

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

RECEIVED

The Honorable Robin B. Stilwell, Circuit Court Judge

JUN 24 2016

SC Court of Appeals

Appellate Case No. 2014-002317

Maria Moyao,

Appellant,

v.

South Carolina,

Respondent.

AMENDED RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2301642

Maria Moyao

South Carolina State Of

2014 SEP 17 PM 2 51

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This matter comes before the Court on appeal from the Summary Court's conviction of the Appellant for DUAC. The Defendant/Appellant argues that the lower court erred in allowing the admission of the incident site video recording and in allowing the State to proceed on DUAC charges after an original ticket for Driving Under the Influence. After having reviewed the record on appeal, the submissions of the parties and the law, the appeal is respectfully DENIED. The Summary Court Judge specifically found that the incident site video was in substantial compliance with Section 56-5-2953 of the South Carolina Code of Laws and found that it was admissible. This Court finds no error or abuse of discretion in that decision. Furthermore, the Summary Court found that the Defendant had received appropriate notice of the State's intent to proceed on DUAC charges. Specifically, the Summary Court found that a notice to the Defendant had been served on February 6, 2012, well in excess of a year before the trial. The Court found that this notice was sufficient and that no prejudice was visited upon the Defendant as a consequence of the notice. Again, this Court finds no error or abuse of discretion in that decision.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

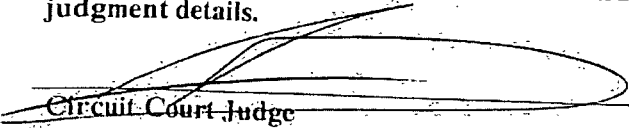
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge

2158

9/3/2014

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 9/17/14, and a copy mailed first class or placed in the appropriate attorney's box on 9/17/14 to attorneys of record or to parties (when appearing pro se) as follows:

Daniel Joseph Farnsworth Jr. Farnsworth Law Offices, LLC
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Christina Marie Bradford 27 Rawood Drive Travelers Rest,
SC 29690

Mitchell K. Byrd Sr. 216 Pimlico Road Greenville, SC
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

06/20/2014 11:16 8642681333

CHICK SPRINGS COURT

PAGE 02/05

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
COUNTY OF GREENVILLE
2014 APR 23 AM 9 34

IN THE SUMMARY COURT

UTT# 53541FV DUI 1ST

-VS-

MARIA MOYAO

2013-CP-23-01642

ANSWER

This case came before me for trial by jury on March 13, 2013. The Defendant was charged with DUI in ticket number 53541. The Defendant and her attorney Perry DeLoach of the Farnsworth Law Offices were present along with the State's representative Mitchell Byrd and Deputy Jonathan Jackson of the Greenville County Sheriff's Office.

Prior to taking any testimony, counsel for the Defendant moved to dismiss the case upon the grounds that the in-car incident site video did not meet the minimum requirements of section 56-5-2953. Defense counsel argued that during portions of the video when Defendant was performing the walk and turn field sobriety test her feet were partially obscured for several steps. I observed the video and noted that the Defendant took several steps which were partially blocked by a bar of some sort on the front of the patrol car as well as by some numbering at the foot of the video as she approached the car. However, substantially all of that test as well as the other tests were clearly visible as was the Defendant's conduct. Accordingly I denied the Motion finding that the video complied with the statute and that a reasonable juror could weigh this evidence

06/20/2014 11:16 8642681333

CHICK SPRINGS COURT

PAGE 03/05

and decide whether Defendant failed or successfully completed the tests as instructed.

Prior to offering testimony, the State announced that it would be proceeding against the Defendant for DUAC pursuant to section 56-5-2933. Defense counsel objected whereupon the State produced a Notice To Defendant dated 2/6/12, acknowledged by Mr. Farnsworth, notifying Defendant that the State would be prosecuting her under section 2933. Finding that this notice was more than thirty days prior to trial, I overruled this objection.

Deputy Jackson testified regarding the stop, his observations and arrest of the Defendant and the State introduced documentary evidence including breath test results of 0.10% along with the incident site video and the breath test video.

Defense counsel cross examined Deputy Jackson and the State rested.

Defense counsel then moved for a directed verdict again arguing that the in car video did not meet the mandatory statutory requirements and that dismissal of the charge was appropriate. Again I disagreed and denied this motion.

The Defendant elected not to offer any evidence and following closing arguments and the court's charges the jury retired, deliberated and returned a verdict of guilty. Sentence per section 56-5-2933 was then pronounced.

Tapes on file.

Date: 9-23-14


Charles R. Garrett, Magistrate

STATE OF SOUTH CAROLINA

TICKET NO. 53541FV

STATE OF SOUTH CAROLINA,

VERSUS.

MARIA MOYAO,

DEFENDANT.

TRANSCRIPTION OF DIGITAL AUDIO FILE

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1 (BEGINNING OF RECORDING TAPE 1 FRONT)

2 BY JUDGE GARRETT:

3 This is State of South Carolina versus Maria
4 Moyao, charged with driving under the influence
5 first offense, 53541FV, scheduled for a jury trial
6 this a.m. at 9:00. Ms. Moyao is represented by
7 Attorney DeLoach. Solicitor Byrd is here, and so is
8 the officer charging, Deputy Jackson.

9 Gentlemen, pre-conference?

10 MR. DELOACH:

11 Yes, sir. Your Honor, I have a motion to
12 dismiss for the fact that the video does not comply
13 with the statute. And I'll hand the Court some law
14 that I have, as well as hand it to Mr. Byrd, as
15 well.

16 Judge, to begin my argument, I just want to
17 start with the statute. Basically, what the statute
18 says is that -- in 2008, we had an amendment to the
19 statute, as Your Honor well knows. And it included
20 that the video provide any field sobriety test. In
21 this particular video, the counter on the clock
22 covers up Ms. Moyao's -- and I believe that the
23 State will admit this -- covers up her feet for
24 seven of the nine steps on the walk and turn and the
25 entire one-legged stand.

1 It is my position that when the legislature
2 amended the statute in 2008, it specifically wanted
3 to address this because it is imperative that the
4 jury be able to view the actions of the defendant to
5 determine probable cause for the arrest. In this
6 particular video, Judge -- I've got some law here,
7 as well, Judge. And if you'll turn first to an
8 order written by The Honorable Mark Hayes. Your
9 Honor, this order is on point. This is a case in
10 which the feet of the defendant were not viewed.
11 Judge Hayes goes on to say this is an order
12 upholding the magistrate's motion to dismiss. Now,
13 in this case, the judge states clearly that in 2008
14 -- and if you'll turn to page seven of seventeen.

15 BY JUDGE GARRETT:

16 Go ahead.

17 BY MR. DELOACH:

18 In 2008, the amendment to South Carolina Code
19 56-5-2953(A)(1)(ii) added the language that any
20 field sobriety test administered must be recorded.
21 Basically, what he goes on to say later -- sorry,
22 Judge. I apologize. If you'll turn to page ten of
23 seventeen, he brings out *Murphy v. State*.
24 Basically, what happened in this case was the State
25 relied on *Murphy v. State*, which was a case that was

1 held before the amendment which stated that only the
2 conduct of field sobriety tests should be viewed,
3 should be considered. In footnote four, the supreme
4 court made it clear that -- it stated -- footnote
5 four basically stated, as amended, the current
6 version of Section 2953 expressly requires the
7 recording of any field sobriety test. We note that
8 the legislature's amendment of the plain language of
9 the statute that required the recording of the field
10 test. Furthermore, it is our position that the
11 plain language in the prior version in effect at the
12 time of the accident did not require recording the
13 test. That was *Murphy v. State*. That was the old
14 law. Judge Hayes went on to say the obvious -- on
15 footnote four in the board of appeals opinion in
16 *Murphy v. State*, which was later upheld by the
17 supreme court, is that if the complete recording of
18 any field sobriety test is not required under the
19 former statute, it is now required, the complete
20 recording. It is now required under the amended
21 statute. It goes on to say that the requirement
22 that any field sobriety test be recorded would
23 necessarily mean that a person watching the
24 recording could completely or substantially view the
25 test as it was administered and performed by the

1 driver/suspect such that a person watching the
2 recording could make some meaningful assessment as
3 to how well the driver performed the test. And this
4 particular case is exactly on point. In fact, in
5 this case, they got to see more than what is seen in
6 my video. Because in our video, it's behind the
7 counter for seven to nine steps and the entire one-
8 legged stand. They had more than that in this
9 video, Judge. And basically, what he said is the
10 only remedy is dismissal. And that was upheld, as
11 we all know, in (inaudible). That the only remedy
12 in the case where the video does not comply with the
13 statute is dismissal. And I've also got two more
14 orders here. One from Judge Addy, as well as from
15 Judge Alford, saying the exact same thing, Judge.
16 And the order from Judge Alford is also on point,
17 the same situation, not being able to view the
18 video.

19 Judge, it's certainly -- we're not blaming the
20 officer in this case. It's a counter. It's more of
21 a technological problem that's probably been
22 remedied now. These counters, I believe, are done.
23 We're not blaming anybody. But there's no way that
24 the jury in this case can view what happened on the
25 one-legged stand and on the walk and turn. And

1 essentially, that equates to no video. If you can't
2 view what's going on in the video, then the video
3 itself is useless.

4 BY JUDGE GARRETT:

5 Solicitor?

6 BY SOLICITOR BYRD:

7 Judge, a couple points. I looked at my video
8 last night, and I could clearly see the feet. I
9 didn't have audio, however. So I called Deputy
10 Jackson and told him that and said please bring your
11 original VHS video with you. We looked at it again
12 this morning, and you can clearly see her feet
13 throughout all the field sobriety tests.

14 Perry is correct in that at -- I think it was
15 step seven of the walk and turn, she begins to --
16 her feet go into where the numbers are. You can
17 still see the feet, but the numbers are across the
18 bottom of the screen. So I would simply quote Judge
19 Hayes, which I think is the law of the land now.
20 You have to have substantial compliance.

21 We're not into making cinematographic motion
22 pictures here. If the jury can view the conduct and
23 substantially see what's happening out there, that
24 passes muster and it goes to the weight of the
25 evidence, not the admissibility. So it's not an

1 automatic dismissal, even if there are minor defects
2 in the video.

3 BY JUDGE GARRETT:

4 (Inaudible).

5 BY MR. DELOACH:

6 And I agree, but let's look at the video, then,
7 because I just have a disagreement with the
8 solicitor. I ---

9 BY JUDGE GARRETT:

10 Well, here's the thing. Let's put it this way.
11 And I understand what you're saying. Why would --
12 why would Perry's tape not show the feet and your
13 tape would show the feet?

14 BY SOLICITOR BYRD:

15 Well, I think it's a case of he says you can't
16 see the feet because of the numbers on the screen.
17 We don't agree with his interpretation of you can't
18 see the feet, meaning I can see the feet. He's
19 saying yes, you can see them, but the numbers cover
20 up the feet at certain points. Again, I don't
21 disagree with him. I'm just saying there is no
22 point in the video where you cannot see her from
23 head to toe. There is some steps toward the end of
24 the walk and turn when she's walking into the screen
25 portion where the numbers are. But you can still

1 see her. You can still see her walking.

2 BY JUDGE GARRETT:

3 All right. Hold on just a minute. In the
4 video, can you see the field sobriety test so far as
5 nystagmus?

6 BY MR. DELOACH:

7 Judge, you can see it. She's way back in the
8 back. But yeah, I can't argue with nystagmus.

9 BY JUDGE GARRETT:

10 Okay. Second is can you see the person in the
11 one-legged stand?

12 BY SOLICITOR BYRD:

13 Yes, sir.

14 BY MR. DELOACH:

15 You can see her person, but not her feet,
16 Judge. I -- maybe I got a different version than
17 the solicitor. In the version I have, she is
18 clearly behind the nine on one of the counters.
19 Now, I don't know whether they're looking through
20 the circle on the nine or something. But even if
21 that's the case, it's obstructed. I mean, this is
22 -- the purpose of this tape is so that the jury can
23 make a meaningful understanding of what they're
24 seeing, whether or not she did the test right, the
25 walk and turn and the one-legged stand.

1 I just disagree with the prosecutor on the
2 quality of the video. I think that's the crux here.

3 BY SOLICITOR BYRD:

4 I do, too. I think the quality of the video is
5 the issue, and if it -- if you can substantially
6 view the conduct, I think the quality goes to --
7 just like any other evidence. He can argue to the
8 jury ---

9 BY JUDGE GARRETT:

10 All right. Here's the way we can settle this
11 thing. Hook up the tape and let me see it.

12 BY SOLICITOR BYRD:

13 It's ready to go, Judge.

14 BY JUDGE GARRETT:

15 Hook up the tape and let me see it. We can see
16 it in the back room, can't we?

17 BY SOLICITOR BYRD:

18 Yes, sir. That's where we looked at it this
19 morning.

20 (VIDEOTAPE IS REVIEWED.)

21 BY JUDGE GARRETT:

22 We have reviewed the videotape of the field
23 sobriety and the motion by the defense is overruled.

24 (BREAK IN RECORDING)

25 BY JUDGE GARRETT:

1 Solicitor and Mr. DeLoach, I'm beginning the
2 previous tape right where we stopped. So we'll just
3 continue right on with that one.

4 Good morning, ladies and gentlemen. We're
5 ready to begin our trial for today. Solicitor, you
6 and Mr. DeLoach, the juries have been polled.
7 Everyone's present and I have appointed Ms. Darnell
8 to serve as our foreperson for today.

9 Now, ladies and gentlemen of the jury, the case
10 before you this morning is 53541FV, The State of
11 South Carolina versus Maria Moyao. Is that correct,
12 Moyao?

13 BY THE DEFENDANT:

14 Moyao.

15 BY JUDGE GARRETT:

16 Okay. Charged with the offense of driving
17 under the influence on 9-4-11. She is represented
18 by Mr. Perry DeLoach. And of course, Solicitor Byrd
19 is here to represent the State. And of course, the
20 arresting officer, Deputy Jackson, is present, also.

21 Now, we're ready ---

22 BY SOLICITOR BYRD:

23 Judge, just for purposes of clarification, this
24 is going to be a DUAC case.

25 BY JUDGE GARRETT:

1 Okay. Excuse me. D ---

2 BY MR. DELOACH:

3 Judge, may I object to that?

4 BY JUDGE GARRETT:

5 Yeah.

6 BY MR. DELOACH:

7 May we approach?

8 BY JUDGE GARRETT:

9 Come.

10 (BRIEF CONFERENCE)

11 BY JUDGE GARRETT:

12 Ladies and gentlemen, the case before you this
13 morning is a DUAC, which is driving with an unlawful
14 alcohol concentration. Okay. And I'll explain that
15 more to you as we go into the charging phase of the
16 trial.

17 I'll ask you, though, at this particular time
18 if you'll please stand and I'll ask you to raise
19 your right hands. And I'll ask you also to please
20 answer and don't just nod your head because the
21 machine cannot pick up a nod. Okay? All right. Do
22 you and each one of you solemnly affirm that you
23 will well and truly try this case and render a true
24 verdict according to the law and evidence produced
25 before you, so help you God?

1 (MEMBERS OF THE JURY ANSWER AFFIRMATIVELY.)

2 BY JUDGE GARRETT:

3 Okay. Let the record reflect everyone in the
4 jury says that they do. You may be seated.

5 Solicitor, Mr. DeLoach, is there a reason to
6 keep our alternate here if he chooses to go?

7 BY SOLICITOR BYRD:

8 No, sir.

9 BY MR. DELOACH:

10 I don't think so.

11 BY JUDGE GARRETT:

12 Mr. (Inaudible), you are welcome to stay or
13 you're welcome to leave, whichever one you'd like to
14 do, sir. All right. Thank you so much.

15 Now, again, ladies and gentlemen, we're ready
16 to begin our trial. As we talked yesterday in our
17 education portion, we are now ready for opening
18 remarks made by both of these fine attorneys. And
19 it is opening remarks. It is not evidence. Do you
20 remember we talked about the evidence is between the
21 goal posts. Gentlemen?

22 BY SOLICITOR BYRD:

23 Thank you, Your Honor. May it please the
24 Court.

25 BY JUDGE GARRETT:

1 Yes, sir.

2 BY SOLICITOR BYRD:

3 Madame Forelady, ladies and gentlemen of the
4 jury, I am Solicitor Byrd. I am with the
5 solicitor's office here in Greenville. And I want
6 to first thank you for your kind attendance here
7 today and know you'll participate with everybody
8 else.

9 I realize that jury service is a burden upon
10 you. It's a burden upon your time and a hardship
11 for you, but it's also a civic duty, a
12 responsibility of citizenship, if you will. We
13 enjoy the fruits of our free society and this is
14 some payback, I guess you could say, to make sure
15 that the system functions properly.

16 We all have responsibilities every day in our
17 lives. We get up every day and take care of family
18 and friends and neighbors and communities, and we go
19 about our lives, accepting the responsibilities that
20 are placed upon us. We always have the option to
21 avoid responsibility, but as we know from our own
22 experiences and common sense, sometimes avoiding
23 responsibility has some repercussions. And that's
24 what this case is about today, is driving with an
25 unlawful alcohol concentration. And I want to read

1 that to you so that when it gets to the point where
2 your deliberation begins, you'll hopefully have some
3 idea of where we're going today.

4 It is unlawful for a person to drive a motor
5 vehicle within this state while her alcohol
6 concentration is eight one-hundredths of one percent
7 or more. Point zero eight percent or higher.

8 So what does that mean? It really means two
9 things. Number one, you have to be driving a motor
10 vehicle within this state. If, in your
11 deliberations, you determine that this lady was not
12 driving a vehicle within this state on the occasion
13 cited, then it would be your duty to find her not
14 guilty. And we would want you to do that because
15 we're not here to do something that's not truthful.

16 The second component of this charge is .08
17 percent blood alcohol content. And that's
18 determined based upon the evidence presented to you.

19 Again, you will have the testimony of the
20 arresting officer, Deputy Jackson, for your
21 consideration. And you will have evidence presented
22 by the State of a Breathalyzer analysis, or a BA
23 machine, which measures the blood alcohol
24 concentration.

25 Once that evidence is presented to you, then

1 you will determine whether or not you believe the
2 truth is this lady had .08 percent blood alcohol
3 concentration or higher on this particular occasion.
4 And if she did, then your verdict should be in favor
5 of the State of South Carolina in that regard. And
6 otherwise, if you find that she was not .08 or
7 higher, then your verdict should be for the
8 defendant.

9 We're not here today to punish enemies or
10 reward friends. We're here to find out what the
11 truth is. And that's all we're asking. And the
12 truth's going to come from this witness stand and
13 from the evidence that's presented to you and to the
14 Court. And all we ask is for your consideration and
15 honest appraisal of that evidence, so that whatever
16 verdict you render, it will speak the truth.

17 BY MR. DELOACH:

18 May it please the Court.

19 BY JUDGE GARRETT:

20 Yes, sir. Mr. DeLoach?

21 BY MR. DELOACH:

22 Good morning, ladies and gentlemen. My name is
23 Perry DeLoach. I'm a defense attorney in town, and
24 I am happy to represent Ms. Moyao.

25 Ladies and gentlemen, Winston Churchill once

1 said that the most important duty that you can
2 perform for your country, outside of service in the
3 military, is jury service. I say that before every
4 trial. Every trial that I do. And the reason I say
5 it is because I truly believe it. It's not just
6 something I say for appearances. What y'all do in
7 this courtroom is unbelievably important. It is
8 used and allows not only the business that's being
9 done here today, but other business that we've done.
10 Your presence has allowed all of that to take place.
11 And I thank you. And I thank you on behalf of my
12 client for your service here today.

13 Ladies and gentlemen, the State is no longer
14 going forward on DUI, as you just heard the judge
15 say. They're going forward on DUAC. Okay. In a
16 lot of ways, that's a lesser charge, okay, from the
17 DUI. It's called driving with an unlawful alcohol
18 concentration. That's (inaudible). Because I am
19 sure when this case is over, you still will not be
20 able to find Ms. Moyao guilty beyond any reasonable
21 doubt. That's the key in this case, is is she
22 guilty beyond any reasonable doubt. And that burden
23 is placed squarely on these gentlemen. They have to
24 prove to you not only that she's guilty, but that
25 she's guilty of every element of this crime beyond

1 any reasonable doubt.

2 Now, the reason we say that is because that is
3 what our founding fathers established. This is not
4 something -- this is just not some legal jargon.
5 This is extremely important and it is critical in
6 our legal system, that any defendant (inaudible) be
7 found guilty beyond every reasonable doubt. Reason
8 being none of us were there. We don't know. We
9 don't know what happened that night. That's the
10 reason the standard is set so high in criminal
11 cases.

12 I'm confident -- I'm going to get to talk to
13 y'all later in what we call closing arguments. I
14 try not to ramble on too much during my opening
15 statements, and I'm not going to do that today,
16 either. But I ask you to listen to each and every
17 -- when the officer takes the stand, I'll ask that
18 you pay attention, and I'm sure you will. Listen to
19 everything. And I'm confident that at the end of
20 this case, when you retire to your jury room, you'll
21 have decided that we can't reach that verdict. And
22 you will find this defendant not guilty.

23 BY JUDGE GARRETT:

24 Now, ladies and gentlemen of the jury and
25 everyone in the court, we're honored to have some

1 folks here visiting with us today, monitoring our
2 court. We welcome you and we hope you enjoy the
3 court. And before you leave, if you have any
4 questions, I'll be glad to speak with you about
5 that, too. Okay?

6 Solicitor?

7 BY SOLICITOR BYRD:

8 Thank you, Your Honor. Call Deputy Jackson to
9 the witness stand.

10 BY JUDGE GARRETT:

11 Come around, please.

12 ***** ***** ***** *****

13 DEPUTY JONATHAN JACKSON, BEING DULY SWORN TO TELL THE
14 TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,
15 TESTIFIED CONCERNING THE MATTER HEREIN AS FOLLOWS:

16 BY JUDGE GARRETT:

17 State your full name and your occupation.

18 BY THE WITNESS:

19 Jonathan Jackson, Deputy with Greenville County
20 Sheriff's Office.

21 BY JUDGE GARRETT:

22 Please have a seat. Answer any questions
23 Solicitor may have for you. Solicitor, your
24 witness.

25 BY SOLICITOR BYRD:

1 Thank you, Your Honor.

2 DIRECT EXAMINATION BY SOLICITOR BYRD:

3 Q Deputy Jackson, where do you live?

4 A I live within the county of Greenville.

5 Q All right. How long have you been in Greenville?

6 A I have lived here since 1996.

7 Q All right. And you're employed with the sheriff's
8 office. And how long have you been employed with
9 the sheriff's office?

10 A Since 1998. July of 1998.

11 Q In your employment with the sheriff's office, what
12 are your basic responsibilities? What do you do,
13 mostly?

14 A I am currently with the traffic division and I am
15 working under a grant from the federal government,
16 which is called H.E.A.T. Grant. It's a Highway
17 Enforcement of Aggressive Traffic. And our primary
18 responsibilities are to work night shift and detect
19 impaired drivers.

20 Q All right. Do you have any certifications or
21 training in this regard?

22 A I do. I am -- as far as traffic or just the
23 impaired driver part?

24 Q Just traffic.

25 A As far as traffic, I'm an instructor in speed

1 measurement devices. I teach and certify officers
2 in both the radar unit and the LIDAR unit, which is
3 the laser. And I also am certified in advanced DUI
4 and I'm an instructor, as well. I teach that class.

5 Q All right. Do you have any advanced training in
6 reference to traffic offenses involving alcohol?

7 A Well, that would be the advanced DUI, in which I
8 teach the standardized field sobriety testing.

9 Q All right, sir. And if you would, were you employed
10 with the sheriff's office in September of 2011?

11 A Yes, sir.

12 Q On September 4, 2011, did you have occasion to come
13 in contact with Maria Rosanna Moyao?

14 A Yes, I did.

15 Q All right. Is this Ms. Moyao seated here?

16 A It is.

17 Q All right. And what brought your attention to Ms.
18 Moyao or her vehicle?

19 A As I was traveling southbound on 385 -- and that's
20 outbound from Greenville city. I began to see the
21 defendant's vehicle cross -- weaving in its lane and
22 then cross over the dotted lined between her lane
23 and the lane to her left. I believe I counted three
24 times.

25 And after observing that, the vehicle weaving,

1 I decided to initiate my emergency equipment and
2 stop the vehicle.

3 Q Do you recall what time of day this was?

4 A It was early in the morning, and I noted about 3:30.
5 3:36.

6 Q 3:30 a.m.

7 A a.m.

8 Q Was it dark outside?

9 A I'm sorry?

10 Q Dark?

11 A Yes, it was. I'm sorry.

12 Q And did you stop her vehicle?

13 A I did.

14 Q And did you have a conversation? Did you speak to
15 her?

16 A I did. I explained the reason for the stop and
17 asked her to step out and explained that I was
18 concerned. And I'm not quoting here, but to
19 summarize, I was concerned about the driving that I
20 had seen. And I wanted to give her some
21 standardized field sobriety testing and make sure
22 that she was safe to continue driving.

23 Q All right. When you spoke with her, did you notice
24 anything about her or about her person that caused
25 you any suspicion?

1 A I did note a strong odor of alcoholic beverage
2 coming from the vehicle when I first made contact as
3 she rolled her window down and spoke with me. And
4 that's when I asked her, you know -- coupling that,
5 the odor, along with the driving I had observed,
6 that's what caused me to ask her to step outside and
7 ---

8 Q Do you recall whether you had a conversation with
9 her about whether or not she had had any alcohol to
10 drink? Alcoholic beverages to drink?

11 A I'll see if I noted it here. I did not note that.
12 So, you know, I don't recall.

13 Q All right. When you asked her to step out of your
14 car, what was the purpose of that?

15 A That is to make sure that she's safe to continue
16 driving. We have standardized field sobriety
17 testing, which the NHTSA, National Highway
18 Transportation Safety Administration ---

19 Q All right. Let's stop at that point.

20 A Okay.

21 Q What are field sobriety tests? What are they
22 designed to do? What are they?

23 A Okay. Field sobriety tests are -- there are three.
24 And as I said, they are standardized. And the
25 purpose of that is so that if you were to watch a

1 video of an officer on the West Coast giving this
2 test, they should be the same test I'm giving here
3 on the East Coast. There was a lot of research done
4 into which were the best tests. Several different
5 tests were looked at and these were chosen by the
6 NHTSA as the most accurate. And so, they are
7 standardized in the way that they're given and in
8 the cues and clues that we look for.

9 And each test -- well, two of the tests are
10 divided attention tests. And what that means is for
11 an impaired person, it is difficult to focus their
12 attention in two places. They are not difficult
13 tests. They're tests that I give out many, many
14 times every single night. And people that are not
15 impaired do not have trouble passing these tests.
16 So they're -- you know, they're not an over-the-top
17 difficult thing to do. We ask you to do things like
18 stand and walk while thinking about maybe counting
19 or doing something like that at the same time. And
20 you'll get to see that shortly.

21 Q Now, what do you mean by divided attention? Let's
22 explain that. What are you trying to determine as
23 you conduct the tests?

24 A Well, driving a vehicle is a divided attention task.
25 What that means is you have to be able to do more

1 than just one thing at the same time. If you have
2 driven a vehicle, you know that you have to be able
3 to look, assess different -- if you want to call
4 them threats or obstacles or whatever. You have to
5 be able to apply a brake, maybe steer at the same
6 time. You have to be able to do several different
7 things at the same time, including with your thought
8 process. And so the purpose of a divided attention
9 test is to see if you're capable of doing more than
10 one thing at the same time. If you're not, then I
11 and the NHTSA would submit that driving is not a
12 good idea for a person that's incapable of that.

13 Q What are the field -- standard field sobriety tests?

14 A The first is the horizontal gaze nystagmus, and that
15 is when you -- you may have seen an officer moving
16 his finger back and forth. And we're looking for
17 six things -- six clues that are present if a person
18 is impaired. And what that means is -- horizontal
19 gaze nystagmus is a fancy word for the involuntary
20 jerking of the eyes. What that means is if I was to
21 come to any sober person, like you right now, and
22 look at your eyes as they move back and forth, I
23 should see -- the first thing we're looking for is a
24 lack of smooth pursuit. If there's a lack of smooth
25 pursuit, this is the first clue that we look for.

1 And what that means is if I was to move a stimulus
2 in front of your eyes back and forth, your eyes
3 should be able to follow that stimulus very
4 smoothly. The analogy I like to use is maybe if I
5 was to take a marble and roll it across this
6 surface, it would roll smoothly.

7 Okay. What we see if a person has a
8 depressant, which in this case would be represented
9 by alcohol, is we see the involuntary jerking of the
10 eye and we see a lack of smooth pursuit. And so a
11 person who's impaired, rather than that marble
12 rolling smoothly, it looks more like it's rolling
13 across a washboard. Their eyes jerk and kind of
14 check in at different points as they go back and
15 forth. They do not roll smooth.

16 As I tested the defendant today, I saw that
17 there was a lack of smooth pursuit in both of her
18 eyes. So that was the first two clues I'm looking
19 for.

20 The third and fourth clue that I'm testing for
21 is called distinct and sustained nystagmus at
22 maximum deviation. What that means is I'm going to
23 take the stimulus and pull her eye out until I don't
24 see any more white beside the lower part of her eye
25 so that she's at what we call maximum deviation.

1 She's turning her eye as far as she can. And when I
2 bring the eye over to that point and hold the
3 stimulus there four seconds, if the depressant is
4 present and if I'm looking at an impaired person,
5 the eye will not be able to hold a steady gaze. The
6 eye will bounce. And that's the involuntary
7 jerking. The good part about this test is a person
8 displaying this clue has no idea that they're doing
9 it. It's not something that they can control. Some
10 people have better balance than others. Some people
11 have different physical capabilities. But nobody
12 can practice or beat or however you want to say, to
13 overcome this test. And so it's a very big clue for
14 me as I'm trying to detect impairment. And so when
15 I bring the eye over there, if I see a sustained
16 bounce, the eye continues to -- and what it's doing
17 is relaxing. It takes muscle -- it takes some form
18 of muscle control to bring your eye that far over.
19 If you try it, at some point, you'll get to a point
20 where it's a little bit uncomfortable and your eye
21 wants to come back. Well, what a depressant does is
22 it causes the eye to give up just a little bit and
23 then the decision-making process is trying to keep
24 it there. So it's -- you're having an almost
25 internal battle with the eye bouncing. And in a

1 person who is sober, you just don't see that. Okay.
2 I test both the left and the right eye two times to
3 make sure I've seen what I thought I saw the first
4 time. And in both eyes, I did see the distinct and
5 sustained nystagmus at maximum deviation. So now I
6 have four clues that I'm checking for, and I've seen
7 those four.

8 The final clue is to check for the onset of
9 that nystagmus prior to 45 degrees. And we don't
10 certainly get out a protractor or measure 45
11 degrees. But as a general rule, we teach the
12 student to bring the eye over to about the
13 shoulder's width. And that's approximately 45
14 degrees. This would be 90, of course, and then
15 approximately right here is 45 degrees. And
16 research shows that if I begin to see that bounce of
17 the eye at that point before 45 degrees, then there
18 is a statistical likelihood that the person is going
19 to be over that .08. And so, I test both eyes again
20 two times to make sure. Initially, I see it. I
21 check this one and I go back to confirm what I've
22 seen. And that is the standardized way to give the
23 test. And again, I saw that nystagmus prior to the
24 45 degrees in both of the defendant's eyes. So now
25 I have six out of six clues that I'm checking for.

1 All six clues were absolutely present in the
2 defendant and I made that note and continued with
3 the second sobriety test.

4 Q And the second sobriety test is what?

5 A The second sobriety test is what we call the nine-
6 step walk and turn. And what I'm going to ask the
7 person to do is to, as I said earlier, basically
8 stand and walk. It's going to be a little bit
9 different from how a person typically stands, but
10 nothing, you know, overtly challenging. I'm going
11 to ask the person to put their left foot --
12 sometimes we have a line and sometimes we don't. If
13 I'm on the side of 385, I'm not going to ask the
14 person to stand on the white line because they have
15 cars going by. So sometimes I say let's not stand
16 here and get hit. Let's pretend like there's a line
17 running through -- for safety's sake, let's pretend
18 there's a line running from you right to the front
19 of my car. I'm not interested in seeing if they,
20 you know, stayed necessarily dead on a line. I just
21 want to see that they can walk a straight line.
22 That's what I'm looking for. So I may say to a
23 person, now, let's pretend there's a line. I want
24 you to put your left foot down on that line and then
25 I want you to put your right foot in front of your

1 left with your heel touching your toe. I'd now like
2 you to just place your hands against your side and
3 just stand there while I explain this test. Okay?
4 That is the -- you know, the initial position, we
5 ask them to maintain while we demonstrate the test.
6 We don't only verbalize. We demonstrate the test.
7 We're going to show you how to do it correctly. And
8 so while they stand and maintain that position, if
9 they can, I'm demonstrating the test. This is where
10 the attention is divided. What I mean by that is if
11 a person is impaired, they are going to struggle so
12 much with maintaining that balance if there's a
13 problem, that they're now not going to hear the
14 things I'm saying. If you're not impaired, you
15 should be able to stand there and pay attention and
16 listen to the simple instructions. If this is a
17 challenge and now you're concentrating so much on
18 that that when I say take nine steps, you don't hear
19 me say take nine steps. When I say turn in this
20 manner, look at your feet, keep your hands to your
21 sides, you're missing those things, okay? So these
22 are all things I'm going to be looking for. I then
23 demonstrate for the person how I wish them to
24 perform the test. When they get to the last step,
25 leave your foot on the line, take a series of small

1 steps, turn around and take nine steps back. Okay.
2 I'm looking for things like stepping off of the
3 line. I'm looking for things like having to raise
4 your arms for balance, falling, not turning
5 properly, taking an improper number of steps.
6 There's any number of ways that impairment can
7 demonstrate itself at that point. If a person is
8 not struggling with impairment, they will stand
9 there and listen to the test -- and again, I see
10 this every night. They can perform it. It's not a
11 challenge.

12 But the defendant today, she had -- she did
13 struggle with her balance during the instruction
14 phase and sidestepped a couple of times and had to
15 get herself acclimated into the position I had asked
16 her to maintain. And as I recall, I noted she did
17 step off the line and I noted she did not touch her
18 heel to her toe as I had demonstrated and requested
19 that she do.

20 And we do provide, by the way -- we allow for a
21 little bit of gap there, you know. If we're off by
22 a half of an inch, I'm not going to count that as a
23 clue. But when you're going for -- kind of going
24 for a walk and it's clear you're not even trying to
25 bring that heel against the toe, then I consider

1 that a clue. And so, that's how she -- those were
2 the clues that I saw that were demonstrated during
3 the nine-step walk and turn.

4 Q All right, sir. And the third and final test?

5 A The third, again, is a divided attention test. I'm
6 going to ask you to just stand there and listen, and
7 I'm going to demonstrate that I would like you to
8 lift the foot of your choice. If you have one that
9 you prefer over the other, you may lift any foot
10 that you would like approximately six inches off the
11 ground. I'm going to ask you to point your toe
12 straight forward so the foot is just about parallel
13 with the ground. Keep your hands against your
14 sides. Look at the toe and count like this: a
15 thousand and one, a thousand and two, a thousand and
16 three, and so forth and so on. Just keep counting
17 until I say stop. That's going to be for about a
18 duration of 30 seconds. And so, after, you know,
19 making sure that they understand and the directions
20 are clear, I then ask any person being tested to
21 perform that test. Obviously, a person who is
22 struggling is not going to be able to keep the toe
23 in the air and is going to have to touch it for
24 balance. Or the arms are going to sway. I look for
25 swaying, hopping around. Those are just some of the

1 clues we look for. And the defendant today did have
2 to touch her foot to the ground to keep from
3 falling.

4 At that point, I have six out of six clues in
5 the horizontal gaze nystagmus, as I demonstrated. I
6 have several clues in the nine-step walk and turn.
7 And then I have the issues with the one-legged
8 stand. And so I determined, at that time, that it
9 was not going to be a good idea to let the defendant
10 continue driving and that she did pose a risk to
11 herself and other people. And I placed her under
12 arrest for driving under the influence.

13 Q All right, sir. And where you stopped her, the
14 location of that, what county is that in?

15 A It's in Greenville County.

16 Q All right. Was anybody in the vehicle with her when
17 you stopped her?

18 A She did have a passenger.

19 Q And could you determine who was operating the
20 vehicle?

21 A Yes. It was clear that the defendant today was
22 operating the vehicle.

23 Q All right. And you got her out of the driver's
24 side?

25 A I did. She stepped out of the driver's side, was

1 there as I walked up. With my spotlights, I have a
2 very, you know, clear view of the interior. So
3 there wasn't any kind of swapping around. And I
4 failed to mentioned I also did read her her Miranda
5 rights after I arrested her.

6 Q Okay. And is there any doubt in your mind regarding
7 who was operating the vehicle when you stopped it?

8 A No, sir. Not at all.

9 Q Is there any doubt in your mind as to whether or not
10 Ms. Moyao had consumed alcohol prior to the stop?

11 A No, there's not.

12 Q All right. Now, is your vehicle equipped with a
13 video camera?

14 A It is.

15 Q And did you turn the video camera on when you
16 initiated your blue lights?

17 A I believe I had turned it on prior to the blue
18 lights to -- as I began to -- or I might have even
19 been running it. I think it was already running.

20 Q Okay.

21 A Before, you know, to capture the driving.

22 Q Is this a copy of your video?

23 A It is.

24 BY JUDGE GARRETT:

25 Any objection?

1 BY MR. DELOACH:

2 No objection, Your Honor.

3 BY SOLICITOR BYRD:

4 All right. Would you be kind enough to try to
5 plug that in for us, sir.

6 BY THE WITNESS:

7 I will.

8 BY SOLICITOR BYRD:

9 It will be kind of hard for you all to turn,
10 but that's ---

11 BY THE WITNESS:

12 I'm not sure if there's a remote to select
13 which input or ---

14 BY JUDGE GARRETT:

15 There's two.

16 (VIDEOTAPE IS REVIEWED.)

17 BY THE WITNESS:

18 The vehicle that we're watching is (inaudible).

19 BY JUDGE GARRETT:

20 Can our visitors see the TV? Can you see it?
21 If you can't, you can move around here, if you like.
22 Come around if you might see it better. Sorry we
23 don't have any popcorn.

24 DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

25 Q Deputy Jackson, I noticed that the picture quality

1 was somewhat poor toward the end of your video. We
2 watched the video this morning on a different
3 machine, and it was fairly clear. Is it your belief
4 that the machine itself is, in part, at fault in
5 that regard?

6 A Yeah, it was obviously much clearer than the one ---

7 Q And if the jury wanted to see that again clearer, we
8 could show it on a different ---

9 A That's correct. That would be fine.

10 Q All right. Based upon your visual observation of
11 Ms. Moyao's operation of the vehicle and based upon
12 your personal observations of her when you were
13 communicating with her and based upon her
14 performance in the field sobriety tests, is there
15 any doubt in your mind that she was under the
16 influence of alcohol?

17 A No, sir. Not at all.

18 Q Would you have felt comfortable allowing her to get
19 back in her car and operate it?

20 A No.

21 Q Why not?

22 A For the danger to other motorists or herself. I had
23 already seen, you know, the weaving. And I was just
24 not comfortable putting her near other motorists.

25 Q All right. Now, did you transport her from that

1 point to the Law Enforcement Center?

2 A I did.

3 Q And when you got to the Law Enforcement Center, what
4 was the purpose of that?

5 A Well, that is to administer the breath test, which I
6 am certified through the Department of Public Safety
7 in South Carolina to administer. And this involves
8 the reading of the -- you begin by videotaping the
9 procedure and advising a person they're being
10 recorded and then reading the implied consent
11 rights, which -- which all occurred on camera, of
12 course. Would you like me to explain implied
13 consent?

14 Q If you would, briefly, what do you mean by implied
15 consent?

16 A Implied consent means this. It's this form here.
17 It's a lot to read, but I will summarize it.
18 Driving in the state of South Carolina is a
19 privilege. It is not a right. And that means that
20 there are certain things that go along with that
21 privilege that the state requires of you. When you
22 accept your driver's license, it is implied that you
23 will agree or consent to any testing that is asked
24 of you if your sobriety or your impairment are
25 called into question.

1 And so I read her the ramifications of that
2 implied consent, whether she does or does not choose
3 to provide a breath sample because I was requesting
4 it. And so I then -- after reading implied consent,
5 there's a 20-minute waiting period that we have to
6 wait. And that is to be fair to everyone. And I'm
7 not saying that the defendant today falls into this
8 circumstance, but if a person that I stop right
9 before I stop had just taken a drink of alcohol and
10 I took them and asked them to blow directly into the
11 device, we would get a higher than is fair reading.
12 And that's because there could be alcohol trapped
13 between the gum and the cheek, between the teeth or
14 whatever. And that would not be fair. So,
15 scientists, medical personnel and the South Carolina
16 legislature have said that 20 minutes is sufficient
17 time to allow any residual alcohol in the mouth to
18 cycle out so that we can get -- test only air from
19 the lungs. And that's what we're interested in.

20 And so after that 20-minute waiting period, I
21 did offer her the opportunity to provide a breath
22 sample and she did so. She did provide a sample.
23 Q All right. I want to show you this form and ask you
24 if you can identify it.
25 A This is the implied consent form. It is the one

1 that we -- the same one I read that night and it is
2 the one we both signed, stating that we did ---

3 Q Is that Ms. Moyao's signature on the top?

4 A She did sign it. Yes, sir.

5 Q Okay.

6 BY SOLICITOR BYRD:

7 Move to introduce, Your Honor.

8 BY JUDGE GARRETT:

9 So entered. State's Exhibit 1 or 2?

10 BY SOLICITOR BYRD:

11 Well, I've got -- the VHS would be 1.

12 BY JUDGE GARRETT:

13 Okay. Then State's Exhibit Number 2.

14 DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

15 Q Now, by implied consent, do you mean that by law you
16 agree to comply with the consent statute?

17 A Correct.

18 Q But you still have the option to take the test or
19 decline to take the test. Is that correct?

20 A That's correct. We will not -- we're not going to
21 hold anybody down. It's their decision if they wish
22 to blow or not.

23 Q And in this case, did Ms. Moyao agree to take the
24 test or not?

25 A She did.

1 Q And you read her the implied consent law and you
2 followed the steps from telling her she was being
3 video recorded until the time that 20 minutes
4 elapsed and it was time to take the test?

5 A Correct.

6 Q And she opted to take the test?

7 A She did.

8 Q Now, how do you know that machine is functioning
9 properly?

10 A It goes through a series of self-tests. And again,
11 this is for the benefit of, you know, the defendant
12 or anybody sitting there. We certainly would not
13 want an unfair reading or an inaccurate reading. So
14 it goes through several self-tests to make sure that
15 it's operating properly before it will allow a
16 person to provide a breath sample.

17 Q If there's a malfunction in the machine, what will
18 happen?

19 A It shuts down and we can no longer use it. Somebody
20 from SLED has to address it.

21 Q All right. Did you test this machine before you
22 offered Ms. Moyao a test?

23 A It performs self-tests. Yes, sir.

24 Q All right. Is there any indication to you -- do you
25 get anything from the machine that confirms ---

1 A I do. It records and prints the results of the
2 self-tests, along with the results from the test.
3 It records all that on one form.

4 Q All right, sir. And I'm going to show you this form
5 and ask you if you can identify that.

6 A That is the printed read-out of our time of the
7 breath analysis, which reflects her signature.

8 Q All right.

9 BY MR. DELOACH:

10 I object, Judge. I don't believe a proper
11 foundation has been laid for it yet until
12 the video is shown.

13 BY SOLICITOR BYRD:

14 You want to watch the video first? That's fine
15 with me.

16 BY JUDGE GARRETT:

17 Fine with me.

18 BY SOLICITOR BYRD:

19 Is that what you'd like, though?

20 BY MR. DELOACH:

21 That's fine.

22 DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

23 Q Did you video record the BA test?

24 A Yeah, the State does. Yes, sir.

25 Q Okay. Now ---

1 BY JUDGE GARRETT:

2 I'll accept it. I'll accept it. I'll accept
3 it. Go ahead and introduce it. And the video, he's
4 going to show the videotape. I'll go ahead and mark
5 that as State Exhibit 3.

6 BY THE WITNESS:

7 All right, sir.

8 BY JUDGE GARRETT:

9 Do you have the ---

10 BY THE WITNESS:

11 Oh, I'm sorry.

12 BY JUDGE GARRETT:

13 So marked as State's Exhibit Number 3.

14 BY SOLICITOR BYRD:

15 Thank you.

16 DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

17 Q Now, Deputy Jackson, does the print-out from the
18 machine reflect that a simulator type test was run
19 on it?

20 A Yes.

21 Q And does it show whether or not those results of
22 that pre-test testing reflected that the machine was
23 operating -- functioning properly?

24 A Yes, it does. The blank test registered zero.
25 That's what we're looking for. The internal

1 standard was verified. The temperature was verified
2 and then the simulator was verified, as well.

3 Q All right. And once you determined that the machine
4 was functioning properly, the read-out being that it
5 would go forward as opposed to stopping, did you
6 offer the test to Ms. Moyao?

7 A I did.

8 Q And did she elect to take the test?

9 A She did.

10 Q And what was the result of the test?

11 A .10.

12 Q All right, sir. Now, I'm going to ask you, if you
13 would, please, to plug in this video.

14 BY JUDGE GARRETT:

15 Before we watch the tape, ladies and gentlemen
16 of the jury, do you need a short break? Stretch?
17 Water or anything? Restroom? Okay.

18 (VIDEOTAPE IS REVIEWED.)

19 BY SOLICITOR BYRD:

20 Your Honor, I move to introduce the
21 Breathalyzer test.

22 BY MR. DELOACH:

23 No objection.

24 BY JUDGE GARRETT:

25 Okay. So entered.

1 BY SOLICITOR BYRD:

2 Thank you.

3 DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

4 Q Deputy Jackson, I may have asked this before the
5 video, but you read Ms. Moyao the implied consent
6 rights stated on the form and you also provided her
7 a copy of it?

8 A That is correct.

9 Q All right. And you checked the machine and provided
10 her with a test and the test result is the one that
11 we showed before the video?

12 A Correct.

13 Q Did Ms. Moyao ask you for assistance to obtain any
14 other tests by any other means of her choosing?

15 A No, she did not.

16 Q When you offered her the mouthpiece to blow in, is
17 there any way to manipulate the machine, in terms of
18 the breath? Is there any way for me to blow softly
19 or hard and manipulate the reading?

20 A No. No.

21 Q How do you know that?

22 A Well, because there's a certain amount of air that
23 is required -- if I'm answering -- if I'm
24 understanding what you're asking, if a person were
25 to try to only blow with the air -- and I see this

1 sometimes, again, not the defendant today. But if a
2 person were to try to blow with just the air in
3 their cheeks, which many people want to do because
4 they don't want the lung air to come, it doesn't --
5 they don't have enough air. There's a requirement
6 for how much air is needed to obtain a sample.

7 Q Does the machine make a noise of any kind?

8 A The beeping changes to that solid tone. Yes, sir.

9 Q All right. So if I were blowing too soft, it
10 wouldn't make that solid sound?

11 (END OF RECORDING MOYAO TAPE 1 FRONT)

12 * * * * *

13 (BEGINNING OF RECORDING TAPE 1 BACK)

14 (THE FIRST 30 MINUTES OF THIS RECORDING DUPLICATE PART OF
15 RECORDING MOYAO TAPE 1 FRONT. TRANSCRIPTION BEGINS AT
16 30:30.)

17 A That's correct. It would be an interrupted -- there
18 would be some tones with interruption.

19 Q And once it starts that solid sound, does it make
20 any difference if I'm blowing harder than Ms. Moyao,
21 trying to force more air in? Does it change the
22 test ---

23 A No, it does not.

24 Q All right. Does it regulate how the air comes in?

25 A It does.

1 Q All right. Any way that you know of that a person
2 can manipulate the results based upon how soft or
3 how hard they blow into the machine?

4 A No.

5 Q Any doubt in your mind that the machine was
6 functioning properly on the occasion that Ms. Moyao
7 gave her sample?

8 A No, sir.

9 Q Any question about the results of the test?

10 A No.

11 Q Any doubt in your mind, based upon your personal
12 observations or the results of the machine, as to
13 whether or not Ms. Moyao was under the influence of
14 alcohol?

15 A There is no doubt. No, sir.

16 Q Any doubt about the reading on the test of .10?

17 A No, sir.

18 BY SOLICITOR BYRD:

19 That's all, Your Honor.

20 BY JUDGE GARRETT:

21 Ladies and gentlemen of the jury, now this
22 witness is fixing to be cross examined. We're going
23 to be a little lengthy here, I assume. And so,
24 therefore, I need to give you a little break because
25 I don't want you to get tired or whatever. So I'm

1 going to tell you let's take a break. And I have
2 about 10:16. I'm a little bit fast because I try to
3 stay out of trouble with my wife, you know, stay
4 ahead of things. So let's come back somewhere in
5 the neighborhood of 10:20, 10:21. Somewhere around
6 there.

7 Now, I'll instruct you as not to discuss the
8 case amongst yourselves. You're not to discuss it
9 with anyone else or allow anyone else to discuss it
10 around you. If that is attempted, tell them you're
11 a juror and then report that to me when we come
12 back. Okay? Restrooms are out and to the left.
13 Water is out and to the left. If you're a smoker,
14 you may step outside and smoke. But let's be back
15 in here around 10:21, somewhere in that
16 neighborhood. Okay? We stand in recess.

17 (RECESS)

18 BY JUDGE GARRETT:

19 Court's back in session. Mr. DeLoach?

20 CROSS EXAMINATION BY MR. DELOACH:

21 Q Good morning, Deputy Jackson. How you doing?

22 A I'm fine. And yourself?

23 Q I'm doing great. Deputy Jackson, I want to start
24 with the stop that we had on the video, the first
25 video that we saw. Now, that video was kind of

1 grainy, admittedly, with some tracking problems,
2 correct?
3 A Uh-huh.
4 Q Okay.
5 A Yes, sir.
6 Q After you pulled -- you pulled over Ms. Moyao -- I
7 am having a hard time pronouncing her name since
8 we've been here. You pulled over Ms. Moyao based on
9 weaving, correct?
10 A That's correct.
11 Q Now, when you drive, Deputy Jackson, do you always
12 keep it directly between the lines? Do you ever
13 deviate?
14 A I do my best.
15 Q Do you ever answer a cell phone, change the radio,
16 laugh at a joke? Anything like that that may cause
17 you to go slightly over the line, one way or the
18 other?
19 A I like to laugh at jokes. Yes, sir.
20 Q So you had indicated that this drifting over the
21 line was supposed to potentially mean you're
22 intoxicated?
23 A By itself, no.
24 Q Okay. After you made this stop, you initiated a
25 field sobriety test, correct? Well, first of all,

1 you said there was a strong odor of alcohol in the
2 car, correct?
3 A That's correct.
4 Q All right.
5 A Alcoholic beverage, yes, sir.
6 Q Alcohol, alcoholic beverage, whatever you want to
7 call it. There was another person in that car, was
8 there not?
9 A There was.
10 Q Okay. You didn't let that person drive home, did
11 you?
12 A No.
13 Q Okay. Is it possible that that strong alcoholic
14 beverage that you smelled came from that person?
15 A Yes, and that's why I removed the driver to see if
16 it persisted after she got out.
17 Q Okay. I understand. But that could have been him,
18 and in fact, you did not let him drive home. You
19 had the car towed, correct?
20 A Correct.
21 Q Okay. Now, let's move on to (inaudible). Now, you
22 performed three field sobriety tests, correct?
23 A I did.
24 Q The first being the HGN.
25 A Uh-huh.

- 1 Q Now, when you performed -- what is it? The first
2 test, what is it called?
- 3 A Horizontal gaze nystagmus.
- 4 Q Okay. And what's the first clue you're looking for
5 or what's the first portion of that test?
- 6 A I'm looking for a lack of smooth pursuit, is the
7 first clue I'm looking for.
- 8 Q Okay. And how long is that test supposed to take?
- 9 A Well, I'd have to add it up to see. Without pen and
10 paper, I believe 50 seconds, if I'm adding my total
11 correctly.
- 12 Q Is this not something that y'all learn when you're
13 taking that class, how long the entire test is
14 supposed to take?
- 15 A No, sir.
- 16 Q Okay. How long is a (inaudible) supposed to take
17 (inaudible)?
- 18 A There are -- I can break it down for you in each
19 step.
- 20 Q Sure.
- 21 A There are two two-second passes, in which we're
22 looking for the lack of a smooth pursuit, and two
23 two-second passes in which we're looking for the
24 equal tracking.
- 25 Q Okay.

1 A Then there is -- you take the eye out, hold it to
2 maximum deviation for four seconds two times per
3 eye.
4 Q Okay.
5 A And then you spend four seconds taking the eye -- or
6 excuse me. A minimum of four seconds. And that's
7 why we don't teach an exact total because it's a
8 minimum on each pass. And you take a minimum of
9 four seconds to get from the center to approximately
10 45 degrees. And you do that twice per eye. And
11 then there are two four-second checks for vertical
12 nystagmus (inaudible).
13 Q Now, when you were doing (inaudible) smooth -- and I
14 know it's kind of hard to see on this video. Do you
15 believe you were making two-second passes?
16 A Yes, I do.
17 Q You're positive?
18 A Uh-huh.
19 Q Okay. Now, you also stated that, on direct
20 examination, that when someone takes the HGN test,
21 they will pass it if they haven't been drinking,
22 correct?
23 A Say it one more time.
24 Q I thought -- I thought you said, and maybe I was
25 wrong, that if someone has not been drinking

1 alcohol, they will pass it, correct?

2 A I believe I said I give it several times a night and
3 people (inaudible) struggle with it, yes; sir.

4 Q Okay. But is it not true that the NHTSA manual only
5 says that it is only 77 percent effective when done
6 properly?

7 A I don't believe that's a direct quote.

8 Q All right, sir.

9 A I think you're referring to the research results.

10 Q Correct. But it's in the NHTSA manual, correct? Do
11 they not quote that research in the NHTSA manual?

12 A I don't know if that was a direct quote or not.

13 Q Okay. Would you agree that this is the NHTSA
14 manual?

15 A Yes, I would.

16 Q Would you read number five, bullet point one,
17 please.

18 A Okay. HGN, by itself, and I think that's what you
19 eliminated ---

20 Q Correct.

21 A Was 77 percent accurate.

22 Q Okay. So it does say that, correct?

23 A It says by itself, it's 77 percent. Yes, sir.

24 Q Okay. All right. Well, then, can you read -- well,
25 we'll get to that in a second.

- 1 A Okay.
- 2 Q So, you admit that, by itself, it's only 77 percent
- 3 effective. Twenty-three percent of the time, it's
- 4 not effective. And that's when it's done properly.
- 5 A I need to answer, and the answer is no to that.
- 6 Q Okay.
- 7 A No, sir. The research was conducted on many, many
- 8 individuals, and the research shows that in 77
- 9 percent of the cases, the officer made the correct
- 10 decision. It does not show that it's only 77
- 11 percent accurate. That means that in 23 percent of
- 12 the time, an officer should have made an arrest and
- 13 did not.
- 14 Q Okay. But this analyzed laboratory test results and
- 15 found that HGN, by itself, is 77 percent accurate,
- 16 and that's what you just read, correct?
- 17 A If we put it in the context of the experiment, yes,
- 18 sir.
- 19 Q Okay. Now, let's move on -- or also, in the HGN
- 20 test on this case and the VPN, I believe. Is it
- 21 vertical gaze? Is that right?
- 22 A The vertical gaze, we look for. Yes, sir.
- 23 Q Okay. And you did that, as well, in this case?
- 24 A I did.
- 25 Q Okay. Is it not proper to have the blue lights on

1 the car off?

2 A The front-facing blue lights, yes, sir.

3 Q Okay. Were the blue lights on in this car in this
4 case?

5 A The rear were for my protection and for her, but not
6 the front.

7 Q Okay. Do you not think that it would cause a
8 person's eye to deviate toward that light when
9 they're seeing it out of the corner of their eye, if
10 there's a ---

11 A There were -- there were no front-facing blue lights
12 is what I'm telling you.

13 Q I understand, but there were lights flashing,
14 correct? (Inaudible).

15 A There were lights from the rear facing the traffic
16 behind us. Yes, sir.

17 Q Okay. Would you argue that you could see it on the
18 tape if the jury wanted to go back there and look at
19 it?

20 A You may or may not. I don't know. The research
21 showed that the front-facing lights could play a
22 role and those were turned off. They were not
23 there.

24 Q Okay. Let's move on now to the walk and turn.

25 A Okay.

1 Q Okay. Now, admittedly, the video is not very good,
2 but I think the jury might have a chance to go view
3 it themselves. Did you watch this video outside of
4 this courtroom with me and the prosecutor?

5 A Yes.

6 Q Okay. Do you agree that portions of her walking and
7 turning is behind the counter on this tape and kind
8 of out of view?

9 A Behind the satellite coordinates?

10 Q Correct. Or you had some counters with satellite
11 coordinates.

12 A Yeah, there are satellite coordinates posted at the
13 bottom of the screen.

14 Q Did they cover up her feet in certain situations?
15 And the jury are going to watch it. I'm just
16 asking.

17 A I mean, this is a -- I'll just -- I'll agree that
18 there are satellite coordinates there. Yes, sir.

19 Q Okay. And I noticed that -- jumping ahead a little
20 bit -- in the one-legged stand, you let her remove
21 her heels. Correct?

22 A That's correct.

23 Q All right. So she did the walk and turn with her
24 heels on?

25 A That's correct.

- 1 Q Okay. Now, do you think that would affect her
2 ability to walk and turn if she had on ---
3 A I have honestly not worn high heels, so I don't know
4 if that would affect it.
5 Q Okay. Also, on this test, as well, this is on the
6 roadside on 385, correct?
7 A Correct.
8 Q Okay. In the median, gravel rough median where all
9 of us have driven in it. We know what it sounds
10 like when our cars run across it, correct?
11 A It's paved. It's not gravel.
12 Q Okay. Cars were passing. She's got a cop car
13 behind her, a cop with a light on her. In that
14 case, if you weren't an officer of the law, would
15 you not be a little bit nervous?
16 A Absolutely.
17 Q Okay. Would you disagree that my client was
18 possibly a little bit nervous that night?
19 A It's possible, sure.
20 Q Okay. And having said all that, she didn't do that
21 bad on the walk and turn, did she?
22 A She displayed enough clues to where it was a failure
23 of the test.
24 Q Okay. Now, let's go to the one-legged stand.
25 A All right.

- 1 Q Now, we couldn't see this at all, really, on the
2 tape because the tracking was real bad, at this
3 point. But again, in that test, she was wearing her
4 heels for the first portion of it and she had to
5 take them off, correct?
- 6 A I believe she either asked to or I said if you'd
7 like to, you can.
- 8 Q I think that's what happened.
- 9 A Yeah.
- 10 Q I think you could hear but you couldn't see it?
- 11 A Right.
- 12 Q And she was allowed to take them off and, again, she
13 just didn't perform the test correctly?
- 14 A Correct. After they were removed, she still had --
15 she still struggled.
- 16 Q Okay. Now, at that point, you placed her under
17 arrest for DUI, correct?
- 18 A Correct.
- 19 Q Okay. You take her back to -- which testing site
20 did y'all go to?
- 21 A At the Law Enforcement Center at 4 McGee Street.
- 22 Q Okay. Hold on one second. Let me look back.
- 23 A Okay.
- 24 Q Let me back up just a second on some of my notes.
25 Now, your training, again, is advanced DUI, correct?

- 1 A That's right.
- 2 Q But you are not a chemist, correct?
- 3 A No.
- 4 Q You are not a doctor?
- 5 A No.
- 6 Q You have no testing whatsoever in the ability to
- 7 determine someone's effect from alcohol, correct?
- 8 A Other than the field sobriety test. I'm trained to
- 9 detect impairment.
- 10 Q Okay. But you're not a doctor. You're not a
- 11 chemist. You're not a PhD.
- 12 A None of the above.
- 13 Q Okay. So when you're making these statements that
- 14 you were positive she was intoxicated and you were
- 15 positive that she was drunk ---
- 16 A I have not used the word intoxicated. I said
- 17 impaired.
- 18 Q Okay. You were positive she was impaired?
- 19 A That's correct.
- 20 Q You were positive that she had been drinking
- 21 alcohol. Those statements were made, but being the
- 22 fact that you're not a technician (inaudible) or a
- 23 chemist or a doctor or anything else, you're just
- 24 basing it on your opinion. Is that not correct?
- 25 A I'm basing it on my training.

1 Q Okay. Your training and opinion?

2 A Yes.

3 Q Okay. And again, that training does not include any
4 chemistry or any medical classes or anything like
5 that that would discuss the effect of alcohol on the
6 body?

7 A Again, I think we've established I'm not a doctor or
8 chemist, but we do discuss the effect of alcohol on
9 the body in the advanced DUI classes.

10 Q Okay. How long does that class take?

11 A It is a 40-hour class.

12 Q Forty hours. And that's just a portion of that 40-
13 hour class, correct?

14 A Yes.

15 Q Okay. Now, you also stated that people that are not
16 intoxicated don't have a problem doing the walk and
17 turn, generally. Correct?

18 A Correct.

19 Q Would you agree with me that the NHTSA manual agrees
20 that that's only 68 percent accurate, or the
21 research shows?

22 A No. I think what you're -- either what you're
23 trying to state or what you may misunderstand from
24 the manual is that it's only 68 percent accurate in
25 that in thirty -- in that case, in 32 percent of the

1 time it is inaccurate. And that is not the case.

2 Thirty-two percent of the time, in the research,
3 officers, just based on that test, that should have
4 made an arrest did not.

5 Q What else would we use to analyze the accuracy of
6 the test? We have to use something, correct? So
7 I'm trying to figure out why you don't think that
8 ---

9 A I'm trying to explain the number to you, okay?

10 Q Okay.

11 A I think at face value, if you don't read more of
12 that manual and you read that one sentence, it
13 sounds like, well, 68 percent of the time, that's
14 right. And 32 percent of the time it's wrong. And
15 that's not how to understand it.

16 Q Okay.

17 A That the research was done with officers making the
18 correct decision whether they should arrest or not.
19 And in some cases, 32 percent of the time, if they
20 only gave that single test by itself, only gave the
21 one-legged -- or the nine-step -- we're talking
22 about the nine-step?

23 Q Right now, we are. Yeah.

24 A Yeah. If they only gave a nine-step, they were not
25 comfortable making an arrest just based on that 32

1 percent of the time. So, when they should have
2 arrested, they did not.

3 Q Okay.

4 A As far as it being an inaccurate test, I'm not
5 comfortable, you know, saying that.

6 Q Okay. Now, let's -- can we go back to five and I
7 want you to read the last bullet point.

8 A By combining the horizontal gaze nystagmus and the
9 walk and turn -- and it says HGN and WAT, but that's
10 what it stands for -- an 80 percent accuracy can be
11 achieved.

12 Q So only 80 percent of the time when you combine them
13 is it accurate?

14 A Just those two tests.

15 Q Okay.

16 (END OF RECORDING TAPE 1 BACK)

17 * * * * * * * * * * * * * * * *

18 (BEGINNING OF RECORDING TAPE 2)

19 Q Okay. Let's get to the BA room.

20 A Yes, sir.

21 Q Now, you get the BA room, and they watched the tape.
22 In your opinion, did Ms. Moyao ---

23 BY MS. MOYAO:

24 Moyao.

25 CROSS EXAMINATION RESUMED BY MR. DELOACH:

1 Q Ms. Moyao, I'm sorry. That's the third time. Did
2 Ms. Moyao appear drunk to you, appear intoxicated,
3 appear to be (inaudible) while she was sitting in
4 that room?
5 A She was able to sit.
6 Q Okay. Did she appear (inaudible) she should have
7 been impaired?
8 A I don't have any training on testing a person just
9 appearing, just by judging them as they sit. So I
10 would not be able to answer that.
11 Q Okay. And let's talk about the machine. Now, these
12 machines are -- the (inaudible) are run by SLED,
13 correct?
14 A Oh, the (inaudible)
15 Q SLED (inaudible) the machines, correct?
16 A Yes.
17 Q Okay. You don't do that?
18 A No, I do not. Well, I change the solution when it's
19 needed and make sure that new and sanitary
20 mouthpieces are being used, but I do not work on the
21 inner workings of the machine.
22 Q And these machines have errors, do they not?
23 A Errors?
24 Q Errors from time to time.
25 A Yes.

1 Q Okay. And I think you stated that when they have
2 these errors that they shut down, correct?

3 A I have never experienced that, but I'm told that
4 that's what happens. If there is an error with the
5 self-testing, that it will turn off.

6 Q Would it shock you if this machine had had errors
7 before, prior to this test?

8 A Well, we're basing this on my experience. I've
9 never seen it, so I would be surprised, yes.

10 Q It would surprise you if this machine had had
11 multiple errors the week prior, correct?

12 A By errors, you're talking about ---

13 Q An error, a self-generated error by the machine.

14 A Okay. Self-generated, yeah. I've never experienced
15 this.

16 Q Okay. And this machine also -- you say you're
17 certified to operate this machine, correct?

18 A Correct.

19 Q It also has a solution on it, does it not?

20 A It does.

21 Q And if that solution is within a certain range, then
22 the test will go forward, correct?

23 A That's correct.

24 Q All right. Do you know what that range is?

25 A I believe it is .076 to .084.

1 Q And if it's within that range, it will go forward.

2 A That's correct.

3 Q And we're talking about someone who blew .02 over
4 the legal limit, correct, or we wouldn't be here
5 today?

6 A Two-hundredths. That's right.

7 Q Okay. So almost half that, correct? .078 is close
8 to .01, correct?

9 A You're in thousandths now.

10 Q I know.

11 A We're talking about hundredths and now you've moved
12 into thousandths.

13 Q Correct. And if it got to ten, it would be .01,
14 correct? It was .007. So if it went to .09 and
15 then one more, it would be .01, correct?

16 A It would be .10.

17 Q .01. Well, it's (inaudible).

18 A No, that's the incorrect answer. It was .10. So,
19 .09, if you add to it, becomes .10.

20 Q Okay. Now, would you agree the solution is there
21 and the solution, if it's within the range of error,
22 will allow the test to go forward?

23 A That is correct. Yeah.

24 Q All right. Now, do you how old these machines are
25 when they started? When we started using them in

1 the state of South Carolina?

2 A I could guess, but I think it was February of -- was
3 it 2010? I don't know the date.

4 Q Would it surprise you if these machines had been in
5 use since 1992 in the state?

6 A Yes. I know they have not.

7 Q Okay. Do you have -- would it surprise you if other
8 states in this union use what they consider to be
9 higher technology, better technology than what we
10 use here in South Carolina?

11 A I don't -- I mean, I don't know if I could be
12 surprised or not. I've not worked in any other
13 state, so I don't know.

14 Q Now, finally, alcohol affects everybody differently,
15 does it not?

16 A It absolutely does.

17 Q Okay. And so, someone that might have a .01 or a .1
18 might be different than someone else, correct?

19 A Yes.

20 Q Okay. So just by a .1 alone, you can't tell whether
21 or not it affected this person as it might me or
22 someone else. Is that correct?

23 A Not by reading a result, no, sir.

24 Q Okay.

25 BY MR. DELOACH:

1 I have no more questions, Judge.

2 BY JUDGE GARRETT:

3 Re-direct?

4 BY SOLICITOR BYRD:

5 Yes, sir. Thank you, Your Honor. Just one
6 quick thing.

7 RE-DIRECT EXAMINATION BY SOLICITOR BYRD:

8 Q Deputy Jackson, Mr. DeLoach mentioned that the NHTSA
9 manual, National Highway Traffic Safety
10 Administration manual. That manual, which is used
11 in training, provides you with how to perform
12 standardized field sobriety tests, correct?

13 A That's correct.

14 Q And if you performed those standard field sobriety
15 tests substantially in compliance with the standards
16 set out in the manual, what will you learn from the
17 tests?

18 A Well, the statistics we failed to reach -- we read
19 the correct decision-making based on one and two
20 tests. The one we did not get to is that when all
21 three tests are given and the results are taken into
22 consideration, that there is a 95 percent accurate
23 -- our officers made the correct arrest decision in
24 95 percent of those cases. Five percent should have
25 arrested and did not.

1 Q And do you know what level of alcohol to blow
2 percentage an affirmative test result shows? Do you
3 know? Under the NHTSA standard, if you give the
4 test according to the manual and you record the
5 clues according to the manual, what will that show
6 in terms of the results of analysis of the blood?

7 A That was -- I believe those studies were done based
8 on a .10.

9 Q All right. So under the NHTSA manual that's been
10 referred to, if you perform those field sobriety
11 tests according to the manual, that, with the clues
12 shown, shows a blood alcohol ratio of .10 or higher.

13 A Or higher. That's right.

14 BY SOLICITOR BYRD:

15 That's all I have, Your Honor.

16 BY JUDGE GARRETT:

17 Re-cross?

18 BY MR. DELOACH:

19 Re-cross.

20 RE-CROSS EXAMINATION BY MR. DELOACH:

21 Q Now, was it 95 percent of the time that it was
22 accurate?

23 A Yes, sir.

24 Q And you're sure about that?

25 A Positive.

1 Q Okay. Would you read four, the first bullet point?

2 A This is based on the San Diego test ---

3 Q Could you read it for me, please.

4 A Well, I can read that, but I think you're going to

5 have to read the one above it, as well, to be fair.

6 In the San Diego test, correct arrest decisions were

7 made 91 percent of the test. And then (inaudible)

8 in the Florida test, correct decisions were made 95

9 percent of the time.

10 Q And the San Diego is 91, correct?

11 A That's correct.

12 Q And Florida is 95. That's two different numbers,

13 correct?

14 A Yes, it is.

15 Q So you chose to rely on the Florida, correct?

16 A Yes, I did..

17 Q Okay.

18 BY MR. DELOACH:

19 No more questions.

20 BY SOLICITOR BYRD:

21 That's the State's case, Your Honor.

22 BY JUDGE GARRETT:

23 You may step down, sir. Thank you so much.

24 Now, ladies and gentlemen, you've heard the

25 State's case. It is now time for the defense to

1 present their defense. Mr. DeLoach?

2 BY MR. DELOACH:

3 Your Honor, we have a motion to (inaudible)

4 BY JUDGE GARRETT:

5 I'll ask you, if you will, step out in the jury
6 room for just a moment and I'll call you back.

7 Okay? That second switch inside there, Mr.

8 (Inaudible), turns the light on in there. Okay?

9 Second switch. There you go. Thank you.

10 (JURY EXITS THE COURTROOM.)

11 BY JUDGE GARRETT:

12 You have a motion?

13 BY MR. DELOACH:

14 Yes, sir. Your Honor, at this time, the
15 defense will renew its motion to have this case
16 dismissed based on the lack of a proper or an
17 appropriate video based on the statute, based not
18 only on the argument we had this morning, Judge, but
19 also on the tracking in this case.

20 The tracking in this case was poor as to what
21 the jury ended up seeing. I think it further took
22 away from the video, and I think that a proper video
23 has not been provided to the jury. At this point, I
24 think the case should be dismissed based on not
25 having a video that meets the statute.

1 BY JUDGE GARRETT:

2 Solicitor?

3 BY SOLICITOR BYRD:

4 Same argument, Judge. I think it would go to
5 the weight of the evidence as opposed to its
6 admissibility.

7 BY JUDGE GARRETT:

8 This Court is going to have to disagree with
9 Mr. DeLoach in this point. One is if there's a
10 question here, it is a jury question, in my opinion.
11 Second is, is I think both of you have made comments
12 leading to the fact that this jury can review that
13 tape or see that tape in the back where you,
14 Solicitor and Deputy Jackson and I looked at it, if
15 they so choose. If they do not, then, of course, as
16 you well know, that they can just disregard the
17 whole tape. So I think it's a jury question. So
18 your motion, again, is denied. Okay.

19 BY MR. DELOACH:

20 One more motion.

21 BY JUDGE GARRETT:

22 Yes, sir.

23 BY MR. DELOACH:

24 I also have a motion that the case be dismissed
25 for a lack of ample video or appropriate videotape

1 based on the sound, in this case. The video that I
2 watched, I remember the sound coming on when the
3 blue lights came on. This video, it didn't come on
4 until well after the blue lights came on. I believe
5 the statute expressly provides that there is
6 supposed to be sound the minute the blue lights come
7 on.

8 BY JUDGE GARRETT:

9 Solicitor?

10 BY SOLICITOR BYRD:

11 I'll be glad to pull the statute out, but I
12 believe the statute says that the in-car video
13 should be turned on no later than when the blue
14 lights -- in this case, it was far in advance of the
15 blue lights when he was following her. (Inaudible)

16 BY JUDGE GARRETT:

17 I think we're going back to the same thing
18 again and we're whipping the same dog. If we need
19 to, that videotape can be looked at by the jury.
20 And in closing arguments or any kind of reference to
21 that or whatever, but the fact still remains that I
22 believe that it's sufficient on the -- as it stands
23 now. But if the jury chooses to look at that, then
24 I think we'll be more than happy to let them see it.
25 Motion denied.

1 BY MR. DELOACH:

2 No more motions.

3 BY JUDGE GARRETT:

4 Ma'am, will you ask our jury to step back in?

5 I may keep you here to do that all day.

6 (JURY ENTERS COURTROOM.)

7 BY JUDGE GARRETT:

8 Now, ladies and gentlemen of the jury, the
9 State has rested and the defense has rested, also.
10 Now we come to the time to where there are closing
11 arguments made by both of these fine gentlemen, and
12 as I reiterate what we talked about yesterday.
13 Closing arguments is not evidence, either. It is a
14 summation.

15 Also, I will instruct you later that just
16 because Ms. Moyao did not take the stand, you should
17 not draw any inference from that because she has
18 that right. She is not compelled to testify if she
19 does not choose to or her counsel chooses not to.
20 Okay? So I'll discuss that a little more with you
21 in just a bit.

22 Gentlemen? Closing arguments?

23 BY SOLICITOR BYRD:

24 Thank you, Your Honor. Madame Forelady, ladies
25 and gentlemen of the jury, I want to, again, thank

1 you for your attention. I could tell during the
2 course of this that it was a little bit tedious and
3 boring for you. But our obligation is to present
4 everything, warts and all. We don't want anybody
5 saying they didn't get a fair trial because they
6 didn't have all the evidence (inaudible), witnesses
7 or anything of that nature. So our job is to lay it
8 all out there for you as best we can. And that's
9 happened in this case. You heard the testimony from
10 the witness stand under oath, and that's evidence.
11 We have some exhibits the judge will provide you.
12 And I will remind you, at that point, that should
13 you feel the need to watch the video again for any
14 reason of your concern, no matter what it is, we
15 have another VHS machine in the back of the
16 building. And we didn't have the difficulty with
17 the visual tracking and audio that we did on this
18 machine. And I apologize for that. But I'm not
19 certain that it makes a lot of difference because
20 what I heard the evidence say, and I encourage you
21 to take the evidence as you heard it, not as I did.
22 If you heard something different from me, then take
23 what you heard. What I'm saying to you is not
24 evidence at all. But what I heard was definitely,
25 without a doubt, that Ms. Moyao was driving the

1 vehicle. That was question number one for your
2 consideration. I don't think there's even a remote
3 chance of a doubt about that. There's been no
4 testimony or evidence offered to the contrary.

5 Now, there's also an abundance of evidence for
6 your consideration that she had consumed alcohol.
7 You have weaving. You can't tell whether somebody's
8 been drinking alcohol if they're weaving, but that's
9 certainly something that causes some suspicion. If
10 you're driving down the road and you see a car
11 weaving from side to side, you wonder is that person
12 on the phone, distracted by the radio or possibly
13 under the influence of alcohol. This gentleman's
14 job is to continue that investigation in case the
15 person is impaired. His job is to get them off of
16 the roadway so that they don't hurt themselves and
17 they don't hurt anyone else. And that's what
18 happened in this case.

19 Now, Deputy Jackson detected an odor of
20 alcohol. Again, that raises a reasonable suspicion
21 that the operator of the vehicle could possibly be
22 impaired by the consumption of alcohol. So that's
23 the reason you ask them to get out of the car and go
24 through some field sobriety tests. This is not
25 science. It's certainly not rocket science. It's

1 just common sense. It's just ordinary human
2 observation.

3 If we do these three standard, fully accepted
4 field sobriety tests, we may or may not see signs
5 that alcohol has impaired this person. May not. In
6 this case, it did. All three tests, he noticed
7 jerking eyes in the nystagmus test. That's evidence
8 that the person is under the influence of alcohol
9 and may be impaired by that alcohol. The walk and
10 turn, again, the divided attention. You want to
11 know if the person can walk and listen to you and
12 follow instructions. Again, this lady did not pass
13 that test. According to Deputy Jackson, she had
14 some difficulty with her balance and touching heel
15 to toe. I wasn't there. I don't know. You can
16 certainly look at the video again if you want to,
17 but again, the purpose of that is to determine is it
18 possible that this lady is impaired by the alcohol
19 that she may have consumed. And again, a failure of
20 the test or, as they point out, clues that show this
21 lady may be impaired by consumption of alcohol.
22 Same with the one-legged stand. I mean, if you ask
23 somebody to hold their foot out, I'm not sure I can
24 do it. But it's in the situation they're in, does
25 that person show clues that confirm what I'm

1 thinking, that this lady is not someone that I want
2 to put back behind the wheel and let them drive off.

3 So everything in this case, up until that point
4 in time, pointed directly at a young lady, nice
5 young lady who made a mistake because she got behind
6 the wheel after consuming too much alcohol. And
7 that's what the law is designed to deter.

8 We don't have the ability to speak to people
9 before they get behind the wheel. All we can do is
10 say don't do it. And if you do it, you may be
11 responsible for what you do. And that's what this
12 case is all about, really, is responsibility.

13 Now, all of that evidence, uncontroverted
14 evidence points directly toward a violation of this
15 traffic ordinance, driving a motor vehicle with a
16 blood alcohol concentration of .08 percent or more.
17 Now, I'll remind you, at that point, the percentages
18 are only to distinguish between someone who may have
19 had some alcohol but is not over the line. .08 is
20 the line.

21 It's not against the law in South Carolina to
22 drink and drive. You hear that a lot, but it's not
23 against the law. You can go out to a restaurant and
24 have a glass of wine or a beer or a cocktail.
25 Because of your constitution or experience with

1 alcohol, you might be able to have two or three and
2 it won't phase you a bit. Won't impair your driving
3 ability at all. And as long as you don't continue
4 the consumption of alcohol to the point where your
5 blood alcohol concentration goes over the line, then
6 there's no infraction. And had this young lady gone
7 to the BA room and registered below zero-eight, we
8 wouldn't be here today because she would not have
9 violated the statute.

10 So up until the BA exam, up until the machine
11 functions, you have a clear case of a violation of
12 the statute, based upon the evidence presented and
13 the observations of this police officer, who's
14 trained to do this and does it. This is -- again,
15 keep in mind, this is 3:00 a.m. in the morning.
16 He's out on the highway, and his job is to try to
17 keep the highway safe. These are our highways.
18 They belong to us. We have the right to use these
19 highways. We pay for them. We pay for him. We ask
20 him to go out there and risk his life to try to
21 ensure that we have safe roads to operate on. So
22 everything, at that point, was done properly.

23 Now, last but not least, you have the
24 Breathalyzer machine. And again, totally for the
25 benefit of people who are operating vehicles. If

1 you have not had anything to consume of an alcoholic
2 nature, you would want to take that test because it
3 would clearly show that you are not over .08 percent
4 blood alcohol concentration. You have the right to
5 take the test or you can refuse to take the test.
6 Those are your rights. Ms. Moyao elected to take
7 the test and no other test. She could have had her
8 own test, if she disputed the test that she took.
9 But she took a test on a machine that was
10 functioning properly at that time. And it was
11 administered by a young man who is certified to give
12 that test, who has testified under oath that the
13 machine was functioning properly. The test result
14 shows that the machine was functioning properly.
15 And Ms. Moyao's results were .10, or .02 over the
16 line. Not on the line, not close to the line, but
17 over the line. And that's what the law says you
18 can't do. You can't get behind the wheel and
19 operate a motor vehicle on the highways in South
20 Carolina if your blood alcohol concentration is .08
21 or above. And that's the truth.

22 We've had enough car crashes in South Carolina.
23 We've had enough personal injury. We've had enough
24 death on the highway and we've had enough
25 heartbroken families. But mostly, we've had enough

1 excuses. It's time for people to accept
2 responsibility and responsibility today is for this
3 lady -- she seems to be intelligent, from what I can
4 pick up. She knew she was doing the wrong thing.
5 And all we ask is that the verdict that you render
6 in this case speak the truth.

7 BY JUDGE GARRETT:

8 Yes, sir.

9 BY MR. DELOACH:

10 Ladies and gentlemen, first of all, I want to
11 take the time (inaudible) the prosecutor stated.
12 (Inaudible). But what we're telling you is that Ms.
13 Moyao was not (inaudible). We all do. And just
14 like the prosecutor said, you're allowed to go out
15 and have a cocktail. You're allowed to go out and
16 have a beer or whatever and get on the roads. It's
17 our position that she was not anywhere near the .08,
18 and we're going to get into that a little bit -- a
19 little bit more.

20 Now, I want to start with, first of all,
21 thanking you again for your service. At the
22 beginning of this trial in opening statements, I
23 informed y'all that y'all had one real
24 responsibility, and that was to make sure that the
25 State met its burden. That it proved -- that it

1 proved the case beyond any reasonable doubt. Each
2 and every one (inaudible). That is a significant
3 burden. It is not to be taken lightly. This is not
4 -- this is not the better weight of the evidence.
5 Little more or a little less (inaudible) scales of
6 justice. It's not that. It's beyond any reasonable
7 doubt, have they proven it? And if they haven't
8 proven one element of this case beyond every
9 reasonable doubt, then the verdict must be not
10 guilty. That's the (inaudible). That's what you
11 are here to do.

12 Now, the prosecutor, in his closing arguments,
13 mentioned that my client didn't have any other tests
14 done. It is not my client's responsibility to bring
15 any other evidence. It's the State's
16 responsibility. Don't let the State switch the
17 burden on my client. She chose not to have any
18 other tests done. It is -- the burden rests solely
19 on the State to prove this case. Don't make her
20 bring anything into this case.

21 Now, when you go back and watch these videos, I
22 want you to tell me if this woman, in your opinion,
23 shouldn't have been driving that vehicle. Do you
24 believe that her blood alcohol was over .08? And
25 the reason I bring that up is the State wants you to

1 believe that this machine is be all, end all. This
2 machine that they've had for years in this state,
3 and I would submit well before 2010, is the be all,
4 end all. That there's no other better technology in
5 the world than what the state of South Carolina uses
6 to determine if someone has a blood alcohol level of
7 over .08. I submit to you that is absolutely
8 incorrect. These machines themselves commit errors
9 all the time and they shut down. This particular
10 machine, I assure you, has committed several errors.
11 And this machine also has a device on it that allows
12 it to work within a certain range of error. Look at
13 Ms. Moyao's (inaudible). Look at her in the BA
14 room. Does that look like someone whose blood
15 alcohol is over .08? Does that look like someone
16 that you don't want to be driving your car with on
17 the road? Does that look like someone who is
18 materially and appreciably impaired? No. Just
19 because some machine in a police station over in
20 Greer says it -- or in Greenville says it doesn't
21 mean you have to believe it. It's your decision.
22 It's just one piece of evidence to be considered.
23 And if you believe that that machine could have made
24 a mistake, that machine which does have errors and
25 which does have a range, could have made an error,

1 and you believe that that gives you reasonable
2 doubt, something that you must be firmly convinced
3 of, then you must find her not guilty.

4 Now, the officer (inaudible). There was never
5 a SLED agent (inaudible). If he were in here, we
6 could ask him questions about the machine. He
7 wasn't here. We could ask him how accurate are
8 they? How many times do these things have these
9 errors? Do these errors happen a lot? How many
10 times has this machine had an error? We could have
11 asked all these questions, but he wasn't here. The
12 State didn't provide him. SLED provides the
13 maintenance on these machines, not these officers.
14 This officer (inaudible) and doing it well. No one
15 is taking that away from him. All we're saying is
16 that this machine doesn't have to be accurate. I
17 just -- I don't want y'all to believe that by the
18 testimony here today. Go back and look at all the
19 evidence. Don't just read a number on a page and
20 decide whether you believe it or not. Look at all
21 the evidence. Look at the way she acted and then
22 determine whether you think it was possible that she
23 might have (inaudible).

24 Ladies and gentlemen, y'all have heard all the
25 evidence. You've heard us both talk. Now it's time

1 for you to make your decision. I just want you to
2 go back and think about everything that you've
3 (inaudible) and don't allow one piece of paper to
4 determine the (inaudible) of this case. Think about
5 it all. Remember your burden. (Inaudible). And
6 I'm asking you to (inaudible).

7 BY JUDGE GARRETT:

8 Thank you. Now, ladies and gentlemen, you've
9 listened to the procedures and the evidence in this
10 case. And it is now my duty to instruct you as to
11 the law which applies to the facts in this matter.

12 The law in the State of South Carolina does not
13 permit me to comment on the facts in the case. You,
14 as jurors, are the sole judges of the facts.
15 However, it is my duty to give you the law and you
16 must accept and apply the law as I give it to you
17 and be guided thereby in your consideration and in
18 your deliberation upon the evidence in the case,
19 whether or not you agree with the law as I will be
20 giving it to you.

21 Since it is my duty to instruct you as to the
22 law of the case, I will instruct you as to the facts
23 -- I will not instruct you as to the facts. If at
24 any time during the course of the trial you believe
25 that I was expressing any opinion of the facts and

1 evidence presented or testimony of a witness, I
2 direct you to disregard that because I have no
3 opinion in this case.

4 Not only are you the sole judge of the facts in
5 this case, but you, as the jury, are the sole and
6 exclusive judges of the effect and value of the
7 evidence in the case, as well as the credibility of
8 all the witnesses who have testified. It is for you
9 to determine which witness or witnesses are recalled
10 and relating to what transpired at the time of the
11 alleged commission of this offense.

12 Now, to weigh the evidence, you must consider
13 the credibility of the witnesses. You will apply
14 the test of truthfulness, to which you are
15 accustomed to applying in your daily lives. You may
16 consider such things as a matter of testifying, the
17 appearance of the witnesses upon the witness stand,
18 the reasonableness of the testimony, the opportunity
19 each witness had to see and hear, the accuracy of a
20 witness's memory, the intelligence of each witness,
21 and the interest and bias of any of the witnesses,
22 if any, together with all the facts and
23 circumstances surrounding the case. You may believe
24 or disbelieve all or any part of the testimony of
25 any one of the witnesses. It is your provenance to

1 determine what testimony is worthy of belief and
2 what testimony is not worth of belief, according to
3 the weight that you, and you alone, assign to the
4 testimony of each witness.

5 Now, the defendant in this case is charged with
6 DUAC, which is driving with an unlawful alcohol
7 concentration, and this is under 56-5-2933. And
8 I'll respectfully submit to you the law of the State
9 of South Carolina. It is unlawful for a person to
10 drive a motor vehicle within this state while his or
11 her alcohol concentration is .08, or one percent or
12 more. A person who violates a provision of this
13 section is guilty of the offense of driving with an
14 unlawful alcohol concentration. A person may be
15 charged with that, but you can't charge both for DUI
16 and DUAC. Now, this section shall not apply to
17 cases arising from a traffic stop, as in a
18 roadblock. It does apply and it also has to be that
19 the testing was done and that the sample taken
20 within a two-hour period.

21 Now, ladies and gentlemen, it is to continue --
22 constitute a violation of this law, the State must
23 prove beyond a reasonable doubt the elements of this
24 offense. One, that this Court has jurisdiction or
25 the right to try this case, and that the offense

1 occurred within the County of Greenville. Second,
2 that any time and place the defendant was driving a
3 motor vehicle. The word drive requires the vehicle
4 to be in motion in order to meet this element of the
5 offense. This requirement may be met by showing
6 through direct or circumstantial evidence that
7 defendant has placed his or her vehicle in motion
8 while they were under the influence of alcohol,
9 drugs or a combination of that. Thirdly, that at
10 the time and place alleged, the defendant was under
11 the influence of alcohol, drugs or a combination of.
12 For the purpose of this section, drugs means licit
13 or illicit drugs.

14 Okay. Now, what is under the influence of
15 alcohol? It is not necessary to show that defendant
16 was in a helpless condition or the defendant was a
17 dead drunk or even so drunk the defendant could not
18 walk without staggering. On the other hand, proof
19 the defendant had at some time before and during the
20 occasion in question partaken some degree of
21 alcohol, drugs or a combination thereof is not
22 sufficient, in itself, to place one under the
23 influence. A person is not under the influence
24 simply because that person drinks or consumes
25 something containing alcohol and then drives a motor

1 vehicle. A person is under the influence, then,
2 when the person has consumed a sufficient quantity
3 of alcohol, drugs or a combination such that his or
4 her ability to operate a motor vehicle is materially
5 and appreciably impaired. The person must be under
6 the influence so as to cause the person to lose
7 normal control of the person's mental or physical
8 faculties, either one or both, to such an extent
9 that there is an appreciable impairment to either or
10 both of these faculties. Such impairment must
11 prevent the defendant from exercising that care in
12 the operation of a motor vehicle, which would have
13 been exercised by a person of his or her ability as
14 a driver who had not partaken of any alcohol or
15 intoxicating (inaudible). One who drives or
16 operates a motor vehicle, then, when that person's
17 mental or physical faculties have been thus impaired
18 is considered to be driving under the influence.

19 Now, if there was, at that time, five one-
20 hundredths of one percent or less by weight of
21 alcohol in the defendant's blood, it shall be
22 conclusively determined that the defendant was not
23 under the influence of alcohol. If there was, at
24 that time, in excess of five one-hundredths of one
25 percent but less than ten one-hundredths of one

1 percent by weight of alcohol -- or excuse me. Eight
2 percent, that is, by weight of alcohol in
3 defendant's blood, such fact shall not give rise to
4 any inference that the defendant was or was not
5 under the influence of alcohol, but such may be
6 considered with other competent evidence and
7 determine the guilt or innocence of the defendant.
8 Thirdly, that if at the time -- if there was, at
9 that time, .08 of one-hundredths of one percent or
10 more by weight of alcohol in defendant's blood, it
11 may be inferred that the defendant was under the
12 influence of alcohol.

13 Now, I mentioned to you earlier that the
14 defendant in this case did not take the stand. She
15 has that right and you're to hold no inference to
16 that. The failure of any defendant to take the
17 stand and testify in his or her own behalf does not
18 create any presumption against him or her. I charge
19 you that you must not permit this fact to weigh in
20 the slightest against defendant. Nor should this
21 fact enter into the discussion or deliberation of
22 the jury in any manner whatsoever.

23 Now, you've heard reference being made to the
24 HGN, which is the horizontal gaze nystagmus. This
25 test involved watching a person's eyeballs when an

1 object is gradually moved out of the subject's
2 vision to detect involuntary movement of the eye.
3 This testing procedure is not conclusive with
4 driving under the influence or determinative of a
5 specific degree of alcohol content. But rather,
6 it's simply one piece of evidence to be given
7 whatever consideration you desire, along with all
8 the other evidence in the case in determining guilt
9 or innocence of the defendant.

10 Now, Madame Foreperson and ladies and gentlemen
11 of the jury, I want to clarify the thing of
12 reasonable doubt to you, as stated in *Victor versus*
13 *Nebraska*, which is a renowned case and is what is
14 used throughout this nation. The State has the
15 burden of proving the defendant guilty beyond a
16 reasonable doubt. As some of you may have served as
17 jurors in civil cases, where you were told that it
18 was only necessary to prove the facts as more true
19 than not, such as by the greater weight or
20 preponderance of the evidence. In criminal cases,
21 the State's proof must be more powerful than that.
22 It must be beyond a reasonable doubt. Ladies and
23 gentlemen, proof beyond a reasonable doubt is proof
24 that leaves you firmly convinced of defendant's
25 guilt.

1 Now, there are very few things in this world
2 that we know with absolute certainty, and in
3 criminal cases, the law does not require proof that
4 overcomes every possible doubt. The law just does
5 not require that. If, based on your consideration
6 of the evidence, you are firmly convinced that
7 defendant is guilty, you should say so. If not, you
8 should say so.

9 Now, Madame Foreperson, on this green ticket
10 here, which is not evidence and should not be
11 considered whatsoever, it is for the verdict that
12 you and the rest of the jurors meet. We, the jury,
13 find the defendant, Maria Moyao -- and my mom always
14 told me alphabetical order -- guilty or not guilty,
15 a place for your signature and then a place for
16 today's date.

17 Your verdict must be absolute and so say you
18 all, and it can only be one of two, either guilty or
19 not guilty. When the jury has reached a verdict,
20 then you will place beside either guilty or not
21 guilty a check or X mark, whichever way you consider
22 doing. And then, inside the door and on the first
23 switch on the wall, you flip that up and that turns
24 this light above the door and the light out in the
25 common area where we will know that you're ready to

1 bring back a verdict.

2 Now, you've heard both parties refer to the
3 tapes, and they're here. You have the right to see
4 those tapes again, if you so choose. It will not be
5 narrated. It will not be attended by anybody but
6 you. It will be set up and then you can see and
7 watch it on your own, if you choose necessary.
8 That's your option. It also (inaudible) the
9 evidence as presented to -- entered into the case as
10 evidence by the State. It is for your review and
11 you can review that, also.

12 Now, Madame Foreperson, do you have a pen?

13 BY MADAME FOREPERSON:

14 Yes, sir.

15 BY JUDGE GARRETT:

16 Okay, good. (Inaudible). I ask you to take
17 these with you. And let us know, now, if you wish
18 to see one of the tapes or whatever by turning the
19 light on. If you do, then someone will come to you
20 and ask you one of two things. Are you ready for a
21 verdict or is there a question or to see the tapes.
22 And then we will go there and set it up if you need
23 to be. If you don't need to be, then just continue
24 your deliberation until you reach a verdict.

25 Okay. Now, I ask you to take these with you.

1 And I'll ask you, members of the jury, to go to the
2 jury room, but do not begin deliberating until I
3 send you word, okay?

4 All right. You may be excused.

5 (JURY EXITS COURTROOM.)

6 BY JUDGE GARRETT:

7 Anything further from the State?

8 BY SOLICITOR BYRD:

9 Judge, we would just note for the record that
10 it's my understanding -- and I want to state to
11 everybody here that I have no research on this
12 point, (inaudible) experience in dealing with this,
13 but it's my understanding that the distinction
14 between DUI and DUAC is the appreciable impairment,
15 and that's not in the DUAC (inaudible). So we would
16 just point that out to the Court. (Inaudible)
17 further charge on that point. And the other thing,
18 which is just sort of a housekeeping, I think under
19 this current statute -- and you may want to take
20 this up at a later point -- they have to determine
21 what the percentage is for sentencing if they decide
22 (inaudible).

23 BY JUDGE GARRETT:

24 Ask them to come back in, please.

25 There's a percentage on the ticket. If they

1 don't agree to it, then they have to set an amount.

2 BY SOLICITOR BYRD:

3 I think that's correct.

4 BY JUDGE GARRETT:

5 It is correct. I know it's correct, yeah. And
6 if they -- and if that's simply their case. It can
7 be .08 or what percent they think it is.

8 BY SOLICITOR BYRD:

9 Right.

10 (JURY ENTERS COURTROOM.)

11 BY JUDGE GARRETT:

12 Just as a housekeeping type chore or whatever,
13 in the DUAC law, it says that if you disagree with
14 the .10 that's on the charge it is stated that she
15 blew, then you may come back to the Court and say
16 what percentage you think it is. Okay? Now, that's
17 up to you. I mean, how you determine that or
18 whatever is a jury's (inaudible), but I must tell
19 you to be fair that you (inaudible) you have a right
20 to come back and say that we find the person guilty
21 or not guilty, whichever one, with an alcohol
22 concentration of. Okay? If you do not agree that
23 .10 is that. Okay? Only on DUAC with the unlawful
24 alcohol concentration is that allowed. Okay. But
25 it is allowable in that, okay. And the amount there

1 of the appreciable and everything will be considered
2 when you look at that. Okay. It's what we're
3 saying to you.

4 So if you feel like, well, this didn't show
5 that. I think it's .09 or I think it's .07 or I
6 think it's .05, or whatever you think it is, based
7 on whatever you use to determine that, then you have
8 a right to say so. If not, you can come back and
9 the .10 stays where it's at and you can either find
10 the defendant guilty or not guilty. And then that's
11 resolved. Okay. Clear as mud, right? Okay. You
12 may be excused. Do not start until I send you word.
13 Okay. Thank you so much.

14 (JURY EXITS COURTROOM.)

15 BY JUDGE GARRETT:

16 Solicitor, anything further?

17 BY SOLICITOR BYRD:

18 Nothing further, Your Honor.

19 BY MR. DELOACH:

20 Nothing from the defense.

21 BY JUDGE GARRETT:

22 Good. Madame, will you ask the jury to please
23 start their deliberation.

24 We stand in recess for deliberation.

25 (RECESS)

1 BY JUDGE GARRETT:

2 The jury has a question. We'll ask them to
3 step back in. It's 11:41.

4 (JURY ENTERS COURTROOM.)

5 BY JUDGE GARRETT:

6 Madame Foreperson, I understand the jury has a
7 question?

8 BY MADAME FOREPERSON:

9 We would just like to review the videotape with
10 the sobriety testing again, please.

11 BY JUDGE GARRETT:

12 Okay. We can do that. Solicitor, if y'all
13 will, Deputy Jackson, give the tape -- carry the
14 tapes and let them -- let them see. Which tape do
15 you want to see? The field sobriety or do you want
16 all of them?

17 BY MADAME FOREPERSON:

18 Just the field sobriety.

19 BY JUDGE GARRETT:

20 Field sobriety, okay.

21 BY UNIDENTIFIED SPEAKER:

22 (Inaudible)

23 BY JUDGE GARRETT:

24 No, that's a big TV.

25 BY SOLICITOR BYRD:

1 That machine back there will work good.

2 BY JUDGE GARRETT:

3 That's the reason I was wondering. Is it
4 possible that the jury could get in there and see
5 it?

6 BY UNIDENTIFIED SPEAKER:

7 (Inaudible). I'll be glad to bring it down
8 (inaudible).

9 BY JUDGE GARRETT:

10 No, it's not. No, it's not. That's the unit
11 over yonder that we moved from over here. That TV's
12 (inaudible). If you want to bring that TV down
13 here, well and good. Or you can get one of these
14 strong-arm big guys back there to help you. Or we
15 can let the jury go down there. Whichever one is
16 fine. There's not one in the jury room?

17 BY SOLICITOR BYRD:

18 There's a disc type ---

19 BY JUDGE GARRETT:

20 Oh, it's a disc. That's right. He can bring
21 that one down.

22 BY UNIDENTIFIED SPEAKER:

23 There is one in the room.

24 BY JUDGE GARRETT:

25 There's one in there, but it doesn't have the

1

2 BY UNIDENTIFIED SPEAKER:

3 It does (inaudible).

4 BY JUDGE GARRETT:5 It has -- the one in there has VHS. Want to
6 try it? Try that one. It has the VHS on it.7 (INAUDIBLE DISCUSSION)8 BY JUDGE GARRETT:9 Whichever one. Deputy Jackson, that one in
10 there has a VHS on it. And I will simply let y'all
11 set it up (inaudible). Set it up. And once it is,
12 they will -- they will start it and let you see it.
13 But they cannot narrate it, okay, because that's
14 (inaudible). You can see the tape as the tape,
15 okay? And that way, you (inaudible).16 (INAUDIBLE DISCUSSION)17 BY JUDGE GARRETT:18 We stand in recess again for the jury to review
19 the field sobriety test.20 (RECESS)21 BY JUDGE GARRETT:22 Court's back in session. The jury indicates
23 they have a verdict. It is now nine minutes till
24 12:00.

25 Now, Madame Foreperson, has the jury reached a

1 verdict?

2 BY MADAME FOREPERSON:

3 Yes, we have.

4 (END OF RECORDING TAPE 2)

STATE OF SOUTH CAROLINA CERTIFICATE OF NOTARY PUBLIC

TICKET NO. 53541FV

STATE OF SOUTH CAROLINA,

VERSUS

MARIA MOYAO,

DEFENDANT.

I, JILL BISHOP EDWARDS, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 97 PAGES REPRESENT A TRUE AND ACCURATE TRANSCRIPT OF THE DIGITAL AUDIO FILE GIVEN TO BISHOP REPORTING SERVICES, LLC, BY FARNSWORTH LAW OFFICES, LLC.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 24TH DAY OF AUGUST, 2014.

JILL BISHOP EDWARDS, CVR
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 7/14/2020

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2013-CP-23-1642

ORIGINAL

STATE OF SOUTH CAROLINA

PLAINTIFF

vs.

TRANSCRIPT OF RECORD

MARIA MOYAO

DEFENDANT

September 2, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

MITCHELL BYRD, ESQ.
Attorney for the State

DANIEL J. FARNSWORTH, JR., ESQ.
CHRISTINA BRADFORD, ESQ.
Attorneys for the Defendant

APRIL HERRON
Official Court Reporter

There were no witnesses.

There were no exhibits.

» > ○ < «

Certificate of Reporter : 24

1 THE COURT: Good afternoon, how's everybody
2 doing today? Okay, we've got everybody rounded up?

3 MR. BYRD: I think so.

4 THE COURT: Okay, let's go ahead and call to bar
5 the case of County of Greenville vs. Maria Moyao, did
6 I pronounce that right?

7 MR. FARNSWORTH: Yes, Your Honor.

8 THE COURT: And that is case No.
9 2013-CP-23-1642.

10 And Mr. Farnsworth, it's your appeal from the
11 decision of the Summary Court, sir?

12 MR. FARNSWORTH: Yes, Your Honor.

13 THE COURT: Okay, I'll be happy to hear from
14 you.

15 MR. FARNSWORTH: Thank you, Your Honor, may it
16 please the Court? Judge, this case was actually --
17 Perry DeLoach is here, was working with me at the
18 time when we were trying this case. It was a DUI
19 case with a .10 BA. We had gone to pre-trial, as
20 usual, over at Judge Garrett's. Gotten an offer. I
21 think from either Mitchell or George Wild. Back
22 then, they don't do this anymore, but they did an
23 offer sheet and they said, Hey, this will expire
24 I'll pass it up to you.

25 THE COURT: I do have something in the file, I

1 think that may be it.

2 MR. FARNSWORTH: Basically, you have until 30
3 days or so to accept or either we'll go ahead and
4 proceed as charged.

5 THE COURT: Yes, sir.

6 MR. FARNSWORTH: They offered a DUAC instead of
7 a DUI, time served. They also have the little box
8 checked down at the bottom that said, DUAC notice.

9 The statute, of course, Judge, requires -- it
10 use to be 14 days, now it requires 30 days notice if
11 the State is going to proceed on DUAC. Because
12 there's different things you want in your defense for
13 a DUAC. You want to consider, typically, an expert
14 coming in and attacking the breathalyzer. Because
15 that's really all you're saying is, Hey, was it a
16 .08 or more? Of course, you argue other things but
17 that's the main thing. So, we got that notice.

18 And a year so or goes, maybe a year and a half
19 goes by and this is called for trial. Well, Perry
20 goes, does a pre-trial on Monday that week. As they
21 do now. Typically do. And I think Mitchell was
22 there. They discussed trying to work it out.

23 The Officer, I think Officer Jackson said, All I
24 can do is the DUAC.

25 And we're like, No, thank you, but -- but that's

1 not acceptable.

2 Perry, who has presented an affidavit.

3 Did you see this, Mitchell?

4 In lieu of live testimony, obviously, we have an
5 affidavit that we can submit that shows a little bit
6 more of this factually. Perry came back from the
7 trial that day and told me, Hey, I lost this trial.
8 I had a couple of concerns, which are the two issues
9 we appealed on. And said, you know, the officer on
10 Monday said something like, Hey, you know, we can
11 always try this as a DUAC, kind of tongue-in-cheek.
12 I think Mitchell was busy with some other people,
13 trying to work out a bunch of cases and didn't really
14 respond to it.

15 They drew a jury the next day, Tuesday. It was
16 docketed under DUI. So, drew the jury under DUI,
17 everything docketed as a DUI. And then when they
18 tried the case the following day, Wednesday, there was
19 some pre-trial motions, mainly this video motion that
20 we have here for you to address, Judge. And then
21 after Judge Garrett found in favor for the State on
22 that motion to dismiss based on the video issues,
23 they proceeded to go to trial and swear the jury.
24 And that's when my understanding that Mitchell says,
25 Judge, just to be clear, we're proceeding under DUAC.

1 So our first point is the DUAC notice was
2 invalid. A, on its face. And B, as a practical
3 matter because even though that notice was sent more
4 than 30 days before, it's contradictory on its face
5 and their actions was driving DUI the entire time.
6 Never was it ever told to Perry or me, other than
7 this sort of routine offer that we get on every case,
8 but they intended to go with DUAC. Which is sort
9 of -- basically, not intentionally misleading but
10 it's kind of the getting caught with your pants down
11 or ambushed because you're expecting to tend to
12 certain things and now all of a sudden that doesn't
13 matter. It's just whether there's no --
14 [indiscernible] -- that number is valid.

15 As far as the -- I'm kind of going backwards,
16 Judge, because I really think the video issue is
17 going to be dispositive on this. We can address that
18 again. I suppose I should have done these in
19 reverse. But this is no longer an issue, I don't
20 think. So, it's really not an issue currently. But
21 the first line of it says, you're charged -- Your
22 client's charged with -- currently with DUI. If your
23 client wishes to accept our offer, here it is. You
24 have 30 days to accept this offer. And it's in bold
25 underneath. If you do not the case will be tried as

1. charged.

2. So, that's telling us it's going to be tried as
3. a DUI.

4. At the same time lower it's saying on the space
5. that we first read, We're going to intend to --
6. intends to try this case as a DUAC.

7. Well, I think the statute says, you know, Notice
8. whether they're going to try it or not. Not whether
9. they might, not whether they may, whether they
10. intend. Again, this isn't Mitchell's fault, it's
11. just the wording of the form that's used. But
12. essentially, what it says is DUAC notice pursuant to
13. these two code sections. It refers to both the DUI
14. and the DUAC notice. I mean, they're both there.
15. So, that's not necessarily telling it's a DUAC
16. either. Not only does it say, Intend, which is to me
17. sort of a soft or -- it doesn't really follow the
18. statute. But it mentions both of them. Okay? So,
19. that alone is contradictory or confusing.

20. But if you go back to the top where it says, You
21. don't take this -- If you don't take this, we're
22. trying you as charged.

23. Then you take the idea, the factual -- I'd like
24. to hand this affidavit up. Sort of the conversation
25. between Perry and the officer, actually not Mitchell.

1 MR. BYRD: Your Honor, if I may, and I don't
2 want to interrupt too much, but we object to the
3 affidavit. There was no new evidence presented at an
4 appeal.

5 THE COURT: Okay, I'll consider it for what it's
6 worth.

7 MR. FARNSWORTH: And Judge, so my point is,
8 basically the picture of this, notice they were given
9 at the time is not valid. It gives you more of a
10 blanket, Hey, we intend to try this as a DUAC but not
11 that we will try it. It is given 30 days ahead,
12 which is the time limit, but it's not clear that
13 that's what they're going to do. Especially when, as
14 you meet in pre-trial, you don't say anything about
15 it. You call it a DUI. The offer was reduction down
16 to a DUAC. Draw a jury. I think the transcript is
17 going to show that it was called as a DUI when the
18 jury was struck. And again, I'm not, you know,
19 blaming Mitchell. I think Mitchell was doing what he
20 could do. At first glance notice seems to -- seems
21 to -- I think shows what he thought was noticed to
22 us. But that's our problem with the notice, Judge.
23 Of course, the remedy of that is get a new trial.

24 Switch gears to what I should have already done,
25 the video issue, Judge, in this case, again is a .10"

1 BA. Our client is there doing field sobriety tests
2 on the video. At the end of the walk and turn, her
3 feet looked kind of obscured by the -- like a bar on
4 the front of the and then there's some numbers they
5 have, I guess some tape numbers, they obscure her
6 feet. And then for the whole one-leg stand, they're
7 obscured. We brought that for you to see if you'd
8 like.

9 THE COURT: I take your word for it.

10 MR. FARNSWORTH: Judge Garrett in his return
11 admits -- says, Yes, they were obscured but he just
12 thinks it goes to the weight. Which according to
13 these other cases shows that that's not the case.
14 It's got to be it's a mandatory requirement to show
15 their conduct at the scene and not just have a jury
16 assume so. That's really, I think, is the
17 dispositive issue, Judge. If you'd like to see
18 video, again I have that. I know that Mitchell,
19 again, argued this with, you know, Buck is here. I
20 think the Judge's findings are there.

21 Christina Bradford, Judge, I'm sorry if I
22 haven't introduced you to her yet. She's one of my
23 associates, she put the brief together and did a
24 great job, much better than I could do. If there any
25 questions, Judge, I can answer them and then Mitchell

1 can respond.

2 THE COURT: All right, Mr. Byrd, be happy to
3 hear from you, sir.

4 MR. BYRD: Thank you, Your Honor, I'll start by
5 addressing the DUAC notice issue first since that's
6 what counsel brought up. You have in the
7 Magistrate's Return a copy of the notice to
8 Defendant. Which is dated February the 6th, 2012.
9 That's also attached to the Defendant's brief as part
10 of Exhibit C. And it is clearly marked with an X and
11 acknowledged by counsel, Mr. Farnsworth. So, he's
12 clearly put on notice, well over 30 days in advance
13 of trial, that the State's going to proceed on a DUAC
14 basis. So, the notice is good. He includes a second
15 notice that I wasn't aware of. But again, there
16 isn't any question that the Defendant was notified
17 that the State will proceed with a DUAC.

18 But I think more important than just the
19 document itself, when the case commenced, counsel for
20 the defense made a motion to dismiss the case based
21 upon the video. The Court denied that motion. And
22 then proceeded to poll the jury, appoint a foreman,
23 commence the trial. And starting on Page 10 of the
24 transcript, which counsel has provided to the Court.
25 You find where the judge says, Okay, charged with the

1 offense of driving under the influence.

2 Solicitor Byrd: Just for purposes of
3 clarification, Judge, this is going to be a DUAC
4 case.

5 No juror sworn yet. The trial hasn't started
6 yet. No testimony.

7 Okay. Excuse me.

8 Mr. DeLoach: Judge, may I object to that?

9 Judge: Yeah.

10 Mr. DeLoach: May we approach?

11 We approached the bench. It was at that point,
12 again, prior to swearing a jury, prior to any
13 testimony, that the Court was presented with this
14 notice that's attached to the Court's return.

15 Whereupon, the Court overruled the objection.

16 And you can tell that that occurred by virtue of
17 the Judge's immediate comment.

18 Judge Garrett: Ladies and gentlemen, this case
19 before you this morning is a DUAC. Which is Driving
20 with an Unlawful Alcohol Concentration.

21 So, the case commenced on a DUAC basis. There
22 was no objection raised by counsel after that. Not
23 during any testimony, not at the directed verdict
24 stage, not when the Court charged the jury that the
25 jury was being asked to answer a question under the

1 DUAC statute. So, I don't want to belabor the point
2 but it's almost disingenuous for the Defendant to
3 say, Well, I let him go ahead and try this case as a
4 DUAC but now that I see there's some issues with
5 regard to the wording of notice, I'll raise that
6 issue. No issue like that was raised to the trial
7 court. I'll make one more point just to be sure it's
8 in the record here.

9 This is Mr. DeLoach in his opening argument
10 which commences on Page 15 of the transcript. Ladies
11 and gentlemen, the State is no longer going forward
12 on DUI. As you just heard the Judge say, they're
13 going forward on DUAC. Okay.

14 This is defense counsel saying, Okay, here we
15 go. We're playing basketball. But now that they've
16 lost the game, they want to come back and say, Well,
17 we really wanted to play football, we didn't want to
18 play basketball. And I just don't think that's fair
19 to the State of South Carolina.

20 Now, with regard to the video issue, again, not
21 trying to be overly technical, I know this is
22 Magistrate's Court and we just try to do justice but
23 justice works in both directions here. Ms. Moyao had
24 a fair trial. She lost. They're now saying that the
25 Judge made a mistake in that he should have dismissed

1 this case prior to trial based upon a defective
2 video. Well, there wasn't anything defective about
3 the video. Moreover, the Defendant raised no
4 objection to the video.

5 And I turn now to Page 33 of the transcript.
6 Before, you know, to capture the driving, is this a
7 copy of your video?

8 It is.

9 Judge Garrett: Any objection?

10 Mr. DeLoach: No objection, Your Honor.

11 VHS 1, the video that the officer took that
12 night, was entered into evidence without objection.

13 They can offer whatever they want to offer
14 today. I would simply point out to Your Honor that
15 Judge Garrett looked at the VHS 1 that was entered
16 into evidence and his findings were that that video
17 tape was sufficient on the issue of what it captured.
18 There is a group of numbers that show up on a film
19 that I believe show the coordinance, the geographical
20 coordinance of the film itself. Ms. Moyao walked on
21 the nine step walk and turn toward the camera. And
22 as she got to the end of her walk, I believe
23 somewhere in the seventh, eighth, ninth step, she
24 reaches those numbers on the screen. You can see --
25 still see her feet. The numbers just run across the

1 feet at the very bottom.

2 The Judge looked at that. Said, I find this is
3 sufficient. The jury can determine whether or not
4 she passed or failed this test.

5 And the jury decided that she failed the test.
6 I assume, although, they didn't make no findings of
7 fact, they just found her guilty. Whether it was
8 because of the field sobriety test or not, I don't
9 know.

10 Just a couple of quick points and then I'll shut
11 up. The Defendant here is asking for two remedies.
12 He's asking that the case be reversed and the case
13 dismissed because of the video issue. He's asking
14 for a new trial based upon the DUAC notice issue.
15 It's my understanding that on a motion for a directed
16 verdict, the case is viewed in the light most
17 favorable to the non-moving party, which is The
18 State. And there's an abundance of evidence in this
19 case of this lady's guilt. The officers watched her
20 weaving in the line, the officers smelled the alcohol
21 on her. The officer gave her field sobriety tests.
22 He testified she failed the HGN, she failed the walk
23 and turn, she failed the one-legged stand. She took
24 the breathalyzer examine, blew a .10. This is
25 substantial evidence, uncontradicted evidence that

1 she's guilty of driving with an unlawful alcohol
2 concentration.

3 Last but not least, there is no motion in the
4 record for the Trial Court objecting to the notice.
5 There is no post-trial motion in this case and there
6 is no new trial motion under 22-3-1000. Which gives
7 every person 10 days to file a motion for a new
8 trial. There was no new motion filed in this case.
9 And it's the State's position that Ms. Moyao got a
10 fair trial and she lost.

11 THE COURT: Okay, Mr. Farnsworth, I know you got
12 a disk that you said I can look at?

13 MR. FARNSWORTH: Yes, Your Honor.

14 THE COURT: I just missed seeing it. And did
15 you submit a brief as well?

16 MR. FARNSWORTH: Yes.

17 THE COURT: Okay. I just don't have it. It may
18 have gone to the Clerk's office and it hasn't routed
19 its way to me yet.

20 MS. BRADFORD: I believe a copy was dropped to
21 you Friday afternoon.

22 THE COURT: On Friday afternoon?

23 MS. BRADFORD: In your box.

24 THE COURT: Okay, then I'll go look in my
25 office.

1 MR. FARNSWORTH: Sure, Judge. And I apologize.

2 THE COURT: That's okay.

3 MR. FARNSWORTH: I thought it was with you
4 because this --

5 MS. BRADFORD: If you'd like, Your Honor, I can
6 approach with a copy of the brief. I know it does
7 not include the exhibits for you but that's a filed,
8 stamped copy.

9 THE COURT: Yeah, y'all have a transcript of the
10 testimony?

11 MS. BRADFORD: Yes, Your Honor, do you need the
12 certified copy from them --

13 THE COURT: No --

14 MS. BRADFORD: -- or the unsealed copy?

15 (WHEREUPON, the attorneys and the Judge were
16 talking over each other.)

17 MR. BYRD: And Judge, just for the record.

18 THE COURT: Yes, sir.

19 MR. BYRD: That's not the video that was
20 introduced into evidence.

21 THE COURT: No?

22 MR. BYRD: The video that was entered into
23 evidence was a VHS video. The old kind.

24 THE COURT: I gotcha.

25 MR. BYRD: Because there was a variance of what

1 the disk showed and what the original VHS showed.

2 THE COURT: Okay.

3 MS. BRADFORD: Your Honor, if I may approach,
4 I've got a certified copy of the transcript.

5 THE COURT: Is this it?

6 MR. FARNSWORTH: That's the brief, Judge. I'm
7 not sure --

8 MS. BRADFORD: This is the actual transcript
9 from the Magistrate Court, Your Honor.

10 THE COURT: Okay.

11 How does this disk vary from the VHS that was
12 introduced?

13 MR. BYRD: I've not looked at that disk. I know
14 I had a disk, as I have indicated in the transcript,
15 at the hearing on the motion to dismiss, pre-trial
16 motion to dismiss occurred. I don't remember exactly
17 what page but I may be able to find it.

18 THE COURT: It's okay, I'll look at it.

19 MR. BYRD: We pointed out to the Court,
20 initially, that there was distinction between the
21 disk copy and the VHS copy because of, not only audio
22 but video. So, the Court looked at the VHS during
23 the pre-trial hearing. And that was one that was
24 submitted into evidence.

25 THE COURT: Okay. All right. Good enough. All

1 right, anything else?

2 MR. FARNSWORTH: Just briefly, Judge.

3 THE COURT: Okay.

4 MR. FARNSWORTH: I was unaware of any difference
5 in the VHS versus the digital copy. But Judge,
6 the -- there's not -- this isn't about, obviously,
7 other evidence that may support the conviction, but
8 this is a low BA. They're other things that we could
9 show that she did great on the field sobriety test.
10 I know Perry knows that. There were a lot of things
11 to point out. We know that Judge Garrett made
12 decisions. I mean, that's clearly why we're
13 appealing, based on decisions that were there.

14 Judge, but the point again, I think you
15 understood me, Judge, unless I was not clear. The
16 notice -- we think the notice on its face is
17 contradictory. Which should be interpreted in our
18 favor. Other than that, to practice what happened
19 wasn't to use Mitchell's analogy, you know, they
20 called a football game, we showed up. And then it's
21 all of a sudden it's basketball or visa versa.

22 That's why we submitted that affidavit in
23 support. Because, I mean, Perry, the first mentions
24 he hears of it is, Well we could do this as a DUAC.
25 But, you know, it didn't happen. Until he shows up.

1 Whether the jury is sworn or not you can't say, We're
2 going to do it this way, Judge. We need 30 days as
3 firm notice it's happening, notice it's clear. And
4 then, even if you rule that notice is clear, not
5 contradictory. What they're doing the entire time is
6 DUI. And oh, we decided we're going to do DUAC.
7 That's not the whole purpose of that notice is to
8 make sure when I go in there or Perry goes in there
9 or anyone goes in there to try a case, they know what
10 they're being charged with.

11 Another thing too, Judge, the statute section, I
12 haven't had this happen much with this change. I had
13 it happen once and then the officer couldn't get the
14 BA result so the case went away. But my
15 understanding by statute, you're supposed to give a
16 new ticket and charge someone with a DUAC before you
17 proceed. Which wasn't done. So technically, you
18 know, this person is not charged on a valid warrant
19 either. A ticket wasn't done for DUAC. My
20 understanding is by the statute is you have to, you
21 know, write the new ticket. Which wasn't done.

22 And that's not really what we're arguing -- I
23 guess that is one of our arguments, actually.
24 Ms. Christina came up with for the brief. But
25 they're several problems we have with this notice.

1 But the main thing with those, with the video Judge,
2 Judge Garrett admits and says, Yes, the feet were
3 blocked. It's clear now. It's not a substantial
4 test. It's got to show. And the remedy is dismissal
5 regardless of what the result was, regardless of what
6 the -- what other evidence is there or not there for
7 you to decide. Because, you know, it robs us of the
8 idea of saying look how she did so well on the
9 one-legged stand. Couldn't say that because you
10 couldn't see it.

11 THE COURT: Okay.

12 MR. FARNSWORTH: That's what we have, Judge.
13 Anything else you need? Should be attached to that
14 brief.

15 THE COURT: I'm just going to take a look at it
16 and read it.

17 MR. FARNSWORTH: Okay.

18 THE COURT: I am, you know, I recognize the DUI
19 law is probably the most complicated law in the State
20 of South Carolina as it's developed now, as it
21 continues to change. Both legislatively and
22 interpretations of all those various legislative
23 modifications. But I do have a pretty good bit of
24 experience with DUI.

25 MR. FARNSWORTH: Sure.

1 THE COURT: Having been on the summary bench for
2 about eight years.

3 I'll take a look at this. I just want to read
4 it. You know, you look at Summary Court proceedings,
5 it's not a Court of Record. And I'm not very
6 concerned with the technicalities. You know, I'm
7 going to look at it and determine, essentially,
8 whether Judge Garrett made an abusive discretion or
9 an error of law. And to the extent that discretion
10 is granted to the Summary Court Judge, I'll probably
11 grant him discretion. Because I think that he
12 deserves that. And that the trying Judge is entitled
13 to a certain degree of discretion in making those
14 types of determinations.

15 I just need to look at it. And see, in fact,
16 whether there was an abuse of discretion or error of
17 law. I'm not so sure right now.

18 MR. FARNSWORTH: The error of law with our
19 [indiscernible] --

20 THE COURT: Do what?

21 MR. FARNSWORTH: The error of law issue is our
22 point on the video.

23 THE COURT: Well, and the question is, was it in
24 substantial compliance with the statute? And many
25 times there are videos which don't appear for

1 whatever reason. And that could be overcome by and
2 through the submission of an affidavit.

3 MR. FARNSWORTH: And that's typically when
4 there's no video at all.

5 THE COURT: When there's no video at all.

6 MR. FARNSWORTH: Right. So that when there is a
7 video it's under A. And that's the thing in the
8 other case that's so helpful.

9 It says, It's not substantial compliance. It
10 has to be shown ~~and~~ their conduct has to be shown
11 completely. Particularly on the field sobriety test
12 or ~~as~~

13 THE COURT: Well, that's why I want to look at
14 that tape.

15 MR. FARNSWORTH: Right. Sure.

16 THE COURT: Because a part of it apparently was
17 obfuscated. Y'all have an disagreement about how
18 much was obfuscated. Judge Garrett looked at it said
19 that they were in substantial complains. Now, if I
20 look at that and there's a banner that says, Eat more
21 chicken in front of the video camera, then Judge
22 Garrett probably made a mistake.

23 MR. FARNSWORTH: Right.

24 THE COURT: If there's a banner which obscures
25 the feet for a portion of the field sobriety test,

1 then Judge Garrett probably didn't make a mistake. I
2 got to look at it and see.

3 MR. FARNSWORTH: Right. Thank you, Judge.

4 THE COURT: All right, y'all have a great day.

5 MS. BRADFORD: Your Honor, would you like a copy
6 of all the Exhibits mentioned in the brief? Just in
7 case your copy doesn't make it to you.

8 THE COURT: No, no, no. If you -- if I got it
9 back there then --

10 MS. BRADFORD: Okay, certainly, Your Honor.

11 (WHEREUPON, the proceedings were concluded.)

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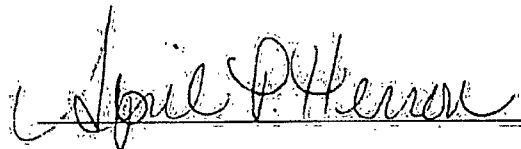
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for
the Thirteenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
Common Pleas for Greenville County, South Carolina, on the
Second day of September, 2014.

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

April 21, 2015



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF <u>Greenville</u>		VERSUS	
FIRST NAME <u>John</u>	MIDDLE NAME <u>Lozano</u>	LAST NAME <u>Moya</u>	
STREET AND NO. <u>221 Hickory Lane</u>	CITY <u>Mauldin</u>	STATE <u>SC</u>	ZIP CODE <u>29662</u>
STATE LICENSED <u>SC</u>	DRIVER'S LICENSE NO. <u>011471041</u>	COPIES <u>1</u> YES <u>0</u> NO	ORIG. LIC. CLASS <u>1</u>
VEH. LIC. NO. <u>E1F793</u>	STATE <u>SC</u>	MAKE OF VEH. <u>Ford</u>	YEAR <u>08</u>
TYPE OF VEH. <u>HAZ. MT.</u>		AUTO <u>0</u>	OTHER <u>0</u>
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT:			
NAME OF TRIAL COURT <u>Greenville</u>		STREET AND NO. <u>2301 Wade Hampton Blvd. #302</u>	
DATE <u>10/13/11</u>	TIME OF TRIAL <u>10:00am</u>	CITY <u>Mauldin</u>	STATE <u>SC</u>
VIOLATION: COURT APPEARANCE REQUIRED <u>YES</u> <u>NO</u>		VIOLATION: SECTION NO. <u>56-5-2130</u>	
OWNER OF VEHICLE <u>Same</u>		DATE OF ARREST <u>9/14/11</u>	
ADDRESS OF OWNER		DATE OF VIOLATION <u>9/14/11</u>	
BAIL DEPOSITED <u>Jan</u>	NAME OF ARRESTING OFFICER <u>J. J. Jackson #557</u>		RANK <u>Det</u>
DESCRIPTION OF ACCUSED <u>10/13/11 10:00am 10/13/11 10:00am</u>		COUNTY <u>Greenville</u>	AGE <u>33</u>
DATE BAIL RECEIVED BY		BADGE <u>412</u>	DOCKET NO. <u>11-133634</u>
CASE BEFORE:		TIME OF VIOLATION <u>03:15</u>	
MAGISTRATE ☐ MUN. COURT ☐		VEHICLE <u>3.85</u>	
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐		DISTANCE IN FEET FROM INTERSECTION <u>3.85</u>	
NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE		DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐	
DISPOSITION:		MILES <u>3.85</u>	
NOLLE PROSSSED ☐ GUILTY ☐		MILES <u>3.85</u>	
FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐		MILES <u>3.85</u>	
TRIAL BY: TRIAL JUDGE ☐ JURY ☐		MILES <u>3.85</u>	
VERDICT OF TRIAL IF ANY		MILES <u>3.85</u>	
GUILTY ☐ NOT GUILTY ☐		MILES <u>3.85</u>	
DATE OF TRIAL IF ANY		MILES <u>3.85</u>	
COMMITTED TO:		DEFENSE CODE <u>99</u>	
DATE		B.A. LEVEL <u>10</u>	
CERTIFIED CORRECT		DATE	

53541 FV

TRIAL COURT COPY

06/20/2014 11:16 8642681333

CHICK SPRINGS COURT

PAGE 05/05

250-9120

NOTICE TO DEFENDANT

Name: Maria Moya Ticket/Warrant No(s): 53541 FV

You or your client is currently charged with: DUI (BA: .10)
 If you or your client wishes to accept early responsibility and plead guilty, the State will offer the following as a recommendation to the Court:

DNAC [Time Served]

You have 30 days from the date of this form to accept this offer. If you or your client does not enter a guilty plea by 3/6/12 then the case will be placed on the docket for trial. At that time, the case will be tried as charged, and NO recommendation will be made.

If one or more of the boxes below is checked, the following additional information applies to your pending criminal case:

- ☐ **Trial in Absence:** If you do not appear for your trial, you will be tried in your absence. The Solicitor may consent to a trial in front of the judge (bench trial) at which time the Court would decide your guilt. If you are found guilty, the Court may issue a Bench Warrant for your arrest. All notices for trial will be sent to the address you provided to the Court. It is your responsibility to inform the Court of any changes to your contact information.
- ☐ **Legal Representation:** You have the right to have an attorney represent you in a criminal matter. If you cannot afford to hire an attorney, the State will appoint one to represent you if you qualify. If you would like an attorney to be appointed, it is your responsibility to apply for a Public Defender. The Office of Indigent Defense can assist you in applying for representation. Their office is located at the Greenville County Courthouse, 305 East North Street in downtown Greenville.

It is your responsibility to secure representation in a timely manner and to inform your attorney of any court notices you receive. If you have not informed the Court that you have secured an attorney before the case is set for trial, the State will go forward with the trial as scheduled. Your case will not be continued because you failed to obtain an attorney or obtained an attorney after the case was put on the trial docket.

- ☒ **DUAC Notice:** Pursuant to § 56-5-2933 and § 56-5-2930 (J) of the South Carolina Code of Laws, you are hereby notified that the State intends to try this case as a violation of Driving with an Unlawful Alcohol Concentration. The case will appear on an upcoming trial docket no sooner than 30 days from the date of this notice.

Defendant

[Signature]
 Defense Attorney

Solicitor

[Signature]
 Date

Updated 1/10/12

Judge Charles R. Garrett
Date: Monday, February 6, 2012
Pretrial Conferences

P-130

TIME	TICKET/ WARRANT	DEFENDANT	OFFENSE	ATTORNEY	SOL	AGENCY
9:00 AM	F070306-7	Joe Nell Boyd Jr.	Simple Possession, Driving under the Influence	Amanda Wicker	GKL	R Thompson, SCHP
9:15 AM	I482988-89	Larry Truett	Driving under the Influence, Uninsured Vehicle	Amanda Wicker	GKL	R Thompson, SCHP
9:30 AM	F275211	Joshua Gilkinson	Driving under the Influence	Steve Sumner	GKL	M George, SCHP
9:45 AM	F279523-24	Judy Arrington	Driving under the influence, ABC Violation	Amanda Wicker	GKL	M George, SCHP
10:00 AM	F151898-900, F274701-4	Joshua Aiken	Driving under the Influence, Driving under Suspension, Operating Uninsured, Leaving Scene, Possession Stolen Property x 2	Amanda Wicker	GKL	G Certain, SCHP
10:15 AM	J994144	Natasha Gibbs	Breach of Peace	Amanda Wicker	GKL	Myrtle Gibbs
10:25 AM	F227570-73	Wayne Campbell	Driving under the Influence, Driving under Suspension, Operating Uninsured, Failure to Register	Amanda Wicker	GKL	
10:40 AM	56791FQ	Joshua Clark	Driving under Suspension 3 rd	Amanda Wicker	GKL	
10:50 AM	E696601	Oleg Konopadchenko	Simple Possession	Amanda Wicker	GKL	
11:00 AM	I434555	Oleg Konopadchenko	Reckless Driving	Amanda Wicker	GKL	
11:10 AM	J993968	Rachael Fowler	Criminal Domestic Violence	Amanda Wicker	GKL	J Burdine, GCSO; Christopher Fowler
11:20 AM	J993539	Lisa Gillespie	Criminal Domestic Violence	Amanda Wicker	GKL	K Azzara, GCSO; Nathan Gillespie
11:30 AM	49581FQ	Buddy McAllister	Interfering with law enforcement	John Rollins	GKL	K Azzara, GCSO
11:40 AM	I408693	Randy Earle	Petit Larceny	Michael Cullinan	GKL	I Henderson, GCSO; Ethel Lunsford
11:50 AM	J993059	Jerry Lowe	Criminal Domestic Violence	John Rollins	GKL	I Henderson, GCSO; Sylvia Lowe

Judge Charles R. Garrett
Date: Monday, February 6,, 2012
Pretrial Conferences

TIME	TICKET/ WARRANT	DEFENDANT	OFFENSE	ATTORNEY	SOL	AGENCY
1:30 PM	J993224	Christina Jackson	Shoplifting	Pro Se	GKL	Vinnie Lopes, Walmart
1:40 PM	F279469	Melvin Johnson Jr.	Improper Turn	Pro Se	GKL	Ashley Richardson
1:50 PM	87839FK	Terry Canada	Negligent Driving	Patrick Mangrum	GKL	
2:00 PM	J993210	Jesse McDonald	Shoplifting	Pro Se	GKL	J Counts, GCSO; Chris Fowler, Bi-Lo
2:10 PM	I434698	Wendy Batson	Unlawful use of Telephone	Pro Se	GKL	J Counts, GCSO; Larry Batson
2:20 PM	J993494	Gary Lee Taylor	Littering	Pro Se	GKL	G Porter, GCSO Hardstone Dev. LLC
2:30 PM	J993473	Starsha Limbaugh	Shoplifting	Pro Se	GKL	G Porter, GCSO; Melissa Johnson
2:40 PM	J993418	Ruben Gurrero	Criminal Domestic Violence	Joseph Baldwin	GKL	R Frady, GCSO; Marisela Guerrero
2:50 PM	J994145	Tia Jones	Assault & Battery	David Holmes	GKL	P DeRosa, GCSO; Adam Massengale
3:00 PM	53541FV	Maria Moyao	Driving under the Influence	Dan Farnsworth Jr.	GKL	J Jackson, GCSO
3:15 PM	57010-11FV	Douglas Humberger	Driving under the Influence, Disregard Red Light	Todd Nichols	GKL	J Jackson, GCSO
3:30 PM	53518-20FV	Elviz Bonilla	Driving under the Influence, Open Container, No SC DL	Pro Se	GKL	J Jackson, GCSO
3:45 PM	55920FQ	Roy Powell	Speeding 57/35	Pro Se	GKL	J Jackson, GCSO
3:55 PM	53530,32FV	Susan Coble	Public Disorderly Conduct, Simple Possession	Pro Se	GKL	J Jackson, GCSO

Judge Charles R. Garrett
Date: Tuesday, February 7, 2012
Pretrial Conferences

TIME	TICKET/ WARRANT	DEFENDANT	OFFENSE	ATTORNEY	SOL	AGENCY
9:00 AM	I433859	Paul Carter	Criminal Domestic Violence	Jeffrey Merriam	GKL	Faith Lanford
9:10 AM	J993735	Valerie Shaw	Criminal Domestic Violence	David Armstrong	GKL	Joseph Shaw
9:20 AM	I408681	Ashley Dunbar	Assault & Battery	Robert Ianuario	GKL	Steadman Brazel
9:30 AM	I481566	Juan Ojeda Mier	Malicious Injury to Personal Property	Matthew Pinckney	GKL	Anayeli Duran
9:40 AM	48561-62FQ	Luis Cortes	No Tag light, No SC DL 2 nd	Matthew Pinckney	GKL	M Cannon, GCSO
9:50 AM	F229206-7	Joseph Gouveia	Driving under the Influence, Operating Uninsured	Steve Sumner	GKL	TJ Genco, SCHP
10:05 AM	F279458-59	Clarence English	Driving under the Influence, Open Container	Steve Sumner	GKL	TJ Genco, SCHP
10:20 AM	F040677-78	Michael Parenti	DUAC, Open Container	Steve Sumner	GKL	D McAlhany, SCHP
10:30 AM	F279489	Tara Arrington	Driving under the Influence	Steve Sumner	GKL	
10:45 AM	45678FQ	Paul Machin	Driving under the Influence	Steve Sumner	GKL	M Cannon, GCSO
11:00 AM	48569FQ	David Dempsey	Driving under the Influence	Steve Sumner	GKL	M Cannon, GCSO
11:15 AM	J993659	Jonathan Edwards	Criminal Domestic Violence	Pro Se	GKL	W McMurrer, GCSO; Holly Edwards

Judge Charles R. Garrett

Date: Tuesday, February 7, 2012

Pretrial Conferences

TIME	TICKET/ WARRANT	DEFENDANT	OFFENSE	ATTORNEY	SOL	AGENCY
1:00 PM	J993168	Justan Fryson	Criminal Domestic Violence	Pro Se	GKL	Rashanda Nichols
1:10 PM	J993330-31	Bobby Chapman	Assault & Battery x 2	Michael Coulter	GKL	M Moore, GCSO; Sarah Rutledge, Shelley Braziel
1:20 PM	49392-93FQ	Benjamin LeGare	Simple Possession, Poss Drug Para	Edward Boggs	GKL	M Moore, GCSO
1:30 PM	52958FQ	Juan Granda	Driving under Suspensio	Pro Se	GKL	M Moore, GCSO
1:40 PM	I433725-28	Daniel Black	Harassment 2 nd , Malicious Injury x 2, Trespassing	Mills Ariail	GKL	M Moore, GCSO; Ellen Williams; John Wharton
1:50 PM	52955FQ	Andrew Peppers	Simple Possession	Randy Chambers	GKL	M Moore, GCSO
2:00 PM	I408661	Christopher Reynolds	Disturbing Schools	Matthew Kappel	GKL	C Husband, North Greenville University
2:10 PM	J992764	Annette Ashby	Shoplifting	John Newkirk	GKL	Luis Sotomayor, Walmart
2:20 PM	48297FQ	Angie Taylor	Driving under the Influence	Matthew Kappel	GKL	P Clark, GCSO
2:35 PM	53337-8FV	William SAyegh	Driving under the Influence, Open Container	John Newkirk	GKL	P Clark, GCSO
2:50 PM	55213FV	Erik Martinson	Driving under the Influence	Amy Parker	GKL	P Clark, GCSO
3:05 PM	55203FV	Lisa Soto	Driving under the Influence	Pro Se	GKL	P Clark, GCSO

Judge Charles R. Garrett
Date: Wednesday, February 8, 2012
Pretrial Conferences

TIME	TICKET/ WARRANT	DEFENDANT	OFFENSE	ATTORNEY	SOL	AGENCY
9:00 AM	I408703CS W	Richard Adcock	Assault & Battery	Pro Se	GKL	Ryan Stokes
9:10 AM	J993287	Christopher Reid	Receiving Stolen Goods	Pro Se	GKL	Rosetta Miller
9:20 AM	J93572	Robert Quinn	Shoplifting	Pro Se	GKL	Luis Sotomayer, Walmart
9:30AM	55876FQ	Elizabeth Howerton	Driving under the Influence	Paul Landis	GKL	
9:45 AM	J993396	Matthew Hayden	Criminal Domestic Violence	Frank Eppes	GKL	Brook McSwain
9:55 AM	J993718	Martha Pickney	Shoplifting	Richard Warder	GKL	Alphonso Holmes
10:05 AM	F147892	Cheryl Satterfield	Driving under the Influence	Richard Warder	GKL	
10:20 AM	I433975	Phillip Stegall	Criminal Domestic Violence	Richard Warder	GKL	J Burdine, GCSO; Jessica Stegall
10:30 AM	J992861	Jeffery Locke	Assault & Battery 3 rd Degree	Pro Se	GKL	T Bowers, GCSO; Chrissy Shumate
10:40 AM	55558FQ	Zachary Gestwicki	Simple Possession	Richard Warder	GKL	T Bowers, GCSO
10:50 AM	I434492	Doyle Wright	Assault & Battery	R. Mills Ariail	GKL	T Bowers, GCSO; Scott Clark
11:00 AM	M990197	Ashley Miller	Criminal Domestic Violence	Chad Groover	GKL	Darryl Williams

Judge Charles R. Garrett
Date: Wednesday, February 8, 2012
Pretrial Conferences

TIME	TICKET/ WARRANT	DEFENDANT	OFFENSE	ATTORNEY	SOL	AGENCY
1:00 PM	70527-28EV	Reginald Bland	Open Container, Simple Possession	Pro Se	GKL	
1:10 PM	F340070	Thomas Cromer	Driving under the Influence	James Price	GKL	Mark McGregor
1:25 PM	J993873	Amy Binder	Criminal Domestic Violence	James Calmes	GKL	J Horne, GCSO; Weldon Holtzclaw
1:35 PM	J992504	Julie Campbell	Criminal Domestic Violence	James Calmes	GKL	J Horne, GCSO; Benjamin Campbell
1:45 PM	53691FF	Mark Hopkins	Unlawful Gambling	J. Bradley Bennett	GKL	
1:55 PM	I434962	Todd Farmer	Criminal Domestic Violence	Daniel Hughes	GKL	Patricia Stowe
2:05 PM	J994386	Holly Pruitt	Criminal Domestic Violence	Nihar Patel	GKL	William Jackson
2:15 PM	F280912	Luis Reyes	Speeding 57/40	Nihar Patel	GKL	
2:25 PM	F284131	Sammy Almad	Speeding 100/60	Rosemary Parham	GKL	
2:35 PM	E693754	Juan Vallejo	Driving under the Influence	David Seay Jr	GKL	
2:50 PM	I408707	Antjuan Richardson	Petit Larceny	Caroline Horlbeck	GKL	Shelricka Duncan
3:00 PM	61286EV	Alexis Martinez-Antonio	Loitering to Engage	Elizabeth Wiygul	GKL	

Judge Charles R. Garrett
Date: Thursday, February 9, 2012
Pretrial Conferences

TIME	TICKET/ WARRANT	DEFENDANT	OFFENSE	ATTORNEY	SOL	AGENCY
9:00 AM	46295FQ	Jerry Nixon	Driving under suspension	Pro Se	GKL	
9:10 AM	J993512	Suzanne Nugent	Criminal Domestic Violence	Pro Se	GKL	Paul Greene
9:20 AM	J992709	Osama Rabadi	Assault & Battery	Susannah Ross	GKL	Alexis Webb
9:30 AM	J994155	Dishawn Hunt	Petit Larceny	Susannah Ross	GKL	W Campbell, GCSO; Brandi Weaver
9:40 AM	F275202-3	David Howell	Driving under Suspension, Following too Closely	Alex Stalvey	GKL	Yvette Cates
9:50 AM	J993150	Stanley Rhome	Petit Larceny	Brian Johnson	GKL	David Hogg
10:00 AM	94057DO	Termaine Turman	Negligent Driving	Pro Se	GKL	M Atwell, GCSO
10:10 AM	J993999- 4001	Kevin O'Shields	Theft of Electrical Current, Receiving Stolen Goods, Petit Larceny	Sarah Henry	GKL	R Devore-Snow, GCSOR Harrison, Duke Energy; Shannon Massengale
10:20 AM	56612-13FV	Edwin Ellison	No Driver's License, False info for Police	Sarah Henry	GKL	
10:30 AM	J993710-11	Reena Travers	Petit Larceny x 2	Sarah Henry	GKL	J Redman, GCSO; Corey Freeman;

Judge Charles R. Garrett

Date: Thursday, February 9, 2012

Pretrial Conferences

TIME	TICKET/ WARRANT	DEFENDANT	OFFENSE	ATTORNEY	SOL	AGENCY
1:00 PM	46411FQ	Frederick Golden	Driving under Suspension	Pro Se	GKL	
1:10 PM	J992940	Richard Caldwell	Criminal Domestic Violence	Pro Se	GKL	Jenna Lopez
1:20 PM	F152668-69	Amber Smith	Driving under the Influence, Child Endangerment	Pro Se	GKL	
1:35 PM	J993415	Caitlin Greer	Shoplifting	Pro Se	GKL	Melissa Johnson, Publix
1:45 PM	51371FQ	Robert Zapata	Possession Drug Para	Timothy Sullivan	GKL	J Redman, GCSO
1:55 PM	F275176-77	Karl Schuetterle	Driving under the Influence, Driving under Suspension	Randolph Hough	GKL	
2:10 PM	F340078	Edward Bell	Driving under the Influence	Tom Quinn	GKL	
2:25 PM	F279582	James Nichols	Too Fast for conditions	J. Kirk Fisher	GKL	Michael Griffin
2:35 PM	J993971	Myron Walker	Petit Larceny	Jim Bannister	GKL	Rhonda Price
2:45 PM	I484854	Steven Jones	Cruelty to Children	Bill Godfrey	GKL	J Proctor, GCSO; James Link Samantha Grace
2:55 PM	I408678	Clayton Angermeier	Violation Restraining Order	John Newkirk	GKL	W Hinkle, GCSO; Mark Vonostenbridge
3:05 PM	80564FK	Cameron Wilson	Improper Passing	Pro Se	GKL	J Cordell, GCSO

P-137

NOTICE TO DEFENDANTName: MARIA MOYAO Ticket/Warrant No(s): 53541FV

You or your client is currently charged with: DUI 10
 If you or your client wishes to accept early responsibility and plead guilty, the State will offer the following as a recommendation to the Court:

DUAC . 08

You have 30 days from the date of this form to accept this offer. If you or your client does not enter a guilty plea by 3/8/13 then the case will be placed on the docket for trial. At that time, the case will be tried as charged, and NO recommendation will be made.

If one or more of the boxes below is checked, the following additional information applies to your pending criminal case:

☐ **Trial in Absence:** If you do not appear for your trial, you will be tried in your absence. The Solicitor may consent to a trial in front of the judge (bench trial) at which time the Court would decide your guilt. If you are found guilty, the Court may issue a Bench Warrant for your arrest. All notices for trial will be sent to the address you provided to the Court. It is your responsibility to inform the Court of any changes to your contact information.

☐ **Legal Representation:** You have the right to have an attorney represent you in a criminal matter. If you cannot afford to hire an attorney, the State will appoint one to represent you if you qualify. If you would like an attorney to be appointed, it is your responsibility to apply for a Public Defender. The Office of Indigent Defense can assist you in applying for representation. Their office is located at the Greenville County Courthouse, 305 East North Street in downtown Greenville.

It is your responsibility to secure representation in a timely manner and to inform your attorney of any court notices you receive. If you have not informed the Court that you have secured an attorney before the case is set for trial, the State will go forward with the trial as scheduled. Your case will not be continued because you failed to obtain an attorney or obtained an attorney after the case was put on the trial docket.

☒ **DUAC Notice:** Pursuant to § 56-5-2933 and § 56-5-2930 (J) of the South Carolina Code of Laws, you are hereby notified that the State intends to try this case as a violation of Driving with an Unlawful Alcohol Concentration. The case will appear on an upcoming trial docket no sooner than 30 days from the date of this notice.

Defendant

Solicitor

Defense Attorney

Date

2/8/13

JURY TRIAL DOCKET
MAGISTRATE C.R. GARRETT
CHICK SPRINGS SUMMARY COURT
WEEK OF MARCH 11-15, 2013

**All trial dockets are final. Please note if you are a defense attorney and need to be removed from the docket, please contact the
MAGISTRATE'S OFFICE.**

PLEASE NOTE JURY SELECTION WILL BE Tuesday, March 12, 2013 AT 9:00 AM

MONDAY, MARCH 11, 2013

TIME	OFFICER/ AFFIANT	DEFENDANT	ATTORNEY	CASE #	TYPE	VICTIM/ WITNESS	OUTCOME
9:00 AM	J Jackson, GCSO	Juan Torres	Barry Bland	57097, 98FV	Driving under the Influence, No SC DL	J Loveless, GCSO	
9:00 AM	J Jackson, GCSO	Maria Moyao	Dan Farnsworth, Jr	53541FV	Driving under the Influence		
9:00 AM	J Jackson, GCSO	Kenneth Trofatter	Steve Sumner	57074FV	Driving under the Influence	William Kennedy Skinner, GCSO	
9:00 AM	J Jackson, GCSO	Joshua McCord	Steve Sumner	59805FF	Driving under the Influence		2010 case
9:00 AM	J Jackson, GCSO	Stanley Skiles	Steve Sumner	55865FQ	Driving under the Influence	Lt Taylor, GCSO	
9:00 AM	J Jackson, GCSO	Mary Smith	Kirk Fisher	45942FQ, 1432837	Driving under the Influence, Child Endangerment	G Martinez, GCSO Kathy Thackston	
9:00 AM	J Jackson, GCSO	Gregory Jameson	Manning Culbertson	57073FV, 61190FV	Driving under the Influence, Speeding	Raymond Crawford	
9:00 AM	J Jackson, GCSO	Howard Gregory	Pro Se	64679, 80FV	Driving under the Influence, Driving under Suspension		
9:00 AM	J Jackson, GCSO	Thomas Mahaffey	Dick Warder	64675, 76, 77FV	Seatbelt Vio, Simple Possession of Marijuana, Poss Drug Paraphernalia	M Watson, P&E K Dixon, Lab	
9:00 AM	J Jackson, GCSO	Cortney Long	Kraig Pringle	64672, 73, 74FV	Driving under the Influence, Simple Possession of Marijuana, Poss Drug Paraphernalia	M Watson, P&E K Dixon, Lab	
9:00 AM	J Jackson, GCSO	David Parker	Chase Harbin	57083FV	Driving under the Influence		
9:00 AM	J Jackson, GCSO	Terry Sims	Amanda Wicker	53544, 45FV	Driving under the Influence, Open Container	McGaha, GCSO	
9:00 AM	J Jackson, GCSO	Robert Shirey	Chase Harbin	61153FV	Speeding		
9:00 AM	J Jackson, GCSO	Stacy Little	Dan Farnsworth	53282, 83, 84FQ	Driving under the Influence, Expired Tag, Simple	S Collins, Lab M Watson, P&E	

					Possession of Marijuana		
9:00 AM	J Jackson, GCSO	Elizabeth Howerton	Paul Landis	55876FQ	Driving under the Influence	Tracy McKinnon, SLED RL Rivera, GCSO Doris Yarbrough, SLED J Thaxton, P&E	
9:00 AM	J Jackson, GCSO	Darren Hill	Amanda Wicker	86815, 16FK	Driving under the Influence, Driving under Suspension	Weinmueller, GCSO	2010 case
9:00 AM	J Jackson, GCSO	Charles Griswold	James O'Connell	75480FK	Driving under the Influence	Megan Mebane, SLED Tina Simpson I Flounders, P&E	2010 case
9:00 AM	J Jackson, GCSO	Sarah Furmanski	Larry Crane	53547, 48, 49FV	Driving under the Influence, Simple Possession of Marijuana, Poss Drug Paraphernalia	K Dixon, Lab M Watson, P&E	
9:00 AM	J Jackson, GCSO	William Ferguson	Amanda Wicker	57014, 15FV	Driving under the Influence, Driving Left of Center	J Thaxton, P&E Quintus Young, SLED Doris Yarbrough, SLED	
9:00 AM	J Jackson, GCSO	Marjorie Dorey	Steve Sumner	57004FV	Driving under the Influence		
9:00 AM Continued by Judge Garrett	J Jackson, GCSO	Larry Davis	Ernie Hamilton	45933FQ	Driving under the Influence	Sgt. Robertson, GCSO	Continued by Judge Garrett
9:00 AM	JD Hand, STP	Raymond Hobby	Bill Bannister	F219734	Driving under the Influence		
9:00 AM	JD Hand, STP	Jessie Craighead	Michael A Brown	F219712	Speeding		
9:00 AM		Mark Howard	Dick Warder	1408988	Petit Larceny	Sharonicka Carter Leroy Howard Vilma Howard	
9:00 AM	EF Lee, CRB	Johnada Young	Amanda Wicker	1388905, 06, 07, 08, 09, 10, 12, 13, 14, 15, 17, 18	Fraud Check x 12	Bi-Lo	2004 cases
1:00 PM	Frank Jordan, SCDNR	Christina Greenwood	Theo Mitchell	757843, 44, 45	Disorderly Conduct, Littering, Trespassing		
1:00 PM	RF Thompson, SCHP	Joshua Ashby	Kraig Pringle	F478610	Driving under the Influence	Wooten, SCHP M Looney, SCHP	
1:00 PM	RF Thompson, SCHP	Gladys Alvarez	Pro Se	F680013	Driving under the Influence	Alex Manolopoulos	
1:00 PM	RF Thompson, SCHP	Enriqueillo Rosario	Amanda Wicker	F680010	Driving under the Influence		
1:00 PM	RF Thompson, SCHP	Adam Woods	Pro Se	F548268	Driving under the Influence		

1:00 PM	C Ladue, SCHP	Christina Rose	Amanda Wicker	F624885	Driving under the Influence		
1:00 PM	C Ladue, SCHP	Derrick Byrd	Pro Se	F539865	Speeding		
1:00 PM	C Ladue, SCHP	Augustus Fitzroy	Rose Mary Parham	F539838	Speeding		
1:00 PM	C Ladue, SCHP	Henry Horn	Dick Warder	F285743	Failure to Yield	Stephanie Terry Mae Henson Wendy Culbreath	
1:00 PM Disposed/ PG	C Ladue, SCHP	Kathryn Howard	Steve Evans	F476874	Driving under the Influence	Stacy Alexander, RN/St Francis Downtown Mercedes Hughes Shana Sorrels, SLED RA Frick, SCHP N Perry, SLED	Disposed/ PG
1:00 PM	C Ladue, SCHP	Jimmy Morgan	Steve Sumner	F285741	Driving under the Influence	M McCoy, GCSO Jason Semanyc, GPD M Huntington, GPD	
1:00 PM	C Ladue, SCHP	Billy Owens	Bill Bouton	F539876, 77	Driving under the Influence, Leaving the Scene	Cedric Barber William Barber Jarrard Jenkins	
1:00 PM	C Ladue, SCHP	Kelly Pruitt	Ronnie Cole	F539888	Driving under the Influence	Leigh Seawright, RN/GHS Carmen Tucker, SLED	
1:00 PM	C Ladue, SCHP	Kelly Wolff	Erick Barbare	F544924	Driving under the Influence		
1:00 PM	JD Howard, GCSO	Phillip Simmons	Pro Se	M994254	Breach of Trust	Daria Glenn, Resource MFG	
1:00 PM	JD Howard, GCSO	Kyle Coyle	Mike MacKinnon	N200324	Larceny	Jolynn Skelton Ruben Hernandez Trejo	
1:00 PM	JD Howard, GCSO	Kyle Coyle	Rob Ianaurio	M990897	Petit Larceny	Charles Frisby Melvin Babb T Fricks, P&E	
1:00 PM	JD Howard, GCSO	Steven Haney	Steve Evans	N201592, 94, 95	Petit Larceny x 2. Obtaining Property Under False Pretenses,	Megan Todd John Chapman Amy Odom	
1:00 PM Waived up to AOF	C Husband, N. Greenville Univ. Police	Javante Sykes	Mike Barcroft	I409011	Assault and Battery	Roy Comer Donald Lilly, N. Greenville Univ Latrell Johnson	Waived up to AOF
1:00 PM	Phil Roberts, GHS Police	Gregory Williams	Robert Newton	F417172	Driving under the Influence	Janet Stephens	
1:00 PM	M Smith, GCSO	Ronald Cooper	William Long	2012A2330201959	Criminal Domestic Violence	Ethel "Marlene" Cooper	
1:00 PM	PG Clark, GCSO	Brandon Mooney	Frank Eppes	77274FK	Driving under the Influence		2010 case

TUESDAY, MARCH 12, 2013

TIME	OFFICER/ AFFIANT	DEFENDANT	ATTORNEY	CASE #	TYPE	VICTIM/ WITNESS	OUTCOME
9:00 AM		<i>JURY</i>	<i>SELECTION</i>				
10:00 AM							
11:00 AM							
1:00 PM	D Robertson, SCHP	Aaron Cowden	Steve Sumner	E679389	Driving under the Influence	Randy Brown, SLED	DATE CERTAIN
2:00 PM							
3:00 PM							
4:00 PM							

WEDNESDAY MARCH 13, 2013

TIME	OFFICER/ AFFIANT	DEFENDANT	ATTORNEY	CASE #	TYPE	VICTIM/ WITNESS	OUTCOME
9:00 AM							
10:00 AM							
11:00 AM							
1:00 PM							
2:00 PM							
3:00 PM							
4:00 PM							

THURSDAY MARCH 14, 2013

TIME	OFFICER/ AFFIANT	DEFENDANT	ATTORNEY	CASE #	TYPE	VICTIM/ WITNESS	OUTCOME
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9:00 AM							
10:00 AM							
11:00 AM							
1:00 PM							
2:00 PM							
3:00 PM							
4:00 PM							

FRIDAY MARCH 15, 2013

TIME	OFFICER/ AFFIANT	DEFENDANT	ATTORNEY	CASE #	TYPE	VICTIM/ WITNESS	OUTCOME
9:00 AM							
10:00 AM							
11:00 AM							
1:00 PM							
2:00 PM							
3:00 PM							
4:00 PM							

JURY TRIAL DOCKET

**MAGISTRATE C.R. GARRETT
CHICK SPRINGS SUMMARY COURT
WEEK OF MARCH 25-28, 2013**

**All trial dockets are final. Please note if you are a defense attorney and need to be removed from the docket, please contact the
MAGISTRATE'S OFFICE.**

PLEASE NOTE JURY SELECTION WILL BE Tuesday, March 26, 2013 AT 9:00 AM

MONDAY, MARCH 25, 2013

TIME	OFFICER/ AFFIANT	DEFENDANT	ATTORNEY	CASE #	TYPE	VICTIM/ WITNESS	OUTCOME
9:00 AM	B Sutherland, SCHP	James Byrd	Steve Evans	F618383	Driving under the Influence		
9:00 AM	B Sutherland, SCHP	Paul Etheridge	Will McKibbin	F727708	Driving under Suspension		
9:00 AM	B Sutherland, SCHP	Julia Hickman	Pro Se	F678722, 23	Driving under the Influence, No SC DL		
9:00 AM	B Sutherland, SCHP	John Sumerel	Tom Quinn	F546471	Driving under the Influence		

9:00AM	B Sutherland, SCHP	Cheritta Delaine	Theo Mitchell	F152653	Disregarding Traffic Light	Andrea Berry R Thompson, SCHP Stephanie Lawing
9:00 AM	B Sutherland, SCHP	Demico McDonald	Steve Evans	F483618	Driving under Suspension	
9:00 AM	B Sutherland, SCHP	Richard Oref	Kim Varner	F152626	Driving under the Influence	John Sims
9:00 AM	B Sutherland, SCHP	Alireza Reyhani	Steve Sumner	F483628	Driving under the Influence	
9:00 AM	B Sutherland, SCHP	David Smith	Nihar Patel	F483648, 49	Driving under the Influence, Open Container	
9:00 AM	B Sutherland, SCHP	Scott Smith	Mike Coulter	F284301, F234900	Driving under Suspension, Operating Uninsured	
9:00 AM	B Sutherland, SCHP	Trifon Tyner	Matt Kappel	F284362	Driving under the Influence	Henry Peden Leigh Seawright, RN/GMH Jennifer Brown, SLED
9:00 AM	M George, SCHP	Douglas Hart	Steve Sumner	F731255	Driving under the Influence	
9:00 AM	M George, SCHP	Dalton Malecha	Steve Sumner	F731259, 60, 61	Driving under the Influence, Minor in Poss, False DL	
9:00 AM	M George, SCHP	Anthony Stribling	Chip Price	F621761, 62	Driving under the Influence, ABC Vio	
9:00 AM	M George, SCHP	Diana Tolles	John Newkirk	F621766	Striking Fixtures	Steven Kang
9:00 AM	M George, SCHP	Thomas Holliday	Rob Ianuario	F550871	Driving under the Influence	
9:00 AM	M George, SCHP	David Howell	Alex Stalvey	F275202, 03	Driving under Suspension, Following too Close	
9:00 AM	M George, SCHP	James Nichols	Kirk Fisher	F279582	Too Fast for Conditions	Michael Griffin Steve Campbell
9:00 AM	M George, SCHP	Derek Siegel	Nihar Patel	F343788, 89	Driving under the Influence, ABC Violation	
1:00 PM	D McElhany, SCHP	Adam Hester	Sara Henry	I408566, 67	Driving under Suspension, Too Fast for Conditions	
1:00 PM	D McElhany, SCHP	Michael Parenti	Steve Sumner	F040677, 78	DUAC, Open Container	J Cannon, SCHP
1:00 PM	J Johnson, SCHP	Clarence Williams	Jake Erwin	N200129, N200131, 33	Reckless Driving, Child Restraint Vio, Driving under Suspension	McElhany, SCHP
1:00 PM	McElhany, SCHP	Clarence Williams	Jake Erwin	M991766	Driving under Suspension	
1:00 PM	E Turner, GCSO	James Willard	Dan Farnsworth	63866EV	Driving under Suspension	

1:00 PM	G Porter, GCSO	Benny Willimon	Dan Farnsworth	J992881	Shoplifting	Micah Cline, Sam's Club	
1:00 PM	Ridgeway, SCHP	Robert Ramey	Dan Farnsworth	F686136	Improper Turn	Andrea Pilgrim	
1:00 PM	M Cannon, GCSO	Jesse Priest	Steve Sumner	81952FK	Driving under the Influence		2010 case
1:00 PM	Atkins, SCHP	Julian Alkhouri	Pro Se	F681339	Too Fast for Conditions	Kenneth Titus	
1:00 PM	Atkins, SCHP	Adam Dixon	Nihar Patel	F681315	Simple Possession of Marijuana	J Armstrong, Lab	
1:00 PM	Atkins, SCHP	Ryan Pace	Pro Se	F549885	Improper Lane Change	Daniel Rzeszutek	
1:00 PM	Atkins, SCHP	Melinda Rosemond	Pro Se	F735636	Speeding		
1:00 PM	Atkins, SCHP	Broadus Downs	Amanda Wicker	F064983	Driving under the Influence	Jennifer Brown, SLED Cathy Dykes, N. Greenville Hosp Beverly Fajardo	
1:00 PM	Atkins, SCHP	Ross Gillingham	Rodney Brown	F472355	Driving under the Influence	Jose Vasquez, MLT/N. Greenville Hosp S Sorrells, SLED	
1:00 PM	Atkins, SCHP	Anthony Richard	Kraig Pringle	F416677	Driving under Suspension		
1:00 PM	Weinmueller, GCSO	Timothy Lee	Pro Se	2012A2310300015	Petit Larceny	Louise Brown Lillie Evans Stanley Heard	
1:00 PM	Weinmueller, GCSO	James Brockman	Steve Sumner	75864, 65FK	Driving under the Influence, Open Container		2010 case
1:00 PM	Weinmueller, GCSO	Lisa Day	Brian Johnson	N200593, 95	Criminal Domestic Violence, Malicious Damage	Jeffrey Forant	
1:00 PM	Weinmueller, GCSO	Martha Pickney	Dick Warder	J993718	Shoplifting	Alphonso Holmes, Target	
1:00 PM	Weinmueller, GCSO	Joseph Williams	Jake Erwin	59079, 81FV	Driving under Suspension, Interfering with Officer		
1:00 PM	Weinmueller, GCSO	Sharon Wyatt	Steve Sumner	71702, 03FD	Driving under the Influence, Open Container	J Armstrong, Lab Hendricks, GCSO Fricks, P&E	2010 case

TUESDAY, MARCH 26, 2013

TIME	OFFICER/	DEFENDANT	ATTORNEY	CASE #	TYPE	VICTIM/	OUTCOME
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	AFFLIANT					WITNESS	
9:00 AM		<i>JURY SELECTION</i>					
10:00 AM							
11:00 AM							
1:00 PM							
2:00 PM							
3:00 PM							
4:00 PM							

WEDNESDAY MARCH 27, 2013

TIME	OFFICER/ AFFIANT	DEFENDANT	ATTORNEY	CASE #	TYPE	VICTIM/ WITNESS	OUTCOME
9:00 AM							
10:00 AM							
11:00 AM							
1:00 PM							
2:00 PM							
3:00 PM							
4:00 PM							

THURSDAY MARCH 28, 2013

TIME	OFFICER/ AFFIANT	DEFENDANT	ATTORNEY	CASE #	TYPE	VICTIM/ WITNESS	OUTCOME
9:00 AM							
10:00 AM							

11:00 AM							
1:00 PM	Westmoreland, GCSO	Reginald Epps	Darren Haley	72402FD	Unlawful Betting	Marchi, GCSO Jacobsen, GCSO Flounders, P&E Ronnie Pitts T Rodgers, GCSO	2010 case DATE CERTAIN
2:00 PM							
3:00 PM							
4:00 PM							



**SOUTH CAROLINA LAW ENFORCEMENT DIVISION
BREATH ALCOHOL ANALYSIS TEST REPORT
DRIVING UNDER THE INFLUENCE**



SUBJECT BIOGRAPHICAL INFORMATION

SUBJECT NAME: MARIA/ASOYAN
RACE: HISPANIC
SEX: F
DOB: 05/17/1983

DL NUMBER: 011471041
DRIVER'S LICENSE: SC
SUBJECT ADDRESS: 321 HICKORY LANE
MAULDIN, SC

ARREST INFORMATION

OFFICER NAME: J/R/JACKSON
TICKET NUMBER: 33341PV
ARREST DATE: 09/04/2011

AGENCY ORI: SC0230000
COUNTY OF ARREST: 23 - GREENVILLE
ARREST TIME: 03:20

OPERATOR INFORMATION

TEST OPERATOR: J/R/JACKSON
CERTIFICATION #: DMT000886
SOLUTION LOT #: 11801
BREATH TEST VIDEO RECORDED? YES
SUBJECT'S MOUTH CHECKED AND
ANY FOREIGN MATERIAL REMOVED? YES
SUBJECT ADVISED OF APPLICABLE RIGHTS? YES

AGENCY ORI: SC0230000
EXPIRATION DATE: 01/03/2013
BOTTLE: 1014
SUBJECT INFORMED OF VIDEO RECORDING? YES
SUBJECT INFORMED OF TYPE SAMPLE REQUESTED? YES
SUBJECT OBSERVED FOR A MINIMUM OF (20)
TWENTY MINUTES? YES

SUBJECT'S BREATH ALCOHOL TEST RESULTS

DATAMASTER DMT SERIAL #117607

TEST DATE:		09/04/2011
OBSERVATION START TIME:		03:33:11
BLANK TEST	0.00	04:14:10
INTERNAL STANDARD	VERIFIED	04:14:16
0.08% SIMULATOR TEMPERATURE	33.99°C	04:14:35
0.08% SIMULATOR VERIFICATION	0.079	04:14:35
BLACK TEST	8.00	04:15:28
~~INTERNAL STANDARD~~	~~0.00~~	~~04:16:49~~
BLANK TEST	0.00	04:16:49
INTERNAL STANDARD	VERIFIED	04:16:56

Subject's Signature

(Received Copy) Date/Time

Arresting Officer's Signature

Test Operator's Signature

VISIT WWW.SLED.SC.GOV AND CLICK ON IMPLIED CONSENT. THEN CLICK ON BREATH TEST VIDEO RECORDINGS. ENTER THE REQUESTED INFORMATION FROM THE BOX BELOW TO ACCESS THE VIDEO RECORDING OF THIS BREATH TEST:

SUBJECT ID: 003FD603E1
SUBJECT PASSWORD: 92DC8

Printed by
IPF

IMPORTANT NOTICE

INFORMATION FROM THIS REPORT WILL BE USED TO ACCESS THE BREATH TEST VIDEO. ANYONE WITH THIS INFORMATION WILL HAVE ACCESS TO THE VIDEO. PROTECT THIS REPORT AS YOU WOULD ANY IMPORTANT DOCUMENT. SLED ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED ACCESS.

SLED Form 1000-1 (Rev. April 2010)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

JUN 24 2016

SC Court of Appeals

The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2014-002317

Maria Moyao,

Appellant,

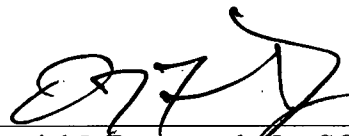
v.

South Carolina,

Respondent.

CERTIFICATE OF COUNSEL

I certify that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material. I also certify that the Amended Record on Appeal contains no matter which is irrelevant to this appeal.



Daniel J. Farnsworth, Jr. SC Bar #6922
Farnsworth Law Offices, LLC
211 Pettigru Street
Post Office Box 8719
Greenville, South Carolina 29604
(864) 250-9119
Attorney for Appellant

June 24th, 2015.