

8

VOLUME II OF II

22420

STATE OF SOUTH CAROLINA

In The Court of Appeals.

 ORIGINAL

APPEAL FROM ALLENDALE COUNTY

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

**RECEIVED**

v.

SEP 23 2015  
SC Court of Appeals

MCKENZIE L. DAVIS,

APPELLANT

APPELLATE CASE NO. 2014-001550

RECORD ON APPEAL

TIFFANY L. BUTLER  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

CHRISTINA J. BIGELOW  
Senior Assistant Deputy Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211

Attorney for Appellant

Solicitor, Fourteenth Judicial Circuit

ISSAC MCDUFFIE STONE, III  
Solicitor, Fourteenth Judicial Circuit  
Post Office Box 2226  
Beaufort, SC 29901  
(803) 943-3580

Attorneys for Respondent

PAGES 501-524

INDEX

INDEX .....i

TRIAL TRANSCRIPT DATED JULY 8, 2014..... 1

DEFENSE MOTION TO SEVER .....8

RULING BY THE COURT .....8

DEFENSE MOTION TO SUPPRESS ALL CHEMICAL TESTING  
RESULTS OF THE DEFENDANT’S BLOOD AND URINE  
(STATUTE UNCONSTITUTIONAL).....9

DEFENSE MOTION TO SUPPRESS ALL CHEMICAL TESTING  
RESULTS OF THE DEFENDANT’S BLOOD AND URINE  
(NO PROBABLE CAUSE FOR ARREST)..... 10

DEFENSE MOTION TO SUPPRESS ALL CHEMICAL TESTING  
RESULTS OF THE DEFENDANT’S BLOOD AND URINE  
(NO SEARCH WARRANT) ..... 11

DEFENSE MOTION TO SUPPRESS PRESENCE OF MARIJUANA  
FOUND IN THE DEFENDANT’S BLOOD ..... 16

DEFENSE MOTION TO EXCLUDE EVIDENCE NOT PROVIDED  
PURSUANT TO RULE 5, SCRCrimPro .....22

JUDGE’S RULING ON MOTION TO EXCLUDE .....25

TESTIMONY

    DENARD THEOTRICUS GATES (IN CAMERA)

        Direct examination by Ms. Burchstead .....30

        Cross examination by Mr. Plexico.....43

        Redirect examination by Ms. Burchstead.....57

        Recross examination by Mr. Plexico.....61

STATE’S ARGUMENT .....64

DEFENSE ARGUMENT .....65

RULING BY THE COURT ON DEFENSE MOTION TO SUPPRESS  
PRESENCE OF MARIJUANA FOUND IN DEFENDANT’S BLOOD .....66

RULING BY THE COURT ON DEFENSE MOTION TO SUPPRESS ALL CHEMICAL TESTING RESULTS OF THE DEFENDANT'S BLOOD AND URINE (STATUTE UNCONSTITUTIONAL) .....	66
RULING BY THE COURT ON DEFENSE MOTION TO SUPPRESS ALL CHEMICAL TESTING RESULTS OF THE DEFENDANT'S BLOOD AND URINE (NO PROBABLE CAUSE FOR ARREST) .....	66
RULING BY THE COURT ON DEFENSE MOTION TO SUPPRESS ALL CHEMICAL TESTING RESULTS OF THE DEFENDANT'S BLOOD AND URINE (NO SEARCH WARRANT).....	66
OPENING STATEMENT BY MR. FERNANDEZ.....	78
OPENING STATEMENT BY MR. PLEXICO .....	82
TESTIMONY	
RODNEY STANLEY	
Direct examination by Mr. Fernandez.....	85
Cross examination by Mr. Plexico.....	92
DENARD THEOTRICUS GATES	
Direct examination by Ms. Burchstead .....	94
RENEWAL OF ALL PRIOR MOTIONS BY DEFENSE .....	125
RULING BY THE COURT ON RENEWAL OF ALL PRIOR MOTIONS BY DEFENSE .....	125
TESTIMONY	
DENARD THEOTRICUS GATES	
Direct examination by Ms. Burchstead .....	125
Cross examination by Mr. Plexico.....	139
Redirect examination by Ms. Burchstead.....	175
Recross examination by Mr. Plexico.....	181
RUSSELL SCOTT ASHE	
Direct examination by Mr. Fernandez.....	184
Cross examination by Mr. Plexico.....	201

GROVER SCOTT BRINSON	
Direct examination by Mr. Fernandez .....	204
Cross examination by Mr. Plexico.....	209
Redirect examination by Mr. Fernandez .....	210
DAVID W. LEE	
Direct examination by Mr. Fernandez .....	212
Cross examination by Mr. Plexico.....	230
JOEY OSWALD	
Direct examination by Ms. Burchstead .....	246
Cross examination by Mr. Plexico.....	251
VALANDREA BING	
Direct examination by Ms. Burchstead .....	254
Cross examination by Mr. Plexico.....	272
Redirect examination by Ms. Burchstead.....	279
Recross examination by Mr. Plexico .....	282
CYNTHIA ALAMIA	
Direct examination by Mr. Fernandez .....	283
Cross examination by Mr. Plexico.....	287
Redirect examination by Mr. Fernandez .....	288
MARK TURNER	
Direct examination by Mr. Fernandez .....	289
Cross examination by Mr. Plexico.....	298
Redirect examination by Mr. Fernandez .....	300
THOMAS EDWARD MOORE	
Direct examination by Ms. Burchstead .....	302
Minor	
Direct examination by Ms. Burchstead .....	311
Cross examination by Mr. Plexico.....	321
Redirect examination by Ms. Burchstead.....	326
DUNCAN KEITH SMITH	
Direct examination by Mr. Fernandez .....	328
Cross examination by Mr. Plexico.....	334
EDWINA BING	
Direct examination by Ms. Burchstead .....	336
Cross examination by Mr. Plexico.....	343
Redirect examination by Ms. Burchstead.....	345

COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY .....	348
--	-----

## TESTIMONY

## DR. JAMES GLASSER

Direct examination by Mr. Fernandez .....	349
Cross examination by Mr. Plexico.....	360

## SELENA KINARD

Direct examination by Mr. Fernandez.....	373
--	-----

## SHERRY BROWN

Direct examination by Mr. Fernandez.....	378
Cross examination by Mr. Plexico.....	384

## BETTY BUTLER

Direct examination by Mr. Fernandez.....	386
Cross examination by Mr. Plexico.....	390

## NIKKI PERRY HUGHES

Direct examination by Mr. Fernandez.....	395
Cross examination by Mr. Plexico.....	399

RENEWAL OF ALL PRIOR MOTIONS BY DEFENSE .....	401
---	-----

RULING BY THE COURT ON RENEWAL OF ALL PRIOR MOTIONS BY DEFENSE .....	401
---	-----

## TESTIMONY

## QUINTUS YOUNG

Direct examination by Mr. Fernandez.....	401
Cross examination by Mr. Plexico.....	410
Redirect examination by Mr. Fernandez .....	415

## LILLIE SMALLS GOLLMAN

Direct examination by Ms. Burchstead .....	417
Cross examination by Mr. Plexico.....	426

STATE RESTS.....	430
------------------	-----

DEFENSE MOTION FOR A DIRECTED VERDICT ON INDICTMENT FOR FELONY DUI (GREAT BODILY INJURY RESULTS).....	430
---	-----

RULING BY THE COURT .....431

DEFENSE MOTION FOR A DIRECTED VERDICT ON  
INDICTMENT FOR FELONY DUI (DEATH RESULTS).....432

RULING BY THE COURT .....433

DEFENSE RESTS .....440

STATE’S CLOSING ARGUMENT .....441

DEFENSE CLOSING ARGUMENT.....453

JURY CHARGE ON THE LAW .....477

QUESTION FROM THE JURY .....505

VERDICT .....508

POLLING OF THE JURY .....509

DEFENSE ARGUMENT .....515

STATE’S ARGUMENT .....517

SENTENCING .....517

STATE’S EXHIBIT #16 – URINE/BLOOD  
COLLECTION REPORT .....520

INDICTMENT AND SENTENCING SHEET .....521

CERTIFICATE OF COUNSEL.....524

## JURY INSTRUCTIONS

1 the influence statute and we covered that already, or  
2 the felony DUI statute. The State has got to prove  
3 that you're driving a car while in violation of one of  
4 those statutes. He's driving under the influence, in  
5 this case, or felony DUI. They must prove that beyond  
6 a reasonable doubt.

7 And the final indictment that alleges that on this  
8 particular date Mr. Davis was driving while his  
9 vehicle -- his right to drive had been suspended. We  
10 call that driving under suspension. And since he  
11 stipulated his license -- he didn't have the right to  
12 drive, don't send a note saying why. You know, you  
13 could lose your license for various things. It doesn't  
14 have any bearing on the case. The issue is whether he  
15 was -- it was suspended and he was driving or not  
16 driving. So the State has to prove that he was driving  
17 a vehicle on November the 1st, 2008.

18 All right, jurors. I mean, I could amplify  
19 things, but I think that basically covers it. When the  
20 verdict form comes back, it's all on one sheet. I  
21 don't see it right here. It just got buried while I  
22 was running through all of this stuff. We will send it  
23 back. And it's pretty straightforward. It just starts  
24 out in order of which I went over it. It's got the  
25 indictment numbers and so forth. And it's felony DUI

## JURY INSTRUCTIONS

1 resulting in death is the first one. Not guilty --  
2 guilty or not guilty.

3 The second one, felony DUI great bodily injury.  
4 Not guilty, guilty. I put a one beside the third one  
5 that they put on there because it's just driving under  
6 the influence. If you find him guilty -- again, any  
7 time I say that, if I don't say it, I don't intend any  
8 inference by it, the Defense always objects, you know.  
9 So I have to say it. If you don't -- if you find him  
10 guilty of felony DUI or cause of death or great bodily  
11 injury, either of those, you would just skip over that  
12 one. Because that's a lesser included offense. You  
13 know, when they say while driving under the influence  
14 he did such and such, that's a charge. It's a smaller  
15 charge. The greater charges is death resulting from  
16 great bodily injury. So, that's not one of the five  
17 indictments. It is -- that charge is included in the  
18 two felony DUI charges. So, you could find him not  
19 guilty of felony DUI resulting in death because no  
20 proximate cause, or not driving or not under the  
21 influence -- you know, not violating a statute. And  
22 the same thing for great bodily injury. If you find  
23 that no great bodily injury occurred, everything else  
24 happened. And then it happens -- but if you find him  
25 guilty of either of those, you wouldn't hit that third

## JURY INSTRUCTIONS

1 one. You'd put a one by it and circle it. And if you  
2 find him not guilty of those two then you would pass on  
3 whether or not he was driving while under the  
4 influence.

5 And then the child endangerment is just going to  
6 be only not guilty, guilty, guilty, not guilty. Folks,  
7 again, the State has the burden of proof on all of  
8 those elements that we've been over.

9 The final thing is the driving under suspension.  
10 It's either not guilty or guilty. Now, that's just  
11 whether he was driving. He's stipulated that his right  
12 to drive had been suspended.

13 So, beyond that jurors, I have tried to keep it as  
14 short as I could. But I'm not saying it's not a  
15 serious situation, it's just we've been in here a long  
16 time and y'all need to start deliberating if you can.  
17 But don't start deliberating until I call you back.  
18 But there are a good many things that I didn't charge  
19 verbatim, you know, because I don't read much, and I  
20 may need to instruct you.

21 Alternates, y'all stay in here. The other 12, if  
22 you would ease out.

23 (Jury exits the courtroom at 4:24 p.m.)

24 THE COURT: All right. Y'all reasonably happy?

25 MS. BURCHSTEAD: No objection.

## JURY INSTRUCTIONS

1 MR. PLEXICO: No objections, Your Honor.

2 THE COURT: All right. Tell the Foreperson to  
3 step back in.

4 MR. FERNANDEZ: We have the evidence here.

5 THE COURT: We're going to send that back in just  
6 a second. I need to tell him something simple. I only  
7 need him to sign, I don't need 12. You'd think that  
8 everybody knows that.

9 (Jury foreman enters the courtroom.)

10 THE COURT: All right. Mr. Foreman, this is the  
11 verdict form. I didn't tell you, but I know you know.  
12 You and only you sign the form. The 12 jurors have to  
13 agree. And we're going to send the evidence back.  
14 Y'all don't start deliberating before we get there. We  
15 will be back in a second.

16 (Jury foreman exits the courtroom.)

17 THE COURT: You know, I've tried a wrongful death  
18 action in civil and, you know, asked the standard  
19 question: Anybody cannot be fair and impartial, and  
20 three come up and said, How can I be fair and impartial  
21 you have already said it's a wrongful death.

22 MR. FERNANDEZ: Right.

23 THE COURT: That's just what it's called but, you  
24 know, a lay person, they don't know. All right. We're  
25 at ease.

## JURY INSTRUCTIONS

1 (Pause.)

2 MS. BURCHSTEAD: Thank you, Your Honor.

3 THE COURT: (Speaking to the alternates) You all  
4 are going to be free to go in a minute. But the  
5 clerk's going to talk to you. Explain about when  
6 you're going to get your money and all this other  
7 stuff. She will be with you in a minute.

8 (Deliberations begin at 4:27 p.m.)

9 THE COURT: Bring them back in. Need more  
10 information on child endangerment. They have a  
11 question. I have to bring them back in. They said  
12 that, We are confused on the charge. It is the  
13 simplest one that we have got but . . .

14 MS. BURCHSTEAD: Okay.

15 THE COURT: All right. Bring them in.

16 (Jury enters the courtroom at 5:38 p.m. )

17 THE COURT: Okay. Jurors, in order to obtain a  
18 conviction of any crime, remember the State has to  
19 prove beyond a reasonable doubt the evidence. Driving  
20 under suspension is simplest, all the State has to  
21 prove, and I'm not suggesting that they did, that the  
22 person's license was suspended and they are driving the  
23 car. That is real simple, two things to prove.

24 Child endangerment is about that simple. And I  
25 will just read the statutes, it don't really need any

## QUESTION FROM THE JURY

1 explanation. Well I'll paraphrase it just a little  
2 bit. If a person is driving a vehicle and has one or  
3 more passengers under the age of 16 in the vehicle and  
4 violates one of three statutes and the driver is over  
5 18 he is guilty of child endangerment. The three  
6 statutes are one, failure to stop for a blue light.  
7 That is not applicable in this case, but I'll give you  
8 the whole statute. Two, Section 56-5-2930, which is  
9 driving under the influence or Section 56-5-2945, which  
10 is felony DUI.

11 So, in order to get a conviction, and I'm not  
12 saying that the State will, they have got to convince  
13 you that the -- the State has to prove beyond a  
14 reasonable doubt that the Defendant is over the age of  
15 18, he had one or more people in the car who were under  
16 the age of 16 and he was either driving under the  
17 influence or driving under the influence and committed  
18 a felony DUI. They don't have to prove both, you know,  
19 just one. But you have to find that he was either --  
20 he violated one of those statutes. I don't know how  
21 that could be confusing, but then I'm not back there  
22 with you talking about all of the other things so.

23 THE FOREPERSON: Okay.

24 THE COURT: Y'all need anything else on that?

25 THE FOREPERSON: That is it, Your Honor.

## QUESTION FROM THE JURY

1 THE COURT: Huh?

2 THE FOREPERSON: That is all.

3 THE COURT: Okay. I mean, if he's not guilty of  
4 felony DUI or driving under the influence he can't  
5 possibly be guilty of child endangerment even if he was  
6 speeding and had a child in the car, that is not --  
7 that is not what he's charged with.

8 (Jury exits the courtroom at 5:42.)

9 THE COURT: They must have some other question  
10 that they didn't write down, you know, concerning. But  
11 I can't speculate what it was, I can just answer that  
12 part. All right.

13 (Jury reaches a verdict at 5:57 p.m.)

14 THE COURT: All right. The jury said that they  
15 have a verdict. Okay. The jury says that they have a  
16 verdict. Is the State ready to proceed with the  
17 verdict?

18 MS. BURCHSTEAD: Yes, Your Honor.

19 THE COURT: Is Defense ready?

20 MR. PLEXICO: Yes, Your Honor.

21 THE COURT: All right. Now, this case has been a  
22 long time coming. We don't know what the jury verdict  
23 is going to be, but obviously it is -- people are going  
24 to be disappointed one way or another. No way that a  
25 jury will come back with a verdict that is going to

## QUESTION FROM THE JURY

1 satisfy everybody in here. I need for everybody to  
2 keep it under control.

3 (Jury enters the courtroom.)

4 THE COURT: Mr. Foreman, has the jury reached a  
5 verdict?

6 THE FOREPERSON: Yes, sir, Your Honor.

7 THE COURT: You handed it to the bailiff who has  
8 just handed it to me; is that right?

9 THE FOREPERSON: Yes, sir, Your Honor.

10 THE COURT: Well, y'all step out one -- y'all step  
11 back out one second and let me show this to the  
12 attorneys.

13 (Jury exits the courtroom.)

14 THE COURT: All right. Attorneys, y'all step over  
15 here.

16 (Off-the-record discussion held.)

17 THE COURT: All right. Bring them back in.

18 THE CLERK: In the Court of General Sessions,  
19 State of South Carolina; Judge Kinard, the State of  
20 South Carolina versus McKenvie Levar Davis, we the jury  
21 find the Defendant on the charge of driving under the  
22 influence resulting in death, not guilty.

23 On the charge of driving under the influence  
24 resulting in great bodily injury, not guilty.

25 On the charge of driving under the influence,

## THE VERDICT

1 guilty.

2 On the charge of child endangerment, not guilty.

3 On the charge of driving under suspension, guilty.

4 Ladies and gentlemen of the jury, is this your  
5 verdict?

6 THE FOREPERSON: Yes, ma'am.

7 THE CLERK: Is it still your verdict?

8 THE FOREPERSON: Yes, ma'am.

9 THE COURT: Anything else while we have the jury?

10 MR. PLEXICO: No, Your Honor.

11 MS. BURCHSTEAD: Could we poll the jury as to the  
12 child endangerment, Your Honor?

13 THE COURT: We will poll them as to the whole  
14 thing.

15 MS. BURCHSTEAD: Yes, sir, we would like that.

16 THE COURT: All right. Jurors, the clerk is going  
17 to ask you two questions. She will say, Was that your  
18 verdict and is that still your verdict.

19 She is not talking about when you went back there  
20 and started deliberating, she is talking about when she  
21 read it now. And she is going to call your individual  
22 names, or you can call them by number.

23 THE CLERK: Mr. Ryan Johnson, was that your  
24 verdict?

25 THE JUROR: Yes.

## THE VERDICT

1 THE CLERK: Is it still your verdict?

2 THE JURY MEMBERS: Yes.

3 THE COURT: Mr. Gwendolyn Jones, was that your  
4 verdict?

5 THE JURY MEMBERS: Yes.

6 THE CLERK: Is it still your verdict?

7 THE JURY MEMBERS: Yes.

8 THE CLERK: Pamela Willingham, was that your  
9 verdict?

10 THE JUROR: Yes.

11 THE COURT: Is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Kenisha Hall, was that your verdict?

14 THE JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 THE JUROR: Yes.

17

18 THE CLERK: Ms. Erica Combs, was that your  
19 verdict?

20 THE JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Mr. Wayne Cromer, was that your  
24 verdict?

25 THE JUROR: Yes.

## POLLING OF THE JURY

1 THE CLERK: Is it still your verdict?  
2 THE JUROR: Yes.  
3 THE CLERK: Mr. Troy Devore, was that your  
4 verdict?  
5 THE JUORPR: Yes.  
6 THE CLERK: Is it still your verdict?  
7 THE JURY MEMBERS: Yes.  
8 THE CLERK: Falisa Williams, was that your  
9 verdict?  
10 THE JUROR: Yes.  
11 THE CLERK: Is it still your verdict?  
12 THE JUROR: Yes.  
13 THE CLERK: Cynthia O'Neal, was that your verdict?  
14 THE JUROR: Yes.  
15 THE CLERK: Is it still your verdict?  
16 THE JUROR: Yes.  
17 THE CLERK: James Badger, was that your verdict?  
18 THE JUROR: Yes.  
19 THE CLERK: Is it still your verdict?  
20 THE JUROR: Yes.  
21 THE CLERK: Lalandra Jackson, was that your  
22 verdict?  
23 THE JUROR: Yes.  
24 THE CLERK: Is it still your verdict?  
25 THE JUROR: Yes.

## POLLING OF THE JURY

1 THE CLERK: Latoya Moultrie, was that your  
2 verdict?

3 THE JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes.

6 THE COURT: Okay. I guess the jury is free to go.  
7 Do you want to tell them when they are going to get  
8 their money for Christmas?

9 THE CLERK: It'll probably be Monday. Does anyone  
10 need an excuse for work? You can step outside and see  
11 the bailiff.

12 THE COURT: Jurors, thanks for your help. I told  
13 her to go down to Beaufort and bring back steak and  
14 lobster but, you know, if y'all didn't want to eat they  
15 will let you go. They will give you the statement in  
16 the hall and the checks will be mailed shortly.

17 THE BAILIFF: All of you that need passes wait in  
18 the jury room and I'll bring them to you.

19 THE COURT: Okay. Thank you very much.

20 (Jury exits the courtroom at 6:05 p.m.)

21 MS. BURCHSTEAD: I need to get forms, Judge, and  
22 prior record.

23 THE COURT: You don't know his prior record? It  
24 is not going to matter anyway with what I can sentence  
25 him to.

## POLLING OF THE JURY

1 MS. BURCHSTEAD: I think that there's enhancements  
2 to DUI.

3 THE COURT: He agreed to that, I believe.

4 MR. PLEXICO: Yes, Your Honor, I believe that he  
5 has eight months credit. It don't know if the jail has  
6 the exact date. I believe that the procedure would be,  
7 correct me if I'm wrong --

8 THE COURT: You don't contest that he has a prior  
9 DUI?

10 MR. PLEXICO: No, we don't contest that he has a  
11 prior DUI conviction.

12 THE COURT: So, it would be DUS, DUI related and  
13 first offense and DUI second offense.

14 MS. BURCHSTEAD: I believe that is correct, Your  
15 Honor. That is what I wanted to check. I know that  
16 he's already done time in jail, I get that. For  
17 paperwork purposes I want to make sure that it's  
18 correct. Mr. Hernandez has gone to get the file,  
19 Judge. I don't know if you had a form or not.

20 THE COURT: I assume that the clerk has a  
21 sentencing sheet.

22 MS. BURCHSTEAD: I'll grab them, Judge.

23 THE COURT: Sentencing sheet.

24 (Pause.)

25 THE COURT: All right. And the DUI is up to a

## POLLING OF THE JURY

1 year and \$5,000?

2 MR. PLEXICO: Yes, Your Honor.

3 THE COURT: It can't be suspended to less than  
4 \$1,200.

5 MR. PLEXICO: Yes, Your Honor.

6 THE COURT: All right.

7 MR. PLEXICO: It is not less than \$1,000. I don't  
8 know what that comes out to by the time she does her  
9 add on.

10 THE COURT: It comes to about \$2500 something.

11 MR. PLEXICO: I believe that's correct, Judge, not  
12 less than five days, not more than a year. Do you want  
13 me to begin? Just let me know when you want me to -- I  
14 have a few brief things to say, Judge.

15 THE COURT: What it says to me for a second  
16 offense, you know, \$1,100.

17 MR. PLEXICO: \$1,100, yes, I misread that, you are  
18 absolutely correct. I apologize.

19 THE COURT: Okay. Let's bring him up. All of  
20 this is not on the record yet.

21 MR. PLEXICO: Your Honor, we are -- I cannot be  
22 certain of the 2009 CDR codes unless I do some  
23 research. I would like the Court's permission, with  
24 the Attorney General's agreement, that I'll refer that  
25 to the clerk and she can write those in. These are the

## POLLING OF THE JURY

1 sentencing sheets. May I begin?

2 THE COURT: Yes.

3 MR. PLEXICO: Your Honor, my client is -- this  
4 happened when he was 24, he's 30 now. He has a child.  
5 He works six days a week over at the -- one of the  
6 Grayber's (ck) Tires in Barnwell which is right down in  
7 Barnwell from the little restaurant that we have down  
8 there. We are very grateful for the verdict that was  
9 returned.

10 By my calculations he had 165 days credit looking  
11 at when the bond was posted. He had 165 days credit,  
12 Your Honor. I thought that he had more, he thought  
13 that he had more. I guess sitting in jail certainly  
14 seems to be a long time. I would ask that you not  
15 place him in jail again, Judge. I think that the  
16 maximum would only be, like I said, a year. It is only  
17 a year. He was not found guilty of those other acts  
18 and I ask those not to be considered. I think that  
19 it'll serve society and my client better, Judge, if he  
20 was on probation and given drug and alcohol outpatient  
21 counseling.

22 THE COURT: And first offense driving under  
23 suspension is just like 30 days, which he has been in  
24 that amount of time.

25 MR. PLEXICO: Yes, sir.

## POLLING OF THE JURY

1           THE COURT: He understands, I'm sure, if he gets  
2 caught driving under the influence again it would be a  
3 third offense. And if he picks up a fourth offense, I  
4 can't speak for other judges, but the least I have --  
5 in 26 years the least I have ever given anybody for a  
6 fourth offense is four years. And the Solicitor will  
7 stand out there and recommend a year, forget that. It  
8 is that fourth offense. He may pass me in the middle  
9 of the night.

10           The same thing with the DUS statute. If you get  
11 caught again it will be an enhanced situation. It  
12 won't be a second offense, it'll be whatever it is, and  
13 it is DUI related which carries much more time for a  
14 second offense. Once you get up to three and four  
15 offenses they can start seizing your car and all of  
16 that. They can seize the car of your brother and  
17 sister of somebody if they know that you have DUIs and  
18 DUSs out there, so you have to be real careful.

19           In addition, your right to drive has already been  
20 suspended. The period of suspension goes farther. You  
21 do understand that?

22           THE DEFENDANT: Your Honor, after all of that  
23 happened I did go to classes and managed to get my  
24 license back. I went to --

25           THE COURT: Well, if you had your license again,

## POLLING OF THE JURY

1 you lose them again today.

2 WITNESS: I understand, Your Honor.

3 THE COURT: I'm just saying, you lose them and it  
4 will be a DUS DUI related charge if you get caught  
5 again.

6 THE DEFENDANT: Yes.

7 THE COURT: Anything that you want to say?

8 THE DEFENDANT: To the family, I would like to say  
9 I'm quite sorry. I wish it wouldn't have happened. My  
10 heart goes out to (inaudible).

11 THE COURT: State, do you want to add anything?

12 MS. BURCHSTEAD: Judge, you heard the facts. I  
13 would take his record, and seriousness of DUI, whether  
14 any injury involved or not, it's serious. We ask for  
15 the maximum sentence. I think that probation is not  
16 appropriate. But I'll obviously accept Your Honor.

17 THE COURT: Where are the sentencing sheets?

18 On the driving under suspension, I sentence him to  
19 time served. More than the max it could be and  
20 further.

21 Well, DUI seconds, people only get five or ten  
22 days in jail for that historically. So, the fine is  
23 mandatory. So I sentence you to one year suspended on  
24 service of time served of 165 days, and cut your fine  
25 to \$1,500, which is going to come up to way over \$3000

## POLLING OF THE JURY

1 and put you on probation for two years.

2 Since you get probation you have got to pay \$500  
3 to the PD fund, which is going to run you up to about  
4 \$4,000. That is it.

5 MR. PLEXICO: Thank you, Your Honor.

6 MS. BURCHSTEAD: Thank you, Judge.

7 THE COURT: Of course, you don't have to pay it  
8 before, but you have to pay it while you are on  
9 probation.

10 (Court adjourned.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## POLLING OF THE JURY

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was  
7 authorized to and did stenographically report the foregoing  
8 proceedings and that the transcript is a true and complete  
9 record of my stenographic notes.

8

DATED this 15th day of October, 2014.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

---

MONA L. MANLEY  
Official South Carolina Court Reporter  
Circuit Reporter for the 14th Circuit  
(850) 893-6662  
mmanley@sccourts.org

**SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT**

Subject: DAVIS McKennie Levar ALLENDALE  
Last Name First Name Middle Name County of Arrest

Subject's Address: [REDACTED]

Driver's License Number: [REDACTED] State: SC DOB: [REDACTED] Sex: MALE Race: BLACK

Arresting Officer: DTGATES Agency: SCHP

Arresting Officer's Address: 64 NEW BRIDGE ST. BAMBERG, SC 29003

Date of Arrest: 11-01-2008 Time of Arrest: 1620 AM/PM Traffic Ticket Number: PENDING

Date of Test: 11-01-2008 Time of Test: 1640 AM/PM Location of Collection: ALLENDALE

**CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)**

- Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
- Subject has been advised in writing of his/her Implied Consent Rights.

**CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)**

- Subject had a DataMaster reading of less than 0.08%, and a urine sample is requested. DataMaster reading: \_\_\_\_\_ (optional)
- Subject is unconscious or otherwise incapable of refusal and is considered informed, therefore, a blood sample is requested.
- A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.
- Subject is under arrest for, or in violation of, Section 56-5-2945 or 50-21-113, and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- A blood sample is requested by the subject for his/her own independent test.

Name and Title of Licensed Medical Personnel: X Cynthia Alamea Phlebotomist / LAB  
(Please Print)

Signature of Licensed Medical Personnel: X Cynthia Alamea Phlebotomist / LAB

**THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR**

- Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector: X Cynthia Alamea  
(Please Print)

Signature of Licensed or Trained Collector: X Cynthia Alamea

**FINAL CHECKS FOR LAW ENFORCEMENT OFFICER**

- Sample collection was under my direct supervision.
- Sample container is properly labeled with the subject's name and time of collection.
- Sample is properly sealed and ready for transport.

Signature of Officer: [Signature] Date: 11-01-2008

I, X [Signature] received a copy of this report on 11-01-2008  
(Subject's Signature) Date

State's 10

White Copy: Arresting Officer    Canary Copy: Hospital    Pink Copy: Subject    Goldenrod Copy: SLED

521

P.002/003

(FAX)8035847046

07/16/2014 10:58 CLERK OF COURTS

WITNESSES

D.T. Gates (SCHP) ✓

ARREST WARRANT NUMBER

K007948

Date of Arrest: February 11, 2009

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

D. 3/22/12

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009-GS03-0074  
Amended Indictment

The State of South Carolina

County of Allendale

COURT OF GENERAL SESSIONS

March Term 2012

THE STATE

vs.

McKenzie Levar Davis

Indictment for

Felony driving under the influence, great bodily  
injury results

SC Code: 56-05-2945  
CDR Code: 2974

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ALLENDALE )

INDICTMENT

2009-GS03- 0074

At a Court of General Sessions, convened on March 22, 2012, the Grand Jurors of Allendale County present upon their oath:

**Felony driving under the influence, great bodily injury results**

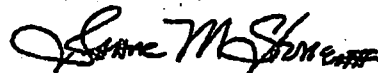
That in Allendale County, South Carolina, on or about November 1, 2008, while driving a vehicle under the influence of alcohol, drugs, or the combination of both alcohol and drugs, the Defendant, McKenzie Levar Davis did drive recklessly and or did drive at speeds in excess of the posted speed limit, an act or acts forbidden by law or neglected a duty imposed by law in driving of said vehicle; and such act or neglect proximately caused great bodily injury to [REDACTED]; all in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976, as amended).

**RECEIVED**

JUL 22 2014

**SC Court of Appeals**

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



**Isaac M. Stone, III**  
Solicitor, 14<sup>th</sup> Judicial Circuit

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Allendale

STATE

VS.

Mckenzie L. Davis

INDICTMENT/CASE#: 2009-GS-03-074

A/W#: K007948

Date of Offense: 11-01-08

S.C. Code §: 56-5-2930

CDR Code #: 2991

AKA:

Race: B

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was TO: Driving under Influence - 2

CONVICTED OF or  PLEADS

In violation of § 56-5-2930 of the S.C. Code of Laws, bearing CDR Code # 2991

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS  \$17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

Solicitor General AG 7170 SC Bar # 495 Defendant Attorney for Defendant T. Plews 612014 SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 1 day/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ 5000; provided that upon the service of 30 days/months/years and payment of \$ 1500, plus costs and assessments as applicable, the balance is suspended with probation for 2 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.

The Defendant is to be placed on 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: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED

Set by SCOPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve WE beginning

Substance Abuse Counseling

\*Fine:

\$14-1-206 (Assessments 107.5%)		\$ 1,500
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 100.00
\$56-5-2995 (DUI Assessment)	\$12	\$ 12.00
\$58-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ 50.00
\$58-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
Proviso 80.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 25.26
TOTAL		\$ 2,261.26

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.

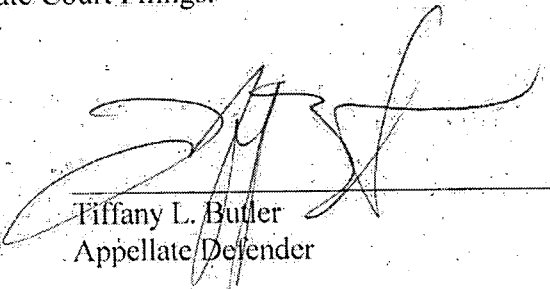
Clerk of Court/Deputy Clerk Court Reporter: Elaine [Signature] Mona [Signature]

Presiding Judge Judge Code: Sentence Date

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 23rd, 2015



Tiffany L. Butler  
Appellate Defender

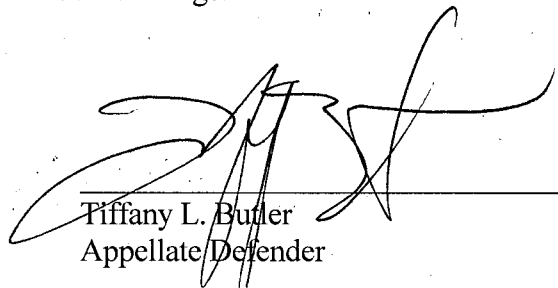
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 23rd, 2015



Tiffany L. Butler  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

**RECEIVED**

SEP 23 2015  
SC Court of Appeals

ATTORNEY FOR APPELLANT