TROOPER THOMAS SHADRACH SUMMERS III

2 RE-DIRECT EXAMINATION BY MR. RUSSO:

3 Q When you were -- when you were at the scene, you  
4 said the videotape in your car was running?

5 A Yes. I -- I don't know how long, but it -- it  
6 activated when I cut my lights on.

7 Q And the only thing that was pointed at was, you  
8 said, other emergency vehicles?

9 A I don't know exactly where my car was. I know it  
10 was a good ways from the scene, due to emergency  
11 vehicles. So, it would've probably seen nothing but  
12 vehicles in the road.

13 MR. RUSSO: Nothing further, your Honor.

14 THE COURT: Ms. Carroway?

15 MS. CARROWAY: One more question.

16 THE COURT: Of course.

17 TROOPER THOMAS SHADRACH III

18 RE-CROSS EXAMINATION BY MS. CARROWAY:

19 Q Trooper Summers, you indicate there were a number  
20 of other Beaufort County deputies there. And their cars  
21 were there?

22 A I'm assuming so, yes.

23 Q Okay. And their cars had their blue lights on?

24 A Yes.

25 MS. CARROWAY: Thank you, your Honor.

1 TROOPER THOMAS SHADRACH SUMMERS III

2 EXAMINATION BY THE COURT:

3 THE COURT: Trooper, what was the reason for you  
4 turning on your lights when you got to the scene?

5 A Well, we were on a U.S. highway, and we had the  
6 roads blocked, and it's just protocol that we do that  
7 for safety reasons.

8 THE COURT: For safety purposes so someone doesn't  
9 run into your car in the middle of the night. --

10 A That's correct.

11 THE COURT: Is that correct?

12 A That's correct.

13 THE COURT: You weren't pulling anyone over, were  
14 you?

15 A No, ma'am.

16 THE COURT: Okay. All right.

17 BY THE COURT:

18 THE COURT: Anything further from this witness?

19 MS. CARROWAY: No, your Honor.

20 A Step down? Thank you.

21 THE COURT: Do you have anything else? I mean, I  
22 know you may need him again. We're going to keep you  
23 close, but. Okay?

24 MS. CARROWAY: Not for purposes of this motion.

25 THE COURT: I figured he doesn't need to sit here

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1 while you argue this motion, so.

2 MS. CARROWAY: I'm good.

3 THE COURT: Yes. Sit down. Don't go anywhere.

4 A Yes, ma'am.

5 THE COURT: Okay? All right.

6 MS. CARROWAY: Judge Mullen, in light of what we've  
7 just heard, I think, in addition to the motion for 2950  
8 and 2953, I think I've also got a *Brady* and a *Rule 5*  
9 issue that I have to bring up at this point.

10 You know, with all due respect to Trooper Summers,  
11 it's not his decision as to what's good evidence in the  
12 case. The information contained on that video could  
13 have been *Brady*. Even if there wasn't a video of my  
14 client, he's got his lapel mic on. He indicated he  
15 spoke with my client at the scene. And the purpose of  
16 2953 is not specifically -- is not just to catch bad  
17 driving with a field sobriety test, but it's to catch  
18 the conduct as a whole, any information that could be  
19 *Brady*. My client's demeanor or thoughts or  
20 conversations could be indication that he wasn't  
21 intoxicated, and now I don't have access to that  
22 information or even a chance to review it to decide if I  
23 wanted to use it.

24 Your Honor, I'd -- I do believe that, based on that  
25 alone, this case should be dismissed. But in addition

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---

1 to that, your Honor, under 2953, if there is not a  
2 video, the trooper can provide an affidavit stating the  
3 reasons for not having a video.

4 I will say that Trooper Summers, in this case, did  
5 attempt to provide an affidavit. I'm not sure, based on  
6 his testimony, that the information obtained is entirely  
7 accurate. He said there is no video because my client  
8 needed emergency medical treatment. The problem with  
9 the affidavit is that it's not notarized.

10 THE COURT: Okay.

11 MS. CARROWAY: So, the statute specifically  
12 requires a sworn affidavit.

13 THE COURT: Is there a time line when it has to be  
14 sworn to? I mean, why can't he swear to the affidavit  
15 today?

16 MS. CARROWAY: Your Honor, I guess that would be up  
17 to the Court. I would say that he submitted an  
18 affidavit. You know, the Secretary of State website  
19 requires, I think, that you swear to what's contained in  
20 the document is true and accurate to the best of your  
21 knowledge before a notary.

22 THE COURT: I understand. My question becomes --  
23 and actually, he can swear in front of me, as well. So,  
24 my point is this, though. Is there anywhere in the  
25 statute, or have you ever seen in another case where

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1 someone has tried to cure --

2 MS. CARROWAY: You can't --

3 THE COURT: -- by having them do an affidavit  
4 contemporaneously at trial, is my question?

5 MS. CARROWAY: I know that you cannot substitute  
6 sworn testimony for the affidavit at trial. Is that  
7 what you're --

8 THE COURT: Yes, that's what I'm asking for. And  
9 where is your case law or authority for that?

10 MS. CARROWAY: Your Honor, I believe it's in 2953.  
11 Let me double check. *Collins versus Doe*, your Honor. I  
12 apologize.

13 THE COURT: *Collins versus Doe*. Thank you. Okay.  
14 I don't have a copy of *Collins versus Doe*, do I? Thank  
15 you.

16 I will tell you this, Ms. Carroway, and obviously,  
17 I haven't heard any argument yet; I don't think this  
18 trooper came on a site where it would apply that he  
19 needed to have the video on when we already have an  
20 alleged defendant already in an ambulance. Again, there  
21 would be nothing for him to record, other than I would  
22 agree with you that it could -- it could have given us a  
23 video. And I don't know if there is a video of what the  
24 scene was when he came upon it.

25 Probably more disconcerting to me is that there are

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1 other possible Beaufort County deputies that were there  
2 that could have had their -- and I'm going to go ahead,  
3 and I know it's a huge assumption -- but I think at  
4 12:45, 1:00 o'clock in the morning, just as Trooper  
5 Summers had indicated, you know, any deputy that pulls  
6 up in the middle of the night in the middle of the  
7 highway, on that busy highway, would have put their  
8 lights on. And I'm going to -- I don't want to assume,  
9 but I would say that those lights should have activated  
10 theirs, if, back in 2010, the Beaufort County Sheriff's  
11 Office patrol cars had that capability, and did, just  
12 like the troopers' cars. And I don't know the answer to  
13 that, but, and Mr. Russo, do you?

14 MR. RUSSO: I don't know the -- I don't know the  
15 answer to that, no. Sorry.

16 THE COURT: And it concerns me because her  
17 argument, as she said, best evidence, is that would be  
18 very helpful to have at the time. Anything else, Mr.  
19 Russo, you want to tell me?

20 MR. RUSSO: Yes, your Honor. I think what this  
21 comes down to, as far as 2953 goes, is *State versus*  
22 *Christopher Manning*. Your Honor should have that  
23 already. The law does not require annulity. And what  
24 *Manning* seems to indicate is that, under Section (b) of  
25 2953, in an event very similar to this, and where the

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1 individual was already taken from the scene in *Manning*.  
2 Here, the individual's in a ambulance; he is taken away  
3 very shortly after troopers arrive upon the scene; that,  
4 not only is the videotape not required in the *Totality*  
5 *of the Circumstances Exception* in Section (b), but an  
6 affidavit is not required based on the language of  
7 Section (b) in the statute, as well.

8 The Section (b) says you can make affidavits for  
9 when your video equipment fails; when emergency medical  
10 help is needed for the victim; or in the totality of the  
11 circumstances. Because it doesn't say or, you can make  
12 an affidavit for the totality of the circumstances. The  
13 Court, in *Manning*, said, no, you don't need one here.  
14 So, that would be my argument as to --

15 THE COURT: And I'm going to tell you, I would tend  
16 to agree, based on the situation that this trooper came  
17 up to. But what's bothersome to me, -- and of course,  
18 when you're trying this to a jury, which you would make  
19 hay of in front of a jury is, is why don't we have these  
20 videos from these deputies that came up on the scene? I  
21 mean, maybe they saw Mr. Rearick, as Ms. Carroway, you  
22 know, stated, walking perfectly after the accident.  
23 Again, he was in a wreck, so I don't know. But again,  
24 what if it did show him to be clear and coherent, or  
25 what if it did show him to be able to walk a straight

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1 line?

2 And it would be interesting to me to know whether  
3 or not he walked to the ambulance, and if that was on  
4 video or -- and again, this is all me guessing. This  
5 all could have happened before they got there. He could  
6 have already been out of his car. He could have already  
7 been checking on the victim. Again, I don't know. But  
8 it would be nice to have that evidence, if it existed.

9 And it's concerning to me that no one asked any of  
10 these either Beaufort County Sheriff's Office deputies  
11 or even Trooper Summers, because there should have been  
12 some tape out there. Even if it shows nothing, it  
13 should have been there, and it should have been turned  
14 over.

15 MR. RUSSO: Your Honor, if I may.

16 THE COURT: Sure.

17 MR. RUSSO: Just very quickly. Going from memory,  
18 under *State versus Landis*, the only individual at the  
19 scene who needs to tape is the arresting officer. In  
20 this case, Trooper Summers is the arresting officer. He  
21 is the one that placed Mr. Rearick under arrest. Only  
22 he would need to tape it all. All other tapes --

23 THE COURT: But what if -- no, but what about just  
24 as far as being evidence? I mean, this could be, again,  
25 evidence to be helpful to the defendant. I mean, you

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1 would be required to turn that in under Rule 5 and 3.

2 MR. RUSSO: Your Honor, --

3 THE COURT: I'm not talking about -- and I  
4 understand this motion is strictly to the statute and  
5 the requirement of it. And I would agree, under this  
6 statute and under this interpretation, I don't think it  
7 applies in this case, and I'm not going to grant a  
8 motion to dismiss this based on 2953. I would agree  
9 that, if an officer came up on a scene or pulled over  
10 someone and pulled them over, I would have no problem  
11 throwing this out. But in this case and in this  
12 situation, I don't think it's appropriate, certainly  
13 given *Manning* and what they've said, and I don't think  
14 it would have caught anything.

15 I am, again, more concerned, though, about whether  
16 or not there is evidence out there that could have been  
17 helpful to Mr. Rearick that was not turned over.

18 MR. RUSSO: I understand, your Honor.

19 THE COURT: So, as far as this motion is concerned,  
20 Ms. Carroway, I'm going to deny your motion to dismiss,  
21 based on 56-5-2953, relying on *Manning*, and again,  
22 relying on the situation that he came on.

23 MS. CARROWAY: Okay.

24 THE COURT: Okay?

25 MS. CARROWAY: Thank you, your Honor. And I don't

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1       -- I don't know if your Honor needs to hear me with  
2       regard to the *Brady* issue again, or if you --

3           THE COURT: I think you've pretty much made your  
4       record.

5           MS. CARROWAY: Okay.

6           THE COURT: You're making a motion to dismiss based  
7       on failure to turn over, right?

8           MS. CARROWAY: Potential *Brady* information, your  
9       Honor. And not just from Trooper Summers at this point,  
10      but I think Trooper Summers has testified there were a  
11      number of deputies out there. And I'm not saying that  
12      those deputies were required to have an appropriate  
13      video under 2953, but I disagree with the summarization  
14      that, if they had information -- that they weren't  
15      required to have anything, because they're not the  
16      arresting officer. I don't think that's what that case  
17      says.

18           If they started the field sobriety test, and then  
19      Summers showed up and continued, then, hypothetically, I  
20      would need the video from their car.

21           THE COURT: Clearly.

22           MS. CARROWAY: So, I disagree with that a little  
23      bit. But at any rate, I do believe I'm missing a bunch  
24      of potential *Brady* information, in not only violation of  
25      not only *Brady*, but of *Rule 5*.

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1 THE COURT: Yes, sir.

2 MR. RUSSO: All I would argue, your Honor, is that  
3 the remedy for a violation such as this would be a  
4 continuance, not dismissal.

5 THE COURT: To see if there is anything out there?  
6 It's three years post. Do you think there's anything  
7 out there?

8 MR. RUSSO, Your Honor, --

9 THE COURT: Well, number one, you don't even know  
10 the deputies that were out there, and that's another  
11 huge problem in this case. You don't even know what  
12 Beaufort County sheriffs were there. So, I don't even  
13 know who you would ask, let alone whether or not it's  
14 saved.

15 Okay. Okay. Ms. Carroway, what's your next  
16 motion?

17 MS. CARROWAY: Your Honor, my second motion --

18 THE COURT: I'm going to take that one under  
19 advisement.

20 MS. CARROWAY: Okay. The second motion I have is a  
21 motion to dismiss for failure to comply with the implied  
22 consent at statute, which is 2950. Your Honor, I  
23 believe that statute states, in relevant part, that:

24 *An individual must first be offered*  
25 *a breath test to determine his BAC. If*

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1           *he's physically unable to do so because he*  
2           *has an injured mouth, is unconscious, dead,*  
3           *or for any other reason considered acceptable*  
4           *by a licensed medical personnel, the arresting*  
5           *officer may request a blood sample be taken.*

6           Your Honor, in this case Mr. Rearick was not  
7           unconscious. He didn't have an injury to his mouth. He  
8           was treated at the hospital and released into police  
9           custody after only a few hours. I believe he got out  
10          around 6:00 o'clock in the morning. There was no reason  
11          he couldn't have taken a breath test.

12          THE COURT: Two hours post this accident?

13          MR. RUSSO: Four.

14          THE COURT: Four hours post this accident?

15          MS. CARROWAY: It was 6:00 in the morning.

16          THE COURT: Okay.

17          MS. CARROWAY: He was released from the hospital.  
18          He was awake. According to his medical records:

19                 *He is awake, alert, answering questions*  
20                 *appropriately.*

21          There's no reason he couldn't have been offered a  
22          breath test, your Honor. For that reason, we are asking  
23          that the case be dismissed.

24          Your Honor, the cases I'm relying on in this matter  
25          are *Peake versus South Carolina DMV*, and *City of*

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1       *Columbia versus Moore.*

2               THE COURT:   Okay.   Mr. Russo.

3               MR. RUSSO:   Your Honor, may I approach?   I have  
4       case law.   And I would direct your attention to *State*  
5       *versus Gary James Long*.   It's 363, S.C. 360.   In this  
6       case, your Honor, a very similar motion to the one Ms.  
7       Carroway made was made here.   And there is actually two  
8       implied consent statutes.   For regular DUIs, it's 56-5-  
9       2950.   For felony DUIs, it's 56-5-2946.   And as this  
10      case clearly states, clearly, the legislature attempted  
11      to do something by enacting 2946.   And I don't think  
12      it's extending the language to say that 29 -- of this  
13      case to say:

14                       *We hold that Paragraph 3 of 56-5-2946*  
15                       *incorporates the technical testing requirements*  
16                       *in 56-5-2950.*

17              The paragraph also makes clear, in short, that 2946  
18      obviates the requirements of 2950, as related to felony  
19      DUIs.

20              Furthermore, your Honor, Ms. Carroway stated that  
21      it would be okay for him to take a breath test four  
22      hours later.   Under the language of 2950, --

23              THE COURT:   That wouldn't even be admissible.

24              MR. RUSSO:   Correct.   You only have two hours to do  
25      that.

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1 THE COURT: Right.

2 MS. CARROWAY: Your Honor, I apologize. I didn't  
3 mean he could take a breath test four hours later. I  
4 meant that he was released from the hospital four hours  
5 later.

6 THE COURT: I understand. But you said at that  
7 point they could have offered a breath test, which,  
8 quite frankly, would have revealed nothing.

9 MS. CARROWAY: Well, the case law I submitted, your  
10 Honor, one of the individuals was hospitalized, and the  
11 Court held that the fact that it's easier for a police  
12 officer to get blood than to take a breath test isn't  
13 reason enough alone.

14 He could have taken -- my point was that he was not  
15 injured. Under the statute, he has to be injured,  
16 unconscious, dead, or other reasons deemed appropriate  
17 by a licensed medical personnel. He wasn't any of those  
18 things. He could have -- could have blown at any point.  
19 He just was never offered the opportunity to do so.

20 THE COURT: Well, I can tell you this. I believe  
21 that, certainly, *State v. Long* is controlling. I also  
22 note it's a 2005 decision, which, interestingly enough,  
23 all of our justices agreed to. Apparently, Burnett was  
24 substituted out, but that's an unusual precedence these  
25 days.

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1           So, with that said, I do think it's controlling. I  
2 do think Mr. Russo is correct in that 2946 did apply,  
3 and he was not required to offer a breath test. So, I'm  
4 going to respectfully deny that motion.

5           MS. CARROWAY: You ready?

6           THE COURT: Yes.

7           MS. CARROWAY: Your Honor, the next motion I have  
8 would be to suppress the blood alcohol content of Mr.  
9 Rearick as a result of the blood draw at the hospital.  
10 As your Honor knows, warrantless searches are presumed  
11 unconstitutional unless an exception exists.

12          THE COURT: Right.

13          MS. CARROWAY: The drawing of Mr. Rearick's blood  
14 is a warrantless search in this case, and exigent  
15 circumstances are a potential exception to this matter  
16 based on *Schmerber versus California*, it says that:

17                 *Exigency is determined on a case-by-case*  
18                 *basis, due to the totality of the circumstances.*

19          Most recently, the Supreme Court, in *McNeely*, has  
20 refused to adopt a per se exigent exception in felony  
21 DUI cases. They say that, basically, *Schmerber* still  
22 controls. It's case by case. What they do recognize in  
23 that case, your Honor, is that a lot's changed since  
24 1966, and technology and cell phones and computers and  
25 email and faxes make obtaining a search warrant much

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1 easier.

2 They also say that the fact that your body's  
3 metabolizing alcohol is not considered an exigent  
4 circumstance as far as a time factor. There are no  
5 alleged circumstances of exigent exigency in this case,  
6 your Honor; nothing that would make law enforcement's  
7 needs so compelling as to justify a warrantless search  
8 of my client.

9 Your Honor, I also state, thanks to Mr. Russo's  
10 genius honesty, *State v. Brown* --

11 THE COURT: Yes.

12 MS. CARROWAY: -- is the case that says that  
13 *McNeely* is applied retroactively. *U.S. v. Brown*, I  
14 apologize.

15 THE COURT: That's fine. There's no question it's  
16 applied retroactively.

17 MS. CARROWAY: Retroactively.

18 THE COURT: It was unconstitutional now and a  
19 violation of the Fourth Amendment; it was  
20 unconstitutional then.

21 MS. CARROWAY: And your Honor, --

22 THE COURT: There's no question.

23 MS. CARROWAY: Yes. Because no exigency exception  
24 exists, the exclusionary rule would bar admission of my  
25 client's blood alcohol reading into evidence. I would

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1 say I understand that the State is going to look towards  
2 and lean on *Krull* for the good faith exception. I  
3 understand the State of South Carolina has never adopted  
4 that good faith exception. I couldn't find a case  
5 exactly on point, your Honor, but I found case after  
6 case after case where, just for one reason or another,  
7 they don't adopt it.

8 I did find a case out of Illinois that's directly  
9 on point where the *People versus McGee*, where the Court  
10 declined to apply the good faith exception from *Krull* in  
11 any felony DUI blood draw cases. They said -- they kind  
12 of reasoned we declined to apply it to homes, people  
13 search, people's homes. And a search under someone's  
14 skin is that much more invasive, and we decline to apply  
15 it in that situation.

16 Your Honor, I want to point out real quickly, I  
17 understand you're going to rule out 2946 is the statute  
18 they'll be relying on, saying that under *Krull*, you  
19 know, Trooper Summers was acting under good faith  
20 statutory exception. I would say that I'm not saying  
21 that 2946 is unconstitutional on its face. I believe  
22 it's a constitutional statute. What I am saying is  
23 that, if you allow a per se exception saying that it  
24 precludes any warrant requirement of the State, that's  
25 and unconstitutional application of the statute.

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1           Your Honor, for those reasons we are asking that my  
2           client's blood alcohol content be suppressed. I believe  
3           it's fruit of the poisonous tree; that the blood was  
4           drawn based on an unconstitutional warrantless search;  
5           and as such, the reading received from that blood would  
6           be fruit of the poisonous tree.

7           THE COURT: All right. Mr. Russo.

8           MR. RUSSO: Yes, your Honor. I am arguing *State*  
9           *versus Krull*. The one -- the one thing that the State  
10          has never really contested is whether or not *McNeely*  
11          might be retroactive. But the real question at issue  
12          here is whether or not your Honor should apply the  
13          exclusionary rule, despite the unconstitutionality of  
14          the search. In this case, your Honor, the State would  
15          bring to the Court's attention again, *State versus*  
16          *Brown*, not *U.S. versus Brown*, which includes lots of  
17          language which seems to incorporate the good faith  
18          exception in South Carolina.

19          Now, moreover, I think this is a -- this is a  
20          situation where this is -- I believe that *McNeely* came  
21          out in April of 2013. That being so, this occurred  
22          nearly three years exactly prior to the time that  
23          *McNeely* came out. These officers can't see the future.

24          THE COURT: Right.

25          MR. RUSSO: They're not attorneys. They don't have

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1 the ability to get what precedent may come down in the  
2 future. All they have at the time is Schmerber and  
3 2946. At the time this occurred, I think 2946 had been  
4 in operation since 1998. That's twelve years.

5 THE COURT: Right.

6 MR. RUSSO: Never once challenged. Never once was  
7 there a case that says, hey, this might be a Fourth  
8 Amendment violation. There's no way these officers  
9 could have known at the time that they were acting  
10 pursuant to a statute which may be -- McNeely never says  
11 the statute in Missouri is unconstitutional. But  
12 there's no way to know that they -- they had no way of  
13 knowing at the time that the search might be  
14 unconstitutional. And so, I would ask that you do not  
15 apply the exclusionary rule in this case.

16 Now, in the alternative, your Honor, all right.  
17 The State would argue independent source doctrine. The  
18 State sent over to Ms. Carroway, two weeks ago, records  
19 from Hilton Head Hospital. We have the custodian of  
20 records from Hilton Head Hospital here. Those records  
21 were obtained pursuant to without a search warrant. And  
22 what they indicate is, they indicate a BAC very similar  
23 to the one present in the records that the State has  
24 from SLED. An independent source doctrine would say  
25 that, even though a search may be unconstitutional at

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1       one point, if that information was obtained  
2       independently from a valid search warrant later, then,  
3       that information could still be admissible. So, the  
4       State would argue that in the alternative. However, the  
5       State would place more of its emphasis on the *Krull*  
6       argument.

7               THE COURT: Do you have two BACs? I don't  
8       understand what you just argued. Are you telling me  
9       that there was a subsequent blood drawing done, and you  
10      went and got a warrant?

11             MS. CARROWAY: There were two vials of blood.

12             THE COURT: One was tested by SLED, and one was  
13      tested by the hospital?

14             MS. CARROWAY: Yes, ma'am.

15             THE COURT: Okay.

16             MS. CARROWAY: I have a number of issues with that,  
17      though. I don't know if your Honor wants to hear from  
18      me on that matter, but.

19             THE COURT: Sure.

20             MS. CARROWAY: The first of which is, if it's  
21      inadmissible for a violation of my constitutional  
22      rights, the drawing of the blood itself was an unlawful  
23      search, an unconstitutional search. I don't care what  
24      piece of paper you put it on, it's still suppressed.

25             Secondly, there are, in those same medical records,

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1 a whole paragraph from the hospital saying this is not  
2 to be used for legal purposes; chain is not sufficient.  
3 You know. I can find the paragraph. But basically  
4 saying, this is for his medical records only; you cannot  
5 use this for a legal purpose; we do not comply with  
6 chain.

7 I don't think, your Honor -- one second, here it  
8 is:

9 *Specimen was received without chain of*  
10 *custody. May not have been handled as a legal*  
11 *specimen. Results should be used for medical*  
12 *purposes only, not for any legal or employment*  
13 *evaluation purposes -- evaluating purposes.*

14 THE COURT: Let me ask you this, Mr. Russo. In  
15 looking at whether or not South Carolina -- I know you  
16 state that the language in *State v. Brown* made it sound  
17 like we did believe in the good faith exception in South  
18 Carolina. What are the other cases that you relied on,  
19 as far as the other progeny before *State v. Brown*?

20 MR. RUSSO: The only thing that I'm relying --  
21 there's no case that's going to say we explicitly accept  
22 it.

23 THE COURT: Right.

24 MR. RUSSO: And there's no case that's going to say  
25 we --

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1 THE COURT: Reject it.

2 MR. RUSSO: So, it's in that gray area. So, the  
3 reason I rely on *Brown* is because, if it's gray, all we  
4 can do is kind of guess, based on the language of *Brown*.  
5 And I think the language of *Brown* is pretty clear.

6 THE COURT: Okay. I'm going to actually take that  
7 portion of that under advisement. We won't put any  
8 testimony in as to any BAC level until I rule on that.

9 I understand you also have chain witnesses here,  
10 too, because you're questioning the chain, as well. Is  
11 that correct? You're challenging the chain?

12 MS. CARROWAY: I am challenging the chain, your  
13 Honor, under regular chain issues, and also under the  
14 implied consent statute.

15 THE COURT: Okay.

16 MS. CARROWAY: My understanding is that they don't  
17 have the nurse who actually drew the blood.

18 THE COURT: Okay. Well, then, they would have to  
19 establish that even before. So, okay. Okay.

20 MR. RUSSO: Am I to respond, your Honor?

21 THE COURT: If you would like to, yes.

22 MR. RUSSO: Sure. Regarding the chain, no, we  
23 don't have the nurse here. The nurse is in New Jersey,  
24 last time I checked. I was unable to get her, and I was  
25 unable to really find her address. What the State would

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1       rely on, and the Court should already have a copy with  
2       it at this time, and if it doesn't, I have it here. May  
3       I approach?

4               THE COURT: You may.

5               MR. RUSSO: It would be *State versus David*  
6       *Williams*. At the very end, your Honor, Page 2, one of  
7       the last -- the last paragraph of the left-hand column:

8               *Appellate contends chain of custody*  
9               *of his blood sample is insufficient, because*  
10              *the nurse who drew the blood did not testify.*

11              In this case, the chain was found to be sufficient.  
12       What happened was, they had another individual who had a  
13       chain of custody document. We actually have more than  
14       that. Not only did -- would Trooper Summers testify to  
15       the fact that he actually witnessed the blood draw, then  
16       take the blood, we also have the Highway Patrol chain of  
17       custody document indicating that it went directly from  
18       the nurse to Trooper Summers, into the evidence locker  
19       at the Highway Patrol's headquarters in Ridgeland.

20              And we think that our facts are stronger than the  
21       facts present in *Williams*. And so, we would argue that  
22       the blood should not be suppressed due to chain issues,  
23       primarily because, even if the nurse is not here to  
24       testify, state law appears to allow me not to have her.

25              MS. CARROWAY: Thank you, your Honor. Your Honor,

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1 as to the specific chain issue, I would have to hear --

2 THE COURT: Right. Each of their -- to be able to  
3 say --

4 MS. CARROWAY: -- their whole chain to know exactly  
5 if there was anybody else missing and things of that  
6 nature.

7 THE COURT: Exactly.

8 MS. CARROWAY: As specific to the nurse not being  
9 present, I think the bigger problem there is, under the  
10 implied consent statute, *State versus Frey* is the case I  
11 submitted; it's 362 South Carolina 511. Your Honor,  
12 it's a case exactly on point:

13 *The mere appearance of a person in a*  
14 *hospital wearing generic hospital attire is*  
15 *not evidence of medical training, and a mere*  
16 *signature on a SLED form is not sufficient*  
17 *to establish compliance with 2950.*

18 Specifically, your Honor, there's no -- without her  
19 here -- Summers isn't a medical professional. He can't  
20 testify that she complied with the SLED requirements,  
21 because he -- he's not a doctor. He's not a registered  
22 nurse.

23 THE COURT: Is there any reason why Mr. Russo can't  
24 establish that she was some type of medical  
25 professional? I mean, I understand she's not here

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1       today, but I'm going to assume she's got an R.N. license  
2       or some type of license.

3           MS. CARROWAY: Your Honor, the case law that I'm  
4       relying on was a very similar situation.

5           THE COURT: Do they know who the person was?

6           MS. CARROWAY: Yeah.

7           THE COURT: They did?

8           MS. CARROWAY: I believe so. I'm not sure.

9           THE COURT: What you just said is, it's some random  
10       person, and --

11          MR. RUSSO: If I may?

12          THE COURT: Sure.

13          MR. RUSSO: I don't mean to interrupt.

14          MS. CARROWAY: That's okay.

15          MR. RUSSO: That case law is according to 2950.  
16       We've already ruled out 2950. 2946 doesn't include  
17       that. This is a blood draw according to 2946, not '50.

18          THE COURT: Okay.

19          MS. CARROWAY: And I disagree with that. I don't  
20       think that the prior case Mr. Russo cited totally rules  
21       out 2950 as applying to any felony DUI case. I think,  
22       if I'm not mistaken, your Honor -- I've read so many  
23       cases in the last two days -- I believe *State v. Frey*  
24       involved a situation at a hospital with a car accident.  
25       And I cannot remember if it was felony DUI or just a,

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1       you know, accident with great bodily injury and whatnot.

2           THE COURT: Well, obviously, I'm going to have to  
3       hear the chain, but if it's as he said, if the *State*  
4       *versus Williams* does seem to allow that each and every  
5       person is not required, but you have to establish a  
6       complete chain, as far as practical. And the whole idea  
7       is to make sure we don't have the wrong blood sample or  
8       it hasn't been tampered with. I mean, that's the point  
9       of it.

10          MS. CARROWAY: Your Honor, I guess my issue with  
11       the lack of the nurse is that there's no one for me to  
12       ask or cross-examine about the SLED requirement. SLED  
13       enumerates a list of requirements for drawing blood in  
14       this situation.

15          THE COURT: We haven't gotten there yet, so, I'm  
16       assuming the other people that he's brought in regards  
17       to this chain may or may not be able to establish that.  
18       I mean, at this point, I'm not letting the BAC in,  
19       unless there's been a chain established to my  
20       satisfaction. So, again, I don't know who he's got to  
21       testify.

22          MS. CARROWAY: I don't think there's anyone else  
23       that could testify to that. No one else was there  
24       except for Summers, and he's not a medical professional  
25       that could testify that she complied with the medical

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1 requirements SLED lists. I don't know if there's anyone  
2 other than her that could testify to those things.

3 She's the person that put the needle in my client's arm.

4 THE COURT: Well, how do you get past, then, *State*  
5 *v. Williams*, where the actual person that drew the blood  
6 didn't have it. The next nurse in line that went in  
7 took it. She said she looked at it. She looked at the  
8 patient number. She looked at the chain of custody  
9 herself. It was initialed by this Nurse Burns, saying  
10 that she's the one that got the sample and locked it  
11 into a refrigerator. Again, I don't know if you have  
12 all of that. I don't know what we have.

13 MS. CARROWAY: Okay.

14 THE COURT: But again, BACs not coming in until and  
15 unless, and again, subject to your objection as to a  
16 warrantless search, obviously, that wouldn't come in at  
17 all under the fruit of the poisonous tree, and then,  
18 again, with establishment of the chain. So, at this  
19 time, like I said, I'm just going to reserve ruling  
20 until --

21 MS. CARROWAY: Okay.

22 THE COURT: -- you can either attempt to establish  
23 that, and until I rule on the implied consent under '46,  
24 under 2946. Okay? All right. All right. Anything  
25 else?

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DIRECT - TROOPER SUMMERS

1 I think you all have agreed to sequester witnesses.

2 And *Jackson v. Denno*? I think we need --

3 MS. CARROWAY: I think the State would need to have  
4 the hearing.

5 THE COURT: Okay.

6 MR. RUSSO: Your Honor, State calls Trooper Tom  
7 Summers.

8 THE COURT: Come on up, Trooper. Sir, I'm just  
9 going to remind you that you're still under oath. Okay?

10 TROOPER THOMAS SHADRACH SUMMERS III: Yes, ma'am.

11 THE COURT: Thank you.

12 TROOPER THOMAS SHADRACH SUMMERS III

13 DIRECT EXAMINATION BY MR. RUSSO:

14 Q Okay. Trooper Summers, did you interview the --  
15 Mr. Rearick at the hospital?

16 A I did.

17 Q You did? Did you *Mirandize* him prior to his  
18 speaking to you?

19 A Immediately, when I walked in, I *Mirandized*.

20 Q Could you tell me what *Miranda* rights you told him,  
21 and whether you told them to him off a card?

22 A I did, I called them off of a card.

23 Q And what were they?

24 A *You have the right to remain silent. You*  
25 *have the right to have an attorney present*

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DIRECT - TROOPER SUMMERS

1           *during any questioning.*

2           So forth and so on.

3       Q     Anything else?

4       A     I can't recite them off the top of my head.

5       Q     You said them off a card?

6       A     Yes.

7       Q     Do you have one of those cards with you here today?

8       A     I do not.

9       Q     You do not. Okay. All right. What were the  
10       statements that he made to you?

11       A     I remember him telling me that he was coming from  
12       the Triangle; that he was with his wife; and that they  
13       were having an argument at the time or there was an  
14       argument taking place. He didn't tell me about what.  
15       And that was the last thing he remembers.

16       Q     Okay. All right. At any time did you intimidate  
17       him or indicate to him that he had to tell you these  
18       things?

19       A     No, you know. He was humble. He was confused and  
20       concerned about the other party, as I remember.

21       THE COURT: And where did this exchange take place?

22       A     In the hospital room.

23       THE COURT: Okay.

24               BY MR. RUSSO:

25       Q     Was he in handcuffs at the time that you spoke to

1 him?

2 A No, he was not.

3 MR. RUSSO: Nothing further at this time.

4 TROOPER THOMAS SHADRACH SUMMERS III

5 EXAMINATION BY THE COURT:

6 THE COURT: Trooper, what were his injuries in  
7 this?

8 A Well, at the time, I don't think anybody really  
9 knew. The doctors were lining up his x rays and --

10 THE COURT: Did he have any blood on him?

11 A I think he had a little bit, a little bit on his  
12 face, if I remember.

13 THE COURT: And looking at that accident, and I  
14 don't know if you -- I assume you went and investigated  
15 afterwards. Is there any evidence that he hit his head  
16 on the windshield, or there was a shattered windshield?  
17 I understand this was a very close to a head-on  
18 accident. I understand that you did make a  
19 determination, of course, that the victim in this case  
20 was wearing his seatbelt. I guess my question is, is  
21 there any evidence that he sustained any kind of head  
22 trauma or anything along those lines? When I say he, I  
23 mean the defendant.

24 A Well, neither one of them were wearing their  
25 seatbelts.

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CROSS - TROOPER SUMMERS

1 THE COURT: Okay. Okay.

2 A The victim was wearing his seatbelt.

3 THE COURT: That's what I said.

4 A Right.

5 THE COURT: Okay. But again, did you see anything  
6 that would indicate to you that he had suffered any type  
7 of head trauma, or have any -- you said he --

8 A I don't know about head trauma, but there was  
9 certainly glass, and -- and there were cuts on his face.  
10 And you know, they had wiped some blood from his face.  
11 I don't know how much, but you could tell that it had  
12 been blood on his face.

13 THE COURT: Okay. Okay.

14 A At the time, I had no idea what the extent of his  
15 injuries were, in talking with him.

16 THE COURT: And did he invoke his right to counsel?

17 A No. No, ma'am. He was humble and was forthright,  
18 and wanting to do what he could do to cooperate.

19 THE COURT: Okay.

20 MS. CARROWAY: I just have a few questions, your  
21 Honor.

22 TROOPER THOMAS SHADRACH SUMMERS III

23 CROSS-EXAMINATION BY MS. CARROWAY:

24 Q Trooper Summers, was anybody else present when you  
25 Mirandized Mr. Rearick?

1       A     When I first went in there, I had a nurse or a  
2       nurse and an orderly show me to his room, but no, not  
3       while I was in there talking with him.

4       Q     You were in there alone.

5       A     By myself.

6       Q     Okay.

7       A     I think there were come -- there were,  
8       periodically, people coming in and out of his room  
9       checking, and --

10      Q     Right.

11      A     -- doing whatever they do.

12      Q     All right. Was he hooked up to any kind of  
13      machines or tubing or anything?

14      A     I believe he was hooked up to a heart monitor.

15      Q     A heart monitor? What about a I.V.?

16      A     Possibly. I don't -- I don't know if he was or  
17      wasn't at that time, but I know it seems like I remember  
18      a beeping noise.

19      Q     Okay. Did he have any kind of braces or things to  
20      restrict his movement on him?

21      A     No, ma'am.

22      Q     All right. And you just testified that he seemed  
23      confused?

24      A     Typical of one that would have been in a pretty  
25      serious accident. Confused and disoriented, in pain.

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1 Q Was he on pain medication?

2 A No -- uh -- no -- I can't answer that. I'm not a  
3 doctor, as you said earlier.

4 MS. CARROWAY: Your Honor, beg the Court's  
5 indulgence just one moment.

6 THE COURT: Okay.

7 MS. CARROWAY: Your Honor, we don't have any  
8 further questions in this matter.

9 THE COURT: Can I ask a question?

10 MS. CARROWAY: Sure.

11 THE COURT: In light of *McNeely*, which was decided  
12 in 2012, is 2946 still good law?

13 MR. RUSSO: That's a very good question, your  
14 Honor. And -- and --

15 THE COURT: It hasn't been repealed. Has there  
16 been any attempt to repeal it yet?

17 MR. RUSSO: As far as the State knows, your Honor,  
18 no. *McNeely* never says that the statute in Missouri is  
19 unconstitutional. They say that the search is  
20 constitutional because it's based on the idea that the  
21 evanescence of BAC creates sort of a per se exigent  
22 circumstances exception, and they say, no, that's wrong.  
23 But they never say the statute is constitutional.

24 That argument regarding the constitutionality of  
25 2946, I don't know that it's ever been heard before, but

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1 as far as I understand from *McNeely*, they never strike  
2 down the statute in the body of the text.

3 THE COURT: Hold on a second. Okay. All right.  
4 Ms. Carroway, you were going to say?

5 MS. CARROWAY: Your Honor, just for clarification  
6 purposes, I'm not attempting to say 2946 is  
7 unconstitutional in my *McNeely* motion, either. I'm  
8 simply saying that to -- I think 2946 stands for the  
9 proposition that a suspect can't refuse a chemical test.

10 THE COURT: Right. In a felony DUI case.

11 MS. CARROWAY: Right. But to expand it to allow an  
12 automatic exception to the warrant requirement would be  
13 an unconstitutional application of the statute. The  
14 statute on its face is constitutional.

15 THE COURT: Because you think, still, you could  
16 abide by the statute, if you went and got a warrant from  
17 a magistrate, and then you could do it.

18 MS. CARROWAY: Correct.

19 THE COURT: But the statute doesn't require that.  
20 It doesn't require a warrant from a judge.

21 MS. CARROWAY: The statute does not specifically  
22 ask for one, no.

23 THE COURT: Right. Okay. Okay. All right.  
24 Anything more from --

25 MR. RUSSO: Just like three re-direct questions,

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RE-DIRECT - TROOPER SUMMERS

1 your Honor.

2 THE COURT: Okay.

3 MR. RUSSO: All right.

4 TROOPER THOMAS SHADRACH SUMMERS III

5 RE-DIRECT EXAMINATION BY MR. RUSSO:

6 Q When you spoke to the defendant that night, did he  
7 seems to recognize his name?

8 A Yes.

9 Q Okay. Did he seem to recognize where he was?

10 A I guess. I'm -- yeah.

11 Q All right. Did he indicate that he had any  
12 questions about the *Miranda* rights that had you read to  
13 him?

14 A No. I read him *Miranda* and implied consent, and he  
15 both understood, because at the end, it asks if you have  
16 -- *do you understand*.

17 Q Okay. And I guess this might be a little  
18 redundant, but so, he indicated he understood all of his  
19 rights, *Miranda* and implied consent?

20 A That's correct.

21 MR. RUSSO: Thank you. Nothing further, your  
22 Honor.

23 MS. CARROWAY: I just have one question, your  
24 Honor.

25 TROOPER THOMAS SHADRACH SUMMERS III

1 RE-CROSS-EXAMINATION BY MS. CARROWAY:

2 BY MS. CARROWAY:

3 Q Trooper Summers, you did read him implied consent,  
4 and you indicated on the bottom of that implied consent  
5 form that he was unable to sign the form?

6 A That's correct.

7 Q Why was he unable to sign it?

8 A I don't know why. He was laying in the bed, and I  
9 read it to him, and, I mean, he was -- I asked --

10 Q A little bit out of it?

11 A Yeah. I mean, he was -- had been in a pretty  
12 serious accident.

13 MS. CARROWAY: Yes, sir. Thank you.

14 THE COURT: Anything further from you all?

15 MR. RUSSO: No, your Honor.

16 THE COURT: Give me a second. Well, at the time he  
17 testified, he wasn't in custody, correct?

18 A No, ma'am, he was not.

19 THE COURT: We could presume he was free to leave,  
20 but apparently, he was so injured that he couldn't get  
21 out of the bed or sign it. Okay. Is this what we have  
22 as far as the *Jackson v. Denno*, or as far as testimony  
23 is concerned?

24 MS. CARROWAY: It's the State's motion.

25 MR. RUSSO: Yes, your Honor.

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1 THE COURT: Okay. Thank you. Well, I will say  
2 this. I don't find that there's any police coercion  
3 involved, and I don't even know if we get to that point  
4 for the simple fact that he wasn't in custody. Again, I  
5 think it comes in. However, certainly, I can give it  
6 the weight that I think is appropriate. I mean, quite  
7 frankly, the man apparently had been in a major  
8 accident, had glass on him, but I think that goes to the  
9 weight I can give it, not to its admissibility. So, I  
10 do think the statements come in, again, for me to weigh.  
11 I mean, he was in a bad wreck, clearly. Okay.

12 MS. CARROWAY: Your Honor, may we approach?

13 THE COURT: Sure.

14 COURT REPORTER: Lauren, do you need me?

15 OFF-THE-RECORD BENCH CONFERENCE OUT-OF-  
16 HEARING OF EVERYONE IN THE COURTROOM.

17 PRESENT: THE COURT, MR. RUSSO, MS. CARROWAY  
18 END BENCH CONFERENCE.

19 THE COURT: You all, we are going to take a brief  
20 recess. Trooper Summers, I'm going to let you step  
21 down, sir. You are free to refresh yourselves. And I  
22 apologize, I don't think we're getting any water or  
23 taking care of you while we're up here.

24 A I'm fine.

25 THE COURT: Are you okay?

1       A     Yes, ma'am.

2           THE COURT:  Go get whatever you need, and we're  
3     just going to take about a ten-minute break and come  
4     back.  Okay?

5           OFF THE RECORD 2:03 P.M.

6           BACK ON THE RECORD 2:57 P.M.

7           BY THE COURT:

8           BAILIFF:

9           THE COURT:  Thank you all.  Please be seated.  All  
10    right.  All right.  Ms. Carroway, other than, obviously,  
11    that I've taken under advisement the BAC, not only on  
12    the implied consent statute, but also I believe there's  
13    the chain issue that we've now have discussed back in  
14    chambers, I think we need to go ahead and see if the  
15    State can establish a chain.  And then, if that can  
16    wait, that'll take care of that issue, and then I can  
17    rule on the implied consent.  But I think we can go  
18    ahead and just do it during the trial.  Okay?

19          END PRETRIAL HEARINGS.

20          BEGIN TRIAL:

21          MR. RUSSO:  All right.  I think, your Honor, we  
22    were going to stipulate to two things.  And if your  
23    Honor would prefer, I know some of my witnesses,  
24    especially from SLED, need to get back.  Is it possible  
25    that we could go out of order?

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STIPULATION

1 THE COURT: Certainly.

2 MR. RUSSO: Just for purposes of judicial economy.

3 THE COURT: Certainly.

4 MR. RUSSO: Thank you. All right. Well, do you  
5 just want to go ahead and stipulate to --

6 THE COURT: Sure.

7 STIPULATIONS:

8 MR. RUSSO: The State and the Defense, as far as I  
9 understand, stipulates the following things: in  
10 relation to the testimony of Dr. Aaron Presnell, who did  
11 the autopsy in this case, we're going to stipulate to  
12 the fact that Mr. Vallejos passed away due to the  
13 injuries sustained in the wreck, which we're here to  
14 talk about today. And furthermore, that his blood  
15 alcohol content was .129.

16 THE COURT: Okay. .129.

17 MR. RUSSO: Yes, your Honor.

18 THE COURT: So, above the legal limit, as well.

19 MR. RUSSO: Yes, your Honor.

20 THE COURT: Okay.

21 MR. RUSSO: And we're also going to stipulate to  
22 the fact that, for the purposes of letting the coroner,  
23 Mr. Edward Allen, go --

24 THE COURT: Okay.

25 MR. RUSSO: -- that he is, at this time, deceased.

1-30-14 STATE V REARICK

DIRECT - TROOPER SUMMERS

1 THE COURT: Okay.

2 MS. CARROWAY: That's correct.

3 THE COURT: Okay. Thank you, Ms. Carroway. Okay.  
4 Well, I think we can forego opening statements in this  
5 case. Let's go ahead and just if you'd like to call  
6 your SLED witnesses to establish --

7 MR. RUSSO: Sure.

8 THE COURT: -- so we can get them home, that's fine  
9 by me.

10 MR. RUSSO: Okay. All right. At this time, your  
11 Honor, the State would call Trooper Tom Summers.

12 THE COURT: Trooper, you're getting your exercise  
13 today.

14 MR. RUSSO: We're probably going to call you one  
15 more time after this.

16 THE COURT: Sir, I'm just going to remind you that  
17 you're under oath. Okay? Thank you.

18 TROOPER THOMAS SHADRACH SUMMERS III: Yes, ma'am.

19 THE COURT: Go ahead.

20 TROOPER THOMAS SHADRACH SUMMERS III

21 DIRECT EXAMINATION BY MR. RUSSO:

22 Q Okay. Trooper Summers --

23 MR. RUSSO: May I approach the witness, your Honor?

24 THE COURT: You may.

25 BY MR. RUSSO:

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DIRECT - TROOPER SUMMERS

1 Q I am handing you what has marked as State's Exhibit  
2 1. Can you identify that, please.

3 A Two vials of blood.

4 Q Okay. On the night/morning of May 30th and May  
5 31st of 2010, did you order that blood be drawn from Mr.  
6 Rearick?

7 A I did.

8 Q And was that done pursuant to 2946 -- or 56-5, the  
9 implied consent orders?

10 A Yes.

11 Q Okay. All right. Who did you ask to do it?

12 A Licensed medical personnel.

13 Q Do you recall that person's name?

14 A I do not.

15 Q Would looking at your chain of custody refresh your  
16 recollection?

17 A I can read her name off the report.

18 Q Off your chain of custody?

19 A Yeah.

20 Q Okay.

21 MR. RUSSO: May I approach?

22 THE COURT: You may.

23 BY MR. RUSSO:

24 Q What was her name?

25 A Yolanda Bryant.

1 Q Okay. Did she ever indicate to you that she was a  
2 registered nurse at Hilton Head Hospital?

3 A I read it on her tag, her name, and that she was an  
4 R.N.

5 Q Okay. Was she wearing scrubs?

6 A They sent her in with scrubs, and yes.

7 Q Okay.

8 A I asked for a licensed medical personnel.

9 Q You did?

10 A Right.

11 Q Okay. And did you watch her draw the blood?

12 A I did.

13 Q Okay. And did she draw the blood with a non-  
14 ethanol prep?

15 A She used our kit that has all of that stuff in it.

16 THE COURT: What is our kit? Do you actually have  
17 a kit?

18 A It's a blood alcohol kit we have with a non-ethanol  
19 prep pad, and two vials, and a urine vial. And it's all  
20 in accordance to -- to the guidelines, as far as drawing  
21 blood.

22 THE COURT: Sort of like a pre-packaged little kit.  
23 Is that correct?

24 A That's exactly right.

25 THE COURT: Thank you.

1-30-14 STATE V REARICK CROSS-EXAMINATION TROOPER SUMMERS

1 BY MR. RUSSO:

2 Q And can you identify -- is the person that from  
3 whom the blood was drawn in this courtroom?

4 A They -- they are.

5 Q Okay. Could you point to them.

6 A Mr. Rearick.

7 Q All right. And where were you when this happened?  
8 What hospital?

9 A At Hilton Head.

10 Q Okay. After you got the blood, what did you do  
11 with it?

12 A I then sealed it into the package or box that we  
13 have, the kit, and I attached the seal onto the box and  
14 started a chain of custody from that point.

15 Q Did you tamper with the blood at all?

16 A Not from that point forward, no.

17 Q Where did you take the blood?

18 A The blood is sealed in a box, and inside the box is  
19 sealed inside of a plastic -- another plastic bag. And  
20 it's taken to a refrigerator where it was signed out to  
21 our office that same night. And from there, it went --

22 MR. RUSSO: Okay. All right. No more questions  
23 for this witness on this issue at this time.

24 THE COURT: Okay. Ms. Carroway?

25 TROOPER THOMAS SHADRACH SUMMERS III

1-30-14 STATE V REARICK      CROSS-EXAMINATION TROOPER SUMMERS

1                    CROSS-EXAMINATION BY MS. CARROWAY:

2            Q      You said that you asked a licensed medical -- asked  
3            for a licensed medical personnel. Who did you ask for?

4            A      Who did --

5            Q      Who did you --

6            A      The doctor.

7            Q      The doctor.

8            A      Um-hmm.

9            Q      And what, specifically, did you say to him?

10          A      I need a R.N. to take some blood.

11          Q      And was anybody else present?

12          A      As far as when she took the blood?

13          Q      When she took the blood or when you made these  
14          statements?

15          A      There was people all around. I just -- I mean, I  
16          don't know who all they were.

17          Q      People all around Bryan?

18          A      No, there were people like nurses and other folks  
19          at the desk when I went up there.

20          Q      And how do you know the person you requested, this  
21          licensed medical personnel to take blood, how do you  
22          know he was a doctor?

23          A      He had a name tag with doctor. I can't remember  
24          his name, but I know that he was the same doctor that  
25          actually saw him.

1-30-14 STATE V REARICK CROSS-EXAMINATION TROOPER SUMMERS

1 THE COURT: When you say *saw him*, saw Mr. Rearick?

2 A Saw Mr. Rearick.

3 THE COURT: Okay.

4 A That's correct.

5 THE COURT: Were you in the emergency room at this  
6 time, or were you up on the floor?

7 A No, I was in the emergency room.

8 THE COURT: Okay.

9 MS. CARROWAY: Your Honor, I don't have any further  
10 questions.

11 THE COURT: Okay. Anything further, Mr. Russo?

12 MR. RUSSO: Nothing from the State.

13 THE COURT: All right. You may step down.

14 A Do you want me to leave this here?

15 MR. RUSSO: Okay.

16 THE COURT: Call your next witness, Mr. Russo.

17 MR. RUSSO: Your Honor, the State, at this time,  
18 would call Ms. Lolita Reed.

19 MADAM CLERK: Would you place your left hand on the  
20 Bible and raise your right hand for me, please, ma'am.  
21 Do you solemnly swear to truthfully answer all questions  
22 asked of you by this court, so help you God?

23 LOLITA REED: I do.

24 MADAM CLERK: Please be seated. State your name  
25 and spell it for the Court, please.

1           LOLITA REED: Lolita Reed, L/o/l/i/t/a, Reed,  
2           R/e/e/d.

3           THE COURT: Thank you, Ms. Reed.

4           LOLITA REED

5           DIRECT EXAMINATION BY MR. RUSSO:

6           Q     Okay. Ms. Reed, where do you work?

7           A     Hilton Head Hospital, Medical Records.

8           Q     How long have you worked there?

9           A     I've worked there since 2006.

10          Q     What is your job title?

11          A     My job title is H.I.M. Supervisor and Record  
12          Custodian.

13          Q     Custodian of Records at Hilton Head Hospital?

14          A     Yes, sir.

15          Q     How long have you been custodian of records at  
16          Hilton Head Hospital?

17          A     Since 2007.

18          Q     Okay. I'm going to approach you --

19          MR. RUSSO: May I approach the witness, your Honor?

20          THE COURT: You may.

21          BY MR. RUSSO:

22          Q     -- with what's been marked as State's Exhibit 14.

23          Could you please identify that for the record, your  
24          Honor -- or, Ms. Reed.

25          A     These are records held during a normal course of

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DIRECT - LOLITA REED

1 business at Hilton Head Hospital.

2 Q Okay. All right. And are those records created in  
3 the normal course of business at the Hilton Head  
4 Hospital?

5 A Yes.

6 Q Okay. All right. And you always create those  
7 records when you intake a patient?

8 A Yes.

9 Q Okay. And those records pretty much go throughout  
10 the patient's entire stay at Hilton Head Hospital?

11 A Yes.

12 Q Okay. All right.

13 MR. RUSSO: Your Honor, at this time, I would seek  
14 to enter what's been identified as State's 14 into  
15 evidence.

16 THE COURT: Any objection?

17 MS. CARROWAY: Your Honor, I'm not sure what the  
18 purpose of this is.

19 THE COURT: Well, have you looked at the records?

20 MS. CARROWAY: I just did, yes, ma'am. They're my  
21 client's medical records.

22 THE COURT: Okay. What are you using them for?

23 MR. RUSSO: It'll take two more questions.

24 THE COURT: Okay. Go ahead.

25 MR. RUSSO: Sorry about that.

1 BY MR. RUSSO:

2 Q All right. Ms. Reed, have you reviewed those  
3 records?

4 A Yes, I have.

5 Q Okay. And do they indicate that Yolanda Bryant was  
6 a registered nurse at Hilton Head Hospital in 2010?

7 A By the records?

8 Q Yes.

9 A Yes.

10 MR. RUSSO: Your Honor, I'd now seek to enter them  
11 into evidence.

12 THE COURT: Okay. And have you established that  
13 these are records kept in the ordinary course of  
14 business? Is that correct?

15 A Yes.

16 THE COURT: Okay. Anything further, Ms. Carroway?

17 MS. CARROWAY: Your Honor, I guess for the limited  
18 purpose of that introduction, I'm not opposed to it.

19 THE COURT: Can I see them? May I see the records?  
20 Thank you. Okay.

21 ITEM IDENTIFIED AS HILTON HEAD ISLAND  
22 HOSPITAL RECORDS OF BRYAN REARICK.  
23 MARKED STATE'S EXHIBIT NUMBER 14,  
24 ADMITTED AS EVIDENCE.

25 THE COURT: Anything further?

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CROSS - LOLITA REED

1 MR. RUSSO: Nothing from the State at this time.

2 MS. CARROWAY: Just a couple questions.

3 LOLITA REED

4 CROSS-EXAMINATION BY MS. CARROWAY:

5 Q Ms. Reed, when you that testified those records  
6 indicate that Ms. Bryant was an R.N., you're simply  
7 reading off that piece of paper; you've never actually  
8 seen her qualifications, correct?

9 A Correct.

10 MS. CARROWAY: Thank you.

11 THE COURT: Okay.

12 MR. RUSSO: Nothing further from the State at this  
13 time.

14 THE COURT: Any objection to this witness being  
15 excused from anyone?

16 MS. CARROWAY: No, your Honor.

17 THE COURT: You are excused, ma'am. Thank you.

18 A Thank you.

19 MR. RUSSO: Your Honor, may the witness be excused?

20 THE COURT: I already excused her.

21 MR. RUSSO: Your Honor, at this time the State  
22 would call Sergeant I.H. Gregory, formerly of the  
23 Highway Patrol, currently a federal marshal.

24 THE COURT: Okay. All right.

25 MADAM CLERK: Would you place your left hand on the

1-30-14 STATE V REARICK

DIRECT - MARSHALL GREGORY

1 Bible and raise your right hand for me, sir. Do you  
2 solemnly swear to truthfully answer all questions asked  
3 of you by this court, so help you God?

4 MARSHALL I.H. GREGORY, JR.: I do.

5 MADAM CLERK: Please be seated. State your name  
6 and spell it for the Court, please, sir.

7 MARSHALL I.H. GREGORY, JR.: My name's Isaac H.  
8 Gregory, Jr.

9 MARSHALL I.H. GREGORY JR.

10 DIRECT EXAMINATION BY MR. RUSSO:

11 Q Okay. Sergeant Gregory?

12 A I used to be, yes.

13 Q Okay. Who do you work for now?

14 A I work for the United States Marshal Service, Court  
15 Security at the federal courthouse in Charleston, South  
16 Carolina.

17 Q Who did you work for in 2010?

18 A South Carolina Department of Public Safety.

19 Q Okay. And specifically within that?

20 A I was a sergeant with the South Carolina Highway  
21 Patrol.

22 Q All right. Did you work the case with Mr. Rearick?

23 A I was supervisor on-scene.

24 Q Okay. Very good.

25 MR. RUSSO: Your Honor, may I approach the witness?

1-30-14 STATE V REARICK

DIRECT - MARSHALL GREGORY

1 THE COURT: You may.

2 BY MR. RUSSO:

3 Q I'm handing you what's been marked State's Exhibit  
4 1. Can you please identify that for the record.

5 A This is an evidence bag with the defendant's name  
6 on it, Bryan Lee Rearick, with the trooper's name on it,  
7 and the South Carolina evidence case number, which  
8 contain two vials of human blood.

9 Q Do you recall where you -- if you touched that  
10 during the investigation of this case?

11 A Yes, I did.

12 Q Okay. Who did you -- or, who or where did you get  
13 it from?

14 A This was dropped off in my office at the patrol  
15 post headquarters, which are in Ridgeland, South  
16 Carolina.

17 Q Um-hmm.

18 A There is an evidence refrigerator there where all  
19 body fluids, blood, urine, would be placed for storage  
20 until it could be carried to the Central Evidence  
21 Facility. And it was my job as the county supervisor to  
22 either have it taken or designate somebody to carry any  
23 evidence from that facility to Central Evidence Facility  
24 in Columbia.

25 Q All right. Very good. And who did you end up --

1 well, first of all, did you ever touch that blood or  
2 tamper with it in any way?

3 A No, I did not.

4 Q Did you unseal the bag?

5 A No, I did not.

6 Q Okay. Did anyone else at the Highway Patrol?

7 A Did what?

8 Q Did anyone else, to the best of your knowledge, at  
9 the Highway Patrol touch or tamper with the blood or  
10 open the bag?

11 A No.

12 Q Okay. Who did you give the bag to, if anyone?

13 A I removed the bag from the refrigerator in the post  
14 headquarters, and I took it to ?Central Evidence  
15 Facility in Columbia, and turned the bag over to Lance  
16 Corporal Odom, who is one of the techs at the Central  
17 Evidence Facility. He gave me a receipt for it, and I  
18 left, and that's the last time I saw the bag 'til today.

19 MR. RUSSO: Thank you, Sergeant Gregory. Please  
20 answer any questions Defense counsel may have.

21 MS. CARROWAY: I don't have any questions for this  
22 witness.

23 THE COURT: All right. Any objection to this  
24 witness being excused?

25 MS. CARROWAY: No, ma'am.

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DIRECT - MARSHALL GREGORY

1 SERGEANT I.H. GREGORY, JR.: Thank you.

2 THE COURT: So, it's back to Charleston, sir.

3 Thank you.

4 SERGEANT I.H. GREGORY, JR.: Thank you, your Honor.

5 THE COURT: Tell my friends from the federal bench  
6 hello.

7 SERGEANT I.H. GREGORY, JR.: I'll do it.

8 THE COURT: Thank you.

9 MR. RUSSO: The State would call Lance Corporal  
10 P.M. Odom of the Highway Patrol. May I approach, your  
11 Honor?

12 THE COURT: Sure. Come on forward, sir.

13 MADAM CLERK: Would you place your left hand on the  
14 Bible and raise your right hand for me, sir. Do you  
15 solemnly swear to truthfully answer all questions asked  
16 of you by this court, so help you God?

17 LANCE CORPORAL PHILLIP ODOM: I do.

18 MADAM CLERK: Please be seated. State your name  
19 and spell it for the Court, please, sir.

20 LANCE CORPORAL PHILLIP ODOM: Phillip Odom.

21 COURT REPORTER: Spell, please. Spell, please.

22 LANCE CORPORAL PHILLIP ODOM: I'm sorry?

23 COURT REPORTER: Spell, please.

24 LANCE CORPORAL PHILLIP ODOM: Last name?

25 THE COURT: Yes, please.

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DIRECT - LANCE CORPORAL ODOM

1 LANCE CORPORAL PHILLIP ODOM: Odom, O/d/o/m.

2 THE COURT: Thank you, sir.

3 LANCE CORPORAL PHILLIP ODOM

4 DIRECT EXAMINATION BY MR. RUSSO:

5 Q Lance Corporal, for what department do you work,  
6 sir?

7 A South Carolina Department of Public Safety.

8 Q Where, specifically?

9 A All right.

10 Q Well, actually, let me back up. For what entity or  
11 agency specifically?

12 A I am currently assigned to the Central Evidence  
13 Unit.

14 Q For whom?

15 A Department of Public Safety. It's -- the  
16 Department covers three -- three branches: Highway  
17 Patrol, State Transport, and Bureau of Protective  
18 Services.

19 Q Did you work at the Central Evidence Facility in  
20 2010?

21 A I did.

22 Q Okay.

23 MR. RUSSO: Your Honor, may I approach the witness?

24 THE COURT: You may.

25 BY MR. RUSSO:

1-30-14 STATE V REARICK

DIRECT - LANCE CORPORAL ODOM

1 Q Corporal Odom, I'm handing you a bag marked State's  
2 Exhibit 1. Do you recognize that bag?

3 A It is a DTS sealed evidence bag.

4 Q Okay. Did that bag come into the Central Evidence  
5 Facility's possession from Sergeant Gregory of the  
6 Highway Patrol in 2010?

7 A Yes, sir. I received this from Sergeant Gregory on  
8 June 1st, 2010.

9 Q When you received it in the Central Evidence  
10 Facility, what did you do with it?

11 A What we do is, once I receive it from him, I take  
12 it to our safe. It's a secured location within our  
13 department, and there's only four people within the  
14 whole state that has access to that unit. I put it in  
15 the safe, and it stays there until we take it to SLED  
16 for analysis.

17 Q Did you ever touch or tamper with the blood in  
18 those vials?

19 A No, sir. We -- we only accept it if it's sealed,  
20 and we put it in our secured location until we take it  
21 to SLED.

22 Q Did anyone else, to the best of your knowledge,  
23 touch or tamper with the blood in those vials?

24 A Not to my knowledge. No, sir.

25 Q Did you or anyone else open the bag that it's

1 contained in?

2 A No, sir.

3 Q Okay. All right. After you received it and you  
4 put it in -- where did you say you put it in?

5 A Our refrigerator, within our sealed evidence  
6 facility.

7 Q Who, to the best of your knowledge, took it after  
8 that?

9 A According to the chain of custody, Lance Corporal  
10 L.M. Donkle.

11 Q Okay.

12 A He was the one that took it to SLED two days later.

13 MR. RUSSO: Please answer any questions Defense  
14 counsel might have.

15 A Yes, sir.

16 MS. CARROWAY: Your Honor, I don't have any  
17 questions for this witness.

18 THE COURT: Any objection to this trooper being  
19 excused? You need him any further?

20 MS. CARROWAY: No, ma'am.

21 MR. RUSSO: No, your Honor.

22 THE COURT: You are excused, sir. Thank you very  
23 much.

24 A Thank you, ma'am. Where would you like this?

25 THE COURT: Just leave it right there.

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DIRECT - LANCE CORPORAL DONKLE

1 A Okay.

2 MR. RUSSO: Your Honor, may I approach?

3 THE COURT: You may.

4 MR. RUSSO: I apologize. I just keep forgetting  
5 this.

6 THE COURT: Come on in, ma'am.

7 MADAM CLERK: Would you place your left hand on the  
8 Bible and raise your right hand for me, please, ma'am.  
9 Do you solemnly swear to truthfully answer all questions  
10 asked of you by this court, so help you God?

11 LANCE CORPORAL LEANNA M. DONKLE: I do.

12 MADAM CLERK: Please be seated. State your name  
13 and spell it for the court reporter, ma'am.

14 LANCE CORPORAL LEANNA M. DONKLE: It's Lance  
15 Corporal L.M. Donkle, Leanna Donkle.

16 LANCE CORPORAL LEANNA M. DONKLE

17 DIRECT EXAMINATION BY MR. RUSSO:

18 Q Okay, Lance Corporal Donkle.

19 COURT REPORTER: Spell your last name for me. I'm  
20 sorry.

21 LANCE CORPORAL DONKLE: Sure. D/o/n/k/l/e.

22 THE COURT: Thank you.

23 MR. RUSSO: Your Honor, at this time, because I'm  
24 going to have to approach every witness in this chain,  
25 and I see that I still have seven or eight chain

1 witnesses, can I have a continuing motion to approach?

2 THE COURT: Certainly.

3 MR. RUSSO: Okay.

4 BY MR. RUSSO:

5 Q Lance Corporal Donkle, who do you work for right --  
6 or where do you work right now?

7 A I work for the Central Evidence with the South  
8 Carolina Highway Patrol.

9 Q Okay. Did you work for them in 2010?

10 A I did, yes, sir.

11 Q Okay. I'm going to approach you at this time with  
12 what's been marked as State's Exhibit 1. Could you  
13 identify that for the record.

14 A Yes, your Honor. Is it labeled Bryan Lee Rearick?  
15 It's evidence that I picked up from SLED and from my  
16 chain of custody I also dropped off at SLED.

17 Q Okay. All right. So, where did you first obtain  
18 that blood, first possess it?

19 A I first possessed it at Central Evidence back on  
20 June the 3rd of 2010, when I took it from our safe, the  
21 refrigerator, in our facility. And then, I took it to  
22 SLED and dropped it off at SLED.

23 Q Who, to the best of your knowledge, put it in the  
24 refrigerator?

25 A From the chain of -- Phillip Odom, STP Officer

1-30-14 STATE V REARICK

DIRECT - LANCE CORPORAL DONKLE

1 Odom.

2 Q Okay. Did you ever open the bag that the vials  
3 were sealed in?

4 A No, sir, I did not.

5 Q Did you ever touch or tamper with the blood in any  
6 way?

7 A No, sir.

8 Q To the best of your recollection, did anybody at  
9 Central Evidence Facility touch, tamper with the blood,  
10 or open the bag?

11 A No, sir.

12 MR. RUSSO: Okay. Please answer any questions  
13 Defense counsel may have.

14 MS. CARROWAY: I have no questions of this witness.

15 THE COURT: Any objection to Lance Corporal Donkle  
16 being excused from anyone?

17 MS. CARROWAY: None from the Defense.

18 THE COURT: You are excused. Thank you.

19 LANCE CORPORAL DONKLE: Thank you, your Honor.

20 MR. RUSSO: State calls Doris Yarbrough. Begging  
21 the Court's indulgence. I'm sorry, your Honor.

22 MADAM CLERK: Would you place your left hand on the  
23 Bible and raise your right hand for me, please. Do you  
24 solemnly swear to truthfully answer all questions asked  
25 of you by this court, so help you God?

1-30-14 STATE V REARICK

DIRECT - DORIS YARBROUGH

1 DORIS YARBROUGH: I do.

2 MADAM CLERK: Please be seated. State your name  
3 and spell it for the Court.

4 DORIS YARBROUGH: My name is Doris Yarbrough,  
5 Y/a/r/b/r/o/u/g/h.

6 DORIS YARBROUGH

7 DIRECT EXAMINATION BY MR. RUSSO:

8 Q All right. Ms. Yarbrough, for whom do you work  
9 right now?

10 A I work for the South Carolina Law Enforcement  
11 Division, commonly known as SLED.

12 Q Okay. And what division of SLED?

13 A I work in the evidence control, or log-in  
14 department.

15 Q Okay. Did you work for them back in 2010?

16 A I did.

17 Q And in that division?

18 A Yes, I did.

19 Q Okay. Very good. I'm going to approach you with  
20 what's been marked as State's Exhibit 1. Please  
21 identify that for the record.

22 A I can identify it by this yellow label that's been  
23 placed on this package as the -- the lab number that it  
24 would be given once it was logged in.

25 Q Okay. And what lab number is that, ma'am?

1-30-14 STATE V REARICK

DIRECT - DORIS YARBROUGH

1 A L10-06-044.

2 Q And did you log it in?

3 A I did.

4 Q Okay. After you logged it in, what did you do with  
5 it?

6 A I placed it in what we -- we call our toxicology  
7 evidence intake storage, and that happens to be in a  
8 secure evidence room, located in the evidence control  
9 department.

10 Q Okay. Did you ever unseal the bag?

11 A Oh, no, sir.

12 Q Okay. Did you ever touch or tamper with the blood  
13 in any way?

14 A No, sir.

15 Q Did any -- I just have to ask. Did anyone, to the  
16 best of your knowledge, at SLED, touch or tamper with  
17 the blood in any way, or open the bag?

18 A Not when I had it.

19 Q Okay. All right. And who is the next person to  
20 pick it up, to the best of your knowledge?

21 A It was retrieved from the Evidence Intake Storage  
22 by Patricia Crooks.

23 MR. RUSSO: Thank you very much. Please answer any  
24 questions Defense counsel may have. If I may approach  
25 and get this?

1 THE COURT: Okay.

2 MS. CARROWAY: I don't have any questions for this  
3 witness.

4 THE COURT: All right. You may step down. Thank  
5 you.

6 A Thank you.

7 MS. CARROWAY: No objection to her being excused.

8 THE COURT: You are excused. Come on forward,  
9 ma'am, please.

10 MADAM CLERK: Would you place your left hand on the  
11 Bible and raise your right hand for me, ma'am. Do you  
12 solemnly swear to truthfully answer all questions asked  
13 of you by this court, so help you God?

14 PATRICIA CROOKS: Yes, I do.

15 MADAM CLERK: Please be seated. State your name  
16 and spell it for the Court, please, ma'am.

17 PATRICIA CROOKS: My name is Patricia Crooks,  
18 C/r/o/o/k/s.

19 THE COURT: Thank you, ma'am.

20 PATRICIA CROOKS

21 DIRECT EXAMINATION BY MR. RUSSO:

22 Q All right, Ms. Crooks. Who do you work for right  
23 now?

24 A I work for the South Carolina Law Enforcement  
25 Division, also known as SLED.

1-30-14 STATE V REARICK

DIRECT - PATRICIA CROOKS

1 Q And what specific portion of SLED? What  
2 specific --

3 A I work in evidence control.

4 Q Okay. All right. Did you work for them in 2010?

5 A Yes, I did.

6 Q Okay. I'm approaching with what's been marked as  
7 State's Exhibit 1. Would you please identify it for the  
8 record.

9 A This is SLED case L10-06-044.

10 Q Okay. All right. And did you handle that bag and  
11 its contents back in 2010?

12 A Yes, I did.

13 Q Okay. From where did you get the blood? Where did  
14 you obtain it?

15 A I removed this blood from the toxicology evidence  
16 intake storage in the SLED evidence room.

17 Q Okay. And did you ever open the bag or tamper with  
18 the blood therein?

19 A No, I did not.

20 Q No, you did not. All right. To the best of your  
21 knowledge, did anyone at SLED, while the bag was in your  
22 possession, do that?

23 A No, they did not.

24 Q Okay. All right. What did you do with the blood  
25 after you were finished handling it?

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DIRECT - PATRICIA CROOKS

1 A After I took custody of the blood, I transferred  
2 that custody to forensic technician, Kimberly D. Mears.

3 MR. RUSSO: Your Honor, may I approach to get that  
4 bag?

5 THE COURT: You may.

6 MR. RUSSO: Thank you. Thank you. Please answer  
7 any questions Defense counsel might have.

8 MS. CARROWAY: No questions for this witness, and  
9 no objection to her --

10 THE COURT: Any objection?

11 MS. CARROWAY: No, ma'am.

12 THE COURT: All right. Ms. Mears, you may -- I'm  
13 sorry. I apologize. You may be excused, ma'am.

14 PATRICIA CROOKS: Thank you.

15 MR. RUSSO: State calls Kimberly Mears.

16 THE COURT: Come on forward, Ms. Mears, right  
17 around here. Thank you.

18 MADAM CLERK: Would you place your left hand on the  
19 Bible and raise your right hand for me, please, ma'am.  
20 Do you solemnly swear to answer all questions asked of  
21 you by this court, so help you God?

22 KIMBERLY MEARS: I do.

23 MADAM CLERK: Please be seated. State your name  
24 and spell it for the Court, please.

25 KIMBERLY MEARS: My name is Kimberly Mears,

1-30-14 STATE V REARICK

DIRECT - KIMBERLY MEARS

1 M/e/a/r/s.

2 KIMBERLY MEARS

3 DIRECT EXAMINATION BY MR. RUSSO:

4 Q All right, Ms. Mears. Who do you work for right  
5 now?

6 A The South Carolina Law Enforcement Division,  
7 commonly known as SLED.

8 Q And what specific portion of SLED?

9 A I'm currently in the latent prints crime scene  
10 department. However, at the time of this case, I was  
11 with the toxicology department.

12 Q Okay. So, you worked for them in toxicology in  
13 2010?

14 A Yes.

15 Q Okay. Perfect. All right. I'm going to approach  
16 at this time with what's been pre-marked as State's  
17 Exhibit 1.

18 A Okay.

19 Q Would you please identify that for the record.

20 A This is a -- this is the heat-sealed pouch that I  
21 received for Case Number L10-06-044.

22 Q Okay. All right. From where or whom did you  
23 obtain that bag?

24 A May I refer to chain of custody?

25 MR. RUSSO: Any objection?

1 MS. CARROWAY: No.

2 BY MR. RUSSO:

3 A I received it from Patricia Cook - Crooks.

4 Q Okay. So, after you got it from Ms. Crooks, what  
5 did you do with it?

6 A It was transferred into my custody by way of the  
7 bar code.

8 Q Um-hmm.

9 A And then I took it to the toxicology department  
10 where I then photographed each stage of the packaging.

11 Q Um-hmm.

12 A Which is what we call inventorying the evidence, to  
13 verify what actual evidence we received was what was  
14 logged into our computer system, and just to verify the  
15 packaging.

16 Q And what's the -- what's the SLED number on there?  
17 What's the case number on there?

18 A It is L10-06-044.

19 Q All right. While it was in your possession, did  
20 you ever touch or tamper with the blood or open the bag?

21 A I opened the heat-sealed pouch --

22 Q Um-hmm.

23 A -- and the packaging within, but I never -- once I  
24 got to the tube itself, I never opened the actual tube.

25 Q And what did you do that for?

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DIRECT - KIMBERLY MEARS

1       A     The inventorying of evidence, to take photos of how  
2       it was packaged.

3       Q     Okay. So, but the blood was never physically  
4       touched by you?

5       A     No, it was not.

6       Q     You never placed an implement in the blood?

7       A     No.

8       Q     You never placed any chemicals in the blood?

9       A     No.

10      Q     Did anyone at SLED do any of those things while the  
11      blood was in your possession?

12      A     No.

13      Q     After you were done with the blood, to whom or what  
14      did you give the blood? Where did you put it?

15      A     I scanned it again with the bar code to the custody  
16      of the toxicology refrigerator.

17      Q     And who obtained the blood next, to the best of  
18      your knowledge?

19      A     Toni Broome got it from the refrigerator.

20           MR. RUSSO: Please answer any questions that the  
21      Defense counsel may have.

22           MS. CARROWAY: No questions for this witness, your  
23      Honor.

24           THE COURT: All right. Anyone object to Ms. Mears  
25      being excused?

1 MS. CARROWAY: No, ma'am.

2 THE COURT: You are excused. Thank you. It's Ms.  
3 Mears, I apologize.

4 MADAM CLERK: Would you place your left hand on the  
5 Bible and raise your right hand for me, please. Do you  
6 solemnly swear to truthfully answer all questions asked  
7 of you by this court, so help you God?

8 TONI BROOME: I do.

9 MADAM CLERK: Please be seated. State your name  
10 and spell it for the court, please, ma'am.

11 TONI BROOME: Toni Broome, T/o/n/i, B/r/o/o/m/e.

12 TONI BROOME

13 DIRECT EXAMINATION BY MR. RUSSO:

14 Q Hi, Ms. Broome.

15 A Hi. . .

16 Q Who do you work for?

17 A South Carolina Law Enforcement Division, also known  
18 as SLED.

19 Q Did you work for them back in 2010?

20 A I did.

21 Q What specific division of SLED?

22 A The toxicology department.

23 Q Okay. All right. I'm approaching you with what's  
24 been pre-marked as State's Exhibit 1. Would you please  
25 identify that for the record? I'm going to leave it up

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DIRECT - TONI BROOME

1 here.

2 A Okay. This is a evidence bag labeled Bryan Lee  
3 Rearick, containing two blood test tubes, two test tubes  
4 of blood.

5 Q Did you handle that back in 2010?

6 A That's correct.

7 Q Okay. From whom did you obtain the -- from whom or  
8 what, I should say, did you obtain the blood?

9 A I retrieved the blood sample from our TOPS' secure  
10 refrigerator.

11 Q Okay. When you had the blood, what did you do with  
12 it?

13 A I analyzed the blood for blood alcohol content.

14 Q Okay. So, tell me what you mean when you say that.  
15 What exactly did you do?

16 A Basically, the blood was tested for ethanol  
17 content, or what's commonly known as drinking alcohol.

18 Q Okay. All right. So, you put an implement into  
19 the blood through a -- into the tube. You opened the  
20 bag and put an implement into the tube, with which  
21 contained the blood.

22 A That's correct.

23 Q Okay. Did that implement in any way affect pH,  
24 affect the ethanol content of the blood itself?

25 A I did not test with pH, but it did not affect the

1 ethanol content.

2 Q Okay. All right. After you were done with it,  
3 what did you -- after you were done doing that, what did  
4 you do with the blood thereafter?

5 A Basically, the blood was sealed, placed back into a  
6 tamper-evident bag, heat-sealed, initialed and dated,  
7 and placed back into our secure toxicology refrigerator  
8 for storage.

9 Q Okay. And who obtained the blood next, after you?

10 A After I placed it back into the refrigerator,  
11 Brandon J. Landrum retrieved the evidence from the  
12 refrigerator.

13 Q Okay. Other than what you've already said that you  
14 did, did you ever touch or tamper with the blood in any  
15 way?

16 A No, I did not.

17 Q Okay. Did you ever open the bag, other than to do  
18 what you told me you did?

19 A No, I didn't.

20 MR. RUSSO: Okay. Please answer any questions  
21 Defense counsel may have.

22 MS. CARROWAY: Your Honor, I don't have any  
23 questions of this witness.

24 THE COURT: Any objection to her being excused?

25 MS. CARROWAY: No, ma'am.

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DIRECT - AGENT BRANDON LANDRUM

1 THE COURT: You are excused. Thank you.

2 TONI BROOME: Thank you.

3 MR. RUSSO: The State calls Brandon Landrum.

4 MADAM CLERK: Would you place your left hand on the  
5 Bible and raise your right hand for me, please. Do you  
6 solemnly swear to truthfully answer all questions asked  
7 of you by this court, so help you God?

8 AGENT BRANDON LANDRUM: I do.

9 MADAM CLERK: Please be seated. State your name  
10 and spell it for the Court, please.

11 AGENT BRANDON LANDRUM: Brandon Landrum.

12 COURT REPORTER: Spell, please.

13 AGENT BRANDON LANDRUM: B/r/a/n/d/o/n,  
14 L/a/n/d/r/u/m.

15 AGENT BRANDON LANDRUM

16 DIRECT EXAMINATION BY MR. RUSSO:

17 Q All right. Agent Landrum?

18 A Yes, sir.

19 Q Who do you work for right now?

20 A South Carolina Law Enforcement Division, also known  
21 as SLED.

22 Q What specific portion of SLED?

23 A I am currently in the executive protection unit at  
24 SLED.

25 Q Okay. So, it protects the governor?

1 A Yes.

2 Q Did you work for them back in 2010?

3 A I did, yes.

4 Q What did you do then?

5 A I was a forensic toxicologist.

6 Q Okay. Where did I put that? Did I leave the bag  
7 up there?

8 A Yes.

9 Q All right. I'm going to approach and just re-hand  
10 to you this bag.

11 A Okay.

12 Q Apologize for that.

13 A Not a problem.

14 Q Let me ask you, did you -- can you please identify  
15 that for the record.

16 A It's a SLED evidence pouch labeled L10-06-044,  
17 Number 1.

18 Q Did you possess that blood back in 2010?

19 A Yes, I did.

20 Q Okay. Who did you get it from?

21 A I received it from our locked refrigerator --

22 Q And --

23 A -- in the toxicology department.

24 Q I apologize. To the best of your knowledge, who  
25 put it there?

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DIRECT - AGENT BRANDON LANDRUM

1 A Usually, the way evidence is brought up, it's  
2 brought up by our evidence technician, which at that  
3 point in this case would have been Kimberly Mears, or  
4 Kimi Mears. And then, she would have logged in all the  
5 evidence, and then taken photos and things of that sort,  
6 to document it; put in the refrigerator. And then, when  
7 it came my time to do my portion of the testing, then I  
8 would have retrieved it from that refrigerator.

9 Q Okay. All right. When you possessed the blood,  
10 did you ever open the bag or touch or tamper with the  
11 blood in any way?

12 A Only when I had to open it to do the actual  
13 testing.

14 Q Sure. And tell me, what exactly do you mean by  
15 actual testing?

16 A I perform the drug analysis screen -- screening  
17 test on the evidence, on June 9th of 2010.

18 Q Okay. Other than that, did you ever touch or  
19 tamper with the blood?

20 A No, sir.

21 Q When you were doing these tests, did you insert  
22 implements into the tube which contained the blood?

23 A I inserted a pipette to draw the blood out in order  
24 to perform the test.

25 Q To the best of your knowledge, does that change the

1 ethanol content of the blood?

2 A No, sir, it does not.

3 Q Okay. Does it change any of the threshold for any  
4 sort of narcotic that's in the blood?

5 A No, sir.

6 Q Okay. Would it change the reading for any type of  
7 narcotic in the blood?

8 A No, sir.

9 Q Any other type of drug in the blood?

10 A No, sir.

11 Q Okay. After you got done testing it, what did you  
12 do?

13 A After I finished testing, I -- I sealed the bag  
14 back up, and then I transferred it from my custody back  
15 into our walk-in refrigerators.

16 Q Okay. To the best of your knowledge, who got it  
17 after you?

18 A After me, it would have been Jennifer Brown.

19 MR. RUSSO: Okay. Please answer any questions  
20 Defense counsel may have.

21 MS. CARROWAY: No questions for this witness, your  
22 Honor.

23 THE COURT: All right. You may be excused. Thank  
24 you, sir.

25 AGENT BRANDON LANDRUM: Thank you.

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DIRECT - JENNIFER BROWN

1 MR. RUSSO: State calls Jennifer Brown.

2 MADAM CLERK: Would you place your left hand on the  
3 Bible and raise your right hand for me, please. Do you  
4 solemnly swear to truthfully answer all questions asked  
5 of you by this court, so help you God?

6 JENNIFER BROWN: I do.

7 MADAM CLERK: Please be seated. State your name  
8 and spell it for the Court, please.

9 JENNIFER BROWN: Jennifer Brown.

10 JENNIFER BROWN

11 DIRECT EXAMINATION BY MR. RUSSO:

12 Q Ms. Brown, who do you work for?

13 A I work for the South Carolina Law Enforcement  
14 Division, commonly known as SLED.

15 Q What do you do for them?

16 A I'm a forensic toxicologist.

17 Q What does a forensic toxicologist do?

18 A We analyze samples for the presence or absence of  
19 drugs; and then interpret those for courts of laws for  
20 solicitors, for coroners, officers, and others.

21 Q Sounds very technical.

22 A Sure.

23 Q Did you receive any training or education to do  
24 that?

25 A Yes. I went to the University of South Carolina,

1       where I have a bachelor's of science and chemistry, but  
2       most of our training is done in-house at SLED.

3       Q     Okay. Did you receive any other training or  
4       education as relating to the effects of ethanol alcohol  
5       on people's ability to function?

6       A     Yes. We have an extensive program in-house at SLED  
7       where we go through training in doing such things.

8       Q     Did you receive any certificates or graduation  
9       notice or anything like diplomas in regards to your  
10      training and education?

11      A     Yes. We're given certificates of completion. And  
12      we have to go through, like I said, extensive training  
13      where we have mock trials. And if we don't pass our  
14      training, then we would be fired and I would no longer  
15      be here.

16      Q     Okay.

17           MR. RUSSO: All right. At this time, your Honor,  
18      I'd seek to qualify the witness as an expert in the  
19      effects of alcohol on an individual's functionality.

20           MS. CARROWAY: Your Honor, I'm going to have to  
21      object.

22           THE COURT: Okay. Let me go ahead and ask you  
23      this.

24           JENNIFER BROWN: Sure.

25           THE COURT: Have you ever been qualified in the

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CROSS - JENNIFER BROWN

1 areas in the effects of alcohol, with respect of a  
2 person's functioning?

3 A On how they're impaired to drive or such, yes.

4 THE COURT: Okay. In what courts?

5 A Let's see. Darlington, Spartanburg, Lexington.

6 Q In circuit court.

7 A Four general sessions in Darlington and  
8 Spartanburg. Oh, goodness. I'm trying to remember the  
9 other ones. Charleston.

10 THE COURT: Okay.

11 MS. CARROWAY: May I ask her?

12 THE COURT: Sure, go ahead.

13 JENNIFER BROWN

14 CROSS-EXAMINATION BY MS. CARROWAY:

15 Q Ms. Brown, do you write or have you been written up  
16 in any peer review journals?

17 A No.

18 Q So, your qualifications at this point, you've  
19 received a bachelor's degree. Is that from the  
20 University of South Carolina?

21 A Correct.

22 Q And you've had some in-house training with your  
23 job?

24 A Extensive in-house training, yes.

25 Q How many times do you think you've testified?

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1       A     Oh, goodness. I really stopped counting over ten,  
2       but I can probably tell you at least four different  
3       general sessions cases.

4       Q     Four general sessions cases?

5       A     At least.

6       Q     And for whom did you testify in those cases? Who  
7       called you as a witness?

8       A     The solicitors.

9           MS. CARROWAY: Your Honor, I don't think I have any  
10       other questions for her.

11       THE COURT: And you've testified as to the effects  
12       of alcohol and how it --

13       A     On driving, yes.

14       THE COURT: On driving.

15       A     And with the person's blood alcohol and how that  
16       would affect their driving.

17       THE COURT: Okay.

18       A     Or -- and other drugs, too.

19       THE COURT: Okay.

20       MS. CARROWAY: Your Honor, I'm not sure -- I do  
21       object to this testimony.

22       THE COURT: Basis?

23       MS. CARROWAY: I don't believe she's qualified as  
24       an expert. I'm not sure of the relevance or the  
25       probative value of it. In this case, it appears she'll

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1 be speaking in general terms not specific to this case.

2 THE COURT: Because we have no video, we have no --

3 MS. CARROWAY: Nothing.

4 THE COURT: Okay.

5 MR. RUSSO: She can testify generally to the  
6 effects of alcohol ability -- on a person's ability to  
7 drive. She's been made an expert in that, what, four  
8 times, at least?

9 A In general sessions at least, yes. At least ten  
10 times otherwise.

11 THE COURT: I think she can testify in general. I  
12 do think she's qualified as an expert certainly in  
13 forensic toxicology.

14 MR. RUSSO: Only in general. Only in general, not  
15 specific to Mr. Rearick.

16 MS. CARROWAY: Your Honor, I'm sure she's an expert  
17 in her field in analyzing.

18 THE COURT: Right.

19 MS. CARROWAY: But my concern is that I don't see  
20 what training she has to testify about how alcohol  
21 affects a person's body. Even if she does have that  
22 training, I'm not sure what relevance it could possibly  
23 have in this case, or probative value, for that matter,  
24 your Honor.

25 THE COURT: Okay. Well, I would actually have to

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1        hear the testimony to know whether or not it's relevant  
2        or probative. But we'll go ahead and let her testify,  
3        and if it's something that I believe that should be  
4        considered, obviously expert testimony, if it aids, you  
5        know, anyone in any way or the fact finder, I certainly  
6        can edit what is necessary, and accept or reject it.  
7        So.

8                MR. RUSSO: All right.

9                JENNIFER BROWN

10                CONTINUE DIRECT EXAMINATION BY MR. RUSSO:

11        Q        Who did you work for in 2010?

12        A        SLED.

13        Q        Okay. In the same department?

14        A        Yes.

15        Q        Okay. I'm going to approach with what's been pre-  
16        marked State's Exhibit 1. Would you please identify it  
17        for the record.

18        A        This is a SCDPS evidence property bag, and inside  
19        of it is the SLED evidence bag, and then two vials of  
20        blood.

21        Q        Okay. Who did you receive that blood from at SLED?

22        A        Give me one moment. Did I, or did SLED?

23        Q        Did you.

24        A        Okay. I would have received it out of our  
25        toxicology department refrigerator.

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1        Q     Okay. And to the best of your knowledge, who put  
2        it there?

3        A     Brandon Landrum.

4        Q     All right. What did you do with the blood when you  
5        received it?

6        A     When I receive it, I check my case to see what  
7        needs to be done, and finished. And then, I allocate  
8        out the samples that are needed to -- needs to be run  
9        for further analysis, or in some cases, go ahead up and  
10       write up the report.

11           COURT REPORTER: I'm sorry. In some cases?

12        A     Write up the report, if they don't need  
13        further analysis.

14        Q     Okay. So, you did ethanol analysis on this blood?

15        A     The ethanol analysis was done by -- by Toni Broome.

16        Q     Okay. All right. Did you write the report on  
17        this?

18        A     Yes.

19        Q     All right.

20           MR. RUSSO: At this time, your Honor, I'd move to  
21        enter State's Exhibit 1 into evidence.

22           MS. CARROWAY: We haven't even deemed that to be  
23        admissible, based on our pretrial motions. Isn't that  
24        the toxicology report?

25           MR. RUSSO: No, that's the blood.

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1 MS. CARROWAY: I mean, I'm sorry. The --

2 MR. RUSSO: And I guess --

3 THE COURT: Okay. At this point, when we get to  
4 the blood and whether the chain has been established, I  
5 think, would be the first, I think that would be the  
6 first motion -- or the first issue. You've actually  
7 offered it for this.

8 I do think, pursuant to *State v. Williams* and *State*  
9 *v. Valentine*, I do think an adequate chain has been  
10 established. I understand the question in this case is  
11 that we don't have the nurse who actually drew the  
12 blood. However, the studying of records from the  
13 hospital at Hilton Head entered the medical records of  
14 your client, Mr. Rearick, that included a sheet that  
15 stated that Ms. Yolanda whatever her last name was, was,  
16 in fact, an R.N. She signed off on it; the officer  
17 signed off on it; and I think it's proper. And I think  
18 as this case is required, it's not perfect. I mean,  
19 quite frankly, this mirrors very closely *State v.*  
20 *Williams* and *State v. Valentine*. And I do think, to  
21 that extent, I think the chain has been established.

22 And we haven't discussed at this point whether or  
23 not, again, it's a constitutional violation, the implied  
24 consent law. So, that, I think we're still at that  
25 issue. And I don't think I've heard -- I haven't heard

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1      any testimony as to what the BAC even was.

2            MS. CARROWAY: All right. I apologize. I thought  
3      he just handed me -- I thought that's what he was  
4      putting in evidence. I apologize.

5            MR. RUSSO: I'm sorry.

6            THE COURT: Okay. And I haven't seen that.

7            MS. CARROWAY: He handed it to me, and so, I -- so  
8      I see it. I apologize.

9            THE COURT: Okay.

10           MR. RUSSO: I apologize.

11           THE COURT: Okay.

12           MR. RUSSO: Okay. Your Honor -- or, sorry.

13           BY MR. RUSSO:

14      Q      Ms. Brown, I'm approaching with what's been pre-  
15      marked as State's Exhibit 13. Would you please identify  
16      that for the record.

17      A      Yes, this is my SLED lab report for the case.

18      Q      Okay. And what does the lab report -- what does  
19      the lab report indicate, generally?

20      A      The presence or absence of whatever we found.

21            COURT REPORTER: I'm sorry. *The presence or*  
22      *absence of?*

23      A      What we found.

24      Q      Found in what?

25      A      In the sample. So, if it's blood or urine, ocular.

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1        It depends on the type of case.

2        Q        Could you put the -- tell me the lab number off of  
3        the report.

4        A        It's the SLED lab number is L10-06-044.

5        Q        I'm going to re-approach you with this blood.  
6        Could you please tell me the lab number on the blood.

7        A        It is the same number. It's L10-06-044.

8        Q        Are they the same number?

9        A        Yes.

10       Q        That lab, does that lab report, refer back to those  
11       samples, to the best of your knowledge?

12       A        Yes.

13       Q        All right. When do you make -- when do you make  
14       those lab reports?

15       A        When we're completed with the case.

16       Q        Would you consider that in the normal course of  
17       business?

18       A        Yes.

19       MR. RUSSO: At this time, your Honor, I'd seek to  
20       enter the lab report into evidence.

21       THE COURT: Subject to your prior objection, again,  
22       that it is a --

23       MS. CARROWAY: Subject to my prior motion.

24       THE COURT: -- it's violation of Mr. Rearick's  
25       constitutional rights, correct?

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1            MS. CARROWAY: Your Honor, the blood was taken in  
2            violation of my client's *Fourth Amendment* rights, such  
3            that any results from any tests performed on the blood  
4            would be fruit of the poisonous tree, and all of the  
5            case law that is cited in our prior motion.

6            THE COURT: You all, can we just go ahead and just  
7            -- we're going to take a quick ten-minute break. We'll  
8            get you out of here today, I assure you.

9            MR. RUSSO: Yes, your Honor.

10           THE COURT: So, I think, Mr. Russo, you need to go  
11           -- I haven't heard any testimony -- I'm having a hard  
12           time believing -- and again, I could be very wrong,  
13           because I haven't tried a DUI case in years, and we  
14           certainly typically don't do it at a general sessions  
15           level, but that she can charge -- she can testify in  
16           general as to the effects of alcohol on a person. I  
17           mean, that would have to take into account human  
18           factors. It would have to take into account type of  
19           alcohol, how often, his tolerance for alcohol, his  
20           weight, his height. I mean, that's a lot to take into  
21           consideration.

22           MR. RUSSO: Sure.

23           THE COURT: And while I believe probably a medical  
24           doctor could testify to it, I have a hard time believing  
25           that a toxicologist could testify to that. So, if you

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1 want to go find where, in fact, I'd love to know who it  
2 was in front of that -- again, I think she's certainly  
3 qualified in the area of forensic toxicology. I think  
4 she can certainly, if it comes in properly, testify as  
5 to what a BAC is and those types of issues. I just have  
6 a hard time going ahead and having her extrapolate from  
7 there --

8 MR. RUSSO: Sure.

9 THE COURT: -- on the effects that it possibly  
10 could have. Because again, you may talk in  
11 generalities, but again, that is different as to every  
12 last person, based on their tolerance, how much alcohol  
13 they take, size, weight, you know, what they drink, how  
14 often they drink, their tolerance for alcohol. Again, I  
15 just think that's just a huge, broad brush stroke, so  
16 you may want to figure out from what other reports in  
17 front of what other people, and if it truly is that's  
18 the extent of what she's testified to.

19 MR. RUSSO: Yes, your Honor.

20 THE COURT: Okay? All right. I'm going to step  
21 down. I'm going to go ahead and step down.

22 OFF THE RECORD 3:49 P.M.

23 BACK ON THE RECORD 4:17 P.M.

24 BY THE COURT:

25 THE COURT: All right. Part of the problem I'm

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1       having, as far as the argument, the *Fourth Amendment*  
2       violation, not getting a warrant before a non-consensual  
3       blood take, in light of, certainly, *McNeely*, which came  
4       out in April of this year. The problem is, I think  
5       we're kind of getting the cart before the horse. It's a  
6       pretrial motion as to whether or not to suppress the  
7       BAC. If it's obviously the fruit of the poisonous tree,  
8       it doesn't come in.

9               But the problem I'm having is, is that, of course,  
10       under *McNeely*, and the case law before it, and certainly  
11       in reading the dissent, I mean, obviously, they, the  
12       Supreme Court, refused to, you know, adopt a per se  
13       exception for failure to get a warrant. And therefore,  
14       the Court is required to look at exigent circumstances  
15       to see whether or not they exist. They did, in fact,  
16       say that, certainly, dissipation, the concentration of  
17       alcohol in his system, was not enough, that there had to  
18       be more.

19               I can tell you in reading the case, I do find that  
20       this case is more along the lines of *Schmerber*, where,  
21       in fact, we did have someone who was going to the  
22       hospital. So, in that case, just like in the case we  
23       have, there was no opportunity for this officer to maybe  
24       give a field sobriety test or, you know, witness his  
25       walking as he gets him out of the car or anything along

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1       those lines.

2           I think, and I'm not sure I'm going to back into  
3       this, however, I do think that I need more testimony  
4       from Officer Summers as to why he didn't obtain a  
5       warrant. And again, I understand this is 2010, and I  
6       know he wasn't required to back then. However, I do  
7       think there would be circumstances with an injury and  
8       that he was already in the car or in the ambulance and  
9       was being transported.

10           And additionally, maybe some testimony in regards  
11       to -- obviously, the MAIT team was called out. They  
12       knew it was a very serious accident. He was the first  
13       officer on there, wrote the report, and also had to do  
14       his investigation on a Highway 278 in the middle of the  
15       night, that you couldn't leave the cars there forever  
16       and go get a warrant. I'm not saying someone else  
17       couldn't, but again, as the responding officer, whether  
18       or not the circumstances were such that he had to  
19       investigate and didn't -- and wouldn't have the  
20       opportunity. So, I think I'm going to need to hear  
21       testimony to that extent.

22           Part of that -- I don't want to say the beauty of  
23       this, but part of the beauty of trying as a bench trial  
24       is, as we all know, I already know what the BAC is of  
25       the defendant. And again, I think at this time,

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1 obviously, I know what it is, I'm going to let Lauren  
2 cross-examine her as to questions as to whether or not  
3 you believe it was an accurate and good BAC, but I'm not  
4 going to let it in as of yet. I am going to wait until  
5 I hear the officer's testimony, the trooper's testimony  
6 of Summers, as to -- and then whether or not I can find  
7 exigent circumstances. And if, in fact, I do, then I  
8 can accept it. But of course, you know, if I find it  
9 doesn't, then that's for -- yes?

10 MR. RUSSO: So, do you want the witness to testify  
11 to the BAC, or hold off until --

12 THE COURT: I think she can testify to the BAC. I  
13 mean, she's here, if you're fine with that. I mean, I  
14 think, again, it's kind of the elephant in the room. We  
15 all know that I already know what it is. And again, as  
16 to -- I think we need to establish, which we've done, as  
17 to the chain of custody; that it wasn't tampered with;  
18 that it was, in fact, good. I think Lauren needs that  
19 opportunity.

20 Again, I think I need to hear from Trooper Summers  
21 whether or not there are exigent circumstances to take  
22 it outside of McNeely. So, I'm fine. She came from  
23 Columbia, and I'd certainly like to send her home today,  
24 and I'm sure she would like to go home today, as well.

25 MR. RUSSO: Um-hmm.

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---

1 THE COURT: So, if that's fine with you, Ms.  
2 Carroway?

3 MS. CARROWAY: Yes. Your Honor, I don't think I  
4 have any questions specifically regarding -- I mean, she  
5 testified that the chain was done properly. Her testing  
6 was done properly, as far as whether or not she properly  
7 tested --

8 THE COURT: Right.

9 MS. CARROWAY: -- the blood, --

10 THE COURT: Right. You don't have any question to  
11 that.

12 MS. CARROWAY: I don't question that.

13 THE COURT: Okay. Okay.

14 MR. RUSSO: Then, the State will only just have one  
15 more question.

16 THE COURT: Okay. And I think what we could do,  
17 then, is just -- let's do this over proffer. We'll do  
18 this testimony as to what the BAC was as a proffer. And  
19 again, then I can consider it. And if I'm going to let  
20 it into evidence, I will let you all know. Okay?

21 MR. RUSSO: Yes, your Honor.

22 THE COURT: All right. I hope that takes care of  
23 it.

24 MR. RUSSO: Yes, your Honor.

25 THE COURT: Okay. And that's subject to Ms.

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1 Carroway's objection. I want to make absolutely sure we  
2 preserve for the record that, again, she objects to it,  
3 in regards to not only the chain, which we talked about  
4 before, but also the *Fourth Amendment* violation, or  
5 alleged *Fourth Amendment* violation, an unlawful  
6 intrusion without a warrant.

7 MS. CARROWAY: And the thing, I think, at this  
8 point, is that it's in violation of implied consent  
9 statute, and that I'm not able -- I'm not in a position  
10 to be able to cross-examine Ms. Bryant about her  
11 compliance with this blood, as far as the BAC, the blood  
12 that was drawn.

13 THE COURT: The implied consent that we all agreed  
14 we're working under 46. So, I need you to articulate  
15 that objection again.

16 MS. CARROWAY: Yes, ma'am. The fact that Ms.  
17 Bryant was not, Yolanda Bryant, was not able to testify.

18 THE COURT: And that's what I said. I understand  
19 that, was that you believe it was in violation of that  
20 Code Section 2946.

21 MS. CARROWAY: I think it's also a confrontation  
22 problem, and you know, I understood the case law that he  
23 was relying on was out of the late eighties. Since  
24 then, we've got *Crawford*.

25 THE COURT: *Crawford* since then.

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1            MS. CARROWAY: I do think that there are, you know,  
2            -- nobody has been able to testify that she was, in  
3            fact, an R.N. The records custodian can testify that  
4            she sees it on a piece of paper that there's letters  
5            behind her name, but nobody's testified that she was, in  
6            fact, an R.N. I don't think the State's in a position  
7            to be able to establish that.

8            They cannot -- no one can testify or establish that  
9            she followed the proper protocol. There's a list of  
10           things that SLED requires you to do. I don't have the  
11           ability to question her about those or cross-examine her  
12           about anything. So, I would -- I believe that creates a  
13           huge problem under the chain and implied consent, and we  
14           would object.

15           THE COURT: Okay. I think you've preserved it for  
16           the record, and I appreciate that. Okay. All right.  
17           So, your one last question of this witness, Mr. Russo.

18           MR. RUSSO: Yes, your Honor.

19           JENNIFER BROWN

20           CONTINUE DIRECT EXAMINATION BY MR. RUSSO:

21           Q    What does your report say the BAC on that blood is?

22           A    The ethanol is 0.148 percent.

23           Q    All right.

24           THE COURT: Zero point what?

25           A    0.148 percent.

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CROSS - JENNIFER BROWN

1 MR. RUSSO: And your Honor, I apologize. One more  
2 question.

3 BY MR. RUSSO:

4 Q Is there anything else that report indicates is in  
5 the blood?

6 A Yes.

7 Q What is it?

8 A Alprazolam.

9 Q What is that?

10 A It's a -- it's a drug commonly known as Xanax, also  
11 an anti-depressant.

12 Q What is the reading on that?

13 A 0.01 milligram per liter.

14 MR. RUSSO: Nothing further.

15 THE COURT: Zero point zero?

16 A Um-hmm. One.

17 THE COURT: Ms. Carroway, anything further?

18 MS. CARROWAY: I just have one question.

19 JENNIFER BROWN

20 CROSS-EXAMINATION BY MS. CARROWAY:

21 Q Under the results for the Xanax, it says that  
22 therapeutic levels are what?

23 A 0.0252, 0.102 milligrams per liter.

24 Q So, he has just a trace amount. Not even enough  
25 that someone who's taking it every day.

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1       A     It could be metabolized, so I can tell you that  
2       that's what it was at the time of the test.

3       Q     Okay. But you're saying, even if it was as high as  
4       a .025, you all would still consider that a therapeutic  
5       level use, correct?

6       A     You're saying if it was a .025 that that would be  
7       therapeutic?

8       Q     Um-hmm.

9       A     Yes.

10       MS. CARROWAY: Thank you, your Honor.

11       THE COURT: Anything else?

12       MR. RUSSO: Nothing from the State, your Honor.

13       THE COURT: Any objection to this witness being  
14       excused to go back to Columbia? Is that a no, for the  
15       record?

16       MS. CARROWAY: No, your Honor. I'm sorry.

17       THE COURT: You're excused. Thank you.

18       A     Thank you.

19       MR. RUSSO: Your Honor, as a housekeeping measure,  
20       would your Honor like me to call Trooper Summers now, or  
21       go through the lay witnesses? The lay witnesses are not  
22       from here. One is from Augusta, one is from Columbia,  
23       and the other's from Charleston.

24       THE COURT: Okay. It's up to you. I plan on  
25       getting everybody up today. Well, everybody to testify.

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1 We'll keep going until we can finish, as long as you all  
2 are able to, so.

3 MR. RUSSO: Let's have Trooper Summers.

4 THE COURT: Come on, Trooper Summers.

5 MADAM CLERK: Yes, sir. Please raise your right  
6 hand and put your left hand on the *Bible*. Do you  
7 solemnly swear or affirm the testimony you give to the  
8 Court in this trial shall be the truth, so help you God?

9 TROOPER THOMAS SHADRACH SUMMERS III: I do.

10 MADAM CLERK: Please have a seat.

11 TROOPER THOMAS SHADRACH SUMMERS III

12 PROFFER, DIRECT EXAMINATION BY MR. RUSSO:

13 Q Okay. Trooper Summers, I'm going to go kind of  
14 backwards, just to kind of get through things just in a  
15 speedier manner. You saw Mr. Rearick at the hospital.

16 A I did.

17 Q Okay. What, if anything, did he say to you there?

18 A Other -- when we -- I *Mirandized* him, and we had a  
19 brief conversation about him driving from the Triangle  
20 Bar, and he told me that him and his wife were having an  
21 -- an argument before the collision.

22 Q Okay. Trooper Summers, I am approaching with  
23 what's been pre-marked as State's Exhibits 2 through 8.  
24 Would you please identify them to the best of your  
25 ability for the record.

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1 A Exhibits 2, 3, 4, 5, 6, 7, and 8 are all pictures  
2 of a -- two vehicles in the eastbound lane of U.S. 278,  
3 one being a Dodge pickup truck, and the other being a  
4 Ford SUV.

5 Q Okay. Are those pictures a true and accurate  
6 representation of what happened on the night of the  
7 accident?

8 A These are pictures that were taken at the time of  
9 the collision, correct.

10 Q But are they a true and accurate representation?

11 A Yes.

12 Q Of the scene that night.

13 A Yes.

14 Q Okay.

15 MR. RUSSO: Your Honor, I'd seek to enter State's  
16 Exhibits 2 through 8 into the record.

17 THE COURT: Any objection.

18 MS. CARROWAY: No.

19 THE COURT: Without objection, they're in evidence.

20 ITEM IDENTIFIED AS PHOTOGRAPHS

21 MARKED STATE'S EXHIBIT NUMBERS

22 2, 3, 4, 5, 6, 7, AND 8, ADMITTED

23 AS EVIDENCE.

24 MR. RUSSO: Your Honor?

25 THE COURT: Yes?

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1 MR. RUSSO: I'll leave these up here, but I'm going  
2 to specifically publish to you Exhibits 2 and 3.

3 BY MR. RUSSO:

4 Q Before I do, Trooper Summers, could you identify  
5 Exhibit 3.

6 A It's a stop sign.

7 Q Okay. Was that the stop sign at the intersection  
8 of the exit from the Crazy Crab and 278 going eastbound;  
9 is that a true and accurate representation of the stop  
10 sign as it was on the night, May 30th, and morning of  
11 May 31st, 2010?

12 A That is correct. On private property.

13 COURT REPORTER: I'm sorry. *That is correct?*

14 A Correct, on private property. The sign's on  
15 private property.

16 Q Okay.

17 MR. RUSSO: At this time, your Honor, I'm going to  
18 publish 3 to you.

19 A Give it to her?

20 MR. RUSSO: Yes, please.

21 THE COURT: Thank you.

22 A Sorry.

23 THE COURT: That's okay.

24 MR. RUSSO: Actually, I'm going to leave 2 down  
25 here.

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1 BY MR. RUSSO:

2 Q Let's go ahead and proceed to BAC and the wreck  
3 scene and all that. Okay. About what time do you  
4 recall arriving at the wreck scene?

5 A Somewhere around 1:00 o'clock, I guess, 1:00 A.M.

6 Q 1:00 o'clock. Okay. What time -- what time did  
7 your investigation conclude the wreck occurred, if at  
8 all?

9 A Based on the dispatch time, when the 911 call came  
10 in through the county dispatch, it -- I think we assumed  
11 or put it at 12:40.

12 Q Okay. But you arrived at 1:00.

13 A Right.

14 Q Okay. At what time do you recall the ambulance  
15 containing Mr. Rearick leaving the scene?

16 A I don't know exactly what time they left the scene,  
17 but it wasn't very -- they don't drag their feet when  
18 they're there because of the injuries, so it wasn't  
19 long.

20 Q Would it be within a half hour?

21 A Yes.

22 Q Okay. Did you find out where that ambulance took  
23 him?

24 A I went back there and identified Mr. Rearick in the  
25 back of the ambulance. At that time, I'd retrieved the

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1 driver's license from him, and that's when I started  
2 establishing my probable cause as far as his alcohol.

3 Q Did you find out where the ambulance took him to?

4 A Yes.

5 Q Where did it take him?

6 A To the Hilton Head Hospital.

7 Q Okay. Did you go to Hilton Head Hospital?

8 A I did.

9 Q Okay. How long did it take you to get there?

10 A Ten minutes.

11 Q Ten minutes?

12 A Or less.

13 Q Okay. Now, I'm going to ask you some really  
14 specific questions that are kind of related to 2946. Do  
15 you know that statute?

16 A Yes, sir.

17 Q What statute is that? What's that about?

18 A Having to do with the submission of blood alcohol  
19 tests.

20 Q Okay. All right. So, what time -- you said it was  
21 1:00. You said it took you ten minutes to get to the  
22 hospital?

23 A Roughly. Somewhere around in that area.

24 Q So, maybe around 1:40, you got to the hospital?

25 A I mean, you're talking times. I'm not sure.

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1 Q Okay. And how long, once you got to the hospital,  
2 did it take you to get up to Mr. Rearick's room?

3 A It's -- the hospital, it's all on one same floor.  
4 I mean, you just walk in the back door. I was directed  
5 to his bedroom. I remember speaking with the doctor on  
6 the way in.

7 Q Okay.

8 A At that point, I did not know how bad his injuries  
9 were, other than in the back of the ambulance.

10 Q Okay. Let me just ask you this. How quickly from  
11 when you entered his room did you request a blood draw?  
12 How much time expended?

13 A I knew when I was going to the hospital I was going  
14 to get blood.

15 Q Okay. And I'm going to ask you about some  
16 procedure and protocol that you followed. At the time  
17 that this wreck occurred, what was the protocol for  
18 blood draws when someone's under suspicion of felony DUI  
19 in South Carolina? What was Troop 6 -- let me go back.  
20 What troop are you with?

21 A I'm sorry?

22 Q What troop are you with?

23 A Troop 6, Post C.

24 Q What is Troop 6, Post C's protocol back in 2010?

25 A Back in 2010?

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1 Q Yes, sir.

2 A Okay. Under 56-5, 2946, in 2010, if it was a  
3 felony DUI with great bodily injury or death, you -- and  
4 once the situation was confirmed, and there was probable  
5 cause to believe the subject was under the influence of  
6 alcohol from the scene, --

7 MR. RUSSO: Um-hmm.

8 A -- we immediately went to the hospital and  
9 *Mirandized* the subject, gave him implied consent under  
10 the felony statute, and then retrieved blood from the  
11 licensed medical personnel.

12 Q Okay.

13 THE COURT: Can I back up and ask something.

14 MR. RUSSO: Sure.

15 THE COURT: What was the probable cause at the  
16 scene that you saw that made you say, while you were  
17 going to the hospital, you were going to get blood?

18 A Several probable cause situations on the scene.  
19 Number one, the first off, we had a head-on collision in  
20 the opposite side of the road. Number two, had a  
21 witness that told me that they was at the Triangle Bar,  
22 where he was at and followed him from the Triangle Bar,  
23 trying to get law enforcement to get him to stop because  
24 he was all over the road, and followed him up into --  
25 from the Triangle Bar to the collision. So, I had a

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1 eyewitness from there.

2 And number 3, when I approached him in the back of  
3 the ambulance, was the very strong odor of alcohol about  
4 his breath and person, and you know, red eyes and just  
5 typical what you would find with someone who was highly  
6 intoxicated.

7 THE COURT: Thank you.

8 A Um-hmm.

9 THE COURT: Go ahead, Mr. Russo.

10 MR. RUSSO: Yes, ma'am.

11 BY MR. RUSSO:

12 Q So, you, essentially, just requested blood. Or  
13 actually, I should say, ordered blood from the  
14 individual once you got there?

15 A I did, but he had no problem with -- he wanted to  
16 cooperate.

17 Q Okay.

18 A Even -- even when I told him we were going to have  
19 to get blood from him, he said that was fine.

20 Q Okay. Okay.

21 THE COURT: Back up a second. He said that he  
22 agreed to it?

23 A He did agree to it.

24 THE COURT: Okay.

25 BY MR. RUSSO:

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1 Q All right. Okay. Let me ask you -- let me ask you  
2 this. Did you have any reason to believe at the time  
3 that the blood draw occurred that you were doing  
4 anything wrong, according to the laws of South Carolina?

5 A No, sir. I've been on the Highway Patrol since  
6 1988, and that is the way we've done it on the felony  
7 situations that I've been on. Now, I understand, under  
8 McNeely, that, recently, that things have changed. But  
9 that was our protocol in handling felony DUI cases.

10 Q How many felony DUIs were you involved with before  
11 Mr. Rearick, just in general? Ballpark.

12 A Hundreds.

13 Q Hundreds. Okay. And did you always do it this  
14 way?

15 A Always.

16 Q Had a defense attorney or anyone, had anyone in  
17 your chain of command ever told you, hey, that might be  
18 -- that might be unconstitutional; I shouldn't do it  
19 that way?

20 A No.

21 Q No. Okay. Do you have any other reason to believe  
22 that you were doing anything wrong at all?

23 A No. Based on 2946, I was following what -- my  
24 probable cause; it was to go get blood.

25 Q This is going to sound a little nuts, but did you

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1 intend to harm Mr. Rearick?

2 A No, sir.

3 Q No? You just -- what did you want to do?

4 A Follow through with the case.

5 Q According to what law?

6 A 56-5-2946 and 56-5-2935.

7 Q 35?

8 A Is it 30 -- DUI, felony DUI law.

9 Q Do you mean 2945?

10 A 2945, sorry.

11 Q Sure.

12 MR. RUSSO: I'm sorry. Beg the Court's indulgence  
13 for like, ten seconds.

14 BY MR. RUSSO:

15 Q Okay. Okay. When you ordered the blood draw, --

16 A Yes.

17 Q -- did you have any idea whether or not the  
18 defendant had already been treated by the doctors in the  
19 hospital?

20 A No, he hadn't been treated yet.

21 Q He hadn't been treated. Did you know of any  
22 intravenous drugs or any orally consumed drugs had been  
23 given to him at that time?

24 A No. I mean, I literally followed the ambulance to  
25 the hospital. I mean, they hadn't done anything with

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1      him yet.

2            MR. RUSSO: All right. Please answer any questions  
3      Defense counsel might have.

4      A      Okay.

5            MS. CARROWAY: Your Honor, I just have a couple  
6      questions. Just so I'm clear, this is just for purposes  
7      of additional information on *McNeely*, right, as far as  
8      my cross-examination?

9            THE COURT: This is his testimony.

10          MS. CARROWAY: This is his testimony.

11          THE COURT: This is his trial testimony. This is  
12      your opportunity.

13          MS. CARROWAY: Okay. I just wanted to be sure I  
14      wasn't -- okay.

15                  TROOPER THOMAS SHADRACH SUMMERS III

16                  PROFFER, CROSS-EXAMINATION BY MS. CARROWAY:

17      Q      Trooper Summers, you said that you believed you  
18      were establishing probable cause at the scene, as far as  
19      Mr. Rearick being under the influence?

20      A      That's correct.

21      Q      Okay. And you said that you knew when you were on  
22      the way to the hospital that you intended to draw blood,  
23      correct?

24      A      Once I left the scene, and based on what I had  
25      witnessed at the scene, and with my eyes and ears and

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1 testimony from witnesses, I knew what I was going after.

2 Q Going to get the blood?

3 A Right.

4 Q Okay. Did you have a cell phone with you?

5 A Yes.

6 Q And there are magistrates and people, judges on  
7 call. There's a solicitor on call that you could have  
8 contacted on that cell phone and requested a warrant,  
9 correct?

10 A Well, at the time, in 2010, you didn't have to have  
11 a warrant for blood.

12 Q I understand.

13 A That's not the way the law read back then.

14 Q I understand. I'm not saying -- I'm saying that,  
15 if there was no exigent circumstances preventing you  
16 from doing that, if you thought that's what you needed  
17 to do, correct?

18 A If somebody above me said that's what I had to  
19 have, --

20 Q You would have done it?

21 A -- then, we would have made -- yeah. But that --  
22 that was not something that we've done in the last --

23 Q Right. It wasn't physically impossible for you to  
24 do it.

25 A I don't make that call. I do what the law tells me

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1 to do, and that's what, you know, in 2010, that's what I  
2 did.

3 Q I understand. But we didn't know about *McNeely*  
4 then.

5 A Yeah, at the time he didn't have a right to refuse.  
6 And your client, he voluntarily gave it up, even anyway.

7 Q He was cooperative.

8 A Very cooperative and very humble, and you know.

9 Q But what I'm saying is, and I'm not -- what I'm  
10 saying is that there was nothing, no --

11 A I wouldn't have known to even ask for a warrant.

12 Q I know. There was no -- but there was no emergency  
13 situation keeping you from using that cell phone on the  
14 way to the hospital to call a magistrate or the on-call  
15 solicitor, correct? Yes or no?

16 A If it -- if it was -- if this happened on the way  
17 home today, I would do that.

18 Q You would do it. You would do it.

19 A Yeah, because we've got magistrates set up for it  
20 on call, and --

21 Q Right. Because you're able -- you were able to do  
22 it in 2010, as well.

23 A Well, no, the law has changed now.

24 Q In 2010, there was an on-call solicitor.

25 A I wouldn't have even have known to do it.

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1 COURT REPORTER: I'm sorry, one at a time. In

2 2010?

3 Q In 2010, --

4 A Yes.

5 Q -- there was an on-call solicitor.

6 A Oh, okay. Yes.

7 Q Yes. There was also a magistrate on call in 2010?

8 A Right.

9 Q Okay. And you had a cell phone.

10 A And -- and I can just about tell you that, if I  
11 would have told a magistrate or the solicitor that night  
12 of what we had, none of them would have said go get a  
13 search warrant.

14 Q Okay. But you had a cell phone.

15 A Yes, I did have a cell phone.

16 Q Okay. Okay. And you testified earlier during  
17 pretrial that, when you spoke with Mr. Rearick, he  
18 appeared confused, disoriented, and a little out of it?

19 A Yes.

20 Q Okay. Consistent with someone who had just been in  
21 a serious accident.

22 A That's correct.

23 Q Okay.

24 A And under the influence.

25 Q I want to move on to a minute -- for a minute to

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1 the actual accident. You've said in your -- you gave  
2 the oral statement that you reviewed earlier, the taped  
3 statement?

4 A Yes.

5 Q Okay. And in that statement you -- or maybe in  
6 your written report, now. I can't remember. You said  
7 that the vehicles came to rest at about the same place  
8 they'd hit?

9 A Yes.

10 Q And what's the significance of that statement?

11 A It is -- it was of my opinion, and it -- at the  
12 time of me looking at the collision, that, on a -- on a  
13 head-on collision, there's a -- and I can speak to this  
14 just briefly, because I'm not a MAIT, but I've done it  
15 enough. But when you've got a force, a G-force, and one  
16 force is greater than the other, then, you're going to  
17 have a certain amount of movement on the opposite  
18 direction. That's just -- that's a rule of law.

19 And this collision never went forward or backwards.  
20 It -- when it hit, it was a dead-on hit, not a dead --  
21 it was more of a sheer hit collision, but it didn't --  
22 it wasn't a spinning of the vehicles. It wasn't a  
23 rotating of the vehicles, which led me to believe that  
24 both vehicles were going at the same speed.

25 Q Okay. And what did you estimate that speed to be?

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1 A I did not estimate.

2 Q You did not. I'm sorry. That's right. I asked  
3 you. So, it would follow that, if the vehicles were  
4 going about the same speed, that the truck leaving Crazy  
5 Crab failed to stop at the stop sign.

6 A That's correct.

7 MS. CARROWAY: Just one second. I beg the Court's  
8 indulgence one second, your Honor.

9 BY MS. CARROWAY:

10 Q Trooper Summers, you said you were at the scene for  
11 -- with Mr. Rearick for about a half an hour.

12 A Not with him. I mean, I just -- I stuck my head in  
13 and got a license from him and spoke with him briefly.

14 Q Right. But you all were both present at the scene  
15 simultaneously for about half an hour.

16 A Yes, at the same scene.

17 Q Okay.

18 MS. CARROWAY: Your Honor, I don't believe I have  
19 anymore questions.

20 TROOPER THOMAS SHADRACH SUMMERS III

21 PROFFER, EXAMINATION BY THE COURT:

22 THE COURT: I just have a couple quick questions.  
23 It looked like Trooper Ashe did most of the MAIT report.  
24 Is that correct, or the calculations? Or did you do  
25 them?

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1 A No. All the -- all the calculations and formulas  
2 and all were deferred. MAIT came out later, and I  
3 marked the scene -- I take that back. I did not  
4 personally mark the scene. Trooper Gregory marked the  
5 scene, because I left for blood.

6 THE COURT: Okay.

7 A And MAIT came out and they can -- take a -- a like  
8 a satellite photo of it, and grid it, and put it to  
9 scale, and get actual speeds.

10 THE COURT: Okay. And I think your testimony was,  
11 is that you stuck your head in, got driver's license  
12 information, and you followed the ambulance to the  
13 hospital.

14 A Pretty much, yes, ma'am.

15 THE COURT: And was that pretty when -- upon your  
16 arrival, you said he was already in the ambulance, and  
17 they went pretty quickly afterwards. Is that correct?

18 A They went fairly quickly, yeah. When they left, I  
19 pretty much followed them on, and left the scene to --  
20 to Sergeant Gregory.

21 THE COURT: Okay. At that point, had they already  
22 taken the other gentleman in the other ambulance away?  
23 Obviously, he was more seriously injured.

24 A I think they were still trying to extricate him out  
25 of the vehicle.

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1 THE COURT: Okay. Okay.

2 A But it was confirmed of his situation, so.

3 THE COURT: Okay. Okay. All right. Anything  
4 further, Mr. Russo?

5 MR. RUSSO: Nothing from the State.

6 THE COURT: Okay. You may step down, sir. Thank  
7 you. I can't quite excuse you right now. I know you're  
8 going to look to me for that. I need you to stick  
9 around, and I apologize. Okay.

10 MR. RUSSO: The State calls Scott Ashe.

11 MADAM CLERK: Yes, sir. Please raise your right  
12 hand. Place your left hand on the *Bible*. Do you  
13 solemnly swear or affirm that the testimony you give to  
14 the Court in this trial shall be the truth, so help you  
15 God?

16 SCOTT ASHE: I do.

17 MADAM CLERK: Please have a seat.

18 SCOTT ASHE

19 DIRECT EXAMINATION BY MR. RUSSO:

20 Q All right, Mr. Ashe. Who did you work for back in  
21 2010?

22 A South Carolina Highway Patrol.

23 Q What specific portion, of any?

24 A It's called MAIT, M/A/I/T. It's an acronym for the  
25 Multi-Disciplinary Accident Investigation Team.

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1 Q Okay. To be a member of MAIT, what do you  
2 have to do? Do you have to get any kind of education?

3 A Yes, sir. They -- it's a specialized unit that is  
4 involved in the reconstruction of complex collisions. I  
5 have just a little bit more training, in some cases a  
6 lot more training, than a road trooper.

7 But more importantly is they're specialized that  
8 they can -- they have the time and the resources to  
9 devote to a single collision, as opposed to having to do  
10 multiple duties at the same time, where we can focus on  
11 that one collision for any amount of time.

12 Q Okay. Have you ever been qualified as an expert in  
13 accident reconstruction?

14 A Yes, sir.

15 Q Okay. How many times?

16 A Twice.

17 Q In this state or in others?

18 A This.

19 Q This one? Okay. What kind of certificates or  
20 diplomas or anything do you have in relation to accident  
21 reconstruction, et cetera?

22 A I've got an entire stack back there, along with a  
23 curriculum vitae of all of my training as far as  
24 collision reconstruction. I don't know. Somewhere  
25 around -- I don't know how many thousands of hours it

1       would be if you were to add them up, but it's four pages  
2       of multiple types of training that are all specific to  
3       collision reconstruction.

4       Q     And how many -- you called them complex accidents?

5       A     Well, yes, sir. The Patrol's policy was for  
6       fatalities, but not all fatalities, but we also  
7       investigated the more complex of collisions.

8       Q     How many would you say you've investigated in your  
9       time with -- well, you're no longer with the patrol,  
10      right?

11      A     Correct.

12      Q     And how many did you -- would you say you  
13      investigated in your time with the Patrol?

14      A     Collisions in general, or with the MAIT team?

15      Q     Let's do one at a time.

16      A     I wouldn't even venture to say how many tens of  
17      thousands of collisions I may have worked while on the  
18      Patrol as a whole. And with the MAIT team, I was with  
19      them for five years, and each year, we did anywhere from  
20      150 to 200 collisions or investigations.

21           MR. RUSSO: Your Honor, at this time, I'd seek to  
22      qualify Mr. Ashe as an expert accident  
23      reconstructionist.

24           MS. CARROWAY: No objection.

25           THE COURT: All right. You are qualified,

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1       certainly, as an expert in accident construction. Thank  
2       you, Mr. Ashe.

3       A     Thank you.

4               BY MR. RUSSO:

5       Q     Mr. Ashe, did you work on this case today?

6       A     Yes, sir.

7       Q     Okay. All right. I'm just going to ask you very  
8       few questions about this. I just want to find out  
9       exactly the position of a few things. What was your  
10      conclusion about where the two vehicles struck one  
11      another?

12      A     We arrived a few days later, and that was a  
13      scheduling issue, but also, due to a few other factors  
14      while we were unable to arrive on the scene that night.  
15      But the troopers who were on-scene that night did a good  
16      job of marking where the vehicles came to rest, as well  
17      as what evidence they could find in this particular  
18      collision.

19            For this one, there wasn't a whole lot of evidence  
20      that was in the roadway that they could find, or even  
21      when we arrived, that we were able to find. There was  
22      really nothing leading up to the collision itself, but  
23      at the point of impact, where both vehicles collided  
24      with each other, there was a gouge that was made in the  
25      roadway, and the troopers who were on-scene, they --

1       they marked that gouge. We went ahead and mapped that  
2       as well, and I'll explain mapping in a few minutes. But  
3       that -- go ahead.

4       Q     I'm sorry. Before you go on, just a quick  
5       question. Did this accident occur in Beaufort County,  
6       South Carolina?

7       A     Yes, sir.

8       Q     Okay. Go ahead. Go ahead.

9       A     So, using the final rest of the vehicles, the  
10      damage profile of the vehicles, how they appeared, we  
11      went and visited them at the wrecker yards the day that  
12      we actually arrived on-scene, took pictures and video,  
13      inspected the vehicles, and did a few other little bit  
14      of paperwork with it, as well. But based on all that  
15      information, we were able to ascertain the best area  
16      that it -- or the area that we believe would have been  
17      the best area that it could have -- they could have  
18      collided in, which was based on the evidence that we had  
19      available to us, that gouge mark in the roadway, --

20      Q     Um-hmm.

21      A     -- as well as the final rest of the vehicles,  
22      combined with the crush damage profile of those  
23      vehicles.

24      Q     Let me be a little bit more specific. Did these  
25      vehicles strike in the yellow median of 278?

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1 A No, sir.

2 Q Where did they strike?

3 A If you were headed eastbound, they would have been  
4 in the left-hand lane. In layman's terms, some people  
5 call it fast lane, things like that.

6 THE COURT: The inside lane.

7 A Yes, ma'am, inside lane, yes.

8 BY MR. RUSSO:

9 Q What part of the inside lane?

10 A If memory serves correctly, it was off to the  
11 right-hand side of that one.

12 Q Close to the dash line?

13 A I think so. Yes, sir.

14 Q Okay. Would your testimony be that it was almost  
15 on the dash line?

16 A I would have to -- to answer that correctly, I  
17 would just have to look at the report or whatever,  
18 because one of the -- one of the -- not that report.  
19 I'm talking about the -- this would be it.

20 Q Okay.

21 A Thank you very much. This is the one that says  
22 MAIT Notes. There's another one that was a -- probably  
23 a four- or five-page document. Never mind. I've got  
24 it. What I'm looking for is, we did CAD drawings based  
25 on the mappings that we did. The way that we do that is

1       so that we can create to-scale diagrams. And that's  
2       what you find in the report when it looks like a  
3       computer has generated those, and they're not  
4       handwritten, that's what -- that's what had generated  
5       those, is a computer where we sit down and we take the  
6       measurements that we took on-scene, using -- it's  
7       basically survey equipment. And we then generate that  
8       to-scale drawing so that --

9           THE COURT: Is that what you're referring to? Is  
10       that the same thing on yours?

11       A     Yes, ma'am, it is.

12           THE COURT: Okay. Thank you.

13           BY MR. RUSSO:

14       A     This one, we call the CAD plates. I really don't  
15       understand where the word *plate* comes from, but  
16       regardless. This one I'm referring to at the bottom, it  
17       says *impact*. And the reason that we generate one here  
18       is so that you can see what the scene looked at the  
19       moment the two vehicles first came in contact, where  
20       they just barely are touching. And this is based on our  
21       best evidence that we have. So, according to this, it  
22       does look like that it is almost on the -- right towards  
23       the middle on that -- that dash line.

24       Q     Almost right on top of that dash line.

25       A     Yes, sir.

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1 Q Like right in the center.

2 A It's very close to it, yes, sir.

3 Q Okay. All right. Let me ask you, what did you  
4 conclude about the speed -- I'm sorry -- the speed of  
5 the vehicles when they collided?

6 A Well, the speed is an issue that we -- again, we do  
7 the best that we can on this. For this particular  
8 collision, neither vehicle had, in layman's terms, it's  
9 called a black box, that actually was able to record  
10 vehicle speeds at the moment of these type of  
11 collisions. It's a very useful tool, but neither one of  
12 them have it. So, we basically resorted to fundamental  
13 reconstruction skills and practices in order to obtain  
14 this.

15 The first thing that you have is, in evidence, is  
16 the final rest of the vehicles. We have photographs of  
17 that. We have the troopers who were on-scene who were  
18 able to mark that for us, so we know the final rest of  
19 the vehicles. We have that gouge, but even if you  
20 didn't have the gouge itself, you still have the final  
21 rest of the vehicles, and you also have that the crush  
22 damage profile of the vehicles. In other words, you can  
23 see where, in a particular place, where maybe a bumper  
24 might have -- from one vehicle might have caused a  
25 similar pattern on the other side of the other vehicle.

1           They were fairly close to head-on, maybe not a true  
2           head-on, but they were fairly close to being head-on.  
3           But more importantly is the damage to both of those  
4           vehicles, given their weight. The SUV, I believe, was  
5           -- it was over a thousand pounds heavier than the other  
6           one, but --

7           Q     Wait, wait, wait. The SUV?

8           A     I think that's the Ford.

9           Q     Ford what?

10          A     Actually, I forgot. It's a '99 Ford, and you'll  
11          have to give me a second.

12          THE COURT: Expedition?

13          A     I think it was an Expedition, yes.

14          BY MR. RUSSO:

15          Q     Okay.

16          A     Yeah, let me look it up on here. '99 Ford  
17          Expedition.

18          Q     Okay.

19          A     Okay. All right. Good enough. So, looking at  
20          those things, we kind of work backwards from final rest  
21          to a point of impact, and we also try to construct a  
22          most likely scenario of what happened, as well, based on  
23          anything we have at this point in time in the  
24          investigation; witnesses; like I said, gouge marks. But  
25          in this particular case, we're relying a lot on what the

1 immediate evidence is telling us.

2 So, based on that, with the collision occurring the  
3 way that it did, with them striking almost head-on, and  
4 I hate to use my hands like this, but when they come  
5 into contact with each other, they're bringing their own  
6 set of energy into this collision. Okay? And that  
7 energy's got to go somewhere, and that energy actually  
8 gets transferred in the crush damage profile, but it  
9 also causes them to sort of spin a little bit. And in  
10 that spin is where they -- they wind up sort of -- kind  
11 of a little perpendicular to the roadway, I guess you  
12 could say. But because one vehicle didn't push the  
13 other vehicle off because it was going so much faster,  
14 then we knew that the speeds would be relatively close.  
15 I mean, not -- not like, within just a mile or two, but  
16 relatively close for this particular thing, so.

17 THE COURT: Well, what is that? What does  
18 relatively close, in terms for this particular thing?

19 A Well, you know, we're not talking about there's a  
20 difference of 20-, 30-miles-an-hour difference or  
21 something like that. You know, it's -- it's certainly  
22 going to be something within maybe ten miles an hour,  
23 maybe even 15 miles an hour, with them striking each  
24 other like that.

25 Now, granted, you've got the one vehicle that's

1 heavier, so it brings more energy into the equation.  
2 So, part of what we do, too, is calculations that we can  
3 use, and they're based on physics. They're based on  
4 Newton's Laws. And we have a long list of these  
5 calculations that -- that we can use for any situation.

6 For this particular collision, just because of the  
7 way that the vehicle's lined up and the damage profile  
8 to them, we decided to stick with what's called a linear  
9 momentum. In other words, it's meant for a head-on  
10 collision, so that you're trying to find the speed at  
11 impact of one of the vehicles. But in order to do that,  
12 you have to have the speed of the other vehicle to input  
13 into the equation. It's a -- it's an algebraic equation  
14 that you only have one variable. You can't have two  
15 variables in this one. You can only have the one. Now,  
16 you can use either one of them that you like, but we had  
17 a better guess at -- and I don't want to say guess, but  
18 a better understanding, maybe, of how fast the Dodge  
19 pickup was traveling, because there was a stop sign  
20 there, and he was coming out of that stop sign.

21 Q Um-hmm.

22 A So, we have to start from somewhere. You have to  
23 -- knowing nothing, you have to start from somewhere.  
24 In this particular instance, we can sort of surmise that  
25 -- let's say that the Dodge pickup stopped at the stop

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1 sign.

2 Q Um-hmm.

3 A At the closest possible place he could have.

4 There's a little bit of a vision obstruction to the

5 left-hand side. There's a set of wood -- there's a wood

6 line that's right there that you really can't see

7 through it all. So, if he would have pulled up to the

8 very last little bit where he could see and stopped, and

9 then would have accelerated, well, what's the fastest

10 that he could have gotten to at that particular point in

11 time where the collision happened? How fast could his

12 truck have gone? So, we have certain variables that we

13 need that are based on the manufacturer, and that

14 paperwork is in the file, as well.

15 Q Um-hmm.

16 A And that gives us one of the numbers we need in an

17 equation to find out what's the maximum speed, given a

18 set of distance. In other words, over 20 feet or 30

19 feet, how fast could this vehicle have possibly

20 accelerated to by the manufacturer? So, that, I

21 believe, was around 14 or 15 miles an hour. So, there's

22 our variable that we have for the input speed into this

23 linear momentum equation.

24 Q How fast do you believe that the -- you said there

25 is an SUV and another vehicle.

1 A Well, the Dodge pickup.

2 Q The Dodge pickup.

3 A Right.

4 Q How fast do you believe the Dodge pickup, in miles  
5 per hour, was going at the time of the wreck?

6 A Our ultimate -- ultimately, I believe that we gave  
7 a range that it could have occurred anywhere from --

8 Do you have another form besides this one, another  
9 thing in evidence? Because this is all MAIT notes, and  
10 there was another one that was labeled -- it's actual  
11 like a four- or five-page report. It says *Case File* on  
12 it. I want to make sure to read off the right thing  
13 that's on the case file. It's the one that would have  
14 been signed off on the last page by David Lee. These  
15 are notes here, but that case file is the actual  
16 findings.

17 THE COURT: Will you show Mr. Russo what you're  
18 talking to? Or you don't have it?

19 A No, that's what I was looking for. I was looking  
20 -- I was thinking maybe it was in this packet here,  
21 along with this, but all I'm seeing is everything we  
22 have for our case notes. It's only just a couple pages,  
23 is what it is.

24 THE COURT: Mr. Russo.

25 MR. RUSSO: I have the C.D. Give me just a moment

1 to load it in my --

2 A On the C.D., it's under *Case File*. Hold on a  
3 second. I got it. It was in the middle.

4 THE COURT: Okay.

5 A It was somehow stuck in the middle of this packet.  
6 That's why I was going through every page.

7 BY MR. RUSSO:

8 Q Okay.

9 A All right. The findings that we have, it says the  
10 speed of Unit Number 2, which is the 1990 Dodge pickup,  
11 was ranged from 20 to 30 miles per hour.

12 Q And the SUV?

13 A The -- the speed of Unit Number 1, which would have  
14 been the SUV, at impact, was calculated to be in the  
15 range of 30 to 38 miles per hour.

16 Q Okay. Do you say anywhere in your notes that it's  
17 your belief, as an accident reconstructionist, that the  
18 Dodge pickup ran the stop sign?

19 A I may have said it on audio notes. I'm going to  
20 look through to find in my written notes, as well, to  
21 see if it actually says that, so I can read it to you  
22 exactly how it was. Now, I can read this whole  
23 paragraph to you, or I can just read the section about  
24 the speed.

25 Q Read the section about the speed, please.

1       A     Okay.

2               We speculated that the speeds could be  
3       close based around the amount of damage and  
4       the location of final rest. When 15 miles  
5       an hour is calculated, the speed of the Dodge,  
6       the Ford's speed is 26 miles per hour. The  
7       total speed is 41 miles an hour, and is a  
8       little low for the amount of damage to the  
9       vehicles.

10              The more likely numbers are Dodge, 30  
11       miles per hour; and Ford, 38 miles per hour.

12              The total of 68 miles per hour is consistent  
13       with the dynamics of the collision. This would  
14       also indicate that the Dodge did not stop at  
15       the stop sign or yield the right-of-way to  
16       traffic on U.S. 278.

17       MR. RUSSO: Please answer any questions Defense  
18       counsel has.

19              SCOTT ASHE

20              CROSS-EXAMINATION BY MS. CARROWAY:

21       Q     Good afternoon. Mr. Ashe, may I see that piece of  
22       paper you're referring to?

23       A     I think this is -- I guess they put that in  
24       evidence.

25       Q     Mr. Ashe. Mr. Ashe, now that you're not a trooper.

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1 A Yes, ma'am. I'm retired.

2 Q Okay. I just have a couple of questions. I  
3 reviewed your oral notes and made some notes of my own  
4 from those. And in those oral notes, you say  
5 specifically it's highly doubtful that the pickup  
6 stopped at the stop sign, correct?

7 A Yes, ma'am.

8 Q In fact, you state that you believe he started at  
9 the back of the parking lot and floored it, correct?

10 A I said he could have done it from that far back  
11 just --

12 Q To get --

13 A The parking lot area is not that long.

14 Q Um-hmm.

15 A And to get up to speeds of 30 miles an hour, you  
16 know, he's going to need more distance than the stop  
17 sign. He's going to need more distance than the  
18 beginning of a driveway. He may need the distance from  
19 -- from at the back to obtain that maximum speed that we  
20 have on there.

21 Q So, to obtain that maximum speed, you believe he  
22 would have had to have been driving very quickly through  
23 the length of the parking lot.

24 A Yes, ma'am.

25 Q You also say in those notes that you believe that

1 the Dodge pickup didn't just make a right-hand turn;  
2 that had he not struck the Expedition, he would have  
3 gone onto the median, and maybe even the other side of  
4 the roadway.

5 A Well, that's true as a maybe, yes, because we don't  
6 know exactly how steep he was making that turn. We  
7 don't know the input he had on his steering wheel and  
8 what action. Obviously, we don't know anything that  
9 would have happened after -- if there would have been no  
10 collision, we don't know what would have happened;  
11 whether he'd have maybe hit the brake. Any number of  
12 scenarios could have happened.

13 Q Sure. But these are your notes, your oral notes  
14 that you churned out.

15 A Right. But he -- but he could have gone to the  
16 other side. I'm sure, if he had have just drove  
17 straight, he would have drove to the other side and went  
18 to the other side of the road and ran off the other side  
19 of the roadway. So, there's any number of things that  
20 could have happened, right.

21 Q Right. But you didn't mention any of those in your  
22 oral notes. What you mentioned was that you believed if  
23 he had not struck the Expedition, he would have gone --  
24 at the rate of speed and the direction he was going, he  
25 would have continued into the median and maybe the other

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1 side of the roadway.

2 A Well, if that's what I said in my audio notes, then  
3 it was just an oversight.

4 Q Okay.

5 A I mean, no one knows what would have happened after  
6 this collision. No one can speculate what his  
7 intentions were.

8 Q So, if you said that in your audio notes, you  
9 believe you just made a mistake?

10 A It wasn't a mistake. It's just that I didn't add  
11 that he could have done other things, as well.

12 Q Okay. And you're basing all of these -- this  
13 reconstruction, you said, on a gouge point that you  
14 believe at the point of impact?

15 A That was most likely the point of impact, yes,  
16 ma'am. There was some speculation that it could have  
17 actually been caused by the wrecker driver while he was  
18 pulling the vehicle out. But if I understand it  
19 correctly, especially talking with the troopers later  
20 on, those notes were taken -- the audio notes that we --  
21 I take are usually fairly early on, after we, like,  
22 leave the scene a lot of times, but it's not my final,  
23 this-is-the-last-thing-I-have-to-say-about-the-notes.

24 But I believe, in talking with the troopers later  
25 on or something, maybe in their interview, I don't

1       remember exactly, but they clarified that the wrecker  
2       driver had taken the vehicles after they had painted  
3       everything. So, they would have painted this gouge mark  
4       before the wrecker driver would have pulled the vehicles  
5       away.

6       Q     Okay. So, you do believe that the gouge mark was  
7       an accurate representation upon impact.

8       A     Yes, ma'am.

9       Q     You also said that the Expedition was the heavier  
10      of the two vehicles, and that it -- because of that, it  
11      brings more energy?

12      A     Yes, ma'am.

13      Q     And what's the relevance of that? Would it push  
14      harder, or?

15      A     Well, the relevance applies in the linear momentum  
16      equation. Now, even if you just think of outside of an  
17      equation, if you just think in general terms, if I -- if  
18      I push you myself, --

19      Q     Um-hmm.

20      A     -- at five miles an hour, there's only so much I  
21      can do to you.

22      Q     Right.

23      A     If an 18-wheeler pushes you at five miles an hour,  
24      weighing 80,000 pounds, there's a lot he can do to you.  
25      So, energy is really what's causing a lot of this damage

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1 to this. So, when a heavier vehicle is traveling at,  
2 let's say, five miles an hour, at any speed, really, at  
3 five miles an hour, the kinetic energy that it has is a  
4 lot more than a lighter vehicle has, because it's -- it  
5 is a lighter vehicle. It has less energy to bring into  
6 anything.

7 So, in a linear momentum equation, the variables  
8 that we have to input are the weights of the vehicle and  
9 the speeds that vehicle attained, or the speed loss,  
10 rather from after that initial impact. In other words,  
11 when they -- they traveled from impact to their final  
12 rest, there's speed loss in that. And it's only a few  
13 miles an hour for this particular collision. If memory  
14 serves, it's less than ten miles an hour. But it has to  
15 factor into a linear momentum equation. It all has to  
16 -- it goes back to Newton's Laws, essentially.

17 Something has to -- the energy has to go somewhere.  
18 So, we factor all those in, and that's why a heavier  
19 vehicle, we make mention of it, because it has the  
20 potential of causing more damage, but it doesn't always  
21 -- it's not the deciding factor. We have to use it in  
22 the equation.

23 Q Okay. But you don't believe that it -- you all  
24 don't believe, in this case, that it pushed the Dodge  
25 truck any farther?

1       A     Well, they -- they both essentially hit each  
2       other, --

3       Q     Um-hmm.

4       A     -- crushed, rotated, and sort of came to rest right  
5       in about the same area where this is at. Even one of  
6       these CAD plates, if I can find it, There should be one  
7       that says *Evidence and Final Rest*. There's one that  
8       says *Roadway*, which is how the roadway looks prior to  
9       this happening. There's the impact one, and the next  
10      one says *Evidence and Prior* or *Evidence and Final Rest*.  
11      And if you notice, both of the vehicles have essentially  
12      turned.

13      Q     Right.

14      A     And they're perpendicular to the roadway a little  
15      bit. And that gouge mark is a little black mark that  
16      you see that wasn't there prior, and it's just a few  
17      feet away from where this collision happened.

18      Q     Okay.

19            THE COURT: What caused the gouge mark?

20      A     When two vehicles hit, the -- the damage to it, it  
21      starts crushing in. So, the things on the top crush up,  
22      but the things on the bottom crush down.

23            THE COURT: So, it's one of the cars causes the  
24      gouge mark, correct?

25      A     Correct. And it's going to be very close to the

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CROSS - SCOTT ASHE

1 center of damage where the vehicles are impacting each  
2 other, because bumpers, the bottom of the engine, the  
3 engine mounts, anything along those lines on the very  
4 bottom, it gets crushed. But not only does the crush  
5 cause it, but also the forces that are driving those two  
6 vehicles down towards each other, right, it pushes them  
7 down, so a lot of times you get small -- just a small  
8 one is all it really takes. Sometimes there might be a  
9 whole series of them. In many situations, you'll see  
10 where they'll have directionality to them, as well.

11 THE COURT: You didn't see any brake marks or  
12 anything along those lines.

13 A From either vehicle, no.

14 THE COURT: Okay.

15 BY MS. CARROWAY:

16 Q Mr. Ashe, just to summarize, you believe the Dodge  
17 was going about 30, and the Expedition was going about  
18 38, correct?

19 A We did give a range, and we gave a range for a  
20 reason. I can't say he was going 30. We give a range  
21 because we -- we get -- the range is based off of the  
22 actual equation itself. If you look at the linear  
23 momentum equation sheet that we did, there's a series of  
24 numbers at the bottom, and that's how we get the range  
25 for both -- range for both vehicles. The first column

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1 says ISV-2, which is input speed -- or impact speed --  
2 excuse me -- for Vehicle Number 2. And that range goes  
3 in a line, 15, 16, 17, all the way up to 30. And we  
4 input that into this -- into this computer program to do  
5 this.

6 Say, I want you to give me a range from 15 to 30,  
7 and then it outputs the speeds of the other vehicle from  
8 26.89 to 38.04. Now, granted, we have a single speed  
9 that is given, and we told it to go ahead and give us  
10 the speed. In the middle of this page, it says *results*.  
11 The speed of Vehicle 1 in miles per hour is 38.04, which  
12 corresponds to 30 miles an hour from the Dodge pickup  
13 truck.

14 Q From the Dodge pickup.

15 A Right. But we -- our official finding is that  
16 range.

17 Q Okay... And it wouldn't be possible for the Dodge to  
18 be going that fast and have had stopped at that stop  
19 sign.

20 A Correct, it would not be possible.

21 MS. CARROWAY: Your Honor, I don't believe I have  
22 any other questions for Mr. Ashe.

23 SCOTT ASHE

24 EXAMINATION BY THE COURT:

25 THE COURT: Mr. Ashe, is the driveway of the Crazy

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1 Crab dirt or gravel, or is it pavement?

2 A It's old pavement.

3 THE COURT: Old pavement?

4 A Yes, ma'am.

5 THE COURT: And is there any variable or margin for  
6 error as to your calculations of point of impact, or are  
7 you able to do it based on the gouge mark, so it's  
8 pretty -- you think it's pretty good and pretty  
9 accurate?

10 A If it's off, it's off from a very short distance.  
11 It would be just --

12 THE COURT: What would be the most it could be off?

13 A I hate to answer that question. A foot, maybe, two  
14 feet at the most. But that would -- that would depend  
15 on which side of the vehicle made that gouge mark. Was  
16 it the left-hand side, which is so many feet away from  
17 the right-hand side? But based on the way the vehicles  
18 are lined up -- when we do these drawings, you're  
19 looking at a -- a 500-foot view of that. When we go do  
20 that, we do that on the computer, and I zoom into a two-  
21 inch view, --

22 THE COURT: Okay.

23 A -- where the screen is looking at nothing but that  
24 gouge for the entire screen. So, I can put those two  
25 vehicles at what's called the centroid of damage. Where

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1 is it most likely that the most amount of damage is  
2 going to occur with those two vehicles? And then I put  
3 -- I take the two vehicles and I line them up on top of  
4 that gouge mark, on that centroid of damage. And in  
5 this case, it would have been just slightly east of  
6 that, because the two vehicles have got to move just a  
7 little bit, within a few inches or so, they've got to  
8 move a little bit before that -- that metal piece can  
9 bend down, because they are moving, still, at this point  
10 in time. But it's got to bend down and make contact and  
11 gouge with the roadway. So, it's all within about a  
12 foot, I guess you could say, of where it actually  
13 occurred.

14 THE COURT: So, could this accident possibly  
15 occurred, in your opinion, in the median?

16 A The painted median?

17 THE COURT: In the painted median.

18 A No, ma'am.

19 THE COURT: Okay. Anything further?

20 MR. RUSSO: Nothing from the State, your Honor.

21 THE COURT: Anything further, Ms. Carroway?

22 MS. CARROWAY: Not from this witness, your Honor.

23 THE COURT: All right. You may step down. Any  
24 objection to Mr. Ashe being excused?

25 MS. CARROWAY: No, ma'am.

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1 THE COURT: Thank you, sir. You are excused.

2 STIPULATION:

3 MR. RUSSO: Your Honor, I apologize. I think we're  
4 going to stipulate at this time that Mr. Vallejos was  
5 the driver of the Dodge Dakota.

6 MS. CARROWAY: That's correct.

7 THE COURT: Okay. Very good.

8 BY THE COURT:

9 MR. RUSSO: The State calls Bryan Derasz.

10 MS. CARROWAY: And your Honor, just briefly, as a  
11 matter of housekeeping, while we wait on Mr. Derasz to  
12 come in, it appears that Mr. Ashe and Mr. Russo were  
13 referring to documents that were not turned over to me.  
14 I have every piece of paper Angie Tanner ever gave me,  
15 and that wasn't one of them.

16 THE COURT: Were you ever given any discs or  
17 anything else?

18 MS. CARROWAY: Yes, ma'am. The discs I have, have  
19 some oral -- what else did I have? It doesn't have the  
20 documents on it. It has pictures and, like, the oral  
21 notes from the troopers and the oral statements, the  
22 phone calls from the two lay witnesses, those are oral  
23 statements, but.

24 THE COURT: Mr. Russo, can you show where you  
25 turned over those two documents?

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1 MR. RUSSO: May we approach?

2 THE COURT: You may. Is there a reason why we're  
3 not doing this on the record? I mean, I prefer to do it  
4 on the record, unless there's something else.

5 MR. RUSSO: Well, I just have letters from Angie  
6 McCall Tanner.

7 MS. CARROWAY: I have a copy of that, too.

8 THE COURT: Well, the letter doesn't matter. I  
9 want to know whether or not you have a copy, or, if you  
10 opened the file and what you did and whether or not it  
11 was in the file at the time.

12 MR. RUSSO: Well, the thing that I have in the file  
13 was the --

14 COURT REPORTER: Are we on the record here?

15 THE COURT: Yes, we're on the record.

16 MR. RUSSO: The only thing I have in the file was  
17 the C.D. And the C.D., attached to the C.D. contained a  
18 SCHP, S/C/H/P, MAIT file in the above-named case.

19 THE COURT: So, you're saying you never got the  
20 MAIT file?

21 MS. CARROWAY: I have the MAIT file, your Honor.  
22 What I -- or, I'll show you what I have.

23 THE COURT: Well, someone needs to verify and look  
24 at it to see whether or not those documents contained --

25 MS. CARROWAY: This is mine, which is the MAIT

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1 report, the pictures.

2 THE COURT: Well, and I have no way to verify.

3 MS. CARROWAY: Oh.

4 THE COURT: What is on that C.D. is what I need to  
5 know. So, again, whether or not it was turned over on a  
6 C.D.

7 MS. CARROWAY: Judge, do you want me to just show  
8 the files on the --

9 DISCUSSION BETWEEN ATTORNEYS.

10 THE COURT: My question is, were those notes on the  
11 disc? On your disc?

12 MS. CARROWAY: Not on my disc.

13 THE COURT: So, Mr. Russo, do you agree or disagree  
14 that she was not given those notes?

15 MR. RUSSO: All that I have is that she was given a  
16 complete MAIT file.

17 MS. CARROWAY: You're welcome to go through this  
18 disc.

19 MR. RUSSO: No, I believe you. I -- I just -- and  
20 that's all that I --

21 THE COURT: How did she not have an exact copy of  
22 what you have a copy of? That's what I don't  
23 understand.

24 MR. RUSSO: That, I don't know.

25 MS. CARROWAY: I don't know if things came in

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1 and I --

2 COURT REPORTER: Lauren, I'm sorry. I'm not  
3 hearing you.

4 THE COURT: We're on the record.

5 MS. CARROWAY: Oh, I'm sorry.

6 COURT REPORTER: That's okay.

7 DISCUSSION BETWEEN ATTORNEYS THAT

8 REPORTER CANNOT HEAR.

9 THE COURT: I was given that from Mr. Russo, and I  
10 handed it to the officer. He didn't have that.

11 MS. MUSSER: Did your copy conform with what the  
12 Judge had or no?

13 MS. CARROWAY: I mean, no. I mean, I -- I can't  
14 say that I -- I mean, I'm pretty organized. Especially  
15 in a case like this, I'm very careful because of these  
16 issues. I mean, I can't imagine that I would put  
17 everything else -- I mean.

18 MS. MUSSER: And I, you know, I don't know any  
19 other the parties, but.

20 MS. CARROWAY: No, I know.

21 MS. MUSSER: But it seemed odd that if it was --

22 THE COURT: Wanda, are you with me next week?

23 COURT REPORTER: No, I'm not.

24 THE COURT: Who are you with?

25 COURT REPORTER: I am on vacation. A working

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1 vacation.

2 DISCUSSION BETWEEN ATTORNEYS

3 THAT REPORTER CANNOT HEAR.

4 THE COURT: So, Mr. Russo, do you believe you  
5 turned over that, or not?

6 MR. RUSSO: I have no reason not to believe that it  
7 was turned over, but I have no reason to --

8 THE COURT: I have no reason to not believe it was  
9 turned over. Okay. Just so we're making sure. I have  
10 no reason not to believe it was turned over or not  
11 turned over?

12 MR. RUSSO: It was --

13 THE COURT: Do you think she has it or not? Do you  
14 think it was turned over by your office?

15 MR. RUSSO: The -- the indication I have was that  
16 the complete MAIT file was given to Ms. Carroway. And  
17 including -- including that, I have another letter from  
18 Ms. Tanner that indicates a MAIT fact sheet and MAIT  
19 diagram and aerial was sent over, as well. But that --

20 THE COURT: It's a report. When he recalled it, he  
21 called it something specific.

22 MS. CARROWAY: Those notes that he was referring  
23 to. Oh, and he said, *I don't think they put these in,*  
24 and I'm like --

25 THE COURT: They were in the middle. Are we

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1 talking about the note from R.S. Ashe, of 6-30-10? Is  
2 this what you don't have, Lauren?

3 MS. CARROWAY: Yes, ma'am.

4 THE COURT: Ms. Carroway, I'm sorry.

5 MS. CARROWAY: At the beginning. I don't know what  
6 else goes with that document, but that's what made me  
7 realize I was missing things, and I -- because, when you  
8 were asking about it, I couldn't figure out where you  
9 all were reading from. And so, --

10 THE COURT: I wasn't reading from anywhere, because  
11 I handed him a copy, the one I was given to by Mr.  
12 Russo, so. All right. This is what we're going to do.

13 MS. CARROWAY: I just asked to look at it. I was  
14 like, let me see what you're looking at.

15 THE COURT: It's 5:25. This obviously has gone on  
16 much longer than we anticipated. What I'm inclined to  
17 do right now is go ahead and break for the day, and  
18 continue the testimony at a later date. I'm trying to  
19 figure out when we can go ahead, and for consistency  
20 purposes, I probably do have some time next week, but I  
21 don't have the same court reporter.

22 MS. CARROWAY: Okay.

23 COURT REPORTER: Well, we can fix that. I mean --

24 THE COURT: Well, no, no, you're on vacation.

25 COURT REPORTER: I mean, no, really. I mean, it

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1 would just be one day or a half a day, right?

2 THE COURT: Right.

3 MR. RUSSO: It would be two hours.

4 COURT REPORTER: Let's do it. Let's do it.

5 THE COURT: Okay.

6 MS. CARROWAY: You're so sweet.

7 THE COURT: Okay. What I'm going to go ahead and  
8 do is, if this works with your all's schedule is, we're  
9 going to have to, I'm thinking Tuesday morning, go ahead  
10 and continue with the trial of this case.

11 MS. CARROWAY: Okay.

12 THE COURT: In the meantime, I think you need to,  
13 Mr. Russo, compare and figure out what, in fact, was  
14 given to Ms. Carroway.

15 MR. RUSSO: Sure.

16 THE COURT: Anything that wasn't, Ms. Carroway, I  
17 think you need to compare your file to his, and I want  
18 you to make copies of anything that was not turned over  
19 in a timely manner to you so we can make that a Court's  
20 exhibit.

21 MS. CARROWAY: Okay.

22 THE COURT: Additionally, Mr. Russo, I want you to  
23 ask if you can ascertain who the Beaufort County  
24 Sheriff's officers were that responded to this, if they  
25 have any videotape at the scene when they responded.

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1 MR. RUSSO: All right.

2 THE COURT: And if, of course, they do, you need to  
3 turn that over to her.

4 MS. CARROWAY: Well, and I would like to know not  
5 only if they have it now, but if the video was running  
6 that night.

7 THE COURT: Exactly.

8 MR. RUSSO: Sure.

9 THE COURT: Okay? And I needed it by affidavit,  
10 and that would be sworn testimony, Mr. Russo.

11 MR. RUSSO: Yes, your Honor.

12 THE COURT: And I'm going to give you back this,  
13 because it appears maybe to be the only copy of these  
14 notes. Where did our trooper go? Trooper, there you  
15 are. Sorry. I couldn't see you. Are you in town  
16 Tuesday morning?

17 TROOPER SUMMERS: I live here.

18 THE COURT: Well, I know. But you're not on  
19 vacation. I'm not going to keep you from going on  
20 vacation. I want to make sure. You're important here,  
21 so.

22 TROOPER SUMMERS: Yes, ma'am. I'll be -- I'll be  
23 wherever you need me to be.

24 THE COURT: I appreciate it, sir.

25 TROOPER SUMMERS: Yes, ma'am.

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1           THE COURT: Okay. We've released the coroner.  
2           We're not going to call Dr. Presnell, either, because  
3           you've stipulated to the cause of death. All right. I  
4           will see you all -- we'll go ahead and tonight, just  
5           adjourn for Tuesday morning. However, for the  
6           attorneys, we are going to meet in my office what time  
7           on Monday afternoon? After lunch? Yes. 1:30ish or  
8           2:00 o'clock, Monday afternoon, you all, where you all  
9           can tell me what you have figured out or found out  
10          between now and then, as far as these documents are  
11          concerned. Consider any appropriate motions that you  
12          want to make, if necessary, in your positions, and be at  
13          my office at --

14          MS. CARROWAY: Your Honor, I do -- one of the lay  
15          witnesses that hasn't testified, I did have a motion  
16          with regard to relevance to his testimony. I don't know  
17          -- you want to take that up on Monday, or just talk  
18          about it then? I was just --

19          THE COURT: We can talk about it then, but  
20          obviously, I'm going to need -- if you say relevancy, I  
21          mean, it may just be that I have to have a proffer of  
22          the testimony, but.

23          MS. CARROWAY: Okay.

24          THE COURT: Okay? Okay? All right, you all.  
25          We're adjourned. I will see the lawyers -- let's do

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1 1:30 Monday for the lawyers, and we'll go ahead and  
2 continue with the trial of this case for Tuesday morning  
3 at 9:00 o'clock. Okay? Thank you all.

4 MS. CARROWAY: Thank you.

5 MR. RUSSO: Thank you, your Honor.

6 THE COURT: Before we leave, I want to make sure  
7 that everything has been marked as a piece of evidence  
8 so far gets back to Wanda.

9 REPORTER'S NOTE: All exhibits  
10 submitted, whether admitted as  
11 evidence or marked for identification,  
12 were placed in the custody of the  
13 deputy clerk, with the exception  
14 of State's Exhibit Number 1, Two  
15 Blood Vials, which were placed in  
16 the custody of Trooper Thomas  
17 Shadrach Summers III.

END PROCEEDING 5:25 P.M.

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CERTIFICATE OF REPORTER  
JANUARY 30, 2014 PARTIAL  
TRANSCRIPT OF BENCH TRIAL

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing January 30, 2014 Partial Transcript of Trial is a true, accurate, and complete record of the proceedings had on said date and exhibits admitted in the case of State versus Bryan Rearick, Beaufort County, South Carolina, Court of General Sessions, Case Number 2010-GS-07-01469.

I further certify that I am of neither kin, counsel, nor interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature August 11, 2014.

  
Wanda H. Rowe, CVR-M  
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

The State of South Carolina,

PLAINTIFF,

v.

Bryan Rearick,

DEFENDANT.

**TRANSCRIPT OF MOTIONS**  
C/A No. 2010-GS-07-01469

Beaufort County Courthouse  
February 3-February 4, 2014

BEFORE:

HONORABLE CARMEN MULLEN, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Adam Russo  
Attorney for State of South Carolina

Lauren Carroway, Esquire  
Attorney for Bryan Rearick

TAKEN BY MELISSA R. SINGLETARY  
CERTIFIED VERBATIM REPORTER

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1           The Court: I just wanted to touch base with you all  
2 before tomorrow. I have a couple of questions for Mr.  
3 Russo.

4           The Affidavit of Captain Mark Maddox has some  
5 documents. Were those documents already turned over to  
6 Ms. Carroway before?

7           Mr. Russo: No, Your Honor, I only found them the  
8 other day.

9           The Court: The other day when you were like looking.  
10 So, I see that it was an incident report, a brief, but it  
11 does tell us who was there, as does the CAD report.  
12 Interestingly enough in the CAD report I see, Subjects  
13 are out of the car, unknown if breathing, vehicles are  
14 smoking, gas is everywhere, subjects are laying on the  
15 ground. You go further and I see REF, so that's  
16 responder referred to two car fifty, which is an  
17 accident, blocking traffic, two people on the ground,  
18 possible entrapment. Did you look at that portion of it?

19           And as you go on further, I see one PT on the ground  
20 not moving. One entrapping. So have you discovered  
21 anything else since last Thursday other than this?

22           Mr. Russo: No, Your Honor, I have spoken to the  
23 Highway Patrol in regards to the issue of Trooper Summers  
24 video tape. He informed me and I'm working on getting an  
25 affidavit for you. Our schedules have not met up yet.

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1       There is nothing in the file. He said if there was a  
2       video tape and if it was destroyed that he would have  
3       paperwork on that. Haven't heard back from him since  
4       then on whether or not such paperwork exist but that's  
5       all.

6               The Court: Ms. Carroway.

7               Ms. Carroway: Your Honor, I'm not sure where you  
8       want me to start. As far as there being any other new  
9       information, I did receive the MAIT notes that I was  
10      missing on Friday afternoon in the evening hour. And in  
11      addition to the MAIT notes there is a number of pages on  
12      vehicle recalls with regard to my client's vehicle.  
13      Things that would have been extremely beneficial to share  
14      with my expert. I don't know if they mean anything  
15      because I don't --- That's why I talk to an expert, you  
16      know. I didn't have this information then. So that was  
17      new before I went through this packet I didn't know it  
18      existed.

19              The Court: Where is the vehicle recall information?

20              Ms. Carroway: I can show you what I've got.

21              The Court: Sure. Hand that up.

22              Ms. Carroway: There's a number of recalls it  
23      appears on my clients vehicle and the Dodge vehicle from  
24      the other party.

25              The Court: You got that on Friday night?

1 Ms. Carroway: Yes ma'am. It was not Friday night,  
2 it was like 4:00 or so. It stood out to me because I was  
3 like gosh I sure would like to get this to Woody Poplin,  
4 you know. I don't know that it is anything that he would  
5 use but it is something that --- and all these are just  
6 other things I didn't have before. Also, I don't know if  
7 we would have used them or not, you know.

8 The Court: I think he would actually be very  
9 interested in looking at the CAD report as well and he  
10 didn't have that?

11 Ms. Carroway: No.. I will say that I know there was  
12 talk about bad faith on Friday. I mean, Thursday, when  
13 we were here. I didn't know the answer at that time so I  
14 just remained silent. Everybody seemed to say, oh yeah,  
15 bad faith needed. I wasn't sure so I just didn't say  
16 anything. I've done some research and I don't see where  
17 bad faith is needed. I'm not alleging that Mr. Russo  
18 intentionally hid things from me or things of that nature  
19 but I do think a level of diligence is required.  
20 Especially in a case of this serious nature to insure my  
21 client's due process rights are protected.

22 The Court: Mr. Russo, how many solicitors have had  
23 this file?

24 Mr. Russo: Outside of myself, to the best of my  
25 knowledge one. There is some talk of possibly another

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1 but to the best of my knowledge just one.

2 The Court: Who was it, who has had it? Who started  
3 with it. Who was it transferred to and how did you  
4 finally get it?

5 Ms. Carroway: Angie Tanner had it originally when my  
6 client was arrested. But upon her exiting the office Jim  
7 may have had his hands on it briefly but nobody ever,  
8 then Shawn had it for a couple of years.

9 Mr. Russo: I know it was Mary Buchanan's before it  
10 was mine.

11 Ms. Carroway: I never even knew Mary had possession  
12 of it, but the people I communicated with were Angie  
13 Tanner and I had a brief conversation with Shawn at a  
14 roster meeting at one point where I was like have you  
15 looked at this, can we talk, you've got problems and he  
16 was not in a position to have a meaningful conversation  
17 at that point he put my client on standby. This was  
18 causing some difficulties because he comes back and forth  
19 every month. He said well if you can get up with him he  
20 doesn't have to come to roll call every month and he put  
21 him on telephone standby where he remained until December  
22 of this year.

23 The Court: I understand your concern Ms. Carroway  
24 with your client's due process rights. Do you need an  
25 opportunity to take this new information to Woody Poplin,

1 is Woody a civil engineer?

2 Ms. Carroway: He is Your Honor. He is someone that  
3 my office retained when I originally got this case. We  
4 talked to a couple of lawyers here in town and they ...

5 The Court: I've known Woody Poplin and I can tell  
6 you as a lawyer I have hired him on at least a dozen  
7 occasions.

8 Ms. Carroway: He came highly recommended so that's  
9 what we did. That was back in 2010, Your Honor. I will  
10 say, I'm not asking for a continuance I'm asking for  
11 relief in way of a dismissal. I believe this case has  
12 been pending for three and a half years. The essence of  
13 due process has been violated in every way during this.  
14 I do believe that dismissal is the appropriate remedy.  
15 Not only do we have these new documents but we have the  
16 issue of this video and with all due respect to Trooper  
17 Summers it's not up to him what is good evidence and what  
18 is not. And, so, in addition to Brady and due process  
19 and Rule 5 we've got this 2953 issue. And 2953©) says  
20 that he can't destroy a video until the cases legal  
21 proceedings have been resolved which he did and which is  
22 in violation of statue in Suchenski, Roberts and Hubbell  
23 and all Suchenski says my remedy for that is dismissal.  
24 I think that is the appropriate remedy in this situation.

25 Mr. Russo: We don't know that he destroyed it yet.

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8

1 We are still working on that. As far as Brady and  
2 everything else goes the state would ask just at this  
3 time that if the court does decide to grant relief based  
4 on those basis that the court grant such a continuance to  
5 allow me to recall the appropriate individuals so that  
6 Mr. Ash can be cross examined again by Ms. Carroway. She  
7 seeks to add her expert, the State has no problem with  
8 that. The State apologizes for this issue, Your Honor,  
9 we did not see it coming. That's it.

10 The Court: I think you need to have either Shawn or  
11 Duffy here tomorrow morning before we start.

12 Ms. Carroway: If I can respond to that. The State  
13 called this case, they sent them notice for trial in  
14 December so for them now to say oh, I can now have it  
15 continued. I'm not asking for a continuance.

16 The Court: I can grant whatever remedy I want,  
17 though.

18 Ms. Carroway: I understand. I'm not, it's just, I'm  
19 not asking for a continuance I mean, I'm ...

20 The Court: All right. Well, Mr. Russo, you get to  
21 tell one of the two of them they have to be here tomorrow  
22 morning. We are starting at 9:00. You cannot have a  
23 three and half year old case where you are turning over  
24 discovery last Friday during the middle of a trial and  
25 then more today. I know you know that. Unfortunately

1     you are the fifth person on the file. Okay. I'll see you  
2     all at 9:00 tomorrow morning.

3             Ms. Carroway: Judge Mullen, it's a matter of  
4     scheduling and I'm out of line for even requesting this,  
5     I understand ...

6             The Court: You're ready to go?

7             Ms. Carroway: Oh, I'm ready to go, yes, ma'am. My  
8     husband has a very early meeting on Tuesday I have to  
9     take my child to school ...

10            The Court: What time, you tell me.

11            Ms. Carroway: It may be 9:10 if I get stuck at that  
12     bridge.

13            The Court: 9:30. Tomorrow morning at 9:30. We'll  
14     see you then, okay.

15            Ms. Carroway: Okay.

16            Mr. Russo: Scott Ash is in California all week long.

17            The Court: That is Officer Ash?

18            Mr. Russo: That's the MAIT expert. Former Officer  
19     Ash.

20            The Court: Didn't he already testify though?

21            Mr. Russo: Yes, Your Honor, he was excused.

22            The Court: So the MAIT notes are his notes that got  
23     turned over Friday? I look forward to seeing Shawn or  
24     Duffy tomorrow morning. And again, it's not directed to  
25     you in anyway. You did a great job. You are incredibly

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1 diligent and I think the Solicitor's office is very lucky  
2 to have you.

3 Mr. Russo: Thank you, Your Honor.

4 The Court: Okay. I'll see you tomorrow morning.

5 **(End of Hearing for today)**

6  

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7 The Court: All right. Just so I know where we are  
8 as far as the status of this case. Mr. Russo, is it  
9 correct that Trooper Summers is still trying to decide  
10 whether or not there is a video tape out there? And,  
11 have you been able to exclusively determine if there is  
12 or not?

13 Mr. Russo: I received the letter yesterday from  
14 Trooper Rouse, the Highway Patrol ...

15 The Court: Who?

16 Mr. Russo: Trooper Rouse, R-O-U-S-E.

17 The Court: Okay.

18 Mr. Russo: Indicating that there was just simply no  
19 video that they had ever found. And, so, that is pretty  
20 much the end of that issue as far as I can find out.

21 The Court: And as far as Beaufort County Sheriff's  
22 office there is no video there either?

23 Mr. Russo: No, Your Honor. As you saw in the  
24 Affidavit, no videos were every logged.

25 The Court: Mr. Russo, I'm still concerned that we

1 are in the middle of a bench trial and you turned over  
2 these affidavits as well as an incident report from  
3 Beaufort County Sheriff's Department which hasn't been  
4 turned over which also details or has an attached CAD  
5 report that tells all of the officers that responded from  
6 the Beaufort County Sheriff's Department, which, of  
7 course, we didn't know because Officer Summers was asked  
8 who was there from the Beaufort County Sheriff's Office  
9 he said there were some sheriffs there but had no idea  
10 who it was. There was nothing in his report and now I  
11 see there was one, two, three, four, five, six, seven  
12 Beaufort County Sheriff's officers that responded to this  
13 scene before the highway patrol was called out.

14 Ms. Carroway?

15 Ms. Carroway: Thank you, Your Honor. At this point,  
16 I am requesting it be dismissed. I believe this has been  
17 a huge due process violation for my client. My issue is  
18 not whether or not the videos were placed in evidence, I  
19 understand that they were never placed in evidence but  
20 they should have been. That's my problem. Trooper  
21 Summers testified that his dash cam was running. I would  
22 assume that means his lapel mic was on and he spoke to my  
23 client, he says he was at the scene half a hour with my  
24 client. That information could be potentially very  
25 exculpatory my client speaking clearly and answering

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1 questions coherently are facts that are extremely  
2 important to this case.

3 The Court: Well, in addition to that, the CAD report  
4 says that there is one person entrapped, which I am going  
5 to assume is the victim in this case and two people on  
6 the ground, which the only people I can assume that is,  
7 is your client and his wife. Again, it's an assumption  
8 because we don't know. It wasn't turned over until  
9 yesterday.

10 Ms. Carroway: Those sheriff's officers, I would  
11 assume, I mean, I don't know, because I've never spoke  
12 with them, one of them probably spoke with my client.  
13 You know, I would assume if you arrive on the scene the  
14 first thing you are going to do is speak to the parties  
15 involved in the accident. In addition to that, I know,  
16 or I don't know but according to one of the lay witnesses  
17 taped interviews, he spoke with the sheriff's deputies.  
18 There's no report of that. There's no documentation of  
19 that and I've expressed before concern about the motive  
20 of credibility of this lay witness to a certain extent.  
21 So, I would like every report of what this gentlemen said  
22 so I can compare contrast stuff. I believe that's  
23 extremely important in this case.

24 The Court: Additionally, I would assume that you  
25 would have wanted your investigator to speak with every

1 one of these deputies to see if anyone had any  
2 independent recollection or remember this accident.

3 Ms. Carroway: I guess my point is so there are no  
4 reports, there are no videos at the Beaufort County  
5 Sheriff's Office but if I at least knew their names in  
6 2010 a month or so after this happened Mr. Chapman could  
7 have spoken with them and their memories maybe could have  
8 provided some information.

9 The Court: Some of them still work for Beaufort  
10 County Sheriff's Office, too. I mean, I recognize ...

11 Ms. Carroway: Well, some of them still work there  
12 but I believe only two out of the six is what we  
13 determined yesterday. Obviously, at this point, they've  
14 worked a number of traffic accidents since 2010, so the  
15 memories are gone. If they would have provided this  
16 information I could have obtained the affidavits on my  
17 own in 2010. I can't do that now so that discovery is  
18 lost.

19 Your Honor, I also expressed yesterday and I will  
20 just state it again. I would have loved to have had, the  
21 reason I retained Woody Poplin was to make sure there was  
22 nothing that I was missing because as far as the  
23 mechanics and the science of it is extremely difficult  
24 for me. I would have loved to have all this information  
25 to share with him. I don't know if it changed anything.

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1 I don't know if all the recalls on both the cars would  
2 have impacted the way the accident happened. There's a  
3 lot of unknowns out there and I believe my client is  
4 extremely prejudiced and his due process rights have  
5 definitely been violated in this case.

6 The Court: Mr. Russo what do you suggest we do?

7 Mr. Russo: Your Honor, in regards to the MAIT report  
8 issue I would suggest that a continuance would be the  
9 appropriate remedy. Mr. Crawford could then look over  
10 the report, we could get Mr. Ash back in here to testify  
11 and he could be cross examined by ...

12 The Court: What is Mr. Ash going to testify to. I  
13 understand he's in California doing some type of  
14 training, is that correct?

15 Mr. Russo: Yes, Your Honor. He's in California this  
16 week.

17 The Court: Okay. And Mr. Ash did the MAIT report,  
18 is that correct?

19 Mr. Russo: Yes, Your Honor. In regards to the BCSO  
20 individuals that were there at the scene that night, the  
21 lay witness can testify to everything he said to them and  
22 to his recollection of what he heard that night. None of  
23 the BCSO officers who were there had any recollection.  
24 The report and the CAD indicate what they indicate and I  
25 don't think that would in any way contradict, I don't

1 think what the lay witness would indicate as well. And,  
2 finally, with regards to Trooper Summers taping issue,  
3 Your Honor, I think that we respectfully went over this  
4 on Thursday and at that time, Your Honor, I think you  
5 held it under advisement and the State would rest on what  
6 it said at that time.

7 Ms. Carroway: Briefly, Your Honor, if I may respond.

8 The Court: Sure.

9 Ms. Carroway: I understand that Beaufort County  
10 Sheriff's office might not have any recollection today,  
11 that's my point exactly, this is the same as evidence  
12 that has been lost or destroyed. There memories have  
13 been - it's four years old, Your Honor. But if I had  
14 known about them in 2010 they may have been able to  
15 provide lots of useful information, you know. Rick could  
16 have talked to them, my investigator and in addition to  
17 that it appears that some of them spoke with one of these  
18 lay witnesses and I would like to have a report based on  
19 what that conversation was about or at least a chance to  
20 interview them about that conversation which I can't do  
21 now, so with regard to the MAIT report, I understand the  
22 State's position may be that I can have more time to, you  
23 know, talk to Mr. Poplin and what not. I disagree with  
24 that. I think they called this case for trial and at any  
25 rate with regard to the rest of the evidence it is lost.

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1 It can't be cured.

2 The Court: Let me ask you this. If I deny your  
3 motion to dismiss, grant a continuance or grant a  
4 mistrial that would give you opportunity to go and do  
5 further research. I don't believe double jeopardy would  
6 attach in this case although that would certainly be for  
7 a later hearing.

8 Ms. Carroway: Your Honor, I leave that in the  
9 court's discretion and we'll stand on the grounds that  
10 ...

11 The Court: Ms. Carroway, let me tell you what irks  
12 me about this. If you don't move for a continuance or  
13 you don't move for a mistrial I think it's very possible  
14 that if he is convicted that this would come back in a  
15 post conviction relief. I understand it might be  
16 strategy for you but I think a court looking, hind sight  
17 being 20/20, again as you know I think it is very likely  
18 that you would be overturned on a PCR and we don't want  
19 to do, we have one man dead and we have another man who's  
20 life hangs in the valance now and we want to make sure  
21 the procedure is done properly.

22 Ms. Carroway: I agree. At the very least, never  
23 mind the core issues and what not, based on the motion I  
24 believe at the very least this is definitely coming back  
25 on a PCR which is something that I'm willing to take for

1 my client. I will stand by the fact, I don't think this  
2 can be cured by a continuance or a mistrial. A lot of  
3 the evidence that I am seeking is gone. I can't get it.  
4 The tape from Trooper Summers is gone. If they don't put  
5 it in evidence evidentially the car cameras it tapes over  
6 it. It's gone.

7 The Court: The other thing that I think is  
8 interesting about this is, and again, I don't mean to be  
9 throwing it out there but for your own strategy purposes  
10 I mean you obviously had agreed to try this but with all  
11 this missing information it might have affected whether  
12 or not you want a judge to bench try it verses a jury. I  
13 think that would go into your reasoning of what you're  
14 doing here.

15 Ms. Carroway: Yes, ma'am. Obviously there is a  
16 little more spoken mirrors with the jury ...

17 The Court: Right. You can make way with your  
18 reasonable doubt where obviously as a judge why we've got  
19 the same, I've got to find beyond a reasonable doubt as  
20 well, yeah, I think that you're right a judge can cut  
21 through what is a red herring and what isn't.

22 Ms. Carroway: Originally I thought this was all  
23 legal issues now I'm not so sure. So - and I'll bring  
24 this up again, Your Honor, I know I mentioned it before.  
25 The tape issue with Summers it's not only a Brady and a

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1 Rule 5 violation under 29-53c it says that those tapes  
2 cannot be destroyed and Suchenski and its prodigy say my  
3 remedy for a tape like that for a violation of that  
4 statute is dismissal period. So I do believe that based  
5 on the discovery violations of 29-53©) violation along  
6 ...

7 The Court: I don't think that is your only remedy  
8 and again we have this testimony from Summers saying what  
9 he got when he responded to the scene was a bunch of blue  
10 lights and a bunch of BCSO guys and when he arrived on  
11 the scene your client was already in the ambulance. So  
12 he's already in the ambulance there is nothing that could  
13 have helped you other than potentially a video of the  
14 scene and the wreck as opposed to just the photographs  
15 that we have, the still photographs.

16 Ms. Carroway: I do believe, Your Honor, if his dash  
17 cam was running I do believe his lapel would have caught  
18 any conversation he would have had with my client based  
19 on my prior DUI experience. They don't have to be on  
20 camera to be able to hear them.

21 The Court: I don't think he was the one that  
22 interviewed the witness.

23 Ms. Carroway: Summers testified that he spoke with  
24 my client at the scene.

25 The Court: Oh, your client. I'm sorry, I thought

1       you meant the witness.

2               Ms. Carroway:    Oh that's a separate issue.

3               The Court: I understand.  You're talking about the  
4       sheriff's office what we now know is going to be a  
5       witness in the trial of this case.

6               Ms. Carroway: And I don't know who else they talked  
7       to because there is no way for me to know.  Their  
8       memories are gone at this point, you know..

9               The Court: You know I will say this.  I don't think,  
10       again, in this case that there really is prosecutorial  
11       misconduct.  I think Mr. Russo got a very stale file.  As  
12       he told me yesterday that he was the fifth assistant  
13       solicitor to have this file.  We are three and a half  
14       years down the road and certainly he has gone and done  
15       everything that I've asked of him.  When I asked if he  
16       could determine one way or the other whether or not  
17       Trooper Summers had the video or whether or not the  
18       Beaufort County Officers had video or audio.  He  
19       obviously produced a CAD report.  He also produced a  
20       Beaufort County Sheriff's Office report.  At a minimum  
21       listed everyone's name.

22               My biggest concern in this is that if we are bench  
23       trying this case and I am the trier of fact and I have to  
24       make decisions of fact based on what I hear in the  
25       courtroom.  And, again, I feel like at this point I am

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1 not being given what I need to make that determination.  
2 As I said to you before, very disconcerting to me is  
3 that, you know, we've got a CAD report that says there  
4 are subjects out of the car and lying on the ground and  
5 it may be that this is after EMS showed up and EMS asked  
6 them to lay down because they were bleeding and they were  
7 concerned that could be it or it could be that these  
8 people were stretched out on the ground. Again, that  
9 goes to the credibility of the witnesses testimony that I  
10 heard, of the other witnesses testimony that I hear.  
11 Again all of that is for me as the trier of fact  
12 incredibly disconcerting.

13 Anyone have anything else to add. Let's make sure  
14 we make a full record.

15 Mr. Russ: Nothing from the State, Your Honor.

16 The Court: Ms. Carroway?

17 Ms. Carroway: Your Honor, with regard to the  
18 discovery violations, I think ...

19 The Court: I understand you've moved obviously for a  
20 dismissal. I'm just so concerned that late production at  
21 this time to afford your expert an opportunity to look at  
22 this accident. I don't know if you intended on Woody  
23 Poplin testifying. I don't know if your client intended  
24 on testifying but I think that what is put in here  
25 matters. And as far as the MAIT report it matters as to

1       how he would look at this. It may not change his opinion  
2       but it is certainly more information for him to consider.

3             All right. Well, I'm going to go ahead and take  
4       about a ten minute recess and then we're going to come  
5       back and we will figure it out. Can I see the lawyers.

6       (There was a break in the proceeding)

7       (Back on the record after break)

8             The Court: Anything further from anyone? From the  
9       State?

10            Mr. Russ: No, Your Honor.

11            The Court: From the defense?

12            Ms. Carroway: No, Your Honor.

13            The Court: All right. I've continued to think about  
14       this certainly and just for the record for appeal  
15       purposes I have been through this in this case and  
16       certainly worked hard on picking out all of the potential  
17       issues. I am concerned with new evidence coming forward  
18       in the middle of the trial. We have talked about  
19       possible cures and possible ways to afford the defendant  
20       an opportunity to speak to some of these now people  
21       potentially be witnesses. Additionally, in the CAD  
22       report that has some information to where the defendant  
23       and his passenger, my understanding his wife, possibly  
24       were at the scene. I've come to the conclusion and I  
25       think I agree with you Ms. Carroway that a continuance

1 would only further cause prejudice for your client  
2 because, of course, knowing that information ahead of  
3 time would have affected the way you tried this case.  
4 And certainly any additional - what you would have  
5 presented, what you would have done on cross examination  
6 as far as the witnesses that have already been put up.  
7 Again, I will say this, I don't find there was any mis-  
8 prosecutorial misconduct in any way. I think Mr. Russ  
9 inherited a three and a half year old case. He did the  
10 best he could and certainly when asked by me during this  
11 trial. Let me put on the record it begin last Thursday  
12 and then we begin again this morning, he did everything I  
13 asked him to do when I asked him to see if there was any  
14 evidence. I think in an absolute abundance of precaution  
15 and the seriousness of this case and we have one man  
16 dead, I certainly respect and understand that. I know  
17 this is very difficult certainly for the victim's family  
18 as well as the defendant. He is on trial for his life  
19 and I appreciate the severity of that as well. So  
20 certainly, I can tell you at this point that I feel like  
21 I have absolutely no choice other than to declare a  
22 mistrial in this case and afford Ms. Carroway an  
23 opportunity to do any further discovery that she needs,  
24 any further work in this case and again to be able to put  
25 forward whether next time it is tried in front of a jury

1 or whether a judge with all of the true evidence. As we  
2 all know a trial is the search for the truth. It doesn't  
3 matter where the source is it is a search from the truth.  
4 That's the only way this system works. Certainly that is  
5 my ultimate goal and certainly the oath that I took. I  
6 am concerned in this case that later discovered evidence,  
7 potential evidence and again this may not turn out to be  
8 anything that we don't have everything that is necessary  
9 to be able to reach that conclusion, an appropriate one.  
10 So, to that extent, again, I am granting a mistrial. I  
11 will get up with the solicitor and Ms. Carroway as to any  
12 further need. Do you need from me as the administrative  
13 judge for either resetting this for a trial or any other  
14 purpose certainly I am open to assist you in any other  
15 way. Okay?

16 Ms. Carroway: Thank you.

17 Mr. Russo: Thank you.

18  
19  
20  
21  
22  
23  
24  
25

**CERTIFICATE**

This is to certify that the motion transcript in the matter of State of South Carolina Bryan Rearick, consisting of Twenty-Three (23) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 19<sup>th</sup> day of September, 2014.



Melissa R. Singletary  
Certified Court Reporter

Notary Public for South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF BEAUFORT ) INDICTMENT NO:  
2010-GS-07-1469

STATE OF SOUTH CAROLINA, )

versus )

Bryan Rearick,  
Defendant. )

DEFENDANT'S NOTICE OF MOTION  
AND MOTION TO BAR PROSECUTION

2014 FEB 13 PM 4:11  
CLERK OF COURT  
BEAUFORT COUNTY, S.C.

TO: ADAM RUSSO, ASSISTANT SOLICITOR, 14TH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that Defendant by and through his undersigned counsel will move before this Honorable Court, as soon as counsel can be heard, for an ORDER BARRING PROSECUTION based on Article 1, Section 12 of the South Carolina Constitution, the Fifth Amendment of the United States Constitution, and controlling case law.

### **Procedural History**

1. Bryan Rearick was arrested and charged with Felony Driving Under the Influence, Great Bodily Injury on May 30, 2010.
2. On June 10, 2010 Mr. Rearick was recharged with Felony Driving Under the Influence, Death Results.
3. On July 22, 2010 Mr. Rearick was indicted by the Beaufort County Grand Jury for Felony Driving Under the Influence, Death Results.
4. The first and only time Mr Rearick's case was noticed for trial was in Decemeber of 2013, and the trial was set for January 30, 2014.

5. Mr. Rearick waived his right to a jury trial and went forward with a bench trial beginning on January 30, 2014.
6. Mr. Rearick made a number of pretrial motions. None of the motions were ruled on by the court.
7. During the State's case in chief, specifically Trooper Summers' testimony, it came to light that there was a road side video from the incident that had not been placed in evidence and thus no longer existed.
8. During the State's case in chief, specifically former MAIT investigator R.S. Ashe's testimony, it was discovered that there was a significant amount of discovery that the state failed to turn over to the defense including approximately 50 pages of notes and reports from MAIT.
9. Mr. Rearick made a motion to dismiss based on violation of his Due Process rights, Brady violations, and violation of his Rule 5 motion.
10. He made an additional motion to dismiss based on the destruction of the road side video under 56-5-2953(c).
11. The Defendant explicitly opposed a continuance or a mistrial on the grounds that it would not cure violations of Mr. Rearick's due process rights, but only prejudice him further. The court agreed with the assessment that a continuance would only prejudice Mr. Rearick.
12. The Honorable Judge Carmen T. Mullen declared a mistrial over the Defendant's objection without ruling on any of the Defendant's outstanding pretrial motions or the additional motion to dismiss that was made during the course of the State's case in chief.

**The Court's declaring a mistrial caused the protections afforded to Mr. Rearick under the Double Jeopardy Clause to Attach**

Article 1, Section 12 of the South Carolina Constitution and the Fifth Amendment of the United States Constitution contain what is commonly referred to as the Double Jeopardy Clause. They state in relevant part that no person shall be subject for the same offense to be twice put in jeopardy of life or liberty.

The test to determine whether double jeopardy has attached in Mr. Rearick's

----- case is whether the declaring of a mistrial was dictated by a *manifest necessity* -----  
*or the ends of public justice.* State v. Prince 301 SE 2d 471

**There was no Manifest Necessity for declaring a mistrial in Mr. Rearick's case**

There was no reason that the court as the trier of fact in Mr Rearick's case could not have reached a verdict. A mistrial is often granted when the jury is deadlocked and unable to reach a verdict or the the jury hears something that taints them in a way that cannot be cured. This would create a manifest necessity in that there would be no way for a fair and just verdict to be reached. In Mr. Rearick's case, there were a number of dispositive pretrial motions that were pending before the court. There was nothing preventing the court from moving forward as the trier of law in ruling on the outstanding pretrial motions. Additionally, there was nothing preventing the court from reaching a just decision

as the trier of fact. The court abdicating its responsibility as the trier of fact and law by failing to reach a decision triggered double jeopardy.

**The Ends of Public Justice are not served by declaring a mistrial**

The public's interest in a fair trial that ends in a just judgement is violated by the Court's declaring a mistrial. The public's interest is by served by judicial economy and ensuring the constitutional rights afforded to the citizens are protected. As to judicial economy, to conduct a second trial would cost the tax payers more time and money. A jury pool will have to be brought in and taken away from their everyday lives. Additional resources would be expended to conduct a trial from both the State and the defense side. There was no reason a just verdict could not have been reached, and thus the additional time, resources, and finances that a second trial will require violate the public's interest.

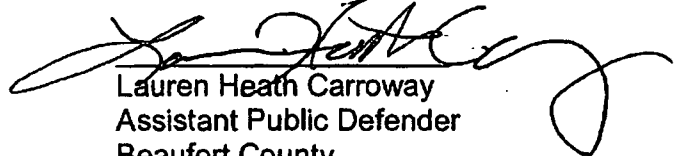
As to the public's interest in protecting their constitutional rights, the ends of public justice are not served by allowing a defendant who is still cloaked in the "robe of righteousness" to face a second trial for the same charges when there is no reason why the first trial could not have reached a just result.

**Conclusion**

The court declaring a mistrial over the defense's objection in Mr. Rearick's case was not done out of manifest necessity or the ends of public justice. There was no reason the court could not have reached a verdict. The court simply

renounced its responsibility and duty to return a just verdict. The public's interest is violated by the time, expense, and resources that a second trial would require. To allow the State to try Mr. Rearick a second time would violate due process rights, specifically Double Jeopardy rights because the mistrial was not declared out of manifest necessity. As such an ORDER BARRING PROSECUTION is necessary to protect Mr. Rearick from double jeopardy violations.

Respectfully submitted,



Lauren Heath Carroway  
Assistant Public Defender  
Beaufort County  
Attorney for the Defendant

Beaufort, South Carolina

Feb 13, 2014

|                         |   |                                        |
|-------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA | ) | INDICTMENT NO.: 2010-GS-07-1469        |
|                         | ) |                                        |
| COUNTY OF BEAUFORT      | ) | WARRANT NO: J346010                    |
|                         | ) |                                        |
| vs.                     | ) |                                        |
|                         | ) | <b>STATE'S RESPONSE TO DEFENDANT'S</b> |
|                         | ) | <b>MOTION TO BAR PROSECUTION</b>       |
| BRYAN REARICK           | ) |                                        |
| _____                   | ) |                                        |

TO: BRYAN REARICK, by and through his attorney LAUREN HEATH CARROWAY,  
the STATE by and through its attorney, Lynorr Musser, Assistant Solicitor  
responds to the Defendant's Motion to Bar Prosecution as follows:

#### I. STATEMENT OF FACTS

On July 22, 2010, the defendant, Bryan Rearick, was indicted for Driving Under the Influence, Death Results pursuant to SC Code 56-05-2945(A)(2). The State alleges that, on May 30, 2010, the defendant was driving West on Route 278 on Hilton Head Island, Beaufort County with a blood alcohol content of .148 when he entered the wrong lane of travel while making a left hand turn and speeding. As a result of being in the wrong lane, he hit another vehicle driven by Mr. William Vallejos head-on. Mr. Vallejos died at the scene as a result of the injuries he sustained in the accident and the defendant was subsequently arrested.

The case was called for trial on January 30, 2014 before the Honorable Carmen T. Mullen. Judge Mullen heard argument on several pre-trial motions and the defendant waived his right to a jury trial. Testimony commenced related to the pre-trial motions and bench trial. After testimony from the State's MAIT expert, Ben Ashe, Ms. Carroway

advised the Court that Mr. Ashe had referred to a page in his report that she did not receive in her discovery.

The State's trial attorney, Assistant Solicitor Adam Russo, advised the Court that former Deputy Solicitor Angela McCall-Tanner had turned over discovery to Ms. Carroway and had documented the file by way of copies of correspondence to Ms. Carroway. The file contained four (4) letters to Ms. Carroway dated July 6, 2010, August 31, 2010, November 1, 2010, and November 15, 2010. The letter dated November 1, 2010, specifically indicates that a CD containing the complete MAIT file was being provided to Ms. Carroway. A copy of those letters is attached as Exhibit "A."

Additionally, the State called the lead investigator, Trooper Summers, to testify regarding the Defendant's Motion to Dismiss for Failure to Comply with 56-5-2953 and 56-5-2950 as well as its case-in-chief. Trooper Summers' testimony raised additional issues regarding whether all discoverable information had been made available to Ms. Carroway. The issues included the names of Beaufort County Sheriff Deputies that were present at the time he arrived at the accident scene as well as the potential existence of video taken from his patrol vehicle. The fact that Trooper Summers had previously prepared an Affidavit with respect to the lack of video confounded the issue of whether video presently exists or existed in the past but was not preserved.

Due to the discovery issues, the Court recessed for the day and scheduled the trial to resume the following Tuesday, February 4th. Additionally, Judge Mullen directed Assistant Solicitor Russo to either locate the outstanding evidence or obtain Affidavits from the South Carolina Highway Patrol and Beaufort County Sheriff's Office stating that said evidence does not exist. Judge Mullen advised the parties that she

would meet with them on Monday, February 3<sup>rd</sup> to confirm that all discovery issues had been resolved and/or that Mr. Russo had obtained the appropriate Affidavits.

During the meeting with Judge Mullen on February 3<sup>rd</sup>, Mr. Russo provided Affidavits stating that video in this case did not exist. However, he had received a CAD report and one page Incident Report from the Beaufort County Sheriff's Office which identified several Sheriff Deputies that were present at the accident site.

The next day, on February 4<sup>th</sup>, when the trial was scheduled to resume, Judge Mullen declared a mistrial. In doing so, she specifically found that, although there had been some documents that were not turned over to defense counsel, there was no prosecutorial misconduct. Judge Mullen outlined the Court's options of (1) continuing the trial to give defense counsel additional time to prepare in light of the recently obtained information, (2) dismissing the case or (3) declaring a mistrial.

Judge Mullen stated that a continuance was not appropriate for several reasons. Among those reasons were that the trial had already commenced, defense counsel had not been given sufficient time to review the new information with her expert, the opportunity for the defense to cross-examine witnesses had been lost, the defense did not have time to locate the additional Sheriff's deputies, and most importantly, that the defendant's election to waive his right to a jury trial may have been different had he known about the evidence that was not previously turned over.

Furthermore, Judge Mullen determined that dismissing the case as requested by the defendant was also inappropriate based on the evidence presented and the public interest, i.e., the death allegedly caused by the defendant.

Finally, due to her finding that neither a dismissal nor a continuance of the case was appropriate under the circumstances, Judge Mullen declared a mistrial over the defendant's objection.

## II. ISSUE

Whether it was an abuse of discretion for the Court to grant a mistrial after a bench trial had commenced where the Court determined that neither a dismissal of the case nor a continuance were appropriate remedies to the discovery issues raised by the defense.

## III. ARGUMENT

In State v. Baum, 355 S.C. 209, 584 S.E.2d 419 (Ct. App. 2003), the South Carolina Court of Appeals stated the legal standard in determining whether a mistrial is justified or whether double jeopardy has attached barring subsequent prosecution.

The test to determine whether sound grounds exist for declaring a mistrial after the jury is sworn is 'whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment.' State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983).

'Manifest necessity' is not a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge. Further, the word 'necessity' is not to be interpreted literally. Arizona, 434 U.S. at 505-06. Rather, there need only be a 'high degree' of necessity in order to conclude that a mistrial is appropriate under the circumstances. *Id.* at 506.

*Id.* at 214; 584 S.E.2d 419 at 422 citing Arizona v. Washington, 434 U.S. 497, 505, 54 L.Ed. 2d. 717, 98 S. Ct. 824 (1978).

In State v. Prince, 279 S.C. 30, 301 S.E.2d 471 (1983), the trial judge declared a mistrial over the defense counsel's objection. The jury had been out for about five and a half hours, and at ten o'clock at night requested that two hours of testimony be read back to them. Rather than reading the testimony to the jurors that evening or reconvening the next day, the trial judge declared a mistrial. The defendant was subsequently tried and convicted for distribution of marijuana. The defendant argued successfully that there no "manifest necessity" for the mistrial and that jeopardy had attached.

In its reasoning, the Court stated the general rule that there must be "manifest necessity" for a judge to declare a mistrial or the ends of public justice must be served. Id. at 472. The Court also recognized that, although a trial court has discretion in whether or not a mistrial should be declared, the power is not absolute. "The power of the court to declare a mistrial ought to be used with the greatest of caution and for plain and obvious causes stated into the record by the judge." Id. at 472. Furthermore, "The 'manifest necessity' rule is easy to state but sometimes difficult to apply. In borderline cases, it is the inclination of appellate courts to sustain the judge in the exercise of his discretion" Id. at 473. Despite the discretion afforded the trial court judge, the Supreme Court held that a mistrial should not have been granted in this case because the jury could have reached a verdict with a simple reading of the requested testimony.

In applying the holdings of Baum and Prince to the facts of this case, the State argues that Judge Mullen's decision to declare a mistrial was warranted and supported by the facts contained in the record. Judge Mullen specifically outlined the options and

remedies available to her given her concerns about the discovery issues. As she stated, those options were dismissal of the case, granting a continuance or declaring a mistrial.

The record is clear that Judge Mullen considered each of the above options and gave considerable thought to what, if any, prejudice the defendant might suffer under each scenario. After careful thought and analysis, she determined that dismissal of the charges was not appropriate due to the evidence presented and case law argued by the State. Dismissal of the charges was also not in the interest of public justice because the victim, Mr. Vallejos, had died. The Court determined that a continuance would prejudice the defendant because his decision to waive his right to a jury trial may have been different had he been aware of the new information. Additionally, the defendant would have been prejudiced by a continuance because the trial had already commenced and witnesses had already been cross-examined without his attorney having the benefit of certain information.

Consequently, having already decided that neither dismissing the case nor granting of a continuance was appropriate under the circumstances, the Court had only one remaining option which was to declare a mistrial. The lack of other viable options, is, by definition, a manifest necessity. As a result, double jeopardy has not attached because the Court's declaration of a mistrial was appropriate, and the State should not be barred from prosecution.

#### IV. SUMMARY

The State respectfully requests that this Honorable Court deny the Defendant's Motion to Bar Prosecution by finding that manifest necessity existed in support of the Court's declaration of a mistrial.

Respectfully submitted,

March 4, 2014  
Beaufort, South Carolina

  
Lynorr Musser, Asst. Solicitor  
14<sup>th</sup> Judicial Circuit

STATE OF SOUTH CAROLINA  
14TH JUDICIAL CIRCUIT  
COUNTY OF BEAUFORT  
COURT OF GENERAL SESSIONS  
CASE NUMBER 2010-GS-07-01469

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

APRIL 8, 2014

TRANSCRIPT OF HEARING  
BEAUFORT, SOUTH CAROLINA

BRYAN REARICK

DEFENDANT

---

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M  
OFFICIAL COURT REPORTER

## APPEARANCES

ON BEHALF OF THE STATE:

HON. LYNORR MUSSER  
BEAUFORT COUNTY SOLICITOR  
FOURTEENTH JUDICIAL CIRCUIT  
POST OFFICE BOX 1880  
BLUFFTON, SOUTH CAROLINA 29910-1880  
TELEPHONE 843-255-5880

ON BEHALF OF DEFENDANT  
BRYAN REARICK:

HON. LAUREN CARROWAY  
BEAUFORT COUNTY PUBLIC  
DEFENDERS OFFICE  
1905 DUKE STREET  
BEAUFORT, SOUTH CAROLINA 29902  
TELEPHONE 843-255-5805

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## EXHIBITS

No exhibits were admitted.

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4-8-14 STATE V REARICK

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1 BEGINNING 11:25 A.M.

2 BY THE COURT:

3 MS. MUSSER: State calls Brian Rearick. Your  
4 Honor, if way may next address Brian Rearick. It's  
5 Indictment 2010-01469. We're here today on the  
6 defendant's motion to bar prosecution.

7 THE COURT: Okay. Ms. Carroway?

8 MS. CARROWAY: Thank you, your Honor. Your Honor,  
9 as the State said, this is my request for an order  
10 barring prosecution in this case. We believe that  
11 double jeopardy has attached, because the Court declared  
12 a mistrial back in January, over my objection, and  
13 without the State ever requesting one. We believe there  
14 was no manifest necessity for the mistrial, and because  
15 of that, the controlling case law indicates that double  
16 jeopardy has attached. And what I'm relying on in this  
17 case, your Honor, is *State v. Prince*.

18 The tests under *State v. Prince* for determining if  
19 double jeopardy has attached is whether the mistrial was  
20 declared out of manifest necessity. Your Honor, we  
21 believe, in this case, that there was nothing preventing  
22 the Court from ruling on the number of outstanding  
23 dispositive pretrial motions that we have, or from  
24 ruling as a trier of facts on the case itself. And for  
25 that reason, we do believe jeopardy has attached, and

## 4-8-14 STATE V REARICK

1 would ask the Court to grant us an order barring the  
2 State from prosecuting this case again.

3 And your Honor, just -- I think, just briefly, I  
4 wanted to respond, if you don't mind, for the record, to  
5 a couple of things that the Solicitor wrote in response  
6 to our motion.

7 THE COURT: Okay. I think we're going to let her  
8 go ahead and argue first.

9 MS. CARROWAY: Okay. Sure. That's fine.

10 THE COURT: Put it on the record, and then you can  
11 certainly respond to that problem.

12 MS. MUSSER: Thank you, your Honor. Certainly, the  
13 State agrees with the test that whether there was a  
14 manifest necessity for the Court declaring the mistrial,  
15 and whether or not the public interest was served. And  
16 as your Honor recalls, you clearly, on the record,  
17 stated what options the Court had at that time, due to  
18 the potential discovery issues.

19 You outlined whether or not a continuance was  
20 appropriate, whether a dismissal was appropriate, and  
21 ultimately, whether declaring a mistrial was  
22 appropriate. You had indicated on the record that a  
23 continuance was not appropriate for several reasons.  
24 One, that the trial has already commenced; two, that  
25 Defense counsel had not been given sufficient time to

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4-8-14 STATE V REARICK

---

1 review the new information, that the opportunity for the  
2 Defense to cross-examine the witnesses that had already  
3 testified --

4 THE COURT: Based on the new information couldn't  
5 be found.

6 MS. MUSSER: -- based on the new information had  
7 been lost. That there was not adequate time to locate  
8 some of the additional sheriff deputies that were not  
9 present. And most importantly, that the defendant's  
10 election to proceed with a non-jury trial may have been  
11 different had he known about the newly-provided  
12 information.

13 So, for that reason, you indicated that a  
14 continuance was not appropriate. So, that left the  
15 Court with two choices: to either dismiss the case or  
16 to declare the mistrial. With respect to the dismissal  
17 of the charges in that request from Defense counsel, you  
18 indicated that that was not appropriate, given the  
19 evidence that had been presented and the fact that it  
20 was serious charges; and that the victim had, in fact,  
21 passed away in this case; therefore, the public interest  
22 would not be served by dismissing the case.

23 So, that only left the Court with one other option,  
24 which was to declare a mistrial. The State's argument  
25 is that, since there were not other viable options but

## 4-8-14 STATE V REARICK

1 for declaring a mistrial, that is inherently the meeting  
2 of a manifest necessity. The Courts have said that a  
3 manifest necessity is easy to state, but there's not a  
4 mechanical application for that.

5 In *Prince*, and the facts of this case can be  
6 clearly distinguished from *Prince*, where the trial court  
7 in *Prince* just dismissed the jury because it was late in  
8 the day and declared a mistrial, when there are other  
9 viable options available to that court. Here, you  
10 didn't have any other options.

11 The Court furthermore went on to state in *Prince*  
12 that:

13 *In borderline cases, it's the inclination*  
14 *of the appellate courts to sustain the judge*  
15 *in exercise of his or her discretion.*

16 So, as a result of that, the State is requesting  
17 that your Honor deny the defendant's motion to bar  
18 prosecution and find that double jeopardy did not  
19 attach.

20 THE COURT: Ms. Carroway. Go ahead and respond,  
21 please.

22 MS. CARROWAY: Thank you, your Honor. Just  
23 briefly, we obviously believe that there were other  
24 viable options. Like I said, there were a number of  
25 dispositive pretrial motions that I believe would have

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4-8-14 STATE V REARICK

---

1       cured the situation, as well as ruling on the facts as a  
2       whole.

3               Your Honor, the State's characterization of the  
4       potential discovery issue is a little unnerving to me.  
5       This was a huge discovery issue, and I maintain and  
6       still believe that a mistrial doesn't put me in a much  
7       different situation than a continuance would, in that,  
8       there is discovery that was lost that I cannot get back.  
9       There are officers that I cannot cross-examine because  
10      it's four years later. If I had known about them four  
11      years ago, the incident would have been in their memory,  
12      so to speak, and I would have been able to speak with  
13      them about it. But four years later, how many stops has  
14      Beaufort County Sheriff road deputies been on since  
15      then? He's not, I don't believe, going to be -- none of  
16      them, I don't believe, will be able to indicate or  
17      provide me with a lot of information.

18             In addition to that, one thing I do want to  
19      indicate is -- or wanted to discuss was that the State's  
20      response to my motion indicates that there was a  
21      potential video based on Summers' testimony. And I know  
22      that Ms. Musser wasn't the actual trial attorney on the  
23      case, but if your Honor will recall, there was a video.  
24      Summers didn't question whether or not there was a  
25      video. In fact, he prepared an affidavit saying that

## 4-8-14 STATE V REARICK

1 there was a video, but that he didn't put it in evidence  
2 because it didn't comply with 2953, and he didn't think  
3 it was relevant.

4 However, under my cross-examination, he indicated  
5 that he had a conversation with my client that was  
6 captured on this video. The video was destroyed.  
7 Under 2953, Section (c), it says you can't destroy the  
8 videos. So, that's a violation of 2953, which my remedy  
9 is a dismissal.

10 My point here is that there are a number of  
11 outstanding issues that could have been ruled on that  
12 would have prevented the mistrial from being granted,  
13 and I don't believe that my client is in any better  
14 posture because of the mistrial, but possibly a worse  
15 posture, because the State has now has a second bite at  
16 the apple, so to speak.

17 Your Honor, the other, just briefly, because I  
18 wanted to -- I'm not sure how clear the record was from  
19 back in January on this. As Ms. Musser indicates in her  
20 response that she lists all the documentation that I  
21 received from Angie Tanner, and I don't dispute that. I  
22 have all of those in my notebook, as well. What I am  
23 disputing, though, is that the MAIT report that I  
24 received lacked approximately 50 pages, if you'll recall  
25 from the trial, of notes and other information regarding

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1 the two vehicles involved.

2 And if your Honor will recall, in January, we  
3 actually brought my laptop up to the bar and went  
4 through it to see what all was on the disc. Your Honor  
5 was there. Mr. Adam Russo was also standing right there  
6 looking at the disc that Angie provided to me in  
7 November.

8 And your Honor, I just want that to be clear,  
9 because I'm not sure how much of that was captured on  
10 the record, because we were scrolling through a laptop.  
11 I don't know that I -- I do want the record to reflect  
12 that your Honor found -- your Honor actually saw with  
13 her own two eyes the disc that I had been provided, and  
14 that, in fact, here's the MAIT report that I have, and  
15 that, yes, it is, in fact missing 50-plus pages. And I  
16 just wanted to make sure that was clear, because I feel  
17 like the State's response to my motion left that a  
18 little ambiguous.

19 THE COURT: All right. Anything else? No? All  
20 right. Well, I'm going to take it under advisement, and  
21 I'll issue an order.

22 MS. CARROWAY: Thank you, your Honor.

23 MS. MUSSER: Thank you.

24 THE COURT: Thank you, sir. Thank you.

END PROCEEDING 11:45 A.M.

4-8-14 STATE V REARICK

CERTIFICATE OF REPORTER

APRIL 8, 2014 HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 8, 2014 Hearing is a true, accurate, and complete record of the proceedings had on said date in the case of State versus Bryan Rearick, Beaufort County, South Carolina, Court of General Sessions, Case Number 2010-GS-07-01469; that no exhibits were admitted.

I further certify that I am of neither kin, counsel, nor interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature August 11, 2014.

  
Wanda H. Rowe, CVR-M  
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

STATE OF SOUTH CAROLINA )

vs. )

BRYAN REARICK,  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
FOURTEENTH JUDICIAL CIRCUIT  
INDICTMENT NO.: 2010-GS-07-1469

**RECEIVED**

AUG 06 2014

Order Denying Defendant's Motion to Bar  
Prosecution

**SC Court of Appeals**

NOW COMES BEFORE THE COURT Defendant's Motion to Bar Prosecution, heard April 8, 2014. Present on behalf of Defendant Bryan Rearick was Lauren Carroway, Esq., of the Beaufort County Public Defender's Office. Present on behalf of the State was Assistant Solicitor Lynorr Musser. The instant motion arises out of a bench trial which began Thursday, January 30, 2014, was continued to February 4, 2014, and ended in a mistrial.

#### BACKGROUND

The incident leading to the prosecution at issue occurred on May 30, 2010, at which time it is alleged that the Defendant left a drinking establishment on Hilton Head Island and was driving West on Route 278 when he entered the wrong lane of travel while making a left-hand turn, struck another vehicle and caused a head-on collision. The victim died as a result of the injuries sustained. The Defendant was indicted for Driving Under the Influence, Death Results pursuant to S.C. Code Ann. § 56-05-2945(A)(2) on July 22, 2010.

Upon the agreement of counsel and waiver by the Defendant, the case was called for a bench trial before me on January 30, 2014. Testimony and oral argument commenced related to several pre-trial motions as well as the trial. After testimony from the State's MAIT expert, Ben Ashe, Ms. Carroway advised the Court that Mr. Ashe had referred to a page in his report that she did not receive in her discovery.

1

The State's trial attorney, Assistant Solicitor Adam Russo, advised the Court that former Deputy Solicitor Angela McCall-Tanner had turned over discovery to Ms. Carroway and had documented the file by way of copies of correspondence to Ms. Carroway. The file contained four (4) letters to Ms. Carroway dated July 6, 2010, August 31, 2010, November 1, 2010, and November 15, 2010. The letter dated November 1, 2010, specifically indicates that a CD containing the complete MAIT file was being provided to Ms. Carroway.

Additionally, the State called lead investigator Trooper Summers to testify regarding the Defendant's Pre-Trial Motion to Dismiss for Failure to Comply with § 56-5-2953 and § 56-5-2950 as well as its case-in-chief. Trooper Summers' testimony raised additional questions regarding whether all discoverable information had been made available to Ms. Carroway. Specifically, Trooper Summers' testimony included the names of Beaufort County Sheriff Deputies that were present at the time he arrived at the accident scene as well as the potential existence of video taken from his patrol vehicle. The fact that Trooper Summers had previously prepared an Affidavit with respect to the lack of video confounded the issue of whether video presently exists or existed in the past but was not preserved.

As this potential problem with discovery arose, the Court recessed and scheduled the trial to resume the following Tuesday, directing Assistant Solicitor Russo to either locate the outstanding evidence or obtain affidavits from the South Carolina Highway Patrol and Beaufort County Sheriff's Office stating that said evidence does not exist and scheduled a meeting with them on Monday, February 3, to confirm that this discrepancy in discovery had been resolved in the manner prescribed.

At that meeting, Mr. Russo provided affidavits stating that video in this case did not exist; however, he had received a CAD report and one page Incident Report from the Beaufort

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County Sheriff's Office which indicated that several additional previously unidentified Sheriff Deputies were present at the accident site.

At the time the trial was scheduled to resume, the undersigned declared a mistrial, making a finding that although there had been some documents that were not turned over to defense counsel, there was no prosecutorial misconduct. Five separate Assistant Solicitors had dealt with the file in the three and a half years from in the case's inception. In support of its ruling, the Court outlined the options currently before it: (1) continuing the trial to give defense counsel additional time to prepare in light of the recently obtained information, (2) dismissing the case or (3) declaring a mistrial. A mistrial was declared over the Defendant's objection for reasons discussed herein.

#### LEGAL STANDARD

In a bench trial, jeopardy attaches when the court begins to hear evidence. *Serfass v. U.S.*, 420 U.S. 377, 388 (1975). The principles of double jeopardy bar a subsequent prosecution following an improvidently granted mistrial. *State v. Rowlands*, 343 S.C. 454, 458, 539 S.E.2d 717, 718 (Ct. App. 2000).

A mistrial is not improvidently granted so long as the declaration of a mistrial is "dictated by manifest necessity of the ends of public justice, the latter being defined as the public's interest in a fair trial designated to end in just judgment." *State v. Baum*, 355 S.C. 209, 214, 584 S.E.2d 419, 422 (Ct. App. 2003) (quoting *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983)). "Manifest necessity is not a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge." *Id.* The word 'necessity' is not to be interpreted literally, and "there need only be a 'high degree' of necessity in order to conclude that a mistrial



is appropriate under the circumstances." *Id.* (quoting *Arizona v. Washington*, 434 U.S. 497, 505-06 (1978)).

"The 'manifest necessity' rule is easy to state but sometimes difficult to apply. In borderline cases, it is the inclination of appellate courts to sustain the judge in the exercise of his discretion." *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 473 (1983). "The power of the court to declare a mistrial ought to be used with the greatest of caution and for plain and obvious causes stated into the record by the judge." *Id.* at 33, 301 S.E.2d at 472. Further, "manifest necessity stands as a command to trial judges not to foreclose the defendant's option until a scrupulous exercise of judicial discretion leads to the conclusion that the ends of public justice would not be served by a continuation of the proceedings." *State v. Kirby*, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977) (quoting *U.S. v. Jorn*, 400 U.S. 470, 485 (1971)).

#### DISCUSSION

The declaration of a mistrial was warranted and supported by the facts contained in the record. Discovery issues became clear throughout the proceedings and continued on the day that the bench trial was set to resume. Five different Assistant Solicitors had handled the file over a three and a half year period between indictment and trial. Each available outcome was considered in the light most favorable to the Defendant to determine what, if any, prejudice the Defendant might suffer under each scenario.

A continuance was not appropriate because the trial had already commenced, defense counsel had not been given sufficient time to review the new information on her own or with an expert, the opportunity for the defense to cross-examine witnesses had been lost, and the defense did not have time to locate the additional Sheriff's deputies. Additionally and of added import,



the Defendant's election to waive his right to a jury trial may have been different had he known about the evidence that was not previously produced.

Dismissing the case as requested by the Defendant is not in the public interest given the nature of the charge. The public interest in a felony driving under the influence case where the victim has died as a direct result of injuries sustained in the collision is great, and the Defendant is entitled to a just result and an opportunity to fully prepare a defense to the case against him. Dismissal of the charge was also not appropriate due to the evidence presented by the State at the time the mistrial was declared.

After full consideration of the options available to the Court, I do find in the exercise of judicial discretion that there does exist a high degree of necessity to declare a mistrial in the instant circumstance. Late-appearing discovery prejudices the Defendant's ability to adequately prepare for the trial that was already underway. Further, the nature of that discovery may lead to the Defendant's altering his decision to agree to a bench trial.

#### CONCLUSION

Given the foregoing reasons, it is hereby ORDERED, ADJUDGED, AND DECREED THAT the Defendant's Motion to Bar Prosecution is DENIED because of the granting of a mistrial out of manifest necessity. As such, double jeopardy has not attached and the State is not barred from prosecution.

AND IT IS SO ORDERED.



Carmen Mullen  
Fourteenth Judicial Circuit

June 24, 2014  
Beaufort, South Carolina



# The Supreme Court of South Carolina

The State, Respondent,

v.

Bryan Rearick, Appellant.

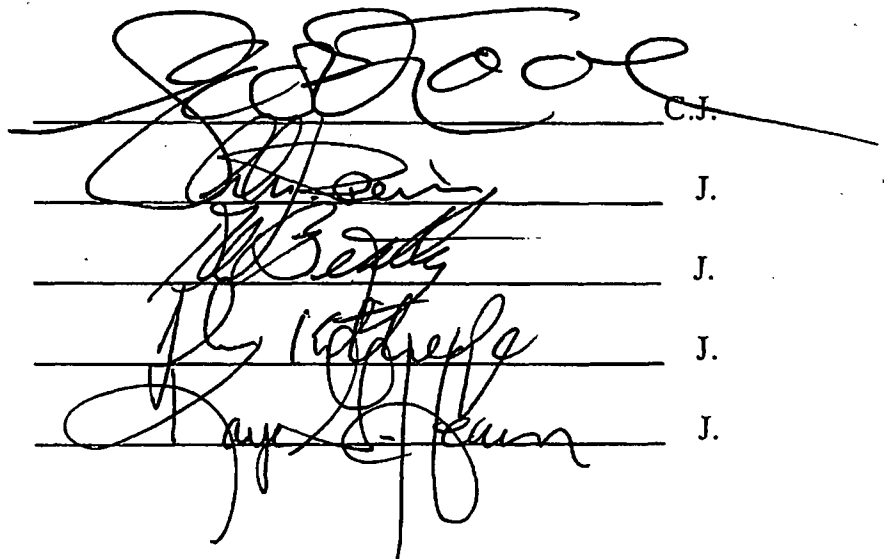
Appellate Case No. 2014-001692

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## ORDER

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The State moves to dismiss this appeal. Appellant opposes the motion. The motion is denied. However, the parties shall argue the issue of appealability in their briefs. Appellant's initial brief on file with this Court is hereby stricken and appellant shall, within thirty days of the date of this order, serve and file an amended initial brief raising the issue included in his first initial brief, along with the issue of appealability.



C.J.  
J.  
J.  
J.  
J.

Columbia, South Carolina

October 8, 2015

cc:

Alan McCrory Wilson, Esquire  
Robert Michael Dudek, Esquire  
Deborah R.J. Shupe, Esquire

**WITNESSES**

Summers - SCHP

**ARREST WARRANT NUMBER**

M056267

**ACTION OF GRAND JURY**

**True Bill**

*B. M. Mathis*  
Foreperson of Grand Jury  
Date: JUL 22 2010

**VERDICT**

Foreperson of Petit Jury  
Date:

INDICT

DOCKET NO. 2010GS0701469

**The State of South Carolina**

**County of Beaufort**

**COURT OF GENERAL SESSIONS**

**July Term 2010**

**THE STATE**

**vs.**

**Bryan Rearick**

**Indictment for**

**DUI / Felony driving under the influence, death results**

SC Code: 56-05-2945(A)(2)  
CDR Code:0395

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I \_\_\_\_\_  
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

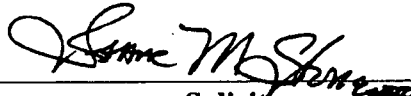
INDICTMENT  
2010GS0701469

At a Court of General Sessions, convened on July 22, 2010, the Grand Jurors of Beaufort County present upon their oath:

**DUI / Felony driving under the influence, death results**

That in Beaufort County, South Carolina, on or about May 30, 2010, while driving a vehicle under the influence of alcohol, drugs or both alcohol and drugs, the Defendant, Bryan Rearick did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle; to wit: defendant crossed the center line and drove into on-coming traffic; and such act proximately caused death to William Marcelino-Vallejos; all in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976, as amended).

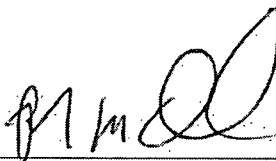
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
Solicitor

## 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."

April 18<sup>th</sup>, 2016



Robert M. Dudek  
Chief 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