

ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Honorable Larry R. Patterson, Circuit Court Judge

Case No. 2004-CP-24-38

Jon E. Hartfield, by and through his Conservator,
Haskell L. Hartfield and Haskell L. Hartfield, Individually Respondent,

vs

The Getaway Lounge & Grill, Inc., and Shou Mei Morris, individually and as President of
The Getaway Lounge & Grill, Inc., ... Appellants.

RECORD ON APPEAL
VOLUME TWO

Other Counsel of Record

JON E. NEWLON
McCRAVY NEWLON LAW FIRM
1629 ByPass 72 NE
(864) 388-9100

Attorneys for Respondent

C. RAUCH WISE
ATTORNEY AT LAW
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Appellant, The
Getaway Lounge & Grill, Inc.,
And Shou Mei Morris,
individually and as President of
The Getaway Lounge & Grill, Inc.

INDEX

Summons and Complaint	1
Consent Order dated January 5, 2004	13
Amended Summons and Complaint	14
Answer	24
Rule 59(a) Motion	27
Order dated February 8, 2007	40
Order dated February 22, 2007 (granting PCV)	41
Order dated February 22, 2007 (denying Rule 59 Motions)	46
Custody Details Report	48
SLED Forensic Services Laboratory Report	49
Defendant's Request to Charge No. 4	51
Defendant's Request to Charge No. 6	52
Transcript of Proceedings pp. 19-149, 124-258, 293-449, 456-521	53
Certificate of Counsel	514

1 DOUGLAS IRV BOHLER,
2 after being first duly sworn, testified as follows:
3 MR. SEIGLER: If it please the Court.

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. SEIGLER:

6 Q Mr. Bohler, state your full name for the
7 record, please, sir.

8 A Douglas Irv Bohler.

9 Q Spell your last name for the record, please.

10 A B-o-h-l-e-r.

11 Q Mr. Bohler, what do you do for a living, sir?

12 A I do glass work, install glass in houses,
13 automobiles.

14 Q Are you self-employed?

15 A I work for Action Glass.

16 Q Action Glass, okay. Where is that located?

17 A On Highway 72, Abbeville County.

18 Q Abbeville County, okay. Mr. Bohler on July
19 11th, 2003, were you present at the Carolina
20 Lounge?

21 A Yes, sir.

22 Q How many people were there that night?

23 A No more than ten at the most.

24 Q Ten or so?

25 A Yes, sir.

1 Q Do you remember a Hoyt Helton affectionately
2 known as Punk enter the Carolina at anytime that
3 evening?

4 A Yes, sir.

5 Q About what time would you say he came in?

6 A I would say around 10:00 at the most.

7 Q 10:00, somewhere in that area?

8 A Yes.

9 Q Did you happen to see where he went when he
10 entered or what he did when he came in?

11 A He walked in, walked straight to the middle
12 of the bar, there is a pole at the middle of the
13 bar, he sat down and talked to Charlie Brown,
14 probably stayed no more than five minutes and got
15 up and walked out.

16 Q Charlie Brown, do you know him?

17 A Yes, sir.

18 Q Is he related at all to Mr. Hoyt Helton?

19 A I think so.

20 Q How long did you say approximately Mr. Helton
21 stayed?

22 A I would say no more than five minutes.

23 Q Where were you located?

24 A I was approximately right in front of him, I
25 was at the second pool table, he was probably no

1 farther than me and the people sitting right here
2 on that first row.

3 Q Where was Mr. Glenn McDonald located?

4 A He was standing right there at the pool table
5 with me.

6 Q Beside you?

7 A Yes.

8 Q Who else was at the pool table with you?

9 A Blake Owens.

10 Q Blake Owens?

11 A Yes, sir.

12 Q Did you happen to see where Mr. Billy
13 McDonald was located?

14 A He was at the end of the bar down toward
15 where the phone was.

16 Q Was he on the end of the bar where Mr. Helton
17 was?

18 A No, sir.

19 Q Could you see what he was doing, Mr. Billy
20 McDonald?

21 A Yes, sir, pretty much the whole time.

22 Q What was he doing?

23 A He was sitting down there talking to Jackie
24 Lovell.

25 Q Jackie Lovell? Did you at anytime see him

- 1 serve Mr. Helton anything?
- 2 A No, sir.
- 3 Q Did he come in with any alcohol?
- 4 A No, sir.
- 5 Q Did he leave with any alcohol?
- 6 A No, sir.
- 7 Q How well did you know Mr. Helton?
- 8 A I didn't know him very well.
- 9 Q Not very well?
- 10 A I just knowed of him.
- 11 Q Occasionally saw him?
- 12 A Yes.
- 13 Q Did you ever see him drink a beer?
- 14 A At the other bars every now and then maybe.
- 15 Q Did you happen to see how long it typically
- 16 took him to drink a beer?
- 17 A It took him a while. He mostly sipped on
- 18 beer everytime I seen him drink.
- 19 Q He sipped on it?
- 20 A Yes, sir.
- 21 Q He didn't kill it?
- 22 A No, sir.
- 23 Q He just sipped on it?
- 24 A Right.
- 25 Q Your testimony to this jury is you did not

1 see him served any alcohol?

2 A Right.

3 MR. SEIGLER: Answer any questions either
4 attorney might have for you.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CROSS EXAMINATION

QUESTIONS BY MR. NEWLON:

Q Mr. Bohler, is that right?

A Yes, sir.

Q And as I understand it, you were not a close friend of Hoyt Helton?

A No, sir.

Q So, you don't have any personal knowledge of his drinking habits?

A No, sir.

Q Okay. And as I understand it, you were in the bar. At the time were you shooting pool?

A We was drawing cards, getting ready to have a pool tournament.

Q How many people were involved in the pool tournament?

A Normally there is 10 or 12 players, however many we get in it, but it was me and Glenn McDonald, we was drawing the cards out to see how they was placed in the turnament.

Q So, is this like cards in a hat or cards in a bucket or how is that done?

A Just draw them out like 1 through 16 and if it ain't 16 players you might get a bye.

Q What do these cards look like, three by five

1 cards?

2 A Yes, sir. They have numbers on them.

3 Q So, everybody is waiting to get a number
4 pulled so they know when they are going to play,
5 who they are going to play, that kind of stuff?

6 A Right.

7 Q Okay. And how long does it normally take for
8 that to gear up? I mean from the time the cards
9 start coming out and everybody getting there.

10 A Five or ten minutes.

11 Q Five, ten minutes. Then after that what
12 happens?

13 A Then we start the tournament.

14 Q Start the tournament?

15 A Yes, sir.

16 Q Did you play in the first round?

17 A No, sir.

18 Q When did you start playing?

19 A Probably the second round.

20 Q Second round?

21 A Yes, sir.

22 Q Okay. Then as I understand your testimony,
23 Hoyt Helton came in while you all were pulling
24 these numbers and getting all this squared away?

25 A Right.

1 Q So, if I understand your testimony correctly,
2 putting it all together, you are telling this jury
3 that a man that you hardly knew, that you would
4 have no reason for him to call your attention to
5 while you're pulling numbers for a pool game you
6 are going to sit there and take the time to observe
7 him come in, sit down, get up, leave and observe
8 whether or not the bartender served him anything?
9 Are you doing all that while you're pulling names
10 and getting ready for a pool tournament?

11 A I was facing toward the bar, I could see
12 everything going on.

13 Q So, everybody that comes in that place you
14 watch them come in?

15 A I pay attention.

16 Q To whatever they may do?

17 A I pay attention pretty much to everything
18 that goes on.

19 Q How well do you know the McDonalds?

20 A I have knowed them for awhile.

21 Q How long?

22 A 25, 30 years.

23 Q Do you consider them to be good friends?

24 A Yes, sir.

25 Q Would you do anything for them?

1 A Yes, sir.

2 MR. NEWLON: No further questions.

3 MR. WISE: No questions.

4 MR. SEIGLER: Briefly, Judge.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. SEIGLER:

3 Q Mr. Newlon asked you if you would do anything
4 for them. You wouldn't lie for them, would you?

5 A No, sir.

6 MR. SEIGLER: No further questions.

7 THE COURT: Thank you.

8 (Witness excused).

9 MR. SEIGLER: If it please the Court, Your
10 Honor, the defendant calls Mr. Blake Owens.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 BLAKE OWENS,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. SEIGLER:

5 Q Mr. Owings, please state your name for the
6 record.

7 A Blake Owens.

8 Q Mr. Owens, what do you do for a living, sir?

9 A I frame houses.

10 Q Self-employed?

11 A Yes, sir.

12 Q Were you present at the Carolina Lounge on
13 July 11th, '03?

14 A Yes, sir.

15 Q Where were you located, sir?

16 A I was sitting at the table drawing cards, we
17 was around the table, we was pulling cards for a
18 tournament.

19 Q Who was there in the area with you, Mr.
20 Owens?

21 A Glenn and Doug.

22 Q Glenn McDonald?

23 A And Doug Bohler.

24 Q How many people do you think were there that
25 night?

- 1 A About 10 or 12.
- 2 Q Did you see Mr. Hoyt Helton enter the bar?
- 3 A Yes, sir.
- 4 Q About what time do you think he got there?
- 5 A It was probably around 10:00.
- 6 Q Somewhere around 10:00?
- 7 A Yes, sir.
- 8 Q Did you happen to see what he did when he
- 9 came in?
- 10 A He just went up there and sat and talked to
- 11 Charlie, Charlie Brown.
- 12 Q Did you see him with anything in his hand
- 13 when he walked in, any alcohol or anything?
- 14 A No, sir.
- 15 Q You said Mr. Glenn McDonald was beside you,
- 16 and Mr. Bohler?
- 17 A Yes, sir.
- 18 Q Did Mr. Glenn McDonald ever leave your
- 19 side --
- 20 A No, sir.
- 21 Q -- during the time Mr. Helton was there?
- 22 A No, sir.
- 23 Q How long do you think Mr. Helton was at the
- 24 bar?
- 25 A It was a very few minutes. It wasn't long,

1 because there wasn't that many people in there.

2 Q Did you happen to see where Mr. Billy
3 McDonald was located in regard to Mr. Helton?

4 A He was talking to Jackie Lovell.

5 Q Mr. Helton was located where in regards to
6 Mr. Billy McDonald?

7 A Sir?

8 Q Where was Mr. Billy McDonald?

9 A He was at the end talking to Jackie Lovell.

10 Q Behind the bar?

11 A Yes, sir.

12 Q So, he was tending bar that night?

13 A Yes, sir.

14 Q Did you see him serve Mr. Helton anything?

15 A No, sir.

16 Q Did you see Mr. Helton ask for anything?

17 A No, sir.

18 Q Did you see Mr. Helton, did you see him
19 leave, did you see Mr. Helton leave the bar?

20 A Yes.

21 Q Did he have anything in his hand when he
22 left?

23 A No.

24 Q Did he appear to be, in your lay opinion,
25 intoxicated?

1 MR. NEWLON: Your Honor, no foundation
2 exists. Objection.

3 THE COURT: What's your question?

4 MR. SEIGLER: Your Honor, I asked him based
5 on his opinion did he appear intoxicated visibly.

6 THE COURT: A layman can testify as to
7 whether a person is intoxicated or not.

8 MR. SEIGLER: Thank you, Judge.

9 BY MR. SEIGLER:

10 Q Did he appear to be intoxicated, sir?

11 A No.

12 Q How long did you say he was there?

13 A About five minutes at the most.

14 MR. SEIGLER: I have no further questions,
15 Judge.

16

17

18

19

20

21

22

23

24

25

CROSS EXAMINATION

QUESTIONS BY MR. NEWLON:

Q Mr. Owens, is that right?

A Yes, sir.

Q Okay. How long have you been going to the Carolina Drive-In?

A About 10 or 12 years.

Q How long have you known the McDonalds?

A Sir?

Q How long have you known the McDonalds, either Glenn or Billy?

A Probably around 10 or 12 years.

Q Okay. Did you take a good look at Hoyt Helton when he came in that night?

A I didn't take a good look, I just noticed he had come in talking, you open one door right there when you are coming in.

Q Did you notice anything about what he was wearing or anything unusual about him?

A No, sir. I just noticed, I seen him coming in because I know his son Tyler.

MR. NEWLON: I don't have any further questions for this witness, Your Honor.

MR. WISE: No questions.

(Witness excused).

1 MR. SEIGLER: If it please the Court, Your
2 Honor, the defendant calls Mr. Billy McDonald.
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 WILLIAM McDONALD,
2 having been previously sworn, testified as follows:

3 MR. SEIGLER: Is he still under oath?

4 THE COURT: You are under oath. You
5 testified, so you are still under oath, sir.

6 MR. SEIGLER: Your Honor, I'm going to speak
7 up a little louder because Mr. McDoanld has a
8 hearing impairment.

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. SEIGLER:

11 Q Mr. McDonald, the judge reminded you you are
12 still under oath, okay?

13 A Yes, sir.

14 Q You are Billy McDonald?

15 A I am Billy McDonald.

16 Q Mr. McDonald, were you present at the
17 Carolina Lounge on July 11th, '03?

18 A Yes, sir.

19 Q I believe you already said you were?

20 A Yes, sir.

21 Q Do you remember Mr. Helton entering the
22 establishment?

23 A Yes, I remember him coming in that night.

24 Q Okay. About what time do you recall?

25 A I really don't exactly know the exact time

1 but it had to be around 10:00 or a little after
2 10:00 or whatever, I don't really know.

3 Q Do you remember how long he stayed?

4 A Five minutes and no longer than ten at the
5 most.

6 Q How many people were there that night that
7 you recall?

8 A In the whole building, 12, 13, 14, somewhere
9 like that, 15 maybe.

10 Q The jury has a picture of the Carolina. It's
11 not a big place, is it?

12 A It's not a very big place, no.

13 Q How many pool tables have you all got in
14 there?

15 A We had four.

16 Q Where were you located when Mr. Helton
17 entered the establishment?

18 A When you come in the front door right there,
19 you come around kind of a stockroom right here, me
20 and Jackie Lovell was sitting right there in the
21 corner, she was sitting on this side of the bar and
22 I was behind the bar, and when he come in he went
23 on down, he didn't stop, he went on down where
24 Charlie was sitting at, there was a stool open
25 right there, he sat down beside Charlie Brown.

1 Q Charlie Brown?

2 A Charlie Brown.

3 Q Who is that?

4 A That's his stepbrother or half brother or
5 something like that, I think.

6 Q How long did Mr. Helton stay at the
7 establishment?

8 A Five to ten minutes, ten minutes at the very
9 most, very most.

10 Q Did he ask you for anything to drink?

11 A No, he did not.

12 Q Did you offer him anything?

13 A No, I did not.

14 Q Did he come in with anything?

15 A I didn't see it.

16 Q Did he set anything on the bar?

17 A No, he didn't.

18 Q Now, you testified that, you are testifying
19 that you talked to Miss Lovell the entire five or
20 ten minutes?

21 A Right.

22 Q Did you ever walk away from her?

23 A No, I didn't, not at that time frame.

24 Q Did anybody else order anything during that
25 time?

- 1 A No, sir.
- 2 Q So, nobody else ordered anything, you just
3 stood there and talked to Miss Lovell?
- 4 A Right.
- 5 Q Where was Mr. Glenn McDonald located?
- 6 A He was out on the floor. What he was doing,
7 he put so many cards together, then they shuffle
8 them up and deal them out. They draw your name out
9 and then numbers, the number on that card, that's
10 the position you played in.
- 11 Q Okay. How long had you known Mr. Helton?
- 12 A About 25 years.
- 13 Q How often did you see him?
- 14 A I ain't seen him in a good many years because
15 I quit coming down here to Greenwood. My daddy
16 died of cirrhosis of the liver, I stayed away
17 several years.
- 18 Q You hadn't seen him in a while then?
- 19 A No, sir.
- 20 Q Did he appear to be intoxicated, to you?
- 21 A No, not to me he didn't, no.
- 22 Q Do you remember a conversation that you had
23 with a Trooper Keller soon after this evening in
24 question?
- 25 A Yes, I do.

1 Q Did Mr. Keller, did Trooper Keller ask you
2 did you serve Mr. Helton a beer on that particular
3 evening?

4 A He asked me did I.

5 Q And what was your response, sir?

6 A I said he did not purchase a beer, did not
7 have a beer, that's what I said.

8 Q Not a beer?

9 A Didn't have a beer.

10 Q Trooper Keller testified that you said you
11 served him one beer.

12 A I said he did not order a beer or buy a beer,
13 not one.

14 Q You said not one beer?

15 A Not one beer.

16 Q How did Trooper Keller interview you? Did he
17 come to the bar?

18 A No, sir, he called me on the telephone.

19 Q On the telephone?

20 A Uh-huh (Affirmative).

21 Q You told him you served him not one beer,
22 that is what you are telling this jury?

23 A That's what I'm saying right now, he did not
24 drink a beer or purchase one, he didn't bring in
25 one neither.

1 Q Did you see him leave?

2 A I didn't see him when he got up and left, but
3 when he got to the door, when I heard the door
4 open, it was raining just like pouring water out of
5 a boot and I saw him, I hollered at him, I said,
6 "Where you parked at?" He said, "Out back." I
7 said, "Why don't you wait until it slacks up rain
8 and then go," and he said, "Ain't but a little
9 water," something like that. He shut the door and
10 that was it.

11 Q The last time you saw him?

12 A That was the last time I saw him.

13 MR. SEIGLER: I have no further questions,
14 Judge.

15

16

17

18

19

20

21

22

23

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. NEWLON:

3 Q Mr. McDonald, Glenn is your son, right?

4 A Yes, sir.

5 Q And he runs Carolina Drive-In, right?

6 A Yes, sir.

7 Q And you occasionally tend bar for him,
8 correct?

9 A Beg pardon?

10 Q And you occasionally tend bar for him?

11 A Yes, I do.

12 Q Is that right?

13 A Yes, sir.

14 Q You were tending bar for him on the evening
15 of July 11th, 2003, when this accident happened,
16 correct?

17 A Yes, sir.

18 Q And Hoyt Helton came up to the bar and sat
19 down at the bar at some point, correct?

20 A Beg pardon, now?

21 Q And Hoyt Helton came in the bar and sat down
22 at the bar at some point, is that correct?

23 A Yes, sir.

24 Q And in this place do you all keep a
25 sufficient amount of lighting so you can tell when

1 someone is intoxicated, you know, lighting around
2 the ceiling?

3 A Yes, sir.

4 Q And you have got a lot of experience tending
5 bar, correct?

6 A Right, yes.

7 Q So, if Hoyt Helton was intoxicated would you
8 have known it?

9 A If I seen him walking in without the crutches
10 I could.

11 Q Okay. Well, let me ask you this. Are you
12 telling the jury that you have no idea whether or
13 not Hoyt Helton was intoxicated that night, you
14 have no opinion one way or the other?

15 A No, sir, I do not, because I didn't have no
16 conversations with him.

17 Q And you are aware that Hoyt Helton had a
18 drinking problem, is that correct?

19 A I didn't realize it until all this done
20 happened. I didn't know before.

21 Q You have known him for 25 years and you
22 didn't know he had a drinking problem?

23 A No, I didn't know it.

24 MR. NEWLON: I don't have any other
25 questions. Thank you.

1 MR. WISE: I have no questions.

2 (Witness excused).

3 MR. SEIGLER: The defendant calls Miss Jackie
4 Lovell.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 JACKIE LOVELL,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. SEIGLER:

5 Q If you will, please, ma'am, state your name
6 for the record.

7 A Jackie Suttles Lovell.

8 Q Miss Lovell, at the time of the incident, the
9 night in question, on July 11th of '03 where were
10 you employed?

11 A I was employed with the United States Postal
12 Service.

13 Q Which one?

14 A Troy, South Carolina.

15 Q That's in Greenwood County, just south of
16 Greenwood?

17 A Yes, sir.

18 Q And you were there on July 11th, at the
19 Carolina?

20 A Yes, sir.

21 Q Do you recall how many people might have been
22 there that night?

23 A Nine or ten while I was there. I wasn't in
24 there that long.

25 Q Okay. Do you remember a Mr. Hoyt Helton,

1 also known as Punk, entering the establishment that
2 night?

3 A I don't remember when he entered, no, sir.

4 Q At what point do you remember seeing him?

5 A I looked over and I saw him sitting over
6 there talking to Charlie Brown.

7 Q Okay. Do you remember how long he might have
8 been there?

9 A No, sir, I don't. I really don't.

10 Q Now, during this time where was Mr. Billy
11 McDonald?

12 A He was behind the bar, at the end of the bar,
13 behind it.

14 Q In front of you or behind you?

15 A He was in front of me and I was sitting with
16 my face toward the bar.

17 Q Okay. Were you all talking?

18 A Yes, sir.

19 Q Was Mr. Billy McDonald the only bartender at
20 that time?

21 A Yes, sir.

22 Q Was there anyone else in there that, behind
23 the bar that would have sold any alcohol?

24 A No, sir.

25 Q So, only Mr. Billy McDonald?

1 A Yes, sir.

2 Q During the time Mr. Helton was seated at the
3 bar did you ever see Mr. Billy McDonald leave your
4 presence?

5 A No, sir.

6 Q Did you see him serve any alcohol to Mr.
7 Helton?

8 A No, sir.

9 Q Did you see Mr. Helton leave?

10 A Well, when he went to leave Billy hollered at
11 him and he turned around and looked and that's when
12 I saw him walking out the door and I asked Billy
13 who it was and that is when he told me who he was.
14 I didn't know him.

15 Q So, you didn't know him prior to that night?

16 A No, sir.

17 Q When he was walking out did you see any
18 alcohol in his hand?

19 A No, sir.

20 Q And he wasn't served anything when he was
21 there?

22 A No, sir.

23 MR. SEIGLER: No further questions, Your
24 Honor.

25

CROSS EXAMINATION

QUESTIONS BY MR. NEWLON:

Q So, ma'am, a man you don't even know from Adam, you are going to watch him walk out of the door and see whether or not he had anything in his hand?

A I didn't say I watched him walk out the door.

Q This man just asked you if you saw him leave the bar with anything to drink in his hand or anything and you said no.

A I said I turned around and I saw him. When I turned around and saw him he had nothing. I didn't watch him walk out the door.

Q Were you watching him the whole time you were in there?

A No, sir.

Q Okay. How long have you been going to the Drive-In?

A A long time, about 30 years.

Q How long have you known Billy McDonald?

A Since 1979.

Q How long have you known Glenn?

A Probably since he was 10 or 11 years old.

Q But you do recall Mr. Helton sitting in the bar, is that correct?

1 A Yes, sir. I turned and I saw him talking to
2 Charlie Brown.

3 MR. NEWLON: Thank you. No further
4 questions?

5 THE WITNESS: Yes, sir.

6 MR. WISE: Just one question.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. WISE:

3 Q When you find out Mr. Helton was killed?

4 A I beg your pardon?

5 Q When did you find out he had died in that
6 wreck?

7 A Probably the next week or so.

8 MR. WISE: Okay, thank you.

9 THE WITNESS: Yes, sir.

10 (Witness excused).

11 MR. SEIGLER: Call Glenn McDonald, Your
12 Honor.

13

14

15

16

17

18

19

20

21

22

23

24

25

1 GLENN WAYNE McDONALD,
2 after being first duly sworn, testified as follows:

3 MR. SEIGLER: If it please the Court, Your
4 Honor.

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. SEIGLER:

7 Q Mr. McDonald, state your full name, please
8 sir.

9 A Glenn Wayne McDonald.

10 Q Mr. McDonald, what do you do for a living
11 sir?

12 A Well, I build trusses during the day and I
13 ran the bar at nights and weekends.

14 Q At the time of the accident?

15 A At the time of the accident, yes, sir. I'm
16 no longer there.

17 Q You were running the bar, is that correct, is
18 that what you said?

19 A Yes, sir.

20 Q Did you own the building?

21 A No, sir.

22 Q You were just running the Carolina Drive-In?

23 A That's right.

24 Q You were there on July 11th of '03?

25 A That's right.

1 Q Will you tell the jury a little bit about the
2 events that occurred that night?

3 A Well, every Friday we have nine-ball
4 tournaments and in the summertime we always start
5 about 10:00 o'clock because business is much slower
6 in the summer than the winter, so we get it drawed
7 out, we had the cards on the table drawing out to
8 start the tournament, and how I noticed Punk coming
9 in was the door opened and I looked up to see if it
10 was a late player to put into the tournament. I
11 saw it wasn't and I continued to draw the cards.

12 Q What did he do when he walked in?

13 A Well, he just walked in and sat right at the
14 end of the table where we were at and talked to
15 Charlie Brown.

16 Q His stepbrother?

17 A Stepbrother, half brother, something, I'm not
18 really sure.

19 Q Who was located in the area of the pool
20 tables with you?

21 A Blake Owens and Doug Bohler. They had been
22 playing on that table prior to that and after that
23 game we went over there and drawed the cards in
24 front of everybody.

25 Q Do you have any idea or can you recall when

1 he got there, when Mr. Helton arrived?

2 A I can't be exact but it was very close to
3 10:00 o'clock because we always started around
4 10:00 o'clock to make sure that everybody would be
5 there on time.

6 Q Were you bartending or serving any alcohol at
7 that time, at that particular time?

8 A At that particular time I wasn't.

9 Q You do occasionally, I mean, it's your bar,
10 you sell beer?

11 A Yes, I do. I was doing the tournament but
12 yes, I would have went behind the bar and served it
13 at some point.

14 Q Who was bartending for you?

15 A My dad was that night.

16 Q Do you remember how long Mr. Helton stayed?

17 A I'm saying from three to five minutes, could
18 have possibly been seven, but it was a very short
19 period of time.

20 Q Do you remember seeing him drink anything?

21 A No, sir.

22 Q Walk in with any alcohol?

23 A No, sir.

24 Q Did you see him leave?

25 A I saw him leave, yes, sir.

1 Q Did you actually see him walking out or did
2 you see him at the door?

3 A Saw him at the door, I didn't see him walking
4 out.

5 Q Did he have anything in his hand at that
6 time?

7 A Not that I noticed, no, sir.

8 Q Did he appear to be visibly intoxicated,
9 based on your experience?

10 A Nothing that he done would make me think
11 that.

12 Q Did you see your father serve any alcohol
13 whatsoever?

14 A To him?

15 Q To him.

16 A No, sir.

17 MR. SEIGLER: No further questions, Judge.

18 MR. NEWLON: Thank you, Your Honor.
19
20
21
22
23
24
25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. NEWLON:

3 Q On July 11th, 2003, to make sure we got this
4 straight, you owned and operated the Carolina
5 Drive-In, is that correct?

6 A That's right, yes, sir.

7 Q You actually served beer there yourself,
8 correct?

9 A Yes, sir.

10 Q And as your father testified, there was
11 sufficient lighting in there and conditions were
12 adequate that if someone came in was intoxicated
13 you would be able to tell. Is that right?

14 A Yes, sir.

15 Q And you have experience in dealing with
16 patrons who are intoxicated?

17 A Thirteen years.

18 Q Okay. Do you turn people away?

19 A Yes, sir.

20 Q Do you have any, you may or may not know, do
21 you have any personal knowledge as to the
22 significance of a .212 level of intoxication of an
23 individual?

24 A I understand that's high but --

25 Q Do you have any idea what that means as far

1 as physiological effects on somebody?

2 A Really I don't know what that is.

3 Q Were you present when the officer called and
4 spoke with your father?

5 A No, sir, I wasn't.

6 Q Okay. At some point did your father tell you
7 what he told the officer?

8 A Yes, sir, he did.

9 Q Okay. At some point later did you all find
10 out that the officer made an allegation that he
11 actually served a beer?

12 A Yes, sir, we did find that out.

13 Q Okay. And what did you do about that?

14 A What could I do about that?

15 Q Did you call the officer and tell him, "Hey,
16 you got it wrong, you misunderstood my dad"?

17 A No, sir.

18 Q Did your dad do that, to your knowledge?

19 A You would have to ask him. I don't know
20 that.

21 Q Okay. How long have you been running the
22 Carolina Drive-In?

23 A I ran it for 13 years, I believe it was 13.

24 Q Are you still running it today?

25 A No, sir.

1 Q You just closed up?
2 A I just closed it up.
3 Q And how long have you known Punk?
4 A I have known who he was for probably 20, 25
5 years.
6 Q Did you know he was an alcoholic?
7 A No, sir.
8 Q No idea?
9 A No idea. I didn't see him in a social
10 capacity.
11 Q Do you all have mutual friends like people
12 that come to your bar?
13 A I'm not sure what circle he ran in, to be
14 honest.
15 Q People that came to your bar you knew, did
16 they know him?
17 A They may have but I don't know who his circle
18 is.
19 Q You don't know anything about him at all
20 other than he is Punk and he came in occasionally?
21 A I knew who he was, I could recognize him.
22 Q Okay. Prior to this particular night in
23 question Punk actually had been in the Carolina
24 Drive-In before, right?
25 A Yes, sir.

1 Q Okay. And you have actually served him beer
2 or seen him drinking beer on the premises, correct?

3 A Yes, sir.

4 Q And would he typically drink Budweiser?

5 A To be honest, he wasn't a regular enough to
6 remember.

7 Q All right. When he came in there what is the
8 only things he could have dranked?

9 A I mean, we only had beer, soda and water.

10 Q Okay, all right. And how much did he
11 typically drink when he came in the Carolina when
12 you were there?

13 A I probably didn't see him that often but I
14 would say he probably drank a couple beers.

15 Q Okay. Did you ever see him intoxicated at
16 all?

17 A I have never seen him intoxicated.

18 MR. NEWLON: I don't have any other
19 questions. Thank you.

20

21

22

23

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. WISE:

3 Q Officer Keller never came out and took a
4 statement from you, did he?

5 A I'm sorry?

6 Q Did Officer Keller ever come out there and
7 take a statement from you?8 A No, sir. Today was the first time I ever
9 seen him.10 Q All right. Did your father mention he had
11 called?

12 A Yes, my dad told me he had called.

13 Q And did your father tell you what he asked
14 him?15 A Yes, sir. He pretty much told me the whole
16 conversation.

17 Q And what did your father say he told him?

18 A Well, I mean, he went through the whole thing
19 about he came in, he sat down and spoke with
20 Charlie Brown, that he only stayed a few minutes,
21 then he left. He said that he said something about
22 the rain outside, he asked about, the highway
23 patrolman had asked him about his drinking a beer,
24 he said he told him he did not drink a beer.

25 Q Do you know if your father ever gave a

1 written statement to the officer?

2 A I don't know that.

3 Q All right. And did you find out for the
4 first time that there was an allegation that your
5 father said he sold him a beer, after this suit was
6 filed?

7 A I think that is what I found out.

8 Q And you had a lawyer by then?

9 A That is when I retained one.

10 Q Right.

11 MR. WISE: Thank you.

12 MR. SEIGLER: No further questions.

13 MR. NEWLON: No.

14 THE COURT: Thank you, sir.

15 (Witness excused).

16 MR. SEIGLER: Call the last witness, sir?

17 THE COURT: Yes.

18 MR. WISE: Judge, I have one brief witness
19 after his that needs to be out today, he won't be
20 three minutes.

21 MR. SEIGLER: If it please the Court, the
22 defendant calls Charlie Brown.

23

24

25

1 CHARLES COOLEY BROWN,
2 after being first duly sworn, testified as follows:

3 MR. SEIGLER: If it please the Court, Your
4 Honor.

5 DIRECT EXAMINATION

6 QUESTIONS BY MR. SEIGLER:

7 Q Mr. Brown, state your full name for the
8 record, please, sir.

9 A Charles Cooley Brown.

10 Q Are you known as Charlie Brown.

11 A Known as Charlie Brown, right.

12 Q Mr. Brown, how are you related to Mr. Hoyt
13 Helton?

14 A His dad was married to my mother, makes us
15 stepbrothers, if anything.

16 Q When were they married?

17 A I say about eight years before that. I
18 knowed him way before then, because I married his
19 daddy's mother's wife -- I mean daughter, twice.

20 Q Okay. So, is it safe to say you have known
21 him a long time?

22 A Yes, sir, 30, 35 years.

23 Q Okay. Were you present on July 11th at the
24 Carolina Drive-In?

25 A Yes, sir.

1 Q The night your stepbrother died?

2 A Yes, sir.

3 Q What time did you get there?

4 A I had been there about a couple hours before
5 he got there.

6 Q Okay.

7 A I sat on the side of the bar waiting for a
8 tournament to start.

9 Q Do you drink?

10 A I might drink a 12-pack a year, I reckon.

11 Q You don't drink much, then?

12 A No, sir.

13 Q Do you remember Mr. Helton coming in that
14 evening?

15 A I sure do.

16 Q About what time did he get there?

17 A I say between 10:00 and 11:00 o'clock,
18 something like that.

19 Q But you don't remember, you do not remember
20 what time he got there?

21 A Not an exact time.

22 Q Okay. Where were you seated when he came in?

23 A I sat on the end of the bar waiting for the
24 pool tournament to start.

25 Q I'm sorry, go ahead, did you see him walk in

1 the door?

2 A Yes, sir, I seen him walk in the door. He
3 come over there, sat down beside me, I asked him
4 what he was doing, anything to drink, said no, he
5 wasn't drinking, I said, "I'm proud of you."

6 Q Did he say anything about the pool
7 tournament?

8 A I said, "You ain't drinking tonight?" He
9 said no. I said, "I'm proud of you." We talked
10 about two or three more minutes and he got up and
11 left.

12 Q He said he wasn't drinking that night?

13 A Yes, sir.

14 Q Did he ask you anything about the pool
15 tournament?

16 A He generally comes by and see me if I play in
17 a tournament

18 Q Okay.

19 A I told him I didn't think I was going to play
20 that night.

21 Q How long was he there?

22 A I say between five and ten minutes.

23 Q Did he set anything on the bar when he walked
24 in, any alcohol?

25 A No, sir, sure didn't.

1 Q Did Mr. Billy McDonald, was he behind the
2 bar?

3 A Yes, sir.

4 Q Did he serve him anything?

5 A No, sir.

6 Q Anybody else serve him anything?

7 A No, sir.

8 Q Now, you testified that you had known Mr.
9 Helton for 30 years or better?

10 A I would say so, yes, sir.

11 Q Have you ever seen him drunk?

12 A Yes, sir, I have seen him pretty high.

13 Q What about this evening?

14 A No, sir.

15 Q He didn't appear intoxicated that evening?

16 A Sure didn't.

17 Q What time -- you said he was there for five
18 minutes, five or ten minutes?

19 A Yes, sir. No longer than that. Like I say,
20 it was raining pretty hard that night. I told him
21 he ought to wait until it slacks up anyway. When
22 he asked me if I was going to play in the
23 tournament I told him I didn't think so, that might
24 be one reason he got up and left, I don't know.

25 Q Based on your experience he didn't appear

1 visibly intoxicated that night?

2 A Not that night, no, sir.

3 Q He didn't drink nothing that night?

4 A No, sir.

5 Q In your presence?

6 A No, sir, he didn't order the first beer or
7 nothing.

8 MR. SEIGLER: I have no further questions,
9 Judge.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. NEWLON:

3 Q Mr. Brown, do you drink?

4 A I might drink about a 12-pack a year,
5 something like that.

6 Q One 12-pack a year?

7 A Yes. Ain't never dranked no four beers at
8 one time in my life as far as I know.9 Q Okay. Drinking only 12 beers in a year, why
10 would you go to a bar?

11 A Why would I go to a bar?

12 Q Spend 365 days drinking 12 beers in a year,
13 why would you go to a bar?

14 A I don't drink beer. I can't drink beer.

15 Q What do you drink?

16 A If I drink that much, I drink Salty Dogs
17 every once in a while every two or three months,
18 something like that.19 Q So, you are at the Carolina Drive-In on the
20 night of July 11th, 2003, sitting next to Punk at a
21 bar, and your testimony is that neither one of you
22 were drinking that night. Is that correct?

23 A Yes, sir, you got that right.

24 Q Okay.

25 A I wasn't drinking, he wasn't neither. If he

1 had been drinking I would have knowed it.

2 Q Okay. How long have you been going to the
3 Drive-In?

4 A How long I been going?

5 Q Yes, sir.

6 A I say about 30 years.

7 Q Don't you live pretty close to the Drive-in?

8 A Yes, sir. I been there 14 years.

9 Q And you hang out there quite a bit, don't
10 you?

11 A I have the last five years, yes, sir.

12 Q And you know the McDonalds, right?

13 A Yes, sir.

14 Q You have known them a long time?

15 A Yes, sir, 10 or 15 years.

16 Q Do you know what it means, do you have any
17 idea what it means to have a blood alcohol content
18 of .212?

19 A I do know, I can tell when a man has had too
20 much to drink and all that.

21 Q Okay, but do you have any understanding of
22 what .212 means, blood alcohol content?

23 A No, sir, I shore don't.

24 Q You don't?

25 A I never been stopped for that or anything.

1 Q Have you been drunk before?

2 A I would say I have, yes, off Salty Dogs.

3 MR. NEWLON: All right, no further questions.

4 Thank you.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CROSS EXAMINATION

QUESTIONS BY MR. WISE:

Q One question. Officer Keller didn't come talk to you, did he?

A Sir?

Q Officer Keller?

A No, sir, ain't nobody talked to me.

Q No highway patrolman came out and talked to you about this case?

A Nobody.

Q And you were talking to Punk for about five or ten minutes?

A Yes, sir.

Q How big was the table you all were at?

A How big was what?

Q The table?

A We sat at the bar.

Q You sat beside each other at the bar?

A He come straight over there and talked to me, yes, sir.

Q Were you sitting on a bar stool?

A Yes, sir.

Q Did he have any trouble sitting on a bar stool?

A No, sir, I don't.

1 Q I mean did he have any trouble keeping his
2 balance on a bar stool?

3 A No, sir.

4 Q Did you see him walk in?

5 A Yes, sir, I seen him walk in.

6 Q Did you walk him to the door?

7 A No, sir. He come in and sat down beside me.

8 Q When he left did you walk him to the door?

9 A No, sir.

10 Q Did he have any trouble --

11 A No, sir.

12 Q -- with his balance?

13 A He didn't have no trouble at all getting out
14 of there.

15 Q Do you know what he sounds like with his
16 voice when he has had too much to drink?

17 A Yes, I can tell, yes.

18 Q Did his voice sound unusual that night?

19 A No, sir.

20 Q Did he sound like he normally does?

21 A Yes, sir.

22 MR. WISE: Thank you.

23 (Witness excused).

24 MR. SEIGLER: That's the defendant's case.

25 THE COURT: Thank you.

1 MR. WISE: I've got one witness I would like
2 to get this afternoon, it won't be long.

3 THE COURT: Okay.

4 MR. WISE: They had to close a place of
5 business.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MELISSA STOREY,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WISE:

5 Q You're Melissa Storey?

6 A Yes, sir.

7 Q Where do you live?

8 A I live at 676 Greer Street.

9 Q And where are you employed?

10 A I am employed at Cambridge Professional
11 Drycleaners.

12 Q How long have you been employed there?

13 A I have been employed there since November of
14 2005.

15 Q Do you remember the evening we are talking
16 about, April the 11th, excuse me, July 11th of
17 2003?

18 A Yes, I do.

19 Q The night that this incident happened?

20 A Yes, I do.

21 Q First of all how did you find out that Punk
22 had died?

23 A I found out that Punk had died the next
24 night.

25 Q Where were you the night of the 11th of July,

1 2003?

2 A I was at the Getaway.

3 Q What were you doing there?

4 A I was planning to work that night.

5 Q What was your job?

6 A I was a karaoke DJ.

7 Q When did you first see Punk?

8 A I first saw Punk when I walked in.

9 Q All right. And do you remember about what
10 time that was?

11 A It was around 8:00 o'clock.

12 Q Did you have any conversations with him?

13 A Just a general conversation, "Hey, how you
14 doing?"

15 Q Okay. Where was he at that time?

16 A He was at the pool table.

17 Q The what?

18 A At the pool table.

19 Q Pool table, all right. Where were you?

20 A I was walking by going to the back toward the
21 DJ booth.

22 Q After you saw him when you first got there
23 did you have any extensive conversation with him
24 after that?

25 A No, I did not.

1 Q All right. What did you do that night to get
2 ready to do karaoke?

3 A There is, you know, setting up everything,
4 plugging in all kind of wires and stuff, getting
5 books ready, just general things like getting disks
6 ready and stuff, just tuning everything.

7 Q What time did karaoke start?

8 A Karaoke started 9:00 o'clock sharp.

9 Q Always starts at 9:00?

10 A Always at 9:00.

11 Q When you, when you started karaoke did you
12 see Punk there then?

13 A No, I did not.

14 Q Did you ever see him again that evening?

15 A No, I did not.

16 Q The brief time you saw him was there anything
17 unusual about him?

18 A No.

19 MR. WISE: Okay, thank you. Answer any
20 questions Mr. Newlon may have.

21

22

23

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. NEWLON:

3 Q Miss Storey.

4 A Hello, Mr. Newlon.

5 Q You do a lot of karaoke for Shou Mei, right?

6 A Yes, I do. Not anymore.

7 Q You did at this time we're talking about,
8 right?

9 A I worked for --

10 Q You did it at the Hog Dog, right?

11 A Yes, I did.

12 Q The Bump & Grind?

13 A That was not when Shou Mei owned the place.

14 When Shou Mei owned Hog Dog, yes.

15 Q You did at The Getaway, right?

16 A Yes.

17 Q Are you aware Shou Mei is the president of
18 that particular organization?

19 A Yes, I am.

20 Q And Dianna Bice runs it, right?

21 A Yes.

22 Q How long have you known Shou Mei and Dianna?

23 A Probably five or six or seven years.

24 Q Okay. How long did you know Punk?

25 A Probably about the same.

1 Q About the same?

2 A Yes.

3 Q Did you ever see him drunk?

4 A Well, I have seen him drunk before, yes.

5 Q Were you aware he's an alcoholic?

6 A No, I'm not.

7 Q No idea?

8 A I don't get into anybody's personal business.

9 Q Okay. So, you were busy setting up getting
10 ready at 9:00 o'clock and looked up, and as I
11 understand what your testimony is, at 9:00 o'clock
12 you just didn't see him, or did you go looking for
13 him and and couldn't find him?

14 A Just did not see him.

15 Q So, it's possible he could have still been
16 there somewhere but out of your vision or you
17 didn't see him?

18 A Well, where the DJ booth is positioned at The
19 Getaway you can pretty much see the whole crowd.
20 That's part of the reason why the DJ booth is where
21 it's at, so you can see the whole crowd, that way
22 you can get your crowd participation and crowd
23 response.

24 Q Right. You didn't go looking for him,
25 though, correct?

1 A No, I did not.

2 Q Okay. And if he had been seated at the bar
3 with Brad Harrison until 9:30 would you have missed
4 him?

5 A No, I wouldn't, I would have been able to see
6 him.

7 Q Would you have been able to see him?

8 A Yes.

9 Q Did you see him drinking that night?

10 A I honestly do not remember. I don't
11 remember. I mean, if I did, if I saw him or talked
12 to him it was, "Hey, how you doing?" I was doing
13 my job, I didn't stand there long enough to watch
14 him sit there and take a drink.

15 Q Okay. Did you observe him long enough -- I
16 will assume, then, based on what you are telling
17 me, you didn't observe him long enough in any
18 capacity to be able to tell this jury whether or
19 not in fact he was intoxicated while he was there.
20 Is that correct?

21 A I mean, when somebody says, "Hey, how you
22 doing," you are going to turn around and say, "Hey,
23 how you doing," you know, but you can pretty much
24 tell right off if somebody is intoxicated enough.

25 Q Right.

1 A You can tell whether they are intoxicated.
2 You can tell, I mean, when you have been in a bar
3 long enough you can tell.

4 Q Okay. So, then, what you are saying is, if I
5 understand correctly, did you have an opportunity
6 to observe him adequately to tell this jury that he
7 was not intoxicated at the time he was at The
8 Getaway, is that what you are saying?

9 A Yes.

10 Q And all he said to you was, "Hi, how you
11 doing?"

12 A No. I said, "Hey, how you doing," he said
13 fine.

14 Q That was it?

15 A Yes.

16 MR. NEWLON: No further questions. Thank
17 you.

18 MR. SEIGLER: I don't have any questions,
19 Your Honor.

20 MR. WISE: You can step down.

21 THE WITNESS: Thank you.

22 (Witness excused).

23 THE WISE: I won't be long tomorrow.

24 THE COURT: We will finish in morning, okay.
25 Do not discuss the case tonight, just be back

1 tomorrow and we'll finish the case in the morning.
2 See you at 9:30.

3 (The jury was excused from the courtroom).

4 THE COURT: You all are excused for the
5 evening, thank you. We'll be in recess in this one
6 until 9:30 in the morning -- wait just one second.

7 MR. WISE: Okay. For planning purposes I
8 can't imagine, based on how these witnesses have
9 gone, my being more than an hour.

10 THE COURT: All right.

11 MR. WISE: Probably closer to 45 minutes.

12 THE COURT: All right. So, you all will be
13 ready to argue in the morning?

14 MR. WISE: We will be.

15 MR. SEIGLER: 9:30, Judge?

16 THE COURT: Yes, 9:30.

17 (Recessed at 5:10 p.m.).
18
19
20
21
22
23
24
25

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

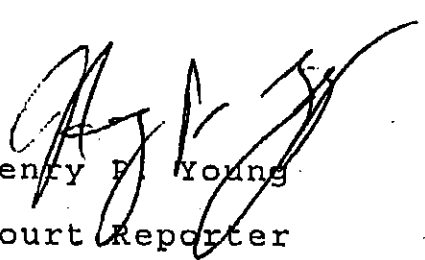
24

25

I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Greenwood County, South Carolina, on the 6th day of February, 2007.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 28, 2007


Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2004-CP-24-38

COUNTY OF GREENWOOD

JON E. HARTFIELD, by and
through his conservator,
Haskell Hartfield, and HASKELL
L. HARTFIELD, individually,

-vs-

GLENN McDONALD, d/b/a The
Carolina Eight Ball Lounge, and
THE GETAWAY LOUNGE & GRILL,
INC., and SHOU MEI MORRIS,
individually and as President
of The Getaway Lounge & Grill,
Inc., and South Carolina
Department of Transportation,

Defendants.

B E F O R E:

HONORABLE LARRY R. PATTERSON

Henry P. Young
Court Reporter

VOLUME III of IV

February 7, 2007

1 A P P E A R A N C E S:

2 JON E. NEWLON, Esquire
3 Attorney for the Plaintiff

4 RUACH C. WISE, Esquire
5 Attorney for the Defendant

6 W. CRAIG SEIGLER, Esquire
7 Attorney for the Defendant

8 MARVIN R. WATSON, Esquire
9 Attorney for the Defendant

9 - - - - -

10 (Convened at 9:35 a.m.).

11 THE COURT: Are you ready?

12 MR. WISE: We're ready.

13 (The jury returned to the courtroom).

14 THE COURT: Okay, ladies and gentlemen. Are
15 we ready, Mr. Wise?

16 MR. WISE: We're ready. Call Harry Metts.

17

18

19

20

21

22

23

24

25

1 HARRY METTS,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WISE:

5 Q Give us your full name.

6 A Harry Metts.

7 Q Where do you live?

8 A 420 Phoenix Road, Greenwood County.

9 Q How long have you lived in Greenwood?

10 A All my life.

11 Q What do you do for a living?

12 A I have a logging business and a package
13 store, party shop.

14 Q And which one is that?

15 A Williams Package, South Point Pub.

16 Q Do you remember this day we're talking about
17 of the 11th of July of 2003?

18 A Yes, sir.

19 Q Were you at the pub that day?

20 A I came in in the afternoon after I left my
21 logging business around 5:00.

22 Q Okay. Was Hoyt Helton there?

23 A Sorry?

24 Q Was Hoyt Helton there?

25 A Yes, sir.

1 Q And what was he doing?

2 A When I came in, I went into the package store
3 for a few minutes, ten minutes, and I then went
4 back around to the pub side. He was sitting on a
5 table on the right side as I walked in, which was
6 right by the cigarette machine. He was just
7 sitting there slumped over a little bit, watching
8 the guys shoot pool, he was on my right side.

9 Q Go ahead. Did you say anything to him?

10 A Right when I walked by he was kind of bent
11 over a little bit and I said, "You know you can't
12 sleep in a place that sells beer," you know, just
13 picking at him. We tease one another a lot.

14 Q All right. Did he continue to stay in the
15 pub?

16 A At that time he did.

17 Q And did he go outside? Where did he go
18 later?

19 A While I was inside doing a couple things and
20 came back by and I put my arm around him and I
21 said, "Are you sick, do you feel bad," and just
22 teased him a little bit, and so he got a little bit
23 upset with me, you know, he went outside. Of
24 course maybe he was just cold, because he couldn't
25 tolerate very cold, much cold weather, and the

1 air-conditioner was on about 72, 74. A lot of
2 times he would sit on the bench out there with his
3 jacket on even in the summertime.

4 Q So, where did he go sit?

5 A He sat on the bench, it was in front of the
6 pub, on the right side over there, kind of on the
7 end of it.

8 Q Did you talk to him while he was outside?

9 A Periodically I was in the package store side,
10 occasionally between customers I would come out and
11 maybe sit down on the bench. He and Johnny Teague
12 were talking.

13 Q Did he have anything to drink while he was at
14 your place?

15 A No, sir, nothing.

16 Q Did you have occasion to observe him very
17 closely?

18 A When I put my arm around him I said, "Are you
19 sick, do you feel bad?"

20 Q Okay. Could you tell us in your opinion
21 whether or not he appeared at all to be under the
22 influence or anything?

23 A I didn't think he was under the influence, I
24 didn't think he was drinking, he just looked very
25 pale. He was sick.

1 Q I believe you were notified of his death that
2 night?

3 A Sometime 11:00 to 12:00 I got a call that
4 woke me up.

5 Q Go ahead.

6 A It was a Deputy Smith, and I later found out
7 there were two Smiths who worked for the Sheriff's
8 Department. One of them asked me if I knew how to
9 get in contact with Punk Helton's wife. I said,
10 "She works at night at Harris Plant and I don't
11 have a number but she's supposed to be working
12 there." And he didn't tell me why or anything.
13 And I told him he had two daughters, and I gave him
14 those names and I didn't know where they lived, and
15 I forgot to tell him that he had a son, and after I
16 hung up, later I called back to the Sheriff's
17 Department and I told her who I was, I said, "Tell
18 this Deputy Smith that contacted me, if he will
19 call me back I have some more information." So,
20 around 2:00 o'clock he called me back and I said,
21 "I failed to tell you he has a son that lives down
22 off Fruit Hill Road, off 178, Good Hope Church,
23 Tyler, I forgot about Tyler." And he said, "Well,
24 I might as well go on and tell you he was involved
25 in an automobile accident and he was killed."

1 Q That is when you first found out about it?

2 A Yes, sir.

3 Q How did they have your name?

4 A Previously in conversation with Punk there
5 was a time where he was somewhere, I forget where,
6 and he had to catch a ride home, he caught a ride
7 with somebody and they went other places, went
8 inside, left him sitting in a car about three hours
9 and I told him, I said, "Listen, you don't have to
10 do that, I'll give you my telephone number," I
11 said, "If you get stranded sometime like that give
12 me a call, I'm easy to reach, I'll bring somebody
13 with me and we'll come get you, take you home."

14 Q You knew him pretty well?

15 A I guess, I tried to think, just a little over
16 a year before his accident, probably, I'm guessing
17 there, he came into the pub with friends and he
18 said he had known me for some time but --

19 Q Any doubt in your mind he was completely
20 sober?

21 A He hadn't brought in nothing to drink with
22 him, he drank nothing there.

23 MR. WISE: Thank you. Answer any questions
24 Mr. Newlon may have.

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. NEWLON:

3 Q So, you know Punk pretty well?

4 A Pretty good.

5 Q How many years?

6 A I just said probably a year before the
7 accident or a little better. I don't recall any
8 time more than that.9 Q Did you all ever, the way you were hugging on
10 him, did you all ever have small talk, did he ever
11 tell you what was going on in his life, things like
12 that?

13 A I knew some things.

14 Q Did you know he had a problem drinking?

15 A I knew he had a little problem with medical
16 problems, he frequented the --17 Q I need you to answer my question. Are you
18 aware that he had a drinking problem, then you can
19 explain.

20 A I think he dranked a good bit.

21 Q Okay.

22 A At times.

23 Q That's right. You were also aware he had
24 been stopped a number of times drinking?

25 A I had heard conversation about a DUI way

1 back. I don't know when.

2 Q Okay. He didn't have a drop at your
3 establishment that evening, is that correct?

4 A I'm sorry?

5 Q He didn't have a drop at your establishment
6 that --

7 A None.

8 Q -- that evening?

9 A Not a drop.

10 Q Does .212 mean anything to you?

11 A Highly intoxicated.

12 Q Highly intoxicated?

13 A Yes, sir.

14 Q You may not know or not but do you know if a
15 person can even get that intoxicated off three
16 beers or even four beers?

17 A I would question that.

18 Q You would question that? Do you even think
19 it's possible?

20 A No, I don't think it's possible to get .22
21 off four beers.

22 Q Okay. So, do you know what time he left
23 Williams Package?

24 A Shortly after 7:00, five minutes or ten
25 minutes, whatever.

1 Q At 7:00 o'clock he was perfectly fine?

2 A That's right.

3 Q Okay. And this accident, you understand that
4 this accident happened approximately 10:50?

5 A That's what I was told.

6 Q Okay. That means somewhere in that three
7 hours this man got to .212?

8 A I don't deny that that's been the testimony.

9 Q Can you explain that in any way based on your
10 knowledge of this man?

11 A No, sir.

12 MR. WISE: Your Honor --

13 A No, sir.

14 THE COURT: Sustained. You know he couldn't
15 explain it.

16 MR. NEWLON: Thank you. No further
17 questions.

18 MR. WISE: Thank you. Come down, Mr. Metts.

19 (Witness excused).
20
21
22
23
24
25

1 JOHN TEAGUE,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WISE:

5 Q Please give us your full name.

6 A John Teague.

7 Q Where do you live, Mr. Teague?

8 A 93 Forest Street, Greenwood.

9 Q And how long have you lived in Greenwood?

10 A I lived here in the seventies for about five
11 years and I've been back in Greenwood since 2000.

12 Q Okay. Did you know Hoyt Helton?

13 A Yes, I did.

14 Q How did you get to know him?

15 A Probably met him at Williams Package.

16 Q Did you all become pretty good friend?

17 A Yes, we did.

18 Q To what extent?

19 A Well, we went to the V.A. together, I drove
20 him a good many times, picked him up and so forth.

21 Q This would be the V.A. where?

22 A In Augusta.

23 Q Okay. So, you would drive him down on
24 occasion?

25 A Yes, sir.

1 Q You knew he had some medical problems?

2 A Sir?

3 Q You knew he had some medical problems?

4 A Yes, I did.

5 Q Tell us, if you would, do you remember the
6 afternoon of July the 11th of 2003?

7 A Yes, I do.

8 Q Tell us what you did that afternoon.

9 A I arrived at Williams Package between 4:30
10 and 5:00. Mr. Helton, Punk, was sitting at the bar
11 by the telephone and I walked over and spoke to him
12 and after about, I would say 15 or 20 minutes, Mr.
13 Metts came in and Punk had gotten up and went over
14 and sat on a table watching them shoot pool. Well,
15 Mr. Metts said if Harry got to aggravating him --

16 MR. NEWLON: Objection to hearsay.

17 MR. WISE: That is not for the truth of the
18 matter asserted.

19 Q Don't tell us what he said.

20 A Anyway, he went outside.

21 Q He went outside?

22 A Right.

23 Q All right.

24 A As he went outside I went out and sat outside
25 with him.

1 Q Okay. How long did you all stay outside
2 talking?

3 A Approximately an hour and a half to two
4 hours.

5 Q Okay. And did Mr. Helton have anything to
6 drink while there?

7 A No, he didn't.

8 Q When you saw him when he first got there did
9 he give any appearance of having had anything to
10 drink?

11 A No, sir.

12 Q Anything in particular you all talked about?

13 A Yes, sir. We talked about his leg, he had
14 had his leg broke two or three times and they
15 discussed with him about having to take his leg.

16 Q Okay. And did you all have a conversation
17 right before, or what time did you all finish up
18 your conversation?

19 A I left about 10 minutes after 7:00, 10 or 15
20 minutes after 7:00.

21 Q All right. Did you have a conversation with
22 Punk as to what he was going to do?

23 A Yes.

24 Q What was his intent?

25 A He said he was going to The Getaway to pay a

1 bill he owed.

2 Q Did Mr. Helton have anything to drink there?

3 A No, sir.

4 Q When he left your presence was he sober?

5 A As far as I know he was. I mean, if he
6 hadn't been I would have offered to drive him
7 somewhere.

8 Q Any indication that he had anything to drink
9 in your presence?

10 A No.

11 MR. WISE: Thank you. Answer any questions
12 Mr. Newlon may have.

13 MR. NEWLON: Your Honor, I have no questions
14 of this witness.

15 MR. SEIGLER: No questions, Your Honor.

16 THE COURT: Thank you, sir.

17 (Witness excused)

18 MR. WISE: Dianna Bice.

19 THE COURT: Miss Bice, you have already
20 testified?

21 THE WITNESS: Yes, sir.

22 THE COURT: You are still under oath. Take
23 the stand.

24

25

1 DIANNA BICE,
2 having been previously sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WISE:

5 Q Miss Bice, you have testified, I will try not
6 to go over your testimony again, it may overlap a
7 little bit.

8 Are you the manager of The Getaway Lounge &
9 Grill?

10 A Yes, sir.

11 Q How long have you been doing that?

12 A Seven years.

13 Q All right. Now, you all have a policy about
14 people that are in your establishment, if they
15 drink too much?

16 A Yes, sir. If they come in basically
17 intoxicated we do not serve them. If they have
18 been there for awhile and they are looking like
19 they are getting intoxicated we will turn, we will
20 not allow them to drink any more.

21 Q Have you all on occasion given people rides
22 home?

23 A Yes, sir.

24 Q And through what means?

25 A If we, I have several people come in, some of

1 them don't drink, I will see if they will give them
2 a ride home. At one point in time I had a guy
3 lived just right behind us, we could call him at
4 anytime and give him \$5.00 and he would take
5 anybody home, or call them a cab, and I have
6 personally taken several of them home myself.

7 Q All right. Now, Shou Mei Morris is also
8 involved in that business?

9 A She's not involved in the day to day
10 operation, she's the president of the corporation.

11 Q Was she there at all the night of July the
12 11th?

13 A No, sir.

14 Q Okay. I believe she is your --

15 A Aunt,

16 Q -- aunt, okay. Now, on the night of July the
17 11th what time did you get there?

18 A 7:15, 7:30, somewhere around in there.

19 Q And I believe you testified earlier that Mr.
20 Helton got there about the same time you did?

21 A Yes, sir.

22 Q Where do you recall him being most of the
23 time during the evening?

24 A Me and him stood at the pool table, I was
25 laying out some stuff for customer appreciation day

1 the next day. I was laying out all the prizes I
2 was giving away. He was standing right there, we
3 had a conversation, I talked to Punk for probably
4 20, 25 minutes about him not having a cast on his
5 leg and not having his crutches.

6 Q What was he using to help him walk?

7 A A cane.

8 Q Who was the bartender working when you got
9 there?

10 A Pamela Fletcher.

11 Q Does she work for you now?

12 A No, she doesn't.

13 Q Do you know where she is now?

14 A I have not been able to find her.

15 Q Who was the bartender that came in about 8:00
16 o'clock?

17 A Barry Stennett.

18 Q How long has he worked for you?

19 A Seven years.

20 Q Seven years?

21 A He has worked for me for seven.

22 Q All right.

23 Q And do you recall what time Mr. Helton left?

24 A We had a conversation, I guess he, he was at
25 the pool table, we was talking, I went behind the

1 bar maybe five or ten minutes after 8:00 to make
2 sure the shift change went okay, and I spoke to my
3 bartender, he asked me where Punk was, that Punk
4 wanted to speak to him. I said, "I don't know," I
5 said, "Don't worry about it. It's just about a
6 dollar-fifty," and I never seen Punk after that.

7 Q When you got there and were talking to Mr.
8 Helton what was the general topic of discussion?

9 A When we first talked about him getting his
10 cast off his leg, that is the first time I had seen
11 him since he got his cast off, and then we talked
12 about, he had been there the previous day and he
13 was asking me why my bartenders didn't trust him.
14 Evidently he had come in and ordered a beer, didn't
15 have the money to pay for it, my bartender had told
16 him, "I'll pay for it, you just come back and pay
17 me for it later," and wouldn't serve him anything
18 else. I tried to explain to Punk that the policy
19 was that they was no longer allowed to write
20 anything down without a credit card or check, it
21 wasn't because we didn't trust them, it was just
22 that my bartenders had to pay for every beer that
23 every customer come in, it was deducted from their
24 paycheck at the end of the week.

25 Q Now, during the time that you were there with

1 him was there any indication that he was
2 intoxicated?

3 A No, sir.

4 Q Any indication that in any way he had had too
5 much to drink?

6 A No, sir.

7 MR. WISE: Thank you. Answer any questions
8 Mr. Newlon may have.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. NEWLON:

3 Q Miss Bice, when I subpoenaed you to court
4 today I asked you to bring a bunch of records,
5 didn't I?

6 A You asked --

7 Q When I subpoenaed you to court I sent you a
8 subpoena and with that subpoena I asked you to
9 bring a bunch of records?10 A I think that was a subpoena from you lawyers'
11 offices.12 Q I understand. Didn't that subpoena ask you
13 to bring things?14 MR. WISE: I object. It deals with an
15 equitable issue involving the case.16 THE COURT: Okay. I think you asked the same
17 questions and she answered them already.18 MR. NEWLON: Some I did not cover that goes
19 specifically to the issue but I will hold off on it
20 if you want to wait until after.

21 THE COURT: Okay.

22 MR. NEWLON: Okay. I would reserve to have
23 the opportunity to examine her for that purpose,
24 Your Honor.

25 THE COURT: Okay.

1 MR. NEWLON: Thank you.

2 BY MR. NEWLON:

3 Q I just want to make sure. You knew Punk
4 pretty well, correct?

5 A Yes, sir.

6 Q You knew he had a drinking problem?

7 A I have seen Punk drink and I have seen him
8 highly intoxicated but I didn't know that he
9 dranked -- I mean, like I said, we see him
10 sometimes two or three times in a week, then may
11 not see him for two or three weeks.

12 Q On this night of July 11, 2003, within an
13 hour and 20 minutes or two hours and 20 minutes or
14 whenever he left, according to your testimony, when
15 he was found to be .22 captured at his death, it is
16 your testimony he was perfectly fine when he was in
17 your bar, is that correct?

18 A Yes, sir.

19 MR. NEWLON: Okay. I have no further
20 questions.

21 MR. WISE: You can come down.

22 (Witness excused).

23 MR. WISE: Call Barry Stennett.

24 MR. WISE: Your Honor, I would like to excuse
25 Mr. Metts if there is no objection.

1 MR. NEWLON: No objection, Your Honor.

2 THE COURT: All right. You can stay or
3 leave, it's up to you.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BARRY STENNETT,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WISE:

5 Q Please give us your full name.

6 A Barry Stennett.

7 Q Very good. Where do you live, Mr. Stennett?

8 A Right behind the Kentucky Fried Chicken.

9 Q In Greenwood?

10 A Yes.

11 Q Are you married?

12 A Yes, sir.

13 Q All right. Where are you employed?

14 A Getaway Lounge.

15 Q How long have you, how long have you been
16 working there?

17 A Seven years.

18 Q All right. Do you remember the evening of
19 July the 11th of 2003?

20 A Yes, sir.

21 Q Did you know Hoyt Helton?

22 A Yes, sir.

23 Q You knew him as Punk?

24 A Yes.

25 Q How long have you known him?

1 A For about, probably about 15 years.

2 Q Okay. You knew him before you started
3 working at The Getaway?

4 A I been working at The Getaway 15 altogether,
5 eight years with Dianna, seven with Shou Mei.

6 Q You have known him about 15 years?

7 A Yes.

8 Q What time did you come to work on the 11th?

9 A Oh, about 15 until 8:00 o'clock, between 15
10 til and 8:00 o'clock.

11 Q What time does your shift start?

12 A 8:00 o'clock.

13 Q And are there things you have to do before
14 you start?

15 A I do inventory and I had to check out my
16 register.

17 Q What did you check on the register?

18 A At 8:00 o'clock.

19 Q What do you mean, check on the register?

20 A Get the register reading and see what your
21 bank is and start my shift out.

22 Q Okay. Did you see Mr. Helton when you got
23 there?

24 A Yes, sir.

25 Q Did you speak to him?

- 1 A I throwed my hand up.
- 2 Q And what did you say?
- 3 A I went to my boss first, she was at the
- 4 middle pool table, I talked to her to see what she
- 5 was doing with the pool sticks. We were having
- 6 customer appreciation day.
- 7 Q Where was Mr. Helton when you saw him?
- 8 A Standing right there.
- 9 Q Right there?
- 10 A Sitting on the corner of the pool table,
- 11 talking to Dianna.
- 12 Q Okay. And you say you threw your hand up?
- 13 A Yes.
- 14 Q Did you speak to him?
- 15 A Yes.
- 16 Q Did he speak to you?
- 17 A Yes.
- 18 Q All right. Did you all carry on any
- 19 conversation?
- 20 A No, sir.
- 21 Q This was just walking by?
- 22 A Yes.
- 23 Q And then what did you do?
- 24 A Do my register, go behind the bar and do my
- 25 register with the other employee.

1 Q Did you see Mr. Helton again?

2 A No, not after I done my register. I turned
3 around to talk to him and he was already gone.

4 Q You turned around to talk to him after you
5 were doing your register?

6 A Yes, sir.

7 Q He was already gone?

8 A Yes, sir.

9 Q You were at the register about when?

10 A Between 8:00 and 8:15.

11 Q Were you keeping precise time that night?

12 A Huh-uh (negative).

13 Q And I believe the highway patrolman called
14 you the next day?

15 A Something like that.

16 Q Several days later?

17 A I don't remember what day, yes.

18 Q You don't know what day it was?

19 A No, sir.

20 Q He did call you later?

21 A Yes, sir.

22 Q You told him basically the same thing?

23 A Yes, sir.

24 Q Now, when Mr. Helton left did he give any
25 appearance to you of being intoxicated?

1 A No. He walked funny because he had a bad
2 leg, he messed his leg up.

3 Q Does The Getaway have a policy of how to deal
4 with people who have had too much to drink?

5 A Yes. I can tell when they come in the door
6 whether they need anything to drink or not, I've
7 been doing it that long. If you come in and drink
8 too much we're going to try to get you a ride home,
9 you're not going to walk out the door like that.

10 Q Are you going to get served?

11 A No, no.

12 Q If a person has too much to drink while at
13 your place what do you do?

14 A Cut him off and make sure he stays a while or
15 call him a cab or get him a ride home.

16 Q You've gotten people rides home before?

17 A Yes.

18 Q Have you called a cab before?

19 A Yes, sir.

20 Q No problem doing that?

21 A No, sir.

22 Q Did you have any problems with customers
23 fighting you on that?

24 A What, now?

25 Q Do customers ever argue with you about that?

1 A No, not really.

2 MR. WISE: All right, thank you. Answer any
3 questions Mr. Newlon may have.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. NEWLON:

3 Q Mr. Stennett, do you know Brad Harrison?

4 A Yes, sir.

5 Q How long have you known Brad?

6 A For about 20 years, 25 years. He's my
7 cousin.

8 Q Is he an honest man in your estimation?

9 A Yes, okay.

10 Q And I understand you have been working for
11 The Getaway for about 15 years?

12 A Uh-huh (Affirmative), yes, sir.

13 Q And you have known Shou Mei and Dianna for
14 quite awhile?

15 A Uh-huh (Affirmative).

16 Q Is that a yes?

17 A Yes, sir.

18 Q And if I understand your testimony, you're
19 telling this jury that this man Punk, according to
20 what you observed, left The Getaway at what time?21 A About between 8:00 and 8:15. I don't know
22 exactly what time but I went behind the bar to
23 check up my other employee, so I really didn't pay
24 it no attention.

25 Q Okay. And you never -- did you ever serve --

1 A No, sir, no, sir.
2 Q You never served Mr. Helton a beer?
3 A That night, no, sir.
4 Q Was anybody --
5 A When I done my register, when I turned around
6 he was already gone.
7 Q Was there anybody else there that could have
8 served him a beer?
9 A Might have been Pam Fletcher before I got
10 there.
11 Q Okay.
12 A She worked first shift, I worked second, she
13 works until 8:00 o'clock.
14 Q All right. So, then, you don't have any
15 knowledge of whether or not Pam Fletcher served
16 him?
17 A No, sir.
18 MR. NEWLON: No further questions.
19 MR. WISE: Thank you. Come down.
20 (Witness excused).
21 MR. WISE: Pam Johnson.
22 MR. WISE: Your Honor, excuse Mr. Stennett?
23 THE COURT: Okay.
24
25

1 PAMELA JOHNSON,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WISE:

5 Q Please give us your full name.

6 A Pamela Johnson.

7 Q Where do you live?

8 A I live at 623 Mt. Olive, Saluda.

9 Q That is actually in Greenwood County?

10 A Greenwood County.

11 Q Okay. What do you do for a living?

12 A I'm employed with Getaway now.

13 Q Okay. What do you do there?

14 A I'm a bartender.

15 Q All right. Do you remember the evening of
16 the 11th of -- you're not the bartender Pam
17 Fletcher?

18 A No.

19 Q Do you remember the evening of July the 11th?

20 A Yes.

21 Q Did you come to The Getaway that night?

22 A I did.

23 Q And what did you do?

24 A I was dating one of Mary and Tracy's DJ's,
25 Stephen --

- 1 Q Who are Mary and Tracy?
- 2 A Clark.
- 3 Q Who are they?
- 4 A They ran the karaoke.
- 5 Q You were dating --
- 6 A One of their other DJ's.
- 7 Q One of their other DJ's?
- 8 A And we came in around 8:00 o'clock.
- 9 Q Were you working that night?
- 10 A No. I was not employed with The Getaway
- 11 then.
- 12 Q Okay.
- 13 A We came in 8:00 o'clock and we walked back to
- 14 the DJ booth where Melissa Storey was sitting up
- 15 and we was all kind of excited about customer
- 16 appreciation. When I walked by going back toward
- 17 the DJ booth Punk was at the pool table talking
- 18 with Dianna.
- 19 Q Uh-huh (Affirmative).
- 20 A I walked back to the DJ booth, Steve was
- 21 helping Peaches, you know, do a few things and we
- 22 were discussing some things. I looked up, I seen
- 23 Punk out toward the pool table.
- 24 Q Right.
- 25 A But I never spoke with him.

1 Q And how long was it before you realized he --
2 let me rephrase it. Did you see him later?

3 A No. I remember seeing him when I came in and
4 then after talking with Peaches and all, or
5 Melissa, I looked up, he was gone.

6 Q You came in about what time?

7 A It was around 8:00.

8 Q Around 8:00 o'clock?

9 A Uh-huh (Affirmative).

10 Q And how long did you go back there to talk to
11 Peaches?

12 A I say 15 to 20 minutes.

13 Q Thank you. So, somewhere around 8:20 or so
14 you looked up and you didn't see him?

15 A Correct.

16 Q Did you stay there the rest of the evening?

17 A Yes, I did.

18 Q Did you see him the rest of the evening?

19 A No, I didn't.

20 Q Did you get close enough to have an opinion
21 of whether or not he had consumed too much alcohol
22 or anything?

23 A No.

24 MR. WISE: Okay. Thank you. Answer any
25 questions Mr. Newlon may have.

CROSS EXAMINATION

QUESTIONS BY MR. NEWLON:

Q I want to make sure you did get close enough to him to assess his state, right?

A I kind of walked by him but I didn't stop to speak.

Q All right. You have no opinion as to whether or not he was intoxicated that night?

A No, just didn't see him drinking.

Q Did I understand this correct, since the accident Dianna Bice has hired you and you now work at Getaway?

A Yes, that's correct.

MR. NEWLON: No further questions.

(Witness excused).

MR. WISE: Call Mary Tyler.

MARY TYLER,
after being first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. WISE:

Q Please give us your full name.

A Mary Tyler.

Q Where do you live?

A 109 Mellow Drive East, Greenwood, South
Carolina.

Q And were you out at The Getaway on the 11th
of July?

A Yes.

Q What were you doing there?

A Well, I was getting ready to open the door
for Dianna, we start the door at 9:00 o'clock to do
karaoke.

Q What do you mean, open the door?

A I check memberships and stuff like that.

Q Okay. What time did you get there?

A I got there approximately about 7:30, 7:35.

Q And do you know Hoyt Helton?

A Yes, I do.

Q Did you see him there?

A Yes, sir.

Q And what was he doing?

A When I first got there he was standing up at the bar holding his cane and then I went on back toward the DJ booth and Dianna was sitting up pool sticks and stuff up on the middle pool table, he went over and sat on the side of the pool table and was talking to Dianna. We come up, you know, was looking at everything that Dianna had and he was carrying on a conversation with Dianna about, "How do I get a pool stick," you know. Dianna said come back the next day.

Q Did you talk to him personally?

A No, sir, I didn't.

Q And what did you do after you went by there?

A After that I went on back toward the DJ booth and we finished what we had to do and about 8:15, 8:20, I come back to the front so that I could go up toward the door and, you know, get everything situated there.

Q Did you see Mr. Helton at that point?

A No, sir, I did not.

Q And for the rest of the evening where were you?

A Sitting in front of the door.

Q All right. And did you see Mr. Helton exit the door?

A No, sir, I didn't.

Q So, the last time you saw him was when you got there?

A Yes, sir.

Q And after 8:15, 8:20 you didn't see him again?

A No, sir, I didn't.

Q Were you ever close enough to him to get an opinion as to whether or not he was sober or anything?

A Well, I was standing at the pool table when he was right there at the pool table and he didn't seem intoxicated to me and I didn't see him again.

MR. WISE: Thank you. Answer any questions Mr. Newlon may have.

CROSS EXAMINATION

QUESTIONS BY MR. NEWLON:

Q On the night of this accident you were an employee, is that correct?

A No, sir, just sitting at the door.

Q How long have you worked or did you work for The Getaway?

A Basically I did karaoke, I hurt my back, I couldn't do it anymore, so I was there, you know, so I was sitting at the door helping Dianna out.

Q You also helped either Dianna or Shou Mei out when they were running the Hog Dog, too, correct?

A Yes, sir. I did the karaoke there.

Q You have known them awhile?

A Yes, sir, probably about six or seven years.

MR. NEWLON: No further questions.

THE COURT: Thank you.

MR. WISE: Thank you, come down.

(Witness excused).

MR. WISE: Call Steve Bice.

1 STEVE JOSEPH BICE,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. WISE:

5 Q Please give us your full name.

6 A Steve Joseph Bice.

7 Q All right. Where do you live, Mr. Bice?

8 A 348 Creswell.

9 Q Where are you employed?

10 A Walmart Distribution.

11 Q How long have you been working there?

12 A About eight years.

13 Q You are related to Dianna Bice?

14 A I'm her husband.

15 Q Okay. How long have you all been married?

16 A Eleven years.

17 Q All right. Do you recall this evening of
18 July the 11th of 2003?

19 A Yes, sir.

20 Q Did you know Hoyt Helton?

21 A Yes, sir.

22 Q How long have you known him?

23 A Probably about two or three years.

24 Q Two or three years? Did you see him in the
25 Getaway that night?

1 A Yes, sir.

2 Q Tell us first of all what time did you get
3 there?

4 A I come with Dianna, it was probably between
5 7:00 and 7:30.

6 Q All right. Was Hoyt there when you got
7 there?

8 A He got there about the same time.

9 Q About the same time, all right. And what did
10 he do when he got there?

11 A We was, we was putting all the stuff on the
12 pool table, he come over there and started talking
13 to me and Dianna.

14 Q All right. What were you all putting on the
15 pool table?

16 A Like tee-shirts, coolie cups, pool sticks,
17 stuff like that.

18 Q Stuff like that, okay. Did you all carry on
19 a conversation with him?

20 A Yes.

21 Q Do you remember what you all talked about?

22 A Me and him, he always joked with me like, and
23 he was talking about the pool sticks, there was a
24 pool stick he wanted and he kept on wanting to know
25 how he could get that pool stick.

- 1 Q Okay. Where did he spend most of the time?
- 2 A At that middle pool table with us.
- 3 Q Now, did you have occasion to observe him
- 4 standing there?
- 5 A Yes, sir.
- 6 Q And talk to him?
- 7 A Yes, sir.
- 8 Q Were you able to form an opinion as to
- 9 whether or not he was sober?
- 10 A Yes, sir.
- 11 Q And what was that opinion?
- 12 A He didn't seem intoxicated to me.
- 13 Q Did he give any indication of it?
- 14 A No, sir, because, I mean, like I say, I
- 15 carried on a conversation with him for awhile.
- 16 Q Did you see him -- was he sitting on the pool
- 17 table?
- 18 A He kind of had like one leg up in the air,
- 19 one on the floor. He was just kind of leaning on
- 20 it.
- 21 Q Kind of leaning on the pool table? Was that
- 22 unusual for him?
- 23 A No, sir.
- 24 Q Do you remember his leaving?
- 25 A Sir?

1 Q Do you remember when he left?

2 A Yes, sir.

3 Q Do you remember about what time it was?

4 A It was probably around 8:30 or so.

5 Q All right. And do you remember the lighting
6 conditions outside when he left?

7 A Yes. It was still daylight.

8 Q How do you remember that?

9 A Well, when he got ready to go he told me he
10 had something to do and he would see me tomorrow to
11 come back and get his pool stick.

12 Q Did you see him leave?

13 A Yes, I watched him walk out the door.

14 Q Could you see light outside?

15 A Yes, sir.

16 Q Did he ever give you indication that he had
17 had too much to drink?

18 A No, sir.

19 MR. WISE: Thank you. Answer any questions
20 Mr. Newlon may have.

21

22

23

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. NEWLON:

3 Q I notice you're shaking. Are you okay?

4 A Yes. I had an accident when I was younger
5 and it makes me sometimes shake. It cut the nerves
6 in my hand and makes me shake.7 Q Okay. Had you ever seen, before this night,
8 ever seen Punk intoxicated at The Getaway?

9 A Yes, sir.

10 Q Have you or anyone else to your knowledge
11 ever given him a ride home or called his wife?12 A Yes, sir, I have given him a ride home a few
13 times.14 MR. NEWLON: I don't have any other
15 questions.16 MR. WISE: Just one redirect.
17
18
19
20
21
22
23
24
25

1 REDIRECT EXAMINATION

2 QUESTIONS BY MR. WISE:

3 Q Did he ever give you any trouble about giving
4 him a ride home?

5 A No, sir.

6 MR. WISE: Thank you.

7 (Witness excused).

8 MR. WISE: The defense rests, Your Honor.

9 THE COURT: All right, ladies and gentlemen,
10 that's all the evidence and testimony and the next
11 thing you will have are the closing arguments or
12 the summations by the attorneys. Before we go into
13 that I need to go over some legal matters with
14 them, then when we come back out we'll let them
15 make their closing argument, their closing
16 statements.

17 I should have told you this but if any of you
18 get uncomfortable or you need to take a break at
19 anytime just raise your hand and it won't be
20 difficult to do that. I have tried to take regular
21 breaks. None of us want any of you to be
22 uncomfortable, okay? If you all would just step
23 back to the jury room for a few minutes, I'll bring
24 you back out for the closing statements. Do not
25 discuss the case at this time.

1 (Jury excused from the courtroom).

2 THE COURT: Is Daley versus Ward a DRAM-Shop
3 case?

4 MR. NEWLON: That's a similar case.

5 MR. WISE: It's not a DRAM-Shop statute in
6 the sense we don't have a DRAM-Shop statute. What
7 Ward says is that it created an obligation on the
8 civil side. So, if we're-splitting hairs or not, I
9 don't know.

10 THE COURT: Well, we call it DRAM-Shop.

11 MR. WISE: I know we do.

12 THE COURT: And --

13 MR. NEWLON: Your Honor, I have a case with
14 the pertinent part highlighted.

15 THE COURT: Do you have that case?

16 MR. NEWLON: Daley versus Ward?

17 THE COURT: Let me look at it, I won't have
18 to pull it out. That's the Windjammer case?

19 MR. WISE: Yes.

20 THE COURT: Okay, I'm familiar with that
21 case.

22 MR. WISE: It just doesn't have Windjammer in
23 the name.

24 MR. NEWLON: Your Honor --

25 THE COURT: I was waiting until the

1 plaintiffs got back in here before we talked about
2 things. This is important to them. I just didn't
3 agree with the language.

4 MR. WISE: Which one?

5 THE COURT: Number one. I've got the law on
6 that charge but you say, "And is followed by
7 inquiry, must bring knowledge of that fact home
8 with him." I just don't think that's the law.

9 MR. WISE: I'm quoting from Daley versus
10 Ward.

11 THE COURT: I know you're quoting from it.
12 It's like many lawyers, you are quoting about
13 whether it's a minor or not, not other person.

14 MR. WISE: Correct, but the same principles
15 apply.

16 THE COURT: No, I don't think, I don't know
17 of any duty to make an inquiry of the person of
18 whether or not he's drinking or not. That is like
19 charge number five, so I don't think it necessarily
20 has to be followed by any inquiry, if by appearance
21 or otherwise, the case says, that the person is
22 intoxicated. He's got to prove two things.

23 MR. WISE: I think we may be reading the same
24 thing and interpreting it differently because first
25 of all if he's intoxicated he obviously can't serve

1 him.

2 THE COURT: Right.

3 MR. WISE: As I understand it, the other
4 alternative is, or if he has such information that
5 from his appearance or other factors, including the
6 number of drinks he had been served, including
7 being boistrous or whatever, as would lead a
8 prudent person to believe, we actually incorporate,
9 they say in that Daley case the reasonable man
10 standard, a prudent person to believe he was
11 intoxicated, then they can be liable. They
12 actually rejected the knew or should have known
13 argument in Daley.

14 THE COURT: They what, now?

15 MR. WISE: They actually rejected the knew or
16 should have known charge.

17 MR. NEWLON: Your Honor, this, they said that
18 charge was a perfectly legitimate charge, so
19 legitimate they incorporated it in the standard
20 charge. This language being proposed sets a much
21 higher standard on the part of the plaintiff than
22 required by the law that exists today. He is
23 arguing against precedent.

24 MR. WISE: In Daley, although Daley may have
25 been entitled to a charge based upon Thelman, they

1 requested instead a charge injecting the term knew
2 or should have known for the term knowingly, which
3 is impliedly rejecting the known or should have
4 known, and adopting under a tavern liability theory
5 the language in Thelman would apply to tavern
6 liability for someone who was intoxicated.

7 MR. NEWLON: Your Honor, the embodiment of
8 the charge exists in the charge book and heard
9 before embodiment of the law in DRAM-Shop cases in
10 South Carolina as a group of cases. It doesn't
11 isolate one particular case. The law in this state
12 is knew or should have known, and it's an
13 interpretation of knowing, someone knew that they
14 did it. The question is did they have knowledge,
15 and knowledge includes whether they knew or should
16 have known. It doesn't preclude that as an aspect
17 of the DRAM-Shop case.

18 THE COURT: Well, the Bice case in big
19 highlighted letters refers to the DRAM-Shop law. I
20 assume that courts do consider DRAM-Shop law.
21 Secondly, they refer that the person knew or should
22 have known, and I think, you know, it's whether a
23 reasonable person would have known or should have
24 known whether he was intoxicated.

25 MR. WISE: I agree, that is what I think my

1 charge focuses on, what a reasonable person would
2 do. I mean, you obviously can't wear blinders and
3 say, "I never saw the person, I served him like
4 this." That's foolish.

5 THE COURT: Right.

6 MR. WISE: But I think --

7 THE COURT: Well, the law is if you knew or
8 should have have known, and in any negligence
9 action it's what a reasonable person knew or should
10 have known under same or similar circumstances.

11 Now, this DRAM-Shop law as we call it, this
12 statute and the case law as established by the
13 Supreme Court, the DRAM-Shop statutes were passed,
14 it imposes additional liability. We all know that
15 the primary person responsible for this accident
16 was Mr. Helton by consuming. It's not unlawful to
17 sell alcohol to a person who wants to buy it. I
18 think you have to do that. But you can't sell it
19 to a person who is intoxicated, and the reason is a
20 person who is, a person who is intoxicated should
21 not become more intoxicated and endanger the
22 public.

23 So, the plaintiff has got to prove by the
24 greater weight or preponderance of the evidence
25 that the establishment sold him alcohol and sold it

1 to him when they knew or should have known that he
2 was intoxicated, and I think that's the law.

3 MR. NEWLON: I would concur, Your Honor.

4 THE COURT: No holder of a permit authorizing
5 the sale of beer or wine may knowingly sell beer or
6 wine to an intoxicated person upon the premises
7 when they knew or should have known the patron was
8 intoxicated at the time of the sale and that his
9 intoxication subsequently caused injury to the
10 plaintiff. That's pretty much what it is.

11 Are there any other charges you all have
12 given me? I have request number two, which says
13 they must prove more than a high alcohol level.

14 MR. WISE: I think that's included in the
15 charge, Your Honor, the fact they have to prove not
16 only they served him, but that they served him in
17 an intoxicated state. That goes without saying.
18 It doesn't need to be highlighted.

19 THE COURT: The jury must find he was
20 intoxicated at the time he was served the beer.
21 You don't have a cite for that. I can't say just
22 because he had a high blood alcohol. They have got
23 to prove they sold him the beer and they've got to
24 prove that he was intoxicated at the time of the
25 sale and that it was the probable cause. They have

1 to prove those three things. They've got to prove
2 more than he had a high blood alcohol level, but
3 the high blood alcohol level is, is important
4 evidence in the case, I can't tell them it's not.

5 MR. WISE: I'm not saying it's not. I think
6 they have got to prove more than that, though.

7 THE COURT: You can argue that to the jury.
8 There is no way that anybody would know what his
9 blood alcohol reading was prior to his death and
10 blood test.

11 MR. WISE: Right.

12 THE COURT: So, you know, it's just a logical
13 thing for you to explain to the jury that your
14 people had to know he was drunk, because they did
15 not know what his blood alcohol level was.

16 MR. WISE: That argument I had thought about.

17 THE COURT: I'm assuming you were going to
18 argue that.

19 MR. WISE: I am now, you gave me a better
20 argument than I had.

21 THE COURT: The blood alcohol is evidence to
22 them to show that he was intoxicated at the time.
23 I mean, that .212 is awfully high. I have tried a
24 lot of these cases and I have seen some of these
25 witnesses testify that .30 makes you comatose or

1 something. There is no evidence of that in this
2 case but I know that's high. Just like your
3 witness testified he knew it was real high and you
4 couldn't get that way on drinking three beers.
5 Your witness testified to that, nonexpert witness,
6 but I agree with that, no question about that but
7 on the other hand we all know from the testimony
8 that you could get that in three hours and 50
9 minutes, I mean, you can drink enough to get to a
10 .21 in that period of time.

11 MR. WISE: Right.

12 THE COURT: So, I don't know. We've got a
13 lot of factual questions that the jury is going to
14 have to determine. I have a charge, unfortunately
15 I don't see it right now, maybe it's sitting on my
16 computer in cyberspace somewhere, a charge that
17 tells the jury they must base their verdict upon
18 the facts proven in the courtroom and they cannot
19 base it on speculation, conjecture or surmise. I
20 charge them the verdict cannot be based on
21 speculation, conjecture or surmise, it has to be
22 based on evidence to a reasonable degree of
23 certainty, the plaintiff has to prove his case by
24 the greater weight or preponderance of the
25 evidence.

1 MR. WISE: That's fine.

2 MR. SEIGLER: I just note my exception to not
3 charging number one and also number, I had one
4 about physical, visibly, one about visibly
5 intoxicated.

6 THE COURT: I just think that you can know
7 that a person is intoxicated without, I don't think
8 there is any duty to make inquiry and ask him how
9 much he's had to drink or anything of that nature.

10 MR. WISE: I think he has a duty to make
11 inquiry if the facts warrant it.

12 THE COURT: You can argue that to the jury.

13 MR. NEWLON: Your Honor, just so I
14 understand, you have taken out defense's charge
15 one, charge two?

16 THE COURT: I'm not going to read any of the
17 charges verbatim.

18 MR. NEWLON: Okay, thank you. Your Honor,
19 the only thing I was going to ask, I submitted the
20 standard charges on the DRAM-Shop cases. I have
21 already given them to the Court.

22 THE COURT: Where are they?

23 MR. NEWLON: I handed them to the Clerk.

24 THE CLERK: Right here.

25 MR. NEWLON: 6-1, 6-2, 6-3 right out of the

1 charge book. The only thing I was going to ask
2 Your Honor, I have heard your charge on pain and
3 suffering, mental suffering, loss of enjoyment of
4 life, and ask you make those same charges.
5 Basically damages in negligence cases.

6 THE COURT: I'm not going to charge them
7 anything on selling to minors.

8 MR. NEWLON: I'm sorry?

9 THE COURT: I'm going to charge them on
10 selling to an intoxicated person.

11 MR. NEWLON: I didn't mean to give that to
12 you, I apologize.

13 THE COURT: That's all right.

14 MR. NEWLON: The only other thing, Your
15 Honor, I would like to charge, for the benefit of
16 the Court, when you are talking about these
17 bartenders and these bars' agents, servants and the
18 law, also respondeat superior, the acts of the
19 agent are the acts of --

20 THE COURT: If the establishment served him
21 alcohol, the agent or their employees knew or
22 should have known he was intoxicated. So, if the
23 bartender, that is what the case, the Windjammer
24 case, that is in error because the judge left out
25 bartenders or something like that. So, if the

1 bartenders served them they're liable.

2 MR. NEWLON: I just wanted to make sure we
3 get that charge.

4 THE COURT: There is no agency issue here.
5 The defense didn't raise it.

6 MR. NEWLON: Thank you, Your Honor.

7 THE COURT: So, you can argue that to the
8 jury, if the bartender served it, then the company
9 served it.

10 MR. NEWLON: Thank you.

11 THE COURT: Mr. Seigler is being quiet.

12 MR. WISE: I would also at this time make a
13 motion for directed verdict on the ground that
14 taking the evidence in a light most favorable to
15 the plaintiff, there has been no proof that Hoyt
16 Helton was in fact intoxicated at the time the
17 sales were made to him. I think at the most the
18 testimony of the retrograding or whatever you call
19 it, blood alcohol is speculative at best and that
20 is what creates the conjecture, surmise in this
21 case.

22 THE COURT: Well, I think that it's
23 scientifically enough to not to take him back three
24 and a half hours and prove he was intoxicated at
25 the time he left at 7:00 o'clock, I have already

1 ruled that way, but I think the testimony of the
2 expert was based on the blood alcohol reading from
3 his blood at the time, and we all know that once he
4 was deceased he couldn't have absorbed it in his
5 system anymore. That is a pretty high reading.
6 Would it go back, I don't know, he was in the
7 neighborhood of .15 or sometime before that. But
8 it's a circumstantial evidence case as far as the
9 plaintiff is concerned against these two
10 defendants, and I think he's got enough to get it
11 to the jury on that. I'm going to deny the motion.

12 MR. SEIGLER: Judge, again we make the same
13 motion, ask the Court to grant a directed verdict
14 based on the fact there is no evidence presented by
15 his brother and everybody in the bar that said he
16 was intoxicated. There has been no evidence to the
17 contrary.

18 THE COURT: Well --

19 MR. SEIGLER: At least in our particular
20 situation, his brother has known him for 30 years,
21 testified he wasn't intoxicated and there was no
22 evidence presented to the contrary at all.

23 THE COURT: It's a .212 that is the hammer, I
24 mean in this case, as opposed to the other
25 DRAM-Shop cases. We just don't have that many

1 DRAM-Shop cases. As much as Mr. Wise doesn't like
2 that word, we don't have that many DRAM-Shop cases
3 or cases under this statute that prohibit selling
4 beer to an intoxicated person. But at .21 50
5 minutes before that when by every witness that
6 testified the jury could find that he was
7 intoxicated when he was at that last establishment.
8 They don't have to believe the officer's testimony
9 that he was sold one beer, and that's a conflicting
10 fact. I don't know if the jury is going to find he
11 was sold a beer or he wasn't. It depends on
12 whether they want to believe the officer or the
13 witnesses. But if he was sold a beer there, then I
14 think they could find, hold that establishment
15 liable.

16 Okay, I'll give you all a few minutes, since
17 we're doing pretty well here.

18 MR. NEWLON: Thank you. I've got to set up,
19 too.

20 THE COURT: You can be ready, you can go
21 ahead and set up. Whenever you get ready let me
22 know.

23 MR. NEWLON: It won't be ten minutes.

24 THE COURT: All right. We'll plan to start
25 back at 11:00 o'clock. Everybody take a stretch

1 break.

2 (Recessed at 10:46 a.m.).

3 (Resumed at 11:25 a.m.).

4 THE COURT: Mr. Sowell, would you ask him to
5 be the foreperson?

6 BAILIFF: Yes, sir.

7 THE COURT: Mr. Sowell will be the
8 foreperson.

9 (The jury returned to the courtroom).

10 THE COURT: All right. We're ready for the
11 summations now.

12 Mr. Newlon.

13 (Closing argument by Mr. Newlon).

14 THE COURT: Mr. Seigler.

15 (Closing argument by Mr. Seigler).

16 (Closing argument by Mr. Wise).

17 THE COURT: Mr. Newlon.

18 (Final closing argument by Mr. Newlon).

19 THE COURT: It's now time for me to go over
20 the law with you. I'm going to give you a five
21 minute stretch break, then I will go over the law
22 with you in detail, then you can deliberate until
23 you reach a verdict. Hopefully I will get your
24 lunch in there before you begin deliberating. I'm
25 going to give you the charge and then I'm going to

1 let you deliberate and have lunch at the same time.

2 Okay. You all step back for about five
3 minutes.

4 (The jury was excused from the courtroom).

5 THE COURT: I didn't talk to you all about
6 the verdict form but there will be two possible
7 verdicts, a verdict for the father and a verdict
8 for the son, and the damages for the father would
9 be the medical bills and nursing care, whatever
10 that would amount to, and for the son it would be
11 any lost wages or disability and pain and
12 suffering, whatever. So, it will be blank dollars
13 actual damages for the father, blank dollars actual
14 damages for the son, or for the defendants, and
15 then if they find for the plaintiffs I think they
16 would need to note whether it was against both
17 defendants or one defendant.

18 MR. WISE: That's correct.

19 THE COURT: Okay.

20 MR. NEWLON: Yes, sir, that's correct.

21 THE COURT: We'll take about five minutes,
22 then. I know you gave me the charge, and nobody
23 has objected to it on the .10 percent as an
24 inference of alcohol.

25 MR. WISE: I hadn't seen that charge. I

1 would object to it. It doesn't apply in a civil
2 case.

3 THE COURT: Well, the statute says that's an
4 inference of intoxication.

5 MR. WISE: Right.

6 THE COURT: And it has to be considered along
7 with any other evidence.

8 MR. WISE: Right, but it's the charge in a
9 criminal case, not a civil case.

10 MR. NEWLON: No, Your Honor, that standard is
11 set, it has absolutely nothing to do with the type
12 case it is, it has to do with whether or not there
13 is an inference of the level of intoxication. It
14 is not limited to criminal cases.

15 MR. WISE: It's limited to, as I understand
16 it, it's limited to a breath test or a test
17 obtained by proper warnings, et cetera, et cetera,
18 in a DUI case.

19 THE COURT: Well, if it is admissible in a
20 criminal case I think it would be admissible in
21 civil cases.

22 MR. WISE: Well, I don't think it is because
23 the procedure for getting the evidence is different
24 in a criminal case versus a civil case.

25 THE COURT: If there is no objection, there

1 hadn't been an objection to it, I will charge it
2 but it is just a permissive inference.

3 Okay.

4 (Recessed at 12:41 p.m.).

5 (Reconvened at 12:59 p.m.).

6 THE COURT: Okay.

7 (The jury returned to the courtroom).

8 THE COURT: Ladies and gentlemen of the jury,
9 you have heard the evidence and testimony. Now I
10 will go over the law with you that applies in this
11 case and then you will go back and deliberate until
12 you reach a verdict in the case.

13 All of us that come into the courtroom, we
14 have different functions and responsibilities. The
15 lawyers represent their clients, present the
16 evidence, ask the questions and get the answers
17 that you need to hear in order to determine the
18 facts, if you can, and so that I will know what law
19 applies to the case.

20 The Clerk keeps the record, he takes down the
21 testimony, all things of that nature.

22 Your responsibility is to determine the facts
23 in this case, if you can, from the evidence and
24 testimony that's been presented to you. The facts
25 are not what the attorneys say they are. The facts

1 are what you determine them to be based on the
2 evidence and testimony in the case.

3 Now, I am prohibited from discussing the
4 facts with you in this case and I would not do
5 that. You are the sole judges of the facts. If I
6 have done anything in this trial to cause you to
7 believe that I have a feeling about the facts of
8 this case you disregard that. I appreciate you
9 ladies and gentlemen being here to determine the
10 facts, more than any person in this courtroom, and
11 if I have done anything, tone of my voice in
12 rulings on objections or anything like that, if you
13 have gotten an impression I have a feeling about
14 this case either for the plaintiff or the defendant
15 you disregard that because if I did anything I
16 didn't mean to. You ladies and gentlemen are the
17 sole judges of the facts. You are the sole judges
18 of the testimony, the credibility and the
19 believability of the testimony of the witnesses and
20 any evidence that's come into this case.

21 Now, in determining the credibility and the
22 believability of the witnesses these witnesses have
23 testified in your presence under oath except maybe
24 for one doctor, he testified under oath by video
25 deposition. You observed the demeanor of the

1 witnesses, you can ask yourself was the witness
2 forthright, how did the witness come to know the
3 facts about which they testified, was there other
4 evidence and testimony in the case to make the
5 testimony of that witness stronger or weaker.

6 Now, you can take into consideration any
7 bias, prejudice or interest that you feel a witness
8 may have in the case, and any other factors that
9 you feel may bear on the credibility and
10 believability of those witnesses. You ladies and
11 gentlemen are the sole judges of the facts, the
12 credibility and the believability of the testimony
13 of any witness regardless of who that witness is.
14 You can believe everything a witness tells you or
15 you can disbelieve everything a witness tells you.
16 I know you wouldn't do that lightly. You can
17 believe part of what a witness told you and
18 disbelieve part of what a witness told you. You
19 can believe one witness as against several or
20 several witnesses as against one. You are the sole
21 judges of the facts, the credibility and the
22 believability of the witnesses and the testimony in
23 this case.

24 Now, you have to accept the law as I explain
25 it to you and apply the facts that you find to the

1 law that I go over with you and write a verdict in
2 this case that speaks the truth.

3 Now, you have all heard the old expression if
4 you go to court you have to prove your case. Well,
5 that's true. In a civil case such as this, when
6 one side brings allegations against another party,
7 which they deny, the person bringing the
8 allegations has the burden of proof and that's the
9 reason you are here. The plaintiff has brought the
10 case against these defendants who operated these
11 places of business, alleging that they violated the
12 statute that I will go over with you, and the
13 plaintiff has the burden of proving his case to you
14 by the greater weight or preponderance of evidence.

15 The plaintiff has to prove under the statute,
16 and I will read the statute to you in more detail,
17 that by the greater weight of the evidence that
18 these businesses sold alcohol to Mr. Helton when he
19 was intoxicated, that the employees or agents of
20 that business that sold the alcohol knew or should
21 have known he was intoxicated. He's got to prove
22 to you those two things by the greater weight of
23 evidence and then that the selling of this alcohol
24 to an intoxicated person that they knew or should
25 have known was intoxicated was a proximate cause or

1 a direct cause of this accident and his damages
2 that directly resulted therefrom.

3 Now, by the greater weight or preponderance
4 of the evidence, when I tell you that the plaintiff
5 has the burden of proving it by the greater weight
6 or preponderance of the evidence we mean that on
7 all the issues when this case began between the
8 plaintiff and the defendant the scales were evenly
9 balanced as to all those issues. In your mind, on
10 any issue that must be proven, if the scales remain
11 evenly balanced or if the scales tip slightly in
12 favor of the defendant or defendants the plaintiff
13 would have failed to prove those allegations by the
14 greater weight or preponderance of evidence. If
15 the scales tip slightly in favor of the plaintiff
16 the plaintiff would have proven those allegations
17 by the greater weight or preponderance of evidence.

18 Now, there are no scales that we can give you
19 to weigh the evidence on. That's just kind of how
20 the judges explain it. Evidence weighs with you if
21 it convinces you of its truth, regardless of
22 whether it comes from a witness for the plaintiff
23 or a witness for the defendant. Evidence weighs
24 with you if it convinces you of it's truth.
25 Another way of expressing that is to say that by

1 the greater weight of the evidence we mean that the
2 evidence on that proposition is more convincing to
3 you than it is on the other side.

4 All right, that's the explanation for the
5 burden of proof and the greater weight of the
6 evidence.

7 Now, in this case we have had testimony from
8 witnesses and we have had testimony from those
9 people that we call expert witnesses. We don't
10 have a lot of witnesses in many trials because the
11 only people or people that can testify are those
12 people who have firsthand knowledge or direct
13 evidence, as we would call it. An exception to
14 that rule are those people that we call experts.
15 They may express an opinion in regard to matters in
16 which they profess to be an expert.

17 Now, expert opinions are given by those
18 people who have become an expert in their field
19 because of their profession, their training or
20 their education. Based on their education and
21 experience they may state an opinion and give the
22 reasons for that opinion.

23 Now, you should consider each expert opinion
24 received in evidence and you give it what weight
25 you think it deserves. If you should decide that

1 the opinion of a witness is not based upon
2 sufficient education or experience or if you should
3 think that the reasons given in support of that
4 opinion are not sound or that the opinion is
5 outweighed by other evidence and testimony you may
6 disregard the opinion of an expert witness
7 entirely. I'm not saying what you should do. An
8 expert's testimony is to be given no greater weight
9 than that of other witnesses simply because he's an
10 expert. You determine what weight you should give
11 to the testimony of any expert witness.

12 Now, ladies and gentlemen, in this case or in
13 any case that we have facts may be proven by direct
14 evidence or circumstantial evidence. Direct
15 evidence is when a person has direct knowledge that
16 he gains through his five senses. Usually an
17 eyewitness can testify directly as to what he
18 heard, saw, tasted, smelled or whatever. That is
19 direct evidence.

20 But facts may be proven by circumstantial
21 evidence. Circumstantial evidence does not tend to
22 immediately prove a fact. However, circumstantial
23 evidence gives rise to a legal inference that such
24 a fact does exist. It means the proof of facts and
25 circumstances indicates the existence of a fact.

1 It is circumstantial evidence if it proves a fact
2 from which an inference of the existence of another
3 fact may be drawn.

4 Now, the law does not make any distinction
5 between direct evidence or circumstantial evidence.
6 Circumstantial evidence is just as competent or
7 capable of proving a fact in issue as is direct
8 evidence. You ladies and gentlemen should weigh
9 all the evidence in the case and you give it such
10 weight as you think it deserves.

11 Now, ladies and gentlemen, this case is
12 brought under the statutory laws of this state
13 under Section 61-4-580. The law provides that no
14 holder of a permit authorizing the sale of beer or
15 wine or any servant, agent or employee of that
16 permittee may knowingly sell beer or wine to an
17 intoxicated person. Now, ladies and gentlemen, the
18 purpose of this section, 61-4-580, is to promote
19 public safety and to prevent an already intoxicated
20 person from becoming more intoxicated and thus an
21 even greater risk to the public at large when he
22 leaves the establishment. That's the purpose of
23 the statute.

24 I would charge you that the plaintiff must
25 prove a violation of this statute. If the

1 plaintiff proves a violation of the statute that
2 one or both of these defendants knowingly sold
3 alcoholic beverages to an intoxicated person, then
4 you would go to the second question and ask if that
5 negligence or violation of that statute was a
6 direct or proximate cause of the plaintiff's
7 injuries or damages.

8 Now, in proving the violation of this statute
9 the plaintiff must prove that the defendant or both
10 defendants or their employees violated the statute,
11 they sold alcoholic beverages to a person that they
12 knew or should have known was intoxicated at the
13 time they sold the alcoholic beverages to that
14 person. If that is proven to you by the greater
15 weight or preponderance of the evidence, then I
16 would charge you that an intoxicated person is a
17 person who has drunk a sufficient quantity of an
18 intoxicating beverage to appreciably impair the
19 normal control of their bodily or mental functions
20 or both.

21 Now, in this state at the time there was a
22 permissive inference that a person was under the
23 influence of alcohol when that person has a blood
24 alcohol level of .10 percent or greater. Now, you
25 have to determine if it's been established at the

1 time that the alcohol was served and the person was
2 intoxicated. Now, this inference is just an
3 inference to be taken by you along with any other
4 evidence of intoxication that you find in the case.

5 The facts and circumstances existing in this
6 case are for you to determine. You determine the
7 facts and circumstances that existed in any
8 particular time if you can. You apply those facts
9 to the law. If the statute has been violated in
10 regard to selling, knowingly selling beer to an
11 intoxicated person, then you have to find that the
12 selling of that beer proximately caused, was a
13 proximate cause of the injuries and damages to the
14 young man in this case and to his father.

15 By proximate cause we mean a real cause, that
16 but for the violation of the statute the plaintiff
17 would not have suffered these injuries and damages.
18 We mean that the injuries and damages suffered by
19 the plaintiff was a natural and probable
20 consequence of the violation of this statute. If
21 you find that the plaintiff has proven the statute
22 was violated, that the violation of the statute was
23 a proximate cause of injuries and damages, then you
24 may make an award of actual damages to the two
25 plaintiffs.

1 Actual damages, ladies and gentlemen, are
2 compensatory damages. That is an award of money as
3 far as you can do that by making a monetary award
4 to put a plaintiff or the plaintiffs in the same
5 position that they would have been in if this
6 incident had not occurred.

7 Now, actual damages have to be established to
8 you by the greater weight or preponderance of the
9 evidence as I have explained that to you. Actual
10 damages, if proven to you by the greater weight or
11 preponderance of the evidence, include physical
12 pain and suffering past and future, mental anguish,
13 lost income, medical expenses, hospital expenses,
14 disfigurement, the impairment of health or physical
15 condition, the loss of enjoyment of life, the
16 limitation of activities, the impairment of earning
17 capacity, and if you find that a plaintiff has
18 received permanent impairment or disability your
19 verdict should include any future damages resulting
20 therefrom and the monetary value to be placed on
21 these injuries is within your sound judgment.

22 In making this determination you can consider
23 both compensation for direct monetary loss as a
24 result of permanent injury and also for nonmonetary
25 loss, non payment aspects of a disabled condition

1 such as the deprivation of a normal full life.

2 Now, I would instruct you, ladies and
3 gentlemen, that the law cannot give you a precise
4 formula or yardstick to measure with any degree of
5 exactness intangible items such as pain, suffering,
6 mental anguish, emotional distress, disfigurement
7 or disability, but the law contemplates that 12
8 intelligent jurors calling upon your experiences in
9 life, that you can satisfactorily fix and determine
10 a proper award of money for these items of damages
11 upon proper instructions from the Court.

12 Now, these damages are not to be awarded on
13 the basis of punishment of a defendant for the
14 injuries which the plaintiff sustained, nor are
15 they to be measured by the amount which you as
16 jurors would demand or ask for enduring the pain
17 which the plaintiff has suffered. On the contrary,
18 damages for these items are to be awarded solely on
19 the basis of compensation which is fair, reasonable
20 and adequate compensation, taking into
21 consideration the nature and extent of the
22 injuries, the character and the frequency of the
23 pain resulting from those, and the period of time
24 for which these injuries and damages will persist
25 or have persisted.

1 Ladies and gentlemen, the plaintiff does not
2 have to prove damages to you to a mathematical
3 certainty but the plaintiff has to prove his
4 damages to a reasonable degree of certainty so that
5 you can make an award in this case which is fair,
6 reasonable and adequate compensation you determine
7 the plaintiff's entitled to actual damages.

8 Now, ladies and gentlemen, your verdict
9 cannot be based upon speculation or guesswork but
10 only upon factual proof to a reasonable degree of
11 certainty. You have to determine, based on the law
12 that I have charged you, if the statute has been
13 violated. If alcoholic beverages were sold to Mr.
14 Helton when the defendants or their employees knew
15 or should have known, would a reasonable person
16 under these facts and circumstances, would they
17 have known or should they have known that he was
18 intoxicated at the time they served him the
19 alcoholic beverages, was that a proximate or direct
20 cause of the injuries and damages to the plaintiff.
21 If those three things have been proven by the
22 plaintiff you would find an award of actual
23 damages.

24 The father seeks actual damages for the care
25 that had to be given to his son and for future care

1 that he may have to give and for medical expenses,
2 and the son seeks actual damages for his
3 disability, loss of earning capacity and things
4 he's presented to you.

5 In that regard, we have evidence in every
6 case of the life expectancy tables, and the life
7 expectancy tables are evidence in this case and you
8 may use those as they are applicable to this case
9 and consider any other evidence that may bear on
10 that life expectancy, but I would charge you that
11 under the life expectancy tables a 21 year old male
12 has a life expectancy of 51.47 more years, and a 64
13 year old male, is that right, has a life expectancy
14 of 14.7 more years from today.

15 Ladies and gentlemen, the verdict form will
16 be this way. My law clerk has gone out to print it
17 out. You saw him leave. You can find for the
18 plaintiff father and the plaintiff son if you find
19 the plaintiff has proven his case to you by the
20 greater weight or preponderance of the evidence as
21 I have explained it to you and award actual damages
22 to them as I have covered those damages with you.

23 You can find against one defendant or both
24 defendants if you find for the plaintiff. You will
25 need to mark if you find against one or both, if

1 the case has been provem against one or both. If
2 the plaintiff has failed to prove his case, those
3 items that I went over with you, by the greater
4 weight or preponderance of the evidence then you
5 could find for the defendants. Those will be your
6 possible verdicts.

7 Every person on the jury has an equal voice,
8 an equal vote and equal input into the case. The
9 verdict has to be unanimous, all 12 of you have to
10 agree but someone has to preside and that will be
11 your responsbility, sir, okay?

12 Now, there can not be any more evidence
13 presented. You have to decide this case on the
14 evidence and law you have heard here today and the
15 last couple days. When you reach a unanimous
16 verdict let us know, we'll bring you back in and
17 take the verdict. If you have any questions about
18 the law you can write those out and we'll answer
19 those, I'll go over it with the attorneys and
20 explain it to you. If you have no questions
21 continue to deliberate until you reach a unanimous
22 verdict.

23 All right, you all may step back to the jury
24 room. Don't begin deliberations right now, let me
25 go over my charge, they may have something else

1 about the law they want me to say to you but if not
2 I will send word back and you can have your lunch
3 and begin your deliberations. Okay?

4 Thank you.

5 (The jury left the courtroom at 1:25 p.m.).

6 THE COURT: All right.

7 MR. WISE: I have my objection to the
8 knowingly, knowing or should have known we
9 discussed earlier. I also object to your reading
10 the statute of permissive inference above .10, and
11 for logical reasons for this objection, I don't
12 have one, it just sounded like I should object. I
13 object to your reading the purpose of the statute.
14 I don't know what that bearing has but that's all.

15 MR. SEIGLER: I would join in all those
16 objections.

17 MR. WISE: And of course failure to charge my
18 defendant's requested charge number one, number two
19 and number six.

20 THE COURT: Okay. I think we discussed
21 those --

22 MR. WISE: We did.

23 THE COURT: -- on the record as to why I
24 would and would not charge them. Okay, we'll note
25 your exceptions.

1 MR. NEWLON: Your Honor, I have none. Thank
2 you.

3 THE COURT: Okay. This is the verdict form,
4 if you all want to look at it. Do we have all the
5 evidence up here?

6 MR. NEWLON: None of the exhibits were
7 published, Your Honor, I put in, but 22, 23, 24 and
8 25 were not put in. I have those.

9 THE COURT: Here's the verdict form. Ask the
10 alternate to come out and I will speak to him.
11 We'll give him his lunch. They can begin their
12 deliberations.

13 (Verdict form and evidence was sent to the
14 jury at 1:29 p.m.).

15 (Recessed at 1:29 p.m.).

16 (Resumed at 2:30 p.m.).

17 THE COURT: Are you all willing to forward
18 without your client being here?

19 MR. WISE: On this issue, yes.

20 THE COURT: Okay.

21 (The jury returned to the courtroom at
22 2:31 p.m.).

23 THE COURT: Ladies and gentlemen, the law is
24 this in regard to the sale of alcoholic beverages.
25 61-4-580 says this. No holder of a permit

1 authorizing the sale of beer or wine may knowingly
2 sell beer or wine to an intoxicated person. The
3 law is an establishment with a license to sell beer
4 or wine cannot knowingly sell beer to a person who
5 is intoxicated, and that is, would the person
6 selling beer, if a person is intoxicated, would a
7 reasonable person have known or should that person
8 have known that that individual was intoxicated at
9 the time they sold him the alcohol. That's what is
10 unlawful under the statute.

11 I hope that answers your question.

12 JUROR: Okay, sir.

13 (The jury was excused from the courtroom
14 at 2:33 p.m.).

15 MR. WISE: My standard objection to that.

16 MR. NEWLON: Fine.

17 THE COURT: All right.

18 (Recessed at 2:34 p.m.).

19 (Resumed at 4:30 p.m.).

20 MR. SEIGLER: Judge, before the jury comes
21 in, Henry states it's about 45 minutes. They said
22 they wanted to hear the testimony of Billy
23 McDonald. I don't know whether they wanted a
24 certain portion or the whole thing.

25 BAILIFF: He's got the note.

1 THE COURT: Do you want me to ask them that?

2 MR. SEIGLER: I think it would be a good
3 idea.

4 THE COURT: Okay.

5 MR. NEWLON: If they are looking for a
6 particular issue and as long as I'm comfortable
7 from the plaintiff's side that the transcript,
8 anywhere that issue appears in the transcript it is
9 read to them, then I'm okay with extracting out,
10 otherwise I want the whole thing read.

11 MR. WISE: Tell them at least how long it's
12 going to take.

13 THE COURT: Okay, bring them in.

14 (The jury returned to the courtroom at
15 4:35 p.m.).

16 THE COURT: Okay, the way we have to do this
17 is he will read it to you exactly the way it was
18 handled in the courtroom, and Mr. McDonald
19 testified one time, then Officer Keller testified
20 and then Mr. McDonald was called again. Now, this
21 is going to be about 40 to 45 minutes and I didn't
22 ask any of you if you all had children or if you
23 had to be somewhere this evening or anything of
24 that nature. Do any of you have to get home or can
25 you go ahead and hear this?

1 JUROR: Yes.

2 THE COURT: Mr. Foreman, the length of the
3 testimony, is that going to make any difference to
4 you? Do you need to talk to them about it any more
5 or --

6 JUROR: Is that a question for me?

7 THE COURT: Well, I just wondered if you all
8 are just ready to hear this?

9 Okay, all want do hear it. We'll go ahead
10 and give it to you.

11 (The testimony of William McDonald and
12 Tony Keller were read to the jury).

13 THE COURT: Okay, very good. Okay, that's
14 all that testimony and I will let you all go back
15 in and deliberate, and you deliberate as long as
16 you want to. It doesn't make any different to us
17 but if all of you should decide you want to come
18 back tomorrow send us a note and let us know that.
19 But if you want to continue to deliberate go ahead
20 and do that, okay? You all can step back to the
21 jury room.

22 (The jury was excused from the courtroom
23 at 5:10 p.m.).

24 THE COURT: Okay, we'll be in recess until we
25 hear from the jury.

1 (Recessed at 5:11 p.m.).

2 (Reconvened at 5:29 p.m.).

3 THE COURT: Okay.

4 (The jury returned to the courtroom at
5 5:30 p.m.).

6 THE COURT: Okay, as I understand it, you
7 want to hear the trooper's testimony in regard to
8 his conversation with Mr. McDonald?

9 JUROR: That's correct.

10 THE COURT: Okay, read that to them.

11 (Excerpts of the testimony of Tony Keller
12 was read to the jury).

13 THE COURT: That's it right now as far as we
14 have, and I don't think there is anything else. I
15 will go over it, and if there is we'll bring you
16 back out. I believe that's all there is in regard
17 to the conversation.

18 (The jury was excused from the courtroom
19 at 5:41 p.m.).

20 (Off-the-record bench conference).

21 THE COURT: That's the third time they have
22 heard it) that they heard McDonald's testimony. I
23 really can't emphasize anything. We will just have
24 to see what they say. Thank you.

25 MR. SEIGLER: Thank you, Judge.

1 (Recessed at 5:42 p.m.).

2 (Reconvened at 6:05 p.m.).

3 MR. NEWLON: Your Honor, before we address
4 anything, real quick, I didn't realize I wasn't on
5 the record before. I had objected to not going
6 back and correcting the reading the court reporter
7 did previously to the jury. I just wanted to note
8 that objection for the record.

9 THE COURT: Okay. I think you argued it, and
10 as I thought more about it, and it was argued so
11 strongly, I think they understand what the
12 testimony is. If they don't, then we have serious
13 problems, so I'm not concerned too much about that.
14 I note your objection. I believe with the
15 arguments, I mean, the strong arguments about the
16 testimony of Mr. McDonald and the trooper, that
17 they fully understand that. I don't know, have you
18 got a comment on the question, Mr. Seigler?

19 MR. SEIGLER: No, sir, I was just standing up
20 listening to you.

21 MR. NEWLON: The only reason, I do have a
22 comment on the question, it leads lead back to the
23 reading, I think that they are confused with what
24 was read to them before and that's what's led to
25 this issue right here we're faced with now.

1 MR. SEIGLER: I don't agree with that, Judge,
2 I don't see how we can advise the jury on what to
3 do if they can't decide on one defendant, and who
4 knows which one it is.

5 THE COURT: They have heard both Mr. McDonald
6 and the trooper at least twice say what the
7 conversation was. I'm not concerned about that.
8 They have found a verdict, they say, on one
9 defendant but they cannot agree on the other.

10 MR. NEWLON: Your Honor, if I may, I would
11 just charge them again on the fact they have to
12 come up with a unanimous verdict, they need to
13 deliberate to come up with a unanimous verdict at
14 some point if they can. We'll address that at that
15 time.

16 THE COURT: They have reached a verdict as to
17 one defendant. I don't know what the verdict is
18 and I don't know which defendant, but you can
19 speculate a lot. I don't know which one or what
20 the verdict was for either one of the defendants.
21 It it would be better if they could reach a verdict
22 in the case. I'm just not prepared to declare a
23 mistrial at this time in either one of them.

24 MR. WISE: I guess --

25 THE COURT: It would have to be a mistrial as

1 to one defendant.

2 MR. WISE: If we received a verdict as to one
3 defendant.

4 MR. NEWLON: Your Honor, even though it's not
5 joint and several liability, I think the evidence
6 is part and parcel so much with one case to the
7 other, unless it's a verdict in the entire case it
8 would be hard to parcel out a verdict against one
9 as opposed to the other.

10 MR. WISE: That's what we told them to do.

11 THE COURT: What is that?

12 MR. WISE: We told them against one or the
13 other or both.

14 THE COURT: Unanimous verdict as to all of
15 them.

16 MR. WISE: Right.

17 THE COURT: I'm going to tell them, "You need
18 to reach a verdict as to each defendant if you
19 can." I think they need to reach a verdict as to
20 each one.

21 Okay, without objection I'm sending that
22 answer back to them.

23 (Recessed at 6:15 p.m.).

24 (Resumed at 6:53 p.m.).

25 (The jury returned to the courtroom at

1 THE COURT: We'll be in recess in this case
2 until they reach a verdict.

3 (Recessed at 9:12 a.m.).

4 (Resumed at 10:31 a.m.).

5 THE COURT: Okay.

6 (The jury returned to the courtroom at
7 10:32 a.m.).

8 THE COURT: Mr. Foreman, I understand you
9 have reached a verdict, is that correct?

10 JUROR: Except for one item. I put a note by
11 that item.

12 THE COURT: All right. Okay, I understand
13 that.

14 All right, Madam Clerk, if you would publish
15 the verdict, please.

16 THE CLERK: Yes, sir. State of South
17 Carolina, County of Greenwood, in the Court of
18 Common Pleas, Jon E. Hartfield by and through his
19 conservator Haskell Hartfield, and Haskell
20 Hartfield individually versus Glenn McDonald doing
21 business as the Carolina Eight-Ball Lounge, and The
22 Getaway Lounge and Grill, Incorporated, Shou Mei
23 Morris Individually and as President of The Getaway
24 Lounge & Grill, Incorporated, case number
25 2004-CP-24-38. We the jury by unanimous decision

1 find for plaintiff Jon E. Hartfield, \$8,000,000
2 actual damages, for the plaintiff Haskell L.
3 Hartfield, \$2,000,000 actual damages, against the
4 defendant Shou Mei Morris Individually and as
5 President of The Getaway Lounge & Grill,
6 Incorporated.

7 Signed Nolan Sowell, foreperson.

8 Ladies and gentlemen of the jury --

9 THE COURT: Read the other.

10 THE CLERK: Could not reach a verdict as to
11 defendant Glenn McDonald and the Carolina
12 Eight-Ball Lounge.

13 Ladies and gentlemen of the jury, if this is
14 your verdict would you please signify that by
15 raising your right hand.

16 THE COURT: Okay, thank you.

17 THE CLERK: Thank you.

18 THE COURT: Any questions as to the form of
19 the verdict? Mr. Newlon?

20 MR. NEWLON: No, Your Honor, I understand.

21 MR. SEIGLER: No, sir.

22 MR. WISE: None from the defendant.

23 THE COURT: Ladies and gentlemen, thank you
24 all very much for serving as jurors, I know the
25 attorneys and the parties appreciate it, and I'm

1 going to, we do appreciate your service and the
2 time you spent on deliberations. I know you paid
3 close attention to the case and I heard the same
4 one you did and I know that some of the questions
5 you asked and how you deliberated, I understand
6 that. Thank you so much.

7 I'm going to excuse you for the week, and as
8 I told you at the beginning, after the case is over
9 you are free to discuss it with anyone you want to
10 or if anybody asks you, you can tell them you don't
11 want to discuss it at all or anymore or anything.
12 You do not have to discuss it if you don't want to
13 but I cannot prohibit you from talking to someone
14 about it, but the choice is yours whether you want
15 to talk to anybody about the case. Just be, if
16 anybody asks you how your fellow jurors thought,
17 kind of respect the opinions of your fellow jurors,
18 of what you all talked about back privately in
19 deliberations, and the way I look at it, if you
20 want to tell them exactly how you felt, then I
21 think that's good, but I'm not sure that a person
22 can speak to the feelings of someone else and
23 express it like they would.

24 I'm going to excuse you all for the week.
25 The Clerk will send you a check for your jury

1 services.

2 BAILIFF: We have them, Your Honor.

3 THE COURT: They've got them, already printed
4 them for you. The judicial branch doesn't have
5 anything to do with what you all get paid, that's
6 decided by each county, the county government, and
7 if you need a statement to show your employer that
8 you were here you can get that.

9 Thank you all so much. You all are excused
10 for the week.

11 (The jury was excused from the courtroom).

12 MR. NEWLON: Your Honor, the plaintiff has a
13 few motions I would like to go over for the record.

14 THE COURT: All right, sir.

15 MR. NEWLON: The first motion being on the
16 first ruling having to do with dismissal of the
17 Williams Package. The plaintiff would simply move
18 for a new trial on the basis that the evidence
19 presented in court, even though circumstantial by
20 way of expert testimony, was sufficient in the
21 retrograde extrapolation to establish that Williams
22 Package did in fact serve that gentleman, Hoyt
23 Helton, who was intoxicated at the time he was
24 there. I want to put that motion on the record and
25 ask for a new trial in that particular case.

1 My second motion, Your Honor, has to do with,
2 again, the ruling regarding the Carolina Drive-In
3 and the re-reading of the testimony or the
4 re-reading of the testimony by the Clerk of Court,
5 and I understand that they could not reach a
6 verdict in that particular case and at that point
7 you can clarify for me but that would be a mistrial
8 in that case and it would have to be tried again.
9 It is a mistrial as to Carolina Drive-In, so in
10 effect my motion on that particular issue, if it is
11 a mistrial it would be tried again and I don't know
12 that I necessarily need to make that motion.

13 THE COURT: Okay. As to the dismissal of the
14 package store, I think I have explained that.
15 There was absolutely no evidence that any alcohol
16 was served to this gentleman, but more than that,
17 there is no evidence from which a jury could find
18 that he was intoxicated, even if you had any
19 evidence that they served him alcohol at the first
20 place. And there is no evidence, I mean, there is
21 evidence that he was served alcohol at the second
22 establishment and he could have been there from
23 sometime after 7:00 until, the longest time is 9:30
24 to 10:00 o'clock, shortly before he went to the
25 last place. The jury was, based on the questions

1 and all the testimony we read, the police officer,
2 it was a death case and he did investigate these
3 things only by telephone and his testimony was that
4 Mr. McDowell told him that he served him one drink.
5 Mr. McDowell testified twice that he told the
6 gentleman he did not serve him a drink and the
7 undisputed testimony was he was only there for 10
8 or 15 or 20 minutes, if you believe Mr. Harrison
9 that he left at 9:30 or 10:00, and got there, he
10 didn't stay long, the accident did happen at 10:50.
11 The problem the jury had was not understanding the
12 testimony, the jury did not know who to believe,
13 the police officer or Mr. McDonald, and I can
14 understand their dilemma on that and that's just a
15 factual decision they couldn't resolve and that's
16 the situation, they did not know whether to believe
17 the police officer or Mr. McDonald. Mr. McDonald
18 testified clearly he didn't serve him anything, the
19 undisputed testimony was he wasn't there that long,
20 so the jury was hung up on whether to believe the
21 officer or Mr. McDonald. That's just the way it
22 was. I'm not sure they could ever resolve that.
23 So, I have no problem declaring a mistrial on that
24 for that defendant. So, I'm going to deny the
25 motions.

1 MR. NEWLON: Thank you, Your Honor. The last
2 thing I want to bring up is the equitable issue
3 regarding piercing the corporate veil. I know I
4 have two obligations, a deposition this afternoon,
5 one in the morning, if it's possible to allow that,
6 I don't think it's going to take more than 30
7 minutes, I wonder if it's possible to do that
8 sometime right after lunch tomorrow, right around
9 lunchtime.

10 MR. WISE: We can do it at the Court's
11 convenience. My thought is, post trial motions, we
12 just keep the post trial motions in abeyance until
13 we rule on that one, then for appeal purposes the
14 time would start on both of them at the same time,
15 no sense ruling on the post trial motions now and
16 if we have a hearing tomorrow or next week or two
17 weeks from now on the other issue, we can do it at
18 the Court's convenience either here or in
19 Greenville..

20 THE COURT: I would rather do it either this
21 afternoon or tomorrow morning rather than to drive
22 back down here on Friday afternoon.

23 MR. NEWLON: This afternoon would be fine.

24 MR. WISE: Either that or tomorrow morning.
25 Tomorrow morning is probably a little easier, we

1 probably have a few things, whenever the Court
2 wants to do it.

3 MR. NEWLON: The only problem I have, I have
4 a 9:00 o'clock deposition tomorrow in a federal
5 court case involving a trucking company, I've got
6 five lawyers showing up, that was the only thing,
7 I'm trying to avoid having to reset that.

8 MR. WISE: Do you want to do it late this
9 afternoon, then?

10 THE COURT: Let's try to do it this afternoon
11 about 3:00 o'clock.

12 MR. NEWLON: That will be fine.

13 THE COURT: Is that it?

14 MR. WISE: That's it.

15 THE COURT: Okay, thank you.

16 MR. WISE: I'll put on the record post trial
17 motions, we have ten days but I will do them this
18 afternoon, too. It is easier to do all them at the
19 same time.

20 THE COURT: All right.

21 (Recessed at 10:44 a.m.).

22 (Reconvened at 3:06 p.m.).

23 THE COURT: Okay, we're back on the Jon Eric
24 Hartfield and Haskell Hartfield case and Getaway
25 Lounge & Grill, Inc., and Shou Mei Morris.

1 The other defendant is not here, so we have
2 motions by The Getaway Lounge, Inc., if you want to
3 make those. I don't know if you want to use the
4 ten days.

5 MR. WISE: I would prefer to use the ten days
6 and submit them to the Court in writing, unless the
7 Court would prefer otherwise, just to make sure I
8 cover everything.

9 THE COURT: All right, I'll give you ten
10 days.

11 MR. WISE: Thank you.

12 THE COURT: So, what brings us here now is
13 whether or not under the so called piercing the
14 corporate veil in an action by the plaintiff with
15 regard to The Getaway Lounge & Grill, Inc.

16 Mr. Newlon, do you want to address that
17 issue?

18 MR. NEWLON: Yes, sir. I would like to call,
19 take the testimony of both Shou Mei Morris and
20 Dianna Bice on that particular issue.

21 THE COURT: Okay.

22 MR. NEWLON: And I would like to call Shou
23 Mei Morris first, and I would also, given the
24 posture in the case, I would like to call them as
25 an adverse witness even though it's for this

1 purpose.

2 THE COURT: Okay. You can ask them leading
3 questions.

4 MR. NEWLON: Thank you.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 SHOU MEI MORRIS,
2 after being first duly sworn, testified as follows:

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. NEWLON:

6 Q Can you please state your full name for the
7 record?

8 A Shou Mei Morris.

9 Q Did you in fact start The Getaway Lounge in
10 1992, or open The Getaway Lounge in 1992?

11 A Yes, sir.

12 Q Were you the vice-president at that time?

13 A I was president.

14 Q You were the president?

15 A Yes, sir.

16 Q Who is vice-president?

17 A Dianna Bice.

18 Q Since that time who has been the president of
19 The Getaway Lounge?

20 A You say 1992?

21 Q Since 1992 who has been the president?

22 A I start 1992, yes.

23 Q And you are still the president?

24 A Yes, sir.

25 Q Okay. Dianna is vice-president?

1 A Yes, sir.

2 Q Do you recall when I took your deposition
3 about a year or year and a half ago in this case?

4 A Yes, sir.

5 Q At that time did you not tell me you didn't
6 do anything as far as functioning or anything like
7 that in regard to The Getaway and you basically
8 left it up to your manager?

9 A Yes.

10 Q Okay. That you didn't attend any meetings
11 for the corporation?

12 A No, sir.

13 Q In fact there were no meetings of the
14 corporation, were there?

15 A Corporation was past president,
16 vice-president and president, and anything, we had
17 meetings, me and her, sometimes we sit down and
18 talk in the office.

19 Q Okay. So, you are telling me you in fact did
20 have meetings?

21 A In a way, yes.

22 Q Okay. Where are your meeting minutes?

23 A Sometime from 50 minutes, an hour.

24 Q No, I don't mean how long they were, ma'am, I
25 mean where are your meeting minutes? That means

1 where is the documentation that I have asked for in
2 this case indicating that you in fact had meetings
3 between you and Dianna Bice or anyone else.

4 A I don't know have any minutes.

5 Q You don't?

6 A No, sir.

7 Q In fact back in 2003 and at the time I took
8 your deposition my understanding is the Palmetto
9 Bank was the bank that The Getaway used for all
10 it's accounts, is that correct?

11 A Yes.

12 Q Okay. So, if there is any money made by The
13 Getaway it would have gone to the Palmetto Bank
14 account?

15 A Yes.

16 Q Okay. I also understand that Donnie Calhoun
17 has been your tax preparer, and when I say you, I
18 mean the Getaway Lounge?

19 A Yes.

20 Q Is that correct?

21 A Yes.

22 Q He's always done you all's taxes?

23 A Yes, sir.

24 Q In fact isn't it true from a business
25 standpoint, for documentation purposes, tax

1 records, prepared documents or anything like that
2 for taxes, corporate records or anything, Donnie
3 Calhoun handled that for The Getaway, is that
4 correct?

5 A Yes.

6 Q Okay. So, isn't it a fact if you had any
7 corporate records of anything he would have them?

8 A Most of them.

9 Q Well, let me ask you this. What would you
10 have that he doesn't have?

11 A You have to ask Dianna, I cannot tell you
12 that.

13 Q You're the president of the company and you
14 don't know?

15 A But I wasn't doing daily operation at all.

16 Q You had nothing to do with the daily
17 operation?

18 A No, I don't, it's nonprofit corporation and,
19 you know, I just not there because I got a business
20 I was working with.

21 Q Okay. Ma'am, were you aware that I
22 subpoenaed records from Donnie Calhoun regarding
23 The Getaway? Were you aware I did that?

24 A Yes.

25 Q And in that subpoena I asked for all

1 financial and tax records for The Getaway Lounge &
2 Grill, including but not limited to anything
3 identifying nonprofit purpose, proof of payments to
4 nonprofit groups, proof of solvency, proof of
5 payments to salaries, proof of payment to
6 dividends, proof of any and all loans.

7 Do you know that all he had was your tax
8 records from 2003 --

9 A I cannot --

10 Q Let me finish my question, ma'am. Do you
11 realize all he gave me was your tax records for
12 2003, 2004, 2005, that's all they've got?

13 A I cannot tell you what he give to you because
14 I didn't see it.

15 Q Well --

16 MR. WISE: Could I see the subpoena you
17 served with that?

18 MR. NEWLON: Absolutely.

19 BY MR. NEWLON:

20 Q Ma'am, what is the Getaway's nonprofit
21 purpose?

22 A Well, it was Varsity one time.

23 Q I'm not talking about the Varsity. You
24 formed The Getaway, I want to know what the
25 Getaway's nonprofit purpose is, please?

1 A Nonprofit is an association and you are
2 joined by members and any profit we make, you know,
3 you can be managing but, you know, after salary and
4 anything over the profit, any profit we make you
5 have to donate to, you know, charity.

6 Q I think I know what you're saying. Are you
7 saying that once the corporation dissolves, if
8 there is any money left over it would go to
9 charity, is that what you are trying to tell me?

10 A Yes, sir.

11 Q That's not what I'm asking. What I'm asking
12 is, you're a nonprofit and as a nonprofit
13 corporation what is your purpose, your charitable
14 purpose while you're functioning, what is it?

15 A Well, I went to my lawyer back in 1992, which
16 is Judge Tunstal now, and he the one that get a
17 charter for me, so, you know, I cannot tell you at
18 this point.

19 Q Well, if you're running a corporation that's
20 nonprofit, wouldn't you agree with me that if you
21 are going to donate money and serve a charitable
22 purpose you would want to know exactly what that is
23 before you donate?

24 A Well, what he explain to me is, you know,
25 when I first open it up it was a bar and grill, I

1 had problems with customers, then we decided to
2 change it to nonprofit, that way it is only way, it
3 had to be joined by members, that way, you know, we
4 can screen who can come in and who cannot come in,
5 not public in a way, and wherever we can help
6 charity, that's what we going to do.

7 Q What you are talking about is making it
8 private so you can limit the membership, that's
9 what you wanted to do?

10 A In a way it is.

11 Q Okay. Miss Morris, isn't it true that as far
12 as the officers in your nonprofit corporation, that
13 it's just family members, is that correct?

14 A Yes, she's my niece and me.

15 Q And also the shareholders are nothing but
16 family members, correct?

17 A Yes.

18 Q Okay. And the property that the building for
19 The Getaway sits on, that's owned by your daughter,
20 correct?

21 A Yes, sir.

22 Q Does your corporation keep a record of
23 payments for any nonprofit purposes?

24 A You have to talk to Dianna about that.

25 Q You have no idea?

1 A No, I don't. The only thing, I'm president
2 of The Getaway and when some tax behind, then they
3 notify me, then that way I have to call Dianna
4 about it.

5 Q In a subpoena to Dianna Bice in this case I
6 asked for copies of all records indicating
7 capitalization of The Getaway Lounge, the date of
8 inception, where did it get its capital from, where
9 it got its money from to start up the business.

10 Do you know where that came from, the money,
11 the monies used to start the business?

12 A Me, or Dianna?

13 Q You, I'm asking you do you know where the
14 money came from --

15 A I didn't understand your question.

16 Q -- to originally start the business in 1992,
17 where did the money come from to start the
18 business?

19 A I move from Chicago, I sold my house.

20 Q Okay.

21 A Then I, you know, I used the money to, you
22 know, to open the business, open the Varsity, then
23 the Getaway.

24 Q Other than your tax records, do you have any
25 records to indicate what revenues you all had taken

1 in, what your overhead has been, what net income
2 you received, where the salaries have went? Where
3 is all that?

4 A Honest true, you may not believe, I have have
5 filing cabinets got stole, this is the God honest
6 truth but you may not believe it, and we talk about
7 15, 16 years ago, all the records, you know, dating
8 back to Varsity, when Dianna take over 2002, when I
9 move, are back, I move away from Greenwood for a
10 while and I come back, all the stuff I got in the
11 house, they come in, they just throw away all my
12 stuff.

13 Q So, you don't have any documentation showing
14 what dividends, if any, were paid out of this
15 corporation to anybody, whether it be an officer,
16 manager, employee, whatever the case may be?

17 A I can tell you some of them but I cannot, I
18 don't have documents to show you.

19 Q Do you remember all that from year to year?

20 A Some of them. I cannot remember all of them.
21 I know who is on salary, what we take in.

22 Q Okay. So, you don't have a record of payment
23 of salaries or monies to employees and officers
24 from, say, 1999 to 2003, you don't have any of that
25 documentation?

1 A No, I don't have it, and since 2002 we might
2 have it, or Dianna have it.

3 Q Okay, I'll ask her about that. Now, ma'am,
4 The Getaway Lounge has been in the business of
5 selling alcohol and food --

6 A Uh-huh (Affirmative).

7 Q -- since 1992, I'm not exactly sure when you
8 got your food license versus your liquor license,
9 but did you get them about the same time?

10 A Yes.

11 Q Okay. During that time, in that ten years
12 how many days a week were you all typically open?

13 A Seven days.

14 Q Seven days a week?

15 A Yes.

16 Q Because it's a private club so you can be
17 open on Sundays, right?

18 A Yes.

19 Q So, seven days a week and do you have any
20 idea how many, typically how many people would come
21 in a night or a day to The Getaway, on the average?

22 A Honest truth, when we start off it's real,
23 real slow.

24 Q Say from 1993 to 2003 when this accident took
25 place, any idea?

1 A 1992 to --
2 Q 1999, excuse me, to 2003?
3 A '99?
4 Q Yes, ma'am, '99.
5 A To 2003?
6 Q 2003.
7 A I don't have idea because I wasn't there at
8 all.
9 Q Okay. Do you have anywhere possession of the
10 articles of incorporation for The Getaway?
11 A That's another thing, I told you all my files
12 got thrown out at my house, new tenants come in, I
13 had them in garage and they took it. When I file
14 for Secretary of State, I'm pretty sure we can get
15 copy of all that.
16 Q When did all this happen?
17 A When I was on the beach, I moved to the beach
18 for year and a half.
19 Q During what period of time, when was that?
20 A Somewhere 2002, 2003.
21 Q Can you explain to me if that happened in
22 2002, 2003, when this case was filed, if my memory
23 is correct, the latter part of 2003, can you
24 explain to me why even with my request for
25 discovery in this case why this is the first time

1 anybody has told me about this?

2 A I don't understand your question.

3 Q Okay. In the course of this litigation I
4 have asked for documents on at least one occasion.

5 A You did not ask me.

6 Q Ma'am, I sent requests for records to your
7 attorney in this case so I would have an
8 opportunity to review those records to evaluate
9 your status as a corporation and in the years that
10 have ensued since I have sent that request I have
11 not heard anything from anyone about records being
12 burned. Can you explain to me why?

13 A I can not explain because you sent it to my
14 attorney, you did not send it to me, so --

15 Q Okay.

16 MR. NEWLON: Bear with me one second, Your
17 Honor, let me look at a few things.

18 Q One more question. As a matter of fact, this
19 Getaway Lounge, for purposes of getting a liquor
20 license, it did not have liquor liability coverage,
21 isn't that correct?

22 A Correct.

23 MR. NEWLON: I have no further questions,
24 Your Honor, thank you.

25 MR. WISE: Just a few questions.

1 CROSS EXAMINATION

2 QUESTIONS BY MR. WISE:

3 Q Defendant's 1 that was introduced earlier,
4 the exhibit introduced earlier, Miss Morris, he
5 asked you did you file this with the Secretary of
6 State?

7 A Yes.

8 Q Do you recognize that is the charter for
9 Getaway Grill and Lounge, Incorporated, still a
10 viable charter with the Secretary of State?

11 A Yes.

12 Q Has it ever been revoked?

13 A No, sir.

14 Q And if someone wanted a copy of the articles
15 of incorporation could they obtain one from the
16 Secretary of State?

17 A Yes, sir.

18 Q Okay. He asked you about -- let me back up a
19 second. When did you stop being the primary
20 officer or primary person responsible for this
21 business?

22 A March 1st, 2000.

23 Q March 1st, 2000? What was the reason for
24 your giving it up at that point?

25 A Because I had a business in town.

1 Q You had business at hand?

2 A I had business.

3 Q What were they?

4 A It was Blaze's Sports Bar & Grill.

5 Q And were you primarily running Blaze's?

6 A Yes, sir.

7 Q You also had a cleaning business?

8 A Yes, sir.

9 Q You were primarily running Blaze's?

10 A Yes, sir.

11 Q In your operation of running Blaze's did you
12 obtain what is called DRAM-Shop insurance for
13 Blaze's?

14 A Yes.

15 Q Did you discuss that with your niece?

16 A Yes, sir.

17 Q And --

18 MR. NEWLON: Your Honor, I object to any
19 information regarding a bar that's got nothing to
20 do with the bar at hand, whether they had coverage
21 or not.

22 MR. WISE: I think it's relevant, Your Honor,
23 I think under the law one of the relevant criteria
24 is whether or not you take adequate steps to
25 protect the corporate interest, and I think it's

1 relevant to that.

2 MR. NEWLON: But that entity is not under the
3 gun.

4 MR. WISE: I understand but --

5 THE COURT: I will let you go on.

6 MR. NEWLON: Thank you, Your Honor

7 BY MR. WISE:

8 Q Did you get coverage for Blaze's which you
9 were responsible for?

10 A Yes.

11 Q After that did you discuss that with Dianna?

12 A Yes.

13 Q And what did you tell her?

14 A I told Dianna you need to have it, I told her
15 she got to have that.

16 Q Coverage?

17 A Coverage.

18 Q All right. And did you think that she had
19 gotten it?

20 A I thought she have it. After the accident I
21 find out she --

22 Q After this accident you found out what?

23 A After the accident I found out she didn't.

24 Q All right. And I believe you got it for
25 Blaze's in 2000?

1 A Yes.

2 Q And you operated that business up until when?

3 A Up until 2002.

4 Q You kept coverage on that one?

5 A Yes.

6 Q Now, after 2000 were you even eligible to
7 sign checks on the accounts?

8 A No, sir.

9 Q Who did that?

10 A Dianna Bice.

11 Q And, now, when you formed this corporation
12 initially in 1992 you were required, you were
13 required to have a nonprofit to have a private club
14 license?

15 A Yes.

16 Q And did you comply with every regulation that
17 the Department of Revenue gave you?

18 A Yes, sir.

19 Q Have you been in violation of any of those
20 regulations?

21 A A couple times.

22 Q Let me rephrase my question. As far as being
23 in a nonprofit status, violations for --

24 A No.

25 Q As far as a nonprofit status, you have

1 complied with that?

2 A Right.

3 Q Have they ever notified you that there is a
4 possibility of revoking your charter because you
5 didn't do something right?

6 A Right.

7 Q Have you ever had your charter revoked or
8 threatened by the Department of Revenue?

9 A No, sir.

10 Q So, you ran the business up until 2000?

11 A Yes.

12 Q Did you regularly file income tax returns?

13 A Yes.

14 Q In the corporate name?

15 A Yes, sir.

16 Q All right. What was the reason you gave up
17 the active management of this corporation in 2000?

18 A Because I had other business to attend.

19 Q How well was the business doing when you gave
20 it up?

21 A Not too well.

22 Q Not too well?

23 A No.

24 Q And what was Dianna doing at the time that
25 you let her take over the management?

1 A She the manager.

2 Q She what?

3 A She done better.

4 Q Do what?

5 A She doing better.

6 Q The business is doing better?

7 A Yes.

8 Q Now, you show gross income on this business
9 of about 200,000.

10 MR. WISE: Did you introduce this?

11 MR. NEWLON: I did not.

12 MR. WISE: I would like to introduce this.

13 Q Do you recognize these as 2003, 2004, 2005
14 income tax returns?

15 A On Getaway?

16 Q Yes.

17 A Yes.

18 Q All right.

19 (Defendant's Exhibits 2, 3 and 4 were
20 marked).

21 BY MR. WISE:

22 Q What do these returns show as the gross
23 income for that business for those years 2003, 2004
24 and 2005?

25 A Gross income, is that what you saying, the

1 first line?

2 Q Yes, how much was the gross income?

3 A 221,250.

4 Q For what year?

5 A 2003.

6 Q 221,000 for 2003?

7 A Yes. And 231,110, that's 2004.

8 Q Uh-huh (Affirmative).

9 A And 205,210 for 2005.

10 Q That comes up to somewhere in the

11 neighborhood of \$5,000 a week?

12 A Yes, sir.

13 Q I mean, you ran, you say, Blaze's for awhile?

14 A Yes, sir.

15 Q And is that located in Greenwood?

16 A Yes.

17 Q And where is that located in relation to The

18 Getaway?

19 A Where?

20 Q How far away?

21 A About two miles.

22 Q All right. How does income, how does the

23 income for the business you ran as Blaze's compare

24 to that?

25 A It's about --

1 Q About the same?

2 A About the same, yes.

3 Q And what are the corporate filings that are
4 required every year as a nonprofit?

5 A Filing required?

6 Q What are you required to file every year with
7 the Department of Revenue or Secretary of State or
8 whatever?

9 A Sales tax, employee tax and then I think you
10 call it bonding sheets you got to file every year.

11 Q And you also have, do you also have to file
12 something to renew your corporate charter every
13 year?

14 A No, you don't have to, you don't have to, you
15 got a charter.

16 Q Okay. But as of February of this year the
17 corporation is still, the charter is still a viable
18 charter?

19 A Well --

20 Q It has not been revoked?

21 A No.

22 Q And if you ever received a notice that the
23 taxes hadn't been filed properly after you ceased
24 being the manager what did you do?

25 A I would call Dianna.

1 Q And she would pay them?

2 A Yes.

3 MR. WISE: Thank you. That's all the
4 questions I have.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REDIRECT EXAMINATION

QUESTIONS BY MR. NEWLON:

Q Miss Morris, these tax records, 2004, 2005, 2006, I think, is that what you had.

MR. WISE: 2003, 2004, 2005.

Q Those tax records that were actually done for those years were done after this accident, weren't they? They were actually prepared after this accident?

A They supposed to file every year.

Q Let me ask you something. Let's go back to 1999, 2000, 2001, 2002 and let's talk about your gross receipts. Where did you make most of your money at The Getaway, where did it make most of its money, out of the lounge or out of the bar?

MR. WISE: Excuse me Your Honor. That's the same thing.

Q When you reported income to the Department of Revenue, to the City of Greenwood, did you not report separately gross sales for the lounge and also gross sales for the bar?

A You are talking about food and bar?

Q Yes. And when you did that, whatever you put in those forms was accurate, is that correct?

A Yes.

1 Q Okay.

2 A Not accurate, they want you estimate.

3 Q Okay, estimate. What would be, say in 2003,
4 or I don't care, you pick a year, 1999, 2000, 2001,
5 2002, 2003, what was the approximate gross revenue
6 for The Getaway?

7 A I don't know.

8 Q No idea?

9 A No.

10 Q Okay. Well, in your 2004 tax return it has
11 gross receipts or sales, \$231,000. Is that about
12 right?

13 A That's right, yes.

14 Q Is that right?

15 A Uh-huh (Affirmative).

16 Q And that's for 2004. I don't have, let me
17 see, 2003 it was 221,000, and then I'm looking at
18 2005 and it's about 205,000. So, say in 2002,
19 2001, 2000, would it have been up around \$200,000?

20 A Looking at the numbers, right there.

21 Q Well, can you explain to me why you would
22 report to the City of Greenwood on your business
23 license that the most you made was 36,000 for 1999,
24 30,000 for the year 2000, 30,000 for the year 2001,
25 25,000 for the year 2002 and 28,000 for the year

1 2003?

2 A I don't know, sir, I wasn't there, I didn't
3 do that.

4 MR. WISE: Can I see those?

5 Q For those same years, ma'am, that would
6 include what you reported, that is for the bar,
7 that's for the bar side, now I'm looking at the
8 food side. 10,000 in 1999, 15,000 in 2000, 12,000
9 in 2001, 20,000 in 2002, 10,000 in 2003. If I add
10 all that up, my math, maybe I'm wrong, can you tell
11 me if I'm wrong, I don't get over \$40,000 in any
12 year. How can you jump from \$40,000 in the years
13 prior to this accident, and all of a sudden get to
14 200,000 after the accident?

15 A I cannot tell you from 2000 to 2006 because I
16 wasn't there to the daily operations, I wasn't
17 keeping the records.

18 Q You were still the president, right?

19 A I was president but I wasn't there.

20 Q Okay. You testified a couple seconds ago
21 that you, that you realized after this happened
22 that you didn't have any insurance coverage, liquor
23 liability insurance coverage. Do you remember
24 saying that to Mr. Wise?

25 A Dianna thought she have it but --

1 Q Right, I understand.

2 A But we find out that she went to report
3 insurance company, find out she doesn't.

4 Q Right. Ma'am, you run more than one
5 business, correct?

6 A Yes, sir.

7 Q You have experience, I mean, you're not a
8 rookie at running a business, are you? Do you
9 understand my question, do you know what a rookie
10 is, a beginner?

11 A Yes.

12 Q Okay. And in 1999, 2000, 2001, 2002, 2003
13 you had been operating or starting to operate or
14 planned to operate other businesses, correct?

15 A Yes, sir.

16 Q Okay. And at some point you handed over The
17 Getaway to Dianna. Correct?

18 A March 1st, 2000.

19 Q Okay. That's because at some point she
20 exhibited the ability to handle it?

21 A She had helped me out quite a bit because,
22 you know, I open Blaze's 1996, I cannot be running,
23 I cannot be two places same time, so me and Dianna
24 talk it over and instead for her to go out and get
25 a job and she give me salary and do a daily

1 operation, the reason I didn't step down, because
2 she's vice-president.

3 Q Okay. So, the fact that you didn't have
4 coverage is all her fault, not your fault?

5 A Well, I trusted Dianna and she thought, like
6 I said, she told me she had coverage, she report to
7 insurance company, find out she did not. I guess
8 she didn't read through the policy.

9 MR. NEWLON: Okay, thank you, Your Honor.
10 I'm sorry, go ahead.

11 THE WITNESS: Our business, I do have it.
12 When we first have it, Getaway, I didn't know
13 nothing about it but I feel after I have Blaze's,
14 you know, they talked to me about it.

15 MR. NEWLON: Thank you.

16 MR. WISE: Thank you. I have nothing
17 further.

18 THE COURT: Okay.

19 (Witness excused).

20 MR. NEWLON: Dianna Bice, sir.
21
22
23
24
25

1 DIANNA BICE,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MR. NEWLON:

5 Q Please state your name for the record.

6 A Dianna Bice.

7 (Plaintiff's Exhibit Number 27 was marked).

8 Q Are you ready?

9 A Yes.

10 MR. NEWLON: May I approach the witness, Your
11 Honor?

12 THE COURT: Okay.

13 Q Miss Bice, I'm handing you what I have marked
14 Exhibit 27. This was an exhibit to a subpoena that
15 I sent for records prior to this trial. Do you
16 remember seeing or hearing about or discussing that
17 list of documents?

18 A I don't remember all this but Rauch called me
19 and told me that you were requesting it, requested
20 the record for The Getaway.

21 Q Okay.

22 A He didn't specify exactly what record you
23 were asking for.

24 Q Okay. Let's look at them.

25 A Okay.

1 Q The first one I asked for is all documents
2 describing The Getaway's nonprofit purpose. Do you
3 have anything, articles of incorporation, anything
4 to let this Court know how it is a bar can serve a
5 nonprofit purpose?

6 A I don't have any documentation but I'm sure I
7 could get to MEG's house, like I said, I donated
8 the money to MEG's house, the Soup Kitchen, to
9 Piney Grove Church League, this was done on a
10 yearly basis. They asked me if I wanted record for
11 tax write-off. At that time, I mean, I wasn't
12 given a whole lot of stuff.

13 Q Okay. So, you have indicated some payments.
14 The second one, I said all documentation showing
15 payment for any nonprofit purpose, and you have
16 identified some. Why haven't you produced anything
17 from --

18 A I was never asked.

19 Q -- Palmetto Bank?

20 A Excuse me?

21 Q Why haven't you produced anything for me from
22 the Palmetto Bank checkbook, an invoice, receipt,
23 anything to substantiate that you ever as an
24 officer for The Getaway, wherein The Getaway made
25 any payments for a charitable purpose?

1 A I didn't know you asked for those records.
2 My attorney didn't tell me you wanted nonprofit,
3 the paperwork for it. I can call them, I can get
4 that, I'm sure. The checks was never cashed, I
5 donated cash. We would have at Christmas, we would
6 have an after Christmas party for our members, they
7 would bring toys, foods, stuff like that we donated
8 to MEG's house or whatever, there was never a
9 dollar amount written, but we did that for
10 nonprofit organizations, donated canned foods, toys
11 and stuff, we donated to MEG's house.

12 Q Well, I sent this letter out the 30th of
13 January, we're sitting here today, if my watch is
14 correct it's February 8th.

15 A Uh-huh (Affirmative).

16 Q I haven't seen anything. You have not
17 produced anything to me, have you?

18 A Except what you have got, yes.

19 Q Simply the question is, you have not provided
20 anything to me, correct?

21 A No.

22 Q Okay. I asked for copies of all meeting
23 minutes, whether they were, I don't care if they
24 are regular meetings, special meetings or whatever,
25 I just want meeting minutes. Where are they?

1 A We never documented our minute meetings.
2 Like I said, me and her talked about it, we never
3 wrote down everything that was discussed.

4 Q Do you understand a nonprofit corporation is
5 kind of a special type corporation, do you
6 understand that?

7 A Yes, sir.

8 Q It's not just a regular corporation?

9 A Yes, sir.

10 Q Okay. Don't you think it would be important
11 to maintain meeting minutes for a nonprofit
12 corporation?

13 A There was just two of us. Maybe if there was
14 more officers or a treasurer or secretary or
15 something, maybe, but it was just me and her, me
16 and Shou Mei, we talked about the business.

17 Q It doesn't matter if someone wanted to come
18 behind you like the IRS, Department of Revenue or
19 anyone else to investigate the corporation, they
20 wouldn't have anything, any record or anything to
21 show where you all discussed any corporate matters?

22 A Well, from my understanding, when I was
23 turned over to vice-president they asked me about
24 the meeting minutes and I told them that we didn't,
25 that that's how we handled it, and she said, "Well,

1 you need, in order for me to be changed over to the
2 vice-president," that I had to present them with a
3 document where we had that meeting but I didn't
4 realize I had to keep documentation for every
5 meeting we had.

6 Q Okay. I also asked for corporate account
7 information, bank account. Where is that?

8 A Where is my account at?

9 Q Proof of an account, proof that The Getaway
10 has an account?

11 A I have it.

12 MR. WISE: I have to apologize for that.
13 Here it is.

14 MR. NEWLON: Thank you.

15 Q Ma'am, your attorney has handed me account
16 records for 2004 to 2005.

17 A Uh-huh.

18 Q Where is the rest of them?

19 A I turn some of my accounts, I went to the
20 bank and any of them you wish to see I will be glad
21 to bring you. The account has been in existence
22 since 2000.

23 Q I asked for any records that might indicate
24 that this corporation maintained any semblance of
25 any formalities, corporate formalities. Do you

1 have anything like that?

2 A I don't understand what you're asking me.

3 Q Did this corporation in any way pay any
4 dividends at anytime?

5 A Yes, sir.

6 Q To who?

7 A When you say dividends, I'm still confused on
8 the question.

9 Q Ma'am?

10 A You might want to change your terminology.

11 Q Were you vice-president -- let me ask
12 something. You are vice-president of The Getaway?

13 A Yes.

14 Q Are you knowledgeable in business affairs?

15 A Yes, I have learned it over the years, yes.

16 Q Do you consider yourself responsible in your
17 maintaining, in performing your functions as
18 vice-president for The Getaway?

19 A Yes, sir.

20 Q And you don't know what dividends are?

21 A Today my mind is --

22 MR. WISE: Your Honor, I think as a matter of
23 law a nonprofit corporation does not pay dividends,
24 therefore she would not be required to be familiar
25 with dividends.

1 MR. NEWLON: Your Honor, he hit the nail on
2 the head, that is exactly right. She should tell
3 me that they don't have to pay dividends. She
4 doesn't even know that.

5 BY MR. NEWLON:

6 Q What about all records of payments of any
7 funds whatsoever to any officers, managers,
8 employees for this business between the years, I
9 don't care what years but I'm looking for 1999 to
10 2003, do you have any of that?

11 MR. WISE: They were supplied with them
12 pursuant to subpoena from Donnie Calhoun, the
13 payment and salary of Dianna Bice, he should have
14 those. He sent me these copies when he sent you
15 that.

16 MR. NEWLON: No.

17 MR. WISE: When he sent me a copy of what he
18 sent you.

19 MR. NEWLON: Okay, thank you.

20 MR. WISE: Do you see that?

21 MR. NEWLON: Yes.

22 MR. WISE: Okay.

23 BY MR. NEWLON:

24 Q Okay, I see where there is a W3 for you,
25 2003, 2004 and 2005?

1 A Yes, sir.

2 Q Is that right?

3 A Yes, sir.

4 Q All right. Where is the rest, where are the,
5 why is the evidence that you paid salaries on or
6 prior to the date of the accident, that's what I'm
7 interested in, I want to know how you all were
8 functioning before this guy got in an accident,
9 this accident happened and you were requested to do
10 all this stuff?

11 A Well, those were the ones that we asked for,
12 me and Barry Stennett were the two on payroll.

13 Q Were you sitting here when I was examining
14 Miss Morris?

15 A Yes, sir.

16 Q Okay. For the sake of brevity, it appears
17 that in 2003, 2004, 2005 you all reported in excess
18 of \$200,000 to the IRS?

19 A Uh-huh (Affirmative).

20 Q But when you go back and look at your gross
21 receipt reports to the City of Greenwood for
22 purposes of your license you didn't report more
23 than \$40,000 in any year?

24 A We also have to take membership fees of \$10
25 per member.

1 Q That makes up over \$150,000?

2 A No, sir, but I don't have the answer for
3 that.

4 Q As a matter of fact there are a bunch of
5 records that were stolen at some point, did I
6 understand that right?

7 A Yes.

8 Q Stolen or burned?

9 A They were stolen from her house.

10 Q Stolen? And I don't mean to be facetious
11 about this but what's the market for stolen records
12 from The Getaway? Is there somebody out there that
13 is stealing that stuff to try to make money?

14 A I don't think they were stolen from her, I
15 believe what she said was she let tenants move in
16 her house and they cleaned her garage out and they
17 did away, they threw away her documentation.

18 Q Oh, they were thrown away?

19 A Yes, I mean --

20 Q Any reason why you wouldn't want to keep or
21 didn't keep corporate records somewhere on the
22 premises, in a cabinet or safe?

23 A Well, I mean, I have had, my business has
24 been broken into, well, The Getaway has been broken
25 into five or six times. We had one time I did have

1 a file cabinet and boxes in there, we had the whole
2 ceiling fell in with a busted water pipe.

3 Q You all are open seven nights a week, right?

4 A Yes, sir.

5 Q What's your gross sales in a night?

6 A It varies.

7 Q On the average?

8 A On average, I don't know, depending on what
9 week it is, Monday through Thursday, maybe two or
10 three hundred dollars a day, the weekends are a
11 little bit more.

12 Q You remember back when I took your deposition
13 in this case, correct?

14 A Yes, sir.

15 Q Okay. Back then I asked you about who
16 handled your records, your corporate records?

17 A Yes, sir.

18 Q And I said, I asked you who handled your
19 books?

20 A My accountant.

21 Q And I said other than providing information,
22 do you prepare documents or anything like that, tax
23 records or anything, you said no, he takes care of
24 all that?

25 A Yes, he did.

1 Q Okay. And can you explain why all I got is
2 three W3's from 2003, 2004 and 2005, three tax
3 records from '03, '04 and '05 and that's the
4 contents?

5 A Well, maybe that's all you requested. I
6 didn't ask Donnie for anything else, I don't know
7 what you subpoenaed from Donnie.

8 MR. NEWLON: Could I have a copy of that
9 subpoena?

10 MR. WISE: Yes.

11 Q Ma'am, I asked him for all financial and tax
12 records of The Getaway Lounge.

13 MR. WISE: I don't know if it's proper to
14 cross-examine her about how Mr. Calhoun responded
15 to that subpoena.

16 MR. NEWLON: I'm just clarifying what was
17 requested, she didn't know, I'm just telling her
18 what I asked.

19 BY MR. NEWLON:

20 Q What I asked for, ma'am, is all financial and
21 tax records of The Getaway Lounge and Grill,
22 including but not limited to profits, proof of
23 payments, proof of solvency, proof of payment of
24 dividends, proof of any and all loans, and he sent
25 me three W3's, three tax records that follow when

1 this accident happened and nothing before that.

2 Can you explain that to me, when you said that he
3 handled everything for you?

4 A No, I don't know when you subpoenaed, I don't
5 know when you subpoenaed them from him because you
6 asked me for them and I told you that Donnie had
7 all these records. When I called Donnie those were
8 the records that I asked him for, "I don't know
9 what they are asking for but you need to get
10 whatever, you need to get it together for them," I
11 don't know if you specified dates to him or not.

12 Q Ma'am, isn't it true that this bar set up
13 this nonprofit status strictly for the purpose of
14 avoiding liability? Isn't that what this is all
15 about, if something happened you personally
16 wouldn't be responsible, isn't that what you were
17 really trying to do, you and your mother tried to
18 do?

19 A She's not my mother, she's my aunt.

20 Q Your aunt.

21 A I don't know, I wasn't there when the
22 corporation was set up.

23 Q So, if that was done she would have done it,
24 not you?

25 A Yes, sir. I didn't become an officer until

1 2000.

2 MR. WISE: Are you through?

3 MR. NEWLON: I'm through.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CROSS EXAMINATION

2 QUESTIONS BY MR. WISE:

3 Q I hand you this and ask you if you can
4 identify this document? I have shown this to Mr.
5 Newlon.6 A Yes, sir. It's a signature card from the
7 Palmetto Bank.

8 Q And whose signature is that on there?

9 A Mine.

10 Q Okay, let me have that.

11 MR. WISE: I would like to introduce this as
12 our next exhibit.

13 (Defendant's Exhibit Number 5 was marked).

14 THE COURT: What is that, Mr. Wise?

15 MR. WISE: Signature card from Palmetto Bank.

16 BY MR. WISE:

17 Q And whose signature is on that?

18 A Mine.

19 Q And after that date who signed any checks
20 with Palmetto Bank?

21 A Me.

22 Q Did Shou Mei Morris sign any?

23 A No.

24 Q Go back one moment. Did you and Miss Morris
25 have a conversation about insurance?

- 1 A Yes, we did.
- 2 Q And was it what is commonly called liquor
3 liability or DRAM-Shop insurance?
- 4 A Liquor liability, I think.
- 5 Q Okay. And did you go to the insurance
6 company?
- 7 A Yes, I did.
- 8 Q All right. And at one time did you think you
9 had it, or exactly how did that come about? You
10 ended up not having it?
- 11 A I went to see Isaac Shaffer, I asked him to
12 give me a quote on the liquor liability. After the
13 quote I told him, when I left his office that day I
14 asked him did we need to sign the policy when he
15 gets it in, to sign papers. I never questioned
16 Isaac, I went there and signed the paperwork I
17 needed to sign, my premium went up. I just, I
18 mean, it went up 100 something dollars, I just
19 assumed it was there. When I went in there to see
20 Isaac to take him a copy of the, about this case
21 here, Isaac told me, he said, "Dianna," he said,
22 "Let me research." He said, "I don't actually
23 handle the business insurance, let me research it
24 for you."
- 25 Q Bottom line is you ended up not having

1 coverage?

2 A I did not have coverage.

3 Q I think there was some other form you had to
4 fill out to get it?

5 A Yes.

6 Q Or something like that?

7 A One more form I needed to sign didn't get
8 signed.

9 MR. WISE: I think that's all I have.

10 MR. NEWLON: One question, ma'am.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REDIRECT EXAMINATION

QUESTIONS BY MR. NEWLON:

Q You're vice-president of The Getaway Lounge and the issue of insurance didn't come up with Isaac until after this accident, correct?

A No, sir, it come up before this accident.

Q Are you sure about that?

A I'm positive. I took the letter to Isaac Shaffer myself, handed him the letter from you, he read over it, he said, "Dianna, let me research this, I think we've got it covered but I need to check." He come back and he said, called me, he said, "I'm leaving the country," he said, "You don't have liquor liability." I said, I told him him, "Isaac, we have been over this, I thought I had it." He said, "Well, what do you want me to do with this paperwork?" I said, "I guess if I don't have liquor liability make sure and send my paperwork to Rauch Wise." That was the discussion with Isaac Shaffer.

Q I don't think you understood my question. You just testified you acted in response to my letter, correct, I wrote a letter?

A This is before you wrote the letter to me, I had been in seeing Isaac.

1 Q I understand that.

2 A I had seen Isaac.

3 Q But before I wrote that letter you were under
4 the assumption, you are testifying that you were
5 under the assumption you had liquor liability
6 coverage?

7 A Yes.

8 Q Yes. What I'm saying is that it did not
9 become an issue or you did not go looking into it
10 until after this accident? In other words, you
11 didn't go back to check it until this accident
12 happened, you made an assumption you had it?

13 A Yes.

14 Q Okay. That's what I wanted to get at.

15 Ma'am, do you know what a declarations page is?

16 A No, sir.

17 Q Have you ever read a policy of insurance?

18 A No, sir.

19 Q When -- what is his name, Isaac what?

20 A Shaffer.

21 Q Shaffer? When Isaac Shaffer offered that
22 policy to you way back when did you ever take time
23 to read it?

24 A He mailed it to me, I put it in the file
25 cabinet. I looked over it but I didn't read it, I

1 wasn't even thinking about it at that time. I
2 thought --

3 Q Vice-president of a corporation selling
4 alcohol to the public and you don't make it a point
5 to read that policy, review that dec page to make
6 sure that you have got liquor liability?

7 A I read over the policy but I didn't, I didn't
8 even -- at that time you have to understand I had
9 been through several surgeries, I was going through
10 a lot at the same time, too.

11 MR. NEWLON: Thank you. No further
12 questions.

13 MR. WISE: Nothing further.

14 THE COURT: Thank you, ma'am.

15 (Witness excused).

16 MR. NEWLON: Your Honor, that's all the
17 testimony.

18 MR. WISE: That's all the testimony from the
19 defendant, too.

20 MR. NEWLON: Your Honor, in reviewing the
21 cases in South Carolina it's clear this is an
22 equitable matter. The language I see in the cases
23 is if there is a sufficient reason to pierce the
24 corporate veil under equitable circumstances, in
25 other words, if the plaintiff can show sufficient

1 reason.

2 In this particular case the plaintiff would
3 argue that these individuals, Shou Mei Morris and
4 then in combination with Dianna Bice running this
5 operation set up this nonprofit corporation
6 strictly for the purpose of avoiding liability
7 while they were serving beer to the public and
8 putting these individuals out on the road and they
9 didn't, as the president and vice-president of this
10 corporation and a sophisticated woman, as Shou Mei
11 Morris is, in running a number of businesses,
12 didn't take time to analyze that and make sure they
13 had that policy. They didn't take the time to
14 record anything they did as a corporation by way of
15 any meetings, whether they were regular or special
16 or whatever, not even once a year. They didn't
17 maintain any corporate records, and any corporate
18 records that supposedly existed have now been
19 stolen or thrown away, and interestingly enough in
20 this case the records that have been submitted by
21 the defendant magically show up after this
22 accident, and there is nothing in the record, I
23 subpoenaed this information from her accountant
24 that Dianna Bice testified handled all her
25 paperwork, I have asked her for that stuff, I have

1 put requests in in discovery and haven't gotten a
2 thing along these lines that would allow the
3 plaintiff to truly analyze, and the plaintiff would
4 submit to this Court it was never there and that
5 these people are setting out there, decided to do a
6 nonprofit corporation under someone's advice and
7 gets this status, create a bogus purpose,
8 charitable purpose, they don't even have any record
9 of that, and then turn around and try to convince
10 this Court that they are operating legitimately as
11 a nonprofit corporation. The plaintiff would
12 submit they are not. There is no proof of these
13 donations, they failed to comply with formalities.
14 I understand that they don't have to pay dividends
15 but as a corporate officer, vice-president, she
16 didn't even know what they were. She didn't even
17 know she didn't have to pay them. And I think it's
18 an irresponsible operation, the plaintiff would
19 submit it's an irresponsible operation and that
20 this corporate veil should be pierced because there
21 is sufficient reason in this case.

22 MR. WISE: Your Honor, there are two cases
23 basically I think pretty well set forth the law in
24 this state, Hunting versus Elders, which is 359
25 South Carolina 217, 597 Southeast 2d 803, and

1 Sturkie versus Sifly, found at 380 South Carolina
2 453, 317 Southeast 2d 316. I will be happy to pass
3 those up.

4 THE COURT: What was the second case?

5 MR. WISE: Sturkie, S-t-u-r-k-i-e.

6 THE COURT: I've got that one. I have both
7 of them.

8 MR. WISE: Okay. And they establish, make
9 pretty stringent criteria to pierce the corporate
10 veil. The first thing, this charter is valid, this
11 corporation is still a valid corporation in South
12 Carolina, no question about it. To really pierce
13 the corporate veil what courts have required, as I
14 read those cases, is to show that that corporation
15 was used as a means to funnel cash to the
16 individual owners in such a manner that it's unfair
17 to not pierce the corporate veil when you funnel
18 for no particular reason.

19 If you look at Sturkie, not Sturkie, Hunting
20 versus Elders case, this talks about hundreds of
21 thousands of dollars the plaintiff in that case was
22 able to prove had been funneled through the
23 corporation to the individuals and actually some of
24 it was even fraudulently done. We have here the
25 income tax returns to show about 200 something

1 thousand dollars a year, which is about \$5,000 a
2 week for a bar like The Getaway, which comes up to
3 about \$700 a day on average, if my figures are
4 correct, comes up to about \$700 a day on average,
5 which certainly does not rise to the level of a
6 fraudulent thing. If they were reporting 20, 30,
7 40 thousand dollars a year in income in the lounge,
8 I think the Court may have some justification for
9 saying they are skimming money off and putting it
10 in the pockets of the proprietors, it's unfair to
11 carry forward the corporate veil, but that's not
12 true. They are reporting pretty substantial income
13 and there has been no proof that income is the
14 least bit under inflated.

15 I will be candid with you, I could argue it
16 is over inflated but that's the figures they've
17 got. But certainly that's a fair amount of income
18 being reported. There has been no showing, the
19 showing is Dianna Bice gets about \$20,000 a year
20 out of the business and that's it, and there is no
21 showing that there is a gross inequity because the
22 owners of that business as required by the cases
23 were able to siphon off money in their own pocket
24 in fraudulent disregard for their corporate
25 responsibilities.

1 Under those facts, with the burden being on
2 the plaintiff to show this, that certainly it's a
3 heavy burden, as I read the cases, certainly no
4 showing that in this case it is and they did, I
5 think, try to act responsibly in regard to
6 protecting the corporation, in that there was an
7 attempt to get the proper insurance and
8 unfortunately through not knowing exactly properly
9 how to do it and so forth it didn't happen. That
10 is really unfortunate in this case, I agree, but I
11 think under those two cases the showing is that
12 there has been no showing, there is no fraud as far
13 as handling the corporate assets.

14 THE COURT: Well --

15 MR. NEWLON: Your Honor -- excuse me.

16 THE COURT: The Elders case is a case, it was
17 a case where, just like this one, and it was a case
18 out of Charleston, it may be on cert to the Supreme
19 Court.

20 MR. WISE: 2005? I didn't realize that.

21 THE COURT: Right now it is guidance for us
22 and it was a case where the Court has held that,
23 they held that the corporation, I don't know what
24 kind of corporation this one was, it was, they
25 allege, they held that it was an alter ego of the

1 individual, and the court, the appellate court
2 granted judgment in the case against the individual
3 in the case and it was a 1.5 million dollar
4 verdict.

5 MR. WISE: I would point out, though, in that
6 case, there were serious differences between that
7 case and this case, the Court found in that case
8 that between 400 and 800 thousand dollars had been
9 siphoned off by the owners of that corporation
10 through this corporate veil and it would therefore
11 not be unequitable to pierce the corporate veil.
12 There is certainly no showing of that in this case.
13 It is a very detailed analysis by the plaintiff in
14 that case.

15 THE COURT: And, you know, we have to have
16 some records to go by. In this case, you know, it
17 seems like the records, something happened to the
18 records in the custody of your client, Shou Mei
19 Morris.

20 MR. WISE: I would point out that the
21 plaintiff has known Donnie Calhoun was the one
22 handling the affairs and he could depose Donnie
23 Calhoun to come in and help prove the case.

24 THE COURT: I thought it was all the records
25 that Mr. Calhoun had --

1 MR. WISE: He did.

2 THE COURT: -- in regard to this and he asked
3 one of the witnesses, he said the only thing he got
4 from him was income tax returns.

5 MR. WISE: That's correct but he could have
6 deposed Donnie Calhoun to help develop his case.

7 THE COURT: Okay.

8 MR. NEWLON: Your Honor, I just have a couple
9 points very quick. There is evidence of fraud in
10 this case and I brought it out very subtly. I
11 have got tax returns from these people following
12 this accident showing revenues in excess of
13 \$200,000. They could not provide me tax returns
14 for the years that would have been applicable prior
15 to the date of this accident. The actual documents
16 that I got previous to this from the City of
17 Greenwood for reporting revenue showed they were
18 reporting between 30 and 40 thousand dollars a year
19 total for both the bar and the food side, and if
20 there is no fraud in this case, it's about \$150,000
21 a year between the years 1999 and 2003 where they
22 were simply reporting \$40,000, and they can't show
23 us the tax returns. If my math is correct, five
24 times 150 is \$750,000 worth of fraud. And then
25 they are sitting here saying they can't get the

1 records in an equitable circumstance where they
2 can't even produce documentation to allow the
3 plaintiff in this case to properly evaluate it. In
4 all fairness they should be held accountable for
5 not being able to take care of their own records.

6 MR. WISE: Another point I would like to
7 make, Your Honor, I believe in the Sturkie case, I
8 think it was mentioned in the Elders also, the
9 liability as opposed to what they call the dominant
10 stockholder, the person primarily in charge of
11 affairs, and Miss Shou Mei Morris was not the
12 dominant stockholder, she had not even signed a
13 checking account for more than three years before
14 this accident.

15 THE COURT: Well, I don't have any
16 documentation of that.

17 MR. WISE: But the testimony was and the
18 document introduced showed that Dianna Bice took
19 over the operation of this company in the year
20 2000, March 1st, 2000. We introduced the signing
21 records where Dianna Bice became the signatory on
22 the account in 2000, and the testimony was that
23 Miss Morris was not actively involved in the
24 corporation from that period, on. I think she
25 testified that she spent about a year and a half

1 down at the beach running another business.

2 MR. NEWLON: Your Honor, I would simply say
3 that the reason that Miss Morris was named in the
4 original complaint is because that was who was
5 listed as the president with the Department of
6 Revenue when the lawsuit was originally brought.
7 Whether or not they updated their records, I have
8 no idea, but in this particular case we're simply
9 piercing the corporate veil of the corporation and
10 once that happens it may involve more people, it
11 may not be limited to Miss Morris. At that point
12 it becomes a matter for a judge in supplemental
13 proceedings. We're not suggesting that Shou Mei
14 Morris is the only person that may be held
15 accountable. It may be the shareholders.

16 THE COURT: Okay. The factors in regard to
17 piercing the corporate veil are if the corporation
18 is the alter ego of an individual as set forth in
19 the Sturkie case and then Hunting versus Elders
20 case which have been recently mentioned.
21 Regardless of what happens to that case on
22 certiorari to the Supreme Court it sets out, Judge
23 Stillwell in his opinion sets out all the factors
24 that must be considered by the Court in regard to
25 the shareholders in a corporation and the factors

1 the Court must consider, and it covers the law
2 pretty much in detail, so the Court will make a
3 decision in this regard. This is a bifurcated
4 trial exactly like Hunting versus Elders, and we
5 have had a judgment this morning against the
6 corporation for a large amount of money and the
7 Court will issue an opinion within the next week on
8 this case.

9 Thank you.

10 MR. NEWLON: Thank you, Your Honor.

11 MR. WISE: Judge, just for purposes of making
12 it a little more convenient to handle things, I'm
13 going to submit probably by the first of next week
14 my motion for new trial. Would you put both those
15 in the same order so we will have the same day for
16 purposes of appeal?

17 THE COURT: If you get your motions to me in
18 time before we make a decision in this case I'll be
19 glad to issue the order on the same day.

20 MR. WISE: I will work on it over the
21 weekend.

22 THE COURT: You only have ten days.

23 MR. WISE: I'm going to send it out Monday.

24 THE COURT: I'm going to hold you to the ten
25 day period

1 MR. WISE: I will file that Monday with you.

2 THE COURT: All right.

3 MR. WISE: And send Mr. Newlon a copy of the
4 motion.

5 MR. NEWLON: Thank you.

6 MR. WISE: Thank you.

7 MR. NEWLON: Thank you, Your Honor.

8 THE COURT: Thank you.

9 (Concluded at 4:18 p.m.).

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY Court of Common Pleas

Honorable Larry R. Patterson, Circuit Court Judge

Case No. 2004-CP-24-38

Jon E. Hartfield, by and through his Conservator,
Haskell L. Hartfield and Haskell L. Hartfield, Individually Respondent,

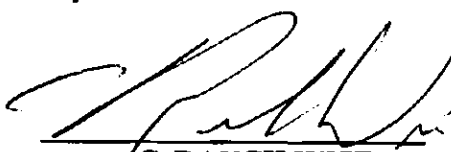
vs.

The Getaway Lounge & Grill, Inc., and Shou Mei Morris, individually and as President of The
Getaway Lounge & Grill, Inc., ... Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.

February 6th, 2008



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
S.C. Bar No. 00188

Attorney for Appellant, The
Getaway Lounge & Grill, Inc.,
and Shou Mei Morris, individually
and as President of The Getaway
Lounge & Grill, Inc.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Honorable Larry R. Patterson, Circuit Court Judge

Case No. 2004-CP-24-38

RECEIVED

FEB 15 2008

SC Court of Appeals