

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Darlington County

Honorable Thomas A. Russo, Circuit Court Judge

VOLUME I OF II

RECEIVED

AUG 17 2016

SC SUPREME COURT

CHARLTON L. HILL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002428

APPENDIX

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THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF DARLINGTON	)	
	)	
THE STATE	)	APRIL 13, 2011
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	2011-GS-16-04422
CHARLTON L. HILL	)	2011-GS-16-01335
	)	2011-GS-16-01336
	)	
DEFENDANT.	)	
_____	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

JOHN HOLT, ESQUIRE
 KENDALL BURCH, ESQUIRE
 PATTI MCKENZIE-PARKER, ESQUIRE
 ATTORNEYS FOR THE STATE

EMILY M. CRAYTON, ESQUIRE
 MATTHEW S. SWILLEY, ESQUIRE
 ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
 Circuit Court Reporter

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-- DAY TWO OF TRIAL --

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	DIRE	DIRECT	CROSS	REDIRECT	RE-CROSS	REPLY
David W. Gainey		129	146			
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--- END OF DAY TWO OF TRIAL ---

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VOIR DIRE

Case No.: 2011-GS-16-04422 Date: April 13, 2011
 Plaintiff: The State Attorney John Holt
 Defendant: Charlton L. Hill Attorney Matthew S. Swilley
 Presiding Judge: J. Michael Baxley Reporter: Pamela Ozment-Cartee

*****		***** STRIKES *****				
Juror #	Juror Name	Race	Sex	Court	State	Defd
107	ROBIN D. PRIOR	B	F		✓	X
036	JOHN P. DEXTER	W	M		✓	✓
097	KENTISSALO P. MITCHELL	B	M		✓	--
078	JOHN A. JOHNSON	W	M		✓	X
108	RICHARD C. PUTNAM	W	M		✓	✓
030	FLOYD COSOM	B	M		✓	✓
105	LEON J. PORTER	B	M		✓	X
027	LISA A. COE	B	F		✓	✓
093	PETER L. MCQUEEN	W	M		✓	✓
059	NORMAN S. UPTON	W	M		✓	X
130	STEPHEN C. THREATT	W	M		X	--
054	WELIE L. GILBERT, III	W	M		✓	✓
072	JONI R. HUDSON	B	F		✓	✓
013	JAMES M. BONNOITT	W	M		✓	✓
063	ANDREW R. HAMILTON, III	W	M		✓	X
042	ELLA J. HARLES FIELDS	B	F		✓	X
116	ARCHIE V. SARVIS	W	M		✓	✓
032	ROBERT L. CURRY	W	M		✓	✓
109	L. BERT RICE	W	M		✓	X
055	BOBBY R. GOOLSBY	W	M		✓	✓
056	LA SHANTA M. GRANT	B	F		✓	✓
	ALTERNATE					
012	KATHERINE M. BLACKMON	B	F		✓	✓
073	BARBARA B. HYMAN	B	F		✓	X
011	KENNETH A. BEAVERS	W	M		X	--
128	JORDAN D. THOMAS	W	F		✓	✓

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1 (Whereupon, this hearing began 10:46 a.m. on
2 Monday, April 11, 2011.)

3 **THE COURT:** All right. Welcome back to the courtroom,
4 ladies and gentlemen. I trust you can hear me. Can you
5 hear me in the back? All right.

6 The way our process works on the criminal side of the
7 Court, the Solicitor, or the elected Solicitor, which Mr.
8 Will Rogers is our elected Solicitor here in Darlington
9 County. Mr. Rogers is in the courthouse, and was in the
10 courtroom as well a moment ago. The Solicitor has charge of
11 the docket. It is the Solicitor's responsibility to work up
12 the cases for prosecution, and then call them for trial.
13 So, Mr. Solicitor, please call your first case for trial.

14 **MR. HOLT:** Thank you very much, Your Honor. At this
15 time the state would like to call The State versus Charlton
16 Lafete Hill. There are several Indictments in this matter,
17 Judge.

18 Indictment 2010-GS-16-01335, charges the defendant with
19 felony driving under the influence.

20 **THE COURT:** Thank you.

21 **MR. HOLT:** 2011-GS-16-00422, is for failure to stop
22 for a blue light, death resulting, Your Honor.

23 2010-GS-16-01336, is for driving under suspension.

24 2011-GS-16-00423, is for reckless homicide.

25 2011-GS-16-00424, is for involuntary manslaughter, Your

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1 Honor.

2 THE COURT: All right. Thank you. All right. Now,
3 we have heard the charges, all of which arise out of an
4 incident that allegedly occurred on January 9, 2010. That
5 is all of which arise out of the same incident. Is that
6 right, Mr. Holt?

7 MR. HOLT: They do, Your Honor.

8 THE COURT: All right. The state has charged
9 Charlton Legate Hill, with five separate charges, and Mr.
10 Swilley, let me ask, do you represent Mr. Hill?

11 MR. SWILLEY: I do, Your Honor.

12 THE COURT: Is Mr. Hill present in the courtroom?

13 MR. SWILLEY: He is, Your Honor.

14 THE COURT: And how does he plea to these charges?

15 MR. SWILLEY: Not guilty on all Indictments, Your
16 Honor.

17 THE COURT: All right. Then thank you. Ladies and
18 gentlemen, you have heard the charges called. You have
19 heard the entrance of a not guilty plea. And thus, the
20 matters are joined for trial.

21 Now, what we are going to do is we are going to qualify
22 now and pick a jury in this specific case. And let me talk
23 to you about this process. We are going to ask a series of
24 questions that have to do with the individual facts, or the
25 allegations within the case. Now, we are going to ask those

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1 of you the jury, and let me just say to you; if we ask a
2 question that you believe you should stand for, please err
3 on the side of standing rather than thinking, well, that
4 might not apply to me. I am not going to answer that
5 question. I don't want to embarrass myself, or whatever you
6 may think. Just please stand up and give us the benefit of
7 whatever the information is you have in your head. I will
8 tell you that the purpose of this process is to ensure that
9 whatever jury we chose is, and I am going to use the term
10 disinterested. When I say that, I don't mean that you don't
11 care. What I mean is, is that you don't have some
12 connection to this case somehow that would make you an
13 inappropriate juror for the case.

14 All right. Now, are we ready then to qualify the jury?
15 What says the state?

16 **MR. HOLT:** We are ready, Your Honor.

17 **THE COURT:** And is the defense ready?

18 **MR. SWILLEY:** We are ready to proceed, Your Honor.

19 **THE COURT:** All right. Let's do this. Mr. Clerk,
20 are you ready to proceed as well?

21 All right. What we are going to do is, let the lawyers
22 and the parties introduce themselves to you first, so that
23 you will know who is involved in this case first of all.

24 Let me just say also when I use the term victim, please
25 understand that I am not saying that a crime has occurred,

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15

1 or that there is a victim. As a matter of fact, I am just
2 simply saying that there is someone here, or an estate, that
3 is a complaining witness, an alleged victim. I am careful
4 with that term, because I want to make sure ladies and
5 gentlemen, that ultimately in this courtroom, it is the jury
6 who decides what happened here, and decides guilt or
7 innocence, and decides what the facts of the case are. Not
8 because I use a particular term in qualification, but
9 because the evidence, which is going to come from this
10 witness stand shows it and proves it.

11 All right. So, Mr. Holt with that understanding,
12 please, if you would, introduce yourself, any co-counsel who
13 will be serving with you. Tell us for whom you work. And
14 give us the name and any other identifying information that
15 you may have about Sylvia Mattox Hill. Go ahead.

16 **MR. HOLT:** Thank you very much, Your Honor. Like I
17 said earlier, my name is John Holt, and I work for the State
18 of South Carolina, and specifically I work for Darlington
19 County. This is Kendall Burch, she is in our office. She
20 is kind of charge of making sure I do everything right. She
21 will be helping me this week. My big boss, the elected
22 official Will Rogers, will probably be here sometime later.
23 And Ms. Patti McKenzie, who is also in the Darlington County
24 Office, I believe has some witnesses on this trial.

25 Ms. Hill was deceased as a result of something. She

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1 was I believe the wife of Mr. Hill, seated over there at Mr.
2 Swilley's table.

3 Is that everything, Your Honor?

4 **THE COURT:** Yes, sir. Thank you, then. Ladies and
5 gentlemen, let's move to the defense side, and let the
6 lawyers introduce themselves as well, and introduce their
7 client the defendant to us, and then we will have questions
8 for you. Go ahead, Mr. Swilley.

9 **MR. SWILLEY:** Thank you, Your Honor. As stated
10 before my name is Matt Swilley. I am with the Public
11 Defender's Office. My co-counsel in this case will be Emily
12 Crayton, also in my office. This is my client, Mr. Charlton
13 Hill, of [REDACTED], [REDACTED].

14 **THE COURT:** All right. Thank you. You may be
15 seated.

16 Now, ladies and gentlemen, let me ask about the lawyers
17 first. I am asking about the lawyers only. Is there any
18 member of this jury panel related by blood or marriage to
19 any of these lawyers who have introduced themselves, or have
20 some close, business, professional, or social connection to
21 them or either now or in the past been represented by them
22 on some other matter. Or, do you have some business
23 connection or other connection to either the Solicitor's
24 Office, or the Public Defender's Office, whether that would
25 be whether you may be a vendor, where you sell them

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1 something. Or you may be a part time --- have some
2 connection to them. If any of that applies to you, please
3 stand.

4 All right. Let's let the record reflect that no one
5 has stood in response to the Court's question.

6 Now, you were introduced to the parties to this case.
7 Not the lawyers, but the parties. And, for the prosecution
8 of course not present, because there is an allegation of a
9 fatality that resulted here, of the Estate of Sylvia Mattox
10 Hill, that is Sylvia Mattox Hill. And then the defendant's
11 name is Charlton Lafete Hill. I want to ask now if there is
12 any member of this jury panel related to either of them by
13 blood or marriage, or think you may have some connection to
14 them, whether it is by business, professional, social
15 association, or even think you know either, the complaining
16 witness, the alleged victim, or the defendant. If any of
17 that applies to you, please stand.

18 All right. Let's let the record reflect that no one
19 has stood.

20 Now, we are going to call out the names of potential
21 witnesses who may appear in the trial of this case. We are
22 going to start with the State. What I would ask you to do
23 ladies and gentlemen, if you are in the courtroom, and you
24 are a witness, then please stand when your name is called,
25 so the jury panel can see you and connect the name with an

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1 individual. Mr. Holt, go ahead, sir. I will let you call
2 them, that's fine.

3 **MR. HOLT:** Thank you very much, Your Honor. The State
4 is prepared to call Eric Hodges. He is a member of the
5 Darlington County Sheriff's Office. Pat Lee is also a
6 deputy with the Darlington County Sheriff's Office.
7 Jeblonski Green --- and this is Mr. Hodges. Russ Harrell,
8 he is also with the Darlington County Sheriff's Office.
9 Deputy Tanner with the Darlington County Sheriff's Office.
10 Wade Gainey is with the South Carolina Highway Patrol, he
11 will be a witness. Michael Cook, he is with the Darlington
12 City Police Department, and he will also be a witness.
13 Michelle Quick is with Darlington EMS. I think she is right
14 over there. Janet Ross is a doctor with Newberry Pathology.
15 She will be here tomorrow. Marla Koontz is a nurse at
16 Carolina Pines Hospital. And Jennifer Brown is a SLED
17 Toxicologist. Ms. Ann Arnold is with the Darlington County
18 Fire and Rescue. She will be a witness here. And I think
19 that is about it.

20 **THE COURT:** All right. Thank you, ladies and
21 gentlemen. Please be seated if you are standing because
22 your name has been called.

23 Now, let me say to you, before we discuss any further
24 witnesses who may appear that the defendant is not required
25 to put up a witness in any case in the criminal court, and

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1 that is because at all times the state has the burden of
2 proof. It never shifts to the defendant to prove innocence.
3 The burden is on the state to prove guilt beyond a
4 reasonable doubt. So the defendant is not required to
5 testify. Not required to speak. Not required to call any
6 witnesses. Not required to put up a case. But I ask you
7 now, Mr. Swilley, while we are talking with this jury, are
8 there any witnesses for whom we should qualify this jury in
9 case there may be additional witnesses other than those
10 called by Mr. Holt. If so, please give us their name.

11 **MR. SWILLEY:** There are, Your Honor. Potential
12 witnesses the defense may call would be Ms. Grace Hill,
13 Timmons ville, South Carolina, Eva Jean Blackmon, Darlington
14 County, and Mackie Tomlinson, Wallace, South Carolina.

15 **THE COURT:** Thank you. You heard the names of three
16 potential additional witnesses. I want to ask you now
17 ladies and gentlemen, when we qualified for the parties that
18 is the complaining witness, or the victim, as well as the
19 defendant I asked you if you even knew them. My question is
20 not so close now with witnesses. What I am looking for is
21 whether you related by blood or marriage, or have some close
22 business, professional, or other association with any of
23 those witnesses. If they are a medical witness, I would
24 like to know if you are a patient of that witness. If any
25 of that applies to you for any of the witnesses names you

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1 have heard, please stand. And, ma'am, would you mind
2 giving us your name and jury number, please?

3 **JUROR:** I am Jamie Watson, juror number 134.

4 **THE COURT:** Okay. And which of the witnesses are you
5 standing for?

6 **JUROR:** Michael Cook, Eric Hodges, my husband is
7 employed with the City of Darlington Police Department.

8 **THE COURT:** Okay. It is not, uncommon in a county
9 the size of Darlington, that someone on the jury panel may
10 know a witness or even know a party. The question is this,
11 would that prevent you from being fair and impartial in this
12 case, in your opinion?

13 **JUROR:** Yes.

14 **THE COURT:** All right. Then based on what you are
15 telling me, then I am going to stand you down for this case.
16 And we will not call you as a juror in this case. So you
17 don't need to answer any further questions with regard to
18 this case. I will just let you be seated now. Thank you,
19 for your candor.

20 All right. Ma'am, please tell me your name and juror
21 number.

22 **JUROR:** Number 51, Loretta Garner. Eric Hodges.

23 **THE COURT:** All right. And how is it you know Mr.
24 Hodges?

25 **JUROR:** Family.

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1 **THE COURT:** You are related to him?

2 **JUROR:** My mother-in-law's nephew.

3 **THE COURT:** Tell me that one more time?

4 **JUROR:** Your mother-in-law's nephew. So you are
5 related by marriage and not by blood?

6 **JUROR:** Yes, sir.

7 **THE COURT:** All right. Ma'am, I tell you what I am
8 going to do. I am going to remove you as well, because you
9 are a relative of the primary state's witness. It is not
10 that you are not capable, but I don't want someone who is
11 reviewing this record to think that we had someone on the
12 jury who may naturally have a predisposition one way or the
13 other. All right. So, you don't need to answer any further
14 questions with regard to this case. Thank you.

15 All right. Is there anyone else now who would stand
16 with regard to any of the witnesses whose names I have
17 called? If so, please stand at this time.

18 All right. Ladies and gentlemen, what I have in my
19 hand are a series of Indictments. You heard the charges
20 called by the Solicitor. And really, whenever someone is
21 charged with a crime, well it is a written document, and
22 what it is, is an Indictment. And arising out of this
23 incident, there are five separate charges, and five
24 Indictments that have resulted.

25 Now, please understand that an Indictment is just a

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1 piece of paper. It is the document by which the Solicitor
2 commences a prosecution against a person. It is not to be
3 accepted as evidence, because it is not evidence. And it is
4 not to be accepted as the truth automatically, because
5 whatever the truth is will be determined by the jury,
6 because the evidence proves it. Not because it says so, on
7 a piece of paper. So, please understand that these are
8 simply allegations.

9 Not only that, the defendant entered a plea of not
10 guilty in this courtroom. You heard it right here, which
11 means that he denies these allegations that are contained in
12 these Indictments. But not only that further, even if the
13 defendant had remained silent, which he has every right to
14 do, and not entered a plea, then the defendant is presumed
15 innocent in this courtroom, unless and until the State
16 proves beyond a reasonable doubt that the defendant is
17 guilty. So, please again understand that these are simply,
18 at this stage, allegations. I am going to give you certain
19 allegations from the Indictments, because I want to ask you
20 if you know anything about this incident.

21 First of all, one of the Indictments is for Felony DUI,
22 which is entitled Driving Under the Influence Resulting in
23 Death. And this Indictment alleges that the defendant did
24 in Darlington County on or about January 8, 2010; so there
25 is the operative date, January 8, 2010, drive a vehicle

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1 while under the influence of alcohol, drugs, or a
2 combination and did an act that is forbidden by law, and or
3 neglected a duty that is required by law in driving that
4 vehicle, which proximately caused the death of Sylvia
5 Mattox. That is the charge for Felony DUI.

6 The defendant is also charged arising out of the same
7 incident with reckless homicide because, the defendant is
8 alleged to have driven a motor vehicle with a reckless
9 disregard for the safety of others, resulting in the death
10 of Sylvia Mattox Hill.

11 The defendant is also charged arising out of the same
12 incident with involuntary manslaughter, which says that
13 allegedly, Charlton Legate Hill did, on the same date and
14 time, unintentionally killed Sylvia Mattox Hill without
15 malice, but while engaged in an unlawful activity not
16 naturally tending to cause death, or great bodily injury, or
17 while engaged in a lawful activity with a reckless disregard
18 for the safety of others.

19 Further, Mr. Hill is charged with driving under
20 suspension, which alleges that on January 8, 2010, the
21 defendant did drive a motor vehicle on the public highway of
22 South Carolina, when his license to drive, his privilege to
23 drive was cancelled, suspended, or revoked, and finally the
24 defendant is charged with again, arising out of the same
25 incident, what is entitled failure to stop for a blue light,

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1 resulting in death alleging that, on January 8, 2010, while
2 operating a vehicle in Darlington County South Carolina the
3 defendant did fail to stop his motor vehicle when signaled
4 to do so by law enforcement vehicle, by means of a siren or
5 flashing light, and that the death of Sylvia Hill resulted
6 when the defendant performed an act forbidden by law, or
7 neglected a duty imposed by law. These are the charges that
8 are levied against the defendant.

9 Now, I ask you ladies and gentlemen --- I tell you this
10 to ask you these questions. Is there any member of this
11 jury panel who has any knowledge about this incident or
12 about this pending case or this prosecution that is going on
13 here today, other than what I have just told you the
14 allegations are, from some other source, whatever that
15 source may be? If you know something about this case,
16 please stand.

17 All right. Ladies and gentlemen, I will tell you that
18 what we do here in the courts of course --- this is a public
19 forum, often we have media coverage, and there may have been
20 --- I say again there may have been some media coverage
21 either of this underlying event, or the prosecution that
22 resulted. I am asking now if there is any member of this
23 jury panel who has seen any media reports concerning this
24 case from any source that that may be; if so, please stand.

25 All right. And then, let's do this. What I am going

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1 to do is get your names, and I am going to talk with you
2 individually. But I am going to wait until the end, because
3 there may be other things that I need to discuss with
4 individuals rather than discussing in open courtroom. And,
5 ma'am in the middle, because I removed your name from this
6 case you may be seated. And you do not need to answer any
7 further questions about this case.

8 And let's go to the left. Please tell me your name and
9 juror number please.

10 **JUROR:** Ms. Mickie Northern.

11 **THE COURT:** All right, ma'am, I am going to let you
12 be seated and we will come back and talk with you at the end
13 of this qualification, alright?

14 And ma'am, please tell me your name and juror number.

15 **JUROR:** Virginia Gainey, 48.

16 **THE COURT:** All right. Thank you, Ms. Gainey.
17 Please be seated, and we will handle that in the same way.

18 Let me say one more thing, or one thing about juror
19 numbers. I realize that when you got here to the courthouse
20 today you had a name, and you probably didn't need a juror
21 number. But the reason we use the juror number system, and
22 I ask you for it is not to demean you, and to treat people
23 as if they were a number and not an individual, but remember
24 we are keeping a record here. If there is some review of
25 this proceeding, whomever we are speaking with in the

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1 audience, we want to be sure that the record appropriately
2 reflects it. Because often times we will have jurors who
3 will have a similar name, and even sometimes have the same
4 name. So, thank you for your courtesy and understanding why
5 I ask you for your juror number.

6 All right. Ladies and gentlemen, of the jury panel, I
7 now want to ask you a little bit about you individually if I
8 may. I want to ask if there is any member of this jury
9 panel, you the juror, have ever been employed full time in
10 law enforcement. If you, yourself in law enforcement,
11 please stand.

12 Ma'am, please tell me your number, ma'am.

13 JUROR: 107.

14 THE COURT: And name?

15 JUROR: Robin Prior

16 THE COURT: All right. And how long has that been
17 since you have worked in law enforcement?

18 JUROR: In 2000.

19 THE COURT: Okay. And what did you do?

20 JUROR: Clerk, office work.

21 THE COURT: All right. And would that previous
22 employment somehow prevent you from being fair and impartial
23 in this case?

24 JUROR: No.

25 THE COURT: Then I find that you are qualified by

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1 that ma'am. Thank you for your response.

2 Is there anyone else now that will stand and say that
3 they themselves have worked in law enforcement?

4 All right. Now I want to know if any of you, members
5 of the jury panel, again excluding those whom we have
6 already removed from this panel, but if there is anyone who
7 has a family member, immediate family member, which I am
8 going to define for you in a moment, who is currently
9 employed in law enforcement --- and what I am looking for
10 when I say immediate family member is this, it is your
11 spouse and your children regardless of where they live, and
12 anyone else who lives in your household. So, again,
13 immediate family members for purposes of this question is
14 spouse and children, wherever they may live, and anyone
15 living in your household. If any of you have an immediate
16 family member just defined who is a full time law
17 enforcement officer, please stand.

18 Let's let the record reflect no one has stood in
19 response to the Court's question.

20 All right. Ladies and gentlemen, I now want to know if
21 any of you may be a member of an organization which has as
22 its purpose the advocacy for, the rights of victims of
23 crime. And let me say immediately, there is absolutely
24 nothing wrong with being a member of such an organization.
25 I just simply would like to know if you are. And these are

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1 organizations such as MADD, which is Mothers Against Drunk
2 Driving, SADD, Students Against Drunk Driving. There is
3 also CAVE, which is Citizens Against Violent Crime. There
4 is also the South Carolina Sheriff's Association and other
5 similar organizations. If you are a member of such an
6 organization, please stand.

7 Let the record reflect that no one stood in response to
8 the Court's question.

9 All right. Ladies and gentlemen, I want to ask you now
10 if there is any member of this jury panel who has ever had
11 an immediate family member, as I have just defined it for
12 you, that has ever been killed or died in an automobile
13 accident. If that applies to you, that is immediate family
14 member who has died in an automobile accident, if that
15 applies to you, please stand.

16 All right. Then ladies and gentlemen, let's come back
17 and I am going to ask you a little bit about this, if you
18 don't mind, we are going to follow up. Let me start back in
19 the middle. Tell me your name and juror number again,
20 please, in brown, right there, yes, ma'am.

21 **JUROR:** Virginia Gainey, 48.

22 **THE COURT:** All right. Just one moment, please. All
23 right. Ms. Gainey, tell me ma'am, which family member
24 passed away?

25 **JUROR:** My one and only brother.

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1 **THE COURT:** All right. And how long ago would this
2 have been, ma'am?

3 **JUROR:** 2003.

4 **THE COURT:** Okay. Is there anything in that incident
5 that would prevent you from being fair and impartial?

6 **JUROR:** Yes, sir.

7 **THE COURT:** All right. Let's do this then. Rather
8 than compromise you, I am going to remove you from this jury
9 panel. You won't need to come up and talk with me later, as
10 I said we would. You don't need to respond to any further
11 questions that I am going to ask about this qualification.
12 All right? Thank you, ma'am for your understanding and
13 thank you for your candor.

14 Ma'am, on the front, please tell me your name and juror
15 number?

16 **JUROR:** Ross Sanders, 115.

17 **THE COURT:** Okay. And tell me ma'am, which family
18 member please?

19 **JUROR:** It was my brother.

20 **THE COURT:** And how long ago was this?

21 **JUROR:** It was in '94.

22 **THE COURT:** All right. Let me ask the question to
23 you a different way. What I am getting ready to ask you is,
24 whether this would prevent you from being fair and
25 impartial? Another way to say the same thing would be this.

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1 Can you, as a juror, listen to the evidence in this case and
2 make your finding as a juror based solely on the evidence in
3 the case and put outside of your mind any other incidents or
4 influence that you have? Can you do that, ma'am?

5 **JUROR:** No.

6 **THE COURT:** No. All right. Well, first of all let
7 me thank you for your candor. I am going to remove your
8 name here as well from this case, and we will not call you
9 as a juror. You don't need to answer any further questions
10 with regard to this case.

11 All right. Then, ma'am, toward the back, please tell
12 me your juror number.

13 **JUROR:** Kimberly Cherry, 24.

14 **THE COURT:** All right. And what family member please
15 ma'am?

16 **JUROR:** My Mom.

17 **THE COURT:** And when was this ma'am?

18 **JUROR:** In '84.

19 **THE COURT:** Would this prevent you, in your opinion,
20 from being fair and impartial in this case somehow?

21 **JUROR:** No, it wouldn't.

22 **THE COURT:** All right. So you are telling me that
23 you would be able to make your decision as a juror based on
24 the evidence in the case, and put out of your mind this
25 incident with your Mom?

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1 **JUROR:** I think so.

2 **THE COURT:** All right. Let me make sure I understood
3 you. You are telling me then that you believe it would
4 prevent you from being fair and impartial?

5 **JUROR:** Yes, sir.

6 **THE COURT:** All right. Let's do this then. Just out
7 of an abundance of caution, rather than putting you in a
8 compromising position, I am going to remove you from this
9 case as a juror, alright. You don't need to answer any
10 further questions about this case, all right. Just be
11 comfortable, please.

12 Sir, on the front, tell me your name and juror number.

13 **JUROR:** 125, Dewey Stokes.

14 **THE COURT:** All right, sir. And tell me what family
15 member?

16 **JUROR:** My mother.

17 **THE COURT:** And how long ago was this, sir?

18 **JUROR:** In '97.

19 **THE COURT:** Is there anything in that incident that
20 would prevent you, in your opinion, from being fair and
21 impartial in this case?

22 **JUROR:** No, sir.

23 **THE COURT:** All right. Then I find that you are
24 qualified by that response, sir. And thank you for that
25 response.

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1 And then sir, please tell me your name and juror
2 number?

3 **JUROR:** I am John Johnson, my number is 78.

4 **THE COURT:** And which family member, sir?

5 **JUROR:** My brother got killed in a car accident in
6 1973, I believe.

7 **THE COURT:** All right. And would that prevent you,
8 hearing the allegations that you have heard in these
9 Indictments, would that prevent you from being fair and
10 impartial in this case, in you opinion?

11 **JUROR:** No, it would not.

12 **THE COURT:** All right, sir. Then I find that you are
13 qualified by your response. Thank you, sir.

14 And then, at the very back, sir, please tell me your
15 name and juror number.

16 **JUROR:** Daniel James, 77.

17 **THE COURT:** Okay. And what family member?

18 **JUROR:** My brother.

19 **THE COURT:** And how long ago was this?

20 **JUROR:** 1995.

21 **THE COURT:** Okay. Would this prevent you from being
22 fair and impartial in a case with these allegations?

23 **JUROR:** Yes.

24 **THE COURT:** All right. Then based on that I am going
25 to remove you from this jury panel. Thank you for your

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1 candor as well. And you don't need to answer any further
2 questions with regard to this case.

3 All right. Now, ladies and gentlemen, I asked whether
4 or not you had an immediate family member who had died in an
5 automobile accident. Several of you have answered. Now, I
6 want to know whether any of you have had an immediate family
7 member who was injured in an automobile accident, which
8 there was an allegation of alcohol or drugs being used that
9 may have caused the accident. So, my question is a little
10 bit different than what I have just asked. I first asked
11 about loss of a family member. Now I am talking about in
12 any automobile accident. Now I am talking about any member
13 in an accident where there has been an allegation of alcohol
14 or drug intoxication? If that has happened to you, please
15 stand.

16 Let the record reflect that no one has responded.

17 I want to ask you now ladies and gentlemen, whether
18 there is anybody in this jury panel, because again, we each
19 bring a different life's history today, who believes that
20 you have lost, or had severely injured a close personal
21 friend due to an automobile accident, which there may have
22 been an allegation of alcohol or drug intoxication that
23 would prevent you, or potentially prevent you from being
24 fair and impartial in a case with these allegations? If
25 that applies to you, I am asking now about close personal

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1 friends; please, stand.

2 All right, ma'am, please tell me your name and juror
3 number.

4 **JUROR:** Cynthia MacArthur, it was a cousin that was
5 injured, and then shortly died because of the injuries.

6 **THE COURT:** All right. And ma'am, how long ago was
7 this?

8 **JUROR:** 1977.

9 **THE COURT:** And let me ask you; would that prevent
10 you, in your opinion, from being fair and impartial in this
11 case in your opinion?

12 **JUROR:** Yes, it would.

13 **THE COURT:** All right. Then based on the candor of
14 your answer, I am going to remove your name as well from
15 this jury panel. You don't need to respond to any further
16 questions. Thank you.

17 All right. Ma'am, please tell me your name and juror
18 number.

19 **JUROR:** Angie Harrison, number 65. It was my first
20 cousin, and she died.

21 **THE COURT:** And how long ago was this?

22 **JUROR:** 2010.

23 **THE COURT:** Okay. Would that prevent you from being
24 fair and impartial in this case in your opinion?

25 **JUROR:** Yes, sir.

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1 **THE COURT:** I find that you should be disqualified.
2 I will let you sit down. You don't need to answer any
3 further questions with regard to this case. Thank you again
4 for the honesty of your response.

5 All right. Just one moment, please.

6 **(PAUSE.)**

7 **THE COURT:** All right. Ladies and gentlemen, we
8 really know nothing of the specifics of the facts of this
9 case. We have heard some allegations. We have heard those
10 allegations denied.

11 I want to ask you this now. Again, several of you we
12 have removed from this case, so there is no need for you to
13 respond. But what I want to know now is, is there anyone
14 who believes that by reason of personal belief, or moral
15 conviction, religious understanding, or whatever it may be,
16 that you would not be an appropriate juror with a case of
17 these allegations? Again, I am not going to ask you
18 questions about it, or somehow confront or question you, I
19 just simply wish to know this.

20 Is there any member of this jury panel who believes in
21 your own personal mind, for whatever reason personal to you,
22 that you would not be an appropriate juror in this case,
23 because you are concerned that you could not be fair and
24 impartial to both sides of the case? If that applies to
25 you, please stand.

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1 Let's let the record reflect that no one has stood in
2 response to the Court's question.

3 Now, are there further questions from the jury panel
4 from the state with regard to qualification?

5 **MR. HOLT:** There are none, Your Honor.

6 **THE COURT:** And now from defense? .

7 **MR. SWILLEY:** There are none, Your Honor.

8 **THE COURT:** All right. Just one moment, please.

9 **(PAUSE.)**

10 **THE COURT:** All right. Ladies and gentlemen, there
11 was one from your group, Juror Number 101 that had a matter
12 I had asked to come forward and discuss privately with the
13 Court at the Court reporter's stand, with the lawyers here
14 as well. And let me ask --- I just asked you a question if
15 there was anybody who felt that they would not be an
16 appropriate juror for whatever reason, and nobody responded.
17 I am going to give you the same opportunity if you have some
18 issue that you want to discuss privately at the Court
19 reporter's stand, with the Court. The lawyers will be with
20 me, but it won't be in the open courtroom. Is there anyone
21 other than juror number 101, who would like to come forward
22 to discuss an issue about this case? Please stand at this
23 time so we might see who it might be.

24 All right. Let the record reflect that no one else has
25 responded. So, ma'am, juror number 101, would you please

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1 come forward and let me talk with you right here at the
2 court reporter's stand?

3 Ma'am, please come forward. Tell me your name please.

4 **JUROR:** Mickie Northern.

5 **THE COURT:** Tell me what it was that you had to
6 discuss that I asked you to come up and discuss privately?

7 **JUROR:** I'm sorry, and I am getting upset.

8 **THE COURT:** Take your time.

9 **JUROR:** I just can't tolerate this. She has ---

10 **MADAME COURT REPORTER:** I'm sorry, I can't hear her.

11 **THE COURT:** Okay. She said that she had an ex-son-
12 in-law that had a drinking problem, DUI problem, and she
13 just can't tolerate.

14 And let me say, we all bring a different life history.
15 And I am sorry that you had that experience. What I am
16 going to do is I am going to remove you from this jury so
17 you will not be put in this position to be compromised.

18 **JUROR:** Thank you.

19 **THE COURT:** Are you going to be all right, ma'am?
20 What I am going to do is ask you to call back after 6:00. I
21 don't know what the message will be. We are going to let
22 you go. If you want to go out the back door that will be
23 fine. Thank you, but after 6:00 tonight, please be sure to
24 call the juror number.

25 (PAUSE.)

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1 **THE COURT:** All right. Thank you for your patience,
2 ladies and gentlemen, while we spoke with one of your
3 colleagues.

4 And let me tell you a little bit about this process.
5 I am going to stand up so that everybody will be able to see
6 and hear me. Can you hear me in the back, ladies and
7 gentlemen?

8 Is the state ready to strike the jury?

9 **MR. HOLT:** The state is, Your Honor.

10 **THE COURT:** Is the defense ready?

11 **MR. SWILLEY:** We are ready, Your Honor.

12 **THE COURT:** How many strikes are claimed by the
13 state?

14 **MR. HOLT:** Five, Your Honor.

15 **THE COURT:** And how many claimed by the defense?

16 **MR. SWILLEY:** Your Honor, I do not have that statute
17 in front of me, but I believe it is ten.

18 **THE COURT:** All right. Very good. Any objection to
19 the defendant's claim of ten strikes?

20 **MR. HOLT:** There is not, Your Honor.

21 **THE COURT:** All right. So the strikes will be five
22 for the state and ten for the defendant.

23 This is what is getting ready to happen, ladies and
24 gentlemen. We have the names of those who are still on the
25 list, and they are being randomized by a computer program

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1 that is then going to print out a list for the clerk, in no
2 particular order. And the clerk is going to call the names
3 of the jurors' one at a time. Now, when your name is
4 called, please stand where you are. And both sides of the
5 case are going to have an opportunity to either seat you or
6 excuse you.

7 Now, let me just tell you. In some courts, many of the
8 judges ask the jurors to come up out of your seat, come
9 stand up here in front of everybody for this decision to be
10 made. Well, I don't do that, because it is kind of
11 invasive. I am going to let you just --- I guess the point
12 is, it is a long walk back if you have not been chosen by
13 the jury. So, rather than go there we are going to let you
14 stand where you are, and let the lawyers make the decision
15 of whether they are going to seat you or excuse you.

16 Now, let's talk about that. Here is what is actually
17 going to happen in the practical sense of it. You are going
18 to stand up. They are going to be talking among themselves.
19 You know they are talking about you. We know they are
20 talking about you. It is a little bit psychologically
21 uncomfortable. But they are going to make a decision as to
22 seat you or excuse you. And whatever your reaction is to
23 that, or whatever the clerk instructs you to do, whether it
24 is 'come join us in the jury box, or just be seated, please
25 do so. I can't let you go immediately, because we may have

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1 to re-strike the jury for some reason that is even unknown
2 at this moment. And so, please understand it is a little
3 bit psychologically uncomfortable but it is a system that
4 has stood us well in this country for over two hundred years
5 that we are going to use.

6 Now, the last thing that I want to say to you is this.
7 Don't be offended if you are not chosen. In fact, it may
8 suit you fine if you are not chosen. But I will say this to
9 you about that. You might not be chosen because of some
10 response here in the courtroom, something written on the
11 jury form that you returned. Some strategy or tactic that
12 is known by the lawyer only in the case. But it is not ---
13 I want to tell you again, it is not because of your race, or
14 your sex. It is against the law to strike for those two
15 reasons, and both sides have an opportunity to challenge the
16 other side's strike if it appears that there is a race or
17 gender bias strike. So it is not for those reasons if you
18 are not chosen.

19 I would also tell you that nobody will be sequestered
20 in this trial. We are going to go home at the end of the
21 day when you are supposed to. I can't tell you how long the
22 trial is going to last, but I will tell you this, it is not
23 going to go beyond the week. This is a trial that will be
24 here in the courtroom, and take perhaps two to three days.
25 I can't give you any more specifics in that at this point,

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1 because I simply don't know. But I just didn't want you to
2 worry about what your status was as jurors if you are chosen
3 or not chosen. Please respond to the clerk's call. And
4 counsel, if you want to turn your back to me, and sit facing
5 the jury, please do so. It may make the process a little
6 easier for you. Go ahead, sir.

7 **CLERK OF COURT:** Juror Number 107, Robin Pryor. What
8 saith The State?

9 **MR. HOLT:** Please present Ms. Pryor.

10 **CLERK OF COURT:** What saith the defense?

11 **MR. SWILLEY:** Please excuse this juror from the
12 trial of this case.

13 **CLERK OF COURT:** You have been excused from the
14 trial of this case. Please have a seat.

15 Juror Number 36, John Dexter. What saith The State?

16 **MR. HOLT:** Please present Mr. Dexter.

17 **CLERK OF COURT:** What saith the defense?

18 **MR. SWILLEY:** Please swear Mr. Dexter.

19 **CLERK OF COURT:** Sir, please come forward and have a
20 seat in the jury box.

21 Juror Number 97, Kentissalo Mitchell. What saith The
22 State?

23 **MR. HOLT:** Please excuse Mr. Mitchell from the trial
24 of this case?

25 **CLERK OF COURT:** You have been excused from this

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1 case, Mr. Mitchell. Thank you.

2 Juror Number 78, John Johnson. What saith The State?

3 **MR. HOLT:** Please present Mr. Johnson.

4 **CLERK OF COURT:** What saith the defense?

5 **MR. SWILLEY:** Please excuse Mr. Johnson from the
6 trial of this case.

7 **CLERK OF COURT:** You have been excused in this case,
8 Mr. Johnson. Thank you.

9 Juror Number 108, Richard Putnam. What saith The
10 State?

11 **MR. HOLT:** Please present Mr. Putnam.

12 **CLERK OF COURT:** What saith the defense?

13 **MR. SWILLEY:** Please swear Mr. Putnam.

14 **CLERK OF COURT:** Please come forward and have a seat
15 in the jury box for me, please.

16 Juror Number 30, Floyd Cosom. What saith The State?

17 **MR. HOLT:** Please present Mr. Cosom.

18 **CLERK OF COURT:** What saith the defense?

19 **MR. SWILLEY:** Please swear Mr. Cosom.

20 **CLERK OF COURT:** Please come forward and have a seat
21 in the jury box for me please, Mr. Cosom.

22 Juror Number 105, Leon Porter. What saith The State?

23 **MR. HOLT:** Please present Mr. Porter.

24 **CLERK OF COURT:** What saith the defense?

25 **MR. SWILLEY:** Please excuse Mr. Porter from the

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1 trial of this case.

2 **CLERK OF COURT:** You have been excused, Mr. Porter.

3 Thank you.

4 Juror Number 27, Lisa Coe. What saith The State?

5 **MR. HOLT:** Please present Ms. Coe.

6 **CLERK OF COURT:** What saith the defense?

7 **MR. SWILLEY:** Please swear Ms. Coe.

8 **CLERK OF COURT:** Please come forward and have a seat
9 in the jury box for me please, Ms. Coe.

10 Juror Number 93, Peter McQueen. What saith The State?

11 **MR. HOLT:** Please present Mr. McQueen.

12 **CLERK OF COURT:** What saith the defense?

13 **MR. SWILLEY:** Please swear Mr. McQueen.

14 **CLERK OF COURT:** Please come forward and have a seat
15 in the jury box for me please, Mr. McQueen.

16 Juror Number 59, Norman Gupton. What saith The State?

17 **MR. HOLT:** Please present Mr. Gupton.

18 **CLERK OF COURT:** What saith the defense?

19 **MR. SWILLEY:** Please excuse Mr. Gupton from the
20 trial of this case.

21 **CLERK OF COURT:** You have been excused in this case,
22 Mr. Gupton. Thank you.

23 Juror Number 130, Stephen Threatt. What saith The
24 State?

25 **MR. HOLT:** Please excuse Mr. Threatt.

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1 **CLERK OF COURT:** You have been excused in this
2 particular case.

3 Juror Number 54, Willie Gilbert. What saith The State?

4 **MR. HOLT:** Please present Mr. Gilbert.

5 **CLERK OF COURT:** What saith the defense?

6 **MR. SWILLEY:** Please swear Mr. Gilbert.

7 **CLERK OF COURT:** Please come forward and have a seat
8 in the jury box, please, Mr. Gilbert.

9 Juror Number 72, Joni Hudson. What saith The State?

10 **MR. HOLT:** Please present Ms. Hudson.

11 **CLERK OF COURT:** What saith the defense?

12 **MR. SWILLEY:** Please swear Ms. Hudson.

13 **CLERK OF COURT:** Please have a seat in the jury box
14 for me please, Ms. Hudson.

15 Juror Number 13, James Bonnoitt. What saith The State?

16 **MR. HOLT:** Please present Mr. Bonnoitt.

17 **CLERK OF COURT:** What saith the defense?

18 **MR. SWILLEY:** Please swear Mr. Bonnoitt.

19 **CLERK OF COURT:** Please have a seat in the jury box
20 for me please, Mr. Bonnoitt.

21 Juror Number 63, Andrew Hamilton. What saith The
22 State?

23 **MR. HOLT:** Please present Mr. Hamilton.

24 **CLERK OF COURT:** What saith the defense?

25 **MR. SWILLEY:** Please excuse Mr. Hamilton from the

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1 trial of this case.

2 CLERK OF COURT: You are excused, Mr. Hamilton from
3 the trial of this case. Thank you.

4 Juror Number 42, Ella Fields. What saith The State?

5 MR. HOLT: Please present Ms. Fields.

6 CLERK OF COURT: What saith the defense?

7 MR. SWILLEY: Please excuse Ms. Fields from the
8 trial of this case.

9 CLERK OF COURT: You have been excused in this case
10 Ms. Fields. Thank you.

11 Juror Number 116, Archie Sarvis. What saith The State?

12 MR. HOLT: Please present Mr. Sarvis.

13 CLERK OF COURT: What saith the defense?

14 MR. SWILLEY: Please swear Mr. Sarvis.

15 CLERK OF COURT: Please come forward and have a seat
16 in the jury box for me, Mr. Sarvis.

17 Juror Number 32, Robert Curry. What saith The State?

18 MR. HOLT: Please present Mr. Curry.

19 CLERK OF COURT: What saith the defense?

20 MR. SWILLEY: Please swear Mr. Curry.

21 CLERK OF COURT: Please come forward and have a seat
22 in the jury box for me please, Mr. Curry.

23 Juror Number 109, Bert Rice. What saith The State?

24 MR. HOLT: Please present Mr. Rice.

25 CLERK OF COURT: What saith the defense?

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1 **MR. SWILLEY:** Please excuse Mr. Rice from the trial of
2 this case.

3 **CLERK OF COURT:** You have been excused, Mr. Rice.
4 Thank you.

5 Juror Number 55, Bobby Goolsby. What saith The State?

6 **MR. HOLT:** Please present Mr. Goolsby.

7 **CLERK OF COURT:** What saith the defense?

8 **MR. SWILLEY:** Please swear Mr. Goolsby.

9 **CLERK OF COURT:** Please come forward and have a seat
10 in the jury box for me please, Mr. Goolsby.

11 Juror Number 56, Shanta Grant. What saith The State?

12 **MR. HOLT:** Please present Ms. Grant.

13 **CLERK OF COURT:** What saith the defense?

14 **MR. SWILLEY:** Please swear Ms. Grant.

15 **CLERK OF COURT:** Please come forward and have a seat
16 in the jury box Ms. Grant.

17 **THE COURT:** All right. Ladies and gentlemen, we will
18 choose two alternates as well. The strikes for the
19 alternates will be one for the state, and two for the
20 defense, as to each alternate. Please proceed.

21 **CLERK OF COURT:** Juror Number 12, Katherine
22 Blackmon. What saith The State?

23 **MR. HOLT:** Please present Ms. Blackmon.

24 **CLERK OF COURT:** What saith the defense?

25 **MR. SWILLEY:** Please swear Ms. Blackmon.

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1 **CLERK OF COURT:** Please come forward please and have
2 a seat in the first chair outside of the jury box for me,
3 Ms. Blackmon.

4 Juror Number 73, Barbara Hyman. What saith The State?

5 **MR. HOLT:** Please present Ms. Hyman.

6 **CLERK OF COURT:** What saith the defense?

7 **MR. SWILLEY:** Please excuse Ms. Hyman from the trial
8 of this case.

9 **CLERK OF COURT:** You have been excused in this
10 particular case, Ms. Hyman. Thank you.

11 Juror Number 11, Kenneth Beavers. What saith The
12 State?

13 **MR. HOLT:** Please excuse Mr. Beavers from the trial
14 of this case.

15 **CLERK OF COURT:** You have been excused in this
16 particular case, Mr. Beavers.

17 Juror Number 128, Jordan Thomas. Is there any show for
18 cause from the state?

19 **MR. HOLT:** There is none.

20 **CLERK OF COURT:** What saith the defense?

21 **MR. SWILLEY:** Please swear Ms. Thomas.

22 **CLERK OF COURT:** If you would come forward please,
23 and have a seat in the second chair outside of the jury box
24 for me please?

25 **THE COURT:** All right. Now, welcome to the jury box

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1 ladies and gentlemen. Let me ask the parties, is there an
2 objection to the procedure that was used by the Court to
3 draw this jury, or the strikes from the other side. What
4 says the state?

5 **MR. HOLT:** There is no objection.

6 **THE COURT:** Now the defense?

7 **MR. SWILLEY:** There are no objections, Your Honor.

8 **THE COURT:** All right. Then hearing none, ladies and
9 gentlemen, you will be our jury for the first case for
10 trial.

11 Let me just by a show of hands ask; how many of you
12 have served before on a jury, whether it is criminal or
13 civil, either one? Okay. Well, I see we have some
14 experience in the jury box. But let me say this to you. If
15 you find yourself there for the first time, don't be
16 uncomfortable about where you are. Jurors need two tools to
17 serve and serve well, and you have them both. The first is
18 your ability to listen. And the second is your collective
19 common sense. Armed with those two things, you are going to
20 find yourself in good-stead.

21 Just one moment, ladies and gentlemen, let me talk to
22 our clerk about scheduling.

23 **(PAUSE.)**

24 **THE COURT:** All right. Ladies and gentlemen, who are
25 not chosen, I know you are disappointed. But if you will,

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1 wait a moment and listen to our clerk's instructions.
2 Counsel, if you would come up here so we can talk about
3 scheduling, then I can give this jury more specific
4 information.

5 (PAUSE.)

6 (Whereupon, a bench conference was held, in
7 the presence of the jury, but out of their hearing range.)

8 THE COURT: What we are going to do, it is going to
9 take a little bit of time to get the case --- the exhibits
10 marked and other things prepared for trial. So we are going
11 to give you an extra lengthy lunch hour today. If you
12 would, be back in the jury room at 2:00. What I am going to
13 let you do is leave with Mr. Merlin. He will show you where
14 the jury room is, so you will come back there instead of to
15 the open courtroom.

16 Now, let me just say this to you about the lunch hour
17 today. Please do not feel like you need to undertake some
18 investigation on your own, whether it is via the internet,
19 out on the street, or whatever it may be. Just have a good
20 lunch, enjoy yourselves. Get some rest. Come back with an
21 open mind, and we will be ready for the lawyers to give you
22 opening statements, and the Court give you the charge here
23 at the start of the case. And then we will go into the
24 trial. I suspect that we will stop today, because of some
25 other criminal court business we have. We will probably

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1 stop this trial somewhere around four, maybe a little bit
2 after four, and then we will resume tomorrow morning at
3 9:30. I just tell you that so that your loved ones that are
4 asking you about what your schedule is going to be, you can
5 give them some information.

6 Again, I don't anticipate this case lasting beyond
7 Wednesday. I can never tell you that with certainty. But I
8 just simply tell you that again for your loved ones.

9 And one more thing about your loved ones. They are
10 going to say, well, what is this case about? And let me
11 instruct you, please do not discuss the facts of the case
12 with your family, and this is why. When it is over with,
13 you can fully discuss it with them, but not until then.
14 Because, I don't want them to say something in the privacy
15 of your conversation that may somehow influence how you
16 decide this case. Because what our process is all about is
17 to make sure that whatever evidence you decide this case
18 comes from this jury stand right here under oath, under
19 direct and cross examination, and not something said by some
20 third party outside of here that nobody knows anything
21 about. So, just tell your loved ones, you can talk about it
22 when it is all over. And with that understanding, we will
23 look to see you at 2:00. We are all going to remain where
24 we are out of respect for you, while you depart for lunch.
25 Lunch is on your own. Have a nice lunch, and we will see

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1 you at 2:00.

2 (Whereupon, the jury exits the courtroom at
3 11:44 a.m. for lunch.)

4 **THE COURT:** All right. The jury has left the
5 courtroom. I notice that there is a large number of people
6 who are seated in the Grand Jury box. I am assuming they
7 are either witnesses or persons of interest in this case.

8 **MR. HOLT:** They are family members of the deceased,
9 Your Honor, as well as some witnesses.

10 **THE COURT:** All right. Well, what we are going to do
11 now ladies and gentlemen, we have dismissed the jury, but we
12 have got some preliminary issues that we need to resolve,
13 some evidentiary matters. If you want to leave, we are not
14 requiring you to leave, I am just simply telling you that we
15 are actually going to start the trial at 2:00 with the jury,
16 but now we are going to have some motions and other issues.
17 If you wish to leave you may. If not, then we will go on
18 into our motions at this time.

19 **MOTION FOR A CHANGE OF VENUE**

20 **THE COURT:** All right. Before we begin the trial of
21 the case are there some issues or motions from the defense
22 that we need to take up, and if so, what are they?

23 **MR. SWILLEY:** There are, Your Honor, our four
24 preliminary motions. A motion for a change of venue. A
25 motion to suppress the blood test analysis results, due to

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1 rule 6, South Carolina rules of criminal procedure, which
2 involve chain of custody. A motion to suppress statements
3 made at the scene of the accident. And a motion pursuant --
4 - excuse me. For the motion to suppress statements,
5 pursuant to Jackson v. Denno, as well as Miranda. And then
6 a fourth motion to suppress autopsy photographs that the
7 state, I believe, plans on introducing at this time,
8 pursuant to Rule 402 and 403 of the Rules of Evidence.

9 **THE COURT:** All right. Let's take these in this
10 order. First of all, let's take a look at the venue issue.
11 Tell me what reason you have to wish to change the venue;
12 which, ladies and gentlemen, means to move this trial to
13 another county. What is your argument?

14 **MR. SWILLEY:** Your Honor, if it pleases the Court, I
15 defer to Ms. Crayton.

16 **MS. CRAYTON:** Thank you, Your Honor. We would state
17 that there has been pre-trial publicity in this case, and
18 some of which is actually factual. And we would state that
19 that has caused prejudice, and we would ask that the venue
20 be changed for that reason, Your Honor. And if you like, I
21 do have several articles I can pass up if you would like to
22 review that.

23 **THE COURT:** Well just tell me what they are, and when
24 they were published please.

25 **MS. CRAYTON:** Okay. We have, of course, there were

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1 several articles published, and we also have the internet
2 articles. This one was updated --- let me see, it was
3 posted on January 11, and updated February 4, 2010. The
4 second article was posted January 11, 2010. And the third I
5 have is March 24, 2011.

6 **THE COURT:** All right. What says the state?

7 **MR. HOLT:** Your Honor, we are obviously against the
8 change of venue. I think if they rely solely on pretrial
9 publicity, then I believe the relevant question becomes not
10 was there pre-trial publicity, but did it fix in the minds
11 of the jurors such an intent that they could only reach one
12 outcome. And I don't know if I am phrasing that right, but
13 I think --- the question more or less revolves around how
14 influenced the jurors were. And I think you can definitely
15 in any criminal case --- there is going to be some amount of
16 internet on SCNOW. There is going to be some amount of
17 Florence Morning News, or a radio show, or something like
18 that. And I think the jurors here today all said that they
19 hadn't formed any opinion about this. I think when we
20 qualified the jury we went through several questions on
21 their opinions and things of that nature. And I don't think
22 there is any amount of evidence of fixed opinions in the
23 mind of the jury.

24 **THE COURT:** All right. Ms. Crayton, let me respond
25 to you.

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1 The Court, when I qualified this panel, I asked
2 them specifically about media coverage, knowing that
3 there had been some media, and that there was an issue
4 pending on the change of venue. I had two jurors who
5 stood and told me that they had seen media reports of
6 this case. I agreed to talk with them privately, but
7 then both of those jurors were disqualified for other
8 reasons.

9 It would appear to the Court that perhaps they may
10 have seen the articles, because they had had a DUI
11 related tragedy or problem within their own family,
12 which ultimately lead through their candor to them
13 being disqualified in this case.

14 So, I am not aware of any juror sitting on this
15 panel who told us that they had knowledge of this case
16 through reading media reports, or seeing television about
17 it. But I am also not aware of any jurors who told us
18 they didn't think they could be fair and impartial.

19 So for those reasons, I am going to deny your motion
20 for a change of venue. I find no basis for it.

21 Thus, it is denied.

22 **MS. CRAYTON:** Thank you, Your Honor.

23 **THE COURT:** You are welcome. Now, let's move to
24 the next issue. What is your preference Mr. Swilley,
25 which you wish to state?

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MOTION TO SUPPRESS STATEMENTS MADE AT THE SCENE

1
2 **MR. SWILLEY:** Your Honor, if it is okay with the
3 state, I would kind of like to take up the motion to
4 suppress statements made at the scene of the accident.

5 **THE COURT:** All right. Very good. Let me first of
6 all ask the state, what it is you intend to put into
7 evidence from the scene that is a quote "statement?"

8 **MR. HOLT:** Your Honor, I think what Mr. Swilley is
9 referring to is the initial video prepared by the South
10 Carolina Highway Patrol when the wreck happens. They pull
11 up to there. I think when he is ascertained at the scene
12 and what's going on the Trooper asks him, why didn't you
13 stop? I think he said something along the lines of, I was
14 looking for a place to stop. That is the only one --- I
15 think that is the one Mr. Swilley is talking about. And
16 then what else I know that he really wants to keep out is
17 the statements that were made to EMS. I think that is also
18 what he is trying to keep out, but I'm not certain.

19 **THE COURT:** All right. Well, let me hear from the
20 defendant. What is it that you wish to suppress?

21 **MR. SWILLEY:** Your Honor, this whole accident was
22 caught on camera via Trooper Gainey's dash-cam. At the
23 scene of the crash, Trooper Gainey gets out of his car,
24 approaches the car, first I believe he instructs Mr. Hill to
25 stay in the car. Your Honor, my argument to the Court at

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1 that moment is this turns into a custodial interrogation.
2 Mr. Hill would not be free to leave. Subsequent to that, he
3 inquires of Mr. Hill, why didn't you just pull over? Mr.
4 Hill gives an exculpatory response. After that ---
5 afterwards, and I am not sure exactly verbatim, but they do
6 exchange some dialogue pertaining to the crash. And at no
7 time at this point is Miranda given.

8 Your Honor, also, later on, there is some dialogue
9 between Trooper Gainey and Mr. Hill as to the condition of
10 the decedent in this matter, Ms. Sylvia Hill. After that, I
11 believe, when Mr. Hill was transported to the hospital, he
12 did exchange dialogue. At this time, I believe, there were
13 still no Miranda warnings given about how much he may or may
14 not have consumed, and what he may have consumed by way of
15 intoxicants.

16 Your Honor, I would also argue to the Court that
17 medical personnel at that point was taking these statements
18 for purposes in this matter, not for medical diagnosis, and
19 hence these statements should be suppressed also as being
20 involuntary, as well as in violation of his Miranda Rights.

21 **THE COURT:** All right. Let's break this down then.
22 What says the state with regard to what was told to the
23 Trooper at the scene? The comments, stay in your car and
24 anything that happened there at the scene with the officer?

25 **MR. HOLT:** Thank you, Your Honor. I think when you

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1 watch the video, Your Honor, you can hear the people talking
2 as the rescue is happening. I think even later on the
3 Trooper admits that he said, I told him to stay in the car
4 because of the accident. He took a bad hit I think are the
5 Trooper's exact words. They are worried about --- they are
6 trying to get him out of that car on a board, a flat board,
7 because they are worried about his neck. I think that just
8 goes to show, which is the point that I'm trying to make is
9 that there wasn't an investigation or a detention going on.
10 It was, hello individual who just wrecked their car at a
11 hundred miles per hour, please stay in there while we get
12 you out. There is not a trying to keep him in there kind of
13 situation, Your Honor. I very much don't think he was in
14 custody at the time. And I think that the Trooper was just
15 trying to ascertain like an investigation, what's going on
16 here? There wasn't anything accusatory in there, in stay in
17 your car. And then when he asked him, why didn't you stop?
18 I don't think --- I don't think there is anything
19 accusatory, and I don't think custody had applied here.

20 **THE COURT:** All right. Do you want to reply to that?

21 **MR. SWILLEY:** Yes, Your Honor. I think what the
22 proper question would be is, would Mr. Hill, in his
23 situation, have been free to leave? And I think looking
24 upon this objectively, and in light of the totality of the
25 circumstances is being interrogated by an officer, who is

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1 definitely inquiring into what happened as far as criminal
2 liability goes. He does make a statement I believe that
3 said he took a pretty good lick over the radio. However, I
4 think that the purpose of this interrogation was to gain
5 exculpatory statements from Mr. Hill, while he was in
6 custody, while he was detained, and when he would not have
7 thought that he was free to leave. And I think because of
8 that these statements should be suppressed.

9 **THE COURT:** All right. Let's move forward then.
10 Apparently there was a discussion with EMS people, which
11 occurred later in this process?

12 **MR. HOLT:** There is, Your Honor. On the way to the
13 hospital, so they could better treat him, EMS asked him had
14 he consumed anything that night? The defendant has consumed
15 beer and narcotics, and he tells EMS that. And the state's
16 objection to Mr. Swilley's motion, of course, is EMS was not
17 functioning as any type of law enforcement or a branch at
18 that time. EMS was trying to figure out how to better treat
19 the defendant.

20 Certainly, I am aware that there are certain
21 medications you can't take if you have been drinking. And
22 there are definitely medications that from a pharmacological
23 point of it you can't take if you have already taken some
24 medications. So I know they were simply looking after the
25 defendant's health.

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1 **THE COURT:** And do you want to reply?

2 **MR. SWILLEY:** Well, Your Honor, I believe that
3 although EMS personnel did want to treat Mr. Hill, I don't
4 think that their intentions were wholly medical in nature.
5 There were statements given by medical personnel as to what
6 Mr. Hill stated to them throughout the course of the
7 ambulance ride to the hospital. And I don't believe that --
8 - I just believe these are the functional equivalent of a
9 post arrest interrogation without Miranda by EMS personnel,
10 and be suppressed due to that.

11 **THE COURT:** All right. Just one moment, please.

12 **(PAUSE.)**

13 **THE COURT:** All right. So we have statements to the
14 officer at the scene, statements to EMS. Were there others,
15 Mr. Swilley that are at dispute here?

16 **MR. SWILLEY:** Your Honor, I believe, when I reviewed
17 the incident report, there was a Bond Hearing at the
18 Magistrate's Court in which Judge Bell set bond for Mr.
19 Hill, and I do think he made some statement to one of the
20 decedent's children, something along the lines of, I loved
21 your mother. I never wanted this to happen.

22 Your Honor, I don't think, even though --- even though
23 these statements were made in earshot of law enforcement,
24 and they weren't made to law enforcement, I don't think that
25 Mr. Hill was cognitive of Miranda Rights, and the facts that

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1 these statements could or would be used against him in this
2 criminal proceeding. I think the time between --- if
3 Miranda hadn't been read to him precedent to this, there was
4 a lot of time that elapsed, and I would just move the Court
5 to suppress those statements as well.

6 **THE COURT:** And the statement was what? I loved your
7 mother, but what?

8 **MR. SWILLEY:** It was something --- it was something
9 along the lines of an apology. And I don't have the
10 verbatim. And it was recorded verbatim on a tape reporter.
11 I believe it was secondhand by the officer who was writing
12 the incident report. The incident in this report is very
13 lengthy.

14 **MR. HOLT:** If I could just respond to another problem
15 that might shed some light on what Mr. Swilley is talking
16 about?

17 In South Carolina, with the implied consent, 2945
18 Felony DUI statute, they have to put you under arrest and
19 read you your implied consent before they take blood from
20 the hospital. I think that procedure was followed here. I
21 think that procedure starts off with, you are under arrest.
22 And there is a lengthy --- very, very procedural thing that
23 has to occur. Miranda is read then. As Your Honor is well
24 aware, DUI legislation is often some of the most confusion
25 and procedurally heavy legislation we have in criminal law.

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1 He was Mirandized that night. I think there are some
2 statements made to law enforcement about an apology even
3 then. I think that that Miranda also carries over to the
4 Bond Hearing. And anything he said at the Bond Hearing
5 would have been public knowledge, Your Honor. And if he
6 apologized, and the officer was standing there during their
7 role in a Bond Hearing the state can definitely --- they can
8 bring that in.

9 **THE COURT:** All right. Is there a statement that was
10 actually made when you sit down and give a statement to
11 police? Is there such a document in evidence in this case?

12 **MR. HOLT:** There is not, Your Honor. And I have the
13 exact statement here that he said in the Bond Hearing, if
14 Your Honor wishes to hear it.

15 **THE COURT:** All right. Tell me what it is please.

16 **MR. HOLT:** He looked at Sylvia Mattox's daughter and
17 said, "I'm sorry. I loved your mother, and I did not mean
18 to hurt her." That is the statement, Your Honor.

19 **THE COURT:** Counsel, do you intend to show the tape
20 from the scene, so that I can get the specifics of his
21 statement made allegedly when the officer first arrived on
22 scene?

23 **MR. HOLT:** Very much so.

24 **THE COURT:** How long is it?

25 **MR. HOLT:** I am willing to not show the entire tape,

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1 but the entire tape is somewhere around twenty-five minutes,
2 I think, maybe. It starts with --- right before he turns
3 the blue lights on, the actual chase, and the accident. It
4 is not very long at all. It happened within the first two
5 minutes of the video, and then the rest of it will be just
6 one shot still of everybody coming in and out who works
7 rescue.

8 **THE COURT:** All right. I probably need to see that
9 counsel, so that I can rule on the voluntariness of any
10 comments made; plus determine what those specifics of them
11 are, because I really don't know at this point. Do you have
12 it on video? Do you have it on computer? What is your
13 preference?

14 **MR. HOLT:** I have it on DVD, Your Honor. It will
15 probably take me some time. If Your Honor wishes, I can
16 hand him a computer and we can watch it right now.

17 **THE COURT:** Let's do that.

18 **MR. HOLT:** Or I can set up my --

19 **THE COURT:** No, let's just bring the computer here
20 and then counsel join me as well as --- Well, counsel on
21 both sides please join me.

22 **(PAUSE.)**

23 **THE COURT:** All right. The Court has now had a
24 chance to review this video. Is there anything further with
25 regard to these arguments?

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1 **MR. SWILLEY:** Yes, Your Honor, as far as the
2 dialogue between law enforcement personnel within
3 themselves. I would also move for suppression of that, due
4 to the fact that it is hearsay. I am unable to cross
5 examine it. And I think that any probative value of
6 anything that is said to personnel to each other at the
7 scene would be substantially outweighed by the unfair
8 prejudice of the defendant as well.

9 **MR. HOLT:** Your Honor, just speaking to his earlier
10 arguments, it is illegal in South Carolina to drive away, or
11 get away from any type of accident which you may have
12 caused. I think everybody knows that. I think really and
13 truly what was going on there was not any type of custody.
14 But you had a victim who was deceased, and you had another
15 person who was obviously drunk and who had just suffered
16 trauma of that car flipping end over end, and you are trying
17 to control a drunk person whose neck may be broken. So, you
18 say just stay in the car and I don't think that was custody
19 yet, Your Honor. And I think that anything he said was a
20 spontaneous statement. I think it is an exception to the
21 hearsay rule. And I think the interrogation was conducted
22 just for public safety, if not for the safety of the
23 defendant himself.

24 **THE COURT:** What about inquiry? Why didn't you stop?
25 What do you say to that? What case law do you have on that

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1 point?

2 **MR. HOLT:** I don't have any case law right here in
3 front of me, Your Honor. Why didn't you stop was part of
4 the investigation and not the interrogation. The Trooper
5 doesn't know anything about what is going on yet. And, he
6 knows that this accident just occurred. And he goes --- He
7 is a little bit upset, because I don't know if Your Honor
8 was aware of this, but right before then he had just seen
9 the body for the first time, and realized what he's got
10 here. He goes from DUI, to car chase, to fatality like that
11 for the Trooper. And he is just sitting there with his
12 flashlight looking at the guy, why didn't you stop? And he
13 undoubtedly has the dead body on his brain right there. But
14 I don't think that there was any kind of interrogation. And
15 I think that anything the defendant said can definitely come
16 in.

17 **THE COURT:** All right. Let's move on, to the next
18 issue. Anything further on hospital personnel, EMS
19 statements that intend to be --- I have heard the arguments.
20 Anything further before we move on?

21 **MR. SWILLEY:** There is not, Your Honor.

22 **THE COURT:** Okay. And anything further Mr. Holt on
23 that issue?

24 **MR. HOLT:** There is not, Your Honor. Other than the
25 state contends that definitely EMS is not a part of law

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1 enforcement. And they have a multitude of reasons for
2 wanting to know what they need to know.

3 **THE COURT:** All right. Let's move on then to our
4 next issue. I am going to take that under advisement. I
5 will consider that over the lunch hour. I will tell you
6 when we come back from lunch what the Court's intention will
7 be. In fact, I will probably tell you beforehand, or as
8 early as I can so that you can react to it. What is the
9 next issue, chain of custody, Mr. Swilley?

10 **THE COURT:** Yes, Your Honor, either that or the
11 autopsy photographs.

12 **THE COURT:** Let's go ahead and do the autopsy
13 photographs now. And do you have them?

14 **MR. HOLT:** I have a copy for defense counsel. I think
15 Ms. Burch has that. I apologize, Your Honor.

16 **THE COURT:** Okay.

17 **MOTION TO SUPPRESS AUTOPSY PHOTOGRAPHS**

18 **MR. HOLT:** Your Honor, obviously the state's point of
19 view, these photographs --- probably some of the most
20 gruesome that I've ever seen. And up until this morning, I
21 was not going to argue with Mr. Swilley about the admission
22 of these photographs. But now that I believe the majority
23 of his defense will in fact be that the defendant was not
24 driving, I feel like the injury sustained to the victim
25 needs to be shown, because they directly correlate to the

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1 shape of the car at the time at the scene. I think their
2 defense now makes the photographs highly relative. I think
3 they should be --- there is no doubt to me that they will be
4 prejudicial. However, under 403, I completely agree that
5 they will be more probative than prejudicial. And my
6 argument now from the state is that it will be completely
7 necessary, at least some of the photographs.

8 **THE COURT:** All right. What I am going to need you
9 to do --- We are going to have to number these first of all,
10 for purposes of this hearing. And what we need to do is get
11 all the copies back up here together, and make sure we order
12 in the same sequence, so we are all talking about this, and
13 we need to preserve this and make a record here. So, let me
14 give you this, and let you do that.

15 **MR. HOLT:** I haven't printed them out.

16 **THE COURT:** All right. What I need for you to do,
17 John along with your co-counsel is decide which ones you are
18 not going to offer. So, please look and see.

19 **MR. HOLT:** Just the one photograph, Your Honor.

20 **THE COURT:** All right. Let's mark it then for
21 purposes of the Jackson v. Denno, let's mark it. We can go
22 ahead and mark it as a --

23 **MADAME COURT REPORTER:** It has already been marked as
24 State's 40.

25 **THE COURT:** All right. It is marked as State's 40,

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1 and we can use that number then. That is the only one you
2 want in?

3 **MR. HOLT:** Yes, sir, Your Honor.

4 **THE COURT:** All right. Let's take a look at that. I
5 need to look at the whole package though in order to
6 appreciate the impact.

7 **MR. HOLT:** Here is the entire package, and there is
8 the one I'd like to get in.

9 **THE COURT:** All right. Very good. All right. Are
10 you aware of which one we are talking about Mr. Swilley?

11 **MR. SWILLEY:** Let me double check real quick.

12 (PAUSE.)

13 **MR. SWILLEY:** All right. Thank you.

14 **THE COURT:** All right. Tell me why you believe 40
15 should be excluded?

16 **MR. SWILLEY:** Your Honor, this photo I think would -
17 -- Well, first of all Your Honor, it is about the most
18 gruesome thing that I have ever seen as far as a photograph
19 goes. Your Honor, there are several things that the state
20 is going to introduce that will suggest that the decedent in
21 this matter did die as a direct and proximate result of this
22 car accident. I believe there is going to be somebody from
23 Newberry Pathology Associates to come and testify as to
24 that, as well as several other collateral sources to
25 establish that the decedent did die as a result of a car

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1 accident.

2 Your Honor, that photo does not show anything probative
3 as to where the decedent may have been sitting in the car,
4 or where --- or where anything that would suggest that
5 whomever was driving was driving. Your Honor, all this
6 photo establishes is that the decedent did die as a result
7 of the accident, and that the death was extremely traumatic,
8 and nothing more. Your Honor, I believe that the
9 prejudicial impact substantially outweighed any kind of
10 probative value, if any, that this photograph would have in
11 the jury's deliberation in this matter.

12 **THE COURT:** All right. Tell me why you believe 40 is
13 relevant and probative?

14 **MR. HOLT:** Obviously, Your Honor, I agree with the
15 majority of what Mr. Swilley said. The state is not going
16 to use these photographs, because of their gruesome nature.
17 However, it is probative because the state has a certain set
18 of facts and evidence that they are going to use that the
19 defendant was driving. And if the defendant is going to say
20 that he was not driving, then that evidence is going to be
21 in confliction. The state needs to be able to show that ---
22 exactly the severity of what went through that car, what
23 caused her death. And it more than likely would not have
24 been that way if she had been sitting in the driver's seat.
25 The hole is on, if you are looking at the car --- if I am

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1 looking at the front of the car coming at me, the hole is on
2 the left side. The damage to her head is on the left side.
3 The log goes through the left side and comes out the back
4 window. Now, the state feels like it is very necessary to
5 show that the log that crushed up that section of the car
6 had to go through the car with that much force is also what
7 damaged her head.

8 **THE COURT:** All right. And the argument that you
9 have just given me, is your autopsy examiner's testimony
10 going to be consistent with this argument that you made?

11 **MR. HOLT:** Consistent insofar as the patient died
12 from head trauma. But, head trauma could come from any
13 number of ways in a car accident. But, specifically, the
14 type in this case that resulted from the log coming through
15 the car the way it did is also what damaged her head like
16 that. I think if the jury just hears massive head trauma,
17 they are liable to think --- you know --- hit your head on
18 the dashboard, when in reality the jury needs to be made
19 aware that the log came through --- and I know it is gross
20 Judge, but just specifically just hitting her head in such a
21 manner as to do to her head what it did, and that couldn't
22 come from a normal series of events in a normal car
23 accident.

24 **THE COURT:** And what then is the purpose of showing
25 the lower half of the body in Number 40?

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1 **MR. HOLT:** Your Honor, I think that showing just half
2 of it can confuse the jury as to what it is. I think
3 showing her whole body puts it in perspective. Certainly,
4 if we want to cover up some private areas, I would
5 understand that. You know, but I think they need to realize
6 the severity of what happened. I think if you cover up half
7 of it, I think the jury will be confused as to what they are
8 looking at.

9 **THE COURT:** All right. What Mr. Holt is saying is
10 the absence of injury to the lower half is as significant as
11 the injury to the upper half.

12 All right. The Court is prepared to rule on this.
13 This --- admittedly this picture is going to have some shock
14 impact. However, the Court finds that the probative nature
15 of the photograph, given the defense raised here by the
16 defendant, which is that the deceased was driving, that it
17 is extremely probative, and actually robs the state of its
18 argument to attempt to compare the damage and trauma done to
19 the occupants, and where they were seated in the car, and
20 make that consistent to the damage done to the external
21 actual portions of the car. That that probative nature
22 outweighs the prejudicial nature of these pictures. And
23 that simply because this is the core issue of this case.
24 And this is the most probative proof, and really the core
25 proof on that core issue.

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1 For these reasons, the Court is going to allow Exhibit
2 40, into evidence. The Court may advise the jury in advance
3 and we will talk about that at a later time as to whether we
4 should warn them of the graphic nature. But, we also will
5 make a court's exhibit of the other I believe thirteen
6 photos, which the state has voluntarily taken down to lessen
7 the prejudicial impact of the series of these photos. That
8 is the ruling of the Court. Motion denied.

9 All right. Anything further now, Mr. Swilley?

10 MR. SWILLEY: As to this matter, Your Honor?

11 THE COURT: Yes.

12 MR. SWILLEY: There is none, Your Honor.

13 THE COURT: And the next matter is?

14 MR. SWILLEY: That would be a chain of custody
15 issue.

16 WHEREUPON, STATE'S EXHIBIT

17 NUMBER 40 IS MARKED AND

18 ADMITTED INTO EVIDENCE OVER

19 OBJECTION.

20 WHEREUPON, COURT'S EXHIBIT

21 NUMBER 1 IS MARKED FOR THE

22 RECORD.

23 THE COURT: And let me specifically say, in looking
24 at the photos in question, if you look at what has been
25 marked as State's Exhibit 20, it shows the log or the pole

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1 in the back of the car. State's Exhibit Number 17 shows
2 what appears to be where the log would have entered as well
3 as where it would have exited. The log is still lying
4 across the passenger seat. And obviously the probative
5 nature of that is that it would be almost impossible to be
6 in the passenger seat and not struck by the log.

7 For these reasons, the Court again confirms that the
8 probative nature of that picture Number 40, outweighs
9 prejudicial impact.

MOTION - SUPPRESS CHAIN OF CUSTODY

10
11 **THE COURT:** All right. Chain of custody. Just tell
12 me what it is that you have with regard to chain of custody.
13 What evidence do you intend to produce, and then we will go
14 back to Mr. Swilley to hear what he believes the problem
15 with it may be.

16 **MR. HOLT:** Thank you very much, Judge. We are going
17 to have Marla Koontz from Carolina Pines Hospital, who took
18 the blood, sealed the blood, and then gave it to Officer Pat
19 Lee over there who was watching the entire time. Officer
20 Russ Harrell, Evidence Custodian with Darlington County
21 Sheriff's Office comes to the hospital collects the blood
22 from Pat Lee there, and returns the blood to Darlington
23 County Sheriff's Office to a refrigerator. Then, some days
24 later, Russ Harrell is responsible for that evidence the
25 entire time, takes it to SLED where it is analyzed by a

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1 Jennifer Brown. I am going to have all of those people come
2 and testify to the chain, Your Honor. I have read, as I am
3 sure Your Honor and Mr. Swilley have the most recent case on
4 this from the Supreme Court, I believe is the Hatcher Case.
5 I think we comply completely with Hatcher. I don't really
6 understand at this time where the problem is.

7 **THE COURT:** Very good. What is your complaint,
8 having looked at the evidence, Mr. Swilley, what is your
9 complaint about the chain of custody?

10 **MR. SWILLEY:** Your Honor, I believe that once it
11 gets to SLED, transported by Mr. Harrell, who is the
12 Evidence Custodian, I do think there are some interstices as
13 to when it gets to SLED, if it was directly given to Ms.
14 Brown, who then analyzed it in and of herself. Whether or
15 not she may have given it to any other SLED personnel, I
16 think may be at issue here.

17 As Your Honor knows all chemical analysis for criminal
18 matters, I do believe do go to SLED to be analyzed. That is
19 the entity for which does this, Your Honor. I believe
20 there may be some interstices in the chain once it gets to
21 SLED, and that is what I am challenging from the state at
22 this time.

23 **THE COURT:** What evidence do you have that there are
24 some missing persons within the chain?

25 **MR. SWILLEY:** Beg the Court's indulgence for just,

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1 one moment?

2 **(PAUSE.)**

3 **MR. SWILLEY:** Your Honor, I don't have the evidence
4 for what Mr. Holt says as to chain. I don't question the
5 veracity of what he said. Your Honor, however, I do think
6 that maybe when Mr. Harrell, if and when he did take it to
7 SLED and give it to Ms. Brown that there would be other
8 people that would be involved in this procedure for testing
9 the blood of both the decedent and the defendant for
10 substances that they were looking. So, Your Honor, I would
11 just contend that there are holes or interstices at this
12 juncture in the chain of custody.

13 **THE COURT:** All right. And what is your witness
14 going to testify to, Mr. Holt, about what happens once Mr.
15 Harrell delivers that package to SLED, puts it in the
16 evidence box, what happens to it?

17 **MR. HOLT:** Your Honor, she will testify about how the
18 evidence will probably be sealed there. I know for a fact,
19 and Ms. Koontz will testify to how she sealed the baggage at
20 the hospital. Ms. Brown will probably give the typical SLED
21 procedures for how the evidence is handled. Assigned a case
22 number, a bar code, scanner, how the scanner is used anytime
23 that evidence is transported. This type of evidence is both
24 bio-hazard and something that needs to be refrigerated. So,
25 I am sure she will testify to the specific location at SLED

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1 for where it is kept.

2 Judge, I think we aren't really going to have a
3 problem. I actually want to quote some of the law --- I am
4 only as far --- the state only has to produce the chain as
5 far as practical and it is obvious, Your Honor. But, we
6 don't need to get each and every single person at SLED. And
7 I think there is a direct quote in the case --- I can't
8 think who may or may not have testified, or touched the
9 evidence in some insignificant way. I think if I can,
10 establish my policy through Ms. Brown. If I can establish
11 that the evidence was sealed, if I can establish how Ms.
12 Brown checked the evidence and double checked it, and who
13 backed up her work, I don't think that the state needs to
14 produce anybody else.

15 **THE COURT:** Is Ms. Brown here today?

16 **MR. HOLT:** She is not, Your Honor.

17 **THE COURT:** Very good. Mr. Swilley, the Court will
18 decline based on what I have heard from the state as an
19 initial impression, it sounds that there is sufficient
20 evidence to establish the chain both external and internal
21 to SLED that would be sufficient for admission to trial.

22 The Court declines to grant you relief at this time.
23 But after you have questioned the witnesses during the
24 course of the trial, if there is some issue about the chain
25 that would come out before the analysis of it would be, and

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1 we would at that time take it up.

2 MR. SWILLEY: Thank you, Your Honor.

3 THE COURT: All right. Anything further?

4 MR. HOLT: There is nothing further from the state,
5 Your Honor.

6 THE COURT: Any other issues?

7 MR. SWILLEY: Yes, Your Honor. I apologize for not
8 bringing this before the Court before now.

9 Your Honor, the defendant would move for a continuance
10 of this matter. And again, I apologize for not bringing
11 this to the Court's attention.

12 Your Honor, the three witnesses which the defense would
13 like to call --- One, the main witness, who would be Ms.
14 Grace Hill, who is the defendant's mother in this matter, I
15 went and spoke with Ms. Hill yesterday. She is actually in
16 a nursing facility at this time. I spoke with her. She is
17 lucid. I think she would be competent under Rule 601 to
18 testify. However, due to her current situation as to health,
19 I think it would be extremely difficult for her to come here
20 and testify now in the state she is in. I think if she were
21 allowed some time to convalesce she may be able to come and
22 testify in the defense of Mr. Hill.

23 Your Honor, also another witness which would testify as
24 to what he observed when the defendants were leaving his
25 home, or when the defendant and the decedent when they were

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1 preceding to leave his home, a gentleman named Mackie
2 Tomlinson who I put on the defense witness list, he is
3 currently in a rehabilitation facility. I spoke with his
4 brother last week. His brother wouldn't tell me where he
5 is, or even how long he would be. But you don't stay in
6 rehabilitation centers forever, or even for an extended
7 length of time. And I think a continuance would allow the
8 defense to speak to Mr. Tomlinson as well. And, I would
9 move for a continuance on these grounds.

10 **THE COURT:** All right. How long has this case been
11 called for trial on this date?

12 **MR. HOLT:** Your Honor, I remember being told about
13 this case the last term of court we had here in Darlington.
14 They had been discussing it for some time previous to that.
15 I know that they have been --- It has been Mr. Swilley's
16 general understanding that this would be the case called
17 well before last term; is that correct?

18 **MR. SWILLEY:** I believe that is correct.

19 **THE COURT:** And the last term, which I did not
20 conduct that term. When was the last term?

21 **CLERK OF COURT:** March 7th.

22 **MR. SWILLEY:** Your Honor, Mr. Hill had a bond
23 reduction motion hearing in front of Judge Burch at that
24 time, and I believe that day is when Ms. Baugh did inform me
25 that she did want to call this trial for this term.

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1 **THE COURT:** All right. Roughly almost five weeks
2 ago.

3 Mr. Swilley, I am going to deny your motion, sir for
4 several reasons.

5 Number one. I don't have any evidence other than your
6 argument that the passage of time would help the defendant's
7 mother coalesce, it maybe actually just the opposite would
8 be true that her condition may decline, as might be expected
9 with someone in a nursing home. And as to the individual in
10 a rehabilitation facility, they are not free of the subpoena
11 process. You may bring them in here if you wish. But I
12 will decline to give you any relief in the form of a
13 continuance on that.

14 All right. Anything further from either side?

15 **MR. HOLT:** Not from the state, Your Honor.

16 **THE COURT:** All right. Then I will come back and be
17 prepared to rule about the statements that were made prior
18 to the --- well, at the scene as well as to EMS. And
19 further, I am going to let you get with the Court reporter
20 and mark whatever exhibits are necessary. And we will start
21 this trial at 2:00 this afternoon with opening statements.

22 All right. Please be back here by ten till 2:00, so we
23 can resolve any issues before the jury comes in.

24 Court is in recess.

25 **MR. HOLT:** Thank you, Judge.

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1 **MR. SWILLEY:** Thank you, Your Honor.

2 (Whereupon, a recess was taken from 12:45
3 p.m. until 2:04 p.m.)

4 **THE COURT:** All right. Ladies and gentlemen, it
5 appears that we are all in place. Let me go ahead and rule.
6 We have been talking here at the bench a little bit about
7 the issues that are before me.

8 In this case the defendant has more than one charge.
9 And some of these charges are simply driving issues. For
10 example, DUS has nothing to do with whether or not there may
11 be an accident, or a failure to stop. The DUS is a driving
12 charge. If you are driving and you don't have a license,
13 you are guilt of DUS. So the officer's inquiry at the scene
14 about why did you run directly bears on the core issues in
15 the DUS charges, combined in this charge. So, I am going to
16 exclude that statement, as well as the discussions by the
17 officers. Because number one, they are not necessary here
18 to the proof of the state's case. But, secondly, I do find
19 that they are prejudicial, and go to the core issues on the
20 driving charges against the defendant.

21 What that means is once the officer arrives at the
22 scene, you will just turn the volume down so that up until
23 that time if there is something that you wish to be heard.
24 But then interaction between the defendant and the police
25 officer as well as officers at the scene will be excluded.

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1 Any questions about that?

2 **MR. HOLT:** Yes, sir, Your Honor. Just to clarify,
3 can I ask the Trooper about it when he takes the stand, and
4 what was said to him?

5 **THE COURT:** Oh, yes. You can ask him about what he
6 said to him, but whether or not you can testify about what
7 the response was is what this whole thing is about. So, yes
8 what the officer said is admissible, because it is the
9 officer's impressions and it is not hearsay, because it is
10 his statement there at the scene. But the response coming
11 back, or the response of a third person coming back most
12 likely will be hearsay. Please object contemporaneously if
13 he does, but I will exclude the officer also testifying
14 about what the defendant said, because it would be the same
15 purpose.

16 **MR. HOLT:** Yes, sir.

17 **THE COURT:** Whether you have it on film, or whether
18 you have it in person the result is the same.

19 All right. Is everyone warm enough in here? Okay,
20 good. Then let's bring in the jury please.

21 **BAILIFF:** All right, sir.

22 (Whereupon, the jury enters the courtroom at
23 2:04 p.m.)

24 **THE COURT:** All right, ladies and gentlemen welcome
25 back. I trust you had a nice and lengthy lunch hour. We

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1 are going to begin this process with you accepting the oath
2 as jurors in this specific case. Please follow our Clerk's
3 instructions.

4 **CLERK OF COURT:** Okay. Thank you, Your Honor. If
5 everyone would please rise and raise your right hand for me.

6 You shall well and truly try in true deliverance made
7 between the state of South Carolina and the defendant, and
8 you shall have in charge and a true verdict rendered
9 according to the law and evidence; so help you God?

10 If you accept the oath, please indicate by stating, "I
11 will."

12 **JURORS:** I will.

13 **CLERK OF COURT:** Everyone who took the oath may take
14 a seat.

15 (Whereupon the jury was sworn at 2:05 p.m. on
16 Monday, April 11, 2011.)

17 **THE COURT:** All right. And, ladies and gentlemen
18 again welcome back. Let me ask, and of course our clerk
19 instructed that everyone that took the oath please sit down.
20 But I just want to be sure. Is there any juror who did not
21 take the oath that was not just administered? If you did
22 not take the oath for any reason, please raise your hand.

23 Let's let the record reflect that no one has raised
24 their hand, and thus all of our jurors are appropriately
25 sworn.

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1 All right. I don't know exactly what is going on with
2 our cooling system. As soon as you turn your back on it, it
3 seems to start heating up again. So, we are working on that
4 as well. It is a little bit warm in the courtroom, and
5 again, that is in progress to be fixed.

INTRODUCTION TO THE CASE

6
7 **THE COURT:** What I want to do now, ladies and
8 gentlemen, is talk with you a little bit about what we call
9 the introduction to the trial of a criminal case. This is
10 not intended to take the place of a more detailed charge of
11 the law that I will give you at the end of the case. In
12 fact, most likely one of the last people you will hear from
13 before you retire to deliberate is the judge giving the
14 charge on the law. This is not that detailed of a charge.
15 But, these are a few things that I think you need to know
16 going into the case, just in advance.

17 And first of all, as we have discussed, this is a
18 criminal case, and it is commenced by the state which I call
19 the prosecution, you will hear me refer to it many times and
20 the case is based on a series of Indictments, in fact there
21 are five Indictments, five charges that arise out of one
22 single incident.

23 Now, I want to tell you that in the Indictments, as I
24 have already discussed, and I don't want to sound like a
25 broken record, but it is important that what is in those

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1 Indictments is not evidence, it is not to be accepted as the
2 truth. It is simply a set of allegations that the state
3 brings against the defendant. I want to tell you that ---
4 and talking about the fact that it is an allegation, as I
5 said to you earlier this morning, you should not accept it
6 automatically as the truth, because it is not accepted by
7 you as the truth, because it is on a piece of paper. The
8 truth is going to be what comes from the witnesses and the
9 evidence in the case. This is why you sit right there, and
10 the witnesses sit right here, who are under oath, and under
11 cross and direct examination. So, please appreciate the
12 distinction between allegations in the case or allegations
13 from the Indictments and evidence that is in the case.

14 Now, you heard the defendant in this courtroom plead
15 not guilty, which means that the defendant denies the
16 allegations contained in those Indictments. The defendant
17 is not even required to enter a plea. The defendant is
18 allowed to remain silent. And the defendant is presumed
19 innocent of these charges, even if the defendant doesn't
20 enter a plea. What that basically means is this. In all
21 criminal cases, the state has the burden of proof. It never
22 shifts over to the defendant to disprove the allegations.
23 The state has the burden of proof of proving these charges
24 beyond a reasonable doubt. And I will tell you that beyond
25 a reasonable doubt is a high standard that the state must

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1 meet. And the defendant comes into this courtroom, and is
2 clothed with the presumption of innocence, continues to be
3 presumed innocent, until the state proves each and every
4 element of these charges --- of each of the charges, beyond
5 a reasonable doubt. That is a high burden. And the purpose
6 of this trial is to see whether or not the state can meet
7 that high burden.

8 Now, let's talk a little bit about your role in the
9 case. First, I will speak about mine. I am the judge of
10 the law, which means I will be privileged to be your
11 presiding officer. And if there is some dispute about the
12 evidence, or the procedure we use, I will resolve that
13 between the parties, and at the end I will give you the
14 charge on the law.

15 But your role is more important than mine, because you
16 are the judges of the facts. What that means collectively
17 is you decide what the facts are, you apply those facts to
18 the law that I give you at the end of the case, and working
19 together that is how we will reach a verdict.

20 Now, just like you, I've not heard the evidence in this
21 case. But I will tell you that many times in court we will
22 have witnesses who will testify to things that sometimes
23 seem inconsistent and sometimes absolutely mutually
24 exclusive, cannot be reconciled. Well, I don't know if that
25 is going to happen here or not, but I will say to you that

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1 if it does, you are the judges of the facts, and thus, you
2 must decide which of the witnesses are more credible and
3 believable in order to determine what the facts are.

4 Now, if you think about this, this is something that
5 you do everyday all day. Every time you talk to someone you
6 gauge them for credibility and believability, whether it is
7 an adult, or a child, or somewhere in between. And, you
8 should employ those same common sense factors that you use
9 everyday in life here in the courtroom. But some other
10 things that you may want to look to, and I tell you this in
11 advance so you can do this while the witnesses are
12 testifying is, what is the demeanor of that witness when
13 they are testifying? Is it hesitant, or is it straight
14 forward? What is their ability to know what they are
15 talking about? How did they come to know what they are in
16 here testifying about? And is their testimony consistent
17 with itself? Is it weakened or strengthened by other
18 evidence in the case? And further, in light of the global
19 evidence in this case, as you find it to be, how reasonable
20 is what that witness is saying? And finally, might there be
21 a reason a witness would want to help or hurt one side or
22 the other of the case? Might that witness have a bias or a
23 prejudice? These are things that I tell you in advance, so
24 that you can consider these while the witnesses are
25 testifying.

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1 Now, let's talk a little bit about our procedure. In
2 just a moment, when I conclude these opening comments to
3 you, the Solicitor and then Defense counsel are going to
4 come before you in what we call opening statements. An
5 opening statement is not some big persuasive argument that
6 you might imagine from television. It is just an
7 opportunity for the lawyers to tell you what they believe
8 the evidence is either going to show, or perhaps is not
9 going to show. And after opening statements are concluded,
10 we go first to the state, because the state has the burden
11 of proof. They will call their witnesses one after another.
12 And every time they call a witness, that witness will come
13 up here, take the oath, and sit in the witness chair, and be
14 subject to direct examination by state's counsel, and cross
15 examination by defense counsel. Then the state rests, and
16 if the defendant wishes to call witnesses they are given an
17 opportunity to do that, but they are not required to do
18 that. Because again remember, the burden of proof never
19 shifts to the defendant. The defendant has no burden of
20 proof. Has nothing to prove in the courtroom, is not
21 required to testify, is not required to put up any
22 witnesses, because the burden never shifts. But, if the
23 defendant wishes to call witnesses, we will take them one
24 after another, with the defense counsel having direct
25 examination and the Solicitor's counsel having cross

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1 examination. And then all the testimony closes. The
2 lawyers come before you in closing argument. I give you the
3 charge on the law. You retire to deliberate. In a
4 nutshell, that is how this process is going to work.

5 Now, a couple more things that I want to tell you.
6 First of all, I usually go roughly an hour or an hour and a
7 half before we take a break. And, I never know to the
8 moment. I don't want you worried about that and watching
9 the clock. It just depends on where we are in the
10 testimony. But, if you need to take a break, before we call
11 for a break, please raise your hand, I will understand what
12 that means. We will stop and take a break immediately. I
13 do that for two reasons. Number one, you are giving your
14 time, or just about giving it to perform a very important
15 civic duty of high public purpose. I want you to be
16 comfortable about what you are doing. But, secondly, I
17 don't want you worried about something else. I want you to
18 be able to listen to the testimony and the evidence in the
19 case, and render a verdict which is true, because you were
20 able to determine what the facts are. So, let us know if
21 you need to take a break.

22 Secondly, when we do take a break, please don't go back
23 and discuss the case and the reason for that is this. You
24 should only discuss the case when it is given to you at the
25 end of the case for deliberation, after you have heard all

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1 of the evidence. If we heard just one witness or a piece of
2 a witness, and took a break and the jury went back and made
3 some preliminary decision that drove the rest of the case it
4 would be unfair to the witnesses who come behind as well as
5 to the defendant, if the defendant wishes to put up a case.
6 And for that reason, please, do not discuss this case until
7 it is given to you for deliberations at the end of the case.

8 Now, we operate this courtroom on a system of rules
9 that we call the Rules of Evidence, or the Rules of Civil
10 Procedure. And just like you are sitting over there where
11 you are, I am sitting over here where I am, if an objection
12 comes, because one side or the other thinks the other side
13 is either breaking those rules or about to break those
14 rules, well I don't know what the objections are before they
15 come. But, when they do come I rule on them based on my
16 training as a judge, my understanding of the law as both a
17 judge and a lawyer for many years before I became a judge,
18 my experiences in the courtroom. But never do I rule on an
19 issue to somehow send you a message about how I feel about a
20 particular issue, because I want you to understand this. I
21 don't have a position on the facts, because if I did I would
22 be invading your providence. You are the judges of the
23 facts, not me. So, please take no inference from any
24 rulings the Court may make on the issues before me, simply
25 because it was an issue that had to be resolved at the

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1 moment.

2 Now, the last thing that I want to tell you is this. In
3 a moment the lawyers are going to come before you in opening
4 and at the end they come before you in closing statement.

5 Now, please notice the lawyers are not under oath. They are
6 not under direct and cross examination. They are advocates
7 for their party. And what that means is, please appreciate
8 the distinction between a lawyer's argument which is not
9 evidence, and the evidence which is in the case, which is
10 what the witnesses testify to on direct and on cross
11 examination. I am not saying the lawyers are going to be
12 dishonest with you, please don't misunderstand. I am just
13 simply saying please appreciate the difference between a
14 lawyer's argument and the evidence in the case.

15 All right, just one moment, ladies and gentlemen. I
16 know it is a little warm in here, and so, if you need to
17 take a break earlier than we normally would, just raise your
18 hand, let me know. We will do that. If you need a fan of
19 some sort we will see if we can't round one up for you.

20 Let me also say to those in the courtroom, as well as
21 to those on the jury, please, if you have a cell phone on
22 you, please make sure it is cut off and that it is not
23 operating, because that is very disruptive when they ring
24 during a courtroom proceeding.

25 Now, with that understanding, ladies and gentlemen,

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1 thank you again for your service. I look forward to working
2 with you in the trial of this case.

3 The Court recognizes prosecution for opening statement.

4 **OPENING STATEMENT BY THE STATE**

5 **MR. HOLT:** Thank you very much, Your Honor. May it
6 please The Court?

7 **THE COURT:** Mr. Holt.

8 **MR. HOLT:** Now, ladies and gentlemen, on January 8,
9 2010, it was probably one of the coldest nights that we have
10 had in a long time. And it was 6:30, which in January means
11 it had already gotten dark. Trooper Wade Gainey, you are
12 going to hear from him, he was on patrol. He was patrolling
13 Highway 34 here in the County. He falls in line behind a
14 2005 Chevy Cobalt, and a Chevy Cobalt is a smaller make of
15 car. And the Trooper notices that there are some problems
16 here that may tend to show that a DUI is happening. So what
17 he does, per policy --- they have policies that regulate
18 everything, is he turns his video camera on. And he
19 continues to follow the 2005 Chevy Cobalt as it turns down a
20 country road. It is cold. It is dark. It is real dark.
21 And, the car makes a couple of turns. A couple more things
22 pop up that makes the Trooper believe he is following
23 someone guilty of DUI. So, according to regulation he puts
24 on his blue lights. But when he flips on his blue lights,
25 they are on Potato House Road. And about the time he does

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1 that the Cobalt looks like it is about to stop. And Trooper
2 Gainey is still behind him, still following him this whole
3 time. And instead of stopping, instead of getting out and
4 tending to it right there, the defendant in this case
5 Charlton Hill makes the decision that ultimately brings us
6 here today because he turns that DUI stop into a car chase.
7 And Trooper Gainey reaches speeds of around a hundred miles
8 per hour. He calls in. Follows procedure the entire time.
9 And the chase doesn't last long. See, Trooper Gainey has
10 gone from a possible suspect, to a blue light, to what could
11 have been a stop, and now he is in a hundred mile per hour
12 chase. It doesn't last long because for reasons we are
13 going to talk about in this trial, can't negotiate a regular
14 bend in the road on Potato House Road, and that car goes off
15 the side of the road, flips end over end, and all along the
16 way it is picking up some logs that are on the side of the
17 highway, and travels a good distance --- you will be able to
18 see all of this, and hear more evidence about that night,
19 January 8, 2010. When Trooper Gainey finally catches up to
20 the car and pulls up, he sees this man in the driver's seat,
21 Charlton Hill, the defendant in this case. And as he is
22 walking around the car, he has to do two things. He has to
23 secure the scene, so eventually traffic can start going by
24 again. And he has to investigate the wreck. And in about
25 four seconds into it, one of the first things that he

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1 notices with his flashlight looking around is the body of
2 Sylvia Mattox Hill. She is lying there, because as I told
3 you that car was flipping end over end, one of those logs
4 that it picked up come through that front window and hit her
5 in the head like a two hundred pound bullet and threw her
6 out of the back window. And the evidence is going to line
7 this up clear as day. And it is going to be one of the
8 things that I am in charge of proving to y'all, and it is
9 one of the things that I believe I can prove to y'all,
10 beyond a reasonable doubt.

11 Now, ladies and gentlemen, because of those actions
12 that he made that night, because of this horrible, horrible
13 accident, and that horrible crash, my office has indicted
14 him with Felony DUI, driving under suspension. Let me make
15 sure that I get them all right. Reckless homicide, failure
16 to stop for a blue light that results in death, and
17 involuntary manslaughter. And the law of that law though --
18 - and we will talk about it at the end, and throughout the
19 course of this trial. It is nothing that we really need to
20 hit on right now.

21 But ladies and gentlemen, just a few quick points like
22 the judge made. And I would like to make a couple of points
23 as well.

24 The American jury trial is the reason that we as
25 Americans can hold our head up when we visit or see anybody

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1 from any other country. We don't have it anywhere else like
2 we do. Okay? Because the state doesn't get up here and say
3 that person is guilty. The corporations don't get up here
4 and decide they want this person found guilty. The people
5 do, and that is y'all. Twelve disinterested people. If you
6 were interested, you would have to know something about it,
7 and we couldn't have chosen you, but twelve people who don't
8 know anything about it.

9 Now throughout the next couple of days, you are going
10 to learn what a real police investigation entails. And you
11 are going to learn what a real trial entails. And these are
12 things that are completely different than what we are
13 accustomed to seeing on television. You are going to learn
14 what the Clerk's Office does. What the judge and the
15 defense counsel, and the Court reporter do. You are going
16 to learn all of that. But my job is a little bit different,
17 because I have a burden of proof. And over the next couple
18 of days this trial is going to be like trip. And I am going
19 to be like a tour guide or a bus driver. I am going to take
20 y'all on a trip. And right now I am picking you up, and you
21 know nothing about this case. You don't know any of the
22 facts. You don't know anything that really matters. But
23 over the next couple of days we are going to learn them.
24 And then when this trip is over, I am going to drop y'all
25 off. Y'all are going to be able to go in that back room.

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1 And y'all are going to be able to know enough about this
2 case where you have no problem passing judgment. And you
3 are going to believe, just like the state believes, and just
4 like I am sure I can prove to y'all over the next couple of
5 days, that this defendant was guilty. And you are going to
6 hear about everything that he did. And you are going to
7 hear about the multitude of reasons why we believe it is
8 true.

9 Now, the biggest thing to remember, and I am going to
10 sit down, because opening statement is not suppose to last
11 long, the biggest thing that I want y'all to remember is at
12 the end of this, we are going to talk about the law. We
13 will talk about the evidence. And we will go over it so you
14 can know it. But the most important thing that can happen
15 here is that y'all pay attention. And the most important
16 way y'all are going to pay attention is you are going to
17 pass all the evidence that I am going to give y'all through
18 the filter in your brains which is your common sense. You
19 are going to be thinking, does this officer look like he
20 would tell the truth? Does what they say match the physical
21 evidence that I have seen? If I look at this picture, does
22 it match up with what this person is saying or what that
23 person is saying? And who do I believe is more trustworthy?
24 And what scenario do I believe is really what happened?

25 The defense counsel is going to talk a little bit, and

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1 they are going to talk a lot about reasonable doubt, and I
2 don't want y'all to worry about that. We are going to go
3 over that in total at the end of this trial. That is not
4 going to be a problem.

5 But I appreciate everything that y'all are doing here
6 for us this week. I want y'all to know that it doesn't go
7 unappreciated. I know everybody is busy. And I hope that
8 you pay attention. And I hope that you pass everything
9 through your common sense.

10 And I thank you very much for your time. I am going to
11 turn the floor over to defense counsel.

12 Thank you.

13 **THE COURT:** Opening statement for the defendant.

14 **MR. SWILLEY:** Thank you, Your Honor.

15 **OPENING STATEMENT BY MR. SWILLEY**

16 **MR. SWILLEY:** Mr. Holt, Ms. Burch. Good afternoon,
17 ladies and gentlemen. My name is Matt Swilley, and along
18 with Ms. Crayton over here I represent Charlton Hill in this
19 matter. Okay? And I submit to you now the State of South
20 Carolina will not prove Charlton Hill guilty beyond a
21 reasonable doubt, and there is an excellent reason for that.
22 He is not guilty. He did not commit this crime. He was not
23 driving the automobile.

24 Now, there is going to be a lot of testimony submitted
25 before you through the state that talks about a lot of

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1 things --- a lot of facts in this case. This case is a huge
2 thorough investigation here in Darlington County.

3 Now, on the night in question, back in January 2010,
4 this car did proceed down Potato House Road. This car did
5 not stop when the Trooper, Mr. Gainey put his lights on and
6 his car did crash, and Mrs. Hill did die. Okay? Mr. Hill
7 was not driving the automobile. Don't get confused --- I am
8 not claiming that this incident was not a tragedy. This was
9 a huge tragedy. It is a tragedy when anybody dies before
10 they are supposed to. And that is what happened to Mrs.
11 Hill. She wasn't supposed to die that night. She was
12 supposed to live out a lot more of her life, many more
13 years. It is a tragedy. But a tragedy and a crime are not
14 synonymous. They don't mean the same thing. Okay? This
15 is a tragedy, not a crime. All right.

16 Now, you are going to see throughout the testimony
17 presented to you by the state is that there was a video
18 camera, and all of this was videotaped. A video camera that
19 was recorded by Trooper Gainey's dash cam. It was mounted
20 in his car. It got turned on when he started following this
21 automobile.

22 Now, the whole time you can see the car, but you can't
23 see who is driving it. You cannot see who was in that
24 driver's seat anytime that car was moving. And this, ladies
25 and gentlemen, is reasonable doubt in this case.

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1 Now, I have a request from you. Throughout the course
2 of this case, I want you to put aside whatever might inflame
3 the prejudices, or cause any kind of bias. I would like for
4 you to do what I call using your brain, and not your heart.
5 Okay? Don't use your emotion in deciding the facts of this
6 case. Use your common sense, your collective common sense.
7 Look upon the facts. Look upon the evidence and testimony
8 presented during the course of this trial. Use your brain.
9 Okay? Don't get emotional. Don't worry about things that
10 aren't in question. Just observe. Just observe what is
11 put before you, and decide the facts. And that is
12 extremely important. Okay? What you are going to see
13 at the conclusion of the evidence presented before you,
14 is something that happens almost every day in America.
15 And that is where the government got it wrong. The
16 government didn't get it right. It happens every day.
17 It happens every day in Darlington County. It happens
18 in Columbia. And for goodness sakes it happens in
19 Washington, D.C. The government just got it wrong.
20 There is reasonable doubt in this case. There is
21 reasonable doubt.

22 Now, there are three important principles in American
23 Criminal Law that I would like for you to be mindful of.

24 Number one. The state has the burden of proof.
25 Anything that has to be proven has to be proven by the

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1 state, by the government, by Mr. Holt, and by Ms. Burch.

2 Okay?

3 Number two. The Defendant, Mr. Hill, is presumed
4 innocent at all times. All right. And like some people
5 say the presumption of innocence is like a cloak of
6 righteousness stripped from the defendant.

7 And number three, and most importantly is that the
8 burden of proof that rests upon the state is beyond a
9 reasonable doubt. They have to prove beyond a reasonable
10 doubt. And that is something that they cannot do, because
11 there is reasonable doubt in this case.

12 Now, as to what Mr. Holt said, this is not like a
13 bus driver, or a tour guide. A tour guide is going to
14 take you through the course of this trial, and show you
15 all of these things. That's right. He is driving.
16 They are driving the bus. Okay? They are prosecuting.
17 They are the state. But, I am going to ask you --- I am
18 going to ask you to be mindful of the fact that they are
19 driving, okay? Pay attention to where you are going.
20 Pay attention to what you see. Pay attention to what
21 you hear. Don't Let them drive the bus falsely and
22 take everything they say as fact. Okay? Use your own
23 brain. Pay attention to this bus ride. And what is more
24 important than that is that what you have to do is
25 decide what has been proven. Okay? Not really so much

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1 who you believe, what you do believe, what you don't
2 believe, but what has been proven before you. What has been
3 proven beyond a reasonable doubt and that is fact. That is
4 what the state has to do. Anything short of that has to be
5 decided in favor of Mr. Hill.

6 Now, I would like to thank you for being here. I
7 know you don't want to be. I know it is stuffy in here.
8 But I would like to remind you that this is the most power
9 that y'all are ever going to have, unless you get elected
10 to some government office, this week is the most power
11 you are ever going to have. You have the power over a
12 man's life. You have power over his freedom or prison.
13 That is a lot of power, and I ask you to be mindful of
14 that throughout the course of this trial. You may not
15 feel important, but let me tell you, you are important.
16 You are extremely important.

17 I would like to thank you for being here. And I would
18 like to thank you for your attention. And I want to thank
19 you especially for your cooperation.

20 **THE COURT:** And the state, please call your first
21 witness.

22 **MR. HOLT:** Thank you, Your Honor. At this time, the
23 state would like to call Michelle Quick.

24 **THE COURT:** Please come forward and take the oath of
25 a witness.

MICHELLE QUICK - DIRECT EXAMINATION

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WHEREUPON, MICHELLE QUICK

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

MS. QUICK: Yes.

DIRECT EXAMINATION BY MR. HOLT

Q. Ms. Quick, would you please give your whole name for the jury?

A. Lynn Michelle Quick.

Q. Ms. Quick, what do you do for a living?

A. I'm a Paramedic for Darlington County EMS.

Q. And how long have you been doing that?

A. Twenty-years.

Q. Twenty-years. Now, is Darlington County EMS the only organization that you medic for?

A. Yes, sir.

Q. Okay. And can you tell us a little bit about the procedure for when an ambulance is called to the scene? Clearly, they don't just call you on your cell phone, and tells you the whole thing that happens?

A. No, sir. Everyone has to go through 911 Dispatch Center, and then dispatch gives us the call.

Q. Dispatch gives it to your office?

A. Yes, sir.

THE COURT: Counsel, Ms. Quick, would you move a little closer to that microphone, so that we can all hear you in the courtroom. Thank you.

MICHELLE QUICK - DIRECT EXAMINATION

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1 Q. Now, were you employed with Darlington EMS on January
2 8, 2010?

3 A. Yes, sir.

4 Q. And were you dispatched to a scene on Potato House
5 Road?

6 A. Yes, sir.

7 Q. What was the weather like that day? Was the sun up, or
8 was the sun down?

9 A. It was dark.

10 Q. And what was the temperature; do you remember?

11 A. It was cold. It was back in January.

12 Q. Now, can you walk us through --- you were arriving on
13 the scene, and then just tell us some of the things
14 that you were in charge of, and what you were a witness
15 to?

16 A. When we got the call to the wreck, we went there, and
17 the guy was in the driver's seat. We kept trying to
18 tell him we were going to have to extricate him out of
19 the car, because he was entrapped in there.

20 Q. Let me just stop you real quick. Why would you have to
21 extricate someone out of the car as opposed to letting
22 them walk out of the car?

23 A. The mechanism of the injury, because of the extent of
24 the wreck. He could have spinal injuries. The door
25 was jammed in there. And we couldn't just open up the

MICHELLE QUICK - DIRECT EXAMINATION

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1 door to get him out. So, he would have to be cut out.

2 Q. All right. And what happened next?

3 A. And then he would not sit still and let us get him out.

4 He finally just crawled through the window and got out.

5 We placed him on a backboard, and took him to the

6 hospital.

7 Q. Now, at any time during that were you close enough to

8 smell the defendant?

9 A. Yes, sir.

10 Q. And did you detect any type of odor, or anything about

11 his body?

12 A. We smelled alcohol on him.

13 Q. All right. And were you in charge of transporting him?

14 A. Yes, sir.

15 Q. The defendant? Where did you take him?

16 A. To Carolina Pines Emergency Room.

17 Q. And why would you take the defendant as opposed to the

18 passenger, Sylvia Hill?

19 A. Because anytime there is more than one patient, we have

20 to triage, and the patients that are more liable we

21 take them first. The DOA's are always last.

22 Q. So the defendant was in better shape --

23 A. -- yes, sir --

24 Q. Than the victim? All right. Now, when you actually

25 got the defendant into your ambulance, did you have to

MICHELLE QUICK - DIRECT EXAMINATION

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1 ascertain any information from him? Did you ask him
2 anything?

3 A. We asked him had he had any alcohol, and that is our
4 procedure to ask when they have any --

5 **MR. SWILLEY:** Objection, Your Honor.

6 **THE COURT:** On what basis?

7 **MR. SWILLEY:** Hearsay.

8 **THE COURT:** Overruled.

9 A. Any time we have any mechanisms or injury like that,
10 any time they have injuries that we may need to give
11 pain medication for, we have to ask, have you had
12 anything to drink, alcohol? Because if we give pain
13 medication with the alcohol, it will knock your
14 respiratory drive down.

15 Q. And what did the defendant tell you, in the ambulance
16 that night when you asked him?

17 **MR. SWILLEY:** Objection, Your Honor. For my
18 previous reasoning.

19 **THE COURT:** As previously stated, that is overruled
20 as well. And, you may answer, ma'am.

21 **MS. QUICK:** Okay. May I look at my paperwork, my
22 statement?

23 **MR. HOLT:** Yes, ma'am.

24 A. You have the statement from the Sheriff's Department
25 that I give them, what he stated to us.

MICHELLE QUICK - DIRECT EXAMINATION

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1 Q. I do?

2 MR. HOLT: Permission to approach, Your Honor.

3 THE COURT: You may.

4 Q. And I am handing you a copy of your statement.

5 A. Thank you. On my statement he stated that he had
6 consumed two twenty-two ounce beers. He stated that he
7 also took some antidepressants, Xanax and Soma.

8 Q. Are Xanax and Soma antidepressants, or is he saying he
9 took three drugs or two drugs?

10 A. Xanax is for anxiety. It is not an antidepressant.
11 And Soma is a muscle relaxer.

12 Q. So he is telling you essentially that he drank two
13 douse --- douses ---

14 MR. SWILLEY: Objection, Your Honor. I think he is
15 leading the witness at this point.

16 THE COURT: He has restated the answer in a slightly
17 different way, but that is not leading. I am going to
18 overrule your objection. You may confirm what the witness
19 testified to.

20 Q. So he is telling you that he drank two twenty-two ounce
21 beers, and he took three types of drugs?

22 A. Yes, sir. This is what is in my statement that I
23 wrote.

24 Q. And where were you at when he told you that?

25 A. In the back of the ambulance.

MICHELLE QUICK - DIRECT EXAMINATION

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1 Q. All right. Now, when you got in the back of the
2 ambulance, where did you drop him off at?

3 A. Carolina Pines, in the Emergency Room.

4 Q. And do you know into whose custody you placed him into?

5 A. Yes, if I can look at my notes. The RN nurse at
6 Carolina Pines, Marla Koontz.

7 Q. Okay. Thank you very much, Ms. Quick. Now, let me ask
8 you some brief follow-up questions about the scene.
9 When you got there, where was the victim in this case,
10 Sylvia Hill?

11 A. She was on the driver's side in the back in the field,
12 the trees area. She was outside of the car.

13 Q. She was not in the car?

14 A. No, sir.

15 Q. How far away from the car was she?

16 A. I'm not sure.

17 Q. Less than ten feet, or more than ten feet?

18 A. It was probably more than ten feet. I mean, she was
19 away from the car, not directly at the car.

20 Q. Now, was there any chance --- Did EMS stand a chance
21 for saving her life?

22 A. No, sir.

23 Q. And why was that?

24 A. She had very extensive injuries to her. There was no
25 life seen at all on her.

MICHELLE QUICK - CROSS EXAMINATION

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1 **MR. HOLT:** Beg the Court's indulgence, just briefly.

2 **(PAUSE.)**

3 **Q.** Now, law enforcement didn't tell you any questions to
4 ask the defendant did they?

5 **A.** No, sir.

6 **MR. HOLT:** Thank you very much. Please answer any
7 questions Mr. Swilley might have.

8 **MS. QUICK:** Okay.

9 **THE COURT:** Cross examination.

10 **MR. SWILLEY:** Very briefly, Your Honor.

11 **CROSS EXAMINATION BY MR. SWILLEY**

12 **Q.** Very briefly, Ms. Quick. When you arrived --- Just to
13 clarify, when you arrived on the scene of Potato House
14 Road, had the Chevy Cobalt ceased movement?

15 **A.** It was in the trees on the ditch over there.

16 **Q.** Okay. So, when you arrived the car was still, correct?

17 **A.** Yes, sir.

18 **Q.** Okay. And you don't have to call me sir. And you
19 stated to Mr. Holt that the defendant smelled of
20 alcohol?

21 **A.** Yes, sir.

22 **Q.** Were you able to differentiate between the automobile
23 smelling like alcohol and the defendant, or did the
24 whole scene just sort of smell like alcohol?

25 **A.** The whole scene smelled like alcohol. And he also

MICHELLE QUICK - CROSS EXAMINATION

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1 smelled like alcohol in the back of the ambulance.

2 Q. Okay.

3 **MR. SWILLEY:** Beg the Court's indulgence. Thank
4 you, Ms. Quick, I have nothing further.

5 **THE COURT:** All right. The way we have a
6 presentation of a witness is we have direct examination and
7 then cross. And if there is some new issue brought up in
8 cross, we go back to the proponent to see if there is any
9 redirect on the witness on new issues.

10 Is there any redirect?

11 **MR. HOLT:** Not for this witness, Your Honor.

12 **THE COURT:** All right. Is there any objection to the
13 release of the witness from either side?

14 **MR. HOLT:** There is none from the state.

15 **MR. SWILLEY:** None from the defense, Your Honor.

16 **THE COURT:** All right. Ma'am, you are not required
17 to leave, but you are free to step down and leave if you
18 wish.

19 **MS. QUICK:** Thank you.

20 **THE COURT:** Thank you. Please call your next
21 witness.

22 **MS. BURCH:** Thank you, Your Honor, the state would
23 calls Josh Edwards.

24 **THE COURT:** Please come forward and take the oath of
25 a witness.

JOHN EDWARDS - DIRECT EXAMINATION

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WHEREUPON, JOHN EDWARDS

FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

MR. EDWARDS: Yes, sir.

THE COURT: You may proceed.

MS. BURCH: Thank you, Your Honor.

DIRECT EXAMINATION BY MS. BURCH

Q. Mr. Edwards, if you would state your name for the record?

A. Joshua Edwards.

Q. And Mr. Edwards, where are you employed currently?

A. Booze Island Hamilton, Incorporated.

Q. And what do you do there?

A. I am a senior consultant for war gaming modeling and assimilation.

Q. The date of January 8, 2010, where were you employed?

A. South Carolina Highway Patrol.

Q. And how long had you been employed there by that date?

A. Eight and a half years.

Q. Do you remember a traffic accident that occurred on Potato House Road on January 8, 2010?

A. Yes, ma'am.

Q. What was your involvement in that accident, or in that investigation?

A. Very briefly, upon arriving on the scene, I was asked by my supervisor to assist the county with any problems

JOHN EDWARDS - DIRECT EXAMINATION

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1 they may have at the hospital.

2 **THE COURT:** Mr. Edwards, would you move a little
3 closer to that microphone, so we can make sure our jury can
4 hear you as well?

5 **MR. EDWARDS:** Yes, sir.

6 Q. What did you assist the county with?

7 A. I was strictly an observer for whatever paperwork they
8 may have to fill out at the time.

9 Q. Did you go anywhere with the County Investigator?

10 A. Yes, ma'am. I arrived at the hospital with
11 Investigator Lee, Pat Lee.

12 Q. Do you remember which hospital it was?

13 A. Carolina Pines.

14 Q. And what did you observe Investigator Lee do at
15 Carolina Pines?

16 A. Basically, he talked to the individual. Implied
17 consent, Miranda Rights, drew the blood, and etcetera.

18 Q. When you say individual, do you mean Mr. Charlton Hill?

19 A. Yes, ma'am. Mr. Charlton Hill.

20 Q. So, there is a procedure that has to be gone through
21 whenever a Felony DUI happens, or is alleged to have
22 happened. Did you observe that procedure?

23 A. Yes, ma'am.

24 Q. Will you tell us a little bit about that?

25 A. Yes, ma'am. The policies per departments may be

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1 different; however the DUI law in the State of South
2 Carolina is still the same. The individual has to be
3 Mirandized, prior to reading implied consent, prior to
4 drawing blood. In this case, Mr. Charlton Hill was
5 Felony DUI. So I observed Mr. Pat Lee, Investigator
6 Pat Lee read him his Miranda Rights, as well as implied
7 consent laws, and then requested blood from Mr. Hill.

8 Q. Who took that blood?

9 A. The young lady at the hospital, Ms. Koontz, if I recall
10 right.

11 Q. She was a nurse at the hospital?

12 A. Yes, ma'am. I think so.

13 Q. What happened after Ms. Koontz took the blood?

14 A. By procedure, she dated it. She put a time on it. She
15 signed it saying basically that she withdrew the blood,
16 handed it to Investigator Lee.

17 Q. Okay. And was there anything else that had to be done
18 in that procedure that you saw?

19 A. Basically, he took it and placed it inside of a kit to
20 get it prepared to send to SLED, or passed it to Mr.
21 Russ.

22 Q. And as far as your knowledge being with Highway Patrol
23 the procedure was followed correctly?

24 A. Yes, ma'am.

25 **MS. BURCH:** Beg the Court's indulgence.

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1 (PAUSE.)

2 MS. BURCH: That's all the questions I have at this
3 time, Your Honor.

4 THE COURT: And cross examination?

5 CROSS EXAMINATION BY MR. SWILLEY

6 Q. Mr. Edwards, was this the extent of the involvement you
7 had in this case?

8 A. Yes, sir. Very briefly.

9 Q. All right.

10 MR. SWILLEY: Thank you, Your Honor, nothing
11 further.

12 THE COURT: Very good. Then sir, you may step down,
13 and you are free to leave if you wish to leave.

14 MR. EDWARDS: Yes, sir. Thank you, Judge.

15 THE COURT: State, please call your next witness.

16 MR. HOLT: Thank you very much, Your Honor. At this
17 time the State would like to call Pat Lee, from Darlington
18 County Sheriff's Department.

19 THE COURT: Please come forward and take the oath of
20 a witness.

21 WHEREUPON, PATRICK NOEL LEE

22 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

23 MR. LEE: Yes, I do.

24 DIRECT EXAMINATION BY MR. HOLT

25 Q. Officer Lee, would you please give your whole name for

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1 the jury?

2 A. Patrick Noel Lee.

3 Q. And Officer Lee, what do you do for a living?

4 A. I am a deputy sheriff for the Darlington County
5 Sheriff's Office, currently assigned to the Criminal
6 Investigation Division.

7 Q. Now let me ask you this. How long have you been in law
8 enforcement?

9 A. I have been a law enforcement officer for over eighteen
10 years.

11 Q. How many of those have been with the Sheriff's Office?

12 A. Since 2002.

13 Q. Now, Officer Lee, were you involved in an investigation
14 stemming from an accident on Potato House Road, January
15 8, 2010?

16 A. Yes, I was.

17 Q. And did you arrive on scene that night?

18 A. Yes, I did.

19 Q. And is Potato House Road, the part, the scene that you
20 were at, is that in Darlington County?

21 A. Yes, sir.

22 Q. And about what time --- Do you remember about what time
23 you got to the scene that night?

24 A. It was January, and it was dark --- it was night time.
25 I would say a little after 6:30, almost 7:00 in the

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1 p.m.

2 Q. What was the temperature like?

3 A. It was freezing. The wind was blowing. It was one of
4 the coldest nights we ever had. I'll never forget it.

5 Q. Now, were you one of the first people on the scene, or
6 were there other people there when you got there?

7 A. There were a few people on scene when I got there.
8 Trooper Gainey, Chief Thompson, maybe a few other
9 people. One or two. I was probably the third or
10 fourth maybe person that got to the scene.

11 Q. Now, who called you and told you to come --- Who
12 assigned you to this case?

13 A. Well, the call came over the 911 Communication Center
14 to respond to the Highway Patrol being involved in
15 either a pursuit, or a traffic investigation. And when
16 I responded to the call, I spoke to Trooper Gainey, and
17 as staff officers got to the scene, they made the
18 decision that we were going to investigate the
19 incident.

20 Q. Was a 2005 Chevy Cobalt on the scene when you got
21 there?

22 A. Yes, sir.

23 Q. Was there anybody inside of it?

24 A. The Defendant, Mr. Hill.

25 Q. And in what seat was he sitting in when you got there?

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1 A. He was sitting in the driver's seat. He was locked
2 inside. He was entrapped in the driver's seat of the
3 car.

4 Q. And was there any odor about his person, or near him?

5 A. Yes, sir. There was a strong odor of alcoholic
6 beverage, clearly several feet away from the vehicle
7 that you could smell immediately.

8 Q. And let me ask you this. What do your duties consist
9 of from that night, in the sense, can you just walk the
10 jury and I through exactly what you did?

11 A. Sure. The first thing as soon as I got a call as a
12 Deputy Sheriff, at the current time I was a Sergeant on
13 a Patrol Division. And, we just got a call over the
14 radio that Highway Patrol was possibly involved in a
15 pursuit of some sort, sometimes it gets a little
16 misunderstood whether they were in a chase, or they
17 actually got in a wreck themselves. We got more
18 information as I was headed towards Potato House Road,
19 and they said that a vehicle had been involved in a
20 traffic collision and the Highway Patrol was there
21 requesting our assistance from the Sheriff's Office. I
22 get on scene. I see Trooper Gainey. He is out of his
23 patrol car. He has got part of the road blocked up
24 with his patrol car, with the blue lights going. And a
25 gold Chevy Cobalt was partially parked in the road, and

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1 you know back into the ditch area. And you could tell
2 extensive damage had been done to the vehicle, where it
3 had obviously rolled or crashed. And, the defendant
4 was seen --- I saw him personally in the driver's seat.
5 And as the other officers got to the scene, the
6 decision was made that since the Highway Patrol was
7 involved or that there was any question about Highway
8 Patrol possibly being in a pursuit with this vehicle,
9 that the Sheriff's Department would investigate it and
10 take over any investigation that may be needed. And
11 that is when I was told to take over the investigation.
12 And I went to the hospital to follow-up, and through
13 the next step of the investigation.

14 Q. Now, before you went to the hospital, did you notify
15 anybody else to go ahead and go there?

16 A. Yes, I did, counselor. I went and --- I stayed a few
17 more moments with Trooper Gainey, until more people
18 could get there. And asked one of our other officers
19 that were in the Hartsville area to go stand by the
20 hospital so when the defendant got off the ambulance
21 there would be a deputy there to watch him at all
22 times.

23 Q. Now, let me ask you this. Right before that happened,
24 were you there when the defendant left the automobile?

25 A. Yes, I was.

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1 Q. Did you see how he did it?

2 A. Yes, I did. Mr. Hill was digging for some papers in
3 the car as if nothing happened. He was very --- It was
4 a very strange situation, because Mr. Hill was just
5 looking for --- like he was looking for the
6 registration card or something. And it was very
7 strange. It was like do you even realize what you have
8 been in? And, he continued to try to crawl out of the
9 driver's seat. And he wouldn't listen to us to stay
10 in. Trooper Gainey, myself, and even EMS and some
11 other people tried to stay right there and try to hold
12 him off so he wouldn't get out of the car. He
13 continued to crawl out of the car and he fell right
14 onto the pavement, on the road. He wouldn't listen to
15 us. There wasn't no way of stopping him.

16 Q. Now, when you got to the hospital, can you tell us what
17 you witnessed?

18 A. When I got to the hospital --- my first responsibility
19 was to make sure that that deputy was still there that
20 I requested to watch Mr. Hill. That deputy was to make
21 sure that nobody else bothered Mr. Hill. That Mr. Hill
22 did not leave the hospital. And that he didn't consume
23 any alcoholic beverages, or take any drugs while being
24 witnessed by law enforcement.
25 After Mr. Hill was checked out by medical staff, and

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1 personnel, at that point that is when I went up and
2 advised Mr. Hill that --- only after he asked what
3 happened to his wife. He said, what happened to my
4 wife? And I told him that she did not survive.

5 Q. And without going into what anybody else said or
6 anything like that, did you witness the nurse, draw any
7 blood from Mr. Hill?

8 A. Yes, I did. I observed Ms. Koontz with the blood kit
9 right in front of me, per protocol.

10 Q. When she drew that blood, did it come out in a vile?

11 A. Yes, it did.

12 Q. Did anybody write anything on that vile?

13 A. She wrote it. She has to initial it. And I have to
14 witness it.

15 Q. And, where did she put the vile?

16 A. She secured these samples in a SLED regulated box, by
17 protocol. We have a standard blood draw box, form,
18 whatever like that, so it is contained in a kit, so we
19 can better store it and transport it, so it don't get
20 lost.

21 Q. Now, did she seal that kit up in front of you with
22 anything?

23 A. Yes, sir. Can I refer to some of my notes about that?
24 I have before me a South Carolina Law Enforcement Urine
25 Blood Collection Report. This particular one.

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1 **MR. HOLT:** Before you get into that, permission to
2 approach, Your Honor?

3 **THE COURT:** You may.

4 Q. Without getting into any of that, if you can just
5 answer a few brief questions.

6 A. Thank you.

7 Q. Could you tell me, without telling the jury what that
8 is do you recognize what is in front of you?

9 A. Yes, I do.

10 Q. Do you know what it is?

11 A. Yes, I do.

12 Q. Have you ever seen it before?

13 A. Yes, I have.

14 Q. And, have there been any changes to it other than the
15 ones you yourself made when you created it?

16 **(PAUSE.)**

17 A. Everything looks in order.

18 **MR. HOLT:** Your Honor, at this time the state would
19 like to move Exhibit 110 into evidence.

20 **MR. SWILLEY:** No objection to that article.

21 **THE COURT:** All right. State's Evidence 110 in
22 evidence without objection.

23 **WHEREUPON, STATE'S EXHIBIT**

24 **NUMBER 110 IS MARKED AND**

25 **ADMITTED INTO EVIDENCE WITHOUT**

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OBJECTION.

Q. Now, Officer Lee, the taking of blood from a suspected Felony DUI, is that very complex and procedural, or is it just something that y'all do Willie-Nellie?

A. Well, it is a common occurrence for law enforcement to go and have blood drawn regularly when people are charged with Felony DUI. It is just that you take extra precaution to make sure that everything is done by the book, and that nothing messes up along the way.

Q. And what are some of those precautions?

A. Some of the precautions are is that we make sure that we witness the actual medical personnel at that moment drawing that blood so there is no mistake that it isn't anybody else's. And that once the blood is taken it is secured properly, and we document and seal the actual box containing the samples.

Q. Now, did you follow those procedures in this case?

A. Yes, I did.

Q. And what nurse took the blood?

A. According to my paperwork here, Marla Koontz, a Registered Nurse, and that was documented on my paperwork for that night.

Q. And, did you witness this?

A. Yes, I did.

Q. Did anybody else witness it?

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1 A. Yes.

2 Q. Who else was there watching that?

3 A. Trooper Josh Edwards.

4 Q. All right. And let me ask you this. What did you do
5 with that blood kit after you collected it? After it
6 was created, and it came into your possession, what did
7 you do with it?

8 A. Once I received the kit and I had it in my custody, I
9 never gave it up until the Evidence Officer, Sergeant
10 Russ Harrell arrived on scene, and I gave it
11 immediately to him.

12 Q. Now when you say arrived on scene, where do you mean?

13 A. Well, we were still at the hospital. We had just taken
14 the blood samples. And I was holding onto them, and
15 did not leave them. And I had to wait on Russ Harrell
16 with the Sheriff's Office to get to the hospital to
17 come put hands on and take it personally from the
18 hospital. In the same room that we had been with Mr.
19 Hill the whole time.

20 Q. Now, after that night, after you went to the scene of
21 the accident, after the blood, after the hospital,
22 after you gave it to Russ, did your duties in this case
23 consist of anything else?

24 A. I completed a Traffic Collision Report. That was it.

25 Q. And who did you get to help you with that?

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1 A. I did it --- I did all the writing and everything
2 myself. But, for protocol reasons, I didn't want it to
3 be a minor mistake on there, due to bad handwriting or
4 anything like that. So, I asked Josh Edwards to look
5 over it. Other than that, he did not write it. He did
6 not give anything other than just a review of it.

7 MR. HOLT: Beg the Court's indulgence for just a
8 moment.

9 (PAUSE.)

10 Q. Deputy Lee, can you explain to the jury what implied
11 consent is?

12 A. I'll do my best to explain it to them.

13 Q. Let me ask you this, and this is what I'm really
14 getting at. When you got the blood, what did you do?

15 A. Well, at the time the defendant was charged, and we
16 told him he was under arrest for Felony DUI, or DUI
17 related death or anything like that, we are allowed to
18 forcibly take blood samples from an individual under
19 those guidelines. When people sign for their driver's
20 license in South Carolina, they agree to give their
21 blood in this particular circumstance.

22 Q. So, right before you got the blood, you put the
23 defendant under arrest?

24 A. Yes, I did.

25 MR. HOLT: Thank you very much, Officer Lee, please

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1 answer any questions that Mr. Swilley or Ms. Crayton may
2 have.

3 **THE COURT:** Cross examination.

4 **CROSS EXAMINATION BY MS. CRAYTON**

5 Q. Officer Lee, do you know the victim Sylvia Hill in this
6 case?

7 A. I did know Mrs. Hill, from years earlier, yes, ma'am.

8 Q. How did you know her?

9 A. Well, I knew her family.

10 **MR. HOLT:** Objection, Your Honor. Relevance.

11 **THE COURT:** Overruled.

12 A. I knew Mrs. Hill from many years ago. I knew her
13 family, and I knew her daughters.

14 Q. And do you know how long you knew her approximately?

15 A. I've known her a long time. I've probably known her
16 ever since I've been a police officer. Over eighteen
17 years probably.

18 Q. Did y'all have a close relationship, or did you have a
19 close relationship?

20 A. We just --- if we saw each other we spoke. We weren't
21 close.

22 Q. Are you close with any of her family?

23 A. No. I just knew her --- one of her daughters by name.
24 The other one, I didn't know her daughter's name. But
25 I knew that that was her daughters.

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1 Q. Were you the lead investigator on this case?

2 A. I wouldn't say I was the lead investigator, I'm an
3 assistant investigator.

4 Q. Okay. Who would you say the lead investigator was?

5 A. Probably Lieutenant Hodges.

6 Q. And you testified about watching the blood being drawn;
7 correct?

8 A. That's correct.

9 Q. And you also testified that you arrived on the scene,
10 and you were about the third or forth person on the
11 scene?

12 A. Yes, ma'am.

13 Q. From when you arrived on the scene to when the blood
14 was drawn, do you know about how much time had passed?

15 A. Maybe about an hour and a half, two hours maybe.

16 Q. And how long had the --- When you arrived on the scene,
17 how long had the accident already occurred?

18 A. Just a few minutes.

19 Q. So you were there pretty quickly?

20 A. I'd say we made it there in the first ten minutes or
21 so. Around ten minutes.

22 **MS. CRAYTON:** Court's indulgence, please.

23 **THE COURT:** Yes, ma'am.

24 **(PAUSE.)**

25 **MS. CRAYTON:** No further questions, Your Honor.

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1 **THE COURT:** Is there redirect after cross
2 examination?

3 **MR. HOLT:** There is none, Your Honor.

4 **THE COURT:** All right. Sir, you are free to step
5 down, free to leave if you wish.

6 Counsel, approach the bench if you would.

7 (Whereupon, a bench conference was held in
8 the presence of the jury, but out of their hearing range.)

9 **THE COURT:** All right. Ladies and gentlemen, I told
10 you earlier today that we stop before the end of the day
11 because of some other matters that the Court needed to
12 resolve that were unrelated to this case. Counsel tells me
13 that this is a good time to stop now. So, we are going to
14 stop for the day. Let you go out where it may be a little
15 bit cooler perhaps, and be a little bit more comfortable.

16 What I would ask you to do is be back in the jury room
17 at 9:30 tomorrow morning, and we will resume the testimony
18 in the state's case and go from there.

19 Now, tonight when you go home, or this afternoon, your
20 loved ones are going to say, now what happened in court day?
21 And it is the same thing that I talked with you about before
22 lunch. Please don't discuss with your loved ones what the
23 case is about, because I don't want them to make some
24 statement that would influence you one way or the other.
25 And I will ask you in the morning before we start again

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1 whether or not you have had a conversation with anyone, just
2 to make sure our record is clear.

3 And we are leaving a little bit early, so you have
4 plenty of time this afternoon. We hope you have a nice
5 afternoon, ladies and gentlemen. Please don't call the
6 telephone information line tonight for further instructions
7 to jurors. Just be back at 9:30 tomorrow morning, and we
8 will be ready to go at 9:30. And we will all remain where
9 we are as you leave the courtroom today out of respect for
10 you. Have a good day, ladies and gentlemen, you are free to
11 go.

12 (Whereupon, the jury exits the courtroom for
13 the day at 3:00 on Monday, April 11, 2011.)

14 **THE COURT:** All right. Is there anything else in
15 this matter before we close the record in this case for the
16 day. From the state?

17 **MR. HOLT:** There is nothing from the state, Your
18 Honor.

19 **THE COURT:** And from defense?

20 **MR. SWILLEY:** Nothing from the defense at this time.

21 **THE COURT:** All right. Then we will recess this case
22 until 9:30 tomorrow morning. We will be prepared to start
23 right at 9:30, so please be here then.

24 Court is in recess on this case.

25 (Whereupon, court ends these proceedings for

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1 the day at 3:02 p.m. on Monday, April 11, 2011.)

2 --- END OF DAY ONE OF TRIAL ---

3

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1 (Whereupon, court resumes at 9:35 a.m. on
2 Tuesday, April 12, 2011.)

-- DAY TWO OF TRIAL --

3
4 THE COURT: All right. Our jurors have arrived. And
5 are we ready for the jury?

6 MR. HOLT: We are, Your Honor.

7 THE COURT: All right. Defense?

8 MR. SWILLEY: We are, Your Honor.

9 THE COURT: All right. And our first witness, you
10 are just going to play a video?

11 MR. HOLT: We are, judge.

12 THE COURT: Are you working on that?

13 MR. HOLT: Yes, Your Honor.

14 THE COURT: How much more time do you need?

15 MR. HOLT: Probably about five, Your Honor.

16 THE COURT: All right. We will just sit here while
17 you do that, and we will bring the jury in, in a moment.

18 (PAUSE.)

19 THE COURT: All right. Are we ready for the jury?

20 MR. HOLT: The state is ready, Your Honor.

21 THE COURT: Defense?

22 MR. SWILLEY: The defense is ready, Your Honor.

23 THE COURT: All right. Bring in the jury, please.

24 BAILIFF: All right, sir.

25 (Whereupon, the jury enters the courtroom at

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1 9:45 a.m. on Tuesday, April 12, 2011.)

2 **THE COURT:** Good morning, ladies and gentlemen.

3 **JURY:** Good morning.

4 **THE COURT:** Welcome back to the courtroom. I trust
5 you had a nice evening. We are just a few minutes late this
6 morning. I usually like to start immediately, and on time,
7 but we have been setting up a video and taking care of some
8 other matters which may speed this process for you.

9 One more comment about the heating and the cooling
10 here. You may hear some movement upstairs. They are still
11 working on the cooling system. It is still a little bit
12 warmer in the courtroom than it should be. But the AC folks
13 are upstairs right now working on running some new vents
14 into this room, and changing the system somewhat for this
15 courtroom.

16 Let me ask, since we were last together, has any member
17 of the jury panel who has had a discussion about the facts
18 of this case; if so, please raise your hand?

19 Let the record reflect that no one has raised their
20 hand. Thank you, for complying with the Court's request.

21 You will recall we ended yesterday in the state's case.
22 We remain there this morning. Mr. Solicitor, please call
23 your next witness.

24 **MR. HOLT:** Thank you very much, Your Honor. At this
25 time the state would like to call Trooper Wade Gainey to the

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1 stand.

2 THE COURT: Please come forward and take the oath of
3 a witness.

4 WHEREUPON, DAVID WADE GAINNEY

5 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

6 TROOPER GAINNEY: I do.

7 DIRECT EXAMINATION BY MR. HOLT

8 Q. Trooper Gainney, could you please give your whole name
9 for the jury?

10 A. David Wade Gainney.

11 Q. And, what is your occupation?

12 A. I am with South Carolina Highway Patrol.

13 Q. And how long have you been employed by the South
14 Carolina Highway Patrol?

15 A. It will be twenty years in August.

16 Q. Were you working on the day, January 9, 2010?

17 A. Yes, I was.

18 Q. And were you working here in Darlington County?

19 A. Yes.

20 Q. And what were your duties on that day?

21 A. My shift started at 7:00 p.m., and it was supposed to
22 end at 7:00 a.m. I was to patrol Darlington County,
23 and respond to broke down motorists and to collisions.

24 Q. And, do you have any training in the detection of
25 impaired drivers?

DAVID WADE GAINNEY - DIRECT EXAMINATION

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1 A. Yes.

2 Q. And could you explain that training to the jury?

3 A. We go through a day course at the Criminal Justice
4 Academy in Columbia. And basically it just shows
5 different signs of DUI's. Like failure to dim your
6 headlights is a sign. Driving left of center could be
7 a sign. Running off the side of the roadway. Failure
8 to yield. Rolling through stop signs. Different
9 things like that just give you a few clues on possibly
10 that they are under the influence.

11 Q. And in your twenty years of experience, have you ever
12 arrested anybody for DUI?

13 A. Oh, many times.

14 Q. And did you use that training to detect who you were
15 going to arrest?

16 A. Yes.

17 Q. All right. Were you alone in your car on January 8,
18 2010?

19 A. Yes.

20 Q. And were you in uniform?

21 A. Yes.

22 Q. And, specifically, at some point or another did you
23 observe a 2005 Chevy Cobalt?

24 A. Yes, I did.

25 Q. Which road was that car on when you observed it?

DAVID WADE GAINES - DIRECT EXAMINATION

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1 A. It was on Timmonsville Highway, SC 340.

2 Q. And could you describe the condition of the roadway?

3 A. It was a cold night, but it was clear. Traffic --- it
4 was around 6:30, so traffic was moderate. Most people
5 had gotten home from work, but there was a little bit
6 of traffic still out.

7 Q. And, could you please describe the defendant's driving
8 that tipped you off that something was off here?

9 A. I came up behind the Chevy Cobalt, just before you get
10 to Hoffmeyer Road on SC 340 heading back into
11 Darlington. I was actually talking to a Trooper that
12 was in here yesterday on the phone, and I asked him to
13 let me go, because I was noticing this car kept running
14 off the side of the road. I observed him hitting the
15 shoulder several times, and it kind of clued me that he
16 may be under the influence of something.

17 Q. Now, where was your vehicle in relation to the
18 defendant's vehicle when you noticed this?

19 A. I was directly behind him.

20 Q. Now, were you able to view the defendant's vehicle
21 clearly?

22 A. Yes.

23 Q. And, could you please describe the light condition on
24 the road that night?

25 A. It had just gotten dark. But when we went through the

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1 intersection of Hoffmeyer and 340, they had just built
2 the Dollar General, and the High Hill Grocery was right
3 there, so you had the parking lot lights lighting up
4 the intersection. So, you could see pretty good.

5 Q. Now, after you observed the vehicle making the erratic
6 movements that you described, did you activate your in
7 car camera?

8 A. Yes, I did.

9 Q. And why did you activate your in car camera?

10 A. To collect evidence of his bad driving.

11 Q. And after you hit record of the in car camera, did you
12 observe any more driving?

13 A. Yes.

14 Q. And what else did he do after you hit the record?

15 A. He continued to travel off the shoulder of the road.
16 We made a couple of turns. He went wide, which is
17 another sign that we look for, which is going wide into
18 a turn. You go wide into the oncoming lane when you
19 make a right or left turn.

20 Q. All right. Now, specifically in regard to your camera
21 and the video setup, have you received training in the
22 operation of the video tape camera?

23 A. Yes.

24 Q. And where did you receive that training?

25 A. At the Criminal Justice Academy.

DAVID WADE GAINES - DIRECT EXAMINATION

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1 Q. And who trained you?

2 A. Our patrol staff.

3 Q. And can you describe some of the training that you went
4 through to the jury?

5 A. It is real basic training. They have made the system
6 really simple. When I activate my blue lights, the
7 camera automatically comes on where a mic on my belt
8 right here, it comes on automatically and starts taping
9 everything that I say or the defendant says. Or, we
10 can manually hit the record button, such as this
11 incident when you see someone driving bad you just hit
12 the record button and it starts recording.

13 Q. And why would you hit record previous to turning on
14 your blue lights? Why would you hit record?

15 A. Because I am recording evidence.

16 Q. And, throughout your twenty years experience on the
17 Highway Patrol, have you had occasions to use your
18 training in the video --- to video capture anything
19 before?

20 A. Oh, yes. Since '95.

21 Q. And, so, you are saying that you use your camera on
22 numerous occasions?

23 A. Very much so, yes. Every traffic stop.

24 Q. And were the results of those uses of your camera
25 accurate?

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1 A. Yes.

2 Q. And, for the record, the scene that your camera
3 records, is it like --- is it from the front of your
4 car, or does it record the back of your car, or does it
5 rotate, or what does it do?

6 A. It is stationary mounted in the windshield.

7 Q. So, you get to record everything you would see as if
8 you were driving?

9 A. Looking straight out the windshield.

10 Q. Now, after you made the recording, how is that media
11 stored? Like, does your car print out a CD, does it go
12 to a USB cable, how do you store that media?

13 A. It actually has a VHS tape in the trunk.

14 Q. And have you looked at that recording since the night
15 of January 8, 2010?

16 A. Yes, I have.

17 Q. And about how many times do you think you have seen the
18 video from that night?

19 A. Probably five or six times.

20 **MR. HOLT:** Your Honor, permission to approach?

21 **THE COURT:** You may.

22 Q. I am going to show you what has been marked as State's
23 Exhibit 121. Hold onto that for a second officer.
24 Without looking at it, can you tell me what that is?

25 A. It is a DVD.

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1 Q. Let me see. Now, you said that you had seen the video
2 previously, and you have seen it four or five times,
3 six or seven times since then. And has that video been
4 altered or deleted in any way when you viewed it?

5 A. No, it hasn't.

6 Q. And is that video a fair and accurate representation of
7 what you observed and what this tape purports to
8 reproduce from January 8th ---

9 A. Yes.

10 Q. --- 2010?

11 A. Yes.

12 MR. HOLT: Your Honor, at this time the state would
13 like to move State's Exhibit 121 into evidence.

14 THE COURT: Is there an objection?

15 MR. SWILLEY: Your Honor, objection under 403.
16 Overly cumulative, as well as the probative value will be
17 substantially outweighed by any prejudicial impact that the
18 introduction of that would have.

19 THE COURT: Overruled. The Court finds that it is
20 cooperative of other testimony, and thus it is probative and
21 relevant, more so than prejudicial. And the Court will
22 permit over objection of the defendant Exhibit 121 into
23 evidence.

24 WHEREUPON, STATE'S EXHIBIT

25 NUMBER 121 IS MARKED AND

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1 ADMITTED INTO EVIDENCE OVER

2 OBJECTION OF THE DEFENDANT.

3 MR. HOLT: Now, Your Honor, at this time the state
4 would like to publish the contents of 121 to the jury as
5 well as to the Trooper for further questioning.

6 THE COURT: Very good. Ladies and gentlemen, any
7 exhibit in evidence you are going to have with you when you
8 return to the jury room for deliberations. But now they
9 intend to show that to you, which is permissible. The Court
10 will allow that.

11 MR. HOLT: Your Honor, if Mr. Swilley and I could
12 take up a brief matter of law with you?

13 THE COURT: You can come up. That will be fine.

14 (Whereupon, a bench conference was held in
15 the presence of the jury, but out of their hearing range.)

16 THE COURT: What about your lighting, Mr. Holt? Do
17 you want any lighting changed in the courtroom?

18 MR. HOLT: Your Honor, if we could dim it just a
19 little bit, I would be greatly appreciative.

20 THE COURT: All right. We will do that.

21 MR. HOLT: Thank you, Your Honor.

22 THE COURT: Ladies and gentlemen, what that
23 discussion was, before we start the tape up here is, that
24 there is a CD placed into evidence, but Mr. Holt has also
25 gone ahead and copied it to the hard drive of his computer,

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1 which means that it can be displayed to you a little more
2 quickly and easily, and there is no objection to that. So,
3 what you are actually seeing is a copy of the exhibit. You
4 may have noticed the exhibit is not actually being put in
5 the computer and played. But, it is the same.

6 Go ahead, counsel.

7 **MR. HOLT:** Thank you very much, Your Honor.

8 (Whereupon, State's Exhibit Number 121 was
9 published to the jury.)

10 **THE COURT:** All right, counsel. You may continue.

11 Q. Trooper Gainney, looking at the video, the part where
12 you activate your blue lights, did it appear as though
13 the Cobalt was slowing down to stop?

14 A. It appeared so, yes.

15 Q. Did you get ready to get out of your car?

16 A. Yes, I did.

17 Q. And at that time were you pretty close to the Cobalt?

18 A. Yes.

19 Q. Were you able to see someone inside?

20 A. Yes.

21 Q. And what could you tell about the back of the driver's
22 head?

23 A. I could see that it was a gentleman driving the
24 vehicle. He had short hair, kind of salt and pepper.

25 Q. Now, when you approached the wreck, who was behind the

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1 wheel of the Cobalt?

2 A. Charlton Hill, the defendant.

3 Q. And, was he holding the steering wheel?

4 A. Yes, he was.

5 Q. And did he smell of anything?

6 A. Yes, he did.

7 Q. And what did he smell of?

8 A. He smelled of alcohol.

9 Q. And when did you realize that a death had occurred?

10 A. When I approached the vehicle, I saw Mr. Hill sitting
11 behind the wheel. I approached him ---

12 Q. How soon after arriving on the wreck scene did you
13 realize a death had occurred?

14 A. Less than thirty seconds, approaching the vehicle.

15 Q. About how far did you find the body of Sylvia Hill from
16 the car?

17 A. Approximately five or six feet.

18 Q. And what is the procedure when a death occurs as a
19 result of a --- I guess a car chase or any time?

20 A. We refer it to the Sheriff's Office to investigate.

21 Q. And did you follow that procedure?

22 A. Yes, we did.

23 Q. Now, looking on the video, it is kind of hard for
24 everybody to know what was going on. But, at one point
25 did EMS or the rescue squad --- I'm not sure who the

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1 personnel were. Did they pry open the passenger side
2 door?

3 A. It appeared that they tried to pry it open, but I don't
4 think they ever did.

5 Q. Were they trying --- Were they trying to get the
6 defendant out of the car?

7 A. Yes.

8 Q. Were they trying to do so in a safety manner --

9 **MR. SWILLEY:** -- Objection, Your Honor --

10 Q. -- to prevent possible injuries?

11 **THE COURT:** And the objection is?

12 **MR. SWILLEY:** Your Honor, I think that calls for
13 speculation. I don't think the Trooper can testify as to --

14 **THE COURT:** -- Well, I'm actually going to sustain it
15 on the issue of leading, counsel. Don't lead your witness.

16 **MR. HOLT:** I apologize.

17 **THE COURT:** And let me just mention about leading
18 questions a moment, so we can be clear on this.

19 When you have your own witness on the stand, and you
20 ask questions, you cannot ask a question that actually leads
21 the witness to the answer. For example, if there was a
22 question about what color was the car, and you want to say
23 what color is the car is an appropriate question. But if
24 you say was the car blue? That is not appropriate on
25 direct, because the answer of that question is contained

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1 within the question. So, you cannot lead your witness when
2 you call them. Now, on cross examination you can lead a
3 witness to see if they hold to what they testified to on
4 direct. But, please don't lead your witness, counsel. Go
5 ahead.

6 MR. HOLT: Yes, sir. I apologize.

7 Q. How did the defendant exit the car?

8 A. Through the driver's side window.

9 MR. HOLT: All right. Your Honor, if I could
10 approach the witness?

11 THE COURT: You may.

12 Q. I am going to show you what has been marked as State's
13 Exhibits 4 through 39. Without telling me what they
14 are, can you tell me if you recognize them?

15 A. Yes, I took these.

16 Q. And are they a fair and accurate representation of the
17 scene that night, January 8, 2010?

18 A. Yes, they are.

19 Q. And since the last time you viewed them, have there
20 been any changes, alterations, or deletions made to
21 those photographs?

22 A. No.

23 MR. HOLT: Your Honor, at this time the state would
24 like to admit items 4 through 36 into evidence.

25 THE COURT: Is it 4 through 36 or 39?

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1 TROOPER GAINES: Thirty-nine.

2 MR. HOLT: Four through 39.

3 THE COURT: And is there an objection?

4 MR. SWILLEY: May I look at them?

5 THE COURT: You may look at them.

6 (Whereupon, defense counsel examines State's
7 Exhibits 4 through 39.)

8 MR. SWILLEY: Your Honor, I would object. Thirteen,
9 eighteen, sixteen, nineteen and twenty, I think shows the
10 same thing. I would object under 403 to those at this time.

11 MR. HOLT: Your Honor?

12 THE COURT: Go ahead.

13 MR. HOLT: And the state's position would be that
14 they are all from different angles that show different
15 structures.

16 THE COURT: And you said thirteen, eighteen, sixteen,
17 and twenty?

18 MR. SWILLEY: Nineteen and twenty, I believe, Your
19 Honor.

20 THE COURT: Thirteen, eighteen --

21 MR. SWILLEY: -- Thirteen, sixteen, eighteen,
22 nineteen and twenty, I believe.

23 THE COURT: All right. And as to the others, is
24 there no objection to the others?

25 MR. SWILLEY: No, none to the others, Your Honor.

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1 **THE COURT:** All right. Then counsel, how about pull
2 those five out please. And let me look at those five,
3 please.

4 **(PAUSE.)**

5 **MR. SWILLEY:** Would you like those photographs as
6 well?

7 **THE COURT:** No, sir. That is not necessary.

8 **(PAUSE.)**

9 **THE COURT:** All right. Counsel, I am going to
10 overrule your objection to thirteen, eighteen, sixteen,
11 nineteen and twenty.

12 First of all, there was no objection to the others, so
13 they are admitted in evidence without objection. Although
14 these may be somewhat cumulative in that they depict a
15 similar scene, they are from different angles. Counsel
16 tells me they are for different purposes. The Court does
17 not find that is objectionable, and I overrule your
18 objection.

19 Also, on the issue of Rule 403, I find that they are
20 more probative than they are prejudicial. And, I overrule
21 that objection as well.

22 And, Madame Court Reporter, do you need to mark those
23 in some way?

24 **MADAME COURT REPORTER:** Yes, please.

25 **THE COURT:** Ladies and gentlemen, this will probably

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1 take a moment. Our court reporter makes a little mark on an
2 exhibit. Of course, we put a sticker on it, but we have a
3 lot of documents in this courtroom that have stickers on
4 them. But, when it is submitted, she makes a notation so
5 that as paper flows around the courtroom we don't get things
6 that are not in evidence into the evidence pile, and vice
7 versa. So, let's give her a moment, and let her mark those
8 as admitted.

9 **WHEREUPON, STATE'S EXHIBIT**

10 **NUMBERS 4 - 39 ARE MARKED AND**

11 **ADMITTED INTO EVIDENCE OVER**

12 **DEFENDANT'S OBJECTION TO**

13 **NUMBERS 13, 16, 28, 19 and 20.**

14 **THE COURT:** We are ready.

15 **MR. HOLT:** Your Honor, if I could approach the
16 witness?

17 **THE COURT:** You may.

18 Q. Trooper Gainney, if I could just ask you; this has been
19 marked as State's Exhibit Number 26, what that is a
20 depiction of?

21 A. Interior of the vehicle. It has a picture of the
22 driver's seat and the passenger's seat with two logs
23 laying in the seat that was the passenger's seat.

24 Q. And I am showing you now what has been marked as
25 State's Exhibit Number 20, entered into evidence. If

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1 you can tell me what that is a picture of?

2 A. That is a picture of the driver's side of the vehicle,
3 depicting the top of the vehicle damage and the driver
4 behind the wheel.

5 Q. And, Number 18, if you can tell me what that is a
6 photograph of?

7 A. That is a photograph from the front of the vehicle, if
8 you are in front of the headlights looking at the
9 vehicle. That is a picture of the passenger's seat
10 with the two logs in the seat and the driver in the
11 driver's seat.

12 Q. Trooper Gainney, about how long after you got to the
13 wreck did you take these photographs?

14 A. I took the photographs I guess as long as it took EMS
15 to arrive, probably ten minutes maybe after the
16 collision.

17 Q. And when you were there at the scene that night did you
18 look around a lot?

19 A. Yes.

20 Q. Did you observe the inside of the car?

21 A. Yes, I did.

22 Q. Now, where did you notice the most blood located?

23 A. Passenger's side.

24 Q. And was there any blood on the rear of the car?

25 A. Yes, there was.

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1 Q. And on what side was the blood located?

2 A. Passenger's side.

3 Q. And, let me ask you this. On the driver's side was
4 there a lot of blood?

5 A. No, there was not.

6 Q. Was the driver bleeding profusely when you were there?

7 A. No, he was not.

8 Q. When you first got --- When you first opened your door
9 you were not far behind in the car. When you get there
10 was he doing any actions inside of the car that you
11 noticed?

12 MR. SWILLEY: Objection, Your Honor.

13 THE COURT: On what basis?

14 MR. SWILLEY: Relevance.

15 THE COURT: Overruled. You may answer.

16 TROOPER GAINNEY: Thank you.

17 A. He was sitting upright in the seat, with his hands on
18 the steering wheel, gripping the steering wheel.

19 Q. Now, you said that initially you were looking at this
20 as a DUI, and that is why you turned your camera on?

21 A. Yes.

22 Q. Why didn't you do any of those standard, field sobriety
23 tests that everybody hears so much about?

24 A. Possibly his injuries. It was a horrific crash. So
25 that is one of the reasons they wanted to try to make

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1 him stay in the vehicle, because of anything that may
2 have caused spinal injuries to himself.

3 MR. HOLT: Beg the Court's indulgence, for just one
4 moment.

5 (PAUSE.)

6 MR. HOLT: Thank you very much, Trooper Gainney.
7 Would you answer any questions the defense may have?

8 TROOPER GAINNEY: Yes.

9 THE COURT: Cross examination.

10 MR. SWILLEY: Thank you, Your Honor.

11 CROSS EXAMINATION BY MR. SWILLEY

12 Q. Good morning, Mr. Gainney. You did testify to Mr. Holt
13 that you did observe a car running off the side of the
14 road?

15 A. Yes.

16 Q. Do you recall which side?

17 A. The right side.

18 Q. The right side? And you also testified to Mr. Holt
19 that you said you saw the car make a wide turn;
20 correct?

21 A. Yes.

22 Q. Was this a right turn or a left turn?

23 A. A right turn.

24 Q. A right turn, okay. Gotcha. And am I mistaken when I
25 ask --- when I say that you activated the blue light

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1 when the car made a left turn after that?

2 A. I activated the blue lights when he made a left on
3 Potato House Road, yes.

4 Q. Okay. What was the reason for which you activated the
5 blue lights at this point, and not the point from which
6 you observed the driver --- the car rather drive off
7 the road, as you stated making a right turn?

8 A. Because it was a safe area.

9 Q. Okay. What was safe about it?

10 A. It had a wider shoulder. Traffic was light.

11 Q. I understand. Do you recall when you called this car
12 into the radio, do you remember whether you called it
13 in as a gold or silver Cobalt?

14 A. I don't recall what color I said it was.

15 Q. Okay. Now, I heard you testify to Mr. Holt that you
16 claimed to be able to identify who the driver was while
17 the car was still in motion; is that correct?

18 A. He came to a stop, and I was behind him, so, yes.

19 Q. Okay. Thank you. At what point was this?

20 A. When he slowed down, I actually took my seat belt off
21 and was getting ready to exit my vehicle.

22 Q. Okay.

23 A. I was directly behind him.

24 Q. Okay. And you contend that you had a clear view of
25 inside of the vehicle?

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- 1 A. I could see inside of the vehicle, yes.
- 2 Q. Okay. Did you see how many people were in there?
- 3 A. I only saw the driver.
- 4 Q. Okay. Did you know at that time how many people were
- 5 in the automobile?
- 6 A. No, that is one of the reasons I was trying to see in
- 7 the vehicle.
- 8 Q. Okay. After you saw the car --- After --- Did you
- 9 observe the car actually crash?
- 10 A. Yes, I did.
- 11 Q. Okay. So, you did see it flip end over end?
- 12 A. Yes.
- 13 Q. Okay. Approximately how many times, from your
- 14 observation, did the car flip?
- 15 A. I didn't count it, but it appeared to be maybe two and
- 16 a half times.
- 17 Q. Okay. And you recall --- was there --- At the scene or
- 18 at the spot where the car stopped, was the car in a
- 19 ditch?
- 20 A. Yes. A small ditch.
- 21 Q. All right. And which way was the car tilted; do you
- 22 recall?
- 23 A. Which way it was tilted?
- 24 Q. Yes, sir. I mean, was the car tilted one way or the
- 25 other, or were both tires flat on the ground. Do you

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1 recall?

2 A. I don't recall.

3 Q. Okay.

4 A. I mean it was on four wheels.

5 Q.. Okay. But do you recall whether the car was in the
6 ditch or not?

7 A. It was partially in the ditch.

8 Q. Okay.

9 A. Partially out of the ditch.

10 Q. I see. Trooper Gaines, do you recall which way the car
11 was pointing?

12 A. It was pointing back toward my vehicle, slightly.

13 Q. And you were the one who, took all of these
14 photographs, is that correct?

15 A. Yes.

16 Q. Okay. When the car came to a stop, how many ways did
17 you notice, that were actually feasible ways to exit
18 the car?

19 A. As far as --- For who to exit the vehicle?

20 Q. At that time, Mr. Hill.

21 A. He could have exited through his driver window. He
22 possibly could have crawled through the windshield.

23 Q. Okay.

24 A. Or he could have crawled over the logs in the passenger
25 side, and crawled out of the passenger's window.

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1 Q. Okay. Was the entire windshield busted out?

2 A. Yes.

3 Q. Okay. And you did testify to Mr. Holt that you say you
4 observed that the passenger side was --- appeared to
5 have more damage; is that what you said?

6 A. The passenger side had a lot more blood than the
7 driver's side.

8 Q. Okay. When medical personnel --- I believe the Fire
9 Department arrived, which side did these people try to
10 extract Mr. Hill from?

11 A. Well, they went to the driver's side first, and
12 evaluated his injuries. They appeared to be trying to
13 get the passenger side door open.

14 Q. Okay. Did you notice a woman's handbag on the middle
15 console of the automobile?

16 A. No, I did not.

17 Q. You didn't? Okay. Did you --- You testified to Mr.
18 Holt that Mr. Hill was not bleeding at the time?

19 A. No, I did not.

20 Q. Oh, what was it you testified to?

21 A. He asked me about his injuries.

22 Q. Okay. And what was your response? How did you
23 respond?

24 A. His injuries weren't life threatening.

25 Q. Okay. Did you not say that Mr. Hill was not bleeding

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1 profusely?

2 A. He was not bleeding profusely, no.

3 Q. Okay.

4 **MR. SWILLEY:** Permission to approach the witness, Your
5 Honor?

6 **THE COURT:** You may.

7 Q. Does Mr. Hill appear to be bleeding in these
8 photographs? And for the record, that is State's
9 Exhibit Number 13 and 18.

10 A. It appears that he has some blood on his chin, and
11 there is some blood on his chin here too.

12 Q. Okay. Is there any blood on his clothing?

13 A. Yes. There are some droplets on his clothing.

14 Q. Okay. Thank you. Mr. Gainey, you told Mr. Holt that
15 you noticed that when the car came to a stop, you came
16 to the window, and you said that Mr. Hill's hands were
17 on the steering wheel?

18 A. Yes.

19 Q. And was that ever noted in your report?

20 A. I don't know if I noted it or not, but I remember it,
21 because that is what I was looking for were his hands.

22 Q. Okay. And when you make a stop, or when you approach a
23 subject in a car, is that usually protocol where you
24 want to see where the individual's hands are?

25 A. Yes.

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1 Q. And you want --- So, you usually just want to see their
2 hands? You just want to see them?

3 A. Yes. Especially after a chase, yes.

4 Q. Okay. I understand. Do you recall how many logs you
5 saw in the automobile?

6 A. It could have been from one tree and they were broken
7 apart. There were several logs in the vehicle.

8 Q. And do you recall whereabouts where in the vehicle they
9 were, from your memory?

10 A. They were laying in the passenger's seat, and all the
11 way through to the back seat.

12 Q. Okay.

13 MR. SWILLEY: Beg the Court's indulgence.

14 (PAUSE.)

15 Q. Mr. Gainey, to your recollection did the vehicle ever
16 come to a complete stop?

17 A. After the collision.

18 Q. Yes. Before the collision?

19 A. No, it did not.

20 Q. Do you remember at the slowest point how --- from what
21 you observed, could you gauge how fast it was going?

22 A. Over ten miles an hour, probably.

23 Q. Okay.

24 MR. SWILLEY: Thank you, Mr. Gainey. I have nothing
25 further.

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1 **THE COURT:** Is there redirect?

2 **MR. HOLT:** There is none, Your Honor.

3 **THE COURT:** All right. Sir, you may step down.

4 **TROOPER GAINNEY:** Thank you, sir.

5 **THE COURT:** Ladies and gentlemen, let's take our
6 morning break now before we call our next witness. What we
7 will do is we will be at break for about fifteen minutes or
8 so, maybe a little longer if you need that. If someone
9 wishes to go outside to take a break, we will accommodate
10 you. And we will all remain where we are while you return
11 to the jury room. Enjoy your break, ladies and gentlemen.

12 **BAILIFF:** Come this way, please.

13 (Whereupon, the jury exits the courtroom for
14 a morning break at 10:56 a.m.)

15 **THE COURT:** Do you intend to release Officer Gainney
16 to return to his work?

17 **MR. HOLT:** Yes, Your Honor, I was going to ask the
18 Court.

19 **THE COURT:** Any objection to the release of the
20 officer?

21 **MR. SWILLEY:** There is none, Your Honor.

22 **THE COURT:** All right. You are not required to
23 leave, but you are free to leave if you wish.

24 All right. Court will be in recess now approximately
25 fifteen minutes.

MARLA KOONTZ, R.N. -- DIRECT EXAMINATION

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1 (Whereupon, a recess was taken from 10:58
2 a.m. until 11:13 a.m.)

3 **THE COURT:** All right. Counsel, I am told that the
4 jury is back. Are you ready when your defendant returns?

5 **MS. CRAYTON:** He is right here, Your Honor.

6 **THE COURT:** Are you ready for your next witness, Mr.
7 Holt?

8 **MR. HOLT:** We are, Your Honor. Ms. Burch is going to
9 call her.

10 **THE COURT:** Very good. Please bring in the jury.

11 (Whereupon, the jury enters the courtroom at
12 11:14 a.m.)

13 **THE COURT:** All right. Welcome back, ladies and
14 gentlemen. And Madame Solicitor, please call your next
15 witness.

16 **MS. BURCH:** Thank you, Your Honor. The state would
17 call Marla Koontz.

18 **THE COURT:** Please come forward and take the oath of a
19 witness.

20 **WHEREUPON, MARLA KOONTZ, R.N.**

21 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:**

22 **MS. KOONTZ:** I do.

23 **DIRECT EXAMINATION BY MS. BURCH**

24 Q. Please state your name for the record.

25 A. Marla Koontz.

MARLA KOONTZ, R.N. -- DIRECT EXAMINATION

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1 **THE COURT:** Spell your last name for us, for our
2 record, please.

3 **MS. KOONTZ:** It is K-O-O-N-T-Z.

4 Q. Ms. Koontz, where are you employed?

5 A. At Carolina Pines Regional Medical Center.

6 Q. How long have you been employed there?

7 A. Right at eleven years.

8 Q. Were you employed there on January 8, 2010?

9 A. Yes.

10 Q. I am going to show you --

11 **MS. BURCH:** Judge, permission to approach?

12 **THE COURT:** Yes, you may.

13 Q. I am going to show you what has been entered into
14 evidence as State's Exhibit Number 110. Do you
15 recognize this document?

16 A. Yes.

17 Q. Can you tell us what that is?

18 A. This is the form we sign whenever we have to draw blood
19 or urine on a patient that is requested by an officer.

20 Q. Do you see your signature on that?

21 A. I do.

22 Q. And did you sign it?

23 A. Yes.

24 Q. What date did you sign that?

25 A. January 8, 2010.

MARLA KOONTZ, R.N. -- DIRECT EXAMINATION

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- 1 Q. What does this form say?
- 2 A. This is stating that I was the one who drew the blood.
- 3 Q. Do you remember doing that on January 8th?
- 4 A. Yes.
- 5 Q. Have you ever drawn blood for law enforcement before?
- 6 A. Yes.
- 7 Q. Can you tell us about that procedure?
- 8 A. The officer will approach the patient, and ask them if
- 9 they agree to have it done. If they say yes, then we
- 10 draw blood and hand it to the officer.
- 11 Q. What do you put that blood in?
- 12 A. A little blood vile.
- 13 Q. Is that standard?
- 14 A. I'm sorry?
- 15 Q. Is that a standard container?
- 16 A. Yes. It has a green top.
- 17 Q. Do you remember on January 8, 2010, who was in that
- 18 room the night you drew the defendant's blood?
- 19 A. Me, the patient, I remember Patrick Lee, I don't
- 20 remember anyone else.
- 21 Q. Okay. Who did you hand that vile of blood to?
- 22 A. Pat Lee.
- 23 Q. And after you took the blood from the defendant, do you
- 24 have to mark that vile in any way?
- 25 A. We put the patient's name on it. The officer's

MARLA KOONTZ, R.N. -- CROSS EXAMINATION

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1 signature has to be on it, and our signature --- well,
2 initials have to be on it.

3 Q. And after you hand the blood over to law enforcement,
4 is that when you sign that form there?

5 A. Yes.

6 **MS. BURCH:** Beg the Court's indulgence.

7 **(PAUSE.)**

8 **MS. BURCH:** Your Honor, I have no further questions
9 at this time.

10 **THE COURT:** Is there cross examination?

11 **MR. SWILLEY:** Briefly, Your Honor.

12 **CROSS EXAMINATION BY MR. SWILLEY**

13 Q. Ms. Koontz, who did you say you work for?

14 A. Carolina Pines Regional Medical Center.

15 Q. Okay. And Ms. Koontz, does Carolina Pines --- do they
16 perform legal blood alcohol?

17 A. We do alcohol levels, if the doctor orders it, simply
18 for diagnostic issues. The only time we draw for any
19 kind of legal issues is if the officer needs it.

20 Q. Okay. Now, on your medical records when you come out
21 with these reports, is there a note on these reports
22 that states that Carolina Pines does not perform legal
23 blood alcohol and no chain of custody exists? Are you
24 familiar with that?

25 A. No.

MARLA KOONTZ, R.N. -- CROSS EXAMINATION

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1 Q. Okay. So you are contesting that? You are saying that
2 doesn't happen? That the results that you produce ---
3 Are the results that you produce for medical purposes
4 examined?

5 A. From the hospital, as it is actually run at the
6 hospital.

7 Q. Okay. So the ones you do in the hospital are not for
8 chain of custody purposes, correct?

9 A. Right.

10 Q. How did this differ from that?

11 A. An officer has to request it and the patient has to
12 give permission. And then it is handed directly to the
13 officer, and then sent with the officer. It is not run
14 in the hospital.

15 Q. Okay. Did, Mr. Hill give permission in this situation?

16 A. He did.

17 Q. He did? Okay. And you were present the entire time?

18 A. Yes.

19 Q. Okay.

20 **MR. SWILLEY:** Beg the Court's indulgence.

21 **(PAUSE.)**

22 Q. Ms. Koontz, did he sign permission, or did he orally
23 give permission?

24 A. Well, they have to verbally tell the officer. If
25 they refuse we can't draw it.

ERIC ANTHONY HODGES - DIRECT EXAMINATION

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1 Q. Okay. So your policy is, they don't have to be signed,
2 they just have to be oral?

3 A. Not by the hospital. Now, the officer may get
4 something signed.

5 Q. Okay. But to your knowledge, there was nothing signed
6 for Mr. Hill to give the blood?

7 A. I don't recall.

8 **MR. SWILLEY:** All right. Thank you, Ms. Koontz.

9 **THE COURT:** Is there redirect for the witness?

10 **MS. BURCH:** No, Your Honor. And if it is okay with
11 the Court, we would like for her to be excused at this time.

12 **THE COURT:** All right. Hearing no objection ma'am,
13 you are free to leave if you wish.

14 **MS. KOONTZ:** Thank you.

15 **THE COURT:** Have a nice day. All right. Counsel,
16 call your next witness.

17 **MS. BURCH:** Your Honor, at this time the State would
18 call Eric Hodges.

19 **THE COURT:** Please come forward and take the oath of
20 a witness.

21 **WHEREUPON, ERIC ANTHONY HODGES**

22 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:**

23 **MR. HODGES:** I do.

24 **DIRECT EXAMINATION BY MS. BURCH**

25 Q. Please state your name for the record.

ERIC ANTHONY HODGES - DIRECT EXAMINATION

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1 A. Eric Anthony Hodges.

2 Q. And Investigator Hodges, what do you do?

3 A. I am the Lieutenant over Criminal Investigations.

4 Q. And how long have you been Lieutenant over
5 Investigations?

6 A. Approximately two years.

7 Q. And how long have you been in law enforcement?

8 A. Almost twenty-two years.

9 Q. Were you with Darlington County Sheriff's Department on
10 January 8, 2010?

11 A. Yes, ma'am.

12 Q. Are you familiar with a traffic fatality that occurred
13 on that date on Potato House Road?

14 A. Yes, ma'am.

15 Q. Would you tell us what your involvement is with that
16 investigation?

17 A. Yes, ma'am. I received a call to respond to the 1600
18 block of Potato House Road in reference to a traffic
19 fatality. And I was advised that the Sheriff's Office
20 had to work this accident, because Highway Patrol was
21 involved in a vehicle pursuit. I notified Sergeant
22 Russ Harrell, who was our Crime Scene Investigator to
23 respond to the scene, to process the scene. I was also
24 told that Sergeant Michael Cook from the Darlington
25 Police Department was also notified to help in the

ERIC ANTHONY HODGES - DIRECT EXAMINATION

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1 traffic aspect of this fatality. Once I got to the
2 scene, I spoke with First Sergeant Tony Chavis with
3 Highway Patrol, and Captain Neil of the Highway Patrol.
4 I advised them that I needed copies of the video dash
5 cam recording, and also I needed a copy of the audio
6 video from their dispatch.

7 Q. Were you able to obtain those two things?

8 A. Yes, ma'am.

9 Q. And who did you receive the video and the audio from?

10 A. I received them from a Corporal Chandler.

11 Q. And after you received those items from Corporal
12 Chandler, what did you do with those?

13 A. They were placed into evidence.

14 Q. And how does that work, do you put them in a box?

15 A. I take a folder, seal it with evidence tape, mark the
16 case number on it, and there is an evidence form that
17 we deal with the chain of custody on the back of it.
18 And once they are secured in that folder, they are
19 placed in an evidence drop box.

20 Q. Whenever you arrived on scene, who was present?

21 A. There were numerous people at the scene. The defendant
22 was there at the scene. I think Mrs. Hill was still
23 there.

24 Q. Did you observe Mrs. Hill at all?

25 A. No, ma'am. I kind of stood back and let the crime

ERIC ANTHONY HODGES - DIRECT EXAMINATION

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1 scene officer and Sergeant Cook process the scene.

2 Q. How did y'all go about processing the scene? Were
3 there search warrants done?

4 A. Well, ah, to process the car there was a search warrant
5 obtained. I assisted Sergeant Jeblonski Green in
6 obtaining the search warrant so we could process the
7 car.

8 Q. Did you actually process the car?

9 A. No, ma'am. I did not.

10 Q. Are you aware of where Mrs. Hill was taken after she
11 was removed from the scene?

12 A. No, ma'am. I am not sure.

13 Q. Did you receive any items that were removed from the
14 car?

15 A. Yes, ma'am. I received a call from the Coroner Todd
16 Hardee that Mrs. Hill's --- Sylvia Hill's pocketbook
17 had been recovered. And inside her pocketbook were two
18 bottles of medication.

19 **MS. BURCH:** Your Honor, permission to approach?

20 **THE COURT:** You may.

21 Q. Lieutenant Hodges, I am going to show you what has been
22 marked as State's Exhibit 115. Do you recognize that
23 bag?

24 A. Yes, ma'am.

25 Q. Did you put the evidence in that bag?

ERIC ANTHONY HODGES - DIRECT EXAMINATION

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1 A. Yes, ma'am.

2 Q. Can you kind of tell us about what is in there?

3 A. There are two bottles of pills. One bottle was 350
4 milligram, generic brand of Soma. Another bottle
5 contained 1 milligram bottle of Xanax.

6 Q. Who did those bottles belong to?

7 A. They had the name of Sylvia Mattox on the --

8 Q. Is that the same person as --

9 A. -- That is Sylvia Hill, yes, ma'am.

10 **MS. BURCH:** Your Honor, at this time we would like to
11 move this exhibit into evidence?

12 **THE COURT:** Is there an objection?

13 **MR. SWILLEY:** No objection, Your Honor.

14 **THE COURT:** Hearing none then, let's mark that as
15 being in evidence.

16 **MS. BURCH:** Thank you, Your Honor.

17 **WHEREUPON, STATE'S EXHIBIT**
18 **NUMBER 115 IS MARKED AND**
19 **ADMITTED INTO EVIDENCE WITHOUT**
20 **OBJECTION.**

21 **THE COURT:** What is that, 115?

22 **MADAME COURT REPORTER:** Yes, sir.

23 **THE COURT:** One fifteen in evidence without
24 objection.

25 **MS. BURCH:** Thank you, Your Honor.

ERIC ANTHONY HODGES - DIRECT EXAMINATION

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1 Q. Lieutenant Hodges, can you tell us what happened the
2 next day on January the 9th as far as your
3 investigation?

4 A. Okay. Are you talking about when the search warrant
5 was obtained?

6 Q. That and where you went the next day.

7 A. Okay. Myself and Sergeant Cook, we went back out to
8 the scene of the accident the next day. I went with
9 Sergeant Cook, because he wanted to look at the scene
10 during the daylight. We would have a better view of
11 the roadway, and conditions, and everything like that.

12 Q. What was the condition of the roadway on January 9th?

13 A. The road was fine. There wasn't any damage --- damage
14 to the road or anything like that.

15 Q. Did anything happen that you saw on January 8th that
16 would damage the road between January the 8th and
17 January the 9th?

18 A. No, ma'am.

19 Q. As far as you know the road was still the same?

20 A. Yes, ma'am.

21 MS. BURCH: Beg the Court's indulgence.

22 (PAUSE.)

23 MS. BURCH: No further questions at this time, Your
24 Honor.

25 THE COURT: And is there cross examination?

ERIC ANTHONY HODGES - CROSS EXAMINATION

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1 **MR. SWILLEY:** Yes, Your Honor.

2 **CROSS EXAMINATION BY MR. SWILLEY**

3 Q. Hello, Mr. Hodges. Mr. Hodges, you did say you searched
4 the automobile, the 2005 Chevy Cobalt?

5 A. No, I did not.

6 Q. Okay. Who was it that actually searched the Cobalt?

7 A. That would be Sergeant Russ Harrell, and Sergeant
8 Jebblonski Green.

9 Q. All right. Mr. Hodges, were you the lead investigator
10 in this case?

11 A. Yes, I was.

12 Q. Okay. Subsequent to the accident, what did you do as
13 far as investigating the aftereffects? Did you search
14 through the ladies handbag?

15 A. No. The handbag had been recovered by the coroner. He
16 called me and advised me that he recovered her
17 pocketbook, and that he would get her pocketbook to one
18 of her daughters. But he wanted us to take the
19 medication and place it in evidence, because it was
20 prescribed to the deceased.

21 Q. Okay. And do you recall the date that this medication
22 was prescribed to the decedent, Ms. Hill?

23 A. No, I don't recall.

24 **MR. SWILLEY:** Permission to approach, Your Honor?

25 **THE COURT:** Yes, you may.

ERIC ANTHONY HODGES - CROSS EXAMINATION

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1 Q. Mr. Hodges, can you examine those bottles, and tell me
2 what the date of issuance the prescription was?

3 **THE COURT:** Do you want to ask him to open the bag?

4 **MR. SWILLEY:** That's correct, Your Honor.

5 **MS. BURCH:** No, Your Honor.

6 **THE COURT:** Very good. You may open the bag.

7 A. The generic Soma, it looks like it was filled on
8 January 8, 2010.

9 Q. Okay.

10 A. And the generic Soma was also filled on January 8,
11 2010.

12 Q. Both were January 8, 2010?

13 A. Yes, sir.

14 Q. You said the generic Soma, what was the other?

15 A. Generic brand of Xanax.

16 Q. Okay. And from what doctor are they prescribed?

17 A. Dr. --- it looks like a John Rope.

18 **MADAME COURT REPORTER:** Spell that please?

19 A. R-O-P-E.

20 **MADAME COURT REPORTER:** Thank you.

21 **MR. HODGES:** Yes, ma'am.

22 **MR. SWILLEY:** Court's indulgence, Your Honor.

23 (PAUSE.)

24 **MR. SWILLEY:** Nothing further, Your Honor.

25 **THE COURT:** Is there redirect?

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1 **MS. BURCH:** None from the state, Your Honor.

2 **THE COURT:** All right. Sir, you may step down. All
3 right. Please call your next witness.

4 **MR. HOLT:** Thank you very much, Your Honor. At this
5 time the state would like to call Deputy Russ Harrell to the
6 stand.

7 **THE COURT:** Please come forward and take the oath of
8 a witness.

9 **WHEREUPON, RUSS HARRELL**

10 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:**

11 **MR. HARRELL:** Yes.

12 **DIRECT EXAMINATION BY MR. HOLT**

13 Q. Deputy Harrell, could you please give the jury your
14 whole name?

15 A. Sergeant Russ Harrell, H-A-R-R-E-L-L.

16 Q. And, where do you work?

17 A. Darlington County Sheriff's Office.

18 Q. And what are your official job titles?

19 A. I am a Forensic Investigator, and also in charge of
20 evidence.

21 Q. And about how long have you had those two jobs?

22 A. I've been officially in crime scene or forensic
23 investigator for two years. I have been in evidence
24 for over six.

25 Q. How many years all together do you have in law

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1 enforcement?

2 A. Almost eleven.

3 Q. Now, in the field of evidence collection, forensic
4 gathering, have you had a lot of classes?

5 A. Quite a few.

6 Q. All right. And have you had any experience in the
7 field here in Darlington County?

8 A. Quite a bit. It has been a lot of experience in
9 Darlington County.

10 Q. And Deputy Harrell, were you called out to the scene of
11 an automobile wreck on Potato House Road in Darlington
12 County on January 8, 2010?

13 A. Yes, I was called by Lieutenant Hodges to respond.

14 Q. And when you reached that scene, what were your duties
15 that night?

16 A. My duties were to make sure that the scene was taped
17 off. Make sure everything was secured. And take
18 photographs, and collect anything that could be
19 collected.

20 Q. And was the defendant still on the scene when you got
21 there?

22 A. He had already gone.

23 Q. Was the victim still on the scene when you got there?

24 A. Yes, sir.

25 **MR. HOLT:** All right. Permission to approach, Your

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1 Honor?

2 **THE COURT:** You may.

3 Q. Deputy Harrell, I am going to show you some items that
4 have been marked as State's Exhibit 42 through State's
5 Exhibit 84. Without telling me what they are, can you
6 tell me and the jury if you recognize those photos?

7 A. I do.

8 Q. And how are you able to recognize those photos?

9 A. These are photos that I took on the night of the
10 accident.

11 Q. And do they fairly and accurately depict the subject
12 matter therein on January 8, 2010?

13 A. Yes, sir.

14 Q. And have there been any altercations or deletions made
15 to those photographs since the last time you viewed
16 them?

17 A. No, sir.

18 **MR. HOLT:** Your Honor, the state would ask if we
19 could enter into evidence 42 through 84.

20 **THE COURT:** Counsel, have you seen them?

21 **MR. SWILLEY:** Your Honor, I believe I have seen
22 them. And I can't recall which I have an objection to.

23 **THE COURT:** All right. Have a look.

24 **(PAUSE.)**

25 **MR. SWILLEY:** We would object to only 54 and 80, I

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1 believe.

2 **THE COURT:** All right. So, no objection to the
3 others?

4 **MR. SWILLEY:** No, Your Honor.

5 **THE COURT:** All right. Then let's hand those to our
6 court reporter, and she can mark them as being in evidence.
7 And let's take a look at 54 and 80.

8 **WHEREUPON, STATE'S EXHIBIT**
9 **NUMBER 42 - 49, AND 51 THROUGH**
10 **79, AND 81 THROUGH 84 ARE**
11 **MARKED AND ADMITTED INTO**
12 **EVIDENCE WITHOUT OBJECTION.**

13 **MR. SWILLEY:** Your Honor, as to 54, I would assert
14 Rule 402 as far as relevance. Also Rule 403 as far as --- I
15 would just assert Rule 402 relevance as to State's Exhibit
16 54. And Rule 403 for State's Exhibit 80, as it would be
17 over cumulative. I think it is overly prejudicial at this
18 time.

19 **THE COURT:** All right. If you would just pass those
20 up Ms. Carter?

21 **(PAUSE.)**

22 **THE COURT:** All right. Then the Court is prepared to
23 rule.

24 And with regard to 54, I am going to overrule your
25 objection. And Madame Court Reporter, you can mark that as

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1 in evidence over objection, because it is relevant and
2 probative.

3 And on Number 80, the Court is going to sustain the
4 objection under Rule 403 grounds, and exclude that from
5 evidence.

6 **MR. SWILLEY:** Thank you, Your Honor.

7 **THE COURT:** Thank you. Just wait one moment until
8 our Court Reporter and Clerk catches up with us.

9 **WHEREUPON, STATE'S EXHIBIT**

10 **NUMBER 54 IS MARKED AND**

11 **ADMITTED INTO EVIDENCE OVER**

12 **OBJECTION.**

13 **THE COURT:** All right. Please proceed.

14 **MR. HOLT:** Thank you, very much. Permission to
15 approach the witness, Your Honor?

16 **THE COURT:** Yes, sir. In fact, you don't need
17 permission counsel. You may approach anytime.

18 Q. Now, Deputy Harrell, can you explain to the jury what
19 Number 54 is a photograph depicting?

20 A. State's Exhibit Number 53 is a photo of the driver's
21 side door, where the log is --

22 Q. Driver's side rear door?

23 A. Rear-door, yes.

24 Q. And could you explain Number 51, and Number 50, what
25 those are photographs of?

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1 A. State's Exhibit 50, is the rear of the vehicle, glass
2 broken, and the blood splatter behind the passenger
3 seat --- rear passenger seat, excuse me.

4 Q. Deputy Harrell, when you were out examining the scene
5 that night, taking these photographs, where was most of
6 the blood that you noticed?

7 A. It was behind the rear area of the --- excuse me. It
8 was on the ceiling, and the rear behind the passenger
9 seat.

10 Q. And could you hold that up to the jury, and explain to
11 them what Number 48 purports to depict?

12 A. State's Exhibit 48 depicts the damage to the front end
13 of the vehicle, where it is caved in towards the
14 driver's side. Also the wood is going across the seat.
15 And also where the log appears to come across the back
16 driver's side.

17 Q. Deputy Harrell, how about the same for picture number
18 47?

19 A. State's Exhibit 47 is a view from the path of where the
20 vehicle was traveling. You can see right here this is
21 where all of the patrol units are, and emergency
22 personnel. This is a mark on the road that was made by
23 a truck, and you can see the tire tracks and the path
24 that the car was traveling.

25 Q. Are there any skid marks visible on the road there?

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1 A. None on the road that are visible. But, if you look
2 closer you can see the beginnings of it right in this
3 area right here.

4 Q. All right. Looking at photograph number 44, can you
5 tell the jury what that is?

6 A. This is a --- State's Exhibit 44 is a view from the
7 passenger side to the driver's side. It shows where
8 the placement of the log is in reference to the
9 driver's seat.

10 Q. Now was there a lot of blood found near the driver's
11 seat?

12 A. No, sir.

13 Q. And just one more time, Number 43?

14 A. State's Exhibit Number 43 is also from the passenger
15 side that shows rough size of the log, and the
16 placement; and the fact that the passenger seat is
17 pretty much completely covered. And State's Exhibit
18 Number 44, the driver's seat is up higher. The seat is
19 higher.

20 Q. Now, Officer Harrell, of course there are more
21 photographs of yours at the scene, but where did you go
22 when you left the scene that day --- the scene of the
23 accident, where was your next stop?

24 A. I went to Carolina Pines, in Hartsville.

25 Q. What did you go to Carolina Pines in Hartsville for?

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1 A. I went to take photos of the defendant, and collect a
2 SLED biological blood sample from the nurse and
3 Sergeant Pat Lee.

4 Q. And let me show you what has been marked as State's
5 Exhibit 55 through 68, photographs that you say you
6 took. Can you explain to the jury collectively what
7 those photographs are and what they are about?

8 A. Collectively State's Exhibits 55 through 68, are photos
9 of defendant's visible injuries.

10 Q. When you got to the scene at the hospital --- When you
11 got to the hospital, you obviously had to get close
12 enough to take these photographs, correct?

13 A. Correct.

14 Q. Was the defendant bleeding profusely or major wounds,
15 or anything to that nature going on that you could see?

16 A. He had some --- I don't want to say minor, but some
17 abrasions consistent with an accident; glass, road
18 rash, abrasions that were visible on his body, but no
19 signs of extreme bleeding.

20 Q. And also, before we get off of these photographs that
21 you took. Looking at Number 54, it separates the scene
22 from the hospital photos. What is that a photo of, and
23 could you tell that to the jury?

24 A. State's Exhibit 54 is a photo of the South Carolina
25 Identification Card of one Charlton Lafete Hill, ID

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1 Number 008080720. And this was on his person at
2 Carolina Pines when I took a photo of him.

3 Q. Thank you, very much, Officer Harrell. Now, Officer
4 Harrell, that night at the hospital was not --- was not
5 the end of your investigation to this was it?

6 A. No, sir.

7 Q. The next day, what did you do to further this
8 investigation?

9 A. On the 9th of January, myself and Sergeant Greene had a
10 search warrant acquired and we went to Scott's Towing
11 in the Darlington area of Darlington County to conduct
12 a search warrant on the vehicle in the daylight hours.

13 Q. Previous to your search warrant that day of the vehicle
14 in the daylight hours, how had you secured the car the
15 night before?

16 A. The car was covered --- we didn't want any rain or the
17 elements to damage any of the things inside or whatnot.
18 And the crime scene tape which is a lot larger was
19 wrapped around it to hold the --- to one hold the cover
20 in place, but also to show if there was any tampering,
21 because the average person is not going to have crime
22 scene tape in their vehicle. And also, it was locked
23 inside of the tow yard too.

24 Q. Officer Harrell, I want to show you what has been
25 marked for identification purposes only, State's

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1 Exhibit 86 through 109. And without telling me or the
2 jury what those are, can you tell me if you recognized
3 them?

4 A. I do. These are the photos I took at the conducting of
5 the search warrant on January 9th.

6 Q. And do they fairly and accurately depict the subject
7 matter therein on January 9, 2010?

8 A. They do.

9 Q. And have those photographs been altered or any
10 deletions made since last you viewed them?

11 A. No, sir.

12 MR. HOLT: Your Honor, at this time the state would
13 like to get in 89 through 109.

14 THE COURT: Do you want to look at those, Mr.
15 Swilley?

16 MR. SWILLEY: Yes, Your Honor.

17 (PAUSE.)

18 MR. HOLT: And judge, I apologize, yet again. It is
19 86 through 109.

20 (PAUSE.)

21 MR. SWILLEY: Your Honor, I would object to State's
22 Exhibit 92, 91, and 98, as --- under relevance. I believe
23 these depictions of the car have been removed from the
24 accident scene, and at that juncture would be relevant, and
25 thus stated within that juncture, would be relevant as found

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1 at the scene. Also, under Rule 403, I think it is
2 cumulative to other photographs in evidence as well.

3 **THE COURT:** All right. Let's mark the others as
4 admitted, and then we will look at those three. Thank you.

5 **WHEREUPON, STATE'S EXHIBIT**
6 **NUMBER 86, 87, 88, 89, 93**
7 **THROUGH 109 ARE MARKED AND**
8 **ADMITTED INTO EVIDENCE WITHOUT**
9 **OBJECTION.**

10 **THE COURT:** All right. The objections are overruled,
11 as to both 402 and 403 objections. The Court feels these
12 are relevant and probative. They are admitted in evidence,
13 three of those 91, 92 and 98 over objection of the
14 defendant.

15 **WHEREUPON, STATE'S EXHIBIT**
16 **NUMBER 91, 92, and 98 ARE**
17 **MARKED AND ADMITTED INTO**
18 **EVIDENCE OVER OBJECTION.**

19 Q. Deputy Harrell, could you please explain to the jury
20 what 96 is a photograph of?

21 A. State's 96, is a photo of a piece of the pine tree log,
22 wood, whatever you would like to refer it to as. And
23 it also shows a rough measurement of about four feet,
24 forty-eight inches from here to here.

25 Q. And, looking at picture 98 is there anything missing

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1 off of that seat, and could you explain to the jury
2 what seat that is?

3 A. State's Exhibit 98, shows the passenger seat completely
4 pushed down to the rear, and the head rest is missing.

5 Q. And what is that of under the seat?

6 A. Under the seat is a twenty-four-ounce Bud ice can.

7 Q. And explain to the jury what 97 is please?

8 A. State's Exhibit Number 97 is one of the larger logs
9 that was removed from the vehicle, and was also scaled.
10 And it reads --- I've got a close up somewhere in
11 there. It is over --- I believe that is over six feet
12 long.

13 Q. Could you explain to the jury what 106 is?

14 A. State's Exhibit 106 is one of the recovered Bud Ice
15 cans, which the reason it has been turned down by
16 Sergeant Greene is because it was partially full, and
17 for storage purposes, we can't store alcohol that is
18 open, because it will go bad. And there are some
19 documents to the fact that it was full and it is now
20 empty.

21 Q. Could you explain where in the car photograph 101 is
22 taken from, and what is that about the seat of the car?

23 A. This is the --- State's Exhibit 101 is the rear ---
24 this would be taken from like the passenger rear door.
25 This is the rear headrest at the scene in the earlier

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1 photos from the night of the accident. Also, you can
2 see the visible blood staining on the headrest.

3 Q. And 102, just 102 only. What is that on the outside of
4 the car?

5 A. On the outside of the car at this particular location
6 is a blood stain pattern.

7 Q. Deputy, could you tell me what 109 is a photograph of?

8 A. Exhibit 109 is the smaller end of the log exhibit that
9 was shown in one of the earlier photos. This is the
10 end of the log, which it has the appearance of --- we
11 have some fabric, appearance of hair, and apparent
12 blood on the end of this particular log right here.

13 Q. Thank you. Deputy Harrell, have these photographs all
14 involved evidence collection? You are also in charge
15 of evidence storage, are you not?

16 A. Yes, sir.

17 Q. Now, January 8, 2010, do you remember about what time
18 you went to the hospital?

19 A. I would say it would be around quarter till eleven, or
20 so. I wasn't there probably thirty minutes or so.

21 Q. And while you were there, you testified that you took
22 photos of the defendant?

23 A. Correct.

24 Q. But you also did one other important job that night.
25 What was that?

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1 A. I collected the SLED specimen kit, which contains the
2 blood evidence from the hospital.

3 Q. And who gave you that blood evidence?

4 A. Sergeant Pat Lee.

5 Q. And then what did you do with the evidence after he
6 gave it to you?

7 A. All the evidence that had been collected prior, and the
8 blood, was then taken back to the Sheriff's Office,
9 evidence storage and secured until whatever item has to
10 go to SLED.

11 Q. Did you drive that blood to SLED yourself?

12 A. I did.

13 Q. And is that a routine thing that you do is taking
14 evidence to SLED?

15 A. It will be either myself or one of our other crime
16 scene officers, but yes.

17 MR. HOLT: Beg the Court's indulgence for just a
18 moment.

19 (PAUSE.)

20 Q. Deputy Harrell, I am going to show you what has been
21 marked as State's Exhibit 112. You testified earlier
22 that you had extracted some beer cans from the
23 automobile. Could you tell the jury, without telling
24 us what is in the box, if you recognize that box?

25 A. I do.

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1 Q. And how would you know --- like why is that box
2 significant to you? How can you describe what is on
3 the inside of it?

4 A. Because it has my handwriting.

5 Q. And the beer cans that you collected from the car, what
6 did you do with those?

7 A. They were submitted to evidence and then taken to SLED.

8 Q. And what is on the inside of that box, Deputy Harrell?

9 A. Four, twenty-four-ounce beer cans. I can be more
10 specific if you need for me to be.

11 MR. HOLT: Your Honor, at this time the state would
12 ask that State's Exhibit 112 be admitted into evidence?

13 THE COURT: Is there an objection?

14 MR. SWILLEY: There is, Your Honor. I think that
15 there has been testimony as to that. I would assert 403, it
16 is over cumulative.

17 THE COURT: Overruled. Over objection, the 112 in
18 evidence.

19 WHEREUPON, STATE'S EXHIBIT
20 NUMBER 112 IS MARKED AND
21 ADMITTED INTO EVIDENCE OVER
22 OBJECTION.

23 MR. HOLT: Your Honor, at this time I would like to
24 ask the witness if he could open that box?

25 THE COURT: He may.

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1 (PAUSE.)

2 Q. Deputy Harrell, just one more time for the record,
3 where did you collect all four of those cans from?

4 A. From the defendant's vehicle.

5 Q. Now, I want to show you --- before we get off that
6 topic, were all of them full, or were all of them
7 empty, or what kind of state were they in when you
8 collected them?

9 A. Only one was --- I'd say was probably three quarters
10 full. The rest of them were empty.

11 Q. The rest of them were empty?

12 A. Yes, sir.

13 Q. All right. Deputy, I will start over again with
14 State's, what has been marked for identification
15 purposes, State's 113. And I am going to ask you if
16 you can recognize what that is?

17 A. Yes. This is a box that holds a piece of wood or log
18 from the defendant's vehicle.

19 Q. And how do you know what is inside of that box? Why is
20 it significant to you?

21 A. It has an evidence bar-code I placed on it.

22 Q. And can you explain to the jury what an evidence bar-
23 code is?

24 A. We have a system in our evidence where we have bar
25 codes like you have on most items that you buy at a

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1 store, like a drink or something. And it will track it
2 through your system. Various bits of information just
3 by --- and it gives a description of the item also.

4 Q. And Officer Harrell, can you tell us what is inside of
5 that box?

6 A. It is a piece of wood that has blood and hair on it.

7 MR. HOLT: Your Honor, at this time the State would
8 move that State's Exhibit Number 113 be admitted into
9 evidence?

10 THE COURT: Is there an objection?

11 MR. SWILLEY: Your Honor, I object under Rule 403
12 again. I think there has been testimony as to this by
13 photographs that are in the record. So I would submit that
14 this meaningless presentation, and cumulative evidence, and
15 violation of Rule 403, of the Rules of Evidence.

16 THE COURT: Response?

17 MR. HOLT: Your Honor, I think the photographs are
18 what they are and a piece of evidence is quite another
19 thing. I don't think it is cumulative in the least bit. We
20 paired the log down from a much larger log. We didn't bring
21 in the larger log, this is just one piece. So, I don't see
22 where it is cumulative.

23 THE COURT: Very good. Objection overruled. And 113
24 in evidence over objection.

25

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1 WHEREUPON, STATE'S EXHIBIT

2 NUMBER 113 IS MARKED AND

3 ADMITTED INTO EVIDENCE OVER

4 OBJECTION.

5 Q. Deputy Harrell, if I could ask you if you would open
6 113, and explain to myself and the jury exactly what is
7 inside of there?

8 THE COURT: Mr. Harrell, is that in bio-hazard wrap?

9 OFFICER HARRELL: It should be.

10 THE COURT: All right.

11 OFFICER HARRELL: I haven't seen it in a while.

12 THE COURT: Do we need gloves?

13 OFFICER HARRELL: I have gloves right here.

14 THE COURT: All right. Very good.

15 Q. All right. And Deputy Harrell, could you explain to
16 the jury exactly how you got that piece of wood?

17 A. This piece of wood was part of what was in the vehicle.
18 We took everything out, so we could work a little bit
19 better in there. We let everything out and photograph
20 it so that it could be a little better seen, versus
21 laid across inside of a car.

22 Q. Is that the only piece of wood you took from the car?

23 A. It was. It appeared to have the most visible evidence
24 on it.

25 Q. Was that the only piece of wood that you found in the

RUSS HARRELL - DIRECT EXAMINATION

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1 car though?

2 A. No, it was not.

3 Q. About how many logs do you think you found in the car?

4 A. Two. Two, one long one and one was hanging out of the
5 back door, and some smaller pieces. I can't say that
6 it was one or two, because it was broken up. But it
7 had two side by side.

8 Q. Did you cut that piece down from a larger piece?

9 A. This piece is what was broken off inside of the car.

10 Q. Did it break off from a larger piece?

11 A. Correct.

12 Q. Okay. Thank you, very much.

13 MR. HOLT: Your Honor, the state has no further
14 questions for Officer Harrell at this time.

15 We would, however, like to publish those pictures to
16 the jury.

17 THE COURT: All right. You may do so. But out of
18 fairness to Mr. Swilley, why don't we wait until after Mr.
19 Swilley asks his questions?

20 MR. HOLT: That would be more appropriate, judge.

21 THE COURT: Mr. Harrell, I would ask you if you
22 would, leave your gloves in box 113, in case the jury
23 decides they need to review it further.

24 OFFICER HARRELL: I think we have a box in the back,
25 in probation.

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1 **THE COURT:** That's good. We will make that available
2 to the jury.

3 **OFFICER HARRELL:** If we don't then I can bring some.

4 **THE COURT:** Thank you. All right. Is there cross
5 examination?

6 **MR. SWILLEY:** Yes, Your Honor.

7 **THE COURT:** Very good.

8 **CROSS EXAMINATION BY MR. SWILLEY**

9 Q. Mr. Harrell, approximately what time did you arrive on
10 the scene at Potato House Road?

11 A. It would have been somewhere around 8:30 or so. Maybe
12 an hour or so after it happened.

13 Q. So you would say about an hour subsequent to the crash;
14 is that correct?

15 A. Roughly.

16 Q. Okay. And Mr. Harrell, that day, you said that you
17 did go to Carolina Pines Hospital?

18 A. I did.

19 Q. Okay. And you said you were the one that took the
20 blood sample from Mr. Hill?

21 A. I didn't take the blood sample from Mr. Hill, no.

22 Q. Were you present at that time?

23 A. I was not.

24 Q. Okay. Now, is it true that you executed the search
25 warrant of the automobile, 2005 Chevy Cobalt, along

RUSS HARRELL - CROSS EXAMINATION

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1 with Officer Jeblonski Green?

2 A. Yes.

3 Q. And was that done on the 9th of January, the next day,
4 2010?

5 A. Correct.

6 Q. Okay. And you and Jeblonski Green went through this
7 automobile at what location?

8 A. Scott's Towing, off Old Florence Road.

9 Q. Okay. So, the automobile had to be towed from Potato
10 House Road to Scott's Towing; correct?

11 A. Correct.

12 Q. Okay. And it was towed by a tow truck; correct?

13 A. Correct.

14 Q. Okay. Approximately how far is Scott's Towing from the
15 scene on Potato House Road where the automobile
16 wrecked?

17 A. I wouldn't know for certain. I would say probably
18 three or five miles, if that far.

19 Q. Okay. And when you and Officer Green were executing
20 this search warrant, did you have a chance to locate a
21 woman's handbag?

22 A. There was a handbag present.

23 Q. There was? And where did you find this handbag?

24 A. There was not a handbag present.

25 Q. Oh, I'm sorry. I thought you said there was a handbag

RUSS HARRELL - CROSS EXAMINATION

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1 present. I'm sorry, so there was a handbag present?

2 A. There was not a handbag present.

3 Q. Okay. So, you never had a chance to go through a
4 woman's handbag at any time?

5 A. No.

6 Q. And did you ever see anyone else do so?

7 A. I did not.

8 Q. Okay. Mr. Harrell, you said that there was a lot of
9 blood that was splattered throughout the vehicle; is
10 that correct?

11 A. That's correct.

12 Q. Okay. Did you have a chance to take swabs of reddish-
13 brown substance which purported to be blood?

14 A. I did.

15 Q. And whereabouts did you take the swabs of blood from?

16 A. I took two swabs from the steering wheel, a swab from
17 the gear shift knob, and two from the corner left side
18 of the left side of the rear window.

19 Q. Okay. And Mr. Harrell did you put those swabs into
20 evidence?

21 A. I did.

22 Q. And were they ever sent to be analyzed?

23 A. I sent them to SLED, yes.

24 Q. Okay. Did you ever receive any results back?

25 A. I did not.

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1 Q. So is it fair to say whose blood, or even if that was
2 actually blood that was actually on the steering part
3 of the car; is that correct?

4 A. I don't know if it was blood or not.

5 Q. And Mr. Harrell, did you have a chance to recover any
6 fingerprints off of anything throughout the vehicle, or
7 any objects?

8 A. No. The vehicle's surface was to --- so abrasive from
9 it rolling over in the dirt that any fingerprint
10 evidence would pretty much be destroyed, or it would be
11 rubbed off and not viable to take prints from such a
12 place.

13 Q. And would the same apply to inside of the vehicle as
14 well?

15 A. Yes. All the dirt and everything is gong to damage the
16 prints, if there is anything.

17 Q. I see. So, is it fair to say that the cans of beer I
18 believe they were, is there any forensic evidence
19 linking these to any individual that you are aware of?

20 A. Not that I am aware of.

21 Q. Okay. And on the log that Mr. Holt had you examine, I
22 don't want to put my hands on it. But what did you
23 notice about this log besides it being inside of the
24 vehicle?

25 A. It has the appearance of a dried substance that appears

RUSS HARRELL - CROSS EXAMINATION

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1 to be blood, and some fibers more than likely, although
2 they were not compared to the inside of the vehicle,
3 and/or had the appearance of hair.

4 Q. Okay. And was this sent to SLED as well?

5 A. Yes, sir.

6 Q. Okay. And was there any analyzation of this by any
7 analyst down there?

8 A. I am not aware of any results.

9 Q. Okay. So that is not that you are aware of?

10 A. I send the item and request the analysis. And on
11 occasions, I do see a report. But, once my request is
12 done it is up to SLED to do those things.

13 Q. Okay. I understand.

14 **MR. SWILLEY:** Beg the Court's indulgence.

15 **(PAUSE.)**

16 Q. Mr. Harrell, as far as the blood that was taken from
17 Mr. Hill's person at the hospital, you stated that you
18 drove that blood to SLED?

19 A. Correct.

20 Q. Okay. And who did you get that vial from?

21 A. That came from Sergeant Pat Lee.

22 Q. Okay. And did you also get blood that was taken from
23 the decedent in this matter?

24 A. Let me check.

RUSS HARRELL - REDIRECT EXAMINATION

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1 (PAUSE.)

2 A. There was not a sample taken --- it was requested to
3 use her toxicology blood for that.

4 Q. Okay. And Mr. Harrell, who did you get a vial of Mr.
5 Hill's blood, taken from his person, at SLED?

6 A. That would be Selena Brown. Excuse me, hold on, let me
7 check. Niki Berry.

8 Q. Okay. And you know that by examining your past
9 recollection?

10 A. No, it is from the submission form.

11 MR. SWILLEY: All right. Mr. Harrell I have nothing
12 further.

13 THE COURT: Is there redirect?

14 REDIRECT EXAMINATION BY MR. HOLT

15 Q. Deputy Harrell, the defense was bringing up the
16 submission form. Can you explain what that is?

17 A. Sure. When items are taken to SLED, South Carolina Law
18 Enforcement Division in Columbia, or State Lab, the
19 items that are going to be submitted for analysis for
20 whatever reason, whether it be latent prints, DNA, are
21 entered into a computer and what they call free log, to
22 save some time. In this particular case the items were
23 sent to SLED, and that would be the blood, the swab of
24 hands, known fingerprints of the decedent. It is
25 logged into their computer, and checked to make sure

RUSS HARRELL - REDIRECT EXAMINATION

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1 everything I put in matches. And they will take
2 possession of it, and send it to the correct
3 department.

4 Q. And, just so me and the jury will understand. If you
5 take blood work, do you or do you not take it to SLED
6 and drop it off in the blood work unit?

7 A. There is a central collection point --- I mean, SLED is
8 a three-story building and has different departments.
9 There is a central collection point. It is basically
10 what we have here in Darlington County. And they
11 receive the items that are brought in by different
12 agencies. And in their computer system it is assigned
13 on the sheet where it is supposed to go to. Like the
14 blood would go to Toxicology. And the other items
15 would go to different departments. And there is a sign
16 downstairs as to where it is going to eventually end
17 up.

18 MR. HOLT: Your Honor, at this time the state would
19 move that this submission form be placed into evidence.

20 THE COURT: And how many are there?

21 OFFICER HARRELL: Just two pages.

22 THE COURT: All right. Two pages. Is there an
23 objection?

24 MR. SWILLEY: No, no --

25 THE COURT: You may look at it.

RUSS HARRELL - REDIRECT EXAMINATION

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1 (PAUSE.)

2 MR. SWILLEY: No objection, Your Honor.

3 THE COURT: All right. Number 123 in evidence
4 without objection. Let's take a moment and mark that
5 please.

6 WHEREUPON, STATE'S EXHIBIT
7 NUMBER 123 IS MARKED AND
8 ADMITTED INTO EVIDENCE WITHOUT
9 OBJECTION.

10 THE COURT: All right. Anything further for Mr.
11 Harrell? Mr. Holt, anything further?

12 MR. HOLT: Just two more quick questions, Your Honor.

13 Q. Deputy Harrell, they said that they checked some things
14 for you at SLED, but they didn't check other things.
15 Do you have any kind of control over what SLED does?

16 A. I have no control. All I have is what I request to be
17 done, and whatever their policies are once they get
18 there I have no control of it.

19 Q. And why would you need for SLED to do anything for you
20 anyway?

21 A. Because we don't have the capacity to do certain things
22 here in Darlington County.

23 Q. And, did you get in for lack of a better word, a tip
24 from SLED telling you about why they didn't check some
25 of your stuff?

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1 A. More than likely so.

2 **MR. HOLT:** Thank you so much, Deputy Harrell.

3 **THE COURT:** All right. There are some new issues, do
4 you want to follow on those or not? Anything further?

5 **MR. SWILLEY:** I don't think there is anything, Your
6 Honor.

7 **THE COURT:** All right. Very good. Sir, you may step
8 down.

9 Counsel, come up and let's talk about scheduling for a
10 moment, please.

11 (Whereupon, a bench conference was held in
12 the presence of the jury, but out of their hearing range.)

13 **THE COURT:** All right. Ladies and gentlemen, counsel
14 tells me that the next witness may run us on into the lunch
15 hour, so we are going to stop now for lunch.

16 What we are going to do is break until 2:00, and then
17 resume at 2:00. Now, lunch will be on your own. Whomever
18 you have lunch, please don't discuss the case.

19 It is likely, what we were discussing here, I'll just
20 tell you now. Quite often when we bring in professional
21 witnesses, or SLED witnesses who have multiple cases in
22 various jurisdictions around the state, we have to try to
23 schedule them. And I believe that the pathologist who is
24 going to testify is not available until tomorrow morning
25 first thing. So, it is likely that we will break a little

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1 early this afternoon, and then continue tomorrow morning.
2 We will take all of the witnesses but the one who cannot be
3 here. But tomorrow morning we will also reconvene for that
4 final witness. But, most likely we will finish a little
5 early today, simply because our witnesses will probably be
6 done earlier in the afternoon. I just tell you that so that
7 you will know a little bit more about what your schedule
8 will be.

9 So, at this time we will reconvene at 2:00. We will
10 stay where we are while you depart the courtroom. Have a
11 nice lunch, ladies and gentlemen.

12 **BAILIFF:** Come this way, please.

13 (Whereupon, the jury exits the courtroom at
14 12:21 p.m.)

15 **THE COURT:** All right. Anything for our record
16 before we break for lunch from the state?

17 **MS. BURCH:** Nothing from the state, Your Honor.

18 **THE COURT:** And, from defense?

19 **MR. SWILLEY:** No, Your Honor.

20 **THE COURT:** All right. Very good. We are going to
21 be in recess until 2:00, ladies and gentlemen.

22 Counsel, step up for just a moment, if you will please.
23 Court is in recess.

24 (Whereupon, a lunch recess was taken from
25 12:22 p.m. until 2:02 p.m.)

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1 **THE COURT:** All right. Counsel, are we ready to
2 proceed; for the state?

3 **MR. HOLT:** Yes, sir, Your Honor.

4 **THE COURT:** For the defense?

5 **MR. SWILLEY:** Yes, Your Honor.

6 **THE COURT:** All right. Bring the jury in, please.

7 **BAILIFF:** All right, sir.

8 (Whereupon, the jury enters the courtroom at
9 2:02 p.m.)

10 **THE COURT:** All right. Counsel, please call your
11 next witness.

12 **MR. HOLT:** The state will now call Michael Cook to
13 the stand, Your Honor.

14 **THE COURT:** All right. Please come forward and take
15 the oath of a witness.

16 **WHEREUPON, MICHAEL DEAN COOK**

17 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:**

18 **MR. COOK:** I do.

19 **DIRECT EXAMINATION BY MR. HOLT**

20 Q. Officer Cook, could you please state your whole name
21 for the jury.

22 A. Michael Dean Cook.

23 Q. And where are you currently employed?

24 A. Darlington City Police Department.

25 Q. And how long have you been employed at Darlington City

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1 Police Department?

2 A. Seventeen years this summer.

3 Q. And how many years experience total do you have in law
4 enforcement?

5 A. About seventeen years.

6 Q. So, Darlington Police Department is the only place you
7 have ever worked?

8 A. That's correct.

9 Q. All right. And, on the night of January 8, 2010, were
10 you called to a scene?

11 A. I was.

12 Q. And who called you?

13 A. My Chief.

14 Q. But, let me ask you this. You don't work for the
15 Sheriff's Office, so why did they call you?

16 A. They called me because I am the lead traffic guy. Our
17 office at the Police Department in Darlington, and the
18 Sheriff's Office --- traffic accidents is something
19 that the Sheriff's Office doesn't work or investigate.
20 That is usually the Highway Patrol in the county. So,
21 due to the nature of the collision, they wanted someone
22 with some background into investigating crashes to come
23 and take a look at it, and help them investigate it.

24 Q. All right. And what did your investigation entail that
25 night, January 8, 2010?

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1 A. I was called out about 7:55 p.m. I arrived on scene by
2 my notes at 8:40 p.m. to investigate a one vehicle
3 collision with a fatality. I arrived on scene, it was
4 dark, it was cold. There were many units still on the
5 scene. Highway Patrol was there. Sheriff's Office was
6 there. I met actually with Sheriff Byrd, met me at my
7 car before I went into the scene. They had the scene
8 taped off with crime scene tape. They gave me a brief
9 incident of what happened. That Highway Patrol was in
10 pursuit with this vehicle, and that it lost control and
11 crashed, and they had a fatality, and wanted me to
12 investigate it.

13 Q. All right. And what did you look at that night as far
14 as the scene is concerned?

15 A. First of all, I looked at the vehicle which was a gold
16 in color Chevy Cobalt. It had severe damage on it.
17 You could tell that it had been in a very severe crash.
18 Also had to go down the line a good bit to investigate
19 what actually happened, why the vehicle crashed, or
20 look into some clues to find out what happened. It was
21 very dark that night, so we had the crash trucks and
22 that sort with the emergency vehicles trying to light
23 up the scene for me the best they could. And we went
24 up the roadway to find out where the car left the road
25 and did some markings and things like that so we could

MICHAEL DEAN COOK -- DIRECT EXAMINATION

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1 go back later and do measurements.

2 Q. All right. And, did you, in fact, go back later and do
3 measurements?

4 A. We did the very next day.

5 Q. And the very next day what did your measurements
6 conclude? What did you find?

7 A. I found that the vehicle was traveling westbound on
8 Potato House Road close to S.C. 340, which would be the
9 Lamar Highway --- or the Timmons ville Highway,
10 actually. The vehicle left the roadway on the left
11 hand side of the highway, which would be on the
12 opposite side of the highway, where you are driving on
13 the right, it left the roadway on the left side. No
14 markings on the highway. No brake markings at all on
15 the highway until it left the roadway. And once it
16 left the roadway, very distinct brake markings where
17 all four tires were locked up after it left the roadway
18 on that shoulder.

19 Q. If the car had locked the brakes up while it was still
20 on the roadway, would it have left a mark on the
21 roadway?

22 A. Yes, sir.

23 Q. From the --- And I believe Officer Harrell ---

24 **MR. HOLT:** --- May I approach, Your Honor?

25 **THE COURT:** Yes, you may.

MICHAEL DEAN COOK -- DIRECT EXAMINATION

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1 Q. --- Earlier --- Looking at what has already been
2 admitted into evidence, State's Exhibit 49, could you
3 tell us what that orange marking at the bottom of the
4 photo is?

5 A. The orange marking on the bottom of this photo is
6 actually where I marked the side of the very far left
7 side of the roadway. That was telling me where to look
8 to where the first markings for any braking was at.
9 There is nothing in the roadway, but if you take a
10 closer look at the photograph, you can see the brake
11 marks begin on the grassy area on the shoulder of the
12 road. And that is my beginning point for my
13 measurements on the skid marks that is located on the
14 grass.

15 Q. Now, from that marking to the scene of the accident,
16 what are the measurements?

17 A. Two hundred and three feet from the time it started
18 braking till the first harmful, which I call striking
19 the dead tree.

20 Q. The log in this case?

21 A. The log. The tree wasn't actually standing up right.
22 The tree had fell, and was lying in the ditch line. It
23 was a dead rotten pine tree.

24 Q. So, 203 feet from where he hit the brakes on the side
25 of the road, the shoulder, till he hits the log?

MICHAEL DEAN COOK -- DIRECT EXAMINATION

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1 A. Correct.

2 Q. All right. But does the car stop there?

3 A. No, sir.

4 Q. Does the car continue on, and if so how far?

5 A. The car continued for another 88 feet, before final
6 rest.

7 Q. So --- and my math is not that good here.

8 A. Two hundred and ninety-one.

9 Q. Two hundred and ninety-one feet from where he goes off
10 on the side of the road to where he stops?

11 A. Correct.

12 Q. All right.

13 MR. HOLT: Beg the Court's indulgence for a second.

14 (PAUSE.)

15 Q. All right. And just one more quick question somehow I
16 forgot to ask you earlier. During your investigation
17 the next day when you were making the measurements in
18 the daylight, did you have an occasion to drive that
19 turn on Potato House Road?

20 A. I did.

21 Q. And what car were you driving?

22 A. I have a 2007 Charger, Dodge Charger.

23 Q. How fast did you get where you were still able to
24 maintain control of the car?

25 MS. CRAYTON: Objection, relevance.

MICHAEL DEAN COOK -- CROSS EXAMINATION

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1 **THE COURT:** I'm going to sustain, counsel. Anything
2 further?

3 **MR. HOLT:** That's it, Your Honor.

4 **THE COURT:** Very good. Cross examination.

5 **MS. CRAYTON:** Thank you, Judge.

6 **CROSS EXAMINATION BY MS. CRAYTON**

7 Q. Officer Cook, just a few questions for you. So, is it
8 my understanding from your testimony with Mr. Holt that
9 you didn't arrive to the scene until you had taped off
10 the area --- So, the crash had already happened?

11 A. That's correct.

12 Q. Okay. And you said that was about what time?

13 A. I arrived on scene at 2040 hours, which would be 8:40
14 p.m.

15 Q. Okay. And the crash had taken place at?

16 A. I was told the crash took place at 6:30.

17 Q. So, you were a couple of hours later?

18 A. Correct.

19 Q. And, so what was your involvement in this case? Was it
20 simply taking measurements?

21 A. My job, by what my understanding was, was to come in
22 and assist the Sheriff's Office in investigating the
23 crash. I did not do the TR-310 Crash Report, which is
24 the analysis form that the state provides for all
25 officers who work a crash, which is a traffic collision

MICHAEL DEAN COOK -- CROSS EXAMINATION

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1 report. I did not do that. I was there, I guess, to
2 substantiate what the county was doing as far as
3 fatality collision. That is to take measurements, try
4 to do some kind of recreation, and the best I could do
5 to assist him.

6 Q. Okay.

7 MS. CRAYTON: Court's indulgence.

8 (PAUSE.)

9 MS. CRAYTON: No further questions.

10 THE COURT: Is there follow up, redirect?

11 MR. HOLT: There is none, Your Honor.

12 THE COURT: All right. Sir, you may step down.

13 All right. Ladies and gentlemen, an explanation of the
14 previous objection and the Court's ruling, just so we will
15 all be of the same mind. The Court sustained the objection.
16 The objection was actually relevance. I think it would be
17 relevant, but there was no underlying information put into
18 evidence about how that test would have been done, what the
19 parameters of the test were, and thus, I didn't find that it
20 was sufficiently scientific to represent proof in a criminal
21 case. That is the reason I sustained the objection.

22 Now, please call your next witness.

23 MS. PARKER: Your Honor, at this time the state will
24 call Deputy Tanner.

25 THE COURT: Please come forward and take the oath of

DON MICHAEL TANNER - DIRECT EXAMINATION

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1 a witness.

2 WHEREUPON, DON MICHAEL TANNER

3 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

4 OFFICER TANNER: I do.

5 DIRECT EXAMINATION BY MS. PARKER

6 Q. Good afternoon. Would you please state your full name
7 for the Court's record?

8 A. My name is Don Michael Tanner.

9 Q. And where are you employed?

10 A. I am employed with the Darlington County Sheriff's
11 Office.

12 Q. And what is your position there with the Sheriff's
13 Office?

14 A. I am a Corporal on patrol at this moment.

15 Q. And, were you employed with the Sheriff's Office back
16 in January of 2010?

17 A. Yes, ma'am.

18 Q. And were you involved with the incident that occurred
19 on January 8, 2010?

20 A. I was. I was at the hospital, just watching the
21 subject.

22 Q. And who did you get the call from to go to the
23 hospital?

24 A. My supervisor called me and asked me to go over there
25 and watch him until somebody else got there.

DON MICHAEL TANNER - DIRECT EXAMINATION

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1 Q. And when you say, him, who are you referring to?

2 A. Sergeant Beard.

3 Q. Okay. When you were told to go to the hospital and
4 watch him, who are you referring to?

5 A. Mister --- the subject that got in the accident, over
6 there.

7 Q. Okay. And, when you arrived at the hospital, where was
8 the defendant?

9 A. He was already there. I think there were two other
10 people already there, an investigator and a highway
11 patrolman.

12 Q. Okay. And after you arrived there at the hospital,
13 what did you do?

14 A. Nothing really. Just sat there and make sure he didn't
15 leave, and nobody else came into talk with him or see
16 him.

17 Q. Okay. And, while you were watching him there at the
18 hospital, did you see the defendant take any substances
19 or anything like that into his body?

20 A. No, ma'am.

21 **MS. PARKER:** Please answer any questions the defense
22 may have.

23 **THE COURT:** Is there cross examination?

24 **MS. CRAYTON:** No questions, Your Honor.

25 **THE COURT:** All right. Sir, you may step down.

JENNIFER G. BROWN -- VOIR DIRE EXAMINATION

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1 Thank you.

2 Please call your next witness.

3 **MR. HOLT:** Your Honor, before we call our next
4 witness, we would ask if Officer Cook could be excused?

5 **THE COURT:** All right. Is there an objection?

6 **MR. SWILLEY:** No objection, Your Honor.

7 **THE COURT:** All right. You are free to go. You
8 don't have to leave, but you are free to leave, sir. Thank
9 you.

10 **MR. HOLT:** And for that matter, Deputy Tanner as
11 well.

12 **THE COURT:** Very good. Any objection?

13 **MR. SWILLEY:** No, sir.

14 **THE COURT:** Hearing none, then that will be the same.

15 **MR. HOLT:** Your Honor, at this time the state would
16 like to call Lieutenant Brown.

17 **THE COURT:** Please come forward and take the oath of a
18 witness.

19 **WHEREUPON, JENNIFER G. BROWN**

20 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:**

21 **MS. BROWN:** Yes, sir.

22 **VOIR DIRE EXAMINATION BY MR. HOLT**

23 Q. Jennifer, could you please give your whole name for the
24 jury?

25 A. It is Jennifer Michelle Guard Brown.

JENNIFER G. BROWN -- VOIR DIRE EXAMINATION

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1 Q. And, what is your current occupation?

2 A. I am a Forensic Toxicologist.

3 THE COURT: And, ma'am, would you move just a little
4 closer to that microphone please, and pull it to you. Pull
5 it down to you. Thank you.

6 Q. And how long have you been a Forensic Toxicologist?

7 A. A little over four years.

8 Q. And where are you currently employed?

9 A. I am employed with the South Carolina Law Enforcement
10 Division, commonly known as SLED.

11 Q. You say you have been there four years?

12 A. A little over, yes.

13 Q. Okay. Now, where did you go to college?

14 A. I went to college at The University of South Carolina.

15 Q. And what degrees did you get there?

16 A. I have a bachelor of science of chemistry and a
17 bachelor of science in marine science.

18 Q. And, what education or training qualifies you as a
19 toxicologist at SLED?

20 A. My education partly at the University of South
21 Carolina. But we also have an extensive training
22 program at SLED. It is about a year of extensive
23 training, where you go through alcohol analysis
24 interpretation, and drug analysis interpretation.
25 Basically we start out with some lectures in alcohol

1 for about the first six months. It is all about
2 alcohol, with every lecture there is a quiz, and you
3 have to pass the quiz. Once all that is done, you will
4 have a test. And with that test you have to pass it.
5 And then once the test is done, we also have a mock
6 trial, which you get drilled by my lieutenant, and by
7 my team leaders and so forth, and the team leaders are
8 my judge and my Solicitor, and basically they ask me
9 anything and everything kind of like we would today
10 about alcohol interpretation. That has to be passed.
11 If that is not passed, I get fired. And so, once you
12 pass that you start your drug training. And in this we
13 are going to learn how to do drug screens, how to run
14 drug screens. How to interpret the results we get from
15 those. Once you pass all of that, you are going to go
16 and learn how to extract the different drugs we see.
17 Different classes of drugs, be it cocaine, marijuana,
18 or a general drug screen that will show everything.
19 Once you go through all of this, and you are actually
20 given a sample that someone put drug into, not that it
21 is a certain person, but we have blank blood, and you
22 put drug into it, and when I analyze that, I have to
23 get that result. If I don't get that result, bad
24 problem. But, basically, once again after I am done
25 with all this training, I have another mock trial, and

JENNIFER G. BROWN -- VOIR DIRE EXAMINATION

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1 basically once again kind of get drilled about
2 everything and anything about drugs. And, if I can't
3 pass it, once again I get fired.

4 Along with this, we also have to test over five
5 hundred samples that have a known quantity for
6 alcohol interpretation purposes. You have to pass
7 that. And the same thing with the drugs. So, it
8 is a pretty extensive test. That is a lot of our
9 training. And it is always continuous, because we
10 have to read journal articles, go to different
11 conferences, and do a lot of other stuff. And
12 with the drugs, it is kind of a neat thing,
13 because there are drugs that come out all the
14 time. So, we need to continually learn about the
15 new drugs that come out, and be able to interpret
16 those.

17 Q. And you said that you are continually getting educated
18 on the subject. About how often is that? How
19 sporadically would that be?

20 A. All the time, essentially. Because almost everyday a
21 new drug seems like comes out, or we will have some
22 reason to learn about that drug. Just because it may
23 be new to our market, or it came over from England, and
24 we need to know how to look for it, how to analyze it,
25 how to interpret the results, you know, results so that

JENNIFER G. BROWN -- VOIR DIRE EXAMINATION

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1 we might find for that.

2 Q. And since you have been working at SLED over four years
3 now, probably about how many blood samples have you
4 looked at, or measured and worked on?

5 A. In training like I said, just strictly alcohol for
6 training purposes was over five hundred. Cases in my
7 last four years, I probably did three to five hundred
8 per year. So, you know, you take that and multiply it
9 times four years, is probably about how many I have
10 seen, so thousands of cases I have analyzed.

11 Q. And all throughout this time you were continuing to get
12 educated on other stuff?

13 A. Yes, going to conferences, going to different training
14 events.

15 **MR. HOLT:** Your Honor, at this time the state would
16 move to have Jennifer Brown admitted as an expert in the
17 field of Toxicology?

18 **THE COURT:** All right. Ladies and gentlemen, our
19 previous witnesses have been lay witnesses. Lay witnesses
20 come in and testify about what they saw, or heard, or did.
21 An expert witness is someone who, because of training in a
22 particular area, or experience, knowledge in that area is
23 allowed to come in and testify about not only what they saw,
24 or heard, or did, but what opinion they derived from what
25 they saw, or heard, or did. The difference then between an

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1 expert and lay witness is that an expert witness may give an
2 opinion.

3 Now, when we have an expert witness offered, we stop
4 there. We go to the other side, and see if we have
5 questions, or challenge to the witness's expertise. And you
6 may ask questions at this time, if you have any.

7 **MR. SWILLEY:** I'm sorry, Your Honor. What was that?

8 **THE COURT:** Well, that was about five minutes worth
9 of talking, counsel.

10 **MR. SWILLEY:** We stipulate to Ms. Brown's
11 qualifications.

12 **THE COURT:** That is what it was. All right. So,
13 there is no objection to the qualification of the witness as
14 an expert.

15 However, that does not mean that you have to accept the
16 expert's testimony as true and undisputed. You should still
17 weigh the evidence as you would any other evidence. It is
18 not given for the purpose of controlling your judgment, but
19 for assisting you in finding matters of fact that are before
20 you, within the purview of the expert. So, you give it the
21 weight you deem it to be entitled to, based on the testimony
22 itself.

23 You may proceed, counsel.

24 **MR. HOLT:** Thank you very much, Your Honor.
25

DIRECT EXAMINATION BY MR. HOLT

Q. Now, Ms. Brown, as a Toxicologist, it is correct that you take people's blood and examine it for what is in them?

A. Correct and others.

Q. But you also --- You also know other stuff like about the effect of alcohol on blood?

A. Correct.

Q. Or on people? Now, everybody in the Court is aware that everybody is scared of that .08 ---

A. --- Correct. ---

Q. --- when they get pulled over. Can you explain what might be going on for a normal person at .08?

A. A normal person at .08 is going to have problems with multitasking in that driving is divided attention, multitasking task. And that you are not just driving, you are driving and drinking, drinking and steering, driving and playing with your phone, driving and turning on the radio. You are making sure cars aren't hitting you. Things are going on. So, you are going to have impairment with that. You are going to have an impairment to do all of that. You are going to have problems with increased self-confidence and decreased inhibitions. So, you are going to do something that you normally wouldn't do otherwise. And that actually

JENNIFER G. BROWN -- DIRECT EXAMINATION

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1 pretty much starts at a .05. So, for my training, I
2 would say anybody at a .05% blood alcohol concentration
3 is too impaired to drive. And so does the Journal of
4 America Medical Association. They actually say that
5 they believe the states should adopt a .05 as per se
6 evidence of intoxication and impairment, and actually
7 recommend that the states start that. But there are
8 also other problems that can arise from vision, and
9 divided attention in driving a car.

10 Q. How about at a .10 or .12, somewhere in that range,
11 what kind of effects would you see happening to a
12 person?

13 A. Similar type of things. You always kind of start with
14 the basics and you add onto that. So, like I said,
15 multitasking, problems with your attention. You are
16 going to see some muscular type of problems, some with
17 coordination, and pretty much similar effects.

18 Q. When you say muscular type problems, what do you mean?

19 A. You are going to start having in-coordination, meaning
20 that if you were driving you would not have the same
21 reflexes as you would as if you were not consuming
22 alcohol because you need your muscles to drive. You
23 need your hands to be, you know, good and steady. Your
24 feet, you know, in proper condition.

25 **MR. HOLT:** If I could approach, Your Honor?

1 **THE COURT:** You may. You don't need to ask the
2 Court. You may approach anytime.

3 Q. I am going to show you what has been marked for
4 identification purposes only, as State's Exhibit Number
5 124. Without telling the jury what that is, can you
6 tell me if you recognize it?

7 A. Yes.

8 Q. And have you ever seen that before?

9 A. Uh-huh. Yes.

10 Q. And has there been, any changes, or deletions to it
11 since the last time you saw it?

12 A. No, besides adding the exhibit number.

13 **MR. HOLT:** Your Honor, at this time the state would
14 move to have her report admitted into evidence as States
15 Exhibit Number 124.

16 **THE COURT:** What says the defense?

17 **MR. SWILLEY:** Your Honor, I don't believe the
18 official link of chain of custody has been established under
19 Rule 6. I don't believe that she testified that she got ---
20 from whom she got the sample from.

21 **THE COURT:** Okay. Sustained.

22 Q. Now, without talking about this, and we are going to
23 sum this up real quick. Let me ask you this. You are
24 a Toxicologist?

25 A. Correct.

JENNIFER G. BROWN -- DIRECT EXAMINATION

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1 Q. Do law enforcement officers just come bring you stuff,
2 and you just take it and keep it, and work on it? How
3 does the process work at South Carolina Law Enforcement
4 Division?

5 A. No, officers can't directly leave me evidence. They
6 bring it to our Log-in Department. And it is generally
7 not a bunch of officers. It is usually the submitting
8 officer, which can be the officer that got the sample,
9 or it can be a collection type of person. They bring
10 it to our Log-in Department which is on our first
11 floor. And there is paperwork that goes along with it.
12 And it is given into an evidence bag. It is given a
13 unique barcode identifier, so every case is a different
14 number. And so, that is how we track our evidence
15 through the system.

16 Q. Now, specifically in this case, earlier the jury heard
17 testimony that Russ Harrell deposited the blood samples
18 at SLED. Can you tell me who he gave it to?

19 A. Yes. He gave it to our long-in technician, who is
20 Nikki Perry.

21 Q. And, following from there, can you tell me what happens
22 with the blood?

23 A. Yes. From there, the blood went into the Toxicology
24 Evidence Intake Storage, which is in our Log-in
25 Department. From there it was picked up by Patricia

JENNIFER G. BROWN -- DIRECT EXAMINATION

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1 Cook, she is also a log-in technician. So, she is
2 going to give the evidence to a technician from my
3 department in Toxicology. And from there it was
4 photographed for our purposes following the outer
5 container all the way down to the evidence. And then
6 from there it was put into our toxicology refrigerator.
7 Only Toxicologists and a few other higher-ups in our
8 SLED are able to access that. We all have a china
9 keycard, and so we swipe it, and if you are not in our
10 department, it doesn't open.

11 Q. Now, throughout this process where the blood goes from
12 Nikki Perry on up to you, are photographs taken of it?

13 A. Once it gets to our department it is. But we all have
14 a barcode. And once it goes from one person to another
15 you scan your barcode and it goes specifically to that
16 evidence to everything. So everything is bar coded, so
17 you can't just scan someone else's barcode and pretend
18 like they did it. It is very precise.

19 Q. And does the evidence remain sealed every time it
20 passes hands?

21 A. It remains sealed, yes.

22 Q. Okay. And, when Russ Harrell gave it to Nikki Perry,
23 and eventually made its way to you, was it labeled the
24 entire time?

25 A. Yes.

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1 **MR. HOLT:** All right. Your Honor, at this time the
2 state would move to admit, I believe it is 124.

3 **THE COURT:** All right. Is there an objection?

4 **MR. SWILLEY:** Yes, Your Honor. I still don't
5 believe in the record there has been testimony proffered
6 that would satisfy a chain of custody under Rule 6, as far
7 as the identity of those that handled the substance. As far
8 as practical, I don't believe the witness has testified from
9 whom she actually got the sample, when and where, I believe.

10 **THE COURT:** All right. The objection is over-ruled.
11 The Court finds that the requirement for the rule has been
12 met.

13 You may question the witness about that, if you wish on
14 cross Examination. But the objection is overruled.

15 Let's mark 124 in evidence over objection.

16 So noted, you may proceed.

17 **MR. HOLT:** Thank you very much, Your Honor.

18 **WHEREUPON, STATE'S EXHIBIT**

19 **NUMBER 124 IS MARKED AND**

20 **ADMITTED INTO EVIDENCE OVER**

21 **OBJECTION.**

22 Q. Now, Ms. Brown, what is exactly State's Exhibit Number
23 124?

24 A. One twenty-four is a copy of my report.

25 Q. And, we were talking earlier about blood alcohol

JENNIFER G. BROWN -- DIRECT EXAMINATION

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1 levels, and how that affects people's impairment. Can
2 you tell me, whose blood is that report for?

3 A. It is for a Charlton Hill.

4 Q. And, what was his blood alcohol level when it was
5 tested at SLED?

6 A. It was at a 0.152%.

7 Q. And is that above the legal limit?

8 A. Above the per se limit, yes.

9 Q. And, about how many times above the per se limit is
10 that?

11 A. Roughly, close to two.

12 Q. So, double. So, aside from alcohol, can you tell me
13 what else was found in his blood at SLED when it was
14 tested?

15 A. At SLED, it was found that he had acetaminophen. It
16 had Benzodiazepine, which is a metabolite of cocaine.
17 It had Hydrocodone, which is like your Lortab or Xanax.
18 I'm sorry, Lortab or Vicodin. It had 11-carboxy-
19 Tetrahydrocannabinol, also a metabolite of THC, or
20 marijuana. Once again, there is another screen that
21 shows acetaminophen. It was also positive for
22 ditrohydrozine, which is like Benedryl. Also positive
23 for tramadol, and it is a metabolite of methyltramadol,
24 which is opioid, similar to a drug like your
25 Hydrocodone, which is your Lortab or Vicodin. It is

JENNIFER G. BROWN -- DIRECT EXAMINATION

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1 also positive for kerosinprodol, which is Soma. And
2 the metabolite of that which is methocarbamol.

3 Q. Okay. Now, you are a Toxicologist?

4 A. Correct.

5 Q. Each substance that was found in his blood, can you
6 describe to the jury how that substance would affect
7 the person, and the effects it would have?

8 A. Sure. The alcohol alone is impairing to the effect
9 that we are going to see those multitasking problems,
10 driving and steering, driving and doing everything that
11 you need. The divided attention problems also. You
12 are going to have increased self-confidence, decreased
13 inhibitions, so you are more likely to do something
14 that you wouldn't, diminution in attention. So what
15 you need to drive and pay attention to what you are
16 doing.

17 You are basically going to basically start having
18 problems with your reaction times, so it is going to
19 take you longer to brake --- to do everything that you
20 need to react to any stimuli coming around you. And
21 you are also going to start having problems with your
22 muscular and coordination. You can also have other
23 physical problems too.

24 Q. And what is next on that list?

25 A. Acetaminophen.

JENNIFER G. BROWN -- DIRECT EXAMINATION

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1 Q. What is acetaminophen?

2 A. Basically, it is your Tylenol. And for the purposes of
3 this, it kind of goes along with your Hydrocodone,
4 because the Hydrocodone is your Lortab or Vicadin is a
5 combination of the Hydrocodone.

6 Q. So they would have Tylenol in it?

7 A. Correct.

8 Q. All right. I am sure everyone knows about Tylenol.
9 Can you move on to the next one?

10 A. Yes. Well, there is also benzoetheline. And that is
11 the metabolite of cocaine.

12 Q. Now, can you tell us what metabolite means?

13 A. Yes. The metabolite is basically the way your body is
14 getting rid of something. So, say your body wants to
15 break down a drug, a substance and get rid of it out of
16 your body. So, the way it does that is that it
17 converts a drug into something else. A daughter ---
18 what we call a daughter product. So, basically the
19 metabolite is basically your body's way of getting a
20 drug out of your system.

21 Q. So, if you were to find the metabolite of a substance
22 in somebody's body, what would that mean to you as a
23 Toxicologist?

24 A. That means that they prior had been taking the parent
25 drug, and in this case cocaine.

JENNIFER G. BROWN -- DIRECT EXAMINATION

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1 Q. Now the cocaine that everyone believes jacks you up and
2 gets you going, isn't that --

3 **MR. SWILLEY:** Objection, Your Honor.

4 **THE COURT:** That is leading counsel. Sustained.

5 Q. What does everybody believe that cocaine is?

6 A. It stimulates you. Because, it is a central nervous
7 system depressant --- I'm sorry, stimulant. However,
8 you can get a high from it and then you crash, which
9 can be more --- have the effect more to a depressant of
10 the central nervous system.

11 Q. All right. So, let's just go on to the next one then.

12 A. The next one on the list was the Hydrocodone, which is
13 your Lortab or Vicadin. That is a central nervous
14 system depressant. And, it is going to have similar
15 effects to that of your alcohol, in that you are going
16 to have increased reaction time, problems with
17 multitasking. You are going to have problems with your
18 coordination, and drowsiness, and you are more likely
19 to fall asleep.

20 Q. Do you call that a CNS depressant?

21 A. Correct.

22 Q. And I think --- Did you call --- What is a CNS
23 depressant?

24 A. Basically, kind of what I said. It is just a central
25 nervous system depressant. Basically, it has the

JENNIFER G. BROWN -- DIRECT EXAMINATION

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1 effects of increased reaction time, and multitasking
2 problems, and problems with doziness as well.

3 Q. Were all the things that you found in the blood central
4 nervous system depressant?

5 A. No. They are not all.

6 Q. What was not a central nervous system depressant?

7 A. Well, your 11-carboxy-Tetrahydrocannabinol, the
8 metabolite of marijuana. It is a variety of things.
9 You don't normally label it as a central nervous system
10 depressant, or a stimulate or a hallucinogenic. It is
11 kind of a combination of all of them. So, that would
12 in and of itself suggest it is not strictly a
13 depressant. And the metabolite of cocaine, depending
14 on where you are in the process of taking it, can be a
15 stimulant or a depressant.

16 Q. All right. And I think you had dropped off on the
17 Hydrocodone?

18 A. Correct.

19 Q. Could you go to the next substance you found in the
20 blood system?

21 A. That would be your 11-carboxy-Tetrahydrocannabinol, the
22 metabolite of marijuana.

23 Q. All right. And I think you explained the marijuana
24 pretty well.

25 A. Oh, do you need for me to explain it?

JENNIFER G. BROWN -- DIRECT EXAMINATION

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1 Q. Yes.

2 A. Okay. You are going to have a problem with combination
3 with your alcohol. It is going to cause a greater
4 effect of your depression, in a sense that once again
5 your reaction time, your multitasking, you are more
6 likely to be drowsy while driving.

7 Q. And what would be the next drug you found in the blood
8 stream?

9 A. It is just showing the positive screen for
10 acetaminophen. And then after that we have the
11 Diphenhydramine, which is your Benadryl. Once again,
12 central nervous system depressant, similar effects to
13 alcohol, multitasking, decreased reaction time,
14 drowsiness, and coordination.

15 Q. In your opinion as a Toxicologist, knowing everything
16 you know about, what was in his blood at the time ---
17 Would it have been a good idea to drive?

18 A. No.

19 Q. And what would be the likely outcome of somebody
20 driving with blood like that?

21 **MR. SWILLEY:** Objection, Your Honor.

22 **THE COURT:** I'm going to sustain.

23 **MR. HOLT:** Beg the Court's indulgence for just one
24 moment?

25 **THE COURT:** Yes, sir.

1 (PAUSE.)

2 Q. We were talking earlier about the metabolites in
3 cocaine. Can you explain to me and the jury what a
4 half-life would be, and why it would be significant?

5 A. Sure. The half-life is basically how much time it
6 takes to get rid of half of the drug. So, depending on
7 the drug depends on the half-life. So, for instance
8 cocaine has about an hour half-life. So you start with
9 "X" quantity, and in an hour you have half of that.
10 And then in the next hour you have half of that again.
11 And depending on with what concentration you start off
12 at depends on the time you end up. For cocaine, if you
13 start out with a high number, you in about six hours,
14 you won't be able to see it. Depending on the
15 concentration, we can you know be sure of that.

16 Q. So, bearing that in mind, probably about how long since
17 the blood was taken was the cocaine used?

18 A. It is really hard to tell you. But, you know, it
19 probably --- it could be --

20 MR. SWILLEY: Objection, Your Honor.

21 THE COURT: And, the objection is what?

22 MR. SWILLEY: I think that calls for speculation.

23 THE COURT: You have to lay a foundation. I'll
24 sustain the objection. Please lay a foundation.

25 MR. HOLT: No further questions at this time, Your

JENNIFER G. BROWN -- CROSS EXAMINATION

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1 Honor. Please answer any questions that defense counsel may
2 have.

3 THE COURT: Just one moment please, before we start.
4 Mr. Medlin, would you step up just a minute please?

5 (PAUSE.)

6 THE COURT: All right. Now, cross examination.

7 MR. SWILLEY: Thank you, Your Honor.

8 CROSS EXAMINATION BY MR. SWILLEY

9 Q. Jennifer, you do in fact, do work for SLED, right? You
10 testified to that?

11 A. Correct.

12 Q. That you are in fact a law enforcement officer?

13 A. Technically.

14 Q. Okay. Now, Jennifer, let me ask you --- You said that
15 you got --- Where did --- The Blood in question you
16 tested, where did you get that from?

17 A. I actually get it out of our toxicology refrigerator.

18 Q. Okay. And do you know who may have put that there?

19 A. Yes.

20 Q. Okay. And who was that?

21 A. It was put in the refrigerator by a Toni Broome.

22 Q. By who?

23 A. Toni Broome.

24 Q. Okay. And who is Mr. Broome?

25 A. Mrs.

JENNIFER G. BROWN -- CROSS EXAMINATION

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1 Q. I'm sorry.

2 A. That's okay. She is another Toxicologist in our
3 department.

4 Q. Okay. And who did you say had it before her?

5 A. It would have been in the refrigerator before that.

6 Q. Okay. And, who put it in the refrigerator before that?

7 A. Brandon Landrum.

8 Q. Okay. And what were the reasons that Mrs. Broome and
9 Mr. Landrum had these samples?

10 A. For different parts of the analysis that they did.

11 Q. Okay. Is this for a different substance that they may
12 be testing for?

13 A. Correct.

14 Q. Okay. What in fact was --- What was your role in all
15 of this? Did you just --

16 A. Can you --

17 Q. What exactly was your role in testing the substance?

18 A. My role is, I get the case put up to me, and I look at
19 it, and I say okay, what does it mean? In this case it
20 needed drug work done. So, I look at it, and I say,
21 okay, what did it screen positive for? And in this
22 case it screed positive for benzodiazepines, which is
23 your Valium or Xanax.

24 Q. Jennifer, I don't mean to cut you off, but you went
25 through that with Mr. Holt. So, your role in this is

JENNIFER G. BROWN -- CROSS EXAMINATION

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1 basically data collection, as far as what --

2 A. -- Oh, no. I do analysis too.

3 Q. Okay. Jennifer, let me ask you. Was this the only
4 sample you had an opportunity to work with in this case

5 ---

6 A. -- In --

7 Q. -- In this case.

8 A. By case you mean?

9 Q. The State versus Charlton Hill.

10 A. I also have urine for him, but we don't do anything
11 with that since we had blood. And we had evidence for
12 the decedent, Sylvia Hill.

13 Q. Okay. And as far as, Mrs. Hill's report, what was it
14 that she was tested --- that her sample indicated was
15 present?

16 A. Just one second.

17 **MR. HOLT:** Your Honor, if I could object at this time
18 to relevance.

19 **THE COURT:** Just a moment.

20 **(PAUSE.)**

21 **THE COURT:** Overruled.

22 **MR. SWILLEY:** Thank you, Your Honor.

23 **THE COURT:** Thank you.

24 Q. Ms. Brown, did you have a chance to test another sample
25 from the decedent, Ms. Hill?

JENNIFER G. BROWN -- CROSS EXAMINATION

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1 A. Yes.

2 Q. Would you tell me what this sample indicated was
3 present in her blood? And if you need the report, I
4 have it right here.

5 A. That would be awesome.

6 Q. Okay.

7 (PAUSE.)

8 A. Okay. First off, we actually didn't test blood for
9 her. We tested ---

10 THE COURT: Ma'am, I didn't understand that. Would
11 you state that again, please?

12 A. I'm sorry. We actually didn't have blood for Sylvia.

13 THE COURT: Okay.

14 A. And, so, what was tested was urine. We also had liver
15 for her, but we didn't test it.

16 Q. And, let me ask you, are the indications that exist in
17 urine as reliable as blood?

18 A. What do you mean reliable?

19 Q. Can you see in someone's urine what you can see in
20 someone's blood? Is there any problems with urine as
21 opposed to blood?

22 A. No.

23 Q. Okay. And can you tell me what you found present in
24 her urine?

25 A. Yes. For Sylvia, we have the acetaminophen, which is

JENNIFER G. BROWN -- CROSS EXAMINATION

229

1 like Tylenol. Tramadol, known as methotramadol,
2 Hydrocodone, dehydrocodine, Hydrocodone, oprasalim, and
3 hydroxilin alprazolam.

4 Q. Okay. Jennifer, one by one, can you tell me what
5 affects those may have on a person's motor skills, as
6 well as cognitive ability one by one?

7 A. Sure.

8 Q. Each that she tested positive for.

9 A. She tested positive for acetaminophen, they generally,
10 like I said before seen in combination with your
11 Hydrocodone. So, that is like your Lortab or your
12 Vicadin. The dehydrocodine and hydromorpphine, are
13 metabolites of Hydrocodone. So, the effects once again
14 would similar to central nervous system depressant.
15 You are going to have --- you said in relation to what?
16 I'm sorry.

17 Q. How would the presence of these chemicals in someone's
18 physiological system, how would that affect motor
19 skills, ability to drive, and cognitive abilities?

20 A. You would once again have problems with multitasking,
21 in that you are going to have problems with
22 coordination. You are going to have decreased reaction
23 time. You are going to have some visual problems too.

24 Q. Okay. And would these issues affect someone's ability
25 to drive a motor vehicle?

JENNIFER G. BROWN -- CROSS EXAMINATION

230

1 A. Yes. But, I also must say that with urine, it is more
2 of a history than it is per se in their system at the
3 time. So, because we got urine, it shows me a history
4 of what she had taken prior, but not what is affecting
5 them at the point in time of draw.

6 Q. Okay. So, is it fair to say that urine goes a lot
7 further back than actually blood goes, correct?

8 A. Correct.

9 Q. Okay. May I have that report back?

10 A. Yeah.

11 Q. Thank you. On this report, Jennifer, I see you note
12 the results --- you have units, and you have threshold,
13 correct?

14 A. For which portion, sorry?

15 Q. In your urinalysis report.

16 A. Which?

17 Q. In both of them. As far as the columns?

18 A. Right.

19 Q. Okay. What as far as units, can you explain that?

20 A. Are you talking --- sorry, sensitive to multiple
21 sections here. Are you talking for the alcohol and for
22 the screens?

23 Q. Well, it says mg/L. What does that indicate?

24 A. Concentration, so you are looking at basically how much
25 there is in milligrams per liter.

JENNIFER G. BROWN -- CROSS EXAMINATION

231

1 Q. Okay. And to the right of that there is a column,
2 threshold.

3 A. Right.

4 Q. And what does that mean?

5 A. Can you tell me what portion you are looking at,
6 because there is a difference?

7 Q. Okay. I am looking at page 2 of 3, on the Sylvia Hill
8 report.

9 A. Okay. So, the portion, you are looking at it looks
10 like it says, screen. So, basically for screens we
11 have a threshold which basically means anything above
12 that threshold is positive, if it is below that
13 threshold it is negative. So we obviously would not go
14 after anything that would be negative.

15 Q. From your observations, can you tell how much for each
16 substance above the threshold exists in your research?

17 A. In --- We are not going to get a quantitative value for
18 it. We can only confirm what is there or not.

19 Q. Okay. I understand. So, is it fair to say Jennifer
20 you can't tell from what --- from what you observed
21 through your work how much of what subject --- how much
22 of which substance was taken?

23 A. For Sylvia?

24 Q. Yes.

25 A. No, I can just tell you if it is there or not.

JENNIFER G. BROWN -- CROSS EXAMINATION

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1 Q. Okay. And, would the same go for the fact that you
2 can't tell me when such substance was ingested?

3 A. I can tell you a half-life, and kind of a window of
4 when we can see it. But not like she took it at 8:00
5 on such and such a date.

6 Q. Okay. Are these all the drugs that you tested for
7 listed on the sheet? Did you test for anything else
8 that is not on here?

9 A. Kind of, I guess. What I'm trying to get at what you
10 are saying is, that for instance if we test positive
11 for benzodiazepines, whatever we see as positives of a
12 report, we don't report a thing was negative. If we do
13 a general drug screen we report what is positive. We
14 don't report anything that we don't find.

15 Q. Okay. I see on here you have some stuff that says
16 negative. Can you explain that?

17 A. Yes. Under for Sylvia, under the drug screen, it will
18 say result negative. So, when we screen for on here
19 amphetamine, methamphetamine, it screened negative. So
20 it just means we screened and it wasn't there.

21 Q. Okay. But you just told me you don't put all the
22 negatives down?

23 A. For quantitative information type of things for screens
24 we put that down.

25 Q. I understand. Okay. On the column that says analysis

JENNIFER G. BROWN -- CROSS EXAMINATION

233

1 by gas chromatography/Mass Spectrometry, (GC/MS), can
2 you explain what that means?

3 A. That is just basically the instrumentation that we use
4 to analyze the sample and find the results for.

5 Q. Okay. And, all six of those below there tested
6 positive, correct?

7 A. Correct.

8 Q. And, in your recollection, is there anything else
9 tested from that method?

10 A. Well, it tested positive no, but had --- When we have
11 some things screen positive, we are going to confirm
12 it. So, when you confirm it, you are going to do a
13 separate analysis. And we have separate instruments
14 for separate things. So, if it screened positive
15 opiates that would be one analysis. So, that is how
16 you are going to see the Hydrocodone, adrocrine,
17 Hydrocodone. So, for the benzodiazepines, that is
18 actually a different instrument, so that is a different
19 column here. But we also do a general drug screen
20 which looks for everything. So the other things on
21 that list we would have seen by the general drug
22 screen, which is the same instrumentation, just
23 different analysis.

24 **MR. SWILLEY:** I understand. Beg the Court's
25 indulgence for a moment.

JENNIFER G. BROWN -- REDIRECT EXAMINATION

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1 THE COURT: Yes, sir.

2 (PAUSE.)

3 MR. SWILLEY: Your Honor, I have nothing further.

4 THE COURT: Is there redirect?

5 MR. HOLT: There is, Your Honor.

6 THE COURT: All right. You may proceed.

7 REDIRECT EXAMINATION BY MR. HOLT

8 Q. Ms. Brown, you just finished talking about
9 conformations. When you did the defendant Charlton
10 Hill's blood, did you test it again to confirm?

11 A. Well, with blood we confirm, and we actually quantitate
12 too to find a value of concentration of how much is
13 there.

14 Q. Now, you talked about the difference between blood and
15 urine. Which one is more accurate of what is in your
16 system at the time it is taken?

17 A. Blood.

18 Q. Okay. And, when we looked at Sylvia Hill's blood, what
19 was the name of the drugs you said you found in it?

20 A. We didn't have blood for Sylvia.

21 Q. I mean in her urine.

22 A. For Sylvia, in her urine, there is acetaminophen,
23 Tramadol known as methotremadol, Hydrocodone,
24 dihydrocodine, Hydrocodone, alprazolam, and
25 hydroxialprazolam.

JENNIFER G. BROWN -- REDIRECT EXAMINATION

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1 Q. And what are some of the fields that those drugs could
2 be?

3 A. The acetaminophen can be taken by itself, so it is
4 Tylenol. You can also take it in combination with
5 Hydrocodone, which is your Lortab or your Vicodin. The
6 dehydrocodine, hydroperoxides is metabolites. You will
7 see those because you had Hydrocodone. And your
8 Tramadol, is another pill, generally seen as either
9 Ultram, or different marketing. And then the O-
10 Desmethyiltramadol would be a metabolite.

11 Q. All right. And, if somebody had prescriptions for
12 drugs, would they test any different when you are
13 looking at them in their urine?

14 MR. SWILLEY: Objection, Your Honor.

15 MR. HOLT: Withdrawn.

16 THE COURT: Sustained. Please rephrase, or move
17 forward.

18 Q. Would the results of anything --- and this may seem
19 like a really dumb question. Would the results of
20 anything in Sylvia's blood in any way, can that impair
21 Charlton Hill?

22 A. Testing the urine and blood, no. Her drugs in her
23 system aren't going to impair him.

24 Q. All right. Did her urine test positive for alcohol?

25 A. No.

JENNIFER G. BROWN -- REPLY EXAMINATION

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1 Q. Did Charlton Hill's test positive for alcohol?

2 A. Yes.

3 Q. Did her urine tests positive for cocaine?

4 A. No.

5 Q. Did Charlton Hill's test positive for cocaine?

6 A. The metabolite, yes.

7 Q. Did her urine test positive for marijuana?

8 A. Nope.

9 Q. Did Charlton Hill test positive for marijuana?

10 A. The metabolite, yes.

11 MR. HOLT: Thank you, very much. No further
12 questions.

13 THE COURT: Do you wish to follow on any of those
14 issues?

15 MR. SWILLEY: Yes, Your Honor.

16 REPLY EXAMINATION BY MR. SWILLEY

17 Q. Ms. Brown, as to urine, what test Mr. Holt brought up,
18 is there any reason why Mrs. Hill's blood was not
19 tested?

20 A. We didn't receive any.

21 Q. And you would not have received any from who?

22 A. From Sylvia Hill.

23 Q. Okay. And --- All right.

24 A. And if I don't receive it, I can't test it.

25 MR. SWILLEY: I understand. No further

JENNIFER G. BROWN -- REPLY EXAMINATION

237

1 questions.

2 THE COURT: This is your witness, anything on those
3 points?

4 REPLY EXAMINATION BY MR. HOLT

5 Q. What would be a reason you couldn't get blood from
6 somebody?

7 MR. SWILLEY: Objection, Your Honor.

8 THE COURT: Overruled. You opened the door. Let's
9 see where it leads.

10 A. Let's say they bled out, or there just wasn't enough.

11 MR. HOLT: Thank you.

12 THE COURT: Do you want to follow on that point?

13 MR. SWILLEY: No, Your Honor.

14 THE COURT: All right. Then ma'am, you are free to
15 step down. You are free to leave, if you wish.

16 Please call your next witness.

17 MR. HOLT: If we could approach, Your Honor?

18 THE COURT: You may.

19 (Whereupon, a bench conference was held in
20 the presence of the jury, but out of their hearing range.)

21 THE COURT: All right. Please call your next
22 witness.

23 MR. HOLT: Your Honor, at this time we just have the
24 Pathologist. And we believe that we will be calling her
25 first thing in the morning.

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STIPULATION

1
2 **MR. HOLT:** The state also has a stipulation from
3 defense counsel.

4 **THE COURT:** Go ahead.

5 **MR. HOLT:** That the dead individual at the scene was
6 in fact Sylvia Hill.

7 **THE COURT:** Very good. Well, let me ask defense. Is
8 that your stipulation?

9 **MR. SWILLEY:** It is, Your Honor.

10 **THE COURT:** All right. Very good. Then the parties
11 have agreed that at the scene the deceased person was indeed
12 Mrs. Sylvia Hill.

13 Counsel, you heard him tell us that he has one more
14 witness before he rests. But that is a physician,
15 pathologist witness who cannot be here until tomorrow
16 morning. And, while we have the right to compel witnesses
17 to be somewhere at a certain time, they have other court
18 appearances, and other medical responsibilities that then
19 impacts many other individuals.

20 So, we will allow her to come tomorrow morning at 9:30,
21 which is when we are going to start back. We will end for
22 the day. And, I would expect that sometime tomorrow
23 morning, we will give this case to you for deliberation,
24 after further witnesses, if there are any, as well as after
25 arguments and charge.

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1 Now, what I would like for you to do in the morning ---
2 Before we talk about in the morning, let's talk about the
3 evening. The same things goes for tonight. Your loved ones
4 are going to be interested about where you have been all
5 day, and what you were doing, and what the case is about.
6 But, please tell them again, the Court has instructed you
7 not to discuss the case until it is over with.

8 Now, tomorrow morning when you come back, when you are
9 all together. I am going to ask our two alternates to serve
10 as co-chair for this jury as they choose and all of you
11 choose among yourselves, a foreperson. Now, it should not
12 be our two alternates, although you have a vote in the
13 process, and again we will let you preside while this choice
14 is made. But I would say to you ladies and gentlemen, that
15 the best foreperson, whether that is a forewoman or a
16 foreman, which is completely your choice, it is someone who
17 is a facilitator of opinion, and a moderator of discussion,
18 because ultimately your verdict in this case, in these
19 cases, is going to have to be unanimous. So it is important
20 that you have a consensus verdict. That is a unanimous
21 verdict. So, think about that overnight who you want your
22 foreperson to be. Make your choice in the morning. Let us
23 know when you are all together who it is. If you would
24 kindly write the name down, knock on the door, we will
25 receive that from you, and then we will be ready to go back

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1 into testimony.

2 Any questions now about our schedule? Then we will
3 see you tomorrow morning at 9:30. We will all remain where
4 we are out of respect for you as you depart the courtroom.

5 Have a nice afternoon, ladies and gentlemen.

6 **BAILIFF:** Come this way, please.

7 (Whereupon, the jury exits the courtroom for
8 the day at 2:55 p.m.)

9 **THE COURT:** All right. Ladies and gentlemen, the
10 jury is clear. Now, let's go back on the record, and let me
11 address an issue that was raised earlier. And that was when
12 State's Exhibit 80 was offered as part of a packet of
13 photographs. There was an objection by the defense, and the
14 Court then excluded 80 under Rule 403. My thinking at that
15 time was --- and I should say for the record that we will
16 make this a Court's Exhibit. It shows the deceased,
17 partially denuded body as found at the scene. In order to
18 lessen the shock value of the photographs, the Court felt
19 that the description of where the deceased was found was
20 sufficient and really didn't add to the evidence to actually
21 show the picture to prove it. There is no evidence to the
22 contrary. There is a stipulation as to whom the victim is.
23 And for all these reasons, the Court excluded Exhibit 80.
24 We are going to make that a Court's Exhibit. And what
25 number would that be?

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1 **MADAME COURT REPORTER:** Court's Exhibit Number 2.

2 **THE COURT:** Again, this is part of an effort
3 realizing that we are going to have one photograph that must
4 of necessity be in evidence that has something of a shock
5 value to it. So, the Court attempted to lessen the totality
6 of the impact of the photographs.

7 **WHEREUPON, COURT'S EXHIBIT**
8 **NUMBER 2 IS MARKED FOR THE**
9 **RECORD.**

10 **THE COURT:** Now, is there anything further for the
11 record today, before we close this record, from the state?

12 **MR. HOLT:** Yes, sir, Your Honor. I believe Your
13 Honor and Mr. Swilley are both aware, and I just want the
14 record to reflect that the state wasn't trying to get it in
15 for the shock value. But was merely --- and in the
16 beginning didn't want to get into any of those photos. But
17 just wanted to make sure that the angles and everything
18 about the accident was covered so as to defeat any defense
19 versions of the events. That's all I was trying to do.

20 **THE COURT:** All right. So noted. And, do you want
21 to respond to that Mr. Swilley? You are not required to,
22 but while we are making a record here, do you have something
23 you want to say in response?

24 **MR. SWILLEY:** Your Honor, I just thought that my
25 objection was warranted. I would never accuse Mr. Holt of

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1 doing anything surreptitiously, or anything of that nature.
2 So, that's it.

3 **THE COURT:** Very good. Have you had a discussion
4 with Mr. Hill about his right to remain silent and his right
5 to testify?

6 **MR. SWILLEY:** We have. He and I have had that
7 conversation.

8 **THE COURT:** Well, let's go ahead and take that up at
9 this time because we will soon be at that point, if we have
10 just one more witness.

11 So, I am going to get you to stand if you would please.
12 And please follow our Clerk's instruction. We are going to
13 place you under oath, sir.

FIFTH AMENDMENT QUERY

WHEREUPON, CHARLTON L. HILL

14
15 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:**

16
17 **MR. HILL:** Yes.

18 **THE COURT:** All right, sir. Mr. Hill, as you have
19 heard said in the courtroom, there is one more witness for
20 the state, and then the state intends to rests which means
21 that we are then at the point where in the morning we will
22 be at the point where the defense either puts up a case or
23 decides not to put up a case.

24 And have you discussed this with your attorneys?

25 **MR. HILL:** Yes.

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1 **THE COURT:** Whether or not you intend to call
2 witnesses?

3 **MR. HILL:** Yes, Your Honor.

4 **THE COURT:** You have?

5 **MR. HILL:** Yes, sir.

6 **THE COURT:** All right. Have you had ample time to
7 discuss these issues with them?

8 **MR. HILL:** Yes.

9 **THE COURT:** All right. And have you understood the
10 things that they have explained to you about your right to
11 testify, and your right to remain silent?

12 **MR. HILL:** Yes.

13 **THE COURT:** All right. I want to talk with you about
14 that myself, as well.

15 I want you to understand that you have not burden of
16 proof here. You are not required to testify. You are not
17 required to speak. If you elect to remain silent, this
18 court will charge the jury that they cannot hold that
19 against you, because you have no burden of proof. Thus, you
20 have absolutely no requirement that you testify. You have a
21 right to remain silent. And do you understand that?

22 **MR. HILL:** Yes, sir.

23 **THE COURT:** All right. Is that the same thing that I
24 just told you, the context basically the same that your
25 lawyers have told you about your right to remain silent?

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1 **MR. HILL:** Yes, sir.

2 **THE COURT:** All right. By the same token, you have
3 the right to testify which means, you can take the stand,
4 here in the courtroom, in front of the jury. And if you
5 do that you will be subject not only to direct examination
6 by defense counsel, your own lawyer, but then cross-
7 examination by the state also in the jury's presence.
8 And, if you have some criminal charges in your background
9 that may bear on your credibility and believability they
10 may come into evidence not to show whether or not you
11 committed this crime that you are charged with, but
12 whether you are credible and believable witness. Do you
13 understand that, sir?

14 **MR. HILL:** Yes.

15 **THE COURT:** All right. And the jury of course
16 may take what you say in your testimony either for you or
17 against you depending on how they perceive it as the
18 finders of the fact. Do you understand that?

19 **MR. HILL:** Yes, sir.

20 **THE COURT:** All right. Now, is what I just told you
21 about your right to testify, the same in context that your
22 lawyers have told you?

23 **MR. HILL:** Yes.

24 **THE COURT:** All right. Do you have any questions of
25 the Court about your right to remain silent, or your right

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1 to testify?

2 MR. HILL: No, sir. Not at this time.

3 THE COURT: All right. Very good. Then, is there
4 anything further that the state would have the Court
5 inquire of Mr. Hill on these rights; Mr. Holt?

6 MR. HOLT: None, Your Honor.

7 THE COURT: All right. And then Mr. Swilley and
8 Ms. Crayton, while I was speaking with Mr. Hill, is there
9 anything further you would have me address with him about
10 his right to testify or his right to remain silent?

11 MR. SWILLEY: Your Honor, just for the record.
12 Should Mr. Hill sometime change his mind, I request that
13 you give Mr. Holt what impeachable offenses he would use,
14 should that occur.

15 THE COURT: All right. I am going to leave you
16 all to discuss that outside of this proceeding today.
17 And if there is some objection or question about it, I
18 will take it up tomorrow. But, I will leave you all to
19 discuss what he believes would be an appropriate evidence
20 from Mr. Hill's record.

21 What we are talking about, Mr. Hill, is not every
22 previous charge is admissible. It depends on certain
23 factors. It depends on the age of that charge as well.
24 So, I am going to leave that to you all to discuss and
25 adjourn these proceedings for the day. This court in

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1 this case is in recess until 9:30 tomorrow morning.

2 (Whereupon, the Court ends the proceedings
3 for the day at 3:07 p.m. on Tuesday, April 12, 2011.)

4 **-- END OF DAY TWO OF TRIAL --**

5

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1 (Whereupon, court comes to order at 9:30 a.m.
2 on Wednesday, April 13, 2011.)

3 -- DAY THREE OF TRIAL --

4 THE COURT: All right. Good morning, everyone. All
5 right. For those of you who are in the courtroom for the
6 first time, I'm Judge Baxley. We have a trial that is in
7 progress. We have at least one witness, and then closing
8 arguments. And, at that time, after we finish and the jury
9 goes out we are going to take up some guilty pleas and other
10 matters the remaining people here in the courtroom may be
11 here for. Ms. McKenzie, if you would step up please and
12 let's talk about scheduling?

13 (Whereupon, a bench conference took place.)

14 THE COURT: All right. Ladies and gentlemen, those
15 of you who are seated here waiting on either a plea, or some
16 other type of Administrative Hearing, you are welcome to sit
17 here and watch this, but it is going to be 11:00 before we
18 get to that point. So, I am going to let you go and come
19 back at 11:00.

20 Please be aware though, if you are not back by eleven,
21 and your name is called, then I am sure there will be a
22 bench warrant or something will happen in your absence that
23 will not be in your best interest. If you wish to leave, be
24 back at 11:00. You may leave now.

25 All right. Counsel, I am told that our Juror, Mr.

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1 Goolsby has been chosen foreperson. And as soon as the
2 defendant arrives, we will bring in the jury.

3 Do you have your witness present and ready to go, Mr.
4 Holt?

5 **MR. HOLT:** We do, Your Honor. Ms. Parker is actually
6 going to handle the examination.

7 **THE COURT:** All right. Very good.

8 **(PAUSE.)**

9 **THE COURT:** All right. Good morning, Mr. Hill.
10 Welcome back.

11 And please bring in the jury.

12 **BAILIFF:** All right, sir.

13 (Whereupon, the jury enters the courtroom at
14 9:33 a.m. on Wednesday, April 13, 2011.)

15 **THE COURT:** Welcome back, ladies and gentlemen, good
16 morning.

17 **JURY:** Good morning.

18 **THE COURT:** Let me ask, since we were all together
19 last, is there any juror who has had a discussion concerning
20 the facts of this case with any third person, if so, please
21 raise your hand.

22 Let's let the record reflect that no one has raised
23 their hand. Thank you again for complying with the Court's
24 request.

25 And, Mr. Goolsby, I see that the jurors have chosen you

JANET ROSS, M.D. -- VOIR DIRE EXAMINATION

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1 as their foreperson.

2 MR. GOOLSBY: Yes, sir.

3 THE COURT: Well, congratulations to you, sir for the
4 confidence they have showed in you. And I will talk with
5 you a little bit more in my charge about your role as
6 foreperson. But in advance I want to thank you for being
7 willing to serve in that important position.

8 I want to thank our alternate jurors for presiding this
9 morning, while that choice was made. And again, welcome
10 back to the courtroom, ladies and gentlemen.

11 You will recall we talked about at the end of the day
12 the state has one remaining witness that they wish to call
13 before resting. And we will now proceed to call that
14 witness.

15 Please call your witness.

16 MS. PARKER: Thank you, Your Honor. At this time,
17 the state calls Dr. Janice Ross.

18 THE COURT: Please come forward and take the oath of
19 a witness.

20 WHEREUPON, JANET ROSS, M.D.

21 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

22 DR. ROSS: I do.

23 THE COURT: Good morning.

24 DR. ROSS: Good morning.

25 VOIR DIRE EXAMINATION BY MS. PARKER

JANET ROSS, M.D. -- VOIR DIRE EXAMINATION

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1 Q. Good morning, Dr. Ross.

2 A. Good morning.

3 Q. Please state your full name for the Court's record.

4 A. Janet Edwards Ross.

5 Q. And, Dr. Ross, where are you employed?

6 A. In Newberry, at Newberry Pathology Associates.

7 Q. And what is your job title there, your position?

8 A. We're Forensic Pathologists. We also do hospital
9 pathology.

10 Q. How long have you been employed there?

11 A. Since May of 2000.

12 Q. And, Dr. Ross, would you tell the Court, and tell the
13 jury, a little bit about your prior training and
14 educational background.

15 A. Yes. I have a Bachelor's Degree from University of
16 South Carolina. My M.D. from Upstate Medical Center in
17 Syracuse, New York, where I also did residency training
18 in Pathology, where we learned how to diagnose diseases
19 by looking at the tissue, and using blood work. We
20 also learned how to do autopsies, and to find causes of
21 death. I have done further study and training in the
22 area of Forensic Pathology, which Forensic means legal.
23 So we use that pathology knowledge for legal matters,
24 like homicides, suicides, accidents. And we learned
25 how to do a forensic autopsy. I am Board Certified in

JANET ROSS, M.D. -- VOIR DIRE EXAMINATION

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1 three areas of Pathology.

2 Q. And are you a member of any specialized medical or
3 scientific groups or associations?

4 A. Yes. The College of American Pathologist. National
5 Association of Medical Examiners. American Academy of
6 Forensic Sciences.

7 Q. Dr. Ross, in your career, throughout the course of your
8 career, how many autopsies would you say you have
9 performed?

10 A. Over five thousand.

11 Q. And how many times have you come to Circuit Court here
12 in South Carolina and testified and been qualified as
13 an expert in the field of Pathology? How many times
14 would you say?

15 A. Over sixty times.

16 **MS. PARKER:** Thank you, Dr. Ross. At this time the
17 state would move to have Dr. Ross be declared as an expert
18 witness in the field of pathology.

19 **THE COURT:** All right. Is there an objection, or are
20 there questions for the witness on expertise?

21 **MR. SWILLEY:** No objection.

22 **THE COURT:** All right. Hearing none, the witness is
23 so admitted.

24 You may proceed.

25

DIRECT EXAMINATION BY MS. PARKER

Q. Now, Dr. Ross, were you employed with Newberry Pathology in January of 2010?

A. Yes.

Q. And, did you have an occasion to perform an autopsy on Sylvia Hill, on January 10, 2010?

A. Yes.

Q. I am going to show you what has been marked as State's Exhibit --

THE COURT: All right. Counsel, turn that picture to me, please.

(PAUSE.)

THE COURT: All right. Very good. Let me talk to the jury just a moment, please.

MS. PARKER: Yes, sir.

THE COURT: All right. Ladies and gentlemen, we've had a discussion about the evidence that is getting ready to be presented to you, before the doctor took the stand. And, one of the things, one of the responsibilities that the Court has is to be what I'm going to call the guardian of the evidence so as not to place evidence in the record that has a shock value, or prejudice to it simply because of the nature of the evidence.

I will tell you that the exhibit that the state is getting ready to put in, the Court has already, having

JANET ROSS, M.D. -- DIRECT EXAMINATION

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1 reviewed it, has agreed that it will be admitted into
2 evidence. But the Court only admits a photograph of this
3 nature in evidence if it bears directly upon the allegations
4 that are raised by the state, or the defenses that may be
5 raised by the defendant. I will tell you that this autopsy
6 picture is a difficult one to look at. I do not require you
7 by putting it into evidence to view it. But, I just wish to
8 caution you beforehand that it is a graphic depiction of the
9 injuries that were sustained by the deceased. That that is
10 necessary to the proof here put forth by the state. That is
11 the reason that one picture was allowed in. There are
12 others that were available. You saw the Court exclude one
13 yesterday, all done to prevent the prejudice of shock, or
14 too graphic in nature of the photograph. But this is why,
15 after due consideration the Court has allowed this one
16 photograph in that is getting ready to be put in.

17 Now, with that introduction, you may proceed.

18 **MS. PARKER:** Thank you. Is it in evidence?

19 **THE COURT:** It is. Is there an objection?

20 **MR. SWILLEY:** I renew my previous objection, Your
21 Honor.

22 **THE COURT:** All right. I have overruled that
23 objection, and Exhibit 40, I believe is the number?

24 **MADAME COURT REPORTER:** Yes, sir.

25 **THE COURT:** Is in evidence, over objection of the

1 defendant.

2 **MS. PARKER:** Thank you, Your Honor.

3 **THE COURT:** And let me just follow this one more
4 thing. I should say this. The reason we are careful about
5 this is that we don't want somehow that a picture put into
6 evidence, or some other piece of evidence may have a shock
7 value that somehow would inure against the defendant to make
8 the jury angry, and thus somehow work to the disfavor or
9 prejudice of the defendant. I want to say to you, please
10 don't --- don't use that photograph with regard to passion,
11 or prejudice, or anger, or any other response. Please, just
12 view it as a disinterested juror that you should be, and a
13 judge of the fact in determining facts that are before you.

14 Go ahead.

15 Q. Dr. Ross, I am going to show you what has been marked
16 State's Exhibit 40. It is in evidence. Is that the
17 body that you autopsied on January 10, 2010?

18 A. Yes, it is.

19 Q. And who took that photograph?

20 A. I did.

21 Q. And tell the Court a little bit about the procedure
22 when you first receive a body, there in Newberry to be
23 autopsied.

24 A. First of all, the coroner calls us and authorizes the
25 autopsy, sends us the deceased in a body bag, which we

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1 receive in the morgue. We open the body bag and do
2 photographs externally with the clothed body, and then
3 we take the clothing off, and inventory that, and take
4 photographs of the body externally. We do a thorough
5 examination for evidence of injury, or natural disease
6 externally. Then we do a procedure internally to look
7 at each organ, again to look for evidence of injury,
8 and for natural disease.

9 Q. Dr. Ross, I am not going to publish that picture to the
10 jury at this time. But I do want you to just in your
11 own words describe the condition the body was in when
12 you received --- from the obvious injuries.

13 A. There was a lot of tearing on the body. There would be
14 head and neck that was almost totally torn away from
15 the body at the level of the shoulders. The top of the
16 head was displayed open, was torn open, including the
17 scalp and the skull, so that the brain tissue had
18 actually been torn out of the body. The brain tissue
19 was away from the body.

20 Also out of the body what we call an avulsion, torn
21 away from the body were the heart and part of the liver
22 along with one lung.

23 Q. Dr. Ross, y'all in fact, do in fact, perform an autopsy
24 on the decedent in this picture?

25 A. Yes.

JANET ROSS, M.D. -- CROSS EXAMINATION

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1 Q. And, were you able to determine a cause of death?

2 A. Yes.

3 Q. And, what were your findings?

4 A. It was the avulsion of the brain, heart and lung, torn.
5 Those organs were torn out of the body due to blunt
6 force trauma of the upper body, due to a motor vehicle
7 collision.

8 MS. PARKER: Please answer any questions the defense
9 may have at this time.

10 THE COURT: Cross examination.

11 MR. SWILLEY: Thank you, Your Honor.

12 CROSS EXAMINATION BY MR. SWILLEY

13 Q. It is good to see you, Ms. Ross.

14 A. Hi.

15 Q. Ms. Ross, is this the only examination that you
16 performed in this case, on this individual?

17 A. Yes.

18 Q. Okay. I'm sorry, Dr. Ross. And, when you get a ---
19 when you get a body in to your practice, and perform an
20 autopsy, are there preliminary facts that are told to
21 you by whomever is sending the body to you?

22 A. Yes.

23 Q. Okay. So, just for clarification purposes, this would
24 be your examination of the body, and what law
25 enforcement told you went into the decision making and

JANET ROSS, M.D. -- CROSS EXAMINATION

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1 the findings of your autopsy; is that correct?

2 A. Yes.

3 Q. Okay. And Ms. Ross, you did come to the conclusion
4 that Ms. Sylvia did die as a result of an automobile
5 accident; is that correct?

6 A. Correct.

7 Q. As to the specifics, were you able to tell anything
8 about how the car may have wrecked, for what reason the
9 car was wrecked, etcetera?

10 A. No. We leave that to the experts on the MAIT Team to
11 settle.

12 Q. Okay.

13 A. We just look at the injuries to see if they are
14 consistent with what they say happened to her.

15 Q. So from your examination, it was just apparent that it
16 was a violent car crash, and that this individual was
17 inside of the car, correct?

18 A. Yes. And something hit her very hard in the upper
19 body.

20 Q. And your finding was that this was the result of a car
21 accident; correct?

22 A. Yes.

23 Q. Okay. That was the official findings?

24 A. Yes.

25 Q. Did you do any kind of blood analysis on the decedent?

JANET ROSS, M.D. -- REDIRECT EXAMINATION

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1 A. We were not able to get blood from her, but we did send
2 urine and some liver tissue for analysis to SLED.

3 Q. And that is State Law Enforcement Division?

4 A. Yes.

5 Q. Okay. And to whom did you send that? What individual
6 at SLED?

7 A. I don't know who received it at SLED, but Russ Harrell
8 took it from us, signed for the evidence, and took it
9 to SLED.

10 MR. SWILLEY: Okay. Beg the Court's indulgence for a
11 moment.

12 (PAUSE.)

13 THE COURT: Your Honor, I have nothing further for
14 Dr. Ross.

15 THE COURT: And is there redirect?

16 MS. PARKER: Just briefly, Your Honor.

17 THE COURT: Go ahead.

18 REDIRECT EXAMINATION BY MS. PARKER

19 Q. Dr. Ross, suppose you would have received that body on
20 January 10, 2010, and no one told you anything about
21 the preliminary basis of what might have happened.
22 Would your opinion, your expert opinion, on the cause
23 of death be any different?

24 MR. SWILLEY: Objection, Your Honor.

25 THE COURT: On what basis?

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1 **MR. SWILLEY:** Under Rule 602, it calls for the
2 witness to speculate.

3 **THE COURT:** Overruled.

4 A. In a body like this with injuries, we would obviously
5 see that the injuries were the cause of death. But,
6 due to motor vehicle collision, being thrown off a
7 cliff, or whatever, we would not be able to say until
8 we got more information, more investigation. So, we
9 would not automatically say this was a motor vehicle
10 collision. There was multiple blunt force trauma.
11 Blunt force trauma causing the avulsion of the brain,
12 and heart, and liver. But, we would have to know more
13 from the scene about what happened.

14 **MS. PARKER:** Thank you. No further questions.

15 **THE COURT:** All right. Any objection to the release
16 of the witness from either side?

17 **MR. SWILLEY:** There is not, Your Honor.

18 **MS. PARKER:** No objection.

19 **THE COURT:** Hearing none, Dr. Ross, you may have a
20 busy schedule. You are free to leave if you wish.

21 **DR. ROSS:** Thank you.

22 **THE COURT:** Watch your step please exiting the
23 witness box.

24 All right. State, please call your next witness.

25 **MR. HOLT:** Your Honor, at this time the state would

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1 close. We have presented our case.

2 **THE COURT:** All right. The State rests.

3 Ladies and gentlemen, what that means is, in every
4 criminal case and civil case as well, whenever one party
5 closes a case, or rests, the Court has to look at certain
6 information, review the record. So, what I am going to do
7 is I am going to let you step from the room. I know that
8 you just got here, but we are going to let you go and take a
9 break. It will only be a few moments. And then we will
10 come back and resume the trial after that.

11 So, please we will remain where we are while you return
12 to the jury room.

13 **BAILIFF:** Come this way, please.

14 **THE COURT:** Enjoy your break.

15 (Whereupon, the jury exits the courtroom at
16 9:50 a.m.)

17 **MOTION FOR A DIRECTED VERDICT**

18 **THE COURT:** All right. Let's wait just one moment
19 and make sure the door is closed.

20 (PAUSE.)

21 **THE COURT:** All right. The jury is clear now, at the
22 close of the state's case. Are there any Motions from the
23 defense?

24 **MR. SWILLEY:** There are, Your Honor.

25 **THE COURT:** All right. Go ahead.

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1 **MR. SWILLEY:** Your Honor, I would make a Motion to ---
2 a Motion for a Directed Verdict on all Indictments, due to
3 the lack of competent evidence in the record to suggest that
4 the defendant committed the crimes for which he is charged.
5 Your Honor, I think there are certain --- there is certain
6 lack of evidence --- of competent evidence that the
7 defendant was in fact driving the automobile. I think every
8 single Indictment hinges on the allegations that he was
9 driving the automobile under the influence of certain
10 intoxicants where he was noticeably and appreciably
11 impaired. I think the element of driving has not been --- I
12 think that competent evidence of the element of driving the
13 defendant's car has not been shown by the state, and would
14 thus move for a Directed Verdict as to all Indictments.

15 **THE COURT:** All right. Without taking argument from
16 the other side, the Court is going to deny that Motion for
17 the following reasons.

18 First of all, Patrolman --- Officer Gainey testified
19 that he saw the defendant, observed him driving the vehicle.

20 And then after the close of this incident, when the car
21 was wrecked, there are photographs showing your client
22 seated in the driver's seat. Reasons of that alone are
23 sufficient evidence to take those issues to the jury.

24 Again, it is not for the Court to weigh the evidence,
25 or decide what is credible and believable, it is just, does

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1 there exist in this record evidence tending to prove the
2 guilt of the accused.

3 I find there is sufficient and ample evidence for these
4 cases to go forward.

5 Do you have further motions?

6 **MR. SWILLEY:** There are none, Your Honor.

7 **THE COURT:** All right. Then, will there be a case
8 for the defense?

9 **MR. SWILLEY:** I'm sorry. As far as motions go, Your
10 Honor. I apologize.

11 I would move to dismiss the Indictments in relation ---
12 or pertaining to reckless homicide as well as involuntary
13 manslaughter. I think this would be in violation of the
14 defendant's Eighth Amendment Rights, should he be convicted.
15 Due to the fact that he would be convicted for multiple
16 crimes for the same occurrence. And, I would move for a
17 dismissal on those grounds.

18 **THE COURT:** All right. Let me hear from the state on
19 that. Do you have a response?

20 **MR. HOLT:** Yes, sir, Your Honor. The state, after
21 speaking with Deputy Solicitor Kernard Redmond, he wishes to
22 move forward on all charges. We find that under the case
23 law the reckless homicide as well as the involuntary
24 manslaughter has separate elements, and are separate crimes.
25 And I think it is well settled case law that they are not

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1 lesser included of Felony DUI. They are, in fact, their own
2 separate crimes.

3 The state feels like there is ample evidence to go
4 forward on all charges, as well as they are unrelated ---
5 essentially separate, and different crimes, Your Honor.

6 **THE COURT:** All right. Very good. Thank you. And,
7 now, Mr. Swilley, do you have case law or precedent that
8 would support your position that the multiplicity of charges
9 is either a violation of the Eighth Amendment, or some other
10 constitutional right, or protection of the defendant?

11 **MR. SWILLEY:** Your Honor, I don't have any Eighth
12 Amendment case law expressly on point as to that issue.
13 However, I would still assert that that is my argument. I
14 think it offends the defendant's Eighth Amendment Right as
15 well as his right to due process.

16 **THE COURT:** All right. Let me take that under
17 advisement for a moment or two, and ask, will the defense be
18 putting up a case?

19 **MR. SWILLEY:** No, Your Honor.

20 **THE COURT:** Very good. Mr. Suggs, did any jurors
21 step downstairs?

22 **CLERK OF COURT:** No, sir. They are all still here.

23 **THE COURT:** All right. Just a moment.

24 (PAUSE.)

25 **THE COURT:** All right. Ladies and gentlemen, let's

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1 do this. Before we go forward, and before I make a decision
2 on this, let's stand down for a moment. And we will take
3 our own break before we go into the charge and argument.

4 Counsel, step up for just a second if you would please.
5 We will probably be in recess approximately ten minutes or
6 so, ladies and gentlemen.

7 **BAILIFF:** Will the jurors have time to smoke?

8 **THE COURT:** If they want to, they can. If they want.
9 All right. We will be in recess now for about ten minutes,
10 ladies and gentlemen.

11 (Whereupon, a recess was taken from 9:59 a.m.
12 until 10:10 a.m.)

13 **THE COURT:** All right. Let me just revisit this
14 issue one more time about the multiplicity of charges here.
15 I want to say, to the state just in sentencing.

16 The Court would not intend to sentence consecutively
17 for all charges. There may be consecutive for some but not
18 for all. And not for reckless homicide, and not for
19 involuntary manslaughter, if there is a conviction.

20 Now, understanding that, does the state still wish to
21 go forward to the jury on all of those issues?

22 **MR. HOLT:** Your Honor, the state understands
23 everything the Court stated. The decision has been made
24 that the state wishes to go forward.

25 **THE COURT:** Very good. All right. Then, Mr.

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1 Swilley, I am concerned about the multiplicity of charges as
2 you raised.

3 But this is really a policy decision that would be made
4 by our Supreme Court. The absence of precedence that
5 supports you tells me that they have made that policy
6 decision. That is, that the state, if the charges meet the
7 elements, or the facts meet the elements, they can proceed
8 on any and all charges that would be appropriate.

9 Now, whether or not that is wise for the state from a
10 technical standpoint, that is not for this court to decide.
11 It is simply whether or not the state has the right to
12 proceed.

13 And, I find that they do. And the Court is going to
14 deny your motion for the multiple charges. One reason is
15 you would put upon the state the Court --- which one you are
16 going to strike. The state is not cooperative, or at least
17 decides they want to proceed on all. Thus, that leaves it
18 upon the Court to just pick and choose this or that charge
19 that the Court would delete. And that is not, in my
20 opinion, an appropriate exercise at this juncture because
21 the Court has already found that there is sufficient
22 evidence for the elements of each charge to proceed to the
23 jury. So, for that reason, I am going to deny your motion.

24 Now, does the state intend to open and close final
25 arguments? Excuse me. I'm sorry. My mistake. The

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1 defendant did not put up any evidence, and did not call any
2 witnesses. So, the defendant gets the final argument. So,
3 you intend obviously to open in full. You go first. And
4 the defense closes. Do you agree?

5 MR. HOLT: Yes, sir.

6 THE COURT: All right. I misstated that. Then Mr.
7 Swilley, you get final argument; do you agree?

8 MR. SWILLEY: Yes, Your Honor, I agree.

9 THE COURT: All right. How long do you believe your
10 argument will be Mr. Swilley?

11 MR. SWILLEY: Your Honor, I don't see it going over
12 twenty-five-minutes.

13 THE COURT: All right. And for the state?

14 MR. HOLT: Right around forty minutes, Your Honor.

15 THE COURT: How long?

16 MR. HOLT: Forty minutes. There are so many
17 witnesses, and I would like to touch something that each one
18 of them said. But I don't see it being very long.

19 THE COURT: All right. Well, I am not going to
20 limit you. But, I would say that generally, after about
21 thirty minutes you begin to loose your audience; that is the
22 jury. But, that is up to you. And we will advise you, if
23 you go to forty, when you have been forty. Very good.

24 All right. Please bring in the jury.

25 BAILIFF: All right, sir.

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1 **THE COURT:** Mr. Swilley, I am going to let you rest
2 on the record. In other words, I am going to turn to you,
3 and you to call your witness, and tell me that you rest.
4 Very good.

5 (Whereupon, the jury enters the courtroom at
6 10:11 a.m.)

7 **THE COURT:** Welcome back to the courtroom, ladies and
8 gentlemen. I trust you enjoyed your break. The state has
9 now closed its case. We now move to the defense. Mr.
10 Swilley, please call your first witness.

11 **MR. SWILLEY:** Your Honor, the defense rests at this
12 time.

13 **THE COURT:** All right. The defendant advises us that
14 they will not call any witnesses. That means that the
15 testimonial phase of this case is over. Please remember, as
16 we said from the beginning, the defendant is not required to
17 put up a case, not required to call witnesses. The
18 defendant is not required to testify, because the defendant
19 has no burden of proof in this courtroom. And you should
20 take no inference from the fact that the defendant chooses
21 to --- elects to remain silent. That is certainly his
22 right, and he is not required to testify. And I will talk
23 with you a little bit further about that in the charge on
24 the law. But, again, that should not be considered by you
25 in your deliberations.

CLOSING ARGUMENT BY MR. HOLT

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1 That means we are now at the point of closing
2 arguments. Remember again, I call it closing argument,
3 because this is when the lawyers can speak to you
4 persuasively about what they believe the evidence has or has
5 not shown in this case. Please remember though the
6 difference between lawyers' arguments and the evidence in
7 the case. Remember the evidence is what the witnesses say,
8 as well as what the exhibits show. When you retire to
9 deliberate, you will have the exhibits with you back in the
10 jury room.

11 Now, the way that the closings work is, the state goes
12 first and the defendant goes last. And then I give you the
13 charge on the law. That is how we are going to proceed.

14 And thus, the Court now recognizes the prosecution for
15 closing argument.

16 **CLOSING ARGUMENT BY MR. HOLT**

17 **MR. HOLT:** Thank you very much, Your Honor. May it
18 please the Court?

19 **THE COURT:** Mr. Holt.

20 **MR. HOLT:** Mr. Swilley, Ms. Crayton. Good afternoon,
21 ladies and gentlemen. I would like to begin this with on
22 January 2010, the victim in this case, Sylvia Hill lost her
23 life. Now y'all heard the story, and y'all saw the video,
24 and you are going to get the pictures, and you heard from
25 the witnesses' mouths, testimony and stuff they saw, and the

CLOSING ARGUMENT BY MR. HOLT

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1 things they did in this case. And the facts are simple.
2 The defendant filled his body with two types of pain pills,
3 antidepressants, alcohol to twice the legal limit. The
4 defendant filled his body with so much that he thought he
5 could outrun the police. Y'all saw the chase, and you are
6 going to have the video back there, and I encourage you to
7 watch it again, and pay attention to everything that is on
8 there.

9 Now, because of the decisions the defendant made,
10 thinking he could make that turn going as fast as he was, he
11 couldn't brake on the road. He was off the road before he
12 realizes that he needed to tap the brakes. Because of every
13 decision that the defendant made, we are here today. And
14 because of those decisions, Sylvia Hill lost her life.

15 Now, ladies and gentlemen, we are here at the end of
16 our trip. And I told you, I was going to be like the bus
17 driver, I was going to be like a tour guide. My portion has
18 ended. I am going to get to argue to you briefly for a
19 minute about some of the evidence. I am going to try to not
20 take up a whole lot of time. But like a preacher or a
21 politician, normally I like to give great big speeches at
22 the end. And I like to get really into it, because like
23 those people, I believe in the truth in the things that I am
24 telling you. I believe in it so much, and I showed y'all
25 the evidence, and I think that the only possible explanation

CLOSING ARGUMENT BY MR. HOLT

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1 is our explanation.

2 Now, if we could talk just about the witnesses. And it
3 won't be that long. See, I took a bunch of them out of
4 order. I had to accommodate some people's schedule that had
5 to be back to this place, or that place. So I brought them
6 up here, and in the very beginning it wasn't that coherent.
7 But if we could go to the next slide, Mr. Perry? These are
8 our witnesses. These are how we took them, a little bit out
9 of order. And if we could go to the next one, and I believe
10 that is Trooper Gainey.

11 Now, Trooper Gainey testified that he was just out that
12 night on patrol. He noticed a car, a 2005 Chevy Cobalt
13 making some movements. Okay? He testified to that. He
14 said the next thing that he did was he flipped on the video.
15 He said after he flipped on the video, the car was still
16 crossing some lines. He follows the car, and the car gets
17 ready to just about stop. He gets close enough to the car
18 to see that the guy has some type of gray hair. Ain't that
19 what he testified to? The man in the driver's seat had
20 stubbly gray hair. All right? He turned on his blue
21 lights. You saw that clear as day on the video. And he
22 testified to the fact that he also turned on his siren. The
23 defendant appeared to stop. He saw him. This Chevy Cobalt
24 looks like it is going to stop, but what does it do? It
25 takes off. And remember what Jennifer Brown from SLED said,

CLOSING ARGUMENT BY MR. HOLT

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1 all that alcohol will make you do? Increases your
2 confidence and decreases your prohibitions. And an everyday
3 way of saying that is, making you feel like Superman. And
4 y'all have enough common sense as a jury to know what that
5 much alcohol will make you do. I can out run the police
6 officer. I can beat him.

7 Now, he took photos of that scene right after it
8 happened. Found the victim's body. Okay? Then he alerted
9 his superiors and everybody got the investigation ball
10 rolling. Now, I didn't do a good job of publishing these to
11 y'all, which is showing y'all that over the course of the
12 trial, but you will be able to take them back with you. And
13 I want you to look at number thirteen. Okay? These are the
14 photos that Trooper Gainey testified that he took right
15 there at the scene of the crime. What do you see right
16 there? Okay? Earlier, when he started the chase, a man
17 with short gray hair was driving. And who did he find in
18 the passenger seat at the end of the chase? Now, it looks a
19 little bit in that video like the chase gets far ahead of
20 him. But, you will notice when the video --- when the wreck
21 happens, how quick does Trooper Gainey get there? Okay?
22 And what does he tell you that he is doing when he rolls up
23 on the scene? Holding on to that steering wheel for dear
24 life. All right? Now, you are got to see a log here, and
25 where most of the damage was done. You are going to see a

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1 lot of photos, and I want you to think about it.

2 Let's go ahead and go to our next witness please, Mr.
3 Perry.

4 Michelle Quick, that was our first witness, and we took
5 her out of order. She transported the defendant to the
6 hospital. Okay? And as per procedure he said, Mr. Hill,
7 what did you consume tonight? I need to know for medical
8 reasons. And what did he say? Two big beers, pain pills,
9 antidepressants. And low and behold, later on when we get
10 the blood results back, what is in the blood results. Now,
11 one of the things that defense counsel will try to do is try
12 to muddy the waters and distort the evidence. But, I want
13 you to think about all of the possible ways that we can get
14 that evidence in. Okay? When you have people from EMS
15 saying one thing, and people from SLED saying one thing, and
16 then when you get here and it all matches up. That girl
17 Michelle Quick, don't work for SLED. She don't work for the
18 police. She works for EMS, and it is her job to take care
19 of people on the scene.

20 Now, if we could go to the next screen, Mr. Perry.

21 Deputy Eric Hodges, okay? He ain't with the Highway
22 Patrol. Who is he with? Darlington County Sheriff's
23 Office. He gets in charge of the investigation. All right?
24 This ain't no Barney Fife investigation. They didn't find
25 him in the car, take a photo with one of those throw away

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1 cameras, and throw him in jail. All right? How many people
2 did he involve in this for things that I am sure y'all are
3 thinking? There are too much resources for something this
4 obvious. Okay? I know I thought about it. But think about
5 all the people that he assigned duties to, okay? Where did
6 he get those pills? All right? The Coroner's Office gets
7 those pills. Okay? They were in the car. You are going to
8 see pictures of the pocketbook. You are going to see ---
9 and in the testimony from Eric Hodges, how the Coroner gave
10 the pocketbook to him. Now, listen those pills went into
11 evidence. And I want you to look at that SLED report, and
12 see what type of pills could have possibly been in his
13 system. Just from the amount of blood --- drugs that were
14 in the defendant is surreal.

15 And then there was Pat Lee. All right. Arrived on the
16 scene shortly after the wreck. And what does he say? Okay?
17 I want you to look at this picture right here. All right?
18 He gets there. This fellow is in the seat when Pat Lee gets
19 there, and what does Pat Lee say? It was surreal. He was
20 thumbing through his glove box looking for his papers, like
21 he was in some kind of traffic stop. Who would think they
22 were in a traffic stop? Look at him. This fellow thought
23 he was in a traffic stop. Okay? Do you know why? Because
24 he has a .152 blood alcohol level, and more pain pills than
25 a medicine cabinet. He is stuck full of them. All right?

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1 He thinks he is in a traffic stop. All right?
2 Now, Pat Lee is also very important, because one of the
3 ways that defense counsel is going to try to destroy this
4 case is they are going to talk about the blood work. All
5 right? It could have been anything, and it was all over the
6 place. Let me tell you something, Marla Koontz took that
7 blood work and gave it to two people. Josh Edwards and Pat
8 Lee, and you heard from all three. Pat Lee's most important
9 part in this whole thing was, he saw that woman put that
10 needle into Charlton Hill's arm, okay? He saw her put it in
11 there, he saw the blood come out, he saw the blood go in a
12 vial. He saw her tape her name --- the defendant's name on
13 the vial. He saw her put that in a box. And he saw her
14 tape it up. He saw her give it to him, and Pat Lee took
15 that box. As sure as anything it is the defendant's blood
16 in there. Okay? Now, go on down. Who did Pat Lee say he
17 gave it to, Russ Harrell, at the hospital that night? Okay?
18 Here is Marla Koontz, drew blood from the defendant that was
19 watched by two people. Sealed the blood in a special tube.
20 They just don't collect blood like they normally would do.
21 There is a special procedure involved. This ain't no joke.
22 This is done for real, so they can get it up here. Okay?
23 This is the real deal. All right? Sealed the blood --- and
24 this is one thing that I never want you to forget about

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1 Marla Koontz, she like the EMS lady works for the hospital.
2 Okay? She ain't with the police, and she ain't with SLED.
3 And she ain't got no dog in this fight. She ain't got no
4 reason to lie to anybody. Okay? And on top of that, two
5 people back up what she says. You have three people in that
6 room when that blood was drawn. You heard from all three of
7 them. If we could go to the next page, Mr. Perry?
8 Deputy Tanner, I remember thinking that boy don't look like
9 he is out of high school yet. But, he was young --- he was
10 the young police officer, and what was his role? Eric
11 Hodges sent him to the hospital just to be there when the
12 defendant showed up from the wreck. That is his only job is
13 to keep an eye on the defendant so that he knows that no
14 drugs or blood goes into his system. And what did he say?
15 So we have got the defendant there at the scene, with
16 everybody there watching him to make sure he's not doing
17 anything. And in the ambulance ride, they are taking notes.
18 He is admitting to what he did do earlier, not taking
19 nothing. You get to the hospital and Tanner is there
20 watching him, not taking nothing. When I tell you, this is
21 no Barney Fife type of thing, it wasn't. Okay? They put
22 massive resources into making sure that something this
23 obvious could get to y'all. If we could go to the next one?
24

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1 Trooper Josh Edwards, just another person that
2 witnessed the blood being drawn. Okay? Pat Lee followed
3 the procedures. Pat Lee is sitting there doing paperwork,
4 and you will see the paperwork. Here it is right here. It
5 is four pages. It involves some blood work, so you can get
6 it up here. Okay? Law enforcement has got one person
7 making sure the other person does the paperwork right.
8 Okay? That is the kind of care that was put in this
9 investigation. If we could just go to the next one?

10 Here is Russ Harrell, and Russ Harrell is important for
11 a lot of reasons. Russ Harrell is the Evidence Custodian,
12 and he is the forensic guy. He was dispatched to the scene,
13 and took the pictures that night. He executed a search
14 warrant the next day on the same car, so they made sure they
15 didn't miss nothing. And you are going to see all of these
16 photos. Okay? And the main thing about every photo of that
17 car that Russ Harrell and that Trooper Gainey took, okay,
18 shows you one thing; passenger side, extensive damage to the
19 car, passenger side, extensive blood everywhere, passenger,
20 Sylvia Hill, passenger, found on the outside of the car.
21 Okay? Dead. Now, there are photos in here and the
22 possibilities are important for one reason only, they show
23 you that it was him in the hospital that night. That the
24 blood was taken. Russell Harrell testified to that. And

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1 they show you the shape that he is in. Okay? You look at
2 the amount of blood that you see in these photos, and you
3 look at the pictures of Charlton Hill, okay, and that blood
4 didn't come from him. Okay? What is the pathologist, and
5 the lady from SLED, two different departments, Newberry
6 Pathology and SLED, what are they saying? You can't get no
7 blood to do her tox screen, and do you know why? Because,
8 there ain't no blood left in that body. All right? You
9 heard it on the stand. Two different experts. But that is
10 beside the point. Okay?

11 Russ Harrell, what did --- and this is what I'm talking
12 about. Everybody in this case backs up everybody else.
13 Okay? What did he say he drank? Some of those big twenty-
14 two ounce beers. What does Russ Harrell find in the car?
15 The same type of beer. Remember he told that lady from EMS
16 that he drank two, twenty-two ounce beers. Okay? What does
17 Russ Harrell find in the car the next day? It ain't
18 pictures of it. They are in the car that night. They just
19 get it the next day. All right? What reason does Michelle
20 Quick have to do or put down anything that he told her?
21 Look, this is what you'll find in the car. So, he admits to
22 drugs, he admits to beer, and low and behold both of them is
23 in the car. And then a month later, both of them is in his
24 blood when they check the blood. They checked the blood on

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1 1/25, and they collected it that night. Less than two hours
2 before. But, you hear what I'm saying. Everything matches
3 up. Now, Russ Harrell did something very important, and
4 collected the blood at the scene that night. It was under
5 his care, custody, and control, until he took it to SLED.
6 All the dates are in the paperwork. Feel free to look at
7 them. We heard from the officers that they matched up.
8 Okay? One of the things that the defense counsel is going
9 to try to do is try to destroy that chain, and say, how do
10 you know, how do you know, how do you know? I want you to
11 think about the professionalism that everybody up here
12 displayed. You had backups to backups to backups. You had
13 people watching people do paperwork. You had people
14 watching people collect blood. You had people watching
15 people take that blood, and then you see the lady from SLED?
16 What time was that blood at that place? What time was it at
17 that place? She just had it right there on the printout.
18 It was here. It was there. This person did this. That
19 person did that. Okay? You saw that. Don't let the
20 defense counsel fool you. If we could go to the next
21 screen, please, Mr. Perry?

22 Jennifer Brown. Jennifer did an excellent job. A very
23 smart girl. She received the blood at SLED. She tested the
24 blood. She is also a Toxicologist who tested the blood to

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1 the way that things affect you. And she said, pain
2 medications, marijuana, cocaine metabolites. Cocaine was a
3 speedy type drug. But when you go down off of cocaine you
4 experience crash. She called these things CNS depressants.
5 Central Nervous System Depressants. Okay? And she said
6 when your central nervous system is depressed, your body
7 doesn't respond like you think it should. And what did
8 Michael Cook say about that car accident scene? The boy
9 didn't brake until he was off of the road. Somebody who may
10 be on CNS Suppressants might not can hit the brake before he
11 realizes that he is off the road entirely. And it wasn't
12 like he went off the right side, he crossed the incoming
13 lane of traffic and was off on the left side, barreling down
14 the road as fast as fast can be. You will see it on the
15 video. The speed and everything is indicated. You can
16 watch it again. Just how fast he was going. You will see
17 it right here. Just watch the video again. Okay? Driving
18 reckless. Do you know why? Because his confidence was up,
19 his inhibitions were down. He was superman. And that is
20 what Jennifer Brown testified to. Nothing could stop him.
21 All right? But what did she say about blood alcohol level.
22 At .05 your body begins to experience not acting right, not
23 being right. And she said people want that to be the legal
24 limit. But in South Carolina the law cuts you some slack

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1 and it is .08 before it is prima facie evidence that you are
2 drunk. What blood alcohol level did the defendant have,
3 .0152, eight more thousands of a point, and he is at double
4 the legal limit. Okay? Even if you take all of this, the
5 cocaine, the marijuana, the pain pills, the antidepressants,
6 even if you take all of that out of the equation, you are
7 still left with a blood alcohol level of somebody who ought
8 not be behind the wheel of the car. Still, and that is the
9 theme of this case is evidence, upon evidence, upon
10 evidence, with backup evidence. There ain't no other way to
11 go here, y'all. If we could go to the next screen, Mr.
12 Perry?

13 Dr. Janet Ross determined the cause of death --- you
14 can look through the pathology report. Okay? You are going
15 to look at a lot of photos. And they all make perfect
16 sense. But this is the one that I want you to see. Okay?
17 The defendant, look at him today, he is allowed to sit over
18 there. All right? He's at the hospital, barely scathed,
19 the inside of the car, all right. Now, look over here at
20 this other. Now, look over here at this other side of the
21 car, where the log is at. Okay? Look at where the
22 passenger seat is. Do you see it? Because you'll have to
23 look for it, because it is under the logs. All right? But,
24 they were going so fast that he traveled --- Officer Cook's

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1 testimony, two hundred and three feet once he hit the break,
2 he still goes that far on the side of the road. Hits these
3 logs, and still has enough to have the energy built up to
4 travel eighty-eight more feet. Do you know what that means,
5 when you are going that fast and you hit something and it
6 comes through? Okay? That log is going through that
7 window going as fast as you are going to see him going on
8 that video. So a two hundred pound bullet didn't hit that
9 woman here, it blew the head --- See --- and, you will see
10 those photos, they are in evidence. And it took her clean
11 out the back window. Do you know how I know that? Because,
12 you are going to look at all of these photographs and you
13 are going to see the trail of blood that she left. And you
14 are going to know that that is how come they couldn't get no
15 blood for toxicology. Okay? And when you look at this
16 pathology photograph --- and some of you might not want to
17 look at it. Okay? I've seen all manner of things up here
18 in this courthouse. And I've always prided myself on how
19 well I took it and go about my job. Okay? But, it broke me
20 down. And when that log hit that woman and hit her in the
21 head, because of this man's actions, okay? I am warning
22 you, you had better get ready for it because, it ain't no
23 simple thing. And I want you to think, look at every
24 photograph. The log sitting there just took the passenger
25 out. Destroyed her. Him sitting there with a blood alcohol

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1 level of .152. Cocaine in the system. Marijuana in the
2 system. Antidepressants in the system. Pain medication in
3 the system. Two different types. He is sitting looking for
4 his paperwork on his car, because he thinks it is a speeding
5 stop, or a traffic stop, or a moving violation. I don't
6 know what it is. Okay? We can go to the next screen, Mr.
7 Perry. And I have to talk with you about the law briefly.
8 Okay?

9 Reckless homicide. When the death of a person ensues
10 within three years is a proximate result of injury received
11 by the driving of a vehicle in a reckless disregard of
12 public safety of others. Okay? That one explains itself.
13 If you are going fast enough where you cross the other side
14 of the road, and you don't even realize that you hit the
15 brakes. When you are this drunk, you are driving reckless.
16 Let's go to the next one, Mr. Perry.

17 This is the big boy, driving under the influence of
18 felony DUI death results. While under the influence of
19 alcohol, drugs, or the combination --- and that is what
20 we've got here. I could rest on alcohol. I could rest on
21 drugs. But, I got the combination. Okay? Driving a motor
22 vehicle and does any act forbidden by law. How about not
23 stopping for the blue lights? How about speeding? How
24 about crossing the center line? I got three acts off the
25 top of my head, and I ain't watched the video in over a day.

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1 All right? Proximately causes great bodily injury, and when
2 you think great bodily injury, I want you to look at the
3 photographs, or death, look at the photograph. Okay. Let's
4 go to the next one, Mr. Perry.

5 Driving under suspension. There is a photograph in
6 here. Okay? There is a photograph in here of what he had
7 in his pocket. I want you to look at that. I want you to
8 think about that one. If we could go to the next one Mr.
9 Perry?

10 Involuntary manslaughter. Criminal negligence.
11 Pumping yourself with so many chemicals that you don't know
12 what is going on. Okay? Criminal negligence. If we could
13 go to the next one Mr. Perry?

14 Failure to stop for blue light, death results. An
15 intent to increase the speed of the vehicle, or avoid the
16 pursuing officer is prima facie evidence of a violation of
17 this section. I'm drunk, high, there are the blue lights.
18 I'm going to act like I am going to stop just long enough
19 for him to look in my car good, and see what color hair I
20 got, and how I've shaved. And then I'm going to take off.
21 All right? The law in this case explains itself.

22 Now, the judge is going to read you the law verbatim.
23 And everything he says is what the law is. I'm showing you
24 the law. And I'm just giving you a brief explanation. If
25 we could go to the next one real quick Mr. Perry?

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1 Reasonable doubt. And this --- I don't know what Mr.
2 Swilley is going to get up here and say. He is a better
3 lawyer, and he is a lot smarter than I am. He knows more
4 about the law about it. He is going to get up here, and he
5 is going to scream reasonable doubt, reasonable doubt,
6 reasonable doubt, okay? But let me tell you something.
7 Even if I had half of what I brought up here, I could have
8 passed reasonable doubt. It is not an imaginary, or a
9 fanciful doubt, or a weak doubt. It is a substantial doubt.
10 It is a doubt with which the words imply. A doubt for which
11 you can give or assign a reason based on the testimony and
12 the evidence in this case. And reasonable doubt is not any
13 sort of doubt. You and I know from everyday life
14 experiences that a doubt may arise about no matter what,
15 trivial or serious. Maybe some alien was driving that car.
16 Okay? That is a trivial doubt. Okay? Reasonable doubt is
17 a substantial doubt. Something that you can say, look at
18 this evidence. Maybe that gives rise to a doubt. But there
19 ain't been no evidence like that in here. The last two or
20 three days there ain't been no evidence like that brought
21 in. He's going to come up here and try to throw that up
22 there and hope that you don't pay attention. That's my
23 weapon "X" all right? Put that up there and let you know
24 just what reasonable doubt is. Eighty years ago how would
25 they have done this? They ain't got no video. Didn't have

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1 no blood work. If a Trooper had come in here and said he
2 was driving drunk and crazy. I would have pulled him over.
3 I found him behind the wheel and she was dead behind the
4 car. Okay? That's how it would have been done. And people
5 went to jail eighty years ago, didn't they? Well what I got
6 now, I got video, blood work, police officers who dedicate
7 their lives to do everything redundantly. Backup upon
8 backup. I got this guy drunk, stumbling through his glove
9 box and his wife is bleeding out behind the car. We can go
10 to the next one, Mr. Perry.

11 And listen that is not at all what Mr. Swilley is going
12 to do. He is not just going to rest on reasonable doubt.
13 He is going to throw up smoke screens to everything. Okay?
14 And what he is going to do is make unimportant, or
15 unnecessary facts seem like they are more important than
16 they really are. And he is going to talk about it in a real
17 condescending way. Where is the DNA? Where is the DNA?
18 What DNA do I need? These things, and you heard testimony,
19 you couldn't get fingerprints off of them, because of the
20 wreck. All right? I don't care if you think about those
21 beer cans at all. It ain't gotta be his. Okay? Maybe they
22 were, maybe they weren't, I don't care. He has the alcohol
23 in his blood. I've got that. Okay? Don't you let him fool
24 you with that mess. Don't you let him fool you with some
25 DNA off of the log that SLED wouldn't test. Okay? SLED has

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1 budget problems like everybody else. I don't care. SLED
2 didn't test it. I don't --- I ain't saying it was that
3 particular log that killed her. But this is what I do know.
4 I know a bunch of logs went through that window. And I know
5 she is dead. And I know she was dead right after it. And I
6 know that car wreck caused logs to go through that window.
7 And I've got pictures of the logs sitting in this boy's lap.
8 Okay? I don't got to prove on malice or no ill intent. I
9 ain't saying the boy is evil. I ain't saying he is evil.
10 Okay? I'm saying he didn't obey the law and because of that
11 Sylvia Hill ain't with us no longer. That is what I'm
12 saying. And I'm saying he didn't obey the law because he
13 was drunk, and driving crazy, and I proved that. Okay? And
14 then he will question the strength of the investigation.
15 All right. Don't let him. You saw the police. You saw all
16 of them. Okay? This was my role. This was my role. This
17 was my role. This was my role. This was my role. Okay?
18 Ain't nobody out to get him. Them police were out to prove
19 something. Okay, that's his. Saw him driving the car. Saw
20 him wreck the car. Saw him in the car when they got to the
21 wreck. Took him to the EMS, and he said, yeah, I've been on
22 drugs and beer. Okay? Took him to the hospital, and took
23 his blood in front of three people. And then somebody
24 tested it, and low and behold they find on that, and then
25 they found other stuff that he didn't admit to. Okay? He

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1 ain't going to tell the EMS people he did weed and cocaine
2 too. Okay? But, you know they found that too. All right?
3 Evidence, upon evidence, upon evidence. Look at the photos.
4 Look at the videos and think about the trustworthiness of
5 the officers that you heard it from. And then I want you to
6 think about the unbiased nature of the other people. People
7 at SLED get paid to see what is in the blood. They don't get
8 paid to find alcohol. If it ain't there, they send it back
9 and say there ain't no alcohol there. People at the
10 pathology place get paid to find out how somebody died.
11 Blunt force trauma. Okay? That is what she said. You are
12 going to see the logs in the car. There is your blunt
13 trauma. And then the last screen, Mr. Perry, and I'm out of
14 y'all's way.

15 And it is your common sense okay. Don't let whatever
16 he gets up here next destroy your common sense. Don't let
17 some little plea for reasonable doubt destroy what you can
18 look at some facts, and make good sense so we could have
19 been here an hour and a half. Okay? The whole thing could
20 have lasted an hour and a half.

21 Please use your common sense, ladies and gentlemen. I
22 got a little more excited than I wanted to get. But, please
23 just look at the overwhelming nature of this evidence.

24 Thank you very much for your time. Undoubtedly when I
25 sit down I'll think of eight more things I forgot to tell

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1 you. But, it was a lot of evidence here. Please use your
2 common sense.

3 Thank you very much.

4 **THE COURT:** And, the defense for closing argument.

5 CLOSING ARGUMENTS BY MR. SWILLEY

6 **MR. SWILLEY:** Thank you, Your Honor.

7 **THE COURT:** Yes, sir.

8 **MR. SWILLEY:** Mr. Holt, Ms. McKenzie.

9 **THE COURT:** Yes, sir. Mr. Swilley.

10 **MR. SWILLEY:** Yes, sir.

11 **THE COURT:** Yes, sir. Go ahead, Mr. Swilley.

12 **MR. SWILLEY:** Good morning, ladies and gentlemen.
13 We have been here all week. You have been very attentive,
14 very patient, very cooperative. I thank you for that again.
15 I'll try not to go too much longer. I don't think I will go
16 as long as Mr. Holt. I don't have as much personality as
17 him. So, you probably wouldn't want to hear me as long
18 anyway.

19 Let me start, and let me tell you, the state hasn't met
20 their burden of proof in this case. Okay? Hadn't met the
21 burden of proof, because Mr. Hill isn't guilty of these
22 crimes. In order to be guilty, all five of these crimes, I
23 think it is, he's got to be tried, and he's got to be proven
24 beyond a reasonable doubt that he is driving. The state
25 hasn't proved that. All right? The reason the state hasn't

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1 proved that is because this investigation, this whole case
2 is incomplete. Okay? Now, I am not accusing anybody of
3 being lazy, or being negligent on their part of this
4 investigation at all. Okay? The people that investigated
5 this case are human beings. All right? And sometimes human
6 beings don't get it exactly right. All right? I don't get
7 it exactly right most of the time --- probably, most of the
8 time. But I can tell you right now, that happened in this
9 case. The investigation was run by people, and people make
10 mistakes. And the mistake that was made in this case is
11 that --- so to speak --- the cart was put before the horse.
12 All right? A fact that is accepted during this
13 investigation that shouldn't have been accepted right off
14 the bat. All right? And that was the fact that Mr. Hill
15 was the one, driving this car. As you noticed, there was --
16 - like Mr. Holt said, there was an extensive investigation.
17 This wasn't no Barney Fife operation. He's right. It
18 wasn't. There were a bunch of people, a bunch of witnesses
19 you heard, some of them were necessary. And that was more
20 than likely done to show you that the effort, and the time,
21 and the extent of the whole thing; yeah, it was. That's
22 right. There was a bunch of work done in this case. And
23 there were a bunch of people involved. Nobody can doubt
24 that. Okay? And because of that, because there are that
25 many people involved in this investigation, that much time

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1 and that much effort, there should be more evidence in this
2 case that Mr. Hill was not behind the wheel of that car.

3 All right?

4 Now, before I get to the witnesses, and start talking
5 about what you heard, and trying to go over what is
6 important, I would like to tell you this. That this case,
7 without a doubt, like I said before, is a horrible and awful
8 tragedy. Okay? Any time somebody dies in this manner, any
9 time somebody dies before they are really supposed to die of
10 natural causes or whatever else when their time comes, is a
11 tragedy. Okay? That is plain and simple. I am not arguing
12 that. And this case has awful details. I'm not arguing
13 that either. Okay? The awful injuries that Ms. Hill
14 sustained are bothersome. It is a tragedy without a doubt.
15 But like I said before, one tragedy shouldn't beget another
16 tragedy. And it has got me thinking that a lot of time,
17 especially here in America, and especially here in the
18 southeast, when awful things happen, bad things happen, not
19 just to us, but to other people. The things that you see on
20 tv, we get angry about it. That is not fair. That's not
21 right. I don't like it. It's not fair. I'm angry. Okay?
22 And all too often we want to weigh and put the blame on
23 something and let that be our outlet. Let that be our
24 scapegoat. All right. I am mad that this happened. And it
25 is this person's or this entity's fault. And it is very

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1 easy in this case to do that. All right? Very easy. But I
2 have got to ask you, don't get so caught up in the tragedy
3 that you let the anger and the awfulness blind you of the
4 facts. Don't let it blind you of what is really going on.
5 Okay? Don't let it cover your ears like it wasn't something
6 that you needed to hear, or realize something that you
7 didn't hear. Okay? I know you want --- naturally, as human
8 beings, you want to say it is somebody's fault. You want to
9 say I'm putting it on this person, but you can't do that.
10 People often jump to doing this, and that is something
11 important that I would ask you to be mindful of, and ask you
12 not to do.

13 Now, I will be the first to say, my client, Mr. Hill,
14 he might not be perfect. All right? I'm not telling you
15 he's no choir boy. I'm not telling you he is a choir boy.
16 I'm not arguing with you there. But what I am telling you
17 is he wasn't driving this car. The state hasn't proven that
18 he was driving this car. He wasn't there. And if he was,
19 this investigation --- there would be more evidence, and it
20 would be proven that he had been driving this car. And that
21 is something to think about. I'm not trying to tell you
22 that he is the best person in the world, or even a pillar of
23 our society, or an upstanding citizen. But, what I am
24 telling you that there is reasonable doubt as to whether or
25 not he was driving that car. That is what I'm saying.

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1 Now, Mr. Holt, laid out all of these photographs, okay?
2 Look at the photographs. Proof is here. Proof is in the
3 pudding. But what I would like to call your attention to is
4 where is there more damage, on the driver's side or on the
5 passenger's side. Ladies and gentlemen, take a look at
6 that. The whole driver's side is mashed in. As you heard
7 Ms. Ross testify to --- and I hate going over this again.
8 It pains me to do so. She used the term avulsed. The brain
9 was avulsed out of Ms. Hill's head. Well, where does it
10 look like something was struck upon the head? I submit to
11 you that when this car ran off of the road and what you saw
12 on that video, the car in the ditch.

13 Now, Mr. Holt talked about there being more blood in
14 the car, which seat has more blood? I got to ask Deputy
15 Harrell, and whoever else investigated, I think Lieutenant
16 Hodges, where was there more blood? What does it matter?
17 Okay? You have two people in this car. The car is topping
18 end over end, everybody is toppling around in there. The
19 blood is going to be everywhere. And blood is going to be
20 in the driver's seat, right there. This is an awful, awful
21 accident. Nobody is arguing with you there. All right? I
22 am also going to ask you to ask yourself after looking
23 through all of these pictures, where is the car positioned?
24 The car landed back towards Trooper Gainey, facing Trooper
25 Gainey. That is why Mr. Hill toppled into the driver's

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1 seat. He landed in the ditch. All right?

2 Now, Mr. Holt went through every single one of his
3 witnesses that he put up that he elicited testimony from.
4 I'm not going to do that with you, but I would like to go
5 over some of the key witnesses in this case.

6 Number one, Trooper Gainey. A fine upstanding Trooper.
7 I am glad to have him in the Highway Patrol. He did a great
8 job in this case. But, like I said before, everybody
9 involved in this investigation is a human being. Okay?

10 Now, y'all were listening to him testify, and he said
11 --- and he said that he could tell that there was a male
12 driving the car. Now, I don't remember him saying anything
13 about white hair, but use your memory about what you heard
14 him say. Okay? All right? When he said that, what did he
15 also say? It was dark. He couldn't tell how many people
16 were in the automobile. All right? You watched the video,
17 and I want you to watch it again. I want you to see for
18 yourself. Okay? Don't skip steps. Don't accept facts
19 before you think about them, and access them. Okay?
20 Trooper Gainey, and I am not saying --- again, I am not
21 saying that he didn't do a good job in this investigation.
22 I'm not saying that he was negligent in any way. But, he is
23 human. He couldn't remember what color he radioed the car
24 in because it was dark. Humans can't see as well in the
25 dark, even when headlights are shining in the dark. What

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1 did the video show? Okay? I am pretty sure he sat up there
2 and said he saw a male. He didn't say anything about spiky
3 hair, spiky gray hair. There is probably a good reason for
4 that. But I don't see any spiky hair. Just a male.
5 Reasonable doubt. You can't see well in the dark. You know
6 that. Let your common sense let you know that. Okay?

7 Now, I am going to move on to Mr. Russ Harrell who is
8 our evidence custodian here in Darlington County. Again, he
9 did a good job. Did an excellent job in this investigation.
10 Remember, Mr. Harrell said he searched the car. He was
11 there. He took blood taken out of Mr. Hill's arm to SLED.
12 And he also witnessed --- what did Mr. Harrell do? He also
13 swabbed the car for blood with Q-tips, put it in evidence,
14 and sent it to SLED. All right. Remember, he got a little
15 irritated, a little hot under the collar when he thought
16 about how come I didn't get no results back. Like Mr. Holt
17 asked him, did you get into a tiff with SLED? Of course he
18 got into a tiff with SLED. He would need that to prove who
19 was driving, who would have been driving at what time. He
20 didn't get it back. There is a good reason for that. That
21 is something --- that raises reasonable doubt.

22 Remember, Mr. Holt saying, about no DNA in evidence,
23 and fingerprints, and real forensic stuff getting in the way
24 of your decision making skills. Ladies and gentlemen, that
25 is a big deal. All right? That is a huge deal. Because,

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1 we are asked --- humans sometimes gets things wrong. Things
2 like that can't lie. They can't. I'm not saying somebody
3 lied in this case. But what I am saying is somebody got it
4 wrong. Okay? The facts exist like that, indicating they --
5 - and they are not here in this case. But if they were
6 here, they would show that Mr. Hill wasn't driving that car.
7 And you saw Mr. Holt stretched out, his hands were on the
8 steering wheel when the Trooper got there. Well, when a
9 policeman comes up to your car, the first thing you do,
10 protocol as he testified, you put your hands up. Okay? The
11 same goes for fingerprints, same goes for DNA, none were
12 collected, and it is important. Okay? It is a big deal.

13 Let me go to Ms. Jennifer Brown, who is a young lady
14 from SLED who got up here, and she was a Forensic
15 Toxicologist. Okay? You got the blood from Mr. Hill,
16 didn't get any from Mrs. Hill, and didn't get any urine.
17 And what did it show? It showed --- she testified to before
18 you as she sat there as to the drugs that Ms. Hill tested
19 positive to. Okay? The same types of drugs. Not any
20 alcohol. Okay? Not any cocaine. Several things, as she
21 testified to that would impair you from driving a car. All
22 right. She testified that she tested positive for Xanax.
23 Also pransometabolite. She testified Lortab showed up, a
24 pain killer. Tramadol, Ultram, she testified that she took
25 Tylenol, hydrocodone, hydromorpphine, all of that stuff.

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1 All right? And that was stuff, substance that came out of
2 her as well. All right. Big deal. Like the statute says,
3 not just alcohol impairs your judgment. All right? All
4 this other stuff does too. A combination of drugs. And we
5 know from what you have seen both individuals in that
6 automobile were on substances, substances that you don't
7 need to be on, when you are involved with a car. You know
8 that. You know that. All right.

9 Then we got Ms. Janet Ross, who is an expert, a doctor,
10 a pathologist. She got up, and again, remember she talked
11 about autopsy photographs that Judge Baxley instructed you
12 on. And pretty graphic photographs. And don't let the
13 horribleness of what you see, cloud your judgment. Okay?
14 Don't let that passion get in the way of a reason. Use this
15 organ between here, not the one in your chest. All right?

16 Ladies and gentlemen, what this case boils down to is
17 that the state proved that there was a crash. Okay? And
18 further that Mr. Hill was under the influence. They didn't
19 prove that he was driving that car. They didn't prove that,
20 because it didn't happen. Because that is not the case.
21 That is not what happened. And that is why you can't find
22 him guilty of these Indictments to these charges, these
23 crimes.

24 Now, Mr. Holt used the analogy that he was driving a
25 bus. He is in charge. He is Assistant Solicitor. All

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1 right. He took y'all on a buss ride all this week, and he
2 forgot to make one stop. And that was the stop to look at
3 who was driving that automobile. And that is a mistake.
4 Like I said, probably for the fifth time, I am not accusing
5 anybody of doing anything intentionally wrong, but
6 unintentional. All right? I saw that y'all were all awake,
7 and y'all noticed that that stop wasn't made.

8 Now, when Mr. Holt gave his closing, and I don't do
9 this very often, but I try to write down some of the things
10 that he said, that probably needed to be clarified on. And
11 what I saw during the whole time he got up here is that in
12 stressed intoxication, intoxication. He was on cocaine,
13 pills, a combination of both. Okay? Great. That was
14 stressed over, and over, and over again. Notice how he
15 skewed away from any kind of accident reconstruction. He
16 brought Officer Cook in here to tell you how, you know,
17 where the car ran off the road, where the brakes marks were.
18 What went on in that car, who went where, and why, and how?
19 Rightfully, and intelligently, he skewed away from that.
20 Okay? Something to look into. Y'all heard him say muddy
21 water. The defense is going to get up here and muddy the
22 waters. All right. Poke holes in the state's case. Mr.
23 Holt has already done that for me. I didn't poke anything.
24 I didn't poke holes in anything. All right? I didn't put
25 up any smoke screens. That smoke was already there before I

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1 got there. I didn't put that there. Okay? That was
2 already there by itself.

3 He kept saying this was no Barney Fife investigation,
4 and like I just said, that's right. Again, no Barney Fife
5 investigation. This was a professional, big deal, and it
6 didn't come up and there is no evidence beyond a reasonable
7 doubt that he was driving that car. And that is important.

8 Now, Mr. Holt said, evidence, upon evidence, all right.
9 Now, he didn't have evidence upon evidence of elements in
10 this case. He didn't have any evidence that you should
11 consider that beyond a reasonable doubt --- He did have
12 evidence. You saw evidence upon evidence of cocaine, and
13 blood analysis, and beer cans, and pills with Mrs. Hill's
14 name on it that was found in the car. Okay? But no
15 evidence of him driving.

16 And he talked about reasonable doubt, and he put up the
17 definition that you are going to hear up here, that you are
18 going to hear Judge Baxley instruct you on what a reasonable
19 doubt is. All right? I'm not going to talk about that.
20 That was right. Okay? It is not a hard thing to come up
21 with what a reasonable doubt is. Listen to Judge Baxley's
22 instructions on it. Y'all are smart enough to know what
23 that is, and understand that. Y'all are from Darlington
24 County, y'all got good sense. I'm not going to say anything
25 else about it. Y'all are going to know what reasonable

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1 doubt is.

2 He said that I am going to try to make things seem more
3 important than they really are. Well, ask yourself, okay,
4 how important are the things that you didn't see? Okay?
5 How important when an accident reconstruction investigation
6 --- how important is the fact that there was no talk about
7 anybody being restrained in this car? Okay? How important
8 are those? How important is that? Ask yourself. I'm not
9 going to tell you, because you already know. How important
10 are those? I'm not trying to make anything seem more
11 important than it really is. All right? That is for y'all
12 to decide. All right? I am not questioning the strength of
13 this investigation. I'm just questioning the steps that
14 were taken. All right?

15 Now, this is a case about completeness. All right?
16 Y'all are smart enough to know what completeness is. All
17 right.

18 Now, before I sit down, I just ask you again to be
19 mindful of the three principles, and I am going to go over
20 them again because they are so important.

21 Number one. The state always has the burden of proof.
22 All right? You get in there and you start arguing and
23 deliberating and deciding with each other, remember the
24 state has to prove anything and everything in this case.
25 The defendant doesn't have to prove anything. And that is

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1 extremely important. I am having the time of my life,
2 because this is my job. But I ask you to be mindful of it
3 too. All right?

4 Number two. The defendant has the presumption of
5 innocence. He is presumed innocent until proven otherwise.

6 Number three. Absolute and most important thing in my
7 opinion. Most important in my opinion, but the burden of
8 proof is beyond a reasonable doubt, and we know what a
9 reasonable doubt is. It is a burden that has not been met.

10 Ladies and gentlemen, finally, I am going to apologize
11 on behalf of myself or Ms. Crayton, because anything that we
12 have said or done that has been offensive, or insulting to
13 you, if that is so, let me apologize for the both of us now.
14 Please do not let anything that may have been done by
15 myself, or Ms. Crayton influence the way you decide this
16 case. This case is too important. I mean his freedom is on
17 the line. And anything that I might have done that would be
18 offensive, you shouldn't take into consideration. I am
19 asking you to use a non-bias approach, your brain, and don't
20 use your emotion, but use your brain, and decide the facts
21 of this case. You may think that maybe petty, trivial, or
22 unimportant, but it is extremely important that you do that.

23 Again, thank you for your presence here. This is the
24 most power that you are going to have is over a man's
25 freedom, the power to decide facts in a criminal case. That

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1 is a lot of power to have. I would ask you to be mindful
2 of that when you go back into that jury room.

3 Thank you.

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5 **THE COURT:** All right. Ladies and gentlemen, you
6 have now heard the arguments of counsel. And I want to give
7 you the charge on the law.

8 As you are aware, the state --- seated at the table
9 closest to you, has the defendant, Charlton L. Hill, with
10 the charges of, felony DUI with death resulting, failure to
11 stop for a blue light, with death resulting, reckless
12 homicide, and voluntary manslaughter, and driving under
13 suspension. Now, you will remember that these charges were
14 all each based on their Indictment. You heard the defendant
15 plead not guilty to these charges in the courtroom, and by
16 that plea denied these allegations that are logged against
17 him in these Indictments. And as I explained to you at the
18 beginning, and I want to say it again because of how
19 important it is, what is in the Indictments is not evidence.
20 It is not to be accepted as the truth. It is simply a set
21 of allegations or accusations made against the defendant.
22 The evidence that you should consider is what came from here
23 in the witness stand, under oath, and under direct and cross
24 examination, as well as such exhibits that have been placed
25 in the record, during the course of this trial, which you

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1 will have back with you in the jury room when you retire to
2 deliberate.

3 Please understand, even if the defendant had not
4 entered a plea, at all, the defendant comes into this court
5 clothed with a presumption of innocence, and this
6 presumption of innocence continues throughout the case, even
7 to this point, and entitles the defendant to a verdict of
8 not guilty unless and until it is dispelled by evidence that
9 satisfies you, the jury, beyond a reasonable doubt that the
10 defendant is guilty of the offense charged, and the state
11 has proved each and every element of the alleged crime
12 beyond a reasonable doubt.

13 Now, as I told you at the beginning of the trial, you
14 are the judges of the facts. And throughout this trial, in
15 ruling on various issues, I have tried not to intimate in
16 any way how I may feel about the facts, because I want to
17 say to you again, I don't have a position on the facts. And
18 one of your roles as the judges of the facts, as I said to
19 you when you began this case, is that you are going to have
20 to determine the credibility and believability of the
21 witnesses who have appeared before you. I will tell you
22 that there is no need to go over those factors again that we
23 discussed when we began, but I just simply say, as you will
24 recall, we talked about the fact that we do this everyday in
25 our lives, and you should use those same common sense

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1 factors you use everyday in deciding believability and
2 credibility. I will tell you that in deciding the facts,
3 you, the jury, can believe as much or as little of each
4 witness's testimony as you think appropriate. You may
5 believe one witness against a whole group of witnesses, or
6 you can do just the opposite. You may believe part of a
7 witness's testimony and completely disbelieve the rest.

8 I would also say to you that the fact that testimony is
9 not controverted or contested does not mean you must accept
10 it as true and undisputed. Because, you first gauge the
11 credibility and the believability of the witness, through
12 which that evidence comes to determine its truth.

13 Keep in mind, throughout this process you have but one
14 objective and that is to search for and find the truth
15 regardless of from which witness that may come.

16 Now, there are two types of evidence in cases such as
17 these, and I want to discuss that with you.

18 First of all there is direct evidence, and secondly
19 there is circumstantial evidence.

20 Direct evidence is the testimony of a person who
21 asserts or claims to have actual knowledge of a fact, such
22 as an eyewitness who would testify about what they say, or
23 heard, or did. That is direct evidence.

24 Circumstantial evidence, on the other hand, is indirect
25 evidence. Circumstantial evidence is a proof of a set or

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1 chain of facts that then indicate the existence of yet
2 another fact. I will tell you that the law makes
3 distinction between the weight or the value to be given to
4 either direct or circumstantial evidence. Nor does it
5 require a greater threshold of proof of one over the other.
6 You should weigh all the evidence in the case.

7 Now, I talked to you a moment ago about weighing the
8 evidence, and I have been back in your jury room before. I
9 haven't been back there while you are back there, but when
10 you go in there on the table you will see that there are not
11 some set of scales to weigh the evidence on. Well, that is
12 obvious, because this is a mental process. But I would say
13 to you, that evidence that weighs with you, is evidence that
14 convinces you of its truth, again regardless from which that
15 witness that may come. Again, your objective today here is
16 to find the truth.

17 Now, the same constitution and law which makes you the judge
18 of the facts makes me the judge of the law. And I will tell
19 you from living here in Darlington County all my life, just
20 as most of you have, there is a lot of bad information out
21 on the street in any county about what the law may be on any
22 particular point, whatever that point may be.

23 So, I am going to suggest to you today, and direct you
24 please put aside what you may have heard out on the street
25 what the law is on a particular point, or what either you or

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1 I think may be a better idea. But simply accept the law as
2 I give it to you in this charge, apply it to the facts as
3 you find it from the evidence, and in doing that, ladies and
4 gentlemen, you will find a verdict which is just and fair in
5 this case. And if you think about it, you know if I were
6 giving you the law wrong, which I am not doing, because we
7 have reviewed this closely. I have talked it over with
8 counsel. The law that I am going to charge you in this, if
9 I give it to you wrong, well, our court reporter is taking
10 this down, that error would be preserved, and there would be
11 another day in time when that could be corrected, if
12 necessary. But for today's purposes, please accept the law
13 as I give it to you. Apply it to the facts as you find it.

14 Now, in a criminal prosecution of this type, as I
15 stated from the beginning, the state, that is the
16 prosecution, has the burden of proof at all times. The
17 defense never has a burden of proof. The defendant is
18 presumed innocent in these charges. And in this state,
19 according to our constitution, the prosecution must prove
20 its case to the standard of proof we call beyond a
21 reasonable doubt, that's it, beyond a reasonable doubt,
22 before a finding of guilt may occur. If the state fails to
23 meet this high burden, the defendant is entitled to
24 acquittal on the particular charge that you are considering.
25 So, then you say, okay what is a reasonable doubt? Well, I

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1 am going to start by telling you what it is not. It is not
2 an imaginary or fanciful doubt or a weak doubt; it is a
3 substantial doubt. It is a doubt which the words imply; a
4 doubt for which you can give or assign a reason based on the
5 testimony and the evidence, or the testimony, in this case.
6 A reasonable doubt is not any sort of a doubt. You and I
7 know from every day life experiences that you may have sort
8 of a doubt about any matter that arises, no matter how
9 trivial it may be or how serious it may be, such as what tie
10 to wear to an event or what pair of shoes to wear. That is
11 not a reasonable doubt..

12 Rather, a reasonable doubt is a doubt which makes an
13 honest, sincere, conscientious juror in search of the truth
14 hesitant to act. Proof beyond a reasonable doubt is proof
15 that leaves you firmly convinced of the defendant's guilt.
16 If you have a doubt for which you can give or assign a
17 reason as to the guilt of a defendant on a particular
18 charge then that defendant is entitled to a verdict of not
19 guilty on that particular charge.

20 I will tell you that reasonable doubt may arise from
21 evidence that is in the case, or from the lack or absence of
22 evidence in the case. You, the jury, must make the
23 determination of whether or not reasonable doubt exists as
24 to the guilt of the defendant with regard to these charges.

25 I will tell you that the very fact, however, that the

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1 jury goes back in the jury room, and engages in a full and
2 free discussion of the issue of guilt or non-guilt in this
3 case, with the conversational ebb and flow on these issues
4 does not automatically mean that reasonable doubt exists in
5 this case or in any other case for that matter.

6 Now, under South Carolina law, criminal intent is a
7 necessary element of each crime that must be proved by the
8 state beyond a reasonable doubt.

9 Now if you think about it, criminal intent is always a
10 matter that must be determined by the jury from the
11 circumstances that surround a situation. You and I know
12 that there is no way to prove intent to a mathematical
13 certainty. There is no way medical science can allow us to
14 look into someone's mind, and determine what they had in
15 mind at a particular point in time. So the law states that
16 criminal intent may be inferred from the circumstances show
17 to have existed, both before and after the fact. This is
18 how you, the jury, make a determination of whether or not
19 the element requiring intent was present.

20 I will tell you that criminal intent is a state of mind
21 that operates jointly with an act or an omission in the
22 commission of a crime. Criminal intent is a mental state of
23 conscious wrongdoing, so it is up to you ladies and
24 gentlemen, to determine whether or not the element of
25 criminal intent has been proved here by the state. I tell

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1 you that the state must prove it beyond a reasonable doubt
2 just as it must prove every element beyond a reasonable
3 doubt in each of these charges.

4 Now, I further instruct you, and I say again, and
5 emphasize the fact that the defendant did not testify in
6 this courtroom. You saw that. And that is not a factor to
7 be considered by you in any way in your deliberations and in
8 your consideration of the question of guilt or innocence of
9 the defendant. It must not be considered in any way
10 whatsoever. The defendant has the constitutional right to
11 remain silent. And the assertion of this right should not
12 be considered by you in your deliberations. So, I repeat to
13 you, under your oath, you should draw no conclusion
14 whatsoever from the fact that the defendant did not testify.
15 The fact that the defendant did not testify shouldn't even
16 be discussed in the jury room. The burden of proof, as I
17 have stated, is always on the state. And the defendant is
18 not required to prove innocence, and the burden of proof
19 remains on the state to prove guilt at all times.

20 Now, I want to define for you each of the charges that
21 is levied against the defendant.

22 First, it is driving under the influence, or what we
23 call Felony DUI. The defendant is charged with felony
24 driving under the influence. In order to prove this, the
25 state must first prove beyond a reasonable doubt that the

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1 defendant drove a vehicle while under the influence of
2 alcohol and/or drugs. Driving a motor vehicle means that
3 the vehicle was in motion. This may be proved by direct or
4 circumstantial evidence.

5 Further, the state must prove beyond a reasonable doubt
6 that the defendant was sufficiently under the influence to
7 impair his ability to drive with the reasonable care, with
8 due regard for others and himself, or as a reasonably
9 prudent person would drive. It is not necessary to show
10 that the defendant was in a hopeless condition, or passed
11 out, or even intoxicated. On the other hand, the fact that
12 the defendant, at some time prior to this incident, drank an
13 alcoholic beverage or took a drug does not automatically
14 prove that the defendant was driving under the influence.

15 Next, the state must prove beyond a reasonable doubt
16 that, while driving, the defendant did an act that was
17 forbidden by law or neglected a duty imposed by law.

18 And finally, the state must prove beyond a reasonable
19 doubt that the act or the neglect of the defendant
20 proximately caused --- that word is proximately caused great
21 bodily injury or death to another person.

22 Now, when I use the word proximate cause, what I mean
23 is this. It is the direct cause; it is the immediate cause;
24 it is the efficient cause; it is that cause without which
25 the death of the victim would not have occurred.

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1 There must be a chain of causation from the time of the
2 injury inflicted until the time of the victim's death.
3 Proximate cause does not necessarily mean that it occurred
4 immediately prior to death, but it certainly can. There
5 may be more than one proximate cause of an event. The
6 defendant's act may be regarded as a proximate cause, if it
7 is the contributing cause of the death of the victim. The
8 fact that other causes may have also contributed to the
9 death of the victim does not relieve the defendant from
10 responsibility.

11 All right. Let's talk about failure to stop for a blue
12 light with death resulting. The defendant is charged with
13 failure to stop for a blue light, with resulting death.
14 Now, in order to prove this, and I say to you in the absence
15 of mitigating circumstances, it is unlawful for a motor
16 vehicle driver, while driving on a road, a street, or
17 highway of the state, to fail to stop when signaled by a law
18 enforcement vehicle by means of a siren or a flashing light.
19 An attempt to increase the speed of a vehicle or in other
20 manner avoid the pursuing law enforcement vehicle when
21 signaled by a siren or flashing light is prima facie
22 evidence of a violation of this section. Failure to see the
23 flashing light or hear the siren does not excuse a failure
24 to stop when the distance between the vehicles and other
25 road conditions are such that it would be reasonable for a

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1 driver to hear or see the signals from the law enforcement
2 vehicle.

3 All right. In this case, the defendant is also charged
4 with reckless homicide. In order to prove this, the state
5 must first prove beyond a reasonable doubt that the
6 defendant drove a vehicle with reckless disregard for the
7 safety of others.

8 Reckless disregard for the safety of others means an
9 indifference to the consequences or results of one's acts; a
10 conscious indifference to the rights and safety of others;
11 or a conscious failure to exercise ordinary care. Reckless
12 disregard for the safety of others is something more than
13 mere negligence or carelessness. The state must also prove
14 beyond a reasonable doubt that a person was injured and died
15 within one year of the date of the injury.

16 Finally, in order to prove this, the state must prove
17 beyond a reasonable doubt that the injury to the victim from
18 the defendant's reckless driving was the proximate cause of
19 the victim's death. And we have already defined proximate
20 cause. But, again I say to you proximate cause is the
21 direct cause; it is the immediate cause; it is the efficient
22 cause; it is a contributing cause; it is that cause without
23 which the death of the victim would not have occurred.

24 Further, the defendant is charged with involuntary
25 manslaughter. The defendant is charged with this, in

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1 addition to the other charges, and in order to prove this,
2 the state must prove beyond a reasonable doubt that the
3 victim unintentionally killed the victim without malice, but
4 while engaged in an unlawful activity not naturally tending
5 to cause death or great bodily harm or that the defendant
6 unintentionally killed the victim without malice, while
7 engaged in a lawful activity with reckless disregard for the
8 safety of others.

9 Let me give you that again. It means that the state
10 must prove beyond a reasonable doubt that the defendant
11 either unintentionally killed the victim without malice, but
12 while engaged in an unlawful activity that would not
13 naturally tend to cause death or great bodily harm or the
14 defendant unintentionally killed the victim without malice,
15 while engaged in a lawful activity with a reckless disregard
16 for the safety of others. Unintentional means that the
17 defendant did not intend for anyone to be killed or
18 seriously injured.

19 Reckless disregard for the safety of others is more
20 than mere negligence or carelessness. Mere negligence or
21 carelessness is the failure to use the care that a person of
22 ordinary reason would use under the same circumstances. But
23 recklessness is a conscious failure to use even ordinary
24 care. Reckless disregard for the safety of others means
25 that you are not interested in the consequences of your acts

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1 or the rights or the safety of others.

2 If a person who knows, or should know, that ordinary
3 care requires certain precautions be taken for the safety of
4 others when using some dangerous instrumentality, such as a
5 weapon or a car, but that person fails to use those
6 precautions without concern, the person's actions are
7 considered reckless.

8 The state must also prove beyond a reasonable doubt
9 that the defendant's act was the proximate cause of death of
10 the victim. I will also charge you that the violation of a
11 statute, a traffic statute, if it is the proximate cause of
12 an injury, is evidence of recklessness.

13 All right. And then finally, ladies and gentlemen, the
14 charge of driving under suspension has been levied against
15 the defendant too. And in order to prove that the state
16 must prove beyond a reasonable doubt that the defendant
17 drove a motor vehicle on a public highway in this state
18 during the time the defendant's driver's license was
19 cancelled, suspended, or revoked or just simply never had
20 driver's licenses. To be guilty of driving under
21 suspension, the defendant must have been notified by the
22 Department of Public Safety that his driver's license has
23 been cancelled, suspended, or revoked.

24 And, ladies and gentlemen, let me say, I said something
25 incorrect. I said or simply just never got licenses. That

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1 is not correct. I told you that incorrectly. Please
2 disregard that. You must prove, the state must prove that
3 the defendant drove a motor vehicle on a highway, during a
4 time that the licenses was either, cancelled, suspended, or
5 revoked.

6 Now, I also want to tell you that these charges are
7 independent of one another. And you have multiple charges
8 here. And your decision on one does not necessarily control
9 your decision on the other. You must consider each of these
10 charges independently in your deliberations.

11 And further, I want to charge you that mere presence at
12 the scene of a crime is insufficient to prove that somebody
13 is guilty of a particular crime. In other words, the state,
14 in a prosecution, must prove every element of the crime
15 charged. If, at the end of all the evidence, you find that
16 the state has only proved that the defendant was present at
17 the scene of a crime, and have not proved any other
18 participation in a crime, beyond a reasonable doubt, then
19 the defendant should be found not guilty of the particular
20 charge. The law is that proof of mere presence at the scene
21 is not enough to find somebody guilty of a crime that may
22 have occurred.

23 Now, ladies and gentlemen, in just a moment or two, you
24 are going to retire to begin deliberations. And as you do
25 that, I want to express to you the hope that you are mindful

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1 of the importance of your responsibility. I know you are.
2 But you may recall we discussed on Monday the fact that you
3 can't be required to serve as a juror more than one time in
4 three calendar years, and there is a reason for that. It is
5 because it is a difficult task. It is because it requires
6 you and I to free our mind of all outside influences,
7 because you and I are acting for the community to see to it
8 that every trial here is fair and the verdict here is just.

9 You have probably noticed throughout the trial that the
10 Court is referred to as your honor, and I know you know from
11 living in this county, that is not some title assigned to me
12 individually. It is a title that assigned to the position
13 that I am privileged to hold. That is because this court is
14 entrusted with the honor of this community, this county,
15 this state, and indeed this nation to see to it that every
16 trial here is fair, and every verdict is just. In a few
17 moments, you are going to take the preservation of the honor
18 of this community, county, state, nation into that jury room
19 with you.

20 Now, when I say that, please understand I'm not telling
21 you how to decide this case. That is not my point. That
22 would be inappropriate. My point is this. As the presiding
23 officer, it is of vital importance to me that whatever
24 verdict you reach be the result of your going back into your
25 jury room, confining your consideration to the evidence put

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1 forth here in this courtroom, weighing that evidence fairly
2 and impartially, applying it to the law that I've given you
3 here in this charge, and reaching a verdict which is just
4 and which is fair. I will tell you that everyone in this
5 case is entitled to justice, nothing more, and nothing less.
6 We owe no sympathy to any party. We owe no support to any
7 party. And, again, I am of the confirmed opinion that
8 whatever result you reach will represent truth and justice
9 for these parties.

10 Now, Mr. Foreman, let me say to you. I have the
11 verdict form here, and you really can't see it from where
12 you are. But you will have it with you in the jury room.
13 And it has five questions because there are five charges.
14 And one question is assigned to each of the charges. And, I
15 am just going to read the first question, for example it
16 says, as to the charge of Felony DUI with death resulting,
17 we the jury, unanimously find the defendant Charlton Hill,
18 beyond a reasonable doubt, and then I've got two choices.
19 Well, please understand that when I have two choices to give
20 you on a piece of paper, I can't give them to you at the
21 same spot. One must necessarily be in front of the other.
22 But there is no priority over them. You have two choices.
23 And the first choice is not guilty, and the second choice is
24 guilty. Whatever the unanimous decision of the jury is,
25 please mark that and move on to the next one, to consider

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1 each of these charges independently and separately.

2 And the last thing that it says on here, where you sign
3 Mr. Goolsby, it says that, I certify that this is the
4 unanimous decision of the jury, and then a signature block
5 for you. So when you sign there, you are telling us that it
6 is a unanimous verdict, which means that if someone is
7 standing by the window, you have kind of a large room there.
8 Someone over by the wall, some seated at the table. If
9 someone has a comment or an opinion they want to express on
10 a particular issue, please make sure they are given the
11 opportunity to do that, so that not only is this verdict a
12 consensus verdict, but that it is indeed a unanimous
13 verdict, in which all have participated.

14 Now, before we all break up here, and you go back to
15 the jury room, let me say this to you. I want to speak to
16 Ms. Blackmon as well to Ms. Thomas, our alternates for a
17 moment. If our other twelve jurors hold their health here
18 for the next minute, which I suspect they are probably going
19 to do, that means, you will not go back and deliberate with
20 them. But I don't want you to think somehow that means your
21 role is less important, because it is not. First of all,
22 you helped choose the foreperson and thank you for that.
23 But secondly, under South Carolina Law, under our
24 Constitution, you must have twelve jurors. And even if we
25 got here right now, when we are getting ready to go to the

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1 jury, and somebody got sick, or had an emergency, and we
2 were down to eleven, I would have to declare a mistrial,
3 because we had no alternate jurors here in order to cover
4 that. Well, you were here, and your presence prevented that
5 from possibly happening.

6 What we are going to do in the event something should
7 happen during deliberation, we are actually going to let you
8 go back to a room, where you will be --- I am going to use
9 the term sequestered. You will be treated nicely, but we
10 are going to keep you separate and apart in case something
11 happens during deliberations, and one of our jurors has to
12 be removed. And we will give you some refreshments and make
13 you comfortable. But in the presence of all of your
14 colleagues, I want to thank you for your service.

15 Now, what I would like to do, ladies and gentlemen, is
16 this. I am going to let you all go back, let you say your
17 goodbye's to your alternates back in the jury room for just
18 a moment. Please don't begin deliberations, because what I
19 have to do now is go over the evidence, make sure we have it
20 all in order, and then send it in to you with the verdict
21 form. When we do that, we will let the alternates come out,
22 and you start deliberating. And then we will be here at
23 your call as opposed to you waiting on us for our call. And
24 please understand there is no deadline. There is no hurry.
25 If you need the Court for any reason, please knock on the

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1 door. There is someone who will be listening for a knock.
2 Not listening to deliberations, because you really can't
3 hear them anyway, but will be responsive to your knock.
4 When you reach a verdict, please knock on the door, and we
5 will then have someone ready to receive your verdict. If
6 you need to take a break, ladies and gentlemen, we will give
7 you that opportunity. We don't require you to stay in that
8 jury room. But if you do take a break, and some want to go
9 outside, what we are going to ask you to do is stop
10 deliberations until all are back together again. Because,
11 it is conceivable that two groups at two different places
12 could reach an inconsistent conclusion at the same time. To
13 prevent that, if we do take a break, if you need one, let us
14 know and we will stop the deliberations until we are all
15 back together.

16 So, ladies and gentlemen, please return to the jury
17 room. Give us just a moment, before you begin to
18 deliberate, and we will bring in the evidence to you.

19 **BAILIFF:** Come this way, please.

20 (Whereupon, the jury exits the courtroom at 11:31
21 a.m.)

22 **THE COURT:** All right. The jury is out. Are there
23 exceptions or objections to the charge given by the Court
24 from the state?

25 **MR. HOLT:** There are none, Your Honor.

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1 **THE COURT:** And from the defendant?

2 **MR. SWILLEY:** There are none, Your Honor.

3 **THE COURT:** All right. Counsel, please come up and
4 let's review the evidence in order that you wish to send it
5 in, and then we will send it in.

6 (Whereupon, the attorneys and the Court
7 reporter review the evidence.)

8 **THE COURT:** All right. We are going to add a pair of
9 gloves, in case someone uses these.

10 All right. And Mr. James, where are we going to put
11 the alternates? We need to put them in a room somewhere.

12 **MR. JAMES:** I'll put them in --

13 **THE COURT:** Okay. If you would, make sure that they
14 have refreshments.

15 Please bring that in, and go ahead and bring the
16 alternates --

17 **CLERK OF COURT:** Do you want to deal with this video
18 first?

19 **THE COURT:** All right. Video, if the jury wants to
20 see the video --- well, first of all, do you have a video
21 with the sound that is automatically muted on the tape?

22 **MR. HOLT:** I don't. I can ask Mr. Perry, would it be
23 hard on your computer that it is already burned on, can you
24 take the sound off, take the speakers away from the
25 computer?

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1 **MR. PERRY:** No, because it is already imbedded in
2 there. It would have to be totally redone, the video.

3 **THE COURT:** All right. What we will have to do is
4 tell them if they want someone to play it, we are going to
5 send the video man in there, which will be Mr. Perry, who
6 will play it without the sound. That is the only way we can
7 give them access. But, please tell them they are welcome to
8 it, but we will have to send the computer and the technician
9 in with it at the same time.

10 **CLERK OF COURT:** All right. Are you ready?

11 (Whereupon, the jury begins deliberations at
12 11:40 a.m.)

13 **THE COURT:** All right. Ladies and gentlemen, we are
14 going to stand in recess in this matter. I am going to
15 return Mr. Hill to the back. And, when we have a jury
16 verdict, then we will be ready to proceed. So, please don't
17 go far. I understand that we have some guilty pleas we are
18 going to take, but we are going to stand down for about ten
19 minutes or so before we resume, and let the guilty pleas get
20 set up.

21 Mr. Hill, I am going to let you return to the back,
22 sir. All right. We will be in recess.

23 (Whereupon, the Court stands in recess from
24 11:42 a.m. until a verdict is announced at 12:03 p.m.)

25 **THE COURT:** Counsel, we are advised that we have a

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1 verdict. So, what I think we will probably do is stand this
2 plea down. We will take it in just a few moments after we
3 finish. Is it a note or a verdict?

4 **BAILIFF:** No, sir, a verdict.

5 **THE COURT:** Verdict. Then we will return you to the
6 back and we will come back and take your plea in a few
7 moments.

8 All right. Please bring in the jury.

9 **BAILIFF:** All right, sir.

10 (Whereupon, the jury enters the courtroom at
11 12:08 p.m.)

12 **THE COURT:** All right. Welcome back to the
13 courtroom, ladies and gentlemen. As you can see we also had
14 our alternate jurors join you. And, Mr. Goolsby, I am
15 advised that the jury has reached a verdict. Is that
16 correct, sir?

17 **MR. GOOLSBY:** That is correct, sir.

18 **THE COURT:** All right. Would you please give your
19 verdict form to our clerk, Mr. Suggs? Thank you.

20 (PAUSE.)

21 **THE COURT:** Let's let the record reflect that the
22 verdict form is appropriately filled out, and is signed by
23 the foreperson. And, Mr. Clerk, I am going to ask you to
24 publish this verdict. And would the defendant, please rise?

25 PUBLICATION OF THE VERDICT

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1 **CLERK OF COURT:** Thank you, Your Honor. This is
2 case number 2010-GS-16-0201, the State of South Carolina
3 versus Charlton L. Hill, defendant.

4 Question one, as to the charge of felony driving under
5 the influence with death resulting. We the jury,
6 unanimously find the defendant, Charlton L. Hill, beyond a
7 reasonable doubt, guilty. If this is your verdict, would
8 you so signify by raising your right hand, please? All
9 twelve jurors have responded with their right hand.

10 Question two, as to the charge of failure to stop for a
11 blue light with death result. We the jury, unanimously find
12 the defendant, Charlton L. Hill, beyond a reasonable doubt,
13 guilty. If this is your verdict, would you so signify by
14 raising your right hand, please? All twelve jurors have
15 responded with their right hand.

16 Question three, as to the charge of reckless homicide,
17 we the jury, unanimously find the defendant, Charlton L.
18 Hill, beyond a reasonable doubt, guilty. We the jury,
19 unanimously find the defendant, Charlton L. Hill, beyond a
20 reasonable doubt, guilty. If this is your verdict, would
21 you so signify by raising your right hand, please? All
22 twelve jurors have responded with their right hand.

23 Question four, as to the charge of involuntary
24 manslaughter, we the jury, unanimously find the defendant,
25 Charlton L. Hill, beyond a reasonable doubt, guilty. We the

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1 jury, unanimously find the defendant, Charlton L. Hill,
2 beyond a reasonable doubt, guilty. If this is your verdict,
3 would you so signify by raising your right hand, please?
4 All twelve jurors have responded with their right hand.

5 As to five, as to the charge of driving under
6 suspension, we the jury, unanimously find the defendant,
7 Charlton L. Hill, beyond a reasonable doubt, guilty. We the
8 jury, unanimously find the defendant, Charlton L. Hill,
9 beyond a reasonable doubt, guilty. If this is your verdict,
10 would you so signify by raising your right hand, please?
11 All twelve jurors have responded with their right hand.

12 And it has been signed by Mr. Bobby Goolsby, on April
13 13, 2011.

14 **THE COURT:** Thank you, Mr. Clerk. Now, while we are
15 in the presence of the jury --- and you may be seated, Mr.
16 Hill. Is there a Motion for which a jury response would be
17 necessary, from defendant?

18 **MR. SWILLEY:** Your Honor, I would make a request to
19 poll the jury at this time.

20 **THE COURT:** All right. Ladies and gentlemen, let's
21 talk a little bit about what that request means. They have
22 asked that the jury be polled. And what is going to happen
23 is, our Clerk is going to call your name individually, and
24 when your name is called, please stand. And you are going
25 to be asked two questions. The first question is going to

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1 be, was this your verdict, and then you answer. And then
2 the next question is, is it still your verdict, and then you
3 answer. So, when your name is called, please follow our
4 clerk's instructions.

5 Now, let me state on the record so there won't be any
6 confusion, that when the Clerk asks you, is this your
7 verdict, or was this your verdict and is it still your
8 verdict, he is referring to all five findings on the verdict
9 form, rather than do this five times for each juror. We are
10 going to ask all five collectively, and please answer. And
11 if there is some distinction, ladies and gentlemen of the
12 jury, on any of the five, then please tell us that when we
13 call upon you.

14 Go ahead, Mr. Suggs.

15 POLLING OF THE JURY

16 **CLERK OF COURT:** Ladies and gentlemen of the jury,
17 the verdict that I just published was the verdict that you
18 just reached in the jury room. When your name is called if
19 you would please stand and respond to those two questions?

20 We will start with the Foreperson, Mr. Bobby Goolsby.
21 Was it your verdict then?

22 **FOREMAN GOOLSBY:** Yes.

23 **CLERK OF COURT:** Is it your verdict now?

24 **FOREMAN GOOLSBY:** Yes.

25 **CLERK OF COURT:** John Dexter, was it your verdict

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1 then?

2 **MR. DEXTER:** Yes.

3 **CLERK OF COURT:** Is it your verdict now?

4 **MR. DEXTER:** Yes.

5 **CLERK OF COURT:** Thank you. Richard Putnam. Was it
6 your verdict then?

7 **MR. PUTNAM:** Yes.

8 **CLERK OF COURT:** Is it your verdict now?

9 **MR. PUTNAM:** Yes.

10 **CLERK OF COURT:** Okay. Thank you. Floyd Cosom, was
11 it your verdict then?

12 **MR. COSOM:** Yes.

13 **CLERK OF COURT:** Is it your verdict now?

14 **MR. COSOM:** Yes.

15 **CLERK OF COURT:** Thank you. Lisa Coe, was it your
16 verdict then?

17 **MS. COE:** Yes.

18 **CLERK OF COURT:** Is it your verdict now?

19 **MS. COE:** Yes.

20 **CLERK OF COURT:** Peter McQueen, was it your verdict
21 then?

22 **MR. MCQUEEN:** Yes.

23 **CLERK OF COURT:** Is it your verdict now?

24 **MR. MCQUEEN:** Yes.

25 **CLERK OF COURT:** Thank you. Willie Gilbert, was it

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1 your verdict then?

2 MR. GILBERT: Yes.

3 CLERK OF COURT: Is it your verdict now?

4 MR. GILBERT: Yes.

5 CLERK OF COURT: Thank you. Joni Hudson, was it
6 your verdict then?

7 MS. HUDSON: Yes.

8 CLERK OF COURT: Is it your verdict now?

9 MS. HUDSON: Yes.

10 CLERK OF COURT: Thank you. James Bonnoitt, was it
11 your verdict then?

12 MR. BONNOITT: Yes.

13 CLERK OF COURT: And is it your verdict now?

14 MR. BONNOITT: Yes.

15 CLERK OF COURT: Thank you. Archie Sarvis, was it
16 your verdict then?

17 MR. SARVIS: Yes.

18 CLERK OF COURT: Is it your verdict now?

19 MR. SARVIS: Yes.

20 CLERK OF COURT: Thank you. Robert Curry, was it
21 your verdict then?

22 MR. CURRY: Yes.

23 CLERK OF COURT: Is it your verdict now?

24 MR. CURRY: yes.

25 CLERK OF COURT: According to my records, that was

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1 all twelve jurors. Any of the twelve jurors --- I'm sorry.

2 LaShanta Grant, was this your verdict?

3 **MS. GRANT:** Yes.

4 **CLERK OF COURT:** And is it your verdict now?

5 **MS. GRANT:** Yes.

6 **CLERK OF COURT:** According to my records, that is
7 all twelve jurors. Any jurors' name who was not called
8 during that process?

9 **THE COURT:** Very good. Thank you, ladies and
10 gentlemen of the jury for your responses. The record
11 reflects that all of our jurors have responded affirmatively
12 to both questions.

13 Now, while we are still in the presence of the jury,
14 are there motions or issues for which a juror response would
15 be necessary from the defense?

16 **MR. SWILLEY:** There is not, Your Honor.

17 **THE COURT:** And now from the state?

18 **MR. HOLT:** There are none, Your Honor.

19 **THE COURT:** All right. Very good. Ladies and
20 gentlemen, what is going to happen now is we are going to
21 have a sentencing hearing. And, I don't require the jurors
22 to stay for a sentencing hearing. You are welcome to stay.
23 But rather than have you sit in the jury box, what we are
24 going to do is let you transition so that if you wish to
25 leave, you can leave. Or if you don't wish to leave, we

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1 will let you go out the door and then come back around and
2 be seated there on the back there on the this side of the
3 courtroom.

4 Let me say to you that in a few days --- well, the
5 first thing I should say is that this concludes your jury
6 service. There will be no further jury draw this week.
7 And, in a few days you are going to receive a small check
8 from the county, or is it ready today, Mr. Clerk?

9 **CLERK OF COURT:** We are printing them now.

10 **THE COURT:** All right. That is going to be the
11 county's expression of gratitude for your service, for your
12 per diem, and for your mileage. It is not going to be
13 enough to retire on, but in just a moment as you leave, I am
14 going to come forward, if you will allow me, and shake your
15 hand, which is my expression of gratitude for a case well
16 tried, and a verdict that is just and fair under these
17 circumstances. And thank you for a job well done.

18 Now, again you are not required to stay. Jurors have
19 different perceptions. Some don't want to stay any longer
20 than they have to, and some want to come back and see the
21 sentencing proceeding. We will wait a moment or two until
22 you have an opportunity to come out of the back and join us,
23 if you wish to do so. But if you will, give me just a
24 moment, and thank you for your service.

25 (Whereupon, a brief recess was taken.)

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1 **THE COURT:** All right. Welcome back to the
2 courtroom, ladies and gentlemen of the jury who have come
3 into the back. We are going to have a sentencing
4 proceeding, but before we do that, let me comment on one
5 issue that had come up during legal arguments during the
6 trial, which was, whether or not the defendant could be
7 fairly charged with multiple crimes that arose out of the
8 same circumstances, the same core set of operative facts. I
9 have had a chance to look at the law on that, and Mr.
10 Swilley, in response to your motion, I would refer you to
11 the case of State v. Cribb, which is a 1992 decision found
12 at 310 S.C. 518; which has held that reckless homicide is
13 not a lesser included offense of Felony DUI, nor is
14 involuntary manslaughter.

15 Also, our court has already ruled previously, in the
16 case of State v. Easterly, which is 322 S.C. 333, and this
17 later affirmed by The Supreme Court, that was a Court of
18 Appeals decision, affirmed by the Supreme Court at 327 S.C.
19 121; in 1997, that there is no double jeopardy violation
20 resulting from punishing a defendant for both reckless
21 homicide and Felony DUI even though they both arise out of a
22 single accident. We have already discussed the Blockburger
23 case which is the case which sets the test of whether or not
24 something is a same offense. These charges, each separate
25 and distinct pass the Blockburger test, because they are all

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1 different offenses, with different elements. Although some
2 may be similar, they each have a different set of elements
3 in their totality. And I also would point you to the case
4 of State v. Hicks, which is 305 S.C. 277; which is said that
5 reckless homicide and involuntary manslaughter convictions
6 arising out of the same event is not double jeopardy. So,
7 again, the Court confirms its decision to send all of these
8 charges to the jury. The jury has found each and every one
9 guilty. Now the Court intends to conduct a sentencing
10 hearing. Let me ask, I asked you for motions that needed a
11 jury response. Are there any further motions for the Court
12 that you would pose at this time concerning these
13 convictions by the jury?

14 **MR. SWILLEY:** Your Honor, I would make a motion for
15 a new trial on all Indictments due to lack of competent
16 evidence, indicating guilt of the defendant.

17 **THE COURT:** All right, sir. Without taking argument
18 from the other side, I am going to deny that Motion.

19 I find that there was ample and even overwhelming
20 evidence in the record for which the jury could find guilt
21 on each of these charges, as they did find.

22 And that Motion is denied. Anything further?

23 **MR. SWILLEY:** There is not, Your Honor.

24 **THE COURT:** All right, very good. Then, what we are
25 going to do at this time is give the victims an opportunity

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1 to speak as well as the defendant, if he wishes. And hear
2 from counsel on sentencing.

3 Let me just say a word to the victims, if I may. You
4 have sat quietly during this proceeding. You have not been
5 able to be a witness. You have not been able, I guess,
6 although definitely a part of this, you have not been a part
7 of the testimonial phase of the case. And that is because
8 the issue really was, in this proceeding, is was the
9 defendant guilty, or was he not.

10 But I want you to understand that victims of crime have
11 multiple rights in these proceedings, including the right to
12 be present, as you know. And to speak to the Court before
13 any sentencing occurs, if you wish to be heard.

14 I am told by Mr. Holt that your family has elected a
15 representative who wishes to be heard. And what I would
16 like to do is first find out from the Solicitor what their
17 position is on sentencing, give the defendant an opportunity
18 to speak, and then give the victim's representative final
19 opportunity to speak before any sentencing is imposed.

20 And just let me say, before we move on, I appreciate
21 your courage in being here. This is not easy, because as
22 the human mind works and things are put aside that are
23 history, although you don't forget, the burden is eased.
24 The pain is not as sharp as it was the day you learned. But
25 when you come back, and you renew, and review, and you sit

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1 here it just brings it all back to the forefront. Again, it
2 takes a lot of courage to be here to do that. I thank you
3 for being here to see that justice is done, for your
4 attendance throughout these proceedings.

5 Now, Mr. Holt, let me hear from you first with regard
6 to sentencing. I also want to ask about the defendant's
7 criminal record, and take any recommendation that you may
8 have. Before you respond, I want to tell our jury, if you
9 hear that the defendant has criminal charges in his past,
10 has convictions, then you may wonder why didn't we know that
11 when we were called upon to decide this case. I will tell
12 you that under our system of justice, under our
13 constitution, if the defendant takes the stand, then those
14 prior charges may come into evidence on the issue of
15 credibility and believability as a witness. Not on the
16 issue of whether he committed the charge for which he is on
17 trial. So, it is a bit of a balancing test. But when the
18 defendant chooses not to testify, the defendant's record is
19 not admissible.

20 All right. Mr. Holt, do you have anything that you
21 wish to report to the Court at this time?

22 PRESENTATION OF PRIOR RECORD

23 MR. HOLT: We do, Your Honor.

24 THE COURT: Please speak up, so we can all hear you.

25 MR. HOLT: I think Your Honor is well aware that

THE STATE VERSUS CHARLTON L. HILL

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1 these charges I didn't have to prove any malice, or any evil
2 intentions. And I think looking back on the defendant's
3 record, you see a lot of that, how his crimes were merely
4 self-serving to himself. There are a ton of driving
5 offenses in here. House breaking and larcenies, for what I
6 assume is the old law for burglary second. There is a good
7 bit of that judge. I think his biggest problem came from
8 drugs, failure to stop for blue lights, possessions, DUI
9 seconds, house breaking. Then you look here in 1998 and you
10 see controlled substances, brown bagging, some more alcohol,
11 more doing how he wants to do. And then the big one came in
12 1988, criminal sexual conduct first degree. This defendant
13 is a registered sex offender, Your Honor. I think that
14 there were minors involved in that. I'm not quite sure. I
15 can't tell the Court honestly what that entails. I don't
16 have that in front of me.

17 **THE COURT:** Tell me, do you have a rap sheet there?

18 **MR. HOLT:** I do, Your Honor.

19 **THE COURT:** What was the sentence for the criminal
20 sexual conduct with a minor, first degree?

21 **MR. HOLT:** I want to say it was ten years, and it ran
22 concurrent with the thirty-year charge he had. He maxed out
23 at eighteen years, is how I understood it.

24 **THE COURT:** All right.

25 **MR. HOLT:** Now, under --- you know, back then

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1 apparently you could get these really big sentences, and max
2 out really early. I don't know how they do back then. I
3 can't really read this old sentencing sheet.

4 **THE COURT:** Very good.

5 **MR. HOLT:** But, Your Honor, I know for a fact that
6 that is what we proved here. That he did just how he wanted
7 to do, and how his actions did to Sylvia Hill. And I
8 believe that the family here has elected to have one person
9 speak, and they would like to be heard, Your Honor.

10 **THE COURT:** Very good. All right. Anything further
11 though from you, Mr. Solicitor?

12 **MR. HOLT:** No, sir. Your Honor, other than just
13 looking at how long this history is, and how full of
14 convictions and crimes. The state is asking for the most
15 that your honor is willing to give.

16 **THE COURT:** Very good. Then ladies and gentlemen,
17 for those of you who may be unfamiliar, CSC, criminal sexual
18 conduct with a minor first degree, means sexual contact or
19 sexual battery, what we use to call rape of a minor, that
20 is, under the age of eleven.

21 All right. Now, we will be glad to hear from you in
22 defense of Mr. Hill, and to hear from Mr. Hill, if he wishes
23 to speak.

24 **STATEMENT BY MR. SWILLEY**

25 **MR. SWILLEY:** Thank you, Your Honor. Mr. Hill is

THE STATE VERSUS CHARLTON L. HILL

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1 forty-eight-years-old. He is from Darlington County. He
2 did graduate high school, and actually has some college,
3 Your Honor.

4 Your Honor, I would ask the Court to be cognitive of
5 the fact that Mr. Hill has made some mistakes in his life.
6 I think to clarify that up, that CSC charge in '88, went
7 down to a third degree, and he received ten years concurrent
8 on another charge that he received. He spent from 1988
9 until 2006 in The Department of Corrections, Your Honor. I
10 believe that comes out to almost eighteen years. He has
11 spent a substantial amount of his life incarcerated, Your
12 Honor, for mistakes that he has made, that he doesn't make
13 any excuse for.

14 I would ask the Court to remain mindful of the fact,
15 also he lost his wife in this matter. He has expressed
16 great remorse to me about this loss. Judge, I don't think
17 Mr. Hill didn't want to shirk any type of responsibility by
18 exercising his right to a jury trial. I would just ask the
19 Court to take all of these things into consideration, and
20 please find some mercy in sentencing Mr. Hill.

21 **THE COURT:** All right. Does Mr. Hill have anything
22 he wishes to say?

23 All right, sir. We are going to place you under oath.
24 Please follow our clerk's instructions, sir.

25 **CLERK OF COURT:** If you would raise your right hand.

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1 MR. HILL: Yes, sir.

2 WHEREUPON, CHARLTON L. HILL

3 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:

4 MR. HILL: Yes, sir.

5 MR. SWILLEY: Your Honor, beg the Court's
6 indulgence.

7 (PAUSE.)

8 MR. HILL: Well, first of all, I would like to thank
9 everybody in Darlington for being here, and giving me a fair
10 trial, officers of the Court, including yourself, Your
11 Honor, Mr. Holt. Mr. Swilley was great. And all I can
12 really do is ask for mercy. I would like to express my
13 condolences, regret, remorse for the death that I didn't
14 cause. Nevertheless, I miss my wife.

15 THE COURT: I'm sorry, did you say, that you did not
16 cause?

17 MR. HILL: Yes, sir.

18 THE COURT: That is what you said?

19 MR. HILL: Yes, sir.

20 THE COURT: Very good. Anything further?

21 MR. HILL: Yes, sir. I would like to express my
22 right, right now to appeal these charges based on several
23 issues, including due process.

24 THE COURT: All right. We are going to go ahead and
25 take you into custody at this time.

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1 **MR. HILL:** Yes, sir.

2 **THE COURT:** I am going to ask you to please submit
3 to the handcuffs from the officer. We will let you be
4 handcuffed in front of you, sir. And you may be seated
5 for the remainder of this procedure. So that he can be
6 seated at the table, and we will switch that out when we
7 leave the courtroom. All right. You may be seated, sir.

8 All right. And, Mr. Holt, who would like to speak
9 for the family?

10 **MR. HOLT:** Your Honor, this is Shirley Clark.

11 **THE COURT:** All right. Ms. Clark, let me get you
12 to come forward, ma'am, if you would, please. And so that
13 we could all hear, if you don't mind coming forward to
14 this microphone, we would be thankful for that.

15 And ma'am, to protect the credibility of these
16 proceedings, we are going to place you under oath as
17 well. Please follow our clerk's instructions.

18 **CLERK OF COURT:** If you would just raise your
19 right hand.

20 **WHEREUPON, SHIRLEY CLARK**

21 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS:**

22 **MS. CLARK:** I do.

23 **THE COURT:** All right. Ma'am, we would be glad
24 to hear from you. Again, thank you for being present
25 today.

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STATEMENT BY SHIRLEY CLARK

1
2 MS. CLARK: The one you called Sylvia, to the six
3 brothers and three sisters, and everyone who knew her called
4 her boy. She was the youngest of ten children, and loved
5 her two daughters and one son. The grandmother of two girls
6 who might remember her, one grandson who will never remember
7 her, and two grandchildren due this year that will never be
8 blessed to know her. She was devoted to each member of her
9 family. She was loving and caring to anyone who called her
10 friend. Willing to help everyone she could, but because of
11 one person, Charlton Hill, a selfish thoughtless act, was
12 violently and tragically snatched away from her family. We
13 were not able to say a proper and permanent goodbye to her.
14 Because of the trauma to her body, we were unable to see her
15 again clothed.

16 We ask the Court to give Charlton Hill the maximum
17 sentence on all charges, because of what he has put this
18 family through, and the fact that we will not see her
19 smiling face or hear her sweet voice again until we meet her
20 in heaven.

21 Maybe with the sentencing the family will be able to
22 close this matter, and move on with our lives, so that each
23 of us can hopefully live and find forgiveness and peace in
24 our own time and place.

25 Once again, we ask the Court to give Charlton Hill the

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1 maximum on all charges, and to keep him from being able to
2 harm anyone else.

3 We thank you for the chance to speak.

4 **THE COURT:** All right. Thank you, ma'am. You may
5 return to your seat.

6 All right. Mr. Holt, do you have sentencing sheets?

7 All right. Mr. Swilley, we need your signature, as well as
8 Mr. Hill's please, if he is available to do so.

9 (PAUSE.)

10 SENTENCE OF THE COURT

11 **THE COURT:** All right. Let's make sure we
12 understand, and the record is clear, what the maximum for
13 these penalties are.

14 A Felony DUI with death resulting, a Felony B, under
15 South Carolina law carries up to twenty-five-years in
16 prison.

17 Failure to stop for a blue light with death resulting
18 carries up to twenty-five-five years in prison.

19 Reckless homicide carries up to ten years in prison.

20 And involuntary manslaughter up to five-years in
21 prison.

22 And the DUS, I believe, is a ninety-day offense at this
23 level.

24 Now, is there any objection to the maximum penalties,
25 which have been called by the Court; from the state?

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1 **MR. HOLT:** There are none, Your Honor.

2 **THE COURT:** All right. From defense?

3 **MR. SWILLEY:** No, Your Honor.

4 **THE COURT:** All right. These are all as provided by
5 the statute.

6 Just one moment, please.

7 **(PAUSE.)**

8 **THE COURT:** Mr. Hill, I am going to get you to stand
9 again, please, sir.

10 What concerns this court in reviewing this case is
11 that, although I am not the finder of fact, what I have
12 before me is because you didn't have a driver's license, and
13 you were driving your car, which may carry as little as
14 thirty-days for a DUS and can even be a fine with no time in
15 jail. You ran from the police. And as a result of running
16 from the police, you killed Sylvia Maddox Hill. What a
17 wasted event over a trivial matter, sir. And when the
18 police --- when the Solicitor tells me your history, your
19 criminal history, I see that this is what it has been. One
20 thing after another that has been stated by Mr. Holt, self-
21 serving, and what is in your best interest. And I am
22 concerned that while I heard you send your condolences to
23 this family, what your defense has been is that in a final
24 indignity is that Sylvia Maddox Hill was driving this car,
25 which is absolutely not possible from the evidence. Every

THE STATE VERSUS CHARLTON L. HILL

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1 shred of evidence both direct and circumstantial puts you in
2 the driver's seat. There comes a time in life when you just
3 need to say, I did it, and I am responsible for it.

4 But you have been given a trial. You have been
5 accorded every right, both constitutional, procedural and
6 substantive right for which you were entitled. You were
7 given the opportunity to testify to this jury to tell them
8 that you did not do that, if you chose to do so, but you did
9 not.

10 For all these reasons, what I find from even after many
11 years on this bench, an act that shocks my conscious, sir.
12 It is absolutely unnecessary and a wasted life.

13 As you probably saw on the video, the police officer
14 who was pursuing you was going a, 115 miles per hour. So
15 that tells us that your speed was either close to or
16 greater than that, and driving drunk all at the same time,
17 without any regard for those who may be in the car with
18 you. All over a DUS which is hard for this court to
19 believe.

20 I find it appropriate to sentence you for the Felony
21 DUI with death resulting to a term of twenty-five-years in
22 the South Carolina Department of Corrections.

23 And then consecutively, I sentence you to an,
24 additional ten-years for failure to stop for a blue light
25 with death resulting.

THE STATE VERSUS CHARLTON L. HILL

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1 For the reckless homicide, I sentence you to ten years
2 concurrently.

3 And involuntary manslaughter, five years concurrently,
4 and DUS, ninety-days concurrently.

5 That means you will have a thirty-five-year prison
6 sentence sir, as a result of these proceedings, and this
7 conviction, from a jury who returned a verdict that is not
8 only just and true, but overwhelmingly required by the
9 evidence before the Court.

10 Now, anything further from the state?

11 **MR. HOLT:** Nothing further from the state at this
12 time, Your Honor.

13 **THE COURT:** From defense?

14 **MR. SWILLEY:** No, Your Honor.

15 **THE COURT:** Please understand, Mr. Hill, your
16 statement in this courtroom, you wish to appeal does not
17 put this matter on appeal. You will have to make sure
18 that your counsel, or other counsel for you appeals this
19 decision, if that is your intent.

20 But again I say to, and you are certainly welcome
21 to appeal. But at some point, to give some dignity to
22 the deceased, you just have to accept responsibility
23 for your actions.

24 I am going to return you now to the detention center,
25 so you can be taken to The Department of Corrections.

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1 To the members of Ms. Hill's family, my best wishes
2 to you.

3 (Whereupon, this trial was concluded at 12:43
4 p.m. on Wednesday, April 13, 2011.)

5 -- END OF TRANSCRIPT --
6

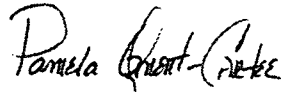
CERTIFICATE OF REPORTER

345

I, the undersigned, Pamela Ozment-Cartee, official court reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the trial of the above captioned case, relative to appeal, in The Court of General Sessions in Darlington County, South Carolina, on the 11th, 12th, and 13th days of April 2011.

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

April 11, 2013

A handwritten signature in cursive script that reads "Pamela Ozment-Cartee".

Pamela Ozment-Cartee
Circuit Court Reporter

CHARLTON L. HILL, #152778
 LIEBER CORRECTIONAL INST.
 P.O. Box 205, MAX-A-224
 RIDGEVILLE, S.C. 29472-020505

13CP160261

COVER LETTER

MR. SCOTT B. SUGGS,
 CLERK OF COURT
 P.O. Box 1177
 DARLINGTON, SC. 29540

FILED
 2013 MAR 25 PM 12:51
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

RE: HILL V. STATE, APPLICATION FOR POST-CONVICTION-RELIEF, 3-21-13.

YOUR HONOR;

PLEASE FIND ENCLOSED FOR FILING WITHIN YOUR OFFICE:

1. ORIGINAL APPLICATION FOR POST-CONVICTION-RELIEF - FORM 5-;
2. VERIFICATION - NOTARIZATION - THEREOF;
3. MOTION TO PROCEED IN FORMA PAUPERIS AND AFFIDAVIT IN SUPPORT THEREOF;
4. MOTION TO ADDRESS ALL ISSUES PURSUANT TO S.C. CODE ANN. § 17-27-80;
5. MOTION FOR EXPENDITURE OF FUNDS FOR INVESTIGATIVE SERVICES PURSUANT TO S.C. CODE ANN. § 17-3-50 (B);
6. AFFIDAVIT IN SUPPORT OF APPLICATION FOR POST-CONVICTION-RELIEF;
7. MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR POST-CONVICTION-RELIEF;
8. ATTACHMENT TO APPLICATION FOR POST-CONVICTION-RELIEF PURSUANT TO S.C. CODE ANN. §§ 17-27-10 THROUGH 17-27-150, PAGES 1 THROUGH 77 AND FORTIOR EXHIBITS I THROUGH LXXXIII, INCLUDING BELATED APPEAL ISSUES 1-A THROUGH 1-G.

RESPECTFULLY SUBMITTED,

Charlton L. Hill, Jr.
 Scott B. Suggs
 TRUE CERTIFIED COPY, 1
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA **13CP1602631**
IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON

FILED

2013 MAR 25 PM 12:51

CHARLTON L. HILL, #152778,
APPLICANT,

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

CASE No.:

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

ORIGINAL APPLICATION,

POST-CONVICTION RELIEF

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 2. MOTION TO ADDRESS ALL ISSUES — UNNUMBERED
 3. MOTION, EXPENDITURE OF FUNDS, INVESTIGATIVE SERVICES — UNNUMBERED
 4. AFFIDAVIT IN SUPPORT OF APPLICATION FOR PCR — A.
 5. MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR PCR — B. — D.
 6. ATTACHMENT TO APPLICATION FOR PCR — PAGES 1-2,
 7. QUESTION #1/ ANSWERS TO 10 AND 11 (a)(b)(c), — PAGES 3-37, I-XXII;
 8. QUESTION #2/ ANSWERS TO 10 AND 11 (a)(b)(c) — PAGES 38-39, XXIII-XXVIII;
 9. QUESTION #3/ ANSWERS TO 10 AND 11 (a)(b)(c) — PAGES 40-44, XXIX-XLVI;
 10. QUESTION #4/ ANSWERS TO 10 AND 11 (a)(b)(c) — PAGES 45-47, XLVII-LXIII;
 11. QUESTION #5/ ANSWERS TO 10 AND 11 (a)(b)(c) — PAGES 48-54;
 12. QUESTION #6/ ANSWERS TO 10 AND 11 (a)(b)(c) — PAGES 55-56, LXIV-LXIX;
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 15. QUESTION #9/ ANSWERS TO 10 AND 11 (a)(b)(c) — PAGES 75-77, LXXV-LXXVII;
 16. QUESTION #10/ ANSWERS TO 10 AND 11 (a)(b)(c) — PAGES 78-79, LXXVIII-LXXIX;

CERTIFIED COPY,
CLERK OF COURT
DARLINGTON COUNTY, SC

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

CHARLTON L. HILL, # 152778)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

13CP160261

APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS - 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 _____ LIEBER CORRECTIONAL INSTITUTION
P.O. BOX 205
RIDGEVILLE, SC. 29472-0205
2. Name and location of Court which imposed sentence _____ GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) _____ DARLINGTON COUNTY COURTHOUSE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) _____	2010 GS 16 1335 FELONY DUI-DEATH;
(b) _____	2010 GS 16 1336 DUS;
(c) _____	2011 GS 16 0442 FAILURE TO STOP-DEATH;
	2011 GS 16 0423 RECKLESS HOMICIDE;
	2011 GS 16 0424 INVOLUNTARY MANSLAUGHTER
5. The date upon which sentence was imposed and the terms of the sentence:

(a) <u>APRIL 13, 2011</u>	FELONY DUI-DEATH = 25 YEARS
(b) <u>35 YEARS</u>	DUS = 90 DAYS CONCURRENT
<u>TOTAL</u> →	FAILURE TO STOP-DEATH = 10 YEARS CONSECUTIVE
	RECKLESS HOMICIDE = 10 YEARS CONCURRENT
	INVOLUNTARY MANSLAUGHTER = 10 YEARS

TRUE CERTIFIED COPY, 1
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

Revised 3/2003

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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (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?
YES APPELLATE CASE NO. : 2011-191446
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE SOUTH CAROLINA COURT OF APPEALS.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DISMISSED: FOR FAILURE TO TIMELY SERVE THE NOTICE OF APPEAL.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MAR 25, 2012.
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. MEARS V. MEARS, 287 S.C. 168, 337 SE 2d 206 (1985)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

SEEKING BELATED APPEAL/ ACTUAL INNOCENCE;

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL / FAILURE TO INVESTIGATE;
- (b) CONVICTION/ SENTENCE IN VIOLATION OF UNITED STATES AND SOUTH CAROLINA
- (c) CONSTITUTIONS/ CONFLICT OF INTEREST/ DOUBLE JEOPARDY.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE ATTACHED: PAGES 1-37, FORTIOR EXHIBITS I-XXII;
- (b) SEE ATTACHED: PAGES 38-66, 75-77, FORTIOR EXHIBITS XXIII-LXIX;
- (c) SEE ATTACHED: PAGES 67-74, FORTIOR EXHIBITS LXX-LXXXIII.

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. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

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 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

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) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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. EMILY M. CRAYTON P.O. BOX 648 DARLINGTON, SC. 29532
 - ii. MATTHEW S. SWILLEY P.O. BOX 648 DARLINGTON, SC. 29532
 - iii. BREEN R. STEVENS P.O. BOX 11569 COLUMBIA, SC 29211
- (b) the proceedings at which each such attorney represented you:
 - i. 17. a, b, c, d.
 - ii. 17. a, b, c, d.
 - iii. 17. d.

19. State clearly the relief you seek in filing this application:

GRANT BELATED APPEAL - PURSUANT TO WHITE V. STATE REVIEW
GRANT NEW TRIAL - PURSUANT TO STRICKLAND V. WASHINGTON
RELEASE FROM CUSTODY DUE TO ACTUAL INNOCENCE

(SEE:
ATTACHED
SHEETS...)

20. Are you now under sentence from any other court that you have not challenged?

NO

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 CLERK OF COURT/R.D.
 DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of DARLINGTON)
CHARLTON L. HILL, #152778)

I, _____, 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.

Charlton L. Hill, Jr.

SWORN to and subscribed before me this 7th
day of March, 2013.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

FILED
2013 MAR 25 PM 12:51
SCOTT E. SUGGS
CLERK OF COURT, D.C.
DARLINGTON COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

CHARLTON L. HILL, #152778

I, _____, 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.

Charlton L. Hill, Jr.
Applicant

SWORN or affirmed to and subscribed before me this
7th day of March, 2013.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

FILED
2013 MAR 25 PM 12:51
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

CHARLTON L. HILL, 152778,
APPLICANT,

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF GENERAL SESSIONS

CASE No. -CP-

13CP160261

MOTION TO ADDRESS ALL ISSUES,

PURSUANT TO

S.C. CODE ANN. § 17-27-80.

APPLICANT, CHARLTON L. HILL, #152778, BY AND THROUGH
COUNSEL, HEREBY MOVES THIS HONORABLE COURT TO DIRECT THE
ATTORNEY GENERAL'S OFFICE TO ADDRESS ALL ISSUES PRESENTED,
PURSUANT TO S.C. CODE ANN. § 17-27-80, AS DIRECTED BY THE
SOUTH CAROLINA SUPREME COURT IN PRUITT V. STATE, 423 S.E.2d 1277
THAT EACH AND EVERY ISSUE PRESENTED BE ADDRESSED AT ANY POST-
CONVICTION-RELIEF HEARING THAT IS HELD ACCORDING TO BRYSON
STATE, 493 S.E.2d 500(1997).

APPLICANT FURTHER ASKS THAT EACH AND EVERY ISSUE
RAISED HERewith BE ADDRESSED BY THIS HONORABLE COURT,
AT THE POST-CONVICTION-RELIEF HEARING THAT IS HELD, AND
THAT THIS HONORABLE COURT DIRECT THAT ALL ISSUES BE ADDRESSED
IN ORDER ISSUED BY THIS HONORABLE COURT.

SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

RESPECTFULLY SUBMITTED,

Charlton L. Hill

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FILED

TRUE CERTIFIED COPY,

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF DARLINGTON

2013 MAR 25 PM 12:52

CASE No.: -CP-

13CP160261

CHARLTON L. HILL, 15278

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

APPLICANT,

VS.

STATE OF SOUTH CAROLINA,
RESPONDANT.

MOTION FOR EXPENDITURE OF FUNDS

FOR INVESTIGATIVE SERVICES

PURSUANT TO

S.C. CODE ANN. § 17-3-50 (B)

APPLICANT, ABOVE NAMED, BY AND THROUGH COUNSEL, HEREBY MOVES THE HONORABLE COURT, PURSUANT TO S.C. CODE ANN. § 17-3-50 (B), FOR AN EXPENDITURE OF FUNDS FOR EXPERT SERVICES. IN SUPPORT OF THIS MOTION, APPLICANT APPRISES THE HONORABLE COURT OF THE FOLLOWING FACTS:

1. ON APRIL 13, 2011, APPLICANT WAS CONVICTED OF A MULTIPLICITY OF CHARGES, INCLUDING DRIVING UNDER THE INFLUENCE WITH DEATH RESULTING, et. al., STEMMING FROM THE SAME SET OF FACTS.
2. SAID CONVICTIONS RELIED HEAVILY UPON EVIDENCE PROFFERED BY STATE'S EXPERT WITNESSES, INCLUDING TESTIMONY INTERPRETING BLOOD/ALCOHOL ANALYSES AND REGARDING THE EFFECTS THEREOF.
3. THERE ARE APPARENT DISCREPANCIES BETWEEN HOSPITAL AND SLED LABORATORIES, BLOOD/ALCOHOL ANALYSES RESULTS, AND PROCEDURAL ERRORS CONCERNING THEIR RESPECTIVE POLICIES. TRUE CERTIFIED COPY, 1
4. DNA EVIDENCE SUBMITTED TO SLED FROM DARLINGTON COUNTY SHERIFF'S OFFICE WAS RETURNED UNTESTED. (SEE FORTIOR EXHIBITS ATTACHED AND TRIAL TRANSCRIPT, PAGE 285, LINE 17-18)

SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

RESPECTFULLY SUBMITTED,

Charlton L. Hill

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

CHARLTON L. HILL, #152778,
APPLICANT,

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF GENERAL SESSIONS

CASE No.: -CP-

13CP160261

AFFIDAVIT IN SUPPORT

OF APPLICATION FOR

POST-CONVICTION RELIEF

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DARLINGTON COUNTY, S.C.

IN SUPPORT OF THIS APPLICATION FOR POST-CONVICTION RELIEF, I, CHARLTON L. HILL,

DO HEREBY ASSERT AND ATTEST THAT: COUNSEL RENDERED CONSTITUTIONALLY

INEFFECTIVE ASSISTANCE IN THE FOLLOWING PARTICULARS;

I WAS PREJUDICED TO THE EXTENT THAT THERE EXISTS A CERTAIN POSSIBILITY

THAT COUNSEL'S DEFICIENT PERFORMANCE AFFECTED THE OUTCOME OF MY TRIAL;

AS A DIRECT RESULT OF COUNSEL'S DEFICIENT PERFORMANCE, I AM ENTITLED TO

RELIEF IN THE FORM OF A VACATED SENTENCE OR A NEW TRIAL, WHEREUPON

MY ACTUAL INNOCENCE MAY BE PROVEN.

IF IT PLEASE THE COURT, AN EVIDENTIARY HEARING IS NECESSARY IN THIS MATTER

IN ORDER TO PRESENT THOSE PARTICULARS HERewith PRESCRIBED BY AND

THROUGH THIS INTERROGATIVE: PAGES 1-77, FORTIOR EXHIBITS I- XXX III.

RESPECTFULLY SUBMITTED,

S/S

Charlton L. Hill

CHARLTON LEFATE HILL

TRUE CERTIFIED COPY, 7

MARCH 15, 2013

CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

CHARLTON L. HILL, 152778,
APPLICANT,

VS.

STATE OF SOUTH CAROLINA,
RESPONDENT.

IN THE COURT OF GENERAL SESSIONS

CASE No. : 13CP160261

MEMORANDUM OF LAW

IN SUPPORT OF

APPLICATION FOR

POST-CONVICTION RELIEF

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CLERK OF COURT, D.C.D.
DARLINGTON COUNTY, S.C.

COMES NOW, THE ABOVE-NAMED APPLICANT, WHO ASKS THE HONORABLE COURT TO GRANT HIM RELIEF IN THIS MATTER BECAUSE HIS RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED PURSUANT TO THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, § 14 OF THE SOUTH CAROLINA CONSTITUTION AND HIS RIGHTS TO DUE PROCESS OF LAW AS GUARANTEED PURSUANT TO THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, § 3 OF THE SOUTH CAROLINA CONSTITUTION HAVE BEEN VIOLATED.

FOLLOWING THIS MEMORANDUM OF LAW, THERE ARE AN INITIAL TEN (10) DETAILED ANSWERS (PAGES 1-77 OF ATTACHMENT) TO QUESTIONS 10(a)(b)(c) AND 11(a)(b)(c) OF FORM 5-APPLICATION FOR POST-CONVICTION RELIEF—HEREWITH AND HEREBY SET FORTH ACCORDINGLY: [1] ARGUMENT—

QUESTION POSED AS TO COUNSEL'S PREJUDICIAL DEFICIENT PERFORMANCE OR COURT'S ERRORS WHICH VIOLATED APPLICANT'S CONSTITUTIONAL RIGHTS;

[2] FACTS—CONCISE INSTANCES OF RELEVANT INFORMATIONS, INCLUDING TRIAL MINUTES/COLLOQUIES AND DOCUMENTS (FORTIOR EXHIBITS 1-LXXXIII);

[3] DISCUSSION—DISCOURSE AND CITATIONS OF CORRELATIVE CASE LAW; RMC
DARLINGTON COUNTY, SC

THAT SHALL JUSTIFY THE HONORABLE COURT IN GRANTING THE REQUESTED RELIEF.

1. ARD V. CATOE 642 SE 2d 590, 597
2. BERGER V. US. 295 US 78, 88
3. BROOKS V. TEXAS 381 F. 2d 619
4. BROWN V. STATE 540 SE 2d 846
5. BRUBAKER V. DICKSON 310 F. 2d 30
6. COLES V. PEYTON 389 F. 2d 224, 226
7. ENLEE V. SEABOARD 110 SC 137
8. EVITTS V. LUCEY 469 US 387
9. FAIRFAX V. SMITH 285 SC 458
10. GARLAND V. COX 472 F. 2d 875
11. GILCHRIST V. STATE 565 SE 2d 281
12. GOODWIN V. BALKCOM 684 F. 2d 794, 805
13. HUDSON V. COM 462 SE 2d 913
14. ILLINOIS V. VITALE 447 US 410
15. JONES V. BARNES 463 US 745
16. KELLY V. S.C. 534 US 246
17. MATTHEWS V. STATE 350 SC 272
18. NORRIS V. CLINKSCALES 47 SC 488
19. SHARPER V. STATE 279 SC 264
20. STATE V. BALDWIN 540 SE 2d 815
21. STATE V. BUTLER 230 SC 159
22. STATE V. CARTER 353 SE 2d 875
23. STATE V. CALDWELL 300 SC 494, 504
24. STATE V. CROSBY 355 SC 47
25. STATE V. DAWKINS 268 SC 110
26. STATE V. DURDEN 212 SE 2d 587
27. STATE V. FISHER 206 SC 220
28. STATE V. GRAMPUS 288 SC 395
29. STATE V. KELLY 343 SE 2d 851
30. STATE V. KENNEDY 272 SC 231
31. STATE V. KING 71 SE 2d 793
32. STATE V. MCINTIRE 221 SC 504
33. STATE V. PIPKIN 294 SC 336
34. STATE V. PRIESTER 391 SE 2d 227
35. STATE V. QUEEN 264 SC 515, 521
36. STATE V. RUDD 355 SC 543, 548
37. STATE V. WHITE 15 SC 381
38. TODD V. STATE 355 SC 396
39. US v. FIORITO 300 F. 2d 424
40. US v. LAMPLEY 127 F. 3d 123, 1246
41. U.S. V. LULASKI 341 F. 2d 325, 330
42. U.S. V. LOWN 355 US 339
43. U.S. V. MEYER 810 F. 2d 1242, 1247
44. U.S. V. MONTROYA 45 F. 3d 1286, 1299

360 U.S. V. WILSON 639 F.2 500

46. WALKER V. U.S. 155 F.3 180

47. WILLIAMS V. BETO 354 F.2 698

48. WHITE V. STATE 263 SC 110

49. STRICKLAND V. WASHINGTON,

466 U.S. 668, 688.

THE APPLICANT ASSERTS THAT AN EVIDENTIARY HEARING IS NECESSARY IN THIS MATTER TO PRESENT THE GROUNDS HEREIN SET FORTH, INCLUDING INEFFECTIVE ASSISTANCE OF COUNSEL. SEE: SHARPER V. STATE, 279 SC 264, 305 SE 2d 247 (1983)

THE APPLICANT RESERVES THE RIGHT TO AMEND THIS ORIGINAL APPLICATION PURSUANT TO SOUTH CAROLINA CODE OF LAWS § 17-27-90, IN WHICH IT IS REQUIRED THAT ALL GROUNDS FOR RELIEF AVAILABLE TO THE APPLICANT ARE TO BE RAISED IN THE ORIGINAL, SUPPLEMENTAL, OR AMENDED APPLICATION.

FURTHER, THE APPLICANT HEREBY REQUESTS THAT THE HONORABLE COURT APPOINT ADEQUATE AND EFFECTIVE COUNSEL TO REPRESENT HIM IN THIS MATTER IN ACCORDANCE WITH SOUTH CAROLINA CODE OF LAWS § 17-27-60 OF THE UNIFORM POST-CONVICTION PROCEDURE ACT AS WELL AS RULE 71.1(d), OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE.

RESPECTFULLY SUBMITTED,

Charlton L. Hill

CHARLTON L. HILL, #152778

LIEBER CORRECTIONAL INST.

P.O. B. 205, MAX-A-224

RIOGEVILLE, S.C. 29472

____APPLICANT____

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DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

Charlton Hill, #152778
Applicant,

VS.

State of South Carolina,
Respondent,

IN THE COURT OF COMMON PLEAS

C/A No. _____

13CP160261

ATTACHMENT TO APPLICATION

FOR POST - CONVICTION RELIEF

Pursuant to S.C. Code Ann -

§17-27-10 through §17-27-150

The Applicant herein was Arrested, Tried, Convicted upon the Indictments as set forth in this Application for Post-Conviction Relief. He was also represented by Counsel as alleged in this Application as indicated as Attorney of Record that the Applicant submit/Contends provided Ineffective Assistance in Controvention/ degradation of Applicant's Rights, Protections, Guarantees Pursuant to the Sixth Amendment to the United States Constitution, South Carolina Constitution Art. 1. § 14; South Carolina Code Ann §17-23-60; Strickland V. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). As his/their Conduct so undermined the proper Functioning of the Adversarial process that the Trial cannot be relied upon as having produced a Just result. At the end of Trial during the sentencing I addressed the Court in front of Trial Counsel and advised them that I wanted a Direct Appeal and Trial Counsel filed the Notice of Appeal but it was Late in a Violation of S.C.A.C.R. Rule 203(b)(2) therefore Applicant is Entitled to White V. State, 263 S.C. 110, 208 S.E. 2d 35 (1974) White Review because he has never Waived his Right to Direct

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Appeal. See: Trial Transcript Page : 337 , Applicant told the Court at that time that he wanted an Appeal/Direct Appeal.

Counsel's Representation Fell below an Objective Standard of Reasonableness and But for Counsel's Unprofessional Errors a Reasonable Probability Exist that the result of the proceeding would have been different. Applicant herein is entitled to a Belated Appeal.

BELATED APPEAL REQUESTED

An Applicant who meets the Burden of showing that the Applicant did not Knowingly and Voluntarily Waive his Right to a Direct Appeal of his Trial Conviction is entitled to a Belated Appeal. See: Wilson V. State, 348 S.C. 215, 559 S.E. 2d 581 (2002); Davis V. State, 288 S.C. 290, 342 S.E. 2d 60 (1986); White V. State, 263 S.C. 110, 208 S.E. 2d 35 (1974). And Clearly Established United States Supreme Court Controlling Federal Law. See: Jones V. Barnes, 463 U.S. 745, 103 S. Ct. 3308; Evitts V. Lucey, 469 U.S. 387, 105 S. Ct. 830.

Applicant herein is Attaching Each Direct Appeal Issue that he intended to raise on his Direct Appeal to Support his Claim herein and also Applicant at this time is raising his Post-Conviction Relief Issues that he also wants to be Addressed as to Ineffective Assistance of Trial Counsel and who ever the Attorney is that is Appointed to Represent the Applicant he now wants the Court and that Counsel to be Aware that if a Belated Appeal is Granted that he wants a Cross Appeal on the remainder of his Issues on Ineffective Assistance of Counsel because as a matter of Law Applicant is Entitled to Belated Appeal.

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ARGUMENT

I. WAS TRIAL COUNSEL CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO FILE NOTICE OF APPEAL ADEQUATELY AND/OR IN A TIMELY MANNER?

FACTS

MR. HILL: YES, SIR. I WOULD LIKE TO EXPRESS MY RIGHT, RIGHT NOW TO APPEAL THESE CHARGES BASED ON SEVERAL ISSUES, INCLUDING DUE PROCESS. TRIAL TRANSCRIPT, PAGE 337, LINES 21, 22, 23.

THE COURT: PLEASE UNDERSTAND, MR. HILL, YOUR STATEMENT IN THIS COURTROOM, YOU WISH TO APPEAL DOES NOT PUT THIS MATTER ON APPEAL. YOU WILL HAVE TO MAKE SURE THAT YOUR COUNSEL, OR OTHER COUNSEL FOR YOU APPEALS THIS DECISION, IF THAT IS YOUR INTENT.

TRIAL TRANSCRIPT, PAGE 343, LINES 15-19.

DISCUSSION

APPLICANT IN OPEN COURT ASKED FOR AN APPEAL, CITING HIS RIGHT TO DUE PROCESS, ALSO REFERRING TO HIS RIGHT TO APPEAL BASED ON SEVERAL OTHER ISSUES.

THE COURT ACKNOWLEDGED APPLICANT'S EXPRESSED RIGHT TO APPEAL.

THE ABOVE-REFERENCE APPEAL ISSUES ARE CONTAINED HEREIN, AND BRIEFED IN COMPLIANCE WITH THE REQUIREMENTS OF RULE 207(b), TO THE EXTENT POSSIBLE BY APPLICANT.

APPLICANT, AS A MATTER OF LAW, CONTENDS THAT HE IS ENTITLED TO A BELATED APPEAL BECAUSE HE DID NOT KNOWINGLY AND VOLUNTARILY WAIVE HIS PROTECTED RIGHT TO APPEAL HIS TRIAL CONVICTION.

SEE WHITE V. STATE, 263 S.C. 110, 208 S.E. 2d 35; EVITT'S V. LUCEY, 469 U.S. 387.

BELETED APPEAL ISSUE 1-A

A) MOTION TO SUPPRESS BLOOD TEST ANALYSES RESULTS, 2010-GS-16-1335, et. al., SUBMITTED BY AND THROUGH TRIAL COUNSEL, PURSUANT TO RULE 6 SCRPC, CHALLENGING THE ACCORD AND THEREBY THE VALIDITY OF SAID RESULTS, BASED ON INTERSTICES AND HOLES IN THE CHAIN OF CUSTODY; AND RULED UPON BY THE HONORABLE COURT AT PAGE 75, LINES 17-25, PAGE 76, LINE 1, AGAIN AT PAGE 217, LINES 10-21 OF THE TRIAL TRANSCRIPT.

FACTS

MOTION-SUPPRESS CHAIN OF CUSTODY

THE COURT: ALL RIGHT. CHAIN OF CUSTODY. JUST TELL ME WHAT IT IS THAT YOU HAVE WITH REGARD TO CHAIN OF CUSTODY. WHAT EVIDENCE DO YOU INTEND TO PRODUCE, AND THEN WE WILL GO BACK TO MR. SWILLEY TO HEAR WHAT HE BELIEVES THE PROBLEM WITH IT MAY BE.

MR. HOLT: THANK YOU VERY MUCH, JUDGE. WE ARE GOING TO HAVE MARIA KOONTZ FROM CAROLINA PINES HOSPITAL, WHO TOOK THE BLOOD, SEALED THE BLOOD, AND THEN GAVE IT TO OFFICER PAT LEE OVER THERE WHO WAS WATCHING THE ENTIRE TIME. OFFICER RUSS HARRELL, EVIDENCE CUSTODIAN WITH DARLINGTON COUNTY SHERIFF'S OFFICE COMES TO THE HOSPITAL COLLECTS THE BLOOD FROM PAT LEE THERE,

AND RETURNS THE BLOOD TO DARLINGTON COUNTY SHERIFF'S OFFICE TO A REFRIGERATOR. THEN, SOME DAYS LATER, RUSS HARRELL IS RESPONSIBLE FOR THAT EVIDENCE THE ENTIRE TIME, TAKES IT TO SLED WHERE IT IS ANALYZED BY A JENNIFER BROWN. I AM GOING TO HAVE ALL OF THOSE PEOPLE COME AND TESTIFY TO THE CHAIN, YOUR HONOR. I HAVE READ, AS I AM SURE YOUR HONOR AND MR. SWILLEY HAVE THE MOST RECENT CASE ON THIS FROM THE SUPREME COURT, I BELIEVE IS THE HATCHER CASE. I THINK WE COMPLY COMPLETELY WITH HATCHER. I DON'T REALLY UNDERSTAND AT THIS TIME WHERE THE PROBLEM IS.

THE COURT: VERY GOOD. WHAT IS YOUR COMPLAINT, HAVING LOOKED AT THE EVIDENCE, MR. SWILLEY, WHAT IS YOUR COMPLAINT ABOUT THE CHAIN OF CUSTODY?

MR. SWILLEY: YOUR HONOR, I BELIEVE THAT ONCE IT GETS TO SLED, TRANSPORTED BY MR. HARRELL, WHO IS THE EVIDENCE CUSTODIAN, I DO THINK THERE ARE SOME INTERSTICES AS TO WHEN IT GETS TO SLED, IF IT WAS DIRECTLY GIVEN TO MS. BROWN, WHO THEN ANALYZED IT IN AND OF HERSELF. WHETHER OR NOT SHE MAY HAVE GIVEN IT TO ANY OTHER SLED PERSONNEL, I THINK MAY BE AT ISSUE HERE.

AS YOUR HONOR KNOWS ALL CHEMICAL ANALYSIS FOR CRIMINAL MATTERS, I DO BELIEVE DO GO TO SLED TO BE ANALYZED. THAT IS THE ENTITY FOR WHICH DOES THIS, YOUR HONOR. I BELIEVE THERE MAY BE SOME INTERSTICES

IN THE CHAIN ONCE IT GETS TO SLED, AND THAT IS WHAT I AM CHALLENGING FROM THE STATE AT THIS TIME.

THE COURT: WHAT EVIDENCE DO YOU HAVE THAT THERE ARE SOME MISSING PERSONS WITHIN THE CHAIN?

MR. SWILLEY: BEG THE COURT'S INDULGENCE FOR JUST, ONE MOMENT? (PAUSE)

MR. SWILLEY: YOUR HONOR, I DON'T HAVE THE EVIDENCE FOR WHAT MR. HOLT SAYS AS TO CHAIN. I DON'T QUESTION THE VERACITY OF WHAT HE SAID. YOUR HONOR, HOWEVER, I DO THINK THAT MAYBE WHEN MR. HARRELL, IF AND WHEN HE DID TAKE IT TO SLED AND GIVE IT TO MS. BROWN THAT THERE WOULD BE OTHER PEOPLE THAT WOULD BE INVOLVED IN THIS PROCEDURE FOR TESTING THE BLOOD OF BOTH THE DECEDENT AND THE DEFENDANT FOR SUBSTANCES THAT THEY WERE LOOKING FOR. SO, YOUR HONOR, I WOULD JUST CONTEND THAT THERE ARE HOLES OR INTERSTICES AT THIS JUNCTURE IN THE CHAIN OF CUSTODY.

THE COURT: ALL RIGHT. AND WHAT IS YOUR WITNESS GOING TO TESTIFY TO, MR. HOLT, ABOUT WHAT HAPPENS ONCE MR. HARRELL DELIVERS THAT PACKAGE TO SLED, PUTS IT IN THE EVIDENCE BOX, WHAT HAPPENS TO IT?

MR. HOLT: YOUR HONOR, SHE WILL TESTIFY ABOUT HOW THE EVIDENCE WILL PROBABLY BE SEALED THERE. I KNOW FOR A FACT, AND MS. KOONTZ WILL TESTIFY TO HOW SHE SEALED THE BAGGAGE AT THE HOSPITAL. MS. BROWN

WILL PROBABLY GIVE THE TYPICAL SLED PROCEDURES FOR HOW THE EVIDENCE IS HANDLED. ASSIGNED A CASE NUMBER, A BAR CODE, SCANNER, HOW THE SCANNER IS USED ANYTIME THAT EVIDENCE IS TRANSPORTED. THIS TYPE OF EVIDENCE IS BOTH BIO-HAZARD AND SOMETHING THAT NEEDS TO BE REFRIGERATED. SO, I AM SURE SHE WILL TESTIFY TO THE SPECIFIC LOCATION AT SLED FOR WHERE IT IS KEPT. JUDGE, I THINK WE AREN'T REALLY GOING TO HAVE A PROBLEM. I ACTUALLY WANT TO QUOTE SOME OF THE LAW --- I AM ONLY AS FAR AS --- THE STATE ONLY HAS TO PRODUCE THE CHAIN AS FAR AS PRACTICAL AND IT IS OBVIOUS, YOUR HONOR. BUT, WE DON'T NEED TO GET EACH AND EVERY SINGLE PERSON AT SLED. AND I THINK THERE IS A DIRECT QUOTE IN THE CASE --- I CAN'T THINK WHO MAY OR MAY NOT HAVE TESTIFIED, OR TOUCHED THE EVIDENCE IN SOME INSIGNIFICANT WAY. I THINK IF I CAN, ESTABLISH MY POLICY THROUGH MS. BROWN. IF I CAN ESTABLISH THAT THE EVIDENCE WAS SEALED, IF I CAN ESTABLISH HOW MS. BROWN CHECKED THE EVIDENCE AND DOUBLE CHECKED IT, AND WHO BACKED UP HER WORK, I DON'T THINK THAT THE STATE NEEDS TO PRODUCE ANYBODY ELSE.

THE COURT: IS MS. BROWN HERE TODAY?

MR. HOLT: SHE IS NOT, YOUR HONOR.

THE COURT: VERY GOOD. MR. SWILLEY, THE COURT WILL DECLINE BASED ON WHAT I HAVE HEARD FROM THE STATE AS AN INITIAL IMPRESSION, IT SOUNDS THAT THERE IS SUFFICIENT EVIDENCE TO ESTABLISH THE CHAIN

BOTH EXTERNAL AND INTERNAL TO SLED THAT WOULD BE SUFFICIENT FOR ADMISSION TO TRIAL. THE COURT DECLINES TO GRANT RELIEF AT THIS TIME. BUT AFTER YOU HAVE QUESTIONED THE WITNESSES DURING THE COURSE OF THE TRIAL, IF THERE IS SOME ISSUE ABOUT THE CHAIN THAT WOULD COME OUT BEFORE THE ANALYSIS OF IT WOULD BE, AND WE WOULD AT THAT TIME TAKE IT UP.

MR. SWILLEY: THANK YOU, YOUR HONOR.

SEE TRIAL TRANSCRIPT, PAGE 72, LINES 10-25, PAGE 73, LINES 1-25, PAGE 74, LINES 1-25, PAGE 75, LINES 1-25, PAGE 76, LINES 1 AND 2.

JENNIFER G. BROWN -- DIRECT EXAMINATION

MR. HOLT: YOUR HONOR, AT THIS TIME THE STATE WOULD MOVE TO HAVE HER REPORT ADMITTED INTO EVIDENCE AS STATE EXHIBIT NUMBER 124.

THE COURT: WHAT SAYS THE DEFENSE?

MR. SWILLEY: YOUR HONOR, I DON'T BELIEVE THE OFFICIAL LINK OF CHAIN OF CUSTODY HAS BEEN ESTABLISHED UNDER RULE 6. I DON'T BELIEVE THAT SHE TESTIFIED THAT SHE GOT --- FROM WHOM SHE GOT THE SAMPLE FROM.

THE COURT: OKAY. SUSTAINED.

Q. NOW, WITHOUT TALKING ABOUT THIS, AND WE ARE GOING TO SUM THIS UP REAL QUICK. LET ME ASK YOU THIS. YOU ARE A TOXICOLOGIST?

A. CORRECT.

Q. DO LAW ENFORCEMENT OFFICERS JUST BRING YOU STUFF, AND YOU JUST

TAKE IT AND KEEP IT, AND WORK ON IT? HOW DOES THE PROCESS WORK AT SOUTH CAROLINA LAW ENFORCEMENT DIVISION?

A. NO, OFFICERS CAN'T DIRECTLY LEAVE ME EVIDENCE. THEY BRING IT TO OUR LOG-IN DEPARTMENT. AND IT IS GENERALLY NOT A BUNCH OF OFFICERS. IT IS USUALLY THE SUBMITTING OFFICER, WHICH CAN BE THE OFFICER THAT GOT THE SAMPLE, OR IT CAN BE A COLLECTION TYPE OF PERSON. THEY BRING IT TO OUR LOG-IN DEPARTMENT WHICH IS ON OUR FIRST FLOOR. AND THERE IS PAPERWORK THAT GOES ALONG WITH IT. AND IT IS GIVEN INTO AN EVIDENCE BAG. IT IS GIVEN A UNIQUE BAR-CODE IDENTIFIER, SO EVERY CASE IS A DIFFERENT NUMBER. AND SO, THAT IS HOW WE TRACK OUR EVIDENCE THROUGH THE SYSTEM.

Q. NOW, SPECIFICALLY IN THIS CASE, EARLIER THE JURY HEARD TESTIMONY THAT RUSS HARRELL DEPOSITED THE BLOOD SAMPLES AT SLED. CAN YOU TELL ME WHO HE GAVE IT TO?

A. YES. HE GAVE IT TO OUR LOG-IN TECHNICIAN, WHO IS NIKKI PERRY.

Q. AND FOLLOWING FROM THERE, CAN YOU TELL ME WHAT HAPPENS WITH THE BLOOD?

A. YES. FROM THERE, THE BLOOD WENT INTO THE TOXICOLOGY EVIDENCE INTAKE STORAGE, WHICH IS IN OUR LOG-IN DEPARTMENT. FROM THERE IT WAS PICKED UP BY PATRICIA COOK, SHE IS ALSO A LOG-IN TECHNICIAN. SO, SHE IS GOING TO GIVE THE EVIDENCE TO A TECHNICIAN FROM MY DEPARTMENT IN TOXICOLOGY. AND FROM THERE IT WAS PHOTOGRAPHED FOR OUR PURPOSES FOLLOWING THE OUTSIDE CONTAINER ALL THE WAY DOWN TO THE EVIDENCE.

AND THEN FROM THERE IT WAS PUT INTO OUR TOXICOLOGY REFRIGERATOR. ONLY TOXICOLOGISTS AND A FEW OTHER HIGHER-UPS IN OUR SLED ARE ABLE TO ACCESS THAT. WE ALL HAVE A CHINA KEYBOARD, AND SO WE SWIPE IT, AND IF YOU ARE NOT IN OUR DEPARTMENT, IT DOESN'T OPEN.

Q. NOW, THROUGHOUT THIS PROCESS WHERE THE BLOOD GOES FROM NIKKI PERRY ON UP TO YOU, ARE PHOTOGRAPHS TAKEN OF IT?

A. ONCE IT GETS TO OUR DEPARTMENT IT IS. BUT WE ALL HAVE A BARCODE AND ONCE IT GOES SPECIFICALLY TO THAT EVIDENCE TO EVERYTHING. SO EVERYTHING IS BAR CODED, SO YOU CAN'T JUST SCAN SOMEONE ELSE'S BARCODE AND PRETEND LIKE THEY DID IT. IT IS VERY PRECISE.

Q. AND DOES THE EVIDENCE REMAIN SEALED EVERY TIME IT PASSES HANDS?

A. IT REMAINS SEALED, YES.

Q. OKAY. AND, WHEN RUSS HARRELL GAVE IT TO NIKKI PERRY, AND EVENTUALLY MADE ITS WAY TO YOU, WAS IT LABELED THE ENTIRE TIME?

A. YES.

MR. HOLT: ALL RIGHT. YOUR HONOR, AT THIS TIME THE STATE WOULD MOVE TO ADMIT, I BELIEVE IT IS 124.

THE COURT: ALL RIGHT. IS THERE AN OBJECTION?

MR. SWILLEY: YES, YOUR HONOR. I STILL DON'T BELIEVE IN THE RECORD THERE HAS BEEN TESTIMONY PROFFERED THAT WOULD SATISFY A CHAIN OF CUSTODY UNDER RULE 6, AS FAR AS THE IDENTITY OF THOSE THAT HANDLED THE SUBSTANCE. AS FAR AS PRACTICAL, I DON'T BELIEVE THE WITNESS HAS TESTIFIED FROM WHOM

SHE ACTUALLY GOT THE SAMPLE, WHEN AND WHERE, I BELIEVE.

THE COURT: ALL RIGHT THE OBJECTION IS OVER-RULED. THE COURT FINDS THAT THE REQUIREMENT FOR THE RULE HAS BEEN MET. YOU MAY QUESTION THE WITNESS ABOUT THAT, IF YOU WISH ON CROSS EXAMINATION. BUT THE OBJECTION IS OVERRULED. LET'S MAKE 124 IN EVIDENCE OVER OBJECTION. SO NOTED, YOU MAY PROCEED.

WHEREUPON, STATE'S EXHIBIT NUMBER 124 IS MARKED AND ADMITTED INTO EVIDENCE OVER OBJECTION. SEE TRIAL TRANSCRIPT, PAGE 214, LINES 13-15, PAGE 215, LINES 1-25, PAGE 216, LINES 1-25, PAGE 217, LINES 1-21.

BE LATED APPEAL ISSUE 1-B

B) MOTION FOR A CHANGE OF VENUE, 2010-GS-16-1335, et. al., SUBMITTED BY AND THROUGH TRIAL COUNSEL, PURSUANT TO SCRCP, REQUESTING THAT THE JURY TRIAL BE MOVED TO ANOTHER COUNTY BECAUSE OF PRETRIAL PUBLICITY AND SUBSEQUENT PREJUDICE; AND RULED UPON BY THE HONORABLE COURT AT PAGE 54, LINES 1-21.

FACTS

MOTION FOR A CHANGE OF VENUE

THE COURT: ALL RIGHT. LET'S TAKE THESE IN THIS ORDER. FIRST OF ALL, LET'S TAKE A LOOK AT THE VENUE ISSUE. TELL ME WHAT REASON YOU HAVE TO WISH TO CHANGE THE VENUE; WHICH LADIES AND GENTLEMEN, MEANS TO MOVE THIS TRIAL TO ANOTHER COUNTY. WHAT IS YOUR ARGUMENT?

MS. CRAYTON: THANK YOU, YOUR HONOR. WE WOULD STATE THAT THERE HAS BEEN PRETRIAL PUBLICITY IN THIS CASE, AND SOME OF WHICH IS ACTUALLY FACTUAL. AND WE WOULD STATE THAT THAT HAS CAUSED PREJUDICE, AND WE WOULD ASK THAT THE VENUE BE CHANGED FOR THAT REASON, YOUR HONOR. AND IF YOU LIKE, I DO HAVE SEVERAL ARTICLES I CAN PASS UP

TO YOU IF YOU WOULD LIKE TO REVEAL THAT.

THE COURT: WELL JUST TELL ME WHAT THEY ARE, AND WHEN THEY WERE PUBLISHED PLEASE.

MS. CRAYTON: Okay. We have, of course, there were several articles published, and we also have the internet articles. This one was updated --- let me see, it was posted on January 11, and updated February 4, 2010. The second article was posted January 11, 2010. And the third I have is March 24, 2011.

THE COURT: All right. What says the state?

MR. HOLT: Your Honor, we are obviously against the change of venue. I think if they rely solely on pretrial publicity, then I believe the relevant question becomes not was there pretrial publicity, but did it fix in the minds of the jurors such an intent that they could only reach one outcome. And I don't know if I am phrasing that right, but I think --- the question more or less revolves around how influenced the jurors were. And I think you can definitely in any criminal case --- there is going to be some amount of internet on SCNOW. There is going to be some amount of Florence Morning News, or a radio show, or something like that. And I think the jurors here today all said that they hadn't formed any opinion about this. I think when we qualified the jury we went through several questions on their opinions and things of that nature. And I don't think there is any amount of evidence of fixed opinions in the mind of the jury.

THE COURT: ALL RIGHT. MS. CRAYTON, LET ME RESPOND TO YOU.

THE COURT, WHEN I QUALIFIED THIS PANEL, I ASKED THEM SPECIFICALLY ABOUT MEDIA COVERAGE, KNOWING THAT THERE HAD BEEN SOME MEDIA, AND THAT THERE WAS AN ISSUE PENDING ON THE CHANGE OF VENUE. I HAD TWO JURORS WHO STOOD AND TOLD ME THAT THEY HAD SEEN MEDIA REPORTS OF THIS CASE. I AGREED TO TALK WITH THEM PRIVATELY, BUT THEN BOTH OF THOSE JURORS WERE DISQUALIFIED FOR OTHER REASONS. IT WOULD APPEAR TO THE COURT THAT PERHAPS THEY MAY HAVE SEEN ARTICLES, BUT THEY HAD HAD A DUI RELATED TRAGEDY OR PROBLEM WITHIN THEIR OWN FAMILY, WHICH ULTIMATELY LEAD THROUGH THEIR CANDOR TO THEM BEING DISQUALIFIED IN THIS CASE. SO I AM NOT AWARE OF ANY JUROR SITTING ON THIS PANEL WHO TOLD US THAT THEY HAD KNOWLEDGE OF THIS CASE THROUGH READING MEDIA REPORTS, OR SEEING TELEVISION ABOUT IT. BUT I AM ALSO NOT AWARE OF ANY JURORS WHO TOLD US THEY DIDN'T THINK THEY COULD BE FAIR AND IMPARTIAL. SO FOR THOSE REASONS, I AM GOING TO DENY YOUR MOTION FOR A CHANGE OF VENUE. I FIND NO BASIS FOR IT. THUS, IT IS DENIED.

SEE TRIAL TRANSCRIPT, PAGE 51, LINE 19, PAGE 52, LINES 9-25, PAGE 53, LINES 1-25, PAGE 54, LINES 1-21.

BE LATED APPEAL ISSUE 1-C

C) MOTION TO SUPPRESS STATEMENTS MADE AT SCENE, 2010-GS-1335, et al., SUBMITTED BY AND THROUGH COUNSEL, PURSUANT TO SCRPC, PETITIONING THE COURT TO HAVE STATEMENTS MADE SUPPRESSED, CITING: HEARSAY, UNFAIR PREJUDICE, AND POST-ARREST INTERROGATION WITHOUT MIRANDA; AND RULED UPON BY THE HONORABLE COURT AT PAGE 79, LINES 4-25 AND PAGE 80, LINES 1-18. SEE ALSO PAGES 55-64,

LINES 1-25, AND PAGE 65, LINES 1-16 OF TRIAL TRANSCRIPT.

FACTS

MOTION TO SUPPRESS STATEMENTS MADE AT THE SCENE

MR. SWILLEY: YOUR HONOR, IF IT IS OKAY WITH THE STATE, I WOULD KIND OF LIKE TO TAKE UP THE MOTION TO SUPPRESS STATEMENTS MADE AT THE SCENE OF THE ACCIDENT.

THE COURT: ALL RIGHT. VERY GOOD. LET ME FIRST OF ALL ASK THE STATE, WHAT IS IT YOU INTEND TO PUT INTO EVIDENCE FROM THE SCENE THAT IS A QUOTE "STATEMENT" ?

MR. HOLT: YOUR HONOR, I THINK WHAT MR. SWILLEY IS REFERRING TO IS THE INITIAL VIDEO PREPARED BY THE SOUTH CAROLINA HIGHWAY PATROL WHEN THE WRECK HAPPENS. THEY PULL UP TO THERE. I THINK WHEN HE IS ASCERTAINED AT THE SCENE AND WHAT'S GOING ON THE TROOPER ASKS HIM, WHY DIDN'T YOU STOP? I THINK HE SAID SOMETHING ALONG THE LINES OF, I WAS LOOKING FOR A PLACE TO STOP. THAT IS THE ONLY ONE --- I THINK THAT IS THE ONE MR. SWILLEY IS TALKING ABOUT. AND THEN WHAT ELSE I KNOW THAT HE REALLY WANTS TO KEEP OUT IS THE STATEMENTS THAT WERE MADE TO EMS. I THINK THAT IS ALSO WHAT HE IS TRYING TO KEEP OUT, BUT I'M NOT CERTAIN.

THE COURT: ALL RIGHT. WELL, LET ME HEAR FROM THE DEFENDANT, WHAT IS IT THAT YOU WISH TO SUPPRESS ?

MR. SWILLEY: YOUR HONOR, THIS WHOLE ACCIDENT WAS CAUGHT ON CAMERA VIA TROOPER GAINES'S DASH-CAM. AT THE SCENE OF THE CRASH, TROOPER GAINES GETS OUT OF HIS CAR, APPROACHES THE CAR, FIRST I BELIEVE HE INSTRUCTS MR. HILL TO STAY IN THE CAR. YOUR HONOR, MY ARGUMENT

TO THE COURT AT THAT MOMENT IS THIS TURNS INTO A CUSTODIAL INTERROGATION. MR.

HILL WOULD NOT BE FREE TO LEAVE. SUBSEQUENT TO THAT, HE INQUIRES OF MR. HILL,

WHY DIDN'T YOU JUST PULL OVER? MR. HILL GIVES AN EXCULPATORY RESPONSE.

AFTER THAT --- AFTERWARDS, AND I AM NOT SURE EXACTLY VERBATIM, BUT THEY DO EXCHANGE SOME DIALOGUE PERTAINING TO THE CRASH. AND AT NO TIME AT THIS POINT IS

MIRANDA GIVEN. YOUR HONOR, ALSO, LATER ON, THERE IS SOME DIALOGUE BETWEEN TROOPER GAINES AND MR. HILL AS TO THE CONDITION OF THE DECEDENT IN THIS MATTER,

MS. SYLVIA HILL. AFTER THAT, I BELIEVE, WHEN MR. HILL WAS TRANSPORTED TO THE HOSPITAL, HE DID EXCHANGE DIALOGUE. AT THIS TIME, I BELIEVE, THERE WAS

STILL NO MIRANDA WARNINGS GIVEN ABOUT HOW MUCH HE MAY OR MAY NOT HAVE CONSUMED, AND WHAT HE MAY HAVE CONSUMED BY WAY OF INTOXICANTS.

YOUR HONOR, I WOULD ALSO ARGUE TO THE COURT THAT MEDICAL PERSONNEL AT THAT POINT WAS TAKING THESE STATEMENTS FOR PURPOSES IN THIS MATTER, NOT

FOR MEDICAL DIAGNOSIS, AND HENCE THESE STATEMENTS SHOULD BE SUPPRESSED

ALSO AS BEING INVOLUNTARY, AS WELL AS IN VIOLATION OF HIS MIRANDA RIGHTS.

THE COURT: ALL RIGHT. LET'S BREAK THIS DOWN THEN. WHAT SAYS THE STATE

WITH REGARD TO WHAT WAS TOLD TO THE TROOPER AT THE SCENE? THE COMMENTS,

STAY IN YOUR CAR AND ANYTHING THAT HAPPENED THERE AT THE SCENE WITH THE OFFICER?

MR. HOLT: THANK YOU, YOUR HONOR. I THINK WHEN YOU WATCH THE VIDEO,

YOUR HONOR, YOU CAN HEAR THE PEOPLE TALKING AS THE RESUE IS HAPPENING. I

THINK EVEN LATER ON THE TROOPER ADMITS THAT HE SAID, I TOLD HIM TO STAY IN

THE CAR BECAUSE OF THE ACCIDENT. HE TOOK A BAD HIT. I THINK ARE THE TROOPER'S

EXACT WORDS. THEY ARE WORRIED ABOUT --- THEY ARE TRYING TO GET HIM OUT OF

THAT CAR ON A ROAD, A FLAT ROAD, BECAUSE THEY ARE WORRIED ABOUT HIS NECK. I THINK THAT JUST GOES TO SHOW, WHICH IS THE POINT THAT I'M TRYING TO MAKE IS THAT THERE WASN'T AN INVESTIGATION OR A DETENTION GOING ON. IT WAS, HELLO INDIVIDUAL WHO JUST WRECKED THEIR CAR AT A HUNDRED MILES PER HOUR, PLEASE STAY IN THERE WHILE WE GET YOU OUT. THERE IS NOT ATTEMPTING TO KEEP HIM IN THERE KIND OF SITUATION, YOUR HONOR. I VERY MUCH DON'T THINK HE WAS IN CUSTODY AT THE TIME. AND I THINK THAT THE PROPER WAS JUST TRYING TO ASCERTAIN LIKE AN INVESTIGATION, WHAT'S GOING ON HERE? THERE WASN'T ANYTHING ACCUSATORY IN THERE, IN STAY IN YOUR CAR. AND THEN WHEN HE ASKED HIM, WHY DIDN'T YOU STOP? I DON'T THINK CUSTODY HAD APPLIED HERE.

THE COURT: All right. Do you want to reply to that?

MRS. SULLIVAN: Yes, Your Honor. I think what the proper question

would be, would Mr. Hill, in his situation, have been free to leave? And I think looking upon this objectively, and in light of the totality of the circumstances is being interrogated by an officer, who is definitely inquiring into what happened as far as criminal liability goes. He does make a statement I believe that said HE TOOK A PRETTY GOOD HIT OVER THE RADIO. HOWEVER, I THINK THAT THE PURPOSE OF THIS INTERROGATION WAS TO GAIN EXCULPATORY STATEMENTS FROM MR. HILL, WHILE HE WAS IN CUSTODY, WHILE HE WAS DETAINED, AND WHEN HE WOULD NOT HAVE THOUGHT THAT HE WAS FREE TO LEAVE. I THINK BECAUSE OF THAT THESE STATEMENTS SHOULD BE SUPPRESSED.

THE COURT: All right. Let's move forward then. APPARENTLY THERE WAS

A DISCUSSION WITH EMS PEOPLE, WHICH OCCURRED LATER IN THIS PROCESS?

MR. HOLT: THERE IS, YOUR HONOR. ON THE WAY TO THE HOSPITAL, SO THEY COULD BETTER TREAT HIM, EMS ASKED HIM HAD HE CONSUMED ANYTHING THAT NIGHT?

THE DEFENDANT HAS CONSUMED BEER AND NARCOTICS, AND TELLS THE EMS THAT.

AND THE STATE'S OBJECTION TO MR. SWILLEY'S MOTION, OF COURSE, IS EMS WAS NOT FUNCTIONING AS ANY TYPE OF LAW ENFORCEMENT OR A BRANCH AT THAT

TIME. EMS WAS TRYING TO FIGURE OUT HOW TO BETTER TREAT THE DEFENDANT.

CERTAINLY, I AM AWARE THAT THERE ARE CERTAIN MEDICATIONS YOU CAN'T TAKE IF YOU HAVE BEEN DRINKING. AND THERE ARE DEFINITELY MEDICATIONS THAT FROM A

PHARMACOLOGICAL POINT OF IT YOU CAN'T TAKE IF YOU HAVE ALREADY TAKEN SOME MEDICATIONS. SO I KNOW THAT THEY WERE SIMPLY LOOKING AFTER THE DEFENDANT'S HEALTH.

THE COURT: AND DO YOU WANT TO REPLY?

MR. SWILLEY: WELL, YOUR HONOR, I BELIEVE THAT ALTHOUGH EMS PERSONNEL DID WANT TO TREAT MR. HILL, I DON'T THINK THEIR INTENTIONS WERE WHOLLY MEDICAL IN NATURE. THERE WERE STATEMENT GIVEN BY MEDICAL PERSONNEL AS TO WHAT MR. HILL STATED TO THEM THROUGHOUT THE COURSE OF THE AMBULANCE RIDE TO THE HOSPITAL. AND I DON'T BELIEVE THAT --- I JUST BELIEVE THESE ARE THE FUNCTIONAL EQUIVALENT OF A POST ARREST INTERROGATION WITHOUT MIRANDA BY EMS PERSONNEL, AND BE SUPPRESSED DUE TO THAT.

THE COURT: ALL RIGHT. JUST ONE MOMENT, PLEASE. ALL RIGHT. SO WE HAVE STATEMENTS TO THE OFFICER AT THE SCENE, STATEMENTS TO EMS.

WERE THERE OTHERS, MR. SWILLEY THAT ARE AT DISPUTE HERE ?

MR. SWILLEY: YOUR HONOR, I BELIEVE, WHEN I REVIEWED THE INCIDENT REPORT, THERE WAS A BOND HEARING AT THE MAGISTRATE'S COURT IN WHICH JUDGE BELL SET BOND FOR MR. HILL, AND I DO THINK THAT HE MADE SOME STATEMENT TO ONE OF THE DECEDENT'S CHILDREN, SOMETHING ALONG THE LINES OF, I LOVED YOUR MOTHER. I NEVER WANTED THIS TO HAPPEN. YOUR HONOR, I DON'T THINK, EVEN THOUGH --- THESE STATEMENTS WERE MADE IN EARSHOT OF LAW ENFORCEMENT, AND THEY WEREN'T MADE TO LAW ENFORCEMENT, I DON'T THINK THAT MR. HILL WAS COGNITIVE OF MIRANDA RIGHTS, AND THE FACT THAT THESE STATEMENTS COULD OR WOULD BE USED AGAINST HIM IN THIS CRIMINAL PROCEEDING. I THINK THE TIME BETWEEN --- IF MIRANDA HADN'T BEEN READ PRECEDENT TO THIS, THERE WAS A LOT OF TIME ELAPSED, AND I WOULD JUST MOVE THE COURT TO SUPPRESS THOSE STATEMENTS AS WELL.

THE COURT: AND THE STATEMENT WAS WHAT? I LOVED YOUR MOTHER, BUT WHAT?

MR. SWILLEY: IT WAS SOMETHING --- IT WAS SOMETHING ALONG THE LINES OF AN APOLOGY. AND I DON'T HAVE THE VERBATIM ON A TAPE RECORDER. I BELIEVE IT WAS SECOND-HAND BY THE OFFICER WHO WAS WRITING THE INCIDENT REPORT. THE INCIDENT IN THIS REPORT IS VERY LENGTHY.

MR. HOLT: IF I COULD JUST RESPOND TO ANOTHER PROBLEM THAT MIGHT SHED SOME LIGHT ON WHAT MR. SWILLEY IS TALKING ABOUT? IN SOUTH CAROLINA, WITH THE IMPLIED CONSENT, 2945 FELONY DUI STATUTE,

THEY HAVE TO PUT YOU UNDER ARREST AND READ YOU YOUR IMPLIED CONSENT BEFORE THEY TAKE BLOOD FROM THE HOSPITAL. I THINK THAT PROCEDURE WAS FOLLOWED HERE. I THINK THAT PROCEDURE STARTS OFF WITH, YOU ARE UNDER ARREST. AND THERE IS A LENGTHY --- VERY, VERY PROCEDURAL THING THAT HAS TO OCCUR. MIRANDA IS READ THEN. AS YOUR HONOR IS WELL AWARE, DUI LEGISLATION IS OFTEN SOME OF THE MOST CONFUSION AND PROCEDURALLY HEAVY LEGISLATION WE HAVE IN CRIMINAL LAW. HE WAS MIRANDIZED THAT NIGHT. I THINK THERE ARE SOME STATEMENTS MADE TO LAW ENFORCEMENT ABOUT AN APOLOGY EVEN THEN. I THINK THAT MIRANDA ALSO CARRIES OVER TO THE BOND HEARING. AND ANYTHING HE SAID AT THE BOND HEARING WOULD HAVE BEEN PUBLIC KNOWLEDGE, YOUR HONOR. AND IF HE APOLOGIZED, AND THE OFFICER WAS STANDING THERE DURING THEIR ROLE IN A BOND HEARING THE STATE CAN DEFINITELY --- THEY CAN BRING THAT IN.

THE COURT: ALL RIGHT. IS THERE A STATEMENT THAT WAS ACTUALLY MADE WHEN YOU SIT DOWN AND GIVE A STATEMENT TO POLICE?

MR. HOLT: THERE IS NOT, YOUR HONOR. AND I HAVE THE EXACT STATEMENT HERE THAT HE SAID IN THE BOND HEARING, IF YOUR HONOR WISHES TO HEAR IT.

THE COURT: ALL RIGHT. TELL ME WHAT IT IS PLEASE.

MR. HOLT: HE LOOKED AT SYVIA MATTOR'S DAUGHTER AND SAID, "I'M SORRY. I LOVED YOUR MOTHER, AND I DID NOT MEAN TO HURT HER." THAT IS THE STATEMENT, YOUR HONOR.

THE COURT: COUNSEL, DO YOU INTEND TO SHOW THE TAPE FROM THE SCENE, SO THAT I CAN GET THE SPECIFICS OF HIS STATEMENT MADE

ALLEGEDLY WHEN THE OFFICER FIRST ARRIVED ON THE SCENE?

MR. HOLT: VERY MUCH SO.

THE COURT: HOW LONG IS IT?

MR. HOLT: I AM WILLING TO NOT SHOW THE ENTIRE TAPE, BUT THE ENTIRE TAPE IS SOMEWHERE AROUND TWENTY-FIVE MINUTES, I THINK, MAYBE. IT STARTS WITH --- RIGHT BEFORE HE TURNS THE BLUE LIGHT ON, THE ACTUAL CHASE, AND THE ACCIDENT. IT IS NOT VERY LONG AT ALL. IT HAPPENED WITHIN THE FIRST TWO MINUTES OF THE VIDEO, AND THEN THE REST OF IT WILL BE JUST ONE SHOT STILL OF EVERYBODY COMING IN AND OUT WHO WORKS RESCUE.

THE COURT: ALL RIGHT. I PROBABLY NEED TO SEE THAT COUNSEL, SO THAT I CAN RULE ON THE VOLUNTARINESS OF ANY COMMENTS MADE; PLUS DETERMINE WHAT THOSE SPECIFICS OF THEM ARE, BECAUSE I REALLY DON'T KNOW AT THIS POINT. DO YOU HAVE IT ON VIDEO? DO YOU HAVE IT ON COMPUTER? WHAT IS YOUR PREFERENCE?

MR. HOLT: I HAVE IT ON DVD, YOUR HONOR. IT WILL PROBABLY TAKE SOME TIME. IF YOUR HONOR WISHES, I CAN HAND HIM A COMPUTER AND HE CAN WATCH IT RIGHT NOW.

THE COURT: LET'S DO THAT. LET'S JUST BRING THE COMPUTER HERE AND THEN COUNSEL JOIN ME AS WELL --- WELL, COUNSEL ON BOTH SIDES PLEASE JOIN ME.

THE COURT: ALL RIGHT. THE COURT HAS NOW HAD A CHANCE TO REVIEW THIS VIDEO. IS THERE ANYTHING FURTHER WITH REGARD TO THE ARGUMENTS?

MR. SWILLEY: YES, YOUR HONOR, AS FAR AS THE DIALOGUE BETWEEN LAW ENFORCEMENT PERSONNEL WITHIN THEMSELVES, I WOULD ALSO MOVE FOR SUPPRESSION OF THAT, DUE TO THE FACT THAT IT IS HEARSAY. I AM UNABLE TO CROSS EXAMINE IT. AND I THINK THAT ANY PROBATIVE VALUE OF ANYTHING THAT IS SAID TO PERSONNEL TO EACH OTHER AT THE SCENE WOULD BE SUBSTANTIALLY OUTWEIGHED BY THE UNFAIR PREJUDICE OF THE DEFENDANT AS WELL.

MR. HOLT: YOUR HONOR, JUST SPEAKING TO HIS EARLIER ARGUMENTS, IT IS ILLEGAL IN SOUTH CAROLINA TO DRIVE AWAY, OR GET AWAY FROM ANY TYPE OF ACCIDENT WHICH YOU MAY HAVE CAUSED. I THINK EVERYBODY KNOWS THAT. I THINK REALLY AND TRULY WHAT WAS GOING ON THERE WAS NOT ANY TYPE OF CUSTODY. BUT YOU HAD A VICTIM WHO WAS DECEASED, AND YOU HAD ANOTHER PERSON WHO WAS OBVIOUSLY DRUNK AND WHO HAD JUST SUFFERED TRAUMA OF THAT CAR FLIPPING END OVER END, AND YOU ARE TRYING TO CONTROL A DRUNK PERSON WHOSE NECK MAY BE BROKEN. SO, YOU SAY JUST STAY IN THE CAR AND I DON'T THINK THAT WAS CUSTODY YET, YOUR HONOR. AND I THINK THAT EVERYTHING HE SAID WAS A SPONTANEOUS STATEMENT. I THINK IT IS AN EXCEPTION TO THE HEARSAY RULE. AND I THINK THE INTERROGATION WAS CONDUCTED JUST FOR PUBLIC SAFETY, IF NOT FOR THE SAFETY OF THE DEFENDANT HIMSELF.

THE COURT: WHAT ABOUT INQUIRY? WHY DIDN'T YOU STOP? WHAT DO YOU SAY TO THAT? WHAT CASE LAW DO YOU HAVE ON THAT POINT?

MR. HOLT: I DON'T HAVE ANY CASE LAW RIGHT HERE IN FRONT OF ME, YOUR HONOR. WHY DIDN'T YOU STOP WAS PART OF THE INVESTIGATION AND NOT THE INTERROGATION. THE TROOPER DOESN'T KNOW ANYTHING ABOUT WHAT

IS GOING ON YET. AND, HE KNOWS THAT THIS ACCIDENT JUST OCCURRED. AND HE GOES --- HE IS A LITTLE BIT UPSET, BECAUSE I DON'T KNOW IF YOUR HONOR WAS AWARE OF THIS, BUT RIGHT BEFORE THEN HE HAS JUST SEEN THE BODY FOR THE FIRST TIME, AND REALIZED WHAT HE'S GOT HERE. HE GOES FROM DUI, TO CAR CHASE, TO FATALITY LIKE THAT FOR THE TROOPER. AND HE IS JUST SITTING THERE WITH HIS FLASHLIGHT LOOKING AT THE GUY, WHY DIDN'T YOU STOP? AND HE UNDOUBTEDLY HAS THE DEAD BODY ON HIS BRAIN RIGHT THERE. BUT I DON'T THINK THAT THERE WAS ANY KIND OF INTERROGATION. AND I THINK THAT ANYTHING THE DEFENDANT SAID CAN DEFINITELY COME IN.

THE COURT: ALL RIGHT. LET'S MOVE ON TO THE NEXT ISSUE. ANYTHING FURTHER ON HOSPITAL PERSONNEL, EMS STATEMENTS THAT INTENDED TO BE --- I HAVE HEARD THE ARGUMENTS. ANYTHING FURTHER BEFORE WE MOVE ON?

MR. SWILLEY: THERE IS NOT, YOUR HONOR.

TRIAL TRANSCRIPT, PAGES 55-64, LINES 1-25.

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, IT APPEARS THAT WE ARE ALL IN PLACE. LET ME GO AHEAD AND RULE. WE HAVE BEEN TALKING HERE AT THE BENCH A LITTLE WHILE ABOUT THE ISSUES THAT ARE BEFORE ME. IN THIS CASE THE DEFENDANT HAS MORE THAN ONE CHARGE. AND SOME OF THESE ISSUES ARE SIMPLY DRIVING ISSUES. FOR EXAMPLE, DUS HAS NOTHING TO DO WITH WHETHER OR NOT THERE MAY BE AN ACCIDENT, OR A FAILURE TO STOP. THE DUS IS A DRIVING CHARGE. IF YOU ARE DRIVING AND YOU DON'T HAVE A LICENSE, YOU ARE GUILTY OF DUS. SO THE OFFICER'S INQUIRY AT THE SCENE ABOUT WHY DID YOU RUN BEARS ON THE CORE ISSUES IN THE DUS CHARGES, COMBINED IN THIS CHARGE.

So, I AM GOING TO EXCLUDE THAT STATEMENT, AS WELL AS THE DISCUSSIONS BY THE OFFICERS. BECAUSE NUMBER ONE, THEY ARE NOT NECESSARY HERE TO THE PROOF OF THE STATE'S CASE. BUT, SECONDLY, I DO FIND THAT THEY ARE PREJUDICIAL, AND GO TO THE CORE ISSUES ON THE DRIVING CHARGES AGAINST THE DEFENDANT. WHAT THAT MEANS IS ONCE THE OFFICER ARRIVES AT THE SCENE, YOU WILL JUST TURN THE VOLUME DOWN SO THAT UP UNTIL THAT TIME IF THERE IS SOMETHING THAT YOU WISH TO BE HEARD. BUT THEN INTERACTION BETWEEN THE DEFENDANT AND THE POLICE OFFICER AS WELL AS OFFICERS AT THE SCENE WILL BE EXCLUDED. ANY QUESTION ABOUT THAT?

MR. HOLT: YES, SIR, YOUR HONOR. JUST TO CLARIFY, CAN I ASK THE TROOPER ABOUT IT WHEN HE TAKES THE STAND, AND WHAT WAS SAID TO HIM?

THE COURT: OH, YES. YOU CAN ASK HIM ABOUT WHAT HE SAID TO HIM, BUT WHETHER OR NOT YOU CAN TESTIFY ABOUT WHAT THE RESPONSE WAS IS WHAT THIS WHOLE THING IS ABOUT. SO, YES WHAT THE OFFICER SAID IS ADMISSIBLE, BECAUSE IT IS THE OFFICER'S IMPRESSIONS AND IT IS NOT HEARSAY, BECAUSE IT IS HIS STATEMENT THERE AT THE SCENE. BUT THE RESPONSE COMING BACK, OR THE RESPONSE OF A THIRD PERSON COMING BACK MOST LIKELY WILL BE HEARSAY. PLEASE OBJECT CONTEMPORANEOUSLY IF HE DOES, BUT I WILL EXCLUDE THE OFFICER ALSO TESTIFYING ABOUT WHAT THE DEFENDANT SAID, BECAUSE IT WOULD BE THE SAME PURPOSE.

MR. HOLT: YES, SIR.

THE COURT: WHETHER YOU HAVE IT ON FILM, OR WHETHER YOU HAVE IT IN PERSON THE RESULT IS THE SAME. ALL RIGHT. TRIAL TRANSCRIPT, PAGE 79, LINES 4-25, PAGE 80, LINES 1-18.

BE LATED APPEAL ISSUE 1-D

D) MOTION TO SUPPRESS AUTOPSY PHOTOGRAPHS, 2010-GS-16-1335, et. al., SUBMITTED BY AND THROUGH COUNSEL, PURSUANT TO SCRCR, CHALLENGING THE PROBATIVE VALUE AND RELEVANCE OF AUTOPSY PHOTOGRAPHS VERSUS THEIR PREJUDICIAL IMPACT; AND RULED UPON BY THE HONORABLE COURT AT PAGE 70, LINES 9-25, PAGE 71, LINES 1-25, PAGE 72, LINES 1-9 OF THE TRIAL TRANSCRIPT.

FACTSMOTION TO SUPPRESS AUTOPSY PHOTOGRAPHS

MR. HOLT: YOUR HONOR, OBVIOUSLY THE STATE'S POINT OF VIEW, THESE PHOTOGRAPHS --- PROBABLY SOME OF THE MOST GRUESOME THAT I'VE EVER SEEN. AND UP UNTIL THIS MORNING, I WAS NOT GOING TO ARGUE WITH MR. SWILLEY ABOUT THE ADMISSION OF THESE PHOTOGRAPHS. BUT NOW THAT I BELIEVE THE MAJORITY OF HIS DEFENSE WILL IN FACT BE THAT THE DEFENDANT WAS NOT DRIVING, I FEEL LIKE THE INJURY SUSTAINED TO THE VICTIM NEEDS TO BE SHOWN, BECAUSE THEY DIRECTLY CORRELATE TO THE SHAPE OF THE CAR AT THE TIME AT THE SCENE. I THINK THEIR DEFENCE NOW MAKES THE PHOTOGRAPHS HIGHLY RELEVANT. I THINK THEY SHOULD BE --- THERE IS NO DOUBT TO ME THAT THEY WILL BE PREJUDICIAL. HOWEVER, UNDER 403, I COMPLETELY AGREE THAT THEY WILL BE MORE PROBATIVE THAN PREJUDICIAL. AND MY ARGUMENT NOW FROM THE STATE IS THAT IT WILL BE COMPLETELY NECESSARY, AT LEAST SOME OF THE PHOTOGRAPHS.

THE COURT: ALL RIGHT. WHAT I AM GOING TO NEED YOU TO DO ---

WE ARE GOING TO HAVE TO NUMBER THESE FIRST OF ALL, FOR PURPOSES OF THIS HEARING. AND WHAT WE NEED TO DO IS GET ALL THE COPIES BACK UP HERE TOGETHER, AND MAKE SURE WE ORDER IN THE SAME SEQUENCE, SO WE ARE ALL TALKING ABOUT THIS, AND WE NEED TO PRESERVE THIS AND MAKE A RECORD HERE. SO LET ME GIVE YOU THIS, AND LET YOU DO THAT.

MR. HOLT: I HAVEN'T PRINTED THEM OUT.

THE COURT: ALL RIGHT. WHAT I NEED FOR YOU TO DO, JOHN ALONG WITH YOUR CO-COUNSEL IS DECIDE WHICH ONES YOU ARE NOT GOING TO OFFER.

MR. HOLT: JUST THE ONE PHOTOGRAPH, YOUR HONOR.

THE COURT: ALL RIGHT. LET'S MARK IT THEN FOR PURPOSES OF THE JACKSON V. DENNO, LET'S MARK IT. WE CAN GO AHEAD AND MARK IT AS A --

MADAME COURT REPORTER: IT HAS ALREADY BEEN MARKED AS STATE'S 40.

THE COURT: ALL RIGHT. IT IS MARKED AS STATE'S 40, AND WE CAN USE THAT NUMBER THEN. THAT IS THE ONLY ONE YOU WANT IN?

MR. HOLT: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT. LET'S TAKE A LOOK AT THAT. I NEED TO LOOK AT THE WHOLE PACKAGE THOUGH IN ORDER TO APPRECIATE THE IMPACT.

MR. HOLT: HERE IS THE ENTIRE PACKAGE, AND THERE IS THE ONE I'D LIKE TO GET IN.

THE COURT: ALL RIGHT. VERY GOOD. ALL RIGHT. ARE YOU AWARE OF WHICH ONE WE ARE TALKING ABOUT MR. SWILLEY?

MR. SWILLEY: LET ME DOUBLE CHECK REAL QUICK. ALL RIGHT. THANK YOU.

THE COURT: ALL RIGHT. TELL ME WHY YOU BELIEVE 40 SHOULD BE EXCLUDED?

MR. SWILLEY: YOUR HONOR, THIS PHOTO I THINK WOULD --- WELL, FIRST OF ALL YOUR HONOR, IT IS ABOUT THE MOST GRUESOME THING THAT I HAVE EVER SEEN AS FAR AS A PHOTOGRAPH GOES. YOUR HONOR, THERE ARE SEVERAL THINGS THAT THE STATE IS GOING TO INTRODUCE THAT THE DECEDENT IN THIS MATTER DID DIE AS A DIRECT AND PROXIMATE RESULT OF THIS CAR ACCIDENT. I BELIEVE THERE IS GOING TO BE SOMEBODY FROM NEWBERRY PATHOLOGY ASSOCIATES TO COME AND TESTIFY AS TO THAT, AS WELL AS SEVERAL OTHER COLLATERAL SOURCES TO ESTABLISH THAT THE DECEDENT DID DIE AS A RESULT OF A CAR ACCIDENT. YOUR HONOR, THAT PHOTO DOES NOT SHOW ANYTHING PROBATIVE AS TO WHERE THE DECEDENT MAY HAVE BEEN SITTING IN THE CAR, OR WHERE --- OR WHERE ANYTHING THAT WOULD SUGGEST THAT WHOEVER WAS DRIVING WAS DRIVING. YOUR HONOR, ALL THIS PHOTO ESTABLISHES IS THAT THE DECEDENT DID DIE AS A RESULT OF THIS ACCIDENT, AND THAT THE DEATH WAS EXTREMELY TRAUMATIC, AND NOTHING MORE. YOUR HONOR, I BELIEVE THAT THE PREJUDICIAL IMPACT SUBSTANTIALLY OUTWEIGHED ANY KIND OF PROBATIVE VALUE, IF ANY, THAT THIS PHOTOGRAPH WOULD HAVE IN THE JURY'S DELIBERATION IN THIS MATTER.

THE COURT: ALL RIGHT. TELL ME WHY YOU BELIEVE ⁴⁰ IS RELEVANT AND PROBATIVE?

MR. HOLT: OBVIOUSLY, YOUR HONOR, I AGREE WITH THE MAJORITY OF WHAT MR. SWILLEY SAID. THE STATE IS NOT GOING TO USE THESE PHOTOGRAPHS, BECAUSE OF THEIR GRUESOME NATURE. HOWEVER, IT IS PROBATIVE BECAUSE THE STATE HAS A CERTAIN SET OF FACTS AND EVIDENCE THAT THEY ARE GOING TO USE THAT THE DEFENDANT WAS DRIVING.

AND IF THE DEFENDANT IS GOING TO SAY THAT HE WAS NOT DRIVING, THEN THAT EVIDENCE IS GOING TO BE IN CONFLICTION, THE STATE NEEDS TO BE ABLE TO SHOW THAT --- EXACTLY THE SEVERITY OF WHAT WENT THROUGH THAT CAR, WHAT CAUSED HER DEATH. AND IT MORE THAN LIKELY WOULD NOT HAVE BEEN THAT WAY IF SHE HAD BEEN SITTING IN THE DRIVER'S SEAT. THE HOLE IS ON, IF YOU ARE LOOKING AT THE CAR --- IF I AM LOOKING AT THE FRONT OF THE CAR COMING AT ME, THE HOLE IS ON THE LEFT SIDE. THE DAMAGE TO HER HEAD IS ON THE LEFT SIDE. THE LOG GOES THROUGH THE LEFT SIDE AND COMES OUT THE BACK WINDOW. NOW, THE STATE FEELS LIKE IT IS VERY NECESSARY TO SHOW THAT THE LOG THAT CRUSHED UP THAT SECTION OF THE CAR HAD TO GO THROUGH THE CAR WITH THAT MUCH FORCE IS ALSO WHAT DAMAGED HER HEAD. THE COURT: ALLRIGHT. AND THE ARGUMENT THAT YOU HAVE JUST GIVEN ME, IS YOUR AUTOPSY EXAMINER'S TESTIMONY GOING TO BE CONSISTENT WITH THIS ARGUMENT THAT YOU MADE?

MR. HOLT: CONSISTENT IN SO FAR AS THE PATIENT DIED FROM HEAD TRAUMA. BUT, HEAD TRAUMA COULD COME FROM ANY NUMBER OF WAYS IN A CAR ACCIDENT. BUT, SPECIFICALLY, THE TYPE IN THIS CASE THAT RESULTED FROM THE LOG COMING THROUGH THE CAR THE WAY IT DID IS ALSO WHAT DAMAGED HER HEAD LIKE THAT. I THINK IF THE JURY JUST HEARS MASSIVE HEAD TRAUMA, THEY ARE LIKELY TO THINK --- YOU KNOW --- HIT YOUR HEAD ON THE DASH-BOARD, WHEN IN REALITY THE JURY NEEDS TO BE MADE AWARE THAT THE LOG CAME THROUGH --- AND I KNOW ITS GROSS JUDGE, BUT JUST SPECIFICALLY JUST HITTING HER HEAD IN SUCH A MANNER

AS TO DO TO HER HEAD WHAT IT DID, AND THAT COULDN'T COME FROM A NORMAL SERIES OF EVENTS IN A NORMAL CAR ACCIDENT.

THE COURT: AND WHAT THEN IS THE PURPOSE OF SHOWING THE LOWER HALF OF THE BODY IN NUMBER 40?

MR. HOLT: YOUR HONOR, I THINK THAT SHOWING JUST HALF OF IT CAN CONFUSE THE JURY AS TO WHAT IT IS. I THINK SHOWING HER WHOLE BODY PUTS IT IN PERSPECTIVE. CERTAINLY, IF WE WANT TO COVERUP SOME PRIVATE AREAS, I WOULD UNDERSTAND THAT. YOU KNOW, BUT I THINK THEY NEED TO REALIZE THE SEVERITY OF WHAT HAPPENED. I THINK IF YOU COVER UP HALF OF IT, I THINK THE JURY WILL BE CONFUSED AS TO WHAT THEY ARE LOOKING AT.

THE COURT: ALL RIGHT. WHAT MR. HOLT IS SAYING IS THE ABSENCE OF INJURY TO THE LOWER HALF IS AS SIGNIFICANT AS THE INJURY TO THE UPPER HALF. ALL RIGHT. THE COURT IS PREPARED TO RUL ON THIS. THIS --- ADMITTEDLY THIS PICTURE IS GOING TO HAVE SOME SHOCK IMPACT. HOWEVER, THE COURT FINDS THAT THE PROBATIVE NATURE OF THE PHOTOGRAPH, GIVEN THE DEFENSE RAISED HERE BY THE DEFENDANT, WHICH IS THAT THE DECEASED WAS DRIVING, THAT IT IS EXTREMELY PROBATIVE, AND ACTUALLY ROBS THE STATE OF ITS ARGUMENT TO ATTEMPT TO COMPARE THE DAMAGE AND TRAUMA DONE TO THE OCCUPANTS, AND WHERE THEY WERE SEATED IN THE CAR, AND MAKE THAT CONSISTENT TO THE DAMAGE DONE TO THE EXTERNAL ACTUAL PORTIONS OF THE CAR. THAT THAT PROBATIVE NATURE OUTWEIGHS THE PREJUDICIAL NATURE OF THESE

PICTURES. AND THAT SIMPLY BECAUSE THIS IS THE CORE ISSUE OF THIS CASE. AND THIS IS THE MOST PROBATIVE PROOF, AND REALLY THE CORE PROOF ON THAT CORE ISSUE. FOR THESE REASONS, THE COURT IS GOING TO ALLOW EXHIBIT 40, INTO EVIDENCE. THE COURT MAY ADVISE THE JURY IN ADVANCE AND WE WILL TALK ABOUT THAT AT A LATER TIME AS TO WHETHER WE SHOULD WARN THEM OF THE GRAPHIC NATURE. BUT, WE WILL ALSO MAKE A COURT'S EXHIBIT OF THE OTHER I BELIEVE THIRTEEN PHOTOS, WHICH THE STATE HAS VOLUNTARILY TAKEN DOWN TO LESSEN THE PREJUDICIAL IMPACT OF THE SERIES OF THESE PHOTOS. THAT IS THE RULING OF THE COURT. MOTION DENIED. ALL RIGHT. ANYTHING FURTHER NOW, MR. SWILLEY?

MR. SWILLEY: THERE IS NONE, YOUR HONOR.

WHEREUPON, STATE'S EXHIBIT NUMBER 40 IS MARKED AND ADMITTED INTO EVIDENCE OVER OBJECTION. WHEREUPON, COURT'S EXHIBIT NUMBER 1 IS MARKED FOR THE RECORD.

THE COURT: AND LET ME SPECIFICALLY SAY, AT LOOKING AT THE PHOTOS IN QUESTION, IF YOU LOOK AT WHAT HAS BEEN MARKED AS STATE'S

EXHIBIT 20, IT SHOWS THE LOG OR THE POLE IN THE BACK OF THE CAR.

STATE'S EXHIBIT NUMBER 17 SHOWS WHAT APPEARS TO BE WHERE THE LOG WOULD HAVE ENTERED AS WELL AS WHERE IT WOULD HAVE EXITED. THE

LOG IS STILL LYING ACROSS THE PASSENGER SEAT. AND OBVIOUSLY THE PROBATIVE NATURE OF THAT IS THAT IT WOULD BE ALMOST IMPOSSIBLE TO

BE IN THE PASSENGER SEAT AND NOT STRUCK BY THE LOG. FOR THESE REASONS, THE COURT AGAIN CONFIRMS THAT THE PROBATIVE NATURE OF THAT PICTURE

NUMBER 40, OUTWEIGHS PREJUDICIAL IMPACT. TRIAL TRANSCRIPT, PAGE 65, LINES 17-25, PAGES 66-71, LINES 1-25, PAGE 72, LINES 1-9.

RELEATED APPEAL ISSUE 1-E

E) MOTION FOR CONTINUANCE, 2010-GS-16-1335, et. al., SUBMITTED BY AND THROUGH COUNSEL, PURSUANT TO SCRCP, REQUESTING A CONTINUANCE FOR THE PURPOSES OF: LOCATING, INTERVIEWING, AND PRODUCING DEFENSE WITNESSES; AND RULED UPON BY THE HONORABLE COURT AT PAGE 77, LINES 10-25, ALSO PAGE 78, LINES 1-13, OF THE TRIAL TRANSCRIPT.

FACTS

MOTION FOR CONTINUANCE

MR. SWILLEY: YES, YOUR HONOR. I APOLOGIZE FOR NOT BRINGING THIS BEFORE THE COURT BEFORE NOW. YOUR HONOR, THE THREE WITNESSES WHICH THE DEFENSE WOULD LIKE TO CALL --- ONE, THE MAIN WITNESS, WHO WOULD BE MS. GRACE HILL, WHO IS THE DEFENDANT'S MOTHER IN THIS MATTER, I WENT AND SPOKE WITH MS. HILL YESTERDAY. SHE IS ACTUALLY IN A NURSING FACILITY AT THIS TIME. I SPOKE WITH HER. SHE IS LUCID. I THINK SHE WOULD BE COMPETENT UNDER RULE 601 TO TESTIFY. HOWEVER, DUE TO HER CURRENT SITUATION AS TO HEALTH, I THINK IT WOULD BE EXTREMELY DIFFICULT FOR HER TO COME HERE AND TESTIFY NOW IN THE STATE SHE IS IN. I THINK IF SHE WERE ALLOWED SOME TIME TO CONVALESCENCE SHE MAY BE ABLE TO COME AND TESTIFY IN DEFENCE OF MR. HILL. YOUR HONOR, ALSO ANOTHER WITNESS WHICH WOULD TESTIFY AS TO WHAT HE OBSERVED WHEN THE DEFENDANTS WERE

LEAVING HIS HOME, OR WHEN THE DEFENDANT AND THE DECEDENT WHEN THEY WERE PRECEDING TO LEAVE HIS HOME, A GENTLEMAN NAMED MACKIE TOMLINSON WHO I PUT ON THE DEFENSE WITNESS LIST, HE IS CURRENTLY IN A REHABILITATION FACILITY. I SPOKE WITH HIS BROTHER LAST WEEK. HIS BROTHER WOULDN'T TELL ME WHERE HE IS, OR EVEN HOW LONG HE WOULD BE. BUT YOU DON'T STAY IN REHABILITATION CENTERS FOREVER, OR EVEN AN EXTENDED LENGTH OF TIME. AND I THINK A CONTINUANCE WOULD ALLOW THE DEFENSE TO SPEAK WITH MR. TOMLINSON AS WELL. AND I WOULD MOVE FOR A CONTINUANCE ON THESE GROUNDS.

THE COURT: ALLRIGHT. HOW LONG HAS THIS CASE BEEN CALLED FOR TRIAL ON THIS DATE?

MR. HOLT: YOUR HONOR, I REMEMBER BEING TOLD ABOUT THIS CASE THE LAST TERM OF COURT WE HAD HERE IN DARLINGTON. THEY HAD BEEN DISCUSSING IT FOR SOME TIME PRIOR TO THAT. I KNOW THAT THEY HAVE BEEN --- IT HAS BEEN MR. SWILLEY'S GENERAL UNDERSTANDING THAT THIS WOULD BE THE CASE CALLED WELL BEFORE LAST TERM, IS THAT CORRECT?

MR. SWILLEY: I BELIEVE THAT IS CORRECT.

THE COURT: AND THE LAST TERM, WHICH I DID NOT CONDUCT THAT TERM. WHEN WAS THE LAST TERM?

CLERK OF COURT: MARCH 7TH.

MR. SWILLEY: YOUR HONOR, MR. HILL HAD A BOND REDUCTION MOTION HEARING IN FRONT OF JUDGE BURCH AT THAT TIME, I BELIEVE THAT DAY IS WHEN MS. BAUGH DID INFORM ME THAT SHE DID WANT TO CALL THIS FOR TRIAL THIS TERM.

THE COURT: ALRIGHT. ROUGHLY FIVE WEEKS AGO ALMOST.

MR. SWILLEY, I AM GOING TO DENY YOUR MOTION, SIR FOR SEVERAL REASONS.

NUMBER ONE. I DON'T HAVE ANY EVIDENCE OTHER THAN YOUR ARGUMENT THAT THE PASSAGE OF TIME WOULD HELP THE DEFENDANT'S MOTHER COALESCE, IT MAY ACTUALLY BE JUST THE OPPOSITE WOULD BE TRUE THAT HER CONDITION MAY DECLINE, AS MIGHT BE EXPECTED WITH SOMEONE IN A NURSING HOME.

AND AS TO THE INDIVIDUAL IN A REHABILITATION CENTER, THEY ARE NOT FREE OF THE SUBPOENA PROCESS. YOU MAY BRING THEM IN HERE IF YOU WISH.

BUT I WILL DECLINE TO GIVE YOU ANY RELIEF IN THE FORM OF A CONTINUANCE ON THAT. ALL RIGHT. ANYTHING FURTHER FROM EITHER SIDE? TRIAL TRANSCRIPT, PAGE 76, LINES 7-25, PAGE 77, LINES 1-25, AND PAGE 78, LINES 1-14.

THE COURT: MR. SWILLEY, I AM GOING TO LET YOU REST ON THE RECORD. IN OTHER WORDS, I AM GOING TO TURN TO YOU, AND YOU TO CALL YOUR WITNESSES, AND TELL ME THAT YOU REST. VERY GOOD.

(WHEREUPON, THE JURY ENTERS THE COURTROOM AT 10:11 a.m.)

THE COURT: WELCOME BACK TO THE COURTROOM, LADIES AND GENTLEMEN. I TRUST YOU ENJOYED YOUR BREAK. THE STATE HAS NOW CLOSED ITS CASE. WE MOVE TO THE DEFENCE MR. SWILLEY, PLEASE CALL YOUR FIRST WITNESS.

MR. SWILLEY: YOUR HONOR, THE DEFENCE RESTS AT THIS TIME.

THE COURT: ALL RIGHT. THE DEFENDANT ADVISES ME THAT THEY WILL NOT CALL ANY WITNESSES. THIS MEANS THAT THE TESTIMONIAL PHASE OF THIS CASE IS OVER. PLEASE REMEMBER, AS WE SAID FROM THE BEGINNING, THE DEFENDANT IS NOT REQUIRED TO PUT UP A CASE, NOT REQUIRED TO CALL WITNESSES. TRIAL TRANSCRIPT, PAGE 267, LINES 1-17.

RELATED APPEAL ISSUE 1-F

F) MOTION FOR A DIRECTED VERDICT, 2010-GS-16-1335; et. al.,
SUBMITTED BY AND THROUGH COUNSEL, PURSUANT TO SCRPC, TO MOVE
THE HONORABLE COURT FOR A DIRECTED VERDICT ON ALL INDICTMENTS,
DUE TO A CERTAIN LACK OF COMPETENT EVIDENCE ON THE ELEMENT OF
DRIVING; AND RULED UPON BY THE HONORABLE COURT AT PAGE 261,
LINES 15-25, AND PAGE 262, LINES 1-4 OF THE TRIAL TRANSCRIPT.

FACTS

MOTION FOR A DIRECTED VERDICT

MR. SWILLEY: YOUR HONOR, I WOULD MAKE A MOTION TO --- A MOTION
FOR A DIRECTED VERDICT ON ALL INDICTMENTS, DUE TO THE LACK OF COMPETENT
EVIDENCE IN THE RECORD TO SUGGEST THAT THE DEFENDANT COMMITTED THE
CRIMES FOR WHICH HE IS CHARGED. YOUR HONOR, I THINK THERE ARE
CERTAIN --- THERE IS CERTAIN LACK OF EVIDENCE --- OF COMPETENT
EVIDENCE THAT THE DEFENDANT WAS IN FACT DRIVING THE AUTOMOBILE.
I THINK EVERY SINGLE INDICTMENT HINGES ON THE ALLEGATIONS THAT HE
WAS DRIVING THE AUTOMOBILE UNDER THE INFLUENCE OF CERTAIN
INTOXICANTS WHERE HE WAS NOTICEABLY AND APPRECIABLY IMPAIRED.
I THINK THE ELEMENT OF DRIVING HAS NOT BEEN --- I THINK THAT COMPETENT
EVIDENCE OF THE ELEMENT OF DRIVING THE DEFENDANT'S CAR HAS
NOT BEEN SHOWN BY THE STATE, AND WOULD THUS MOVE FOR A
DIRECTED VERDICT AS TO ALL INDICTMENTS.

THE COURT: ALL RIGHT. WITHOUT TAKING ARGUMENT FROM THE OTHER SIDE, THE COURT IS GOING TO DENY THAT MOTION FOR THE FOLLOWING REASONS. FIRST OF ALL, PATROLMAN--- OFFICER GAINES TESTIFIED THAT HE SAW THE DEFENDANT, OBSERVED HIM DRIVING THE VEHICLE. AND THEN AFTER THE CLOSE OF THIS INCIDENT, WHEN THE CAR WAS WRECKED, THERE ARE PHOTOGRAPHS SHOWING YOUR CLIENT SEATED IN THE DRIVER'S SEAT. REASONS OF THAT ALONE ARE SUFFICIENT EVIDENCE TO TAKE THOSE ISSUES TO THE JURY. AGAIN, IT IS NOT FOR THE COURT TO WEIGH THE EVIDENCE, OR DECIDE WHAT IS CREDIBLE AND BELIEVABLE, IT IS JUST, DOES THERE EXIST IN THIS RECORD EVIDENCE TENDING TO PROVE THE GUILT OF THE ACCUSED. I FIND THERE IS SUFFICIENT AND AMPLE EVIDENCE FOR THESE CASES TO GO FORWARD.

TRIAL TRANSCRIPT, PAGE 260, LINE 17, PAGE 261, LINES 1-25, PAGE 262, LINES 1-4.

RELATED APPEAL ISSUE I-G

G-) MOTION TO DISMISS INDICTMENTS, 2016GS-16-0423, AND 2011-GS-16-0424, BY AND THROUGH COUNSEL, PURSUANT TO SCRCP, CITING VIOLATIONS OF DEFENDANT'S EIGHTH AMENDMENT AND DUE PROCESS RIGHTS, SHOULD HE BE CONVICTED FOR A MULTIPLICITY OF CHARGES ARISING FROM THE SAME SET OF FACTS; AND RULED UPON BY THE HONORABLE COURT AT PAGE 264, LINE 25, PAGE 265, LINES 1-23 OF THE TRIAL TRANSCRIPT.

MR. SWILLEY: I WOULD MOVE TO DISMISS THE INDICTMENTS IN RELATION--- OR PERTAINING TO RECKLESS HOMICIDE AS WELL AS

INVOLUNTARY MANSLAUGHTER. I THINK THIS WOULD BE IN VIOLATION OF THE DEFENDANT'S EIGHTH AMENDMENT RIGHTS, SHOULD HE BE CONVICTED. DUE TO THE FACT THAT HE WOULD BE CONVICTED FOR MULTIPLE CRIMES FOR THE SAME OCCURRENCE. AND, I WOULD MOVE FOR A DISMISSAL ON THOSE GROUNDS.

THE COURT: ALL RIGHT. LET ME HEAR FROM THE STATE ON THAT. DO YOU HAVE A RESPONSE?

MR. HOLT: YES, SIR, YOUR HONOR. THE STATE, AFTER SPEAKING WITH DEPUTY SOLICITOR KERNARD REDMOND, HE WISHES TO MOVE FORWARD ON ALL CHARGES. WE FIND THAT UNDER THE CASE LAW THE RECKLESS HOMICIDE AS WELL AS THE INVOLUNTARY MANSLAUGHTER HAS SEPERATE ELEMENTS, AND ARE SEPERATE CRIMES. AND I THINK IT IS WELL SETTLED CASE LAW THAT THEY ARE NOT LESSEK INCLUDED OF FELONY DUI. THEY ARE, IN FACT, THEIR OWN SEPERATE CRIMES. THE STATE FEELS LIKE THERE IS AMPLE EVIDENCE TO GO FORWARD ON ALL CHARGES, AS WELL AS THEY ARE UNRELATED --- ESSENTIALLY SEPERATE, AND DIFFERENT CRIMES, YOUR HONOR.

THE COURT: ALL RIGHT. VERY GOOD. THANK YOU. AND, NOW, MR. SWILLEY, DO YOU HAVE CASE LAW OR PRECEDENT THAT WOULD SUPPORT YOUR POSITION THAT THE MULTIPLICITY OF CHARGES IS EITHER A VIOLATION OF THE EIGHTH AMENDMENT, OR SOME OTHER CONSTITUTIONAL RIGHT, OR PROTECTION OF THE OFFENDANT?

MR. SWILLEY: YOUR HONOR, I DON'T HAVE ANY EIGHTH AMENDMENT

~~Rest~~

CASE LAW EXPRESSLY ON POINT AS TO THAT ISSUE. HOWEVER, I WOULD STILL ASSERT THAT THAT IS MY ARGUMENT. I THINK IT OFFENDS THE DEFENDANT'S EIGHTH AMENDMENT RIGHT AS WELL AS HIS RIGHT TO DUE PROCESS.

THE COURT: ALL RIGHT. LET ME TAKE THAT UNDER ADVISEMENT FOR A MOMENT OR TWO, AND ASK, WILL THE DEFENCE BE PUTTING UP A CASE? TRIAL TRANSCRIPT, PAGE 262, LINES 11-25, PAGE 263, LINES 1-18.

THE COURT: ALL RIGHT. LET ME JUST REVISIT THIS ISSUE ONE MORE TIME ABOUT THE MULTIPLICITY OF CHARGES HERE. I WANT TO SAY, TO THE STATE JUST IN SENTENCING. THE COURT WOULD NOT INTEND TO SENTENCE CONSECUTIVELY FOR ALL CHARGES. THERE MAY BE CONSECUTIVE FOR SOME BUT NOT FOR ALL. AND NOT FOR RECKLESS HOMICIDE, AND NOT FOR INVOLUNTARY MANSLAUGHTER, IF THERE IS A CONVICTION. NOW, UNDERSTANDING THAT, DOES THE STATE STILL WISH TO GO FORWARD TO THE JURY ON ALL OF THOSE ISSUES?

MR. HOLT: YOUR HONOR, THE STATE UNDERSTANDS EVERYTHING THE COURT STATED. THE DECISION HAS BEEN MADE THAT THE STATE WISHES TO GO FORWARD.

THE COURT: VERY GOOD. ALL RIGHT. THEN, MR. SWILEY, I AM CONCERNED ABOUT THE MULTIPLICITY OF CHARGES AS YOU RAISED. BUT THIS IS REALLY A POLICY DECISION THAT WOULD BE MADE BY OUR SUPREME COURT. THE ABSENCE OF PRECEDENCE THAT SUPPORTS YOU TELLS ME THAT THEY HAVE MADE THAT POLICY DECISION. THAT IS, THAT THE STATE, IF THE CHARGES MEET THE ELEMENTS, THEY CAN PROCEED ON ANY AND ALL CHARGES THAT WOULD BE APPROPRIATE. NOW, ~~BEFORE~~ WHETHER OR NOT THAT

IS WISE FOR THE STATE FROM A TECHNICAL STANDPOINT, THAT IS NOT FOR THIS COURT TO DECIDE. IT IS SIMPLY WHETHER OR NOT THE STATE HAS THE RIGHT TO PROCEED AND I FIND THAT THEY DO. AND THE COURT IS GOING TO DENY YOUR MOTION FOR THE MULTIPLE CHARGES. ONE REASON IS YOU WOULD PUT UPON THE STATE THE COURT --- WHICH ONE YOU ARE GOING TO STRIKE. THE STATE IS NOT COOPERATIVE, OR AT LEAST DESIDES THEY WANT TO PROCEED ON ALL. THUS, THAT LEAVES IT UPON THE COURT TO JUST PICK AND CHOOSE THIS OR THAT CHARGE THAT THE COURT WOULD DELETE. AND THAT IS NOT, IN MY OPINION, AN APPROPRIATE EXERCISE AT THIS JUNCTURE BECAUSE THE COURT HAS ALREADY FOUND THAT THERE IS SUFFICIENT EVIDENCE FOR THE ELEMENTS OF EACH CHARGE TO PROCEED TO THE JURY. SO FOR THIS REASON, I AM GOING TO DENY YOUR MOTION. TRIAL TRANSCRIPT, PAGE 262, LINES 11-25, PAGE 263, LINES 1-18, PAGE 264, LINES 13-25, AND PAGE 265, LINES 1-23.

CONCLUSION

APPLICANT HEREBY REQUESTS THAT THE POST-CONVICTION RELIEF JUDGE AFFIRMATIVELY FIND THAT HIS RIGHT TO DIRECT APPEAL WAS NOT KNOWINGLY AND INTELLIGENTLY WAIVED, AND THAT THE COURT GRANT A BELATED APPEAL PURSUANT TO WHITE V. STATE REVIEW, TO BE BASED ON EACH DIRECT APPEAL ISSUE HEREIN SET FORTH, PAGES 3 THROUGH 37, 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G; FORTIOR EXHIBITS I THROUGH XXII, AS WELL AS OTHER RELEVANT ISSUES HEREAFTER SUBMITTED BY AND THROUGH APPOINTED COUNSEL.

APPLICANT FURTHER REQUESTS THAT A CROSS APPEAL BASED ON THE REMAINDER OF HIS POST-CONVICTION RELIEF ISSUES BE APPROPRIATELY FILED BY AND THROUGH APPOINTED COUNSEL, INASMUCH AS HE IS AS A MATTER OF LAW ENTITLED TO A BELATED APPEAL.

13CP160261

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Darlington County
Court of General Sessions

The Honorable J. Michael Baxley, Circuit Court Judge

2011-GS-16-1336, 2011-GS-16-0424, 2011-GS-16-0423, 2011-GS-16-1335
2011-GS-16-0422

The State,

Respondant,

vs.

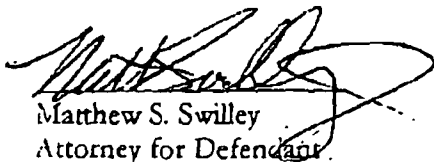
Charlton L. Hill,

Appellant.

FILED
2013 MAR 25 PM 12:55
SCOTT B. SUGGS
CLERK OF COURT/REG. D.
DARLINGTON COUNTY, S.C.

PROOF OF SERVICE

I certify that I have served notice of appeal on John Holt in the above captioned case by placing copy of same to him in the mail with adequate postage affixed on April 26, 2011.



Matthew S. Swilley
Attorney for Defendant
4th Circuit Public Defender's Office
300 Russell Street, Suite 113
Darlington, SC 29532
Phone: 843-398-4069

RECEIVED
APR 27 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

POS 4-26-11
PM 4-26-11

Appeal from Darlington County
Court of General Sessions

13CP160261

The Honorable J. Michael Baxley, Circuit Court Judge

2011-GS-16-1336, 2011-GS-16-0424, 2011-GS-16-0423, 2011-GS-16-1335
2011-GS-16-0422

The State,

Respondant,

vs.

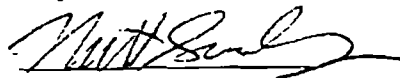
Charlton L. Hill,

Appellant.

FILED
2011 MAR 25 PM 12:55
SCOTT B. SUGGS
CLERK OF COURT/IR.O.D.
DARLINGTON COUNTY, S.C.

NOTICE OF APPEAL

The Defendant, Charlton L. Hill, appeals his convictions in the trial of this case. The Sentence was imposed by the Honorable J. Michael Baxley on April 13, 2011.



Matthew S. Swilley
4th Circuit Public Defender's Office
Attorney for Defendant
300 Russell Street, Suite 113
Darlington, SC 29532

Other Counsel of Record: John W. Holt
Asst. Solicitor
1 Public Square
Darlington, SC 29532

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APR 27 2011
SC Court of Appeals



13CP160261

The South Carolina Court of Appeals

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DEPUTY CLERK

11-289

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1015 SUMTER STREET
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www.sccourts.org

May 12, 2011

MEMORANDUM

To: Loriene French/Angela Bennett

From: Della White

Re: Notice of Filing of Notice of Appeal

Case Name: The State v. Hill, Charlton

Case Number: 2011-GS-16-1336, 2011-GS-16-0424, 2011-GS-0423, 2011-GS16-1335,
2011-GS-16-0422

County: Darlington

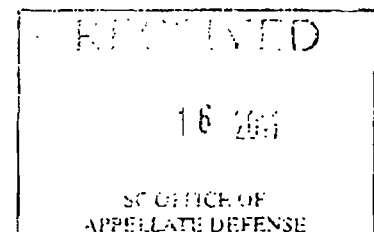
Date of Filing: April 27, 2011

Proof of Service: April 26, 2011

Filed by: Matthew S Swilley, Public Defender

Judge: The Honorable J. Michael Baxley

Hearing Date: April 13, 2011

Asmeat - Carter



13CP160261

The South Carolina Court of Appeals

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CLERK

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May 16, 2011

Matthew Sherrod Swilley, Esquire
Fourth Circuit Public Defender's Ofc.
P.O. Box 648
Darlington, SC 29540

Re: The State v. Hill, Charlton

Dear Mr. Swilley:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1015 Sumter Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within thirty (30) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the

transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

13CP160261

NOTE: If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S.C. Code Ann. Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases:

- 1) any final judgment from the circuit court which includes a sentence of death;
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58;
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance;
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state;
- 5) any final judgment from the circuit court pertaining to elections and election procedure;
- 6) any order limiting an investigation by a State Grand Jury under S.C. Code Ann. Section 14-7-1630;
- 7) any order of the family court relating to an abortion by a minor under S.C. Code Ann. Section 44-41-33.

Very truly yours,

V. Claire Allen

V. Claire Allen
DEPUTY CLERK

VCA/dw

cc: Chief Appellate Defender Robert M. Dudgeon
Assistant Deputy Attorney General Salley W. Elliott
John Woodrow Holt, IV, Esquire

13CP160261

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County
The Honorable J. Michael Baxley, Presiding Judge

2011-GS-16-1335; 2011-GS-16-1336;
2011-GS-16-0422; 2011-GS-16-0423; 2011-GS-16-0424

THE STATE,

Respondent,

vs.

CHARLTON L. HILL,

Appellant.

MOTION TO DISMISS APPEAL

Respondent, through its undersigned counsel, would respectfully show unto this Court as follows:

I.

On April 13, 2011, Appellant was convicted of felony driving under the influence with death resulting, failure to stop for a blue light, reckless homicide, involuntary manslaughter, and driving under suspension and was sentenced that same date according to the attached verdict forms and sentence sheets which reflect the guilty verdicts and sentence date.

1

II.

13CP160 261

Appellant, through counsel, served notice of appeal on April 26, 2011.

III.

Pursuant to the long-standing rules of appellate procedure, a notice of appeal from a criminal conviction must be served upon the State within ten (10) days of imposition of the sentence. See Rules 203(b)(2), 262(b), SCACR. The timely service is a jurisdictional requirement and this Court has no authority to extend or expand the time within which the notice of appeal must be served. State v. Hinson, 303 S.C. 92, 399 S.E.2d 422 (1990); Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985); Miller v. State, 269 S.C. 113, 236 S.E.2d 422 (1977). The State also may not consent to appellate jurisdiction because the parties may not consent to jurisdiction if it is not properly acquired.

IV.

Appellant's notice of appeal should have been served upon Respondent on or before April 25, 2011 and was not served until April 26, 2011. The failure of Appellant to timely serve written notice of appeal upon the State deprives this Court of jurisdiction over this appeal and entitles Respondent to a dismissal of the appeal, regardless of the reasons for the failure to timely serve the notice.

WHEREFORE, Respondent respectfully prays that this Court dismiss the appeal; that the time limits for this appeal be held in abeyance until this Court's disposition of this motion; and for such other and further relief as this Court may deem just and proper.

13CP100261

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

WILLIAM B. ROGERS, JR.
Solicitor, 4th Judicial Circuit

BY:


SALLEY W. ELLIOTT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 5, 2012

The South Carolina Court of Appeals

The State, Respondent,
v.
Charlton L. Hill, Appellant.

13CP160261

Appellate Case No. 2011-191446

ORDER

Respondent has filed a motion to dismiss, arguing Appellant failed to timely serve written notice of appeal on Respondent. Appellant did not file a return.

After a careful consideration, we dismiss this appeal for failure to timely serve the Notice of Appeal. See Rule 203(b)(2), SCACR (providing that a notice of appeal from a criminal conviction shall be served on all Respondents within ten days after the sentence is imposed); Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 227 may be extended"); Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985) (explaining the notice of appeal is a jurisdictional requirement, and the appellate courts have no authority to extend the time in which the notice of intent to appeal must be served).


FOR THE COURT

Columbia, South Carolina

cc:
Salley W. Elliott
Breen Richard Stevens

FILED

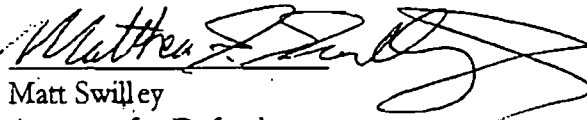
9-24-12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
	)	
THE STATE OF SOUTH CAROLINA	)	MOTION TO SUPPRESS
	)	BLOOD TEST ANALYSES
vs.	)	RESULTS
	)	
CHARLTON L. HILL,	)	2010-GS-16-1335, et al.
<u>Defendant.</u>	)	

The Defendant, by and through counsel, moves this Honorable Court to suppress the results of a blood analyse which shows positive indications for alcohol as well as other drugs. The Defendant challenges the introduction of this evidence pursuant to Rule 6 SCRPC for chemical analyses and chain of custody.

Respectfully submitted,

4TH CIRCUIT PUBLIC DEFENDER'S OFFICE

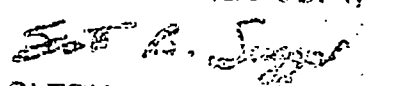


Matt Swilley
Attorney for Defendant
300 Russell Street, Suite 113
Darlington, SC 29532
Phone: 843-398-4069

Darlington, South Carolina

April 8, 2011

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permanent

CUMULATIVE REPORT

CAROLINA PINES REGIONAL MEDICAL CENTER

1304 West Bobo Newsom Highway, Hartsville, SC 29550

Harold N. Wheeler, M.D., Pathologist

PATIENT: HILL, CHARLTON

MRN: 0000118203

LOCATION: 3SG-0316-

I.D.#: 8975878

DOB:

AGE: SEX: M

continued

C H E M I S T R Y

	-----I1080493-M3-----	-----I1080495-M2-----	-----I1080499-M1-----	-----I109C064-----	
COLLECTED	01/08/10 20:25	01/08/10 20:25	01/08/10 20:25	01/09/10 02:53	REFERENCE RANGE
PRIORITY, PHYSICIAN	STAT BALVICH, JIM	STAT BALVICH, JIM	STAT BALVICH, JIM	TIMED DAMERON, JASON	

NS:

Reference Range	0 mg/dl
Limited muscular incoordination	<50 mg/dl
Incoordination	50-100 mg/dl
Incoordination, behavior changes	
(Legally intoxicated in most states)	100-150 mg/dl
Incoordination, prolonged reaction times	
(Legally intoxicated in most states)	>150 mg/dl

13CP160261

NOTE: Carolina Pines Regional Medical Center does NOT perform legal blood alcohols. No chain of custody exists. Results are for medical purposes only.

- RESULT REPORTED FIRST TIME

ATT. PHYS.: DAMERON, JASON

MRN: 0000118203

LOCATION: 3SG-0316-A

PATIENT: HILL, CHARLTON

KEY FOR ABNORMAL COLUMN: L-LOW, H-HIGH, AB-ABNORMAL, P-PANIC

C H E M I S T R Y

4 of 69, 159 of 317

PRINTED 01/09/2010 19:24

Page: 5 of 7

FOLIO EXHIBIT XL

CAROLINA PINES REGIONAL MEDICAL CENTER

HISTORY AND PHYSICAL **13CP 160261**

NAME: HILL, CHARLTON
MR #: 000118203
ROOM #: 0316 A

HOSPITAL #: 008975878
DOB:
ADMITTED: 01/08/2010

CHIEF COMPLAINT: Car accident.

HISTORY OF PRESENT ILLNESS: The patient is a 47-year-old gentleman who presented to the emergency department on 01/08/2010 after being involved in a single car motor vehicle collision. The patient reportedly was being pursued by a police car which resulted in a single car collision. He does not recall the events of the accident. According to EMS records, he was found at the scene in the driver's seat. There was noted to be severe damage to the car. It is unsure whether or not he was wearing a seatbelt. Passenger in the car was dead on arrival. He was transferred to the emergency department, where on initial presentation he was noted a hemodynamically stable with a blood pressure 122/77, respiratory rate 16, O2 saturation is 90%, pulse of 84, temperature 96.8 degrees Fahrenheit. He reportedly complained of neck pain. His work-up included a CT scan of the head, face, chest, abdomen and pelvis, T-L spine and C-spine. His only acute traumatic injury was depressed comminuted nasal fracture. White count 10.8, with H&H 15.6 and 45.5, and platelet count 273 with normal differential. PTT 26.7, PT, INR both within normal limits. Blood type O-positive. Urinalysis was all within normal limits except for trace leukocyte esterase. Urine drug screen was positive for THC, cocaine and opiates. Comprehensive metabolic panel showed no abnormalities. Blood alcohol was 177.3. Amylase, lipase, CK-MB, CPK and troponin were all within normal limits.

PAST MEDICAL HISTORY: Includes gallbladder disease. Polysubstance abuse. Hepatitis C and questionable right inguinal hernia. General anxiety disorder with associated panic attacks. Burns to the left hand and wrist.

SURGICAL HISTORY: Includes cholecystectomy, right inguinal hernia repair. Skin grafting to his left hand and wrist. Peripheral neuropathy of his left upper extremity reportedly associated with previous burn trauma.

MEDICATIONS:

1. Neurontin 600 mg p.o. 3 times a day.
2. Soma 350 mg twice daily.
3. Xanax 0.5 mg twice daily.
4. Tramadol 50 mg 4 times a day.

General anxiety disorder with associated panic attacks with burns to the left hand wrist please add to the surgical history.

Skin grafting to his left hand and wrist. Peripheral neuropathy of the left upper extremity reportedly associated with previous burn trauma and.

ALLERGIES: Include PENICILLIN and CODEINE.

SOCIAL HISTORY: Admits to marijuana use 2 to 3 times a week, cocaine use as much as possible. In his words if he could use it daily he would. Alcohol use type and quantity not specified. He previously lived with his wife.



SLED LABORATORY FORENSIC SERVICES REQUEST

(Use ballpoint pen and press firmly. Print all
information except where signature is required.)

13CP16026

FORM: LAB-000
NOVEMBER 1993
Previous Editions
May Be Used

Name of Investigating Officer: Patrick Lee Rank: Sgt
Department: Dorchester County Sheriff's Office Telephone Number: 843-378-4501
Street Address or Post Office Box: P.O. B. 783 County: Dorchester
City: Dorchester State: SC Zip Code: 29540
Incident Date: 01-08-2010
CC: _____ Related Lab No. _____

Subject # 1 Victim # _____ Sex: M ☒ F _____ SID/FBI
Last Name: Hill First Name: Charles Middle Name: Letole DLSS NO: _____
Race: Cau ☒ Blk _____ Other _____ DOB: _____

Subject # _____ Victim # _____ Sex: M _____ F _____ SID/FBI
Last Name: _____ First Name: _____ Middle Name: _____ DLSS NO: _____
Race: Cau _____ Blk _____ Other _____ DOB: _____

Subject # _____ Victim # _____ Sex: M _____ F _____ SID/FBI
Last Name: _____ First Name: _____ Middle Name: _____ DLSS NO: _____
Race: Cau _____ Blk _____ Other _____ DOB: _____

Subject # _____ Victim # _____ Sex: M _____ F _____ SID/FBI
Last Name: _____ First Name: _____ Middle Name: _____ DLSS NO: _____
Race: Cau _____ Blk _____ Other _____ DOB: _____

* Could any subjects or victims have the following: (circle) AIDS VD Hepatitis Tetanus TB Lice

Comments: _____

COMPLETE THIS SECTION ON ALL CASES: (Circle Appropriately)

Homicide Suicide Accidental Death Natural Death Child Fatality Autopsy Performed: Yes No

(A) Gunshot (B) Stabbing (C) Beating (D) Strangulation (E) Drug/Poison (F) Alcohol (G) Carbon Monoxide (H) Fire (I) Hanging (J) Electrocution
(K) Heart Related (L) Disease (M) Other _____

Accident Fatality Victim: (A) Driver (B) Pedestrian (C) Motorcyclist (D) Bicyclist (E) Passenger (F) Swimming/Boating

TYPE OF CASE: (IF NOT DEATH) (A) Drugs (B) CSC (C) Burglary (D) Larceny (E) Other _____

FOR TOXICOLOGY CASES: (Circle Appropriately)

DUI (Felony DUI) Was a Breath Test given? Yes (No) If Yes, Reading _____

Number of Specimens Enclosed: Blood 2 Urine 1 Ocular Fluid _____ Other _____

Examination Requested: Blood Alcohol Drug Screen CO Blood Type _____ Other _____

Drugs Suspected: (Yes) No List Drugs: Marijuana - Bupropion - Cocaine

FOR SEROLOGY/DNA/HAIR/FIBER CASES: (Circle Appropriately)

Was the subject(s) bleeding? Yes No Unknown Have any of the victims / subjects been transfused in the last 120 days? Yes No Unknown

Crime occurred: Suspect's residence Victim's residence Suspect's vehicle Victim's vehicle Other _____

Was a weapon involved? Yes No Unknown Type of weapon: _____

Have standards from all possible bleeders or body fluid donors been submitted? Yes No Unknown

Comments: HEB 018 100

Submission of victim and suspect standards is necessary before complete analysis can be performed.

THE ITEMS SUBMITTED WILL BE EXAMINED WITH YOUR ASSURANCE THAT THE SUBMITTED SPECIMENS HAVE NOT NOR WILL BE SUBMITTED TO ANY OTHER LABORATORY FOR TECHNICAL OR SCIENTIFIC EXAMINATION. THIS STATEMENT WAS READ BY OFFICER.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Lt. Eric A. Hodges
Darlington County Sheriff's Office
P.O. Box 783
Darlington, SC 29540

TOXICOLOGY DEPARTMENT
February 22, 2010
SLED No: L10-00610
Your Case No: 2010010201, FA10027
Incident Date: 01/08/2010

[S] Charlton Hill
[V] Sylvia Mattox Hill

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

PARTIAL REPORT

ITEMS OF EVIDENCE

Item: 3 **Sample Type: Blood (Toxicology) - labeled "HILL, CHARLTON"**

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.152	% w/v	0.01

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Benzodiazepines	Positive	mg/L	0.05
Cannabinoids	Positive	mg/L	0.03
Amphetamine	Negative	mg/L	0.15
Methamphetamine	Negative	mg/L	0.15
Oxycodone	Negative	mg/L	0.10



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

13CP160261

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FOURTH JUDICIAL CIRCUIT
 COUNTY OF DARLINGTON)
)
 THE STATE OF SOUTH CAROLINA,) MOTION FOR CHANGE OF VENUE
)
 vs.)
)
) Indictment No: 2011-GS-16-0397
)
 CHARLTON LAFATE HILL,)
)
Defendant.)

The Defendant, by and through counsel, Matt Swilley, moves this Honorable Court for a change of venue for the trial of this case. The Defendant is currently indicted for Failure to Stop for a Blue Light Resulting in Death pursuant to S.C. Code 56-5-750(C)(2).

The Defendant contends that he is entitled to a change of venue for the trial of this case due to pretrial publicity along with the decedent's standing in a small community. The Defendant contends that, as a direct and proximate result of to these factors, any prospective jurors in Darlington County would have such fixed opinions that they could not judge impartially the guilt or lack thereof of the Defendant. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). The Defendant maintains that prospective jurors would be unable to lay aside their impressions and opinion and render a verdict based on the evidence presented in court during the trial of this case. Irvin v. Down, 366 U.S. 717, 723 (1961).

Respectfully Submitted,

4TH CIRCUIT PUBLIC DEFENDER'S OFFICE



Matt Swilley
 Attorney for Defendant
 300 Russell Street, Suite 113
 Darlington, SC 29532
 Phone: (843) 398-4069

Darlington, South Carolina

March 24, 2011

TRUE CERTIFIED COPY,
Scott B. Suggs
 CLERK OF COURT/ROD
 DARLINGTON COUNTY, S.C.

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Who gets to use unsold cruise cabins at huge discounts
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160261

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Man charged in crash that killed his wife

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Posted: Jan 11, 2010 11:32 AM EST
Updated: Feb 04, 2010 3:27 PM EST

DARLINGTON, SC (WMBF) - Darlington County Investigators have made an arrest in connection with a fatal accident Friday night.

According to authorities, Charlton Hill, 47, of is charged with felony DUI, failure to stop for a blue light and driving under suspension.

Investigators say Hill, along with his wife Sylvia Britt Mattox, 47, was driving a 2005 Chevy Cobalt on Potato House Road in Darlington Friday night. When a trooper with the South Carolina Highway Patrol attempted to pull the car over, they say Hill tried to escape.

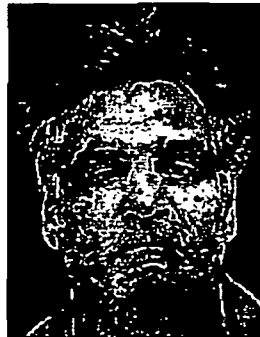
Hill lost control of the vehicle, ran off the road and hit a tree in the 1600 block of Potato House Road. Mattox was pronounced dead on the scene. Hill was transported to an area hospital where he was treated and admitted for observation.

Hill was released on Sunday and transported to the Darlington County Detention Center.

SCHP officials called for Darlington County to investigate the wreck because of the trooper's involvement with the chase.

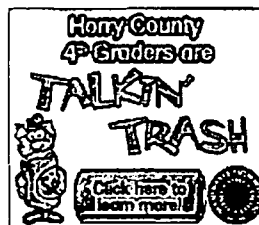
Preliminary results show that the car was traveling at a high rate of speed when the driver lost control. This case is still under investigation.

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Charlton Hill (Source: Darlington County Jail)

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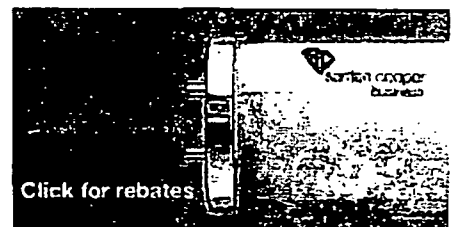
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Barefoot resort



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**Tonya Brown**

Tonya has been reporting stories happening in the Pee Dee for more than 10 years.

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Man charged in deadly chase

by Tonya Brown

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Read more: Local, Crime, Charlton Hill, Charged, Deadly Chase and Accident, Wife's Death

47-year-old Charlton Hill is charged in a deadly chase and accident investigators say caused his wife's death.

Hill is charged with Felony DUI, Failure to stop for a blue light and driving under suspension. He's being held at the Darlington County Detention Center.

At about 6:30pm Friday, Highway Patrol says a trooper tried to stop a car for a traffic violation on Potato House Road, but the car didn't stop.

A minute later, the car ran off the road and hit a tree. Investigators say Charlton Hill was driving in the car.

Investigators say his wife, 47-year-old Sylvia Brit Marox Hill died in the crash.

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FORTIOR EXHIBIT XVII



13CP160261

Thursday, March 24, 2011 |

Wilmington, North Carolina 75° Feels Like: 75° Partly Cloudy

NEWS

HOME / NEWS / LOCAL /

Timmons ville man faces felony DUI charge in chase, wife's death

Recommend Be the first of your friends to recommend this.

By From staff reports
Published: January 11, 2010

DARLINGTON — A Timmons ville man has been charged with felony driving under the influence in connection with a crash that killed his wife in Darlington County on Friday night.

Charlton Lafate Hill, 47, of _____ was discharged from an area hospital Sunday and arrested Sunday afternoon, Darlington County Sheriff's Capt. Andy Locklair said. Hill also is charged with failure to stop for a blue light and driving under suspension.

Darlington County Magistrate Judge James E. Thomas of Hartsville set Hill's bond for the felony DUI resulting in injury or death charge at \$65,000 cash or surety and for the failure to stop for a blue light charge at \$1,067.50. Thomas also fined Hill \$652.50 for the DUS charge he faces.

Hill is accused of leading a S.C. Highway Patrol trooper on a high-speed chase that began about 6:30 p.m. and ended when his 2005 Chevy Cobalt ran into a tree on the 1600 block of Potato House Road near Darlington.

His only passenger, his 47-year-old wife Sylvia Britt Mattox Hill, was pronounced dead at the scene. Darlington County Coroner Todd Hardee said in a press release issued Saturday.

"Coroner Hardee has not issued a ruling into the death at this time. This ruling will be made once all evidence has been collected and examined by the Coroner's Office," according to the release.

Her body was sent to Newberry for an autopsy Sunday, but results are not yet available.

Her daughters, 20-year-old Blake Cook and 24-year-old Bridget Cook, and her stepson, Timmy Beasley, were among the family members present for Hill's bond hearing Monday afternoon and said they felt bond for his release should have been denied.

"I don't think what happened today was justified at all and I'm really angry," Bridget Cook said. "... My momma didn't deserve to die like that. His bond should've been denied."

The chase, which lasted about a minute, started with an attempted traffic stop on Potato House Road, S.C. Highway Patrol Trooper Lance Cpl. Sonny Collins said.

The driver of the Cobalt failed to stop for blue lights and fled, Collins said. The pursuing trooper was not injured.

Patrol officials are reviewing the case to make sure policy was followed, Collins said.

"Because the trooper was chasing the car, they (S.C. Highway Patrol) have asked us to investigate the wreck," Darlington County Sheriff Wayne Byrd said in a press release issued Monday.

The Darlington Police Department provided the sheriff's office with an accident reconstructionist to assist in the investigation Friday and Saturday, Locklair said.

Preliminary results show that the car was traveling at a high rate of speed when the driver lost control, according to the sheriff's office release.

3/24/2011

Timmons ville man faces felony DUI char...

416

The sheriff's office and coroner's office are still investigating the crash, Hardee said in his release.

[Recommend](#) Be the first of your friends to recommend this.

Reader Reactions

Voice your opinion by [posting a comment](#).

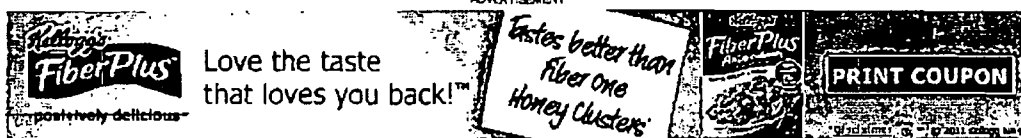
13CP160261

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FORTUNE EXHIBIT XIX

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

THE STATE OF SOUTH CAROLINA,

vs.

CHARLTON L. HILL,

Defendant.

IN THE COURT OF GENERAL SESSIONS

FOURTH JUDICIAL CIRCUIT

MOTION TO SUPPRESS
STATEMENTS

2010-GS-16-1335, 2010-GS-16-1336

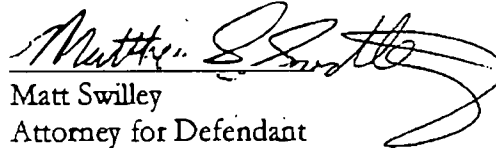
2010-GS-16-0422, 2010-GS-16-0423

2010-GS-16-0424

The Defendant, by and through counsel, moves this Honorable Court for a ruling suppressing the statements that were made subsequent to a traffic accident as well as statements made to medical personnel during his transportation to the hospital. The Defendant contends these statements were made before any Miranda warnings were given and while he was in custody. The Defendant also challenges the voluntariness of the statements given.

Respectfully Submitted,

4TH CIRCUIT PUBLIC DEFENDER'S OFFICE



Matt Swilley

Attorney for Defendant

300 Russell Street, Suite 113

Darlington, SC 29532

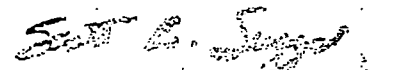
Phone: 843-398-4069

Darlington, South Carolina

April 8, 2011

FILED
2011 APR -8 PM 1:46
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,


CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FOURTH EXHIBIT XX

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

THE STATE OF SOUTH CAROLINA,

vs.

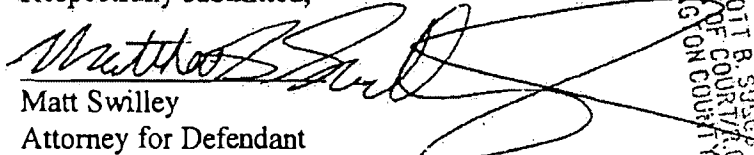
CHARLTON L. HILL,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) FOURTH JUDICIAL CIRCUIT) MOTION TO SUPPRESS AUTOPSY
) PHOTOGRAPHS) 2010-GS-16-1336, 2010-GS-16-1335,
) 2011-GS-16-0422, 2011-GS-16-0423,
) 2011-GS-16-0424

The Defendant, by and through counsel, moves this Honorable Court for an order suppressing the photographs taken before, during, and after the autopsy of the decedent in the above-captioned case while the decedent's body was in the physical custody of Newberry Pathological Associates. The introduction of said photographs would not comport with Rule 403 SCRE. The introduction of said photographs probative value, if any, would be substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Respectfully submitted,



Matt Swilley
Attorney for Defendant
300 Russell Street, Suite 113
Darlington, SC 29532
Phone: 843-398-4069

Darlington, South Carolina

March 31, 2011

TRUE CERTIFIED COPY.
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

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CAROLINA PINES REGIONAL MEDICAL CENTER
1304 West Bobo Newsom Highway Hartsville, SC 29550
Harold N. Wheeler, M.D., Pathologist

419

autoreporting lab

12CP120261

Patient name: HILL, CHARLTON

M.R.N.: 0000118203 Room:

Location: EMERGENCY ROOM

Billing no.: 8975878

Adm.date: 01/08/10 Surg.date:

Att.physician: BALVICH, JIM

DOB: Age: Sex: M

Order Id : I1080495

FINAL

Date&Time Ordered: 01/08/10 19:55

COMMENTS:

RD. COMM: MVA -- MAJOR TRAUMA

TEST DRUG SCREEN RAPID WAS CANCELLED, 01/08/10 21:33 released in erro

C H E M I S T R Y

TEST-NAME	RESULT	ABN.	NRML-RANGE	UNITS
SPECIMEN URR COLLECTED 01/08/10 21:50 BY NURSE RECEIVED 01/08/10 22:04 BY CWB				

DRUG SCREEN (URINE)

COCAINE	✓ POSITIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
AMPHETAMINES	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
OPIATES	✓ POSITIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
TETRAHYDROCANNIBOL THC	✓ POSITIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
BARBITURATES	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
BENZODIAZEPINES	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
PHENCYCLIDINE	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
TRICYCLICS	NEGATIVE	NEGATIVE ng/ml
Edited report, previous value was POSITIVE, reported at 21:28 on 01/08/10.		
METHADONE	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
METAMPHETAMINE	NEGATIVE	NEGATIVE

This is a screening test for medical purposes only. Legal
drug screens are not performed at Carolina Pines RMC.
Confirmations or quantitations of positives should be ordered
by the physician and will be sent to the reference laboratory.

Results are considered Positive when at or above the following threshold
values:

cetaminophen 5ug/mL
mphetamines 1000ng/mL

c o n t i n u e d o n n e x t p a g e

Patient name: HILL, CHARLTON

MRN: 0000118203Room:

Location: EMERGENCY ROOM

Att.physician: BALVICH, JIM

Printed: 01/08/2010 22:31

PAGE: 1 of 2

FORNOK EXHIBIT XXII

2. Was COUNSEL INEFFECTIVE FOR FAILING TO: [1] CHALLENGE THE SUFFICIENCY AND VALIDITY OF GRAND JURY INDICTMENT 2010_GS_16_1335, AND/OR [2] FILE A MOTION TO QUASH, OR [3] OBJECT IN A TIMELY MANNER, WHEN TRIAL COURT LACKED JURISDICTION: OFFENSE LOCATION BEING IN ERROR, SAID INDICTMENT BEING DEFECTIVE ON THE BODY AND CONTRARY TO SWORN TESTIMONY ?

FACTS

- A) AT A COURT OF GENERAL SESSIONS, CONVENED ON SEPTEMBER 20, 2013, THE GRAND JURORS OF DARLINGTON COUNTY PRESENT UPON THEIR OATH, FELONY DRIVING UNDER THE INFLUENCE - DEATH CDR: 0395 56_05_2945(A)(2) THAT CHARLTON LEFATE HILL DID IN HORRY COUNTY ON OR ABOUT JANUARY 8, 2010 DRIVE A MOTOR VEHICLE... (ATTACHED)
- B) AT THE TIME OF THE TRIAL, UNDER DIRECT EXAMINATION BY MR. HOLT, TROOPER GAINEY TESTIFIED: Q. WHICH ROAD WAS THAT CAR ON WHEN YOU OBSERVED IT? A. IT WAS ON TIMMONSVILLE HIGHWAY, SC 340. Q. AND COULD YOU DESCRIBE THE CONDITION OF THE ROADWAY? A. IT WAS A COLD NIGHT, BUT IT WAS CLEAR. TRAFFIC--- IT WAS AROUND 6:30, ... A. I CAME UP BEHIND THE CHEVY COBALT, JUST BEFORE YOU GET TO HOFFMEYER ROAD ON SC 340 HEADING BACK INTO DARLINGTON. (TRIAL TRANSCRIPT, PAGE 130, LINE 25, PAGE 131, LINES 1-4, 9-11)
- C) ALSO, AT THE TIME OF THE TRIAL, UNDER DIRECT EXAMINATION BY MS. BURCH, OFFICER HODGES TESTIFIED: Q. WERE YOU WITH DARLINGTON COUNTY SHERIFF'S DEPARTMENT ON JANUARY 8, 2010? A. YES, MA'AM. I RECEIVED A CALL TO RESPOND TO THE 1600 BLOCK OF POTATO HOUSE ROAD IN REFERENCE TO A TRAFFIC FATALITY? (TRIAL TRANSCRIPT, PAGE 160, LINES 9-11, 17-19)

2013 MAR 25 PM 12:56
 SCOTLAND COUNTY
 CLERK OF COURT
 DARLINGTON COUNTY

FILED

OFFENSE LOCATION IS REQUIRED BY LAW. § 17-19-20 ALLEGATIONS SUFFICIENT FOR INDICTMENT. EVERY INDICTMENT SHALL BE DEEMED AND JUDGED SUFFICIENT AND GOOD IN LAW WHICH, IN ADDITION TO ALLEGATIONS AS TO TIME AND PLACE, AS REQUIRED BY LAW, ... HISTORY: 1962 CODE § 17-402; 1952 § 17-402; ...

APPLICANT CONTENDS THAT COUNSEL WAS DEFICIENT IN HIS DUTY TO HIM FOR FAILING TO PROMPTLY AND PROPERLY PETITION THE COURT, INAS MUCH AS INDICTMENT 2010_GS-16-1335 WAS INVALID BASED ON ERRONEOUS PLACE OF OFFENSE.

TIME AND PLACE OFFENSE: THE TWOFOLD PURPOSE OF THIS SECTION [CODE 1962 § 17-402] IN REQUIRING THE INDICTMENT TO ALLEGE THE PLACE OF THE CRIME IS TO LAY JURISDICTION OF THE COURT AND INFORM THE ACCUSED OF THE COUNTY IN WHICH HE IS CHARGED WITH THE VIOLATION OF LAW. (SEE STATE V. FISHER [1945] 206 SC 220; STATE V. MCINTIRE [1952] 221 SC 504)

S.C. 2001. LACK OF SUBJECT MATTER JURISDICTION MAY NOT BE WAIVED, EVEN BY CONSENT OF THE PARTIES, AND SHOULD BE TAKEN NOTICE OF BY THE SUPREME COURT.

BROWN V. STATE, 540 S.E. 2d 846.

S.C. 2001. ISSUES RELATED TO SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME, INCLUDING FOR THE FIRST TIME ON APPEAL IN THE SUPREME COURT.

BROWN V. STATE, 540 S.E. 2d 846.

APPLICANT FURTHER CONTENDS, BUT FOR COUNSEL'S DEFICIENT PERFORMANCE, THE OUTCOME OF TRIAL WOULD HAVE BEEN DIFFERENT BECAUSE THE TRIAL COURT WAS WITHOUT JURISDICTION TO IMPOSE SENTENCE. (U.S.C.A. CONST. AMEND. 6)

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2013 MAR 25 PM 12:55
CLERK OF COURT/3.0
DANIELSON COUNTY

13CP160261

Rev. CHARLTON L. HILL, Jr.

2013 MAR 25 PM 12:56
 RECEIVED
 U.S. DEPT. OF JUSTICE
 D. C. DISTRICT OF COLUMBIA

MATTHEW SWILLEY, ESC.

P.O. Box 648

Rev. CHARLTON HILL VS. SC.

DARLINGTON, SC. 29540

MARCH 29, 2011.

DEAR MATT:

YOUR MESSAGE, DATED 3.24.11, WAS WELL RECEIVED. THANK YOU FOR YOUR
 TIMELY RESPONSE AND COOPERATION THIS FAR.

OUR NEXT COURSE OF ACTION IS TO PETITION THE COURT FOR PSYCHIATRIC
 EVALUATION AT A TIME MOST BENEFICIAL TO OUR STRATEGY. AS YOU ARE
 AWARE, A JUDGE MAY APPOINT (AT SC.'S EXPENSE) A PSYCHIATRIST TO HELP
 INDIGENT DEFENDANTS, OR EVEN TRANSFER A DEFENDANT TO THE STATE
 HOSPITAL AT THEIR CONVENIENCE. ALBERT, AN INSANITY DEFENCE IS NOT THE
 PRIMARY AGENDA, IT WILL TAKE TIME, INASMUCH AS SAID AGENDA REMAINS
 HIDDEN, SO THAT WE HAVE AN OPPORTUNITY TO ESTABLISH ANOTHER, MORE FEASIBLE,
 DEFENCE. ARE YOU FAMILIAR WITH THE M'NAGHTEN RULE? PARTICULARLY THE
 COMMON ACCEPTED DEFINITION OF INSANITY BEING: IRRESISTIBLE IMPULSE?

VOLUNTARY INTOXICATION CAN SERVE AS A PARTIAL DEFENCE, WHEREAS A
 PROSECUTOR MUST PROVE THAT A DEFENDANT ACTED WITH A SPECIFIC INTENT.
 SAID INTOXICATION DOESN'T EXCUSE THE CRIME, BUT IF INTOXICATION PRODUCED
 MENTAL IMPAIRMENT THAT RENDERED A DEFENDANT UNABLE TO FORM THE REQUIRE
 SPECIFIC INTENT, THE DEFENDANT CAN BE CONVICTED OF A LESSER OFFENCE.
 LIKE INSANITY, OR IRRESISTIBLE IMPULSE, THIS DEFENCE IS USUALLY SUPPORTED
 WITH MEDICAL AND/OR PSYCHIATRIC TESTIMONY.

ANOTHER CASE IN POINT THAT REQUIRES SOME ATTENTION IS "CHEMISTRY,"

PAGE 5 OF 7 (SEE ENCLOSURES), DOES NOT PERFORM LEGAL BLOOD ALCOHOLS. NO CHAIN OF CUSTODY EXISTS. RESULTS ARE FOR MEDICAL

ALSO, PLEASE SEE "AUTOPSY, CASE SUMMARY, PAGE 4 OF 4, PARAGRAPHS 4(A) AND 5(B) = (A) AN AMENDED OPINION MAY BE NECESSARY. (B) = THE MANNER OF DEATH IS ACCIDENT."

ALSO, PLEASE REVIEW "RULE 3(C) S.C.R. CRIM.P., AND SECTION (D), AS THIS SHOULD BE GROUNDS FOR A DISMISSAL, ACCORDING TO MY UNDERSTANDING, IF NEITHER HAS BEEN DONE **INDICTMENT**

IN CONCLUSION, PLEASE FORWARD ANY MOTIONS, INDICTMENT, ECT., FILED BY THE STATE, OR YOU ON MY BEHALF. HOLD YOUR FINDINGS IN CONSIDERANCE TO BE PRESENTED AT A CONGRUENTLY DECIDED TIME.

FURTHERMORE, DO NOT OFFER A COUNTER-PLEA UNTIL WE HAVE DECIDED ON OUR BEST COURSE OF ACTION. OUR DEFENCE GROWS STRONG, AND FOR ALL INTENTS AND PURPOSES, SHOULD SHOW NO WEAKNESS BY COUNTER OFFER. WITH ALL DUE RESPECT, I LOOK FORWARD TO TRIAL BY JURY, PLEASE, CONTINUE YOUR DILIGENCE. PREPARE FOR THE WORST CASE SCENARIO.

Sincerely,

Charlton L. Hill

3.30.2011.

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2013 MAR 25 PM 12:56
SCOTT B. SUGGS
D. CLERK OF COURT
DADE COUNTY, FLA.

424

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #: 201001-0201

863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER

J662997

ARRESTED ON: 2010-01-11

ACTION OF GRAND JURY

Grand Jury Foreperson

Date SEP 02 2010

VERDICT

TRUE BILL

Petit Jury Foreperson

Date

DOCKET NUMBER:

2010-GS-16-1335

0261

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2013 MAR 25 PM 12:56

SCOTT D. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:

September 2010

THE STATE

vs.

Charlton Lafate Hill

INDICTMENT FOR

DUI / Felony driving under the influence, death
results

§56-05-2945(A)(2)

CDR Code: 0395

TRUE CERTIFIED COPY.
Scott B. Suggs
CLERK OF COURT/RMO
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

FOTOIR EXHIBIT XXV

FOTOIR EXHIBIT XXVI

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #: 201001-0201

863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
J662997

ARRESTED ON: 2010-01-11

ACTION OF GRAND JURY

Grand Jury Foreperson

Date SEP 02 2010

VERDICT

TRUE BILL

Petit Jury Foreperson

Date

DOCKET NUMBER:

2010-GS-16-1335

FILED

2013 MAR 25 PM 12:56

SCOTT B. SUGGS
CLERK OF COURT/R.D.O.
DARLINGTON COUNTY, S.C.

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:

September 2010

THE STATE

vs.

Charlton Lafate Hill

INDICTMENT FOR

DUI / Felony driving under the influence, death results

§56-05-2945(A)(2)

CDR Code: 0395

TRUE CERTIFIED COPY.
Scott B. Suggs
CLERK OF COURT/RMO
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

13CP160261

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

DUI / Felony driving under the influence, death
results

§56-05-2945(A)(2)

At a Court of General Sessions, convened on September 20, 2010, the Grand Jurors of Darlington County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE - DEATH

CDR: 0395 56-05-2945(A)(2)

That Charlton Lafate Hill did in Horry County on or about January 8, 2010 drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused the death of Sylvia Mattox in violation of Section 56-05-2945(A)(2), S. C. Code of Laws, 1976, as amended.

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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

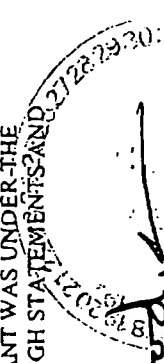
TRUE CERTIFIED COPY.
WILLIAM B. ROGERS, JR.
SOLICITOR

ARREST WARRANT
J662997
STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
DARLINGTON COUNTY
THE STATE
against
HILL, CHARLTON LEFATE
Address:
Phone:
Sex: M Race: W Height: 5' 08" Weight: 181
DL State: SC DL #: DOB: Agency OR#: Prosecuting Agency: Pin-recuting Officer: ANY LAWFUL OFFICER Offense: FELONY D.U.I. INVOLVING DEATH Code/Ordinance Sec. 56-05-2945(A)(2) Offense Code: G395
This warrant is CERTIFIED FOR SERVICE in the [] County/ [] Municipality of [] State of South Carolina. The accused is to be arrested and brought before me to be dealt with according to law.
Date: Signature of Judge: (L.S.)

RETURN
A copy of this arrest warrant was delivered to defendant HILL, CHARLTON LEFATE on JAN 14 2010
Deputy Rachel Brown
Signature of Constable/Law Enforcement Officer
RETURN WARRANT TO:
D. B. CURTIS
115 CAMP RD.
DARLINGTON, SC 295320000

STATE OF SOUTH CAROLINA)
[X] County/ [] Municipality of)
DARLINGTON COUNTY)
CASE # 2010010201
AFFIDAVIT
Personally appeared before me the affiant LT. E. A. HODGES/DCSO being duly sworn deposes and says that defendant HILL, CHARLTON LEFATE did within this county and state on JAN 08, 2010 violate the criminal laws o State of South Carolina (or ordinance of [X] County/ [] Municipality of DARLINGTON COUNTY in the following particulars:
DESCRIPTION OF OFFENSE:
FELONY D.U.I. INVOLVING DEATH
56-05-2945(A)(2)
I further state that there is probable cause to believe that the defendant named above did commit crime set forth and that probable cause is based on the following facts:
THAT THE DEFENDANT DID ON JANUARY 8, 2010 WHILE ON POTATO HOUSE RD. LOCATED IN THE DARLINGTON AREA OF DARLINGTON COUNTY, COMMIT THE OFFENSE OF FELONY DUI INVOLVING DEATH SC CODE OF LAWS 56-5-2945 (A)(2) CIRCUMSTANCES TO WIT: THAT THE DEFENDANT CHARLTON LEFATE HILL DID FAIL TO STOP FOR LAW ENFORCEMENT ONCE SIGNALLED BY BLUE LIGHTS AND SIREN WHILE OPERATING A MOTOR VEHICLE (2005 CHEVROLET COBALT SC TAG
SAID DEFENDANT CONTINUED TO ELUDE LAW ENFORCEMENT UNTIL HE WRECKE THE VEHICLE KILLING THE PASSENGER (SYLVIA MATTOX). SAID DEFENDANT WAS UNDER THE INFLUENCE OF ALCOHOL AND NARCOTICS. INFORMATION GAINED THROUGH STATEMENTS AND EVIDENCE.
Affiant's Address P.O. BOX 283
DARLINGTON, SC 29540
Affiant's Telephone (843) 398-4501
Signature of Affiant
ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that on JAN 08, 2010 defendant HILL, CHARLTON LEFATE did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of DARLINGTON COUNTY) as set forth below:
DESCRIPTION OF OFFENSE:
FELONY D.U.I. INVOLVING DEATH
56-05-2945(A)(2)
Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be deliver the defendant at the time of its execution, or as soon thereafter as is practicable.
Sworn to and subscribed before me)
on JANUARY 11, 2010)
Signature of Issuing Judge
Judge Code: 063
D. B. CURTIS
Issuing Court: [X] Magistrate [] Municipal [] C
Judge's Address 115 CAMP RD.
DARLINGTON, SC 295320000
Judge's Telephone (843) 398-4340

427
Form 427 by
S.C. Attorney General
April 21, 2003
SCCA 618



FORTIOR EXHIBIT XXVII



Fourth Circuit Public Defender

A.C. Stephens
Chief Circuit Defender

13CP100261

March 24, 2011

Mr. Charlton Hill
Darlington County Detention Center
2349 Rogers Road
Darlington, SC 29532

Charlton:

Please find a copy of the Motion for a Change of Venue that I filed today in your case. Also, please find a copy of the indictment for Failure to Stop for a Blue Light with Death Resulting that has been true billed. At this time, to my knowledge this is the only indictment that the Solicitor's Office has submitted to the grand jury. I will notify you if anything else changes.

Very Respectfully,

Matt Swilley

MSS
enc.

Dillon: Post Office Box 29 • Dillon, SC 29536 • 877-225-2922 • Fax 800-670-6375
Darlington: Post Office Box 648 • Darlington, SC 29540 • 877-225-2922 • Fax 800-670-6375
Bennettsville: Post Office Box 37 • Bennettsville SC 29512 • 877-225-2922 • Fax 800-670-6375
Chesterfield: Post Office Box 307 • Chesterfield, SC 29709 • 877-225-2922 • Fax 800-670-6375

FORTIOR EXHIBIT XXVIII

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2013 MAR 25 PM 12:56
SCOTT B. JONES
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

ARGUMENT

3. WAS COUNSEL INEFFECTIVE FOR FAILURE TO CHALLENGE THE: [1] ACCURACY OF CERTAIN BLOOD-ALCOHOL/DRUG ANALYSES, [2] SUFFICIENCY OF TRAINING AND METHOD OF ADMINISTERING AGENTS OF SAME ANALYSES, OR [3] LEGALITY OF SEIZURE, WHEREAS RETROACTIVE APPLICATION OF APPLICANT'S SIGNATURE TO "IMPLIED CONSENT LAW" WAS USED TO FORCIBLY REQUIRE SAME ANALYSES IN LIEU OF INDEPENDANT TEST RESULTS?

FACTS

- A) ON JANUARY 8, 2010, 19:35, APPLICANT WAS ADMITTED TO CAROLINA PINES REGIONAL MEDICAL CENTER BY HOSPITAL REPRESENTATIVE DORRIETY. DURING ADMITTING APPLICANT SIGNED DOCUMENTS, INCLUDING CONSENT TO TREATMENT AND AGREEMENT TO PRIVATE-PAY FOR SAME. (ATTACHED)
- B) ON THAT SAME DAY, 20:15, SGT. PATRICK N. LEE ADVISED APPLICANT OF HIS "IMPLIED CONSENT" RIGHTS; TO WIT: "YOU HAVE THE RIGHT TO HAVE A QUALIFIED PERSON OF YOUR OWN CHOOSING CONDUCT ADDITIONAL INDEPENDENT TESTS AT YOUR EXPENSE AND THE OFFICER, UPON REQUEST, MUST PROVIDE YOU AFFIRMATIVE ASSISTANCE." (ADVISEMENT OF IMPLIED CONSENT RIGHTS ATTACHED.)
- C) ON THAT SAME DAY, 20:18, APPLICANT REQUESTED SUCH A TEST; GAVE NURSE MARIA H. KOONTZ ORAL PERMISSION TO DRAW BLOOD FOR INDEPENDENT ANALYSES AT CAROLINA PINES, FOR WHICH HE WAS PRIVATELY BILLED AT HIS OWN EXPENSE. (HOSPITAL CHEMISTRY, INCLUDING DRUG SCREEN AND BLOOD ALCOHOL ATTACHED)
- NURSE KOONTZ PREPPED SITE WITH BETADINE AND DREW BLOOD, SENDING SAME SPECIMEN TO HOSPITAL LABORATORY FOR DRUG/ALCOHOL ANALYSES AS WELL AS

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CLERK OF COURT
DARLINGTON COUNTY, S.C.

OTHER DIAGNOSTICS; SIMULTANEOUSLY, SGT. LEE SEIZED A SAMPLE OF APPLICANT'S BLOOD.

(NURSE DOCUMENTATION, MHK; SUPPLEMENTARY INCIDENT REPORT, PAGE 3 OF 7 ATTACHED.)

D) NURSE KOONTZ, UNDER CROSS EXAMINATION BY MR SWILLEY, TESTIFIED AT APPLICANT'S

TRIAL TO WIT: A. AN OFFICER HAS TO REQUEST IT AND THE PATIENT HAS TO GIVE

PERMISSION. Q. OKAY. DID MR. HILL GIVE PERMISSION IN THIS SITUATION?

A. HE DID. (TRIAL TRANSCRIPT, PAGE 158, LINES 11, 12; 15, 16.)

E) SGT. LEE, UNDER DIRECT EXAMINATION BY MR HOCT, TESTIFIED AT APPLICANT'S TRIAL,

TO WIT: A. WELL, AT THE TIME THE DEFENDANT WAS CHARGED, AND WE TOLD HIM

HE WAS UNDER ARREST FOR FELONY DUI, OR DUI RELATED DEATH OR ANYTHING LIKE

THAT, WE ARE ALLOWED TO FORCIBLY TAKE BLOOD SAMPLES FROM AN INDIVIDUAL

UNDER THOSE GUIDELINES. WHEN PEOPLE SIGN FOR THEIR DRIVER'S LICENSE IN

SOUTH CAROLINA, THEY AGREE TO GIVE THEIR BLOOD IN THIS PARTICULAR CIRCUMSTANCE.

(TRIAL TRANSCRIPT, PAGE 121, LINES 15-21)

F) COUNSEL STIPULATED TO QUALIFICATIONS OF STATE'S EXPERT WITNESS, JENNIFER

BROWN, WHEN, DURING VOIR DIRE EXAMINATION, SHE DID NOT PROFFER TESTIMONY

AS TO BEING TRAINED IN DETERMINING THE EFFECTS OF ALCOHOL OR DRUGS UPON THE

HUMAN SYSTEM. TO WIT: MR. SWILLEY: I'M SORRY, YOUR HONOR. WHAT WAS THAT?

THE COURT: WELL, THAT WAS ABOUT FIVE MINUTES WORTH OF TALKING, COUNSEL.

MR. SWILLEY: WE STIPULATE TO MS. BROWN'S QUALIFICATIONS.

COUNSEL FAILED TO OBJECT WHEN MS. BROWN OPINED AS TO THE EFFECTS OF ALCOHOL

AND DRUGS UPON THE HUMAN SYSTEM, AND FAILED TO ATTACK THE ACCURACY OF

EVIDENCE: TO WIT: [MS BROWN]: IT HAD BENZODIAZEPINE, WHICH IS

METABOLITE OF COCAINE. I HAD HYDROCODONE, WHICH IS LIKE LORITAB OR XANAX.

(TRIAL TRANSCRIPT, PAGE 118, LINES 15-17)

G) ON APRIL 13, 2011, APPLICANT WAS CONVICTED OF A MULTIPLICITY OF CHARGES, INCLUDING FELONY DUI - DEATH, ET. AL., BASED ON THE SAME SET OF FACTS. SAID CONVICTION RELIED HEAVILY UPON EVIDENCE PROFFERED BY STATE'S EXPERT WITNESS, MS. BROWN, INCLUDING HER TESTIMONY INTERPRETING BLOOD - ALCOHOL/DRUG ANALYSES, AND REGARDING THE EFFECTS THEREOF. (THERE ARE APPARENT DISCREPANCIES BETWEEN HOSPITAL AND SLED RESULTS, CONCERNING THE TRAINING OF ADMINISTERING AGENTS, AS WELL AS THE METHOD USED BY THOSE INDIVIDUALS [AND IN PARTICULAR, THE USE OF BETADINE TO PREP SITE OF INTRAVENOUS PUSH])

H) THE ENACTMENT OF S.C. CODE OF LAWS 1976, § 56-05-2945, HAS A HISTORY WHICH DATES BACK TO JUNE 14, 1983. APPLICANT WAS ISSUED A DRIVER LICENSE ON APRIL 16, 1981. APPLICANT RELINQUISHED HIS DRIVER LICENSE ON SEPTEMBER 3, 1982. AFTER THIS DATE (9-3-1982), § 56-05-2945 WAS AMENDED TO ALLOW FORCIBLE, UNWARRANTED SEARCH AND SEIZURE OF FELONY DUI SUSPECTS' BLOOD. APPLICANT WAS CHARGED IN VIOLATION OF § 56-05-2945 ON JANUARY 8, 2010.

(COUNSEL FAILED TO MOVE THE COURT FOR SUPPRESSION OF EVIDENCE OBTAINED, BY AND THROUGH, AN EX POST FACTO APPLICATION OF APPLICANT'S SIGNATURE AS AUTHORIZATION OF CURRENT LAW, I.E. THE SEIZURE OF BLOOD WITHOUT A WARRANT OR COURT ORDER.) (PLEASE SEE APPLICANT'S DRIVER LICENSE HISTORY, PAGE 1, ATTACHED.) (COUNSEL WAS INEFFECTIVE FOR FAILURE TO ARTICULATE A FOURTH AMENDMENT CLAIM, TO THE EXCLUSION OF CERTAIN ALCOHOL/DRUG ANALYSES SEIZED WITHOUT THE CONSENT OF PHYSICIAN.) (SEE ATTACHED.)

§ 56-5-2945 CASE NOTES: NECESSITY OF OPPORTUNITY FOR INDEPENDANT TESTING.

WHERE ONE ACCUSED OF DRIVING A MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUORS WAS DENIED THE RIGHT TO HAVE AN ANALYSIS MADE BY A QUALIFIED PERSON OF HIS OWN CHOOSING AS REQUIRED BY § 56-5-2945, THE STATE SHOULD NOT HAVE BEEN PERMITTED TO INTRODUCE THE RESULTS OF EITHER A BREATHALYZER TEST OR A BLOOD-SAMPLE EXAMINATION MADE BY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION. WHERE THE TRIAL COURT ERRONEOUSLY ADMITTED SUCH EVIDENCE, AND THE ERROR COULD NOT BE CORRECTED AT A TRIAL, THE SUPREME COURT WOULD DIRECT THAT THE CHARGE BE DISMISSED. FAIRFAX V. SMITH (1985) 285 SC 458

AT TRIAL, APPLICANT WAS DENIED HIS STATUTORY RIGHT TO HAVE HIS INDEPENDANT CHEMICAL ANALYSES MADE AVAILABLE FOR PROBATIVE PURPOSES, INCLUDING IMPEACHMENT, COMPARISON OR DISPUTATION.

§ 56-5-2950 PROVIDES IN PART AS FOLLOWS: THE PERSON TESTED MAY HAVE A... REGISTER NURSE... CONDUCT A TEST OR TESTS IN ADDITION TO THE TEST ADMINISTERED BY THE LAW ENFORCEMENT OFFICER.

VIOLATION OF STATUTE MANDATED SUPPRESSION OF BOTH BREATHALYZER AND BLOOD TEST RESULTS WHERE DEFENDANT, AFTER REQUESTING INDEPENDENT TESTS, WAS TAKEN TO LOCAL HOSPITAL WHERE VIAL OF BLOOD WAS DRAWN, ARRESTING OFFICER TOOK POSSESSION OF VIAL ADVISING THAT IT WOULD BE TRANSMITTED TO SLED FOR ANALYSIS, AND SECOND VIAL WOULD BE REQUIRED IF DEFENDANT DESIRED BACKUP TEST. STATUTE WAS VIOLATED IN TWO RESPECTS: (1) SEIZURE AND ANALYSIS OF VIAL OF BLOOD CONSTITUTED IMPERMISSIBLE SECOND EXAMINATION BY STATE OF DEFENDANT'S BLOOD ALCOHOL CONTENT BECAUSE STATUTE

PERMITS ONLY ONE SUCH EXAMINATION, THAT BEING BREATHALYZER TEST; AND (2) DEFENDANT'S RIGHT TO INDEPENDANT TEST WAS COMPROMISED WHEN OFFICER APPROPRIATED VIAL, BECAUSE DEFENDANT COULD ONLY AVAIL HIMSELF OF INDEPENDANT TEST BY HAVING SECOND SAMPLE OF BLOOD WITHDRAWN.

STATE V. PIPKIN (1988) 294 S.C. 336, 364 S.E. 2d 464.

VA. APP. 1995. RECORD DID NOT SUPPORT CONTENTION THAT USING "BETADINE" TO CLEAN DEFENDANT'S ARM SUBSTANTIALLY COMPLIED WITH STATUTORY REQUIREMENTS THAT PART OF BODY FROM WHICH BLOOD IS TAKEN FOR PURPOSES OF ALCOHOL OR DRUG TEST MUST BE CLEANSSED WITH "SOAP AND WATER, POLYVINYLPIRROLIDONE IODINE OR BENZALKONIUM CHLORIDE," AND THUS BLOOD TEST RESULTS WERE INADMISSIBLE IN PROSECUTION FOR OPERATING VEHICLE WHILE UNDER INFLUENCE OF ALCOHOL; RECORD STATED THAT "BETADINE" WAS USED TO CLEAN DEFENDANT'S ARM, BUT NO EVIDENCE WAS PRESENTED AS TO CHEMICAL PROPERTIES OF BETADINE.

HUDSON V. COM., 462 S.E. 2d 913, 21 VA. APP. 184.

A CONVICTION FOR DRIVING UNDER THE INFLUENCE (DUI) OF INTOXICANTS AND FOR RECKLESS HOMICIDE WOULD BE REVERSED... WHERE IT DID NOT APPEAR THAT THE TEST WAS ADMINISTERED BY A PERSON TRAINED AND CERTIFIED BY SLED, USING METHOD APPROVED BY THAT AGENCY, AS ALSO REQUIRED BY SUBSECTION (b).

SEE STATE V. PRIESTER (S.C.) 391 S.E. 2d 227.

PURSUANT TO FREEDOM OF INFORMATION ACT, APPLICANT IS IN THE PROCESS OF OBTAINING INFORMATION CONCERNING TRAINING/CERTIFICATION OF NURSE KOONTZ AND SGT. LEE TO PARTICIPATE IN BLOOD SEIZURE FOR ANALYTICAL PURPOSES, TO BE USED AS EVIDENCE AT PCR. (APPEAL TO U.S. DEPT. OF JUSTICE ATTACHED)

13CP160261

ACKNOWLEDGEMENT: RECEIPT OF PRIVACY NOTICE

Purpose: This form is used to document (a) an individual's acknowledgement of receipt of our Privacy Practices Notice or (b) when we have not obtained this acknowledgement, our good faith effort to obtain the acknowledgement.

Patient Name: HILL, CHARLTONMedical Record Number: 0000118203Date of Admission: 01/08/2010Notice Version (Date): 4/14/2003**Acknowledgement of receipt of Privacy Practices Notice**

I, HILL, CHARLTON, acknowledge that I have received a Privacy Practices Notice from: CAROLINA PINES REG MED CENTER

Further, by signing below I provide my permission for this facility to use and disclose my medical information for the permitted purposes of treatment, payment and health care operations as discussed in the Notice of Privacy Practices.

Patient Signature: [Signature] Date: 01/08/2010

☐ Notice has previously been distributed by another location in our OHCA (except for physicians):

List location that distributed the Joint Notice: _____

If a personal representative on behalf of the individual signs this authorization, complete the following:

Personal Representative's Name: _____

Relationship to Individual: _____

IF NOT SIGNED: (Good faith effort to obtain acknowledgement of receipt)

Describe your good faith effort to obtain the individual's signature on this form: _____

Describe the reason why the individual would not sign this form: _____

SIGNATURE: (Hospital Representative)

I attest that the above information is correct.

Signature: [Signature]Date: 01/08/2010Print Name: Linda Dorriety Admitting

Title: _____

Include this acknowledgement form in the individual's records.



HMA7220

 Hospital Copy
 FORTIOR EXHIBIT **XXIX**


8975878

13CD160261
CONDITIONS OF TREATMENT AND ADMISSION

PATIENT'S NAME HILL, CHARLTON ATTENDING PHYSICIAN BALVICH, JAMES C.
ACCOUNT NO. 8975878 DATE & TIME OF ADMISSION 01/08/2010 19:35

CONSENT TO HOSPITAL CARE AND TREATMENT

I AM PRESENTING MYSELF FOR EMERGENCY SERVICES OR ADMISSION TO THE HOSPITAL AND I VOLUNTARILY CONSENT TO THE RENDERING OF SUCH CARE, INCLUDING DIAGNOSTIC TESTS AND MEDICAL TREATMENT, BY AUTHORIZED AGENTS AND EMPLOYEES OF THE HOSPITAL, AND BY ITS MEDICAL STAFF, OR THEIR DESIGNEES, AS MAY IN THEIR PROFESSIONAL JUDGEMENT BE DEEMED NECESSARY OR BENEFICIAL TO MY WELL BEING.

I ACKNOWLEDGE AND UNDERSTAND THAT MANY OF THE PHYSICIANS ON THE STAFF OF THIS HOSPITAL, INCLUDING THE ATTENDING PHYSICIAN(S) NAMED ABOVE, AND RADIOLOGISTS, ANESTHESIOLOGISTS, PATHOLOGISTS AND EMERGENCY PHYSICIANS, ARE NOT EMPLOYEES OR AGENTS OF THE HOSPITAL, BUT RATHER ARE INDEPENDENT CONTRACTORS WHO HAVE BEEN GRANTED THE PRIVILEGE OF USING THE HOSPITAL FACILITIES FOR THE CARE AND TREATMENT OF THEIR PATIENTS. I AGREE TO ACCEPT THEIR CARE EVEN THOUGH THEY ARE NOT EMPLOYED BY THE HOSPITAL.

I UNDERSTAND THAT THE EXAMINATION AND TREATMENT THAT I RECEIVE ON AN EMERGENCY BASIS IS NOT INTENDED AS A SUBSTITUTION OR REPLACEMENT FOR COMPLETE MEDICAL CARE.

CONSENT TO RELEASE INFORMATION

I HEREBY AUTHORIZE THE HOSPITAL TO DISCLOSE TO INSURANCE COMPANIES, INCLUDING WORKERS COMPENSATION CARRIERS, OR OTHER PARTIES THAT MAY BE LIABLE FOR ALL OR PART OF THE HOSPITAL CHARGES, ALL OR PART OF MY HOSPITAL RECORDS AS MAY BE NECESSARY (INCLUDING ANY TREATMENT FOR ALCOHOL OR DRUG ABUSE OR DEPENDENCE), TO DETERMINE BENEFITS ENTITLEMENT AND PROCESS PAYMENT CLAIMS FOR HEALTH CARE SERVICES PROVIDED.

MEDICARE CERTIFICATION RELEASE

I CERTIFY THAT THE INFORMATION GIVEN BY ME IN APPLYING FOR PAYMENT UNDER THE TITLE XVIII AND TITLE XIX OF THE SOCIAL SECURITY ACT IS CORRECT. I AUTHORIZE ANY HOLDER OF MEDICAL OR OTHER INFORMATION ABOUT ME TO RELEASE TO THE SOCIAL SECURITY ADMINISTRATION OR ITS INTERMEDIARIES OR CARRIERS ANY INFORMATION NEEDED FOR THIS OR A RELATED MEDICARE CLAIM. I REQUEST THAT PAYMENT OF AUTHORIZED BENEFITS BE MADE ON MY BEHALF TO THE HOSPITAL OR TO THE PHYSICIAN WHO ACCEPTS ASSIGNMENT.

PERSONAL EFFECTS AND VALUABLES

I UNDERSTAND THAT THE HOSPITAL SHALL NOT BE LIABLE FOR THE LOSS OR DAMAGE OF ANY PERSONAL EFFECTS OR VALUABLES (MONEY, JEWELRY, GLASSES, DENTURES, DOCUMENTS, CLOTHING, ETC.) UNLESS SUCH ITEMS ARE DEPOSITED IN THE HOSPITAL SAFE. THE HOSPITAL WILL NOT BE LIABLE IN EXCESS OF \$50 FOR THE LOSS OR DAMAGE OF ANY PERSONAL EFFECTS OR VALUABLES DEPOSITED WITHIN THE HOSPITAL SAFE.

ABOUT YOUR BILL

I UNDERSTAND THAT I WILL RECEIVE A BILL FROM THE HOSPITAL FOR PROVISION OF THE HOSPITAL SERVICES, INCLUDING STAFF AND EQUIPMENT, AND FOR ANY SUPPLIES OR MEDICINES UTILIZED. I WILL ALSO RECEIVE A BILL FROM ANY PHYSICIAN WHO PROVIDES PROFESSIONAL CARE TO ME. FOR EXAMPLE, I MAY RECEIVE A SEPARATE BILL FROM ONE OR MORE OF THE FOLLOWING TYPES OF PHYSICIANS WHO RENDER SERVICES TO ME: MY ATTENDING PHYSICIAN OR PERSONAL PHYSICIAN, EMERGENCY ROOM PHYSICIAN, RADIOLOGIST, ANESTHESIOLOGIST, PATHOLOGIST, OR ANY OTHER SPECIALIST.

INSURANCE ASSIGNMENT

I HEREBY ASSIGN TO AND AUTHORIZE THE HOSPITAL AND PHYSICIANS INVOLVED IN CARE DURING THIS PERIOD OF ILLNESS OR TREATMENT (HEREINAFTER "PHYSICIANS"), OR THEIR DULY AUTHORIZED ASSIGNS TO TAKE ALL NECESSARY STEPS, WITHOUT LIMITATIONS, TO ENSURE THAT ANY INSURANCE BENEFITS OTHERWISE PAYABLE TO ME OR MY ESTATE ARE PAID DIRECTLY TO THE HOSPITAL OR PHYSICIANS. THIS ASSIGNMENT OF INSURANCE BENEFITS INCLUDES BUT IS NOT LIMITED TO BILLING INSURANCE, FILING PETITIONS, FILING SUIT, IN MY NAME OR ON BEHALF OF THE HOSPITAL OR PHYSICIANS, FILING PROOFS OF CLAIM, FILING PROBATE CLAIMS AND FILING GRIEVANCES AND ALL OTHER SIMILAR PROCEDURES, AS MAY BE AMENDED FROM TIME TO TIME WITH THE STATE DEPARTMENT OF INSURANCE. I ALSO AGREE TO PROVIDE AND SIGN ANY OTHER DOCUMENTS THAT MAY BE REASONABLY NECESSARY TO ACCOMPLISH ANY OF THE OTHER PURPOSES.

STATEMENT OF FINANCIAL RESPONSIBILITY

I UNDERSTAND THAT I AM FINANCIALLY AND LEGALLY RESPONSIBLE FOR CHARGES NOT COVERED IN FULL BY ANY THIRD PARTY. I FURTHER AGREE THAT SHOULD I NOT PAY THE BALANCE WITHIN THIRTY (30) DAYS AFTER THE DATE OF DISCHARGE, MY ACCOUNT WILL BE CONSIDERED DELINQUENT. I AGREE TO PAY COSTS OF COLLECTION, INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS, COLLECTION AGENCY FEES AND COSTS, AND INTEREST WHICH SHALL ACCRUE AT THE MAXIMUM RATE ALLOWED BY LAW.

FRAUD

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD, OR DECEIVE ANY INSURANCE COMPANY, OR FILES A STATEMENT OF CLAIM CONTAINING FALSE, INCOMPLETE OR MISLEADING INFORMATION MAY BE SUBJECT TO PROSECUTION UNDER APPLICABLE LAW.

ADVANCE DIRECTIVE (FOR ADMISSION TO HOSPITAL ONLY)

IF I AM TO BE ADMITTED TO THE HOSPITAL, I HAVE BEEN GIVEN WRITTEN MATERIALS ABOUT MY RIGHT TO ACCEPT OR REFUSE MEDICAL TREATMENT. I HAVE BEEN INFORMED OF MY RIGHTS TO FORMULATE ADVANCE DIRECTIVES. I UNDERSTAND THAT I AM NOT REQUIRED TO HAVE AN ADVANCE DIRECTIVE IN ORDER TO RECEIVE MEDICAL TREATMENT AT THIS HOSPITAL. I UNDERSTAND THAT THE HOSPITAL AND MY CAREGIVERS WILL FOLLOW THE TERMS OF ANY ADVANCE DIRECTIVE THAT I HAVE EXECUTED TO THE EXTENT PERMITTED BY LAW.

(INITIAL THE FOLLOWING OPTION THAT APPLIES)

- I HAVE EXECUTED AN ADVANCE DIRECTIVE AND WILL PROVIDE A COPY OF THIS FOR MY MEDICAL RECORD WITHIN A REASONABLE AMOUNT OF TIME. _____ INIT.
- I HAVE NOT EXECUTED AN ADVANCE DIRECTIVE AND DO NOT WISH TO DO SO. ☒ INIT. FOLLOW-UP DONE BY _____ DATE _____
- I WISH TO COMPLETE AN ADVANCE DIRECTIVE DURING THIS HOSPITALIZATION. _____ INIT.

I CERTIFY THAT I HAVE READ (OR HAVE BEEN READ) THE ABOVE CONSENTS AND CERTIFICATIONS AND UNDERSTAND AND AGREE WITH THEM.

DATE: 1 MONTH 8 DAY 2010 YEAR 01/08/2010
SIGNATURE OF PATIENT OR LEGALLY AUTHORIZED REPRESENTATIVE

PRINT NAME OF PERSON ABOVE

ADVISEMENT OF IMPLIED CONSENT RIGHTS

Charles Lafate Hill

Subject's Name (Print)



Date of Birth

X

Driver's License Number

State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here → ♦ Inform subject of video recording
 ♦ Advise subject of Miranda rights
 If answer is No, start here → ♦ Inform subject of the type (breath, blood, urine) samples requested

(B) Then read the following advisement to subject:

- ♦ You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
- ♦ The arresting officer has directed that samples be taken for alcohol and/or drug testing.
- ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- ♦ You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least ninety (90) days and your refusal may be used against you in court.
- ♦ If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
- ♦ If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
- ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- ♦ You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
 (D) Time stamp Breath Alcohol Analysis Test Report. (Not required if a refusal has occurred.)
 (E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)
 (F) Enter biographical data into BAC DataMaster. (Required for all tests, including refusals.)

FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT

- (B) Will test be video recorded? If answer is Yes, start here → ♦ Inform subject of video recording.
 ♦ Advise subject of Miranda rights.
 If answer is No, start here → ♦ Inform subject of the type (breath, blood, urine) samples requested.

(B) Then read the following advisement to subject:

- ♦ You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
- ♦ The officer has directed that samples be taken for alcohol and/or drug testing.
- ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- ♦ Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
- ♦ The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.
- ♦ If your tests or samples have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
- ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- ♦ You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material.
 (D) Time stamp Breath Alcohol Analysis Test Report.
 (E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample.
 (F) Enter biographical data into BAC DataMaster.

RECEIVED
MAR 22 2011

By

Sgt. Patrick N. Lee (B-2)

Officer's Name (Print)

Sgt. Patrick N. Lee (B-2)

Officer's Signature

Issued bloody hands and medical attention (P.N.)

Subject's Signature (Received Copy)

CHUCK HILL

Date

Time

FORTHIOR EXHIBIT XXXI

Patient: HILL, CHARLTON DOB:

Carolina Piedmont RMC
West Bobo Newsom Highway, Hartsville, SC 29525
843-339-2100

Patient #: 8975878 MRN: 0000118203 Date In: 1/8/2010

Treatments 01/08/2010 23:25 MHK

****IV Insertion left hand, with a 18 gauge Introcan, regulated with tubing, initiated per ems staff pta to er initiated at 01/08/2010 19:35 by MHK. [Transcribed][JB3]:**

****IV Insertion rt ac, with a 20 gauge Introcan, Hep Lock, 1 attempt initiated at 01/08/2010 20:36 by MHK. [Transcribed][JB3]:**

Blood Collection marla koontz rn, sent to lab initiated at 01/08/2010 20:18 by MHK. [Transcribed][JB3]:

Urine Collection-Voided pt/ chris bedenbaugh nt, sent to lab initiated at 01/08/2010 21:51 by MHK. [Transcribed][JB3]:

Iv Hydration 1st hour ---d5ns regulated with IV pump, 200 cc/hr initiated at 01/08/2010 21:20 by MHK. [Transcribed][JB3]:

Disposition 01/08/2010 22:56 MHK

Admit: Patient left the department at 01/08/2010 23:33. Patient's disposition is: ADMIT-MED. Patient transported by stretcher. IV infusing during transport. Vital signs taken at 23:10 were: T: 96.6 PO, P: 92 and is regular, R: 18 and unlabored, BP: 119/79, O2 Sat: 97% on RA, O2 delivered by RA, pain level is 8 on a 1-10 scale in the multiple areas.

1935---to er room 10 via ems stretcher. was in mva rollover as trying to avoid being stopped by police. has multiple abrasions with dried blood to face. reddened areas to chest. top front left tooth pushed up into gums. bottom front tooth knocked out. keeps asking "where is my wife?" put onto cardiac, nibp, and pulse ox monitors. pt is fully immobilized on backboard, head straps and c-collar. responding appropriately to questions asked. has 18 ga jelco to left hand initiated per ems staff pta to er. c/o pain to head and rt side of face. sheriff officers present with pt. sts that female riding in vehicle with him was doa at scene. pt cooperative.

2009---sheriff officer talking with pt and pt made aware that female was doa. pt crying.

2014---ekg done showing nsr heart rate 87.

2018---blood drawn for labs and for sheriff blood tests. site prepped with betadine and blood drawn. tubes given to patrick lee---officer, and forms signed by marla koontz rn.

2020---pt has pulled off his c-collar and thrown it to floor. new c-collar applied.

2031---portable xrays done by xray tech, then pt taken to xray via stretcher. sheriff officers to xray with pt.

2036---20 ga jelco to rt ac per zannie woodard rn, for ct scans to be done.

2106---return from xray. remains immobilized.

2120---d5ns infusing at 200 cc/hr

2132---pt refusing to have foley catheter done, but agrees to give voided urine sample.

2148---pt refusing tetanus injection. states just had tetanus at dr. acaylar's office 2 days ago after having



Patient: HILL, CHARLTON DOB:

Patient #: 8975878 MRN: 0000118203 Date In: 1/8/2010

cat scratch to abdomen.

2151---pt has voided with sheriff officers in room. they have collected their sample for drug screening and we have collected our sample for ua/ uds.

2200---md has reviewed all test results and given orders for pt to come off backboard. pt removed from backboard. has 50 cent size abraded area to rt scapula area of back. no other injured areas seen. c-collar remains on.

2217---pts face cleaned of dry blood. multiple abrasions seen.

2248---scalp cleaned. large abrasion to hairline area back approximately 6 inches into hair / scalp area. no laceration seen.

2252---room assignment 316 given for pt.

2315---report given to rose gostlin on 3rd. room and staff ready for pt. sheriff officers aware of pt being admitted. pt remains cooperative.

[MHK: 01/08/2010 23:23]

MARLA KOONTZ 0 All text in this document clearly marked by MHK has been authored and legally signed by use of electronic device. 01/08/2010 23:26

STATE OF SOUTH CAROLINA
COUNTY OF Darlington

13CP100261
SEARCH WARRANT

Form approved by
 S.C. Attorney General
 Section 17-13-160
 March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF

Darlington County

It Appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
 TO BE SEARCHED**

CAROLINA PINES REGIONAL MEDICAL CENTER MEDICAL RECORDS DEPARTMENT.

Now, therefore, you are hereby authorized to search the subject premises described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

ANY AND ALL MEDICAL RECORD
CHARLTON LEFATE HILL (D.O.B.
JANUARY 8, 2010

CLUDE X-RAYS AND RADIOLOGY REPORTS FOR
) IN REGARDS WITH HIM BEING EXAMINED ON

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

~~JUDGE O.M. BELL~~

EAH
Judge Curtis

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

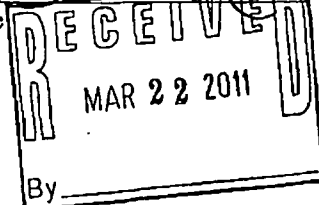
A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such persona as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Darlington, S.C.
January 11, 20 10

SCCA513
 (3-78)

Signature of Judge

Deatrice Barnes Curtis
 (S.S.)



FORTIOR EXHIBIT XXXIV

CAROLINA PINES REGIONAL MEDICAL CENTER

13CP160261

HISTORY AND PHYSICAL

NAME: HILL, CHARLTON
MR #: 000118203
ROOM #: 0316 A

HOSPITAL #:
DOB:
ADMITTED:

CHIEF COMPLAINT: Car accident.

HISTORY OF PRESENT ILLNESS: The patient is a 47-year-old gentleman who presented to the emergency department on 01/08/2010 after being involved in a single car motor vehicle collision. The patient reportedly was being pursued by a police car which resulted in a single car collision. He does not recall the events of the accident. According to EMS records, he was found at the scene in the driver's seat. There was noted to be severe damage to the car. It is unsure whether or not he was wearing a seatbelt. Passenger in the car was dead on arrival. He was transferred to the emergency department, where on initial presentation he was noted a hemodynamically stable with a blood pressure 122/77, respiratory rate 16, O2 saturation is 90%, pulse of 84, temperature 96.8 degrees Fahrenheit. He reportedly complained of neck pain. His work-up included a CT scan of the head, face, chest, abdomen and pelvis, T-L spine and C-spine. His only acute traumatic injury was depressed comminuted nasal fracture. White count 10.8, with H&H 15.6 and 45.5, and platelet count 273 with normal differential. PTT 26.7, PT, INR both within normal limits. Blood type O-positive. Urinalysis was all within normal limits except for trace leukocyte esterase. Urine drug screen was positive for THC, cocaine and opiates. Comprehensive metabolic panel showed no abnormalities. Blood alcohol was 177.3. Amylase, lipase, CK-MB, CPK and troponin were all within normal limits.

PAST MEDICAL HISTORY: Includes gallbladder disease. Polysubstance abuse. Hepatitis C and questionable right inguinal hernia. General anxiety disorder with associated panic attacks. Burns to the left hand and wrist.

SURGICAL HISTORY: Includes cholecystectomy, right inguinal hernia repair. Skin grafting to his left hand and wrist. Peripheral neuropathy of the left upper extremity reportedly associated with previous burn trauma.

MEDICATIONS:

1. Neurontin 600 mg p.o. 3 times a day.
2. Soma 350 mg twice daily.
3. Xanax 0.5 mg twice daily.
4. Tramadol 50 mg 4 times a day.

General anxiety disorder with associated panic attacks with burns to the left hand wrist please add to the surgical history.

Skin grafting to his left hand and wrist. Peripheral neuropathy of the left upper extremity reportedly associated with previous burn trauma and.

ALLERGIES: Include PENICILLIN and CODEINE.

SOCIAL HISTORY: Admits to marijuana use 2 to 3 times a week, cocaine use as much as possible. In his words if he could use it daily he would. Alcohol use type and quantity not specified. He previously lived with his wife.

FILED
2013 MAR 25 PM 2:58
CLERK OF COURT
CAROLINA PINES REGIONAL MEDICAL CENTER

441

CAROLINA PINES REGIONAL MEDICAL CENTER
1304 West Bobo Newsom Highway Hartsville, SC 29550
Harold N. Wheeler, M.D., Pathologist

autoreporting lab

Patient name: HILL, CHARLTON

M.R.N.: 0000118203 Room:
Billing no.: 8975878
Att.physician: BALVICH, JIM
DOB:

Location: EMERGENCY ROOM
Adm.date: 01/08/10 Surg.date:

Order Id : I1080495
Date&Time Ordered: 01/08/10 19:55

FINAL

13CP160261

COMMENTS:

RD. COMM: MVA -- MAJOR TRAUMA

TEST DRUG SCREEN RAPID WAS CANCELLED, 01/08/10 21:33 released in erro

C H E M I S T R Y

TEST-NAME	RESULT	ABN.	NRML-RANGE	UNITS
SPECIMEN URR COLLECTED 01/08/10 21:50 BY NURSE RECEIVED 01/08/10 22:04 BY CWB				

DRUG SCREEN (URINE)

COCAINE	✓ POSITIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
AMPHETAMINES	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
OPIATES	✓ POSITIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
TETRAHYDROCANNIBOL THC	✓ POSITIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
BARBITURATES	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
BENZODIAZEPINES	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
PHENCYCLIDINE	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
TRICYCLICS	NEGATIVE	NEGATIVE ng/ml
Edited report, previous value was POSITIVE, reported at 21:28 on 01/08/10.		
METHADONE	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
METAMPHETAMINE	NEGATIVE	NEGATIVE

This is a screening test for medical purposes only. Legal
drug screens are not performed at Carolina Pines RMC.
Confirmations or quantitations of positives should be ordered
by the physician and will be sent to the reference laboratory.

Results are considered Positive when at or above the following threshold
values:

Acetaminophen 5ug/mL
Amphetamines 1000ng/mL

c o n t i n u e d o n n e x t p a g e

Patient name: HILL, CHARLTON
Location: EMERGENCY ROOM

MRN: 0000118203Room:
Att.physician: BALVICH, JIM

Printed: 01/08/2010 22:31

PAGE: 1 of 2

FOOTNOT EXHIBIT XXXVI

CUMULATIVE REPORT

CAROLINA PINES REGIONAL MEDICAL CENTER
1304 West Bobo Newsom Highway, Hartsville, SC 29550
Harold N. Wheeler, M.D., Pathologist

PATIENT: HILL, CHARLTON
I.D.#: 8975878

MRN: 0000118203
DOB:

LOCATION: 3SG-0316-
AGE: SEX: M

continued
C H E M I S T R Y

	-----I1080493-M3-----	-----I1080495-M2-----	-----I1080499-M1-----	-----I109C064-----	
COLLECTED	01/08/10 20:25	01/08/10 20:25	01/08/10 20:25	01/09/10 02:53	REFERENCE RANGE
PRIORITY, PHYSICIAN	STAT BALVICH, JIM	STAT BALVICH, JIM	STAT BALVICH, JIM	TIMED DAMERON, JASON	

MS:

13CP160261

Reference Range	0 mg/dl
Limited muscular incoordination	<50 mg/dl
Incoordination	50-100 mg/dl
Incoordination, behavior changes (Legally intoxicated in most states)	100-150 mg/dl
Incoordination, prolonged reaction times (Legally intoxicated in most states)	>150 mg/dl

NOTE: Carolina Pines Regional Medical Center does NOT
perform legal blood alcohols. No chain of custody
exists. Results are for medical purposes only.

FILED
2013 MAR 25 PM 12:58
SCOTT B. SUGGS
CLERK OF COURT, D.D.
DARLINGTON COUNTY, S.C.

- RESULT REPORTED FIRST TIME

ATT. PHYS.: DAMERON, JASON
LOCATION: 3SG-0316-A

MRN: 0000118203
PATIENT: HILL, CHARLTON

KEY FOR ABNORMAL COLUMN: L-LOW, H-HIGH, AB-ABNORMAL, P-PANIC

C H E M I S T R Y

AGENCY I.D.
SC0160000

SUPPLEMENTARY INCIDENT REPORT
Darlington County Sheriff's Office

CASE NUMBER

201001-0201

N 443

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL

☐ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 00261

PAGES

L. HILL, WAS REFUSING TO WAIT IN THE DRIVER'S SEAT FOR RESCUE PERSONNEL TO CUT HIS WAY OUT. MR. HILL CRAWLED OUT THE DRIVER'S SIDE WINDOW AND LAYED ON THE ROADWAY. EMS DID EVALUATE AND TRANSPORTED HIM TO CAROLINA PINES HOSPITAL FOR FURTHER MEDICAL TREATMENT. MR. HILL DID ASK ALOUD "WHERE IS MY WIFE"?

CHIEF-DEPUTY J. THOMPSON, CAPTAIN W. LOCKLAIR, CAPTAIN J. HUDSON, AND SHERIFF J. W. BYRD WERE ADVISED OF THE INCIDENT AND THE SOUTH CAROLINA HIGHWAY PATROL STAFF (SERGEANT KOLLUCK, FIRST SERGEANT T. CHAVIS, AND CAPTAIN J. NELL WERE ADVISED). DARLINGTON COUNTY CORONER T. HARDEE DID ARRIVE AT SCENE AS WELL WITH HIS ASSISTANT M. LOCKLAIR. DARLINGTON RESCUE SQUAD AND DARLINGTON COUNTY FIRE DISTRICT WERE INVOLVED IN THE RESCUE OPERATION AS WELL.

I DID POST DEPUTY D. M. TANNER AT CAROLINA PINES HOSPITAL UNTIL THE SUSPECT, HILL, WAS AT THE HOSPITAL. I DID ARRIVE AT THE HOSPITAL AND WAS ACCOMPANIED BY TROOPER J. EDWARDS AS AN OBSERVER. I DID OBSERVE MR. HILL BEING EVALUATED IN ER AND I DID SPEAK WITH HIM STATING THAT I WAS INVESTIGATING A TRAFFIC COLLISION IN WHICH HE WAS DRIVING THE CAR WHICH RESULTED IN THE DEATH OF HIS WIFE, SYLVIA MADDOX, THE PASSENGER OF THE SAME CAR. I ADVISED MR. HILL HE WAS UNDER ARREST FOR FELONY DUI, FAILURE TO STOP FOR BLUE LIGHT WITH A FATALITY, AND DRIVING UNDER SUSPENSION. I DID READ MIRANDA WARNING, VERBATIM, OFF MY MIRANDA CARD. I ADVISED MR. HILL THAT WERE WOULD BE SEIZING A SAMPLE(S) OF HIS BLOOD AND URINE AND DID READ, VERBATIM, ADVISEMENT OF IMPLIED CONSENT RIGHTS AT 2015 HOURS. MR. HILL WAS VERY DIRTY AND BLOODY. MR. HILL DID ASK WHAT HAPPENED TO MY WIFE? I RESPONDED THAT SHE DIDN'T SURVIVE THE COLLISION. MR. HILL CLOSED HIS EYES AND BEGAN TO CRY FOR A MOMENT. MARLA KOONTZ DID DRAW BLOOD SAMPLE(S) AND URINE SAMPLE WAS ALSO OBTAINED. THESE SAMPLES WERE SECURED BY ME (SERGEANT P. LEE) UNTIL PLACED IN THE CUSTODY OF DEPUTY R. HARRELL, WHICH IS THE EVIDENCE OFFICER. DR. BALVICH DID ADVISE ME THAT MR. HILL WOULD BE ADMITTED TO THE HOSPITAL OVERNIGHT FOR EVALUATION. AT NO TIME DID MR. HILL LEAVE MY SIGHT NOR TAKE DRINK ANY ALCOHOLIC BEVERAGE OR DRUGS WHILE BEING OBSERVED.

THE DUI FORMS WERE ATTACHED TO THIS REPORT. MR. HILL WAS GIVEN A COPY OF HIS IMPLIED CONSENT, AND SLED BLOOD /URINE COLLECTION FORM.

I THEN CLEARED THE HOSPITAL AFTER CORRECTION OFFICER R. BROOKS OF THE DARLINGTON COUNTY DETENTION CENTER WAS ON SITE TO GUARD MR. HILL.

WARRANTS WILL BE SOUGHT FOR FELONY DUI, FAILURE TO STOP FOR A BLUE LIGHT INVOLVING A FATALITY, AND DRIVING UNDER SUSPENSION.

A TRAFFIC COLLISION REPORT (TR-310) WILL BE COMPLETED.

SCOTT PRUITT DID IMPOUND/TOW THE AUTOMOBILE.

ADMINISTRATIVE	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
	REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
	70144 - SGT. PATRICK N. LEE		01/09/2010	70144	02096 - LT. ERIC A. HODGES		01/11/2010	
	34549 - SGT JEHLONSKI D. GREEN				FOLLOW-UP INVESTIGATION OFFICER ☐ YES ☒ NO			

FOI2002 EXHIBIT XXXVIII

444



SLED LABORATORY FORENSIC SERVICES REQUEST

(Use ballpoint pen and press firmly. Print all
information except where signature is required.)

13CP16026

FORM LAB-003
NOVEMBER 1993
Previous Editions
May Be Used

Name of Investigating Officer: Patrick Lee Rank: Sgt
Department: Dorchester County Sheriff's Office Telephone Number: 843-378-4501
Street Address or Post Office Box: P.O. B. 783 County: Dorchester
City: Dorchester State: SC Zip Code: 29540
Incident Date: 01-08-2010
Related Lab No. _____

Subject # 1 Victim # _____ Sex: M ☒ F _____ SID/FBI
Last Name: Hill First Name: Charles Middle Name: Leale DL/SS NO: _____
Race: Cau ☒ Blk _____ Other _____ DOB: _____

Subject # _____ Victim # _____ Sex: M _____ F _____ SID/FBI
Last Name: _____ First Name: _____ Middle Name: _____ DL/SS NO: _____
Race: Cau _____ Blk _____ Other _____ DOB: _____

Subject # _____ Victim # _____ Sex: M _____ F _____ SID/FBI
Last Name: _____ First Name: _____ Middle Name: _____ DL/SS NO: _____
Race: Cau _____ Blk _____ Other _____ DOB: _____

Subject # _____ Victim # _____ Sex: M _____ F _____ SID/FBI
Last Name: _____ First Name: _____ Middle Name: _____ DL/SS NO: _____
Race: Cau _____ Blk _____ Other _____ DOB: _____

* Could any subjects or victims have the following: (circle) AIDS VD Hepatitis Tetanus TB Lice
Comments: _____

COMPLETE THIS SECTION ON ALL CASES: (Circle Appropriately)

Homicide Suicide Accidental Death Natural Death Child Fatality Autopsy Performed: Yes No
(A) Gunshot (B) Stabbing (C) Beating (D) Strangulation (E) Drug/Poison (F) Alcohol (G) Carbon Monoxide (H) Fire (I) Hanging (J) Electrocution
(K) Heart Related (L) Disease (M) Other _____
Accident Fatality Victim: (A) Driver (B) Pedestrian (C) Motorcyclist (D) Bicyclist (E) Passenger (F) Swimming/Boating
TYPE OF CASE: (IF NOT DEATH) (A) Drugs (B) CSC (C) Burglary (D) Larceny (E) Other _____

FOR TOXICOLOGY CASES: (Circle Appropriately)

DUI (Felony DUI) Was a Breath Test given? Yes No If Yes, Reading _____
Number of Specimens Enclosed: Blood 2 Urine 1 Ocular Fluid _____ Other _____
Examination Requested: Blood Alcohol Drug Screen CO Blood Type Other _____
Drugs Suspected: Yes No List Drugs: Marijuana - Balthazar - Cocaine

FOR SEROLOGY/ DNA/HAIR/FIBER CASES: (Circle Appropriately)

Was the subject(s) bleeding? Yes No Unknown Have any of the victims / subjects been transfused in the last 140 days? Yes No Unknown
Crime occurred: Suspect's residence Victim's residence Suspect's vehicle Victim's vehicle Other _____
Was a weapon involved? Yes No Unknown Type of weapon? _____
Have standards from all possible bleeders or body fluid donors been submitted? Yes No Unknown Comments: _____
By: _____

Submission of victim and suspect standards is necessary before complete analysis can be performed.

THE ITEMS SUBMITTED WILL BE EXAMINED WITH YOUR ASSURANCE THAT THE SUBMITTED SPECIMENS HAVE NOT NOR WILL BE SUBMITTED TO ANY OTHER LABORATORY FOR TECHNICAL OR SCIENTIFIC EXAMINATION. THIS STATEMENT WAS READ BY OFFICER.

Print Name of Delivering Officer

Signature of Delivering Officer

FORTIOR EXHIBIT XXXIX



SLED LABORATORY FORENSIC SERVICES REQUEST

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

13CP160281

FORM: LAB-003
NOVEMBER 1993
Previous Editions
May Be Used

Name of Investigating Officer: Patrick Lee Rank: Sgt
 Department: Dorchester County Sheriff's Office Telephone Number: 843-378-4501
 Street Address or Post Office Box: P.O. B. 783 County: Dorchester
 City: Dorchester State: SC Zip Code: 29540
 Incident Date: 11-08-2010
 CC: _____ Related Lab No. _____

Subject # 1 Victim # _____ Sex: M ☒ F ☐ SID/FBI
 Last Name: Hill First Name: Charles Middle Name: Latate DOB: 01/06/00
 Race: C

Subject # _____ Victim # _____ Sex: M ☐ F ☐ SID/FBI
 Last Name: _____ First Name: _____ Middle Name: _____ DOB: _____
 Race: Cau ☐ Blk ☐ Other _____

Subject # _____ Victim # _____ Sex: M ☐ F ☐ SID/FBI
 Last Name: _____ First Name: _____ Middle Name: _____ DOB: _____
 Race: Cau ☐ Blk ☐ Other _____

Subject # _____ Victim # _____ Sex: M ☐ F ☐ SID/FBI
 Last Name: _____ First Name: _____ Middle Name: _____ DOB: _____
 Race: Cau ☐ Blk ☐ Other _____

* Could any subjects or victims have the following: (circle) AIDS VD Hepatitis Tetanus TB Lice
 Comments: _____

COMPLETE THIS SECTION ON ALL CASES: (Circle Appropriately)

Homicide Suicide Accidental Death Natural Death Child Fatality Autopsy Performed: Yes No
 (A) Gunshot (B) Stabbing (C) Beating (D) Strangulation (E) Drug/Poison (F) Alcohol (G) Carbon Monoxide (H) Fire (I) Hanging (J) Electrocution
 (K) Heart Related (L) Disease (M) Other _____
 Accident Fatality Victim: (A) Driver (B) Pedestrian (C) Motorcyclist (D) Bicyclist (E) Passenger (F) Swimming/Boating
 TYPE OF CASE: (IF NOT DEATH) (A) Drugs (B) CSC (C) Burglary (D) Larceny (E) Other _____

FOR TOXICOLOGY CASES: (Circle Appropriately)

DUI Felony DUI Was a Breath Test given? Yes ☒ No ☐ If Yes, Reading _____
 Number of Specimens Enclosed: Blood 2 Urine 1 Ocular Fluid _____ Other _____
 Examination Requested: Blood Alcohol Drug Screen CO Blood Type Other _____
 Drugs Suspected: Yes No List Drugs: Marijuana - Barbiturates - Cocaine

FOR SEROLOGY/ DNA/HAIR/FIBER CASES: (Circle Appropriately)

Was the subject(s) bleeding? Yes No Unknown Have any of the victims / subjects been transfused in the last 100 days? Yes No Unknown
 Crime occurred: Suspect's residence Victim's residence Suspect's vehicle Victim's vehicle Other _____
 Was a weapon involved? Yes No Unknown Type of weapon? _____
 Have standards from all possible bleeders or body fluid donors been submitted? Yes No Unknown Comments: _____
 By: _____

Submission of victim and suspect standards is necessary before complete analysis can be performed.

THE ITEMS SUBMITTED WILL BE EXAMINED WITH YOUR ASSURANCE THAT THE SUBMITTED SPECIMENS HAVE NOT NOR WILL BE SUBMITTED TO ANY OTHER LABORATORY FOR TECHNICAL OR SCIENTIFIC EXAMINATION. THIS STATEMENT WAS READ BY OFFICER.

Print Name of Delivering Officer

Signature of Delivering Officer

FORTIOR EXHIBIT III

13CP160261

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORTMARK SANFORD
GovernorREGINALD I. LLOYD
DirectorLt. Eric A. Hodges
Darlington County Sheriff's Office
P.O. Box 783
Darlington, SC 29540**TOXICOLOGY DEPARTMENT**
February 22, 2010
SLED No: L10-00610
Your Case No: 2010010201, FA10027
Incident Date: 01/08/2010[S] Charlton Hill
[V] Sylvia Mattox Hill

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division**PARTIAL REPORT****ITEMS OF EVIDENCE****Item: 3** **Sample Type: Blood (Toxicology) - labeled "HILL, CHARLTON"****Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)**

Analyte	Result	Units	Threshold
Ethanol	0.152	% w/v	0.01

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Benzodiazepines	Positive	mg/L	0.05
Cannabinoids	Positive	mg/L	0.03
Amphetamine	Negative	mg/L	0.15
Methamphetamine	Negative	mg/L	0.15
Oxycodone	Negative	mg/L	0.10

RECEIVED
MAR 6 2010

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

SLED No :L10-00610

2/22/10

13CP160261 Page 2 of 3

Screen by Fluorescence Polarization Immunoassay (FPIA)

Analyte	Result	Units	Threshold
Cocaine Metabolite	Positive	mg/L	0.10
Opiates	Positive	mg/L	0.10

Quantitation by Fluorescence Polarization Immunoassay (FPIA)

Analyte	Result	Units	Threshold
Acetaminophen	24	mg/L	
Synonyms: Tylenol®			
Notes: Therapeutic levels: 10-20 mg/L			

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Benzoylcegonine	0.23	mg/L	
Synonyms: BE, Cocaine metabolite/hydrolysis product			
Hydrocodone	0.20	mg/L	
Synonyms: Lortab®, Vicodin®			
Notes: Therapeutic levels: 0.03-0.25 mg/L			
11-carboxy-Tetrahydrocannabinol	7.7	µg/L	2.00
Synonyms: THC metabolite			
Acetaminophen	Positive	mg/L	
Synonyms: Tylenol®			
Notes: Therapeutic levels: 10-20 mg/L			
Diphenhydramine	Positive	mg/L	
Synonyms: Benadryl®, Benahist®, Unisom®			
Notes: Therapeutic levels: 0.025-0.112 mg/L			
Tramadol	0.16	mg/L	
Synonyms: Ultram®, Tramal®, Topalgic®			
Notes: Therapeutic levels: 0.1-0.6 mg/L			
O-Desmethyltramadol	0.04	mg/L	
Synonyms: Tramadol metabolite			

Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)

Analyte	Result	Units	Threshold
Benzodiazepines	Negative	mg/L	
Analytes of interest include 7-Aminoflunitrazepam, 7-Aminoclonazepam, alpha-hydroxyalprazolam, Alprazolam, Chlordiazepoxide, Clonazepam, Desalkylflurazepam, Diazepam, Lorazepam, Midazolam, Nordiazepam, Oxazepam, Temazepam, and Triazolam.			



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FURTHER EXHIBIT LV

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CLERK OF COURT/R.D.
DARLINGTON COUNTY, S.C.

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MAR 23 2010

SLED No :L10-00610

Page 3 of 3

2/22/10

Analyte	Result	Units	Threshold
Carisoprodol	2.0	mg/L	
Synonyms: Soma®			
Notes: Therapeutic levels: 10-40 mg/L			
Meprobamate	0.18	mg/L	
Synonyms: Equanil®, Miltown®, Carisoprodol metabolite			
Notes: Therapeutic levels: 2-28 mg/L			
Comprehensive Analysis			

A comprehensive analysis was performed on this sample. With the exception of the compound(s) listed, no other drugs or poisons of concern were found.

Item: 4 **Sample Type: Urine - labeled "Charlton Lefate Hill"**

No Analysis Performed

Jennifer Brown

Jennifer M. G. Brown
Forensic Toxicologist

CC: Dr. Janice E Ross - Newberry Pathology
Coroner J. Todd Hardee - Darlington County Coroner's Office

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DARLINGTON COUNTY, S.C.

Biological specimens processed for testing which are not consumed during analysis will be maintained for 180 days from the completion date of the analysis and then destroyed unless otherwise notified.



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FOOTNOTES EXHIBIT LVI

permanent

449

CUMULATIVE REPORT

CAROLINA PINES REGIONAL MEDICAL CENTER
1304 West Bobo Newsom Highway, Hartsville, SC 29550
Harold N. Wheeler, M.D., Pathologist

PATIENT: HILL, CHARLTON
I.D.#: 8975878

MRN: 0000118203 LOCATION: 3SG-0316-
DOB: AGE: SEX: M

continued

C H E M I S T R Y

	-I1080493-M3-	-I1080495-M2-	-I1080499-M1-	-I109C064-	
COLLECTED	01/08/10 20:25	01/08/10 20:25	01/08/10 20:25	01/09/10 02:53	(REFERENCE RANGE
PRIORITY, PHYSICIAN	STAT BALVICH, JIM	STAT BALVICH, JIM	STAT BALVICH, JIM	TIMED DAMERON, JASON	

MS:

Reference Range	0 mg/dl
Limited muscular incoordination	<50 mg/dl
Incoordination	50-100 mg/dl
Incoordination, behavior changes	
(Legally intoxicated in most states)	100-150 mg/dl
Incoordination, prolonged reaction times	
(Legally intoxicated in most states)	>150 mg/dl

NOTE: Carolina Pines Regional Medical Center does NOT
perform legal blood alcohols. No chain of custody
exists. Results are for medical purposes only.

13CP160261

FILED
2013 MAR 25 PM 12:59
SCOTT D. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

* - RESULT REPORTED FIRST TIME

ATT. PHYS.: DAMERON, JASON
LOCATION: 3SG-0316-A

MRN: 0000118203
PATIENT: HILL, CHARLTON

KEY FOR ABNORMAL COLUMN: L-LOW, H-HIGH, AB-ABNORMAL, P-PANIC

C H E M I S T R Y

CAROLINA PINES REGIONAL MEDICAL CENTER

HISTORY AND PHYSICAL

13CP160261

NAME: HILL, CHARLTON
MR #: 000118203
ROOM #: 0316 A

HOSPITAL #: 008975878
DOB:
ADMITTED: 01/08/2010

CHIEF COMPLAINT: Car accident.

HISTORY OF PRESENT ILLNESS: The patient is a 47-year-old gentleman who presented to the emergency department on 01/08/2010 after being involved in a single car motor vehicle collision. The patient reportedly was being pursued by a police car which resulted in a single car collision. He does not recall the events of the accident. According to EMS records, he was found at the scene in the driver's seat. There was noted to be severe damage to the car. It is unsure whether or not he was wearing a seatbelt. Passenger in the car was dead on arrival. He was transferred to the emergency department, where on initial presentation he was noted a hemodynamically stable with a blood pressure 122/77, respiratory rate 16, O2 saturation is 90%, pulse of 84, temperature 96.8 degrees Fahrenheit. He reportedly complained of neck pain. His work-up included a CT scan of the head, face, chest, abdomen and pelvis, T-L spine and C-spine. His only acute traumatic injury was depressed comminuted nasal fracture. White count 10.8, with H&H 15.6 and 45.5, and platelet count 273 with normal differential. PTT 26.7, PT, INR both within normal limits. Blood type O-positive. Urinalysis was all within normal limits except for trace leukocyte esterase. Urine drug screen was positive for THC, cocaine and opiates. Comprehensive metabolic panel showed no abnormalities. Blood alcohol was 177.3. Amylase, lipase, CK-MB, CPK and troponin were all within normal limits.

PAST MEDICAL HISTORY: Includes gallbladder disease. Polysubstance abuse. Hepatitis C and questionable right inguinal hernia. General anxiety disorder with associated panic attacks. Burns to the left hand and wrist.

SURGICAL HISTORY: Includes cholecystectomy, right inguinal hernia repair. Skin grafting to his left hand and wrist. Peripheral neuropathy of the left upper extremity reportedly associated with previous burn trauma.

MEDICATIONS:

1. Neurontin 600 mg p.o. 3 times a day.
2. Soma 350 mg twice daily.
3. Xanax 0.5 mg twice daily.
4. Tramadol 50 mg 4 times a day.

General anxiety disorder with associated panic attacks with burns to the left hand wrist please add to the surgical history.

Skin grafting to his left hand and wrist. Peripheral neuropathy of the left upper extremity reportedly associated with previous burn trauma and.

ALLERGIES: Include PENICILLIN and CODEINE.

SOCIAL HISTORY: Admits to marijuana use 2 to 3 times a week, cocaine use as much as possible. In his words if he could use it daily he would. Alcohol use type and quantity not specified. He previously lived with his wife.

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2013 MAR 25 PM 12:59
SCOTT B. SUGGS
CLERK OF COURT
FREDERICK COUNTY, S.C.

MAR 08 2010

CAROLINA PINES REGIONAL MEDICAL CENTER
1304 West Bobo Newsom Highway Hartsville, SC 29550
Harold N. Wheeler, M.D., Pathologist

autoreporting lab

Patient name: HILL, CHARLTON

M.R.N.: 0000118203 Room:

Billing no.: 8975878

Location: EMERGENCY ROOM

Att.p BALVICH JIM

Adm.date: 01/08/10 Surg.date:

DOB: Age: Sex: M

Order Id : I1080495

FINAL

Date&Time Ordered: 01/08/10 19:55

13CP130261

COMMENTS:

ORD. COMM: MVA -- MAJOR TRAUMA

TEST DRUG SCREEN RAPID WAS CANCELLED, 01/08/10 21:33 released in erro

C H E M I S T R Y

TEST-NAME	RESULT	ABN.	NRML-RANGE	UNITS
SPECIMEN URR COLLECTED 01/08/10 21:50 BY NURSE RECEIVED 01/08/10 22:04 BY CWB				

DRUG SCREEN (URINE)

COCAINE	✓ POSITIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
AMPHETAMINES	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
OPIATES	✓ POSITIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
TETRAHYDROCANNIBOL THC	✓ POSITIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
BARBITURATES	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
BENZODIAZEPINES	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
PHENCYCLIDINE	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
TRICYCLICS	NEGATIVE	NEGATIVE ng/ml
Edited report, previous value was POSITIVE, reported at 21:28 on 01/08/10.		
METHADONE	NEGATIVE	NEGATIVE
Edited report, previous value was NEGATIVE, reported at 21:28 on 01/08/10.		
METAMPHETAMINE	NEGATIVE	NEGATIVE

This is a screening test for medical purposes only. Legal drug screens are not performed at Carolina Pines RMC. Confirmations or quantitations of positives should be ordered by the physician and will be sent to the reference laboratory.

Results are considered Positive when at or above the following values:

Acetaminophen 5ug/mL
Amphetamines 1000ng/mL

continued on next page

Patient name: HILL, CHARLTON

MRN: 0000118203Room:

Location: EMERGENCY ROOM

Att.physician: BALVICH, JIM

Printed: 01/08/2010 22:31

PAGE: 1 of 2

FORTIOR EXHIBIT LIX



U.S. Department of Justice

Office of Information Policy

Telephone: (202) 514-3642

Washington, D.C. 20530

JAN 16 2013

Mr. Charlton L. Hill
No. 152778
Lieber Correctional Institution
P.O. Box 205
Ridgeville, SC 29472-0205

13CP160261

FILED
2013 MAR 25 PM 12:59
SCOTT B. SUGGS
CLERK OF COURT, R.O.
DARLINGTON COUNTY, S.C.

Re: Request No. 1200829 - Marla Koontz

Dear Mr. Hill:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Investigation was received by this Office on December 14, 2012.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number **AP-2013-01365**. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal you may contact me at the number above.

Sincerely,

Priscilla Jones
Supervisory Administrative Specialist



Federal Bureau of Investigation

Washington, D.C. 20535

September 25, 2012

MR. CHARLTON L. HILL
**152778
LIEBER CORRECTIONAL INSTITUTION EB-59
POST OFFICE BOX 205
RIDGEVILLE, SC 29472

13CP130261

FOIPA Request No.: 1198872- 000
Subject: LEE, PATRICK N.

Dear Mr. Hill

This acknowledges receipt of your Freedom of Information/Privacy Act (FOIPA) request to the FBI. The FOIPA number-listed above has been assigned to your request.

You have requested records concerning a third party (or third parties). Records pertaining to a third party generally cannot be released absent express authorization and consent of the third party, proof that the subject of your request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from the disclosure of the requested records. Proof of death can be a copy of a death certificate, Social Security Death Index, obituary or another recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago. Since you have not furnished a Certification of Identity form, proof of death, or public justification for release, the release of records concerning a third party would result in an unwarranted invasion of personal privacy and would be in violation of the Privacy Act, Title 5 U.S.C. § 552a. These records are also generally exempt from disclosure pursuant to the FOIA, Title 5 U.S.C. § 552 exemptions (b)(6) and (b)(7)(C).

Enclosed is a Certification of Identity form. You may make additional copies of this form if you are requesting information on more than one individual. The subject of your request should complete this form and then sign it or prepare a document containing the required descriptive data and have it notarized. The original certification of identity, notarized authorization with the descriptive information and a legible, original signature must be provided to the FBI before an accurate search of our records can be conducted.

If requested, we will conduct a search for any public records maintained in our files, such as court records and news clippings, without the express authorization of the third party, proof of death, or public justification for release provided the subject is of sufficient public notoriety. If public records exist in our files and you desire to obtain them, please reply with a letter asking for the public documents. You can fax your request to (540) 868-4997, or mail to 170 Marcel Drive, Winchester, VA 22602, to the Attn: Work Process Unit. If we do not receive a response from you within 30 days from the date of this letter, your request will be closed. You must include the FOIPA request number with any communication regarding this matter. This response should not be considered an indication of whether or not records responsive to your request exist in FBI files.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Number assigned to your request to facilitate its identification.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Very truly yours,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosures

FOI/2012 EXHIBIT LXI

2013 MAR 25 PM 12:59
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
CHARLINGTON COUNTY, S.C.

FILED



Federal Bureau of Investigation
Washington, D.C. 20535

October 19, 2012

Mr. Charlton L. Hill
**152778
EB-59
Lieber Correctional Institution
Post Office Box 205
Ridgeville, SC 29472-0205

13CP160261

FOIPA Request No.: 1200829-000
Subject: Koontz, Maria

FILED
2013 MAR 25 PM 12:59
SCOT B. SUGGS
CLERK OF COURT/R.D.
DARLINGTON COUNTY, S.C.

Dear Mr. Hill:

This acknowledges receipt of your Freedom of Information/Privacy Act (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.

You have requested records concerning a third party (or third parties). Records pertaining to a third party generally cannot be released absent express authorization and consent of the third party, proof that the subject of your request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from the disclosure of the requested records. Proof of death can be a copy of a death certificate, Social Security Death Index, obituary or another recognized reference source. Death is presumed if the birth date of the subject is more than 100 years ago. Since you have not furnished a Certification of Identity form, proof of death, or public justification for release, the release of records concerning a third party would result in an unwarranted invasion of personal privacy and would be in violation of the Privacy Act, Title 5 U.S.C. § 552a. These records are also generally exempt from disclosure pursuant to the FOIA, Title 5 U.S.C. § 552 exemptions (b)(6) and (b)(7)(C).

Enclosed is a Certification of Identity form. You may make additional copies of this form if you are requesting information on more than one individual. The subject of your request should complete this form and then sign it or prepare a document containing the required descriptive data and have it notarized. The original certification of identity, notarized authorization with the descriptive information and a legible, original signature must be provided to the FBI before an accurate search of our records can be conducted.

If requested, we will conduct a search for any public records maintained in our files, such as court records and news clippings, without the express authorization of the third party, proof of death, or public justification for release provided the subject is of sufficient public notoriety. If public records exist in our files and you desire to obtain them, please reply with a letter asking for the public documents. You can fax your request to (540) 868-4997, or mail to 170 Marcel Drive, Winchester, VA 22602, to the Attn: Initial Processing. If we do not receive a response from you within 30 days from the date of this letter, your request will be closed. You must include the FOIPA request number with any communication regarding this matter. This response should not be considered an indication of whether or not records responsive to your request exist in FBI files.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

U.S. Department of Justice



Federal Bureau of Investigation
Washington, D.C. 20535

November 19, 2012

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EB-59
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Post Office Box 205
Ridgeville, SC 29472-0205

FOIPA Request No.: 1200829-000
Subject: Koontz, Maria

Dear Mr. Hill:

This is in response to your Freedom of Information/Privacy Act (FOIPA) request for information pertaining to the above subject. It is incumbent upon the requester to provide documentation regarding a subject's public notoriety before public source information can be processed pursuant to the FOIA. Absent proof of death or a privacy waiver from the individual involved, these records are exempt from disclosure pursuant to the FOIA, Title 5 U.S.C. § 552 exemptions (b)(6) and (b)(7)(C). See the enclosed form for an explanation of exemptions.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) [Title 5 U.S.C. § 552 (b)(7)(E)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number in any correspondence to us for proper identification of your request.

Sincerely,

David M. Hardy
Section Chief
Record/Information
Dissemination Section
Records Management Division

2013 MAR 25 PM 12:59
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CLERK OF COURT/R.D.O.
DARLINGTON COUNTY, S.C.

Enclosure(s)

ARGUMENT

5. WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT TO PROSECUTOR'S IMPROPER CLOSING ARGUMENT THAT IMPERMISSIBLY: [1] VOUCHER FOR, OR BOLSTERED, THE CREDIBILITY OF STATE'S WITNESS(ES); [2] APPEALED TO THE JURY'S EMOTIONS; [3] OFFERED UNSOLICITED PERSONAL VIEWS ON THE EVIDENCE; OR [4] COMMENTED ON APPLICANT'S GUILT OR HIS FAILURE TO TESTIFY?

FACTS

- 5.1(A) BUT LIKE A PREACHER OR A POLITICIAN, NORMALLY I LIKE TO GIVE GREAT BIG SPEECHES AT THE END. AND I LIKE TO GET REALLY INTO IT, BECAUSE LIKE THOSE PEOPLE, I BELIEVE IN THE TRUTH IN THE THINGS THAT I AM TELLING YOU. I BELIEVE IN IT SO MUCH, AND I'LL SHOW Y'ALL THE EVIDENCE, AND I THINK THAT THE ONLY POSSIBLE EXPLANATION IS OUR EXPLANATION. TRIAL TRANSCRIPT, PAGE 269, LINES 20-25, PAGE 270, LINE 1.
- 5.1(B) THAT GIRL MICHELLE QUICK, DON'T WORK FOR SLED. SHE DON'T WORK FOR THE POLICE. SHE WORKS FOR EMS, AND IT IS HER JOB TO TAKE CARE OF PEOPLE ON THE SCENE. TRIAL TRANSCRIPT, PAGE 272, LINES 16-19.
- 5.1(C) THIS AIN'T NO BARNEY FIFE INVESTIGATION. THEY DIDN'T FIND HIM IN THE CAR, TAKE A PHOTO WITH ONE OF THOSE THROW AWAY CAMERAS, AND THROW HIM IN JAIL. TRIAL TRANSCRIPT, PAGE 272, LINES 24, 25, PAGE 273, LINE 1.
- 5.1(D) AND SHE AIN'T GOT NO DOG IN THIS FIGHT. SHE AIN'T GOT NO REASON TO LIE TO ANYBODY. OKAY? TRIAL TRANSCRIPT, PAGE 275, LINES 3, 4.
- 5.1(E) EVEN IF I HAD HALF OF WHAT I BROUGHT UP HERE, I COULD HAVE PASSED REASONABLE DOUBT. TRIAL TRANSCRIPT, PAGE 284, LINES 7, 8.

2013 MAR 25 PM 12:59
 SCOTT B. SUGGS
 CLERK OF COURT
 DISTRICT COURT
 11-38

FILED

5.1 (F) WHERE IS THE DNA? WHERE IS THE DNA? WHAT DNA DO I NEED? THESE THINGS, AND YOU HEARD THE TESTIMONY, YOU COULDN'T GET FINGERPRINTS OFF OF THEM, BECAUSE OF THE WRECK. ALL RIGHT? I DON'T CARE IF YOU THINK ABOUT THOSE BEER CANS AT ALL. IT AIN'T GOT TO BE HIS. OKAY? MAYBE THEY WERE, MAYBE THEY WEREN'T, I DON'T CARE. HE HAS THE ALCOHOL IN HIS BLOOD. I'VE GOT THAT. OKAY? DON'T YOU LET HIM FOOL YOU WITH THAT MESS. DON'T YOU LET HIM FOOL YOU WITH SOME DNA OFF THE LOG THAT SLED WOULDN'T TEST. OKAY? SLED HAS BUDGET PROBLEMS LIKE EVERYBODY ELSE. I DON'T CARE. TRIAL TRANSCRIPT, PAGE 285, LINES 17-25

5.1 (G) LOOK AT THE VIDEOS AND THINK ABOUT THE TRUSTWORTHINESS OF THE OFFICERS THAT YOU HEARD IT FROM. AND THEN I WANT YOU TO THINK ABOUT THE UNBIASED NATURE OF THE OTHER PEOPLE. TRIAL TRANSCRIPT, PAGE 287, LINES 4-6.

5.1 (H) UNDOUBTEDLY WHEN I SIT DOWN I'LL THINK OF EIGHT MORE THINGS I FORGOT TO TELL YOU. BUT, IT WAS A LOT OF EVIDENCE HERE. PLEASE USE YOUR COMMON SENSE. TRIAL TRANSCRIPT, PAGE 287, LINES 24, 25, PAGE 288, LINES 1, 2.

5.2 (A) YOU LOOK AT THE AMOUNT OF BLOOD THAT YOU SEE IN THESE PHOTOS, AND YOU LOOK AT THE PICTURES OF CHARLTON HILL, OKAY, AND THAT BLOOD DIDN'T COME FROM HIM. OKAY? WHAT IS THE PATHOLOGIST, AND THE LADY FROM SLED, TWO DIFFERENT DEPARTMENTS, NEWBERRY PATHOLOGY AND SLED, WHAT ARE THEY SAYING? YOU CAN'T GET NO BLOOD TO DO HER TOX SCREEN, AND DO YOU KNOW WHY? BECAUSE, THERE AIN'T NO BLOOD LEFT IN THAT BODY. ALL RIGHT? YOU HEARD IT ON THE STAND. TWO DIFFERENT EXPERTS. BUT THAT IS BESIDE THE POINT. OKAY? TRIAL TRANSCRIPT, PAGE 277, LINES 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

5.2(B) THE DEFENDANT, LOOK AT HIM TODAY, HE IS ALLOWED TO SIT OVER THERE. ALL RIGHT?

HE'S AT THE HOSPITAL, BARELY SCATHED, THE INSIDE OF THE CAR, ALL RIGHT. NOW, LOOK OVER HERE AT THIS OTHER. NOW, LOOK OVER HERE AT THIS OTHER SIDE OF THE CAR, WHERE THE LOG IS AT. OKAY? LOOK AT WHERE THE PASSENGER SEAT IS. DO YOU SEE IT? TRIAL TRANSCRIPT, PAGE 280, LINES 17-22.

5.2(C) SO A TWO HUNDRED POUND BULLET DIDN'T HIT THAT WOMAN HERE, IT BLEW THE HEAD --- SEE --- AND, YOU WILL SEE THOSE PHOTOS, THEY ARE IN EVIDENCE. AND IT TOOK HER CLEAN OUT THE BACK WINDOW. TRIAL TRANSCRIPT, PAGE 281, LINES 8-11.

5.2(D) --- AND SOME OF YOU MIGHT NOT WANT TO LOOK AT IT. OKAY? I'VE SEEN ALL MANNER OF THINGS UP HERE IN THIS COURTHOUSE. AND I'VE ALWAYS PRIDED MYSELF ON HOW WELL I TOOK IT AND GO ABOUT MY JOB. OKAY? I AM WARNING YOU YOU HAD BETTER GET READY FOR IT BECAUSE, IT AIN'T NO SIMPLE THING. AND YOU HAD YOU TO THINK, LOOK AT EVERY PHOTOGRAPH. OKAY? BUT IT BROKE ME DOWN. AND WHEN THAT LOG HIT THAT WOMAN AND HIT HER IN THE HEAD, BECAUSE OF THIS MAN'S ACTIONS, OKAY? THE LOG SITTING THERE JUST TOOK THE PASSENGER OUT. DESTROYED HER. HIM SITTING THERE... TRIAL TRANSCRIPT, PAGE 281, LINES 16-25.

5.2(E)... I WANT YOU TO LOOK AT THE PHOTOGRAPHS, OR DEATH, TRIAL TRANSCRIPT, PAGE 283, LINES 23. PLEASE USE YOUR COMMON SENSE, LADIES AND GENTLEMEN. I GOT A LITTLE MORE EXCITED THAN I WANTED TO GET. BUT, PLEASE JUST LOOK AT THE OVERWHELMING NATURE OF THIS EVIDENCE. UNDOUBTEDLY WHEN I SIT DOWN I'LL THINK OF EIGHT MORE THINGS I FORGOT TO TELL YOU. BUT, IT WAS A LOT OF EVIDENCE HERE. PLEASE USE YOUR COMMON SENSE. TRIAL TRANSCRIPT, PAGE 287, LINES 21-25, PAGE 288, LINES 1, 2.

5.3(A) THE DEFENDANT FILLED HIS BODY WITH SO MUCH THAT HE THOUGHT HE COULD OUTRUN THE POLICE. TRIAL TRANSCRIPT, PAGE 269, LINES 3-5.

5.3(B) HE GETS CLOSE ENOUGH TO THE CAR TO SEE THAT THE GUY HAS SOME TYPE OF GRAY HAIR. AIN'T THAT WHAT HE TESTIFIED TO? THE MAN IN THE DRIVER'S SEAT HAD STUBBLY GRAY HAIR. TRIAL TRANSCRIPT, PAGE 270, LINES 17-20.

5.3(C) RUSS HARRELL, WHAT DID --- AND THIS IS WHAT I'M TALKING ABOUT. EVERYBODY IN THIS CASE BACKS UP EVERYBODY ELSE. TRIAL TRANSCRIPT, PAGE 277, LINES 11, 12.

5.3(D) DESTROYED HER. TRIAL TRANSCRIPT, PAGE 281, LINE 25.

5.3(E) HE IS SITTING LOOKING FOR HIS PAPERWORK ON HIS CAR, BECAUSE HE THINKS IT IS A SPEEDING STOP, OR A TRAFFIC STOP, OR A MOVING VIOLATION. I DON'T KNOW WHAT IT IS. TRIAL TRANSCRIPT, PAGE 282, LINES 3-6.

5.3(F) I'M DRUNK, HIGH, THERE ARE THE BLUE LIGHTS. I'M GOING TO ACT LIKE I'M GOING TO STOP JUST LONG ENOUGH FOR HIM TO LOOK INTO MY CAR GOOD, AND SEE WHAT COLOR HAIR I GOT, AND HOW I'VE SHAVED. TRIAL TRANSCRIPT, PAGE 283, LINES 17-20.

5.3(G)... REASONABLE DOUBT, OKAY? BUT LET ME TELL YOU SOMETHING. EVEN IF I HAD HALF OF WHAT I BROUGHT UP HERE, I COULD HAVE PASSED REASONABLE DOUBT. IT IS NOT AN IMAGINARY, OR A FANCIFUL DOUBT, OR A WEAK DOUBT. IT IS A SUBSTANTIAL DOUBT. TRIAL TRANSCRIPT, PAGE 284, LINES 6-9.

5.3(H) EIGHTY YEARS AGO HOW WOULD THEY HAVE DONE THIS? THEY AIN'T GOT NO VIDEO, DIDN'T HAVE NO BLOODWORK. IF A TROOPER HAD COME IN HERE AND SAID HE WAS DRIVING DRUNK AND CRAZY. I WOULD HAVE PULLED HIM OVER. I FOUND HIM BEHIND THE WHEEL AND SHE WAS DEAD BEHIND THE CAR. OKAY? THAT'S HOW IT WOULD HAVE BEEN DONE. AND PEOPLE WENT TO JAIL EIGHTY YEARS AGO,

DIDNT THEY? WELL WHAT I GOT NOW, I GOT VIDEO, BLOODWORK, POLICE OFFICERS WHO DEDICATE THEIR LIVES TO DO EVERYTHING REDUNDANTLY. BACK-UP UPON BACK-UP. I GOT THIS GUY DRUNK, STUMBLING THROUGH THE GLOVE BOX AND HIS WIFE IS BLEEDING OUT BEHIND THE CAR. TRIAL TRANSCRIPT, PAGE 284, LINES 24, 25, PAGE 285, LINES 1-9.

5.4(A) BECAUSE OF THOSE DECISIONS, SYLVIA HILL LOST HER LIFE. TRIAL TRANSCRIPT, PAGE 269, LINE 14.

5.4(B) LOOK AT HIM. THE FELLOW THOUGHT HE WAS IN A TRAFFIC STOP. OKAY? DO YOU KNOW WHY? BECAUSE HE HAS A .152 BLOOD ALCOHOL LEVEL, AND MORE PAIN PILLS THAN A MEDICINE CABINET. HE IS STUCK FULL OF THEM. ALL RIGHT? HE THINKS HE IS IN A TRAFFIC STOP. TRIAL TRANSCRIPT, PAGE 273, LINES 22-25.

5.4(C) OKAY? WHAT DID HE SAY HE DRANK? SOME OF THOSE BIG TWENTY-TWO OUNCE BEERS. TRIAL TRANSCRIPT, PAGE 277, LINES 13, 14.

5.4(D) HOW ABOUT SPEEDING? HOW ABOUT CROSSING THE CENTER LINE. I GOT THREE ACTS OFF THE TOP OF MY HEAD, ... TRIAL TRANSCRIPT, PAGE 282, LINES 23-25.

5.4(E) PUMPING YOURSELF WITH SO MANY CHEMICALS THAT YOU DONT KNOW WHAT IS GOING ON. OKAY? TRIAL TRANSCRIPT, PAGE 283, LINES 11, 12.

5.4(F) I DONT GOT TO PROVE ON MALICE OR NO ILL INTENT. I AINT SAYING THE BOY IS EVIL. OKAY? I'M SAYING HE DIDNT OBEY THE LAW AND BECAUSE OF THAT SYLVIA HILL AINT WITH US NO LONGER. THAT IS WHAT I'M SAYING. AND I'M SAYING HE DIDNT OBEY THE LAW BECAUSE HE WAS DRUNK, AND DRIVING CRAZY, AND I PROVED THAT. OKAY? TRIAL TRANSCRIPT, PAGE 286, LINES 8-13.

... AND HE SAID, YEAH, I'VE BEEN ON DRUGS AND BEER. TRIAL, PAGE 286, LINES 22, 21.

DISCUSSION

A REVIEW OF A SOLICITOR'S CLOSING ARGUMENT IS BASED UPON THE STANDARD OF WHETHER HIS COMMENTS SO INFECTED THE TRIAL WITH UNFAIRNESS AS TO MAKE THE RESULTING CONVICTION A DENIAL OF DUE PROCESS. U.S.C.A. CONST. AMEND. 14
STATE V. CALDWELL 300 SC 494, 504; 386 SE2d 816, 822 (1990)

A SOLICITOR'S CLOSING ARGUMENT MUST NOT APPEAL TO THE PERSONAL BIASES OF THE JURORS NOR BE CALCULATED TO AROUSE THE JURORS PASSIONS OR PREJUDICES, AND ITS CONTENT SHOULD STAY THE RECORD AND REASONABLE INFERENCES TO IT.

STATE V. RUDD 355 SC 543, 548; 586 SE 2d 153, 156 (Ct. App. 2003)

IN UNITED STATES V. GARZA, THE DEFENDANT'S CONVICTION WAS REVERSED BECAUSE THE PROSECUTOR BOLSTERED HER WITNESS' CREDIBILITY BY ASSERTING HER OWN CREDIBILITY AND STATING THAT THE PROSECUTION WOULD NOT HAVE BEEN BROUGHT IF THE DEFENDANT WAS NOT GUILTY. THE USE OF THE TERMS "PREPOSTEROUS" AND "LIE" TO CHARACTERIZE THE TESTIMONY OF A DEFENSE WITNESS IS ALSO INAPPROPRIATE.

UNITED STATES V. DRUMMOND 481 F.2d. 62 (2d CIRCUIT, 1973)

THE SOUTH CAROLINA SUPREME COURT HAS PREVIOUSLY HELD THAT BECAUSE "A JURY MUST MAKE ITS OWN ASSESSMENT ON THE CREDIBILITY OF WITNESSES, IT IS INAPPROPRIATE FOR THE STATE TO ASSURE THE JURY OF A GOVERNMENT WITNESS'S CREDIBILITY."

STATE V. KELLY, 343 SE 2d 851 (2001).

THE RECORD CLEARLY SUPPORTS COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO THESE STATEMENTS BECAUSE THEY IMPROPERLY BOLSTERED THE CREDIBILITY OF THE GOVERNMENT'S WITNESSES. GILCHRIST V. STATE, 565 S.E. 2d 281 (2002)

(PETITIONER WAS PREJUDICED BY COUNSEL'S FAILURE TO OBJECT TO THE STATE'S

VOUCHING FOR WITNESS'S CREDIBILITY); MATTHEWS V. STATE, 350 S.C. 272 (2002) (COUNSEL RENDERED INEFFECTIVE ASSISTANCE BY FAILING TO OBJECT TO SOLICITOR'S COMMENTS VOUCHING FOR THE CREDIBILITY OF STATE'S WITNESS).

THE FACT THAT THE BOLSTERING BY THE PROSECUTION OF THE GOVERNMENT'S WITNESSES WAS PERVASIVE AND NOT LIMITED TO ONE OCCURRENCE OR ANY ONE WITNESS DEMONSTRATES THAT PREJUDICE RESULTED, AND THERE IS A REASONABLE PROBABILITY THAT THE OUTCOME AT TRIAL WOULD HAVE BEEN DIFFERENT. Id.

THERE IS A GOOD DISCUSSION ON THIS ISSUE IN STATE V. KELLY, 343 S.C. 350 (2001), REVERSED ON OTHER GROUNDS, KELLY V. S.C., 534 U.S. 246, 122 S.Ct. 726 (2002) WHEREIN KELLY RELIED ON A THIRD CIRCUIT'S DISCUSSION ON VOUCHING. SEE WALKER V. U.S., 155 F.3d 180 (3RD CIR. 1998); ALSO U.S. V. LAWN, 355 U.S. 339, 359 U.S. 78, 78 S.Ct. 311, 323 U.S. 15, 2 L.Ed. 2d 321 (1958).

THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION PROVIDES THAT "IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE."

THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL MEANS THE "EFFECTIVE ASSISTANCE OF COUNSEL." IT IS CLEAR THERE IS NO TRIAL STRATEGY FOR COUNSEL FAILING TO OBJECT.

IT IS CLEAR, ALSO, THAT THESE IMPERMISSIBLE COMMENTS ARE A VIOLATION OF APPLICANT'S DUE PROCESS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

APPLICANT HEREBY REQUESTS THE HONORABLE COURT TO GRANT A NEW TRIAL.

ARGUMENT

6. WAS COUNSEL INEFFECTIVE FOR FAILING TO MOVE THE COURT FOR A CONTINUANCE BASED ON A LACK OF COMPETENT EVIDENCE, IN PARTICULAR THE ABSENCE OF CERTAIN DNA ANALYSES, INCLUDING SWABS FROM THE GEAR SHIFT AND STEERING WHEEL?

FACTS

- A) ON JANUARY 10, 2010, LT. ERIC A. HODGES, CONDUCTED A SEARCH AND SEIZURE FOR POTENTIAL EVIDENCE PERTAINING TO HIS INVESTIGATION OF CRIMINAL CHARGES AGAINST APPLICANT. (AFFIDAVIT ATTACHED)
- B) AT THAT TIME, LT. HODGES COLLECTED, AMONG OTHER THINGS, SWABS FROM THE GEAR SHIFT AND STEERING WHEEL OF THE VEHICLE INVOLVED, AND AUTOPSY ITEMS - TOXICOLOGY/ DNA. (EVIDENCE... LIST ATTACHED)
- C) RUSS HARRELL, UNDER CROSS EXAMINATION BY COUNSEL, TESTIFIED THAT: CERTAIN FIELD TESTS WERE CONDUCTED; HIS FINDINGS WERE RELAYED TO SLED FOR ANALYSES; HE DID NOT RECEIVE ANY RESULTS. TO WIT:
- Q. OKAY. DID YOU HAVE A CHANCE TO TAKE SWABS OF REDDISH-BROWN SUBSTANCE WHICH PURPORTED TO BE BLOOD? A. I DID.
- Q. AND WHEREABOUTS DID YOU TAKE THE SWABS OF BLOOD FROM?
- A. I TOOK TWO SWABS FROM THE STEERING WHEEL, A SWAB FROM THE GEAR SHIFT, AND TWO FROM THE CORNER LEFT SIDE OF THE REAR WINDOW.
- Q. OKAY. MR. HARRELL DID YOU PUT THOSE SWABS INTO EVIDENCE? A. I DID.
- Q. AND WERE THEY EVER SENT TO BE ANALYZED? A. I SENT THEM TO SLED, YES.
- Q. OKAY. DID YOU EVER RECEIVE ANY RESULTS BACK? A. I DID NOT.

TRIAL TRANSCRIPT, PAGE 168, LINES 12-25.

D) DURING PROSECUTION'S CLOSING ARGUMENT REFERENCES WERE MADE CONCERNING A LACK OF DNA EVIDENCE. TO WIT:

WHERE IS THE DNA? WHERE IS THE DNA? WHAT DNA DO I NEED? THESE THINGS, AND YOU HEARD TESTIMONY, YOU COULDN'T GET FINGERPRINTS OFF OF THEM, BECAUSE OF THE WRECK. ALL RIGHT? I DON'T CARE IF YOU THINK ABOUT THOSE BEER CANS AT ALL. IT AIN'T GOTTA BE HIS. OKAY? MAYBE THEY WERE, MAYBE THEY WEREN'T, I DON'T CARE. HE HAS THE ALCOHOL IN HIS BLOOD. I'VE GOT THAT. OKAY? DON'T YOU LET HIM FOOL YOU WITH THAT MESS. DON'T YOU LET HIM FOOL YOU WITH SOME DNA OFF THE LOG THAT SLED WOULDN'T TEST. OKAY? SLED HAS BUDGET PROBLEMS LIKE EVERYBODY ELSE. I DON'T CARE. SLED DIDN'T TEST IT. TRIAL TRANSCRIPT, PAGE 285, LINES 17-25; LINES 1, 2.

E) DURING COUNSEL'S CLOSING ARGUMENT HE ARGUED THAT THE STATE'S INVESTIGATION WAS INCOMPLETE. TO WIT: TRIAL TRANSCRIPT, PAGE 288, LINES 24, 25, P. 289, L. 1, 2. THE STATE HASN'T PROVED THAT. ALL RIGHT? THE REASON THE STATE HASN'T PROVED THAT IS BECAUSE THIS INVESTIGATION IS INCOMPLETE, THIS WHOLE CASE IS INCOMPLETE. COUNSEL MADE A MOTION FOR A NEW TRIAL DUE TO LACK OF COMPETENT EVIDENCE: MR. SWILLEY: YOUR HONOR, I WOULD LIKE TO MAKE A MOTION FOR A NEW TRIAL ON ALL INDICTMENTS DUE TO LACK OF COMPETENT EVIDENCE, INDICATING GUILT OF THE DEFENDANT. TRIAL TRANSCRIPT, PAGE 331, LINES 14-16.

F) PLEASE, SEE FORTIOR EXHIBIT: SOUTH CAROLINA LAW ENFORCEMENT FORENSIC SERVICES LABORATORY REPORT, DATED SEPTEMBER 9, SIGNED BY FORENSIC SCIENTIST JENNIFER L. CLAYTON.

FILED
2013 MAR 25 PM 1:00
CLERK OF COURT
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA

13CP160261

AFFIDAVIT

COUNTY OF DARLINGTON

Personally appeared before me, SGT. J. GREEN, who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

ANY AND ALL ALCOHOLIC BEVERAGES, NARCOTICS, NARCOTIC PARAPHERNALIA, TRACE EVIDENCE, BLOOD, OR ANY AND ALL EVIDENCE AS IT PERTAINS TO OWNERSHIP OF LIKE ITEMS TO INCLUDE ANY AND ALL EVIDENCE RELATING TO ALCOHOL, NARCOTICS AND TRAFFIC VIOLATIONS. ANY AND ALL EVIDENCE AS IT PERTAINS TO FELONY DRIVING UNDER THE INFLUENCE RESULTING IN DEATH, FAILURE TO STOP FOR A BLUE LIGHT, AND DRIVING UNDER SUSPENSION.

DESCRIPTION OF PREMISES (PERSON, PLACE, OR THING)
TO BE SEARCHED

A 2005 CHEVROLET COBALT FOUR (4) BEARING SC LICENSE TAG # _____, AND VIN# _____ PRESENTLY LOCATED AT 1257 OLD FLORENCE RD. (SCOTT'S COLLISION CENTER) DARLINGTON, SC DARLINGTON COUNTY. TRAVELING FROM THE DARLINGTON COUNTY SHERIFF'S OFFICE LOCATED ON HARRY BYRD HWY. SC 151 IN DARLINGTON SC DARLINGTON COUNTY: GO EAST ON SC-151 PAST ROGERS ROAD FOR APPROXIMATELY 1.8 MILES MERGE ONTO US-52 SOUTH (S. GOV. WILLIAMS HWY). TRAVELING SOUTH FOR APPROXIMATELY 3.3 MILES TURN LEFT ONTO OLD FLORENCE RD., TRAVELING APPROXIMATELY 1 MILE TO 1257 OLD FLORENCE RD. (SCOTT'S COLLISION CENTER) LOCATED ON THE RIGHT.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

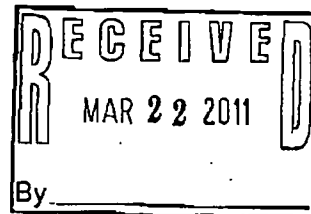
ON JANUARY 8, 2010 TROOPER GAINY WITH THE SC HIGHWAY PATROL ATTEMPTED TO INITIATE A TRAFFIC STOP ON THE AFOREMENTION VEHICLE. THE DRIVER REFUSE TO STOP AND ATTEMPTED ELUDE TROOPER GAINY. THE DRIVER CONTINUED TO FLEE FROM TROOPER GAINY UNTIL HE WRECKED THE VEHICLE. AS A RESULT OF THE ACCIDENT THE PASSENGER WAS KILLED. EVIDENCE OF ALCOHOLIC BEVERAGE AND NARCOTICS WERE DETECTED. THE DARLINGTON COUNTY SHERIFF'S OFFICE BELIEVE THAT ANY EVIDENCE RECOVERED WILL AID IN THIS INVESTIGATION.

Sworn to and Subscribed before me

This 9th day of January 2010
Debra J. Green (S.)
Signature of Judge

Sgt. J. Green
Affiant
Address 1621 Harry Byrd Hwy
Darlington, SC 29532

Phone 843-398-4501



Evidence/Stored Property Item List

Property Control Number: 201001-0201	Incident Number: 201001-0201	Reason Entered: Evidence	Assigned Officer: 02096 - LT. ERIC A. HODGES

Seq. #:	Date Stored:	Item Description:	Stored Location:	Status:	Tag Number:
1	01/14/2010	PHOTO CD'S-SCENE AND SUSPECT, VEHICLE	Bn: 102	In Custody	 01000989
2	01/10/2010	AUTOPSY ITEMS-TOX./DNA	Rm: 143-SLED	In Custody	 01000990
3	01/10/2010	PAIR OF POST MORTEM LATENTS	Rm: 143-SLED	In Custody	 01000991
4	01/10/2010	SLED BIOLOGICAL SPECIMEN KIT	Rm: 143-SLED	In Custody	 01000992
5	01/10/2010	VICTIM'S CLOTHES-PANTS, (2) BRA,(1)UNDERWEAR,SWEATER,TH ERMAL, BLACK TOP	Sh: 99L	In Custody	 01000993
6	01/10/2010	24 OZ. BUD ICE CANS	Rm: 143-SLED	In Custody	 01000994
7	01/10/2010	24 OZ. BUD LIGHT CAN	Rm: 143-SLED	In Custody	 01000995
8	01/10/2010	SWABS FROM STEERING WHEEL	Rm: 143-SLED	In Custody	 01000996
9	01/10/2010	SWABS FROM THE GEAR SHIFT	Rm: 143-SLED	In Custody	 01000997
10	01/10/2009	CELL PHONE	Bn: 102	In Custody	 01000998
11	01/10/2010	PIECE OF WOOD WITH "BLOOD" AND HAIR	Rm: 143-SLED	In Custody	 01000999
12	01/10/2010	SWABS FROM THE LEFT CORNER-OUTSIDE WINDOW -REAR	Rm: 143-SLED	In Custody	 01001000
13	01/14/2010	IN-CAR SCHP CD W/ CUSTODY FORM	Bn: 102	In Custody	 01001001

201001-0201

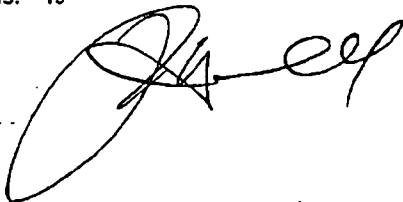
467

Evidence/Stored Property Item List

Property Control Number: 201001-0201	Incident Number: 201001-0201	Reason Entered: Evidence	Assigned Officer: 02096 - LT. ERIC A. HODGES

Seq. #:	Date Stored:	Item Description:	Stored Location:	Status:	Tag Number:
14	01/14/2010	SCHP PHOTO CD	Bn: 102	In Custody	 01001002
15	01/14/2010	WRITTEN STATEMENT FROM TROOPER GAINEY	Bn: 102	In Custody	 01001003
16	01/14/2010	SCDPS INCIDENT REPORT	Bn: 102	In Custody	 01001004
17	01/14/2010	SCDPS PURSUIT FORM COPY	Bn: 102	In Custody	 01001005
18	01/14/2010	350mg (CARISOPRODOL) SOMA IN A BOTTLE	Bn: 102	In Custody	 01001006
19	01/14/2010	1mg ALPRAZOLAM (XANEX) IN A BOTTLE	Bn: 102	In Custody	 01001007

Total Items: 19



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 DARLINGTON COUNTY, S.C.

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Evidence/Stored Property Record

Darlington County Sheriff's Office

Hazard/Warning - Biohazard

Evidence/Stored Property Item(s)

13CP160261

Item Information

Owner Name:		Owner Address:		Owner Phone #:	
Date Obtained:	Time Obtained:	Obtaining Officer:		Location Obtained:	
01/09/2010	17:00	17914 - SGT. RUSSELL R. HARRELL		SCOTT'S TOWING-OLD FLORENCE RD., Darlimgt	
Obtained From Name:		Obtained From Address:		Obtained From Phone #:	
Item Tag Number:	Property Type:	Item Category:		Value:	Quantity:
01000996	77 - Other				2
Make:	Model:	Item Description:			
		SWABS FROM STEERING WHEEL			
Serial Number:	Owner Number:	Primary Color:	Secondary Color:	Date Sent To Lab:	
Lab Sent To:	Lab Number:	Lab Results:			
Vehicle Type:	Year:	Vehicle Style:	License Plate #:	State:	VIN:
Drug Type:	Description:	Measurement:		Quantity:	

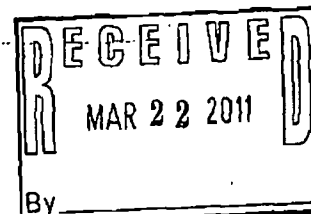
Storage Information

Date Stored:	Time Stored:	Storing Officer:	Impound Location:
01/10/2010	19:00	17914 - SGT. RUSSELL R. HARRELL	
Stored Location:			
Rm: 143-SLED			

Item Disposition

Disposition:	Disposition Description:		Disp. Date:	Disp. Time:
Officer Executing Disposition:	Disposition Authority:	Authority Date:	Officer Witnessing Item Destruction:	
Auction/Sale Amount:	Released To Name:	Released To Address:	Phone Number:	

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DARLINGTON COUNTY, S.C.



Evidence/Stored Property Record

469

Darlington County Sheriff's Office

Evidence/Stored Property Item(s)

Item Information

13CP100261

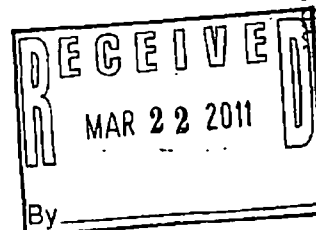
Owner Name:		Owner Address:		Owner Phone #:	
Date Obtained: 01/09/2010	Time Obtained: 17:00	Obtaining Officer: 17914 - SGT. RUSSELL R. HARRELL		Location Obtained: SCOTT'S TOWING-OLD FLORENCE RD., Darlington	
Obtained From Name:		Obtained From Address:		Obtained From Phone #:	
Item Tag Number: 01000997	Property Type: 77 - Other	Item Category:		Value:	Quantity: 2
Make:	Model:	Item Description: SWABS FROM THE GEAR SHIFT			
Serial Number:	Owner Number:	Primary Color:	Secondary Color:	Date Sent To Lab:	
Lab Sent To: SLED	Lab Number:	Lab Results:			
Vehicle Type:	Year:	Vehicle Style:	License Plate #:	State:	VIN:
Drug Type:	Description:	Measurement:	Quantity:		

Storage Information

Date Stored: 01/10/2010	Time Stored: 19:00	Storing Officer: 17914 - SGT. RUSSELL R. HARRELL	Impound Location:
Stored Location: Rm: 143-SLED			

Item Disposition

Disposition:	Disposition Description:		Disp. Date:	Disp. Time:
Officer Executing Disposition:	Disposition Authority:	Authority Date:	Officer Witnessing Item Destruction:	
Auction/Sale Amount:	Released To Name:	Released To Address:	Phone Number:	



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DARLINGTON COUNTY, SC

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

13CP169261

Lt. Eric A. Hodges

Darlington County Sheriff's Office
P.O. Box 783
Darlington, SC 29540

September 09, 2010
SLED Lab Number: L10-00610
Your Case Number: 2010010201,
FA10027
Incident Date: 1/8/2010
[S] Charlton Hill
[V] Sylvia Hill

In a continuing effort to maximize the efficiency of the SLED DNA laboratory, we are updating files and determining the disposition of backlogged cases.

The DNA evidence for the case listed above will be returned without analysis unless a response is received within 30 days. If analysis becomes necessary after the evidence has been returned, it may be resubmitted.

If you have any questions or concerns, please contact the SLED DNA Casework Department at (803) 896-7383.

Sincerely,

Jennifer L. Clayton
Forensic Scientist

2013 MAR 25 PM 1:00
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CLERK OF COURT/R.D.D.
DARLINGTON COUNTY, S.C.

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P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

ARGUMENT

7. WAS COUNSEL CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO MAKE: [1] OBJECTION, OR [2] EXCEPTION TO TRIAL JUDGE'S "CHARGE ON THE LAW", IN CORRELATION TO ANY IMPROPER, MISLEADING, CONFUSING, AND/OR IMPERMISSIBLE STATEMENT(S)?

FACTS

ON APRIL 13, 2011, DURING THE HONORABLE COURT'S DISSERTATION TITLED "CHARGE ON THE LAW", TRIAL JUDGE, J. MICHAEL BAXLEY PRESIDING, THE FOLLOWING STATEMENTS, AS RECORDED BY CIRCUIT COURT REPORTER PAMELA OZMENT-CARTEE, WERE MADE TO THE JURY:

A) TRIAL JUDGE: KEEP IN MIND, THROUGHOUT THIS PROCESS YOU HAVE BUT ONE OBJECTIVE AND THAT IS TO SEARCH FOR AND FIND THE TRUTH REGARDLESS OF WHICH WITNESS THAT MAY COME. TRIAL TRANSCRIPT, PAGE 303, LINES 13-14. (WHEREAS COURT'S VERBIAGE REASONABLY INFERS TO THE JURY THAT THEIR OBJECTIVE OF TRUTH IS, IN FACT, FOUND FROM A WITNESS; ALSO CALLING TO MIND THAT COUNSEL FOR THE DEFENSE DID NOT PRODUCE ANY WITNESS AND THAT APPLICANT HAD EXERCISED HIS RIGHT TO NOT TESTIFY. IN ESSENCE OFFERING CREDENCE TO, AND VOUCHING FOR STATE'S WITNESS, THUS, COUNSEL SHOULD HAVE OBJECTED.)

B) TRIAL JUDGE: I WILL TELL YOU THAT THE LAW MAKES DISTINCTION BETWEEN THE WEIGHT OR THE VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR DOES IT REQUIRE A GREATER THRESHOLD OF PROOF OF ONE OVER THE OTHER. TRIAL TRANSCRIPT, PAGE 304, LINES 2-5. (WHEREAS COURT'S SUMMARY DISTINCTION PERTAINING TO DIRECT OR CIRCUMSTANTIAL EVIDENCE IS PARTIALLY ERRONEOUS, AND MAY HAVE CONFUSED A JUROR, BECAUSE A CURATIVE INSTRUCTION WAS NOT PROFFERED; COUNSEL SHOULD HAVE OBJECTED.)

C) TRIAL JUDGE: IT IS NOT AN IMAGINARY OR FANCIFUL DOUBT OR A WEAK DOUBT; IT IS A SUBSTANTIAL DOUBT. IT IS A DOUBT WHICH THE WORDS IMPLY; A DOUBT FOR WHICH YOU CAN GIVE OR ASSIGN A REASON BASED ON THE TESTIMONY, AND THE EVIDENCE, OR THE TESTIMONY, IN THIS CASE. A REASONABLE DOUBT IS NOT ANY SORT OF DOUBT, TRIAL TRANSCRIPT, PAGE 306, LINES 1-6.

(IN THE SAME LANGUAGE AS THE PROSECUTION USED IN ITS CLOSING ARGUMENT [TRIAL TRANSCRIPT, PAGE 284, LINES 8,9] ON REASONABLE DOUBT, THE COURT MAKES AN INDIRECT, ALBEIT IMPROPER OR MISLEADING COMMENT ON APPLICANT'S RIGHT TO REMAIN SILENT, INASMUCH AS THE JURY COULD ONLY ASSIGN A REASONABLE DOUBT BASED ON TESTIMONY IN THIS CASE, PLACING EMPHASIS ON THE SUBJUNCTIVE MODE OF EVIDENCE. COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING.)

D) TRIAL JUDGE: YOU, THE JURY, MUST MAKE THE DETERMINATION OF WHETHER NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE DEFENDANT WITH REGARD TO THESE CHARGES. TRIAL TRANSCRIPT, PAGE 306, LINES 22-24.

(APPLICANT ASSERTS THAT A JUROR COULD HAVE REASONABLY MISINTERPRETED THIS STATEMENT, IN THAT THE CHOICE OF THE PHRASE "GUILT OF THE DEFENDANT" IS CONFUSING AND MISLEADING, IMPERMISSIBLY SHIFTING THE BURDEN OF PROOF TO THE DEFENDANT. COUNSEL SHOULD HAVE OBJECTED, OR MADE EXCEPTION TO THE PHRASEOLOGY.)

E) TRIAL JUDGE: NOW, I FURTHER INSTRUCT YOU, AND I SAY AGAIN, AND EMPHASIZE THE FACT THAT THE DEFENDANT DID NOT TESTIFY IN THIS COURTROOM. YOU SAW THAT. TRIAL TRANSCRIPT, PAGE 308, LINES 4-6.

(THE COURT'S REDUNDANT EMPHASIS COULD HAVE BEEN MISCONSTRUED BY THE JURY, HAVING A NEGATIVE IMPACT; COUNSEL SHOULD HAVE OBJECTED.)

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CLERK OF COURT
D. CLEMENS COUNTY, S.C.

F) TRIAL JUDGE: THE DEFENDANT IS CHARGED WITH FELONY DRIVING UNDER THE INFLUENCE.

IN ORDER TO PROVE THIS, THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DROVE A VEHICLE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS. TRIAL TRANSCRIPT, PAGE 308, LINES 23, 25, PAGE 309, LINES 1, 2.

(A JUROR COULD HAVE REASONABLY UNDERSTOOD THIS CHARGE TO MEAN, SIMPLY, THE STATE MUST PROVE THAT DEFENDANT DROVE A VEHICLE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS.) WEBSTER'S DICTIONARY DEFINES INFLUENCE: THING THAT INFLUENCES; [I.E. ALCOHOL AND/OR DRUGS IN THE CONTEXT OF THIS CHARGE]

F.F) TRIAL JUDGE: IT IS NOT NECESSARY TO SHOW THAT THE DEFENDANT WAS IN A HOPELESS CONDITION, OR PASSED OUT, OR EVEN INTOXICATED. TRIAL TRANSCRIPT, PAGE 309, LINES 9-11. WEBSTER'S DICTIONARY DEFINES INTOXICATED: MADE DRUNK. (THIS LATTER STATEMENT OF THE SAME CHARGE SEEMS CONTRARY TO THE PRECEDENT [F] WHEREAS A JUROR WOULD REASONABLY CONSTRUCT INTOXICATED AS SYNONYMOUS WITH UNDER THE INFLUENCE. COUNSEL SHOULD HAVE OBJECTED ON GROUNDS OF CONFUSING OR MISLEADING.)

G) TRIAL JUDGE: THERE MAY BE MORE THAN ONE PROXIMATE CAUSE OF AN EVENT. THE DEFENDANT'S ACT MAY BE REGARDED AS A PROXIMATE CAUSE, IF IT IS THE CONTRIBUTING CAUSE OF THE DEATH OF THE VICTIM. THE FACT THAT OTHER CAUSES MAY HAVE ALSO CONTRIBUTED TO THE DEATH OF THE VICTIM DOES NOT RELIEVE THE DEFENDANT FROM RESPONSIBILITY. TRIAL TRANSCRIPT, PAGE 310, LINES 4-10. (COUNSEL SHOULD HAVE OBJECTED TO THE CLEAR AND UNMISTAKABLE IMPROPRIETY OF THIS COMMENT ON THE FACTS, WHEREAS IT SHIFTED THE BURDEN OF PROOF TO THE DEFENDANT.)

H) TRIAL JUDGE: WHATEVER THE UNANIMOUS DECISION OF THE JURY IS, PLEASE MARK THAT AND MOVE ON TO THE NEXT ONE, TO CONSIDER EACH OF THESE CHARGES INDEPENDANTLY AND SEPERATELY. AND THE LAST THING THAT IT SAYS ON HERE, WHERE YOU SIGN MR. GOOLSBY, IT SAYS THAT I CERTIFY THAT THIS IS THE UNANIMOUS DECISION OF THE JURY, AND THEN A SIGNATURE BLOCK FOR YOU. SO WHEN YOU SIGN THERE, YOU ARE TELLING US THAT IT IS A UNANIMOUS VERDICT, ...
 (THIS REPETITIOUS USE OF THE WORD UNANIMOUS IS SUSPECT AND SEEMS TO BE DESIGN TO COVERTLY UNDERMINE THE AUTONOMY OF THE INDIVIDUAL JURIST; A SPECIES OF BURDEN SHIFTING, NO LESS; THIS COUNSEL WAS DEFICIENT IN HIS PERFORMANCE BY NOT OBJECTING TO THESE STATEMENTS, AND HIS DEFICIENT PERFORMANCE PREJUDICED HIS CLIENT.)

I) TRIAL JUDGE: THE LAW THAT I AM GOING TO CHARGE YOU IN THIS, IF I GIVE IT TO YOU WRONG, WELL, OUR COURT REPORTER IS TAKING THIS DOWN, THE ERROR WILL BE PRESERVED, AND THERE WILL BE ANOTHER DAY IN TIME WHEN THAT COULD BE CORRECTED, IF NECESSARY. BUT FOR TODAY'S PURPOSES, PLEASE ACCEPT THE LAW AS I GIVE IT TO YOU. TRIAL TRANSCRIPT, PAGE 305, LINES 8-13.

(APPLICANT CONTENDS THAT THIS STATEMENT IS MISLEADING AS WELL AS SUGGESTIVE, ALSO INTIMATING TRIAL JUDGE'S OPINION OF GUILT AND HAS ERRONEOUSLY SHIFTED THE BURDEN OF PROOF FROM STATE TO DEFENDANT. A REASONABLE JUROR COULD HAVE INTERPRETED THIS STATEMENT AS TELLING THEM TO JUST CONVICT APPLICANT AND ANY ERRORS WOULD BE CORRECTED "...ANOTHER DAY IN TIME..." THIS PRETENTIOUS COMMENT EFFICIENTLY DENIED APPLICANT HIS RIGHT TO A FAIR AND IMPARTIAL TRIAL BY JURY.)

DISCUSSION

THE LAW IN THIS AREA IS AS EASY TO MISSTATE AS IT IS DIFFICULT TO APPLY. THIS STATEMENT [I] ABSOLVED THE JURY OF THE RESPONSIBILITY FOR ITS VERDICT AND ENABLED THEM TO RENDER AN ERRONEOUS DECISION; TO WIT: A REASONABLE JURIST COULD HAVE INTERPRETED THIS COMMENT TO SIMPLY MEAN "CONVICT THE DEFENDANT AND IF SOMETHING WAS DONE WRONG IT WOULD BE CORRECTED."

SEE UNITED STATES V. FIORITO, 300 F.2d 424 (7TH CIRCUIT), SUPPORTIVE IN THIS INSTANCE. IN THAT SITUATION, THE 7TH CIRCUIT CONCLUDED THAT "SUCH DILUTION OF THE FINAL RESPONSIBILITY OF THE JURY AS WAS THUS INFERRED AS PERMISSION TO THE JURY IN ITS DETERMINATION OF THE VERDICT [WAS] PREJUDICIAL TO THE DEFENDANT." Id. AT 472.

OTHER COURTS HAVE REVERSED CONVICTIONS BECAUSE THE JURY WAS REMINDED THAT A "HIGHER COURT" WOULD BE REVIEWING ANY POSSIBLE MISTAKES.

FIORITO, SUPRA, ALSO SEE, UNITED STATES V. LULASKI, 341 F.2d 325, 330. PREJUDICIAL COMMENTS. IN THE COURSE OF A CRIMINAL TRIAL, THE JUDGE

MUST REFRAIN FROM ALL COMMENTS THAT TEND TO INDICATE HIS OPINION AS TO THE WEIGHT OR SUFFICIENCY OF EVIDENCE, THE CREDIBILITY OF WITNESSES, THE GUILT OF THE ACCUSED, OR AS TO THE CONTROVERTED FACTS. STATE V. KENNEDY

(S.C. 1978) 272 S.C. 231, 250 S.E.2d 338. CRIMINAL LAW KEY: 656(5); 656(9).

N.C. APR 2000. IN A CRIMINAL CASE, REASONABLE ERROR RESULTS WHERE THE JURY MAY RATIONALLY INFER FROM THE TRIAL JUDGE'S ACTION AN EXPRESSION OF OPINION AS TO THE DEFENDANT'S GUILT OR THE CREDIBILITY OF A WITNESS.

G.S. § 15 A-1222. STATE V. BALDWIN 540 S.E. 2d. 815.

THE FACTS MUST SUPPORT A JURY INSTRUCTION FOR IT TO BE PROPER.

STATE V. CROSBY, 355 S.C. 47, 584 S.E. 2d 110 (S.C. 2003).

JURORS ARE PRESUMED TO FOLLOW THE INSTRUCTIONS OF THE TRIAL COURT. STATE V. QUEEN, 264 S.C. 515, 521, 216 S.E. 2d 182, 185 (1975).

FURTHER, SOUTH CAROLINA LAW DICTATES THAT JURY INSTRUCTIONS, WHEN ANALYZED, MUST BE CONSIDERED IN THEIR ENTIRETY, SEE TODD V. STATE, 355 S.C. 396, 585 S.E. 2d 305 (2003).

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2013 MAR 25 PM 1:01
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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

ARGUMENT

8. WAS COUNSEL INEFFECTIVE FOR FAILING TO OBJECT DURING PROSECUTION'S
 OPENING STATEMENT WHEN SOLICITOR IMPROPERLY: [1] VOUCHERD
 FOR/OR BOLSTERED THE CREDIBILITY OF STATE'S ONLY EYE-WITNESS;
 [2] IMPASSIONED THE JURY BY APPEALING TO THEIR EMOTIONS; OR
 [3] COMMENTED ON APPLICANT'S GUILT?

FACTS

A-1) AND IT WAS 6:30, ... TROOPER WADE GAINES, YOU ARE GOING TO HEAR FROM
 HIM, HE WAS ON PATROL. HE WAS PATROLING HIGHWAY 34 HERE IN THE COUNTY.

(TRIAL TRANSCRIPT, PAGE 90, LINES 10-13.)

(SOLICITOR'S STATEMENTS IN THIS INSTANCE ARE PARTIALLY ERRONEOUS AND
 MISLEADING. ACCORDING TO TROOPER GAINES'S OWN TESTIMONY, HIS
 SHIFT DID NOT BEGIN UNTIL 7:00 PM. [TRIAL TRANSCRIPT, PAGE 129, LINES 21-22],
 AND HE OBSERVED A 2005 CHEVY COBALT ON HIGHWAY 340 [TRIAL TRANSCRIPT,
 PAGE 130, LINES 23-25, PAGE 131, LINE 1]; THEREFORE, TROOPER GAINES
 WAS NOT OPERATING UNDER COLOR OF THE LAW, BUT AS AN OFF-DUTY CIVILIAN.)

B-1) SO WHAT HE DOES, PER POLICY --- THEY HAVE POLICIES THAT REGULATE EVERYTHING...

(TRIAL TRANSCRIPT, PAGE 90, LINES 16-18)

SO, ACCORDING TO REGULATION... (TRIAL TRANSCRIPT, PAGE 90, LINE 23)

FOLLOWS PROCEDURE THE WHOLE TIME. (TRIAL TRANSCRIPT, PAGE 91, LINE 8)

(SOLICITOR'S ALLUSIONS, I.E. POLICY, POLICIES, REGULATION, PROCEDURE,

PERTAINING TO TROOPER GAINES'S ACTIONS ARE CALCULATED TO BOLSTER

WITNESS'S CREDIBILITY, BEING BASED, IN PART, ON AFOREMENTIONED FALLACY.

COUNSEL SHOULD HAVE OBJECTED TO IMPROPER COMMENTS AS MISLEADING OR UNFOUNDED.)

C-1) WHEN TROOPER GAINES FINALLY CATCHES UP TO THE CAR AND PULLS UP, HE SEES THIS MAN IN THE DRIVER'S SEAT, CHARLTON HILL, THE DEFENDANT IN THIS CASE. (TRIAL TRANSCRIPT, PAGE 91, LINES 19-21)

(HERE, IN THIS INSTANCE, SOLICITOR IMPERMISSIBLY ADDED HIS PERSONAL AND GOVERNMENTAL CREDIBILITY TO THAT OF THE LONE EYE-WITNESS.

COUNSEL SHOULD HAVE OBJECTED TO THIS ASSURING COMMENT AS VOUCHING.)

D-1) AND YOU ARE GOING TO HEAR ABOUT EVERYTHING THAT HE DID. AND YOU ARE GOING TO HEAR ABOUT THE MULTITUDE OF REASONS WHY WE BELIEVE IT IS TRUE. (TRIAL TRANSCRIPT, PAGE 94, LINES 5-8)

(IN REFERENCE TO THE APPLICANT, SOLICITOR AGAIN COMBINES PERSONAL AND GOVERNMENTAL CREDIBILITY, LENDING IT IN SUPPORT OF POTENTIAL OR PENDING STATE'S WITNESSES.)

A-2)...SYLVIA MATTOX HILL. SHE IS LYING THERE, BECAUSE AS I TOLD YOU THAT CAR WAS FLIPPING END OVER END, ONE OF THOSE LOGS THAT IT PICKED UP CAME THROUGH THAT FRONT WINDOW AND HIT HER IN THE HEAD LIKE A TWO HUNDRED POUND BULLET AND THREW HER OUT THE BACK WINDOW. AND THE EVIDENCE IS GOING TO LINE THIS UP CLEAR AS DAY. AND IT IS GOING TO BE ONE OF THOSE THINGS THAT I AM IN CHARGE OF PROVING TO Y'ALL, AND IT IS ONE OF THE THINGS THAT I BELIEVE I CAN PROVE TO Y'ALL, BEYOND A REASONABLE DOUBT. NOW, LADIES AND GENTLEMEN, BECAUSE OF THOSE ACTIONS THAT HE MADE THAT NIGHT, BECAUSE OF THIS HORRIBLE, HORRIBLE ACCIDENT, AND THAT HORRIBLE CRASH,... (TRIAL TRANSCRIPT, PAGE 92, LINES 2-13)

(AS IT WERE, THE SOLICITOR IS CLEARLY APPEALING COMPASSION OF THE JURY.)

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WASHINGTON COUNTY

A-3) THE AMERICAN JURY TRIAL IS THE REASON THAT WE AS AMERICANS CAN HOLD OUR HEAD UP WHEN WE VISIT OR SEE ANYBODY FROM ANY OTHER COUNTRY. WE DON'T HAVE IT ANYWHERE ELSE LIKE WE DO. OKAY? BECAUSE THE STATE DOESN'T GET UP HERE AND SAY THAT PERSON IS GUILTY. THE CORPORATIONS DON'T GET UP HERE AND DECIDE THEY WANT THIS PERSON FOUND GUILTY. THE PEOPLE DO, AND THAT IS Y'ALL (TRIAL TRANSCRIPT, PAGE 92, LINES 24, 25, PAGE 93, LINES 1-5.)

(WITH THESE OSTENTATIOUS COMMENTS, THE SOLICITOR IS RAILING AGAINST THE VERY THING THAT HE IS PERPETRATING: USING OR ABUSING HIS POSITION AS ESQUIRE, POLITICIAN, AND CLOUT AS FIRST LAW ENFORCEMENT OFFICER TO IMPERMISSIBLY CAST OR INSINUATE GUILT, AND SHIFT STATE'S BURDEN OF GUILT. COUNSEL'S PERFORMANCE WAS DEFICIENT, AND THAT DEFICIENCY PREJUDICED APPLICANT AT TRIAL, WHEN HE FAILED TO OBJECT TO COMMENTS ABOUT APPLICANT'S GUILT.)

B-3) AND Y'ALL ARE GOING TO BE ABLE TO KNOW ENOUGH ABOUT THIS CASE WHERE YOU HAVE NO PROBLEM PASSING JUDGEMENT. AND YOU ARE GOING TO BELIEVE, JUST LIKE THE STATE BELIEVES, AND JUST LIKE I AM SURE I CAN PROVE TO Y'ALL OVER THE NEXT COUPLE OF DAYS, THAT THIS DEFENDANT WAS GUILTY.

(TRIAL TRANSCRIPT, PAGE 94, LINES 1-5.)

(SOLICITOR USED "YOU" OR "FORMS OF YOU" OVER THIRTY (30) TIMES IN HIS OPENING STATEMENT; A VARIANT VIOLATION OF THE "GOLDEN RULE," PLACING THE JURY IN THE VICTIM'S SHOES, SO TO SPEAK. COUNSEL, BY ALL MEANS, SHOULD HAVE OBJECTED.)

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CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

DISCUSSION

APPLICANT RESPECTFULLY SUBMITS THAT THE SOLICITOR IS AN OFFICER OF THE COURT, THE GOVERNMENT'S ATTORNEY. AS SUCH, HE IS THE REPRESENTATIVE OF A SOVEREIGNTY WHOSE OBLIGATION TO GOVERN IMPARTIALLY IS AS COMPELLING AS ITS OBLIGATION TO GOVERN ALL, AND WHOSE INTERESTS, THEREFORE, IN A CRIMINAL PROSECUTION IS NOT THAT IT SHALL WIN A CASE, BUT THAT JUSTICE BE DONE. THE DUTY OF THE PROSECUTION IS TO SEEK JUSTICE, NOT MERELY TO CONVICT. BERGER V. U.S., 295 U.S. 78, 88, (1935).

THUS A PROSECUTOR MAY NOT SEEK A CONVICTION AT ANY PRICE, CERTAINLY NOT AT THE EXPENSE OF JUSTICE. A PROSECUTOR MAY PROSECUTE WITH EARNEST AND VIGOR—INDEED, HE SHOULD DO SO. BUT WHILE HE MAY STRIKE HARD BLOWS, HE IS NOT AT LIBERTY TO STRIKE FOUL ONES. IT IS AS MUCH HIS DUTY TO REFRAIN FROM IMPROPER METHODS CALCULATED TO PRODUCE A WRONGFUL CONVICTION AS IT IS TO USE LEGITIMATE MEANS TO BRING ABOUT A JUST ONE. SEE ALSO: STATE V. KING, 71 S.E.2d 793 (1952)

A SOLICITOR IS AN OFFICER OF THE COURT REPRESENTING ALL THE PEOPLE, INCLUDING THE ACCUSED, AND OCCUPIES A QUASI-JUDICIAL POSITION AND MUST SEE THAT JUSTICE IS DONE. THAT NO CONVICTION TAKES PLACE EXCEPT IN [STRICT] CONFORMITY WITH THE LAW AND THAT THE ACCUSED IS NOT DEPRIVED OF ANY CONSTITUTIONAL RIGHTS OR PRIVILEGES AND, HOWEVER STRONG HIS/HER BELIEF MAY BE OF AN ACCUSED GUILT, HE MUST NOT CONDUCT THE TRIAL IN A MANNER UNFAIR OR PARTIAL TO THE ACCUSED. SEE ALSO: STATE V. DURDEN, 212 S.E. 2d 587 (1975).

2013 MAR 25 PM 1:02
SCOTT B. SUGGS
CLERK OF COURT
JULIA H. HARRIS
JULIA H. HARRIS
JULIA H. HARRIS

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ARGUMENT

9 WERE APPLICANT'S CONSTITUTIONAL RIGHTS TO: DUE PROCESS, EQUAL PROTECTION, A FUNDAMENTALLY FAIR TRIAL, AND/OR, BE FREE FROM DOUBLE JEOPARDY, VIOLATED PURSUANT TO PROSECUTORIAL MISCONDUCT, INCLUDING VINDICTIVE PROSECUTION OR A CONFLICT OF INTEREST?

FACTS

A) IN 1999, DEPUTY SOLICITOR KERNARD REDMOND, AT THE TIME IN PRIVATE PRACTICE, ASSOCIATED WITH THE LAW OFFICES OF SALEEBY AND COX, REPRESENTED APPLICANT AT A PAROLE HEARING. (SEE PERSONAL CORRESPONDENCE ATTACHED.)

B) IN 2010, APPLICANT WAS INDICTED BY GRAND JURY FOR FELONY DUI-DEATH, AND DRIVING UNDER SUSPENSION.

C) IN ACCORD WITH SAID INDICTMENT, APPLICANT WAS OFFERED A PLEA BY SOLICITOR THROUGH COUNSEL; TO WIT: PLEAD TO 2010-GS-16-1335 [FELONY DUI-DEATH] = 22 YRS & WILL TAKE TO JUDGE KING WHEREVER HE IS B/C JUDGE BAXLEY IS NOT IN THE CIRCUIT ANYMORE. (ATTACHED)

D) ON APRIL 11, 2010, APPLICANT, BASED ON ACTUAL INNOCENCE, EXERCISED HIS RIGHT TO TRIAL BY JURY. (TRIAL TRANSCRIPT, PAGE 13, LINES 14-16)

ON THAT SAME DAY, DEPUTY SOLICITOR KERNARD REDMOND RECOMMENDED THREE (3) ADDITIONAL INDICTMENTS BE CHARGED AGAINST APPLICANT FOR ONE (1) ACTION, ONE (1) SET OF FACTS, BECAUSE HE CHOSE TO GO TO TRIAL.

MR. HOLT: YES, SIR, YOUR HONOR. THE STATE, AFTER SPEAKING WITH DEPUTY SOLICITOR KERNARD REDMOND, HE WISHES TO MOVE FORWARD ON ALL CHARGES. WE FIND THAT UNDER THE CASE LAW THE RECKLESS HOMICIDE AS WELL AS THE INVOLUNTARY MANSLAUGHTER HAS SEPERATE ELEMENTS, AND

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DARLINGTON COUNTY, S.C.

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ARE SEPERATE CRIMES. AND I THINK IT IS WELL SETTLED CASE LAW THAT THEY ARE NOT LESSER INCLUDED OF FELONY DUI. THEY ARE, IN FACT, THEIR OWN SEPERATE CRIMES. THE STATE FEELS LIKE THERE IS AMPLE EVIDENCE TO GO FORWARD ON ALL CHARGES, AS WELL AS THEY ARE UNRELATED --- ESSENTIALLY SEPERATE, AND DIFFERENT CRIMES, YOUR HONOR.

(TRIAL TRANSCRIPT, PAGE 262, LINES 20-25, PAGE 263, LINES 1-5.)

E) APPLICANT CONTENDS THAT TIME INTERVAL BETWEEN ADDITIONAL INDICTMENTS

* AND TRIAL OPERATED TO DENY SUFFICIENT OPPORTUNITY TO ASSIST IN HIS DEFENSE, BOTH LEGAL AND FACTUAL, I.E. [1] PROCURE MEMORANDUM OF LAW CITING PRECEDENT CASE: ILLINOIS V. VITALE, 447 U.S. 410, 65 L.Ed. 2d 228; WHEREIN THE "ELEMENT" TEST SET FORTH BY BLOCKBURGER HAS BEEN EXPANDED UNDER U.S. SUPREME COURT DECISION. (1960); AND [2] ADMISSIBILITY OF EVIDENCE OBTAINED UNDER SECTION 56-5-2950 —

ANY EVIDENCE OBTAINED UNDER THE PROVISIONS OF § 56-5-2950 SHALL NOT BE ADMISSIBLE AS EVIDENCE TO PROVE A CRIMINAL OFFENSE OTHER THAN THOSE OFFENSES DELINEATED IN TITLE 56. HISTORY: 1987-ACT No. 179 § 3.

F) APPLICANT FURTHER CONTENDS THAT TIME INTERVAL BETWEEN INDICTMENTS

* AND TRIAL OPERATED TO VIOLATE OR DENY HIS CONSTITUTIONAL RIGHTS.

THE COURT: ALL RIGHT. VERY GOOD. THANK YOU. AND, NOW, MR. SWILLEY, DO YOU HAVE CASE LAW OR PRECEDENT THAT WOULD SUPPORT YOUR POSITION THAT THE MULTIPLICITY OF CHARGES IS EITHER A VIOLATION OF THE EIGHTH AMENDMENT OR SOME OTHER CONSTITUTIONAL RIGHT, OR PROTECTION OF THE DEFENDANT?

FILED
2017 MAR 14 AT
SCOTTSBORO
CLERK OF COURT
DAVINGTOWN COUNTY, S.C.
PM 1:02

MR. SWILLEY: YOUR HONOR, I DON'T HAVE ANY EIGHTH AMENDMENT CASE LAW EXPRESSLY ON POINT AS TO THAT ISSUE. HOWEVER, I WOULD STILL ASSERT THAT THAT IS MY ARGUMENT. I THINK IT OFFENDS THE DEFENDANT'S EIGHTH AMENDMENT RIGHT AS WELL AS HIS RIGHT TO DUE PROCESS. TRIAL TRANSCRIPT, PAGE 263, LINES 6-15.

THE COURT: VERY GOOD. ALL RIGHT. THEN, MR. SWILLEY, I AM CONCERNED ABOUT THE MULTIPLICITY OF CHARGES AS YOU RAISED. BUT THIS IS REALLY A POLICY DECISION THAT WOULD BE MADE BY OUR SUPREME COURT. THE ABSENCE OF PRECEDENCE THAT SUPPORTS YOU TELLS ME THAT THEY HAVE MADE THAT POLICY DECISION. TRIAL TRANSCRIPT, PAGE 264, LINE 25, PAGE 264, LINES 1-6.

DISCUSSION

VINDICTIVE PROSECUTION: A PROSECUTOR'S USE OF THE CHARGING PROCESS MAY VIOLATE DUE PROCESS IF IT PENALIZES THE EXERCISE OF CONSTITUTIONAL OR STATUTORY RIGHTS. IF A DEFENDANT SHOWS ACTUAL VINDICTIVENESS HE ESTABLISHES A PER SE DUE PROCESS VIOLATION. CHARGES OF VINDICTIVE PROSECUTION USUALLY ARISE ONLY WHEN THE DEFENDANT HAS BEEN REINDICTED. SEE U.S. v. Wilson 639 F. 2d 500 (9TH CIRCUIT 1981), VINDICTIVE PROSECUTION ALLEGATION APPROPRIATE ONLY IF SECOND INDICTMENT BROUGHT; SELECTIVE ALLEGATION CLAIM CHALLENGES INITIAL INDICTMENT. BUT SEE U.S. v. Montoya 45 F. 3d 1286, 1299 (9TH CIRCUIT 1995) WHERE FILING OF INDICTMENT CAN SUPPORT VINDICTIVE PROSECUTION CHARGE. U.S. v. LAMPLEY 127 F. 3d 1231, 1246 (10TH CIRCUIT 1997) TO ESTABLISH CLAIM OF VINDICTIVENESS, IF DEFENDANT MUST PROVE ACTUAL VINDICTIVENESS,

OR REALISTIC LIKLIHOOD OF VINDICTIVENESS, IF DEFENDANT MEETS THIS BURDEN, PROSECUTION MUST THEN JUSTIFY ITS DECISION WITH LEGITIMATE, ARTICULABLE, OBJECTIVE REASON. CERT. DENIED 116 S. Ct. 1098 (1998).

WHEN PROSECUTOR FAILS TO WARN THE DEFENDANT AND INCREASES THE CHARGES SOLELY BECAUSE THE DEFENDANT HAS CHOSEN TO PLEAD NOT GUILTY AND GO TO TRIAL, VINDICTIVENESS IS PRESUMED. SEE U.S. V. MEYER 810 F. 2d 1242, 1247, 1245-46 (DC CIRCUIT) 1987; VINDICTIVENESS FOUND WHEN PROSECUTOR WITHOUT NOTICE OR WARNING INCREASED CHARGES AGAINST DEFENDANTS AFTER THEY INVOKED RIGHT TO TRIAL; ALTHOUGH INCREASED CHARGES VOLUNTARILY DISMISSED, ORIGINAL INFORMATIONS ALSO DISMISSED. PRESUMPTION OF VINDICTIVENESS EMPLOYED IN PRETRIAL CONTEXT WHEN SUSPICION OF VINDICTIVENESS RAISED BY FACT THAT THOSE WHO CHOSE TO GO TO TRIAL FACED ADDED CHARGES, HEIGHTENED BY SIMPLICITY AND CLARITY OF BOTH THE FACTS AND LAW.

* MULTIPLE INDICTMENTS ATTACHED; TO INCLUDE REINDICTMENT FOR FAILURE TO STOP FOR A BLUE LIGHT, PLEASE NOTICE THEREIN REINDICTMENT (PRESUMABLY ON THE SAME DAY - APRIL 11, 2011) ADDED DETAILS HEIGHTENED BY DEATH ON TITLE, AND MARRIED NAME TO BODY OF SAME. ALSO NOTICE VARIABLE DOCKET NUMBERS - 0397 ON ORIGINAL AND - 0442 ON SECOND.

APPLICANT RESPECTFULLY SUBMITS U.S. CONSTITUTIONAL AMENDMENTS: V; VI; VIII. PROSECUTION'S MISCONDUCT HEREIN SET FORTH DEPRIVED APPLICANT OF LIFE; LIBERTY; AND DUE PROCESS OF LAW.

SCOTT B. SUGGS
CLERK OF COURT/R.O.
DARLINGTON COUNTY, S.C.

2013 MAR 25 PM 1:02

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CONFLICT OF INTEREST

485

APPLICANT ASSERTS THAT DEPUTY SOLICITOR KERNARD REDMOND'S PRIOR REPRESENTATION OF HIM CONSTITUTED AN INDIRECT CONFLICT OF INTEREST WITH PRESENT GOVERNMENTAL OFFICE, AND IS PREJUDICIAL BASIS FOR PROSECUTION'S ARBITRARY CHOICE OF MULTIPLICITY OF CHARGES, TO INCLUDE INVOLUNTARY MANSLAUGHTER AND RECKLESS HOMICIDE.

THE RULE OF STATUTORY CONSTRUCTION, THAT REPEAL BY IMPLICATION IS NOT FAVORED AND WILL NOT BE INDULGED IN IF THERE IS ANY REASONABLE CONSTRUCTION, IS APPLICABLE TO STATUTES RELATING TO CRIMES; THUS, THE SPECIFIC CRIME CODIFIED § 56-5-2910 HAS NOT BEEN REPEALED BY THE GENERAL PROVISIONS OF THE INVOLUNTARY MANSLAUGHTER STATUTE, § 16-3-60. NEITHER THE FACT THAT THE SOLICITOR MAY ARBITRARILY CHOOSE THE SECTION UNDER WHICH TO PROSECUTE NOR THE FACT THAT THE PUNISHMENT FOR INVOLUNTARY MANSLAUGHTER IS TWO YEARS AND PUNISHMENT UNDER § 56-5-2910, FOR THE INDISTINGUISHABLE OFFENSE OF RECKLESS HOMICIDE BY MEANS OF AN AUTOMOBILE, IS FIVE YEARS RENDERS THE STATUTORY SCHEME CONSTITUTIONALLY DEFECTIVE. ———
STRICKLAND V. STATE (1981) 276 S.C. 17, 274 S.E. 2d 430.

THE LEGISLATURE DID NOT INTEND THAT FELONY DUI (DENOUNCED IN § 56-5-2945) TO SUPPLANT THE COMMON LAW OFFENSE OF INVOLUNTARY MANSLAUGHTER AND THE STATUTORY OFFENSE OF RECKLESS HOMICIDE (DENOUNCED BY § 56-5-2910), BUT INSTEAD INTENDED TO SUPPLEMENT THOSE OFFENSES. ———

STATE V. KING (1986) 269 S.C. 371, 346 S.E. 2d 323.

2013 MAR 25 PM 1:00
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

STATE V. CARTER, 353 S.E. 2d 875 (S.C. 1987)

DEFENDANT, WHO HAD BEEN CONVICTED IN MUNICIPAL COURT ON DRIVING UNDER THE INFLUENCE CHARGE, WAS SUBSEQUENTLY TRIED AND CONVICTED OF RECKLESS HOMICIDE IN GENERAL SESSIONS COURT, BERKLEY CO., RODNEY PEEPLES, J. DEFENDANT APPEALED. THE SUPREME COURT, FINNEY, J., HELD THAT DEFENDANT'S SUBSTANTIAL CLAIM OF DOUBLE JEOPARDY PROHIBITED HIS PROSECUTION FOR RECKLESS HOMICIDE FOLLOWING HIS CONVICTION OF DRIVING UNDER THE INFLUENCE, BECAUSE STATE RELIED ON AND PROVED SAME SET OF FACTS OF ADJUDICATED DRIVING UNDER THE INFLUENCE OFFENSE TO ESTABLISH RECKLESS ACT NECESSARY TO PROVE RECKLESS HOMICIDE. REVERSED.

FILED
2003 MAR 25 AM 1:02
CLERK OF COURT
SOUTH CAROLINA
JAIL

1. CRIMINAL LAW KEY 196: PRINCIPAL TEST FOR DETERMINING WHETHER TWO OFFENSES ARE THE SAME FOR PURPOSES OF BARRING SUCCESSIVE PROSECUTIONS IS WHETHER EACH PROVISION REQUIRES PROOF OF ADDITIONAL FACT WHICH OTHER DOES NOT. U.S.C.A. CONST. AMEND 5.

2. CRIMINAL LAW KEY 200(1): DEFENDANT'S SUBSTANTIAL CLAIM OF DOUBLE JEOPARDY PROHIBITED HIS PROSECUTION FOR RECKLESS HOMICIDE FOLLOWING HIS CONVICTION OF DRIVING UNDER THE INFLUENCE, BECAUSE STATE RELIED ON AND PROVED SAME FACTS OF ADJUDICATED DRIVING UNDER THE INFLUENCE OFFENSE TO ESTABLISH RECKLESS ACT NECESSARY TO PROVE RECKLESS HOMICIDE. U.S.C.A. CONST. AMEND. 5; CODE 1976, §§ 56-5-2910, 56-5-2930, 56-5-2950.

APPELLANT DOES NOT DISPUTE THE "ELEMENT" TEST SET OUT IN BLOCKBURGER, SUPRA, AND BROWN, SUPRA BUT HE CONTENTS THE TEST HAS BEEN EXPANDED

UNDER THE U.S. SUPREME COURT DECISION IN ILLINOIS V. VITALE, 447 U.S. 410, 100 S. Ct. 2260, 65 L. Ed. 2d 228 (1980). ILLINOIS V. VITALE INVOLVE A FATAL ACCIDENT WHEREIN THE DEFENDANT WAS TRIED SEPERATELY AND CONVICTED OF FAILING TO REDUCE SPEED AND INVOLUNTARY MANSLAUGHTER. THE U.S. SUPREME COURT MADE NO DETERMINATION AS TO WHEATHER THE TWO ILLINOIS OFFENSES WERE THE "SAME" FOR DOUBLE JEOPARDY PURPOSES AND REMANDED THE CASE FOR FURTHER PROCEEDINGS. THE COURT IN ITS OPINION STATED :

[1] IF IN THE PENDING MANSLAUGHTER PROSECUTION ILLINOIS RELIES ON AND PROVES A FAILURE TO SLOW TO AVOID AN ACCIDENT AS THE RECKLESS ACT NECESSARY TO PROVE MANSLAUGHTER, VITALE WOULD HAVE A SUBSTANTIAL CLAIM OF DOUBLE JEOPARDY UNDER THE FIFTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONST. THE COURT HAS ADOPTED THE SUBSTANTIAL CLAIM OF DOUBLE JEOPARDY RATIONALE ANNOUNCED IN ILLINOIS V. VITALE, SUPRA. SEE STATE V. GRAMPUS, (FELONY "DRIVING UNDER THE INFLUENCE" PROSECUTION VIOLATED DEFENDANT'S RIGHT TO BE FREE FROM DOUBLE JEOPARDY SINCE PROSECUTION WAS FOUNDED ON THE SAME ACT WHICH SERVED AS BASIS FOR DEFENDANT'S PRIOR CONVICTION IN MAGISTRATE COURT FOR VIOLATING TRAFFIC LAWS).

[2] DURING THE TRIAL THE STATE INTRODUCED EVIDENCE SHOWING THE APPELLANT WAS ARRESTED FOR DRIVING UNDER THE INFLUENCE, AND IT PROVED THE LEVEL OF APPELLANT'S CONSUMPTION OF ALCOHOL BY PRESENTING THE RESULTS OF HIS BREATHALYZER TEST. THE JURY WAS CHARGED THE LAW OF DRIVING UNDER THE INFLUENCE, S.C. CODE ANN. § 56-5-2930 (1976), AND THE LAW REGARDING THE PRESUMPTIONS ARISING PURSUANT TO IMPLIED CONSENT STATUTE, S.C. CODE

§ 56-5-2950 (1976). IN OUR VIEW, THE TRIAL ON RECKLESS HOMICIDE WAS, IN EFFECT, A RETRIAL OF THE DRIVING UNDER THE INFLUENCE OFFENSE. THE ONLY SIGNIFICANT DISTINCTION THAT THE STATE WAS REQUIRED TO ESTABLISH THE DEATH OF THE VICTIM AS AN ELEMENT OF RECKLESS HOMICIDE. THE DRIVING UNDER THE INFLUENCE VIOLATION WAS CRITICAL IN ESTABLISHING THE RECKLESS HOMICIDE.

WE HOLD ONLY THAT APPELLANT'S SUBSTANTIAL CLAIM OF DOUBLE JEOPARDY PROHIBITS HIS SUBSEQUENT PROSECUTION FOR RECKLESS HOMICIDE BECAUSE THE STATE RELIED UPON AND PROVED THE SAME SET OF FACTS OF THE ADJUDICATED DRIVING UNDER THE INFLUENCE OFFENSE TO ESTABLISH THE RECKLESS ACT NECESSARY TO PROVE RECKLESS HOMICIDE.

STATE V. GRAMPUS, SUPRA; AND ILLINOIS V. VITALE, SUPRA. REVERSED.

STATE V. GRAMPUS, (1986) 343 SE. 2d 26, 288 SC. 395.

FELONY "DRIVING WHILE UNDER THE INFLUENCE" PROSECUTION VIOLATED DEFENDANT'S RIGHT TO BE FREE FROM DOUBLE JEOPARDY, WHEN PROSECUTION WAS FOUNDED ON SAME ACT OF CROSSING CENTER LINE WHICH SERVED AS BASIS FOR DEFENDANT'S CONVICTION IN MAGISTRATE'S COURT OF VIOLATING TRAFFIC LAWS; OVERRULING STATE V. BUTLER, 94 SE. 2d 761, 230 SC. 159. (TRIAL JUDGE'S VERBIAGE (TRIAL TRANSCRIPT, PAGE 330, LINE 1-25, PAGE 331, LINES 1-9) WAS CONTRARY TO DISCUSSION AND MEMORANDUM OF LAW, IN CORRELATION TO DOUBLE JEOPARDY CLAUSE, AS HEREIN SET FORTH, AND IS IN ERROR ACCORDING TO SUPREME COURT'S DECISION AND THE CONSTITUTION OF THE UNITED STATES OF AMERICA.)

279 S.C. 264
Supreme Court of South Carolina.

Sammie SHARPER, Appellant,
v.
STATE of South Carolina, Respondent.

No. 21961. | July 20, 1983.

Appeal was taken from ruling by the Common Pleas Court, Chesterfield County, Paul M. Moore, J., dismissing without hearing defendant's application for postconviction relief. The Supreme Court held that: (1) allegation that trial counsel's inability to gather certain witness was specific instance where counsel was ineffective and allegation that short interval between indictment and trial gave defendant insufficient opportunity to assist in preparation of defense were sufficient to set forth prima facie violation of defendant's constitutional rights, and (2) defendant was entitled to hearing on issue whether short time interval between indictment and trial operated to deny defendant sufficient opportunity to assist in his defense.

Reversed and remanded.

West Headnotes (3)

[1] Criminal Law

↔ Admissibility of Evidence

Defendant's allegation that he was denied effective assistance of counsel on ground that short interval between his indictment and trial gave him insufficient opportunity to assist in preparation of defense of his case, and on ground that trial counsel's inability to gather specific witness was specific instance where counsel was ineffective were sufficient to set forth prima facie violation of his constitutional rights. U.S.C.A. Const.Amend. 6.

[2] Criminal Law

↔ Counsel

Where application for postconviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted

by record before lower court, question of fact is raised which can only be resolved by evidentiary hearing. U.S.C.A. Const.Amend. 6.

[3] Criminal Law

↔ Counsel

Although defendant's claim that counsel rendered ineffective assistance by failing to gather certain witness was conclusively refuted by record, where record confirmed defendant's factual assertion that his indictment came the day before trial, but did not show that he had sufficient opportunity to assist in preparation of his own defense, so that claim that short time interval between indictment and trial operated to deny defendant effective assistance of counsel was not squarely presented to trial court, defendant was entitled to hearing on claim. U.S.C.A. Const.Amend. 6.

Attorneys and Law Firms

****248 *264** Asst. Appellate Defender Tara D. Shurling, of S.C. Comm'n of Appellate Defense, Columbia; for appellant.

***265** Atty. Gen. T. Travis Medlock, Retired Atty. Gen. Daniel R. McLeod, Asst. Atty. Gen. Donald J. Zelenka and Staff Atty. Sally M. Rentiers, Columbia, for respondent.

Opinion

PER CURIAM:

This appeal is from the dismissal without a hearing of appellant's application for post-conviction relief. We reverse and remand to the lower court.

In March 1977 appellant was convicted of armed robbery. On direct appeal we upheld the conviction, finding no error in the trial court. *State v. Sharper*, Mem.Op. 78-38, filed April 10, 1978. In March 1982 appellant filed this application for post-conviction relief, which contained among its grounds for relief a general allegation of ineffective assistance of counsel. The State filed a return and motion to dismiss the application without an evidentiary hearing. The lower court heard arguments on the motion and granted it on the ground

that appellant failed to point to any specific instances where counsel was ineffective to support his general allegation of ineffective assistance of counsel, so that an evidentiary hearing was not required. See *Coardes v. State*, 262 S.C. 493, 206 S.E.2d 264 (1974).

[1] Contrary to the lower court's finding, however, we find appellant did allege two specific instances where counsel was ineffective. Appellant argued he was denied effective assistance of counsel because the short interval between his indictment and trial gave him an insufficient opportunity to assist in the preparation of the defense of his case. He also alleged that trial counsel's inability to gather a certain witness was a specific instance where counsel was ineffective. These specific allegations were sufficient to set forth a *prima facie* violation of appellant's constitutional rights. *Normon v. State*, 276 S.C. 278, 277 S.E.2d 707 (1981).

[2] Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing. *Norman*.

*266 [3] Here, we find the claim that counsel rendered ineffective assistance because he failed to gather a certain witness is conclusively refuted by the record. The trial record shows that the witness in question did in fact testify for the

appellant. This completely and conclusively refutes the claim that trial counsel failed in his attempt to bring the witness to testify. See *Coardes*.

We find also, however, that appellant's claim he was denied effective assistance of counsel because he had an inadequate opportunity to assist in the preparation of the defense of his case is not conclusively refuted by the record before the lower court. The record confirms appellant's factual assertion **249 that his indictment came the day before trial, but does not conclusively show he nevertheless had sufficient opportunity to assist in the preparation of his own defense. The claim that this circumstance operated to deny appellant effective assistance of counsel was not squarely presented to the trial court, so the record cannot be said to conclusively refute it. Cf. *State v. Carpenter*, 277 S.C. 309, 286 S.E.2d 384 (1982) (claim of ineffective assistance of counsel at trial will not normally be considered on appeal from a conviction, particularly when the issue is not argued to the trial judge). Appellant was entitled to a hearing in this specific allegation of ineffective assistance of counsel.

The ruling of the lower court is reversed and the case remanded for proceedings consistent with this opinion.

Parallel Citations

305 S.E.2d 247

End of Document

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CHARLTON L. HILL, 152778
LIEBER CORR. INST. MA-224
P.O. Box 205
RIDGEVILLE, S.C. 29472

KERNARD REDMOND, DEPUTY SOLICITOR
P.O. Box 868
DILLON, S.C. 29536

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For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 1.45
Certified Fee	2.95
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Total Postage & Fees	\$ 5.75
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City, State, ZIP+4 DILLON, SE. 29536	
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RE: FORMAL REQUEST FOR CLIENT'S FILE, JANUARY 15, 2013.

DEAR MR. REDMOND,

13CP160261

SIR, MY NAME IS CHARLTON L. HILL, JR. WHEN YOU WERE PARTNERED WITH THE LAW OFFICES OF SALLEBY & COX, YOU REPRESENTED ME AT A PAROLE HEARING. IT WAS HELD AT RIDGELEND CORR. INST. AROUND 1999. A COLLEAGUE OF YOURS, MR. BENJAMIN, WAS CHAIRMAN OF THE BOARD AT THAT TIME. NEVERTHELESS, I WAS NOT PAROLED.

BE THAT AS IT MAY, IT HAS COME TO MY ATTENTION THAT I AM IN DIRE NEED OF MY CASE FILE IN PREPARATION FOR A PENDING LEGAL MATTER INVOLVING A STATUTE OF LIMITATIONS; THEREFORE, I MUST MAKE A FORMAL REQUEST FOR MY CASE FILE PURSUANT TO SUPREME COURT RULE 32, CODE OF PROFESSIONAL RESPONSIBILITY DR6-101 (A)(3).

RESPECTFULLY SUBMITTED,

Charlton L. Hill

CC: SALLEBY & COX, ESQ.,
(1) ENCL/CROSS-REFERENCE,
CHARLTON L. HILL, 152778.

FILED
2013 MAR 25 PM 1:02
G. OTT B. SUGGS
CLERK OF COURT, D.D.
DARLINGTON COUNTY, S.C.

CHARLTON L. HILL, 152778
 LIEBER CORR. INST. MA-224
 P.O. Box 205
 RIDGEVILLE, SC. 29472

13CP100261

SALLEBY AND COX, ESQ.
 P.O. Box 519
 HARTSVILLE, SC. 29551

RE: FORMAL REQUEST FOR CLIENT'S FILE, JANUARY 1, 2013.

DEAR MR. SALLEBY;

SIR, MY NAME IS CHARLTON HILL. YOU MAY REMEMBER MY MOTHER,
 GRACE HILL, OR MYSELF AS A CLIENT OF YOURS IN OR AROUND 1999.

GRACE RETAINED YOUR FIRM TO REPRESENT ME AT A PAROLE
 HEARING. MR. KERNARD REDMOND, WHO WAS AT THAT TIME EMPLOYED
 BY YOUR OFFICES, WAS ASSIGNED TO THE TASK.

IT HAS MOST-RECENTLY COME TO MY ATTENTION THAT I
 URGENTLY NEED THAT CASE FILE IN PREPARATION OF A PENDING LEGAL
 MATTER. THIS MATTER HAS A RUNNING STATUTE OF LIMITATIONS;
 THUS, I AM REQUESTING AT YOUR SOONEST CONVENIENCE MY CASE
 FILE PURSUANT TO SUPREME COURT RULES, RULE 32, CODE OF
 PROFESSIONAL RESPONSIBILITY, DR6-101(A)(3).

THANK YOU, SIR, FOR YOUR TIME.

BEST WISHES & REGARDS,

Charlton L. Hill

2013 MAR 25 PM 1:02
 SCOTT B. SUGGS
 CLERK OF COURT/PRO.
 DARLINGTON COUNTY, SC

FILED

CC: DEPUTY SOLICITOR KERNARD REDMOND,
 ENCLOSURE CROSS-REFERENCE,
 CHARLTON L. HILL, 152778.

LAW OFFICE
SALEEBY & COX, P.A.

311 WEST HOME AVENUE
HARTSVILLE, SOUTH CAROLINA 29550
SERVING THE PEE DEE SINCE 1949

EDWARD E. SALEEBY (1927-2002)
THAD E. SALEEBY (1929-1973)
JAMES C. COX, JR.
EDWARD E. SALEEBY, JR.
TERENCE A. QUINN
CHRISTOPHER J. SCOTT

MAILING ADDRESS:
POST OFFICE BOX 519
HARTSVILLE, SC 29551
TELEPHONE: (843) 332-1531
FAX: (843) 383-5800

January 18, 2013

1300100001

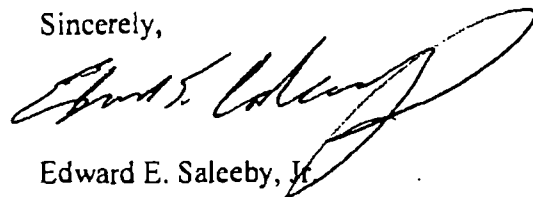
ATTORNEY/CLIENT PRIVILEGE
Mr. Charlton L. Hill, 152778
Leiber Correctional Institute, MA-224
POB 205
Ridgeville, SC 29472

Re: Parole

Dear Charlton:

I received your letter requesting your file from Kernard Redmond's representation at a parole hearing in 1999 and I do remember you and your mother. This is to advise that Mr. Redmond is no longer with our firm and is now an assistant solicitor. I did send a member of my staff to our warehouse to search for your file. By law, we are not required to keep files more than ten years and we think your file has been shredded.

Sincerely,



Edward E. Saleeby, Jr.

wp

Enclosures:

SOLICITOR PLEA OFFER

STATE OF SOUTH CAROLINA -VS-

Charles Hill

SOLICITOR:

SCB for KR

ON PROBATION/PAROLE: YES NO

ATTORNEY:

Swilley/Crayton

INDICTMENT NO(S)	CHARGE	POSSIBLE SENTENCE
2010-GS-16-1336	OUS / not for DUT	up to 30 days & for \$300 fine
2010-GS-16-1335	Felony DUT / dash newets	1-25 yrs - 10K no more than 25K
2011-GS-16-0423	Picklen homicide / death	up to 10 yrs
0422	PTSEB - Death	up to 25 yrs
0424	Involuntary manslaughter	up to 5 yrs
A's deadline to accept is Friday, April 1st, 2011 @ 11am		

to be
indicting
involuntary
manslaughter

FORNOR EXHIBIT LXXV

FILED

2013 MAR 25 PM 1:02
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY

13CP180201

OFFER DATE: 3/28/11

OFFER BY SOLICITOR: plead to 2010-GS-16-1335 - 22 yrs

I will take to Judge King wherever he is bc
Judge Barley is not in the circuit anymoreRECOMMENDED: ☒NEGOTIATED: ☐ACCEPTED: ☐REJECTED: ☐

DATE: _____

DEFENDANT'S SIGNATURE: _____

DATE: _____

ATTORNEY'S SIGNATURE: _____

DATE: 3/28/11

SOLICITOR'S SIGNATURE: Jessie Bay

Original - Defense Attorney

Yellow - Solicitor

Pink - Defendant

S3563-S-07

13CP160261

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

Traffic / Failure to stop for a blue light, death results

§56-05-0750(C)(2)

At a Court of General Sessions, convened on April 11, 2011, the Grand Jurors of Darlington County present upon their oath:

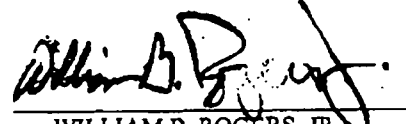
FAILURE TO STOP FOR BLUE LIGHT/SIREN

CDR: 2398 56-05-0750(C)(2)

That Charlton Lafate Hill did in Darlington County on or about January 8, 2010, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, and that the death of Syllvia Mattox resulted when the defendant performed an act forbidden by law or neglected a duty imposed by law in the driving of the vehicle, in violation of Section 56-05-0750(C)(2), S. C. Code of Laws, 1976, as amended.

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2013 MAR 25 PM 1:02
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Darlington County Sheriff

Law Enforcement Case #:

863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR0884

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-16-0397

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
April 2011

THE STATE

vs.

Charlton Lafate Hill

INDICTMENT FOR

Traffic / Failure to stop for a blue light, death results

§56-05-0750(C)(2)

CDR Code: 2398

FILED
2013 MAR 25 PM 1:03
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

William B. Rogers, Jr., Solicitor

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #:

863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR0886

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

13CP160261

DOCKET NUMBER:
2011-GS-16-0422

497

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
April 2011

THE STATE

vs.

Charlton Lafate Hill

2013 MAR 25 PM 1:03
FILED
CLERK OF COURT
DARLINGTON COUNTY, S.C.

INDICTMENT FOR

Traffic / Failure to stop for a blue light, death results

§56-05-0750(C)(2)

CDR Code: 2398

COPY

William B. Rogers, Jr., Solicitor

13CP160261

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

Traffic / Failure to stop for a blue light, death results

§56-05-0750(C)(2)

At a Court of General Sessions, convened on April 11, 2011, the Grand Jurors of Darlington County present upon their oath:

FAILURE TO STOP FOR BLUE LIGHT/SIREN-DEATH

CDR: 2398 56-05-0750(C)(2)

That Charlton Lafate Hill did in Darlington County on or about January 8, 2010, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, and that the death of Sylvia Mattox Hill resulted when the defendant performed an act forbidden by law or neglected a duty imposed by law in the driving of the vehicle, in violation of Section 56-05-0750(C)(2), S. C. Code of Laws, 1976, as amended.

FILED
2013 MAR 25 PM 1:03
SCOTT B. SUGGS
CLERK OF COURT/PRO. D.
DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Eric Hodges

Darlington County Sheriff

Law Enforcement Case #:

863

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
DAR0887

ARRESTED ON: Direct Presentment

ACTION OF GRAND JURY

Grand Jury Foreperson

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-16-0423

499

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
April 2011

THE STATE

vs.

Charlton Lafate Hill

INDICTMENT FOR

Homicide / Reckless Homicide, death results
within one Year

§56-05-2910

CDR Code: 3097

COIT B. JONES
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2013 MAR 25 PM 1:03

FILED

COPY

William B. Rogers, Jr., Solicitor

13CP129261

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF DARLINGTON)

Homicide / Reckless Homicide, death results within
one Year

§56-05-2910

At a Court of General Sessions, convened on April 11, 2011, the Grand Jurors of
Darlington County present upon their oath:

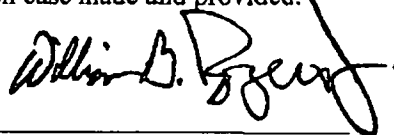
RECKLESS HOMICIDE

CDR: 3097 56-05-2910

That Charlton Lafate Hill did in Darlington County on or about January 8, 2010, drive a vehicle
in reckless disregard of the safety of others, and that the death of Sylvia Mattox Hill ensued as a
proximate result of injury received by the defendant's driving of such vehicle, in violation of
Section 56-05-2910, S. C. Code of Laws, 1976, as amended.

FILED
2013 MAR 25 PM 1:03
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WILLIAM B. ROGERS, JR.
SOLICITOR

FORTIOR EXHIBIT LXXXI