

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

R. Lawton McIntosh, Circuit Court Judge

ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RUSSELL ALAN TUPPER,

APPELLANT

APPELLATE CASE NO. 2015-000717

RECORD ON APPEAL

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1 State of South Carolina
2 County of Oconee In the Court of General Sessions

3
4 State of South Carolina,)
5)
6) 2014-GS-37-00503
7) 2014-GS-37-00504
8) 2014-GS-37-00505
9 -vs-)
10 Russell Alan Tupper,)
11)
12) March 23, 2015
13)
14) Volume I of II
15) Pages 1 - 112
16) Transcript of Record
17)
18)
19)
20)
21)
22)
23)
24)
25)

12 B E F O R E:

13 The Honorable R. Lawton McIntosh, Judge;
14 and a jury.

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

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17 Attorney for the State

18 Russell Warren Patrick, Esquire
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20 Attorneys for Defendant

23 Diane L. Marcengill, RPR, CRR
24 Circuit Court Reporter
25

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For the Court:

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1	Note from jury - foreperson	74	

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 10:20 a.m.)

4 THE COURT: Good morning, ladies and gentlemen.
5 My name is Lawton McIntosh. It's my pleasure to be
6 with you this week during the term of what we refer to
7 as general sessions, our criminal side of the court.
8 This term will last no further than Friday, from what
9 I'm advised, and so if you are selected, you can make
10 your plans accordingly.

11 Before we get started, I'm going to ask the clerk
12 to please swear you in and call the roll, please.

13 THE CLERK: Ladies and gentlemen, before we begin,
14 I do need to administer an oath to you so if everyone
15 would please stand.

16 (WHEREUPON, the prospective jury panel was sworn.)

17 THE CLERK: Let the record reflect that all
18 members of the jury have accepted the oath.

19 As I call your name, I will need for you to please
20 stand. We will need to know the name of your employer
21 and the job that you hold with that employer. If you
22 are married, we will need the same information for your
23 spouse. If you or your spouse are retired, we will
24 need to know your last jobs held.

25 Number 1, Lawrence Adkins.

1 POTENTIAL JUROR: HWI Environmental Technologies.
2 I'm a forklift operator. No spouse.

3 THE COURT: Okay. Thank you.

4 POTENTIAL JUROR: Thank you.

5 THE COURT: Number 2, Melvin Alexander.

6 POTENTIAL JUROR: South Carolina Department of
7 Transportation. Trade specialist three. Wife is Alice
8 Alexander. She works for Interim Healthcare at the
9 home health place.

10 THE COURT: Thank you.

11 Number 4, Debra Aref.

12 POTENTIAL JUROR: I'm a pharmacist. I work for
13 United Pharmacy Services, and my husband is a radiology
14 tech. Works for Cannon Memorial Hospital.

15 THE CLERK: Okay. Number 6, Jason Ashley.

16 POTENTIAL JUROR: I work for Glen Raven,
17 Incorporated in Anderson. And my wife is Shanon
18 Ashley. Process tech. Wife, School District of Oconee
19 County, and she's a teacher.

20 THE CLERK: Number 10, Brenda Bearden.

21 POTENTIAL JUROR: I'm disabled. My husband works
22 at Super Service in Walhalla.

23 THE CLERK: What does he do for Super Service?

24 POTENTIAL JUROR: He's a mechanic.

25 THE CLERK: Thank you.

1 Number 13, Robert Bishop.

2 POTENTIAL JUROR: Adams Motor Express, truck
3 driver. No spouse.

4 THE CLERK: Number 16, Gregory Boone.

5 POTENTIAL JUROR: Lift Technologies. I'm the
6 quality manager. No spouse.

7 THE CLERK: Number 18, Dee Brown.

8 POTENTIAL JUROR: I work at GHS/OMC. I'm a
9 scheduler, and my husband is a police officer with
10 Westminster PD.

11 THE CLERK: Number 23, Alice Campbell.

12 POTENTIAL JUROR: I work for the Oconee County
13 School District. I'm a school teacher. My husband,
14 Ken Campbell, works for Campbell & Partners in sales.

15 THE CLERK: Number 24, Demetrius Campbell.

16 POTENTIAL JUROR: Self-employed. I'm a barber.
17 Wife is Crystal. She's a hairstylist.

18 THE CLERK: Number 26, Kathra Carter.

19 POTENTIAL JUROR: I'm retired from the School
20 District of Oconee County and Learning Safari.
21 Retired.

22 THE CLERK: Okay. Number 27, Louis Carver.

23 POTENTIAL JUROR: I work at Oconee Joint Regional
24 Sewer Authority. My wife is disabled. She used to
25 work at Clemson University.

1 THE CLERK: What did she do at Clemson?

2 POTENTIAL JUROR: Lab technician, lab director.

3 THE CLERK: Thank you.

4 29, Charles Clark.

5 POTENTIAL JUROR: I work for Day & Zimmerman for
6 Ocone Nuclear, Duke Power. No spouse.

7 THE CLERK: What do you do there?

8 POTENTIAL JUROR: I'm a builder, scaffold builder.

9 THE CLERK: Thank you.

10 Number 31, Darius Clayburn.

11 POTENTIAL JUROR: I work for the City of
12 Greenville. I'm a maintenance tech II with the
13 wastewater division. My wife, Roshunda Clayburn, works
14 at Joe's Pizzeria. She's a supervisor.

15 THE CLERK: Okay. Number 32, Jeremy Conrad.

16 POTENTIAL JUROR: Outback Construction, general
17 labor. No spouse.

18 THE CLERK: Number 33, Lynn Cox.

19 POTENTIAL JUROR: I'm employed with Seneca Baptist
20 Church, financial secretary. My husband is employed at
21 Itron as a electrician.

22 THE CLERK: Number 34, Kevin Craig.

23 POTENTIAL JUROR: I'm a self-employed carpenter.
24 No spouse.

25 THE CLERK: Okay. Number 36, Kenneth Dailey.

1 POTENTIAL JUROR: I do not have one right now.

2 THE CLERK: Okay.

3 Number 39, Coleen Dent.

4 POTENTIAL JUROR: Formerly worked at Manus
5 Construction Corporation in Lexington. Unemployed
6 right now. My husband is a contracting officer, U.S.
7 Forest Service in Columbia, but now he does private
8 contracting up here in Walhalla.

9 THE CLERK: Number 43, Natasha Earle.

10 POTENTIAL JUROR: I work at Seneca Health and
11 Rehab, CNA.

12 THE CLERK: Number 45, Courtney Eller.

13 POTENTIAL JUROR: I'm a registered nurse at AnMed
14 Health, and I have no spouse.

15 THE CLERK: Number 47, Susan Engler.

16 POTENTIAL JUROR: Retired analyst, Ford Motor
17 Company. My husband is a retired engineer, Ford Motor
18 Company.

19 THE CLERK: Number 49, Kenneth Fey.

20 POTENTIAL JUROR: SNS South, supervisor; Kenny Fey
21 Photography, owner. No spouse.

22 THE CLERK: Number 51, Donnell Freeman.

23 POTENTIAL JUROR: I work for Itron Corporation.
24 I'm a network engineer. No spouse.

25 THE CLERK: Okay. Number 52, Glenda Gaines.

1 POTENTIAL JUROR: I work at the Tribble Center,
2 administrative assistant.

3 THE CLERK: Number 56, James Gray.

4 POTENTIAL JUROR: I'm a school teacher with the
5 School District of Oconee County, and my wife is a
6 teacher as well with the School District of Oconee
7 County.

8 THE CLERK: Okay.

9 Number 57, Joseph Griffin.

10 POTENTIAL JUROR: Disabled. My wife, Jennifer,
11 works at Covidien.

12 THE CLERK: What does she do for Covidien?

13 POTENTIAL JUROR: Team lead.

14 THE CLERK: Number 59, Tracy Haney.

15 POTENTIAL JUROR: Golden Corner Church, preschool
16 teacher and bookkeeping. Spouse works at Sage
17 Automotive and Management.

18 THE CLERK: Number 61, Andrea Harris.

19 POTENTIAL JUROR: Self-employed house cleaner. My
20 husband works for Upstate Scuba as a professional
21 diver.

22 THE CLERK: Number 62, Barton Harris.

23 POTENTIAL JUROR: I work for Wolters Kluwer. I
24 sell software, sales rep. My wife does not work.

25 THE CLERK: Number 65, Janie Henderson.

1 POTENTIAL JUROR: I'm a stay-at-home mom and my
2 husband works at Imagine Wear Uniform.

3 THE CLERK: Okay. Thank you.

4 Number 69, James Holbrooks.

5 POTENTIAL JUROR: Disabled. Formerly worked at
6 High Tech Development Center in Greenville, South
7 Carolina. No spouse.

8 THE CLERK: Okay. Number 70, Jessica Holbrooks.

9 POTENTIAL JUROR: Clemson University Foundation.
10 I'm a financial analyst.

11 THE CLERK: Okay. Number 71, Linda Holt.

12 POTENTIAL JUROR: I work for Schneider Electric,
13 geometry configuration specialist. My husband retired
14 from Elbert County Schools in Georgia.

15 THE CLERK: Number 75, Arie Jenkins-Hall.

16 POTENTIAL JUROR: I'm a substance abuse counselor
17 by trade, but I'm currently unemployed. I volunteer
18 full-time at the Truth Outreach. My husband's
19 currently unemployed, but he worked for Catalyst
20 Construction as a regular laborer.

21 THE CLERK: Thank you.

22 Number 76, Alex Johnson.

23 POTENTIAL JUROR: I work for Koyo Bearings,
24 robotic technician.

25 THE CLERK: Number 78, Demond Jones.

1 POTENTIAL JUROR: I work for Sandvik, bulldog
2 operator. My wife is Natasha Jones, medical assistant
3 at AnMed.

4 THE CLERK: Number 80, Richard Jones.

5 POTENTIAL JUROR: I'm a wastewater operator with
6 HTS technical and CRI Environmental. My wife works at
7 AnMed Hospital at the rehab service department.

8 THE CLERK: What does she do there?

9 POTENTIAL JUROR: She's a rehab therapist.

10 THE CLERK: Thank you.

11 Number 81, Paul Jordan.

12 POTENTIAL JUROR: Meat cutter for Food Lion. My
13 wife is a cook at Ingles in the deli.

14 THE CLERK: Number 82, George Kassler.

15 POTENTIAL JUROR: Retired computer system
16 consultant. No spouse.

17 THE CLERK: Number 89, Ashley Lane.

18 POTENTIAL JUROR: Flight attendant, Delta
19 Airlines. No spouse.

20 THE CLERK: Number 91, Tammy Lewin. Or is that
21 "Lewin"?

22 POTENTIAL JUROR: Lewin.

23 THE CLERK: Okay.

24 POTENTIAL JUROR: I'm a financial service rep at
25 GHS and Ocone, and my spouse James is a maintenance

1 supervisor for U.S. Engine Valve.

2 THE CLERK: Number 98, Daniel McCormick.

3 POTENTIAL JUROR: Unemployed with no spouse.

4 THE CLERK: Number 99, Kate McCrary.

5 POTENTIAL JUROR: Clemson University, office
6 manager.

7 THE CLERK: Number 102, Lindsey McKinney.

8 POTENTIAL JUROR: Stay-at-home mom. My husband
9 Andy is a probation officer for the Department of
10 Juvenile Justice here in Oconee.

11 THE CLERK: Number 104, James Merritt.

12 POTENTIAL JUROR: I work for Bolt Staffing at
13 Schneider Electric. I'm a builder. No spouse.

14 THE CLERK: 108, Michael Moore.

15 POTENTIAL JUROR: I work at Johnson Controls as a
16 process technician. My wife works there as well as a
17 production specialist.

18 THE CLERK: Number 110, Ernest Morris.

19 POTENTIAL JUROR: Business partner with Yoderbuilt
20 Construction, homes. My wife is a stay-at-home mother.

21 THE CLERK: Number 116, Glenda Nichols.

22 POTENTIAL JUROR: I work for Palmetto Advisors.
23 I'm an administrative assistant. My husband works at
24 U.S. Engine Valve as a linesman.

25 THE CLERK: Number 118, Jimmy Owens.

1 POTENTIAL JUROR: Disabled. My wife works for
2 Ocone Medical Center as an administrative assistant.

3 THE CLERK: Okay.

4 Number 123, Amanda Phillips.

5 POTENTIAL JUROR: I work at Head-Lee Nursery. I'm
6 in charge of office management, accounting, and my
7 husband works for Valspar Paint Corporation, and he's a
8 sales rep.

9 THE CLERK: Number 126, Lauren Purdy.

10 POTENTIAL JUROR: Koyo Bearings, machine operator.
11 No spouse.

12 THE CLERK: Number 129, Brian Ranck.

13 POTENTIAL JUROR: I'm an attorney. I work for
14 Sanders, Ranck & Skilling in Toccoa. My wife Allison
15 is a hospitalist at GHS AnMed Hospital.

16 THE CLERK: 130, Ashley Rice.

17 POTENTIAL JUROR: Ocone County Probate Court,
18 administrative assistant. And my husband is Corporal
19 Tim Rice with Ocone County Sheriff's Department.

20 THE CLERK: 131, William Rich.

21 POTENTIAL JUROR: Retired City of Aurora, Colorado
22 recreation superintendent. My wife is a nurse at Ty
23 Cobb Hospital.

24 THE CLERK: Number 28, Laura Schwartz.

25 POTENTIAL JUROR: I work for the School District

1 of Oconee County, and my husband is audio director for
2 World Outreach Center in Greenville.

3 THE CLERK: 143, Barbara Spoon.

4 POTENTIAL JUROR: I'm an RN employed as assistant
5 vice president at AnMed Health in Anderson, South
6 Carolina. My husband is the owner of Upstate Medical
7 Associates.

8 THE CLERK: Number 144, Nora Stancil.

9 POTENTIAL JUROR: I work for Tamassee DAR School.
10 My husband works for Backwater.

11 THE CLERK: What do you do for the DAR School?

12 POTENTIAL JUROR: Supervisor.

13 THE CLERK: And what does he do?

14 POTENTIAL JUROR: He's over landscaping and
15 maintenance.

16 THE CLERK: Thank you.

17 Number 145, Diane Stanton.

18 POTENTIAL JUROR: Retired Clemson University
19 College business officer. No spouse.

20 THE CLERK: Number 146, Kayla Swafford.

21 POTENTIAL JUROR: Stay-at home mom with no spouse.

22 THE CLERK: Number 149, Joel Thompson.

23 POTENTIAL JUROR: I'm a self-employed general
24 contractor. My wife does not work.

25 THE CLERK: Number 150, Pamela Tidwell.

1 POTENTIAL JUROR: Dental hygienist at Westminster
2 Smiles.

3 THE CLERK: Number 158, Matthew Vereb.

4 POTENTIAL JUROR: Ocone County rock quarry plant.
5 Mechanic Army National Guard. Wife works at GHS,
6 patient registrar.

7 THE CLERK: Number 160, Anthony Vincent.

8 POTENTIAL JUROR: Minister, Trinity Baptist
9 Church. My wife's a school teacher in the district.

10 THE CLERK: Number 165, Anthony Ward.

11 POTENTIAL JUROR: TLS Builders. Currently
12 separated.

13 THE CLERK: Number 168, Sema Watt.

14 POTENTIAL JUROR: Lila Doyle Nursing Facility,
15 CMA. Single.

16 THE CLERK: Number 169, Justin Weathersbee.

17 POTENTIAL JUROR: Wal-Mart stocker, third shift.
18 Wife doesn't work.

19 THE CLERK: Number 173, Vicki Woodward.

20 POTENTIAL JUROR: Sole owner/operator of Towne &
21 Country Styling Salon.

22 THE CLERK: And 175, Martha Zglinicki.

23 POTENTIAL JUROR: Administrative assistant at
24 Clemson University. My husband is an insurance agent
25 at Field Insurance.

1 THE CLERK: Is there anyone here whose name I did
2 not call, if you would, please stand.

3 Okay.

4 THE COURT: All right. Very good. Thank you,
5 ma'am.

6 All right. Ladies and gentlemen, my name is
7 Lawton McIntosh. I'm the resident circuit court judge
8 from Anderson County, next door, but Anderson County
9 and Oconee comprise what is known as the Tenth Judicial
10 Circuit, so I'm up here a good bit.

11 As I told you, this is a week of general sessions,
12 so it's criminal court. Before we get started in the
13 qualifications and exemptions in just a minute, let me
14 say something to you about your service this week. We
15 understand the court system, the inconvenience it is to
16 each and every one of you being called away from your
17 jobs or your homes and your family and having to sit
18 here in jury service. I think it's Winston Churchill
19 who said during peacetime, there's no higher service
20 that a person can do for their country than sit on a
21 jury.

22 That being said, hopefully we will make this as
23 inconvenient -- not as inconvenient as possible, excuse
24 me, and maybe make it somewhat educational. If anyone
25 has a problem -- if our bailiffs will stand up,

1 please -- grab one of these folks by the arm. They
2 know the inner workings of the courthouse probably as
3 good as anyone except for our clerk, and they can help
4 you out, direct you to me or to the clerk's office to
5 resolve any issues you may have.

6 But as I told you this morning, the purpose of our
7 questions are to determine whether or not you are
8 qualified to sit on a jury -- not whether you want to,
9 but whether you are qualified to sit on a jury, and the
10 next would be whether or not you have an exemption that
11 applies to you where you can say, "Even though I'm
12 qualified, I choose not to serve."

13 Certainly these questions are very personal, and
14 I'll tell you the state statutes require the trial
15 judge go over these questions with any jury panel. And
16 it may be that you do not want to stand up in front of
17 your peers and give the information out loud, and
18 that's quite okay. If a question pertains to you and
19 you do not wish to speak out, just make a mental note
20 that you need to respond, and at the end of this
21 process I'll let each and every one of you who desires
22 to come forward and speak to us in a more confidential
23 setting. But please keep in mind that it is absolutely
24 essential that we have both accurate and truthful
25 information, and I will remind you that you are under

1 oath.

2 With that being said, the first set of questions
3 have to do with your qualifications to serve. If
4 anyone doesn't hear me, raise your hand. Can y'all
5 hear me okay? Very good.

6 The first qualification question is this: Is any
7 member of the jury panel not a citizen of the United
8 States? If so, would you please stand.

9 Next question: Is there any member of the jury
10 panel who is not a citizen and resident of Ocone
11 County? If so, would you please stand.

12 Is there any member of the jury panel that is
13 unable to read, write, speak, or understand the English
14 language? If so, would you please stand.

15 Is there any member of the jury panel that has
16 less than a sixth grade education or its equivalent?
17 If so, would you please stand.

18 Is there any member of the jury panel that is
19 unable, because of an intellectual or physical
20 infirmity to render efficient jury service if you are
21 selected to serve this week? By efficient jury
22 service, you will need to be able to sit, stand, or
23 with some other reasonable accomodation, listen to the
24 statements of these attorneys, to the testimony that
25 will be elicited during the trial, to the law as I give

1 it to you at the end of this case and engage in
2 meaningful deliberations. But if there is a juror who,
3 because of intellectual or physical infirmity who
4 cannot render efficient jury service and you don't mind
5 standing at this juncture, would you please do so.

6 Okay. Would you give me your jury number, please.
7 It should be on your little sticker.

8 POTENTIAL JUROR: Ten.

9 THE COURT: You're Ms. Bearden?

10 POTENTIAL JUROR: Uh-huh.

11 THE COURT: Do you mind telling me what your
12 problem is or would you rather speak to me --

13 POTENTIAL JUROR: I have got three rods and 12
14 screws in my neck.

15 THE COURT: I'm sorry?

16 POTENTIAL JUROR: I got three rods and 12 screws
17 in my neck, and I got pins in my legs, and I have to
18 sit my back and head up against something to where my
19 head -- if I sit up too long, my head starts falling
20 over and I ain't got no control over it.

21 THE COURT: Goodness. Okay. So you don't think
22 there's any reasonable accomodation we could make for
23 you?

24 POTENTIAL JUROR: No.

25 THE COURT: Do you wish to be excused?

1 POTENTIAL JUROR: Please.

2 THE COURT: All right. Ms. Bearden, thank you for
3 coming. I'll tell you that the clerk is going to send
4 you a big check in the mail. Don't spend it all in one
5 place. Okay?

6 POTENTIAL JUROR: Thank you.

7 THE COURT: Yes, ma'am.

8 Anyone else? Has any member of the jury panel
9 been convicted by a guilty plea or trial in a state or
10 federal court of record of a crime by a punishment of
11 more than one year -- more than one year -- and your
12 civil rights have not been restored by pardon or
13 amnesty? Now, by more than one year, what I mean is
14 you could have received a sentence in excess of a year,
15 although you may have received a sentence of a year or
16 less. If that applies to you and you don't mind
17 standing, would you please do so.

18 Okay, sir. What number are you?

19 POTENTIAL JUROR: 149.

20 THE COURT: 149? You're Mr. Thompson?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: Okay, sir. And what was your charge?

23 POTENTIAL JUROR: Possession of drugs.

24 THE COURT: Well, you have to be a little more
25 specific because first offense possession of marijuana

1 is a 30-day charge, if I'm not mistaken.

2 POTENTIAL JUROR: The charge was 37 years ago. I
3 don't remember.

4 THE COURT: Tell you what. If you would, at the
5 end of this process, would you come forward. We can
6 check that for you.

7 POTENTIAL JUROR: Okay.

8 THE COURT: Thank you, sir.

9 Anyone else?

10 Is any member of the jury panel a clerk or deputy
11 clerk of court, constable, sheriff, or other
12 commissioned law enforcement officer, probate judge,
13 county commissioner, magistrate, other county officer
14 or employed within the walls of any courthouse? If so,
15 would you please stand.

16 POTENTIAL JUROR: Your Honor, I don't think this
17 applies.

18 THE COURT: Just one second. What was your jury
19 number?

20 POTENTIAL JUROR: 129.

21 THE COURT: 129. One second, please. Mr. Ranck?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: Okay.

24 POTENTIAL JUROR: I'm the county attorney, Stevens
25 County. I'm not on their payroll. I don't know if

1 that answers your question, if that's a requirement or
2 not.

3 THE COURT: I appreciate you disclosing that. I
4 don't think that would excuse you. Okay? Thank you
5 very much.

6 POTENTIAL JUROR: Thank you.

7 THE COURT: Anyone else?

8 Is there any member of the jury panel who has
9 previously served here in circuit court as opposed to
10 magistrate's court, city court, or federal court this
11 calendar year, in 2015? If you have previously served
12 in circuit court in 2015, you would not be eligible to
13 serve again in 2015. If that applies to you, would you
14 please stand.

15 Is there any member of the jury panel a member of
16 the Oconee County Grand Jury for the last several
17 years? If so, would you please stand.

18 All right. Ladies and gentlemen, those are the
19 questions that have to do with your qualifications.
20 The next set of questions are exemptions which simply
21 means, again, that you are qualified to serve, but if
22 the exemption applies to you, you have a right to say
23 "I choose not to serve."

24 The first of those would be those of you who may
25 have attained the age of 65 years or older. If you're

1 65 years or older, you have a right to say, "I choose
2 not to serve this week." Before any of you who may fit
3 that criteria exercise your exemption, let me urge you
4 to stay with us. If you've made it 65 years on this
5 earth, you could be of benefit to any jury we have out
6 there.

7 But with that being said, you have the absolute
8 right to say, "I choose not to serve." So if there's
9 any jury member who is 65 years or older who chooses to
10 be exempt this week, would you please stand.

11 Okay, sir. What is your jury number?

12 POTENTIAL JUROR: 82.

13 THE COURT: 82? Mr. Kassler?

14 POTENTIAL JUROR: That's right.

15 THE COURT: And you're 65 or older?

16 POTENTIAL JUROR: Yes, I am.

17 THE COURT: And you wish to exercise your
18 exemption?

19 POTENTIAL JUROR: I do.

20 THE COURT: Okay, sir. Thank you for coming
21 today, but you will be excused. And like the other
22 lady, you will receive a big check as well. Okay?

23 All right. Anyone else?

24 All right. Another exemption has to do with prior
25 jury service. In South Carolina, a juror in state

1 court as opposed to federal court, city court, or
2 magistrate's court, can only be required to serve once
3 every three calendar years. Now, the prior question on
4 qualification asked whether or not you served in 2015
5 which would make you not qualified.

6 However, if you served in 2014 or 2013, you would
7 be qualified, but you also would have a right to claim
8 the exemption not to serve more often than once every
9 three calendar years. So if that applies to you and
10 you wish to be exempt, would you please stand.

11 Very good.

12 Also, anyone who has served as Grand Jurors
13 anywhere in South Carolina within the last five
14 calendar years has a right to claim an exemption. If
15 that applies to you and you wish to be exempt, would
16 you please stand.

17 All right. Ladies and gentlemen, the next
18 exemption has four subparts, all of which must apply
19 before you can claim the exemption, but it has to do
20 with those of you who have small children, that you may
21 be exempt from jury service if: Number one, you have a
22 small child or children under -- under the age of
23 seven. Number two, you have legal custody of your
24 child or children. Number three, you are the principal
25 caretaker of your child or children. And number four,

1 you would be unable to make suitable arrangements for
2 the care of your child or children if you were required
3 to serve this week.

4 If all four of those subparts apply to you and you
5 wish to be exempt, would you please stand.

6 Okay. Over here. What's your jury number?

7 POTENTIAL JUROR: 102.

8 THE COURT: 102? You're Ms. McKinney?

9 POTENTIAL JUROR: Yes, sir.

10 THE COURT: And you have a child that's under
11 seven?

12 POTENTIAL JUROR: 15 months.

13 THE COURT: Well, I would say that's under seven.
14 Do you wish to be exempt?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: And all those subparts apply to you?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Okay. Thank you for being here.

19 POTENTIAL JUROR: Thank you.

20 THE COURT: Okay.

21 POTENTIAL JUROR: I'm number 43.

22 THE COURT: 43? Ms. Earle?

23 POTENTIAL JUROR: Yes. I have a two-year-old and
24 a three-year-old.

25 THE COURT: And same thing. Do all those subparts

1 apply to you?

2 POTENTIAL JUROR: Yes.

3 THE COURT: You wish to be exempt?

4 POTENTIAL JUROR: Yes.

5 THE COURT: Thank you so much for coming.

6 Yes, ma'am.

7 POTENTIAL JUROR: 146.

8 THE COURT: Ms. Swafford, same thing?

9 POTENTIAL JUROR: Yes.

10 THE COURT: You wish to be exempt?

11 POTENTIAL JUROR: Please.

12 THE COURT: Thank you for coming this morning.

13 Anyone else?

14 POTENTIAL JUROR: 150.

15 THE COURT: 150?

16 POTENTIAL JUROR: Yes.

17 THE COURT: Ms. Tidwell?

18 POTENTIAL JUROR: Yes. My son is actually seven,
19 but I'm a single parent.

20 THE COURT: Tell you what. At the end of this
21 process, Ms. Tidwell, come talk to me and we'll work
22 out something that will be suitable.

23 Anyone else?

24 All right. The next exemption, ladies and
25 gentlemen, applies to those of you who may be attending

1 school or working at an educational institution. It
2 applies whether or not it's a public school, a private
3 school, or a technical school. If this exemption
4 applies to you, you will not be excused from service,
5 but you will be transferred to a term of court that
6 will not interfere with your education or your work at
7 an educational institution.

8 So if there's any member of the jury panel that is
9 a full-time student, a teacher, certified personnel,
10 crossing guard, school bus driver, or who works in some
11 other capacity at a public, private, or technical
12 school who wishes to be transferred to another term of
13 court, would you please stand.

14 Okay. On the front row, what's your jury number?

15 POTENTIAL JUROR: 23.

16 THE COURT: You are Ms. Campbell? And I didn't
17 write down. You work at Clemson?

18 POTENTIAL JUROR: I teach at Walhalla High School.

19 THE COURT: Okay. And I assume that you're not
20 teaching during the summer?

21 POTENTIAL JUROR: No.

22 THE COURT: Is there a month in the summer that
23 would suit you better, June, July, August? I know none
24 of them really do.

25 POTENTIAL JUROR: July.

1 THE COURT: Ma'am?

2 POTENTIAL JUROR: July.

3 THE COURT: Do we have a term in July?

4 THE CLERK: We do. I think we just have one, but
5 we do.

6 DEPUTY CLERK: Well, we haven't gotten our July
7 schedule yet.

8 THE CLERK: We do have a term in July, we just
9 don't have it up here yet.

10 THE COURT: You will receive another notice in the
11 mail that will tell you the date and time you're
12 supposed to be here, so we will excuse you. And once
13 you get your notice, you will need to come back,
14 please. Thank you so much.

15 POTENTIAL JUROR: Thank you.

16 THE COURT: What is your jury number?

17 POTENTIAL JUROR: 98.

18 THE COURT: 98?

19 POTENTIAL JUROR: Uh-huh.

20 THE COURT: You're Ms. McCormick?

21 POTENTIAL JUROR: Uh-huh. I attend Southern
22 Wesleyan University.

23 THE COURT: And you're a full-time student?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: Would you rather be transferred to the

1 summer?

2 POTENTIAL JUROR: Please.

3 THE COURT: June, July, August?

4 POTENTIAL JUROR: June or July, either one.

5 THE COURT: Okay. Since we know we have a July
6 term, I'm going to go ahead and put you down for that.
7 You will receive a new notice in the mail, just like
8 this other lady. You will need to come back. Good
9 luck with your school.

10 POTENTIAL JUROR: Thank you.

11 THE COURT: Anyone else?

12 Is there any member of the jury panel who is
13 employed with the Department of Corrections at a
14 penitentiary? If so, would you please stand.

15 Is there any juror who performs service for a
16 business, commercial, or agricultural enterprise which
17 is so essential to the operation of that business that
18 if you were selected to serve this week, that business
19 would have to shut its doors and not operate while
20 you're performing your services as a juror? If that
21 applies to you and you wish to be exempted, please
22 stand.

23 I saw one spring up over there. You're -- I think
24 I wrote down you're sole owner of a business; is that
25 right?

1 POTENTIAL JUROR: That's correct.

2 THE COURT: What's the name of your business?

3 POTENTIAL JUROR: Towne & Country Styling Salon.

4 THE COURT: And is anybody else there?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: And it's shut down right now?

7 POTENTIAL JUROR: It's shut down right now.

8 THE COURT: Do you wish to be excused?

9 POTENTIAL JUROR: Yes, please.

10 THE COURT: What's your jury number?

11 POTENTIAL JUROR: 173.

12 THE COURT: 173. Just for the record, ma'am, you
13 are Ms. Zglinicki?

14 POTENTIAL JUROR: No, Vicki Woodward.

15 THE COURT: Oh, Woodward. Excuse me. I read my
16 numbers wrong. Thank you so much for coming.

17 POTENTIAL JUROR: Thank you.

18 THE COURT: All right. Sir, you're the
19 contractor; is that right?

20 POTENTIAL JUROR: Yes, sir.

21 THE COURT: What number are you? I just, for some
22 reason, I missed my notes. 149?

23 POTENTIAL JUROR: 149, yes, sir.

24 THE COURT: You're Mr. Thompson?

25 POTENTIAL JUROR: Yes.

1 THE COURT: And what type of contractor are you?

2 POTENTIAL JUROR: I'm a general contractor.

3 THE COURT: You're a general contractor?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: Now, what kind of contracting do you
6 do? Are you doing construction?

7 POTENTIAL JUROR: Yes, residential and commercial
8 remodeling and construction.

9 THE COURT: Okay. And how many employees do you
10 have?

11 POTENTIAL JUROR: Myself.

12 THE COURT: That's it?

13 POTENTIAL JUROR: That is it.

14 THE COURT: And I assume that the doors are shut
15 right now?

16 POTENTIAL JUROR: They are.

17 THE COURT: You wish to be excused?

18 POTENTIAL JUROR: Please.

19 THE COURT: All right, sir. You are excused.
20 Thank you for coming.

21 All right, sir. What's your juror number?

22 POTENTIAL JUROR: 24.

23 THE COURT: 24? You're Mr. Campbell?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: Okay.

1 POTENTIAL JUROR: Well, I'm a barber. I'm also a
2 barber instructor, and I have two students. They can't
3 be on the job site without me being there.

4 THE COURT: Tell you what. Come talk to me at the
5 end of this process. Let me get a little more
6 information from you.

7 POTENTIAL JUROR: Okay.

8 THE COURT: Thank you.

9 Anyone else?

10 All right. Is there any juror who is the primary
11 caretaker of a severely disabled person who is not
12 capable of being left by him or herself or is there
13 someone who is a primary caretaker of someone who is
14 65 years or older? If this exemption applies to you
15 and you wish to be excused, would you please stand.

16 All right. Ladies and gentlemen, that concludes
17 the questions that have to do with qualifications -- or
18 exemptions. It may be that you're qualified and that
19 no exemption applies to you, however, having to serve
20 this particular week may present you with an undue
21 hardship. State law does not allow me to excuse
22 qualified and nonexempt jurors. However, under
23 compelling circumstances, I'm allowed to transfer you
24 to another term of court which may not be such a
25 hardship for you.

1 If anybody would like me to entertain a request to
2 be transferred to another term of court, would you
3 please stand..

4 What is your jury number?

5 POTENTIAL JUROR: 26.

6 THE COURT: You are Ms. Carter?

7 POTENTIAL JUROR: Yes.

8 THE COURT: Do you mind telling me what your
9 circumstances are?

10 POTENTIAL JUROR: I have surgery scheduled for
11 Thursday and pre-op on Wednesday.

12 THE COURT: I would say that qualifies. Okay. Is
13 there any particular month of the year that you would
14 like to be transferred to?

15 POTENTIAL JUROR: Not in particular.

16 THE COURT: I'm going to go ahead and put you in
17 July. Is that okay?

18 POTENTIAL JUROR: That will be fine.

19 THE COURT: You will receive a new notice. And
20 good luck with your surgery.

21 POTENTIAL JUROR: Thank you.

22 THE COURT: Yes, ma'am.

23 Anyone else?

24 All right. Ladies and gentlemen, it may be -- if
25 you did not respond earlier and you needed to, or if I

1 asked you to come forward and speak with me or if you
2 have a question as to whether or not you're qualified
3 or exempt or you want me to consider a transfer
4 request, if you would turn up and walk to the door in
5 front of the courtroom at the bar, and I'll be glad to
6 speak with you on an individual basis.

7 THE COURT: Hey.

8 POTENTIAL JUROR: I just.

9 THE COURT: Just one second. Let's make sure we
10 get this down. You are Ms. Jenkins-Hall?

11 POTENTIAL JUROR: Uh-huh. I just want -- I take a
12 lot of medication and I just wanted to know if I could
13 have water throughout.

14 THE COURT: Sure. We can let you have water in
15 the courtroom if you need it.

16 POTENTIAL JUROR: My mouth just stays --

17 THE COURT: I will be in trouble, so you owe me.

18 POTENTIAL JUROR: My mouth just stays so dry. I
19 just take a lot of medication.

20 THE COURT: Sure.

21 POTENTIAL JUROR: That's all I need.

22 THE COURT: Does it affect your ability to
23 comprehend and understand what's going on?

24 POTENTIAL JUROR: No. It helps. I have ADHD, so
25 I take Adderall, and it makes me very dry.

1 THE CLERK: We keep water carafes in the back, so
2 you can just fill a cup if you are chosen and bring it
3 out with you.

4 POTENTIAL JUROR: Okay.

5 THE CLERK: We'll provide it for you.

6 THE COURT: Thank you so much.

7 You are?

8 POTENTIAL JUROR: 13.

9 THE COURT: Mr. Bishop?

10 POTENTIAL JUROR: I'm wearing a colostomy bag. I
11 have early stages of colon cancer, so radiation is in
12 the process.

13 THE COURT: Do you want me to excuse you? I'll be
14 glad to.

15 POTENTIAL JUROR: Yeah, because I'm going to have
16 to do some radiation this week.

17 THE COURT: Yeah, I'll excuse you.

18 POTENTIAL JUROR: It's a good diet plan because I
19 used to be 300 pounds.

20 THE COURT: Good. You look better. I hope it
21 goes well.

22 Hey, how you doing?

23 POTENTIAL JUROR: Doing good.

24 THE COURT: 24. Mr. Campbell, you say you're a
25 barber?

1 POTENTIAL JUROR: Yes, sir. And I'm an
2 instructor, and I got two students. They can't work,
3 you know, unless I'm on site.

4 THE COURT: How -- what am I trying to say? What
5 are the terms of their classes, January through June?

6 POTENTIAL JUROR: Well, it's -- I mean, it's
7 year-round until they get their 1920. It's 1920 hours
8 you have to have, so it's year-round until they finish
9 those hours.

10 THE COURT: Do you work at a business here?

11 POTENTIAL JUROR: Yes. We have a business. We
12 own a business.

13 THE COURT: And is it like if I were to go get my
14 hair cut now, could I get in?

15 POTENTIAL JUROR: No. We're open Tuesday through
16 Saturday.

17 THE COURT: Well, on Tuesday, if I were to walk
18 in, in other words if you were up here serving, does
19 the place still operate?

20 POTENTIAL JUROR: No. My wife is there. She does
21 women's hair but no men's hair.

22 THE COURT: All right. I'm going to excuse you.

23 POTENTIAL JUROR: I appreciate it.

24 THE COURT: Take care.

25 POTENTIAL JUROR: Thank you.

1 THE COURT: If anybody has any objections to me
2 excusing anybody, just let me know.

3 Hey.

4 POTENTIAL JUROR: Hey. 123.

5 THE COURT: You are 123, Ms. Phillips?

6 POTENTIAL JUROR: Uh-huh. I have an 18-month-old
7 and I'm still breast-feeding.

8 THE COURT: Well, I think that qualifies.

9 POTENTIAL JUROR: Okay. I didn't know if you
10 would let me pump or anything during.

11 THE COURT: Well, I would if that's however we can
12 reasonably accommodate you. We'd be glad to do that.

13 POTENTIAL JUROR: I don't know how convenient that
14 would be.

15 THE COURT: You tell me.

16 POTENTIAL JUROR: I think I would rather be
17 excused.

18 THE COURT: That shocks me.

19 POTENTIAL JUROR: I honestly plan to stop within
20 the next few months.

21 THE COURT: Boy or girl?

22 POTENTIAL JUROR: Little girl.

23 THE COURT: How's she doing?

24 POTENTIAL JUROR: Great.

25 THE COURT: Mine is getting ready to go into med

1 school. It goes fast, I'm telling you. All right.

2 I'm going to excuse.

3 POTENTIAL JUROR: Thank you.

4 MS. BLUNDY: What was your number?

5 POTENTIAL JUROR: 123.

6 MS. BLUNDY: Thank you.

7 THE COURT: Hey. You are?

8 POTENTIAL JUROR: Pamela Tidwell, 150. I'm a
9 single parent, and I'm the only source of income for my
10 family, and it's going to be a burden to be off for a
11 whole week without pay.

12 THE COURT: Where do you work?

13 POTENTIAL JUROR: Westminster Smiles in
14 Westminster.

15 THE COURT: I'm going to do like Judge Macaulay,
16 let you go.

17 POTENTIAL JUROR: I appreciate it. Thank you so
18 much.

19 THE COURT: What's your juror number?

20 POTENTIAL JUROR: 78, Demond Jones.

21 THE COURT: Mr. Jones?

22 POTENTIAL JUROR: Yeah. My two youngest, I have a
23 three and four-year-old in the house. My
24 three-year-old this weekend, we had to take her to the
25 emergency room. She has strep, and right now I have my

1 18-year-old watching them so she had to take the day
2 off school, and she's a senior, so I don't really want
3 to keep pulling her out. I work third. My wife works
4 admin. She usually gets off at 5:00, so I have nobody
5 between 3:00 and 5:00 to get my son off the bus or
6 watch the kids.

7 THE COURT: All right. I'm going to excuse you
8 this week.

9 POTENTIAL JUROR: Appreciate it.

10 THE COURT: Good luck to you, man.

11 POTENTIAL JUROR: Hi, Judge.

12 THE COURT: Hey. How you doing?

13 POTENTIAL JUROR: Good. How y'all doing this
14 morning?

15 THE COURT: 129?

16 POTENTIAL JUROR: Yes, sir. I've got a question.

17 THE COURT: Mr. Ranck?

18 POTENTIAL JUROR: Yes, sir. I've got a couple
19 things going on this week, and my question was going to
20 be if I could, maybe if the Court would move me to a
21 date where I could, like July or something where I
22 could put on my calendar, do a leave of absence if I
23 need to. I've got tomorrow night a county commission
24 meeting 5:30. I'm the county attorney. I need to be
25 there if I can. I can't really stick my partners into

1 it if I can avoid that because it's stuff that I've
2 been working on. On Wednesday I've got a refinance on
3 our -- that we have scheduled at Gruber Sires' that our
4 rate lock expires so. I don't know how that works. I
5 can call his office and go early or late. I can
6 probably work around that. I have a court appearance
7 tomorrow in Douglas County, Georgia. It's on the west
8 side of Georgia. I've already talked to the judge, and
9 he's going to let me off.

10 THE COURT: Is that Judge Smith?

11 POTENTIAL JUROR: That's my former law partner in
12 Toccoa. What I was going to ask. I'd love to serve.
13 I want to serve. But if there is a July date or a date
14 you could give me, do a leave of absence and come back.

15 THE COURT: We'll move you to July.

16 POTENTIAL JUROR: Do you know the date? I
17 understand the importance of serving. I just have a
18 lot on my plate.

19 (Discussion with the clerk.)

20 THE COURT: Tell Rusty I said hello.

21 POTENTIAL JUROR: Thank you. I appreciate that.

22 THE COURT: What's your jury number, 36?

23 POTENTIAL JUROR: 36.

24 THE COURT: Mr. Dailey?

25 POTENTIAL JUROR: Yes, sir. I'm on a rehab

1 program, Ash Tree program. I figured I'd bring that to
2 your attention.

3 THE COURT: Where do you meet?

4 POTENTIAL JUROR: I stay there for ten months.
5 Ash Tree program in Walhalla.

6 THE COURT: Ash Tree?

7 POTENTIAL JUROR: Yes.

8 THE COURT: I'm not familiar with that.

9 MR. BURR: It's a residential program we have in
10 Walhalla.

11 THE COURT: So if I transfer you to the summer,
12 then --

13 POTENTIAL JUROR: That would work.

14 THE COURT: Take the time. You work somewhere or
15 no?

16 POTENTIAL JUROR: Not yet.

17 THE COURT: So we'll put you in July okay?

18 POTENTIAL JUROR: Okay.

19 THE COURT: Good luck to you. Good luck with your
20 treatment.

21 THE CLERK: If it's ten months, you need to wait
22 until he's finished.

23 THE COURT: How far you been in?

24 POTENTIAL JUROR: Three weeks. I just started.

25 THE CLERK: We'll transfer you after the first of

1 the year. Is that okay? That will give you ten
2 months.

3 THE COURT: Good luck to you.

4 POTENTIAL JUROR: Appreciate it.

5 THE COURT: Hey.

6 POTENTIAL JUROR: Hey. Juror 27.

7 THE COURT: Okay, sir. You are Mr. Carver?

8 POTENTIAL JUROR: Yes. My wife is on Medicare and
9 I'm a payee representative for her. She cannot read or
10 write, and I have to take care of all the finances and
11 I work, so I have to go back and forth from working and
12 home and check the finances and pay the bills, so.

13 THE COURT: Hang on for a second. Your wife is on
14 Medicare?

15 POTENTIAL JUROR: Yes.

16 THE COURT: What's the nature of her disability?

17 POTENTIAL JUROR: She has screws in her foot,
18 arthritis, she has diabetes, heart trouble, high blood
19 pressure, she's overweight, and she cannot read or
20 write less than a sixth grade education.

21 THE COURT: Where do you work?

22 POTENTIAL JUROR: Oconee Regional Sewer Authority.

23 THE COURT: And what are your hours of work?

24 POTENTIAL JUROR: 8:00 to 5:00.

25 THE COURT: 8:00 to 5:00?

1 POTENTIAL JUROR: Yeah. And I return, go home and
2 check on her.

3 THE COURT: At lunchtime?

4 POTENTIAL JUROR: Yeah.

5 THE COURT: Well, if we let you go home at
6 lunchtime and do that, will that be sufficient?

7 POTENTIAL JUROR: Yeah.

8 THE COURT: If you get selected, let us know.
9 We'll make accommodations. I'm going to ask you to
10 stick around with us. Thank you so much.

11 POTENTIAL JUROR: Okay.

12 THE COURT: Good morning.

13 POTENTIAL JUROR: I have a question about the --
14 number 80.

15 THE COURT: Mr. Jones.

16 POTENTIAL JUROR: The door is not close, that's my
17 question. I can do jury duty, but I have to work
18 before or after or both. This morning I've already
19 been to work, and whenever we get done, I'll have to go
20 back.

21 THE COURT: What kind of work do you do?

22 POTENTIAL JUROR: I'm an environmental contractor.
23 I have a room -- in fact, this morning I have been to
24 Belton and Powdersville. When I get done, I go to
25 Pendleton and back to Belton. We're required --

1 THE COURT: Who do you work for?

2 POTENTIAL JUROR: Couple different companies.

3 HTS. I'm just a contractor, not a full-time employee.

4 THE COURT: Do you own your own business?

5 POTENTIAL JUROR: I do.

6 THE COURT: Or HTS?

7 POTENTIAL JUROR: Yeah, I guess, but I'm just
8 contracted out for them. I don't know if I'm
9 explaining this. They sell their services and they
10 hire independent contractors like me to do the work I
11 am required to do.

12 THE COURT: Do you get a W-2 at the end of the
13 year?

14 POTENTIAL JUROR: With one of them I do. One of
15 them I don't. I have three employers. But my question
16 is some of these, the stops I have to go to, I'm
17 mandated by DHEC to be there if they're going to run.

18 THE COURT: Well, I tell you what I can do. I can
19 transfer you to a term that may not be such a problem
20 for you because you don't seem like you fit in the
21 classification to let you out. That way you can plan
22 with DHEC, say, "Don't assign me this particular week
23 because I may be --

24 POTENTIAL JUROR: DHEC doesn't assign me. It's
25 just the plant, if they want to discharge water, they

1 have to have me there. And right now there is no one
2 else. Like I said, tonight I'll be there whatever time
3 I have to be there.

4 THE COURT: What I can do would be transferring
5 you, make it easier so you can put everybody on notice.

6 POTENTIAL JUROR: Like I said, I'm it. Whether
7 it's sick or weekends, it doesn't matter. That's why I
8 want to come up here and ask you. It's not the doors
9 are closed, but I will have to find a way to get there.
10 Every 24 hours I must be there or they violate the law
11 and I violate my license if they were to discharge. I
12 know it's kind of convoluted.

13 THE COURT: I understand that. I'm just thinking
14 of the best way. Every time I say the chances of you
15 getting selected on a jury are not great, and every
16 time I say that, they get selected.

17 POTENTIAL JUROR: Right.

18 THE COURT: But I can put you back into the fall
19 somewhere where you might go ahead and think of some
20 system that you can protect yourself better than you
21 have now or let you take a chance, but you don't want
22 to get into the exemptions. So what would you rather
23 do?

24 POTENTIAL JUROR: I'd rather try to get it over
25 with. I'm not trying to be hateful.

1 THE COURT: If you have a problem, a particular
2 problem, you just make sure you let me know and we'll
3 try our best to accommodate you. Thank you.

4 Anyone one else?

5 All right.

6 We'll go over the rules and take a quick break and
7 come back and select a jury. First, I don't know if
8 they let you in the courthouse with any type of cell
9 phones or iPhones or any other type of apparatus
10 capable of making sounds or noises, but you're not
11 allowed to have them in the courtroom if you are
12 selected on a jury. I can tell you I travel all over
13 South Carolina, and during the most inopportune times
14 we have circumstances of phones going off and
15 disrupting the proceedings. So if you are selected or
16 you are asked to come back this week as a juror, or a
17 potential juror, please leave your phones in your cars
18 or at home so that they won't interrupt the
19 proceedings.

20 In Anderson and in Oconee and communities of this
21 size, we typically do everything in the big courtroom
22 which means that you may have an opportunity to bump
23 into one of the attorneys on this case or these cases,
24 a witness, or a party.

25 Now, the attorneys know, their clients have been

1 advised that they're not to have any interaction with
2 any potential juror, any member of the jury panel.
3 However, if you happen to know someone who is a party,
4 who is a witness or one of the attorneys here, do not
5 try to engage them in conversation. They know they
6 can't speak with you. If they don't respond, they're
7 not being rude, they are just doing what they have been
8 advised. If the other side sees someone speaking to a
9 lawyer or witness, they're going to think there's
10 improper ex parte communications going on. It's okay
11 to nod and shake your head at each other and
12 acknowledge them, but don't go beyond that.

13 Also I will typically start court at around 9:30.
14 Sometimes at 9:00. If you are asked to be here at
15 9:30, if you would be here about 9:20, I'll do my best
16 to move the proceedings on so that you are not sitting
17 around waiting for us to get started.

18 I'll tell you that sometimes it's inevitable that
19 you will sit back in your jury room, but I can give you
20 my assurance it won't be because we're sitting here not
21 working. Sometimes we have to do things out of your
22 presence, but if you're five or ten minutes late, and
23 you multiply that across the board, sometimes it gets
24 substantial.

25 Madam Clerk, we have a letter or what is it, the

1 number that we call?

2 THE CLERK: The letter they were handed when they
3 come up, big bold letters, instructions at the top of
4 the page.

5 THE COURT: Does everybody still have that notice
6 that you were handed when you came up that has a number
7 on it? Let me ask, is there anyone who does not have
8 it? On that notice you will see a bold number. This
9 is a call-in number. If you would, until you receive a
10 message on that answering machine not to come back and
11 that you have been excused, if you would call every
12 night after 6 o'clock, there will be a message on
13 there. It won't be there until 6:00, so if you will
14 call after 6 o'clock, there will be a message as to
15 when you need to return or whether you need to return.

16 With that being said, let's take about a
17 ten-minute break and then we'll come back to jury
18 selection and our first trial.

19 May I see the attorneys right quick, please.

20 (WHEREUPON, recess taken from 11:09 a.m.
21 to 11:26 a.m.)

22 THE COURT: State ready to call its case?

23 MS. BLUNDY: Yes, your Honor, we are.

24 THE COURT: Would you announce your case, please,
25 ma'am.

1 MS. BLUNDY: Thank you. May it please the Court.

2 We're here on the State of South Carolina versus
3 Russell Alan Tupper, 2014-GS-37-503, driving under the
4 influence; 504, driving under suspension; 505, habitual
5 traffic offender.

6 THE COURT: Very good. Would you pass those
7 forward, please.

8 Ladies and gentlemen, can you hear me okay? Very
9 good.

10 We're about to start jury selection in the case of
11 State versus Russell Alan Tupper on the charges
12 identified by the State. Before we do, let me point
13 out to you the fact that this gentleman has been
14 indicted. These documents in my hand are not evidence
15 of his guilt, nor does it raise an inference or
16 presumption of his guilt. This is simply the charging
17 mechanism by which the State of South Carolina will
18 bring in someone for trial and a determination whether
19 or not they're guilty or innocent.

20 Now, I believe the attorneys confirmed that it's
21 five and five on strikes, correct?

22 MS. BLUNDY: That is correct.

23 THE COURT: And on the alternate, I think both
24 parties want an alternate; is that correct?

25 MS. BLUNDY: That is correct.

1 MR. PATRICK: Yes, your Honor.

2 THE COURT: And two for the defense, one for the
3 State on alternates, right?

4 Now, ladies and gentlemen, I have to ask some more
5 specific questions in this case other than the general
6 qualification exemption questions. Unless you have an
7 absolute need, I'm just going to ask you to stand up
8 where you are and give me your jury number and your
9 response.

10 Now, if you feel compelled, I'll still let you
11 come forward, but these are not nearly as personal.

12 The first question is this: Has anyone ever been
13 related by blood or marriage to Russell Alan Tupper?

14 Mr. Tupper, would you please stand.

15 (Defendant stood and faced the gallery.)

16 THE COURT: Okay. Thank you, sir.

17 Has anyone ever been related by blood or marriage
18 to Russell Alan Tupper? Would you please stand.

19 Has any member of the jury panel ever had a close
20 personal or social relationship with Russell Alan
21 Tupper? If so, would you please stand.

22 I'm going to read a list of potential witnesses
23 for you. If anybody does not get those names or any of
24 these names, raise your hand and I will repeat them for
25 you. But the following is a list of potential

1 witnesses: Trooper Michael Taylor, South Carolina
2 Highway Patrol; Neill Burkett, Oconee County 911
3 dispatch operator; William Gravley; Rebecca Carter,
4 Oconee County 911 dispatch operator; Beverly Whitfield,
5 our Clerk of Court; and Marie Wearing, South Carolina
6 Department of Motor Vehicles.

7 Did everybody get those names? Is there anyone
8 who did not get those names?

9 Very good. Has any member of the jury panel ever
10 been related by blood or marriage to any of the
11 witnesses I have just read out to you? If so, would
12 you please stand.

13 Has any member of the jury panel ever had a close
14 personal or social relationship with any of the
15 potential witnesses I've just given you? If so, would
16 you please stand.

17 Mr. Patrick, would you stand and identify the
18 attorneys at your table.

19 MR. PATRICK: I'm Rusty Patrick. This is Wilson
20 Burr. We work for the public defender's office.

21 THE COURT: Counsel for the State, Ms. Blundy.

22 MS. BLUNDY: Thank you, your Honor. My name is
23 Beth Blundy. I work under Chrissy Adams.

24 THE COURT: All right. Has any member of the jury
25 panel ever been related -- excuse me -- represented by

1 any of the attorneys here in this courtroom or any
2 member of the Oconee County public defender's office or
3 the Oconee County solicitor's office? If so, would you
4 please stand.

5 Has any member of the jury panel ever been related
6 by blood or marriage or have you ever had a close
7 personal or social relationship with any of these
8 attorneys here in the courtroom, any member of the
9 Oconee County public defender's office or any member of
10 the Oconee County solicitor's office? If so, would you
11 please stand.

12 Has any member of the jury panel read or heard
13 anything about the case of State of South Carolina
14 versus Russell Tupper prior to today? If so, if you
15 have read, heard, or seen anything about this case
16 prior to today, would you please stand.

17 Has any member of the jury panel formed or
18 expressed an opinion about any issue or matter involved
19 in the case of the State of South Carolina versus
20 Russell Tupper? If so, would you please stand.

21 Is any member of the jury panel aware of any bias
22 or prejudice they may have against the State of South
23 Carolina, to this defendant, Mr. Tupper, or to their
24 attorneys? If so, would you please stand.

25 Is there any member of the jury panel that is a

1 member of the Oconee County Grand Jury which issued the
2 indictment in this case? If so, would you please
3 stand.

4 Is there any member of the jury panel who is a
5 member of or a contributor to any group which has as
6 its primary purpose the promotion of law enforcement or
7 victims rights? Example of these type of groups would
8 be MADD, SADD or CAVE. Those are just examples, and
9 there may be others out there -- I'm sure there are --
10 but if you are a contributor to or a member of any
11 group which has as its primary purpose the promotion of
12 law enforcement or victim rights, would you please
13 stand.

14 Is there any member of the jury panel who has a
15 religious or moral opposition to the consumption of
16 alcohol? If so, would you please stand.

17 Is there any member of the jury panel that has
18 any -- know of any reason -- knows of any reason
19 whatsoever why he or she should not be selected to
20 serve on the trial of this matter with particular
21 emphasis being placed on your ability to be fair and
22 impartial to both the State of South Carolina and to
23 the defendant in this matter? If anybody knows of any
24 reason why they should not be selected, would you
25 please stand.

1 Is there any member of the jury panel that has
2 been charged with DUI, DWI, DUAC or an alcohol-related
3 crime? If so, would you please stand.

4 Okay, sir. What is your jury number?

5 POTENTIAL JUROR: 69.

6 THE COURT: 69? Mr. Holbrooks.

7 POTENTIAL JUROR: Yes, sir.

8 THE COURT: And what was the result of those
9 charges?

10 POTENTIAL JUROR: I was convicted of a DUI.

11 THE COURT: How long ago has that been?

12 POTENTIAL JUROR: '95.

13 THE COURT: Well, if this case involves a charge
14 of DUI, would that prior experience impact on your
15 ability to be fair and impartial to both the State and
16 to the defendant in this matter?

17 POTENTIAL JUROR: No, sir.

18 THE COURT: All right. If any of the attorneys
19 wish to have additional voir dire, indicate for me,
20 please. If not, I'm going to assume that you do not.
21 Okay?

22 Thank you, sir.

23 All right. Ma'am, right here. What's your jury
24 number?

25 POTENTIAL JUROR: 130.

1 THE COURT: 130? And what was the result of those
2 charges?

3 POTENTIAL JUROR: DUI conviction four years ago.

4 THE COURT: Four years ago?

5 POTENTIAL JUROR: Uh-huh.

6 THE COURT: The same question to you. Would that
7 experience impact on your ability to be fair and
8 impartial to both the State and the to this defendant?

9 POTENTIAL JUROR: No, your Honor.

10 THE COURT: Thank you, ma'am.

11 Yes, sir?

12 POTENTIAL JUROR: It's been about ten years.

13 THE COURT: What's your jury number?

14 POTENTIAL JUROR: 29.

15 THE COURT: 29?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: And what was the result of the
18 charges?

19 POTENTIAL JUROR: Just probation.

20 THE COURT: Probation?

21 POTENTIAL JUROR: Yes, sir.

22 THE COURT: So you pled and were found guilty?

23 POTENTIAL JUROR: Yes.

24 THE COURT: Would that impact your ability to be
25 fair and impartial to both sides?

1 POTENTIAL JUROR: No, sir. It would not. No,
2 sir.

3 THE COURT: Thank you so much.
4 Anyone else?

5 Is there any member of the jury panel who feels
6 that he or she could not be fair and impartial because
7 a family member or close personal friend or
8 acquaintance was charged with DUI, DWI, DUAC, or an
9 alcohol or drug-related crime? If so, would you please
10 stand.

11 Is there any member of the jury panel who has a
12 family or personal experience with someone who has had
13 or has alcohol problems which would affect their
14 ability to be fair and impartial as jurors in this
15 matter? If so, would you please stand.

16 Is there any member of the jury panel who is a
17 former or current member of the solicitor's office or
18 any law enforcement agency in the state of South
19 Carolina? If so, would you please stand.

20 Does any member of the jury panel have a close
21 personal friend or family member who is a current or
22 former member of the Tenth Judicial Circuit solicitor's
23 office or any law enforcement agency within this state?
24 If so, would you please stand.

25 Okay. Ma'am, give me your number again. I know

1 you've done it.

2 POTENTIAL JUROR: 130.

3 THE COURT: Who was that, please?

4 POTENTIAL JUROR: My husband is Corporal Tim Rice
5 of Oconee County Sheriff's Department.

6 THE COURT: You speak like my daughter. You're so
7 fast, I can hardly hear you.

8 POTENTIAL JUROR: My husband is Corporal Tim Rice
9 for Oconee County Sheriff's Department.

10 THE COURT: Would that relationship impact your
11 ability to listen to the testimony, listen to the
12 evidence and apply the law as I give it to you?

13 POTENTIAL JUROR: No, your Honor.

14 THE COURT: You can be fair and impartial to both
15 sides?

16 POTENTIAL JUROR: (Nodding.)

17 THE COURT: And would the fact that your husband
18 is in law enforcement cause you to tend to believe law
19 enforcement testimony over anyone else's testimony by
20 virtue of the fact that they're law enforcement?

21 POTENTIAL JUROR: No, your Honor.

22 THE COURT: Okay. Thank you, ma'am.

23 All right. What's your jury number?

24 POTENTIAL JUROR: 18.

25 THE COURT: 18?

1 POTENTIAL JUROR: Yes, sir.

2 THE COURT: Okay.

3 POTENTIAL JUROR: My husband is an officer with
4 Westminster Police Department.

5 THE COURT: With Ocone?

6 POTENTIAL JUROR: Westminster.

7 THE COURT: Westminster? Would that impact on
8 your ability to be fair and impartial to both the State
9 and the defendant?

10 POTENTIAL JUROR: No.

11 THE COURT: And because of that relationship,
12 would you believe law enforcement testimony over any
13 other testimony in this case?

14 POTENTIAL JUROR: No.

15 THE COURT: Thank you, ma'am.

16 Has any member of the jury panel been arrested and
17 accused in a criminal case? If so, would you please
18 stand.

19 Okay, sir. What is your jury number?

20 POTENTIAL JUROR: 158.

21 THE COURT: 158?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: How long ago has that been?

24 POTENTIAL JUROR: Three years ago.

25 THE COURT: What were the results of those

1 charges?

2 POTENTIAL JUROR: I paid a fine and probation.

3 THE COURT: Paid a fine and probation?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: Would that experience impact on your
6 ability to listen to the testimony and evidence in this
7 case --

8 POTENTIAL JUROR: No, sir.

9 THE COURT: -- and give both the State and the
10 defendant a fair trial?

11 POTENTIAL JUROR: No, sir.

12 THE COURT: Okay, sir. Thank you very much.

13 Anyone else?

14 Does any member of the jury panel have any
15 feelings concerning the use of alcohol that would
16 affect their ability as a juror in this case to be fair
17 and impartial and to make their decision based on the
18 testimony and evidence presented in this case and
19 according to the law as given to you? If so, would you
20 please stand.

21 Is there any member of the jury panel that would
22 believe the testimony of law enforcement over the
23 testimony of someone else who may appear by virtue of
24 the fact that they are law enforcement? If so, would
25 you please stand.

1 Does anyone on the jury panel not understand that
2 a defendant in any criminal case, no matter how serious
3 the charge, is always presumed innocent and that the
4 State must prove their guilt by proving each and every
5 element of the crime charged by proof beyond a
6 reasonable doubt? Does anybody have any problems
7 applying that doctrine? If so, please stand.

8 Is there any member of the jury panel that would
9 draw an adverse inference against a defendant who
10 exercised his or her right under the Fifth Amendment
11 and chose not to testify in a case? If anyone
12 exercised their Fifth Amendment right, would that cause
13 you to have an adverse inference against that person?
14 If so, would you please stand.

15 All right. Other than as submitted, any other
16 voir dire from the State, Ms. Blundy?

17 MS. BLUNDY: Nothing from the State, your Honor.

18 THE COURT: From the defense?

19 MR. PATRICK: Nothing from the defense, your
20 Honor.

21 THE COURT: Okay. Ladies and gentlemen, what
22 we're about to do in just a minute, unlike in civil
23 cases, the clerk is going to put your name in a
24 computer, and there will be certain names drawn by
25 random selection. And in the old days before I had

1 gray hair, we'd have somebody in the courtroom who
2 would actually pull your name out of the spindle who
3 could not read, and they would call you on that basis.
4 Now we have a computer that does that.

5 It will take a minute to run that through, but if
6 your name is called, I'm going to ask you to come here
7 and walk through the bar, the swinging door, stand
8 right here in front of the counter and face the State
9 and face the defense, and they will make a decision as
10 to whether or not you will be selected to serve on the
11 jury of this matter.

12 If you are called, bring your personal belongings
13 with you so in case you are selected you don't have to
14 run back and get them.

15 All right. Madam Clerk, whenever you're ready.

16 THE CLERK: Ladies and gentlemen, as I call your
17 name, if you would, please come forward bringing your
18 personal belongings.

19 Juror number 130, Ashley Rice.

20 (Whereupon, a white female stepped forward.)

21 THE CLERK: What says the State?

22 MS. BLUNDY: Please excuse this juror.

23 THE CLERK: Ma'am, you have been excused from this
24 case. You may be seated.

25 Number 31, Darius Clayburn.

1 (Whereupon, a black male stepped forward.)

2 THE CLERK: What says the State?

3 MS. BLUNDY: Please seat this juror.

4 THE CLERK: What says the defense?

5 MR. PATRICK: Please seat Mr. Clayburn.

6 THE CLERK: Sir, if you would, please take a seat
7 in the jury box.

8 Number 145, Diane Stanton.

9 (Whereupon, a white female stepped forward.)

10 THE CLERK: What says the State?

11 MS. BLUNDY: Please seat this juror.

12 THE CLERK: What says the defense?

13 MR. PATRICK: Please excuse Ms. Stanton.

14 THE CLERK: Ma'am, you have been excused from this
15 case. You may be seated.

16 Number 57, Joseph Griffin.

17 (Whereupon, a black male stepped forward.)

18 THE CLERK: What says the State?

19 MS. BLUNDY: Please seat this juror.

20 THE CLERK: What says the defense?

21 MR. PATRICK: Please seat Mr. Griffin.

22 THE CLERK: Sir, if you would, take a seat in the
23 jury box.

24 Number 56, James Gray.

25 (Whereupon, a white male stepped forward.)

1 THE CLERK: What says the State?

2 MS. BLUNDY: Please seat this juror.

3 THE CLERK: What says the defense?

4 MR. PATRICK: Please seat Mr. Gray.

5 THE CLERK: Sir, if you would, please take a seat
6 in the jury box.

7 Number 89, Ashley Lane.

8 (Whereupon, a white female stepped forward.)

9 THE CLERK: What says the State?

10 MS. BLUNDY: Please seat this juror.

11 THE CLERK: What says the defense?

12 MR. PATRICK: Please seat Ms. Lane.

13 THE CLERK: Ma'am, if you would, please take a
14 seat in the jury box.

15 Number 49, Kenneth Fey.

16 (Whereupon, a white male stepped forward.)

17 THE CLERK: What says the State?

18 MS. BLUNDY: Please seat this juror.

19 THE CLERK: What says the defense?

20 MR. PATRICK: Please seat Mr. Fey.

21 THE CLERK: Sir, if you would, please take a seat
22 in the jury box.

23 Number 27, Louis Carver.

24 (Whereupon, a white male stepped forward.)

25 THE CLERK: What says the State?

1 MS. BLUNDY: Please excuse Mr. Carver.

2 THE CLERK: Sir, you have been excused from this
3 case. You may be seated.

4 Number 69, James Holbrooks.

5 (Whereupon, a white male stepped forward.)

6 THE CLERK: What says the State?

7 MS. BLUNDY: Please excuse Mr. Holbrooks.

8 THE CLERK: Sir, you have been excused from this
9 case. You may be seated.

10 Number 51, Donnell Freeman.

11 (Whereupon, a black male stepped forward.)

12 THE CLERK: What says the State?

13 MS. BLUNDY: Please seat Mr. Freeman.

14 THE CLERK: What says the defense?

15 MR. PATRICK: Please seat Mr. Freeman.

16 THE CLERK: Sir, if you would, please take a seat
17 in the jury box.

18 Number 126, Lauren Purdy.

19 (Whereupon, a white female stepped forward.)

20 THE CLERK: What says the State?

21 MS. BLUNDY: Please excuse Ms. Purdy.

22 THE CLERK: Ma'am, you have been excused from this
23 case. You may be seated.

24 Number 158, Matthew Vereb.

25 (Whereupon, a white male stepped forward.)

1 THE CLERK: What says the State?

2 MS. BLUNDY: Please seat Mr. Vereb.

3 THE CLERK: What says the defense?

4 MR. PATRICK: Please seat Mr. Vereb.

5 THE CLERK: Sir, if you would, please take a seat
6 in the jury box.

7 Number 62, Barton Harris.

8 (Whereupon, a white male stepped forward.)

9 THE CLERK: What says the State?

10 MS. BLUNDY: Please seat Mr. Harris.

11 THE CLERK: What says the defense?

12 MR. PATRICK: Please seat Mr. Harris.

13 THE CLERK: Sir, if you would, please take a seat
14 in the jury box.

15 Number 71, Linda Holt.

16 (Whereupon, a white female stepped forward.)

17 THE CLERK: What says the State?

18 MS. BLUNDY: Please seat Ms. Holt.

19 THE CLERK: What says the defense?

20 MR. PATRICK: Excuse Ms. Holt.

21 THE CLERK: Ma'am, you have been excused from this
22 case. You may be seated.

23 Number 99, Kate McCrary.

24 (Whereupon, a white female stepped forward.)

25 THE CLERK: What says the State?

1 MS. BLUNDY: Please seat Ms. McCrary.

2 THE CLERK: What says the defense?

3 MR. PATRICK: Please seat Ms. McCrary.

4 THE CLERK: Ma'am, if you would, please take a
5 seat in the jury box.

6 Number 110, Ernest Morris.

7 (Whereupon, a white male stepped forward.)

8 THE CLERK: What says the State?

9 MS. BLUNDY: Please seat Mr. Morris.

10 THE CLERK: What says the defense?

11 MR. PATRICK: Please seat Mr. Morris.

12 THE CLERK: Sir, if you would, please take a seat
13 in the jury box.

14 Number 116, Glenda Nichols.

15 (Whereupon, a white female stepped forward.)

16 THE CLERK: What says the State?

17 MS. BLUNDY: Please seat Ms. Nichols.

18 THE CLERK: What says the defense?

19 MR. PATRICK: Please excuse Ms. Nichols.

20 THE CLERK: Ma'am, you have been excused from this
21 case. You may be seated.

22 Number 81, Paul Jordan.

23 (Whereupon, a white male stepped forward.)

24 THE CLERK: What says the State?

25 MS. BLUNDY: Please excuse Mr. Jordan.

1 THE CLERK: Sir, you have been excused from this
2 case. You may be seated.

3 Number 128, Bill Ramsey.

4 THE COURT: Would you check out in the hall and
5 see if you see Mr. Ramsey.

6 MR. BURR: He wasn't here in roll call, I don't
7 think, either.

8 THE CLERK: I didn't call him either. I don't
9 know.

10 DEPUTY CLERK: Well, we have plenty. I'm not even
11 sure because we didn't even call his name.

12 THE COURT: Let me see the attorneys up here right
13 quick.

14 (WHEREUPON, a bench conference was held off the
15 record in the presence of the jury, but out of the
16 hearing of the jury.)

17 THE COURT: Just for the record, the State and the
18 defense said that they want to go forward instead of
19 starting jury selection all over again. Is that
20 correct?

21 MS. BLUNDY: That is correct, your Honor.

22 MR. PATRICK: That is correct, your Honor.

23 THE COURT: Very good.

24 THE CLERK: Number 144, Nora Stancil.

25 (Whereupon, a white female stepped forward.)

1 THE CLERK: What says the State for cause?

2 MS. BLUNDY: Nothing for cause.

3 THE CLERK: So seat the juror?

4 MS. BLUNDY: Seat the juror.

5 THE CLERK: What says the defense?

6 MR. PATRICK: Excuse the juror.

7 THE CLERK: Ma'am, you have been excused from this
8 case. You may be seated.

9 Number 34, Kevin Craig.

10 (Whereupon, a white male stepped forward.)

11 THE CLERK: What says the State for cause?

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

13 THE COURT: Yes, ma'am.

14 (WHEREUPON, a bench conference was held off the
15 record in the presence of the jury, but out of the
16 hearing of the jury.)

17 THE COURT: Sir, I'm going to excuse you. Thank
18 you very much.

19 MR. PATRICK: Your Honor, may we approach?

20 (WHEREUPON, a bench conference was held off the
21 record in the presence of the jury, but out of the
22 hearing of the jury.)

23 THE COURT: Mr. Patrick, if you will remind me,
24 we'll put something on the record in just a few
25 minutes.

1 THE CLERK: Number 104, James Merritt.

2 (Whereupon, a white male stepped forward.)

3 THE CLERK: What says the State for cause?

4 MS. BLUNDY: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. PATRICK: Please seat Mr. Merritt.

7 THE CLERK: Sir, if you would, please take a seat
8 in the jury box.

9 Number 91, Tammy Lewin.

10 (Whereupon, a white female stepped forward.)

11 THE CLERK: What says the State for cause?

12 MS. BLUNDY: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. PATRICK: Please excuse Ms. Lewin.

15 THE CLERK: Ma'am, you have been excused from this
16 case. You may be seated.

17 Number 75, Arie Jenkins-Hall.

18 (Whereupon, a white female stepped forward.)

19 THE CLERK: What says the State for cause?

20 MS. BLUNDY: Please present the juror.

21 THE CLERK: What says the defense for cause?

22 MR. PATRICK: Please seat Ms. Jenkins.

23 THE CLERK: Ma'am, if you would, please take a
24 seat in the jury box.

25 And this will be for our alternate.

1 Number 16, Gregory Boone.

2 (Whereupon, a white male stepped forward.)

3 THE CLERK: What says the State?

4 MS. BLUNDY: Please seat Mr. Boone.

5 THE CLERK: What says the defense.

6 MR. PATRICK: Please seat Mr. Boone.

7 THE CLERK: Sir, if you would, please take a seat
8 in the jury box.

9 THE COURT: Other than as discussed, any motions
10 directed at jury selection from the State?

11 MS. BLUNDY: Nothing from the State, your Honor.

12 THE COURT: From the defense?

13 MR. PATRICK: Nothing from the defense, your
14 Honor.

15 THE COURT: Very good. All right.

16 Ladies and gentlemen, those of you who were
17 selected, just to let you know, just the timing of
18 things, we will take up some administrative matters
19 after lunch, and so we'll take most of the afternoon.

20 What we anticipate doing is starting at 9:30 in
21 the morning with opening statements and the trial in
22 this case. Before you leave, however, I'm going to ask
23 that you go back with Buck to the jury room, that you
24 appoint someone to be a foreperson. The foreperson
25 presides over deliberations also communicates with the

1 court any time there needs to be any kind of
2 communication. Our alternate -- are you our alternate?

3 ALTERNATE JUROR: Yes, sir.

4 THE COURT: You may not serve as the foreperson.
5 You have a right to vote. It doesn't have to be
6 unanimous but by a simple majority. Once the person is
7 selected to serve as foreperson, I'm going to ask that
8 you write your name down on a piece of paper and then
9 query your fellow jurors to determine who, if anyone,
10 would like to have pad and pencil to use during the
11 course of this trial to take notes with.

12 Once you get that number, if there are any, just
13 write it down, knock on the door, and we'll give you
14 some closing instructions before we excuse you for the
15 day. If you will go with Buck to the jury room.

16 (WHEREUPON, the jury exited the courtroom
17 at 12:02 p.m.)

18 THE COURT: All right. Those of you who weren't
19 selected, I can see the look of dismay on all your
20 faces out there. I know you're disappointed. I always
21 thought it was wondrous when I practiced law -- I
22 practiced law for 20-some-odd years, and I remember
23 just after I turned 20 years of practicing law, I had
24 never sat on a jury. This whole process of walking up
25 in front of me I had participated in before but never

1 was the one who made the walk and always kind of felt
2 bad for people who would look up there in front of
3 somebody and they say, "We don't want you." And, you
4 know, although really the opposite is true, you're glad
5 not to have to do it.

6 But I remember I was sitting there one time. I
7 had a lady that I had gone to high school with and kind
8 of had a crush on her for most of my whole life. And
9 we were sitting in the panel back there and they called
10 my name, and I looked at her and said, "Just watch just
11 how long before they get rid of me." Sure enough, they
12 sat me on the jury and I sat there for about three
13 days. And it's interesting insight to see.

14 But for those of you who were excused, it's
15 certainly nothing personal directed at you.
16 Everybody's just wanting to get what they perceive to
17 be triers most favorable to them. That being said, I'm
18 going to excuse you for the remainder of the day.
19 Remember that sheet you were given when you came in?
20 Does everybody still have that? Call in after
21 6 o'clock tonight -- not tonight, tomorrow night we'll
22 leave as message as to whether or not you need to
23 report back Wednesday, and if so, what time. But thank
24 you for being here today.

25 Let me just say this, that I tell all jurors.

1 Without people like you who are willing to do their
2 civic duty, take time away from their families and
3 their jobs, the system doesn't work and we have no rule
4 of law. So if nothing else, thank you for doing your
5 civic duty this week. You are excused.

6 (WHEREUPON, the remainder of the prospective jury
7 panel exited the courtroom.)

8 THE COURT: All right. For the record, juror -- I
9 believe it was number 34 was excused by the Court for
10 cause. During voir dire I specifically asked if
11 anybody had been arrested or charged with any crimes
12 involving alcohol. That gentleman in fact had been,
13 according to their record. And so I excused him for
14 cause over the objection of the defendant.

15 Now, Mr. Patrick, if you want to put anything
16 further on the record other than what I've stated, now
17 is your time to do so.

18 MR. PATRICK: Yes, sir, your Honor. Just the fact
19 that we're not given the criminal histories of the
20 defendants, and that's probably something that could
21 have been brought up beforehand.

22 THE COURT: And that was pointed out to me. My
23 understanding is right before the witness testifies,
24 you have to give it to them. I don't know about the
25 potential jurors, however. But my concern was this

1 gentleman, it was not subtle, the question I asked as
2 to whether or not you had any alcohol charges or
3 arrests or convictions, and he chose not to respond in
4 the affirmative so I struck him.

5 (WHEREUPON, an off-the-record discussion was
6 held between the Court and bailiff.)

7 THE COURT: Juror number 158 will be our
8 foreperson.

9 Did you ask them to check and see if anybody wants
10 pad and pencil?

11 THE BAILIFF: All of them do.

12 THE COURT: Very good.

13 MR. BURR: May it please the Court, your Honor.
14 Would you have the prosecution provide the rap sheet on
15 Mr. Craig to verify that that was, in fact, the same
16 Kevin Craig that was in court today.

17 THE COURT: Would you like to make that a court
18 exhibit as well?

19 MR. BURR: If I could just have time to check into
20 it, and if it's a different person, we will. Thank
21 you, your Honor.

22 THE COURT: Okay.

23 Anything further from the State?

24 MS. BLUNDY: Nothing further from the State.

25 THE COURT: From the defense?

1 MR. PATRICK: Nothing further from defense, your
2 Honor.

3 THE COURT: Okay. We're going to take up motions
4 after we excuse the jury.

5 Will you bring the jury in.

6 (WHEREUPON, Court's Exhibit Number 1 was marked
7 for identification.)

8 (WHEREUPON, the jury came into open court at
9 approximately 12:08 p.m.)

10 THE COURT: All right, sir. You are our foreman;
11 is that correct?

12 JURY FOREMAN: Yes, sir.

13 THE COURT: I understand all the jurors want pad
14 and pencils for the trial; is that correct?

15 Very good.

16 Sir, if you would, each time you come in and out
17 of the courtroom, if you would use that seat. And our
18 alternate, if you would use that seat as well. It
19 helps us keep up with some administrative matters.

20 Sir, whenever you like that's most comfortable for
21 you, you just let us know. All right?

22 JUROR: All right. Thank you.

23 THE COURT: Now, ladies and gentlemen, we're going
24 to excuse you in just a minute and bring you back at
25 9:25 tomorrow so hopefully we can start at 9:30 sharp.

1 But before we do, let me point out to you several
2 things and rules.

3 Number one, until you are instructed by the Court,
4 me, that you may begin your deliberations, you may not
5 discuss this case with anyone. That includes amongst
6 yourselves during a break or during lunch or overnight
7 if we happen to go into overnight. I'm married. I
8 have a little girl. I know if I were selected, they
9 would be asking me 20 questions. You can't go over
10 other than the fact that you're selected. After the
11 case is over with, you can speak to them all you want
12 to. That would include face-to-face communications,
13 telephonic communications, Twitter, or e-mail or any
14 form of communication that I'm not smart enough to
15 understand. Okay?

16 Also, you're not allowed -- I don't think this
17 will be a problem, but if there's anything about this
18 case that may be in the press or blog or some other
19 media outlet, whether it be radio, TV, press, on the
20 computer, on the Internet, or from some other source,
21 you may not read, hear, or listen to anything about
22 this case until the end of the case and you have been
23 excused. Okay? The reason being we don't want you
24 talking amongst yourselves to come to a premature
25 conclusion about what the facts are. We don't want you

1 exposed to some evidence or some information that the
2 parties are not privy to and it may cause you to be
3 biased for one reason or another.

4 Likewise, each circuit court judge is instructed
5 to tell all juries in civil or criminal cases that
6 while the trial is going on, you may not engage in
7 what's called independent jury research. What that
8 simply means is you may not look up anything about a
9 court official or attorney or party in this case. You
10 may not look up any issue that you think may be
11 beneficial to help you understand this case or any
12 matter that you heard about during the case. Again,
13 the reason being we want you to make your decision
14 about what the facts are or what your verdict is going
15 to be based on the testimony and the evidence you hear
16 here in this courtroom and according to the law as I
17 give it to you at the end of this case.

18 With that being said, I'm going to excuse you for
19 the day and ask that you be back in your jury room at
20 9:25 in the morning. Have a nice afternoon.

21 (WHEREUPON, the jury exited the courtroom
22 at 12:12 p.m.)

23 THE COURT: Any additions or exceptions from the
24 State as to the instructions?

25 MS. BLUNDY: Nothing, your Honor.

1 THE COURT: From the defense?

2 MR. PATRICK: None, your Honor.

3 THE COURT: Okay. All right. Bring up matters we
4 need to contend with. Let's go to -- hold on. We have
5 a plea we want to do; is that right?

6 MR. PATRICK: That's right.

7 THE COURT: Let me get this plea out of the way
8 then we will come back with some pretrial matters.

9 (WHEREUPON, recess taken from 12:12 p.m.
10 to 12:51 p.m.)

11 THE COURT: All right. Ms. Blundy, anything for
12 the State before we break for lunch?

13 MS. BLUNDY: Your Honor, with Mr. Tupper, we just
14 have a few clerical things I think that we want to --

15 THE COURT: Sure. Let's do it.

16 MS. BLUNDY: Okay. Your Honor, I'm more
17 addressing the Court for instruction. The case that
18 the State has called, as you know, is DUI fourth and
19 subsequent. In addition to a DUS second and a habitual
20 offender, I've talked with defense counsel prior to
21 today about the prejudicial aspects of the case.

22 I have handed the Court the case law that I could
23 find that is directly on point with the facts of our
24 case today, and it's State vs. Anderson. It's a court
25 of appeals case out of South Carolina similar to our

1 case, same charges.

2 The dilemma with the State is we have to prove the
3 elements of the crime on the habitual offender and the
4 DUS. And in order to do that, prior convictions do
5 need to come in. Prior evidence of violations. I
6 understand there is a prejudice, but I feel that it's
7 more probative to bring that forward in the case to be
8 able to prove our actual case. So that's kind of the
9 issue I just wanted to bring up before the Court today
10 so we could get instruction on how the trial is
11 actually going to run.

12 THE COURT: Well, and we had pretrialed in my
13 chambers, and I indicated to you that I thought that
14 once they stipulated, then it was over. But you handed
15 me this case, and quite frankly, it hurts from your
16 perspective.

17 And one thing in that case that -- I have not
18 finished the dissent in the case by Judge Howard, but
19 it appears that the defendant offered to stipulate,
20 State did not, there was no exceptions to that in that
21 the question was whether or not does the State have to
22 accept jurisdiction once the offer to stipulate is
23 made. You disagree with that?

24 MR. PATRICK: Your Honor, I disagree just because
25 the State vs. Anderson was decided in 1995. As I was

1 discussing, the law for the DUI has changed.

2 THE COURT: What year did it change?

3 MR. PATRICK: 2000, your Honor. 56-5-2980. I
4 have a copy I can pass up. A lot of the discussion in
5 State v. Anderson deals with this statute when it was
6 written and allowed -- the wording was "with the
7 Solicitor." That wording has been taken out of that,
8 of this statute, to allow just the defendant to
9 stipulate to the prior DUI so that the prior DUI does
10 not come in.

11 I think it's pretty clear that the legislature
12 understood how the prejudicial effect of prior DUIs in
13 a DUI fourth, third, whatever, whatever as being
14 charged.

15 THE COURT: Let me ask you this. I mean,
16 assuming -- clearly that's what 56-5-2980 says. If the
17 defendant stipulates to the charge, that the charge
18 constitutes a second or subsequent offense, the
19 indictment shall not contain the allegations nor any
20 evidence of such prior offenses shall be introduced.

21 So as to DUI, clearly the statute unambiguously
22 holds that. But the problem still remains that you
23 have driving under suspension and you have the habitual
24 traffic offenses. I mean, the legislature has deemed
25 to understand what their statutes hold and, in fact,

1 that they included it under one statute and didn't
2 include it under another means that they specifically
3 maybe excluded it from these other statutes. So what
4 would be your address to that?

5 MR. PATRICK: My address to that would be that by
6 trying them all together, the habitual traffic
7 offender, that would circumvent the 56-5-2980 in
8 allowing all the DUI convictions, and I would argue the
9 prejudicial effect is just too great to my client, to
10 Mr. Tupper.

11 THE COURT: 403, okay.

12 MR. PATRICK: 403, your Honor, yes, sir.

13 THE COURT: How would you propose, then, that that
14 be cured?

15 MR. PATRICK: Your Honor, we are willing to
16 stipulate to the jurisdiction of the Court on the
17 habitual traffic offender and the driving under
18 suspension.

19 THE COURT: According to Ms. Blundy, and I know
20 she's right, part of her case-in-chief is that she's
21 got to bring up this prior record to satisfy the
22 habitual traffic offender and also that he was, in
23 fact, suspended at a previous time where he was driving
24 during this incident.

25 MR. PATRICK: Yes, sir, your Honor. We don't

1 dispute the fact that he is a habitual traffic offender
2 and he's under suspension for driving. And we would
3 just ask to allow us to stipulate to that because the
4 defense is going to come down to whether he was driving
5 or not. If he was found to be driving, then he's
6 guilty of habitual traffic offender and driving under
7 suspension.

8 So we would ask to stipulate to the fact that he
9 was driving under suspension and that he is a habitual
10 traffic offender to try to alleviate the prejudicial
11 effect of all the DUIs and driving under suspension
12 coming in because my understanding is the State wants
13 to bring in his driving record which goes, I think
14 further goes into I think it's a ten-year driving
15 record. So it brings up a lot of stuff, not just the
16 habitual traffic offender, but previous driving under
17 suspension.

18 THE COURT: What else is included on that driving
19 record other than the basis for the suspension?

20 MS. BLUNDY: Your Honor, I'll just be frank with
21 the Court. The DMV case file on the defendant is 81
22 pages long where there is eleven DUIs on it. There is
23 a DUI after this case out in Georgia. And I agree that
24 that wouldn't have any relevancy because it's after the
25 date of our case.

1 We could limit the driving record, but I think the
2 offenses that I need to prove start back from 2002 on.

3 THE COURT: How many offenses do you intend to
4 prove?

5 MS. BLUNDY: There are -- the habitual offender,
6 your Honor, I just need to prove the prior DUSs. If
7 you will bear with me one moment.

8 THE COURT: What would be the number you would
9 need for habitual, three?

10 MS. BLUNDY: Three.

11 THE COURT: Well, let me ask you this, Ms. Blundy.
12 Even under, say, burglary first, if one of the
13 aggravating elements is that he has a prior conviction,
14 doesn't the case law limit your introduction of prior
15 convictions only to the amount to satisfy the hurdle to
16 get in to prove that?

17 MS. BLUNDY: I believe that is correct, your
18 Honor.

19 THE COURT: So why would it be any different in
20 this case, besides that being in the statute?

21 MS. BLUNDY: I -- I agree with you, your Honor,
22 and I have no problem with the Court limiting it to the
23 three. The problem is the habitual offender letter
24 that's actually sent out to the defendant and he's
25 given notice of lists seven prior convictions. So we

1 could potentially black out a few of them and only go
2 with the three, and I have no objection to that.

3 THE COURT: Look, if you do it that way, I mean,
4 obviously the jury is going to see seven lines down
5 there or four in addition to the three necessary. I
6 can't help but feel the prejudice in that circumstance
7 is substantial.

8 MS. BLUNDY: The only challenge I have, your
9 Honor, is if he's willing to stipulate that he's a
10 habitual offender, we should be here for a guilty plea.
11 I feel like if he's saying, "Yes, I was a habitual
12 offender," I just never heard of anybody stipulating to
13 all the elements of the crime.

14 THE COURT: I think except for the fact that he
15 was driving. I think I heard Mr. Patrick say the issue
16 on the DUS and the habitual is whether or not he was
17 driving. And I assume that on the DUIs, in fact, if he
18 was driving, was he materially appreciably impaired.

19 MS. BLUNDY: I do have one habitual offender
20 letter that was sent out early on back in 2003.

21 THE COURT: But that wouldn't be relevant to these
22 charges, would it, or would it?

23 MS. BLUNDY: It would, your Honor, on habitual
24 offender. There's no time limitation.

25 THE COURT: There's not?

1 MS. BLUNDY: It just has to be within a three-year
2 period. So as long as they were in a three-year
3 period. It's not three years from the date of today,
4 but just a three-year period.

5 THE COURT: Well, was that previous letter
6 associated with a prior DUS or a habitual traffic
7 offender, or was it related to the charges which he's
8 facing trial on now?

9 MS. BLUNDY: It was the driving under the
10 influence and one unlawful alcohol concentration.

11 THE COURT: Previous charges, though?

12 MS. BLUNDY: Previous charges.

13 THE COURT: Yeah. We can't do that. If it was
14 something in this case for which these charges
15 originated, then that might be -- let me see that
16 letter for this case.

17 (WHEREUPON, Ms. Blundy approached the bench.)

18 THE COURT: I'm asking her whether or not she has
19 to show those to show the financial responsibility.

20 (WHEREUPON, Mr. Patrick approached the bench.)

21 THE COURT: Mr. Patrick, Ms. Blundy says that part
22 of her case-in-chief is proof that this gentleman
23 received this letter.

24 MR. PATRICK: It is my understanding that all they
25 have to prove is it was mailed to him, not that he.

1 actually received it. But that's my knowledge.

2 THE COURT: That it was mailed?

3 MR. PATRICK: Yes, your Honor.

4 THE COURT: So if that's part of her
5 case-in-chief, what would be your response to that?

6 MR. PATRICK: My response is I believe that the
7 DMV has exclusive jurisdiction to determine if somebody
8 is a habitual traffic offender. And so I would, like I
9 said, would argue that that's all that needs to be
10 proven, that he was determined to be a habitual traffic
11 offender. And we would be willing to stipulate to
12 that.

13 THE COURT: All right. Well, certainly DUI, I
14 agree with you. I think the statute is unambiguous on
15 that. Let me look at it and think about it. Are
16 either or all of you going to be back here this
17 afternoon at all?

18 MS. BLUNDY: Yes, I will be here all afternoon.

19 MR. PATRICK: I can be back here.

20 THE COURT: Just let my law clerk have your
21 number, that way I can let you know how we will
22 proceed.

23 Ms. Blundy, I'm going to give you this back. I
24 don't know that we can redact that letter. That would
25 cause more harm than good.

1 MS. BLUNDY: Just one more thing to bring to the
2 Court's attention is the habitual offender statute
3 actually requires me to prove a class of crimes that
4 fall under those major violations.

5 THE COURT: Right.

6 MS. BLUNDY: And it lists DUI as one of those. So
7 I just don't know how I'd prove the class of crimes
8 without -- unless I asked a question, a vague question,
9 of was it within the class of crimes.

10 THE COURT: No. I mean, but my thoughts, quite
11 frankly, are something akin to the burglary first where
12 you don't get -- sounds like this gentleman has quite
13 the driving record. And if you start getting all of it
14 in there, then probative value ceases and the prejudice
15 increases. Disagree?

16 MS. BLUNDY: I agree, your Honor.

17 THE COURT: So if you limit the necessary elements
18 of proof to the charges, if she's got to prove that
19 classification, she's got to prove it. Now we can come
20 up with something potentially, but my inclination is
21 certainly to let you -- I don't know if I have an
22 inclination or not. You have to prove your case, and
23 those are the elements of your charges. That's what
24 you've got to prove.

25 Now, the remainder of the record will be on.

1 That's just piling on a little bit.

2 MS. BLUNDY: And the last thing that the State
3 just wanted to bring forward, and I think we've already
4 discussed prior in chambers, is that the original
5 indictment went in for DUS third. The State, after
6 reviewing the driving record in its totality, I believe
7 it's only a second offense. I don't think a new
8 indictment is actually needed if we go a step lower
9 since we're not indicting it to a higher offense, and I
10 think Mr. Patrick agreed to stipulate that it's a DUS
11 second and not DUS third.

12 MR. PATRICK: I do agree and I conferred with my
13 client. We're willing to waive indictment on DUS
14 second.

15 THE COURT: Waive presentment?

16 MR. PATRICK: Presentment. I'm sorry, your Honor.

17 THE COURT: So, Mr. Tupper, to the extent it may
18 be necessary, you were charged with DUS third -- do me
19 a favor. Raise your right hand.

20 (WHEREUPON, the defendant was sworn.)

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. You can put your hand down.

23 You have a right, as any criminal defendant, to
24 have any indictment against them presented to the Grand
25 Jury in which 12 out of 18 people have to vote to find

1 probable cause to go forward with the indictment. Has
2 that been explained to you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In this case you have been indicted
7 for DUI third?

8 MR. PATRICK: DUS third, your Honor.

9 THE COURT: Excuse me, DUS third. Now, the State
10 advises from their review of your record, it appears
11 that you only have a DUS second offense, and if it is
12 required that that indictment be submitted to the Grand
13 Jury for its consideration. Do you waive presentment?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you do so freely and voluntarily?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Anybody force, threaten or promise you
18 anything to get you to waive presentment to the Grand
19 Jury?

20 THE DEFENDANT: No, sir.

21 THE COURT: You are doing that of your own free
22 will?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very good. Thank you.

25 MS. BLUNDY: Thank you, your Honor.

1 THE COURT: Give your information to Brann, my
2 clerk. I'm going to look at your cases. I'm going to
3 try to get something out to you this afternoon so y'all
4 will be ready to go in the morning. Okay?

5 MS. BLUNDY: Thank you very much.

6 THE COURT: Anything further from the State before
7 we break?

8 MR. PATRICK: The only thing left would be the
9 video issue, but that might -- I mean, we can probably
10 take that up later in the day if you want.

11 THE COURT: Let's do that. I think they've got me
12 slated back at 2:00. Do you mind doing that? Do you
13 mind coming back?

14 MR. PATRICK: Yes, sir, your Honor.

15 THE COURT: All right. Has Mr. Tupper been
16 remanded or is he out on bond?

17 MR. PATRICK: He's out on bond.

18 THE COURT: All right. You will remain out on
19 bond. Very good.

20 Mr. Tupper, I'm going to tell you now, though,
21 that if you don't report back this afternoon or
22 tomorrow, then the case will go on in your absence.
23 You will have a trial in your absence. And if you
24 happen to be found guilty to one or more of the
25 charges, you will then be sentenced, that will be

1 sealed, and when you're apprehended -- and you will be
2 apprehended -- you will be brought back to the court.
3 You don't have a right to a trial. You don't have a
4 right to do anything but stand there and get sentenced
5 and sent off to wherever you've got to go. So, in
6 other words, come back.

7 THE DEFENDANT: I understand.

8 THE COURT: Thank you. We're on break until
9 2:00 o'clock.

10 MR. PATRICK: Thank you, Judge.

11 (WHEREUPON, recess taken in this matter from.
12 1:09 p.m. to 3:09 p.m.)

13 THE COURT: All right. Back on the record with
14 the State vs. Tupper, Russell Allen Tupper, charged
15 with DUI fourth or more, DUS second, habitual traffic
16 offender, correct?

17 MR. PATRICK: Correct, your Honor.

18 THE COURT: The question before we left was
19 whether or not by the defense offering to stipulate to
20 jurisdiction as to whether or not the State would be
21 required to accept that stipulation and not mention the
22 number of charges it is either second or fourth
23 correct.

24 MR. PATRICK: Correct, your Honor.

25 MS. BLUNDY: (Nodding.)

1 THE COURT: And Mr. Patrick handed up a statement
2 that was after the State v. Anderson case, I think it's
3 Anderson case, wasn't it, Ms. Blundy -- that basically
4 said as long as you stipulate to it, you can't bring up
5 evidence of prior DUIs, and I think that's clear
6 because it's unambiguous in the statute. So as far as
7 the DUI charges, your client offers to stipulate to
8 that, right?

9 MR. PATRICK: Yes, your Honor.

10 THE COURT: Now, looking at the elements of
11 driving under suspension, you have operated -- these
12 are the elements that I understand to be listed based
13 on the Criminal Offenses of South Carolina, black book
14 by Mr. Ferguson that I'm referring to, but the elements
15 are: Operated a motor vehicle on a public highway when
16 license or privilege to drive cancelled, suspended or
17 revoked. Okay. Technically, the predicate charges are
18 not necessary to establish in your case. The notice
19 is. But I don't think, still don't think you can get
20 into the other charges there even if the notice is
21 there, is not necessary. Under the statute, as I
22 understand, it just says you have been suspended based
23 on your prior record. Here you go. Here you go. In
24 this case we have seven different charges which far
25 exceeds what's necessary. It's, what, three or

1 more for DUS -- no, that's habitual. What are the
2 charges, three or more within a three-year period?

3 MS. BLUNDY: Five years, your Honor.

4 THE COURT: Ma'am? Five years?

5 MS. BLUNDY: Five years.

6 THE COURT: Either way, it's not necessary for the
7 State to prove its case under DUS. Now, on the other
8 side of the coin, if you look at the elements of
9 habitual traffic offender, okay, the elements in that
10 case are committing three or more of the following
11 separate offenses: Voluntary manslaughter, involuntary
12 manslaughter, reckless homicide resulting from the
13 operation of a vehicle, DUI, reckless driving, driving
14 under suspension except where the suspension was for
15 failure to file proof of financial responsibility,
16 commission of a felony involving a motor vehicle or
17 hit-and-run where the collision resulted in death or
18 injury, or ten or more convictions of separate moving
19 violations carrying four or more points under 56-17-20
20 within a three-year period.

21 So while I agree with you one hundred percent on
22 the others, under this element of charges, the
23 predicate offenses are absolutely necessary to be
24 established.

25 Now, I went back and looked at burglary first

1 because the statute in burglary first and this are
2 almost similar, this two or more prior offenses, et
3 cetera, this is so and so or more. The statute doesn't
4 say that the predicate offenses have to be limited to
5 the sufficient number to obtain jurisdiction which is
6 the case in South Carolina. It would seem to me that
7 you would have to just establish predicate offenses by
8 establishing the requisite number under the statute as
9 provided by the statute.

10 What would be your response to that?

11 MR. PATRICK: Your Honor, my response would be
12 that I still feel like that's circumventing the DUI
13 statute and the prejudicial effect is too great to my
14 client to go into his previous driving history.

15 THE COURT: Well, let me ask you this. Are all
16 the -- is it DUS or suspension -- is the habitual
17 traffic offender offense based solely on his DUI?

18 MR. PATRICK: A portion of them are. I mean, I
19 think it's driving under suspension and DUI. I think
20 it's a combination of the two that gave him the --
21 basically the DUIs gave him the habitual traffic
22 offender. That's my understanding.

23 MS. BLUNDY: Yes, your Honor. The habitual
24 offender, the way the DMV calculated it was based on
25 the prior DUIs. He obviously doesn't have a conviction

1 on this one, so, I mean, it's hard to say. It has to
2 be within a three-year period. And so the habitual
3 offender, as far as my understanding, was referred over
4 to the solicitor's office upon the other two charges in
5 connection with this case. That's when Trooper Taylor
6 received notice that he was a habitual offender from
7 dispatch and all of the charges were brought at one
8 time.

9 THE COURT: That doesn't answer my question
10 because I don't understand what you said. How many
11 DUIs are you basing the habitual traffic offender on
12 and how many DUSs?

13 MS. BLUNDY: According to the DMV, he had six
14 DUIs, one charge of unlawful alcohol concentration. So
15 those are the charges that would be brought to
16 establish the habitual offender, according to the
17 letters.

18 THE COURT: So no DUSs?

19 MS. BLUNDY: No DUSs.

20 THE COURT: How does the State overcome this DUI
21 statute that says if he stipulates to jurisdiction -- I
22 know that's the DUI statute -- but how does the State
23 overcome the fact that that statute says if he
24 stipulates, you can't bring in further evidence?

25 MS. BLUNDY: Your Honor, and this is where we get

1 into stipulation. I mean, stipulation, as far as I
2 understand, it is a mutual agreement between both
3 parties. I don't necessarily believe that the State
4 has to stipulate to prove jurisdiction.

5 THE COURT: Well, that's what Anderson said that
6 they didn't hold. They just said that was the question
7 but that was not argued, so it really wasn't answered
8 other than we would answer no.

9 MS. BLUNDY: Even if they did stipulate and the
10 State was willing to stipulate to the fourth or
11 subsequent DUI, just if you're going to
12 compartmentalize on the DUI case, we could agree he's
13 fourth and subsequent. On the habitual offender case,
14 we have to put forth the evidence of the prior DUIs
15 because those were the violations that meet the
16 elements of that charge.

17 THE COURT: I don't disagree. Do you understand
18 the rule in burglary first that the predicate offense
19 is you only get to bring up sufficient number to give
20 you jurisdiction, you don't get to bring up all of
21 them?

22 MS. BLUNDY: I do understand, your Honor. And
23 it's not the State's intention, and I will state for
24 the record, to necessarily go through the defendant's
25 criminal history on the DUI unless jurisdiction wasn't

1 stipulated to, then we would have to on the DUI portion
2 of it. But for the habitual offender portion of it, I
3 believe that I have to put forth that DMV letter. I
4 think really that's the only way to prove it or at
5 least have Marie Waring testify to it.

6 THE COURT: Well, I mean, I don't necessarily
7 think that you don't have to show that they didn't
8 suspend him during that period, but you're not going to
9 get out all those DUIs. I don't care if she reads it
10 or tries to put it in evidence. I mean, that's just
11 overkill on those. If you think you are, I'm sorry I
12 disagree with you.

13 MS. BLUNDY: I guess my challenge, your Honor, is
14 are you stating that the Court would be entertaining to
15 allow me to establish the three and we would cap it at
16 that?

17 THE COURT: That's what I keep saying to you about
18 predicate offenses, okay. Do you understand what I
19 mean?

20 MS. BLUNDY: I do understand what you mean.

21 THE COURT: Okay. Well, that's what I'm talking
22 about.

23 MS. BLUNDY: Okay.

24 THE COURT: Let me ask Mr. Patrick. You have a
25 statute that you showed me that deals -- that's the DUI

1 statute. But it doesn't change the fact that the
2 habitual traffic offender statute clearly says that
3 these are the elements of the charge, right?

4 MR. PATRICK: Correct, your Honor.

5 THE COURT: They have not changed that.

6 MR. PATRICK: They have not changed that, your
7 Honor. And one solution, which I don't know if the
8 judge would be willing to go along with it, would be to
9 sever the habitual traffic offender from the DUI and
10 the DUS, and then if he's found guilty of the DUI and
11 DUS, that will be a really quick trial on the habitual
12 traffic offender because he would have been found
13 guilty of driving under the driving under suspension.
14 And then, basically, they can bring that in to prove
15 his driving, and then all they have to do is prove his
16 previous record. It will be a pretty quick trial on
17 that one.

18 MS. BLUNDY: Your Honor, the challenge with that I
19 think at that point if he's going to make a motion to
20 sever, we'd have to have a brand new trial, brand new
21 jury selected. I don't think that we can necessarily
22 bifurcate the issues for the jury.

23 THE COURT: That's not what he said. I don't
24 think that's what I heard him say. I thought I heard
25 him say if you take out the habitual traffic offender,

1 once it's determined judicially that he was found
2 guilty, then the next trial would be very short. The
3 problem is you overlook appeals, and that stays it, so
4 I don't think that's the solution.

5 Are you trying to say something there?

6 My law clerk is jumping at the bit here.

7 What happened, my law clerk is saying over here,
8 if I understand what he's saying, is that the
9 determination of being a habitual traffic offender is
10 an administrative function by the Department of Motor
11 Vehicles, but if there was such determination, if you
12 were found to drive again, then you would be guilty of
13 being a has been traffic offender subject to the
14 sentencing of up to five years. But look up the
15 elements -- no, I don't believe that because the
16 elements are the elements of the charge.

17 MS. BLUNDY: I don't really necessarily think the
18 element of driving is an element of the charge. It's
19 just do you have these certain convictions within a
20 three-year period, have you been notified.

21 THE COURT: I think you're right.

22 MS. BLUNDY: And that's what I was trying to say
23 earlier.

24 THE COURT: I don't think you can get out of it
25 without proving your elements of the charges. Now, the

1 State is creating part of its own problem by bundling
2 these together. I understand why you do, but that's
3 your discretion. The defendant doesn't have a choice
4 in the matter. You do. But there's been no motion
5 necessary to sever either. So, effectively that's what
6 you're asking.

7 MR. PATRICK: That was a solution I was trying to
8 come up with, your Honor.

9 THE COURT: Go ahead. I cut you off, Ms. Blundy.

10 MS. BLUNDY: It's fine, your Honor. I mean,
11 that's what I was trying to state earlier when we were
12 talking this morning, that the defendant was willing to
13 stipulate to it, and that's what I brought up before
14 the Court. I thought, well, then it needs to be a
15 plea. If he's willing to stipulate to driving isn't an
16 element, so that's what I was trying to say earlier. A
17 moot point at this point.

18 THE COURT: Yeah. All right.

19 What I'm going to do, rightly or wrongly, since
20 the defendant didn't have an opportunity to necessarily
21 pick and choose the cases being brought, although
22 there's not been a motion to sever, under the
23 circumstances, I will say that the defendant is
24 entitled to stipulate under the joinder of the causes
25 of action we have here. Since habitual traffic

1 offender includes the establishment of prior offenses
2 and you also have the underlying offense charge brought
3 before the jury as well that I am going to -- that is
4 DUI, I'm going to say the State has to accept the offer
5 to accept or stipulate to jurisdiction under the
6 particular facts of this case.

7 So your witnesses will be limited and your
8 client -- let's make sure we're clear -- will stipulate
9 that he has three prior driving offenses that qualify
10 for being habitual traffic offender under the statute?

11 MR. PATRICK: Yes, sir, your Honor.

12 THE COURT: How do you say if you stipulate to
13 that, and the more I'm hearing this argument,
14 Ms. Blundy may very well be right, I don't see an
15 element of driving. Is there a separate element?

16 MR. PATRICK: My confusion is -- my understanding
17 is if they brought a charge of -- they only brought a
18 charge of habitual traffic offender when they charged
19 him with driving. I was under the impression that was
20 an element of the crime.

21 THE COURT: Well, I'm not saying that it's not.

22 MR. PATRICK: That just doesn't make a lot of
23 sense to me to be able to --

24 THE COURT: Well, hold on. If you commit three or
25 more of the following offenses within a three-year

1 period, and all those have to do with motor vehicle
2 offenses. But if you have three previous charges of
3 that, then whether you're driving or not, they can come
4 back and charge you with being a habitual traffic
5 offender.

6 Mr. Burr, what's your position?

7 MR. BURR: Your Honor, I'm reading the statute
8 now. I mentioned earlier today I thought that the
9 Department of Motor Vehicles made the determination.

10 THE COURT: That's what my clerk is saying, that's
11 what they do.

12 MR. BURR: And that has been determined in this
13 case and we're willing to stipulate to that.

14 THE COURT: But if that's the case, if you
15 stipulate to it, then he just pleads guilty and I'll go
16 ahead and sentence him.

17 MR. BURR: He hasn't stipulated to the driving at
18 this point.

19 THE COURT: That's what I'm saying. If the
20 Department of Motor Vehicles make the determination
21 under the statute, and then because his prior criminal
22 driving record or prior driving record which
23 constitutes those offenses within a three-year period,
24 okay, then once that occurs, whether or not he's
25 driving is not an element of the statute. That's what

1 it appears to me, and that's what the State is arguing.

2 So if he stipulates, then he admits his guilt. I
3 mean, look at it. I'm going to let you look at it, and
4 I'm going to go back and do a little bit more research.
5 But the more I look at it, you may be right. Otherwise
6 it is part of the elements of this case, and there's
7 been no motion to sever, so she has to at least do the
8 predicate offenses, no more. That's it. One or the
9 other. Okay?

10 My question is: If he stipulates to what you just
11 did, is he out? Okay. Y'all take a minute and look at
12 it and let me know. I'll be back here looking it up
13 myself.

14 (WHEREUPON, recess taken from 3:29 p.m.
15 to 3:30 p.m.)

16 THE COURT: If that is, in fact, an element of the
17 offense charged, driving, and I think everybody here is
18 under the general idea but it's kind of segregated in
19 the statute, then it is -- I mean, the three -- just
20 let me think about it. You brought up a good point.
21 But at the same time, clearly it's part of the element
22 of the statute. I'm inclined to let them have the
23 predicates in and no more. I'll let you know in a few
24 minutes. You disagree with me, Ms. Blundy, about
25 driving?

1 MS. BLUNDY: Well, I guess what throws me off a
2 bit is I know we all go by the black book, and it's
3 pretty clear in setting out the elements --

4 THE COURT: But the statute is the statute, and
5 that's the real book. I'm sure Mr. Patrick wouldn't
6 misquote it. All right.

7 I'll tell you what I'm going to do. Under the
8 particular facts of this case, because you have a
9 habitual traffic offender, DUI and DUS, I'm going to
10 find that the State is only going to be allowed to show
11 that he received proper notice, and that's the
12 stipulation that he's entering into. DUI goes without
13 reason that the statute is plain and unambiguous that
14 you can't bring it up if he stipulates to it, which he
15 has. As far as the DUSs, it's not an element of that
16 charge, so that doesn't come in either.

17 So all said and done at the end of the day, you
18 need to think about what the necessary stipulation is,
19 but the stipulation is that your client did receive,
20 did get charged or found guilty, pled guilty to the
21 reckless statute charges within a three-year period.
22 He received notice of the termination of his habitual
23 traffic offender, and the question is whether or not he
24 was driving.

25 MR. PATRICK: Correct, your Honor.

1 THE COURT: Okay. All right.

2 Ms. Blundy, that subject, if you can convince me
3 otherwise, but I think that's right based on what
4 Mr. Patrick showed me.

5 MS. BLUNDY: Just so I'm clear, your Honor, so
6 it's my understanding that Marie Waring doesn't need to
7 come up from Columbia because --

8 THE COURT: She's not going to be and you will be
9 without prejudice. If they try to raise that issue,
10 they might be allowed to.

11 MS. BLUNDY: Okay.

12 THE COURT: I'm sure they don't want to redo that.

13 MR. PATRICK: No, your Honor.

14 THE COURT: All right. So you can call her off.

15 MS. BLUNDY: Thank you.

16 THE COURT: Thank you.

17 See you, guys.

18 MR. PATRICK: Your Honor, there is the issue of
19 the video.

20 THE COURT: Oh, yeah. Mr. Patrick, you haven't
21 been enough thorn for me today already?

22 MR. PATRICK: Sorry, your Honor. The issue we
23 have with the video is that the trooper that pulled
24 over Mr. Tupper, called out to the scene, had actually
25 pulled over Mr. Tupper about three years prior and --

1 THE COURT: From what he had, probably most
2 troopers in Oconee County know him on a first name
3 basis.

4 MR. PATRICK: Yes, sir, your Honor. And in the
5 video, there is a lot of talk about that previous DUI.

6 THE COURT: Right.

7 MR. PATRICK: I mean --

8 THE COURT: I think the State agreed that was
9 prejudicial and needs to be redacted out.

10 MR. PATRICK: I just wanted to put it on the
11 record because there is some issues with the timing
12 because the timing I had for my video was off from the
13 timing she had, and I just wanted to make sure it was
14 on the record that none of his, you know, DUI from his
15 previous convictions would come up from that video.

16 MS. BLUNDY: Yeah. Your Honor, we, at length,
17 have gone through this video tooth and nail and --

18 THE COURT: Just for the record, let me say this.
19 In chambers, in transitioning the CD to discovery disk,
20 whatever it is, the timing somehow was altered, not
21 intentionally but unintentionally. Doesn't alter the
22 content of the tape, just doesn't match up time for
23 time for State's evidence; is that correct?

24 MS. BLUNDY: That is correct, your Honor. We
25 can't exactly pinpoint what the issue is with the

1 videotape. There is an affidavit in this case.
2 Trooper Taylor will be able to talk to you more about
3 that and let you know more about that. He did
4 eventually have his entire camera replaced in his car
5 after the fact when he acknowledged that this was going
6 on.

7 It's our intention that the evidence is there,
8 that the statutory requirements of, you know, upon
9 activation of blue lights or accident, upon arriving at
10 the scene, the video is running, the defendant is
11 brought over to the camera, the investigation is
12 ongoing of whether or not it's a DUI, he's read his
13 Miranda rights on camera in front of the camera, and
14 then he's placed inside the patrol vehicle.

15 Now, after that point, Trooper Taylor does hit the
16 button to split the camera so you can see a split view
17 of the defendant and everything else going on outside.
18 And I think at that point it triggered something within
19 the camera to cause it to be like Groundhog Day where
20 it jumps back to the beginning and you're rewatching
21 the same thing and it will pick up with where it
22 continued on.

23 Defense counsel and I have met. We've tentatively
24 agreed, I think, to stop it at 17 minutes. The
25 challenge is that the timing gets thrown off so when we

1 escort the jury out during all these different places
2 that we're going to have to redact, it's going to be an
3 extremely difficult burden on the State --

4 THE COURT: Hold on. You're proposing that each
5 time you get to one of these areas you ship the jury
6 out of the courtroom?

7 MS. BLUNDY: I don't know of any other way to do
8 it, your Honor. And, unfortunately, the officer did
9 talk an immense amount about that prior violation which
10 he had had with Mr. Tupper.

11 THE COURT: How many are you talking about? And
12 how much time in between?

13 MS. BLUNDY: Rusty, do you have four different
14 times?

15 MR. PATRICK: Excuse me?

16 MS. BLUNDY: Where we agreed to redact?

17 MR. PATRICK: Because our timing is off, I have a
18 bunch of statements that I have. I mean, right when he
19 first sees him, "Hello, Mr. Tupper. I remember you. I
20 didn't know you was out of jail."

21 MS. BLUNDY: We agreed that that would be out.

22 THE COURT: I know. Here is the practical
23 problem. Ms. Blundy says there's a lot of little
24 snippets in there, and she proposes we run the jury in
25 and out of here like cattle. I'm not inclined to do

1 that.

2 Now, the question I was asking her was how many
3 times does that occur roughly and what's the
4 difference, what's the time in between one snippet to
5 the next? I know it varies.

6 MR. PATRICK: There's some snippets that there's
7 three sentences in between that are fine to be heard,
8 and then there's some that have longer portions. I
9 mean, I'm telling you, he says a lot, so it's kind of
10 hit or miss and it's probably four or five times you
11 have to take them out.

12 THE COURT: Why can't you just cut the volume down
13 in those areas? I mean, I've done that multiple times
14 and that's fine. You don't want the jury running like
15 cattle back and forth through here. I mean, I know we
16 have done it, but if you can help it, we don't want to
17 do it.

18 MS. BLUNDY: The challenge with that, your Honor,
19 is we played this video a couple times. The timing can
20 get thrown off. I know it doesn't make any sense, but
21 the timing can get thrown off, so I don't know when to
22 cut the volume back on without hearing --

23 THE COURT: I thought you said that's just on his
24 copy. Yours was fine. Yours varies, too?

25 MS. BLUNDY: Yeah.

1 THE COURT: Where is the original?

2 MS. BLUNDY: In the camera. I mean, it's copied
3 to a disk and I have that copy.

4 THE COURT: So from my understanding of what
5 you're telling me, the same disk that you have, your
6 original, for lack of a better word, play it three
7 times in a row, your timing sequence is going to be
8 different on each one?

9 MS. BLUNDY: Yes.

10 MR. PATRICK: I mean, the only other thing I can
11 think of to stipulate --

12 THE COURT: Don't you know your tape well enough
13 to know where you're getting to that particular point
14 regardless of whether it says it's on 30 or 31 seconds?

15 MS. BLUNDY: Yes, your Honor. I could cut the
16 statement off, but it's getting it back on to the next
17 statement that I won't know because I don't know how
18 far to go.

19 THE COURT: Is there any portions of that tape we
20 can excise out to reduce the number of times we go in
21 and out?

22 MR. PATRICK: That will be up to Ms. Blundy. Like
23 I said, I just want to make sure that those statements
24 of the prior DUI --

25 THE COURT: I have not heard anything from you

1 suppressing the video saying it doesn't comport with
2 the requirements of the statute.

3 MR. PATRICK: I was getting ready to say I would
4 agree that it complies with the statute. I mean, they
5 read Miranda to him. They do all that stuff. So at
6 that point, I mean, I think Ms. Blundy wants the jury
7 to see portions of the video for her case, and I want
8 to put the burden on her to make sure none of the other
9 statements come in.

10 MS. BLUNDY: It's the challenge with the
11 videotaping statute, your Honor. I don't know what
12 else to do.

13 THE COURT: The point being I know that you want
14 every single statement he makes the whole time he's out
15 there in evidence, but does that necessarily make your
16 case any stronger or weaker? I don't know. I've not
17 seen it. But I can tell you that I have been around
18 enough juries that you start running them in and out of
19 here too many times for things to come in and get a
20 blurb, they come back in and it's a blurb, and it's a
21 blurb, they're going to get cut off, if not worse.

22 Have you looked at this video at all?

23 MR. WAGNER: I have not seen it, Judge. I can
24 look at it tonight.

25 THE COURT: You might give her some constructive

1 criticism.

2 MR. WAGNER: Yes, sir.

3 THE COURT: All right. Well, if we have to run
4 them out, we have to run them out. I hope we don't,
5 okay?

6 Anything else?

7 MR. PATRICK: That's all I have, your Honor.

8 MS. BLUNDY: That's it.

9 THE COURT: 9:30 in the morning. We don't need to
10 take up any pretrial motions as far as statements? No?
11 Good, good. Thank y'all. Appreciate y'all's patience.

12 (WHEREUPON, proceedings adjourned at 3:41 p.m.)

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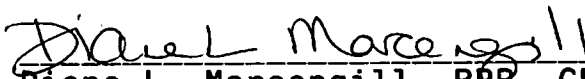
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 23rd day of March 2015.

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

June 16, 2015


Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

1 State of South Carolina
2 County of Oconee In the Court of General Sessions

3
4 State of South Carolina,)
5)
6) 2014-GS-37-00503
7) 2014-GS-37-00504
8) 2014-GS-37-00505
9 -vs-)
10) March 24, 2015
11)
12 Russell Alan Tupper,)
13)
14) Volume II of II
15) Pages 113 - 243
16) Transcript of Record
17)
18)
19)
20)
21)
22)
23)
24)
25)

12 B E F O R E:

13 The Honorable R. Lawton McIntosh, Judge;
14 and a jury.

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

16 Bethany Ann Blundy, Esquire
17 Attorney for the State

18 Russell Warren Patrick, Esquire
19 W. Wilson Burr, Esquire
20 Attorneys for Defendant

21
22
23 Diane L. Marcengill, RPR, CRR
24 Circuit Court Reporter
25

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For the State:

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For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:37 a.m.)

4 THE COURT: Before we get started, is there
5 anything from the State that we need contend with?

6 MS. BLUNDY: Nothing, your Honor.

7 THE COURT: From the defense?

8 MR. PATRICK: Nothing, your Honor.

9 THE COURT: Are we clear on yesterday's rulings,
10 everybody?

11 MS. BLUNDY: Just to reiterate to make sure that
12 we are clear, my understanding is that the defense has
13 stipulated that the defendant is a habitual offender
14 and was driving -- and was under suspension at the
15 time, and the main issue that's going to be decided
16 today at trial is whether or not he was driving on
17 those two charges.

18 MR. PATRICK: That is my understanding.

19 THE COURT: And whether or not he was impaired
20 while driving?

21 MR. PATRICK: Not yet. That's -- with the DUI,
22 that's going to be the question, driving and
23 impairment.

24 THE COURT: But everybody is okay? All right.
25 Would you bring the jury in, please, sir.

1 (WHEREUPON, the jury came into open court at
2 approximately 9:39 a.m.)

3 THE COURT: We have everybody here.

4 Good morning. All right. Ladies and gentlemen,
5 in just a second you will be sworn in, but before we
6 do, Mr. Foreman, this is not an endurance contest. If
7 the jury needs anything, if anyone needs to break, just
8 indicate and we'll be glad to stop and accommodate
9 anyone. Okay, sir?

10 If you cannot hear or see, just make a motion and
11 we'll stop and make sure you can see or hear. Okay?

12 Madam Clerk, you ready to swear the jury?

13 THE CLERK: Yes, sir.

14 (WHEREUPON, the jury was impaneled.)

15 THE COURT: All right. Ladies and gentlemen,
16 we're about to start the trial of the case of the State
17 versus Russell Allen Tupper, who's been indicted for
18 driving under the influence, driving under suspension,
19 and as being a habitual traffic offender.

20 Now, I don't know if any of you have ever been
21 involved in a trial before, whether it be civil or like
22 this case, a criminal case. I would suspect, however,
23 that each and every one of you have watched what
24 purports to be a trial on TV or at the movies. What
25 you're about to see is nothing like that. Movies are

1 entertainment. Trials are not. A trial is a basic
2 fundamental part of our democracy. They are a search
3 for the truth to try to make sure that justice is done.

4 With that being said, these attorneys, when
5 they're sworn in as attorneys, take an oath that says
6 that they will zealously represent their particular
7 side of the case, whether it be civil or criminal, and
8 you can expect no less in this case. But at the same
9 time, they're also officers of this court.

10 What that means is you can expect them to be
11 professional, to be competent and courteous to one
12 another, to this Court, and to any witness that may
13 appear in these proceedings. Likewise, you have just
14 taken an oath that you will try to reach a just and
15 fair verdict, and you represented to this Court that
16 you can be fair and unbiased in your deliberations and
17 your task as jurors in this case.

18 What that means is the parties, the attorneys and
19 the Court has a right to expect of you that you will be
20 fair and that you will be impartial in your dealings in
21 this matter. Now, what I'm telling you now is
22 basically a roadmap as to what you can reasonably
23 expect throughout this trial. It is not the law. I
24 will charge you on the law at the end of this case.
25 It's the law that you must apply to the facts as you

1 find them to be.

2 Now, I remind you that the fact that this
3 gentleman was indicted is not evidence of his guilt.
4 It does not raise an inference of his guilt nor a
5 presumption of his guilt. It's simply the charging
6 mechanism by which the State of South Carolina will
7 bring a person before a jury such as yourselves for a
8 trial and a determination of guilt or innocence.

9 Several of you or all of you have indicated you
10 like to take notes. Let me give you a couple
11 cautionary instructions about that. At the end of the
12 day, just because something appears in someone's notes
13 doesn't mean it trumps somebody's memory of what the
14 testimony and the evidence is. Some people are better
15 note-takers than others.

16 Mr. Foreman, if there is a difference in
17 somebody's notes and somebody's memory, that's why they
18 call them deliberations, and you'll just have to hash
19 the differences out so that you can ultimately reach a
20 finding of fact on that issue.

21 Also, part of your functions as jurors is to
22 determine credibility, and one of the aspects of
23 determining witness credibility is watching how they
24 act on the stand. In other words, watching their
25 demeanor. So if you're so engaged in taking your notes

1 that you miss a subtle reaction of some witness, you
2 may miss something that's very important or indicative
3 of what their credibility is in this case, so I remind
4 you to be careful with regard to that.

5 Now, in this case the defendant has said, "I'm not
6 guilty to all three charges." What that means is the
7 burden has been placed on the State of South Carolina
8 to prove each and every element of all three charges by
9 proof beyond a reasonable doubt. And I'll charge you
10 more about reasonable doubt, but let me give you a
11 brief definition about reasonable doubt at this
12 juncture.

13 A reasonable doubt is the kind of doubt that would
14 cause a reasonable person to hesitate to act in an
15 important matter in their own affairs. Now, some of
16 you may have sat on a civil jury. In those cases, the
17 burden of proof is by a preponderance or what we say
18 the greater weight of the evidence.

19 In criminal cases the burden is much higher. It
20 is proof beyond a reasonable doubt. And proof beyond a
21 reasonable doubt is proof that leaves you firmly
22 convinced of the defendant's guilt.

23 Now, with that being said, ladies and gentlemen,
24 there are very few things in this world that we know
25 with absolute certainty, and in criminal cases the law

1 does not require proof that overcomes every possible
2 doubt. If, based on your considerations of the
3 evidence, you are firmly convinced the defendant is
4 guilty of the charge or charges for which he is
5 standing trial, then you will be responsible for
6 finding him guilty.

7 On the other hand, if you think that there is a
8 real possibility that you think he's not guilty, then
9 you must give him the benefit of the doubt and find him
10 not guilty.

11 And, Mr. Foreman, I'll tell you more about this at
12 the end when I give you the charge.

13 Each one of these indictments or charges stands on
14 their own. You must consider one independently of the
15 other. Once the jury makes a decision as to that
16 charge, you will independently consider the other
17 charge and the other charge. Okay? And I'll tell you
18 more about that.

19 The indictments will not go back with you to the
20 jury room. You will simply have a verdict form and any
21 exhibits that are admitted into evidence.

22 Now, it will be up to you at the end of this case
23 to determine whether or not the State has met its
24 burden of proving each and every element of the charges
25 against this defendant by proof beyond a reasonable

1 doubt.

2 Now, your purpose as jurors are to be finders of
3 the fact. As we say in the law, you're the sole judges
4 of the facts in this case. In other words, which
5 verdict you intend to reach or that you will reach.

6 If I make a comment during the course of this
7 trial, if I make a movement or sign or anything that
8 seems to indicate to you how you are to find facts in
9 this case, I'm going to ask you but also to instruct
10 you to disregard that. Our state constitution does not
11 allow any trial judge to have an opinion or to express
12 an opinion or comment on the facts. That is solely
13 your province in this case. And you will determine
14 what the facts are from the testimony and the evidence
15 that you will hear in this courtroom, from this witness
16 stand, by way of sworn testimony, and you may not and
17 you shall not be influenced by anything that may occur
18 outside of this courtroom. That's why I told you
19 yesterday before you were excused you may not engage in
20 independent jury research. You may not hear anything
21 about the case or speak with anybody about the case
22 because we want you unaffected in your decision, but
23 base your decision only by what you hear in this
24 courtroom and according to the law as I give it to you
25 at the end of this case.

1 Now, it's not going to be a very long trial. That
2 doesn't mean it's not very important to both the State
3 and to the defense in this matter. So pay close
4 attention. I'll tell you that if I make a mistake,
5 there are groups of folks down in Columbia who will
6 correct me. But ordinarily if you make an incorrect
7 finding of fact, that's not correctible on appeal. So
8 it's very incumbent upon you to pay close attention to
9 the course of this trial.

10 Now, the law that makes you the finders and the
11 sole judge of the fact makes me the sole judge of the
12 law. You must accept the law as I give it to you. You
13 shall not and may not be concerned with what you would
14 like it to be or what you think it should be. Again,
15 if I make a mistake, I will be corrected. But it's
16 your duty as sworn jurors to accept the law as I give
17 it to you.

18 I remind you that you may not begin your
19 deliberations until the end of this case when I give
20 you clear and certain instructions that you may begin
21 your deliberations, and that includes speaking amongst
22 yourselves about any testimony you may hear before a
23 break or during a break.

24 In every occasion, including criminal cases, there
25 are five basic phases. There will be opening

1 statements. There will be presentation of the
2 evidence. There will be closing statements. I'll
3 charge you on the law and you will begin your
4 deliberations. I tell you that so you will know
5 generally where you are.

6 Now, in just a minute the State is going to step
7 up and give you their opening statement. What the
8 State tells you in their opening statement is not
9 evidence. The attorneys are not sworn, they're not put
10 on this witness stand and put through cross-examination
11 or direct examination. It's helpful to help you
12 understand what their case is, but it is not evidence.

13 So at the end of the day if what you remember the
14 facts to be differs from what either one or both of
15 these attorneys tell you, then your memory will control
16 as to what those facts are. At the same time, the
17 defense may but is not required to give an opening
18 statement. Again, the same rules would apply to the
19 defense. It's just their contentions about what the
20 case is about and what they intend to show.

21 I'll remind you at all times the burden of proof
22 remains on the State of South Carolina to prove this
23 defendant guilty by proof beyond a reasonable doubt.

24 In every case I ever had as an attorney and every
25 case I've had since I've been a judge, there will be

1 objections. Now, the fact that there is an objection
2 and to the extent I let you stay in the courtroom while
3 I rule on that objection is not proper fodder for your
4 deliberations.

5 In other words, Mr. Foreman, you may not go back
6 in your jury room when it's time to begin your
7 deliberations and say, "What about that objection?
8 What about this? What about the other?" It's simply
9 to say that that is the process that's followed in
10 every case, and in your deliberations, Mr. Foreman, it
11 will be your job to make sure that no one tries to
12 raise the issue of an objection or my ruling on that
13 objection when you begin to make your decision in this
14 case.

15 At times you may feel like you're cattle running
16 in and out of the courtroom. Sometimes it can't be
17 helped. Just necessarily understand that that is the
18 process that we go through to make sure that justice is
19 done for both parties and that a fair and impartial
20 trial is had.

21 Now, Mr. Foreman, at any time if I call you back
22 to the jury room before you're ready -- I mean to the
23 courtroom before you're ready, just simply say, "We're
24 not ready to go yet." We'll give you as much room as
25 you need reasonably and accommodate you as much as we

1 can.

2 If the jury needs anything, I'm going to ask that
3 you do the same process that you did earlier", write
4 your name, write what the issue or what your request
5 is, give it to the bailiff, and we'll receive it here
6 in the courtroom. Okay, sir?

7 Now, in order to make sure I haven't stated
8 something to you that I should have or neglected to
9 tell you something that I should not have, I'm going to
10 ask that you go back to the jury room and let me
11 consult with the attorneys and we'll come back with
12 opening statements.

13 (WHEREUPON, the jury exited the courtroom
14 at 9:52 a.m.)

15 THE COURT: Any additions or exceptions from the
16 State?

17 MS. BLUNDY: Nothing from the State, your Honor.

18 THE COURT: From the defense?

19 MR. PATRICK: Nothing from the defense, your
20 Honor.

21 THE COURT: Okay. Y'all want a minute or two
22 before you do your opening statements or are you ready
23 to go?

24 MS. BLUNDY: I'm ready, your Honor.

25 MR. PATRICK: Ready, your Honor.

1 THE COURT: Tell them to come on back.

2 Mr. Patrick, are you going to make an opening
3 statement?

4 MR. PATRICK: Yes, your Honor.

5 (WHEREUPON, the jury came into open court at
6 approximately 9:53 a.m.)

7 THE COURT: State ready to proceed?

8 MS. BLUNDY: Yes.

9 THE COURT: Defense ready?

10 MR. PATRICK: Yes, your Honor.

11 THE COURT: You may proceed.

12 MS. BLUNDY: May it please the Court.

13 Three things I want you to remember about this
14 case today and it's relatively simple: Drinking,
15 driving, and a ditch. That sums up our entire case.

16 And you heard from the judge about reasonable
17 doubt. And that is my burden as a representative from
18 the State. I have to prove to you beyond a reasonable
19 doubt elements of the crimes that he's been charged
20 with.

21 What is reasonable doubt? Well, like the judge
22 told you, when you're back in the jury room
23 deliberating after the trial is over, if you are firmly
24 convinced that the defendant is guilty, you must render
25 a guilty verdict.

1 Everything in life is not a hundred percent
2 certain. In fact, you probably heard the only thing a
3 hundred percent certain in life is death and taxes. We
4 know that. And that's not the standard. But if you
5 are firmly convinced that I proved to you the elements
6 of these crimes that I'm about to go through with you,
7 then it's got to be a guilty verdict. I just want to
8 start off by saying that.

9 There's two different types of evidence, too. And
10 you may have heard of it: Circumstantial evidence and
11 direct evidence. What are they? Well, direct evidence
12 is a good example of you walk out of your house, you
13 get wet. It's raining. It completely covers you.
14 You're standing in it. You know it. It's direct.

15 What's circumstantial evidence? You go to bed at
16 night, you fall asleep. You wake up in the morning.
17 The ground is completely covered. There's puddles.
18 Your neighbor's house is wet. You know that it rained.
19 Did you see it? No, of course not. You were asleep.
20 But you use your common sense and you know that it
21 rained.

22 Why do I tell you the difference? Because the law
23 does not make a distinction between direct evidence and
24 circumstantial evidence. And in the case that you're
25 going to decide today, there are both types of

1 evidence. So you will need to weed through that and
2 understand the difference.

3 So what happened? Why am I telling you about
4 drinking, driving, and the ditch? It was January the
5 16th of 2014. It was a clear, crisp winter day. It
6 was sunny. There was no slick roads. There was no
7 storms. There was no rain, and the defendant was
8 driving. It was 8:30 in the morning. He was driving
9 his mama's car. He lives with his mom. He was driving
10 on Armstrong Road. That is off of 123 going towards
11 Westminster.

12 And when he was driving, he took the curve too
13 fast. He missed the curve. He went about 40 feet off
14 the roadway into some bamboo and into a ditch. Nobody
15 witnessed the accident but William Gravley, a member of
16 our community who rode by, saw him standing next to the
17 car went to see if he was all right.

18 He was fine. William thought something isn't
19 right about this guy. He was staggering a little bit.
20 He was wobbly. He asked him, "Do you need help?" He
21 said, "No, I just ran my car out of the road. I need a
22 ride." William said, "Well, I'm not going to give you
23 a ride," but he did end up calling 911.

24 And so Trooper Taylor from the South Carolina
25 Highway Patrol was dispatched out to the wreck scene.

1 When he arrived, the defendant was the only one there.
2 He asked Mr. Tupper what happened. He noticed
3 Mr. Tupper, the defendant, smelled of alcohol. He
4 noticed that his reaction time was slow. He noticed
5 that he was unsteady on his feet. He asked the
6 defendant, "Have you been drinking?" Immediately the
7 defendant says, "No. No, I haven't had anything to
8 drink." Then he asked him again and he changes his
9 story, and he says, "Okay. Yes, I've been drinking. I
10 drank a lot. But I wasn't driving the car." But we'll
11 leave that for you to decide.

12 He's been charged with driving under the
13 influence. In the State of South Carolina, I have to
14 prove to you that the defendant was driving a motor
15 vehicle under the influence of alcohol or drugs or a
16 combination of the two to the extent that his faculties
17 to drive that car were materially and appreciably
18 impaired. Materially and appreciably. You know it.
19 You can appreciate it. You can tell. Basically you
20 can tell.

21 The other charges that have been brought before
22 you are habitual traffic offender. Basically, if you
23 have been charged with either three major traffic
24 offenses or ten minor traffic offenses within a
25 three-year time period, you're designated as a habitual

1 traffic offender.

2 He's also been charged with driving under
3 suspension. Driving on a public highway while your
4 driver's license is suspended. Not a valid license.

5 Now, the defendant has stipulated, he's agreed,
6 "Yes, I am a habitual traffic offender. Yes, I did not
7 have a valid driver's license." What he doesn't agree
8 to is that he was driving. So that's going to be our
9 issue today in trial. And I ask that you pay close
10 attention to the evidence. You remember the
11 circumstantial versus the direct. You remember
12 everything that comes from that witness stand, and you
13 talk about it after the trial. That's all I ask of
14 you. Talk about it. And if you're firmly convinced,
15 render a guilty verdict.

16 There is a little more to our case, though.
17 Trooper Taylor doesn't offer the defendant any field
18 sobriety tests. You may have heard of field sobriety
19 tests -- one leg stand, walk-and-turn, an eye test. He
20 didn't do that because he felt it was unsafe on the
21 curve. Those tests have to be administered where the
22 accident occurs. You can't transport them to a
23 different place. Got to be done right there. It was a
24 dangerous curve, didn't feel it was safe, didn't offer
25 it to him. Didn't feel like he needed to offer it to

1 him because of the impairment, and you will get to hear
2 from his testimony as to why.

3 He did offer him a breathalyzer test, and the
4 defendant refused to give a breath sample. He's guilty
5 of DUI, he's guilty of habitual offender, and he is
6 guilty of driving under suspension. Drinking, driving
7 and a ditch. That sums it up. Thank you.

8 THE COURT: Mr. Patrick, does the defense wish to
9 have an opening statement?

10 MR. PATRICK: We do, your Honor. May it please
11 the Court.

12 THE COURT: Yes, sir.

13 MR. PATRICK: Consistency. Mr. Tupper was not
14 driving that car. He told the police officer that day,
15 January 16th, 2014, and he is still saying that today,
16 14 months later. Consistency.

17 Ladies and gentlemen, I took a year off between
18 college and law school. And during that year off, I
19 worked construction. I learned a lot of things working
20 construction. And one of the things was that I
21 definitely wanted to go to law school. Construction
22 was -- it's tough work.

23 Second thing I learned was how to build fences. I
24 learned how to set the posts, build supports, put the
25 slats on. And that ended up becoming very important

1 for me because I ended up getting a dog who, if he can
2 see out, he's going to get out. So building fences was
3 something that I got good at, and I built many of them.

4 But, ladies and gentlemen, the State in this case
5 is going be using circumstantial evidence to try to
6 prove Mr. Tupper was driving. They don't have any
7 direct evidence that he was behind the wheel. Nobody
8 saw him driving. So they're going to try to prove
9 their case by circumstantial evidence. And the judge
10 will give you an instruction on circumstantial
11 evidence.

12 Part of that will tell you that every circumstance
13 that they rely on, that the State relies on, has to be
14 perfectly consistent with each other. If they're not
15 perfectly consistent with each other, if they're not
16 perfectly consistent with Mr. Tupper driving, then you
17 will have to find Mr. Tupper innocent.

18 The reason I brought up building a fence, part of
19 circumstantial evidence is, if think about it, is they
20 have to build a fence around Mr. Tupper, and they have
21 to put up slats or evidence all the way around. So
22 they have to prove, and they can't leave any gaps.
23 They can't leave any slats out. They have to
24 completely encircle Mr. Tupper in order to find him
25 guilty.

1 Now, ladies and gentlemen, when we, at the end of
2 this trial, I'll come up here and we will inspect their
3 fence. And after we inspect that fence, it will be
4 clear that there is only one consistent thing, and that
5 is that Mr. Tupper was not driving. And I'll ask you
6 to find him not guilty on all three charges. Thank
7 you.

8 THE COURT: Call your first witness, please.

9 MS. BLUNDY: Thank you, your Honor. The State
10 would like to call William Gene Gravley.

11 WILLIAM EUGENE GRAVLEY,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. BLUNDY:

15 Q Mr. Gravley, please state your full name for the
16 record.

17 A William Eugene Gravley.

18 Q And you go by Gene, right?

19 A Gene.

20 Q Gene, where are you employed?

21 A School District of Oconee County.

22 Q And how long have you been with the school
23 district in our county?

24 A Eleven years.

25 Q And as part of your job with the school district,

1 do you drive around?

2 A Yes.

3 Q Do you recall the early morning of January 16th,
4 2014?

5 A I do.

6 Q And on that date did you have an opportunity to
7 come into contact with the defendant, Mr. Tupper, over
8 here?

9 A I did.

10 MS. BLUNDY: Please let the record reflect that he
11 has identified the defendant.

12 THE COURT: So reflects.

13 BY MS. BLUNDY:

14 Q Do you recall what time it was when you were out
15 and about?

16 A It was early morning. Exact time traveling
17 through there, I don't recall, but it was early
18 morning.

19 Q If you would just speak loud because I don't know
20 if everybody can hear you.

21 A It was in the early morning, sometime after
22 probably 8 o'clock or so. Somewhere this that range,
23 yes.

24 Q Do you recall what type of weather it was that
25 day?

1 A It was clear and cool. I would say it was pretty
2 cool.

3 Q What road were you driving on, do you remember?

4 A It was Armstrong Road.

5 Q And what did you observe when you got to Armstrong
6 Road?

7 A What was the question?

8 Q What did you observe when you got to Armstrong
9 Road?

10 A Well, when I was driving down through there, I
11 hardly ever travel that road because I pull a trailer,
12 and I try to stay off some of the smaller roads, but I
13 did that morning just to see if it was a shortcut. And
14 I came up on in the curve there. There was a car off
15 in the woods, and I seen the -- I can't think of his
16 name there -- but I seen him walking down the right
17 side of the road.

18 Q Okay. How far off of the road was the car?

19 A It was probably 40 feet or so.

20 Q And did you assume an accident had occurred? What
21 was it about the car that was strange to you?

22 A Well, it just drove off into the woods, just
23 sitting in the woods there like.

24 Q Was there anybody around the vehicle at the time?

25 A There wasn't anybody around the vehicle. He was

1 on the right-hand side of the road and was walking.

2 Q Was there anybody with him?

3 A I did not see anybody else.

4 Q What happened when you approached the defendant?

5 A When I came up, I pulled down the side where he
6 was walking, asked him, you know, if he needed help,
7 what happened. And when I asked -- you know, asked him
8 what happened, he wanted me to give him a ride, said
9 that he had ran out of the road, missed the curve,
10 wanted to know if I would give him a ride to his
11 mother's house. I said, "No, I can't give you a ride
12 to your mother's house." So we just -- I said, We can
13 go back up, you know, to the vehicle, you know, and
14 call 911 or whatever, so.

15 Q So he had told you that he had run out of the
16 road?

17 A Yes.

18 Q And he wanted a ride to his mother's house?

19 A Yes.

20 Q What did you notice about his demeanor, what was
21 he acting like?

22 A He was just sort of quiet, slow, not -- not saying
23 a whole lot.

24 Q Did you notice anything strange about the way he
25 walked?

1 A Well, when I pulled up beside him, he got in the
2 truck with me, and I just turned around, went back up
3 in front of the vehicle, so I really didn't get a
4 chance to see him walk there. And he pretty much sat
5 in the truck until the officer got there.

6 Q Okay. How about the way he talked, his speech,
7 anything that you thought was a little strange?

8 A It was just sort of slow.

9 Q Why didn't you end up giving him a ride to his
10 mom's house?

11 A Why didn't I?

12 Q Uh-huh.

13 A Well, it would be against my policy to probably
14 carry anybody that way. You know, if somebody was hurt
15 or if I needed to do something, I feel it would be
16 okay. But somebody is involved in an accident, you
17 know, you don't leave the accident.

18 Q So what did you end up doing?

19 A We just turned around, went back up and waited on
20 the officer to get there.

21 Q Did you call 911?

22 A I did.

23 Q Were you there the entire time until Trooper
24 Taylor arrived?

25 A I was.

1 Q Do you recall how long it was or how long it took
2 from the time that you called 911 until the time
3 Trooper Taylor arrived?

4 A It wasn't very long from the time because I think
5 I assumed that someone else had already called before I
6 did because it didn't seem like a whole lot of time for
7 the first officer to get there.

8 Q During the entire time that you were with the
9 defendant, did anybody else come in or around the car?

10 A Not that I know of.

11 Q Was it just you and the defendant that entire
12 time?

13 A Pretty much, yes.

14 Q Pretty much? Will you explain that, please?

15 A Well, I just -- I'm -- just the way I'm speaking.
16 There wasn't anybody else there.

17 Q Okay. Thank you.

18 MS. BLUNDY: I have no further questions. Thank
19 you. Please answer any questions Mr. Patrick may have.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. PATRICK:

23 Q Is it Mr. "Gravley" or "Gravley"?

24 A Gravley.

25 Q Gravley. I apologize.

1 A It's okay.

2 Q Mr. Gravley, you testified that when you got out
3 there, Mr. Tupper wasn't by the car. He was on the
4 other side of the road, correct?

5 A That's correct.

6 Q So you never saw Mr. Tupper behind the wheel?

7 A No.

8 Q Okay. You called 911. And when the officer got
9 out there, you spoke to him about what you had
10 observed?

11 A Yes.

12 Q So you had a brief conversation about -- about,
13 you know, you stopping?

14 A Yes.

15 Q Did you write a statement on that particular day?

16 A Not that I know of.

17 Q Did the officer get your information from you,
18 your --

19 A Yes, he did.

20 Q Take your driver's license?

21 A Yes.

22 Q Got your telephone number?

23 A Yes.

24 Q Once he got all that information, you were free to
25 leave?

1 A Yes.

2 Q When you went home, you didn't write down what had
3 occurred that day, did you?

4 A No.

5 Q Did Trooper Taylor call you and have you come in
6 and write down a statement?

7 A No.

8 Q In fact, the next time you probably thought about
9 this was close to 14 months later when the solicitor
10 called you into her office?

11 A I wouldn't say it was the last time I thought
12 about it, but I thought about it when she did call me,
13 yes.

14 Q And that was 14 months later?

15 A Yes.

16 Q And it was then that you -- she had you come in to
17 try to talk to you about what happened, correct?

18 A Correct.

19 Q And to try to get you to remember, to the best of
20 your knowledge, what had happened?

21 A Correct.

22 Q 14 months previously?

23 A Correct.

24 Q You testified that you weren't entirely sure about
25 when the call went in?

1 A Correct.

2 Q I want to hand you a document. The highlighted
3 portion in the green, is that your number and your --

4 MS. BLUNDY: Objection. Your Honor, I don't know
5 what he's handed the witness.

6 THE COURT: Would you show it to counsel, please.

7 BY MR. PATRICK:

8 Q Do you have any idea what that document is?

9 A It's a phone transaction where I made a phone
10 call.

11 Q From the 911 phone call?

12 A Yes.

13 Q And that is, the portion I highlighted in green,
14 that's your number and your name?

15 A That's correct.

16 Q And what time does that say?

17 A 9:14.

18 Q 9:14. So it's fair to say about 9:14 is when you
19 made the initial call to the 911 --

20 A Yeah. Early morning, yes.

21 Q And you said the officer came there shortly
22 thereafter?

23 A Yes. It didn't seem like a long time. I didn't
24 keep up with exactly when he got there.

25 Q Which is understandable. You mentioned that there

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William Eugene Gravley - Redirect Examination by Ms. Blundy

1 was probably a phone call earlier, correct --

2 A Yes.

3 Q -- is why he showed up so much quicker?

4 A Yes.

5 Q Does that call log show there was an earlier phone
6 call, the portion highlighted in yellow?

7 A Yes, there is.

8 Q And that was -- what time does that say?

9 A 8:31.

10 Q So 40 minutes prior to when you made the phone
11 call, approximately 40 minutes?

12 A Correct.

13 Q And that portion says there were people out there?

14 A Correct.

15 Q But when you got out there, you only saw

16 Mr. Tupper?

17 A That's correct.

18 Q 40 minutes after the first known phone call came
19 in?

20 A Correct.

21 MR. PATRICK: No further questions, your Honor.

22 THE COURT: Redirect?

23 MS. BLUNDY: Thank you.

24 REDIRECT EXAMINATION

25 BY MS. BLUNDY:

1 Q Mr. Gravley, I know it has been 14 months since
2 the date of this accident. But the best that you can
3 recall, you said it was around 8 o'clock you were
4 driving?

5 A Well, I don't remember exactly the time but, you
6 know.

7 Q Early morning?

8 A I was leaving one school going to another school,
9 so.

10 Q Okay. Could it be possible -- let me show you the
11 first page of the 911 log. Could it be possible that
12 the call actually came in at 8:40?

13 MR. PATRICK: Objection; speculation.

14 THE COURT: What was your question?

15 MS. BLUNDY: I said could it be possible that the
16 call actually came in at 8:40.

17 THE COURT: Lay some foundation for it, please.

18 Sustained as asked.

19 BY MS. BLUNDY:

20 Q Mr. Gravley, how did you know that there might
21 have been another 911 call before yours?

22 A Well, I'm a volunteer fireman, and I have
23 walkie-talkies, and I was listening on the
24 walkie-talkie, too. So, you know, I can tell after I
25 made the phone call, then I turned my radio on to see

1 what was happening, to see response, was anyone coming
2 or whatever.

3 Q So is it possible someone passed by before you
4 actually stopped?

5 A I would think that's very possible.

6 Q Okay. When you arrived there, though, he was the
7 only one at the scene?

8 A That's correct.

9 Q Is it possible that you made the phone call to 911
10 prior to 9:15?

11 MR. PATRICK: Objection; speculation.

12 THE COURT: Sustained.

13 THE DEFENDANT: Um --

14 THE COURT: Don't answer that, sir.

15 BY MS. BLUNDY:

16 Q You do not actually remember when you made the
17 phone call to 911?

18 A No.

19 Q You just know it was early morning?

20 A Yeah.

21 Q Thank you.

22 MS. BLUNDY: No further questions.

23 THE COURT: May this witness be excused?

24 MS. BLUNDY: Yes, your Honor. I would ask that he
25 be able to leave.

1 THE COURT: You are free to leave.

2 Call your next witness, please.

3 MS. BLUNDY: The State would like to call Lance
4 Corporal Trooper Michael Taylor.

5 MICHAEL TAYLOR,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. BLUNDY:

9 Q Trooper Taylor, please state your full name for
10 the record.

11 A I'm Michael Taylor, lance corporal with the South
12 Carolina Highway Patrol.

13 Q How long have you worked for the highway patrol?

14 A I've been on with the highway now for
15 approximately just over eight years.

16 Q And as a state trooper, what are some of your
17 general duties?

18 A Routine patrol, traffic enforcement, you know,
19 speeding tickets, seat belt tickets, that kind of
20 thing, wreck investigations.

21 Q Do you ever encompass or work with DUI-related
22 incidents?

23 A I do.

24 Q Do you ever investigate accidents?

25 A I do.

1 Q Were you on duty the morning of January 16, 2014?

2 A I was.

3 Q And on that date did you see the defendant or come
4 into contact with the defendant, Mr. Russell Tupper?

5 A I did.

6 Q Is he present in the courtroom?

7 A He is. He's over here in the white button-up
8 shirt in the middle of the table there.

9 Q Do you recall what time you were dispatched out to
10 the wreck scene?

11 A It was approximately 8:30. The wreck report,
12 when I respond to a collision, when I get to a
13 collision and I start my paperwork, I ask my dispatch
14 for my notification and arrival times. The
15 notification time I was given was 8:33 in the morning.

16 Q How does dispatch know to send you out?

17 A Receive a phone call from either an individual or
18 from the agency that took the call such as the Oconee
19 County 911 system. And they reflect that in their
20 logs.

21 Q So you were dispatched around 8:30 in the morning?

22 A I was dispatched around 8:30 in the morning, 8:33.

23 Q Where did you come into contact with the
24 defendant?

25 A It's state secondary Highway Number 49, which is

1 Armstrong Road. And that's in the Westminster area of
2 Oconee County, South Carolina.

3 Q Tell us a little bit about Armstrong Road. What
4 type of road is it?

5 A It's a two lane, it's a residential road. There
6 is some farmland out there as well. It's fairly narrow
7 and pretty curvy.

8 Q Is it a public road, is it a private road?

9 A It's a public highway, public road.

10 Q What did you observe when you arrived at the
11 scene?

12 A When I arrived, I actually came in off of U.S.
13 Highway 76. I came from the Seneca area toward
14 Westminster and turned left on Armstrong Road. And as
15 I arrived, I notice that there was a truck with a
16 trailer that was parked on the side of the road like
17 facing -- going toward Highway 11. To the right of the
18 truck, off in a bamboo patch, there was a red vehicle
19 that appeared to have ran off the roadway and wrecked.

20 Q Were you able to go up to the vehicle?

21 A I was.

22 Q Who was around the vehicle at the time that you
23 arrived on the scene?

24 A There was no one at the vehicle itself. When I
25 arrived, actually Mr. Gravley was actually standing on

1 the side of the road, just kind of trying to monitor
2 traffic, trying to hopefully help prevent another
3 collision from happening with his county vehicle, and
4 inside of his truck was Mr. Tupper. He had allowed him
5 to get inside the truck to sit down to try to stay
6 warm.

7 Q Do you recall what type of car it was off the side
8 of the road?

9 A I believe it was a Dodge, like a four-door Dodge
10 car.

11 Q Were you able to determine who the car was
12 registered to?

13 A Yes, ma'am. It's registered to Betty Mae Tupper,
14 which is Mr. Tupper's mother.

15 Q What did you determine happened during the
16 accident?

17 A As I was -- as I was looking around the area, I
18 was able to see that this vehicle had been traveling
19 from Highway 11 toward U.S. Highway 76 on Armstrong,
20 came into a curve and ran off the right-hand side of
21 the road. There appeared to be an overcorrection, and
22 the vehicle then traveled across both lanes of
23 Armstrong Road, ran off the left side of the road and
24 ran into a ditch and proceeded beyond into a bamboo
25 patch.

1 Q When you came into contact with Mr. Tupper, what
2 did you notice about him?

3 A I noticed very slow, slurred speech. He had
4 fairly heavy eyes, so to speak, like seemed to be
5 having trouble keeping his eyelids open. When I could
6 see his eyes, they appeared to be bloodshot eyes. He
7 was fairly unsteady. There was a couple times where I
8 had to reach and grab him to try to hold him up.

9 Q Did you smell any alcohol on him?

10 A I did.

11 Q Did you ask him whether or not he had been
12 drinking?

13 A I did.

14 Q What was his first response to you?

15 A He had a pretty initial quick response that he had
16 not been drinking anything.

17 Q Did you ask him other -- did you ask him again?

18 A I asked him -- I did ask him again because the
19 presence of alcohol was obvious. And, you know, the
20 second time I asked him, he changed his answer and
21 said, "Yeah, I've been drinking a lot."

22 Q How many other people were present while you were
23 at the accident scene?

24 A It was just the three of us, myself, Mr. Tupper,
25 and Mr. Gravley.

1 Q How long would you say you were out at the
2 accident scene approximately?

3 A I don't know exactly. It was at least 30 minutes,
4 probably more.

5 Q During that entire time that you were out there,
6 did anyone else come back out to the accident scene or
7 the car?

8 A Nobody did. There were some other people that
9 traveled up and down the road going from wherever to
10 wherever, but, you know, of course a couple people
11 stopped and said, "Hey, is everybody okay? I just want
12 to check on things," but nobody actually stopped or
13 came back out to the scene, no.

14 Q Who did you determine was driving the vehicle?

15 A Mr. Tupper.

16 Q When you were able to go over towards the vehicle,
17 did you notice anything on the inside of the vehicle?
18 Were there any personal belongings in the vehicle?

19 A I didn't really notice much of anything on the
20 inside as far as belongings. I did notice that like
21 the seat position, the seat position appeared to be in
22 such a manner that not a short person was driving it,
23 but not a super tall person like somebody, say, you
24 know, my height, 6'2, would have been driving. It was
25 not close to the steering wheel, but it was back far

1 enough for somebody approximately Mr. Tupper's size to
2 be able to comfortably operate the vehicle.

3 Q You're talking about the driver's seat?

4 A The driver's seat, yes.

5 Q Do you recall ever asking Mr. Tupper where he was
6 headed?

7 A I did. He didn't want to answer the question.

8 Q After Mr. Tupper told you that he wasn't driving,
9 did he ever tell you who was?

10 A No, he never -- he never wanted to admit to
11 driving. In fact, at one point after Mr. Tupper was
12 arrested and read Miranda, read his Miranda rights, he
13 did make a statement that he didn't really want to tell
14 me anything in fear that he might incriminate himself.

15 Q So you did arrest him for of driving under the
16 influence?

17 A I did.

18 Q And you read him his Miranda rights?

19 A I did.

20 Q You told him he had a right to a lawyer?

21 A I did.

22 Q You told him anything he would say could be used
23 against him in court?

24 A I did.

25 Q You told him that he had a right to remain silent?

1 A I did.

2 Q You told him that he, if he couldn't afford a
3 lawyer, he could be appointed one?

4 A I did.

5 Q Typically, Trooper Taylor, on a DUI arrest, do you
6 have your video recorder running?

7 A I do typically.

8 Q And what happened this day with your video?

9 A I didn't know it at the time, after going back and
10 reviewing video making a copy for the solicitor here, I
11 noticed that there was an error in the dubbing of it
12 that I don't know if it was with the camera itself or
13 with the actual disk that it copies on. It's a digital
14 system, and it saves everything to a hard drive and it
15 burns it automatically onto a DVD. The video somehow
16 had messed up. There were -- it skipped around in
17 portions. Essentially it didn't record correctly.

18 Q Did you fill out an affidavit stating that?

19 A I did.

20 (WHEREUPON, State's Exhibit Number 1 was marked
21 for identification.)

22 BY MS. BLUNDY:

23 Q I'm showing you what has been marked State's
24 Exhibit 1. What is this document?

25 A This is the affidavit for failure -- it's labeled

1 "Affidavit for Failure to Produce a Videotape of DUI."

2 Q And what did you write as your reasons?

3 A There was a subsection for D, which is other valid
4 reasons existed for failing to produce the videotape
5 based on the totality of the circumstances, the reasons
6 are outlined below. And I wrote, "This video is of a
7 collision. The camera was activated immediately on my
8 arrival. As I began the DUI investigation, the
9 defendant was brought in front of the camera. After
10 arrest and Miranda, the video repeats itself. The
11 camera unit was changed on 2/18/14."

12 Q Is this -- is this substantially in the same
13 condition as the day you filled it out?

14 A Yes, ma'am.

15 Q Has this been altered or changed in any way since
16 you wrote it?

17 A No.

18 Q Is this still your testimony before the court
19 today?

20 A It is.

21 MS. BLUNDY: State moves to admit Exhibit Number

22 1.

23 THE COURT: Any objection?

24 MR. PATRICK: No objection.

25 THE COURT: Admitted.

1 (WHEREUPON, State's Exhibit Number 1 was admitted
2 into evidence.)

3 BY MS. BLUNDY:

4 Q Trooper Taylor, in reviewing the video, were there
5 issues with the timing of the video?

6 A The timing appears to be skipping around. It
7 doesn't -- I'm not sure what happened with it, but it
8 jumps around with the time.

9 Q Does it repeat itself?

10 A It does.

11 Q Kind of like Groundhog Day, over and over again?

12 A Right.

13 Q So we have an issue with your video camera. Is it
14 a new camera?

15 A It was a new camera, yes, ma'am.

16 Q In fact, you had the old VHS camera before,
17 correct?

18 A Actually, the car that I had before that was a
19 Crown Victoria that had the same system in it, the
20 digital system. Before that I operated off a VHS
21 system. But, yes, it's a new camera system.

22 Q Once you discovered that the camera or the copying
23 of the camera wasn't working, were you able to notify a
24 supervisor?

25 A I was.

1 Q To get that situation corrected?

2 A I was. Any time we notice there was an issue with
3 our cameras, that's a pretty high priority. We rely a
4 lot on our cameras capturing our daily activities with
5 traffic stops and wrecks and DUI investigations, that
6 type of thing. So if it's malfunctioning, we want to
7 have it corrected immediately. So I notified my
8 supervisor, and I was sent fairly quickly upon catching
9 it to our shop in Columbia to have it changed out.

10 (WHEREUPON, State's Exhibit Number 2 was marked
11 for identification.)

12 BY MS. BLUNDY:

13 Q That leads me to State's Exhibit Number 2. What
14 is this document?

15 A This is a service order that our shop in Columbia
16 writes up any time we come in for any kind of repairs.

17 Q And what did they end up doing with the camera?

18 A They actually replaced the main body of the
19 camera. They didn't replace the camera itself because
20 there wasn't an issue with the camera itself. The
21 issue was with the main body of the camera. They
22 replaced it out.

23 Q And you got this work order service form?

24 A I did.

25 Q Is it substantially in the same condition as the

1 day it was given to you?

2 A It is.

3 Q Has this been altered or changed in any way?

4 A No, ma'am.

5 Q This reflects that your camera had been changed
6 out?

7 A It does.

8 MS. BLUNDY: State moves to admit Exhibit Number
9 2.

10 THE COURT: Any objection?

11 MR. PATRICK: No objection, your Honor.

12 THE COURT: Admitted.

13 (WHEREUPON, State's Exhibit Number 2 was admitted
14 into evidence.)

15 BY MS. BLUNDY:

16 Q In your affidavit, Trooper Taylor, you said the
17 video had started at the time you came into contact
18 with the defendant, correct?

19 A Right.

20 Q And that's a little different than a normal
21 traffic stop where you pull somebody over, right?

22 A Right.

23 Q Where if you pull somebody over, the video is
24 going to start upon activation of blue lights; isn't
25 that correct?

1 A Right.

2 Q So when you arrive at a wreck scene, that's when
3 you start the video?

4 A Typically.

5 Q Okay.

6 A As soon as we arrive. Actually these cameras have
7 a pre-event recording is what it's called, which will
8 capture up to a minute's worth of time before the
9 equipment is actually activated, so.

10 Q Normally in your, let's just say standard
11 run-of-the-mill DUI case, you would offer field
12 sobriety tests, correct?

13 A Typically.

14 Q Are there occasions where you do not?

15 A There are.

16 Q Was this one of them?

17 A It was.

18 Q Could you please explain for the jury first what
19 the field sobriety tests are and how you use them?

20 A Field sobriety tests that we use, there are three
21 standardized, and they are nationally accepted tests
22 that we use. They have gone through many years of
23 trial studies and been validated and have been proven
24 to accurately work a very large percentage of the time.

25 They consist of an eye test. It's called the

1 horizontal gaze nystagmus. We call it the HGN because
2 that's kind of a mouthful. And it's a test that we
3 use -- we look for nystagmus, which is an involuntary
4 jerking of the eyes. So that's the first test that we
5 use.

6 The second test is called the walk and turn. We
7 have a subject stand in a certain position, take nine
8 heel-to-toe steps, turn around, do the same nine
9 heel-toe steps back opposite direction. There is a
10 prescribed manner in which we instruct the people to
11 use that. That's the second test.

12 The third test is the one-leg stand test. And,
13 again, we advise instructions on it, tell them a
14 specific way to do it. They pick -- essentially they
15 pick one foot off the ground and stand there in a
16 prescribed way that we tell them for a certain length
17 of time.

18 Q Is there certain occasions where these tests
19 aren't valid?

20 A There are.

21 Q What is the first step that you have to go through
22 in deciding whether or not to administer those tests?

23 A We have to validate it which means we have to
24 basically check the person out, per se, and make sure
25 that, first of all, they're able to take these tests

1 immediately.

2 Q And how about where the tests are administered?

3 A Where the tests are administered are a big deal.

4 It's not fair to the defendant or the subject that

5 we're out with if, you know, we're on a steep incline

6 and we're expecting them to, you know, stand still on

7 one leg and do certain things. Again, you know, in a

8 curve, I'm not going to offer a field sobriety test in

9 a curve. That's not safe for anybody. It's not safe

10 for the person that may come around the curve, it's not

11 safe for me standing there with them, and it's

12 certainly not safe for the person that we're out with.

13 Q Were there other cars driving by when you were out

14 there with Mr. Tupper?

15 A There were.

16 Q What determination did you make about the safety

17 in this case?

18 A It was completely unsafe to be standing on the

19 road trying to administer these tests.

20 Q Why else didn't you administer the field sobriety

21 tests?

22 A Honestly, I felt like he was too intoxicated to be

23 even attempting these tests anyways.

24 Q Elaborate a little bit more. Tell us exactly what

25 it was about him that you decided not to offer these

1 tests.

2 A Just as we were standing there talking, with me
3 trying to figure out what to do with him, he was having
4 difficulty even standing straight while we were just
5 standing there talking. There was a few times where I
6 actually had to reach out and grab Mr. Tupper by the
7 arm just to keep him from falling down.

8 Q And how about in the HGN, the nystagmus test, does
9 somebody have to keep their eyes open to do that test?

10 A They do. They do. If they're unable to keep
11 their eyelids open, I'm not able to see what I'm
12 testing for. And Mr. Tupper has having difficulty even
13 holding his eyelids open as we were talking.

14 Q What determination did you make regarding his
15 impairment?

16 A I determined that he was too intoxicated to be
17 operating a vehicle, so subsequently I arrested him.

18 Q After you arrested him and you Mirandized him, you
19 placed him in your patrol car, correct?

20 A Correct.

21 Q What happened or what did you observe after you
22 placed the defendant in your patrol car?

23 A I had some other things I had to do, other
24 information I had to obtain from the vehicle itself and
25 from the witness, Mr. Gravley, that was there. So I

1 was back and forth a good bit, but there were several
2 times where I would go back to my vehicle to check on
3 him. There was stuff I needed to get out. But mainly
4 I wanted to check on him because, after all, he's in my
5 care and custody at that point, so I want to ensure
6 that nothing was wrong with him as we're there. And
7 there were several times where I went back to the
8 vehicle and I noticed that, even sitting in the seat of
9 my car handcuffed behind his back and seat-belted in,
10 that he was falling asleep. He was passing out.

11 Q Did you ever feel like he needed EMS at any point?

12 A I didn't. And the reason for that is it wasn't a
13 severe crash. It did tear up, I think it was the front
14 bumper of the car, but it wasn't -- it wasn't such to
15 where there was heavy like severe damage to the car.
16 It wasn't a rollover. He didn't strike trees. He
17 didn't go down an embankment. I didn't see any
18 manifestations of injuries or anything like that.

19 Q Who offered the defendant a breathalyzer test?

20 A I did.

21 Q Were you able to read the defendant his implied
22 consent rights?

23 A I did.

24 (WHEREUPON, State's Exhibit Number 3 was marked
25 for identification.)

1 BY MS. BLUNDY:

2 Q I'm showing you what has been marked as State's
3 Exhibit Number 3. What is this document?

4 A This is a copy of the advisement of implied
5 consent rights.

6 Q And how do you recognize it?

7 A It's a standard form that we use with every DUI
8 investigation. Whether we go to a breath test site or
9 whether the subject has been transported to the
10 hospital for evaluation, that's the same form. It has
11 my handwriting on it.

12 Q Is it substantially in the same condition as the
13 day you executed it?

14 A It is.

15 Q Has this form been altered or changed in any way?

16 A No, ma'am.

17 Q Did you have an opportunity to hand the defendant
18 a copy of this form in the breathalyzer room?

19 A I did.

20 Q Were you able to actually read this form out loud
21 to him?

22 A I did. When we go into the breath test room,
23 first thing we do is, again, we activate the camera in
24 there as soon as we walk in the door. We -- I sit down
25 and I get the machine activated, and the first thing I

1 do from there is, along with advising him that he is
2 being video recorded and asking that he take a breath
3 test or offering the breath test to him, saying that's
4 why we're there, the first thing we do is print out
5 this form. I hand a copy to him -- I'm saying "him" in
6 this case because we're here with him, but I hand a
7 copy to the person sitting there and allow them the
8 opportunity to follow along, and I do read it out loud.

9 MS. BLUNDY: State moves to admit Exhibit Number
10 3.

11 THE COURT: Any objection?

12 MR. PATRICK: No objection, your Honor.

13 THE COURT: Admitted.

14 (WHEREUPON, State's Exhibit Number 3 was admitted
15 into evidence.)

16 BY MS. BLUNDY:

17 Q While you were in the breathalyzer room with him,
18 you said you activated the camera?

19 A Yes.

20 Q Did you inform the defendant that he was being
21 video recorded?

22 A I did.

23 Q Did you inform him that you were offering a breath
24 sample?

25 A I did.

1 Q Did the machine run through a series of tests to
2 make sure it was working properly?

3 A It did. I'm not able to use the machine at all.
4 I can't get into it and do anything with the machine
5 unless it validates within itself that it's working
6 properly.

7 (WHEREUPON, State's Exhibit Number 4 was marked
8 for identification.)

9 BY MS. BLUNDY:

10 Q I'm handing you what has been marked as State's
11 Exhibit Number 4. Please tell the jury what that form
12 is.

13 A The South Carolina Law Enforcement Division breath
14 alcohol analysis test report for driving under the
15 influence.

16 Q Where does this form come out of?

17 A There is a printer that's hooked up to the machine
18 that we use and it, upon a person either taking the
19 test or refusing the test, whichever the case may be,
20 it prints it out automatically.

21 Q Please tell me what you put in as your arrest time
22 of the defendant.

23 A My arrest time was around 8:42 in the morning.

24 Q Why is that time of arrest so important as it
25 relates to the breath test?

1 A We have -- once we conduct our DUI investigation
2 and place a subject under arrest, we're on a time
3 limit. We have to have the person taking a test, if
4 they choose to take the test, within two hours of the
5 arrest time.

6 Q And the machine ran its simulator, correct,
7 according to the form?

8 A Correct.

9 Q Was the simulator within the appropriate .08
10 range?

11 A It was.

12 Q Which indicates to you that the machine was
13 working properly?

14 A It does.

15 Q And if it wasn't, the machine would have shut
16 down?

17 A Would shut down and lock me out. I couldn't do
18 anything with the machine afterward until the machine
19 was correct.

20 Q When you offered the breath test to the defendant,
21 did he opt to take it?

22 A He did not.

23 Q He refused to give a sample?

24 A He refused to give a sample.

25 Q And you indicated that and put it into the

1 machine?

2 A I did.

3 Q So at that point you didn't have to check his
4 mouth to make sure there was no foreign materials that
5 might affect the test?

6 A Right.

7 Q And you didn't have to sit in the breathalyzer
8 room for the state law-required 20 minutes prior to
9 administering the test, correct?

10 A Correct.

11 Q Because he wasn't going to take the test?

12 A Right.

13 Q Look at this. Is this substantially in the same
14 condition as the day it was generated?

15 A It is.

16 Q Has this been altered or changed in any way from
17 that date?

18 A Has not.

19 MS. BLUNDY: State moves to admit Exhibit Number
20 4.

21 THE COURT: Any objection?

22 MR. PATRICK: No objection, your Honor.

23 THE COURT: Admitted.

24 (WHEREUPON, State's Exhibit Number 4 was admitted
25 into evidence.)

1 THE DEFENDANT: I might add along with these
2 forms, when we are in the breath test room doing these
3 tests, I have a copy that I keep for my records, and we
4 always hand a copy to the subject for their own
5 recordkeeping. The subject copy has a place where it
6 says just that, it says "subject copy." They don't
7 have to do anything else with it. On our copy we ask
8 that the person we're there with sign it as an
9 acknowledgement that we have explained the form to them
10 and that we're giving them a copy of the form.
11 Mr. Tupper did refuse to sign any form that I had for
12 him.

13 BY MS. BLUNDY:

14 Q Trooper Taylor, for as long as you've been a
15 highway patrolman, have you had occasion to see or come
16 into contact with individuals who were under the
17 influence of alcohol or drugs to the extent that they
18 were impaired?

19 A Many times.

20 Q Based on your observations of the defendant that
21 day, that early morning, do you have an opinion as to
22 whether or not he was impaired?

23 A I do. He was severely intoxicated.

24 Q Do you believe that that affected his faculties to
25 operate that motor vehicle?

1 A Without a doubt.

2 Q Do you believe that he, in fact, was driving that
3 vehicle?

4 A I do.

5 MS. BLUNDY: No further questions, your Honor.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MR. PATRICK:

9 Q Trooper Taylor, you testified that when you got
10 out to the scene, it was Mr. Gravley and Mr. Tupper
11 there, correct?

12 A Correct.

13 Q You never saw Mr. Tupper driving the vehicle, did
14 you?

15 A I did not since it was a collision.

16 Q You were -- the first call you got to go out there
17 was somewhere around 8:30-ish, correct?

18 A Correct.

19 Q But you didn't know exactly when this accident
20 took place, do you?

21 A It's hard to pinpoint unless somebody is able to
22 tell us exactly when the collision occurred. It's hard
23 to pinpoint exactly when they occur.

24 Q So you can't tell us when the accident took place?

25 A Not down to an exact number, no. Not to an exact

1 time, no.

2 Q To any time?

3 A No. I can't say that it was recent. Upon doing
4 my investigation, the engine was still warm. It
5 wasn't -- it hadn't cooled down to where, you know --
6 say it had been sitting there for several hours, so, I
7 mean, there was still a little bit of heat coming off
8 the engine of the car.

9 Q You made the determination that he was impaired
10 and didn't do any field sobriety tests?

11 A Right.

12 Q The horizontal nystagmus doesn't require him to
13 walk anywhere; it requires him to stand still?

14 A That's correct.

15 Q And basically follow a stimulus?

16 A Correct.

17 Q And you had him standing outside your car in front
18 of the video camera, correct?

19 A I did.

20 Q For at least a little bit of time?

21 A A short amount of time, yes, uh-huh.

22 Q So there would have been nothing to stop you from
23 doing at least that test there?

24 A It's still hard to stand there in position the way
25 we need to to offer a test when we're in that kind of

1 environment. And, again, I didn't feel that it would
2 be fair with where we were, nor would it be safe where
3 we were to actually stand there and offer any tests.
4 And, again, the couple of times that I did have to
5 reach out and grab him to help steady him and hold him
6 up, again, safety concerns. I didn't want to stand
7 there and offer it to him.

8 Q Did you not leave Mr. Tupper outside the car while
9 you went to move some items around in your car?

10 A I did. I had to. I had some items in the -- we
11 transport people in the front seat of our vehicle. We
12 don't have a partition like most agencies do. And I
13 had some items laying in the front seat of my car that
14 I had to remove before I could sit him down.

15 Q So you felt it was safe enough for him to stand
16 out there by himself on the side of the road while you
17 did that?

18 A Right. I didn't really have much of a choice on
19 that.

20 Q You had testified that the field sobriety tests,
21 they are a good determinate of whether somebody's
22 impaired?

23 A They are.

24 Q But you had already made that determination,
25 correct, yourself?

1 A Through his other actions, I mean, I felt that
2 there was enough there to be able to proceed the way I
3 did without offering the test.

4 Q The one-legged stand doesn't require a whole lot
5 of movement either, does it?

6 A It doesn't.

7 Q It requires the defendant to stand still?

8 A Right.

9 Q And just lift one leg?

10 A Right.

11 Q But you didn't perform that either?

12 A I didn't. I wouldn't have been able to perform
13 that one due to the process that we have to go through.
14 It's standardized, and there is a specific order that
15 we must go through for each test, and one-leg stand is
16 the last test that we offer. So if I were to go
17 through it, I do the HGN, the eye test, first and then
18 the walk and turn, and then the one-legged stand. The
19 determination was there was no way I was going to be
20 able to offer him the walk and turn, so there's no way
21 possible for me to offer the one-legged stand at the
22 roadside.

23 Q Was there not a patch of cement where the car had
24 gone off the road? I mean, right where the bamboo was,
25 was there not a patch of concrete that was, I don't

1 know, 15, 20 feet long?

2 A I'm not sure about that. There was a driveway up
3 from where we were. Again, that's going to require
4 some moving around, which is going to potentially
5 compromise how we do our testing.

6 Q So we don't have any of the field sobriety testing
7 to determine whether he was impaired?

8 A No. I don't have the field sobriety tests
9 themselves, no.

10 Q Is the portion of the call log still up there? Do
11 you recognize those documents?

12 A I have not seen this one in particular, no, but I
13 do know what it is. It's a call for service report
14 that looks like it came in.

15 MS. BLUNDY: I'm just going to object right here,
16 your Honor. I mean, he just testified that he's never
17 seen these documents before.

18 THE COURT: Overruled. Go ahead.

19 THE DEFENDANT: It appears to have come in through
20 the Oconee County 911.

21 BY MR. PATRICK:

22 Q So you've never seen this particular call log?

23 A I've never seen this particular call log. I have
24 seen -- I have seen these call logs before, but not
25 this particular one.

1 Q So you haven't gone over this call log, this --
2 before?

3 A Not this one, no.

4 Q With your knowledge of this particular incident,
5 did you say it looked like the first call that came in
6 would be around 8:30?

7 A It looks like it. It appears to be around 8:30,
8 which is what I testified to earlier.

9 Q On page four, that goes into when different patrol
10 vehicles were called out there, correct?

11 A It's still generating a log of things going on,
12 whether calls are coming in or people are being
13 notified. By people I mean officers or whomever.

14 Q Can I draw your attention to page three where I
15 have highlighted in green, I believe?

16 A Uh-huh.

17 Q That time says 9:14?

18 A Right.

19 Q And that's the time that is associated with the
20 phone number of Mr. Gravley?

21 A Right.

22 Q Was that at 9:14?

23 A That's what this says.

24 Q But you testified earlier that the arrest time was
25 at 8:42?

1 A I did. And the reason for that is, again, as I
2 stated earlier, any time I'm doing anything at the
3 scene and documenting what I need to as far as times
4 that I need, I'm calling my dispatch over my issued
5 radio, in-car radio typically, and asking them for
6 these times, and I go off of what they give me. My --
7 the call -- the arrest time that I was given would have
8 been about 8:42.

9 Q But there is a discrepancy between this call log
10 and your arrest time?

11 A There is, which I wouldn't say is uncommon
12 because, you know, the operator, depending on what's
13 going on, the operator may or may not --

14 MR. PATRICK: Objection; speculation.

15 THE COURT: Overruled.

16 THE DEFENDANT: The operator may or may not put in
17 the information right away. It depends on how busy
18 they are, what they have got going on. I can't say
19 exactly what was going on inside the 911 room at the
20 time. You know, I don't work for the county. I don't
21 work for the sheriff's office, so how they operate is
22 beyond what I do.

23 BY MR. PATRICK:

24 Q But there is a discrepancy?

25 A There is a discrepancy in the log, yes. I can't

1 say why. Again, that may have been that their times
2 were off. It may have been that they wait until later
3 to put it in. I'm not sure. It could have been like
4 my camera, the log may have had an issue like my camera
5 had an issue. I can't say for sure why that
6 discrepancy is there.

7 Q There is a call that's generated at 8:30?

8 A Right.

9 Q That claims there were people at the accident
10 scene --

11 A Right.

12 Q -- highlighted in yellow portion?

13 A It is. That's what it says. Again, you know we
14 don't control what they type in --

15 MS. BLUNDY: Objection; hearsay.

16 THE COURT: It's already in evidence. Overruled.

17 BY MR. PATRICK:

18 Q It says --

19 A It does say in the description for that time, it
20 says people are standing next to it. Didn't look like
21 any PI's meaning injuries.

22 Q Personal injury?

23 A Right.

24 Q And that was around 8:31?

25 A The -- yes. The time documented on here is

1 8:31:06 exact.

2 Q When you got out to the scene, you spoke to
3 Mr. Gravley, correct?

4 A I did.

5 Q And you're asking about what had gone on?

6 A Right.

7 Q And he told you that he reckoned that he was going
8 too fast for the curve?

9 A Right.

10 Q And you said looks like he started the curve here?

11 A Right. After walking through, walking down the
12 road and looking to see what I could see, I found a
13 point where it appeared that he ran off the road.

14 Q You came out to the scene, and there was one
15 person there and one car, correct? Or there
16 was Mr. Tupper was there and the vehicle that was in
17 the ditch?

18 A When I got there, Mr. Tupper was sitting inside of
19 the pickup truck that Mr. Gravley was driving. The one
20 vehicle was off in the bamboo patch or, you know, where
21 the ditch was, and Mr. Gravley was outside of his truck
22 when I got there. So two people and two vehicles.

23 Q So you assume --

24 A One wrecked.

25 Q So you assume that Mr. Tupper was the one who was

1 driving, correct? Or that was the determination you
2 made?

3 A That's the determination I made, yes.

4 Q But Mr. Tupper told you he wasn't driving?

5 A He did.

6 Q And there is a call log that says that there were
7 people around the vehicle at 8:30?

8 A Right.

9 Q There's also a number on the first page, a 602
10 number, associated with that call. Did you do any
11 investigation, did you try to contact that person?

12 A I had not accessed any phone logs at any point. I
13 didn't know that there was another call that had come
14 in.

15 Q So you didn't do any investigation other than, I
16 mean, once you arrested Mr. Tupper, you didn't do any
17 more investigation?

18 A No. I mean, I didn't know -- again, I didn't know
19 that there was another call that had come in. This was
20 the first that I'm being informed of it.

21 Q This is the first time that you have ever seen
22 this call log?

23 A It is.

24 Q So you have no way to find out what exactly that
25 first person saw?

1 A No. No.

2 Q So you never saw Mr. Tupper in the car?

3 A I didn't. I mean, that's typical in a wreck case.

4 Q And you didn't do any investigation to try to find
5 anybody who could have seen him in the car?

6 A I'm not sure -- I mean --

7 Q Did you?

8 A There's nothing -- there was nothing else that I
9 felt needed to be done at that point.

10 Q Because you had already made your determination?

11 A After going through everything at the scene, yes,
12 I made my determination, yes.

13 MR. PATRICK: No further questions, your Honor.

14 THE COURT: All right.

15 Redirect?

16 MS. BLUNDY: Thank you, your Honor.

17 REDIRECT EXAMINATION

18 BY MS. BLUNDY:

19 Q Trooper Taylor, let's look at this call log a
20 little bit closer since this is the first time that
21 you've seen this. This comes directly from 911,
22 correct?

23 A Yes, ma'am.

24 Q Please turn to page four. Read the very top
25 entry, please, under "log."

1 A Okay.

2 Q Right there.

3 A The very first entry on this, it says 11/6/14.

4 08:33:04, which is the time. Entered by: Neill

5 Burkett, which is one of the operators there in the

6 dispatch center. Unit: SCHP. Status: Dispatched.

7 Action: Unit status change. Description: There's no

8 description. Location: Armstrong Road/Sandifer

9 Boulevard, Westminster.

10 Q But the time is 8:33, correct?

11 A Right.

12 Q And it says "SCHP." That's you?

13 A Right.

14 Q And it says "dispatched"?

15 A Right.

16 Q So it would be fair to say that's the time that

17 you were dispatched out?

18 A Right.

19 Q So there really isn't a discrepancy in the log?

20 A No, I wouldn't think.

21 Q Okay. Please read several lines down to the 9:14.

22 What does that say?

23 A Again, I'll read the whole line just as before.

24 "1/16/14, 09:14:22, the time. Entered by: Rebecca

25 Carter, which is the chief dispatcher for the county,

1 for the sheriff's office. Unit: B7, which is a call
2 number for one of the county units. Status: Available
3 for calls. Action: Unit cleared. Description: Unit
4 cleared from call."

5 Q Okay. "Unit cleared," do you know what that
6 means?

7 A That means that he was removed from the call.

8 Q Okay. And all the times listed after that go
9 through all the different units that were cleared from
10 the scene, correct?

11 A Right.

12 Q What time was highway patrol cleared from the
13 scene?

14 A Their logs, again, I'll read the entire line. On
15 this it has "1/16/14. 09:17:34 for the time. Again
16 Rebecca Carter for the entered by dispatcher. Unit:
17 SCHP 1. Status: Available for calls. Action: Unit
18 cleared. Description: Unit cleared from call."

19 Q So it's fair to say that that's when the whole
20 accident scene was done and over with, you were cleared
21 from the call at 9:17?

22 A Right.

23 Q Which is consistent with your arrest time that you
24 entered into the breathalyzer test of being 8:42 in the
25 morning?

1 A Right.

2 Q Called out at 8:30, arrested at 8:42, cleared
3 completely at 9:17?

4 A Right.

5 Q So that is consistent?

6 A That is very consistent.

7 Q Just briefly, on the field sobriety tests, the HGN
8 test, the eye test, it takes several minutes to
9 administer, correct?

10 A It does.

11 Q And that being -- you have to do how many passes
12 with your stimulus on each eye?

13 A I have to do -- it would be a total of
14 approximately 18 passes.

15 Q Four passes on each eye?

16 A Three initial passes to make sure that both eyes
17 are tracking equally. And that's two passes for each
18 eye. So that would be four passes. There's another
19 set of two for each eye, so four passes for -- we're
20 checking for the lack of smooth pursuit, whether the
21 eyes are going to jump while they're following there.
22 Again, the same number to check for nystagmus at the
23 maximum point where we stop. Again, there's two for
24 each eye, so four passes on that. There is another set
25 of two passes for each eye, so four passes where we

1 stop or we're checking for nystagmus prior to 45
2 degrees, and then there's two vertical passes where
3 we're checking for nystagmus vertically.

4 Q So the test takes several minutes?

5 A It takes a little while to do that test.

6 Q And when you brought Mr. Tupper over to your
7 patrol vehicle, before you placed him inside the
8 vehicle, because you had to move some things out of
9 there, where exactly did you place Mr. Tupper and why
10 did you do that?

11 A He was directly in front of my vehicle up against
12 the push bar at the front. I placed him there because
13 I felt like that would be the safest place for him, and
14 I always have to think tactically because I never know
15 what a person is capable of. Safest place for him to
16 be standing there and safest place for me was for him
17 to be standing there.

18 Q So were you still concerned with his safety at
19 that point?

20 A Of course.

21 MS. BLUNDY: No further questions.

22 THE COURT: All right. Thank you, sir. You may
23 step down.

24 Call your next witness, please.

25 MS. BLUNDY: Your Honor, at this time the State

1 would rest their case.

2 THE COURT: Okay.

3 THE COURT: All right.

4 Mr. Foreman, ladies and gentlemen of the jury, the
5 State says they have rested which means they have
6 presented their case-in-chief. I have some
7 administrative things I need to take up right now, so
8 if you would go back to your jury room, it's a good
9 time to take a morning break anyway.

10 If you need anything, check with the bailiff. She
11 will make sure she gets it for you, and we'll bring you
12 back in just a little bit.

13 (WHEREUPON, the jury exited the courtroom
14 at 11:10 a.m.)

15 THE COURT: All right. Motions?

16 MR. PATRICK: Yes, sir, your Honor. I'd like to
17 make a motion for a directed verdict at this time. I
18 do not believe that the State has put forth evidence to
19 prove that my -- that Mr. Tupper was driving the
20 vehicle. The only evidence they have put forth would
21 be the alleged confession that he made to Mr. Gravley.

22 I believe that the State has to prove more than
23 just -- a confession is not evidence of -- alone that
24 he committed the crime. They have to put more evidence
25 in. I don't think they can establish when this

1 accident took place. And without establishing when the
2 accident took place, they can't prove the nexus of
3 impairment with when the accident took place. Without
4 proving that, they can't prove that he was driving
5 while impaired.

6 Like I said, your Honor, I believe they haven't
7 put forth the evidence to prove that he was driving at
8 all, but even if you believe that they have, I do not
9 think that they have proved any nexus between his
10 impairment and when they allege he drove a car because
11 there is no determination of when this took place.

12 THE COURT: I'm going to deny your motion.
13 There's evidence, as you said, by Mr. Tupper, also the
14 officer testified that the car was relatively warm, so
15 the wreck was recent. There is sufficient evidence to
16 take it to make it a jury question.

17 Now, before we get started, Mr. Patrick, have you
18 gone over, before we take a break, with Mr. Tupper his
19 Fifth Amendment rights?

20 MR. PATRICK: I have discussed his rights with
21 him. I would like to have an opportunity to speak with
22 him about those.

23 THE COURT: I will give you that opportunity, but
24 let me go over his rights.

25 Mr. Tupper, please stand up and raise your right

1 hand.

2 (WHEREUPON, the defendant was sworn.)

3 THE COURT: Now, Mr. Tupper, at this point in the
4 trial I'm going to explain certain of your rights that
5 are available to you. If you don't understand anything
6 that I say to you, let me know, let your lawyers know
7 so I will stop and explain it such that you do. Okay?

8 THE DEFENDANT: Okay.

9 THE COURT: Now, we have reached that stage in the
10 trial where the State says, "We have put up our case."
11 You have a right at this juncture to put up a defense,
12 or you have a right to claim the protections that are
13 afforded to you by the Fifth Amendment to the United
14 States Constitution.

15 And let me read you in part what that provides.
16 It reads, "That no person shall be compelled in any
17 criminal case to be a witness against himself." Now,
18 has that been explained to you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Just to make sure, what that means,
23 Mr. Tupper, is that you cannot be required to testify
24 in this case. Your attorneys can't make you take the
25 stand. The State cannot make you take the stand. The

1 Court can't make you take the stand. This is a
2 personal right that you and only you can decide as to
3 whether or not you will exercise your Fifth Amendment
4 rights or whether or not you will testify in this case.

5 If you decide that you do want to testify, you
6 will be subject to the same rules that govern other
7 witnesses. You will be subject to direct examination
8 by your attorneys. You will also be subject to
9 cross-examination by the State. If you have any
10 convictions involving dishonesty or false statement or
11 for crimes punishable by imprisonment for more than a
12 year, if I find that the probative value of those
13 convictions outweigh the prejudice to you, then the
14 State would be allowed to cross-examine you about those
15 convictions. The obvious reason, it will impeach your
16 credibility.

17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, if you decide that you do want to
20 testify, that's a decision that can be made in
21 conjunction with your attorneys, can be made in
22 conjunction with somebody who's reasonably here to be
23 available to you such as family or friends. However,
24 in the end, if you decide you want to testify, that
25 decision has to be made freely, voluntarily and

1 intelligently by you knowing your rights under the
2 Fifth Amendment and the consequences of your decision
3 to testify.

4 On the other hand, if you decide you do not want
5 to testify, I will, in my instructions, charge the jury
6 that they may not and shall not consider your failure
7 to testify during their deliberation because the burden
8 remains on the State of South Carolina at all times to
9 find you guilty by proof beyond a reasonable doubt.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions about
13 anything I've explained to you thus far?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. All right. I'm going to give
16 you a few minutes, let you talk to your client, let him
17 talk to someone who's reasonably here or available to
18 him, and then let's take a break about ten minutes. Do
19 you think that would be sufficient time?

20 MR. PATRICK: Yes, your Honor.

21 THE COURT: Other than your client, do you
22 anticipate having any other witnesses?

23 MR. PATRICK: I'm not sure, your Honor. I have
24 two others that are on the potential witness list. I
25 need to make that determination after I speak to my

1 client.

2 THE COURT: All right. Very good. We're in
3 recess for ten minutes.

4 (WHEREUPON, recess taken from 11:15 a.m.
5 to 11:42 a.m.)

6 THE COURT: All right. Mr. Tupper, you're still
7 under oath as far as your decision of whether or not to
8 testify. My understanding is you have decided to
9 exercise your rights under the Fifth Amendment and not
10 testify; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And has anybody forced, threatened or
13 promised you anything to get you not to testify?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you making this decision of your
16 own will?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Freely and voluntarily?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Knowing your rights under the Fifth
21 Amendment and knowing the consequences of your
22 testimony if you should take the stand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very good. All right. Let me go over
25 the charges. I've gone over the substantive charge

1 with counsel. My understanding is from the State and
2 the defense the law of DUI, the law of driving under
3 suspension and being a habitual traffic offender is
4 properly stated in the proposed charge; is that correct
5 Ms. Blundy?

6 MS. BLUNDY: That is correct, your Honor.

7 THE COURT: Is that correct, Mr. Patrick?

8 MR. PATRICK: That is correct, your Honor.

9 THE COURT: All right. Very good. Then we'll go
10 back to the main structure. My charge is in three
11 parts. The first part is the law that defines and
12 controls the jury's duties as jurors. The second part
13 would be the law that we just went over, the
14 substantive law, and the third part would be some
15 considerations for the jury to consider in their
16 deliberations.

17 I will tell the jury just that, and then I will go
18 over the general rules that they have to determine the
19 facts from all the evidence, apply the law as I give it
20 to them, they must follow law, must not be concerned
21 with what they like it to be but what it is, and they
22 should not be influenced by any personal likes or
23 dislike, opinions, sympathy, prejudice, undue sympathy
24 one side or the other, no friends to reward or enemies
25 to punish. That means they decide what the facts are

1 according to the law, and that's what their oath tells
2 them to do.

3 In my instructions, they have to follow all of the
4 them and not point out certain aspects that they like
5 and follow those and disregard things they may not like
6 because they're all equally important. And I remind
7 them that if I have done anything throughout the course
8 of this trial to indicate how they are to find the
9 facts or the verdict they will reach, they are to
10 disregard that. And they are to evaluate and weigh the
11 evidence they have heard during the trial and make a
12 determination. I tell them I can't give them a set of
13 scales, that that's entirely a mental process and they
14 evaluate and weigh the evidence using their common
15 sense and sound judgment.

16 I tell them what the evidence is. And this comes
17 in, Ms. Blundy, your question in chambers. One, the
18 testimony, sworn testimony of witnesses, whether it be
19 direct or cross-examination, any exhibits into
20 evidence, and then any stipulations.

21 In this case the parties have stipulated that the
22 defendant at the time of this incident had been
23 declared to be a habitual traffic offender, also that
24 his license had been suspended.

25 You agree with that, Mr. Patrick?

1 MR. PATRICK: I do, your Honor.

2 THE COURT: You agree with that, Ms. Blundy?

3 MS. BLUNDY: I do, your Honor. The only thing I
4 ask is for those jurors who aren't familiar with
5 stipulation, it may have a connotation of a legal term.
6 If you won't mind just phrasing it in the word
7 "agreement."

8 THE COURT: I'm going to say stipulation and it
9 means that they have to find the fact. They cannot
10 dispute that fact. I know how to tell them about that.

11 MS. BLUNDY: Thank you.

12 THE COURT: Thank you.

13 Then I go into what is not evidence. Your
14 arguments, your statements that y'all make is not
15 evidence and that you're not witnesses, and if their
16 memory differs from what y'all tell them, their memory
17 will control.

18 I also remind them about their notes. Also
19 questions, objections of lawyers is not evidence. We
20 haven't had anything stricken from the record in this
21 case, have we?

22 MS. BLUNDY: I don't think so.

23 MR. PATRICK: No, your Honor.

24 THE COURT: Okay. So I won't do that. Anything
25 that they have heard when the case -- trial is not in

1 session, in other words, not in the courtroom. I go
2 under next to both types of evidence, direct and
3 circumstantial evidence. I give examples. But this is
4 under the State vs. Logan case, the circumstantial
5 evidence charge. When all the circumstances must be
6 consistent with each other and when taken together
7 point conclusively to the guilt of the accused, et
8 cetera, et cetera. My example -- I have had somebody
9 object to it -- my example of direct evidence is I give
10 myself as a witness and I see somebody run a stop sign.
11 Circumstantial, I give them an example about going to
12 sleep at night with a fresh sheet of snow in the yard
13 and waking up with tracks in the snow. If anybody has
14 a problem, let me know.

15 Next, I go over the credibility of witnesses.
16 I'll list for them the factors that they can consider
17 in determining the credibility of the witnesses, and I
18 also tell them they don't check their common sense at
19 the door as jurors and shouldn't in this case. And
20 also that they can't add up the number of witnesses
21 that have appeared in this case for one side or the
22 other and make that determination because it doesn't
23 matter from which side of the case the truth comes
24 from.

25 We have had no expert testimony in this case,

1 right?

2 I remind them that the indictments are not
3 evidence of guilt. They don't raise a presumption or
4 inference of guilt. I also remind them that each one
5 of the indictments is freestanding. They have to
6 separately make their decision as to that indictment
7 before they can get into the decision on the next one
8 okay?

9 I charge them on the presumption of innocence,
10 what reasonable doubt is.

11 Intent. Is intent a proper charge in this case,
12 Ms. Blundy?

13 MS. BLUNDY: I don't believe so, your Honor.

14 THE COURT: Wouldn't intent to drive be part of
15 it?

16 MS. BLUNDY: I don't -- I don't think intent is an
17 element.

18 MR. PATRICK: I don't believe it's an element,
19 your Honor, but I'm not --

20 THE COURT: Okay. Then I won't charge intent.
21 Both sides agree.

22 Okay. Then I will charge them on failure to
23 testify. Next I'll go to the substantive charges.
24 Then I get into some considerations about their
25 deliberations after the substantive charges. I tell

1 them that they shouldn't be in a big hurry, they're the
2 judges of the facts and their sole interest is to try
3 to find the truth from the evidence they heard, to
4 listen to everybody's points and their points of view,
5 and that if they are to reach a decision it has to be
6 unanimous. But in order to do that, they have to make
7 their own decision about the facts of this case, that
8 they're not to be afraid to change their decision as to
9 the weight of the evidence if the discussions convinces
10 them to do so, but not to change their decision just to
11 please, come to a consensus with their fellow jurors.

12 I go over the verdict form with the defendant -- I
13 mean with the foreperson and give instruction as to any
14 questions they may have. Kind of in a nutshell.

15 You're more than free to look at it, but it's
16 pretty much straightforward.

17 Any additions or exceptions to the proposed
18 skeleton charge?

19 MS. BLUNDY: Sounds good to me, your Honor. Thank
20 you.

21 MR. PATRICK: Sounds good to me, your Honor.

22 THE COURT: It's my understanding, Ms. Blundy, you
23 want to go ahead and do your closing now and let me
24 charge after the fact; is that correct?

25 MS. BLUNDY: Yes.

1 THE COURT: Okay. We'll do that. Y'all ready or
2 you need a break?

3 MR. PATRICK: I'm ready.

4 MS. BLUNDY: Your Honor, we're ready.

5 THE COURT: Good. Bring the jury in.

6 (WHEREUPON, the jury came into open court at
7 approximately 11:51 a.m.)

8 THE COURT: Quick moment. With the attorneys.

9 (WHEREUPON, a bench conference was held off the
10 record in the presence of the jury, but out of the
11 hearing of the jury.)

12 THE COURT: All right.

13 Mr. Patrick, would you call your first witness,
14 please, sir.

15 MR. PATRICK: Your Honor, the defense rests. And
16 I would just like to renew my earlier motion.

17 THE COURT: Thank you. That's noted.

18 Mr. Foreman, ladies and gentlemen of the jury, the
19 State says that they have rested. That means they have
20 presented the evidence they're going to. The defense
21 says it rests, means that they have presented what they
22 intended to present. So we move into the third phase
23 of the case. Remember I told you there's five. You
24 had opening statements, presentation of the evidence.
25 Next you will come into the closing arguments by the

1 attorneys after which I'll charge you on the law, and
2 we'll have a brief conference and we'll send word back
3 in just a few minutes after that for you to begin your
4 deliberations.

5 State ready?

6 MS. BLUNDY: We are.

7 THE COURT: Defense ready?

8 MR. PATRICK: We are, your Honor.

9 THE COURT: Ms. Blundy.

10 MS. BLUNDY: Thank you. I told you this morning
11 that the case is relatively simple and to remember
12 drinking, driving and the ditch. And here we are.
13 You've heard the evidence and you heard from the
14 witnesses as to why we say that.

15 As the jury, you don't check your common sense at
16 the door. You use every life experience that you have
17 had and you evaluate the evidence that was presented
18 for you. Like I gave you the illustration with the
19 rain. You're standing in the rain, you feel it, it's
20 direct evidence.

21 We have some direct evidence in this case. But we
22 also have some circumstantial evidence. You go to
23 sleep, you wake up and all the ground is wet. You can
24 logically conclude that it had been raining while you
25 were asleep. I tell you that illustration because I

1 want you apply it to the driving.

2 If you think about it, how often is a highway
3 patrolman really around to witness every single
4 accident that ever occurs. Very rarely does an
5 accident occur right in front of them to where they
6 become an eyewitness. No, most of the time it happens
7 and they're out to the scene after the fact. And
8 they're trained in accident reconstruction. They're
9 able to determine what happened at the accident even
10 though they weren't physically present to witness
11 direct evidence.

12 We have circumstantial evidence, and you get to
13 weigh that circumstantial evidence, and that's what I
14 want you to do because when you do in this case, it
15 leads to one logical conclusion: That Mr. Tupper, the
16 defendant, was driving that vehicle.

17 So how do we get there? How did the State get
18 there? Well, we know that it was his mom's car. We
19 know that it was registered to her. We know that,
20 through the testimony, that he lives with her, meaning
21 he would have had access to the vehicle.

22 William Gravley, community member, works for the
23 school district happened to come by the accident. He
24 was the only one around the vehicle. In fact, he was
25 walking away from the vehicle, and when William went up

1 to him, he asked him if he needed help. He said he
2 didn't. But what did he tell him? He said, "I just
3 ran my car out of the road." He admitted it. Through
4 his own words he told Gene William that he had run the
5 car out of the road. He was driving. He was driving.

6 And then when he asked him, you know, "What do you
7 need?" He said, "I need a ride." Well, if he hadn't
8 been driving, why would he need a ride? And if
9 somebody was coming back to pick him up at the accident
10 scene, why wouldn't they have come within a half an
11 hour? They would have come during that time to get
12 him, but no one came back because no one else was with
13 him. He was by himself. He was driving the car.

14 You will hear from the judge and he will instruct
15 you on stipulations. It's an agreement made between
16 the parties, between the defense and between the State.
17 And one of those agreements is that the defendant was,
18 in fact, a habitual traffic offender, meaning he had
19 three major violations or ten or more minor violations
20 within a three-year period. He agrees to that, says,
21 "I am. I am a habitual traffic offender."

22 He also agreed that he was driving under
23 suspension -- well, that he was under suspension.
24 Doesn't agree that he was driving. He agrees that he
25 was under suspension, meaning his driver's license was

1 under suspension at the time that this incident
2 happened. So we know that.

3 So knowing that, knowing that he agreed to that,
4 common sense would tell you he's not going to admit to
5 being the driver. He's not going to admit that he
6 didn't have a license at the time and he got behind the
7 wheel.

8 It was January the 16th, 2014. It was a clear,
9 crisp, cool winter day. Sun was shining probably
10 pretty much like it was this morning. There was
11 nothing else that caused that accident. There was no
12 bad weather conditions. If Armstrong Road -- it's not
13 that highly traveled. Probably most of us in this
14 county haven't even heard of it. It was a one-car
15 accident. Not two cars, not another person involved
16 with this accident. Only one. Only one person caused
17 this accident, and that was the defendant. And the
18 defendant took that curve too fast. He missed the
19 turn. He went right off the road. He didn't make the
20 turn. He went right off the road into the woods into a
21 batch of bamboo and into a ditch. Why? Because he was
22 impaired. He was impaired.

23 In fact, how do we know that? We didn't have
24 field sobriety tests. We didn't, and you heard Trooper
25 Taylor's testimony as to why he didn't administer

1 those. But what did he observe about the defendant?
2 Him and Gene both said that something was a little off.
3 I mean, they couldn't put their finger exactly on it
4 when they first met him, but something was a little off
5 with him. They said his speech was slow. Trooper
6 Taylor said he felt his speech was a little bit
7 slurred. He also said that he felt his eyes were
8 bloodshot, and he asked him. He straight-up asked him,
9 "Have you been drinking?" The defendant said
10 immediately, what, a lie. He said, "No. No, sir,
11 haven't been drinking." When he asked him again,
12 "Russell," and he says, "Okay. I drank." What does he
13 say after that? "I drank a lot." Not a little bit.
14 He tells the officer, "I drank a lot. But I wasn't
15 driving." Okay.

16 If he wasn't driving and he had drank, why would
17 he refuse the breathalyzer test? If it didn't matter
18 if he blew into that machine and blew a 20. If he was
19 drunk, why would it matter if he wasn't driving. Why
20 wouldn't he just take the test? But he didn't take the
21 test. And there is a reason why he didn't take the
22 test because he was impaired and he was driving that
23 car, and he didn't want you, the jury, to know what his
24 breath alcohol concentration would have been that
25 morning. He didn't want you to know that number

1 because he had been drinking a lot. Remember? Only a
2 guilty person would refuse that test.

3 And I need to bring it to your attention that it
4 is 8:30 in the morning. 8:30. Not even noon yet.
5 It's not even happy hour. It's 8:30 in the morning,
6 and he had already been drinking a lot. What is that a
7 sign of? What does your common sense tell you? I know
8 what it tells me. He was drinking. He was driving.
9 He doesn't want to admit the driving to you, but cars
10 don't drive themselves.

11 When he asked him, "Well, where were you headed,"
12 he didn't want to answer that question. "Who was
13 driving?" We don't know that answer. But we do know
14 that answer. We do because there was only one person
15 at the scene.

16 Now, there was a 911 call that mentioned other
17 people. We don't know if a passer-by had seen them
18 standing there. We don't know that. But Gene called
19 in, and you heard Gene's testimony that he was the only
20 one there with the defendant. The defendant was the
21 only one around the vehicle. You heard Trooper
22 Taylor's testimony that he was the only one there with
23 him and Gene. That was it. The three of them. There
24 was nobody else.

25 There's not a discrepancy in the call log from

1 911. Trooper Taylor got dispatched out at 8:30 in the
2 morning. Gene couldn't remember exactly. He said it
3 was early. It happened over a year ago. It's hard to
4 remember exact times. But he told you it happened
5 really early in the morning. It's all documented. He
6 documented the arrest time. Why? Because to the T he
7 has to offer that breathalyzer test within two hours
8 from the time that he placed somebody under arrest so
9 the results are accurate. The longer you go, the less
10 accurate the results would be. So he has to know that
11 time. And he put that time into his computer system as
12 8:42. Got out there 8:30, arrested him 12 minutes
13 later, and then eventually 911 ended up clearing all
14 the units from the scene at 9:17.

15 We know what time he was driving. We know that he
16 was driving at least before 8:30 in the morning, which
17 means he probably drank sometime before that. There's
18 enough evidence in this case. There is enough to build
19 a fence. It's complete. So I ask that you talk about
20 it, you evaluate it, talk amongst each other, and then
21 I ask that you render a guilty verdict on all three
22 charges: Driving under the influence, habitual
23 offender, and driving under suspension. Thank you.

24 THE COURT: Mr. Patrick.

25 MR. PATRICK: May it please the Court.

1 THE COURT: Yes.

2 MR. PATRICK: Consistency, assumptions, lack of
3 investigation. Ladies and gentlemen, the trooper
4 testified that he could not tell you when that accident
5 took place. He couldn't determine a time when that
6 took place. The Solicitor just said it had to have
7 happened at least before 8:30. Well, how long is
8 before 8:30? 7:30, 6:30, 5:30? Trooper testified the
9 hood was warm, but that's not evidence of anything
10 other than the hood being warm.

11 I told you at the beginning of opening statement
12 that I was going to inspect the fence that they were
13 going to try to build around Mr. Tupper because their
14 case hinges upon circumstantial evidence. And the
15 judge will instruct you that all the circumstantial
16 evidence they put forth has to be consistent. The
17 State has the burden of putting forth all that
18 evidence.

19 Let's talk a little bit about some of the slats
20 that are missing. You don't get to determine or see
21 Mr. Tupper's conduct on the video. You don't get to
22 see that. You certainly don't get to see any field
23 sobriety tests. You have to take the trooper's word
24 that he was impaired. He took that out of your hands
25 because he didn't want to do the field sobriety tests.

1 And they didn't show you the video.

2 Let's talk about another thing, this call log. We
3 know that there was a call at 8:30 that morning.
4 That's the earliest call that we know of. And that
5 call says there were people out there. Ladies and
6 gentlemen, they didn't call. The State didn't put
7 forth the call operators to go into detail about that.
8 They didn't bring the audio of the call, the 911 phone
9 calls. Ask yourself why they didn't do that. Because
10 that's inconsistent with their theory. Because it said
11 people were out there. People.

12 Now, when Mr. Gravley came upon the scene, he only
13 saw Mr. Tupper and the car, and he does what we all do.
14 You make that assumption. "Well, this is one person
15 and there is a car. He drove that car out of the
16 roadway." It's an easy assumption. I'm not saying he's
17 lying. He's mistaken because he made that assumption,
18 the same assumption that the trooper made when he got
19 out there and there was only one person and one car.

20 But an inconsistency they can't get around is the
21 fact at 8:30 there were people out there and, had
22 Mr. Gravley pulled up and saw people out there, his
23 assumption wouldn't have been he was driving. The
24 assumption then becomes somebody was driving. That
25 somebody is reasonable doubt, ladies and gentlemen.

1 That is a huge gap in their fence that they can't get
2 around.

3 The only absolute consistency is that Mr. Tupper
4 has said that he was not driving from the very get-go
5 until today. He has stayed consistent the whole time.
6 He was not driving. He told the trooper that. Did the
7 trooper try to investigate at all to see if there was
8 any other witnesses out there? All he had to do was go
9 get the call log. If he had gotten the call log, all
10 you have to do is backtrack that number and call the
11 first person who came upon the scene and ask them,
12 "What did you mean by 'people'?" But he didn't do
13 that. It's more evidence that the State failed to put
14 before you because it's inconsistent with their theory.

15 Now, ladies and gentlemen, I don't want -- it's
16 not fair for the State to be able to cherry-pick what
17 evidence they put before you. They should have put all
18 the evidence before you so that you can make the
19 determination. They didn't do that here. They didn't
20 put forth the video showing his conduct. They didn't
21 give you field sobriety tests. There's been no
22 evidence whatsoever that he was behind the wheel.
23 Nobody saw him drive and they can't determine that.

24 Ladies and gentlemen, they have not built a good
25 fence. There is gaps all throughout there. I plead

1 with you to do the right thing and find Mr. Tupper not
2 guilty DUI, not guilty habitual traffic offender, and
3 not guilty driving under suspension. Thank you.

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen of the jury my charge will probably take
6 around 25 minutes, give or take. Would you like a
7 brief break, or do you want to continue on with the
8 charge at this point?

9 JURY FOREPERSON: Continue.

10 THE COURT: Very good. I figured that's what you
11 were going to say.

12 All right. Ladies and gentlemen, now that you've
13 heard all the evidence and now that you've heard the
14 argument of the lawyers, it's my duty to instruct you
15 on the law.

16 My instructions are going to be in three parts.
17 The first part will be the general rules that define
18 and control your duties as jurors. The second part
19 will be the substantive law of DUI, the substantive law
20 on driving under suspension, and the substantive law of
21 habitual traffic offender. The third aspect will be
22 some considerations about your deliberations.

23 Mr. Foreman, I will then go over the verdict form
24 with you and give you some further instructions in that
25 regard. Okay, sir?

1 Now, ladies and gentlemen, if you recall, at the
2 beginning of this case I told you it is your duty to
3 find the facts, and you find those facts from the
4 evidence that's been presented here in this courtroom.
5 Now, it's also your duty to apply the law as I give it
6 to you now. You must not be concerned with what you
7 would like it to be or what you think it should be but
8 what it is. And it's your duty to follow the law as I
9 give it to you.

10 Also, you shall not be concerned about any --
11 shall not be influenced by any personal likes or
12 dislike, opinions, prejudice, or undue sympathy that
13 you may have for one side or the other in this case.
14 That means that you have no friends to reward, no
15 enemies to punish. You are to find the facts from the
16 testimony and the evidence you heard during this case.
17 If you recall, at the beginning of this case, in your
18 oath, you agreed to do just that.

19 Again, all my instructions are equally important.
20 You can't pick out things in my instructions that you
21 like and apply those and disregard things that you may
22 not like. They're all equally important.

23 If I've done anything that makes you indicate how
24 you are to find facts in this case, i.e., what verdict
25 you would reach, I ask you and instruct you to

1 disregard that. I have no such feeling. I have no
2 such opinion. You and you alone are the judges of the
3 facts, and you will decide what those facts are by
4 evaluating and weighing the evidence that you heard in
5 this case and applying the law as I give it to you now.

6 Now, there's no way to weigh evidence in a literal
7 sense, but it's entirely a mental process. And when
8 you go back to begin your deliberations, you should use
9 your common sense and good judgment in deciding what
10 the facts are in this case.

11 Now, you will decide what the facts are based on
12 what the evidence is. And this is what the evidence is
13 in this case. The only true evidence is the sworn
14 testimony that you've heard from the witnesses on the
15 witness stand, whether it be on direct examination or
16 cross-examination.

17 Also, any exhibits that have been admitted into
18 evidence is evidence. Also, the parties have entered
19 into what is a stipulation. A stipulation are facts
20 that have been agreed upon. You may not and shall not
21 disregard those facts. You have to accept those facts
22 as being true.

23 And this is the stipulation: That at the time of
24 this incident on January 16, 2014: Number one, the
25 defendant had been declared to be a habitual traffic

1 offender. Number two, the defendant's driver's license
2 had been suspended. You shall accept those facts as
3 true and you may not debate those.

4 Mr. Foreman, if anybody attempts to, it will be
5 your job to see that's not done. Okay?

6 Now, ladies and gentlemen, that is the only
7 evidence you may consider in this case. So that leads
8 me to what is not evidence. Number one, arguments and
9 statements by the attorneys. As I told you earlier
10 this morning, it's not evidence. What they say is
11 helpful to you to help guide you, but if your memory of
12 what they tell you in your notes or your recollection
13 differs, then your memory will control.

14 Also, the fact that there are questions or
15 objections during the course of this testimony or this
16 trial is not evidence. It's also just -- objections
17 are just part of the procedure that's followed in every
18 single trial, and I have never seen one where there
19 wasn't an objection raised. Questions are just a way
20 to elicit the information which is evidence. Also,
21 anything that you may have seen or heard when court was
22 not in session or when on breaks is not evidence.

23 So that leads me to a discussion as to the two
24 types of evidence that we recognize. We recognize
25 direct evidence, and we have circumstantial evidence.

1 And the law makes absolutely no distinction between the
2 two.

3 Direct evidence is this: It is evidence that
4 directly proves the existence of a fact and does not
5 require deduction. Circumstantial evidence is proof of
6 a chain of facts and circumstances indicating the
7 existence of a fact. In other words, it's by
8 inference.

9 Crimes may be proven by circumstantial evidence,
10 ladies and gentlemen, and the law makes no distinction,
11 as I've told you, between the weight and value to be
12 given to either direct evidence or circumstantial
13 evidence. However, to the extent that the State relies
14 on circumstantial evidence, all of the circumstances
15 must be consistent with each other, and when taken
16 together, point conclusively to the guilt of the
17 accused beyond a reasonable doubt. If these
18 circumstances merely portray the defendant's behavior
19 as suspicious, then that proof has failed. And the
20 State has the burden of proving the defendant guilty
21 beyond a reasonable doubt, and that burden remains with
22 the State regardless of whether it relies on direct or
23 circumstantial evidence or a combination of direct and
24 circumstantial evidence.

25 And before I leave this topic, let me give you an

1 example of both. If I were an eyewitness in a case and
2 I said I saw my law clerk over here run a red light,
3 that would be direct evidence because it immediately
4 establishes that fact. You don't have to infer
5 anything from it.

6 Circumstantial evidence would be if each of you
7 were to go to bed at night with a clean sheet of snow
8 in your front yard. If you were to wake up in the
9 morning and see tracks in that snow, you may infer
10 reasonably that someone or something walked through
11 your yard during the night. Although you did not see
12 it, it's an inference.

13 With that being said, ladies and gentlemen, when
14 you determine what the facts are in this case, part of
15 your responsibility will be to determine the
16 credibility of the witnesses. In other words, you have
17 to decide which testimony you want to believe over
18 which testimony you wish not to believe. You have a
19 right to disbelieve all or part of any witness'
20 testimony. You have a right to believe all of any
21 witness' testimony.

22 In making this determination of the witnesses'
23 testimony, I'm going to give you some factors that you
24 may but you are not required to consider. Number one,
25 was the witness able to hear or see or know the things

1 about which they testify. Number two, how well was the
2 witness able to recall and describe the topics about
3 which they testified. What was, under number three,
4 the witness' manner while they're testifying. In other
5 words, what was their demeanor while they were on the
6 stand. You can ask yourselves was there some reason
7 that a witness would want to give testimony that would
8 hurt or help one side or the other. Did they have any
9 bias or prejudice for or against a party or for or
10 against any issue involved in this case.

11 Also, you can ask yourself how reasonable was the
12 witness' testimony in light of the other testimony and
13 the evidence in this case and whether that witness'
14 testimony had been contradicted by what they had said
15 at another date and time or other evidence in this
16 case.

17 And, ladies and gentlemen, those are just some of
18 the factors you may consider in making this
19 determination of credibility of the witnesses. And, of
20 course, as jurors you don't check your common sense at
21 the door once you're sworn in. And you should use
22 those things in your day-to-day lives that you find
23 indicative of truthfulness and also indicative of lack
24 of truthfulness when you make this determination of
25 credibility of the witnesses.

1 Now, one thing that you may not and shall not do
2 is add up the number of witnesses that may have
3 appeared before the State or the defense because it
4 does not matter where the truth comes from.

5 With that being said, I remind you that the fact
6 that this defendant has been arrested, charged and
7 indicted is not evidence of guilt, nor does it raise an
8 inference or a presumption of guilt. Again, these are
9 solely the charging mechanisms by which a person such
10 as this defendant is brought before a jury like
11 yourselves for a trial and determination of guilt or
12 innocence.

13 Also, Mr. Foreman, each one of these charges is
14 freestanding. What that simply means is you have to
15 make a decision on each of the charges independently of
16 your decision on the other charge. Okay? You can find
17 the defendant guilty on all the charges, not guilty on
18 all the charges, or any combination thereof. But you
19 have to make those decisions independently of one
20 another, okay, sir?

21 Now, in this case, as I told you at the beginning
22 of trial, the defendant has pled not guilty, and that
23 places the burden on the State of South Carolina to
24 prove him guilty by proof beyond a reasonable doubt.

25 I'll tell you that in South Carolina it is an

1 important rule of law that a person in a criminal case
2 is never required to prove themselves innocent. No
3 matter how serious the charge is, a person will always
4 be presumed innocent of the crime or crimes for which
5 they have been charged unless there has been guilt --
6 evidence presented that satisfies you of guilt beyond a
7 reasonable doubt.

8 Now, this presumption of innocence does not end
9 when you begin your deliberations but it accompanies
10 the defendant throughout the trial until you, the jury,
11 reach a verdict of guilt based on the evidence
12 satisfying you of guilt beyond a reasonable doubt.

13 It has been said in law that the presumption of
14 innocence is like a robe of righteousness that hangs
15 around the shoulders of the defendant until it's been
16 removed by sufficient evidence satisfying you of guilt
17 beyond a reasonable doubt.

18 I'll tell you, ladies and gentlemen, this is not
19 just a mere legal theory. It's not just a legal
20 phrase, but it is an important rule of law in which
21 every defendant is entitled until you, the jury, are
22 satisfied of the defendant's guilt beyond a reasonable
23 doubt.

24 And I gave you a brief definition of reasonable
25 doubt earlier, and I'll give you a more expansive one

1 now.

2 This is the definition of reasonable doubt: A
3 reasonable doubt is the kind of doubt that would cause
4 a reasonable, sincere, honest and conscientious person
5 to hesitate to act in an important matter in their own
6 affairs. Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the defendant's guilt.

8 Now, there are very few things that we know in
9 this world with absolute certainty. And, again, in
10 criminal cases, the law does not require proof that
11 overcomes every possible doubt.

12 If, based on your consideration of the evidence,
13 you are firmly convinced that the defendant is guilty
14 of the crime or crimes for which he has been charged,
15 you must find the defendant guilty. On the other hand,
16 if you think there is a real possibility that defendant
17 is not guilty, you must give the defendant the benefit
18 of the doubt and find him not guilty.

19 A reasonable doubt may arise from the evidence or
20 from the lack of the evidence. I further instruct you
21 that a defendant is entitled to every reasonable doubt
22 that may arise in the case. And what that simply means
23 is that if upon any fact essential to a conviction in a
24 verdict of guilty of the offense for which the
25 defendant has been charged, if you have a reasonable

1 doubt, you should resolve that doubt in favor of the
2 defendant.

3 Finally, ladies and gentlemen and Mr. Foreman, I
4 will instruct you and emphasize the fact that this
5 defendant did not testify shall not be considered by
6 you in any fashion in your deliberations. The burden
7 remains on the State of South Carolina to prove his
8 guilt beyond a reasonable doubt as to all charges and
9 each and every element of those charges. And if any
10 juror wants to bring that matter up, it will be up to
11 you to make sure that that is not done. Okay, sir?

12 Now, ladies and gentlemen, those are the general
13 rules that define and control your duties as jurors.
14 If you'd like to give me a quick break, I will, or I
15 can go to the substantive law of DUI.

16 JURY FOREMAN: Keep going, your Honor.

17 THE COURT: I'll do it. All right. This is the
18 law of DUI. The law applicable to this case is found
19 in Code Section 56-5-2930 of the Code of Laws of South
20 Carolina which reads as follows: It is unlawful for a
21 person to drive a motor vehicle within this state
22 while: Number one, under the influence of alcohol to
23 the extent that the person's faculties to drive are
24 materially and appreciably impaired or under the
25 influence of any other drug or a combination of other

1 drugs or substances which cause impairment to the
2 extent that the person's faculties to drive are
3 materially and appreciably impaired, or under the
4 combined influence of alcohol and any other drug or
5 drugs or substances which impair to the extent that the
6 person's faculties to drive are materially and
7 appreciably impaired.

8 Now, ladies and gentlemen, a person is not under
9 the influence simply because he drinks something
10 alcoholic and then drives a motor vehicle. On the
11 other hand, in order to prove a defendant guilty of
12 driving under the influence, the State does not have to
13 prove that the defendant was grossly intoxicated or
14 about to pass out.

15 The true test of guilt or innocence of the
16 defendant is whether or not the defendant's faculties
17 to drive were materially and appreciably impaired from
18 the consumption of alcohol, drugs, or a combination of
19 them.

20 The State must prove beyond a reasonable doubt
21 that the defendant was driving a motor vehicle in this
22 state while under the influence of alcohol and/or drugs
23 or other substances to the extent that the defendant's
24 faculties to drive were materially and appreciably
25 impaired.

1 Driving a motor vehicle means that the vehicle was
2 in motion. This may be proved by direct or
3 circumstantial evidence. A movement of the vehicle
4 might occur without any affirmative act by a driver or,
5 in fact, by any person.

6 If a vehicle is moved by some power beyond the
7 control of the defendant or by accident, this would not
8 be driving. The State must prove beyond a reasonable
9 doubt that the defendant was sufficiently under the
10 influence to impair his ability to drive with
11 reasonable care with due regard for others and himself
12 or as a reasonable person would drive.

13 Now, in South Carolina we have what is known as an
14 implied consent law which is located at Code Section
15 56-5-2950 which in part reads: A person who drives a
16 motor vehicle in this state is considered to have given
17 consent to chemical test of his breath, blood, or urine
18 for the purpose of determining the presence of alcohol
19 or drugs or the combination of alcohol and drugs if
20 arrested for an offense arising out of acts alleged to
21 have been committed while the person was driving a
22 motor vehicle while under the influence of alcohol,
23 drugs, or a combination of them.

24 Now, a defendant has a right to refuse to take a
25 blood alcohol concentration test. However, the State

1 has the right to advise you that the defendant has
2 refused to take the test.

3 Ladies and gentlemen, that is the law of DUI.
4 Next would be driving under suspension.

5 The defendant is charged with driving under
6 suspension. The State must prove beyond a reasonable
7 doubt that the defendant drove a motor vehicle on a
8 public highway in this state during the time the
9 defendant's driver's license was cancelled, suspended,
10 or revoked.

11 To be guilty of driving under suspension, the
12 defendant must have been notified by the Department of
13 Public Safety that his driver's license had been
14 cancelled, suspended, or revoked.

15 Finally, this is the law of habitual traffic
16 offender. The defendant is charged with violating the
17 Habitual Traffic Offenders Act. The State must first
18 prove beyond a reasonable doubt that the defendant was
19 operating a motor vehicle in this state. Operating a
20 motor vehicle does not necessarily mean driving the
21 vehicle. Driving means that the vehicle was actually
22 in motion. However, in order to be operating a motor
23 vehicle, there does not need to be any motion.
24 Operating includes starting the engine or using any
25 mechanical or electrical part in the vehicle which will

1 set the vehicle in motion.

2 The State must also prove beyond a reasonable
3 doubt at the time the defendant was operating the motor
4 vehicle, the Department of Public Safety had found the
5 defendant to be a habitual traffic offender and they
6 had revoked the defendant's license to drive based on
7 that finding.

8 All right. Ladies and Gentlemen, that's the
9 substantive law in this case. And that leads me to a
10 few points to bring up about your deliberations.

11 If you will recall during our qualification
12 process, each of you indicated affirmatively or by not
13 speaking out that you felt you could be fair and
14 impartial to both sides. And what that simply means is
15 to be jurors. You're not here to be partisans or
16 advocates for one side or the other. It is your job to
17 try to see that justice is done from the evidence
18 presented in this case according to the law presented
19 to you. You should use your experiences in life, your
20 good judgment, sound common sense in discussing this
21 case and ultimately reaching a verdict.

22 Let me tell you this. Deliberation is defined as
23 this: It's a careful consideration, weighing up with a
24 view to a decision. Now, regardless of what any of you
25 may think about our jury system, I would submit to you

1 that the genius of the system is that it allows 12 men
2 and women who come from different backgrounds who have
3 different experiences and come from different walks of
4 life to sit through the trial, to listen to the
5 evidence, to listen to the law, and to ultimately go
6 back and discuss that evidence and the law and reach a
7 unanimous decision.

8 We call them deliberations for a reason. You
9 should go through all the evidence carefully and
10 courteously with one another and discuss it in a calm,
11 thorough, and courteous manner. Again, you're not
12 partisans for one side or the other, but you're judges
13 of the facts of this case.

14 I'm going to ask you and also going to charge you
15 to listen to everyone's points and their points of
16 view, go through and discuss all the evidence carefully
17 and courteously. And remember, if you are doing
18 something on a deliberate basis, if you're not in a big
19 hurry, I will tell you this is the State's only day in
20 court, and this is the defendant's only day in court.
21 They don't get to come back for a second bite at the
22 apple.

23 Now, in order for your verdict to stand, it will
24 have to be unanimous. But with that being said, each
25 of you have to decide this case on your own. But you

1 should not be afraid to change your opinion about the
2 weight and value of the evidence in this case if the
3 persuasion with your fellow jurors convinces you that's
4 the right thing to do. On the other hand, do not
5 change your opinion about the weight or the value of
6 the evidence solely to appease your fellow jurors in
7 order to reach a unanimous verdict. Okay?

8 Now, Mr. Foreman, in just a few minutes, after I
9 have a brief conference with these attorneys, we will
10 send back this verdict form. And we're also going to
11 send back the pieces of evidence at that have been
12 admitted into this case.

13 The verdict form has to be in some order, so the
14 order that it appears is of no consequence. But your
15 first option in this case will be, number one, driving
16 under the influence. And option number one, just
17 check, check the one that's applicable. As to the
18 charge of driving under the influence, we, the jury,
19 unanimously find the defendant not guilty. Option
20 number two, as to the charge of driving under the
21 influence, we, the jury, unanimously find the defendant
22 guilty.

23 Remember each of these charges are separate, okay?
24 Separate. So once the jury reaches a decision as to
25 that charge, then you will go to the next one, driving

1 under the influence. And your options would be under
2 that one not guilty or guilty, and you will just check
3 the option that the jury unanimously decides on. And,
4 finally, under habitual traffic offender, the option is
5 guilty or not guilty. And, again, you check the
6 applicable finding by the jury, you will sign your
7 name, fold the verdict form over in half, knock on the
8 door, and we'll receive your verdict here in the jury
9 room (sic).

10 Remember this. All the evidence that is going to
11 be admitted in this case has been submitted. There
12 will be no other record or no other evidence submitted
13 at this juncture.

14 Now, Mr. Foreman, if at any time the jury has any
15 questions, if you need anything, if would you follow
16 the procedure that I've asked you to do and that is
17 write it down and sign it, give it to our bailiffs,
18 we'll respond accordingly here in the courtroom. Okay?

19 I'm going to send you back to your jury room. If
20 I've made a mistake, I'll bring you back and correct
21 it. If not, we'll send back word with the verdict form
22 for you to begin your deliberations. Okay?

23 Go back -- you're the alternate. Would you get
24 your personal belongings, then stay with the bailiff in
25 the hallway, please.

1 (WHEREUPON, the jury exited the courtroom
2 at 12:33 p.m.)

3 THE COURT: Any additions or exceptions from the
4 State?

5 MS. BLUNDY: None, your Honor.

6 THE COURT: From the defense?

7 MR. PATRICK: None from the defense, your Honor.

8 THE COURT: All right, guys. Would y'all get your
9 exhibits together and make sure you have them there and
10 we'll get the verdict form and we can let them begin
11 their deliberations.

12 If you are going to take off anywhere, how about
13 leave your phone number for my law clerk so we can call
14 you in the event we have a question on the verdict.
15 And that being said, I would like to thank both of you
16 for your professionalism.

17 MS. BLUNDY: Thank you, your Honor.

18 MR. PATRICK: Thank you, your Honor.

19 (Court in recess, pending verdict, from 12:34 p.m.
20 until 1:17 p.m.)

21 THE COURT: My understanding is we have a verdict.
22 Would you bring the jury in, please, sir.

23 (WHEREUPON, the jury came into open court at
24 approximately 1:18 p.m.)

25 THE COURT: Mr. Foreman, my understanding is the

1 jury has reached a verdict; is that correct?

2 JURY FOREMAN: That's correct.

3 THE COURT: Is it unanimous?

4 JURY FOREMAN: Yes, sir.

5 THE COURT: Would you pass the verdict form to the
6 bailiff, please, sir.

7 THE CLERK: In the matter of the State of South
8 Carolina versus Russell Alan Tupper, on indictment
9 number 2014-GS-37-503, 504, and 505, on the first
10 count, driving under the influence, as to the charge of
11 driving under the influence on that indictment number
12 2014-GS-37-503, we, the jury, unanimously find the
13 defendant guilty.

14 As to the charge of driving under suspension on
15 indictment number 2014-GS-37-504, we, the jury,
16 unanimously find the defendant guilty.

17 And as to charge of violation of the habitual
18 offender statute on indictment number 2014-GS-37-505,
19 we, the jury, unanimously find the defendant guilty.

20 Ladies and gentlemen of the jury, if this was your
21 verdict and remains your verdict, please indicate so by
22 raising your right hand.

23 Let the record reflect that all members of the
24 jury have confirmed their verdict.

25 THE COURT: Thank you, ma'am. All right.

1 Ladies and gentlemen, as I told you from the
2 beginning of this case and I'll tell you again, the
3 Court is never concerned with what your findings of
4 fact are or what your verdict is. That's solely your
5 province. But you have paid attention to the
6 testimony, although a short trial, and to the law, so
7 you performed your responsibilities and your duties as
8 jurors. I am never concerned again with what your
9 verdict is, but I do thank you for your service to the
10 community. Without having you, people who are willing
11 to do their civic duty, we're not able to enforce the
12 rule of law. And without having the rule of law, you
13 can look at examples somewhere in the Mid East and see
14 what kind of lives those folks live. And regardless of
15 what you may think about the system, I would submit to
16 you there's none in the world that's better than what
17 we have here.

18 That being said, we're done with trials this week.
19 We're going to pick up on some other things, so you
20 don't have to come back this week and you don't have to
21 come back for three years. Okay?

22 Before you are excused, if you would go back to
23 your jury room, I have a few things I would like to go
24 over with you, Mr. Foreman, get you to sign some
25 paperwork for me right quick and we'll let you know.

1 If you will go back to your jury room.

2 (WHEREUPON, the jury exited the courtroom
3 at 1:21 p.m.)

4 THE COURT: Ms. Blundy, will you prepare me some
5 sentencing sheets?

6 MS. BLUNDY: I will, your Honor.

7 THE COURT: We'll just hang out. I'll be back in
8 about five minutes.

9 (WHEREUPON, recess taken from 1:21 p.m.
10 to 1:29 p.m.)

11 THE COURT: Y'all go ahead and be seated.

12 All right. Come around, please.

13 I want you to bring me his criminal record. I
14 want to hear it all on the record, please, ma'am.

15 THE COURT: While she's looking that up,
16 Mr. Tupper, I have to advise you that you have ten days
17 to appeal this verdict. Okay, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And the sentence.

20 Now, would you go ahead and slowly go through his
21 criminal record for me.

22 MS. BLUNDY: I will, your Honor.

23 1999, driving under the influence, second offense.

24 THE COURT: Let me ask you this. Where is the
25 first? Is that before the ten years?

1 MS. BLUNDY: It is before the ten years, your
2 Honor, and sometimes if it happened in another state,
3 it does not make it onto the federal background check.

4 THE COURT: I'm sorry. Excuse me.

5 MS. BLUNDY: 1999, failure to stop for a blue
6 light. 2002, petty larceny. 2002, driving under the
7 influence, first offense. 2002, assault of a high and
8 aggravated nature. 2002, driving under the influence,
9 first offense. 2002, open container. 2002, driving
10 without a license. 2002, public disorderly conduct.
11 2002, public disorderly conduct.

12 2003, public disorderly conduct. 2003, driving
13 under the influence, first offense. 2003, driving
14 under the influence, fourth offense. 2004 -- sorry.
15 2004, driving under the influence, fourth offense.
16 2004, driving under suspension. 2004, driving under
17 suspension. 2004, operating a vehicle not registered.

18 2005, public disorderly conduct. 2005, open
19 container. 2006, driving under the influence, fourth
20 offense. 2006, habitual traffic offender. 2008,
21 breach of peace.

22 2009, driving under the influence, fourth offense.
23 2009, habitual traffic offender. 2009, DUS third or
24 subsequent. 2014, breach of peace.

25 THE COURT: Let me guess, he was in jail during

1 the intervening period; is that right?

2 MR. PATRICK: Yes, your Honor.

3 MS. BLUNDY: Your Honor, there's also a criminal
4 history out of Georgia. Would you like me to go
5 through that?

6 THE COURT: Yes, ma'am. I sure would.

7 MS. BLUNDY: 2003, driving under the influence.
8 2003, furnishing, purchasing or possession of an
9 alcoholic beverage below legal age. 2003, giving a
10 false name to a police officer. 2003, traffic motor
11 vehicle offense, no driver's license. 2004, theft by
12 taking.

13 1996, habitual traffic offender. 1998, driving
14 under the influence. 1998, aggravated assault. 2000,
15 habitual traffic offender. 2000, hit and run. '99
16 probation violation. 2000, theft by taking. 2000,
17 probation violation. 2000, again probation violation.
18 2002, driving under the influence.

19 That is the complete record.

20 THE COURT: All right. Give me the range on DUS
21 second, time and fine, please.

22 MS. BLUNDY: Your Honor, on DUS second -- just one
23 moment. The range is \$600 or 60 days up to six months.

24 THE COURT: That's the DUS second?

25 MS. BLUNDY: That is correct.

1 THE COURT: All right. Give me -- zero to five,
2 and DUI fourth and greater is how much? Time and fine.

3 MS. BLUNDY: DUI fourth at a refusal, not less
4 than one year but no more than five years.

5 THE COURT: One to five. What's the fine range?

6 MS. BLUNDY: Do you know, Mr. Patrick?

7 MR. PATRICK: I don't, your Honor, I'm sorry, off
8 the top of my head.

9 MS. BLUNDY: Your Honor, it seems there is a fine
10 set out for first, second, and third offenses, but it
11 does not have a fine range listed for fourth or
12 subsequent offense.

13 THE COURT: I assume you don't disagree with that?

14 MR. PATRICK: No, your Honor.

15 THE COURT: Also you're guilty -- I find him
16 guilty today, also implicates an existing probation
17 case; is that correct?

18 PROBATION OFFICER: Yes, your Honor.

19 THE COURT: What is he on probation for?

20 PROBATION OFFICER: The charges that she announced
21 for 2009, the habitual traffic offender, DUS, and DUI.
22 I can send all these up to you.

23 THE COURT: He was on DUI from -- I mean probation
24 in 2009?

25 PROBATION OFFICER: He got a four-year prison

1 sentence. He didn't get released until November 1st of
2 2013.

3 THE COURT: I can just look -- that's 36 charges
4 that I have out there. Well, two are traffic. Okay.
5 Tell me about his probation course, please.

6 PROBATION OFFICER: May it please the Court, your
7 Honor. We issued a citation on September 25th of 2014,
8 and it was served on September 29, 2014, for the
9 following violations: He was sentenced on July 8,
10 2014, for breach of peace and received 30 days at
11 Ocone magistrates office; by leaving the state of
12 South Carolina without permission and was arrested in
13 the state of Georgia on August 12th, 2014, and
14 convicted on September 10, 2014, for DUI, suspended
15 license, reckless driving, open container, driving on
16 the wrong side of the road, no seat belt and received
17 12 months probation and fines totaling \$4,942 at the
18 Hartwell County courthouse; by drinking alcoholic
19 beverages to the excess due to the above charges; by
20 being terminated from behavioral health services due to
21 nonattendance and being in jail instead of Georgia; by
22 failing to pay on the fine and the supervision fee here
23 in South Carolina; by failing to report immediately to
24 the agent after being released from Georgia on
25 September 11, 2014, in that he didn't make any contact

1 with the agent until September 16, 2014.

2 THE COURT: How much time is he looking at? What
3 is the fine amount again?

4 PROBATION OFFICER: His fine balance here in South
5 Carolina is \$648.90 and a surcharge balance is \$558.26.

6 THE COURT: Surcharge being your -- the
7 administrative fees?

8 PROBATION OFFICER: Yes, for the court.

9 On the DUS, he has a three-year sentence. And on
10 the DUI, he has a five-year sentence.

11 THE COURT: How much of that still is pending, all
12 of it?

13 PROBATION OFFICER: I'm sorry. I handed up the
14 orders to you, the sentence sheets. Because on one of
15 the charges, he got the four-year sentence. And I
16 believe --

17 THE COURT: That's DUI?

18 PROBATION OFFICER: Yes, sir. The two that I have
19 here, he didn't get any -- he didn't get a split
20 sentence. It was just a straight probationary
21 sentence, so he still has the three years and the five
22 years.

23 THE COURT: Three years and the five years?

24 PROBATION OFFICER: Yes, sir.

25 THE COURT: Okay.

1 Mr. Tupper, what do you have to say in your
2 defense? You probably have, in the lower ended type of
3 charges compared to some of the more heinous charges we
4 see, you have one of the more extensive records I've
5 seen.

6 THE DEFENDANT: Yes, sir. I understand. I've had
7 a drinking problem my whole life, and it's just brought
8 all the charges that you see, the drinking charges.

9 THE COURT: Isn't it an interesting thing on this
10 probation report, they gave you a chance to have some
11 treatment and you just chose not to go.

12 THE DEFENDANT: No, sir, I did go. I graduated.

13 THE COURT: You didn't graduate with honors, I can
14 tell you that, okay?

15 All right. Mr. Patrick, I'll be glad to hear from
16 you.

17 MR. PATRICK: Yes, sir, your Honor. Mr. Tupper,
18 as Mr. Tupper indicated, he actually did complete a
19 Faith Home two-month rehab. He graduated March 7th on
20 that, so that was fairly recently. So he has taken
21 some steps to try to kick this addiction.

22 He'll be the first one to admit to you he has an
23 addiction, he has a problem. While at the Faith Home
24 he was -- was baptized, has a certificate of that and
25 has a picture of that if I can pass that up to the

1 Court.

2 THE COURT: Certainly.

3 MR. PATRICK: Your Honor, I mean, we're here just
4 pleading at the mercy of the Court. His mother is in
5 attendance and at the appropriate time would like to
6 speak to the Court.

7 THE COURT: Tell her to come around.

8 Would you state your name for the record.

9 MS. TUPPER: Betty Tupper.

10 THE COURT: Ms. Tupper, I know you're mom, and I'm
11 sorry for you, but I'll be glad to hear from you.

12 MS. TUPPER: Well, most of all, I don't want my
13 son going to jail.

14 THE COURT: He's going to go to jail today, I can
15 tell you.

16 MS. TUPPER: I know. He really is a nice young
17 man, even though his record doesn't say that. He has a
18 15-year-old daughter. And he does live with me, has an
19 apartment at my house. And since his father passed
20 away, I live on Social Security. And he's always been
21 able to do all the repairs on the house, do the outside
22 work. Even make repairs to my cars. He's changed my
23 brakes, he's changed the rotors.

24 It's hard for me living on my own to have to pay
25 somebody to come in and do all this stuff. And so with

1 him there, he has pretty much taken care of everything.

2 And he is loved by his family.

3 THE COURT: Sure.

4 MS. TUPPER: And he has tried to not drink.

5 Unfortunately, it's an addiction that a good bit of the
6 family has. And he is bipolar, so that kind of --

7 THE COURT: Oh, he is?

8 MS. TUPPER: So that kind of contributes to it.

9 And I'm sorry.

10 Sorry, Honey.

11 THE COURT: I know. How did he get your car that
12 day? Did you let him take it?

13 MS. TUPPER: No. I don't know. I did not see it.

14 THE COURT: I gotcha. Okay.

15 MS. TUPPER: It was kind of like her analogy of
16 the rain.

17 THE COURT: Ma'am?

18 MS. TUPPER: I said it was kind of like the lady's
19 analogy with the rain, it came in during the night.

20 THE COURT: I gotcha. Anything else you would
21 like to tell me?

22 MS. TUPPER: No, just that I love him and I hope
23 you will have some mercy. I do need him at home with
24 me.

25 THE COURT: Thank you, Ms. Tupper.

1 All right. Mr. Tupper or Mr. Patrick or Mr. Burr,
2 I'll be glad to hear from any of you.

3 MR. BURR: Your Honor, I have known Mr. Tupper
4 for, I guess, the entire time I've been up in Ocone
5 County. His addiction to alcohol is as bad as
6 anybody's I've ever seen. When he's not drinking, he's
7 really the nicest guy you could meet, and something
8 goes crazy in his head once he starts drinking.

9 He knows what he's facing. And he's also
10 expressed to me he knows how lucky he is he's never
11 hurt anybody.

12 THE COURT: I was about to go over that. Just by
13 the grace of God with that that you haven't killed
14 somebody or maimed them.

15 MR. BURR: Has been sober since the last arrest.
16 He went to rehab. It's not a long period of time, but
17 he has been struggling with it. Even the pressure and
18 stuff he's been under to participate in this trial, he
19 has stayed sober. Hopefully he'll continue to do that.
20 We would ask the Court to show mercy on him.

21 PROBATION OFFICER: Your Honor, I just have one
22 more thing. I just want the Court to have a clear
23 picture. I mean, we sent him to BHS. He got
24 terminated. I sent him to Home With a Heart. He left
25 there. He went to Faith Home on his own because he

1 knew he was court-ordered to complete inpatient.

2 THE COURT: I'm not fooled by that one bit.

3 MS. BLUNDY: Your Honor, did you need the
4 sentencing or the penalty on the habitual offender?

5 THE COURT: Zero to five. Is there a fine with
6 that?

7 MS. BLUNDY: Yeah.

8 THE COURT: Did you ever determine what fine, if
9 any, was with was DUI? You don't think there is on
10 fourth?

11 MS. BLUNDY: I don't. With the way the statute is
12 set out, it clearly says it in first through third.
13 Once you hit four, it imposes the mandatory jail time,
14 and it kind of leaves it at jail time. Are you seeing
15 something different?

16 THE COURT: Ma'am?

17 MS. BLUNDY: Are you seeing something different?

18 THE COURT: No, I just don't deal with these
19 statutes, so I have to read them to see.

20 All right. So from probation we have three and
21 five that he's looking at plus fines. Over here you're
22 looking at ten years and six months on these charges.

23 Mr. Tupper, I haven't heard from you other than to
24 say, "I've got a problem." Do you have anything else
25 you want to say?

1 THE DEFENDANT: Yes, sir. It's really hard for me
2 sometimes with my problems. But I'm also, like mama
3 said, I'm bipolar and they have had me down with
4 schizophrenia and everything, and I was on all these
5 medications prior to me going to Faith Home because
6 they won't allow you to take any medications at all
7 while you're there. So it makes it even more difficult
8 to get sober even without the psychotropic drugs and
9 things I've took, I've been taking for the past five
10 years, since they diagnosed me with the mental
11 problems.

12 I realize a lot of my mental problems are
13 attributed to my drinking, and a lot of my drinking has
14 contributed to my mental problems. They kind of go
15 hand in hand. They kind of go together. I did go to
16 prison. I was there for almost five years. During
17 that time I had a nervous breakdown. I pretty much
18 lost my mind, and that's why when I got out of prison,
19 I was still behaving in similar situations I was before
20 but really worse because it just -- all the time in
21 prison, it really messed my mind up worse than before I
22 went in. And I imagine that this will be same
23 situation here. It's taken me two years to get my mind
24 back right, and I just -- I've only been sober a few
25 months now, but I finally have been able to get myself

1 back together where my family enjoys me and loves me,
2 to where I have goals I want to reach. I have
3 things -- see, the problem is I got this DUI almost
4 right after I got out. So I've known these past two
5 years that if I lose my trial, that I was going to lose
6 everything. Like mama said, I got an apartment at the
7 house. I have a lot of things that I have that are
8 likely for me to lose in a long prison sentence.

9 My daughter, you know, I missed the years with
10 her. I missed a lot of them. Didn't want to miss any
11 more. But it's just when things got back right for me.
12 I mean, I finally had friends. I finally had things
13 that I could, you know, that I could value that, I can
14 hold on to. It's at this point in my life. Now it's
15 all crumbling back down again.

16 I just pray, Judge, despite the fact that I have a
17 lengthy criminal record, you know, with respect to
18 mostly all alcohol related, that you don't -- please
19 don't stick me with the maximum sentences. I do have a
20 home to go back to. I do have the desire to do right
21 and to be a good father, a good son, brother,
22 boyfriend, you know, all these things I want to do.
23 And it's just -- it's been hard these last couple
24 years. Just as soon as I got out, bam, I messed up,
25 you know.

1 And that's why it took me so long to finally --
2 like Ms. Ware was saying. She would give me
3 opportunities to go to like these other classes at the
4 BHS place. It's like one hour a week. And to do
5 things like that, that isn't what I really needed.
6 What I needed was Faith Home and the Christian
7 structure and the faith-based values that they give
8 you. And I know you've probably heard it a million
9 times from people about giving their life to God,
10 getting baptized and all these things. But it does
11 hold water with me. I am genuine. And, you know,
12 whether or not somebody believes that is unimportant,
13 but what's important is that I just believe it and I do
14 it and I continue to work my program. And I just pray
15 that you will give me the opportunity to work my
16 program and not spend my whole life in prison or the
17 remainder of my life. Although this probably appears
18 to be what I deserve, it won't benefit the public at
19 all. I mean --

20 THE COURT: Oh, I disagree. Keeping you off the
21 road will benefit the public.

22 THE DEFENDANT: Yes, sir. I understand that, but,
23 I mean, I've finally got to where -- I'll quit talking
24 now, your Honor. Thank you.

25 THE COURT: Thank you. All right. I've heard

1 enough.

2 I'm going to revoke his probation in full. Those
3 sentences and monies owed will be committed to a civil
4 judgment against this gentleman.

5 PROBATION OFFICER: Thank you.

6 THE COURT: Under indictment 2014-503, sentence
7 will be five years. That will be consecutive to your
8 probation. It will be concurrent with 2004-GS-37-504,
9 2014-505.

10 Under 2014-504, sentence is six months and \$600
11 fine. That will be consecutive to probation,
12 concurrent to 2014-505 and 503. 2014-505 will be five
13 years. That will be consecutive to probation
14 concurrent to 2014-504 and 503. Any time that he spent
15 in jail -- it's my intent, Mr. Tupper, that you spend
16 these sentences consecutive to your probation
17 revocation, but these sentences will be concurrent.
18 Okay? That's my intent. Okay?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Any time in jail, Mr. Patrick?

21 MR. PATRICK: Three weeks, your Honor, but --
22 yeah, I think it was three weeks, but I don't have that
23 for certain.

24 THE COURT: I'll go ahead and mark it as credit
25 for time served. Before it gets out of here, it's

1 better to put the numbers down because sometimes they
2 don't give them credit down there.

3 MR. PATRICK: Yes, sir. I'll check on that, your
4 Honor.

5 MR. BURR: Thank you, your Honor.

6 MR. PATRICK: Thank you, your Honor.

7 MS. BLUNDY: Thank you, your Honor.

8 (WHEREUPON, the hearing ended at 1:55 p.m.)

9 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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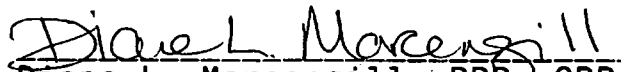
1 Certificate of Reporter

2
3 I, Diane L. Marcengill, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Oconee County, South Carolina,
10 on the 24th day of March 2015.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 June 16, 2015

16
17 
18 Diane L. Marcengill, RPR, CRR
19 Circuit Court Reporter
20
21
22
23
24
25

DOCKET NO. 2014GS37 00503

WITNESSES

M L Taylor, SCHP

CL Towe

CL Towe

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 07 2014

Term

ARREST WARRANT NUMBER

G624042

THE STATE

vs.

Russell Alan Tupper

ACTION OF GRAND JURY

True Bill

Melissa A. Burdette

Melissa A. Burdette

Foreperson of Grand Jury

Date:

APR 07 2014

BLS

Indictment for

VERDICT

DUI/Driving Under The Influence < .10 4th Or
Sub.

SC Code: 56-05-2930(A)

CDR Code: 3363

Foreperson of Petit Jury

Date:

FILED
RECEIVED
CLERK OF COURT
JULY 10 2014
COLUMBIA, SC

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Oconee)

At a Court of General Sessions, convened on APR 07 2014, the Grand Jurors of Oconee County present upon their oath:

DUI/Driving Under the Influence < .10 4th or sub.

That Russell Alan Tupper did in Oconee County, on or about January 16, 2014, drive a vehicle while under the influence of alcohol and/or any other drug or a combination of drugs and/or substances which cause impairment; having three prior convictions within a period of ten years including and immediately preceding the foregoing date and having a blood alcohol concentration of at least .08% but less than .10%, all in violation of Section 56-5-2930(A), Code of Laws of South Carolina (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR.

WITNESSES

M L Taylor, SCHP

*CL Towe**CL Towe*

ARREST WARRANT NUMBER

G624043

ACTION OF GRAND JURY

*TRUE BILL**Melissa A Burdette**Melissa A Burdette*

Foreperson of Grand Jury

Date:

APR 07 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS37 00504

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 07 2014

Term

THE STATE

vs.

Russell Alan Tupper

BLS

Indictment for

DUS / Driving Under Suspension, License
Suspended For DUI - 3rd Or Subsequent
Offense

SC Code: 56-01-0460(3)

CDR Code: 0956

FILED 06/07/14
CLERK OF COURT
JUL 9 10 11 AM

STATE OF SOUTH CAROLINA)
)
COUNTY OF Oconee)

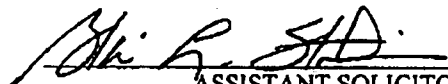
INDICTMENT

At a Court of General Sessions, convened on APR 07 2014, the Grand Jurors of Oconee County present upon their oath:

DUS / Driving Under Suspension, License Suspended For DUI – 3rd Or
Subsequent Offense

That Russell Alan Tupper did in Oconee on or about January 16, 2014 Drive a motor vehicle on a public highway of this state when his license to drive was suspended, such not being the first offense within a period of five years including and immediately preceding the foregoing date. All in violation of Section 56-1-460(A)(2)(a), Code Of Laws Of South Carolina, (1976) as Amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

DOCKET NO. 2014GS37 00505

WITNESSES

M L Taylor SChP

MLT

CC Towle

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

APR 07 2014

Term

ARREST WARRANT NUMBER

G624044

THE STATE

vs.

Russell Alan Tupper

ACTION OF GRAND JURY

True Bill

Melissa A. Burdette

Melissa A. Burdette

Foreperson of Grand Jury

APR 07 2014

Date:

BLS

Indictment for

VERDICT

Traffic / Habitual Traffic Offenders, DUS as per
Habitual Traffic Offender Status

SC Code: 56-01-1100

CDR Code: 0057

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

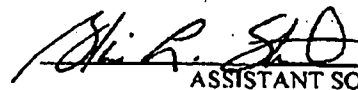
INDICTMENT

At a Court of General Sessions, convened on APR 07 2014, the Grand Jurors of
Oconee County present upon their oath:

Traffic / Habitual Traffic Offenders, DUS as per Habitual Traffic
Offender Status

That Russell Alan Tupper did in Oconee County, on or about January 16, 2014,
operate a motor vehicle in this State while his driver's license was suspended, and after
having been declared an Habitual Traffic Offender. This is in violation of §56-1-1100 of
the South Carolina Code of Laws (1976) as amended.

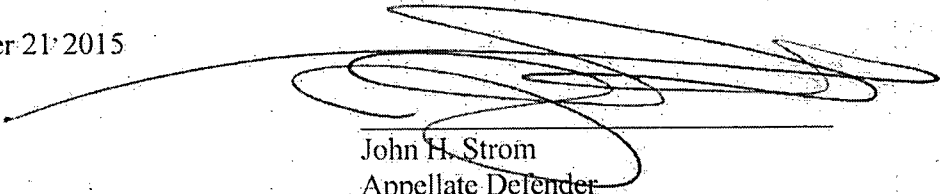
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 21, 2015



John H. Strom
Appellate Defender

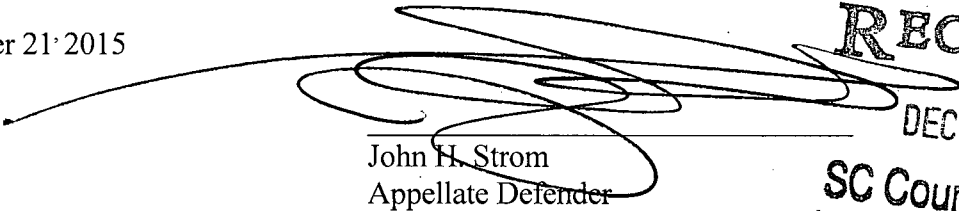
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 21, 2015



John H. Strom
Appellate Defender

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SC Court of Appeals

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ATTORNEY FOR APPELLANT