

STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM UNION COUNTY
Court of General Sessions

DEC 21 2012

James C. Williams, Circuit Court Judge
Lee S. Alford, Circuit Court Judge

S.C. Supreme Court

Case No. 2009-GS-44-0343

The State of South Carolina Respondent,

v.

Gene Howard Vinson..... Petitioner.

APPENDIX

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Gene Howard Vinson, Appellant.

Appellate Case No. 2009-146227

Appeal From Union County
Lee S. Alford, Circuit Court Judge

Opinion No. 5044
Heard June 5, 2012 – Filed October 31, 2012

AFFIRMED

Heath P. Taylor, of Taylor Law Firm, LLC, of West Columbia; and Pete G. Diamaduros, of White Diamaduros & Diamaduros, of Union, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney General John W. McIntosh, and Senior Assistant Deputy Attorney General Salley W. Elliott, all of Columbia; and Solicitor Kevin Brackett, of York, for Respondent.

WILLIAMS, J.: On appeal, Gene Vinson ("Vinson") contends the circuit court erred in denying his motion to dismiss because the police did not have a reasonable articulable suspicion to justify the traffic stop resulting in Vinson's arrest. We affirm.

FACTS/PROCEDURAL HISTORY

On Saturday, February 7, 2009, at approximately 3:00 a.m., Trooper C. B. Horne ("Trooper Horne") of the South Carolina Highway patrol was patrolling Highway 215 in Union County. Highway 215 is a two-lane roadway with both the northbound and southbound lane having its own yellow lane line to indicate passing is prohibited. Trooper Horne testified he was driving from Buffalo towards downtown Union, and he passed Vinson's vehicle in the opposing lane. Trooper Horne then turned around and observed Vinson's vehicle drift "back and forth" between the double yellow lines that separated the opposing lanes of traffic. Based on this observation, Trooper Horne activated his dash camera and followed Vinson for approximately two-tenths of a mile. Trooper Horne testified Vinson's vehicle never completely crossed into the opposing lane nor did it drift again into the center of the two yellow lines after Trooper Horne turned on his dash camera.

However, based on his experience, statistics, the absence of any other traffic on the road, the day of week, and the time of night, Trooper Horne stated he suspected Vinson was under the influence of alcohol. As such, Trooper Horne decided to pull Vinson over at that time because they were traveling into "a well-populated area[] [where there were] a lot of houses, a lot of hills," and further, Trooper Horne concluded it would be unfair to conduct any field sobriety tests on sloped terrain.

Trooper Horne testified that as soon as he asked for Vinson's license and registration, he noticed Vinson's eyes were bloodshot and detected an odor of alcohol emanating from Vinson's vehicle. Trooper Horne asked Vinson if he had been drinking, to which Vinson replied he had not. Trooper Horne then asked Vinson to exit his vehicle. Once Vinson exited his vehicle, Trooper Horne stated he asked Vinson again whether he had been drinking, and Vinson admitted he drank four or five beers in the past hour. Trooper Horne then asked Vinson to perform two field sobriety tests. Vinson agreed, and Trooper Horne read him his *Miranda* rights. According to Trooper Horne, Vinson failed both tests, and after Vinson stumbled numerous times while attempting to walk a straight line, he stated, "[B]e straight with me. I just failed that." In response, Trooper Horne asked Vinson whether he would like to repeat the test, which Vinson did without success. Accordingly, Trooper Horne arrested Vinson for driving under the influence. Vinson performed a breathalyzer test at the police station, which registered Vinson's blood alcohol content as 0.14.¹

¹ The legal blood alcohol concentration limit in South Carolina is 0.08.

On October 13, 2009, Vinson made a pretrial motion to dismiss his charge on the ground the traffic stop was not based upon reasonable suspicion or probable cause; thus, the traffic stop was an unreasonable seizure in violation of the Fourth Amendment. After hearing Trooper Horne's testimony, the circuit court denied Vinson's motion. In support of its decision, the circuit court ruled,

The statute says that the vehicle shall be operated as nearly as practicable . . . within a single lane. I interpret [that] to mean if it's impossible to stay in that lane because of an obstruction on the road or the road conditions[;] . . . I don't interpret that as giving the driver freedom to reign back and forth as he deems practicable in his driving. . . . And if you're on that line then you are not within the lane; . . . I don't see where it makes any difference whether you are over the line one inch or a foot or a yard, if you've crossed the yellow line, technically it's a violation of the statute. . . . I find that under these specific circumstances that I've outlined, the officer was reasonable, that he did have reasonable, articulable suspicion, and so I would deny your motion to dismiss the case on that ground[.]

Vinson was subsequently tried on November 10, 2009. He was convicted of driving under the influence, second offense. This appeal followed.

STANDARD OF REVIEW

In criminal cases, the appellate court reviews errors of law only. *State v. Banda*, 371 S.C. 245, 251, 639 S.E.2d 36, 39 (2006). As such, an appellate court is bound by the circuit court's factual findings unless they are clearly erroneous. *Id.* "The appellate court will reverse only when there is clear error." *State v. Rogers*, 368 S.C. 529, 533, 629 S.E.2d 679, 681 (Ct. App. 2006). "The same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases." *Banda*, 371 S.C. at 251, 639 S.E.2d at 39. "[Thus, the appellate court's] review in Fourth Amendment search and seizure cases is limited to determining whether any evidence supports the [circuit] court's finding." *Id.* Restated, "[a]n appellate court must affirm the [circuit] court's ruling if there is *any* evidence to support the ruling." *State v. Pichardo*, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct. App. 2005) (emphasis in original).

LAW/ANALYSIS

Vinson contends the circuit court erred in finding it was lawful to stop his vehicle because Vinson's conduct did not violate section 56-5-1900 of the South Carolina Code (2006). Thus, his arrest was the result of an illegal stop and in violation of his Fourth Amendment rights. We disagree.

The Fourth Amendment to the Constitution of the United States grants citizens the right to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; *see also* S.C. Const. art. I, § 10. A traffic stop constitutes a Fourth Amendment seizure; thus, the traffic stop must be reasonable under the circumstances. *See Rogers*, 368 S.C. at 533, 629 S.E.2d at 681; *see also Pichardo*, 367 S.C. at 97, 623 S.E.2d at 847 (citing *Whren v. U.S.*, 517 U.S. 806, 810 (1996)). "Reasonableness is measured in objective terms by examining the totality of circumstances." *Pichardo*, 367 S.C. at 101, 623 S.E.2d at 849. A traffic stop is not unreasonable if conducted with probable cause to believe a traffic violation has occurred, or when the officer has a reasonable suspicion the occupants are involved in criminal activity. *State v. Burgess*, 394 S.C. 407, 412, 714 S.E.2d 917, 919 (Ct. App. 2011); *see also Whren*, 517 U.S. at 810 ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."). Moreover, a police officer's "subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *State v. Corley*, 383 S.C. 232, 241, 679 S.E.2d 187, 192 (Ct. App. 2009) (internal quotation marks omitted).

In denying Vinson's motion to dismiss, the circuit court found Trooper Horne had reasonable suspicion to believe Vinson violated section 56-5-1900. Section 56-5-1900 states, in pertinent part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply . . . [a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.

§ 56-5-1900(a). To support its decision, the circuit court held there was no evidence or testimony that Vinson "could not have maintained his vehicle within that single lane had he chosen to do so." Because section 56-5-1900(a) requires a

driver to remain within his lane "as nearly as practicable," the circuit court concluded the driver may only leave his lane "if it's impossible to stay in that lane because of an obstruction on the road or the road conditions or something of that nature." In finding Trooper Horne possessed reasonable suspicion that Vinson violated section 56-5-1900, the circuit court also noted the "totality of circumstances," including the officer's consideration of the time of day, the day of the week, the lack of other cars on the road, and Vinson's proximity to a hilly, populated area.

We concur with the circuit court's decision that Trooper Horne was justified in stopping Vinson for a perceived violation of section 56-5-1900.² *See State v. Butler*, 343 S.C. 198, 539 S.E.2d 414 (Ct. App. 2000) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. The police, however, may also stop and briefly detain a vehicle if they have a reasonable suspicion that the occupants are involved in criminal activity."). The plain language of section 56-5-1900 requires a driver to maintain his vehicle "entirely within a single lane" and excuses this mandate only when it is not practicable or the driver can safely change lanes. *See* § 56-5-1900(a) ("A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety."). Trooper Horne testified Vinson's front tire crossed into the area between the double yellow lines that separated opposing lanes of traffic in a "no passing" zone. This action, in and of itself, is a violation of the statute.³ Furthermore, Trooper Horne stated there

² We note our decision regarding the violation of section 56-5-1900 does not entail a totality of circumstances analysis; rather, our conclusion is solely based on Vinson's violation of the plain language of the statute.

³ Vinson highlights case law from other jurisdictions in which courts construed similar statutory language and held that minor infractions over a lane line were an insufficient basis for a stop. While we acknowledge a split of authority, we are persuaded by the line of cases in which courts have found the purpose of the "as nearly as practicable" language is to keep both drivers and pedestrians safe, not to allow motorists the option of when they will or will not abide by a lane requirement. *See U.S. v. Bassols*, 775 F. Supp. 2d 1293, 1300-01 (D.N.M. 2011) (rejecting the argument that a vehicle making contact with an lane marker is "entirely within a single lane" under a statute similar to section 56-5-1900(a), as such an interpretation could lead to the absurd result that two vehicles traveling toward each other could each be "entirely within a single lane" even though they

were no other cars on the road during that time that would have prompted Vinson's decision to cross the center line. Because it was practicable to remain within his lane of traffic, we find Trooper Horne had the requisite reasonable suspicion to pull Vinson's vehicle over for a violation of section 56-5-1900. Accordingly, the circuit court properly denied Vinson's motion to dismiss.

CONCLUSION

Based on the foregoing, the circuit court's decision is

AFFIRMED.

THOMAS and LOCKEMY, JJ., concur.

both are partially on the same lane marker); *see also People v. Smith*, 665 N.E.2d 1215, 1218-19 (Ill. 1996); *State v. Hodge*, 771 N.E.2d 331, 338 (Ohio Ct. App. 2002); *State v. McBroom*, 39 P.3d 226, 228-29 (Or. Ct. App. 2002).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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23 Court of Appeals

APPEAL FROM UNION COUNTY
Court of General Sessions

James C. Williams, Circuit Court Judge
Lee S. Alford, Circuit Court Judge

Case No. 2009-GS-44-0343

The State of South Carolina.....Respondent,

v.

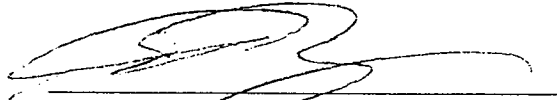
Gene Howard Vinson.....Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Appellant hereby respectfully petitions the Court for a rehearing of its opinion in this matter filed October 31, 2012. In the opinion, the Court affirmed the lower court’s interpretation of S.C. Code Ann. § 56-5-1900.

S.C. Code Ann. § 56-5-1900 is penal in nature. “When a statute is penal in nature, it must be strictly construed against the State and in favor of the defendant.” *Town of Mount Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). The Court’s opinion amounts to a strict construction of the statute against the Defendant and the motoring public at large. Therefore, Appellant respectfully requests that the Court reconsider its opinion and grant Appellant’s Petition for Rehearing.

Respectfully Submitted,



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
Honorable James C. Williams, Circuit Court Judge
Honorable Lee S. Alford

Appellate Case No: 2009-146227

THE STATE,

Respondent,

vs.

GENE HOWARD VINSON,

Appellant.

RETURN TO PETITION FOR REHEARING

As requested by this Court, the State hereby responds to the Petition for Rehearing. The support of its position, the State submits that this Court did not overlook or misapprehend any factual or legal points in this case and would show unto this Court as follows:

I.

In his Petition for Rehearing, Gene Howard Vinson argues that the Court's Opinion constitutes a strict construction of S.C. Code § 56-5-1900 against Vinson and the "motoring public at large." He contends that because the statute is penal in nature, strict construction against the State is mandated. The State submits that this Court properly interpreted the facts and correctly applied the law in its review of this matter and that the Petition for Rehearing must be denied. First, the

State submits that this Court should not consider the argument presented in Appellant's Petition for Rehearing because it is being presented to the Court for the first time on rehearing. See Rule 208 (b) (1) (D), SCACR; State v. Garner, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2010); State v. Halcomb, 382 S.C. 432, 676 S.E.2d 149 (Ct. App. 2009); State v. Nelson, 336 S.C. 186, 519 S.E.2d 786 (1999). Review of Appellant's Final Brief reflects that Appellant failed to make the argument he is now asking this Court to consider. Arguments may not be raised for the first time in a Petition for Rehearing. Kleckley v. Northwestern Nat'l Cas. Co., 338 S.C. 131, 526 S.E.2d 218 (2000).

II.

Second, the State incorporates and reiterates herein its Final Brief of Respondent and all arguments made therein in support of its contention that this Court properly reviewed the facts and correctly applied the law in this matter. The State submits this Court correctly concluded that Appellant's conduct of crossing over his lane line and driving between the two center lines of the opposing lanes on the roadway in a "no passing" zone constituted a violation of S.C. Code Ann. section 56-5-1900 and, therefore, supported the traffic stop. This Court correctly affirmed the trial court's conclusion that the words "as nearly as practicable" means that a driver may cross out of his single lane only when an obstruction, other impediment or exigent circumstance makes it impossible to travel in the single lane.

While the term "practicable" is not defined by the statute, rules of statutory construction support this Court's opinion affirming the trial court's finding. "The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible." City of Camden v. Brassell, 326 S.C. 556, 560, 486 S.E.2d 492, 494 (S.C. Ct. App. 1997) (citing Joint Legislative Comm. v. Huff, et al., 320 S.C. 241, 464 S.E.2d 324 (1995)). "All rules of statutory

construction are subservient to the one that legislative intent must prevail if it reasonably can be discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” Brassell, 326 S.C. at 560, 486 S.E.2d at 494 (citing Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994)). In determining the meaning of a statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Ry. Co. v. S.C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). When the terms of a particular statute are clear and unambiguous, the literal meaning should be applied. Duke Power Co. v. S.C. Tax Comm., 292 S.C. 64, 354 S.E.2d 902 (1987).

The word “practicable” is defined by Black’s Law Dictionary as “reasonably capable of being accomplished, feasible.” Black’s Law Dictionary (9th ed. 2009). Our Supreme Court has defined it in other contexts to mean “reasonably possible”; “that which is possible of reasonable performance”; “capable of and being done or performed.” Woody v. S.C. Power Co., 202 S.C. 73, 24, S.E.2d 121 (1943); Fort Sumter Hotel v. S.C. Tax Comm., 201 S.C. 50, 21 S.E.2d 393, 396 (1942). The term “as nearly as practicable” means that a driver must remain in his single lane unless an exigent circumstance makes the operation of the vehicle in the single lane impossible. This Court’s opinion is consistent with the construction given by other jurisdictions. See People v. Smith, 665 N.E.2d 1215 (Ill. 1996); Texas Dep’t of Public Safety v. Chang, 994 S.W.2d 875 (Tex. 1999); see also State v. Hodge, 771 N.E.2d 331 (Ohio 2002), citing Miller v. State, 440 P.2d 840 (Wash 1968); Unverzagt v. Prester, 13 A.2d 46 (Pa. 1940); Beech Fork Coal Co. v. Pocahontas Corp., 152 S.E.785 (W.Va. 1930); People, ex rel. Williams v. Errant, 82 N.E.271 (1907).

Contrary to Appellant’s argument, the statute in question does not provide a driver with the option

of staying within the lane or traveling outside the lane at the discretion of the driver. As recognized by the Ohio appellate court in State v. Hodge, 771 N.E.2d 331 , “[c]ommon sense dictates that the statute is designed to keep travelers, both in vehicles and pedestrians, safe. The logical conclusion is that the legislature intended only special circumstances to be valid reasons to leave a lane, not mere inattentiveness or carelessness. To believe that the statute was intended to allow motorists the option of when they will or will not abide by the lane requirement is simply not reasonable.” 771 N.E.2d at 558. The construction Appellant urges this Court to adopt will lead to uncertainty in enforcement, is contrary to legislative intent, and conflicts with the interpretation previously announced by our supreme court concerning a similarly worded statute. See State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978).

III.

This Court correctly interpreted and applied the law in its review; nevertheless, the argument Appellant asks this Court to reconsider was not presented in his brief and is not properly before this Court by way of a request for rehearing.

WHEREFORE, the State prays this Court will deny Appellant’s Petition for Rehearing and for such other and further relief as this Court may deem just and appropriate.

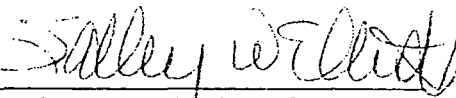
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November 26, 2012

The South Carolina Court of Appeals

The State, Respondent,

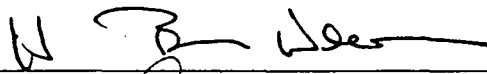
v.

Gene Howard Vinson, Appellant.

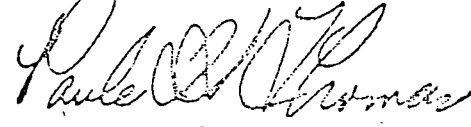
Appellate Case No. 2009-146227

ORDER

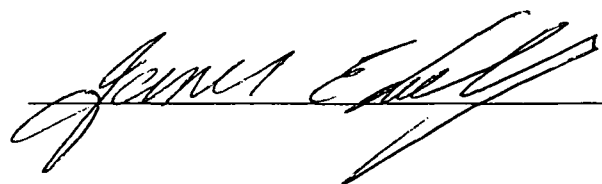
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

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Heath Preston Taylor
Pete Gus Diamaduros

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30 NOV 2012

STATE OF SOUTH CAROLINA
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APPEAL FROM UNION COUNTY
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RECORD ON APPEAL

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1 MR. HICKMAN - YOUR HONOR, THE STATE NEXT CALLS
2 GENE HOWARD VINSON. HE'S CHARGED WITH DRIVING UNDER THE
3 INFLUENCE SECOND OFFENSE.

4 THE COURT - AND I --- SINCE WE DON'T HAVE A
5 JURY, I ASSUME THIS IS FOR PURPOSE OF SOME MOTION?

6 MR. DIAMADUROS - YES, SIR, YOUR HONOR, IT'S A
7 MOTION.

8 THE COURT - ALL RIGHT, SIR. YES, SIR, BE HAPPY
9 TO HEAR FROM YOU. DO YOU WAIVE YOUR CLIENT'S PRESENCE?

10 MR. DIAMADUROS - YES, SIR, I CALLED HIM AND HE'S
11 AT HOME SICK WITH THE FLU, SO I DIDN'T WANT HIM SITTING BY
12 ME TODAY, HOPING HE'D GET BETTER.

13 THE COURT - WELL, I DON'T WANT HIM SITTING BY ME
14 TODAY OR TOMORROW EITHER ONE. WHAT'S --- YOU THINK WE'RE
15 GOING --- WELL, WE'LL PROCEED WITH THE MOTION. JUST HAVE
16 TO SEE HOW HIS HEALTH IS, BECAUSE THAT'S THE LAST THING WE
17 WANT TO DO IS TO BRING HIM INTO THIS COURTROOM IF HE'S GOT
18 THE FLU.

19 MR. DIAMADUROS - WELL, I ---WHEN I SPOKE TO HIM
20 --- AND MAYBE WE'LL SEE HOW THE MOTION GOES --- BUT WHEN
21 I SPOKE TO HIM, HE'S BEEN OUT OF WORK YESTERDAY AND TODAY,
22 BEEN SICK SINCE SATURDAY AND DOESN'T HAVE A FAMILY DOCTOR
23 SO HE'S TAKEN LEFT-OVER MEDICINE FROM HIS ROOMMATES. I
24 DON'T KNOW IF HE'S GOING TO BE SICK OR WELL BUT ---

25 MR. ANTHONY - CAN I ASK YOU SOMETHING? IF ---

1 ARE YOU GOING TO HAVE HIM HERE IN THE MORNING?

2 MR. DIAMADUROS - IF WE START --- IF WE START
3 TRIAL, THE JUDGE SAYS WE'LL START THE TRIAL, HE'LL BE
4 SITTING HERE.

5 MR. ANTHONY - ALL RIGHT. SO YOU DON'T THINK
6 THERE'S ANY REASON --- YOU WOULDN'T BE PLANNING ON MOVING
7 TO CONTINUE IT IN THE MORNING ---

8 THE COURT - I CAN'T HEAR Y'ALL IF YOU'RE TALKING
9 TO ME.

10 MR. ANTHONY - WELL, I --- I WAS JUST INQUIRING
11 OF MR. DIAMADUROS IF HIS CLIENT WILL BE ABLE TO STAND
12 TRIAL IN THE MORNING, IF THE STOP'S ALLOWED IT IN.

13 MR. DIAMADUROS - HE'S AT HOME SICK TODAY. I
14 ASSUME HE MIGHT BE BETTER. I CAN'T SAY IF HE'LL BE BETTER
15 OR NOT, BUT ---

16 THE COURT - WELL, ALL I CAN TELL YOU IS THAT IF
17 I HEAR THE MOTION AND MAKE A RULING THAT'S IT AS FAR AS
18 THAT RULING. THAT'S THE LAW OF THE CASE WHETHER YOU ---

19 MR. DIAMADUROS - YES, SIR.

20 THE COURT - --- WHETHER I TRY THE CASE LATER OR
21 WHETHER SOME OTHER JUDGE TRIES THE CASE LATER. THAT'S MY
22 UNDERSTANDING OF THE LAW.

23 MR. DIAMADUROS - AND I'M FINE WITH THAT, YOUR
24 HONOR.

25 MR. ANTHONY - THAT'S FINE WITH US. I JUST

1 WANTED TO MAKE SURE THAT THAT WAS UNDERSTOOD BEFORE WE
2 WENT FORWARD.

3 MR. DIAMADUROS - I'M NOT --- I'M FINE WITH THAT.

4 THE COURT - ALL RIGHT. OKAY. IS THIS THE ONE
5 WE STARTED --- THAT WE ATTEMPTED TO TRY, WE TRIED TO TRY
6 SOME TIME AGO.

7 MR. DIAMADUROS - WE TRIED TO TRY IT, YES, SIR.

8 THE COURT - YES, SIR. ALL RIGHT.

9 MR. DIAMADUROS - AND, YOUR HONOR, I WOULD ---

10 THE COURT - THAT'S ALL I REMEMBER ABOUT IT. I
11 DON'T REMEMBER ANYTHING ELSE.

12 MR. DIAMADUROS - I'M JUST HANDING UP A MOTION
13 THAT I FILED AND PREPARED IN THIS CASE. LET ME ASK THE
14 PROSECUTOR ONE THING.

15 (DISCUSSION IS HELD BETWEEN MR. DIAMADUROS AND
16 MR. HICKMAN WHICH WAS NOT REPORTED.)

17 MR. DIAMADUROS - YOUR HONOR, MY MOTION IS A
18 MOTION TO DISMISS BASED UPON THE EVIDENCE THAT I'VE BEEN
19 PRESENTED WITH. I THINK THAT THE PROSECUTION --- I
20 THOUGHT WE MIGHT BE ABLE TO STIPULATE TO THE FACTS, BUT
21 THE PROSECUTION MAY PUT UP TROOPER HORNE, AND I DON'T KNOW
22 IF IT WOULD BE APPROPRIATE TO PROCEED WITH MY MOTION NOW,
23 BUT THE MOTION DEALS WITH THE FACTS OF THE CASE BEING ONE
24 WHERE AN INCIDENT REPORT, THE TROOPER INDICATES THAT MY
25 CLIENT WAS PULLED FOR DRIVING ON THE CENTERLINE. THE DATE

1 OF --- I MEAN THE ROADSIDE VIDEO-TAPE THAT I HAVE DOES NOT
2 SHOW ANY DRIVING ON THE CENTERLINE, SO TAKING THE FACTS IN
3 THE LIGHT MOST FAVORABLE TO THEM, BEST CASE SCENARIO IS
4 THAT MY CLIENT RODE ON THE WHITE LINE --- ON THE
5 CENTERLINE OF THE HIGHWAY FOR SOME PERIOD OF TIME AND IN -
6 -- IN MY MOTION TO DISMISS I HAVE SET OUT MANY CASES FROM
7 NUMEROUS STATES THAT INTERPRET OUR PARTICULAR LAW --- OR
8 INTERPRET THE LAW JUST LIKE OUR LAW ABOUT HAVING SOME SORT
9 OF VIOLATION OF THE LAW BEFORE YOU CAN PULL SOMEONE OVER.
10 THERE'S NO REASONABLE SUSPICION; THERE'S NO PROBABLE CAUSE
11 IN THIS CASE BASED UPON THE FACTS IN THE CASE AS THEY ARE
12 ON THE VIDEO-TAPE AND AS THEY'RE IN THE OFFICER'S REPORT,
13 AND I WOULD MOVE TO DISMISS THIS CASE BASED ON THE
14 UNREASONABLE STOP, SEARCH AND SEIZURE OF MY CLIENT THAT
15 PARTICULAR EVENING. I'LL GIVE YOU THE SPECIFIC CASES IF
16 THE COURT WANTS TO HEAR THEM OR WHETHER THEY WANT TO HEAR
17 TESTIMONY FROM THE TROOPER FIRST.

18 THE COURT - SO YOUR MOTION IS THERE WAS NO
19 PROBABLE CAUSE TO STOP THE VEHICLE IN THE FIRST PLACE. IS
20 THAT RIGHT?

21 MR. DIAMADUROS - THAT'S CORRECT, YOUR HONOR.

22 THE COURT - OKAY.

23 MR. DIAMARUROS - THE ONLY --- AND YOU HAVE TO
24 HAVE SOME SORT OF VIOLATION OF THE --- OF A STATUTE.

25 THE COURT - YOU'VE GOT TO HAVE PROBABLE CAUSE.

1 MR. DIAMARUDOS - YOU'VE GOT TO HAVE PROBABLE
2 CAUSE, REASONABLE SUSPICION. AND IN THIS CASE, TOUCHING
3 THE LINE IN THE CENTER OF THE ROAD WITH YOUR VEHICLE DOES
4 NOT LEAVE RISE TO THAT, AND I'VE SET FORTH SOME DIFFERENT
5 CASES FROM ALL OVER THE COUNTRY THAT HAVE DEALT WITH THIS
6 PARTICULAR ISSUE. FIRST OF ALL, IF YOU DON'T COMMIT A
7 TRAFFIC OFFENSE, THAT THEY GIVE YOU THE RIGHT TO PULL OVER
8 ON JUST MERELY HUNCHES AND I THINK I OUR STATE SUPREME
9 COURT HAS SAID THAT IN --- AND SO HAVE NUMEROUS OTHER
10 FEDERAL AND STATE COURTS.

11 THE COURT - OKAY, WELL, HOLD ON A SECOND. ARE
12 YOU STIPULATING THAT HE WAS DRIVING --- THAT --- AND WHEN
13 IT SAYS DRIVING ON THE CENTERLINE, I ASSUME THAT ONE OF
14 HIS WHEELS WAS EITHER ON THE CENTERLINE OR TO THE WRONG
15 SIDE OF THE CENTERLINE. THAT WOULD BE MY ASSUMPTION AS
16 WHAT THAT MEANS.

17 MR. DIAMADUROS - ON THE CENTERLINE IS AS FAR
18 OVER AS HE GOES UNDER ANY THEORY. THAT'S MY POSITION.

19 THE COURT - AND THAT YOU SAY THAT EVEN IF I TAKE
20 THAT AS TRUE, THAT'S NOT PROBABLE CAUSE TO STOP HIM.

21 MR. DIAMADUROS - YES, SIR. AND I BASE THAT UPON
22 A LITANY OF CASES THAT I'VE CITED STARTING IN MY MOTION
23 THAT DEAL WITH THAT PARTICULAR ISSUE. THE STATUTE 56-5-
24 1900 DEALS WITH SOMEONE DRIVING A --- THEIR CAR AS NEARLY
25 AS PRACTICABLE IN A PARTICULAR --- IN THEIR LANE. UNITED

1 STATES SUPREME COURT --- I MEAN I'M SORRY --- FEDERAL
2 COURT IN UNITED STATES VS. SUGAR, A MISSOURI STATUTE DEALS
3 WITH THE RIGHT REAR DOUBLE WHEELS OF A RECREATIONAL
4 VEHICLE THAT CROSSED OVER THE RIGHT SHOULDER OF THE ROAD
5 THREE TIMES, CROSSED OVER THE FOG LINE AS THEY CALL IT ON
6 THE RIGHT-HAND SIDE. THAT STATUTE WITH --- COUPLES ---
7 THAT PARTICULAR TOUCHING OF THE DUAL WHEEL, ONE SET OF
8 DUAL WHEELS ON THE FOG LINE AS THEY CALL IT, COUPLED WITH
9 MINOR SWERVING WAS FOUND NOT TO BE REASONABLE TO BE ABLE
10 TO STOP SOMEONE. UNITED STATES VS. GREGORY DEALS WITH A
11 U-HAUL TRUCK THAT CROSSED TWO FEET INTO THE RIGHT SHOULDER
12 OF A LANE ON THE INTERSTATE, AND THE TENTH CIRCUIT FOUND
13 THAT THAT CROSSING IN THE EMERGENCY LANE DIDN'T VIOLATE A
14 STATUTE. IT'S JUST WRITTEN JUST LIKE OUR STATUTE IS
15 WRITTEN. WE HAVE ROWE VS. MARYLAND, WHICH DEALT --- THE
16 MARYLAND STATUTE ALONG WITH A --- SIMILAR TO OUR STATUTE
17 WHERE THE TROOPER OBSERVED MR. ROWE CROSS THE WHITE EDGE
18 LINE ONTO THE SHOULDER BY ABOUT EIGHT INCHES AND SWERVE OR
19 WEAVE INTO THE WHITE SHOULDER LINE AGAIN. THAT WAS ---
20 THAT LED TO SEVENTY-SEVEN POUNDS OF MARIJUANA BEING
21 SUPPRESSED BECAUSE THAT WASN'T REASON FOR A STOP. THERE'S
22 A CASE IN HERE THAT I'VE --- THERE'S A LITANY OF CASES AND
23 THEY COME DOWN HERE WITH AN OFFICER IN HERNANDEZ VS. STATE
24 WHICH WAS OUT OF TEXAS, AGAIN, A STATUTE WRITTEN LIKE
25 OURS, BUT IT'S WHERE THE OFFICER OBSERVED HERNANDEZ SWERVE

1 LEFT, SAW HIS LEFT VEHICLES (SIC) CROSS INTO THE SECOND
2 LANE BY ABOUT EIGHTEEN TO TWENTY-FOUR INCHES AND ARRESTED
3 HIM FOR BEING UNDER THE INFLUENCE OF ALCOHOL. THE
4 STATUTORY LANGUAGE IN THAT PARTICULAR CASE THE COURT
5 FOUND, THAT PARTICULAR WEAVE OF ONE TIME OVER WAS NOT
6 ENOUGH TO STOP MR. HERNANDEZ. IN CASE OF STATE VS. CANNON
7 AND I --- THE REASON I GIVE THE PARTICULAR BRIEF, BECAUSE
8 IT CITES THEM ALL, GIVE THEM ALL CITES IF THE COURT WANTED
9 TO LOOK AT ANY OF THEM, BUT THE MAIN STATUTE LOOKS THE
10 SAME WAY AND IT SAYS --- THE COURT SAID A VEHICLE'S BRIEF
11 ONE TIME STRADDLING OF THE CENTERLINE OF AN UNDIVIDED
12 HIGHWAY IS A COMMON OCCURRENCE AND IN THE ABSENCE OF ON-
13 COMING OR PASSING TRAFFIC WITHOUT ERRATIC OPERATION OR
14 OTHER UNUSUAL CIRCUMSTANCES THAT WAS NOT --- NOT JUSTIFY
15 AN INTRUSION TO STOP BY A POLICE OFFICER, OTHERWISE, WE
16 WOULD SANCTION STOPS ON MERE HUNCHES OR SPECULATION. U.S.
17 VS. GASTELLUM IS A COLORADO CASE WHERE AN OFFICER OBSERVED
18 A VEHICLE ONCE APPROX --- I MEAN WEAVE ONCE APPROXIMATELY
19 ONE TO THREE FEET OVER THE RIGHT-HAND SHOULDER LINE. THAT
20 WAS NOT FOUND TO BE A PROPER STOP. U.S. VS. SMITH, A
21 FLORIDA CASE WHERE IT SAID A FLORIDA STOP WAS INVALID
22 UNDER FLORIDA LAW WHERE A CAR'S RIGHT WHEELS CROSSED OVER
23 THE WHITE LINE ABOUT SIX INCHES AND THE CAR WEAIVED
24 SLIGHTLY WITHIN ITS OWN LANE. WARRICK VS. COMMISSIONER,
25 A CASE OUT OF NORTHWEST --- IS ONE THAT SAYS A SUBTLE

1 WEAVING WITHIN A DRIVER'S OWN LANE IS INSUFFICIENT TO BASE
2 REASONABLE, ARTICULABLE (SIC) SUSPICION. A NORTH DAKOTA
3 CASE, U.S. VS. GREGORY, WEAVING SLIGHTLY WITHIN ONE'S OWN
4 LANE WHILE TRAVELLING THIRTY TO THIRTY-FIVE IN A FIFTY
5 ZONE, THE COURT SAID THE FACTS IN THIS RECORD SUGGEST THE
6 MERE HUNCH OF ILLEGAL ACTIVITY, BUT NOT ENOUGH TO STOP,
7 AND THE CASES GO ON AND ON. I HAVE THREE OR FOUR THAT I
8 CAN GET INTO, BUT THE SITUATION THAT I WOULD ASK THIS
9 COURT TO CONSIDER IS THAT SOMEONE WHO HAS NOT COMMITTED AN
10 OFFENSE AND IN THIS --- IN THOSE CASES I CITED, MOST OF
11 THEM HAVE PEOPLE CROSSING THE LINE ONE TIME, MAYBE DRIVING
12 SLOWER THAN THE LIMIT. DRUGS WERE SUPPRESSED IN NUMEROUS
13 CASES, ALCOHOL OFFENSES WERE THROWN OUT IN OTHERS, BUT IN
14 THIS CASE, THE BEST CASE SCENARIO WE HAVE A TROOPER WHO
15 COMES UPON A CAR AND SEES HIM TOUCH ACROSS OR TOUCH ONTO
16 THE CENTERLINE, NOT CROSS IT OR DO ANYTHING THAT WOULD
17 VIOLATE OUR STATUTE AND PULLED HIM OVER, AND WE WOULD SAY
18 THAT IS NOT ENOUGH PROBABLE CAUSE OR REASONABLE SUSPICION
19 TO PULL SOMEONE WITHOUT MORE.

20 THE COURT - ALL RIGHT, SIR. YES, SIR. I THINK
21 I NEED TO HEAR THE TESTIMONY OF THE OFFICER, SO LET'S DO
22 THAT.

23 MR. HICKMAN - YOUR HONOR, NOW THE STATE WOULD
24 CALL TROOPER HORNE.

25 THE COURT - COME AROUND, TROOPER HORNE. PUT

1 YOUR HAND ON THIS BIBLE, YOUR LEFT HAND ON THIS BIBLE
2 RIGHT UP HERE.

3 WHEREUPON, MR. C. B. HORNE IS DULY SWORN BY THE
4 COURT

5 THE COURT - COME AROUND AND HAVE A SEAT. I
6 WOULD SAY THAT THIS IS AN ISSUE OF NOVEL IMPRESSION WITH
7 ME --- COULD SAY IT'S ALL GREEK TO ME, THIS PARTICULAR
8 ISSUE.

9 MR. DIAMADUROS - AND SINCE THE GREEK MAY HAVE
10 GIVEN IT TO YOU ---

11 THE COURT - WELL, I STARTED NOT TO SAY THAT WHEN
12 I CAUGHT MYSELF AND I SAID, WELL, MAYBE IT'LL BE ALL
13 RIGHT. SO I'M GOING TO HAVE TO STUDY YOUR CASES AFTER I
14 HEAR THIS TESTIMONY.

15 MR. DIAMADUROS - YES, SIR.

16 THE COURT - YES, SIR, GO AHEAD.

17 DIRECT EXAMINATION

18 BY MR. HICKMAN -

19 Q TROOPER, WOULD YOU PLEASE INTRODUCE YOURSELF?

20 A I'M TROOPER C. B. HORNE WITH THE SOUTH CAROLINA
21 HIGHWAY PATROL.

22 Q AND HOW LONG YOU BEEN WORKING?

23 A TEN YEARS.

24 Q AND WHAT IS YOUR POSITION AT THE HIGHWAY PATROL?

25 A I AM A STATE TROOPER WITH HIGHWAY PATROL.

1 Q OKAY. WERE YOU WORKING ON THE NIGHT OF FEBRUARY 7TH
2 THIS YEAR?

3 A YES, SIR.

4 Q AND AT ABOUT THREE O'CLOCK IN THE MORNING DID YOU
5 PULL ANYONE OVER FOR DRIVING UNDER THE INFLUENCE?

6 A YES, SIR, I DID STOP A CAR ON SC 215 IN UNION COUNTY.

7 Q NOW, TELL ME FROM THE --- YOUR EARLIEST ENCOUNTER
8 WITH THAT CAR AS MUCH DETAIL AS YOU CAN REMEMBER WHAT
9 HAPPENED.

10 A I WAS TRAVELLING TOWARD BUFFALO ON SC 215. AT THAT
11 TIME THERE WAS A CAR IN FRONT OF ME. I DIDN'T REALLY PAY
12 TOO MUCH ATTENTION TO IT. I WAS GOING DOWN THE ROAD GOING
13 INTO TO BUFFALO. I GET ABOUT PROBABLY AROUND MIDWAY I
14 NOTICED THE VEHICLE DRIFT OVER, DID NOT ACTUALLY
15 COMPLETELY CROSS INTO THE OTHER LANE, BUT IT DID DRIFT
16 OVER INTO THE CENTER LANE, INTO THE CENTER IN BETWEEN THE
17 TWO YELLOW LINES. AT THAT TIME I OBSERVED THAT; I
18 ACTIVATED MY CAMERA; I DID NOT ACTIVATE MY LIGHTS AT THAT
19 TIME BECAUSE I WAS GOING TO RECORD TO SEE IF HE WOULD DO
20 IT AGAIN OR DO SOMETHING EVEN WORSE. AT THAT TIME I
21 ACTIVATED MY CAMERA; I FOLLOWED HIM FOR A LITTLE BIT; I
22 SAY A LITTLE, HOWEVER DISTANCE IT IS PROBABLY FROM --- I'M
23 SAY FROM ANDY'S TO THE TIME I ACTUALLY PULLED THE CAR OVER
24 WHICH WAS AT HEATHERLY'S WHEN I ACTUALLY ACTIVATED MY
25 LIGHTS AND THE CAR PULLED OVER INTO THE HEATHERLY'S

1 PARKING LOT. I DIDN'T ACTUALLY GET --- I DIDN'T GET A
2 VIOLATION ON CAMERA, ALTHOUGH I DID OBSERVE HIM DRIVE ---
3 DRIFT OVER INTO THE CENTER TWO LANES. I WAS TRAVELLING
4 INTO A WELL-POPULATED AREA, A LOT OF HOUSES, A LOT OF
5 HILLS. I DIDN'T KNOW WHAT TO EXPECT WHEN I PULLED THE
6 VEHICLE OVER. AT THE TIME I DID --- I DID STOP HIM UNDER
7 THE SUSPICION OF POSSIBLY HIM BEING UNDER THE INFLUENCE
8 BECAUSE OF THE TIME-FRAME. YOU LOOKING AT THREE O'CLOCK
9 IN THE MORNING ON A SATURDAY NIGHT, THERE'S NO CARS ON THE
10 ROAD, STOPPED HIM PRIOR TO GETTING INTO A HAZARDOUS AREA
11 WHICH WOULD BE A POPULATED AREA.

12 Q AND FROM THE TIME YOU FIRST BECAME SUSPICIOUS ABOUT
13 THIS VEHICLE AND THE ERRATIC DRIVING, HOW LONG FROM THAT
14 POINT UNTIL YOU ACTUALLY PULLED THE CAR OVER WAS IT?

15 A WELL, I WAS ABOUT --- I MEAN I WAS ABOUT MIDWAY AND
16 HE ACTUALLY PULLED OVER AROUND HEATHERLY'S, SO YOU'RE
17 PROBABLY LOOKING AT MAYBE A TENTH, TWO-TENTHS OF A MILE
18 FROM THE TIME I ACTUALLY OBSERVED THE UH --- OBSERVED HIM
19 CROSS THE CENTERLINE TO THE TIME HE ACTUALLY STOPPED, I'D
20 PROBABLY SAY TWO-TENTHS OF A MILE.

21 Q AND WHY DID YOU GO AHEAD AND PULL HIM OVER AGAIN?

22 A BECAUSE WE WAS GOING INTO A POPULATED AREA AND IF THE
23 SUBJECT --- IF THE SUBJECT --- IF THE SUBJECT HAD BEEN
24 UNDER THE INFLUENCE THERE WOULD BE NO PLACE IN THAT AREA
25 TO DO A SOBRIETY TEST, A FAIR SOBRIETY TEST.

1 Q BUT YOU FELT LIKE YOU HAD REASONABLE SUSPICION AT
2 THAT POINT THAT HE MIGHT'VE BEEN INTOXICATED. IS THAT
3 CORRECT?

4 A DUE TO THE TIME OF THE DAY, THE DAY OF THE WEEK,
5 STATISTICS SHOWS, YOU KNOW, THAT THOSE TIMES ARE DAYS,
6 HARDLY ANY CARS --- THERE WAS NO CARS ON THE ROAD OTHER
7 THAN HIM. LIKE I SAID, AT THE TIME --- THAT'S WHEN I
8 STOPPED HIM THERE BECAUSE IT WAS A LEVEL AREA, AND
9 OBVIOUSLY IF, YOU KNOW, HE HADN'T HAVE BEEN UNDER THE
10 INFLUENCE, THEN HE WOULD'VE BEEN RELEASED.

11 Q NOW, WAS HE --- WAS HE RIDING ON THE YELLOW LINE OR
12 WAS HE KIND OF ---

13 A HE WAS JUST ---

14 Q --- COMING BACK AND OUT OF IT?

15 A HE WAS JUST DRIFTING BACK AND FORTH OVER INTO IT.

16 Q OKAY. DID YOU --- NOW, YOU SAY --- OF COURSE,
17 THERE'S TWO YELLOW LINES. RIGHT?

18 A THAT'S --- THAT'S CORRECT. EACH LANE HAD ITS OWN
19 YELLOW LINE.

20 Q OKAY.

21 A YOU HAVE THE --- IF YOU HAVE A NORTH AND SOUTH-BOUND
22 LANE, THE TWO LANES REPRESENT --- ONE LANE REPRESENTS THE
23 LANE FOR THE NORTH-BOUND SIDE, AND THE OTHER LANE
24 REPRESENTS THE LANE FOR THE SOUTH-BOUND SIDE. SO
25 TECHNICALLY TO DRIVE LEFT OF CENTER, YOU DO NOT HAVE TO

1 CROSS BOTH LANES TO BE DRIVING LEFT OF CENTER BECAUSE,
2 LIKE I SAID, YOU HAVE A NORTH-BOUND YELLOW LINE AND SOUTH-
3 BOUND YELLOW LINE.

4 Q SO HE CROSSED OVER THE YELLOW LINE THAT WAS ON THE
5 OTHER SIDE OF THE ROAD?

6 A THAT'S CORRECT. THAT'S CORRECT.

7 Q AND IN YOUR UNDERSTANDING IS THAT A VIOLATION OF LAW?

8 A I WOULD SAY SO. AT THE LEAST IF --- IF SOMEONE WOULD
9 NOT INFER THAT IT WAS A VIOLATION OF LAW I WOULD AT LEAST
10 INFER THAT IT WOULD BE REASONABLE SUSPICION TO UH --- TO
11 MAKE A TRAFFIC STOP.

12 Q SO IN HIS DRIFTING, DID YOU SEE HIM COME BACK INTO IT
13 A COUPLE TIMES OR DID HE --- OR DID HE ---

14 MR. DIAMADUROS - YOUR HONOR, I OBJECT. I MEAN
15 IT'S ASKED AND ANSWERED AND ASKED IT AND --- THIS IS, I
16 THINK, MIGHT BE THE THIRD TIME, SAME QUESTION.

17 MR. HICKMAN - I'D JUST LIKE TO KNOW THE NUMBER
18 OF TIMES THAT HE MIGHT HAVE ---

19 THE COURT - WELL, WHY DON'T YOU ASK HIM TO BE
20 VERY SPECIFIC IN DESCRIBING THE CONDUCT HE OBSERVED. I'LL
21 OVERRULE THE OBJECTION ON THE ASKED AND ANSWERED QUESTION,
22 BUT IT WAS VERY LEADING QUESTION. YOU NEED TO ASK HIM TO
23 TESTIFY.

24 Q JUST IN THE MOST DETAILED WAY THAT YOU CAN BASED ON
25 WHAT YOU SAW THAT NIGHT, WHAT --- WHAT WAS THE MANNER OF

1 HIS DRIFTING?

2 A WELL, LIKE I SAID, PRIOR TO ME ACTIVATING MY CAMERA,
3 THAT'S WHAT CAUGHT MY EYE WAS HIM DRIFT OVER. NOW, BY THE
4 TIME I ACTIVATED MY CAMERA AND GOT UP TO HIM AND THE TIME
5 I ACTUALLY CUT THE BLUE-LIGHTS ON WAS A VERY SHORT PERIOD
6 OF TIME, SO BY THE TIME I ACTUALLY OBSERVED HIM DRIFT OVER
7 THE CENTERLINE OR DRIFT OVER THE YELLOW LINE AND THE TIME
8 I GOT HIM STOPPED, HE DID NOT DO IT AGAIN. I MEAN IT ---
9 HE --- HE DRIFTED OVER TO IT, WHICH CAUGHT MY ATTENTION;
10 I ACTIVATED MY CAMERA; I DID NOT ACTIVATE MY BLUE-LIGHTS
11 YET. I FOLLOWED HIM FOR A SHORT PERIOD OF TIME. WE WAS
12 COMING INTO A HILLY WELL-POPULATED AREA. AT THAT TIME I
13 ACTIVATED MY LIGHTS. HE DID NOT CROSS --- HE DID NOT
14 CROSS THE YELLOW LINE ANY OTHER TIME PRIOR TO ME
15 ACTIVATING MY CAMERA TO THE TIME I STOPPED HIM. FOR
16 SAFETY REASONS I WENT AHEAD AND STOPPED HIM.

17 Q OKAY.

18 MR. HICKMAN - THAT'S ALL I HAVE, YOUR HONOR.

19 THE COURT - CROSS EXAM.

20 CROSS EXAMINATION

21 BY MR. DIAMADUROS -

22 Q SO TROOPER, JUST TO GET --- TO GET ONE THING
23 STRAIGHT. YOUR VIDEO WHICH I HAVE A COPY, HAS ABSOLUTELY
24 NO BAD DRIVING ON IT?

25 A NO, SIR.

1 Q OKAY.

2 THE COURT - WAIT A MINUTE. IS THE ANSWER TO THE
3 QUESTION YES, MY VIDEO HAS NO BAD DRIVING ON IT OR NO, MY
4 VIDEO DOES HAVE BAD DRIVING ON IT. YOU'VE GOT TO LISTEN
5 TO HIS QUESTION. ASK YOUR QUESTION AGAIN.

6 Q THE VIDEO-TAPE THAT I HAVE IS THE SAME VIDEO-TAPE YOU
7 HAD IN YOUR CAR. CORRECT?

8 A THAT'S CORRECT.

9 Q THAT VIDEO-TAPE HAS NO BAD DRIVING ON IT, DOES IT?

10 A FROM --- THE VIDEO I HAVE OF YOUR SUBJECT I DID NOT
11 HAVE ANY BAD DRIVING ON VIDEO. THE ONLY BAD DRIVING I
12 HAVE IS WHAT I TESTIFIED TO PRIOR TO --- AT --- WHAT I
13 SEEN PRIOR TO ACTIVATING MY CAMERA.

14 Q AND YOU SAY THERE ARE TWO --- THE ROAD IS DIVIDED BY
15 A DOUBLE YELLOW LINE, THE ONE THAT SAYS DON'T PASS FROM
16 EITHER SIDE. CORRECT?

17 A SAYS DON'T PASS ---

18 Q WELL, YOU KNOW, WHEN YOU HAVE A DOUBLE YELLOW, THAT
19 MEANS DON'T PASS. IS THAT WHAT YOU'RE TELLING THIS COURT?

20 A THAT'S CORRECT.

21 Q OKAY. AND IN YOUR REPORT DID YOU NOT WRITE THAT I
22 TROOPER HORNE MADE A TRAFFIC STOP ON SOUTH CAROLINA 215 IN
23 BUFFALO, A FORD CAR FOR DRIVING ON THE CENTERLINE?

24 A IF THAT'S WHAT YOU'RE READING. I MEAN I DON'T HAVE
25 IT IN FRONT OF ME.

1 Q OKAY. WELL, LET ME HAND YOU A COPY OF WHAT I HAVE
2 AND TELL ME IF THAT'S YOUR REPORT.

3 A YES, SIR, WHICH I FEEL LIKE IS THE SAME THING I JUST
4 TESTIFIED TO.

5 Q OKAY. AND NOWHERE IN THERE DOES IT SAY THAT HE
6 CROSSED A CENTERLINE?

7 A NO, SIR, NOR DID I TESTIFY THAT HE CROSSED ---

8 Q AND HE DID NOT CROSS A CENTERLINE.

9 A WELL, I MEAN DRIVING ON IT AND CROSSING. I MEAN IT
10 DEPENDS ON WHERE --- WHERE YOU CALL THE CENTERLINE. I
11 MEAN HE --- HE CROSSED THE YELLOW LINE WHICH WOULD BE FOR
12 --- AT THE END OF HIS LANE.

13 Q BUT HE DIDN'T CROSS A LINE GOING INTO THE OTHER LANE?

14 A NO, SIR, I DID NOT OBSERVE HIM CROSS INTO --- HE ---
15 I WAS JUST TRYING TO BE --- THE CORRECT --- THE EVERY DAY
16 TERM WOULD BE DRIVING ON THE CENTER LANE IN THE MIDDLE OF
17 THE --- IN THE MIDDLE OF THE LANE I GUESS YOU WOULD SAY.

18 MR. DIAMADUROS - YOUR HONOR, WE'D OFFER THAT AS
19 AN EXHIBIT FOR IDENTIFICATION OR I THINK IT'S ACTUALLY
20 ATTACHED TO MY MOTION AND THAT MAY BE FINE.

21 THE COURT - HIS REPORT?

22 MR. DIAMADUROS - I WOULD WANT TO INTRODUCE HIS
23 REPORT AS AN EXHIBIT.

24 THE COURT - YES, SIR, I HAVE IT.

25 MR. HICKMAN - YOUR HONOR, FOR PURPOSES OF THE

1 HEARING WE DON'T HAVE AN OBJECTION TO THAT.

2 THE COURT - SIR?

3 MR. HICKMAN - FOR THE PURPOSES OF THIS HEARING
4 WE DO NOT HAVE AN OBJECTION TO THAT.

5 THE COURT - OKAY, THAT'S ADMITTED AS DEFENSE 1
6 FOR PURPOSES OF THIS HEARING.

7 (DOCUMENT MARKED AS DEFENDANT'S EXHIBIT NUMBER
8 1.)

9 Q AND FROM YOUR EXPERIENCE --- HOW MANY YEARS HAVE YOU
10 BEEN A HIGHWAY PATROLMAN?

11 A TEN YEARS.

12 Q AND THERE'S NO STATUTE THAT SAYS THAT YOU VIOLATE ANY
13 LAW BY RIDING ALONG OR THAT DOUBLE YELLOW LINE AS YOU'VE
14 DESCRIBED IT, IS THERE?

15 A WELL, THAT WOULD YOUR INTERPRETATION OF DRIVING LEFT
16 OF CENTER, WHATEVER YOUR INTERPRETATION WOULD BE. I MEAN
17 IF YOU --- IF YOU CROSSED THE CENTERLINE, YOU CROSSED THE
18 CENTERLINE.

19 Q OKAY, WELL --- I THINK YOU SAID THAT THE WEAVING
20 TOWARDS THE CENTERLINE WHERE YOU SAY HE CROSSED ONTO THE
21 CENTERLINE, MAYBE CROSSED INTO A ROAD ON THE DOUBLE LINE
22 IS WHAT YOU --- IS THAT WHAT YOU'RE SAYING? BUT NEVER
23 CROSSED THE SECOND YELLOW LINE?

24 A I --- I COULD NOT SEE --- I SAID THE ANGLE I HAD, I
25 CAN'T SAY THAT HE CROSSED OVER IT, NO, SIR. I CANNOT SAY

1 HE CROSSED COMPLETELY INTO THE OTHER LANE.

2 Q AND YOU FOLLOWED HIM FOR ABOUT A TENTH OF A MILE,
3 MAYBE TWO TENTHS OF A MILE ---

4 A YES, SIR.

5 Q THAT'S FROM THE VERY FIRST TIME YOU SAW HIS CAR UNTIL
6 YOU GOT HIM PULLED OVER, NOT FROM THE TIME YOU ACTIVATED
7 THE BLUE-LIGHT, I MEAN THE CAMERA. CORRECT?

8 A THAT'S CORRECT.

9 Q YES. AND THIS WAS THREE O'CLOCK IN THE MORNING AND
10 THAT PLAYED INTO YOUR DECISION TO PULL HIM OVER. DIDN'T
11 IT?

12 A THAT'S CORRECT.

13 Q AND IT WAS A SATURDAY MORNING.

14 A THAT'S CORRECT.

15 Q AND THAT PLAYED INTO YOUR DECISION.

16 A SATURDAY. SATURDAY MORNING ---

17 Q YOU SAID --- YOU SAID A SATURDAY. WAS IT A SATURDAY
18 A.M.?

19 A I MEAN IT WAS A SATURDAY NIGHT, WASN'T IT?

20 Q BOTTOM LINE, IT WAS AFTER EITHER A FRIDAY NIGHT OR A
21 SATURDAY NIGHT IN YOUR MIND.

22 A IT WAS THREE O'CLOCK ON FEBRUARY --- FEBRUARY 7TH.

23 Q OKAY. AND THERE WAS NO TRAFFIC ON THE ROAD.

24 A NO, SIR, NO OTHER VEHICLES I CAN REMEMBER.

25 MR. DIAMADUROS - I'VE GOT NO FURTHER QUESTIONS.

1 THE COURT - YES, SIR. ANY RE-DIRECT?

2 MR. HICKMAN - NO FURTHER QUESTIONS, YOUR HONOR.
3 NO FURTHER QUESTIONS.

4 THE COURT - YOU CAN STEP DOWN. ALL RIGHT, SIR,
5 I'LL HEAR YOUR ARGUMENTS, SIR.

6 MR. HICKMAN - YOUR HONOR, OF COURSE, AGAIN, THIS
7 IS A FACT-SPECIFIC TYPE OF SITUATION AND THE STATE'S
8 POSITION, OF COURSE, IS THAT FOR THE NECESSARY REASONABLE
9 SUSPICION OF UNLAWFUL CONDUCT THAT TROOPER HORNE'S
10 OBSERVATION DID RISE TO THAT LEVEL. IT'S THREE A.M.,
11 ALMOST NOBODY'S ON THE ROAD ON THE --- ON THE MORNING OF -
12 -- AFTER A SATURDAY NIGHT, HE COMES IN BEHIND THIS GUY AND
13 HE IS DRIFTING AND RIDING ON THE CENTERLINE. TROOPER
14 HORNE'S BEEN DOING THIS FOR TEN YEARS. HE KNOWS WHAT THE
15 STATISTICS ARE. HE KNOWS THE SAFETY CONCERNS ABOUT WHEN
16 YOU'RE --- WHEN YOU'RE, YOU KNOW, TALKING ABOUT, YOU KNOW,
17 CARS THAT ARE OPPOSING TRAFFIC LIKE THAT AND HOW CROSSING
18 THE CENTERLINE IS A LIFE OR DEATH TYPE OF SITUATION. HE -
19 -- HE DID THE BEST HE COULD UNDER THE CIRCUMSTANCES ABOUT
20 MAKING A BRIEF DETENTION TO --- TO FIGURE OUT WHETHER THE
21 GUY WAS DRINKING OR NOT. AND THE --- THE STATUTES STATE
22 THAT --- THAT A VEHICLE SHOULD BE DRIVEN ON THE RIGHT HALF
23 OF THE ROADWAY. I THINK IT'S ARGUABLE THAT HE --- HE WAS
24 AT LEAST CALLING HIMSELF INTO QUESTION AS FAR AS RAISING
25 A CONCERN THAT WOULD BE A, YOU KNOW, A SUSPICION OF

1 UNLAWFUL CONDUCT AND ALSO THE STATUTE 56-5-1900 SAID ---
2 SAYS A VEHICLE SHALL BE DRIVEN AS NEARLY AS PRACTICABLE
3 ENTIRELY WITHIN A SINGLE LANE AND SHALL NOT BE MOVED FROM
4 THE LANE, SO HE WASN'T STAYING IN HIS --- AS MUCH AS
5 PRACTICABLE WITHIN THE CENTER LANE, YOUR HONOR, AND THE --
6 - LIKE I SAID, AS MR. --- AS TROOPER HORNE KNOWS FROM HIS
7 EXPERIENCE, AND THERE'S STATISTICAL EVIDENCE FOR THESE
8 THINGS, YOU KNOW, THE HIGHWAY TRANSPORTATION SAFETY
9 ADMINISTRATION HAS INDICATIONS OF DRUNK DRIVING, IF
10 THEY'RE STRADDLING THE CENTER LANE, IF THERE'S --- BEEN
11 FOUND OUT THAT SIXTY-FIVE PERCENT CHANCE OF IT BEING A
12 DRUNK DRIVER; A DRIFTING IN A LANE IS FOUND TO HAVE BEEN
13 A FIFTY PERCENT CHANCE OF DRUNK DRIVING, AND WE BELIEVE
14 THAT BASED ON ALL OF THOSE CIRCUMSTANCES THAT TROOPER
15 HORNE COULD --- WAS ACTING REASONABLE IN JUST PULLING HIM
16 OVER AND --- AS IT TURNS OUT HE WALKED UP TO THE CAR AND
17 THE FIRST THING THAT HE COULD SMELL WAS ALCOHOL, AND THE
18 REST IS HISTORY, YOUR HONOR. THAT'S OUR POSITION.

19 MR. DIAMADUROS - YOUR HONOR, I'LL STAND ON MY
20 BRIEF AND WOULD ADD ONE THING ELSE --- ONE OTHER THING TO
21 IT. THE REASON THAT I'M HERE TODAY IS NOT --- I MEAN
22 OBVIOUSLY I'M REPRESENTING MR. VINSON AND I WANT MR.
23 VINSON'S CASE TO BE DISMISSED, BUT IN REALITY WE'RE HERE
24 TO PROTECT THE PEOPLE OF THIS STATE. THERE ARE A LOT OF
25 HUNTERS THAT GO OUT AT FOUR O'CLOCK IN THE MORNING, TURKEY

1 HUNTING, DEER HUNTING, WHATEVER. THERE'S A LOT OF PEOPLE
2 THAT GO OUT THAT TIME OF THE MORNING. YOU DON'T JUST PULL
3 EVERYBODY OVER ON A HUNCH BECAUSE IT'S SATURDAY A.M. AT
4 THREE O'CLOCK AND THOSE ARE TWO OF HIS BIGGEST POINTS
5 ALONG WITH ONE MERE DRIFT. HAD HE FOLLOWED HIM AND HE
6 DRIFTED ACROSS THE LINE OR RAN OFF THE SHOULDER OF THE
7 ROAD THAT MAY BE DIFFERENT, BUT HERE HIS REPORT SAYS
8 SOMEONE DROVE ON THE LINE, STRETCHING AS FAR AS HE CAN
9 STRETCH IT. HE'S GOT A DOUBLE YELLOW LINE AND MY CLIENT
10 IN THE BEST CASE SCENARIO FOR THE STATE IS THAT HE MAY
11 HAVE GONE ACROSS THE ONE YELLOW LINE INTO THE CENTER OF
12 THE TWO YELLOW LINES. THAT'S STILL NOT VIOLATING THE LAW
13 GOING INTO ANOTHER LANE OR DOING ANYTHING OTHER THAN A
14 VERY SHORT PERIOD. WE'RE ONLY TALKING ABOUT FROM THE TIME
15 HE ACTUALLY SAW THIS UNTIL THE TIME PULLED HIM BEING A
16 TENTH TO TWO-TENTHS OF A MILE, AND I THINK IT IS A
17 UNREASONABLE SEARCH AND SEIZURE AND A STOP AND A VIOLATION
18 OF MY CLIENT'S FOURTH, FOURTEENTH AMENDMENTS TO THE
19 CONSTITUTION, UNREASONABLE SEARCH SEIZURE AND OUR STATE
20 CONSTITUTION, SO I --- I WILL --- THAT'S WHY I PUT IT IN
21 WRITING SO YOU COULD SEE SOME OF THE CASES FROM OTHER
22 STATES. OUR STATE HAS NOT INTERPRETED THIS STATUTE, THE
23 ONE THAT HE --- THAT HE JUST MENTIONED. OTHER STATES HAVE
24 AND HAVE USED STATUTES WITH SIMILAR LANGUAGE IF NOT
25 IDENTICAL LANGUAGE TO OURS, AND THEY HAVE FOUND MUCH WORSE

1 EGREGIOUS CONDUCT THAN THIS TO BE CASES THAT WERE NOT ---
2 I MEAN CASES THAT WERE DISMISSED AT APPELLATE LEVELS AFTER
3 SOMETIMES BEING CONVICTED AT LOWER LEVELS.

4 THE COURT - ALL RIGHT, WELL, LET'S TAKE A LITTLE
5 RECESS AND LET ME LOOK AT YOUR CASES AND I'LL DO THAT
6 RIGHT NOW.

7 (RECESS TAKEN)

8 THE COURT - THANK YOU VERY MUCH. YOU MAY BE
9 SEATED. I AM CONSTANTLY AMAZED AT HOW MANY NOVEL
10 QUESTIONS OF LAW REMAIN AFTER ALL OF THESE YEARS OF
11 PRACTICING LAW IN SOUTH CAROLINA, I MEAN NOT WITH ME
12 PRACTICING, BUT COUPLE HUNDRED YEARS OF JURIS PRUDENCE AND
13 YOU HAVE QUESTIONS LIKE THIS OUR SUPREME COURT HAS NEVER
14 VISITED, AND I SEEM TO HAVE ONE ABOUT EVERY OTHER WEEK.
15 I WANT TO SAY ONE THING. WHEN WE TALKED EARLIER, I MADE
16 THE STATEMENT THAT THE OFFICER WOULD HAVE TO HAVE PROBABLE
17 CAUSE IN ORDER TO STOP THE VEHICLE. I THINK THAT'S WRONG.
18 I THINK HE NEEDS ONLY A REASONABLE ARTICULABLE (SIC)
19 SUSPICION. DO EITHER ONE OF YOU WANT TO BE HEARD ON THAT
20 QUESTION? FROM THE STATE?

21 (NO RESPONSE)

22 THE COURT - YOU AGREE THAT IT'S REASONABLE
23 SUSPICION?

24 MR. DIAMADUROS - IT IS, YOUR HONOR.

25 THE COURT - ALL RIGHT. AND I NOTICE Y'ALL BEEN

1 SWAPPING CASES BACK AND FORTH. THE STATE HAS BEEN GETTING
2 SOME. DO YOU --- DO YOU NEED ANY MORE TIME TO LOOK AT
3 THOSE CASES OR DO YOU WANT TO BE HEARD ON ANY OF THOSE
4 CASES? EITHER ONE OF YOU. FROM THE STATE? DO YOU HAVE
5 ANYTHING ELSE TO ADD?

6 MR. ANTHONY - WE DON'T HAVE ANYTHING ELSE TO
7 PRESENT.

8 THE COURT - MR. DIAMADUROS?

9 MR. DIAMADUROS - WE DON'T EITHER, YOUR HONOR.

10 THE COURT - ALL RIGHT, WELL, THE STATUTE SAYS
11 THAT THE VEHICLE SHALL BE OPERATED AS NEARLY AS
12 PRACTICABLE WITHIN THE ONE LANE. I THINK IT SAID WITHIN
13 A SINGLE LANE I THINK IS THE EXACT --- WITHIN A SINGLE
14 LANE. I INTERPRET THE STATUTE TO MEAN EXACTLY THAT,
15 WITHIN A SINGLE LANE. THE PART AS NEARLY AS PRACTICAL ---
16 PRACTICABLE, I INTERPRET TO MEAN IF IT'S IMPOSSIBLE TO
17 STAY IN THAT LANE BECAUSE OF AN OBSTRUCTION ON THE ROAD OR
18 THE ROAD CONDITIONS OR SOMETHING OF THAT NATURE. I DON'T
19 INTERPRET THAT AS GIVING THE DRIVER FREEDOM TO REIGN BACK
20 AND FORTH AS HE DEEMS PRACTICABLE IN HIS DRIVING, BUT I
21 THINK IT'S A VERY SPECIFIC STATUTE THAT REQUIRES THE CAR
22 TO REMAIN WITHIN THAT LANE. I THINK THE SECOND PART OF
23 THE STATUTE ABOUT MOVING IT SAFELY FROM ONE LANE TO THE
24 OTHER ONLY APPLIES IF YOU'RE GOING TO MOVE FROM ONE LANE
25 TO THE OTHER, SO I DON'T THINK THE OFFICER HAS TO SEE

1 SOMEONE IN DANGER BY THE POSITION OF THE CAR WITHIN THE
2 LANE BEFORE HE COULD HAVE SUSPICION THAT THIS STATUTE HAS
3 BEEN VIOLATED. WITH --- AND I THINK THAT WITHIN A SINGLE
4 LANE MEANS WITHIN THAT LANE, AND I THINK IF YOU GET OUT OF
5 THAT LANE, YOU'VE VIOLATED THE STATUTE, AND IF YOU'RE ON
6 THE --- THE WAY I UNDERSTAND IT THERE WERE ONLY TWO LINES
7 ON THIS HIGHWAY, THE YELLOW --- TWO YELLOW LINES, AND THE
8 CENTER LINE OF THE HIGHWAY WOULD'VE BEEN BETWEEN THOSE TWO
9 YELLOW LINES SOMEWHERE, LOCATED BETWEEN THOSE TWO YELLOW
10 LINES, BUT THAT THE YELLOW LINE OUTLINES AND DISTINGUISHES
11 THE RIGHT-HAND LANE --- EACH LANE OF TRAVEL, AND IF YOU'RE
12 ON THAT LINE THEN YOU ARE NOT WITHIN THE LANE; YOU ARE ON
13 THAT LINE AND YOU ARE NOT WITHIN THE LANE ITSELF, AND I
14 DON'T SEE WHERE IT MAKES ANY DIFFERENCE WHETHER YOU ARE
15 OVER THE LINE ONE INCH OR A FOOT OR YARD, IF YOU'VE
16 CROSSED THE YELLOW LINE, TECHNICALLY IT'S A VIOLATION OF
17 THE STATUTE. ONE CASE THAT COUNSEL GAVE ME, AND IT ---
18 THIS IS UNITED STATES VS. ALVARADO WHICH DEALS WITH A
19 SIMILAR SPECIAL CIRCUMSTANCE --- IT SEEMS ---
20 INTERPRETATION OF A VERY SIMILAR STATUTE --- WHEN THE
21 COURT SAYS THAT WHEN EVALUATING THE REASONABLENESS OF THE
22 INITIAL STOP OUR SOLE INQUIRY IS WHETHER THIS PARTICULAR
23 OFFICER HAD REASONABLE SUSPICIONS THAT THIS PARTICULAR
24 MOTORIST VIOLATED ANY ONE OF THE MULTITUDE OF APPLICABLE
25 TRAFFIC REGULATIONS, AND I THINK THAT SIMPLY POINTS OUT

1 THAT IT IS A CASE SPECIFIC ANALYSIS AND THEY GO ON TO SAY
2 WE UNDERSTAND IT TO REQUIRE A FACT SPECIFIC INQUIRY INTO
3 THE PARTICULAR CIRCUMSTANCES PRESENT DURING THE INCIDENT
4 IN QUESTION IN ORDER TO DETERMINE WHETHER THE DRIVER COULD
5 REASONABLE BE EXPECTED TO MAINTAIN A STRAIGHT COURSE AT
6 THAT TIME IN THAT VEHICLE ON THAT ROADWAY. THERE'S BEEN
7 NOTHING IN THE TESTIMONY I'VE HEARD THAT WOULD GIVE ANY
8 REASON THE DRIVER COULD NOT HAVE MAINTAINED HIS VEHICLE
9 WITHIN THAT SINGLE LANE HAD HE CHOSEN TO DO SO. I THINK
10 THE OFFICER'S CONSIDERATION IN DETERMINING WHETHER OR NOT
11 HE HAD REASONABLE SUSPICION OF THE TIME OF DAY OR EARLY
12 MORNING HOURS, THE FACT THAT IT WAS ON THE WEEKEND ARE
13 BOTH CONSIDERATIONS, THE TOTALITY OF THE CIRCUMSTANCES
14 THAT HE IS ENTITLED TO CONSIDER. AND I THINK ANOTHER
15 CONSIDERATION IN HIS DECISION AS TO WHETHER HE HAD
16 REASONABLE SUSPICION WOULD BE THE LOCATION ON THE HIGHWAY.
17 HE TESTIFIED A COUPLE OF TIMES THAT HE WAS APPROACHING ---
18 I KNOW HE SAID HILLY, POPULATED AND I THINK HE SAID A
19 HILLY, CURVY POPULATED --- BUT THE RECORD SPEAKS FOR
20 ITSELF ON THAT --- A PORTION OF THE HIGHWAY THAT HE WAS
21 OBVIOUSLY VERY FAMILIAR WITH, WHERE IT WOULD NOT BE A SAFE
22 PLACE TO STOP THE DEFENDANT AND CONDUCT THE SOBRIETY TEST
23 IF HE NEEDED TO DO SO. SO HE WAS FACED WITH A CHOICE. HE
24 COULD FOLLOW THE VEHICLE A LITTLE BIT LONGER AND OBSERVE
25 HIM A LITTLE BIT LONGER TO SEE IF HE CROSSED THE

1 CENTERLINE AGAIN OR IF HE COMMITTED ANY OTHER RECKLESS
2 DRIVING AND THAT WOULD NOT HAVE BEEN AN UNREASONABLE
3 APPROACH UNDER MOST CIRCUMSTANCES TO DO THAT OR HE COULD
4 STOP THE DRIVER RIGHT THEN BEFORE HE GOT INTO THE --- I
5 GUESS I WOULD USE THE WORD DANGEROUS OR INCONVENIENT
6 PORTION OF THE HIGHWAY IN ORDER TO MAKE A DETERMINATION
7 WHETHER OR NOT THE DRIVER WAS IMPAIRED FOR SOME REASON.
8 THE TRAFFIC STOP OF THIS NATURE I THINK THE COURTS HAVE
9 SAID IS DEFINITELY A SEIZURE. IT'S AN INTRUSION, BUT IT'S
10 A MINIMAL INTRUSION. HAD THE DRIVER CHECKED OUT OKAY, HE
11 WOULD'VE ONLY BEEN STOPPED A FEW MINUTES AND HE WOULD'VE
12 BEEN ON THE ROAD. I THINK OUR COURT IN THE REDLIGHT
13 STATUTE THAT COUNSELOR GAVE ME --- NAIM JIHAD WAS THE
14 DEFENDANT IN THAT CASE ---- INDICATES A POSITION OF OUR
15 COURT THAT A TECHNICAL VIOLATION OF THE LAW WHETHER IT
16 REALLY AMOUNTS TO A SAFETY VIOLATION OR NOT IS ENOUGH TO
17 GIVE REASONABLE SUSPICION TO AN OFFICER TO MAKE A STOP.
18 SO FOR THAT REASON, MR. DIAMADUROS, I DENY YOUR MOTION.
19 I FIND THAT UNDER THESE SPECIFIC CIRCUMSTANCES THAT I'VE
20 OUTLINED, THE OFFICER WAS REASONABLE, THAT HE DID HAVE
21 REASONABLE, ARTICULABLE (SIC) SUSPICION, AND SO I WOULD
22 DENY YOUR MOTION TO DISMISS THE CASE ON THAT GROUNDS.

23 MR. DIAMADUROS - THANK YOU.

24 THE COURT - ALL RIGHT, SIR. NOW, IS THAT ALL WE
25 NEED TO DO IN THIS CASE TODAY?

1 MR. HICKMAN - YES, SIR, YOUR HONOR. I BELIEVE
2 WE CAN START IN THE MORNING?

3 THE COURT - 9:30?

4 MR. ANTHONY - CAN WE START AT 10:00?

5 THE COURT - SURE.

6 MR. ANTHONY - THANK YOU.

7 THE COURT - OKAY, 10:00 O'CLOCK. THAT SUITS
8 YOU, COUNSELOR?

9 MR. DIAMADUROS - YES, SIR.

10 THE COURT - NOW, I'M SERIOUS ABOUT THIS. I MEAN
11 ALL YOU HAVE TO DO IS PICK UP THE PAPERS AND YOU READ
12 ABOUT THE FLU AND THE PROBLEMS IT'S CAUSING IN THIS STATE
13 AND ALL OVER THE UNITED STATES. WE DON'T NEED TO TRY THIS
14 CASE IF WE'RE GOING TO EXPOSE PEOPLE IN THIS COURTROOM TO
15 THE FLU, AND SO I'M EXPECTING YOU TO MAKE A CAREFUL AND
16 PRUDENT DECISION IN THAT REGARD, AND IF YOUR CLIENT IS
17 STILL SHOWING SOME SIGNS OF THE FLU, WE DON'T WANT TO TRY
18 THIS CASE TOMORROW.

19 MR. DIAMADUROS - YOUR HONOR, AND THIS IS WHAT
20 I'LL DO AND I'LL BE FRANK WITH THE COURT. I NEVER WANT
21 THIS COURT TO INTERPRET ME NOT WANTING TO GO --- ACT LIKE
22 I'M TRYING TO FIND A WAY TO GET OUT OF A CASE. IF HE'S
23 STILL SICK THEN I WILL ASK THE COURT THEN UNDER THAT
24 THEORY ---

25 THE COURT - ABSOLUTELY. I TRUST YOUR JUDGMENT

1 IN THAT CASE. WE DON'T NEED TO PUT ---

2 MR. DIAMADUROS - I JUST DIDN'T WANT THIS COURT
3 TO THINK I'M GOING TO MAKE A MOTION AND IF I LOSE THEN I'M
4 GOING TO ASK TO CONTINUE IT JUST TO PUT IT OFF.

5 THE COURT - I DON'T THINK THAT AT ALL, BECAUSE
6 YOU'VE --- I'VE DONE YOU ALL THE DAMAGE I CAN DO AND
7 YOU'RE STUCK WITH THAT ON THIS RULING.

8 MR. DIAMADUROS - YES, SIR, I'M FINE WITH THAT.

9 THE COURT - YOU KNOW, IT DOESN'T MATTER --- IT
10 DOESN'T MATTER WHETHER I TRY IT OR SOMEBODY ELSE TRIES IT,
11 THAT'S GOING TO BE THE LAW IN THIS CASE, BUT I MEAN I ---
12 I CERTAINLY TAKE --- I TAKE IT VERY SERIOUSLY THE AMOUNT
13 OF FLU THAT WE'VE GOT IN THIS STATE RIGHT NOW.

14 MR. DIAMADUROS - WELL, I REALLY DON'T WANT TO BE
15 SITTING BY HIM AND SURE WASN'T GOING TO ASK FOR, BUT I ---
16 IF HE IS STILL SICK AND --- AND AS I SAID, YOUR HONOR, I'D
17 LOVE FOR HIM TO HAVE A DOCTOR, BUT HE DOESN'T, AND HE'S
18 BEEN HOME SINCE SATURDAY IN THE BED. I REALLY DON'T WANT
19 --- BUT I'LL LET --- I DON'T KNOW IF I NEED TO LET THEM
20 KNOW, BUT I'LL WAIT UNTIL THE MORNING ---

21 THE COURT - JUST LET THE SOLICITOR KNOW AND ERR
22 ON THE SIDE OF CAUTION. I MEAN I'M READY TO TRY THE CASE.
23 THEY READY TO TRY THE CASE. IS THERE ANY WITNESS BESIDES
24 THE OFFICER?

25 MR. ANTHONY - NO, THERE'S NOT ---

1 THE COURT - THE BREATHALYZER MAYBE.

2 MR. DIAMADUROS - HE IS THE BREATHALYZER ---

3 THE COURT - I MEAN YOU --- YOU ERR ON THE SIDE
4 OF CAUTION.

5 MR. ANTHONY - CAN WE DISCUSS ONE THING ABOUT
6 THIS OFF THE RECORD, JUST ABOUT THE SCHEDULING PART OF IT?

7 THE COURT - SURE.

8 (END OF TRANSCRIPT)

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1 hear him from a distance, but he's talking towards the mike.
2 The officer has got it right here. But when you listen to
3 the entire case and the evidence that's presented to you for
4 your decision, I think you are going to sit here and just
5 keep your mind open at the end, you will be able to call it
6 like it is, just like an umpire does at a baseball game, and
7 you will find him not guilty.

8 THE COURT: All right. Does anybody need a break
9 before we get started?

10 MS. DESCH: Could we approach just briefly, Your
11 Honor?

12 THE COURT: Yes.

13 (Whereupon, the lawyers approached the bench for
14 an off-the-record discussion)

15 THE COURT: All right, ready to proceed.

16 MR. HICKMAN: Yes, sir, Your Honor.

17 Your Honor, the State's first and only witness is
18 Trooper Brad Horne of the South Carolina Highway Patrol.

19 TROOPER BRAD HORNE, having been first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION BY MR. HICKMAN:

22 Q. Good afternoon.

23 Would you just introduce yourself to the jury, please?

24 A. I'm Brad Horne, South Carolina Highway Patrol.

25 Q. And where are you employed?

1 A. Here. I'm stationed here in Cherokee and Union County.

2 Q. And what is your rank?

3 A. It's lance corporal.

4 Q. And was that your rank at the time of this incident?

5 A. That's correct.

6 Q. Had you been trained in detecting DUI?

7 A. Yes, sir.

8 Q. And just describe a little bit about the background
9 that you have for that.

10 A. I joined the patrol in January of 2000. I went through
11 twenty-one weeks at the police academy at the time, in which
12 I was graduated and sent to Newberry.

13 I spent two years in Newberry before coming to Union
14 almost eight years ago, and I have been here in Union for
15 eight years since then.

16 Q. Okay. Were you out on patrol on February the 7th of
17 this year?

18 A. Yes, sir.

19 Q. And did you have occasion to be on Route 215 in Union
20 County?

21 A. Yes, sir, that's correct.

22 Q. Did you make any stops that night?

23 A. Yes, sir.

24 Q. Tell me how that came about.

25 A. On this particular traffic stop I was on S.C. 215 going

1 towards Buffalo from Union when I observed -- I observed a
2 car which appeared to have drifted over onto the center line
3 where the reflectors are. At that time I got a little
4 closer to the car. I activated my camera to record the
5 situation. I was going into a hilly area, so at the time I
6 went ahead and stopped the car. I did not get a violation
7 on video, but there was a short period of time that I was
8 behind him.

9 Q. What's the significance of whether it was hilly or not?

10 A. Well, the hills have got to do with in case the subject
11 was under the influence.

12 Q. Right.

13 A. It wouldn't be fair to ask somebody to do a sobriety
14 test on the side of a hill.

15 Q. Okay. So you wanted to stop him on the flat land?

16 A. That's correct, I wanted to stop him where it was over
17 a flat. That way I could be fair to everyone.

18 Q. So at that point what was the -- what did you
19 anticipate your stop to -- what was your purpose at that
20 time of stopping?

21 A. Basically just doing my job, ensuring that the people
22 on the highway are safe. You know, protecting all the
23 people on the highway, as well as the people that are
24 driving the cars.

25 Q. What were you looking for, I mean, as far as the

1 defendant goes?

2 A. Well, I was hoping that it was someone just sleepy or
3 something, but in this case it just wasn't this situation.
4 It was someone under the influence.

5 Q. Tell me what was your first contact with him like?

6 A. My initial approach to the car, I do like I always do,
7 usual police thing - license, registration, please. He
8 handed me his license right away. He fumbled around a
9 little bit looking for a registration. I said --

10 When you watch the video, you can see exactly, but you
11 see me lean over into the car. Just a few seconds after I
12 have been there I leaned over into the car and noticed a
13 smell of alcohol.

14 At that time, once he found his paperwork, I asked him,
15 you know, "if you had anything to drink," and he said "no."
16 That's when I asked him, I said "well -- you know, just like
17 I always do, if I smell alcohol or anything I give you the
18 benefit of the doubt. We ask them to step out of the car,
19 check you out and make sure you are okay to drive. If I
20 feel like he's okay to drive, I send him on his way. In
21 this situation I felt like it wasn't safe to release him to
22 drive. So, therefore, he was placed under arrest.

23 Q. Okay. But when he got out, did you ask him some more
24 questions?

25 A. Yeah, once he got out of the car, I asked him again how

1 much -- I'm sorry, I asked him again "have you had anything
2 to drink," and he said "yeah, I had -- I think he said a
3 few. Well, come to find out, he said "I had four or five."
4 I asked him how long ago. He said about an hour ago.

5 Q. Okay. And at that point, so that's when you did the
6 field sobriety test?

7 A. Yeah, at that point I took him back toward my car and
8 offered him a field sobriety test, that's correct.

9 Q. Did you read him his Miranda Rights at that point?

10 A. Yes, sir, I did.

11 Q. Okay. And just basically what are the basic rights
12 that you advised him at that time?

13 A. The Miranda Rights?

14 Q. Yeah.

15 A. It's that you have right to remain silent.

16 Anything that you say can and -- anything you say or do
17 can be used against you.

18 You have the right to an attorney. If you can't afford
19 an attorney, one would be appointed to represent you before
20 any questioning, if you wish.

21 You can exercise these rights at any time without
22 making any statements or answer any questions.

23 Q. And did he -- did he waive his Miranda Rights and
24 proceed?

25 A. He pretty much "yeah, yeah, yeah, yeah." I mean, that

1 was -- you know, when I was in the -- first started reading
2 his rights, that's pretty much "yeah, yeah, yeah, I know
3 them." Kind of his demeanor the whole night.

4 Q. Did you say -- so did you give him a field sobriety
5 test?

6 A. I give him two.

7 Q. Okay. Which ones did you give him?

8 A. I did the what's called an HGN says, which is called
9 Horizontal Gaze Nystagmus, which is basically a nystagmus is
10 an involuntary jerking of the eyes, which is caused by
11 alcohol. Basically what -- most of us call the pen test or
12 the finger test. We usually make someone follow a pen.
13 Basically what we do -- what we are trained to do is we will
14 hold the pen six or eight inches away from their eyes and
15 tell them to keep your head still, look straight ahead, keep
16 your head still, follow my tip of my finger or my pen with
17 your eyes only, keep keeping your head still. I started --
18 I started turning it and you can see on the video I said
19 "hold your head still yes."

20 "Yes, I am."

21 "No, you're not."

22 You can actually see his chin moving following it and
23 that's one of the clues we look for is being able to follow
24 instructions.

25 Again, I told him, I said "you have to hold your head

1 When you get to nine, take a series of small steps,
2 turn around and take nine steps back in the same direction:
3 One, two, three, four, five, six, seven, eight, nine.

4 That's basically just like I explained it to him that
5 night.

6 (Witness back on the witness stand)

7 BY MR. HICKMAN:

8 Q. Okay. How did Mr. Vinson do on that test?

9 A. Well, he was unsteady on his feet. And actually I want
10 to say when he got to -- I think as Mr. Diamaduros said,
11 when he got to, I'm wanting to say, five or six, he actually
12 swayed a little bit.

13 But then on the way back I want to say step five, six
14 and seven he pretty much lost his balance. He was pretty
15 bad on that one.

16 It was bad enough in which he looked at me and said
17 "you know, be straight with me. I just failed that."

18 Q. Okay. And at that point, is that when you made the
19 arrest?

20 A. Well, no, I asked him, actually I said -- you know,
21 again I want to be correct in saying this, but the video
22 shows exactly what I said, but in a cliff notes version, I
23 said "do you want to try it again?" And that's when he
24 says, you know, "yeah, I'll try it again, but be honest with
25 me. I failed that. If you fail one out of three, you are

1 A. I thought I heard him say when I first got him out of
2 the car, I thought he had just left -- he was coming from
3 Shady's and he had four or five beers.

4 Q. And did you -- well, let me show you a couple of things
5 first.

6 (Off the record)

7 (Back on the record)

8 BY MR. HICKMAN:

9 Q. Did you -- where did you take him after you -- where
10 were you driving at that point?

11 A. We was en route to the county jail.

12 Q. And what was -- what was the first thing on your agenda
13 at the jail up there to do?

14 A. Was to offer him a breathalyzer test.

15 Q. Okay. And I'm handing you what's been marked State's
16 Exhibit No. 1. Could you tell me what that document is?

17 A. This is the advisement of implied consent rights. It's
18 basically the form that we read to them in regards to the
19 breathalyzers. It's part of SLED's policy to read this.

20 Q. And what are the basic rights that you are talking
21 about there?

22 A. It basically just goes through, says you are under
23 arrest for driving under the influence.

24 It tells you a breath sample is going to be requested.
25 It says you don't have to take it.

1 Like I said, that's basically, you know, for his benefit.
2 If there were anything in there, it would give time to get
3 in his system and not show a false reading or a reading
4 higher than what's actually in his system.

5 He was -- he was checked. He was observed for twenty
6 minutes. Actually the time stamped was 3:42. The test
7 wasn't run until 4:07. So you are looking at twenty-eight
8 minutes there.

9 Q. Okay. So you had pulled him over at what time then?

10 A. 3:07.

11 Q. And this test was administered at?

12 A. Well, the sample was given at 4:07. The test actually
13 begin at 3:42.

14 Q. And what signatures are on that copy?

15 A. The --

16 Q. On this?

17 A. The test report? The test report is signed by the test
18 operator, which was myself; the arresting officer, which was
19 myself; as well as Mr. Vinson. He did sign this test, the
20 test report. He did sign it.

21 Q. He signed that in your presence?

22 A. Yes, sir, that's correct.

23 Q. Okay. And what was the reading on the breath sample?

24 A. The reading was a .14 percent.

25 Q. What is the legal inference in South Carolina?

1 Q. Okay. Just answer any questions that the defense would
2 have for you.

3 CROSS EXAMINATION BY MR. DIAMADUROS:

4 Q. Trooper Horne, tell me where you came from that evening
5 before you got behind Gene.

6 A. It was on 215.

7 Q. Well, 215 from where? Did you come -- were you on 215
8 all the way through Union, from Carlisle? Where were you
9 coming from?

10 A. I was just riding 215.

11 Q. Okay. So does that mean that --

12 A. I mean, from -- between -- between town and Buffalo. I
13 was just -- I mean, I think I come from Buffalo and I was
14 just going back towards town.

15 Q. So did you cross my client or were you following him?

16 A. I met him -- I met him and then -- I met him and turned
17 around and followed him and that's when I observed him.

18 Q. Okay. So what you were doing that night is you were
19 going from downtown City of Union, main street, on 215?

20 A. No.

21 Q. Okay.

22 A. No. I had come from Buffalo and I had met him -- I
23 probably met him somewhere -- I don't know, probably
24 around -- I don't know, I mean, I just -- I remember meeting
25 a car. And then, you know, after he got on by us, well, I

1 turned around.

2 Q. Okay. And were you doing this all night, going up and
3 down 215?

4 A. No.

5 Q. I just thought you said that you were going up and down
6 215. That's what I was trying to figure out.

7 A. No.

8 Q. So you just happened to see a car and it's three
9 o'clock in the morning, so you just turned around to follow
10 it?

11 A. Well, I mean, I -- I just turned around and that's when
12 I noticed -- after I followed him for a little bit, I
13 noticed him weaving.

14 Q. Well, where did you turn around?

15 A. I'm not exactly sure. Somewhere between Buffalo and
16 Union.

17 Q. Okay. And that's about three or four miles?

18 A. Well, I would probably say it's from more up around the
19 maybe the new Wal-Mart area.

20 Q. Okay. And so you didn't -- you didn't see any bad
21 driving, you didn't get any on the tape, but your definition
22 of bad driving is that the double yellow line in the middle
23 of 215, his tire got on the double yellow and hit the
24 reflector?

25 A. That's correct, that's why I stopped him for.

1 the highway.

2 Q. And when you go by somebody at three o'clock in the
3 morning on any night, do you always make a U-turn and follow
4 them?

5 A. Well, I can't say always, but the majority of the time,
6 yes, I do.

7 Q. Okay. As far as his speed was concerned, is there any
8 issue of speed?

9 A. I don't recall speed being a factor.

10 Q. Okay. And would you have turned around then and had to
11 speed up then to catch up to him?

12 A. I don't recall ever speeding up to catch up to him.

13 Q. Okay. When he was blue lighted right when the camera
14 comes on, he turns on his left turn signal and pulls into a
15 vacant parking lot that's a business, correct?

16 A. That's correct.

17 Q. And he pulled his car parallel to the road and --

18 A. Uh-huh.

19 Q. I mean, everything was normal at that point?

20 A. Yes, sir.

21 Q. Okay. So when you went to his window, what was the
22 first thing unusual that you noticed about him?

23 A. The bloodshot eyes and the smell of alcohol.

24 Q. Okay. And you asked to get the license and he gave you
25 a license, correct?

1 didn't want him to dash out in front of a car, or --

2 Q. Well, you didn't care if he was going to dash out in
3 the front of a car when he exited his car.

4 A. He wasn't under arrest at that time.

5 Q. No, but he got out of his car and you walked back to
6 your car and he literally followed you to your car and
7 walked normally, didn't he? You saw it on the tape.

8 A. Well, he staggered around a little bit.

9 Q. You -- in fact, you probably didn't see a lot of that,
10 because you actually walked with your back to him and you
11 let him follow you to your car.

12 A. Well, I'm just saying what I just sit here and watched.

13 Q. Now, he didn't -- the five, seven, eight, nine on his
14 steps you have to say weren't very good at the end of the
15 second leg of the test, the second nine steps, were they?

16 A. No, sir.

17 Q. But the rest of his walking around out there and
18 talking to you, you didn't have any problems with him, you
19 know, holding onto you, or stumbling, or staggering, was he?

20 A. He was not falling down drunk. No, he wasn't. I felt
21 like he had too much to drink to safely operate a vehicle.

22 Q. But you don't know how he normally walks and talks, and
23 there was nothing out of the unusual there? Nothing
24 unusual?

25 A. I don't know how he is normally. I don't know him.

1 Q. Okay. So then it would be hard for you to say that he
2 was staggering around out there, if you don't know how he
3 usually walks and kind of saunters, if that would be a good
4 word?

5 A. What are you asking me?

6 Q. The bottom line is he didn't have any problems getting
7 into your car when he was cuffed? Let's go back to that
8 spot.

9 A. No, because I escorted him and set him in my car.

10 Q. And when you got him to the jail, you had to -- you had
11 to basically reach in and help him get out of the car
12 because his hands were behind his back, right?

13 A. That's correct.

14 Q. And when he got out, he walked from there into the
15 jailhouse, down the hallway, through doors, and into a
16 datamaster room?

17 A. That's correct.

18 Q. He didn't have any problems with that walking, did he?

19 A. He did a little staggering. Yes, he was.

20 Q. And you don't have that -- but that's not here?

21 A. I don't have a video clip then. I mean --

22 Q. So he would have been staggering as bad out from that
23 walk as he was staggering on the screen that we saw, the
24 same type of walking?

25 A. Well, I mean, he was able to walk himself and I

1 before we proceed, so I'm going to ask you to retire to the
2 jury room for a brief time. You can refresh yourselves, but
3 we will not be long. Thank you.

4 (The following takes place outside the presence of
5 the jury panel)

6 THE COURT: All right, counsel, there is couple of
7 things. Okay, I will be glad to hear you with regard to any
8 motions that you wish to make at this time, but also, I
9 believe, Mr. Diamaduros, you were going to put a motion on
10 the record in this case with regard to a preliminary
11 suppression hearing, so I'll allow you to do that now.

12 MR. DIAMADUROS: Yes, sir, Your Honor.

13 I had previously filed a written motion in -- I
14 think it was the last term of court when we were before
15 Judge Williams, and that motion was ruled on by stipulation
16 of the parties, and I think maybe by court, really I'm not
17 quite sure on that, and we are bound by the ruling of Judge
18 Williams. Judge Williams ruled that there was -- that there
19 was enough sufficient probable cause to let this case go
20 forward, so I would renew that motion at this time, and I
21 think there was actually a written motion that has been
22 filed with the clerk. It wasn't filed physically with the
23 clerk, but filed with the clerk here and handed up to the
24 court.

25 THE COURT: All right. The record will reflect

1 that the written motion was made and ruled on by Judge
2 Williams with the understanding that that would be binding
3 insofar as the trial. You weren't able to go forward with
4 the trial. I believe the defendant was sick with the flu, or
5 something.

6 MR. DIAMADUROS: That's correct, Your Honor.

7 THE COURT: And so -- but it was agreed that
8 whatever his ruling would be would be binding, of course, on
9 this court when it came to trial. So that's -- at least the
10 record will reflect that was done and is part of the record
11 now. Proceed now.

12 Do you have any motions?

13 MR. DIAMADUROS: And I would also move, Your
14 Honor, at this time for a directed verdict of not guilty.
15 Looking at the evidence presented in this case in the light
16 most favorable to the State, I would submit there is not
17 evidence of driving under the influence that should be
18 presented to the jury.

19 THE COURT: Of course, in looking on a motion for
20 directed verdict, I am required to look at the evidence in
21 the light most favorable to the party against whom the
22 motion is being made.

23 In this case, looking at the evidence in the light
24 most favorable to the State, I find there is substantial
25 evidence from which the jury could infer the State had

1 Q. Okay. And what time that night did you leave Shady's?

2 A. Two o'clock.

3 Q. And is there a reason you left at two?

4 A. Yes, sir, they closed.

5 Q. Okay. So from ten to two did you consume alcohol?

6 A. From --

7 Q. Ten o'clock until two?

8 A. Yes, sir.

9 Q. And do you know about how many?

10 A. About two beers an hour.

11 Q. So when the officer asked you -- we will go back before
12 that. Did you have anything to drink before you got there?

13 A. No, sir.

14 Q. Okay. So you had nothing to drink until you got there,
15 and when you got there from ten until two in the morning --

16 A. No.

17 Q. -- how many beers did you have in that four hour period
18 of time?

19 A. I would say about maybe a beer, beer and a half an hour
20 from ten to two.

21 Q. The officer -- you told the officer that you had four
22 or five beers that night?

23 A. Yes, sir.

24 Q. Is that just a good guess?

25 A. Yeah.

1 Q. And how far down the road were you from home?

2 A. Not even a half mile.

3 Q. Okay. And when he pulled you over, I think that you
4 were asked to get out of the car, is that right?

5 A. Yes, sir.

6 Q. Okay. And as far as the tests are concerned, you were
7 asked to do a walking toe to heel, nine steps one way, nine
8 steps back. Do you remember that test?

9 A. Yes, sir, I remember -- I remember that.

10 Q. And is that -- does that test there, you felt like you
11 did good on that test?

12 A. As good as I could do, yes, sir.

13 Q. Have you tried to do it again?

14 A. Maybe a couple times at work.

15 Q. And were you able to do it?

16 A. No, sir.

17 Q. Have you ever walked toe to heel before that night?

18 A. No, sir.

19 Q. So you hadn't been growing up practicing toe to heel
20 walking, have you?

21 A. No, sir.

22 Q. And so basically after that test was done, I think I
23 heard you tell the officer "well, I know if I flunk one, you
24 are going to arrest me. Go ahead and take me downtown." Is
25 that right?

1 Q. So did all of that conversation just continue to make
2 you irritated that you had been pulled over?

3 A. Yes, sir.

4 Q. You know, your personality is the kind -- I think you
5 used a few words on there, a few little choice words about
6 what you thought he ought to be pulled over and used words
7 like A-S-S and opposed to anything. You weren't being very
8 polite, were you?

9 A. No, sir.

10 Q. And even in your appearance in the car, did you -- you
11 have seen the videotape. Did you feel like you were upset?

12 A. Yes, sir.

13 Q. Okay. The officer didn't do anything like really -- he
14 didn't do anything mean to you or ugly to you. You just
15 felt like what?

16 A. Like he was just being disrespectful. Like I tried to
17 talk to him and asked him questions and he wouldn't respond.

18 Q. Okay. And again, from that particular night, the only
19 place that you had gone to consume any alcohol was at
20 Shady's?

21 A. Yes, that's correct.

22 Q. None before ten o'clock and none after it closed at
23 two?

24 A. No, sir.

25 Q. Okay. Answer any questions that the prosecutor might I

1 have.

2 CROSS EXAMINATION BY MR. HICKMAN:

3 Q. Mr. Vinson, when the officer first pulled you over, you
4 told him that you hadn't been drinking at all, is that
5 correct?

6 A. Yes, sir.

7 Q. Okay. Was that true?

8 A. No, sir.

9 Q. Okay. Why did you lie to the officer?

10 A. Because I was tired and trying to get home and go to
11 bed.

12 Q. So you decided to lie to him?

13 A. (Shaking head yes).

14 Q. But now you say that you had four or five?

15 A. Uh-huh.

16 Q. I'll point out again you said you had four or five?

17 A. Yes, sir.

18 Q. Did you hear on the video when he asked you how long
19 ago it was you had the four or five and you said about an
20 hour ago?

21 A. I misunderstood his question. I thought he asked me
22 how many did I have to drink that night.

23 Q. But you heard that he -- you heard yourself say that
24 you had -- you told him that you had those about an hour
25 ago. It's on the video. We all --

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 10, 2010

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JAN 04 2011

SC Court of Appeals



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM UNION COUNTY
Court of General Sessions

SC Court of Appeals

James C. Williams, Circuit Court Judge
Lee S. Alford, Circuit Court Judge

CASE NO. 2009-GS-44-0343

The State of South Carolina..... Respondent,

v.

Gene Howard Vinson..... Appellant.

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AGENCY I.D.
SC044SP00

INCIDENT REPORT

CASE NUMBER	1993-038519	NO.	ENTR.
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INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
Driving under the Influence (90D)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	Highway/Road/Alley		<input type="checkbox"/> Individual <input type="checkbox"/> Business <input type="checkbox"/> Financial Inst. <input type="checkbox"/> Government <input type="checkbox"/> Relig. Orgn. <input type="checkbox"/> Soc./Public <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Police Off.
	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			
	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) SC215 2 MILES NORTH OF UNION ZIP CODE 29379 WEAPON TYPE

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	LOCATION NO.
2/7/2009	03:07		2/7/2009	04:30	DISP. DATE DISP. TIME TIME ARRIVED DEPART. TIME	

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
	#1 #2 #3	* JSOU						
ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.				

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
	#1 #2 #3	* JSOU						

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.

VISIBLE INJURY (VICT. 1) YES NO EXPLAIN - COMPLAINT OF NON-VISIBLE INJURIES: YES NO

VICTIM (NO.1) USING: ALCOHOL YES NO UNK. DRUGS: YES NO UNK. TYPE:

TWO-MAN VEH. <input type="checkbox"/>	ONE-MAN VEH. <input type="checkbox"/>	DETECTIVE/SPLASMT. <input type="checkbox"/>	OTHER <input type="checkbox"/>	ALONE <input type="checkbox"/>	ASSISTED <input type="checkbox"/>	* J - This Jurisdiction, S - State, O - Out of State, U - Unknown				
<input type="checkbox"/> SUSPECT	NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
<input type="checkbox"/> RUNAWAY	VINSON, GENE HOWARD	W	M	28	N		510	200	BRO	BRO
<input type="checkbox"/> WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
<input type="checkbox"/> WARRANT	ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.					
<input checked="" type="checkbox"/> ARREST										
<input type="checkbox"/> JAIL	SUBJECT (NO.1) USING ALCOHOL <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK.	ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNK.	DATE/TIME OF OFFENSE	DATE/TIME OF ARREST						
<input type="checkbox"/> SUMMONS	DRUGS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK. TYPE:	TOTAL # ARRESTED:								

ON THE ABOVE DATE AND TIME I TROOPER HORNE MADE A TRAFFIC STOP ON SC 215 IN BUFFALO ON A FORD CAR FOR DRIVING ON THE CENTER LINE. ON THE APPROACH OF THE CAR I FOUND A GENE HOWARD VINSON DRIVING THE CAR, I NOTICED A ODOR OF ALCOHOL COMEING FROM THE VEHICLE. I ASKED MR VINSON IF HE HAD ANYTHING TO DRINK AND HE SAID NO. I ASKED MR VINSON TO STEP OUT OF THE CAR AND I ASKED HIM AGAIN IF HE HAD ANYTHING TO DRINK AND HE STATED HE HAD 4 OR 5 ABOUT A HOUR AGO. I READ HIM HIS MIRANDA RIGHTS AND OFFERED HIM A FIELD SOBRIETY TEST. SUBJECT FAILED TWO OF THE TEST AND DID NOT TAKE THE THIRD. SUBJECT WAS PLACED UNDER ARREST FOR DUI READ HIM THE IMPLIED CONSENT AND MIRANDA AND TRANSPORTED TO UNION CO JAIL. VEHICLE WAS TOWED BY GREERS OFF ROTATION. SUBJECT WAS OFFERED A DATAMASTER TEST AND THE READING WAS A .14%. A DL RECORDS CHECK SHOWED A PRIOR DUI ON 1-4-2006, SUBJECT WAS

JURISDICTION OF THEFT	JURISDICTION OF RECOVERY
-----------------------	--------------------------

TYPE(GROUP)	TOTAL VALUE
STOLEN	
DAMAGED	
BURNED	
RECOVERED	
SEIZED	
FORGED	

SUBJECT IDENTIFIED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO.	SUBJECT LOCATED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> ACTIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/> UNFOUNDED	<input type="checkbox"/> ARRESTED UNDER 18 <input checked="" type="checkbox"/> ARRESTED 18 AND OVER	<input type="checkbox"/> EX-CLEAR UNDER 18 <input checked="" type="checkbox"/> EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH. 2. <input type="checkbox"/> NO PROSECUTION. 3. <input type="checkbox"/> EXTRADITION DENIED. 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION. 5. <input type="checkbox"/> JUVENILE-NO CUSTODY				
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	D# 51 UNIT NUMBER 69 586
HORNE, CHARLES B	2/8/2009	T363	MUELLER, STEVEN	
FOLLOW-UP OFFICER INVESTIGATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

December 29, 2010

TAYLOR LAW FIRM LLC

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SC Court of Appeals



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM UNION COUNTY
Court of General Sessions

James C. Williams, Circuit Court Judge
Lee S. Alford, Circuit Court Judge

Case No. 2009-GS-44-0343

The State of South Carolina Respondent,

v.

Gene Howard Vinson Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

I. DID THE LOWER COURT ERR IN FINDING THAT THE STOP OF APPELLANT'S VEHICLE WAS LAWFUL AND BASED UPON REASONABLE, ARTICULABLE SUSPICION?

STATEMENT OF THE CASE

Appellant was arrested for Driving Under the Influence, Second Offense in Union County by a South Carolina State Trooper on February 7, 2009 (R.p. 11, lines 1 – 5). On October 13, 2009, the Honorable James C. Williams, Jr., entertained Appellant's motion to dismiss. In the motion, counsel for Appellant challenged the lawfulness of the traffic stop. Counsel argued that the stop was not based upon reasonable suspicion and the case should be dismissed as an unreasonable seizure in violation of the Fourth Amendment of the United States Constitution and Article One, § 10 of the South Carolina Constitution. (R.p. 5, lines 6 – 15). The motion was denied (R.p. 24 lines 10 – 25 – p. 27, lines 1 – 22).

The case was called for trial before the Honorable Lee S. Alford on November 10, 2009 in the Union County Court of General Sessions. After a jury verdict of guilty, this appeal followed.

FACTS

In the early morning hours of February 7, 2009, Trooper C. B. Horne of the South Carolina Highway Patrol initiated a traffic stop of Appellant. Prior to the stop, Trooper Horne met Appellant on S.C. Highway 215 in Union County, turned around for no apparent reason and began following him (R.p. 40, lines 15-25 – p. 41, lines 1-12). The roadway was divided by two yellow lines which prohibited passing from either lane (R.p. 16, lines 14-20). Trooper Horne noticed Appellant's vehicle drift into the area between the double yellow lines where reflectors are located. At no time did Appellant's vehicle

cross over into the lane of oncoming traffic. (R.p. 11, lines 13-17; p. 18, lines 19-25 – p. 21, line 1; p. 32, line 25 – p. 33, lines 1-4; p. 41, lines 20-25).

Trooper Horne then activated his video camera and continued to follow Appellant but observed no further alleged traffic infractions prior to the stop of Appellant's vehicle (R.p. 11, lines 17-25 – p. 12, lines 1-2). According to Trooper Horne's incident report, Appellant was stopped for "driving on the center line." (R.p. 51; p. 41, lines 20-25). After failing to perform a series of field sobriety exercises to the satisfaction of Trooper Horne, Appellant was placed under arrest for driving under the influence (R.p. 62, lines 18-25).

ARGUMENT

I. THE LOWER COURT ERRED IN FINDING THAT THE STOP OF APPELLANT'S VEHICLE WAS LAWFUL AND BASED UPON REASONABLE, ARTICULABLE SUSPICION.

"Indeed, if failure to follow a perfect vector down the highway or keeping one's eyes on the road were sufficient reasons to suspect a person of driving while impaired, a substantial portion of the public would be subject each day to an invasion of their privacy."

United States v. Lyons, 7 F.3d 973, 976 (10th Cir. 1993)

The lower court erred in finding that the stop of Appellant's vehicle was lawful based upon a purported violation of S.C. Code Ann. § 56-5-1900 (2006). The record in this case shows that Trooper Horne stopped Appellant for driving on the center line. The pertinent portion of S.C. Code Ann. § 56-5-1900 (2006) which was reviewed by the lower court and formed the basis for its ruling states the following:

A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.

S.C. Code Ann. § 56-5-1900(a) (2006). As set forth more fully below, the conduct of Appellant did not rise to level of a traffic violation. As such, Appellant was arrested as a result of an illegal stop and the lower court should have dismissed the case.

The Fourth Amendment provides that

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

Like the Federal Constitution, the South Carolina Constitution protects against unreasonable searches and seizures. Specifically, Article I, § 10 of the South Carolina Constitution states, in pertinent part, “The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures *and unreasonable invasions of privacy* shall not be violated[.]” (emphasis added). *See also State v. Forrester*, 343 S.C. 637, 644, 541 S.E.2d 837, 841 (2001) (stating “the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution resulting in the exclusion of the discovered evidence”); *State v. Austin*, 306 S.C. 9, 16, 409 S.E.2d 811, 815 (Ct. App. 1991) (“It is firmly established that state courts may interpret their own constitutions in such a way as to expand rights conferred by the Federal Constitution.”).

“Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of the Fourth Amendment.” *State v. Pichardo*, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005). Thus, the stop of an automobile ““must be

justified by probable cause or a reasonable suspicion, based upon specific and articulable facts, of unlawful conduct.” *United States v. Wilson*, 205 F.3d 720, 723 (4th Cir. 2000) (quoting *United States v. Hassan El*, 5 F.3d 726, 729 (4th Cir. 1993)). In South Carolina, “an officer may stop and briefly detain the occupants of a car without treading on Fourth Amendment rights, even without probable cause to arrest, if he has reasonable suspicion that the occupants are engaged in criminal activity. *State v. Rogers*, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006). Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch. *Id.*

In the present case, the State contends that Trooper Home had reasonable suspicion or probable cause to stop Appellant because Appellant left his lane of travel when he crossed one of the two yellow lines. As noted above, South Carolina law only requires that the vehicle be driven as nearly as practicable entirely within a single lane. The appellate courts of South Carolina have not addressed the meaning of the “as nearly as practicable” language. Thus, the Court should look to the decisions of other jurisdictions in interpreting S.C. Code Ann. § 56-5-1900(a) (2006).

Recently, the Kansas Supreme Court reversed the Kansas Court of Appeals in finding that minor lane line crossings do not constitute reasonable suspicion for an investigatory stop. In *State v. Marx*, 215 P.3d 601, 604 (Kansas 2009), a deputy observed the driver of a motor home cross the fog line which is a solid white line, overcorrect and cross the center line. After detecting the odor of marijuana, a subsequent search led to the discovery of a substantial amount of illegal drugs in the motor home. The trial court held that the deputy lacked reasonable suspicion to stop the motor home in spite of the fact that the motor home **crossed** both the white fog line and the center line. The

language of the statute reviewed in *Marx*, Kan. Stat. Ann. § 8-1522(a) (1974), is identical to that of S.C. Code Ann. § 56-5-1900(a) (2006). *Id.* at 607.

In reversing the Kansas Court of Appeals and affirming the trial court's decision, the *Marx* court stated:

K.S.A. 8-1522(a) is not a strict liability offense. . . . The express language employed - "as nearly as practicable" - contradicts the notion that any and all intrusions upon the marker lines of the chosen travel lane constitute a violation. . . . It only requires compliance with the single lane requirement as *nearly* as practicable, *i.e.*, compliance that is *close* to that which is feasible. That statutory language tells us that a violation of K.S.A. 8-1522(a) requires more than an incidental and minimal lane breach.

Accordingly, contrary to the *Marx* panel's suggestion that the deputy's testimony that he observed the motor home cross the fog line, overcorrect, and cross the centerline ended the reasonable suspicion inquiry in the State's favor, a detaining officer must articulate something more than an observation of one instance of a momentary lane breach.

Id. at 612 (emphasis in original). Unlike, the defendant in *Marx*, Appellant did not cross completely over the lane line but touched the center dividing lines.

In *United States v. Sugar*, 322 F.Supp.2d 85 (D. Mass. 2004), a Massachusetts Federal District Court construed a similar Missouri statute in determining the legality of a traffic stop. In *Sugar*, the defendants were stopped when the right rear double wheels of the RV they were driving crossed over the right shoulder line three times. The applicable Missouri statute, Mo. Rev. Stat. § 304.015.5 (2001), also has identical language to that of S.C. Code Ann. § 56-5-1900: "[a] vehicle shall be driven as nearly as practicable entirely within a single lane. . . ."

In ruling that that the stop was unlawful, the *Sugar* court stated that "[t]he phrase 'as nearly as practicable' indicates that the statute was not intended to comprehend minor swerving." *Sugar*, 322 F.Supp.2d at 91. Unlike the defendants in *Sugar*, Appellant only

touched the center line once as opposed to crossing over the line into the right shoulder which was found not to be a reasonable basis for the stop

Similarly, in *United States v. Gregory*, 79 F.3d 973 (10th Cir. 1996), the United States Court of Appeals for the Tenth Circuit addressed the meaning of Utah Code Ann. § 41-6-61(1). In *Gregory*, a county sheriff's officer observed Gregory's "U-Haul truck cross two feet into the right shoulder emergency lane of the interstate." The officer then stopped Gregory, and during a search of the vehicle, the officer found marijuana and approximately ten kilograms of cocaine.

At trial, Gregory moved to suppress the drugs on the ground that the alleged lane violation did not amount to probable cause to justify the officer stopping him. The district court denied Gregory's motion to suppress. On appeal, the Tenth Circuit found that Gregory's crossing into the emergency lane did not violate Utah's traffic laws, and accordingly, the court reversed Gregory's conviction.

The statute at issue in *Gregory* is Utah Code Ann. § 41-6-61, which states the following:

On a roadway divided into two or more clearly marked lanes for traffic the following provisions apply:

(1) A vehicle shall be operated as nearly as practical entirely within a single lane and may not be moved from the lane until the operator has determined the movement can be made safely.

Utah Code Ann. § 41-6-61(1) (1993).

Relying upon Utah law, the Tenth Circuit stated that, "[w]e do not find that an isolated incident of a vehicle crossing into the emergency lane of a roadway is a violation of Utah law." *Gregory*, 79 F.3d at 978 (citing *State v. Bello*, 871 P.2d 584, 586 (Utah Ct.

App. 1994) (holding that a single instance of weaving does not violate section 41-6-61(1)). In arriving at this conclusion, the court noted that the U-Haul truck could have crossed into the emergency lane for any number of reasons. The court also noted that there was no evidence that Gregory's action created any danger of a collision. Accordingly, the court concluded that the officer did not have probable cause to stop Gregory.

Another case that is instructive is *Rowe v. Maryland*, 769 A.2d 879 (Md. 2001), in which the court addressed the meaning of Md. Code Ann., Transp. § 21-309(b)(1999). In *Rowe*, Trooper Jones observed Rowe cross the white edge line onto the shoulder by about 8 inches onto the shoulder or rumble strips. After Rowe's vehicle hit the rumble strips, it swerved back into the slow lane. Trooper Jones later saw Rowe's vehicle swerve or weave onto the white shoulder edge line once again. Based upon these observations and the time of night (1:00 a.m.), Trooper Jones conducted a traffic stop on Rowe because he believed Rowe could have been intoxicated or falling asleep at the wheel.

After Trooper Jones stopped Rowe, Trooper Jones questioned Rowe about whether he had been drinking or was sleepy. During the stop, Trooper Jones's became suspicious of Rowe. Subsequently, Trooper Jones obtained Rowe's consent to search the car, and during the search, Trooper Jones found approximately 77 pounds of marijuana.

At trial, Rowe moved to suppress the drugs, claiming that Trooper Jones did not have probable cause to stop him. The trial court, however, denied Rowe's motion. On appeal, the Court of Appeals of Maryland held that Trooper Jones did not have probable cause to stop Rowe.

The court began its analysis of the probable cause issue by turning to whether Rowe failed to drive in a single lane in violation of Maryland's traffic laws. As in South Carolina, Maryland law requires that

A vehicle shall be driven as nearly as practical entirely within a single lane and may not be moved from that lane or moved from a shoulder or bikeway into a lane until the driver has determined that it is safe to do so.

Md. Code Ann., Transp. § 21-309(b)(1999)

In interpreting the meaning of section 21-309(b), the court applied the plain meaning rule. The court stated that for one to comply with section 21-309(b), the "vehicle must be driven as much as possible in a single lane and movement into that lane from the shoulder or from that lane to another cannot be made until the driver has determined that it can be done safely." *Rowe*, 769 A.2d at 885. The court noted that its interpretation of section 21-309(b) was "consistent with that given essentially identical statutes by courts that have considered this issue." *Id.* at 886 (citing cases that require more than a momentary crossing or touching of an edge or lane line to constitute a violation of the traffic laws).

In *Rowe*, the court conducted a thorough analysis of cases finding where crossing a lane line constituted probable cause for the stopping of the driver and cases finding that the crossing of a lane line did not constitute probable cause. After analyzing the law and applying it to Rowe's actions, the court "conclude[d] that [Rowe's] momentary crossing of the edge of the roadway and later touching of that line did not amount to an unsafe lane change or unsafe entry onto the roadway, conduct prohibited by § 21-309, and thus, cannot support the traffic stop in this case." *Id.* at 889.

Yet another case that is instructive is *Hernandez v. State*, 983 S.W.2d 867 (Tex. Ct. App. 1998), in which the court construed the meaning of Tex. Transp. Code § 545.060 (West 1997). Section 545.060 is similar to S.C. Code Ann. § 56-5-1900, and it states the following:

An operator on a roadway divided into two or more clearly marked lanes for traffic: (1) shall drive as nearly as practical entirely within a single lane; and (2) may not move from the lane unless that movement can be made safely.

Tex. Transp. Code § 545.060 (a) (West 1997).

In *Hernandez*, Officer Combs was traveling behind Hernandez and observed Hernandez swerve left and saw his left wheels cross into the second lane by about 18 to 24 inches. After stopping Hernandez, Officer Combs conducted a series of field sobriety tests on Hernandez. Subsequently, Officer Combs arrested Hernandez for driving while intoxicated because he failed the field sobriety tests.

During the trial, Hernandez filed a motion to suppress on the ground that Officer Combs did not have proper grounds to stop him. In addressing the issue of whether Hernandez violated section 545.060, the court reviewed the legislative history of the section. After reviewing the legislative history, the court stated that “the statutory language shows a legislative intent that a violation of section 545.060 occurs only when a vehicle fails to stay within its lane *and* such movement is not safe or is not made safely.” *Hernandez*, 983 S.W.2d at 871. After reviewing the facts of Hernandez’s driving, the court held that Officer Combs had no authority to stop Hernandez because there was no evidence that his crossing the lane line was unsafe. Therefore, the court reversed Hernandez’s conviction.

In addition to the cases discussed above, many other courts have held that a driver's minor crossing of a lane line or a fog line do not amount to traffic infractions. *See, e.g., United States v. Colin*, 314 F.3d 439 (9th Cir. 2002)(touching fog line and solid yellow painted line for approximately 10 seconds on two occasions did not violate Cal. Veh. Code § 21658 (West 2000) which requires vehicles remain as nearly as practical within a single lane); *United States v. Freeman*, 209 F.3d 464, 466 (6th Cir. 2000)(“[w]e cannot . . . agree that one isolated incident of a large motor home partially weaving into the emergency lane for a few feet and an instant in time constitutes a failure to keep the vehicle within a single lane ‘as nearly as practicable’”); *United States v. Smith*, 799 F.2d 704 (11th Cir. 1986) (stop invalid under Florida law where car's right wheels crossed over white line about six inches into emergency lane and where car weaved slightly within its own lane); *United States v. Gastellum*, 927 F.Supp.1386 (D.Colo. 1996) (invalid stop where officers had observed vehicle weave once approximately one to three feet over right-hand shoulder white solid line for only a moment); *State v. Livingston*, 75 P.3d 1103, 1106 (Ariz. Ct. App. 2003) (holding that identical statutory language found in S.C. Code Ann. § 56-5-1900(a) (2006) demonstrates an express legislative intent to avoid penalizing brief, momentary, and minor deviations outside the marked lines); *Crooks v. Florida*, 710 So.2d 1041, 1042 – 43 (Fla. Dist. Ct. App. 1998) (no violation of statute when driver crossed edge line three times); *State v. Caron*, 534 A.2d 978 (Me. 1987) (“A vehicle's brief, one time straddling of the center line of an undivided highway is a common occurrence and, in the absence of oncoming or passing traffic, without erratic operation or other unusual circumstances, does not justify an intrusive stop by a police officer. Otherwise, we would sanction stops on mere hunch or speculation. The fourth

amendment to the United States Constitution and article I, section 5 of the Maine Constitution require more.”); *State v. Lafferty*, 967 P.2d 363 (Mont. 1998) (stating that the defendant did not violate Montana’s traffic laws when the evidence showed that “[s]he merely crossed onto and barely over the fog line on the far right side of the right traffic lane in which she was traveling”); *Salter v. North Dakota Dept. of Transportation*, 505 N.W.2d 111, 113 (1993) (driver weaved slightly within own lane while traveling 30-35 in a 50 zone; “The facts in this record suggest a mere hunch of illegal activity . . .”).

Finally, in the case of *State v. Tarvin*, 972 S.W. 2d 910 (Tex. Ct. App. 1998), the same language requiring safe lane travel was reviewed by the Texas Court of Appeals. A police officer observed Tarvin drift to the right side of his lane and “go over” the solid white fog line on two or three occasions. *Id.* at 911. Officer Hill activated overhead lights and initiated a traffic stop for a lane travel violation. The trial court found that Tarvin did not violate the statute. The appellate court approved the lower court’s ruling, finding there was no evidence that the defendant’s driving was unsafe as he did not enter another lane of traffic and his driving was not otherwise accompanied by any other traffic infractions such as speeding. The appellate court stated “[w]e do not find that Tarvin’s driving provided a reasonable suspicion of criminal activity.” *Id.* at 912.

In this case, Trooper Horne’s testimony and incident report indicates that he observed Appellant drive on but not cross the center line or enter the lane of oncoming traffic. Significantly, the testimony and incident report does not show that Appellant’s alleged lane violation interfered with any other traffic or caused any safety problems for other drivers. Assuming that Appellant did cross the center line or weave within his lane, there is no evidence that Appellant failed to comply with S.C. Code Ann. § 56-5-

1900(a) (2006) because any lane change was done with safety. *See Hernandez*, 983 S.W.2d at 871 (stating that “the statutory language shows a legislative intent that a violation of section 545.060 occurs only when a vehicle fails to stay within its lane *and* such movement is not safe or is not made safely”). Further, as discussed above and in accord with holdings in other jurisdiction, the mere driving on the center line should not be deemed a *per se* violation of S.C. Code Ann. § 56-5-1900(a) (2006). Therefore, the Court should find that Trooper Horne did not have reasonable suspicion to stop Appellant because he did not violate S.C. Code Ann. § 56-5-1900(a) (2006).

CONCLUSION

Based upon the foregoing, this Court should reverse the decision of the trial court refusing to dismiss the charge against the Defendant based upon an unlawful stop. Appellant acknowledges that other jurisdictions have taken contrary positions on this issue. However, Appellant urges this Court to adopt the position of the courts cited herein and protect the citizens of South Carolina from impermissible seizures and invasions of privacy.

Respectfully Submitted,

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Union County

Honorable James C. Williams, Circuit Court Judge

Honorable Lee S. Alford, Circuit Court Judge

THE STATE

Respondent

AGENT HOWARD VINSON

Appellant

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err when it denied Appellant's motion to suppress and/or dismiss when probable cause existed to support the stop for a traffic violation for failing to maintain a single lane and, alternatively, when the officer who conducted the stop had reasonable, articulable suspicion that Appellant committed a traffic violation or was operating the vehicle under the influence of alcohol?

STATEMENT OF THE CASE

Appellant was indicted for driving while under the influence of alcohol and/or drugs more than first offense during the April 2009 term of the Union County Court of General Sessions. (2009-GS-44-0343). A pretrial hearing on Appellant's motion to dismiss was held on October 13, 2009 before the Honorable James C. Williams. Judge Williams denied Appellant's motion and, on November 14, 2009, Appellant proceeded to trial before the Honorable Lee S. Alford, and a jury. Appellant was found guilty as charged and was sentenced by Judge Alford to confinement for a period of one year and a fine of \$2100.00 suspended upon the service of five days and payment of \$1600.00. This appeal follows.

ARGUMENT

Did the trial court err when it denied Appellant's motion to suppress and/or dismiss when probable cause existed to support the stop for a traffic violation for failing to maintain a single lane and, alternatively, when the officer who conducted the stop had reasonable, articulable suspicion that Appellant committed a traffic violation or was operating the vehicle under the influence of alcohol?

Appellant was charged with driving under the influence, second offense. (ROA. p. 2, lines 1 - 3). Prior to trial, Appellant moved to dismiss the charge on the ground the trooper who initiated the traffic stop of Appellant's vehicle lacked probable cause or reasonable suspicion to stop him for a lane violation because Appellant's vehicle was traveling on the center line of the road and did not cross into the left lane. (ROA. p. 4, line 12 - p. 5, line 21; p. 6, lines 1 - 10; p. 6 line 17 - p. 9, line 19). Appellant argued the case should be dismissed "based upon the unreasonable stop, search and seizure" (ROA. p. 4, line 17 - p. 9, line 19). A pretrial hearing was held respecting the motion.

At the pretrial motion hearing, Highway Patrol Trooper Horne testified that he has ten (10) years experience as a state trooper and was traveling in his patrol car on Highway 215 in Union County on Saturday, February 7, 2009 at 3:00 a.m. (ROA. p. 10, line 19 - p. 11, line 19; p. 12, lines 8-9; p. 19, lines 9 - 22). Horne described the highway as a two-lane roadway with each lane having its own yellow lane line – one for the northbound lane and one for the southbound lane-designated to indicate that no passing was allowed. (ROA. p. 13, line 4 - p. 14, line 3; p. 16, lines 14 - 20). Horne stated it was not necessary to cross both yellow lines to be driving left of center because both lanes had yellow lines marking the lane boundaries for the

individual lanes (ROA. p. 13, line 16 - p. 14, line 3). Horne stated that he was traveling behind Appellant's vehicle when he observed the vehicle drift into the center of the road between the two yellow lane lines. (ROA. p. 11, lines 10 - 17; p. 12, lines 1 - 3; p. 15, lines 6 - 9; p. 17, lines 8 - 17). Horne confirmed that Appellant's vehicle "crossed over the yellow line that was on the other side of the road." (ROA p. 14, lines 4 - 6). Horne stated Appellant traveled over "into the center between the two yellow lines" dividing the opposing lanes of traffic of this two-lane road and that Appellant crossed over the yellow line that was on the other side of the road. (ROA. p. 10, line 18 - p. 11, line 17; p. 14, lines 4 - 6). He testified that Appellant was "just drifting back and forth over into it." (ROA. p. 13, lines 11 - 15). He stated that Appellant did not have to cross both yellow lines to be driving left of his center line because each lane was marked with a yellow center line. (ROA. p. 13, line 11- p. 14, line 3). He also testified that when Appellant crossed the yellow line in his lane, Horne activated the video camera in his patrol car but did not record a violation because he very soon thereafter stopped the vehicle as it approached a more hazardous, populated area. (ROA. p. 11, line 10 - p. 12, line 25). Horne observed the vehicle for a total of approximately two-tenths of a mile and stopped the vehicle because Appellant was under suspicion for driving under the influence. (ROA. p. 12, lines 3 - 25). Horne testified that he felt he had reasonable suspicion of intoxication to stop the vehicle based upon the erratic driving, the fact that the incident occurred at 3:00 a.m. on a Saturday morning and that no other vehicles were in the area. (ROA. p. 13, lines 1 - 10; p. 19, lines 9 - 22; p. 19, lines 9 - 24). Horne stated reasonable suspicion also arose based upon, his experience and statistics in DUI intervention. (ROA. p. 13, lines 1 - 10). Horne testified that Appellant's crossing over his yellow lane line was a violation of the law or, alternatively, constituted reasonable suspicion to make a traffic

stop. (ROA. p. 14, lines 4 - 11). The incident report prepared by Horne indicates Appellant's vehicle was driving on the center line. (ROA. p. 16, lines 21 - 25; SROA. P. 51 [incident report]). Horne admitted that from his vantage point, he did not observe Appellant cross completely into the opposing lane but did see that Appellant was driving in the middle of the two opposing lane lines. (ROA p. 17, lines 8 - 17; p. 18, line 19 - p. 19, line 1).

At the conclusion of the hearing, Appellant argued to the trial court that Horne lacked probable cause or reasonable suspicion to stop the vehicle because a single, brief instance of driving on the center of the road between the two lines dividing the opposing lanes did not constitute a violation of the statute requiring him to drive within a single lane. (ROA. p.21; line 19- p. 23, line 3; ROA. p. 45, line 6 - p. 46, line 11). The trial court ruled the governing statute providing that a vehicle shall be operated as nearly as practicable within a single lane allows for divergence only when an obstruction on the road or some other condition makes it impossible to stay within the lane but does not allow for drifting in and out of the required lane of travel at the discretion of the driver. The court concluded that a traffic violation occurred when Appellant crossed the yellow line for his lane and traveled between the two opposing lanes lines without a roadway obstruction or other impediment and that the officer possessed reasonable, articulable suspicion to initiate the traffic stop. The Appellant's motion was denied and that matter proceeded to trial. (ROA. p. 24, line 10 - p. 27, line 22).

At trial, Trooper Horne testified that he joined the Highway Patrol in 2000 and received training in DUI detection (ROA. p. 31, line 23; p. 32, line 12). He testified that while traveling on Route 215 on February 7, he observed Appellant drift over onto the center line (ROA. p. 32, line 16; p. 33, line 3; p. 41, line 20-25). Horne initiated a stop, approached the car and requested

Appellant's license and registration (ROA. p. 34, line 6-9). Appellant's fumbling caused Horne to lean over into the car at which time Horne detected the odor of alcohol and observed Appellant's bloodshot eyes (ROA. p. 34, line 8-13; p. 42, line 17-23). Upon being questioned, Appellant denied he had anything to drink (ROA. p. 34, line 14-15). Horne asked Appellant to step out of the vehicle, and Appellant admitted he consumed "four or five" an hour ago. (ROA. p. 34, line 25; p. 35, line 4; p. 38, line 1-3). Two field sobriety tests were administered and Appellant failed both. (ROA. p. 35, line 5-8; p. 36, line 4; p. 37, line 17). Appellant was also unsteady on his feet. (ROA. p. 37, line 8-15; p. 43, line 5-21; p. 44, line 14-19). A Breathalyzer test was administered and Appellant registered a reading of .14 percent. (ROA. p. 39, line 11-24).

Appellant testified that he consumed two beers per hour between 10:00 P.M. and 2:00 A.M. (ROA. p. 47, line 1-25; p. 49, line 22-24). He stated that he was pulled over on his way home and was asked to step out of his vehicle. (ROA. p. 48, line 1-5). Appellant explained that he had no experience in walking heel-to-toe (ROA. p. 48, line 6-21). He admitted he initially denied that he consumed alcohol (ROA. p. 50, line 1-13).

Appellant asserts on appeal that the trial court's refusal of his pretrial motion ruling was erroneous and must be reversed. The State submits that Trooper Horne's stop was based upon an observed traffic violation, that the stop was based upon probable cause and constitutional on that ground, and that Appellant failed to establish the trial court erred in its ruling. Alternatively, the State asserts that the trooper had reasonable suspicion that Appellant committed a traffic offense and/or was engaged in the unlawful activity of driving under the influence and the stop was additionally proper for investigatory purposes. The conviction and sentence must be affirmed.

The appellate court sits to review errors of law in a criminal case. State v. Banda, 371

S.C. 245, 639 S.E.2d 36 (2006). The appellate court is bound by the trial court's factual findings unless the findings are clearly erroneous. Id. at 251, 639 S.E.2d at 39. In this appeal from a motion to suppress based upon Fourth Amendment grounds, the appellate standard of review is limited to determining whether any evidence supports the trial court's ruling. State v. Tindall, 388 S.C. 518, 698 S.E.2d 203(2010); State v. Missouri, 361 S.C. 107, 603 S.E.2d 594 (2004). "The appellate court will reverse only where there is clear error." State v. Rogers, 368 S.C. at 533, 629 S.E.2d at 681. "The 'clear error' standard means that an appellate court will not reverse a trial court's finding of fact simply because it would have decided the case differently." State v. Pichardo, 367 S.C. 84, 96, 623 S.E.2d 840, 846 (Ct.App. 2005).

The Fourth Amendment to the Constitution of the United States grants citizens the right to be secure against unreasonable search and seizure. U.S. Const. amend. IV; see also Art. I, section 10 of the South Carolina Constitution. A traffic stop constitutes a detention of the vehicle and its occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. State v. Rogers, 368 S.C. 529, 629 S.E.2d 679 (2006); see also Delaware v. Prouse, 440 U.S. 648 (1979). "Thus, an automobile stop is 'subject to the constitutional imperative that it not be 'unreasonable under the circumstances.'" State v. Pichardo, 367 S.C. at 97, 623 S.E.2d at 847, citing Whren v. United States, 517 U. S. 806 (1996). A traffic stop constitutes a Fourth Amendment seizure and must be justified by probable cause or by reasonable suspicion, based upon specific and articulable facts of criminal activity. See Berkemer v. McCarty, 468 U.S.420 (1984); Delaware v. Prouse, 440 U.S. 648 (1979); Terry v. Ohio, 392 U.S. 1 (1968); . "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." State v.

Williard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct. App. 2007); see also Whren v. United States, 517 U. S. 806 (1996); City of Orangeburg v. Carter, 303 S.C. 290, 400 S.E.2d 140 (1991); State v. Goodstein, 278 S.C. 125, 292 S.e.2d 791 (1982).

Also, “[o]ur courts have held that in South Carolina, an officer may stop and briefly detain the occupants of a car without treading on Fourth Amendment rights, even without probable cause to arrest, if the officer has a reasonable suspicion that the occupants are involved in criminal activity.” State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682; see also State v. Lesley, 327 S.C. 641, 486 S.E.2d 276 (1997); Knight v. State, 284 S.C. 138, 325 S.E.2d 535 (1985); see also State v. Butler, 343 S.C. 198,201, 539 S.E.2d 414, 416 (Ct. App. 2000), citing Whren v. U.S., 517 U.S. 806, 809. An officer “who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke that suspicion.” Id. at 534, 629 S.E.2d at 682. “‘Reasonable suspicion’ requires a ‘particularized and objective basis that would lead one to suspect another of criminal activity.’” State v. Rogers, 368 S.C. at 534, 629 S.E.2d at 682. The “suspicion must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” State v. Lesley, 326 S.C. 641, 643-44, 486 S.E.2d 276, 277 (1997), citing Terry v. Ohio, 392 U.S. 1 (1968). The totality of the circumstances must be taken into account in determining whether reasonable suspicion exists. Id. The assessment is based upon the officer’s actions in light of the facts and circumstances confronting the officer at the time and not the officer’s state of mind. Maryland v. Macon, 472 U.S. 463 (1985). Moreover, the officer’s continued questioning of a driver outside the scope of the initial traffic stop is permissible either

when the officer has a reasonable articulable suspicion of other illegal activity or when the stop has become consensual. State v. Picahardo, 367 S.C. 84, 623 S.E.2d 840. If the officer's suspicions are confirmed or further aroused, the stop may be prolonged and the scope enlarged. State v. Corley, 383 S.C. 232, 679 S.E.2d 187 (Ct. App. 2009).

Appellant asserts he was stopped for violating S.C. Code Ann. § 56-5-1900 which provides in pertinent part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven **as nearly as practicable** entirely within single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety. (Emphasis added).

Appellant contends that the traffic stop was illegal because the fact that he crossed over his lane line once was insubstantial and did not give rise to probable cause or reasonable suspicion that he violated the statute in view of the requirement that he drive entirely within a single lane only as nearly as practicable. The State disagrees.

The State submits that Appellant's conduct of crossing over his lane line and driving between the two center lines of the opposing lanes on the roadway in a "no passing" zone constituted a violation of the traffic statute in question and, therefore, gave rise to probable cause for the traffic stop. The trial court in this case properly concluded the words "as nearly as practicable" to mean that a driver may cross out of his single lane only when an obstruction, other impediment or exigent circumstance makes it impossible to travel in the single lane. While the term "practicable" is not defined by the statute, rules of statutory construction support the trial court's finding.

“The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.” City of Camden v. Brassell, 326 S.C. 556, 560, 486 S.E.2d 492, 494 (S.C. Ct. App. 1997) (citing Joint Legislative Comm. v. Huff, et al., 320 S.C. 241, 464 S.E.2d 324 (1995)). “All rules of statutory construction are subservient to the one that legislative intent must prevail if it reasonably can be discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.” Brassell, 326 S.C. at 560, 486 S.E.2d at 494 (citing Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994)). In determining the meaning of a statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Ry. Co. v. S.C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). When the terms of a particular statute are clear and unambiguous, the literal meaning should be applied. Duke Power Co. v. S.C. Tax Comm., 292 S.C. 64, 354 S.E.2d 902 (1987).

The word “practicable” is defined by Black’s Law Dictionary as “reasonably capable of being accomplished, feasible.” Black’s Law Dictionary (9th ed. 2009). Our Supreme Court has defined it in other contexts to mean “reasonably possible”; “that which is possible of reasonable performance”; “capable of and being done or performed.” Woody v. S.C. Power Co., 202 S.C. 73, 24, S.E.2d 121 (1943); Fort Sumter Hotel v. S.C. Tax Comm., 201 S.C. 50, 21 S.E.2d 393, 396 (1942). The State submits that, in context, the term “as nearly as practicable” means that a driver must remain in his single lane unless an exigent circumstance makes the operation of the vehicle in the single lane impossible. Other jurisdictions have construed this statutory term similarly. See People v. Smith, 665 N.E.2d 1215 (Ill. 1996); Texas Dep’t of Public Safety v. Chang, 994 S.W.2d

875 (Tex. 1999); see also State v. Hodge, 771 N.E.2d 331 (Ohio 2002), citing Miller v. State, 440 P.2d 840 (Wash 1968); Unverzagt v. Prester, 13 A.2d 46 (Pa. 1940); Beech Fork Coal Co. v. Pocahontas Corp., 152 S.E.785 (W.Va. 1930); People, ex rel. Williams v. Errant, 82 N.E.271 (1907). The trial court properly ruled that the legislature did not intend to punish a driver for failing to remain within a single lane where debris or other obstruction makes it unsafe or impossible to travel within the lane but, contrary to Appellant's argument, did not provide the driver with the option of staying within the lane or traveling outside the lane at the discretion of the driver. As recognized by the Ohio appellate court in State v. Hodge, 771 N.E.2d 331 , "[c]ommon sense dictates that the statute is designed to keep travelers, both in vehicles and pedestrians, safe. The logical conclusion is that the legislature intended only special circumstances to be valid reasons to leave a lane, not mere inattentiveness or carelessness. To believe that the statute was intended to allow motorists the option of when they will or will not abide by the lane requirement is simply not reasonable." 771 N.E.2d at 558.

This trial court's construction is consistent with other similar traffic statutes. S.C. Code Ann. § 56-5-1810 (2006) provides:

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic or **as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.** (Emphasis added).

S.C. Code Ann. § 56-5-1890 provides

(a) The Department of Transportation and local authorities may determine those portions of any highway under their respective jurisdictions where overtaking and passing or driving on the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible

to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

(b) Where signs or markings are in place to define a no-passing zone as set forth in subsection (a) no driver shall at any time drive on the left side of the roadway within such or on the left side of any pavement striping designed to mark such no-passing zone throughout its length. (Emphasis added).

Lastly, S.C. Code Ann. § 56-5-1920 states

Whenever any highway has been divided into two or more roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, **every vehicle shall be driven only upon the right-hand roadway unless directed or permitted to use another roadway by official traffic-control devices or police officers. No vehicle shall be driven over, across or within any such dividing space, barrier or section except through an opening** in such physical barrier or dividing section or space or at a crossover or intersection as established, unless specifically prohibited by public authority. For clarification, a left turn across a pointed median is authorized unless prohibited by an official traffic-control device. (Emphasis added).

In construing S.C. Code Ann. § 56-5-180, as set forth above, our supreme court ruled in State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978) that the defendant's arrest for a violation of a traffic statute requiring vehicles to be driven on the right half of the roadway was supported by probable cause for the stop when the officer followed the defendant for one mile and observed the defendant drive across the middle of a two-lane road. The construction Appellant urges this Court to adopt will lead to uncertainty in enforcement, is contrary to legislative intent, and conflicts with the interpretation previously announced by our supreme court concerning a similarly worded statute.

In this case, Appellant traveled outside the single, marked lane in which he was traveling and moved into the area between the two yellow lines designating the opposing lanes and indicating no passing is allowed. Appellant traveled outside of his marked lane when it was feasible or practicable to remain within the single lane in which he was traveling. In doing so,

Appellant committed a violation of the traffic statute for which he was legally stopped. Despite the numerous cases from other jurisdictions cited by Appellant in support of his argument that no traffic violation occurred, most of which concern violations for traveling over the line designating the shoulder of the road, our supreme court has considered the question in the context of a related statute and determined that failure to maintain a proper lane occurs from any violation. The trial court in this case properly ruled that the language of the statute directing a driver to operate his or her vehicle within a single lane of traffic as nearly as practicable only allows a driver to momentarily move outside a lane of traffic due to special circumstances such as obstruction of the lane, weather conditions or vehicle conditions. Otherwise, the driver must travel within one lane. In this case, Horne observed Appellant's failure to properly maintain a single lane and conducted a lawful traffic stop based upon probable cause Appellant committed a violation. See State v. Jihad, 347 S.C. 12, 553 S.E.2d 249 (2001).

Alternatively, the State submits that, even if Appellant did not violate the applicable traffic statute, Horne was justified in stopping the vehicle Appellant was driving based upon reasonable suspicion that Appellant was operating the vehicle in violation of the lane requirements or while under the influence. The record before this Court reflects that Horne observed Appellant failing to maintain his lane on an empty two lane road at 3:00 AM. on a Saturday morning with no apparent lane obstruction or lane impediment. The trooper in question had experience and training in the detection of alcohol enforcement matters. Based upon his experience and training, the time of morning, the nature of the empty highway, the day of the week involved, and the manner of Appellant's driving, the officer suspected Appellant was driving under the influence and stopped the vehicle for investigative purposes. Upon stopping the

vehicle and approaching Appellant for his driver's license, registration, and proof of insurance, the trooper noticed the odor of alcohol on or about Appellant. The trooper also observed that Appellant had bloodshot eyes and was fumbling for documents. Appellant initially denied that he had consumed alcohol but, thereafter, failed to satisfactorily perform field sobriety tests and ultimately admitted that he consumed a number of alcoholic beverages as recently as one hour prior to the stop. The trooper was justified in making the traffic stop and in extending the scope and duration of the stop based on the reasonable suspicion that Appellant was driving while under the influence.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

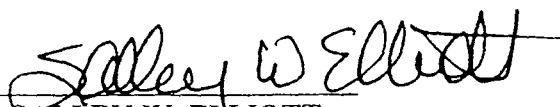
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