

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable R. Knox McMahon, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

Respondent/Petitioner,

THE STATE,

vs.

ANDRA BYRON JAMISON,

Petitioner/Respondent.

**RETURN TO PETITIONER/RESPONDENT'S
PETITION FOR WRIT OF CERTIORARI**

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STATEMENT OF ISSUE ON CERTIORARI

The Court of Appeals properly determined any error resulting from the admission of the State's blood test results was harmless because the other evidence presented during trial conclusively established Jamison's guilt for the offense of felony driving under the influence resulting in a death.

STATEMENT OF THE CASE

Procedural History

Petitioner/Respondent Andra Byron Jamison was arrested following an investigation into a vehicle and bicycle collision resulting in a fatality. In January of 2009, the Lexington County grand jury indicted Jamison for one count of felony driving under the influence resulting in a death. On October 12, 2009, a jury trial was commenced in the Lexington County court of general sessions with the Honorable R. Knox McMahan, circuit court judge, presiding. At the conclusion of trial, the jury convicted Jamison as indicted. The trial judge sentenced Jamison to a term of imprisonment of eighteen years and a \$10,000 fine. Jamison then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals unanimously affirmed Jamison's conviction. State v. Jamison, Op. No. 2012-UP-58 (S.C. Ct. App. filed Feb. 1, 2012). Both Jamison and the State petitioned the Court of Appeals for rehearing, and the petitions were denied. Following the Court of Appeals' decision, both the State and Jamison filed petitions for a writ of certiorari in the Supreme Court. The State then filed this return to Jamison's petition.

Factual History

Late on the evening of July 31, 2008, Shonda Cheeks was driving across the Blossom Street Bridge on her way home to West Columbia when she observed a vehicle on the other side of the road hit something. (R. pp. 646-648). Cheeks saw the vehicle veer to the right and drift outside of its lane of travel.¹ (R. pp. 648-650). Cheeks then

¹ During trial, Cheeks testified she was "positive" Petitioner/Respondent Andra Byron Jamison's vehicle drifted to the right and was not in its own lane of travel. (R. pp. 649-650).

observed someone in the roadway and realized the vehicle struck a person. (R. pp. 650-651).

Shortly thereafter, Todd Fitzgerald was driving down Knox Abbott Drive while returning to his apartment in Columbia. (R. p. 634). As he approached the Blossom Street Bridge, he noticed a shoe, then a bicycle, and then a person lying in the roadway. (R. p. 634). He immediately stopped his vehicle to attempt to offer assistance. (R. p. 634). Several other vehicles also stopped to help, and one of those individuals called 911. (R. p. 635). Fitzgerald surveyed the scene to see if there were any other vehicles or witnesses in the vicinity and observed a vehicle stopped fifty yards down the bridge with its passenger tires resting on the sidewalk. (R. p. 635; p. 644). Petitioner/Respondent Andra Byron Jamison was outside of the stopped vehicle and appeared to be checking the front passenger side for damage. (R. p. 635; pp. 637-638).

Fitzgerald approached Jamison and asked him if he hit the victim lying in the roadway. (R. p. 635). Jamison responded, "Who?" (R. pp. 635-636). Fitzgerald pointed towards the victim, and Jamison asked, "Did I hit him?" (R. pp. 636-637). Fitzgerald noted Jamison was very disoriented and appeared intoxicated. (R. p. 637). Jamison appeared confused, smelled of alcohol, was staggering, and had glassy eyes. (R. p. 637). Fitzgerald believed Jamison was too intoxicated to tell what happened, and he directed law enforcement to Jamison after they arrived on the scene. (R. p. 638).

Officer Michael Stone of the Cayce Police Department was on patrol around 11:25 p.m. when he noticed traffic backing up on the Blossom Street Bridge. (R. p. 123; pp. 126-127). As he approached the scene, he observed a person lying in the roadway with a large quantity of blood coming from his head. (R. pp. 127-128). Officer Stone then cleared the crowd and radioed in for assistance. (R. p. 128). Several other officers

and medical personnel arrived on the scene within minutes. (R. p. 128; p. 530). Officer Stone discovered Jamison was the driver of the vehicle that struck the victim, who was later identified as nineteen-year-old Jesse Gamble. (R. p. 128; p. 185; p. 198). Officer Stone then approached Jamison and asked him what occurred. (R. p. 128). Jamison responded he did not know what happened and did not mean to hurt anyone. (R. p. 128). Officer Stone noticed Jamison was unsteady on his feet, was slurring his speech, and had the smell of alcohol on his breath and about his person. (R. pp. 129-130). He then placed Jamison under investigative detention. (R. p. 130).

Meanwhile, paramedics Barrett Raymond and Daniel Boyce responded to the scene of the collision. (R. p. 530; p. 541). They observed Gamble lying in the roadway and attended to him. (R. p. 530; p. 541). Gamble was unresponsive, had a broken leg, and his pupils were fixed, but he was breathing and had a pulse. (R. pp. 531-532). Boyce also checked on Jamison, who was sitting on the curb in a sulking position, and spoke with him to gather information about the collision. (R. pp. 542-543). As he spoke with Jamison, Boyce noticed Jamison appeared intoxicated and smelled of alcohol. (R. p. 544). Boyce had difficulty understanding Jamison because Jamison's speech was slurred, but Boyce heard Jamison state he thought he hit a garbage can. (R. p. 543). The paramedics then quickly transported Gamble to the hospital. (R. p. 533; p. 545).

Officer Adam Smith and Detective John Reese also responded to the scene. (R. p. 215; pp. 319-320). Officer Smith observed Gamble in the roadway with very severe injuries. (R. pp. 216-217). While on the scene, he heard Jamison ask several witnesses if he hurt someone or did something wrong. (R. p. 220). Officer Smith noticed Jamison's vehicle was damaged, his speech was slurred, he had a strong odor of alcohol on his breath and person, and he was unsteady on his feet. (R. p. 224). Detective Reese

observed Gamble, bicycle parts, a shoe, and a sock lying in the roadway. (R. pp. 319-321). He inspected Jamison's van, which was located farther down the bridge, and noticed significant damage. (R. p. 323). The hood of the vehicle was dented in, the windshield was cracked and damaged, a front lens was damaged, and there was a long scratch on the passenger side.² (R. pp. 323-324). He also discovered Gamble's bicycle was severely damaged, and he found a sock, a shoe, and some hair in the roadway. (R. pp. 324-325). While examining Jamison's vehicle, Detective Reese located a Killian's Red beer bottle underneath the van next to a tire.³ (R. p. 362; p. 369). Inside of the vehicle, Detective Reese found two twelve-packs of Killian's Red beer, with one package open and missing several bottles. (R. pp. 371-372).

Sergeant Robert Marzol arrived on the scene and spoke to Jamison with Officer Stone. (R. p. 131; p. 244; p. 253). Sergeant Marzol informed Jamison of his rights. (R. p. 131; p. 134; pp. 253-254; p. 258). He noticed Jamison was calm, was unsteady on his feet, and smelled strongly of alcohol. (R. p. 257). Sergeant Marzol offered Jamison an opportunity to perform field sobriety tests, and Jamison refused, stating he would not do anything without speaking to an attorney.⁴ (R. p. 131; p. 134; pp. 256-257). Jamison was then arrested and transported to the Cayce Police Department. (R. p. 135; pp. 257-259).

On the way to the police department, Jamison stated he did not know what was going on and did not mean to hurt anyone, and he asked why he was under arrest. (R. p. 135). Once they arrived, Jamison was taken to the breathalyzer testing room, and Sergeant Marzol began administering the test around 12:30 a.m. (R. p. 136; pp. 264-

² The damage suggested Gamble's head may have been knocked into the windshield. (R. p. 323).

³ The beer bottle found underneath Jamison's van had moisture on it. (R. p. 373).

⁴ The officers recorded their interaction with Appellant using the in-dash camera from another officer's vehicle, and the recording was introduced during the trial. (R. p. 134; p. 223; State's Ex. #49).

265). He informed Jamison of his rights, entered his information into the testing machine, and reviewed an implied consent form with Jamison. (R. p. 137; p. 265). Relying on the implied consent form, Sergeant Marzol informed Jamison he was required to submit to some form of chemical testing, his refusal or obstruction of testing could be used against him, and he had “the right to have a qualified person of [his] own choosing to conduct additional independent tests at [his] own expense, and the officer upon request must provide affirmative assistance.” (R. pp. 267-268). Jamison then refused to sign the implied consent form, insisting he did not know what was going on and wanted an attorney. (R. p. 137; pp. 268). The officers then observed Jamison for the statutorily-required period of twenty minutes before allowing him an opportunity to blow into the breathalyzer testing machine. (R. p. 137; p. 274). During this period, Jamison continued to slur his speech, smelled of alcohol, and was unsteady while walking or standing. (R. p. 270). After the observation period expired, Jamison continued to state he did not know what was going on and did not take the breathalyzer test.⁵ (R. pp. 138-139). The testing machine registered a refusal after two minutes, and Jamison refused to sign the refusal ticket. (R. p. 139; pp. 274-276; p. 755).

Jamison was then transported to Lexington Medical Center for the drawing of blood samples, and they arrived around 1:30 a.m. (R. pp. 142-143; pp. 277-278). The officers directed a doctor to withdraw blood samples from Jamison, and two vials of Jamison’s blood were drawn by a phlebotomist. (R. pp. 143-144; p. 278; p. 387). The phlebotomist explained to Jamison and the officers he was going to draw two vials and give one to the officers and one to Jamison for his own personal testing. (R. p. 387). The

⁵ The observation period was recorded, and the recording was introduced during trial. (R. pp. 264-265; State’s Ex. #50).

vials were properly drawn, sealed, and labeled. (R. p. 390). The officers took one sample into evidence, and Officer Stone placed the other sample into Jamison's shirt pocket. (R. pp. 145-146; pp. 278-279).

Jamison was then transported to the Lexington County Detention Center. (R. p. 146). A corrections officer booked Jamison into the jail, and Officer Stone then transported the vial of blood taken into evidence to the police department. (R. pp. 146-147). Records at the detention center indicated the other blood sample, which had been given to Jamison, was collected by a nurse and placed in a locked refrigerator. (R. pp. 421-422). However, Jamison's booking sheet did not indicate a blood sample was taken from him, and the blood sample was subsequently lost. (R. p. 422; p. 430).

Meanwhile, Gamble was transported to Palmetto Richland Hospital and admitted shortly after midnight. (R. p. 185). Dr. Raymond Sweet, a neurosurgeon at the University of South Carolina School of Medicine, examined Gamble and discovered he was in a deep coma with a severe brain injury and spinal fractures. (R. p. 185; pp. 186-188). Due to the severity and extensiveness of the injuries, there were no available treatment options. (R. p. 190). Gamble was pronounced brain dead at 3:20 p.m. on August 1, 2008. (R. p. 193). Dr. Sweet determined the cause of death was severe traumatic blunt injury to the brain. (R. p. 193).

Subsequently, Sergeant Steven Breland and Corporal Charles Coats, who were members of the South Carolina Highway Patrol collision reconstruction team and experts in accident reconstruction, investigated the scene of the collision. (R. p. 552; p. 558; p. 561; p. 601; p. 607; p. 609). They discovered tire scuff marks on the curb and noted the damage to Gamble's bicycle indicated a significant impact. (R. pp. 571-572; p. 576). They also discovered red paint on the bumper of Jamison's van, which was consistent

with the red paint on the bicycle, and scuff marks on the front tire consistent with the scuff marks on the curb. (R. p. 412; p. 577; p. 580). Sergeant Breland concluded Jamison's van struck Gamble in the bicycle lane on Knox Abbott Drive and continued travelling on before running into the curb, leaving scuff marks. (R. p. 579). He noted Gamble was discovered approximately 164 feet from the point of impact, and his bicycle was located 150 feet from the point of impact. (R. p. 596). The officers noted the road was clear and straight with no visibility obstructions, and the posted speed limit was thirty-five miles per hour. (R. p. 581; p. 685). Corporal Coats estimated Jamison's speed was between forty-seven and fifty-seven miles per hour at the time of the collision. (R. pp. 621-622). Based on Gamble's location, he concluded Gamble was either thrown to that position or carried there by Jamison's van. (R. p. 624).

Subsequently, Jamison was indicted for felony driving under the influence resulting in a death, and he proceeded to trial. (R. pp. 764-765). Prior to trial, Jamison moved to suppress the admission of the test results from the blood alcohol concentration analysis, and the trial judge conducted a pre-trial hearing on Jamison's motion. (R. pp. 12-14). At the conclusion of the hearing, Jamison argued the blood test results should be suppressed because he was denied affirmative assistance in acquiring independent testing and was denied an opportunity to obtain testing when the jail staff lost his blood sample. (R. pp. 88-96). After hearing argument from both sides, the trial judge denied the motion. (R. pp. 103-105).

Subsequently, during trial, the officers and multiple witnesses testified regarding the circumstances of the incident, the condition Jamison was in at the time, and Jamison's refusal to submit to field sobriety tests or a breathalyzer test. Additionally, Brandon Landrum, an analyst at S.L.E.D. and an expert in forensic toxicology, testified regarding

his analysis of Jamison's blood sample over Jamison's objection. (R. p. 473; p. 481; pp. 486-487). Landrum indicated he performed a blood alcohol analysis on Jamison's blood specimen. (R. p. 488). The testing revealed Jamison's blood sample had a 0.225 percent weight per volume of ethanol. (R. p. 491). Landrum testified an average male would be required to drink approximately ten beers in an hour to reach the level of blood alcohol concentration present in Jamison's blood sample. (R. p. 495). He further stated Jamison would have experienced significant impairment based on those results. (R. pp. 496-497).

At the conclusion of trial, the jury convicted Jamison as indicted. (R. p. 739).

During sentencing, Jamison apologized to Gamble's family, stating:

I would never, ever intentionally hurt anyone, and I am so sorry for what happened that night. . . . I have a son as well, and I don't know what I would do if a travesty or tragedy ever happened like that night. . . . There is nothing I can do, but you better believe if there is one thing I could change in this world with my life it would be that night. I have – I'm sorry.

(R. p. 742). The trial judge then sentenced Jamison to an eighteen-year term of imprisonment along with a \$10,000 fine. (R. p. 745). Jamison subsequently appealed his conviction.

On appeal, the Court of Appeals affirmed Jamison's conviction. State v. Jamison, Op. No. 2012-UP-58 (S.C. Ct. App. filed Feb. 1, 2012). In reaching that decision, the Court of Appeals held: "[T]he State denied Jamison a reasonable opportunity to obtain testing of his own blood sample, and therefore the trial court erred in admitting the results of testing the State performed on its sample of Jamison's blood." Id. However, the Court of Appeals concluded any error was harmless based on the other evidence presented conclusively establishing Jamison's guilt and affirmed Jamison's conviction on that basis. Id.

ARGUMENT

The Court of Appeals properly determined any error resulting from the admission of the State's blood test results was harmless because the other evidence presented during trial conclusively established Jamison's guilt for the offense of felony driving under the influence resulting in a death.

Jamison contends the Court of Appeals erred in finding any error in the admission of the State's blood tests results was harmless. Jamison maintains the other evidence presented during trial did not conclusively establish he was under the influence of alcohol at the time of the fatal collision. To the contrary, the evidence and testimony presented during trial other than the State's blood test results conclusively established Jamison's guilt for each element of felony driving under the influence resulting in a death, including that Jamison was operating a motor vehicle under the influence of alcohol when he struck the victim. Thus, the testimony and evidence presented during trial, which included testimony of multiple witnesses on Jamison's impaired condition and demeanor, testimony on Jamison's refusal to submit to field sobriety tests or a breathalyzer test, testimony regarding the circumstances of the collision, and testimony regarding the discovery of beer bottles both inside and outside of Jamison's vehicle, rendered any error in the admission of the State's blood test results entirely harmless. The Court of Appeals properly affirmed Jamison's conviction, and Jamison's petition for a writ of certiorari should be denied.

After an error is discovered, the appellate court must then determine whether the error was harmless. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result.

State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”). In order to evaluate the materiality of an error, an appellate court must review the other evidence considered at trial besides the erroneously-admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

Pursuant to S.C. Code Ann. § 56-5-2945(A), “[a] person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony driving under the influence[.]” Thus, in order for a jury to convict a defendant of felony driving under the influence resulting in a death, the jury must determine the defendant: (1) drove a vehicle while under the influence of alcohol, drugs, or both; (2) committed an unlawful act or neglected a lawful duty; and (3) caused the death of another as a result of the act or neglect. State v. Dantonio, 376 S.C. 594, 604, 658 S.E.2d 337, 342 (Ct. App. 2008).

In the case sub judice, the trial judge properly admitted the test results demonstrating Jamison's exceedingly high level of blood alcohol concentration following the fatal collision. See State v. Wickenhauser, 309 S.C. 377, 380, 423 S.E.2d 344, 346 (1992) (finding the subsequent loss of a suspect's blood sample at a detention center did not require suppression of the State's test results of another blood sample but, instead, created a question of fact for the jury to resolve regarding whether the loss of the suspect's blood sample by law enforcement personnel negated the suspect's reasonable opportunity to obtain independent testing); see also City of Columbia v. Ervin, 330 S.C. 516, 521, 500 S.E.2d 483, 486 (1998) ("By transporting Ervin to [Richland Memorial Hospital], the arresting officer providing Ervin with more reasonable assistance than required since Ervin had refused to take the datamaster test."). However, even assuming the trial judge erred in admitting the results of the testing of Jamison's blood sample, any error was harmless in the light of the other overwhelming evidence of intoxication conclusively establishing Jamison's guilt.⁶

During trial, multiple witnesses, including law enforcement officers, random bystanders, and paramedics, testified Jamison was confused, slurred his speech, smelled of alcohol, was unsteady on his feet, and appeared intoxicated following the collision. Notably, directly after the collision, a witness observed Jamison checking his vehicle for damage fifty yards down the bridge from the fatally-injured victim's location in the roadway. When questioned about whether he hit the victim, Jamison was confused and disoriented and seemed not to understand what had occurred. Thereafter, Jamison

⁶ In denying Jamison's motion for a directed verdict, the trial judge listed and summed up the extensive evidence presented during trial demonstrating Jamison's guilt. (R. pp. 665-669).

repeatedly commented he did not intend to hit anyone and did not know what was going on, and Jamison informed a paramedic he believed he hit a garbage can.⁷

In addition to the witnesses' testimony regarding Jamison's condition and demeanor following the collision, officers inspected Jamison's damaged van at the scene. When they did so, they discovered significant damage to the hood and windshield of the van and found the van parked with its passenger side tires resting on the sidewalk instead of on the roadway. Most significantly, officers discovered a still-moist bottle of Killian's Red Beer that someone had been drinking hidden behind a tire underneath Jamison's van. Inside the van, they discovered two packages of the same brand of beer with several bottles missing from the packages.

Furthermore, officers asked Jamison to perform field sobriety tests at the scene of the collision. However, Jamison refused to perform the field sobriety tests. Thereafter, Jamison was transported to the police department for breathalyzer testing. While awaiting the testing, Jamison continued to exhibit the signs of impairment he displayed at the scene of the collision along with belligerent behavior towards the officers in the testing room.⁸ Jamison then also refused to submit to a breathalyzer test. See State v.

⁷ The paramedic noted Jamison was barely comprehensible because Jamison was slurring his speech. (R. p. 543).

⁸ Throughout the twenty-minute waiting period before the breathalyzer test could be taken, Jamison exhibited belligerent behavior towards the officers and appeared confused. At the outset of the waiting period, Jamison stated: "I would never hurt anybody. I don't know if you're trying to trick me into hurting somebody. I would never hurt anybody, and if I hurt anybody tonight, it wasn't on purpose." Additionally, when asked if he had any dentures, Jamison responded: "Not unless I need a lawyer." Thereafter, he repeatedly asked if the waiting period was being recorded, and the officers affirmed it was on several occasions, including at the beginning of the waiting period. Despite the fact the officers informed Jamison the waiting period was being recorded multiple times, he again asked one of the officers if the waiting period was being recorded, and another officer once again affirmed that it was. Jamison responded by telling that officer he was not talking to him before asking the other officer if the waiting period was being recorded several more times. Jamison then stated: "I guess not." Furthermore, Jamison repeatedly insisted he was "really confused" and did not understand anything the officers explained to him, including what having a right to remain silent means. At one point, Jamison asked one of the officers if he did something wrong that night and then appeared to state: "Cause I don't seriously know." At another point, he again

Kerr, 330 S.C. 132, 151-152, 498 S.E.2d 212, 222 (Ct. App. 1998) (“It is well established in this State that one who is arrested for DUI impliedly consents to a breathalyzer test, and that the revocation of that consent is constitutionally admissible as prosecutorial evidence at the trial pursuant to that arrest.”).

Regarding the collision itself, a witness who observed Jamison strike the victim testified Jamison swerved to the right and was unable to maintain his vehicle in his lane of travel. Additionally, experts in accident reconstruction determined the victim was struck by Jamison while riding his bicycle in the bicycle lane and was either thrown or carried a significant distance by the van. The experts further testified they discovered red paint matching the paint from the victim’s bicycle on Jamison’s bumper and tire scuff marks on Jamison’s tire and on the curb. Based on their analysis, they concluded Jamison was going between twelve and twenty-two miles per hour over the speed limit when he struck the victim on a clear, straight road with no visibility obstructions.

Notwithstanding the results of the testing of Jamison’s blood sample, which demonstrated Jamison’s blood alcohol concentration was alarmingly high, the State

insisted he did not understand what was going on, and one of the officers attempted to re-explain the implied consent form to Jamison. Jamison interrupted the officer and insisted he was not very smart. He then accused the officer of not being smart enough to explain it to him. At various points during the waiting period, Jamison raised his voice with the officers. He also repeatedly insisted he had not refused and was not refusing anything. Additionally, he accused the officers of “trickery” and stated to one of the officers: “You really don’t know who you fucking with right now.” He also repeatedly asked the officers for their names, which they provided to him on several occasions. Then, he persisted in asking for the officers’ names even after those names were provided to him and stated he did not trust what was going on because one of the officers would not give him his identification. As the waiting period continued, he repeatedly asked for a lawyer even though he was told he could not yet have one and continued to insist he was not refusing anything. See State v. Degnan, 305 S.C. 369, 371, 409 S.E.2d 346, 348 (1991) (“Although some jurisdictions allow a ‘reasonable attempt’ to consult with counsel, we reject this view. To hold otherwise would interfere with proper administration of the breathalyzer test as required by State v. Parker. Accordingly, we hold that administration of a breathalyzer test is not a critical stage at which an accused is entitled to counsel.” (footnotes omitted)). At the conclusion of the waiting period, one of the officers attempted to explain to Jamison that he had a limited amount of time to take the breathalyzer test. Jamison did not take the test but insisted he was not refusing to do so. After the breathalyzer machine registered Jamison’s refusal and while the officers signed the breathalyzer ticket, Jamison stated “Before you sign, you understand that I’m not anywhere – anyway impaired – my judgment is not impaired.” Thereafter, he would not sign the breathalyzer ticket. (State’s Ex. #50).

presented overwhelming evidence of Jamison's guilt independent of the test results. The other evidence presented during trial, including the testimony of multiple witnesses on Jamison's impaired condition and demeanor, the testimony on Jamison's refusal to submit to field sobriety tests or a breathalyzer test, the testimony regarding the circumstances of the collision, and the testimony regarding the discovery of beer bottles both inside and outside of Jamison's vehicle, overwhelmingly established Jamison was guilty of felony driving under the influence and was responsible for the victim's catastrophic injuries and death. Therefore, any error in the admission of the blood test results was harmless and did not warrant a reversal of Jamison's conviction. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt).

On appeal, Jamison maintains lay witness opinion testimony that a defendant is intoxicated is insufficient to constitute overwhelming evidence of guilt in a driving under the influence case. Specifically, relying on the Supreme Court's decisions in State v. Pipkin, 294 S.C. 336, 364 S.E.2d 464 (1988), and State v. Masters, 308 S.C. 433, 418 S.E.2d 552 (1992), Jamison contends an officer's testimony that the suspect smelled of alcohol, slurred his speech, and failed a field sobriety test is not sufficient to constitute overwhelming evidence of intoxication in light of the fact the defendants' convictions in Pipkins and Masters were reversed on appeal. However, notably, the Supreme Court did not conduct a harmless error analysis in either case, and there is nothing to suggest the State argued the errors in those cases were harmless. See Masters, 308 S.C. at 435, 418 S.E.2d at 553 (reversing Masters' driving under the influence conviction under the "unique facts" of Master's case without addressing the issue of the harmlessness of any

error); Pipkin, 294 S.C. at 338, 364 S.E.2d at 465 (reversing Pipkin's driving under the influence conviction without addressing the issue of the harmlessness of any error).

Accordingly, those cases do not stand for the proposition that an officer's testimony on a suspect's condition cannot constitute overwhelming evidence of intoxication based on the fact neither case actually addressed that particular issue. See Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.' " (citations omitted)).

Regardless, the evidence establishing Jamison was under the influence of alcohol at the time of the fatal collision consisted of much more than lay witness opinion testimony regarding his condition. In addition to the testimony of multiple police officers and other witnesses unaffiliated with law enforcement regarding Jamison's impaired condition, confused demeanor, slurred speech, and incriminating smell, testimony and evidence was presented during trial establishing Jamison was unable to operate his motor vehicle in his lane of travel on a straight road, Jamison was confused and belligerent with law enforcement officers while awaiting a breathalyzer test, Jamison had a still-moist bottle of the same brand of beer found inside his van concealed underneath his van on the middle of a bridge, and Jamison refused to submit to field sobriety tests or a breathalyzer test after he collided with the victim. In light of that overwhelming evidence collectively and conclusively establishing Jamison was under the influence of alcohol at the time he fatally struck the victim, any error in the admission of the State's blood test results was harmless. See Ervin, 330 S.C. at 522, 500 S.E.2d at 486 (finding no prejudice resulted from the admission of Ervin's refusal to submit to a breathalyzer test where testimony was presented establishing Ervin was unsteady on his feet, smelled of alcohol, exhibited

slurred speech, cursed and threatened police officers, and tried to kick the window of a police vehicle); see also State v. Degnan, 305 S.C. 369, 372, 409 S.E.2d 346, 348 (1991) (finding no prejudice resulted from the admission of Degnan's refusal to submit to a breathalyzer test where the other evidence presented during trial established Degnan had a strong odor of alcohol on her breath, had difficulty walking, slurred her speech, and admitted she drank five or six beers); State v. Wilson, 296 S.C. 73, 76, 370 S.E.2d 715, 716 (1988) (finding any error in the admission of blood test results was harmless because it was cumulative to other evidence of Wilson's intoxication, which included properly-admitted breathalyzer test results and testimony that Wilson admitted to drinking a half pint of Vodka).

Furthermore, Jamison contends the evidence of his intoxication cannot be considered overwhelming because the level of a suspect's blood alcohol concentration can determine whether the suspect can be charged with driving with an unlawful alcohol concentration in violation of S.C. Code Ann. § 56-5-2933. However, Jamison was not charged with driving with an unlawful alcohol concentration but, instead, was charged with felony driving under the influence resulting in a death. In order to convict Jamison of felony driving under the influence resulting in a death, the jury was not required to specifically determine the level of Jamison's blood alcohol concentration.⁹ Compare S.C. Code Ann. § 56-5-2933(A) ("It is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one-hundredths of one percent or

⁹ Notably, just as with felony driving under the influence, a jury is not required to specifically determine a defendant's blood alcohol concentration in order to convict the defendant of the offense of driving under the influence. See S.C. Code Ann. §29-5-2930(A) ("It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired.").

more.”) with S.C. Code Ann. § 56-5-2945(A) (“A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony driving under the influence[.]”). Instead, the jury was only required to find Jamison caused the victim’s death through the commission of an unlawful act or by neglecting a lawful duty while driving a motor vehicle “while under the influence of alcohol, drugs, or the combination of alcohol and drugs[.]” S.C. Code Ann. § 56-5-2945(A). Notwithstanding the blood test results establishing Jamison’s extremely high level of blood alcohol concentration at the time of the collision, the testimony and evidence regarding Jamison’s impaired condition and demeanor coupled with the other evidence presented during trial conclusively established Jamison was under the influence of alcohol when he unlawfully veered outside of his lane of travel and fatally struck the victim. Thus, Jamison’s guilt for felony driving under the influence resulting in a death was conclusively established regardless of the admission of the blood test results.

Based on the overwhelming evidence of Jamison’s guilt, any error in the admission of the blood test results was harmless regardless of the admissibility of those results.¹⁰ See Ervin, 330 S.C. at 522, 500 S.E.2d at 486 (“[I]n light of the overwhelming

¹⁰ Notably, notwithstanding the overwhelming evidence of intoxication, Jamison eliminated any remaining doubts about his guilt or innocence when he apologized for his actions to the victim’s family during the sentencing proceedings. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (“[R]eview of a trial error is unnecessary where a defendant admits in open court after his conviction that he is guilty.”); State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) (finding further review was unnecessary where the defendant admitted his guilt in open court after his conviction); Wiley, 387 S.C. at 497, 692 S.E.2d at 564 (finding an alleged trial error to be harmless based on overwhelming evidence of guilt and Wiley’s apology in open court during sentencing proceedings). Significantly, after he was convicted, Jamison described the incident as a travesty or tragedy, stated it was the one thing he wished he could change in his life, and apologized to the victim’s family.

evidence of his intoxication, Ervin was not prejudiced by the admission of his refusal to take the datamaster test.”); see also Degnan, 305 S.C. at 372, 409 S.E.2d at 348 (“In light of the overwhelming evidence of her intoxication, Degnan has shown no prejudice in admission of her refusal to submit to the breathalyzer.”); Wilson, 296 S.C. at 76, 370 S.E.2d at 716 (finding any error in the admission of blood test results was harmless because it was cumulative to other evidence of Wilson’s intoxication). Regardless of the correctness of its decision on the admissibility of the blood test results, the Court of Appeals correctly determined any error in the admission of those test results was harmless. Accordingly, Jamison’s petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that Jamison's petition for a writ of certiorari should be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT/PETITIONER

May 14, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent/Petitioner,

vs.

ANDRA BYRON JAMISON,

Petitioner/Respondent.

RECEIVED

MAY 14 2012

S.C. Supreme Court

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petitioner/Respondent's Petition for Writ of Certiorari on Petitioner/Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
Post Office Box 12891
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 14th day of May, 2012.

Ellen R. DuBois

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ALAN WILSON
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May 14, 2012

Jeremy A. Thompson, Esquire
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RECEIVED

MAY 14 2012

S.C. Supreme Court

RE: State v. Andra Byron Jamison

Dear Mr. Thompson:

I am enclosing two (2) copies of the Return to Petitioner/Respondent's Petition for Writ of Certiorari, along with proof of service, in the above-referenced case.

Sincerely,


Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosures

cc: (Honorable Daniel E. Shearouse (original and six copies enclosed))
Honorable Jenny A. Kitchings (one copy enclosed)
Victim Services