

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
COURT OF COMMON PLEAS

Letitia H. Verdin, Circuit Court Judge

Case No.: 2017-CP-39-00391

RECEIVED
JUL 27 2018
SC Court of Appeals

Zebbulin Alan Short.....Appellant,

v.

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

RECORD ON APPEAL

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP3900391

Zebbulin Alan Short

The State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
- ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
- ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☒ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
- ☒ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court: **This matter came before the Court on June 30, 2017. The Court carefully reviewed the briefs of both parties and considered the arguments presented in the courtroom. The Court finds that the Magistrate Court had jurisdiction to try Mr. Short for driving with an unlawful alcohol concentration (DUAC). Thus, the decision of the Magistrate Court is hereby affirmed.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge Letitia Verdin

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on _____, and a copy mailed first class or placed in the appropriate attorney's box on _____, to attorneys of record or to parties (when appearing pro se) as follows:

William Norman Epps III PO Box 2167 Anderson, SC 29622

Mitchell K. Byrd Sr. 114 Amber Drive Greenville, SC 29607

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter **Teresa Johnson**

Harold P Welborn, Jr. - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Pickens Common Pleas

Case Caption: Zebbulin Alan Short VS The State Of South Carolina

Case Number: 2017CP3900391

Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2017-08-01 15:19:15 page 3 of 3

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP3900391

Zebbulin Alan Short

The State Of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant

Submitted by:

☐ Self-Represented Litigant

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- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);

☐ Rule 43(k), SCRCP (Settled);

☐ Other: _____

☐ **ACTION STRICKEN (CHECK REASON):**

☐ Rule 40(j) SCRCP;

☐ Bankruptcy;

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed;

☐ Reversed;

☐ Remanded;

☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: **Appellant's Motion to Reconsider is denied.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

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Circuit Court Judge Letitia Verdin

Judge Code

Date



Pickens Common Pleas

Case Caption: Zebbulin Alan Short VS The State Of South Carolina

Case Number: 2017CP3900391

Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2017-08-24 11:36:22 page 3 of 3

For Clerk of Court Office Use Only

This judgment was entered on _____, and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

William Norman Epps III PO Box 2167 Anderson, SC 29622

Mitchell K. Byrd Sr. 114 Amber Drive Greenville, SC 29607

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Harold P Welborn, Jr. - Clerk of Court

Court Reporter:

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This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
PICKENS COUNTY

ZEBBULIN ALAN SHORT,

Defendant/Appellant,

vs.

THE STATE OF SOUTH CAROLINA,

Plaintiff/Respondent.

MOTION TO RECONSIDER

TICKET NO.: F838374

Case No.: 2017-CP-39-00391

PLEASE TAKE NOTICE that the undersigned attorney for the Defendant/Appellant, Zebbulin Alan Short will move before the Honorable Letitia H. Verdin within ten (10) days after service of the Motion or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend the Order on Appeal from a hearing held on June 30, 2017 and filed with the Pickens County Clerk of Court on August 3, 2017 and received by the Defendant/Appellant, Zebbulin Alan Short on August 3, 2017 in the following particulars: (1) that the Court failed to rule on the following exceptions:

1. That the Court erred in failing to grant a directed verdict on the charge of driving with an unlawful alcohol concentration on the grounds that the State failed to present sufficient independent evidence corroborating Defendant's extra-judicial statements to establish the *corpus delicti* of DUAC. Trooper Mayfield testified that he came upon a one car accident and Defendant was outside the vehicle on the side of the road talking to a tow truck company. Trooper Mayfield asked the Defendant if he had been drinking, to which Defendant replied, "Not enough to do that". The car had clipped a telephone poll and both air bags had deployed. The Defendant's wife was in the car during the accident but had been picked up by a third party and taken home prior to Trooper Mayfield arriving on the scene, approximately thirty to forty-five minutes after the accident. Trooper Mayfield was standing by the driver's side door of the automobile when he stated that there was blood on the air bag. Another Trooper went to Defendant's residence to check on his wife. Trooper Baldwin advised that she declined treatment but had a bloody nose or lip. No other statements were taken and Trooper Mayfield never spoke to the Defendant's wife or the third party who picked her up. He performed no tests or forensic tests on the air bags inside the vehicle and was never provided a key to the automobile by the Defendant. At the close of the State's case, the Defendant moved for a directed verdict arguing that the State failed to present sufficient independent evidence corroborating Defendant's extra-judicial statements to establish

the *corpus delicti* of DUAC, i.e., that Defendant was driving the car.

“It is well-settled law that a conviction cannot be had on the extrajudicial confessions of a defendant unless they are corroborated by proof aliunde of the corpus delicti.” *State v. Osborne*, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999) (footnote omitted). The corroboration rule applies to statements whether those statements are confessions or admissions. *Id.* at 177–78, 516 S.E.2d at 203–04. “[T]he corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extrajudicial statements and, together with such statements, permits a reasonable belief that the crime occurred.” *Id.* at 180, 516 S.E.2d at 205. Corroboration requires “substantial independent evidence,” which is sufficient “if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth.” *Id.* at 179, 516 S.E.2d at 204 (quoting *Opper v. United States*, 348 U.S. 84, 93, 75 S.Ct. 158, 99 L.Ed. 101 (1954)). *Id.* at 180, 516 S.E.2d at 205. See *State v. Russell*, 345 S.C. 128, 132–33, 546 S.E.2d 202, 204–05 (Ct. App. 2001).

The State argued that these line of cases had been overruled by *State v. Abraham*, 408 S.C. 589 (2014). That is not so. The law is well settled and *Abraham* held, “As our supreme court in *Osborne* clarified this state's law to be consistent with the rule outlined in *Opper*, we speculate that continued reference to the requirement that a defendant's extra-judicial statements must be corroborated by “proof aliunde of the corpus delicti” has caused confusion amongst the bench and bar. We anticipate that this confusion could be avoided by ceasing reference to “proof aliunde of the corpus delicti” and similar terms, and instead echoing the language in *Opper*, in that the State must “introduce substantial independent evidence which would tend to establish the trustworthiness of the statement.” *Opper*, 348 U.S. at 93, 75 S.Ct. 158. *Id.* at 593, 759 S.E.2d at 442.

As set forth herein, the State failed to introduce substantial independent evidence which would tend to establish the trustworthiness of the Defendant's statement.” *Opper*, 348 U.S. at 93, 75 S.Ct. 158. Therefore the Defendant/Appellant respectfully asks to reconsider and that his conviction be reversed.

2. The Court erred in failing to charge the jury the well settled law as set forth above in *Opper v. United States*, 348 U.S. 84, 93, 75 S.Ct. 158, 99 L.Ed. 101 (1954)) and the case law of this State. The Court refused to charge the jury this law stating that it would confusing to the jury. If there is any evidence to support a jury charge, the trial judge should grant the requested charge. *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law. *Clark*, 339 S.C. at 390, 529 S.E.2d at 539. To warrant a reversal, however, the error must result in prejudice to the party requesting the charge. *Id.* See *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

In this case the Defendant was prejudiced because the State emphasized greatly the Defendant's statement, “Not enough to do that”, when asked by Trooper Mayfield if he had been drinking. In fact, the State crafted it's closing argument around Defendant's statement, “Not enough to do what I did”. The failure of the Court to charge the jury was not harmless error and it

cannot be said beyond a reasonable doubt that the error complained of did not contribute to the verdict. Therefore the Defendant/Appellant respectfully asks that the Court reconsider and that his conviction be reversed and/or that a new trial be granted.

3. The Court erred in refusing to allow the Defendant to enter into evidence or cross examine the Trooper in regards to SLED's status records on DataMaster (BAC/DMT) Serial Number - 107607 that showed the DataMaster had an error or malfunction nine times between April 24, 2013 and May 28, 2013. The Defendant took the DataMaster on May 11, 2013. This document was electronically signed by Deborah H. Banks, Lieutenant, Supervisory Special Agent, Implied Consent Department and said document stated that this report represents true and correct copies of the original documents maintained by SLED in the normal course of business. Not only was this document a public record pursuant to Rule 803(8) SCRE, but also within the business records exception pursuant to Rule 803(8) SCRE. This document was also self authenticating pursuant to S.C. Code Ann. § 19-5-10, as amended. *See also* S.C. Code Ann. § 56-5-2954, as amended. This being a DUAC case, these documents were material to the defense and defense's case was materially impaired by the failure to cross examine the Trooper as to this document. Said documents should have been disclosed by the State pursuant to Rule 5, SCRCrimP and *Brady v. Maryland*, 373 U.S. 83 (1963) and as set forth above the Defendant was prejudiced and an evidentiary hearing should have been held. Therefore, the Defendant/Appellant respectfully asks that the Court reconsider and that his conviction be reversed and/or that a new trial be granted. *See State v. Landon*, 370 S.C. 103 (2006).

Based on the foregoing, the applicable statutory and case law of South Carolina and any briefs as may be presented, the Defendant/Appellant respectfully asks that the Court reconsider it's Order filed August 3, 2017 and that his conviction be reversed, set aside and/or that a new trial be granted.

Respectfully submitted

S/William N. Epps III
WILLIAM N. EPPS III
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230 W. Whitner Street
Post Office Box 2167
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ATTORNEY FOR THE
DEFENDANT/APPELLANT

August 13, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
PICKENS COUNTY

ZEBBULIN ALAN SHORT,

Defendant/Appellant,

vs.

THE STATE OF SOUTH CAROLINA,

Plaintiff/Respondent.

NOTICE OF APPEAL

TICKET NO.: F838374

CASE NO.: 2017-CP-39- _____

The Defendant/Appellant, Zebbulin Alan Short, hereby gives Notice of Appeal from his conviction for the charge of driving with an unlawful alcohol concentration first offense before the Honorable Michael A. Baker in the above action, from a jury trial held on March 15, 2017 and from an Order denying Motion for a New Trial, to the Court of Common Pleas in Pickens County.

This Notice of Appeal is made subsequent to the Ruling/Conviction of the Pickens County Magistrate Court Judge Michael A. Baker and Jury which was rendered on the 15th day of March, 2017 in the Pickens County Summary Court and from an Order denying Motion for a New Trial dated March 30, 2017.

The grounds for the Defendant's motion are set forth as follows:

1. The Defendant was found guilty by the jury of the charge of driving with an unlawful alcohol concentration first offense. The Defendant moved prior to the State's case-in-chief to dismiss the charge of driving with an unlawful alcohol concentration, specifically, S. C. Code Ann. § 56-5-2933 because the Defendant was never charged with the offense of driving with an unlawful alcohol concentration by way of uniform traffic ticket or arrest warrant and therefore the Magistrate Court did not have jurisdiction to commence proceedings on said charge. *See State v. Ramsey*, 398 S.C. 275 (2012). The Defendant was charged with driving under the influence, ticket number F838374. Trooper Mayfield testified that he never charged the Defendant with the offense of driving with an unlawful alcohol concentration.

S. C. Code Ann. § 56-5-2933(J) states in part.... “At trial, a person **charged with a violation of this section** is allowed to present evidence relating to the factors enumerated above and the totality of the evidence produced at trial may be used by the jury to determine guilt or innocence. **A person charged with a violation of this section** must be given notice of intent to prosecute under the provisions of this section at least thirty calendar days before his trial date.” *Id.* As set forth above, the Defendant was never charged with section 56-5-2933. The Statute is clear and unambiguous.

State v. Leopard, 349 S.C. 467, 470–71, 563 S.E.2d 342, 344–45 (Ct. App. 2002) holds:

The basic principles of statutory construction as applied to criminal statutes have been clearly and repeatedly set forth by our supreme court and by this court.

It is well established that in interpreting a statute, the court's primary function is to ascertain the intention of the legislature. When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning. Furthermore, in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.

State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) (citations omitted); *see also Kerr v. State*, 345 S.C. 183, 188, 547 S.E.2d 494, 496–97 (2001); *State v. Johnson*, 347 S.C. 67, 70, 552 S.E.2d 339, 340 (Ct.App.2001); *accord Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001); *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). “ ‘All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.’ ” *State v. Baucom*, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000) (quoting *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)).

If the legislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute. When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.

While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that this Court can completely rewrite a plain statute.

Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (citations omitted). “ ‘What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.’ ” *Wade v. State*, Op. No. 25409, 348 S.C. 255, 559 S.E.2d 843 (2002) (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)); *accord Rainey* at 85, 533 S.E.2d at 581. *Id.* at 563, S.E.2d at 344–45.

As set forth above, the Magistrate Court did not have jurisdiction to commence proceedings on the charge of driving with an unlawful alcohol concentration and as such, the Defendant/Appellant respectfully asks that his conviction be reversed.

2. That the Court erred in failing to grant a directed verdict on the charge of driving with an unlawful alcohol concentration on the grounds that the State failed to present sufficient independent evidence corroborating Defendant’s extra-judicial statements to establish the *corpus delicti* of DUAC. Trooper Mayfield testified that he came upon a one car accident and Defendant was outside the vehicle on the side of the road talking to a tow truck company. Trooper Mayfield asked the Defendant if he had been drinking, to which Defendant replied, “Not enough to do that”. The car had clipped a telephone poll and both air bags had deployed. The Defendant’s wife was in the car during the accident but had been picked up by a third party and taken home prior to Trooper Mayfield arriving on the scene, approximately thirty to forty-five minutes after the accident. Trooper Mayfield was standing by the driver’s side door of the automobile when he stated that there was blood on the air bag. Another Trooper went to Defendant’s residence to check on his wife. Trooper Baldwin advised that she declined treatment but had a bloody nose or lip. No other statements were taken and Trooper Mayfield never spoke to the Defendant’s wife or the third party who picked her up. He performed no tests or forensic tests on the air bags inside the vehicle and was never provided a key to the automobile by the Defendant. At the close of the State’s case, the Defendant moved for a directed verdict arguing that the State failed to present sufficient independent evidence corroborating Defendant’s extra-judicial statements to establish the *corpus delicti* of DUAC, i.e., that Defendant was driving the car.

“It is well-settled law that a conviction cannot be had on the extrajudicial confessions of a defendant unless they are corroborated by proof aliunde of the corpus delicti.” *State v. Osborne*, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999) (footnote omitted). The corroboration rule applies to statements whether those statements are confessions or admissions. *Id.* at 177–78, 516 S.E.2d at 203–04. “[T]he corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant’s extrajudicial statements and, together with such statements, permits a reasonable belief that the crime occurred.” *Id.* at 180, 516 S.E.2d at 205. Corroboration requires “substantial

independent evidence,” which is sufficient “if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth.” *Id.* at 179, 516 S.E.2d at 204 (quoting *Opfer v. United States*, 348 U.S. 84, 93, 75 S.Ct. 158, 99 L.Ed. 101 (1954)). *Id.* at 180, 516 S.E.2d at 205. See *State v. Russell*, 345 S.C. 128, 132–33, 546 S.E.2d 202, 204–05 (Ct. App. 2001).

The State argued that these line of cases had been overruled by *State v. Abraham*, 408 S.C. 589 (2014). That is not so. The law is well settled and *Abraham* held, “As our supreme court in *Osborne* clarified this state's law to be consistent with the rule outlined in *Opfer*, we speculate that continued reference to the requirement that a defendant's extra-judicial statements must be corroborated by “proof aliunde of the corpus delicti ” has caused confusion amongst the bench and bar. We anticipate that this confusion could be avoided by ceasing reference to “proof aliunde of the corpus delicti ” and similar terms, and instead echoing the language in *Opfer*, in that the State must “introduce substantial independent evidence which would tend to establish the trustworthiness of the statement.” *Opfer*, 348 U.S. at 93, 75 S.Ct. 158. *Id.* at 593, 759 S.E.2d at 442.

As set forth herein, the State failed to introduce substantial independent evidence which would tend to establish the trustworthiness of the Defendant's statement.” *Opfer*, 348 U.S. at 93, 75 S.Ct. 158. Therefore the Defendant/Appellant respectfully asks that his conviction be reversed.

3. The Court erred in failing to charge the jury the well settled law as set forth above in *Opfer v. United States*, 348 U.S. 84, 93, 75 S.Ct. 158, 99 L.Ed. 101 (1954)) and the case law of this State. The Court refused to charge the jury this law stating that it would confusing to the jury. If there is any evidence to support a jury charge, the trial judge should grant the requested charge. *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law. *Clark*, 339 S.C. at 390, 529 S.E.2d at 539. To warrant a reversal, however, the error must result in prejudice to the party requesting the charge. *Id.* See *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

In this case the Defendant was prejudiced because the State emphasized greatly the Defendant's statement, “Not enough to do that”, when asked by Trooper Mayfield if he had been drinking. The failure of the Court to charge the jury was not harmless error and it cannot be said beyond a reasonable doubt that the error complained of did not contribute to the verdict. Therefore the Defendant/Appellant respectfully asks that his conviction be reversed and/or that a new trial be granted.

4. The Court erred in refusing to allow the Defendant to enter into evidence or cross examine the Trooper in regards to SLED's status records on DataMaster

(BAC/DMT) Serial Number - 107607 that showed the DataMaster had an error or malfunction nine times between April 24, 2013 and May 28, 2013. The Defendant took the DataMaster on May 11, 2013. This document was electronically signed by Deborah H. Banks, Lieutenant, Supervisory Special Agent, Implied Consent Department and said document stated that this report represents true and correct copies of the original documents maintained by SLED in the normal course of business. Not only was this document a public record pursuant to Rule 803(8) SCRE, but also within the business records exception pursuant to Rule 803(8) SCRE. This document was also self authenticating pursuant to S.C. Code Ann. § 19-5-10, as amended. *See also* S.C. Code Ann. § 56-5-2954, as amended. This being a DUAC case, these documents were material to the defense and defense's case was materially impaired by the failure to cross examine the Trooper as to this document. Said documents should have been disclosed by the State pursuant to Rule 5, SCRCrimP and *Brady v. Maryland*, 373 U.S. 83 (1963) and as set forth above the Defendant was prejudiced and an evidentiary hearing should have been held. Therefore, the Defendant/Appellant respectfully asks that his conviction be reversed and/or that a new trial be granted. *See State v. Landon*, 370 S.C. 103 (2006).

Based on the foregoing, the applicable statutory and case law of South Carolina and any briefs as may be presented, the Defendant/Appellant respectfully asks that his conviction be reversed, set aside and/or that a new trial be granted..

Respectfully submitted

S/William N. Epps III
 WILLIAM N. EPPS III
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 ATTORNEY FOR THE
 DEFENDANT/APPELLANT

April 3, 2017

STATE OF SOUTH CAROLINA
PICKENS COUNTY SUMMARY
COURT

TICKET NO: F838374

THE STATE OF SOUTH CAROLINA
Plaintiff

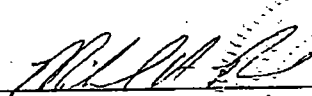
-VS-

MOTION FOR NEW TRIAL
RULING

ZEBULIN ALAN SHORT
Defendant

After reviewing the motion for a new trial, the answer provided by the state, and the record in its entirety, the court respectfully denies the motion for a new trial; as all arguments at issue were heard and ruled on by this judge on the date of the trial. The sentence of 30 days suspended upon payment of fine in the amount of \$1,017.00 in the form of a scheduled time payment, remains as issued.

IT IS SO ORDERED this 30th day of March, 2017.


The Honorable Michael A. Baker,
Pickens County Magistrate Judge

Liberty, South Carolina

CERTIFIED COPY
PICKENS COUNTY MAGISTRATE

STATE OF SOUTH CAROLINA
COUNTY OF Pickens

IN THE COURT OF COMMON PLEAS

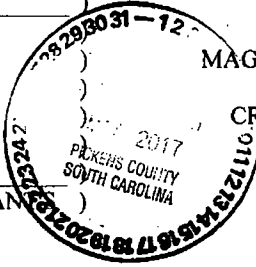
STATE

MAGISTRATE'S RETURN
OF
CRIMINAL APPEAL

VS

Zebbulin Alan Short

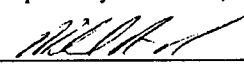
DEFENDANT



The Attached Papers Comprise the Court Record Which Is Transmitted to the Circuit Court Pursuant to Section 18-3-40 SC Code. Attached are copies of the items which are checked.

- ☒ 1. ☐ Warrant / Or ☒ Ticket. Number: F838374
☒ 2. Pretrial Motions and Responses:
☐ A) Rule 5 / Brady
☒ B) Motion to Exclude Evidence And/or Testimony
☒ C) Other Motions.
☒ 3. Jury List and Jury Selection Record of Strikes, Cause and /or Peremptory.
☒ 4. Voir Dire of Jury.
☒ 5. Trial Transcript: ☐ Judge's Trial Notes Typed, or ☐ Transcript of Recording Prepared by Appellant and Certified Correct by Magistrate.
☒ 6. List of witnesses and summary of their testimony.
☒ 7. List of motions, a summary of parties' positions, and court ruling.
☒ 8. List of items offered into evidence, a summary of objections and the court's ruling.
☒ 9. List of Exhibits Admitted and Copies.
☒ 10. Jury Verdict.
☒ 12. New Trial Motion Received (Date March 28, 2017 Time 12:00).
☐ 13. Notice of Hearing on Motion.
☒ 14. Notice of Denial of Motion.
☒ 11. Notice of Intent to Appeal.
☒ 12. Other Transcript provided by the court consists of 3 recording tracks for a total of just under 5 hours of audio recording

Respectfully Submitted,


Magistrate

CITY Pickens

STATE SC

May 1, 2017 

STATE OF SOUTH CAROLINA)
COUNTY OF Pickens)

IN THE CIRCUIT COURT

STATE)

MAGISTRATE'S RETURN
OF
CRIMINAL APPEAL

VS)

Zebbulin Alan Short)

DEFENDANT'S)
(ADDRESS))

This matter is on appeal from the Magistrate Court of Pickens County,
South Carolina, the Honorable, Michael A. Baker, Presiding Judge

The defendant, Zebbulin Alan Short was charged with violating
S. C. Code Ann. § 56-5-2930 which is commonly referred to as
DUI, on May 11, 2013.

This matter was heard in a Jury trial on March 15, 2017 as DUAC >.08% and the
Notice of Appeal was filed on April 6, 2017 The proceedings were
(check appropriate box) ☒ recorded electronically. ☐ recorded by a court reporter.
☐ recorded in writing by the judge.

The jury list was prepared pursuant to S. C. Code Ann. (Check appropriate Box)
☒ § 22-2-80. Selection of jury list for a single trial, ☐ § 22-2-90. Selection of jury list for
scheduled terms of jury trials, and the Defendant and the State was given an opportunity to
exercise peremptory challenges on 3/13/2017

The State called the following witnesses:

- | | |
|--|-----------|
| 1. <u>Trooper Joey Baldwin</u> | 6. _____ |
| 2. <u>Trooper Brian Mayfield (Retired)</u> | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

A summary of their testimony is attached.

The Defendant called the following witnesses:

- | | |
|-------------------------------|-----------|
| 1. <u>No witnesses called</u> | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

A summary of their testimony is attached.

The State made the following Motions:

- | | |
|--------------------|-----------|
| 1. No motions made | 6. _____ |
| 2. _____ | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

A summary of the State's and Defendant's position on each motion and the Court's ruling is attached.

The Defendant made the following Motions:

- | | |
|---|-----------|
| 1. Pre-trial motion to dismiss stating the defendant was never charged with the crime of DUAC 56-5-2933. This motion begins immediately in audio track 1 within the attached transcript (CD) ruling made at approximately 23:00 minutes into recording. | 6. _____ |
| 2. Pre-trial motion to suppress a portion of the roadside video starts at 23:00 minutes and ends with ruling at 24:30 minutes in track 1. | 7. _____ |
| 3. Directed verdict motion on the grounds the state failed to provide sufficient independent evidence corroborating defendant's extra judicial statements to establish corpus delicti of DUAC motion starts in Track 3 at 42:22 and ends with ruling at approximately 59:96 | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

A summary of the Defendant's and State's position on each motion and the Court's ruling is attached.

The State offered the following items into evidence:

- | | |
|--|---|
| 1. A) Road side video of FST's and arrest | 6. Pre-trial Evidence: A) Notice to Defendant of intent to proceed as DUAC |
| 2. B) Advisement of Implied Consent Rights | 7. B) Appeal verdict for Greenville County appeal 2013CP2301642 heard by the Honorable Judge Stilwell |
| 3. C) SLED Breath Alcohol Analysis Test Report | 8. _____ |
| 4. D) Breath Analysis Video | 9. _____ |
| 5. _____ | 10. _____ |

The Defendant raised the following objections to the items that the State sought to introduce into evidence:

- | | |
|---|----------|
| 1. States Exhibit A was without objection(Track 2 starts at 3:20 minutes) | 6. _____ |
| 2. States Exhibit B was without objection (Track 2 starts at 50:46 minutes) | 7. _____ |
| 3. Defense objected to States Exhibit C | 8. _____ |

claiming proper foundation had not been laid. Objection was overruled. (Track 2 starts at 53:55)

4. States Exhibit D was without objection(Track 2 starts at 56:31) 9.
5. 10.

A summary of the Defendant's and State's position and the Court's ruling on the objection is attached.

The Defendant offered the following items into evidence:

- | | |
|---|-----|
| 1. The defense did not offer any evidence | 6. |
| 2. | 7. |
| 3. | 8. |
| 4. | 9. |
| 5. | 10. |

The State raised the following objections to the items that the Defendant sought to introduce into evidence:

- | | |
|----|-----|
| 1. | 6. |
| 2. | 7. |
| 3. | 8. |
| 4. | 9. |
| 5. | 10. |

A summary of the State's and Defendant's position and the Court's ruling on the objection is attached.

The Defendant was found guilty of violating S. C. Code Ann. § 56-5-2933, commonly known as DUAC >.08% and the Court imposed the following sentence: 30 days suspended upon payment of a fine in the amount of \$1,017.00 in the form of a Scheduled Time Payment.

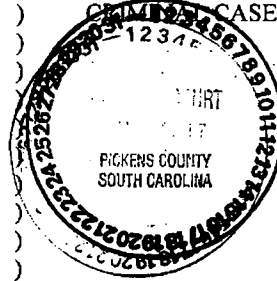
IN THE MAGISTRATE'S COURT

CASE NO.: F838374

STATE OF SOUTH CAROLINA

vs.

ZEBBULIN ALAN SHORT,



APPEAL RETURN
CASE SUMMARY

Incident summary

On May 11, 2013 at approximately 3:00 a.m. Trooper Brian Mayfield responded, or happened upon (Trooper could not recall which), a one car accident on Calhoun Memorial Highway (Hwy. 123) at which time he began an investigation into the cause of the accident. Trooper Mayfield met with the defendant Mr. Short who advised he was the driver of the vehicle and was standing by waiting for a tow truck. Mr. Short advised he must have fallen asleep at the wheel causing him to hit a telephone pole. Mr. Short stated his wife, who had already left the scene with a third party, was a passenger in the vehicle. Trooper Mayfield inquired as to whether Mr. Short had consumed any alcoholic beverages at which time Mr. Short state he had. Mr. Short who was very cooperative explained he and his wife had been to several establishments in Clemson for a graduation party. Trooper Mayfield asked Mr. Short to perform a series of Field Sobriety Tests, which Mr. Short was unable to pass. Trooper Mayfield placed Mr. Short under arrest and Mirandized him.

Trooper Mayfield requested Trooper Baldwin, who was not on scene, to do a well-being check on Mr. Short's wife, which was completed. Mr. Short was taken to the Pickens County Detention Facility where he provided a voluntary breath sample, which registered as a .09%.

This case was continued several times under a different judge at the request of both the state and the defense. This jury trial date was a date set certain due to the age of the case. The state notified the defense of their intent to proceed as a DUAC on or about September 15, 2015.

Response to appeal

1) Response to appeal paragraph 1.

Defense motion to dismiss based on the state's ability to proceed with this jury trial under the charge of DUAC 56-5-2933, as the UTT was issued as DUI 56-5-2930. The defense made the argument that the defendant had to be charged as DUAC in order to proceed, citing State Vs. Ramsey. The State contended they only needed to charge the defendant with 56-5-2930 (DUI), and that notice of intent to proceed as a DUAC 56-5-2933(J)(4) be given to the defendant within 30 days of trial thereby adhering to the statute. The state provided an appeal ruling pertaining to this same issue heard by the Honorable Judge Stillwell stating notice was all that was needed to proceed as DUAC, when originally charged as a DUI. The state submitted both their notice of intent to proceed as DUAC (pre-trial evidence marked (A)) as well as Judge Stillwell's ruling during appeal review (pre-trial evidence marked as (B)). This argument begins on recording track (1) and ends with my ruling at approximately 23:00 minutes in to the recording.

2) The next motion made by the defendant was to redact a portion of the roadside video reference a line of questioning between Trooper Mayfield and the defendant in regards to drinking during the night. The Defense made the argument that because the defendant had not been Mirandized then the testimony should be thrown out. The State argued the trooper was simply investigating a traffic accident and the defendant was not under custodial arrest during the line of questioning stating case law (State Vs. Peel, & State Vs.

Morgan) Argument began on track (1) at approximately 24:30 Ruling made at 29:15.

3) Response to appeal paragraph 2.

A directed verdict motion was made by the defense stating the extra judicial confession given by the defendant to driving the vehicle was not enough to proceed with a verdict. The state argued the confession, along with the totality of the circumstances, i.e. the wrecked vehicle, defendant's roadside omission to driving, and his account of the wreck was enough to put the decision before the jury. The court overruled the directed verdict motion. This argument begins on track 3 at 42:22 minutes and ends with my ruling at approximately 59:56.

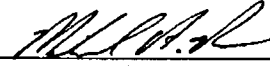
4) Response to appeal paragraph 3.

The defense counsel is inaccurate in his portrayal of the jury charge discussion. The court provided both sides with its standard statutory charge for DUAC and made sure both sides were satisfied with the courts charge after revisions were requested by the defense and offered by the state. Only after charging the jury and releasing them to their jury room prior to deliberations did the defense object to the courts charge. The defense withdrew his objection when the court offered to further charge the jury as requested. This objection begins on Track (3) at 01:32:13 and ends with objection withdrawal at 01:41:45. The entirety of the 56-5-2933(I) & (J) ended up being read to the jury to respond to a juror question, which is a part of the record as well. The court was open to any charge that could be agreed upon by both the state and defense. The state never objected to any of the proposed charges.

5) Response to appeal paragraph 4.

The State objected to the Defenses' attempt to cross examine the witness (Trooper Mayfield) with S.L.E.D documentation regarding the BA Datamaster machines failures during the months of April & May of 2013; stating that Trooper Mayfield was not the custodian of records for S.L.E.D and should not be made to testify to S.L.E.D documentation. The witness, through cross examination, had already admitted to not knowing the intricacies of the datamaster machine and was unaware of any failures the machine may or may not have suffered during those months. The objection made by the state was sustained. There was never an offer for the submission of evidence, merely the objection to the line of cross examination.

RESPECTFULLY SUBMITTED



The Honorable Michael A. Baker,
Pickens County Magistrate Judge

Liberty, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
PICKENS COUNTY

ZEBBULIN ALAN SHORT,

Defendant/Appellant,

vs.

THE STATE OF SOUTH CAROLINA,

Plaintiff/Respondent.

APPELLANT'S BRIEF

Case No.: 2017-CP-39-00391

The Defendant/Appellant, Zebbulin Alan Short, hereby submits his brief in support of his Appeal from his conviction for the charge of driving with an unlawful alcohol concentration first offense before the Honorable Michael A. Baker in the above action, to the Court of Common Pleas in Pickens County.

The Defendant/Appellant, Zebbulin Alan Short appeals the Ruling/Conviction of the Pickens County Magistrate Court Judge Michael A. Baker and Jury which was rendered on the 15th day of March, 2017 in the Pickens County Summary Court and from an Order denying Motion for a New Trial dated March 30, 2017. A copy of the trial transcript of record from March 15, 2017 is attached hereto and incorporated herein by reference.

STANDARD OF REVIEW

Pursuant to S.C. Code Ann. § 18-3-70, the Circuit Court may either confirm the sentence appealed from, reverse or modify it, or grant a new trial, as to the Court may seem meet and conformable to law. Id.

LAW/ANALYSIS

The grounds for the Defendant's motion are set forth as follows:

1. The Defendant was found guilty by the jury of the charge of driving with an unlawful alcohol concentration first offense. The Defendant moved prior to the State's case-in-chief to dismiss the charge of driving with an unlawful alcohol

concentration, specifically, S. C. Code Ann. § 56-5-2933 because the Defendant was never charged with the offense of driving with an unlawful alcohol concentration by way of uniform traffic ticket or arrest warrant and therefore the Magistrate Court did not have jurisdiction to commence proceedings on said charge. *See State v. Ramsey*, 398 S.C. 275 (2012). (Tr. pp. 4-23). The Defendant was charged with driving under the influence, ticket number F838374. (Tr. p. 98). Trooper Mayfield testified that he never charged the Defendant with the offense of driving with an unlawful alcohol concentration, by way of uniform traffic ticket or arrest warrant. (Tr. p. 99).

S. C. Code Ann. § 56-5-2933(J) states in part.... “At trial, a person **charged with a violation of this section** is allowed to present evidence relating to the factors enumerated above and the totality of the evidence produced at trial may be used by the jury to determine guilt or innocence. **A person charged with a violation of this section** must be given notice of intent to prosecute under the provisions of this section at least thirty calendar days before his trial date.” *Id.* As set forth above, the Defendant was never charged with section 56-5-2933. The Statute is clear and unambiguous.

State v. Leopard, 349 S.C. 467, 470–71, 563 S.E.2d 342, 344–45 (Ct. App. 2002) holds:

The basic principles of statutory construction as applied to criminal statutes have been clearly and repeatedly set forth by our supreme court and by this court.

It is well established that in interpreting a statute, the court's primary function is to ascertain the intention of the legislature. When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning. Furthermore, in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.

State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) (citations omitted); *see also Kerr v. State*, 345 S.C. 183, 188, 547 S.E.2d 494, 496–97 (2001); *State v. Johnson*, 347 S.C. 67, 70, 552 S.E.2d 339, 340 (Ct.App.2001); *accord Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001); *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). “ ‘All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.’ ” *State v. Baucom*, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000) (quoting *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)).

If the legislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute. When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.

While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that this Court can completely rewrite a plain statute.

Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (citations omitted). “ ‘What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.’ ” *Wade v. State*, Op. No. 25409, 348 S.C. 255, 559 S.E.2d 843 (2002) (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)); *accord Rainey* at 85, 533 S.E.2d at 581. *Id.* at 563, S.E.2d at 344–45.

As set forth above, the Magistrate Court did not have jurisdiction to commence proceedings on the charge of driving with an unlawful alcohol concentration and as such, the Defendant/Appellant respectfully asks that his conviction be reversed.

2. That the Court erred in failing to grant a directed verdict on the charge of driving with an unlawful alcohol concentration on the grounds that the State failed to present sufficient independent evidence corroborating Defendant's extra-judicial statements to establish the *corpus delicti* of DUAC. Trooper Mayfield testified that he came upon a one car accident and Defendant was outside the vehicle on the side of the road talking to a tow truck company. (Tr. p. 50). Trooper Mayfield asked the Defendant if he had been drinking, to which Defendant replied, “Not had enough for this to occur”. (Tr. p. 51). The car had clipped a telephone poll and both air bags had deployed. The Defendant's wife was in the car during the accident but had been picked up by a third party and taken home prior to Trooper Mayfield arriving on the scene, approximately thirty to forty-five minutes after the accident. (Tr. pp. 51-52). Trooper Mayfield was standing by the driver's side door of the automobile when he stated that there was blood on the air bag. (Video at incident site). Another Trooper went to Defendant's residence to check on his wife. Trooper Baldwin advised that she declined treatment but had a bloody nose or lip. (Tr. p. 52). No other statements were taken and Trooper Mayfield never spoke to the Defendant's wife or the third party who picked her up. He performed no tests or forensic tests on the air bags inside the vehicle and was never provided a key to the automobile by the Defendant. The Defendant's wife had the insurance information for the vehicle. (Tr. pp. 89 and Tr. pp. 96-97). At the close of the State's case, the Defendant moved for a directed verdict arguing that the State

failed to present sufficient independent evidence corroborating Defendant's extrajudicial statements to establish the *corpus delicti* of DUAC, i.e., that Defendant was driving the car. (Tr. pp. 127-125 and Tr. pp. 127-133).

"It is well-settled law that a conviction cannot be had on the extrajudicial confessions of a defendant unless they are corroborated by proof aliunde of the corpus delicti." *State v. Osborne*, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999) (footnote omitted). The corroboration rule applies to statements whether those statements are confessions or admissions. *Id.* at 177-78, 516 S.E.2d at 203-04. "[T]he corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extrajudicial statements and, together with such statements, permits a reasonable belief that the crime occurred." *Id.* at 180, 516 S.E.2d at 205. Corroboration requires "substantial independent evidence," which is sufficient "if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth." *Id.* at 179, 516 S.E.2d at 204 (quoting *Opper v. United States*, 348 U.S. 84, 93, 75 S.Ct. 158, 99 L.Ed. 101 (1954)). *Id.* at 180, 516 S.E.2d at 205. See *State v. Russell*, 345 S.C. 128, 132-33, 546 S.E.2d 202, 204-05 (Ct. App. 2001).

The State argued that these line of cases are no longer good law pursuant to *State v. Abraham*, 408 S.C. 589 (2014). (Tr. pp. 125-126 and Tr. p. 133). That is not so. The law is well settled and *Abraham* held, "As our supreme court in *Osborne* clarified this state's law to be consistent with the rule outlined in *Opper*, we speculate that continued reference to the requirement that a defendant's extrajudicial statements must be corroborated by "proof aliunde of the corpus delicti" has caused confusion amongst the bench and bar. We anticipate that this confusion could be avoided by ceasing reference to "proof aliunde of the corpus delicti" and similar terms, and instead echoing the language in *Opper*, in that the State must "introduce substantial independent evidence which would tend to establish the trustworthiness of the statement." *Opper*, 348 U.S. at 93, 75 S.Ct. 158. *Id.* at 593, 759 S.E.2d at 442.

As set forth herein, the State failed to introduce substantial independent evidence which would tend to establish the trustworthiness of the Defendant's statement." *Opper*, 348 U.S. at 93, 75 S.Ct. 158. Therefore the Defendant/Appellant respectfully asks that his conviction be reversed.

3. The Court erred in failing to charge the jury the well settled law as set forth above in *Opper v. United States*, 348 U.S. 84, 93, 75 S.Ct. 158, 99 L.Ed. 101 (1954)) and the case law of this State. The Court refused to charge the jury this law stating that it would in essence be confusing to the jury and that we were there because of the Defendant's admission of driving. (Tr. pp. 135-136 and Tr. pp. 138-139). If there is any evidence to support a jury charge, the trial judge should grant the requested charge. *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999).

The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law. *Clark*, 339 S.C. at 390, 529 S.E.2d at 539. To warrant a reversal, however, the error must result in prejudice to the party requesting the charge. *Id. See State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

In this case the Defendant was prejudiced because the State emphasized greatly the Defendant's statement, "Not enough to do what I did", when asked by Trooper Mayfield if he had been drinking. In fact, the State crafted its closing argument around Defendant's statement, "Not enough to do what I did". (Tr. pp. 140-144). The failure of the Court to charge the jury was not harmless error and it cannot be said beyond a reasonable doubt that the error complained of did not contribute to the verdict. Therefore the Defendant/Appellant respectfully asks that his conviction be reversed and/or that a new trial be granted.

The Defendant certainly requested that the charge be given and repeatedly raised an exception. (Tr. pp. 135-136 and Tr. pp. 138-140). (Also Tr. pp. 162-163).

4. The Court erred in refusing to allow the Defendant to enter into evidence or cross examine the Trooper in regards to SLED's status records on DataMaster (BAC/DMT) Serial Number - 107607 that showed the DataMaster had an error or malfunction nine times between April 24, 2013 and May 28, 2013. (Tr. pp. 108-119). The Defendant took the DataMaster on May 11, 2013. This document was electronically signed by Deborah H. Banks, Lieutenant, Supervisory Special Agent, Implied Consent Department and said document stated that this report represents true and correct copies of the original documents maintained by SLED in the normal course of business, attached hereto. The Defendant proffered the document to the Court. (Tr. pp. 114-115). Not only was this document a public record pursuant to Rule 803(8) SCRE, but also within the business records exception pursuant to Rule 803(8) SCRE. This document was also self authenticating pursuant to S.C. Code Ann. § 19-5-10, as amended. *See also* S.C. Code Ann. § 56-5-2954, as amended. This being a DUAC case, these documents were material to the defense and defense's case was materially impaired by the failure to cross examine the Trooper as to this document. Said documents should have been disclosed by the State pursuant to Rule 5, SCRCrimP and *Brady v. Maryland*, 373 U.S. 83 (1963) and as set forth above the Defendant was prejudiced. Therefore, the Defendant/Appellant respectfully asks that his conviction be reversed and/or that a new trial be granted. *See State v. Landon*, 370 S.C. 103 (2006).

CONCLUSION

Based on the abovementioned arguments and authorities, the Defendant/Appellant

respectfully asks that his conviction be reversed and/or that a new trial be granted.

Respectfully submitted

S/William N. Epps III
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Anderson, South Carolina 29622
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ATTORNEY FOR THE APPELLANT

June 28, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

THIRTEENTH JUDICIAL CIRCUIT

State of South Carolina

Respondent

Vs.

CA # 2017-CP-39-00391

Zebbulin Alan Short

BRIEF OF RESPONDENT

Defendant-Appellant

In response to the Defendant/Appellant's Notice of Appeal dated April 3, 2017, the State respectfully requests that the verdict of the jury and rulings of the trial court be affirmed.

1. The Magistrate Court had jurisdiction to try Mr. Short for driving with an unlawful alcohol concentration (DUAC).

On May 11, 2013 Mr. Short was charged with driving under the influence first offense (DUI) by citation number F838374. On September 15, 2015, the State notified him that it intended to prosecute him for violating § 56-5-2933, driving with an unlawful alcohol concentration (DUAC). A copy of the State's written notification, receipt of which was acknowledged by his counsel, was introduced into evidence without objection. On March 15, 2017, Mr. Short was tried for the offense of DUAC and found guilty.

Mr. Short contends that the trial court erred by denying his motion to dismiss and for a directed verdict in this case on the ground that no new citation or warrant charging him with DUAC was served upon him prior to trial thus depriving the trial court of jurisdiction.

The original DUI first offense citation issued to Mr. Short conferred en personam and subject matter jurisdiction in the Magistrate's court. *State v. Bayly*, 397 S.C. 290, 724 S.E.2d 182 (2012).

Sub-section 56-5-2930 (I) provides in clear, unambiguous language that a person charged for a violation of § 56-5-2930 (DUI) can be **prosecuted** pursuant to § 56-5-2933 (DUAC) so long as the original testing of the person's breath or collection of other bodily fluids was performed within two hours of the time of arrest and reasonable suspicion existed to justify the traffic stop. *Handling Traffic Cases in South Carolina, 4th Edition*, 2005, Cole and Huff, pg. 109. A defendant must be given at least thirty (30) days advance notice that the State intends to **prosecute** a DUI charge as a DUAC charge. S.C. Code § 56-5-2933 (J) (4). In the present case, the State met all required conditions precedent in order to prosecute Mr. Short for DUAC. If the

legislature had wanted to add other conditions precedent in order for the State to prosecute a DUI as a DUAC, after proper notice, it could have easily done so. It is well established in South Carolina that "when a statute is clear on its face, it is improvident to judicially engraft extra requirements to the legislation...." *Grier v. Amisub*, 397 S.C. 532, 540, 725 S.E.2d 693, 698 (2012) cited in *Fullbright v. Spinnaker Resorts Inc.*, S.C. Sup. Ct. Op. No. 27720, (filed May 17, 2017). § 56-5-2930 (I) clearly states the requirements necessary to prosecute a DUI as a DUAC. These requirements were met by the State and there is nothing in the statute requiring service of a new citation or warrant prior to trial.

2. The State established the corpus delicti in this case.

At the close of the State's case-in-chief, Mr. Short moved for a directed verdict on the ground that the State failed to prove the corpus delicti for DUAC. The trial court denied this motion.

At the directed verdict stage the trial court does not weigh the evidence. The question before the court on a directed verdict motion is the existence of evidence to support the charge. In deciding whether to grant a motion for directed verdict by a defendant, the evidence and all reasonable inferences derived therefrom are viewed in a light most favorable to the State. *State v. Thompson* S.C. Ct. App. Op. No. 5492 (filed June 14, 2017)

Trooper Mayfield's testimony and the evidence in this case included the following, inter alia:

1. Mayfield was called to or came up on the scene of a one car wreck at approximately 3:00 a.m. Tr. p. 6, l. 16- p. 7, l. 25.
2. It was dark and he found a vehicle on the side of the road with damage and Mr. Short standing outside the vehicle talking to a tow truck service. *Id.*
3. No one else was at the scene. *Id.*
4. Trooper Mayfield detected the odor of alcohol coming from Mr. Short. Tr. p. 8, l. 6-14.
5. In a colloquy regarding consumption of alcohol Mr. Short replied "not enough to do what I did". *Id.*
6. When asked by Trooper Mayfield what had happened Mr. Short responded that he fell asleep, and dozed off, and ran off the road and hit a utility pole. *Id.*
7. Mr. Short failed three standard field sobriety tests and registered 0.09% on the Datamaster test.

The State also introduced into evidence, without objection, the in-car video corroborating all salient facts regarding the investigation; the conduct of Mr. Short; all field sobriety tests; the arrest and Miranda warning given. This evidence was sufficient to meet the requirements of the corroboration rule, formerly known as the corpus delicti rule. This rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra judicial statements and, together with such statements; permits a reasonable belief that the crime occurred. *State v. Abraham*, 408 S.C. 589, 759 S.E. 2d 440 (Ct. App. 2014) citing *State v Osborne* 335 S.C. 172,175, 516 S.E.2d 201,202 (1999). The corpus delicti for DUAC requires proof: (1) that someone was driving a vehicle; (2) within the State of South Carolina; and (3) with a blood alcohol concentration of .08% or more. Evidence of the corpus delicti must be established by the best proof attainable but direct evidence is not essential. *State v Townsend* 321 S. C. 55, 467 S.E.2d 138 (Ct. App. 1996) The corpus delicti may be sufficiently proved by presumptive or circumstantial evidence when that is the best attainable. *Id.* In this case there is direct and sufficient circumstantial evidence that someone was driving a vehicle in this state. Mr. Short had an odor of alcohol, failed road side sobriety tests, and registered more than 0.08% on the breath test. Taking this evidence together with Mr. Short's admissions created a reasonable belief that the crime occurred, thereby satisfying the corroboration rule. The trial court properly denied Mr. Short's motion for a directed verdict on the ground that the State failed to meet the corpus delicti requirement. The trial court properly submitted the questions of driving and breath test results to the jury for determination.

3. There was no error by the trial court in declining to charge the jury regarding the law of corpus delicti.

This issue is not properly before the circuit court on appeal as no objection was timely lodged. See Magistrate's Return dated May 1, 2017 page 3, item #4 and Rule 20 (b) SCRCrP.

Even if raised by Mr. Short, the issue of the sufficiency of the evidence to satisfy the corpus delicti or corroboration rule is a question of law for the court, not a question for the jury. *State v. McCombs*, 335 S.C. 123, 515 S.E.2d 547 (Ct App. 1997).

4. The trial court did not abuse its discretion by declining to allow Mr. Short's counsel to cross examine Trooper Mayfield regarding purported SLED documents or to introduce such documents into evidence during cross examination.

This issue is not properly before the circuit court on appeal as no sufficient proffer of the excluded evidence was made. See Magistrate's Return dated May 1, 2017 page 3, item #5 and Rule 103 (a) (2) SCRE.

Trooper Mayfield testified he was not familiar with any SLED records relating to the datamaster machine used to test Mr. Short's breath. Tr. P. 50 l. 15-22, p. 52 l. 12- p. 53 l. 11-9. The State's objection to defense counsel's attempt to cross examine Trooper Mayfield regarding the contents of documents purportedly produced by SLED but not authenticated and with no

foundation was properly sustained. *State v. Sarvis*, 317 S.C. 102, 107, 450 S.E.2d 606, 609 (Ct. App.1994) cert. den. (1994). See also Rule 901 (b) (1) SCRE. Introduction of unsealed uncertified papers during cross examination is improper. *State v. Homewood*, 241 S.C. 231, 245, 128 S.E.2d 98, 104 (1962). Mr. Short's reliance upon the public records exception to the hearsay rule has no merit. SCRE 803 (8) specifically excludes "matters observed by police and other law enforcement personnel" in criminal cases.

Moreover, Mr. Short had an opportunity to present witnesses and introduce evidence but declined to do so. Therefore, he was not prejudiced by the trial court's refusal to allow examination of Trooper Mayfield regarding what were allegedly SLED documents or by the trial court's decision not to allow the introduction of such documents during cross examination.

Any error committed by the trial court in this case was harmless as the evidence against Mr. Short was substantial.

WHEREFORE the State asks that the verdict below be affirmed.

Respectfully Submitted

s/Mitchell K. Byrd, Sr.

Mitchell Byrd #1067
Assistant Solicitor 13th Circuit
305 E. North St. Ste. 325
Greenville SC 29601
864-467-8701

June 26, 2017

**CERTIFIED COPY
PICKENS COUNTY MAGISTRATE**

MAR 24 2017

STATE OF SOUTH CAROLINA
IN THE SUMMARY COURT
PICKENS COUNTY

County Magistrate Court

THE STATE OF SOUTH CAROLINA,

Plaintiff,

-vs-

ZEBBULIN ALAN SHORT,

Defendant.

**NOTICE OF MOTION AND MOTION
FOR A NEW TRIAL**

TICKET NO.: F838374

TO: THE HONORABLE MICHAEL A. BAKER, PRESIDING JUDGE; AND,
MITCHELL K. BYRD, ASSISTANT SOLICITOR:

The Defendant, Zebbulin Alan Short hereby moves for a new trial from his conviction for the charge of driving with an unlawful alcohol concentration first offense before the Honorable Michael A. Baker in the above action, from a jury trial held on March 15, 2017.

The grounds for the Defendant's motion are set forth as follows:

1. The Defendant was found guilty by the jury of the charge of driving with an unlawful alcohol concentration first offense. The Defendant moved prior to the State's case-in-chief to dismiss the charge of driving with an unlawful alcohol concentration, specifically, S. C. Code Ann. § 56-5-2933 because the Defendant was never charged with the offense of driving with an unlawful alcohol concentration by way of uniform traffic ticket or arrest warrant and therefore the Magistrate Court did not have jurisdiction to commence proceedings on said charge. *See State v. Ramsey*, 398 S.C. 275 (2012). The Defendant was charged with driving under the influence, ticket number F838374. Trooper Mayfield testified that he never charged the Defendant with the offense of driving with an unlawful alcohol concentration.

S. C. Code Ann. § 56-5-2933(J) states in part... "At trial, a person **charged with a violation of this section** is allowed to present evidence relating to the factors enumerated above and the totality of the evidence produced at trial may be used by the jury to determine guilt or innocence. **A person charged with a violation of this section** must be given notice of intent to prosecute under the provisions of this section at least thirty calendar days before his trial date." *Id.* As set forth

above, the Defendant was never charged with section 56-5-2933. The Statute is clear and unambiguous.

State v. Leopard, 349 S.C. 467, 470–71, 563 S.E.2d 342, 344–45 (Ct. App. 2002) holds:

The basic principles of statutory construction as applied to criminal statutes have been clearly and repeatedly set forth by our supreme court and by this court.

It is well established that in interpreting a statute, the court's primary function is to ascertain the intention of the legislature. When the terms of the statute are clear and unambiguous, the court must apply them according to their literal meaning. Furthermore, in construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Finally, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.

State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991) (citations omitted); see also *Kerr v. State*, 345 S.C. 183, 188, 547 S.E.2d 494, 496–97 (2001); *State v. Johnson*, 347 S.C. 67, 70, 552 S.E.2d 339, 340 (Ct.App.2001); accord *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001); *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). “ ‘All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute.’ ” *State v. Baucom*, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000) (quoting *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)).

If the legislature's intent is clearly apparent from the statutory language, a court may not embark upon a search for it outside the statute. When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning.

While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that this Court can completely rewrite a plain statute.

Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (citations omitted). “ ‘What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.’ ” *Wade v. State*, Op. No. 25409, 348 S.C. 255, 559 S.E.2d 843 (2002) (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)); accord *Rainey* at 85, 533 S.E.2d at 581. *Id.* at 563, S.E.2d at 344–45.

As set forth above, the Magistrate Court did not have jurisdiction to commence proceedings on the charge of driving with an unlawful alcohol concentration and a new trial should be granted.

2. That the Court erred in failing to grant a directed verdict on the charge of driving with an unlawful alcohol concentration on the grounds that the State failed to present sufficient independent evidence corroborating Defendant's extra-judicial statements to establish the *corpus delicti* of DUAC. Trooper Mayfield testified that he came upon a one car accident and Defendant was outside the vehicle on the side of the road talking to a tow truck company. Trooper Mayfield asked the Defendant if he had been drinking, to which Defendant replied, "Not enough to do that". The car had clipped a telephone poll and both air bags had deployed. The Defendant's wife was in the car during the accident but had been picked up by a third party and taken home prior to Trooper Mayfield arriving on the scene, approximately thirty to forty-five minutes after the accident. Trooper Mayfield was standing by the driver's side door of the automobile when he stated that there was blood on the air bag. Another Trooper went to Defendant's residence to check on his wife. Trooper Baldwin advised that she declined treatment but had a bloody nose or lip. No other statements were taken and Trooper Mayfield never spoke to the Defendant's wife or the third party who picked her up. He performed no tests or forensic tests on the air bags inside the vehicle and was never provided a key to the automobile by the Defendant. At the close of the State's case, the Defendant moved for a directed verdict arguing that the State failed to present sufficient independent evidence corroborating Defendant's extra-judicial statements to establish the *corpus delicti* of DUAC, i.e., that Defendant was driving the car.

"It is well-settled law that a conviction cannot be had on the extrajudicial confessions of a defendant unless they are corroborated by proof aliunde of the corpus delicti." *State v. Osborne*, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999) (footnote omitted). The corroboration rule applies to statements whether those statements are confessions or admissions. *Id.* at 177-78, 516 S.E.2d at 203-04. "[T]he corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extrajudicial statements and, together with such statements, permits a reasonable belief that the crime occurred." *Id.* at 180, 516 S.E.2d at 205. Corroboration requires "substantial independent evidence," which is sufficient "if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth." *Id.* at 179, 516 S.E.2d at 204 (quoting *Oppen v. United States*, 348 U.S. 84, 93, 75 S.Ct. 158, 99 L.Ed. 101 (1954)). *Id.* at 180, 516 S.E.2d at 205. See *State v. Russell*, 345 S.C. 128, 132-33, 546 S.E.2d 202, 204-05 (Ct. App. 2001).

The State argued that these line of cases had been overruled by *State v. Abraham*, 408 S.C. 589 (2014). That is not so. The law is well settled and *Abraham* held, "As our supreme court in *Osborne* clarified this state's law to be consistent with

the rule outlined in *Opper*, we speculate that continued reference to the requirement that a defendant's extra-judicial statements must be corroborated by "proof aliunde of the corpus delicti" has caused confusion amongst the bench and bar. We anticipate that this confusion could be avoided by ceasing reference to "proof aliunde of the corpus delicti" and similar terms, and instead echoing the language in *Opper*, in that the State must "introduce substantial independent evidence which would tend to establish the trustworthiness of the statement." *Opper*, 348 U.S. at 93, 75 S.Ct. 158. *Id.* at 593, 759 S.E.2d at 442.

As set forth herein, the State failed to introduce substantial independent evidence which would tend to establish the trustworthiness of the Defendant's statement." *Opper*, 348 U.S. at 93, 75 S.Ct. 158. Therefore a new trial should be granted.

3. The Court erred in failing to charge the jury the well settled law as set forth above in *Opper v. United States*, 348 U.S. 84, 93, 75 S.Ct. 158, 99 L.Ed. 101 (1954)) and the case law of this State. The Court refused to charge the jury this law stating that it would confusing to the jury. If there is any evidence to support a jury charge, the trial judge should grant the requested charge. *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law. *Clark*, 339 S.C. at 390, 529 S.E.2d at 539. To warrant a reversal, however, the error must result in prejudice to the party requesting the charge. *Id.* See *State v. Santiago*, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

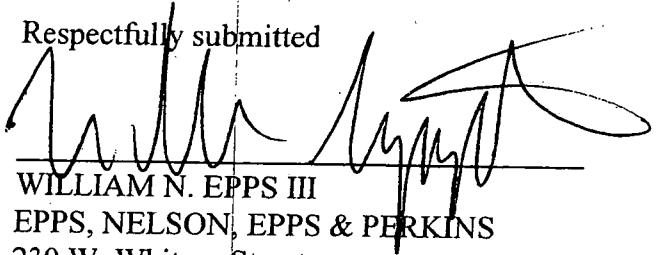
In this case the Defendant was prejudiced because the State emphasized greatly the Defendant's statement, "Not enough to do that", when asked by Trooper Mayfield if he had been drinking. The failure of the Court to charge the jury was not harmless error and it cannot be said beyond a reasonable doubt that the error complained of did not contribute to the verdict. Therefore a new trial should be granted.

4. The Court erred in refusing to allow the Defendant to enter into evidence or cross examine the Trooper in regards to SLED's status records on DataMaster (BAC/DMT) Serial Number - 107607 that showed the DataMaster had an error or malfunction nine times between April 24, 2013 and May 28, 2013. The Defendant took the DataMaster on May 11, 2013. This document was electronically signed by Deborah H. Banks, Lieutenant, Supervisory Special Agent, Implied Consent Department and said document stated that this report represents true and correct copies of the original documents maintained by SLED in the normal course of business. Not only was this document a public record pursuant to Rule 803(8) SCRE, but also within the business records exception pursuant to Rule 803(8) SCRE. This document was also self authenticating pursuant to S.C. Code Ann. § 19-5-10, as amended. See also S.C. Code Ann. § 56-5-2954, as amended. This being a DUAC case, these documents were material to the defense and defense's

case was materially impaired by the failure to cross examine the Trooper as to this document. Said documents should have been disclosed by the State pursuant to Rule 5, SCRCrimP and *Brady v. Maryland*, 373 U.S. 83 (1963) and as set forth above the Defendant was prejudiced and an evidentiary hearing should have been held. Therefore, a new trial should be granted. *See State v. Landon*, 370 S.C. 103 (2006).

Based on the foregoing, the applicable statutory and case law of South Carolina and any briefs as may be presented, the Defendant respectfully asks that her conviction be set aside and that a new trial be granted.

Respectfully submitted



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March 24, 2017

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

State of South Carolina

IN THE MAGISTRATE'S COURT

THIRTEENTH JUDICIAL CIRCUIT

vs.

RETURN TO MOTION FOR NEW TRIAL

Zebbulin Alan Short

Defendant

By way of return to the Defendant's Motion for a new trial dated March 24, 2017, the State respectfully replies as follows:

1. On or about May 11, 2013 Defendant was charged with driving under the influence (DUI) by citation number F838374.
2. On or about September 15, 2015, the State duly notified the Defendant that the State intended to prosecute the Defendant for a violation of §56-5-2933 driving with an unlawful alcohol concentration (DUAC). A copy of the State's written notification, receipt of which was acknowledged by counsel for the Defendant, was introduced into evidence without objection.
3. On March 15, 2017, Defendant was tried by jury for the offense of DUAC and found guilty.
4. Defendant's motion for a new trial should be denied as he received a fair trial and the verdict was supported by the evidence.
5. Subsection 2930 (I) of section 56-5-2930 provides in clear unambiguous language that a person charged for a violation of section 2930 (DUI) may be prosecuted pursuant to section 2933 (DUAC) if the original testing of the person's breath or collection of other bodily fluids was performed within two hours of the time of arrest and reasonable suspicion existed to justify the traffic stop. The defendant must be given at least thirty (30) days advance notice that the State intends to prosecute the DUI charge as a DUAC charge. That is what happened in this case. If the legislature had wanted to add any additional requirements in order for the State to proceed it could have simply done so. It did not and the State complied with the existing requirements of the law.
6. Whether a defendant initially charged with DUI may be prosecuted for DUAC after proper notice but without service of a new ticket charging a violation of section 2933 is a question of statutory interpretation which is a question of law for the court. Legal errors are reviewable by the Court of Common Pleas on appeal pursuant to § 18-3-10 et. seq. There are no material issues of fact in dispute regarding this issue. It is not a fact based dispute subject to adjudication on a motion for new trial. Defendant's recourse for error, if any there be, is to appeal to the Circuit Court.
7. At the directed verdict stage of a trial the trial court does not weigh the evidence. The question before the court on a directed verdict motion is the existence of evidence to support the charge. In deciding whether to grant a motion for directed verdict by a defendant, the evidence and all

reasonable inferences derived therefrom are viewed in a light most favorable to the State. Trooper Mayfield's testimony in this case included the following, inter alia:

1. He was called to the scene of a one car collision at approximately 3:00 a.m.
2. It was dark and he found a vehicle on the side of the road with fresh damage and the defendant standing alone outside the vehicle communicating with a wrecker service
3. When asked by Trooper Mayfield what had happened the defendant responded that he fell asleep and ran off the roadway striking a utility pole.
4. Trooper Mayfield smelled an odor of alcohol coming from the defendant and asked the defendant how much he had had to drink to which the defendant replied "not enough to do what I did".
5. The Defendant registered 0.09% on the Datamaster test.

The State also introduced into evidence, without objection, the in car video corroborating all salient facts regarding the investigation; the conduct of the defendant; all field sobriety tests; the arrest and Miranda warnings given. This evidence and all reasonable inferences, viewed in the light most favorable to the State, was more than sufficient to deny the defendant's motion for a directed verdict.

8. The evidence related above was also sufficient to meet the requirements of the corroboration rule formerly known as the corpus delicti rule. The rule is satisfied if the State presents sufficient direct or circumstantial evidence which serves to corroborate the defendant's extra judicial statements and, together with such statements, permits a reasonable belief that the crime occurred. See *State v Abraham* 408 S.C. 589, 759 S.E. 2d 440 (Ct. App. 2014). The corpus delicti for DUAC requires evidence: 1. That someone was driving a vehicle; 2. Within the State of South Carolina; 3. With a blood alcohol concentration of 0.08% or more. Trooper Mayfield stated that he observed a vehicle off the roadway in South Carolina with recent damage and the defendant standing alone outside the vehicle calling for a tow truck. This is direct and circumstantial evidence that someone had been driving the vehicle in this State. It is undisputed that defendant registered more than 0.08% on the breath test. Taking this evidence together with the defendant's admissions created a reasonable belief that the crime occurred thereby satisfying the corroboration rule. The court properly denied the defendant's motion for a directed verdict on the ground that the State failed to meet the corpus delicti requirement. The trial court properly submitted the questions of driving and breath test results to the jury for determination.
9. Whether the corroboration rule was satisfied in this case is a question of law for the court. Legal errors are reviewable by the Court of Common Pleas on appeal pursuant to § 18-3-10 et. seq. There are no material issues of fact in dispute regarding this issue. It is not a fact based dispute subject to adjudication on a motion for new trial. Defendant's recourse for error, if any there be, is to appeal to the Circuit Court.
10. Trial courts have a duty to instruct jurors as to the current law applicable to the issues to be tried. In this case the defendant sought to have the trial court instruct the jurors incorrectly

using language from decisional law that has been modified by appellate courts. See *State v Abraham*, *Id.* The current corroboration rule does not require substantial evidence as the defendant contends and the instruction proposed by the defendant would have unduly confused the jurors. Defendant's request to charge was properly denied.

11. Whether the trial court's instructions to the jury in this case were erroneous is a question of law for the court. Legal errors are reviewable by the Court of Common Pleas on appeal pursuant to § 18-3-10 et. seq. There are no material issues of fact in dispute regarding this issue. It is not a fact based dispute subject to adjudication on a motion for new trial. Defendant's recourse for error, if any there be, is to appeal to the Circuit Court.
12. Trooper Mayfield testified he was not familiar with any SLED records relating to the datamaster machine used to test the defendant's breath. The State's objection to the defendant's attempts to cross examine Trooper Mayfield regarding the contents of documents purportedly produced by SLED but not authenticated and with no foundation was properly sustained. Introduction of unsealed uncertified papers during cross examination is improper. See *State v Homewood* 241 S.C. 231, 128 SE2d 98 (1962). The defendant was offered an opportunity to present witnesses and introduce evidence but declined to do so. Defendant was not prejudiced by the trial court's refusal to allow examination of Trooper Mayfield regarding what was alleged to be SLED documents or the introduction of such documents by the Defendant during cross examination.
13. Whether relevant and admissible evidence was improperly excluded by the trial court is a question of law for the court. Legal errors are reviewable by the Court of Common Pleas on appeal pursuant to § 18-3-10 et. seq. There are no material issues of fact in dispute regarding this issue. It is not a fact based dispute subject to adjudication on a motion for new trial. Defendant's recourse for error, if any there be, is to appeal to the Circuit Court.
14. A Magistrate may grant a new trial in any case tried in his court for reasons for which new trials have usually been granted in the courts of law of this State. See § 22-3-990. It is a fact based motion. In this case the defendant's motion for a new trial does not raise fact based issues only legal questions which are not properly decided by a motion for a new trial.
15. "The granting or refusal of a motion for a new trial is within the discretion of the trial judge and will not be disturbed absent a clear abuse of discretion." *State v Simmons*, 278 S.C. 165, 166, 303 S.E. 2d 857, 858 (1983). "Where there is no evidence to support a conviction, an order granting a new trial should be upheld." *State v Smith*, 316 S.C. 53, 55, 447 S.E. 2d 175, 176 (1993). "However, where there is any competent evidence to sustain the jury's verdict, the judge may not substitute his judgment for that of the jury." *State v Prince*, 316 S.C. 57, 63, 447 177, 181 (1993), *State v Poindexter* 314 S.C. 490, 431 S.E.2d 254 (1993)
16. In a long line of cases, our appellate courts have repeatedly confirmed the law of South Carolina regarding a judge's new trial authority. See *State v Williams*, 166 S.C. 63, 164 S.E. 415 (1932) ("The first difficulty in the appellant's position rests, we think, in the opinion of his counsel that a trial judge should substitute entirely his views of the evidence in a case for the views of the twelve jurors. That is not the law.") 166 S.C. at 81, 415 S.E at 422. *State v Dasher* 278 S.C. 395, 297 S.E. 2d 414 (1982) ("Where a new trial is sought, this court has stated: 'A trial judge may not invade the province of the jury or substitute his verdict for theirs.' *Waterford v S.C. State Highway Dept.* 269 S.C. 130,133, 236 S.E. 2d 558. On an earlier occasion the court spoke more

simply: 'The trial judge is not a juror.' State v Williams, Id.") State v Miller, 287 S.C. 280, 337 S.E. 2d 883 (1985) (" Thus, the trial judge has no authority to grant relief on factual grounds after a verdict of guilty that is the equivalent to the relief he could have granted at the directed verdict stage."), accord, State v Taylor 348 S.C. 152, 558 S.E. 2d 917 (Ct. App. 2001), affirmed in result 355 S.C. 392, 585 S.E. 2d 303 (2003), accord, State v Hill 394 S.C. 312, 714 S.E. 2d 879 (Ct. App. 2011), accord, State v Mitchell ____ S.C. ____, 731 S.E. 2d 889 (Ct. App. 2012).

17. Any errors committed by the trial court in this case were harmless as the evidence against the defendant was overwhelming.

The trial court should deny Defendant's motion for a new trial.

Respectfully Submitted



Mitchell Byrd
Assistant Solicitor 13th Circuit

March 29, 2017

I certify that I have served a copy of the State's return to the Defendant's motion for a new trial upon counsel for the defendant by placing a copy in the US postal system with proper postage attached and addressed as follows this 29th day of March , 2017.

William N. Epps, III, Esquire
Box 2167
Anderson S.C. 29622



Mitchell Byrd

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) IN THE MAGISTRATE'S COURT

STATE OF SOUTH CAROLINA,) TICKET NO.: F838374
))
PLAINTIFF,))
))
VS.) **TRANSCRIPT OF RECORD**
))
ZEBBULIN ALAN SHORT,))
))
DEFENDANT.))
_____)

HEARING HELD BEFORE THE HONORABLE MICHAEL A.
BAKER, MAGISTRATE, ON THE 15TH DAY OF MARCH, 2017, IN THE
PICKENS COUNTY SUMMARY COURT, 216-A L.E.C. ROAD, PICKENS,
SOUTH CAROLINA.

APPEARANCES:

MITCHELL BYRD, ESQUIRE)
OFFICE OF THE SOLICITOR) REPRESENTING THE PLAINTIFF
13TH JUDICIAL CIRCUIT)
GREENVILLE, SOUTH CAROLINA 29622)

WILLIAM N. EPPS, III, ESQUIRE)
EPPS, NELSON EPPS & PERKINS) REPRESENTING THE DEFENDANT
POST OFFICE 2167)
ANDERSON, SOUTH CAROLINA 29622)

ALSO PRESENT: ZEBBULIN ALAN SHORT

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WITNESS: BRIAN MAYFIELD

EXAMINATION

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1

2

10

1 WITH AN UNLAWFUL ALCOHOL CONCENTRATION, AGAIN, IS
2 56-5-2933. AND, YOUR HONOR, PURSUANT TO STATUTORY
3 CONSTRUCTION -- AND THESE ARE CRIMINAL STATUTES --
4 PURSUANT TO STATUTE -- STATUTORY CONSTRUCTION, THE
5 ONLY NOTICE I GOT, OR MY CLIENT GOT, WAS IN
6 SEPTEMBER, SEPTEMBER -- ON SEPTEMBER THE 15TH OF
7 2015. WHEN, AT A PRE-TRIAL, THERE WAS A NOTICE OF
8 DEFENDANT THAT I RECEIVED THAT SAID MY CLIENT --
9 WAS A PLEA OFFER, BASICALLY WAS A PLEA OFFER. MY
10 CLIENT WAS CHARGED WITH D.U.I., FIRST, AND THAT
11 THEY WOULD, THEY WOULD, THEY WOULD, IF HE PLED TO
12 D.U.A.C., TIME SERVED AND COURT COSTS, THEY WOULD
13 NOLLE PROS THE D.U.I. IF, IF THAT -- THAT OFFER
14 WAS GOOD FOR THIRTY (30) DAYS AND IF, IF, IF IT
15 WASN'T ACCEPTED, THEN THE CASE WOULD BE TRIED AS
16 CHARGED. IT WAS ALSO CHECKED AT THE BOTTOM, A
17 D.U.A.C. NOTICE "PURSUANT TO THE 56-5-2933 AND 56-
18 5-2930 (J)," THEY NOTIFIED THAT "THE STATE
19 INTENDED TO TRY THIS CASE IN VIOLATION OF DRIVING
20 WITH AN UNLAWFUL ALCOHOL CONCENTRATION." NOW, I,
21 I RECEIVED THIS AND I SIGNED IT, 'CAUSE THAT WAS A
22 NOTICE. I MEAN, I -- JUST A NOTI- -- I, I -- THAT
23 WE GOT THE OFFER AND, AND THAT WAS OUR OFFER TO
24 ACCEPT OR TO, TO NOT ACCEPT. I WOULD LIKE TO HAND
25 THAT UP, YOUR HONOR, BECAUSE THAT IS NOT -- THAT

1 IS THE, THAT IS THE ONLY NOTICE WE HAVE. TO DATE,
2 TODAY, STILL PENDING, THE CHARGE OF D.U.I., FIRST
3 OFFENSE, ON THAT UNIFORM TRAFFIC TICKET BACK IN
4 MAY OF 2013 IS STILL PENDING. THAT IS THE ONLY
5 CHARGING DOCUMENT IN THIS CASE. THAT NOTICE TO
6 DEFENDANT IS NOT A CHARGING DOCUMENT. PURSUANT TO
7 56- -- AND WE'RE GOING FORWARD ON 56-5-2933.
8 PURSUANT TO THAT STATUTE, YOUR HONOR, AND I CAN
9 HAND IT UP. WHILE I -- IT SAYS "A PERSON CHARGED
10 FOR A VIOLATION OF 56-5-2930 MAY BE PROSECUTED
11 PURSUANT TO THIS SECTION IF THE ORIGINAL TESTING
12 OF THE PERSON'S BREATH OR COLLECTION OR OTHER
13 BODILY FLUIDS WERE PERFORMED WITHIN TWO (2) HOURS
14 AND REASONABLE SUSPICION AS, AS THIS IS TO JUSTIFY
15 THE TRAFFIC STOP." IT GOES ON TO SAY THAT "THE
16 PERSON MAY NOT BE PROSECUTED FOR BOTH A VIOLATION
17 OF, OR 29-30 AND A VIOLATION OF THIS SECTION," THE
18 D.U.I. SECTION. THAT'S "I". AND IT TELLS WHAT
19 THE, THE RIGHT THE PERSON WHO -- THAT IS, IS
20 "VIOLATES PROVISIONS OF THIS SECTION IS ENTITLED
21 TO A JURY TRIAL AND AFFORDED THE RIGHT TO
22 CHALLENGE CERTAIN FACTORS." AND IT GOES THROUGH
23 THAT FACTORS. FURTHER, IF YOU READ THE STATUTE AS
24 A WHOLE AND YOU LOOK AT THE STATUTORY
25 CONSTRUCTION, YOU ALSO -- YOU GET TO "J," WHICH IS

1 THE NEXT SECTION. IT SAYS NOTHING, NOTHING AL- --
2 ALSO, "NOTHING CONTAINED IN THIS SECTION PROHIBITS
3 THE INTRODUCTION OF FURTHER EVIDENCE OF, OF, OF --
4 FURTHER EVIDENCE THAT WOULD COME INTO QUESTION
5 THAT WOULD -- THAT, THAT, THAT COULD ADDRESS THE
6 DEFENDANT'S GUILT OR INNOCENT -- INNOCENCE."
7 FURTHER, AFTER FOUR (4), THAT, THAT STATUTE
8 STATES, "AT TRIAL, A PERSON CHARGED WITH A
9 VIOLATION OF THIS SECTION, BEING 2933, IS ALLOWED
10 TO PRESENT EVIDENCE RELATING TO THE FACTORS
11 ENUMERATED ABOVE AND THE TOTALITY OF THE EVIDENCE
12 PRODUCED AT TRIAL MAY BE USED BY THE JURY TO
13 DETERMINE GUILT OR INNOCENCE. A PERSON CHARGED
14 WITH A VIOLATION OF THIS SECTION MUST BE GIVEN
15 NOTICE OF INTENT TO PROSECUTE UNDER THE PROVISIONS
16 OF THIS SECTION AT LEAST THIRTY (30) CALENDAR DAYS
17 BEFORE THIS TRIAL DATE." YOUR HONOR, THAT STATUTE
18 IS CLEAR. FOR A PERSON TO BE CHARGED WITH A
19 VIOLATION OF 2933 D.U.A.C., THERE HAS TO BE A
20 CHARGING DOCUMENT AND A CHARGING DOCUMENT IS A
21 UNIFORM TRAFFIC TICKET OR AN ARREST WARRANT. AND
22 PURSUANT -- AND, AND, AND OTHERWISE, THERE'S NO --
23 THAT NOTICE TO DEFENDANT THAT I HANDED UP, YOUR
24 HONOR, IS NOT A CHARGING DOCUMENT. THE ONLY WAY
25 THIS COURT WOULD HAVE JURISDICTION OVER THE CHARGE

1 OF, OF D.U.A.C. WOULD BE FOR A -- FOR THE D.U.I.
2 TO BE NOLLE PROS, PROSSED AND A BLUE -- EITHER A
3 UNIFORM TRAFFIC TICKET FOR D.U.A.C. BE WRITTEN, OR
4 AN ARREST WARRANT FOR DRIVING -- FOR, FOR
5 D.U.A.C., PURSUANT TO 56-5-2933. SO, THEREFORE,
6 YOUR HONOR, YOUR HONOR, BASED ON -- AND TO DATE,
7 WE, WE'VE NEVER BEEN -- MY CLIENT'S NEVER BEEN
8 SERVED WITH A UNIFORM TRAFFIC TICKET FOR THE
9 CHARGE OF D.U.A.C. 56-5-2933. HE'S NEVER BEEN
10 SERVED WITH AN ARREST WARRANT FOR 56-5-2933 AND,
11 THEREFORE, YOUR HONOR, AND TODAY WE'RE GOING
12 FORWARD ON THE CHARGE OF D.U- -- NOT D.U.I. THAT
13 HE WAS ACTUALLY CHARGED WITH BACK IN MAY OF 2013,
14 BUT THE CHARGE OF D.U.A.C. AND PURSUANT TO THAT
15 STATUTE, YOUR HONOR, AND WHEN YOU LOOK AT CRIMINAL
16 STATUTES SUCH AS THIS, YOU HAVE TO, YOU HAVE TO BE
17 -- YOU -- STATUTORY CONSTRUCTION MUST ACT -- AS
18 THE RULE OF STATUTORY CONSTRUCTION IS A COURT MUST
19 ASCERTAIN AND GIVE EFFECT TO THE INTENT OF THE
20 LEGISLATURE. WHAT A LEGISLATURE SAYS IN A TEXT OF
21 A STATUTE IS CONSIDERED THE BEST EVIDENCE OF, OF
22 THE LEGISLATIVE INTENT AND WILL. THEREFORE, THE
23 STATUTE'S LANGUAGE IS PLAIN, UNAMBIGUOUS, AND
24 CONVEYS A CLEAR MEANING. THE RULES OF STATUTORY
25 INTERPRETATION ARE NOT NEEDED AND THE, AND THE

1 COURT HAS NO RIGHT TO IMPOSE ANOTHER MEETING --
2 ANOTHER MEANING. ALL RULES OF STATUTORY
3 CONSTRUCTION ARE SUBSERVIENT TO THE MAXIMUM THAT
4 LEGISLATIVE INTENT MUST PREVAIL IF IT CAN BE
5 REASONABLY BE DISCOVERED IN THE LANGUAGE USED.
6 HOWEVER, PENAL STATUTES AS WE HAVE HERE MUST --
7 WILL -- PENAL STATUTES WILL BE STRICTLY CONSTRUED
8 AGAINST THE STATE AND BASED -- AND IN FAVOR OF THE
9 DEFENDANT. IN THIS CASE, YOUR HONOR, WE'RE
10 PROCEEDING ON D.U.A.C. MY CLIENT HAS NEVER --
11 THIS IS NOT A SITUATION WHERE THERE WAS A BLUE
12 TICKET FOR DRIVING WITH UNLAWFUL ALCOHOL
13 CONCENTRATION. THERE'S NEVER BEEN A BLUE TICKET.
14 THERE'S NEVER BEEN A UNIFORM TRAFFIC TICKET.
15 THERE'S NEVER BEEN AN ARREST WARRANT. AND, AS
16 SUCH, YOUR HONOR, THIS COURT DOES NOT HAVE
17 JURISDICTION TO GO FORWARD WITH THOSE CRIMINAL
18 PROCEEDINGS. 'CAUSE IT NEEDS TO BE, IT NEEDS TO
19 BE INITIATED WITH A BLUE TICKET, A UNIFORM TRAFFIC
20 TICKET OR AN ARREST WARRANT. SO, WE RESPECTFULLY
21 ASK FOR THE CHARGE OF, OF, OF D.U.A.C. BE
22 DISMISSED.

23 BY THE COURT: OKAY. MR. BYRD, I'D BE HAPPY
24 TO HEAR FROM YOU.

25 BY MR. BYRD: THANK YOU, YOUR HONOR. IF

1 YOU'LL READ THE SECTIONS, AS I'M SURE YOU HAVE IN
2 THE PAST, THERE'S NOTHING IN THE SECTIONS WHICH
3 INDICATES THAT THERE MUST BE A NEW INDEPENDENT
4 CHARGING DOCUMENT. IN FACT, THE LANGUAGE -- AND
5 WE AGREE WITH COUNSEL FOR THE DEFENDANT, THAT THE
6 INTENT IS FROM THE LEGISLATION, ITSELF. A PERSON
7 CHARGED FOR A VIOLATION OF 56-5-2930 MAY BE
8 PROSECUTED PURSUANT TO THIS SECTION. AND THAT'S
9 WHAT'S HAPPENED. THEY'VE BEEN GIVEN MORE THAN
10 THIRTY (30) DAYS NOTICE. IN FACT, IT'S SIX (6)
11 MONTHS, ROUGHLY. THERE'S THE ORIGINAL WITH MR.
12 EPPS' SIGNATURE ON IT. THIS ISSUE HAS COME UP ON
13 A NUMBER OF OCCASIONS, JUDGE. AND I'LL HAND UP TO
14 YOU AN ORDER ISSUED BY JUDGE STILLWELL, IN
15 GREENVILLE TO THE THIRTEENTH CIRCUIT, WHICH IN THE
16 LATTER PARAGRAPH OF THE ORDER ADDRESSES THE D.U.I.
17 -- D.U.A.C. THIS IS A NOTIFICATION ISSUE. THE
18 STATUTORY SCHEME IS THAT WE MUST GIVE A THIRTY
19 (30) DAY NOTICE TO THE DEFENDANT. WE'VE GIVEN A
20 THIRTY (30) DAY NOTICE. THERE'S NO REQUIREMENT IN
21 THE STATUTE. THERE'S NO REQUIREMENT ANYWHERE THAT
22 I'M AWARE OF, AND NO AUTHORITY HAS BEEN OFFERED
23 FOR THE PROPOSITION THAT A NEW TICKET HAS TO BE
24 WRITTEN OUT AND SERVED.

25 BY MR. EPPS: AND I'M WANT -- MAY, MAY I

1 RESPOND ---

2 BY THE COURT: SURE.

3 BY MR. EPPS: --- TO THAT, YOUR HONOR? YOUR
4 HONOR, THIS IS A CRIMINAL STATUTE. THIS IS NOT A
5 NOTICE ISSUE. D.U-, D.U- -- YOU WOULD, YOU WOULD
6 REACH A -- TO, TO, TO HAVE A SITUATION WHERE
7 SOMEBODY -- AND IF YOU READ THE PLAIN LANGUAGE OF
8 THE STATUTE, YOU'RE TALKING ABOUT THE D.U.A.C. THE
9 FI- -- 2933. IT SAYS -- ALL RIGHT -- WHILE, WHILE
10 THE PERSON MAY BE PROSECUTED FOR -- CHARGED WITH A
11 VIOLATION OF 2930, MAY BE PROSECUTED UNDER THIS
12 SECTION -- HE HAS TO BE CHARGED. AND TO SAY THAT
13 THIS IS ONLY A NOTICE THING AND THAT THIS CRIMINAL
14 STATUTE FOR DRIVING WITH AN UNLAWFUL ALCOHOL
15 CONCENTRATION IS JUST A NOTICE DEAL IS -- WOULD
16 LEAD TO AN ABSURD RESULT AS TO HE IS -- MR. SHORT
17 IS HERE BEFORE THE COURT, POTENTIALLY COULD GO TO
18 JAIL, AND HAS NEVER BEEN CHARGED OR NEVER BEEN
19 SERVED WITH A UNIFORM TRAFFIC TICKET OR AN ARREST
20 WARRANT FOR THE CHARGE OF D.U.A.C. IT COULD HAVE
21 VERY EASILY -- IN THE FOUR (4) YEARS THIS CASE HAS
22 BEEN PENDING, SINCE SEPTEMBER, 2015, WHEN, WHEN,
23 WHEN THIS PLEA NOTICE WAS GI- -- OR, OR PLEA OFFER
24 WAS GIVEN TO, TO MR. SHORT AND GIVEN TO MYSELF, IT
25 COULD HAVE BEEN EASILY RE-WRITTEN. THE D.U.I.

1 COULD HAVE BEEN -- IF THEY WERE GOING FORWARD ON
2 THE D.U.A.C., THEY COULD HAVE EASILY NOLLE PROSSED
3 THE D.U.I. TICKET, WHICH WOULD HAVE BEEN THE
4 PROPER THING TO DO AND REISSUE A, A, A TICKET FOR
5 DRIVING WITH UNLAWFUL ALCOHOL CONCENTRATION. AND
6 HE THE ADVISED, THE ADVI- -- THE IMPLIED CONSENT
7 ADVISEMENT RIGHTS THAT HE WAS READ BY TROOPER
8 MAYFIELD IN THE B.A. ROOM SAID IF YOU BLOW A
9 CERTAIN LEVEL, OVER POINT ZERO EIGHT (.08), POINT
10 ZERO EIGHT (.08) OR OVER, YOU COULD BE, YOU MAY BE
11 CHARGED WITH A VIOLATION OF DRIVING WITH UNLAWFUL
12 ALCOHOL CONCENTRATION. THE ONLY WAY YOU CAN
13 CHARGE SOMEBODY -- AND WE'RE TALKING ABOUT A, A
14 CRIMINAL STATUTE. THE ONLY WAY THAT NEED TO BE
15 CONSTRUCTL- -- CONSTRUED, CONSTRUED IN, IN --
16 AGAINST THE STATE AND IN FAVOR OF THE DEFENDANT IS
17 THAT HE HAS TO BE CHARGED. AND THE ONLY WAY YOU
18 CAN CHARGE SOMEBODY IN THIS CASE -- IT'S NOT A
19 NOTICE ISSUE. IT IS CHARGE. YOU HAVE TO, YOU
20 HAVE TO DO SO EITHER IN THIS CASE, THROUGH A
21 UNIFORM TRAFFIC TICKET AND A ARREST WARRANT. IN
22 THIS CASE THERE IS NONE, YOUR HONOR.

23 BY THE COURT: OKAY. FOR THE PURPOSE OF THE
24 RECORD, THE NOTICE TO DEFENDANT, WHICH WAS
25 PRESENTED BY MR. EPPS, AS WELL AS MR. BYRD, DOES

1 HAVE -- LET ME SEE -- NOTICE DATE OF SEPTEMBER --
2 IS IT 5TH, 2015?

3 BY MR. BYRD: I CAN'T READ IT ---

4 BY MR. EPPS: I THINK IT'S THE 5TH -- LOOKS
5 LIKE 15TH.

6 BY THE COURT: OKAY.

7 BY MR. EPPS: WE'VE, WE'VE HAD MULTIPLE PRE-
8 TRIAL -- OR APPEARANCES IN THIS CASE.

9 BY THE COURT: WHAT WAS YOUR RESPONSE TO
10 THIS?

11 BY MR. EPPS: WE REJECTED ---

12 BY THE COURT: DID YOU RESPOND TO THE STATE?

13 BY MR. EPPS: NO, WE DID NOT ACCEPT, ACCEPT
14 THE OF- -- WE DIDN'T ACCEPT THE OFFER.

15 BY THE COURT: BUT YOU DID RESPOND, ONE WAY
16 OR THE OTHER?

17 BY MR. EPPS: I RESPONDED BY -- I MEAN AND BY
18 -- WE, WE, WE -- SINCE THAT TIME, YOUR HONOR, WE
19 HAVE HAD AT LEAST TWO (2) OR THREE (3) ---

20 BY THE COURT: MANY.

21 BY MR. EPPS: --- APPEARANCES ---

22 BY THE COURT: SURE.

23 BY MR. EPPS: --- TRYING TO RESOLVE THIS
24 MATTER OR WORK IT OUT, AND WE HAVE NOT BEEN ABLE
25 TO WORK IT OUT.

1 BY THE COURT: AND FOR THE RECORD, THE BOX
2 MARKED "D.U.A.C. NOTICE PURSUANT TO 56-5-2933 AND
3 56-5-2930 OF SOUTH CAROLINA CODE OF LAWS, YOU ARE
4 HEREBY NOTIFIED THAT THE STATE INTENDS TO TRY THIS
5 CASE AS A VIOLATION OF DRIVING WITH UNLAWFUL
6 ALCOHOL CONCENTRATION." 56-5-2933 SUB-SECTION
7 FOUR (4) STATES "A PERSON CHARGED WITH A VIOLATION
8 OF THIS SECTION MUST BE GIVEN NOTICE OF INTENT TO
9 PROSECUTE UNDER THE PROVISIONS OF THIS SECTION AT
10 LEAST THIRTY (30) CALENDAR DAYS BEFORE HIS TRIAL."
11 SO, IF NOTICE IS WHAT'S BEING DEBATED, IT WOULD BE
12 MY RULING THAT THIS IS PROPER NOTICE, OBVIOUSLY
13 FAR ---

14 BY MR. EPPS: YES, SIR.

15 BY THE COURT: --- EXCEEDS THIRTY (30) DAYS
16 PRIOR.

17 BY MR. EPPS: AND I WOULD AGREE IF IT WAS A
18 NOTICE ISSUE, BUT IT'S, IT'S NOT A NOTICE. IT'S A
19 JURISDICTIONAL ISSUE DEALING WITH CHARGE. IF YOU
20 LOOK AT THE -- LIKE I SAID, THE LANGUAGE OF THE
21 CHARGE WITH A VIOLATION OF THIS SECTION -- AND
22 SECTION SPECIFICALLY REFERENCES THE SECTION OF
23 THIS LAW FOR D.U.A.C., WHICH IS 56-5-2933. HE HAS
24 TO BE CHARGED. AND I CAN -- I'D LIKE TO HAND UP
25 THE CA-, I HAVE THE CASE OF THE, THE CASE OF THE

1 STATE VERSUS RAMSEY. IT DEALS WITH THE CHARGING
2 DOC- -- IT DEALS WITH YOU'VE GOT TO INITIATE
3 CRIMINAL PROCEEDINGS IN MAGISTRATE COURT THROUGH A
4 UNIFORM TRAFFIC TICKET OR AN ARREST WARRANT. AND
5 IN THIS CASE, THERE IS N-, THERE IS NONE. I
6 UNDERSTAND THEY COULD HAVE VERY EASILY PRO- -- MY,
7 MY -- OUR POSITION IS THIS: IF HE'S -- IF
8 THEY'RE GOING TO PURSUE D.U.A.C., THAT THEY CAN
9 EASILY NOLLE PROS THE D.U.I. AND RE-CHARGE -- AND
10 WRITE A BLUE -- A UNIFORM TRAFFIC TICKET FOR
11 D.U.A.C. TO INITIATE -- TO START CRIMINAL
12 PROCEEDINGS IN THIS COURT FOR, FOR DRIVING WITH
13 UNLAWFUL-, UNLAWFUL ALCOHOL CONCENTRATE. HE COULD
14 HAVE BEEN WRITTEN A D.U.A.C. TICKET IN MAY OF
15 2013, BUT HE WASN'T.

16 BY THE COURT: RIGHT.

17 BY MR. EPPS: SO, IT'S NOT A NOTICE ISSUE.
18 AND A NOTICE ISSUE, THAT WOULD LEAD TO AN ABSURD
19 RESULT: THEREFORE, YOU CAN JUST, YOU CAN JUST
20 HAVE A CRIMINAL CHARGE BROUGHT AGAINST A, BROUGHT
21 A -- A DEFENDANT BROUGHT INTO COURT THAT CAN
22 POTENTIALLY BE LOOKING AT GOING TO JAIL AND NOT
23 HAVE A CHARGING DOCUMENT, A UNIFORM TRAFFIC
24 TICKET, OR AN ARREST WARRANT TO, TO, TO BRING HIM
25 INTO COURT AND SUBJECT HIM TO THE JURISDICTION OF

1 THE COURT OR FOR THE COURT, FOR THE COURT TO HAVE
2 JURISDICTION OVER THE CHARGE. AND, AND I CAN HAND
3 UP -- AND THIS IS THE STATE VERSUS RAMSEY. I'VE
4 GOT THE COURT OF APPEALS CASE. AND IT -- AND I,
5 I, I HAND UP, JUST, JUST SAYING THAT YOU -- JUST
6 FOR THE ARGU- ---

7 BY THE COURT: YEAH. I'M FAMILIAR WITH
8 RAMSEY. YEAH.

9 BY MR. EPPS: YES. JUST FOR THE ARGUMENT
10 THAT IT'S NOT A BLUE TICKET OR AN ARREST WARRANT
11 ISSUE, BUT IT'S JUST, IT'S JUST A CHARGING
12 DOCUMENT ISSUE COMPLETELY ACROSS THE BOARD. HE'S
13 NOT CHARGED WITH D.U.A.C. AND IT, AND IT -- IF
14 YOU GOT NOTICE -- IF I'VE GOT NOTICE OF SOMETHING
15 I'M NOT CHARGED WITH. YOU, YOU GOT TO BE CHARGED
16 WITH, WITH, AGAIN, THAT UNIFORM TRAFFIC TICKET OR
17 AN ARREST WARRANT. SO, IT'S A FUNDAMENTAL ISSUE
18 OF HEY, YOU'VE GOT TO BE, YOU'VE GOT TO BE -- A
19 DEFENDANT HAS AN ABSOLUTE RIGHT TO BE CHARGED AND
20 -- WITH A CHARGING DOCUMENT IN ORDER TO, TO, TO,
21 TO, TO BE BROUGHT BEFORE THE COURT AND FOR THE
22 COURT TO HAVE JURISDICTION. IN THIS MATTER IN THE
23 CA- -- IN THE -- FOR THE, FOR THE, FOR THE, FOR
24 THE VIOLATION OF, IN THIS CASE, 56-5-2933.

25 BY THE COURT: OKAY. MR. BYRD.

1 BY MR. BYRD: YES, SIR.

2 BY THE COURT: I UNDERSTAND THE LEGISLATURE
3 DRAFTS THESE LAWS. SOMETIMES THE VERBIAGE BECOMES
4 A PROBLEM FOR US HERE.

5 BY MR. BYRD: YES, SIR.

6 BY THE COURT: AND THEN INTENT HAS TO BE
7 FIGURED OUT. WE'VE GOT TWO (2) WORDS IN THIS ONE
8 (1) SENTENCE, "CHARGED" AND "NOTICE" OF INTENT TO
9 PROSECUTE. AND I UNDERSTAND MR. EPPS ARGUING A
10 PERSON CHARGED WITH A VIOLATION OF THIS SECTION,
11 HOW WOULD YOU ARGUE THAT?

12 BY MR. BYRD: WELL, I THINK THE INTENT OF THE
13 LEGISLATURE IN THE STATUTORY SCHEME IS THAT HE
14 MUST BE CHARGED. IF, IF YOU READ THE SECTION ON
15 D.U.I., 2930, HE HAS TO BE ARRESTED AND CHARGED AT
16 THAT POINT IN TIME AND GIVEN THE MIRANDA RIGHTS ON
17 THE VIDEO. SO, THE LEGISLATIVE INTENT IS THERE
18 THAT HE MUST BE CHARGED WITH D.U.I. HE CANNOT BE
19 CHARGED WITH D.U.A.C. AT THAT POINT 'CAUSE THERE'S
20 NO BREATHALYZER READING. AFTER HE IS GIVEN THE
21 BREATHALYZER IN THE BREATHALYZER ROOM, HE CAN BE
22 CHARGED WITH D.U.A.C. AT THAT POINT. THE
23 LEGISLATURE ALSO GIVES THE OPTION TO THE STATE TO
24 MAKE AN ELECTION. WE'RE GOING TO PROSECUTE THIS
25 D.U.I. AS A D.U.A.C. THE ONLY QUALIFICATION TO

1 THAT IS YOU HAVE TO GIVE THEM AT LEAST THIRTY (30)
2 DAYS NOTICE THAT THAT'S WHAT YOU'RE GOING TO DO.
3 SO, THERE'S NO STATUTORY REQUIREMENT THAT A NEW
4 TICKET BE ISSUED. HE HAS A CHARGING DOCUMENT.
5 IT'S A D.U.I. CITATION THAT'S BEING PROSECUTED AS
6 A D.U.A.C. IN FACT, I THINK THE NEW CITATIONS
7 ACTUALLY ENCOMPASS THAT ISSUE BY GIVING THE COURT
8 THE ABILITY TO, TO PUT ON A D.U.A.C. CHARGE THAT
9 IT'S A D. -- I MEAN A D.U.I. CHARGE THAT IT'S A
10 D.U.A.C. TICKET. SO (PAUSE) ---

11 BY THE COURT: I DON'T -- I'VE NEVER SEEN ---

12 BY MR. EPPS: I'M, I'M -- AGAIN, YOU KNOW,
13 AGAIN, WE'RE TALKING ABOUT -- IT SAYS -- AND HE'S
14 RIGHT. IT SAYS, "A PERSON CHARGED WITH A
15 VIOLATION OF THIS SECTION, WHICH IS THE 2933, THE
16 D.U.A.C., OF THIS SECTION," I -- YOU'VE CHARGED.
17 AGAIN, IT'S NOT -- I DON'T THINK -- I, I -- THAT
18 WOULD LEAD TO A ABSURD RESULT, IN MY OPINION.
19 YOU'VE GOT -- YOU WOULD HAVE INDIVIDUALS THAT JUST
20 SAY, "OKAY, WE'RE GOING, WE'RE GOING TO BRING YOU
21 IN ON A D.U.A.C, YOU KNOW," -- AND THEY RE-WRITE
22 THEM ALL THE TIME. AND THERE'S A REASON WHY
23 YOU'VE GOT TO RE-WRITE A TICKET TO A DRIVING WITH
24 UNLAWFUL ALCOHOL CONCENTRATION INSTEAD OF A
25 D.U.I., A NOLLE PROSSED D.U.I., BECAUSE IT'S A

1 DIFFERENT CRIMINAL STATUTE. IT'S NOT A LESSER,
2 INCLUDING OFFENSE. IT IS A SEPARATE CRIMINAL
3 STATUTE THAT YOU HAVE TO CHARGE HIM. IF HE'S
4 CHARGED -- AND THE ONLY WAY TO CHARGE SOMEBODY,
5 AGAIN, IS, IS BY A CHARGING DOCUMENT. YOU KNOW,
6 AGAIN, A UNIFORM TRAFFIC TICKET OR, OR AN ARREST
7 WARRANT. IT'S NOT A NOTICE ISSUE. AND, AND I
8 THINK PARTICULARLY WHEN YOU'RE TALKING ABOUT THE
9 FUNDAMENTAL RIGHT OF THE DEFENDANT IN THIS CASE,
10 PARTICULAR DEALING WITH A CRIMINAL STATUTE WHERE
11 HE CAN GO TO JAIL ON BOTH CHAR- -- ON THIS CHARGE,
12 YOU'VE CERTAINLY GOT TO CONSTRUE IT IN FAVOR OF --
13 AGAINST THE STATE AND IN FAVOR OF THE DEFENDANT IN
14 THIS MATTER. AND HE MUST BE CHARGED. IT'S A
15 SIMPLE ISSUE. IT'S A SIMPLE THING. HE COULD HAVE
16 VERY EASILY IN THE FOUR (4) YEARS THIS CASE HAS
17 BEEN PENDING BEEN SERVED WITH A UNIFORM TRAFFIC
18 TICKET FOR D.U.A.C. AND IT'S BEEN A YEAR AND A
19 HALF SINCE SEPTEMBER OF 2015.

20 BY MR. BYRD: I GUESS I WOULD ADD TO THAT,
21 JUDGE, REGARDLESS OF YOUR THINKING ON THE MATTER,
22 IF THE JURY THAT'S HERE DECIDES THAT MR. SHORT IS
23 NOT GUILTY OF DRIVING UNDER -- WITH AN UNLAWFUL
24 ALCOHOL CONCENTRATION, THAT'LL PUT AN END TO THE
25 ISSUE, AND YOU CAN TAKE IT UNDER ADVISEMENT AND

1 RULE ON IT AT THAT POINT, IF YOU CHOOSE, RATHER
2 THAN AT, AT -- IN PRE-TRIAL.

3 BY MR. EPPS: WELL, I DON'T WANT TO HAVE -- I
4 MEAN, THIS IS A FUNDAMENTAL ---

5 BY THE COURT: WELL, I UNDERSTAND PITFALLS
6 AND PROS AND CONS ON, YOU KNOW, PROSECUTING AND
7 DEFENDING D.U.I. VERSUS D.U.A.C. THERE'S, YOU
8 KNOW, A SIZEABLE DIFFERENCE THERE AS FAR AS THE
9 ELEMENTS ARE CONCERNED. AND THIS CASE LAW, IN
10 THIS APPEAL HEARD BY JUDGE STILLWELL, SEEMS TO
11 DEAL WITH THE EXACT ISSUE THAT WE'RE HEARING
12 TODAY.

13 BY MR. EPPS: I DON'T HAVE -- LET ME ---

14 BY THE COURT: THAT'S FINE. TAKE YOUR TIME.

15 BY MR. EPPS: I THOUGHT I HAD TWO (2) ---

16 BY MR. BYRD: I THOUGHT I GAVE YOU ONE;
17 REMEMBER?

18 BY MR. EPPS: YEAH, I KNOW YOU -- IT JUST
19 DISAPPEARED.

20 BY THE COURT: I'VE, I'VE READ MINE. TAKE
21 THAT AND JUST ---

22 BY MR. BYRD: I DIDN'T BRING AN EXTRA.

23 BY MR. EPPS: BECAUSE I GLANCED OVER IT.

24 (PAUSE) WELL, AND, AGAIN, YOUR HONOR, WHILE IT --
25 THAT'S, THAT'S, THAT'S A COURT OF GENERAL

1 SESSIONS.

2 BY THE COURT: RIGHT.

3 BY MR. EPPS: I MEAN, I UNDERSTAND. AND I
4 UNDERSTAND. I MEAN, I -- AGAIN, YOU KNOW, I STILL
5 THINK THAT THAT -- MY POSITION IS, IS IN THIS CASE
6 IN THIS, IN THIS -- AGAIN, I DON'T KNOW. AND
7 USUA- -- THE, THE FACTS -- HE MAY HAVE BEEN RE-
8 WRITTEN -- IT MAY HAVE BEEN RE-WRITTEN TO A
9 D.U.A.C. BUT, THE FACT OF THE MATTER IS, YOU'VE
10 GOT A STATUTE THAT SAYS THAT NEED TO BE STRICTLY
11 CONSTRUED AGAINST THE STATE AND, AND IN FAVOR OF
12 THE DEFENDANT, THAT A PERSON CHARGED WITH
13 VIOLATION OF THIS SECTION, IT -- YOU -- IT -- TO,
14 TO HAVE A SITUATION WHERE IT'S JUST A NOTICE THING
15 IS -- WOULD LEAD TO AN ABSURD RESULT. WE'RE
16 TALKING ABOUT A CRIMINAL CHARGE WITH CRIMINAL
17 PENALTIES WITH PENALTY -- WITH THE POTENTIAL THAT,
18 THAT THE DEFENDANT, MY CLIENT, WILL GO TO JAIL.
19 AND IT SAYS "YOU'RE CHARGED WITH VIOLATION OF
20 THIS, THIS SECTION," WHICH IS THE D.U.A.C. THAT
21 HE NEEDS TO BE CHARGED THROUGH, AGAIN, THROUGH A
22 UNIFORM TRAFFIC TICKET, A BLUE TICKET OR AN ARREST
23 WARRANT.

24 BY THE COURT: WELL, I, I HEARD BOTH
25 ARGUMENTS AND I'M GOING TO RESPECTFULLY DENY THE

1 MOTION TO DISMISS, BASED ON THE NOTICE PRESENTED
2 BY BOTH YOU AND THE STATE, AS WELL AS THE CASE LAW
3 HEARD BY JUDGE STILLWELL IN THE FORM OF AN APPEAL,
4 DEALING WITH THE SAME ISSUE. THAT NOTICE, AS
5 ARTICULATED IN THE STATUTE, WILL SUFFICE IN THIS
6 MATTER AS FAR AS BEING NOTIFIED OF THE INTENT TO
7 PROSECUTE UNDER THE D.U.A.C. ANY OTHER MOTIONS
8 BEFORE WE ---

9 BY MR. BYRD: I'M ---

10 BY THE COURT: WOULD YOU LIKE TIME TO ---

11 BY MR. BYRD: NO, JUST FOR THE SAKE OF
12 EXPEDITION, WE PROFFER THE TWO (2) VIDEOS, THE
13 V.A. AND THE IN-CAR. AND MR. EPPS INDICATED HE
14 HAD SOME ---

15 BY MR. EPPS: WELL, I DO HAVE, ---

16 BY MR. BYRD: --- ISSUES.

17 BY MR. EPPS: (LOOKING THROUGH DOCUMENTS)

18 BY MR. BYRD: SO, I THINK BEST TO GET THOSE
19 DONE.

20 BY THE COURT: SURE.

21 BY MR. EPPS: YES, SIR, YOUR HONOR, MAY -- IS
22 THAT -- I'M CERTAINLY -- FOR ANY APPEAL PURPOSE --
23 I MEAN, CERTAINLY, THE, THE -- THOSE -- THE -- DO
24 I NEED TO MAKE THE NOTICE ISSUE AND THE -- THE
25 NOTICE THAT WE RECEIVED, I GUESS WAS THE CRU- --

1 THE ISSUE WITH THE -- THE ISSUE WITH THIS, THIS,
2 THIS ---

3 BY THE COURT: YES, SIR. THE NOTICE, ---

4 BY MR. EPPS: --- STATUTORY ---

5 BY THE COURT: --- THE STATUTES, THE VERBIAGE
6 IN SUBSECTION FOUR (4), AS WELL AS THE CASE LAW BY
7 WAY OF APPEAL, HEARD BY JUDGE STILLWELL. THAT'S
8 WHAT I WAS BASING MY ---

9 BY MR. EPPS: OKAY. SO, IT'S -- YES, YES,
10 YES, SIR.

11 BY THE COURT: OKAY.

12 BY MR. EPPS: ALL RIGHT. I DO HAVE, YOUR
13 HONOR -- THERE'S, THERE -- IN REGARDS TO THE
14 VIDEO, ---

15 BY THE COURT: UH-HUH. (AFFIRMATIVE)

16 BY MR. EPPS: --- THE VIDEO ON 5/11/2013
17 STARTED ABOUT THREE-THIRTY (3:30), IT LOOKED LIKE,
18 THREE-THIRTY (3:30), THREE-THIRTY (3:30) IN THE
19 MORNING AND STOPPED AT FOUR-THIRTY-EIGHT (4:38) IN
20 THE MORNING. BEGINNING AT ABOUT -- AND THIS WAS A
21 SINGLE-CAR ACCIDENT. TROOPER MAYFIELD CAME ONTO
22 THE SCENE AFTER THE, AFTER THE, THE ACCIDENT
23 HAPPENED. SO, AROUND THREE-THIRTY-ONE (3:31),
24 THIRTY-FOUR (3:34), THERE WAS SOME, THERE WAS SOME
25 QUESTIONING REGARDING DRINKING. ABOUT THREE-

1 THIRTY-TWO (3:32) YOU GOT QUESTIONING REGARDING
2 DRINKING LAST COUPLE OF HOURS, COMING BACK FROM
3 CLEMSON. DID YOU HAVE ANY BEERS? THINGS LIKE
4 THAT. YOUR HONOR, AT THAT POINT IN TIME, EVEN
5 THOUGH IT'S -- TROOPER MAYFIELD WAS ON THE SCENE,
6 IT WASN'T UNTIL HE WAS ACTUALLY MIRANDIZED AT
7 THREE-FORTY-EIGHT (3:48) -- HE WASN'T MIRANDIZED
8 UNTIL, UNTIL, UNTIL THREE-FORTY-EIGHT (3:48) ON
9 THE VIDEO. SO, I GOT A -- I'VE GOT A QUESTION
10 REGARDING SUP- -- MY ISSUE IS THIS: MY, MY MOTION
11 IS TO SUPPRESS ANY STATEMENTS REGARDING DRINKING
12 FROM THE TIME FROM AROUND THREE-THIRTY-ONE (3:31)
13 TO THREE-FORTY-EIGHT (3:48). AND THE REASON
14 BEING, AT THAT POINT IN TIME, MR., MR., MR. SHORT
15 IS IN CUSTODY. HE IS IN A CUSTODIAL SITUATION.
16 HE IS ON THE SIDE OF THE ROAD. TROOPER MAYFIELD
17 ASKED HIM WHAT'S HAPPENED. I BELIEVE MR. SHORT IS
18 ON THE PHONE WITH HIS TOW TRUCK COMPANY AND THEN
19 SPECIFIC QUESTIONS WERE, WERE AS-, ASKED OF HIM,
20 TARGETING "WERE YOU DRINKING? WHERE YOU COMING
21 FROM? HOW MANY HAVE YOU HAD?" THINGS OF THAT
22 NATURE. SO, AT THAT POINT IN TIME, HE'S IN A
23 CUSTODIAL SITUATION. HE'S NOT ABLE TO LEAVE. I
24 MEAN, HE'S NOT ABLE TO LEAVE AT ALL. SO, I WOULD,
25 I WOULD ASK THERE -- THERE'S, THERE'S -- THOSE

1 STATEMENTS DEALING WITH, WITH DRINKING AND WHERE
2 HE'S BEEN, DRINKING, FROM, FROM THREE-THIRTY-ONE
3 (3:31) TO, TO THE TIME HE WAS MIRANDIZED AT THREE-
4 FORTY-EIGHT (3:48) BE SUPPRESSED.

5 BY THE COURT: MR. BYRD?

6 BY MR. BYRD: YES, SIR, YOUR HONOR. TWO (2),
7 TWO (2) BASIC REASONS WHY THAT IS NOT A, A MOTION
8 THAT THE COURT SHOULD GRANT. THE, THE CASE LAW --
9 AND I'M, I'M JUST GOING TO ZIP THROUGH THEM,
10 RATHER THAN GO THROUGH EACH CASE. PENNSYLVANIA
11 VERSUS BRUDER. IT'S A 1988 UNITED STATES SUPREME
12 COURT CASE. "ORDINARY TRAFFIC STOPS DO NOT
13 INVOLVE CUSTODY FOR PURPOSES OF MIRANDA." STATE
14 VERSUS PEEL, WHICH IS A SOUTH CAROLINA CASE IN
15 1989. THE SUPREME COURT RULED THAT THE "ADMISSION
16 OF FIELD SOBRIETY TEST TESTIMONY, DESPITE NO
17 MIRANDA WARNINGS BEING ADMINISTERED WAS NOT
18 ERROR." BERKEMER VERSUS MCCARTY. THAT'S AN '84,
19 UNITED STATES SUPREME COURT CASE. "ROADSIDE
20 QUESTIONING OF A MOTORIST DETAINED PURSUANT TO A
21 TRAFFIC STOP DOES NOT CONSTITUTE CUSTODIAL
22 INTERROGATION FOR MIRANDA PURPOSES." STATE "V"
23 MORGAN. THAT'S A '84 SOUTH CAROLINA SUPREME COURT
24 DECISION. "MIRANDA WARNINGS ARE NOT REQUIRED FOR
25 STATEMENTS MADE AT THE SCENE OF A TRAFFIC ACCIDENT

1 TO BE ADMISSIBLE." THIS WAS A TRAFFIC ACCIDENT.
2 ANOTHER PAGE OF CASES; I WON'T CONTINUE IN THAT
3 REGARD. I JUST WOULD POINT OUT THAT THE, THE
4 STATUTORY SCHEME ENVISIONS AN ARREST AND A MIRANDA
5 SHOWN ON THE VIDEO. ALL MR. MAYFIELD WAS DOING
6 WAS INVESTIGATING A WRECK. THE STATEMENTS THAT
7 WERE MADE ARE ADMISSIBLE. HE WAS NOT IN CUSTODY
8 AT THAT POINT. HE WAS PLACED IN CUSTODY WHEN HE
9 WAS PLACED UNDER ARREST AND HANDCUFFED, AND READ
10 HIS MIRANDA RIGHTS.

11 BY THE EPPS: ALL RIGHT. AGAIN, I UNDERSTAND
12 YOU'VE GOT -- THIS IS NOT -- YOU, YOU GOT
13 SPECIFICALLY -- WHEN YOU -- THIS IS DIFFERENT THAN
14 A TRAFFIC STOP. AN INVESTIGATION WHERE YOU GO ON
15 -- WHAT YOU COME -- THIS WAS A, THIS WAS A, A, A,
16 A SINGLE CAR WRECK WHERE MR. SHORT WAS ON THE
17 SCENE, CALLING A TOW TRUCK DRIVER AND THERE WERE
18 SPECIFIC A- -- THERE WAS QUESTIONING HIM -- "WHAT
19 HAPPENED? DID YOU DOZE OFF? ALL RIGHT. YOU BEEN
20 DRINKING?" AND THEN IT GOES INTO SPECIFIC
21 QUESTIONS. AT THAT POINT IN TIME HE'S NOT -- IT'S
22 NOT WHETHER HE'S UNDER ARREST, BUT HE'S, HE'S IN
23 CUSTODY. CAN HE LEAVE? IS HE FREE TO LEAVE? NO,
24 HE'S NOT FREE TO LEAVE. HE WAS IN A SITUATION
25 WHERE IT WAS A CUSTODIAL SITUATION THAT WOULD

1 IMPLICATE MIRANDA. AND I BELIEVE THAT, YOU KNOW,
2 AT LEAST UP UNTIL THE TIME THAT HE WAS MIRANDIZED
3 AT THREE-FORTY-EIGHT (3:48), THAT THOSE STATEMENTS
4 SHOULD BE SUPPRESSED.

5 BY THE COURT: ALL RIGHT. I'M GOING TO
6 RESPECTFULLY DENY THE MOTION.

7 BY MR. EPPS: YES, SIR.

8 BY THE COURT: WE'LL CONTINUE ON. ANYTHING
9 ELSE?

10 BY MR. EPPS: YES, SIR. (PAUSE - LOOKING
11 THROUGH DOCUMENTS) NOT AT THIS, NOT AT THIS TIME,
12 YOUR HONOR.

13 BY THE COURT: OKAY. WE'LL BE IN RECESS FOR
14 JUST A -- ANYTHING FURTHER?

15 BY MR. EPPS: NO, NO.

16 (OFF RECORD/THE JURY ENTERS)

17 BY THE COURT: ALL RIGHT. FOR THE REST OF
18 YOU, I DO APPRECIATE -- BOTH PARTIES APPRECIATE
19 MORE THAN YOU KNOW, YOU APPEARING TODAY. I'M
20 GOING TO TRY AND TALK AROUND THIS T.V. I
21 APPRECIATE YOU SITTING TO WHERE I COULD SEE YOU.
22 I KNOW THERE'S A MILLION OTHER PLACES YOU'D RATHER
23 BE, BUT THIS IS A SERIOUS ISSUE TO BOTH PARTIES
24 CONCERNED. AND WITHOUT YOUR ASSISTANCE TODAY, IT
25 WOULDN'T BE POSSIBLE FOR US TO APPRECIATE THE

1 RIGHTS THAT WE DO HAVE IN THIS COUNTRY. I'M GOING
2 TO APPOINT A FOREPERSON. IT'S GOING TO BE MS.
3 SMALL. IF YOU'LL -- THAT'S YOU? OKAY.

4 BY MS. SMALL: UH-HUH. (AFFIRMATIVE)

5 BY THE COURT: YOU'RE GOING TO BE THE VOICE
6 OF THE JURY. YOU'LL BE THE ONE I, I CONSULT WITH
7 DURING THIS PROCESS AND AT THE END. BUT, YOU WILL
8 BE THE FOREPERSON, OKAY?

9 BY MS. SMALL: OKAY.

10 BY THE COURT: I'M GOING TO SWEAR YOU ALL IN.
11 IF YOU'LL WILL PLEASE STAND.

12 (THE JURY COMPLIES)

13 BY THE COURT: DO YOU, AND EACH OF YOU,
14 SOLEMNLY SWEAR OR AFFIRM THAT YOU WILL WELL AND
15 TRULY TRY THE ISSUES BETWEEN THE STATE OF SOUTH
16 CAROLINA AND THE DEFENDANT IN THE CASE AT BAR, AND
17 GIVE A TRUE VERDICT ACCORDING TO THE LAW AND THE
18 EVIDENCE PRESENTED, SO HELP YOU, GOD? MS. SMALL?

19 BY MS. SMALL: I DO.

20 BY THE COURT: MS. LYNCH?

21 BY MS. LYNCH: I DO.

22 BY THE COURT: MS. BEECH?

23 BY MS. BEECH: I DO.

24 BY THE COURT: MR. CLONTS (PHONETIC)?

25 BY MR. CLONTS: I DO.

1 BY THE COURT: MS. SHAW?

2 BY MS. SHAW: I DO, SIR.

3 BY THE COURT: MR. RON (PHONETIC)?

4 BY MR. RON: I DO.

5 BY THE COURT: ALL RIGHT. YOU MAY HAVE A
6 SEAT.

7 BY THE COURT: THE ISSUE WE'RE HERE TODAY IS
8 IN REFERENCE TO STATE VERSUS MR. ZEBBULIN SHORT.
9 MR. SHORT IS SITTING OVER HERE. HIS ATTORNEY IS
10 MR. WILLIAM EPPS. HE'LL INTRODUCE HIMSELF IN JUST
11 A MINUTE. THE CHARGE FILED BY WAY OF UNIFORM
12 TRAFFIC CITATION IS FOR DRIVING WITH AN UNLAWFUL
13 ALCOHOL CONCENTRATION. IT IS BY TICKET F838374,
14 THE ELEMENTS OF WHICH WILL BE EXPLAINED TO YOU
15 LATER. THE TICKET IS SIMPLY THE CHARGE BY WHICH
16 THE CASE IS BROUGHT INTO COURT. IT IS NOT IN ANY
17 SENSE TO BE TAKEN AS EVIDENCE. THE DEFENDANT HAS
18 PLEAD NOT GUILTY TO THIS CRIME AND, THEREFORE, THE
19 STATE HAS THE BURDEN OF PROVING EACH OF THE
20 ELEMENTS OF THE CRIME, BEYOND A REASONABLE DOUBT.
21 IT WILL BE YOUR DUTY, LADIES AND GENTLEMEN, TO
22 DECIDE WHETHER OR NOT THE STATE HAS MET THAT
23 BURDEN. I'VE GOT SOME THINGS I NEED TO READ TO
24 YOU I WISH I DIDN'T HAVE TO READ. BUT, IT, IT'S
25 TOO MUCH TO MEMORIZE AND I WANT TO MAKE SURE YOU

1 GET IT RIGHT; OKAY? THE INSTRUCTIONS THROUGHOUT
2 THIS TRIAL: YOU SHOULD REMAIN ALERT AND LISTEN
3 ATTENTIVELY. YOU SHOULD REMEMBER ALL THE EVIDENCE
4 AS CLEARLY AS POSSIBLE, BUT YOU SHOULD NOT FORM
5 ANY DEFINITE OPINION ON THE MERITS OF THE CASE
6 UNTIL YOU HAVE HEARD ALL OF THE EVIDENCE,
7 ARGUMENTS AND INSTRUCTIONS OF THE LAW. UNTIL THAT
8 TIME, YOU ARE NOT TO DISCUSS THIS CASE AMONG
9 YOURSELVES OR WITH ANYONE ELSE. I KNOW LITTLE
10 ABOUT THIS CASE AND I WHAT I DO KNOW IS
11 IRRELEVANT, SINCE YOU, THE JURY, MUST DETERMINE
12 THE FACTS BASED ON THE EVIDENCE PRESENTED FROM THE
13 WITNESS STAND. DURING THIS CASE, YOU MAY HEAR
14 CONFLICTING TESTIMONY, WHICH IS WHY I ASK YOU TO
15 PAY CAREFUL ATTENTION TO THE WITNESSES AS THEY
16 TESTIFY, SINCE YOU WILL HAVE TO DETERMINE WHICH
17 WITNESSES ARE TELLING THE TRUTH IN ORDER TO DECIDE
18 THE FACTS OF THE CASE. THE, THE TICKET CHARGING
19 THE DEFENDANT WITH THE OFFENSE OF DRIVING WITH
20 UNLAWFUL CONCENTRATION IS NOT EVIDENCE AGAINST THE
21 DEFENDANT. IT'S ONLY A MEANS BY WHICH TO BRING
22 THE CASE BEFORE YOU FOR TRIAL. AS I POINTED OUT
23 BEFORE, THE DEFENDANT HAS ENTERED A PLEA OF NOT
24 GUILTY AND IT IS THE STATE'S BURDEN OF PROVING THE
25 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

1 ANYONE ACCUSED OF A CRIME IS PRESUMED TO BE NOT
2 GUILTY AND THE PRESUMPTION OF INNOCENCE SHALL
3 REMAIN WITH THE ACCUSED THROUGHOUT THE TRIAL UNTIL
4 HIS OR HER GUILT HAS BEEN PROVEN TO YOU BEYOND A
5 REASONABLE DOUBT. NOW, LET'S GO OVER THE
6 PROCEDURE. EACH SIDE WILL HAVE THE OPPORTUNITY TO
7 ADDRESS YOU TO EXPLAIN THEIR POSITION IN THIS
8 DISPUTE. THE PARTIES WILL MAKE OPENING STATEMENTS
9 TO EXPLAIN THE CASE AS THEY SEE IT. HOWEVER, THIS
10 OPENING STATEMENT IS PURELY A MATTER OF CHOICE,
11 AND NO CONCLUSION SHOULD BE DRAWN IF ONE PARTY OR
12 BOTH PREFER NOT TO MAKE AN OPENING STATEMENT. THE
13 DEFENSE HAS THE RIGHT TO DEFER ITS OPENING
14 STATEMENT UNTIL THE STATE HAS PRESENTED ITS CASE
15 IN CHIEF. ONCE THE OPPORTUNITY FOR OPENING
16 STATEMENTS HAS ENDED, THE STATE WILL PRESENT THEIR
17 CASE, IN WHICH HE WILL OFFER WITNESSES OR WHATEVER
18 FORMS OF EVIDENCE HE DEEMS NECESSARY TO PROVE HIS
19 CASE. WHEN THE STATE RESTS, THE DEFENSE WILL THEN
20 PRESENT HIS CASE. AFTER ALL THE EVIDENCE HAS BEEN
21 PRESENTED, EACH SIDE WILL THEN ARGUE THEIR CASE TO
22 YOU IN THE FORM OF A CLOSING ARGUMENT. THE
23 ARGUMENTS ARE MERELY THEIR SUMMATIONS OF THE CASE
24 AND ARE NOT TO BE CONSIDERED AS EVIDENCE. I WILL
25 THEN GIVE YOU THE CHARGE OF THE LAW GOVERNING THIS

1 CASE, WHICH YOU MUST TAKE AND APPLY TO THE FACTS
2 THAT HAVE BEEN PRESENTED. YOU WILL RETIRE TO YOUR
3 JURY ROOM WHERE YOU WILL DELIBERATE THE FACTS OF
4 THIS CASE. REMEMBER, NEITHER THE OPENING OR
5 CLOSING ARGUMENTS ARE EVIDENCE IN THE CASE, AND NO
6 CONCLUSION SHOULD BE DRAWN FROM THEM. THE STATE
7 LAW DOES NOT ALLOW JURORS TO TAKE NOTES DURING THE
8 TRIAL, NOR CAN YOU ASK ANY QUESTIONS. THEREFORE,
9 I AGAIN ASK THAT YOU PAY CLOSE ATTENTION TO THE
10 EVIDENCE AND TESTIMONY PRESENTED IN THIS CASE. IT
11 IS YOUR SOLEMN RESPONSIBILITY TO DETERMINE THE
12 GUILT OR INNOCENCE OF THE DEFENDANT, AND YOUR
13 VERDICT MUST BE BASED SOLELY ON THE EVIDENCE WHICH
14 IS PRESENTED TO YOU DURING THE TRIAL, AND ON THE
15 LAW, WHICH I WILL PROVIDE TO YOU AT THE END OF THE
16 TRIAL. YOU, THE JURY, ARE CONCERNED WITH THE
17 FACTS AND THE COURT IS CONCERNED WITH THE LAW.
18 THE COURT IS CONCERNED WITH THE FACTS ONLY TO SEE
19 THAT THEY ARE PROPERLY AND LAWFULLY PROVIDED TO
20 YOU: THERE MAY BE TIMES WHEN I WILL NEED TO
21 CONFER WITH BOTH SIDES OUTSIDE YOUR PRESENCE, AT
22 WHICH TIME, YOU WILL BE ALLOWED TO TAKE A BREAK.
23 HOWEVER, PLEASE REFRAIN FROM TALKING ABOUT THE
24 CASE TO ANYONE, EVEN A FELLOW JUROR. IF ANYONE
25 SHOULD APPROACH YOU AND ATTEMPT TO DISCUSS THIS

1 CASE, PLEASE REPORT IT TO ME IMMEDIATELY, AS THIS
2 IS A SERIOUS BREACH THAT I WILL NEED TO ADDRESS.
3 REMEMBER THAT YOU HAVE SWORN TO BE FAIR AND
4 IMPARTIAL TO BOTH THE STATE AND THE DEFENDANT. I
5 DID NOT INTRODUCE THE STATE. THE STATE IS
6 REPRESENTED BY MR. MITCHELL BYRD. HE'LL INTRODUCE
7 HIMSELF IN JUST A MINUTE. WITH THAT BEING SAID,
8 MR. BYRD?

9 BY MR. BYRD: THANK YOU, YOUR HONOR. MAY IT
10 PLEASE THE COURT. MADAM FORELADY, LADIES AND
11 GENTLEMAN OF THE JURY, AGAIN, MY NAME IS MITCHELL
12 BYRD. I'M WITH THE SOLICITOR'S OFFICE HERE IN
13 PICKENS COUNTY. AND I'M GOING TO BRIEFLY EXPLAIN
14 TO YOU WHY WE'RE HERE, WHAT THE EVIDENCE MAY SHOW
15 YOU WHEN IT'S DISCLOSED, AND HOW WE REACH A, A
16 DECISION IN THE CASE. EVERYONE SHOULD KNOW BY NOW
17 THAT AN AUTOMOBILE IS A DANGEROUS INSTRUMENTALITY.
18 IT REQUIRES MENTAL ABILITY TO THINK AND MAKE
19 DECISIONS AND IT REQUIRES PHYSICAL ABILITY TO BE
20 ABLE TO MAKE TURNS AND, AND PUT ON BRAKES AND STAY
21 IN YOUR LANE. AND WE, WE ENCOURAGE PEOPLE TO
22 OPERATE MOTOR VEHICLES IN SOUTH CAROLINA ON THE
23 ROADS IN PICKENS COUNTY. AND THE ONLY THING WE
24 ASK OF THEM IS THAT THEY PLEASE DO SO SAFELY. AND
25 IN THAT REGARD, WE HAVE RULES OF THE ROAD. WE

1 HAVE STOP SIGNS, FOR INSTANCE. AND WE WANT PEOPLE
2 TO STOP AT THE STOP SIGN. IT'S NOT JUST FOR THEIR
3 SAFETY. IT'S FOR THE SAFETY OF ALL THE PEOPLE WHO
4 ARE USING THE ROADS. AND WE, AS A SOCIETY, ALSO
5 CONDONE THE USE OF ALCOHOL. WE -- YOU SEE
6 COMMERCIALS ON T.V. ALL THE TIME AND, AND
7 REFERENCES TO BEER, WINE AND WHISKEY EVERYWHERE
8 YOU GO. RESTAURANTS SERVE THEM, SO, I -- WE, AS A
9 SOCIETY, WE TOLERATE ALCOHOL USE. AND THEREIN
10 COMES THE RUB. WE WANT DRIVERS TO OPERATE CARS
11 SAFELY AND WE WANT PEOPLE TO FEEL FREE TO IMBIBE
12 WITH ALCOHOL. THE PROBLEM IS WHEN PEOPLE CONSUME
13 TOO MUCH ALCOHOL TO OPERATE A VEHICLE SAFELY.
14 THAT'S WHERE THE RUB COMES. THAT'S WHAT THIS CASE
15 IS ABOUT TODAY. NOW, WE EXPECT THE EVIDENCE WILL
16 SHOW THAT FORMER TROOPER BRIAN MAYFIELD WITH THE
17 SOUTH CAROLINA HI- -- FORMERLY WITH THE SOUTH
18 CAROLINA HIGHWAY PATROL. HE, HE WAS WITH THE
19 PATROL FOR TWENTY-FIVE (25) YEARS AND HAS NOW
20 RETIRED -- WILL TESTIFY TO HIS INVESTIGATION THAT
21 OCCURRED AT THE TIME THIS INCIDENT OCCURRED. YOU
22 WILL HAVE SOME VIDEOS THAT ARE SHOWN TO YOU FROM
23 THE PATROL VEHICLE, AS WELL AS IN THE BREATHALYZER
24 ROOM, WHERE THE BREATHALYZER EXAMINATION WAS
25 GIVEN. THE EVIDENCE WILL SHOW THAT MR. SHORT AND

1 HIS WIFE HAD BEEN TO A GRADUATION CELEBRATION AT
2 CLEMSON, THAT THEY HAD PROCEEDED TO VARIOUS
3 ESTABLISHMENTS FOLLOWING THAT. I, I'M NOT
4 FAMILIAR WITH THE ESTABLISHMENT, TRIPLE T'S, BACK
5 ALLEY, I THINK ARE NAMES THAT ARE MENTIONED. THEY
6 CONSUMED ALCOHOL. THEY LEFT THE PLACE TWO --
7 BETWEEN TWO (2:00) AND THREE (3:00) IN THE
8 MORNING. AND WHILE EN ROUTE TO THEIR HOME, MR.
9 SHORT PASSED OUT, LEFT THE ROADWAY, STRUCK A
10 UTILITY POLE, SEVERELY DAMAGING HIS CAR, INJURING
11 HIS WIFE. TROOPER MAYFIELD WAS CALLED TO THE
12 SCENE, INVESTIGATED THE ACCIDENT, THE WRECK. MR.
13 SHORT INDICATED TO HIM THAT HE HAD CONSUMED SOME
14 BEER PRIOR TO THE WRECK. HE WAS ARRESTED FOR
15 DRIVING UNDER THE INFLUENCE, BROUGHT TO PICKENS
16 COUNTY, AND OFFERED A BREATHALYZER EXAM. AND HE
17 TOOK THE TEST AND BLEW A POINT ZERO NINE (.09) OR
18 NINE, NINE ONE-HUNDREDTHS OF ONE PERCENT (.09%) OF
19 ALCOHOL. OUR LAW, SECTION 2933--AND HIS HONOR IS
20 GOING TO EXPLAIN THIS TO YOU AT LENGTH ONCE ALL
21 THE EVIDENCE IS PRESENTED FOR YOUR CONSIDERATION
22 TODAY--SIMPLY STATES "IT IS UNLAWFUL FOR A PERSON
23 TO DRIVE A MOTOR VEHICLE WITHIN THIS STATE WHILE
24 HIS ALCOHOL CONCENTRATION IS EIGHT ONE HUNDREDTHS
25 OF ONE PERCENT (.08%) OR MORE. PRETTY SIMPLE, BUT

1 SUBJECT TO ARGUMENT FOR SURE. WHAT IT MEANS IS
2 TWO (2) THINGS; NUMBER ONE (1), FOR YOUR
3 CONSIDERATION, WAS MR. SHORT OPERATING A MOTOR
4 VEHICLE, DRIVING A MOTOR VEHICLE IN SOUTH CAROLINA
5 ON THIS OCCASION? IF YOU DETERMINE THAT HE DID
6 NOT DRIVE THE VEHICLE OR YOU HAVE SOME REASONABLE
7 DOUBT THAT HE WAS OPERATING THE VEHICLE THAT
8 NIGHT, THEN YOUR VERDICT SHOULD BE NOT GUILTY,
9 BECAUSE HE IS NOT GUILTY. THE SECOND ISSUE IS
10 WHETHER OR NOT HE HAD AN ALCOHOL CONCENTRATION IN
11 HIS BLOOD OF POINT ZERO EIGHT HUNDREDTHS OF ONE
12 PERCENT (.08%) OR MORE. YOU HAVE THE BREATHALYZER
13 EVIDENCE IN THIS CASE THAT HE -- HIS BREATH
14 MEASURED AT POINT ZERO NINE PERCENT (.09%), WHICH
15 IS IN EXCESS OF POINT ZERO EIGHT PERCENT (.08%).
16 SO, THE SECOND ISSUE WAS DID HE HAVE POINT ZERO
17 EIGHT PERCENT (.08%) ALCOHOL CONCENTRATION IN HIS
18 BLOOD ON THAT OCCASION? IF YOUR ANSWER IS YES,
19 THEN MR. SHORT IS GUILTY OF DRIVING WITH AN
20 UNLAWFUL ALCOHOL CONCENTRATION. NOW, THE BURDEN
21 IS ON THE STATE OF SOUTH CAROLINA. THE PEOPLE
22 HAVE THE OBLIGATION TO BRING ALL OF THE EVIDENCE
23 IN HERE, WARTS AND ALL. SOME OF IT'S TEDIOUS;
24 SOME OF IT'S BORING. THE VIDEOS ARE LONG. IT'S
25 GOING TO CAUSE YOU TO HAVE SOME FATIGUE. I

1 APOLOGIZE FOR THAT. BUT, WE OWE IT TO MR. SHORT
2 AND TO THESE OFFICERS OF THE LAW AND TO THE COURT
3 TO BRING IT ALL IN HERE FOR YOU, EVERYTHING. SO,
4 ALL WE ASK IS THAT YOU GIVE DUE CONSIDERATION TO
5 THE EVIDENCE. AND AFTER THE EVIDENCE IS ENTERED
6 AND THE ARGUMENTS ARE OVER AND THE JUDGE HAS
7 CHARGED YOU WITH THE LAW, YOU DELIBERATE THE FACTS
8 AND FIND THE FACTS AS YOU BELIEVE THEM TO BE AND
9 RETURN A VERDICT THAT SPEAKS THE TRUTH. THAT'S
10 WHAT THE WORD "VERDICT" MEANS, TO SPEAK THE TRUTH.

11 BY THE COURT: THANK YOU, SIR. MR. EPPS?

12 BY MR. EPPS: THANK YOU, YOUR HONOR. MAY IT
13 PLEASE THE COURT, OPPOSING COUNSELS -- OPPOSING
14 COUNSELOR. LADIES AND GENTLEMEN OF THE JURY, MY
15 NAME IS WILLIAM NORMAN EPPS, III. I'M AN ATTORNEY
16 WITH EPPS, NELSON, EPPS AND PERKINS IN ANDERSON,
17 SOUTH CAROLINA. AND I REPRESENT THE DEFENDANT,
18 MR. ZEBBULIN SHORT. THIS CASE IS FOUR (4) YEARS,
19 GOING ON FOUR (4) YEARS. ON MAY THE 11TH, 2013,
20 NEARLY FOUR (4) YEARS AGO, THERE WAS AN ACCIDENT,
21 A ONE-CAR ACCIDENT. AND MR. SHORT WAS, AS THE
22 STATE TOLD YOU, MR. SHORT WAS ARRESTED AND CHARGED
23 WITH DRIVING UNDER THE INFLUENCE. HOWEVER, TODAY,
24 WE ARE HERE BEFORE Y'ALL FOR A JURY TRIAL ON THE
25 CHARGE OF DRIVING WITH UNLAWFUL ALCOHOL

1 CONCENTRATION, WHICH IS DIFFERENT. AND I CAN --
2 WE'LL GO TO RE-VISIT THIS LATER. BUT THAT IS NOT
3 DRIVING UNDER THE INFLUENCE. THAT IS A DIFFERENT
4 CHARGE, ALTOGETHER. BUT, WE'RE NOT HERE FOR A
5 D.U.I. WE ARE HERE WITH DRIVING WITH AN UNLAWFUL
6 ALCOHOL CONCENTRATION. AND, AS THE COURT TOLD
7 YOU, MR. SHORT IS ENTITLED TO -- HE IS INNOCENT
8 UNTIL PROVEN GUILTY. HE HAS, IN ESSENCE, THAT
9 CLOAK OF INNOCENCE THAT SURROUNDS HIM UNTIL YOU,
10 THE JURY, HAVE SEEN THE EVIDENCE, HEARD THE
11 TESTIMONY, AND DELIBERATED AND MADE A DECISION
12 REGARDING -- YOU ARE THE FACT-FINDERS IN THIS
13 CASE. Y'ALL WILL LOOK AT ALL THE EVIDENCE. THAT
14 MEANS THE VIDEOS THAT YOU'RE GOING TO WATCH,
15 YOU'RE GOING TO HEAR, HEAR THE WITNESSES, THE
16 WITNESS TESTIMONY FROM THE STAND. AND IT'S NOT,
17 IT IS NOT WHETHER -- YOU ALSO NEED TO, TO KEEP AN
18 OPEN MIND AND LISTEN TO THE EVIDENCE; OKAY?
19 BECAUSE JUST 'CAUSE YOU DRIVE IN THIS STATE -- YOU
20 CAN DRINK AND DRIVE. YOU CAN HAVE SOME DRINKS
21 WITH ALCOHOL AND YOU CAN DRIVE A CAR. A D.U.I.,
22 YOU CANNOT DRIVE AN AUTOMOBILE WHILE YOU'RE
23 MATERIALLY AND APPRECIABLY IMPAIRED. UNDER THIS
24 DRIVING WITH UNLAWFUL ALCOHOL CONCENTRATION --
25 MR., MR. SHORT HAS NEVER BEEN CHARGED WITH. HE'S

1 NEVER BEEN GIVEN A BLUE TICKET; HE'S NEVER BEEN
2 GIVEN AN ARREST WARRANT FOR THAT CHARGE. BUT, WE
3 ARE HERE TODAY FOR THAT CHARGE -- IS YOU CAN'T
4 DRIVE THIS -- A CAR WITH THE ALCOHOL CONCENTRATION
5 OF, OF, POINT ZERO EIGHT (.08%). OKAY? BUT, YOU
6 ALSO -- IN, IN, IN COMING TO -- IN, IN DETERMINING
7 AND DELIBERATING, ONCE YOU GET ALL THAT TESTIMONY
8 AND THE EVIDENCE, YOU'VE GOT TO LOOK AT THE --
9 EVERYTHING -- YOU'VE GOT TO LOOK AT THE EVIDENCE
10 AND THE TESTIMONY IN TOTALITY. MEANING YOU --
11 THERE ARE, THERE ARE MANY THINGS YOU NEED TO LOOK
12 AT. YOU CAN LOOK AT WHETHER OR NOT THE PERSON WAS
13 LAWFULLY ARRESTED OR DETAINED. YOU CAN LOOK AT
14 THE DEFENDANT'S CONDUCT FROM THE TIME THAT TROOPER
15 MAYFIELD GOT ON THE SCENE TO THE TIME HE WENT TO
16 JAIL, FROM THE TIME HE WENT TO THE DATAMASTER
17 ROOM. YOU CAN, YOU CAN LOOK AT EVIDENCE OF ANY
18 FIELD SOBRIETY TEST. YOU CAN LOOK AT THE VIDEOS.
19 WE'VE GOT THE VIDEOS IN THIS CASE. Y'ALL CAN SEE
20 THE DEFENDANT. YOU CAN SEE MR. SHORT'S CONDUCT.
21 YOU ALSO CAN LOOK AT ANY OTHER -- YOU CAN LOOK AT
22 ANY, ANY EVIDENCE THAT'S BEEN SUBMITTED. YOU CAN
23 LOOK AT -- YOU CAN -- YOU'LL HEAR, YOU'LL HEAR
24 SOME EVIDENCE -- YOU'LL HEAR SOME, SOME TESTIMONY
25 AS FAR AS THE DATAMASTER, THE BREATHALYZER, OKAY?

1 BUT, YOU NEED TO TAKE ALL THAT EVIDENCE AND, AND
2 YOU CAN CONSIDER THAT EVIDENCE TO, TO DETERMINE,
3 'CAUSE Y'ALL ARE THE FINDERS OF THE FACTS, WHETHER
4 MR. SHORT'S FACULTY TO DRIVE WOULD CALL INTO
5 WHETHER HE -- WHETHER THAT WOULD CALL INTO, INTO
6 QUESTION THE RESULTS OF THE BREATH TEST IN THIS
7 CASE. AND THAT'S A MAIN ISSUE. AND THAT IS THE
8 BIG ISSUE. AGAIN, IT'S NOT AGAINST THE LAW TO
9 HAVE A DRINK OR TO HAVE A -- DRINK ALCOHOL AND
10 DRIVE A CAR. YOU CERTAINLY CAN'T DRIVE A VEHICLE
11 AND YOU SH- -- UNDER THE MATERIALLY AND
12 APPRECIABLY IMPAIRED AND DRIVE UNDER THE
13 INFLUENCE. AGAIN, THAT'S NOT THE CHARGE THAT HE'S
14 CHARGED WITH. THAT'S NOT WHAT WE'RE PUTTING
15 BEFORE YOU. SO, WE NEED TO GET THAT CLEAR. IT'S
16 WHETHER OR NOT HE WAS DRIVING AN AUTOMOBILE WITH
17 AN ALCOHOL CONCENTRATION OF POINT ZERO EIGHT
18 (.08%). AND JUST BECAUSE THE BREATHALYZER CAME
19 BACK AT A CERTAIN READING, I WANT TO KEEP -- ASK
20 Y'ALL TO KEEP AN OPEN MIND THAT IT MAY NOT BE SO.
21 THAT, THAT, THAT'S NOT THE END-ALL, BE-ALL. THAT
22 IS NOT, THAT IS NOT THE DROP DEAD SMOKING GUN
23 THAT, THAT I THINK THE STATE WOULD ASK Y'ALL TO
24 BELIEVE THAT IT IS. BECAUSE IT CAN BE FALLIBLE.
25 OKAY. AND YOU MUST TAKE INTO EVERYTHING. YOU

1 NEED TO LOOK AT THE CO- -- AND YOU'LL SEE ON THE
2 VIDEO THE CONDUCT THAT MR. SHORT IS, IS -- YOU'LL
3 SEE -- IT DOESN'T -- HE, HE, HE DOESN'T LOOK UNDER
4 THE INFLUENCE. HE STAYED ON THE SCENE. HE WAS
5 RESPECTFUL. HE WAS NICE. HE WAS KIND. HE, IN
6 FACT, TOLD THE OFFICER DURING THE COURSE OF THE,
7 OF THE VIDEO -- APOLOGIZED TO TROOPER MAYFIELD FOR
8 PUTTING HIM OUT. SO, LOOK AT HIS CONDUCT. LOOK
9 AT HIS CONDUCT BOTH AT THE INCIDENT SITE AND LOOK
10 AT THE CONDUCT IN THE, IN THE BREATHALYZER ROOM.
11 ASK YOURSELF, "DOES THAT -- DOES" -- YOU KNOW,
12 LOOK AT HIS CONDUCT AND THEN CONSIDER WHAT, WHAT
13 THE CHARGE IS. AGAIN, THIS IS NOT A DRIVING UNDER
14 THE INFLUENCE CHARGE. BUT, YOU NEED TO CONSIDER
15 HIS CONDUCT AND YOU NEED TO CONSIDER ALL THE
16 EVIDENCE AND THE TESTIMONY THAT'S PUT BEFORE YOU.
17 AGAIN, THIS IS, THIS IS A VERY -- AND THIS IS
18 SERIOUS. IT IS SERIOUS. IT IS, IT IS -- AN
19 AUTOMOBILE -- TO DRIVE AN AUTOMOBILE, AUTOMOBILE
20 IN THE STATE OF SOU-, IN THE STATE OF SOUTH
21 CAROLINA IS A PRIVILEGE, OKAY? BUT IT'S NOT
22 NECESSARILY A DANGEROUS AUTOMOBILE. IT CAN BE A
23 DANGEROUS AUTOMOBILE. BUT, EVERYBODY HAS THE
24 PRIVILEGE, THE PRIVILEGE TO DRIVE. THIS IS MR.
25 SHORT'S -- AGAIN, THIS HAS BEEN A LONG-TIME

1 COMING, FOUR (4) YEARS. FROM MAY, 2013. SO, I
2 WANT TO THANK YOU UP FRONT FOR YOUR TIME, FOR YOUR
3 EFFORT, FOR BEING HERE TODAY. AND, PLEASE -- AND
4 SOMETIMES -- AND IF, IF THIS GETS -- DURING THE
5 COURSE OF THE TRIAL, THE JUDGE MAY SEND YOU OUT.
6 THERE MAY BE SOME ISSUES THAT WE HAVE TO TAKE UP
7 WITH THE COURT. BUT DON'T -- I ASK YOU -- DON'T
8 HOLD THAT AGAINST THE DEFENDANT IN THIS CASE.
9 THAT IS, THAT IS, THAT IS -- AT TIMES, THAT IS
10 WHAT -- THAT IS THE ATTORNEYS' JOB. AND ISSUES
11 COME UP THAT HAVE TO -- IT HAS TO BE, IT HAS TO BE
12 ADDRESSED OUTSIDE YOUR PRESENCE. BUT, AGAIN, I
13 WANT TO THANK YOU FOR BEING HERE. MR. SHORT,
14 THANKS YOU FOR BEING HERE. AND THIS IS A SERIOUS
15 MATTER, BECAUSE THIS IS A -- THIS IS, THIS IS A --
16 IT'S A CRIMINAL TRIAL AND, AND IT IS A VERY
17 SERIOUS MATTER FOR MR. SHORT. SO, PLEASE KEEP AN
18 OPEN MIND. LOOK AT ALL THE EVIDENCE AND, AND WE
19 WOULD ASK YOU AT THE END OF THE CASE, TO COME TO A
20 JUST VERDICT. AND WE BELIEVE THAT THE EVIDENCE
21 WILL SHOW THAT MR. SHORT IS NOT GUILTY OF THIS
22 CHARGE. THANK YOU.

23 BY THE COURT: THANK YOU, SIR. MR. CLONTS,
24 MS. SMALL, I'M GOING TO MOVE THIS. SO, IF YOU
25 WANT TO MOVE DOWN, FEEL FREE TO DO SO. IT'S A

1 SMALL COURT ROOM AND WE DON'T HAVE SO MUCH SPACE.
2 SITTING THERE; CAN YOU SEE THE WITNESS STAND OKAY?

3 BY MALE: YES, SIR. THAT'S FINE.

4 BY THE COURT: MR. BYRD, WHEN YOU NEED IT,
5 THE WITNESS CAN PULL IT OUT.

6 BY MR. BYRD: CERTAINLY.

7 BY THE COURT: OKAY. GO AHEAD, SIR.

8 BY MR. BYRD: THANK YOU, YOUR HONOR. IF IT
9 PLEASE THE COURT, WE'D LIKE TO CALL TROOPER
10 BALDWIN OUT OF ORDER. HE'S ON DUTY TODAY AND HIS
11 TESTIMONY IS VERY LIMITED IN THIS SITUATION. AND
12 RATHER THAN SUBJECT HIM TO LENGTHY CROSS-
13 EXAMINATION TO THE DETRIMENT OF THE JURY, I'D ASK
14 THAT HE BE PERMITTED TO TESTIFY FIRST.

15 BY THE COURT: MR. EPPS?

16 BY MR. EPPS: NO OBJECTION, YOUR HONOR.

17 BY THE COURT: OKAY. THANK YOU, SIR.

18 TROOPER BALDWIN, IF YOU WOULD TAKE THE STAND.

19

20 **(TROOPER JOEY L. BALDWIN TAKE THE STAND)**

21

22 BY THE COURT: IF YOU'LL RAISE YOUR RIGHT
23 HAND FOR ME.

24 BY THE WITNESS: (COMPLIES)

25 BY THE COURT: DO YOU SOLEMNLY SWEAR OR

1 AFFIRM THAT THE TESTIMONY YOU GIVE IN THIS CASE
2 WILL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING
3 BUT THE TRUTH, SO HELP YOU, GOD?

4 BY THE WITNESS: I DO, YOUR HONOR.

5 BY THE COURT: IF YOU WOULD STATE YOUR FULL
6 NAME, FOR THE RECORD.

7 BY THE WITNESS: TROOPER JOEY L. BALDWIN.

8 BY THE COURT: HAVE A SEAT, SIR. THANK YOU.

9 **DIRECT EXAMINATION BY MR. BYRD:**

10 Q. AND YOU'RE WITH THE SOUTH CAROLINA HIGHWAY PATROL?

11 A. THAT'S CORRECT.

12 Q. HOW LONG HAVE YOU BEEN WITH THE PATROL?

13 A. SINCE 2000.

14 Q. ALL RIGHT. AND DID YOU HAPPEN TO BE ON DUTY ON
15 MAY THE 11TH, 2013 IN PICKENS COUNTY?

16 A. I DID.

17 Q. WHAT WERE YOU DOING AT THE THREE, THREE O'CLOCK
18 (3:00), THREE-THIRTY (3:30) TIME ZONE IN RELATION
19 TO THIS CASE?

20 A. WELL, I CAN RECALL I WAS ON WHAT WE WOULD CONSIDER
21 ROUTINE PATROL. AND I CAN RECALL CORPORAL
22 MAYFIELD ASKING ME TO GO BY AND CHECK A RESIDENCE.
23 I, I BELIEVE THAT SOMEONE AT A RESIDENCE WAS
24 AFFILIATED WITH THE DEFENDANT HERE WHO WAS
25 OPERATING THE VEHICLE. AND I THINK HIS MAIN

1 OBJECTIVE THAT NIGHT WAS FOR ME ---

2 BY MR. EPPS: I WOULD OBJECT JUST TO HE --
3 WELL, AS FAR AS OPERATING, UNLESS HE'S GOT
4 SPECIFIC KNOWLEDGE AS TO WHO WAS OPERATING IT --
5 OR CAN LAY A FOUNDATION AS TO HOW HE ---

6 BY THE WITNESS: I CAN RESTATE IT.

7 BY MR. EPPS: --- KNOWS.

8 BY THE COURT: OKAY. MR. BYRD, ANY ARGUMENT
9 OR ---

10 BY MR. BYRD: NO, SIR.

11 BY THE COURT: WOULD YOU -- OKAY -- RESTATE
12 IT, PLEASE.

13 BY THE WITNESS: YES, SIR, YOUR HONOR.

14 A. CORPORAL MAYFIELD HAD ASKED ME TO GO BY AND CHECK
15 A RESIDENCE FOR ANY INJURIES FROM A VEHICLE
16 COLLISION THAT HE WAS INVESTIGATING.

17 Q. AND DID YOU GO BY THE RESIDENCE?

18 A. YES, SIR. I DO RECALL GOING BY THE RESIDENCE.

19 Q. AND DO YOU RECALL SPEAKING WITH ANYONE?

20 A. I CAN RECALL A FEMALE SUBJECT, BUT I CAN'T RECALL
21 ANY KIND OF CONVERSATIONS THAT ---

22 Q. ALL RIGHT.

23 A. --- HER OR I MAY HAVE HAD DURING THAT COURSE.

24 Q. DO YOU KNOW WHETHER SHE WAS INJURED?

25 A. I DON'T KNOW THE EXACT OF HER INJURIES OR IF SHE

1 WAS. I, I THINK TROOPER MAYFIELD'S MAIN OBJECTIVE
2 HERE WAS TO MAKE SURE NOBODY HAD ANY DEBILITATING
3 INJURIES IN THAT RESIDENCE WHERE THE PLATE CAME
4 BACK TO.

5 Q. DID SHE ASK FOR ANY MEDICAL SERVICE?

6 A. I DON'T ---

7 Q. DID SHE ASK FOR E.M.S. OR ANYTHING?

8 BY MR. EPPS: YOUR HONOR, I OBJECT. THAT'S
9 HEARSAY, YOUR HONOR.

10 BY THE COURT: SUSTAINED.

11 A. I CAN'T RECALL THAT; NO.

12 BY MR. BYRD: THAT'S -- THANK YOU. THAT'S
13 ALL I HAVE, JUDGE.

14 BY THE COURT: ALL RIGHT. ANY CROSS? MR.
15 EPPS?

16 CROSS-EXAMINATION BY MR. EPPS:

17 Q. JUST WANTED -- ONE (1) QUESTION. DO YOU REMEMBER
18 IF THERE WAS ANY BLO- -- WAS THERE ANY BLEEDING?
19 WAS, WAS ---

20 A. I DON'T (PAUSE) ---

21 BY THE COURT: BLEEDING TO WHO?

22 Q. TO, TO THE INDIVIDUAL THAT YOU SPOKE WITH AT
23 THE HOUSE.

24 A. I CAN'T, I CAN'T RECALL.

25 Q. OKAY. OKAY.

1 BY MR. EPPS: NO FURTHER QUESTIONS, YOUR
2 HONOR.

3 BY THE COURT: OKAY.

4 BY MR. BYRD: THANK YOU. I ASK THAT THIS
5 WITNESS BE EXCUSED.

6 BY THE COURT: ANY OBJECTION?

7 BY MR. EPPS: NO OBJECTION.

8 BY THE COURT: ALL RIGHT. THANK YOU, TROOPER
9 BALDWIN.

10 **(TROOPER JOEY L. BALDWIN LEAVES THE STAND)**

11 BY MR. BYRD: CALL TROOPER BRIAN MAYFIELD TO
12 THE WITNESS STAND.

13 BY THE COURT: OKAY.

14 BY MR. BYRD: EXCUSE ME. FORMER TROOPER.

15

16 **(BRIAN MAYFIELD TAKES THE STAND)**

17

18 BY THE COURT: MR. MAYFIELD, IF YOU'LL RAISE
19 YOUR RIGHT HAND.

20 BY THE WITNESS: (COMPLIES)

21 BY THE COURT: DO YOU SOLEMNLY SWEAR OR
22 AFFIRM THAT THE TESTIMONY YOU'LL GIVE IN THIS CASE
23 WILL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING
24 BUT THE TRUTH, SO HELP YOU, GOD?

25 BY THE WITNESS: YES, SIR.

1 BY THE COURT: ALL RIGHT. IF YOU'LL STATE
2 YOUR FULL NAME, FOR THE RECORD.

3 BY THE WITNESS: BRIAN WAYNE MAYFIELD.

4 BY THE COURT: THANK YOU, SIR.

5 DIRECT EXAMINATION BY MR. BYRD:

6 Q. WHERE DO YOU LIVE, BRIAN?

7 A. I LIVE IN PIEDMONT, ANDERSON, SOUTH -- ANDERSON
8 COUNTY.

9 Q. ALL RIGHT. AND WHERE ARE YOU EMPLOYED NOW?

10 A. WELL, RIGHT NOW I'M A LICENSED REAL ESTATE AGENT
11 WITH KELLER WILLIAMS.

12 Q. WERE YOU FORMERLY WITH THE HIGHWAY PATROL?

13 A. YES, SIR.

14 Q. WHEN DID YOU RETIRE FROM THE PATROL?

15 A. APRIL OF 2016.

16 Q. LAST YEAR?

17 A. YES, SIR.

18 Q. AND HOW LONG WERE YOU WITH THE PATROL BEFORE YOU
19 RETIRED?

20 A. TWENTY-FIVE (25) YEARS.

21 Q. ALL RIGHT, SIR. AND DURING THE COURSE OF YOUR
22 EMPLOYMENT WITH THE HIGHWAY PATROL, WHAT WERE YOUR
23 FUNCTIONS? WHAT WERE YOUR PRIMARY DUTIES?

24 A. WELL, RELATIVE TO THIS CASE, I WAS A PATROL
25 SUPERVISOR, A CORPORAL IN PICKENS, OCONEE COUNTY

- 1 ON THE EVENING OF THIS CASE. PRIOR TO THAT, MY
2 DUTIES WERE LIKE TROOPER BALDWIN. JUST PATROLLED
3 THE HIGHWAYS AS A LANCE CORPORAL. LOOKED FOR ANY
4 TRAFFIC VIOLATIONS OR ANYTHING THAT NEEDED MY
5 ATTENTION. I WORKED COLLISIONS, ASSIST MOTORISTS,
6 PATROL THE HIGHWAYS IN THE STATE OF SOUTH CAROLINA
7 IN MY PARTICULAR ASSIGNED COUNTY OR COUNTIES.
- 8 Q. WHICH WAS PICKENS?
- 9 A. AT THE TIME, IT WAS PICKENS; YES, SIR.
- 10 Q. ALL RIGHT, SIR. AND DURING THE COURSE OF YOUR
11 TWENTY-FIVE (25) YEARS WITH THE HIGHWAY PATROL,
12 HOW MANY TIMES WOULD YOU SAY YOU HAD ENCOUNTERED
13 SITUATIONS INVOLVING ALCOHOL IN RELATIONSHIP TO
14 OPERATING OR DRIVING VEHICLES?
- 15 A. OH, NUMEROUS. I CANNOT GIVE YOU AN EXACT NUMBER,
16 BUT, I, I CAME IN CONTACT WITH NUMEROUS PEOPLE
17 DURING MY CAREER THAT HAD BEEN DRIVING
18 INTOXICATED.
- 19 Q. AND YOU'RE FAMILIAR WITH THE INTERACTION OF
20 ALCOHOL AND OPERATING A VEHICLE?
- 21 A. YES, SIR.
- 22 Q. NOW, WERE YOU ON DUTY ON MAY THE 11TH, 2013 AT
23 APPROXIMATELY THREE (3:00) A.M. IN THE MORNING?
- 24 A. YES, SIR.
- 25 Q. WHAT BROUGHT YOUR ATTENTION TO THE SCENE WHERE MR.

1 SHORT WAS?

2 A. I WAS ON -- NORTH ON PENDLETON ROAD. AND I CANNOT
3 RECALL IF I GOT CALLED TO IT OR IF I JUST CAME UP
4 ON IT. BUT I, I CAME UPON HIS VEHICLE OFF THE
5 SIDE OF THE ROAD. AND HE WAS WITH HIS VEHICLE.
6 HE HAD WRECKED. WHICH HE WAS, I GUESS, COMING
7 TOWARDS EASLEY, 'CAUSE HE HAD WENT OFF THE RIGHT
8 SIDE OF THE ROAD AND, AND COLLIDED WITH A UTILITY
9 POLE.

10 Q. WILL YOU DESCRIBE FOR THE JURY, BRIEFLY, WHAT THE
11 SCENE APPEARED TO YOU TO BE.

12 A. IT LOOKED LIKE A TRUCK OFF THE ROAD, KIND OF IN A
13 DITCH, DOWN AN EMBANKMENT, SORT, SORT OF. WHICH,
14 LIKE I SAID, WOULD HAVE BEEN OFF HIS -- OFF THE
15 RIGHT SIDE OF THE ROAD FOR HIM. I THINK I WAS
16 GOING AWAY FROM EASLEY, GOING BACK TOWARD THE
17 DIRECTION OF -- I GUESS 178, WHICH WOULD HAVE
18 BEEN, WOULD HAVE BEEN TO MY LEFT, I BELIEVE.

19 Q. WAS THERE ANY DAMAGE TO THE VEHICLE?

20 A. YES, SIR. HE HAD SOME DAMAGE TO THE TRUCK.

21 Q. ALL RIGHT. DO YOU RECALL WHETHER THE VEHICLE WAS
22 OPERABLE OR NOT?

23 A. I DON'T THINK IT WAS. I DON'T -- I -- HE HAD
24 CALLED A TOW TRUCK. BUT, I, I DON'T THINK IT WAS
25 OPERABLE. BUT I, I COULDN'T TELL YOU FOR, FOR

- 1 SURE AT THIS POINT.
- 2 Q. WAS ANYONE ELSE THERE?
- 3 A. NO; JUST HIM, MR. SHORT.
- 4 Q. DID YOU HAVE A CONVERSATION WITH HIM WHEN YOU
- 5 ARRIVED ON THE SCENE?
- 6 A. YES, I DID.
- 7 Q. WHAT WERE THE SUBSTANCE, THE COMMENTS, THE
- 8 STATEMENTS MADE?
- 9 A. WELL, I GOT OUT AND ASKED HIM WHAT HAPPENED, IF HE
- 10 WAS OKAY. I COULD DETECT THE ODOR OF ALCOHOL
- 11 ABOUT HIS PERSON, SO I ASKED HIM ABOUT DRINKING.
- 12 HE SAID AT FIRST, I THINK, THAT HE HAD HAD -- NOT
- 13 HAD ENOUGH FOR THIS TO OCCUR. BUT HE TOLD ME HE
- 14 FELL ASLEEP, OR DOZED OFF, AND RAN OFF THE ROAD
- 15 AND HIT A UTILITY POLE.
- 16 Q. ALL RIGHT. DID HE TELL YOU WHETHER THERE WAS
- 17 ANYONE IN THE VEHICLE WITH HIM?
- 18 A. WHEN I ASKED HIM THE QUESTION WAS ANYBODY WITH
- 19 HIM, HE SAID HIS, HIS -- I BELIEVE IT WAS HIS WIFE
- 20 WAS WITH HIM.
- 21 Q. ALL RIGHT. WAS SHE ON THE SCENE WHEN YOU GOT
- 22 THERE?
- 23 A. NO, SIR.
- 24 Q. DO YOU KNOW WHERE SHE WAS?
- 25 A. HE TOLD ME SOMEBODY HAD PICKED HER UP AND TOOK HER

1 HOME, TO HIS HOUSE.

2 Q. DID YOU INQUIRE ABOUT HER STATE, HER SITUATION AS
3 FAR AS THE WRECK, WHETHER SHE WAS INJURED?

4 A. I DID. I AS- -- I THINK I MAY HAVE ASKED HIM, BUT
5 HE JUST SAID, "I THINK THE AIRBAG GOT HER," OR
6 SOMETHING LIKE THAT. BUT, I HAD TROOPER BALDWIN
7 -- BECAUSE SHE WASN'T THERE FOR ME TO VERIFY
8 INJURIES, I HAD TROOPER BALDWIN GO OVER THERE AND
9 CHECK WITH HER ABOUT INJURIES.

10 Q. WHY DID YOU DO THAT?

11 A. BECAUSE IF IT'S SOMETHING SERIOUS, AND WHICH I DID
12 NOT KNOW AT THE TIME BECAUSE SHE WASN'T THERE, IF
13 IT'S SOMETHING SERIOUS AND SOMEBODY'S IMPAIRED,
14 THEN I HAVE TO EVALUATE IF IT'S SOMETHING SERIOUS
15 WHERE SOMEBODY IS MORE SERIOUSLY INJURED, EVEN ON
16 A REGULAR WRECK, I HAVE TO FIGURE OUT WHAT'S GOING
17 ON. AND SHE WASN'T THERE TO, TO -- FOR ME TO
18 EVALUATE.

19 Q. ALL RIGHT. DID YOU LATER RECEIVE INFORMATION FROM
20 TROOPER BALDWIN OR HER?

21 A. YES, YES. I BELIEVE TROOPER BALDWIN TOLD ME SHE
22 HAD HAD A -- I BELIEVE A, AN INJURED NOSE OR
23 SOMETHING ALONG THOSE LINES, AND THAT SHE HAD
24 DECLINED -- I THINK SHE DECLINED AN AMBULANCE,
25 DECLINED BEING TRANSPORTED. AN AMBULANCE WAS

1 CALLED, I BELIEVE, BUT I THINK SHE DECLINED BE
2 TRANSPORTED BY AMBULANCE.

3 Q. NOW, DID YOU SPEAK WITH MR. SHORT ABOUT HOW THE
4 WRECK OCCURRED?

5 A. I ASKED HIM WHAT OCCURRED AND I, I THINK, TO THE
6 BEST OF MY RECOLLECTION, HE TOLD ME THAT HE FELL
7 ASLEEP OR DOZED OFF, RAN OFF THE ROAD AND, AND HIT
8 THE UTILITY POLE. THAT'S, THAT'S WHAT HE TOLD ME,
9 WHAT HE TOLD ME AT THE ---

10 Q. DID HE INDICATE THAT HE WAS DRIVING THE VEHICLE?

11 A. YES, SIR. YES, SIR.

12 Q. DID HE INDICATE THAT HIS WIFE WAS DRIVING THE
13 VEHICLE?

14 A. NOT THAT I RECALL; NO, SIR.

15 Q. NOW, DID YOU DETECT AN ODOR ABOUT HIM?

16 A. YES, SIR. YES, SIR, I DID SMELL ALCOHOL.

17 Q. WOULD YOU DESCRIBE THAT.

18 A. I JUST SMELLED WHAT, WHAT DEEMED TO ME, A STRONG
19 ODOR OF AN ALCOHOLIC BEVERAGE ABOUT HIS BREATH,
20 HIS PERSON. AND I ASKED HIM ABOUT DRINKING. HE
21 TOLD ME HE HAD HAD SOME ALCOHOL EARLIER. I
22 BELIEVE AROUND TWO O'CLOCK (2:00) WAS THE LAST ONE
23 HE MAY HAVE HAD. ONE FORTY-FIVE (1:45) OR TWO
24 O'CLOCK (2:00) AT LAST CALL. HE TOLD ME HE HAD
25 BEEN TO A COUPLE OF DIFFERENT PLACES AFTER A

- 1 GRADUATION IN CLEMSON.
- 2 Q. DO YOU RECALL WHAT PLACES?
- 3 A. HE TOLD ME TRIPLE T'S, BACK STREET'S AND BACK TO
- 4 TRIPLE T'S, OR TIGER TOWN TAVERN. THE NAME OF
- 5 THOSE PLACES CAME UP, I BELIEVE, IN CONVERSATION.
- 6 Q. ARE YOU FAMILIAR WITH THOSE PLACES?
- 7 A. I THINK I'VE HEARD OF, I THINK I'VE HEARD TRIPLE
- 8 T'S AND TIGER, TIGER TOWN TAVERN. I'M NOT SURE.
- 9 I -- THE BACK STREETS -- IT MAY BE SOMETHING IN
- 10 DOWNTOWN CLEMSON RIGHT THERE IN THE MAIN STRETCH.
- 11 I'M NOT SURE.
- 12 Q. DO YOU KNOW WHETHER THOSE ESTABLISHMENTS SERVE
- 13 ALCOHOL?
- 14 A. I BELIEVE THEY DO. I BELIEVE THEY DO. YES, SIR.
- 15 Q. ALL RIGHT.
- 16 A. I, I DON'T KNOW PERSONALLY, BUT I BELIEVE THEY DO.
- 17 Q. NOW, AFTER YOU SPOKE WITH MR. SHORT ABOUT WHAT
- 18 HAPPENED AND DETECTED AN ODOR OF ALCOHOL, DID YOU
- 19 GIVE HIM ANY FIELD SOBRIETY TEST?
- 20 A. YES, SIR. YES, SIR. I GAVE HIM ---
- 21 Q. TELL THE JURY WHAT FIELD SOBRIETY TESTS ARE.
- 22 A. WELL, FIELD SOBRIETY TESTS -- WE GIVE THREE (3).
- 23 WE WERE TRAINED TO GIVE HORIZONTAL GAZE NYSTAGMUS,
- 24 WHICH IS -- YOU BASICALLY TAKE AN INK PEN OR SOME
- 25 OTHER STIMULUS, SOME OTHER APPARATUS, AND YOU PUT

1 IT IN FRONT OF THEIR EYES AND YOU GO BACK AND
2 FORTH, ASK THEM TO FOLLOW THE PEN OR YOUR FINGER,
3 FOLLOW THEIR GAZE BACK AND FORTH, TO FOLLOW WITH
4 THEIR EYES ONLY, DON'T MOVE YOUR HEAD. AND YOU'RE
5 GENERALLY LOOKING FOR AN INVOLUNTARY JERKING IN
6 THE EYES, WHICH WE'VE BEEN TRAINED THAT THE
7 CONSUMPTION OF ALCOHOL DOES CREATE, AFTER YOU'VE
8 HAD SOME ALCOHOL TO DRINK, YOU'LL HAVE AN
9 INVOLUNTARY JERKING OF THE EYES. AND YOU DO --
10 IT'S ALWAYS RUN AT MAXIMUM DEVIATION, FORTY-FIVE
11 (45) DEGREES. YOU, YOU CHECK IT VARIOUS, VARIOUS
12 TIMES DURING THE TEST TO MAKE SURE OR TRY TO
13 VERIFY IF THE PERSON HAS BEEN DRINKING. IT'S A
14 FIELD SOBRIETY TEST THAT WE USE. ALSO, ONE-LEG
15 STAND AND WALK AND TURN, WALK AND TURN. YOU ASK
16 SOMEBODY TO STAND ON THEIR FEET ON A -- EITHER A
17 LINE THAT'S ACTUALLY THERE OR AN IMAGINARY LINE.
18 YOU ASK THEM TO WALK STRAIGHT HEEL-TO-TOE FOR NINE
19 (9) STEPS WE DEMONSTRATE FOR THEM. WE SHOW THEM
20 WHAT YOU, WHAT YOU NEED TO DO. THEY WALK NINE (9)
21 STEPS ONE WAY, AND TURN AROUND AND DO A PIVOT AND
22 WALK NINE (9) STEPS BACK. AND YOU'RE NORMALLY
23 LOOKING FOR THEM BEING ABLE TO DO DIVIDED
24 ATTENTION, WHICH IS TWO (2) THINGS, BASICALLY, AT
25 ONCE. WHERE MAYBE YOU'RE ASKING THEM -- IF YOU'RE

1 ASKING THEM TO DO THE WALK AND TURN, YOU'RE ASKING
2 THEM TO BE ABLE TO STAY IN LINE WITH THEIR STEPS,
3 STAY IN A STRAIGHT LINE AND ALSO COUNT ACCURATELY.
4 IT'S, IT'S A DIVIDED ATTENTION TEST. AND THE ONE-
5 LEG STAND IS ALSO ALONG THOSE SAME LINES. YOU ASK
6 THEM TO STAND, STAND STRAIGHT, ARMS DOWN AT YOUR
7 SIDES, FEET TOGETHER, RAISE ONE (1) FOOT ABOUT
8 FORTY-FIVE (45) INCH- -- OR FORTY-FIVE (45)
9 DEGREES OFF THE GROUND. YOU ASK THEM TO RAISE
10 THEIR FOOT UP OFF THE GROUND AND COUNT OR COUNT
11 ONE THOUSAND-ONE, ONE THOUSAND-TWO, ONE THOUSAND-
12 THREE OR UNTIL I TELL THEM TO STOP. WHICH I
13 USUALLY TIME THEM FOR ABOUT THIRTY (30) SECONDS.
14 SO, THIS IS A -- ALL THESE ARE DIVIDED ATTENTION
15 TESTS. YOU'RE ASKING SOMEBODY TO DO SOMETHING OR
16 DO MULTIPLE THINGS, KIND OF AT THE SAME TIME.
17 Q. WHAT DO YOU MEAN BY "DIVIDED ATTENTION?"
18 A. BECAUSE DRIVING IS MUL- -- IS VERY MUCH A DIVIDED
19 ATTENTION TASK, WHERE YOU HAVE TO DO SEVERAL
20 DIFFERENT THINGS AT THE SAME TIME. YOU'RE HAVING
21 TO LOOK FOR OTHER CARS. YOU'RE HAVING TO DRIVE
22 OFFENSIVELY, MONITORING YOUR SPEED, THAT KIND OF
23 THING. THE, THE TASKS THAT WE'RE ASKING YOU DO
24 "IS CAN YOU STAY IN A LINE? CAN YOU WALK HEEL-TO-
25 TOE? CAN YOU DO THAT AT THE SAME TIME WHILE

1 YOU'RE COUNTING?" PRETTY MUCH DRIVING ASKS YOU DO
2 A COUPLE OF DIFFERENT THINGS AT THE SAME TIME IN
3 THAT YOU'RE TRYING TO CONCENTRATE ON YOUR DRIVING.
4 BUT YOU'RE ALSO TRYING TO TRYING TO DRIVE
5 OFFENSIVELY. THE TESTS KIND OF SPEAK TO THAT.

6 Q. THANK YOU. NOW, IN THE H.G.N. TEST, HORIZONTAL
7 GAZE NYSTAGMUS, I BELIEVE YOU SAID.

8 A. YES, SIR.

9 Q. WHAT ARE YOU LOOKING FOR?

10 A. INVOLUNTARY JERKING IN THE EYES. STUDIES ---

11 BY MR. EPPS: I THINK THAT'S BEEN ASKED AND
12 ANSWERED, YOUR HONOR. HE SOUNDS LIKE HE'S -- HE'S
13 TESTIFIED TO THAT BECAUSE IT HAS BEEN ASKED AND
14 ANSWERED.

15 BY THE COURT: IT'S OVERRULED. I'LL ALLOW
16 THE TESTIMONY.

17 Q. DID YOU GIVE THAT TEST TO MR. SHORT?

18 A. YES, SIR. YES, SIR.

19 Q. AND WHAT DID YOU OBSERVE IN HIS EYES?

20 A. I HAD MADE IN MY NOTES THAT I OBSERVED A, A
21 TWITCHING THROUGHOUT THE, THROUGHOUT THE TEST,
22 THROUGHOUT THE EXTENT OF THE TEST. HE HAD A
23 DISTINCT NYSTAGMUS (INAUDIBLE) AGAIN, AS I WAS
24 DOING THE TEST, WHICH WOULD BE THE JERKING OF THE
25 EYES.

- 1 Q. AND WHAT DID THAT INDICATE TO YOU ABOUT MR. SHORT?
- 2 A. IT VERIFIED THAT HE, HE HAD ACTUALLY BE DRINKING
- 3 ON TOP, ON TOP OF WHAT I HAD PREVIOUSLY ---
- 4 Q. NOW, THE TWO (2) OTHER TESTS, THE WALK AND TURN, I
- 5 BELIEVE YOU MENTIONED, AND THE ONE-LEGGED STAND?
- 6 A. YES, SIR.
- 7 Q. ONE-LEG STAND. WHAT ARE YOU LOOKING FOR WHEN
- 8 YOU'RE OBSERVING THAT TEST?
- 9 A. BALANCE AND IF SOMEBODY CAN ACCURATELY COUNT.
- 10 LIKE I SAID, DO, DO A COUPLE OF DIFFERENT THINGS
- 11 AT ONCE CAN YOU KEEP, KEEP YOUR BALANCE AND CAN
- 12 YOU ACTUALLY COUNT AND STAY IN A STA- -- IN A
- 13 STRAIGHT LINE AND DO AS, AS YOU'RE INSTRUCTED TO
- 14 DO.
- 15 Q. AND DID YOU GIVE THE WALK AND TURN TEST TO MR.
- 16 SHORT?
- 17 A. YES, SIR.
- 18 Q. WHAT DID YOU OBSERVE IN HIS PERFORMANCE?
- 19 A. I OBSERVED, I OBSERVED IT -- I THINK AT ONE POINT
- 20 IN TIME HE WAS UNSTEADY, LOST HIS -- KIND OF, KIND
- 21 OF -- I GUESS STRUGGLING A LITTLE BIT TO KEEP HIS
- 22 BALANCE. AND THAT, THAT'S WHAT I OBSERVED ON THAT
- 23 TEST.
- 24 Q. ALL RIGHT. AND ON THE ONE-LEG STAND, DID YOU
- 25 OBSERVE HIM DOING THAT -- PERFORMING THAT TEST?

1 A. YES, SIR. HE PUT HIS FOOT BACK DOWN. AND THEN,
2 I THINK WHEN HE GOT TO -- AS HE WAS COUNTING
3 NINETEEN (19), HE'D SAY "ONE-ONE THOUSAND OR ONE
4 THOUSAND-ONE, ONE THOUSAND-TWO, ONE THOUSAND-
5 THREE." I THINK WHEN HE GOT TO TWENTY (20), HE
6 SAID, LIKE "TWO THOUSAND" OR SOMETHING LIKE THAT,
7 ALONG THOSE LINES. AND THEN ALSO HE PUT HIS, HE
8 PUT HIS FOOT, HE PUT HIS FOOT DOWN BEFORE I TOLD
9 HIM TO STOP.

10 Q. YOUR CONCLUSION REGARDING HIS PERFORMANCE OF THOSE
11 TWO (2) TESTS, WALK AND TURN AND ONE-LEG STAND,
12 HOW, HOW DO YOU RATE HIS PERFORMANCE?

13 A. WELL, I JUST FELT LIKE HE WAS IMPAIRED. I FELT
14 LIKE IT SUBSTANTIATED MY ---

15 BY MR. EPPS: I WOULD OBJECT TO THE
16 CHARACTERIZATION UNLESS HE CAN LAY A FOUNDA- -- HE
17 -- THAT'S, THAT'S THE JURY'S PROVINCE. HE CAN
18 TESTIFY THAT HE GAVE THE TEST, THE RESULTS OF THE
19 TEST AND WHAT HE DID AFTER THE TEST. BUT, AS FAR
20 AS WHETHER OR NOT MR. SHORT WAS IMPAIRED, I THINK
21 THAT'S THE IN THE PROVINCE OF THE JURY. I WOULD
22 OBJECT.

23 BY THE COURT: MR. BYRD?

24 BY MR. BYRD: I THINK HE'S ENTITLED TO GIVE
25 AN OPINION. HE'S -- A LAY WITNESS CAN GIVE AN

1 OPINION.

2 BY THE COURT: I'M GOING TO OVERRULE THE
3 OBJECTION. I'LL ALLOW THE TESTIMONY.

4 Q. IN YOUR OPINION, DID MR. SHORT PASS THOSE TESTS?

5 A. NO, NO, SIR. NOT, NOT TO MY -- IN MY
6 INTERPRETATION, IT, IT VERIFIED THAT, TO ME, THAT
7 HE WAS IMPAIRED.

8 Q. BASED UPON THE ODOR OF ALCOHOL, HIS STATEMENTS TO
9 YOU ABOUT CONSUMPTION OF ALCOHOL PRIOR TO THE
10 WRECK, AND HIS PERFORMANCE ON THE THREE (3) FIELD
11 SOBRIETY TESTS, WHAT WAS YOUR CONCLUSION ABOUT HIS
12 STATE?

13 A. I FELT LIKE THAT HE HAD HAD TOO MUCH TO DRINK TO
14 THE POINT ---

15 BY MR. EPPS: I -- AGAIN, YOUR HONOR, I'M
16 GOING TO OBJECT. HE'S, HE'S, HE'S ENTIRELY
17 SPECULATING. HE'S NOT -- HE, HE CAN TESTIFY TO
18 WHAT HE DID, BUT AS FAR AS HIS STATE OF MIND OR
19 WHAT, WHAT, WHAT CONDITION HE WAS IN AS FAR AS
20 HIS, HIS, HIS STATE, THAT IS A PROVINCE FOR THE --
21 THAT IS THE JURY'S -- THAT'S THE FACT-FINDERS
22 MISSION. HE CAN TESTIFY TO -- HE TESTIFIED TO
23 WHAT HE, WHAT HE DID, WHAT HE OBSERVED. IN FACT,
24 HE -- YOU KNOW.

25 BY THE COURT: RIGHT. I'M GOING TO OVERRULE

1 THE OBJECTION WITHOUT STATING ANY FURTHER IN FRONT
2 OF THE JURY.

3 BY MR. EPPS: YES, SIR.

4 BY THE COURT: ALL RIGHT.

5 Q. WOULD YOU HAVE FELT COMFORTABLE ALLOWING MR. SHORT
6 TO DRIVE AWAY IN A VEHICLE AT, AT THAT TIME?

7 BY THE COURT: LET ME EXCUSE YOU FOR A
8 MINUTE. IF YOU'LL STAND UP.

9 (BRIEF BREAK/THE JURY LEAVES)

10 BY THE COURT: ALL RIGHT. BACK ON THE
11 RECORD. I, I DIDN'T WANT TO STATE TOO MUCH IN
12 FRONT OF THE JURY. IT, IT IS MY BELIEF THAT THE
13 OFFICERS JOB IS TO CONDUCT THESE TESTS AND INFER
14 WHETHER OR NOT THIS PERSON'S ABILITY TO DRIVE, IN
15 THIS CASE, MATERIALLY OR APPRECIABLY IMPAIRED
16 SINCE THE DATAMASTER HAS NOT BEEN GIVEN; OBVIOUSLY
17 THERE'S NO BREATH SAMPLE. IT'S HIS JOB TO
18 DETERMINE WHETHER OR NOT A PERSON IS SAFE TO DRIVE
19 AWAY. AND SO, I WILL ALLOW THAT TESTIMONY.

20 BY MR. EPPS: OKAY. HE NEEDS TO -- FAIL --
21 I, I -- MY -- YOUR HONOR, HE NEEDS TO LAY A
22 FOUNDATION. THIS AIN'T A SITUATION WHERE HE CAN
23 DRIVE AWAY. I MEAN, THAT'S, THAT'S A LITTLE -- IT
24 COULD BE PREJUDICIAL.

25 BY THE COURT: NO, THAT, THAT, THAT ---

1 BY MR. EPPS: THAT'S FINE, THAT'S, THAT'S --
2 THAT'S FINE THAT HE CAN SAY IF HE'S -- BUT AS FAR
3 AS WHETHER YOU THINK THAT HE'S OKAY TO DRIVE AWAY,
4 IT'S A SITUATION WHERE HE CANNOT DRIVE AWAY. SO,
5 I THINK THAT IS PREJUDICIAL.

6 BY THE COURT: MR., MR. BYRD, WHAT DO YOU,
7 WHAT DO YOU SAY TO THAT?

8 BY MR. BYRD: AGAIN, I -- IT'S, IT'S NOT A
9 BIG DEAL TO ME. I CAN WITHDRAW THE QUESTION AS
10 FAR AS I'M CONCERNED. HE, HE'S A, HE'S A --
11 CONSIDERED AN EXPERT. WE HAVEN'T QUALIFIED HIM AS
12 AN EXPERT, BUT HE -- BECAUSE A LAY PERSON CAN
13 TESTIFY TO THE OPINION OF SOMEONE'S STATE, WHETHER
14 THEY ARE LAW ENFORCEMENT OR NOT.

15 BY MR. EPPS: WELL, HE CAN TESTIFY. I DON'T
16 THINK IT'S FAIR TO HIS "STATE". I MEAN, THAT'S --
17 YOU GETTING INTO -- HE CAN TESTIFY AS TO WHAT HE
18 DID, WHAT HE SAW, WHAT'S WITHIN HIS KNOWLEDGE. AS
19 FAR AS HIS, HIS STATE OF MIND -- I MEAN, I -- OR
20 STATE, THAT'S -- YOU, YOU -- THAT'S -- YOU'RE
21 DEALING -- YOU'RE GETTING INTO SOME SPECULATION.
22 THAT'S -- HE CAN CERTAINLY SAY WHAT HE DID, WHAT
23 HE SAW, WHAT HE LOOKED LIKE, WHAT HE SMELLED LIKE,
24 WHAT HE DID, WHAT HE DID WITH HIM AS FAR AS HIS
25 ARRESTING HIM. BUT, THAT IS THE PROVINCE OF THE

1 JURY. HE'S NOT AN EXPERT IN, IN GIVING AN OPINION
2 ON HYPOTHETICALS. THIS IS -- HE'S TESTIFYING TO
3 WHAT HE DID THAT DAY.

4 BY THE COURT: IF YOU CAN, SO WE DON'T MUDDY
5 THE RECORD, RESTATE THE QUESTION THAT YOU'RE
6 OBJECTING TO.

7 BY MR. EPPS: I'M OBJECTING TO HIM ASKING HIM
8 IF HE FELT THAT HE WAS SAFE TO -- I THINK IT WAS
9 TO, TO, TO DRIVE AWAY FROM THE SCENE, TO GET IN
10 THE CAR AND DRIVE AWAY FROM THE SCENE.

11 BY THE COURT: OKAY.

12 BY MR. EPPS: MY, MY -- HE'S ALREADY
13 TESTIFIED AND YOU'VE MADE YOUR RULING ON THAT.

14 BY THE COURT: RIGHT, RIGHT.

15 BY MR. EPPS: THAT IS -- TO ME IS -- IF
16 YOU'RE GOING OVER -- YOU'RE, YOU'RE GOING ABOVE-
17 BOARD TO SOMETHING THAT'S NOT EVEN -- THERE'S NO
18 WAY HE COULD HAVE DROVE AWAY. SO, MY -- I WOULD
19 SAY ---

20 BY THE COURT: I'M GOING TO, I'M GOING TO
21 SUSTAIN THAT OBJECTION TO THE DRIVING AWAY, THE
22 POSSIBILITY OF. I CAN'T ---

23 BY MR. EPPS: THAT'S FINE.

24 BY THE COURT: OKAY. I'LL SEE IF -- I TOLD
25 THEM THEY COULD TAKE A BREAK. BUT, I'LL SEE IF

1 THEY'RE READY.

2 (THE JURY ENTERS)

3 BY THE COURT: ALL RIGHT. BACK ON THE
4 RECORD.

5 BY MR. BYRD: THANK YOU, YOUR HONOR.

6 BY THE COURT: UH-HUH. (AFFIRMATIVE)

7 DIRECT EXAMINATION BY MR. BYRD RESUMES:

8 Q. MR. MAYFIELD, BEFORE THE BREAK, I, I BELIEVE I WAS
9 QUESTIONING YOU IN REFERENCE TO YOUR OBSERVATIONS
10 ON THE SCENE AFTER YOU INVESTIGATED THE WRECK.

11 A. YES.

12 Q. I BELIEVE YOU TESTIFIED WITH REGARD TO ODOR AND
13 FIELD SOBRIETY TESTS.

14 A. YES.

15 Q. BASED ON YOUR INVESTIGATION OF THE WRECK, YOUR
16 CONVERSATIONS WITH MR. SHORT, AND YOUR FIELD
17 SOBRIETY TESTS; WHAT CONCLUSION DID YOU REACH
18 ABOUT HIS STATE AT THAT POINT IN TIME?

19 A. THAT HE HAD BEEN IMPAIRED BY ALCOHOL.

20 Q. AND DID YOU PLACE HIM UNDER ARREST?

21 A. YES, SIR.

22 Q. DID YOU READ HIM HIS MIRANDA RIGHTS, AS REQUIRED?

23 A. YES, SIR. YES, SIR, I BELIEVE I DID.

24 Q. AND WAS YOUR CAR EQUIPPED WITH A VIDEO CAMERA?

25 A. YES, SIR.

1 BY MR. BYRD: YOUR HONOR, AT THIS TIME, WE'D
2 ASK THAT THE WITNESS BE ALLOWED TO START THE VIDEO
3 CAMERA AND THEN HAND THE REMOTE TO MR. EPPS.
4 THERE IS ONE POINT IN THE VIDEO WHERE SOME E.M.S.
5 FOLKS ARE INVOLVED AND THAT WOULD NOT BE RELEVANT
6 TO THIS CASE.

7 BY MR. EPPS: THERE ARE SOME HEAR- -- THERE
8 ARE SOME HEARSAY STATEMENTS, YOUR HONOR, ---

9 BY THE COURT: SURE.

10 BY MR. EPPS: --- AND I THINK THAT WE HAVE
11 (PAUSE) ---

12 BY THE COURT: AS LONG AS THERE IS A CONSENT,
13 I'M FINE WITH IT.

14 BY MR. EPPS: AND I GUESS THE EASIEST WAY TO
15 DO IT WOULD BE JUST TO MUTE IT.

16 BY THE COURT: WE COULD DO THAT. SURE. LET
17 ME GET -- LET ME MAKE SURE YOU'RE FAMILIAR WITH
18 THE REMOTE. I DON'T WANT HIM TO HAND IT TO YOU
19 WHILE WE'RE GOING HERE. BUT, IT'S FAIRLY SELF-
20 EXPLANATORY. YOU CAN EITHER PAUSE, YOU CAN FAST-
21 FORWARD. LET ME SEE. THE MUTE IS -- IF YOU SEE
22 IT, YOU TELL ME. THIS IS WHY WE ---

23 BY MR. EPPS: I GOTCHA.

24 BY THE COURT: --- GO OVER THIS STUFF. YOU
25 SEE IT? I DON'T SEE -- WAIT A MINUTE. I DON'T

1 SEE -- IT'LL BE ON THIS ONE. THIS IS THE T.V.
2 CONTROL. I'LL JUST LAY THIS ON YOUR DESK.

3 BY MR. EPPS: OKAY.

4 BY THE COURT: THAT'S THE MUTE BUTTON.

5 BY MR. EPPS: OKAY. THANK YOU.

6 BY THE COURT: UH-HUH. (AFFIRMATIVE)

7 BY THE WITNESS: DO I NEED TO KEEP THIS?

8 BY THE COURT: GIVE IT TO HIM FOR RIGHT NOW.

9 MR. MAYFIELD, WOULD YOU MAKE SURE THAT EVERYONE
10 CAN SEE OKAY. MR. BYRD, DO YOU WANT IT POSITIONED
11 ANYWHERE ELSE?

12 BY MR. BYRD: THAT'S FINE.

13 BY THE COURT: MR. EPPS, ARE YOU OKAY WITH
14 THE LOCATION?

15 BY MR. EPPS: I'M FINE, YOUR HONOR, AS LONG-
16 -- YOUR HONOR, AS LONG AS I'M -- IF I COULD STAND
17 OVER HERE SO I CAN SEE AS WELL.

18 BY THE COURT: SURE.

19 BY MR. BYRD: AND, FOR THE RECORD, WE WOULD
20 JUST ASK THE COURT TO MARK THIS AS ONE OF THE
21 STATE'S EXHIBITS AND OFFER IT INTO EVIDENCE.

22 BY THE COURT: SURE. I'VE GOT, I'VE GOT PRE-
23 TRIAL MARKERS. I'M GOING TO START ALL OVER AGAIN
24 FOR THE COURT PROCEEDINGS. THIS WILL BE STATE'S
25 EXHIBIT "A".

1 BY THE WITNESS: DO YOU WANT ME TO HAND THE
2 REMOTE TO YOU OR?

3 BY THE COURT: YOU'LL HAND IT TO MR. EPPS.

4 BY THE WITNESS: OKAY. (COMPLIES)

5 **(EXHIBIT "A" MARKED & ENTERED)**

6 (VIDEO PLAYING)

7 BY THE COURT: HAD YOU STARTED DRIVING ON
8 THERE? I CAN'T SEE.

9 BY THE WITNESS: I, I ---

10 BY THE COURT: ARE THEY STILL AT THE SCENE OR
11 HAVE THEY STARTED ---

12 BY THE WITNESS: YES, SIR.

13 BY THE COURT: --- DRIVING?

14 BY MR. BYRD: YES, SIR.

15 BY THE WITNESS: THEY'RE, THEY'RE AT THE
16 SCENE.

17 BY THE COURT: IS THERE ANYMORE CONVERSATION?

18 BY MR. BYRD: VERY LITTLE, YOUR HONOR. I
19 CERTAINLY HAVE NO OBJECTION TO STOPPING AT THIS
20 POINT.

21 BY THE COURT: MY INTEREST IN LISTENING TO
22 SILENCE IS, IS -- SO, Y'ALL HAVE SEEN THE VIDEO.
23 I HAVE NOT. THIS IS THE STATE'S EVIDENCE AT THIS
24 POINT.

25 BY THE WITNESS: I THINK THEY'RE WAITING ON A

1 WRECKER.

2 BY THE COURT: YEAH, THAT'S WHAT I FIGURED.

3 I MEAN, IF THERE'S CONVERSATION, I'M NOT OPPOSED
4 TO IT.

5 BY MR. EPPS: WE CAN TURN IT OFF, YOUR HONOR.

6 BY THE COURT: OKAY.

7 BY MR. BYRD: CAN YOU HELP US?

8 BY THE WITNESS: SURE.

9 (VIDEO STOPS)

10 **DIRECT EXAMINATION BY MR. BYRD RESUMES:**

11 Q. MR. MAYFIELD, JUST TO FAST-FORWARD A LITTLE BIT,
12 YOU WERE AT THE POINT IN THE VIDEO WAITING ON THE
13 TOW TRUCK TO GET THERE?

14 A. YES, SIR. THAT OR EITHER TROOPER BALDWIN
15 BASICALLY COME, COME STAND BY FOR ME IF HE COULD.
16 BUT, YES, WE WERE WAITING ON A TOW TRUCK.

17 Q. YOU CAN'T LEAVE THE SCENE AS LONG AS THE VEHICLE
18 IS UNATTENDED, CAN YOU?

19 A. NO, SIR.

20 Q. THAT'S AGAINST STANDARD PROCEDURE?

21 A. YES, SIR.

22 Q. OKAY. AND ULTIMATELY A TOW TRUCK OR MR. BALDWIN
23 DID COME TO WATCH THE VEHICLE WHILE YOU -- AND
24 THEN PROCEEDED WHERE?

25 A. TO THE JAIL.

1 Q. WHAT JAIL? WHERE?

2 A. PICKENS COUNTY, PICKENS COUNTY JAIL.

3 Q. AND WHAT WAS YOUR PURPOSE IN GOING TO THE JAIL?

4 A. WELL, THAT IS WHERE WE CONDUCT THE DATAMASTER TEST
5 PRIOR TO INCARCERATION.

6 Q. AND DID YOU OFFER A DATAMASTER TEST OR BREATH TEST
7 TO MR. SHORT?

8 A. YES, SIR.

9 Q. BEFORE WE GET TO THAT, ARE YOU CERTIFIED TO --
10 WERE YOU CERTIFIED TO GIVE A BREATHALYZER
11 EXAMINATION?

12 A. YES, SIR.

13 Q. HOW DO YOU BECOME CERTIFIED?

14 A. YOU INITIALLY GET CERTIFIED THROUGH THE
15 DEPARTMENT. SLED, AT ONE TIME, CERTIFIED US.
16 BUT, I THINK, SEVEN (7) YEARS AFTER SLED FIRST
17 CERTIFIED THAT YOU WENT THROUGH THE DEPARTMENT TO
18 GET CERTIFIED WITH THE ACADEMY. AND YOU
19 PERIODICALLY, EVERY COUPLE OF YEARS, WHENEVER YOUR
20 CERTIFICATION WAS DUE TO EXPIRE, YOU HAVE TO GO
21 THROUGH A, A RE-CERTIFICATION PROCESS.

22 Q. AND, AND WERE YOU CERTIFIED ON THE DATE OF THIS
23 TEST?

24 A. YES, SIR.

25 Q. ALL RIGHT. NOW, BEFORE YOU GIVE A BREATHALYZER

1 EXAMINATION, A BREATH TEST, WHAT STEPS DO YOU TAKE
2 TO INFORM MR. SHORT OR SOMEONE, REGARDING THEIR
3 RIGHTS AND RESPONSIBILITIES WITH REGARD TO THE
4 TEST?

5 A. I HAVE TO MAKE SURE THAT THE TEST, OBVIOUSLY, IS
6 VIDEOTAPED, THE BREATH TEST, GO TO A FACILITY
7 WHERE IT CAN BE VIDEOTAPED. ALSO, I INFORM HIM
8 THAT HE'S BEING VIDEOTAPE RECORDED AT THE JAIL,
9 AND I REQUEST THAT HE TAKE A BREATH TEST. SO, I
10 HAVE TO READ HIM WHAT'S CALLED IMPLIED CONSENT
11 RIGHTS. THAT'S THE RIGHTS DEALING WITH JUST THE
12 TEST, ITSELF. AND I READ HIM VERBATIM, I PROVIDE
13 HIM A WRITTEN COPY OF THE, OF THE ADVISEMENT AND I
14 READ TO HIM "YOU'RE UNDER ARREST FOR DRIVING UNDER
15 THE INFLUENCE D.U.I. SECTION 56-5-2930, SOUTH
16 CAROLINA CODE OF LAWS, 1976 IS AMENDED. THE
17 ARRESTING OFFICER IS DIRECTED THAT SAMPLES BE
18 TAKEN FOR ALCOHOL AND/OR DRUG TESTING. THE
19 SAMPLES WILL BE TAKEN AND TESTED ACCORDING TO
20 SECTION 56-5-2950 IN SLED POLICIES. YOU DO NOT
21 HAVE TO TAKE THE TEST OR GIVE THE SAMPLES, BUT IF
22 YOU REFUSE TO SUBMIT TO THE TEST, YOUR PRIVILEGE
23 TO DRIVE IN SOUTH CAROLINA MUST BE SUSPENDED OR
24 DENIED FOR AT LEAST SIX (6) MONTHS, AND YOUR
25 REFUSAL MAY BE USED AGAINST YOU IN COURT. IF YOU

1 TAKE THAT TEST OR GIVE THE SAMPLES AND HAVE AN
2 ALCOHOL CONCENTRATION OF EIGHT ONE-HUNDREDTHS OF
3 ONE PERCENT (.08%) OR MORE, YOU MAY INSTEAD BE
4 CHARGED WITH DRIVING WITH UNLAWFUL ALCOHOL
5 CONCENTRATION, D.U.A.C., WHICH IS SECTION 56-5-
6 2933. IF YOU HAVE AN ALCOHOL CONCENTRATION OF
7 FIFTEEN ONE-HUNDREDTHS OF ONE PERCENT (.015%) OR
8 MORE, YOUR PRIVILEGE TO DRIVE IN SOUTH CAROLINA
9 MUST BE SUSPENDED FOR AT LEAST ONE (1) MONTH. YOU
10 HAVE THE RIGHT TO HAVE A QUALIFIED PERSON OF YOUR
11 OWN CHOOSING CONDUCT ADDITIONAL INDEPENDENT TESTS
12 AT YOUR EXPENSE AND THE OFFICER, UPON REQUEST,
13 MUST PROVIDE YOU WITH AFFIRMED ASSISTANCE. YOU
14 HAVE THE RIGHT TO REQUEST AN ADMINISTRATIVE
15 HEARING WITHIN THIRTY (30) DAYS OF THE ISSUANCE OF
16 THE NOTICE OF SUSPENSION. IF YOU DO NOT REQUEST
17 AN ADMINISTRATIVE HEARING OR IF YOUR SUSPENSION IS
18 UPHOLD AT THE ADMINISTRATIVE HEARING, YOU MUST
19 ENROLL IN AN ALCOHOL AND DRUG SAFETY ACTION
20 PROGRAM." I DO CHECK HIS MOUTH. THAT'S, THAT'S
21 PROCEDURE. I CHECK, I CHECK -- I WOULD CHECK THE
22 MOUTH AND, AND REMOVE ANYTHING THAT HE WOULD
23 TYPICALLY HAVE. IT'S MY -- WHAT I'M REQUIRED TO
24 DO, UNLESS THERE'S A REFUSAL. ENTER THE
25 BIOGRAPHICAL INFORMATION INTO THE DATAMASTER,

1 WHICH IS HIS INFORMATION, MY INFORMATION, AND
2 OBSERVE THE PERSON FOR TWENTY (20) MINUTES PRIOR
3 TO COLLECTING THE SAMPLE, AND THAT'S NOT REQUIRED
4 IF, IF THEY'RE REFUSING.

5 Q. AND I'M GOING TO SHOW YOU THIS FORM AND ASK YOU IF
6 YOU CAN IDENTIFY IT. (DOCUMENT SHOWN TO WITNESS)

7 A. (UPON REVIEW) YES, SIR.

8 Q. WHAT ---

9 A. A COPY OF THE FORM FROM MR. SHORT FROM THAT NIGHT.

10 BY MR. BYRD: MOVE TO INTRODUCE THIS INTO
11 EVIDENCE, YOUR HONOR.

12 BY THE COURT: ANY OBJECTION?

13 BY MR. EPPS: NO OBJECTION.

14 BY THE COURT: OKAY. STATE'S EXHIBIT ---

15 BY MR. BYRD: AN -- EXCUSE ME.

16 (PLAINTIFF'S EXHIBIT "B" MARKED & ENTERED)

17 A. THANK YOU.

18 Q. AND IS THAT MR. SHORT'S SIGNATURE AT THE BOTTOM OF
19 IT?

20 A. YES, SIR.

21 Q. IS THAT THE SET OF RIGHTS THAT YOU READ TO HIM
22 WITH REGARD TO THE TEST THAT HE TOOK?

23 A. YES, SIR.

24 Q. AND, AND DID HE ELECT TO TAKE THE TEST?

25 A. YES, SIR; HE DID.

- 1 Q. AND WHY DO YOU CHECK HIS MOUTH?
- 2 A. WELL, TO MAKE SURE HE DIDN'T HAVE ANY FOREIGN
- 3 MATERIAL THAT MIGHT CAUSE THE MACHINE TO HAVE A
- 4 MIS-READING OR SOMETHING OF THAT NATURE. WHERE
- 5 YOU WOULDN'T WANT TO HAVE GUM IN THE MOUTH,
- 6 TOBACCO, ANYTHING THAT WOULD CAUSE THE READING TO
- 7 READ HIGHER. SO IT MAY HAVE -- YOU KNOW, IF HE
- 8 HAD BEEN DRINKING EARLIER AND MAYBE HE CHEWED GUM,
- 9 IT MAY ABSORB THE ALCOHOL AND IT MAY CAUSE A
- 10 PROBLEM LATER OR SOMETHING LIKE THAT.
- 11 Q. ALL RIGHT. AND WHY DO YOU WAIT TWENTY (20)
- 12 MINUTES BEFORE GIVING THE TEST?
- 13 A. THAT'S MANDATED BY SLED. IT JUST -- IT IS THE
- 14 TIME PERIOD THAT WE'VE BEEN TRAINED THAT IF YOU
- 15 DID JUST TAKE A SWIG OF ALCOHOL, THE TYPICAL
- 16 PERIOD THAT THEY SAY IT WOULD -- THE ALCOHOL WOULD
- 17 DISSIPATE FROM THE MOUTH WOULD BE TWENTY (20)
- 18 MINUTES.
- 19 Q. ALL RIGHT. AND DID YOU WAIT TWENTY (20) MINUTES
- 20 IN THIS CASE?
- 21 A. YES, SIR.
- 22 Q. AND DID YOU OFFER MR. SHORT AN OPPORTUNITY TO BLOW
- 23 A BREATH SAMPLE INTO THE BREATHALYZER MACHINE?
- 24 A. YES, SIR.
- 25 Q. AND HOW DO YOU KNOW THE MACHINE WAS FUNCTIONING

1 PROPERLY?

2 A. THE MACHINE GOES THROUGH A SERIES OF CHECKS,
3 ITSELF. AND IT WILL SHUT ITSELF DOWN IF IT HAS A
4 PROBLEM. AND IT DID NOT SHUT ITSELF DOWN. IT
5 VERIFIED AND CHECKED EACH POINT THAT IT'S SUPPOSED
6 TO. VERIFIED THAT IT WAS WORKING PROPERLY.

7 Q. IT CHECKS BREATH ALCOHOL CONCENTRATION VIA
8 CHEMICALS; IS THAT CORRECT?

9 A. YES, SIR. IT USES A KNOWN SIMULATOR SOLUTION.

10 Q. AND HOW DO YOU KNOW THAT'S AN ACCURATE SOLUTION?

11 A. IT'S PLACED THERE BY SLED AND IT'S CHANGED OUT
12 PERIODICALLY, ACCORDING TO NUMBER OF DAYS OR HOW
13 MANY TESTS THAT ARE, THAT ARE GIVEN.

14 Q. WILL THE MACHINE OPERATE IF IT'S NOT IN PROPER
15 ORDER?

16 A. THE MACHINE WILL SHUT DOWN IF IT, IF IT IS NOT IN
17 PROPER ORDER. IF IT GETS TO THE POINT I, I
18 BELIEVE WHERE THE SOLUTION HAS -- THE NUMBER OF
19 DAYS HAVE EXPIRED OR, OR WHATEVER, IT'LL GIVE YOU
20 A WARNING WHEN IT GETS CLOSE. "CHANGE SOLUTION
21 SOON." AND THEN ONCE IT SAYS, "CHANGE SOLUTION,"
22 YOU CAN'T RUN A -- YOU CAN'T RUN ANOTHER TEST ON
23 IT. BUT IT USES DIFFERENT CHECKS AND BALANCES
24 WITHIN THE MACHINE TO MAKE SURE IT'S WORKING
25 PROPERLY.

1 Q. AND WAS THE MACHINE THAT MR. SHORT USED TO GIVE A
2 BREATH SAMPLE FUNCTIONING PROPERLY WHEN YOU
3 ADMINISTERED THE TEST TO HIM?

4 A. YES, SIR. ACCORDING TO MY KNOWLEDGE, YES, SIR.

5 Q. YES, SIR. I'M GOING TO SHOW YOU THIS DOCUMENT.
6 ASK YOU IF YOU CAN IDENTIFY THAT. (DOCUMENT
7 HANDED TO WITNESS)

8 A. (UPON REVIEW) YES, SIR. THAT IS THE SOUTH
9 CAROLINA LAW ENFORCEMENT DIVISION BREATH ALCOHOL
10 ANALYSIS TEST REPORT.

11 BY MR. BYRD: MOVE TO INTRODUCE THIS INTO
12 EVIDENCE, YOUR HONOR.

13 BY MR. EPPS: YOUR HONOR, I'M GOING TO, I'M
14 GOING TO OBJECT ON THE GROUNDS HE NEEDS TO LAY --
15 I THINK OFFIC- -- ON THE GROUNDS HE NEEDS TO LAY
16 BETTER FOUNDATION REGARDING THE MACHINE WORKING
17 PROPERLY. HE'S TALKING ABOUT CHECKS AND BALANCES.
18 HE HASN'T SPECIFICALLY SAID WHAT CHECKS OR
19 BALANCES OR HIS KNOWLEDGE OF THEM, OR WHAT HE
20 ACTUALLY -- HE DID. SO, I'D ASK HIM TO LAY A
21 FURTHER FOUNDATION.

22 BY THE COURT: MR. BYRD?

23 BY MR. BYRD: YOUR HONOR, THE STATE VERSUS
24 PARKER DECISION REQUIRES FOUR (4) THINGS: THAT
25 THERE BE EVIDENCE THAT THE MACHINE IS FUNCTIONING

1 PROPERLY, THAT THE CORRECT CHEMICALS ARE INVOLVED,
2 THERE'S NOTHING IN THE MOUTH FOR A PERIOD OF
3 TWENTY (20) MINUTES, AND THAT THE TESTER IS
4 QUALIFIED. I BELIEVE THE WITNESS HAS TESTIFIED TO
5 ALL OF THOSE QUALIFICATIONS FOR ADMISSION OF THE
6 TEST.

7 BY THE COURT: ALL RIGHT. I'M GOING TO
8 OVERRULE THE OBJECTION. ADMIT INTO EVIDENCE
9 STATES EXHIBIT "C".

10 **(PLAINTIFF'S EXHIBIT "C" MARKED & ENTERED)**

11 Q. THANK YOU. MR. MAYFIELD, IF YOU WOULD, PLEASE
12 PUBLISH THE RESULTS OF THE TEST TO THE JURY.

13 A. HE TOOK THE TEST AND GAVE A SAMPLE OF POINT ZERO
14 NINE PERCENT (.09%).

15 Q. DOES THAT CONFIRM YOUR OBSERVATIONS OF HIM?

16 A. YES, SIR.

17 Q. AND THAT TEST WAS GIVEN AT WHAT TIME?

18 A. IT WAS GIVEN AT ZERO FIVE-OH-FIVE (05:05) A.M.

19 Q. FIVE-OH-FIVE (5:05) A.M.?

20 A. YES, SIR.

21 Q. AND YOU CAME ON THE SCENE AT THREE SOMETHING?

22 A. YES, SIR. IT WAS THREE -- IT WAS AFTER THREE
23 (3:00), I BELIEVE.

24 Q. SO, THIS TEST WOULD HAVE BEEN AN HOUR AND HALF OR
25 SO AFTER THE ---

1 A. AFTER THE AR- -- I WAS OUT THERE FOR SOME TIME,
2 SO, PROBABLY WITHIN AN HOUR OR HOUR AND HALF --
3 OR, OR WITHIN AN HOUR, HOUR AND FORTY-FIVE (45)
4 MINUTES TO THE ARREST, I GUESS, OR SOMEWHERE IN
5 THERE.

6 Q. DO YOU KNOW EXACTLY WHEN THIS WRECK OCCURRED?

7 A. I, I DON'T HAVE THE REPORT IN FRONT OF ME, THE TR-
8 310. SOMETIME AFTER, I BELIEVE SOMETIME AFTER --
9 AROUND THREE O'CLOCK (3:00) OR AFTER THREE (3:00),
10 SOMETHING LIKE THAT, I BELIEVE. BUT, I'M NOT
11 SURE. I DON'T HAVE THE TR-310 IN FRONT OF ME.

12 Q. NOW, THE BREATHALYZER TEST IN, IN THE B.A. ROOM,
13 IF YOU WILL, THAT'S ALL VIDEO RECORDED; CORRECT?

14 A. YES, SIR.

15 Q. AND I'M GOING TO SHOW YOU THIS AND ASK, ASK IF YOU
16 CAN IDENTIFY IT. (DOCUMENT SHOWN TO WITNESS)

17 A. (UPON REVIEW) IT'S LABELED A COPY. I GUESS IT'S
18 GOING TO BE A COPY OF THE B.A. VDA, THE BREATH
19 ANALYSIS VIDEO.

20 BY MR. BYRD: MOVE TO INTRODUCE THE B.A.
21 VIDEO.

22 BY MR. EPPS: NO OBJECTION, YOUR HONOR.

23 BY THE COURT: OKAY. THANK YOU, SIR. BE
24 STATE'S EXHIBIT "D."

25 (PLAINTIFF'S EXHIBIT "D" MARKED & ENTERED)

1 Q. AND, MR. MAYFIELD, IF YOU WILL, I'LL ASK YOU TO
2 PLEASE EXTRACT THE OTHER VIDEO AND REPLACE IT WITH
3 THIS ONE.

4 A. YES, SIR. (COMPLIES)

5 Q. THANK YOU.

6 A. YES, SIR.

7 (VIDEO PLAYING)

8 BY MR. BYRD: YOUR HONOR, THAT'S ALL THE
9 QUESTIONS FROM THIS WITNESS. I ANTICIPATE SOME
10 CROSS-EXAMINATION AT LEAST. IT'S AFTER TWELVE
11 (12:00). MIGHT BE ---

12 BY THE COURT: IT IS. I, I WAS GOING TO
13 SUGGEST WE BREAK FOR LUNCH.

14 BY MR. EPPS: THAT'S FINE.

15 BY THE COURT: AN HOUR AND FIFTEEN (15)
16 MINUTES. IS THAT OKAY? IT IS NOW TWELVE-OH-NINE
17 (12:09). SAY WE BE BACK BY ONE-THIRTY (1:30).
18 DOES THAT GIVE YOU ENOUGH TIME? I WANT TO WORK
19 WITH YOU. SO, IF YOU NEED MORE, JUST LET ME KNOW.
20 BUT, I WANT TO GET YOU OUT OF HERE THIS AFTERNOON,
21 AS WELL. SO, LET'S JUST SAY WE'LL BE BACK BY ONE-
22 THIRTY (1:30), OKAY?

23 (THE JURY LEAVES)

24 BY THE COURT: OKAY. WE'RE STILL ON THE
25 RECORD. SINCE THE JURY IS NOT HERE, I JUST WANTED

1 GO OVER A COUPLE OF THINGS.

2 BY MR. EPPS: YES, SIR.

3 BY THE COURT: NOT TO GET AHEAD. I KNOW
4 YOU'RE GOING TO CROSS-EXAM. DO YOU PLAN ON
5 PUTTING UP A DEFENSE? HAVE YOU TALKED TO YOUR
6 CLIENT ABOUT ---

7 BY MR. EPPS: AT THIS TIME, YOUR HONOR, NO.
8 I DO NOT PLAN ---

9 BY THE COURT: OKAY.

10 BY MR. EPPS: --- ON CALLING MY, MY CLIENT AT
11 THIS TIME.

12 BY THE COURT: AND, OF COURSE, YOU'RE MORE
13 THAN ABLE TO CHANGE YOUR MIND, AND ---

14 BY MR. EPPS: RIGHT.

15 BY THE COURT: BUT I DIDN'T WANT TO MISSPEAK.

16 BY MR. BYRD: I'LL GO AHEAD AND HAND UP OUR
17 PROPOSED CHARGE IN THAT EVENT.

18 BY THE COURT: SURE. SURE.

19 BY MR. BYRD: IT'S JUST STRAIGHT FROM THE
20 STATUTE, BUT (PAUSE) --- (DOCUMENTS HANDED TO THE
21 COURT AND MR. EPPS)

22 BY THE COURT: (UPON REVIEW) IT IS SIMILAR
23 TO WHAT I HAVE ---

24 BY MR. BYRD: AND THAT'D BE FINE; WHATEVER
25 YOU HAVE.

1 BY THE COURT: WELL, AND TH- -- AND IT
2 DOESN'T -- IF THE TWO (2) OF YOU CONSENT TO
3 SOMETHING, I'LL BE HAPPY TO READ IT. A LOT OF
4 TIMES I JUST READ THE STATUTE, WHICH IS THE FIRST
5 PARAGRAPH; SECTION "A" OF 2933, AND THEN THIS IS
6 WHAT THE COURT HAS AS A CHARGE, AS WELL. AND
7 THEN, MR. EPPS, I'M HAPPY TO GO WITH ANYTHING THAT
8 YOU MAY -- LOOK AT ANYTHING YOU MAY HAVE
9 REDRAFTED. HOW ABOUT WE TAKE THESE UNDER
10 CONSIDERATION. BREAK FOR LUNCH ---

11 BY MR. EPPS: SURE.

12 BY THE COURT: TALK ABOUT IT WHEN WE GET
13 BACK.

14 BY MR. EPPS.: OKAY. YES, SIR, YOUR HONOR.

15 (OFF RECORD/LUNCH BREAK)

16 BY THE COURT: ALL RIGHT. BACK ON THE
17 RECORD, STATE VERSUS SHORT. SO, WHICH -- I GAVE
18 YOU BOTH THE COURT'S VERSION AND THE STATUTE, AND
19 THEN WE HAVE MR. BYRD'S, AS WELL, WHICH IS, I
20 BELIEVE A VERSION OF THE COURTS. WHICH ONE DID
21 YOU LIKE -- WAS IT THE STATUTE?

22 BY MR. EPPS: I LIKE THE ONE, THE COURT'S
23 VERSION.

24 BY THE COURT: OKAY. THE COURT'S ---

25 BY MR. EPPS: YES, SIR. AND I KNOW PURSUANT

1 TO THE STATUTE, THERE WAS, THERE'S A COUPLE OF --
2 I KNOW AT THE BOTTOM IT SAYS YOU -- WHERE IT SAYS
3 THE MEMBERS OF THE JURY CAN -- MAY CONSIDER ANY
4 EVIDENCE PRESENTED FOR YOUR CONSIDERATION, YADDY,
5 YADDA, YADDA. AND YOU'VE GOT "A," "B," "C," "D,"
6 "E." THERE'S ALSO -- I'D LIKE TO INCLUDE --
7 THERE'S SOME OTHER LANGUAGE IN THE STATUTE,
8 TALKING ABOUT IS THE MACHINE -- IF THE MACHINE IS
9 WORKING PROPERLY. I THINK THAT'S ABOUT IT.

10 BY THE COURT: LET ME SEE THAT. I THINK
11 THAT'S MY ONLY COPY. MR. BYRD?

12 BY MR. BYRD: IT DOESN'T MAKE ANY DIFFERENCE
13 TO ME, JUDGE. IF, IF HE WANTS, WE CAN READ ALL OF
14 THOSE THINGS IN SECTION "I" -- ONE (1) THROUGH ---

15 BY MR. EPPS: "I," "I" AND "J." AND I -- MY,
16 MY -- AND ANOTHER -- WELL, I GUESS FROM THE TIME
17 OF PROB- -- I DON'T -- MY MAIN CONCERN IS I DON'T
18 WANT, YOU KNOW, THE JURY TO GET CONFUSED ---

19 BY THE COURT: YEAH. YEAH.

20 BY MR. EPPS: --- REGARDING D.U.I. AND
21 D.U.A.C.

22 BY THE COURT: RIGHT. SO, YOU -- ARE YOU
23 TALKING ABOUT ALL OF "I" AND ALL OF "J"? AND IN
24 LIEU OF THE "A," "B," "C," "D," AND "E"?

25 BY MR. EPPS: LET ME MAKE A COPY.

1 BY THE COURT: MR. BYRD, DO YOU HAVE A COPY?

2 BY MR. BYRD: NO. BUT, THAT'S OKAY.

3 BY THE COURT: THANK YOU. SO, "A," "B," "C,"
4 "D," AND "E" OF THE COURT'S CHARGE, DID YOU LIKE
5 THAT OR NO?

6 BY MR. EPPS: I, I THINK THAT'S FINE, YOUR
7 HONOR. I, I MEAN, I BELI- -- I -- YOU KNOW, IF,
8 IF -- I HAVE NO OBJECTION TO READING "I" AND "J"
9 IN ITS ENTIRETY ---

10 BY THE COURT: OKAY.

11 BY MR. EPPS: --- OF 2933. PART OF THE
12 REASON BEING, I MEAN, YOU'VE GOT -- I, I, JUST --
13 I, I, I DO HAVE A CONCERN. I DON'T WANT D.U.I.
14 AND D.U.A.C. TO BE CONFUSING OR ---

15 BY THE COURT: RIGHT.

16 BY MR. EPPS: --- MIXED AND MINGLE- --
17 INTERMINGLED.

18 BY THE COURT: WHAT IF I TOOK MR. BYRD'S
19 D.U.A.C. CHARGE AND ADDED "I" AND "J"?

20 BY MR. BYRD: I HAVE ONE WITH THAT ON IT.

21 BY THE COURT: YOU DO?

22 BY MR. BYRD: YEAH.

23 BY THE COURT: OKAY.

24 BY MR. BYRD: I'VE GOT TO PUT MY HANDS ON IT.

25 BY THE COURT: OKAY. 'CAUSE THAT'S

1 ESSENTIALLY -- THAT WOULD ACCOMPLISH THE MISSION.

2 BY MR. EPPS: 'CAUSE HIS ---

3 BY THE COURT: HIS IS LACKING THE ---

4 BY MR. EPPS: HIS IS, HIS IS, HIS IS, I

5 GUESS, IT'S THE ---

6 BY THE COURT: IT'S THE SAME, EXCEPT ---

7 BY MR. EPPS: --- IT'S THE SAME, EXCEPT YOU

8 GET ---

9 BY THE COURT: RIGHT. I GOTCHA. SO, I WAS

10 THINKING ABOUT ADDING "I" AND "J".

11 BY MR. BYRD: HERE, HERE IT IS WITH "A,"

12 "B," "C," "D," AND "E."

13 BY THE COURT: SO, THAT'S THE SAME THING THE

14 COURT IS.

15 BY MR. EPPS: HUH?

16 BY THE COURT: IS THAT CORRECT?

17 BY MR. EPPS: YEAH.

18 BY MR. BYRD: I THINK IT IS.

19 BY THE COURT: OKAY.

20 BY MR. BYRD: YEAH, "A," "B," "C," "D," AND

21 "E".

22 BY THE COURT: ALL RIGHT. DO YOU FEEL LIKE

23 THAT'LL SUFFICE? IS THERE ANYTHING ---

24 BY MR. EPPS: YES.

25 BY THE COURT: YOU OKAY?

1 A. BY MR. EPPS: YES.

2 BY THE COURT: OKAY.

3 BY MR. EPPS: YES, SIR.

4 BY THE COURT: SO, WHEN YOU GET DONE WITH

5 YOUR CROSS, ---

6 BY MR. EPPS: YES, SIR.

7 BY THE COURT: --- WE -- I CAN EXCUSE THEM

8 AGAIN. I DON'T KNOW IF WE NEED TO TAKE UP A MOT-

9 -- TO MAKE A DIRECTED VERDICT MOTION, WHETHER OR

10 NOT IT'S GOING TO BE, YOU KNOW, DENIED IS, ---

11 BY MR. EPPS: YES, SIR.

12 BY THE COURT: --- OF COURSE, UP TO ME. BUT,

13 DO YOU EXPECT THAT MOTION TO COME? I, I JUST WANT

14 TO KNOW IF I NEED TO TAKE THE JURY OUT AGAIN OR

15 LEAVE THEM IN, GO AHEAD WITH CLOSINGS.

16 BY MR. EPPS: HOW ABOUT IF IT GET, HOW ABOUT

17 IF I GET -- GIVE, GIVE ME ABOUT TWO (2), THREE (3)

18 MINUTES WITH MY CLIENT ---

19 BY THE COURT: SURE.

20 BY MR. EPPS: --- AND I'LL TELL YOU RIGHT

21 NOW. 'CAUSE LIKE I SAID, RIGHT NOW, I DON'T PLAN

22 ON OFFERING, PUTTING UP MY CLIENT. THAT -- IT

23 ISN'T ---

24 BY THE COURT: SURE.

25 BY MR. EPPS: IT'S NOT INTENDED -- IT'S NOT

1 -- IS NOT GOING TO TESTIFY.

2 BY THE COURT: AND THEN, IF YOU WOULD, DECIDE
3 WHETHER OR NOT IN MY CLOSING, YOU WANT ME TO READ
4 THE FAILURE OF DEFENDANT TO TESTIFY OR BRING NO
5 MENTION OF THAT.

6 BY MR. EPPS: ALL THAT WOULD HAVE TO BE
7 CHARGED.

8 BY THE COURT: OKAY.

9 BY MR. EPPS: YES, SIR.

10 BY THE COURT: YOU DO WANT IT TO BE CHARGED?

11 BY MR. EPPS: YES, YES, YES, SIR.

12 BY THE COURT: OKAY. ALL RIGHT.

13 (THE JURY ENTERS)

14 BY THE COURT: ALL RIGHT. BACK ON THE
15 RECORD. STATE VERSUS SHORT. LADIES AND GENTLEMEN
16 OF THE JURY, YOU JUST HAD A LUNCH BREAK. DID
17 ANYONE APPROACH YOU? IF SO, SIGNIFY. DID YOU
18 HAVE ANY CONTACT ABOUT THIS CASE? YOU DEFINITELY
19 DIDN'T SEE ME OR TALK TO ME; IS THAT ---

20 BY THE FOREPERSON: NO, SIR.

21 BY THE COURT: ALL RIGHT. THEN WE'LL
22 PROCEED. MR. EPPS?

23 BY MR. EPPS: YES, SIR, YOUR HONOR, MAY IT
24 PLEASE THE COURT?

25 BY THE COURT: MR. MAYFIELD, IF YOU'LL TAKE

1 THE STAND.

2

3

(BRIAN MAYFIELD TAKES TO THE STAND)

4

5 CROSS-EXAMINATION BY MR. EPPS:

6 Q. TROOPER MAYFIELD, HOW ARE YOU?

7 A. I'M DOING ALL RIGHT.

8 Q. YES, SIR. YOU TESTIFIED THAT YOU WERE -- YOU, YOU
9 HAVE RETIRED FROM, FROM THE HIGHWAY PATROL.

10 A. YES, SIR.

11 Q. IS THAT CORRECT?

12 A. YES, SIR.

13 Q. AND WHEN DID YOU RETIRE?

14 A. APRIL OF 2016.

15 Q. OKAY. AND THAT WAS TWENTY-FIVE (25) YEARS ON THE,
16 ON THE HIGHWAY PATROL; IS THAT RIGHT?

17 A. YES, SIR.

18 Q. WELL, THANK YOU FOR YOUR SERVICE.

19 A. THANK YOU.

20 Q. ALL RIGHT. NOW, HIGHWAY HAS STATE-WIDE
21 JURISDICTION; CORRECT?

22 A. YES, SIR.

23 Q. AND YOU GO ALL OVER THE PLACE. YOU GO OUTSIDE THE
24 PICKENS AREA, AS WELL; IS THAT CORRECT?

25 A. YES, SIR, I HAVE PATROLLED OUTSIDE THE PICKENS

- 1 AREA; YES, SIR.
- 2 Q. OKAY. ALL RIGHT. AND YOU -- PURSUANT TO YOUR IN-
- 3 CAR CAMERA, THE, THE VIDEO, YOU ARRIVED AT THE
- 4 SCENE OF THE, OF THE ACCIDENT AROUND THREE-THIRTY
- 5 (3:30); IS THAT CORRECT?
- 6 A. I, I DIDN'T LOOK AT THE TIME ON VIDEO, BUT
- 7 WHATEVER ---
- 8 Q. OKAY.
- 9 A. --- THE VIDEO SAID; YES, SIR.
- 10 Q. OKAY. WELL, ONCE YOU GOT TO THE SCENE, OBVIOUSLY,
- 11 OBVIOUSLY THAT WRECK -- YOU -- OBVIOUSLY THAT
- 12 WRECK HAD TAKEN PLACE SOMETIME BEFORE YOU ARRIVED
- 13 ON THE SCENE; CORRECT?
- 14 A. YES, SIR.
- 15 Q. AND I THINK YOU TESTIFIED THAT, THAT YOU COULDN'T
- 16 REMEMBER WHETHER YOU WERE DIS-, DISPATCHED TO THE
- 17 SCENE OR WHETHER YOU WERE, WHETHER YOU JUST
- 18 HAPPENED UPON THE WRECK; RIGHT?
- 19 A. THAT'S CORRECT.
- 20 Q. BUT, YOU AGREE A SUBSTANTIAL AMOUNT OF TIME HAD
- 21 PASSED BEFORE YOU ACTUALLY GOT TO THE SCENE; IS
- 22 THAT CORRECT?
- 23 A. I, I WOULD -- THAT, THAT'S POSSIBLE. I DON'T, I
- 24 DON'T KNOW ---
- 25 Q. OKAY.

- 1 A. --- EXACTLY HOW MUCH.
- 2 Q. AT LEAST ENOUGH TIME FOR, FOR SOMEBODY THAT WAS IN
- 3 THE CAR TO LEAVE, LEAVE THE SCENE, SOMEBODY TO
- 4 COME BY AND PICK, PICK MR. SHORT'S WIFE UP AND,
- 5 AND TAKE HER TO THE, TO THE, TO THE PARTY'S
- 6 RESIDENCE; IS THAT RIGHT?
- 7 A. YES, SIR.
- 8 Q. OKAY. AND DURING YOUR TIME -- AND I BELIEVE --
- 9 DURING THE TIME THAT WE SAW THE VIDEO, FROM THE
- 10 TIME YOU GOT ON THE SCENE, FROM THE TIME THAT YOU
- 11 WERE WITH MR. SHORT, FROM THE TIME THAT, THAT YOU
- 12 WERE IN THE DATAMASTER ROOM, TILL HE WAS
- 13 ULTIMATELY PUT IN A JAIL CELL, IS THAT YOUR ONLY
- 14 TIME WITH MR. SHORT, THE DEFENDANT?
- 15 A. FROM THE TIME THE VIDEO CAME ON ---
- 16 Q. OKAY.
- 17 A. --- TILL THE TIME ---
- 18 Q. OKAY.
- 19 A. --- I PUT HIM IN JAIL; YES, SIR. THAT SHOULD BE
- 20 IT.
- 21 Q. AND THAT WAS MAY 11TH OF 2013; CORRECT?
- 22 A. YES, SIR.
- 23 Q. AND YOU HAD NO INVOLVEMENT IN THIS CASE PAST MAY
- 24 11TH OF 2013; IS THAT RIGHT?
- 25 A. NOT LONG AFTER ---

- 1 Q. UNTIL WE ARE HERE TODAY?
- 2 A. YES, SIR.
- 3 Q. THAT'S RIGHT? OKAY. AND WHEN YOU GOT IN -- AND
- 4 WHEN YOU, WHEN YOU REACHED THE SCENE AND YOU WERE
- 5 -- EXCEPT -- AS IT WAS, AS IT WAS BROUGHT IN THE
- 6 VIDEO, YOU DIDN'T GO, YOU DIDN'T GO -- YOU NEVER
- 7 SPOKE WITH MS. SHORT YOURSELF, PERSONALLY; RIGHT?
- 8 A. NO, SIR.
- 9 Q. YOU NEVER TRAVELED -- YOU NEVER WENT TO THE -- TO
- 10 MR. AND MS. SHORT -- OR MR. SHORT'S RESIDENCE TO
- 11 TALK TO MS. SHORT; IS THAT CORRECT?
- 12 A. NO, NOT -- NO, SIR.
- 13 Q. OKAY. DURING THAT WHOLE TIME ON, ON MAY 11TH,
- 14 2013, YOU NEVER LAID EYES ON HER; IS THAT CORRECT?
- 15 A. NO, SIR.
- 16 Q. OKAY. NOW -- AND JUST -- AND, AND LET'S BE CLEAR
- 17 ON THAT. THAT CAR WAS OFF THE SIDE OF THE ROAD;
- 18 RIGHT? AND THE, AND THE PASSENGER SIDE WAS FACING
- 19 YOUR PATROL CAR AS, AS IT WAS PARKED ON THE ROAD;
- 20 CORRECT?
- 21 A. YES, SIR.
- 22 Q. OKAY. AND THE AIRBAGS HAD DEPLOYED; IS THAT
- 23 RIGHT?
- 24 A. I BELIEVE SO; YES, SIR.
- 25 Q. OKAY. AND DID YOU EVER DO ANY TEST, ANY FORENSIC

1 TESTS, AT ALL ON ANY CONTENTS OR ANYTHING THAT WAS
2 IN THAT VEHICLE?

3 A. NO, SIR.

4 Q. OKAY. AND, NOW, WHEN YOU, WHEN YOU GOT TO THE
5 SCENE, MR. SHORT, THE DEFENDANT, WAS ON THE PHONE
6 WITH A TOW TRUCK COMPANY TRYING TO -- IN
7 CONVERSATION ABOUT GETTING HIS CAR TOWED; IS THAT
8 RIGHT?

9 A. YES, SIR. HE HAD ---

10 Q. OKAY.

11 A. --- SPOKEN WITH ONE; YES, SIR.

12 Q. AND, AND WHILE ON THE SCENE, MR. SHORT -- I MEAN,
13 THE DEFENDANT WAS COOPERATIVE; YOU AGREE?

14 A. YES, SIR.

15 Q. OKAY. HE WAS RESPECTFUL; DO YOU AGREE?

16 A. YES, SIR.

17 Q. OKAY. THE FACT THAT HE STAYED ON THE SCENE TO TRY
18 TO CALL A TOW COMPANY OR ADDRESS THE SITUATION,
19 THAT'S AN APPROPRIATE THING TO DO; DO YOU, DO YOU
20 AGREE WITH THAT?

21 A. THAT'S CORRECT.

22 Q. OKAY. 'CAUSE HE COULD HAVE LEFT THE SCENE.

23 A. HE COULD HAVE.

24 Q. IN FACT, HE COULD HAVE LEFT THE SCENE WITH HIS
25 WIFE AND BEEN SITTING AT HIS HOUSE AND IT COULD

- 1 HAVE BEEN HOURS BEFORE Y'ALL LOCATED HIM; IS THAT
2 RIGHT?
- 3 A. THAT'S CORRECT.
- 4 Q. OKAY. DID YOU EVER TALK TO THE INDIVIDUAL -- YOU
5 NEVER -- DID YOU EVER TALK TO THE INDIVIDUAL WHO
6 ACTUALLY PICKED MS. SHORT UP FROM THE SCENE?
- 7 A. NOT THAT I RECALL; NO, SIR.
- 8 Q. OKAY. ALL RIGHT. NOW -- AND YOU AGREE THAT --
9 APPARENTLY, THE, THE ACCIDENT WAS HARD ENOUGH TO
10 DEPLOY THE AIRBAGS IN THE VEHICLE; RIGHT?
- 11 A. YES, SIR. I BELIEVE THERE WAS SOME BLOOD ON THE
12 AIRBAGS, I THINK. IS WHAT I MENTIONED TO, TO
13 TROOPER BALDWIN ON THE PHONE.
- 14 Q. OKAY. OKAY. BUT, YOU DON'T HAVE ANY IDEA EXACTLY
15 WHAT -- YOU CAN'T TELL THIS JURY EXACTLY WHAT TIME
16 THIS ACCIDENT HAPPENED?
- 17 A. IT WOULD JUST BE AN ESTIMATION.
- 18 Q. RIGHT. OKAY. NOW -- AND YOU GOT -- AND, AND YOU
19 PERFORMED -- YOU HAD A -- YOU HAD MR. SHORT
20 PERFORM FIELD SOBRIETY TESTS; RIGHT?
- 21 A. YES, SIR.
- 22 Q. OKAY. AND THAT WAS THE STANDARDIZED FIELD
23 SOBRIETY TESTS; RIGHT?
- 24 A. THAT'S CORRECT.
- 25 Q. WHAT ARE NON-STANDARDIZED FIELD SOBRIETY TESTS?

- 1 A. NON-STANDARDIZED MIGHT BE SAYING YOUR ALPHABET,
2 DOING A FINGER TEST, "ONE (1), TWO (2), THREE (3),
3 FOUR (4), FOUR (4), THREE (3), TWO (2) ONE (1),
4 ONE (1), YOU KNOW, ON AND ON. MAYBE STAND WITH
5 YOUR FEET TOGETHER, HEAD BACK WITH YOUR EYES
6 CLOSED, BRING YOUR INDEX FINGER TO YOUR NOSE,
7 SOMETHING LIKE THAT.
- 8 Q. OKAY. AND THAT'S PRETTY -- AND THAT'S DONE WHEN
9 THERE'S A, THERE'S A REASON OR THERE'S, THERE'S A
10 REASON WHY, WHY FIELD -- STANDARDIZED FIELD
11 SOBRIETY TESTS CAN'T BE DONE OR THE PERSON
12 SHOULDN'T DO THEM; IS THAT RIGHT?
- 13 A. THE, THE STANDARDIZATION WAS DONE, I THINK,
14 BECAUSE THEY WANTED TO PUT EVERYBODY ON THE SAME
15 PAGE, ALL LAW ENFORCEMENT ON THE SAME PAGE, AS FAR
16 AS WHAT YOU WERE DOING ON THE SIDE OF THE ROAD.
17 'CAUSE UP UNTIL THEN -- AND I, AND I'VE, I'VE BEEN
18 AROUND LONG ENOUGH, I, I'VE PERFORMED ALL THOSE
19 SOBRIETY TESTS ---
- 20 Q. RIGHT.
- 21 A. --- THAT I JUST MENTIONED. I, I'VE USED ALL THOSE
22 SOBRIETY TESTS THAT I JUST MENTIONED. AND THEY
23 CAME UP WITH THESE THREE (3) BY, BY A STUDY. THEY
24 DID A STUDY AND CAME UP WITH THESE THREE (3) AS
25 BEING THE MOST ACCURATE.

- 1 Q. RIGHT. BUT YOU ASK QUESTIONS LIKE IF YOU, IF
2 YOU'RE INJURED, IF YOU HAVE LEG PROBLEMS, FEET
3 PROBLEMS, BACK PROBLEMS, EYE PROBLEMS, CATARACTS,
4 GLASSES. YOU ASK ALL THOSE MEDICAL -- YOU
5 MEDICALLY QUALIFY PEOPLE AND ARE YOU -- IF YOU GOT
6 SOMEBODY -- YOU MED-, MEDICALLY QUALIFY THEM TO
7 SEE IF, "HEY, DO I NEED TO GO OUTSIDE THESE
8 STANDARDIZED FIELD SOBRIETY TESTS AND DO SOME NON-
9 STANDARD-, STANDARDIZED FIELD SOBRIETY TESTS;"
10 RIGHT?
- 11 A. WELL, IF YOU HAVE ISSUES, MEDICAL ISSUES, IT COULD
12 PRECLUDE THEM FROM DOING THEM, YES, SIR.
- 13 Q. YES, SIR. OKAY. NOW, DID YOU THINK THERE WAS ANY
14 ISSUE? 'CAUSE HE HAD BEEN IN A CAR WRECK. MR.
15 SHORT HAD BEEN IN A CAR WRECK -- REGARDING HIM
16 DOING THOSE STANDARDIZED FIELD SOBRIETY TESTS?
- 17 A. I, I THINK I ASKED HIM IF HE WAS -- COULD DO THEM
18 OR WOULD TRY TO PERFORM THEM AND, AND HE TOLD ME
19 HE WASN'T INJURED. I THINK HE HAD A LITTLE BIT OF
20 BLOOD -- I CERTAINLY WOULD HAVE CALLED THE
21 AMBULANCE IF HE NEEDED ONE.
- 22 Q. I GOTCHA. AND, AND HE SAID HE WAS A LITTLE BIT --
23 A LITTLE, A LITTLE SHOOK UP; RIGHT?
- 24 A. YES, SIR.
- 25 Q. OKAY.

- 1 A. I THINK SO; YES, SIR.
- 2 Q. OKAY. IN THE GRAND SCHEME OF THINGS, NOW YOU --
- 3 WE SAW THE VIDEO AND YOU DIDN'T PUT IN YOUR INCI-,
- 4 INCIDENT REPORT DETAILS OF, OF HOW MR. SHORT DID
- 5 ON THE FIELD SOBRIETY TEST. BUT, CONSIDERING HE
- 6 WAS IN A CAR ACCIDENT AND THE AIRBAG HAD DEPLOYED
- 7 AND, AND -- DID THE -- HE PERFORMED YOUR
- 8 STANDARDIZED FIELD SOBRIETY TESTS; IS THAT
- 9 CORRECT?
- 10 A. YES, SIR; HE DID.
- 11 Q. OKAY. AND I BELIEVE THAT THE H.G.N., THE EYE
- 12 TEST, WENT ABOUT A MINUTE LONG; IS THAT RIGHT?
- 13 A. I, I DIDN'T COUNT, BUT I ---
- 14 Q. YOU DIDN'T COUNT?
- 15 A. I DIDN'T COUNT HOW MUCH TIME IT TOOK.
- 16 Q. SHOULDN'T THAT TEST GO MORE THAN A MINUTE?
- 17 A. IT'S -- YES, SIR. IT'S POSSIBLE. IT SHOULD; YES,
- 18 SIR.
- 19 Q. OKAY. SO, IF IT GOES LESS THAN A MINUTE OR A
- 20 MINUTE, THAT'S, THAT'S NOT LONG ENOUGH; IS THAT --
- 21 DO YOU AGREE WITH THAT?
- 22 A. WELL, I, I TYPICALLY WOULD DO IT TO, TO SEE WHAT I
- 23 COULD SEE AND, YOU KNOW, WHETHER OR NOT THE EYES
- 24 WERE DOING WHAT I, WHAT I SUSPECTED THEY WOULD DO
- 25 AS FAR AS INVOLUNTARY JERKING. BUT, YOU CAN DO --

1 YOU CAN DEFINITELY STRETCH IT OUT LONGER THAN WHAT
2 I, ---
3 Q. OKAY.
4 A. --- WHAT I DO IT.
5 Q. BUT, YOU AGREE IT WAS ABOUT A MINUTE, A -- THIS
6 HAPPENED?
7 A. LIKE I SAY, I DIDN'T, I DIDN'T COUNT. SO, I --
8 YES, SIR, I GUESS IT WAS ---
9 Q. OKAY.
10 A. --- IN THE TIME.
11 Q. AND YOU AGREE THERE WAS A PORTION ON THAT VIDEO
12 WHERE MR. SHORT'S FEET ON THE WALK AND TURN WERE
13 OFF THE VIDEO?
14 A. YES, SIR; THAT'S CORRECT.
15 Q. OKAY. AND ON THE WALK AND -- ON THE ONE-LEGGED
16 STAND, ARE YOU SUPPOSED TO -- WHEN YOU'RE
17 EXPLAINING THE ONE-LEGGED STAND, YOU'RE SUPPOSED
18 TO ADVISE HIM THAT THE, THAT THE COUNT IS TO
19 THIRTY (30)?
20 A. I TELL THEM TO COUNT ONE, ONE THOUSAND, OR ONE
21 THOUSAND-ONE, ONE THOUSAND-TWO, ONE THOUSAND-THREE
22 UNTIL I TELL THEM TO STOP. I TELL THEM UPFRONT
23 THAT ---
24 Q. OKAY. BUT, GENERALLY IS -- AND, GENERALLY ---
25 A. I'M TIMING TILL ABOUT THIRTY (30) SECONDS.

- 1 Q. ABOUT THIRTY SECONDS.
- 2 A. YES, SIR.
- 3 Q. OKAY. DO YOU TELL THEM THAT?
- 4 A. NO. I JUST TELL THEM ---
- 5 Q. OKAY. SO, SO, THEY JUST ---
- 6 A. --- TILL, TILL I TELL, TELL THEM TO STOP.
- 7 Q. OKAY. BUT, THEY'RE STANDING -- I MEAN -- SO,
- 8 THEY'RE STANDING THERE WITH ONE (1) LEG IN THE AIR
- 9 AND THEY DON'T KNOW WHEN THEY'RE GOING TO PUT
- 10 THEIR LEG DOWN; IS THAT CORRECT?
- 11 A. WELL, I, I GUESS SO, 'CAUSE I TELL THEM TO DO IT
- 12 TILL I TELL THEM TO STOP; YES, SIR.
- 13 Q. OKAY. BUT, YOU DON'T -- BUT, JUST -- ARE YOU
- 14 SUPPOSED TO EXPLAIN TO THEM AND TELL THEM IT'S
- 15 SUPPOSED TO BE AROUND THIRTY (30) SECONDS?
- 16 A. I DON'T REMEMBER THEM TELLING US IN OUR TRAINING
- 17 YOU HAD TO TELL THEM THIRTY (30) SECONDS. BUT, I
- 18 MEAN, I COULD -- I GUESS I COULD TELL HIM THAT.
- 19 BUT I TELL THEM JUST TYPICALLY TO DO IT TILL I
- 20 TELL YOU TO STOP. AND I BELIEVE THAT'S HOW I WAS
- 21 TRAINED TO TELL THEM TO, TO DO IT TILL YOU STOP --
- 22 OR TILL I TELL YOU TO STOP. I'M SORRY.
- 23 Q. OKAY. OKAY. AND THEN -- MR. SHORT DID NOT HAVE
- 24 THE KEYS TO THE CAR; IS THAT CORRECT?
- 25 A. I DON'T REMEMBER.

1 Q. OKAY.

2 A. HE MAY HAVE, HE MAY HAVE HAD THEM IN HIS POCKET.

3 I DON'T REMEMBER.

4 Q. OKAY. BUT, YOU NEVER GOT ON THE VIDEO -- HE NEVER

5 REMOVED ANY -- HE NEVER GAVE YOU A SET OF KEYS?

6 A. I WANT TO SAY, I WANT TO SAY THERE WAS SOMETHING

7 ON THE VIDEO ABOUT KEYS, BUT I, I DON'T REMEMBER

8 RIGHT NOW.

9 Q. OKAY. DO YOU REMEMBER WHERE YOU GOT YOUR KEYS --

10 WHERE THE KEYS WERE FOR THAT VEHICLE?

11 A. NO, NOT RIGHT OFF THE TOP OF MY HEAD, RIGHT NOW.

12 Q. OKAY. YOU DON'T KNOW -- REMEMBER WHERE THE KEYS

13 WERE?

14 A. NOT RIGHT OFF THE TOP OF MY HEAD.

15 Q. OKAY. AND DO YOU ADMIT THERE WERE CONVERSATION ON

16 THE VIDEO THAT MS., MS. SHORT HAD THE INSURANCE

17 INFORMATION ON HER?

18 A. I DON'T, I DON'T -- I MEAN, HE, HE MAY HAVE SAID

19 THAT. I DON'T REMEMBER WHAT ---

20 Q. YOU DON'T REMEMBER?

21 A. --- HE SAID ABOUT IT. I REMEMBER THE CAR. ---

22 Q. YOU NEVER GOT ANY IN- ---

23 A. I REMEMBER, I REMEMBER THE CAR -- I REMEMBERED

24 SOME DISCUSSION ABOUT THE REGISTRATION, I THINK,

25 AND THE, AND THE CARD, AND THAT MAY HAVE BEEN AT

- 1 THE B.A. ROOM. BUT I, I CAN'T REMEMBER EXACTLY.
- 2 Q. OKAY. NOW -- AND LET'S, LET'S, LET'S, LET'S BE
- 3 CLEAR. YOU CHARGED, YOU CHARGED MR. SHORT IN THIS
- 4 CASE WITH TICKET F838374; RIGHT?
- 5 A. YES. I DON'T HAVE A COPY ---
- 6 Q. I'VE GOT A COPY. THAT'S, THAT'S -- I GOT A COPY
- 7 FROM DISCOVERY. THAT'S, THAT'S A COPY OF THAT
- 8 BLUE TICKET, UNIFORM TRAFFIC TICKET, THAT YOU
- 9 ENTERED -- THAT YOU, THAT YOU SERVED ON OR YOU
- 10 GAVE TO, ---
- 11 A. YES, SIR.
- 12 Q. --- TO MR. SHORT; RIGHT?
- 13 A. YES, SIR; YES, SIR.
- 14 Q. AND THAT'S THE TICKET THAT YOU CHARGED MR. SHORT
- 15 WITH; CORRECT?
- 16 A. YES, SIR.
- 17 Q. AND YOU CHARGED MR. SHORT AT -- ON MAY 11TH, 2013
- 18 WITH DRIVING UNDER THE INFLUENCE, FIRST DEGREE --
- 19 FIRST OFFENSE; RIGHT?
- 20 A. THAT'S CORRECT.
- 21 Q. AND THAT IS ON, THAT IS THE ONLY TICKET. THAT IS
- 22 56-5-2930; CORRECT?
- 23 A. THAT'S CORRECT.
- 24 Q. OKAY. NOW, YOU CHARGE SOMEBODY BY GIVING THEM A
- 25 UNIFORM TRAFFIC TICKET; IS THAT RIGHT?

- 1 A. THAT'S CORRECT.
- 2 Q. OKAY. OR YOU CAN ISSUE -- GIVE AN ARREST WARRANT
3 FOR THEIR ARREST; IS THAT CORRECT?
- 4 A. THAT'S CORRECT.
- 5 Q. OKAY. AND YOU KNOW TODAY, HERE, WE'RE HERE FOR
6 DRIVING WITH AN UNLAWFUL ALCOHOL CONCENTRATION;
7 CORRECT?
- 8 A. YES, SIR.
- 9 Q. OKAY. AND YOU HAVE NEVER WRITTEN A UNIFORM
10 TRAFFIC TICKET FOR DRIVING WITH UNLAWFUL ALCOHOL
11 CONCENTRATION TO MR. SHORT; IS THAT CORRECT?
- 12 A. THAT'S CORRECT.
- 13 Q. YOU'VE NEVER GOT AN ARREST WARRANT FOR DRIVING
14 WITH AN UNLAWFUL ALCOHOL CONC-, CONCENTRATION FOR
15 MR. SHORT IN THIS CASE; RIGHT?
- 16 A. THAT'S CORRECT.
- 17 Q. OKAY. SO, THE SOLE TICKET IN THIS CASE IS FOR
18 D.U.I., FIRST?
- 19 A. THAT'S THE TICKET.
- 20 Q. WE'RE NOT HERE FOR A D.U.I.; IS THAT RIGHT?
- 21 A. HE'S BEEN, HE'S BEEN TRIED FOR D.U.A.C.; YES, SIR.
- 22 Q. OKAY. BUT, WE'RE NOT HERE FOR -- THE DEBATE --
23 BUT, BUT WE'RE NOT -- THIS IS NOT, THIS IS NOT A
24 TRIAL FOR DRIVING UNDER THE INFLUENCE; CORRECT?
- 25 A. TO MY KNOWLEDGE, IT'S D.U.A.C.; CORRECT.

1 Q. OKAY. OKAY. AND YOU CHANGED IT, WHY?

2 A. I DID -- I -- THAT, THAT WOULD HAVE TO BE ---

3 Q. OKAY.

4 A. --- THE SOLICITOR'S OFFICE SENT THE NOTICE.

5 Q. SO, YOU CAN'T, SO, YOU CAN'T -- YOU CAN'T
6 ARTICULATE WHY YOU'RE PROCEEDING, OR WHY WE'RE
7 PROCEEDING, ON ---

8 BY MR. BYRD: YOUR HONOR, I'M GOING TO
9 OBJECT.

10 BY THE COURT: SUSTAINED.

11 Q. AND, AGAIN, YOU'VE NEVER WRITTEN A TICKET FOR
12 D.U.A.C.?

13 A. NO, SIR.

14 Q. OKAY. AND THE CHARGE -- WHEN YOU CHARGE SOMEBODY
15 ON A CHARGING DOCUMENT, WHAT ARE THE TWO (2) WAYS
16 THAT YOU CHARGE SOMEBODY WITH A TRAFFIC ---

17 BY MR. BYRD: I'M GOING TO OBJECT AGAIN,
18 JUDGE. I DON'T SEE THE RELEVANCE IN THIS. WE'VE
19 DISCUSSED THIS.

20 BY THE COURT: ASKED AND ANSWERED. DO YOU
21 WANT TO REPHRASE.

22 BY MR. EPPS: OKAY. I'LL REPHRASE.

23 Q. WHETHER THIS ---

24 THE COURT: SUSTAINED.

25 BY MR. EPPS: I'LL, I'LL, I'LL, I'LL MOVE ON.

- 1 BY THE COURT: IT'S BEEN ASKED AND ANSWERED;
2 YES, SIR.
- 3 Q. NOW, NOW, YOU WENT -- AND, AGAIN, AFTER, AFTER YOU
4 ARRESTED MR. SHORT AT THE SCENE, THEN Y'ALL, Y'ALL
5 WENT TO THE, TO THE DATAMASTER, THE B.A. ROOM, AT
6 THE PICKENS COUNTY DETENTION CENTER; IS THAT
7 CORRECT?
- 8 A. THAT'S CORRECT.
- 9 Q. OKAY. AND THAT VIDEO WE SAW WAS ABOUT THIRTY-
10 SOMETHING MINUTES. AND DURING THAT PERIOD OF
11 TIME, DO YOU AGREE THAT MR. SHORT WAS NICE AND
12 RESPECTFUL AND COOPERATIVE WITH YOU DURING THAT
13 TIME; RIGHT?
- 14 A. YES, SIR.
- 15 Q. OKAY.
- 16 A. THERE WASN'T ANY PROBLEM.
- 17 Q. OKAY. AND YOU TESTIFIED TO, TO WHAT YOU DID AS
18 FAR AS, AS, AS YOUR PROCEDURES OF, OF GOING
19 THROUGH WITH MR. SHORT PRIOR TO GIVING HIM THE,
20 THE BREATHALYZER TEST; RIGHT?
- 21 A. THAT'S CORRECT.
- 22 Q. OKAY. NOW, I KNOW YOU TESTIFIED, YOU TESTIFIED
23 THAT, YOU TESTIFIED THAT THE MACHINE WAS WORKING
24 PROPERLY; RIGHT?
- 25 A. THAT'S CORRECT; TO MY KNOWLEDGE.

1 Q. HOW DID, HOW DID YOU -- TO YOUR KNOW- -- HOW DID
2 YOU DETERMINE THAT THAT, THAT DATAMASTER MACHINE
3 WAS, WAS WORKING PROPERLY?

4 A. WELL, AS I TESTIFIED TO IN DIRECT EXAMINATION, IT
5 WILL GO THROUGH DIFFERENT CHECKS PRIOR TO THE TEST
6 BEING ADMINISTERED WHERE IT WILL, AND HAS, SHUT
7 ITSELF DOWN IF SOMETHING IS AMISS WITH THE
8 SIMULATOR SOLUTION, MAYBE THE TEMPERATURE IN THE
9 ROOM OR SOME- -- OR RADIO, EVEN RADIO
10 INTERFERENCE. IT WILL, IT WILL SHUT ITSELF DOWN.
11 I'VE HAD IT DO, I'VE HAD IT DO THAT OVER MY, OVER
12 MY, OVER MY TIME ON PATROL.

13 Q. OKAY. WHAT, SPECIFICALLY, ARE THE CHECKS?

14 A. WELL, IT WILL DO A BLANK TEST, WHICH, I THINK, AT
15 CERTAIN TIMES, IT USES THE BLANK TEST TO, IF I'M
16 NOT MISTAKEN, USE ROOM AIR TO MAKE SURE, AFTER THE
17 SIMULATOR SOLUTION AND BEFORE THE SIMULATOR
18 SOLUTION, THAT THERE'S NO ALCOHOL WITHIN THE
19 MACHINE. IT USES A NON-SIMULATOR SOLUTION TO, TO
20 VERIFY THAT IT IS WORKING.

21 Q. CAN I -- MAY, MAY I -- MAY -- YOU'RE READING FROM
22 SOMETHING. MAY I SEE WHAT YOU'RE --

23 A. THIS, THE BREATH ANALYSIS TEST REPORT. (DOCUMENT
24 SHOWN TO MR. EPPS) THE SIMULATOR SOLUTION THAT
25 DAY ---

- 1 Q. OKAY.
- 2 A. --- CHECKED OUT AT ZERO POINT SEVEN SIX PERCENT
- 3 (0.76%) ALCOHOL.
- 4 Q. OKAY. ARE YOU AFI- -- ARE YOU FAMILIAR WITH THE
- 5 DATAMASTER OPERATIONAL PROTOCOL?
- 6 A. I'M NOT FAMILIAR FROM THE STANDPOINT OF WHAT SLED
- 7 DOES, PER SE. I JUST KNOW, KNOW WHAT I KNOW,
- 8 BASICALLY HOW TO OPERATE IT. BUT, I KNOW A FEW
- 9 THINGS THAT IT DOES DO. IT DOES CHECK ITSELF TO
- 10 MAKE SURE IT'S WORKING PROPERLY.
- 11 Q. OKAY. YOU, YOU MASH THE BUTTONS; RIGHT?
- 12 A. YES, SIR.
- 13 Q. OKAY. DO YOU, DO YOU UNDERSTA- -- AND THE, AND IN
- 14 THE DATAMASTER OPERATION PROTOCOL, DO YOU KNOW
- 15 WHAT PURGING IS?.
- 16 A. PURGING WOULD BE -- IT WOULD CLEAN -- I GUESS IT
- 17 WOULD BE CLEANING ITSELF OUT.
- 18 Q. CORRECT. AMBIENT ZEROING?
- 19 A. I'M NOT FAMILIAR WITH EXACTLY ---
- 20 Q. BLANK TEST?
- 21 A. BLANK TEST?
- 22 Q. UH-HUH. (AFFIRMATIVE)
- 23 A. I THINK A BLANK TEST IS WHEN IT'S USING, LIKE I
- 24 SAID, ROOM AIR, I BELIEVE.
- 25 Q. UH-HUH. (AFFIRMATIVE)

- 1 A. TO VERIFY WHETHER OR NOT ALCOHOL IS IN THE
2 MACHINE.
- 3 Q. INTERNAL STANDARD?
- 4 A. I'M NOT FAMILIAR WITH EXACTLY WHAT THAT DOES ---
- 5 Q. EXTERNAL STANDARD?
- 6 A. NOT FAMILIAR WITH EXACTLY WHAT THAT IS.
- 7 Q. OKAY. AND PURGING?
- 8 A. PURGING, I THINK WOULD BE CLEANING ITSELF, MAKING
9 SURE THAT ALL -- EVERYTHING INSIDE THE MACHINE IS,
10 IS GOOD AS FAR AS BEING ABLE TO, TO SUBMIT A
11 SAMPLE. LIKE, YOU CAN ---
- 12 Q. HOW MANY TIME DOES THE MACHINE PURGE IN THE
13 OPERATIONAL PROTOCOL?
- 14 A. I'M NOT SURE IF IT'S -- I DON'T THINK IT'S ON
15 HERE, NECESSARILY. I BELIEVE IT PURGES AFTER THE
16 SOLUTION, AFTER THE SIMULATOR TEST, I BELIEVE.
17 BUT I, I'M NOT, I'M NOT CERTAIN. BUT, I THINK IT
18 PURGES AFTER IT RUNS THE SIMULATOR SOLUTION
19 THROUGH THE MACHINE TO GIVE A READING.
- 20 Q. OKAY. YOU'RE NOT CERTAIN; RIGHT?
- 21 A. NO, I'M NOT CERTAIN.
- 22 Q. OKAY. DO YOU KNOW WHEN THIS, THIS MACHINE, THIS
23 DATAMASTER BREATHALYZER WAS CALIBRATED?
- 24 A. NO, SIR; I DON'T.
- 25 Q. OKAY. DO YOU KNOW WHEN THIS MACHINE WAS

1 INSPECTED?

2 A. NO, SIR; I DON'T.

3 Q. OKAY. DO YOU, DO YOU, DO YOU KNOW HOW MANY -- DO

4 YOU KNOW HOW MAN- -- HOW -- DO YOU KNOW HOW OFTEN

5 THE MACHINE NEEDED TO BE INSPECTED?

6 A. NO, I DON'T, NOT, NOT RIGHT OFF THE TOP OF MY

7 HEAD. I KNOW SLED'S IN CHARGE, I BELIEVE SLED'S

8 IN CHARGE OF THAT. AND I THINK THOSE, YOU KNOW,

9 THOSE RECORDS CAN BE GOTTEN THROUGH SLED. I

10 BELIEVE THEY'VE GOT THAT ---

11 Q. I UNDERSTAND. WERE YOU AWARE OF, OF, OF THE MACH-

12 -- OF, OF THAT DATAMASTER MACHINE HAVING MULTIPLE

13 ERRORS THE MONTH OF MAY OF 2013?

14 A. NO.

15 Q. YOU, YOU WERE NOT?

16 A. NO.

17 Q. OKAY. NOW, I'M GOING TO ASK -- THIS HAS BEEN

18 MARKED -- AND I THINK YOU'VE GOT A COPY OF IT UP

19 THERE.

20 A. YEAH, I'VE GOT THE ORIGINAL.

21 Q. THAT DATAMASTER -- LET'S ME SEE -- AND THAT WAS

22 SERIAL NUMBER 107607; RIGHT?

23 A. (UPON REVIEW) THAT LOOKS LIKE IT; YES, SIR.

24 Q. OKAY. AND YOU WASN'T -- YOU DIDN'T HAVE ANY --

25 YOU WASN'T AWARE OF ANY PROBLEMS WITH THAT MACHINE

1 THE MONTH OF MAY OF 2013; RIGHT?

2 A. NOT THAT I'M AWARE OF RIGHT OFF THE TOP OF MY

3 HEAD. I, I THINK AT ONE TIME THE CAMERA MAY HAVE

4 WENT OUT AND THEY HAD, THEY HAD TO GO TO A

5 DIFFERENT, A DIFFERENT SITE TO DO YOUR TESTS

6 BECAUSE THE CAMERAS -- SLED DO THE -- THOSE

7 CAMERAS, TOO. AND I THINK THE CAMERAS MAY HAVE

8 WENT OUT, BUT I'M NOT SURE.

9 Q, NOW, LET'S BE -- THE, THE, THE, THE BREATHALYZER

10 OR THE DATA -- THE BREATHALYZER IS NOT FOOLPROOF;

11 YOU AGREE?

12 A. WELL, I DON'T -- I GUESS AIN'T NO MACHINE IS.

13 Q. I UNDERSTAND. AND IT CAN GIVE INACCURATE READINGS

14 AT TIMES; IS THAT -- DO YOU AGREE WITH THAT?

15 A. I, I, I DON'T WANT TO SAY NO, BUT, I, I MEAN, I, I

16 DON'T KNOW. I MEAN, I WOULD THINK THAT AS LONG AS

17 IT'S WORKING PROPERLY, IT'S GOING TO GIVE THE

18 PROPER READING. THERE'S, THERE'S NOTHING IN MY

19 EXPERIENCE THAT WOULD SHOW ME IT WOULDN'T GIVE A

20 PROPER READING AS LONG AS IT'S WORKING PROPERLY.

21 IF YOU INTRODUCE OTHER THINGS INTO IT -- I, I, I

22 GUESS THAT'S WHY THE SAFETY, THE SAFETY CHECKS ARE

23 DONE WITH CHECKING THEM OUT AND THAT KIND OF

24 THING. YOU WOULDN'T WANT SOMEBODY TO REGURGITATE

25 INTO THE TUBE AND IT GET IN THERE. AND YOU

- 1 WOULDN'T WANT SOMEBODY THAT -- BECAUSE OF THE
2 TWENTY (20) MINUTE OBSERVATION PERIOD, YOU
3 WOULDN'T WANT SOMEBODY THAT JUST TOOK A SWIG OF
4 ALCOHOL AND MAY HAVE -- STILL HAVE ALCOHOL IN
5 THEIR MOUTH TO BLOW INTO IT, 'CAUSE THAT COULD
6 PROBABLY CAUSE, CAUSE A FALSE READING; YES, SIR.
- 7 Q. LET ME ASK YOU THIS -- AND YOU BROUGHT THAT UP.
8 AND DID YOU -- DO YOU REMEMBER WHEN YOU, YOU
9 LOOKED INTO, TO MR. SHORT'S MOUTH PRIOR TO
10 THE ---
- 11 A. I THINK IT WAS RIGHT AFTER I SAT HIM DOWN AND, AND
12 DID A FEW, DID, DID A FEW PROCEDURES, I BELIEVE.
13 SHOULD BE ON THE CAMERA ---
- 14 Q. OKAY. WAS IT, WAS IT DURING THE TWENTY (20)
15 MINUTE WAITING PERIOD?
- 16 A. NO. I THINK IT'S RIGHT AFTER, RIGHT AFTER WE SAT
17 DOWN. I, I, I THINK THE TWENTY (20) MINUTE
18 OBSERVATION PERIOD STARTS ONCE I HIT THE -- OR PUT
19 THE MACHINE -- OR PUT THE INFORMATION IN.
- 20 Q. DO YOU KNOW WHEN YOU STARTED ON THAT VIDEO? DO
21 YOU KNOW WHEN YOU STARTED THE TWENTY (20) MINUTE
22 OBSERVATION PERIOD?
- 23 A. FOUR-FORTY-TWO (4:42), I THINK. FOUR-FORTY-TWO
24 (4:42) A.M.
- 25 Q. OKAY. NOW, IF YOU KNEW ABOUT -- THAT YOU WAS

1 SUPPOSED TO DO -- IF YOU HAD DONE THAT, IF YOU
2 WERE DONE CHECKING THE MOUTH -- NOW, WHEN YOU
3 CHECK THE MOUTH, YOU'RE ALSO ASKING -- ARE YOU
4 ALSO SUPPOSED TO ASK A PAR- -- A PERSON -- OR IN
5 THIS CASE, MR. SHORT, ABOUT ANY DENTURES OR
6 REMOVAL PAR- -- TEETH OR ANYTHING OF THAT NATURE
7 THAT WOULD, THAT, THAT, THAT WOULD BE IN THE
8 MOUTH?

9 A. I TYPICALLY DO. I ASK THEM SOMETIMES IF THEY HAVE
10 FALSE TEETH, PARTIAL, PLATES ---

11 Q. OKAY. BUT, YOU DIDN'T IN THIS CASE; IS THAT
12 RIGHT?

13 A. UH-UH. (SHAKING HEAD NEGATIVELY)

14 Q. OKAY. ALL RIGHT. NOW, I'M GOING TO HAND YOU --
15 AND AS YOU TESTIFIED EARLIER, SLED'S GOT THE
16 RECORDS FOR THAT DATAMASTER, FOR THE SPECIFIC
17 DATAMASTER MACHINES ---

18 A. UH-HUH. (AFFIRMATIVE)

19 Q. --- I GUESS ACROSS THE STATE OF SOUTH CAROLINA, ON
20 THEIR WEBSITE; IS THAT RIGHT?

21 A. I BELIEVE SO. I BELIEVE THEY DO.

22 Q. OKAY. ALL RIGHT.

23 BY MR. BYRD: YOUR HONOR, I'M GOING TO RAISE
24 AN OBJECTION AND IF IT WOULD BE ALL RIGHT WITH THE
25 COURT, IT MIGHT BE GOOD TO TAKE IT UP OUTSIDE THE

1 PRESENCE ---

2 BY THE COURT: SURE.

3 BY MR. BYRD: --- OF THE JURY.

4 BY THE COURT: LADIES AND GENTLEMAN, IF
5 YOU'LL STEP OUT TO THE JURY ROOM.

6 (THE JURY LEAVES)

7 BY THE COURT: OKAY.

8 BY MR. BYRD: OKAY. YOUR HONOR, I -- AS I
9 UNDERSTOOD THE WITNESS TO SAY, HE WAS NOT FAMILIAR
10 WITH SLED RECORDS WITH REGARD TO THIS MACHINE; HE
11 ONLY KNEW THAT IT WAS WORKING PROPERLY. COUNSEL,
12 I BELIEVE, IS GETTING READY TO ATTEMPT TO GET HIM
13 TO IDENTIFY SLED RECORDS. THEY ARE HEARSAY. THEY
14 HAVE GOT TO BE IDENTIFIED BY SOMEBODY THAT THE
15 DEFENSE PRESENTS TO VERIFY THE AUTHENTICITY OF
16 THOSE RECORDS. THIS WITNESS HAS ALREADY STATED
17 HE'S NOT CAPABLE OF DOING THAT.

18 BY MR. EPPS: THAT'S NOT WHERE -- ALL I'M
19 GOING TO ASK HIM ABOUT IS WHETHER HE, WHETHER HE
20 WAS AWARE ABOUT, ABOUT -- BECAUSE PART OF WHAT I
21 CAN, PART OF WHAT I CAN PRESENT EVIDENCE ON. AND
22 THESE ARE THEIR RECORDS. THESE ARE RECORDS I
23 SHOULD HAVE GOT -- TECHNICALLY, I SHOULD HAVE GOT
24 THEM IN DISCOVERY.

25 BY MR. BYRD: HOW DO I KNOW THAT?

1 BY MR. EPPS: THESE ARE RECORDS -- THESE ARE
2 SLED RECORDS FROM THE WEBSITE THAT ARE CERTIFIED.
3 THEY'RE PUBLIC RECORDS THAT ARE ON THE SLED
4 WEBSITE UNDER IMPLIED CONSENT. AND I GET TO ASK
5 HIM ABOUT THAT PURSUANT TO THE EVIDENCE THAT I'M
6 ALLOWED TO GO INTO ON THIS CASE. NOW, I -- YOU
7 KNOW, DID HE CHARGE -- GETS CHARGED WITH D.U.I.
8 AND I GET HAMSTRUNG WITH D.U.A.C. SO, ONE THING I
9 CAN DO IS, IS, IS, IS, IS NUMBER ONE (1), ATTACK
10 THE, THE MACHINE OR ANYTHING OTHER THING THAT
11 WOULD -- ANY OTHER EVIDENCE THAT WOULD, THAT WOULD
12 ADDR-, ADDRESS THE VALIDITY OF THE BREATH TEST
13 RESULTS. PART OF THAT IS LOOKING ONLINE FOR SLED,
14 WHICH IS -- WHICH THE SLED RECORDS ARE ABSOLUTELY
15 -- THEY'RE PUBLIC RECORDS. THEY'RE ON THE
16 WEBSITE. AND TECHNICALLY, IF I'VE GOT -- IF I'M -
17 - IT'S A D- -- IT'S A D.U.A.C ON A, ON A CHARGE OF
18 BLOWING A POINT ZERO NINE (.09%), I SHOULD HAVE
19 GOTTEN THIS BY WAY OF DISCOVERY. BUT, I'M CROSS-
20 EXAM -- THAT'S ON CROSS-EXAMINATION. THE ---

21 BY MR. BYRD: I SHOULD HAVE GOTTEN IT BY WAY
22 OF DISCOVERY.

23 BY MR. EPPS: NO. THAT, THAT'S ---

24 BY MR. BYRD: YOU HAVEN'T SERVE ME WITH A
25 THING.

1 BY MR. EPPS: THAT'S -- THIS IS ---

2 BY MR. BYRD: AND I, I SERVED YOU WITH
3 DISCOVERY.

4 BY MR. EPPS: YOU SERVED ME WITH DISCOVERY,
5 BUT YOU -- NOT THIS. NOT THIS, YOU DIDN'T.

6 BY MR. BYRD: YOU DIDN'T SEND IT TO ME.

7 BY MR. EPPS: I DON'T HAVE TO SEND IT TO YOU.
8 I'M ON CROSS-EXAMINATION. I'M NOT PUTTING THIS
9 INTO EVIDENCE. I CAN ASK HIM ABOUT IT.

10 BY THE COURT: IF YOU'RE GOING TO PRESENT IT
11 TO THE WITNESS, WHO DOES NOT WORK FOR SLED, I
12 WOULD SUSTAIN THE OBJECTION. I'M NOT GOING TO
13 MAKE HIM TESTIFY BASED OFF OF SOMETHING A
14 CUSTODIAN OF RECORDS WITH SLED WOULD NEED TO BE
15 HERE TO VERIFY.

16 BY MR. EPPS: WELL, I CAN ASK HIM, I CAN ASK
17 HIM IF THERE WAS PROBLEMS WITH THE MACHINE.

18 BY THE COURT: YOU'VE ALREADY ASKED HIM.

19 BY MR. BYRD: YOU'VE ALREADY DONE THAT.

20 BY THE COURT: I THINK YOUR EXACT QUESTION
21 WAS "WERE YOU AWARE THAT THERE WERE THREE (3)
22 ERRORS DURING THE MONTH" OR DURING TWO -- 2013; IS
23 THAT RIGHT?

24 BY MR. EPPS: THERE WERE, THERE WERE MORE
25 THAN THAT DURING MAY OF 2013.

1 BY THE COURT: BUT WASN'T THAT YOUR
2 QUESTION ---

3 BY MR. EPPS: THAT'S MY ---

4 BY THE COURT: --- TO THE WITNESS?

5 BY MR. EPPS: MY QUESTION WAS: DID HE --
6 'CAUSE HE'S GOT TO BE THE OPERATOR. HE'S GOT --
7 HE'S, HE'S GOT TO UNDERSTAND -- ALL RIGHT, WERE
8 YOU CON- -- "WERE YOU AWARE OF ANY PROBLEMS ON
9 THAT MACHINE IN THE MONTH OF MAY OF 2013?"

10 BY THE COURT: RIGHT.

11 BY MR. EPPS: I CAN GO INTO IT A LITTLE MORE.

12 BY THE COURT: WELL, HE, HE SAID "NO." AND
13 THEN YOU -- DID YOU NOT SPECIFY THE NUMBER OF
14 ERRORS?

15 BY MR. EPPS: IT IS MORE THAN -- IT IS -- I,
16 I -- TO TELL YOU THE TRUTH, I CAN'T REMEMBER.
17 (LAUGHTER) I CAN'T REMEMBER. I CAN'T REMEMBER.

18 BY THE COURT: I TRY TO PAY ATTENTION. BUT,
19 BUT, NO, I, I WOULDN'T MAKE THE WITNESS TESTIFY ON
20 SLED, SLED PAPERWORK. SLED CAN BE HERE. THEY'RE
21 NOT.

22 BY MR. EPPS: THE FACT IT'S A PUBLIC RECORD,
23 SAY I CAN -- IF I CAN ASK HIM -- I CAN ASK HIM DID
24 HE REL- -- DID HE -- WAS HE AWARE OF THE, OF THE,
25 OF THE, OF THE ERROR IN THE MACHINE ON SUCH-AND-

1 SUCH DATE, SUCH-AND-SUCH DATE, IF IT'S CLOSE IN
2 TIME, IF IT'S INTO MAY OF 2013.

3 BY MR. BYRD: YOU'VE DONE ASKED HIM. HE
4 DOESN'T KNOW.

5 BY THE COURT: YEAH. YOU ASKED HIM TWO (2)
6 DIFFERENT WAYS AND HE SAID HE DIDN'T KNOW. I
7 THINK YOU GOT YOUR POINT ACROSS, WHICH I KNOW IS
8 WHAT YOU'RE TRYING TO DO. BUT, IN REFERENCE TO
9 THE DOCUMENTATION, I WOULD SUSTAIN THE OBJECTION.

10 BY MR. EPPS: WELL, I'M NOT GOING TO HAVE HIM
11 READ OFF THE DOCUMENTATION. THAT'S WHAT I'M GOING
12 TO ASK, IF I CAN BE CLARIFIED ON, ON THE DATES.
13 IF I CAN ASK HIM ON THE DATES. THESE ARE PUBLIC
14 RECORDS.

15 BY THE COURT: ANY ---

16 BY MR. BYRD: IF THEY'RE PUBLIC RECORDS, YOU
17 STILL GOT TO INTRODUCE THEM.

18 BY MR. EPPS: YOU GOT -- THEY, THEY, THEY --
19 I CAN ASK HIM WHETHER OR NOT THAT ON SUCH-AND-SUCH
20 DATE DID HE KNOW THAT ---

21 BY MR. BYRD: AND YOU DID THAT.

22 BY MR. EPPS: MAYBE I CAN GET HIM -- I CAN BE
23 MORE SPECIFIC REGARDING THE SOLUTION.

24 BY MR. BYRD: YOU ASKED HIM AND HE SAID HE
25 DIDN'T KNOW.

1 BY MR. EPPS: NO, I DIDN'T SAY -- I SAID
2 "...ANY ERRORS WITH THE MACHINE?"

3 BY THE COURT: WHAT DO YOU HAVE THERE?

4 BY MR. EPPS: I'VE GOT -- THIS IS -- JUDGE,
5 AND I PROFFERED THIS. OKAY, THIS IS STATUS
6 RECORDS FROM THE SLED WEBSITE. THE REASON THEY
7 WEREN'T IN THERE 'CAUSE YOU GOT A HOST OF PROBLEMS
8 WITH THIS MACHINE FROM MAY -- AND THE END OF
9 MARCH, END OF APRIL, 2013 THROUGH MAY, 2013.

10 BY THE COURT: UH-HUH. (AFFIRMATIVE)

11 BY MR. BYRD: IT'S HEARSAY.

12 BY MR. EPPS: IT'S NOT HEARSAY. IT IS, IT IS
13 THEIR D- -- IT'S SLED.

14 BY THE COURT: BUT, HE DOESN'T WORK FOR SLED.

15 BY MR. EPPS: I UNDERSTAND THAT. BUT IT'S
16 SLED'S PUBLIC -- IT'S PUBLIC RECORD.

17 BY THE COURT: THAT'S, THAT'S THE, THAT'S THE
18 END OF THAT. THAT'S IT. FINAL AS I CAN BE. I'M
19 NOT GOING TO MAKE A MAN WHO WORKS FOR THE HIGHWAY
20 PATROL ---

21 BY MR. EPPS: BUT I CAN ---

22 BY THE COURT: --- TESTIFY ON SLED
23 DOCUMENTATION.

24 BY MR. EPPS: I'M NOT GOING TO ASK HIM TO
25 TESTIFY ON SLED DOCUMENTATION.

1 BY THE COURT: BUT, YOU -- THAT'S WHAT YOU
2 PRESENTED..

3 BY MR. EPPS: BUT, THIS IS -- IT'S, IT'S --
4 IT IS, IT IS, IT IS AN EXCEPTION TO THE HEARSAY
5 RULE 'CAUSE IT'S PUBLIC RECORDS. IT SAYS "THIS
6 REPORT REPRESENTS TRUE AND CORRECT COPIES OF THE
7 ORIGINAL DOCUMENTS MAINTAINED BY SLED IN THE
8 NORMAL COURSE OF BUSINESS. DEBORAH, DEBORAH
9 BANKS, LIEUTENANT, SPECIAL SERVICE [SIC],
10 SUPERVISORY, SPECIAL AGENT, IMPLIED CONSENT
11 DEPARTMENT." I CAN ASK -- IF I CAN GO BACK AND AT
12 LEAST ASK HIM "DID YOU -- WERE YOU AWARE THAT ON
13 APRIL 24TH, MAY 14TH, MAY 15TH, MAY 17TH" -- AND I
14 CAN BE MORE SPECIFIC. 'CAUSE I CAN TALK ABOUT THE
15 SOLUTION. IF I CAN DO THAT, THAT'S ALL I, THAT'S
16 ALL I ---

17 BY MR. BYRD: OBJECTION.

18 BY THE COURT: WHAT ABOUT THE SOLUTION? YOU
19 KEEP TALKING ABOUT THE SOLUTION.

20 BY MR. EPPS: THE SOLUTION WAS BA- -- THE
21 SOLUTION THAT WAS IN THAT DATAMASTER. I'M PRO-, I
22 PRO- -- THE, THE SOLUTION THAT WAS IN THAT, IN
23 THAT DATA -- THAT, THAT, THAT BREATHALYZER ON THE
24 DATE IN QUESTION HAD MULTIPLE ERROR FUNCTIONS,
25 MULTIPLE ERRORS ---

1 BY THE COURT: HOW ARE YOU READING INTO THAT
2 WHEN THAT ONLY SAYS "EXTERNAL" ---

3 BY MR. EPPS: 'CAUSE I'VE GOT IT RIGHT HERE.
4 (LOOKING THROUGH DOCUMENTS) AND I CAN GET THIS
5 INTO EVIDENCE. THE BOTTOM OF THE SOLUTION
6 BOTTLE ---

7 BY THE COURT: YOU CANNOT.

8 BY MR. BYRD: YOU CANNOT GET THAT INTO
9 EVIDENCE TO THE ---

10 BY MR. EPPS: I'M NOT GIVING INTO EVIDENCE.

11 BY THE COURT: WE CAN'T GO DOWN THIS ROAD
12 WITH THIS WITNESS. IT'S NOT FAIR.. IT'S NOT
13 RIGHT. YOU ASKED HIM TWICE. I THINK YOU GOT YOUR
14 POINT ACROSS. BUT, THIS GENTLEMAN DOES NOT WORK
15 FOR SLED. HE'S ADMITTED THAT HE DOESN'T KNOW ALL
16 THE INNER WORKINGS OF THE MACHINE. HE'S, HE'S
17 ADMITTED HIS FAULTS, IF YOU WANT TO LOOK AT THEM
18 THAT WAY. I THINK THE JURY HAS SEEN THAT. SO,
19 I'M TRYING TO BE FAIR, BUT I'M ALSO TRYING TO
20 PROTECT THE WITNESS IS WHERE I STAND.

21 BY MR. EPPS: I UNDERSTAND. I UNDERSTAND.
22 I'M NOT -- I'M, I'M GOING TO ASK HIM -- JUST ASK
23 HIM TO, TO LOOK AT IT.

24 BY THE COURT: SURE.

25 BY MR. EPPS: BUT, I CAN ALSO ASK HIM --

1 WELL, I CAN BE MORE -- I MEAN. ---

2 BY THE COURT: I'M GOING TO SUSTAIN THE
3 OBJECTION. THAT'S IT.

4 BY MR. EPPS: OKAY.

5 BY THE COURT: OKAY. I'M GOING TO CALL THE
6 JURY BACK IN.

7 BY MR. EPPS: BUT, I CAN -- CAN I, CAN I ASK
8 -- 'CAUSE I HAVE NOT ASKED A QUESTION REGARDING
9 THE SOLUTION.

10 BY THE COURT: WHAT ABOUT THE SOLUTION?

11 BY MR. EPPS: IF HE KNEW THERE WAS A PROBLEM,
12 A PROBLEM WITH A SPECIFIC SOLUTION. I MEAN, THIS
13 IS ---

14 BY THE COURT: HOW DO YOU SAY YOU KNEW THERE
15 WAS A PROBLEM WITHOUT THOSE DOCUMENTS? YOU KNOW
16 WHAT I MEAN?

17 BY MR. EPPS: I UNDERSTAND. BUT, THEY ARE,
18 THEY ARE -- THEY'RE PUBLIC RECORDS. I SHOULDN'T
19 HAVE TO -- I MEAN, HE'S A, -- THESE ARE ---

20 BY THE COURT: WHY IS SLED NOT HERE? WHY WAS
21 SLED NOT SUBPOENAED TO BE HERE?

22 BY MR. EPPS: WELL, I DIDN'T ---

23 BY THE COURT: IF IT'S THAT SERIOUS, IF IT'S
24 THAT IMPORTANT, WHY IS SLED NOT ---

25 BY MR. EPPS: I'M -- I GOT -- 'CAUSE I --

1 'CAUSE WHEN I SHOWED UP ON MONDAY -- WE'VE BEEN
2 DOWN HERE EIGHT (8), NINE (9) TIMES. WE -- I WAS
3 PICKING A JURY MONDAY FOR A TRIAL ON WEDNESDAY.
4 THERE'S NO WAY IN THE WORLD I CAN GET SOMEBODY
5 FROM SLED DOWN HERE IN, IN THAT, THAT TIME.

6 BY THE COURT: WHAT DID YOU THINK WOULD
7 HAPPEN ON MONDAY, THEN?

8 BY MR. EPPS: WELL, WE WAS -- HOPEFULLY, WORK
9 IT OUT.

10 BY THE COURT: Y'ALL -- THIS HAS BEEN SINCE
11 2013. IF YOU WERE GOING TO WORK IT OUT, ---

12 BY MR. EPPS: THAT'S RIGHT.

13 BY THE COURT: --- YOU SHOULD HAVE DONE IT
14 BEFORE NOW.

15 BY MR. EPPS: WELL, I MEAN, THIS -- WE'VE
16 BEEN UP HERE, WE'VE BEEN UP HERE SO MANY TIMES, SO
17 MANY TIMES AND GONE HOME. I, I CAN'T -- I MEAN --
18 SEE, I DIDN'T KNOW -- I TRULY DIDN'T KNOW WHAT TO
19 EXPECT. COME UP HERE, 'CAUSE I COME UP HERE AND I
20 TALKED TO ONE (1) OFFICER -- I MEAN, BECAUSE WE,
21 WE GOT -- AS YOU KNOW, THERE'S ANOTHER DYNAMIC TO
22 THIS WHOLE SITUATION. ONE TIME TROOPER MAYFIELD
23 IS NOT HERE, AND ONE TIME TROOP- -- THE OTHER
24 TROOPER WASN'T HERE. SO, I -- YOU KNOW.

25 BY THE COURT: I UNDERSTAND. I DO. AND LIKE

1 I SAY, I TRY TO BE FAIR TO BOTH SIDES.

2 BY MR. EPPS: YES, SIR.

3 BY THE COURT: I'M GOING TO SUSTAIN THIS LINE
4 OF QUESTIONING; OKAY?

5 BY MR. EPPS: OKAY.

6 BY THE COURT: ALL RIGHT. ANYTHING ELSE?

7 BY MR. BYRD: NO, SIR.

8 (THE JURY ENTERS)

9 BY THE COURT: MR. EPPS?

10 BY MR. EPPS: YES, SIR, YOUR HONOR. IF THE
11 COURT WOULD JUST GIVE -- JUST GRANT ME A FEW
12 MINUTES?

13 BY THE COURT: SURE. SURE.

14 BY MR. EPPS: (PAUSE TO REVIEW DOCUMENTS)

15 ALL RIGHT. THE COURT WILL GRANT ME A MINUTE?

16 BY THE COURT: SURE.

17 BY MR. EPPS: (CONFERRING WITH CLIENT)

18 **CROSS-EXAMINATION BY MR. EPPS RESUMES:**

19 Q. OKAY. JUST ONE (1) MORE -- YOU DON'T HAVE ANY --
20 THAT SOLUTION IN THAT, THAT SOLUTION BOTTLE --
21 THAT SOLUTION THAT'S IN THAT MACHINE, YOU DON'T
22 HAVE ANY INFORMATION ON THAT, ON THAT PARTICULAR
23 SOLUTION, THAT BOTTLE OF 2-4-4; RIGHT?

24 A. NO, SIR; NO, SIR, OTHER THAN JUST ---

25 Q. YOU'VE GOT NO KNOWLEDGE AT ALL?

1 A. OTHER THAN THAT'S WHAT WAS USED, I SUPPOSE, IN
2 THIS -- IN HIS TEST.

3 Q. OKAY. AND YOU DIDN'T HAVE -- YOU DIDN'T CHANGE IT
4 OR DO ANYTHING LIKE THAT? YOU WOULDN'T ---

5 A. I'M SORRY?

6 Q. YOU DIDN'T, YOU DIDN'T MAKE A -- YOU DIDN'T -- YOU
7 DON'T KNOW WHEN IT WAS CHANGED AND WHEN IT WAS PUT
8 IN THERE OR HAVE ANY, ANY INFORMATION?

9 A. I, I DON'T, I DON'T KNOW AT THIS TIME; NO, SIR. I
10 THINK THE CHANGE DATE AND STUFF IS LABELED ON THE
11 MACHINE, ITSELF. BUT ---

12 Q. AND YOU DON'T KNOW WHAT THAT IS?

13 A. --- I DON'T HAVE THAT, I DON'T HAVE THAT IN FRONT
14 OF ME.

15 Q. ALL RIGHT.

16 A. NO, SIR.

17 Q. OKAY.

18 BY MR. EPPS: ALL RIGHT, YOUR HONOR. AT THIS
19 TIME, I HAVE NO FURTHER QUESTIONS.

20 BY THE COURT: ALL RIGHT. THANK YOU, SIR.
21 ANY REDIRECT?

22 BY MR. BYRD: NO, SIR.

23 BY THE COURT: OKAY.

24 BY THE WITNESS: STEP DOWN?

25 BY THE COURT: THANK YOU, SIR; YES.

1 **(BRIAN MAYFIELD LEAVES THE STAND)**

2 BY THE COURT: ALL RIGHT. LADIES AND
3 GENTLEMAN, I DON'T WANT TO CAUSE YOU TO DO
4 CALISTHENICS. THAT IS NOT MY INTENTION HERE.
5 IT'S JUST DIFFERENT THINGS, DIFFERENT STAGES I
6 HAVE TO TAKE UP. IT'S UNFORTUNATE YOU JUST LEFT.
7 BUT, I'M GOING TO HAVE TO ASK YOU TO LEAVE AGAIN.

8 **(THE JURY LEAVES)**

9 BY THE COURT: ALL RIGHT. ANY MOTIONS BEFORE
10 CLOSING?

11 BY MR. EPPS: YES, YOUR HONOR. I HAVE A
12 MOTION FOR DIRECTED VERDICT ON THE CHARGE OF, ON
13 THE CHARGE OF D.U.A.C. OF 56-5-2933, YOUR HONOR,
14 ON THE GROUNDS THAT THERE IS NO INDEPENDENT,
15 SUFFICIENT INDEPENDENT CORROBORATION OF THE, THE
16 CORPUS DELICTI OF THIS CHARGE OF DRIVING THE
17 VEHICLE WITH AN UNLAWFUL ALCOHOL CONCENTRATION IN
18 THE STATE OF SOUTH CAROLINA. THE LAW IS CLEAR,
19 YOUR HONOR, STATE VERSUS RUSSELL, STATE VERSUS
20 OSBORNE, THAT IS WELL-SETTLED LAW THAT A
21 CONVICTION CANNOT BE HAD ON EXTRA-JUDICIAL
22 CONFESSIONS OF A DEFENDANT, EVEN IF THERE ARE
23 ADMISSIONS OR A CONFESSION. IT DON'T MATTER.
24 BOTH OF THEM APPLY. UNLESS THEY ARE CORROBORATED
25 BY PROOF ALIUNDE OF THE CORPUS DELICTI. THE

1 CORROBORATION RULE APPLIES TO STATEMENTS, WHETHER
2 THE STATEMENT ARE CONFESSIONS OR ADMISSIONS. "THE
3 CORROBORATION RULE IS SATISFIED IF THE STATE
4 PROVIDES SUFFICIENT INDEPENDENT EVIDENCE WHICH
5 SERVES TO CORROBORATE THE DEFENDANT'S EXTRA-
6 JUDICIAL STATEMENTS AND TOGETHER WITH SUCH
7 STATEMENTS PERMITS A REASONABLE BELIEF, REASONABLE
8 BELIEF THAT THE CRIME OCCURRED. CORROBORATION
9 REQUIRES SUBSTANTIAL INDEPENDENT EVIDENCE, WHICH
10 IS SUFFICIENT, WHICH IS SUFFICIENT IF THE
11 CORROBORATION SUPPORTS THE ESSENTIAL FACTS
12 ADMITTED SUFFICIENTLY TO JUSTIFY A JURY INFERENCE
13 OF THEIR TRUTH. IF, IF THE STATEMENT IS
14 INDEPENDENTLY CORROBORATED, THEN THE COMBINATION
15 OF THE STATEMENT AND THE STATE'S REMAINING
16 EVIDENCE MAY BE CONSIDERED BY THE TRIAL COURT TO
17 DETERMINE IF THERE IS ANY EVIDENCE INTENDING TO
18 ESTABLISH THE CORPUS DELICTI." AND, YOUR HONOR,
19 IN THIS CASE, THERE IS ABSOLUTELY NO EVIDENCE,
20 OUTSIDE OF MR. SHORT'S EXTRA-JUDICIAL STATEMENTS,
21 THAT HE WAS DRIVING THE CAR. THIS INDICATES IN
22 OSBORNE WHERE THE GUY HAD -- WHERE OSBORNE, THE
23 DEFENDANT, HAD THE KEYS IN HIS POCKET, GAVE. EVEN
24 IN STATE VERSUS RUSSELL, MR. RUSSELL HAD THE KEY
25 IN HIS POCKET AND UNLOCKED THE DOOR. THE KEY --

1 HE -- TROOPER MAYFIELD COULDN'T REMEMBER WHERE THE
2 KEY WAS. IT'S CLEAR FROM THE VIDEO; THE KEY WAS
3 NOT ON, ON MR., MR., MR. SHORT'S PERSON. NOBODY
4 ASKED NO OTHER EVIDENCE OF ANY-, ANYBODY. NO
5 OTHER EVIDENCE CO- -- INDEPENDENTLY CORROBORATING
6 THAT HE WAS DRIVING THAT CAR. NOBODY ASKED MS.
7 SHORT. NOBODY BROUGHT THAT OUT. YOU'VE GOT A, A
8 ONE-CAR ACCIDENT, WHO TROOPER MAYFIELD SHOWED UP
9 AT LEAST THIRTY (30) MINUTES LONGER, THIRTY (30)
10 MINUTES LON- -- OR, OR WELL AFTER THE ACCIDENT
11 HAPPENED. ONE (1) PERSON -- THE OTHER PERSON
12 INVOLVED IN THE WRECK LEFT THE SCENE. THE
13 EVIDENCE IS THAT SHE HAD A, A BUSTED LIP, OR
14 BLEEDING, A, A, AN INJURY TO HER LIP, I BELIEVE.
15 OKAY? THERE WAS BLOOD ON THE, ON, ON, ON THE
16 AIRBAG. WHAT I HEARD -- AND I BELIEVE I HEARD AND
17 I MAY BE COR- -- BUT ON THE, ON THE VI- -- WELL,
18 BASED ON THE VIDEO, THE PASSENGER SIDE WAS FACING
19 THE, THE PATROL CAR. WHEN, WHEN, WHEN TROOPER
20 MAYFIELD TESTIFIED THAT THERE WAS BLOOD ON THE
21 AIRBAG, HE WAS STANDING ON THE PASSENGER SIDE --
22 OR NOT THE PASSENGER SIDE, BUT THE DRIVER'S SIDE
23 OF, OF, OF THE CAR. HE NEVER -- HE, HE -- THAT --
24 THERE WAS ABSOLUTELY -- AGAIN, HE TESTIFIED THERE
25 WAS NO TEST DONE, NO TEST RUN. THERE WAS NO

1 INTERACTION BETWEEN TROOPER MAYFIELD AND MS. SHORT
2 AT THE HOUSE OR PERSONALLY OR IN ANY WAY. NO
3 STATEMENTS TAKEN AT ALL. NO CONVERSATION WITH
4 HER. AND AFTER MAY 11TH OF 2013, HE HAD
5 ABSOLUTELY NO, NO, NO FURTHER INVESTIGATION AND
6 NO, NO, NO, NO, NO CONTACT WITH MR. SHORT, MS.
7 SHORT OR ANYTHING ELSE IN THIS MATTER. THERE
8 AGAIN, THIS AIN'T -- THESE ARE DISTINGUISHABLE.
9 THIS PARTICULAR ITEM, LOOKING AT STATE VERSUS
10 RUSSELL; I'M LOOKING AT STATE VERSUS OSBORNE,
11 WHERE, IN THAT CASE, YOU KNOW, THEY HAD THE KEYS
12 IN THEIR POCKET, THEY GAVE. IN THIS CASE, THAT'S
13 NOT THE CASE, YOUR HONOR. YOU HAD, YOU HAD THE
14 KEYS NOT ON MR. SHORT'S PERSON. AND BY THE VIDEO,
15 THE INSURANCE INFORMATION WAS WITH HIS WIFE. A
16 THIRD PARTY -- NOBODY TALKED TO THE THIRD PARTY
17 EITHER. TROOPER MAYFIELD DIDN'T TALK TO THE THIRD
18 PARTY. YOU HAD A SITUATION WHERE YOU HAD A -- FOR
19 HOWEVER LONG -- WHENEVER THAT TRO- -- AND THERE'S
20 NONE TR- -- THAT'S UN- -- THE TROOPER IS UNSURE
21 WHEN THIS ACCIDENT HAPPENED. BUT, IT WAS LONG
22 ENOUGH FOR SOMEBODY TO COME BY, PICK UP MS. SHORT,
23 TAKE HER TO THE HOUSE. MR. SHORT STAYED THERE AND
24 WAS ON THE PHONE WITH THE, WITH THE, WITH THE TOW
25 COMPANY. NOBODY WAS -- NOBODY ELSE WAS IN --

1 NOBODY WAS IN THE CAR AT ALL. NO TESTS WERE RUN.
2 NOTHING WAS DONE REGARDING THE AIRBAGS AND ANY
3 BLOOD OR ANYTHING LIKE THAT IN THE CAR. SO -- AND
4 THE ONLY, THE ONLY, THE ONLY REASON THAT THEY SAY
5 -- THE ONLY EVIDENCE THAT HE WAS DRIVING THAT CAR
6 IS MR., MR. SHORT'S EXTRA-JUDICIAL CON- --
7 STATEMENTS REGARDING DRIVING THE CAR, FALLING
8 ASLEEP AT THE WHEEL. HOWEVER, THAT -- THE RULE IS
9 WELL-SETTLED, AGAIN, THAT UNLESS THEY'VE GOT
10 EXTRA-JUDICIAL CONFESSIONS OF THE DEFENDANT, YOU
11 HAVE TO -- A, A CONVICTION CANNOT BE HAD ON THOSE
12 EXTRA-JUDICIAL CONFESSIONS UNLESS THEY ARE
13 SUFFICIENTLY CORROBORATED BY INDEPENDENT EVIDENCE
14 OF THE CORPUS DELICTI. IN THIS CASE, YOUR HONOR,
15 THERE IS NO OTHER INDEPENDENT, SUFFICIENT
16 INDEPENDENT EVIDENCE OF THE CORPUS DELICTI THAT,
17 THAT MR. SHARP -- THAT MR. SHORT WAS DRIVING THIS
18 AUTOMOBILE AT THAT TIME, PARTICULARLY WITH A
19 UNLAWFUL ALCOHOL, ALCOHOL CONCENTRATION. SO, I'D
20 ASK THE CASE TO BE DISMISSED.

21 BY THE COURT: THANK YOU, SIR. MR. BYRD?

22 BY MR. BYRD: YOUR HONOR, COUNSEL IS QUOTING
23 CASES THAT ARE NO LONGER GOOD LAW IN SOUTH
24 CAROLINA. THE MORE RECENT DECISION OF STATE
25 VERSUS ABRAHAM, IT'S AN OPINION 5238, NUMBER 5238

1 BY THE COURT OF APPEALS IN JUNE OF 2014. IT'S A,
2 IRONICALLY, IT'S A, I BELIEVE, A CASE THAT
3 ORIGINATED EITHER OUT OF PICKENS OR OCONEE. I'M
4 NOT SURE. IT COULD HAVE BEEN ANDERSON. I KNOW
5 MIKE, MIKE HALLMAN WAS ON THE OTHER SIDE. THE
6 COURTS HAVE MODIFIED THE OLD CORPUS DELICTI RULE.
7 MANY COMPONENTS TO WHAT COUNSEL HAS INDICATED ARE
8 INCORPORATED INTO THE NEWER VERSION OF THE RULE.
9 I WILL QUOTE FROM ABRAHAM, WHICH IS THE LATEST
10 CASE. "THE CORROBORATION RULE IS SATISFIED IF THE
11 STATE PROVIDES SUFFICIENT INDEPENDENT EVIDENCE
12 WHICH SERVES TO CORROBORATE THE DEFENDANT'S EXTRA-
13 JUDICIAL STATEMENTS, AND TOGETHER WITH SUCH
14 STATEMENTS PERMITS A REASONABLE BELIEF THAT A
15 CRIME OCCURRED." YOU HAVE AN OFFICER WHO ARRIVES
16 ON THE SCENE AND FINDS ONE (1) PERSON THERE;
17 THAT'S EVIDENCE THAT THAT PERSON WAS DRIVING THAT
18 VEHICLE. THE STATEMENT FROM THE DEFENDANT, "NOT
19 ENOUGH TO DO WHAT I DID" IS EVIDENCE FROM HIM,
20 WHICH TAKEN TOGETHER WITH THE OBSERVATION,
21 SATISFIES THE CORROBORATION RULE THAT EX-, THAT
22 EXISTS IN THIS STATE. AND WHETHER OR NOT HE WAS
23 DRIVING, BASED ON THE TOTALITY OF THE EVIDENCE
24 PRESENTED, IS A QUESTION FOR THE JURY. IT'S, IT'S
25 NOT A QUESTION OF LAW ONCE ALL THAT EVIDENCE IS

1 IN.

2 BY MR. EPPS: THAT'S EXACTLY WHAT HE SAID.

3 IT'S WHAT THE LAW IS. THAT'S EXACTLY WHAT IT

4 SAYS. IT -- YOU -- I MEAN YOU DON'T HAVE ANYTHING

5 OTHER THAN MR. SHORT'S EXTRA-JUDICIAL STATEMENT.

6 HE'S ON THE SCENE BEC- -- AND, AND HIS WIFE LEFT.

7 SOMEBODY CAME TO PICK HER UP. HE DOESN'T HAVE THE

8 KEYS. HE DOESN'T HAVE THE INSURANCE INFORMATION.

9 NOBODY TAKES ---

10 BY MR. BYRD: THERE'S NO, THERE'S NO EVIDENCE

11 THAT HE DIDN'T HAVE THE KEYS, EITHER, I MIGHT ADD.

12 THE WITNESS SAID HE WASN'T SURE WHETHER HE HAD THE

13 KEYS.

14 BY MR. EPPS: HE DOESN'T KNOW! HE DIDN'T

15 GIVE HIM THE KEYS. YOU CAN SEE THAT ON THE VIDEO.

16 NOTHING -- OR NOWHERE WAS THERE ANYWHERE ANY KEYS

17 ANYWHERE ON THE VIDEO OR THE, OR THE INCIDENT

18 REPORT OR ANYTHING. IT'S NOT -- IT'S EXACTLY WHAT

19 HE SAID. IT'S -- THAT'S THE LAW. EXTRA-JUDICIAL

20 STATEMENTS CANNOT, CAN- -- A CONVICTION CANNOT BE

21 HAD UNLESS IT IS INDEPENDENTLY -- IS SUFFICIENT

22 INDEPENDENT EVIDENCE TO CORROBORATE, THE

23 CORROBORATION RULE, CORROBORATE THE EXTRA-JUDICIAL

24 STATEMENTS. AND IN THIS CASE, YOUR HONOR, WE HAVE

25 NOTHING. THE, THE WHOLE CA- -- DID, DID -- THE

1 TRU- -- I DON'T KNOW. NOBODY ASKED THE WIFE.
2 NOBODY -- TROOPER MAYFIELD DIDN'T TALK TO THE
3 WIFE. NOBODY TALKED WITH THE PERSON THAT PICKED
4 THE WIFE UP AT THE SCENE, NOBODY. THE ONLY -- THE
5 SOLE BASIS FOR SAYING THAT HE WAS DRIVING THIS CAR
6 AT THE TIME OF WHENEVER HE WAS DRIVING WITH AN
7 UNLAWFUL ALCOHOL CONCENTRATION IS THE EXTRA-
8 JUDICIAL STATEMENTS OF, OF THE DEFENDANT. WHO WAS
9 TESTIFIED, DID THE RIGHT THING. HE STAYED THERE
10 AND TRIED TO DEAL WITH THE PROBLEM. HOWEVER,
11 YOU'VE GOT ONE (1) PARTY THAT LEFT, ONE (1) PARTY
12 THAT LEFT, WITH A THIRD PARTY THAT PICKED THEM UP
13 AND TOOK THEM BACK HOME. IT'S NOT A -- IT'S --
14 AGAIN, THERE'S NO OTHER EVIDENCE THAT WOULD, THAT
15 WOULD, THAT WOULD INDEPENDENTLY, SUFFICIENTLY
16 INDEPENDENTLY CORROBORATE THAT HE WAS THE DRIVER
17 OF THAT CAR.

18 BY THE COURT: WELL, I UNDERSTAND THE, THE
19 STATE'S VIEWPOINT. WHAT CONSTITUTES
20 CORROBORATION? IS IT THE FACT THAT ONE (1) PERSON
21 IS STANDING ALONE BESIDE THE VEHICLE, STATES HE
22 WAS DRIVING THE VEHICLE, WHICH IS THE EXTRA-
23 JUDICIAL ADMISSION THAT YOU'RE SPEAKING ABOUT.

24 BY MR. EPPS: YOU'VE GOT THE SAME QUEST- ---

25 BY THE COURT: DID THEY HAVE, DID THEY HAVE

1 ANY REASON TO BELIEVE ANYONE ELSE WAS DRIVING THE
2 VEHICLE? WHY WOULD YOU FURTHER INVESTIGATE IF YOU
3 HAVE SOMEONE STANDING ALONG BESIDE A VEHICLE, ---

4 BY MR. EPPS: WELL, THE LAW SAYS YOU HAVE TO
5 HAVE ---

6 BY THE COURT: --- AND THEIR STATEMENT IS
7 THEY FELL ASLEEP, ---

8 BY MR. EPPS: I UNDERSTAND.

9 BY THE COURT: --- HIT A POST ---

10 BY MR. EPPS: WELL, YOU'VE GOT A SITUATION --
11 THE SAME SITUATION WHERE ANYBODY -- WHERE, WHERE
12 TROOPER, TROOPER MAYFIELD DOESN'T KNOW IF HE GOT
13 CALLED OUT OR HE JUST HAPPENED UPON THE SCENE.

14 BY THE COURT: RIGHT.

15 BY MR. EPPS: THIS IS NOT A CASE WHERE DISPA-
16 -- WE KNOW THAT DISPATCH CALLED OR HE SAW THE
17 DRIVING OR, IN MANY CASES, THERE IS A WITNESS ON
18 THE SCENE THAT SAW THE DRIVING.

19 BY THE COURT: RIGHT.

20 BY MR. EPPS: I'VE HAD OTHER CASES WHERE THEY
21 TRACK THE WITNESSES DOWN AND GET A STATEMENT, A
22 VIDEO STATEMENT OR A WRITTEN STATEMENT. NONE OF
23 THAT. IT COULD HAVE BEEN DONE, BUT IT WASN'T
24 DONE. THE FACT OF THE MATTER IS EXTRA-JUDICIAL,
25 AND THAT'S THE LAW, EXTRA-JUDICIAL CONFESSIONS OR

1 STATEMENTS OR ADMISSIONS, AND WHAT WE HAVE HERE IS
2 ADMISSIONS, IS -- HAS TO BE CORROBORATED BY
3 SUBSTANTIAL INDEPENDENT EVIDENCE. IN THESE OTHER
4 CASES -- AND I'VE GOT TO LOOK AT ABRAHAM. BUT
5 WHAT HE QUOTED IS THE EXACT -- IT'S WHAT THE LAW
6 SAYS, THAT A CONVICTION CANNOT BE HAD UNLESS
7 SUFFICIENT INDEPENDENT EVIDENCE, EVIDENCE TO
8 CORROBORATE THE CORPUS DELICTI OF THIS CASE.
9 I.E., WAS MR. SHORT DRIVING THE CAR AT THE TIME IN
10 QUESTION WITH AN UNLAWFUL ALCOHOL CONCENTRATION?
11 IT'S GOT TO THE MORE -- A LITTLE BIT -- IN, IN, IN
12 THE CASES I, I, I, I CITED TO, WHICH WERE NOT
13 OVERTURNED, OKAY, WERE NOT OVERRULED. BUT, THOSE
14 SITUATIONS, THEY HAD THE KEYS IN THEIR POCKET.
15 ONE GUY HAD -- RUSSELL HAD -- THE CAR WAS LOCKED.
16 HE GAVE HIM THE KEY TO UNLOCK THE CAR. OSBORNE
17 HAD THE KEY IN THE POCKET -- HAD HIS KEY. GAVE
18 THE TROOPER THE KEY. SAID "LOOK, THE CORE -- CAR,
19 GOT STOLEN, OH, BUT I WAS DRIVING -- NO, THE CAR
20 GOT STOLEN." THAT TYPE OF SITUATION. SO, YOU
21 HAVE A SITUATION WHERE NOBODY'S IN THE CAR, A
22 SUFFICIENT AMOUNT OF TIME HAS PASSED WHERE A PARTY
23 HAS LEFT THE SCENE, PICKED UP BY A THIRD PARTY,
24 AND THERE'S ABSOLUTELY NO OTHER EVIDENCE, OTHER
25 THAN WHAT HE STATED TO THE OFFICER THAT HE WAS

1 DRIVING THE CAR. DOESN'T HAVE THE KEYS. YOU GOT,
2 YOU GOT THE WIFE WITH A BLOODY NOSE AND, AND, AND
3 THERE WAS AN AIRBAG WITH BLOOD ON IT. SHE'S THE
4 ONE WITH THE BLOODY NOSE OR BLOODY, BLOODY LIP.
5 NOBODY ---

6 BY THE COURT: I, I CAN'T REMEMBER THE AIRBAG
7 TESTIMONY.

8 BY MR. BYRD: I DON'T REMEMBER IT BEING
9 SPECIFIED AS ONE SIDE OF THE CAR OR THE OTHER.

10 BY THE COURT: I, I DON'T REMEMBER.

11 BY MR. EPPS: NO EVIDENCE OF ANY INDEPENDENT
12 CORROBORATION, YOUR HONOR.

13 BY MR. BYRD: AND, AND, AGAIN, -- I DON'T
14 WANT TO BELABOR THE POINT, BUT HE, HE KEEPS
15 REFERRING TO CASES THAT HAVE BEEN MODIFIED BY THE
16 COURT. THE, THE ABRAHAM CASE MAKES IT CLEAR. AND
17 I QUOTE, "THE INDEPENDENT EVIDENCE MUST TOUCH UPON
18 OR BE CONCERNED WITH THE CORPUS DELICTI; HOWEVER,
19 THE RULE DOES NOT REQUIRE THAT THE EVIDENCE
20 ALIUNDE, THE CONFESSION OR ADMISSION PROVE ANY
21 ELEMENT OF THE CRIME."

22 BY MR. EPPS: THAT'S WHAT IS SAYS. THAT'S
23 NOT CHANGING IT.

24 BY MR. BYRD: IN OTHER WORDS ---

25 BY MR. EPPS: THAT'S NOT CHANGING IT.

1 BY MR. BYRD: --- FINDING A PERSON AT THE
2 SCENE, ALONE, DOES NOT HAVE TO SH- -- BE PROOF
3 SUFFICIENT TO -- OF DRIVING. IT'S TAKEN TOGETHER
4 WITH SUCH STATEMENTS AND PERMITS A REASONABLE
5 BELIEF THAT THE CRIME OCCURRED. IT'S THE
6 COMBINATION, FINDING A PERSON THERE AND THE PERSON
7 SAYING, "NOT ENOUGH TO DO WHAT I DID."

8 BY MR. EPPS: BUT, THAT'S -- JUST 'CAUSE HE,
9 HE WASN'T BEHIND THE WHEEL. HE WAS OUTSIDE OF THE
10 CAR, NOT BEHIND THE WHEEL. AND IT'S HIS
11 STATEMENTS, NO OTHER EV- -- THAT'S IT. HE WAS
12 STANDING THERE NEXT TO THE CAR ON THE PHONE WITH
13 THE TOW COMPANY. IF THAT'S THE SUFFICIENT
14 INDEPENDENT EVIDENCE, THAT IS SORELY LACKING. AND
15 WHAT HE SAID HAS NOT CHANGED A WORD -- A BIT OF,
16 OF, OF THE STANDARD THAT -- THAT'S A UNITED STATES
17 SUPREME COURT, STATE VERSUS -- I THINK IT'S
18 OPPERMAN [SIC]. OPPER VERSUS UNITED STATES.
19 THAT'S A UNITED STATES SUPREME COURT CASE. THESE
20 CASES HAVE NOT BEEN OVER-, OVERRULED. THEY
21 HAVEN'T BEEN MODIFIED. OPPER VERSUS THE UNITED
22 STATES. THAT'S WHERE THEY GET IT FROM, WHERE IT
23 SAYS THAT "WELL-SETTLED LAW THAT A CONVICTION
24 CANNOT BE HAD ON EXTRA-JUDICIAL CONFESSIONS OF THE
25 DEFENDANT UNLESS THEY CORROBORATED BY PROOF

1 ALIUNDE OF THE CORPUS DELICTI." YOU AIN'T GOT TO
2 PROVE EVERY EVIDENCE, BUT YOU'VE GOT TO HAVE SOME
3 INDEPENDENT SUFFICIENT CORROBORATION, INDEPENDENT
4 AND SUBSTANTIAL INDEPENDENT CORROBO- -- EVIDENCE
5 TO CORROBORATE THE CORPUS DELICTI. THAT I.E., MR.
6 SHORT WAS DRIVING, BEFORE A CONVICTION CAN BE HAD.
7 IN THIS CASE, THERE WAS NOTHING OTHER THAN ---

8 BY MR. BYRD: IT'S JUST NOT THE LAW ANYMORE,
9 JUDGE.

10 BY THE COURT: IT'S A, IT'S A, IT'S A GOOD
11 ARGUMENT. I HAVE TO MAKE A DECISION. I DO FEEL
12 LIKE THERE'S ENOUGH TO TAKE IT TO THE JURY, TO PUT
13 IT TO THE JURY. SO, RESPECTFULLY, I'M GOING TO
14 DENY THE MOTION TO DISMISS.

15 BY MR. EPPS: OKAY.

16 BY THE COURT: ANYTHING ELSE BEFORE I BRING
17 THEM IN, CHARGE ---

18 BY MR. EPPS: I DO WANT TO MAKE A MOTION.
19 RENEW -- I WANT TO RENEW MY MOTION TO DISMISS
20 BASED ON -- IT'S MY UNDERSTANDING -- I'VE, I'VE
21 REALIZED -- I'VE FOUND SINCE -- WELL, I REMEMBER
22 READING IT IN MY MOTION THAT MR. SHORT -- TO
23 DISMISS THE CHARGE OF D.U.A.C., THE 29- -- 56-5-
24 2933.

25 BY THE COURT: THE ISSUE ON THE CHARGE?

1 BY MR. EPPS: ON THE CHARGE. HE'S NOT EVER
2 BEEN CHARGED. TEST- -- HE'S NEVER BEEN CHARGED BY
3 BLUE TICKET, ARREST WARRANT, OR ANYTHING OF THAT
4 NATURE.

5 BY THE COURT: OKAY. OKAY. I BELIEVE AND
6 I ---

7 BY MR. EPPS: I BELIEVE IT'S MY
8 UNDERSTANDING, TALKING TO MR. BYRD DURING, DURING
9 THE PROC- -- THAT THAT CASE THAT WAS RELIED ON BY
10 THE COURT, BY JUDGE STILLWELL, IS ON, ON APPEAL.
11 SO, ---

12 BY MR. BYRD: I'M NOT SURE IF IT IS OR NOT.
13 I TOLD HIM IT, IT MAY WELL BE. I DON'T KNOW.

14 BY MR. EPPS: I UNDERSTAND. AND THAT'S GOING
15 -- THAT'S, THAT'S -- BUT, I MEAN THAT'S THE, THE
16 EVI- ---

17 BY THE COURT: SURE. AND I RECORD ALL THIS.
18 SO, IN THE CASE OF AN APPEAL AGAINST MYSELF, YOU
19 KNOW, I DON'T TAKE IT PERSONALLY.

20 BY MR. EPPS: OH, I UNDERSTAND. AND I'M NOT
21 -- YOU KNOW, WHAT I'M SAYING? I'M NOT, NOT
22 (INAUDIBLE) ---

23 BY THE COURT: I KNOW, I KNOW, I KNOW. BUT,
24 YES, IT, IT IS NOTED. ANYTHING ELSE?

25 BY MR. EPPS: I THINK THAT'S IT.

1 BY THE COURT: OKAY.

2 BY MR. EPPS: THANKS, YOUR HONOR.

3 BY THE COURT: AND YOU DO WANT THE CHARGE ON
4 THE FAILURE OF THE DEFENDANT TO TESTIFY; CORRECT?

5 BY MR. EPPS: YES, SIR. I WANT A CH- -- I
6 NEED A CHARGE ON ---

7 BY THE COURT: PRESUMPTION OF INNOCENCE?

8 BY MR. EPPS: CAN I, CAN I LOOK AT THE CHAR-
9 -- 'CAUSE I WANT TO DO THE CHARGE ---

10 BY THE COURT: SURE. ABSOLUTELY.

11 BY MR. EPPS: I WANT TO DO A CHARGE ON THE
12 EXTRA-JUDICIAL CONFESSIONS OR ADMISSIONS BY THE
13 DEFENDANT.

14 BY THE COURT: NO, I DO NOT HAVE THAT.

15 BY MR. EPPS: I CAN, I CAN, I CAN DRAFT IT
16 OUT.

17 BY THE COURT: MR. BYRD, I'LL BE HAPPY TO
18 HEAR FROM YOU, AS WELL.

19 BY MR. BYRD: I HAVE THE ABRAHAM CASE HERE,
20 IF YOU'D LIKE IT. IF HE'S TALKING -- ARE WE
21 TALKING ABOUT THE CORPUS DELICTI AGAIN?

22 BY THE COURT: YES.

23 BY MR. BYRD: I HAVE THAT CASE.

24 BY THE COURT: I DON'T WANT TO GET TOO
25 TECHNICAL WITH THE JURY.

1 BY MR. BYRD: I DON'T WANT TO DO IT ALL. I'M
2 JUST SAYING ---

3 BY THE COURT: THIS, THIS VERB- -- YOU DON'T
4 WANT TO DO IT AT ALL?

5 BY MR. EPPS: HE DON'T -- WELL, I KNOW THAT,
6 BUT (PAUSE) ---

7 BY THE COURT: THIS VERBIAGE, I DON'T, I
8 DON'T KNOW THAT THEY'RE GOING TO BE ABLE TO RETAIN
9 IT. WE DEAL WITH THIS ALL THE TIME, SO IT, IT
10 MAKES SENSE TO US. I JUST DON'T WANT TO GET IN A
11 SITUATION WHERE I HAVE TO EXPLAIN MORE THAN I
12 SHOULD.

13 BY MR. EPPS: AND I BELIEVE THAT THIS -- AND
14 I'VE GOT A -- IT'S, IT'S, IT'S -- AND I CAN LOOK
15 -- IF YOU GIVE ME THE ABRAHAM -- I'M, I'M FAMILIAR
16 WITH WHAT HE -- THAT, THAT CASE. BUT, IF YOU WANT
17 TO LOOK IF THERE'S EVEN -- THAT THERE'S SUF- -- I,
18 I KNOW THE LANGUAGE I WOULD LIKE TO HAVE IN IT.
19 AND IT BASICALLY SAYS THAT -- WHAT I QUOTED TO THE
20 COURT THAT "IT IS WELL-SETTLED LAW THAT A
21 CONVICTION CANNOT BE HAD ON EXTRA-JUDICIAL
22 CONFESSIONS OF A DEFENDANT UNLESS THEY ARE
23 CORROBORATE, CORROBORATED BY PROOF ALIUNDE UNDER
24 CORPUS DELICTI." CORPUS DELICTI BEING I.E., WAS
25 HE DRIVING A CAR IN THE STATE OF SOUTH CAROLINA?

1 YOU KNOW, THERE NEEDS TO BE SUFFICIENT ---

2 BY MR. BYRD: THAT'S NOT PART OF THE CORPUS
3 DELICTI, EITHER.

4 BY MR. EPPS: THAT IS PART OF THE CORPUS
5 DEL- ---

6 BY MR. BYRD: IT MOST CERTAINLY IS NOT.

7 BY MR. EPPS: HE'S GOT DRIVING IN THE STATE
8 OF SOUTH CAROLINA AS AN ELEMENT. THAT'S THE
9 CORPUS DEL- ---

10 BY MR. BYRD: THERE'S NO REQUIREMENT THAT WE
11 SHOW WHO WAS DRIVING.

12 BY MR. EPPS: YES, THERE IS! ABSOLUTELY.

13 BY MR. BYRD: NO, SIR. NO SIR.

14 BY MR. EPPS: THAT IS ABSOLUTELY WRONG, YOUR
15 HONOR. THAT IS ABSOLUTELY WRONG. IF HE STANDS BY
16 THAT, THAT'S CRA- -- IT IS -- THE, THE EVIDENCE --
17 DRIVING A -- TO, TO -- THE EVIDENCE OF D.U.A.C. IS
18 DRIVING A MOTOR VEHICLE IN THIS STATE ---

19 BY THE COURT: CORRECT.

20 BY MR. EPPS: --- WHILE HAVING AN ALCOHOL
21 CONCENTRATION OF ONE EIGHT HUNDREDTHS OF ONE
22 PERCENT (.08%) OR MORE. DRIVING THE CAR IN THE
23 STATE OF CA- -- OF, OF THE STATE OF SOUTH CAROLINA
24 IS THE CORPUS DELICTI OF THIS, THIS CHARGE.

25 BY MR. BYRD: BUT, NOT OF THE DEFENDANT.

1 BY MR. EPPS: WELL, THE DEFENDANT ---

2 BY MR. BYRD: DRIVING, YES.

3 BY MR. EPPS: WELL, THE DEFENDANT WAS ---

4 BY MR. BYRD: YOU DON'T HAVE TO SHOW IT WAS
5 THE DEFENDANT, ---

6 BY MR. EPPS: WHOA! LET ME ASK YOU -- IF YOU
7 DON'T THINK ---

8 BY MR. BYRD: --- JUST THAT DRIVING OCCURRED.

9 BY MR. EPPS: IF YOU DON'T THINK THAT THE
10 DEFENDANT WASN'T DRIVING THE CAR, HE'S NOT GUILTY
11 OF ANYTHING. HE IS -- THE, THE -- IT IS THE
12 DEFENDANT DRIVING THE VEHICLE WITH AN UNLAWFUL
13 ALCOHOL CONCENTRATION IN THE STATE OF SOUTH
14 CAROLINA.

15 BY MR. BYRD: THAT'S THE CRIME.

16 BY MR. EPPS: THAT IS, THAT IS THE CORPUS
17 DELICTI OF THE CRIME.

18 BY MR. BYRD: NO, SIR; IT IS NOT.

19 BY MR. EPPS: YES, IT IS.

20 BY MR. BYRD: YOU'RE WRONG.

21 BY MR. EPPS: YES, IT IS. NO.

22 BY THE COURT: THE PROB-, THE PROBLEM IS THE
23 REASON WE ARE HERE IS BECAUSE OF THE DEFENDANT'S
24 ADMISSION TO DRIVING. IF SOMEONE ELSE DROVE, THAT
25 WOULD HAVE BEEN THE TIME TO SAY SO. I CANNOT HELP

1 IT IF THAT WAS THE CASE AND NOTHING WAS SAID.
2 BUT, WE ARE HERE TODAY BECAUSE OF THE DEFENDANT'S
3 ADMISSION TO DRIVING THAT VEHICLE.

4 BY MR. EPPS: OKAY. AND THAT'S EXACTLY WHAT
5 THIS -- WHAT THESE -- WHAT THIS LAW SAYS, WHAT
6 ABRAHAM SAYS, WHAT OSBORNE SAYS, WHAT OPPER VERSUS
7 THE UNITED STATES, THE UNITED STATES SUPREME COURT
8 SAYS. THAT'S WHY -- THAT IS -- THAT'S DIRECTLY ON
9 THE POINT.

10 BY THE COURT: YEAH.

11 BY MR. EPPS: THE FACT THAT HE SAID IT, THERE
12 NEEDS TO BE SOME KIND OF INDEPENDENT
13 CORROBORATION, AND THEY DON'T ---

14 BY MR. BYRD: AND, AND WE'VE EXPLAINED THAT,
15 NORMAN.

16 BY THE COURT: YEAH, I'M GOING TO LEAVE THE
17 CHARGE AT WHAT IT IS. ANYTHING ELSE? I'M GOING
18 TO PULL THE JURY BACK IN. I'M, I'M NOT GOING TO
19 BELABOR THIS ALL DAY.

20 BY MR. EPPS: OKAY.

21 BY THE COURT: IF I GET APPEALED, I GET
22 APPEALED; THAT'S FINE. I TOLD YOU I DON'T CARE.

23 BY MR. EPPS: I UNDERSTAND. I UNDERSTAND.

24 BY THE COURT: I'M, I'M GETTING DONE.

25 BY MR. EPPS: I'VE GOT -- WELL, I JUST WANT

1 TO MAKE SURE EVERYTHING'S ON THE RECORD. I, I ---

2 BY THE COURT: ARE WE GOOD TO GO?

3 BY MR. BYRD: YES, SIR.

4 BY THE COURT: ALL RIGHT.

5 (THE JURY ENTERS)

6 BY THE COURT: ALL RIGHT. PLEASE STAND FOR
7 THE JURY. ALL RIGHT. MR. BYRD?

8 BY MR. BYRD: THANK YOU, YOUR HONOR. "NOT
9 ENOUGH TO DO WHAT I DID. NOT ENOUGH TO DO WHAT I
10 DID." THAT'S MR. SHORT'S STATEMENT WHEN FORMER
11 TROOPER MAYFIELD CAME ONTO THE SCENE AND INQUIRED
12 ABOUT WHETHER HE'D HAD ANYTHING TO DRINK. I WROTE
13 IT DOWN. YOU TAKE IT THE WAY YOU HEARD IT. "NOT
14 ENOUGH TO DO WHAT I DID." REMEMBER WHEN WE
15 STARTED? WE WANT PEOPLE TO DRIVE CARS; WE WANT
16 THEM TO DRIVE ON THE ROADS; WE WANT THE ROADS TO
17 BE SAFE. WE CONDONE USE OF ALCOHOL. WE ALLOW
18 PEOPLE TO DRINK ALCOHOL. WE ALLOW PEOPLE TO EVEN
19 DRINK ALCOHOL AND DRIVE. THERE'S NOTHING WRONG
20 WITH YOU GOING TO A RESTAURANT AND HAVING A GLASS
21 OF WINE OR A COCKTAIL OR, OR TWO (2) AND, AND
22 OPERATING A MOTOR VEHICLE. THE RUB COMES WHEN
23 YOU'VE HAD TOO MUCH TO OPERATE A VEHICLE SAFELY.
24 AND THAT'S WHAT YOU HAVE IN THIS CASE. YOU HAVE A
25 GENTLEMAN WHO WENT TO A PARTY AFTER A GRADUATION.

1 I CAN'T IMAGINE THAT THE GRADUATION CEREMONY
2 WASN'T OVER BY MIDNIGHT AT CLEMSON. I DON'T KNOW
3 WHEN IT WAS OVER. I DO KNOW THAT HE INDICATED
4 THAT HE WENT TO SEVERAL ESTABLISHMENTS UNTIL
5 CLOSING TIME. AND I DO RECALL THAT HE INDICATED
6 HE HAD CONSUMED BEER. BUT, IN HIS MIND, WHEN THE
7 OFFICER ARRIVED, "NOT ENOUGH TO DO WHAT I DID."
8 HE THOUGHT HE WAS FINE. HE THOUGHT HE HAD NOT HAD
9 TOO MUCH TO DRINK; BUT, HE HAD. AND THAT'S WHERE
10 THE RUB COMES. IT'S OKAY TO DRIVE IF YOU'VE HAD
11 SOMETHING TO DRINK. BUT, IF YOU'VE HAD TOO MUCH
12 TO DRINK, DON'T DRIVE. DON'T RISK YOUR LIFE.
13 DON'T RISK YOUR WIFE'S LIFE. DON'T RISK ANYBODY
14 ELSE'S LIFE THAT'S OUT USING THE HIGHWAYS THAT WE
15 OWN AND WE PAY FOR. FROM CRADLE TO GRAVE, WE WANT
16 TO BE SAFE. NOW, MR. SHORT'S A NICE MAN. THIS IS
17 NOT AN INDICTMENT OF HIM AS A PERSON. HE SIMPLY
18 MADE A MISTAKE THAT NIGHT AND THAT'S WHY WE'RE
19 HERE TODAY. HE'S CHARGED WITH DRIVING WITH AN
20 UNLAWFUL ALCOHOL CONCENTRATION. THAT'S TWO (2)
21 THINGS AND TWO (2) THINGS ONLY. DRIVING -- WAS HE
22 DRIVING? "NOT ENOUGH TO DO WHAT I DID." HE WAS
23 DRIVING; NO EVIDENCE TO THE CONTRARY. NO EVIDENCE
24 THAT ANYONE WAS DRIVING. NO EVIDENCE THAT HIS
25 WIFE WAS DRIVING. HE'S NOT INDICATED HIS WIFE WAS

1 DRIVING. POINT OH-EIGHT (.08%) OR HIGHER ON THE
2 BREATHALYZER MACHINE. IT'S RIGHT THERE ON THE
3 VIDEOS. IT'S RIGHT THERE IN THE DOCUMENT; BLEW A
4 POINT OH-NINE (.09%). HE IS OVER THE LEGAL LIMIT.
5 NOT A BAD PERSON. I'M NOT SAYING HE'S A BAD
6 PERSON. I'M JUST SAYING HE SHOULDN'T HAVE
7 OPERATED A VEHICLE THAT NIGHT. HE KNOWS IT. WE
8 KNOW IT. THE EVIDENCE IS CLEAR. HE WRECKED THE
9 CAR. YOU, YOU REALLY CAN'T HAVE MORE EVIDENCE OF
10 IMPAIRMENT FROM ALCOHOL THAN YOU HAVE IN THIS
11 CASE, OUTSIDE OF A DEATH. AND I'M GLAD NO ONE WAS
12 SERIOUSLY HURT, EITHER MR. SHORT OR HIS WIFE.
13 BUT, THIS IS A CLEAR CASE OF SOMEONE WHO HAD NO
14 BUSINESS GETTING BEHIND THE WHEEL AT THREE O'CLOCK
15 (3:00) IN THE MORNING, OR WHATEVER TIME IT WAS
16 THAT THEY LEFT THE TAVERN OR THE ESTABLISHMENTS
17 WHERE THEY HAD BEEN CONSUMING BEER AND ALCOHOL
18 AFTER THIS, THIS CEREMONY. THE EVIDENCE IN THIS
19 CASE IS, IS ALSO OVERWHELMING COMING FROM FORMER
20 TROOPER MAYFIELD. TWENTY-FIVE (25) YEARS OF
21 EXPERIENCE. HANDLED MANY CASES OF THIS NATURE.
22 IT HAPPENS ALL THE TIME. COMES ON THE SCENE,
23 DETECTS AN ODOR OF ALCOHOL. OBVIOUSLY, A WRECK
24 HAS OCCURRED, SO HE KNOWS SOMETHING'S WRONG.
25 TAKES THE TIME TO GIVE FIELD SOBRIETY TESTS JUST

1 TO VERIFY WHAT IT APPEARS TO BE. AND, AND YOU SAW
2 THE FIELD SOBRIETY TESTS. THE H.G.N. CHECKS HIS
3 EYES FOR JERKING. HIS EYES WERE JERKING. OBVIOUS
4 EVIDENCE OF ALCOHOL CONSUMPTION. WALK AND TURN;
5 ONE-LEG STAND. HE, HE PERFORMS THOSE, BUT HE
6 DOESN'T PERFORM THEM TO THE SATISFACTION OF
7 SOMEONE INDEPENDENT WHO'S WATCHING HIM THERE ON
8 THE SCENE, AS IF TO SAY, "WELL, THIS MAN IS
9 OBVIOUSLY FINE." HE, HE -- AGAIN, AND AGAIN, YOU
10 TAKE, YOU TAKE IT THE WAY YOU, YOU SEE IT. I SAW
11 STUMBLING, WOBBLES, ARMS OUT, BALANCE PROBLEMS.
12 FOOT -- HE STARTED THE ONE-LEGGED STAND TEST
13 EARLY. THAT'S, AGAIN, BACK TO OUR DIVIDED
14 ATTENTION; YOU HAVE TO BE ABLE TO THINK AND HAVE
15 PHYSICAL CONTROL TO OPERATE A VEHICLE SAFELY.
16 AND, SO, THE TEST IS TO SEE IF HE'S NOT ONLY ABLE
17 TO LIFT HIS FOOT, BUT CAN HE LISTEN TO YOU AND
18 UNDERSTAND? "DON'T START UNTIL I TELL YOU TO
19 START." UP COMES THE FOOT. PUTS THE FOOT DOWN AT
20 SEVEN (7); PUTS THE FOOT DOWN AT TWENTY (20).
21 DOESN'T COUNT CORRECTLY. IT, IT -- THAT DOESN'T
22 SHOW YOU HOW MUCH ALCOHOL SOMEBODY HAD. IT
23 DOESN'T TELL YOU THEY'RE GROSSLY INTOXICATED. IT
24 JUST SAYS, "I'M CONVINCED THAT THIS PERSON HAD TOO
25 MUCH TO DRINK TO BE DRIVING THIS CAR. SO, I'M

1 GOING TO TAKE HIM IN AND OFFER HIM A BREATHALYZER
2 EXAM AND WE'LL FIND OUT FOR SURE." AND WE DID.
3 SO, HE THOUGHT "NOT ENOUGH TO DO WHAT I DID," AND
4 HE WAS WRONG. WE, WE ARE TIRED OF CAR CRASHES
5 RELATED TO ALCOHOL. WE'RE TIRED OF PEOPLE BEING
6 INJURED IN WRECKS AS A RESULT OF ALCOHOL. AND
7 WE'RE TIRED OF EXCUSES. THERE IS NO EXCUSE FOR
8 WHAT HAPPENED. HE'S GUILTY OF DRIVING WITH AN
9 UNLAWFUL ALCOHOL CONCENTRATION. THAT'S ALL THERE
10 IS. THAT'S THE TRUTH. LET YOUR VERDICT SPEAK THE
11 TRUTH.

12 BY THE COURT: THANK YOU, SIR. MR. EPPS?

13 BY MR. EPPS: MAY IT PLEASE THE COURT?

14 LADIES AND GENTLEMEN OF THE JURY, I WANT TO THANK
15 YOU FOR YOUR TIME. I WANT TO THANK YOU FOR YOUR
16 TIME FOR THIS AFTERNOON. I WANT -- MR. SHORT
17 THANKS YOU FOR, FOR YOUR TIME IN HIS CASE. NOW,
18 IT'S GOING ON FOUR (4) YEARS, FOUR (4) YEARS THIS
19 MAY, FOUR (4) YEARS THAT THIS HAS BEEN GOING ON.
20 NOW, ORIGINALLY, THIS CHARGE WAS A D.U.I. THE
21 BLUE TICKET THAT'S BEFORE YOU THAT WE'RE HERE
22 TODAY IS A DRIVING UNDER THE INFLUENCE. BUT, THIS
23 IS NOT A DRIVING UNDER THE INFLUENCE CASE; NO.
24 THIS IS A DRIVING WITH UNLAWFUL ALCOHOL
25 CONCENTRATION. THAT -- THE TROOPER DIDN'T EVEN

1 KNOW WHY ARE WE GOING FORWARD ON THAT ONE, WHICH
2 THEY COULDN'T GET -- COULDN'T ARTICULATE,
3 ARTICULATE A REASON. IT'S THE "GOTCHA GAME."
4 HE'S NEVER BEEN CHARGED WITH DRIVING WITH AN
5 UNLAWFUL ALCOHOL CONCENTRATION. HE'S NEVER BEEN
6 CHARGED WITH 56-5-2933. HE'S NEVER BEEN WRITTEN A
7 BLUE TICKET. HE'S NEVER BEEN WRITTEN A -- OR
8 GIVEN AN ARREST -- SERVED WITH AN ARREST WARRANT
9 FOR THAT CHARGE. IF HE WAS DRIVING IN THE STATE
10 OF SOUTH CAROLINA WITH AN UNLAWFUL ALCOHOL
11 CONCENTRATION -- IT IS A VERY DIFFERENT CHARGE
12 THAN D.U.- -- THAN DRIVING UNDER THE INFLUENCE,
13 WHETHER YOU'RE DRIVING IN THE STATE OF SOUTH
14 CAROLINA WITH MATERIALLY AND APPRECIABLY IMPAIRED.
15 AND I DON'T WANT Y'ALL TO GET IT CONFUSED ABOUT
16 THAT. WE SAW A LOT OF -- YOU SAW THE VIDEO AND
17 YOU HEARD, YOU HEARD THE STATE, MR. BYRD, GET UP
18 AND, AND, AND SAY WHAT HE SAID. HE -- THAT'S NOT
19 EVIDENCE THAT HE'S GUILTY. "HE DID THIS" AND "HE
20 DID THIS ON THE FIELD SOBRIETY TEST." THAT'S NOT
21 EVIDENCE. YOU SAW MR. SHORT ON THAT VIDEO. MR.
22 SHORT -- THERE WAS AN ACCIDENT. HE WAS OUTSIDE
23 THE CAR. MR. -- TROOPER MAYFIELD SHOW UP -- DON'T
24 KNOW WHEN -- SHOWED UP AFTER THE FACT. HE DOESN'T
25 KNOW WHEN THAT ACCIDENT HAPPENED. HE DIDN'T SEE

1 ANYBODY IN THAT CAR. HE DIDN'T SEE ANYBODY
2 DRIVING THAT VEHICLE AND HAD NO INDEPENDENT
3 CORROBORATION OTHER THAN, THAN, THAN, THAN MR.
4 SHORT'S STATEMENTS THAT, THAT, THAT HE WAS DRIVING
5 THAT CAR. HIS WIFE HAD LEFT. THE TESTIMONY --
6 WHAT YOU HEARD ON THE, ON THE VIDEO WAS THAT HIS
7 WIFE HAD A BLOODY NOSE. HOWEVER, WHEN TROOPER
8 MAYFIELD WAS STANDING ON THE DRIVER'S SIDE OF THAT
9 AUTOMOBILE THAT WAS FACING AWAY FROM HIS PATROL
10 CAR, HE SAID THAT, THAT THE AIRBAG HAD BLOOD ON
11 IT. THE, THE TESTIMONY WAS -- OR WHAT WAS BROUGHT
12 OUT ON THE VIDEO WAS THAT HIS WIFE HAD SUFFERED AN
13 INJURY TO HER MOUTH OR HER NO- -- TO HER MOUTH.
14 SHE HAD AN INJURY. BUT, TROOPER MAYFIELD DIDN'T
15 GO TALK TO HER. TROOPER MAYFIELD DIDN'T GET A
16 STATEMENT FROM HER. TROOPER MAYFIELD DIDN'T GO TO
17 THE HOUSE TO GET HER STATEMENT. HE COULD HAVE
18 EASILY RIDDEN DOWN TO THE HOUSE. OR EASILY COULD
19 HAVE DONE A FOLLOW-UP, DID A FOLLOW-UP
20 INVESTIGATION TO GOT THAT INFORMATION. COULD HAVE
21 ASK HER A SIMPLE QUESTION. "WERE YOU A PASSENGER
22 OR WERE YOU -- WERE, WERE YOU, WERE YOU A
23 PASSENGER?" NOBODY DID THAT. NOBODY SUFFICIENTLY
24 INDEPENDENTLY CORROBORATED WHETHER OR NOT MR. --
25 OR MR., MR. SHORT'S STATEMENTS. WHAT HE WAS DOING

1 WAS OUT THERE ON THE SIDE OF THE ROAD, TRYING TO
2 DO WHAT WAS RIGHT, TRYING TO, TRYING TO CALL THE
3 TOW TRUCK TO ADDRESS -- TO, TO, TO COME PICK UP
4 HIS CAR THAT HAD A WRECK. JUST 'CAUSE SOMEBODY
5 HAS A WRECK DOESN'T MEAN THEY ARE UNDER THE
6 INFLUENCE. JUST 'CAUSE SOMEBODY HAD A WRECK
7 DOESN'T MEAN THEY'RE DRIVING WITH AN UNLAWFUL
8 ALCOHOL CONCENTRATION. WRECKS HAPPEN. AND I
9 AGREE, YOU SHOULDN'T BE DRIVING MATERIALLY AND
10 APPRECIABLY IMPAIRED OR -- AT, AT ALL. OR HIGHLY
11 -- OR INTOXICATED, DRUNK DRIVING ON THE, ON THE
12 ROADS OF SOU- -- OR THE STATE OF SOUTH CAROLINA.
13 BUT, THE FACT OF THE MATTER IS, NOBODY SAW HIM
14 DRIVING. NOBODY SAW HIM DRIVING. AND WHAT HE WAS
15 DOING -- AND TROOPER MAYFIELD STATED, HE SAID HE
16 WAS DOING THE RIGHT -- THAT, THAT'S THE RIGHT
17 THING TO DO. IF HE WAS UNDER THE -- IF HE WAS SO
18 INTOXICATED OR SO IMPAIRED, LIKE THE STATE WANTS
19 YOU TO THINK HE WAS, WHY DIDN'T HE LEAVE? THERE
20 WAS PLENTY OF TIME BEFORE TROOPER MAYFIELD GOT ON
21 THE SCENE FOR HIM TO LEAVE, HIMSELF. HE COULD
22 HAVE GOT IN THE CAR WITH HIS WIFE AND THAT THIRD
23 PARTY -- NOBODY TALKED TO THE THIRD PARTY WHO CAME
24 TO PICK, WHO CAME TO PICK UP HIS WIFE. NOBODY
25 SPOKE TO THEM. NOBODY GOT A STATEMENT FROM, FROM

1 THAT PERSON, THAT LADY. NOBODY INTERVIEWED HER.
2 MR. SHORT COULD HAVE VERY EASILY SAID, "I'VE HAD
3 TOO MUCH, I'VE HAD TOO MUCH TONIGHT. I'VE HAD TOO
4 MUCH. I SHOULDN'T HAVE BEEN DRIVING," OR -- AND
5 GOT IN THE CAR WITH HIS WIFE AND THIS PERSON AND,
6 AND, AND DRIVEN OFF. IT WOULD HAVE BEEN HOURS.
7 IT WOULD HAVE BEEN, IT WOULD HAVE BEEN MANY HOUR-
8 -- IT WOULD HAVE BEEN, IT WOULD HAVE BEEN WELL
9 AFTER WHEN TROOPER MAYFIELD ARRIVED ON THE SCENE
10 BEFORE ANYBODY WOULD HAVE, WOULD HAVE TALKED TO OR
11 SEEN MR. AND MRS. SHORT. BUT, THE BOTTOM LINE,
12 MR. SHORT WAS TRYING TO DO THE RIGHT THING. HE
13 WAS CALLING TO TRY TO ADDRESS -- TO GET A TOW
14 TRUCK. YOU COULD SEE HE WAS CONCERNED FOR HIS
15 WIFE. CALLED HIS WIFE, CALLED HIS WIFE AND USED
16 HIS PHONE WHEN HE WASN'T EVEN SUPPOSED TO. HE WAS
17 RESPECTFUL. HE WAS NICE. HE WAS COOPERATIVE. HE
18 DIDN'T STUMBLE, MUMBLE, BUMBLE. HE ASKED TROOPER
19 MAYFIELD FOR A PEN. HE DIDN'T HAVE ONE. AND,
20 ALSO, NOBODY KNEW WHERE THE -- MR. SHORT DIDN'T
21 HAVE THE KEY ON HIM. NOBODY KNOWS WHERE THE KEY
22 WAS. HE DIDN'T HAVE THE KEY ON HIM. ALSO, THE
23 INSURANCE INFORMATION YOU HEARD ON THE, ON THE
24 VIDEO -- HIS -- MRS. SHORT HAD THE INS-, INSURANCE
25 INFORMATION WITH HER. SHE HAD THE INSURANCE

1 INFORMATION. AND HE WAS COOPERATIVE. CAUSED NO
2 PROBLEMS. DID THE FIELD SOBRIETY TESTS. AND
3 THIS, THIS IS AN INDIVIDUAL, THIS IS AN INDIVIDUAL
4 -- AND IT'S UP TO YOU TO DETERMINE THE FACTS. THE
5 -- Y'ALL ARE THE FACT-FINDERS IN THIS CASE. BUT
6 IT WAS AN AUTOMOBILE WRECK. THERE WAS AN AIRBAG
7 THAT WAS DEPLOYED, TWO (2) AIRBAGS THAT WERE
8 DEPLOYED. NO TESTING DONE ON THE AIRBAGS. NOBODY
9 DID ANYTHING WITH THE AIRBAGS OR ANYTHING INSIDE
10 THAT VEHICLE AT ALL. THEY -- THE, THE
11 INVESTIGATION -- IF THERE -- ANY INVESTIGATION
12 THAT HAPPENED CONCLUDED ON FEBRUARY THE 11, 2013.
13 AND HE -- NOBODY -- TROOPER MAYFIELD HADN'T SEEN
14 THE SHORT'S SINCE THAT TIME, UNTIL, UNTIL TODAY,
15 FOUR (4) YEARS LATER. IN A SITUATION WHERE HE'S
16 ON TRIAL -- MR. SHORT IS ON TRIAL FOR A CHARGE
17 THAT HE MAY HAVE GOTTEN NOTICE FOR, BUT HE WAS
18 NEVER CHARGED. HE WAS NEVER GIVEN A, A CHARGING
19 DOC- -- HE WAS NEVER SPECIFICALLY CHARGED WITH
20 THAT CRIME, NEVER GIVING A BLUE TICKET, NEVER
21 SERVED WITH A BLUE TICKET, NEVER SERVED WITH AN
22 ARREST WARRANT. AND THERE'S DEFINITELY -- THE TWO
23 (2) -- D.U.I.'S AND D.U.A.C.'S IS DIFFERENT. AND
24 IT'S ALMOST LIKE A "GOTCHA GAME." "GOTCHA." ALL
25 WE'VE GOT TO PROVE IS YOU WERE DRIVING IN THE

1 STATE OF SOUTH CAROLINA WITH AN UNLAWFUL ALCOHOL
2 CONCENTRATION AND "WE GOT YOU." THAT'S IT. YOU
3 KNOW, THIS WHOLE TIME WE'RE ROLLING -- WE'RE GOING
4 ON, WE'RE GOING ON. "YOU GOT ARRESTED FOR D.U.I.,
5 BUT WE'RE GOING TO TRY YOU FOR SOMETHING
6 DIFFERENT." I SUBMIT TO YOU, LADIES AND GENTLEMAN
7 OF THE JURY, YOU CAN'T DO THAT. YOU CAN ALSO --
8 ALSO, IN THE BREATHALYZER ROOM -- LET'S GO TO THE
9 DATAMASTER ROOM. MR. SHORT IS NICE, RESPECTFUL.
10 DOESN'T LOOK DRUNK, DOESN'T ACT DRUNK. YOU COULD
11 SEE HIS EYES IN THE RIDE OVER IN THE CAR. HIS
12 EYES DIDN'T LOOK BLURRY. AGAIN, HE WAS
13 COOPERATIVE. HE WAS COOPERATIVE. HE BLEW IN THE
14 MACHINE. HE DID BLOW. BUT, TROOPER MAYFIELD
15 TESTIFIED HE DOESN'T KNOW THE, THE -- HE, HE, HE
16 TESTIFIED HE WAS CERTIFIED AND THAT THE MACHINE
17 WAS IN PROPER WORKING ORDER, 'CAUSE IT DOES
18 CHECKS. BUT, HE DIDN'T KNOW EXACTLY WHAT THOSE
19 CHECKS WERE. AND TROOPER MAYFIELD, I RESPECT HIM
20 GREATLY. GOOD MAN. RESPECT HIS TWENTY-FIVE (25)
21 YEARS OF SERVICE. HE'S A GOOD MAN. BUT, MR.
22 SHORT IS ON TRIAL FOR A CRIMINAL CHARGE. AND PART
23 OF WHAT YOU CAN CONSIDER IS WHETHER OR NOT -- YOU
24 KNOW, YOU'VE GOT TO KNOW THE MACHINE, IF THE
25 MACHINE WAS WORKING PROPERLY. YOU'VE GOT TO KNOW

1 WHETHER THE, THE SOLUTION WAS BAD. THERE BEEN ANY
2 DEFECTS OR ERRORS? HE SAID HE DIDN'T KNOW. HE
3 TESTIFIED HE DIDN'T KNOW. HE DIDN'T KNOW THE
4 CHECKS OR THE BALANCES, SPECIFICALLY THE
5 OPERATIONAL PROTOCOL, THE PURGING, THE EXTERNAL,
6 EXTERNAL STANDARDS. YOU'VE GOT TO KNOW THOSE
7 THINGS. HE'S -- I THINK HE, I THINK HE TE- -- HE
8 TESTIFIED HE JUST PUSHES THE BUTTONS. AND THOSE
9 MACHINES ARE NOT PROOF -- THOSE MACHINES ARE NOT
10 INFALLIBLE. THERE'S MANY CONDITIONS, MANY
11 CONDITIONS THAT Y'ALL CAN, CAN LOOK AT; OKAY? AND
12 WHETHER OR NOT THOSE MACHINES, MACHINES ARE, ARE A
13 HUNDRED PERCENT (100%) ACCURATE ALL THE TIME,
14 'CAUSE THAT'S NOT THE CASE. THAT'S NOT THE CASE.
15 AND TROOPER MAYFIELD IS -- HE ADMITTED ON THE
16 STAND -- HE SAID ON THE -- AND THEY TALKED ABOUT
17 THE EYE TEST, THE H.G.N. TEST, THE WALK AND TURN
18 AND THE STANDARD -- AND THE, AND THE, AND THE ONE-
19 LEGGED STAND. TROOPER MAYFIELD SAID, "YEAH, I
20 MEAN, YOU'RE SUPPOSED TO DO THE EYE TEST, THE
21 H.G.N. TEST, MORE THAN A MINUTE." OKAY, WELL,
22 THAT TEST WAS LESS THAN A MINUTE. YOU KNOW? MR.
23 SHORT HAD BEEN IN -- I MEAN, IT -- HE HAD BEEN IN
24 AN ACCIDENT. AND, YOU KNOW, -- BUT HE DID THE
25 STANDARD FIELD SOBRIETY TEST. THERE ARE OTHER

1 STAND-, THERE ARE OTHER STANDARDIZED, THERE ARE
2 OTHER NON-STANDARDIZED FIELD SOBRIETY TESTS THAT
3 YOU CAN GIVE SOMEBODY, PARTICULARLY, AGAIN, IF
4 THEY'RE HURT, IF THEY'VE GOT AN INJURY, MEDICAL
5 PROBLEMS OR THINGS OF THAT NATURE. AND THAT'S,
6 THAT'S, THAT'S, THAT'S -- THE FINGER COUNT OR THE
7 A,B,C'S, THINGS OF THAT NATURE. BUT, AGAIN, MR.
8 SHORT COOPERATED. AGAIN, YOUR -- LADIES AND
9 GENTLEMEN OF THE JURY, Y'ALL ARE THE FACT-FINDERS.
10 I WILL SUBMIT TO YOU, I CAN SUBMIT TO YOU -- BUT,
11 Y'ALL ARE THE ONES THAT MAKE THE DECISION. Y'ALL
12 ARE THE ONES THAT ARE GOING TO DELIBERATE. Y'ALL
13 WILL BE, Y'ALL ARE GOING TO BE THE ONES TO MAKE
14 THE DECISION WHETHER, ACCORDING TO THE LAW, THAT
15 THE STATE HAS PROVEN THEIR BURDEN BEYOND A
16 REASONABLE DOUBT, BEYOND A REASONABLE DOUBT. AND,
17 AND THE JURY -- AND THE JUDGE WILL CHARGE YOU THAT
18 THAT REASONABLE DOUBT IS, IS IF YOU HAVE A
19 HESITATE TO ACT, THEN THAT'S NOT BEEN -- THEN IT'S
20 NOT BEEN PROVED BEYOND A REASONABLE DOUBT. AND
21 REASONABLE DOUBT IS THE, IS THE HIGHEST BURDEN IN
22 THE LAND. IT'S LIKE A FOOTBALL GAME WHERE YOU'RE
23 FIRST AND TEN (10) ON THE GOAL LINE. THERE'S
24 DIFFERENT STANDARDS OF PROOF AND DIFFERENT BURDENS
25 OF PROOF. YOU'VE GOT "PROBABLE CAUSE." THAT'S

1 REAL -- THAT'S A KIND OF A LOW -- THAT'S A LOW
2 BURDEN. YOU'VE GOT BY THE "PREPONDERANCE OF THE
3 EVIDENCE." YOU TAKE A FOOTBALL FIELD OF A
4 PREPOND- -- IF IT WAS A STANDARD BY THE
5 PREPONDERANCE OF THE EVIDENCE, THE STATE WOULD
6 HAVE TO PROVE IT BY FIFTY-ONE PERCENT (51%). I --
7 YOU CROSS ONE (1) YARD OVER THE FIFTY (50), FIFTY
8 (50) YARD LINE. THAT'S BY THE PREPONDERANCE OF
9 THE EVIDENCE. THEN YOU'VE GOT "CLEAR AND
10 CONVINCING," WHICH IS, WHICH IS GREATER THAN THE
11 PREPONDERANCE OF THE EVIDENCE, BUT, BUT LESS THAN
12 BEYOND A REASONABLE DOUBT. AGAIN, BEYOND A
13 REASONABLE DOUBT IS FIRST AND GOAL. YOU'VE GOT TO
14 PROVE THAT ONE (1), THAT HE WAS DRIVING, HE WAS
15 DRIVING THE AUTO- -- THAT HE WAS ACTUALLY DRIVING
16 THE AUTOMOBILE IN THE STATE OF SOUTH CAROLINA WITH
17 AN UNLAWFUL ALCOHOL CONCENTRATION AT THE TIME HE
18 WAS DRIVING AND THAT IT WAS OVER POINT -- POINT
19 ZERO-EIGHT (.08%). AGAIN, Y'ALL ARE THE FINDERS
20 OF FACT IN THIS CASE. Y'ALL HAVE HEARD THE
21 TESTIMONY. I WANT TO S- -- I CAN'T STRESS ENOUGH
22 -- I CAN'T TELL ENOUGH -- SAY ENOUGH -- THAT IN
23 THIS CASE HE'S NEVER BEEN CHARGED WITH DRIVING
24 WITH AN UNLAWFUL ALCOHOL CONCENTRATION. HE'S
25 NEVER BEEN SERVED WITH A BLUE UNIFORM TRAFFIC

1 TICKET. HE'S NEVER BEEN SERVED WITH AN ARREST
2 WARRANT. AND IN THIS CASE -- AND THERE WAS
3 ABSOLUTELY NO INDEPENDENT, SUFFICIENT INDEPENDENT
4 EVIDENCE TO SHOW THAT MR. SHORT WAS DRIVING THAT
5 CAR. AND I SUBMIT TO YOU THAT THEY COULD HAVE
6 EASILY PRODUCED OR GOT INDEPENDENT, INDEPENDENT
7 EVIDENCE CORROBORATING THAT STATEMENT. AND THAT
8 WASN'T DONE. NOW, AGAIN, YOU'VE GOT A SITUATION
9 WHERE, WHERE MR. SHORT WAS TRYING TO DO THE RIGHT
10 THING, TRYING TO CALL A TOW COMPANY, WAS CONCERNED
11 FOR HIS WIFE. HE HAD CONCERN FOR HIS WIFE.
12 MULTIPLE TIMES, HE CALLED HIS WIFE. MULTIPLE
13 TIMES, HE ASKED, ASKED IF HE COULD CHECK ON HER.
14 SO, LADIES AND GENTLEMEN OF THE JURY -- AND Y'ALL
15 SAW THE VIDEO. Y'ALL SAW WHAT HAPPENED. YOU
16 CAN'T TAKE -- AND THE JUDGE WILL CHARGE YOU -- YOU
17 CAN'T TAKE THAT THE DEFENDANT DIDN'T TESTIFY. YOU
18 CAN'T CONSIDER THAT, BECAUSE IT'S THE STATE'S
19 BURDEN TO PROVE THEIR CASE BEYOND A REASONABLE
20 DOUBT. AND IN THIS CASE, YOU SAID ALL -- YOU SAW,
21 YOU SAW WHAT HAPPENED FOUR (4) YEARS AGO ON MAY
22 THE 11TH OF 2013. YOU DIDN'T SEE ANYBODY DRIVING.
23 AND YOU SAW MR. SHORT'S CONDUCT. YOU SAW HIS
24 ACTIONS. YOU SAW HIS DEMEANOR. YOU SAW HOW HE
25 SPOKE, WHAT HE LOOKED LIKE, WHETHER HE WAS -- YOU,

1 YOU SAW HIM ON THAT DAY WHEN THIS HAPPENED. AND I
2 SUBMIT TO YOU, HIS ACTIONS, HIS CONDUCT ON THAT
3 DAY WERE THEN -- WERE NOT SOMEONE WHO WAS IMPAIRED
4 TO THE EXTENT FROM ALCOHOL. HE WAS TRYING TO DO
5 THE RIGHT THING. SO, WE ASK Y'ALL TO CONSIDER ALL
6 THE TOTALITY OF THE EVIDENCE, PARTICULARLY THAT
7 HE'S NEVER BEEN CHARGED WITH DRIVING WITH
8 UNLAWFUL, UNLAWFUL ALCOHOL CONCENTRATION. AND
9 RESPECTFULLY ASK FOR, FOR Y'ALL, THE JURY, TO
10 RETURN A VERDICT OF NOT GUILTY. THANK YOU.

11 BY THE COURT: THANK YOU, SIR. ALL RIGHT.
12 LADIES AND GENTLEMEN OF THE JURY, YOU HAVE
13 LISTENED TO THE PROCEEDINGS AND THE EVIDENCE IN
14 THIS CASE. AND IT IS NOW MY DUTY TO INSTRUCT YOU
15 AS TO THE LAW AS IT APPLIES TO THE FACTS OF THIS
16 CASE. THE LAWS OF SOUTH CAROLINA DO NOT PERMIT ME
17 TO COMMENT ON THE FACTS OF THE CASE; HOWEVER, IT
18 IS MY DUTY TO GIVE YOU THE LAW. AND YOU MUST
19 ACCEPT AND APPLY IT AS I GIVE IT TO YOU AND USE IT
20 IN CONJUNCTION WITH THE EVIDENCE PROVIDED DURING
21 YOUR CONSIDERATION AND DELIBERATION TO FIND THE
22 DEFENDANT EITHER GUILTY OR NOT GUILTY. I CANNOT
23 EXPRESS MY OPINION -- I'M SORRY. I CANNOT EXPRESS
24 ANY OPINION I MAY HAVE ABOUT THE FACTS OF THIS
25 CASE. AND ANY OPINION YOU MAY HAVE GATHERED FROM

1 ANYTHING I SAID OR DID DURING THIS CASE SHOULD BE
2 DISREGARDED. SINCE YOU ARE THE SOLE JUDGES OF THE
3 FACTS, TO WEIGH THE EVIDENCE, YOU MUST CONSIDER
4 THE CREDIBILITY OR BELIEVABILITY OF EACH OF THE
5 WITNESSES AND IT IS FOR YOU TO DETERMINE WHICH
6 WITNESS OR WITNESSES ARE RECALLING AND TRUTHFULLY
7 RELATING WHAT TRANSPIRED AT THE TIME OF THE
8 ALLEGED CRIME. YOU HAVE THE RIGHT TO BELIEVE ONE
9 (1) WITNESS AND TO DISBELIEVE ANOTHER, NOT
10 ARBITRARILY, BUT IF, IN YOUR OPINION, THERE IS
11 SOUND REASON FOR DOING SO. IN DETERMINING THE
12 CREDIBILITY OF WITNESSES, YOU MAY TAKE INTO
13 CONSIDERATION HIS OR HER OPPORTUNITY FOR
14 OBSERVATION AND KNOWLEDGE OF THE MATTERS ABOUT
15 WHICH HE OR SHE TESTIFIED AND ANY PREJUDICE OR
16 BIAS HE OR SHE MAY HAVE. YOU MAY CONSIDER THE
17 MANNER IN WHICH THE WITNESSES TESTIFIED, THE
18 REASONABLENESS OF THE TESTIMONY, THE OPPORTUNITY
19 THE WITNESS HAD TO SEE OR HEAR, ACCURACY OF
20 MEMORY, INTELLIGENCE, AND INTEREST OR BIAS, IF
21 ANY. IN FACT, YOU MAY CONSIDER ANYTHING WHICH, IN
22 YOUR GOOD JUDGMENT OR ACCORDING TO YOUR COMMON
23 SENSE, TENDS TO SHOW WHETHER OR NOT A WITNESS IS
24 TELLING THE TRUTH. YOUR OBJECTIVE IS JUST THAT,
25 TO FIND THE TRUTH. YOU, AGAIN, ARE THE SOLE

1 JUDGES OF THE FACTS, THE CREDIBILITY OF THE
2 WITNESSES, AND THE WEIGHT OF THE EVIDENCE. AFTER
3 HAVING DETERMINED WHAT THE FACTS ARE, IT IS YOUR
4 DUTY TO APPLY THE LAW AS I'VE CHARGED, AS CHARGED
5 BY THE COURT, AND TO ARRIVE AT A TRUE VERDICT.
6 THE PRESUMPTION OF INNOCENCE: I CHARGE YOU THAT
7 IT IS A CARDINAL AND IMPORTANT RULE UNDER OUR LAW
8 AND OUR SYSTEM OF JUSTICE, THAT ANY PERSON CHARGED
9 WITH COMMITTING A CRIME, NO MATTER WHAT THE
10 CHARGE, WILL ALWAYS BE PRESUMED TO BE INNOCENT
11 UNTIL PROVEN GUILTY BY A REASONABLE DOUBT --
12 BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF
13 INNOCENCE FOLLOWS THE DEFENDANT THROUGHOUT THE
14 TRIAL AND UNTIL YOU HAVE REACHED A VERDICT OF
15 GUILTY. THE LAW DOES NOT REQUIRE ANY DEFENDANT TO
16 PROVE HIS OR HER INNOCENCE OF A CRIME. THE BURDEN
17 OF OVERCOMING THE DEFENDANT'S PRESUMPTION OF
18 INNOCENCE IS PLACED UPON THE STATE AND RESTS UPON
19 THE STATE UNTIL YOU, THE JURY, HAVE BEEN SATISFIED
20 OF THE DEFENDANT'S GUILT BEYOND A REASONABLE
21 DOUBT. FAILURE OF DEFENDANT TO TESTIFY: THE
22 FAILURE BY THE DEFENDANT TO TAKE THE STAND AND
23 TESTIFY ON HIS OWN BEHALF DOES NOT CREATE ANY
24 PRESUMPTION AGAINST HIM. I CHARGE YOU THAT YOU
25 MUST NOT LET THIS FACT TO WEIGH IN THE SLIGHTEST

1 AGAINST THE DEFENDANT, NOR SHOULD THIS FACT ENTER
2 INTO THE DISCUSSION OR DELIBERATION BY THE JURY IN
3 ANY MANNER. THE CONSTITUTION OF THE UNITED STATES
4 GIVES THE DEFENDANT THE ABSOLUTE RIGHT NOT TO
5 DECIDE TO TESTIFY AND TO REQUIRE THE GOVERNMENT TO
6 PROVE ITS CASE. BEYOND A REASONABLE DOUBT:
7 LADIES AND GENTLEMEN, THE STATE HAS THE BURDEN OF
8 PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE
9 DOUBT, WHICH IS PROOF THAT LEAVES YOU FIRMLY
10 CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE
11 VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
12 ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES, THE
13 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY
14 POSSIBLE DOUBT. IF BASED ON YOUR CONSIDERATION OF
15 THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE
16 DEFENDANT IS GUILTY OF THE CRIME CHARGED, THEN YOU
17 MUST FIND HIM OR HER GUILTY. IF, ON THE OTHER
18 HAND, THERE IS A REAL POSSIBILITY THAT EITHER HE
19 OR SHE IS NOT GUILTY, THEN YOU MUST GIVE THEM THE
20 BENEFIT OF THE DOUBT AND FIND HIM OR HER NOT
21 GUILTY. THE DEFENDANT IS CHARGED BY THE STATE OF
22 SOUTH CAROLINA UNDER TICKET F838374, I READ TO YOU
23 AT THE BEGINNING OF THE TRIAL, WITH HAVING
24 VIOLATED SECTION 56-5-2933 OF THE CODE OF LAWS
25 REGARDING DRIVING WITH AN UNLAWFUL ALCOHOL

1 CONCENTRATION. LADIES AND GENTLEMEN OF THE JURY,
2 I CHARGE YOU THAT PURSUANT TO SECTION 56-5-2933 OF
3 THE SOUTH CAROLINA CODE OF LAWS, IT IS UNLAWFUL
4 FOR A PERSON TO DRIVE A MOTOR VEHICLE WITHIN THIS
5 STATE WHILE HIS OR HER ALCOHOL CONCENTRATION IS
6 EIGHT ONE-HUNDREDTHS OF ONE PERCENT (.08%) OR
7 MORE. A PERSON WHO VIOLATES THE PROVISIONS OF
8 THIS SECTION IS GUILTY OF THE OFFENSE OF DRIVING
9 WITH AN UNLAWFUL ALCOHOL CONCENTRATION. THE
10 ELEMENTS OF THIS DEFENSE ARE: DRIVING A MOTOR
11 VEHICLE WITHIN THIS STATE. AND TWO (2), WHILE
12 HAVING AN ALCOHOL CONCENTRATION OF EIGHT ONE-
13 HUNDREDTHS OF ONE PERCENT (.08%) OR MORE. IN
14 OTHER WORDS, IT IS THE STATE'S BURDEN TO PROVE
15 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IN
16 THIS CASE WAS DRIVING A MOTOR VEHICLE IN SOUTH
17 CAROLINA ON THE DATE AND TIME CHARGED WHILE HE OR
18 SHE HAD A BLOOD ALCOHOL CONCENTRATION OF POINT OH-
19 EIGHT PERCENT (.08%) OR MORE. IF YOU FIND FROM
20 THE EVIDENCE PRESENTED, THAT THERE IS A REASONABLE
21 DOUBT THAT THE DEFENDANT WAS DRIVING A MOTOR
22 VEHICLE IN THIS STATE ON THE OCCASION CITED OR IF
23 YOU FIND THAT THERE IS A REASONABLE DOUBT THAT THE
24 DEFENDANT HAD AN ALCOHOL CONCENTRATION OF POINT
25 OH-EIGHT PERCENT (.08%) OR MORE AT THAT TIME, THEN

1 IT WOULD BE YOUR DUTY TO FIND THE DEFENDANT NOT
2 GUILTY. IF, ON THE OTHER HAND, YOU FIND THAT THE
3 STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT
4 THE DEFENDANT WAS DRIVING A MOTOR VEHICLE WITHIN
5 THE STATE ON THE DATE CITED, AND THAT THE
6 DEFENDANT HAD AT THE TIME A BLOOD ALCOHOL
7 CONCENTRATION OF POINT OH-EIGHT PERCENT (.08%) OR
8 MORE, THEN IT WOULD BE YOUR DUTY TO RETURN A
9 VERDICT OF GUILTY. YOU, MEMBERS OF THE JURY, AS
10 THE SOLE JUDGES OF THE FACTS, MAY CONSIDER ANY
11 EVIDENCE PRESENTED FOR YOUR CONSIDERATION THAT MAY
12 CORROBORATE OR QUESTION THE VALIDITY OF THE BREATH
13 OR THE BODILY FLUID TEST RESULTS, INCLUDING, BUT
14 NOT LIMITED TO: (A) EVIDENCE OF FIELD SOBRIETY
15 TESTS; (B) EVIDENCE OF THE AMOUNT OF ALCOHOL
16 CONSUMED BY THE DEFENDANT; (C) EVIDENCE OF THE
17 DEFENDANT'S DRIVING; (D) VIDEO RECORDINGS OF THE
18 DEFENDANT'S CONDUCT AT THE INCIDENT SITE AND
19 BREATH TESTING SITE; (E) ANY OTHER EVIDENCE OF THE
20 STATE OF THE DEFENDANT'S FACULTIES TO DRIVE WHICH
21 WOULD CALL INTO QUESTION THE RESULTS OF BREATH OR
22 BODILY FLUID TESTS. IN ADDITION TO ALL OF THESE
23 FACTORS ENUMERATED FOR YOU, YOU, THE JURY, MAY
24 CONSIDER THE TOTALITY OF THE EVIDENCE PRESENTED TO
25 DETERMINE GUILT OR INNOCENCE. FAIR TRIAL: YOU

1 ARE NOT TO BE GOVERNED BY SYMPATHY, PREJUDICE, OR
2 PUBLIC OPINION. AND IT IS ESPECIALLY IMPORTANT
3 THAT YOU PERFORM YOUR DUTY DILIGENTLY AND
4 CONSCIENTIOUSLY FOR, ORDINARILY, THERE IS NO MEANS
5 OF CORRECTING AN ERRONEOUS DETERMINATION OF FACT
6 BY A JURY. ON THE OTHER HAND, AND WITH EQUAL
7 EMPHASIS, I CHARGE YOU THAT THE LAW, AS I HAVE
8 EXPLAINED IT TO YOU, IS THE ONLY LAW FOR GUIDANCE,
9 AND IT IS YOUR DUTY TO ACCEPT AND FOLLOW IT, EVEN
10 IF YOU DISAGREE WITH IT. UNANIMOUS VERDICT: THE
11 LAW OF THIS STATE REQUIRES THAT JURY VERDICTS BE
12 UNANIMOUS, WHICH SIMPLY MEANS THAT YOU MUST ALL
13 AGREE. THE ONLY TWO (2) FORMS OF THE VERDICT IN
14 THIS CASE IS GUILTY OR NOT GUILTY. MS.
15 FOREPERSON, ONCE THE JURY AS REACHED A VERDICT,
16 MARK THE APPROPRIATE VERDICT ON THE FORM PROVIDED,
17 SIGN THE VERDICT TO SIGNIFY WHAT YOU HAVE REACHED
18 IS THE TRUE AND UNANIMOUS VERDICT OF ALL THE
19 JURORS. WHEN YOU HAVE REACHED A VERDICT, LET MY
20 SECRETARY KNOW AND I'LL COME GET YOU AND BRING YOU
21 BACK INTO THE COURTROOM. IF YOU HAVE ANY
22 QUESTIONS, I WILL GIVE YOU A NOTEPAD, YOU CAN
23 WRITE THOSE DOWN, GET THEM TO ME. I'LL CONSULT
24 WITH BOTH PARTIES, BRING YOU BACK IN HERE AND GIVE
25 YOU AN ANSWER. I'LL EITHER BE ABLE TO ANSWER IT

1 OR I WON'T. THERE'S A LOT THAT I CAN'T ANSWER.
2 YOU'LL HAVE THE BENEFIT OF THE EVIDENCE THAT'S
3 BEEN SUBMITTED. IF YOU NEED THE T.V. TO REVIEW
4 ANY OF IT, BE HAPPY TO DO THAT, AS WELL. WITH
5 THAT BEING SAID, MS. SMALL, THIS IS THE VERDICT
6 FORM, VERY SELF-EXPLANATORY. I'LL BRING IT BACK,
7 ALONG WITH THE EVIDENCE. THERE IS A GUILTY, NOT
8 GUILTY. YOU'LL SIGN HERE, DATE, AND THEN I'LL
9 SIGN ONCE YOU BRING IT BACK IN; OKAY?

10 BY THE FOREPERSON: OKAY.

11 BY THE COURT: AT THIS TIME, I'M GOING TO
12 ESCORT YOU BACK TO THE JURY ROOM AND I'LL, I'LL BE
13 IN THERE -- PLEASE DON'T TALK ABOUT IT UNTIL I
14 BRING YOU ALL THE EVIDENCE; OKAY?

15 (THE JURY LEAVES)

16 BY THE COURT: OKAY. ANYTHING, ANYTHING
17 ELSE?

18 BY MR. EPPS: I -- JUST FOR THE RECORD, YOUR
19 HONOR, I WANT TO TAKE EXCEPTION. I THOUGHT --
20 WELL, NUMBER ONE (1), I WOULD, I WOULD, -- IN --
21 REGARDING THE CHARGE, REGARDING THE EXTRA-JUDICIAL
22 CONFESSIONS THAT NEED TO BE CORROBORATED ---

23 BY THE COURT: RIGHT.

24 BY MR. EPPS: --- AND SUBSTANTIAL INDEPENDENT
25 EVIDENCE. I WAS -- I TAKE EXCEPTION TO THAT

1 CHARGE OR A CHARGE SIMILAR TO THAT, TO THAT
2 DOCTRINE OF LAW BEING CHARGED WITH THE JURY. I
3 THINK THAT'S GOING TO -- THAT, THAT -- I THINK
4 REGARDING THAT LAW, THEY'RE GOING TO TAKE HIS
5 STATEMENT AS A FACT AND, YOU KNOW, THAT'S WITHOUT
6 CONSIDERATION OF ANY INDEPENDENT CORROBORATING
7 EVIDENCE. AND, THEREFORE, I THINK THEREIN LIES
8 THE PROBLEM. AND, AND I WOULD -- I, I WOULD TAKE
9 EXCEPTION TO THAT NOT BEING CHARGED TO THE JURY.

10 BY THE COURT: UNDERSTOOD.

11 BY MR. EPPS: ALSO, I THOUGHT -- IT IS MY
12 UNDERSTANDING THAT ON THE CHARGE, THE D.U.A.C.
13 CHARGE, FOR THE 56-5-2933, ---

14 BY THE COURT: UH-HUH. (AFFIRMATIVE)

15 BY MR. EPPS: --- I THOUGHT WE WERE GOING TO
16 READ THE FIRST PART AND THEN "I" AND "J" FROM THE
17 STATUTE.

18 BY THE COURT: I -- WHEN WE TALKED ABOUT THAT
19 I ASKED IF THIS WOULD SUFFICE BECAUSE IT SEEMED TO
20 ENUMERATE "I" AND "J" ---

21 BY MR. EPPS: AND IT DIDN'T.

22 BY THE COURT: --- AND YOU SAID "OKAY."

23 BY MR. EPPS: WELL, I THOUGHT ---

24 BY THE COURT: I THOUGHT WE WERE ON THE SAME
25 PAGE AT THAT POINT.

1 BY MR. EPPS: AND I MAY, I MAY HAVE -- I'M --
2 I -- MAYBE IT'S, MAYBE IT'S ON ME. I DIDN'T -- I
3 MISUNDERSTOOD. I THOUGHT WE WERE OKAY WITH DOING,
4 DOING THE STATE'S VERSION, WHICH WAS THAT AND THEN
5 READING "I" AND "J" FROM THE STATUTE. THAT'S WHAT
6 I THOUGHT THAT WE WERE OKAY WITH.

7 BY THE COURT: AND, AND I DID PRESENT THAT AT
8 ONE POINT AND THEN MR. BYRD SAID HE HAD A VERSION
9 OF THAT ---

10 BY MR. EPPS: AND THAT WAS ---

11 BY THE COURT: --- AND IT HAPPENED TO BE THE
12 COURT'S VERSION.

13 BY MR. EPPS: YEAH, IT WAS -- WELL, HIS VER--
14 -- YEAH, HIS VERSION WAS THE EXACT SAME COURT --
15 THAT WAS THE EXACT, EXACT SAME ONE THAT THE COURT
16 HAD. BUT, I, I TAKE EXCEPTION TO THAT BECAUSE I
17 THINK THAT MY -- I THINK THAT'S GOING TO BE AN
18 ISSUE, BECAUSE THAT DOESN'T ENCOMPASS THE WHOLE
19 STATUTE OF 29- -- 56-5-2933.

20 BY THE COURT: WHAT SECTION OF "I" AND "J" DO
21 YOU THINK I MISSED THAT WOULD BE BENEFICIAL?

22 BY MR. EPPS: WELL, WELL, IF YOU READ "I" AND
23 "J" AS A WHOLE, YOU WOULD ALSO HAVE THE LANGUAGE
24 ABOUT THE MACHINE WORKING PROPERLY. YOU HAVE THE
25 LANGUAGE AT THE END OF "I" TALKING ABOUT PERSON

1 CHARGED WITH A VIOLATION OF THE SECTION, THINGS OF
2 THAT NATURE. IT'S MORE ENCOMPASSING. I MEAN,
3 THAT'S THE STATUTE IN WHAT WAS CHARGED. DOESN'T
4 NECESSARILY INCLUDE EVERYTHING IN -- OR THOSE,
5 THOSE, THOSE TWO (2) SECTIONS OF 2933.

6 BY THE COURT: MR. BYRD?

7 BY MR. BYRD: I DON'T HAVE ANY OBJECTION IF
8 HE WANTS ALL OF THAT IN. I -- MY, MY CONCERN IS
9 NOT WITH WHAT YOU CHARGE SO MUCH AS IN HIS
10 ARGUMENT HE REITERATED HIS ARGUMENT ABOUT THE
11 DIFFERENCE BETWEEN D.U.I. AND D.U.A.C. AND SO, IT
12 MIGHT, IT MIGHT BE BEST IF WE CLEAR THAT UP FOR
13 THEM WITH THE SECTION "I."

14 BY THE COURT: AND JUST, JUST READ "I" AND
15 "J" IN ITS ENTIRETY?.

16 BY MR. EPPS: WELL, ---

17 BY THE COURT: I'M NOT AGAINST THAT.

18 BY MR. EPPS: I MEAN, IT'S -- WELL, I MEAN,
19 IT'S -- I, I JUST -- IT'S -- I'LL WITHDRAW THAT
20 OBJECTION, YOUR HONOR, TO THAT. I DON'T WANT TO
21 BRING, I DON'T WANT TO BRING THE JURY BACK IN ---

22 BY THE COURT: OKAY.

23 BY MR. EPPS: --- AND, AND, AND ---

24 BY THE COURT: OKAY. AND WHAT I CAN -- AND I
25 TOLD THEM NOT TO DISCUSS SO WE -- I WANT TO RIGHT

1 ANY WRONGS THAT I MAY HAVE INADVERTENTLY -- IT'S A
2 LOT TO READ, SO ---

3 BY MR. EPPS: RIGHT. AND MY MAIN, MY MAIN
4 EXCEPTION WOULD BE REGARDING THE LAW THAT IS WITH
5 THE ABRAHAM'S CASE AND THE OSBORNE CASE AND THE
6 RUSSELL CASE, AND IN PARTICULAR THAT QUOTE FROM
7 OPPER VERSUS UNITED STATES REGARDING THE EXTRA-
8 JUDICIAL CONFESSIONS OF ADMISSIONS AND SUFFICIENT
9 INDEPENDENT CORROBORATION OF THOSE STATEMENTS.

10 BY THE COURT: OKAY. NOTED. THANK YOU, SIR.

11 BY MR. EPPS: YES, SIR.

12 BY THE COURT: EVIDENCE CONSISTING OF "A,"
13 "B," "C," AND "D." ANYTHING ELSE?

14 BY MR. BYRD: I THINK THAT'S IT.

15 BY MR. EPPS: I THINK THAT'S IT, YOUR HONOR.

16 BY THE COURT: IF THEY WANT TO WATCH IT, I'LL
17 PROBABLY NEED THE TIMES SO THAT -- I HOPE THEY
18 DON'T. BUT, IF THEY WANT TO WATCH IT, I WOULD
19 NEED TO MUTE THE PART WITH E.M.S..

20 BY MR. BYRD: YEAH.

21 BY MR. EPPS: I'VE GOT IT.

22 BY THE COURT: I WOULD NEED THOSE TIMES.

23 BY MR. EPPS: I GOT IT. YES, SIR.

24 BY THE COURT: ALL RIGHT. WELL, THANK YOU
25 ALL. I REALLY APPRECIATE IT. WE WILL BE

1 ADJOURNED.

2 (OFF RECORD)

3 BY THE COURT: ALL RIGHT. BACK ON THE
4 RECORD. THE STATE VERSUS SHORT. THE JURY HAD
5 QUESTIONS. THEY HAVE THREE (3) QUESTIONS HERE.
6 THE FIRST IS "WHAT IS THE DIFFERENCE BETWEEN A
7 D.U.I. FIRST OFFENSE CHARGE AND A CHARGE OF
8 DRIVING WITH AN UNLAWFUL CONCENTRATION?" SECOND
9 IS "WHY WAS HE ORIGINALLY WRITTEN A TICKET FOR
10 D.U.I. AND IS NOW BEING CHARGED WITH A D.U.A.C.?"
11 THIRD IS "GRANTED THAT MR. SHORT" -- THIS IS A
12 PARAGRAPH, MIND YOU. "GRANTED THAT MR. SHORT DID
13 SIGN THE DRIVING UNDER THE INFLUENCE SLED SHEET IN
14 WHICH IT STATES IF YOU TAKE THE TESTS OR GIVE THE
15 SAMPLES AND HAVE A ALCOHOL CONCENTRATION OF EIGHT
16 ONE-HUNDREDTHS PERCENT (.08%) OR MORE, YOU MAY
17 INSTEAD BY CHARGED WITH D.U.A.C. DOES THE
18 FOLLOWING TICKET FOR A D.U.I. CHARGE AUTOMATICALLY
19 BECOME A CHARGE OF D.U.A.C. BECAUSE THE BREATH
20 TEST FOUND EVIDENCE THAT HE WAS DRIVING WITH A
21 BREATH SAMPLE ---

22 BY MR. EPPS: OH, WE GOT A PROBLEM.

23 BY THE COURT: --- POINT OH-EIGHT (.08%)?"

24 BY MR. BYRD: AND THAT'S ONE (1) QUESTION ---

25 BY THE COURT: YEAH, ALL THIS -- YEAH,

1 ABSOLUTELY ALL OF THIS -- THEY ARE CONFUSED.

2 BY MR. BYRD: SECTION "I" ---

3 BY THE COURT: THEY ARE ---

4 BY MR. BYRD: SECTION "I" -- AND IT'S IN BOTH
5 2930 AND 2933. 2930 SAYS "A PERSON CHARGED WITH
6 THIS SECTION CAN BE PROSECUTED..." 2933, AND 2933
7 SAYS A PERSON CHARGED WITH 2930 CAN BE PROSECUTED
8 UNDER THIS SECTION.

9 BY MR. EPPS: BUT IT'S GOT TO BE CHARGED.
10 AND THEN WE GOT TO -- IF WE'RE GOING TO DO IT, WE
11 NEED TO READ THE WHOLE THING.

12 BY MR. BYRD: THERE'S NOTHING, NOTHING IN THE
13 STATUTE SAYS YOU GOT TO BE CHARGED. AND THAT'S
14 YOUR ARGUMENT.

15 BY THE COURT: YES.

16 BY MR. BYRD: THAT, THAT'S NOT A JURY MATTER.
17 THAT'S A LEGAL QUESTION.

18 BY THE COURT: WELL, IF WE -- DO YOU THINK --
19 I WONDER EVEN IF I READ "I" TO THEM VERBATIM, DO
20 YOU THINK THEY WOULD BE ABLE TO INFER?

21 BY MR. BYRD: I THINK THEY'VE GOT TO BE
22 INFORMED THAT THE STATE NOTIFIED THE DEFENDANT
23 THAT HE WAS GOING TO BE PROSECUTED BY THE STATE
24 FOR D.U.A.C.

25 BY MR. EPPS: AND MY POSITION IS, THE BASIS,

1 YOU'VE GOT TO BE CHARGED. EVEN -- IT SAYS -- EVEN
2 IN THE -- LIKE, LIKE THEY SAID -- THEY HIT THE
3 NAIL ON THE HEAD. YOU HAVE THE IMPLIED CONSENT
4 RIGHTS AND THE ADVISEMENT OF RIGHTS, "YOU CAN BE
5 CHARGED."

6 BY THE COURT: WELL, IT -- "I" SAYS "A PERSON
7 CHARGED FOR A VIOLATION OF SECTION 56-5-2930 MAY
8 BE PROSECUTED PURSUANT TO THIS SECTION IF THE
9 ORIGINAL TESTING OF THE PERSON'S BREATH OR
10 COLLECTION OF THE BODILY FLUIDS WAS PERFORMED ..."

11 BY MR. BYRD: I THINK THAT'S ALL THEY NEED TO
12 KNOW.

13 BY MR. EPPS: NO. AND THEN YOU'VE GOT TO GO
14 DOWN TO -- 'CAUSE YOU GO -- YOU'VE GOT ---

15 BY THE COURT: YEAH, I WOULD READ IT ALL.

16 BY MR. EPPS: YOU'VE GOT TO READ IT ALL.

17 BY THE COURT: YEAH, I WOULD -- I WOULDN'T
18 CUT LIKE THAT.

19 BY MR. EPPS: YEAH. 'CAUSE YOU'VE GOT TO
20 READ IT, 'CAUSE THEN IT TALKS ABOUT A CHARGE WITH
21 THE -- A PERSON CHARGED WITH THIS SECTION.

22 BY THE COURT: WELL, HOW ABOUT IT DO THAT?
23 ANY OBJECTION TO ME DOING THAT?

24 BY MR. BYRD: NONE.

25 BY MR. EPPS: I WOULD DO -- READ ---

1 BY THE COURT: THE ENTIRETY OF "I?"

2 BY MR. EPPS: AND "J."

3 BY THE COURT: IT DOESN'T ME. I DON'T HAVE A
4 PROBLEM ---

5 BY MR. EPPS: YEAH, 'CAUSE THAT'S THE PRO- --
6 THAT HEREIN LIES THE PROBLEM. THEY'RE, THEY'RE
7 CONFUSED ABOUT -- I UNDERSTAND ---

8 BY THE COURT: WELL, "J" IS "A," "B," "C,"
9 "D," AND "E."

10 BY MR. EPPS: WELL, LET ME GET TO THEM.
11 (REVIEWING DOCUMENTS)

12 BY THE COURT: I DON'T WANT TO READ TOO MUCH,
13 'CAUSE THEN THEY LOSE SIGHT OF WHAT IT IS THAT
14 THEY'RE ASKING.

15 BY MR. EPPS: I, I -- IF YOU'RE GOING TO RE-
16 CHARGE IT -- IF YOU'RE GOING TO, IF YOU'RE GOING
17 TO, IF YOU'RE GOING TO ---

18 BY THE COURT: DO YOU WANT ME TO READ "J?"

19 BY MR. EPPS: "J" TO -- IN, IN ITS ENTIRETY.

20 BY THE COURT: SURE. AS LONG AS MR. BYRD
21 DOESN'T HAVE AN OBJECTION.

22 BY MR. BYRD: NO, I DON'T HAVE AN OBJECTION.
23 I THINK PARTS OF "J" AND -- YOU KNOW, DON'T REALLY
24 BEAR ON MANY ISSUES AND IT MAY JUST MUD-, MUDDY
25 THE WATER MORE. BUT, -- ONLY WE'RE NOT GOING TO

1 ARGUE IT. BECAUSE THAT'S, THAT'S WHAT MUDDIED IT
2 UP IS HIS ARGUMENT.

3 BY MR. EPPS: (LAUGHTER)

4 BY MR. BYRD: IT'S HIS PROFFER, BUT ---

5 BY THE COURT: ALL RIGHT. WELL, MY ONLY
6 CONCERN WITH "J" IS SUBSECTION THREE (3), "A VIDEO
7 RECORDING OF A PERSON'S CONDUCT AT THE INCIDENT
8 SITE AND BREATH TESTING SITE, TAKEN PURSUANT TO
9 SECTION 56-5-2953, WHICH IS SUBJECT TO REDACTION
10 UNDER THE SOUTH CAROLINA RULES OF EVIDENCE" --
11 THEY'RE GOING -- THEY'RE NOT GOING TO REALLY KNOW
12 WHAT THAT, ---

13 BY MR. EPPS: WELL, IF WE SAID "VIDEO
14 RECORDING ---

15 BY THE COURT: --- THAT IS.

16 BY MR. EPPS: --- OF A PERSON'S CONDUCT AT
17 THE INCIDENT SITE AND BREATH TESTING SITE." I'M
18 FINE WITH THAT.

19 BY THE COURT: OKAY.

20 BY MR. EPPS: TAKING OUT THE -- BECAUSE ---

21 BY THE COURT: OKAY. OKAY.

22 BY MR. EPPS: AND, AGAIN, IT GOES BACK TO --
23 IT'S GOING TO BE THE, THE ARGUMENT ABOUT WHETHER
24 IT'S NOTICED -- YOU, YOU GOT TO BE CHARGED WITH
25 THIS ---

1 BY THE COURT: RIGHT. OKAY. IF YOU'RE FINE
2 WITH THAT?

3 BY MR. EPPS: YES, SIR.

4 (THE JURY ENTERS)

5 BY THE COURT: ALL RIGHT. MS. FOREPERSON,
6 YOU PROVIDED ME WITH THREE (3) QUESTIONS. I HAVE
7 READ THEM TO BOTH PARTIES. AFTER CONFERRING WITH
8 BOTH PARTIES, THERE IS AN ADDITIONAL CHARGE THAT
9 I'M GOING TO ISSUE, ISSUE YOU; OKAY? THERE SOME
10 MORE READING, BUT TAKE WHAT YOU WILL FROM THAT;
11 OKAY? THIS WILL BE THE ONLY ANSWER IN REFERENCE
12 TO THE THREE (3) QUESTIONS. "A PERSON CHARGED FOR
13 A VIOLATION OF SECTION 56-5-2930 MAY BE PROSECUTED
14 PURSUANT TO THIS SECTION IF THE ORIGINAL TESTING
15 OF THE PERSON'S BREATH OR COLLECTION OF OTHER
16 BODILY FLUIDS WAS PERFORMED WITHIN TWO (2) HOURS
17 OF THE TIME OF ARREST AND REASONABLE SUSPICION
18 EXISTED TO JUSTIFY THE TRAFFIC STOP. A PERSON MAY
19 NOT BE PROSECUTED FOR BOTH THE VIOLATION OF
20 SECTION 56-5-2930 AND A VIOLATION OF THIS SECTION
21 FOR THE SAME INCIDENT. A PERSON WHO VIOLATES THE
22 PROVISIONS OF THIS SECTION IS ENTITLED TO A JURY
23 TRIAL AND IS AFFORDED THE RIGHT TO CHALLENGE
24 CERTAIN FACTORS, INCLUDING THE FOLLOWING: WHETHER
25 OR NOT THE PERSON WAS LAWFULLY ARRESTED OR

1 DETAINED; TWO (2) THE PERIOD OF TIME BETWEEN
2 ARREST AND TESTING; THREE (3) WHETHER OR NOT THE
3 PERSON WAS GIVEN A WRITTEN COPY OF THE THE VER- --
4 OF AND VERBALLY INFORMED OF THE RIGHTS ENUMERATED
5 IN SECTION 56-5-2950; FOUR (4) WHETHER THE PERSON
6 CONSENTED TO TAKING A TEST PURSUANT TO SECTION 56-
7 5-2950; AND WHETHER THE (A) REPORTED ALCOHOL
8 CONCENTRATION AT THE TIME OF TESTING WAS EIGHT
9 ONE-HUNDREDTHS OF ONE PERCENT (.08%) OR MORE; (B)
10 INDIVIDUAL WHO ADMINISTERED THE TEST OR TOOK
11 SAMPLES WAS QUALIFIED PURSUANT TO SECTION 56-5-
12 2950; (C) TESTS ADMINISTERED AND SAMPLES OBTAINED
13 WERE CONDUCTED PURSUANT TO SECTION 56-5-2950; AND
14 REGULATIONS ADOPTED PURSUANT TO SECTION 56-5-2951;
15 (D) MACHINE WAS WORKING PROPERLY; (J) NOTHING
16 CONTAINED IN THIS SECTION PROHIBITS THE
17 INTRODUCTION OF ONE (1) THE RESULTS OF ANY
18 ADDITIONAL TESTS OF THE PERSONS BREATH OR OTHER
19 BODILY FLUIDS; TWO (2) ANY EVIDENCE THAT MAY
20 CORROBORATE OR QUESTION THE VALIDITY OF THE BREECH
21 [SIC], OR BODILY FLUID TESTS RESULTING -- RESULT
22 INCLUDING, BUT NOT LIMITED TO, (A) EVIDENCE OF
23 FIELD SOBRIETY TESTS; (B) EVIDENCE OF THE AMOUNT
24 OF ALCOHOL CONSUMED BY THE PERSON; AND (C)
25 EVIDENCE OF THE PERSON WHO WAS DRIVING. A VIDEO

1 RECORDING OF THE PERSON'S CONDUCT AT THE INCIDENT
2 SITE AND BREATH TESTING SITE TAKEN, ANY OTHER
3 EVIDENCE OF THE STATE OF A PERSON'S FACULTIES TO
4 DRIVE WHICH WOULD CALL INTO QUESTION THE RESULTS
5 OF A BREATH OR A BODILY FLUID TEST. AT TRIAL, A
6 PERSON CHARGED WITH A VIOLATION OF THIS SECTION IS
7 ALLOWED TO PRESENT EVIDENCE RELATING TO THE
8 FACTORS ENUMERATED ABOVE AND THE TOTALITY OF THE
9 EVIDENCE PRODUCED AT TRIAL MAY BE USED BY THE JURY
10 TO DETERMINE GUILT OR INNOCENCE. A PERSON CHARGED
11 WITH A VIOLATION OF THIS SECTION MUST BE GIVEN
12 NOTICE OF INTENT TO PROSECUTE UNDER THE PROVISIONS
13 OF THIS SECTION AT LEAST THIRTY (30) CALENDAR DAYS
14 BEFORE HIS TRIAL DATE." I DON'T KNOW IF THAT
15 HELPS YOU. BUT THAT IS THE ONLY ANSWER THAT WE
16 COULD AGREE TO PROVIDE TO YOU; OKAY?

17 BY THE FOREPERSON: OKAY.

18 BY THE COURT: SO, WE'LL GO BACK INTO THE
19 JURY ROOM, DELIBERATE FURTHER AND SEE IF YOU CAN
20 COME TO A UNANIMOUS DECISION.

21 (THE JURY LEAVES)

22 BY MR. BYRD: I'VE HAD THE REVERSE OF THIS
23 COME UP, TOO.

24 BY MR. EPPS: HUH?

25 BY MR. BYRD: I'VE HAD THE ARGUMENT MADE THAT

1 BY MS. SMALL: IN OUR OPINION?

2 BY THE COURT: NO, JUST YOU, INDEPENDENTLY.
3 I'M GOING TO POLL EACH ONE OF YOU.

4 BY MS. SMALL: OH. OH, EACH ONE? YES, SIR;
5 IT IS.

6 BY THE COURT: ALL RIGHT. MS. LYNCH?

7 BY MS. LYNCH: YES.

8 BY THE COURT: IS YOUR VOTE GUILTY?

9 BY MS. LYNCH: YES, SIR.

10 BY THE COURT: OKAY. MS. BEECH?

11 BY MS. BEECH: YES.

12 BY THE COURT: MR. CLONTS?

13 BY MR. CLONTS: YES, SIR.

14 BY THE COURT: ALL RIGHT. MR. SHAW? I'M
15 SORRY. MS. SHAW?

16 BY MS. SHAW: WITH HEAVY HEART, I FEEL LIKE
17 FIFTY PERCENT (50%) HE SHOULD BE GIVEN A CHANCE.
18 HE HAS A LONG FU-, FUTURE AHEAD. BUT BY THE LAWS
19 AND ALL THAT, HE SHOULD HAVE -- AS A MATURE
20 PERSON, HE SHOULD HAVE THOUGHT OF THIS AND NOT BE
21 ON THE -- BEHIND THE WHEELS.

22 BY THE COURT: BUT YOUR VOTE WAS GUILTY?

23 BY MS. SHAW: SO ---

24 BY THE COURT: IS THAT TRUE OR -- I'M NOT
25 HERE TO SWAY YOU. HOW DID YOU VOTE?

1 BY MS. SHAW: YES, GUILTY. YES.

2 BY THE COURT: MR. RON?

3 BY MR. RON: GUILTY.

4 BY THE COURT: OKAY. THANK YOU, LADIES AND
5 GENTLEMEN. I APPRECIATE IT. NOW, WE'RE GOING TO
6 MOVE INTO THE SENTENCING PHASE. YOU DO NOT NEED
7 TO BE PRESENT FOR IT. YOU CAN STAY IF YOU WANT
8 TO. BUT, I REALLY DO APPRECIATE YOUR SERVICE
9 TODAY. ALL RIGHT. THANK YOU.

10 (THE JURY LEAVES)

11 BY THE COURT: ALL RIGHT. ANY RECOMMENDATION
12 ON BEHALF OF THE STATE FOR SENTENCING?

13 BY MR. BYRD: NO, SIR, YOUR HONOR. MR. SHORT
14 AND HIS COUNSEL ROLLED THE DICE AND CAME UP SNAKE
15 EYES, SO ---

16 BY THE COURT: OKAY.

17 BY MR. BYRD: --- IT'S IN THE COURT'S
18 DISCRETION.

19 BY THE COURT: MR. EPPS?

20 BY MR. EPPS: YES, SIR, YOUR HONOR?

21 BY THE COURT: ANYTHING YOU'D LIKE TO SAY
22 ON -- IN PARTICULAR?

23 BY MR. EPPS: YOUR HONOR, I WOULD,
24 RESPECTFULLY, I'D ASK THE COURT TO, TO -- IF THE
25 COURT SEES FIT, I BELIEVE MR. SHORT IS A -- HE IS,

1 HE IS -- HE'S GOT THIS CHARGE AND ONE (1) OTHER
2 CHARGE THAT'S PENDING, HASN'T BEEN JUDICATED YET.
3 IT IS, IT IS -- HE HAS NO CRIMINAL THE RECORD. HE
4 IS A, HE IS A GOOD GUY. HE'S WORKING. HE'S HARD
5 -- HE WORKS. HE'S MAINTAINED EMPLOYMENT. I THINK
6 YOU SAW ON, ON THE VIDEO AND, AND ON THE INCIDENT
7 SITE, AS WELL AS THE BREATH TEST SITE, HE'S
8 RESPECTFUL, NICE, COOPERATIVE WITH THE OFFICER.
9 WE'D ASK THE COURT TO -- FOR A FIRST OFFENSE IT
10 SAYS, YOU KNOW, A FINE OF FOUR HUNDRED DOLLARS
11 (\$400.00) OR IMPRISONMENT NOT LESS THAN FORTY-
12 EIGHT (48) HOURS OR NO MORE THAN THIRTY (30) DAYS.
13 WE WOULD ASK THE COURT TO RESPECTFULLY, TO
14 CONSIDER MAYBE A FORTY-EIGHT (48) PUBLIC SERVICE
15 EMPLOYMENT. THAT IS AN OPTION THAT THE COURT HAS
16 IN THIS MATTER.

17 BY THE COURT: WELL, AND I DO RESPECT THE WAY
18 YOU DEALT WITH THE OFFICER. THAT GOES A LONG WAY
19 WITH ME. YOU KNOW, AND LIKE MR. BYRD STATED IN
20 HIS CLOSING, THIS IS NOT AN INDICTMENT ON YOU. I,
21 I BELIEVE YOU'RE PROBABLY A GOOD PERSON; OKAY?
22 YOU DEFINITELY SHOWED THAT THAT DAY. I'M NOT A
23 SPITEFUL PERSON. IT'S THIRTY (30) DAYS IN JAIL,
24 SUSPENDED UPON PAYMENT OF THE FINE. THE ONLY WAY
25 I CAN HELP YOU IS TO GIVE YOU TIME TO PAY THAT

1 FINE; OKAY? WE HAVE NO METHOD OF TRACKING
2 COMMUNITY SERVICE, SO WE DON'T ISSUE THAT IN THIS
3 COURT.

4 BY MR. SHORT: OKAY. OKAY.

5 BY THE COURT: GREENVILLE IS DIFFERENT. THEY
6 HAVE ALL KINDS OF MECHANISMS BY WHICH TO ISSUE
7 COMMUNITY SERVICE. WE, WE DO NOT, SINCE WE ARE
8 SMALLER. YOU'RE WORKING?

9 BY MR. SHORT: YES, SIR.

10 BY THE COURT: THE FINE IS A THOUSAND
11 SEVENTEEN (\$1,017.00). HOW MUCH TIME WOULD YOU
12 NEED TO PAY THAT? AND IS THERE ANY OPPOSITION
13 FROM STATE?

14 BY MR. BYRD: NONE.

15 BY THE COURT: OKAY.

16 BY MR. SHORT: DO YOU TAKE DEBIT?

17 BY THE COURT: WE DO. WE DO.

18 BY MR. SHORT: I WILL PAY IT TODAY.

19 BY THE COURT: OKAY. ALL RIGHT.

20 BY MR. EPPS: WELL, HOLD ---

21 BY MR. SHORT: I'M SORRY.

22 BY MR. EPPS: I'D LIKE TO HAVE FIVE (5) DAYS.

23 THE TIME IS FIVE (5) DAYS FOR ANY POST-TRIAL
24 MOTIONS.

25 BY THE COURT: SURE.

1 BY MR. EPPS: WOULD THAT STAY ANY PAYMENT OF
2 THE ---

3 BY THE COURT: WHAT I, WHAT I COULD DO IS --
4 OBVIOUSLY, WE HAVE THE FIVE (5) DAYS AND THEN THE
5 TEN (10).

6 BY MR. BYRD: AND PAYMENT DOESN'T ADVERSELY
7 AFFECT THOSE RIGHTS.

8 BY MR. EPPS: OKAY.

9 BY MR. BYRD: IT DOESN'T -- YOU'RE NOT
10 WAIVING ANYTHING.

11 BY MR. EPPS: YOU MEAN LIKE A BOND ---

12 BY THE COURT: THE ONLY THING IT WOULD DO IS,
13 IS CAUSE A, A FINANCIAL ISSUE WITH THE, WITH THE
14 COURT AS FAR AS RECEIVING SHOULD THAT BE NECESSARY
15 -- I MEAN, NOT RECEIVING, BUT RETURNING,
16 REFUNDING. 'CAUSE WE DO MONTHLY RECONCILIATIONS TO
17 THE TREASURER'S OFFICE. SO, IT COULD BE A
18 HEADACHE. SO, WHY DON'T I -- IF THAT'S A THOUGHT
19 -- IF YOU THINK YOU'RE GOING TO GO THAT ROUTE,
20 JUST ERR ON THE SIDE OF CAUTION AND PROVIDE A
21 MONTH TO PAY.

22 BY MR. BYRD: SURE. WE DON'T, WE DON'T ANY
23 OBJECTION TO THAT.

24 BY MR. EPPS: THIRTY (30) DAYS TO PAY?

25 BY THE COURT: OKAY.

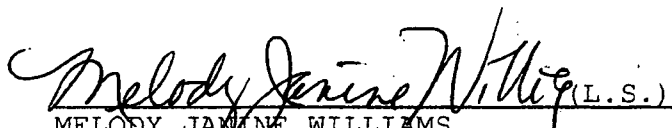
1 BY MR. EPPS: AND THEN CERTAINLY WITHIN FIVE
2 (5) DAYS, EITHER A FIVE (5) DAY LIMIT OR TEN (10)
3 DAY LIMIT ---
4 BY MR. BYRD: IT'S TEN (10) NOW.
5 BY MR. EPPS: IT'S TEN (10)?
6 BY THE COURT: YEAH.
7 BY MR. EPPS: OKAY. NOT FIVE (5)? OKAY.
8 WELL, TEN (10) DAYS. TEN (10) DAYS TO FILE.
9 BY MR. BYRD: USED TO BE FIVE (5).
10 BY MR. EPPS: YEAH.
11 BY MR. BYRD: THEY FINALLY GOT THAT IN SYNC
12 WITH THE OTHER ---
13 BY MR. EPPS: SO WE'RE ALL IN SYNC? SO,
14 WE'RE OKAY. SO TEN (10) DAYS TO FILE POST TRIAL
15 MOTIONS OR TO FILE AN APPEAL?
16 BY THE COURT: YES, SIR.
17 BY MR. EPPS: OKAY. ALL RIGHT.
18 BY THE COURT: ALL RIGHT.
19 BY MR. EPPS: THANK YOU, YOUR HONOR.
20 BY THE COURT: THE -- MR. SHORT, WHAT IS THAT
21 ADDRESS AGAIN, SIR?
22 BY MR. SHORT: HOME ADDRESS?
23 BY THE COURT: YEAH.
24 BY MR. SHORT: 119 MOORE, M-O-O-R-E, DRIVE.
25 BY MR. BYRD: THANK YOU, JUDGE.

1 BY THE COURT: THANK YOU, SIR. APPRECIATE
2 IT.
3 BY MR. BYRD: UH-HUH. (AFFIRMATIVE)
4 BY THE COURT: LIBERTY?
5 BY MR. SHORT: EASLEY.
6 BY THE COURT: EASLEY. 4-0 OR 4-2?
7 BY MR. SHORT: 4-2 -- 29642.
8 BY THE COURT: 4-2? OKAY.
9 BY MR. EPPS: ALL RIGHT, JUDGE.
10 BY THE COURT: THANK YOU, SIR.
11 THE HEARING WAS THEN CONCLUDED

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON) NOTARY/TRANSCRIPTIONIST

THIS IS TO CERTIFY THAT THE FOREGOING ONE HUNDRED EIGHTY-TWO (182) PAGES REPRESENT A TRUE AND ACCURATE TRANSCRIPTION OF THE AUDIO RECORDING OF THE HEARING HELD ON THE 15TH DAY OF MARCH, 2017, IN THE MATTER OF STATE VERSUS ZEBBULIN ALAN SHORT, THAT THE AUDIO RECORDING WAS SUBMITTED TO THE OFFICES OF BOWEN COURT REPORTING SERVICE, LLC, FOR TRANSCRIPTION PURPOSES BY THE OFFICES OF EPPS, NELSON, EPPS & PERKINS, AND THAT I, MELODY JANINE WILLIAMS, TRANSCRIPTIONIST AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, WITHOUT BENEFIT OF ANY NOTES WHATSOEVER, TRANSCRIBED THE AUDIO RECORDING TO THE BEST OF MY KNOWLEDGE AND ABILITY. I FURTHER ACKNOWLEDGE IN SOME INSTANCES THE AUDIO RECORDING WAS INAUDIBLE.

THIS WILL FURTHER CERTIFY THAT I AM NOT INTERESTED IN, NOR AM I COUNSEL OR ATTORNEY TO ANY OF THE PARTIES INTERESTED IN THE EVENT OF THE CAUSE.


MELODY JANINE WILLIAMS, (L.S.)
NOTARY PUBLIC IN AND FOR THE STATE
OF SOUTH CAROLINA.

MY COMMISSION EXPIRES: 10/16/2022

JUNE 22, 2017

STATE OF SOUTH CAROLINA	)	COURT OF COMMONS PLEAS
	)	
COUNTY OF PICKENS	)	Case No(s):2017CP3900391
	)	
Zebbulin Alan Short,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

June 30, 2017
Pickens, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

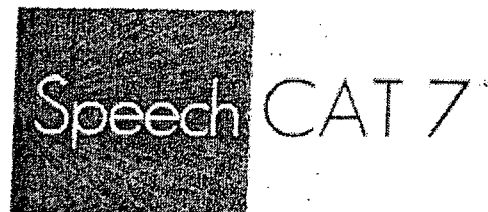
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EXHIBITS PAGE

NO.

DESCRIPTION

ID EV

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(Proceedings begin on the 30th day of June, 2017
at approximately 10:40 a.m.)

THE COURT: All right. Looks like this is
an appeal from magistrate's court, and this is
Mr. Short's appeal.

MR. EPPS: Yes, ma'am, Your Honor.

THE COURT: All right. Yes, sir.

MR. EPPS: Yes, ma'am, Your Honor. May it
please the Court. William Norman Epps, III. I
represent the appellate, the defendant
appellate in this matter, Mr. Zebbulin Alan
Short. Your Honor, this is an appeal from a
jury trial from before the Honorable Michael A.
Baker in magistrate court, on March 15th of
2017, regarding Mr. Short's conviction for
driving with an unlawful alcohol concentration,
first offense. It's also an appeal from an
order denying a motion for a new trial dated
March 30th, 2017.

Your Honor, I had filed a brief. I put it
-- attached to that brief is the complete
transcript of record from those proceedings,
also, as well as a -- as to one of those
issues, a SLED document from SLED'S website

1 under the implied consent provisions of the
2 website.

3 Specifically -- specifically, Your Honor,
4 the grounds for the defendant's appeal -- for
5 the appellate's appeal is, as follows: again,
6 the defendant was found guilty by the jury of
7 the charge of Driving with an Unlawful Alcohol
8 Concentration, first offense. Prior to the
9 start of the case and at the directed verdict
10 stage, the defendant moved for -- that the
11 charges be dismissed on the grounds that
12 Mr. Short has never been charged with Driving
13 with an Unlawful Alcohol Concentration by way
14 of uniform traffic ticket or arrest warrant.

15 He was arrested on May 11th of 2013 for the
16 charge of Driving Under the Influence, DUI
17 first. Since that time, four years had preceded
18 that -- four years passed before we tried the
19 case in March of 2017. At no time during that
20 period was the DUI nol prossed and written as a
21 DUAC.

22 Now, in September of 2015, we had a
23 pretrial. At that pretrial, there was an offer
24 submitted by the State that offered to dismiss
25 the DUI, rewrite the ticket to a DUAC. If

1 Mr. Short would accept that offer, that would
2 be the plea. If he did not accept that offer,
3 then the trial would go forward on DUI. At the
4 bottom of that document, it said it was a check
5 -- boilerplate language that checked and said
6 we hereby notify that we're going to try this
7 case as a DUAC charge. Again, from September
8 the 15th until March of 2015 -- March 15th of
9 2017, there was never any -- any -- any -- any
10 effort by the State or Trooper Mayfield, who
11 was the trooper in this case, to nol pros or
12 rewrite the ticket from DUI to DUAC under a
13 uniform traffic ticket or an arrest warrant.
14 Again, he was never served or charged -- he was
15 never charged with the crime of Driving with
16 Unlawful Alcohol Concentration.

17 So we made -- I made a motion to dismiss
18 based on -- based on jurisdiction, alleging
19 that the magistrate court did not have
20 jurisdiction to proceed on the charge of DUAC
21 based on State versus Ramsey. Again, you've got
22 to have a charging document. Specifically, the
23 Driving with Unlawful Alcohol Concentration
24 statute, which is 56-5-2933(J) states that at
25 trial, a person charged with a violation of

1 this section is allowed to present evidence
2 relating to the factors enumerated above and
3 the totality of the evidence produced at trial
4 may be used by the jury to determine guilt or
5 innocence, period. A person charged with a
6 violation of this section must be given notice
7 of intent to prosecute under the provisions of
8 this section at least 30 days -- 30 calendar
9 days before his trial date.

10 Now, the State contends this is a notice
11 issue. We contend that is a jurisdictional
12 issue. Now, there's a part in that statute that
13 says a person may be charged -- a person
14 charged with DUI maybe prosecuted under DUAC if
15 they are lawfully arrested and breath test and
16 the test were done within two hours after the
17 arrest.

18 However, if you go down -- then you go to
19 (J), which I just cited to the court just now.
20 Charged. They specifically say a person charged
21 with a violation of this section may -- must be
22 given notice. So the notice that they discussed
23 and the notice that the State discussed, we
24 contend that the defendant must be charged with
25 a violation of DUAC. To do so, Your Honor, to

1 take the position that you could -- even if you
2 got a DUI ticket, you could proceed on a DUAC
3 -- a DUAC charge, which is a completely
4 different criminal charge. It's not the same.
5 It's not a lesser included offense. It is a
6 separate charge under the statute for DUI.

7 Basically to say, okay, if somebody's
8 charged with DUI, we'll just send them -- give
9 them a piece of paper that says we'll hereby
10 notify you we're going to try this as a DUAC,
11 that's not a charging document. That's not
12 official notice. It's not a charging document.
13 We believe in order to charge -- to proceed on
14 a DUAC charge, he must be charged by way of
15 uniform traffic ticket or an arrest warrant.
16 That was never done.

17 Trooper Mayfield testified during the trial
18 that he never charged the defendant with the
19 offense of Driving with an Unlawful Alcohol
20 Concentration by way of uniform traffic ticket
21 or an arrest warrant. In looking at the
22 statutory instruction, Your Honor, if you -- if
23 you just -- if you take the position that it's
24 just -- you just got to give them notice,
25 you're making these words in (J) charged with a

1 violation of this section -- charged with a
2 violation of this section must be given notice,
3 you're making those words meaningless.

4 **THE COURT:** Okay.

5 **MR. EPPS:** So we're asking that the Court
6 dismiss the charge or reverse the trial court
7 on the grounds that they -- that they --
8 reverse the magistrate court on the grounds
9 that the Court did not have jurisdiction to
10 proceed under the DUAC charge.

11 The second grounds, Your Honor, of the
12 appeal is, at the directed -- after the State's
13 testimony rested -- the State rested their
14 case, Trooper Mayfield testified as Trooper
15 Baldwin had testified. Your Honor, the
16 defendant moved for a directed verdict on the
17 charge of DUAC on the grounds that the State
18 failed to present sufficient independent
19 evidence corroborating the defendant's extra
20 judicial statements to establish the corpus
21 delicti of DUAC, i.e., the elements are that
22 the defendant was driving the car in the State
23 of South Carolina with an unlawful alcohol
24 concentration.

25 In this case, Your Honor, this case was a

1 -- Trooper Mayfield couldn't remember if he was
2 called to the scene or arrived on the scene,
3 but there was a car -- one car -- there was a
4 car wreck. When Trooper Mayfield arrived on the
5 scene, substantial time had passed, at least 30
6 to 45 minutes. Nobody knows for sure, but a
7 substantial -- some time had passed. Mr. Short
8 was on the side of the road talking to a tow
9 truck driver. Air bags had deployed. The car
10 was facing -- facing sideways in the ditch, so
11 to speak, with the passenger side facing
12 towards Trooper Mayfield's car.

13 At that time, the wife -- Mr. Short's wife
14 was with him. Prior to the time of Trooper
15 Mayfield coming on the scene, a third party had
16 come by the scene, picked up Ms. Short, took
17 her back to the party's residence, which was a
18 short way down the road. So there was his wife
19 in the car. Air bags had deployed. Trooper
20 Mayfield sent Trooper Baldwin to Mr. Short's
21 home to speak to the wife to make sure she was
22 okay. She declined EMS. She had a bloody nose
23 or a bloody lip. She declined -- again, she
24 declined medical attention of EMS.

25 Mr. -- Trooper Mayfield, in talking to Mr.

1 Short on the side of the road, said have you
2 been drinking. He said not enough to do this.
3 Not enough for this to occur, to do what I did.
4 Mr. Short did not have the keys on him. The
5 keys were never provided to him. Based on the
6 video, Ms. Short had the insurance information
7 in her pocket. If you watched the incident --
8 the incident video, the video of the incident
9 site, Trooper Mayfield is standing on the
10 driver's side of the car and said there's blood
11 on the air bag.

12 **THE COURT:** I got you.

13 **MR. EPPS:** There's no forensic tests done
14 on the air bag or any tests done inside of the
15 car. Trooper Mayfield never spoke to Ms. Short.
16 Nobody spoke to the third party that picked
17 Ms. Short up from the accident scene. Trooper
18 Baldwin said I don't remember anything that she
19 said. Basically, she declined EMS. That's, Your
20 Honor -- that -- based on that, that is the
21 sole -- his statements were basically the sole
22 -- were the only evidence that he was driving
23 that vehicle. As a result, we think that that
24 is not sufficient substantial independent
25 evidence to corroborate the defendant's extra

1 judicial statement that he was driving the
2 vehicle.

3 That, Your Honor -- that was -- well, the
4 State argued that -- I'm talking State versus
5 Osbourne which is from the Arthur versus United
6 States case, which is well-settled law that a
7 conviction can not be had based on extra
8 judicial confessions of the defendant unless
9 they corroborated by proof aliunde of the
10 corpus delicti, i.e., it's got to be
11 corroborated.

12 Again, the State argued that these line of
13 cases were no longer good law pursuant to State
14 versus Abraham. It's a Court of Appeals case,
15 but that just reaffirms the settled law that is
16 set forth from the United States Supreme Court
17 on down. Again, the State failed to introduce
18 substantial independent evidence that would
19 tend to establish the trustworthiness of the
20 defendant's statement, i.e., that he was
21 driving the car, that the only evidence, again,
22 was his statement.

23 **THE COURT:** Gotcha.

24 **MR. EPPS:** Also, when the directed verdict
25 was denied, Your Honor, I moved -- at that

1 time, once it was denied and the issue was
2 going to the jury, I asked the Court to charge
3 that well-settled law to the jury. I think the
4 facts of this case -- now I understand that
5 that's a -- that's a -- it's a court question,
6 but I think the specific facts of this case,
7 which are different than the other cases I've
8 read regarding accidents with people outside
9 the car, this had a second individual in the
10 car with them. Nobody talked to him. Nobody
11 got a statement. Baldwin talked to him. Nobody
12 got a written statement regarding driving.
13 Nobody talked to the third party. There was
14 blood on driver's side air bag.

15 I asked that that charge regarding the
16 independent corroboration of the defendant's
17 extra judicial statement to be charged to the
18 jury. The court refused to charge this -- this
19 -- this -- he refused to charge the jury this
20 law stating, in essence, it would be confusing
21 to the jury and that we were there because the
22 defendant's -- because of the defendant's
23 admission of driving. I think there's evidence
24 that there were other people involved. The
25 judge did not -- did not charge -- make that

1 charge.

2 We think that's highly prejudicial in this
3 specific case because of the facts that we had
4 laid out. It was particularly prejudicial
5 because the State -- their closing argument was
6 crafted -- the first thing that was mentioned
7 was not enough to do what I did. They took his
8 statement and they crafted their closing
9 argument on that. The failure of the Court to
10 charge the jury, we believe is not harmless
11 error and it can not be said beyond a
12 reasonable doubt that the error complained of
13 did not contribute to the verdict. We're asking
14 that the conviction be reversed or a new trial
15 be granted.

16 **THE COURT:** All right.

17 **MR. EPPS:** Your Honor, the last -- we did
18 -- and I know the magistrate return said that
19 we did not make that or we waived that
20 argument. We did not. That was regarding the
21 DUAC charge and the language in the DUAC
22 charge. I repeated -- I requested that the
23 charge be given and repeatedly raised the
24 exception.

25 **THE COURT:** I'm going to read the entire

1 transcript before I rule.

2 MR. EPPS: Yes, ma'am.

3 THE COURT: So you don't have to worry
4 about that.

5 MR. EPPS: Yes, ma'am. And then the last
6 issue, we're asking that -- we had -- there was
7 -- Trooper Mayfield was testifying. The SLED
8 record again, DUI and DUAC is a completely
9 different -- you've got to try them differently
10 as far as the DUAC charge. We're talking about
11 the Datamaster test. SLED keeps their record.
12 They maintain their records.

13 I tried to cross-examine Trooper Mayfield
14 regarding the records, specifically SLED's
15 status records on the Datamaster serial number
16 107607, which was the actual Datamaster
17 machine, that Mr. Short blew into on May the
18 11th, 2013. That -- that status sheet showed
19 that that Datamaster had an error or
20 malfunction nine times between April 24th, 2013
21 and May 28th, 2013 before and after Mr. Short
22 took that test. This document was
23 electronically signed by Debra H. Hanks,
24 Lieutenant Special -- Supervisory Special
25 Agent, Implied Consent Department. The document

1 stated that this report represents a true and
2 correct copy of the original documents
3 maintained by SLED in the normal course of
4 business, which is attached to my brief.

5 I asked -- I simply wanted to ask to cross-
6 examine the officer regarding those
7 malfunctions, which were nine times, which was
8 significant in the month of May of 2013 when
9 Mr. Short took it. I couldn't even -- and I
10 believe they are public records. I believe they
11 are public records pursuant to 803(8) of the
12 South Carolina Rules of Civil Procedure. They
13 are also self-authenticating, I believe,
14 pursuant to 19-5-10, as well as also admissible
15 pursuant to 56-5-2954.

16 This being a DUAC case, these documents
17 were material to the defendant. Trooper
18 Mayfield had talked about -- had testified
19 earlier about SLED maintaining and keeping
20 records on the website. I couldn't even ask him
21 anything. The Court's position was if you want
22 to talk about these documents or get these
23 documents into evidence, then you need to have
24 somebody from SLED up here to testify.

25 My position is that, basically, I believe

1 that those records are maintained online. They
2 are electronically signed because I don't think
3 SLED's got the manpower or the -- to send a
4 SLED officer to every DUI trial in the State of
5 South Carolina.

6 **THE COURT:** All right.

7 **MR. EPPS:** So Your Honor, we're asking
8 that the -- that the defendant's conviction be
9 reversed and/or that a new trial be granted.

10 **THE COURT:** All right. Thank you.

11 Yes, sir.

12 **MR. BYRD:** Thank you, Your Honor. One
13 quick housekeeping matter. This case was --
14 appeal was filed back in April. We had not
15 heard from Mr. Epps or the appellate with
16 regard to the transcription of the tape. So we
17 independently had Trooper Mayfield's testimony
18 transcribed. It's referenced in our brief,
19 which we filed on the 26th.

20 **THE COURT:** Okay.

21 **MR. BYRD:** The brief that we filed with
22 the Court and served, on the second page,
23 references that transcript.

24 **THE COURT:** Okay.

25 **MR. BYRD:** It's pages 49 through 51 of the

1 transcript that was filed after that by
2 appellant's counsel. Very briefly on the four
3 points raised, the statute is clear. DUAC may
4 be prosecuted. Two conditions, breath test
5 within two hours and reasonable suspicion for
6 the stop. The only other requirement in section
7 2933 is that the person be given at least 30
8 days notice that the State intends to
9 prosecute. We contend the statute is
10 unambiguous.

11 **THE COURT:** Notice of trial, you think, is
12 notice under the statute?

13 **MR. BYRD:** Yes, ma'am. It specifically
14 says that. If you take the appellant's logic
15 further, it borders on absurd. We can't nol
16 pros a DUI citation. We lose personal
17 jurisdiction of the defendant, if we do that.
18 If we were to issue a DUAC ticket, we would
19 have to arrest someone. We would have to be
20 able to find them. If they are in North
21 Carolina, we have to go through the Governor's
22 office to get them. They've got to be
23 fingerprinted.

24 **THE COURT:** What about this corpus delicti
25 issue? Let's move onto that.

1 **MR. BYRD:** Yes, ma'am. That's fine. I
2 think the confusion here from appellate is that
3 corpus delicti is one theory, the burden of
4 proof is a separate theory. He conflates those.
5 In his brief, as well as today, he indicated
6 that there was no independent proof that the
7 defendant was driving. That's not a requirement
8 of corpus delicti rule, or what is now known as
9 the corroboration rule.

10 I point out to the court State v. Smith.
11 It's 493 S.E.2d 506 is the latest case that I
12 found on that point in which the court says,
13 and I quote, thus, in order to sustain a DUI
14 conviction, there must be evidence other than
15 the defendant's extra judicial statements that
16 someone, but not necessarily the defendant, was
17 driving impaired.

18 Corpus delicti is the body of the crime.
19 Was a crime committed? Evidence of driving is
20 in this case. The defendant has -- the
21 appellant has cited State v. Russell. State v.
22 Russell provides -- and again, I quote, that's
23 546 S.E.2d at 202. The position and condition
24 of the vehicle provides substantial
25 circumstantial evidence that it was being

1 operated in South Carolina.

2 We have a wrecked vehicle. We have a
3 defendant standing outside of that -- his
4 vehicle, admittedly his vehicle, calling a tow
5 truck. That is sufficient evidence,
6 circumstantial evidence of driving. We don't
7 have to show that it was Mr. Short that was
8 driving for the corpus delicti or corroboration
9 rule. We do have to prove that to carry the
10 burden of proof, separate theory. In proving
11 the DUAC burden, we can use his statement that
12 not enough to drink to do what I did. I ran off
13 the road, dozed off, hit a telephone pole. That
14 evidence is substantial and carries the burden
15 of proof, which is separate from corpus
16 delicti.

17 And again, I don't want to belabor the
18 point, but just real quick, that was the
19 confusion that Judge Baker was dealing with in
20 the charge aspect of this case. Mr. Epps, on
21 behalf of the defendant and the appellant, kept
22 asserting that the corpus delicti or
23 corroboration rule requires proof that
24 Mr. Short was driving. It does not. That's a
25 separate theory. Burden of proof, we have to

1 prove he was driving. Corpus delicti, all we
2 have to prove is that someone was driving.
3 That's the distinction that the judge was
4 dealing with.

5 The SLED document, there was no
6 authentication. This is during cross-
7 examination. No foundation laid for the
8 document. Rule 803 specifically provides for
9 the admission of public records. However, in
10 criminal cases, matters observed by police
11 officers and other law enforcement personnel
12 are excluded. So he has no basis for entering
13 this SLED document into evidence.

14 Now, the judge points out that there was no
15 proffer, but again, that's a procedural issue
16 that Your Honor can iron out with regard to the
17 transcript. This wasn't a perfect trial. I
18 don't know if I've ever been in a perfect
19 trial. It was a fair trial.

20 **THE COURT:** Okay. And I'll do this, we're
21 running a little bit behind now, so I'll say
22 this, if anybody wants to submit anything, I'm
23 going to hold off for 10 days ruling. If
24 there's anything else anybody wants to submit
25 in writing, I'm happy to consider it.

CERTIFICATE

23

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Commons Pleas for Pickens, South Carolina, on this 16th day of October, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

South Carolina Law Enforcement Division - Status Records



Date Range From 01/01/2013 To 12/31/2013
DataMaster (BAC/DMT) Serial Number - 107607
Report Date - 3/14/2017

Legend I - Incomplete
R - Refusal
V - Invalid Sample
X - Interference
Detected

Serial Number	Loc Number	Date/Time	Status Record	Status Info
107607	SC0390000	1/11/2013 10:16:02 AM	RFI DETECTED	
107607	SC0390000	4/24/2013 5:43:59 PM	EXTERNAL STANDARD OUT OF RANGE	
107607	SC0390000	4/24/2013 5:49:23 PM	EXTERNAL STANDARD OUT OF RANGE	
107607	SC0390000	5/14/2013 5:06:26 AM	EXTERNAL STANDARD OUT OF RANGE	
107607	SC0390000	5/14/2013 5:10:58 AM	EXTERNAL STANDARD OUT OF RANGE	
107607	SC0390000	5/15/2013 2:43:53 AM	EXTERNAL STANDARD OUT OF RANGE	
107607	SC0390000	5/15/2013 2:49:42 AM	EXTERNAL STANDARD OUT OF RANGE	
107607	SC0390000	5/17/2013 11:19:32 AM	EXTERNAL STANDARD OUT OF RANGE	
107607	SC0390000	5/17/2013 1:58:34 PM	EXTERNAL STANDARD OUT OF RANGE	
107607	SC0390000	5/25/2013 11:01:39 PM	FILTER DISAGREEMENT ERROR	
107607	SC0390000	5/27/2013 11:43:51 PM	EXTERNAL STANDARD OUT OF RANGE	
107607	SC0390000	5/28/2013 7:52:02 PM	SUCK BACK ERROR	
107607	SC0390000	12/13/2013 12:41:45 AM	EXTERNAL STANDARD OUT OF RANGE	

**THIS REPORT REPRESENTS TRUE AND CORRECT COPIES OF THE ORIGINAL
DOCUMENTS MAINTAINED BY SLED IN THE NORMAL COURSE OF BUSINESS.**



**DEBORAH H. BANKS, LIEUTENANT
SUPERVISORY SPECIAL AGENT
IMPLIED CONSENT DEPARTMENT**

SOUTH CA
UNI

DEPARTMENT OF PUBLIC SAFETY
TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME Zebbulh		MIDDLE NAME Alan		LAST NAME Short	
STREET AND NO. 119 Moore Dr.		CITY Exley		STATE SC ZIP CODE 29642	
STATE LICENSED SC	DRIVER'S LICENSE NO. 102681765		CDL ☐ YES ☒ NO	DRI. LIC. CLASS D	
VEH. LIC. NO. GFD-748	STATE SC	MAKE OF VEH GMC	YEAR 98	COMM. VEH. ☐ YES ☒ NO	AUTO ☐ YES ☒ NO
HAZ. MT. ☐ YES ☒ NO		MOPED ☐ YES ☒ NO		MTRCYCL ☐ YES ☒ NO	

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT Magistrate Court		STREET AND NO. 216 A LEC ROAD	
DATE OF TRIAL 06/13/2013	TIME OF TRIAL 1030AM	CITY Pickens	STATE SC ZIP CODE 29671
VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO		VIOLATION SECTION NO. 56-5-2930	
OWNER OF VEHICLE Zebbulh Short		DATE OF ARREST 05/11/2013	
ADDRESS OF OWNER Exley SC		DATE OF VIOLATION 05/11/2013	

BAIL DEPOSITED Cash	NAME OF ARRESTING OFFICER BW Mayfield	RANK CR
ALL TIMES SHOWN ON THIS SUMMONS ARE IN MILITARY TIME		COUNTY Pickens
PRESENT THIS SUMMONS TO THE TRIAL COURT SHOWN ABOVE		BADGE A67
		TRIP 3

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

TIME OF VIOLATION MILITARY TIME 0300							WEATHER Cloudy
I	U	P	O	HWY NO.			DOCKET NO. 326-06
1	2	3	4	5	6	7	
MILES 7.50				N	E	S	W
CITY Exley				CODE 1			
Lat				Long			
OFFENSE CODE 99				B.A. LEVEL .09%			

SEE IMPORTANT INFORMATION ON
THE REVERSE SIDE OF THIS TICKET

F 838374

VIOLATOR'S COPY

NOTICE TO DEFENDANT

Name: Zebulun Short

Ticket/Warrant No(s): F 838374

You or your client is currently charged with: DUI 09%

If you or your client wishes to accept early responsibility and plead guilty, the State will offer the following as a recommendation to the Court:

DUAC 08% T/5 + CC

NP → DUI

You have 30 days from the date of this form to accept this offer. If you or your client does not enter a guilty plea by 10/12/15 then the case will be placed on the docket for trial. At that time, the case will be tried as charged, and NO recommendation will be made.

If one or more of the boxes below is checked, the following additional information applies to your pending criminal case:

☐ **Trial in Absence:** If you do not appear for your trial, you will be tried in your absence. The Solicitor may consent to a trial in front of the judge (bench trial) at which time the Court would decide your guilt. If you are found guilty, the Court may issue a Bench Warrant for your arrest. All notices for trial will be sent to the address you provided to the Court. It is your responsibility to inform the Court of any changes to your contact information.

☐ **Legal Representation:** You have the right to have an attorney represent you in a criminal matter. If you cannot afford to hire an attorney, the State will appoint one to represent you if you qualify. If you would like an attorney to be appointed, it is your responsibility to apply for a Public Defender. The Office of Indigent Defense can assist you in applying for representation. Their office is located at the Greenville County Courthouse, 305 East North Street in downtown Greenville.

It is your responsibility to secure representation in a timely manner and to inform your attorney of any court notices you receive. If you have not informed the Court that you have secured an attorney before the case is set for trial, the State will go forward with the trial as scheduled. Your case will not be continued because you failed to obtain an attorney or obtained an attorney after the case was put on the trial docket.

☒ **DUAC Notice:** Pursuant to § 56-5-2933 and § 56-5-2930 (J) of the South Carolina Code of Laws, you are hereby notified that the State intends to try this case as a violation of Driving with an Unlawful Alcohol Concentration. The case will appear on an upcoming trial docket no sooner than 30 days from the date of this notice.

Short
Defendant

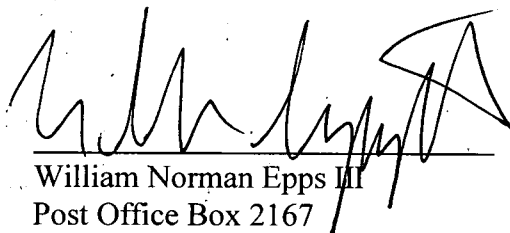
Byrd
Solicitor

Epps
Defense Attorney

9/15/15
Date

CERTIFICATE OF COUNSEL

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.



William Norman Epps III
Post Office Box 2167
Anderson, South Carolina 29622
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Attorney for Appellant

June 27, 2018

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JUL 27 2018
SC Court of Appeals