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VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Larry B. Hyman, Jr., Circuit Court Judge

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SC Court of Appeals

DANIEL HAMRICK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002164

APPENDIX

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBITS #1-22 (PHOTOS)
STATE'S EXHIBITS # 35 AND #37 (VIDEOS)
DEFENDANT'S EXHIBITS #1-24 (PHOTOS AND DIAGRAMS)

TESTIMONY OF ANDREW T. HARRIS

1 markings there, there's scratches. It would be unfair for
2 me to say this scratch right here was from the boot or from
3 a swerve mark from a car. I mean, there are a lot of stuff
4 here, it wasn't as clean as we see in training. There was
5 no brake marks on the vehicle -- skid marks, excuse me,
6 measure skid marks. There were no swerve marks, you know,
7 there was no cones down, which would have showed where he
8 entered the work zone or didn't enter the work zone.

9 So it's one of those things where in training
10 you have all the proper signs and you measure and you do the
11 formulas and it's all perfect, but this was real life and we
12 didn't have all of that. So we just documented as best as
13 we could.

14 Q Is there enough evidence on the scene, strictly
15 evidence on the scene, for anyone to determine the point of
16 impact?

17 A No.

18 Q And is it important as you do your job to only
19 make conclusions that you can prove?

20 A Yes.

21 Q And strictly based on measurements and evidence on
22 the scene, could you reach a conclusion about point of
23 impact?

24 A Point of impact, no.

25 Q Combined with witness testimony and witness

TESTIMONY OF ANDREW T. HARRIS

1 statements taken from the scene, does that help you in
2 making that sort of conclusion?

3 A Yes.

4 MR. BISCHOFF: Objection; leading, Judge.

5 THE COURT: I'll give him some latitude. You
6 may proceed.

7 Sir, you can answer the question. Do you need it
8 repeated?

9 THE WITNESS: Yes.

10 THE COURT: Please repeat the question.

11 BY MR. KIDD:

12 Q Combining evidence on the scene with witness
13 statements, does that aid you in reaching such a conclusion?

14 A Yes.

15 MR. KIDD: The Court's indulgence?

16 THE COURT: Uh-huh.

17 BY MR. BISCHOFF:

18 Q At 43 feet that we measured earlier, do you know
19 if it's possible to swerve in and swerve out a few feet into
20 that distance?

21 MR. BISCHOFF: Objection, Judge.

22 THE COURT: Basis?

23 MR. BISCHOFF: He's not been qualified to
24 render such an opinion.

25 THE COURT: He investigated the accident. He

TESTIMONY OF ANDREW T. HARRIS

1 has training and experience. He does not have to
2 be qualified as an expert to render a lay opinion
3 based on his rational perception. You have to,
4 however, pose the question in a form where he's
5 not --

6 MR. KIDD: Judge, may we approach?

7 THE COURT: Yes.

8 (Off-the-record discussion.)

9 THE COURT: You may proceed.

10 BY MR. KIDD:

11 Q In your preparation and reconstruction of this
12 scene, did you ever set cones up on a 43 foot gap?

13 A I did.

14 Q And why did you do that?

15 A I did it because, you know, I don't remember when
16 exactly I did it, but it was after the incident. And to be
17 honest, I wasn't even planning on -- I didn't know this was
18 going to be in court, but I just came up -- I figured if I
19 was investigating this as the investigating officer, like
20 Mr. Bischoff said, I have a responsibility. And so to do it
21 myself I said, you know, could it really be done, could
22 someone swerve into a closed area -- a set-up closed area
23 43 feet, hit someone that was inside of those cones.

24 So I went out to a spot in Mount Pleasant
25 that's by the airport that no one travels and I set up

TESTIMONY OF ANDREW T. HARRIS

1 cones, took my tape measure like we had and measured 43 feet
2 and put the cones out there. And I just did it. There were
3 no cars coming, and I was, you know, plus I'll be honest,
4 100 percent I did it with the -- with the -- kind of
5 impartiality. I didn't drive up there and jerk it in and
6 jerk it out. I did it as if it would be a drift. I mean,
7 I'm not there -- I wasn't trying to prove it to anybody but
8 myself.

9 I wanted to see if it could be done, so I
10 would drift in, set my cruise at a certain speed, drift in.
11 And when I hit the makeshift pedestrian with a cone, I would
12 swerve back out. And I was able to do it.

13 Q And was it difficult?

14 A It was. I mean, I did it at different speeds. I
15 wanted to know so I did it at 30, 35, 40. I set my cruise
16 coming up to it like I was just, you know, if I were to be
17 drifting. I didn't jerk it in or I would -- it would have
18 been easier to hit the pedestrian cone, but as I drifted in
19 I would hit it and swerve back out. Sometimes I would hit
20 the second cone, which was -- would have been -- it
21 simulated the paver. So at certain times I would have hit
22 that and -- I would have hit the paver, but in this case it
23 didn't happen.

24 Q And were sometimes you successful?

25 A Yes.

TESTIMONY OF ANDREW T. HARRIS

1 Q And were you able to be successful at 40 miles an
2 hour?

3 A Yes.

4 Q And just, briefly, on the nystagmus -- I'm going
5 to switch gears here.

6 Did Mr. Hamrick say anything specific about
7 the quality of his eyes?

8 A Dang near perfect.

9 Q Did you ask him if he was taking any medication?

10 A I did.

11 Q And what was his response?

12 A I think he said he was -- or he did say he had
13 strep throat the week prior, he had shots the week prior.

14 Q Like an antibiotic?

15 A Yeah.

16 Q Is an antibiotic a week prior known to cause
17 nystagmus?

18 A Not that I know of.

19 Q And finally, and I failed to mention it on my
20 direct the first time, but Mr. Bischoff referred to
21 Phase Two, the personal contact phase in a DWI
22 investigation.

23 Can you tell the jury some of the things that
24 you did notice about him that would indicate impairment?

25 A Sure. You know, when I walked up to him, I did

TESTIMONY OF ANDREW T. HARRIS

1 separate him from everybody, and I did notice I could smell
2 alcohol on his breath when I spoke to him. And, of course,
3 you know, I'm there, I'm investigating this wreck, so I got
4 close enough to him as I'm talking to him to smell it and I
5 did smell it. I noticed that his eyes were bloodshot and
6 glossy in appearance.

7 MR. BISCHOFF: The Court's indulgence?

8 THE COURT: Uh-huh.

9 MR. KIDD: I have no further questions, Your
10 Honor.

11 THE COURT: Any objection to the witness
12 being excused?

13 MR. BISCHOFF: Very brief, limited brief
14 recross.

15 RE CROSS EXAMINATION

16 BY MR. BISCHOFF:

17 Q When you performed this experiment out at the
18 airport, what type of vehicle did you use?

19 A I was in my issued Crown Vic.

20 Q Issued Crown Vic.

21 The one that was on the scene that night or a
22 different one?

23 A Yes, I would have been in 412 at the time.

24 Q So you had an in-dash cam video in that car,
25 right?

TESTIMONY OF ANDREW T. HARRIS

1 A I did.

2 Q And you didn't record this experiment out at the
3 airport?

4 A Like I said, this was something that I was solely
5 doing for myself.

6 Q I understand.

7 Very simple question, though. Did you record
8 the experiment that you just testified to on your in-dash
9 camera?

10 A No, not that I can remember.

11 MR. BISCHOFF: Thank you, Your Honor.

12 THE COURT: Any further questions from the
13 State?

14 MR. KIDD: No, ma'am.

15 THE COURT: Any objection to the witness
16 being excused subject to the recall from the
17 State?

18 MR. KIDD: No, Your Honor.

19 MR. BISCHOFF: No, ma'am.

20 THE COURT: Sir, you are excused subject to
21 being recalled.

22 Call your next witness.

23 MR. KIDD: Thank you, Judge. The State calls
24 Carla Fallaw. Oh, excuse me, Judge, the State
25 calls.

TESTIMONY OF ROBERT BASILLE

1 officer Basille.

2 THE COURT: You may proceed.

3 MR. KIDD: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 Thereupon,

6 ROBERT BASILLE

7 was called as a witness, having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. KIDD:

11 Q Good afternoon, Officer Basille, tell the jury
12 where you are employed, please?

13 A Mount Pleasant Police Department.

14 Q How long have you been with Mount Pleasant?

15 A 2007.

16 Q And what are your current duties with Mount
17 Pleasant?

18 A I work in the traffic safety unit.

19 Q And what about in 2011?

20 A Same assignment, traffic safety unit.

21 Q What does that generally entail?

22 A Overall traffic safety, work collisions, write
23 tickets in high prone collision areas, and traffic issues,
24 disabled vehicles and DUIs, things of that nature.

25 Q Do you recall becoming involved in this case back

TESTIMONY OF ROBERT BASILLE

1 on November 14th, 2001?

2 A I do.

3 Q And what was your first duties in regards to this
4 case?

5 A To offer the Defendant a breathalyzer.

6 Q And where did that occur?

7 A Mount Pleasant Police Department headquarters.

8 Q And did you offer him a breath test?

9 A I did.

10 Q Did he take it?

11 A He refused.

12 Q What did you do at that point?

13 A Transported him to East Cooper Hospital for a
14 blood sample.

15 Q And do you recall arriving at East Cooper?

16 A Yes.

17 Q Do you know approximately what time it was?

18 A I'd have to look at my paperwork, 6:30 in the
19 morning, 6:00 a.m., somewhere in that area.

20 Q Did you observe that blood test being -- that
21 blood sample being taken from the Defendant?

22 A Yes.

23 Q Do you recall who administered or who drew that
24 sample?

25 A Nurse Fallaw, F-A-L-L-A-W. Again, it is on my

TESTIMONY OF ROBERT BASILLE

1 supplemental report that I gave the investigator.

2 Q And did you provide a kit for them to use or did
3 they have one there?

4 A We provided a SLED kit for them to use.

5 Q So you provided a kit for them to use to draw the
6 blood?

7 A Yes.

8 Q And is that a self-contained kit?

9 A Yes, it is. It's a small cardboard box, inside of
10 it there's paperwork and vials and everything they use to
11 take the blood with. And then when they're done it goes
12 back in there and I put it into evidence.

13 Q Let me show you what's been marked as State's
14 Exhibit 29.

15 Do you recognize that box?

16 A It looks like the SLED kit, yes.

17 Q Is that your name up there?

18 A It is.

19 Q Is that your handwriting?

20 A Yes, sir.

21 Q Would you have filled out that label?

22 A Yes.

23 Q And State's Exhibit 31, is that it, as well?

24 A That is Officer Harris' handwriting.

25 Q Okay. Is that the same thing there (indicating),

TESTIMONY OF ROBERT BASILLE

1 the top side of that, State's Exhibit --

2 A Yes. Yes.

3 Q All right. At East Cooper, what did you do once
4 the blood sample was obtained from the Defendant?

5 A Officer Harris, the initial arresting officer, met
6 me there. We filled out some paperwork, and I gave him the
7 kit to put into evidence, and then we went to the Charleston
8 County Detention Center.

9 Q So you witnessed Nurse Fallaw take a sample; is
10 that correct?

11 A Yes.

12 Q Who then put it back inside the kit, was it done
13 right then?

14 A Yes. Oh, yes.

15 Q And then you took custody of it?

16 A Yes.

17 Q And you then gave it to who?

18 A Officer Drew Harris.

19 Q And one more thing, let me show you this,
20 Exhibit 33.

21 Is that your signature right there
22 (indicating)?

23 A Yes, sir.

24 Q And what does that indicate?

25 A Just that the sample was collected under my direct

TESTIMONY OF ROBERT BASILLE

1 supervision, it was properly labeled; the name and
2 information went on it; all of the paperwork was signed and
3 it was properly sealed and ready to transport and put into
4 evidence.

5 Q Is that form kept with the kit?

6 A Yes.

7 Q Do you recall obtaining the -- Mr. Hamrick's phone
8 number at some point?

9 A Yes.

10 Q How did that occur?

11 A I met up with his wife at a gas station in Mount
12 Pleasant to give her a copy of the a form, the collision
13 report form. And at that time I asked her for his cell
14 phone, I think, number and provider.

15 Q And she provided that to you?

16 A She did.

17 Q And what was the purpose of that?

18 A In order for us to get a warrant done to subpoena
19 the phone records to see if he was on the cell phone at the
20 time of the collision.

21 MR. KIDD: I have no further questions for
22 Officer Basille.

23 THE COURT: Any questions for the witness?

24 MR. BISCHOFF: Yes, Judge, briefly.

25 THE COURT: You may proceed.

TESTIMONY OF ROBERT BASILLE

1 CROSS EXAMINATION

2 BY MR. BISCHOFF:

3 Q Officer Basille, your testifying earlier, that's
4 not the full story, is it?

5 A As far as what?

6 Q The BA room, what happened in the BA room?

7 A We initially went to the BA room. There was a
8 malfunction with, I guess, the system. Initially we have to
9 put in the SLED number and put all of his information and
10 initially it gave us error codes. The machine does a self
11 test and at that time -- before the self test was going on
12 it said that it wasn't working properly. I shut the whole
13 system down and let it reset, re-boot until it went through
14 the proper codes to show that it was working properly.

15 Q But you used the same machine --

16 A Yes.

17 Q -- after it re-booted?

18 A Yes, I did.

19 MR. BISCHOFF: Thank you, sir.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MR. KIDD:

23 Q When it re-booted, was it working properly?

24 A It was.

25 Q And then you offered it to the Defendant?

TESTIMONY OF ROBERT BASILLE

1 A Yes.

2 Q And then he refused?

3 A Yes.

4 MR. KIDD: No further questions.

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

7 MR. KIDD: No, ma'am.

8 THE COURT: From the Defense?

9 MR. BISCHOFF: No, Your Honor.

10 THE COURT: Sir, you're excused.

11 Call your next witness.

12 MR. KIDD: The State calls Carla Fallaw.

13 THE BAILIFF: Last name?

14 THE WITNESS: Carla Fallaw, F as in Frank,

15 A-L-L-A-W.

16 DIRECT EXAMINATION

17 BY MR. KIDD:

18 Q Good afternoon, Ms. Fallaw. I appreciate you
19 being here. I'm sorry for all of the delay.

20 Can you tell the jury where you are currently
21 employed, please?

22 A East Cooper Hospital, in the laboratory.

23 Q And is that where you were employed in November of
24 2011?

25 A Yes.

TESTIMONY OF ROBERT BASILLE

1 MR. KIDD: Court's indulgence one second.

2 BY MR. KIDD:

3 Q I'm going to show you what's been marked for
4 identification as State's Exhibit 27.

5 Do you recognize that photograph?

6 A Yes.

7 Q And what is that?

8 A That looks like the blood tubes that we drew, and
9 I signed my name to.

10 Q Okay. Does that look like it did when you signed
11 them?

12 A Uh-huh.

13 THE COURT: Ma'am, if you can say yes or no
14 for me.

15 THE WITNESS: Yes.

16 THE COURT: Thank you.

17 MR. KIDD: State would offer Exhibit 27 into
18 evidence.

19 THE COURT: Any objection?

20 MR. BISCHOFF: No, Your Honor.

21 THE COURT: Marked and received without
22 objection.

23 *(Whereupon, State's Exhibit No. 27 was marked for*
24 *identification and received in evidence.)*

25

TESTIMONY OF ROBERT BASILLE

1 BY MR. KIDD:

2 Q And just briefly, can you explain exactly what
3 your job title is and your duties are at East Cooper?

4 A Okay. My job title is, I'm a medical
5 technologist, and I analyze blood and body fluids that come
6 into the laboratory. And on occasion we have to back-up the
7 phlebotomy team and draw blood as well.

8 Q Okay. And what -- where did you go to college?

9 A I have a two-year associate degree from
10 Orangeburg-Calhoun Technical College in medical lab
11 technology. Then I moved here and went to the Medical
12 University to get my bachelor's of health sciences degree
13 that I obtained from MUSC.

14 Q At East Cooper, did they go through any training
15 about drawing blood and those sort of things?

16 A Yes, they do. Every year we have an annual
17 competency, a checklist within the lab, our department. We
18 have to go through each department, work in multiple
19 departments, and we do annual competency and get checked off
20 every year.

21 Q And have you successfully completed those?

22 A Yes. That is part of our yearly evaluation and
23 possible merit increase when that time comes around.

24 Q Is East Cooper a licensed medical facility?

25 A Yes.

TESTIMONY OF ROBERT BASILLE

1 Q And so you've drawn blood before?

2 A Yes.

3 Q Okay. Do you know how many times?

4 A Oh, goodness, I don't. Too many to remember.

5 Q Okay. And in this instance were you provided a
6 kit to use?

7 A Yes, sir.

8 Q What -- do you recall what's contained in that
9 kit?

10 A The kit, the SLED kit, it has I think one or two
11 vials for blood, a needle. Everything that we use, we use
12 only anything in the kit. I didn't bring anything, you
13 know, anything else. Just everything --

14 Q What about, like, disinfectant swabs, does it
15 include those as well?

16 A Yes, sir, uh-huh.

17 Q Do you remember what sort of -- I mean, are
18 they -- do you remember what kind of swabs they are?

19 A They could have been iodine like a brown-type
20 swab. I'm not exactly sure what it -- whatever is in the
21 kit is what we used.

22 Q Okay. So you used the swabs provided in the SLED
23 kit?

24 A Yes.

25 Q Once you drew the blood and you put it in those

TESTIMONY OF ROBERT BASILLE

1 vials?

2 A Yes.

3 Q Is there anything else in those vials before you
4 put blood in them, do you know?

5 A Unless there's some type of additive or something.

6 Q And then once you fill them, is that when you
7 affixed these seals?

8 A Uh-huh.

9 Q Okay. And then there's your handwriting there
10 (indicating)?

11 A Yes.

12 Q And did you do anything else after that?

13 A Just followed directions on the box and put
14 everything in the box and gave it back to the officer.

15 Q Okay. So then you returned everything to that
16 box. And I'm going to show you -- okay, is this the box
17 that you're referring to?

18 A It looks like it, yes, sir.

19 MR. KIDD: The Court's indulgence?

20 THE COURT: Uh-huh.

21 MR. KIDD: I have no further questions of
22 Ms. Fallaw.

23 THE COURT: Any questions for the witness?

24 MR. BISCHOFF: May I beg the Court's
25 indulgence for just a minute, Your Honor?

TESTIMONY OF ROBERT BASILLE

1 THE COURT: Uh-huh.

2 MR. BISCHOFF: I don't have any questions for
3 this witness. Thank you.

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

6 MR. KIDD: No, Your Honor.

7 THE COURT: From the Defense?

8 MR. BISCHOFF: No, Your Honor.

9 THE COURT: Ma'am. You're excused.

10 THE WITNESS: Thank you.

11 THE COURT: You're welcome.

12 State, you may call your next witness.

13 MR. KIDD: Thank you, Your Honor. The State
14 calls Officer A.R. Mitchell.

15 THE WITNESS: Angela Mitchell,

16 M-I-T-C-H-E-L-L.

17 THE COURT: You may proceed.

18 Thereupon,

19 ANGELA MITCHELL

20 was called as a witness, having been first duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SIMPSON:

24 Q I thank you for your patience.

25 A Okay.

TESTIMONY OF ANGELA MITCHELL

1 Q What agency do you currently work for?

2 A Mount Pleasant Police Department.

3 Q In what capacity?

4 A I am a crime scene technician and evidence
5 custodian.

6 Q Okay. We're going to focus today on the second
7 part of that description.

8 What is an evidence custodian?

9 A We maintain the evidence for the Mount Pleasant
10 Police Department. Whatever types of evidence the officers
11 bring in to us, we take it into our facility and kind of
12 give it a home to stay until we have to go to trial or
13 whatever we may need -- whatever purpose we may need it for.

14 Q Okay. You mention the facility, is that a secure
15 area?

16 A It is.

17 Q And where is that?

18 A It is in the Mount Pleasant Police Department.
19 It's inside of the building and it has an exterior door
20 where there are four people who have keys to it, me and
21 three other evidence custodians. And then we have an
22 interior locked door that has a key pad alarm system and
23 only four people have access to that room. So everything in
24 there is doubly-secured.

25 Q So an officer just coming and going through the

TESTIMONY OF ANGELA MITCHELL

1 Mount Pleasant Police Department would not have access?

2 A No, they would not.

3 Q When an officer collects evidence, how would that
4 work, they come and bring it to you through a window or --

5 A We have -- they're double-sided lockers where if
6 you're on the patrol side, which is what we call the
7 outer -- where the patrol officers have access, they're on
8 this side (indicating) of the wall. And then we have these
9 lockers, just like gym lockers except once you close them
10 the guys on the outside can't open them back up.

11 And we open them from our secured side in the
12 evidence room and take the evidence out, whatever item it
13 may be, and bring it in and check to make sure what they
14 said it is on the evidence sheet is the exact same thing as
15 what we have in our hands and log it in and put it in a bin
16 somewhere.

17 Q Okay. Do you then store that evidence until it's
18 needed again?

19 A We do.

20 Q Is there a distinction made on how you might store
21 blood evidence as opposed to something like --

22 A Yes, we -- instead of using those secure lockers,
23 we have a small secured refrigerator on the patrol side
24 where -- it's one, you know, like you guys would have to
25 your college dorm, it's a small one and we have a padlock on

TESTIMONY OF ANGELA MITCHELL

1 it that secures that. Once the officer places any item in
2 that refrigerator, it is locked by the officer. And then
3 the evidence custodian the next morning will go unlock that
4 refrigerator, take it out and go through the same procedure.

5 Q And once that is taken out of the temporary
6 refrigerator, it's refrigerated as well?

7 A It is. We have an interior refrigerator inside
8 the evidence room.

9 Q Can an officer then come to the evidence room and
10 check out evidence?

11 A They can.

12 Q And is that -- is all of this in and out of
13 evidence, is that strictly documented?

14 A It is.

15 MR. KIDD: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 BY MR. SIMPSON:

19 Q Officer, I'm handing you what's been marked for ID
20 only as State's 26.

21 Is that form familiar to you?

22 A It is.

23 Q And what is that?

24 A This is the Mount Pleasant Police Department
25 evidence property receipt that we use. Anytime the officers

TESTIMONY OF ANGELA MITCHELL

1 put evidence into our facility they fill one of these out,
2 and we take this form and find, you know, the evidence and
3 bring it into our facility.

4 Q Okay. And do you know that you're here today for
5 a specific case?

6 A Yes.

7 Q And you know for a specific item of evidence, as
8 well?

9 A Yes.

10 Q Does the form in your hand, does that relate to
11 the item of evidence?

12 A It does.

13 Q And what evidence is that?

14 A That was the SLED blood kit.

15 Q And does that document before you reveal when that
16 piece of evidence was received by the Mount Pleasant Police
17 Department in evidence?

18 A It does.

19 Q And what time was that?

20 A It was at 8:33 in the morning on November 14th,
21 2011.

22 Q And would that -- as a SLED blood kit, would that
23 have been stored as you previously testified you store
24 blood?

25 A Yes.

TESTIMONY OF ANGELA MITCHELL

1 Q Does the document before you, would that indicate
2 if that evidence was checked out?

3 A Yes, it does.

4 Q And when was that evidence checked out of the
5 Mount Pleasant evidence room?

6 A It was taken out on December 1st, 2011 at 9:00.

7 Q And if I could go back, who does that indicate
8 checked in the evidence on November the 14th?

9 A I checked it in from the locked refrigerator that
10 we have, I brought it into our facility.

11 Q Okay. And who checked it out on December 1st,
12 2011 at 9 a.m.?

13 A That would be Officer Ray Haupt, another evidence
14 custodian.

15 MR. KIDD: May I approach the witness, Your
16 Honor?

17 THE COURT: Uh-huh.

18 MR. KIDD:

19 Q I'm showing you what's previously been entered
20 into evidence as State's Exhibit 30.

21 Do you recognize that?

22 A I do.

23 Q And what is that?

24 A That is a photo of the actual blood kit from SLED
25 that the officer put into evidence.

TESTIMONY OF ANGELA MITCHELL

1 Q Okay.

2 MR. KIDD: May I?

3 THE COURT: Uh-huh.

4 BY MR. KIDD:

5 Q Officer, what is this (indicating)?

6 A That's our designation. That was -- that's an
7 evidence label that tells the same -- pretty much, the basic
8 information that's on an evidence sheet is on that label.
9 So it's going to tell me what that is, what case it is
10 associated with. Just the biographical information of the
11 case.

12 Q Okay. I noticed that it covers over the seam of
13 the box there.

14 A It does.

15 Q What's the purpose of that?

16 A It ensures that whenever that item goes to SLED,
17 it is sealed, that it has not been tampered with, it has not
18 been opened by anyone when it leaves our facility en route
19 to SLED.

20 Q And as an evidence custodian, would you accept
21 evidence in a SLED kit where that seal was broken?

22 A No.

23 Q Would you check out, without alerting someone,
24 evidence where that seal was broken?

25 A No.

TESTIMONY OF ANGELA MITCHELL

1 Q Was it in this case, the evidence, checked into
2 you with a sealed label?

3 A Yes, that's exactly how it was whenever I checked
4 it in.

5 Q Was it also sealed and untampered with when you
6 checked it out?

7 A Yes.

8 Q At any time in your possession did you tamper with
9 evidence?

10 A No.

11 MR. KIDD: Court's indulgence?

12 THE COURT: Uh-huh.

13 MR. KIDD: I have no further questions.

14 Thank you for your time.

15 THE WITNESS: Thank you.

16 MR. KIDD: Mr. Bischoff may have some
17 questions.

18 THE COURT: Any questions for the witness?

19 MR. BISCHOFF: No, Your Honor.

20 THE COURT: Any objection to the witness
21 being released, State?

22 MR. KIDD: No, Your Honor.

23 THE COURT: Any from the defense?

24 MR. BISCHOFF: No, Your Honor.

25 THE COURT: Ma'am, you're excused.

TESTIMONY OF ANGELA MITCHELL

1 Call your next witness.

2 MR. SIMPSON: The State calls Officer Ray
3 Haupt.

4 Thereupon,

5 RAY HAUPT

6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 THE WITNESS: Raymond Thomas Haupt, H-A-U-P
9 as in Paul, T as in Tom.

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION

12 BY MR. SIMPSON:

13 Q Officer Haupt, good afternoon. Thanks for your
14 patience today. We appreciate it.

15 What is the entity you work for?

16 A Mount Pleasant Police Department.

17 Q In what capacity?

18 A A crime scene investigator evidence technician.

19 Q We're going to focus on the evidence technician
20 aspect of it today.

21 A Okay.

22 Q How long have you worked there?

23 A Ten years.

24 Q And is one of the more boring tasks as an evidence
25 technician to drive things from one place to another?

TESTIMONY OF RAY HAUPT

1 A Yes.

2 Q And you know you're here today for a particular
3 case, correct?

4 A Yes, sir.

5 Q And involving a particular piece of evidence?

6 A Yes.

7 Q Okay.

8 MR. SIMPSON: May I approach the witness?

9 THE COURT: You may.

10 BY MR. SIMPSON:

11 Q I'll show you what's been marked for ID only as
12 State's Exhibit 26.

13 Do you recognize that document?

14 A Yes, I do.

15 Q And what type of document is that?

16 A That is one of our evidence sheets.

17 Q And what is the purpose of an evidence sheet, what
18 type of information might that reflect?

19 A The evidence sheet has the case number, date and
20 time, who collected what item, what item it is, and then at
21 the bottom of it it would be who has logged out the item, or
22 in my case I took it to SLED.

23 Q And what item does that evidence log refer to?

24 A A SLED blood kit.

25 Q And what day did you -- you said "logged out,"

TESTIMONY OF RAY HAUPT

1 what do you mean by logged out?

2 A Whenever an item of evidence has to go somewhere
3 for, in this case, testing, we find the item in the evidence
4 room, scan it out and then sign it out where it's going.

5 Q And when does that document reflect to you that
6 you checked this piece of evidence out?

7 A December 1st, 2011 at 9:00.

8 Q And what was the purpose of you logging that piece
9 of evidence out?

10 A I had to take it to SLED for testing.

11 Q And when you say "SLED for testing," what types of
12 tests were you requesting from SLED?

13 A I believe it is a blood alcohol test. I would
14 have to see the certificate.

15 Q Okay.

16 MR. SIMPSON: May I approach the witness,
17 Your Honor?

18 THE COURT: You may.

19 BY MR. SIMPSON:

20 Q Okay. I'll show you what's been entered as an
21 exhibit, it's State's Exhibit 30.

22 Do you recognize that?

23 A Yes, I do.

24 Q And what is that?

25 A It's the SLED evidence tags.

TESTIMONY OF RAY HAUPT

1 Q And is it a photograph?

2 A Yes.

3 Q Officer Haupt, is this -- what is this receipt
4 here, is this a seal or label?

5 A It's one of our evidence labels. All of the
6 evidence that comes in to the Mount Pleasant Police
7 Department has to have some form of label. And then in this
8 case, it is a stick-on label.

9 Q And does that cover the seal of the box -- the
10 seam of the box?

11 A Yes.

12 Q Does that indicate -- what does that indicate to
13 you that that seal is unbroken?

14 A It hadn't been cut.

15 Q The box has remained closed?

16 A Yes, sir.

17 Q Would you check out evidence from your evidence
18 room and take it to SLED if that seal had shown tampering or
19 breaking?

20 A No.

21 Q Was that seal affixed in that manner when you
22 drove it to SLED on December the 1st?

23 A Yes, it was.

24 Q Over the course of driving it to SLED, did you
25 tamper with that in any way?

TESTIMONY OF RAY HAUPT

1 A No, sir.

2 Q And what did you do with that evidence once you
3 arrived at SLED in Columbia?

4 A As soon as I arrived at SLED I had to sign in at
5 the front desk and then I'm called back into one of the
6 evidence areas. When I'm there, they verify that all of the
7 paperwork that I have. They verify the item, make sure that
8 it's sealed well, and it is what it is on the evidence sheet
9 and -- the item that I'm bringing, and they then take
10 possession of the item.

11 MR. SIMPSON: The Court's indulgence?

12 THE COURT: Uh-huh.

13 MR. SIMPSON: May I approach the witness?

14 THE COURT: Uh-huh.

15 BY MR. SIMPSON:

16 Q Officer Haupt, I'm showing you what's been marked
17 for ID only as State's 28.

18 Do you recognize that?

19 A Yes, I do.

20 Q And what is that?

21 A Whenever I drop an item off they will -- SLED,
22 sorry, the SLED evidence intake will put the item in their
23 own package. And I then seal the package there in front of
24 them and write some of the different case information on it.

25 Q And what is that photograph of, in your hands?

TESTIMONY OF RAY HAUPT

1 A It is a SLED law enforcement division evidence
2 bag. It has my initials and date that the item was received
3 at SLED, along with my name, the date, agency and case
4 number on the bag, as well.

5 Q And is the sealing of that bag even further
6 guarantee against any sort of tampering?

7 A Yes, sir.

8 MR. SIMPSON: Your Honor, at this time, the
9 State would seek to move State's 28 into evidence.

10 THE COURT: Any objection?

11 MR. BISCHOFF: No objection.

12 THE COURT: Marked and admitted without
13 objection.

14 *(Whereupon, State's Exhibit No. 28 was marked for*
15 *identification and received in evidence.)*

16 BY MR. SIMPSON:

17 Q And do you recall offhand who the intake
18 technician was that you transferred this evidence to at
19 SLED?

20 A Selena Kinard.

21 MR. SIMPSON: Thank you for your patience
22 today, Officer Haupt. Please answer any questions
23 of Mr. Bischoff.

24 THE COURT: Cross examination of the witness?

25 MR. BISCHOFF: Briefly, Judge.

TESTIMONY OF RAY HAUPT

1 THE COURT: You may proceed.

2 CROSS EXAMINATION

3 BY MR. BISCHOFF:

4 Q Officer, you're familiar with the SLED policies on
5 handling blood samples, correct?

6 A Somewhat.

7 Q And are you familiar with the policy that
8 addresses transport from one law enforcement agency to
9 Columbia, as far as the time is concerned?

10 A No, sir.

11 Q You're not?

12 A No, sir.

13 Q But your job as a police officer of Mount Pleasant
14 is to transfer samples from Mount Pleasant to SLED --

15 A Yes, sir.

16 Q -- when they request it?

17 MR. BISCHOFF: Thank you.

18 THE COURT: Any redirect?

19 MR. SIMPSON: No, Your Honor.

20 THE COURT: Any objection to the witness
21 being excused from the state?

22 MR. SIMPSON: No, Your Honor.

23 THE COURT: From the defense?

24 MR. BISCHOFF: No, Your Honor.

25 THE COURT: Sir, you're excused.

TESTIMONY OF RAY HAUPT

1 THE WITNESS: Thank you.

2 THE COURT: You're welcome.

3 You may call your next witness.

4 MR. SIMPSON: The state calls Selena Kinard
5 from SLED.

6 Thereupon,

7 SELENA KINARD

8 was called as a witness, having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SIMPSON:

12 Q Good afternoon, Ms. Kinard.

13 A Good afternoon.

14 Q Thank you for your patience today.

15 A That's okay.

16 Q Where do you work?

17 A Right now I'm unemployed.

18 Q Where did you work in November of 2011?

19 A I worked for SLED.

20 Q And what does SLED stand for?

21 A The South Carolina Law Enforcement Division.

22 Q And in what role did you work for SLED?

23 A I was a forensic technician within the evidence
24 control department.

25 Q And what does that mean, "the evidence control

TESTIMONY OF SELENA KINARD

1 department"?

2 A We basically took in evidence from agencies across
3 the state, logged it into the computer system and the
4 computer system would give a lab number, and that's how it
5 would be followed throughout the lab.

6 Q And were you -- did you often work at the intake
7 area --

8 A Yes.

9 Q -- at SLED?

10 A Yes, I did.

11 Q What is that, what does the intake do?

12 A Just that. We would greet the officers that would
13 come in, log in the evidence. They would come sign over the
14 evidence to us, and that's when the lab numbers would be
15 created through the system.

16 MR. SIMPSON: May I approach the witness,
17 Your Honor?

18 THE COURT: You may.

19 BY MR. SIMPSON:

20 Q Ms. Kinard, I'm handing you what's been marked for
21 ID only as State's 25.

22 A Okay.

23 Q If you can take a moment just to review. It's a
24 seven-page document.

25 A (Witness reviewing documents.) Okay.

TESTIMONY OF SELENA KINARD

1 Q What is that?

2 A The first two pages is the receipt that would have
3 been given to the officer once I logged in the case.

4 Q Okay.

5 A The next sheet is -- would have been the paper
6 that he actually gave me when I logged in the case. And
7 then the next two pages are what we would call the
8 electronic chain of custody.

9 Q And what do you mean by "chain of custody"?

10 A Basically, the chain of custody starts when I
11 would have logged in the case, which was 12/1/2011. And
12 each time the evidence is scanned electronically, the chain
13 of custody picks up that scan and that's how it is
14 scanned -- or excuse me, tracked throughout the whole lab.

15 Q And is the purpose of that to do the often tedious
16 task that you're doing now, to make sure that we know every
17 person that has touched a piece of evidence?

18 A That's correct.

19 Q Okay. And what specific piece of evidence does
20 that document refer to?

21 A Okay. The chain of custody is Item 1, seal-heated
22 package containing blood toxicology in parenthesis,
23 described as labeled, Hamrick, Daniel D.

24 Q Okay. Well, let me stop you there and talk about
25 the standards.

TESTIMONY OF SELENA KINARD

1 Would you just accept anything that an
2 officer brings and says test this, test that, or is there
3 some standard that you apply when receiving evidence?

4 A Yeah, we do. We -- well, excuse me, we did when I
5 was there. We wouldn't accept just, you know, just
6 anything. But, basically, you know, blood for toxicology,
7 very common, urine, you know, things of that nature were
8 very common.

9 Q And when accepting something like blood, do you
10 check to see if there's some evidence for tampering on the
11 package that you receive?

12 A Basically, what I would do when I was intaking
13 blood or urine, I would make sure that the seals were intact
14 and the names on the labels that should be affixed to, like,
15 the blood tubes or the cups of urine have the person's name
16 that I was supposed to be logging the evidence in for. So I
17 would check all of that information up-front.

18 Q Was it also required that the person seal the bag
19 in front of you with the evidence in it?

20 A Yes. I would -- what I would do is take --
21 usually what they would give me would be what we called the
22 blood toxicology box, and that box should have been sealed.
23 And I would write, you know, that it was sealed or it was
24 unsealed, which, you know, either way. And then I would put
25 it into a heat sealed pouch and then seal it. And then upon

TESTIMONY OF SELENA KINARD

1 my sealing, I would hand it to the officer and they would
2 have to initial it, date across the seal and then sign and
3 date on the front of the bag.

4 Q Let me show you what's already been moved into
5 evidence as State's 28.

6 Do you recognize that?

7 A Yes. This would be the outer heat seal pouch. At
8 the top it will be -- it is sealed and from Mount Pleasant
9 Police Department initialed and dated. And he also -- he
10 signed, dated it and put the agency and then his case number
11 on the front. But it's just required that they sign and
12 date the front down here.

13 Q And who dropped off this piece of evidence
14 Ms. Kinard?

15 A Ray Haupt.

16 Q Okay. And what agency is he from?

17 A Mount Pleasant Police Department.

18 Q And what did you do with this item once received?

19 A On December 1st, 2011, I received it at 10:44 a.m.,
20 and at 10:45 a.m. I've scanned it to a location called
21 Toxicology Evidence and Storage.

22 MR. SIMPSON: Court's indulgence?

23 THE COURT: Uh-huh.

24 BY MR. SIMPSON:

25 Q A couple more questions Ms. Kinard.

TESTIMONY OF SELENA KINARD

1 You see the markings on that?

2 A Yes.

3 Q Is there any more markings on that that would
4 indicate that you received this piece of evidence?

5 A Yes. If you look to the left, it's kind of cut
6 off, but I wrote "received sealed, 12/1/11," and those are
7 my initials, SK.

8 MR. SIMPSON: Thank you, Ms. Kinard. Answer
9 any questions that Mr. Bischoff may have for you.

10 THE COURT: You may proceed.

11 MR. BISCHOFF: Thank you, Judge.

12 CROSS EXAMINATION

13 BY MR. BISCHOFF:

14 Q Ms. Kinard, so I'm clear.

15 Once you get this box and you open it up, and
16 then do you assign a SLED number as opposed to a Mount
17 Pleasant Police Department number?

18 A Basically, when I am handed this box, I'm also
19 handed a sheet of paper, which should be what we call the
20 packing slip. And that's where the officer logs in the
21 evidence at their police department or sheriff's office and
22 it has a bar code on it. And when it comes -- when it comes
23 to me, I would have scanned that bar code and it would
24 populate basically everything he entered. And I would go
25 through on the sheet and just verify that I have the items

TESTIMONY OF SELENA KINARD

1 that he says I have. And he would sign a signature pad, and
2 then I would save that and the computer actually assigns the
3 lab number.

4 Q And the signature pad, the signature shows up on
5 the chain of custody?

6 A That is correct, yes.

7 MR. BISCHOFF: May I approach the witness?

8 THE COURT: Yes.

9 MR. BISCHOFF: May I look at the documents
10 that the prosecutor gave?

11 THE COURT: Yes.

12 BY MR. BISCHOFF:

13 Q And so I see here it says, Agency Item No. 1. I
14 mean, does that -- why 1, does that mean quantity? Does
15 that mean tracking number? What is the significance of
16 that?

17 A That just populates basically when we were -- if
18 we were logging in cases. Some agencies actually would put
19 in specific numbers and we would have to change that to
20 their specific agency numbers because that's how they would
21 track it in their evidence room. But it has no
22 significance, actually, to SLED and the evidence there.

23 Q Okay. And that's my question.

24 So SLED assigns it another number with a bar
25 code?

TESTIMONY OF SELENA KINARD

1 A That's correct.

2 Q And then as it moves from station to station
3 within SLED, does each station scan it to keep track of it?

4 A That's correct.

5 We had badges that have bar codes on them
6 that say, you know, when I put it into the toxicology intake
7 storage, the next person that touched that evidence would
8 have had to scan their badge and then the actual item of
9 evidence and then saved it and that's how the chain of
10 custody recognizes it.

11 Q I understand.

12 And what about when it goes into the
13 refrigerator, is there a scanner on the refrigerator? How
14 is the refrigerator set up?

15 A Yes, actually, as far as evidence control, in the
16 evidence room on the actual refrigerators themselves they
17 have bar codes, but also we have a big book that has the bar
18 codes in it, as well. So they can either scan the book or
19 go to the refrigerator itself and scan the item and save it
20 to that location.

21 Q So when you're looking at the chain of custody
22 report, if you have someone's name listed, a certain date,
23 certain time, that means that person had possession of it on
24 that day and that time?

25 A That's correct.

TESTIMONY OF SELENA KINARD

1 Q And then the same thing for the refrigerator?

2 A Right.

3 Q And, eventually, does it ever get assigned a
4 separate number at some point within SLED?

5 A A separate lab number?

6 Q Yes.

7 A No, it would not unless they entered -- if for any
8 reason they would have additional items to submit, it would
9 still follow this same lab number. It would have just been
10 an additional submission and just been assigned the very
11 next item number, SLED item number.

12 Q I understand.

13 MR. BISCHOFF: Thank you.

14 THE WITNESS: You're welcome.

15 THE COURT: Any redirect?

16 MR. SIMPSON: Yes, Your Honor.

17 THE COURT: You may proceed.

18 REDIRECT EXAMINATION

19 BY MR. SIMPSON:

20 Q So the evidentiary item is assigned a lab number
21 which stays with it throughout the process but --

22 A Yes.

23 Q -- what does the lab number?

24 A It is L11-13661.

25 Q And how does SLED store blood evidence?

TESTIMONY OF SELENA KINARD

1 A As I would have taken it in and when I logged this
2 case in, I scanned it to the toxicology evidence intake
3 storage which is a refrigerator.

4 Q Which is -- so when Mr. Bischoff was referring to
5 the SLED lab should reflect to you that it was stored in the
6 refrigerator and he asked you about that, does that SLED
7 chain, in fact, reflect to you that it was stored in that
8 refrigerator?

9 A It does say intake storage.

10 Q Okay. And that's a refrigerator?

11 A That is a refrigerator, yes.

12 Q Okay. And did it go to -- who was the next person
13 after you to handle the item in any way?

14 A That was on 12/2, Nikki Perry Hughes.

15 Q And what does that -- what chain of custody --
16 what did Ms. Hughes do with that item?

17 A Same day, just a few minutes later she transferred
18 that evidence to Brandon Williams.

19 Q And who is Brandon Williams?

20 A He is a forensic technician within the toxicology
21 department.

22 Q Okay. So Ms. Hughes just moved the evidence from
23 one location to another?

24 A That's correct.

25 MR. SIMPSON: No further questions, Your

TESTIMONY OF SELENA KINARD

1 Honor.

2 THE COURT: Any objection to the witness
3 being excused from the state?

4 MR. KIDD: Nothing from the state, Your
5 Honor.

6 THE COURT: From the defense?

7 MR. BISCHOFF: No, Your Honor.

8 THE COURT: Ma'am, you're excused.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 Mr. Foreman, ladies and gentlemen, we are going to
12 take advantage of this break in testimony to take a
13 very brief restroom break. During the break, please do
14 not discuss the case amongst yourself. Please leave
15 your notepads in your seats.

16 (Jury exits the courtroom at 4:10 p.m.)

17 (Brief recess.)

18 THE COURT: Thank you. You may be seated.
19 Ladies and gentlemen, we will now proceed with
20 testimony.

21 State, call your next witness.

22 MR. KIDD: Thank you, Your Honor. The State
23 calls Brandon Williams.

24 THE WITNESS: My name is Brandon Williams,
25 W-I-L-L-I-A-M-S.

TESTIMONY OF BRANDON WILLIAMS

1 Thereupon,

2 BRANDON WILLIAMS

3 was called as a witness, having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. KIDD:

7 Q Good afternoon, Mr. Williams.

8 A Good afternoon.

9 Q I appreciate you being here.

10 Will you tell the jury where you are
11 currently employed, please?

12 A I currently work for SLED, South Carolina Law
13 Enforcement Division.

14 Q And where is that located?

15 A Columbia, South Carolina.

16 Q All right. What is your job title?

17 A I am a forensic technician.

18 Q All right. Are you familiar with SLED chain of
19 custody sheets?

20 A Yes.

21 Q I'm going to show you what's been marked for ID as
22 State's 25.

23 See if you can recognize that for me, please.
24 You might have to flip a couple of pages into it.

25 A (Witness reviewing documents.) Yes.

TESTIMONY OF BRANDON WILLIAMS

1 Q Can you identify the lab number that that chain of
2 custody sheet represents?

3 A L11-13661.

4 Q And did you come in contact with the evidence
5 which is associated with that chain of custody sheet?

6 A I did.

7 Q Can you tell the jury what day and time you came
8 in contact with that piece of evidence?

9 A December 2nd, 2011 at 9:37 a.m.

10 Q And can you tell who you received it from?

11 A Nikki Perry Hughes.

12 Q And what -- do you know what you did with that,
13 the item when you received it?

14 A Yes. I inventoried it, which includes making sure
15 it was sealed when I got it; taking photographs of it after
16 I opened it all the way down to the individual item that was
17 submitted and taking pictures and documenting what was
18 labeled on it.

19 Q Okay. I'm going to show you what's been marked
20 for ID -- I mean, excuse me, what's been marked and entered
21 into evidence as State's 27, 28, 29, 30, 31, 32 and 33, and
22 see if you recognize these photographs.

23 A (Witness reviewing documents.) Yes.

24 Q And can you tell the jury what those photographs
25 are?

TESTIMONY OF BRANDON WILLIAMS

1 A The first photograph is a photograph of the
2 outside of the sealed pouch that it was placed in once it
3 got to SLED. And then, therefore, a picture of the box that
4 it was originally put in and a description on the outside of
5 the box all the way to the inside, it had request sheets in
6 there, and all the way down to the two vials of blood.

7 Q May I see those photographs, please?

8 A Yes.

9 Q Thank you.

10 MR. KIDD: Sorry, I just want to make sure
11 that all of these have been entered into evidence.

12 THE COURT: What are the numbers?

13 MR. KIDD: 27, 28, 29, 30, 31, 32 and 33.

14 THE COURT: 26, 29, 30 and 31 came in as well
15 -- have all of those come in?

16 THE COURT REPORTER: I don't have that detail
17 but I can look in the transcript.

18 MR. KIDD: This might be easier.

19 MR. KIDD:

20 Q Do these photographs fairly and accurately
21 represent the items as you received them?

22 A Yes.

23 Q And that would be 27 through 33?

24 A Yes.

25 MR. KIDD: Your Honor, at this time the State

TESTIMONY OF BRANDON WILLIAMS

1 would offer 27 through 33 into evidence.

2 MR. BISCHOFF: We have no objection.

3 THE COURT: Without objection, so admitted.

4 *(Whereupon, all others having previously received*
5 *in evidence, at this time State's Exhibit Nos. 32 and*
6 *33 were marked for identification and received in*
7 *evidence.)*

8 BY MR. KIDD:

9 Q So, Mr. Williams, am I correct that as you
10 unpacked the item you photographed each stage of opening it?

11 A Correct.

12 Q Is that what these photographs represent?

13 A Correct.

14 Q Okay. And what this -- this is how it was
15 received?

16 A Yes, sir.

17 Q And that yellow tag on the top, is that -- what is
18 that?

19 A That is the unique lab number that it was given
20 when it was logged in the evidence log.

21 Q Okay. And all the way down to the vials on the
22 inside of the box; is that correct?

23 A Correct.

24 Q When you opened the box, did you notice if
25 anything had been tampered with?

TESTIMONY OF BRANDON WILLIAMS

1 A No, sir.

2 Q Had any of the seals been broken when you opened
3 the box?

4 A They were not.

5 Q Had they been torn or broken in any way would you
6 have made any indication of that?

7 A Yes, there would have been a narrative written up..

8 Q And did you write any such narrative?

9 A No, sir.

10 Q After you opened the kit, what did you do with it
11 next?

12 A The box that it came in was thrown away.

13 Q Okay.

14 A The two vials of blood here were put back inside
15 the bag and sealed again.

16 Q And just so I'm clear.

17 That would be the SLED bag, right?

18 A Correct.

19 Q Okay. So the box is thrown away. The paperwork
20 and everything else is stuffed inside in the -- stuffed,
21 placed inside the SLED bag?

22 A Everything except the paperwork. The paperwork is
23 put in the case after and the two vials of blood are put
24 back in this bag.

25 Q Okay. So the vials of blood go into the SLED kit

TESTIMONY OF BRANDON WILLIAMS

1 bag and paperwork into a case jacket?

2 A Correct.

3 Q And then how are those separate items stored for
4 their time with SLED, or where do you put it then?

5 A The blood, I put it back in the toxicology
6 refrigerator.

7 Q Okay.

8 A And the two pieces of paper are put with the case
9 that then goes to the analyst and they store it.

10 Q So the case jacket with the paperwork goes to the
11 analyst, the blood goes to the refrigerator?

12 A Correct.

13 Q Are both of those indicated by the same lab
14 number?

15 A Yes.

16 Q Okay. And that's that number on that yellow
17 sticker there?

18 A Correct.

19 Q And so, like, for example, this -- on these vials
20 you also have that number there?

21 A I write on the vial. I'll write the number
22 L11-13661 on the vials.

23 Q Okay. And then you -- I believe you testified
24 then you return them to a refrigerator?

25 A Correct.

TESTIMONY OF BRANDON WILLIAMS

1 Q After unpacking and photographing?

2 A Correct.

3 Q Who is the next person on the chain of custody
4 that checks out those items?

5 A Maribeth Coleman.

6 MR. KIDD: I have no further questions.

7 THE COURT: Any questions for the witness?

8 MR. BISCHOFF: Just briefly, Judge.

9 THE COURT: Uh-huh.

10 CROSS EXAMINATION

11 BY MR. BISCHOFF:

12 Q Mr. Williams, if I could direct your attention
13 to -- sorry.

14 MR. BISCHOFF: May I approach the witness?

15 THE COURT: Yes, sir.

16 BY MR. BISCHOFF:

17 Q State's -- the chain of custody -- the chain of
18 custody form --

19 A Yes, sir.

20 Q -- on -- do you see where you handled the sample
21 on February 3rd, 2012 --

22 A Yes, sir.

23 Q -- and then it gets a number.

24 What is the significance of that number
25 there, do you know?

TESTIMONY OF BRANDON WILLIAMS

1 A Yes, that is the -- once the case is finished, it
2 is then put into a bin, a container bin, and that bin is
3 given a specific number that Jennifer made up, because she
4 was the one that finished the case. And that was the number
5 with all of her cases she finished in January, they got put
6 in a bin that was labeled that number.

7 Q Okay. So Jennifer Brown is the one who gave it
8 that number one?

9 A Correct.

10 Q And then what about on September 25th, 2012, you
11 assigned it another number that day?

12 A Yes.

13 Q What is the significance of that?

14 A It was placed into another bin to be returned to
15 an agency.

16 Q And given another number?

17 A Yes.

18 Q Okay. Thank you for explaining that.

19 MR. KIDD: Just very briefly, Judge.

20 REDIRECT EXAMINATION

21 BY MR. KIDD:

22 Q And both of those were done after testing?

23 A Correct.

24 MR. KIDD: No further questions.

25 THE COURT: Any objection to the witness

TESTIMONY OF BRANDON WILLIAMS

1 being excused from the State?

2 MR. KIDD: No, ma'am.

3 THE COURT: From the Defense?

4 MR. BISCHOFF: No, Your Honor.

5 THE COURT: Sir, you are excused.

6 Call your next witness.

7 MR. KIDD: The State calls Maribeth Coleman.

8 Thereupon,

9 MARIBETH MCCORMACK

10 was called as a witness, having been first duly sworn,

11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 THE WITNESS: Maribeth McCormack,

14 M-C-C-O-R-M-A-C-K.

15 THE COURT: You may proceed.

16 DIRECT EXAMINATION

17 BY MR. KIDD:

18 Q Good afternoon, Ms. McCormack. And I apologize, I
19 have been referring to you as Coleman all of this time. Did
20 you have a name change?

21 A Yes, I was recently married.

22 Q Congratulations.

23 A Thank you.

24 Q Can you tell the jury where you are employed
25 currently?

TESTIMONY OF MARIBETH COLEMAN

1 A I am employed at the South Carolina State Law
2 Enforcement Division, commonly known as SLED.

3 Q How long have you worked for SLED?

4 A Five years and seven months.

5 Q What's your title at SLED?

6 A I am a forensic scientist in the drug analysis
7 department.

8 Q As a forensic scientist, what sort of education or
9 background do you have that qualifies you to be a scientist?

10 A I have a bachelor of science in chemistry and a
11 master's in teaching secondary science, both from the
12 University of South Carolina.

13 Q And you then -- are you then additionally trained
14 by SLED?

15 A Yes. I have completed training in the drug
16 analysis department and also blood alcohol training in the
17 toxicology department.

18 Q And you're currently a forensic scientist, but
19 back in 2011, were you working in the alcohol toxicology
20 department?

21 A Yes, I was working in the drug analysis department
22 as well as in the toxicology department.

23 Q What were you -- excuse me -- what were you doing
24 for the alcohol toxicology department at that time?

25 A I was performing blood alcohol analysis.

TESTIMONY OF MARIBETH COLEMAN

1 Q Is that -- were you doing that in your duties as a
2 forensic scientist?

3 A No, I was working more as a technician in the
4 toxicology department because they were shorthanded, and so
5 I volunteered to train to perform blood alcohol analysis.

6 Q So that was -- is it safe to say that you were
7 kind of overqualified for that position at that time?

8 A I -- you know.

9 Q Well, you currently work as a forensic scientist
10 with the drug department; is that accurate?

11 A Yes.

12 Q But you were kind of filling in as a technician
13 with the alcohol department?

14 A Correct.

15 Q Okay. That's all. I didn't mean overqualified, I
16 apologize.

17 But you were just kind of helping out in the
18 alcohol toxicology department?

19 A Yes.

20 Q Okay. As part of your duties within the alcohol
21 toxicology department, what sort of things would you do for
22 them?

23 A My duties were to pipette blood samples.

24 Q Can you explain to the jury what pipetting a blood
25 sample is?

TESTIMONY OF MARIBETH COLEMAN

1 A Basically pipetting is just taking a small amount
2 of the blood and transferring it into a tube, a vial, and
3 placing it on instrumentation, and that instrumentation
4 would then provide data as to the content.

5 Q What sort of instrumentation would you utilize?

6 A I used Headspace gas chromatograph.

7 Q And do you run one sample at a time through that,
8 or how does that work?

9 A One sample at a time, but there would be a batch
10 of samples. So each sample would be run over maybe a
11 six-minute period, but then it would be in a larger batch
12 for the entire run.

13 Q Okay. So one sample would run through the piece
14 of equipment at a time, but then there would be subsequent
15 samples right behind it?

16 A Yes.

17 Q And so there would be samples from other cases
18 some coming one after another?

19 A Yes.

20 Q Is that an accurate explanation?

21 A Yes.

22 Q While you were working for the toxicology
23 department at SLED, did you come into contact with an item
24 associated with SLED lab number L11-13661? And if it would
25 help you, I can show you the internal chain of custody

TESTIMONY OF MARIBETH COLEMAN

1 paperwork, which I believe is actually still in front of you
2 on that table there if you flip a couple of pages.

3 A Yes.

4 Q On what date and time did you come into contact
5 with the sample associated with that lab number?

6 A On December 6th, 2011, at 9:50 a.m. and also on
7 December 7th, 2011, at 1:42 p.m.

8 Q Okay. And what sort of sample was it?

9 A A blood sample.

10 Q Okay. Now, can you walk the jury through what you
11 would do with that blood sample?

12 A Once I retrieved it from the toxicology
13 refrigerator, I would set up a run list, which would include
14 every sample I was going to run in that batch that day. I
15 would label an empty vial with all of the different lab
16 numbers. I would then pipette the standards that would be
17 run with that batch, the known standards. And then I would
18 go through each case and pipette a sample of blood into the
19 vial for the septum over the vial, cap the vial and then
20 load the vials onto the instrumentation, type in the log
21 list with all of the lab numbers and begin the
22 instrumentation.

23 Q Okay. So each sample -- I'm just going to show
24 you what has been entered as State's Exhibit 27.

25 Would this be the vials that you retrieved

TESTIMONY OF MARIBETH COLEMAN

1 the sample from?

2 A Yes, the tube, yes.

3 Q The tube, excuse me, the test tube that you
4 received the sample from?

5 A Yes.

6 Q So you would have broken the seal on one of those
7 tubes?

8 A Yes.

9 Q And you said you would then pipette into -- a
10 small portion of that into a vial?

11 A Yes.

12 Q Is it just the blood or is it mixed with something
13 else?

14 A We also add an internal standard to the vial just
15 as a quality control step, because it's a known amount, a
16 known standard that we're adding. So if that, you know,
17 were to somehow not show up in our results, then we would
18 know that something was wrong with the instrumentation.

19 Q Okay. So as you pipette some of the blood sample
20 into a vial you also include a known standard?

21 A Yes.

22 Q What's that known standard?

23 A Tertiary butanol. We call it T-butanol for short.

24 Q Okay. And so what you add in there is something
25 that you know exactly what is present --

TESTIMONY OF MARIBETH COLEMAN

1 A Yes.

2 Q -- within that standard?

3 A Yes.

4 Q In addition to that sort of safety check, are
5 there additional standards run through the equipment with
6 that batch?

7 A Yes.

8 Q Can you explain to the jury what that is or how
9 that works?

10 A Yes. At the beginning of the batch we run two
11 known standards with the value of .08, and then every 15 -
12 15th slot on the batch list would be another .08 standard.
13 And then at the end there's a .08 standard, a .4 standard, a
14 check mix, which is made in-house and then a negative
15 control, which is just water with the T-butanol.

16 Q And why is that done?

17 A Just to make sure if we know -- we have a known
18 standard, then we know the results should be 5 percent of
19 that known standard. And if they are outside of that range,
20 then we do not use the data.

21 Q So it's a checks and balances on the accuracy of
22 the equipment --

23 A Yes.

24 Q -- is that safe to say?

25 And so this is what you did on December 6th

TESTIMONY OF MARIBETH COLEMAN

1 of 2011?

2 A Yes.

3 Q And you ran the pipette sample through this tube
4 from what sort of equipment was it again?

5 A Headspace gas chromatograph.

6 Q Then on December 7th you check out these tubes
7 again. Why is that?

8 A I would have checked it out again because the --
9 excuse me, the sample tested positive for --

10 Q So what do you do when you check it back out?

11 A I do the same process over again.

12 Q So you repeat the same test that you performed the
13 day before?

14 A Yes.

15 Q You call that, what, replicate testing?

16 A Yes.

17 Q Okay. So then -- so, in essence, it's been tested
18 twice at that point?

19 A Yes.

20 Q The second time you run it through, do you run the
21 same checks and balances?

22 A Yes.

23 Q So there's the T-butanol added --

24 A Yes.

25 Q -- and there's known standards at the beginning

TESTIMONY OF MARIBETH COLEMAN

1 every 15th, and then at the end of the batch?

2 A Yes.

3 Q And are the results of all of those things
4 recorded?

5 A Yes.

6 Q And does the equipment that you use print out a
7 report as to what it finds?

8 A It prints out data.

9 Q It prints out data, not a report?

10 A Yes.

11 Q Excuse me, it prints out data as to what it finds
12 in the sample?

13 A Yes.

14 Q And then what do you do with that data and the
15 tubes at that point?

16 A The tubes I heat seal the bag, return it to the
17 refrigerator. With the data, I make sure -- I glance at it
18 to make sure that the values from the first testing and the
19 second testing agree within 8 percent. If they do agree,
20 then I pass it along to the next toxicologist for further
21 testing.

22 Q Okay. And like I was saying before, you're not
23 qualified to interpret those results, are you?

24 A No.

25 Q You just pipette and run through the equipment.

TESTIMONY OF MARIBETH COLEMAN

1 Is that safe to say?

2 A Yes.

3 Q Can you tell the jury about some of the safety
4 precautions that you may take to prevent any cross
5 contamination?

6 A Absolutely. We use clean vials every time. We
7 wipe down our work area with a Clorox solution. I never
8 have two bags open at the same time. If I'm done with one
9 bag, it is heat sealed and set to the side as to not mix up
10 anything. I label the vials with the lab number and my
11 batch sheet also has a lab number, and so I make sure that
12 those match before pipetting and before adding it on to the
13 instrumentation.

14 Q Can you tell who the next member of SLED is that
15 handles the blood vials after you from the chain of custody?

16 A Yes, based on the chain of custody, Carmen Tucker
17 was the next.

18 Q And do you know what she would have done with the
19 samples?

20 A She would have performed a drug screen.

21 Q And then where would she have returned these vials
22 to, I mean the test tubes to?

23 A Based on the chain of custody, she returned it to
24 the refrigerator.

25 Q And then who would have picked them up from there?

TESTIMONY OF MARIBETH COLEMAN

1 A Jennifer Brown.

2 MR. KIDD: The Court's indulgence.

3 THE COURT: Uh-huh.

4 MR. KIDD: I have no further questions.

5 THE COURT: Any questions for the witness?

6 MR. BISCHOFF: I beg the Court's indulgence?

7 THE COURT: Uh-huh.

8 MR. BISCHOFF: No questions, Judge. Thank
9 you.

10 THE COURT: You're welcome.

11 Any objection to the witness being excused from
12 the state?

13 MR. KIDD: No, ma'am.

14 THE COURT: From the defense?

15 MR. BISCHOFF: No, Your Honor.

16 THE COURT: Ma'am, you're excused.

17 You may call your next witness.

18 MR. SIMPSON: The State calls Kievet Heyward
19 from the Charleston County Sheriff's Office.

20 Thereupon,

21 KIEVET HEYWARD

22 was called as a witness, having been first duly sworn,
23 was examined and testified as follows:

24 THE WITNESS: Kievet Heyward. The last name
25 is spelled H-E-Y-W-A-R-D.

TESTIMONY OF KIEVET HEYWARD

1 DIRECT EXAMINATION

2 BY MR. SIMPSON:

3 Q Is it Sergeant Heyward?

4 A It is sir.

5 Q Good afternoon, Sergeant.

6 A Good afternoon, sir.

7 Q Thank you for patience this afternoon. I
8 appreciate you coming.

9 What agency do you work for?

10 A Charleston County Detention Center.

11 Q And what is your job at the Charleston County
12 Detention Center?

13 A The lobby supervisor, security and administrative
14 services.

15 Q Okay. And what was your role at the detention
16 center back in November 2011?

17 A I'm over the lobby, which entails visitation,
18 phone subpoenas and ID PNR.

19 Q And you said phone subpoenas; what do you mean by
20 that?

21 A Well, we are responsible for pulling all jail
22 tapes via the computer system, printing the logs and issuing
23 them as they are subpoenaed or a search warrant is given to
24 us.

25 Q Okay. And so I guess we can infer from that,

TESTIMONY OF KIEVET HEYWARD

1 phone conversations at the jail are recorded?

2 A Correct.

3 Q Can you explain to the jury a little bit about
4 that process? How does an inmate go about to use the phone
5 at the jail?

6 A Yes. The inmates come into the facility. They
7 are booked in. At the time of book-in -- in between book-in
8 and getting classified they're given a pin number. That pin
9 number is what they are able to use to make phone calls.
10 They are told verbally and in writing that the phone calls
11 are recorded. There's also a sign posted over the phones
12 saying that the phone calls are recorded. And they are
13 allowed three free phone calls in the classification
14 area/book-in and then they are -- each call after that is
15 collect.

16 Q Collect in it's charged to the recipient?

17 A Correct.

18 Q And just to review again, is it some secret that
19 these are being recorded?

20 A It is not. Not only is it posted and in writing,
21 the phone also will tell you every so often, I'm not sure of
22 the minutes in between, but it tells them that the phone
23 call is being recorded.

24 Q And that's explained to them upon booking, you
25 said both verbally and in writing?

TESTIMONY OF KIEVET HEYWARD

1 A Correct.

2 MR. SIMPSON: May I approach the witness,

3 Your Honor?

4 THE COURT: You may.

5 BY MR. SIMPSON:

6 Q Sergeant Heyward, I'm handing you what's been
7 marked for ID only as State's 34.

8 Could you remove that from the bag?

9 A Yes, sir.

10 Q Do you recognize that?

11 A It is.

12 Q What is that?

13 A It is a disk made by the facility with the
14 inmate's name, number and the phone calls dated from
15 11/14/2011 to 11/16/2011 and it is signed by me.

16 MR. BISCHOFF: Objection, Judge. I don't
17 believe that sufficient foundation has been laid.

18 THE COURT: You may proceed. It goes to
19 weight, not admissibility, but you still have to
20 lay the appropriate foundation.

21 MR. SIMPSON: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 BY MR. SIMPSON:

24 Q You mentioned, Sergeant Heyward, that you would
25 receive a request for a certain inmate's --

TESTIMONY OF KIEVET HEYWARD

1 A Yes.

2 Q -- recordings?

3 A Yes.

4 Q The form that you're holding there, is that how
5 you would respond to that subpoena?

6 A I don't have a form in front of me.

7 Q I'm sorry, the sheet in your hand, is that what we
8 would be provided with in response to a subpoena?

9 A Yes, you would be provided a CD and a log sheet.

10 Q Okay. And that would be the phones calls
11 associated with a specific inmate?

12 A Correct.

13 Q And do you know who the specific inmate is in this
14 case?

15 A Hamrick.

16 Q Okay. And, again, the inmate, you know that from
17 a PIN note number provided to Mr. Hamrick when he was booked
18 in?

19 A Say, again, I'm sorry.

20 Q An inmate is given a PIN number when they're
21 booked in?

22 A Correct.

23 Q Is that individual to the specific inmate?

24 A Yes, every inmate has their own PIN number.

25 Q And when they use the phone, they have to punch in

TESTIMONY OF KIEVET HEYWARD

1 that PIN number?

2 A Correct.

3 Q And therefore the phone is recorded and logged
4 under that PIN number; is that correct?,

5 A Yes.

6 MR. SIMPSON: Your Honor, at this time I
7 would -- I'm sorry, may I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 MR. SIMPSON: At this time I'll move to admit
11 selections from the State's 34 that have been
12 previously discussed with Defense counsel and also
13 referenced just for the record in Court's 1.

14 THE COURT: Pardon me?

15 MR. SIMPSON: For the record, these are
16 referenced in Court's 1, the specific portions I
17 seek to admit.

18 THE COURT: Any objections?

19 MR. BISCHOFF: Yes, Judge.

20 THE COURT: Basis of the objection?

21 MR. BISCHOFF: I don't believe they've been
22 properly authenticated. Also have an objection
23 under privilege, I don't believe that we've talked
24 about yet. Would you like us to approach, Your
25 Honor?

TESTIMONY OF KIEVET HEYWARD

1 THE COURT: Mr. Foreman, ladies and gentlemen
2 of the jury, I have a brief matter to take up with
3 the attorneys. During this break, please do not
4 discuss the case and leave your notepads in your
5 seats.

6 (Jury exits courtroom at 4:50 p.m.)

7 THE COURT: What is the basis of the
8 objection?

9 MR. BISCHOFF: We talked about it earlier,
10 Judge, on authentication, you've already ruled on
11 that.

12 But this privilege has to do with communications
13 between Mr. Hamrick and his wife.

14 THE COURT: How is it privileged?

15 MR. BISCHOFF: I believe it's covered because
16 it's communication between a spouse and her
17 husband. And they are trying to bring it forward
18 in a civil action proceeding before the Court.
19 I'm looking at 19-11-30 South Carolina Code of
20 Laws.

21 THE COURT: Would the State like to respond?

22 MR. SIMPSON: Yes, Your Honor.

23 Spousal privilege is a privilege covering
24 compelled testimony. We did not subpoena Mr. Hamrick's
25 wife. We are not calling her to testify. Because she

TESTIMONY OF KIEVET HEYWARD

1 is not subject to direct questioning or return
2 questioning, we merely have a few statements, again,
3 agreed upon a day ago. This is kind of unexpected
4 wherein Mr. Hamrick responded to simple questions from
5 his spouse. We are not eliciting any testimony from
6 the spouse. I don't believe this is covered by the
7 spousal rule.

8 If a third party -- Your Honor, if a third party,
9 if I could give you a hypothetical, were in a bar and
10 heard a conversation between Mr. Hamrick and his
11 spouse, certainly, they could call that third party to
12 testify about the substance of that conversation, that
13 is not covered by privilege. Similarly, in this
14 situation, we have a paid third party, Charleston
15 County Detention Center, which recorded conversations
16 to the knowledge of Mr. Hamrick, thus waiving the
17 privilege.

18 And, again, that's another reason why this is not
19 the type of thing contemplated in the law that covers
20 spousal privilege. And I would like -- have a case
21 that I would like to site.

22 THE COURT: Sure.

23 MR. SIMPSON: United States versus John
24 Hannon, it's from the United States District Court
25 of South Carolina.

TESTIMONY OF KIEVET HEYWARD

1 THE COURT: Has it been subject to appellate
2 review, Fourth Circuit Court?

3 MR. SIMPSON: By Judge Childs. That case is
4 2012 --

5 THE COURT: It has not been subject to Fourth
6 Circuit Review, it is just like me issuing an
7 opinion. I can't rely on that.

8 MR. SIMPSON: I understand.

9 And I know it's not binding, but for appellate
10 reasons it lays out reasons, in this very specific
11 situation, incarcerated spouse was communicating with
12 his nonincarcerated spouse over a prison telephone
13 cannot claim the marital privilege because neither
14 party has a reasonable expectation of privacy or
15 confidentiality. As such I would just point to the
16 opinion as persuasive guidance, Your Honor.

17 THE COURT: I think it's a novel argument,
18 but I don't think it has any merit. Normally a
19 privilege applies when you call a spouse to
20 divulge a confidence. There are several things
21 that really sort of work against your logic. One
22 of which is we have a third party present,
23 theoretically, and you know you're being recorded.
24 The privilege -- you can't claim privilege when
25 you don't have an expectation of privacy.

TESTIMONY OF KIEVET HEYWARD

1 When I'm on a cell phone and it constantly says
2 you are being recorded I have no expectation of privacy
3 since I know that someone is listening. They've
4 notified me in writing and they've notified me orally
5 that any phone conversation that I have other than with
6 my lawyer are going to be recorded and they can be used
7 against me, and will be used against me.

8 The other interesting issue is, I would agree with
9 you if they were calling her to testify and
10 conversations had not been recorded and they were
11 asking her to repeat. In other words, if they had this
12 conversation privately in their bedroom or in their
13 house, in their kitchen or in their backyard and you
14 were calling her -- they were calling her for the sole
15 purpose of divulging what her husband said to her, it
16 would not be admissible because, clearly, that is what
17 the privilege is designed to protect, confidential
18 communication between spouses.

19 But that's not what this is. She is not being
20 called to testify. She's not being called to abrogate
21 privilege. And, of course, the person that claims the
22 privilege is the person that the privilege belongs to,
23 her husband in this instance.

24 But I don't think that's what this statute was
25 designed for. I mean, the statute was designed to

TESTIMONY OF KIEVET HEYWARD

1 protect confidential communication between a husband
2 and wife within the confines basically -- I don't mean
3 to sound -- well, in the confidences of their
4 marital --

5 MR. SIMPSON: Home.

6 THE COURT: Yes, their house, their, you
7 know, their confidential spaces, so to speak. And
8 that's not -- and generally that's how privilege
9 arises. It's no different than a privilege when a
10 person goes to their spiritual advisor, you know,
11 when everything I'm saying is confidential. You
12 don't expect somebody to repeat it. You have
13 expectation of privacy, that's the whole reason
14 that you do it, because you want to purge yourself
15 and you don't expect anybody to judge you or
16 anybody to repeat what has been spoken.

17 But I think the greatest problem with your
18 argument is the lack of expectation of privacy. You're
19 clearly put on notice that anything you say is going to
20 get recorded and can be replayed and that you have no
21 expectation of privacy in the conversation. Now, of
22 course, they can't record your conversations with your
23 lawyer, that's clearly covered by privilege. And they
24 don't, as far as I know. And if they do they certainly
25 don't listen to them and they're destroyed.

TESTIMONY OF KIEVET HEYWARD

1 But I don't think the statute, and I'm referring
2 to 19-11-30, which states "In any trial or inquiry, in
3 any suit, action or proceeding in any court or before
4 any person having, by law or consent of parties -- of
5 the parties -- authority to exam witnesses." And
6 that's dispositive language, "exam witnesses."

7 She's not a witness that's being examined. "Or
8 hereafter, no husband or wife may be required to
9 disclose any confidential," and she's not being asked
10 to disclose anything confidential. We have dispositive
11 language in the statute, "required to disclose any
12 confidential or, in a criminal proceeding, any
13 communication made by one to the other during their
14 marriage." She is not being compelled to do that. If
15 the State were to try to call her as a witness,
16 certainly the statute would be applicable and the
17 privilege would be upheld. She cannot be required to
18 come into court and repeat what her husband said to
19 her.

20 But this is very different context. This is where
21 a conversation is being recorded. You know they're
22 being recorded. You have no expectation of privacy.
23 Frankly, anybody in jail should anticipate that those
24 phone conversations are going to be played. It is not
25 hearsay. It is his statement against interest. I

TESTIMONY OF KIEVET HEYWARD

1 don't know exactly what the statements are; what are
2 they?

3 MR. SIMPSON: Your Honor, Court's 1 outlines
4 it in a page and a half.

5 THE COURT: Just tell me the synopsis, what
6 his statements are.

7 MR. SIMPSON: All regarding responses to how
8 much did you have to drink that night and his
9 various responses to that question.

10 THE COURT: What were the responses?

11 MR. SIMPSON: It began like it does on the
12 scene with one beer, quickly moves to two beers,
13 and then moves to three beers and two shots, then
14 again repeats three beers and two shots, and then
15 no beer before midnight, but then acknowledges the
16 last shots probably came around 2:00 a.m.

17 THE COURT: Have you all made any attempts to
18 work out any stipulations as to how many drinks he
19 had that night?

20 MR. SIMPSON: No, Your Honor, we suspect that
21 he, even with the maximum admissions, it was far
22 more than that. So I don't think that that would
23 be possible.

24 THE COURT: Okay. How many recorded phone
25 calls do you have?

TESTIMONY OF KIEVET HEYWARD

1 MR. SIMPSON: They are here. We are playing
2 just really short snippets. I don't know that
3 snippet is a word, but really short bits --

4 THE COURT: I guess my question should be
5 more direct, I apologize. I'm trying to figure
6 out how many -- how many minutes are we talking
7 about of phone calls?

8 MR. SIMPSON: We have six, six bits of phone
9 conversations, none lasting more than 30 seconds.
10 I mean, it'll take us some time to move between
11 them, but not too much time. They are relatively
12 straight forward.

13 MR. KIDD: Judge, when you get a minute, can
14 we approach on a scheduling matter?

15 THE COURT: Sure.

16 (Off-the-record discussion.)

17 THE COURT: We don't have a case directly on
18 point. We have State versus Copeland, 1996
19 Supreme Court decision, 468 S.E. 2d 620. Which, I
20 think, gives us sufficient guidance on the issue.
21 And I'll just read the operative portions.
22 Copeland asserts that spousal privilege extends to
23 statements made by her husband to police,
24 therefore she contends the trial court erred in
25 allowing police officers to testify that after

TESTIMONY OF KIEVET HEYWARD

1 talking with her husband they discovered a car
2 owned by her that matched a description of the
3 vehicle seen by a neighbor at the victim's house
4 on March 22nd. The court articulates, we
5 disagree. This is the operative portion. I
6 didn't mean to read those other sentences, but
7 they are in now. This is the operative portion I
8 think that gives us clarity on 19-11-30. The
9 spousal privilege provides that in criminal cases
10 married persons cannot be compelled to testify
11 against their spouses concerning any communication
12 made between them during their marriage, citing
13 19-11-30. We have held that the right to exercise
14 the privilege against disclosing marital
15 communications is solely that of the
16 witness/spouse from whom the privileged
17 information is being sought. So, I think that
18 gives us the clarity that we need, which is that
19 19-11-30 applies to compelled testimony. That
20 means calling in the spouse to testify and
21 compelling them to testify as to communications
22 made between them and their spouse. That is not
23 factually applicable in this case.

24 The other thing that I find very interesting is
25 really I have some questions now about Mr. Hamrick's

TESTIMONY OF KIEVET HEYWARD

1 ability to have standing to raise this privilege since
2 the privilege belongs to his wife, not to him. And so
3 she would -- then, of course, that still furthers the
4 logic that the statute really only applies to calling a
5 spouse to testify and at that time she would be able to
6 assert the privilege. But she doesn't have to.
7 Because, in this instance, it appears that -- well, in
8 this instance the husband in this case elected not to
9 testify against his wife and he did assert privilege
10 and he was not called as a witness, but what happened
11 was the police did, as a result of a conversation with
12 her husband, therefore, did find the vehicle.

13 But I think that the intent of the statute is very
14 clear, that it applies and prohibits you from calling a
15 spouse and compelling them to come into court and
16 testify as to confidential communications they made
17 with their spouse. And the privilege belongs to that
18 spouse, and it is theirs to assert or not to assert.

19 Of course we know all communications are not
20 covered, and we have case law that says when a spouse
21 is beating up another spouse, that is not privileged
22 communication either. And certainly that person can
23 come in and testify as to what transpired between the
24 spouses. But that goes a little far afield from our
25 factual scenario here. What we are dealing with is

TESTIMONY OF KIEVET HEYWARD

1 communications made between spouses not without any
2 expectation of privacy, on a recorded phone
3 conversation, and the spouse is not being called into
4 court or held in court and being required or compelled
5 to testify regarding any conversation she had with her
6 husband. No, 19-11-30 is inapplicable.

7 MR. BISCHOFF: Thank you for hearing me,
8 Judge.

9 THE COURT: You are welcome, not a worry.
10 Are we ready?

11 MR. SIMPSON: We are, Your Honor. For
12 clarification, assuming that these are admissible,
13 I believe that we discussed publishing them in the
14 morning.

15 THE COURT: I think we should. I think that
16 is a good idea. They have been working hard. We
17 are used to that volume of information but that is
18 a lot for lay folk to absorb. So I think that we
19 probably, you know, hit their information maximum
20 today. We probably need to let them go on home.
21 And again, you know, we have people with children,
22 day care and otherwise, I really don't like
23 keeping people much past, beyond 5:00.

24 MR. SIMPSON: And I don't believe that
25 Defense counsel has any cross of this witness?

TESTIMONY OF KIEVET HEYWARD

1 MR. BISCHOFF: No. I mean, just for the
2 rècord, noting my objection to them being put into
3 evidence and playing them.

4 THE COURT: I will note your objection for
5 the record, and it is overruled based on my
6 previous ruling regarding privilege. And what we
7 will do is I will allow Mr. Simpson to place the
8 exhibit into evidence in the presence of the jury.
9 And I don't know, are we going to need Ms. Heyward
10 back in the morning to publish the portions, or
11 are you fine with her being excused?

12 MR. BISCHOFF: Judge I'm fine as long as the
13 record is clear about my objection. I think that
14 it is.

15 THE COURT: It is up to y'all. I don't want
16 y'all to get in the middle of something and then
17 need to call her about something.

18 MR. SIMPSON: We would like to go ahead and
19 excuse her if that's okay.

20 THE COURT: Is there any objection of
21 Defense?

22 MR. BISCHOFF: No, subject to recall.

23 THE COURT: Okay. What we will do then is
24 bring in the jury. We will go ahead and move the
25 disk in in their presence and then we will excuse

TESTIMONY OF KIEVET HEYWARD

1 Ms. Heyward subject to being recalled. And I'll
2 give you the opportunity to put on the record that
3 you don't have any cross-examination of her.

4 MR. BISCHOFF: Thank you, Judge.

5 THE COURT: Did you ask all of the questions
6 in the presence of the jury regarding foundation?
7 I can't remember.

8 MR. SIMPSON: Yes, they were still in, Your
9 Honor.

10 THE COURT: All right. If you will get the
11 jury, please.

12 (Jury enters the courtroom at 5:13 p.m.)

13 THE COURT: You may be seated. The State may
14 proceed.

15 MR. SIMPSON: I think, Your Honor, at this
16 time, the State would seek to admit State's 34. I
17 should say selected portions of State's 34 into
18 evidence.

19 THE COURT: Marked and admitted subject to
20 Defense's objection.

21 MR. SIMPSON: Thank you, Your Honor.

22 THE COURT: You are welcome.

23 *(Whereupon, State's Exhibit No. 34 was marked for*
24 *identification and received in evidence.)*

25 THE COURT: Anything further for the witness?

TESTIMONY OF KIEVET HEYWARD

1 MR. SIMPSON: Nothing further.

2 THE COURT: Any cross-examination from the
3 witness?

4 MR. BISCHOFF: No, Your Honor.

5 THE COURT: Any objection to the witness
6 being excused subject to recall?

7 MR. SIMPSON: None from the State.

8 MR. BISCHOFF: None from the Defense, Your
9 Honor.

10 THE COURT: Thank you. Ma'am, you are
11 excused. Mr. Foreman, ladies and gentlemen of the
12 jury, we are going to take advantage of this break
13 in testimony to take our evening recess. During
14 the break please do not discuss the case in any
15 manner whatsoever, please do not read, watch or
16 listen to any media accounts or do any independent
17 research on the Internet as well as make any
18 comments regarding your service on any networking
19 sites. We will resume -- and avoid any contact
20 with anyone in and about the courthouse. If you
21 will leave your note pads in your seats. Hope
22 that you have a wonderful evening. We will see
23 you in the morning at 9:30.

24 (Jury exits the courtroom and court is adjourned
25 at 5:15 p.m. Proceedings continue in Volume 6.)

REPORTER'S CERTIFICATE PAGE

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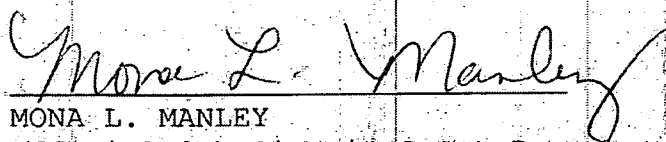
CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF CHARLESTON:

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

DATED this 1st day of May, 2014.


MONA L. MANLEY
Official 9th Circuit Court Reporter
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magnoliareporting@yahoo.com

1 State of South Carolina }
2 County of Charleston } Indictment No. 2012GS1001033
3 State of South Carolina, }
4 Plaintiff, }
5 vs. } Trial Transcript
6 Daniel D. Hamrick, }
7 Defendant. }

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VOLUME 6

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October 24, 2013

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Charleston, South Carolina

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21 BEFORE:

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The Honorable Deadra Jefferson

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1 **APPEARANCES**

2

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1 PROCEEDINGS

2 THE COURT: Is the State ready to proceed?

3 MR. KIDD: We are, Your Honor.

4 THE COURT: Defense ready to proceed?

5 MR. BISCHOFF: We are, Your Honor.

6 THE COURT: Good morning. They should be
7 here in just a minute. We are waiting on a
8 couple.

9 MR. KIDD: I believe that we are going to the
10 publish the jail calls first. And we are awaiting
11 the arrival of Ms. Brown in the meantime. Which
12 she should be here shortly.

13 THE COURT: Okay.

14 (Pause.)

15 (Jury enters the courtroom.)

16 THE BAILIFF: Jury is all present, Your
17 Honor.

18 THE COURT: You may be seated. Good morning,
19 ladies and gentlemen. I hope you all had a
20 pleasant evening.

21 Mr. Kidd, you may proceed -- or Mr. Simpson.

22 MR. SIMPSON: Thank you, Your Honor. As
23 discussed yesterday, at this point the State would
24 seek to admit portions of 34 for purposes of the
25 record.

1 THE COURT: I think that we have already
2 dealt with that.

3 MR. SIMPSON: Okay. Your Honor, then
4 beginning with the phone call on 11-14, 2011, 8:59
5 a.m., 21 seconds.

6 THE COURT: You may proceed.

7 MR. SIMPSON: Thank you.

8 THE COURT: You are welcome.

9 MR. SIMPSON: Your Honor, for this respect,
10 may I sit down?

11 THE COURT: Uh-huh.

12 MR. SIMPSON: Thank you.

13 (Audio playing.)

14 MR. SIMPSON: Your Honor, moving to a call on
15 November 14th, 2011, at 11:55 a.m., six seconds.

16 (Audio playing.)

17 MR. SIMPSON: Moving now to a phone call on
18 November 14th, 2011 at 4:40 p.m. for 11 seconds.

19 (Audio playing.)

20 MR. SIMPSON: Your Honor, that is the
21 completion of what we would like to admit from
22 this exhibit.

23 THE COURT: You may proceed.

24 MR. KIDD: May we approach?

25 THE COURT: Uh-huh.

1 Mr. Foreman, ladies and gentlemen, we need to ask
2 your indulgence. We are delayed in the arrival of a
3 witness who is on the interstate en route. She should
4 be here in the next ten minutes or so. We are going to
5 go ahead and take a very short break in the interim
6 while we awaiting her arrival.

7 During this break do not discuss the case and
8 leave your note pads in your seats. We appreciate your
9 patience.

10 (Jury exits the courtroom.)

11 (Brief recess.)

12 THE COURT: You may be seated.

13 Has your witness arrived?

14 MR. KIDD: She has, Your Honor. I apologize.

15 THE COURT: No worries.

16 Let's see. The jury is on the way down the hall.
17 Anything that I need to take up before we bring in the
18 jury?

19 MR. KIDD: No, ma'am.

20 THE COURT: From the State. From the
21 Defense?

22 MR. BISCHOFF: No, Your Honor.

23 THE COURT: All right.

24 (Jury enters the courtroom at 11:00 a.m.)

25 THE COURT: Thank you, you may be seated.

1 Ladies and gentlemen, we appreciate your patience.
2 We are now going to resume testimony. You may call
3 your next witness.

4 MR. KIDD: Thank you, Your Honor. The State
5 calls Jennifer Brown.

6 THE COURT: If the witness will come forward
7 and be sworn.

8 Thereupon,

9 JENNIFER BROWN
10 was called as a witness, having been first duly sworn,
11 was examined and testified as follows:

12 THE WITNESS: Jennifer Michelle Guard Brown,
13 B-R-O-W-N, last name.

14 THE COURT: If you could speak directly into
15 the microphone, Ms. Brown.

16 THE WITNESS: Sorry.

17 THE COURT: I know it doesn't move.

18 THE WITNESS: Jennifer Michelle Guard Brown,
19 and Brown is B-R-O-W-N.

20 THE COURT: Thank you very much, you may
21 proceed.

22 MR. KIDD: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. KIDD:

25 Q Good morning, Ms. Brown.

TESTIMONY OF JENNIFER BROWN

1 A Good morning.

2 Q Where do you live?

3 A Brook Chapin area.

4 Q Did you get in some traffic on the way this
5 morning?

6 A Yes.

7 Q I appreciate you coming down for us.

8 Can you tell the jury where you are employed.

9 A I'm employed at the South Carolina Law Enforcement
10 Division, commonly known as SLED.

11 Q How long have you been employed by SLED?

12 A I will be employed there seven years in January.

13 Q Do you have a job title?

14 A Yes, I'm a forensic toxicologist.

15 Q Can you explain forensic toxicology, or what a
16 forensic toxicologist does?

17 A Basically, I am a scientist who analyzes
18 biological samples, be it blood, ocular tissues and others,
19 for the presence or absence of drugs, including alcohol and
20 toxins, poisons, and then I interpret those results for
21 courts, police officers, coroners and others.

22 Q And is that sort of what your duties are at SLED?

23 A Yes.

24 Q Can you tell the jury a little bit about your
25 educational background?

TESTIMONY OF JENNIFER BROWN

1 A Sure. I went to the University of South Carolina
2 and have a bachelor's of science in chemistry. But mainly
3 our training is in-house at SLED. We have about a year
4 program where you start with alcohol analysis and you
5 analyze at least 500 samples and you try to find the
6 presence or absence of alcohol, and they are known samples
7 so you compare that with previously reported results. And
8 then after that you have lecture series where you go through
9 and learn about alcohol. In those lecture series you are
10 graded and you have to pass those exams, and then at the
11 final of your training for the alcohol portion you are given
12 an exam and a mock trial. If you don't pass that, you will
13 actually be fired.

14 And from there we go on to our drug training
15 where we try to learn the different extractions, the
16 different drugs, go through to different extractions, go
17 through the different drugs, analyze cases there too, and
18 then once again, when we are done with that we are given
19 another mock trial. If we don't pass that, then we will be
20 fired also.

21 And we try to continue our education through
22 journals and going to different conferences and meetings and
23 any training that we can get.

24 Q Have you testified in court before?

25 A Yes.

TESTIMONY OF JENNIFER BROWN

1 Q Have you been qualified as an expert in any
2 fields?

3 A Yes.

4 Q In what fields?

5 A Forensic toxicology, and then every once in a
6 while in chemistry.

7 MR. KIDD: Your Honor, at this time I offer
8 Ms. Brown as an expert in forensic toxicology.

9 THE COURT: Any objections or questions?

10 MR. McCUNE: No, Your Honor.

11 THE COURT: So admitted without objection.

12 MR. KIDD: Thank you, Your Honor.

13 Q As part of your duties at SLED, did you come in
14 contact with an item SLED number L11-13664?

15 A Yes.

16 Q Do you know what time you came into contact with
17 that item?

18 A Let me look real quick.

19 Approximately 17:02 on 12/12/11.

20 Q 17:02, that is like --

21 A Five --

22 Q 02?

23 A 5:02, yep.

24 Q And what was the purpose of you receiving that
25 item?

TESTIMONY OF JENNIFER BROWN

1 A To further go through the analysis, and then
2 eventually write up the report.

3 Q And what -- what sort of testing had been done on
4 the sample by the time you received it?

5 A There was blood alcohol on it, and then a blood
6 strain.

7 Q Do you know who run the blood alcohol test on it?

8 A Yes, that would have been Maribeth Coleman, and I
9 can't remember her married name, it just changed I think
10 this week or last week.

11 Q Okay. And I'm going to show you a couple of
12 photographs just to make sure that we are talking about the
13 same items.

14 Let me show you what's been marked as State's
15 Exhibit 27. Would that be the sample that you were
16 referring to?

17 A Give me one minute.

18 Yes.

19 Q Okay. When you received those samples, is there
20 also a case jacket that comes with them?

21 A Yes.

22 Q And what is contained in the jacket when you
23 receive it?

24 A Generally, it is -- any of the data associated
25 before me, so the blood alcohol results and drug screens.

TESTIMONY OF JENNIFER BROWN

1 Q What kind of testing is used on the blood to
2 determine blood alcohol results?

3 A As in the instrumentation?

4 Q Yes, ma'am.

5 A We use a Headspace gas chromatograph with an FID,
6 which is a flame ionization detector, and then when we get
7 the results from that, assuming they're positive, we confirm
8 that with a Headspace gas mass spectrometer.

9 Q I'm going to show you what's been marked for ID as
10 State's Exhibit 39. Do you recognize this?

11 A Yes, it is my report.

12 Q Is that a report that you yourself generated?

13 A Yes.

14 Q Is the information contained in that report a true
15 and accurate reflection of the results of the analysis that
16 you performed on that sample?

17 A Yes.

18 Q Is the test that you performed on that result
19 specific to ethyl alcohol?

20 A Yes.

21 Q And what were the results of your analysis?

22 A The results were that --

23 MR. BISCHOFF: Your Honor, objection.

24 THE COURT: Basis?

25 MR. BISCHOFF: Just renewing the Defendant's

TESTIMONY OF JENNIFER BROWN

1 previous objection.

2 THE COURT: Overruled. I find for the
3 Court's previous ruling.

4 A That the ethyl alcohol, also known as ethanol or
5 drinking alcohol, was at 0.113 percent.

6 Q So, a .113 percent, correct?

7 A Yes.

8 Q Now, can you tell what time a specific sample was
9 recovered? Like from an individual, what time this blood
10 sample would have been recovered from Mr. Hamrick in this
11 case?

12 A Yes, if it's on our seal we know what time it was
13 given.

14 Q Do you know what time it was in this case?

15 A Let me look at my -- it looks like 7:00 a.m., if I
16 can see that correctly.

17 Q And can you tell the jury a little bit about how
18 the body metabolizes alcohol and how that changes in the
19 bloodstream?

20 A Sure. Basically, metabolism is the way that the
21 body is getting rid of the drug. So, with ethanol, it is
22 metabolized first through a process of alcohol
23 dehydrogenase, which is an enzyme in your body, to
24 acetaldehyde, and then from there it can metabolize with
25 another enzyme, which is aldehyde dehydrogenase, to acetic

TESTIMONY OF JENNIFER BROWN

1 acid.

2 Q If we put it in sort of more layman's terms, what
3 sort of rate would an alcohol level in a blood be reduced
4 over time?

5 A On average, it is about --

6 MR. McCUNE: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. McCUNE: Calls for speculation.

9 THE COURT: Overruled based on her expertise
10 in the area and her education, training and
11 experience. It's already been subject to the
12 qualification of expert.

13 You may proceed.

14 A On average, 0.15 percent.

15 Q Over what period of time?

16 A Per hour.

17 Q So --

18 MR. KIDD: Your Honor, may we approach?

19 THE COURT: You may.

20 BY MR. KIDD:

21 Q Have studies been performed about the rate of
22 percentage of alcohol in the bloodstream and how fast it
23 reduces over time?

24 A Yes.

25 Q And through your training, have you -- are you

TESTIMONY OF JENNIFER BROWN

1 aware of a range of rates that that typically occurs inside
2 the human body?

3 A Yes.

4 Q And what is that range?

5 A It'll be probably about a 0.01 to upwards of a
6 0.02 percent per hour.

7 Q So, roughly that is what it would decrease per
8 hour?

9 A Correct.

10 Q Now, if you could explain to the jury about the
11 different phases that the body goes through after ingesting
12 alcohol. Absorption and reduction.

13 A Sure. Your body absorbs the alcohol and then it
14 gets distributed because alcohol likes water. So, any place
15 in your body that has water it'll get distributed to. Your
16 blood, your tissues, your ocular fluid; a little bit of
17 everything in your body. So, it distributes throughout your
18 body, and then your body goes through metabolism and it
19 tries to eliminate that, and it's absorbed into your small
20 intestine and liver and excreted through your urine and
21 sweat. Anything that's water.

22 Q So, for some period of time after consuming
23 alcohol, is it safe to say that the alcohol level in blood
24 increases?

25 A Correct.

TESTIMONY OF JENNIFER BROWN

1 Q For what period of time would an alcohol level in
2 the blood tend to increase?

3 A It kind of depends on how much food you have in
4 your stomach. If you have a totally empty stomach, about 30
5 minutes to get to your peak blood alcohol, and that is
6 assuming that you stopped drinking. If you continue to
7 drink, it'll continue to get higher and higher. If you have
8 a really, really full stomach, it can take up to an hour and
9 a half.

10 Q Are you familiar with the studies about how many
11 drinks it takes to get to certain blood alcohol levels?

12 A Yes.

13 Q Can you explain some of those studies and their
14 results to the jury.

15 A Basically, the studies just go through, and
16 there's a nice little equation called the Widmark Equation,
17 and it shows your amount of alcohol versus your -- actually,
18 your body fat. Because you are looking at how much water
19 you have. So, men tend to have more -- less body fat and
20 more water in their system than women do, and then you look
21 at the density of the ethanol.

22 And so with using those equations, we can say
23 that this is how much. So, on average, your average person
24 with one drink will increase by about .02 percent per
25 hour -- or per drink.

TESTIMONY OF JENNIFER BROWN

1 Q So, every drink would be a .02?

2 A On average for an average person.

3 Q For an average male. Am I average?

4 A They usually consider average about 150 pounds.

5 Q So, I'm 230, so I'm not average.

6 A Sure.

7 Q Okay. So, every drink would be .02?

8 A Yes.

9 Q So, how many drinks to get to a .08?

10 A About four, and that is assuming that you jump
11 into not -- you have them over time.

12 Q Could you explain that to the jury?

13 A Because you are going over time, as you are
14 absorbing it you are also eliminating it. So in the sense
15 the .02 per drink is literally like chug chug chug. So it
16 wouldn't be -- the longer that you take in between --
17 because you are also absorbing, you are eliminating too it
18 will decrease and incline, decrease and incline.

19 Q An average person that drinks alcohol in a normal
20 setting, would it take more?

21 A Yes, it'll take more.

22 Q So just so I make sure I'm getting your testimony
23 right, if I was 150 pounds, for me to get to a .08 I would
24 have to take four shots and then wait for a period of time
25 for the absorption to hit its peak, which would be between

TESTIMONY OF JENNIFER BROWN

1 30 minutes and an hour, and then I would hit that .08; is
2 that correct?

3 A Correct.

4 Q Now, if I had one shot every 30 minutes and I had
5 four drinks, would I reach that level?

6 A No, because you also going to be eliminating it,
7 so you will have elimination in there.

8 Q At the same time alcohol is being absorbed,
9 alcohol is also being eliminated?

10 A Yes, it cycles through your body. It doesn't go
11 and then stop and then go and stop.

12 Q Now, if -- if a person had their last drink at
13 2:00 a.m. --

14 A Okay.

15 Q -- and a blood test at 7:00 a.m. --

16 A Right.

17 Q -- and those results were .113 --

18 A Uh-huh.

19 Q -- can you develop a range that the blood alcohol
20 would be at around 3:30?

21 A Yes, because we can say that, you know, you can --
22 let's just say, on average, have about an hour, given that,
23 you know, that you are maybe not exactly on an empty stomach
24 but not on a crazy full stomach either. Let's say an hour.
25 So, if you had your last drink at 2:00, let's say around

TESTIMONY OF JENNIFER BROWN

1 3:00 you are going to be fully in elimination. So then you
2 can say from 3:00 on you will be eliminating, and using the
3 average rate, you can calculate back.

4 Q So, you would have $3\frac{1}{2}$ hours of the elimination
5 phase; is that right?

6 A Yes.

7 Q If you eliminate for $3\frac{1}{2}$ hours at the rate that you
8 mentioned before, what would that be?

9 A That is -- oh, let's see. If it's $3\frac{1}{2}$ times .015,
10 so, that is -- if I can have a calculator, because I can't
11 do it off the top of my head. Sorry.

12 THE CLERK: I have one.

13 MR. KIDD: Thank you.

14 THE WITNESS: Thanks. Do you have a
15 different one? It is not wanting to work. It is
16 not typing.

17 Sorry. It is not working. I have one in my bag
18 if you want.

19 THE COURT: Use this one.

20 A Okay, so a .015 percent per hour times $3\frac{1}{2}$ hours,
21 you are going to additionally have about a .01525 added on
22 to our .113. So, on average you will be about a 0.166 at $3\frac{1}{2}$
23 hours.

24 Q So, a .166?

25 A Right.

TESTIMONY OF JENNIFER BROWN

1 Q Can you do a similar calculation as if the last
2 drink would have been at 3:20 with a 7:00 blood draw?

3 A So, saying about two and a half hours with
4 elimination. That would be additional .0375 percent, so add
5 that to our .113 and we will get about a .151 percent.

6 Q So, a .151?

7 A Yes.

8 Q How many drinks would it take a person like me to
9 get my blood alcohol to a .15, .16?

10 A Once again, straight back chugging it, you know,
11 one right after another, no time in between, at least about
12 eight or nine, and that is just one after the other. So, if
13 you are going to take time between it'll be a decent amount
14 more.

15 Q So, if I were to get my blood alcohol to a .15,
16 .16, I would have to line up nine shots and take them all
17 right now, and then once I got to the absorption phase I
18 would hit that level?

19 A Correct.

20 Q If I were to drink like a normal person and drink
21 over a period of time, would it take more than that?

22 A Yes.

23 Q Okay. I want to talk a little bit about some of
24 the impacts and side effects that alcohol has on the human
25 body --

TESTIMONY OF JENNIFER BROWN

1 A Okay.

2 Q -- when you consume them. Can you talk about
3 some -- some of the effects alcohol has when you are, you
4 know, in that .1, .11 to .16 range?

5 A Sure. I'll start with even lower than that.
6 About a 0.05 is really where you are going to start seeing
7 your effects of alcohol. Around that stage you are going to
8 see your increased self-confidence and decreased inhibition,
9 so you are more likely to do something that you otherwise
10 wouldn't.

11 In saying that too, there's also an article
12 that came out through the Journal of American Medical
13 Association in 1986 where they actually say that the
14 deterioration of driving begins at a 0.05 and increases
15 thereafter. And they actually in 1986 said that --
16 sanctioned it off as the first evidence of impairment in
17 driving. But at that stage you are going to have problems
18 with multi-tasking. So that's driving, steering, driving
19 braking, driving and turning on the radio, watching what's
20 going on around you.

21 As you increase, you're going to see problems
22 with your perception, with your glare recovery, with your
23 coordination, with your peripheral vision. So, your
24 peripheral vision will narrow, so you're going to -- instead
25 of seeing out here when you are looking, you are going to

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1 start seeing about here. And then you're going to have
2 problems with reaction time. So it is going to take you
3 longer to stop. So, right now if I was driving and I saw a
4 car, I would stop immediately. Now it's going to take me
5 longer. So I might have a few more seconds in there that
6 it's going to take me to stop.

7 Q Can you tell the jury about glare recovery?

8 A Sure. It is kind of what you might think of
9 driving at night. You see a bright light and your eyes tend
10 to recover pretty quickly. But now it is going to take you
11 longer, and you are going to have that glowing in your eye.

12 Q That will exist longer in your eye if you are
13 intoxicated than if you are sober?

14 A Correct.

15 Q Are you familiar with the Grand Rapids study?

16 A Yes.

17 Q What is it?

18 A It's a study that was done using a lot of drivers
19 and seeing at what alcohol ranges they had accidents. So,
20 in that they saw that at about a .04 you started really
21 seeing an increase in accidents, not just with alcohol, and
22 then really started increasing at a .08, which is partly the
23 reason why that's now usually evidence of impairment. And
24 then it really starts climbing and you are going to get a
25 lot more accidents above .15 percent.

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1 Q Above what?

2 A Above a .15 percent.

3 Q .15 percent. What about the JAMA study?

4 A That was the one that I just said. In 1986, they
5 came out with a study that said that a .05 percent should be
6 per se evidence of impairment, and they recommended that the
7 states adopt that.

8 Q Now, can you tell the jury a little bit about
9 alcohol tolerance.

10 A Yeah. Generally what you think with tolerance in
11 alcohol is more of a behavioral tolerance. So people know
12 that if they drink for a long time, that at a certain point
13 they are going to start getting tipsy and they are not going
14 to keep their balance. They're more likely to lean on
15 something or hold on to something, or, you know, with their
16 walking they are going to walk with a wider gait. So, that
17 is kind of the tolerance you'll see.

18 Otherwise, there's a tolerance that you can
19 think of when you start drinking excessively and binge drink
20 and have, you know, maybe 15 or so drinks a night. So you
21 have a really high level. Which in most people, you might
22 consider a coma or a death type of state. So, they are
23 going to develop a little bit faster metabolism, but again,
24 when your liver starts deteriorating because of drinking it
25 is going to reverse.

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1 Q I'm going to use myself as an example.

2 A Okay.

3 Q If I was at a .1 today versus maybe myself as a
4 college freshman with no experience with alcohol, would the
5 effects of alcohol be more apparent on me, younger me than
6 today me?

7 A Sure. Because over time you have learned that,
8 okay, at this level I'm going to be tipsy, I'm going to be
9 wobbling everywhere so I'm going to need to hold on to
10 something, or I'm going to need to lean on something, or I'm
11 going to need to walk with a wider gait, so legs spread
12 apart.

13 Q Is cognitive impairment always visually
14 noticeable?

15 A No. A lot of the effects that you might consider
16 the classic drunk or classic intoxicated you really won't
17 see until you get close to a .15. So, when people think,
18 oh, they are walking all crazy or funny and falling and
19 tripping over, usually that's something that you are going
20 to see closer to a .15 than at a lower level.

21 Yes, there's coordination associated with it,
22 but it won't be where people normally think of someone being
23 drunk.

24 Q A lot of those effects are seen, like vomiting,
25 things like that, occur at a much -- at what sort of level

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1 does that sort of behavior start?

2 A It can be somewhat with experience, but once you
3 get over a .15 you are going to see the more pronounced
4 impairments of the coordination, stumbling everywhere, your
5 vision is going to get worse, you'll start to get double
6 vision, and then further on, you'll have decreased
7 respiration to the point of comas and death.

8 Q Could adrenaline affect the appearance of
9 intoxication?

10 A Sure.

11 Q And just -- what was -- excuse me.

12 MR. KIDD: Your Honor, at this time the State
13 would offer State's Exhibit 39 in evidence.

14 MR. McCUNE: Just redoing the objection, Your
15 Honor, that you have already ruled upon.

16 THE COURT: Those are two separate things. I
17 need you to look at the exhibit and see if you
18 have any exceptions to it.

19 MR. McCUNE: Your Honor, this is --

20 THE COURT: No speaking objections. Please
21 approach.

22 (off-the-record discussion.)

23 *(Whereupon, State's Exhibit No. 39 was marked for*
24 *identification and received in evidence.)*

25 THE COURT: Okay. Overruled. Marked and

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1 received subject to the objection, based on the
2 Court's earlier ruling.

3 MR. KIDD: Okay.

4 BY MR. KIDD:

5 Q I'm going to backtrack a little bit. I think that
6 I jumped around.

7 Can you tell the jury about some of the
8 standards in quality control protocols that are used when
9 y'all performed the alcohol analysis?

10 A Sure. Let's just say that you have one sample
11 instead of doing a batch, you are going to have a 0.0 --
12 sorry, a 0.080. So, .08, your legal limit as being one
13 standard, and then it's going to be run twice at the
14 beginning before you even run your sample.

15 So your sample is run, and then you run
16 another .08 standard for ethanol, and then you are going to
17 run a check mix, so we have different alcohols that we look
18 for. So that just shows us the different alcohols in there
19 at about a .05 percent. And then we are also going to run a
20 .4 percent ethanol and then a negative control. So the
21 negative control is there to make sure that we don't have
22 anything contaminating, continuing or crossover that we see
23 our .4 going into our next sample.

24 That is -- just in one sample we have all of
25 those standards. But then we also repeat that to make sure

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1 that we have a replicable result, and then we also have
2 other standards that we run along with it too.

3 Q Do you have a margin of error?

4 A Yes, we have a margin of error with our standards
5 of about a 5 percent.

6 Q What would that come to? When we talk about .08,
7 what would 5 percent margin of error be on a .08?

8 A It is a .76 to .084 percent.

9 Q And did you -- were two analyses run on this blood
10 sample?

11 A Yes.

12 Q And can you tell the jury what those two results
13 were.

14 A The first time it was run, the ethanol was a
15 0.1137, and the second time it was run it was a .1144.

16 Q And which one do you put on your report?

17 A The least of the two.

18 MR. KIDD: The Court's indulgence?

19 THE COURT: Uh-huh.

20 BY MR. KIDD:

21 Q So the error rate is in the thousands; is that
22 correct?

23 A Yes.

24 Q And like when we talk about a .1, that first
25 number is a ten, the second number is hundreds, third number

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1 thousands?

2 A Yes.

3 Q So that error rate is in the third number?

4 A Generally, yeah, you are going to look at about 5
5 to 8 percent.

6 Q It would plus or minus .005, or plus or minus
7 .008; fair to say?

8 A Yes.

9 MR. KIDD: No further questions.

10 THE COURT: Any questions for this witness?

11 MR. BISCHOFF: Yes, Judge, thank you.

12 THE COURT: You may proceed.

13 CROSS EXAMINATION

14 BY MR. BISCHOFF:

15 Q Good morning, Ms. Brown.

16 A Good morning.

17 Q Again, thank you for being here today.

18 Now, you would agree with me that there are
19 several variables that control how alcohol is metabolized,
20 correct?

21 A Sure.

22 Q And among those variables would be sex, correct?

23 A Yes. As in male, female, yeah.

24 Q Okay. And body fat might have --

25 A Yes. How much water you have in your system,

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1 yeah.

2 Q And how much you have had to eat?

3 A Yes.

4 Q One's regular drinking habits?

5 A Sure.

6 Q There are differences in the type of alcohol you
7 might have consumed, correct? Beer versus hard liquor, how
8 it is processed?

9 A Not necessarily.

10 Q How about for absorption?

11 A They are absorbed the same way.

12 Q They are absorbed the same way?

13 A Right.

14 Q You are not aware of any studies that say that
15 they are absorbed differently?

16 A I'm not exactly sure what you are talking about.

17 Q I'm just talking about the time that it takes to
18 absorb, and therefore, the time that it takes for you to
19 reach your peak and the time that you start metabolizing?

20 A In general, no matter if the drink is a beer or
21 wine, there's about an average, and they all have -- no
22 matter the percentage, the average amount of alcohol in a
23 drink is roughly the same.

24 Q How about how fast you drink?

25 A The time to peak is what you are saying?

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1 Q Yes, the time to peak.

2 A So, if you chug on an empty stomach, it can be
3 quicker than if you're taking them over time with a full
4 stomach.

5 Q In the Widmark study you talked about was done in
6 1932, I believe, the original study.

7 A I don't remember offhand.

8 Q It was done in a laboratory setting, right?

9 A As far as I know, yes.

10 Q This was done with subjects on an empty stomach?

11 A I can't remember off the top of my head, but yes,
12 it should be.

13 Q What they did was they took premeasured amounts of
14 alcohol and Widmark studied their individual rates as they
15 were metabolized?

16 A Uh-huh.

17 Q So, it is -- you come up with a generic figure for
18 metabolization, but that -- that doesn't apply in all cases,
19 each case is different, each person is different, correct?

20 A I mean, there's an average, the average person.
21 Someone might be a little quicker, some might be a little
22 slower, but generally there's an average that has been
23 found.

24 Q But it would be helpful to measure the rate of
25 metabolization if you had a couple of different

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1 measurements, right? Let's say that you took an alcohol
2 test at seven a.m. and then you took another one at
3 8:00 a.m. Wouldn't that give you an idea of the rate of
4 metabolism better than one single point with an average
5 rate?

6 A Sure, but generally when the studies are done they
7 are looked at over time. They are not just, you know, at
8 this time -- they are going to continue testing along the
9 way. They are going to say at this hour and they are going
10 to get a curve.

11 Q Right. But it's an estimate, it is not going to
12 be exact?

13 A Sure.

14 Q Otherwise, when you -- when you computed the
15 alcohol level with your machinery, you compute what you
16 consider an exact level within a small margin of error,
17 correct?

18 A Yes, the instrumentation rule will compute at --
19 in the sample, what that ethanol is.

20 Q Okay. Now, another way to compute it you said is
21 just to count the number of drinks that someone has had and
22 do an average and come up with where they are, right?

23 A No. That is just a way of explaining it and
24 giving you about an average. But this is very scientific,
25 and we are looking exactly at that sample at the time of the

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1 test, the time that the blood was drawn, what the result is.

2 Q What I'm saying is, on the other side of that
3 extrapolation is doing exactly what I just talked about. It
4 is taking an average over an average amount of time, instead
5 of an exact -- it's not an exact science, not an exact
6 point?

7 A We generally use averages, yeah.

8 Q But you don't use averages on the original sample,
9 right?

10 A Oh, no. This is different.

11 Q You test more than one sample at once, correct, in
12 a batch?

13 A Right, so we will have multiple people's samples
14 in there, yes.

15 Q Average of how many?

16 A I can't tell you on a given day. It changes.
17 Some days we might have a couple of batches, a couple of
18 runs. On one run we can hold 70, but that's also including
19 the standards and controls we run. So it is depending on
20 the day truthfully, how many cases come in.

21 Q You don't run the instrumentation itself, correct?

22 A No, I don't.

23 Q What do you get from the instrumentation?

24 A From the instrumentation we'll get a printout that
25 looks like this, and this is basically what our

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1 instrumentation gives us as data, and so every standard
2 control sample will get this. And I would say next to the
3 top where we label them too. So, this will have the lab
4 number for this associated case. Our standards and controls
5 will also be labeled as such. Our vials are labeled. It is
6 a process of good quality control where we can check
7 everything, and it is not like the samples are going to get
8 mixed up.

9 Q For the retrograde extrapolation --

10 A Right.

11 Q -- to be accurate, you have to have reached your
12 peak alcohol level, correct?

13 A Yes.

14 Q So it's possible that if you had -- let's say
15 someone did several shots at noon.

16 A Okay.

17 Q And they were stopped at 12:20.

18 A Okay.

19 Q Then they gave a sample three hours later. Would
20 it be possible for the blood alcohol to be on the upswing at
21 the time of driving, and then on the way down?

22 A So, you are saying last drink at 12, and then at
23 12:20 you are saying they are still absorbing. Yes, they
24 would still be absorbing generally.

25 Q So they're still absorbing?

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1 A Yes.

2 Q So it would be possible that their alcohol level
3 would be on the way up?

4 A Correct.

5 Q So, the alcohol test would actually reflect a
6 higher level than what the level was when they were stopped?

7 A If you are saying at 12:00 you are going to be
8 increasing until -- you know, on an empty stomach, a half an
9 hour, on a full stomach, up to an hour and a half. So, at
10 the time the test comes, if it is -- how many --

11 Q Say three hours later.

12 A Three hours later you are going to be on the
13 downswing, you are going to be seeing -- you are already
14 going to be in elimination, so it's possible that your
15 number could actually be lower.

16 Q So, your number could be lower three hours later?

17 A Yes.

18 Q And could it be higher three hours later?

19 A Sorry, let me think about this.

20 I guess it's plausible.

21 Q Do you know what a steeping effect is?

22 A Not off the top of my head.

23 Q Okay. So, there are variables in how the alcohol
24 is metabolized. Those include sex, correct, we talked about
25 drinking habits, correct, meaning how long you have -- how

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1 long you have consumed alcohol over a period of your life.

2 A In the sense that, yeah, if you are a healthy
3 individual versus someone that has liver damage, yeah.

4 Q And food that may be in your system?

5 A Will effect the absorption, yeah.

6 Q So the average is just that, it is an average and
7 it gives you a ballpark figure. But you can't specifically
8 say what the retrograde information gives you without more
9 information, it is a pretty wide range. It is not like your
10 .05 or .08 when you do the test with your instrumentation,
11 correct?

12 A Yes, correct.

13 Q It is just a ballpark figure?

14 A Yes, the average for an average person.

15 MR. BISCHOFF: Okay. I beg the Court's
16 indulgence.

17 Q When you talk about a shot, what does that mean?
18 Is there a measurement? All shots are not created equal; is
19 that correct?

20 A If you are given the average shot, you will have
21 about 14.2 mills of ethanol in it. Your average shot, your
22 average drink, your average whatnot.

23 Q Okay. But the -- saying a shot would assume like
24 a measured shot glass of some kind. Some people call a shot
25 something less and some call it something more, correct?

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1 A In theory they should all be the same.

2 Q Do you -- would you process alcohol differently
3 than your husband as a female?

4 A In the sense of absorbing it or distributing it --

5 Q Absorbing and distributing it.

6 A In theory, I probably have more fat than my
7 husband, and so it'll take me -- it'll take him, I should
8 say, four drinks to get to the same spot it would take me,
9 depending on the body fat. Otherwise our health is about
10 the same, so, you know, how we metabolize it on average
11 should be about the same.

12 Q And do you drink alcohol?

13 A Once in a blue moon.

14 MR. KIDD: Objection, Your Honor, relevance.

15 THE COURT: Please approach.

16 The question is withdrawn. You may proceed.

17 MR. McCUNE: I beg the Court's indulgence.

18 THE COURT: Uh-huh.

19 MR. McCUNE: I have no further questions at
20 this time. Thank you very much.

21 THE COURT: Any redirect of this witness?

22 MR. KIDD: Very briefly.

23 THE COURT: You may proceed.

24 REDIRECT EXAMINATION

25

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1 BY MR. KIDD:

2 Q Those rates, that average rates we talked about,
3 that is for a 150 pound person; is that correct?

4 A That's correct.

5 Q A person larger than that, the rates would be
6 higher, is that safe to say?

7 A Sorry, I'm still drinking water.

8 We are using an average, so we are saying
9 that the average healthy person, average 150-pound person,
10 it is possible that they are a little faster or a little
11 slower, yes.

12 Q So, the average 230 pound person as opposed to the
13 average, what would the difference be?

14 A I mean, we are using an average for the person as
15 that 150 pounds, but when you are looking at water content,
16 is what you are more looking at, how much fat you have,
17 which is what we call our body distribution level. So, the
18 more fat you have, the lower that body distribution.

19 Q So, if someone has a belly on them, then they are
20 going to absorb more -- it's going to take more alcohol to
21 reach that same level of intoxication?

22 A The larger you are, the less water, and therefore,
23 the less it has to distribute through your body. So it
24 would actually be higher.

25 Q Now, I want to go back to something that defense

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1 counsel talked to you about, and it was -- the hypothetical
2 was at 12:00, last drink, 12:20 stop.

3 A Right.

4 Q And he said if the testing was three hours later?

5 A Right.

6 Q How would -- how could alcohol be higher at 3:20
7 when your last drink was at 12?

8 A Sorry.

9 Q Well, maybe I can phrase it differently.

10 A Yeah.

11 Q Let's say that I am a 00, haven't had a single
12 drink. Noon, clock strikes noon, I take a shot and I get in
13 my car and I drive and I get pulled over in 20 minutes. At
14 that time that I get pulled over, what phase am I in?

15 A You are in absorption.

16 Q Okay. Three hours from then -- how much longer
17 could I still be going up?

18 A For about another hour probably, if you have a
19 full stomach.

20 Q So, at most another hour, so that would be -- I
21 would peak at 1:30 at the time latest?

22 A Right.

23 Q And then I would enter the elimination phase?

24 A Correct.

25 Q So, then every hour after that I would go down?

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1 A Right.

2 Q .015 or .012?

3 A Right.

4 Q So, is it possible to --

5 A You are generally increasing at about a .02, and
6 decreasing at about a .15 percent -- or .015 percent, sorry.

7 Q Okay. So you are saying it is theoretically
8 possible, I guess?

9 A In theory.

10 Q What is the likely result of a three hour delay?

11 A The likely would be that the value would be less.

12 Q And that is based on someone drinking over a
13 period of time?

14 A Correct.

15 Q And that would be consistent with the range that
16 we talked about before, the .15 to the .16?

17 A Right. Right.

18 MR. KIDD: No further questions, Your Honor.

19 THE COURT: Objection to the witness being
20 excused from the State?

21 MR. KIDD: No, ma'am.

22 THE COURT: From the Defense?

23 MR. BISCHOFF: No, Your Honor.

24 THE COURT: Ma'am, you are excused.

25 The State may proceed.

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1 MR. KIDD: I apologize, Judge. The State
2 rests, Your Honor.

3 THE COURT: Mr. Foreman, ladies and
4 gentlemen, the State has rested their case. There
5 are brief matters of the law that I need to take
6 up with the attorneys. During this break, please
7 don't discuss the case, and please leave your
8 notepads in your seat. We appreciate your
9 patience.

10 (Jury exits the courtroom at 11:50 a.m.)

11 THE COURT: You may be seated.

12 The State has rested. Are there any motions?

13 MR. BISCHOFF: Yes, Judge. At this time we'd
14 move for a directed verdict under State V Frasier,
15 State V Fernandez, both of which hold that even
16 when the evidence merely raises suspicion that the
17 accused -- direct verdict is appropriate.

18 State's witness, Officer Harris, the lead
19 investigator in this case, testified that their theory
20 of the case was possible, repeat, possible amounts to
21 anything other than a suspicion, so the State has
22 failed to present their case on proximate cause, which
23 is an essential element of felony DUI. They have only
24 presented enough evidence for driving under the
25 influence. They have not met their burden and a

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1 directed verdict is absolutely appropriate.

2 THE COURT: Is that your complete motion?

3 MR. BISCHOFF: As well as renewing our
4 motions to suppress the blood evidence. Under the
5 fourth amendment, blood evidence under 56-5-2950,
6 and all previously ruled-upon motions regarding
7 motions in limine for any evidence that has been
8 submitted prior to --

9 THE COURT: My question is, is that the full
10 recitation of your motion on directed verdict?

11 MR. BISCHOFF: It is, Judge.

12 THE COURT: Okay, I just want to make sure.
13 I don't like to go back and forth.

14 MR. BISCHOFF: It is.

15 MR. KIDD: In light that is favorable to the
16 State. I think that we had sufficient evidence as
17 to each factor. I mean, he is on video, admitting
18 to driving, admitting to striking the man. We
19 have evidence of alcohol concentration to
20 impairment as an proximate cause. We have six
21 workers that said that he swerved in this work
22 zone and struck the worker. That is just one
23 theory. We have officers that said that he was
24 speeding, admitted to the speeding, failure to
25 exercise due care. There can be a variety of

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1 proximate causes.

2 It is strange here in the criminal court talking
3 about proximate cause. It is a civil theory, but there
4 can be multiple proximate causes for an accident. I
5 don't think that we are constrained to just one in this
6 case.

7 So I believe that each element of the defense has
8 been met, and due to the light most favorable to the
9 State and proper for the jury's consideration.

10 THE COURT: In considering the motion for
11 directed verdict, the Court is not a finder of
12 fact. It is only required to determine in the
13 light most favorable to the State whether there
14 exists direct evidence or circumstantial evidence
15 reasonably tending to prove the Defendant's guilt.
16 The evidence must of course raise beyond a
17 suspicion of the Defendant's guilt. However, the
18 Court is not required to find that the evidence
19 infers guilt to the exclusion of any other
20 reasonable hypothesis.

21 Considering the evidence in the light most
22 favorable to the State, and the presentation of that,
23 the motion for directed verdict is denied, as there
24 exists both direct evidence in the form of
25 eyewitnesses, as well as substantial circumstantial

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1 evidence in light of the other testimony presented that
2 reasonably infer the guilt of the Defendant.

3 The intent to prove the Defendant's guilt.

4 And without really belaboring the hour, the State
5 must prove beyond a reasonable doubt that the Defendant
6 drove the vehicle while under the influence of alcohol
7 and/or drugs, which they have proven.

8 They must also prove beyond a reasonable doubt
9 that the Defendant was sufficiently under the influence
10 to impair his ability to drive with reasonable care
11 with due regard for others and himself, or as a
12 reasonably prudent person would drive. It's not
13 necessary to show that the Defendant was in a helpless
14 condition, passed out or even intoxicated, and
15 certainly they have proven that beyond a reasonable
16 doubt. They have proven that by direct and substantial
17 circumstantial evidence.

18 The State must also prove beyond a reasonable
19 doubt that while driving the Defendant did an act
20 forbidden by law or neglected a duty imposed by law,
21 and they certainly have presented evidence regarding
22 negligence in the operation of his vehicle, that being
23 failure to keep a proper lookout, exceeding the speed
24 limit in a construction zone. And so they have met
25 that element by direct and substantial circumstantial

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1 evidence.

2 They must also prove beyond a reasonable doubt
3 that the act or neglect of the Defendant proximately
4 caused great bodily injury or death to another person,
5 and they have proven by direct and substantial
6 circumstantial evidence that the Defendant did enact or
7 negligently cause great bodily injury to Mr. Garland in
8 the form of the testimony of the doctor who testified
9 regarding the permanency of his condition, in addition
10 to the eyewitnesses from Banks Construction who
11 testified that Mr. Hamrick veered into the prohibited
12 work zone and struck Mr. Garland with his vehicle, and
13 their attempts to avoid his vehicle as it went by them
14 as they clung to the skidder or the grader, whatever
15 term it is that they use describing that piece of
16 equipment.

17 And the law on proximate cause is very clear, his
18 actions don't have to be the only actions. There can
19 be more than one act of proximate cause. Two acts of
20 two or more people combined to create proximate cause.
21 And certainly that's been established. Although, the
22 direct testimony is that Mr. Hamrick's behavior was the
23 only proximate cause of this injury by striking
24 Mr. Garland with his vehicle after having swerved into
25 the construction zone.

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1 And his act does not have to be the sole act of
2 the injury. Only the proximate cause of the injury.
3 And they have proven by direct and substantial
4 circumstantial evidence great bodily injury of
5 Mr. Ahmad Garland. Therefore, the motion is denied.

6 Sir, actually, before we proceed with that, is
7 there any record the State will be seeking to use to
8 impeach Mr. Hamrick if he were to testify?

9 MR. KIDD: He does have fraudulent checks.

10 THE COURT: What year are those?

11 MR. KIDD: With the Court's indulgence.

12 '96. He has eight fraudulent checks in 1996.

13 THE COURT: Pardon me.

14 MR. KIDD: He has eight counts of fraudulent
15 checks in 1996, he has another one in '97.

16 THE COURT: Those are more than ten years.

17 MR. KIDD: They are, but they are crimes of
18 dishonesty.

19 THE COURT: I don't think that excludes it
20 from the ten-year time limit.

21 MR. KIDD: I believe that it goes to their
22 credibility.

23 THE COURT: Yes, it is still applicable.
24 Rule 69 still applies.

25 Did you give them sufficient advanced written

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1 notice of your intent to use the evidence?

2 MR. KIDD: I did not, Judge.

3 THE COURT: You are correct. The only thing
4 that crimes of dishonesty are exempted from is the
5 one year or more requirement, as well as the
6 balancing test. But it does not exclude
7 Subsection B of Rule 69 which deals with time
8 limits. The rule provides that if it's more than
9 ten years old it is not admissible unless the
10 Court determines that its probative value is
11 outweighed by the prejudicial effect.

12 In addition to that, the second portion of the
13 rule requires evidence of a conviction more than ten
14 years old is calculated herein and is not admissible
15 unless the proponent gives the adverse party sufficient
16 advanced written notice of intent to use such evidence
17 to provide the adverse party with a fair opportunity to
18 contest the use of such evidence.

19 So, the next part of the inquiry comes, did you
20 give him advanced written notice of your intent to use
21 these convictions? And when was he released from
22 confinement. Were these dealt with in magistrate's
23 court, or were they dealt with in circuit court?

24 MR. KIDD: To be honest, I probably wouldn't
25 get into them anyway, so I'll withdraw it.

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1 THE COURT: You are withdrawing your request
2 to use the convictions?

3 MR. KIDD: Yes, Your Honor.

4 THE COURT: Sir, stand before me and swear to
5 be sworn.

6 Do you swear or affirm the testimony you give will
7 be the truth?

8 THE WITNESS: I do.

9 THE COURT: State your full name for the
10 record.

11 THE COURT: Daniel Daris (phonetic) Hamrick.

12 THE COURT: Mr. Hamrick, at this time I'll
13 explain to you certain of your rights. If you
14 don't understand anything that I say, please let
15 me know. If you need me to repeat anything that I
16 say, please let me know. Do you understand?

17 MR. HAMRICK: Yes, ma'am.

18 THE COURT: Sir, we have now reached the
19 stage of the trial where you claim to present your
20 defense. You have a right to claim the
21 protections given to you by the fifth amendment of
22 the United States constitution, and this amendment
23 provides that no person shall be compelled in any
24 criminal case to be a witness against himself.
25 This means that you cannot be required to testify.

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1 You have the right to testify; however, no one can
2 make you testify. This is a personal right and no
3 one can waive this right except you.

4 If you decide to testify, you will be subject to
5 the same rules that govern other witnesses, and you may
6 be examined and cross-examined on any relevant issue in
7 this case. In addition, if you have any convictions
8 involving dishonesty or false statement or for crimes
9 punishable by imprisonment for more than one year, if
10 this Court determines that the probative value of the
11 State's evidence outweighs its prejudicial effect to
12 you, the Solicitor will be able to introduce your
13 record to attack your credibility.

14 If you decide to testify, this decision on your
15 part must be made freely, voluntarily and
16 intelligently, with knowledge given to you by the fifth
17 amendment and the consequences of your decision to
18 testify.

19 If you decide to not testify I will instruct the
20 jury that they cannot give the fact that you did not
21 testify any consideration whatsoever. And there is to
22 be absolutely no prejudice to you because you did not
23 testify. They will be instructed that they cannot
24 discuss the fact that you didn't testify in any manner
25 whatsoever, that you have no burden of proof in this

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1 case, that the burden remains on the State to prove
2 guilt beyond a reasonable doubt.

3 It is left entirely up to you whether or not you
4 testify. You may speak with your attorney, your family
5 members, your friends or anyone else, but the final
6 decision will be left entirely up to you.

7 Sir, do you understand your rights as I have just
8 explained them to you?

9 A Yes, ma'am, I do.

10 Q Do you have any questions about your rights as I
11 have just explained them to you?

12 A No, ma'am, I do not.

13 THE COURT: Have you discussed with your
14 lawyers whether you should or should not testify?

15 MR. HAMRICK: Yes, ma'am.

16 THE COURT: Do you need to speak with them
17 any further at this time regarding that issue?

18 MR. HAMRICK: No, ma'am.

19 THE COURT: Is that correct?

20 MR. BISCHOFF: That is correct, Your Honor.

21 THE COURT: Sir, do you wish to testify or
22 not to testify?

23 MR. HAMRICK: Not to testify.

24 THE COURT: Okay, you may take your seat.

25 Is the Defense ready to proceed, or do you need a

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1 restroom break?

2 MR. BISCHOFF: We are ready, Your Honor.

3 MR. KIDD: Judge, could I have just a couple
4 of minute restroom break?

5 THE COURT: That is fine.

6 MR. KIDD: Thank you.

7 THE COURT: You are welcome. We will be at
8 ease for about five minutes.

9 (Brief recess.)

10 THE COURT: Is the State ready to proceed?

11 MR. KIDD: We rested, Your Honor.

12 THE COURT: Still are you ready to proceed?

13 MR. KIDD: I understand. My mind's a little
14 slow, sorry.

15 THE COURT: Is the Defense ready to proceed?

16 MR. BISCHOFF: We are, yes, Judge.

17 THE COURT: Who is your first witness?

18 MR. BISCHOFF: Officer Googe from the Mt.
19 Pleasant police department.

20 THE COURT: You can go ahead and get the jury
21 for me.

22 (Jury enters the courtroom.)

23 THE BAILIFF: Jury all present.

24 THE COURT: Thank you, ladies and gentlemen,
25 you may be seated. The defense may call its first

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1 witness.

2 MR. BISCHOFF: Thank you, Your Honor, we call
3 Officer Googe.

4 Thereupon,

5 ROBERT GOOGE

6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BISCHOFF:

10 Q Officer, good morning.

11 A Good morning.

12 Q Sergeant, correct?

13 A Yes, sir.

14 Q Sergeant, where do you work?

15 A Mt. Pleasant Police Department.

16 Q How long have you been employed there?

17 A Almost 18 years.

18 Q Were you working in your official duties as a
19 police officer on November 14th, 2011?

20 A I was on call out for traffic services.

21 Q Did you happen to respond to the scene of an
22 accident on Highway 17?

23 A Yes, sir, I did.

24 Q And did you respond in your patrol vehicle?

25 A Yes, sir.

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1 Q Is there a video equipped in that vehicle?

2 A Yes, it is. It turns on when you turn the blue
3 lights on, or for a push button record.

4 Q Was it activated that night?

5 A Yes, sir, it was.

6 MR. BISCHOFF: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes.

9 MR. KIDD: I have no objection to him
10 entering the exhibit.

11 THE COURT: What number is that?

12 MR. BISCHOFF: Defense 25.

13 THE COURT: Marked and admitted without
14 objection. You may proceed.

15 MR. BISCHOFF: Thank you.

16 Q Do you recognize that picture?

17 A Yes, sir, that is from my in-car camera.

18 Q What is this showing now?

19 A It shows -- it looks like I'm arriving at the
20 collision scene on Highway 17.

21 (Video playing.)

22 BY MR. BISCHOFF:

23 Q And your video continued to record while you are
24 on scene?

25 A Yes, sir.

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1 Q Thank you, Officer.

2 MR. BISCHOFF: No more questions, Your Honor.

3 THE COURT: Any questions for the witness?

4 MR. KIDD: Just quickly.

5 Q Where you ended up parking, is that the median?

6 A I believe so, with the camera back off. It looked
7 like -- right near the median, yes, sir, is what it looks
8 like.

9 Q As you were approaching that scene, were you in
10 the northbound lane?

11 A Yes, I was heading northbound from 526, up north.

12 THE COURT: Any redirect?

13 MR. BISCHOFF: No, Your Honor.

14 THE COURT: Any objection to the witness
15 being excused from his service?

16 MR. KIDD: No, Your Honor.

17 THE COURT: From the Defense?

18 MR. BISCHOFF: No, Your Honor.

19 THE COURT: Sir, you are excused.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: You may proceed.

22 Well, actually, will counsel approach for me,
23 please.

24 (Off-the-record discussion.)

25 THE COURT: Mr. Foreman, ladies and

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1 gentlemen, our next witness will take a -- we
2 would not be able to finish that witness before
3 lunch. What we will do is break for lunch and
4 then resume after lunch so we can have that
5 testimony uninterrupted. We are going to deal
6 with matters of the law. We are going to work a
7 little bit before we go to lunch. So we will have
8 a longer lunch hour today. We will break until
9 2:00, at which time we will resume testimony with
10 that witness.

11 I anticipate we will finish this case today. I
12 don't know that we will get to closing argument and
13 instruction today, because that probably -- by the time
14 we finish the witness, those arguments will take us
15 longer than 5:00. I wouldn't want you to have to
16 interrupt your evening schedule for that purpose.

17 So at this time I'm anticipating we will have
18 closing argument and instruction in the morning.
19 Sometimes that can change when things take a little
20 shorter than I expect, but we will play it by ear. But
21 I wanted to give you all that heads-up so that you can
22 plan accordingly.

23 During this break, please do not discuss the case
24 in any manner whatsoever. Please don't have any
25 contact with anyone in or about the courthouse, or

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1 comment on your jury service on any social networking
2 sites.

3 I'm aware that there are media reports about this
4 case, potentially in the newspaper. Please guard
5 yourself and don't read, watch or listen to any media
6 accounts or do any independent research on the
7 Internet.

8 Come back directly to your jury room at 2. And
9 have a good lunch. Hopefully it's warmed up a little
10 bit outside. If you would leave your notepads in your
11 seats for me, please.

12 (Jury exits the courtroom.)

13 THE COURT: Okay. You may be seated. What
14 matters do we need to take up?

15 MR. KIDD: Your Honor, I was advised by
16 Defense this morning that they have the videotape
17 that their expert prepared of an experiment done
18 with a 40 some odd foot gap. My objection, Judge,
19 is under rule five. Specifically, it says that
20 the Defendant must turn over evidence which it
21 intends to introduce in its case-in-chief, at
22 trial, or when prepared by a witness whom the
23 Defendant intends to call at trial and the
24 resulting report relates to his testimony.

25 Judge, we have known about this witness who is

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1 going to be called to trial for maybe a year now. Just
2 got his report a few hours ago. So, you know, I think
3 under the rules --

4 THE COURT: What Subsection of the rule are
5 you relying on?

6 MR. KIDD: Rule 5B -- B1B, the last sentence.
7 Because it's not about evidence that they want in
8 their case-in-chief. It is prepared by their
9 witness, and, you know, they have acknowledged to
10 me that they have been in possession of it for
11 quite sometime.

12 MR. McCUNE: No, no. We got possession of it
13 Monday.

14 MR. KIDD: Excuse me, that is what I was
15 told.

16 MR. SIMPSON: I must have misunderstood a
17 previous conversation.

18 THE COURT: What exactly are we talking
19 about?

20 MR. McCUNE: Your Honor, it is a video in
21 which there are two cones, traffic cones set up
22 that are 43.1 feet apart. Halfway in between the
23 two cones there's a cone set up, it is one foot
24 inside the center line between the two cones. The
25 car is driven by the expert witness. A vehicle

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1 driven by the expert witness at 35 miles an hour
2 attempts to miss the first cone, strike the second
3 cone and miss the third cone. It is essentially a
4 re-creation of what Officer Harris testified that
5 he did yesterday, only this was videotaped.

6 This was put in a motion by evidence that the
7 defense gave last Thursday, that if our expert
8 testified that it would be impossible for someone to
9 veer in and out of the work zone, then he would at that
10 time introduce the testimony of Officer Harris that he
11 had conducted the demonstration that he spoke of
12 yesterday.

13 So, once we got that notice, the -- our expert
14 witness set up a videotaped demonstration. We got that
15 from him on -- I thought that it was Monday, but
16 actually we got it on Tuesday morning, it was delivered
17 to us, and we weren't planning on introducing it
18 because we didn't think that we could. But when that
19 testimony actually -- from Officer Harris entered
20 yesterday, we thought that it had opened the door to
21 present the same experiment conducted by --

22 THE COURT: I don't know how a door can be
23 opened when you originated the line of testimony.
24 That is what concerns me. The State asked the
25 questions they asked in response to a line of

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1 questions that you all posited to the witness, and
2 I am a little concerned -- I am a little -- I have
3 some other concerns. And I'm going to finish
4 listening to your arguments.

5 Is there anything further?

6 MR. McCUNE: No, Your Honor, just that the
7 testimony elicited from Officer Harris yesterday
8 was that he went out --

9 THE COURT: That was in response to a line of
10 questioning that you all elicited from him.

11 MR. McCUNE: Well, it was in response to a
12 line of questioning that the State asked him
13 about. It wasn't -- it was on redirect.

14 THE COURT: It was on redirect after your
15 cross examination, which elicited the original
16 line of questioning. You may continue in further
17 argument if you want.

18 MR. McCUNE: Well, Your Honor, it is simply
19 that it is a -- you ruled yesterday that Officer
20 Harris could testify about something that he did
21 and observed with his own eyes, it was a personal
22 observation, he had an opportunity to record it,
23 it was not recorded.

24 THE COURT: That wasn't the extent of my
25 ruling. I ruled on it based on the fact that it

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1 was in response to a line of questioning that you
2 all presented to him in your cross examination.

3 MR. McCUNE: Your Honor, I --

4 THE COURT: The record will speak for itself,
5 I'm not going to belabor getting into that.

6 MR. McCUNE: That is fine, the record can
7 speak for itself, but in the interest of fairness,
8 if he's able to introduce that testimony we should
9 be able to introduce evidence contrary, including
10 the video, which is merely a demonstrative, which
11 the Court has wide latitude to introduce, to allow
12 to be introduced.

13 THE COURT: When was this prepared?

14 MR. McCUNE: It was shot last Friday, I
15 believe, and we got it Tuesday.

16 THE COURT: If he did it last Friday, how can
17 it be in response to this witness?

18 MR. McCUNE: It was in response to an e-mail
19 from the Solicitor who told us that he was going
20 to elicit the testimony that he in fact elicited
21 from Sergeant Harris. Our expert took the stand
22 and testified that it would be impossible to veer
23 in and out of a lane. So, in preparation for that
24 possible testimony the video was prepared.

25 THE COURT: What is the basis for the State's

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1 objection?

2 MR. KIDD: Our original objection was rule
3 five, Judge, but I also think that there's a
4 difference between demonstrative evidence that
5 proves a possibility and disproves. When you have
6 the subjective actions of a driver, it becomes
7 extremely prejudicial to show an inability to do
8 something when it's all subjective about how the
9 vehicle is being operated, and I just -- I don't
10 find it -- I don't find it properly relevant under
11 the rules. I think that, you know, I don't think
12 that they can claim that they get evidence in
13 through the back door when they are the ones that
14 opened it in the first place.

15 THE COURT: I assume their expert was going
16 to testify anyway that this accident did not
17 happen the way y'all have opined it happened. So,
18 he was going to testify that it was not possible
19 to have struck -- to have veered into this
20 construction zone, correct?

21 MR. KIDD: Up until -- I wouldn't have known
22 that he was going to testify whether it was
23 impossible or not. I mean, he broke down a series
24 of numbers that had different valuations on it,
25 different speeds and different gap sizes based on

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1 different angular maneuvers and, you know, my
2 concern was obviously, you know, there's a million
3 different ways that these events could have played
4 out.

5 The testimony from our officer was just that he
6 wanted to ensure that it was physically possible, if
7 that was our theory in the case, and I think that
8 that's much different than -- proving in the
9 affirmative is different than in the negative -- than
10 disproving in the negative.

11 THE COURT: What's his original testimony
12 going to be? That this accident could not have --
13 in other words, that Mr. Hamrick could not have
14 swerved into the construction zone and hit
15 Mr. Garland? Was that going to be the substance
16 of his testimony?

17 MR. McCUNE: Your Honor, the substance of the
18 testimony would have been that the accident could
19 not have taken place as described, and there's
20 some question as to what the work zone and safety
21 zone is.

22 But the point of impact described in the reports
23 was a point of impact, as Officer Harris talked about
24 yesterday, that was approximately 16 feet from the
25 paver, and -- pardon me, from the cone, and some

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1 distance from the paver that totaled 43 feet. And he,
2 using that as the point of impact, because that was in
3 the report, he was prepared to say that that was not
4 possible.

5 THE COURT: Okay. Repeat that for me again,
6 I don't think that you completely answered my
7 question.

8 MR. McCUNE: Okay. He was going to testify
9 that the point of impact that was in the officer's
10 report was not a possible point of impact.

11 Now, we found out yesterday, the officer said that
12 they really have no idea where the point of impact was.

13 THE COURT: Okay.

14 MR. McCUNE: So then the officer was
15 permitted to speak.

16 THE COURT: I need to know what the substance
17 of your expert's opinion is going to be. I'm not
18 rehashing what happened yesterday. So, basically,
19 what you all did you asked questions in
20 anticipation of what your expert was going to
21 testify to. And then in response to those
22 questions, I allowed the State to pursue a course
23 of questioning.

24 I need you to answer my direct question, which is
25 what is the scope of your expert's opinion, what does

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1 he plan to opine to you?

2 MR. McCUNE: He plans to opine that it is
3 likely that the point of impact was in a lane of
4 traffic.

5 THE COURT: Was that all that this witness is
6 tendered for?

7 MR. McCUNE: Yes, Your Honor.

8 THE COURT: What did he plan to present in
9 support of that opinion before he did this video?

10 MR. McCUNE: He has some -- he has some data
11 based on various speeds and various maneuvering
12 capabilities of vehicles that talk about the lack
13 of incursion that one can make at those speeds and
14 with that distance to travel. And that is in his
15 report.

16 THE COURT: Okay. I am going to -- anything
17 further from the State?

18 MR. KIDD: Nothing as to the decision, Judge.

19 THE COURT: I'm going to think about it over
20 the evening.

21 Not over the evening, over lunch, because much --
22 of course, we are having more and more video
23 re-creations in civil cases, there are strict
24 parameters about video re-creations, whether they cross
25 the line of going to comments on the facts, and I need

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1 to research it before I make a decision.

2 MR. McCUNE: Thank you, Judge. And in the
3 alternative, if you are not inclined to --

4 THE COURT: He can testify about it, opine to
5 it. I think that was always going to be his
6 position, which is that it could not have happened
7 the way that it's been reported. I think his
8 opinion, based on what you all represented to the
9 Court, was always that this accident happened in
10 the lane of travel, that your client didn't
11 intrude into the construction zone and strike
12 Mr. Garland. I think the State has always been on
13 notice that that was the substance of his opinion,
14 and I don't think that they can complain about
15 that now.

16 What troubles me or gives me pause is not
17 necessarily that this is a re-creation, but the
18 admissibility of those types of videos, period. I
19 think that our Court has spoken very clearly on it. I
20 just need to find case law on it.

21 MR. McCUNE: Yes, Your Honor.

22 THE COURT: It is almost similar to --
23 probably not the best analogy, but it's almost
24 like you've got a therapist saying, this is my
25 opinion, and generally based on certain formulas

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1 or certain applicable principles, this is
2 generally how something would have happened. That
3 is permissible. They can't say, based on my
4 review of this person's records, this is what they
5 did.

6 The same is true for the analyst that testified
7 for SLED. She can say in general, based on certain
8 scientific principles or certain principles that we use
9 in this industry, these are the parameters of how
10 things can or cannot happen. But she cannot say
11 whether in fact that's how it happened with Mr. Hamrick
12 on that particular evening.

13 So, it is almost that same line of logic, which
14 is, your expert can opine as to how, based on how
15 certain scientific principles, how this could or could
16 not have happened, and in his expert opinion this is
17 how it most probably happened. But I think once you
18 start getting into re-creations, that becomes
19 problematic and I need to research that a little bit.

20 I'm not certain that I would have allowed in the
21 officer's dash camera, even if he had recorded it.

22 MR. McCUNE: Your Honor, if I may. One thing
23 I found valuable in this was it looks like Clark V
24 Cantrell 332 S.C. 433. It just talks a little
25 about -- it is a computer animation, which is not

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1 exactly the same thing.

2 THE COURT: Well, it is along the same lines.

3 MR. McCUNE: Yeah. And we don't claim that
4 this is an animation or a re-creation or anything.
5 It is a demonstration.

6 THE COURT: It is a re-creation. You want
7 the jury to believe that this is how it happened
8 that night, and that is what becomes problematic
9 about it. Otherwise you wouldn't be seeking to
10 put it in.

11 MR. McCUNE: We want the jury to see what it
12 looks like.

13 THE COURT: The jury has already seen what it
14 looks like.

15 The other problematic thing that you have is that
16 all of those cones were moved after the accident.
17 Nobody knows where they were prior to the accident.
18 Now, you have everybody opining about what the
19 standards were and where the cones actually were. We
20 don't know where they actually were. All of them were
21 moved after the accident. Which is reasonable under
22 the circumstances.

23 When you have an accident, the first thing that
24 first responders are thinking about, and EMS, is how do
25 we preserve this person's life. What happens is that

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1 everything gets moved. So we don't really know what
2 the state of this scene was before the accident.

3 We have opinions from Ms. Neva who said that this
4 is the State's standard and that if they didn't have it
5 this way I would not have allowed them to work that
6 night. We have other people testifying who looked at
7 the pictures of the scenes and said, this is how the
8 cones would have been set up. But nobody knows how
9 they actually were set up that night.

10 I don't have a problem with your expert testifying
11 that based on the safety standards were, based on how
12 these cones and pylons were supposed to be set up, this
13 was not possible. When you start getting into
14 demonstration, the representation to the jury that this
15 is how it was that night, and it's impossible
16 physically or scientifically for this accident to have
17 taken place the way that they say it happened.

18 It is a re-creation and it is offered for the
19 truth, and you want the jury to rely on it or you
20 wouldn't offer it. I'm concerned about it and I will
21 think about it over lunch.

22 MR. McCUNE: Thank you, Your Honor. We do
23 have a copy of it if you want it.

24 THE COURT: I'll look at it. I need to do
25 some research and eat and I'll look at it on a

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1 full stomach. Is there some specific software
2 needed to look at it?

3 MR. McCUNE: No, sir, just Media Player.

4 THE COURT: Leave it there and I'll look at
5 it over lunch. Y'all have a good lunch and we
6 will see you at two.

7 MR. KIDD: Just for my scheduling, is it safe
8 to assume we're not closing --

9 THE COURT: Depends on how long their expert
10 takes. I'm not going to close the charge after
11 3:00.

12 MR. KIDD: I'll speak really slowly.

13 THE COURT: After everything is done, it will
14 be after five. I'm not holding a jury hostage
15 here until late into the evening.

16 MR. KIDD: Yes, thank you.

17 THE COURT: You are welcome.

18 (Lunch recess.)

19 THE COURT: Is the State ready to proceed?

20 MR. KIDD: Yes, ma'am.

21 THE COURT: Is the Defense ready to proceed?

22 MR. McCUNE: Yes, Your Honor.

23 THE COURT: As regards to the video, while
24 I'm going to take it up in-camera, any questions
25 that you would have asked about the video so there

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1 will be an appropriate proffer established?

2 MR. McCUNE: Yes, Your Honor. For the
3 record, if we could make the video an exhibit.

4 THE COURT: Well, it would be a Court's
5 exhibit -- well, I'll decide how I'm going to mark
6 it after I make the decision.

7 What I need for you to do is to ask all of the
8 questions that you would up until when you would seek
9 to introduce the demonstration of the -- seek to
10 introduce the video.

11 MR. McCUNE: Okay.

12 THE COURT: And then I'll take that up
13 in-camera. I'll allow you to ask those questions
14 so that that will be preserved and then we will go
15 from there.

16 At this moment, however, I'm not inclined to allow
17 the introduction of the video for a myriad of reasons,
18 one of which, there's no concrete evidence in the
19 record as to what the point of contact would have been,
20 or was, and that I cannot be assured of the accuracy of
21 any re-enactment. But I'm going to think about it a
22 little more as you proceed.

23 However, he can still testify as to his opinion,
24 which is that he doesn't think that it happened in the
25 construction zone. That it happened in the lane of

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1 traffic.

2 MR. McCUNE: Can he testify, as did Officer
3 Harris, that he performed an experiment and was
4 unable to do that?

5 THE COURT: I think you can ask him a
6 hypothetical. The officer wasn't an expert,
7 therefore, it wasn't asked in the form of a
8 hypothetical. You can ask him that question.
9 Hypothetically, if he did, blah blah blah, what
10 would his opinion be.

11 MR. McCUNE: That is fine, Your Honor.

12 THE COURT: All right. Are we ready to
13 proceed? Is the jury out there?

14 THE BAILIFF: Yes.

15 THE COURT: I apologize for the delay in
16 starting. I apologize for being out of breath.
17 The garage was full, there was nobody out there,
18 and traffic was backed up to Meeting Street and
19 Queen Street, and there was nobody to redirect and
20 there were people in the wells, and finally I had
21 to get out of my car and ask folks to move. I bet
22 they are not particularly happy with me, but I'm
23 not particularly happy with the garage.

24 So I apologize, I was stuck. I couldn't go in,
25 move, I was just stuck. I apologize. I'm sure that

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1 you all have been in similar situations, it hadn't
2 happened to me a very, very long time, so, I was just a
3 tad bit frustrated when it happened. They have
4 Lockwood blocked off, it looks like some kind of toxic
5 spill or something, I don't know. I hope that they
6 have it cleaned up by the time the court is over. They
7 had the fire department and all. Murphy's law, what
8 can happen will happen.

9 (Jury enters the courtroom.)

10 THE BAILIFF: The jury is all present.

11 THE COURT: You can be seated.

12 Good afternoon. I hope that you had a pleasant
13 recess. I'm going to apologize to you all, as I did to
14 counsel just a moment ago. Of course you all deal with
15 downtown every day, as we do, but as happenstance did
16 it, the garage was full and there was no one to direct
17 traffic. So I was stuck in between two points and
18 couldn't move in my car. Which was frustrating, but
19 I'm sure not as frustrating as you all sitting in that
20 room waiting on us. So I apologize, I fall on my
21 sword, it is all my responsibility.

22 We will now resume with testimony. I'll ask that
23 you give the attorneys your undivided attention.

24 You may proceed when you are ready.

25 MR. McCUNE: Thank you, Your Honor. We will

TESTIMONY OF ROBERT GOOGE

1 call Mr. Woodrow Poplin.

2 THE COURT: If you would come to the stand
3 and be sworn.

4 Thereupon,

5 WOODROW POPLIN

6 was called as a witness, having been first duly sworn,
7 was examined and testified as follows:

8 THE CLERK: Please state your full name,
9 spelling your last.

10 THE WITNESS: My name is Woodrow M. Poplin,
11 P-O-P-L-I-N.

12 THE COURT: You may proceed.

13 MR. McCUNE: Thank you, Judge.

14 DIRECT EXAMINATION

15 BY MR. McCUNE:

16 Q Good afternoon.

17 A Good afternoon.

18 Q Thank you for your patience with us today. What
19 is your current job?

20 A I am a consulting engineer, I specialize in the
21 evaluation of traffic accidents, or transportation
22 accidents.

23 Q And how long have you been doing that particular
24 line of work?

25 A I have been doing that, this year is 30 years.

TESTIMONY OF WOODROW POPLIN

1 Q And could you tell us a little bit about your
2 personal background. Are you from this area?

3 A I grew up on Lake Marion, halfway between here and
4 Columbia.

5 Q Okay. What about your educational background?

6 A I have a bachelor of science in mechanical
7 engineering, a master of science in mechanical engineering,
8 and a master of engineering in civil engineering.

9 Q Okay. Where did you receive those degrees?

10 A The University of South Carolina.

11 Q And could you explain just a little bit about
12 those degrees, what is a -- the difference between civil
13 engineering and mechanical engineering, for example?

14 A Well, the common phrase is a mechanical builds
15 weapons, civil builds targets. Civil engineers build
16 structures, dams, sewage systems, bridges, roadways, things
17 of that nature. Mechanical engineers are generally
18 concerned with energy systems such as power systems or
19 machines and mechanisms.

20 Q Okay. And have you been trained in accident
21 reconstruction?

22 A Yes, sir.

23 Q And what kind of courses have you had in accident
24 reconstruction?

25 A Well, accident reconstruction is the evaluation of

TESTIMONY OF WOODROW POPLIN

1 accidents from a physics standpoint. From a -- what you can
2 develop in the way of mathematical physical formulas, what
3 you can observe, touch, examine, measure, evaluate. So it
4 is applied engineering. So courses in engineering statics,
5 dynamics, kinematics, strength materials, all of those are
6 applicable to accident reconstruction.

7 Specifically with the title accident
8 reconstruction, I have been to seminars, courses, various
9 aspects in my professional career associated with accident
10 reconstruction.

11 Q Have you ever taught any courses yourself in
12 accident reconstruction?

13 A I haven't taught any courses, I have given talks
14 at seminars, presentations, that type of thing. But a full
15 blown course, no.

16 Q And during your accident reconstruction career,
17 have you had an occasion to investigate accidents between
18 pedestrians and motor vehicles?

19 A Yes.

20 Q On more than one occasion?

21 A Yes.

22 Q Have you ever given expert testimony about
23 automobile and pedestrian accidents?

24 A Yes, sir.

25 Q And was that the State of South Carolina?

TESTIMONY OF WOODROW POPLIN

1 A Yes.

2 MR. McCUNE: Your Honor, the government --
3 pardon me, the defense would offer Mr. Poplin as
4 an expert witness in accident reconstruction.

5 THE COURT: Any objections or questions?

6 MR. KIDD: No, ma'am.

7 THE COURT: So admitted without objection.

8 MR. McCUNE: Thank you.

9 Q Now, Mr. Poplin, you were retained in this case by
10 the defense; is that correct?

11 A Yes.

12 Q And as part of that, you are paid for your
13 services, correct?

14 A Yes, sir, I charge for my time.

15 Q And have you testified on behalf of defendants in
16 criminal cases before?

17 A I have.

18 Q Have you testified on behalf of the State in
19 criminal cases?

20 A I have.

21 Q Have you testified on behalf of plaintiffs in
22 civil cases?

23 A Yes.

24 Q And have you testified on behalf of defendants in
25 civil cases?

TESTIMONY OF WOODROW POPLIN

1 A I have as well, yes, sir.

2 Q So, would you say that you specialize in any
3 particular type of work? In other words, you are not
4 exclusively defense work or plaintiff's work?

5 A No, sir, I am evaluating accidents.

6 Q Okay. And about how many accidents have you
7 evaluated?

8 A I believe it would be 27, 2800.

9 Q Okay. And I would presume each of them are
10 different?

11 A Yes, sir, they are all a little bit different.

12 Q Okay.

13 MR. McCUNE: Your Honor, may I approach the
14 witness?

15 THE COURT: Uh-huh.

16 BY MR. McCUNE:

17 Q I'm showing you what's been previously marked for
18 identification as Defense Exhibits 12 through 19. I would
19 like you to take a look at those, if you would please. And
20 we will go through them numerically.

21 Do you recognize Defense Exhibit 12?

22 A I do.

23 Q What is that?

24 A That is a report I issued on this case.

25 Q Okay. How about Defense Exhibit 13?

TESTIMONY OF WOODROW POPLIN

1 A That is a drawing that I prepared, based on the
2 police measurements.

3 Q Okay. Now, can you explain the difference between
4 a drawing and a sketch?

5 A Well, a drawing is to scale. A sketch is a more
6 freehand representation, it is not to scale.

7 Q So, these are drawings that you prepared?

8 A Yes, these are drawings.

9 Q What about Exhibit 14?

10 A That is another drawing based on the same
11 measurements.

12 Q Fifteen?

13 A A drawing giving dimensions and positioning.
14 Again, spelling out some of the things that were measured at
15 the site.

16 Q Thank you. Sixteen?

17 A It gives the same type of information, except
18 assuming the cones are in alignment, as opposed to not in
19 alignment.

20 Q Okay. The next one, I think, 17?

21 A Seventeen depicts a depiction of both the relative
22 motion of the pedestrian relative to the vehicle and
23 relative to the ground.

24 Q Okay. And 18?

25 A Eighteen is a depiction of measurements taken by

TESTIMONY OF WOODROW POPLIN

1 the police.

2 Q Okay. And 19?

3 A Nineteen is a standard plan from the South
4 Carolina Department of Transportation.

5 Q Okay. Thank you.

6 MR. McCUNE: May I approach the witness, Your
7 Honor?

8 THE COURT: You may.

9 MR. McCUNE: And may I approach one more
10 time, Your Honor?

11 THE COURT: You may.

12 BY MR. McCUNE:

13 Q I'm handing you what's been previously marked for
14 identification as Defendant's Exhibit 24. Do you recognize
15 that?

16 A I do.

17 Q What is that?

18 A That is a drawing based on the measurements taken
19 by the police.

20 Q Okay. And did you make use of that in your report
21 or your investigation?

22 A I made use of the measurement on the second page,
23 but not the drawing itself.

24 Q Thank you.

25 MR. McCUNE: Your Honor, may I approach?

TESTIMONY OF WOODROW POPLIN

1 THE COURT: You may.

2 MR. McCUNE: And Your Honor, I would like to
3 offer Defendant's 13, 14, 15, 16, 17, and 18 as
4 demonstrative exhibits.

5 MR. KIDD: No objection as to those drawings.

6 THE COURT: Are they for ID or are you
7 seeking to admit them?

8 MR. McCUNE: I'm seeking to admit them as
9 demonstrative.

10 THE COURT: It has to be one or another.
11 Either it's marked for ID or admitted as an
12 exhibit. I need to be clear as to what you are
13 seeking to do, and then I need to be clear as to
14 what the State's response is.

15 MR. McCUNE: Thanks, Your Honor.

16 Your Honor, we would move to enter those as
17 exhibits.

18 THE COURT: Tell me the numbers again.

19 MR. McCUNE: It is 13 through 18 inclusive,
20 Your Honor.

21 THE COURT: Any exception from the State?

22 MR. KIDD: No, ma'am.

23 THE COURT: Marked and received without
24 objection.

25 *(Whereupon, Defendant's Exhibit Nos. 13-18 were*

TESTIMONY OF WOODROW POPLIN

1 *marked for identification and received in evidence.)*

2 MR. McCUNE: Thank you, Your Honor.

3 BY MR. McCUNE:

4 Q Now, Mr. Poplin, in preparation for your testimony
5 here, you reviewed some items in order to prepare your
6 report; is that correct?

7 A Yes, sir, I did.

8 Q And what -- what sorts of things do you review
9 when you are preparing an accident reconstruction?

10 A You review what you have available on that
11 accident. And it varies.

12 Q And what was available to you at the time that you
13 wrote your report?

14 A At the time I wrote my report I had looked at the
15 South Carolina traffic collision report, the Mt. Pleasant
16 Police Department incident report, and all of the associated
17 documents. I had seen photographs of the damage to the 2009
18 Jeep Commander, I had photographs of the accident scene, and
19 by accident scene I mean the night of the accident with
20 things still there. I had reviewed the manual on uniform
21 traffic control devices and the South Carolina Department of
22 Transportation standard drawings of temporary traffic
23 control.

24 Q You reviewed all of those and you composed this
25 report which you turned over to the defense team, correct?

TESTIMONY OF WOODROW POPLIN

1 A Correct.

2 Q After you turned that report over, you reviewed
3 other items?

4 A Yes, sir.

5 Q And did they include what has been previously
6 marked for identification as Defense Exhibit 24?

7 A Yes.

8 Q And in particular, did they include the
9 measurements in Defense 24?

10 A Yes.

11 Q Okay. And what was the -- what was the purpose of
12 reviewing the manual on uniform traffic control devices?

13 A Well, this incident occurred in a traffic control
14 zone for traffic -- for construction. The manual on uniform
15 traffic control devices is the governing engineering
16 document for traffic control in general. And Chapter Six is
17 specific to construction zones and temporary sites.

18 Q And who publishes the manual on uniform traffic
19 control devices?

20 A The United States Department of Transportation.

21 Q And is that something you, during accident
22 reconstruction, have an occasion to refer to often?

23 A Yes, sir, that is one of the governing engineering
24 documents.

25 Q And let's talk a little bit just in general about

TESTIMONY OF WOODROW POPLIN

1 setting up a construction zone. You have a road that is
2 going to undergo construction. We will talk particularly
3 about something called channelization devices. What is a
4 channelization device?

5 A A channelization device is something that you put
6 alongside the path of travel to channel the traffic in the
7 direction you want it.

8 Q Can you give us some examples of channelization?

9 A Concrete barricades, these concrete walls that are
10 put in place, the temporary ones that can be moved, the
11 portable drums you see, big barrel type things, type three
12 barricades can be used. Cones can be used. There are these
13 vertical posts, I forget what they are called, but you see
14 those occasionally.

15 Q I'll show you what has previously been marked and
16 admitted, pardon me, as Defense Exhibit 10. Do you see
17 channelization devices in that photo?

18 A Yes, sir.

19 Q And did you -- you can mark on the screen, it is a
20 touch screen. So, could you mark and explain what they are?

21 A Well, you have got drums here, and you have got
22 lots of those, and you have traffic cones here.

23 Q Is there a particular name for that type of cone?

24 A I believe that it's referred to in documents as an
25 oversized cone, but it's more commonly referred to as a tall

TESTIMONY OF WOODROW POPLIN

1 boy.

2 Q Okay. When you are looking at setting up
3 channelization devices, are there specific guidelines that
4 you look for to set those up?

5 A Yes, sir.

6 Q And where are those guidelines found?

7 A For South Carolina they are found in the manual on
8 uniform traffic control devices, and in the standard plans
9 from the South Carolina Department of Transportation.

10 MR. McCUNE: Your Honor, may I approach?

11 THE COURT: You may.

12 BY MR. McCUNE:

13 Q I'm showing you what's previously been marked for
14 identification as Defense 19. Could you describe what that
15 is, please?

16 A This is a drawing from the work zone traffic
17 control engineer with the South Carolina highway department.

18 Q And is there a particular title of that drawing?

19 A Yes, sir.

20 Q And what is that?

21 A This is lane closure nighttime, urban load speed
22 less than or equal to 35 miles per hour.

23 Q That is just commonly known as an engineering
24 drawing?

25 A Yes.

TESTIMONY OF WOODROW POPLIN

1 Q Thank you.

2 MR. McCUNE: May I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. McCUNE:

5 Q Is this accessible to the public?

6 A Yes, sir, you can download it from the web.

7 Q And it is published by the State?

8 A Yes.

9 MR. McCUNE: Your Honor, I would like to
10 offer Defense Exhibits 19 through 22 into
11 evidence.

12 THE COURT: Any objection from the State?

13 MR. KIDD: Foundation, Judge.

14 THE COURT: I need you to approach.

15 (Off-the-record discussion.)

16 THE COURT: Marked for ID only.

17 MR. McCUNE: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. McCUNE:

20 Q Can you tell us generally, Mr. Poplin, what is the
21 scheme for routing traffic through these traffic control
22 areas? How would one ideally route the traffic as far as
23 being able to establish parameters that are required by
24 the -- and dictated in the manuals that you reviewed?

25 A Well, ideally you want to route it as far away as

TESTIMONY OF WOODROW POPLIN

1 possible. Ideally you want to close the road.

2 Q Ideally you don't [sic] want to close the road.

3 If you have to close portions of the road, are there means
4 of separating a closed portion from the active portion?

5 A Yes, sir.

6 Q What do they use to separate the closed portion
7 from the active portion?

8 A Well, they use a number of signs and
9 channelization devices.

10 Q Okay. And is there any safety zone provided by
11 using channelization?

12 A Yes, sir. What you want to do is you want to set
13 up your work zone, that is the area where the workers and
14 equipment are in, you want to have a buffer zone to separate
15 that work zone from traffic, and then you have a traffic
16 zone where the traffic is.

17 Q So, you have a work zone, then a buffer zone and
18 then a traffic zone?

19 A Correct.

20 Q Is there any standard size for a buffer zone?

21 A No, sir.

22 Q Are there any suggested -- any suggestions, or is
23 it left to engineering judgment?

24 A Well, it is a large work zone.

25 Q Again, what is the purpose of a buffer zone?

TESTIMONY OF WOODROW POPLIN

1 A A buffer zone is to separate the work activities
2 from the traffic activities.

3 MR. McCUNE: Your Honor, may I set up the
4 easel?

5 THE COURT: Uh-huh.

6 BY MR. McCUNE:

7 Q Now, did you review the -- review the measurements
8 and drawings that you had given to you by Mt. Pleasant
9 Police Department that gave you the contours of what the
10 channelization devices looked like on the night of the
11 accident?

12 A Yes.

13 Q And were you able to take that information and
14 plot or map where the channelizations were?

15 A Yes, I plotted it on a drawing.

16 Q Okay. And as part of this, you referred to the
17 South Carolina Department of Transportation standard
18 drawings as part of your review of this --

19 A Yes.

20 Q Okay. And what was your conclusion after looking
21 at the South Carolina Department of Transportation
22 standardized drawings? What was the scenario that should
23 have been followed in setting up the channelization devices?

24 A Well, it -- in this particular area location, the
25 channelization devices should have been 25 feet apart.

TESTIMONY OF WOODROW POPLIN

1 Q That is according to the drawing that you have?

2 A Yes.

3 Q And the channelization devices, were they -- was
4 it specified what they should be?

5 A It was called for them to be drums, and allowable
6 as oversized cones.

7 Q And is there advantage or disadvantage to drums
8 and/or oversized cones?

9 A The drums have an advantage over oversized cones.

10 Q Advantage for who?

11 A Advantage for workers and traffic.

12 Q Why is that?

13 A Because they are larger, they provide more
14 separation. If that's your only buffer space, they provide
15 more buffer space. They are a bigger object to look at,
16 they give the appearance of being a formidable object to
17 strike. You tend to keep traffic away from them because of
18 that appearance, and workers probably give them more leeway
19 as well.

20 Q Well, let's talk about that for just a moment.
21 Talk a little bit about delineation. What does delineation
22 mean?

23 A Delineation is our normal striping, markings on
24 the roadway to delineate the traffic lanes.

25 Q Okay. I'm going to show you what's been

TESTIMONY OF WOODROW POPLIN

1 previously admitted as Defense Exhibit 2, and if you go to
2 the top right of your screen and clear --

3 A Somebody did it already.

4 Q Thank you.

5 When you are talking about delineation, are
6 you talking about those white stripes that you see in that
7 photo?

8 A Yes, sir.

9 Q Okay. And is there another term for those white
10 stripes?

11 A They are lane edge lines.

12 Q Okay. And what about the ones in the middle of
13 the road?

14 A Again, they are lane edge lines. I'm sure that
15 there's a term for the interrupted line.

16 Q Okay. And what is that term for the interrupted
17 line?

18 A I don't recall off the top of my head.

19 Q Okay.

20 A Most people call them white lines or yellow lines.

21 Q White lines or yellow lines?

22 A There's yellow lines on two-lane roadways.
23 There's white lines on almost everything else.

24 Q Are they a standard size, generally a standard
25 length?

TESTIMONY OF WOODROW POPLIN

1 A In general, they are 10 feet long. Ones on the
2 interstate are 6 inches wide, and ones everywhere else for
3 the most part are 4 inches wide.

4 Q Okay, and let me show you again, this time what's
5 been marked as State's Exhibit 19, and if you are looking
6 down that view, away from that piece of machinery you see a
7 couple of white lines; is that correct?

8 A Correct.

9 Q And do you know what purpose those lines serve?

10 A That separates the two travel lanes.

11 Q The two travel lanes. When you are setting up to
12 have a traffic control area, it is -- what do you first
13 establish? Is there a difference between urban and
14 interstate?

15 A Sure.

16 Q And is there a difference between day operations
17 and night operations?

18 A Yes.

19 Q And is there a difference in how you set up,
20 depending on speed?

21 A Yes.

22 Q And why does speed make a difference?

23 A Well, as the speeds go up you need less frequent
24 traffic control devices such as the cones or drums.

25 Q Why is that?

TESTIMONY OF WOODROW POPLIN

1 A Well, because at higher speeds you go from one to
2 the next much more quickly, you have less room to deviate,
3 you have less room for confusion, you are looking farther
4 down the roadway.

5 Q Okay. So, can channelization devices also be used
6 as delineation devices?

7 A Well, they are different in that channelization is
8 something that is vertical, coming up, the delineation is
9 something that you are laying out on the pavement. But one
10 of the things that you are doing with the channelization in
11 a case like this is you are trying to overcome the marked
12 roadway. So you are -- your channelization devices have to
13 be frequent enough to do that as one of the things that they
14 have to accomplish.

15 Q Okay. And by overcome, could you explain that?
16 You are trying to refocus attention?

17 A Well, if you want traffic to not use the existing
18 lane lines you have to provide sufficient numbers of
19 alternatives to overcome the existing lane lines.

20 Q Okay. I would like to show you -- if you would
21 step down here for just a moment.

22 MR. McCUNE: Your Honor, may I post the
23 chart?

24 THE COURT: You may.

25

TESTIMONY OF WOODROW POPLIN

1 BY MR. McCUNE:

2 Q This drawing here, so I'm correct, I want to make
3 sure that we have the correct reference to it because these
4 aren't marked. This would be Defense Exhibit 14. Can you
5 tell me what this depicts?

6 A This depicts the objects that were measured by the
7 police department on top of their measurements.

8 Q Okay, and by the objects measured by the police
9 department, you are talking about the objects that were in
10 Defense Exhibit for ID 24?

11 A Correct.

12 Q Okay. And how did you translate Defense
13 Exhibit 24 into this drawing?

14 A Well, I had the measurements on a -- typed out on
15 a sheet of paper, I ran them through an optical character
16 reader and converted them to output into my computer. I
17 corrected some errors that it made and then I brought it
18 into a surveying program and turned it into an AutoCad
19 drawing and did that drawing.

20 Q Okay. And does this represent the totality of
21 objects that were shown in that report in the measurements?
22 In other words, the totality of the non-debris objects.

23 A It represents most of them. It doesn't represent
24 some things that were measured.

25 Q Okay. But we do have a representation of those

TESTIMONY OF WOODROW POPLIN

1 here somewhere.

2 So, tell me -- tell me what that is. That is
3 just --

4 A This is a cone.

5 Q Okay. And by cone, you mean the --

6 A The tall boy, oversized cone.

7 Q And this?

8 A That is another cone.

9 Q And that?

10 A This is the paver, the outline of the paver.

11 Q Do you know if there was anything in front of the
12 paver?

13 A There was a truck in front of the paver. I didn't
14 draw the truck or measure the truck.

15 Q What is that?

16 A This is a cone.

17 Q And that?

18 A A cone.

19 Q And that?

20 A This is the final position of the Jeep.

21 Q Okay. With your program, can you measure
22 distances based on these coordinates on the ground?

23 A Yes.

24 Q And did you in fact do that?

25 A I did.

TESTIMONY OF WOODROW POPLIN

1 Q Okay. Let's take a look here.

2 And tell me what these distances represent.

3 A From this cone to this cone was 118 and a half
4 feet. From this cone to this cone was 123.4 feet, and
5 between the last two cones was 43.2 feet.

6 Q Okay. And you said that the -- your
7 interpretation of the South Carolina drawings is that the
8 cones in this area should have been what?

9 A 25 feet apart.

10 Q Okay. So, these cones are how far apart?

11 A This one would be about four and a half times the
12 desired spacing, this one would be five times the desired
13 spacing, and this one is about the one and a half times the
14 desired spacing.

15 Q Okay. You talked earlier about a buffer zone.
16 Where is the buffer zone that separates the work zone from
17 the travel zone in this depiction?

18 A Well, in this depiction, the only thing that you
19 can reasonably have as your buffer zone would be the width
20 of a cone.

21 Q What is the width of a cone?

22 A Eighteen to 20 inches, about this wide.

23 Q So, that is what separates the traffic zone from
24 the work zone, correct?

25 A Correct.

TESTIMONY OF WOODROW POPLIN

1 Q And is there a rule of thumb for placing devices
2 where the buffer zone is large or small? In other words, do
3 you need more channelization devices or fewer channelization
4 devices?

5 A You would need more channelization devices if you
6 are going to reduce the buffer zone.

7 Q Why is that?

8 A Again, you do not want there to be any confusion
9 about where these zones are by either the traffic or the
10 workers.

11 Q Okay. I note that this device is not on this
12 line. Is that the position of the device as given to you by
13 the Mt. Pleasant Police Department?

14 A That was the position that was measured.

15 Q And it was plotted out?

16 A Yes.

17 Q Okay. And this device is on the line. Is that
18 position the one that you were given?

19 A Yes.

20 Q And how about that position?

21 A Yes. In general these cones were placed just to
22 the left of -- or in this case it would be east of the lane
23 dividing mark.

24 Q Okay, and what is the difference -- if I went from
25 this lane dividing line to this lane dividing line, about

TESTIMONY OF WOODROW POPLIN

1 how long a distance is that?

2 A Any given point on the dividing line should be
3 40 feet apart. So, in the -- front to front is 40 feet
4 apart, back to back, center to center, however you want to
5 do it. They're typically 40 feet apart. 40 feet
6 altogether.

7 Q Looking at this drawing, what does this represent?

8 A Not sure what you are pointing at.

9 Q This line at the bottom.

10 A This line at the bottom is the lane edge line on
11 the left side of travel. The right one is white, the left
12 one is yellow. So, I'm showing a yellow line here.

13 Now, an area was being paved and the paving
14 had already occurred so this line stopped there.

15 Q Okay. So, there's no line beyond there. Do you
16 know if there were any channelization devices, are you
17 aware, on the left-hand side?

18 A Some appear to be.

19 Q Okay. Now, the measurements of this paver device,
20 did you also get those from the measurements provided by the
21 Mt. Pleasant Police Department?

22 A Yes.

23 Q Okay. Okay, I'm showing you this, and for the
24 record, that would be what is the Exhibit 16, Defense
25 Exhibit 16. What is the difference between this depiction

TESTIMONY OF WOODROW POPLIN

1 and the last?

2 A The difference is I have shown the buffer zone, or
3 the area between the cones, in alignment on this drawing
4 because there was some discussion that the cone had been
5 moved out post accident to that position, as opposed to
6 being right up against the pavement.

7 Q But you didn't change the position of that, you
8 just changed the projected buffer zone, correct?

9 A Correct.

10 Q Is there anything significant about this
11 depiction?

12 A Well, we have the paver extending out across this
13 buffer zone, small buffer zone, and actually into the travel
14 zone. My understanding is that these cones were actually
15 having to be moved as the paver went along. I mean, that is
16 just totally unsatisfactory.

17 Q Is there any guidance in the SCDOT guidelines
18 about that?

19 A No, they just assume that you don't do stuff like
20 that.

21 Q Okay.

22 A I mean, having the paver stick out into the travel
23 zone is just awful.

24 Q Thank you.

25 With this arrangement, were the cones to be

TESTIMONY OF WOODROW POPLIN

1 at 50-foot intervals how many additional cones would have
2 been there, just an estimate?

3 A At 50-foot intervals?

4 Q Yes, sir.

5 A Well, the intervals are maximums. You can always
6 go a little bit lower than that, but you can't increase the
7 interval. So, to spread this gap you would need two cones,
8 to spread this gap you would need two cones at 50-foot
9 intervals.

10 Q And you need -- is channelization more important
11 around the work area than it is in straight line travel
12 where there's no work, or does it make any difference?

13 A It would be most important in the work area; that
14 is where people and the equipment are.

15 Q Why is it more important in the work area?

16 A That is where the people and equipment are.

17 Q Do the people in the work area use channelization
18 devices?

19 A That is their protection.

20 Q And how about drivers, how do they use the
21 channelization devices?

22 A That is their protection as well.

23 Q Okay. And we talked earlier about delineation, I
24 want you to talk about that. You see this line, there are
25 these center lane dividing lines?

TESTIMONY OF WOODROW POPLIN

1 A Yes.

2 Q And those provide some sense of where the lane of
3 travel is, correct?

4 A Yes, that is to divide a lane.

5 Q And the channelization devices are to overcome
6 that?

7 A Yes.

8 Q To overcome that perception?

9 A Yes.

10 Q And in this case, is it your opinion that there
11 was sufficient channelization devices to overcome that
12 perception?

13 A No, there was not. With this kind of spacing you
14 have got a lane line showing up between your channelization
15 devices.

16 Q Okay. Why don't you have a seat. I appreciate
17 that. And we will talk a little bit about your report.

18 Now, you identified the vehicle that was
19 involved in the accident, correct?

20 A Correct.

21 Q And what kind of vehicle was it?

22 A It is a 2009 Jeep Commander sport utility vehicle.

23 Q Okay. And did you have occasion to review any
24 photographs of that?

25 A I did.

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1 Q Okay. And I'm going to show you what's been
2 previously entered into evidence as Defendant's Exhibit 6.
3 Do you recognize that?

4 A Yes, sir.

5 Q And what is that?

6 A That is a picture of the front of the Jeep.

7 Q And what does it indicate to you has occurred
8 there?

9 A You have got collision damage on the right
10 passenger front.

11 Q Okay, and I'm showing you what's been previously
12 marked or entered as Defendant's Exhibit 7, and what is
13 that?

14 A That is a picture of that passenger front corner.

15 Q Okay. And Defense Exhibit 5, what is that?

16 A That is a picture of the trailing edge of the hood
17 on the passenger side.

18 Q You have investigated auto/pedestrian collisions
19 before; could you make any generalizations about the type of
20 collision this was? I mean, does this resemble an
21 auto/pedestrian collision?

22 A Yes, sir, it is an auto/pedestrian collision.

23 Q It doesn't look like it was a collision with any
24 other device or --

25 A No. Well, the damage that we see here is pretty

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1 typical of a pedestrian collision.

2 Q Okay. And you examined the damage to the vehicle
3 with an eye towards accident reconstruction, correct?

4 A Well, I examined it through photographs, yes, sir.

5 Q Okay. And which direction was the -- was the Jeep
6 headed?

7 A Southbound.

8 Q Okay. And what were the road conditions, if you
9 know, as far as level or hilly?

10 A It should be level, relatively straight, dark.

11 Q You said dark?

12 A Yes, dark.

13 Q Okay. Was there any ambient lighting that you
14 know of?

15 A Well, it is in Mt. Pleasant, there would be some
16 ambient lighting, but no specific street lighting.

17 Q Okay. And as you were looking at the pictures of
18 the Jeep, you were given a range of speed where the accident
19 may have occurred; is that correct?

20 A Yes, the descriptions of the accident revolved
21 around basically 35, 40 miles per hour.

22 Q Was the damage of the Jeep, from an accident
23 reconstruction point of view, consistent with the speed of
24 35, 40 miles per hour?

25 A I didn't see anything that suggested otherwise.

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1 Certainly I would expect that type of damage at that speed.

2 Q Okay. Let's talk a little bit about the
3 contention that the Jeep was maneuvered into the work zone.
4 You remember reading about that?

5 A Yes.

6 Q Okay. And actually, there was -- you were
7 provided a possible point of impact?

8 A Yes.

9 Q Okay. And where was that point of impact, as you
10 recall?

11 A Well, it was described in the manner of -- there
12 was a 43.1 feet separation between the traffic cone and the
13 paver, and then 16, I believe, .9 feet north of -- south of
14 the traffic cones was a probable point of impact, and 26.3
15 feet north of the paver.

16 Q Okay. And did you have occasion to plot that out
17 as part of your investigation, or as part of your drawing?

18 A Yes, sir. I noted that those numbers didn't add
19 up to the exact same number, which suggested something not
20 in alignment, or a problem with measuring one.

21 Q Okay. Let's talk a little bit about impact. When
22 a car impacts a pedestrian, can you tell us a little bit
23 about the physics of that.

24 A Well, if we address it to a pedestrian impacted
25 like in this accident where you have contact with the

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1 passenger front of the vehicle, the pedestrian, compared to
2 the automobile, is relatively stationary. So, Newton's law
3 says they want to remain stationary. So, what you have is
4 you have a vehicle striking the lower torso, and the upper
5 torso wanting to stay where it is, well, what happens, it
6 starts to rotate around the top of the vehicle. So, you
7 have lower torso contact with the front, and the upper torso
8 rotating back, in this case, onto the hood and impacting the
9 hood, and then you have got -- because all modern vehicles
10 have a little bit of a rounded contour at the front. Kind
11 of like a blunt boat.

12 If you rent a boat and you are going to
13 follow it, all of the water to the right, the starboard
14 side, gets pushed to the right. All the water to the left,
15 the port side, get pushed to the left. Well, your vehicle
16 going through the air is doing the same type of thing. In
17 this case, it's encountering a pedestrian, but it is on the
18 far right side. So, the pedestrian picks up a component of
19 velocity toward the passenger side, toward the right,
20 relative to the vehicle. So, they would roll up on the
21 vehicle to some extent, and come off of it on the right
22 side.

23 Q You provided a drawing about that, correct?

24 A Yes.

25 Q And I'm showing you Defense Exhibit 17. Is this a

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1 drawing you provided?

2 A Yes.

3 Q And could you step through that with the -- to
4 help us understand again what you were saying and what these
5 two drawings depict.

6 A The top one presents the motion relative to the
7 vehicle. So, if the pedestrian is at the right front corner
8 of the vehicle, the vehicle is moving forward, the
9 pedestrian goes rearward relative to the vehicle, and then
10 off to the right relative to the vehicle.

11 Now, my transition to looking at what happens
12 relative to the ground. What really happens. The
13 pedestrian never goes backwards, never goes north, opposite
14 direction of the travel of the vehicle. They are always,
15 from the moment of contact, headed south. So, they are
16 traveling forward. But they are also picking up a component
17 of velocity to the right. So, overall that becomes a
18 trajectory off to the right.

19 So, in a collision like this that occurs on a
20 two-lane highway with an automobile in the travel lane, the
21 pedestrian winds up on the shoulder or in a ditch or
22 something like that, that is what you commonly see. If the
23 contact is on the left side of the vehicle, then they end up
24 in the oncoming lane. Because they are propelled both
25 forward in the direction the vehicle is going and laterally,

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1 depending on which side they have contact on. And if they
2 happen to hit right in the middle, now you are looking --
3 they are going to roll up and be projected off and get maybe
4 run over.

5 Q Okay. Thank you.

6 As you reviewed the information that you were
7 provided as part of your accident reconstruction, did you
8 determine where Mr. -- where Mr. Garland ended up relative
9 to the lane of travel?

10 A Yes.

11 Q Okay. I'm going to show you what's been
12 previously introduced as Defense Exhibit 2. Do you
13 recognize that photo?

14 A Yes.

15 Q And can you show us approximately where you think
16 that the body of Mr. Garland struck the paver?

17 A Well, we don't have a photograph of him in
18 position, but right here in this corner is my understanding.
19 I believe we have a blood spot here and a blood spot over
20 here.

21 Q Okay. Would that be consistent with a point of
22 impact in the lane of travel?

23 A Yes, sir, it would. You are looking for a point
24 of impact to the left of where the rest position is.

25 Q And let's talk a little bit about maneuvering.

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1 Did you conduct any calculations to determine what sort of
2 lateral deviation that you can get with different speeds
3 when you are driving?

4 A Yes, sir. With respect to the vehicle I did.

5 Q Okay. And how do you come up with those
6 calculations?

7 A Well, I conducted them from a number of
8 approaches. I conducted a couple of calculations associated
9 with the limit maneuvering. By that, I mean what would be
10 possible if you were taking the vehicle to the traction
11 limits, limiting out its maneuvering, and then I conducted
12 some calculations relative to what reconstruction analysis
13 is recommended, based on what people really do in situations
14 as opposed to what the vehicle is physically capable of.

15 Q And based upon those calculations, were you able
16 to come up with some possible lateral deviations?

17 A Yes, sir.

18 Q Okay. And did you use that -- was that helpful to
19 you in formulating your opinion?

20 A Yes, sir, it was very helpful.

21 Q Okay. And in simple terms because I am a simple
22 man, which is more maneuverable, if you are at a higher
23 speed or at a lower speed?

24 A Well, with respect to the geometry, low speed.

25 Q Okay. And so the higher the speed, the less

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1 lateral deviation; is that correct?

2 A Yes.

3 Q And the lower the speed, the more lateral
4 deviation you can make?

5 A Correct.

6 Q Okay. And based on the maximum performance --
7 now, at maximum performance, would there be any -- would it
8 be physically possible in a setup like existed that night to
9 give maximum performance that you talked about, the maximum
10 level of acceleration, the maximum turn in and out?

11 A No, sir. You can't get the maximum that I
12 calculated, because to do that you have to have approaches
13 that you don't have on this roadway.

14 Q You can't have those approaches for what reason?

15 A For example, the first calculation is if you were
16 to have a circle, like a race track, a perfectly circular
17 race track. If you keep increasing your speed until your
18 vehicle starts to slip and you can no longer maintain that
19 circle, you hit the traction limits. You've also reached
20 the maximum speed that you can do relative to that geometry,
21 the radius of that circle, and the traction that you have.

22 Well, that perfect arc is going to provide
23 the maximum deviation, because what you have got between any
24 two points is a coordinate middle ordinant. That middle
25 ordinant provides your maximum deviation for the coordinate

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1 you just created. But you can't do that on the roadway
2 because you can't drive in a perfect circle.

3 Q What was your maximum deviation at -- now, this is
4 depending upon how far apart the channelization devices are,
5 right?

6 A Correct.

7 Q If the channelization devices were 40 feet, what
8 do you calculate as the maximum lateral deviation at maximum
9 performance?

10 A I calculate 50 feet.

11 Q I'm sorry, at 43.1 feet?

12 A At 43.1 feet, that circular pattern would produce
13 a maximum deviation at 35 miles per hour of 2 feet,
14 basically the width of a cone. Just a tad more than the
15 width of a cone. At 40 miles per hour, at one and a half
16 feet.

17 Q Okay.

18 A So, pretty close to the cone.

19 Q So would there be any oral cues or visual cues if
20 you were operating at that maximum level of performance?

21 A Certainly.

22 Q What would they be?

23 A Well, you would have a lot of lean on the vehicle,
24 you would have your tires squalling. I mean, you hit the
25 traction limits.

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1 Q Okay. In a more realistic way, you considered how
2 far you could deviate in a traffic zone at 43 feet space
3 between cones?

4 A Yes.

5 Q What was that at 35 miles per hour?

6 A Well, stepping down to what you could do, the next
7 thing that I said, you can approach relatively straight,
8 like the travel lane would force you into, and you could
9 make a swerve at the traction limits to try to swerve to the
10 left. So that gives you a smaller number, but it's still a
11 larger number than you would have in typical driving.

12 The numbers that I got with that maneuver at
13 35 miles per hour, 1.15 feet. Basically about 13 and a half
14 inches. At 40 miles per hour, .89 feet. So, ten and a half
15 inches, ten and three-quarters.

16 Q Okay. And then you computed a variety of what you
17 would call the typical driving moves, the double swerve
18 moves where you are in and out?

19 A Yes, recognizing that if you are in a travel lane
20 and you're trying to maneuver to the next travel lane over,
21 you have got to turn right and then turn left, and in this
22 case you've got to turn right again to avoid going off the
23 left side of the travel lane, and those numbers were a few
24 inches, three, four, five inches.

25 Q Okay, so that is not the length of a -- or the

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1 width of a cone, is it?

2 A No.

3 Q Based on those calculations, and based on where
4 Mr. Garland hit the paver, did you reach any conclusions
5 about what happened that evening?

6 A Yes, sir.

7 Q And what was that conclusion?

8 A It was my opinion that the collision was occurring
9 out to the left of where the contact with the paver was
10 made.

11 Q Okay. So, that was --

12 A Which would be out to the left of the work zone.

13 Q That would be in the traffic zone?

14 A The traffic zone, or at most, in the buffer zone.

15 Q Okay. Now, you did a depiction of what the --
16 what the traffic zone would have looked like with devices at
17 25-foot intervals, correct?

18 A I did.

19 Q And would you mind stepping down here, please?

20 And could you just explain that?

21 A Well, what I have depicted is the cones so that
22 the farthest extremity of the paver comes up to the -- as to
23 the right side of the cones, and then the cone width itself
24 is your very small buffer zone, and to the left of that is
25 your traffic zone. And then on the far left side, another

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1 line of cones because you force traffic into straddling this
2 yellow line, the left side of the original pavement.

3 Q Okay. Thank you.

4 Let me show you one more depiction here.

5 This is -- depicts what?

6 A This is the rest position of the vehicle.

7 Q And do you have any opinion about this -- the stop
8 that was made if the collision occurred somewhere between
9 here and here, is that a reasonable controlled stop?

10 A Yes.

11 Q Okay. Thank you.

12 MR. McCUNE: Beg the Court's indulgence, Your
13 Honor.

14 THE COURT: Uh-huh.

15 Q We took a look at the car, or the Jeep. Do you
16 happen to know what the dimensions of the Jeep are, how long
17 the Jeep was?

18 A Yes, sir, I have some data on it.

19 I have 188.6 inches -- 188.6 inches.

20 Q How many feet is that?

21 A I'll tell you in just a second.

22 15.7 feet.

23 Q So a little over 15 and a half feet long?

24 A Yeah.

25 Q And the point of impact was somewhere within 43.1

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1 or 43.2 feet. It happened somewhere between the paver and
2 the cone, correct?

3 A That is the information that we have, yes, sir.

4 Q Okay. A car going 35 miles per hour, how many
5 feet per second is it going, can you tell us that?

6 A Fifty-one and a half.

7 Q So, a car going 35 miles an hour would pass
8 through this zone -- how long would it take a car going
9 35 miles an hour, this might be too complicated, to go 43
10 feet?

11 A .83 seconds.

12 Q Okay. How about going 40 miles an hour?

13 A .73 seconds.

14 Q Okay.

15 A Three-quarters of a second.

16 Q Okay. And the front right of the car was the
17 impact area, correct?

18 A Correct.

19 Q And the vehicle is 15 feet long?

20 A Almost 16, yeah.

21 Q Okay. So, the point of impact had to occur before
22 the front of the paver, correct?

23 A Yes.

24 Q Okay. So the point of impact had to occur at
25 least before the front of the car cleared the paver, right?

TESTIMONY OF WOODROW POPLIN

1 A Yes.

2 Q It happened after that. Let me show you one more
3 diagram, if you wouldn't mind.

4 Okay. Could you explain to us what this is?

5 A Well, this is one that I plotted just to show you
6 the measurements that I had. This is the original that I
7 have. I have enough lines and cones put in there to at
8 least give you an idea as to where things are positioned.
9 Here is the outline of the paver. But all of these little
10 small points are the things that were actually measured.
11 So, what I have got is that I have -- they were taken with
12 Toll Station, which measures spherical versus horizontal
13 lines or vertical lines in the distance to the car angle,
14 and that is translated in direct angular coordinates X, Y
15 and Z that you may have seen in algebra or something.

16 So, I have simply plotted all of those, and I
17 did it on the computer to make it easy, and that is what is
18 showing up. So I have an elevation for each of these points
19 and I have a description that was keyed in when that point
20 was taken. And I have a location.

21 Q Okay. What does this depict here?

22 A These four points tell me where the Jeep came to
23 rest. What they did is they measured where each of the
24 tires were. So, if you know the four tire positions, you
25 know what they did.

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1 Q There was some debris around the front of the
2 paver. Can you help us with that? Did you plot anything
3 that was of significance to you in your investigation? Was
4 there anything that meant anything to you around the paver?

5 A I didn't take any particular significance to the
6 debris. We had a little bit of glass, which presumably is
7 carried by the pedestrian as he travels to rest. We have
8 some blood obviously. We have, I believe, a bag of peanuts
9 or something associated with peanuts was recorded. Some
10 type of bag, okay. I didn't take any significance out of
11 any of those.

12 Q Okay. And you were at one point given a point of
13 impact estimated for a -- a witness-reported point of
14 impact, correct?

15 A Yes.

16 Q Okay. And tell us what this depicts.

17 A Well, I simply took the measurements I was given,
18 both in what was measured with Toll Station and then
19 measured by hand, as 16.9 feet and 26.3 feet, and I draw a
20 circle at 16.9 feet around this cone and a circle 26.3 feet
21 around this corner of the paver, and those are the second
22 two points. One of those was out in the travel area, well
23 into the left lane. The other one was off to this side,
24 well into the right lane.

25 Q How --

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1 A Obviously from the descriptions that came along
2 with these measurements, it was a spot identified in the
3 right lane with a lot of loose stone and everything around
4 it.

5 Q How far into the right lane, measuring
6 perpendicularly, was that?

7 A Well, I took a measurement from the left side of
8 the cone to the edge of the paver to this spot, and it was
9 4.7 feet. Basically about this far.

10 Q Is that beyond the maximum maneuvering capability
11 of the automobile?

12 A That is way beyond the maximum.

13 Q Okay. So just a very quick summary here. This
14 depicts the information you were provided of the
15 channelization devices?

16 A Yes.

17 Q Okay. And are these channelization devices in
18 your opinion in compliance with the SCDOT requirements?

19 A No.

20 Q And what is your understanding of the SCDOT
21 requirements that these channelization devices should be at?

22 A More than 25 feet.

23 Q Okay, and let's say that the requirements were
24 50 feet, would that be in compliance with that?

25 A No.

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1 Q Okay. And what is the maximum buffer zone that
2 could have existed that separates the active traffic zone
3 from the work zone in this environment?

4 A In this environment, the way that I would see it
5 would be the width of a cone. The width of a cone is kind
6 of like the lane line in the middle. It doesn't belong to
7 anyone. If you are on a two-lane roadway and you have a
8 broken dividing line, you can't claim that line, and the
9 oncoming car can't claim that line. If you both claim that
10 line you are going to have a collision. So you both have to
11 stay away from that line. If you are on the right side of
12 these cones you're supposed to stay on the right side. If
13 you are on the left you're supposed to stay on the left.
14 Otherwise, you are in danger of trying to claim the same
15 area.

16 Q Okay. All right. Thank you.

17 MR. McCUNE: Thank you for your indulgence.

18 THE COURT: Uh-huh.

19 (Off-the-record discussion.)

20 Q Mr. Poplin, having reviewed the material and
21 having prepared the report, you said you had reached a
22 conclusion regarding the impact point of the -- where the
23 point of impact was, correct?

24 A Yes.

25 Q And the point -- your estimation was point of

TESTIMONY OF WOODROW POPLIN

1 impact was where?

2 A To the left of the work zone, to the left of that
3 final position on the paver.

4 Q Thank you.

5 A Presumably out in the travel zone.

6 Q Thank you.

7 MR. McCUNE: May we approach, Your Honor?

8 THE COURT: Uh-huh.

9 Q Mr. Poplin, let me give you a hypothetical. If
10 you were going to test the ability for a driver to maneuver
11 in and out of the work zone, could you set up an experiment
12 for a demonstration of that?

13 A Yes.

14 Q And how would you do that?

15 A Well, there are a number of ways you could do
16 that.

17 Q What would be the simplest way to do it?

18 A Well, you would want something that's realistic
19 for the conditions that you had. You would want, in this
20 case, the cones were identified as 43.1 feet apart, so you
21 set the cones up at 43.1 feet apart. You use a vehicle, you
22 determine a speed.

23 Q Is it important what kind of vehicle you use?

24 A It has some bearing on it, yes.

25 Q What type of vehicle would be more appropriate in

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1 a situation like this? Obviously a 2009 Jeep Commander
2 would be the best.

3 A Well, the 2009 Jeep Commander would be the best.
4 The second best would be another Jeep Commander or a similar
5 vehicle. But these type of numbers are not highly dependent
6 on the vehicle being used; they are somewhat dependent. The
7 problems -- there are other problems associated with using a
8 different type of vehicle.

9 Q Okay. Well, assume that you have a vehicle that
10 adequately replicates the accident vehicle, then how would
11 you conduct that experiment from there?

12 A Well, a very simple way would be just to drive it
13 and attempt the maneuver.

14 Q Okay, and let me ask you this, would you
15 consciously attempt to maneuver around, strike an object and
16 then move back around?

17 A Well, if you are trying to do some evaluation
18 relative to this accident, the descriptions are that no
19 cones were contacted. So if you are looking at a deviation
20 between the cones, you would conduct that maneuver hopefully
21 without contacting the cones.

22 Q Okay. But any -- any result you had from that
23 would be dependent on other variables, correct, whether you
24 were able to strike or not strike the cone --

25 A Sure, there are a lot of variables. I mean, I

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1 have done this type of test.

2 Q Right. And one of the variables would be how far
3 you would laterally deviate, how far you needed to laterally
4 deviate to hit the cones. So how far the middle cone, if
5 you would, was placed.

6 A Yes. I mean, you can make the maneuver and you
7 can try to track the maneuver, or you can put an object in
8 there and try to hit it. There are a number of ways that
9 you can set it up.

10 Q And do you think -- hypothetically speaking, would
11 you conduct this test at different rates of speed, or would
12 you conduct the test at a constant rate of speed? In other
13 words, would you do a test at a constant rate of speed as
14 computed by your speedometer?

15 A Well, if you are using your speedometer, you need
16 to either calibrate the speedometer or use another source.
17 Speedometers are notoriously inaccurate.

18 Q Why would you calibrate your speedometer?

19 A That would be an important part of establishing
20 your test.

21 Q You say that speedometers are inaccurate?

22 A Well, speedometers typically overestimate or
23 over-report the speed. If you look at your speedometer and
24 it says 40, typically you are not doing 40.

25 Q What could you do to overcome that speedometer

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1 problem?

2 A Consciously establish whatever your speedometer
3 reads relative to the calibrated speed. I mean, that
4 varies. Tire wear can influence it, air pressure can
5 influence it, temperature can influence it. Whatever you
6 are doing at the time.

7 Q But in general, speedometers are designed so that
8 they don't under-report speed. Because you don't want
9 people driving at what they think is 60 miles and hour and
10 it's really 65. You would rather have them driving at what
11 they think is 60 and it's really 55.

12 A That's generally considered okay. In fact, in
13 Europe, that is a requirement, you have to do that.

14 Q So, hypothetically speaking, you could conduct an
15 experiment of this type, correct, or a demonstration of this
16 type?

17 A Yes, sir, I have done this on a number of
18 occasions.

19 Q And the results might help inform you as to the
20 real capabilities as opposed to the mathematically computed
21 capabilities of the vehicle?

22 A Yes, sir, they will establish the real
23 capabilities, which will fall in line with these
24 mathematical capabilities. Because like I say, I have done
25 this on a number of occasions, and that is the answer that

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1 you get.

2 Q The calculation that you get is that the collision
3 took place where?

4 A Out of the work zone into the travel area, or at
5 most, the edge of the buffer zone.

6 Q Thank you.

7 MR. McCUNE: No further questions at this
8 time, Your Honor.

9 THE COURT: Mr. Foreman, ladies and
10 gentlemen, we are going to take advantage of this
11 break to take a restroom break. During the break,
12 please do not discuss the case, and please leave
13 your notebooks in your seats. After a short
14 restroom break, we will resume with cross
15 examination.

16 (Jury exits the courtroom at 3:45 p.m.)

17 THE COURT: You may be seated.

18 You may proceed with the questions that you want
19 to ask the witness.

20 MR. McCUNE: Thank you, Your Honor. Were
21 this to proceed, I would ask the witness if --

22 THE COURT: You need to ask the questions
23 that you were going to ask.

24 MR. McCUNE: Thank you.

25 (In-camera examination held as follows:)

IN-CAMERA EXAMINATION

1 BY MR. McCUNE:

2 Q Mr. Poplin, have you conducted the demonstration
3 to simulate the events of that evening?

4 A No, sir.

5 Q Have you conducted -- did you ever try to
6 replicate deviating to the right to hit an object between
7 two objects that are 43 feet apart?

8 A Yes.

9 Q Okay. And how did you do that?

10 A I set up two cones along the center line of a
11 two-lane roadway in an isolated area, 43 feet and one inch
12 apart on centers, and placed another cone midway between
13 those at two locations, one 16.9 feet south of the upstream
14 cone, and the other position was midway between the cones,
15 and offset one foot.

16 Q Offset one foot. Did you establish a buffer zone
17 on the left-hand side so that you could simulate a lane?

18 A I established a line with cones on the left side
19 to reduce the approach path to a lane width.

20 Q Those cones were placed at a lane width?

21 A Yes.

22 Q Did you document the placement of the cones by
23 photography?

24 A Yes.

25 Q And did you document these test runs by

IN-CAMERA EXAMINATION

1 videography?

2 A I did.

3 Well, I did six of them, and I did a number
4 of them without videography.

5 Q Okay. And did you establish your speed at a
6 particular speed?

7 A I used my global positioning system, GPS to
8 establish my speed.

9 Q What speed did you perform this at?

10 A I used 35 miles per hour for all of those.

11 Q And you said that you made six recorded passes?

12 A Yes, recorded on video.

13 Q How many total passes, do you recall?

14 A I think ten.

15 Q During these passes, were you able to maneuver
16 around the first cone, hit the second cone and then maneuver
17 around the third cone successfully?

18 A No.

19 Q On any of the passes?

20 A Not on any of them.

21 Q Okay. And I would like to show you what's been
22 marked for identification as the --

23 THE COURT: I have already admitted it as a
24 Court's exhibit. There's no need to play it. We
25 are hearing this in-camera for the purpose of

IN-CAMERA EXAMINATION

1 proffer.

2 MR. McCUNE: Okay, thank you, Your Honor.

3 That is all of the questions that I would ask.

4 THE COURT: Any questions from the State?

5 MR. KIDD: Just briefly.

6 BY MR. KIDD:

7 Q What sort of vehicle did you perform those tests
8 in?

9 A A 2007 Honda Ridgeland.

10 Q Does that have the same wheel base as a Commander?

11 A It is going to have a similar wheel base, it is
12 probably not going to have the exact same wheel base.

13 Q Is it larger or smaller?

14 A It is not going to be larger. It may be just
15 slightly smaller. The Commander is a pretty big vehicle.

16 Q Don't Jeeps notoriously have smaller wheel bases?

17 A You must be thinking CJ5, the older one.

18 Q What about the pavement, was it similar pavement
19 as on the scene?

20 A No, the pavement was relatively clean. It wasn't
21 contaminated like the pavement on the scene. That would
22 tend to reduce any values that you have, that pavement.

23 THE COURT: Sorry, didn't hear what you said.

24 A It would tend to reduce any values that you had,
25 that contamination. Because it would restrict the values.

IN-CAMERA EXAMINATION

1 Q Did you conduct it at day or nighttime?

2 A I conducted it in the daytime.

3 Q Do you recall the temperature?

4 A Not exactly, but roughly 75 degrees.

5 Q Does temperature have an impact on traction?

6 A It has a minor impact, yes.

7 Q And the recorded passes was with the cone, the
8 offset cone at the center line, or did you record them at
9 both the center line and the --

10 A I recorded -- the first five video runs were made
11 with the intermediate cone midway between the first and last
12 cone. The sixth and last run was made with that midpoint
13 cone moved up to 16.9 feet.

14 Q At any point in the information that you have
15 reviewed in preparation for this case, was an impact ever
16 indicated to be at center point?

17 A No.

18 Q What about lane size, is -- and I just don't know
19 so maybe you can educate me here. Is a highway lane the
20 same width as a kind of back roads lane?

21 A It depends on which back road that you are talking
22 about, but major highways have 12-foot wide lanes.

23 Q What about back roads?

24 A Back roads have lanes typically ten and a half,
25 11, 11 and a half or 12. The particular lane we have in

IN-CAMERA EXAMINATION

1 this accident is reduced down from a 12-foot lane. It is
2 probably closer to a nine to 10-foot lane.

3 Q Because of the buffer zone and --

4 A Because of the cones and the paver are using a
5 portion of that lane. If you look at some of the
6 photographs, it looks like the barrels are actually placed
7 on top of the left side lane line as well. So, you could be
8 dealing with as little as about a nine foot lane. If you
9 recall, the old Cooper River bridge had 10-foot lanes.

10 Q That was scary.

11 A That wasn't very comfortable to drive across.

12 Q I remember it well.

13 But what about, though -- would you agree
14 that on the scene when you extend into another lane, the
15 idea is that -- maybe -- whether or not it was in this case,
16 the idea is that the adjacent lane would then channel out
17 over the edge stripe, thereby extending the lane past the
18 stripe, ideally?

19 A I'm not sure what the question is. I mean, you
20 are asking me, can you do that?

21 Q No, I'm just saying when the paver extends into
22 the work zone -- I mean, into the traffic zone, you agree
23 with that?

24 A Well, I don't agree that it should. I agree that
25 it did on this case.

IN-CAMERA EXAMINATION

1 Q Okay, and when you talk about proper
2 channelization, do you agree that there's no way that a
3 paver can match up pavement without crossing that line to
4 some extent?

5 A I don't have a problem with the paver, I have a
6 problem with the channelization.

7 Q Sure. So if the channelization was appropriate,
8 when the paver extends over that mid line, the
9 channelization would then extend over the far left edge to
10 give the active lane enough space?

11 A Correct, that is the way that I drew it up.

12 Q So, if it was set up appropriate, the active lane
13 would maintain the width of the entire road? If set up
14 appropriately.

15 A It would maintain a width similar to the original
16 traffic lane.

17 Q Anyway, I think that we got off track.
18 What was the width of the lanes that you were
19 using?

20 A I didn't measure them. They were down at the end
21 of Walhalla Island.

22 THE COURT: Sorry, I didn't hear the last
23 part.

24 THE WITNESS: They are down at the end of
25 Walhalla Island.

IN-CAMERA EXAMINATION

1 BY MR. KIDD:

2 Q Would you agree that the width of the lane is
3 important, because the lie of the lane, the steeper the
4 angle you would be able to take going into the cone, after
5 the first cone?

6 A I think that is a factor, yes.

7 Q And finally, conducting an experiment like this,
8 there's obviously a large human element in it as well; do
9 you agree with that?

10 A In this particular one, yes.

11 MR. KIDD: That is all of the questions that
12 I have, Your Honor.

13 THE COURT: Let me ask a question.

14 Well, is there any redirect?

15 MR. McCUNE: No, Your Honor.

16 THE COURT: Does the State have any exception
17 to the line of questioning without the video that
18 the Defense has just solicited from this witness?

19 MR. KIDD: Judge, I think that I should, but
20 what is good for the goose is good for the gander.

21 THE COURT: That is why I asked that
22 question.

23 MR. KIDD: Because you let me get it in, I
24 don't feel like I have standing to object to them
25 testifying about it. I would object to the video.

IN-CAMERA EXAMINATION

1 THE COURT: How about splitting the baby,
2 y'all agreeable to that?

3 MR. BISCHOFF: Yes, ma'am.

4 THE COURT: I think that's fair. We are
5 going to take a quick restroom break as well.

6 Over the lunch recess I did some research, and
7 most of the research deals with animation, which in my
8 estimation, an animation is far more accurate than a
9 re-creation. Animations are based on feeding numbers
10 of criteria basically into a program, and then the
11 program basically animates for you.

12 Let's use an animator. There is some human
13 subjective element to it, but generally variables and
14 scientific formulas, and a video re-creation is made.
15 In this instance, and again, I'm jumping a little ahead
16 of myself, but dealing with the human element of it,
17 if, let's just say for argument's sake the officer in
18 this case had recorded it with a dash cam, I would not
19 have let it in.

20 There are -- there's a distinction to be made
21 between the officer's testimony and this witness'
22 testimony, but I asked the question, Mr. Kidd, because
23 I felt it reasonable to allow this line of questioning,
24 and I felt that he probably would agree with me.

25 But the officer's testimony really was not

IN-CAMERA EXAMINATION

1 elicited in any scientific fashion, it really was
2 elicited in response in allowing the State to
3 rehabilitate their witness, and he really testified
4 within the lay scope of his being an officer and the
5 extent of his investigation of this case. That is
6 really the scope of which he testified. Which is, I
7 testified about this because I have a greater
8 responsibility to the public and to the Defendant, and
9 really, frankly, to be fair, I wanted to go out there
10 and see if this was possible, and I did this.

11 But it wasn't from any sort of scientific
12 sampling. And again, it was to allow the State to
13 rehabilitate their witness based on what had been
14 elicited from defense counsel.

15 But our case law that we have, we have maybe one
16 or two criminal cases on animation; most are in the
17 civil context. You normally have video animations if
18 you're re-creating accidents. The large majority of
19 those deal with CSX Railroad recreating a car/train
20 collision, or really big tort cases where you have a
21 really bad automobile accident.

22 But the things that were problematic for me with
23 the video, and Mr. Kidd drew those out during -- and
24 they came out during the Defense's questions of the
25 witness, really deal with the similarities of being

IN-CAMERA EXAMINATION

1 able to recreate this on a video. And what troubled me
2 the most is the human element. That is why I wouldn't
3 allow the officer's video in and why I wouldn't let
4 this one in.

5 Because there's a large human element in driving.
6 There's a huge variation in construction of vehicles
7 when you start dealing with utility vehicles versus
8 smaller vehicles versus wheel base, all of those things
9 that can't really be simulated unless, as your expert
10 opined, you have the exact vehicle under the exact
11 conditions, which can't be re-created, and just the
12 subjective nature of it. I think that is a fair
13 resolution.

14 What we will do is take a quick restroom break,
15 and when we resume I will allow you to ask those
16 questions of the witness, and then we'll resume with
17 cross examination of the witness.

18 MR. BISCHOFF: Thank you, Your Honor.

19 THE COURT: Okay. We will take a short
20 break. Sir, you can take a restroom break as
21 well. Just don't discuss your testimony with
22 anybody.

23 (Brief recess. Proceedings continued in Volume
24 7.)

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REPORTER'S CERTIFICATE PAGE

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CERTIFICATE

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4

STATE OF SOUTH CAROLINA:

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COUNTY OF CHARLESTON:

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

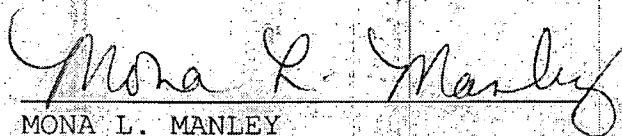
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DATED this 1st day of May, 2014.

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1 State of South Carolina }
2 County of Charleston } Indictment No. 2012GS1001033
3 State of South Carolina, }
4 Plaintiff, }
5 vs. } Trial Transcript
6 Daniel D. Hamrick, }
7 Defendant. }

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9 VOLUME 7

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15 October 24, 2013

16 Charleston, South Carolina

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21 BEFORE:

22 The Honorable Deadra Jefferson

23

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TESTIMONY OF WOODROW POPLIN

1 (Following a brief recess the following
2 proceedings were held:)

3 THE COURT: State ready to proceed?

4 MR. KIDD: Yes, ma'am.

5 THE COURT: Defense ready to proceed?

6 MR. BISCHOFF: Yes, ma'am.

7 THE BAILIFF: Jurors all present, Your Honor.

8 THE COURT: You may be seated. Ladies and
9 gentlemen, I hope that up enjoyed your break. We
10 will now resume the witnesses. You may proceed.

11 MR. McCUNE: Thank you, Your Honor.

12 THE COURT: You are welcome.

13 Thereupon,

14 WOODROW POPLIN

15 resumed the stand, having been previously duly sworn,
16 was examined and testified as follows:

17 DIRECT EXAMINATION (CONTINUED)

18 BY MR. McCUNE:

19 Q Mr. Poplin, did you ever have an occasion to
20 attempt to replicate the distances that were established on
21 the document you have and try to maneuver a vehicle to hit
22 an object within that distance?

23 A Yes, I did.

24 Q And how did you set that up?

25 A Well, I set it up similar to the manner in which

TESTIMONY OF WOODROW POPLIN

1 the accident had been described with two cones, 43.1 feet
2 apart. And in this case I used an intermediate cone set one
3 foot to the right of the left edge line of the cones. And I
4 did that because I had the report and somebody else was
5 doing this at 45 miles per hour.

6 Q Okay. And when did -- how did you -- how did you
7 arrange the lane of travel? How did you set up the lane of
8 travel that you were going to be traveling in?

9 A I set up the cones on center line of the roadway
10 with the left edge on center lines. And I lined the left
11 edge of the travel lane with cones.

12 Q Okay. And do you know approximately how wide your
13 travel lane was; do you have any idea?

14 A I think the area that I was in, they should be
15 11 feet or so.

16 Q Okay. And then --

17 A I did not measure.

18 Q You didn't measure it, okay. And then what kind
19 of vehicle did you use to conduct this?

20 A I used my personal vehicle, a 2007 Honda
21 Ridgeline.

22 Q A Honda Ridgleine, is that a sedan, an SUV, what
23 type of vehicle?

24 A That is a pick-up.

25 Q Does that have any special kind of suspension in

TESTIMONY OF WOODROW POPLIN

1 it, any special handling characteristics that we ought to
2 know about?

3 A No, it ought to be relatively similar to the Jeep
4 Commander that we had in this case.

5 Q Okay. And did you establish a speed at which you
6 were going to conduct this experiment?

7 A I conducted it starting at 35 miles per hour with
8 the intention, if I was successful, to move up from there.

9 Q Okay. And how did you establish your speed of 35
10 miles an hour?

11 A I used my GPS.

12 Q Okay. And why did you use your GPS?

13 A Because I believed that to be more accurate than
14 my speedometer.

15 Q Did you happen to check at all if it was more
16 accurate than your speedometer?

17 A I have checked it in the past and the GPS has no
18 reason to have any built-in error in it. The speedometer
19 does.

20 Q So, when you set up this experiment or this
21 demonstration or this try up, how many passes total did you
22 make during this maneuver?

23 A I made, I believe, ten passes.

24 Q Okay. And what was your object during these ten
25 passes?

TESTIMONY OF WOODROW POPLIN

1 A My object was to stay within the confines of the
2 left lane until I reached the area of the cones and then
3 travel as far as I could to the right in a maneuvering
4 fashion, and maneuver back to the left while remaining in
5 the left lane and avoiding overturning my vehicle and see to
6 what extent I could maximize the intrusion to the right
7 without striking the cones.

8 Q Okay. And how far to the right did you say that
9 you set the object?

10 A I set it one foot offset to the right of the two
11 end cones.

12 Q Okay. And are you talking one foot from the -- as
13 you are facing the run, you are going this way, you are
14 facing the run, did you set it one foot from the right side
15 of the cone, the base of the cone, or one foot from the left
16 side of the cone?

17 A I set the intermediate cone one foot to the right
18 of the left side of the intermediate cones. So, if I put
19 three cones in a line, I went to the middle one and moved it
20 one foot to the right.

21 Q Okay. And do you know what the dimensions of the
22 cones that you used were, any idea?

23 A The two end cones were 28 inch cones, the
24 intermediate cone was a smaller cone.

25 Q Okay. And by 28 inches, is that height or width?

TESTIMONY OF WOODROW POPLIN

1 A Height.

2 Q Okay. Do you know what the width is by any
3 chance?

4 A Base width on those is going to be roughly a foot.

5 Q A foot?

6 A Perhaps a little bit larger than a foot.

7 Q Okay. That is about half of the size of the tall
8 boy cone and half of the width of the tall boy cone?

9 A It is going to be a little more than that.

10 Q Little more than half of the width of the tall boy
11 cone?

12 A Yes.

13 Q So, you set it up. And tell us how it went.

14 A I was unable to strike the intermediate cone and
15 avoid striking the end cones on any of the runs that I made.

16 Q Okay. And the majority of the runs you made,
17 where was that intermediate cone in relation to the other
18 two?

19 A Well for all of the runs, except for the last and
20 final run I made, the intermediate cones was between the end
21 cones, but in the last one I moved it to 16.9 feet. I know
22 that is a little more limited, ten. I didn't have success
23 with the first nine. I didn't have success with that one
24 either.

25 Q Is there a reason that you chose the midpoint of

TESTIMONY OF WOODROW POPLIN

1 the cones?

2 A Well, it is going to be the point you can get to
3 the maximum.

4 Q So, the mid point would be the point that you can
5 maneuver out from and still make it back?

6 A For general maneuvering, it would be basically the
7 max.

8 Q And you didn't replicate any of the environmental
9 conditions that were existing at the time of this accident,
10 correct?

11 A No.

12 Q And you didn't -- you used your own vehicle and
13 you didn't use the Jeep Commander?

14 A That is correct.

15 Q But to your abilities you were not able to perform
16 that maneuver?

17 A I was right on the edge of it at 35 miles an hour.
18 I think if I could have stayed out there long enough I might
19 have got one at 35 miles per hour. My numbers say that I
20 can't do it at 40 or 45. And driving that vehicle I could
21 not do it at 40 or 45 miles an hour.

22 Q Okay. And may I approach the witness, Your Honor?

23 THE COURT: You may.

24 Q I'm showing you again what's been marked for
25 identification as Defense Exhibit 12, is that experiment in

TESTIMONY OF WOODROW POPLIN

1 there anywhere?

2 A No.

3 Q Did you conduct the experiment before you wrote
4 that report?

5 A Not relative to this case. I mean, this type of
6 thing I have done in the past.

7 Q Okay. But you didn't include that information in
8 this report?

9 A I didn't do a specific test set-up or anything for
10 this report. I crunched the numbers.

11 Q Okay.

12 MR. McCUNE: May I approach?

13 THE COURT: You may.

14 MR. McCUNE: And, Your Honor, we would offer
15 Defendant's Exhibit 12 into evidence, and I think
16 that would probably be over objection.

17 THE COURT: Any exception?

18 MR. KIDD: We object to it.

19 THE COURT: Marked for ID only at this time.

20 *(Whereupon, Defendant's Exhibit No. 12 was marked*
21 *for identification.)*

22 MR. McCUNE: Okay. Thank you, Your Honor.

23 THE COURT: You are welcome. Any further
24 questions of the witness?

25 MR. KIDD: Yes, ma'am, thank you.

TESTIMONY OF WOODROW POPLIN

1 CROSS EXAMINATION

2 BY MR. KIDD:

3 Q Do you think that you would have had different
4 results on that experiment had your wheel base been a foot
5 shorter?

6 A You should -- you would have some different
7 results, yes.

8 Q Would it surprise you that the wheel base on a
9 2007 Honda Ridgeline is 122 inches?

10 A Sounds reasonable.

11 Q Would it surprise you that the wheel base on a
12 Jeep Commander 2009 was 109.5 inches?

13 A I actually have that. What?

14 Q 109.5 inches.

15 A I have a little more than that, but close.

16 Q What do you have?

17 A 109.84. Pretty close.

18 Q Is that significant -- that is pretty close,
19 right?

20 A That is pretty close.

21 Q I might not have paid as much to detail as I
22 should have, but that is bigger based on the Ridgeline?

23 A Based on the wheel base, yes.

24 Q So, would that affect the accuracy of that test
25 that you just testified about?

TESTIMONY OF WOODROW POPLIN

1 A It would have some effect. But the primary thing
2 that is controlling that is the maneuvering time and
3 traction.

4 Q Do you know that the Crown Vic has 115 wheel base?

5 A It sounds reasonable.

6 Q That is a little bit closer to the wheel base of a
7 Jeep Commander, isn't it?

8 A Yes.

9 Q And so the experiment conducted with the Crown
10 Vic, in that regard, would be more accurate, right? As to
11 wheel base.

12 A With respect to wheel base, yes. Although I'm not
13 sure where you got that Ridgeline number; longer than a
14 Crown Vic?

15 Q It is your car, you know.

16 A I'll look it up when I get back. Trust me.

17 Q Please do. In your direct you indicated on this
18 photo the body position, where it was located. Would you
19 recreate that mark for me?

20 A I believe that we had a bloodstain out in this
21 area and we had one in this area.

22 Q All right.

23 A I mean, there are some closer photos, I believe.

24 Q Let me show you what's been marked as State's
25 Exhibit 8. I might have a better photo than that. (Pause.)

TESTIMONY OF WOODROW POPLIN

1 MR. KIDD: The Court's indulgence one moment.

2 BY MR. KIDD:

3 Q Did you see the bloodstain in that photograph?

4 A Yes.

5 Q Can you tell about how far away from the center
6 stripe that is?

7 A Well, it looks like this blood is actually pooling
8 here and running this way.

9 Q Let me show you State's Exhibit 16 and it'll be
10 easier to see.

11 A Well, that actually shows both, so that is good.
12 You have got one down here and then one up here.

13 Q The one on the top, that would be consistent with
14 when the body was on the cat walk and blood was dripping
15 down on the pavement?

16 A Yes.

17 Q And the blood over there in the active lane, that
18 would be consistent with when they rolled him off of the cat
19 walk and EMS was treating him?

20 A If that's what they did, yes.

21 Q So, based on the blood positioning in the work
22 zone, would that indicate that the body came to rest inside
23 the work zone?

24 A It would indicate that some of it did.

25 Q Correct.

TESTIMONY OF WOODROW POPLIN

1 A I mean, you know, I'm thinking that his body is
2 probably close to 6 feet long.

3 Q It could also be extending the other direction,
4 could it not?

5 A Yes.

6 Q So, if you had a 6-foot body who suffered a
7 traumatic head injury, right?

8 A Yes.

9 Q And the feet were going in the other direction it
10 could extend 6 feet farther into the work zone, is that
11 right?

12 A Yes, that's correct. But I would expect the
13 description of where the body was to be different than what
14 we had.

15 Q Do you see this item right here?

16 A Yes.

17 Q Do you know what that is?

18 A It looks like it may be a piece of glass.

19 Q It looks like it would be a piece of that head
20 lamp from that Jeep Commander, doesn't it?

21 A I mean, it very well could be.

22 Q You reviewed the measurements and schematics that
23 the police handed you that Defense counsel just went over
24 with you, right?

25 A Yes.

TESTIMONY OF WOODROW POPLIN

1 Q I believe that it was Defense 24?

2 A Yes.

3 Q Does it not indicate a head lamp fragment over
4 there on that corner of the road?

5 A It does not, it says glass.

6 Q And does it say glass on the closer piece as well?

7 A Yes.

8 Q They are identified the same?

9 A Yes, that is accurate.

10 Q What would a piece of glass on the far lane of the
11 head lamp indicate to you?

12 A That it bounced over there.

13 Q So, it had a lateral momentum?

14 A Yes, it would have.

15 Q What sort of trajectory of the vehicle would give
16 it lateral momentum like that?

17 A Forward.

18 Q Forward trajectory of the vehicle would give a
19 lateral velocity to that piece of glass and knock it all the
20 way across the lane?

21 A I'm not looking at the vehicle moving laterally.

22 No one has talked about it being in a yaw.

23 Q No one has talked about it being in a what?

24 A In a yaw, oriented differently than its track.

25 Q I have got you. Now, this is the diagram that you

TESTIMONY OF WOODROW POPLIN

1 prepared, right?

2 A Correct.

3 Q Now, I'm going to overlay it. I know this isn't
4 to scale.

5 A I have one to scale.

6 Q We will use this one. Is that about how you see
7 the impact occurring?

8 A I think from a concept, yes.

9 Q Okay. Now, would you agree with me then that, had
10 the paver not been where it was, the body would have ended
11 up in a different spot?

12 A Yes, the body would have continued to track south
13 and north.

14 Q So the body would have continued to track south
15 and north, therefore it would have moved farther into the
16 work zone had the paver not been there, right?

17 A Correct.

18 Q And you don't know how far in the work zone it
19 would have traveled had the paver not been there, do you?

20 A No.

21 Q So, if the paver wasn't there and the body had
22 traveled all the way across the work zone would you change
23 your opinion about where the impact occurred, not taking
24 into account any cone placement?

25 A Well, the location would be a little more nebulous

TESTIMONY OF WOODROW POPLIN

1 then. You would still be looking north and toward the left.

2 Q So, if --

3 A You are always looking towards the left with this
4 type of contact.

5 Q Always?

6 A Yes.

7 Q Now there's a few different ways body trajectories
8 depart from vehicles at different speeds; is that correct?

9 A Correct.

10 Q There's a few different vault methods, right?

11 A That is the way that some people phrase it, yes.

12 Q At different speeds bodies travel farther up the
13 vehicle, right?

14 A Yes.

15 Q And really over about 40 miles an hour a body is
16 going to clear, 40 or 45, in that range, is that accurate?

17 A When you start to get up there, you have the
18 potential for that to happen; it doesn't necessarily have it
19 happen.

20 Q But it can happen at 40 to 45 miles per hour,
21 right?

22 A Yes.

23 Q And when a body clears over the roof of a car,
24 they call that like a somersault vault, right, that is the
25 type of trajectory they refer to when you get to those

TESTIMONY OF WOODROW POPLIN

1 speeds?

2 A Roof vault is what I --

3 Q Roof vault. Do some people in the field call it
4 somersault vault?

5 A I have seen that term. This is not engineering
6 terminology. It is . . .

7 Q It is accident reconstruction terminology, right?

8 A Yes. So there aren't any hard and true
9 definitions of some of those people that coin them to try to
10 describe the various motions of the body about the vehicle.
11 You hear about fender vaults and roof vaults and somersaults
12 and there's probably a dozen different terms.

13 Q Whatever the term may be, roof vaults, over
14 40 miles an hour, they don't have the same lateral
15 deviation, do they?

16 A No, they wouldn't. But I think when you are
17 talking about roof vaults at that speed you are looking at
18 vehicles with a lower profile than a Jeep Commander.

19 Q But there's also --

20 A I mean, a Chevrolet Corvette you can certainly
21 envision that type of thing occurring at those speeds. A
22 Camaro, or some low-slung vehicle, is going to take a lower
23 speed to pick up that type of rotation, but a Jeep Commander
24 is a fairly tall vehicle.

25 Q But there's also a human element involved too,

TESTIMONY OF WOODROW POPLIN

1 right?

2 A You mean with respect to the size of the
3 individual?

4 Q And with respect to how he acts prior to impact?

5 A If he jumps up or something like that it can have
6 an influence, yes.

7 Q And jumping up is exactly what I'm talking about.
8 And on a bigger vehicle, if someone were to yell out right
9 before they were coming and they jumped to get out of the
10 way it would have an impact and make a roof vault more
11 highly -- more likely?

12 A Yes, it would improve the chances, yes. It would
13 improve the chances, especially if the vehicle were lower.

14 Q And on a roof vault the lateral deviation or the
15 lateral velocity would be less?

16 A If you have a true going over the roof like that
17 it is probably because you are not picking up much lateral
18 velocity. You can have that type of motion referred to even
19 if you are not talking about technically the pedestrian
20 going over the roof as opposed to just as high as the roof.
21 There would be a difference.

22 Q And also it could be different if the vehicle is
23 not traveling in a straight line. So, if the vehicle is
24 turning or swerving at the moment of impact that lateral
25 velocity could then be transferred to the pedestrian for the

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1 times that the pedestrian is in contact with the vehicle,
2 right?

3 A For the purposes of the pedestrian contact, I mean
4 you are looking at such a short time frame. The overall
5 motion of the vehicle, for example, in a swerving maneuver
6 is not going to be reflected in the pedestrian's motion much
7 at all. You are just talking about such a short time frame.

8 Q Would the angle --

9 A Your typical collision, you know, roughly a
10 hundred milli seconds.

11 Q Sorry, I don't mean to cut you off.

12 A Well, what you are looking at rather than the
13 swerving motion of the vehicle is whatever the angle of the
14 vehicle is at the moment of contact. It is going to be very
15 much like it was traveling in that direction.

16 Q Could that make sense?

17 A Not a bit.

18 Q Based on what?

19 A You can't get over there.

20 Q Based on what?

21 A Based on my numbers, based on testing.

22 Q Based on cone spacing?

23 A Based on cone spacing.

24 Q Based on assumptions?

25 A Based on assumption, they are measuring what was

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1 out there and what was out there is what is there.

2 Q But nobody knows where the cones are at impact, so
3 it is based on assumption, is it not?

4 A If nobody knows where the cones are then we don't
5 know where the work zone is and we don't know where the
6 traffic zone is.

7 Q And that is a problem?

8 A That is a problem.

9 Q And that makes a problem for your entire report,
10 doesn't it?

11 A No, my document is accurate based on what was out
12 there. If what was documented out there is not remotely
13 what we had, then obviously we don't know where the work
14 zone is, we don't know where the traffic zone is and we
15 don't know where the buffer zone is.

16 Q That is exactly right. You watch TV?

17 A Yes.

18 Q You ever seen that Papa John's commercial, it
19 says, better ingredients, better pizza, Papa John's?

20 A Maybe not.

21 Q Maybe you don't watch as much TV as me?

22 A I don't pay that much attention to those
23 commercials, that's for sure.

24 Q Well, I apologize, I don't mean to get cheesy
25 here. You get the reference, cheesy, pizza.

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1 Anyway, what I am saying is that it's just
2 like science, the better numbers you have going into your
3 equation the better results that you are going to have in
4 the end, right?

5 A I don't know "better," but more accurate.

6 Q More accurate, right. So, the more accurate the
7 data that you have going in the better the results that you
8 have coming out?

9 A Yes.

10 Q And that is true with any mathematical equation,
11 and those mathematical equations are what you rely on and
12 what you do for a living, correct?

13 A That is correct.

14 Q And what you do for a living is pedestrian auto
15 impact reconstruction. That is a small part of what you do,
16 but that is the most difficult type of traffic
17 reconstruction, is it not?

18 A I wouldn't call it the most difficult.

19 Q What is more difficult?

20 A Who was driving cases may be more difficult.

21 Q Well, that is not a reconstruction. I'm talking
22 about reconstruction.

23 A Sure it is. The way that I do a who was driving
24 cases or reconstruction, that is a very difficult case.

25 Cases where things don't actually contact each other are

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1 extremely difficult.

2 Q If they don't contact each other; how is that a
3 collision?

4 A Well, a vehicle pulls out from the stop sign,
5 another driver panics and swerves off of the roadway and
6 hits a tree, you have an accident but you did not have a
7 collision between two vehicles, those are very difficult to
8 put together.

9 Q I got you. As to collisions, would you agree that
10 pedestrian auto collisions are difficult?

11 A Yes.

12 Q They may not be the most difficult, but they are
13 pretty difficult to determine?

14 A They can be difficult.

15 Q That is because generally a lot of information
16 that you want to put in formulas is lacking, right? And a
17 lot of information that would help in a pedestrian auto
18 collision would be like height that the body might have
19 reached, you would like to know that information?

20 A That depends on the question, but yes, that can be
21 a parameter you need.

22 Q You would like to know the exact point of impact?

23 A Yes.

24 Q You would like to know an exact velocity?

25 A Yes.

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1 Q Exact trajectory?

2 A Yes.

3 Q You would like to know whether the pedestrian had
4 a velocity of some sort?

5 A Yes.

6 Q Or whether he was standing still?

7 A The data suggests that it usually doesn't make
8 much difference, but sure. I mean, it certainly affects
9 things that set up the collision. For instance, if this
10 pedestrian is stepping out into the travel lane, then even
11 though his speed is not going to make much of a difference
12 relative to the collision it is obviously going to be a huge
13 difference relative to the set-up of the collision.

14 Q Do you know what the average walking speed is for
15 a human?

16 A I generally use three miles an hour, which is
17 about four or five -- four and a half feet per second. The
18 reason is, that is military march.

19 Q Most reconstruction is $3\frac{1}{2}$ to 4 feet per second.
20 Or most that I'm dealing with anyway.

21 A They are dealing with slower people.

22 Q Okay. I'm going to switch gears a little bit.
23 Have you heard of the moth effect?

24 A Yes.

25 Q Tell the jury what the moth effect is.

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1 A The moth effect is a description of a phenomena
2 that seems relatively common. It is disputed by most of the
3 people working in the area, but that is that drivers are
4 attracted to objects on the side of the road. As I like to
5 say, if you park a vehicle on the side of an interstate in
6 the emergency lane it is not a matter of will it get hit, it
7 is a matter of when it will get hit. The moth effect says
8 that drivers are actually attracted, sort of follow that
9 vehicle, especially if it's lighted or something. That they
10 will view that as a vehicle traveling down the roadway and
11 steer in that direction. There's been some testing and some
12 scientific work that says that there's no moth effect. I
13 don't know the answer to that, but that is what the moth
14 effect is.

15 Q And the moth effect is talking about lights and
16 that is like -- it is almost like attracting moths to a
17 flame?

18 A Correct.

19 Q And that is why they call it the moth effect. But
20 in actuality it is not a moth effect, it is called target
21 fixation? Are you familiar with target fixation?

22 A I heard the term.

23 Q When I got my motorcycle license they taught me
24 target fixation. They teach it to pilots too, right?

25 A Yes.

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1 Q And the idea of target fixation is when you are
2 operating a motorcycle, plane or car and you fixate on an
3 object you have a tendency to steer toward it; is that
4 accurate of target fixation?

5 A That is an aspect, yes.

6 Q And the reason that it's called the moth effect is
7 because typically a light would attract your attention; is
8 that fair to say?

9 A I think it's reasonable.

10 Q And you have reviewed the back of this paver,
11 right? You have seen this photograph?

12 A Yes.

13 Q Is it fair to say that that is a pretty large
14 light on the back of it?

15 A Yes.

16 Q Driving down the road, would that attract your
17 attention?

18 A Yes.

19 Q I'm going to switch gears again, talk about cone
20 spacing.

21 A Say that again.

22 Q I want to talk about cone spacing. And you
23 reviewed the Department of Transportation guidelines in
24 preparation of your report, right?

25 A I reviewed the manual on uniform traffic control

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1 devices and the standard drawing reports, yes, if that is
2 the document that you are referring to.

3 Q It is. And --

4 A And I also referred to -- used the specific
5 documents for this particular construction to see if they
6 were anything that changed it.

7 Q I'm sorry, it is a mess up here. Bear with me one
8 moment. I'm going to show you State's Exhibit 22. Are you
9 familiar with that area at all?

10 A Somewhat.

11 Q Seventeen south and Parkwest, right?

12 A Yes.

13 Q And our accident occurred, or collision, excuse
14 me, occurred about right here; correct?

15 A Correct.

16 Q And you said in your direct testimony that 25-foot
17 cone spacing was appropriate, right?

18 A Yes.

19 Q And why is 25-foot cone spacing appropriate?

20 A Well, this was in -- I used the drawing plan for
21 an urban area less than or equal to 35 miles per hour
22 multi-lane. This was a multi-lane highway. It was in the
23 City of Mt. Pleasant. The speed limit was equal to 35 miles
24 per hour. There's another drawing plan which could
25 potentially be inferred as applying to this. It is rural

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1 above 35-miles per hour multi-lane highways. It provides
2 50-foot cone spacing and 25-foot cone spacing in the
3 vicinity of an intersection.

4 I didn't see this portion of highway as
5 applicable to that set of plans because it wasn't rural and
6 it wasn't above 35 miles per hour. But regardless, even
7 using that set of plans I would still come up with 25
8 because this was close to an intersection.

9 Q What intersection was it close to?

10 A George Crowder Boulevard.

11 Q You know that is a driveway to the church?

12 A It is still an intersection.

13 Q What if it's closed off and cars can't come in and
14 out of it?

15 A Then it is not an intersection.

16 Q It is not, is it?

17 A But it's still urban or 35 or less.

18 Q Do you get to decide whether something is urban or
19 not? Do you get to make that decision?

20 A As an engineer, the engineers are the ones that
21 make that decision.

22 Q Did you make the call on this? Did you review the
23 entire area and say, you know, this is residential or urban.
24 I mean, where is the line? Where does it turn urban?

25 A I would think somewhere north of Wando High

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1 School. Or turned rural, I guess.

2 Q How wide -- how wide did you say those tall boy
3 cones were again?

4 A I measured one at 18 inches. I have got a
5 document on one that says 20.25 inches.

6 Q Is that the width of the cone itself or the base?

7 A That is the width of the base.

8 Q Okay. That helps explain the discrepancy.

9 Because the width of that cone is not 18 inches wide, is it?

10 A Well, the width of the base portion of the cone is
11 18 to 20 inches wide. The tall part of the cone is -- this
12 one is 7.6 inches wide.

13 Q You testified the width of the skip line, I think
14 that might have been the word that you were looking for
15 earlier, is about 4 inches?

16 A Typically on anything except the interstate it's
17 4 inches. I noticed on some of the highways that are not
18 interstate I have seen 6-inch lines.

19 Q And the top of the tall boy cone are different
20 width than the bottom, right?

21 A Yes, it is tapered.

22 Q So, it would be thinner at the top than at the
23 bottom, correct?

24 A Yes.

25 Q And that top doesn't appear to be over a foot

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1 wide, does it?

2 A No.

3 Q You ever hit a deer before?

4 A I have not personally hit one. My wife has hit
5 one, or one run into her.

6 Q I hit one. Went all the way down the side. Put a
7 dent in every panel on the side of my car.

8 MR. McCUNE: Objection, Your Honor,
9 relevance.

10 THE COURT: I'll give him a little latitude
11 subject to the connection. But you need to
12 connect the dots.

13 BY MR. KIDD:

14 Q Would it surprise you that the deer's carcass was
15 in the lane of travel that I was in?

16 A No.

17 Q Based on your testimony about lateral deviation or
18 lateral velocity at impact, why?

19 A Maybe you swerved.

20 Q Maybe?

21 A Maybe the lane curved. I mean, I didn't
22 investigate your accident.

23 Q Sure. Maybe that car swerved, maybe?

24 A It certainly could have.

25 Q Now a lot of your numbers are based on human

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1 reaction time; is that fair to say?

2 A Some of the numbers incorporate some response time
3 in that, for example, you cannot instantaneously turn your
4 steering wheel so it takes some time to maneuver.

5 Q And that is a large part of what makes you believe
6 that this maneuver was impossible, right?

7 A That gives me the lower numbers of 3 to 5 inches.
8 The larger numbers are based more on limits.

9 Q Okay. And when you take into account human
10 reaction time there has to be some triggering event which
11 starts the reaction process; is that fair to say?

12 A That is true.

13 Q And in an accident in which the driver never saw
14 what he hit there would have to be some other triggering
15 event to start a deviation, to start a maneuver; would that
16 be fair to say?

17 A Yes.

18 Q And in fact when typically analyzing an auto
19 pedestrian accident there's sort of three phases of the
20 accident that you can look at. There's the perception
21 phase, the reaction phase, and the result phase; is that
22 fair to say?

23 A When you are talking about the reaction of -- the
24 perception/reaction of the driver, yes.

25 Q Also that can apply to the pedestrian as well,

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1 right?

2 A Yes.

3 Q Because the pedestrian can perceive the vehicle
4 and react also?

5 A Correct.

6 Q And that is a lot of that human element that I was
7 talking to you about before, which we don't know about;
8 right?

9 A Correct.

10 Q And a human element, have you ever kind of walked
11 around a corner and run into someone and you have both done
12 a dance where each step is in the same direction?

13 A Many times.

14 Q And when confronted with something coming at you
15 that way, you never really know how you are going to move or
16 which way, it is just a reaction, right, from a pedestrian
17 standpoint?

18 A Totally? It is not total just reaction.

19 Q Well, you process information and react
20 accordingly but you never really know how someone is going
21 to react in a situation like that, right?

22 A You don't know precisely. I mean, there are
23 studies and there are reasonable things that people do.

24 Q Have you been provided all of the same information
25 as the officers on the scene?

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1 A Say again.

2 Q Have you been provided all of the information as
3 the officers on the scene been provided, would you have been
4 able to develop an exact point of impact?

5 A I don't know. I mean, I don't know what all they
6 were provided with.

7 Q Well, I hope everything that you were provided
8 with. Well, with the information that you have, can you
9 develop an exact point of impact?

10 A No.

11 Q So you are just making assumptions?

12 A No.

13 Q Well, you don't know where the body would have
14 ended up had the paver not been there, right?

15 A Well, I know that it's going to continue on the
16 general line.

17 Q But you don't know what line that would be, do
18 you?

19 A I know relative to highway, I'm looking for
20 something headed south and toward the right.

21 Q Right, but you did all of your calculations as if
22 the car was going in a straight line, right?

23 A No. All of these numbers I have talked about were
24 deviations.

25 Q Those were deviations on whether a car can do a

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1 maneuver between a cone that we don't even know where it
2 was, right?

3 A Right. Between the cones --

4 Q That we don't know were there.

5 A Of positions that were measured and recorded.

6 Q But you didn't calculate the angle of the travel
7 lane of the vehicle as to body position, you only did that
8 calculation as in a straight line, right?

9 A No, I'm looking at a position of the body at the
10 left rear of the paver. I'm looking at descriptions that
11 put the point of impact closer to the cone than the paver.
12 If you have a deviating vehicle then the trajectory is going
13 to be even farther to the right.

14 Q Maybe, right. That is not an absolute, is it?

15 A It is pretty absolute.

16 Q All right. Let's assume then that there's no cone
17 at 43 feet.

18 A Okay.

19 Q Okay. So that the car could swerve in as far as
20 it wanted to with no problem?

21 A If there's no cones the car can travel anywhere in
22 those two lanes.

23 Q Then that could make sense?

24 A Sure.

25 Q That would be consistent with where the body ended

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1 up, right?

2 A Sure. There's no -- if there's nothing to
3 delineate the travel there then you don't have the
4 restrictions. You are supposed to have cones every 25 feet.
5 That is -- that is why you need them.

6 Q According to you?

7 A Or even every 50 feet. We didn't have that.

8 Q Now you testified that there was an inadequate
9 buffer zone, right?

10 A Yes, there was a totally inadequate buffer zone.
11 If you are moving your boundary to let your equipment by you
12 don't have a buffer zone, or you don't have an appropriate
13 buffer zone.

14 Q On direct you testified that neither party should
15 have access to the area in that striped line, right?
16 Because if they both occupy that space there's going to be a
17 collision?

18 A No, I said neither party have access to the buffer
19 zone. The striped line is not in the buffer zone.

20 Q The striped line is in the work zone?

21 A Correct.

22 Q For argument sake let's say that, say this white
23 line is the buffer zone or in a non-work zone scenario let's
24 say that is a striped line.

25 A Then you have to move your paver up.

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1 Q My point is that the buffer zone, neither party
2 should have access to the buffer zone; is that correct?

3 A Correct. I mean, you want to have some room for
4 an automobile to drive by and the mirror that sticks out not
5 strike someone who is in the buffer zone. Or you want to
6 have a pedestrian who is walking beside the line of cones
7 and maybe has an elbow extended a few inches into the buffer
8 zone. You don't want that to be claimed by the traffic.

9 Q Right.

10 A You have got to have some buffer there. Just like
11 the buffer that we use on two-lane highways is just the
12 width of that little line. That little 4-inch line is your
13 buffer.

14 Q How big do you think this paving machine is?

15 A The lane is 12 feet wide and it's wider than the
16 lanes. It looks like it extends about 2 feet or maybe a
17 little more to the left. It probably extends similar out to
18 the right, maybe a little less.

19 Q Pretty big light over it, right?

20 A So, I would think 14, 15 feet wide.

21 Q Pretty big light over it, right?

22 A Yes.

23 Q Pretty visible from a long distance away?

24 A It would be visible, yes. Depending on how it's
25 aimed, it might potentially hide the edge.

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1 Q Pretty good indication of a work zone?

2 A It is pretty clear all of this is a general
3 temporary traffic control zone.

4 Q I liked that you used that language, temporary
5 traffic control zone. And you testified that the South
6 Carolina Department of Transportation schematics and cone
7 spacing are designed to protect the workers and the drivers,
8 right?

9 A Yes.

10 Q As are South Carolina Code of Laws that teach --
11 tell us how to drive?

12 A Yes.

13 Q Drunk driving statutes protect us, right?

14 A Yes.

15 MR. McCUNE: Objection, relevance.

16 THE COURT: Basis?

17 MR. McCUNE: Relevance.

18 THE COURT: Approach, please.

19 (Off-the-record discussion.)

20 THE COURT: You may proceed subject to
21 connection.

22 MR. KIDD: Thank you, Judge.

23 THE COURT: Uh-huh.

24 BY MR. KIDD:

25 Q Are you familiar with the standard of care a

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1 driver is supposed to exhibit when going through a temporary
2 work zone?

3 A If you are talking about specifics, no.

4 Q That wouldn't be relevant to your investigation of
5 this scene?

6 A Not in general, part of the reconstruction. I
7 mean, obviously you are supposed to stay in your lane, keep
8 a proper lookout, all of that. I mean, you obviously have
9 something more specific in mind.

10 Q In fact it's necessary to keep your vehicle under
11 control by the driver to avoid a collision and to avoid
12 injuries to persons and property?

13 A Yes.

14 Q And you are supposed to keep your vehicle under
15 the degree of control necessary to accomplish that?

16 A Right.

17 Q According to statute when going through a
18 temporary work zone?

19 A True.

20 Q And that is because work zones are inherently
21 dangerous, aren't they?

22 A Yes.

23 Q And so as drivers we need to slow down; right?

24 A That is why the speed limits are generally lower,
25 yes.

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1 Q But in case of -- because real world is rarely
2 perfect, is it not? In a perfect world we would have --
3 like you said, we would close down both lanes, right?

4 A I mean, that is the ideal solution, yes.

5 Q Ideally we wouldn't have to have traffic going by
6 this paver machine, right?

7 A Correct.

8 Q But the real world isn't that convenient, is it?

9 A Correct.

10 Q A lot of times in the real world we have to make
11 exceptions and we have to do things imperfect, right?

12 A Yes, but there's a difference in doing things less
13 than ideal and doing things incorrectly.

14 Q Okay. Now, you testified that you have a degree
15 in mechanical engineering, right?

16 A Yes.

17 Q As a mechanical engineer can you imagine designing
18 a paver that didn't have to overlap the center line in order
19 to make the pavement match up?

20 A I don't think that it would be unreasonable.

21 Q Would it be possible?

22 A I would suspect that it's possible, yes.

23 Q Maybe you could tell the jury -- maybe I don't
24 know something that you do, how can you tell -- how can the
25 pavement be matched up with the other pavement by a machine

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1 without at least overlapping the center lane?

2 MR. McCUNE: Objection.

3 THE COURT: Basis.

4 MR. McCUNE: Argumentative.

5 THE COURT: Overruled.

6 A If you designed a machine that had a flow pad that
7 could extend past the left side of the machine it would be
8 possible, yes.

9 Q Well then the flow pan would be sticking into --

10 A No, flow pad.

11 Q Flow pad.

12 A You are placing the stuff, so it's somewhat
13 mobile. If you can set it up so that it was pushed to the
14 side even by a little bit, you can design it with no
15 intrusion whatsoever and it would certainly be able to be
16 designed with less intrusions than it has, significantly,
17 significantly less. I mean, the most major portions that
18 protrude, as I understand it, is the GPS unit. You would
19 think that you could put that just about anywhere.

20 Q So, in a perfect world it wouldn't stick over?

21 A It is much easier to design it this way.

22 Q But the paver wasn't struck, was it?

23 A No.

24 Q I want to talk about the pavement, the lines from
25 the active paving lane to the work zone. Uneven pavement

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1 can affect a vehicle, right, when you cross over it?

2 A Yes.

3 Q And in fact it can jerk a vehicle one way or
4 another, right?

5 A Yes.

6 Q And it really doesn't take much but like maybe an
7 inch if it grabs your tires the right way to pull it?

8 A In general they try to hold it within 2 inches
9 except for relatively high speeds, which we don't have here.

10 Q But an uneven pavement can cause a swerving or a
11 small pulling motion in a vehicle if it catches those
12 vehicles?

13 A Uneven pavement causes many accidents, yes. I
14 look at a lot of those.

15 Q We have uneven pavement here, correct?

16 A Yes. Yes.

17 Q That would be in the work zone, right, that uneven
18 pavement?

19 A Yes. The line of cones, as I understand it, was
20 set up against the side of that uneven pavement.

21 Q So the uneven pavement is in the work zone, right?

22 A Not really.

23 Q In the buffer zone?

24 A Well, the transition is basically the line
25 between -- it is the edge of the cone line, right there at

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1 that transition.

2 Q The transition?

3 A The cones are butted up against this higher
4 pavement.

5 Q On the left side of that white line, right?

6 A Yes.

7 Q Okay.

8 MR. KIDD: The Court's indulgence?

9 THE COURT: Uh-huh.

10 BY MR. KIDD:

11 Q I know he talked about it on direct, but you have
12 been paid to be here, right?

13 A I charge for my time, yes, sir.

14 Q How much does your time cost?

15 A 195 an hour.

16 Q How much did it cost to generate one of these
17 reports?

18 A Generally a report like this, I have four or five
19 hour into it, for writing a report.

20 Q Do you only charge per hour for something like
21 that?

22 A I only charge per hour.

23 Q So this report cost \$400?

24 A No, in the research and reviewing all of the
25 materials to get to the point of writing the report I charge

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1 for as well.

2 Q How much time have you put in on this case?

3 A Prior to getting ready for trial, I mean, I'm
4 thinking that I had 20, 20 hours or so, somewhere in that
5 neighborhood.

6 Q 200 dollars an hour. Do you charge the same
7 amount for court time?

8 A Yes.

9 Q So, by achieving the results they want you then
10 come and testify, right?

11 MR. McCUNE: Objection, Your Honor.

12 THE COURT: Basis?

13 MR. McCUNE: Argumentative.

14 THE COURT: Please restate the question.

15 MR. KIDD: I'll state it in the negative.

16 Q If you produce a report that they didn't like they
17 wouldn't need you to testify, would they?

18 A That is correct. I don't generally get called --
19 generally you would be calling me then.

20 Q Fair enough.

21 A I have testified a number of times for the side
22 other than my client, or my original client.

23 Q I don't disagree with that, I just think that the
24 jury should know what you are paid, what your time is worth
25 and what you have put into this.

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1 And I'm just going to recap real quick. Much
2 of your report and your data is all based on that 43-foot
3 gap, right?

4 A Yes.

5 Q And we don't know where that cone was at the time
6 of the collision, right?

7 A That wasn't the way that the records were.

8 Q That wasn't the way that they explained them to
9 you, right?

10 A I read the records. That cone was presented as
11 being in essentially the position that it was at the time of
12 the accident.

13 Q Essentially?

14 A Well, it was reported that it was moved from a
15 position up against the pavement edge a foot out.

16 Q But we don't know whether it was moved closer or
17 farther?

18 A It wasn't reported to be moved closer or farther,
19 it was reported to be moved a foot out.

20 Q Which still --

21 A A foot to the left.

22 Q And we don't know where the body would have
23 ultimately come to rest because the paver stopped its
24 momentum, right?

25 A Correct.

TESTIMONY OF WOODROW POPLIN

1 Q And it very easily could have come to rest on the
2 far right-hand side of that lane, had the paver not been
3 there?

4 A That would be a little flawed.

5 Q Based on what?

6 A A typical lateral rise at this kind of pitch.

7 Q So it wouldn't have moved that far?

8 A Probably not.

9 Q But once again, we are guessing at this point,
10 right?

11 A I wouldn't call it guessing.

12 Q As --

13 A I mean, I'm thinking back to all of the data that
14 I reviewed on that particular problem. And I mean, you are
15 talking about movement that would be generally at the
16 extremes of the day.

17 Q Well, here is where I'm troubled is you know where
18 the body was resting on the back of this paver; right,
19 generally?

20 A Yes.

21 Q On that cat walk, right?

22 A Yes.

23 Q Do you know if the body struck higher up on that
24 paver and then fell down to the cat walk?

25 A No.

TESTIMONY OF WOODROW POPLIN

1 Q Well, that would be pretty important information,
2 wouldn't it, had that occurred?

3 A I don't know that it would change anything, but it
4 would be nice to know.

5 Q Well, would it change how far the body would have
6 traveled before it hit the ground, had the paver not been
7 there?

8 A Sure. In that case, sure, the impact is going to
9 be pretty close, yeah.

10 Q That is the thing that makes this reconstruction
11 so hard, right, because we don't have any skid marks; right?
12 We don't have a point of impact, right?

13 A Well, all of these things are unknowns to some
14 extent. You know, I'm trying to answer what you can answer
15 from the evidence that you have.

16 Q And --

17 A And so, you know, if you want to change the
18 evidence all around you have got something different. But I
19 am telling you what you can derive from the evidence that
20 you have.

21 Q What evidence have I changed around?

22 A You were moving cones a while ago.

23 Q Well, the evidence is that we don't know where
24 that cone was.

25 A That is not what is in this documentation. The

TESTIMONY OF WOODROW POPLIN

1 documentation says we know almost exactly where this cone
2 was.

3 Q But you weren't out there that night, right?

4 A That is correct.

5 Q And typically, had the paver not been there and
6 you were able to calculate how far the body traveled, that
7 would be a measurement that would be useful in determining
8 point of impact, right?

9 A Well, if you don't know the point of impact you
10 don't know how far a body traveled.

11 Q Well, it would be useful information to your
12 reconstruction?

13 A Yes. And certainly at these speeds you can
14 develop reasonably expected travel distances.

15 Q But you can't in this case, right?

16 A I mean, you can certainly develop maximums and you
17 can still develop reasonably expected travel distances
18 absent the paver.

19 Q Well, do you know how much Mr. Garland weighed?

20 A No.

21 Q Would that be relevant to that calculation, how
22 tall he was?

23 A Maybe on about the fifth order.

24 Q Or how tall he was?

25 A It is not going to be dependent on those

TESTIMONY OF WOODROW POPLIN

1 variables.

2 Q Those are variables, right?

3 A I mean, first and second order.

4 Q What about if he was 300 pounds?

5 A Say again.

6 Q What if he was 300 pounds?

7 A He is still light, weight relative to a Jeep
8 Commander.

9 Q He is not going to fly through the air, is he?

10 A Yes, he is.

11 Q Compared to a 100-pound person?

12 A Yeah, he is.

13 Q So, weight doesn't play any roll in that at all?

14 A If you say the momentum change is negligible, then
15 weight is not going to factor into that.

16 Q Well --

17 A If you start getting into the momentum effect and
18 say, okay, the collision reduced the speed of the Jeep by,
19 if we took for example a 300-pound individual, roughly on
20 the order of about a mile and a half an hour, maybe 2 miles
21 an hour, as opposed to a 100-pound person who might reduce
22 it to -- by about a third as much.

23 Q Don't we have coefficients of friction that we
24 look at. If the paver wasn't there, as far as skidding,
25 bouncing, moving across the ground?

TESTIMONY OF WOODROW POPLIN

1 A Yeah, but that is why we use coefficient of
2 friction, it is weight independent. That is why the weight
3 doesn't show up in those equations.

4 Q Right, but -- and we also have like a bouncing
5 effect, right?

6 A Again, a 300-pound body bounces about as much as a
7 100-pound body, which isn't much at all.

8 Q But ultimately the point is, we don't need to look
9 at any of that because the paver stopped the momentum of the
10 flight, right?

11 A Sure.

12 Q So we don't know where he would have ended up?

13 A We don't have a precise point.

14 Q I guess, and this is all that I'm trying to say is
15 that the body could have hit the paver going up or it could
16 have hit the paver going down, we don't know.

17 A It is almost certain the paver going down unless
18 the impact is really close to the paver. And it's hard to
19 envision that without contact with the paver -- I mean,
20 because you have got 2 feet to the left of that paver
21 sticking out in the other lane.

22 Q It is hard to envision that based on the cone
23 placement?

24 A Based on what?

25 Q Based on the cone placement.

TESTIMONY OF WOODROW POPLIN

1 A That is largely independent, the cone placement.
2 The body has to be going down.

3 MR. KIDD: The Court's indulgence one moment.

4 THE COURT: Yes, sir.

5 (Pause.)

6 BY MR. KIDD:

7 Q One last thing. A responsible accident
8 reconstructionist, when provided insufficient information,
9 is the appropriate answer sometimes, I don't know?

10 A Lots of times it is I don't know. I tell a lot of
11 people I don't know.

12 MR. KIDD: No further questions.

13 THE COURT: Any redirect of the witness?

14 MR. McCUNE: Very briefly.

15 REDIRECT EXAMINATION

16 BY MR. McCUNE:

17 Q Mr. Poplin, do you know who conducted the
18 investigation into this accident?

19 A From my perspective, the Mount Pleasant Police
20 Department.

21 Q And do you know who gave you the data that you
22 used to compute your report?

23 A Your office gave me the data.

24 Q And where was that data from?

25 A My understanding, Mount Pleasant Police Department

TESTIMONY OF WOODROW POPLIN

1 ultimately.

2 MR. McCUNE: And may I approach Your Honor?

3 THE COURT: You may.

4 BY MR. McCUNE:

5 Q I'm showing you what's been marked for
6 identification as Defense Exhibit 12. When did you complete
7 that report?

8 A August 30th, 2012.

9 Q And did you receive any updated information from
10 the -- our office or the Mount Pleasant Police Department in
11 the -- in the interim related to any of the measurements to
12 cones or anything?

13 A Yes.

14 Q And what did you receive?

15 A I received their detailed manuals.

16 Q That was it, no changes?

17 A Right.

18 MR. McCUNE: No further questions, Your
19 Honor. May I approach?

20 THE COURT: Any objection to the witness
21 being excused from the State?

22 MR. KIDD: No, ma'am.

23 THE COURT: From the Defense?

24 MR. McCUNE: No, Your Honor.

25 THE COURT: Sir, you are excused.

TESTIMONY OF WOODROW POPLIN

1 THE WITNESS: Thank you, ma'am.

2 THE COURT: You are welcome.

3 (Pause.)

4 THE COURT: You may proceed.

5 MR. BISCHOFF: The Defense rests.

6 THE COURT: Reserve motion. Does the State
7 have any rebuttal witnesses?

8 MR. KIDD: No, ma'am.

9 THE COURT: Mr. Foreman, ladies and
10 gentlemen, both the State and the Defense have
11 rested their cases. We are going to resume in the
12 morning with closing argument and instruction. It
13 is essential that you maintain your impartiality.
14 I apologize, long day. That you maintain your
15 impartiality and that you have no discussion about
16 this case among yourselves or with anyone else.

17 While you have heard all of the evidence in this
18 case you have not heard the arguments of counsel or the
19 Court's instructions on the law. So, to begin to
20 discuss what you have heard requires you to process
21 that information and weigh it and draw conclusions
22 based upon it and that, by its very nature, is
23 deliberations. And you must do that only after you
24 have heard all of the arguments and Court's charge as
25 well as beginning to deliberate among your members in

JURY RELEASED FOR THE DAY

1 the privacy of the jury room. If there are any media
2 accounts about this case, please don't read watch or
3 listen to any accounts. And please do not do any
4 independent research on the Internet. There are so
5 many things available online, but I'll intricately
6 instruct you that you must decide this case only on the
7 testimony that you have heard from the sworn witnesses
8 and other evidence that has been introduced.

9 When you return to the courthouse in the morning
10 please do not have any contact with anyone. Please,
11 again, at this late stage in the trial I wouldn't want
12 an innocent conversation by a third party to be
13 misinterpreted. If you will leave your note pads in
14 your seats we will secure them during the recess.
15 Thanks very much for allowing us to go beyond 5:00.
16 Have a good evening and we will see you at 9:30.

17 (Jury exits the courtroom at 5:17 p.m.)

18 THE COURT: You may be seated. The State has
19 rested. The Defense has rested its case. Are
20 there any motions?

21 MR. BISCHOFF: Renew my motion for directed
22 verdict, Your Honor.

23 THE COURT: Anything from the State in
24 response?

25 MR. KIDD: Not unless you need it.

INSTRUCTION REQUESTS/ARGUMENT

1 THE COURT: Motions will be marked renewed
2 and denied based on the Court's previous ruling.

3 MR. BISCHOFF: Thank you, Your Honor.

4 THE COURT: You are welcome.

5 THE COURT: Does the State have any request
6 for instructions?

7 MR. KIDD: Judge, I have a handful of driving
8 statutes that I would like to have read.

9 THE COURT: If you would hand them up,
10 please. May I approach? I mean, I have most of
11 these printed out. That is a list and let me grab
12 the copies.

13 MR. SIMPSON: I just e-mailed you our sort of
14 a synthesis of those requests for charges. It
15 was, I hope, emailed. Is that the right one?

16 THE LAW CLERK: It is djeffersonlc, as in law
17 clerk.

18 THE COURT: It is the same. Dealing with the
19 requests for instruction that were submitted by
20 the Defense. The request number one deals with
21 the Court's general instruction. And I have
22 utilized my general instruction.

23 MR. BISCHOFF: May I get a copy, Judge?

24 THE COURT: Copy of what?

25 MR. BISCHOFF: Of your general instructions.

INSTRUCTION REQUESTS/ARGUMENT

1 THE COURT: No.

2 MR. BISCHOFF: Can I get a copy of any of
3 your instructions?

4 THE COURT: No, because a lot of it is
5 committed to memory. I don't ever read it on the
6 page and it is not a pretty work product. I don't
7 give it out or to the jury.

8 THE LAW CLERK: I got your e-mail. Printing
9 it out right now.

10 THE COURT: There's no reason to it. As in
11 regard to Defendant's request to charge number
12 two, which is the presumption of innocence, I'll
13 use my standard instruction. Three, reasonable
14 doubt, I'll use standard instructions. Failure
15 for Defendant to testify, I'll use my standard
16 instruction. And number five is cumulative to
17 number three and I'll use my standard instruction
18 which is Victor versus Nebraska, unreasonable
19 doubt.

20 Number six, which is verdict, I'll use my standard
21 instruction. Number seven on credibility of witnesses,
22 I will use my standard instruction.

23 Number eight, I am not certain that it is
24 applicable the way it's phrased. I'm not fond of it,
25 but if I were to instruct as to prior inconsistent

INSTRUCTION REQUESTS/ARGUMENT

1 statements I would use my standard instructions.

2 MR. BISCHOFF: I agree, I don't think that
3 that's applicable.

4 THE COURT: I don't either.

5 MR. BISCHOFF: Thank you.

6 THE COURT: Number nine is not applicable
7 being the presentation of the evidence as there's
8 been no character or reputation evidence.

9 Number ten, probable cause, I will use my standard
10 instruction.

11 Number eleven, statement of Defendant, that is
12 typical Miranda statement. That will not be applicable
13 in the case as none of the statements made by the
14 Defendant were pursuant to the Miranda precedent.
15 Spontaneous statements made prior to his arrest and
16 those made while he was at the detention center are
17 covered by standards and instructions under witness
18 credibility or believability.

19 Number twelve, which is felony DUI elements, I'll
20 use my standard instruction.

21 Number thirteen is a statement of law which is for
22 the Court not for a jury to consider and will not be
23 instructed in the case. Which is the Blockburger or
24 lesser included offenses, that is the standard for the
25 Court to employ not to be instructed to a jury.

INSTRUCTION REQUESTS/ARGUMENT

1 Number fourteen, DUI elements, I can find no basis
2 to instruct on DUI. The Defendant is not charged with
3 DUI. And maybe even leaping a little ahead, there's no
4 case law to support DUI with the lesser included
5 offense of felony DUI with great bodily injury nor does
6 it meet the elements test.

7 Number fifteen I will use my standard instruction
8 on expert witness testimony.

9 And Number sixteen I feel is an inappropriate
10 comment on the facts, and I will not instruct that.
11 I'll use my standard instruction on expert witness
12 testimony.

13 I'm going to sort out the statutes over the
14 evening because I need to figure out exactly which
15 statutes I'm going to instruct. And I need to look at
16 this list that was just provided to me by the State.
17 I'll give the jury a general instruction regarding
18 their responsibility, my responsibility, how they are
19 to judge witness credibility and believability. I will
20 use my standard instruction on expert witness
21 testimony.

22 I'll give standard instruction from State versus
23 Grippon which defines direct and circumstantial
24 evidence. I'll give a general instruction that the
25 charge arrest and indictment are not evidence as well

INSTRUCTION REQUESTS/ARGUMENT

1 as standard instruction on the presumption of
2 innocence.

3 I'll instruct Victor versus Nebraska on reasonable
4 doubt.

5 Then I will instruct the elements of felony DUI
6 with felony driving under the influence with great
7 bodily injury, which is the elements found in 56-5-2945
8 which I have already gone through really at the motion
9 stage of the trial which is that the State must prove
10 the following elements beyond a reasonable doubt: That
11 the Defendant drove a vehicle while under the influence
12 of alcohol and/or drugs. It defines driving a motor
13 vehicle means movement of a motor vehicle. The State
14 must prove beyond a reasonable doubt that the Defendant
15 was sufficiently under the influence to impair his
16 ability to drive with reasonable care. With due regard
17 of others or himself or that a reasonably prudent
18 person would drive. It is not necessary to show the
19 Defendant was in a helpless position, passed out or
20 even intoxicated. On the other hand, the fact that the
21 Defendant at some time prior to the incident drank an
22 alcoholic beverage or took a drug does not prove that
23 he was driving under the influence.

24 I'll then instruct the appropriate -- I will then
25 instruct the inferences from blood alcohol test

INSTRUCTION REQUESTS/ARGUMENT

1 results, which is 56-5-2950, which is the amount of
2 alcohol in the Defendant's blood at the time that the
3 alleged violation is shown by chemical analysis that
4 the Defendant's breath or other bodily fluids may be
5 considered by you in deciding whether the Defendant was
6 under the influence. If the alcohol concentration was
7 .08 eight one-hundreths, .08, it may be inferred that
8 the Defendant was under the influence. However this
9 information is simply an evidentiary fact to be
10 considered by you along with other evidence in this
11 application. And you may give it the weight and value
12 that you decide that it should receive.

13 Then the next element that the State must prove is
14 while driving the Defendant did an act or did by law
15 neglect a duty imposed by law. I'll then instruct the
16 applicable automobile statutes, which will be
17 56-5-2930, which is operating a motor vehicle while
18 under the influence of alcohol or drugs. 56-5-1520,
19 which is the rules regarding general speeds.

20 And I'm also going to instruct some portions of
21 56-5-1536, which is work construction statute. And I'm
22 going to have to see what the rest of these, 56-5-1536,
23 35, 2370, and I'll have to look to see whether these
24 other -- there will be other common law duties and
25 statutes that would be instructed as well as proper

INSTRUCTION REQUESTS/ARGUMENT

1 lookout, keeping your vehicle under control. Proper
2 lookout, the duty to maintain your vehicle under proper
3 control. I'm trying to think if there are any other
4 common law statutes. There are none that are coming to
5 my mind at this moment. But if they are they will be
6 instructed.

7 And then finally the State must prove beyond a
8 reasonable doubt that the act or negligence of the
9 Defendant approximately caused the death of another
10 person. And then I'll instruct the proper instruction
11 on what constitutes proximate cause. Which is the same
12 basically as the civil definition. Not basically, it
13 is the same. And that the statements prove beyond a
14 reasonable doubt as well that the incident resulted in
15 great bodily injury to the victim, that being great
16 bodily injury means bodily injury which creates a
17 substantial risk of death or which causes a serious
18 permanent disfigurement or extended loss or impairment
19 of a body function, limb or organ.

20 Then I'll instruct on the unanimity of the verdict
21 and the forms on the verdict. Going back just a little
22 bit. Prior to instructing -- after instructing on
23 reasonable doubt I will instruct on failure of the
24 Defendant to testify. It cannot be used against him in
25 any manner, he has the constitutional right to remain

INSTRUCTION REQUESTS/ARGUMENT

1 silent, he cannot be prejudiced in any way because of
2 that. And it cannot be discussed in any manner
3 whatsoever during the course of the jury deliberations.

4 Are there any exceptions to charges imposed from
5 the State?

6 MR. KIDD: No, ma'am.

7 THE COURT: From the Defense?

8 MR. BISCHOFF: There may be, Judge, but I
9 don't -- I have no idea what the standard charges
10 are.

11 THE COURT: I don't think that there's any
12 disagreement what South Carolina law is.

13 MR. BISCHOFF: You said standard charges on a
14 number of these charges that you just mentioned,
15 and I don't know what you are going to charge.

16 THE COURT: The law is not a mystery.

17 MR. BISCHOFF: Judge, there are a number of
18 charges for various issues.

19 THE COURT: You need to be specific.

20 MR. BISCHOFF: Like reasonable doubt.

21 THE COURT: I told you the charge. Victor
22 versus Nebraska, I'm going with what that said.

23 MR. BISCHOFF: I'm not familiar with that
24 one. I would like to preserve any particular
25 challenge to any of the charges until in the

INSTRUCTION REQUESTS/ARGUMENT

1 morning, until I have a chance to review what you
2 just told us in your charge.

3 THE COURT: You are telling me that you don't
4 know what Victor versus Nebraska says?

5 MR. BISCHOFF: I'm telling you that I'm not
6 quite familiar enough to voice an objection until
7 in the morning.

8 THE COURT: I'm not having any further
9 argument on charges in the morning so we need to
10 deal with this now.

11 MR. BISCHOFF: Well, your Honor, I'm
12 requesting a brief recess.

13 THE COURT: I'll charge as follows: The
14 State has the burden of proving the Defendant
15 guilty beyond a reasonable doubt. Some of you may
16 have served as jurors in civil cases where you
17 were told that it's only necessary to prove that a
18 fact is more likely true than not true. Such is
19 by the greater weight of the preponderance of the
20 evidence. In criminal cases the State's proof
21 must be more powerful than that, it must be guilty
22 beyond a reasonable doubt. Proof beyond a
23 reasonable doubt is proof that leaves you firmly
24 convinced of the Defendant's guilt. There are
25 very few things that we know in this world with

INSTRUCTION REQUESTS/ARGUMENT

1 absolute certainty. And in criminal cases the law
2 doesn't require proof that overcomes every
3 possible doubt.

4 Based on your consideration of the evidence if you
5 are firmly convinced that the Defendant is guilty of
6 the prior charge you must find the Defendant guilty.
7 If, on the other hand, you think there's a real
8 possibility that the Defendant is not guilty, you must
9 give him the benefit of that doubt and find him not
10 guilty. That is the standard language of Victor versus
11 Nebraska.

12 MR. BISCHOFF: Thank you, Judge, that is
13 probably pretty clear. But again, on the other 16
14 plus charges that you mentioned --

15 THE COURT: You need to be specific as to
16 what you need clarifying.

17 MR. BISCHOFF: I am unable to be specific at
18 this time.

19 THE COURT: The Court is directing you to be
20 specific at this time as to what you claim you do
21 not understand.

22 MR. BISCHOFF: Judge, I just -- I would like
23 to voice an opinion in the morning.

24 THE COURT: You are an attorney licensed to
25 practice in the state. What do you not

INSTRUCTION REQUESTS/ARGUMENT

1 understand?

2 MR. BISCHOFF: I don't understand why I can't
3 have time to review what you have just told us in
4 a matter of maybe five minutes.

5 THE COURT: You told me that there's
6 something that you don't understand and you should
7 be able to tell me what you don't understand so I
8 can clarify it because I am not going to entertain
9 this in the morning and take an hour prior to
10 charging a jury.

11 MR. BISCHOFF: Thank you, Judge.

12 THE COURT: You need to tell me what it is
13 that you don't understand just as you did in
14 Victor versus Nebraska. I don't think that I'm
15 being unreasonable. Frankly, I think that I am
16 being very lenient.

17 MR. BISCHOFF: Proximate cause.

18 THE COURT: I think that proximate cause is
19 clear from the law. It is not different than
20 anything in the law as to proximate cause.

21 MR. BISCHOFF: Is it under State V Dantonio?

22 THE COURT: It is whatever the current
23 prevailing law is, proximate cause which is
24 articulated in every charge book in this state. I
25 don't think that the definition of proximate cause

INSTRUCTION REQUESTS/ARGUMENT

1 has changed.

2 MR. BISCHOFF: Okay.

3 THE COURT: What else do you not understand?
4 And I have already read it to you as well. I read
5 it at directed verdict.

6 MR. BISCHOFF: Okay, Judge. Lesser included
7 offenses.

8 THE COURT: You need to make a request for
9 lesser included offenses, I did not mention them.
10 Is there a request for them?

11 MR. BISCHOFF: Yes, ma'am, for DUI.

12 THE COURT: Okay. What would be your support
13 of that request?

14 MR. BISCHOFF: That I believe that it is a
15 lesser included offense of felony DUI.

16 THE COURT: Does the State have a position?

17 MR. KIDD: Our position is that it is not a
18 lesser included offense, it doesn't meet the
19 Blockburger test. And it requires a material and
20 appreciable impairment and felony DUI does not.
21 It is -- lesser included has an additional element
22 plus it has a BAC element from a point one to a
23 point one six or higher. Felony DUI doesn't
24 contain those things. So, DUIs have additional
25 elements than felony DUIs that make them lesser

INSTRUCTION REQUESTS/ARGUMENT

1 included.

2 THE COURT: Would you like to respond?

3 MR. BISCHOFF: I would. It does under 5950
4 Subsection G, it talks about including 56-5-2945
5 anyone .08 or above may be inferred. But it also
6 talks about .05 up to the .08 again.

7 THE COURT: What subsection of the statute
8 are you referring to?

9 MR. BISCHOFF: G.

10 THE COURT: Where does it actually say -- I'm
11 confused.

12 MR. BISCHOFF: The criminal prosecution for
13 the violation of Section, including 56-5-2945, the
14 alcohol concentration test has shown that the
15 chemical analysis of a person's breath, and gives
16 rise to the following -- and talks about .08 gives
17 rise to the inference that someone is under the
18 influence.

19 THE COURT: I'm instructing as to inference
20 and that is what that statute -- that is what
21 that's talking about. You can't throw out blood
22 alcohol test and measurement amounts and not have
23 some guidance by which for the jury to measure
24 that. In other words, that creates an
25 information, however, the jury can, based on their

INSTRUCTION REQUESTS/ARGUMENT

1 experience and totality of the evidence, disregard
2 that entirely. The information is that, just like
3 every other evidentiary matter for the jury to
4 consider. But that does not establish that a
5 person unequivocally is impaired.

6 It's simply a benchmark for the jury to consider,
7 but if it is outweighed by other testimony or evidence
8 they can disregard it.

9 MR. BISCHOFF: Impairment is one of the
10 requirements. And then additionally you have to
11 take it further and you are talking about driving
12 a motor vehicle under the influence is prohibited
13 by law. And then there is proximate cause and
14 great bodily injury. I think all of those warrant
15 that finding that a DUI is a lesser included.

16 THE COURT: You said that you were referring
17 on Subsection G of which statute?

18 MR. BISCHOFF: I was talking -- because the
19 Solicitor mentioned that felony DUI doesn't
20 require anything, doesn't require an analysis of
21 blood alcohol to make that distinction.

22 THE COURT: It doesn't. They don't even have
23 to present any testimony as to blood alcohol at
24 all. I don't know if we talked about this off of
25 the record or not. I explained to you in a lot of

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1 counties now they are arresting people at a .05.
2 And there's nothing that you have to prove a .08
3 for DUI. It is just an inference.

4 MR. BISCHOFF: It is an inference --

5 THE COURT: Just like any other case where
6 you have an inference about malice or if you have
7 an inference about certain kinds of weapons, you
8 are instructed that is an evidentiary fact and the
9 jury can disregard it completely.

10 MR. BISCHOFF: But anything under .05, right,
11 you are not --

12 THE COURT: DUI is blood alcohol. DUI can
13 mean that you had two beers and a joint and that
14 you were materially, appreciably impaired or you
15 have Xanax or you have some Ecstasy and you got in
16 a car and drove. They have to prove under that
17 statute that you are materially and appreciably
18 impaired. So if you have two beers and you have a
19 couple of Xanax and you have some other form of
20 Amphetamine or you have Oxycodone or Oxycontin or
21 you have marijuana and you are weaving all over
22 the highway, yes, that is enough to prove that you
23 are materially and appreciably impaired and you
24 get a DUI.

25 They don't have to prove that you are .08. Point

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1 zero eight simply is an inference, which means -- in
2 other words, whenever you have an expert that is going
3 to come in and testify about what they have measured,
4 the law always creates some inference, a benchmark
5 against which the jury can judge that testimony. So, a
6 .08 is just an inference. The jury can disregard it
7 completely and feel that at his weight and level of
8 elimination and his tolerance that he wasn't impaired.

9 MR. BISCHOFF: Right, I understand that. But
10 I mean there has to be something else. Aren't we
11 talking about DUI is lesser included felony DUI?

12 THE COURT: We are, but it still has to meet
13 the Blockburger elements. When you look at
14 Blockburger, the elements have to match exactly,
15 the words have to be exactly the same, except that
16 the whole, which is the greater offense, has to
17 have all of the elements of the lesser offense and
18 that is why I asked the question. Because felony
19 DUI doesn't have all of the elements of DUI.

20 MR. BISCHOFF: Okay. I think that when you
21 read it, first of all, under the influence, it
22 tracks the language up to that point. I
23 understand that. But you are describing under the
24 influence by definition, if you are saying that
25 anybody that consumes an alcoholic beverage could

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1 be under the influence.

2 THE COURT: I am sorry, repeat that.

3 MR. BISCHOFF: If we are saying that under
4 the influence is simply consumption of alcohol.

5 THE COURT: No, I am sorry, you lost me.

6 MR. BISCHOFF: If we are saying that under
7 the influence is simply consumption of alcohol.

8 THE COURT: It is not simply that under our
9 statute, it can be anything.

10 MR. BISCHOFF: But that is my point though.
11 If it can be anything you have to have someone
12 prove why they are under the influence.

13 THE COURT: You will have to have someone to
14 testify --

15 MR. BISCHOFF: If they drink one beer and
16 they are in an accident like this.

17 THE COURT: You could have a combination of
18 things, I don't know. I think that is an extreme
19 example.

20 MR. BISCHOFF: I mean, but that is why --
21 what if someone refused though, what if you have a
22 situation where someone refused?

23 THE COURT: There's a matter of refusal, you
24 presume. Basically in South Carolina you refuse a
25 test, you are admitting that you are impaired.

INSTRUCTION REQUESTS/ARGUMENT

1 There's an instruction on that. Basically when
2 you refuse to take a BA in a DUI, regular DUI
3 case, the jury is instructed, you should presume
4 that the person was impaired if they refused a BA.

5 MR. BISCHOFF: But I'm trying to specifically
6 address 2945, felony DUI.

7 THE COURT: And I don't need you to do that.
8 I need you to tell me what elements are in the
9 lesser offense.

10 MR. BISCHOFF: I don't think that because the
11 language, to the extent that a person's ability to
12 drive a car is materially and appreciably
13 impaired, changes the statute such that it's not a
14 lesser included offense. Does that make sense?

15 THE COURT: Yes, but I don't think it's not
16 supported by Blockburger. You can't have a
17 deviation in language, except of course that we
18 have changed the ominous which sort of now deals
19 with the issue involving lesser included that we
20 had that were common law offenses and never had
21 the same language. So, now we really don't have
22 that issue anymore because they have codified all
23 of these things and made that language mirror
24 every lesser included offense with the exception
25 of one element, two elements as we go down the

INSTRUCTION REQUESTS/ARGUMENT

1 line, missing.

2 For the Blockburger offense, literally, the
3 greater offense has to have the exact same elements as
4 the lesser offense. In other words, the language in
5 that DUI statute has to be consumed completely in the
6 greater offense, which is a felony DUI. It has to say
7 the exact same thing. For example, it would have to
8 say the exact same thing, but for example, missing the
9 element of great bodily injury or element of proximate
10 cause.

11 MR. BISCHOFF: What I'm arguing, though
12 Judge, is that I think our Legislature,
13 unfortunately, didn't include the extra language.

14 THE COURT: I don't know, I have met a lot of
15 Legislators and they tend to say what they mean to
16 say.

17 MR. BISCHOFF: I don't know how you determine
18 someone being under the influence otherwise. I
19 mean, that would mean that you could simply drink
20 a beer.

21 THE COURT: No, the law says, the instruction
22 clearly says the fact that they drank something in
23 advance is not enough to prove that they were
24 impaired. There could be a combination of
25 factors. DUI doesn't just mean alcohol.

INSTRUCTION REQUESTS/ARGUMENT

1 MR. BISCHOFF: I know that. I am just saying
2 when you are looking at the elements test, felony
3 DUI requires DUI and then a violation of law and
4 neglect of duty, proximate cause and a great
5 bodily injury or death.

6 THE COURT: Sorry, say that one more time.

7 MR. BISCHOFF: Felony DUI requires DUI,
8 violation of a duty or a neglect of a duty -- or
9 violation of a law or neglect of a duty, I am
10 sorry.

11 THE COURT: But see DUI doesn't require it.

12 MR. BISCHOFF: Well, I know, that's what I'm
13 saying. Felony DUI has -- or DUI is one of the
14 four elements of felony DUI. That is my argument.

15 THE COURT: But that is not how you do the
16 Blockburger test. The Blockburger test basically
17 means if I have one statute, the greater offense,
18 the lesser offense has to mirror it almost
19 completely with the exception of one or two
20 elements. And usually it is just one element off.
21 And then you go down to the next lesser included,
22 which is one element off. And then you go to the
23 next, theoretically, which is one element off.

24 And for whatever reason our Legislature has
25 determined in their providence and their wisdom that a

INSTRUCTION REQUESTS/ARGUMENT

1 greater degree of -- that there's really a greater
2 element in DUI which is materially and appreciably
3 impaired, whereas felony DUI only requires that the
4 State proves beyond a reasonable doubt that he was
5 under the influence and that he drove that vehicle
6 while under the influence of alcohol or drugs.

7 And then the other elements, which is that he was
8 sufficiently under the influence to impair his ability
9 to drive with reasonable care and with due regard for
10 others and himself, or as a reasonably prudent person
11 would drive.

12 Basically what felony DUI is is somebody who may
13 have had alcohol, may not have had alcohol, it may be
14 some other substance, it impairs their ability to drive
15 combined with some negligent standard, which is a lower
16 standard than materially and appreciably impaired. I
17 think. This argument has been --

18 MR. BISCHOFF: I don't want to take up any
19 more of the Court's time.

20 THE COURT: Sometime the State has -- it's
21 been a long time ago. I have one case that the
22 State agreed that it was a lesser included
23 offense, but since then I have not had any cases
24 where they have agreed that it was a lesser and
25 included offense. I'll study it a little more

INSTRUCTION REQUESTS/ARGUMENT

1 tonight and make sure that the Blockburger
2 analysis --

3 MR. KIDD: I'll look at it too.

4 THE COURT: -- is accurate. Because really,
5 almost in a felony DUI case, it is almost an all
6 or nothing kind of analysis when you come down to
7 it. Either the person was driving impaired and
8 hurt somebody or they didn't hurt -- really, the
9 critical element in a felony DUI with great bodily
10 injury is hurting somebody. So, either you hurt
11 somebody or you didn't.

12 MR. BISCHOFF: I know, but in this kind of
13 case in particular where you may have, you may
14 have a jury to determine that somebody stepped out
15 in front of another person. Being under the
16 influence has nothing to do with the injury.

17 THE COURT: It would mandate a not guilty
18 verdict because the greater element in felony DUI
19 is proximate cause and great bodily injury. So,
20 if you have no great bodily injury and you have no
21 proximate cause you have a not guilty verdict.

22 MR. BISCHOFF: I understand that. And that
23 is actually the flip side of it. Some people look
24 at that as maybe an advantage. But if the Court
25 will allow me to please take some time this

INSTRUCTION REQUESTS/ARGUMENT

1 evening to look into this, just this one issue of
2 lesser included offense, I don't have an issue
3 with any of the other charges.

4 THE COURT: What is going to be very
5 interesting, I don't know if y'all have been
6 listening to the news, the government is about to
7 lower the standards. We are going to get lower to
8 the .05 if you want to get highway money. Which
9 is going to change the statutes. The statutes say
10 that five one-hundreths of 1 percent or less it
11 concludes that the person was not under the
12 influence. Well, that is going to change the
13 whole schematic. It is going to change. If you
14 want to get highway funds you have to adopt it.

15 MR. BISCHOFF: Maybe we can retire and open
16 up a cab company because, I mean, you are not
17 going to be able to go to dinner.

18 THE COURT: I don't know. Well, you know
19 that I'm not a drinker, you know, and I live in a
20 fish bowl so I, you know, I wouldn't ever have
21 anything because I'm paranoid, which I don't
22 advise anybody to live like that, because it's not
23 necessarily good.

24 MR. BISCHOFF: Will the Court hear me very
25 briefly in the morning on this?

INSTRUCTION REQUESTS/ARGUMENT

1 THE COURT: I'm going to hear you, but I am
2 going to work on it this evening. And I will hear
3 you in the morning, but I won't have a lengthy
4 protracted argument because I'm not having a jury
5 sitting while we argue.

6 MR. BISCHOFF: I appreciate that.

7 THE COURT: I'm not trying to be difficult.

8 MR. BISCHOFF: No, I understand.

9 THE COURT: They give us their time for \$10 a
10 day. It's difficult to have them waiting while we
11 opine -- although it is necessary sometimes to do
12 that. We have a lawyer on the jury who I'm sure
13 understands and probably is -- you know, has a
14 greater understanding of it than those who are
15 not. But I'm not particularly fond of having them
16 sit for any extended amount of time to re-argue
17 it.

18 I'm going to look at Blockburger. I have had this
19 come up in a case before and I have ruled that it was
20 lesser included. I'm going to look at my notes. We
21 literally did a chart and did it -- mirror to mirror --
22 and it isn't. I think finally, my logic if I followed
23 it to conclusion, is that you really don't -- DUI is
24 really not the critical element. It is one of the
25 elements, but it's not really what is dispositive of

INSTRUCTION REQUESTS/ARGUMENT

1 the felony DUI statute and great bodily injury. What
2 is dispositive is proximate cause and great injury
3 combined with being impaired while driving a vehicle.

4 So, if you don't meet the other two elements, it
5 is a not guilty verdict. So it becomes an all or
6 nothing statute where drinking or being impaired
7 becomes one of the elements that lead to the other
8 elements. But if the jury will find, as they will
9 argue, that Mr. Garland did not -- was not in the work
10 zone, that your expert testified that it was not
11 possible that logistically it could happen this way and
12 he stepped in front of the car, then there is no
13 proximate cause -- great bodily injury because there is
14 no proximate cause, so it fails. So, from a purely
15 legal standpoint there's no way that a verdict can
16 stand on felony DUI with great bodily injury unless the
17 jury found proximate cause and great bodily injury.

18 So, if they were to follow your theory, then those
19 two elements fail and it is a not guilty verdict. But
20 I think that's where I ended up with it before when I
21 was thinking through it. And, like I said, me and my
22 clerk stayed late and we did a chart. I said, we need
23 to find out if this meets the element test.

24 MR. BISCHOFF: Thank you, Judge.

25 THE COURT: You are welcome. We will talk

INSTRUCTION REQUESTS/ARGUMENT

1 about it in the morning. And, again, I am not
2 trying to be difficult, my jury charges I have had
3 for 17 years or probably a little more. They are
4 not pretty or a work product that I want in public
5 domain. Oftentimes because I have done them so
6 many times I may change a paragraph around or do
7 something differently. It would be hard for you
8 to rely on that. And I may exclude something from
9 it.

10 MR. BISCHOFF: Okay.

11 THE COURT: I always say that I am going to
12 re-do them but the time just never provides me the
13 opportunity to do that. We go from court week to
14 week to week and, you know, life sort of takes
15 over. But it's not a pretty work product that I
16 would want floating around with my handwriting and
17 errors.

18 MR. BISCHOFF: I understand. Thank you,
19 Judge.

20 THE COURT: Y'all have a good evening. I'll
21 see you in the morning.

22 (Trial recessed for the day. Proceedings
23 continued in Volume 8.)

24

25

REPORTER'S CERTIFICATE PAGE

1 CERTIFICATE

2

3 STATE OF SOUTH CAROLINA:

4 COUNTY OF CHARLESTON:

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

9 DATED this 1st day of May, 2014.

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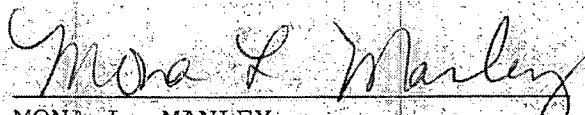
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1 State of South Carolina }
2 County of Charleston } Indictment No. 2012GS1001033
3 State of South Carolina, }
4 Plaintiff, }
5 vs. } Trial Transcript
6 Daniel D. Hamrick, }
7 Defendant. }

8

9 VOLUME 8

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13

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15 October 25, 2013

16 Charleston, South Carolina

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21 BEFORE:

22 The Honorable Deadra Jefferson

23

24

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1 PROCEEDINGS

2 THE COURT: Mr. Kidd, you said that you were
3 going to think about whether the State was going
4 to change its position on the lesser and included?

5 MR. KIDD: I researched it briefly. To be
6 frank, I didn't spend a whole lot of time but I
7 didn't find any support for the charging lesser
8 and included. And I would argue it's not
9 appropriate.

10 THE COURT: Okay. Mr. Bischoff, did you find
11 anything over the evening?

12 MR. BISCHOFF: I did. A number of
13 jurisdictions have looked at it.

14 THE COURT: I need something in South
15 Carolina.

16 MR. BISCHOFF: I think that it's so obvious
17 here that that is the reason that no one was able
18 to find anything on it. If you look at
19 Blockburger --

20 THE COURT: I think that it's not obvious
21 or -- I am talking. It's not obvious or we would
22 already have a case on point about it. There's
23 several on appeal about it. And I'm certain that
24 the appellate court will give us guidance on it in
25 probably, I am thinking, the next year, if not

IN-CAMERA MOTIONS/ARGUMENT

1 sooner. I just can't think of how long one of the
2 cases -- as a matter of fact it is in Charleston
3 County and it is on appeal, I just can't remember
4 how long it's been going through the appellate
5 process. My question is, did you find anything in
6 South Carolina to support that it is a lesser
7 included offense. I do not find other states
8 persuasive for guidance because most of their
9 statute are very different than ours and statutory
10 framework is very different than ours, if unless
11 you found a state with a statutory framework
12 identical to South Carolina.

13 MR. BISCHOFF: No.

14 THE COURT: So the answer I guess is that you
15 didn't find any South Carolina precedence
16 supporting your position?

17 MR. BISCHOFF: That is correct. And, Judge,
18 I know that you said that you didn't want to keep
19 the jury waiting so what I did is prepared a
20 document to lay out my objections to the jury
21 charge and I would like to make it a Court
22 exhibit.

23 THE COURT: You need to argue it. And I'm a
24 little troubled by the posture that you have taken
25 because I asked you on yesterday to make the Court

IN-CAMERA MOTIONS/ARGUMENT

1 aware of anything that you did not find clear or
2 was vague so that I could read it to you. I'm a
3 little confused as to how you could possibly
4 object to something that you claim that you didn't
5 understand. So now for you to take that posture
6 is troubling to me because I asked you very
7 specifically last night and my directive was very
8 clear -- I know that it was late and we were all
9 tired -- to articulate to this Court what your
10 exception was. And I needed to know what it was.
11 To do it now, the way that you are suggesting it
12 limits the Court's ability to address anything in
13 advance.

14 MR. BISCHOFF: I believe that you didn't give
15 me the opportunity to address it in advance, that
16 is why I filed the jury charges at the beginning.

17 THE COURT: You did and I looked at them.
18 And I told you what -- when I said that I am using
19 the standard instruction it doesn't mean that the
20 concept is not covered, it simply means that I'm
21 not going to use the language that you have
22 suggested. So I need for you to articulate to me
23 what it is that you have an exception to so that
24 if there's something that I might well agree with
25 you, that it can be corrected before instructions

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1 are given. But, again, the instructions on this
2 issue are very standard.

3 MR. BISCHOFF: I have done everything that
4 you have asked, Judge. And in the sake of time I
5 have made it a Court's exhibit. I have got it
6 documented.

7 THE COURT: That is not what I have asked you
8 to do. I have asked you now to articulate and you
9 have not done what I have asked.

10 MR. BISCHOFF: May I grab my document?

11 THE COURT: You don't make anything an
12 exhibit without checking with the Court in
13 advance.

14 MR. BISCHOFF: Well, I'm asking you to make
15 that a Court's exhibit.

16 THE COURT: And I am asking you to articulate
17 what your exceptions are.

18 MR. BISCHOFF: Failure to charge DUI, driving
19 under the influence, failure to charge driving
20 under the influence as a lesser included I think
21 violates the Blockburger elements test under State
22 v. Easler and then secondly, charging --

23 THE COURT: I need you to slow down please.
24 And next?

25 MR. BISCHOFF: Charging offenses not

IN-CAMERA MOTIONS/ARGUMENT

1 mentioned in the indictment as possible violations
2 of law and the second element in felony DUI.

3 THE COURT: You have confused me. What are
4 you referring to?

5 MR. BISCHOFF: Because you listed off a
6 number of offenses that you may or may not charge
7 to the jury yesterday late afternoon, one of which
8 was actually DUI as being the underlying offense
9 for which --

10 THE COURT: No, I didn't. That is why I
11 think that you --

12 MR. BISCHOFF: The State presented the jury
13 charges.

14 THE COURT: I didn't use any of the State's
15 jury charges.

16 MR. BISCHOFF: Well, you haven't told me if
17 you are or if you aren't.

18 THE COURT: I did tell you. I was very clear
19 as to what I was going to instruct, I was using my
20 standard instructions. I don't even know what you
21 are referring to.

22 MR. BISCHOFF: The State told me that they
23 handed it up to you, that they charged a number of
24 violations. It wasn't very clear yesterday, Your
25 Honor.

IN-CAMERA MOTIONS/ARGUMENT

1 THE COURT: I don't think that the Court was
2 vague in any manner whatsoever. The only
3 instructions that I have marked here are yours, so
4 I don't know what you are referring to.

5 MR. BISCHOFF: Again, I believe that the
6 Court indicated that they were going to charge a
7 number of offenses, including DUI, including
8 speeding through a construction zone, a number of
9 common law offenses that I think are not outlined
10 in the indictment and doing so I think is error.

11 THE COURT: Okay. To address what you are
12 referring to, the felony DUI statute includes any
13 act that is forbidden by law or neglect of duty of
14 law. And that includes driving statutes. And
15 that is routinely included. So all -- any statute
16 that deals with negligence, basically, is included
17 in the instruction, so that would be all of the
18 statutes that deal with speeding, construction
19 zone statutes as well as -- let's see here.

20 That would be 57-5-1536, driving in a temporary
21 work zone, only C and D are applicable. 56-5-1520
22 which is reasonable speed under conditions, appropriate
23 conditions. 56-5-2370, which is driving in a highway
24 construction maintenance zone, which is Subsection A of
25 that statute. 56-5-1535A, speeding in a highway work

IN-CAMERA MOTIONS/ARGUMENT

1 zone, which is again, Subsection A. 56-5-1900, which
2 was one of the State's requests I believe, which was
3 failure to maintain lane. That would be applicable as
4 well because you are required to drive completely in a
5 lane, and the testimony is that he deviated from that
6 and drove into the work zone.

7 The duty to maintain due care which is 56-5-3230,
8 which is maintaining your vehicle in due care to avoid
9 colliding with a pedestrian, which is proper lookout
10 codified.

11 They also requested the Mt. Pleasant City
12 Ordinance, which is 701066, which is careless
13 operation, unlawful for any person to drive or ride any
14 vehicle without care and caution in full regard for the
15 safety of persons and property. So, those would be
16 included as they are appropriately reflected by law.

17 And as with regards to an indictment, an
18 indictment is a notice -- really, technically, all that
19 the State has to do is put the statute in there and
20 that puts you on notice as to what you have to defend.
21 They don't have to allege every single --

22 MR. BISCHOFF: It is also double jeopardy,
23 right? And I don't think what they have done here
24 is given appropriate notice to address every
25 single possible violation of the law.

IN-CAMERA MOTIONS/ARGUMENT

1 THE COURT: I think that you all know how the
2 facts were going to develop in this case once you
3 went through the discovery process, as evidenced
4 by your procurement of an expert on this issue
5 because your expert addressed almost every single
6 one of these elements -- well, not elements
7 because they are not elements, factual
8 circumstances in this case.

9 The indictment says, Speeding too fast for
10 conditions, failure to exercise due care, failure to
11 keep proper lookout and/or failure to maintain lane and
12 such act proximately caused great bodily injury to
13 Ahmad Garland. So, it does cover all of those, they
14 don't have to mention any statute.

15 MR. BISCHOFF: I think they do. In State v.
16 Cattary, (phonetic) which is 262 South Carolina --

17 THE COURT: Was that decided before or after
18 Gentry?

19 MR. BISCHOFF: I think it's on point.

20 THE COURT: If it's after Gentry, it is not
21 on point.

22 MR. BISCHOFF: I think it's on point, it's
23 absolutely on point under the circumstances.

24 THE COURT: I'll note your exceptions. Our
25 case law is very clear, State versus Gentry, the

IN-CAMERA MOTIONS/ARGUMENT

1 indictment is a noticed document, the State
2 doesn't have to allege every single factual
3 circumstance. An indictment puts you on notice as
4 to what you are being charged with or what you are
5 called to defend. I think that the indictment is
6 more than sufficient to put you on notice as to
7 those statutes. And in fact you did defend
8 against each of these factual circumstances. Do
9 you have any other exceptions that you have not
10 articulated other than DUI as a lesser included
11 offense and the statutes which the Court will
12 include pursuant to the felony DUI statute?

13 MR. BISCHOFF: Proximate cause, which we
14 already covered yesterday.

15 THE COURT: How -- oh, okay. And I told you
16 what I would -- I read the proximate cause during
17 the directed verdict.

18 MR. BISCHOFF: You did, yes, ma'am.

19 THE COURT: I'll note your exceptions for the
20 record. Any other exceptions?

21 MR. BISCHOFF: No, ma'am.

22 THE COURT: Would the State like to respond
23 to each of Mr. Bischoff's exceptions?

24 MR. KIDD: No, ma'am, I think that you have
25 articulated our position. I think under Gentry

IN-CAMERA MOTIONS/ARGUMENT

1 there's plenty of notice as to -- I think all of
2 the statutes that we are requesting be charged are
3 subsumed by the allegations in the indictment, due
4 care, proper lookout, failure to maintain lanes,
5 speeding. It is pursuant to all of the statutes
6 which we have requested be charged, so I think
7 that they are on notice for what they are facing
8 here today.

9 And I have got no further commentary on your other
10 charges, standard charge that you are going to be
11 using.

12 (Pause.)

13 THE COURT: I thought at great length about
14 this on last night. And that is why I'm taking a
15 little time because I'm thinking about it more.
16 And I have been rolling it over in my mind as the
17 evening progressed. And while I do not think that
18 DUI, pursuant to the Blockburger test -- in other
19 words, while I don't think that it meets the
20 elements test, because there is -- well, I guess
21 you could really -- it could almost come up 50/50
22 in some ways.

23 Because if you read it in one aspect there's
24 language required in the greater offense that is not in
25 the lesser offense. In other words, there's really a

IN-CAMERA MOTIONS/ARGUMENT

1 lesser standard required of the greater offense than
2 the lesser offense. However you could also read it as
3 each element of the other. Lesser included is also a
4 necessary element of the greater offense. And if you
5 looked at it in the way the Defense is arguing it is
6 that DUI is always a necessary element of the greater
7 offense, which arguably it could be and arguably it
8 could not be when you start dealing with inferences and
9 other ways that you interpret DUIs as we discussed on
10 yesterday evening.

11 Because the State does not have to prove -- the
12 State merely has to prove under the felony DUI statute
13 that he was driving a car while under the influence of
14 alcohol or drugs. But after I thought -- to make a
15 long story short, without belaboring the hour, I
16 thought about it more, my thought process became, What
17 is the harm in it?

18 Because frankly if he fails -- in other words, his
19 argument is that this person stepped out in front of
20 me, I did not swerve into the construction zone,
21 therefore while I was driving intoxicated there was a
22 lack of proximate cause. So the jury follows that
23 argument in my estimation the State has failed to meet
24 their burden of proof and there would be no conviction
25 of felony DUI, he would be acquitted.

IN-CAMERA MOTIONS/ARGUMENT

1 But if they don't have a problem with running the
2 risk of him being convicted of something else when he
3 could be acquitted I don't see why -- I guess I'm at
4 the point, What is the harm of it? Either the State is
5 going to prove its case beyond a reasonable doubt and
6 he is convicted of felony DUI and great bodily injury,
7 and if the jury follows his argument they are going to
8 acquit him.

9 But he has asked for the lesser included offense
10 which technically means if you fail to prove he's going
11 to be convicted of something else. The more that I
12 thought about it, I came around to, you know, what is
13 the harm in it really?

14 MR. KIDD: I won't object to you charging it,
15 Judge, my only concern is that if we, when
16 addressing the law, the difference between those
17 two charges. We don't require material and
18 appreciably impaired on the felony DUI.

19 THE COURT: Exactly.

20 MR. KIDD: As long as we make the
21 differentiation I don't mind charging the lesser
22 and included.

23 THE COURT: I took the time, and I appreciate
24 you all indulging me because I wanted to read the
25 cases and that's why I asked Mr. Bischoff as I did

IN-CAMERA MOTIONS/ARGUMENT

1 and why I instructed him as I did. I think
2 sometimes in the heat of battle it is very
3 difficult for lawyers to really hear the Court. I
4 am not an advocate. I don't have a position. My
5 only concern is that there be a clean record and
6 that everybody have a fair, level playing field.

7 So, if I ask a particular question I'm not wasting
8 words. They are designed, it's not a mystery to me, I
9 know what I'm asking and I know why I'm asking it. I
10 have the luxury of seeing the end from the beginning.
11 So, if I ask a question it is designed for a specific
12 reason. And the reason that I wanted you to articulate
13 your objections, Mr. Bischoff, is that they may have
14 validity and the Court needs the option and ability to
15 address those things before the jury is instructed. It
16 is much easier to correct an instruction beforehand
17 than after the fact. So when I asked you on last
18 evening to articulate your exceptions I did not want
19 there to be any mystery in my instructions, I wanted
20 you to tell me so I could read it to you so that you
21 would know exactly what the Court would be instructing.
22 But I know that that is hard to see in the heat of
23 battle because y'all have to win, I don't. At least
24 that is in y'all's mind.

25 I was an advocate, I wanted to win, I'm not going

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1 to kid about that, I think attorneys have those
2 personalities and posture and they want to succeed in
3 what they are doing, but I ask those questions very
4 specifically for a reason. Because, again, if there is
5 something that can be corrected beforehand it's better
6 than trying to go back after the fact and either
7 re-instruct a jury or clarify an instruction.

8 So, I appreciate you all giving me the
9 opportunity. Because I wanted to read the case that
10 Mr. Bischoff gave the Court this morning to make sure
11 that my assessment was accurate. Of course, no Court
12 is perfect, that's why we have the appellate court so
13 they can tell us when we mess up.

14 MR. BISCHOFF: Thank you, Judge.

15 THE COURT: You are welcome. And, again, I
16 don't know. Until we get guidance from the
17 appellate court, I have no idea. These are the
18 kind that could be in the lesser included. They
19 have another set of cases that -- I don't know. I
20 don't have a clue. We will see what happens. All
21 we can do is the best that we can with what we
22 have. So, what I'm going to instruct the jury is
23 that if they were to find that the State has
24 failed to prove felony DUI with great bodily
25 injury beyond a reasonable doubt then they can

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1 consider whether the State has proven the
2 Defendant guilty of driving under the influence.

3 Pursuant to 56-5-2930 and then I'll instruct the
4 elements of 5-2930 which is the State must prove the
5 Defendant was driving under the influence, driving a
6 motor vehicle in the state under the influence of
7 alcohol and/or drugs or other substances to the extent
8 that the Defendant's faculties to drive were materially
9 and appreciably impaired. And then we will -- the
10 Court defines what driving a motor vehicle is, the
11 movement of a vehicle and the State must prove beyond a
12 reasonable doubt that the Defendant was sufficiently
13 under the influence to impair his ability to drive with
14 reasonable care with due regard of others and himself
15 or a reasonably prudent person would drive, not
16 necessary to be passed out, et cetera.

17 And then I'll instruct again the inferences from
18 the test, which is 56-5-2950D, which is a point zero
19 eight, which is the eight one-hundreths of 1 percent or
20 more, or .08. And that may be inferred that the
21 Defendant was under the influence and that that
22 inference is simply an evidentiary fact to be
23 considered along with the other evidence in the case.
24 And you may give it the weight, value and effect that
25 you determine it should receive. Is there any

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1 exception from the State?

2 MR. KIDD: Judge, no exception to that. I
3 just think that this raises one additional
4 concern.

5 THE COURT: What is that?

6 MR. KIDD: That is if they convict of the
7 lesser included.

8 THE COURT: Uh-huh.

9 MR. KIDD: Then I think that they need to
10 address blood alcohol level.

11 THE COURT: I am sorry.

12 MR. KIDD: Then I believe that they need to
13 address what his BAC was.

14 THE COURT: Oh yeah, under that.

15 MR. KIDD: Whether it falls into less than .1
16 or .16, so I think that we need to have that
17 additional option, guilty of felony DUI, not
18 guilty of felony DUI.

19 THE COURT: Actually it would read, guilty of
20 felony DUI with great bodily injury or as to the
21 lesser offense, guilty of driving under the
22 influence.

23 MR. KIDD: And if you find guilty of driving
24 under the influence then his BAC was A, B, or C.
25 Or we can send them back, if they come back with a

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1 lesser included, then we can send him back with a
2 determination of what his BAC was.

3 THE COURT: I think that it's better to do it
4 all at one time. We will work on the verdict form
5 while you are doing your closing arguments and
6 then we will go over that. We will take a break
7 after the closing arguments and instructions so we
8 can look at the verdict form and make sure we are
9 all on the same page. Anything from the State?

10 MR. KIDD: No, Your Honor.

11 MR. BISCHOFF: No, Your Honor. I think that
12 you said that you are not going to grant my
13 motion, regardless, fully on the law.

14 THE COURT: Well I think the law is what the
15 law is.

16 MR. BISCHOFF: The law's in fact as my filed
17 motion in limine states.

18 THE COURT: I think that they are required to
19 argue under the laws, and frankly they can waive
20 opening if they like unless the Court requires
21 them to. That is why they get last argument, they
22 have the burden of proof.

23 MR. BISCHOFF: Yes, ma'am.

24 THE COURT: All right. Ready to proceed from
25 the State?

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1 MR. KIDD: Yes, ma'am.

2 THE COURT: From the Defense?

3 MR. BISCHOFF: Yes, Your Honor.

4 THE COURT: All right. Please bring the jury
5 in.

6 (Jury enters the courtroom.)

7 THE COURT: Good morning, ladies and
8 gentlemen. I hope that you had had a pleasant and
9 restful evening. As I explained both the State
10 and Defense have rested their cases. We have now
11 reached the stage of the trial to hear closing
12 arguments and the Court's instruction. You will
13 hear from the State, followed by the Defense,
14 after which you will hear from the State again.

15 Under our rules of procedure, both civil and
16 criminal, the party with the burden of proof gets the
17 last chance, so to speak. Since the state has the
18 burden of proof they get last argument. We have also
19 ordered your lunch today. I figure it is the least
20 that we can do, you have been here all week. We have
21 gauged when we think we will be done with the process
22 so that your lunch arrives and coordinates with the
23 conclusion of the argument. So we appreciate your
24 patience this morning. I know that we had jurors with
25 challenges in getting here this morning.

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1 I would ask that you give the attorneys your
2 undivided attention. Mr. Kidd, you may proceed when
3 you are ready.

4 MR. KIDD: Yes, Your Honor, may it please the
5 Court. Mr. Bischoff. Good morning ladies and
6 gentlemen, I want to start out by thanking you for
7 your service. And I know it's been a long week
8 and I know that it is an awful big sacrifice to
9 ask of you. And I know that I speak for everyone
10 in the courtroom when I extend our sincere thanks.
11 Kind of on that note I also want to apologize, I
12 made a joke in my cross-examination yesterday and
13 this really isn't the forum for it. It is a
14 serious case and it deserves serious attention and
15 if I offended you or the Garland family, I
16 apologize.

17 But this is my opportunity to address the law that
18 governs this case. And when I'm done Mr. Bischoff will
19 give his closing arguments and then you will hear from
20 me one more time to give you my surmise of the facts.
21 And as I told you in my opening statements on Tuesday,
22 it feels like a long time ago, if anything that I say
23 about the law that governs this case differs in any way
24 from Judge Jefferson, that you defer to her, she is the
25 absolute authority in the case. If I differ anyway

STATE'S CLOSING

1 from it, she is the authority. Just like you are the
2 authority on the facts, she is the authority of the
3 law.

4 So, once again, I want to walk through my elements
5 of felony DUI so I can talk to you about what I have to
6 prove in order to get a conviction. Elements of felony
7 DUI, got to prove that Mr. Hamrick was driving a
8 vehicle under the influence of alcohol number one. I
9 have got to prove that he does any act forbidden by law
10 or neglects any duty imposed by law. And finally, I
11 have to prove that one of those acts or duties which he
12 failed to obey or that he did approximately causes
13 great bodily injury to Ahmad Garland.

14 There's a variety of statutes that govern driving
15 in this state. One of which is South Carolina Code
16 56-5-1536. And in the Paragraph C of that statute I'm
17 going to go down to the second sentence, it says, The
18 exercise of control required for a driver to comply
19 with this section is that control possible and
20 necessary by the driver to avoid a collision and to
21 avoid injury to persons or property.

22 And if you look to D section of this statute,
23 number two, another duty is to maintain a safe speed
24 for road conditions, changing lanes and impossible or
25 unsafe. This deals with traveling through a work zone.

STATE'S CLOSING

1 Another South Carolina code statute which is
2 applicable, 56-5-1520. A person shall not drive a
3 vehicle on a highway at a speed greater than is
4 responsible and prudent under the conditions and having
5 regard to the actual and potential hazards that
6 existed. Speed must be so controlled to avoid
7 colliding with a person, vehicle, or other conveyance
8 on or entering the highway in compliance with legal
9 requirements and the duty of a person to use care.

10 Another South Carolina Code 56-5-2370. The driver
11 of a vehicle shall yield the right-of-way to any
12 authorized vehicle or pedestrian actually engaged in
13 work upon a highway within any highway traffic
14 construction or maintenance area indicated by official
15 traffic control devices.

16 Another code, 56-5-1535, it is unlawful for a
17 person to drive a motor vehicle in a highway work zone
18 at a speed in excess of the speed limit set and posted
19 by signs.

20 Another code, 56-5-3230. Notwithstanding other
21 provisions of any local ordinance, any driver of a
22 vehicle shall exercise due care to avoid colliding with
23 any pedestrian or any person propelling a human-powered
24 vehicle.

25 Mount Pleasant city ordinance, Shall be unlawful

STATE'S CLOSING

1 for any person to drive or ride in a vehicle without
2 care or caution or full regard for the safety or
3 persons and property. Any person failing to do so
4 shall be guilty of careless driving.

5 So this brings me to the final prong of felony DUI
6 which I first referred to, which is proximate cause.
7 Now, one of these duties or acts has to be the
8 proximate cause of Mr. Garland's injuries for
9 Mr. Hamrick to be guilty.

10 So, what is proximate cause? That is kind of
11 important. Proximate cause is the cause that directly
12 produces an event without which the event would not
13 have occurred is the proximate cause of an accident.
14 Now, in law school they usually define proximate cause
15 as "but for" causes, but for this this wouldn't have
16 happened. "But for" causes. But what is important
17 about proximate cause is that there can be multiple
18 proximate causes for a single accident, for a single
19 collision. And I'm going to illustrate that example
20 for you. In a hypothetical situation --

21 MR. BISCHOFF: Judge, I object to this line.
22 This is instruction on the law. I don't think
23 that this is proper use of a diagram. I think
24 that's getting into argument.

25 THE COURT: We will see. Subject to being

STATE'S CLOSING

1 overruled you may proceed.

2 BY MR. KIDD:

3 Q In a hypothetical situation, not the facts of this
4 case at all, if you have a drunk driver who fails to stop at
5 a stop sign and you have another driver coming from an
6 intersection at a different direction who is speeding and
7 they collide at that intersection, there are two proximate
8 causes to this accident, there's the speeder and there's the
9 failure to stop. Two proximate causes to one collision.

10 Now, it doesn't matter whether this sober
11 driver was going 10 miles an hour over or 30 miles an hour
12 over, proximate cause of the accident. And in criminal
13 court it is not like civil court. You know in civil court
14 you have comparative negligence, contributory negligence and
15 it is about splitting up money. So, if there's, you know, a
16 hundred thousand dollars at stake, you know, someone is 30
17 percent liable and another person is 30 percent liable, then
18 they split up the money and people pay accordingly. That is
19 not how it works here. There's no such thing as comparative
20 and contributory negligence in criminal court. There's just
21 proximate cause of great bodily injury. So, as long as he
22 did an act, which is the proximate cause of Mr. Garland's
23 injuries, then that satisfies the statute.

24 And the final thing or the final element is
25 great bodily injury. Great bodily injury is that which

STATE'S CLOSING

1 creates a substantial risk of death or which causes serious
2 permanent disfigurement and protracted loss or impairment of
3 the function of any bodily member or organ. That is the
4 definition of great bodily injury.

5 And there's one final point of law that I
6 would like to address, and that is inferences. You are
7 allowed to infer. You may infer that when someone's blood
8 alcohol content is over a .08 that he's under the influence
9 of alcohol. That is a legal inference that you may make,
10 over a .08, under the influence of alcohol.

11 I want to thank you again for your time.
12 Please give your attention to Mr. Bischoff and I'll
13 readdress the facts.

14 THE COURT: You may proceed when you are
15 ready.

16 MR. BISCHOFF: Thank you, Your Honor.

17 THE COURT: You are welcome.

18 MR. BISCHOFF: Good morning. I know it's
19 been a long week. I'm exhausted. I know the
20 State is exhausted, prosecutors are exhausted.
21 And I know that you are also. I know that you
22 have been taken away from your families and work,
23 but I truly appreciate the time and it is an
24 important part of our process in our country that
25 juries decide disagreements, whether it be in

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1 civil court, whether it be in criminal court.

2 As I told you in the beginning, from the very
3 moment that I first talked with you, this case is all
4 about whether or not there was an unavoidable accident.
5 I told you that felony DUI requires that you be under
6 the influence, that you violate a law or that you
7 neglect a duty and then that violation or neglect
8 approximately causes great bodily injury.

9 I told you that we were going to try and make it
10 as easy as we could on what was the proximate cause.
11 It is the most important part of this case. I'll
12 concede that Mr. Garland suffered great bodily injury.
13 And you may hear from the State in their closing
14 argument that this is about justice for Mr. Garland.
15 Whether you come back guilty or not guilty he is not
16 going to get justice today. He didn't deserve what
17 happened. There's no question about it.

18 But the circumstances from that night, and we have
19 showed you, was that an unavoidable accident that
20 simply shouldn't have happened but did. But it wasn't
21 because Mr. Hamrick was the direct cause, it was
22 because there simply was not proper set-up at the
23 construction site to protect Mr. Garland and to protect
24 Mr. Hamrick or anybody else that was traveling on that
25 road when Mr. Garland got disoriented and unfortunately

DEFENDANT'S CLOSING

1 turned into traffic at just the last second, just the
2 wrong second. But holding Mr. Hamrick accountable --
3 remember what I said, when there's a tragedy you always
4 try to assess blame somewhere. Holding him accountable
5 is not holding the State to beyond a reasonable doubt
6 requirement. It's not remembering that he's innocent
7 until proven guilty beyond each and every element of
8 beyond a reasonable doubt.

9 The way that felony DUI is stated, you have DUI,
10 violation of a law or dereliction of duty. And then
11 you have proximate cause or direct cause. They have to
12 find beyond a reasonable doubt that every single
13 element is satisfied, that every single element -- that
14 Mr. Hamrick is guilty of every single element.

15 If you go back in your jury room and you
16 deliberate and you say, you know what, that blood
17 alcohol content, I just don't think that that's wrong.
18 I think he was over the influence. You don't have to
19 say that. You are going to get instructed that over
20 .08 you may infer that somebody is over the influence.

21 Look around. Everybody handles alcohol
22 differently. But that's -- you are able to make the
23 determination yourselves based on your own experiences
24 and common knowledge. You don't have to leave that at
25 the door when you come in here.

DEFENDANT'S CLOSING

1 Proximate cause, as Mr. Kidd said, is a
2 complicated legal principle. But you don't have to
3 leave common sense at the door. If you go in the back,
4 you know, he's found under the influence, you can come
5 back with him being guilty of DUI.

6 But what I'm saying, what I said the entire time,
7 is that the State has not proven beyond a reasonable
8 doubt that the accident was avoidable and that
9 Mr. Hamrick could have done anything to avoid colliding
10 with Mr. Garland.

11 Now, how are you going to figure out exactly what
12 happened? I know you all remember taking an oath,
13 taking an oath to uphold the law as the Judge
14 instructed you, taking an oath not to communicate or
15 deliberate about the evidence or testimony that you
16 heard from the witness stand until you get into the
17 jury room.

18 So, when you get into the jury room I encourage
19 you, you are taking down notes, talking with your
20 fellow jurors, and just because you heard one thing
21 doesn't mean that they necessarily heard another. But
22 you are supposed to individually and collectively come
23 to a decision about what is the fair resolution in the
24 case. And you are going to do that by talking through
25 the witnesses who you heard testify one by one.

DEFENDANT'S CLOSING

1 I'm not going to go into every single thing that
2 all of the construction workers said. I think that all
3 of you paid attention and I would present to you that
4 maybe -- we just don't know, from the construction
5 workers, think about what they were doing at the time
6 of the accident, they are not paying attention to
7 exactly where one person is standing. They are not
8 paying -- they are trying to do their job. So, in such
9 an emotional situation we can all relate. This is an
10 emotional case. When emotions run high you tend to
11 maybe lose your cool or lose perspective.

12 Requiring them to prove to you, beyond a
13 reasonable doubt, what happened is simply not fair.
14 You can accept some, none or all of their testimony.
15 But let's think about what were they consistent on.

16 They were consistent on the fact that Mr. Garland,
17 unfortunately when he came to his final resting spot
18 ended on the back left side of the paver. They were
19 consistent that they didn't quite know where the cones
20 were set up. They maybe should have been there, but
21 they don't quite know how the barrels got into the
22 picture. Remember they testified about that.

23 Remember Henry Ford drew dots on the screen, they
24 thought that the cones were lining the road as you go
25 down. Well, we know that that's not true, right,

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1 because none of the cones were hit. None of the
2 barrels were hit. None of the other workers were hit.
3 When you take all of that into consideration, how can
4 you go with the State's theory, the prosecution's
5 theory that Mr. Hamrick entered the work zone?

6 The prosecutor told you in the beginning of his
7 opening statement, I accept this burden of proof. I'm
8 going to tell you that Mr. Hamrick entered the work
9 zone and then jerked out into the lane of travel and
10 then brought his car to a controlled stop some 100 feet
11 away. That is what he told you he was going to prove.

12 And then when we talked about Woody Poplin, our
13 expert, who, yes, we hired him. He gets paid for his
14 time. Everybody in here, that is a part of this
15 process, gets paid except for the Defendant. You guys
16 might get a small check for your service, but don't let
17 that cloud your judgment, he talked about 2700 wrecks
18 that he's analyzed. He is an expert, it is what he
19 does. It is not split second observations. It is not
20 about emotion. It is about hard core indisputable
21 facts, science, facts, physics, all of that stuff that
22 none of us probably cared about when we were in high
23 school, but that is his thing. He's testified for the
24 State, he's testified for the defense, he's testified
25 in civil cases on the Plaintiff's side and Defense

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1 side. So, yes, we did pay him for his time. But we
2 certainly didn't pay him to come up with the conclusion
3 that Mr. Garland stepped out into traffic and the point
4 of impact was in the travel lane not work zone. So,
5 the State's theory just doesn't add up.

6 When it didn't add up, the prosecutor starts
7 asking, well, what if the facts were different. What
8 if they were different? The State told that you that
9 they were going to prove their case based on what their
10 investigation led us to believe. They could have
11 charged him with DUI but they didn't. They had a
12 theory that he entered the work zone and he came out
13 and that is where he struck Mr. Garland. It is just
14 not possible.

15 Remember that, even with Officer Harris, we talked
16 about how fast a car travels, a car travels at 35 miles
17 an hour, 51 feet per second, and at 41 miles per hour
18 about 58 feet per second. Remember we talked about how
19 long Mr. Hamrick's car is, 15 and a half feet, I
20 believe, so they are saying that Mr. Hamrick drove his
21 car into the work zone at 35 to 40 miles an hour, and
22 again, we don't know exactly how fast he was going.
23 The State didn't give you any witness that says that
24 the damage to the car was consistent with the car
25 driving over 40 miles an hour. But I promise they will

DEFENDANT'S CLOSING

1 argue that he was speeding through a work zone.

2 And you heard Poplin say, odometers are
3 notoriously wrong, high, or not low. I guarantee you
4 every single one of you has driven your car, thinking
5 that you are going the speed limit and you look down
6 and say, oh, 37. You don't slam on brakes going a few
7 miles over the speed limit. Don't let that cloud your
8 judgment. We know that the car was traveling at a
9 certain rate of speed. And it just can't get in and
10 out of the work zone that quickly. It's just not
11 possible.

12 And on top of everything the State is then going
13 to argue, through their toxicologist, that
14 Mr. Hamrick's blood alcohol content was not .113, but
15 all of a sudden now it's a .16, twice the legal limit.
16 Twice the legal limit allows someone to perform that
17 kind of maneuver and not hit a cone, not hit a barrel,
18 not hit the paver, and Heaven forbid, not hit any of
19 the other construction workers around that work zone.

20 There's testimony from Neva Newman, Twan Roberts,
21 from Brian Sessions, all of them said that they were
22 literally right there at the paver and dump truck. You
23 heard from Henry Ford, from James Faulkner, from Terry
24 Lee Johnson, those gentlemen were in the work zone
25 right near Mr. Garland. They weren't hit. It just

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1 doesn't make sense.

2 Remember, don't leave common sense at the door.
3 And let's talk about -- let's talk about the
4 intoxication. You remember when Officer Harris was on
5 the stand and even though you know you have got to hold
6 him somewhat responsible or at least Mt. Pleasant
7 Police Department because they came in here, we are in
8 a criminal trial, they know what the burden of proof
9 is, they know that they have got to prove their case
10 beyond a reasonable doubt. That is what protects us.
11 He came in, he wasn't quite sure what happened. He
12 said, It's possible that the car entered the work zone.
13 Well, possible is not even probable. It is not even
14 probable according to the civil standard that warrants
15 one side winning over the other. It is certainly not
16 beyond a reasonable doubt.

17 Well, you heard all about, isn't this possible,
18 isn't that possible. It is the State's case. They
19 ought to know what happened. They can't just bring a
20 charge and not have the facts to support it. And they
21 certainly can't start changing around the facts. So,
22 even though Mr. Harris, Officer Harris, testified that
23 he wasn't quite sure what happened he did know the
24 field sobriety test well. Right? He knew exactly
25 according to guidelines under the National Traffic

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1 Safety Administration or NHTSA guidelines were developed
2 because they wanted to standardize DUI detection. So,
3 while I argue that his interpretation of what happened
4 on video was not accurate, he certainly knew what to
5 do, he certainly knew how to test for DUI.

6 But remember, the State is going to argue and I'm
7 going to argue that they lose credibility here. How
8 can you believe everything that they say that they are
9 going to argue through a toxicologist that speaks in
10 general terms, he was twice the legal limit and he's
11 able to do this. (Video playing.)

12 How does somebody hide being twice the legal limit
13 behind that? It is just not possible. Remember he
14 talked about divided attention and perception. That is
15 important, right? Everybody who has consumed alcohol
16 can relate to that. When you have cocktails and drinks
17 you lose your perception a bit, you lose your
18 orientation. Well, the State didn't point this out,
19 but you can decide.

20 Remember I told you in the beginning that he made
21 a split second judgment on the call in the field, but
22 let's go to the videotape. You can't argue with
23 videotape. You can argue with testimony from
24 witnesses, you can believe some, none or all, but when
25 you have got videotape, you the jury get to decide.

DEFENDANT'S CLOSING

1 (Video playing.)

2 Do you see that? How much more of an example of
3 divided attention can I give you than to be talking to
4 the officer in the middle of what everyone has
5 described as chaos and you got a car -- I mean, that
6 car looked like it was speeding, that car wasn't
7 stopping, and it throws rocks from the fresh pavement
8 in Daniel Hamrick's direction and he points that out to
9 the police officer who didn't feel it. That is divided
10 attention.

11 That is what makes you, when you go into the jury
12 room, to deliberate. If you feel like he was under the
13 influence, then, that is fine, but that is going to
14 tell you that it's not twice the legal limit. And then
15 remember when Officer Harris testified about one of the
16 things that he looked for in Phase Two, which is
17 personal contact, is consistency in the story or
18 slurred speech. There's no slurred speech on the
19 video. There's no testimony about slurred speech. How
20 do we know that he's consistent? Because he tells the
21 same thing over and over again to every officer that
22 was out there. He was at work. His boss man told him
23 that he had to stay over late. He did. And then he
24 got in his car and drove and he didn't see the guy.

25 (Video playing.)

DEFENDANT'S CLOSING

1 So, that is Officer Eckert. He testified that is
2 the hero, to be perfectly honest with you, that is the
3 guy that did everything that he ought to have done when
4 he responded to the scene. But that is what Daniel
5 Hamrick told Officer Eckert, I was at work, had to stay
6 open, I closed late. And I got in my car, I just
7 didn't see the guy. I know what happened, and because
8 he was driving he knows what happened. But he just
9 didn't see the guy and he didn't see him because
10 Mr. Garland steps out in front of traffic at just the
11 wrong time.

12 But then during personal contact with Officer
13 Harris, what does Mr. Hamrick tell him?

14 (Video playing.)

15 And then a few minutes later, this is exactly what
16 he says again. So, if you are talking about personal
17 contact to determine whether somebody is under the
18 influence, one of the things that you look for is
19 whether or not their story is consistent. He told it
20 consistently over and over and over again. He is not
21 twice the legal limit.

22 So, don't be fooled by the testimony of the
23 toxicologist talking in generalities. Did you hear
24 what she said? She says that every drink basically has
25 the same alcohol content. We know that's not true.

DEFENDANT'S CLOSING

1 Right? I mean, in this day and age there's not just
2 Budweiser, Bud Light, Natural Light, now there are
3 micro-brews where they change the brewing process and
4 alcohol content is stronger.

5 And we know when you are drinking liquor, if you
6 have that Malibu stuff in a Daiquiri that is not as
7 strong as Scotch, or even worse, that stuff Everclear,
8 which is like rubbing alcohol. Right? We know that
9 there's different concentrations of alcohol in
10 beverages.

11 Don't leave your common sense at the door. We
12 know that. But I would say that I'm not quite sure
13 that the toxicologist knew that. I mean, that's
14 just -- if that's her perception, if that's her life
15 experience, I can see how she could conclude that
16 somebody, based on the numbers, under these
17 circumstances, or in general terms of a high BAC, but
18 everybody is different. That is why you can't accept
19 what she said at face value. That is why you have to
20 go to the videotape.

21 Now, what do we know about the damage to the car?
22 And why is this significant? Why do we know that that
23 is significant or why is that significant? Because
24 what the State's charging, and even though they didn't
25 mention it in the beginning, they are going to tell you

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1 about speeding through a construction zone and weaving
2 into a lane, whatever they can think of they are going
3 to throw at you. But the damage to the car is
4 significant because if Mr. Garland had been in the
5 roadway then you would have seen damage in the middle
6 of the car.

7 If they are going to argue that Mr. Hamrick had a
8 duty to exercise due care, you have got a duty to the
9 stop if somebody is in your roadway, regardless of
10 where you are. You don't have to be in a construction
11 zone for that. But what duty do we have when it's an
12 unavoidable accident? How can we stop our car and
13 avoid an accident when someone steps in front of us at
14 just the last second? We just simply cannot.

15 And the damage to the car proves to you that the
16 point of impact was at that point on the car. We know
17 that's where the point of impact was. There's no
18 disputing that. Nothing else was hit out there. Not a
19 cone, not a barrel, not a paver, not another
20 construction worker. So we know that the damage to the
21 car is consistent with our theory. And when someone
22 turns into the lane of travel when there's no buffer
23 zone when they can become disoriented. Mr. Key just
24 told you, your head is like on a swivel when you are
25 out there at night. You can't avoid the accident when

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1 that happens, you just can't.

2 And to hold Mr. Hamrick responsible for Mr.
3 Garland turning out into the lane of travel at just the
4 wrong second is just not right. Remember, whenever
5 there's a tragedy we want to assign blame. That is not
6 what you are required to do. You took an oath to apply
7 the facts to the law. And I would propose to you that
8 the damage to the car proves in and of itself, along
9 with where Mr. Garland ended up on the paver, that the
10 accident -- the collision happened in the travel zone
11 and it was a last second, unavoidable accident.

12 And you remember Mr. Poplin talking about that
13 diagram. That is what happened, ladies and gentlemen.
14 That is what a body does when it gets trajected like
15 that. When a car is traveling forward the car has to
16 be traveling forward because it didn't hit any other
17 cones, it didn't hit the paver, it didn't hit any
18 barrels, it didn't hit anybody else.

19 And when you step out into traffic like that your
20 body is going to go that direction and it is going to
21 end up, unfortunately, at the back left side of the
22 paver.

23 I keep talking like we have the burden of proof,
24 but remember, we don't. The State does. And they
25 talked about possibilities, and you can't convict on

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1 possibilities. But what I'm telling you is what --
2 they gave to us the problem and they said that your
3 client, the Defendant, did this. And we said
4 Mr. Poplin, to our expert, Could it have happened this
5 way? And he said, No, here is what I think happened.
6 And that is what we presented to you. You don't have
7 to be an expert to conclude that that's the way that it
8 happened. Everything points to that.

9 Now, we have talked a little bit about whether or
10 not he was under the influence. We have talked a
11 little bit about a collision. And I just want to point
12 out to you that what I think the State is failing to
13 realize is that when a car stops at that location that
14 is not in dispute, there's no testimony that the car
15 got moved after that, if you take even Woody Poplin's
16 diagram and you talk about the feet that that car
17 travels from the point of impact -- I'm not going to
18 get technical because we don't know exactly where the
19 point of impact was. We know where, but we don't know
20 specifically how far away from the paver.

21 But think about it. You are talking about a
22 little bit over 100 feet, give or take. And when a car
23 travels at 50 feet per second, then in order to get in
24 between these two cones because we know that that's
25 where the car entered, right? Let me put it on the big

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1 screen so we can look at it. He is not pulling in
2 right there, right? We know that. If he pulled in
3 there he's going to be beyond that third cone. So, he
4 pulls in between the first cone that you see in that
5 picture and the second cone. That is less than
6 100 feet away from where the accident took place. It
7 is far less than that. So, he's basically stopping at
8 the moment of the impact. As soon as the impact
9 happens he's hitting the brake.

10 Remember, if you are twice the limit are you going
11 to be able to keep it together when your car collides
12 with a body in order to keep the car straight, not hit
13 the dump truck and then pull in at the first available
14 opportunity to bring your car to a controlled stop?
15 How is that possible?

16 Again, possible is not probable and it is not
17 beyond a reasonable doubt. But that's what the State
18 prosecutor is trying to tell you. Well, if this is
19 possible you deserve to come back for a conviction, but
20 I think about the driving for a number of reasons.
21 One, it had something to do with influence. And two,
22 it shows you that Mr. Hamrick was absolutely exercising
23 due care or else he's going to run into all of these
24 cones, he's going to hit something else.

25 Don't be fooled when they tell you he had some

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1 sort of a duty. He did everything that he should have
2 when he's driving. Remember, the way that the felony
3 DUI is set up, you have DUI and violation of law and
4 neglect of duty when you are driving, and proximate
5 cause of great bodily injury. So, it is significant.
6 Don't lose sight of that.

7 I also want to talk to you about, just briefly,
8 about how it was so easy to --

9 (Video playing.)

10 MR. BISCHOFF: To save us time I'm going to
11 fast forward. This is Officer Googe's video. See
12 how close the workers are. They are not protected
13 there. There's no buffer zone. When he arrives
14 look at this officer on the right, he has no idea
15 that the car is even behind him. No idea. Watch
16 Officer Eckert. Good morning. I mean, if you
17 can't get your bearings about you when there are
18 multiple cop cars everywhere, lights everywhere,
19 do you see how easy it is even for a trained
20 police officer to step into what could be
21 on-coming traffic?

22 Now, obviously this was the median. But the point
23 being that Mr. Garland had no idea that the car was
24 there. He got disoriented and didn't have the buffer
25 zone. It happened on more than one occasion. The

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1 State has all of these videos. Watch this. Now, this
2 car that is traveling through has the luxury of a
3 buffer zone. They have the luxury of people standing
4 around, of commotion. But do you see how easy it is to
5 get disoriented out there? That was an officer,
6 presumably, or maybe somebody for Banks Construction,
7 but they just walk into traffic. Remember, at the time
8 of the accident they weren't paving, so when you see
9 these pictures that the State is going to show you
10 about what happened, that is not the lighting
11 conditions.

12 Remember Officer Harris testified about Will
13 Gilliard, he was the guy driving the light truck, they
14 parked that truck there after the accident. That is
15 not going to illuminate enough to really give the same
16 effect here. But you saw how easy it was to get
17 disoriented.

18 I apologize ladies and gentlemen, but I want to
19 just -- I want to make sure that when you are in the
20 back deliberating -- I mean, you cannot forget this
21 point. Officer Eckert does the same thing here, look
22 at him on the far left side of the screen. Woe. Do
23 you see that? I mean, do you see how easy it is when
24 there's not the proper spacing? Far left side of the
25 screen. I mean, how close can you get?

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1 Now, granted these cars are clearly traveling 15,
2 20 miles an hour, and the State may say, that is what
3 duty Mr. Hamrick had, but you don't have all of this at
4 the time of the accident. Remember that stretch of
5 highway at Highway 17, I mean, it goes on for miles.
6 They are not working on every single part of the road.
7 In this case they weren't working on that part of the
8 road. There was no lighting, they were transitioning.
9 But even when there's clear advanced notice, do you see
10 how somebody, even in the middle of everything out
11 there can get disoriented? It is very simple.

12 This is obviously an emotional case and don't just
13 forget that when you enter your deliberation room and
14 you start to talk about the case. Because emotions are
15 so high, you have got these construction workers, some
16 of which still work for Banks, some don't, but their
17 testimony is not that credible. It is important but
18 it's not what you need to rely on to make your
19 decision.

20 You consider it, consider some, none, all but when
21 you are so emotional about what happened it is hard to
22 really take a step back and rationalize all of it.
23 That is why I'm giving you the video. That is why I've
24 taken it out, taken emotion out of it and shown to you
25 the important things in this case that you have to

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1 consider when you are trying to figure out what
2 happened.

3 There's no erratic driving. And in a chaotic
4 scene like that you are going to hit barrels, you are
5 going to hit cones, you are going to hit the paver, you
6 are going to hit other construction workers. You are
7 not going to be able to bring your car to a controlled
8 stop. There's no erratic driving. And I'm going to
9 argue that there isn't specific speeding to hold
10 Mr. Hamrick guilty on that alone. Speeding through a
11 construction zone is going 55 or 60 miles an hour, well
12 over the speed limit, not just over the speed limit.

13 That is not the only thing that the State is going
14 to argue. They don't know what happened so they are
15 going to throw another possibility in. He didn't weave
16 into the lane and back out. We know that from Woody
17 Poplin's report. He got down here and explained under
18 rigorous cross-examination. You can't argue with facts
19 and science.

20 And who did we not hear from? The doctor who took
21 care of Mr. Garland after the accident, the doctor who
22 would have been able to back up what Officer Harris
23 said, No damage to hips, to pelvis, no damage to either
24 of the legs, no damage to the knees, no damage to
25 either lower leg, only damage to the right ankle. Why

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1 is that significant? If he's walking to the paver and
2 he's told by Mr. Key, go get the sweeper, if he turns
3 at the right moment his injury is going to be to his
4 ankle. His facial injuries are caused by the catwalk.

5 A car going 35, 40 miles an hour is going to break
6 bones if it comes in contact, as the State said, by
7 entering the work zone. You would have heard about
8 significant damage from the ER doctor. But they didn't
9 call him. The doctor that they did call, he confirmed
10 the only injury to any of his lower extremities was to
11 the right ankle. Don't forget that. That is an
12 important piece of this puzzle. That is an important
13 thing for you to consider. Otherwise you are going to
14 have other injuries if it happened the way that the
15 State said that it happened.

16 So, we know that he's got reasonable driving; he's
17 not negligently driving. And we know that because Neva
18 Newman and Christopher Key didn't know the South
19 Carolina Department of Regulations or Department of
20 Transportation guidelines, that's why there's no buffer
21 zone. That is why they are not work protected at that
22 particular time of night. If they had been we wouldn't
23 be here.

24 I think that you all can conclude that based on
25 the testimony that you have heard, because it did not

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1 give adequate protection between the travel zone and
2 work zone to Mr. Garland, and but for him stepping into
3 the lane of travel the collision would not have
4 happened.

5 We have been consistent throughout our entire
6 case. And I just ask that when you go into the back
7 you give consideration to some of the things that I
8 have pointed out. Because you can't argue with the
9 video. But justice is not going to change, justice in
10 the form of a guilty verdict or even not guilty, it is
11 not going to change what happened to Mr. Garland. And
12 it is not something that anybody in here wishes had
13 happened, but it did. But it's not the fault of Daniel
14 Hamrick.

15 You have the ability if you believe based on
16 everything that you have seen on the video, based on
17 the blood alcohol content, to find him guilty of DUI if
18 that's what you think is appropriate. But I would
19 argue that something just can't add up with the blood
20 sample, or something doesn't add up with the
21 toxicologist telling you he's twice the legal limit.
22 If that's it and you feel that's just in this case,
23 then you are able to do that, but the State has not
24 proven that beyond a reasonable doubt, that Mr. Hamrick
25 was the proximate cause of Mr. Garland's injuries. And

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1 they have to do that.

2 I ask that you consider everything that I have
3 mentioned and when you come back render the verdict
4 that you think is appropriate keeping in mind that we
5 are all innocent until proven guilty and the State, the
6 prosecution, is required to prove each and every
7 element beyond a reasonable doubt. And the reason that
8 the they cannot prove proximate cause in this case is
9 because it's not there.

10 It was an unavoidable accident and there was
11 nothing that Mr. Hamrick could have done. To hold him
12 criminally responsible you have to feel like there's
13 something that he could have done. If you feel like he
14 shouldn't have had the drinks at work, then you can
15 find him guilty of DUI, but they are separate. DUI
16 doesn't lead to proximate cause.

17 I appreciate your attention. Thank you.

18 THE COURT: Mr. Foreman, ladies and
19 gentlemen, you have been sitting about an hour.
20 I'll give you a brief restroom break. During the
21 break do not discuss the case. As soon as you are
22 done with the restroom advise the bailiffs and at
23 that time we will listen to arguments. If you
24 will leave your note pads in your seats and go
25 with the bailiff.

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1 (Jury exits the courtroom.)

2 THE COURT: You may be seated. If you will
3 bear with me one moment. I have printed a verdict
4 form and I want you all to look at it as soon as
5 my clerk comes back with it.

6 (Pause.)

7 THE COURT: Any exception to the form of the
8 verdict from the State?

9 MR. KIDD: Isn't a level -- I don't have a
10 problem with it. I just -- isn't there a level
11 of --

12 THE COURT: The statute says .05 -- I will
13 have to look at it right quick it's been a while
14 since I have looked at it.

15 THE CLERK: It's 2533.

16 MR. BISCHOFF: Once they determine guilt then
17 you have to determine --

18 THE COURT: That is for 1617, three ranges,
19 three different penalty ranges.

20 Those are the only three mentioned in the statute.

21 MR. KIDD: I'm good. I wanted to make sure.

22 THE COURT: Any exception from the Defense?

23 MR. BISCHOFF: No, ma'am.

24 THE COURT: We will take a quick restroom
25 break. As soon as the jury lets us know that they

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1 are done we will resume with the argument.

2 (Brief recess.)

3 THE COURT: Is the State ready to proceed?

4 MR. KIDD: Yes, ma'am.

5 THE COURT: Is the Defense ready to proceed?

6 MR. BISCHOFF: Yes, ma'am.

7 THE COURT: We took a lit bit longer break.

8 The jury wanted coffee and I accommodated them.

9 (Jury enters the courtroom.)

10 THE BAILIFF: Jurors all present, Your Honor.

11 THE COURT: Thank you. You may be seated.

12 We will now resume argument. Mr. Kidd, you may
13 resume with your argument.

14 MR. KIDD: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 MR. KIDD: The first thing that I want to
17 address is you know now that Mr. Garland is
18 disoriented, not the guy with a .11 or a .15, but
19 Mr. Garland is the one who is disoriented. And
20 that is not fair. But before I address a lot
21 of -- the rest of Mr. Bischoff's argument first I
22 want to talk about that cone placement in
23 Mr. Poplin's testimony and why it's not
24 something -- this is Officer Eckert's video when
25 he's arriving on the scene. The first officer on

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1 the scene.

2 (Playing video.)

3 MR. KIDD: Now I'm going to play this a
4 couple of times for you. What I want you to look
5 for is that tall boy cone. Where is it?
6 Certainly not 4, 3 feet from that paver. I'm
7 going to back up and play it again. We have
8 variables. We don't have that tall boy cone for
9 you 3 feet out. Now, ladies and gentlemen,
10 there's one out there, it's just not 4, 3 from the
11 paver like all of their math and science.

12 Now, Mr. Poplin is a smart guy, a very smart guy
13 but he's relying on information that just wasn't there
14 at the time of the accident. He's relying on
15 information that was there two hours later. And you
16 know, it is a chaotic scene. We have a man down and
17 there's an active lane right by it, so the workers are
18 moving cones, they are diverting traffic away from
19 their fallen co-worker, they are not thinking about,
20 Let's preserve the case of this cone, 43 feet is going
21 to be important two years from now. They are thinking,
22 Let's keep traffic away from our guy who is clinging on
23 to life.

24 So, saying 43 feet makes or breaks this case is
25 not fair. Saying 43 feet discredits six eye witnesses

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1 is not fair. Ladies and gentlemen, our 34th president,
2 Dwight Eisenhower once said, The search for the
3 scapegoat is the easiest of all hunting exhibitions.
4 And that is what they are doing here. They are
5 pointing fingers. They are pointing fingers at
6 Mr. Garland because he has no voice to defend himself.
7 They are pointing a finger at the construction site and
8 Banks Construction because these places are inherently
9 dangerous. They are pointing their finger at Mt.
10 Pleasant Police Department. They should have done a
11 better job, should have done this or that. Hindsight
12 is 20/20.

13 There isn't enough evidence on the scene to do an
14 accurate reconstruction. It is not -- that is why
15 Officer Harris is a better reconstructionist than Woody
16 Poplin, he has the integrity to admit when something
17 can't be done and when something else is possible just
18 based off of the facts and evidence that is there. But
19 he knows what happened based off of the people who saw
20 it. They want to point fingers. They want to throw
21 rocks at glass houses, but that's going to leave them
22 exposed to the truth. If they want to point fingers
23 they can only look in the mirror.

24 We are here because of the choice that he made.
25 We are here because he chose to drink in excess of ten

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1 drinks over the shift of his work. He chose to speed
2 because that construction was an inconvenience for him.
3 He chose to be distracted, lack of due care, to not
4 maintain a proper lookout. We are here because of his
5 choices.

6 Now let's talk about the evidence that we do have.
7 Let's talk about the things that we do know. It is
8 going to be a little rudimentary, but the basic outline
9 of the scene, I want to take you back to Tuesday, it
10 seems like a long time ago, who did we hear from, Neva
11 Newman, put an N there for her, Twan Roberts right
12 there. Which way did he say he was looking down but
13 faced this way? Where was Ralph Crow? Siting on the
14 paver. Christopher Key right about here walking this
15 direction. Henry Ford walking this direction. James
16 Faulkner walking this direction. I'm sorry, that looks
17 awful up there.

18 And then Terry Johnson. And where did they all
19 say that Mr. Garland was struck? In that area right
20 there. And they all saw different portions of the
21 accident. Mr. Faulkner, Mr. Ford they saw the whole
22 thing. Ms. Newman, Mr. Key didn't turn until they
23 heard the impact. And what did Mr. Johnson say? He
24 yelled out when that car came in.

25 What did Mr. Ford and Mr. Faulkner say caused them

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1 to turn around? Mr. Ford flinched because the car
2 passed him so close coming into the work zone. And
3 they all saw it -- not all, excuse me. Mr. Ford,
4 Mr. Faulkner saw it strike Mr. Garland in the work
5 zone. Mr. Newman saw it jerking out of the work zone.

6 And you want to talk about credibility of these
7 witnesses. What reasons do they have to lie to you?
8 What reasons does he have to lie? Let's talk about
9 what he tells you. What did he tell Officer Eckert
10 right after? I never saw him. I just heard a thump.

11 Ladies and gentlemen, you are operating your
12 vehicle with due care, how do you strike something with
13 the front of your vehicle? Not just something,
14 something wearing this, something wearing this. How do
15 you strike this reflective object in your headlights
16 area, right by your headlight and not see it? How is
17 that possible?

18 Maybe if you are distracted, maybe if you are on
19 the phone, maybe if you are drunk and have glare
20 recovery from a light. You heard Mr. Brown testify
21 about that. When you are intoxicated to this level
22 glare recovery is a big side effect. And when you get
23 a bright light that is on top of the paver it is
24 temporarily blinding. The moth effect attracts your
25 eye, you look over there, it causes you to steer. And

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1 when that glare goes away and you realize that you have
2 swerved in the other lane you jerk it out but it's too
3 late.

4 What else happens when he's talking to Officer
5 Eckert? He tells him that he has one beer. Didn't
6 even get to finish that Yuengling, he says. But then
7 refused the field sobriety test. If you have had one
8 beer why are you going to refuse standard field
9 sobriety. If you are not drunk, why refuse. Now let's
10 talk about Officer Harris' testimony and the video of
11 Officer Harris.

12 Now, I don't have a neat little clicker so you can
13 play specific portions and get them out of context but
14 remember Officer Harris' testimony, remember the field
15 sobriety test and clues, unable to do the one-legged
16 stand, the clues on the walk and turn and nystagmus in
17 the eyes, indicators of impairment. He's been doing it
18 for a while, dealt with a lot of intoxicated people.
19 In his opinion he is under the influence.

20 You know what, that is confirmed by his blood.
21 Now, do you see a person who is falling down drunk on
22 that video? No, you don't. You don't see a guy who is
23 stumbling and can't stand up. You can't see a guy who
24 is vomiting on himself, but you do see an impaired man.
25 You see a drunk man on those videos. You see someone

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1 who is not able to operate a motor vehicle.

2 Now let's talk about Jennifer Brown's testimony,
3 about what she told them. His blood at 6:57 a.m. was a
4 .113. This accident occurred 3:23ish, give or take a
5 minute. 3½ hours later his blood was drawn and it took
6 that long because he refused the breathalyzer test, so
7 3½ hours later his blood is drawn and she told you
8 about how alcohol dissipates in the blood stream over
9 time and it does it on an average. And it's been well
10 studied. And it goes down .015 and .02 per hour. And
11 she was able to develop a range based on certain
12 parameters, parameters like him having his last drink
13 at 2:00 a.m.

14 I mean, where did that information come from? The
15 jail phone calls. Do you remember that? Probably had
16 my last shot around 2:00 a.m. That is where that comes
17 from. That is where she can begin to do an accurate
18 retrograde of a range. That his blood alcohol content
19 would have been at the time of the accident had he been
20 telling the truth on the jail calls and had his last
21 drink at 2:00 a.m.

22 Now, it is a big "if" as to whether he was telling
23 the truth. Because what do those jail calls tell you.
24 He lied to police first, lied to his wife next, then he
25 lies to his mother. Who is present, those Banks

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1 employees or Mr. Hamrick. You know, honesty is a
2 difficult thing. To truly be honest to truly bear
3 one's soul is tough, it takes knowing yourself really
4 well.

5 You know, I'll give you one more sort of
6 presidential quote that is from First Lady Michelle
7 Obama, "We learned honesty and integrity that the truth
8 matters, that you don't take shortcuts or play by your
9 own set of rules." It is on these ideals that were
10 lost on Mr. Hamrick somewhere along the way. He
11 clearly doesn't value honesty. He doesn't believe that
12 rules apply to him because they are inconvenient. He
13 drank too much. He chose to get behind the wheel of an
14 automobile and he broke the law. And because he broke
15 those driving laws he led to the injuries that
16 Mr. Garland suffered and that makes him guilty.

17 But ladies and gentlemen, assume for a second that
18 Mr. Garland was in the active lane, assume for a second
19 that all of those Banks employees are wrong, that
20 Mr. Garland is standing out there in the active lane,
21 he is still guilty. He has a duty to maintain a proper
22 lookout. The guy is wearing a reflective vest and a
23 bright orange hard hat. He has a duty to see him. He
24 has a duty not to speed through the work zone, and not
25 just the speed limit, he has the duty to operate his

STATE'S FURTHER CLOSING

1 vehicle where the conditions are so bad at a lower
2 level.

3 And on that point phone records, his cell phone
4 records. 3:20 a.m. two minute call, 3:24 a.m. five
5 minute call, 3:20 a.m. call came, hit somebody, have to
6 hang up. Get out of the car, go see what happened.
7 Confronted by construction workers, they don't let you
8 go back to your car. Time is going by. One of them
9 gets the phone out of your car so you can get it back.
10 Call your wife and tell her what happened two minutes
11 later.

12 You ask yourselves why he didn't see him? Because
13 he wasn't paying attention, because he wasn't
14 exercising due care. I ask you to see the facts for
15 what they are, follow the law as the Judge charges you,
16 find this man guilty for what he's done, hold him
17 responsible for the choices that he made. Thank you.

18 THE COURT: During this trial, ladies and
19 gentlemen, you and I have certain duties to
20 perform. As the trial judge it is my
21 responsibility to preside over the trial of this
22 case and I also have the duty to pass upon a rule
23 on the admissibility of evidence offered during
24 the course of this trial. You are to consider
25 only the competent evidence that is before you and

JURY CHARGE

1 you are to disregard and disabuse from your mind
2 any testimony that is stricken from the record in
3 this case, during the progress of this trial if
4 there's been any.

5 You are to consider only the testimony which has
6 been presented from this witness stand together with
7 any exhibits which have been made a part of the record
8 in this case and any stipulations of the counsel made
9 into the record. And as I have already explained to
10 you, the stipulation is an agreement between the
11 attorneys and it requires no further proof. I have the
12 additional duty to charge or instruct you on the law
13 applicable to this case.

14

15 In every case tried before a jury the jury becomes
16 the sole and exclusive judges of the facts. You the
17 jury are the judges of the facts in this case. The
18 court is the judge of the law. The constitution of
19 your state has declared that a trial judge shall not
20 intimate, state, or comment upon or make any comment to
21 a trial jury about facts in the case since the jury are
22 the sole judges of the facts in this case.

23 You are not to infer anything that I have said in
24 the progress of this trial and in ruling upon
25 admissibility of evidence or otherwise or anything that

JURY CHARGE

1 I say to you during the course of this instruction that
2 I have any opinion about the facts. The law does not
3 allow me to have an opinion about facts. This is a
4 matter solely for you the jury to determine. As jurors
5 then it is your duty as I have instructed to you to
6 determine the effect, the value and the weight of the
7 truth and truth of the evidence presented during this
8 trial.

9 To determine the facts in this case, ladies and
10 gentlemen, you will have to evaluate the credibility
11 which is simply a legal term meaning the believability
12 of each witness who has testified. Some of the things
13 that you may consider as you decide whether or not to
14 believe a witness' testimony about a particular matter
15 include: What was the manner and appearance of the
16 witness who testified, was he or she straightforward or
17 hesitant in this answering, was the testimony of a
18 witness consistent or inconsistent. How did the
19 witness come to know the facts that he or she testified
20 to. What was their ability to know these facts. Is
21 there a reason that a witness wants to give testimony
22 to help or hurt one side or another. In other words,
23 was the witness bias or prejudiced and was the
24 testimony strengthened or weakened by other testimony
25 or evidence.

JURY CHARGE

1 Again, necessarily, you must assess the
2 credibility of witnesses who have testified in this
3 case. It becomes your duty as jurors to analyze and
4 evaluate the evidence and determine that evidence which
5 convinces you of its truth. I further instruct you in
6 determining the question of credibility or
7 believability of witnesses who have testified you may
8 believe one witness against several witnesses or
9 several witnesses against one witness. You may believe
10 a part of a testimony of a witness and reject the
11 remaining part of the testimony of that same witness.

12 If you have a good and sound reason you may
13 believe the testimony of a witness in its entirety or
14 reject the testimony of a witness in its entirety. You
15 may consider the demeanor of the witness, that is the
16 appearance and demeanor of the witness from the witness
17 stand. Believe as much or as little from each witness'
18 testimony as you think appropriate.

19 Ladies and gentlemen, throughout this process you
20 have but one objective: To seek the truth, regardless
21 of its source. I further instruct you, ladies and
22 gentlemen, that our rules of evidence ordinarily do not
23 permit witnesses to testify to opinions or conclusions.
24 An exception to this rule exists for witnesses we call
25 "expert."

JURY CHARGE

1 Expert witnesses by their education, training and
2 experience has become an expert in the art, science,
3 profession or calling may state an opinion as to the
4 relevant or material matters and which the witness
5 claims to be an expert and may also state the reasons
6 for that opinion. You should consider any expert
7 opinion received in evidence in this case like any
8 other evidence, give it the weight you think it
9 deserves.

10 If you decide that the opinion of an expert
11 witness is not based on sufficient education, training
12 and experience or if you conclude that the reasons
13 given in support of the opinion are not sound or that
14 the opinion is outweighed by other evidence you may
15 disregard the opinion entirely. An expert witness'
16 testimony may not be given any greater weight than that
17 of another witness simply because they are an expert.
18 Further, you are not required to accept an expert's
19 opinion even though it's uncontroverted.

20 Direct evidence and circumstantial evidence.
21 Direct evidence is the testimony of a person who
22 asserts or claims to have actual knowledge of a fact,
23 such as an eye witness. Circumstantial evidence is
24 proof of a chain of facts and circumstances indicating
25 the existence of a fact. The law makes absolutely no

JURY CHARGE

1 distinction between the weight or value to be given to
2 either direct or circumstantial evidence nor is a
3 greater degree of certainty required for circumstantial
4 than direct evidence.

5 You should weigh all of the evidence in this case.
6 After weighing all of the evidence, if you are not
7 convinced of the guilt of the Defendant beyond a
8 reasonable doubt you must find the Defendant not
9 guilty. Conversely, if you are convinced after
10 weighing all of the evidence of the guilt of the
11 Defendant beyond a reasonable doubt, then you must find
12 him guilty.

13 Instruct you that the fact that the Defendant was
14 arrested, charged and indicted is not evidence in this
15 case and cannot be considered by you as evidence of
16 guilty in this case. Nor does it create any
17 presumption or inference of guilt. This documentation,
18 ladies and gentlemen, is simply the formal written
19 instrument which may contain a charge or charges made
20 against the Defendant. It serves as the formal
21 document by which the case is processed and brought
22 into this course.

23 The Defendant has pled not guilty to the
24 indictment and that plea casts the burden on the State
25 to prove the Defendant guilty. Because a person

JURY CHARGE

1 charged with committing a criminal offense in South
2 Carolina is never required to prove himself innocent.
3 I instruct you, Mr. Foreman, ladies and gentlemen of
4 the jury, that it is a cardinal important rule of the
5 law of evidence that a defendant in a criminal trial,
6 no matter what the seriousness of the charge made
7 against him, may be -- will always be presumed to be
8 innocent of the crime for which he's indicted unless
9 the guilt is proven by evidence satisfying that he's
10 guilty beyond a reasonable doubt. This does not cease
11 when you retire to deliberate. It accompanies the
12 Defendant from the time of his appearance throughout
13 the trial until you reach a verdict in this case.

14 Our Supreme Court has said the presumption of
15 innocence is like a robe of righteousness placed about
16 the Defendant and it assigns him to that class until
17 that presumptive robe of righteousness is stripped from
18 his person by evidence satisfying that guilt beyond a
19 reasonable doubt.

20 Ladies and gentlemen, the presumption of innocence
21 is not mere legal theory, it's not just a legal phrase,
22 it's a substantial right to which every defendant is
23 entitled unless you the jury are satisfied from the
24 evidence of his guilt beyond a reasonable doubt.

25 The State has the burden of proving the

JURY CHARGE

1 Defendant's guilt beyond a reasonable doubt. Some of
2 you may have served as jurors in civil cases where you
3 were told that it's only necessary to prove that a fact
4 is more likely true than not true, such as by the
5 greater weight or preponderance of the evidence but in
6 criminal cases the State's proof must be more powerful
7 than that, it must be beyond a reasonable doubt.

8 Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the Defendant's guilt.
10 There are very few things in this world that we know
11 with absolute certainty in a criminal case, the law
12 doesn't require proof that the evidence overcomes all
13 possible doubt. Based on your review of the evidence
14 and you are firm in the guilt of the crime charged, you
15 must find the Defendant guilty. On the other hand, if
16 you think that there's a real possibility that the
17 Defendant is not guilty you must give him the benefit
18 of the doubt and find him not guilty.

19 I instruct you and emphasize to you the fact that
20 the Defendant didn't testify is not a factor that
21 should be considered by you in any way whatsoever in
22 your deliberation and consideration on the question of
23 guilt or innocence of the Defendant. It must not be
24 considered by you in any manner whatsoever. A
25 Defendant has the Constitutional right to remain silent

JURY CHARGE

1 and assertion of this right must not be considered by
2 you in your deliberations.

3 I repeat, under your oath you are to draw no
4 conclusions whatsoever from the fact that the Defendant
5 in this case did not testify. The fact that the
6 Defendant didn't testify should not be discussed in any
7 way or at any time whatsoever in the jury room in your
8 deliberations.

9 The burden of proof as I've stated to you is on
10 the State. The Defendant is not required to prove
11 innocence. The burden of proof remains on the State to
12 prove guilt beyond a reasonable doubt.

13 The Defendant is charged with felony driving under
14 the influence. The State must first prove beyond a
15 reasonable doubt that the Defendant drove a vehicle
16 while under the influence of alcohol and/or drugs.
17 Driving a motor vehicle means that the vehicle was in
18 motion. This may be proven by direct or circumstantial
19 evidence. A movement of a vehicle might occur without
20 any affirmative act by a driver, or in fact, by any
21 person. If a vehicle is moved by some power beyond the
22 control of the Defendant or by accident this would not
23 be driving.

24 The State must also prove beyond a reasonable
25 doubt that the Defendant was sufficiently under the

JURY CHARGE

1 influence to impair his ability to drive with
2 reasonable care with due regard for others and himself
3 or as a reasonably prudent person would drive. It's
4 not necessary to show that the Defendant was in a
5 helpless condition, passed out or even intoxicated.

6 On the other hand the fact that the Defendant at
7 some time prior to this incident drank an alcoholic
8 beverage or took a drug doesn't prove that the
9 Defendant was driving under the influence.

10 I further instruct you that the amount of alcohol
11 in the Defendant's blood at the time of the alleged
12 violation as shown by chemical analysis of the
13 Defendant's breath or other bodily fluids may be
14 considered by you in deciding whether the Defendant was
15 under the influence -- was under the influence. If the
16 alcohol concentration was eight one-hundreths of 1
17 percent, or .08 or more, it may be inferred that the
18 Defendant was under the influence.

19 This inference, ladies and gentlemen, is simply an
20 evidentiary fact to be considered by you along with
21 other evidence in this case. And you may give it the
22 weight, value and effect that you decide it should
23 receive.

24 Next, ladies and gentlemen, the State must prove
25 beyond a reasonable doubt that while driving the

JURY CHARGE

1 Defendant did an act forbidden by law or neglected a
2 duty imposed by law. And in regard to that I instruct
3 you as follows: Code Section of the South Carolina
4 Code of Laws provides as follows: 56-5-1536(c) and
5 Subsection C and D(2) provide as follows: Driving in a
6 temporary work zone. The driver of a vehicle shall
7 keep his vehicle under control when approaching or
8 passing a temporary work zone area. The exercise of
9 control required for a driver to comply with this
10 section is that control possible and necessary by the
11 driver to avoid a collision, and to avoid injury to
12 persons or property.

13 A person driving a vehicle approaching a temporary
14 work zone area shall proceed with due caution,
15 significantly reduce the speed of the vehicle, and
16 maintain a safe speed for road conditions, if changing
17 lanes is impossible or unsafe.

18 And Code Section 56-5-1520, reasonable prudent
19 speed under circumstances provides: A person shall not
20 drive a vehicle on a highway at a speed greater than is
21 reasonable and prudent under the conditions and having
22 regard to the actual and potential hazards then
23 existing. Speed must be so controlled to avoid
24 colliding with a person, vehicle, or other conveyance
25 on or entering the highway in compliance with legal

JURY CHARGE

1 requirements and the duty of a person to use care.

2 And the driver of a vehicle shall drive consistent
3 with the requirements of subsection (A), at an
4 appropriate reduced speed when approaching and crossing
5 an intersection or railway grade crossing, when
6 approaching and going around a curve, approaching a
7 hillcrest, when traveling upon any narrow bridge,
8 narrow or winding roadway, and when special hazard
9 exists with respect to pedestrians or other traffic or
10 by reason of weather or highway conditions.

11 And 56-5-2370 subsection (a). Driving in highway
12 construction/maintenance zone. The driver of a vehicle
13 shall yield the right-of-way to any authorized vehicle
14 or pedestrian actually engaged in work upon a highway
15 within any highway traffic construction or maintenance
16 area indicated by official traffic-control devices.

17 And 56-5-1535 sub (A). Speeding in a highway work
18 zone. It's unlawful for a person to drive a motor
19 vehicle in a highway work zone at a speed in excess of
20 the speed limit set and posted by signs.

21 And 56-5-1900 subsection (a). Failure to maintain
22 lane. Whenever any roadway has been divided into two
23 or more clearly-marked lanes for traffic the following
24 rules in addition to all others consistent herewith
25 shall apply: A vehicle shall be driven as nearly as

JURY CHARGE

1 practicable entirely in a single lane and shall not be
2 moved from the lane until the driver has first
3 ascertained that such movement can be made with safety.

4 And 56-5-3230, Duty to maintain care.
5 Notwithstanding other provisions of any local
6 ordinance, every driver of a vehicle shall exercise due
7 care to avoid colliding with any pedestrians or any
8 person propelling a human-powered vehicle.

9 As well as Mount Pleasant City Ordinance Section
10 71.066, careless operation. It shall be unlawful for
11 any person to drive or ride any vehicle without care
12 and caution and full regard for the safety of persons
13 and property.

14 Finally, ladies and gentlemen, the State must
15 prove beyond a reasonable doubt that the act or neglect
16 of the Defendant proximately caused great bodily injury
17 to another person. Proximate cause is the direct
18 cause. It is the immediate cause. It is the efficient
19 cause. It is that cause without which the injury to
20 the victim would not have resulted.

21 There must be a chain of causation from the time
22 of the jury inflicted by the Defendant. Proximate
23 cause does not necessarily mean that it occurred
24 immediately. There may be more than one proximate
25 cause. The act of two or more persons may combine

JURY CHARGE

1 together to be a proximate cause of the injury to a
2 person.

3 The Defendant's acts may be regarded as the
4 proximate cause if it is a contributing cause of injury
5 to the victim. The fact that other causes also
6 contributed to the injury to the victim does not
7 relieve the Defendant from responsibility. The
8 Defendant's act need not be the sole cause of the
9 injury, but must be a proximate cause contributing to
10 the injury of the victim.

11 I further instruct you, ladies and gentlemen, that
12 great bodily injury means bodily injury which creates a
13 substantial risk of death or which causes serious
14 permanent disfigurement or extended loss of impairment
15 or function of any bodily member or organ.

16 Ladies and gentlemen, if you find that the State
17 has failed to prove beyond a reasonable doubt the
18 offense of felony driving under the influence resulting
19 in great bodily harm you may consider whether the State
20 has proven beyond a reasonable doubt that the Defendant
21 was driving a motor vehicle while under the influence.

22 In order to establish this offense the State must
23 prove beyond a reasonable doubt that the Defendant was
24 driving a motor vehicle in this state while under of
25 the influence of alcohol and/or drugs or other

JURY CHARGE

1 substances to the extent that the Defendant's faculties
2 to drive were materially and appreciably impaired.

3 Driving a motor vehicle means that the vehicle was
4 in motion. This may be proven by direct or
5 circumstantial evidence. A movement of the vehicle
6 might occur without any affirmative act by a driver or,
7 in fact, by any person. If a vehicle is moved by some
8 power beyond the control of the Defendant or by
9 accident this would not be driving.

10 The State must also prove beyond a reasonable
11 doubt that the Defendant was sufficiently under the
12 influence to impair his ability to drive with
13 reasonable care, with due regard for others and
14 himself, or as a reasonably prudent person would drive.
15 It's not necessary to show that the Defendant was in a
16 helpless condition, passed out, or even intoxicated.
17 On the other hand, the fact that the Defendant at some
18 time prior to the incident drank an alcoholic beverage
19 or took a drug does not prove that the Defendant was
20 driving under the influence.

21 I further instruct you that the amount of alcohol
22 in the Defendant's blood at the time of the alleged
23 violation as shown by a chemical analysis of the
24 Defendant's breath or other bodily fluids may be
25 considered by you in deciding whether the Defendant was

JURY CHARGE

1 under the influence.

2 If the alcohol concentration was eight
3 one-hundreds of one percent or more it may be inferred
4 that the Defendant was under the influence. This
5 inference, ladies and gentlemen, is simply an
6 evidentiary fact to be considered by you along with the
7 other evidence in the case. And you may give it the
8 weight, value, and effect you decide it should receive.

9 Ladies and gentlemen, there are several possible
10 verdicts in this case, and you don't have to try to
11 write this down, I will read them to you and it will
12 also go into the jury room with you. I only read to
13 you by way of explanation, and you are not to draw any
14 significance whatsoever from the order in which the
15 possible verdicts are stated, it's simply that one must
16 be stated first. And it is as follows: As to
17 indictment number 20120101033 we the jury by unanimous
18 consent find the Defendant guilty of felony driving
19 under the influence resulting in great bodily harm.

20 Or as to the lesser included offense, guilty of
21 driving under the influence. And there's several
22 options under that which you will need to check one of
23 them if applicable.

24 At least eight one-hundreths of 1 percent, 0.08
25 but less than ten one-hundreths of a percent, 0.10, or

JURY CHARGE

1 at least 10 one-hundreths of a percent, 0.10, but less
2 16 one-hundreths of a percent, 0.16 or more than 16
3 one-hundreths of a percent, 0.16, or not guilty.

4 Again, there's no significance whatsoever to the
5 order in which I have stated these verdicts, it's
6 simply that one must be stated first. Ladies and
7 gentlemen, your verdict must be unanimous which means
8 that all 12 of you must agree in order to reach a
9 verdict.

10 Mr. Foreman, it will be your responsibility to
11 fill out the verdict form and sign and date the form
12 and also knock on the door and advise the bailiff when
13 the jury has reached a unanimous verdict. Also, if the
14 jury has any questions during the jury deliberations it
15 is your responsibility to write out those questions and
16 follow the same procedure of knocking on the door and
17 advise the bailiff that the jury has a question.

18 Ladies and gentlemen, if you have any questions
19 during deliberations, please know that there will be a
20 delay in our response and that is because there's a
21 procedure that we have to follow in answering your
22 questions. So, know if there's a question there will
23 be a delay in our response because we are following
24 that procedure.

25 I, again, ladies and gentlemen, your verdict must

JURY CHARGE

1 be unanimous which means all 12 of you must agree in
2 order to reach a verdict.

3 Your lunch is scheduled to be here at 12:30, which
4 is in about ten minutes. The bailiff will be coming in
5 to get drink orders from you or otherwise. After you
6 have eaten your lunch you are welcome to go downstairs
7 to get some air. The bailiffs will have to take you
8 downstairs to do that. Or if any of you need to make a
9 phone call for scheduling or otherwise, you can do that
10 as well but I need to advise you that the bailiff have
11 to observe any phone calls that you make because it
12 will be during the deliberation process. I am going to
13 ask that you return to the jury room but do not yet
14 begin your deliberations. I have some matters of law
15 that I need to take up with the attorneys that may
16 require further instructions or clarification of an
17 instruction.

18 However, if there's no further instructions the
19 Court will send in the evidence as well as the verdict
20 form and your notebooks and at that time you will be
21 allowed to begin your deliberations.

22 If you will go to jury room, please, and do not
23 yet begin your deliberations. And please leave your
24 note pads in your seats.

25 (Jury exits the courtroom.)

JURY CHARGE

1 THE COURT: You may be seated. Other than
2 what we have already covered in charge conference,
3 are there any additional exceptions to the charge
4 from the State?

5 MR. KIDD: No, ma'am.

6 THE COURT: From the Defense?

7 MR. BISCHOFF: Judge, just to clarify.

8 THE COURT: Yes.

9 MR. BISCHOFF: On the jury charges that you
10 mentioned regarding the violations, I do not take
11 issue with failure to maintain lane or duty to
12 maintain due care.

13 THE COURT: Wait one second for me. Let me
14 get those. (Pause.)

15 THE COURT: Okay. Yes, sir?

16 MR. BISCHOFF: I do not take issue with the
17 finding 56-5-1900, failure to maintain lane. It
18 was mentioned in the indictment. I also do not
19 take issue with the 56-5-3230 duty to maintain due
20 care, I believe that it's in the indictment. I
21 take issue with careless operation. I take issue
22 with speeding in a highway work zone. I take
23 issue with driving in a highway
24 construction/maintenance zone. And I take issue
25 with the reasonable, prudent speed under the

JURY CHARGE

1 circumstances. And I take issue with driving in a
2 temporary work zone. And then, in addition, the
3 proximate cause. But other than that, no other
4 issues with respect to the charges.

5 THE COURT: Would the State like to respond?

6 MR. KIDD: No, ma'am.

7 THE COURT: The Court will note your
8 exceptions. And the Court will stand by its
9 previous rulings. The indictment very clearly
10 articulates speeding too fast for conditions,
11 failure to exercise due care, failure to keep
12 proper lookout and/or failure to maintain lane,
13 and such acts proximately caused great bodily
14 injury to Ahmad Garland.

15 All of those, in particular, are specified. They
16 put you on notice as required by Gentry as to what you
17 are being charged with and what the State is seeking
18 you to defend. And the State does not have to be
19 specific and enumerate each statutory provision that
20 they intend to proceed under. The case law is very
21 clear that an indictment is simply a notice document,
22 no different than a pleading where someone alleges
23 negligence. They don't have to allege every act of
24 negligence they are intending to proceed under. And
25 certainly you all are on notice as to what the State's

JURY CHARGE

1 posture was regarding his violations and it's been
2 developed fully and factually during the course of this
3 trial.

4 And the Court will stand by its instruction on
5 proximate cause as a current and accurate statement of
6 prevailing law. If you all will make sure for me that
7 all of the exhibits are in place so that the bailiffs
8 can take those back. You can start collecting the
9 notebooks for me but leave the alternate's books in the
10 seats.

11 MR. KIDD: I would like to withhold the CD
12 exhibits because there's a lot of things that we
13 muted out.

14 THE COURT: Well, they don't have anything to
15 play it. So, they do have to come back in. They
16 have a flat screen and TV in there.

17 MR. KIDD: If we can withhold all of the CDs,
18 and if they want to watch it --

19 THE COURT: How will they know it's in
20 evidence if it's not in there with them?

21 Which CDs are you talking about?

22 MR. KIDD: The jail CDs have other calls on
23 them.

24 THE COURT: Why couldn't you burn copies of
25 them?

JURY CHARGE

1 MR. KIDD: They write protect those jail
2 calls so strenuously because they don't want
3 anyone to allege that they have altered it. We
4 have tried a hundred times.

5 Also those cruiser videos go on for hours and we
6 only admitted -- there's a lot of hearsay statements
7 and things likes that on them.

8 THE COURT: You couldn't have cut and pasted
9 a clean copy?

10 MR. KIDD: It is probably possible. I don't
11 have the technical wherewithal.

12 THE COURT: The problem -- and I use that
13 word "problem" really is probably a more
14 significant term than I intend to convey, but they
15 should be able to watch it in there how they want
16 to watch it and stop it and do whatever. They
17 shouldn't have to come in here and watch it with
18 us. The problem becomes -- can you play those CDs
19 with a regular Windows player or does it require
20 special software?

21 MR. KIDD: Officer Harris' would require
22 software but Officer Eckert is really the one that
23 has a -- I mean, you hear him take all of the
24 statements.

25 THE COURT: Does that require special

JURY CHARGE

1 software?

2 MR. KIDD: Windows Media Player.

3 THE COURT: See, they have got that on their
4 laptop.

5 MR. KIDD: I mean, I do know, we have done
6 these in other trials, we have kept the CDs.

7 THE COURT: Yes, but in the future y'all need
8 to burn clean copies. You shouldn't have to come
9 in here and do that. They shouldn't have to be
10 able to be watched under our watchful eye. And so
11 what I need you to do is pull out the CDs that
12 have the extraneous stuff on it. I need to know
13 what those exhibit numbers are.

14 (The alternate jurors are brought before the
15 Court.)

16 THE COURT: Ladies, we thank you for your
17 time and attention to this case. We know that
18 being an alternate is a thankless job, but you are
19 very needed. If something happened to someone you
20 would be needed. I watched and you both have been
21 attentive during the proceedings and we fully
22 appreciate your willingness to appreciate. Your
23 lunch is here and I believe that the bailiff has
24 already given it to you. You are welcome to stay
25 if you would like. And you are welcome to leave

JURY CHARGE

1 if you would like. If you decide to stay the
2 bailiffs will place you in a room separate from
3 the rest of the panel. You are welcome also to
4 discuss this case after the entire panel is
5 released, so probably the best rule of thumb is
6 not until after Monday.

7 Sometimes lawyers will contact you to know how to
8 do something better or hope to know about performance,
9 but that would be unusual if they contact you. If you
10 do not wish to discuss the case, please make sure that
11 the clerk's office knows that and we will take whatever
12 creation necessary. And your lunch is ready and you
13 have the Court's profound thanks. You are welcome to
14 stay and eat as well. Just let them know your
15 preference and they will accommodate you. Thank you so
16 much.

17 (Alternate jurors released.)

18 THE COURT: Mr. Foreman, there are several.
19 I wanted to make sure you are aware, there are
20 several exhibits that have not come back with the
21 jury, that being all of the CDs. That is so
22 because it requires special software to be played
23 even though you have a computer and flat screen,
24 so I wanted to advise you, if you need to re-hear
25 or watch any of those items, we will accommodate

JURY CHARGE

1 you.

2 THE JURY FOREMAN: I have been asked whether
3 we can look at the videos.

4 THE COURT: Make us a list of what, or if you
5 want to re-see or hear them all let us know and we
6 will bring you back in to hear them. And we
7 apologize. Thank you.

8 (Pause.)

9 THE COURT: Any exception by the State as to
10 the Court's instructions to the Foreperson?

11 MR. KIDD: No, ma'am.

12 THE COURT: From the Defense?

13 MR. BISCHOFF: No, Your Honor.

14 THE COURT: I would suggest it takes them
15 about 20 minutes to eat depending -- we have
16 smokers, I think. Yes, we have a couple of
17 smokers, and they may want a cigarette. I think
18 that you may want to give yourselves 30 minutes.
19 I have a strong suspicion we are going to re-watch
20 videos and hearing tapes and I don't want you in
21 the middle of eating and run back down here.

22 MR. KIDD: Be back at 1:15?

23 THE COURT: What is 30 minutes from now?

24 THE CLERK: Ten after one.

25 THE COURT: Ten after one. That is why I

JURY CHARGE

1 became a lawyer, I'm not that great at math.

2 Thank you.

3 (Lunch recess taken until 1:55 p.m.)

4 THE COURT: You may be seated. It reads as
5 follows: Judge Jefferson, may we have a copy of
6 the relevant South Carolina Code Sections
7 mentioned in your jury instructions? My response
8 to that would be: Ladies and gentlemen of the
9 jury, our procedures do not allow a copy of the
10 jury charge/instructions to be given to you. If
11 there's a specific instruction that you would like
12 given again or the entire instruction, advice us
13 and I will accommodate it immediately. That will
14 be attached and the note is marked as a Court's
15 exhibit also.

16 *(Whereupon, State's Exhibit Nos. 4-6 were marked*
17 *for identification and received in evidence.)*

18 THE COURT: In addition, they have asked,
19 number two, all video which was shown during the
20 trial. Three, audio of the phone calls from the
21 detention center by the Defendant. So, I have
22 asked through my clerk to have the State queue up
23 all of the video that was shown and it'll be
24 played straight through, so that would be
25 State's -- let me make sure that I have them the

JURY CHARGE

1 accurate numbers. That would be State's 37, the
2 CD of the scene. State's 35, the field sobriety
3 test. Number 24, which is the Eckert video in-car
4 camera. State's 34, the jail CD. And Defendant's
5 25, which is the Googe CD. And Defendant's 20
6 which is -- well, they didn't ask for the 911
7 call. So, we would not have the 911 call, so we
8 would not be playing that as they did not request
9 that.

10 So, we will have the audio of the phone calls from
11 the detention center and all video which was shown
12 during the trial. Those portions are fairly short, are
13 they not?

14 MR. KIDD: I would say that Eckert is 20
15 minutes.

16 THE COURT: Is it 20 minutes?

17 MR. KIDD: It is, Judge.

18 THE COURT: Twenty minutes of his video was
19 shown?

20 MR. KIDD: 16, 17 minutes. It goes from 326
21 to 341.

22 THE COURT: Okay. I didn't realize that it
23 was that long. Okay. What is the other one?

24 MR. KIDD: Harris' video is from about --

25 THE COURT: Is that the field sobriety test?

JURY CHARGE

1 MR. KIDD: That's 408 to roughly 440, so
2 roughly 30 minutes on Harris' video. And the
3 scene view is five minutes tops. And then the
4 jail calls would take another five minutes.

5 THE COURT: Okay, I'm going to send this note
6 back into the jury for him to -- so that if they
7 want me to re-instruct them that I can do that
8 after we watch the videos and hear the CD and then
9 we will resume. Is there any exception from the
10 State in proceeding in that manner?

11 MR. KIDD: No.

12 THE COURT: From the Defense?

13 MR. BISCHOFF: There is, Judge. I don't
14 believe that all of Harris' video --

15 THE COURT: When I say "all," I mean only
16 what was shown to the jury.

17 MR. KIDD: I'm going to mute the marijuana.

18 MR. BISCHOFF: I'm not talking about
19 exceptions that I made before, but I used clips
20 from Harris' video in my closing statement and I
21 am trying to locate the transcript that I don't
22 believe were encompassed from what the State
23 showed in their case-in-chief.

24 THE COURT: It is extra than that they didn't
25 show?

JURY CHARGE

1 MR. BISCHOFF: It is not extra from what is
2 admitted into evidence, but it was not in what the
3 State showed.

4 THE COURT: Was that the entire video
5 admitted into evidence?

6 MR. KIDD: It was other than the muted
7 portion dealt with in pretrial.

8 (Pause.)

9 THE COURT: They now changed their mind.
10 They want copies of the relevant statutes first.
11 Hold off on other requests for now. So, what I'm
12 going to do is I'm going to attach my original
13 response to them to that note -- both notes will
14 be marked as Court's Exhibit and then we will
15 await further instructions from them. Any
16 exceptions from proceeding that way from the
17 State?

18 MR. KIDD: I don't have an exception. I
19 thought that you read the original note. You will
20 give them the charge after the video, now they
21 want them first? .

22 THE COURT: I'll tell them that I can't give
23 a copy, if there's anything that they want me to
24 re-instruct them on, they will have to go from
25 there.

JURY CHARGE

1 (Pause.)

2 THE COURT: Okay. The next note. "Judge
3 Jefferson, we would like to see or hear that
4 portion of the jury instructions which included
5 the South Carolina Code sections, so I'll
6 re-instruct them on that portion of the charge.
7 Any exception from the State?

8 MR. KIDD: No, ma'am.

9 THE COURT: From the Defense?

10 MR. BISCHOFF: No, Your Honor.

11 THE COURT: Please bring in the jury.

12 (Jury enters the courtroom.)

13 THE COURT: Hello.

14 THE BAILIFF: All present, Your Honor.

15 THE COURT: Thank you, you may be seated.

16 Mr. Foreman, ladies and gentlemen, we received
17 your note. Judge Jefferson, we would like to see
18 or hear that portion of the jury instructions
19 which included the South Carolina Code sections.
20 In response to that note. I will re-instruct you
21 as follows:

22 Next, ladies and gentlemen, the State must prove
23 beyond a reasonable doubt that while driving the
24 Defendant did an act forbidden by law or neglected a
25 duty imposed by law. And in regard to that I instruct

JURY CHARGE

1 you as follows: Code Section of the South Carolina
2 Code of Laws provides as follows: 56-5-1536(c) and
3 Subsection C and D(2) provide as follows: Driving in a
4 temporary work zone. The driver of a vehicle shall
5 keep his vehicle under control when approaching or
6 passing a temporary work zone area. The exercise of
7 control required for a driver to comply with this
8 section is that control possible and necessary by the
9 driver to avoid a collision, and to avoid injury to
10 persons or property.

11 A person driving a vehicle approaching a temporary
12 work zone area shall proceed with due caution,
13 significantly reduce the speed of the vehicle, and
14 maintain a safe speed for road conditions, if changing
15 lanes is impossible or unsafe.

16 And Code Section 56-5-1520, reasonable prudent
17 speed under circumstances provides: A person shall not
18 drive a vehicle on a highway at a speed greater than is
19 reasonable and prudent under the conditions and having
20 regard to the actual and potential hazards then
21 existing. Speed must be so controlled to avoid
22 colliding with a person, vehicle, or other conveyance
23 on or entering the highway in compliance with legal
24 requirements and the duty of a person to use care.

25 And the driver of a vehicle shall drive consistent

JURY CHARGE

1 with the requirements of subsection (A), at an
2 appropriate reduced speed when approaching and crossing
3 an intersection or railway grade crossing, when
4 approaching and going around a curve, approaching a
5 hillcrest, when traveling upon any narrow bridge,
6 narrow or winding roadway, and when special hazard
7 exists with respect to pedestrians or other traffic or
8 by reason of weather or highway conditions.

9 And 56-5-2370 subsection (a). Driving in highway
10 construction/maintenance zone. The driver of a vehicle
11 shall yield the right-of-way to any authorized vehicle
12 or pedestrian actually engaged in work upon a highway
13 within any highway traffic construction or maintenance
14 area indicated by official traffic-control devices.

15 And 56-5-1535 sub (A). Speeding in a highway work
16 zone. It's unlawful for a person to drive a motor
17 vehicle in a highway work zone at a speed in excess of
18 the speed limit set and posted by signs.

19 And 56-5-1900 subsection (a). Failure to maintain
20 lane. Whenever any roadway has been divided into two
21 or more clearly-marked lanes for traffic the following
22 rules in addition to all others consistent herewith
23 shall apply: A vehicle shall be driven as nearly as
24 practicable entirely in a single lane and shall not be
25 moved from the lane until the driver has first

JURY CHARGE

1 ascertained that such movement can be made with safety.

2 And 56-5-3230, Duty to maintain care.

3 Notwithstanding other provisions of any local
4 ordinance, every driver of a vehicle shall exercise due
5 care to avoid colliding with any pedestrians or any
6 person propelling a human-powered vehicle.

7 As well as Mount Pleasant City Ordinance Section
8 71.066, careless operation. It shall be unlawful for
9 any person to drive or ride any vehicle without care
10 and caution and full regard for the safety of persons
11 and property.

12 Ladies and gentlemen, that will include the
13 additional instruction. Please let us know if you need
14 anything further. We will accommodate your request. If you
15 will go with the bailiffs, please.

16 (Jury exits the courtroom.)

17 THE COURT: You may be seated. Any
18 exceptions from the State?

19 MR. KIDD: No, ma'am.

20 THE COURT: From the Defense?

21 MR. BISCHOFF: No, Your Honor.

22 THE COURT: Okay. We will await further
23 instructions from the jury.

24 (Jury deliberation in progress.)

25 THE COURT: The jury has reached a verdict.

JURY VERDICT

1 Anything before we receive the verdict from the State?

2 MR. KIDD: No, ma'am.

3 THE COURT: From the Defense?

4 MR. BISCHOFF: No, Your Honor.

5 THE COURT: Okay. Please bring in the jury.

6 (Jury enters the courtroom at 3:13 p.m.)

7 THE BAILIFF: All present, Your Honor.

8 THE COURT: You may be seated. Mr. Foreman,
9 is it correct that the jury has reached the
10 verdict?

11 THE JURY FOREMAN: Yes, Your Honor.

12 THE COURT: If you will give the verdict form
13 to the bailiff for me, please.

14 (Judge reviews verdict form.)

15 THE COURT: Okay. I'll tender it to the
16 Clerk for publication and verdict.

17 THE CLERK: The Court of the General Sessions
18 of the Ninth Judicial Circuit, Indictment
19 2012GS101033, State of South Carolina; State of
20 South Carolina versus Daniel Hamrick, Defendant.

21 As to Indictment 2012GS101033, we find the
22 Defendant guilty of felony driving under the influence
23 with great bodily injury. Signed Robert Pearson,
24 Junior, Foreman of the Jury.

25 Mr. Foreman, ladies and gentlemen of the jury, if

POLLING OF THE JURY

1 this is your verdict, signify by raising your right
2 hand.

3 (Jury complies.)

4 THE CLERK: Your Honor, let the record
5 reflect all jurors raised their right hand.

6 THE COURT: Any request to poll the jury from
7 the State?

8 MR. KIDD: No, ma'am.

9 THE COURT: From the Defense?

10 MR. BISCHOFF: Yes, please, Your Honor.

11 THE COURT: Ladies and gentlemen, give the
12 clerk your attention.

13 THE CLERK: I'll ask you two questions: Is
14 this your verdict? Is this still your verdict?
15 Please respond accordingly.

16 If I call your juror number raise your hand.

17 Juror 267. Is this your verdict?

18 THE JUROR: (267) Yes.

19 THE CLERK: Is this still your verdict?

20 THE JUROR: (267) Yes.

21 THE CLERK: Juror number 18, is this your
22 verdict?

23 THE JUROR: (18) Yes.

24 THE CLERK: Is this still your verdict?

25 THE JUROR: (18) Yes.

POLLING OF THE JURY

1 THE CLERK: Thank you ma'am. Juror 35, is
2 this your verdict?

3 THE JUROR: (35) Yes.

4 THE CLERK: Is this still your verdict?

5 THE JUROR: (35) Yes.

6 THE CLERK: Juror 53, is this your verdict?

7 THE JUROR: (53) Yes.

8 THE CLERK: Is this still your verdict?

9 THE JUROR: (53) Yes.

10 THE CLERK: Juror 54, is this your verdict,
11 ma'am?

12 THE JUROR: (54) Yes.

13 THE CLERK: Is this still your verdict?

14 THE JUROR: (54) Yes.

15 THE CLERK: Juror 96, is this your verdict?

16 THE JUROR: (96) Yes.

17 THE CLERK: Is this still your verdict?

18 THE JUROR: (96) Yes.

19 THE CLERK: Juror 126, is this your verdict,
20 ma'am?

21 THE JUROR: (126) Yes.

22 THE CLERK: Is it still your verdict?

23 THE JUROR: (126) Yes.

24 THE CLERK: Thank you. Juror 151, is this
25 your verdict, ma'am?

POLLING OF THE JURY

1 THE JUROR: (151) Yes.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: (151) Yes.

4 THE CLERK: Thank you. Juror 154, is this
5 your verdict?

6 THE JUROR: (154) Yes.

7 THE CLERK: Is this still your verdict?

8 THE JUROR: (154) Yes.

9 THE CLERK: Juror 195, is this your verdict?

10 THE JUROR: (195) Yes.

11 THE CLERK: Is this still your verdict?

12 THE JUROR: (195) Yes.

13 THE CLERK: Thank you, ma'am. Juror 242, is
14 this your verdict ma'am?

15 THE JUROR: (242) Yes.

16 THE CLERK: Is this still your verdict?

17 THE JUROR: (242) Yes.

18 THE CLERK: Juror 372, is this your verdict?

19 THE JUROR: (372) Yes.

20 THE CLERK: Is this still your verdict?

21 THE JUROR: (372) Yes.

22 THE CLERK: Your Honor, the jury has been
23 polled.

24 THE COURT: Ladies and gentlemen, we thank
25 you for your time and attention to this case. We

POLLING OF THE JURY

1 know that jury service is thankless. You heard me
2 say during jury qualification that real court is
3 nothing like Judge Judy, Joe Brown, Judge Mathis,
4 and the range of court shows that we have. And
5 every time that I say that I say it earnestly. I
6 think that most people learn about court and the
7 way that the court works on television. Most is
8 designed to be entertaining but not particularly
9 accurate. So I hope that your opportunity to
10 serve on this jury has allowed you to see exactly
11 how the system works.

12 Our system is the only system where 12 citizens
13 listen to a case and determine what the facts are and
14 then apply a complicated set of laws to those facts and
15 render verdicts. It is the only system of its kind in
16 the world and the envy of much of the world because of
17 the way our system works. It's not perfect but I don't
18 think that any system is. I hope in a small way it's
19 re-instilled your faith in the system and that it works
20 because of your willingness to donate your time. And
21 you are welcome to the discuss this case.

22 Oftentimes lawyers will call and they want
23 feedback on things that they have done and things that
24 they can do better. Oftentimes they want a lay
25 person's perspective on how they have presented a case.

POLLING OF THE JURY

1 You are welcome to discuss the case, but by the same
2 token you are welcome to not discuss it. If someone
3 should persist and go beyond your comfort level, take
4 the appropriate action to protect your privacy. If you
5 need a work excuse we will make sure that you have one
6 before you leave. You get one on the first floor of
7 the courthouse, on the circuit court side. Any of the
8 deputies in the windows can give you a work excuse,
9 otherwise they will be mailed to you with your checks
10 either later today or on Monday.

11 (Jury excused. Trial concluded.)

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REPORTER'S CERTIFICATE PAGE

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF CHARLESTON:

6

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

8

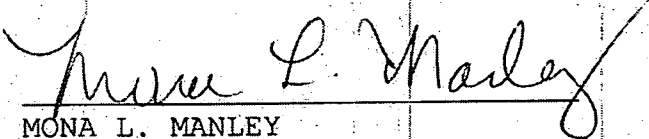
9 DATED this 1st day of May, 2014.

9

10

11

12


MONA L. MANLEY

13

Official 9th Circuit Court Reporter

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(850) 893-6662

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magnoliareporting@yahoo.com

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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

PFC A. Harris
Mt. Pleasant Police Department
100 Ann Edwards Lane
Mt. Pleasant, SC 29464

TOXICOLOGY DEPARTMENT

January 31, 2012
SLED No: L11-13661
Your Case No: 2011P14170
Incident Date: 11/14/2011

[S] Daniel D Hamrick
[V] Ahmad C Garland

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

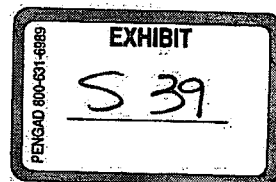
Item: 1 Sample Type: Blood (Toxicology) - labeled "Hamrick, Daniel D"

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.113	% w/v	0.01

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Amphetamine	Negative	mg/L	0.10
Benzodiazepines	Negative	mg/L	0.05
Methamphetamine	Negative	mg/L	0.10
Oxycodone	Negative	mg/L	0.10
Cannabinoids	Negative	mg/L	0.03



SLED No :L11-13661

Page 2 of 2

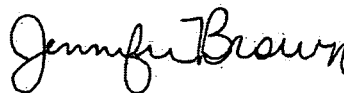
1/31/12

Screen by Fluorescence Polarization Immunoassay (FPIA)

Analyte	Result	Units	Threshold
Cocaine Metabolite	Negative	mg/L	0.20
Opiates	Negative	mg/L	0.10

Comprehensive Analysis

A comprehensive analysis was performed on this sample. With the exception of the compound(s) listed, no other drugs or poisons of concern were found.



Jennifer M. G. Brown
Forensic Toxicologist



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS

FOR THE NINTH JUDICIAL CIRCUIT

INDICTMENT NUMBER: 2012-GS-10-1033

WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,)

Plaintiff,)

-versus-)

DANIEL D. HAMRICK,)

Defendant.)

JURY CHARGE NUMBER 1**GENERAL CHARGE**

What I will now say is intended to serve as an introduction to the trial of this case. These remarks are not a charge on the law in this case. I will instruct you on the law applicable to this case at the end of the trial before you retire to consider your verdict. This is merely an explanation of the procedure that we will follow in the trial of this case so that you may better understand what may be happening. (You are not to take any notes during the trial.)

Mr. Hamrick is charged by an indictment filed in this Court with willfully committing Felony Driving Under the Influence resulting in Great Bodily Injury, the elements of which will be explained to you later.

The indictment is simply the charge by which the case is brought into Court, and it is not, in any sense, evidence of any of the allegations it contains. Mr. Hamrick has denied these allegations and is presumed innocent. The State, therefore, has the burden of proving each of the elements of the indictment beyond a reasonable doubt. And it will be your duty, ladies and gentlemen, to decide



whether the State has met that burden.

Your purpose as jurors is to find and determine the facts. You are the sole judge of the facts. If at any time I make any comment regarding the facts, you must disregard it.

You are to determine the facts from the evidence introduced in Court. It is up to you to determine the inferences which you feel may properly be drawn from the evidence, or from the absence of evidence.

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

On the other hand, and with equal emphasis, the same law that makes you the judges of the facts makes me the Judge of the law. The law as given by the Court is the only law you may consider. You must accept and follow it even though you may disagree with it. I cannot tell you what the facts are, and you cannot disagree with me about what the law is or should be. Your job is to take the law as I give it to you and apply it to the facts as you find them from the testimony of the witnesses and any other evidence that is introduced. After doing that, you will render your verdict, a true and just verdict under the solemn oath that you just took as jurors.

Until I advise you to begin your deliberations, you must not discuss this case with anyone, including your fellow jurors, friends, family members, and anyone involved in the case. After the case is submitted to you, you must discuss it only in the jury room with your fellow jurors. The attorneys and parties in this case have been advised that they are not to talk to you at all. So, if you see anyone involved in this case and they do not say hello, they are not being unfriendly, they are just following my instructions.

Under the Solemn Oath you have taken you the jury have certain obligations.

You must not read, listen to or watch any news report, story or opinion about this case, or any party associated with this case - including Mr. Hamrick, the witnesses, the lawyers and me, the Judge. This includes stories which may be published or disseminated on the television, radio, internet, "social media," in print, or in any other form during this trial, as well as older stories or reports which may be archived on the internet. In fulfilling your duty you must not consider anything that you may have heard or read about this case, or any of the people associated with it, outside of the courtroom.

Starting with the presumption that Mr. Hamrick is innocent, it is your Solemn Duty to determine whether the State can prove Mr. Hamrick is not innocent, and you must not decide any issue in the case until all the evidence has been presented, the lawyers have given their closing arguments, and I have instructed you on the law.

So that you may approach this case with an open mind, you must not discuss this case during the trial with anyone, including any of the attorneys, parties, witnesses, your friends, or members of your family. This prohibition extends to all forms of communication, whether in person, written or through any electronic device or social media such as: text message, e-mail, Facebook, MySpace, Twitter, instant messaging, or any other form of communication.

I will give you some form of this instruction every time we take a break. I do that not to insult you or because I don't think you are paying attention, but because, in my experience, this is the hardest instruction for jurors to follow. I know of no other situation in our culture where we ask strangers to sit together watching and listening to something, then go into a little room together and

not talk about the one thing they have in common - what they just watched together. There are at least three reasons for this rule.

The *first* is to help you keep an open mind. When you talk about things, you start to make decisions about them and it is extremely important that you not make any decisions about this case until you have heard all the evidence and all the rules for making your decisions, and you won't have that until the very end of the trial. The *second* reason is that by having conversations in groups of two or three during the trial, you won't remember to repeat all of your thoughts and observations for the rest of your fellow jurors when you deliberate at the end of the trial. The *third and most important* reason is that by discussing the case outside of the jury room you increase the likelihood that you will be influenced by an outside third party and or you will reveal information that could impact the outcome of the case. If any person tries to talk to you about this case, tell that person you cannot discuss the case because you are a juror. If that person persists, simply walk away and report the incident to my staff.

Next, it is very important that you do not do any research or make any independent personal investigations into any facts, people or issues connected with this case. Do not look up or consult any dictionaries or reference materials, or the Internet. Do not communicate any private or special knowledge about any facts, individuals or locations connected with this case to your fellow jurors. Do not read or listen to any news reports about this case. The law prohibits a juror from receiving evidence not properly admitted at trial. If you have a question or need additional information, submit your request in writing and I will discuss it with the attorneys.

In our daily lives we may be used to looking for information on-line and to "Google" something as a matter of routine. In a trial it can be very tempting for jurors to do their own research to make sure they are making the correct decision, but the moment you try to gather information about this case or the participants is the moment you contaminate the process and violate your oath as a juror. Looking for outside information is unfair because the parties do not have the opportunity to refute, explain or correct what you discovered or relayed. The trial process works by each side knowing exactly what evidence is being considered by you and what law you are applying to the facts you find. You must resist the temptation to seek outside information for our system of justice to work as it should. Once the trial is over you may research and discuss the case as much as you wish. [Are there any of you who cannot or will not abide by these rules concerning communication or research with others in any way, shape or form during this trial?].

Ramifications: If you communicate with anyone about the case or do outside research during the trial, it could lead to a mistrial, which is a tremendous expense and inconvenience to the parties, the court and taxpayers. Furthermore, you could be held in contempt of court and subject to punishment such as paying the costs associated with having a new trial. If you find that one of your fellow jurors has conducted improper communications or research, you have a duty to let me or a court officer know, so that we can protect the integrity of this trial.

Now, in just a moment, the Solicitor will make what is called an "opening statement" in which the Solicitor will explain to you the issues in this case or, at least, what the Solicitor thinks the issues are in this case. Mr. Bischoff may also make an opening statement, although he is not required to do so. What the attorneys tell you during their opening statements is not evidence in this case, it is only their contention as to what the issues are.

The evidence in this case will be presented to you by the testimony of sworn witnesses from this witness stand and/or by exhibits that may be introduced into evidence.

From time to time during the trial, you may hear one of the lawyers say something like, "Your Honor, I believe we have a question of law or a matter of law to discuss with you" or "Your Honor, may we approach the Bench?" or sometimes I myself might find it necessary to excuse you from the courtroom for a short while so the attorneys and I can discuss a matter of law. The reason for this is because you are the judges of the facts in this case, and sometimes, when I am discussing matters of law with the attorneys, it may be necessary for me to make some comment as to the facts, in connection with ruling whether or not a particular law applies. I am not supposed to tell you what I think the facts are, so I will excuse you from the courtroom while these discussions take place so that in no way will you be influenced by anything that I might say or do in connection with the facts.

In determining what the true facts are in this case, you must decide whether or not the testimony of the witnesses is believable. It will be my responsibility to rule as a matter of law as to whether certain testimony is admissible at all or not. There may, however, come a time when I will instruct you that certain evidence may only be considered for a limited purpose. Once the testimony is admitted, whether or not you believe it is solely for you to determine; however, it is your duty to limit your consideration according to my instruction.

In deciding whether to believe a witness, you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the mental infirmities of any witness, the fact that a particular witness never saw the alleged illegal conduct, or the matters and things about which the witness may testify, and the way the witness acts on the witness stand.

It is your duty to pay close attention to these witnesses, to observe the witnesses, to listen to the witnesses, and to pay close attention to the attorneys and to the Court. Don't let your thoughts wander, but give strict attention to the testimony in this case so that at the end of all the testimony, after the arguments of counsel and the charge on the law by the Court, you will then be in a position to determine what the true facts are and to apply the law to those facts, and thus render a true and just verdict.

It is your added duty, Mr./Madam Foreperson, to preside in the jury room to ensure that each juror complies with my instruction and be the jury's spokesperson here in Court.

In order to preserve everyone's rights, I will give the parties an opportunity to object to anything I have said. Any exceptions to anything that I have said to the jury by the State? And by Mr. Hamrick?

We will now begin the trial.

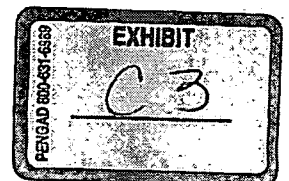
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
	)	WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 2
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	

PRESUMPTION OF INNOCENCE

Presumption of innocence is a legal right of all citizens of this country subject to a criminal trial. This presumption of innocence remains with the accused at all times from the moment of his arrest, throughout the trial proceeding, and goes into your jury room and remains with the accused even then unless and until you, the jury, reach a verdict of guilty based on evidence which the State has presented during trial satisfying you of the accused's guilt beyond a reasonable doubt. Presumption of innocence is not overcome by simply proving one of the elements of the crime charged beyond a reasonable doubt. All elements of the crime charged must be proven beyond a reasonable doubt in order to find Mr. Hamrick guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

State v. Primus, 349 S.C. 576, 584, 564 S.E.2d 103, 107 (2002), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) ("It is elementary that an accused is presumed innocent until proven guilty and that the burden is upon the State to prove the accused committed the crime charged. An accused has the right to rely entirely upon this presumption of innocence and the weakness in the State's case against him.")



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
		WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	
	)	JURY CHARGE NUMBER 3
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
	)	

REASONABLE DOUBT

The State has the burden of proving Mr. Hamrick guilty beyond a reasonable doubt. Remember, Mr. Hamrick remains innocent throughout the trial until the State has convinced you beyond a reasonable doubt of his guilt.

What is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the accused's guilt, and the burden is on the State to satisfy such proof concerning each and every element of the crime charged in order for you to find Mr. Hamrick guilty.

Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove the fact is more likely than not, such as by the greater weight or preponderance of the evidence. In criminal cases, the State's burden is the highest burden in our legal system. In order for the State to overcome this high burden of proving Mr. Hamrick guilty, they must prove each and every element of the crime charged such that you are firmly convinced of his guilt.

If, based on your consideration of the evidence, you are firmly convinced that Mr. Hamrick is guilty of the crime charged, you must find him guilty. If, on the other hand, you conclude the State has not met their burden of proving each and every element of the crime charged beyond a reasonable doubt, you must give Mr. Hamrick the benefit of that doubt and find him not guilty.

State v. Jones, 343 S.C. 562, 578, 541 S.E.2d 813, 821 (2001); *State v. Manning*, 305 S.C. 413, 417, 409 S.E.2d 372, 375; *Victor v. Nebraska*, 511 U.S. 1 (1994) (finding Due Process Clause requires government to prove criminal defendant's guilt beyond reasonable doubt, and trial courts must avoid defining reasonable doubt so as to lead jury to convict on lesser showing than due process requires and explaining the charge defining reasonable doubt as a doubt that would cause a reasonable person to hesitate to act was a formulation which the Court had repeatedly approved); *In re Winship*, 397 U.S. 358 (1970) (proclaiming the Due Process Clause mandates the government prove every element of the charged offense beyond a reasonable doubt).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
		WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)
	)
Plaintiff,	)
	)
-versus-	)
	)
DANIEL D. HAMRICK,	)
	)
Defendant.	)
_____	)

JURY CHARGE NUMBER 4

DEFENDANT NOT TESTIFYING

I instruct you and emphasize that the fact the Defendant did not testify is not a factor to be considered by you in any way in your deliberation and in your consideration on the question of the guilt or the innocence of the Defendant. It must not be considered by you in any manner whatsoever. A Defendant has the constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you are to draw no conclusion whatsoever from the fact that the Defendant in this case did not testify. The fact that this Defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have stated to you, is on the State. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NO.: 2012-GS-10-1033
	)	WARRANT NO.: M-614794
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 5
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
_____	)	

RESOLUTION OF DOUBT IN FAVOR OF DEFENDANT - ACQUITTAL

The Defendant is entitled to every inference in his favor which can reasonably be drawn from the evidence. When two inferences may be drawn from the same set of facts, one consistent with a verdict of guilty and one inference consistent with a verdict of not guilty, the Defendant is entitled to the inference which is consistent with a verdict of not guilty.

You cannot find the Defendant guilty based upon suspicion, conjecture, or speculation, no matter how strong. A conviction can only be based upon proof of guilt beyond a reasonable doubt. If the proof does not meet that standard, you must find the Defendant not guilty.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
		WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 6
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
_____	)	

UNANIMITY OF VERDICT

Under the Constitution of this State, the jury verdict must be unanimous. Unanimity is mandated. Every single juror must agree on the jury verdict. There cannot be any split or divided vote in any form or fashion, such as eleven to one, ten to two, nine to three. Each and every one of you is entitled to their own opinion regarding the guilt or innocence of Mr. Hamrick. The verdict you reach must be your own. You do not have to give up your beliefs or opinions simply to join the majority, but you are all encouraged to keep an open mind, consult with one another, and express your views while listening to the views of others so that you may reach a just and fair verdict.

The foreperson is required to sign the jury verdict. When the foreperson writes the verdict and signs the name as the foreperson, that assures the court that the jury verdict is unanimous. Please do not sign the verdict form until every single juror agrees.

If you, the jury, are able to unanimously find Mr. Hamrick guilty, the foreperson should then write one word: "guilty," and sign the foreperson's name. If, on the other hand, the jury unanimously

concludes that Mr. Hamrick is not guilty, the foreperson should write two words: "not guilty," and sign the foreperson's name.

S.C. Const. art. V, § 22 ("The petit jury of the Circuit Court shall consist of twelve members and the number of jurors of other courts must be determined by law. All jurors in any trial court must agree to a verdict in order to render the same."); *Green v. State*, 351 S.C. 184, 569 S.E.2d 318 (2002) (stating trial judge polls jury to ensure verdict is unanimous; trial judge is not required to conduct jury poll if court is satisfied verdict is unanimous); *State v. Robinson*, 360 S.C. 187, 193, 600 S.E.2d 100, 103 (Ct. App. 2004) ("It is universally recognized that a genuine inability of the jury to reach a unanimous verdict constitutes a manifest necessity for the declaration of a mistrial.").

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NO.: 2012-GS-10-1033
	)	WARRANT NO.: M-614794
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 7
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
	)	

CREDIBILITY OF WITNESSES

Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NO.: 2012-GS-10-1033
	)	WARRANT NO.: M-614794
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 8
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
	)	

PRIOR INCONSISTENT STATEMENTS

There has been evidence presented that witnesses have made prior statements which are not consistent with the witnesses' present testimony. You may use this evidence to decide whether to believe the witness. You may also use evidence of the earlier contradictory statements to determine the truth of those statements. It is up to you to decide whether to believe the earlier statements or the testimony given at trial.

If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness' testimony as to other matters. You may reject all testimony of that witness or give all or part of the testimony the weight you think it deserves.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NO.: 2012-GS-10-1033
	)	WARRANT NO.: M-614794
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 9
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
_____	)	

CHARACTER - OPINION AND REPUTATION

The credibility of all witnesses is a matter for you, the jury, to determine. In making this determination, you may consider that a witness may be discredited or impeached by testimony of another witness concerning whether he or she would believe the first witness under oath. A witness may also be discredited or impeached by evidence that his or her general reputation for truthfulness is bad in the community where that witness now resides or has recently resided.

It is for you to determine whether such testimony by a second witness has any discrediting or impeaching effect on the credibility of the testimony of the another witness. If you determine that a witness has been thus discredited, it is for you to determine the credibility, if any, that his or her testimony deserves.

Dollard v. Dollard's Executor, Harp 564 (1826); W. REISER, A COMPARISON OF THE FEDERAL RULES OF EVIDENCE WITH SOUTH CAROLINA EVIDENCE LAW 42-43 (5th ed. 1993).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
		WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 10
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
_____	)	

PROXIMATE CAUSE

Proximate cause is the direct cause, the immediate cause, the efficient cause, the cause without which the injury would not have resulted. Now, there may be more than one proximate cause. The acts of two or more persons may combine together to be a proximate cause of the injury of a person. The Defendant's act may be regarded as the proximate cause if it is the direct cause to the injury of the victim. The fact that other causes also contribute to the injury of a victim does not relieve the Defendant from responsibility. The Defendant's act need not be the sole cause of injury, but it has to be the direct cause, without which the injury of the victim would not have resulted, and this has to be proved to you by the State of South Carolina beyond a reasonable doubt.

State v. Dantonio, 376 S.C. 594, 658 S.E.2d 337 (2008)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
	)	WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 11
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
	)	

STATEMENT OF DEFENDANT

A statement alleged to have been made by the Defendant has been admitted into evidence in this case. While the Court has determined that the statement is admissible, I instruct you that you make the ultimate decision of whether or not the Defendant made the statement. If the Defendant did make the statement, you must determine whether the statement was made by the Defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion, or intimidation, or by hope or a promise of leniency or a reward of any kind. In determining whether the statement was voluntary, you should consider both the characteristics of the Defendant and the details of the questioning. Some of the factors that you must consider are: (1) the age of the Defendant; (2) the Defendant's education or lack of education; (3) the Defendant's mental ability or capacity; (4) the Defendant's I.Q. or intelligence; (5) the Defendant's background and environment; (6) the place and length of detention; (7) the nature of the questioning; and (8) the advice, or lack thereof, to the Defendant of his constitutional rights including, but not limited to, the right to remain silent; that any statement could be used against him

in a court of law; the right to have a lawyer present; that if he could not afford a lawyer, a lawyer would be appointed to represent him without any cost; and that he could stop making a statement at any time. You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, you may give the statement any further consideration that you deem proper. You must decide what weight, if any, should be given to the alleged statement. If you determine the alleged statement was not the free and voluntary statement of the Defendant, you should not consider the statement at all.¹

¹State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
		WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)
	)
Plaintiff,	)
	)
-versus-	)
	)
DANIEL D. HAMRICK,	)
	)
Defendant.	)
_____	)

JURY CHARGE NUMBER 12

FELONY DUI - ELEMENTS

The State must prove beyond a reasonable doubt that the Defendant was sufficiently under the influence to impair his ability to drive with reasonable care, with due regard for others and himself, or as a reasonably prudent person would drive. It is not necessary to show that the Defendant was in a helpless condition, passed out, or even intoxicated. On the other hand, the fact that the Defendant, at some time prior to this incident, drank an alcoholic beverage or took a drug does not prove that the Defendant was driving under the influence.

Next, the State must prove beyond a reasonable doubt that, while driving, the Defendant did an act forbidden by law or neglected a duty imposed by law.

Finally, the State must prove beyond a reasonable doubt that the act or neglect of the Defendant proximately caused great bodily injury or death to another person.

The amount of alcohol in the Defendant's blood at the time of the alleged violation, as shown by chemical analysis of the Defendant's breath or other bodily fluids, may be considered by you in deciding whether the Defendant was under the influence.

If the alcohol concentration was eight one-hundredths (.08) of one percent or more, it may be inferred that the Defendant was under the influence. This inference is simply an evidentiary fact to be considered by you, along with the other evidence in the case, and you may give it the weight you decide it should receive.

The Defendant has the right to refuse to take a blood alcohol concentration test.

The Defendant is charged with Felony Driving Under the Influence. The State must first prove beyond a reasonable doubt that the Defendant drove a vehicle while under the influence of alcohol and/or drugs.

Driving a motor vehicle means that the vehicle was in motion. This may be proved by direct or circumstantial evidence.

A movement of the vehicle might occur without any affirmative act by a driver or, in fact, by any person. If a vehicle is moved by some power beyond the control of the Defendant, or by accident, this would not be driving.¹

¹State v. Graves, 269 S.C. 356, 237 S.E.2d 584 (1977)/

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
		WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 13
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
	)	

LESSER INCLUDED OFFENSES

A request to charge on a lesser included offense is properly refused when there is no evidence that the Defendant committed the lesser rather than the greater offense.¹

The test for determining when a crime is a lesser included offense of the crime charged is whether the greater of the two offenses includes all the elements of the lesser offense.²

Where an offense has traditionally been considered a lesser included offense of the crime charged, it will continue to be construed as a lesser included offense despite the failure to strictly satisfy the elements test.³

¹State v. Johnson, 324 S.C. 38, 476 S.E.2d 681 (1996); State v. Goldenbaum, 294 S.C. 455, 365 S.E.2d 731 (1988).

²State v. McFadden, 342 S.C. 629, 539 S.E.2d 387 (2000); State v. Bland, 318 S.C. 315, 457 S.E.2d 611 (1995).

³State v. Watson, 349 S.C. 372, 563 S.E.2d 336 (2002).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
		WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 14
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
_____	)	

DUI - ELEMENTS

In order to convict the Defendant of Driving Under the Influence, each of the statutory provisions must be proven beyond a reasonable doubt. The State must prove beyond a reasonable doubt that: (1) the Defendant drove a motor vehicle; (2) while under the influence of alcohol and/or other drugs or substances; and (3) to the extent that the driver's faculties to drive are materially and appreciably impaired. If the State fails to prove all of the elements each beyond a reasonable doubt, then the Defendant must be acquitted.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
		WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-versus-	)	JURY CHARGE NUMBER 15
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
	)	

EXPERT WITNESS

The Rules of Evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call "expert witnesses." A witness who, by education and experience, has become expert in some art, science, profession, or calling may state an opinion as to relevant and material matter, in which the witness claims to be an expert, and may also state the reasons for the opinion.

You should consider any expert opinion received in evidence in this case and, like any other evidence, give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contradicted.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	INDICTMENT NUMBER: 2012-GS-10-1033
		WARRANT NO.: M-614794

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	JURY CHARGE NUMBER 16
	)	
-versus-	)	
	)	
DANIEL D. HAMRICK,	)	
	)	
Defendant.	)	
_____	)	

PAYMENT OF EXPERT WITNESS

When an expert witness is called by either the State or the defendant, he expects to be paid and he should be paid. You should not take into consideration the fact that the witness is paid unless there is some evidence or circumstances appearing from the evidence which would fully and reasonably convince you that the testimony of the witness has been influenced because of the sum which he has been paid as a witness.

Judge Jefferson

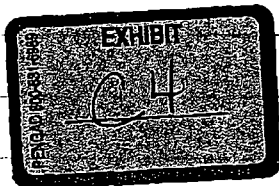
May we have:

- ① copy of the relevant S.C. Code Sections mentioned in your jury instructions
- ② all video which was shown during the trial
- ③ audio of phone calls from the detention center by the defendant.

Foreman

June 26th

Robert W. Rouse Jr.



Judge Tupper

Change:

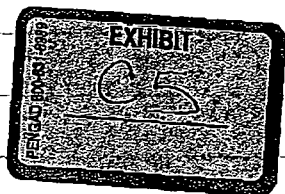
Could we just see
copies of the relevant
statutes first?

Hold off on other
requests for now.

Fruen

267

Rehl



Ladies and Gentlemen of the Jury our procedures do not allow for a copy of the jury charge/instructions to be given to you. If there is a specific instruction that you would like given again or the entire instruction please advise us and I will accommodate your request immediately.

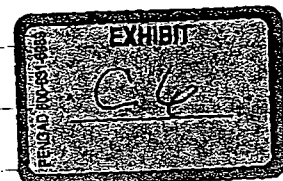
Judge Jefferson:

We would like to see or hear
that portion of the jury
instructions which included
the S.C. Code sections.

Thank you

Foreman
267

Robert W. Rame



AW9

FORM 5

2014-CP-10-5221

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA

County of CharlestonDaniel Hamrick

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2014 AUG 29 PM 2:49
CLERK OF COURT
J. H. STRONG

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Walden C.I. in Columbia, SC
2. Name and location of Court which imposed sentence Charleston County
General Sessions Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2012 GS 10 01033
(b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Oct. 25, 2013 - 15 yrs.
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty - found guilty after trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- yes, I appealed the conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. pending - there was a late filing by
- ii. my attorney for the Appeal.
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Sentencing Order by Judge
- ii. Jefferson
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) The Judge violated my 4th Amendment rights
- (b) The judge improperly instructed the jury
- (c) the judge did not give me a fair trial
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Missouri v. McNeely case
- (b) she reference statutes not listed in the indictment
- (c) she let the prosecutor do whatever he wanted to try and convict me
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, State appeal
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for Appeal in Ct Appeals
- ii. N/A
- iii. ↓
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SC Court of Appeals in Columbia, SC
- ii. N/A
- iii. ↓
- iv. _____

(c) the disposition thereof:

- i. pending
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. pending
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NONE
- 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?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- 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) Have not had a chance to appeal yet

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? I did not plea.

(b) your trial, if any? yes; Scott Bischhoff of the Savage Law Firm

(c) your sentencing? " " in Charleston, SC

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes; David Alexander of OJD (appeal is pending)

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. 15 Prioleau St.

Charleston, SC 29401

ii. _____

iii. David Alexander

Office of Indigent Appellate Defense

(b) the proceedings at which each such attorney represented you:

i. Bischhoff - trial and sentencing

ii. Alexander - Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

I want a new trial.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Daniel Hamrick, 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.

[Signature]

SWORN to and subscribed before me this 20th day of August, 2014.

[Signature] (L.S.)
Notary Public

My Commission Expires: 1/20/2022

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Daniel Hamrick, 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.

[Signature]
Applicant

SWORN or affirmed to and subscribed before me this:

20th day of August, 2014.

[Signature]
Notary Public

My Commission Expires: 1/20/2022

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-5221
	)	
Daniel Hamrick, #357851,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION
	)	TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 26, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the February 2012 term of the Charleston County Grand Jury for felony driving under the influence resulting in great bodily injury (2012-GS-10-1033). The Applicant was represented by J. Scott Bischoff, Esquire.

On October 25, 2013, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of fifteen years.

The Applicant filed a timely Notice of Appeal. His appeal was dismissed on September 23, 2014 because the Applicant failed to properly serve the Notice of Appeal on the State of South Carolina. The Remittitur was issued on October 17, 2014.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's application and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The judge violated my 4th amendment rights.
2. The judge improperly instructed the jury.
 - a. She referenced statutes not listed in the indictment.
3. The judge did not give me a fair trial.
 - a. She let the prosecutor do whatever he wanted to try to convict me.

III.

The Respondent construes the Applicant's allegations as claims of trial judge error. The Respondent submits these are direct appeal issues which are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on the State's Motion to Dismiss unless the Applicant amends his application to allege claims which are proper for post-conviction relief.

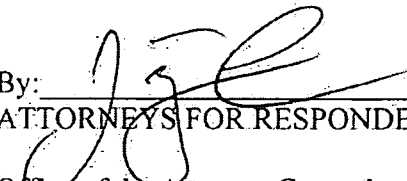
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

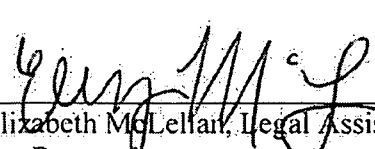
August 26, 20 15

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-5221
DANIEL HAMRICK, #357851	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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 and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esq.
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this 26th day of August, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Daniel Hamrick, #357851,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2014-CP-10-5221

**ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT
TO WHITE V. STATE**

FILED
2015 SEP 22 PM 12:24
JULIE J. WINTERBORN
CLERK OF COURT
BY _____

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 26, 2014. The Respondent made its Return and Motion to Dismiss on or about August 26, 2015.

The matter was added to the September, 2015 PCR term of Court in Charleston County. James K Falk, Esq. represented the Applicant. J. Rutledge Johnson, Esquire of the South Carolina Attorney's General Office represented the Respondent. Before the case was called, the parties advised the court that an agreement was reached to resolve the Applicant's PCR case through a consent order.

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted by the February 2012 term of the Charleston County Grand Jury for felony driving under the influence resulting in great bodily injury (2012-GS-10-1033). J. Scott Bischoff, II and Donald McCune represented him, with Mr. Bischoff acting as lead counsel. On October 21, 2013, the Applicant proceeded to a jury trial, and on October 25, 2013 Applicant was found guilty of the indicted charge. The Honorable Debra Jefferson sentenced the Applicant to confinement for fifteen (15) year term for

felony driving under the influence resulting in great bodily injury. Applicant timely notified Mr. Bischoff that he wanted to appeal the decision. As computed in accordance with Rule 203 SCACR, the deadline for filing Notice of Appeal was November 4, 2013. Mr. Bischoff filed notice of appeal on November 7, 2013.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The judge violated my 4th amendment rights.
2. The judge improperly instructed the jury.
 - a. She referenced statutes not listed in the indictment.
3. The judge did not give me a fair trial.
 - a. She let the prosecutor do whatever he wanted to try to convict me.

Applicant's PCR counsel advised the Attorney's General Office that Applicant wished to amend his PCR application to include the allegation that trial counsel denied him of his right to file a direct appeal.

SUMMARY OF COURT'S EXHIBITS

Applicant's PCR counsel provided the court with the May 29, 2015 Affidavit of J. Scott Bischoff and the July 10, 2015 Affidavit of Applicant. The Court entered the two affidavits as courts exhibits 1 & 2.

In his affidavit Applicant stated:

1. After the verdict, Applicant instructed Mr. Bischoff to file an appeal.
2. That he waived his right to an evidentiary hearing on any issues he could raise through a PCR application other than his right to file a belated review of direct appeal issues pursuant to White v. State.
3. That he was aware that if there were other grounds supporting his PCR application, the PCR judge would have the authority to remand his case back for a new trial, but

by entering into the consent order he was forever waiving his right to have a PCR Judge grant this relief. That the only opportunity he would have for a new trial is through the direct appeal of his criminal conviction.

4. That he discussed the matter with his PCR counsel, who explained the significance of entering into the consent order, and that he fully understood his rights.

In his Affidavit Mr. Bischoff stated:

1. That he was retained to represent Mr. Hamrick on his charges and that he was lead counsel at his October 2013 jury trial.
2. That within 10 (ten) days of his conviction Mr. Hamrick asked him to file a Notice of Appeal pursuant to Rule 203 SCACR
3. That a Notice of Appeal was served on the prosecuting Assistant Solicitor and filed with Charleston County clerk of court on November 7, 2013. That the Notice of Appeal was not timely filed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court agrees that the allegation that the Applicant was denied a direct appeal is meritorious. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).¹

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his

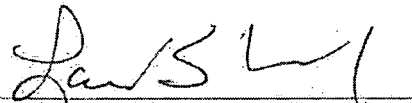
¹ "Even where the post-conviction relief judge makes this finding, he may not grant relief on this basis. Instead, the applicant must petition this Court for a White v. State review." [Emphasis added]. Davis, 288 S.C. at 291, n. 1, 342 S.E.2d at 60.

right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his conviction(s). A petition for belated review pursuant to White v. State can remedy the Applicant's lack of a direct appeal.

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED!

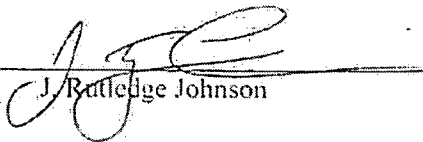


Larry B. Hyman Jr.
Presiding Circuit Court Judge
Ninth Judicial Circuit

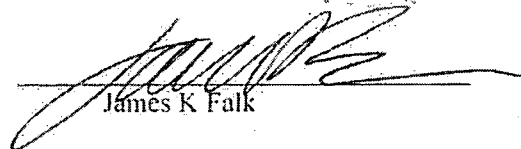
9-16, 2015

Cowley, South Carolina.

I consent:



J. Rutledge Johnson



James K. Falk

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

In Re: Daniel D. Hamrick

**AFFIDAVIT OF
J. SCOTT BISCHOFF, II**

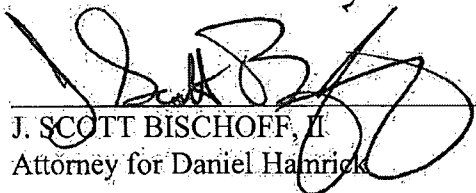
PERSONALLY APPEARED before me, J. Scott Bischoff, II, date of birth [REDACTED]
1980, currently living in Charleston, South Carolina, 29407.

1. THAT I am currently an attorney with the Savage Law Firm located at 15 Prioleau Street, Charleston, South Carolina, 29401;
2. THAT Daniel Hamrick hired my firm in November of 2011 to represent him on Warrant Number M614794 regarding a criminal charge of Felony DUI with Great Bodily Injury for an incident that occurred in Mount Pleasant, South Carolina on November 14, 2011;
3. THAT Donald McCune and I represented Daniel Hamrick during a week long jury trial in the Charleston County General Sessions Court. I was Mr. Hamrick's lead counsel. The Honorable Deadra Jeffeson presided over Mr. Hamrick's trial on Indictment Number 2012GS1001033 for the charge of Felony DUI with Great Bodily Injury (Warrant Number M614794);
4. THAT Mr. Hamrick was found guilty after said trial on October 25, 2013, and sentenced to 15 years incarceration with credit given for time already served;
5. THAT within 10 (ten) days of his conviction Mr. Hamrick asked that I file a Notice of Appeal pursuant to Rule 203 of the South Carolina Rules of Appellate Procedure;



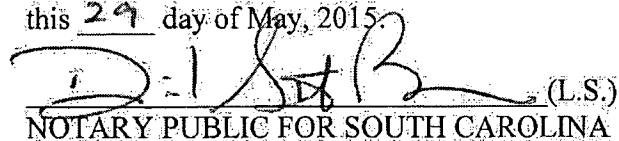
6. THAT a Notice of Appeal was served on the prosecuting Assistant Solicitor and filed with Charleston County clerk of court on November 7, 2013. I did not timely file a Notice of Appeal as proscribed by Rule 203 of the South Carolina Rules of Appellate Procedure. The deadline for filing Mr. Hamrick's Notice of Appeal was November 4, 2013;
7. THAT I believe this rendered me ineffective and Mr. Hamrick is entitled to a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

FURTHER THE AFFIANT SAYETH NOT!


J. SCOTT BISCHOFF, II
Attorney for Daniel Hamrick

SWORN TO and SUBSCRIBED BEFORE me

this 29 day of May, 2015.

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

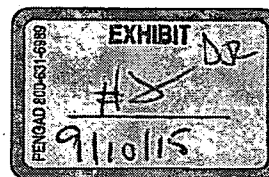
My Commission Expires: 2/21/2016

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Daniel Hamrick	)	CASE NO.: 2014-CP-10-05521
Plaintiff	)	
vs.	)	
	)	
State of South Carolina	)	
Defendant,	)	
	)	

PETITIONER'S AFFIDAVIT

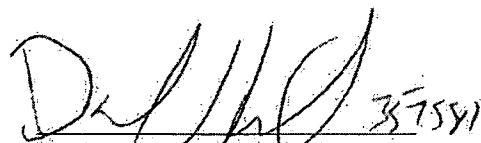
The affiant having been duly sworn hereby deposes and states:

1. I am the petitioner in the above PCR hearing in Charleston County Circuit Court.
2. I am currently in the custody of the South Carolina Department of Corrections.
3. I was the defendant in Charleston County Case No. 2012-GS-10-01033
4. I retained Scott Bischoff to represent me at my criminal trial.
5. After the jury reached its verdict I instructed Mr. Bischoff that I wanted him to file an appeal.
6. It is my understanding the Mr. Bischoff failed to file a timely Notice of Appeal. SCCID had already commenced working on my appeal when it received notice that there was no timely notice of appeal.
7. In my application for PCR relief, I now allege that Mr. Bischoff provided ineffective assistance of counsel by failing to file a timely notice of appeal.
8. I am represented by James Falk in this PCR action.
9. I have been informed by Mr. Falk of the following:
 - a. The Attoreny's General office has agreed to enter into a consent order through which I will be able to filer belated appeal of my criminal conviction pursuant to *White v State*, 208 S.E.2d 35 (1974).



- b. The Consent Order will not address any other potential claims or grounds that I may have upon which to support my PCR application.
- c. If the Court accepts and enters the Consent Order, I will not have an evidentiary hearing and the only remedy I will receive is the right to file a belated appeal of my criminal conviction.
- d. PCR Applicants must raise all their issues at one time in one PCR application. A PCR applicant is only entitled to one evidentiary hearing in which to resolve all their PCR claims.
- e. By entering into this consent order, I am waiving my right to an evidentiary hearing through which to claim any additional grounds for PCR relief.
- f. If there were other additional grounds supporting my PCR application, the PCR Judge would have the authority to remand my case back for a new trial. HOWEVER, by entering into this Consent Order I am forever waiving my right to have a PCR judge grant this relief. The only opportunity I will have for a new trial is through the direct appeal of my criminal conviction.
- g. I have discussed this matter with my PCR counsel James Falk, who has explained the significance to me of entering into the Consent Order. I fully understand the rights I am waiving by entering into this Consent Order. I require no further explanation or information from James Falk regarding this matter.

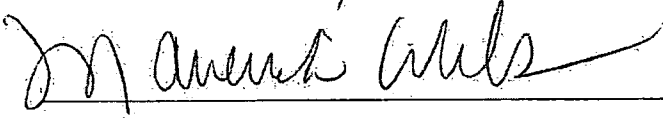
FURTHER THE AFFIANT SAYETH NAUGHT!


Daniel Hamrick 357581

(Continued on next page)

SWORN TO and SUBSCRIBED BEFORE me.

This 10 day of July, 2015



Notary Public for South Carolina

My commission expires: 3/8/2021

ARREST WARRANT

M-614794

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Daniel D Hamrick

Address:

Mount Pleasant, SC 29466-6713

Phone:

M Race: W Height: 6' 2" Weight: 200

DL State: SC

DL #:

DOB:

Agency ORI #:

SC0100300

Prosecuting Agency:

Mt. Pleasant Police Department

Prosecuting Officer:

A. T. Harris - 0053 / *SH*Offense: DUI / Felony driving under the influence, great
bodily injury results

Offense Code:

0406

Code/Ordinance Sec:

56-05-2943(A)(1)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of District/County Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant A. T. Harris / *SH* who
being duly sworn deposes and says that defendant Daniel D Hamrick
did within this county and state on or about 11/14/2011 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)
in the following particulars:

DESCRIPTION OF OFFENSE: DUI / Felony driving under the influence, great bodily injury results

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

See Attached Affidavit

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address 100 Ann Edwards LaneMount Pleasant, SC 29464-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 11/14/2011 defendant Daniel D Hamrickdid violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: DUI / Felony driving under the influence, great bodily injury results

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me
on 11/15/2011

Signature of Issuing Judge

Linda Schwartz Lombard

Judge Code:

7004

(L.S.)

Judge's Address 3870 Leeds Avenue, Suite 106North Charleston, SC 29405-7469Judge's Telephone (843)746-9822

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Judge Lambert
 on 11-15-11
 Type and Amount 250,000
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. procs., etc.)

Disposition: _____
 Sentence: _____

JURORS

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS



FILED
 2011 NOV 17 AM 10:29
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

OCA #2011-P-14170

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appeared before me, a Magistrate Judge of this county, one Bill Greer
(Affiant)

who, first being duly sworn, deposes and says that DANIEL HAMRICK
(Defendant)

did within the Town of Mt. Pleasant, County of Charleston, State of South Carolina, on NOVEMBER 14, 2011, did violate the criminal laws of the Town of Mt. Pleasant, Charleston County, State of South Carolina, namely, FELONY DUI resulting in Great Bodily Injury to another, at the following location, US 17 AND GEORGE BROWDER BOULEVARD, of the South Carolina Code of Laws of 1976, as amended. The affiant states that there is probable cause to believe that the Defendant named above did commit the crime set forth and that such probable cause is based on the following facts:

That on November 14, 2011, the defendant Daniel Hamrick, did commit the offense of Felony Driving Under the Influence while driving on US 17 Southbound at George Browder Boulevard, which is in the Town of Mount Pleasant, County of Charleston, State of South Carolina. While driving in the left lane of the two Southbound lanes of US 17, Mr. Hamrick struck a construction worker, who was critically injured and has life threatening injuries. The victim was wearing an orange reflective vest and actively working in the right lane, which was closed to traffic with orange construction cones. PFC A. Harris conducted an investigation on scene during which witnesses stated the victim was struck in the blocked off section of the roadway when the vehicle drifted right and struck him. Mr. Hamrick admitted to PFC A. Harris that he knew and was aware that the construction zone was a 35 MPH zone and he stated he was exceeding that by driving 40 MPH at the time of the collision. Mr. Hamrick admitted to consuming alcohol, a pint of beer prior to driving on this night. PFC A. Harris could detect an odor of an unknown alcoholic beverage coming from Mr. Hamrick as they spoke, his eyes were glassy and bloodshot in appearance and he performed poorly on field sobriety tasks administered by PFC A. Harris. Based on statements made by Mr. Hamrick to PFC A. Harris, Mr. Hamrick was driving under the influence while in violation of South Carolina statute 56-5-1520 (speeding) in that he admitted to driving 40 MPH in a zone he knew was a 35 MPH work zone. Based on statements made by witnesses, Mr. Hamrick was driving under the influence while in violation of South Carolina statute 56-5-1900 (improper lane usage) after he struck the victim in the coned construction area. The vehicle, SC tag, HIU 331, 2009 Jeep Cherokee (1J8HH48K89C517253), is registered to Daniel Hamrick of Mount Pleasant, SC.

The above is believed to be true based on the investigation by PFC A Harris of the Mount Pleasant Police Department. All of the above is against the law, peace, and dignity of the State of South Carolina.

Sworn to and Subscribed before me this
15th day of Nov 2011.

Signature of Judge [Signature]

Bill Greer

AFFIANT

100 Ann Edwards Lane
Mt. Pleasant, SC 29464
343-884-4176

KNR20111107729

WITNESSES

Mt. Pleasant Police Department

AGENCY CASE NUMBER

2011P14170

ARREST WARRANT NUMBER

M614794

DATE OF ARREST

November 15, 2011

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: FEB 14 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2012GS1001033

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

February Term 2012

THE STATE

VS.

DANIEL D HAMRICK

Indictment for

Felony Driving Under The Influence With
Great Bodily Injury

FILED

2/22/2012 4:22:21 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

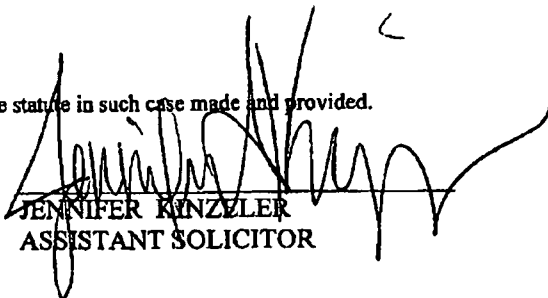
INDICTMENT

At a Court of General Sessions, convened on February 13, 2012 the Grand Jurors of Charleston County present upon their oath:

Felony Driving Under The Influence With Great Bodily Injury

That in Charleston County, South Carolina, on or about November 14, 2011, while driving a vehicle under the influence of alcohol, drugs or both alcohol and drugs, the Defendant, DANIEL D HAMRICK did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle, to wit: speeding/too fast for conditions, failure to exercise due care, failure to keep proper look out, and/or failure to maintain lane; and such act proximately caused great bodily injury to Ahmad Garland; all in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976, as amended).

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


JENNIFER KINZLER
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

Daniel D Hamrick

AKA:

Race: WHITE Sex: M Age: 36

DOB:

Address:

DL#: SC 29466-6713
SID#: SC01003088*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, great bodily injury

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1001033

A/W#: M614794

Date of Offense: 11/14/2011

S.C. Code § : 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

Kidd, Culver

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 15 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:☒ 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

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	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§ 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)	\$	\$ 2.25
TOTAL		\$ 249.25

Clerk of Court/ Deputy Clerk

Court Reporter: Mona Manley

SCCA/217 (03/2011)

PTUP

_____ 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:

ATU if available.

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2128

Sentence Date: 10/25/13