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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Eugene C. Griffith, Jr., Circuit Court Judge

SAMUEL THOMPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-00421 1419

APPENDIX

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1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
 2012-GS-10-01466
 01468, 07652

3 STATE OF SOUTH CAROLINA)
 4)
 4 Plaintiff)
 5)
 5 V.)
 6)
 6 SAMUEL THOMPSON,)
 7 Defendant.)
 7 -----)

TRANSCRIPT OF RECORD
 Trial Day 1 and 2

8
 9 January 7 and 8, 2013
 Charleston, South Carolina

10
 11
 12 B E F O R E:

13 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
 14
 15
 16
 17

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

19 Mr. Greg Voigt, Assistant Solicitor
 20 Ms. Spencer Compton, Assistant Solicitor
 Representing The State

21 Mr. James W. Smiley, Esquire
 22 Representing The Defendant
 23

24 Anne Bouley Meyer, RPR
 Circuit Court Reporter
 25

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1 THE COURT: It is my understanding that
2 indictment 2012-GS-10-7652 has not been served on the
3 defendant. There was another indictment where he was
4 indicted on the same offense, but I assume it was
5 housekeeping to do this additional indictment?

6 MR. VOIGT: That's correct, Your Honor. The
7 state added some verbiage alleging a dereliction of a
8 traffic duty or duty to others. More specifically,
9 improper lane change, failure to control vehicle.

10 THE COURT: And that replaced 2012-1468,
11 correct?

12 MR. VOIGT: It does, Your Honor.

13 MR. SMILEY: And, Your Honor, it hadn't been
14 served -- Jim Smiley on behalf of Samuel Thompson. I
15 have been his attorney throughout. It does not change
16 our defense whatsoever. It went from being a traffic
17 violation to saying an improper lane change, and I knew
18 that's what we would be facing from the start.

19 So I just want it clear on the record, it does
20 not change. And I think I had sufficient notice from
21 the first indictment, and the second one just cleans it
22 up.

23 THE COURT: Okay. There are no substantive
24 changes and you are still -- you have sufficient notice
25 of the charges and what you are prepared to defend,

1 correct?

2 MR. SMILEY: That's correct, Your Honor.

3 THE COURT: Okay. Now, do you need a copy of
4 this, Mr. Smiley?

5 MR. SMILEY: It would be nice.

6 THE COURT: Give me one second and we will do
7 that and then we will get started. And I will get back
8 with this copy and then we'll bring in the jury.

9 MR. SMILEY: Okay.

10 (Whereupon, a recess was taken.)

11 MR. SMILEY: Your Honor, may I inquire if my
12 client not stand? He's got a really bad knee.

13 THE COURT: That's fine.

14 (Whereupon, the prospective jurors enter the
15 courtroom.)

16 THE COURT: Mr. Smiley, does your client wish to
17 have a formal arraignment?

18 MR. SMILEY: No, Your Honor.

19 THE COURT: Ladies and gentlemen, we appreciate
20 your patience as we worked through some technical
21 issues as we proceeded with the docket this afternoon.
22 Again, we do not take your time for granted.

23 We are going to select two juries. One for the
24 case of the State of South Carolina versus Samuel
25 Thompson, Jr. We're going to go through a process that

1 is called voir dire, which is simply a legal term
2 meaning that I'm going to ask you some questions so
3 that the attorneys can more effectively exercise their
4 preemptory challenges.

5 If a question applies to you please stand, and
6 in a loud and clear voice give us your name, your juror
7 number, and an answer to the question if applicable,
8 and remain standing until the Court has completed
9 questioning you.

10 Before we begin that process, I'm going to have
11 counsel for the State to introduce themselves and
12 anyone who will be assisting them in the trial of the
13 case, and also give us the names of the lawyers in
14 their office.

15 I'm also going to have counsel for the defense
16 provide us with the same information, as well as having
17 his client face the panel.

18 You may proceed, Mr. Voigt.

19 MR. VOIGT: Thank you very much, Your Honor.

20 THE COURT: You're welcome.

21 MR. VOIGT: My name is Greg Voigt. I'm an
22 assistant solicitor here in Charleston County.
23 Assisting me today will be Spencer Compton, who is also
24 an assistant solicitor. You may see my investigator,
25 Jack Scarborough, he's with our office, formerly of the

1 sheriff's office.

2 You may see various other people. There is a
3 paralegal in our office, you may see her assisting me
4 technically from time to time.

5 The attorneys in our office, we work for Scarlet
6 Wilson, who's the solicitor of the Charleston and
7 Berkeley County 9th Circuit. Bruce Durant is the
8 deputy solicitor. Stephanie Linder, Rutledge Durant,
9 Michael Nelson, Chad Simpson, Culver Kidd, Amy Harrell,
10 Julie Cardillo, Jennifer Shealy.

11 We have Shannon Elliot, Timmy Finch, Marian
12 Askins, Natasha Chisolm, Tyler Whitaker, Jim Stack,
13 Lindsey McClain. Meg Haley. Adam Young. Debbie
14 Herring-Lash. Elizabeth Gordon. Grant Stoney.
15 Emmanuel Fuerguson. Richard Waring. Todd Williams.
16 Kelly Flynn and Elizabeth Pitt.

17 THE COURT: Mr. Smiley, you may proceed.

18 MR. SMILEY: I'm Jim Smiley. I'm a member of
19 the Charleston County bar. I have been practicing as a
20 solo practitioner since 1997. I am going to be trying
21 the case on behalf of Samuel Thompson. My client,
22 Sammy, has got a bad knee.

23 This is my client. This is Samuel Thompson, Jr.
24 He is charged in this case, and it is my pleasure to be
25 his attorney. And assisting me in the case will be

1 another attorney from the Charleston County bar by the
2 name of Laree Hensley. She has her practice out on
3 Remount Road. I'm here on King Street.

4 I don't have a long list to tell you, just me,
5 Mr. Thompson, Ms. Hensley. So thank you very much.

6 THE COURT: Ladies and gentlemen, as I have
7 indicated, we are going to select a jury for the case
8 indictment 2012-GS-10-7652, the State versus Samuel
9 Thompson, Jr. That indictment is for felony driving
10 under the influence, and it alleges as follows: that
11 in Charleston County, South Carolina, on or about
12 September 20th of 2011, while driving a vehicle under
13 the influence of alcohol, drugs, or both alcohol and
14 drugs, the defendant, Samuel Thompson, Jr., did an act
15 forbidden by law or neglected a duty imposed by law in
16 driving the said vehicle, to wit: improper lane change,
17 and such act proximately causing the death to Margaret
18 Deas, alleging a violation of code section 56-5-2945 of
19 the South Carolina code of laws as amended.

20 Again, if a question applies to you please
21 stand, and in a loud and clear voice give us your name,
22 your juror number, an answer to the question if
23 applicable, and remain standing until the Court has
24 completed questioning you.

25 Is there any member of the panel related by

1 blood or marriage to Samuel Thompson, Jr., or Margaret
2 Deas? If so, please stand at this time.

3 Does any member have a close personal, social or
4 business relationship with Samuel Thompson, Jr.,
5 or anyone who is in the family of Margaret Deas or
6 previously with Margaret Deas?

7 If so, please stand at this time.

8 Yes, ma'am. Tell us your name and your juror
9 number.

10 PROSPECTIVE JUROR: My name is Vivian Wright.
11 My juror number is 372. I actually went to church with
12 Mr. Thompson's family, so I know the entire family
13 personally.

14 THE COURT: Okay. And so you said you went to,
15 past tense, or you still go to church with them?

16 PROSPECTIVE JUROR: I used to go to church with
17 the family.

18 THE COURT: How long ago was that?

19 PROSPECTIVE JUROR: It has been within the last
20 five years.

21 THE COURT: Ma'am, as a result of this
22 experience do you feel that you can remain fair and
23 impartial, and render a fair and impartial decision in
24 this case based solely on the evidence as it will be
25 presented and on the law as the Court will instruct?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you, ma'am. You may take your
3 seat.

4 The following are a list of potential witnesses
5 in this case, I would ask that you listen carefully.
6 Matt Smoak, Cpl. Jay Miller, Officer Ryan Brown,
7 Detective Chris Barfield, May [sic] Phillips, all of
8 the Charleston Police Department.

9 Alisa Whittington. Erin Presnell, all of
10 Medical University of South Carolina. PFC John Dalti.
11 Shana Sorrells, Amy Stephens, Patricia Crooks, Kathleen
12 Woodward, Toni Broome, Maribeth Coleman, Carmen Tucker,
13 Brandon Williams, and Brad Wilson, all of the South
14 Carolina Law Enforcement Division.

15 And Carolyn Middleton and Samuel Thompson, Jr.

16 Is there any member of the panel related by
17 blood or marriage to any of the people that I have just
18 listed, or does anyone have a close personal or social
19 relationship with any of these individuals?

20 If so, please stand.

21 Has any member of the panel ever been
22 represented by any of the attorneys involved in this
23 case, or any of the attorneys in their offices?

24 If so, please stand at this time.

25 Is there any member of the panel related by

1 blood or marriage to, or have a close personal, social
2 or business relationship with any of the attorneys
3 involved in this case, any of the attorneys in their
4 offices, or any of the employees of either the
5 solicitor's office or Mr. Smiley's office?

6 If so, please stand at this time.

7 Yes, sir. If you would tell us your name and
8 your juror number.

9 PROSPECTIVE JUROR: Robert Carter, I think it's
10 64 or 66.

11 THE COURT: Bear with us one second.

12 46. And, sir, who is it you have a relationship
13 with?

14 PROSPECTIVE JUROR: Jack Scarborough.

15 THE COURT: Could you characterize that
16 relationship for me? Are you close friends,
17 acquaintances?

18 PROSPECTIVE JUROR: Close friends.

19 THE COURT: How often would you say you see one
20 another?

21 PROSPECTIVE JUROR: Not as much anymore. His
22 wife and myself worked together for 15 years.

23 THE COURT: So how often would you see him per
24 month?

25 PROSPECTIVE JUROR: Once a month. Twice a month

1 in the past.

2 THE COURT: And what type of setting would that
3 be in?

4 PROSPECTIVE JUROR: Social.

5 THE COURT: And would that be with others, or
6 just you and your wife and he and his wife?

7 PROSPECTIVE JUROR: With others.

8 THE COURT: Okay. Sir, as a result of this
9 experience, do you feel that you can remain fair and
10 impartial, and render a fair and impartial decision in
11 this case based solely on the evidence as it will be
12 presented and on the law as the Court will instruct?

13 PROSPECTIVE JUROR: Sure. I guess.

14 THE COURT: Okay. There is no right or wrong
15 answer, but only you can provide that answer and it has
16 to be a yes or a no.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Thank you, sir.

19 Has any member of the panel formed or expressed
20 an opinion about any issue or matter involved in this
21 case?

22 If so, please stand at this time.

23 Is there any member of the panel aware of any
24 bias or prejudice toward either the State or the
25 defense in this case?

1 If so, please stand at this time.

2 Is there any member of the panel who was a
3 member of the grand jury which issued the indictment in
4 this case?

5 If so, please stand at this time.

6 Is there any member of the panel who is a member
7 of or contributor to any group which has as its primary
8 concern the enforcement of law enforcement -- the
9 promotion of law enforcement or victim's rights? These
10 groups would include, but are not limited to, Mothers
11 Against Drunk Driving, Students Against Drunk Driving,
12 Citizens Against Violent Crime, People Against Rape,
13 Citizens Advocating a Return to Decency and Ethics, and
14 Parents Empowered to Save Teens.

15 If you are a member of any of these groups, or
16 any such like groups, if you would stand at this time.

17 PROSPECTIVE JUROR: I'm juror number 279. My
18 name is Mary Saalfield. I have -- my first cousin was
19 killed by a drunk driver.

20 THE COURT: Okay. If you would -- I'm going to
21 ask another question that's going to address that
22 subject matter, but I appreciate you being forthright
23 with us. Just give me one moment.

24 Is there any member of the panel who has any
25 religious, philosophical or moral beliefs that would

1 make it difficult for you to sit in judgment of a
2 fellow human being and impair your ability to follow
3 the Court's instructions?

4 If so, please stand at this time.

5 Is there any member of the panel who has ever
6 had what they would characterize as an unpleasant
7 experience with law enforcement?

8 If so, please stand at this time.

9 Is there any member of the panel who was
10 formally employed with law enforcement?

11 If so, please stand at this time.

12 Is there any member of the panel who has any
13 personal knowledge of the alleged facts and
14 circumstances of this case?

15 If so, please stand at this time.

16 Is there any member of the panel who has read,
17 watched or listened to any media accounts about this
18 case? That includes anything that could have been on
19 the Internet, newspaper, radio or television?

20 If so, please stand at this time.

21 Is there any member of the panel who has a
22 moral, religious, or philosophical opposition to the
23 consumption of alcohol?

24 If so, please stand at this time.

25 Is there any member of the panel, or any member

1 of your immediate family, ever been what you would
2 consider the victim of a driving and drinking incident?

3 If so, please stand at this time.

4 Yes, ma'am. You're number 279, correct?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: And you said you had a first cousin
7 who was killed as a result of a vehicular situation
8 with alcohol?

9 PROSPECTIVE JUROR: That is correct.

10 THE COURT: As a result of this experience, do
11 you feel that you can remain fair and impartial and
12 render --

13 PROSPECTIVE JUROR: No.

14 THE COURT: It's a long question, I'm sorry but
15 I still have to ask the whole question. I apologize.

16 As a result of this experience, do you feel that
17 you can remain fair and impartial, and render a fair
18 and impartial decision in this case based solely on the
19 evidence as it will be presented and on the law as the
20 Court will instruct?

21 PROSPECTIVE JUROR: I don't think so.

22 THE COURT: Thank you, ma'am. You will be
23 excused from the trial of this case only. If you would
24 take your seat for me.

25 Does the State have any opposition to

1 Defendant's voir dire 8 and 9?

2 MR. VOIGT: One moment, Your Honor.

3 I do about number 8, Your Honor.

4 THE COURT: I would ask it, I think, a little
5 differently.

6 Is there any member of the panel who has ever
7 had any involvement with law enforcement as a result of
8 drinking and driving?

9 If so, please stand at this time.

10 If you would tell me your name and your juror
11 number.

12 PROSPECTIVE JUROR: Raymond Campbell, number 41.

13 THE COURT: And, sir.

14 PROSPECTIVE JUROR: Robert Carter, 16 [sic].

15 THE COURT: And, sir.

16 PROSPECTIVE JUROR: Phillip Atkins, number 10.

17 THE COURT: As a result of these experiences, do
18 you all feel that you can remain fair and impartial,
19 and render a fair and impartial decision in this case
20 based solely on the evidence as it will be presented
21 and on the law as the Court will instruct?

22 If your answer is yes, please take your seat.

23 (All comply.)

24 PROSPECTIVE JUROR: Juror 225.

25 THE COURT: Yes, sir.

1 PROSPECTIVE JUROR: I'm an acquaintance with two
2 of the members of the solicitor's office.

3 THE COURT: Who are they?

4 PROSPECTIVE JUROR: Michael Nelson and Stephanie
5 Linder.

6 THE COURT: And how would you characterize that
7 acquaintance?

8 PROSPECTIVE JUROR: Michael I have known since I
9 was in middle school, high school. And Stephanie
10 Linder is simply an acquaintance.

11 THE COURT: Okay. Do you socialize with them?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Okay. So you just have known them
14 in passing?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: As a result of this experience, do
17 you feel that you can remain fair and impartial, and
18 render a fair and impartial decision in this case based
19 solely on the evidence as it will be presented and on
20 the law as the Court will instruct?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Thank you, sir. You may take your
23 seat.

24 Is there any member of the panel who has had a
25 family member who has had involvement with law

1 enforcement as a result of driving and alcohol?

2 If so, please stand at this time.

3 If you would just tell me your name and your
4 juror number.

5 PROSPECTIVE JUROR: Ronald Lail, 170.

6 THE COURT: Yes, ma'am.

7 PROSPECTIVE JUROR: Annemarie Dontato, 79.

8 THE COURT: Ma'am, in the corner.

9 PROSPECTIVE JUROR: 304, Monica Smith.

10 THE COURT: And, sir?

11 PROSPECTIVE JUROR: Paul Peters, 249.

12 THE COURT: And, sir?

13 PROSPECTIVE JUROR: Eric Lutz, 182.

14 THE COURT: And, ma'am, in the corner?

15 PROSPECTIVE JUROR: Melody Templeton, 319.

16 THE COURT: As a result of these experiences, do
17 you all feel that you can remain fair and impartial,
18 and render a fair and impartial decision in this case
19 based solely on the evidence as it will be presented
20 and on the law as the Court will instruct?

21 If your answer is yes, please take your seat.

22 Let the record reflect that all answered
23 yes with the exception -- you're number 170, correct,
24 sir?

25 PROSPECTIVE JUROR: Yes, ma'am.

1 THE COURT: And you're number 79, correct?

2 PROSPECTIVE JUROR: Yes, ma'am.

3 THE COURT: You will be excused from the trial
4 of this case only. You may take your seats.

5 Does any member of the panel know of any reason
6 whatsoever why he or she should not serve as a juror in
7 this case, with particular emphasis being placed on
8 your ability to be fair and impartial to both the State
9 and the defense?

10 If so, please stand at this time.

11 Are there any additional questions from the
12 State?

13 MR. VOIGT: None, Your Honor.

14 THE COURT: From the defense?

15 MR. SMILEY: No, ma'am.

16 THE COURT: Strikes are five and five.

17 Who's going to demonstrate for me?

18 We are going to go through the process of jury
19 selection. If your name is called, if you would come
20 forward and stand exactly where Mr. Robinson is
21 standing, facing back out toward the panel until we
22 either seat you as a juror or we excuse you as a juror.

23 Again, we appreciate your patience as we go
24 through this process. If you come from the inside of
25 the bench, if you could slide down so that if a person

1 is returning to the gallery they don't have to step
2 over you, that would be greatly appreciated.

3 Give us just a moment and we will begin that
4 process. It's just a typical Monday. If it's
5 technical and it's supposed to work, it's giving us
6 issues. So we have to print in another courtroom, so
7 bear with us. Again, we appreciate your patience.

8 THE CLERK: If I call your name and juror
9 number, come forward with your belongings, turn and
10 face the audience.

11 Juror number 243, Vijay Patel.

12 (Whereupon, a white male approaches.)

13 THE CLERK: What say you for the State?

14 MR. VOIGT: Please excuse the juror.

15 THE CLERK: Mr. Patel, please have a seat back
16 in the gallery.

17 Juror number 81, John Draffin.

18 (Whereupon, a white male approaches.)

19 THE CLERK: What say you for the State?

20 MR. VOIGT: Please seat this juror.

21 THE CLERK: What say you for the defendant?

22 MR. SMILEY: Please excuse the juror.

23 THE CLERK: Please have a seat back in the
24 gallery.

25 Juror number 10, Phillip Atkins.

1 (Whereupon, a white male approaches.)

2 THE CLERK: What say you for the State?

3 MR. VOIGT: Please seat this juror.

4 THE CLERK: What say you for the defendant?

5 MR. SMILEY: Please seat this juror.

6 THE CLERK: Mr. Atkins, please have a seat in
7 the jury box.

8 Juror number 114, Sandra Gilliam.

9 (Whereupon, a black female approaches.)

10 THE CLERK: What say you for the State?

11 MR. VOIGT: Please seat this juror.

12 THE CLERK: What say you for the defendant?

13 MR. SMILEY: Please excuse the juror.

14 THE CLERK: Ms. Gilliam, please have a seat back
15 in the gallery.

16 Juror number 144, David Hurlock.

17 Juror number 144, David Hurlock.

18 THE COURT: He must be next door. I guess we
19 have to skip him since he wasn't a part of voir dire.
20 Please go check and see if he's next door. Don't bring
21 him over, I just need to know if he's next door.

22 You can move on to the next juror.

23 THE CLERK: Juror number 12, Susan Bailey.

24 (Whereupon, a white female approaches.)

25 THE CLERK: What say you for the State?

1 MR. VOIGT: Please seat this juror.

2 THE CLERK: What say you for the defendant?

3 MR. SMILEY: Please seat this juror.

4 THE CLERK: Ms. Bailey, please have a seat in
5 the jury box.

6 Juror 180, Allison Loring.

7 (Whereupon, a white female approaches.)

8 THE CLERK: What say you for the State?

9 MR. VOIGT: Please seat this juror.

10 THE CLERK: What say you for the defendant?

11 MR. SMILEY: Please seat this juror.

12 THE CLERK: Ms. Loring, please have a seat in
13 the jury box.

14 Juror number 97, Thomas Fetter.

15 (Whereupon, a white male approaches.)

16 THE CLERK: What say you for the State?

17 MR. VOIGT: Please seat this juror.

18 THE CLERK: What say you for the defendant?

19 MR. SMILEY: Please seat this juror.

20 THE CLERK: Juror number 173, Deborah Leech.

21 (Whereupon, a white female approaches.)

22 THE CLERK: What say you for the State?

23 MR. VOIGT: Please seat this juror.

24 THE CLERK: What say you for the defendant?

25 MR. SMILEY: Please seat this juror.

1 THE CLERK: Juror number 18, Shannon Beckham.

2 (Whereupon, a white female approaches.)

3 THE CLERK: What say you for the State?

4 MR. VOIGT: Please seat this juror.

5 THE CLERK: What say you for the defendant?

6 MR. SMILEY: Please seat this juror.

7 THE CLERK: Juror number 11, Nancy Aust.

8 (Whereupon, a white female approaches.)

9 THE CLERK: What say you for the State?

10 MR. VOIGT: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MR. SMILEY: Please excuse the juror.

13 THE CLERK: Three strikes for the defendant.

14 Juror number 222, Joseph Morrison.

15 (Whereupon, a white male approaches.)

16 THE CLERK: What say you for the State?

17 MR. VOIGT: Please excuse the juror.

18 THE CLERK: Please have a seat back in the
19 gallery.

20 Jury number 346, Stanley Washington.

21 (Whereupon, a black male approaches.)

22 THE CLERK: What say you for the State?

23 MR. VOIGT: Please seat this juror.

24 THE CLERK: What say you for the defendant?

25 MR. SMILEY: Please seat this juror.

1 THE CLERK: Jury number 41, Raymond Campbell.

2 (Whereupon, a white male approaches.)

3 THE CLERK: What say you for the State?

4 MR. VOIGT: Please seat this juror.

5 THE CLERK: What say you for the defendant?

6 MR. SMILEY: Please seat this juror.

7 THE CLERK: Jury number 156, Isaac Johnson.

8 (Whereupon, a black male approaches.)

9 THE CLERK: What say you for the State?

10 MR. VOIGT: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MR. SMILEY: Court's indulgence.

13 Please seat this juror.

14 THE CLERK: Juror number 168, Christine

15 Kitchens.

16 (Whereupon, a white female approaches.)

17 THE CLERK: What say you for the State?

18 MR. VOIGT: Please seat this juror.

19 THE CLERK: What say you for the defendant?

20 MR. SMILEY: Please seat this juror.

21 THE CLERK: Jury number 223, Devon Moultrie.

22 (Whereupon, a black male approaches.)

23 THE CLERK: What say you for the State?

24 MR. VOIGT: Please excuse the juror.

25 THE CLERK: Three strikes for the State.

1 Juror number 92, Joseph Evans.

2 (Whereupon, a white male approaches.)

3 THE CLERK: What say you for the State?

4 MR. VOIGT: Please seat this juror.

5 THE CLERK: What say you for the defendant?

6 MR. SMILEY: Please seat this juror.

7 THE CLERK: Jury number 13, Kristen Baker.

8 (Whereupon, a white female approaches.)

9 THE CLERK: What say you for the State?

10 MR. VOIGT: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MR. SMILEY: Please excuse the juror.

13 THE CLERK: Juror number 61, Danielle

14 Cubberleygoldston.

15 (Whereupon, a white female approaches.)

16 THE CLERK: What say you for the State?

17 MR. VOIGT: Please seat this juror.

18 THE CLERK: What say you for the defendant?

19 MR. SMILEY: Please seat this juror.

20 THE COURT: One or two alternates?

21 MR. SMILEY: I believe two.

22 THE COURT: Strikes are two and one.

23 THE CLERK: Now striking for the first

24 alternate. Juror number 372, Vivian Wright.

25 (Whereupon, a black female approaches.)

1 THE CLERK: What say you for the State?

2 MR. VOIGT: Please excuse the juror.

3 THE CLERK: Jury number 46, Robert Carter.

4 (Whereupon, a white male approaches.)

5 THE CLERK: Any challenge from the State?

6 MR. VOIGT: No.

7 THE CLERK: What say you for the defendant?

8 MR. SMILEY: Please seat this juror.

9 THE CLERK: Now striking for the second

10 alternate.

11 Juror number 349, Alan Webb.

12 (Whereupon, a white male approaches.)

13 THE CLERK: What say you for the State?

14 MR. VOIGT: Please seat this juror.

15 THE CLERK: What say you for the defendant?

16 MR. SMILEY: Please seat this juror.

17 THE CLERK: Mr. Webb, have a seat in the jury

18 box.

19 THE COURT: Are there any motions regarding the

20 selection of the jury from the State?

21 MR. VOIGT: No, Your Honor.

22 THE COURT: From the defense?

23 MR. SMILEY: No, ma'am.

24 THE COURT: Okay. Ladies and gentlemen, you

25 have been selected for the case of the State of South

1 Carolina versus Samuel Thompson, Jr. We are going to
2 begin this case tomorrow morning at 9:30. You will
3 return directly to the jury room. The bailiffs are
4 going to show you how to do that.

5 During this break, please do not discuss this
6 case among yourselves or with anyone else. Please
7 don't speculate about what you think it may or could be
8 about. Please do not read, watch or listen to any
9 media accounts about this case, if there are any.

10 That includes anything that could be found on
11 radio, television, newspaper or Internet. And you are
12 prohibited from doing any independent research of any
13 type on the Internet regarding any issue or matter,
14 word searches, topic searches or otherwise regarding
15 this case.

16 You are also prohibited from discussing your
17 jury service on any social networking sites. That
18 includes Facebook, Socialgram, Instagram, there's so
19 many. But a very innocent comment could be so very
20 easily misinterpreted, so I would ask that you refrain
21 from doing that as well.

22 When you return to the courthouse, please do not
23 have any contact with anyone or have any conversations
24 with anyone that does not have on a juror sticker.
25 People look very different outside the courtroom than

1 they look inside the courtroom. We would not want you
2 to have an innocent conversation and have that
3 conversation misinterpreted.

4 We again appreciate your patience. I hope you
5 all have a wonderful afternoon. We will see you in the
6 morning at 9:30, and Mr. Chris will show where you need
7 to return in the morning. Have a great afternoon.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Counsel approach for me.

10 (Whereupon, a discussion was held at the bench
11 not on the record.)

12 THE COURT: There is no way I have -- there are
13 a certain number of jurors that we need to select a
14 jury. There is no way for me to simply add more jurors
15 to your number because it's a completely random
16 process.

17 So I'm going to have to ask you all to go back
18 next door and then we are going to generate another
19 list. Some of you may be on the new list, some of you
20 may not.

21 So again, I appreciate your patience. If you
22 would go with the bailiffs for me, please. It should
23 take us less than 5 minutes.

24 (Whereupon, the proceedings in this matter
25 before the Court were adjourned for the evening.)

* * * * *

(Whereupon, State's Exhibit Nos. 1 through 48 were marked for identification.)

THE COURT: Is there any exception to the State's exhibits, Mr. Smiley?

MR. SMILEY: 1 through 46, the photographs of the accident scene, I'm going to have no objection to. I will not object to 47.

MR. VOIGT: 48 is the implied consent form, just for reference.

MR. SMILEY: And for record purposes, I understand there may be some objections as a result depending on the testimony. So 47 is -- the last one is the only one that has a question to it. I'm not objecting to any of the others.

THE COURT: 1 through 47 come in without objection.

(Whereupon, State's Exhibit Nos. 1 through 47 are admitted into evidence.)

THE COURT: And 48, you have an objection to the implied consent form itself?

1 MR. SMILEY: Itself, no.

2 THE COURT: Okay. Well, tell me.

3 MR. SMILEY: We've got to wait and see what the
4 testimony is about -- there was no breath in this case,
5 Your Honor.

6 THE COURT: Okay.

7 MR. SMILEY: So I've just got to wait and see
8 how the testimony goes because it's not clear.
9 Probably there is not going to be an objection, I just
10 don't want you to think I'm saying there is not.

11 THE COURT: Okay. Now, are there any pretrial
12 motions from the State?

13 MR. VOIGT: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. SMILEY: No, ma'am. There is going to be
16 one motion. And we talked, for efficiency purposes,
17 Your Honor, my client makes a statement at some point
18 when he is at the hospital. And we thought it would be
19 best to take that just before the witness that received
20 it instead of doing it pretrial.

21 THE COURT: That makes sense.

22 MR. SMILEY: And that's the only motion.

23 MR. VOIGT: And it's a very brief statement.

24 THE COURT: What is the statement?

25 MR. SMILEY: Basically that he said about the

1 collision that another woman was involved, or a woman
2 cut him off. He also says, I had -- I drank two shots.
3 And so that's --

4 THE COURT: Who did he make that statement to?

5 MR. SMILEY: To Officer Smoak. But it's
6 subsequent to being read Miranda at some point
7 previous. So there is going to be -- I've just got to
8 have him testify because there is not a lot of detail.

9 THE COURT: I guess my question is do we need to
10 take it up in camera?

11 MR. VOIGT: We should, Your Honor. And I
12 anticipate that portion of the testimony to be no more
13 than three minutes.

14 MR. SMILEY: We can do openings. I don't think
15 he is testifying until later. And that's -- as far as
16 motions go, the other ones will be created as the trial
17 goes on, Your Honor. I see lots of pitfalls, but I
18 know Mr. Voigt is a pretty accomplished attorney. I
19 don't know that we will be in a box with those.

20 THE COURT: Is there anything else we need to
21 take up before we bring in the jury, swear them in and
22 proceed with the trial?

23 MR. SMILEY: No, ma'am.

24 I did provide you with an order earlier, Your
25 Honor, that I have shown the prosecution about allowing

1 Mr. Thompson out on bond. I did have to fax it to
2 Mr. Hamilton because it's there in Moncks Corner, and
3 quite frankly I did not have time to drive up there and
4 get his signature and drive back.

5 THE COURT: Is he going to be in Charleston any
6 time soon?

7 MR. SMILEY: He had not planned on it. I can
8 specifically request he come.

9 THE COURT: We do need his original signature.

10 MR. SMILEY: Yes, ma'am. At a break I will ask
11 him to come down and sign before the day is out.

12 THE COURT: Okay. Any exception from the State?

13 MR. VOIGT: No exceptions, Your Honor.

14 THE COURT: Okay.

15 (Whereupon, the jurors enter the courtroom.)

16 THE COURT: Good morning, ladies and gentlemen.
17 I hope that you all had a pleasant and restful evening.
18 I apologize, there was something I needed to do.

19 Number 97, please have him placed in the
20 foreperson's seat.

21 Ladies and gentlemen, if you could stand for me,
22 please, and raise your right hand so that the clerk can
23 swear you.

24 (Whereupon, the clerk administers the oath to
25 the jury panel.)

1 THE COURT: You may be seated.

2 Ladies and gentlemen, I hope you all had a
3 pleasant and restful evening. I'm glad to see that
4 everyone arrived at the courthouse safely this morning.

5 As I indicated to you on yesterday, you have
6 been selected for the case of the State of South
7 Carolina versus Samuel Thompson, Jr. I'm going to give
8 you some preliminary instructions so that you will know
9 how we will be proceeding in the trial of this case so
10 that you will better understand what is happening and,
11 again, as the case proceeds.

12 These instructions are not what we call a charge
13 on the law. And you will hear me use the term charge
14 and instructions interchangeably. Charge is a legal
15 term of art that simply means instructions. So when
16 you hear those words, know that charge and instructions
17 mean the same thing.

18 These remarks, again, are not a charge on the
19 law. I will instruct you on the law applicable to this
20 case at the end of the trial before you retire to
21 consider your verdict. This is merely an explanation
22 of the procedures that we will follow in this trial so
23 that you may better understand what is happening.

24 You will be given the opportunity to take notes.
25 Each of you has a notepad. There should be a sticker

1 on the front of each of those notebooks. If you would
2 put your juror number on that sticker so that you will
3 be able to identify which notebook belongs to you.

4 Please know that I will give you some additional
5 instructions on note-taking, but know that your privacy
6 and your notes will be protected, and no one will read
7 those during the breaks or recesses. But again, I will
8 give you some additional instructions on that near the
9 end of this instruction.

10 The defendant is charged by an indictment filed
11 with this Court with the crime of felony driving under
12 the influence. The elements of that charge I will
13 explain to you at the conclusion of this trial before
14 you retire to deliberate regarding this case, and after
15 you have heard the closing arguments of the State and
16 the defense.

17 The indictment, ladies and gentlemen, is simply
18 the charge by which the case is brought into court, and
19 it is not in any sense evidence of any of the
20 allegations it contains.

21 The defendant has pled not guilty to the
22 indictment. The State, therefore, has the burden of
23 proving each of the elements of the indictment beyond a
24 reasonable doubt. And it will be your duty, ladies and
25 gentlemen, to decide whether the State has met that

1 burden or not.

2 Your purpose as jurors is to find and determine
3 the facts. You are the sole judges of the facts in
4 this case. If at any time I make any comment regarding
5 the facts, you must disregard it. You are to determine
6 the facts from the testimony you hear, and the other
7 evidence introduced in court. It is up to you to
8 determine the inferences which you feel may be properly
9 drawn from the evidence.

10 It is especially important that you perform your
11 duty of determining the facts diligently and
12 conscientiously, because ordinarily there is no way to
13 correct an erroneous determination of facts made by a
14 trial jury.

15 On the other hand, and with equal emphasis, the
16 same law that makes you the judges of the facts makes
17 me the judge of the law. The law as given by the Court
18 is the only law you may consider. You must accept and
19 follow it, even though you may disagree with it.

20 The Court cannot tell you what the facts are,
21 and you cannot disagree with the Court about what the
22 law is or what the law should be. Your responsibility,
23 ladies and gentlemen, is to take the law as I instruct
24 it and apply it to the facts as you find them from the
25 testimony of the witnesses and any other evidence that

1 is introduced.

2 After doing that you will render your verdict, a
3 true and just verdict, under the solemn oath that you
4 have just taken as jurors in this case.

5 until I advise you to begin your deliberations,
6 you must not discuss this case with anyone. That
7 includes among your fellow jurors, your friends, your
8 family members, or anyone else potentially or involved
9 in the case. After the case is submitted to you, you
10 must discuss it only in the jury room among your fellow
11 jurors.

12 The attorneys and the parties have been advised
13 that they should not speak with you at all, so if you
14 should run into them in the lobby, or even in the
15 garage or a local restaurant during a lunch break, or
16 even in the elevators or otherwise, and they don't
17 speak with you, please don't think they're being
18 untoward or unfriendly, they're simply following the
19 Court's instructions. Because even an innocent
20 conversation could be observed by a third party and
21 misinterpreted.

22 During the trial, you are not to read, watch or
23 listen to any media accounts about this case. This
24 includes anything that may be in newspapers, Internet,
25 radio or television. And you are also not to do any

1 independent research of any type on the Internet. That
2 includes any Bing, Google or any other type search
3 engines.

4 You are the fact finders in this case, and you
5 must not consider anything that you may have read or
6 heard about this case outside the courtroom whether
7 before or during the course of this trial. It is
8 important and essential that you maintain and keep an
9 open mind and not decide any issue in this case until
10 all of the evidence has been presented, the parties
11 have made their closing arguments, and I have
12 instructed you on the law of this case.

13 It is your solemn responsibility to determine
14 the guilt or innocence of the defendant. And your
15 verdict must be based solely on the evidence as it is
16 presented to you in this trial, and on the law as I
17 will instruct you during and at the close of this
18 trial.

19 In just a moment the solicitor will make what we
20 will call an opening statement in which the solicitor
21 will explain to you what they believe the issues to be
22 in this case. The attorney for the defendant may also
23 make an opening statement, although he is not required
24 to do so.

25 Ladies and gentlemen, what the attorneys tell

1 you during their opening statements is not evidence in
2 this case. It is only their contention as to what they
3 believe the evidence will show in this case, and what
4 they perceive the issues in this case to be.

5 The evidence in this case will be presented to
6 you by the testimony of sworn witnesses from the
7 witness stand, and/or by exhibits that may be
8 introduced into evidence. From time to time during the
9 trial you may hear one of the attorneys say, Your
10 Honor, I object. Just as in sports, business, or any
11 other structured activity, there are certain rules that
12 we must obey in the presentation of evidence. These
13 rules have a definite purpose, they ensure that you
14 receive the most trustworthy and reliable evidence
15 available.

16 An objection is the procedure that an attorney
17 uses to call a possible violation of these rules to my
18 attention as the judge of this court. And for this
19 reason, you should never hold an attorney's objection
20 against them. Nor should you conclude from the court
21 overruling or sustaining an objection that I favor one
22 side or the other.

23 Also from time to time you may hear one of the
24 attorneys say, Your Honor, I object -- I mean, I'm
25 sorry -- I have a matter of law. I apologize. I was

1 thinking about the fact that I no longer have control
2 on my bench, and I was thinking about the white noise
3 we use during bench conferences and I got distracted.
4 I apologize.

5 They took our controls from us because they said
6 the judges were shorting them out. They said it was
7 costing too much money to re-fit the courtrooms. They
8 said it's too much, so now we only have one set of
9 controls, and Whitney is adept at that. But I was
10 sitting here actually in my mind thinking about three
11 things at once, as women do, and thinking, I no longer
12 have a control pad, I can't tell them what the white
13 noise is about. So I apologize.

14 You may hear one of the attorneys say, Your
15 Honor, we have a matter of law. And sometimes what
16 will happen is the attorneys will ask to approach the
17 bench, or I may ask them to approach the bench, and you
18 will hear that noise.

19 But it is directly over your heads, and it was
20 designed to interfere with your hearing. And the
21 reason we do that is because sometimes when I'm
22 discussing matters of law with the attorneys, it might
23 be necessary for me to make some comment about the
24 facts in connection with whether a rule applies or a
25 statute or otherwise. And I would not want you to be

1 influenced in any way by what the Court may say in
2 connection with the facts of the case.

3 And even in connection with that, it might be
4 necessary for us to excuse from the courtroom for a
5 short while while we have those discussions. Again, so
6 that you will not be influenced by anything that we may
7 say or do in connection with the facts of the case.

8 When I give that explanation again, it always
9 tickles me a little. We had that white noise on one
10 time and I had a gentleman raise his hand. And I said,
11 yes, sir? He said, we can't hear you. And I said, you
12 are not supposed to hear us. So at least I knew it was
13 working. So just know that we do that to interfere
14 with your hearing.

15 And it saves us time lots of times. As you can
16 tell, it takes a little minute for you all to come back
17 and forth down the hallway. And so to save time,
18 sometimes we will use that mechanism.

19 In deciding what the true facts are in this
20 case, you must decide whether or not the testimony of a
21 witness or witnesses is believable. It will be my
22 responsibility to rule as a matter of law as to whether
23 certain testimony is admissible at all or not. But
24 once it is admitted, ladies and gentlemen, whether or
25 not you believe it is solely a matter for you to

1 determine as the fact finders in this case.

2 In deciding whether to believe a witness, you
3 have the right to consider the interest of any witness;
4 the bias of any witness; the prejudice of any witness;
5 the opportunity for the witness to have seen the
6 matters and things about which the witness may testify;
7 and the way the witness acts on the witness stand,
8 something we commonly call demeanor.

9 You have a right to consider anything that is in
10 the record that will help you evaluate the testimony of
11 the witnesses. That means, ladies and gentlemen, that
12 it is your duty to pay close attention to the
13 witnesses; to observe them; to listen to them; and to
14 pay close attention to the attorneys and the Court.

15 Although I know it is difficult, especially in a
16 room that doesn't have windows or natural sunlight,
17 please do not allow your thoughts to wander. But try
18 to give strict attention to the testimony and the
19 evidence so that at the end of the testimony, after the
20 arguments of the attorneys and the instructions on the
21 law given by the Court, you will then be in a position
22 to determine what the true facts are and apply the law
23 to those facts and thus render a true and just verdict
24 in this case.

25 I have selected a foreperson. It is a

1 completely random process. And just so that you all
2 know, the foreperson does not have any greater vote or
3 voice than any other juror. It is purely an
4 administrative function. That person fills out the
5 verdict form. And if the jury has any questions during
6 deliberations, that person writes those questions out
7 and let's the bailiff know that the jury has questions.

8 Again, that person does not have any greater
9 vote or voice than you do. It's purely administrative,
10 and purely a random process that the Court employs to
11 make sure that a cross-section of the community is
12 represented in that function.

13 And as I have explained, Mr. Foreman, it is your
14 responsibility to write out any questions that the jury
15 may have during deliberations and to fill out the
16 verdict form. But I will give you additional
17 instructions about that at the conclusion of this
18 trial.

19 Ladies and gentlemen, during the
20 course of this trial you will be given the opportunity
21 to take notes. Note-taking is a privilege that you may
22 choose to exercise or choose not to exercise. Please
23 do not feel compelled to take notes. Not everyone
24 finds note-taking helpful to them.

25 If you should decide to take notes, please don't
try to record everything that is said. I will tell you

1 that it's physically impossible. The average person
2 talks at a rate of about 200 words a minute. And as
3 you can well imagine, that's a lot to try to write
4 down. And even if you thought you were
5 taking it down verbatim, you would find out later that
6 you had inverted words, you had put the beginning of
7 the sentence at the end of the sentence. And if you
8 are like me, sometimes I substitute words that I would
9 commonly use for a word that has been used in a
10 sentence.

11 So it is -- really is physically impossible to
12 do it. The court reporter can do it because she's
13 trained in a very sophisticated, complicated form of
14 shorthand and uses a very complex computer that allows
15 her really to take down what is said phonetically. So
16 she probably can take down a whole sentence in three
17 stroke on her computer. But even with that, she still
18 goes back and listens to a backup tape when she is
19 doing her transcription to make sure that it is
20 accurate.

21 And again, because it is so important that you
22 rely on your powers of observation, please do not allow
23 note-taking to become a distraction to you, so that you
24 have ample opportunity to observe the witnesses and
25 make the appropriate decisions about their credibility

1 and believability as they testify.

2 You may want to keep an outline of the main
3 points that are being made so that when you retire to
4 deliberate you can allow those notes to refresh your
5 memory, again, of the general testimony and the general
6 arguments that have been made during the course of the
7 trial.

8 During breaks and recesses, your notes will be
9 left in your seats. And we do that so that there is no
10 premature desire or temptation to deliberate regarding
11 any testimony or any matter that may have just been
12 concluded during the course of the trial. Please know
13 that your notes will be secure and no one will invade
14 your privacy in reading your notes or otherwise.

15 I would remind you, ladies and gentlemen, that
16 your notes are for your specific and your individual
17 purposes. They're to be used only to refresh your
18 memory, and they're not to be shared with anyone else.

19 And also be reminded that your notes should not
20 be considered any more reliable than someone else's
21 memory. Someone else's memory should be considered
22 just as reliable as notes that may have been taken by
23 another juror.

24 In order to preserve everyone's rights, I'm
25 going to give the parties the opportunity to take

1 exception to anything that the Court has said by way of
2 opening instruction.

3 Is there any exception from the State?

4 MR. VOIGT: None, Your Honor.

5 THE COURT: From the defense?

6 MR. SMILEY: No, ma'am.

7 THE COURT: Ladies and gentlemen, I would ask
8 that you give the attorneys your undivided attention.

9 MR. VOIGT: May it please the Court.

10 THE COURT: Yes, sir. You may proceed.

11 MR. VOIGT: Let me begin, ladies and gentlemen,
12 the way I'm going to end, whenever we get to the end of
13 this, by thanking you. I don't know if you noticed
14 yesterday, but the very first gentleman who came up
15 here for jury selection who I excused thanked me on the
16 way out. And I don't get that very often, but I think
17 it's a common sentiment. I think people really would
18 rather be somewhere else.

19 And I thank you for being here. I know there
20 are things you need to do, and places in your life
21 you'd rather be.

22 This is a very important day for Mr. Samuel
23 Thompson. We are here today because Mr. Samuel
24 Thompson has exercised his right to a trial, a right
25 that each one of us has, and he has elected to make me

1 prove the case against him. And that's what I have to
2 do.

3 There are a couple thing, and the Court has gone
4 into generally -- let me, just at the outset, this is a
5 little unnerving to me. This courtroom was shut down
6 for a couple of months and refitted, and I'm trying --
7 I'm really not technologically adept at all -- I'm
8 trying to work this new technology. So if it kind of
9 comes off as a little bumpy sometimes, please forgive
10 me. I'm trying to -- I'm from an older generation of
11 attorneys.

12 The State's opening is a road map. At least
13 that's how it's been described often, so often that I
14 kind of wish I had another cliché for it. But it's a
15 road map for what the State believes it's going to show
16 to you in its case in chief today.

17 So it's kind of a, hey, heads up, this is what
18 is coming down the road. These are the facts that we
19 want you to pay attention to, and this is how they
20 interact with the law.

21 The Court has told you that she's the judge of
22 the law and you're the judge of the facts, but there's
23 -- I have to prove each and every element of the crime,
24 and that's where you come in. You have to take the law
25 as it's given to you, analyze the facts as they have

1 been presented from the witness stand, and determine
2 whether or not I did my job.

3 I picked that particular road map because on
4 that road map is going to be a very important location
5 today. Like I said, as a juror you have to concentrate
6 on the facts, and the facts are going to come from that
7 witness stand. There are going to be a couple of
8 different ways that you are going to hear about them.

9 There is going to be witness testimony. You are
10 the judges of the credibility of that testimony;
11 believe all of it, part of it. When they're my
12 witnesses, I want you to believe all of it.

13 The law is given to you by the Court. And what
14 I don't want you to concentrate on -- and in the jury
15 instruction at the very end it's not -- it's kind of
16 what's not said in those jury instructions, so I listen
17 for it every time, every time I try a case, and I
18 always tell the jury, oh, it's in there. You shouldn't
19 allow sympathy to play a part.

20 But it's really not specifically stated in
21 there, it's more affirmative what you should do as
22 opposed to what you shouldn't do.

23 Well, the criminal justice system is kind of an
24 imperfect deal in justice. Always has been. And it is
25 specifically with felony DUI cases you're going to have

1 sympathy. There is going to be a lot of sympathy in
2 this room.

3 You have a row of people over here who lost
4 somebody. At some point they may cry, they may tear
5 up. That's not why you are here. You're not here to
6 analyze that. You are not here to have that factor in.

7 At this table and in these rows back here you
8 have, similarly, people who are going to evoke sympathy
9 from you. Mr. Thompson does. But that's not why you
10 are here. Get that out of the way early.

11 It's a human emotion. You are going to look at
12 him and say, I'd hate to be that guy, I'd hate to be in
13 that man's shoes. But then you've got to move on.
14 Your analysis is about the facts and about the law.

15 And the personal philosophy is to -- you don't
16 have to agree with what the law is. Okay? Punishment
17 is not up to you. Punishment is up solely to the
18 Court, if we ever get there. We only get there if you
19 decide that I proved my case. That's not for you to
20 consider.

21 For you to consider is the facts.

22 Let me digress just a minute. This is a felony
23 DUI case. All right? At the end of the case the Judge
24 is going to tell you about the law that you are going
25 to be anticipated from. I have three elements. And I

1 have to prove beyond a reasonable doubt -- which by the
2 way is the highest standard in a criminal case -- I
3 have to prove these three elements.

4 That Mr. Thompson drove a vehicle while under
5 the influence of alcohol. The statute says alcohol or
6 drugs, but I have no evidence whatsoever that drugs are
7 involved, so let's just talk about alcohol. This is a
8 case about alcohol. That he did an act forbidden by
9 law, or neglected a duty imposed by law.

10 what does that mean? He acted negligently in
11 performance of the driving of the car. He did something
12 that caused an accident. If there were no alcohol
13 involved, would this have been a civil suit, would he
14 have been held at least partially liable or negligent
15 in some way? It's not a civil suit. It's a criminal
16 action brought by a grand jury by indictment.

17 But this is one of the few places in the law
18 where civil law and criminal law kind of overlap. And
19 there is a reason for that, and I will get into that in
20 a second. And that this act, this dereliction of duty
21 or this negligent act, was the proximate cause of the
22 death of Margaret Deas.

23 Proximate cause is a civil negligence concept
24 that we have imported wholly into this statute under
25 criminal law. And it means that but for Mr. Thompson

1 doing something negligent, and while intoxicated, that
2 this accident, this death would not have occurred.

3 There is a reason that these statutes are --
4 this is an unusual area of the law. This trial is
5 going to be a little bit different than some of the
6 other trials that other juries will conduct this week
7 or this month. There will be less fire, less fireworks
8 because there will be sympathy all around.

9 Unlike a lot of cases, we may casually refer to
10 this, or witnesses may, or attorneys may, as the
11 accident. And an accident doesn't really sound like a
12 criminal term. In this case it is though. And part of
13 that has to do with where we have gone as a country.
14 I'm going to be very brief here.

15 It's changed. You may not immediately know who
16 those people are and why they are connected. Talked
17 about this over the break, watch a lot of old movies
18 over the break when you are not working.

19 William Powell was a great actor, a great New
20 York stage actor who played Nick Charles, the detective
21 in the Thin Man series. And the fun drinking game you
22 can play, if you're so inclined, is you drink with Nick
23 Charles. When he drinks, you drink. You won't make it
24 to the second reel.

25 And that was how alcohol was portrayed when they

1 made those movies in the '30s and '40s, as a
2 lighthearted something to do. Well, earlier, a
3 generation earlier, Carrie Nation, who led the Women's
4 Temperance Movement, and who is primarily responsible
5 for having prohibition implemented in this country --
6 no lips that touch alcohol should not touch mine, that
7 sort of thing -- campaigned against the evils of
8 alcohol.

9 And prohibition disappeared probably before most
10 of us were born, most of us were cognizant of it. But
11 Carrie Nation won that argument. I remember being 18
12 and buying a drink and being able to walk down the
13 street with it and being able to put it in my car. You
14 can't do that anywhere in the United States.

15 Alcohol is treated differently. And this is
16 where this law has changed in South Carolina and other
17 places. It's where you are, it's how intoxicated you
18 are. It's not about whether alcohol is right or wrong,
19 it's about location.

20 I'm going to take you back to I-26, and in a
21 vehicle. Our society has come to the conclusion that
22 we really do not tolerate accidents involving alcohol
23 to the same extent that we did generations ago. They
24 are no longer accidents now in the same sense of the
25 word. At 1:45 in the afternoon with a bright,

1 partly cloudy day, high sky, no weather to speak of, no
2 weather conditions to speak of, 1:45 in the afternoon,
3 not traffic, not late at night, not when the bars
4 close,

5 Margaret Deas was driving east on I-26 near the
6 Rutledge Avenue exit. I pass it every day coming down
7 here to the courthouse.

8 All right. It's that little stretch right in
9 the neck, and you'll see pictures, that little stretch
10 of where the turpentine factory used to be, houses
11 there on one side, nobody is on the other.

12 At 1:45, or approximately thereabouts, the
13 evidence is going to show that Samuel Thompson, while
14 operating his car, crossed over and hit the car of
15 Margaret Deas, a 77-year-old woman who didn't know that
16 it was her time. She probably had more time left.

17 She was driving her car, and his car collided
18 with her car, pushed her into the rail where she
19 bounced around. She got out of her car and immediately
20 fell down. If she had been surrounded by emergency
21 personnel, it would not have mattered. She was going
22 to die.

23 Her liver was macerated. And you've heard the
24 related term lacerated, a laceration is a cut of some
25 sort. Think of maceration as such. Her liver was not

1 going to make it. She would die an hour or so --
2 pronounced dead an hour or so later at MUSC.

3 You are going to hear testimony about Samuel
4 Thompson immediately after the accident. Samuel
5 Thompson, because of the severity of the accident, was
6 taken to the hospital immediately by EMS. You are
7 going to hear about the procedures done on Samuel
8 Thompson at the hospital. You're going to hear the
9 observations of the people who saw him at the hospital,
10 blood was drawn from him, and you are going to hear the
11 test results of what that blood draw is.

12 Now, in South Carolina we have a statute that
13 establishes the legal limit, you've heard of this, .08.
14 You are going to hear testimony about how close Mr.
15 Thompson was to that mark. And at the end, you are
16 going to conclude that I have proven the elements of
17 this case.

18 Thank you very much. Please listen to
19 Mr. Smiley.

20 THE COURT: Yes, sir.

21 MR. SMILEY: I introduced myself to you
22 yesterday. I introduced myself again today. I'm Jim
23 Smiley. This is my client, Samuel Thompson, who I have
24 the honor of representing.

25 I agree a lot with what Mr. Voigt said. This is

1 a hard case for everybody because of the situation. I
2 have personally sat where Ms. Deas' family has sat, and
3 I know how hard that is. I have been there.

4 I have also met many people during my years of
5 criminal defense much different than Mr. Thompson. It
6 is a privilege to be able to represent him today. He
7 is a man who sits here innocent, just as my other
8 clients have sat here innocent, just as I am presumed
9 innocent, just as every citizen carries that cloak of
10 innocence.

11 And so when he hired me, I took it with great
12 responsibility to do it with dignity and honor to
13 zealously represent him and to have everyone in this
14 room do their job.

15 Our system, as Mr. Voigt just referred to it, is
16 an imperfect system, but it works and everybody has
17 their job. And so before we begin, I do this in every
18 opening so it's not special, but I like to tell you
19 what everybody's job is.

20 At least we think we know, but do we really
21 know? And I'm going to start with the officers. And
22 the officers, the police in the case, their job is to
23 investigate incidents and make arrests. That's their
24 job. The crime has been committed if when they do
25 their job they arrest someone, not convict them, arrest

1 them. That's their job.

2 Then we have the prosecutor. And his job, or
3 her job, is to do justice. To take what they have been
4 given from the police and look at it and do justice.
5 Not to zealously seek a conviction, not to dismiss
6 cases, but whatever the case requires to do justice.

7 Now, I already told you about my job. My job is
8 to zealously, within the rules, represent my client.
9 To do everything I possibly can to make sure Mr. Voigt
10 and Ms. Compton and the police have done their job.

11 The clerk, what's their job? Their job, they're
12 the keeper of the records. They are the people who
13 have you drawn and brought down here. They are the
14 ones that hold the indictments of any records. They
15 have got an important function too.

16 The court reporter, you have already heard about
17 her. She writes down everything that is said in this
18 courtroom. And I talk on top of people, so I will try
19 my best not to.

20 Judge Jefferson has told you about her job, but
21 she is the judge of the law. She is the gatekeeper.
22 She is the referee, for lack of a better word.

23 And I agree with Mr. Voigt, this case isn't one
24 that is going to be fought tooth and nail like some
25 other crimes because there are never going to be any

1 winners in this case. There are -- there is nothing
2 but a terrible, terrible day that forever changed a
3 whole bunch of people's lives.

4 Her job is to allow evidence in, make Mr. Voigt
5 follows the rules, make sure I follow the rules and to
6 give you the law.

7 Y'all are the only ones that matter here anyway.
8 Y'all are the judges of the facts. Not what the police
9 say, not what Mr. Voigt believes, not what I believe,
10 not what the judge believes, or anybody else.

11 But you will hear evidence from the stand that
12 is competent evidence, and then you are going to take
13 it and you are going to apply some basic principles.
14 And we start with the first one that I told you about
15 is Mr. Thompson is innocent. He remains innocent
16 until and if Mr. Voigt can provide competent evidence
17 to you that proves beyond a reasonable doubt that Mr.
18 Thompson was intoxicated at the time that he committed
19 a traffic offense that resulted in the death of Ms.
20 Deas.

21 If he fails on any of those, he can't prove his
22 case. And y'all have an obligation and a duty to keep
23 the cloak of innocence on Mr. Thompson and return a not
24 guilty verdict.

25 No matter what happens today, Ms. Deas isn't

1 coming back. Mr. Thompson's life is never going to be
2 the same. But it's important regardless that y'all
3 render a true verdict. Take your common, collective
4 experience by 12 people, because it's about the right
5 number to experience, to get a collective consciousness
6 that can look at the facts and determine whether the
7 State has met their burden.

8 I don't believe they're going to be able to.
9 But it's not up to me, it's up to y'all. It's
10 undisputed that there was an accident on I-26 that
11 resulted in the death of Ms. Deas. She had grave
12 injuries. I have seen worse wrecks, but it doesn't
13 matter. It's this particular wreck.

14 It's going to be undisputed that Sam Thompson
15 was driving the other car involved in the accident.
16 Undisputed. The question is really going to become
17 very simply, at the time of the accident was Mr.
18 Thompson legally intoxicated? That's the question to
19 be answered. No frills or whatever.

20 So as you listen we start with he was sober.
21 That's where we start, and that's where he remains
22 until the State has put competent evidence beyond a
23 reasonable doubt otherwise. And it's y'all's grave
24 responsibility to look at it and see if he has.

25 Reasonable doubt the Judge is going to tell you

1 about. When you talk about reasonable doubt, it's like
2 we are hiding behind some figure of law. It's one of
3 the most important concepts of citizenship. The State
4 -- it's not iffy or maybe, it's beyond a reasonable
5 doubt.

6 I'm not going to tell you it's 100 percent.
7 Nothing is 100 percent. It's very substantial and the
8 Judge will give you further instructions on that.

9 All I ask of you is to start with a blank slate,
10 an open mind and not reach judgments until you've
11 deliberated in the back together. And to look at it as
12 you would anything in life. Have they proved their
13 case. Not like, what should happen here? Have they
14 proved their case.

15 Please, as this goes on, don't hold any mistakes
16 I make against Mr. Thompson. I'm going to do my very
17 best to represent him. I know Mr. Voigt is going to do
18 his very best to do his job for the State. In the end
19 I think y'all will come to one true verdict; not
20 guilty. Thank you.

21 THE COURT: You may proceed.

22 MR. VOIGT: The State calls Jeff Miller.

23 JEFFERY MILLER,

24 after having first been sworn to tell the truth, the
25 whole truth and nothing but the truth testified on his

1 oath as follows:

2 DIRECT EXAMINATION

3 BY MR. VOIGT:

4 Q Can you give us your name, please.

5 A Jeffrey Curtis Miller, M-I-L-L-E-R.

6 Q Mr. Miller, what is your rank?

7 A I'm a civilian crime scene tech with the City of
8 Charleston.

9 Q And how long have you worked for the City of
10 Charleston?

11 A I hit 27 years last month.

12 Q That's a significant number, isn't it?

13 A (Affirmative head shake.)

14 Q What are some of your duties for crime scene?

15 A We respond to calls, take photographs, collect
16 evidence, dust for fingerprints.

17 Q Okay. And were you called out to a scene on
18 September 20th, 2011?

19 A Yes, I was.

20 Q And do you recall where you were called out to?

21 A To I-26.

22 Q Do you recall what kind of call it was?

23 A It was a traffic accident.

24 Q Okay. And when you got there, were you told
25 basically what to do?

1 A Yes. I was instructed to take photographs of
2 the scene.

3 Q Did you have any other duties during that
4 particular day?

5 A No. I just took photographs.

6 Q Okay. I'm going to show you what has been
7 previously marked as State's 1 through 46. And I ask
8 you just to kind of leaf through those.

9 Do you recognize those as photographs you may
10 have taken?

11 A Yes.

12 Q And how do you recognize those as photographs
13 you may have taken?

14 A The first picture on top is my photo card. We
15 will write the case number down, the date and time, and
16 take a photograph of that.

17 MR. VOIGT: At this time, Your Honor, I would
18 offer, file and introduce State's 1 through 46.

19 THE COURT: They have already been admitted
20 without objection.

21 MR. SMILEY: That's correct.

22 MR. VOIGT: Thank you very much, Your Honor.

23 Q (By Mr. Voigt) So, when you are talking about
24 your photograph card, is that the sort of thing that
25 you are talking about?

1 A Yes.

2 Q And what is the purpose of that photograph card?

3 A That's for me because I need that information to
4 keep a record in our office for the call. And it shows
5 the case number that was given to me at the scene, and
6 the location, and then the incident.

7 Q Okay.

8 A And the team and the date and time.

9 Q And that's for record-keeping purposes State's
10 Exhibit 1.

11 Now, I'm going to put up here State's Exhibit 2.
12 What is that a photograph of?

13 A That is showing the scene from -- it's past the
14 Rutledge Avenue ramp looking down facing westbound.

15 Q So we are facing North Charleston at this
16 point --

17 A Correct.

18 Q -- from where you are. And why did you take
19 that particular photograph?

20 A I just could actually picture the whole scene
21 because it was elevated where I stood.

22 Q Okay. So this was to give some sort of
23 perspective of how large the scene was and the
24 positioning of everything?

25 A Yes.

1 Q And similarly, State's Exhibit 3.

2 A Yes. Same.

3 Q Now, I notice that there is a wrecker in that
4 particular photograph. How long were you on the scene?

5 A I couldn't tell you.

6 Q Was it, say, more than an hour?

7 A It could have been about an hour.

8 Q Okay. Were emergency personnel on the scene at
9 all when you were there?

10 A I don't remember seeing them. No.

11 Q I'm going to show you State's Exhibit 6.

12 I see, I think -- is that a Department of
13 Transportation vehicle there as well?

14 A A sheriff truck, I believe.

15 Q And what was the purpose of this particular
16 shot?

17 A This was prior to -- that's the Rutledge Avenue
18 off ramp. So that's what I consider to be the
19 beginning of the scene to start the photographs.

20 Q State's Exhibit 13. Do you know what type of
21 car that is? What type of vehicle that is?

22 A No. I don't remember.

23 Q State's Exhibit 16. Why did you take that
24 particular photograph?

25 A I was instructed -- when I shoot the scene, I'd

1 start with any marks in the roadways, and I take any
2 impacts on walls or gouges in the road.

3 Q And does that tire track lead directly to the
4 vehicle depicted there in the photograph you took?

5 A From the photo, yes.

6 Q I will show you State's Exhibit 17. Similar
7 angle.

8 Now, you took -- did you take more than 46
9 photographs?

10 A I believe I did.

11 Q And did you take many shots often of the same
12 thing?

13 A Yes.

14 Q Why do you do that?

15 A Well, you want to show perspective. So you
16 don't want to just take one close-up photo, so you take
17 an overall. You actually start farther back than you
18 need to, and then you just progress through the scene
19 and try to follow the same paths that the cars would
20 have been traveling in.

21 Q Showing you State's Exhibit 23. Again, are you
22 trying to get as much of the scene as you possibly can
23 in these photographs?

24 A Well, in this photograph there are marks on the
25 wall there, as well as you can see where the car is

1 positioned also.

2 Q State's 25. Again, what are you trying to
3 capture there?

4 A To see the lines in the roadway, as well as
5 where the car is.

6 Q Let me show you what is State's 37 here. Again,
7 this is the darker vehicle. Did you make those lines
8 on the roadway?

9 A The orange lines, no.

10 Q Okay. And do you know what the purpose of those
11 lines are?

12 A Those are for the traffic investigators.

13 Q Okay. So that marking would have been done
14 after the car came to rest there, to the best of your
15 knowledge?

16 A Yes.

17 Q What are you trying capture here in State's 39?

18 A That's the front end of the dark-colored
19 vehicle.

20 Q State's 40. What are you trying to capture
21 there in State's 40?

22 A Just what was in the interior.

23 Q And that's of the dark-colored vehicle?

24 A Yes.

25 Q This is State's 42. Actually, let me turn that

1 around. State's 42, is that a picture taken in the
2 same dark-colored vehicle?

3 A Yes. That's the center console armrest, I
4 believe.

5 Q This is State's 43. Why did you take a picture
6 of the tire tread?

7 A Well, I have done this for a long time and it's
8 something that the traffic investigators have asked for
9 us to do this because they like to see what kind of
10 tread -- whether there is tread on a tire, or it might
11 be worn down.

12 So that's what this shows is the tread on the
13 tire.

14 Q Looks pretty good, doesn't it.

15 Let me show you State's Exhibit 44. Now, that
16 wasn't -- that doesn't depict something that you came
17 upon the scene, right? Those bottles weren't sitting
18 there, were they?

19 A No. The traffic officers had gone through the
20 car and they wanted me to take a specific picture of
21 that.

22 Q Okay. So they placed those there and you took
23 the picture?

24 A Correct.

25 Q I take it that 45, is that a picture of the same

1 bottles from a different angle?

2 A Yes.

3 Q Did you collect any fingerprints on the scene?

4 A No.

5 Q Did you take any statements on the scene?

6 A No.

7 Q Did you conduct any other tests or procedures on
8 the scene?

9 A No, I didn't.

10 Q Did you collect any evidence?

11 A No.

12 Q Other than these photographs?

13 A Just the photos.

14 MR. VOIGT: Please answer any questions that
15 Mr. Smiley may have of you.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 BY MR. SMILEY:

19 Q Forgive me, but you are a civilian now?

20 A Correct.

21 Q Okay. So I won't call you captain or something
22 like that?

23 A No. I used to be a corporal.

24 Q A corporal. And I think we met when you were a
25 corporal.

1 A Yes.

2 Q All right. So you have been trained, of course,
3 in the collection of evidence and the photographing of
4 evidence, possible evidence?

5 A Correct.

6 Q Okay. When you -- you got to this scene, your
7 placard said 1538, but you got that before that, right?

8 A Well, that's the time I write down on the card.

9 Q Right. That's before you start taking pictures,
10 right?

11 A Correct.

12 Q But it's not the time that you arrived, correct?

13 A It would have been within a couple of minutes.

14 Q Okay. And that's my question. So you arrived
15 on the scene within a few minutes of that placard being
16 taken?

17 A Correct.

18 Q So if it said 1538, and I'm not good at military
19 time, that's 3:38 in the afternoon?

20 A Correct.

21 Q So you were there roughly somewhere around 3:30?

22 A Yes.

23 Q Okay. And I believe it was your testimony when
24 you arrived at 3:30, the EMS, if there were any, had
25 already left?

1 A I don't remember seeing them.

2 Q Okay. So you didn't see Mr. Thompson?

3 A I don't remember seeing him, no.

4 Q Or the other person involved in the accident,
5 Ms. Deas, she wasn't there?

6 A No.

7 Q So you get there, you were called out of course,
8 right?

9 A Correct. I responded.

10 Q And there was -- when you arrived, the City had
11 brought their -- I don't know what the word they're
12 going to use -- but the traffic reconstruction team,
13 right?

14 A Correct.

15 Q Is that -- is there a specialized name for them?

16 A We call them the fatality squad.

17 Q Okay. The guys that reconstruct the accident
18 scene?

19 A Correct.

20 Q And you spoke with them before you began, I'm
21 sure?

22 A I get the information for that card from them.

23 Q So they give you the information. And do they
24 generally or specifically tell you what they're looking
25 for?

1 A Well, they tell me where to start as far as like
2 when I spoke earlier about the gouge marks.

3 Q Right.

4 A Start from there and then proceed through. And
5 then anything specific as we go along, and they'll ask
6 for me to take a photo of that.

7 Q Okay. So you're doing general photography based
8 on where they said it started and stopped?

9 A Yes.

10 Q And then you will take specific pictures at
11 their direction?

12 A Correct.

13 Q Okay.

14 MR. SMILEY: Again, forgive me, Judge, on
15 technology. I'm not very good at this either. State's
16 42.

17 Q (By Mr. Smiley) First I'm going to show you
18 what State's Exhibit 38 is. And you took this picture
19 of the dark automobile?

20 A Correct.

21 Q And there were two automobiles involved that you
22 photographed?

23 A Correct.

24 Q And there was this Cadillac, and further down
25 the road there was a gold or bronze import like a

1 Honda, right?

2 A Yes.

3 Q And when you took this picture, that car had
4 been sitting there for a while, right?

5 A Yes.

6 Q And then were you specifically directed to the
7 interior of the car?

8 A Yes.

9 Q So one of the accident reconstruction team asked
10 you to take pictures of the inside?

11 A Yes.

12 Q Now, when you photograph scenes and take
13 pictures or collect evidence, you try to take a picture
14 as the scene existed, correct?

15 A Yes.

16 Q Do you ask questions about whether a particular
17 scene has been modified before you take a picture, or
18 you just take what they tell you?

19 A Just take the photos.

20 Q All right. So they asked you to take a picture
21 of the inside of the car, correct?

22 A Yes.

23 Q I'm going to show you what is State's Exhibit 40
24 in evidence. Is that a picture of the inside of the
25 dark car?

1 A Yes.

2 Q Okay. Is that how it appeared when you looked
3 in, had it been modified?

4 A That's the way when I took the photo.

5 Q Okay. Now, they particularly asked you to take
6 pictures of the center console, correct?

7 A Yes.

8 Q Now, was that the position of the center console
9 when you first looked in the car?

10 A Yes.

11 Q Show you State's Exhibit 43. Now, that shows
12 the center console opened, correct?

13 A Yes.

14 Q Now, when you opened that center console to take
15 a picture, you were being directed, correct?

16 A Correct.

17 Q All right. Did you move any of the items to
18 take that picture?

19 A No. I don't believe I touched any items.

20 Q So you just opened it and took a picture?

21 A Yes.

22 Q All right. Now, that picture that you've taken
23 -- it's hard to get the right orientation -- that
24 picture is taken, it is taken from the passenger side
25 window looking in?

1 I know it's hard. If it would help you, it
2 looks like there is a policeman sitting in the driver's
3 seat.

4 A Okay. Yes, it looks like his vest. Now I see
5 that, right.

6 Q Yeah. It was taken. And so where the bottles
7 are pointing would be the front of the car?

8 A Correct.

9 Q All right. And so when you first took the
10 picture it was closed, the center console, correct?

11 A I believe so.

12 Q Well, you took a picture with it closed, right?

13 A There was a picture with it closed, yes.

14 Q Okay. And then you were instructed to take a
15 picture with it opened, correct?

16 A Yes.

17 Q And it's your testimony that to the best of your
18 recollection you just opened it, didn't move anything,
19 and took the picture, correct?

20 A Well, it was opened -- I wasn't there when it
21 was pulled open that I can recall.

22 Q You don't know -- if you were directed to take a
23 picture of what was inside, somebody had already
24 looked, right?

25 A Yes.

1 Q Okay. So you took a picture of it -- and I know
2 it's hard to remember -- did you take a picture of it
3 open first and then close it? Or was it closed and
4 then you opened it?

5 A That I would have to look at my photos in all
6 the orders to see.

7 Q Okay. My question is, to take that photograph,
8 you didn't manipulate any of the contents?

9 A I did not.

10 Q Okay. Now, just a couple more. One of the
11 reasons you are taking the pictures of the scene and
12 the tire tracks and that kind of stuff -- I'm going to
13 show one more picture.

14 For instance, I'm going to show you -- this is
15 State's Exhibit 16 I'm showing you. One of the reasons
16 you would take that picture to assist the accident
17 reconstruction people when they go to do their
18 reconstruction?

19 A Yes.

20 Q So then I take it the tire tracks and the tread
21 and those kind of pictures is to show the scene to the
22 jury one day, but to assist the accident reconstruction
23 people with their measurements and the tire treads and
24 that kind of thing, right?

25 A Correct.

1 Q All right. While you are not part of the
2 accident reconstruction team, you are assisting them
3 with your pictures?

4 A Yes.

5 Q The ultimate goal in taking those pictures,
6 besides to show the jury the scene, is to assist the
7 accident reconstruction team in reconstructing the
8 scene?

9 A Yes.

10 MR. SMILEY: That's all I have, Your Honor.

11 THE COURT: Any redirect of the witness?

12 MR. VOIGT: No redirect, Your Honor.

13 THE COURT: Any objection to the witness being
14 excused from the State?

15 MR. VOIGT: None from the State.

16 THE COURT: From the defense?

17 MR. SMILEY: No, ma'am.

18 THE COURT: Sir, you are excused.

19 THE WITNESS: Thank you.

20 THE COURT: You're welcome.

21 You may call your next witness.

22 MR. VOIGT: John Dalti.

23 JOHN DALTI,
24 after having first been sworn to tell the truth, the
25 whole truth and nothing but the truth testified on his

1 oath as follows:

2 DIRECT EXAMINATION

3 BY MR. VOIGT:

4 Q Mr. Dalti, where are you employed?

5 A Employed with the Medical University of South
6 Carolina, public safety.

7 Q And what are some of your duties there as public
8 safety?

9 A I'm second-shift field training officer, and
10 public safety officer.

11 Q How long have you been with the MUSC public
12 safety?

13 A I have been with MUSC for a period of six years.

14 Q On September 20th, 2011, were you also employed
15 with MUSC?

16 A That is correct, sir.

17 Q And on that date did you have occasion to
18 witness an accident on I-26?

19 A That is affirmative.

20 Q And where were you going on that date?

21 A I was heading to work, sir.

22 Q Were you in your own personal car, or in an MUSC
23 vehicle?

24 A I was in my personal vehicle.

25 Q What kind of car was that?

1 A It was a 2011 Jeep Wrangler.

2 Q Do you recall approximately what time of day it
3 was?

4 A Time of day was approximately sometime after
5 1:00. Basically around 1:15 or so, heading to work.

6 Q And how long down I-26 do you typically travel,
7 or did you at that time?

8 A I believe from Summerville it's about a 24-mile
9 stretch.

10 Q Is that a stretch of highway that you are very
11 familiar with?

12 A I am, sir.

13 Q Is that part of your daily commute?

14 A Affirmative. Yes.

15 Q Was the 20th of September 2011 like other days
16 that you've had during that commute?

17 A No, it wasn't, sir.

18 Q What was the first thing you saw that made you
19 believe that it was going to be a different sort of

20 day? A Basically I observed a black Cadillac
21 driven by a black male come at a high rate of speed to
22 the left side of my vehicle. I was occupying lane 2,
23 and on lane 1, which would have been my left side, this
24 vehicle came around me at a high rate of speed.

25 It appeared that he was losing control as he

1 passed the front of my vehicle. And what I witnessed
2 was his vehicle cross 2 lanes of travel in front of me,
3 bumps off the guardrail, come ricocheting back across
4 the front of my Jeep Wrangler, hitting the cement
5 barrier separating the 2 lanes of travel, proceeding
6 across again in front crossing my vehicle striking a
7 gold Honda.

8 And at that time the gold Honda was projected
9 forward eastbound and pushed against the barrier about
10 60 yards past the Rutledge -- I believe it was Exit
11 219, exit to the Rutledge, Citadel -- Rutledge Ave
12 Citadel exit.

13 Q Let me show you what has been marked as State's
14 38. Is that -- does that picture depict part of the
15 scene?

16 A Yes, sir. That would be the vehicle that came
17 around me at that high rate of speed.

18 Q Do you see the gold vehicle anywhere in that
19 picture?

20 A Exactly. About 60 yard down the road eastbound
21 on that left side.

22 Q In your observation, did the gold vehicle do
23 anything to contribute to this automobile accident?

24 A Not at all, sir. It was struck from behind and
25 just catapulted forward.

1 Q Now, we have -- at that part of I-26 there are
2 three lanes? Are there three lanes?

3 A That is correct.

4 Q And what lane was your vehicle in?

5 A Mine was in the middle lane. I believe it would
6 have been lane 2. At this juncture I believe his
7 vehicle had come to rest basically where you see it
8 depicted. And I had positioned my Jeep Wrangler at the
9 apex of the exit, kind of like to the right of the
10 front of that vehicle, I believe.

11 Q So I'm going to show you what has been
12 previously marked as State's 20.

13 Is that the apex of which you spoke?

14 A That is correct, sir. I figured that would be a
15 safe positioning for my vehicle as well at that point.
16 At that time, as I rolled out of my vehicle, vehicles
17 were coming at us too.

18 Q Showing you what has been marked as State's
19 Exhibit 37. That's a -- is that your jeep vehicle in
20 the background there? Or is that another vehicle?

21 A I don't believe my vehicle is there at that
22 time. I don't see a Jeep Wrangler there.

23 Q Approximately how long did you remain on the
24 scene?

25 A I'm going to say a good 45 minutes to an hour,

1 sir.

2 Q What was the first thing you did after you
3 witnessed this accident?

4 A Definitely positioned my vehicle, rolled out of
5 it, observed the black man getting out of his vehicle
6 and asked him to stay with his vehicle due to the
7 situation and everything that was playing out at the
8 time.

9 Once I saw him get back into his vehicle, I felt
10 my job was to start directing traffic away from the
11 accident scene.

12 Q Did he say anything to you?

13 A He did, sir. As he exited his vehicle and was
14 walking around kind of erratically and unstable on his
15 feet he asked what time it was. And I said, sir,
16 please just get back in your vehicle.

17 Q What was the next thing that you did?

18 A Basically I had grabbed a traffic vest out of my
19 vehicle and had put it on and began -- well, I
20 basically called my headquarters as well and let them
21 be aware of what transpired and asked for basically
22 highway patrol and EMS to respond immediately to a
23 10-50 there that occurred on 26 heading eastbound.

24 Q Let me show you what has been previously marked
25 as State's 17. Does that photograph accurately depict

1 the scene and the resting place of the black Cadillac
2 on that day?

3 A Yes, sir.

4 Q Are those the marks from where it hit the
5 barrier?

6 A Correct.

7 Q Now, is it your testimony that -- strike that.
8 Did this particular vehicle -- how many lanes
9 did that vehicle occupy during the time you witnessed
10 it?

11 A Basically all three. But he was going back and
12 forth, kind of like a pinball, you know, a pinball
13 machine ricocheting back and forth. But he --
14 basically after making contact with the gold Honda, I
15 believe he did hit the barrier again as the picture is
16 depicting, but eventually came to rest where he is now.

17 Q And where did he strike the gold Honda?

18 A In the rear.

19 Q And what happened to the Honda as a result of
20 that?

21 A It was projected eastbound, but kind of on an
22 angle where it hit the barrier again.

23 Q So it hit the wall as well?

24 A As well, sir, yeah. Eventually just coming to
25 rest up against where the picture is depicting it on.

1 that side.

2 Q Did you have any interaction with the victim,
3 Margaret Deas, that day?

4 A I didn't, sir. No.

5 Q Did you have any further interaction with the
6 black gentleman?

7 A No, sir. Once I saw that he was in that
8 vehicle, I had noticed other off-duty law enforcement
9 people as well as a DNR officer that had appeared on
10 the scene. People were just jumping out
11 trying to render aid at that point. But once I saw
12 that there was other LE on scene, I let them tend to
13 him. My main concern was preventing any further
14 accidents and directing traffic at that time.

15 Q And LE is law enforcement?

16 A Yes, sir. I'm sorry. Law enforcement officers.

17 Q And you directed traffic?

18 A That is true, sir. I had that vest on, and I
19 figured that was the best thing I could do at the time.

20 Q Okay. Did you observe anything else about the
21 demeanor of the driver of the black Cadillac?

22 A He appeared to me to be intoxicated, unstable on
23 his feet, definitely under the influence of something.

24 Q But you didn't give him any tests or anything?

25 A No, sir, I didn't.

1 Q And that is not your training or aptitude with
2 MUSC?

3 A No, sir.

4 MR. VOIGT: One moment, Your Honor.

5 THE COURT: Uh-hum.

6 MR. VOIGT: Please answer any questions that
7 Mr. Smiley may have for you.

8 THE COURT: You may proceed.

9 CROSS-EXAMINATION

10 BY MR. SMILEY:

11 Q You have been in law enforcement for a while?

12 A Yes, sir.

13 Q And I'm just guessing that, but I can sort of
14 tell the way you talk that you were either in the
15 military or been in the police agency for a while,
16 right?

17 A Basically police, sir.

18 Q Yes, sir. And are you originally from here?

19 A No, sir. I'm from the state of Rhode Island.

20 Q Were you in law enforcement up there also?

21 A I was, sir.

22 Q And you were, at the time of this accident,
23 safety officer at MUSC for how long?

24 A Six years, sir.

25 Q And you were a field training officer, correct?

1 A Correct.

2 Q So you taught other guys how to do the job?

3 A Correct.

4 Q All right. So in your time in law enforcement,
5 whether it be in Rhode Island or down here, you have
6 been at traffic accidents before?

7 A Nothing to this degree.

8 Q I'm not suggesting, but you had seen traffic
9 accidents?

10 A Correct, sir.

11 Q You said that the gentleman got out of his car
12 and walked around it, and you asked him to stay with
13 his car, right?

14 A Right.

15 Q Did you ask him if he was hurt?

16 A No, I didn't, sir.

17 Q Okay. But it was a pretty terrific accident,
18 right?

19 A Correct.

20 Q And you've seen people in those kind of
21 accidents, maybe not that bad before, and it shakes you
22 up pretty good?

23 A It does, sir.

24 Q Even watching it shakes you up, doesn't it?

25 A Basically, sir, I could have been a victim as

1 well. Yes, you're right. And that feeling was still
2 pretty much there.

3 Q It's a shaking feeling?

4 A Correct.

5 Q Takes you a minute to get your bearings, right?

6 A Correct.

7 Q And of course being in law enforcement, your
8 training, it helps you maybe to get your bearings
9 quicker than others?

10 A I suppose you're correct.

11 Q Fair statement?

12 A Fair statement.

13 Q Because it's your thinking, you got him there,
14 they're tending to her, what can I do? I can help make
15 sure nobody else comes on the scene and collides,
16 correct?

17 A Correct. That was my main thing; for others'
18 safety of the scene.

19 Q Right. And in your experience with law
20 enforcement and what have you, you have been taught
21 about taking reports and that kind of stuff, right?
22 And to put as much information in the report as
23 possible, right?

24 A Correct.

25 Q And you gave a statement in this case, right?

1 A Correct. I did, sir.

2 Q And in that statement you didn't mention
3 anything about a rate of speed, did you?

4 A No, I didn't, sir.

5 Q But it's fair to say you were in the middle lane
6 going the speed limit or thereabouts?

7 A If I may, sir, I'm sorry. I believe I stated in
8 my statement I was in the middle lane doing at least 60
9 to 70 miles an hour when this gentleman came around me
10 at a high rate of speed.

11 Q Let me do this. I'm going to ask you to refresh
12 your memory and show you a copy of your statement
13 before I ask my next question. Okay?

14 A Okay.

15 MR. SMILEY: If I may approach, Your Honor?

16 THE COURT: You may.

17 Q (By Mr. Smiley) If I give you an opportunity,
18 Mr. Dalti --

19 A Yes, sir.

20 Q -- just take a moment, take your time and read
21 your statement before I ask you my next couple of
22 questions.

23 A Okay, sir. I believe I'm there.

24 Q All right. I'm going to take it back since you
25 refreshed your memory.

1 A Okay. No problem.

2 Q Now, I believe -- my question was you were in
3 the center lane and going roughly the speed limit?

4 A Correct.

5 Q Okay. And this black Cadillac came up on the
6 left side of you?

7 A Uh-hum.

8 Q And I don't know how they count lanes, but the
9 one closest to the center, right?

10 A The high-speed lane. Left lane, high-speed
11 lane.

12 Q Passing lane, there is different names for it.
13 He was going faster than you, right?

14 A Correct, sir.

15 Q But -- and you gave this statement the same day
16 of the accident, correct?

17 A Yes, sir.

18 Q And it would have been fresh in your memory,
19 right?

20 A (Affirmative head shake.)

21 Q In your statement you don't mention anything
22 about his rate of speed, do you?

23 A No, I don't, sir.

24 Q Or your rate of speed?

25 A No, I didn't.

1 Q And you weren't even, from what I can tell,
2 asked about the rate of speed, were you?

3 A No, sir.

4 Q But it's fair to say he was going fast enough to
5 go past you, and you were going around about the speed
6 limit?

7 A Absolutely, sir. What I witnessed was just a
8 black blur coming around me until I actually made out
9 the vehicle to be a black Cadillac as he crossed my
10 path.

11 Q Past you on the left?

12 A Yeah.

13 Q Then went across the lanes, correct?

14 A Right.

15 Q Impacted the barrier on the right-hand side?

16 A Sir, I'm in the middle lane with my Wrangler.

17 This gentleman comes around me at what I consider to be
18 a high rate of speed --

19 Q I'm not arguing with you.

20 A No. No. -- and as he cut across in front of
21 me, almost cutting me off, he came across, hit the
22 guardrail --

23 Q Yes, sir. And that's my question.

24 A Okay.

25 MR. SMILEY: Forgive me for talking on him.

1 I'll try my best not to.

2 Q (By Mr. Smiley) So as he came across is when he
3 impacted first the barrier on your right-hand side?

4 A That is correct.

5 Q After he hit that barrier, he went across the
6 highway?

7 A Again.

8 Q Again.

9 A Right.

10 Q Basically bounced off that first barrier, right?

11 A Uh-hum.

12 Q And hit the middle barrier?

13 A Correct.

14 Q And after he hit that middle barrier is when he
15 impacted the --

16 A Gold Honda, correct, sir. From what I can
17 recall.

18 Q And that's all we can ask. The gold Honda then
19 hits the middle barrier, correct?

20 A Yes, sir.

21 Q And then screeches to a halt in the center some
22 distance forward?

23 A (Affirmative head shake.)

24 Q In the meantime -- and you're the only true
25 eyewitness we have got, that's why I'm asking you these

1 questions.

2 So you then see the dark Cadillac stopped in the
3 right-hand side in that wide area?

4 A To the left of the exit, correct, sir.

5 Q Right. Right in the road, left of the exit
6 there's a breakdown area, for lack of a better word, in
7 the middle, right?

8 A That is correct.

9 Q And he is stopped?

10 A (Affirmative head shake.)

11 Q You were able to stop before you impacted any of
12 that, right?

13 A Yes, sir. Correct.

14 Q Because moments after the accident you get out,
15 and the first thing you do when you get out is you go
16 to the car closest to you, which would have been the
17 gentleman in the black car?

18 A That is correct.

19 Q He gets out of the car and --

20 A Excuse me. Actually, he was kind of out of his
21 vehicle by the time I got out of mine. He came to
22 rest, yeah.

23 Q All right. So he gets out maybe a little before
24 you, but basically contemporaneously right after the
25 accident, and your heart is certainly pumping through

1 your chest after watching one of those?

2 A Yes.

3 Q He walks around his car. He asked you what time
4 it was, which I'm sure you felt was odd?

5 A Due to the circumstances, correct.

6 Q You didn't see any apparent injuries, so you
7 asked him to get back in his car?

8 A Exactly.

9 Q All right. In your statement that you gave that
10 same day, you didn't mention anything about him
11 appearing drunk or anything like that, did you?

12 A No, sir.

13 MR. SMILEY: That's all I've got.

14 THE COURT: Any redirect of the witness?

15 REDIRECT EXAMINATION

16 BY MR. VOIGT:

17 Q Officer Dalti, was it your job that day to
18 investigate this particular accident scene?

19 A No, sir. I was off-duty status going to work.

20 Q Did you make a report that documented each and
21 every observation you made that day?

22 A No, sir.

23 Q Did anything in that statement that Mr. Smiley
24 showed to you that you had written -- that was a
25 statement you had written, right?

1 A Yes, sir, that is correct.

2 Q Does any of that contradict what you've
3 testified to this jury today?

4 A No, sir.

5 Q Did the gentleman in the black Cadillac cut
6 across your lane of traffic at least once or twice?

7 A That is correct.

8 Q And did he change lanes again to impact the gold
9 Honda?

10 A Yes, sir.

11 Q Just as an observer, did he do that in a safe
12 and prudent manner?

13 A No, sir.

14 Q Did the black Cadillac cause the accident with
15 the gold Honda?

16 A He did, sir.

17 MR. SMILEY: Unfortunately, I have one more
18 question, Your Honor.

19 THE COURT: Go ahead.

20 RE CROSS-EXAMINATION

21 BY MR. SMILEY:

22 Q At the point that the black Cadillac impacted
23 the barrier on the right-hand side, is it fair to say
24 he lost control?

25 A I would say he was out of control, sir. Yeah.

1 MR. SMILEY: Thank you.. That's all I have.

2 THE COURT: Any further questions from the
3 State?

4 MR. VOIGT: No, Your Honor.

5 THE COURT: Any exception to the witness being
6 excused from the State?

7 MR. VOIGT: No, Your Honor.

8 THE COURT: From the defense?

9 MR. SMILEY: No, ma'am.

10 THE COURT: Sir, you're excused.

11 THE WITNESS: Thank you.

12 MR. SMILEY: Your Honor, this is not related to
13 the witness. Can we approach before the next witness?

14 THE COURT: Uh-hum..

15 (Whereupon, a discussion was held at the bench
16 not on the record.)

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 we are going to take a very brief restroom break.
19 During the break, please do not discuss the case and
20 please leave your notepads in your seats. We will be
21 about 10 minutes.

22 (Whereupon, the jurors exit the courtroom.)

23 THE COURT: You can be seated. We will be at
24 ease for about 10 minutes.

25 (Whereupon, a recess was taken.)

1 THE COURT: Is the State ready to proceed?

2 MR. VOIGT: Yes, Your Honor.

3 THE COURT: Defense ready to proceed?

4 MR. SMILEY: Yes, ma'am.

5 THE COURT: Please bring in the jury.

6 (Whereupon, the jurors enter the courtroom.)

7 THE COURT: Ladies and gentlemen, we will now
8 resume testimony.

9 You may call your next witness.

10 MR. VOIGT: Thank you.

11 The State calls Officer Ryan Brown.

12 RYAN BROWN,

13 after having first been sworn to tell the truth, the
14 whole truth and nothing but the truth testified on his
15 oath as follows:

16 DIRECT EXAMINATION.

17 BY MR. VOIGT:

18 Q Officer Brown, how are you employed?

19 A I work for the City of Charleston Police
20 Department.

21 Q How long have you worked for the City of
22 Charleston Police Department?

23 A I started with them in 1998, and had a four-year
24 period where I was gone, now I have come back.

25 Q And what do you do for the City of Charleston?

1 A Right now I'm assigned to the patrol division.

2 Q Where were you assigned in September of 2011?

3 A To the traffic division.

4 Q And what were your duties in the traffic
5 division?

6 A I handled day-to-day routine traffic
7 enforcement, and also collision investigations for
8 serious injuries and fatalities.

9 Q Have you ever been certified as an expert in
10 accident reconstruction?

11 A Yes, sir, I have.

12 Q Was that one of the duties that you did in the
13 traffic division when you were assigned there was
14 accident reconstruction?

15 A Yes, sir.

16 Q Were you called upon to assist in the
17 investigation of an accident that occurred on I-26 on
18 September 20th, 2011?

19 A Yes, sir.

20 Q What was your role in that investigation?

21 A As part of the collision reconstruction team I
22 was there to identify evidence points, try to determine
23 the cause of the collision. Any kind of information to
24 be gathered, I assisted with that.

25 Q I'm going to show you State's 38. What are

1 those orange marks?

2 A That's paint.

3 Q Okay. Why is there paint on that particular
4 vehicle? Was that one of the vehicles involved in the
5 accident on September 20th?

6 A That was the vehicle that collided with the
7 victim's vehicle.

8 Q Okay.

9 A And the paint would be there to mark the -- to
10 place the vehicle at that particular point on the
11 roadway.

12 Q Does the car remain there while you do your
13 investigation?

14 A Yes, sir, until we call for a tow truck to
15 remove it.

16 Q And at some point -- I will show you what has
17 been marked as State's 9 -- at some point that happens,
18 right?

19 A Yes, sir.

20 Q And what happens to the paint, to the orange
21 paint?

22 A It stays in place.

23 Q Why is it important to put paint there? Why is
24 it important to mark the location?

25 A If they're -- not necessarily in every case, but

1 in most cases the location of the vehicles
2 post-collision can be important in helping determine
3 the cause and factors such as speed and stuff like
4 that.

5 Q Is that important when you don't have an
6 eyewitness?

7 A It is, simply for corroboration.

8 Q In this case were you aware of an eyewitness?

9 A I believe we were. There was an off-duty police
10 officer, I believe, who witnessed it.

11 Q Now, in your role assisting this investigation,
12 did you attempt to locate any evidence?

13 A Yes.

14 Q Did you look in the black car for evidence?

15 A Yes, sir.

16 Q What were you looking for?

17 A Anything that would stand out, you know, whether
18 it's -- some of the typical things that we look for,
19 what can be contributed to a collision would be radio
20 volume, whether or not the windows were up, whether or
21 not somebody is wearing a seatbelt, and also if --
22 especially when it involves a case where there is
23 suspected impaired driving, if there is any alcohol or
24 anything like that in the vehicle.

25 Q Was there suspected impaired driving in this

1 particular case?

2 A Yes.

3 Q Did you search both vehicles?

4 A I do not believe that I searched the victim's
5 vehicle. I was responsible for the Cadillac.

6 Q And is this picture, State's 40, of the interior
7 of the black Cadillac?

8 A Yes, sir. It appears to be.

9 Q Is that how it appeared if you were to look in
10 through the driver's side window?

11 A Yes, sir.

12 Q I'm going to show you what has been marked as
13 State's 42. Is that another picture of the same center
14 console?

15 A Yes, sir.

16 Q Did you open the console?

17 A I did.

18 Q Did you move the contents of the console around
19 to see what was in there?

20 A I did.

21 Q So if you just were to open the console, the
22 contents wouldn't just be like that?

23 A No, sir. I don't believe it would have been
24 able to close.

25 Q Now, the striped pants. Is that law

1 enforcement?

2 A Yes, sir.

3 Q Do you know who that might have been?

4 A It was a motor officer, I can tell you that by
5 the color of his stripe.

6 Q So that would have been one of the people,
7 either you or another officer, who was assisting at the
8 scene?

9 A It was more than likely me.

10 Q I'm going to show you what has previously been
11 entered into evidence as State's 47.

12 Can you open that bag and take a look at it?

13 A Yes, sir.

14 Q Would you like to open it from the bottom? Any
15 way you want.

16 A It's stapled on top.

17 Q Can you pull those? Oh, you have.

18 Officer Brown, what are those?

19 A This is two bottles of Banana Schnapps.

20 Q Are those the same bottles that are depicted in
21 the previous photograph that I showed you, as well as
22 this photograph 45 here?

23 A Yes, sir.

24 Q Are there liquid contents in there?

25 A Yes, sir, there are.

1 Q Do the seals on those bottles appear to have
2 been broken?

3 A They were broken. As a matter of fact, they
4 were broken also whenever I discovered them.

5 Q Okay. So to the best of your knowledge no law
6 enforcement personnel or no one on scene broke those?

7 A No, sir. I was the first one to see them. And
8 they appear to be the same as they were.

9 Q What do those bottles, what do the labels say
10 that they are?

11 A 99 Bananas, Banana Schnapps Liqueur, 49.5
12 percent alcohol, 99 proof. It appears to be Banana
13 Schnapps.

14 Q Did you do a full accident reconstruction in
15 this case?

16 A By full, we didn't complete the to-scale
17 diagram. No, sir.

18 Q And why not?

19 A Simply because in this case where we did have an
20 eyewitness that witnessed the collision, and from the
21 evidence on the roadway, it appeared to coincide with
22 what he was telling us.

23 Typically whenever we do a full reconstruction
24 it's to gather information that we couldn't gather from
25 when there wasn't a witness such as speed and distance.

1 And when we get speed and distance, then we can also
2 get time. And if we needed to find out whether
3 somebody's speed would have changed if they had enough
4 time to react and collide with somebody.

5 In this instance, because two vehicles were
6 moving at the same time, there's two unknowns, just
7 like an algebra equation. If you don't have any known,
8 there is really not a way to get to the speed of the
9 vehicle. So there wasn't a need for us to complete a
10 full diagram because it wasn't going to give us
11 anything that we didn't already have.

12 Q Were you able to locate marks on the scene that
13 confirmed the story that the witness gave you?

14 A Yes, sir. That's what I was talking about. The
15 evidence that we saw that coincided with what the
16 witness stated.

17 Q I'm going to put up here State's 16. What is
18 that on the concrete barrier there? What does that
19 appear to be?

20 A That appears to be a left-side tire scuff from
21 where the vehicle -- this one appears to be the
22 defendant's vehicle that collided with the wall on the
23 left side.

24 Q Is that, again, more of your orange paint there
25 on the scene?

1 A Yes, sir. I believe all the markings were done
2 by myself.

3 Q Okay.

4 MR. VOIGT: Please answer any questions that
5 Mr. Smiley may have.

6 THE COURT: You may proceed.

7 CROSS-EXAMINATION

8 BY MR. SMILEY:

9 Q Were you the one that interviewed the MUSC
10 Safety Officer Dalti?

11 A I don't believe that I took the statement from
12 him.

13 Q Okay. You testified because you had an off-duty
14 officer as a witness that you didn't need to do an
15 accident reconstruction?

16 A No, not just because there was an off-duty
17 officer that witnessed it, it was anybody who witnesses
18 it. But the reason we didn't need to do a scale
19 diagram was because we weren't -- there was nothing to
20 gain by doing it.

21 Q Okay. So do you know who interviewed the
22 off-duty officer?

23 A I don't recall offhand. No, sir.

24 Q But whoever interviewed him, it would be
25 important, since you were going to rely on his

1 perception, to get as much information about what he
2 saw and write it down, right?

3 A Yes.

4 Q Okay. So when y'all decided not to do a
5 reconstruction report, and you are going to rely on
6 that information, is to have as much of it written down
7 as possible to be able to make some conclusions as to
8 what happened, correct?

9 A I'm sorry. I don't understand the question.

10 Q Well, the reason you do an accident
11 reconstruction report is to try to determine the cause
12 of an accident, correct?

13 A Correct.

14 Q And y'all spent a great deal of time out there
15 at the time of the accident, and later that night,
16 taking measurements, right?

17 A Correct.

18 Q It was getting ready to be rush hour, so you got
19 marks on the road and what have you --

20 A I apologize. You said later that night, we
21 didn't go back and do the -- take mapping evidence
22 marks until the next day.

23 Q Okay. Pardon me. I was given the information
24 it was later that night.

25 A No. The next day.

1 Q Nevertheless, it's going to be rush hour pretty
2 soon?

3 A Yes.

4 Q And that's a major artery there, right?

5 A Yes.

6 Q Your higher-ups wanted you to get what you
7 needed as quickly as you could. Not to not be
8 thorough, but as quickly as you could?

9 A Unfortunately, yes.

10 Q And so because you have done this with your team
11 several times, what you do is you take your spray
12 paint, mark everything, write it down so you can come
13 back later when it's not rush hour --

14 A Correct.

15 Q -- to get your measurements and what have you,
16 right?

17 A Correct.

18 Q You also got a crime scene guy that comes with a
19 camera, right?

20 A Correct.

21 Q And y'all, while he's taking pictures, you are
22 directing him to a certain degree about what you need,
23 right?

24 A Correct.

25 Q And y'all did all that, right?

1 A Yes, sir.

2 Q So you did your paint, you directed the
3 photographs, got what you needed to come back later and
4 then cleared the scene, right?

5 A Correct.

6 Q Now, and then later it was determined, after you
7 came back and got the measurements, that -- even though
8 all the physical effort had been done at the scene that
9 you didn't need that accident reconstruction report.
10 You actually didn't make that decision, though, did
11 you? It was somebody higher up?

12 A Probably it was a team decision. It was
13 probably something we all discussed.

14 Q Right. It wasn't that Officer Brown said, we
15 don't need it?

16 A Correct.

17 Q Okay. That's what I'm getting at.
18 What time did you arrive at the scene?

19 A Probably, if I recall, I was close to getting
20 off shift at 3:00, so somewhere between 2:00 and 3:00,
21 I believe it was.

22 Q When you arrived at the scene, were there EMS
23 vehicles there?

24 A I believe that everybody had been transported
25 prior to my arrival.

1 Q So you don't have any interaction with Sam
2 Thompson?

3 A Correct.

4 Q Okay. You had arrived at the scene, spoke -- or
5 someone spoke -- with the off-duty officer, and then
6 you went about taking your measurement?

7 A Correct.

8 Q Investigating, searching the car?

9 A Right.

10 Q You are the one that was assigned to search the
11 brown Cadillac, right?

12 A Correct.

13 Q They showed a picture of the inside of the car
14 with the console closed. Is that how you found the
15 car?

16 A Yes.

17 Q You got in the car and opened the center
18 console?

19 A Correct.

20 Q Were -- when you opened it, the bottle were on
21 top, right?

22 A I don't recall whether they were on top or not.

23 Q Is it fair to say that you didn't take
24 everything out of the console?

25 A More than likely I probably did at one point and

1 put it all back in.

2 Q So you didn't take a picture when you got there
3 of the evidence undisturbed, you disturbed it and then
4 re-placed it?

5 A Right.

6 Q I'm not saying you did anything wrong.

7 A No. No. No. I'm saying that I wasn't taking a
8 picture of -- I think the picture is gone now.

9 Q I'll put it back up for you. Hang on.

10 A Sure.

11 Q We've got them so let's use them.

12 All right. I'm going to put up State's 41.

13 That depicts the interior of the brown or dark
14 Cadillac, right?

15 A Correct.

16 Q Is that the way you found it?

17 A As far as I know, it would be. Generally we
18 have the crime scene technician or officer would take a
19 picture of the interiors of the car, and then if
20 something additional was found, such as in this case.

21 Q So the crime scene fellow taking pictures is --
22 took a picture of it before you went in and started --

23 A Correct.

24 Q So that would be our picture pre-search?

25 A As far as I know.

1 Q And that's all I can ask you.

2 A Right.

3 Q So you get there between somewhere around
4 3:00-ish, a little before, you get your instructions as
5 your team does, and you come across the car, you direct
6 the crime scene guy, before you go in, to take a
7 picture, right?

8 A (Affirmative head shake.)

9 Q You look around, you open the console?

10 A Okay.

11 Q You find the Schnapps, correct?

12 A Correct.

13 Q Okay. But you remove them from the console
14 before the picture was taken?

15 A Correct.

16 Q And re-placed them?

17 A I laid them back down. I didn't -- obviously
18 one of the rules in crime scene is you can never put
19 anything back exactly like it was.

20 Q Exactly. And so you are trying to take those
21 photographs for a couple of different reasons, but
22 ultimately so the jury can see what you saw, right?

23 A Correct.

24 Q And so you want them to see it as you saw it,
25 right? Or as close as practicable?

1 A Right. I just -- basically the bottles were put
2 back in the location, general location of where they
3 were found so that it was photographed so it wasn't
4 later thought that they came out of the glove box.

5 Q I understand. I'm going to show you what's
6 State's Exhibit 42 that we looked at before. Okay?

7 That's generally where you found the Schnapps
8 bottles?

9 A Correct.

10 Q And that console was not terrible deep, is it?

11 A I don't believe it is. It doesn't appear to be
12 from the picture.

13 Q And so when you opened it, you saw them fairly
14 quickly?

15 A Yes.

16 Q And at that point in time you stopped what you
17 were doing, you told your crime scene guy, I need a
18 picture of this, right?

19 A Correct.

20 Q Now, both those bottles have been opened, right?

21 A Yes, sir.

22 Q Do you know when they were opened?

23 A I do not.

24 Q There is no way to tell, is there?

25 A Not for me.

1 Q Not from looking at them. Now, when you do an
2 accident reconstruction report, it would tell you
3 within some kind of degree of certainty, nothing is
4 exact, but from your calculations, the speed of the
5 vehicles at impact, right?

6 A Sometimes.

7 Q Sometimes. And in this case you had a good bit
8 to work with, didn't you?

9 A Correct.

10 Q A report was not made though, correct?

11 A There wasn't a scale diagram made, no, sir.

12 Q Or any final conclusions made either?

13 A I mean, we concluded that the defendant was at
14 fault for the collision.

15 Q I'm not arguing with you, that's not my
16 question. I'm sorry, I asked it poorly.

17 other than the off-duty officer's recollection,
18 no mathematical determination of the speed was made?

19 A Correct.

20 Q Other than the off-duty officer's recollection
21 or statement, no initial impact point was determined?

22 A Correct.

23 Q Other than -- forgive me for repeating it, but
24 so we keep the questions specific -- other than the
25 off-duty officer's recollection and statement, no

1 initial impact with the gold car was determined?

2 A Correct.

3 Q Other than the off-duty officer's statement,
4 recollection, there was no determination as to what
5 caused the brown Cadillac to impact anything, correct?

6 A Correct.

7 Q So you are relying a good bit on what the
8 off-duty officer saw?

9 A Yes, sir. Unfortunately, in responding to
10 collisions, it's not always that we have an independent
11 eyewitness. So whenever we do have one that's credible
12 and non-biased, it's always --

13 Q Okay. I got you. But let me ask you some more
14 questions about that. When you are getting the
15 information from this unbiased witness, you want to
16 write down as much of it as specifically as you
17 possibly can, right?

18 A Sure.

19 Q You don't want to just boom, boom, boom, you
20 want as much detail as you possibly can get, right?

21 A Sure.

22 Q And if you are getting it, in this case
23 fortunately from a trained officer, you are hopeful
24 that you can get an even clearer picture, correct?

25 A Sure.

1 Q So when he gives you the information he either
2 writes it down or an officer will write it down, right?

3 A Yes. Typically, we let them write it. We'll
4 ask them to describe everything in detail, and then
5 afterwards we will review it. And if there is any
6 further questions, at least the way I normally do it,
7 write down a question, ask them a question, and then
8 write down their answer.

9 Q And in this case there wasn't any of that?

10 A I don't know.

11 Q That's right, pardon me. I'm trying to expand
12 your role. You weren't dealing directly with the
13 officer, you were taking paint measurements to a
14 certain degree -- but later -- and searching the car,
15 right?

16 A Yeah.

17 Q All right. Were you able -- you said you do
18 things like try to determine the volume of the radio?

19 A (Affirmative head shake.)

20 Q Did you do that in this case?

21 A I believe, if I'm not mistaken, the battery had
22 been cut, cable had been cut so there was no way to --

23 Q As a result of the accident?

24 A Yes.

25 Q Okay.

1 A Well, normally a lot of times when the fire
2 department arrives they will cut the battery terminals.

3 Q Right. So there won't be an explosion or
4 anything like that?

5 A Correct.

6 Q So you couldn't test the radio?

7 A I don't believe I was able to.

8 Q All right. And were you able to determine if
9 Mr. Thompson was wearing a seat belt?

10 A I was not.

11 Q Okay. If you have an accident in which --
12 unfortunately we had someone that passed in this case,
13 but you still had one person that's alive, right?

14 A Correct.

15 Q Would it be helpful in your investigation to
16 create a reconstruction to speak to that person?

17 A To speak to the person?

18 Q Somebody involved in an accident --
19 (Cell phone ringing.)

20 MR. SMILEY: Pardon me, Your Honor, that was my
21 client.

22 Turn your phone off. All right?

23 THE COURT: And if there is anybody else. I
24 know sometimes inadvertently we will leave our phones
25 on, if you would turn your phone off because if you

1 don't the deputy is going to take it and that would be
2 a very expensive lesson.

3 MR. SMILEY: We apologize to the jury.

4 I lost my train of thought but I think I can
5 pick it back up.

6 Q (By Mr. Smiley) In general when you have an
7 accident just for whatever reason you need to
8 investigate, it's a fender-bender, you got two drivers,
9 you would talk to each of them in trying to determine
10 what happened; fair enough?

11 A Correct.

12 Q In this case --

13 A Not always.

14 Q Okay. I got you.

15 A Generally, yeah.

16 Q Generally if you come across a scene, you walk
17 up and say, tell me what you saw, what happened. Go to
18 the other party. It doesn't mean you agree with them,
19 I'm not saying that.

20 A Right.

21 Q You get to talk to them, right?

22 Was there any estimation of speed made in this
23 case to your knowledge?

24 A No, sir.

25 Q Was there any determination made as to what

1 caused the brown or dark-colored Cadillac to impact the
2 gold Honda?

3 A No, sir.

4 Q You, yourself, did you create any reports as a
5 result of this? I mean final reports that got approved
6 by the supervisor?

7 A No, I did not.

8 Q So what you are telling me today is your
9 recollection, correct?

10 A Yes, sir.

11 MR. SMILEY: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 Q (By Mr. Smiley) The off-duty officer Dalti had
14 mentioned that this was a fairly crowded place. Were
15 there any other witnesses to your knowledge found?

16 A I believe -- I can remember somebody saying that
17 I believe a relative of the defendant's was following
18 him because he thought he had been drinking too much
19 and didn't want --

20 Q Who told you that?

21 A Officer Wilson.

22 Q Okay. That was a relative of?

23 A I believe it was a relative of the defendant.

24 Q Okay. Now, at the conclusion of getting all of
25 the paint down and removing the cars and getting

1 traffic to come back, your team came back later,
2 correct?

3 A Yes.

4 Q And we talked about your team; four or five
5 guys?

6 A It's not necessarily always the same people.
7 I'm trying to recall. I believe there were four or
8 five.

9 Q Okay. Officer Ward, he would have been one of
10 them?

11 A He was -- Officer Ward was the patrol officer
12 that responded to the collision initially.

13 Q Okay. So he wasn't part of your team?

14 A No.

15 Q Okay. So do you remember how many were involved
16 in coming back and taking measurements?

17 A I believe four or five.

18 Q And y'all came back the next day -- and just so
19 to make sure I'm clear -- you had different points, you
20 call it the evidence point?

21 A Evidence points.

22 Q And you find a stationary object and take
23 measurements off of that?

24 A No, sir. What we used was a total station,
25 which is -- it's like you see a surveyor out on the

1 road where one guy is with the little machine there and
2 the other guy is holding the pole. We use that.

3 Q Okay. So you find a point, and then you take
4 measurements from that point?

5 A Right. The total station is the known point,
6 and then it references off of that point to all of the
7 different points on the road.

8 Q Okay. Y'all gathered all the information you
9 would need with the total station?

10 A As far as I know.

11 MR. SMILEY: That's all I have.

12 THE COURT: Any additional questions of the
13 witness?

14 MR. VOIGT: Yes, Your Honor.

15 THE COURT: You may proceed.

16 REDIRECT EXAMINATION

17 BY MR. VOIGT:

18 Q As a result of your investigation, your role in
19 the investigation, did you have a clear picture as to
20 who and what caused the accident?

21 A Yes, sir.

22 Q And as Mr. Smiley asked you, is it sometimes
23 helpful to talk to both of the people in an accident?

24 A Sometimes it is.

25 Q And there was no way to talk to Ms. Deas, was

1 there?

2 A No, sir. She was already gone.

3 Q Do people involved in accidents, especially
4 those involving alcohol, are they often the most
5 reliable source of information about the accidents that
6 they were in?

7 A Not always. Especially when there has been
8 alcohol involved.

9 Q Was there anything in your investigation, any of
10 the measurements you took, any of the things that you
11 did either on the scene or when you came back later,
12 that contradicted anything that Mr. Dalti had told you
13 during the course of your investigation?

14 MR. SMILEY: Objection, Your Honor.

15 THE COURT: Basis?

16 I really haven't heard the whole question. Can
17 I hear it?

18 MR. SMILEY: Yes, ma'am.

19 THE COURT: Repeat the question.

20 MR. VOIGT: And I will try to leave out the
21 opening phrase just for clarity.

22 Q (By Mr. Voigt) Is there anything that you found
23 during the course of the investigation, any physical
24 evidence or evidence in the markings or any of the
25 things that you did on the scene or afterwards with the

1 total station that contradicted what Mr. Dalti had
2 informed your team of?

3 A No, sir.

4 MR. VOIGT: That's it for me.

5 THE COURT: Any objection to the witness being
6 excused, from the State?

7 MR. SMILEY: No, ma'am.

8 THE COURT: From the defense?

9 MR. VOIGT: None from me.

10 MR. SMILEY: I apologize. I thought you were
11 asking me that and you were looking at him.

12 THE COURT: That's okay. I'm sorry. I didn't
13 mean to confuse you.

14 Sir, you are excused.

15 THE WITNESS: Thank you ma'am.

16 THE COURT: Could counsel approach for me.

17 (Whereupon, a discussion was held at the bench,
18 not on the record.)

19 THE COURT: Mr. Foreman, ladies and gentlemen,
20 we are going to take advantage of this break in
21 testimony to take our lunch recess. We expect the next
22 witness to be fairly substantial in terms of the length
23 of time, and I would not want to break up that
24 testimony.

25 We are going to break until 1:30. That gives

1 you an hour and 10 minutes, give or take, for lunch.
2 During the break, please do not discuss the case among
3 yourselves or with anyone else. Please do not allow
4 yourselves to be exposed to any media coverage
5 regarding the case, or do any independent research on
6 the Internet.

7 Please leave your notepads in your seats.
8 You'll return directly to your jury room. And please
9 do not have any contact with anyone in or about the
10 courthouse. I hope you all have a good lunch. We will
11 see you at 1:30.

12 (Whereupon, the jurors exit the courtroom.)

13 THE COURT: You may be seated. Is there anybody
14 on the State's witness list that is not being called?

15 Is there going to be an issue with the chain?
16 Are you calling everybody from SLED? I'm just asking.

17 MR. SMILEY: There doesn't appear to be one.
18 However, I can't stipulate.

19 THE COURT: I wasn't asking you to. I just
20 wanted to ask. Every attorney handles it differently.

21 MR. SMILEY: Yes, ma'am.

22 THE COURT: See you all at 1:30.

23 (Whereupon, a recess was taken.)

24 THE COURT: Is the State ready to proceed?

25 MR. VOIGT: Yes, Your Honor.

1 THE COURT: Defense ready to proceed?

2 MR. SMILEY: Yes, ma'am.

3 THE COURT: Who is the next witness?

4 MR. VOIGT: Our next witness is Officer Smoak,
5 and I'll retrieve him shortly, Your Honor.

6 THE COURT: You can retrieve him now.

7 MS. COMPTON: Your Honor, this may actually be
8 an appropriate time to discuss the mini Jackson V Denno
9 issue that we had discussed earlier with Mr. Smiley, if
10 you would like to take it up at this time before the
11 jury returns.

12 THE COURT: How long into his testimony?

13 MS. COMPTON: Fifteen, twenty minutes.

14 THE COURT: We'll take it up when it's time for
15 it to come up in his testimony. Let me know you have a
16 matter of law.

17 (Whereupon, the jurors enter the courtroom.)

18 THE COURT: Ladies and gentlemen, I hope you had
19 a pleasant luncheon recess. We'll now resume
20 testimony. The State may proceed.

21 MS. COMPTON: Thank you, Your Honor. The State
22 calls Officer Matt Smoak.

23 THE COURT: Please swear the witness.

24 MATTHEW T. SMOAK,
25 after having first been sworn to tell the truth, the

1 whole truth and nothing but the truth testified on his
2 oath as follows:

3 DIRECT EXAMINATION

4 BY MS. COMPTON:

5 Q Officer Smoak, what do you do for a living?

6 A I currently work as a police officer with the
7 City of Charleston Police Department.

8 Q And how long have you been in law enforcement?

9 A In law enforcement, six years with the City of
10 Charleston.

11 Q What did you do before you were in law
12 enforcement?

13 A I was a certified state paramedic, and a
14 nationally registered EMT paramedic with the State of
15 South Carolina since 2002.

16 Q Okay. What does a paramedic generally do?

17 A We handle high-risk trauma calls, medical calls
18 relating anywhere from, you know, stubbed toes to
19 people dying of heart attacks, major collisions,
20 vehicle collisions, gunshots, stabbings.

21 Q And that's like someone on an ambulance, right?

22 A Yes.

23 Q Now, can you tell the jury about your education
24 and training as it relates to law enforcement collision
25 investigation?

1 A I'm a certified collision reconstructionist for
2 the State of South Carolina. I have done extensive
3 training to obtain the status of a collision
4 reconstructionist. I'm also a traffic safety officer.
5 Which in order to get that, you have to be a collision
6 reconstructionist certified in radar, certified in DUI,
7 certified in other advanced traffic classes in order to
8 obtain that.

9 Q Thank you. Now, what are your current duties
10 with the City of Charleston?

11 A My current duties, I work as a motor officer in
12 the traffic division, I also work on the collision
13 reconstruction team, and I investigate high-risk
14 collisions that involve serious injuries and/or death.

15 And that's the majority of the collisions that I
16 tend to work with right now.

17 Q Okay. And were these your same general
18 responsibilities back on September 20th, 2011?

19 A Yes.

20 Q Now, did you have occasion to meet Mr. Samuel
21 Thompson on that date?

22 A Yes.

23 Q Please tell the jury about that.

24 A I was informed that there was a vehicle
25 collision in the area of I-26 and the Rutledge Avenue

1 exit.

2 Q Can I stop you right there for just a second?

3 A Yes.

4 Q Is that in Charleston County?

5 A Yes, it is.

6 Q Okay, thanks. Please continue.

7 A Okay. I was directed by my supervisor that due
8 to the seriousness of the collision that I was told to
9 go to the hospital to check on a victim and figure out
10 who was involved in the collision, whether or not how
11 many occupants were in each vehicle, what kind of
12 injuries we were looking at dealing with, whether it
13 was a fatal that we were going to have to work up as a
14 different collision work, or if it was just going to be
15 a simple where the parties may have been released from
16 the hospital. We tend to do our investigation a little
17 bit differently in those aspects of the collisions.

18 Q Now, at the time you went to the hospital, did
19 you know whether or not alcohol had been a factor in
20 this collision?

21 A No.

22 Q What was your purpose in going and checking
23 everyone at this point?

24 A It was going to go, like I said, to check on the
25 people involved in the collision, how many people may

1 have been involved in each car, whether there were
2 other occupants in the vehicles, and to see what kind
3 of injuries we were looking at dealing with, and relay
4 that information back to my supervisor.

5 Q Okay. Thank you. Do you remember what time you
6 showed up at the hospital that day?

7 A Around 2:45-ish or so.

8 Q What did you learn about the victim's condition
9 at that time?

10 A When I initially went there, I learned that she
11 was going through some medical testing to figure out
12 what the extent of her injuries were, as well as
13 Mr. Thompson, he was going through some tests to figure
14 out what the extents of his injuries might have been.

15 Q At some point within that visit did you make
16 contact with the defendant?

17 A Yes.

18 Q And can you please tell the jury about his
19 general demeanor at that point?

20 A He was uncooperative with myself, the ER staff.
21 He was acting in a very belligerent manner in
22 cooperating with what the hospital staff wanted him to
23 do to the point that I believe they had to actually
24 restrain him down.

25 I could smell an alcoholic odor emanating from

1 himself when he was talking to me. And just his
2 repetitiveness in the questions that he kept asking me
3 about what had happened, he kept repeating himself.

4 I then relayed that information back to my
5 supervisor.

6 Q Did he say anything in particular to you at that
7 time?

8 A Not particularly, no.

9 Q Have you had experience as a paramedic with
10 intoxicated people?

11 A Yes.

12 Q And have you had experience as a law enforcement
13 officer with intoxicated people?

14 A Yes.

15 Q Did what you observed about the defendant based
16 on your training and experience change the nature of
17 your investigation?

18 A Yes, it started to. I started realizing that
19 alcohol may have played a factor in the collision that
20 occurred.

21 Q Okay. Tell me what happened next.

22 A I then contacted my supervisor and said that I
23 had one party that -- Mr. Thompson that had possibly
24 been -- had alcohol in his system, and we needed to
25 figure out which vehicle he was in. Because at the

1 time when I originally went there, I didn't know who
2 was in what vehicle.

3 So he told me that information back that the
4 vehicle that was at fault was indeed Mr. Thompson's
5 vehicle. So then I proceeded to go forth with the DUI
6 investigation at that point.

7 Q Did you -- what was the next step in your
8 investigation at this point?

9 A After talking with my supervisor, I went out and
10 got a blood kit from my car and the implied consent
11 paperwork from my vehicle, and went and spoke with
12 Mr. Thompson about the charge that he was being
13 arrested for.

14 I then placed him under arrest for felony DUI,
15 and read him his Miranda rights and his implied
16 consent.

17 Q I'm going to stop you right there.

18 MS. COMPTON: Your Honor, may I approach the
19 witness?

20 THE COURT: Yes.

21 Q (By Ms. Compton) I'm showing you what has been
22 pre-marked as State's Exhibit 48. Do you recognize the
23 outside of the envelope?

24 A Yes, ma'am.

25 Q And can you open that for us, please.

1 MS. COMPTON: Let me see if the clerk has any
2 scissors. Excuse me.

3 Q (By Ms. Compton) When you sealed this envelope,
4 did you indicate your initials on it?

5 A Yes, I did.

6 Q And are those your initials on the back of this?

7 A Yes, they are.

8 Q I apologize for not doing this sooner with your
9 seal. But if you could please use those to open that
10 now.

11 A (Witness complies.)

12 Q Can you tell the jury whether you recognize the
13 paperwork contained in this exhibit?

14 A Yes, I do. This is my DUI evidence paperwork
15 that I collected at the time of the arrest and then
16 placed them into the evidence lockers at our police
17 department.

18 Q And may I take a look at that as well, please?

19 A Yes.

20 Q Thank you.

21 And, Officer Thompson [sic], I believe you did,
22 did you look at all of these and you recognize all of
23 these items?

24 A Yes.

25 MS. COMPTON: Your Honor, I beg the Court's

1 indulgence one moment.

2 (Whereupon, State's Exhibit No. 55 was marked
3 for identification.)

4 Q (By Ms. Compton) I'm showing you State's 55.
5 Do you recognize this?

6 A Yes. This is the advisement of implied consent
7 rights for felony DUI driving under the influence.

8 Q Can you tell the jury what implied consent
9 rights are?

10 A Do you want me to read the implied consent?

11 Q No. Just the nature of them. Where do they
12 come from, what gives you the -- what is implied
13 consent?

14 A Okay. The implied consent is where you obtain
15 your South Carolina driver's license, you have under
16 section 56-5-2945, which deals with DUIs -- 56-5-2945
17 actually deals with felony DUI.

18 In that, you know, when you are issued a South
19 Carolina driver's license, you have certain rights that
20 you are given with the driver's license. It's not a --
21 it's more or less your driving is a privilege. Under
22 those privileges if you are involved in a collision in
23 which there is great bodily harm, great bodily injury
24 occurs and/or death, we can obtain your -- if we
25 believe that there might be alcohol and/or drugs, we

1 can obtain that information through breath, blood
2 and/or urine.

3 And your implied consent is the rights that we
4 read to you whenever -- we read when you are under
5 arrest for a DUI. And you have a DUI implied consent,
6 and a felony DUI implied consent. And like I said, the
7 felony DUI deals more with there's a great bodily
8 injury and/or death other than the occupant that is
9 being charged with the DUI, if that makes sense.

10 Q Okay. What do these implied consent rights
11 allow you, as an officer, to do?

12 A They allow me to obtain the alcohol and/or drug
13 levels within your -- within the person; the breath,
14 blood or urine.

15 Q Okay. And in this particular case, did you have
16 knowledge of great bodily injury at this time?

17 A At the time I did, yes.

18 Q And whose injury is that?

19 A That was the victim, Ms. Deas.

20 Q Okay. And at the time in this case did you then
21 proceed under the implied rights statute to collect the
22 blood-alcohol of Mr. Thompson?

23 A Yes.

24 Q And before you collected that, did you indicate
25 to him his rights in State's 55?

1 A Yes. I read him his -- actually the implied
2 consent rights, and I also read his Miranda rights, his
3 Miranda warnings before I read the implied consent.

4 Q Well, let's just talk about the implied consent
5 for now. What types of warnings do you give someone in
6 regards to implied consent?

7 A What do you mean?

8 Q Are there warnings on there? Do you tell them
9 anything?

10 A Yeah. It tells you that, you know, you are
11 being under arrest for felony driving under the
12 influence, and it tells you the code.

13 It also tell them that I'm directing samples be
14 taken for alcohol and/or drug testing. And the samples
15 can be used, taken and tested according to the SLED
16 policies in 56-5-9 -- 2950 which involves the DUIs.

17 I have to -- with this implied consent that the
18 person must submit to either one or a combination of
19 chemical tests of the person to determine the presence
20 of alcohol, drugs, or a combination of alcohol and/or
21 drugs.

22 The resistance or obstruction or opposition of
23 testing is evidence admissible at trial. So you can't
24 really refuse the implied consents for felony DUI. You
25 can't refuse to give breath, blood or alcohol when it's

1 felony DUI. You have to submit to it.

2 And then it goes on to tell you that if your
3 blood-alcohol is a certain level over, then you can --
4 you lose your driver's license for a certain period of
5 time.

6 It also advises them that you can have a
7 qualified person of your own choosing conduct separate
8 tests at the individual's expense.

9 Q All right. Now showing you what has been marked
10 as State's Exhibit 57. Do you recognize this on both
11 sides?

12 A Yes. This is the Miranda warning card that I
13 read to Mr. Thompson.

14 Q Okay. And what are a person's Miranda rights?
15 They're familiar, but if you could read the first
16 couple of them.

17 A The Miranda rights are the rights that you are
18 given whenever you're placed under arrest. You have
19 the right to remain silent. Anything you say can and
20 will be used against you in a court of law.

21 You have the right to talk with a lawyer, have
22 him present during any questioning if you wish. If you
23 cannot afford to hire an attorney, one will be
24 appointed to represent you before any questioning if
25 you wish one. If you decide to answer questions

1 without a lawyer present, you have the right to stop
2 answering questions at any time you so choose.

3 Q Okay. And did the defendant indicate to you in
4 any way that he understood these rights?

5 A No. I mean, it was due to his impairment and
6 uncooperative -- uncooperation. I wasn't -- you know.

7 Q Were you able to collect his blood at this time,
8 though?

9 A Yes. I gave the blood kit -- opened up the
10 blood kit and gave the nurse that was there the items
11 out of the blood kit that she needed to draw that.

12 Q Okay. And were you present for the nurse
13 drawing Mr. Thompson's blood?

14 A Yes.

15 Q And, again, I'm going to show you a series of
16 exhibits. I apologize. I know it seems rigorous, but
17 we have to keep everything straight by number.

18 I'm showing you what has been pre-marked as
19 State's Exhibits 49, 50, 51, 52, 53, and 54.

20 Do you recognize the contents of these photos?
21 Take a minute to look at all of them, please.

22 A Yes. In photo 49, it's going to be the front of
23 the blood kit box that we use at the police department.

24 Q You can just take a look at them. Do you
25 recognize what's in all of the pictures?

1 A Yes. My handwriting on the outside of the blood
2 kit, the case number, what the charge is for, what time
3 the blood was taken, who drew the blood, and the copies
4 of the pictures of the blood vials that have my
5 signature, the nurse's signature, and the case number
6 involved.

7 Q Okay. And do those pictures appear to be a fair
8 and accurate representation of the blood kit as you saw
9 it that day?

10 A Yes.

11 Q And as it was collected that day?

12 A Yes.

13 MS. COMPTON: Your Honor, at this time the State
14 moves to admit Exhibits 49 through 54.

15 THE COURT: Any objection?

16 MR. SMILEY: I've got to see what they are, Your
17 Honor.

18 MS. COMPTON: I'm sorry, they're just some
19 pictures.

20 Beg the Court's indulgence.

21 MR. SMILEY: I object to foundation, Your Honor.

22 THE COURT: Approach.

23 (Whereupon, the following discussion was held at
24 the bench.)

25 THE COURT: Where is the actual bag and stuff?

1 MS. COMPTON: It's coming with the toxicologist
2 tomorrow.

3 THE COURT: You need to ask the appropriate
4 questions. Once he filled the form out, he sealed the
5 box. More questions about him observing the draws of
6 blood.

7 The objection is sustained on foundation.

8 MS. COMPTON: Thank you, Your Honor.

9 (In open court.)

10 THE COURT: Proceed. The objection is sustained
11 on foundation.

12 Q (By Ms. Compton) Officer Smoak, when you were
13 present for -- you indicated to the jury before the
14 photos and the objection that you were present for the
15 blood draw, correct?

16 A Yes.

17 Q What did you observe at that time?

18 A I observed the nurse use the, you know, I guess
19 the needles that she needed to use to obtain the blood,
20 she put it in the provided vials that comes with the
21 blood kit, and handed them over to me so that I could
22 put the paper sealing on it where we both signed --
23 excuse me, where we both signed and initialed it and
24 dated it and put the person's name that the blood came
25 from on the vial tube, the blood vial.

1 Q Okay. I'm going to show you State's 52 and 53.
2 Are those the blood vials that you had that day?

3 A Yes.

4 Q And I am going to show you State's 51. What is
5 that?

6 A This is the information we put on the back of
7 the box that has the name of the subject that the blood
8 was drawn from; the offense; the case number; the date
9 on which the blood was drawn; the time; what county;
10 who the investigating officer was, myself; what
11 department I work for; the date the blood was drawn;
12 the time the blood was drawn; location of the drawing;
13 who drew the blood; and who it was witnessed by, who
14 the blood was witnessed to be drawn by and that was
15 myself.

16 Q Okay. And who initialed or signed, I guess,
17 that they drew the blood?

18 A Alisa Whittington.

19 Q Okay. Showing you State's 50. What is this?

20 A This is the bottom of the box. It shows the box
21 has been sealed, and I'm the one that sealed it.
22 Because after the nurse would draw the blood, she would
23 hand me the vials, I would put it back in the box,
24 close the box, put all the information that needs to go
25 back in the box, and then seal it.

1 Q Okay. So the nurse drew the vials and gave them
2 to you?

3 A Uh-hum.

4 Q And then you testified you filled out a form,
5 correct?

6 A Yes.

7 Q Is this the form in State's 51?

8 A Yes. It's like on the lid of the box. When you
9 open it up, it was there.

10 Q And then what did you do with those materials?

11 A Put it in the box and sealed the box. And then
12 I took the box to our evidence locker room at the
13 police department, the refrigerator.

14 Q Does State's 50 indicate that the box -- what
15 does State's 50 indicate?

16 A That indicates that the box is sealed and that
17 it is ready for evidence.

18 Q Okay. And what does State's 49 indicate?

19 A That indicates that the front of the box -- we
20 send this box to SLED so they can test it. So it has
21 the return address of me, the department I work for,
22 the case number, and has our evidence tag on there so
23 our evidence personnel can keep track of where this
24 evidence is at.

25 And it also has the defendant Mr. Thompson's

1 name and date of birth and how many vials of blood and
2 the case number on it.

3 Q And then finally, what does State's 54 show?

4 A This is the bag that is -- I dropped this box
5 off, I dropped the box off like this into our
6 refrigerator. And this looks like a --

7 Q So you didn't fill out State's 54?

8 A I did not fill this out.

9 Q Okay. Then I will hold that for the next
10 witness. Thank you.

11 MS. COMPTON: I beg the Court's indulgence.

12 Your Honor, at this time the State would move to
13 admit State's Exhibits 49, 50, 51, 52, and 53, which
14 are all photographs as described:

15 THE COURT: Any exception?

16 MR. SMILEY: I'm going to do these one at a
17 time, Your Honor.

18 THE COURT: Please approach.

19 (Whereupon, the following discussion was held at
20 the bench.)

21 THE COURT: No speaking in the presence of the
22 jury.

23 MR. SMILEY: As to 49, Your Honor, I agree it's
24 a picture of the box that he says he sealed.

25 MS. COMPTON: It's a picture.

1 MR. SMILEY: I don't have any objection that
2 it's a picture of the box. As to 50, I have no
3 objection as it being a picture of the bottom of the
4 box that is sealed. As to 51, I have no objection as
5 it being a picture of the document that was attached to
6 the box detailing consent.

7 I do have an objection -- these are pictures of
8 the vials. The vials are going to be here later. I
9 don't know why they're relevant.

10 MS. COMPTON: I just was trying to start the
11 chain and use the pictures at this point.

12 MR. SMILEY: It's described as pictures of what
13 he believes are the vials he put in the box, I guess.

14 THE COURT: That's his testimony.

15 MR. SMILEY: I know. I don't want it to appear
16 that I'm admitting that that's the blood all the way
17 through. I'm trying to be very careful. It used to be
18 we had the box. They don't do that anymore.

19 THE COURT: No. They're going to bring it from
20 SLED.

21 MR. SMILEY: No, ma'am. They're going to bring
22 the vials. They box they destroy. They took pictures
23 of it.

24 THE COURT: That's new.

25 MS. COMPTON: Yes.

1 MR. SMILEY: So I agree it's pictures of those
2 things. If that's --

3 MS. COMPTON: That is all I'm admitting.

4 THE COURT: Which ones --

5 MS. COMPTON: The vials are 52 and 53.

6 THE COURT: Okay.

7 MR. SMILEY: Can I put that on the record?

8 THE COURT: It's on the record.

9 MR. SMILEY: Thank you.

10 (In open court.)

11 THE COURT: Numbers 49 through 53 come in
12 without objection.

13 (Whereupon, State's Exhibit Nos. 49 through 53
14 are admitted into evidence.)

15 THE COURT: You may proceed.

16 MS. COMPTON: Thank you, Your Honor.

17 Q (By Ms. Compton) And, Officer Smoak, as to
18 State's 55, you testified that this is the form, this
19 is the actual form that you administered and read to
20 the defendant from that day?

21 A Yes.

22 Q And what is that writing on the bottom of it?

23 A That is basically saying that the subject was
24 unable to sign due to being medicated. And the witness
25 is my supervisor, Officer Clifton Wilson, his report

1 number and my signature on the right.

2 Q Okay. So you signed that this is in fact the
3 form that you used that day?

4 A Uh-hum.

5 MS. COMPTON: At this time, the State would move
6 to admit State's 55 into evidence.

7 THE COURT: Please show it to counsel.

8 MR. SMILEY: I have no objection as to that
9 being the form that they used and that the officer
10 signed.

11 THE COURT: State's 55 admitted without
12 objection.

13 (Whereupon, State's Exhibit No. 55 is admitted
14 into evidence.)

15 MS. COMPTON: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 Q (By Ms. Compton) Thank you for bearing with me
18 with all this evidence. I appreciate it. I know it
19 can get complicated with all those numbers.

20 Now, what did you do with the box that was
21 indicated in those photos after the nurse collected the
22 blood?

23 A After the collection of the blood and after I
24 sealed the box I had to take the box to our police
25 department where we have a locked refrigerator that's

1 kept there for storage until we took it to SLED the
2 following day.

3 Q And did you do anything to tamper --

4 A No.

5 Q -- or in any way interfere with the vials in the
6 box?

7 A No.

8 Q Now, you said it was a locked refrigerator?

9 A Yes.

10 Q Are you able to access that refrigerator, or is
11 anyone able to access that refrigerator after --

12 A There is only a few people in our department
13 that can access our refrigerator that have the key, or
14 a combination. I don't know if it's a key lock or a
15 combination lock.

16 You basically open the refrigerator door.
17 There's a metal door that's locked, and there's a spot
18 cut just big enough for that blood box to be dropped
19 into it.

20 Q Okay. Did you return to the hospital at any
21 point that day?

22 A Yes, I did. Around 9:00 or so that night.

23 Q Okay. And at that time did you learn anything
24 from the medical staff regarding the defendant's
25 health?

1 A Regarding the defendant's health, I was advised
2 that he had no reported injuries, that he was going to
3 be expected to be released from the hospital, that he
4 had no injuries that --

5 Q And that he would be released?

6 A Yes.

7 Q And did you learn anything regarding the
8 victim's health at that point?

9 A I did. I learned that the victim, Ms. Deas, she
10 had succumbed to her injuries at approximately 6:24 in
11 the afternoon. She had sustained a lot -- significant
12 amount of blood loss, she had a lacerated liver and
13 spleen. She was transferred from the ER to the ICU
14 where she later passed away in the ICU unit.

15 MS. COMPTON: Your Honor, I believe at this time
16 we have a matter of law to take up.

17 THE COURT: Mr. Foreman, ladies and gentlemen,
18 we have a very brief matter of law to take up. During
19 the break, please do not discuss the case and please
20 leave your notepads in your seats. We appreciate your
21 patience.

22 (Whereupon, the jurors exit the courtroom.)

23 THE COURT: Proceed.

24 IN-CAMERA EXAMINATION

25 BY MS. COMPTON:

1 Q Officer Smoak, outside the presence of the jury
2 we are going to go through some questions, and then
3 again with the jury.

4 At the time that you returned to the hospital,
5 was the defendant in custody at that time?

6 A Yes. He was already in custody.

7 Q Because you had arrested him earlier that day,
8 correct?

9 A Uh-hum.

10 Q And did you speak with the defendant at all?

11 A I did. I spoke with him when I got back there.
12 He was getting ready to be discharged so that we could
13 take him to the jail.

14 Q And what was the purpose of speaking with the
15 defendant at that point?

16 A I -- he addressed some questions that he had.
17 He wanted to know what he was being arrested for, what
18 the charge were for. And I explained to him that he
19 was being arrested for felony DUI, and that he was
20 charged with at fault for the collision that resulted
21 in a death, that he would be taken to Charleston County
22 Detention Center.

23 He then expressed to me that he had only drank
24 two shots, that he didn't cause the collision or
25 anything like that, that the lady cut him off. But he

1 also advised me that he had no recollection as to what
2 happened with the collision prior to that.

3 Q Did he make any statements in response to any
4 questioning from you?

5 A I didn't ask him any questions.

6 Q You didn't ask him any questions at all?

7 A No.

8 Q If you were going to interrogate someone, would
9 this be the setting that you would do it in?

10 A No.

11 MS. COMPTON: Your Honor, at this time the State
12 has some case law that we'd like to hand up to the
13 Judge.

14 THE COURT: I need to see if there is an
15 exception first, and then you can.

16 MR. SMILEY: Can I ask him some questions? I
17 might be able --

18 THE COURT: I do not kill trees. You can just
19 give me a citation. He needs to cross-examine the
20 witness as well, and then I will take up any
21 exceptions.

22 MS. COMPTON: Thank you.

23 THE COURT: You may proceed.

24 IN-CAMERA CROSS-EXAMINATION

25 BY MR. SMILEY:

1 Q And this is only -- Officer Smoak, I'm only
2 going to ask you about that second visit and Miranda
3 for the Jackson v. Denno part so we know what we are
4 doing here, okay?

5 So you first made contact with Mr. Thompson
6 about 3:45?

7 A 2:45.

8 Q 2:45 in the afternoon, and that was at the
9 hospital?

10 A Uh-hum.

11 Q And at that point in time, was he in a room?
12 Where was he located?

13 A When I first got there I believe he was still in
14 the ER undergoing some testing, and I don't know
15 exactly what testing he was undergoing in the ER.

16 Q Okay. So when you got there he was in the back
17 with --

18 A In the trauma room, yes.

19 Q In the trauma room?

20 A Yes.

21 Q And there were doctors attending to him, or he
22 was just sitting there? I'm just try to get the
23 setting.

24 A I mean --

25 Q You didn't see him?

1 A I didn't see him. It took me a while to get
2 back and see him.

3 Q So you get to the desk, tell them why you're
4 there. And they say, Ms. Deas is in surgery or
5 whatever, and Mr. Thompson is in the back. And do you
6 explain to them you need to see Mr. Thompson and
7 Ms. Deas if possible?

8 A Yes.

9 Q Because at that point you didn't know much of
10 anything?

11 A Correct.

12 Q Just that there was a bad accident?

13 A Uh-hum.

14 Q Where did you first come in contact with
15 Mr. Thompson?

16 A In the trauma room.

17 Q So they let you back?

18 A Yes.

19 Q So when you came back and went in the room, who
20 was present?

21 A The first?

22 Q Well, you said you made contact with him in the
23 trauma room. So they let you back to him?

24 A Yes.

25 Q So when they let you back to him, I assume he's

1 either in a room or a curtained area or whatever?

2 A It was a curtained area. There may have been a
3 tech around, one of his nurses might have been around.

4 Q He didn't have any IVs or anything like that
5 going on? He was just sitting there?

6 A I don't recall.

7 Q Had you at that point in time talked to anybody
8 about any medical care he had received?

9 A Yes. I was trying to figure out still what the
10 extent of the injuries were with Mr. Thompson and Ms.
11 Deas.

12 Q Okay. Were you able to determine -- or who did
13 you ask about what medical treatment he had received?

14 A That was probably his nurse taking care of him.
15 But I don't remember who the exact person was.

16 Q In response to that, were you able to determine
17 if he in fact had received any kind of medication or
18 anything else?

19 A Yes. There was one point that I was told he was
20 under medication because he was uncooperative.

21 Q Do you know what that medication was?

22 A No.

23 Q It was at that point you had your first
24 encounter with him and you observed what you believed
25 to be symptoms of intoxication?

1 A Yes.

2 Q At that point did you place him under arrest?

3 A I still wanted to figure out whether he was
4 impaired or whether he had a head injury. So he went
5 through a CAT scan I believe, and some other medical
6 testing.

7 And after I spoke with the Deas, or tried to get
8 in contact with Ms. Deas, I made contact with my
9 supervisor to figure out who was in which car. That's
10 when I started -- after I figured out which car the
11 occupants were in and who was at fault for the
12 collision, that's when I started my investigation
13 towards the DUI.

14 Q All right. At what point did you put
15 Mr. Thompson into custody? At what time I guess is the
16 question.

17 A It would have to be after 3:00.

18 Q It was before the collection of blood, of
19 course, correct?

20 A Yes.

21 Q And I think the blood was collected about 3:45,
22 correct?

23 A Yes.

24 Q When you placed him in custody, did you actually
25 cuff him or anything like that?

1 A No, because he was already restrained to the
2 bed.

3 Q So they were using bed restraints?

4 A Yes.

5 Q So he was in a horizontal position?

6 A Uh-hum.

7 Q When you first saw him he was in a horizontal
8 position?

9 A Yes.

10 Q And he was conscious of course, right?

11 A In and out, yes.

12 Q At that point that you placed him in custody,
13 did you inform him that he was under arrest?

14 A Yes.

15 Q And that he was under arrest for felony DUI?

16 A Uh-hum.

17 THE COURT: Sir, if you could say yes or no.

18 She can't do uh-hum. It helps her.

19 THE WITNESS: Sure.

20 Q (By Mr. Smiley) And that's the point that you
21 read him his DUI rights?

22 A Yes, sir. His Miranda rights and his implied
23 consent.

24 Q I got you. And that was in the first trip, he
25 was still back in the trauma area?

1 A Yes.
2 Q He was restrained to the bed. And you told him
3 he was under arrest for felony DUI?

4 A Yes.

5 Q And you got out your card, right?

6 A Yes.

7 Q And you read it to him, right?

8 A Uh-hum. Yes.

9 Q He was conscious, correct?

10 A Yes.

11 Q You didn't ask for him to sign?

12 A I asked, but he couldn't sign.

13 Q Why couldn't he sign?

14 A Because he was restrained.

15 Q Okay. So because of that, you read him his
16 rights but he didn't sign it?

17 A Yes.

18 Q And then you proceeded to at the same time read
19 him his implied consent rights, correct?

20 A Yes.

21 MR. SMILEY: I've got to stay on track for what
22 this hearing is for. You know me, Judge.

23 Q (By Mr. Smiley) Okay. So he is in custody at
24 3:45-ish. You made your determination, you collected
25 your blood, and you left?

1 A Yes.

2 Q And how long passed before you made contact with
3 him again?

4 A Roughly -- we had somebody there with him
5 because he was under arrest.

6 Q Right.

7 A Five-and-a-half, maybe six hours later.

8 Q All right. Was he still in the same location
9 when you came back?

10 A Yes.

11 Q He was still horizontal on the bed restrained?

12 A He was in the same location. He was sitting up.

13 Q They had cranked the bed up?

14 A Yes.

15 Q Was he still restrained?

16 A I believe he was. I don't recall exactly.

17 Q Okay. And at that point -- now, you've already
18 told him he is under arrest, right?

19 A Yes.

20 Q Okay. Your purpose in coming back was to
21 transport him to jail because he was going to be
22 released?

23 A Yes.

24 Q Now, Mr. Thompson then asked you -- wanted to
25 ask you questions?

1 A Yes.

2 Q Okay. There was already an officer there with
3 him though, right?

4 A Yes.

5 Q Do you remember who that officer was?

6 A Not off the top of my head I don't.

7 Q Okay.

8 A I'd have to look back at the CAD system. I
9 don't remember.

10 Q I'll skip. During the time that the other
11 officer was present, is there any notation or do you
12 have any recollection of any conversations between
13 Mr. Thompson and that officer?

14 A I couldn't testify to that. I don't know. He
15 may have asked the officer something else, I don't
16 know.

17 Q To your knowledge?

18 A To my knowledge, no.

19 Q Okay. So he has spent four or five hours with
20 an officer while he was in custody before you arrived
21 back?

22 A Yes.

23 Q And then when he saw you approach he then began
24 asking you questions, right?

25 A Yes.

1 Q Did you stop him and tell him -- read him his
2 Miranda?

3 A No. I wasn't interrogating him. He asked me
4 questions.

5 Q Okay.

6 A I wasn't asking questions for information. He
7 asked me questions, so I answered his questions.

8 Q Okay. So what questions did he ask?

9 A He wanted to know what had happened, what he was
10 arrested for, and where he was going.

11 Q And you answered those questions?

12 A I answered that he was involved in a collision,
13 he was under arrest for felony DUI, he was going to
14 Charleston County Detention Center.

15 Q At some point he started to make a statement to
16 you, right?

17 A (Affirmative head shake.)

18 Q In response to this conversation back and forth?

19 A Uh-hum.

20 Q At that point did you stop him and read him his
21 Miranda rights?

22 A No.

23 Q Did you tell him he had a right to remain
24 silent?

25 A No.

1 Q Did you tell him that anything he said was going
2 to be used against him?

3 A No.

4 Q At that point in time you are still in the
5 hospital atmosphere, right?

6 A Uh-hum.

7 Q And he has been with another officer for four or
8 five hours since you read him Miranda, right?

9 A Yes.

10 Q At that point -- he didn't have cuffs on him,
11 right?

12 A He did at this time. The second time I went
13 back was to load him up to get him transported.

14 Q So at the point his questions was going on he
15 had been cuffed?

16 A Yes.

17 Q And so he was standing up at that point in time?

18 A Uh-hum.

19 Q And he started to speak, you did not tell him --
20 remind him he was in custody, and anything he said
21 could be used against him?

22 A No.

23 MR. SMILEY: Beg the Court's indulgence.

24 Q (By Mr. Smiley) Now, you had said earlier that
25 you believe he had been medicated?

1 A Yes.

2 Q Were you ever able to determine what medication
3 that was?

4 A No.

5 Q So when he made those statements, do you know
6 what he -- any medication that was in his system?

7 A I don't know anything.

8 Q Okay.

9 MR. SMILEY: I don't have anything further, Your
10 Honor.

11 THE COURT: Any redirect?

12 MS. COMPTON: No further questions for this
13 witness, Your Honor.

14 THE COURT: Any exceptions to the testimony?

15 MR. SMILEY: Your Honor, I think from the
16 testimony it is has been established that he was not
17 being asked questions -- he was in custody, but from
18 the testimony it appears that he was not being asked
19 any questions and therefore under the dictates of
20 Jackson v Denno it would be admissible as a statement
21 against interest, as much as I'd like it to be
22 otherwise, or a statement.

23 THE COURT: I haven't heard anything that he
24 said that was incriminatory. He asked, where was he,
25 where was he going, what was he being arrested for.

1 MR. SMILEY: Right. But his responses were, I
2 had two shots. It was, I didn't cause the accident,
3 the woman cut me off. That's the statement that I was
4 trying to get at.

5 Unfortunately, Your Honor, as an officer of the
6 court and still trying to be an advocate, I don't
7 believe that the answers or what Mr. Thompson said was
8 in response to questioning by the officers, as much as
9 I'd like it to be.

10 Therefore, I think it does not fall under the
11 dictates of the Jackson v Denno, it violates in
12 custody, it wasn't a product of interrogation, and
13 therefore I cannot object on that basis.

14 And since I -- it is either a statement against
15 interest or is the spontaneous utterance, as much as I
16 want to, I don't know that I have a reason or basis to
17 object.

18 THE COURT: So there is no object then, correct?

19 MR. SMILEY: I'd like to, but I can't, ma'am.
20 So I'm not objecting to those statements.

21 THE COURT: Okay. So we can proceed.

22 MS. COMPTON: The State is ready to proceed,
23 Your Honor.

24 THE COURT: Is the defense ready to proceed?

25 MR. SMILEY: May I?

1 THE COURT: Go ahead. That's fine.

2 (Whereupon, a recess was taken.)

3 THE COURT: Is the State ready to proceed?

4 MS. COMPTON: Yes, Your Honor.

5 THE COURT: Is the defense ready to proceed?

6 MR. SMILEY: The defense is ready, Your Honor.

7 THE COURT: Please bring in the jury.

8 (Whereupon, the jurors enter the courtroom.)

9 THE COURT: Ladies and gentlemen, we appreciate
10 your patience. We will now resume with the witness's
11 testimony.

12 You may proceed.

13 MS. COMPTON: Thank you, Your Honor.

14 Q (By Ms. Compton) I will jump back just one
15 question. Did you return to the hospital at any point
16 that day?

17 A Yes, I did.

18 Q About what time was that?

19 A About 9:00.

20 Q And did you speak with the defendant at that
21 time?

22 A I did.

23 Q What was your purpose in speaking with him at
24 that time?

25 A It was to advise him that we were going to be

1 taking him to the Charleston County Detention Center
2 because he was under arrest.

3 Q Did you ask him any questions at that time?

4 A No.

5 Q Did he say anything to you at that time?

6 A He did.

7 Q What did he say?

8 A He told me that he had -- he wasn't really
9 certain what was going on, what he was being arrested
10 for. So I explained to him that he was involved in a
11 serious collision, that he was arrested for felony DUI,
12 that he was being transported to Charleston County
13 Detention Center.

14 He also then advised me that he had only drank
15 two shots, and that he had not caused the collision,
16 that the lady had cut him off. And he also advised me
17 that he had no recollection as to what happened during
18 the collision.

19 Q Okay. And do you see that man in the court
20 today?

21 A I do.

22 Q Can you point him out and indicate what he is
23 wearing?

24 A Mr. Thompson is wearing a gray suit and gray
25 shoes.

1 MS. COMPTON: Your Honor, may the record reflect
2 that he has identified the defendant?

3 THE COURT: Let the record so indicate. You may
4 proceed.

5 MS. COMPTON: Nothing further at this time, Your
6 Honor.

7 THE COURT: Mr. Smiley, you may proceed.

8 CROSS-EXAMINATION

9 BY MR. SMILEY:

10 Q One question before we get to the main thing.
11 Did you ever meet with the off-duty MUSC officer, John
12 Dalti?

13 A Not that I know of.

14 Q I'm just trying to figure out who took his
15 statement. You didn't take his statement?

16 A Uh-uh.

17 Q Okay. Did you ever go out to the scene?

18 A I did afterwards. A couple days later.

19 Q A couple days later?

20 A Uh-hum.

21 Q But the day of the event, you went straight down
22 to MUSC?

23 A Yes.

24 Q So you had no contact with Mr. Thompson until
25 you arrived at MUSC?

1 A That's correct.

2 Q Okay. And when you got to MUSC, about what time
3 was it?

4 A I got there the first time approximately around
5 2:45.

6 Q Okay. And that was about an hour after the
7 incident, roughly?

8 A Roughly, yeah.

9 Q I'm not holding you to it, just for the jury to
10 see sort of the events. So you got there about an hour
11 after, around 3:45?

12 A I got there at 2:45.

13 Q Excuse me. Thank you. So you got there about
14 2:45. And you go in the emergency room there?

15 A Yes.

16 Q And you were inquiring about both Mr. Thompson
17 and Ms. Deas, correct?

18 A That's correct.

19 Q Because at that point in time you don't know
20 what happened, you just know you have a couple people
21 down there at the hospital, right?

22 A Yes.

23 Q So when you got there you went to the desk and
24 you made your inquiry and they told you Mr. Thompson
25 was back in the trauma unit?

1 A Yes.

2 Q And that Ms. Deas was in surgery or somewhere
3 else?

4 A Yes.

5 Q So when you first made contact with
6 Mr. Thompson --

7 A Yes.

8 Q -- he was back in a curtained-off area?

9 A Yes.

10 Q And there was medical staff there?

11 A Yes.

12 Q I know you don't know exactly who was with him,
13 you believe it to be the nurse that later drew blood?

14 A It could have been. His doctor could have been
15 there. I just knew there was medical staff. I don't
16 know their titles or what their care to Mr. Thompson
17 was.

18 Q I got you. And Mr. Thompson at point in time
19 was on a hospital bed?

20 A Yes.

21 Q And he had restraints on him?

22 A Yes.

23 Q And he was interacting with the staff?

24 A He was uncooperative with the staff. Acting
25 belligerently towards them and myself.

1 Q But he was interacting?

2 A Yes.

3 Q At that point in time is when you believe that
4 you smelled the odor of alcohol --

5 A Yes.

6 Q -- about him?

7 A Yes.

8 Q At that point in time you were able to determine
9 that he was the driver of the car that impacted
10 Ms. Deas?

11 A Yes.

12 Q And as a result of you smelling the alcohol and
13 his general demeanor is when you believed that it may
14 be a DUI investigation?

15 A Yes.

16 Q Of course you are trained in DUI, right?

17 A That's correct.

18 Q And you knew that Ms. Deas had some serious
19 injuries?

20 A Yes.

21 Q And of course you couldn't tell the future, you
22 didn't know the extent of those injuries.

23 A Yes.

24 Q So you began this as a DUI investigation, right?

25 A Yes. As a felony DUI investigation.

1 Q And you and I use this word felony DUI versus
2 DUI. Is it fair to say that the difference between a
3 DUI investigation and a felony DUI investigation is
4 that someone has been hurt?

5 A Yes.

6 Q And that is the major distinction, correct?

7 A Yes.

8 Q At that point in time?

9 A Yes.

10 Q And so when someone has been hurt, you look to a
11 different statute, correct?

12 A Correct.

13 Q Because the DUI laws are fairly technical,
14 right?

15 A Yes.

16 Q Is one of the things, at the point that you
17 decided that you were going to further investigate
18 Mr. Thompson for whether he was under the influence,
19 would be to take him to a site and administer a breath
20 test; one of the options?

21 A That is an option.

22 Q You chose not to do that?

23 A Yes.

24 Q At the breath site -- when I say breath site,
25 that's where the DataMaster thing you blow in, right?

1 A Yes.

2 Q Whenever you take someone to a breath site,
3 there is a requirement that they be videotaped, right?

4 A Correct.

5 Q And so if he was taken -- if you had chosen --
6 and again I'm not arguing your choices, but just for
7 the jury -- if you in fact had chosen to take him to a
8 DataMaster site, a breath site, he would have been
9 videotaped, correct?

10 A Correct.

11 Q And so the jury would have been able to see what
12 you saw, right?

13 A Correct.

14 Q Due to the fact that he was in the hospital and
15 had been restrained, you chose not to do that, correct?

16 A That's correct.

17 Q Now, you read him his Miranda rights?

18 A Yes.

19 Q Did you ask him to sign them?

20 A Yes.

21 Q He refused?

22 A He couldn't. He was restrained.

23 Q Okay. So you didn't truly ask him. You didn't
24 come over and say, will you sign it. Because he was
25 restrained you just put, unable to sign, correct?

1 A Yes. He was unable to sign.

2 Q Okay. But you also put something else in that
3 card, that he was unable to acknowledge that he
4 understood his rights because -- he was unable to sign
5 it because he was under medication, correct?

6 A Yes.

7 Q So he was, while not cooperative, he was
8 interacting with you and personnel, right?

9 A Yes.

10 Q At that point you then read him his implied
11 consent, correct?

12 A Yes. Right after the Miranda warnings I read
13 the implied consent.

14 Q All right. And that's required by law, right?

15 A Yes.

16 Q And I think you've explained it. Just so the
17 jury understands, when we get a driver's license, we
18 agree to give a sample, right?

19 A Yes.

20 Q And that's why it's called an implied consent,
21 because we don't always know that's what we are
22 agreeing to to get the privilege to drive. You are
23 agreeing, if there is an investigation into
24 intoxication or influence, that you will, by getting
25 the privilege to drive, consent?

1 A Yes.

2 Q To give that. And as we know from everyday
3 life, from your experience as an officer, in a regular
4 DUI investigation one can refuse, correct?

5 A That's correct.

6 Q And there is some -- I don't want to use the
7 word penalties, but there are some repercussions to
8 that decision?

9 A Yes.

10 Q But in fact if you are taken down to a breath
11 site, or if it's a regular DUI and you seek to choose
12 for whatever reason to draw blood, someone can say no?

13 A Yes.

14 Q But because it's under the felony DUI statute,
15 and that's what you were investigating, they are
16 required to, right?

17 A Yes.

18 Q All right. However, the method of collection is
19 up to you at that point in time, correct?

20 A What is in the best interest of the client, the
21 defendant. If he can't get to the breath site, then I
22 have the option to request blood or urine.

23 Q And the reason you couldn't take him to a breath
24 site was because he was at the hospital?

25 A Yes. He had not been medically cleared yet to

1 leave the hospital.

2 Q Well, would you agree with me that he didn't
3 have any injuries?

4 A I didn't know at the time.

5 Q You were able to observe him. Was he bleeding
6 anywhere?

7 A Not that I know of.

8 Q He was conscious. Not cooperative, but
9 conscious?

10 A Yes.

11 Q You didn't ask him -- and I'm not saying you are
12 required to, just asking the question -- you didn't ask
13 him if he wanted to go give a breath sample and be
14 videotaped?

15 A No.

16 Q You chose blood?

17 A Yes.

18 Q And like, again, I'm not trying to say you did
19 something wrong, I'm just trying to get how we got
20 there, okay?

21 So you go get your blood collection kit?

22 A Uh-hum. Yes.

23 Q And you come back to -- or you probably already
24 had it with you, but you got it shortly after being
25 there. And you read him his implied consent where you

1 tell him basically he has to give a sample, right?

2 A Yes.

3 Q And when it's the other kind it actually has
4 some import, but here you still have to read it but he
5 didn't get any choices?

6 A Yes, that's right.

7 Q And again, he had a place at the bottom -- oh,
8 before I get there. You weren't alone, were you?

9 A No.

10 Q You had another officer with you?

11 A Yes.

12 Q Was he your supervisor?

13 A There -- he -- the supervisor came there at the
14 hospital, but I don't remember what time he had gotten
15 there.

16 Q And your supervisor was Wilson?

17 A Yes.

18 Q And other than Wilson, was there another officer
19 with you?

20 A Possibly.

21 Q Okay. So at some point your supervisor arrived.
22 And we know from the implied consent it had to be
23 contemporaneously or before you read him this because
24 he witnessed it, right?

25 A He witnessed me reading it, yes.

1 Q Right. So he was there for this?

2 A Yes.

3 Q Now, while you said you smelled the odor
4 alcohol, you don't know when Mr. Thompson ingested any
5 alcohol, do you?

6 A Not to my knowledge, no.

7 Q And you don't know the amount that he ingested,
8 do you?

9 A No.

10 Q It was just at that point in time -- but at that
11 point in time you didn't know for a fact he had
12 ingested alcohol, he just smelled of it?

13 A He smelled of it, yes.

14 Q And his demeanor was not cooperative, which
15 could be a sign of intoxication, correct?

16 A Correct.

17 Q Also it could be a sign of being disoriented
18 from an accident, couldn't it?

19 A Possibly.

20 Q Now, on this advisement of rights form that your
21 supervisor witnessed and you signed, you put Mr.
22 Thompson was unable to sign it because he was
23 medicated?

24 A Yes.

25 Q He was also restrained, but your reasoning was

1 he was medicated, right?

2 A Yes.

3 Q Okay. Also in the course of a regular DUI
4 investigation, and sometimes in the felony DUI
5 investigation, you would like the ability to do some
6 field sobriety tests, correct?

7 A Correct.

8 Q Because it helps take your initial assumption
9 and give you some evidence for or against intoxication,
10 correct?

11 A Yes.

12 Q In this case because, number one, you weren't at
13 the scene you were at the hospital, and because
14 Mr. Thompson was horizontal and restrained --

15 A Yes.

16 Q -- you chose not to do any field sobriety tests?

17 A That's correct.

18 Q Okay. Now, after you read him the implied
19 consent you then went to the blood draw, correct?

20 A Yes.

21 Q And all this happened pretty much as we are
22 talking about, logical order, boom, boom, boom, boom.

23 A Yes.

24 Q And so you pull out your blood draw kit and you
25 fill out that form, correct?

1 A Yes.

2 Q And you are doing the blood because truthfully
3 it's just easier than doing the breath at that point in
4 time, correct?

5 A Yes.

6 Q And before you do the blood draw you have to
7 talk to the medical people, right?

8 A Yes.

9 Q Because one of them will, for the most part,
10 have to draw the blood, right?

11 A Yes.

12 Q So you have got to find a licensed, qualified
13 person to do that?

14 A Yes.

15 Q I'm not saying it's hard to do, but you have got
16 to find one, right?

17 A Yes.

18 Q Okay. And also when you are doing that do you
19 ask them, as the licensed person, don't you ask them if
20 he is capable of taking the breath test?

21 A You can. The problem is he was not medically
22 cleared to leave the hospital. So that was out.

23 Q All right. So even though he didn't, as it
24 turned out, didn't have any injuries, you didn't
25 believe that was an option because he wasn't cleared?

1 A Yes. I didn't find out about his non-injury
2 status until the second time I went back.

3 Q All right. Fair enough. Just so at that point
4 in time you witnessed Ms. Whittington take his blood,
5 right?

6 A Yes.

7 Q And then the process that we put it in your box
8 and sealed it up and send it off?

9 A Yes.

10 Q And you left at that point?

11 A Uh-hum.

12 Q All right. And you said another officer stayed,
13 he was basically a custodian?

14 A Yes.

15 Q Because once you've arrested somebody you just
16 can't leave them, right?

17 A That's correct.

18 Q And since as you said he wasn't cleared to leave
19 yet, somebody had to stay with him?

20 A Yes.

21 Q But you don't remember who that officer was?

22 A I don't.

23 Q That officer actually spent the most time with
24 him, didn't he?

25 A Yes.

1 Q Between the time you left and the time you came
2 back, did Ms. Deas expire?

3 A As far as I know, yes.

4 Q Okay. Let me ask it this way then. Between the
5 -- when you left, you had always intended to return
6 when he was cleared to leave the hospital?

7 A Yes.

8 Q All right. And you were informed by someone
9 that he was about to be released otherwise?

10 A Yes.

11 Q And that's why you went back?

12 A Yes.

13 Q And at 9:00 you go in, he has been restrained,
14 but at that point you are going to put him in cuffs and
15 take him off to the jail?

16 A Uh-hum. Yes.

17 Q And when you arrived he was still interacting?

18 A Yes. He was talking more, sitting up.

19 Q Okay. And when you told him that you had to
20 take him to the jail, did he act like he remembered
21 what you had done before?

22 A He wanted to know what he was arrested for.

23 Q All right. You had already told him previously,
24 right?

25 A Yes.

1 Q At the same time that you read him his Miranda
2 rights?

3 A Yes.

4 Q Okay. And you told him again?

5 A Yes.

6 Q That he was being arrested for felony DUI?

7 A Yes.

8 Q At that point you probably didn't tell him about
9 the death because I don't know if you were certain at
10 that point, but it was going to be one or the other?

11 A Yes.

12 Q You put him in his cuffs and then he told you he
13 had two shots, right?

14 A That's correct.

15 Q He said, I drank two shots, right?

16 A Yes.

17 Q He didn't say, they gave me two shots?

18 A No. He drank two shots.

19 Q Two shots. And low and behold they found two
20 shots in the car, didn't they?

21 A As far as I know, yes, sir.

22 Q You are right. I'm going over what you don't
23 know. I got you. So and then he says that he denied
24 causing the accident, right?

25 A Yes.

1 Q His explanation is somebody cut him off, right?

2 A Correct.

3 Q Okay. Now, that is the extent of your
4 involvement in the case, right?

5 A That's correct.

6 Q You were the guy that collected the stuff at the
7 hospital and had a short period of observation of
8 Mr. Thompson and then took him to the jail?

9 A Yes.

10 Q After he spoke to you there at the hospital,
11 there wasn't any more conversation, correct?

12 A That's correct. As soon as he told me he had
13 the two shots and that the lady cut him off and that
14 she came in his lane, that was the extent of the
15 conversation.

16 Q All right. Were you able to determine what
17 medication he was given at the hospital?

18 A No.

19 MR. SMILEY: Beg the Court's indulgence.

20 Q (By Mr. Smiley) Just a couple more things.
21 When you smell alcohol on someone, fair to say that the
22 closer to the time that somebody drank that alcohol the
23 stronger the smell?

24 A Correct.

25 MR. SMILEY: That's all I've got.

1 THE COURT: Any redirect?

2 MS. COMPTON: Yes, Your Honor, briefly.

3 THE COURT: You may proceed.

4 REDIRECT EXAMINATION

5 BY MS. COMPTON:

6 Q officer Smoak, was taking him to the
7 breathalyzer room an option that day for you?

8 A No.

9 Q And did you have an option to video him while at
10 the hospital?

11 A No.

12 Q Okay. Now, you went over this stuff with
13 Mr. Smiley, but what about Mr. Thompson caused you to
14 change the nature of your investigation that day?

15 A His demeanor towards myself, towards hospital
16 staff; his repetitive questionings of, you know, what's
17 going on, why is he here; is this smell of just -- an
18 abundant smell of alcoholic beverages emanating from
19 himself, his breath. And that led me to believe that
20 alcohol may have been a factor in the collision.

21 Q And in your experience as a paramedic and as a
22 law enforcement officer, was this person intoxicated?

23 A Yes.

24 MS. COMPTON: Nothing further.

25 THE COURT: Any objection to the witness being

1 excused from the state?

2 MS. COMPTON: None from the State.

3 THE COURT: From the defense?

4 MR. SMILEY: No, ma'am.

5 THE COURT: Sir, you're excused.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Counsel approach, please.

8 (Whereupon, a discussion was held at the bench
9 not on the record.)

10 THE COURT: Call your next witness.

11 MR. VOIGT: State calls Alisa Whittington.

12 ALISA WHITTINGTON,

13 after having first been sworn to tell the truth, the
14 whole truth and nothing but the truth testified on her
15 oath as follows:

16 THE COURT: You may proceed.

17 MR. VOIGT: Thank you very much, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. VOIGT:

20 Q Ms. Whittington, how are you employed?

21 A I'm a registered nurse at the Medical University
22 of South Carolina.

23 Q Were you a registered nurse on September 20th,
24 2011 as well?

25 A Yes, sir, I was.

1 Q And on that date were you working at MUSC?

2 A I was.

3 Q Okay. And did you have the occasion to come
4 into contact with one Samuel Thompson?

5 A I did.

6 Q And for what purpose did you come into contact
7 with Mr. Thompson?

8 A I wasn't his primary nurse. There was actually
9 a lot of stuff going on that day and I had been called
10 into the room that he was in to help out.

11 Q What were the sorts of things you helped out
12 with concerning Mr. Thompson that day?

13 A Just keeping him in the bed, he was a little bit
14 agitated. And drawing blood, starting IVs, putting him
15 on the monitor so we could watch his heartbeat, pulse
16 and all that stuff.

17 Q For what purpose did Mr. Thompson receive IVs,
18 if you can remember?

19 A Anybody who comes in in a motor vehicle
20 accident, we have to think that they have lots of
21 injuries. And so one of the ways that we help protect
22 them is to go ahead and put in two IVs. That way if
23 there's a massive blood loss or something like that, we
24 can resuscitate them fluid-wise really quickly.

25 Q Now, these IVs were some sort of saline solution

1 or something to maintain hydration?

2 A Yes, sir. Uh-hum.

3 Q Would the sort of IVs that you put into somebody
4 affect, if you know, their blood-alcohol content?

5 A No. Not to my knowledge.

6 Q And you stated also that one of the things you
7 were asked to do was draw Mr. Thompson's blood?

8 A By the officer that was there, yes.

9 Q Is that something you do in the course and scope
10 of your work on a regular basis?

11 A Not 100 percent regular. But when the occasion
12 arises and there is an officer with a patient, they
13 will ask us to do it.

14 Q Now, in this case was Mr. Thompson under an
15 officer's supervision while he was being treated at the
16 hospital?

17 A Yeah. There was an officer pretty much at the
18 foot of his bed. We have area where the nurses sit
19 where they can watch the patients where the computers
20 are. He was probably about 12 feet away from him.

21 Q Do you recall which officer asked you to draw
22 the blood?

23 A I don't know his name, no.

24 Q And as a result of drawing blood, did you fill
25 out a form of any sort?

1 A I did.

2 MR. VOIGT: May I approach the witness?

3 THE COURT: (Affirmative head shake.)

4 Q (By Mr. Voigt) I'm going to show you what I
5 have marked as State's Exhibit 58. Could you take a
6 look at that? Do you recognize that document?

7 A I do.

8 Q And what is that document?

9 A It's a document that the officer had me sign
10 once I was getting the legal blood-alcohol for him.

11 MR. VOIGT: At this time, for record purposes,
12 the States would offer filed and introduce State's 58.

13 MR. SMILEY: For record purposes, no objection.

14 THE COURT: You may proceed.

15 (Whereupon, State's Exhibit No. 58 was admitted
16 into evidence.)

17 Q (By Mr. Voigt) Now, what is the purpose of you
18 signing forms when someone's blood is drawn?

19 A That way I can make sure I verify that it's the
20 person, and that I have done what I have said I have
21 done.

22 Q Okay. How many vials of blood do you draw?

23 A I'm not sure actually how many I drew for the
24 legal blood-alcohol, to be honest with you, because we
25 draw different ones on every single different patient.

1 So I'm not sure, to be honest with you.

2 Q I'm going to show you what has been previously
3 marked as State's Exhibit 52 and ask you to take a look
4 at that.

5 A That's my signature.

6 Q Just to be clear what we are talking about on
7 State's Exhibit 52, you signed a sticker of some sort?

8 A Uh-hum.

9 Q And is that a vial of blood?

10 A Yes.

11 Q And what do you do with this vial of blood?

12 A Well, after I obtained it from the patient I
13 labeled it and put the seal on it.

14 Q Okay. And who do you give it to?

15 A I handed it to the officer that was standing
16 behind me.

17 Q Was Mr. Thompson cooperative during this
18 process?

19 A Not exactly, no.

20 Q What do you remember about Mr. Thompson during
21 this process, during your interactions with him?

22 A I wasn't the only nurse at the bedside just
23 because we were having a hard time keeping him in the
24 bed. He appeared really agitated, and was kind of
25 rolling around in the bed trying to kind of move a leg

1 over the side rail.

2 So it was pretty much just a couple of us at the
3 bedside maintaining safety by keeping him physically in
4 the bed.

5 Q Did he respond? Was he instructed to stay in
6 the bed and stay still?

7 A Yes.

8 Q Did he appear to listen to those?

9 A He really wasn't following simple commands at
10 that point to a point. He didn't appear to follow
11 every aspect that we asked him.

12 Q In your experience and training as a nurse, do
13 you have experience with intoxicated persons?

14 A I do.

15 Q Do you know -- do you have experience also with
16 people who have suffered head injuries as well?

17 A I do.

18 Q Did you see any indication that Mr. Thompson had
19 suffered a head injury?

20 A I did not at that time, no.

21 Q Did you see any indication during your time with
22 him that he appeared to be intoxicated?

23 A Yes.

24 Q And what did you see?

25 A He was yelling. Like I said, he was agitated in

1 the bed and his speech was slurred. And I could smell
2 the odor of alcohol on him.

3 Q Please answer any questions that Mr. Smiley may
4 have of you.

5 No. Before I let you go. Who did you give the
6 blood to?

7 A The police officer standing right behind me.

8 Q Okay. And did you see what he did with it?

9 A No. To be honest with you, I was still running
10 around doing other things.

11 Q Okay. Thank you. Please answer any questions
12 Mr. Smiley may have.

13 MR. SMILEY: Just a couple of questions.

14 THE COURT: You may proceed.

15 MR. SMILEY: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. SMILEY:

18 Q You said you smelled the odor of alcohol on
19 Mr. Thompson?

20 A Yes, sir.

21 Q You don't know when he consumed that alcohol, do
22 you?

23 A No, I do not.

24 Q You don't know the amount of alcohol that he
25 consumed?

1 A No, I do not.

2 Q In fact, you are uncertain at that point in time
3 that he did consume alcohol?

4 A I smelled it, but yeah.

5 Q Fair enough though?

6 A Sure.

7 Q And in fact there are times that people with a
8 head injury or other injuries can get agitated, true?

9 A That's correct.

10 Q And one of the reasons you want to keep them
11 calm and in their bed is because if they in fact hurt
12 themselves you don't want them moving around, right?

13 A Correct.

14 Q The officer had indicated that he believed
15 Mr. Thompson to be medicated. Do you know for a fact
16 whether you medicated him or not?

17 A Like I said, I wasn't his primary nurse. I had
18 just come in to assist in keeping him safe in the bed.
19 And then I actually ended up drawing the blood-alcohol
20 level, so I can't answer that.

21 I, myself, never medicated the patient.

22 Q Okay. And your interaction with Mr. Thompson
23 was for a period of time that he was in the trauma
24 unit, correct?

25 A Not the entire period that he was there. I was

1 in there 15, 20 minutes maybe.

2 Q Okay. So you had 15 or 20 minutes of
3 interaction with him?

4 A Yes, sir.

5 Q And he was conscious during that time?

6 A Yes.

7 Q Did you ever have a conversation with him?

8 A I don't recall having a conversation with him.

9 Q All right. You drew the blood, gave it to the
10 officer, and you have a recollection that he smelled of
11 alcohol and was agitated?

12 A Yes, sir.

13 Q Thank you.

14 THE COURT: Any redirect?

15 MR. VOIGT: No redirect, Your Honor.

16 THE COURT: Any objection to the witness being
17 excused from the State?

18 MR. VOIGT: None, Your Honor.

19 THE COURT: From the defense?

20 MR. SMILEY: None, Your Honor.

21 THE COURT: Ma'am, you are excused.

22 MR. VOIGT: May we approach?

23 THE COURT: You may.

24 (Whereupon, a discussion was held at the bench
25 not on the record.)

1 THE COURT: You may call your next witness.

2 MR. VOIGT: State calls Mary Phillips.

3 MARY PHILLIPS,

4 after having first been sworn to tell the truth, the
5 whole truth and nothing but the truth testified on her
6 oath as follows:

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION

9 BY MR. VOIGT:

10 Q Ms. Phillips, how are you employed?

11 A I work for the City of Charleston Police
12 Department in the crime scene unit.

13 Q And how long have you worked there?

14 A Approximately six years.

15 Q And what are some of the duties that you have in
16 the department?

17 A I work various types of crime scenes. I handle
18 a lot of our evidence that has to go to the state lab,
19 as well as to the county lab.

20 Q Did you have an occasion to become involved in
21 the investigation of an automobile accident on I-26
22 that occurred on September 20th, 2011?

23 A I did.

24 MR. VOIGT: May I approach the witness, Your
25 Honor?

1 THE COURT: You may.

2 Q (By Mr. Voigt) I'm going to show you what I
3 have marked as State's Exhibit 54.

4 A Okay.

5 Q Do you recognize that photograph?

6 A I do.

7 Q And before I ask you about that, what was your
8 role in the investigation of this particular matter?

9 A I transported a DUI kit up to the state lab in
10 Columbia.

11 Q And where did you get it from?

12 A I picked it up from the police department's
13 evidence.

14 Q Okay. Is that a refrigerated locker?

15 A Yes, sir.

16 Q And how many people have access to that locker?

17 A Just the individuals that work in the evidence.

18 Q Okay. Are you one of those individuals?

19 A No.

20 Q And when you picked it up from the locker, was
21 it sealed?

22 A Yes, sir.

23 Q And what, if anything, did you do with it to
24 indicate that you had touched it?

25 A I placed it into my custody in the computer

1 system to show that it was in my possession until I
2 took it up to SLED.

3 Q And how long was it in your custody before you
4 took it up to SLED?

5 A I leave straight from the station up to SLED, so
6 from the point at which I took it until turning it over
7 to SLED, approximately two hours.

8 Q So you drive straight there?

9 A Correct.

10 Q And do you drive a number of samples at a time,
11 just kind of like a -- do you shuttle some things up
12 there, or do you take them sample by sample?

13 Q I can take numerous cases in one.

14 Q On this particular date do you recall if you
15 took just this, or did you take more than this?

16 A I probably would have taken more.

17 Q And when you get to SLED, where do you take it?

18 A I take it to their evidence people who log it
19 into their evidence system and they take custody of it.

20 Q So that you physically give it to them?

21 A Correct.

22 Q And what indicates -- what does --

23 MR. VOIGT: At this time I would offer State's
24 54.

25 THE COURT: Any objection?

1 MR. SMILEY: No object that 54 being a
2 photograph of an evidence container.

3 THE COURT: Marked and admitted without
4 objection.

5 (Whereupon, State's Exhibit No. 54 is admitted
6 into evidence.)

7 Q (By Mr. Voigt) What does State's 54 show?

8 A It shows a photograph of the outer seal of a
9 SLED bag.

10 Q Okay. And this is -- does it contain your
11 initials?

12 A Yes, sir.

13 Q And why do you have an outer seal on it?

14 A SLED likes all of the evidence taken to them to
15 go into their own packaging. So they take the kit that
16 I took up there and they put it into their own package
17 and I seal it there while I'm there.

18 Q Okay. So when you got there you had a sealed
19 SLED kit?

20 A Yeah, I had the box.

21 Q The box. And then while you are at SLED did you
22 reseal it in their own package?

23 A Yes, sir.

24 Q And then what did you do with it after you
25 resealed it in SLED's package, which is that

1 photograph?

2 A They would have taken custody of it.

3 Q And you leave it?

4 A Correct.

5 Q Did you ever see it again?

6 A No, sir.

7 Q Okay. Please answer any questions that
8 Mr. Smiley may have.

9 THE COURT: You may proceed.

10 MR. SMILEY: Just a couple things.

11 CROSS-EXAMINATION

12 BY MR. SMILEY:

13 Q You actually don't go into the fridge, right?

14 A No, sir.

15 Q Because you go to the evidence custodian, and
16 they give it to you, then you sign for it basically,
17 right?

18 A Correct.

19 Q So somebody else goes in the refrigerator?

20 A Correct.

21 Q You don't have the key to the refrigerator?

22 A Correct.

23 Q All right. So before you received it to take it
24 up to SLED, somebody gave it to you?

25 A Correct.

1 Q Do you remember who?

2 A I would have to look at our chain of custody.

3 Q Fair enough. But someone gave it to you?

4 A Correct.

5 Q And do you just toss it in the car, do you put
6 it on ice, is there any special --

7 A It is placed with all of the other evidence that
8 is going to SLED.

9 Q Even though it had been refrigerated for two,
10 three weeks, you don't refrigerate it on the way up?

11 A No. We have discussed that with SLED and they
12 have said that given the short time limit it's not
13 needed.

14 Q Okay. Just asking. And then so when you get it
15 it's in a box, right?

16 A Correct.

17 Q When you arrived at SLED is when they put this
18 plastic on the outside?

19 A Yes.

20 Q And that's when you do your initials and the
21 date once it has been heat-sealed there?

22 A Correct.

23 Q So they actually get it in a pouch, but that's
24 done there for their purposes?

25 A Correct.

1 Q All right. So the box you got, of course, it
2 wasn't tampered with that you could tell?

3 A Correct. I always check the seals.

4 Q Right. Because they put them in a sealed box,
5 right?

6 A Correct.

7 Q And if the seal had been broken, that would be
8 the first -- you wouldn't take it, you would have
9 stopped right then and there?

10 A Correct.

11 Q And that's the only connection you've got in
12 this case is you are the driver to Columbia, right?

13 A Yes, sir.

14 MR. SMILEY: That's all I've got.

15 THE COURT: Any redirect?

16 MR. VOIGT: No, Your Honor.

17 THE COURT: Any objection to the witness being
18 excused from the State?

19 MR. VOIGT: No, Your Honor.

20 THE COURT: From the defense?

21 MR. SMILEY: No, ma'am.

22 THE COURT: Ma'am, you are excused.

23 Counsel approach for me, please.

24 (Whereupon, a discussion was held at the bench
25 off the record.)

1 THE COURT: Mr. Foreman, ladies and gentlemen,
2 we are going to break a little early today. I have an
3 obligation that I need to attend to this afternoon
4 regarding some court business.

5 During this break please do not discuss the case
6 among yourselves or with anyone else. Please don't do
7 any independent research of any type; that includes
8 anything that could be found on the Internet. I know
9 with all the search engines that are out there it can
10 be tempting, but again, you are the fact finders in
11 this case. And as such, you are bound by your oath and
12 your duty to decide this case only according to the
13 testimony that you hear from the lips of the witnesses,
14 as well as the other evidence that is being introduced
15 during the course of this trial.

16 We are going to resume in the morning at 9:30.
17 You will come directly to your jury room. Also, guard
18 yourselves against any media coverage, if there be any;
19 that means radio, television, Internet or newspaper.

20 Also, please refrain from having any contact
21 with anyone in or about the courthouse. I know you
22 will hear me say this over and over again, but know
23 that it has come from hard-fraught experience. There
24 are cameras everywhere in this building. There are
25 cameras on everybody's cell phone.

1 If I told you the number of times I have had
2 videos without audio shown to me of jurors talking to
3 people in passing, very innocent conversations that
4 because of the heightened nature of litigation people
5 take and extrapolate from that, we would be here all
6 day. Or innocent comments made on Facebook, Instagram,
7 et cetera, about jury service. We have become such a
8 society that deals with technology, it's amazing to me
9 how many people live their lives on Facebook. I don't
10 want anybody to know where I am all the time.

11 But in any event, we seem to have come to that,
12 and you would be amazed by the people that read
13 Facebook. I have had people who are not on jury duty
14 read Facebook comments and call our jury coordinator,
15 that are not even at the courthouse, to comment about
16 somebody making a comment who is on jury duty.

17 So I give you that explanation so that you can
18 know that I'm just not being persnickety about it, it's
19 because we have just had the experiences with it. And
20 I would not want any of you to have to go through the
21 process I have to go through if something like that
22 were to happen.

23 So again, guard yourselves. Even an innocent
24 conversation could be very easily misinterpreted.
25 People look very different outside the courtroom than

1 they look inside the courtroom.

2 If you would leave your notepads in your seats,
3 we will secure those during the recess. We appreciate
4 your patience. You all have been very generous with us
5 today. I hope you all have a wonderful evening. We
6 will see you in the morning.

7 (Whereupon, the jurors exit the courtroom.)

8 THE COURT: Okay. Do we need to take up
9 anything before we recess, from the State?

10 MR. VOIGT: Not from the State, Your Honor.

11 THE COURT: From the defense?

12 MR. SMILEY: No, ma'am.

13 THE COURT: All right. Thank you.

14 (Whereupon, the proceedings in this matter
15 before the Court were adjourned for the evening.)

16 * * * * *

17

18 (COURT REPORTER'S NOTE: The following morning
19 of January 9, 2013, at the start of the proceedings, a
20 change of plea was entered and transcribed in the above
21 matter. All exhibits were returned to the parties.)

22 * * * * *

23

24

25

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
PARTIAL transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

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

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2012-GS-10-01466
01468, 07652

3 STATE OF SOUTH CAROLINA)
4 Plaintiff)
5 V.)
6 SAMUEL THOMPSON,)
7 Defendant.)
-----)

TRANSCRIPT OF RECORD
Change of Plea

8 January 9, 2013
9 Charleston, South Carolina

10
11
12 B E F O R E:

13 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
14
15
16
17

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

19 Mr. Greg Voigt, Assistant Solicitor
20 Representing The State

21 Mr. James W. Smiley, Esquire
22 Representing The Defendant

23 Anne Bouley Meyer, RPR

24 Circuit Court Reporter
25

1 THE COURT: Is the State ready to proceed?

2 MR. SMILEY: We are here to enter a plea, Your
3 Honor.

4 THE COURT: It is my understanding that Mr.
5 Thompson wishes to change his plea from guilt not to
6 guilty; is that correct?

7 MR. SMILEY: Correct, Your Honor.

8 THE COURT: Are there any negotiations or
9 recommendations?

10 MR. VOIGT: No, Your Honor.

11 THE COURT: Does he have any record?

12 MR. VOIGT: He does, Your Honor. In 1982 he was
13 convicted of forgery for which he received a 5-year
14 sentence.

15 THE COURT: A 5 year active sentence, or a 5
16 year suspended sentence?

17 MR. VOIGT: It looks like it was originally
18 suspended and then some part of it was made active.

19 MR. SMILEY: That's correct, Your Honor.

20 THE COURT: Was it a probation violation?

21 MR. SMILEY: No, ma'am.

22 THE COURT: Some part of it was active and then
23 it was suspended to probation?

24 MR. SMILEY: I'm not quite sure, but it became a
25 5 year active sentence. He never did the probation.

1 THE COURT: So he did the 5 years and maxed out.
2 Is that what you're saying?

3 MR. SMILEY: Yes, ma'am. It was a nonviolent.
4 He didn't do a terrible amount of time. So 35 years
5 ago he did go to prison.

6 MR. VOIGT: And then in 1984 he has a public
7 intoxication. That's the sum total of his record.

8 THE COURT: Mr. Smiley, have you explained to
9 your client the charges contained in the indictment,
10 the possible punishment, and his constitutional rights?

11 MR. SMILEY: I have, Your Honor.

12 THE COURT: Do you believe he understands the
13 charge, the punishment and his rights?

14 MR. SMILEY: Yes, ma'am.

15 THE COURT: Does he wish to plead guilty or not
16 guilty?

17 MR. SMILEY: He would like to change his plea to
18 guilty, Your Honor.

19 THE COURT: Do you agree with that decision?

20 MR. SMILEY: I do.

21 THE COURT: To your knowledge, has he ever had
22 to be evaluated to determine his competency?

23 MR. SMILEY: No, ma'am.

24 THE COURT: Sir, I need you to stand for me and
25 raise your right hand to be sworn.

1 THE COURT: Do you swear or affirm the testimony
2 you give will be the truth?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: You are having difficulty with your
5 legs today?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You can be seated.

8 Please state your full name for the record.

9 THE DEFENDANT: Samuel Thompson, Junior.

10 THE COURT: Sir, how old are you?

11 THE DEFENDANT: 62 this year.

12 THE COURT: How far have you gone in school?

13 THE DEFENDANT: Two years of junior college.

14 THE COURT: What type of work do you do or have
15 you done in the past?

16 THE DEFENDANT: I have been doing some
17 pipefitting, plumbing, things like that.

18 MR. SMILEY: Officially he's disabled, Your
19 Honor.

20 THE COURT: Sir, what is the nature of your
21 disability?

22 THE DEFENDANT: Both of my knees.

23 THE COURT: Are you receiving some government
24 assistance for that?

25 THE DEFENDANT: Yes, ma'am. 100 percent disabled

1 from 'Nam.

2 MR. SMILEY: He was honorably discharged for
3 medical reasons, Your Honor.

4 THE COURT: You said from Vietnam, sir?

5 THE DEFENDANT: During the era.

6 THE COURT: I can't hear you.

7 THE DEFENDANT: Yes, ma'am, during that era.

8 THE COURT: Okay. Are you married?

9 THE DEFENDANT: Yes, ma'am

10 THE COURT: How long have you been married?

11 THE DEFENDANT: About 6 years now.

12 THE COURT: You said 6 years.

13 THE DEFENDANT: About 5 or 6, 5.

14 THE COURT: Do you have any children?

15 THE DEFENDANT: Yes.

16 THE COURT: How old are they?

17 THE DEFENDANT: I have 37, 36, them are my
18 stepchildren, but I have one son.

19 THE COURT: And how old is he?

20 THE DEFENDANT: 39.

21 THE COURT: Sir, are you suffering from any
22 mental disabilities or under the influence of any drugs
23 or alcohol?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Have you had any drugs or alcohol or

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medication in the last 72 hours?

THE DEFENDANT: Medication?

THE COURT: Uh-hum.

THE DEFENDANT: Blood pressure pill.

THE COURT: Does that in any way affect your

ability to understand where you are and what you are

doing?

THE DEFENDANT: No, ma'am.

THE COURT: Are you aware of any physical,

emotional or nervous problems that would keep you from

understanding where you are right now or what you are

doing?

THE DEFENDANT: No, ma'am.

THE COURT: On indictment 2012-GS-10-7652, which

is felony driving under the influence, how do you

plead, sir, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Do you understand that that carries

a maximum of 25 years, a minimum of 1 year, and a

minimum fine of \$10,100 and a maximum fine of \$25,100?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that no probation

can be given, and this is a no-parole offense?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that it is

1 likewise classified as violent and serious?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you understand that under South
4 Carolina law those classifications subject you to
5 enhanced penalties?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you understand that if you were
8 to receive two additional serious offenses, you could
9 face life without the possibility of parole?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you understand that the violent
12 classification will bear on how you serve your time?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Sir, you may have discussed parole
15 or parole eligibility with your lawyer or with others,
16 but until you are sentenced, no one can tell you when,
17 if ever, you will be eligible for parole or under what
18 conditions.

19 You should assume that you will serve the entire
20 time in jail you're sentenced to day-for-day. Do you
21 understand?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you understand that as a
24 consequence of this plea your license will be suspended
25 for 5 years?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: I want you to listen carefully to
3 the facts. Mr. Voigt.

4 MR. VOIGT: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 MR. VOIGT: On September 20th, 2011 on I-26
7 eastbound at approximately the Rutledge Avenue exit,
8 Mr. Thompson operated his motor vehicle, a Cadillac.

9 He crossed from the left-hand lane all the way
10 to the right-hand lane, struck the guardrail, crossed
11 back, struck the barrier, and then proceeded on to
12 strike the car of Margaret Deas. Ms. Deas' car then
13 struck the barrier.

14 She suffered severe bodily injuries, it
15 lacerated her liver, died at MUSC several hours later.
16 There was no chance from the time of the accident to
17 the time she passed that she would be resuscitated or
18 saved.

19 As the Court has heard the facts thus far, the
20 court hasn't heard, but may have heard allusion to, is
21 that at the hospital blood was drawn, and that blood
22 was later tested at SLED, in SLED's toxicology
23 department and the blood alcohol reading of that test
24 was .238.

25 I would ask, Your Honor, if I could approach.

1 The family has given me a picture of Ms. Deas. I have
2 shown this to Mr. Smiley.

3 Your Honor, there are three family members who
4 wish to address the Court at the appropriate time. And
5 I have a few more thoughts.

6 THE COURT: As regards to sentencing?

7 MR. VOIGT: As regards to sentencing. But as
8 for the factual allocution, that's it.

9 THE COURT: Sir, do you agree or disagree with
10 the facts?

11 THE DEFENDANT: I agree, ma'am.

12 THE COURT: Do you feel anything needs to be
13 changed or added to the facts?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Sir, are you pleading guilty because
16 you are guilty?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: I want you to listen carefully.
19 When you plead guilty, you give up certain important
20 constitutional rights.

21 Those rights include your right to a jury trial.
22 At a jury trial, you are entitled to a presumption that
23 you are innocent. The State has the burden of proving
24 your guilt beyond a reasonable doubt.

25 You have the right to confront and cross-examine

1 the State's witnesses and call witnesses in your own
2 defense. You would have the right to present any
3 defenses that you may have.

4 If you have made any confessions or other
5 incriminating statements, you'd have the right to
6 challenge those statements.

7 You would also have the right to remain silent.
8 And if you were silent, your silence could never be
9 used against you.

10 Do you understand your rights as I have just
11 explained them to you?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that you are
14 giving up each and every one of those rights?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you understand that if you desire
17 to go forward with the trial and continue the trial,
18 that the Court stands ready to accommodate that
19 request?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Knowing that, do you still wish to
22 enter a plea of guilty?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Have you been satisfied with your
25 lawyers' services.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Have they answered all of your
3 questions?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Done everything you've asked or
6 expected in representing you?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Is there anything more you would
9 have them do that they have not already done on your
10 behalf?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Have you understood your talks with
13 them?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you have any complaints about
16 their services?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Has anyone promised you anything, or
19 held out any hope of a reward to cause you to plead
20 guilty?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Has anyone used threats, coercion,
23 force, pressure, intimidation or duress to cause you to
24 plead guilty?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Are you pleading guilty freely,
2 voluntarily, and of your own will?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Sir, have you understood my
5 questions?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you believe you have had enough
8 time to make up your mind about pleading guilty?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you need to ask me about anything
11 we have been over?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Have you been truthful in your
14 responses?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Do you understand that you have the
17 right to appeal this guilty plea and sentence of the
18 court, but that you must do so in writing within 10
19 days of today?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you understand that if you cannot
22 afford an attorney for that process, that one will be
23 appointed to you at no cost?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: I find that there is a substantial

1 factual basis for the plea; that the defendant has
2 entered the plea freely, voluntarily, knowingly and
3 intelligently; that he has had the advice and
4 assistance of counsel with whom he has indicated to the
5 Court he is satisfied, and I will accept the plea.

6 Bear with me one second.

7 Anything further from the State?

8 MR. VOIGT: Yes, Your Honor. There are a couple
9 of things at this point to address sentencing, Your
10 Honor.

11 THE COURT: I'm sorry, I can't hear you.

12 MR. VOIGT: To address sentencing, Your Honor?

13 THE COURT: Yes, sir.

14 MR. VOIGT: Thank you. I just wanted to make I
15 guess four points. One is in most cases a defendant
16 receives some benefit. Although, unlike the federal
17 system it's not statutorily mandated, I believe that
18 most courts believe that the acceptance of
19 responsibility a mitigating factor in the sentence.

20 We are in the middle of trial. We have had very
21 -- I believe this is a very strong case for the State,
22 and very strong evidence has been presented. But what
23 is blindingly obvious, I think, to a neutral observer
24 would be a reading, a blood-alcohol reading of 238.
25 That is a coming hours after an accident in the middle

1 of the day.

2 An incredible number. Incredible in the oldest
3 -- in the older sense of the term meaning hard to
4 believe. It's hard to believe that someone could drive
5 on our highways in the middle of the afternoon with a
6 blood-alcohol content such that a lesser person might
7 be unconscious or incapacitated.

8 And to know that going in and still not be able
9 to accept that responsibility I think does not reflect
10 well upon this particular defendant.

11 We are in the second day of trial, or third day
12 of trial, depending on how you calculate it, and
13 ordinarily I am not at all concerned with fines in
14 cases like this. The legislature has mandated certain
15 fines, and I never blink when courts suspend those
16 fines in these particular cases.

17 However, we have witnesses who are parked on the
18 side of I-26 right now because they were ready to be
19 here to conduct their examination and to testify as to
20 what they did. We have mobilized all these resources,
21 the Court's resources and the State's resources, and to
22 what end I'm not quite sure.

23 The result here is what should have been the
24 result here. I just feel bad that we had to go this
25 far into the process. And I believe that we have

1 expended resources. And so I would ask the Court to
2 consider not suspending the fine in this case.

3 THE COURT: I don't think you can suspend the
4 fine lower than \$10,100. And by the time the
5 surcharges are added it's almost \$40,000, which nobody
6 ever pays.

7 MR. VOIGT: I understand. I have seen it
8 suspended.

9 THE COURT: I think the statute, unless it says
10 that it can be, it can't be. But it is my
11 understanding that where you have a minimum and a
12 maximum fine under the DUI statutes that you can impose
13 the maximum but you can't suspend it below the minimum.
14 At least that is my understanding on felony DUI.

15 But by the time -- if I were to impose the
16 maximum fine of 25 -- it would be almost \$75,000. So
17 what you usually do is suspend it to the 10,100
18 which ends up being about \$35,000.

19 MR. VOIGT: And I'm not trying -- I'm just
20 suggesting to the Court that I have seen other judges
21 suspend it. And ordinarily I don't blink, I don't
22 think twice about it because this is not a money game,
23 this is not why we are here.

24 Now, the last thing I wanted to address the
25 Court before I ask some of these family members to

1 speak; deterrence is thrown around in the criminal
2 justice system quite a bit. And I have been around the
3 block a few times. And I don't believe you can deter
4 certain types of people in society.

5 The 18-year-old kid with a gun is not going to
6 be deterred by a possible 10-year sentence or a 20-year
7 sentence because he is not thinking through his
8 actions.

9 But as I told the jury at the beginning of this
10 case, felony DUI's touch different parts of our
11 society. And they address -- Mr. Thompson is not the
12 typical person I prosecute. And there are other people
13 at VFW halls right now and in bars like Mr.
14 Thompson who are law-abiding citizens who have very
15 infrequent or no interaction with the law, but
16 nevertheless may have a night or a day like Mr.
17 Thompson had in September involving alcohol.

18 And this is one of the few times where I believe
19 a sentence in this matter would possibly deter somebody
20 else. Because the kind of the person it would deter is
21 someone who is much more likely to obey the law and pay
22 attention to the law; like Mr. Thompson did for the
23 majority his life.

24 So I believe that a sentence -- that a sentence
25 in this case would have a deterrent effect and I would

1 ask the Court to consider something above the minimum,
2 and above in the range of the minimum, to have that
3 sort of deterrent effect.

4 THE COURT: When you say in the range of the
5 minimum, can you quantify that?

6 MR. VOIGT: Judge, frankly the minimum is 1, the
7 maximum is 25. I don't think this is anywhere near the
8 maximum. But by the same token I don't believe it's
9 near the minimal at all.

10 The facts of this particular case, this day, not
11 Mr. Thompson but this day in his life is egregious. It
12 is really -- when you are driving on the highway -- if
13 it's 11 o'clock and you are downtown, or if it's 2
14 o'clock and the bars are letting out, maybe you are
15 more aware, maybe you are aware of your surroundings
16 and you can drive defensively.

17 At 1:45, when the angel of death comes then, you
18 are not prepared. And there is no way Ms. Deas --
19 there is no precaution she could have taken. There is
20 nothing she could have done. She couldn't have tensed
21 at the steering wheel or avoided this in any way. This
22 was her time.

23 And because of the time that this happened,
24 because of the nature that this happened, and frankly
25 because Mr. Thompson refused to see that reality for so

1 long, until today, he has never seen what everybody
2 else can see, what is so blindly obvious to everybody
3 else.

4 I would like more people to see it. And I think
5 that something in the middle of that range is more
6 appropriate. Now, that's just me. I understand that
7 there are all sorts of factors that the Court must
8 weigh.

9 The family has three people that would like to
10 address the Court, Your Honor.

11 THE COURT: Certainly.

12 MR. VOIGT: Please state your name loudly for
13 the court reporter.

14 MS. MIDDLETON: Good morning, my name is Kendra
15 yvette Middleton. I am the granddaughter of the
16 deceased.

17 I would like to say if you were to look in the
18 book of Love 101, the full name of my grandmother would
19 be there. Margaret Louise Deas.

20 I was complimented a lot today for my vest. And
21 my grandmother gave it to me, which shows that she has
22 exquisite taste.

23 My grandmother was the type of female, woman,
24 young lady, even at her age, that was independent. My
25 grandfather died when my mother was 3 years old. And

1 my grandmother took care of her 3 daughters, and raised
2 beautiful, independent, strong young women. And they
3 in turn raised beautiful, independent, strong young
4 women and men.

5 My grandmother took care of the sick whether
6 they were older than her, whether they were younger
7 than her. She put no stipulations on that.

8 I had surgery in 2011, July of 2011 and my
9 grandmother was right by my side. When I opened my
10 eyes from the operation, she was holding my hand.

11 My grandmother was a firm believer that with God
12 all things are possible, and you can't fail without
13 God. My grandmother was the type of woman that
14 believed in God completely. God was all her trust,
15 that was all she knew.

16 Like I forestated [sic], her husband died very
17 early, so she put all her trust in God, and also in
18 what she could do as far as working to take care of her
19 responsibility.

20 Me grandmother was the type of woman that took
21 care of the homeless. If they needed something to eat,
22 she would make me -- and sometimes I didn't want to but
23 she'd say, Kendra, you take this across the street.
24 Okay; being obedient because that's how she taught us
25 to be. I did that. And that in turn built my

1 character to care for others.

2 I just recently had a daughter. My daughter is
3 5 months old. My grandmother would have loved to see
4 my daughter. Because the surgery I had was because I
5 couldn't have children. So I named my daughter after
6 my grandmother. I gave her my grandmother's whole name
7 as a tribute because of the love that she showed to me.

8 In my closing, my grandmother would say, the
9 fear of the Lord is the beginning of knowledge. But
10 fools despise wisdom and instruction. And she would
11 say, better days are coming. Even if you disappointed
12 her, or if you did something wrong, she used the rod of
13 correction and she corrected you, and after that she
14 showed love.

15 So again, if you want to know Love 101, it's
16 Margaret Louise Deas. Thank you.

17 THE COURT: You're welcome.

18 MS. SEABROOK: Your Honor, my name is Camellia
19 D. Seabrook. I am the oldest grandchild of Martha
20 Louise Deas.

21 On Tuesday, September 20th, we senselessly lost
22 our matriarch when Samuel Thompson, Jr., driving under
23 the influence of alcohol, crashed into my grandmother
24 Martha Deas on I-26 causing her to lose control of her
25 vehicle.

1 Although my grandmother was 78 years old, she
2 was still very active socially. A woman in good health
3 considering her age, and a leader and active member of
4 her church, Greater St. Luke, A.M.E.

5 She attended noonday prayer service regularly,
6 and walked Colonial Lake every day. Most importantly,
7 she was the cornerstone of our family. Although we are
8 deeply saddened by our loss, the loss of our matriarch,
9 our eldest family leader, has been the most significant
10 impact.

11 Your Honor, this is not a plea for restitution,
12 for pain and suffering. This is a plea for justice and
13 accountability. Samuel Thompson, Jr., is a grown man
14 responsible for his actions. On September 20, 2011
15 when he consumed alcohol and then got behind the wheel
16 of his vehicle, he knew there were consequences. In
17 spite of that, he decided to take the risk.

18 It was a gamble that didn't pay off. And we,
19 the Clark family, are pleading the maximum punishment
20 to be levied.

21 Your Honor, although I'm sure Mr. Thompson is a
22 nice man, and is remorseful, none of that has anything
23 to do with him being held accountable. The Clark-write
24 family is asking that we do not simply punish Samuel
25 Thompson, Jr., simply because of his wrongdoing. For

1 the death of my grandmother cannot be undone. Instead,
2 let him be accountable. And let the accountability
3 serve as a clear and definite deterrent to him and all
4 who shall see him or hear his story from ever doing
5 such a terrible thing again. Thank you?

6 THE COURT: You're welcome.

7 MS. MIDDLETON: Good morning, Your Honor. My
8 name is Karen Yvette Deas Middleton. I am the youngest
9 daughter of Margaret Deas. I just want to say first of
10 all thank you.

11 In my impact statement that I wrote prior to us
12 even conceiving coming to this place, I spoke about the
13 day that this tragedy occurred in our life. And before
14 that day, that Sunday my mom and I spoke on the phone,
15 and I had just transferred over to new job. I had been
16 employed with Head Start for over 20 years, and our
17 agency changed hands, and everybody's job was up for
18 grabs.

19 And when I told mom, she was like, Karen, we are
20 not going to worry about it. Do what you need to do.
21 Get your application in. You got the job. And every
22 so often when she would talk to me she would say, have
23 you gotten any word yet? Have you gotten any word yet?
24 No, Mom, not yet. You got the job. We are going to go
25 on and do what we need to do.

1 And when I told her that they had rehired me she
2 was so happy, because she instilled in myself and in my
3 two sisters a sense of obligation, a sense of being
4 responsible. Not just for you, but for whoever was
5 around you.

6 And with that being said, she came to my job on
7 that Monday, and that Sunday she was talking to me
8 because I live in Summerville and my job is here in
9 West Ashley area and I have to leave so early in the
10 morning and I get home so late. But nonetheless, she
11 said, Karen, put on some jeans and when you home, you
12 don't have to worry about dinner. Put it in the pot,
13 it will be ready.

14 And when I got on my job, they came my door and
15 said, Ms. Middleton, someone is here for you. And when
16 I looked down the hall it was my mom. And she had a
17 tree.

18 And she said, I brought this for you. She said,
19 come to the car. And I went to the car. And in the
20 car she had a blue stock pot. This is for you to put
21 your beans in. Put those beans on.

22 And the last thing I remembered I said to my
23 mom, Mama, I love you. I love you. And she said,
24 Karen, I love you too, and she gave me the biggest hug.

25 And that's the kind of person she was. She

1 would always help out. No matter what her plight was,
2 she would give from her heart. And that's what she
3 would say, I'm giving this from my heart. And if I
4 can't give from my heart then I don't want to give it
5 all. It didn't matter what it was. She didn't have to
6 know you.

7 She showed up in so many people's live that we
8 weren't even aware of. They would come up to us and
9 say, your mom did this or your mom did that, even
10 though she was mom, she was tough. She was tough. Oh,
11 yeah she was tough, but she was soft.

12 And I said, Lord, I want my mom to live to be
13 100 years old. And I do believe he was going to grant
14 her that because she took care of herself, she took
15 care of her health. She drove herself around. She
16 would say, hey, hey, make sure you look in the back
17 rearview mirror to see what's coming. Make sure you're
18 a conscientious driver. That's what she would always
19 say.

20 Don't get so close up on that car, Karen. You
21 need at least another car length in between. Okay,
22 Mama. Okay. Okay. But that's just the kind of person
23 that she was.

24 But when she came to my job, and little did I
25 know that on that Tuesday my sister would be calling

1 for me from MUSC, when I got home my daughter, Mama,
2 Mema was calling from you. Why she is calling for me?
3 What's going on? Little did I know that our lives
4 would have been changed to the core.

5 I have never been in this place before. And it
6 is the hardest thing that I have ever had to endure. I
7 have been married for 27 years, and that has been hard.
8 But this one has really been very hard. Sleepless
9 nights.

10 But yet I got up and I went to work. And nobody
11 would have known that anything happened unless I said
12 something to them because she says, don't show it on
13 your face. When you go to work, people don't have to
14 know what went on in your home. People don't have to
15 know. They don't have to know.

16 And I try to honor her every day. I miss her so
17 much every day. It's not a day that goes by that I
18 don't think about her and want to pick up that phone
19 and call her.

20 And I miss hearing her voice. For my birthday
21 she would call. And she wasn't the best voice but she
22 would sing happy birthday to you. Christmas was a
23 special time. That was my day, even though it was me
24 and my sisters and my nieces and my nephew, when it was
25 my time it was my time. And she made you feel special.

1 she really did.

2 She would say, I don't have much but what I have
3 you can have too. And that's just the kind of person
4 that our mom was.

5 Why on that day? I ask sometimes and I say,
6 Lord, it's not fair. I wanted her to see my first
7 granddaughter. I wanted her to see my daughter get
8 married in July. But we still have to go on. Every
9 day it's a struggle, it's struggle to go on.

10 But I can hear her say, Karen, be strong. And
11 some days I say, Mama, I don't want to be strong, I
12 miss you so many. I miss you even when you fuss with
13 me. I miss you. I miss you. I know I'm going to see
14 her again.

15 But just her strong hands that went to the Naval
16 Hospital every day and provided for me and my sisters,
17 she didn't have to do it, but she said, this is what
18 your daddy left and this is what I'm going to do. I
19 was proud. I was so proud of my mother.

20 Every day going to Colonial Lake. I was so
21 proud of her. I wish I just had a little more time.
22 But I can hear her saying, it's okay.

23 But she would always say, just take
24 responsibility for what you have done. And that's all
25 we wanted today. I'm sorry we even had to come to this

1 point. But such as it is, I just want justice to be
2 done on today. Thank you.

3 THE COURT: You're welcome, ma'am.

4 MR. VOIGT: Nothing further from the State, Your
5 Honor.

6 MR. SMILEY: May it please the Court.

7 THE COURT: One moment.

8 Yes, sir, Mr. Smiley.

9 MR. SMILEY: May it please the Court, Your
10 Honor.

11 THE COURT: Yes, sir.

12 MR. SMILEY: You and I have known each other a
13 long time, Judge.

14 THE COURT: Time flies, doesn't it?

15 MR. SMILEY: And I am going to ask you to
16 forgive me being emotional today.

17 THE COURT: No, everybody is. This is a hard
18 situation.

19 MR. SMILEY: I usually don't let representation
20 of a person affect me. We got to do what we got to do.
21 I can't say that's the case here.

22 I know Margaret Deas was a wonderful woman. I
23 know that. There are wonderful people in this
24 courtroom. I know the woman you are speaking of. I
25 don't know her personally, but I know that woman.

1 And for me personally, I extend my deepest
2 condolences, and I hope you understand when I'm
3 speaking.

4 This process that we have, Your Honor, makes
5 healing hard. Because the man that I know, Sam
6 Thompson, and his wife and family, it's not the kind of
7 family that wants to be standoffish, that wants to be
8 closed down.

9 From day one they wanted to reach out to the
10 Deas family, but couldn't. Which makes the system
11 really hard. Because as his lawyer I have to tell him,
12 you can't. You can't.

13 And I agree, having a trial in this case is not
14 what anybody wanted. We were put in a position, as his
15 counselor, to tell him what are our options. And in
16 spite of my advice, we began this trial.

17 Sam is 61, almost 62 years old. From Moncks
18 Corner, Your Honor. His family is all from the area.
19 Went in the Army. Jumping out of vehicles, APC, he
20 ruined his knee for life. He was honorably discharged.

21 The last 30 years he has been a model citizen.
22 I wasn't surprised, Your Honor, truthfully in voir dire
23 when Ms. Vivian Wright said that she knew Mr. Thompson
24 and his family from church because I knew that that was
25 an important part of his life.

1 He is taking responsibility, Your Honor.
2 Sometimes it's a hard thing to wrap yourself around,
3 that your actions caused the death of someone else.

4 There are no winners in this case, as you know.
5 One wonderful woman passed. And I will say a wonderful
6 man is going to be punished.

7 His mother, he found out the day of this
8 incident, was being put in hospice. He found out that
9 morning. The night before he and his wife were at home
10 watching a ball game, and he has approximately 5 to 6
11 beers. Miss Carolyn says when she went to the
12 refrigerator she had two or three, there was two or
13 three left.

14 Carolyn, his wife, was having physical therapy
15 that day. And they found out that his mom was being
16 put in hospice, so he took Carolyn to her physical
17 therapy appointment, then went over to see a cousin
18 that was still very close in the family to let him know
19 about his mother being moved to the final stages of her
20 life.

21 He was quite distraught. And has a very hazy
22 memory of the events that led up to the accident
23 because he was quite upset about his mom.

24 After the accident, he was put back in his car,
25 Your Honor, and truthfully, which would have been part

1 of our defense, is he consumed that alcohol -- and I'm
2 not say he wasn't intoxicated at the time of the
3 accident, but his blood-alcohol, as Mr. Voigt has said,
4 would be near comatose. He drank those two shots as he
5 sat in the car shaken up.

6 He didn't realize the damage he had done. He
7 saw Ms. Deas sort of get out of the car when he had
8 gotten out of the car. Nobody really told him what was
9 going on until later that night.

10 You know, in this job I get to see bad things
11 all time. And this one is just about as bad as it
12 gets. Because Ms. Deas was a totally innocent person,
13 who had had a wonderful life, who passed that day. And
14 I have a man who had built his life, his life will
15 never be the same.

16 I am concerned that any sentence you give him is
17 going to put the remainder of his days in prison. As
18 you know he has to do 85 percent. While he's got his
19 physical disabilities, and I wouldn't say that he is in
20 poor health, at his age and given the custody status,
21 what he is facing, it's going to be a very hard
22 journey.

23 I don't know that I necessarily agree about the
24 deterrence, but I understand the family and the
25 prosecutor's request. By the same token, Your Honor, I

1 want you to consider as minimum a sentence as possible.
2 I don't know that Sam is going to make it out of
3 prison. And that makes me quite emotional because I
4 have come to greatly care for my client. The man would
5 change places with Ms. Deas right now if he could.

6 I want to allow him to address the family if you
7 will allow it, and his family to speak. Then I'd like
8 to speak again if I could, Your Honor.

9 THE COURT: (Affirmative head shake.)

10 MR. SMILEY: Sam.

11 THE DEFENDANT: To the Deas family, I'm terribly
12 sorry about this. I wish I could change it, but I just
13 can't. I lost my mother too, and I felt the loss for
14 years. And that is something I have got to live with
15 for the rest of my life.

16 I'm so sorry. And I hope you find it in your
17 heart to please forgive me. I am just trying to carry
18 on. Thank you.

19 MR. SMILEY: His mother died three days after he
20 was put in jail, on that Friday following the incident.
21 And he of course was incarcerated, Your Honor. So he
22 -- while he takes responsibility for Ms. Deas' death,
23 he understands the feeling of loss.

24 I know it's not the same, but he understands
25 that feeling of loss.

1 His wife Carolyn. Carolyn can you talk? Okay,
2 this is his sister.

3 THE COURT: Yes, ma'am.

4 MS. OWENS: My name is Rosa Owens. To the Court
5 and to the Deas family, I just want you to know that on
6 the 20th when the accident happened, we had just taken
7 our mom to hospice because we found out that she was
8 dying. And Sam had gotten upset because he and his
9 Mama were very close.

10 And even while we were in her room and we found
11 out what happened, we took time out to pray for your
12 family.

13 And when I got home, the rest of my heart so and
14 I said, Mama would want me to let the family know that
15 we feel your loss. We know it.

16 And I tried calling. As a matter of fact, I
17 called one of my missionaries at St. Luke. Ms. Jenkins
18 as a matter of fact, and I told her what happened. And
19 I said, I understand she is a member of your church. I
20 would love to tell the family that we are so sorry for
21 what happened.

22 But she called back and she said maybe it's not
23 a good time for you to call. And I'm so sorry.

24 Because I know what it is to lose a mother
25 because our mom died. And it's not to say it's an

1 excuse for what he did; chain-reactions so to speak.
2 Because he was hurting and alcohol doesn't solve any
3 problems.

4 And because of his action, you lost your Mama,
5 and we are so sorry. And because -- we are so sorry,
6 we are asking you please just to say have mercy on him
7 and forgive him and forgive us for what has gone
8 through.

9 And that's all I can say is that we feel your
10 pain because we know what it is to lose a mother. So
11 please, if you please just have mercy upon him for us.
12 We can't undo it but we just ask that you forgive us
13 and have mercy on us.

14 THE COURT: Thank you, ma'am.

15 Yes, sir. This is his wife.

16 MS. THOMPSON: I apologize to you. To the Deas
17 family, my name is Carolyn Thompson. I apologize to
18 you. I apologize I'm truly, truly sorry. You have my
19 deepest sympathy. I apologize. Thank you all.

20 THE COURT: Anything further, Mr. Smiley?

21 MR. SMILEY: Yes, ma'am.

22 I know you've got the hardest job in the world.
23 I humbly ask you for a sentence that I have talked to
24 Sam about. I have spent many nights here with you and
25 I don't know that he can survive more than a three

1 years sentence, Your Honor.

2 And so I'm going to ask you to give him what in
3 any other man, a younger man's life, would be a much
4 shorter time but will be a long, long time for Sam.

5 I know you have to give him 1. As close to that
6 at you can possibly come. I'd ask you to consider a 3
7 year sentence, Your Honor. That's all we have. Thank
8 you.

9 THE COURT: Thank you. Does the State have any
10 response to Mr. Smiley's request of a 3 year sentence?
11 Does the State have any position, or is the State
12 opposed to his request?

13 MR. VOIGT: The State believes that's lower than
14 what this -- The State believe that's too low.

15 THE COURT: Tell me what range the State thinks
16 is appropriate.

17 MR. VOIGT: Without an intimate knowledge of Mr.
18 Thompson's health --

19 THE COURT: What is his health, Mr. Smiley?
20 what is his diagnosis? Or does he have a diagnosis
21 besides high blood pressure?

22 MR. SMILEY: He doesn't have --

23 THE COURT: He is disabled.

24 MR. SMILEY: He has the same infirmaries that
25 any 61-year-old man would have. He visits the VA

1 regularly.

2 He is suffering from a knee injury that has been
3 with him for a while, but has gotten to the point that
4 he has a difficult time walking and standing for long
5 periods of time.

6 As I said, I'm not portraying him to be in poor
7 health, Your Honor. But he is nearly 62, and he has a
8 permanent disability.

9 THE COURT: So the major issue that he has with
10 his health is his knee incapacity; is that correct?
11 And he indicated to me he takes high blood pressure
12 medicine.

13 MR. SMILEY: Yes, ma'am.

14 THE COURT: Okay. Yes, sir, Mr. Voigt.

15 MR. VOIGT: Thank you, Your Honor. I
16 sympathetic to Mr. Thompson's age and his health
17 concerns, however I worry sometimes when we weigh those
18 too heavily that we do a disservice to all those young
19 men and women.

20 I would hate to think we heap time on them
21 because they can do it, and not because it's fair or
22 because it's right. There is some ideal in cases like
23 this, as hard as it is for us to find it, as to what is
24 fair and just.

25 And my sense of it, it's just a sense, is that

1 that range falls somewhere between 7 and 12 years. And
2 there's no scientific method that I used to arrive
3 there. But that's my sense of it, Your Honor.

4 THE COURT: We will be ease for five minutes.
5 (Whereupon, a recess taken.)

6 THE COURT: I have listened very intentionally to
7 everything that has been offered to the Court. And I
8 think what is the most apropos thing that has been said
9 today is that this is a difficult choice among
10 difficult choices.

11 I listened very intently to the family of Ms.
12 Deas, who by all account was a vibrant, giving, loving
13 woman, who just gave immeasurably to her family. and
14 There is nothing, unfortunately, that this Court can do
15 to make them whole.

16 So I want them to know that the Court listened
17 very intently to everything that they presented. And I
18 think Mr. Smiley acknowledge that as well as this Court
19 that I think everybody in this courtroom hearts goes
20 out to them in their loss. I don't think that really
21 my words could ever fully articulate that.

22 So I just want them to the know that the Court
23 has listened very intently and has a great deal of
24 empathy for their loss. I can't say sympathy, I
25 haven't lost a mother. I don't know what that's like.

1 I have a mother who's lost a mother, I know how
2 drastically that affected her.

3 And so I feel their pain, so to speak, as they
4 talked about the loss of someone who gave so
5 immeasurably to them. So I just want them to know that
6 the Court has heard them and has acknowledged that.

7 Likewise, I've listened to the defense and the
8 information they have provided in mitigation regarding
9 the loss of Mr. Thompson's mother, and what may have
10 been a catalyst to the drinking episode on that day
11 which caused him to have a blood-alcohol level well in
12 excess of the .10, having to deal with what was
13 potentially -- well, not potentially, what was the
14 impending loss of his mother having placed her hospice.

15 The Court must weigh all of these thing and of
16 course to be fair to the victims in this case as well
17 as mete out what is appropriate and what has been
18 sought by Mr. Thompson and his family as they have
19 asked this Court to impose a sentence that gives him
20 some level of mercy, so to speak, in sentencing.

21 Mr. -- the defense has asked for a sentence of 3
22 years. The State has indicated that they do not feel
23 that that would be an appropriate penalty, and the
24 Court is inclined to agree with that in light of the
25 fact that a life was lost.

1 However, I do believe that Mr. Thompson is
2 entitled to some level of mitigation for his lack of
3 criminal record. And while it has taken him, as his
4 lawyer said, a bit of time to wrap his head around his
5 culpability in this instance in terms of admitting his
6 culpability, that they sought some level of mitigation
7 for him now accepting his responsibility in this
8 instance.

9 The Court acknowledges that. And I find it
10 appropriate -- as you all know, no portion of the
11 sentence can be suspended nor probation given. Any
12 sentence must a straight sentence and he must serve
13 that at 85 percent.

14 The Court finds it appropriate that he be
15 sentenced to the State Department of Corrections for a
16 period of 9 years. I'm going to impose the minimum
17 fine of \$10,100.

18 As you know, and you all have had the benefit of
19 me discussing that, that while that is \$10,100, by the
20 time all of the assessments and surcharges are added
21 that fine will probably be about \$35,000.

22 I have been doing this now, I'm now well into my
23 17th year on the bench, and I have never seen anybody
24 pay the felony DUI fine. They end up being empty
25 judgments that the clerk's office has to basically keep

1 track of. Because in this economy nobody has -- just
2 don't have the funds pay it.

3 But, nevertheless, I think it is appropriate
4 under these circumstances, and it is mandated by
5 statute that the fine not be suspended, and I'm not
6 going suspend -- I'm not going to impose the maximum
7 because I just think it's an exercise in futility.

8 But I do believe the minimum fine is
9 appropriate.

10 You will get credit pursuant to 24-13-40 to be
11 calculated and applied by the department of
12 corrections. I'm also ordering that ATU if that is
13 available to him, which will give him some level of
14 drug treatment and counseling.

15 Is there anything further for the record from
16 the State?

17 MR. VOIGT: Nothing from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. SMILEY: No, ma'am.

20 THE COURT: Thank you all very much for your
21 time and attention to this case, and your
22 professionalism.

23 (Whereupon, the proceedings in this matter
24 before the Court were adjourned.)

25 * * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
PARTIAL transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

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

--- Anne Bouley Meyer ---

Anne Bouley Meyer, RPR
Circuit Court Reporter

AW 237

STATE OF SOUTH CAROLINA

COUNTY OF

CHARLESTON

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP-10-5744

Plaintiff(s)

VS.

Defendant(s)

(Please Print)

Submitted By: Samuel Thompson

Address:

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- ☐ Contracts
☐ Construction (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case #
20-CP-
☐ Notice/File Med Mal (230)
☐ Other (299)

- ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

- ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- ☒ Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Other (799)

- ☐ Administrative Law/Relief
☐ Reinstatement Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission
(990)
☐ Employment Security Comm (991)
☐ Other (999)

- ☐ Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in-
an Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature: Samuel Thompson

Date: 9-5-013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FORM 5

STATE OF SOUTH CAROLINA

County of CHARLESTON2013-CP-10-5744
IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant

Samuel Thompson Jr.
124650

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2013 SEP 27 PM 1:14
JULIE J. AINSWORTH
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention EVANS CORRECTIONAL INST.
2. Name and location of Court which imposed sentence CHARLESTON COUNTY
100 Broad St. Suite 106 CHARLESTON, SC 29401-2258
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 201109064682012GS1001466

- (b) 89531 FX
- (c) m61 3868
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 1-9-013
- (b) 9 yrs. Violent 85%
- (c) _____
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty YES
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My Attorney didn't RECOMMEND it, he just walked out.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Counsel was Negelent in my defence
- (b) Ineffective Assistance of Counsel
- (c) Plea Not knowingly, voluntarily and intelligently made.
11. State concisely and in the same order the facts which support each of the grounds set out in (10) (Quote)
- (a) Counsel told me Several times PLEADING guilty he
- (b) would get me five years because of my age.
- (c) By waiting on his People, I would get five yrs.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Haven't Return to Court yet
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? _____
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Smiley, James Watson
178 1/2 King St.
 ii. Charleston, S.C.
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. N/A
N/A
 ii. N/A
N/A
 iii. N/A
N/A

19. State clearly the relief you seek in filing this application:

A Reduce Sentence in accordance with the
(5) years I was promise by my attorney

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Samuel Thompson JR., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Samuel Thompson JR.

SWORN to and subscribed before me this 24th
 day of September, 2013.

C. J. [Signature] (L.S.)
 Notary Public

My Commission Expires: Feb. 9th, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Samuel Thompson, JR., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Samuel Thompson, JR.
Applicant

SWORN or affirmed to and subscribed before me this

24th day of September, 2013

C. J. Cooper
Notary Public

My Commission Expires: Feb. 9th, 2020

August 13, 2013

To Whom it may concern.

I, Carolyn, the wife of Samuel Thompson. I was present on the day of his trial when his attorney discussed his sentence with us. Mr. Smiley stated that by pleading guilty he would get him five years tops due to his age.

Sincerely

Carolyn Thompson
Carolyn Thompson

8/3/13 *Theresa S. Gilm*
Community Affairs 4/23/2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2013-CP-10-5744

Samuel Thompson, #124650,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief (PCR) filed September 27, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the March 2012 term of the Charleston County Grand Jury for reckless homicide (2012-GS-10-1466) and felony driving under the influence (2012-GS-10-1468). The Applicant was subsequently indicted for felony driving under the influence in November 2012 (2012-GS1-7652). The Applicant was represented by James Smiley, Esquire.

On January 9, 2013, the Applicant pled guilty to felony driving under the influence under indictment #2012-GS-10-7652. The two remaining indictments were *nolle prossed*. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of nine (9) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel was negligent in my defense.
 - b. Counsel told me several times by pleading guilty he would get me five years because of my age.
2. Involuntary guilty plea.
 - a. Plea not knowingly, voluntarily, and intelligently made.

III.

In this application, the Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges his guilty plea was not knowingly, voluntarily, and intelligently made. The Respondent submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d

391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The Respondent submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Respondent submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such. Accordingly, this allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: ALAN WILSON
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Feb. 10, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SAMUEL THOMPSON, #124650

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

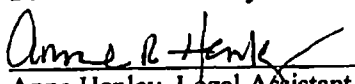
2013-CP-10-5744

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
PO Box 2008
Mt. Pleasant, SC 29465

DATED this 10th day of February, 2014


 Anne Henley, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2) Court of Common Pleas
3 COUNTY OF CHARLESTON) Case No. 2013-CP-10-5744
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SAMUEL THOMPSON, JR.,

Plaintiff,

vs.

STATE OF SOUTH CAROLINA,

Defendant.

Transcript of Record

DATE: February 17, 2015

B E F O R E:

The Honorable Eugene C. Griffith, Jr.

A P P E A R A N C E:

Jeremy Adam Thompson
Attorney for the Plaintiff

Ashleigh Rayanna Wilson and Suzanne H. White
Attorney for the Defendant

Karen V. Andersen, RMR, CRR, CSR
Circuit Court Reporter

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1 MR. THOMPSON: Your Honor, I think we are ready to
2 go.

3 MS. WILSON: May it please the Court, Your Honor.
4 This is Ashleigh Wilson for the State of South Carolina.
5 This is Samuel Thompson vs. The State, Docket No.
6 2013-10-5744.

7 Mr. Thompson was indicted in November 2012 and March
8 2012 for one count of felony DUI, one count of reckless
9 homicide, and a second count of felony DUI. But he ended up
10 pleading to direct indictment for the November 2012 felony
11 DUI, so it became one count of felony DUI.

12 He pled guilty on January 9th, 2013, before Judge
13 Jefferson. He was represented by Joe Smiley and he was
14 sentenced to nine years. He pled guilty in the middle of his
15 trial. He did not file an appeal and he filed his
16 application for post-conviction relief on September 27th,
17 2013. In his application, he alleged ineffectiveness of
18 counsel and challenged the voluntariness of his guilty plea.

19 He is present today and represented by Mr. Jeremy
20 Thompson. The State would just ask that Mr. Thompson state
21 for the record the claims that Mr. Thompson is going to go
22 forward here on the record.

23 THE COURT: All right. Mr. Thompson.

24 MR. THOMPSON: May it please the Court, Your Honor.
25 Makes it a little confusing, both Sam Thompson and I have the

1 same last name, though we are of no relation.

2 For the record, my name is Jeremy Thompson. I do
3 represent Samuel Thompson on this application. He does
4 allege generally that he received ineffective assistance of
5 counsel, a violation of the 6th and 14th amendment rights to
6 the United States Constitution, as well as the corresponding
7 provisions of the South Carolina state constitution in that
8 his plea was not knowingly, voluntarily or intelligently
9 entered.

10 Specifically, Your Honor, we are basically going
11 forward on one specific allegation here today. Sam was
12 informed by his attorney, at least he alleges that he was
13 informed by his attorney that if he pled guilty, he was going
14 to receive a sentence of no more than three to five years,
15 and that's why he stopped his trial and pled guilty. And
16 that had he known that his plea was actually an open plea for
17 1 to 25 years, he would not have pled guilty, he would have
18 continued with his trial.

19 Do you have a -- speaking with the Attorney General,
20 I believe she said she put a copy of the mistrial (sic)
21 transcript in your packet. Do you have it up there?

22 THE COURT: Of the trial transcript?

23 MR. THOMPSON: Not the plea, but the actual trial.

24 MS. WILSON: It is pretty thin. It's in there.

25 THE COURT: Yes, I do.

1 MR. THOMPSON: Great. I have a few extra copies
2 just in case. With that background in mind, Your Honor, I
3 would call Mr. Sam Thompson as his own first witness.

4 THE COURT: Mr. Thompson, come forward and be sworn.

5 SAMUEL THOMPSON,
6 having been duly sworn, testifies as follows:

7 THE CLERK: For the record, if you will please state
8 your name, spelling your last name.

9 THE WITNESS: Samuel Thompson, Jr., T-h-o-m-p-s-o-n.

10 DIRECT EXAMINATION

11 BY MR. THOMPSON:

12 Q. How are you doing this morning, Sam?

13 A. Good. Yourself?

14 Q. Good. I ask that you speak up and speak clearly.
15 The nice lady sitting next to you has to take down everything
16 you are saying. And the judge has to be able to understand
17 what you are saying in order to properly rule on your
18 application. All right?

19 A. All right.

20 Q. Who were you represented by at your trial and your
21 plea?

22 A. Jim Smiley.

23 Q. Did you hire Mr. Smiley or was he appointed to
24 represent you?

25 A. I hired him.

SAMUEL THOMPSON - Direct by Mr. Thompson

1 Q. How soon after you were arrested did you hire
2 Mr. Smiley?

3 A. Well, I think it was matter of couple of a days,
4 because I needed a bond reduction. And he had to take care
5 of the bond reduction and then I had him to, more or less,
6 represent me in the trial at the same time.

7 Q. And so he represented you essentially for the entire
8 span of the case?

9 A. Right.

10 Q. Over the course of that period of time, how many, I
11 would say, substantive meetings did you have with Mr. Smiley?
12 How long did you meet with him for longer than five or ten
13 minutes?

14 A. Approximately three.

15 Q. About three times?

16 A. About three times.

17 Q. And you were out on bond?

18 A. Yes.

19 Q. So would you go to his office and meet with him?

20 A. Well, I would go to the office, but I would meet him
21 downstairs because the one was doing the payment part,
22 because of my knees and walking up the stairs, but I did go
23 up there about three times to have a conversation.

24 Q. During those conversations, did you have any
25 discussion about taking a plea versus going to trial?

1 A. Yeah, he spoke about it.

2 Q. And what kind of, I guess, target range, if you
3 know, were you looking for?

4 A. Well, I was looking for -- he told me, more or less,
5 pleading, more or less, carries 1 to 25. And before I was
6 making a plea, that's during the time when we was in court,
7 he said 3 to 5.

8 Q. Let me backtrack things. So when you had
9 conversations with him at his office --

10 A. At his office.

11 Q. -- your discussions were for how many years?

12 A. Well, actually, it wasn't actually discussions as
13 far as how many years. He was just telling me how many years
14 I could get.

15 Q. How many years you could get?

16 A. 1 to 25.

17 Q. Did you talk about what kind of sentencing range you
18 were looking for in order to accept a plea?

19 A. Yes, 3 to 5.

20 Q. That's what you told him then?

21 A. Yes.

22 Q. Were you ever given an offer to 3 to 5 years?

23 A. Well, during the course of the trial, that's when he
24 brought that back up to me.

25 Q. Prior to trial, were you ever given an offer of that

SAMUEL THOMPSON - Direct by Mr. Thompson

1 nature where you would face 3 to 5 years?

2 A. No.

3 Q. And is that part of the reason why you ended up
4 going to trial?

5 A. Yes.

6 Q. Now, obviously, you ended up in trial. During
7 trial, was there further discussion about a plea?

8 A. Not during -- yes, later on. During the trial, when
9 I was pleading not guilty, he came to me and offered 3 to 5.

10 Q. And when you say he, Mr. Smiley?

11 A. Mr. Smiley, yes.

12 Q. And he told you there was a plea to 3 to 5 years in
13 prison?

14 A. Yes, sir.

15 Q. And were you told that if you plead, you will
16 definitely get 3 to 5 years?

17 A. Yes.

18 Q. It wasn't a possibility?

19 A. No, he didn't mention no possibility. He only said
20 if I plead, 3 to 5.

21 Q. And did you ultimately accept that offer?

22 A. Oh, yes, yes.

23 Q. Now, you obviously understand now that that plea was
24 not to 3 to 5 years?

25 A. Yes, sir.

1 Q. It was to 1 to 25. It was an open plea where you
2 could get anywhere from 1 to 25 years in prison?

3 A. Yes.

4 Q. Would you have accepted that plea -- would you have
5 changed your plea, would you have pled guilty had you known
6 that the plea was still from 1 to 25 years?

7 A. Would I have pled guilty?

8 Q. Right.

9 A. Yes, I would have.

10 Q. You would have pled guilty had you known that you
11 could face up to 25 years?

12 A. No, no, no, no, no, hum-um, hum-um.

13 Q. That's what I was trying to clarify.

14 A. Yes.

15 Q. You thought the plea was 3 to 5?

16 A. 3 to 5, right.

17 Q. If you had known it was 1 to 25, would you have
18 pled?

19 A. No, no.

20 Q. Now, do you recall during the plea where Judge
21 Jefferson asked you questions -- and, Your Honor,
22 specifically here, I'm referring to page 6, lines 18 through
23 21 -- where Judge Jefferson asks you: Do you understand
24 that the offense of felony driving under the influence
25 carries a maximum of 25 years, minimum of 1 year?

SAMUEL THOMPSON - Direct by Mr. Thompson

1 Do you remember her asking you that?

2 A. Yes, yes.

3 Q. And you responded, yes, you understood that?

4 A. Yes.

5 Q. Why did you answer in that way then?

6 A. Well, I knew what that plea said, 1 to 25. And I
7 said, yes, I do know that, because the fact that Mr. Smiley
8 already told me 3 to 5.

9 Q. So when she asked you that question, you did not
10 realize that she was telling you she could sentence you to 25
11 years in prison?

12 A. Well, I realized when she said 1 to 25, that I could
13 be sentenced, that that's what the crime carries, but after
14 Mr. Smiley told me 3 to 5 if I plead, I thought that was it,
15 the deal.

16 Q. So you knew that's what it carried, but that's
17 not -- let me try to -- excuse me. Let me rephrase that.
18 You knew that the crime carried up to 25 years?

19 A. Yes.

20 Q. But you didn't think the plea carried up to 25?

21 A. No, I didn't think the plea carried that.

22 Q. And also, on page 11, lines 18 through 21, do you
23 remember Judge Jefferson asking you if anyone had promised
24 you anything or held out any hope of reward to cause you to
25 plead guilty? Do you remember her asking you that?

1 A. Yes.

2 Q. And do you remember answering that no one had
3 promised you anything?

4 A. Right.

5 Q. Why at that point did you not say, well, Mr. Smiley
6 has told me I'm going to get 3 to 5 years?

7 A. Well, with him being my counselor, I believed what
8 he said. So I didn't want to, you know, say anything else
9 about it because I was looking for 3 to 5. And I thought
10 that deal was already worked out as far as having it on the
11 table that day.

12 Q. So you thought it was all being taken care of and
13 you were going to get 3 to 5?

14 A. I thought it was all taken care of, right.

15 Q. All right. Did you understand that felony DUI
16 resulting in death carries up to 1 to 25 years in prison?

17 A. Yes, sir.

18 Q. And that if you win this proceeding, what -- you are
19 not going to be able to get your 3 to 5 years plea, that what
20 you are doing is that you are overturning the entire case; do
21 you understand that?

22 A. Yes, sir.

23 Q. And you would potentially be going back to a new
24 trial; do you understand that?

25 A. Yes, sir.

1 Q. And what was the sentence you ultimately received?

2 A. Nine years.

3 Q. Do you understand that if you win this proceeding
4 and you are taken back to trial or -- well, let me rephrase.
5 Do you understand if you win this proceeding, the State has
6 no obligation to make you a plea offer?

7 A. Yes.

8 Q. And that if you pled guilty again without a certain
9 plea or if you went on trial and were convicted, you could
10 get more time than what you are currently serving now?

11 A. Yes, sir.

12 Q. Knowing all that, do you still want to go forward
13 with this proceeding here today?

14 A. Yes, sir.

15 Q. Barring some very unusual circumstances, I don't
16 think -- this will probably be the only PCR hearing you are
17 going to get. I think I covered everything we talked about
18 beforehand regarding your allegation. Do you have anything
19 to add? Do you think there's anything the judge needs to
20 know to properly rule on this allegation that I have not
21 covered with you?

22 A. Well, I'm sorry for what happened, but I just
23 understood that I was supposed to receive 3 to 5 years, so
24 that's why I'm back here now.

25 Q. And if you weren't going to get 3 to 5, you would

1 not have pled?

2 A. No, I wouldn't have.

3 MR. THOMPSON: No further questions, Your Honor.

4 THE COURT: Ms. Wilson.

5 CROSS-EXAMINATION

6 BY MS. WILSON:

7 Q. Good morning, Mr. Thompson.

8 A. Good morning.

9 Q. Now, it's your testimony today that Mr. Smiley told
10 you that your conviction you were facing for felony DUI
11 carries a 1- and 25-year sentence; is that correct?

12 A. Yes.

13 Q. And it's also your testimony that when you went to
14 court, the judge could have sentenced you to between 1 and 25
15 years?

16 A. Yes.

17 Q. And it's your testimony also that you told
18 Mr. Smiley that you wanted to accept a sentence between 3 and
19 5 years; is that correct?

20 A. That's what he put on the offer.

21 MS. WILSON: Thank you.

22 THE COURT: Anything else?

23 MR. THOMPSON: Just real briefly, I think the second
24 question I was a little confused by.

25 REDIRECT EXAMINATION

1 BY MR. THOMPSON:

2 Q. She asked you if you understood when you went to
3 court you could get 1 to 25 years? When you answered that
4 question, what were you referring to, for the trial or for
5 the plea?

6 A. Oh, for the trial, for the trial.

7 Q. You knew you could get 1 to 25 --

8 A. Right, right.

9 Q. -- if you were convicted at trial?

10 A. Right.

11 Q. When you went to plead, what did you think you could
12 receive?

13 A. 3 to 5.

14 MR. THOMPSON: No further questions.

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

16 (Whereupon the witness is excused.)

17 MR. THOMPSON: We call James Smiley.

18 JAMES SMILEY,

19 having been duly sworn, testifies as follows:

20 THE CLERK: State your name, spelling your last
21 name.

22 THE WITNESS: James W. Smiley, S-m-i-l-e-y.

23 DIRECT EXAMINATION

24 BY MR. THOMPSON:

25 Q. Mr. Smiley, how are you doing this morning?

1 A. Rushing, but I'm okay.

2 THE WITNESS: Sorry I was late, Your Honor.

3 THE COURT: It's all right.

4 BY MR. THOMPSON:

5 Q. I have just a few questions for you, so hopefully I
6 can rush you back out of here. Do you recall your
7 representation of Sam?

8 A. Very well.

9 Q. And were you hired or were you appointed to
10 represent Sam?

11 A. I was retained right after his arrest.

12 Q. And so, obviously, you represented him for a number
13 of months?

14 A. For the entire course of this case, over a year.

15 Q. How many times would you say that you met with Sam
16 to go over the case?

17 A. He's about right, about three times.

18 Q. And were you ever made any plea offers by the State
19 prior to trial?

20 A. Absolutely not. Mr. Voigt's general policy on
21 felony DUIs, which he handles a whole lot of, he doesn't let
22 you make offers. He lets you plead to the judge.

23 Q. Did you have any discussions with Sam prior to trial
24 about what kind of plea you would be looking for?

25 A. Well, with a straight-up plea, we had come to court

JAMES SMILEY - Direct by Mr. Thompson

1 on two occasions when he was on the guilty plea docket, but
2 it was a straight-up plea. I talked it out with Sam. We
3 were looking at 1 to 25. And he declined that as -- while we
4 didn't have what I would call a great defense, we had talked,
5 and I believe we had a defense.

6 Q. What was that defense going to be?

7 A. Well, it was -- his blood alcohol was .23. He had
8 maintained that he had stopped drinking the night before.
9 This happened in mid-afternoon, about two o'clock in the
10 afternoon, three o'clock. He had maintained that he and his
11 wife had drank some beers the night before at the house
12 watching Monday Night Football. And I had spoken to his
13 wife. They both confirmed that he had quit drinking around
14 midnight and there was a beer or two in the refrigerator. He
15 maintained he didn't drink anything up until the accident.

16 There were two bottles of Schnapps that were found
17 empty in the center console. And Sam conveyed to me that
18 afterwards, he was so shaken up, he was sitting on the side
19 of the road, and SC safety officer told him to get back in
20 the car. And he sat in that car for a period of time, and he
21 said that's when he drank it.

22 And he doesn't even have a real clear recollection
23 of drinking them, because he was so shook up. It was a
24 pretty terrible accident. That was our defense, that the
25 intoxication occurred after the accident, not before.

1 Q. And he was not willing to accept a straight-up plea
2 prior to trial?

3 A. We had talked about it, and we just didn't see that
4 there was any advantage to it. And we had a defense. We
5 didn't -- there was no bargain to the plea, let's put it that
6 way.

7 Q. So you ended up -- you and Sam ended up going to
8 trial. What changed? Why did he end up taking the plea?

9 A. Well, I'm going to have to explain this. And
10 everything that Sam said up here, with the exception of a
11 couple little things, misunderstandings, he pretty much told
12 it right. When we started trial, we began trial -- we had
13 been on the docket two or three times before that. Their
14 docket fell apart. I was prepared, but it was somewhat
15 rushed that day because we thought there was three other
16 cases going. So we got there. We picked a jury. We got
17 started.

18 Judge Jefferson a couples of times had called us
19 back to talk to us about why won't this case plea, kind of
20 thing. I explained to her Sam was in poor health. He's
21 disabled, he's got bad knees, takes all kind of medicine,
22 that I was concerned that any kind of long-term sentence for
23 him was a life sentence, and that Sam, I felt, would take
24 some responsibility if I could tell him he was coming home.
25 And so that was the discussion back in chambers.

JAMES SMILEY - Direct by Mr. Thompson

1 As we -- this was on the first day. And second day,
2 but truly on the second day of trial that this discussion
3 took place, myself, Ms. Hensley, my co-counsel, and
4 Mr. Voigt, in the back, and his co-counsel too, I don't
5 remember off the top of my head, but we went back in chambers
6 and met with Judge Jefferson, who was, while not active in
7 the negotiation, was participating in the conversation. I
8 told her I didn't think Sam could do more than three years,
9 that just health-wise it concerned me.

10 She asked Mr. Voigt what he was looking for. And he
11 said that, you know, he thought significantly more time than
12 I was suggesting, but he had talked to the victims and while
13 they weren't pleased, they thought around seven that they
14 would be -- that's sort of their number, while they weren't
15 putting it out, per se, publicly in talking to the judge in
16 chambers.

17 Judge Jefferson -- and maybe I misunderstood her,
18 but I had a bunch of people back there with me -- said, I can
19 accommodate y'all. So I thought it was fairly clear when I
20 walked out of that meeting that I was asking for three. The
21 prosecutor was satisfied with seven. And with her saying, I
22 can accommodate y'all, I was fairly clear it would be between
23 3 and 7.

24 I went and met with Sam in a room right off the
25 courtroom. We were in trial. She actually didn't hold him

1 in custody, so he was not in custody. Met with him. I met
2 with his wife. I met with a couple of family members. And I
3 explained to them, this is it, we've gone through some
4 testimony that went the way I expected, but wasn't good for
5 us. Didn't kill us, but we are getting ready to have some,
6 like the autopsy in front of the jury, some testimony from
7 family members. The woman that passed away was a very nice
8 lady. I mean, this is a tragedy all the way around. So I
9 said, Sam, if you are going to plead, now is the time to do
10 it, I have an indication that we are somewhere between three
11 and seven. I would guess the worst the judge is going to do
12 is split the baby.

13 Now, I use the word guess, but I'm giving him
14 advice. All right? I've tried -- Your Honor, I've done
15 nothing but criminal defense for 22 years. Probably handled
16 at least 10 to 11 felony DUI cases. It's not like it's my
17 first rodeo. I told him what I expected to happen, that his
18 blood alcohol at .23 was really high, and that I don't know
19 if we can overcome that with our defense. I mean, we could,
20 but we might not.

21 And I felt like if we went to jury and came back,
22 that I had no indication at all where she would be, Judge
23 Jefferson would put him. But I thought I had an indication
24 from the conference in the back, so I explained that to Sam.
25 I told him, now is the time if you are going to do it.

JAMES SMILEY - Direct by Mr. Thompson

1 It was not an easy decision on his part. His wife
2 had some input, family had some input. But he relied on my
3 advice and said, okay, Mr. Smiley, I'm ready to get this
4 done. And we entered the plea.

5 Of course, Judge Jefferson then surprised me very
6 much; gave him nine years. I was quite shocked. It's not
7 what I contemplated. It's not, per se, the advice that I had
8 given my client about whether to enter a plea or not. Now,
9 he was well aware that the sentence carried 1 to 25. And I
10 explained to him that. He knew that's what he was looking
11 at. And he knew that it was not a guarantee. I mean, I
12 explained that to him, that the judge could go anywhere she
13 wanted, but I have an indication this is where we are going
14 to end up. He chose to go forward. We were all shocked.

15 And I was considering filing a reconsideration.
16 Before I left the courtroom, I approached the bench to let
17 her know I was a little concerned that it wasn't what I
18 expected. And Judge Jefferson, who I've known forever, and I
19 consider very -- I give her a lot of deference from the bench
20 because she's a straight shooter, I've always found, said,
21 Mr. Smiley, think of it this way, if we had gone to trial and
22 lost, he would have gotten at least 15, I think I gave him a
23 break by giving him 9.

24 And I didn't get into a discussion that that wasn't
25 my understanding at the bench, but that forestalled me

1 wanting to do a reconsideration, or considering one, because
2 I was concerned that it wasn't going to go well for us at
3 all. So it happened the way it happened. And that's it in a
4 nut shell.

5 I told Sam that day that if this day ever came, this
6 is exactly -- I was going to tell it just the way I saw it.
7 I didn't know what that meant, but that's what happened.

8 Q. So the advice that you gave to Sam was that -- I
9 guess in what terms, realistically, he's looking at 3 to 7,
10 or just how definite a statement was it?

11 A. I gave him the advice that I believed it was in his
12 best interest that if he wanted to avail himself to a lower
13 sentence, which I expected to be no less than three and,
14 quite frankly, no more than seven, now is the time to take
15 it. That was my advice.

16 Now, Sam had not had any record in the last 30
17 years. I was his only conduit or experience to the legal
18 system. I had developed -- while we had only met about his
19 case on three occasions, I had met with Sam at least once a
20 month. I talked to him and his wife on the phone regularly.
21 I've gotten to know Sam. I thought I developed a level of
22 trust. I felt like he trusted me. I tried to give him
23 straight-forward advice.

24 So I know he did not enter that plea without relying
25 on what I told him and what his family members told him who

JAMES SMILEY - Cross by Ms. Wilson

1 listened to what I said. It's one of those that I wish I had
2 just gone through with the trial because when you get in
3 those murky waters of trying to suggest what a judge is going
4 to do, most of the time I'm right, but I was wrong. And
5 sometimes it's better to keep your mouth shut. And it was a
6 hard thing.

7 I was trying to help Sam. I was really concerned
8 about his length of time in prison, and thought at the time
9 it was certainly in his best interest to enter the plea.

10 MR. THOMPSON: Beg the Court's indulgence for one
11 moment.

12 No further questions, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. WILSON:

15 Q. Good morning, Mr. Smiley.

16 A. Good morning, Ms. Wilson.

17 Q. It was your testimony today -- well, let me take one
18 step back before we go there. When you first initially
19 started representing Mr. Thompson, did you go over with him
20 any discovery materials you may have requested or received
21 from the State?

22 A. Certainly. I talked to him about what their
23 evidence was going to be. I don't know, per se, I read it to
24 him. We talked about the public safety officer, talked about
25 the evidence that would be -- and that was a strong piece of

1 evidence. There was an off-duty M.U.S.C. police officer that
2 was in traffic who testified that he came speeding by and
3 changed lanes and made the impact. And I thought that -- and
4 he was the one that had the first contact with Mr. Thompson
5 on the side of the road. I thought that was the best piece
6 of evidence.

7 I thought the follow-up forensic testimony was going
8 to go one way or another. It was going to be mostly
9 observations on the roadside. And, of course, he certainly
10 knew his blood alcohol was .23. We could not come up with
11 what I felt was a comfortable explanation other than the mini
12 bottles that he vaguely remembers consuming after the
13 accident.

14 Q. And now, prior to starting trial, did you talk to
15 Mr. Thompson about the elements of the charges he's facing
16 and what the State had to prove in order to convict him?

17 A. Yes.

18 Q. And just to confirm, when you started talking to
19 Mr. Thompson about pleading guilty in the middle of his
20 trial, did you communicate to him that this was a straight-up
21 guilty plea, there was no offer from the State with regards
22 to sentence?

23 A. I told him that the State wasn't offering anything,
24 but I also conveyed to him the -- what we had talked about in
25 chambers, where I had requested three and the State had told

JAMES SMILEY - Cross by Ms. Wilson

1 the judge, while they weren't asking for a number, that he
2 felt like somewhere around 7 would be -- satisfy the State.
3 So I conveyed that, not so much as a plea offer, but as best
4 as I can do, a forecast of what the judge would do.

5 Q. Did you talk to him about the consequences of
6 pleading guilty and what constitutional rights he would be
7 waiving if he plead guilty?

8 A. Absolutely. This wasn't a quick, easy decision.
9 This was long discussions during trial. The judge stopped
10 things, let us go sit out there. We did it at some length.
11 They allowed the family members to come in and sit down and
12 talk with us too. So it wasn't something where I just turned
13 and said, hey, it's time to go, let's plead and he said,
14 whatever you say. There was a good bit of conversation. It
15 wasn't an easy decision for him either.

16 Q. Essentially, after you spoke with the Court, you
17 kind of conveyed to Mr. Thompson what your belief would be as
18 to what sentence the Court would kind of hand out; is that
19 correct?

20 A. Yes. I conveyed to him what I thought I heard in
21 our pretrial conference.

22 Q. But you didn't give him any guarantee that he would
23 receive a certain sentence?

24 A. No, I couldn't give him a guarantee. I felt very
25 confident about where the plea was going to be, but I

1 certainly didn't give him a promise. I can't make that
2 promise. I'm very careful about those kinds of things.
3 However, when you develop a trust with a client, he's relying
4 on what I told him. And I told him that I thought the best
5 he was going to do was three, and the worst he was going to
6 do was seven.

7 Q. But he was also aware that he could be sentenced
8 between 1 and 25?

9 A. Absolutely.

10 Q. Another thing, did you talk to Mr. Thompson about
11 the fact that once he started the guilty plea process, that
12 the victim's family would have the opportunity to kind of
13 present their voice to the Court?

14 A. Oh, he knew that. He also wanted the opportunity to
15 apologize to the family, something he had wanted to do, but I
16 couldn't let him have any communication before then. Both
17 him and his wife were real torn up over this whole thing.

18 Q. And today, I guess based off of the talks you said
19 you had with Judge Jefferson at the conclusion of his guilty
20 plea about what his possible sentence could have been if he
21 proceeded to trial, you still think it was in his best
22 interest to plead guilty?

23 A. At this point, I can't tell you that. I thought
24 that Sam -- I'm pleased to see that he looks healthy today.
25 I was really concerned when he went into prison of what that

1 was going to mean. And so I don't know what my advice would
2 be at this point. Three to seven, I thought he got home. At
3 nine, it's borderline.

4 And I hate to sound like I'm picking numbers here,
5 Judge, but it's just the way that works out. And I'm trying
6 to give him good advice. I care very much for Sam; still do.
7 I think highly of him. He had a terrible accident. I
8 wish -- I don't know what advice I could give him today
9 differently, I guess is what I would say. I can only tell
10 him what I told him.

11 MS. WILSON: Thank you.

12 THE COURT: Anything else?

13 REDIRECT EXAMINATION

14 BY MR. THOMPSON:

15 Q. Do you believe Sam intelligently entered this plea?

16 A. Based on the information he was given, yes.

17 Q. And that information was best case scenario, three
18 years; worst-case scenario, seven?

19 A. That's what I anticipated the range to be based on
20 my experience and discussions with -- in chambers.

21 MR. THOMPSON: No further questions, Your Honor.

22 THE COURT: You can step down.

23 THE WITNESS: Thank you, Your Honor.

24 MR. THOMPSON: That will be the applicant's case,
25 Your Honor.

1 MS. WILSON: Nothing from the State, Your Honor.

2 THE COURT: I need to read the transcript for the
3 partial trial. I've read the other transcript already. Let
4 me read that and we will notify you what we decide. If you
5 have anything else you want me to consider, I will.

6 MR. THOMPSON: Other than I think it's pretty
7 straight-forward, Your Honor, both Sam and Mr. Smiley
8 testified, I mean, 3 to 5 and 3 to 7 is pretty similar. He
9 thought he would get 5, which is where I think the 5 years
10 comes from, and that the advice -- Sam says he heard
11 definite. Mr. Smiley says pretty sure, essentially. And
12 that's what led to the plea, and that had the correct advice
13 been given, he wouldn't have entered the plea.

14 MS. WILSON: Just briefly in response, Your Honor,
15 it's the State's position that any error in or inefficiency
16 with regard to Mr. Smiley's advice, the State would assert
17 there was none, that the error was cured by the Court's
18 advice to Mr. Thompson on the record prior to.

19 MR. THOMPSON: I did want to argue one little thing
20 about that. I believe Sam actually astutely points out the
21 question that is asked is: Do you understand that that
22 carries a maximum of 25 years, a minimum of 1 year. Judge
23 Jefferson never specifically asked a question, do you
24 understand that I could sentence you up to 25 years and could
25 be sentenced as low as one. The question is -- could be

1 interpreted technically as, do you understand that the
2 penalty, the statutory penalty for the charge is 1 to 25, not
3 that you are looking at 1 to 25. And I believe he at least
4 interpreted that question that way.

5 THE COURT: All right. Well, am I correct if the
6 application is granted, he gets a new trial. And if
7 subsequently convicted, he loses his credits; is that right?

8 MR. THOMPSON: No, Your Honor. I believe he gets
9 all the time that he has spent in prison on this charge, that
10 still counts.

11 MS. WILSON: I don't think that's correct, Your
12 Honor. I don't think we can say for sure if he gets the
13 credit.

14 THE COURT: I thought it was kind of in limbo.

15 MR. THOMPSON: Speaking from personal experience,
16 I've had multiple clients get out, win PCRs, go back and get
17 resentenced, they are given credit for the time that they
18 served.

19 THE COURT: All right. Let me read this stuff and I
20 will let y'all know.

21 (Whereupon, the proceedings are adjourned.)

22

23

24

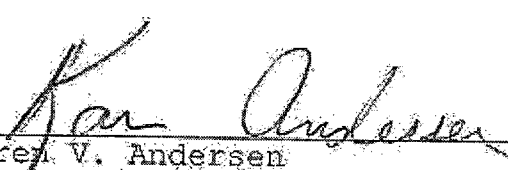
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CERTIFICATE OF REPORTER.

I, Karen V. Andersen, Registered Merit Reporter
certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 29th day of July, 2015, at Charleston, Charleston
County, South Carolina.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

cc
AG
AT
STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Samuel Thompson, #124650,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-10-5744

ORDER OF DISMISSALFILED
2015 JUN 11 PM 12:27
JULIE J. HARRINGTON
CLERK OF COURTPresiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:The Honorable Eugene C. Griffith, Jr.
Jeremy Thompson, Esquire
Ashleigh R. Wilson, Esquire
James Smiley, IV, Esquire
February 17, 2015
Karen Anderson

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 27, 2013. The Respondent made its Return on February 10, 2014. An evidentiary hearing into the matter was convened on February 17, 2015 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Jeremy Thompson, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, James Smiley, IV, Esquire, also testified at the hearing. This Court had before it the Applicant's trial and guilty plea transcripts, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

1
Sept 11/10

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the March 2012 term of the Charleston County Grand Jury for reckless homicide (2012-GS-10-1466) and felony driving under the influence (2012-GS-10-1468). The Applicant was subsequently indicted for felony driving under the influence in November 2012 (2012-GS1-7652). The Applicant was represented by James Smiley, Esquire.

On January 9, 2013, the Applicant pled guilty to felony driving under the influence under indictment #2012-GS-10-7652. The two remaining indictments were *nolle prossed*. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of nine (9) years. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following sole reason:

1. Ineffective assistance of counsel.
 - a. Counsel advised the Applicant that if he pled guilty he would receive no more than a three to five year sentence for felony DUI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

2/2/13 2/10

Summary of the Testimony

The Applicant Samuel Thompson was present and testified he was represented by Jim Smiley. He testified he hired Smiley shortly after arrest to handle his bond hearing. The Applicant testified he went to speak to counsel at his office at least three times. He testified they discussed the difference between a plea and a trial. The Applicant testified counsel told him a guilty plea carries a one to twenty-five year sentence. He testified he told counsel he would accept a guilty plea offer for a sentence between three to five years. He testified there was no plea offer of three to five years so he proceeded to trial.

The Applicant testified he was told by counsel during his trial that if he pled guilty and stopped his trial he would definitely get a sentence between three to five years. He testified he accepted the offer and did not know the plea was to an open sentence between one and twenty-five years.

The Applicant testified he recalls the Court telling him he could face one to twenty-five years at his guilty plea. He testified he realized he could be sentenced to one to twenty-five years, but thought the three to five years counsel told him was definite. The Applicant also testified he recalled telling the Court that he was not promised anything to plead guilty. He testified he did not want to say anything about the three to five year sentence and thought everything was taken care of.

Plea counsel James Smiley, IV was present and testified he was retained to represent the Applicant shortly after arrest. He testified he represented the Applicant over one year and met with him at least three times. Counsel testified he reviewed the discovery materials with the Applicant and they discussed the elements of the charges the Applicant was facing and what the State was required to prove to convict him.

Counsel testified the State made no plea offers to the Applicant. He testified he told the Applicant any guilty plea would be straight up and that the Applicant was facing between one and twenty-five years. He testified they had developed a defense for trial and at the time there was no benefit to be gained by the Applicant pleading straight up.

Counsel testified after the start of the trial, the trial judge called them in to chambers to discuss a guilty plea. Counsel testified he was concerned that any long term prison sentence would be a life sentence for the Applicant. He testified in chambers, he told the trial judge he thought the Applicant could only do three years in prison and the State told the trial judge the victim would be pleased with something around a seven year sentence. Counsel testified the trial judge indicated she could accommodate the range preferred by the Applicant and the State. Counsel testified after speaking with the judge in chambers, he felt the Court would likely sentence the Applicant between the three years he requested and the seven years requested by the State.

Counsel testified he then met with the Applicant and his family. He testified he told them the State was not offering anything and conveyed the conversation he had in chambers with the judge. He testified he told them the trial testimony so far was not good, but would not kill them. He testified he told the Applicant that if he was going to plea, he would guess that the trial judge would lean towards a sentence between three and seven years. Counsel testified he told the Applicant that if he were to be convicted by the jury that he did not know what the sentence of the court would be.

Counsel testified the Applicant was well aware that he was facing between one and twenty-five years. Counsel testified he advised the Applicant that it was in his best interest to avail himself to a lesser sentence and that if he pled now he would likely get three to seven years.

He testified he conveyed to the Applicant what he believed his sentence would likely be. He testified he gave the Applicant no guarantee as to what sentence the judge would give.

Counsel testified the Applicant relied on his advice and pled guilty. He testified he was shocked at the Court's nine year sentence. He testified he considered a motion to reconsider, but when he approached the bench after the plea the Court indicated the Applicant was given a break with the nine year sentence he received.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCF; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance

must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant acknowledged that he was guilty of these offenses. The Applicant told the plea court that he was

satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant claims counsel provided ineffective assistance of counsel by advising the Applicant that if he pled guilty in the middle of his trial he would receive a sentence between three and five years. This Court finds this allegation is without merit. As an initial matter, this Court finds plea counsel's testimony to be credible. This Court does not find to be credible the Applicant's testimony. This Court finds counsel's performance was not deficient. Counsel's advice to the Applicant regarding his belief that the Applicant would receive a sentence between three and seven years if he pled guilty was not improper. In Griffin v. State, the Supreme Court held counsel's performance was not deficient when counsel related his belief to the defendant that the court would give a twenty-two year sentence instead of the thirty year sentence the defendant actually received. 361 S.C. 173, 177, 604 S.E.2d 394, 396 (2004). In both Griffin and the Applicant's case, counsel told the defendant the plea court had indicated it would likely give a certain sentence, counsel made no promises or guarantees as to what sentence the defendant would receive, and the defendant was informed by both counsel and the plea court of the

maximum sentences he could receive. Id. This Court finds the Supreme Court's holding in Griffin dispositive in this matter. The Applicant's wishful thinking regarding sentence does not render his plea invalid or counsel's advice improper. See Wolfe v. State, 326 S.C. 158, 485 S.E.2d 3677 (1997). Therefore, the Applicant has failed to carry his burden of proving counsel's performance was deficient in this regard.

This Court finds further the voluntariness of the Applicant's guilty plea was not affected by counsel's advice regarding sentence. This Court finds the Applicant's guilty plea was entered freely and voluntarily and any alleged misadvice by counsel was cured by the plea colloquy¹. The record reflects the Court advised the Applicant that the charge he was pleading guilty carried a twenty-five year maximum sentence and a one year minimum sentence. (Plea Tran. 6:18-21). The Applicant also told the Court he had not been promised anything to get him to plead guilty. (Plea Tran. 11:18-21). The Court also advised the Applicant of his right to a jury trial, right to remain silent, and right to confront his accusers. (Plea Tran. 6:18-21, 9:21-10:9). The Applicant's plea colloquy reflects an awareness by the Applicant of the potential range of sentences he was facing and an understanding that he had not been promised anything in return for his guilty plea. Therefore, this Court finds the Applicant has failed to carry his burden of proving that but for counsel's advice regarding sentencing he would not have pled guilty. This Court finds further the record reflects the Applicant's guilty plea was entered freely and voluntarily. This application for

¹ See Bennett v. State, 371 S.C. 198, 205 n. 6, 638 S.E.2d 673, 676 n. 6 (2006) (reversing grant of PCR and stating that "even where counsel offers misinformation, this deficiency can be cured where the trial court properly informs the defendant about the sentencing range"); Burnett v. State, 352 S.C. 589, 576 S.E.2d 144 (2003) (reversing grant of PCR and holding that even if plea counsel erroneously informed defendant that his sentence would only be three years, the information conveyed at the plea hearing cured any misconception caused by counsel's alleged inaccurate advice); Moorehead v. State, 329 S.C. 329, 333, 496 S.E.2d 415, 417 (1998) (reversing grant of PCR on the ground that there was no evidence to support the PCR judge's finding that applicant received ineffective assistance of counsel due to erroneous sentencing advice where "any misconception was cured at the plea hearing"); Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997) (reversing grant of PCR and recognizing that in considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing).

post-conviction relief is denied and dismissed with prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that may have been raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

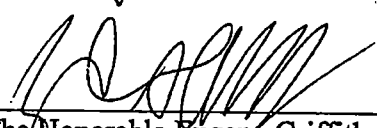
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

⁹
RA 9/10

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 3rd day of June, 2015


The Honorable Eugene Griffith, Jr.
Presiding Judge
9th Judicial Circuit

Newberry, South Carolina.

GKV20110906468

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1115427

ARREST WARRANT NUMBER

89531FX

DATE OF ARREST

September 20, 2011

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

MAR 05 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1001468

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2012

THE STATE

vs.

SAMUEL THOMPSON JR

DOB: [REDACTED]

B/M

Indictment for

Felony Driving Under the Influence

NP

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 5, 2012 the Grand Jurors of Charleston County present upon their oath:

Felony Driving Under the Influence

That in Charleston County, South Carolina, on or about September 20, 2011, while driving a vehicle under the influence of alcohol, drugs or both alcohol and drugs, the Defendant, SAMUEL THOMPSON JR did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle; and such act proximately caused death to Margaret Deas; all in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR

GKV20110906468

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1115427

ARREST WARRANT NUMBER

M613868

DATE OF ARREST

September 22, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 05 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1001466

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2012

THE STATE

vs.

SAMUEL THOMPSON JR

DOB:

B/M

Indictment for

Reckless Homicide

NP

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 5, 2012 the Grand Jurors of Charleston County present upon their oath:

Reckless Homicide

That in Charleston County, on or about September 20, 2011, the Defendant, SAMUEL THOMPSON JR, did, while driving a vehicle with reckless disregard for the safety of others, did proximately cause the death of Margaret Deas.

This is in violation of Section 56-5-2910 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.



GREGORY VOIGT
ASSISTANT SOLICITOR

GKV20110906468

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1115427

ARREST WARRANT NUMBER

DIRIND1797

DATE OF ARREST

November 13, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

NOV 14 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1007652

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2012

THE STATE

vs.

SAMUEL THOMPSON JR

DOB:

B/M

Indictment for

Felony Driving Under the Influence

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

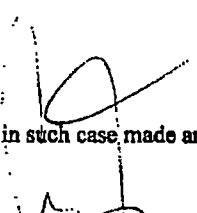
INDICTMENT

At a Court of General Sessions, convened on November 13, 2012 the Grand Jurors of Charleston County present upon their oath:

Felony Driving Under the Influence

That in Charleston County, South Carolina, on or about September 20, 2011, while driving a vehicle under the influence of alcohol, drugs or both alcohol and drugs, the Defendant, SAMUEL THOMPSON JR did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle to wit: improper lane change; and such act proximately caused death to Margaret Deas ; all in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



GREGORY VOIGT
ASSISTANT SOLICITOR