

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Perry H. Gravely, Circuit Court Judge

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AUG 22 2016

SC SUPREME COURT

CHRISTOPHER LEE JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000240

A P P E N D I X

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 CHRISTOPHER LEE JOHNSON,)
)
 DEFENDANT.)
 _____)

2010-GS-23-09683 - 09684

TRANSCRIPT OF RECORD

OCTOBER 10 - 11, 2011
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE G. EDWARD WELMAKER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

SARA LEE DRAWDY, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

DANIEL J. FARNSWORTH, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 **THE COURT:** Thank you. Please take your seats, ladies
2 and gentlemen. All right. Are we ready to have a jury come
3 up on the next case?

4 **MS. DRAWDY:** Yes, Your Honor. And just to dispense
5 with a couple of pretrial matters. I believe Mr. Farnsworth
6 is stipulating to the jurisdiction of the Court.

7 **MR. FARNSWORTH:** That's correct.

8 **MS. DRAWDY:** And I did tell you that we had a -- needed
9 pretrial hearings on the city of Mt. Pleasant -- town of Mt.
10 Pleasant versus Roberts.

11 **THE COURT:** Will that involve taking testimony?

12 **MS. DRAWDY:** Yes, Your Honor, extensive testimony.

13 **THE COURT:** Okay.

14 **MS. DRAWDY:** And I would request that the jury be
15 selected, but not sworn until after that hearing is
16 concluded. And I anticipate the hearing to last an hour and
17 a half at least.

18 **THE COURT:** How about the trial of the case itself if
19 it gets -- will we be able to finish it today? How many
20 witnesses would testify if we had a trial?

21 **MS. DRAWDY:** The trial, there will be two State
22 witnesses and two videos.

23 **THE COURT:** How long are the videos?

24 **MS. DRAWDY:** Probably about an hour and twenty minutes
25 between the two of them max, a little less.

1 THE COURT: Okay.

2 MS. DRAWDY: I can give you a definite answer by
3 looking at the videos.

4 THE COURT: Well, you say it will take an hour and a
5 half probably to do the pretrial?

6 MS. DRAWDY: Yes, Your Honor, maybe two hours.

7 THE COURT: Do you agree with that, Mr. Farnsworth?

8 MR. FARNSWORTH: Yes, Your Honor.

9 THE COURT: So if I have the jury to come back at 2:30
10 they might have to wait a little while, but we'll see how
11 that is. 3:00 better, you think?

12 MS. DRAWDY: I think ---

13 THE COURT: We'll probably not get them selected til a
14 quarter til twelve. So that'll give us an hour and fifteen
15 minutes. Let's shoot for 2:30 and see if we can ---

16 MR. FARNSWORTH: Your Honor, I was just going to add
17 that I don't think the actual case itself will probably be a
18 little more than -- say you started it in the morning, over
19 a good half day, the trial itself probably.

20 THE COURT: So we could get all the testimony in this
21 afternoon for sure, I would think, and showing the videos?

22 MS. DRAWDY: Yes, Your Honor.

23 THE COURT: If we try it and start at 2:30 we could at
24 least be ready to -- all the testimony's gone before them
25 before in the morning. All right.

1 I think I was handed a witness list. And, Mr.
2 Farnsworth, do you have any ---

3 MR. FARNSWORTH: Your Honor, I didn't supply one
4 because it would be only the Defendant, ---

5 THE COURT: Okay.

6 MR. FARNSWORTH: --- if any.

7 THE COURT: I'll cover that. All right. Ready to
8 proceed with selecting our jury. I'll just have them come
9 back at 2:30. Have them come up.

10 (Whereupon, State's exhibit 1 was marked for
11 identification)

12 (Whereupon, Court's exhibits 1 - 6 were marked for
13 identification)

14 (Whereupon, the jury panel entered the courtroom at
15 11:16 am)

16 THE COURT: Please be seated, ladies and gentlemen,
17 when you get to your seats. Good morning, ladies and
18 gentlemen. I'm Eddie Welmaker. I'm from Pickens county.

19 I've been assigned here in Greenville county this week
20 to conduct trials and do other matters in the General
21 Sessions Court. I look forward to working with you in this
22 case. I look forward to working with you in other matters
23 that may come before us this week.

24 We have here a case that the State of South Carolina
25 has brought against Mr. Christopher Lee Johnson. The

1 indictments that have been presented to me charge Mr.
2 Johnson here in Greenville county back in March of last
3 year, around March the 18th of operating a motor vehicle
4 while under the influence of alcohol or drugs, which caused
5 impairment to the extent that his ability to operate that
6 motor vehicle were materially and appreciably impaired.
7 He's charged with an offense of driving under the influence
8 on that same date of March 18th, 2010.

9 Mr. Johnson is also charged with operating a motor
10 vehicle on a public highway in this State when his license
11 to do so -- his license to drive had been suspended.

12 Mr. Johnson has entered a plea of not guilty to these
13 charges. By entering that plea of not guilty the burden is
14 on the State of South Carolina to prove beyond a reasonable
15 doubt that he did, in fact, commit the offenses that he has
16 been indicted for.

17 You and I are going to be judges in this case. I'm
18 going to judge the law, decide what the law is. We need to
19 find twelve fair and impartial jurors to judge the facts in
20 the case to determine what the facts are.

21 I need to ask you some additional questions. You've
22 been qualified to serve as a juror this week already. I
23 need to ask you some additional questions to determine your
24 eligibility to serve on this particular case that we're
25 about to start.

1 First of all, is there any member of the jury panel
2 familiar with the particular incident that I've set forth by
3 the indictments, either that you've heard something about it
4 on the radio or saw something on television, read something
5 in the newspaper, heard something about it at the coffee
6 shop, happened upon the scene? If you have any prior
7 knowledge about this particular event that allegedly
8 occurred on or about March the 18th, 2010 would you please
9 stand?

10 (No response)

11 **THE COURT:** Thank you. There is no response.

12 Is there any member of the jury panel related by blood
13 or marriage to Mr. Christopher Lee Johnson? If so, would
14 you please stand.

15 (No response)

16 **THE COURT:** Is there a member of the jury panel who has
17 a close business, a social or a personal relationship with
18 Mr. Johnson? If so, would you please stand.

19 (No response)

20 **THE COURT:** Several witnesses may be called upon to
21 testify in this case if it -- not all of these witnesses may
22 be called, but these are among the witnesses who may be
23 called to testify. From the Greenville Police Department is
24 Officer Jesse D. Lowe, also Sergeant D.S. Ng, Lieutenant Joe
25 Browning.

1 From the South Carolina Department of Public Safety
2 would be Elaine Johnson, also from the Greenville Police
3 Department, Sergeant Dean Elliott, also witnesses
4 potentially from the law enforcement would be Captain Jinny
5 Moran, also Robert Coler.

6 Those are potential witnesses who may be called upon to
7 testify in this case. Is there any member of the jury panel
8 related by blood or marriage to any of these potential
9 witnesses? If so, would you please stand.

10 (No response)

11 **THE COURT:** Is there a member of the jury who has a
12 close business, social or personal relationship with any of
13 these potential witnesses? If so, would you please stand.

14 (No response)

15 **THE COURT:** Is there any member of the jury panel
16 expressed or formed an opinion in any way about the facts in
17 this case? If so, would you please stand.

18 (No response)

19 **THE COURT:** Is there a member of the jury panel aware
20 of any bias or prejudice that would interfere with your
21 ability to be a fair juror if selected in this case? If so,
22 would you please stand. Yes, ma'am. Your name, please?

23 **JUROR:** Gail Moore.

24 **THE COURT:** And you don't believe you could be a fair
25 juror in light of the nature of this case?

1 MS. MOORE: My brother was killed in an alcohol related

2 ---

3 THE COURT: All right. Thank you, ma'am. I'll excuse
4 you from the trial of this case. If you'd just remain
5 seated. You don't need to respond to any of the other
6 questions I ask.

7 (Whereupon, Gail Moore, a white female, was excused)

8 THE COURT: Is there a member of the jury panel who has
9 a religious or moral opposition to the consumption of
10 alcohol to such an extent that it would render you incapable
11 of rendering a fair judgment in this case if you were
12 selected to be a juror? If so, would you please stand.

13 (No response)

14 THE COURT: Is there any member of the jury panel who
15 is a contributing member of any organization whose primary
16 concern is the promotion of victim's rights or law
17 enforcement such as the Sheriff's Association, MADD or SADD,
18 CAVE, PARR, any such organization? If you are a
19 contributing member of any such organization whose primary
20 concern is the promotion of law enforcement or victim's
21 rights, would you please stand.

22 (No response)

23 THE COURT: Thank you. There is no response.

24 Is there any member of the jury panel or a member of
25 your immediate family who is in law enforcement? If so,

1 would you please stand. If you or a member of your
2 immediate family is in law enforcement. Yes, ma'am. Your
3 name, please.

4 **JUROR:** Jennifer Dickerson.

5 **THE COURT:** And what relative do you have in law
6 enforcement?

7 **MS. DICKERSON:** My father is an NYPD cop. He's a
8 retired officer in New York.

9 **THE COURT:** In New York?

10 **MS. DICKERSON:** Yes.

11 **THE COURT:** So he's retired now?

12 **MS. DICKERSON:** Yes.

13 **THE COURT:** The fact that you -- your father is a
14 retired law enforcement official, would that affect your
15 ability to be a fair juror? In other words, if you're
16 selected, could you be fair to the State of South Carolina,
17 could you be fair to Mr. Johnson, make a decision on the law
18 and the evidence and that alone?

19 **MS. DICKERSON:** Yes, sir.

20 **THE COURT:** Thank you, ma'am. You may be seated.

21 At this time I'll ask the attorneys, if you would,
22 please stand and introduce yourself to the jury. Solicitor.

23 **MS. DRAWDY:** My name is Sara Lee Drawdy. I've been a
24 prosecutor here for seventeen years. And this is Andrea
25 Phillips. She's my investigator who will be assisting me

1 with the case.

2 **THE COURT:** Mr. Farnsworth.

3 **MR. FARNSWORTH:** My name is Dan Farnsworth. And I
4 represent Mr. Johnson, who's seated beside me here.

5 **THE COURT:** Thank you. Is there any member of the jury
6 panel related by blood or marriage to either of these
7 attorneys or the individuals who've been introduced? If so,
8 would you please stand.

9 (No response)

10 **THE COURT:** Is there a member of the jury panel who has
11 a close business, a social or a personal relationship with
12 either of these attorneys? If so, would you please stand.

13 (No response)

14 **THE COURT:** Is there a member of the jury panel who's
15 ever been involved in any litigation in which either of
16 these attorneys represented you or represented the opposing
17 side? If so, would you please stand.

18 (No response)

19 **THE COURT:** Thank you. There's no response.

20 The State of South Carolina and the defendant, Mr.
21 Johnson, in this case, they each desire to have a fair,
22 impartial juror -- jury to hear this case. They deserve to
23 have a fair and impartial jury to hear the case.

24 Is there any member of the panel aware of any reason
25 whatsoever that if you were selected you could not be fair

1 to both the State of South Carolina, to the Defendant in
2 this case, that if you were selected you could render a
3 decision that would be based just upon the evidence that's
4 presented, the law that I give you and that alone? If for
5 any reason you believe you could not be a fair juror in this
6 case, would you please stand.

7 (No response)

8 **THE COURT:** Thank you. There is no response.

9 Any other questions from the State?

10 **MS. DRAWDY:** None from the State, Your Honor.

11 **THE COURT:** From the Defense?

12 **MR. FARNSWORTH:** None, Your Honor.

13 **THE COURT:** Let's select a jury.

14 **MADAME CLERK:** When I call your name, if you would just
15 stand in place. And if you're seated, at that time you
16 would bring your belongings and sit in the jury box.

17 Juror number 138, Judy McKinley. Just stay right
18 there, please, ma'am.

19 (Whereupon, Judy McKinley, a white female, stood)

20 **MS. DRAWDY:** Please present Ms. McKinley.

21 **MR. FARNSWORTH:** Please excuse the juror from this
22 case.

23 **MADAME CLERK:** Thank you. You may be seated. You're
24 excused from the trial of this case. Juror number 234,
25 Natosha Brown.

1 (Whereupon, Natosha Brown, a white female, stood)

2 MS. DRAWDY: Please present Ms. Brown.

3 MADAME CLERK: Thank you.

4 MR. FARNSWORTH: Please seat the juror.

5 MADAME CLERK: Thank you. You may be seated in the
6 jury box. Juror number 56, John Dragoun.

7 (Whereupon, John Dragoun, a white male, stood)

8 MADAME CLERK: What says the State?

9 MS. DRAWDY: Please present Mr. Dragoun.

10 MADAME CLERK: Thank you.

11 MR. FARNSWORTH: Seat the juror, please.

12 MADAME CLERK: Thank you. You may be seated in the
13 jury box. Juror number 18, Stephen Bomar.

14 (Whereupon, Stephen Bomar, a white male, stood)

15 MS. DRAWDY: Please excuse Mr. Bomar.

16 MADAME CLERK: Thank you. You may be seated. You're
17 excused from the trial of this case. Juror number 71,
18 Brenda Fuller.

19 (Whereupon, Brenda Fuller, a white female, stood)

20 MS. DRAWDY: Please present Ms. Fuller.

21 MADAME CLERK: Thank you.

22 MR. FARNSWORTH: Please excuse this juror.

23 MADAME CLERK: Thank you. You may be seated. You're
24 excused from the trial of this case. Juror number 52, Jerry
25 Dillard.

1 (Whereupon, Jerry Dillard, a white male, stood)

2 MS. DRAWDY: Please present Mr. Dillard.

3 MADAME CLERK: Thank you.

4 MR. FARNSWORTH: Please seat the juror.

5 MADAME CLERK: Thank you. You may be seated in the
6 jury box. Juror number 157, Edwin Brown Parkinson.

7 (Whereupon, Edwin Parkinson, a white male, stood)

8 MS. DRAWDY: Please present Mr. Parkinson.

9 MADAME CLERK: Thank you.

10 MR. FARNSWORTH: Please excuse the juror from this
11 case.

12 MADAME CLERK: Thank you. You may be seated. You're
13 excused from the trial of this case. Juror number 129,
14 Heather Massingale.

15 (Whereupon, Heather Massingale, a white female, stood)

16 MS. DRAWDY: Please present Ms. Massingale.

17 MADAME CLERK: Thank you.

18 MR. FARNSWORTH: Please seat the juror.

19 MADAME CLERK: Thank you. You may be seated in the
20 jury box. Juror number 119, Wilson Lee.

21 (Whereupon, Wilson Lee, a white male, stood)

22 MS. DRAWDY: Please present Mr. Lee.

23 MR. FARNSWORTH: Please seat the juror, please.

24 MADAME CLERK: You may be seated in the jury box.
25 Juror number 183, Jesenia Rodriguez.

1 (Whereupon, Jesenia Rodriguez, other female, stood)

2 MS. DRAWDY: Please present Ms. Rodriguez.

3 MR. FARNSWORTH: Please seat the juror.

4 MADAME CLERK: Thank you. You may be seated in the
5 jury box. Juror number 94, Ellen Howard.

6 (Whereupon, Ellen Howard, a white female, stood)

7 MS. DRAWDY: Please present Ms. Howard.

8 MR. FARNSWORTH: Please seat the juror.

9 MADAME CLERK: Thank you. You may be seated in the
10 jury box. Juror number 210, Bryan Titus.

11 (Whereupon, Bryan Titus, a white male, stood)

12 MS. DRAWDY: Please present Mr. Titus.

13 MR. FARNSWORTH: Seat the juror, please.

14 MADAME CLERK: Thank you. You may be seated in the
15 jury box. Juror number 214, Stephen Troutman.

16 (Whereupon, Stephen Troutman, a white male, stood)

17 MS. DRAWDY: Please present Mr. Troutman.

18 MR. FARNSWORTH: Please seat the juror.

19 MADAME CLERK: Thank you. You may be seated in the
20 jury box. Juror number 102, Benjamin Ivins.

21 (Whereupon, Benjamin Ivins, a white male, stood)

22 MS. DRAWDY: Please present Mr. Ivins.

23 MR. FARNSWORTH: Please seat the juror.

24 MADAME CLERK: Thank you. You may be seated in the
25 jury box. Juror number 179, Kathy Rivers.

1 (Whereupon, Kathy Rivers, a black female, stood)

2 MS. DRAWDY: Please present Ms. Rivers.

3 MR. FARNSWORTH: Please seat the juror.

4 MADAME CLERK: Thank you. You may be seated in the
5 jury box. Juror number 153, Barbara Nix.

6 (Whereupon, Barbara Nix, a white female, stood)

7 MS. DRAWDY: Please present Ms. Nix.

8 MR. FARNSWORTH: What was that number again, please?

9 MADAME CLERK: The number is 153.

10 MR. FARNSWORTH: Please excuse the juror in this case.

11 MADAME CLERK: Thank you. You may be seated. You're
12 excused from the trial of this case. Juror number 147,
13 Robert Mort.

14 (Whereupon, Robert Mort, a white male, stood)

15 MS. DRAWDY: Please present Mr. Mort.

16 MR. FARNSWORTH: Please seat the juror.

17 MADAME CLERK: Thank you. You may be seated in the
18 jury box. Juror number 139, Albert Leon McNinch.

19 (Whereupon, Albert McNinch, a white male, stood)

20 MS. DRAWDY: Please present Mr. McNinch.

21 MR. FARNSWORTH: Please seat the juror.

22 MADAME CLERK: Thank you. You may be seated in the
23 jury box.

24 THE COURT: Mr. Mort, if you would, just come down one
25 row and have you sit in that seat. Any matters we need to

1 take care of as far as the selection of the jury in this
2 case?

3 **MS. DRAWDY:** None from the State, Your Honor.

4 **MR. FARNSWORTH:** No, Your Honor.

5 **THE COURT:** Ladies and gentlemen who were not selected,
6 I'll ask if you would, please, you can go back down to the
7 jury assembly room. Ms. Olsen will have further
8 instructions for you at that time.

9 (Whereupon, the remaining jurors not selected exited
10 the courtroom)

11 **THE COURT:** Ladies and gentlemen, you've seen the
12 process by which you were selected. You've been selected by
13 these parties in the belief by both the State and the
14 Defense that you're the twelve jurors who can best hear this
15 case and best make a decision as to the facts of the case.
16 You're going to be judges of the facts.

17 We've selected thirteen jurors. We have an alternate.
18 He'll always occupy one of the two seats where he is now.
19 He's every bit as much of a part of the jury as anyone else,
20 but not knowing how long the case may take or even a short
21 case sometimes an emergency comes up with one of you, a
22 child or an illness unfortunately befalls you, we have an
23 alternate who will step in the shoes of one of you. And
24 that way the trial can proceed. It won't have to be started
25 all over again at another time. So he'll be participating

1 just as well and listening just as closely as you do in the
2 event that he's needed to be called upon.

3 I'm well aware, ladies and gentlemen, the sacrifice
4 that you've made to be here. There's lots of things that
5 you have on your agenda, I'm sure, to take care of at home
6 and the workplace, but I'm grateful that you're here to
7 serve your community as a juror this week.

8 We're going to do everything within our power to
9 accommodate you to make sure you're not sitting idly by
10 while other things are going on. I'll be conscious of that
11 sacrifice that you're making.

12 I've given you the title of judge. You may have some
13 apprehension about that title I've given you. You, perhaps,
14 have never served as a juror before. Maybe you've never
15 been in the courthouse before and certainly not in a
16 courtroom. And now you find yourself sitting in a jury box
17 and thinking to yourself, how did this all happen on a
18 Monday morning when I'm now sitting over there and given the
19 title as judge.

20 I assure you, ladies and gentlemen, that every skill
21 you're going to need to be the judge of the facts you
22 possess. You are going to be able to use that good common
23 sense with which you've been blessed, the every day
24 experiences that you enjoy in your life with social
25 contacts, with being in the home, with employment

1 opportunities. Those are going to be the every day
2 experiences you're going to utilize in determining what the
3 facts are in this case.

4 I'll be the judge of the law. I'll explain to you what
5 the law is. And you'll, under your requirements as a juror,
6 you're to accept that law and apply the law as I state it to
7 you.

8 Part of my job also is to conduct the trial, to take
9 breaks and to signify when we'll take breaks. Your comfort
10 is vitally important. Of course, you're going to be a good
11 listener. You've got to be listening to the testimony
12 that's offered and what's taking place in the courtroom. If
13 you're uncomfortable in any way, then obviously, you're not
14 going to be able to fulfill your job as a good listener.

15 So if I haven't taken a break -- normally we'll take a
16 break every hour, hour and a half to give you time to
17 refresh yourself and stretch. If it seems that you need a
18 break and I haven't called for one, please let me know. Get
19 my attention or get one of these bailiffs' attention. Ms.
20 Sims over to your right, one of the bailiffs, Mr. Thompson
21 in the back. They'll certainly assist you in any way they
22 can.

23 Also with the Clerk's Office, the young lady who called
24 your name, Ms. Joel Lanfear, she'll certainly assist you in
25 any way that she can.

1 Seated beside me is Sean Hinton, recent law school
2 graduate, a law clerk. You'll see him, perhaps, coming and
3 going during the course of the trial taking care of matters
4 in the office upstairs that we need to attend to as well, a
5 valuable asset for me.

6 The young lady seated directly in front of me, Ms.
7 Susan Hudgins, she's the court reporter. She's taking down
8 everything that's said and every activity that we have.
9 She'll be marking exhibits and keeping up with those and
10 making sure if there are any exhibits and making sure those
11 are properly designated and accounted for. Any of these
12 folks will certainly give you any assistance that you need
13 in the course of the trial.

14 Trials normally take place in stages. Normally the
15 attorneys will make an opening statement to you, give you an
16 overview of what the case is about. Then there'll be
17 witnesses who will testify under oath. They will be
18 examined and cross examined by the attorneys.

19 After all the evidence is in, then the attorneys,
20 again, can address you in closing. And I'll then instruct
21 you on the law.

22 Sometimes as the case progresses there's time-frames
23 that require legal matters to be taken care of. Sometimes
24 there might be an objection made that may require me to
25 address some legal matters that normally would take more

1 time, not normally would take as much time, but there may be
2 events that occur during the course of the trial where you
3 will need to be back in your jury room while I listen to the
4 arguments of the counsel, or maybe have to research the law
5 or hear some testimony that wouldn't even be properly
6 presented to you so that I could make the best decision I
7 possibly can.

8 That's what my desire is, to make sound rulings on the
9 law. I'm sure you want to do the same in your decisions on
10 the facts. So if you have to be back in your jury room and
11 wonder what's going on out here, it's not that we're hiding
12 things from you. I just need to make sure that all the
13 legal matters that are presented to me are fully analyzed
14 and evaluated by me in order that my rulings are correct.

15 It's similar to after all the evidence is in and you're
16 in your jury room deliberating on the facts, I'm a judge
17 such as -- just like you are, but I'm not going to be back
18 in the jury room with you because that's your prerogative to
19 determine what the facts are. I can't even have an opinion
20 about the facts under the law of South Carolina. That's
21 totally up to the jury to make that determination, not the
22 judge. I only decide what the law is.

23 It's very important, you've made this commitment through
24 the selection process to be fair to both sides. And coming
25 and going at lunch, or at the end of the day or whatever the

1 case may be, you may see these lawyers in the hallway or at
2 the elevator. If they seem distant to you and a little
3 high-hatting and not as friendly as they normally are,
4 please understand, that's their training.

5 They don't want to have any accusation that there's an
6 impropriety with any juror even though you may be talking
7 about something innocent, the weather, or sports or
8 something else, if they seem to avoid you that's because of
9 their training. So please don't hold that against the
10 attorneys for being distant toward you. They want to make
11 sure that there cannot be any appearance of any impropriety
12 in any way.

13 While you're out and about for lunch, you may have some
14 colleagues at work or family members that have lunch with
15 you or your fellow jurors, you shouldn't be talking about
16 the case or letting anyone talk about the case with you.
17 You're going to decide this case on what takes place in this
18 courtroom, on the evidence that's given, the testimony that
19 was presented, the law that I give you, and that alone.

20 Therefore, if you're out eating lunch and someone's at
21 a table near you and you overhear them talking about the
22 case, whoever it may be, you take the initiative and excuse
23 yourself, move to another table if need be. If someone were
24 to approach you and want to give you information about a
25 case, please explain to them you're a juror and you can't be

1 talking about the case or getting information about the
2 case.

3 I don't expect anything like that to happen, but if it
4 were and someone persisted in wanting to give you
5 information or ask you questions, please excuse yourself.

6 And if possible, get the name of that individual, report it
7 back here, and I assure you I'll take care of that matter.

8 I would not expect anything like that, but I want you
9 to be aware of the important role that you have as a juror,
10 the commitment that you're making to these parties. And we
11 want to make sure the purity of the process is enforced
12 throughout the trial.

13 Likewise, in the evening or at lunch where family
14 members are -- they know you have jury duty and they know
15 that you're going to be occupied some this week and right
16 away a friend would want to know, well, did you get picked?
17 What's the case about? Those kind of things.

18 You can certainly let them know the nature of the case
19 that you're trying, but it would be improper for you to
20 share information or get information from a family member or
21 loved one. You're going to have time when the case is over
22 and completed to share your experiences with those folks,
23 but while the trial is going on is not the time to do that.

24 We're in a highly technical age now. We have access to
25 information. Our Supreme Court Chief Justice has issued an

1 order that all trial judges such as I are required to give
2 to jurors. And that's the fact that while you're sitting on
3 a jury and hearing a case, you're not to do any kind of
4 investigation.

5 You're -- I don't know that there'll be any news
6 coverage of this case, but if there's something in the
7 newspaper or on the television, you should refrain from
8 reading that. Those matters can be clipped or recorded for
9 you to see after the fact. But you're not to be influenced
10 by any kind of media coverage.

11 We sometimes are curious and we want to do some
12 research ourselves and ride by the scene once we hear what
13 that is, or do some archive search or get on the internet
14 and check things out. That would be highly improper and
15 against the commitment that you've made to these parties.
16 It would be against the instructions of our Court in
17 Columbia for you to do any kind of thing like that.

18 These lawyers are going to give you all the information
19 you need to make a good sound decision about the case. And
20 that's where you're going to make that decision, from this
21 jury -- from this courtroom and that alone. I don't say
22 that by way of temptation to you, but the importance of the
23 instruction that you don't do any kind of independent
24 research whatsoever.

25 As you come and go you can have -- some of you may like

1 to sit on the back row, one end or the other, or the front
2 row. You can certainly sit anywhere that you'd like.

3 I've appointed Mr. Mort as the foreman of the jury.
4 He's going to be the one that when you're back in your jury
5 room you may have a question to ask, a need that you have
6 about adjusting the thermostat, or that you need some coffee
7 or whatever it may be. Someone may need to make a call to
8 have a child picked up.

9 He'll be the liaison with the Court. He'll write out
10 whatever need you have, get it to the bailiff. And the
11 bailiff will get it to the proper, appropriate person be it
12 me or the Clerk's Office or wherever it may need to be.

13 Sometimes exhibits are offered into evidence. And
14 sometimes they're tangible exhibits that may be passed
15 around where lawyers will hand it to the foreperson who can
16 look at it and pass it to the fellow jurors.

17 Ultimately what the foreperson's responsibility will be
18 is when all the evidence is in and I've instructed you on
19 the law there'll be a time for deliberations for you at that
20 time. Certainly not while the case is going on. You should
21 not be discussing it even with fellow jurors as the case is
22 in progress.

23 But after all the evidence is in and I've instructed
24 you on the law, that foreperson will make sure that everyone
25 has their input and their say as to their view of the facts

1 to facilitate that discussion and on behalf of the jurors to
2 write out a verdict form that will be provided for you.

3 The alternate, as I said earlier, will occupy those --
4 the chair in the back. The rest of you, other than the
5 foreperson, who will occupy that seat, can sit anywhere
6 you'd like.

7 I look forward to working with you, ladies and
8 gentlemen. I'm proud of the fact that you've accepted this
9 responsibility, the commitment that you've made to the
10 parties involved in this case.

11 We have a legal matter that we need to take care of.
12 It's also near to the lunch hour. Normally we'll start
13 about 9:00 in the morning and we'll take a morning break.
14 Usually we try to break for lunch around 1:00 or so and
15 hopefully end by five, 5:30 in the afternoon.

16 Sometimes it may run a little later. If you have some
17 commitments, we'll certainly try to work with you on that to
18 let you know of -- be it child care or otherwise.

19 The attorneys indicated to me we have several legal
20 matters. We've got exhibits that need to be marked and so
21 forth. We're going to try to get all those things worked
22 out during lunch and then we'll have time, hopefully, for a
23 sandwich ourselves.

24 Based upon their estimate of the time, it's probably
25 going to be about 2:30 before we're really ready to start

1 with the opening statements. So I'm going to give you an
2 extended lunch break today. We'll be working on some of
3 these matters in the meantime.

4 So when you come back -- I'll let you go with Ms. Sims
5 in a moment. She'll show you where to report back. I'll
6 remind you not to discuss the case. And once we have you
7 back at 2:30 we'll be ready to start with the opening
8 statements at that time.

9 Have a good lunch. Please be back in your jury room at
10 2:30 this afternoon. If you'll go with the bailiff at this
11 time, please.

12 (Whereupon, the jury exited the courtroom at 11:52 am)

13 **THE COURT:** All right. Y'all can give me an overview
14 of what issues we have. Are these motions by the Defense or
15 what do we need to take care of?

16 **MR. FARNSWORTH:** Your Honor, ---

17 **THE COURT:** I don't know anything about the case,
18 obviously. So fill me in, if you would, Mr. Farnsworth.

19 **MR. FARNSWORTH:** All right. Your Honor, I would be
20 making a motion for dismissal of the charge based on the
21 fact that a -- that the video recording was -- that the
22 officer's vehicle at the time of the arrest was not
23 recording with video cameras as provided in 56-5-2953. And
24 I'll have a motion to dismiss.

25 This is going to be based on the Mt. -- recent Mt.

1 Pleasant case which, Your Honor, held that unless -- when
2 there's no video equipment in the law enforcement car the --
3 in that case, which was a case that there was not one, the
4 court dismissed the town of Mt. Pleasant's argument and that
5 -- and held that statutory exceptions in subsection (g) or
6 -- nor subsection (b) excused the town's non-compliance with
7 the requirements of 56-5-2953 and that that dismissal was a
8 proper sanction.

9 And the facts in this case are -- as to the actual
10 facts of the case are pretty -- very much similar. There
11 was a --- both were, of course, DUI charges. The -- our case
12 today, the officer did not have a video equipment provided
13 by the Department of Public Safety in his -- installed in
14 his car as was the case in the town of Mt. Pleasant case.

15 The statute, 26-5-2953, provides that every incident
16 site arrest for DUI should be video recorded. And it states
17 the things that must be video recorded is the conduct of the
18 person arrested.

19 And then subsection (b) goes along to say that if the
20 officer does not provide the tape, that that's not alone
21 grounds for dismissal unless he can show some of the
22 exceptions existed. And that would be, number one, Your
23 Honor, that the -- well, let me just read them right here.
24 It's in the case. I think you have the case up there.

25 It's subsection 56-5-2953, outlines the statutory

1 exceptions that excuse non-compliance with the videotape,
2 mandatory videotaping requirements. Non-compliance is
3 excusable if the arresting officer submits a sworn affidavit
4 certifying that the video equipment was inoperable despite
5 efforts to maintain it.

6 If the -- number two, if the arresting officer submits
7 an affidavit that it was impossible to produce the videotape
8 because the Defendant either (a) needed emergency medical
9 attention or (b) exigent circumstances existed or (3)
10 circumstances including, but not limited to road blocks,
11 traffic accidents and citizens' arrests or (4) for any other
12 valid reason for the failure to produce the videotape based
13 on the totality of circumstances. In the town of Mt.
14 Pleasant case the court held that the town of Mt. Pleasant
15 did not -- did not come under any of these exceptions.

16 And there's another exception that was raised and
17 argued was that section (g) of the section provided for
18 videotaping states that the patrol car must be equipped with
19 the equipment before these exceptions and mandatory
20 requirements for videotaping can begin. That being the
21 case, the court still dismissed the charge.

22 The argument Mt. Pleasant made was that the -- that the
23 obligation -- that they admitted they didn't have the
24 cameras in the car and they fit the exceptions -- the first
25 three exceptions in subsection (b) but that the Department

1 of -- the Department of Public Safety is responsible for
2 providing the videotapes to the law enforcement cars in the
3 State and that it's -- it was not their duty to request
4 them. And the court held that they had not complied with
5 section (g) or section (b), the exceptions I just mentioned
6 to you and dismissed the charge.

7 Your Honor, this is -- this town of Mt. Pleasant case
8 is the first case that's dealt with a -- with the
9 videotaping requirements where there was no video in the
10 car. The others were decided, you know, where there was a
11 videotaping either with a malfunction of the video or
12 various other circumstances.

13 So we would -- this is, as you know, new law. And we
14 think that the facts in this case are very similar to the
15 facts in the town of Mt. Pleasant case. I think Ms. Drawdy
16 is going to present some statistical information that has
17 several witnesses who will testify as to whether or not --
18 what requests were made, how many video camera devices were
19 sent to the Greenville Police Department by the Department
20 of Public Safety. So that's my motion. We'd move to
21 dismiss based on that.

22 **THE COURT:** Any other motions? This is just to the DUI
23 charge ---

24 **MR. FARNSWORTH:** This is just to the DUI charge. The
25 failure to provide a site -- on-site video of the person's

1 arrest, the field sobriety test, the Miranda rights before
2 that, the traffic stop and all conduct at the incident site.

3 THE COURT: Was there a breathalyzer given?

4 MR. FARNSWORTH: Breathalyzer was offered and refused.

5 THE COURT: Okay. That was ---

6 MR. FARNSWORTH: So we're not -- we're not ---

7 THE COURT: That was videotaped?

8 MR. FARNSWORTH: That was videotaped. And we have no
9 argument with respect to that ---

10 THE COURT: Okay.

11 MR. FARNSWORTH: --- breath site test.

12 THE COURT: All right.

13 MR. FARNSWORTH: Now, Your Honor, I have -- Ms. Drawdy,
14 I think, after this motion has decided -- I think they have
15 another tape which they plan to present into evidence. And
16 depending on that I may have a motion with respect to that
17 other tape, which is separate from what we're arguing about
18 now.

19 THE COURT: You have two tapes?

20 MS. DRAWDY: Actually, Your Honor, it is a part of what
21 we're arguing about. This is one way in which the facts of
22 the case are quite distinguishable from the town of Mt.
23 Pleasant case.

24 There was no in-car video in the arresting officer's
25 car. Therefore, there is no driving recorded following the

1 activation of the blue lights. And that is a part of video
2 recording we do not have.

3 However, there was a sergeant on the street, this
4 happened in downtown Greenville, who had his own personal,
5 individual camera that you put on your lapel. And he did,
6 in fact, videotape the field sobriety test and Miranda being
7 read to this Defendant.

8 And we will be submitting that as evidence in the case
9 in chief and also during our motion. We have two copies,
10 one for a Court's exhibit and one to be used in the case in
11 chief. So it is distinguishable on those facts.

12 Furthermore, -- and that is one of our arguments, that
13 as the statute encourages in situations including, but not
14 limited to roadblocks, citizen's arrest, traffic accident
15 investigations. When an arrest has been made and the video
16 recording equipment has not been activated by blue lights it
17 states that as soon as video recording is practicable in
18 these circumstances video recording must begin. And there
19 was a practicable solution that the officers did take
20 advantage of.

21 So we would argue that in large measure we are
22 factually in compliance with the statute. However, -- and
23 really should be forgiven for not having the camera.
24 However, at our peril, it is in our peril that we do not
25 make a rigorous proffer as to the efforts of the Greenville

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 Police Department to get videotaping cameras in their cars
2 and also to show their interfacing with the Department of
3 Public Safety to get the free cameras to them from the
4 Department of Public Safety. So the State would like to
5 proffer that information as well.

6 **THE COURT:** All right. I'll be glad to hear the
7 testimony.

8 **MS. DRAWDY:** Yes, sir. The State calls Officer Jesse
9 Lowe.

10 **Jesse Lowe, being duly**
11 sworn testified as follows:

12 **MADAME CLERK:** Thank you. You may be seated.

13 **Direct Examination by Ms. Drawdy:**

14 Q. Good morning, Deputy Lowe.

15 A. Good morning.

16 Q. You are employed with the Greenville Police Department?

17 A. Yes, ma'am.

18 Q. And you're the arresting officer in this case?

19 A. I was, ma'am.

20 Q. How long have you been with the Department?

21 A. Over two and a half years.

22 Q. Okay. At the time of this incident on March 18th,
23 2010, I believe, what type of vehicle were you driving in
24 connection with your employment?

25 A. A marked patrol vehicle.

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 Q. All right. Is it fully marked?

2 A. It is, ma'am. Blue light bar, police markings on the
3 front and back, or excuse me, on the sides and the back.

4 Q. And was it one of the older vehicles or a new one?

5 A. Older vehicle. I believe it was seven years old at the
6 time.

7 Q. And was it equipped with a videotaping camera at that
8 time?

9 A. It was not..

10 Q. I'm going to show you Court's exhibit 1 that's been
11 marked and ask you to identify this document. It is a copy.

12 A. Yes, ma'am. This is a city of Greenville Police
13 Department's affidavit for failure to produce a videotape
14 that I filled out on the morning of the incident.

15 Q. And is that your affidavit for failure to produce
16 video?

17 A. It is, ma'am.

18 Q. And what was the reason for failing to produce video?

19 A. My patrol car was not equipped with a video camera at
20 the time of the incident.

21 MS. DRAWDY: Your Honor, we'd like to submit this as
22 Court's exhibit 1 at this time.

23 MR. FARNSWORTH: No objection, Your Honor.

24 THE COURT: Without objection, for the purposes of this
25 hearing, you may proffer it.

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 (Whereupon, Court's exhibit 1 was admitted into
2 evidence for the Court's record)

3 Q. When you -- just briefly tell me why you stopped the
4 Defendant.

5 A. I observed the Defendant back out of a parking space on
6 South Main Street within the city limits of Greenville,
7 South Carolina with no lights on, headlights or tail lights.
8 I then -- I positioned my patrol car behind the Defendant's
9 vehicle, observed that one of his tail lights was
10 inoperable.

11 And I also observed him stop at a red-light and then
12 proceed through the intersection before the light had gone
13 green and then again stop in the middle of the intersection.

14 Q. Okay. And did you activate your blue lights?

15 A. I did.

16 Q. And what did he do in that ---

17 A. He pulled into a parking spot near the intersection of
18 South Main and McBee.

19 Q. And did you get him out of the vehicle?

20 A. I did.

21 Q. While you were first interviewing him were any other
22 officers downtown? Did they come to your assistance?

23 A. Not right away. Maybe after two minutes at the most.

24 Q. And who arrived?

25 A. Sergeant Donnie Ng.

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 Q. Donnie Ng?

2 A. Yes.

3 Q. Did you inquire of him whether he had an in-car camera
4 in his vehicle?

5 A. I did.

6 Q. And did he have an in-car camera?

7 A. He advised me that he did not.

8 Q. All right. So at that point did you proceed to offer a
9 field sobriety test?

10 A. I did.

11 Q. Did those field sobriety tests, in fact, get recorded?

12 A. They did.

13 Q. And who recorded them?

14 A. Sergeant Ng did with a small camera he had on his
15 person.

16 Q. And I know that you have not actually seen this, but
17 what is this marked as being?

18 A. A copy of the video recording that was done by Sergeant

19 Ng ---

20 Q. All right..

21 A. --- on the night ---

22 Q. This is marked as Court's exhibit 2.

23 **MS. DRAWDY:** Mr. Farnsworth, do you have any objection

24 to this being entered as Court's exhibit 2 at this time?

25 **MR. FARNSWORTH:** Just for identification?

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 , MS. DRAWDY: For the Court.

2 MR. FARNSWORTH: Yeah. No objection.

3 MS. DRAWDY: Court's exhibit 2. Your Honor, at this
4 time we'd like to play just the first few minutes of it.
5 And then if the Court needs to review it for completeness in
6 terms of determining whether or not we're in compliance with
7 the statute, we would encourage the Court to do that. But
8 at this point I'm just going to show the first minute or so
9 of the tape.

10 THE COURT: All right.

11 (Whereupon, Court's exhibit 2 was admitted into
12 evidence for the Court's record)

13 (Whereupon, Court's exhibit 2 was shown to the Court)

14 MS. DRAWDY: Your Honor, you may have missed that.
15 That's where he asked the sergeant if he has a tape, if
16 you'd like to hear that.

17 THE COURT: I heard that.

18 MS. DRAWDY: Okay. And I'm going to just play a couple
19 of minutes so you can get the flavor of -- regarding the
20 scene.

21 (Whereupon, Court's exhibit 2 was continued)

22 MS. DRAWDY: Would Your Honor like to see the entire

23 ---

24 THE COURT: I can review that during lunch, maybe. You
25 said you had an extra copy of that or ---

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 MS. DRAWDY: Yes, sir. Yeah, I do have an extra that
2 will be in the case in chief. So ---

3 THE COURT: Okay. I can use one of them or I can use
4 the court exhibit over lunch and review it.

5 MS. DRAWDY: All right.

6 THE COURT: How long is it?

7 MS. DRAWDY: It's probably about twenty minutes.

8 THE COURT: Okay. I'll review it at lunchtime.

9 MS. DRAWDY: Twenty to thirty minutes. Let's see. We
10 can tell you. It's hard to tell.

11 THE COURT: It's all right. I'll look at it.

12 Direct Examination by Ms. Drawdy Continued:

13 Q. Officer Lowe, ---

14 A. Yes, ma'am.

15 Q. --- would you have been probably considered a rookie at
16 this point?

17 A. Yes, ma'am.

18 Q. Thus having the older vehicle?

19 A. Yes.

20 Q. Do you now have a new vehicle?

21 A. I do.

22 Q. When did you receive that?

23 A. I believe April of this year.

24 Q. Okay. Approximately in ---

25 A. Yes.

JESSE LOWE - CROSS EXAMINATION BY MR. FARNSWORTH

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1 Q. And does that -- is that vehicle now equipped with a
2 videotaping ---

3 A. It is.

4 Q. --- device?

5 A. Yes, ma'am.

6 Q. Please answer any questions Mr. Farnsworth may have.

7 Cross Examination by Mr. Farnsworth:

8 Q. Okay. Just a couple of questions, officer. Now you
9 said you've been with the Department two and a half years.

10 A. Yes, sir.

11 Q. And that, I believe, you said this car was seven years
12 old that you were driving?

13 A. I believe it was a 2002 or 2003 model, Crown Vic.

14 Q. All right. Well, let me ask you, how long had you been
15 assigned to drive that car?

16 A. Maybe two months.

17 Q. That's all?

18 A. Yes, sir.

19 Q. And what did -- what did you drive before that?

20 A. An even older vehicle.

21 Q. Okay.

22 A. I believe a 2001, maybe.

23 Q. All right. Was that car or vehicle equipped with a
24 video ---

25 A. It was not.

JESSE LOWE - REDIRECT EXAMINATION BY MS. DRAWDY

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1 Q. --- device?

2 A. No.

3 Q. And the one, of course, that we're here today on was
4 not equipped with a video camera device?

5 A. It was not.

6 Q. And have -- how many other cars have you -- been
7 assigned to you since you've been with the Greenville Police
8 Department?

9 A. None that we have not discussed. Just the ---

10 Q. Just those two cars?

11 A. And then the one I have now.

12 Q. Okay.

13 A. So three.

14 Q. All right. So two didn't have and the one you've got
15 now, which you got, I believe you said, this year ---

16 A. Yes, sir.

17 Q. --- is equipped?

18 A. (Affirmative nod).

19 MR. FARNSWORTH: Okay. That's all I have.

20 MS. DRAWDY: One follow-up question.

21 Redirect Examination by Ms. Drawdy:

22 Q. What was -- what was your assignment at that time?

23 Were you part of what is referred to as the traffic unit?

24 A. I was not uniform patrol, ma'am.

25 Q. And what do uniform patrol primarily do?

JESSE LOWE - RECROSS EXAMINATION BY MR. FARNSWORTH

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1 A. Just patrol and call response.

2 Q. And you were not part of the traffic unit?

3 A. No, ma'am.

4 Q. Thank you.

5 MR. FARNSWORTH: One question.

6 Recross Examination by Mr. Farnsworth:

7 Q. You were -- you did make, obviously make traffic stops
8 and ---

9 A. Yes, sir.

10 Q. --- wrote tickets for violations of traffic offenses?

11 A. Yes, sir.

12 Q. Okay. And that was a part of your job too?

13 A. It is.

14 Q. As ---

15 A. Yes.

16 Q. Okay.

17 MS. DRAWDY: That's all I have.

18 THE COURT: All right. Thank you, sir. You may step
19 down, Officer Lowe.

20 MS. DRAWDY: The State calls Lieutenant Joe Browning.

21 Joe Browning, being duly
22 sworn testified as follows:

23 MADAME CLERK: Thank you. You may be seated.

24 Direct Examination by Ms. Drawdy:

25 Q. Lieutenant Browning, you're employed with the

JOE BROWNING - DIRECT EXAMINATION BY MS. DRAWDY

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1 Greenville Police Department?

2 A. Yes, ma'am.

3 Q. How long have you been with them?

4 A. Approximately seventeen years.

5 Q. And what have been your assignments over the years? If
6 you'd just give me a summary.

7 A. I started out in uniform patrol. Did about eight years
8 in the traffic division. Served a period as a uniform
9 patrol sergeant, a patrol lieutenant. And now I'm in the
10 financial side of the Police Department as a lieutenant.

11 Q. Now by financial side, what do you mean?

12 A. Essentially my job is to oversee the budget. I deal
13 with procurement issues, some personnel issues, supply
14 issues, property and evidence, things of that nature.

15 Q. And have you been asked to review all of the records
16 that are currently in the possession of the Greenville
17 Police Department with regard to the history of video -- in-
18 car video cameras that the Department has had over the
19 years?

20 A. Yes, ma'am.

21 Q. As part of that process have you prepared -- and I'll
22 note, are these things on the table your materials?

23 A. Yes, ma'am, they are.

24 MS. DRAWDY: And with your permission, Your Honor, I'd
25 like to invite the witness to step down ---

JOE BROWNING - DIRECT EXAMINATION BY MS. DRAWDY

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1 THE COURT: All right.

2 MS. DRAWDY: --- so that he can handle things and talk
3 about what we're asking him about.

4 Q. Did you prepare an outline that would assist the Court
5 in understanding your testimony and your presenting it with
6 regard to what you found?

7 A. Yes, ma'am, I did.

8 MS. DRAWDY: And this is Court's exhibit 3, Your Honor.

9 THE COURT: Any objection ---

10 MR. FARNSWORTH: No objection, Your Honor.

11 THE COURT: --- for this hearing? Without objection,
12 Court exhibit 3.

13 (Whereupon, Court's exhibit 3 was admitted into
14 evidence for the Court's record)

15 Q. All right. Lieutenant Browning, since the passage of
16 -- the ruling came down in the town of Mt. Pleasant versus
17 Roberts have you been getting -- did your department receive
18 a FOIA request for the city Attorney?

19 A. Yes, ma'am, we did.

20 Q. Is that what largely provoked your inquiry into the
21 records?

22 A. It did indeed.

23 Q. What -- if you could, just begin to tell us what the
24 state of the records were and a little bit of the history of
25 who was responsible for your program in the beginning.

JOE BROWNING - DIRECT EXAMINATION BY MS. DRAWDY

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1 A. Sure. Initially our first cameras were given to us as
2 part of some DPS grants. We only had a handful of them.
3 This was prior to 2001.

4 Q. Was this related to the current funding statute or
5 something ---

6 A. This -- no.

7 Q. --- separate?

8 A. This predated that.

9 Q. All right.

10 A. We had several cameras. At that point the traffic unit
11 was under the command of Lieutenant Bill Robinson.
12 Lieutenant Robinson, unfortunately, is now deceased. Many
13 of these records resided in the traffic division and were
14 actually kept in a file there.

15 Some of this information is somewhat dated. Many of
16 the cameras are no longer in service. We can go through the
17 specific details just depending on how you want to proceed.

18 Q. I would like for you to just start at the beginning and
19 talk about ---

20 A. Okay.

21 Q. --- the history of video cameras at the Greenville
22 County Police Department.

23 A. The first four cameras were given to us by DPS as part
24 of an award, the safety award. From there the Department
25 started trying to purchase our own cameras.

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1 Starting on December 12th of 2001 we actually purchased
2 some cameras from Delta Dimensions. It was a company called
3 Prosecutor out of Texas. We had, unfortunately, very little
4 luck with these particular systems.

5 We don't have the records any longer to tell you
6 exactly how many we had. We purchased somewhere around
7 eighteen cameras. Again, those records are kind of
8 difficult to find at this point. We extended thirty-five
9 thousand, five hundred and fifty dollars (\$35,550.00) to
10 purchase those cameras. We had approximately eighteen in
11 service.

12 Unfortunately, as soon as we started putting those
13 cameras in they started failing. We did not have a good
14 infrastructure set up for those. The company did not give
15 us good service for those cameras.

16 We finally wound up selling all eighteen for about a
17 hundred and fifty-five dollars (\$155.00) on gun deals. And
18 that took place on September 17th of 10. We had taken these
19 out of service and they have been in storage for some time.

20 February ---

21 Q. Can I interrupt you a minute?

22 A. Certainly.

23 Q. This is going to be marked as Court's exhibit 10. Is
24 this your documentation showing that sale?

25 A. Yes, ma'am.

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1 Q. Okay. So how much did you sell all of these cameras
2 for?

3 THE COURT: Wait just a minute. Let her do -- she can
4 only do one thing at a time.

5 MS. DRAWDY: Sorry. I'm sorry.

6 (Whereupon, Court's exhibit 10 was marked and admitted
7 into evidence for the Court's record)

8 Q. How much were you able to sell these cameras for?

9 A. It was a hundred and fifty-five, but I think we
10 actually netted one forty-three of it.

11 Q. And can you tell me what happened when the purchaser
12 came to pick them up?

13 A. Yes, ma'am. The winning bidder actually came and
14 looked at the cameras. We had them all on a pallet over at
15 our garage. After examining the merchandise he decided that
16 he did not want to take it with him. We wound up notifying
17 him that if he didn't pick up his merchandise it would be
18 destroyed. And it ultimately went to the landfill in
19 Greenville county.

20 Q. So these cameras never really worked?

21 A. No, ma'am.

22 Q. And how much did you spend on them?

23 A. Thirty-five thousand, five hundred and fifty dollars
24 (\$35,550.00) according to the records that I could find.

25 Q. Okay. Now, so after this experience what was the next

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1 thing that the Greenville Police Department did?

2 A. Well, that's where we start getting into the SCDPS
3 cameras.

4 Q. Okay. Now the four that you got, let me just reiterate
5 to make this clear so there's no misunderstanding. The four
6 that you got prior to 2001 were a separate grant that had
7 nothing to do with the DUI videotaping statute?

8 A. Correct. That predated all that. Essentially where
9 those cameras came from is the Office of Highway Safety
10 would give you awards based on if you've got your seatbelt
11 numbers up or different things.

12 We received about four cameras as a result of that.

13 And some of these cameras were from the late 90s. Most of
14 them were almost inoperable when I came on seventeen years
15 ago. So these were very old pieces of equipment.

16 Q. And do you know what type of equipment they were?

17 A. We had a couple of Mobile Visions and a couple of
18 Kustom Eyewitness VHS systems.

19 Q. Okay. Do you know where those cameras are today?

20 A. Somewhere in the bottom of the Greenville county
21 landfill.

22 Q. All right. Do you have any records that indicate when
23 they were taken out of service?

24 A. No, ma'am.

25 Q. Okay. So that's back when things were kind of fuzzy?

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1 A. Indeed.

2 Q. All right. So, then when did you first -- well, I
3 don't want to move you along too far. Is there anything
4 that's happened in between the time you began getting
5 cameras from DPS pursuant to the videotaping statute?

6 A. No. You had the original four, then you had the
7 Prosecutors and then we began with the DPS cameras.

8 Q. Okay.

9 A. No others.

10 Q. Please tell me what happened there.

11 A. Sure. The first document that we received from DPS was
12 February 13th of 2002. This was after the change with the
13 DUI law. We were notified that pursuant to that we would be
14 getting some cameras from the state.

15 That began the process up until -- well, pretty much we
16 had a memo on February 13th, 2002. And then we picked up
17 some more cameras in 2004, February 3rd, 2004. We received
18 all of those cameras from DPS. And they were all installed
19 in the cars. Essentially by the time we got done we had
20 twenty-one cameras we received from DPS.

21 Q. Now let's go back and dig for a little detail in what
22 you ---

23 A. Sure.

24 Q. --- just said. This is Court's exhibit 5, and ask you
25 to identify this document. There's several pages.

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1 A. Yes, ma'am. This is the original document, a copy of
2 the document that we got from DPS that indicates how we were
3 going to receive our cameras. It also documents the first
4 camera that we received on August 8, 2002.

5 Q. So August 8, 2002 you received your first installment
6 in cameras?

7 A. Yes, ma'am. One camera and, I believe, ten videotapes.

8 Q. So you got one camera ---

9 A. Yes, ma'am.

10 Q. --- during the first distribution?

11 A. Yes, ma'am.

12 MS. DRAWDY: Court's exhibit 5.

13 Q. Now let's look at ---

14 THE COURT: Court's exhibit 5.

15 (Whereupon, Court's exhibit 5 was admitted into
16 evidence for the Court's record)

17 Q. Let's look at that letter and tell me what your -- read
18 into the record, essentially, what it says.

19 A. Any particular paragraph or the beginning.

20 Q. Let's see. If you'd read the middle -- the second
21 paragraph.

22 A. Okay. The Steering Committee surveyed all law
23 enforcement entities to determine the quantity of systems
24 needed to meet the requirements of legislation. During that
25 process your department requested fifteen camera systems be

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1 provided through this program.

2 From the survey results it was determined that funds
3 were not available to provide all the systems at one time.
4 And the Committee determined cameras would be issued through
5 a computerized random selection process. During the third
6 random selection process your department was selected to
7 receive one system. The Steering Committee has also
8 determined that at the time of installation each department
9 would receive ten eight hour videotapes.

10 Q. Okay. Now let me ask you about exactly what a
11 videotaping system is and how it is installed in a car. Can
12 you tell me what is involved in that and what was involved
13 with this particular system, the first one that you
14 received?

15 A. Yes, ma'am. Essentially, this is the system that we
16 had installed in our cars. It's a basic Mobile Vision
17 System.

18 Essentially, you have a large trunk unit that contains
19 the VHS portion of it. You will also have a control head
20 unit that's mounted to the roof of the patrol car, basically
21 controls all functions of that system. You have a monitor
22 that's a part of that along with a camera and the audio
23 portion of it that the officer would actually wear. It's a
24 charging system. And it also syncs it to the system.

25 Between the head unit and the VHS set-up in the trunk,

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1 you'd have what's basically a huge bundle of cables that has
2 to go through. Depending on the type car you're putting it
3 in, you're going to probably have to remove the seats,
4 you're going to be removing the cage, backseats, things of
5 that nature in order to run all those wires.

6 The very first system, we were fortunate enough that
7 DPS installed it. But we had to physically take the car to
8 Columbia and basically stay there for that day for them to
9 take everything out of our car, install it and then send us
10 back to Greenville with it.

11 Q. Okay. The part of the VHS system that is in the trunk,
12 ---

13 A. Yes, ma'am.

14 Q. --- what is that referred to? As the vault?

15 A. It is the vault, yes, ma'am.

16 Q. Okay. Tell us a little bit about that and how that
17 interfaces -- how it's used with the use of the camera, what
18 the officer has to do there.

19 A. Sure. The vault is locked in the trunk. Basically
20 it's a VHS recording device that is inside there. You have
21 two key functions. The door has to be closed and key locked
22 in order for the camera to operate. The tapes go in there.
23 The tapes come out there.

24 Unfortunately, we had a lot of issues with that
25 particular location because the heat gets so high in the

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1 trunk that when the VHS system, especially in the Summer,
2 they would shut off. So you would have officers that would
3 have to open the trunk, allow it to cool off before it would
4 be functional. We actually wound up with a couple of our
5 cars -- actually cutting holes in the back deck and adding
6 fans to expel that heat to keep the systems functional.

7 Q. Okay. And so this -- and this was happening fairly
8 frequently?

9 A. Especially in the Summer. In the hot Summer months we
10 did have some issues.

11 Q. Approximately how long -- and later on did you get
12 mechanics, your mechanics trained to make these
13 installations?

14 A. Yes, ma'am. As the program progressed we went from
15 having DPS install those cameras in Columbia to actually
16 picking the cameras up and bringing them back to Greenville
17 and having our mechanics do it.

18 Part of that became necessary because if we had a car
19 that, let's say, the motor went down, transmission went
20 down, it got wrecked, something of that nature, taking that
21 vehicle back to Columbia was really not an option. So we
22 wound up using our own mechanics to remove those systems and
23 put it in.

24 Unfortunately, that was a timing problem for us because
25 it's the same gentleman that would be doing our oil changes

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1 and all of our other maintenance. So it became quite time
2 consuming.

3 Q. Okay. What other types of equipment do your mechanics
4 install in and on the patrol vehicles?

5 A. Basically the way our garage is set up is our mechanics
6 do everything. They do all of the mechanical stuff. They
7 take care, of course, the inside of the vehicle, everything
8 from cages to cameras to radar systems, blue light and
9 sirens. Pretty much it's a one-stop-shop. So the mechanics
10 we have on staff are responsible for all that.

11 Q. Okay. You described a bundle of cables that had to be
12 run through the vehicle ---

13 A. Yes, ma'am.

14 Q. --- to install the video camera. Is there a similar
15 requirement for the blue lights?

16 A. Yes, ma'am. There are a significant number of wires
17 that would go with that as well.

18 Q. And what about the computers? I don't know -- what are
19 those called ---

20 A. Mobile Data Terminals, MDTs.

21 Q. Mobile Data Terminals. Tell me about those.

22 A. Our MDTs are mounted inside the passenger compartment
23 of the vehicle. You have a stand that's mounted on the
24 passenger's side that swings that computer over to the
25 driver. You have, of course, the power system for that.

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1 We've gotten away from what we used to do. When we
2 first started with these cameras we had a rather elaborate
3 wiring system, a radio modem and antennas that had to be
4 installed. As technology's improved, now we're up to using
5 aircards to function with those.

6 Q. So all these wires have to be strung through the car,
7 connected to the correct places. Sometimes they're close
8 together, is that correct?

9 A. That is correct.

10 Q. And if you have an older vehicle that is going to be
11 taken out of service that has a camera, ---

12 A. Yes, ma'am.

13 Q. --- do you try to save that camera and move it to
14 another car?

15 A. Absolutely.

16 Q. What all is involved in that?

17 A. Unfortunately it depends on what you're taking out of
18 the car because if you have all these other systems you have
19 to be very careful not to cut the wrong wire. I mean, it
20 really looks like just a matted nest of wires there's so
21 much in these vehicles.

22 And, of course, with the cameras you have such a
23 bundle. You're talking probably a two and a half to three
24 inch bundle of wire that's going completely through that
25 vehicle. You have to remove every piece of the seat, the

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1 cage and all in many cases in order to get that out without
2 cutting those wires. So it's quite time consuming.

3 Q. Okay. To take it out. And then you'd have to put it
4 in the other vehicle?

5 A. Yes, ma'am.

6 Q. And in that process is it unusual for that
7 de-install/re-install to cause you to begin having problems
8 with the camera that you may not have had before?

9 A. No, that certainly is the case whenever you move that
10 type of electronics. A lot of times we would have audio
11 issues, you would have power issues.

12 Like something as simple as not having a ground wire
13 connected the way it probably should be, having a wire get
14 nicked and you didn't notice it, it could cause it to ground
15 out. You know, the more times you move that system the more
16 problematic it could be for you.

17 Q. Okay. As -- and just moving forward a little bit,
18 looking forward to some of the things we're going to
19 discuss, ---

20 A. Okay.

21 Q. --- as we move forward, is it your responsibility to
22 oversee and manage and make decisions about removing
23 cameras, putting them in other cars, selecting which cars
24 this is going to be done?

25 A. Yes, ma'am.

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1 Q. And what types of things do you take into consideration
2 when you're doing that?

3 A. The primary things that we look at is what is the role
4 of the officer that's going to have this camera? Certainly
5 we want our first responders that will be going out in the
6 field to have that equipment first.

7 We would be looking for uniform patrol officers,
8 traffic officers, K-9 officers. Those that are going to be
9 out in their patrol vehicle the majority of the day would
10 get equipment first.

11 Q. So supervisors would not be a high priority?

12 A. No, ma'am.

13 Q. And does the age of the vehicle have any impact on your
14 decision of whether to put a camera in it?

15 A. Yes, ma'am. It has a great deal especially with the
16 cost of the cameras. You'd be talking anywhere, depending
17 on the system you're looking at, from three thousand to five
18 thousand dollars.

19 And when you look at the amount of time that it takes
20 to install that camera, you certainly want to make sure that
21 you're putting it in a vehicle where it's going to get the
22 most use. We would look for newer vehicles that we're
23 planning on having in the fleet for a number of years.

24 Putting it in an older car that's only going to be here
25 for two years or so or less really doesn't make good

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1 financial sense because I have to pay to have that system
2 installed, I have to pay to have that system removed and
3 then I have the risk of that system not operating properly
4 when it's moved into a new vehicle. So we really try to
5 make our installations as physically smart as we possibly
6 can.

7 Q. All right. Let's move back into the next communication
8 that you had from DPS regarding the cameras that you were
9 getting from them. I believe there's a letter dated
10 February 3rd, 2004.

11 A. Yes, ma'am.

12 MS. DRAWDY: And this is Court's exhibit 6. I'd like
13 to introduce this at this time.

14 THE COURT: Without objection, for the purpose of this
15 hearing, exhibit 6 is admitted.

16 (Whereupon, Court's exhibit 6 was admitted into
17 evidence for the Court's record)

18 Q. Can you summarize what this letter told you and what
19 came along with the letter?

20 A. Yes, ma'am.

21 Q. Or subsequent to it in terms of a distribution of
22 cameras ---

23 A. Yes, ma'am.

24 Q. --- to your department.

25 A. Essentially, this correspondence from February 3rd,

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1 2004 is notifying us that we have again been selected to
2 receive a few more cameras toward our allotment.

3 Q. All right. Now you keep using the word selected.

4 A. Yes, ma'am.

5 Q. What is your understanding of the process and how it
6 worked, how you received cameras?

7 A. Much like the very first letter, it was a random
8 selection based upon our numbers. The way our cameras were
9 set up is when that number would come around, it would come
10 up to Greenville Police Department, then we would be granted
11 cameras. In this case we were granted ten more cameras.

12 Q. All right. And when you received them did you have to
13 sign off on it?

14 A. Yes, ma'am, we did.

15 Q. And did you periodically have to inventory them?

16 A. Yes, ma'am, every year.

17 Q. All right. And we'll get to that. So now at this
18 point in 2004 you have had how many cameras distributed to
19 you from the DPS grant under the videotaping statute?

20 A. By the end of 2004 we had received twenty-one cameras
21 in total from the DPS.

22 Q. Okay. So you received twenty-one?

23 A. Yes, ma'am.

24 Q. And what is the grand total that you have received from
25 DPS?

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1 A. Twenty-one cameras, ma'am.

2 Q. Twenty-one cameras?

3 A. (Affirmative nod).

4 Q. All right. So was it your understanding that you had
5 the ability to get additional cameras from DPS or were you
6 confined to the allocation process?

7 A. During this period we were confirmed to, excuse me,
8 confined to the selection process. We could not request
9 anymore.

10 Q. All right. So what steps was the Greenville Police
11 Department taking during this period, if any, to equip its
12 cars with additional video cameras? Can you tell me about
13 that?

14 A. Sure. Throughout 2002, 2004, of course, we were
15 waiting to get as many DPS cameras as we could hoping that
16 process would continue. From 2004 to 2007, late 2007 we
17 were still relying upon the DPS to provide cameras.

18 End of 2007, beginning of 2008 we started actually
19 going out trying to procure our own cameras. We started
20 actually putting together a committee to go out and see what
21 kind of cameras were out in the marketplace so that we could
22 try to purchase the best product we could.

23 If you remember back we talked about the Prosecutor
24 cameras. We expended quite a bit of our own money, over
25 thirty-five thousand, and that had gone quite badly for us.

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1 So we certainly wanted to make sure we did our due diligence
2 this time to get systems that would give us as much time as
3 we could possibly get out of them.

4 Q. Okay. And was a committee formed to handle this
5 process?

6 A. That is correct. Yes, ma'am.

7 Q. Can you explain what you did?

8 A. Sure. Starting in 2008, then Chief Wilfong had just
9 arrived, and she had asked us to put together a re-
10 engineering committee to go out and see what was in the
11 marketplace. Essentially, we sat down and we tried to
12 figure out what manufacturers were putting out the digital
13 cameras because we had decided at that point that we wanted
14 to go to digital, not VHS.

15 We went through, looked at a couple of different,
16 excuse me, nine different companies. Started to look at
17 their product, see if it would meet our needs. We actually
18 requested systems from those various companies. Many of
19 them sent us systems, which we then installed in our patrol
20 cars and actually took them out in the field for a period of
21 time so that we could see if it would be a good product for
22 our particular uses.

23 Q. I'm not going to introduce it at this time, but just so
24 the Court can see it. Do you have a notebook that contains
25 that committee's work?

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1 A. Yes.

2 Q. Okay. And according to your outline exactly when did
3 this process begin?

4 A. It was in 2008. I can't tell you an exact date. I
5 don't believe I have the exact date on it. I believe it was
6 probably early to mid-year is ---

7 Q. I believe ---

8 A. --- when we got started.

9 Q. --- you have a date in your outline.

10 A. I may have. Let's see. June 2007 is when we started.

11 Q. When you started?

12 A. Yes. And that was just the beginning of the research
13 part of it.

14 Q. Okay. So it was a very detailed ---

15 A. Yes, ma'am.

16 Q. --- analysis? What were some of the decisions that you
17 had to make?

18 A. Well, you've got to look at and decide, one, how much
19 money you're willing to spend. Two, what kind of a system
20 do you want? Do you want something that is a direct burn
21 much like you would have a VHS system where it actually
22 expels a disc or something with video on it? Do you want
23 something that's server based where you will have a central
24 depository giving you more access to that particular
25 product? It just depends on what you want.

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1 Unfortunately, unlike VHS, VHS is very simple, take
2 in/take out. With the digital products it can be pretty
3 much the sky's the limit, whatever you want.

4 Q. Okay. So why did you -- did you ultimately decide to
5 go with a digital product?

6 A. Yes, ma'am.

7 Q. Why did you decide to do that rather than continue with
8 the VHS?

9 A. The VHS had been somewhat problematic for us. A couple
10 of things, one, VHS tapes take up a lot of room to store.
11 The way our policy was set up, we had a minimum of thirty
12 days for retention. Most of your traffic officers had
13 forty-five videotapes. We actually had a large cabinet that
14 held stacks, and stacks and stacks of tapes for these
15 officers to keep up with.

16 Also, the VHS system, the tapes, when they're reused,
17 start to lose their quality very quickly. You'll reuse that
18 tape more than three or four times. When you actually play
19 that tape you can start to see artifacts and imperfections
20 in those videos, which we were trying to get away from.

21 The VHS tapes are also difficult if you need it for
22 evidence, or for court, or for other purposes, dubbing those
23 tapes so that you can give multiple copies out was also
24 problematic for us. We were looking for something that
25 would allow that information to be maintained for a longer

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1 period of time and a lot more accessible than what we had
2 with the VHS systems.

3 Q. Okay. So what did you ultimately decide to go with and
4 how did you settle on that particular format and product or
5 brand?

6 A. Sure. We ultimately wound up with Kustom Signals, was
7 the company that wound up actually getting the contract for
8 the city.

9 There's several reasons that we wound up with them.
10 One, we knew we wanted to go with a server based system.
11 They actually offer that. Many of the companies that we
12 looked at were direct burn only. So we immediately
13 eliminated them.

14 We also have a lot of infrastructure issues within the
15 city. We had several other prominent companies in the field
16 that came out. They looked at the Law Enforcement Center.
17 They looked at our courthouse. They looked at some of the
18 other locations around the city, but unfortunately we lack,
19 I guess, the fiber connections in order to move that video
20 back and forth from building to building. One company
21 actually threw up their hands and left because we didn't
22 have the necessary infrastructure.

23 When Kustom came in they were able to look at our set-
24 up, and they offered acquired download, which a couple of
25 the other companies did not. They offered wireless, but, of

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1 course, the county already has a wireless array.

2 We don't have the infrastructure to move that video.

3 So Kustom, as we went through it, really came up to be the
4 only company that offered the product that we needed to fit
5 into our current infrastructure.

6 Q. Okay. Was the security of -- securing the integrity of
7 a recording a factor for you?

8 A. Yes, ma'am, it was. Several of the companies, the way
9 they actually did their video, when the disc came out, much
10 like the VHS tape, that was your evidence, you needed to
11 take it straight and put it in property and evidence. And,
12 of course, VHS is much harder to alter.

13 Digital video, depending on how skilled the individual
14 is and what type of computer they may have, there's
15 certainly the potential to alter that digital evidence. We
16 wanted a company that had some security protocols in there
17 so that we could say that this information had not been
18 altered in any way, shape or form.

19 Kustom, the way they were set up, they actually had an
20 internal watermark process in their video. There's no way
21 to alter that video without popping that watermark
22 throughout the actual taping process to make sure that that
23 information that you're watching on the screen is the same
24 as what happened the day the officer videotaped it.

25 Q. Are there some other advantages to digital over VHS

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1 with the system that you bought with regard to capturing
2 permanently something that happened prior to the blue lights
3 going off?

4 A. Yes, ma'am. That is probably the largest difference
5 between a VHS system and digital system. The way the
6 digital system works in the car, the camera's always
7 contained or basically running a recording loop, always
8 active.

9 And when that officer activates his blue light or
10 whatever, a 12 volt impulse triggers that camera. So it can
11 be blue lights, it can be siren, it could be a K-9 door
12 popper, it could be really any input that we choose. The
13 camera will start recording immediately upon that 12 volt
14 impulse coming in.

15 However, being that this is a digital system, it can
16 actually go back and pick up the information that was
17 already recorded on that loop. So I can actually go back
18 and look at, depending on how the camera's set, anywhere
19 from five seconds to two minutes prior to that trigger being
20 hit in the car.

21 The easiest way to explain this, when you see most
22 videos from our VHS systems, let's say it's a red-light
23 violation, when the officer hits his blue light switches,
24 you see the officer taking off and making a stop. With a
25 digital system what you see is the individual running the

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1 red-light all the way through the stop. So it really
2 changes the information that we're able to bring into a
3 courtroom setting down the line.

4 Q. You used an interesting phrase a little while ago, it
5 depends on how much you're willing to spend.

6 A. Yes, ma'am.

7 Q. You, personally?

8 A. The Agency.

9 Q. Okay. And would the Agency be willing to spend three
10 million dollars if it had it to spend on this?

11 A. If we had the money, we probably would.

12 Q. Okay. So there are limitations on willing to spend?

13 A. Yes, ma'am, unfortunately.

14 Q. Can you describe to me what your source of funds has
15 been for the cameras you've purchased and how you get
16 approval to expend funds?

17 A. Sure. Our camera system today has been paid for mainly
18 in two separate ways. One is grant funding, whether it be
19 through state allocations or through federal allocations and
20 the expenditure of seized assets funds from various things
21 that we've had.

22 Q. Okay. Now you talked about these funds, ---

23 A. Yes, ma'am.

24 Q. --- a kitty, so to speak.

25 A. Yes, ma'am.

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1 Q. Are there other things that you are required to
2 purchase from this same ---

3 A. Yes, ma'am.

4 Q. --- kitty of funds? What is that?

5 A. Actually the seized funds that we actually spend pretty
6 much go for anything we cannot purchase out of our budget
7 that would go toward a law enforcement purpose. Some of
8 those examples could be speed trailers for the traffic unit,
9 it could be MDTs, which is probably our largest expenditure.

10 Q. Now this is the computer that's in the ---

11 A. Yes, ma'am, Mobile Data Terminals.

12 Q. Okay. How much do those cost?

13 A. Currently we're paying about thirty-nine hundred
14 dollars per computer.

15 Q. Okay. And what do the cameras end up costing you
16 roughly per unit that you bought from Kustom ---

17 A. Approximately forty-four hundred.

18 Q. Okay. Now just educate me a little bit on what the MDT
19 is used for by the officer.

20 A. Probably the best answer, I know this sounds a little
21 trite, but everything. The officer in the car relies on
22 that MDT probably more than any other piece of equipment
23 that we have.

24 The MDT actually gives you that interface with
25 dispatch. It allows you to see all the incoming calls. It

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1 allows you to access DMV records, tags, DLs, things of that
2 nature. It allows access to the county warrant system. It
3 allows access to the internet to look up information that
4 you might need in the field. It contains our mapping
5 system. Pretty much everything that that officer uses is on
6 that machine.

7 Q. So if there were a choice between putting in MDT and a
8 camera in a given unit, you couldn't afford to do both,
9 which would you select?

10 A. MDT hands down.

11 Q. Okay.

12 A. No question.

13 Q. All right. Let's get back to what you actually ended
14 up purchasing.

15 A. Yes, ma'am.

16 (Whereupon, Court's exhibit 9 was marked)

17 **MS. DRAWDY:** And this would be Court's exhibit 9.

18 Q. Can you tell me what you ended up purchasing -- well,
19 let me go back. Where did you get the money -- how much did
20 you end up spending and where did you get it?

21 A. All total on our digital camera system, to date we have
22 expended four hundred, sixty-three thousand, four hundred,
23 sixty-three dollars and ninety-nine cents (\$463,463.99).
24 That's where we stand as of now. That was for the purpose
25 of eighty-nine cameras plus the server that we had to have

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1 to maintain all that information.

2 Q. Okay. Explain -- so your set-up costs were included in
3 this figure?

4 A. Um-hum (affirmative).

5 Q. And would you describe the components of the system,
6 the server, the uploading system for the units?

7 A. Sure. The way we're set up is over in our courthouse
8 on North Main, on the second floor we actually have a room
9 that's dedicated to hold the server. The server is in one
10 of the corners. We have several AC units trying to keep
11 that room cool because of all the electronics that are in
12 there now.

13 You actually have a pipe that comes from that building,
14 that room, into the parking lot with five stands mounted in
15 that location. Each of those stands has an ethernet cable
16 hooked up to it. When our officers come to the courthouse
17 for any particular purpose, they actually plug the ethernet
18 cable into their camera system, it downloads that video off
19 of the actual car unit, stores it in the server for access.

20 We also have a web server as part of this. The web
21 server allows us access to that video from anywhere inside
22 the city on the internet.

23 Think of it as the officer downloads it into the
24 system, then when he goes to court we have a television
25 screen and a computer monitor where basically they punch in

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1 their information and they're able to show those videos
2 anytime, ready to go day, night, whatever day of the week.

3 They don't have to go and actually pull a video
4 cassette like we had to do in the past. It's easily
5 accessible. Not only that, the city attorney or anyone else
6 inside the city has access to that video 24/7.

7 MS. DRAWDY: This is Court's exhibit 9.

8 Q. Lieutenant Browning, is this a summary of the
9 expenditures that the Greenville Police Department has made
10 from 1998 to 2011?

11 A. It is, ma'am.

12 Q. Did you prepare it?

13 A. I did, ma'am.

14 Q. And is that something you've been referencing during
15 your testimony?

16 A. Yes, ma'am, it is.

17 MR. FARNSWORTH: Without objection.

18 MS. DRAWDY: Okay.

19 THE COURT: Exhibit 9, Court exhibit 9 without
20 objection.

21 (Whereupon, Court's exhibit 9 was admitted into
22 evidence for the Court's record)

23 Q. Now, I want to go back to how you -- the source that
24 you used this time around for purchase -- making this
25 initial purchase and the process that you have to go through

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1 in order to be authorized to spend money.

2 A. Certainly. The first purchase of our digital cameras
3 took place on February 23rd, 2010 for fifty-six thousand,
4 nine ninety-two (56,992). This was actually the most
5 difficult portion of the purchase.

6 We had actually began our committee late 2007, 2008.
7 We picked out the cameras that we were going to purchase.
8 And we were looking at using seized funds to purchase those.
9 However, this is about the time when the stimulus money
10 began coming in from the federal government. We elected to
11 waive to see if we could get a grant through the stimulus
12 funds to pay for some of these cameras, which ultimately we
13 applied to the state and we were able to get that fifty-six
14 thousand from the state.

15 However, there is a lot of strings attached to that as
16 far as the procurement process went. We actually wound up
17 having to go through a lengthy process. We wound up doing a
18 sealed bid, having to go through opening those at City Hall.
19 We finally were able to purchase those Kustom cameras
20 because they wound up being the lowest bidder in that sealed
21 bid process.

22 After we purchased those initial cameras, then we
23 started looking for some additional grants which actually
24 would allow us to purchase a few more. And then we moved in
25 to the seized fund allocation.

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1 Seized funds are actually really difficult for us to
2 spend. That money is in an account marked for law
3 enforcement purposes, but in order for me to expend any of
4 those funds, first I'd have to fill out a canceled action
5 form, get that through the process at City Hall, meaning
6 signed off by the budget administrator, signed off by the
7 city attorney, signed off by the city manager.

8 After that process, then it has to be put on the agenda
9 for city counsel. City counsel has to run it through and it
10 has to go through two separate meetings at city counsel and
11 be approved and an ordinance issued before I can actually
12 spend those funds. So it takes quite a bit of time for me
13 to actually even expend those to buy these cameras.

14 Q. And when do you have time to install them? That was a
15 little -- all right. How many cameras have you purchased to
16 date under the Kustom System?

17 A. To date I have purchased eighty-nine.

18 Q. All right. And how many have been installed?

19 A. All but twenty-one.

20 Q. And why have those twenty-one not been installed? I
21 understand there's a complex answer, but I want to hear
22 that.

23 A. Oh, no problem. The twenty-one cameras that still
24 remain that have not been installed have been delayed simply
25 because of our fleet issues. Over the course of the last

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1 year and a half we have received in one allotment forty --
2 forty marked vehicles. And then we just received eight
3 more.

4 We didn't want to start installing the remainder of
5 those cameras into existing cars until we determined where
6 these forty-eight were going to go. The forty-eight all
7 were equipped with the exception of two with new cameras.
8 So all those came ready to go. Officers would get those,
9 those officers would pass their cars down to someone else.
10 Their cars were passed down again. Eventually older cars
11 would be flushed out of the fleet.

12 What we were trying to do was make sure that when we
13 passed all these cars around that we don't install cameras
14 in older vehicles that were going to be going out of the
15 fleet or a vehicle that may sit as just a spare in a lot.
16 When you're talking about a forty-five hundred camera, it's
17 way too expensive to be sitting in a car that's only driven,
18 you know, one to two days a month.

19 So we're still working on our fleet issues. We're in
20 the process of just about having all of that done and
21 beginning to start installing cameras. In fact, I have a
22 date, November 15th will be the first of those twenty-one to
23 be installed.

24 Q. All right. And what -- are there warranty issues with
25 the cameras that you take into consideration?

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1 A. Yes, ma'am. The cameras, the way they're set up, when
2 they ship from the factory -- as soon as I take delivery the
3 warranty starts. If they sit in the warehouse and they
4 don't get installed, my warranty is still running. So I
5 need to get those into the car as soon as they hit the
6 ground or as quick thereafter as I can.

7 Q. So had you actually purchased a number of these cameras
8 and request that they not be shipped?

9 A. Yes, ma'am. Out of that last purchase of cameras,
10 which was fifty-seven, they were only supposed to send me
11 enough to do the vehicles that I had put together over in
12 Spartanburg. Unfortunately, through an error through the
13 dock, I'm not sure how, they actually shipped the entire
14 order to Spartanburg.

15 We actually had to wind up going back to the company
16 and having them issue a waiver that those cameras will sit
17 without the warranty starting until I can get my cars there.
18 They fully agreed. They knew it was their error. They
19 should not have shipped them. Unfortunately, you know, we
20 got very lucky that they were able to do that because my
21 warranty could have started on those cameras when they
22 arrived in January.

23 Q. And have there been several upgrades in the cameras
24 since you began purchasing them?

25 A. Yes, ma'am. Just like any other digital product,

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1 things are changing so fast. Kustom just actually upgraded
2 all the audio systems in their cameras. Of course, audio is
3 one of the most important components of the video system.

4 As of, I believe it was Friday, I finally got
5 authorization from the president of their company to upgrade
6 the audio in the twenty-one cameras that are still sitting
7 in Spartanburg. If my cameras had not shipped, the way they
8 were supposed to, you know, still be in the factory, they
9 would have shipped with the new audio system. So through
10 some negotiations they're going to replace that system so
11 that I have the latest equipment like I should have had if
12 they'd shipped it the way I'd requested it.

13 Q. So you have purchased a total of eighty-nine cameras?

14 A. Yes, ma'am.

15 Q. How many patrol vehicles does the Greenville Police
16 Department have?

17 A. Patrol vehicles as far as marked cars?

18 Q. Marked cars.

19 A. Marked cars, I would say right around one -- between
20 one sixty and one seventy. That number fluctuates depending
21 on how many cars are wrecked, they go down for mechanical
22 reasons. It's never a solid number. It's always a moving
23 target. But that's pretty accurate.

24 Q. Okay. And how many of those are used primarily for
25 traffic enforcement?

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1 A. For primary traffic enforcement we have a total of
2 about eight to ten cars. The reason I'm not giving you an
3 exact number is we actually have some traffic positions that
4 aren't filled. So there's no one in those particular
5 vehicles now.

6 Q. Okay. Would those be considered a priority for a
7 camera?

8 A. Absolutely. And all those vehicles are equipped.

9 Q. All are equipped?

10 A. Yes, ma'am.

11 Q. Now you've been dealing with the cameras for a while.
12 And you may not know this as far as the digital cameras yet.
13 But what was your experience of the initial VHS base cameras
14 that DPS distributed to you? What was the useful life of
15 those cameras?

16 A. Depending on the vehicle set-up and how much it was
17 used, about five years is what we were hoping to get out of
18 those systems.

19 Q. And is that ---

20 A. Many of them were expired before that. Of course,
21 you've got a few that lasted longer than that. So around
22 that five year mark is where we started to see problems.

23 Q. And the last of these was allocated to your agency
24 when?

25 A. The last one was in '04. June 3rd of 2004 was the last

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1 one.

2 Q. Okay.

3 (Whereupon, Court's exhibit 8 was marked)

4 MR. FARNSWORTH: No objection, Your Honor.

5 MS. DRAWDY: Court's exhibit 8 ---

6 THE COURT: Without objection, Court exhibit 8.

7 (Whereupon, Court's exhibit 8 was admitted into
8 evidence for the Court's record)

9 Q. Have -- were you required to inventory -- keep an
10 inventory, an annual inventory and report back to DPS on all
11 these cameras?

12 A. Yes, ma'am, every year.

13 Q. And do you still have any of those cameras?

14 A. Not as of today, no, ma'am.

15 Q. Okay. Tell me -- just give me a summary of what's
16 happened to those and where they are now.

17 A. Sure. Over the course of the cameras being installed
18 in the vehicles, certainly some of them failed, some of them
19 had issues. Many of those cameras we were able to get
20 pieces and parts to keep them running in the short term.

21 We took two of them to Columbia and returned them quite
22 some time ago. That was two of the earlier systems that we
23 had received.

24 As we started putting in more digital systems and as
25 our VHS systems started to fail, we actually started pulling

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1 those systems out of the cars and putting them at our garage
2 for storage. Of course, we still had to do our inventory
3 every year for DPS. All those systems basically got to the
4 point where they were -- none of them were useable or
5 dysfunctional.

6 September the 15th of this year, partially because of
7 receiving my last notice from DPS to verify the location of
8 all those cameras and having taking the time to hunt them
9 all down and get them in one place, we had one of the
10 traffic corporals return those to DPS. Technically they
11 were never ours. They were on loan to us from DPS. So
12 September of this year we returned all of them and replaced
13 the ones that we had with digital systems in those cars.

14 Q. And, again, under the allocation process the most
15 cameras you ever were given from DPS was how many?

16 A. Twenty-one.

17 Q. And that was over about an eight year period?

18 A. Yes, ma'am, starting in 2002.

19 Q. And to date your agency has taken it upon itself to
20 purchase how many cameras?

21 A. We currently have purchased those eighty-nine. And we
22 have about eighteen Prosecutors that all failed.

23 Q. Okay. Let's talk about April 28th, 2009.

24 A. Yes, ma'am.

25 Q. Is that the last time you were invited to request

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1 cameras?

2 A. Yes, ma'am.

3 Q. Let's see.

4 (Whereupon Court's exhibit 7 was marked)

5 Q. Let me show you Court's exhibit 7 and ask you to
6 identify that.

7 A. Yes, ma'am. That is the letter that we received from
8 DPS.

9 Q. And attached to it, is it your response?

10 A. Yes, ma'am, it is.

11 Q. Okay.

12 **THE COURT:** Without objection, exhibit 7 is admitted.

13 (Whereupon, Court's exhibit 7 was admitted into
14 evidence for the Court's record)

15 Q. All right. Court's exhibit 7, what essentially did
16 they invite you to do?

17 A. Essentially this document was telling us that we had
18 our first opportunity to request more cameras, that DPS had
19 basically reached their number threshold they were trying to
20 get to from their original 2002 allocation. So this was our
21 first chance to get some more cameras.

22 Q. Did they happen to give you any information about
23 cameras?

24 A. Yes, ma'am. There's quite a bit of information in this
25 document.

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1 Q. How many had they initially -- had they distributed to
2 date? Is that in that letter?

3 A. Yes, ma'am, it is. Would you like me to read that ---

4 Q. Yes.

5 A. The Department is glad to announce that the original
6 requests have been fulfilled and that we have officially
7 awarded thirty-two hundred camera systems.

8 Q. Okay. Now that process began in ...

9 A. 2002.

10 Q. 2002. And this is -- what's the date on this letter?

11 A. April 28th, 2009.

12 Q. So they were able to purchase thirty-two hundred
13 cameras state-wide?

14 A. Yes, ma'am.

15 Q. And many of those cameras are now over five years old,
16 correct?

17 A. Most of them, yes, ma'am.

18 Q. Okay. And so based on your experience how many of
19 those cameras were probably working?

20 A. If theirs -- if other agencies were -- had experiences
21 similar to ours, I would say probably one-third to two-
22 thirds have had significant problems.

23 Q. Okay. So at this point what did they tell you about
24 your choices for requesting cameras?

25 A. The letter basically tells us that we have the

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1 opportunity to request more VHS systems or to request
2 digital systems. However, if we choose to request digital
3 systems, then our request would be delayed as they filled
4 existing requests for VHS cameras.

5 Q. Did they indicate that they were -- did have plans to
6 go digital after they distributed all of the VHSS?

7 A. After the VHS systems were gone, yes, ma'am.

8 Q. And what decision did you make at that time?

9 A. At that point the city had already expended quite a bit
10 of funds heading toward a digital system. So certainly we
11 requested digital products because we didn't want to have a
12 cross fleet.

13 Q. And is this also the letter that tells you how many
14 cameras -- I believe this is State's -- Court's exhibit 5,
15 which is the February 13th, 2002 letter?

16 A. Um-hum (affirmative).

17 Q. The second page, at what rate did the Department
18 indicate they were able to afford to purchase cameras by the
19 quarter?

20 A. Sure. I'll read the excerpt. Based on the revenue
21 currently being generated by the provision of law, we should
22 be able to procure approximately eighty camera systems per
23 quarter. At the time of each purchase the random selection
24 will be conducted and notifications issued. Your department
25 will remain in the random selection process until all

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1 requests have been satisfied.

2 Q. So you were randomly selected?

3 A. Yes, ma'am.

4 Q. You couldn't request additional cameras from them?

5 A. No, ma'am.

6 Q. And at a rate of eighty per quarter for the entire
7 state?

8 A. Yes, ma'am.

9 Q. For a camera that has a life of five years?

10 A. Yes, ma'am.

11 Q. All right. So what did you decide to do? To request
12 digital or VHS?

13 A. We requested digital.

14 Q. And did you request a specific brand of camera?

15 A. Yes, ma'am. We asked for Kustom Signals cameras.

16 Q. Okay. And why did you ask for that?

17 A. The way the digital products are set up, you have to
18 make sure you have a product that's going to be consistent
19 and functional with what you already have. Getting a
20 product from another manufacturer would not integrate into
21 our system. You couldn't download into the server. The
22 security protocols would be different. There's a lot of
23 software components that just would not be -- would not
24 marry into our system. So we certainly wanted to stay with
25 the same product that we already had.

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1 Q. And so you requested ten Kustom?

2 A. Twenty.

3 Q. Oh, twenty?

4 A. Yes, ma'am.

5 Q. Twenty this time?

6 A. Yes, ma'am.

7 Q. Why that number?

8 A. Basically what we were looking for there is we knew how
9 many we were trying to purchase with our own seized funds.
10 And, of course, those dollars are limited. Twenty more
11 would have outfitted pretty much everything that we had in a
12 marked car at the time. Of course we keep changing our
13 fleet constantly.

14 And also we have to remember, we had twenty-one cameras
15 that were going out of the fleet because they had failed.
16 We certainly wanted to replace those twenty with new digital
17 cameras if we could. I would have asked for forty, but I
18 don't think I probably would have gotten them.

19 Q. Okay. So you're still under the allocation process as
20 far as you know?

21 A. Yes, ma'am.

22 Q. Okay. I'm going to show you Court's exhibit 4, two
23 pages to this one. Can you describe what those are?

24 A. Yes, ma'am. This is an email request that I sent to
25 SLED, Lewis Stuart asking for our DUI numbers for the last

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1 ten years.

2 Q. All right. And was that part of the process of
3 collecting information for the FOI that you were trying to
4 satisfy?

5 A. Yes, ma'am.

6 Q. And did you actually get -- did they send you ---

7 A. I did.

8 Q. --- the figures?

9 A. Yes, ma'am.

10 MS. DRAWDY: Your Honor, we'd introduce this as Court's
11 exhibit 4.

12 MR. FARNSWORTH: Without objection.

13 THE COURT: Without objection, exhibit 4 is admitted.

14 (Whereupon, Court's exhibit 4 was admitted into
15 evidence for the Court's record)

16 Q. And is your understanding that is -- those are the
17 figures which DPS, running a comparison with other agencies
18 ---

19 A. Yes, ma'am.

20 Q. --- decided how you would be allocated cameras?

21 A. Yes, ma'am.

22 Q. Do you have any information or were you able to obtain
23 any information about other agencies' figures and where you
24 fell into the firmament?

25 A. No, ma'am. I requested that information from SLED, but

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1 they were unable to provide it to me without filing a FOI.

2 Q. Yourself?

3 A. Myself.

4 Q. Okay.

5 MS. DRAWDY: Your Honor, if you'll give me just a
6 minute and let me check with the court reporter to see what
7 we have in.

8 (Pause)

9 Q. Do you happen to know what the plans are for the future
10 for video -- for the purchase of video cameras by your
11 agency?

12 A. Yes, ma'am. We plan on purchasing more digital
13 cameras. Our goal is to have every patrol unit to have a
14 camera in their vehicle. We may even extend that into some
15 other areas, possibly SROs, things of that nature, just
16 depending on the funding.

17 Certainly our funding source is somewhat limited. And
18 we have to get the MDT -- our MDTs are getting much older.
19 We're actually in the process of having to purchase new
20 ones. Just placed an order for thirty MDTs for a cost of
21 about a hundred and twenty-five thousand.

22 So unfortunately that's delaying the number -- purchase
23 of more cameras. We'll continue to install the ones we have
24 and hopefully be able to move more in the future, but it's
25 going to depend on monies.

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1 Q. Okay. And what has your experience been with the
2 reliability with these Kustom digital cameras that you now
3 are using in your patrol vehicles?

4 A. Unfortunately, even with these Kustom cameras it has
5 been painful. Our first thirteen that we received had some
6 significant flaws in them. We actually had a lot of
7 electrical issues with them not wanting to download, not
8 wanting to record properly. We wound up battling with the
9 company over that. And they replaced all thirteen of those.
10 Those have been upgraded.

11 And, of course, technology's always changing. We've
12 had some issues with the company sending us out new hardware
13 with old software. We've gotten most of those bugs worked
14 out, but certainly it's a challenge.

15 We've moved from a VHS system, which was essentially a
16 TV screen with a VCR into a completely digital age,
17 everything's electronic. The easiest way to explain it is
18 the camera in the car is like having a mini laptop. It runs
19 on a stripped down XP operating system. So it really is
20 like having another computer riding around in your car and
21 you have similar issues that come along with that.

22 Q. Okay. And, again, how much do these cameras cost?

23 A. About forty-four hundred a piece.

24 Q. What are the ongoing expenses with maintaining this
25 system? If you could give us a brief overview.

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1 A. Well, certainly we have a lot of batteries that we go
2 through with the audio packs. That's something that's
3 always costing money.

4 We have a lapel mic, which actually goes in the
5 officer's uniform here, it goes down. Those are routinely
6 torn up and we wind up having to replace those whether it be
7 from just use, or from a scuffle or something of that
8 nature. We have the reoccurring cost of burning videos. We
9 have tons of discs that we go through with that.

10 We, of course, have the expenses to move those systems
11 from car to car. Since we had mentioned the new cars we had
12 purchased fairly recently, we've already got two of those
13 that have gotten pretty much smashed due to other parties
14 running red-lights and tearing those up. We have to move
15 those cars out.

16 We've had a lot of expense as we've gone through the
17 fleet. We've had -- all of our K-9 units got new vehicles.
18 All of their cameras had to be taken out and put into other
19 vehicles. So it's a -- unfortunately, it's an ongoing
20 expense that we have every month that we have to spend
21 something on cameras.

22 Q. And is that something you have to budget for out of the
23 grant funds and the seizure funds?

24 A. Unfortunately because we have no internal budget that
25 is dedicated to cameras.

JOE BROWNING - CROSS EXAMINATION BY MR. FARNSWORTH

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1 Q. Okay. And is Greenville City Council involved in
2 helping to establish your budget?

3 A. Yes, ma'am.

4 Q. So there are political decisions that are being made?

5 A. Yes, ma'am.

6 Q. How has money been the last five or six years?

7 A. Very tight. Very tight.

8 Q. Is that unique to your agency?

9 A. I don't believe so, no.

10 Q. Please answer any questions Mr. Farnsworth might have.

11 THE COURT: You can ---

12 MR. FARNSWORTH: Just a couple ---

13 THE COURT: --- come back up ---

14 MR. FARNSWORTH: --- of questions.

15 THE COURT: --- to your seat, officer.

16 MR. FARNSWORTH: Oh, go ahead, Judge.

17 THE COURT: All right, Mr. Farnsworth.

18 **Cross Examination by Mr. Farnsworth:**

19 Q. Officer, other than the twenty-one cameras I think you
20 said that you had around 2002, 2004, ---

21 A. Yes, sir.

22 Q. --- were all those provided -- supplied by the
23 Department?

24 A. The twenty-one, yes, sir, were bought by DPS. Yes,
25 sir.

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1 Q. Okay. Are those all the cameras you were ever provided
2 by them to you? Those twenty-one?

3 A. Yes, sir.

4 Q. Ever?

5 A. Yes, sir.

6 Q. No others? So until you bought these eighty-one --
7 eighty-nine cameras from Kustom back in February of 2010 you
8 were still using those twenty-one that you had?

9 A. Most of those had began to fail by that point. The
10 majority of them had been uninstalled. They were actually
11 at our garage waiting a shipment back to Columbia.

12 Q. Okay. So you didn't have hardly any active ---

13 A. Not ---

14 Q. --- cameras in cars?

15 A. No, sir. We had a handful of those. And everything
16 else that we had was digital cameras.

17 Q. Okay. And so after the initial business with the
18 Department of Public Safety you really didn't have anymore
19 business with the Department of Public Safety, did you?

20 A. We did not receive anything ---

21 Q. You didn't?

22 A. --- additional.

23 Q. Okay.

24 A. No, sir.

25 Q. And you made, I think you testified, one time that you

JOE BROWNING - CROSS EXAMINATION BY MR. FARNSWORTH

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1 did make a request for fifteen more and those were -- and
2 you never got those?

3 A. Twenty more, yes, sir.

4 Q. And ---

5 A. We haven't received them.

6 Q. Was your understanding when this law came into effect
7 that, when you got involved in it anyway, that the
8 Department of Public Safety was to supply these video
9 cameras for the cars?

10 A. My understanding ---

11 Q. And purchase them?

12 A. That the DPS would be purchasing cameras to go in
13 patrol cars.

14 Q. Okay. And then after you -- after a while you found
15 out it didn't quite work that way, is that right?

16 A. Well, we wanted cameras faster than they were being ---

17 Q. Okay.

18 A. --- provided by the DPS.

19 Q. Okay. And you were under -- are you aware that under
20 the law -- that law has not changed, under the law they're
21 still, you know, are to supply, and purchase and maintain?

22 A. Yes, sir. My understanding ---

23 Q. That law has not changed?

24 A. Yes, sir.

25 Q. Despite their inactivity?

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1 A. My understanding ---

2 Q. As far as Greenville county anyway.

3 A. Did we -- yes, sir. That we ---

4 Q. Greenville city, excuse me.

5 A. --- had not received anymore as of that time.

6 Q. Okay. Let me ask you on this -- the last thing you

7 talked about was driving under the influence cases in

8 Greenville county. You started at ten years, 2001 through

9 2010, the number of DUI cases made. And I believe that, if

10 you'll refer to it if you need to, I believe that 2010 was

11 by far the highest number that were made were in 2010?

12 A. Yes, sir.

13 Q. In fact, they were doubled in some of the years ---

14 A. In some of the years. Yes, sir.

15 Q. Or even tripled.

16 A. A couple of years.

17 Q. All right. And when did you first become aware that

18 your DUI cases that were going up as they did in 2010?

19 A. To be honest with you, sir, that's not something I keep

20 ---

21 Q. Okay.

22 A. --- the statistics on.

23 Q. Okay.

24 A. To be honest with you, the numbers for the DUIs, when I

25 requested it from SLED, is the first time that I had seen

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1 those.

2 Q. Okay. And in any event, your camera situation there
3 from 2001, 2002 all the way up til you purchased these
4 eighty-nine was in pretty bad shape overall?

5 A. Yes, sir, with our purchase of the Prosecutor cameras
6 and those failing immediately, ---

7 Q. Uh-huh (affirmative).

8 A. --- we did have some challenges.

9 Q. And that explains why you bought these eighty-nine
10 cameras ---

11 A. Correct, sir.

12 Q. --- starting on February 23rd, 2010?

13 A. Correct, sir.

14 Q. And I noticed the -- all thirteen of them were
15 purchased -- was that requested, or bought or was that
16 installed?

17 A. Those ---

18 Q. The initial ten or thirteen?

19 A. The initial thirteen, what took place with those is we
20 purchased them out of that state grant money, the stimulus
21 money. The company actually delivered those cameras to us
22 and sent installers from their home base in Kansas to assist
23 our mechanics in installing them and teaching them how to
24 actually handle those systems.

25 Q. Okay. And the remainder of the eighty-nine, I assume,

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1 were purchased after -- well, beginning in September through
2 December of 2010?

3 A. Correct, sir.

4 Q. So at the most, in March -- let's just go back to March
5 of 2010. At most you would have had how many cameras
6 installed in cars? That'd be one month about after you
7 started purchasing through Kustom. About how many would you
8 have had installed a month later or between February 23rd
9 and March 18th of 2010? How many would the Greenville
10 Police Department, the cars out on the road with the tapes
11 installed?

12 A. Sure. The original thirteen would have been installed
13 because their personnel from Kansas came and made sure we
14 had all of those taken care of. Out of the original DPS
15 cameras at that point we were probably sitting around seven,
16 eight systems that were still out in the field. We had more
17 than that, but some of those had become unfunctional --
18 dysfunctional and had not been removed as of that date.

19 Q. Okay. That's all I have.

20 MS. DRAWDY: Your Honor, while he's on the stand, if I
21 could just look through the exhibits to make sure I've moved
22 everything in.

23 (Pause)

24 MS. DRAWDY: Your Honor, I believe we have everything
25 moved in. And the court reporter knows what they are. That

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1 would be all I have from this witness.

2 THE COURT: Could I clarify when you asked for the
3 twenty more from the Department of Public Safety?

4 A. Yes, sir.

5 THE COURT: When was that?

6 A. I believe it was June of '09, sir.

7 THE COURT: Did you get a response to that request?

8 A. Essentially the response was the VHS system would be
9 provided first and they would get to us with the digital
10 cameras as soon as they became available and the VHS ones
11 were expended.

12 THE COURT: Okay. All right. Thank you, sir. You may
13 step down.

14 MS. DRAWDY: Your Honor, I have one more witness ---

15 THE COURT: All right.

16 MS. DRAWDY: --- to call, which will be a little bit
17 lengthy. And I could stand a brief break.

18 THE COURT: All right. Let's just ---

19 MS. DRAWDY: About three to five minutes.

20 THE COURT: How many more witnesses do you ---

21 MS. DRAWDY: Just one more on this -- on the motion.

22 THE COURT: Okay. We'll take a short break and then
23 we'll finish up with this witness.

24 MS. DRAWDY: Thank you, Your Honor.

25 THE COURT: Five minute break.

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1 (Whereupon, court was in recess at 1:19 pm)

2 (Whereupon, court resumed at 1:27 pm)

3 **THE COURT:** You ready to proceed?

4 **MS. DRAWDY:** Yes, Your Honor.

5 **THE COURT:** All right. You may call your next witness.

6 **MS. DRAWDY:** The State calls Elaine Johnson.

7 **Elaine Johnson, being**

8 duly sworn testified as follows:

9 **MADAME CLERK:** Thank you. You may be seated. Would
10 you please state your name for the record.

11 **MS. JOHNSON:** Elaine Johnson.

12 **MADAME CLERK:** Thank you.

13 **Direct Examination by Ms. Drawdy:**

14 Q. Good morning, Ms. Johnson.

15 A. Good morning. Well, good afternoon.

16 Q. Yeah, that's right, it is afternoon. You're employed
17 with the Department of Public Safety?

18 A. That's correct.

19 Q. How long have you been in that agency?

20 A. It was created in '93. And I went in '94.

21 Q. Okay. So you're almost as old as the agency is?

22 A. I was with them on grandfather agency. Go far back as
23 '72.

24 Q. All right. And what capacity were you with that
25 department when the legislation was passed ---

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1 A. I was ---

2 Q. --- for the DUI statute that we're -- the videotaping
3 statute that is the subject of this hearing?

4 A. I was the Director of the Department of Resource
5 Management, which included procurement, various
6 administrative functions and special projects.

7 Q. So when this legislation was enacted ---

8 A. Um-hum (affirmative).

9 Q. --- were you aware of the passage of it and were you
10 one of the individuals who was given the task of
11 implementing the legislation?

12 A. That's correct.

13 Q. What was the funding mechanism for the cameras -- what
14 were the -- DPS's responsibility and what was the funding
15 mechanism?

16 A. The funding mechanism comes from court fines on DUI
17 cases. The legislation was set up so that all of the monies
18 first went to SLED until they were able to equip all the
19 breathalyzer sites with new equipment.

20 SLED had two procurement protests during that process.
21 And until they finished that process the Department of
22 Public Safety received no funds from that funding source.

23 In 1999 we were notified that SLED thought they had a
24 good procurement and that we should start receiving our
25 share of the money shortly. It actually started really

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1 coming to us in 2001.

2 We get eighty-seven point five (87.5) percent of the
3 revenue source. And SLED still maintains twelve point five
4 (12.5) percent of the money every month to keep the
5 breathalyzer sites up and running.

6 Q. Okay. Is DPS responsible for purchasing cameras?

7 A. Purchasing, installing and maintaining.

8 Q. Now what -- define what that entails. And give me some
9 rough costs.

10 A. Well, I'll give you a hundred. I'll use a hundred. If
11 we buy a hundred cameras in the current VHS camera we're
12 using, we've just spent two hundred and eighty-five thousand
13 dollars (\$285,000.00). To put those hundred cameras in is
14 another one hundred and ninety thousand dollars
15 (\$190,000.00).

16 The first year of warranty is two hundred and fifty
17 thousand dollars (\$250,000.00). The second year of warranty
18 is two hundred and twenty-five thousand dollars
19 (\$225,000.00). The third year of warranty/maintenance is
20 two hundred thousand dollars (\$200,000.00).

21 At that point we make a determination on whether the
22 camera is worth putting anymore money in it at that point.
23 And usually we stop buying the maintenance contract on the
24 third year, but we still are responsible for the life of the
25 camera to pay for any cost relative to keeping it

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1 operational or we determine it economically unfeasible to
2 keep. And then we replace the camera with a replacement or
3 a rebuilt camera.

4 Q. You've heard today Lieutenant Browning testify that his
5 own agency has between a hundred and fifty and two hundred
6 cars.

7 A. Yes..

8 Q. If you were to equip every car, every marked -- you
9 can't tell me how much it would cost to equip every car?

10 A. I can't even fathom what it would cost. It took us
11 from 2001 until 2009 to purchase, issue, install a little
12 over thirty-two hundred cameras. And now we're faced with
13 VH cameras -- VHS cameras are no longer being manufactured.
14 So, therefore, we are forced now to start purchasing digital
15 cameras. Digital cameras start in the price range of about
16 four thousand dollars and can go as high as ten thousand
17 dollars.

18 And as Officer Browning testified, when you start
19 buying digital you become married to the embedded base.
20 Whatever the local purchased -- police department purchased,
21 when we get to them on their list we're going to have to
22 purchase that same camera and maintain it because you can't
23 ask an agency to be using two types of digital systems that
24 won't talk to each other.

25 Q. And does your agency stand prepared to do that?

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1 A. Well, we're prepared based solely on the money we get
2 monthly, which varies from about a hundred and fifty
3 thousand dollars (\$150,000.00) to a hundred and eighty-five
4 thousand dollars (\$185,000.00) a month.

5 And keep in mind, I think it was recently revealed that
6 we maybe have ten to twenty thousand DUI cases that have
7 been in holding patterns. So, therefore, the funding source
8 is -- until the case is settled, you know, we don't get any
9 fines out of those cases.

10 Q. And if they aren't convicted -- this is ---

11 A. And there's ---

12 Q. --- based on convictions?

13 A. That's correct.

14 Q. Back when the legislation was first enacted and you
15 embarked with others in your agency, ---

16 A. Um-hum (affirmative).

17 Q. --- implementation, was it your understanding that the
18 intent was that the individual agencies not have to spend
19 money on cameras?

20 A. That was the intent of the legislation, that small
21 police departments especially would never be able to fund
22 and maintain cameras with the budgets that those agencies
23 had. And, of course, large police departments also had
24 funding issues. And that was the intent of the legislation
25 that this funding source provide cameras for all. And I

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1 must say traffic -- the law very well defines that it's for
2 traffic related vehicles.

3 Q. So that was your understanding, it was in vehicles used
4 primarily for traffic ---

5 A. For traffic.

6 Q. --- enforcement?

7 A. That's correct.

8 Q. Is the South Carolina Highway Patrol also one of the
9 agencies that you provide cameras to?

10 A. They were in the very beginning of this program. In
11 2007 the program -- they pulled out of the program because
12 we just weren't being able to provide the cameras to the
13 locals. And when we were getting new troopers added through
14 the budget process, the general assembly was putting in
15 funds to fund the -- to outfit the cars with cameras. So,
16 therefore, patrol determined that they would no longer take
17 anymore money out of the DUI camera for themselves.

18 Q. So has that move possibly freed up a few more cameras
19 for the other agencies through your program?

20 A. A few, yes.

21 Q. Now, you have been from the beginning in charge of a
22 finite resource, ---

23 A. That's correct.

24 Q. --- is that safe to say?

25 A. That's correct.

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1 Q. And how did you go about determining who to distribute
2 x number of cameras to?

3 A. Well, the way we started is we put together a committee
4 and we asked the Chief Association to put in two
5 representatives and the Sheriff's Association to put in two
6 representatives. And the patrol put in two representatives.
7 And we have, of course, had administrative folks that helped
8 in the committee process.

9 And we did an evaluation. We did a request for
10 information. And all manufacturers submitted their cameras.
11 With this committee we did benchmark testing, we did in-car
12 testing. And we determined the number of cameras that
13 passed the criteria. And at that time we put in the state
14 contract through the State Department of General Services.

15 And we determined after looking at the ORI charts that
16 SLED provided us to conduct how we would give away the
17 cameras, we immediately saw that a very few percentage of
18 the agencies did the bulk of the DUI work. The middle group
19 did about thirty percent. And a large group of agencies
20 accounted for about twenty percent.

21 So the committee determined that what we would do is a
22 random selection process. And each time we had funding
23 available to purchase cameras, fifty percent of those
24 cameras would go to the high end agencies, thirty percent
25 would go to the mid group and twenty percent would go to the

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1 bottom group.

2 Q. Okay. And this was a random ---

3 A. This was a random computerized selection process.

4 Q. And under that first distribution do you have records
5 that tell us how many Greenville Police Department got?

6 A. I do have records to tell you that Greenville Police
7 Department got twenty-one. They ---

8 Q. In the first ---

9 A. In the first group. And I need to maybe clarify a
10 little bit of more things that happened.

11 Q. Okay. I'm sorry. I jumped ahead of you.

12 A. We submitted regulations to the Senate Judiciary as
13 we're required by law to do with our random selection
14 process. When we went before the Judiciary Committee, the
15 Senators there told us that they did not want the cameras
16 issued through a random selection. They wanted the cameras
17 issued based on DUI activity as recorded by SLED through
18 agencies' ORI numbers.

19 At that time we had to revise our procedures and
20 resubmit them to the Senate Judiciary. And they were
21 eventually promulgated through distribution based on DUI
22 activity.

23 Q. Okay. So you had to put the brakes on ---

24 A. Um-hum (affirmative).

25 Q. --- and recalculate how you were going to do this?

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1 A. Exactly. That's why when Greenville -- when Officer
2 Browning testified that they received one in the random
3 selection process, it was just the draw of the computer.
4 And that's why they got one.

5 Now the remaining ---

6 Q. So they could have asked you for a hundred?

7 A. Um-hum (affirmative).

8 Q. And they would have just gotten one?

9 A. At that particular time, yes.

10 Q. All right.

11 A. And then after our regulations were promulgated we re-
12 surveyed in May of 2002 at the direction of the Judiciary
13 and basically told the police departments that the Judiciary
14 wanted them to reevaluate and submit only their traffic
15 related numbers.

16 The original request from our '99 survey resulted in
17 over fifty-five hundred camera requests. The revised
18 request from the May 2000 put that number down to a little
19 over thirty-two hundred.

20 Q. So this was at your direction that you said, no, no,
21 no, you can only request for a primary traffic enforcement
22 vehicle?

23 A. Well, the law says that.

24 Q. Okay.

25 A. It says the vehicle used for traffic enforcement.

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1 Q. So that reduced your requests?

2 A. That reduced the requests.

3 Q. Okay. And so you had a benchmark for each agency that
4 was established in 2002?

5 A. That's correct.

6 Q. And you proceeded to, under the protocol that you had
7 been given, allocating cameras as you were able to purchase
8 them?

9 A. Right. And we received our ORI listing from SLED that
10 prioritized each agency in the order of total arrests. And
11 I have that if you want that to be ---

12 Q. Okay.

13 MS. DRAWDY: Let's mark that as Court's exhibit 11.

14 A. How many copies would you like?

15 Q. And you still have one?

16 A. Oh, yes.

17 (Whereupon, Court's exhibit 11 was marked)

18 MS. DRAWDY: Your Honor, I'd like to introduce this as
19 Court's exhibit 11.

20 MR. FARNSWORTH: Without objection, Your Honor.

21 THE COURT: Without objection, exhibit 11.

22 (Whereupon, Court's exhibit 11 was admitted into
23 evidence for the Court's record)

24 Q. Now this has been marked. Can you explain what the
25 marks -- where the marks came from?

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1 A. Those are working notes of mine. Actually some of the
2 lined out indicated police departments that replied to the
3 survey indicating they did not want any cameras from the
4 program. So they were marked out so when the spreadsheet
5 was made they would not be included in the spreadsheet.

6 Q. Can you say with certainty that everyone that's marked
7 out that is the reason it's marked?

8 A. Yes, I can.

9 Q. Okay. Did Greenville Police Department continue to ask
10 for cameras?

11 A. They did. They asked for their -- they asked for
12 twenty. And before they were actually awarded those twenty
13 they called and asked to add one more camera to their
14 request. And we allowed that because we had not started in
15 their rotation, which made their request twenty-one.

16 Q. And again, this was at the direction that the initial
17 request by agencies were too high and they needed to reduce
18 it based on the character of the kind of work that the
19 patrol vehicle was going to primarily be doing, i.e.,
20 traffic?

21 A. That's correct. I have a letter from the Senate
22 Judiciary to our agency director directing us to perfect the
23 changes as they had requested in the subcommittee hearing
24 and those proposed changes, if you want to have that for the
25 record.

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1 MS. DRAWDY: Your Honor, we'd like to mark this as 12
2 and move it in.

3 (Whereupon, Court's exhibit 12 was marked)

4 MR. FARNSWORTH: Without objection.

5 MS. DRAWDY: Without objection.

6 THE COURT: All right. Exhibit 12 is admitted without
7 objection.

8 (Whereupon, Court's exhibit 12 was admitted into
9 evidence for the Court's record)

10 A. And then from there we prepared a spreadsheet based on
11 the activity and what started our award under that
12 methodology.

13 Q. And is this figure that appears in one of the earlier
14 exhibits that was testified to roughly your ability to
15 purchase cameras at the rate -- and get out at the rate of
16 eighty per quarter a pretty good rule of thumb as to what
17 you were experiencing?

18 A. Well, we actually were experiencing lower than eighty a
19 quarter.

20 Q. Okay. In the beginning?

21 A. In the beginning.

22 Q. And ---

23 A. And it's actually been worse recently.

24 Q. Okay. Because the funding source has dipped?

25 A. Yes. With the backlog of DUI cases, the funding source

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1 has not increased and a proviso that allowed patrol to use
2 some operating money out of that fund.

3 Q. Do you have figures with you -- well, I'm going to let
4 you move along. You have your order of ---

5 A. No, whatever you need me ...

6 Q. Okay.

7 A. I have this spreadsheet that shows the 2002 requests
8 and how we filled them.

9 Q. For all agencies?

10 A. For all agencies.

11 Q. Roughly how many agencies are there across the state
12 that were eligible for these cameras?

13 A. Two hundred and eighty-one.

14 Q. And one of those agencies at the beginning would have
15 been the South Carolina Highway Patrol?

16 A. That's correct.

17 Q. Okay.

18 **MS. DRAWDY:** Let's mark that as exhibit 13.

19 (Whereupon, Court's exhibit 13 was marked)

20 A. And here's just a modified version that that -- some of
21 the columns are just notes, basically.

22 Q. And these are your personal working documents?

23 A. They are. And that's just a ---

24 Q. Okay.

25 A. --- compilation of the one column. It just takes the

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1 requested column and cuts everything else off.

2 Q. Okay. So -- but this is already ---

3 A. Absolutely.

4 Q. All right. I'm going ---

5 A. Absolutely.

6 Q. --- to let you keep that.

7 A. Okay.

8 MS. DRAWDY: Your Honor, we'd move 13 in as Court's
9 exhibit 13.

10 MR. FARNSWORTH: No objection, Your Honor.

11 THE COURT: Without objection, exhibit 13.

12 (Whereupon, Court's exhibit 13 was admitted into
13 evidence for the Court's record)

14 Q. And where -- how far down the list does Greenville
15 Police Department fall?

16 A. Greenville, on the 2002 list was number -- bear with me
17 one minute.

18 Q. Now exhibit 13, is that the 2002 list?

19 A. That is the 2002 list. Greenville Police Department
20 was agency number 20.

21 Q. Okay. And do you have raw numbers or is that just a --
22 for that year -- is that based on the previous year or ---

23 A. It actually was prefaced on the ORI chart that I just
24 gave you. It was SLED's numbers for 2001, but they were
25 compiled in 2002.

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1 Q. Okay. So is there a -- 2001 arrests?

2 A. Pardon?

3 Q. They're 2001 arrests?

4 A. Um-hum (affirmative).

5 Q. Okay. So this is based on arrests not ---

6 A. That's correct, total arrests. Um-hum (affirmative).

7 It was for the year 1-1-1 to 12-31-1. And it was compiled

8 in April of '02.

9 Q. So would the -- would Greenville Police Department have
10 been in the high producing ---

11 A. Yes, they were.

12 Q. --- group?

13 A. Yes.

14 Q. As we move forward -- so at this point you've

15 established a benchmark of twenty-one cameras for

16 Greenville?

17 A. They determined that.

18 Q. They determine that ---

19 A. They determined that.

20 Q. --- based on -- okay.

21 A. We didn't -- we gave them an opportunity through survey
22 to give us the number they needed.

23 Q. Okay. And so then you had to proceed based on raw DUI
24 numbers. Was that figure recalculated on an annual basis?

25 Was it a cumulative figure? How -- where did your figures

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1 come from for going forward through prioritizing the
2 allocation of cameras?

3 A. It came from the ORI listing of total arrests. That
4 was how we prioritized the first -- the highest figure on
5 the ORI chart was the first person to get cameras and
6 followed suit.

7 It was determined that if every time a police
8 department got a new car and we let them add, then we would
9 never finish the chart. So the committee determined that we
10 would finish the 2002 survey request prior to starting a new
11 entertaining of requests.

12 Q. And at the time that the agencies gave you their
13 initial requests they were unaware of that limitation, is
14 that correct?

15 A. I would say that's probably correct.

16 Q. Because you hadn't even decided that until you ---

17 A. Absolutely.

18 Q. And so it took -- so when did Greenville Police
19 Department ultimately receive the last of the twenty-one
20 cameras?

21 A. They received the -- they received one in 2002, five in
22 2003 and a total of fifteen in 2004 in two different months.
23 Ten in February and five in March.

24 Q. Okay. Has it been your experience that the useful life
25 of these cameras is three to five years?

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1 A. At the Highway Patrol we're getting more like seven to
2 eight years. And most locals are still using the cameras
3 that we gave them.

4 Q. Okay. But do they start beginning requiring a lot ---

5 A. They start ---

6 Q. --- of maintenance?

7 A. --- beginning having problems about the fourth and
8 fifth year. And, like I say, if we can't economically
9 repair them we try to cannibalize and get cameras that the
10 manufacturer can certify.

11 Q. Now, so this initial request, grant request from all of
12 the agencies that occurred in 2002, it took you until when
13 to satisfy that?

14 A. 2009.

15 Q. 2009. And that was how many cameras total?

16 A. Three thousand -- bear with me one minute and let me
17 get that number. Three thousand, two hundred and thirty-one
18 (3,231).

19 Q. So once you had done that -- and this was based on
20 money coming in?

21 A. Correct.

22 Q. Once you had done that where did you find yourself in
23 terms of inventory and available funds to purchase more
24 cameras and what the market was like for purchasing VHS
25 cameras?

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1 A. Well, we continued to purchase VHS. And the funding
2 source moved slower and slower. I actually have a break-
3 down by year on how many cameras were installed at Motorola
4 shops and how many were installed by the Department of
5 Public Safety shops.

6 And you can see in '02 we put in over six hundred
7 cameras. In '03 that number went down to about two hundred
8 and sixty. In '04 that number went back up to about three
9 hundred and ninety. And '05, about three hundred and
10 thirty. And '06, about three hundred and eighty. '07, two
11 hundred and forty. '08, three hundred and fifteen.

12 And '09, we did not purchase but twenty -- thirty
13 cameras. And thus far in '10 we have purchased five hundred
14 in '10 -- fiscal year 10-11, five hundred.

15 Q. And where are those cameras now?

16 A. They're in various police cars ---

17 Q. Oh, they ---

18 A. --- all throughout the state. Oh, yes, we don't -- we
19 don't keep a running stock. Immediately upon ordering
20 cameras I take the list, I issue the award letters, a user's
21 agreement and several other documents that we provide each
22 police department giving them the instructions that they
23 must follow, telling them they don't own the camera, they
24 can't work on the camera, they can't dispose of the camera
25 without written permission from us. And we continue to

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1 install til we finish the original 2002 requests.

2 Q. I'm going to show you a copy of what has been submitted
3 as State's [sic] exhibit 7.

4 A. Um-hum (affirmative).

5 Q. And it's a letter from DPS, I believe, under your
6 signature.

7 A. Yes, it is. This was the 2009 when we re-surveyed and
8 we told everyone that the original requests from the '99 and
9 2002 surveys had been completed and that they now had an
10 opportunity to ask for new cameras. At the time we told
11 them that they should use this opportunity to add or upgrade
12 if they had cameras that were no longer advantageous to
13 repair.

14 We also gave them the opportunity to choose between VHS
15 and digital. Because of the cost we went as far as to tell
16 them that if they chose digital they would have to wait
17 until all the VHS cameras that were available from the
18 manufacturer were purchased and installed.

19 Q. And are you in the -- have you purchased your last VHS
20 camera?

21 A. We have purchased our last VHS camera.

22 Q. And will you now be purchasing digital?

23 A. We are in the process of starting the digital. We have
24 done an evaluation with locals and sheriff's departments.

25 And the state has issued a multi-award contract on digital

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1 cameras. This fund has purchased no digital cameras at this
2 time.

3 Q. And do you have a copy of the requests, a compilation
4 of the requests that you received from various agencies?

5 A. Yes. Yes, I do. You may also want this ORI listing
6 that this 2009 request is based on.

7 MS. DRAWDY: We'll mark that as ---

8 A. I didn't want Your Honor to have a heart attack when he
9 saw these folders.

10 MS. DRAWDY: We'll mark this as 14:

11 (Whereupon, Court's exhibit 14 was marked)

12 MS. DRAWDY: And move that in as Court's exhibit 14.

13 MR. FARNSWORTH: Without objection.

14 THE COURT: Without objection.

15 (Whereupon, Court's exhibit 14 was admitted into
16 evidence for the Court's record)

17 A. And this is the compilation Excel spreadsheet.

18 Q. Okay.

19 A. That accompanies that.

20 Q. All right. The compilation of the 2009 ---

21 A. 9 survey.

22 Q. --- survey?

23 A. That's correct.

24 MS. DRAWDY: That'd be exhibit 15.

25 (Whereupon, Court's exhibit 15 was marked)

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1 MS. DRAWDY: Your Honor, we'd move this in as Court's
2 exhibit 15.

3 MR. FARNSWORTH: Without objection.

4 THE COURT: Without objection, ---

5 Q. And would you describe for us ---

6 THE COURT: --- exhibit 15.

7 Q. Oops.

8 (Whereupon, Court's exhibit 15 was admitted into
9 evidence for the Court's record)

10 Q. Would you describe for us once more, Ms. Johnson,
11 exactly what State's [sic] exhibit 15 is?

12 A. It is a compilation of the survey that we issued in
13 2009 giving agencies an opportunity to reevaluate their
14 traffic needs for DUI in-car video cameras. It's broken
15 down between digital and VHS.

16 And also if an agency chose digital we gave them an
17 opportunity to tell us the brand that they were currently
18 using. So you'll see the brand listed.

19 And, of course, the award dates are when letters are
20 issued. And the closed file was when everything has been
21 installed for that agency.

22 Q. So this is a pretty good snapshot of which agencies had
23 begun purchasing cameras on their own?

24 A. Absolutely.

25 Q. And they have -- and have selected to go digital?

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1 A. Absolutely.

2 Q. And how many did Greenville request?

3 A. Greenville PD requested twenty cameras. They requested
4 digital. And they indicated they wanted to match their
5 Kustom Signal cameras.

6 Q. Okay. And at this point in time in 2009 where did they
7 fall in the firmament of the allocations?

8 A. They're actually in this number, twenty-one.

9 Q. And they will -- once you begin purchasing digital
10 cameras they will -- these will trickle in in a similar way
11 as the previous allocation ---

12 A. No. Actually they will -- when they come up on the
13 list they'll get all twenty at one time because the random
14 selection process, it was ones and twos, but the way this
15 works is however many they ask for, they get it.

16 Q. So Charleston PD would be the first to get digital
17 cameras?

18 A. That's correct. Two hundred digital cameras.

19 Q. And just because they've asked for two hundred, they
20 will get all two hundred before Greenville gets its twenty?

21 A. That's correct. In fact, you go down the chart you'll
22 see Columbia has a hundred and ninety-three before we get to
23 Greenville. And there are numerous other agencies with ten,
24 fifteen, thirty, twenty, four, seventeen. So there's quite
25 a few that are still ahead of Greenville PD for the digital

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1 requests.

2 Q. Is there any way that the funding source that you have
3 could equip every patrol vehicle in the state?

4 A. No, not as it is currently structured. We can do it,
5 but it would be about a fifteen year process.

6 Q. And then by that time ---

7 A. And, of course, by that time agencies will have added
8 more cars and the first cameras will have worn out.

9 Q. So revenues for your funding source are up or down
10 right now?

11 A. They're hanging at about one sixty-five a month. About
12 --- it really is about the same. They're not up. I haven't
13 seen the last two month's deposits yet, but prior to that
14 they've been hanging between one fifty to one seventy-five.
15 So a good average of one sixty-five.

16 Q. Now I want to ask you if once the initial survey was
17 done in 2002 ---

18 A. Um-hum (affirmative).

19 Q. --- you permitted agencies to ask for maybe one
20 additional camera?

21 A. No. In this case they had just returned their form and
22 we had not started the distribution process at all for the
23 2002 survey. And they called and asked if they could change
24 their number from twenty to twenty-one. But that is not a
25 common practice. Once the distribution starts it's kind of

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1 set in stone by the state regulations.

2 Q. At that point no one realized it was going to be seven
3 years before they would be allowed to request more cameras?

4 A. Well, the police departments did not realize that, no.

5 Q. Okay.

6 A. Some of us that had studied the physical impact of the
7 bill understood it, but the individual police departments
8 did not have that information.

9 Q. So is it safe to say that this was a program that
10 everyone was doing the best they could but didn't really
11 know what to expect?

12 A. Absolutely. It was a great piece of legislation.
13 There's just not enough money to provide the service that
14 the legislation asked us to provide.

15 Q. Okay. Has there been any review of this that you're
16 aware of by the Legislature?

17 A. Not that I'm aware of. We do have a problem with the
18 annual inventory. And we have made a recommendation for
19 this legislative session that we be allowed to actually give
20 the cameras to the police department and still do the
21 maintenance work through our vendor network. But that has
22 been introduced to the sessions, and it's been turned down.
23 And the rationale for the Senate Judiciary is that they're
24 afraid that the smaller locals won't be able to keep the
25 cameras operational.

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1 Q. So you still own all of these cameras?

2 A. We still own every ---

3 Q. You still have title to them?

4 A. --- one of these cameras, yes.

5 Q. And inventory them?

6 A. Um-hum (affirmative). Every year.

7 Q. Is there anything else that you think's important we
8 know?

9 A. For this case, no. But for the source of funding, you
10 know, it needs to be understood that certainly a lot of time
11 has passed. And you would think by looking at time that
12 everybody should have gotten a camera. But when an analysis
13 is done of the funding versus the requests and the need,
14 there's just not enough money there to do it.

15 Q. Okay. And have you observed the same kind of
16 maintenance costs, installation, de-installation headaches
17 that Lieutenant Browning describes state-wide?

18 A. Absolutely. We haven't quite had as many problems, I
19 think, as Lieutenant Browning, but we too suffered through
20 the Prosecutor. We had ---

21 Q. Now the Prosecutor, let me be clear, that's a brand
22 name ---

23 A. That's a different brand -- that's a brand name of
24 camera. We too suffered through eighty-eight of those
25 through this program. So -- but there has been no

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1 additional funding, no change in the legislation. And to my
2 knowledge there's nothing other than the asking of -- giving
3 us permission to give the cameras to the police departments.

4 Q. Thank you, Ms. Johnson.

5 A. Absolutely.

6 Q. Please answer any questions that Mr. Farnsworth ---

7 A. Absolutely.

8 MR. FARNSWORTH: I don't believe I have any questions.

9 A. All right. Great.

10 THE COURT: Let me just ask one question ---

11 A. Sure.

12 THE COURT: --- for my benefit. The higher the number,
13 the greater the chance of getting a camera?

14 A. Yes, sir. They'll be the first on the list. If you
15 look at the spreadsheet, the ones we awarded originally
16 under the VHS we started with the Greenville Sheriff, and
17 Spartanburg Sheriff and go right on down.

18 THE COURT: I see that now.

19 A. Yeah.

20 THE COURT: You indicated on exhibit 11 where you had
21 the line-outs -- that those lined out ---

22 A. Those were --- that was the ---

23 THE COURT: --- that that town did not want to ---

24 A. That was the 2002s.

25 THE COURT: That's what I meant to say, ---

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1 A. Yeah.

2 THE COURT: --- 2002. They did not want to ---

3 A. Right. And we had some in this survey that don't want
4 to participate.

5 THE COURT: In 2007 different agencies ---

6 A. Yes, sir.

7 THE COURT: --- sometimes don't want to.

8 A. Yes, sir. And if you have a copy of the Excel
9 spreadsheet there's a legend that shows that the red
10 agencies did not respond to requests.

11 THE COURT: What's the significance of the green?

12 A. The green are people that actually have closed their
13 file because they asked for none and we closed their file.

14 THE COURT: The numbers you get on this 2002 and 2007,
15 are those numbers provided by the agency?

16 A. They're provided by SLED. That report comes directly
17 from SLED. And they actually enter -- now the officers
18 probably better speak to how they do that, but they actually
19 report those to SLED by their ORI number. And they're
20 compiled in SLED's database annually.

21 And as you can see we had on the 2009 survey, seven
22 hundred and eighty-nine (789) requests for VHS, one
23 thousand, three hundred and forty (1,340) requests for
24 digital. And to date we've awarded five hundred (500)
25 cameras.

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1 THE COURT: All right. Thank you, ma'am.

2 A. Absolutely.

3 Direct Examination by Ms. Drawdy Continued:

4 Q. Ms. Johnson, before you come down I just want to make
5 sure that we're clear on what data is on those spreadsheet
6 exhibits so that we are not -- so that we know what we're
7 ---

8 A. Absolutely.

9 Q. --- looking at because I don't want there to be created
10 any confusion in the record. What's been marked as State's
11 [sic] exhibit 13, ---

12 A. Um-hum (affirmative).

13 Q. --- what does this spreadsheet show?

14 A. That is the 2002 requests in the order of ORI DUI
15 arrests.

16 Q. Okay. And number 15?

17 A. It's the 2009 survey in order of the ORI listings by
18 SLED.

19 Q. Okay. Thank you.

20 A. Absolutely.

21 MS. DRAWDY: Your Honor, that would be the extent of
22 what the State has to offer.

23 THE COURT: Anything from the Defense?

24 MR. FARNSWORTH: No, Your Honor.

25 THE COURT: All right.

1 MS. DRAWDY: Unless you want argument.

2 THE COURT: Let's take a lunch break and try to be back
3 about five minutes til three. We'll let the jury wait on us
4 a little while. And I'll be glad to hear argument then.
5 Would you like to -- yeah, I probably need to hear some
6 argument based on the exhibits. Let's be back about five
7 til three. I'll be glad to hear from you then. I'll try to
8 review that video in the next thirty minutes too if you have
9 a copy of it for me. That'll give us about forty-five
10 minutes for lunch.

11 MS. DRAWDY: Thank you, Your Honor.

12 (Whereupon, court was in recess at 2:10 pm)

13 (Whereupon, State's exhibits 2 - 7 were marked for
14 identification)

15 (Whereupon, court resumed at 3:10 pm)

16 THE COURT: All right. I'll be glad -- how long do you
17 believe you need to argue this case to me, Mr. Farnsworth?

18 MR. FARNSWORTH: Your Honor, I'm not going to need
19 long.

20 THE COURT: You're not?

21 MR. FARNSWORTH: No, ---

22 THE COURT: Ms. Drawdy.

23 MR. FARNSWORTH: --- I don't think so.

24 THE COURT: Okay. I think you've got the tape back.
25 I've watched the tape. I'll be glad to hear from you, Mr.

1 Farnsworth, about how this case is on all fours with ---

2 MR. FARNSWORTH: Okay.

3 THE COURT: --- Mt. Pleasant.

4 MR. FARNSWORTH: Your Honor, as you know, the Mt.
5 Pleasant case held that neither the -- this, of course,
6 involved, as we've said, a law enforcement vehicle that was
7 not equipped with the video camera device. And the town, of
8 course, held its -- its argument was really based on the
9 fact that they were under no obligation to, you know, to
10 purchase or request the tapes, that it was the obligation of
11 the Department of Public Service to supply tapes. Your
12 Honor, in any event, the court held that neither the
13 statutory exceptions in section (g) or the other exceptions
14 in section (b) of 2953 were excused and that the remedy or
15 sanction should be a dismissal of the case.

16 Your Honor, the -- I think the problem in this case is
17 that we have heard two witnesses today that told us things
18 that the court that decided the town of Mt. Pleasant didn't
19 have access to, all this information that's about the number
20 of videos, the requests, the funding, this type thing.

21 But I think this statute was doomed from the start
22 because it was just so totally and inadequately funded that
23 it was doomed to get in the financial shape it is now. In
24 other words, all the state agencies are having problems, but
25 I don't think the -- this one was ever going to get off the

1 ground just as we've heard today.

2 But the statute, 56-5-2953, is still in effect. It
3 hasn't been abolished. The town of Mt. Pleasant case is --
4 is that it's still law. Your Honor, I would just ask that
5 you just consider everything you've heard today on our
6 motion and render your decision.

7 **THE COURT:** How is this case different, Ms. Drawdy?

8 **MS. DRAWDY:** Your Honor, I think the record that the
9 court had to operate on to begin with is very different in
10 terms of what was before it. I believe that the state in
11 Mt. Pleasant relied on subsection (g) as it not applying and
12 was not prepared to make the type of proffer that has been
13 made today. So I believe Your Honor has before you an
14 entirely different record than the city of Mt. Pleasant case
15 had or the town of Mt. Pleasant.

16 Furthermore, even so, the court in the -- just before
17 the conclusion in the city of Mt. Pleasant makes the remark,
18 our decision should in no way be construed as eradicating
19 subsection (g) of section 56-5-2953. Instead, we emphasize
20 that subsection (g) is still viable and must be read in
21 conjunction with subsection (b) as these exceptions under
22 the appropriate factual circumstances could operate to
23 excuse a law enforcement agency's non-compliance due to the
24 failure to equip a patrol vehicle with a video camera.

25 I think that the totality of the circumstances analysis

1 ---

2 THE COURT: What page was that on? I read that
3 earlier, but I forgot where that was ---

4 MS. DRAWDY: It's just above the conclusion.

5 THE COURT: Oh, yeah.

6 MS. DRAWDY: It would probably ---

7 THE COURT: Okay.

8 MS. DRAWDY: It's on page 12 of the ---

9 THE COURT: All right.

10 MS. DRAWDY: --- copy near the top.

11 And they go on to conceive a scenario. And this
12 doesn't exactly match that, but that does not mean the only
13 scenario.

14 GPD was making efforts to get cameras. They wanted
15 cameras. There was no indication that they were in any way
16 acting in bad faith.

17 And I will remark about the line of cases under this
18 videotaping statute. When you look at Suchenski and Murphy,
19 Suchenski never did a totality of the circumstances
20 analysis. That was not preserved on appeal. And that is
21 something that clearly the statute and the Legislature
22 intended to be a catch-all.

23 If you look at the way the statute is written it goes
24 -- it sets forth a requirement and then it says -- it
25 expresses it in the negative, at best this statute is

1 awkwardly drafted. It expresses the dismissal option as in
2 a negative sense; this alone is not a reason.

3 It never says must be dismissed. And when the
4 appellate courts have looked at what the courts below have
5 done, they have been in a position of saying, was it error
6 to dismiss it? And they're saying, no, it's an appropriate
7 remedy. It wasn't until Murphy where, I would argue, an
8 incomplete record of the objective reality in the world was
9 not before the court.

10 And they saw what under, I think, what was in essence a
11 totality of the circumstances analysis, even though they
12 don't call it that, bad faith on the part of the agency is
13 what they thought they were seeing, and no effort, and as a
14 matter of fact, an effort not to acquit. And that may, in
15 fact, have been the case.

16 But -- so and then when you look at Murphy, the court
17 in some footnotes talks about the fact, this is the tape --
18 the statute where they found that they were, in fact, in
19 compliance with the statute, the requirements that the
20 previous version of the incident site statute that would
21 require that the defendant's conduct be included on the
22 incident site video.

23 And they said that simply because a portion of the
24 defendant's body was not visible on the camera during some
25 of the field sobriety tests, they still found them to be in

1 compliance. But they also remarked, I think it's
2 interesting in the footnotes and the asides that there -- it
3 does not appear that the officer was making some kind of
4 effort to get the defendant off the camera.

5 So I do believe that in point of fact, even though they
6 don't call it that, where the appellate courts have done to
7 the extent they're allowed to, they have -- the record has
8 permitted them below to do a totality of the circumstances
9 analysis and also have looked to see whether there was good
10 or bad faith on the part of the agency.

11 The -- what I would say are Herculean efforts on the
12 part of the GPD to equip its vehicles in as sensible a way
13 as they can, and a very expensive proposition, I might add,
14 they have done -- they have acted in utter good faith and
15 reasonably in attempting to equip their vehicles.

16 And in the case at bar, not only that, you have a
17 sergeant who is using his own personal camera when the --
18 when he had it available to document. And I would argue
19 that is the whole purpose of the videotaping statute for
20 DUIs.

21 It's not -- and again, I guess I am arguing a little
22 bit of a term of art with Judge Beatty. It's not to create
23 evidence, it's to document evidence on video. And that
24 effort was made. So there is not even an -- there is not a
25 whiff of bad faith on the part of the Greenville Police

1 Department.

2 So I would argue that this case is very different from
3 town of Mt. Pleasant versus Roberts on a number of accounts
4 and that this case should not be dismissed. Thank you.

5 **THE COURT:** Thank you. I have read the opinion. And
6 I'd read it when it first came out. I've read it with
7 multi-colored highlighters and pens trying to see exactly
8 where it goes.

9 I'm going to deny your motion, Mr. Farnsworth, and for
10 the Appellate Court's elimination of my thinking.
11 Obviously, I've read the case and what it says, but I think
12 when the court said under the specific facts of this case my
13 primary reliance is on footnote 15 of the opinion in light
14 of Court exhibits 7, 11 and 15 in this case. And that's
15 solely the basis upon which I'm making this decision. Well,
16 plus the interpretation of that statute and the totality of
17 the circumstances and considering section (b) and section
18 (g).

19 But, assumingly, the court there had the same
20 information that I have now, at least as to exhibit 15. And
21 they knew the date was April the 28th, which I presume they
22 had exhibit 7, the letter.

23 And I'm impressed by the fact that in Court exhibit
24 number 11, based upon the testimony of the witness that Mt.
25 Pleasant had -- was lined out and that they did not care to

1 participate in the program back in 2002 when this came out.
2 And I think certainly Judge Nicholson could have had that
3 evidence.

4 And I think that makes this case quite different from
5 that whereas Greenville was always seeking to get to the
6 trough to get the equipment when they could, expending their
7 own dollars in addition. So I respectfully deny your
8 motion.

9 Anything else we need to take care of before the jury
10 comes back and be sworn?

11 **MS. DRAWDY:** Nothing from the State other than a
12 request of the Court if you would be willing to write a
13 brief order to that effect. I know -- we're going to be re-
14 litigating this over and over again if we don't have some
15 sort of ---

16 **THE COURT:** Well, believing that it might be fact-
17 specific each time too, I don't know if you're going to have
18 a general order on that or not. But I've stated it on the
19 record. But I'm not going to write an order right now to
20 tie up the jury longer. They've waited forty-five minutes
21 already.

22 So we'll address that. I've stated my reasoning on the
23 record based upon the facts of that case in Mt. Pleasant and
24 what I've heard in this particular case. Anything else?

25 **MR. FARNSWORTH:** No, Your Honor.

1 **THE COURT:** All right. Let's have our jury come in.
2 They'll be sworn.

3 (Whereupon, the jury entered the courtroom at 3:25 pm)

4 **THE COURT:** I apologize, ladies and gentlemen. I
5 sometimes don't estimate as well as I should. And that's my
6 fault. We had a very late lunch. We've got the legal
7 matters taken care of now and we're ready to proceed with
8 the trial of the case.

9 I'm going to have the clerk administer an oath to you.
10 I hope that you will listen carefully as that oath is
11 administered. It's a time honored oath that's been in
12 existence well before the foundation of our country where
13 jurors such as yourself have sat in jury boxes similar to
14 the one you're in now, taking this oath and tried cases for
15 centuries, literally.

16 After the oath is given to you, the attorneys will have
17 a chance to make opening statements to you, give you an
18 overview, a roadmap of what you can expect as the case
19 develops. You're going to hear evidence, testimony.

20 What the lawyers have to say to you is not evidence,
21 but I'm confident that each of these attorneys will give you
22 valuable insights to help you in your analysis of the case
23 as it develops and ultimately as you conduct your
24 deliberations. All right. Ms. Lanfear, if you would,
25 administer the oath to the jury.

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1 **MADAME CLERK:** Yes, sir, Your Honor. Would you please
2 stand and raise your right hand. The response to the oath
3 is I will.

4 You shall well and truly try cases 2010-GS-23-0963, the
5 State versus Christopher Lee Johnson, indicted for driving
6 under the influence and 9684 for driving under suspension
7 and a true verdict rendered according to the law and the
8 evidence, so help you God?

9 **THE JURY:** I will.

10 **MADAME CLERK:** Thank you.

11 **THE COURT:** Solicitor, you may address the jury.

12 **MS. DRAWDY:** May it please the Court. Ladies and
13 gentlemen, the reason we're here today is to present a case
14 to you, the evidence that the State has, to convince you
15 firmly that Christopher Lee Johnson is guilty of the crimes
16 of driving under suspension and driving under the influence.

17 Now, as he sits right there, he's presumed innocent.
18 And the role of the prosecutor is to present the evidence
19 that the State has in as orderly a fashion as possible to
20 help you assess whether or not that presumption of innocence
21 has been overcome. And that's what the burden of proof is
22 about. That's what -- we have the burden, the burden of
23 going forth, the burden of proving it.

24 Now, it may surprise you for me to tell you that it is
25 not necessarily illegal to have a drink or maybe even two

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1 and get behind the wheel of a car in South Carolina. The
2 problem comes is when you've had enough that it's impaired
3 your faculties to drive. Made them less than they would
4 have been had you not had that drink.

5 Frequently we have a blood alcohol level. I'm going to
6 tell you right now you don't have that in this case. So
7 you're going to have to base your decision on the evidence
8 of some videotape that the Defendant is on and the testimony
9 of two officers who had up-close and personal contact with
10 the Defendant that night.

11 And that's where you will have to judge whether or not
12 he had been drinking alcohol and it had made a difference or
13 impaired his ability to operate a vehicle. It makes a
14 difference in the way he's driving or capable of driving.

15 So it doesn't mean you're drunk, it just means you're
16 impaired. So that's what you're going to have to decide
17 today.

18 The other charge is driving under suspension. And we
19 have a stipulation in this case that will help you a lot
20 with that charge. Basically what the State has to prove to
21 you is that someone operated a motor vehicle on a public
22 road while their privilege to drive in South Carolina was
23 under suspension and that the Department of Public Safety,
24 driver records had sent them adequate notice that they were
25 under suspension.

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1 The elements that we have to prove to you on DUI is
2 that in Greenville county the Defendant drove a motor
3 vehicle while under the influence, meaning his faculties to
4 drive were materially and appreciably impaired by the
5 consumption of alcohol. It can be drugs, but there's no
6 indication of drugs in this case. It's all about alcohol.

7 So I hope that simplifies for you what you're looking
8 for in this case so that you will know what's important as
9 the evidence is presented. And you are here to bring to
10 bear on this case your own knowledge of the world and how
11 things work and whether or not someone's being truthful,
12 whether or not someone was in a position to observe what
13 they tell you they saw, and what motivation they might have
14 to color the truth.

15 So you will judge the credibility of the witnesses and
16 what they're telling you. And you look at what they're
17 telling you in light of all the evidence in the case.
18 That's why the Judge will tell you don't make up your mind
19 until you've heard everything. You're measuring and
20 weighing everything and looking at this. And it's a
21 judgment call. And you are the judges.

22 You will hear testimony from two officers who were with
23 the Defendant that night. And you will be given an
24 opportunity to view the Defendant on videotape. There will
25 be some documents that are shown, the advisement of implied

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1 consent and a few things like that.

2 But that is evidence that you can expect to see this
3 afternoon. And I will ask you to return a verdict which
4 speaks the truth at the conclusion of the evidence. Thank
5 you.

6 MR. FARNSWORTH: May it please the Court.

7 THE COURT: Yes, sir, Mr. Farnsworth.

8 MR. FARNSWORTH: Mr. Foreman, and ladies and gentlemen,
9 we all appreciate your service on this jury. We hope it
10 will be something that you'll remember and be a positive
11 thing for you. We apologize for you having to wait like you
12 did, but we were involved in a thing that took a lot longer
13 than we thought it was going to take.

14 In any event, Mr. -- number one, the reason we're here
15 before you, ladies and gentlemen, is Mr. Johnson denies that
16 he was guilty of driving under the influence on the date and
17 time alleged in this indictment. I think it was like March
18 the 18th. I think it had been said it was St. Patrick's Day
19 all that day. It was about 2:00 in the morning. And it
20 happened in downtown Greenville. And so he denies that he
21 was guilty of that and has asked you, the jurors, to decide
22 his guilt or innocence.

23 We do, however, admit that Mr. Johnson was guilty of
24 driving under suspension that night. So -- but that will be
25 an indictment you'll have. But I can tell you now, you

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1 shouldn't take too much time on that one because we concede
2 that he was guilty of that.

3 Now in a trial like this, a driving under the influence
4 charge, you're going to have the usual testimony from the
5 witness stand from the officers involved, this type thing.
6 And in addition you're going to have -- you're going to see
7 some videotape. You're going to see a videotape of Mr.
8 Johnson on what we call field sobriety tests. It really
9 means what it says. And the breathalyzer room.

10 Those are two things that are almost always shown,
11 unless there's some exception, in a DUI case. So not only
12 will you have what you hear from the stand, you'll get to
13 see and listen as it's played on the -- by the video camera.

14 Now, ladies and gentlemen, under the laws of our state
15 and of the United States and the Constitution of this state,
16 United States, an accused person is always presumed to be
17 innocent. And they're never required to prove their
18 innocence. The burden's always on the state of South
19 Carolina to prove guilt that convinces you beyond a
20 reasonable doubt that the person committed the offense.

21 At the close of the case, again, after considering all
22 the evidence and the law that Judge Welmaker charges you
23 that applies to this case, you will take the facts and --
24 you take the law and apply it to the facts as you determine
25 them being and you'll reach a verdict.

DONNIE NG - DIRECT EXAMINATION BY MS. DRAWDY

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1 the record, and you'll have it for you later. But the
2 parties, the State and the Defendant in this case have
3 agreed that the privilege that Mr. Johnson had to drive in
4 South Carolina was under suspension on March the 18th, 2010
5 and that he had actual personal knowledge that his license
6 was under suspension on that date.

7 They further stipulate that on November the 17th, 2009
8 that there was a legal notice mailed to him at his address
9 of record that was on file with the Department of Motor
10 Vehicles informing him of the privilege to operate a motor
11 vehicle had been suspended beginning on December 7, 2009,
12 and it was an indefinite suspension still in effect on March
13 the 18th, 2010.

14 Furthermore, the stipulation is that on January the
15 29th, 2010 legal notice was mailed to the Defendant, again,
16 at his address of record that the Department of Motor
17 Vehicle was informing him that his privilege to operate a
18 motor vehicle was suspended beginning on January the 8th,
19 2010 and ending on October the 8th, 2010.

20 He was given actual notice of this. And that
21 suspension was still in effect on March the 18th, 2010. And
22 both of those notices that were sent to the Defendant
23 informed him that you may not drive until the suspension
24 period has ended, explained the steps that he would need to
25 take to have his license reinstated.

DONNIE NG - DIRECT EXAMINATION BY MS. DRAWDY

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1 And, furthermore, the stipulation of the parties is
2 that the Director of Public Safety provided a certificate
3 that these referenced notices were sent as required to the
4 Defendant at the address contained in those records at the
5 Department of Motor Vehicles by way of first class mail with
6 postage prepaid so that the mailing was accomplished.

7 Again, you'll have that document with you in your jury
8 room. That is the stipulation between the parties. All
9 right. Solicitor, you may examine the witness.

10 (Whereupon, State's exhibit 1 was admitted into
11 evidence)

12 Direct Examination by Ms. Drawdy:

13 Q. Sergeant Ng, you're employed with the Greenville Police
14 Department?

15 A. Yes, ma'am.

16 Q. How long have you been with the Greenville Police
17 Department?

18 A. A little over sixteen years.

19 Q. And is that the extent of your law enforcement
20 experience or did you have prior experience?

21 A. That is it.

22 Q. That is it. What kind of training did you receive?
23 Just an overview.

24 A. The basic police academy, detective school, advance
25 DUI, interviews. It's a long list of them.

DONNIE NG - DIRECT EXAMINATION BY MS. DRAWDY

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- 1 Q. Okay. Well, let's focus on the DUI part of that,
2 advanced DUI detection. What types of things are you taught
3 in that course, specifically?
- 4 A. It's the HGN, which is the horizontal gaze nystagmus,
5 the 9 step walk-and-turn and the one-leg stand.
- 6 Q. Okay. Those three things that you just described, are
7 those referred to as standardized field sobriety tests?
- 8 A. Yes, ma'am.
- 9 Q. And you have training in administering those yourself?
- 10 A. Yes, ma'am.
- 11 Q. Do you have experience in actually making DUI arrests
12 yourself during your career?
- 13 A. I have.
- 14 Q. Now on March 18th, 2010 were you still a road officer?
- 15 A. No, ma'am.
- 16 Q. What was your position at that time?
- 17 A. I was a sergeant of a downtown unit working the central
18 business district.
- 19 Q. Of downtown Greenville?
- 20 A. Of downtown Greenville.
- 21 Q. And do you recall what holiday March 17th was?
- 22 A. It was St. Patrick's Day.
- 23 Q. Were you in the downtown area patrolling or assisting
24 patrolmen who were out with the GPD that evening?
- 25 A. Yes, ma'am, I was.

DONNIE NG - DIRECT EXAMINATION BY MS. DRAWDY

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1 Q. What shift did you work?

2 A. It's night-shift, which is from 4 pm until 2:45 in the
3 morning.

4 Q. 2:45 am. And around 2:00 am approximately did you have
5 occasion to assist one of your officers who had stopped
6 someone on suspicion of DUI?

7 A. Yes, ma'am.

8 Q. And was that the Defendant in this case?

9 A. Yes, it was.

10 Q. Mr. Johnson?

11 A. Yes, it was.

12 Q. Can you tell me where you first came into contact with
13 the officer? Who was the officer?

14 A. It was Officer Lowe.

15 Q. Officer Lowe? And when did you first come into contact
16 with him and the Defendant? Where were they?

17 A. I heard him call out a traffic stop on Main Street. I
18 usually go check on the officers in downtown to make sure
19 they're okay. And I went down to, I believe it was McBee
20 and Main. That's where he was located at on the traffic
21 stop.

22 Q. And was the Defendant already out of his car?

23 A. Yes, he was.

24 Q. Did Officer Lowe request any kind of assistance from
25 you at all?

DONNIE NG - DIRECT EXAMINATION BY MS. DRAWDY

1 A. No, ma'am.

2 Q. Okay. Did he ask you for any equipment?

3 A. He did ask if I had a video camera in my vehicle. And
4 I told him no.

5 Q. So you did not have a video camera ---

6 A. I did not.

7 Q. --- in your vehicle? Did you have a camera?

8 A. I did have a camera.

9 Q. Can you tell us about that camera? Was it issued by
10 the Department?

11 A. It was not. Actually, I've seen a small camera being
12 worn by officers before. And I thought it was a good idea.
13 And I found one on the internet fairly cheap. And I just
14 happened to wear one on my uniform that night.

15 Q. Okay. And so did you use that to videotape the
16 administration of the field sobriety tests to Mr. Johnson?

17 A. I did.

18 Q. Can you describe -- did you have a conversation with
19 the Defendant that night?

20 A. I did have a conversation with him. It was after
21 Officer Lowe had advised him of his Miranda rights.

22 Q. And did you form an opinion of his sobriety after you
23 had been observing him?

24 A. Yes. He appeared to be impaired.

25 Q. And why do you say he was impaired? What about him

DONNIE NG - DIRECT EXAMINATION BY MS. DRAWDY

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1 made you think he was impaired?

2 A. Based on the DUI training. He didn't do so well on the
3 HGN, the walk-and-turn, the 9 step.

4 Q. And you referred to the HGN. What is that -- what is
5 the term -- what is that test?

6 A. It's the horizontal gaze nystagmus, which is the
7 twitching of the eye when you're impaired.

8 Q. Impaired by alcohol?

9 A. Alcohol or drugs.

10 Q. Okay. I'm going to show you State's exhibit 2 and ask
11 you if you recognize this?

12 A. Yes. That is the video of the incident with my
13 initials on it.

14 Q. So is this a copy of the video that you made that
15 night?

16 A. No. That one was placed in property and evidence.

17 Q. Is this a copy of it?

18 A. Yes, it is.

19 Q. Have you viewed it?

20 A. Yes, I have.

21 Q. And is it a fair and accurate depiction of what
22 happened that night?

23 A. Yes, it was.

24 Q. And how do you know that you viewed it?

25 A. Because I initialed by it after I viewed the video.

DONNIE NG - DIRECT EXAMINATION BY MS. DRAWDY

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1 Q. Okay.

2 MR. FARNSWORTH: Without objection.

3 MS. DRAWDY: Your Honor, at this time we'd like to
4 introduce this as State's exhibit 2.

5 THE COURT: Without objection, exhibit 2 is admitted
6 into evidence.

7 (Whereupon, State's exhibit 2 was admitted into
8 evidence)

9 MS. DRAWDY: And we'd like to publish it to ---

10 THE COURT: You may ---

11 MS. DRAWDY: --- the jury at this time.

12 THE COURT: --- publish it to the jury whenever you
13 wish.

14 (Whereupon, State's exhibit 2, video, was published to
15 the jury)

16 (Whereupon, video was stopped)

17 Q. Okay. Office Ng -- Sergeant Ng, did -- was Officer
18 Lowe aware that you were videotaping at this time?

19 A. He was not. He didn't know I had the camera on me.

20 Q. Okay.

21 (Whereupon, video was continued)

22 (Whereupon, video was stopped)

23 Q. Sergeant Ng, let me ask you a few questions about
24 what's happening right now. Is this the horizontal gaze
25 nystagmus test?

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1 A. Yes, it is.

2 Q. What is -- you were training in the administration of
3 this test yourself?

4 A. Yes, I was.

5 Q. What is it that Officer Lowe was looking for to -- that
6 would indicate alcohol in the system?

7 A. It's the involuntary twitching of the eyes and also the
8 lack of smoothness pursuit of the tracking of the eyes.

9 Q. Okay. Is that something that you would expect to be
10 able to see in this -- from the point where you're
11 videotaping?

12 A. No.

13 Q. Okay. You wouldn't be able to see it in the video?

14 A. No.

15 Q. The actual twitching?

16 A. No.

17 Q. Okay. And is this normally videotaped from an in-car
18 camera?

19 A. Yes, it would be.

20 Q. And how far away is that usually?

21 A. Pretty far away. So definitely you wouldn't be able to
22 see any type of twitching.

23 Q. Okay.

24 (Whereupon, video was continued)

25 (Whereupon, video was stopped)

DONNIE NG - DIRECT EXAMINATION BY MS. DRAWDY

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1 Q. Sergeant Ng, this vehicle that's shown in your video,
2 whose vehicle is that?

3 A. That is the vehicle that was -- that the Defendant was
4 operating that night.

5 Q. Okay. All right. You were obviously videotaping this.
6 So did you have an opportunity to observe the Defendant's
7 performance on the field sobriety tests?

8 A. I did.

9 Q. What did you notice about his performance?

10 A. It's not very good. He obviously seemed impaired.

11 Like I said, the HGN, horizontal gaze nystagmus, he did -- a
12 lot of times when you do -- when you move the pen straight
13 across on someone that's not impaired, it's very smooth.
14 There is no stopping.

15 In this incident you can actually see the stopping and
16 then his eyes would jump to the next section when the pen
17 moves further. And then when you're out far, far away the
18 eyes would twitch.

19 And then the following of directions on the walk-and-
20 turn and also the one-leg stand he did not do very well on
21 following directions. He failed both of those tests.

22 Q. Okay. Did you notice anything about his balance or his
23 stability?

24 A. Yes. He was -- he's off balance. Even when we were
25 doing the horizontal gaze nystagmus he was -- started to

DONNIE NG - CROSS EXAMINATION BY MR. FARNSWORTH

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1 fall backwards. That's why I moved to the side of him just
2 in case if he does fall back I can catch him so he won't
3 hurt himself.

4 Q. And did you hear him say how many beers he'd had to
5 drink that night?

6 A. I did. He said five or six. And that's why in my
7 initial conversation with him I was asking him if he had
8 five or six beers how come he was operating a vehicle that
9 night.

10 Q. And approximately what time of the evening was this?

11 A. I think it was about two am.

12 Q. And where is this?

13 A. It was on Main Street and McBee. I think he was --
14 when I got there the vehicle was obviously pointing
15 southbound Main Street.

16 Q. And is this within the city limits of Greenville where
17 this occurred?

18 A. It was, city limits, downtown Greenville.

19 Q. And is that within Greenville county?

20 A. That's within Greenville city and Greenville county.

21 Q. Please answer any questions that the defense counsel
22 might have for you.

23 **Cross Examination by Mr. Farnsworth:**

24 Q. Okay. Sergeant Ng, how far away were you from him when
25 you were making the video that we just saw?

DONNIE NG - CROSS EXAMINATION BY MR. FARNSWORTH

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- 1 A. It's hard to say. I guess probably about five feet
2 maybe.
- 3 Q. Five feet?
- 4 A. I moved -- I moved around a lot the whole time. It's
5 very hard for me to say, to give you a ---
- 6 Q. Okay. Well, just -- just try to -- like how far Mr.
7 Johnson and you, yourself, about how far were you standing?
8 Just tell me whether to come closer or back.
- 9 A. Closer.
- 10 Q. Closer?
- 11 A. Yeah.
- 12 Q. You were this close to him?
- 13 A. I would say so.
- 14 Q. Okay. And I think you said when you first saw Mr.
15 Johnson or the officer, well, Officer Lowe, that Mr. Johnson
16 was already out of the car, he was -- he'd already pulled
17 into a parking space, is that correct?
- 18 A. Yes.
- 19 Q. So of your own knowledge you don't even know where he
20 came from, do you?
- 21 A. No. I have no idea.
- 22 Q. You don't know what road he traveled to get there to
23 where he ended up?
- 24 A. No, sir. I ---
- 25 Q. Okay.

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1 A. --- didn't know where he was heading or the whole
2 situation of the traffic stop.

3 Q. All right. And now I believe you testified that Mr.
4 Johnson told you he'd had five or six beers, is that
5 correct?

6 A. Yes, sir.

7 Q. Did you ask him over what period of time he had those
8 beers?

9 A. I did not.

10 Q. Did you ask him what time it was the last beer he had?

11 A. I did not.

12 Q. And you said it was about 2:00 in the morning though
13 when you had this conversation?

14 A. Yes, sir.

15 Q. Okay. So actually your part in this was using your
16 camera to take video?

17 A. Yes, sir.

18 Q. And you didn't take part in any other part of the
19 arrest?

20 A. No, sir.

21 Q. Okay. Thank you. That's all I have.

22 **MS. DRAWDY:** That's all I have for this witness, Your
23 Honor.

24 **THE COURT:** All right. Thank you. You may step down,
25 Officer Ng.

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

1 MS. DRAWDY: The State calls Officer Jesse Lowe.

2 Jesse Lowe, being duly
3 sworn testified as follows:

4 MADAME CLERK: Thank you. You may be seated. Would
5 you please state your full name for the record.

6 MR. LOWE: Jesse D. Lowe.

7 MADAME CLERK: Thank you.

8 Direct Examination by Ms. Drawdy:

9 Q. Officer Lowe, you're employed with the Greenville
10 Police Department?

11 A. Yes, ma'am.

12 Q. And are you the arresting officer in this case?

13 A. I am, ma'am.

14 Q. What shift did you work that evening?

15 A. Night-shift, which is from 7:40 pm til seven in the
16 morning the following day.

17 Q. How long had you been with the Greenville Police
18 Department about this time?

19 A. A year and two months.

20 Q. A year and two months.

21 A. Yes, ma'am.

22 Q. Had you also received some training prior to this
23 incident?

24 A. I had, ma'am. I had completed the basic officer's
25 academy for the state of South Carolina. And also I had

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 been through training in running a DataMaster as well as
2 advanced field, excuse me, advanced DUI detection, which
3 includes the three field sobriety tests.

4 Q. I want to take you back to your activities shortly
5 before you made this stop. Did you make a traffic stop on
6 the Defendant's vehicle?

7 A. I did, ma'am.

8 Q. What was it that caught -- drew your attention to this
9 vehicle?

10 A. I was driving northbound on Main Street just prior to
11 the intersection of Main and McBee. I observed a red Ford
12 Explorer backing out of a parking spot without any
13 headlights on. At that time, as he was backing out, I was
14 going through the light at McBee and Main as it was a yellow
15 light. I was traveling northbound on Main Street.

16 When I passed the Defendant I still didn't see him turn
17 his headlights on. So I did a u-turn behind the vehicle on
18 Main Street. When I got behind the vehicle it was stopped
19 at the red-light at McBee and Main. One of its brake lights
20 was not operational.

21 The Defendant's vehicle then pulled halfway into the
22 intersection while the light was still red and stopped in
23 the middle of the intersection. Once the light went green
24 he continued through the intersection. At that time I
25 activated my blue lights to initiate a traffic stop.

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

1 Q. And did he pull over?

2 A. He pulled -- he did. He pulled into a parking spot on
3 Main Street close to the intersection of Main and McBee.

4 Q. And at that point did you pull into a parking space as
5 well or were you on the street?

6 A. I was on the street at that point.

7 Q. How long did it take you to get over to the car or did
8 you approach the car?

9 A. Approximately ten seconds, if that. I would have had
10 to call out the traffic stop on the radio to our dispatch
11 and then approach the driver's door.

12 Q. And did you have a conversation with the Defendant when
13 you approached his vehicle?

14 A. I did.

15 Q. What did -- what transpired when you first started
16 talking to him and what did you observe about him?

17 A. When I approached him, before I even spoke to him, I
18 made eye contact with him. And I observed his eyes to be
19 glassy. I also noticed he had a wristband on his wrist from
20 Wild Wings, which is a local -- a local bar and café just
21 down from the incident location.

22 I advised him I stopped him for not having headlights,
23 for the defective brake light and also for the red-light
24 violation.. I'd asked him -- I then asked him if he had
25 anything to drink. And he stated too much. I asked him how

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 much too much was. And at that point he stated six or seven
2 beers at least.

3 Q. Okay.

4 A. I then had him step out of the vehicle, patted him down
5 for weapons. And I had him stand at the side of his
6 vehicle. I then returned to my patrol vehicle, parked it in
7 a parking spot close to his vehicle and deactivated my blue
8 lights.

9 Q. Okay. And did you notice a smell of alcohol on him?

10 A. I did. He did have an odor of alcoholic beverage
11 coming from his person.

12 Q. And had you been in the downtown area throughout the
13 evening?

14 A. I had not.

15 Q. You had not?

16 A. No, ma'am.

17 Q. So you were just coming through ---

18 A. Yes, ma'am.

19 Q. --- Main Street? So what was the reason why you
20 actually stopped him?

21 A. For the -- not have headlights on, the brake light
22 being out and for running that red-light.

23 Q. Now we see you writing on a pad in the video.

24 A. Um-hum (affirmative).

25 Q. What are you doing then?

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 A. I'm reading -- reading and writing on a notepad that
2 was provided to me during my advance DUI class. And it just
3 lists the -- it has the instructions that I read to the
4 Defendant about -- for the three field sobriety tests. And
5 it just has little checkmarks next to each possible clue
6 that you could see during the tests.

7 Q. And you referred to clues on each test.

8 A. Yes, ma'am.

9 Q. What is a -- generally speaking, what is a clue on the
10 horizontal gaze nystagmus test and how many possible clues
11 are there?

12 A. There are eight possible clues. And the clue in this
13 case would be something that you would see in someone who's
14 impaired by either drugs and/or alcohol, but you would not
15 see in someone who is not impaired. An example would be the
16 involuntary twitching of their eye that Sergeant Ng
17 explained earlier.

18 Q. Okay. The involuntary twitching. And what is that
19 caused by?

20 A. It's caused by either alcohol or drugs.

21 Q. And what did you notice when you were observing the
22 Defendant? What was the purpose of your moving the pen back
23 and forth and what were you looking for?

24 A. Okay. At that point there are four different clues.

25 And each eye, excuse me, each direction and each eye counts

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 for one, totals eight clues. At first you're looking for
2 lack of smooth pursuit, which is, you know, you're going
3 back and forth. If the eyes are jumping, that is one of the
4 clues.

5 Q. Did you observe that?

6 A. I did, in both eyes and both directions. Another clue
7 is to look for nystagmus, which is the involuntary twitching
8 of the eyes at maximum deviation when the finger gets all
9 the way out to the edge to just where the finger is almost
10 out of the Defendant's vision on each side. And I did
11 observe nystagmus at maximum deviation in both eyes on both
12 sides.

13 The third clue is looking for onset of that nystagmus
14 before forty-five degrees. And the fourth clue is onset of
15 nystagmus when you're going horizontal, having them look
16 upwards. And I did observe that in both eyes, both of those
17 clues in both eyes.

18 Q. You did observe that clue as well?

19 A. Yes, ma'am. All eight clues were seen in this
20 instance.

21 Q. Now is this something that someone can control?

22 A. It is not.

23 Q. Is it ---

24 A. It's involuntary.

25 Q. It's involuntary?

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1 A. Yes, ma'am.

2 Q. So if someone has consumed alcohol, they can't practice

3 this test ---

4 A. They cannot.

5 Q. --- to keep it from happening?

6 A. No way, shape or form.

7 Q. All right. So is that the first test that you were

8 taught to administer in your class?

9 A. It is, ma'am.

10 Q. And what is the second test you're taught to

11 administer?

12 A. The walk-and-turn test.

13 Q. And what clues did you observe on that test, if any?

14 A. The first clue I observed is the Defendant was unable

15 to stand as instructed with his right foot in front of his

16 left with his hands down to the side. He -- after I asked

17 him to do that, he stepped off the line a couple of times.

18 And for his safety, so he would not fall over, I just

19 advised him to stand normal, which is when you can see him

20 spread his legs on the line.

21 He also failed to touch heel to toe on all steps except

22 for the final three steps. And although I'd instructed him

23 not to, which is another clue, he used his arms to balance.

24 The test specifically states not -- that he cannot raise his

25 arms at all. And it more specifically states that he should

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 not raise them more than six inches from his body. And he
2 did do that multiple times.

3 Q. And you told him not to use his arms ---

4 A. Yes. I told him to keep his arms down at his sides.
5 His arms down to the side.

6 Q. So what did his performance on that test indicate to
7 you?

8 A. That he was, in fact, unable to control his movements
9 and he was under the influence of alcohol.

10 Q. Is there a third test that you were taught to
11 administer?

12 A. There is. It's the one-leg stand test. That test asks
13 the subject to stand with one leg approximately six inches
14 off the ground, keeping that foot parallel -- that one foot
15 off the ground parallel to the ground, you know,
16 approximately six inches off the ground for thirty seconds
17 while counting one thousand one, one thousand and two and so
18 forth until they get to thirty.

19 The Defendant was only able to keep his foot up until
20 he got to nine one thousand. I had him continue at which
21 point once he -- he began starting or he started from
22 eleven. I told him to go back to nine.

23 He started from nine. And once he got to thirteen one
24 thousand he stopped saying one thousand and just counted
25 thirteen, fourteen, fifteen and so on. He was only able to

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 get to sixteen in the thirty seconds of testing -- the
2 thirty seconds the test was given for.

3 Q. Was he holding his foot up the appropriate height off
4 the ground?

5 A. Yes.

6 Q. He was?

7 A. Yes. Except for when he sat it down ---

8 Q. Okay.

9 A. --- and touched the ground after the nine seconds.

10 Q. So what did his performance on that test indicate?

11 A. It, again, indicated that he was materially and
12 appreciably impaired and was unable to correctly pass this
13 test.

14 Q. Officer Lowe, do you, yourself, drink?

15 A. I do.

16 Q. Have you been around people who were impaired before
17 you became an officer?

18 A. I have.

19 Q. Okay. What are -- are there some other things
20 unrelated specifically to field sobriety tests that you
21 observed about the Defendant that would lead you to believe
22 that he was impaired by alcohol?

23 A. The strong odor of alcohol. He spoke to me about a
24 female that was going to drive him home that he had said had
25 waved at him. During -- before the traffic stop, during the

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1 traffic stop and after the Defendant was placed into
2 custody, at no point did I see any female concerned in any
3 way, shape or form of the Defendant. He just kind of -- I'm
4 not really sure where the -- where this female was or if she
5 ever even existed per se.

6 Q. After you placed him under arrest for driving under the
7 influence -- and you did give him his Miranda rights at one
8 point, correct?

9 A. Yes.

10 Q. At the very beginning of the encounter?

11 A. Yes, ma'am.

12 Q. Did you -- where did you take him?

13 A. At that point he was placed in the back of my patrol
14 vehicle where he, again, was read his rights from the --
15 from my field sobriety manual. I then took him to the
16 Greenville County Detention Center where after a long couple
17 of minutes in a -- in his cell to use the restroom, we went
18 into a DataMaster room, which is where the breathalyzer
19 machine is.

20 Q. All right. Let me stop you there.

21 A. Sure.

22 Q. As part of your training were you also trained on the
23 proper administration of DataMaster tests?

24 A. I was, ma'am.

25 Q. Were you certified to operate a DataMaster, ---

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 A. Yes, ma'am.

2 Q. --- administer DataMaster tests?

3 A. Yes, ma'am.

4 Q. Who trained you and certified you?

5 A. The South Carolina Criminal Justice Academy, one of
6 their ---

7 Q. And when were ---

8 A. --- instructors.

9 Q. --- you first certified?

10 A. A couple of months before the incident. I can tell you
11 the exact date. The 2nd of, I'm sorry, yeah, 2/4 of 2010.
12 So about a month and two weeks before exactly.

13 Q. Okay. And have you administered other field sobriety
14 -- other DataMaster tests prior?

15 A. I have.

16 Q. Tell me what a DataMaster instrument is and what it
17 measures, just in general.

18 A. It measures the alcohol level on someone's breath.

19 MS. DRAWDY: Your Honor, we'd like to offer Officer
20 Lowe is certified and to administer breath DataMaster tests
21 in South Carolina.

22 MR. FARNSWORTH: Without objection.

23 THE COURT: Without objection.

24 Q. Officer Lowe, when you went into the testing facility
25 -- let me ask you, was this also videotaped?

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 A. It is as soon as the system is activated. It's one of
2 the first things we do as soon as we walk them over is turn
3 the camera system on.

4 Q. Before we show the video could you tell me what --
5 whether or not you went over with the Defendant his
6 advisement of his implied consent rights?

7 A. Yes. As soon as you -- after entering the Defendant's
8 data or while entering the Defendant's data into the
9 machine, two advisement of the implied consent rights are
10 printed out, one for the Department records and one for the
11 Defendant. And we did read over it, and he did sign my
12 copy, which was turned in.

13 Q. Is that part of the procedure that you're required to
14 do?

15 A. Yes, ma'am.

16 Q. Let me show you State's exhibit 3 and ask you if you
17 can identify this document?

18 A. This is the advisement of implied consent that was read
19 to the Defendant on the night of the incident or the morning
20 of the incident.

21 Q. And did he sign it as acknowledging the receipt of that
22 document?

23 A. He did.

24 Q. And did you provide that to him in writing before
25 asking him if he would take the test?

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 A. I did.

2 Q. Okay.

3 MR. FARNSWORTH: Without objection.

4 MS. DRAWDY: Okay. Your Honor, we'd like to enter this
5 as State's exhibit 3.

6 THE COURT: Without objection, exhibit 3 is admitted
7 into evidence.

8 (Whereupon, State's exhibit 3 was admitted into
9 evidence)

10 MS. DRAWDY: Publish it to the jury.

11 THE COURT: You may do so.

12 Q. Does advisement of implied consent have different
13 languages on it?

14 A. It does. English and Spanish, ma'am.

15 Q. Okay. And what's at the top?

16 A. English.

17 Q. All right. After you advised him of his implied
18 consent rights did you -- did you check his mouth for
19 foreign material?

20 A. I did.

21 Q. Why did you do that?

22 A. To make sure that there was nothing in his mouth that
23 could affect the test.

24 Q. And when it came time for him to provide a breath
25 sample did he, in fact, provide one?

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 A. He did not. He refused to provide a breath sample.

2 Q. He produced -- refused it. And did you document that
3 by running the SLED breath test report?

4 A. I did at that point. Again, two copies of his breath
5 alcohol analysis test report printed out. One for the
6 Department records and one for him. And he did sign my
7 copy. And I did sign his and provide it to him.

8 Q. All right.

9 A. And it does have his -- where it says subject's sample
10 highlighted and states that he refused.

11 Q. Okay. I'm going to show you State's exhibit 5. Is
12 that the document that was generated by the instrument
13 following his refusal?

14 A. Yes, ma'am.

15 Q. And did he sign acknowledging a receipt of that?

16 A. He did.

17 Q. And approximately what time was this?

18 A. 3:36 in the morning.

19 Q. 3:36 in the morning, am.

20 A. On that same date, the 18th of March, 2010.

21 Q. And did you wait twenty minutes before you ran that
22 sequence ---

23 A. I did.

24 Q. --- from the time ---

25 A. Yes, ma'am.

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

1 Q. Why is that?

2 A. The required twenty minute waiting period is to make
3 sure there's no residual alcohol left on the Defendant -- in
4 the Defendant's mouth to make sure the results are not
5 higher than what they actually should be.

6 Q. So had he elected to take the test, that would have
7 been important?

8 A. Yes, ma'am.

9 Q. When you read the advisement of implied consent is the
10 Defendant advised about the consequences of refusing the
11 test?

12 A. Yes, ma'am.

13 Q. Would you -- and please speak up a little bit. Your
14 voice is ---

15 A. I'm sorry.

16 Q. --- very soft spoken. That's all right. Would you
17 read the advisement as you read it to him that night.

18 A. It states, you're under arrest for driving under the
19 influence, DUI, section 56-5-2930, South Carolina Code of
20 Laws, 1976 as amended. The arresting officer has directed
21 that samples be taken for alcohol and/or drug testing. The
22 samples will be taken and tested according to section 56-5-
23 2950 and SLED policies.

24 You do not have to take the test or give the samples,
25 but if you refuse to submit to the test your privilege to

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1 drive in South Carolina must be suspended or denied for at
2 least six months. And your refusal may be used against you
3 in court.

4 If you take the test or give the samples and have an
5 alcohol concentration of eight one hundredths of one percent
6 or more, .08, you may instead be charged with driving with
7 an unlawful alcohol concentration, DUAC, which is section
8 56-5-2933. If you have an alcohol concentration of fifteen
9 one hundredths of one percent or more, .15, your privilege
10 to drive in South Carolina must be suspended for at least
11 one month.

12 You have the right to have a qualified person of your
13 own choosing conduct additional independent tests at your
14 expense. And the officer, upon request, must provide you
15 affirmative assistance.

16 You have the right to request an administrative hearing
17 within thirty days of the issuance of a notice of
18 suspension. If you do not request an administrative hearing
19 or if your suspension is upheld at the administrative
20 hearing, you must enroll in an alcohol and drug safety
21 action program.

22 Q. So he was told that it could be used against him in
23 court if he refused?

24 A. Yes, ma'am.

25 Q. And also that his license would be suspended for at

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

1 least six months?

2 A. Yes, ma'am.

3 Q. And as a result of his refusal was there paperwork to
4 be done to suspend his license?

5 A. There was. A South Carolina Department of Motor
6 Vehicles notice of suspension was completed and was also
7 signed by the Defendant.

8 MR. FARNSWORTH: No objection.

9 Q. I'm going to ask you if this is a carbon copy of the
10 notice of suspension that you gave him that night?

11 A. It is.

12 MS. DRAWDY: Your Honor, we'd move this in as State's
13 exhibit 6.

14 THE COURT: Without objection, exhibit 6 is admitted.

15 (Whereupon, State's exhibit 6 was admitted into
16 evidence)

17 MS. DRAWDY: Your Honor, we'd also move State's exhibit
18 5 into evidence at this time.

19 THE COURT: Any objection ---

20 MR. FARNSWORTH: No objection.

21 THE COURT: --- to exhibit 5? Any objection?

22 MR. FARNSWORTH: No. No objection.

23 THE COURT: Without objection, exhibit 5 is also into
24 evidence.

25 (Whereupon, State's exhibit 5 was admitted into

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 evidence)

2 Q. I'm going to show you State's exhibit 4 and ask you if
3 this is a DVD that you have viewed before?

4 A. It is, ma'am.

5 Q. How do you know?

6 A. Because I initialed it after viewing it.

7 Q. Okay. And with the exception of a few audio
8 redactions, is this a fair and accurate copy ---

9 A. Yes, ma'am.

10 Q. --- of what transpired that night in the DataMaster
11 room?

12 A. Yes, ma'am.

13 MS. DRAWDY: Your Honor, at this time I'd like to pass
14 up for the Court's record Court's exhibit 16, which is a
15 list of audio redactions that have been agreed upon by the
16 parties.

17 (Whereupon, Court's exhibit 16 was marked and admitted
18 into evidence for the Court's record)

19 MS. DRAWDY: If you would instruct the jury that
20 they're not to be worried that there's some kind of
21 tampering.

22 THE COURT: All right.

23 MS. DRAWDY: And then I'll publish it.

24 THE COURT: Again, this is a video taken. And
25 sometimes extraneous matters comes out in the videotape from

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

1 whatever source that may be in the room. So if there are
2 gaps where it's muted, then, of course, you should not
3 consider that it's been tampered with in any way. These
4 are, by agreement of the parties, that these particular
5 sections will be deleted from a legal standpoint. Any
6 objection to exhibit 4 as ---

7 MR. FARNSWORTH: No, Your Honor.

8 THE COURT: --- as redacted? Without objection,
9 exhibit 4 is admitted into evidence and may be published.

10 (Whereupon, State's exhibit 4 was admitted into
11 evidence)

12 Q. Now are you required by statute to videotape -- have
13 this videotaped?

14 A. Yes, ma'am.

15 Q. Who is in charge of videotaping?

16 A. SLED.

17 Q. Okay. And is that centrally downloaded in Columbia?

18 A. As far as I know, yes, ma'am.

19 Q. Okay. Do you have any access to the recording other
20 than to view it on-line at a later date?

21 A. No, ma'am.

22 (Whereupon, State's exhibit 4, video, was published to
23 the jury)

24 (Whereupon, video was stopped)

25 Q. Officer Lowe, can you explain the set-up of this

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 facility where you are?

2 A. All right. Yes, ma'am. In the lower left hand corner
3 is the control module for the camera system. In front of me
4 is the DataMaster machine with a keyboard. And then up on
5 the upper right hand corner is the camera system where it
6 just shows that it's recording and has the date, time and
7 information for the video reporting.

8 Q. Is this the only instrument at the Law Enforcement
9 Center?

10 A. No. At that time there were four available within the
11 Law Enforcement -- within the Detention Center.

12 Q. To the right of you -- to your right in the video, your
13 back is to the camera.

14 A. Yes, ma'am.

15 Q. Is -- there's a window.

16 A. Yes.

17 Q. Is that -- and is there glass in that window?

18 A. There is.

19 Q. On the other side of that is -- is that another cubicle
20 for DataMaster?

21 A. There was. And it's being used. If there's some audio
22 interference, there was another ---

23 Q. Okay. So occasionally you will hear some talking or
24 sounds of the other instrument ---

25 A. Yes, ma'am.

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 Q. --- from the room next door to you?

2 A. Yes.

3 (Whereupon, video was continued)

4 Q. What are you doing at this point?

5 A. I'm entering the Defendant's information into the
6 computer system, his name, address, my information, my
7 DataMaster certification number. It also requires some
8 information I needed to retrieve off of my ticket book as
9 well as from my MDT, my computer system.

10 (Whereupon, video was stopped)

11 Q. Okay. What are you doing here, Officer Lowe?

12 A. I was giving the Defendant a sealed mouthpiece. Each
13 test is done with it through the same hose, but there's
14 sealed mouthpieces we give the subjects to open and use at
15 that time so they're not ---

16 Q. So you were opening a sterile mouthpiece?

17 A. Well, I was giving him the chance to open it. I
18 normally let the person ...

19 (Whereupon, video was continued)

20 (Whereupon, video was stopped)

21 Q. Officer Lowe, we see you doing a lot in the BA room.

22 Is there a lot of paperwork associated with a DUI?

23 A. There is.

24 Q. Okay. And what shift were you working, again, that
25 night?

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 A. Night-shift.

2 Q. And what did that run from?

3 A. 6:40 pm til 7 am the following morning.

4 Q. Among those things that you were filling out did you
5 fill out what's known as an affidavit for failure to produce
6 videotape?

7 A. Yes, ma'am.

8 Q. What does that refer to?

9 A. It refers to my vehicle not being equipped at the time
10 of the arrest or, excuse me, at the time of the field
11 sobriety test and arrest with an in-car video camera.

12 Q. Okay. Is that something that is part of the paperwork
13 you're required to do?

14 A. It is. This was actually filled out later that
15 morning.

16 Q. Okay.

17 A. These forms are not available in the Detention Center.

18 Q. Okay. So you filled that out later that morning?

19 A. Yes, ma'am.

20 MS. DRAWDY: This is State's exhibit 7.

21 MR. FARNSWORTH: No objection.

22 THE COURT: Without objection, exhibit 7 is admitted
23 into evidence

24 (Whereupon, State's exhibit 7 was admitted into
25 evidence)

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 Q. So you didn't have a video camera available to record
2 the Defendant's driving that night?

3 A. No, ma'am.

4 Q. But as soon as you -- as luck would have it the field
5 sobriety tests were recorded by Sergeant Ng?

6 A. Yes, ma'am.

7 Q. Okay.

8 MS. DRAWDY: Would you mark this as 8?

9 (Whereupon, State's exhibit 8 was marked for
10 identification)

11 Q. I'm going to show you State's exhibit 8 and ask you if
12 you recognize this?

13 A. I do, ma'am.

14 Q. What is that?

15 A. This is a photo of the Defendant. I believe it's his
16 booking photo from the night of the incident.

17 Q. All right. And does that photo fairly and accurately
18 depict his appearance that night?

19 A. It does.

20 Q. Okay.

21 A. Except for his shirt looks different.

22 Q. Okay. Now -- and this is State's exhibit 8, correct?

23 A. Yes, ma'am.

24 Q. You saw the Defendant driving that night?

25 A. Yes, ma'am.

JESSE LOWE - DIRECT EXAMINATION BY MS. DRAWDY

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1 Q. Where was he driving and what was he driving?

2 A. He was driving a red Ford Explorer with a paper tag.

3 He was driving southbound on South Main Street at the
4 intersection of East and West McBee within the city limits
5 of Greenville, South Carolina.

6 Q. Okay. Did you actually view him behind the wheel ---

7 A. Yes, ma'am.

8 Q. --- operating the vehicle?

9 A. I did.

10 Q. What charges did you make that night against him?

11 A. The Defendant was charged with driving under
12 suspension, DUI and also charged with improper display of a
13 tag.

14 Q. Okay.

15 A. And then he was given a warning for the driving without
16 headlights and without the brake light, a written warning
17 and a verbal warning to the red-light violation.

18 Q. Okay. And what was the red-light violation that you
19 observed?

20 A. As I was driving northbound on South Main Street, just
21 before McBee, I observed him backing out of the parking
22 spot, as I said, did a u-turn behind him after I went
23 through the intersection. When I went through the
24 intersection I observed the light in both directions,
25 obviously, turning yellow so that McBee could cross Main.

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1 At that time I did a u-turn behind the Defendant. When
2 I did a u-turn he was at the intersection of South Main and
3 McBee at a red-light. He then went forward, I'd say, about
4 thirty feet to the point where his rear tires were twenty
5 feet from the crosswalk into the intersection of Main and
6 McBee while the light was still red.

7 Q. And based on your observations did you feel he was too
8 impaired to be operating a vehicle safely?

9 A. Yes, ma'am, absolutely.

10 Q. Please answer any questions Mr. Farnsworth may have.

11 **THE COURT:** Can I see the attorneys here just for a
12 moment?

13 (Whereupon a bench conference was held off the record
14 in the presence of the jury, but out of their hearing)

15 **THE COURT:** Mr. Foreman, ladies and gentlemen, before
16 we start the cross examination, I understand from the
17 attorneys that we don't have a lot more testimony today, but
18 I'd like to see if we can get at least the State's case in
19 today.

20 So I'm going to give you a short break. We won't keep
21 you too long this evening. We'll just take about a five
22 minute break. Go stretch and we'll call you back in about
23 five to ten minutes. As soon as you're ready we'll call you
24 back. Don't discuss the case while you're out in your jury
25 room.

JESSE LOWE - CROSS EXAMINATION BY MR. FARNSWORTH

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1 (Whereupon the jury exited the courtroom at 5:03 pm)

2 THE COURT: Let's take a real short break. Officer
3 Lowe, let me remind you not to discuss your testimony with
4 anyone while we're out.

5 A. Yes, sir.

6 THE COURT: Does the State have a position on Mr.
7 Johnson's custody?

8 MS. DRAWDY: Your Honor, we think it's fine for him to
9 stay out on bond. He's always appeared for court.

10 THE COURT: All right. I'll grant that then that he
11 stay out on bond during the time the jury's got the case.
12 Take a short break.

13 (Whereupon, court was in recess at 5:04 pm)

14 (Whereupon, court resumed at 5:14 pm)

15 THE COURT: All right. The jury's ready. You can have
16 them come in.

17 (Whereupon, the jury entered the courtroom at 5:16 pm)

18 THE COURT: All right. Mr. Farnsworth, you may cross
19 examine the witness.

20 MR. FARNSWORTH: Okay. Thank you, Your Honor.

21 Cross Examination by Mr. Farnsworth:

22 Q. I'm just going to have a few questions for you, Officer
23 Lowe.

24 A. Yes, sir.

25 Q. I believe you said when you first saw Mr. Johnson's car

JESSE LOWE - CROSS EXAMINATION BY MR. FARNSWORTH

1 he was backing out of a parking space, is that correct?

2 A. It is, sir.

3 Q. Onto Main Street?

4 A. Yes, sir.

5 Q. And he was headed, what, south toward South Main?

6 A. Yes, toward Falls Park.

7 Q. Okay. And approximately how far was the intersection
8 with the red-light that you're saying he ran? About how far
9 would that be from where -- to where he made the back out
10 and where he stopped briefly for the red-light as you
11 testified?

12 A. He was approximately in the fourth or fifth parking
13 spot ---

14 Q. Okay.

15 A. --- back, counting from the intersection backwards
16 northbound.

17 Q. Okay. In the same block that ---

18 A. Yes, from McBee.

19 Q. He didn't go through two blocks ---

20 A. No, from McBee.

21 Q. Very short distance?

22 A. Yes.

23 Q. And, I believe, you testified that when he backed up
24 you noticed the headlights were out. Did you ever see the
25 headlights on after that?

JESSE LOWE - CROSS EXAMINATION BY MR. FARNSWORTH

1 A. Did not.

2 Q. You never did see them?

3 A. No.

4 Q. Okay. And, I believe, you testified that the tail
5 light was out.

6 A. Yes.

7 Q. Was there -- did you see any kind of tape over the
8 light or anything?

9 A. I cannot recall.

10 Q. You can't recall? All right. In any event, when you
11 did your turn around and u-turn and you got to the -- as you
12 approached the intersection of McBee and Main there where
13 the red-light was, you testified, I believe, that he was
14 stopped at the light.

15 A. Yes, sir.

16 Q. Is that correct?

17 A. Yes.

18 Q. And you were the next car behind him?

19 A. I was.

20 Q. And while you were behind him with the light still red
21 he pulled out, as you said, and ran a red-light?

22 A. Went about halfway through the intersection, yes, sir.

23 Q. Okay. All right. And then after he got halfway
24 through the intersection did the light change?

25 A. It did.

JESSE LOWE - CROSS EXAMINATION BY MR. FARNSWORTH

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1 Q. All right. And he immediately turned into a parking
2 spot that's shown there, I think you said, over where it
3 used to be the Carolina First building?

4 A. Yes, sir. My blue lights were activated ---

5 Q. Okay.

6 A. --- before he started turning into the parking spot.

7 Q. Okay. But that -- but he pulled over in a very short
8 distance?

9 A. He did, yes.

10 Q. Okay. And you testified earlier that he told you that
11 he had six or seven beers?

12 A. Yes, sir.

13 Q. And did you ask him what period of time he had those
14 beers in or did he tell you?

15 A. Not that I recall.

16 Q. All right. And did he tell you whether or not -- what
17 time the last beer he had was?

18 A. No.

19 Q. Okay. And at this red-light when you first pulled up
20 to it and he was still stopped at it, what would you say,
21 you were a car length or so behind him?

22 A. Yes, sir.

23 Q. Okay.

24 MR. FARNSWORTH: That's all I'm going to have, Your
25 Honor.

JINNY MORAN - DIRECT EXAMINATION BY MS. DRAWDY

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1 THE COURT: Any redirect?

2 MS. DRAWDY: Nothing from the State, Your Honor.

3 THE COURT: Thank you, officer. You may step down.

4 MS. DRAWDY: The State calls Captain Jinny Moran.

5 Jinny Moran, being duly

6 sworn testified as follows:

7 MADAME CLERK: Thank you. You may be seated. Would

8 you please state your name for the record.

9 MS. MORAN: Captain Jinny Moran.

10 Direct Examination by Ms. Drawdy:

11 Q. Captain Moran, with whom are you employed?

12 A. Greenville County Public Safety, records management,
13 services division.

14 Q. So you manage the records for the Detention Center?

15 A. I manage the records for the Sheriff's Office, the
16 Greenville Police Department and the Detention Center
17 records.

18 Q. Okay. And are you the custodian of those records?

19 A. Yes.

20 Q. Were you asked to bring a booking photo today?

21 A. Yes, I was.

22 Q. Okay. I'm going to show you State's exhibit 8 and ask
23 you if this is the booking photo that you brought with you
24 today?

25 A. Yes, it is.

JINNY MORAN - DIRECT EXAMINATION BY MS. DRAWDY

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1 Q. Can you identify what that is?

2 A. This is a mugshot photo that I copied from the mugshot
3 database that Greenville county manages.

4 Q. And was that associated with the arrest of this
5 Defendant on March 18th, ---

6 A. Yes, it was.

7 Q. --- 2010?

8 A. Yes, it was.

9 Q. And it's Christopher -- who is the subject in the -- in
10 the photo?

11 A. The name associated with the photograph is Christopher
12 Lee Johnson.

13 Q. Okay.

14 MS. DRAWDY: Your Honor, we'd like to move this in as
15 State's 8 at this time.

16 MR. FARNSWORTH: Without objection.

17 THE COURT: Without objection, exhibit 8 is admitted
18 into evidence.

19 (Whereupon, State's exhibit 8 was admitted into
20 evidence)

21 MS. DRAWDY: I'd like to publish it to the jury.

22 THE COURT: You may do so.

23 MS. DRAWDY: Those are all the questions I have for
24 this witness ---

25 MR. FARNSWORTH: No questions, Your Honor.

1 THE COURT: All right. Thank you. You may step down.

2 MS. DRAWDY: Can she be excused, Your Honor?

3 THE COURT: Without objection ---

4 MR. FARNSWORTH: Without objection.

5 THE COURT: --- this witness may be excused.

6 MS. DRAWDY: Your Honor, that will be the State's case.

7 THE COURT: Ladies and gentlemen, this might be a good
8 time now for us to take an evening break. I'll remind you
9 again not to discuss the case with anyone tonight. We'll be
10 ready to start back at 9:00 in the morning with the
11 continuation of the case.

12 I don't want anyone discussing it with you. Don't do
13 any kind of independent investigation. I'm confident that
14 based upon what these attorneys present to you you'll be
15 able to make a good valid decision about the facts in this
16 case that's in dispute between the State of South Carolina
17 and Mr. Johnson.

18 Have a good evening. We'll be ready to start back at
19 9:00 in the morning. Everyone else, please remain seated
20 while the jury is excused.

21 (Whereupon, the jury exited the courtroom at 5:23 pm)

22 THE COURT: All right. Are there any matters we need
23 to take care of before I tell Mr. Johnson his rights about
24 testifying and so forth?

25 (No response)

1 **THE COURT:** I need him to come forward with you, Mr.
2 Farnsworth, just to explain to him his rights under our
3 Constitution.

4 **MR. FARNSWORTH:** Okay.

5 **THE COURT:** Mr. Johnson, if you would come forward,
6 please, to the microphone. If you would, please, raise your
7 right hand. Do you swear or affirm the testimony you're
8 about to give me will be the truth, the whole truth and
9 nothing but the truth so help you God?

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** We've reached the stage of this trial where
12 you have a right to put up a defense. You have a right to
13 testify on your own behalf. I want to explain to you
14 certain rights you enjoy under our Constitution. I'm
15 confident that you've had an opportunity to talk to Mr.
16 Farnsworth about these matters. I need to be satisfied in
17 my own mind that you understand the rights that you enjoy.

18 The Constitution of South Carolina, the Constitution of
19 the United States of America says that no person shall be
20 compelled in any criminal case to be a witness against
21 himself. That means that you can't be required to testify
22 in this case.

23 You have a right to testify if you choose to, but
24 nobody can make you testify. This is a personal right that
25 you enjoy under the Constitution of South Carolina and the

1 5th Amendment to the United States Constitution. Nobody can
2 waive this right except you.

3 You may decide to testify, Mr. Johnson. And if you do,
4 you'd be subject to the same rules that govern any other
5 witness who testifies. You could be examined and cross
6 examined on any relevant issue in the case.

7 In addition, if you have any prior convictions that
8 would involve dishonesty, or false statements or crimes that
9 were punishable by imprisonment for more than one year and
10 the Court determines that the probative value of admitting
11 this evidence outweighs any prejudice to you, then the
12 solicitor would be able to introduce your criminal record to
13 attack your credibility.

14 If you decide to testify, this decision on your part
15 must be intelligently made by you and voluntarily made by
16 you, freely made by you with the knowledge of the
17 protections that you're afforded under the Constitution, our
18 State and the 5th Amendment to the United States
19 Constitution. You also must make this decision realizing
20 the consequences of your decision to testify.

21 You may choose not to testify. And if you make that
22 decision not to testify the jurors can't give any
23 consideration whatsoever to that choice that you make under
24 the Constitution. There's to be absolutely no prejudice
25 toward you because you chose not to testify.

1 Whether you testify or don't testify, that's left
2 entirely up to you, sir. You can talk more with your
3 attorney. You can talk with family, friends, anyone else
4 you wish to talk to, but ultimately that final decision
5 rests with you and you alone as to whether or not you choose
6 to testify. Do you understand what I've explained to you?

7 **MR. JOHNSON:** I do.

8 **THE COURT:** Do you have any questions to me about what
9 I've explained to you?

10 **MR. JOHNSON:** No, sir.

11 **THE COURT:** All right. Have you discussed this with
12 your attorney already as to whether or not you wish to
13 testify?

14 **MR. JOHNSON:** Kind of.

15 **THE COURT:** I'll give you more time. We're through for
16 the evening. And, obviously, you'll need to make that
17 decision tomorrow as you have a chance to present a defense
18 first thing in the morning. You can return to your seat
19 with your attorney.

20 Is there any prior convictions? You can return back to
21 your seat. Any prior convictions for which ---

22 **MS. DRAWDY:** There are none that we can impeach him
23 with, Your Honor.

24 **THE COURT:** So there'd be no prior so that he can make
25 an intelligent decision about that. Anything else we need

1 to take care of this evening?

2 (No response)

3 **THE COURT:** We'll be ready to start back at 9:00 in the
4 morning. Have a good evening, ladies and gentlemen.

5 (Whereupon, court was in recess at 5:28 pm)

6 **Tuesday, October 11, 2011:**

7 (Whereupon, court resumed at 9:17 am)

8 **THE COURT:** Thank you. Please take your seats, ladies
9 and gentlemen. All right. Any matters we need to take care
10 of before the jury comes in?

11 **MR. FARNSWORTH:** Your Honor, other than we discussed
12 yesterday at the end of the day about -- you explained his
13 rights to testify or not testify. And I talked more with
14 him after that. And he's informed me that he wishes not to
15 testify.

16 **MS. DRAWDY:** Your Honor, ---

17 **THE COURT:** No other matters from the Defense, no other
18 witnesses?

19 **MR. FARNSWORTH:** No, Your Honor.

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

21 **MS. DRAWDY:** Your Honor, I do have a few questions
22 that'll inform me about what to say during my closing. I
23 wanted to know what you charge on reasonable doubt and also
24 to ask your permission to offer to the jury a computer,
25 which our office will provide, I won't tell them it's coming

1 from our office, if they wish to review the DVDs that are in
2 evidence in the jury room.

3 I believe it's more efficient to allow them to be able
4 to look at that evidence on their own rather than having to
5 interrupt court. And we're happy for them to do that since
6 all the appropriate redactions have been made.

7 **THE COURT:** Nothing else on the computer?

8 **MS. DRAWDY:** Sir?

9 **THE COURT:** Is there anything else on the laptop or the
10 computer that would go back with them from your office?

11 **MS. DRAWDY:** You know, I haven't thought about that.

12 I'm glad ---

13 **THE COURT:** There are -- there might be some other --
14 it's not a brand new computer, is it?

15 **MS. DRAWDY:** No, but I don't know what other people
16 might have put on it. I wouldn't expect ---

17 **THE COURT:** I didn't know -- well, if they decided they
18 wanted to play with things.

19 **MS. DRAWDY:** Okay.

20 **THE COURT:** Check on ---

21 **MS. DRAWDY:** I can check. I won't mention that during
22 the closing, but while they're deliberating I'll check to
23 see if we have a clean computer. And then if they ask to
24 view it, I'll show it to the Court. And ---

25 **THE COURT:** Well, you'd need to show it to Mr.

1 Farnsworth ---

2 MR. FARNSWORTH: Right. Your Honor, I understand -- I
3 would join in the request. I was going to encourage them to
4 look at the ---

5 THE COURT: Okay.

6 MR. FARNSWORTH: --- video again, if they need be.

7 THE COURT: Well, I just want to make sure what goes
8 back is -- doesn't have, you know, ---

9 MS. DRAWDY: Yes, sir.

10 THE COURT: --- the law of DUI ---

11 MS. DRAWDY: Oh, I understand. I understand. I would

12 ---

13 THE COURT: Or the law of something else.

14 MS. DRAWDY: I'll see if we have such an animal that's
15 clean.

16 THE COURT: Just make sure that whatever you do have
17 doesn't have any kind of information for the protection of
18 both sides. If both of you are in agreement with that, then
19 we'll certainly do that.

20 Reasonable doubt, I'll charge -- both under the --
21 reasonable person hesitate to act as well as the doubt for
22 which you can give a reason.

23 MS. DRAWDY: Do you make any charge on refusal
24 regarding the use of the refusal?

25 THE COURT: I was just going to charge the law on that,

1 that he has a right to refuse. The Defendant has a right to
2 refuse to take the blood alcohol concentration test or blood
3 test, yeah.

4 MS. DRAWDY: I would request an instruction that they
5 may use that as they see appropriate because the State is
6 allowed to comment on the refusal and to say that they can
7 use that against him.

8 THE COURT: Well, you can ---

9 MS. DRAWDY: Not that ---

10 THE COURT: You can ---

11 MS. DRAWDY: Not that the State can do that, but that
12 they can make use of that fact for whatever they deem
13 appropriate.

14 THE COURT: Well, there was not a blood test involved
15 here. So, you know, I'm not going to charge anything about
16 that unless -- you certainly can argue the case as you see
17 fit. All right.

18 I've got a verdict form. I'll just let the attorneys
19 look that over, if you would, and make sure it's in proper
20 form.

21 (Pause)

22 THE COURT: The verdict form satisfactory?

23 MS. DRAWDY: Yes, Your Honor.

24 THE COURT: It is dated September. We'll scratch
25 through that, let the Foreperson do that and make it

1 October. All right.

2 Mr. Farnsworth, when the jury comes back I'll ask you
3 for your defense, and you can rest on the record so they'll
4 know that you did have the opportunity. Then we'll go into
5 our arguments. All right.

6 The jury -- oh, one more matter. I understand that one
7 of the jurors called in sick today. So the alternate --
8 I'll explain that. I don't know which juror it was, but
9 maybe the first one chosen was not able to be here today.
10 So the alternate will be utilized after all. All right. If
11 the jury is ready, have them come in, please.

12 Do you have a request either way about whether I -- on
13 the refusal?

14 **MR. FARNSWORTH:** No, Your Honor.

15 **THE COURT:** Then I can tell them ---

16 **MR. FARNSWORTH:** Just the usual.

17 **THE COURT:** --- that he has a right to refuse it, but
18 as he -- they already know that from the evidence, that's in
19 there from the State.

20 **MR. FARNSWORTH:** Nothing other than what you've said,
21 Your Honor.

22 **THE COURT:** Okay. Whether I say that or not, you
23 certainly can argue your case, solicitor.

24 (Whereupon, the jury entered the courtroom at 9:24 am)

25 **THE COURT:** Good morning, ladies and gentlemen. We're

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1 now ready to proceed with the trial of the case. You may
2 have noticed that one of your jurors is not present today.
3 She called in sick this morning, not able to be here, as we
4 had prepared.

5 We didn't anticipate, but sometimes illness does
6 happen. So we have an alternate. He's now part of that
7 jury, as I said. He'll be the one to continue in the case
8 as a -- as the twelfth member of the jury.

9 All right, Mr. Farnsworth, you may call your first
10 witness.

11 MR. FARNSWORTH: Your Honor, at this time the Defendant
12 rests.

13 THE COURT: All right. Mr. Foreman, ladies and
14 gentlemen, you've heard all the evidence in the case. That
15 means now it's time for the attorneys to make their closing
16 statements to you. After that I'll instruct you on the law
17 of the case. The case will then be yours to decide.

18 I've told you before that the attorneys' statements to
19 you in opening and in closing is not evidence, but I urge
20 you to listen carefully as these attorneys address you. I'm
21 confident that they can each give you some valuable insights
22 to perhaps help you as you analyze the case in your
23 deliberation soon to follow. Solicitor, you may address the
24 jury in your closing.

25 MS. DRAWDY: May it please the Court. My mom was an

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1 English teacher. So my style of talking to juries about
2 cases is to teach and to write on the board.

3 Your jury duty is, 'at least as far as this case is
4 concerned, is about to really begin. You may have thought
5 when you said jury duty, it involved setting aside your
6 daily life, driving to the courthouse, going through some
7 strange procedures, being ogled by attorneys, but this is
8 where the duty part of it really comes in.

9 The duty is to make a judgment. And duty is almost
10 never easy or pleasant. And a lot of times it's rather
11 difficult. And the State is going to ask you to do a little
12 bit of a difficult thing, and that is to find the Defendant
13 guilty of driving under the influence and driving under
14 suspension.

15 It is never an easy thing to hold ourselves, our
16 children or other people accountable. It's not a pleasant
17 thing. It's a duty, but it's necessary. And if after
18 evaluating all of the evidence you are firmly convinced that
19 the Defendant is guilty of violating the law as the Judge
20 gives it to you, it is your duty to find him guilty.

21 Now, we have two charges that we're dealing with today.
22 And I want to talk to you just a little bit about both of
23 them. The first one is driving under suspension. The
24 second one is driving under the influence. And they're two
25 very different kinds of charges.

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1 DUS is sort of an objective thing. It's almost like a
2 pregnancy test, either you are or you aren't. Either your
3 license is under suspension, it's suspended or it's not.
4 Either you were driving a motor vehicle on a public road or
5 you weren't.

6 And you have some pretty simple evidence in this case.
7 Mr. Farnsworth standing up here and telling you that his
8 Defendant -- his client was guilty of DUS is not evidence.
9 What Mr. Farnsworth and I say to you is not evidence. What
10 happened once we began presenting testimony, that's the
11 evidence. And that's what you base your judgment on.

12 One of those things that you had that's part of the
13 evidence in this case is the stipulation. So this is your
14 evidence. You have the stipulation. And it's kind of drawn
15 out and technical, but when the Judge charges you on DUS
16 he's going to tell you what the elements of the charge are,
17 the charge of DUS.

18 And when you review the testimony that notice was
19 given, that the license was suspended, now that's in this
20 stipulation, and then you have testimony he was driving on a
21 public road. That meets the elements. Okay.

22 That's the easy charge to deal with. And that's your
23 template for helping you deal with something that's a little
24 more difficult.

25 DUI is probably unique in all of our criminal law.

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1 It's just sort of different because people -- ordinary
2 people commit DUI. You know, we're not talking about drug
3 dealers, which is outside of our normal experience, we're
4 talking about ordinary people like the attorneys in this
5 room, our neighbors, our friends, maybe even ourselves.
6 This is the kind of thing that people mess up and do.

7 And it's not really something they meant to do. There
8 are very -- I would warrant that every -- no one who has
9 been convicted of DUI is going to say I am going to go get
10 drunk tonight and drive. It's something that -- it's a
11 circumstantial thing. People find themselves in
12 circumstances and they make a bad judgment call. And that's
13 one of the first things that goes when one is under the
14 influence of alcohol.

15 And if you'll notice when we're talking about the
16 elements of DUI, this is the law. This is -- the law
17 defines it. It's not what necessarily it may be, but it's
18 not necessarily what you walked into the courthouse thinking
19 DUI was. We hear it on the news all the time, drunk
20 driving. That's not what it is.

21 We're also not talking about prohibition and a
22 teetotaler's idea, no amount of alcohol should be allowed.
23 That's not what we're talking about either.

24 The law is very sensible and balanced. It balances
25 individual freedom to go out and enjoy a drink, maybe two,

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1 if you can handle it, with your friends and a meal and then
2 drive home and going over the edge.

3 There's an area in between where you're impaired. And
4 sometimes that can be subtle, particularly if you don't know
5 the person or if you aren't actually right there with them.

6 What you have to do to judge whether or not this
7 Defendant was impaired in this middle zone, which the law
8 says if you're impaired and you get behind the wheel, you've
9 committed the offense of driving under the influence. And
10 society holds people accountable for this when they're
11 brought into court and the jury's convinced that they're
12 impaired.

13 A judgment of guilty tells them, no, that's not all
14 right. You shouldn't have done that. You're potentially
15 endangering others.

16 That's why we have this law because your faculties to
17 drive, again, we're talking about the elements. And that's
18 sort of a different word. Sorry, my writing is not that
19 good. Your faculties to drive. It doesn't talk about -- it
20 doesn't say you're guilty of DUI only if you actually have a
21 collision, only if you run off the road, only if you can't
22 stand up, only if you can't speak clearly.

23 Driving a motor vehicle is a responsibility and a
24 privilege to drive on the roads. A motor vehicle can be a
25 dangerous thing. It's something that requires you to multi-

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1 task to do it appropriately, to notice things around you
2 that are happening, to stop at a light and stay stopped
3 until it turns red and it's safe for you to proceed through
4 an intersection.

5 Now, we're getting into the facts a little bit, whether
6 you believe the Defendant actually went through a red-light
7 once he stopped at it, went into the intersection and
8 realized he needed -- and stopped again, whether you realize
9 that really happened. And that goes to something about --
10 that you're going to have to decide as part of the judgment
11 call you make on what the facts are. You're going to be
12 determining the facts.

13 And in determining the facts you're going to look at
14 the credibility of the witnesses. And how do you judge
15 that? You judge what your motivations are, what they --
16 would they have a reason to tell something that's not true?
17 You look about whether or not they told the same fact
18 consistently throughout.

19 And then you decide what you believe really happened.
20 Is that a fact in this case? Do you believe that's a fact,
21 that the Defendant stopped at a light and then went into the
22 intersection about twenty feet and stopped again? Do you
23 believe his lights were off, that he forgot to turn his
24 headlights on?

25 These are the little tell-tale signs of impairment.

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1 And we talk about faculties to drive, your ability to drive.
2 Those are some tell-tale signs that he's impaired.

3 Now, do people who are not impaired do those same
4 things sometimes because they're distracted? Of course.
5 Yes, that happens. But why was this particular Defendant?
6 Is it likely that the reason he did those things were the
7 six or seven beers that he admitted? Do you believe that
8 the facts show that he had at least six or seven beers? He
9 tells the officer that. Is that real good judgment?

10 Now, you also need to look at all the evidence, each
11 piece of evidence, each bit of testimony, each document, the
12 information on the videos in the context. You look at
13 everything in context to come to a conclusion about what the
14 facts are.

15 Now, let's look at the context. This is St. Patty's
16 Day, a drinking holiday. The Defendant has been downtown
17 celebrating and telling you he's been drinking. Now why
18 does someone drink six or seven beers? It's not because
19 they're thirsty. It's because of the effect that it has on
20 them.

21 And if you have one beer, you may not feel its effects
22 and people may not notice it. And we're going to get --
23 that's where we get into talking about materially and
24 appreciably impaired. And I'm going to go down here and
25 talk about that a little bit.

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1 Material means -- and these are words we use in our
2 everyday conversation. But it's a very balanced guidepost
3 that the law gives us into how to determine whether or not
4 the law has been breached. Material means it makes a
5 difference, okay. Material means it makes a difference.

6 Appreciable means something you can appreciate,
7 something you can notice, something you can say, okay, I see
8 him swaying there, okay, that made no sense for him to say
9 six or seven beers, okay, he ran through this red-light. I
10 see him swaying. We aren't talking about a drunk, we're
11 talking about impairment. That's what the standards of the
12 law is.

13 These six or seven beers made a difference that you can
14 notice, that you can appreciate, a difference that you can
15 notice and -- materially and appreciably impaired. Impaired
16 means less than. It simply means you should not have been
17 driving a vehicle. That's all it means. You were impaired.
18 Those six or seven beers at least made a difference that you
19 can notice.

20 Now, there's one last thing I'm going to talk to you
21 about that will help you. We talked about having sort of
22 objective things with the DUS. DUI is a judgment call that
23 you're going to have to make based on all the evidence. And
24 I encourage you to look very carefully at it in the
25 deliberation room. Look at the videos. Look at the

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1 photographic evidence. Look at the advisement of implied
2 consent.

3 One of the things that would have been very helpful to
4 you to have in making your judgment call would be what was
5 his blood alcohol level? Well, that's another balancing act
6 that our Legislature has done quite cleverly.

7 If you had a number of blood alcohol the Judge would
8 tell you what those different blood levels mean under the
9 law based on scientific evidence. Whether or not somebody
10 -- what you could consider that someone was impaired at that
11 level, at that blood alcohol level. That's an objective
12 scientific piece of information that would be very useful to
13 you. And we encourage people to give that.

14 When you drive on the roads of this state, under the
15 law, you have impliedly consented to providing a breath
16 sample or, if you're injured and you can't be taken down to
17 the Law Enforcement Center, a blood sample to a law
18 enforcement officer who has reason to believe that you're
19 under the influence and that you've been driving under the
20 influence.

21 They smell alcohol, they see other indications that
22 you're under the influence, they can ask you, that gives
23 them the right to ask you to provide a sample. And you have
24 impliedly consented and said, yes, I will.

25 But the law gives you the right to withdraw that

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1 consent and to refuse. The officer cannot make you do it.
2 So, therefore, you have a right at that point to change your
3 mind and refuse.

4 Now, what do we do about that? That's a useful piece
5 of information. Well, the law says, and the Defendant is
6 warned about that in his implied consent, your refusal can
7 be used against you in court. So a jury is entitled to use
8 that against the Defendant in exchange for not giving us
9 that very valuable piece of information of what the blood
10 alcohol level was. You can use the Defendant's refusal
11 against him.

12 And by using it against him it's not just saying, we
13 don't like it that you refused. That's not the purpose of
14 it. The purpose of it is why did he refuse? He is uniquely
15 positioned to know exactly how much he's had to drink. He
16 is uniquely positioned to know whether or not he should have
17 been driving at that point that it's brought to his
18 attention and he stopped.

19 Why did he refuse? Especially in the light of the fact
20 that he is reminded that it can be used against him in
21 court. And that's also in the implied consent, your license
22 will be suspended for at least six months. And as a
23 consequence of refusing, it was.

24 So, because you -- the substitute for that very nice
25 piece of objective information that you have is the use of

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1 the refusal against him, and not arbitrarily so. Why do you
2 think he refused?

3 Now, the quality of the evidence in what you're looking
4 at, what is the best evidence of impairment and faculties to
5 drive? It's the driving itself. The officer told you what
6 he saw. He saw that he forgot to turn his lights on and he
7 stops at this light and then goes into the intersection and
8 stops in the middle of the intersection again. And that's
9 before he stops and then pulls him over.

10 He's also looking for a female. And there probably was
11 a female in the bar that said, yeah, I really like him.
12 I'll go home with you. I'll meet you on the corner.

13 Now, I'm not asking you to say that Mr. Johnson is a
14 bad person, just that he made a bad decision, a bad judgment
15 call. And that is what you are saying if you determine a
16 verdict of guilty. I've looked at all of this evidence.
17 I've done my duty. I've rolled up my sleeves, and I've done
18 the hard work.

19 There are some temptations that you're going to face
20 because it's not pleasant to hold other people accountable
21 even if you are firmly convinced that they're guilty of the
22 crime. It's not pleasant.

23 Splitting the baby. Well, he's guilty of DUS. Am I
24 convinced he was impaired by alcohol? But, you know, I'd
25 rather not -- that's just hard for me to do. And, you know,

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1 I -- that splitting the baby is a temptation that you're
2 going to have.

3 And that's something else that I want to talk to you
4 about is the word but. You have no friends to reward. You
5 have no enemies to punish. Yes, I am convinced -- I'm
6 firmly convinced he was impaired by alcohol, but I feel kind
7 of sorry for him. You can't do that. It's your duty to
8 hold him accountable. Yeah, I'm firmly convinced that he
9 was impaired. And no doubt, ladies and gentlemen, that's
10 the issue. It's the judgment call you're asked to make.

11 But, you know, that -- and that's another thing that
12 you may be tempted to do is deflection, things that really
13 don't matter when you get down to it. But this was a young
14 officer. And it's obvious to me he was kind of having to
15 check on things. And I don't really know if he knew a
16 hundred percent what he was doing.

17 Well, look at everything. Everybody's got a period of
18 time when they're somewhat new at their job. This officer
19 is exclusively tied to the field sobriety tests and all of
20 the extra things he's given. The law says that a lay person
21 is perfectly capable of getting on a stand if they've
22 observed somebody in saying whether or not they were
23 impaired. It doesn't require an expert opinion.

24 He followed his procedures. He did what he was
25 supposed to when he saw the clues he told you that he had

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1 been trained to look for. He already knew that this guy was
2 impaired, but he followed the procedures he's supposed to.

3 He administered the three standardized field sobriety tests.

4 And you also have a sixteen year veteran out there with
5 him on the street who testified, yes, this guy was impaired.

6 So it's not just a young, relatively inexperienced officer.

7 Now he's already got what most of us would have in a
8 lifetime of experience with people who are under the
9 influence in his young career.

10 We're deflecting. The Defendant, himself, does it in
11 the DataMaster room. He wants to talk about all the other
12 people downtown who were way worse than he was. Did you
13 hear him say that? I'm not anywhere near like that.

14 It doesn't matter. That's not what matters. That's
15 not what you're here to decide. You're here to make a
16 judgment call about this evidence and this Defendant and
17 whether or not he crossed the line by being impaired. Was
18 there a difference you could notice?

19 And you need to look at all of the evidence. And I'll
20 wager that you gradually see an improvement in his
21 condition. It's subtle, but a little bit from the time he's
22 out on the street -- from the time he's out on the street
23 and throughout the evening when he's in the room. There's a
24 gradual improvement.

25 You see here, he's leaning, steadying himself. Is that

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1 normal behavior for someone who's talking to an officer who
2 stopped him, to go over and lean? And then later on if you
3 watch the video you do see some unsteadiness.

4 Granted, there's some people who have better balance
5 than others. And that might be a reason that someone
6 wouldn't perform all that well on the one-legged stand and
7 the walk-and-turn.

8 Again, there are other reasons, but the one test that
9 you cannot fake, you cannot practice for, you cannot change
10 is the horizontal gaze nystagmus. That doesn't matter if
11 you're old, you're young, you're fat and you're skinny.
12 That test, you can't fake. And all of the clues were there,
13 all of the clues. Look at everything together.

14 And finally, his booking photo. You'll have this in
15 the jury room in a little bit too. Ladies and gentlemen,
16 there's a difference you can notice. You can see somebody
17 who's been downtown partying, having at least six or seven
18 beers and then making the bad call to get behind the wheel
19 and drive. Thank you.

20 **MR. FARNSWORTH:** May it please the Court, Your Honor.

21 **THE COURT:** Yes, sir. Mr. Farnsworth, you may address
22 the jury at this time.

23 **MR. FARNSWORTH:** I want to thank you again for your
24 service on the jury. After I speak to you and I sit down,
25 Judge Welmaker's going to charge you the law that applies in

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1 this case as I mentioned to you yesterday. And then you'll
2 reach a verdict based on the law and the evidence.

3 Now I'm going to speak to you briefly. I may repeat
4 some of the things that Ms. Drawdy said, but I had no way of
5 knowing exactly what she was going to say til I heard her.
6 I'm going to just briefly go over the facts with you again
7 in this case.

8 This was about 2:00 in the morning on March 18th. I
9 think it had been St. Patrick's Day downtown. Officer Lowe
10 was in his marked patrol car. He was headed -- he was
11 headed north on Main Street when he saw Mr. Johnson backing
12 out of the parking space on North Main headed toward South
13 Main, the intersection there of McBee and South Main Street.
14 In fact, right across the intersection there is a Carolina
15 First Bank building, what used to be Carolina First.

16 He says that as he passed him that he noticed his
17 lights were off. And as he got a little closer and he had
18 backed down a little further he noticed that he hadn't put
19 his lights back on. And so he did a u-turn and turned
20 around and got behind Mr. Johnson, who he said was already
21 stopped at the red-light, if you'll remember his testimony.

22 He said that as he got directly behind him Mr. Johnson
23 went through the light or twenty feet into the intersection
24 while the light was still red. And this is a situation
25 where he's in a marked patrol car and he's right behind Mr.

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1 Johnson when Mr. Johnson does this.

2 The -- as the light turned green the officer testified
3 that he activated his blue light then and Mr. Johnson pulled
4 over on one of the parking places right there in front of
5 the bank I just mentioned. And you could see that as they
6 were doing the field sobriety tests exactly where it was, in
7 front of the bank there on the curbing on the -- outside --
8 the pavement outside of the front door of the bank there.

9 You know, from the start, you know, from start to stop
10 this incident occurred probably no more than a minute or two
11 it seemed like just based on the testimony. I don't think
12 anybody said exactly how long it took, but it was -- it
13 wasn't a long distance of travel from where he pulled out of
14 the parking space to where the officer hit the blue light
15 and he pulled into another parking space.

16 If you're familiar with that intersection, I think the
17 officer said he was in one of the three or four parking
18 spaces back this side of the intersection. And he went to
19 the intersection and he pulled into one that was like three
20 or four, maybe five spaces, you know, on the other side of
21 the intersection. So it was a very short period of time.

22 Now, unfortunately this part of the case was not
23 videotaped. We have everything videotaped that took place
24 in this case except the actual driving and what the -- the
25 traffic violations were that caused the officer to stop Mr.

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1 Johnson. And that's because, you know, he had no videotape
2 in his car. So we don't have that.

3 Now, and I think it's important because everything else
4 was videotaped. And this is the main reason or the only
5 reason that he was stopped to talk, you know, to start with.

6 Mr. Lowe didn't know that Mr. Johnson was under the
7 influence when he first saw him. He probably had an idea he
8 might be because it's, you know, St. Patrick's night down
9 there. You know, all the young people particularly are
10 there drinking. Bars stay open until 2:00 or whatever.

11 And I think he also said he noticed -- the first thing
12 he noticed was a band on his arm that said Wild Wing Café or
13 something like that. And then he said, and I quote him,
14 that's a local bar here in town. So I think he probably
15 right away figured that he might have been drinking and
16 that's what he was -- what he was looking for.

17 Now, I suppose that some of us today in this courtroom
18 or in the courthouse even not having anything to drink could
19 have done one or more of the things that Mr. Johnson's, you
20 know, accused of doing. No headlights, tail light out and
21 even run a red-light.

22 You don't have to be under the influence, according to
23 the law, to do these things. You don't have to -- people do
24 those things every day. And I expect, as I said, some of us
25 have done some of those things when we haven't even had

CLOSING ARGUMENTS - MR. FARNSWORTH

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1 anything to drink. And it happens.

2 Now, the thing that concerns me about this case -- and
3 I still am having trouble understanding everything that
4 happened on this red-light situation. As I said, without
5 being redundant, he sees that he's stopped at the red-light,
6 and when he comes up and gets behind him in a marked car,
7 that's when he goes out into the intersection and runs the
8 light. I mean, that's just totally, I mean, it's illogical
9 and it just doesn't make sense.

10 It's a situation that I wished that we had on video,
11 but we don't. I would like to really see that to -- that's,
12 I think, some missing link to this case.

13 And I know you've got the testimony of the officer, I
14 understand that, but the tape is very important because it
15 helps you judge for yourself whether he was under the
16 influence rather than relying on -- solely on the officer's
17 testimony who testifies to something that did or didn't
18 happen nineteen months ago. And I think that's why the
19 videotapes are important in this case.

20 And I believe that he -- you saw first, you saw the
21 tape with the field sobriety tests. And I'm not saying that
22 it didn't show what it purportedly shows. The quality of
23 that tape, the sound and the audio and the video were not
24 nearly the quality that the audio and video were with the
25 second tape, in my opinion.

CLOSING ARGUMENTS - MR. FARNSWORTH

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1 And it also, it lasted a lot longer. It gives you a
2 better chance to take a better look at Mr. Johnson when you
3 get down to judging whether or not he was under the
4 influence.

5 He and this officer had a conversation on that tape, an
6 on and off conversation, probably -- well, there's a twenty
7 minute waiting period. The conversation that you heard and
8 saw probably lasted twenty-five minutes at least, if not
9 close to thirty. And you saw that.

10 The -- and all -- and this time on this tape everything
11 was on Mr. Johnson. Only the back of the officer was
12 showing. So you could key in on what the, you know, what
13 Mr. Johnson's faculties actually were at that time as
14 appeared to you in the video.

15 Now, I will say this, I've listened to it several times
16 prior to today and yesterday we watched it. The -- Mr. --
17 usually on a DUI case it's always, I smelled an odor of
18 alcohol, his eyes were bloodshot, his speech was slurred,
19 on, and on and on.

20 Now, if you'll look at that second tape or remember
21 what you saw in it. You don't have to look at it again
22 unless you want to. And you can if you want to. You'll
23 notice his speech, for instance, questions he was asked by
24 the officer about his information he requested of him, he
25 gave it.

CLOSING ARGUMENTS - MR. FARNSWORTH

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1 His speech seemed to me to be clear, concise and
2 understandable. It certainly wasn't slurred, I don't think,
3 in any event. I could understand what he was saying. And
4 I'm going to leave that to you, ladies and gentlemen, to
5 whether or not you thought it was clear and understandable
6 and not slurred.

7 And if you remember -- and I don't think it got to a
8 situation where they were arguing with each other, but it
9 may have gotten close. But he repeatedly told the officer
10 that he didn't run the red-light. And he didn't, you know,
11 cuss him or anything like that. But he told him, I did not
12 run that red-light. Why do you say I ran that red-light?

13 Well, again, that's the officer's testimony. It's in
14 evidence. We don't, you know, we don't have the video of
15 it. I don't know whether he did or not. But if the officer
16 says he did, you know, that's one thing. But, again, we
17 don't have that.

18 So, in any event, that doesn't mean because he ran the
19 red-light, or half a red-light or went into the intersection
20 halfway, twenty feet, that doesn't mean that he's under the
21 influence. It doesn't mean that at all.

22 Now, I will concede that in the video, the second
23 video, the one that lasted -- the one in the breathalyzer
24 room, I will concede that Mr. Johnson at times looked tired
25 and somewhat depressed. You know, it was 3:30 in the

CLOSING ARGUMENTS - MR. FARNSWORTH

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1 morning. And he did -- he had just been charged with DUI.

2 I expect I'd be depressed too.

3 But, you know, under the circumstances I don't think
4 you'd expect him to be up there laughing and smiling and,
5 you know, telling jokes. I mean, this was a serious
6 situation for Mr. Johnson.

7 And you'll have this picture in evidence. I think if
8 you'll remember when he first -- the first video came on
9 that he had a hat on. And he -- the officer said, well, let
10 me have your hat and, you know, he took it. So his hair was
11 kind of messed up.

12 And if you've had a hat on, I don't know, some of the
13 men do, I don't know if the ladies knows this, but some men
14 like me, if I wear a hat too long and I take it off, well,
15 it just looks awful because of just the texture of my hair.
16 In any event, you'll have that in the jury room. It's there
17 for you.

18 Again, I'm going to encourage you to think about these
19 tapes when you decide this case. I mean, I ask you to
20 consider all the evidence too, but I just think the tapes
21 are so important in a DUI case. And I think it's the
22 greatest thing that ever happened to the defense and the
23 prosecution in a DUI case.

24 It just -- and a lot of times it just decides the case
25 for the jury. I mean, it can do it. It's just there it is,

CLOSING ARGUMENTS - MR. FARNSWORTH

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1 you know, here it is, this is the way he was that night at
2 2:00, decide what you think, you know, tell us what you
3 think, that type situation. So they are important.

4 And regardless of -- and appreciate my friend saying
5 that I -- that just because I said he was not -- was guilty
6 of driving under suspension that that's not evidence in the
7 case. And it isn't. And I appreciate her saying that.

8 But I'm going to tell you again, I'm going to remind
9 you, we submit to you that he was driving under the
10 influence [sic] that night. And, again, it's not evidence,
11 but you can take it for what it's worth. All right.

12 Finally, when I sit down Judge Welmaker's going to
13 charge you the law that applies in this case. He's going to
14 -- he's going to charge you what presumption of innocence
15 means, what the burden of proof means, what reasonable doubt
16 means. And he's going to define the DUI statute and explain
17 what driving under the influence is.

18 And at the -- at the end of the charge, since you're
19 the judge of the facts in this case and Judge Welmaker's the
20 judge of the law, you're going to take the law that he
21 applies, and listen carefully to him because it's very
22 important, and apply it to the facts as you determine them
23 to be in this case. Only you can decide what the facts are.
24 Nobody else can.

25 And based on those two things we would ask you to reach

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1 a verdict that is consistent with the law and the evidence.
2 And if you do that, no one will have a right to criticize
3 whatever your decision is. And, again, we appreciate your
4 time.

5 **THE COURT:** Mr. Foreman, ladies and gentlemen, it's now
6 my responsibility to instruct you on the law of the case. I
7 read to you indictments charging Mr. Johnson with two
8 offenses, that being driving under the influence and driving
9 under -- while his license had been suspended.

10 The fact that he was charged, that he was arrested,
11 that he was indicted, that's not evidence for you to
12 consider. That's no presumption of guilt on his part. The
13 indictments are merely the charging papers by which the
14 cases are brought to this court for disposition by you, the
15 jury.

16 The fact that two charges were brought in this case
17 means that each of them are independent one of the other.
18 You are to decide them separately based upon the law
19 applicable to each case and the evidence that's attributable
20 to each of those cases.

21 You make that decision uninfluenced by your decision in
22 that other indictment. In other words, the Defendant can be
23 convicted or acquitted on both or neither of the charges.
24 You'll be asked to write separate verdict forms for them.

25 Now, the case that's before you is here because the

JURY CHARGE

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1 Defendant has pled not guilty to these indictments.. That
2 places the burden on the State to prove the Defendant's
3 guilt:

4 A person charged with committing a criminal offense in
5 South Carolina is never required to prove himself innocent.
6 That's an important rule of law that in a criminal trial, no
7 matter how serious a charge may be, the Defendant will
8 always be presumed innocent of the crime for which that
9 indictment was issued unless guilt has been proven by the
10 State through evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 Presumption of innocence doesn't end when you begin
13 your deliberations. It accompanies a defendant throughout a
14 trial until you've reached that verdict of guilt based upon
15 evidence satisfying you of guilt beyond a reasonable doubt.

16 Presumption of innocence isn't a mere legal theory.
17 It's not just a legal phrase. And it is a substantial right
18 to which every defendant is entitled unless you're satisfied
19 from the evidence of that defendant's guilt beyond a
20 reasonable doubt.

21 You may ask yourself, what is a reasonable doubt in the
22 law? A reasonable doubt is the kind of doubt that would
23 cause a reasonable person to hesitate to act.

24 Now some of you may have had the opportunity to serve
25 on a jury before and you were told by a judge that a fact --

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1 it was only necessary to prove a fact by the greater weight
2 or the preponderance of the evidence. In criminal cases the
3 state's proof is more powerful than that, it's proof beyond
4 a reasonable doubt. That would be proof that leaves you
5 firmly convinced of the defendant's guilt. There are very
6 few things in this life that we know with absolute
7 certainty. And in criminal cases the law doesn't require
8 proof that overcomes every possible doubt.

9 If, based upon your consideration of the evidence,
10 you're firmly convinced that the Defendant is guilty of the
11 crime charged, then you must find the Defendant guilty. If,
12 on the other hand, you think there's a real possibility that
13 the Defendant is not guilty, you must give the Defendant the
14 benefit of that doubt and find him not guilty.

15 Now, you and I have had certain duties to perform
16 during the trial of this case. And it's been my
17 responsibility to preside over the case and rule on the
18 admissibility of evidence that's been offered. You're to
19 consider only the competent evidence that is before you, the
20 testimony of the witnesses that have been presented from the
21 witness stand, the exhibits that have been made part of the
22 record and the stipulation of counsel.

23 My job also is to charge you on the applicable law in
24 the case. I'm the sole judge of the law. And it's your
25 duty as jurors to accept the law and apply that law as I

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1 state it to you now.

2 Some of you may already have an idea of what the law is
3 in a case such as this or even a notion of what the law
4 ought to be in a case such as this. If you have such an
5 idea that's in conflict with what I now tell you the law is,
6 then you must abandon such an idea because under your oath
7 you've sworn to accept the law and apply the law exactly as
8 I state it to you.

9 Every case that's tried in this courtroom before a
10 jury, that jury becomes the sole and exclusive judge of the
11 facts in the case. The trial judge can't intimate or state,
12 comment on or make any statements whatsoever to a trial jury
13 about the facts in a case.

14 Since you, the jury, are the sole judges of the facts,
15 you're not to infer from what I've said during the progress
16 of the trial, any rulings I've made on the admissibility of
17 evidence or, otherwise, any comments I make now during the
18 course of this instruction to you that I have an opinion
19 about the facts. I don't have an opinion about the facts.

20 Our law in South Carolina, our Constitution of South
21 Carolina prohibits a trial judge from having any opinion
22 about the facts. That's a matter solely for you, ladies and
23 gentlemen, to determine -- you make the determination as to
24 the effect and the value, the weight and the truth of the
25 evidence that's been presented.

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1 Normally there's two types of evidence. There's direct
2 evidence and there's circumstantial evidence. Direct
3 evidence is the testimony of a person who claims to have
4 actual knowledge of the facts such as an eyewitness. It's
5 evidence which immediately establishes the main fact to be
6 proved.

7 Circumstantial evidence is proof of a chain of facts
8 and circumstances that indicate the existence of a fact. It
9 would be evidence which immediately establishes collateral
10 facts from which the main fact may be inferred. It's based
11 upon inference then and not upon personal knowledge or
12 observation.

13 The law makes absolutely no distinction between the
14 weight or the value to be given either to direct evidence or
15 circumstantial evidence. There's not a greater degree of
16 certainty required of circumstantial evidence than of direct
17 evidence.

18 You should weigh all of the evidence, ladies and
19 gentlemen. And after weighing that evidence if you're not
20 convinced of the guilt of the Defendant beyond a reasonable
21 doubt, then, of course, you must find the Defendant not
22 guilty.

23 Of necessity you must determine credibility of
24 witnesses who've testified in the case. That simply means
25 believability. It's your duty as jurors to analyze and

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1 evaluate the evidence and determine which evidence convinces
2 you of its truth.

3 In determining the believability of witnesses who have
4 testified in the case, you can believe one witness over
5 several witnesses, several witnesses over one witness. You
6 can believe part of the testimony of a witness, reject the
7 remaining part of the testimony of that very same witness.

8 You can believe the testimony of a witness in its
9 entirety. You can reject the testimony of a witness in its
10 entirety. You can consider whether any witness has
11 exhibited to you any bias or prejudice or other motive in
12 the case.

13 You can consider the appearance and the demeanor of
14 that witness while on the witness stand. It's totally your
15 prerogative, yours alone, to determine the credibility of
16 witnesses.

17 Now to establish criminal liability, criminal intent is
18 required, must be established and proven by the State beyond
19 a reasonable doubt. It's always a matter to be determined
20 by the jury from the circumstances surrounding the
21 situation.

22 There's no way to prove intent to a mathematical
23 certainty, but it may be established by inference in the
24 same way as any other facts taken into consideration, the
25 acts of the parties and all the facts and circumstances of

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1 the case. It's a mental state. It's a conscious
2 wrongdoing. It's up to you to determine the Defendant's --
3 what the Defendant intended to do based upon the
4 circumstances shown to have existed.

5 I instruct you and I emphasize to you the fact that the
6 Defendant did not testify in this case is not a factor to be
7 considered by you in any way in your deliberations, your
8 consideration of the question of guilt or the innocence of
9 the Defendant. It must not be considered by you in any
10 manner whatsoever.

11 A defendant has a constitutional right to remain
12 silent. The assertion of this right must not be considered
13 by you in any way in your deliberations. Under your oath I
14 instruct you that you're to draw no conclusions whatsoever
15 from the fact that the Defendant in this case chose to
16 exercise his right and not testify. The fact that he did
17 not testify should not even be discussed by you in the jury
18 room.

19 Again, the burden of proof is on the State. The
20 Defendant is not required to prove his innocence. That
21 burden remains on the State to prove guilt beyond a
22 reasonable doubt.

23 Now, in this case the Defendant is charged with driving
24 under the influence. The State must prove beyond a
25 reasonable doubt that the Defendant was driving a motor

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1 vehicle in this state while under the influence of alcohol
2 or drugs or other substances to the extent that the
3 Defendant's faculties to drive were materially and
4 appreciably impaired.

5 Driving a motor vehicle means that the vehicle was in
6 motion. This may be proved by direct or circumstantial
7 evidence. Movement of the vehicle may occur without any
8 affirmative act by the driver or, in fact, by any person.
9 If a vehicle is moved by some power beyond the control of
10 the Defendant or by accident, this would not be driving, of
11 course.

12 The State must prove beyond a reasonable doubt that the
13 Defendant was sufficiently under the influence to impair his
14 ability to drive with reasonable care with due regard for
15 others and himself or as a reasonably prudent person would
16 drive. It's not necessary to show the Defendant was in a
17 helpless condition, or passed out or even intoxicated. On
18 the other hand, the fact that the Defendant at some time
19 prior to this incident drank an alcoholic beverage or took a
20 drug does not prove that the Defendant was driving under the
21 influence.

22 The law of South Carolina gives the Defendant the right
23 to refuse to take a blood alcohol concentration test.

24 The Defendant also is charged with driving under
25 suspension. The State must prove beyond a reasonable doubt

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1 that the Defendant drove a motor vehicle on a public highway
2 in this state during the time the Defendant's driver's
3 license was cancelled, or suspended or revoked. To be
4 guilty of this offense, driving under suspension, the
5 Defendant must have been notified by the Department of
6 Public Safety that his driver's license had been cancelled,
7 suspended or revoked.

8 Now, ladies and gentlemen, there's two possible
9 verdicts you can find in this case. Either you can find the
10 State met its burden of proof, the verdict would be guilty.
11 If you find the State has failed in any manner to meet its
12 burden of proof, your verdict, of course, would be not
13 guilty.

14 I've prepared a verdict form, Mr. Foreman. I believe
15 it's -- to be self-explanatory as to each of the charges.
16 Again, you consider them separate and distinct, one from
17 another. You either check the appropriate block of guilty
18 if the State has met its burden or not guilty if not, sign
19 your name as foreperson, date it and we'll receive it back
20 in the courtroom.

21 There's no significance whatsoever in the order in
22 which the possible verdicts are listed. One has to be
23 listed before the other. So you should not take any
24 significance with that.

25 All twelve of you must agree upon a verdict. In other

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1 words, the verdict must be unanimous. Your verdict cannot
2 be based upon sympathy or passion, emotion or any other
3 consideration not in evidence.

4 I'll remind you that you're free to ask me any question
5 concerning the law of this case, but remember, it's
6 impermissible for me to answer any questions that you have
7 regarding the facts of the case. You have the facts before
8 you. It's your duty to be the sole fact-finder based upon
9 the evidence that's been presented.

10 At this time I'll ask you, if you would, go back to
11 your jury room. Don't start your deliberations just yet.
12 There's a final matter of law I need to take up with the
13 attorneys, after which we'll hopefully have the verdict
14 forms and evidence back for you to begin your deliberations.
15 If you'll retire to your jury room at this time, please.

16 (Whereupon, the jury exited the courtroom at 10:19 am)

17 **THE COURT:** Any exceptions to the charge from the
18 State?

19 **MS. DRAWDY:** None from the State, Your Honor.

20 **THE COURT:** From the Defense?

21 **MR. FARNSWORTH:** None from the Defendant, Your Honor.

22 **THE COURT:** All right. If you'll make sure all the
23 evidence is in order. Here's the verdict form to go back as
24 well. Tell the jury they can begin their deliberations.

25 (Pause)

1 **THE COURT:** All right. We'll be in recess in this case
2 until we hear from our jury.

3 (Whereupon, the jury began deliberating at 10:21 am)

4 (Whereupon, court was in recess at 10:21 am)

5 (Whereupon, court resumed at 10:42 am)

6 (Whereupon, a bench conference was held off the record)

7 **THE COURT:** For the record, the jury has inquired about
8 watching the first video. I've had a conference with the
9 attorneys. They're both in agreement that they'll give a
10 computer that'll be clean for the jury to look at that.

11 And they asked for the first videotape. And they'll
12 get that to the bailiff without the jury coming back out and
13 let them watch what they want to as far as that video. Is
14 that correct, Mr. Farnsworth?

15 **MR. FARNSWORTH:** Yes, Your Honor.

16 **THE COURT:** Ms. Drawdy?

17 **MS. DRAWDY:** Yes, sir.

18 **THE COURT:** All right. Thank you.

19 (Whereupon, Court's exhibit 17 was marked and admitted
20 into evidence for the Court's record)

21 (Whereupon, court was in recess at 10:42 am)

22 (Whereupon, court resumed at 12:15 pm)

23 **THE COURT:** All right. I understand we have a verdict
24 from our jury. Anything we need to take care of before we
25 hear the verdict?

JURY VERDICT

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1 MS. DRAWDY: Nothing from the State, Your Honor.

2 MR. FARNSWORTH: No, Your Honor.

3 THE COURT: All right. The jury has a verdict. If you
4 can bring them in, please.

5 (Whereupon, the jury entered the courtroom at 12:18 pm)

6 THE COURT: Mr. Foreman, I understand the jury has
7 reached a verdict. Is that correct?

8 MR. FOREMAN: Yes, Your Honor.

9 THE COURT: Is it a unanimous verdict as to both
10 charges?

11 MR. FOREMAN: Yes, Your Honor.

12 THE COURT: If you would, please, hand the verdict form
13 to the bailiff. All right. Madame Clerk, you may publish
14 the verdict.

15 MADAME CLERK: Yes, Your Honor. Your Honor, indictment
16 2010-GS-23-9683 and 2010-GS-23-9684, Christopher Lee
17 Johnson, we, the jury, by unanimous consent find the
18 Defendant, Christopher Lee Johnson, as to the charge of
19 driving under the influence, guilty. As to the charge of
20 driving under suspension, guilty. Signed the foreperson,
21 Robert Mort. If this is your verdict, please raise your
22 right hand.

23 (Whereupon, all jurors raised their right hand)

24 MADAME CLERK: Thank you.

25 THE COURT: Are there any matters we need to take care

SENTENCE OF THE COURT

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1 of with this jury before they're discharged, from the State?

2 MS. DRAWDY: Nothing from the State, Your Honor.

3 THE COURT: From the defense?

4 MR. FARNSWORTH: No, Your Honor.

5 THE COURT: Ladies and gentlemen, thank you very much
6 for your participation in this trial. I apologize for
7 keeping you waiting. We had lots of matters that I could
8 not break loose from with the selection of another jury.

9 And I guess it has worked a little to your benefit.
10 Rather than going back in the pool to be selected on the
11 next jury, I can dismiss you for the day. You'll need to
12 call back tonight after 6:00. I'm sure Ms. Olsen will give
13 you further instructions about that. I would ask as you are
14 dismissed that you go back by the assembly room so that
15 she'll know that you are free from this case.

16 I've enjoyed working with you. You've been a good
17 conscientious juror -- jury. And I look forward to working
18 with you on some more cases this week. You're excused for
19 now. If you would, just report back to the assembly room.
20 If you'll go with the bailiff.

21 (Whereupon, the jury exited at 12:20 pm)

22 THE COURT: Any matters we need to take care of before
23 sentence is imposed on this case?

24 MS. DRAWDY: No, Your Honor.

25 MR. FARNSWORTH: No, Your Honor.

SENTENCE OF THE COURT

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1 THE COURT: All right.

2 MS. DRAWDY: I'm just getting the paperwork together.

3 THE COURT: Please come forward when you get the
4 paperwork.

5 (Pause)

6 THE COURT: All right. Mr. Farnsworth, I'll be glad to
7 hear from you and certainly from your client.

8 MR. FARNSWORTH: Okay, Your Honor. Mr. Johnson is, I
9 think, right -- just turned in August twenty-nine years old.
10 Is that correct?

11 MR. JOHNSON: Yes, sir.

12 MR. FARNSWORTH: And his work history -- he's single,
13 Your Honor. He lives with his step-father. His
14 employment's been -- he worked as a roofer, musician. He's
15 worked at a chemical company. And he lives in Startex,
16 lives over in Startex, lives with his step-father.

17 Your Honor, the solicitor's advised me that Mr. Johnson
18 has two hundred and seventy-three days in jail on these two
19 charges.

20 THE COURT: How far did you go in school, sir? Mr.
21 Johnson, how far -- how far did you go to school?

22 MR. JOHNSON: Eleventh. Before I got locked up for
23 this I got a grant. I was going to GED classes and then
24 going to attend Brown Mackie College, but I kind of got a
25 little set back.

SENTENCE OF THE COURT

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1 After I got out on probation I started getting my life
2 back, made about thirteen dollars an hour. My boss
3 terminated me, retaliated against me. And so now I have a
4 case against that. And my probation violated me. So --
5 because I couldn't pay the money. And I pretty much lost
6 everything. So ...

7 THE COURT: On your probation ---

8 MR. JOHNSON: I'm not proud -- I'm not proud of any of
9 this, Your Honor. I don't want to be standing here in front
10 of you or anybody else here today.

11 I just know I'm going to get my life back together
12 because it's just the kind of person I am. I know I'm a
13 strong individual. I know I can do anything I set my mind
14 to. I know that some things happened that I could have
15 prevented or at least thought about it and considered a lot
16 more.

17 I did something stupid one time and I took a plea. And
18 I was not going to -- I said to myself, I'm not going to do
19 it again. And, I mean, here I am.

20 THE COURT: What were you on probation for?

21 MR. JOHNSON: For grand larceny in 2008.

22 THE COURT: Are you still on probation or has it
23 terminated?

24 MR. JOHNSON: Yes, sir, I am.

25 THE COURT: You still on?

SENTENCE OF THE COURT

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1 MR. FARNSWORTH: Spartanburg county, Your Honor.

2 THE COURT: You understand this could put you in
3 jeopardy on that?

4 MR. JOHNSON: I understand.

5 THE COURT: What's the conditions of your probation?

6 MR. JOHNSON: I was on PTUP to pay, I think it -- it
7 was a total of seventeen hundred, but then the court costs
8 and everything, I think it was three thousand. And I got it
9 down to about seventeen hundred. Then I lost my job and
10 pretty much anything else I was trying to attend to at the
11 time, getting my license back and things like that.

12 THE COURT: So have you heard from your probation
13 officer or is that -- they served you with a warrant?

14 MR. JOHNSON: Yes, sir. I went to a violation hearing,
15 and they put me on weekend time. So I'm doing that now as
16 we speak ---

17 THE COURT: Okay.

18 MR. JOHNSON: --- so I can still keep my appointments.
19 I'm trying to draw social security. I've been diagnosed
20 with a mental disorder.

21 THE COURT: All right. What's the prior record,
22 solicitor?

23 MS. DRAWDY: In addition to what he's already told you,
24 his prior DUI was in February of 2003. He did have a
25 pending arrest for DUI several weeks before this incident

SENTENCE OF THE COURT

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1 out of Spartanburg from January 8th, 2010. That has not
2 been resolved.

3 He has a DUS conviction from September of 2003, 2000,
4 simple possession of marijuana, 2006, petty larceny, 2007,
5 disorderly conduct, 2008, urinating in public, 2010,
6 operating uninsured, and 2009, assault and battery.

7 **THE COURT:** The State agrees there's been nine months
8 served on this?

9 **MS. DRAWDY:** Yes, Your Honor.

10 **THE COURT:** When's your probation supposed to end in
11 Spartanburg? Do you know how long it was? You said it was
12 PTUP, but ---

13 **MR. JOHNSON:** Yes, sir. There's just a few conditions
14 that I'm supposed to complete, a GED program, which I'm
15 enrolled in now, and SADAC, of course, for the -- because of
16 alcohol, the DUI because they had found out and I had told
17 them, let them know what was going on with these charges.
18 And I have to complete that and pay the money. And then
19 it's to the probation officer's discretion whenever I can
20 get off.

21 **THE COURT:** Did the judge tell you three years of
22 probation?

23 **MR. JOHNSON:** Oh, it was five suspended to five years,
24 PTUP probation.

25 **THE COURT:** Five years of probation, but PTUP?

SENTENCE OF THE COURT

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1 MR. JOHNSON: Yes, sir.

2 THE COURT: When was that? When did you enter ---

3 MR. JOHNSON: December of 2009.

4 THE COURT: Are you -- part of your probation, you say,
5 does have some alcohol and drug counseling?

6 MR. JOHNSON: Yes, sir.

7 THE COURT: Have you been doing that?

8 MR. JOHNSON: I have paid for the twenty dollar
9 assessment fee. And I went to one class. And I was
10 supposed to go again this week. I'm hoping I'll make it.

11 It's just really hard for me to get around right now.
12 Between anything, and having rides, and people fussing at
13 me, wanting me to hurry up and everything. So it's real
14 stressful. But I have to do it. I don't have any choice.

15 THE COURT: You living in Startex now, you say?

16 MR. JOHNSON: Yes, sir.

17 (Pause)

18 THE COURT: You drawing any income now?

19 MR. JOHNSON: No, sir, not at the moment. My probation
20 officer -- he had -- when I went into the violation hearing,
21 he said my payments were going to be restructured. Then
22 when I reported that Tuesday he said my payments were going
23 up. And I said, why would they go up? I don't have any
24 income right now. And I'm kind of hands up in the air on
25 that. I don't know what's going to happen.

SENTENCE OF THE COURT

233

1 MR. FARNSWORTH: You've got a lawsuit and your lawyer's
2 handling it for you?

3 MR. JOHNSON: Yeah.

4 MR. FARNSWORTH: You've been offered how much?

5 MR. JOHNSON: I've been offered eighty-four thousand
6 dollars.

7 MR. FARNSWORTH: It's an unlawful termination thing.

8 MR. JOHNSON: Sexual harassment, retaliation.

9 MR. FARNSWORTH: That's maybe in the future, Your
10 Honor. Probably not any time soon.

11 MR. JOHNSON: I'm hoping to get a draw off of it to try
12 to pay this probation off.

13 (Pause)

14 MR. JOHNSON: My therapist diagnosed me with PTSD. And
15 I can't work, for right now, a year. I think she rated me
16 at 309.81 on the social and occupational functioning scale
17 just because I got locked up. And then I kind of shut down
18 after that. And they kept me sedated. And I've been trying
19 to recover ever since then.

20 And then I lost my other job for really no reason. And
21 I was retaliated on because I tried to tell my supervisor or
22 another supervisor what was going on. And I lost my job.
23 And I had to go from there.

24 (Pause)

25 THE COURT: Well, I hope you get those things worked

SENTENCE OF THE COURT

234

1 out, Mr. Johnson. This is case 2010-GS-23-9683. The
2 sentence of the Court is that the Defendant be committed to
3 the State Department of Corrections for a period of one year
4 and pay a fine of twenty-five hundred dollars. Provided
5 upon the service of nine months, credit for time served and
6 payment of eleven hundred dollar fine, the balance is
7 suspended and placed on probation for fifteen months,
8 condition to obtain his GED and have substance abuse
9 counseling as deemed necessary, random alcohol and drug
10 testing.

11 I'd like for you to attend the MADD impact course
12 that's offered periodically. You, I think, can work out a
13 time for you to do that. Of course, this case can be
14 transferred to Spartanburg county if that's suitable with --
15 with the other one.

16 Case 2010-9684, the sentence is thirty days, credit for
17 his time served, to be concurrent to that previously imposed
18 sentence. Wish you the best, sir. Probation will be seeing
19 you. They'll have a chance to see him soon. All right.
20 We'll be at ease til 1:30.

21 MS. DRAWDY: Thank you, Your Honor.

22 (Whereupon, court was in recess at 12:35 pm)

23 (Hearing Ended at 12:35 pm)

24 (End of Requested Transcript of Record)

1 Certificate of Reporter

2 I, the undersigned, Susan W. Hudgins, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the state of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Greenville county, South Carolina, on the 10th -
9 11th day of October 2011.

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

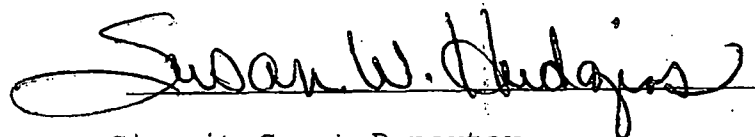
12 January 4, 2012

13

14

15

16



Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Greenville)
)
Christopher Lee Johnson)
 Full name and prison number (if any) of Applicant.)
)
 v.)
)
 State of South Carolina)
)

IN THE COURT OF COMMON PLEAS

2015-CP-2

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
 CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENS
 2015 MAR 19 4:30

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 veified (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 chr 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, exeise care fo 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 thfees 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 Greenville
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 276 - 308 days time Served -
 - (b) 15 months' probation

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals _____
- ii. Supreme Court _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed _____
- ii. ~~affirmed~~ denied _____
- iii. _____
- (c) the date of each such result:
- i. May 14th 2014 _____
- ii. January 23rd 2015 _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 408 S.C. 544 758 S.E.2nd 911 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: for non-compliance to the 1998 code of laws that envoke All uniformed vehicles to comply to video footage, and the Neglective issue of Not complying to the Department of Safety that Revised 3/2003 would have budgeted the video footage material for all 170 vehicles

- (a) inaffective assistance of counsel
- (b) _____
- (c) _____

11. *FACTS* State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Entrance of Faulty illegal evidence
- (b) innffective Counsel to speak to prosecutor before hearing Privately
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes Court of Appeals
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? yes United States Supreme Court for Certiorari
- (d) any other petitions, motions or applications in this or any other Court? _____

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. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. Court of Appeals 1015 ~~Sumter~~ Sumter St Columbia SC 29201
- ii. South Carolina Supreme Court 1231 Gervais St Columbia, SC 29201
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. denied
- ii. denied Review of Facts
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. July 24th
- ii. January 23rd
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- 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?
- yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. ineffective lack of Assistance or Counsel
- ii. illegal entrance of defaulter evidence
- iii. Invalid members presented for jury selection
- (b) the proceedings in which each ground was raised:
- i. These motions of proceeding were not considered or raised
- 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) ineffective lack of Counsel or Assistance
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? 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? yes

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. Daniel J Farnsworth
 - ii. ~~Danny~~ Dayne C. Phillips Esquire
 - iii. Carmen Vaughn Ganjehsani / Laura Bair
- (b) the proceedings at which each such attorney represented you:
 - i. 3-19-2010 - 10-2011
 - ii. 10-19-2012 - 1-23-2015
 - iii. _____

19. State clearly the relief you seek in filing this application:

Conviction Vacated

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

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.

[Handwritten signature]
[Handwritten signature]

SLIP
0113216206
8114182
12/17/17

SWORN to and subscribed before me this 10
day of March, 2015.

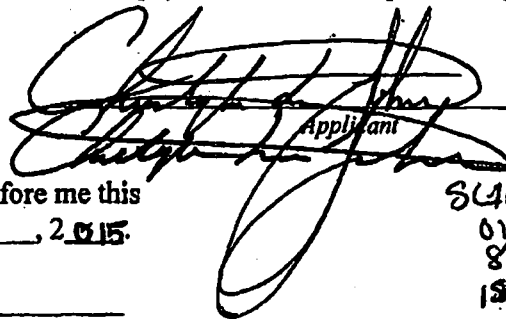
[Handwritten signature] (L.S.)
Notary Public

My Commission Expires: 12/24/14

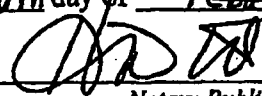
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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.



 Applicant

SWORN or affirmed to and subscribed before me this
10th day of February, 2015.


 Notary Public

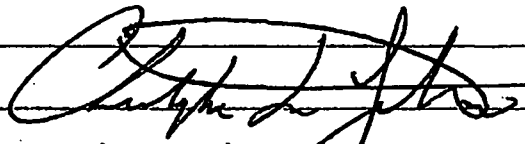
SL40
 031 326 206
 8/14/82
 18/14/17

My Commission Expires: 10/24/16

Sworn Affidavit

I Christopher Lee Johnson swear on the date of 2-11-2015 as of the date of 12-13-2013 Issues were not considered to be raised or considered of ineffective assistance of Counsel. Previously on 3-18-2010 i was attending an adult education program were on 9-04-2014 i could not even finish classes resulting for career advancement i expressed these same opinions to the arresting officer on 3-18-2010 prior to arrest and later argued to my ineffective assistance of Counsel based on the "Mount Pleasant" Act of North Carolina about failer to comply with D.O.S or past laws requiring all vehicles to have Cameras previously installed upon any traffic stop. Since October through december 2013 I have had a mass amount of discrimination to my disability were this charge had started Consuming disposition of my Character. To the Genetic non discrimination Act of 2008 and 1973 A.D.A non discrimination Rehabilitation act of 1973 I have had insurance discrimination, education discrimination, personal property discrimination, and also local healthcare facilities personel practice, or substantiating medical malpractice that has made a hostile environment as stated in Title VII of the Civil Rights Act of 1964. I am lucky to be alive from Cancer Survivor, or any other full fresh medical malpractice or banking forgery. I have also had my civil rights violated on numerous occasions through the 2014

voting year and have come out of the Supreme Court several times related to VRA and the most controversial VRA that the state of Texas imposed and were in the state of South Carolina was discriminated on through housing or recreation. Therefore I feel my certiorari was butted illegitimately in review of denial. I have received documentation from the Department of Justice and have filed ADA Complaints related to Title II and Title III statutes and other case files #'s as result of Civil Rights violations. These are the reasons set forth I am requesting PCR relief.



I am also being singled out towards a minority to where reproductive excess and local facilities I can't or have an antitrust revolving around special litigations where I have almost had death occur from personell practice. These issues expressed from 2014 voting cycle are still remarking to this day.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2015-CP-23-1985
COUNTY OF GREENVILLE)	
)	
Christopher Lee Johnson,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed March 19, 2015, the Respondent would show this Court:

I.

The Greenville County Grand Jury indicted the Applicant at the April 2011 term of General Sessions for driving under the influence (DUI) (2010-GS-23-9683) and driving under suspension (DUS) (2010-GS-23-9684). Daniel Farnsworth, Sr., Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On October 11, 2011, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of 1 year suspended on service of 9 months and \$1000 fine with the balance suspended to 15 months probation for DUI, second offense and 30 days for DUS, first offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Carmen V. Ganjehsani, Esquire and Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense represented the Applicant on appeal. The Court of Appeals affirmed the Applicant's convictions and sentences on May 14, 2014. State v.

Johnson, 408 S.C. 544, 758 S.E.2d 911 (Ct. App. 2014). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on January 23, 2015. The Remittitur was sent on January 29, 2015.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges his conviction is unlawful for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Ineffective Counsel to speak to prosecutor before hearing Privately."
2. "Entrance of faulty illegal evidence."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

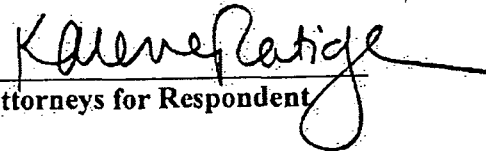
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

September 2, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 CHRISTOPHER LEE JOHNSON)
)
 Applicant,)
))
 vs)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

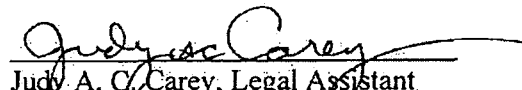
2015-CP-23-1985

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher Lee Johnson
203 Dovie Drive
Greer SC 29651

DATED this 2nd day of September, 2015.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE)

Christopher Lee Johnson,)
)
 Plaintiff,)
 v.) Case No. 15-CP-23-01985
)
 State of South Carolina,)
)
 Defendant.)

TRANSCRIPT OF HEARING

The within HEARING in the above-captioned matter was held December 16, 2015, before The Honorable Perry H. Gravely in Courtroom 6 of the Greenville County Courthouse, East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

Mills Arial, Esq.
 Appearing for Applicant

Karen Ratigan, Esq.
 OFFICE OF ATTORNEY GENERAL
 ... Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29616
dgarrison@sccourts.org

Christopher L. Johnson v State of South Carolina
Case No. 15-CP-23-1985
PCR Hearing of December 16, 2015

2

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INDEX OF EXHIBITS

- None Entered -

Christopher L. Johnson v State of South Carolina

3

Case No. 15-CP-23-1985

PCR Hearing of December 16, 2015

1 THE COURT: All right, what have
2 we got?

3 MS. RATIGAN: Your Honor, this
4 is the case of Christopher Lee Johnson versus
5 the State of South Carolina. The docket
6 number is 15-CP-23-1985.

7 Mr. Johnson was indicted for DUI and
8 DUS. He was represented on these charges by
9 Daniel J. Farnsworth.

10 The case was brought to trial on
11 October 2011 and Mr. Johnson was found guilty
12 of both charges. On October 11, of 2011,
13 Judge Welmaker sentenced him to concurrent
14 terms of one year, suspended on the service
15 of nine months and a thousand dollar fine,
16 with the balance suspended to fifteen months
17 probation for DUI; and thirty days for the
18 DUS first offense.

19 The case was appealed. The Court of
20 Appeals affirmed his convictions and
21 sentences in May of 2014.

22 A cert petition was filed with the
23 State of Supreme Court. That matter was
24 granted, briefed, and the Supreme Court
25 affirmed the Court of Appeals on January of

1 2015.

2 This application was timely filed
3 and the State is ready to proceed. I would
4 note just for the record that Mr. Johnson is
5 present today. He is not incarcerated, as he
6 is out of prison.

7 THE COURT: Mr. Arial, I will be
8 glad to hear from you.

9 MR. ARIAL: Thank you, Your Honor.
10 We are ready to proceed. Mr. Johnson is here
11 and I would like to call him to the stand as
12 my first witness.

13 (WITNESS TAKES STAND)

14 CHRISTOPHER LEE JOHNSON, having
15 been sworn to tell the truth, and nothing but
16 the truth, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. ARIAL:

19 Q. Mr. Johnson, you good right now?

20 A. Yes, I'm just a little shaky.

21 Q. Just relax so that we can kinda go
22 through your case and give the judge an
23 understanding of exactly what we are here for
24 today.

25 A. Okay.

Christopher L. Johnson v State of South Carolina

5

Case No. 15-CP-23-1985

PCR Hearing of December 16, 2015

TESTIMONY OF APPLICANT - DIRECT EXAMINATION

1 Q. You filed a PCR application against
2 Mr. Farnsworth. Is that correct?

3 A. The process, yes.

4 Q. And the reason you filed that is
5 because you're saying that he was ineffective
6 in your representation during these two
7 charges that Ms. Ratigan put on the record;
8 is that right?

9 A. Correct.

10 Q. As I have discussed with you over
11 this process, the reason we are here is
12 because you're saying that he was ineffective
13 in what he did to represent you. Okay?

14 A. (Affirmative nod).

15 Q. I know that you're having a lot of
16 issues that are outside of that and -- I know
17 you've sought some medical help for those
18 items, of that nature.

19 A. (No verbal response).

20 Q. What I want to concentrate today on
21 is how you believe that he was ineffective in
22 his representation of you. Okay?

23 A. (Affirmative nod).

24 Q. Can you tell me what you believe
25 that Mr. Farnsworth did wrong or how he was

1 ineffective when he represented you?

2 A. It's my recall -- it's been so long
3 ago. I've been through a tremendous -- I'm
4 very lucky to be alive.

5 Q. I understand.

6 A. The issue that he had me go in for
7 and talk to the prosecutor was this -- you
8 know, not constitutional. That's usually,
9 you know, -- doesn't happen.⁶

10 Q. Let's stop right there. When you
11 went in and had a conversation with the
12 prosecutor -- right?

13 A. Yes.

14 Q. When was that meeting?

15 A. It was before the actual -- I think
16 -- these are on the basis of the
17 preliminaries, I think. So -- when I had to
18 be on roll call, coming into the, uh, -- or
19 -- just having to go up here. The case was
20 then kinda pushed to a later.

21 Q. What happened during that meeting?

22 A. To my knowledge and recall, she
23 basically said that she'd had mercy, or
24 something like that, because I stayed in
25 there for so long. You know, they finally

Christopher L. Johnson v State of South Carolina

7

Case No. 15-CP-23-1985

PCR Hearing of December 16, 2015

TESTIMONY OF APPLICANT - DIRECT EXAMINATION

1 let me out without, you know, -- by signing
2 my own bond. She said that she felt bad for
3 me or something like that. Then, you know,
4 I know you -- I think I told her, I said,
5 'well, you know, they didn't have any reason
6 to pull me over because of the dash cams and
7 the street cams.'

8 Q. Because they had none of those in
9 the car; is that correct?

10 A. Correct.

11 Q. Okay.

12 A. I had even -- that was the basis of
13 the conversation, basically the end of the
14 conversation, very briefly, a very brief
15 period. Then I think the next time that I
16 came in that we had the case -- that Mr.
17 Farnsworth had the case.

18 Q. How was he ineffective during that
19 meeting?

20 A. Well, to my knowledge you're not
21 supposed to tell anyone to go in and talk to
22 the prosecutor, because that's not repre--,
23 -- that's not representation.

24 Q. Okay.

25 A. And then he said that he was going

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TESTIMONY OF APPLICANT - DIRECT EXAMINATION

1 to waive some of the things that was -- the
2 evidence and based on the Mount Pleasant,
3 okay, later again, because the Court of
4 Appeals had stamped -- where they had stamped
5 -- they had said 2015 in the South Carolina
6 Department of Corrections. They basically,
7 like, tried me for the same thing twice;
8 double jeopardy.

9 And then, you know, after I'd already had
10 a series of traumatic events before that --
11 to take place.

12 Then they executed to give me
13 Supreme Court, uh, certiorari. Then I think
14 it came to January 23rd of -- I believe this
15 year. And, uh, you know, it said on the
16 basis of -- why did I think that there was
17 ineffective assistance of counsel and
18 everything, because basically Mr. Farnsworth
19 did not, uh, there was certain evidence that
20 was entered. I was going to school at the
21 time ---

22 Q. I want to stop you because that's a
23 ground. "Faulty or illegal evidence" is what
24 you put. What do you mean by that?

25 A. There was sort of -- some sort of

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1 device that was not issued by State or
2 government. A lot of things -- you know, we
3 are the first state to actually get body
4 cameras. These things were not even raised
5 or brought into, you know, any kind of
6 process until there were race-related things
7 that started happening throughout the United
8 States.

9 Q. All right, let's go back. I know
10 that there is a lot of things that you want
11 to say in regards to that.

12 How was he ineffective in regards to the
13 evidence that you're saying being included in
14 the ---

15 A. Basically he did not represent me.
16 It was like he was agreeing with everything
17 that the prosecutor was saying. Basically,
18 you know, misrepresented me. Your Honor, my
19 -- what he said that he was going to go, he
20 was not going to let the evidence be entered
21 because it was not issued by State or local
22 government. You know, there was no kinds of
23 body cams or anything like that. I mean,
24 these were not devices that were ---

25 Q. What evidence was entered that

1 you're saying shouldn't have been entered?
2 That's what I am trying to get out, trying to
3 understand.

4 A. Should be?

5 Q. Yes. You're saying that there was
6 the entry of faulty, illegal evidence. That
7 means to me that you're saying something was
8 allowed to be entered into evidence that
9 shouldn't have been and that Mr. Farnsworth
10 didn't object to it.

11 A. Well, there were a couple of things
12 that I told him about. Because, obviously,
13 -- you know, there was no reason to pull me
14 over because of the dash cams. There was a
15 whole -- there was a whole point to where
16 they had twelve years, and they were making
17 budget excuses. I just think that's
18 ridiculous. After twelve years. I've had
19 the death penalty almost occur about these
20 things, other things -- you know, for
21 internet crimes and other types of ---

22 Q. I want to make sure that we don't
23 get lost on those things. Those are the two
24 items that you raised, right?

25 A. Yes, and also the street cameras

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TESTIMONY OF APPLICANT - CROSS EXAMINATION

1 that were throughout Greenville County.
2 They said that I ran some sort of red light.
3 I still to this day, you know, told the
4 police officer. I said, 'you think if
5 someone was behind you and they noticed that
6 someone was, you know, in the back of you
7 that they would obviously;;, you know, just
8 plough through a very crowded street,
9 anything like that. So, you know, there was
10 no basis to even pull me over on the basis
11 of, you know, because obviously it was based
12 on an act that was obviously not -- uh, you
13 know, to raise a concern. I just felt like,
14 you know, that I was getting -- trying to get
15 over on me, take advantage of the
16 circumstances of the case because I wasn't as
17 knowledgeable of the laws and everything that
18 was going on. I felt like I was just handed
19 a decision.

20 MR. ARIAL: I have no further
21 questions for you. Please answer any
22 questions that Ms. Ratigan may have.

23 CROSS EXAMINATION

24 BY MS. RATIGAN:

25 Q. A couple of quick questions. Did

TESTIMONY OF APPLICANT - CROSS EXAMINATION

1 you ever make bond or were you in jail the
2 whole time?

3 A. I did, yes.

4 Q. You did make bond at some point?

5 A. Yeah, I did. It was two hundred and
6 ninety-six days.

7 Q. And when did you have this meeting
8 with the assistant solicitor, do you
9 remember?

10 A. I want to say that it was either
11 September or October. It might have been in
12 October. I'm really not -- it has been so
13 long ago and I've had so many things happen
14 to me, you have to forgive me because it'll
15 -- I've had, you know, some traumatic brain,
16 uh, problems.

17 Q. Okay. Well, when you did meet with
18 the solicitor, that was because Mr.
19 Farnsworth told you to meet with her?

20 A. (No verbal response).

21 Q. Is that correct?

22 A. Correct.

23 Q. And why did he say that you should
24 meet with her? What was his reason for that?

25 A. He said 'go in there and talk to

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Case No. 15-CP-23-1985

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TESTIMONY OF APPLICANT -CROSS EXAMINATION

1 her, she might like you.' That's what he
2 told me.

3 Q. And Mr. Farnsworth didn't have this
4 meeting with y'all, it was just you and the
5 assistant solicitor?

6 A. Correct, he was not in there. He
7 wasn't even present. Obviously that is mi-
8 representation.

9 Q. You also said that Mr. Farnsworth
10 said that he was going to waive some things
11 based on the Mount Pleasant case.

12 A. Yes.

13 Q. What did he waive?

14 A. Well, he didn't even argue. He did
15 not argue that I was a student. He didn't
16 argue about the dash cams. When she was
17 talking about budgeting concerns over a
18 twelve-year period and there was only
19 thirteen out of a hundred seventy vehicle ---

20 Q. All that information came out,
21 though; didn't it?

22 A. No.

23 Q. Not at all?

24 A. No.

25 Q. Okay. Now, the device that you're

TESTIMONY OF APPLICANT - CROSS EXAMINATION

1 talking about that was not issued by the
2 government, is this the camera that one of
3 the officers had purchased himself?

4 A. I believe so.

5 Q. And you're saying that anything that
6 camera recorded was illegal and wasn't have
7 been entered?

8 A. Correct.

9 MS. RATIGAN: That's all that I
10 have.

11 THE COURT: Anything further?

12 MR. ARIAL: Nothing further, Your
13 Honor.

14 THE COURT: Thank you, you may
15 step down.

16 (WITNESS STEPS DOWN)

17 THE COURT: Anything else, Mr.
18 Arial?

19 MR. ARIAL: No, Your Honor, that's
20 our case.

21 THE COURT: Ms. Ratigan>?

22 MS. RATIGAN: We would call Mr.
23 Farnsworth.

24 (WITNESS TAKES STAND)

25 DANIEL J. FARNSWORTH, having been sworn

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TESTIMONY OF DANIEL FARNSWORTH - DIRECT EXAMINATION

1 to tell the truth, and nothing but the
2 truth, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. RATIGAN:

5 Q. Mr. Farnsworth, do you recall
6 representing Mr. Johnson on these charges?

7 A. Yes, I do.

8 Q. Were you appointed or were you
9 retained?

10 A. I was appointed.

11 Q. Did you file the usual *Brady* al and
12 Rule 5 Motions?

13 A. Yeah. Yes, I did.

14 Q. In your opinion, do you believe
15 that you received full discovery from the
16 State?

17 A. Yes. In fact, I knew that this was
18 going to be kind of an usual case due to the
19 video camera that was being -- the unit not
20 being equipped. I probably met with them two
21 or three times and viewed the officer's tape
22 that subsequently came into evidence.

23 Q. Were you also able to show that tape
24 to Mr. Johnson?

25 A. Uh, ---

TESTIMONY OF DANIEL FARNSWORTH - DIRECT EXAMINATION

1 Q. Do you recall?

2 A. You know, I -- I can't remember
3 exactly at the point in time when I did see
4 it. It seems like that was kind of -- it
5 didn't come with the original discovery. I
6 am not sure how close to trial Mr. Johnson
7 got out jail, but I think he probably would
8 have been out a couple of weeks before,
9 according to his testimony, and I think we
10 did -- prior to trial, because we knew that
11 this was going to be a trial all along, based
12 on this thing.

13 Q. What was your trial strategy?

14 A. Well, you know, because of the video
15 -- the car wasn't equipped with video, there
16 was going to be a Motion -- and of course we
17 argued that and that went on all one day into
18 the next day. Ninety-five percent of it was
19 what efforts that the City of Greenville
20 Police Department had made or not made to,
21 you know, secure these cameras. We had a
22 lady from the Highway Department about the
23 funding, on and on and on. Then, that
24 failed.

25 You know, I thought that he had a

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Case No. 15-CP-23-1985

PCR Hearing of December 16, 2015

TESTIMONY OF DANIEL FARNSWORTH - DIRECT EXAMINATION

1 chance. The facts of the case on a DUI
2 really weren't all that bad. You know, the
3 facts were that he'd gotten in his car. It
4 was parked right near the intersection of
5 McBee and where the old Carolina First Bank
6 used to be?

7 He was parked up the street a little bit,
8 probably from the table over there where we
9 were seated a minute ago, from this wall to
10 the red light where he -- he backed up.

11 According to the officer's testimony,
12 he didn't have his headlights on. And, I
13 seem to think, there might have only been one
14 taillight.

15 So he backed up and when the officer saw
16 that his lights weren't on, he did a turn-
17 around and -- and Mr. Johnson, according to
18 the officer, stopped at the red light. The
19 officer got behind him and -- just a few
20 second later, he pulls a halfway into the
21 intersection, more towards under the red
22 light and stopped. That's when he put the
23 lights and siren on. Then he went another
24 maybe twenty or twenty-five yards and pulled
25 into another parking space. So, you know, it

TESTIMONY OF DANIEL FARNSWORTH - DIRECT EXAMINATION

1 was all just -- you know, within fifty,
2 seventy-five or a hundred yards.

3 As I remember the video and all, it
4 wasn't that bad. The problem was he admitted
5 to, I think, quote/unquote "too much to
6 drink", six or seven beers. This was in --
7 about 2:00 o'clock in the morning, a St.
8 Patricks Day celebration downtown.

9 He had a wristband on that said Wild
10 Wing Café. The officer saw that and then of
11 course the officer went on about glassy eyes,
12 smelled, like they do with all of them. So,
13 you have the failed sobriety. The officer
14 didn't think that he did well enough, so he
15 charged him with DUI. He refused the
16 breathalyzer.

17 But, you know, the facts weren't
18 overwhelming against him.

19 You know, the video wasn't that bad.

20 You know, I thought he had a chance of
21 winning. I think the jury stayed out two or
22 three hours, at least two.

23 Q. Speaking of the video, did you see
24 there was a basis to object to the video
25 since it came from the officer's private

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TESTIMONY OF DANIEL FARNSWORTH - DIRECT EXAMINATION

1 camera?

2 A. I tried the best I could. I talked
3 to other lawyers and, (negative gesture), I
4 did not object because I didn't think that
5 there was any basis.

6 Q. Did you ever instruct Mr. Johnson to
7 have a private conversation with the
8 assistant solicitor in this case?

9 A. You know, I just -- you know, I
10 heard his testimony. I did not specifically
11 remember that but he said Ms. Drawdy to say
12 that she felt sorry for him, this type of
13 thing, that does kind of ring a bell. She
14 may have told me that or, like he said, she
15 may have told him that. I don't think I
16 would have said go in here -- whatever it
17 was. I never did hear where this meeting
18 supposedly happened. But I -- I -- I can't
19 think of any circumstances where I would tell
20 my client to go in and talk with the
21 solicitor, you know, without me. I am not
22 saying that it didn't happen but I don't
23 remember that.

24 MS. RATIGAN: That is all that I
25 have, Your Honor.

TESTIMONY OF DANIEL FARNSWORTH - CROSS EXAMINATION

1 THE COURT: Mr. Arial?

2 MR. ARIAL: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. ARIAL:

5 Q. Mr. Farnsworth, just a few question
6 about your representation of him.

7 He mentioned some street cams. Did you
8 ever get some street cameras, that you're
9 aware of, in this case? Or saw?

10 A. Like they use downtown?

11 Q. Yes.

12 A. That never came up. I don't know if
13 there was any mention by the solicitor. I
14 don't even know, to be honest with you, if
15 that corner at that particular time had
16 cameras.

17 Q. So you're saying that he admitted at
18 some point in time to having had six or seven
19 beers?

20 A. Yeah, that's according to the
21 testimony that I read.

22 Q. Then your strategy was, first of
23 all, to try to get the Motion to suppress
24 granted. If not, then you were just going to
25 go in there ---

Christopher L. Johnson v State of South Carolina

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Case No. 15-CP-23-1985

PCR Hearing of December 16, 2015

TESTIMONY OF DANIEL FARNSWORTH - CROSS EXAMINATION

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A. Yeah.

Q. The camera that came in was a personal camera from the officer, is that correct?

A. An officer who came upon the scene.

Q. Afterwards?

A. Right.

Q. So you didn't feel at that point in time that there was any Motions or anything that could be suppressed.

A. No, and that was not the first time that I'd heard it was going to happen. I knew that it was going to happen. You know, that's kinda of a -- back then and even now -- that's kinda of a new area, that camera. That *Roberts* case was about the first case that was solely on if you don't have one it is dismissed.

Q. Right.

MR. ARIAL: I have no further questions, Your Honor.

MS. RATIGAN: I have no further questions and the State would rest.

THE COURT: Thank you, Mr. Farnsworth.

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(WITNESS STEPS DOWN)

THE COURT: Anything else?

MR. ARIAL: Nothing further at this time.

THE COURT: I will be glad to hear from you both if you have any final remarks.

MR. ARIAL: No final remarks, Your Honor.

THE COURT: You know, it looks like the two primary claims, if I am not mistaken, are -- one is the claim about Mr. Farnsworth sending him in to talk with a solicitor. You know, even if that did happen, I do not see any prejudice or how that hurt his case in any way.

The other thing, it sounds like the primary claim was the use of video and the claim about the failure -- I know Mr. Johnson indicated about the budget restraints and the fact that it was improper for this car not to have an in-car video. Even though that may be true, it sounds like they maybe should have done something before.

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PCR Hearing of December 16, 2015
RULING OF THE COURT

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It sounds like Mr. Farnsworth did everything that he could possibly do, and that issue was argued on appeal.

Mr. Johnson, what we are looking at here today is whether Mr. Farnsworth's role in this was ineffective and if that caused your conviction. I believe, based on what I've heard hear today, that there has not been any showing that Mr. Farnsworth was ineffective or that ineffectiveness caused your conviction.

We are not an appellate court, that's a different arm. Therefore, I find that you've not met your burden on showing he was ineffective in his assistance as counsel in any way. So I deny your petition.

Ms. Ratigan, I would ask that you prepare the Order.

MS. RATIGAN: Yes, sir.

(HEARING CONCLUDED)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Christopher Lee Johnson,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2015-CP-23-1985

ORDER OF DISMISSAL

ENTERED COMPUTER

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSINGER
 2016 JUN 21 PM 4 13

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 19, 2015. The Respondent made its return on September 2, 2015. An evidentiary hearing was held on December 16, 2015 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Daniel Farnsworth, Sr., Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant was indicted at the April 2011 term of the Greenville County Grand Jury for driving under the influence (DUI) (2010-GS-23-9683) and driving under suspension (DUS) (2010-GS-23-9684). He was represented by Daniel Farnsworth, Sr., Esquire.

After the State called the case to trial, the Applicant was found guilty. On October 11, 2011, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of 1 year

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 PWR

suspended on service of 9 months and \$1000 fine with the balance suspended to 15 months probation for DUI, second offense and 30 days for DUS, first offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Carmen V. Ganjehsani, Esquire and Dayne C. Phillips, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense represented the Applicant on appeal. The Court of Appeals affirmed the Applicant's convictions and sentences on May 14, 2014. State v. Johnson, 408 S.C. 544, 758 S.E.2d 911 (Ct. App. 2014). The South Carolina Supreme Court denied the Applicant's subsequent petition for writ of certiorari on January 23, 2015. The remittitur was sent on January 29, 2015.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Ineffective Counsel to speak to prosecutor before hearing Privately."
2. "Entrance of faulty illegal evidence."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action,

[Handwritten Signature]

"[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel should not have had him talk to the prosecutor in his absence. The Applicant stated trial counsel did not properly challenge the introduction of illegal evidence (the video from the officer's personal device).

Trial counsel testified he did not recall telling the Applicant to talk to the assistant solicitor alone but did not think he would have told the Applicant to do so. Trial counsel testified there was no basis to have objected to the introduction of the video taken with the officer's camera.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective. Trial counsel testified he did not think he would have recommended the Applicant speak to the assistant solicitor outside of his presence. Trial counsel testified there was no basis for objecting to the admission of the video evidence. This Court finds trial counsel's testimony

is credible. This Court notes trial counsel is an experienced criminal defense attorney and it is clear upon review of the trial record that he presented a well-researched and thorough defense at trial. This Court finds trial counsel would not have advised the Applicant to speak to the assistant solicitor alone. This Court also finds the Applicant has failed to articulate what specific argument trial counsel should have made in order to suppress the video evidence. See, e.g., Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.") (citation omitted). Trial counsel argued the statutory provisions regarding dashcam videos had not been satisfied and this issue was addressed on appeal.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations.

Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

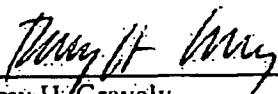
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.


IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice.

AND IT IS SO ORDERED this 14th day of June, 2016.



 Perry H. Gravelly
 Presiding Judge
 Thirteenth Judicial Circuit


 _____, South Carolina.



R. MILLS ARIAIL, JR.

11 NORTH IRVINE STREET, SUITE 11
GREENVILLE, SC 29601

Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Christopher Lee Johnson, Appellant.

Appellate Case No. 2011-201808

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 5230
Heard January 7, 2014 – Filed May 14, 2014

AFFIRMED

Dayne C. Phillips, of Lexington, and Appellate Defender
Carmen Vaughn Ganjehsani, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia, for Respondent.

THOMAS, J.: Christopher Lee Johnson appeals his conviction for driving under the influence (DUI), arguing the circuit court erred in denying his motion to dismiss the charge because the Greenville Police Department (GPD) failed to

comply with the video recording requirements of section 56-5-2953 of the South Carolina Code (Supp. 2013).¹ We affirm.

FACTS/PROCEDURAL HISTORY

In the early hours of March 18, 2010, Officer Jesse Lowe of the GPD conducted a traffic stop of Johnson after observing Johnson (1) operating a vehicle without its headlights on and with an inoperable brake light and (2) stopping at a red light, entering the intersection, and stopping again in the middle of the red-lit intersection. During the traffic stop, Officer Lowe noted Johnson's eyes were "glassy" and that he smelled of alcohol. Officer Lowe also noticed Johnson was wearing a wristband from a local restaurant and bar. After informing Johnson of his traffic violations, Officer Lowe asked Johnson if he had consumed any alcohol. Johnson responded "too much," and stated he had consumed "six to seven beers at least." As a result of his initial observations, Officer Lowe conducted three field sobriety tests.² After Johnson failed these tests, Officer Lowe placed Johnson under arrest for DUI and transported him to the Greenville County Detention Center.

Upon arrival at the detention center, Officer Lowe prepared an affidavit regarding his failure to produce a video recording of Johnson's conduct at the incident site. On the affidavit, Officer Lowe checked a box reading:

At the time of the Defendant's arrest the vehicle I was operating had not been equipped with [a] videotaping device and therefore pursuant to Section 18 of Senate Bill 174 of 1998, the videotaping requirement regarding vehicles is not applicable.

¹ The code provision in effect at the time Johnson committed the offense in 2010 has not since been amended; thus, we cite to the current version of section 56-5-2953.

² The field sobriety tests were recorded on a personal camera by Officer Donnie Ng of the GPD, who arrived at the scene of the traffic stop after Johnson was already out of his car. Upon Officer Ng's arrival, Officer Lowe asked him if he had a video camera in his vehicle, which Officer Ng did not. The video recorded by Officer Ng did not begin until after Johnson had already been pulled over and exited his car. The State has not argued on appeal that the video recorded by Officer Ng meets the requirements of section 56-5-2953.

Johnson was subsequently indicted for second-offense DUI and driving under suspension, and the case proceeded to trial. Prior to trial, Johnson's counsel moved to dismiss the DUI charge on the ground that the GPD failed to comply with the video recording requirements of section 56-5-2953.

At a pre-trial hearing on this matter, Lieutenant Joe Browning testified regarding his management of the GPD's budget and the GPD's efforts over the previous decade to obtain and maintain video recording systems for their law enforcement vehicles. Lieutenant Browning stated the GPD acquired its first four camera systems from the Department of Public Safety (DPS) as part of a safety award some time prior to 2001. Lieutenant Browning testified the GPD began an effort in December 2001 to purchase its own camera systems and expended \$35,550 on eighteen camera systems. However, these camera systems began failing soon after the purchase, and the GPD sold them all for \$155.

According to Lieutenant Browning, on February 13, 2002, DPS informed the GPD that it would be receiving VHS-based camera systems from DPS following "the change with the DUI law." The GPD subsequently requested fifteen camera systems. On August 8, 2002, the GPD received one camera system from DPS along with a letter informing them that funds were not available to provide all the requested camera systems at one time. Instead, a computerized random selection process was utilized, by which the GPD received one camera system. By the end of 2004, the GPD had received twenty-one camera systems.

Lieutenant Browning further testified that the GPD was confined to the amount of camera systems it had previously requested and could not request any more camera systems until 2009. After waiting to no avail for DPS to take more camera system requests, the GPD established a committee in late 2007 and early 2008 to look into purchasing its own camera systems. The committee decided the GPD should utilize digital-based camera systems rather than VHS-based camera systems due to the advantages in storage, installation, and video quality. The committee requested recording systems from nine different companies in order to test the equipment. In February 2010, the GPD began purchasing digital-based camera systems from Kustom Signals.³ As of the date of Johnson's trial, the GPD had spent \$463,463.99 to purchase eighty-nine digital-based camera systems.

³ Lieutenant Browning explained the GPD's delay in purchasing these camera systems was due to the lengthy process of attempting to obtain approval and extra funding from state and local government.

In April of 2009, DPS notified law enforcement agencies that the 2002 requests had been satisfied and it was now accepting requests for additional camera systems. Lieutenant Browning testified that this was the first opportunity since 2002 to request additional camera systems. DPS also informed law enforcement agencies that it would fulfill requests for VHS-based camera systems before fulfilling any requests for digital-based camera systems.⁴ According to Lieutenant Browning, the GPD opted to request twenty digital-based camera systems in 2009 rather than VHS-based camera systems because the GPD had already expended a significant amount of its own funds transitioning towards digital-based recording.⁵ As of the date of Johnson's trial, the GPD had yet to receive any camera systems from DPS since its 2009 request.

Elaine Johnson, an employee of DPS and previously the Director of the Department of Resource Management when section 56-5-2953 was enacted, testified next regarding DPS's efforts to implement legislation and provide video recording systems to state law enforcement agencies. She indicated that DPS is responsible for purchasing, installing, and maintaining video recording systems. Johnson stated that, as she understood it, section 56-5-2953 was enacted so that individual law enforcement agencies would not have to spend their own money on camera systems. According to Johnson, it will take fifteen years to fulfill the number of camera systems requested statewide in 2009. She further verified that the GPD had received twenty-one camera systems as of 2004, and that the GPD's 2009 request for twenty digital-based camera systems was still pending.

Johnson's counsel then argued our supreme court's holding in *Town of Mount Pleasant v. Roberts*, 393 S.C. 332, 713 S.E.2d 278 (2011), warranted dismissal of the DUI charge. At the conclusion of the pre-trial hearing, the circuit court denied the motion to dismiss, finding the facts of this case were distinguishable from those in *Roberts* because, unlike the law enforcement agency in *Roberts*, the GPD "was always seeking to get to the trough to get the equipment when they could, expending their own dollars in addition." The case proceeded to trial and the jury convicted Johnson of DUI and driving under suspension.⁶ This appeal followed.

⁴ The Greenville Sheriff's Department (GSD), the highest priority agency in the state to request VHS-based camera systems in 2009, did not receive any camera systems until over a month after Johnson's arrest. The GSD had second priority statewide; the GPD had twenty-first priority.

⁵ Lieutenant Browning testified the GPD would have requested forty camera systems in 2009 but he did not believe DPS could supply that many.

⁶ At trial, Johnson stipulated to knowingly driving with a suspended license.

ISSUE ON APPEAL

Did the circuit court err in denying Johnson's motion to dismiss his DUI charge because of the GPD's failure to comply with the video recording requirements of section 56-5-2953 of the South Carolina Code (Supp. 2013)?

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.*

LAW/ANALYSIS

A person who commits the offense of DUI "must have his conduct at the incident site and the breath test site video recorded . . . [and] [t]he video recording at the incident site must . . . not begin later than the activation of the officer's blue lights." S.C. Code Ann. § 56-5-2953(A)(1)(a)(i) (Supp. 2013). However, subsection 56-5-2953(B) outlines four exceptions that excuse noncompliance with subsection (A)'s mandatory video recording requirements:

Failure to comply with the video recording requirement is excused: (1) if the arresting officer submits a sworn affidavit certifying the video equipment was inoperable despite efforts to maintain it; (2) if the arresting officer submits a sworn affidavit that it was impossible to produce the video recording because either (a) the defendant needed emergency medical treatment or (b) exigent circumstances existed; (3) in circumstances including, but not limited to, road blocks, traffic accident investigations, and citizen's arrests; or (4) for any other valid reason for the failure to produce the video recording based upon the totality of the circumstances.

State v. Manning, 400 S.C. 257, 264, 734 S.E.2d 314, 317-18 (Ct. App. 2012) (citing § 56-5-2953(B)). Pursuant to subsection (G) of 56-5-2953, the provisions of subsections (A) and (B) of 56-5-2953 take effect for each law enforcement vehicle used for traffic enforcement once the law enforcement vehicle is equipped with a video recording device. The failure to comply with the provisions of section

56-5-2953 merits a *per se* dismissal. *Town of Mount Pleasant v. Roberts*, 393 S.C. 332, 348, 713 S.E.2d 278, 286 (2011).

Johnson alleges the failure to produce a video recording in compliance with section 56-5-2953 merited the dismissal of the DUI charge pursuant to the supreme court's holding in *Roberts*. In *Roberts*, a Mount Pleasant police officer failed to record the traffic stop of Roberts because the officer's vehicle was not equipped with a video camera. *Id.* at 336, 713 S.E.2d at 280. Prior to the trial in municipal court, Roberts moved to dismiss the charge based on the officer's failure to videotape the entire arrest pursuant to section 56-5-2953. *Id.* at 337, 713 S.E.2d at 280. In opposing that argument, the Town of Mount Pleasant (the Town) relied on subsection (G) of section 56-5-2953 for the proposition that the videotaping requirement only takes effect once the law enforcement vehicle is equipped with a videotaping device. *Id.* at 337-38, 713 S.E.2d at 280-81. As the vehicle had not been equipped with such a device, the Town argued the statute had not taken effect.⁷ *Id.* In support of her motion to dismiss, Roberts called several law enforcement officers from Charleston, Berkeley, and Dorchester counties in an attempt to establish that Mount Pleasant had fewer video cameras than these municipalities despite a higher number of DUI arrests. *Id.* at 338, 713 S.E.2d at 281. Roberts argued the Town had willfully avoided compliance with 56-5-2953 as it had not requested additional cameras from DPS in response to increasing DUI arrests.⁸ *Id.* Additionally, Roberts argued the Town was financially able to purchase additional video cameras but had chosen not to do so. *Id.*

At the conclusion of the pre-trial hearing, the municipal court denied Roberts's motion to dismiss. *Id.* at 339, 713 S.E.2d at 281. The municipal court concluded there was no requirement that Mount Pleasant obtain any video cameras, and noted that subsection (G) indicated the other provisions of section 56-5-2953 only take

⁷ Our supreme court noted "this argument would be valid but for the Town's obvious intentional efforts to avoid complying with section 56-5-2953." *Roberts*, 393 S.C. at 338, 713 S.E.2d at 281.

⁸ From our reading of *Roberts*, the Town did not argue that the difficulty in receiving video cameras from DPS contributed to their noncompliance. Unlike this case, it does not appear that the Town presented evidence that law enforcement agencies were unable to request additional cameras until 2009. Instead, "[t]he Town countered Roberts's arguments by claiming that DPS was solely responsible for providing the video cameras and, thus, the Town did not have a duty to request or purchase additional cameras in order to comply with the statute." *Roberts*, 393 S.C. at 338-339, 713 S.E.2d at 281.

effect once a vehicle is equipped with a videotaping device. *Id.* Roberts was convicted of DUI and subsequently appealed her conviction to the circuit court. *Id.* The circuit court reversed Roberts's conviction, finding that to construe subsection (G) as proposed by the Town would permit law enforcement agencies to circumvent the statute by not requesting video cameras from DPS. *Id.* at 340, 713 S.E.2d at 282. The circuit court also concluded that none of the exceptions in subsection (B) of 56-5-2953 were satisfied. *Id.*

In affirming the circuit court, our supreme court held that the Town's failure to equip its patrol vehicles with video cameras, despite its "priority" ranking, "defeat[ed] the intent of the Legislature and violated the statutorily-created obligation to videotape DUI arrests." *Id.* at 347, 713 S.E.2d at 285. The supreme court went on to say the Town should not be able to continually evade its duty by relying on subsection (G) of section 56-5-2953. *Id.* The court also pointed out that the Town failed to satisfy any of the statutory exceptions to the videotaping requirement. *Id.* Furthermore, the Town's failure to request additional video cameras from DPS did not constitute a "valid reason for the failure to produce the videotape based upon the totality of the circumstances." *Id.* at 348, 713 S.E.2d at 286 (citing § 56-5-2953(B)). In reaching this decision, the supreme court noted that its holding was dependent on the specific facts of *Roberts*, and it could envision other circumstances in which a law enforcement agency could establish a "valid reason" for noncompliance:

Our decision should in no way be construed as eradicating subsection (G) of section 56-5-2953. Instead, we emphasize that subsection (G) is still viable and must be read in conjunction with subsection (B) as these exceptions, under the appropriate factual circumstances, could operate to excuse a law enforcement agency's noncompliance due to the failure to equip a patrol vehicle with a video camera. For example, we can conceive of a scenario where a law enforcement agency establishes a 'valid reason' for failing to create a video of the incident site by offering documentation that, despite concerted efforts to request video cameras, it has not been supplied with the cameras from DPS.

Id. at 349, 713 S.E.2d at 286-87.

In the present case, we find the GPD established a valid reason for its failure to equip a patrol vehicle with a video recording system. Lieutenant Browning's testimony outlined the GPD's extensive efforts to obtain video recording systems for its law enforcement vehicles. The GPD requested camera systems from DPS in both 2002 and 2009, which were the only opportunities to request camera systems from DPS.⁹ Unlike the police department in *Roberts*, the GPD had already begun a process of expending its own funds to purchase camera systems before Johnson's arrest. This process included establishing a committee to research camera systems and necessitated the time-consuming task of attempting to secure extra funding from state and local government. These efforts do not constitute an attempt to evade the requirements of section 56-5-2953; instead, we agree with the circuit court that these efforts signify an attempt to comply with the statute with the limited funds and opportunities available. As we find the GPD did not seek to evade compliance with 56-5-2953 through reliance on subsection (G), subsection (G) still applies. Therefore, the video recording requirements of subsection 56-5-2953(A) had not taken effect because the vehicle had yet to be equipped with video recording equipment. Additionally, had the requirements taken effect, we find these facts constitute a "valid reason" under a totality of the circumstances analysis, which would satisfy an exception under section 56-5-2953(B). See *Roberts*, 393 S.C. at 349, 713 S.E.2d at 286-87 ("We can conceive of a scenario where a law enforcement agency establishes a 'valid reason' for failing to create a

⁹ Johnson also argues the number of camera systems requested by the GPD was insufficient in comparison to the number of requests made by police departments in "other highly populated cities." Specifically, Johnson points out that in 2009 the Charleston Police Department requested 200 camera systems and the Columbia Police Department requested 193 camera systems. However, this argument lacks merit because the number of DUI arrests, rather than population, governs priority for camera systems. In 2009, the Charleston and Columbia police departments had first and ninth priority, respectively, while the GPD had twenty-first priority. According to a DPS spreadsheet, the number of camera systems requested by the GPD was comparable to the number of requests by agencies with similar "priority" rankings. More specifically, the Richland County and Anderson County sheriff's departments had 2009 priority rankings of nineteenth and twentieth, respectively. Accordingly, the spreadsheet reveals that Richland County requested ten camera systems in 2009, Anderson County requested fifteen camera systems, and the GPD requested twenty camera systems. Similarly, in 2002, the GPD had twentieth priority and requested more camera systems than the two agencies with eighteenth and nineteenth priority.

video of the incident site by offering documentation that, despite concerted efforts to request video cameras, it has not been supplied with the cameras from DPS.").

CONCLUSION

We hold the circuit court properly denied Johnson's motion to dismiss his charge for DUI. Unlike the police department in *Roberts*, the GPD did not seek to evade its duties in equipping law enforcement vehicles with video recording systems. Thus, under subsection (G) of 56-5-2953, the video recording requirements of subsection 56-5-2953(A) had not taken effect because a video camera had not been installed in the vehicle. Accordingly, the circuit court's decision is

AFFIRMED.

SHORT and WILLIAMS, JJ., concur.

The Supreme Court of South Carolina

The State, Respondent,

v.

Christopher Lee Johnson, Petitioner.

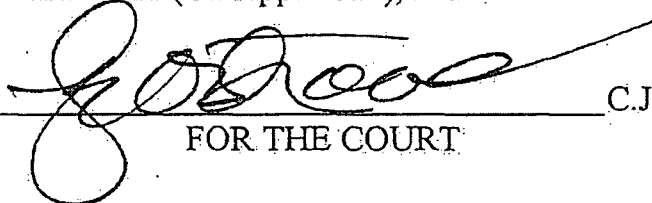
Appellate Case No. 2014-001599

Lower Ct. Case No. 2010-GS-2309683

2010-GS-2309684

ORDER

The petition for a writ of certiorari to review the Court of Appeals' decision in *State v. Johnson*, 408 S.C. 544, 758 S.E.2d 911 (Ct. App. 2014), is denied.


 _____ C.J.
 FOR THE COURT

Columbia, South Carolina

January 23, 2015

cc:

The Honorable Jenny Abbott Kitchings

The Honorable Paul B. Wickensimer

Dayne C. Phillips, Esquire

~~Carmen Vaughn Ganjehsani, Esquire~~

Mark Reynolds Farthing, Esquire

RECEIVED

JAN 23 2015

SC OFFICE OF
 APPELLATE DEFENSE

WITNESSES

J.D. Lowe
J. D. Lowe

Greenville Police Department

3/18/2010

DOCKET NO. 2010-GS-23-

SLD

The State of South Carolina

County of Greenville

009683

COURT OF GENERAL SESSIONS

April

TERM 2010

THE STATE

vs.

CHRISTOPHER LEE JOHNSON

ARREST WARRANT NUMBER

163A2FG

ACTION OF GRAND JURY

PROCEED

Sally Damm

Foreperson of Grand Jury

VERDICT

3356

Indictment for

DRIVING UNDER THE INFLUENCE

VIOLATION § 56-05-2930

Clerk of Court
Greenville County

0107 01 300

RECEIVED

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DRIVING UNDER THE INFLUENCE

At a Court of General Sessions, convened on **APR 12 2011** the Grand Jurors of Greenville

County present upon their oath:

That CHRISTOPHER LEE JOHNSON did in Greenville County, on or about the 18th day of March, 2010, drive a motor vehicle while under the influence of alcohol, or other drug or substance or combination of alcohol, other drug and/or substance which caused impairment to the extent that the defendant's faculties to drive were materially and appreciably impaired; such not being the first offense within a period of ten (10) years including and immediately preceding the foregoing date. This is in violation of §56-05-2930 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

Form S-43a
Rev. 12/08

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

6360
3-26-10

CITY OR COUNTY OF Greenville VERSUS
FIRST NAME Christopher MIDDLE NAME Lee LAST NAME Johnson
STREET AND NO. [REDACTED] CITY St. Startex, SC STATE SC ZIP CODE 29365

STATE LICENSED SC DRIVER'S LICENSE NO. [REDACTED] CDL YES NO DRL LIC. CLASS JD only
VEH. LIC. NO. Paper Tag STATE SC MAKE OF VEH. Ford YEAR 91 COMM. VEH. HAZ. MT. MOPED MTRCYCL. OTHER SHL

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER
NAME OF TRIAL OFFICER [REDACTED] STREET AND NO. 158 W. Ararat St.

DATE OF TRIAL 3/27/10 TIME OF TRIAL 9:00 CITY Greenville STATE SC ZIP CODE 29601

VIOLATION - COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO. 36-05-2933

OWNER OF VEHICLE Same DATE OF ARREST 03/18/10

ADDRESS OF OWNER [REDACTED] DATE OF VIOLATION 03/18/10

BAIL DEPOSITED [REDACTED] NAME OF ARRESTING OFFICER JD Lowe #660 RANK Off

DESCRIPTION OF ACCUSED: RACE W/M SEX M BIRTH DATE 02/25/71 HT. 000 WT. 185 EYES BRN COUNTY Greenville NUMBER 23
BADGE 123 DISTRICT 3

CASE BEFORE: MAGISTRATE MUNICIPAL COURT
CIRCUIT COURT FAMILY COURT FEDERAL COURT
TIME OF VIOLATION 0202 AM-1 P.M.-2 WEATHER CLR

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE: W. McBee Ave
DISTANCE IN FEET FROM INTERSECTION OF 5 MAIN ST.

DEFENDANT: DID NOT APPEAR APPEARED
NOLLE PROSSED DISPOSITION: GUILTY
FORFEITED BOND PLED: NOLLO CONTENDERE

TRIAL BY: TRIAL OFFICER JURY
MILES --- N E S W
1 2 3 4

VERDICT OF TRIAL IF ANY: GUILTY NOT GUILTY
DATE OF TRIAL IF ANY: 20
Lat ---

COMMITTED TO: JAIL SUSPENS FINE AMT. COLLECTED AMT. SUSPENDED
Vehicle Searched N Arrest as Result of Collision N
OFFENSE CODE 99 B.A. LEVEL Refused

CERTIFIED CORRECT DATE ---
16342 FG

DRIVER'S RECORD COPY

State Court

DOCKET NO. 101497

#

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2010GS2309683

Christopher Lee Johnson

A/W#: 16342FG

AKA:

Date of Offense: 3/18/2010

Race: WHITE Sex: M Age: 28

S.C. Code §: 56-05-2930

DOB: -1982 SS#:

CDR Code #: 2982

Address:

City, State, Zip: Startex, SC 29377

DL#: SID#:

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or

In disposition of the said indictment comes now the Defendant who was TO: DUI/Refusal 2nd

in violation of § 56-05-2930-2940(4) of the S.C. Code of Laws, bearing CDR Code # 3356
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Sara Lee M Drawdy, Sara Lee SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ 2500; provided that upon the service of 9 days/months/years and/or payment
of \$ 1100; plus costs and assessments as applicable*; the balance is suspended with probation for 15

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. gmo-
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114(BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCJA Surcharge), 3% to County (if paid in installments), TOTAL.

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: ATTEND MADD IMPACT course

(Transfer to Spartanburg Co.)

Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk Paul B. Wehner

Presiding Judge

Court Reporter: Audra

Judge Code: 2157

SCCA/217 (03/2011) Prob. begins today

Sentence Date: 10-11-2011

WITNESSES

J. D. Lowe

Greenville Police Department

3/18/2010

DOCKET NO. 2010-GS-23-009684

^{SLD}
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April TERM 2010 ²⁰¹¹

THE STATE

vs.

CHRISTOPHER LEE JOHNSON

ARREST WARRANT NUMBER

16343FG

ACTION OF GRAND JURY

RETURNED

Bobly D. Baum

Foreperson of Grand Jury

VERDICT

0624

Indictment for

DRIVING UNDER SUSPENSION

VIOLATION § 56-01-0460

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DRIVING UNDER SUSPENSION

APR 12 2011

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That CHRISTOPHER LEE JOHNSON did in Greenville County, on or about the 18th day of March 2010, drive a motor vehicle on a public highway of this state when his license to drive was suspended.

This is in violation of §56-01-0460 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

Rev. 12/06

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

6360
3-26-10
VERSUS

CITY OR COUNTY OF Greenville

FIRST NAME Christopher MIDDLE NAME Lee LAST NAME Johnson

STREET AND NO. _____ CITY Starlet, SC STATE SC ZIP CODE 29365

STATE LICENSED SC DRIVER'S LICENSE NO. _____ CDL YES NO DRI. LIC. CLASS TP only

VEH. LIC. NO. Paper Tag STATE SC MAKE OF VEH Ford YEAR 98 COMB. VEH. HAZ. MT. AUTO MOPED 18/PSGR VEH. MTRCYCL OTHER SUV

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER Hartley STREET AND NO. ~~Starlet~~ Main St

DATE OF TRIAL 2010 TIME OF TRIAL am CITY Greenville STATE SC ZIP CODE 29601

VIOLATION - COURT APPEARANCE REQUIRED YES NO DA 5-DUI Related 2nd VIOLATION SECTION NO. 56-01-0460

OWNER OF VEHICLE Same DATE OF ARREST 03/18/2010

ADDRESS OF OWNER _____ DATE OF VIOLATION 03/18/2010

BAIL DEPOSITED _____ NAME OF ARRESTING OFFICER JO Lowe RANK 660 Off

DESCRIPTION OF ACCUSED: RACE W/M HT. 5'8" WT. 155 EYES BRO COUNTY GVL NUMBER 23

DATE BAIL REC'D. BY _____ BADGE 123 DISTRICT 3

CASE BEFORE: MAGISTRATE MAIN COURT CIRCUIT COURT FAMILY COURT FEDERAL COURT

NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE _____ TIME OF VIOLATION 0202 P.M. WEATHER CLR

DEFENDANT: DID NOT APPEAR APPEARED DISTANCE IN FEET FROM INTERSECTION OF S. MAIN ST.

NOLLE PROSSED GUILTY FORFEITTED BOND PLED: NOLO CONTENDERE AND W. McBee Ave

TRIAL BY: TRIAL OFFICER JURY MILES _____ CITY GVL

VERDICT OF TRIAL IF ANY: GUILTY NOT GUILTY DATE OF TRIAL IF ANY 20

JAIL _____ SUSPEND _____ FINE _____ AMT. COLLECTED _____ AMT. SUSPENDED _____

COMMITTED TO: _____ Vehicle Searched N Arrest as Result of Collision N OFFENSE CODE 96 B.A. LEVEL Refused

CERTIFIED CORRECT _____ DATE _____

16343 FG

DRIVER'S RECORD COPY

#

state court

DOCKET NO.

10-24977

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2010GS2309684

Christopher Lee Johnson

A/W#: 16343FG

AKA:

Date of Offense: 3/18/2010

Race: WHITE Sex: M Age: 28

S.C. Code § : 56-01-0460(2)

DOB: -1982 SS#: [REDACTED]

CDR Code #: 2055

Address: [REDACTED]

City, State, Zip: Startex, SC 29365

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Dus / Driving Under Suspension, 1st Offense

in violation of § 56-01-0460(1) of the S.C. Code of Laws, bearing CDR Code # 0624
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Sara Lee 174
Drawdy, Sara Lee SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 30 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 10-11-11
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul Buchan
Court Reporter: Andy
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2137
Sentence Date: 10-11-2010