

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Jocelyn J. Newman, Circuit Court Judge

JOSE L. CABARRUVIAS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002516

APPENDIX

DAVID ALEXANDER
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KELLY OPPENHEIMER
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT (SEPTEMBER 3, 2010)	1
APPLICATION FOR POST-CONVICTION RELIEF WITH ATTACHMENTS (JANUARY 4, 2011)	36
RETURN WITH ATTACHMENTS (MARCH 9, 2011)	67
POST-CONVICTION RELIEF HEARING TRANSCRIPT (JUNE 8, 2011)	111
MOTION TO REOPEN THE RECORD (JULY 7, 2011)	209
ORDER APPOINTING INTERPRETER (JULY 21, 2011)	211
RETURN TO MOTION TO REOPEN THE RECORD (AUGUST 10, 2011)	212
ORDER (DECEMBER 10, 2012)	214
MOTION TO AMEND APPLICATION FOR POST-CONVICTION RELIEF (JANUARY 29, 2013)	216
MOTION FOR STATE FUNDING OF COSTS (MAY 14, 2013)	233
MOTION TO AMEND APPLICATION FOR POST-CONVICTION RELIEF AND SUPPLEMENT APPENDIX (DECEMBER 11, 2015)	237
ORDER OF CONTINUANCE (JANUARY 25, 2016)	297
POST-CONVICTION RELIEF HEARING TRANSCRIPT (JUNE 28, 2017)	298
COURT’S EXHIBIT NO. 1 (SUBPOENA)	408
COURT’S EXHIBIT NO. 2 (SUBPOENA)	414
APPLICANT’S EXHIBIT NO. 1 (MEDICAL RECORDS)	421
STATE’S EXHIBIT NO. 1 (M.A.I.T REPORT)	429
ORDER OF DISMISSAL (DECEMBER 11, 2017)	445
INDICTMENTS AND SENTENCING SHEETS	463

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)

IN THE CIRCUIT COURT
 OF THE TENTH JUDICIAL CIRCUIT
 2009-GS-04-01993,01994,01940

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs)

JOSE LUIS L. CABARRUVIAS,)

DEFENDANT.)

GUILTY PLEA

SEPTEMBER 3, 2010
 ANDERSON, SOUTH CAROLINA

BEFORE: THE HONORABLE R. LAWTON MCINTOSH

FOR THE STATE:

JENNIFER BYFORD
 ATTORNEY AT LAW
 TENTH CIRCUIT SOLICITOR'S OFFICE
 POST OFFICE BOX 8002
 ANDERSON, SC 29622

FOR THE DEFENSE:

JENNIFER JOHNSON
 ATTORNEY AT LAW
 OFFICE OF THE PUBLIC DEFENDER
 301 CAMSON ROAD
 ANDERSON, SC 29625

DAVID STODDARD, ESQUIRE
 320 EAST RIVER STREET
 ANDERSON, SC 29624

JO RICE
 COURT REPORTER

1 **THE COURT:** OKAY.

2 **MS. BYFORD:** YOUR HONOR, MAY IT PLEASE THE COURT. THIS IS JOSE
3 LUNA CABARRUVIAS, 2009-GS-04-1993, PLEADING TO FELONY DRIVING UNDER
4 THE INFLUENCE RESULTING IN GREAT BODILY INJURY. 2009-GS-04-1994,
5 PLEADING TO FELONY DRIVING UNDER THE INFLUENCE RESULTING IN GREAT
6 BODILY INJURY AND 2009-GS-04-1940, PLEADING TO FELONY DRIVING UNDER
7 THE INFLUENCE RESULTING IN DEATH. THERE IS NO RECOMMENDATION.

8 **THE COURT:** SOLICITOR, WHAT ARE THE RANGES ON THESE?

9 **MS. BYFORD:** YOUR HONOR, BOTH COUNTS OF GREAT BODILY INJURY
10 CARRY UP TO FIFTEEN YEARS. DEATH CARRIES UP TO TWENTY-FIVE.

11 (THE DEFENDANT IS DULY SWORN BY THE CLERK OF COURT)

12 **THE COURT:** MISTER STODDARD, BEFORE WE BEGIN, IS YOUR CLIENT
13 PROFICIENT IN UNDERSTANDING THE ENGLISH LANGUAGE?

14 **MR. STODDARD:** HE DOES, YOUR HONOR.

15 **THE COURT:** VERY GOOD. YOU'RE JOSE LUIS LUNA CABARRUVIAS?

16 **MR. CABARRUVIAS:** YEAH. UH-HUH.

17 **THE COURT:** IT SAYS ON THIS INDICTMENT THAT YOU ARE FORTY-FOUR
18 YEARS OLD?

19 **MR. CABARRUVIAS:** SAY IT AGAIN?

20 **THE COURT:** ARE YOU FORTY-FOUR YEARS OLD?

21 **MR. CABARRUVIAS:** I JUST TURNED THE SEVENTEENTH OF THIS MONTH
22 DAY OF AUGUST, FORTY-FIVE.

23 **THE COURT:** FORTY-FIVE?

24 **MR. CABARRUVIAS:** YES, SIR.

25 **THE COURT:** OKAY. CABARRUVIAS? IS THAT CORRECT?

1 **MR. CABARRUVIAS:** YES. MY MOMMA'S LAST NAME. YES.

2 **THE COURT:** CAN YOU UNDERSTAND ME OKAY?

3 **MR. CABARRUVIAS:** YES, SIR.

4 **THE COURT:** IT'S VERY IMPORTANT THAT YOU UNDERSTAND WHAT'S
5 GOING ON HERE TODAY. OKAY?

6 **MR. CABARRUVIAS:** YEAH. UH-HUH.

7 **THE COURT:** HOW FAR DID YOU GO IN SCHOOL?

8 **MR. CABARRUVIAS:** WELL, WHEN MY YEARS IN MEXICO I WENT
9 THROUGH AND I REALLY DON'T HAVE MUCH EDUCATION. I DIDN'T FINISH
10 TWELVE BECAUSE WHEN I WENT TO CALIFORNIA, I WENT TO TWELVE GRADE
11 FOR THREE MONTHS AND I HAD TO WORK AND STUFF LIKE THAT AND I DIDN'T
12 FINISH SCHOOL, YOU KNOW, BUT I KNOW HOW TO READ AND A LITTLE BIT OF
13 MATHEMATICS AND STUFF, YOU KNOW.

14 **THE COURT:** SO, SOMEWHERE AROUND THE ELEVENTH GRADE?

15 **MR. CABARRUVIAS:** I GUESS NO PROBLEM, AROUND TEN.

16 **THE COURT:** OKAY. DO YOU HAVE ANY VOCATIONAL TRAINING?

17 **MR. CABARRUVIAS:** I DO KNOW HOW TO DO PLUMBING, ELECTRICAL
18 AND SOME CARPENTRY. I USED TO BE FOR, SINCE '99 I DEDICATED MYSELF
19 TO IN RENTAL. LIKE I USED TO WORK FOR A YEAR FOR RENTAL PROPERTIES
20 UP THERE IN TAYLORS AND I WORKED FOR THREE YEARS, I WORKED FOR HIM
21 AND I ELECTRICAL, HEAT AND AIR, AND CARPENTER, PLUMBING. IT WAS THE
22 LAST AROUND NINE MONTHS THAT I WASN'T WORKING FOR SUCH A
23 REGULAR, YOU KNOW, PERSONAL COMPANY. I WAS WORKING FOR MYSELF,
24 CARPENTRY OR WHATEVER CAME UP, BUT I WAS KEEPING MYSELF WORKING
25 FOR THE LAST TWO MONTHS I GOT ---

1 **MS. JOHNSON:** HE'S GOING TO GIVE YOU A CHANCE TO TALK. I'M
2 SORRY.

3 **THE COURT:** IT'S OKAY. I UNDERSTAND. I UNDERSTAND. I WANT TO
4 HEAR HIM. ARE YOU MARRIED?

5 **MR. CABARRUVIAS:** YES.

6 **THE COURT:** IS THIS YOUR WIFE?

7 **MR. CABARRUVIAS:** THAT'S MY GIRL.

8 **MS. JOHNSON:** HIS WIFE IS OUT HERE. (INDICATING)

9 **THE COURT:** OKAY. AND YOU SAY THIS IS YOUR DAUGHTER? HOW
10 MANY CHILDREN DO YOU HAVE?

11 **MR. CABARRUVIAS:** FOUR.

12 **THE COURT:** WHAT ARE THEIR AGES?

13 **MR. CABARRUVIAS:** TWENTY-TWO, TWENTY-ONE, ONE DAUGHTER, AND
14 TWENTY, MY BOY, AND MY YOUNGEST IS SIXTEEN.

15 **THE COURT:** SIXTEEN?

16 **MR. CABARRUVIAS:** YEAH.

17 **THE COURT:** BEFORE YOU WERE INCARCERATED, WERE YOU
18 EMPLOYED?

19 **MR. CABARRUVIAS:** I WAS EMPLOYED ABOUT NINE MONTHS BEFORE
20 THE ACCIDENT HAPPENED, BUT I WAS DOING LIKE SOME -- A PERSON THAT
21 HAS A MOBILE HOME PARK UP THERE ON PICKENS HIGHWAY ON GREENVILLE,
22 I WAS DOING SOMETIME CALL ME. HE GOT A EMERGENCY, I WAS THAT GUY. I
23 WAS ON TWENTY-FOUR SEVEN CALL OR SOMETHING LIKE THAT AND SOME
24 OTHER WORKS AROUND, I WAS TRYING TO GET SOME WORK FOR MYSELF.

25 **THE COURT:** MISTER CABARRUVIAS, I DON'T KNOW IF IT'S BEEN

1 EXPLAINED TO YOU, I DON'T KNOW WHAT YOUR STATUS IS AS FAR AS
2 WHETHER YOU'RE HERE LEGALLY OR NOT, BUT HAS ANYBODY EXPLAINED TO
3 YOU THE CONSEQUENCES IF YOU ARE NOT HERE LEGALLY OF PLEADING
4 GUILTY HERE IN COURT TODAY?

5 **MR. CABARRUVIAS:** WELL, I'VE BEEN HERE ALMOST TWENTY YEARS IN
6 THE UNITED STATES. I THINK GOING ELEVEN YEARS MORE THAN IN MEXICO.
7 I CAME IN AT SEVENTEEN IN '82 AND IT'S BEEN HARD FOR ME, YOU KNOW. I
8 HAVE TWO KIDS, MY TWO DAUGHTERS WERE BORN IN CALIFORNIA. I'VE GOT
9 A BOY BORN IN ANOTHER STATE IN 1990. AND MY OTHER BOY, MY YOUNGEST
10 WAS BORN IN ---

11 **THE COURT:** LET ME STOP YOU RIGHT QUICK. I DON'T MEAN TO
12 INTERRUPT YOU, BUT LET ME MAKE CLEAR TO YOU ---

13 **MR. CABARRUVIAS:** RIGHT.

14 **THE COURT:** --- SO THAT YOU UNDERSTAND ---

15 **MR. CABARRUVIAS:** UH-HUH.

16 **THE COURT:** --- THAT IF YOU ARE NOT HERE LEGALLY ---

17 **MR. CABARRUVIAS:** UH-HUH.

18 **THE COURT:** --- YOUR GUILTY PLEA COULD RESULT IN YOUR BEING
19 DEPORTED FROM THE UNITED STATES ---

20 **MR. CABARRUVIAS:** YES ---

21 **THE COURT:** AFTER YOU FINISH ---

22 **MR. CABARRUVIAS:** SIR, I ---

23 **THE COURT:** STOP FOR A SECOND. SEE THIS LADY RIGHT HERE?

24 **MR. CABARRUVIAS:** YES.

25 **THE COURT:** EVERYTHING THAT IS BEING SAID TODAY, SHE IS SAYING,

1 AND WHEN YOU AND I SPEAK ON TOP OF EACH OTHER, SHE CAN'T HEAR IT.
2 OKAY? SO, I'M NOT TRYING TO BE RUDE TO YOU, I JUST WANT YOU TO LET
3 ME FINISH AND I WILL DO THE SAME THING FOR YOU. OKAY?

4 MR. CABARRUVIAS: THANK YOU FOR TELLING ME THAT.

5 THE COURT: ALL RIGHT. NOW, I WANT YOU TO UNDERSTAND ---

6 MR. CABARRUVIAS: UH-HUH.

7 THE COURT: --- THAT IF YOU ARE NOT HERE LEGALLY AND YOU PLEAD
8 GUILTY, THAT AFTER YOU DO ANY JAIL TIME THAT I MAY ASSIGN TO YOU, IF
9 ANY, THAT YOU CAN DEPORTED FROM THE UNITED STATES. DO YOU
10 UNDERSTAND THAT?

11 MR. CABARRUVIAS: COMPLETELY, SIR.

12 THE COURT: ALL RIGHT. VERY GOOD. COUNSEL, ARE BOTH OF YOU
13 REPRESENTING MISTER CABARRUVIAS?

14 MS. JOHNSON: YES, SIR.

15 THE COURT: OKAY. DO YOU FEEL LIKE HE IS COMPETENT TO PLEAD
16 GUILTY TODAY?

17 MS. JOHNSON: YES, SIR.

18 THE COURT: ARE YOU UNDER THE INFLUENCE OF ANY MEDICATIONS,
19 DRUGS OR ALCOHOL?

20 MR. CABARRUVIAS: RIGHT NOW?

21 THE COURT: YES, SIR.

22 MR. CABARRUVIAS: YES. I TAKE MEDICATION FOR ULCER.

23 THE COURT: ULCER?

24 MR. CABARRUVIAS: YEAH, THEY FOUND THAT OUT WHEN I WAS IN JAIL
25 FOR THAT.

1 **MS. JOHNSON:** HE HAS AN ENLARGED PROSTATE, YOUR HONOR, AND
2 HE'S BEEN GIVEN MEDICATION FOR THAT.

3 **THE COURT:** SO, YOU ARE TAKING MEDICATION FOR AN ULCER AND AN
4 ENLARGED PROSTATE? IS THAT CORRECT?

5 **MR. CABARRUVIAS:** YES, SIR.

6 **THE COURT:** NOW, MISTER CABARRUVIAS, DOES THAT AFFECT YOUR
7 ABILITY TO UNDERSTAND AND COMPREHEND WHAT YOU ARE DOING TODAY?

8 **MR. CABARRUVIAS:** NO.

9 **THE COURT:** DO YOU UNDERSTAND WHERE YOU ARE?

10 **MR. CABARRUVIAS:** YEAH. I UNDERSTAND.

11 **THE COURT:** WHERE ARE YOU?

12 **MR. CABARRUVIAS:** SAY AGAIN?

13 **THE COURT:** WHERE ARE YOU?

14 **MR. CABARRUVIAS:** I'M HERE IN ANDERSON COUNTY COURT.

15 **THE COURT:** AND WHO ARE THESE FOLKS STANDING TO YOUR RIGHT
16 OR LEFT?

17 **MR. CABARRUVIAS:** YEAH.

18 **THE COURT:** WHO ARE THEY?

19 **MR. CABARRUVIAS:** MISTER DAVID STODDARD AND JENNIFER
20 JOHNSON.

21 **THE COURT:** AND WHAT IS THEIR FUNCTION FOR YOU?

22 **MR. CABARRUVIAS:** REPRESENTING ME.

23 **THE COURT:** OKAY. ALL RIGHT. NOW, YOU ARE PLEADING GUILTY TO
24 TWO COUNTS OF FELONY D-U-I RESULTING IN GREAT BODILY HARM AND ONE
25 COUNT OF D-U-I RESULTING IN DEATH. IS THAT CORRECT?

1 **MR. CABARRUVIAS:** UH-HUH.

2 **THE COURT:** YOU HAVE TO GIVE ME VERBAL RESPONSES.

3 **MS. JOHNSON:** SAY YES, SIR OR NO, SIR.

4 **THE COURT:** DO YOU UNDERSTAND THAT IS WHAT YOU ARE PLEADING
5 GUILTY TO?

6 **MR. CABARRUVIAS:** YES, SIR.

7 **THE COURT:** HAS ANYBODY FORCED, THREATENED OR PROMISED YOU
8 ANYTHING TO GET YOU TO PLEAD GUILTY?

9 **MR. CABARRUVIAS:** NO. NOT AT ALL.

10 **THE COURT:** ARE YOU PLEADING GUILTY FREELY AND VOL---

11 **MR. CABARRUVIAS:** VOLUNTARY. YES. VOLUNTARY.

12 **THE COURT:** DO YOU UNDERSTAND THAT ON THE D-U-I COUNTS
13 RESULTING IN GREAT BODILY INJURY I CAN SENTENCE YOU UP TO FIFTEEN
14 YEARS ON EACH OF THOSE COUNTS?

15 **MR. CABARRUVIAS:** I AGREE, SIR.

16 **THE COURT:** AND THEN ON THE D-U-I RESULTING IN DEATH, I COULD
17 SENTENCE YOU TO TWENTY-FIVE YEARS?

18 **MR. CABARRUVIAS:** I UNDERSTAND, SIR.

19 **THE COURT:** ALL SAID AND DONE, MISTER CABARRUVIAS, I COULD
20 SENTENCE YOU TO FIFTY-FIVE YEARS TODAY. DO YOU UNDERSTAND THAT?

21 **MR. CABARRUVIAS:** UH-HUH.

22 **THE COURT:** AND THERE IS NOT ANY RECOMMENDATION OR DEAL AND
23 SO YOU ARE PLEADING STRAIGHT UP. DO YOU UNDERSTAND THAT?

24 **MR. CABARRUVIAS:** (NODS HEAD)

25 **THE COURT:** YOU HAVE TO GIVE ME A VERBAL RESPONSE.

1 **MR. CABARRUVIAS:** LORD MAKE ME ---

2 **THE COURT:** YOU HAVE TO GIVE ME A RESPONSE TO MY QUESTION,
3 MISTER CABARRUVIAS.

4 **MR. CABARRUVIAS:** YES, SIR.

5 **THE COURT:** KNOWING THAT, DO YOU WANT TO GO FORWARD WITH
6 YOUR PLEA TODAY?

7 **MR. CABARRUVIAS:** HUH?

8 **THE COURT:** KNOWING THAT I COULD SENTENCE YOU TO FIFTY-FIVE
9 YEARS IN JAIL, DO YOU WANT TO GO FORWARD WITH YOUR GUILTY PLEA?

10 **MR. CABARRUVIAS:** WELL, WILL YOU GIVE ME ANY CONSIDERATION?

11 **MS. JOHNSON:** NO. HE'S NOT SAYING HE'S SENTENCING YOU, HE'S
12 SAYING THAT'S HOW MUCH YOU COULD GET.

13 **MR. CABARRUVIAS:** OH. OH, YES. I UNDERSTAND THAT NOW.

14 **MS. JOHNSON:** HE SAID, KNOWING THAT THAT'S THE TIME YOU ARE
15 LOOKING AT.

16 **MR. CABARRUVIAS:** YEAH, I UNDERSTAND.

17 **MS. JOHNSON:** DO YOU STILL WANT TO GO FORWARD WITH YOUR
18 GUILTY PLEA KNOWING THE MAXIMUM POSSIBLE SENTENCE? NOT SAYING
19 HE'S GOING TO GIVE YOU THAT, BUT KNOWING THAT HE COULD ---

20 **MR. CABARRUVIAS:** YEAH, I KNOW THE CHARGES TAKE THAT AND HE'S
21 TRYING TO TELL ME.

22 **MS. JOHNSON:** DO YOU STILL WANT TO PLEAD GUILTY KNOWING WHAT
23 THOSE CHARGES CARRY?

24 **MR. CABARRUVIAS:** ACCORDING TO WHAT I THINK.

25 **THE COURT:** MISTER CABARRUVIAS, I'M NOT GOING TO LET YOU SIT

1 HERE AND GIVE ME YOUR NARRATIVES ON EACH QUESTION I HAVE.

2 MR. CABARRUVIAS: YES, SIR. I HAVE ---

3 THE COURT: STOP. I'VE ASKED YOU ALREADY AND I'M NOT GOING TO

4 DO IT ANYMORE. I'M ASKING YOU TO LISTEN TO MY QUESTION ---

5 MR. CABARRUVIAS: RIGHT.

6 THE COURT: --- AND WHEN I ASK YOU A QUESTION I WANT YOU TO GIVE

7 ME AN ANSWER THAT IS RESPONSIVE TO MY QUESTION. DO YOU

8 UNDERSTAND?

9 MR. CABARRUVIAS: YES, SIR.

10 THE COURT: OKAY. AND THE QUESTION IS, KNOWING THAT I COULD

11 SENTENCE YOU TO FIFTY-FIVE YEARS TODAY, DO YOU WISH TO GO

12 FORWARD WITH YOUR GUILTY PLEA?

13 MR. CABARRUVIAS: I'M PLEADING, SIR.

14 THE COURT: WHAT DID HE SAY?

15 MS. JOHNSON: HE SAID HE PLEADS GUILTY.

16 THE COURT: ARE YOU HAVING DIFFICULTY UNDERSTANDING ME?

17 MR. CABARRUVIAS: A LITTLE BIT. I COME TO UNDERSTAND WHAT YOU

18 TRYING TO TELL ME.

19 THE COURT: DO WE HAVE AN INTERPRETER HERE?

20 MS. JOHNSON: WE CAN GET ONE, YOUR HONOR. OBVIOUSLY, WE

21 DISCUSSED THE INTERPRETER ASPECT BEFORE. HIS CONCERN, AND

22 FRANKLY, EVERY TIME I'VE EVER MET WITH HIM AND MISTER STODDARD, TO

23 MY KNOWLEDGE, EVERY TIME HE'S MET WITH HIM, THERE'S NEVER BEEN AN

24 INTERPRETER PRESENT.

25 THE COURT: RIGHT.

1 **MS. JOHNSON:** AND WE'VE ALWAYS BEEN ABLE TO COMMUNICATE. I'VE
2 GOTTEN LETTERS FROM HIM THAT ARE, YOU KNOW, PERFECTLY
3 UNDERSTANDABLE. WE CAN GET ONE, BUT ONE OF HIS CONCERNS WAS,
4 WITH THE INTERPRETATION, HE'S LISTENING IN ENGLISH AND ALSO HAVING
5 SOMEBODY SPEAK TO HIM. HE THOUGHT IT MIGHT BE MORE CONFUSING
6 HAVING AN INTERPRETER PRESENT. I'M HAPPY TO CALL SOMEONE. I HAVE
7 SOMEONE I THINK WE CAN GET HERE RELATIVELY QUICKLY IF WE NEED TO.

8 **THE COURT:** WELL, LISTEN, YOU'VE DEALT WITH THIS GENTLEMAN. I
9 HAVEN'T. MY CONCERN IS IT'S JUST NOT, WHAT I'M ASKING HIM IS JUST NOT
10 SINKING IN. I KNOW HE'S NERVOUS AND WE ALL UNDERSTAND THAT.

11 **MS. JOHNSON:** RIGHT.

12 **THE COURT:** AND A CERTAIN AMOUNT OF THAT GOES TO BEING
13 NERVOUS.

14 **MS. JOHNSON:** RIGHT.

15 **THE COURT:** BUT --

16 **MS. JOHNSON:** AND I DID ASK HIM THAT IF HE HAD ANY QUESTION
17 ABOUT WHAT YOU WERE ASKING TO PLEASE LET ME KNOW AND THEN IF
18 THERE WAS -- I DON'T THINK IT'S SO MUCH TROUBLE UNDERSTANDING THE
19 LANGUAGE AS IT IS, THIS IS HIS FIRST TIME IN A COURT OF GENERAL
20 SESSIONS AND THIS IS-- THE WHOLE PROCESS IS NEW TO HIM AND SO IT'S
21 NOT JUST THAT THERE'S A LANGUAGE BARRIER, BUT IT'S A, YOU KNOW, NEW
22 TO THE PROCESS.

23 **THE COURT:** I UNDERSTAND. WELL, LET ME ASK YOU, COUNSEL, HOW
24 LONG HAVE YOU BEEN DEALING WITH THIS GENTLEMAN?

25 **MS. JOHNSON:** YOUR HONOR, I'VE REPRESENTED HIM SINCE MAY OF

1 2009, SO OVER A YEAR.

2 THE COURT: AND MISTER STODDARD, HOW LONG HAVE YOU
3 REPRESENTED HIM?

4 MR. STODDARD: ABOUT A -- I REPRESENTED HIM FOR ABOUT A MONTH.
5 I GOT OFF THE CASE AND I'VE BEEN BACK IN IT FOR ABOUT A MONTH.

6 THE COURT: WELL, DURING ANY OF EITHER ONE OF Y'ALL'S DEALINGS
7 WITH MR. CABARRUVIAS, AM I PRONOUNCING HIS NAME RIGHT?

8 MS. JOHNSON: COBRRUVIAS.

9 THE COURT: COBRUVIAS. HAS THERE EVER BEEN ANY INDICATION
10 THAT THERE WAS A LANGUAGE BARRIER, THAT HE DIDN'T UNDERSTAND AND
11 WAS ABLE TO COMMUNICATE WITH YOU ABOUT THE CASE?

12 MS. JOHNSON: THERE'S NEVER BEEN ANY PROBLEM WITH THE
13 LANGUAGE. AGAIN, SOMETIMES, WITH PEOPLE WHO ARE NOT FROM THE
14 UNITED STATES AND MAY NOT BE AS AWARE OF THE JUDICIAL SYSTEM HERE,
15 CONCEPTS SUCH AS JURY TRIALS, WAIVING RIGHTS, THOSE ARE -- AND
16 FRANKLY, I HAVE TO EDUCATE A LOT OF MY CLIENTS AS TO WHAT THOSE
17 ACTUALLY MEAN, BUT NO, I DO NOT THINK IT'S A LANGUAGE PROBLEM. I'VE
18 ALWAYS BEEN ABLE TO UNDERSTAND HIM AND, YOU KNOW, HE SAYS THAT
19 HE UNDERSTANDS ME AND OUR CONVERSATIONS AND I'VE NEVER GOTTEN
20 AN INDICATION FROM ANYTHING THAT HE HAS SAID THAT I THOUGHT, "OH,
21 WAIT, HE DIDN'T UNDERSTAND SOME CONCEPT AS I WAS DISCUSSING IT."

22 THE COURT: YOU AGREE WITH THAT MISTER STODDARD?

23 MR. STODDARD: I AGREE WITH THAT.

24 THE COURT: MISTER CABARRUVIAS, DO YOU UNDERSTAND WHAT
25 YOUR ATTORNEY JUST STATED?

1 **MR. CABARRUVIAS:** I UNDERSTAND.

2 **THE COURT:** AND SO, THE MAIN THING I WANT TO MAKE SURE BEFORE
3 WE GO FORWARD IS THAT THERE'S NO LANGUAGE BARRIER BETWEEN YOU
4 AND I AND THAT YOU UNDERSTAND COMPLETELY WHAT YOU ARE DOING AND
5 THE CONSEQUENCES OF WHAT YOU ARE DOING.

6 **MR. CABARRUVIAS:** YES, YOUR HONOR. I UNDERSTAND.

7 **THE COURT:** YOU DO UNDERSTAND?

8 **MR. CABARRUVIAS:** YES.

9 **THE COURT:** LET ME GO BACK, PLEASE, AND GO OVER WITH YOU ---

10 **MR. CABARRUVIAS:** OKAY.

11 **THE COURT:** ON TWO OF THE CHARGES THAT YOU ARE PLEADING TO, I
12 COULD SENTENCE YOU TO FIFTEEN YEARS A PIECE. DO YOU UNDERSTAND?

13 **MR. CABARRUVIAS:** YES, SIR.

14 **THE COURT:** THAT MEANS I COULD SENTENCE YOU TO THIRTY YEARS
15 FOR JUST THOSE TWO. THE OTHER CHARGE, THE FELONY D-U-I RESULTING
16 IN DEATH, I COULD SENTENCE YOU TO TWENTY-FIVE YEARS. DO YOU
17 UNDERSTAND?

18 **MR. CABARRUVIAS:** (NODS HEAD)

19 **THE COURT:** YOU HAVE TO GIVE ME A VERBAL RESPONSE.

20 **MR. CABARRUVIAS:** YES, SIR.

21 **THE COURT:** THAT MEANS, ALL SAID AND DONE TODAY, I COULD
22 SENTENCE YOU TO FIFTY-FIVE YEARS IN PRISON. DO YOU UNDERSTAND
23 THAT?

24 **MR. CABARRUVIAS:** YES, SIR.

25 **THE COURT:** KNOWING THAT, DO YOU WANT TO GO FORWARD WITH

1 YOUR GUILTY PLEA TODAY?

2 MR. CABARRUVIAS: YES, SIR.

3 THE COURT: HAS ANYBODY FORCED, THREATENED OR PROMISED YOU
4 ANYTHING TO GET YOU TO PLEAD GUILTY?

5 MR. CABARRUVIAS: NO, SIR.

6 THE COURT: ARE YOU PLEADING GUILTY FREELY AND VOLUNTARILY?

7 MR. CABARRUVIAS: VOLUNTARY.

8 THE COURT: DO YOU UNDERSTAND AS MS. JOHNSON WAS SAYING TO
9 ME EARLIER, THAT YOU HAVE A RIGHT TO A JURY TRIAL ON THESE CHARGES?

10 MR. CABARRUVIAS: YES, SIR.

11 THE COURT: IN THAT CASE, TWELVE PEOPLE WOULD BE SELECTED
12 FROM A PANEL AND THEY WOULD SIT AND MAKE A DETERMINATION OF
13 WHETHER OR NOT YOU WERE GUILTY OR INNOCENT. DO YOU UNDERSTAND
14 THAT?

15 MR. CABARRUVIAS: YES, SIR.

16 THE COURT: IN THAT TRIAL, YOU WOULD BE PRESUMED TO BE
17 INNOCENT. THE STATE WOULD HAVE TO PROVE EACH AND EVERY ELEMENT
18 OF ALL THREE CHARGES AGAINST YOU BEYOND A REASONABLE DOUBT. DO
19 YOU UNDERSTAND THAT?

20 MR. CABARRUVIAS: YES, SIR.

21 THE COURT: DO YOU WISH TO HAVE A JURY TRIAL OR DO YOU WISH TO
22 PLEAD GUILTY?

23 MR. CABARRUVIAS: I GUESS PLEAD GUILTY.

24 THE COURT: DO YOU VOLUNTARILY GIVE UP YOUR RIGHT TO A JURY
25 TRIAL?

1 **MR. CABARRUVIAS:** YEAH.

2 **THE COURT:** WHAT DID HE SAY?

3 **MS. JOHNSON:** HE SAID, "YEAH."

4 (MISTER CABARRUVIAS SPEAKS TO MS. JOHNSON)

5 **MS. JOHNSON:** RIGHT. SO, WHAT HE'S ASKING IS, IF HE ACCEPTS YOUR
6 PLEA TODAY, YOU WILL NOT GET A JURY TRIAL. DO YOU UNDERSTAND THAT?

7 **MR. CABARRUVIAS:** YEAH. I UNDERSTAND.

8 **MS. JOHNSON:** AND YOU DO NOT WANT A JURY TRIAL?

9 **MR. CABARRUVIAS:** I DON'T WANT A JURY TRIAL.

10 **THE COURT:** JUST TO MAKE SURE THAT WE'RE CLEAR WITH EACH
11 OTHER, MISTER CABARRUVIAS, BY PLEADING GUILTY, YOU ARE TELLING ME I
12 DO NOT WANT TWELVE PEOPLE TO DECIDE WHETHER I'M GUILTY OR
13 INNOCENT. DO YOU UNDERSTAND?

14 **MR. CABARRUVIAS:** I UNDERSTAND.

15 **THE COURT:** IS THAT WHAT YOU ARE TELLING ME, THAT "I DO NOT
16 WANT TWELVE PEOPLE TO DECIDE. I WANT TO ADMIT MY GUILT TODAY IN
17 COURT?"

18 **MR. CABARRUVIAS:** YES, SIR.

19 **THE COURT:** ARE YOU FREELY AND VOLUNTARILY GIVING UP YOUR
20 RIGHT TO A JURY TRIAL OR WHAT WE CALL WAIVING YOUR RIGHT TO A JURY
21 TRIAL?

22 **MR. CABARRUVIAS:** I DON'T BELIEVE THAT I NEED TO WHAT HE IS
23 SAYING. (HE SPEAKS TO MS. JOHNSON)

24 **THE COURT:** I WANT YOU TO SIT HIM DOWN. I JUST DON'T FEEL
25 COMFORTABLE WITH HIM RIGHT NOW.

1 **MS. JOHNSON:** OKAY.

2 **THE COURT:** THINK ABOUT IT. WE'LL GO BACK OVER IT OR WHATEVER,
3 BUT THIS JUST SEEMS TO BE TOO MUCH OF A BARRIER BETWEEN MY
4 QUESTIONS AND HIS RESPONSES FOR ME TO FEEL GOOD ABOUT THIS.

5 **MS. JOHNSON:** DO YOU WANT ME TO ATTEMPT TO GET THE
6 TRANSLATOR HERE AND SEE IF THAT HELPS?

7 **THE COURT:** WELL, YEAH. LISTEN, YOU'VE BEEN WITH HIM LONGER
8 THAN I HAVE AND MS. JOHNSON, YOU ARE A FINE, FINE LAWYER AND I KNOW
9 THAT YOU KNOW WHAT YOU ARE DOING. SO, IF YOU THINK THAT WILL HELP,
10 LET'S DO IT. IF YOU DON'T, LET'S JUST LET HIM SIT DOWN AND KIND OF GET
11 READJUSTED OR WHATEVER.

12 **MS. JOHNSON:** OKAY.

13 **THE COURT:** OKAY? THANK YOU. I'M SORRY, GUYS.

14 **CONTINUING WITH THE HEARING LATER THAT DAY**

15 (THE INTERPRETER, MISTER GUILBERTO GONZALEZ, IS DULY SWORN
16 BY THE CLERK OF COURT)

17 **THE COURT:** MISTER CABARRUVIAS, YOU ARE STILL UNDER OATH. YOU
18 HAVE PREVIOUSLY BEEN SWORN.

19 **MR. CABARRUVIAS:** YES.

20 **THE COURT:** JUST FOR THE RECORD, I PREVIOUSLY ATTEMPTED TO GO
21 THROUGH THE GUILTY PLEA SOLILOQUY WITH MISTER CABARRUVIAS, BUT
22 BASED ON HIS RESPONSES, I WAS NOT SATISFIED THAT HE WAS
23 UNDERSTANDING THE PROCESS AND OUT OF AN ABUNDANCE OF CAUTION,
24 MS. JOHNSON AND MISTER STODDARD HAVE OBTAINED THE SERVICES OF AN
25 INTERPRETER SO THAT THERE'S NO QUESTION THAT MISTER CABARRUVIAS

1 UNDERSTANDS WHAT HE IS DOING TODAY. DO YOU AGREE WITH THAT?

2 MS. JOHNSON: YES, SIR.

3 THE COURT: THANK YOU VERY MUCH FOR DOING THAT. MISTER
4 CABARRUVIAS, PREVIOUSLY I WAS EXPLAINING TO YOU THAT IF YOU GO
5 FORWARD WITH YOUR GUILTY PLEA, I COULD SENTENCE YOU TO FIFTY-FIVE
6 YEARS IN PRISON TODAY. DO YOU UNDERSTAND?

7 MR. CABARRUVIAS: YES, SIR.

8 THE COURT: KNOWING THAT, DO YOU WANT TO GO FORWARD WITH
9 YOUR GUILTY PLEA TODAY?

10 MR. CABARRUVIAS: YES, SIR.

11 THE COURT: HAS ANYBODY FORCED, THREATENED OR PROMISED YOU
12 ANYTHING TO GET YOU TO PLEAD GUILTY?

13 MR. CABARRUVIAS: NO, SIR.

14 THE COURT: ARE YOU PLEADING GUILTY FREELY AND VOLUNTARILY?

15 MR. CABARRUVIAS: YES, SIR.

16 THE COURT: MISTER CABARRUVIAS, YOU HAVE A RIGHT TO A JURY
17 TRIAL AND AS I WAS EXPLAINING TO YOU EARLIER, TWELVE INDIVIDUALS
18 WOULD BE SELECTED TO SIT AND DETERMINE WHETHER YOU WOULD BE
19 FOUND GUILTY OR NOT GUILTY. DO YOU UNDERSTAND?

20 MR. CABARRUVIAS: I UNDERSTOOD. YES.

21 THE COURT: IN ORDER TO BE FOUND GUILTY, ALL TWELVE JURORS
22 WOULD HAVE TO, UNANIMOUSLY, FIND YOU GUILTY. DO YOU UNDERSTAND?

23 MR. CABARRUVIAS: YES, SIR.

24 THE COURT: IN THAT TRIAL, YOU WOULD BE PRESUMED TO BE
25 INNOCENT AND THE STATE WOULD HAVE TO PROVE EACH AND EVERY

1 ELEMENT OF ALL CHARGES AGAINST YOU BEYOND A REASONABLE DOUBT.
2 DO YOU UNDERSTAND THAT?

3 MR. CABARRUVIAS: I UNDERSTOOD.

4 THE COURT: WHEN YOU PLEAD GUILTY, YOU ARE SAYING, "I DO NOT
5 WANT A JURY TRIAL."

6 MR. CABARRUVIAS: YES. I DO NOT WANT A JURY TRIAL.

7 THE COURT: DO YOU WISH TO VOLUNTARILY GIVE UP YOUR RIGHT TO A
8 JURY TRIAL?

9 MR. CABARRUVIAS: NO. (INTERPRETER SPEAKS AGAIN TO MISTER
10 CABARRUVIAS) I DO WISH TO NOT HAVE A JURY TRIAL.

11 THE COURT: MISTER CABARRUVIAS, YOU HAVE THE FOLLOWING
12 CONSTITUTIONAL RIGHTS IN ADDITION TO THE RIGHT TO A JURY TRIAL. YOU
13 HAVE THE RIGHT TO CONFRONT ANY ONE WHO TESTIFIES AGAINST YOU AND
14 THE RIGHT TO CROSS EXAMINE THOSE PEOPLE. DO YOU UNDERSTAND THAT
15 RIGHT?

16 MR. CABARRUVIAS: YES, SIR.

17 THE COURT: ALSO, MISTER CABARRUVIAS, YOU HAVE THE
18 CONSTITUTIONAL RIGHT TO PRESENT OR TO INTRODUCE COMPETENT
19 EVIDENCE IN YOUR DEFENSE IN A TRIAL. DO YOU UNDERSTAND?

20 MR. CABARRUVIAS: I UNDERSTOOD.

21 THE COURT: IN ADDITION, IF YOU WERE TO GO TO TRIAL, YOU HAVE A
22 RIGHT TO REMAIN SILENT OR NOT TO TESTIFY. DO YOU UNDERSTAND?

23 MR. CABARRUVIAS: I UNDERSTOOD.

24 THE COURT: IF YOU WENT TO TRIAL AND DID NOT TESTIFY, THE JUDGE
25 WOULD INSTRUCT THE JURY THAT THEY COULDN'T HOLD THAT AGAINST YOU

1 IN ANY FORM OR FASHION. DO YOU UNDERSTAND?

2 MR. CABARRUVIAS: YES, SIR.

3 THE COURT: THE JUDGE WOULD INSTRUCT THE JURY THAT THEY
4 COULDN'T EVEN CONSIDER THE FACT THAT YOU DIDN'T TESTIFY. DO YOU
5 UNDERSTAND THAT?

6 MR. CABARRUVIAS: YES, SIR.

7 THE COURT: IF YOU GO FORWARD WITH YOUR GUILTY PLEA TODAY,
8 YOU ARE TELLING ME THAT, "I DO NOT WISH TO AVAIL MYSELF OF THESE
9 CONSTITUTIONAL PROTECTIONS."

10 MR. CABARRUVIAS: CORRECT.

11 THE COURT: DO YOU UNDERSTAND?

12 MR. CABARRUVIAS: I UNDERSTOOD.

13 THE COURT: DO YOU WISH TO WAIVE THESE CONSTITUTIONAL RIGHTS
14 AND INSTEAD PLEAD GUILTY TODAY?

15 MR. CABARRUVIAS: YES.

16 THE COURT: MISTER CABARRUVIAS, IF YOU MAINTAIN THAT YOU HAVE A
17 DEFENSE TO ANY OF THESE CHARGES, YOU GIVE UP THE RIGHT TO ASSERT
18 THAT DEFENSE OR DEFENSES BY PLEADING GUILTY.

19 MR. CABARRUVIAS: I UNDERSTOOD.

20 THE COURT: IN ADDITION, YOU ARE ADMITTING THE ALLEGATIONS THAT
21 THE STATE MAKES AGAINST YOU AS BEING TRUE. IN OTHER WORDS, YOU
22 ARE SAYING, "I AGREE WITH WHAT THE STATE SAYS."

23 MR. CABARRUVIAS: YES, SIR.

24 THE COURT: MISTER CABARRUVIAS, IF YOU MAINTAIN THAT THERE HAS
25 BEEN A VIOLATION OF YOUR CONSTITUTIONAL RIGHTS UP TO THIS POINT,

1 YOU LOOSE THE RIGHT TO COMPLAIN OF THAT VIOLATION BY PLEADING
2 GUILTY TODAY. DO YOU UNDERSTAND?

3 **MR. CABARRUVIAS:** I UNDERSTOOD.

4 **THE COURT:** DO YOU UNDERSTAND ALL THE QUESTIONS THAT I'VE
5 ASKED YOU THUS FAR?

6 **MR. CABARRUVIAS:** I UNDERSTOOD.

7 **THE COURT:** KNOWING ALL THIS, DO YOU WANT TO GO FORWARD WITH
8 YOUR PLEA?

9 **MR. CABARRUVIAS:** YES.

10 **THE COURT:** ALL RIGHT, SIR. UNDER INDICTMENT 2009-1940, THE
11 CHARGE OF FELONY D-U-I RESULTING IN DEATH, ARE YOU GUILTY?

12 **MR. CABARRUVIAS:** YES, SIR.

13 **THE COURT:** IN THE INDICTMENT IT SAYS THAT, "ON OR ABOUT MAY 16,
14 2009, WHILE YOU WERE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS,
15 THAT YOU CAUSED THE DEATH OF KATIE EATON BY DRIVING LEFT OF CENTER
16 OR DRIVING TOO FAST FOR CONDITIONS. DO YOU ADMIT THESE
17 ALLEGATIONS?

18 **MR. CABARRUVIAS:** YES, SIR.

19 **THE COURT:** DO YOU ADMIT THAT YOU WERE UNDER THE INFLUENCE
20 OF ALCOHOL OR DRUGS AT THE TIME OF THAT ACCIDENT?

21 **MR. CABARRUVIAS:** YES, SIR.

22 **THE COURT:** UNDER INDICTMENT 2009-1994, FELONY D-U-I RESULTING
23 IN GREAT BODILY HARM. IT SAYS THAT ON MAY 16, 2009, WHILE YOU WERE
24 UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR A COMBINATION OF
25 THOSE, THAT YOU CAUSED GREAT BODILY INJURY TO RAYMOND SIGMON.

1 THAT WHILE YOU WERE INTOXICATED, YOU DROVE LEFT OF CENTER, THAT
2 YOU FAILED TO USE DUE CARE OR DROVE TOO FAST FOR CONDITIONS. DO
3 YOU ADMIT THOSE ALLEGATIONS?

4 MR. CABARRUVIAS: YES, SIR.

5 THE COURT: UNDER INDICTMENT 2009-1993, FELONY D-U-I RESULTING
6 IN GREAT BODILY HARM. THE INDICTMENT SAYS THAT ON OR ABOUT MAY 16,
7 2009, THAT WHILE YOU WERE UNDER THE INFLUENCE OF ALCOHOL OR
8 DRUGS OR A COMBINATION OF THAT AND THAT WHILE INTOXICATED, YOU
9 DROVE A MOTOR VEHICLE LEFT OF CENTER, FAILED TO USE DUE CARE,
10 AND/OR DROVE TOO FAST FOR CONDITIONS RESULTING IN GREAT BODILY
11 INJURY TO SUSAN SIGMON. DO YOU ADMIT THOSE ALLEGATIONS?

12 MR. CABARRUVIAS: YES.

13 THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF YOUR
14 ATTORNEYS, BOTH MS. JOHNSON AND MISTER STODDARD?

15 MR. CABARRUVIAS: YES, SIR.

16 THE COURT: HAVE BOTH YOUR ATTORNEYS REASONABLY DONE ALL
17 THAT YOU ASKED OF THEM?

18 MR. CABARRUVIAS: YES.

19 THE COURT: AS WE STAND HERE IN COURT TODAY, IS THERE ANYTHING
20 THAT YOU CONTEND THAT YOUR ATTORNEYS HAVE NOT DONE TO EITHER
21 INVESTIGATE OR PREPARE YOUR CASES THAT THEY SHOULD HAVE DONE
22 PRIOR TO COMING TO COURT TODAY?

23 MR. CABARRUVIAS: (SPEAKING WITHOUT THE INTERPRETER) I HAVE A
24 RIGHT SHOULDER AND INJURY TO COLLARBONE AND I SAY TO THEM WHEN I
25 WAS IN WILLIAMSTON ON 323 IN CUSTODY AND I STILL HAVE SOME MONEY

1 **THAT HE OWED ME AND LET ME EXPLAIN JUST A LITTLE BIT ---**

2 **THE COURT: STOP FOR A SECOND. WHAT IS HE SAYING, PLEASE?**

3 **MR. GONZALEZ: HE IS TRYING TO EXPLAIN SOMETHING THAT HE DID**
4 **BEFORE THE ACCIDENT HAPPENED.**

5 **THE COURT: OKAY. I'M NOT ASKING YOU THAT AT ALL.**

6 **MR. CABARRUVIAS: YES.**

7 **THE COURT: AND MISTER CABARRUVIAS. I NEED YOU TO LISTEN TO MY**
8 **QUESTION AND ANSWER THE QUESTION. I WILL GIVE YOU SUFFICIENT TIME**
9 **TO MAKE ANY EXPLANATION YOU'D LIKE. OKAY?**

10 **MR. CABARRUVIAS: YES, SIR.**

11 **THE COURT: MY QUESTION WAS, IS THERE ANYTHING THAT YOU**
12 **CONTEND THAT YOUR ATTORNEYS HAVE NOT DONE TO EITHER INVESTIGATE**
13 **OR PREPARE YOUR CASES THAT THEY SHOULD HAVE DONE PRIOR TO**
14 **COMING TO COURT TODAY?**

15 **MR. CABARRUVIAS: I DON'T BELIEVE SO.**

16 **THE COURT: ARE YOU COMPLETELY SATISFIED WITH THE SERVICES OF**
17 **YOUR ATTORNEYS?**

18 **MR. CABARRUVIAS: YES, SIR.**

19 **THE COURT: AND THAT IS BOTH MISTER STODDARD AND MS. JOHNSON.**

20 **MR. CABARRUVIAS: YES, SIR.**

21 **THE COURT: ALL RIGHT. COUNSEL, HAVE YOU HAD THE CHANCE TO**
22 **MEET WITH MISTER CABARRUVIAS TO EXPLAIN THE ELEMENTS OF ALL THREE**
23 **OF THESE INDICTMENTS TO HIM, THE TIME HE COULD GET ON THESE**
24 **INDICTMENTS, EXPLORE WITH HIM WHETHER HE HAS ANY DEFENSES TO THE**
25 **CHARGES AND ALSO EXPLAIN TO HIM HIS CONSTITUTIONAL RIGHTS?**

1 **MS. JOHNSON:** YES, SIR. I HAVE.

2 **MR. STODDARD:** YES, SIR.

3 **THE COURT:** SO, BOTH OF YOU HAVE?

4 **MS. JOHNSON:** YES, SIR.

5 **MR. STODDARD:** DO YOU FEEL LIKE THERE IS A SUBSTANTIAL, FACTUAL
6 BASIS FOR YOUR CLIENTS DECISION TO PLEAD GUILTY?

7 **MS. JOHNSON:** I DO.

8 **MR. STODDARD:** YES, SIR.

9 **THE COURT:** DO YOU AGREE WITH HIS DECISION TO PLEAD GUILTY?

10 **MS. JOHNSON:** YES, SIR.

11 **MR. STODDARD:** YES, SIR.

12 **THE COURT:** THANK YOU VERY MUCH.

13 **MS. BYFORD:** YOUR HONOR, MAY IT PLEASE THE COURT, THIS
14 COLLISION OCCURRED ON MAY 16, 2009. THE DEFENDANT WAS DRIVING ON
15 U.S. 29 IN ANDERSON COUNTY WHEN HE LOST CONTROL OF HIS VEHICLE AND
16 HE WAS DRIVING TOO FAST IN A HEAVY RAIN, HYDROPLANED AND CROSSED
17 OVER THE YELLOW LINE AND HIT A VAN CARRYING THE THREE VICTIMS
18 HEAD-ON, ALMOST HEAD-ON, YOUR HONOR. WHEN HE WAS – THERE WAS
19 ANOTHER VEHICLE THAT WAS BEHIND HIM THAT WITNESSED THE ACCIDENT.
20 ALL THREE OF THOSE INDIVIDUALS GOT OUT IMMEDIATELY. WHEN THEY GOT
21 TO THE CAR, THEY FOUND THIS DEFENDANT UNCONSCIOUS BEHIND THE
22 WHEEL. THERE WAS NO ONE ELSE IN THE CAR. HE WAS TRANSPORTED TO
23 THE HOSPITAL. THE NURSES AND E-M-S ADVISED THE HIGHWAY PATROL
24 THAT HE SMELLED STRONGLY OF ALCOHOL. HIS BLOOD WAS DRAWN,
25 TESTED AT SLED AND HIS ALCOHOL LEVEL WAS A .271. SUSAN SIGMON,

1 YOUR HONOR, SUSTAINED A SERIOUS NECK INJURY IN THIS ACCIDENT, A
2 CRUSHED HEEL ON HER RIGHT FOOT, TWO CRACKED RIBS, SHE GOT FLUID IN
3 HER LUNGS, I THINK SHE HAD A SLIGHT PUNCTURE FROM HER BROKEN RIBS,
4 AND SHE ALSO BRUISED HER SPLEEN. RAYMOND SIGMON HAD A BROKEN
5 LEFT ANKLE THAT REQUIRED IMMEDIATE SURGERY AND TWO BROKEN RIBS.
6 YOUR HONOR, THEY DID NOT WANT TO COME TODAY. I THINK IT'S STILL
7 DIFFICULT FOR MS. SIGMON TO GET AROUND AND THEY REALLY DIDN'T WANT
8 TO RE-LIVE THIS AGAIN, BUT THEY WOULD HAVE COME IF THEY HAD HAD TO
9 TESTIFY SINCE IT WAS ON THE TRIAL DOCKET THIS WEEK. MS. KATIE EATON,
10 YOUR HONOR, SUFFERED NUMEROUS INTERNAL INJURIES, MOST
11 IMPORTANTLY TO HER KIDNEYS AND LUNGS. SHE WAS IN I-C-U FOR ABOUT
12 FIVE DAYS, YOUR HONOR, BEFORE SHE PASSED AWAY DUE TO RENAL
13 FAILURE AND PNEUMONIA, WHICH WERE CAUSED FROM THE BRUISES TO THE
14 KIDNEYS AND THE LUNGS SHE SUSTAINED IN THE ACCIDENT. HER BROTHER,
15 MISTER GEORGE KIRK IS HERE, YOUR HONOR. HE DOES NOT WISH TO
16 ADDRESS THE COURT, BUT HE DOES BELIEVE THAT GIVEN THE DEFENDANT'S
17 ALCOHOL LEVEL AND THE INJURIES AND, OBVIOUSLY, THE DEATH OF HIS
18 SISTER, THAT THIS DOES DESERVE THE MAXIMUM SENTENCE AND THE STATE
19 WOULD AGREE WITH THAT, YOUR HONOR. HE DOES HAVE A PRIOR 2001 D-U-I
20 AND ALSO AN IMPLIED CONSENT VIOLATION BECAUSE IN THAT 2001 D-U-I, HIS
21 B-A-C WAS HIGHER THAN .15 UNDER THE OLD LAW. HE ALSO HAS AN I.C.E.
22 DETAINER ON HIM FROM IMMIGRATION.

23 THE COURT: ALL RIGHT, COUNSEL, TELL ME ABOUT HIM.

24 MS. JOHNSON: YOUR HONOR, IF I MAY BEGIN. YOU'VE HEARD A LITTLE
25 OF HIS BACKGROUND EARLIER. MISTER CABARRUVIAS CELEBRATED HIS

1 45TH BIRTHDAY FOUR WEEKS AGO IN THE ANDERSON COUNTY DETENTION
2 CENTER. HE HAS BEEN THERE 476 DAYS AS OF TODAY'S DATE.

3 THE COURT: FOUR HUNDRED AND SEVENTY-SIX?

4 MS. JOHNSON: YES, SIR. AS HE TOLD YOU EARLIER, HE IS MARRIED TO
5 THE MOTHER OF HIS CHILDREN. HE HAS FOUR CHILDREN AND TWO
6 GRANDCHILDREN. ONE OF THE GRAND BABIES WAS BORN SINCE HE HAS
7 BEEN HERE IN THE ANDERSON DETENTION CENTER. HE HAS LIVED IN THE
8 UNITED STATES ABOUT TWENTY-EIGHT YEARS AND HE CAME HERE AS A
9 TEENAGER, AS AN OLDER TEENAGER, WHERE AS HE INDICATED, HE WAS
10 ENROLLED IN SCHOOL FOR A PERIOD OF TIME IN CALIFORNIA, BUT DID NOT
11 COMPLETE THAT BECAUSE HE WENT TO WORK. YOUR HONOR, HIS FAMILY IS
12 ALL HERE IN ANDERSON NOW. IF I COULD ASK THE FAMILY MEMBERS JUST
13 TO STAND UP SO THE COURT CAN SEE WHO IS HERE WITH HIM. (FAMILY
14 MEMBERS COMPLY) HIS BROTHER, HIS WIFE, HIS CHILDREN.

15 THE COURT: THANK YOU.

16 MS. JOHNSON: AS YOU CAN SEE, HE DOES HAVE A LARGE AND
17 EXTENDED FAMILY IN THIS AREA. OTHER THAN THE PRIOR D-U-I, WHICH I
18 UNDERSTAND GIVEN THE KIND OF CASE WE'RE HERE FOR IS A SERIOUS
19 CONCERN FOR THE COURT, HE HAS NOT HAD ANY OTHER INTERACTIONS
20 WITH LAW ENFORCEMENT. HE IS SOMEONE WHO HAS WORKED HARD
21 DESPITE HIS RELATIVE LACK OF FORMAL EDUCATION. HE HAS LEARNED THE
22 LANGUAGE OF THIS COUNTRY, HE HAS LEARNED HOW TO -- HE IS A
23 CARPENTER, AN ELECTRICIAN, HE DOES HVAC WORK. AS HE BEGAN TO
24 EXPLAIN EARLIER, HE HAD WORKED FOR SOMEONE IN TAYLORS DOING -- HE
25 HAD A TRAILER PARK, BASICALLY, THAT HE MAINTAINED FOR THAT

1 INDIVIDUAL, BUT LEADING UP TO THE TIME SHORTLY BEFORE THIS ACCIDENT
2 OCCURRED, HE HAD ACTUALLY BEEN SOBER FOR A WHILE. HIS PASTOR WAS
3 HERE ON MONDAY AND I SPOKE WITH HIM. HIS PASTOR HAD BEEN HELPING
4 HIM TRY TO STAY ON A PATH TO SOBRIETY, BUT I THINK WHAT HAPPENED,
5 HE'D BEEN SOBER FOR ABOUT SIX MONTHS PRIOR TO THIS HAPPENING AND
6 HE HAD PURCHASED A TRAILER FOR HIS FAMILY. AT THE TIME HE WAS
7 WORKING TO TRY TO GET THAT FIXED. HE HAD THE WHOLE FAMILY LIVING
8 WITH HIM AND THEY DID NOT HAVE RUNNING WATER AT THIS
9 ESTABLISHMENT AND HE WAS TRYING TO IMPROVE THE SITUATION THAT
10 THEY HAD, BUT HE WAS HAVING DIFFICULTY FINDING WORK. HE HAD
11 PRINTED UP BUSINESS CARDS, WHICH HE SAID, YOU KNOW, "I'VE GONE TO
12 WAL-MART, THE GAS STATION," OR WHATEVER. HE IS SOMEBODY WHO HAS
13 TRIED TO WORK AND I THINK JUST REALLY AT THE TIME THIS HAPPENED HE
14 FELT VERY DOWN ON HIS LUCK. THE FRIDAY EVENING BEFORE THIS
15 ACCIDENT OCCURRED ON SATURDAY, THE FRIDAY EVENING BEFORE THIS
16 HAPPENED, HE SAID THAT HE HAD BOUGHT SOME COORS LIGHT AND HAD
17 SEVERAL THAT EVENING AND WHEN HE GOT UP THE NEXT MORNING, HE HAD
18 A FEW MORE. WHAT HE WAS TRYING TO ALLUDE TO EARLIER, THE MORNING
19 THAT THIS HAPPENED, THERE WERE TWO INDIVIDUALS WHO WERE FRIENDS
20 OF HIS. ONE HAD RECENTLY GONE TO WORK WITH A FELLOW DOING SOME
21 CONSTRUCTION WORK AND THOUGHT THAT HE MIGHT BE ABLE TO GET ON
22 WITH THAT GUY TO WORK FOR HIM. SO, HE HAD GONE OVER TO HIS
23 FRIEND'S HOUSE. THAT FRIEND, BOTH OWED HIM MONEY WHICH HE WAS
24 TRYING TO COLLECT, BUT HE ALSO HAD POTENTIAL JOB, YOU KNOW,
25 POTENTIALLY LINED UP FOR HIM. HE HAD, AGAIN, HE HAD BEEN DRINKING

1 THAT MORNING. HE ACTUALLY DOES NOT REMEMBER THE ACCIDENT
2 HAPPENING. THE LAST THING THAT HE REMEMBERS IS GETTING INTO HIS
3 VAN -- AND IT WAS HIS VAN THAT WAS INVOLVED IN THIS ACCIDENT --
4 GETTING INTO HIS VAN, GETTING INTO THE PASSENGER SIDE AND ASKING
5 THIS OTHER INDIVIDUAL TO GIVE HIM A RIDE. HOWEVER, I THINK BECAUSE OF
6 THE HIGH BLOOD ALCOHOL CONCENTRATION AND, AS WAS MENTIONED
7 WHEN HE WAS FOUND AT THE SCENE OF THE ACCIDENT, EVEN THOUGH
8 THESE INDIVIDUALS RAN UP TO THE CAR TRYING TO GET HIM TO RESPOND,
9 HE WAS NOT RESPONSIVE AT THAT TIME, SO THERE'S NO DOUBT IN MY MIND
10 THAT HE DOES NOT REMEMBER BEING IN THE ACCIDENT. SO, YOU KNOW, HE
11 OBVIOUSLY LEFT THERE. FROM A REVIEW OF THE EVIDENCE IN THIS CASE,
12 THERE ARE, AS MS. BYFORD MENTIONED, THERE WERE THREE WITNESSES
13 WHO WERE IN A TRUCK THAT WAS FOLLOWING HIM ON 29 THAT SAW THE
14 ACCIDENT HAPPEN, WHO STOPPED AND IMMEDIATELY WENT TO RENDER AID.
15 THEY ACTUALLY WENT TO HIS VEHICLE FIRST. THERE WERE THREE
16 INDIVIDUALS IN THE OTHER CAR THAT HE STRUCK. IT WAS A SMALLER BUICK
17 AND HE WAS IN LIKE A CHEVY ASTRO VAN. THE PASSENGER SIDE OF HIS
18 VEHICLE WAS BASICALLY CRUSHED IN. THERE WAS NO WAY THAT ANYONE
19 COULD HAVE EXITED THE PASSENGER SIDE DOOR AND THERE ACTUALLY
20 WASN'T A PASSENGER REAR DOOR ON THE CAR, JUST THE FRONT
21 PASSENGER DOOR. SO, I THINK FROM A REVIEW OF THE EVIDENCE, WHICH
22 MISTER STODDARD AND I HAVE SPENT A GREAT DEAL OF TIME GOING
23 THROUGH THAT WITH HIM, WE REVIEWED THE DOCUMENTS THAT CAME WITH
24 THE REPORTS, INTERVIEWS ACTUALLY CONDUCTED OVER THE PHONE BY
25 THE HIGHWAY PATROL, WITH THE THREE WITNESSES, OBVIOUSLY

1 NUMEROUS PICTURES, VIDEOS TAKEN OF THE ACCIDENT. AFTER REVIEWING
2 THOSE ITEMS, MISTER CABARRUVIAS SAYS, EVEN THOUGH HE DOES NOT
3 REMEMBER WHAT HAPPENED, HE BELIEVES THAT HE WAS, IN FACT, THE
4 DRIVER OF THAT VEHICLE. HE HAS -- OBVIOUSLY, THIS HAS BEEN VERY
5 DIFFICULT FOR HIM. HE DID SUSTAIN SOME INJURIES IN THE ACCIDENT
6 WHICH HE ELUDED TO EARLIER. HE HAD BROKEN HIS RIGHT COLLARBONE
7 AND AT THE TIME HE COULD NOT REMEMBER WHAT HAD HAPPENED, HE
8 THOUGHT IT WAS A SEATBELT INJURY FROM THE PASSENGER'S SIDE, THAT
9 HE WAS, IN FACT, STILL A PASSENGER IN THAT VEHICLE WHICH WAS THE
10 LAST THING HE REMEMBERED PRIOR TO GETTING INTO THE ACCIDENT.
11 UNFORTUNATELY, THOUGH, FROM THE INVESTIGATION OF THIS CASE, I DO
12 NOT HAVE, AND I THINK I SPEAK FOR MISTER STODDARD AS WELL, ANY
13 HESITATION IN SAYING THAT FROM THE EVIDENCE OVERWHELMINGLY IN THE
14 CASE, THAT HE WAS THE ONLY PERSON IN THE VEHICLE, NUMBER ONE, AND
15 THAT HE WAS, IN FACT, THE DRIVER OF THAT VEHICLE AT THE TIME OF THE
16 ACCIDENT.

17 THE COURT: AND THAT HE WAS GREATLY INTOXICATED AND THAT THE
18 ACCIDENT CAUSED INJURIES TO OTHERS?

19 MS. JOHNSON: YES, SIR. ABSOLUTELY. ABSOLUTELY. HE DOES NOT
20 DISPUTE THOSE FACTS. AGAIN, THESE ARE ALWAYS DIFFICULT CASES
21 BECAUSE NATURALLY, WHEN SOMEONE -- HE DID NOT INTEND TO GO OUT
22 AND HURT OR KILL SOMEONE THAT DAY AND I KNOW AND HE UNDERSTANDS
23 THAT HE IS RESPONSIBLE AND THAT, ULTIMATELY, THAT IS WHAT HAPPENED
24 AND IT'S, IT'S A TRAGEDY FOR EVERYONE INVOLVED. IT'S CERTAINLY A
25 TRAGEDY FOR THE VICTIMS AND THEIR FAMILIES IN THIS CASE. THEY LOST A

1 LOVED ONE AND HIS FAMILY UNDERSTANDS THAT THEY ARE GOING TO LOSE
2 HIM FOR A WHILE AS A RESULT OF THIS. IF I MAY TOUCH ON THE
3 IMMIGRATION MATTER FOR A WHILE, HE DID NOT ENTER IN THE COUNTRY
4 LAWFULLY AND HAS BEEN HERE UNLAWFULLY SINCE THAT TIME. THERE IS
5 CURRENTLY A DETAINER ON HIM FROM IMMIGRATIONS AND CUSTOMS AT THE
6 DETENTION CENTER. WE HAVE DISCUSSED THE FACT THAT IT IS LIKELY THAT
7 AT THE END OF THE SENTENCE THAT HE SHOULD RECEIVE HERE TODAY
8 THAT THEY WILL GET A REMOVAL PROCEEDINGS TO MOVE HIM BACK TO
9 MEXICO. MY UNDERSTANDING -- HE ACTUALLY HAD AN IMMIGRATION
10 ATTORNEY THAT SPOKE AT A CONFERENCE I WENT TO LAST YEAR -- IS ONCE
11 SOMEONE HAS ENTERED THE COUNTRY UNLAWFULLY, THERE IS NO LONGER
12 A LAWFUL PATH FOR THEM TO RETURN DESPITE THE FACT THAT HIS FOUR
13 CHILDREN ARE HERE, HIS WIFE IS HERE AND THEY ARE CITIZENS OF THIS
14 COUNTRY, THERE IS NOT A LAWFUL PATH FOR HIM TO COME BACK HERE AND
15 SO THAT'S ANOTHER THING HIS FAMILY IS HAVING TO DEAL WITH THE
16 CONSEQUENCES OF POTENTIALLY LOSING HIM FOREVER. SO, WE ASK THE
17 COURT TO FACTOR ALL THESE CONSIDERATIONS INTO ITS DECISION. WE
18 ARE NOT TRYING TO SAY THAT WHAT HAPPENED HERE WAS NOT A TERRIBLE
19 TRAGEDY AND HE UNDERSTANDS THAT HE IS AT FAULT FOR THAT, BUT
20 BEFORE THIS HAPPENED, I THINK HE HAD RECOGNIZED THAT HE HAD A
21 PROBLEM WITH ALCOHOL. HE HAD GONE TO HIS PASTOR. HE HAD BEEN
22 WORKING TRYING TO DO SOMETHING AND IT WAS JUST, YOU KNOW, LESS
23 THAN TWENTY-FOUR HOURS BEFORE THIS INCIDENT HAPPENED, HE FELL
24 OFF THE WAGON AND THIS IS WHERE WE ARE. I DON'T THINK HIS PASTOR IS
25 HERE TODAY, BUT I DID SPEAK WITH HIM MONDAY WHEN HE WAS AT THE

1 COURT AND ---

2 THE COURT: AND LET ME NOTE FOR THE RECORD, I DO -- I HAVE TOLD
3 MS. JOHNSON AND MS. BYFORD THAT I WOULD ACCEPT HIS PLEA MONDAY,
4 BUT BECAUSE OF OTHER MATTERS THAT WERE TAKING UP TOO MUCH TIME,
5 WE JUST WEREN'T ABLE TO GET TO IT. I KNOW THAT HE WAS HERE AND SO
6 I'LL LET YOU TELL ME WHAT HE SAID.

7 MS. JOHNSON: YES, SIR. SO, HE DID INDICATE THAT HE HAD BEEN
8 WORKING WITH MISTER CABARRUVIAS AND HE HAD BEEN ATTENDING
9 CHURCH AND REALLY BEEN WORKING ON HIS SOBRIETY. AND AGAIN, I THINK
10 THE SITUATION WHERE THEY WERE EVICTED FROM THIS TRAILER, AND IT
11 SOUNDS LIKE A SITUATION WHERE THEY MAY HAVE GOTTEN TAKEN
12 ADVANTAGE OF, AND HE MOVED HIS FAMILY IN THERE AND THEY HAD NO
13 RUNNING WATER AND, YOU KNOW, I THINK HE PAID \$2300.00 FOR IT, SO IT'S
14 NOT IN EXCELLENT CONDITION AND HE WANTED TO GET THAT TOGETHER
15 FOR HIS FAMILY AND I REALLY FEEL LIKE THE REASON HE DRANK THAT DAY IS
16 BECAUSE HE FELT SO OVERWHELMINGLY THAT HE HAD LET HIS FAMILY
17 DOWN IN SOME WAY, THAT HE HAD NOT PROVIDED FOR THEM AS HE FELT IT
18 WAS HIS RESPONSIBILITY AND AS HE ALWAYS HAD PROVIDED FOR THEM AND
19 AGAIN, IT DOESN'T EXCUSE WHAT HAPPENED. IT DOESN'T EXCUSE HIS
20 NEGLIGENCE OR RECKLESSNESS OR THE ACCIDENT, BUT I THINK IT'S
21 IMPORTANT FOR THE COURT TO UNDERSTAND HIS CIRCUMSTANCES AT THE
22 TIME THIS ACCIDENT OCCURRED.

23 THE COURT: MISTER STODDARD, DO YOU HAVE ANYTHING THAT YOU
24 WANT TO SAY?

25 MR. STODDARD: YES, SIR. JUST A LITTLE BIT. AS MS. JOHNSON SAID,

1 HE'S ACKNOWLEDGED, HE ACKNOWLEDGES, "I'M AN ALCOHOLIC." WHAT HE
2 DESCRIBED TO US IS, "WHEN I START TO HAVE A FEW DRINKS, I CAN'T JUST
3 HAVE A FEW," AND HE KIND OF UNDERSTANDS THAT. BUT I'VE MET HIS
4 FAMILY AND ALL THIS FAMILY OUT HERE AND BASED ON THE WAY, WHAT SHE
5 JUST TOLD YOU ABOUT HIM NOT REMEMBERING THE ACCIDENT, EVERYONE
6 HAD A FIRM BELIEF THAT HE DIDN'T DO THIS. THAT'S ONE OF THE THINGS
7 THEY WANTED US TO DO IS CHECK AND SEE WAS THERE ANOTHER DRIVER.
8 ONE OF THE REASONS THEY BELIEVED THIS IS, THEY TOLD US THAT HE
9 DOESN'T DO THIS. HE HAS A DRINKING PROBLEM, BUT HE KNOWS NOT TO
10 GET IN THE CAR AND DRIVE. THEY COULDN'T BELIEVE HE DID THAT AND HIS
11 LAST MEMORY IS, "I WAS IN THE PASSENGER SEAT," AND SO I THOUGHT THAT
12 WAS IMPORTANT FOR THE COURT TO NOTE. AND DESPITE THE OLD D-U-I,
13 APPARENTLY, HE HAD LEARNED FROM THAT AND HE JUST HAS THIS
14 DRINKING PROBLEM, BUT HE'S NOT RECKLESS IN THE SENSE OF HAVING
15 DISREGARD FOR PEOPLE. ALSO, IN THE WRECK REPORT, ACCORDING TO
16 THE WRECK REPORT, HE WAS GOING 50 MILES-PER-HOUR IN A 50 MILE-PER-
17 HOUR ZONE. ACCORDING TO THE WITNESSES, HE HYDROPLANED. IT WAS
18 RAINING, HE HYDROPLANED AND WENT INTO THE OTHER LANE AND I WANTED
19 THE COURT TO UNDERSTAND THAT, TOO. HE WASN'T APPARENTLY ALL OVER
20 THE ROAD. AS I SAID, I'VE MET MANY TIMES WITH HIS FAMILY AND I WAS
21 VERY IMPRESSED. THEY ARE A VERY CLOSE KNIT FAMILY AND THEIR HEARTS
22 ARE BREAKING OVER THIS, YOUR HONOR, AS IS HIS. WHEN HE FINALLY CAME
23 TO THE REALIZATION, JUST BASED ON THE EVIDENCE THAT WE WERE ABLE
24 TO SHOW HIM, THAT "I MUST HAVE BEEN DRIVING," HE BROKE DOWN CRYING.
25 HE IS VERY REMORSEFUL FOR THIS AND I'D ASK THE COURT TO CONSIDER

1 THAT AND I DO THINK, BASED ON HIS ACKNOWLEDGING THIS, APPARENTLY
2 THE WAY HE HAS PROVIDED SO WELL FOR HIS FAMILY OVER THE YEARS,
3 THAT SOMETHING LESS THAN THE MAXIMUM IS JUST IN THIS CASE.

4 **MS. JOHNSON:** YOUR HONOR, ONE OTHER THING THAT I FORGOT TO
5 MENTION EARLIER, TO JUST QUICKLY -- AFTER, AND THERE WAS A MOMENT
6 AND DAVID AND I WERE PRESENT AT THE MOMENT WHEN I THINK MISTER
7 CABARRUVIAS REALIZED THAT DESPITE HIS HOPE THAT HE WAS NOT THE
8 PERSON THAT WAS DRIVING THAT CAR, THAT HE REALIZED THAT HE HAD
9 BEEN, IT WAS, IT WAS AN IMMEDIATE CHANGE. IT WAS ALMOST A
10 TRANSFORMATION. HE DID BREAK DOWN, HE CRIED AND HE SAID -- AND HE'S
11 QUOTED THE BIBLE A FEW TIMES FOR ME AND I KNOW THAT A LOT OF
12 PEOPLE GET UP HERE AND CLAIM THAT THEY'VE FOUND JESUS AND FOUND
13 THE LORD, BUT I REALLY -- HE KNOWS HIS BIBLE. I DO BELIEVE THAT HE
14 FINDS THAT HIS FAITH WILL GET HIM THROUGH THIS, NUMBER ONE, BUT LIKE
15 HE SAID, WHATEVER HAPPENS IN COURT, MY ULTIMATE JUDGMENT IS GOING
16 TO BE SOMEWHERE ELSE AND -- BUT HE SAID, "WHY DID GOD TAKE HER AND
17 NOT ME," AND I THINK HE WOULD EXCHANGE PLACES AND THE ANSWER HE
18 CAME UP WITH FOR THAT IS HE THINKS GOD HAS UNFINISHED WORK FOR HIM
19 AND THAT I THINK HE UNDERSTANDS THAT HE'S GOT TO MAKE A DIFFERENT
20 PATH FOR THE REST OF HIS LIFE AND I THINK HIS IS GENUINE.

21 **THE COURT:** ANYTHING FURTHER?

22 **MS. JOHNSON:** NO, SIR.

23 **MR. STODDARD:** NOTHING FURTHER.

24 **THE COURT:** AND MY UNDERSTANDING IS, SIR, THAT YOU DO NOT WANT
25 TO ADDRESS THE COURT. IS THAT CORRECT?

1 **MR. KIRK:** YES, SIR.

2 **THE COURT:** THANK YOU FOR BEING HERE.

3 **MR. KIRK:** YES, SIR.

4 **THE COURT:** MISTER CABARRUVIAS, I'VE TOLD YOU EARLIER THAT I
5 WAS GOING TO LET YOU SPEAK IF YOU WANTED TO AND NOW IS THE TIME.
6 DO YOU HAVE ANYTHING THAT YOU WOULD LIKE TO SAY?

7 **MR. CABARRUVIAS:** I SAY, YOUR HONOR, THAT DAY I WAS TRYING TO
8 GET WORK. I TALKED TO MY FRIEND ROJO ABOUT HE'S GOT A JOB FOR ME A
9 COUPLE OF DAYS BEFORE THE ACCIDENT HAPPENING AND I ASKED HIM IF HE
10 MIGHT PUT ME TO WORK WITH HIS BOSS AND THEN I WAKE UP IN THE
11 HOSPITAL AND I WENT UP THERE AND I HAD A COUPLE OF PLANS AND I DRINK
12 A COUPLE OF BEERS THE NIGHT BEFORE AND WELL, SEE, YOU KNOW, THE
13 CONVERSATION AND SOMETHING LIKE THAT AND I SAY I NOT REMEMBER THE
14 TIME IT WAS I SAY I TOLD HIM I WAS GOING HOME AND I WAS DRIVING UP HIS
15 DRIVEWAY AND MADE A LEFT TURN TO HIS HOUSE AND I SAT IN THE CAR AND
16 HE WAS SUPPOSED TO PAY ME \$50.00 AND HE HAD STARTED WORKING AND
17 HAD THE MONEY TO PAY ME SO I SAY YOU HAVE THE MONEY AND HE SAY NO,
18 THAT HE ONLY WORKED THREE DAYS THIS WEEK, CAN I PAY YOU NEXT WEEK
19 ON FRIDAY AND I SAY YES AND I TOLD HIM I WASN'T ABLE TO DRIVE AND HE
20 SAID YOU WANT ME TO DRIVE FOR YOU AND I SAID YES IF YOU CAN. WE WAIT
21 A FEW MINUTES TO GET TO THE HOUSE AND WE WAITED FOR A FEW
22 MINUTES FOR A FRIEND SO HE COULD HAVE A WAY BACK AND WE WENT TO
23 HIS HOUSE AND INSIDE HIS HOUSE AND I STAYED IN THE DRIVEWAY AND I
24 REMEMBER AND HE WAS FASTENING THE SEAT AND I SIT OVER THERE AND
25 FASTENED MY SEATBELT AND THAT'S WHAT I REMEMBER. AND I WAKE UP A

1 COUPLE OF HOURS IN THE HOSPITAL AND NOT KNOWING AND ASKING THE
2 QUESTION, YOU KNOW, WHAT HAPPENED AND SOMEBODY SAID YOU'RE
3 INJURED AND PEOPLE GOT HURT AND I JUST REALLY DON'T KNOW HOW IT
4 HAPPENED AND I STARTED ASKING WHEN I WAS IN JAIL BECAUSE MY
5 MEMORY STILL WASN'T GOOD AND STILL I WAS UNDER THE ALCOHOL
6 SOMETIMES AND I HAD TROUBLE AND I SAID I WASN'T DRIVING AND THE WAY
7 MY MEMORY STILL WASN'T GOOD UNDER THE ALCOHOL THE WAY I SEE IT
8 AND THE THREE PEOPLE OVER THERE IN JAIL TOLD ME. THERE WERE MARKS
9 OF THE SEATBELT, PLACES THEY HIT ME HERE AND HERE, TOO, I BRUISE
10 TOO, BUT I WAS ASSUMING I WAS A PASSENGER, I DON'T KNOW, BUT ALL THE
11 REASONS WHAT THEY SAY. I TOLD THE LORD I HAVE NO CLUE WHAT
12 HAPPENED. FROM THE HOUSE TO THE CAR TO THE HOSPITAL AND WAKE UP
13 AND MAKE NO SENSE AND SO I DON'T KNOW WHAT HAPPENED AND IF YOU
14 ASK ME WHAT HAPPENED OR SOMETHING LIKE THAT TO THIS MONTH, I HAVE
15 SIXTEEN MONTHS AND STAY IN MY CELL TO TRY TO REMEMBER AND STILL I
16 DO NOT.

17 THE COURT: ANYTHING FURTHER? DO YOU HAVE ANYTHING ELSE YOU
18 WOULD LIKE TO SAY?

19 MR. CABARRUVIAS: NO, SIR. THAT'S IT.

20 THE COURT: FIRST, I'M GOING TO FIND THAT THERE IS A KNOWING,
21 INTELLIGENT, VOLUNTARY PLEA BY MISTER CABARRUVIAS. THAT THERE IS A
22 SUBSTANTIAL, FACTUAL BASIS FOR HIS PLEA AND THAT HE IS PLEADING WITH
23 THE ADVICE AND CONSENT OF TWO VERY FINE ATTORNEYS WITH WHOM HE
24 IS WELL SATISFIED AND WHILE, MISTER CABARRUVIAS, I UNDERSTAND THAT
25 YOU DIDN'T SET OUT TO INTENTIONALLY HURT OR KILL THESE INDIVIDUALS,

1 YOU DID INTEND TO DRINK TO THE EXTENT THAT I'VE HEARD OVER AND
2 OVER, YOU DON'T EVEN REMEMBER.

3 MR. CABARRUVIAS: YES, SIR.

4 THE COURT: UNDER FELONY D-U-I RESULTING IN GREAT BODILY HARM,
5 INDICTMENTS 1994 AND 1993, I SENTENCE YOU TO FIFTEEN YEARS. THOSE
6 WILL BE CONCURRENT. ALL WILL BE CONCURRENT. I'LL GIVE HIM CREDIT
7 FOR 476 DAYS. UNDER INDICTMENT 1940, FELONY D-U-I RESULTING IN DEATH,
8 I SENTENCE YOU TO TWENTY YEARS. THAT IS CONCURRENT. I GIVE YOU
9 CREDIT FOR 476 DAYS. GOOD LUCK.

10 MS. JOHNSON: THANK YOU, YOUR HONOR.

11 MS. BYFORD: THANK YOU, YOUR HONOR.

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING THIRTY-FIVE PAGED TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA ON SEPTEMBER 3, 2010, AT THE ANDERSON COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MARCH 21, 2011

A handwritten signature in cursive script that reads "Jo Rice". The signature is written in dark ink and is positioned above a horizontal line.

JO RICE

STATE OF SOUTH CAROLINA

County of ANDERSON

In the Court of Common Pleas

#342601

JOSE LUIS LUNA COBARRUVIAS

Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

2011-CP-04-00015

INSTRUCTIONS -- READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention MCCORMICK C.I. F-2-B-120, 386 REDEMPTION WAY, MCCORMICK S.C. 29855
2. Name and location of Court which imposed sentence ANDERSON COUNTY COURT OF GENERAL SESSIONS
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) FELONY DUI GREAT BODILY INJURY - 2 COUNTS
 - (b) FELONY DUI CAUSING DEATH - 1 COUNT
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SEPT 3, 2010 - 20 YEARS
 - (b) _____
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty ☒ _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. N/A
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. N/A
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. N/A
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. N/A
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) COUNSEL DID NOT APPEAL FAILED TO PRESERVE ISSUES
 - (b) N/A
 - (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 - (b) INVOLUNTARY GUILTY PLEA
 - (c) PROSECUTORIAL MISCONDUCT - BRADY VIOLATION RULES
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) FAILED TO INVESTIGATE, FAILED TO HIRE EXPERT RECONSTRUCTIONIST
 - (b) AND DOCTORS TESTIMONY, FAILED TO IMPEACH STATES WITNESSES
 - (c) FAILED TO ALIQUOT BRADY VIOLATIONS, FAILED TO EXPLAIN DEFENSE OF PHYSICAL FACTS RULE, WITHHOLDING DISCOVERY,
B) FAILED TO EXPLAIN ELEMENTS OF OFFENSE AND THE "REWHOLETHE MENS REAH OF (HARDE), COERCED GUILTY PLEA, FACTS WAS MISREPRESENTED,
C) STATE FAILED TO DISCLOSE 2 WITNESSES WHO STATED APPLICANT WAS DRIVER AND WITHHELD STATEMENT - SEE ATTACHMENTS

11. Prior to this application, have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) FAILED TO PRESERVE ISSUES FOR APPELLATE REVIEW.
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ✓
- (b) your trial, if any? NO
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

- i. DAVID F. STODDARD
- ii. JENNIFER C. JOHNSON
- iii. ANDERSON COUNTY PUBLIC DEFENDER

(b) the proceedings at which each such attorney represented you:

- i. INITIAL CHARGE
- ii. SENTENCING - GUILTY PLEA
- iii. _____

18. State clearly the relief you seek in filing this application.

THAT I BE GIVEN A TRIAL OR DISMISSAL OF CHARGES AND
APPOINTED EXPERTS FOR MY DEFENSE.

19. Are you now under sentence from any other court that you have not challenged?

NO.

STATE OF SOUTH CAROLINA

VERIFICATION

County of ANDERSON

I, JOSE LUIS COBARRUVIAS, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Jose Luis Cobarruvias

SWORN to and subscribed before me this 21
day of Dec, 19 2016
J C Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JOSE LUIS COBARRUVIAS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

X Jose Luis Cobarruvias
Applicant

SWORN or affirmed to and subscribed before me this
21 day of Dec, 19 2016
J C Franklin
Notary Public

My Commission Expires 12-16-2019

I. INEFFECTIVE ASSISTANCE OF COUNSEL

A. COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE WITNESS TESTIMONY AT PRELIMINARY HEARING THAT IT WAS DIFFERENT FROM THE WRITTEN STATEMENTS.

SEE STATE V. STANLEY, 365 S.C. 24, 615 S.E. 2d 445

S.C. 2005). S.C. COURT OF APPEALS HELD THAT A "WITNESS"

INITIAL TRIAL TESTIMONY DIRECTLY CONTRADICTED HIS PRIOR TESTIMONY GIVEN IN A POLICE STATEMENT, WITNESS WAS GUILTY OF "PERJURY" IF THE INFORMATION WAS FALSE, AND IF THE INFORMATION WAS TRUE, WITNESS PERJURED HIMSELF ON THE STAND BY CONTRADICTING IT. HAD COUNSEL QUESTIONED THE

WITNESS PROPERLY IT WOULD HAVE SHOWN INCONSISTENT TESTIMONY DIFFERENT FROM THE POLICE REPORTS SEE EXHIBITS TO BE INCLUDED LATER 1-4. NO IDENTIFICATION WAS SHOWN IN THESE STATEMENTS.

THE U.S. SUPREME COURT WAS CLEAR WHEN IT SAID THAT THE 14TH AMENDMENT CANNOT TOLERATE A STATE CRIMINAL CONVICTION OBTAINED BY KNOWING USE OF FALSE EVIDENCE. MILLER V.

DATE, 87 S.Ct. 785, 788 (1967).

B. COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE STATEMENT OF OFFICER WARREN STATING HE TOOK STATEMENTS FROM WITNESSES BETWEEN 11:22 A.M. AND 11:44 A.M. WHEN HE DID NOT ARRIVE AT THE SCENE OF THE ACCIDENT UNTIL 1:30 P.M.

COUNSEL SHOULD HAVE ALLEGED FALSE AFFIDAVITS TO SUPPORT THE ACCIDENT. U.S. V. MATOS 905 F.2d 30 (2d Cir. 1990), TRIAL COUNSEL'S WILLINGNESS TO ACCEPT GOVERNMENT'S VERSION OF FACTS AND FAILED TO FILE ANY MOTIONS BECAUSE HE RELIED

ON GOVERNMENT'S VERSION (ALL COUNSEL'S REPRESENTATION IN SERIOUS QUESTION OF INADEQUACY - ALSO SEE RICHARDSON V. STATE, 355 S.E. 2d 59 (6.A. App. 1988).

C. COUNSEL WITHHELD DISCOVERY MATERIAL FROM APPLICANT WHICH SHOWED A CONFLICT OF INTEREST IN VIOLATION OF THE SIXTH AMENDMENT.

1. COUNSEL FAILED TO DISCLOSE THE STATEMENTS FROM E.M.S. PERSONNEL AND RESULTS OF THE INVESTIGATION.
2. COUNSEL FAILED TO DISCLOSE THE REPORTS OF STATEMENTS FROM THE MAIT TEAM INVESTIGATOR.
3. COUNSEL FAILED TO DISCLOSE ALL THE PICTURES FROM INSIDE THE VEHICLE AND FAILED TO DISCLOSE ALL THE MISSING X-RAYS FROM SHOULDER INJURY.
4. COUNSEL WITHHELD STATEMENTS FROM PRELIMINARY HEARING AS TO THE INDIVIDUAL WHO CLAIMED DEFENDANT WAS DRIVING. SEE EXHIBIT - 1

D. COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY INVESTIGATE HIS CLAIM HE WAS THE PASSENGER NOT THE DRIVER. COUNSEL WAS INEFFECTIVE FOR FAILING TO PREPARE FOR TRIAL. SEE YOUNG V. ZANT, 677 F.2d 782, 798 (11TH CIR. 1982). TRIAL COUNSEL'S FAILURE TO UNDERSTAND DEFENDANT'S FACTUAL OR LEGAL CLAIMS FAILED TO PROVIDE PERFORMANCE WITHIN THE COMPETENCY EXPECTED FROM CRIMINAL DEFENSE COUNSEL. SEE HAWKMAN V. PARRATT, 661 F.2d 1161 (8TH CIR. 1981). ALSO SEE HOLSCAW V. SMITH, 822 F.2d 1041 (11TH CIR. 1987).

1. COUNSEL FAILED TO LOCATE THE DRIVER AND PASSENGER OF HIS VEHICLE WHEN DEFENDANT TOLD COUNSEL THEIR NAMES.

2. COUNSEL FAILED TO QUESTION THE HIGHWAY PATROL OFFICER TO DOCUMENT WHO EXTRACTED DEFENDANT FROM VEHICLE.
3. COUNSEL FAILED TO QUESTION THE HIGHWAY PATROL OFFICER TO EXPLAIN HOW HE TOOK STATEMENTS BETWEEN 11:22 A.M. AND 11:44 A.M. WHEN HE DIDN'T ARRIVE UNTIL 1:30 P.M.
4. COUNSEL FAILED TO INTERVIEW THE E.M.S. PERSONNEL TO DISCOVER WHICH SEAT DEFENDANT WAS EXTRACTED FROM AND WHO EXTRACTED HIM FROM THE VEHICLE.

E. COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT AND
 1. EXPLAIN ALL DEFENSES AND PRESENT TO DEFENDANT THE
 DEFENSE OF THE PHYSICAL FACTS RULE, UNDER RULE 704
 RULES OF EVIDENCE. CRIMINAL LAW 553, EVIDENCE 588,
 CRIMINAL LAW §§ 1099, 1101-1102, EVIDENCE §§ 1318-1320
 1322, 1329.

THE PRINCIPLE THAT ORAL TESTIMONY MAY BE DISREGARDED
 WHEN IT IS INCONSISTENT OR IRRECONCILABLE WITH THE
 PHYSICAL EVIDENCE IN THE CASE. ALSO CALLED INCONTRAVERTIBLE
 PHYSICAL FACTS DOCTRINE.

F. COUNSEL WAS INEFFECTIVE FOR FAILING TO HIRE ACCIDENT
 EXPERT RECONSTRUCTIONIST AND PRODUCE DOCTOR'S TESTIMONY
 TO SHOW INJURY TO SHOULDER CAME FROM IMPACT ON
 PASSENGER SIDE AND BEING STRAPPED IN PASSENGER SEAT.
 SEE STATE V. FRAZIER, 592 S.E.2d 621 (S.C. 2004).

PURPOSES OF INTRODUCTION OF EVIDENCE BASED ON AN
 EXPERIMENT OUT OF COURT, THE EXPERIMENT MUST HAVE
 BEEN MADE UNDER CONDITIONS AND CIRCUMSTANCES
 SIMILAR TO THOSE PREVAILING AT THE TIME OF THE

OCCURRENCE INVOLVED IN THE CONTROVERSY. SEE STATE V. RAMSEY, 550 S.E.2d 294 (2001); STATE V. JONES, 541 S.E.2d 813 (2001) RULES OF EVIDENCE RULE 702, AND STATE V. COUNCIL, 515 S.E.2d 508 (1999).

G. COUNSEL FAILED TO CONDUCT INDEPENDANT INVESTIGATION ON VEHICLE TO SHOW INJURIES MATCHED DAMAGE TO VEHICLE ON RIGHT HAND SIDE.

H. COUNSEL FAILED TO CHALLENGE THE STATE ON A MOTION TO DISMISS THAT THE STATE FAILED TO ESTABLISH THE "CORPUS DELICTI" OF THE CRIME. SEE STATE V. SMITH, 493 S.E.2d 506 (1997).

BRADY VIOLATION

PROSECUTORIAL MISCONDUCT - VIOLATION OF RULE 5

1. APPLICANT CONTENDS THAT THE PROSECUTION PRESENTED FALSE TESTIMONY TO SUPPORT THE "CORPUS DELICTI" OF THE CRIME. THAT WITNESS STATEMENTS AT ACCIDENT DO NOT STATE HE WAS THE DRIVER OF THE VEHICLE. SEE STATEMENTS. ALSO THE TROOPER CLAIMED HE TOOK THE STATEMENTS AT 11:22 A.M. OR 11:44 A.M. AND HE DIDNIT ARRIVE ON SCENE UNTIL 1:30 P.M.
2. THE PROSECUTION NEVER PRODUCED A WRITTEN STATEMENT OR NAME OF WITNESS WHO CLAIMED DEFENDANT WAS THE DRIVER.
3. THE PROSECUTION WITHHELD THE MAET ACCIDENT WRITTEN REPORTS.

THE PROSECUTOR MAY NOT KNOWLEDGELY PRESENT FALSE TESTIMONY. NAPUE V. ILLINOIS, 360 U.S. 264, 267 (1959); U.S. V. YOUNG,

17 F.3d 1201 (9TH CIR. 1994).

INVOLUNTARY GUILTY PLEA

1. APPLICANT CONTENDS THAT HIS GUILTY PLEA WAS INVOLUNTARY ON THE GROUNDS HE WAS NOT ADVISED OF THE ELEMENTS OF THE OFFENSE AND THE DEFENSE OF THE PHYSICAL FACTS RULE. SEE ANDERSON V. STATE, 535 S.E.2d 649 (2000) AND BOYKIN V. ALABAMA, 89 S.C.T. 1709.
2. APPLICANT WAS NOT GIVEN AN INTERPRETER TO EXPLAIN THE "REQUISITE MENS REA" OF THE OFFENSE OF FELONY "DUI" AND HE WAS ENTITLED TO AN EXPERT AND DOCTOR'S TESTIMONY TO SUPPORT HIS CLAIMS.
3. APPLICANT CLAIMS HIS PLEA WAS INVOLUNTARY BASED ON COUNSEL'S MISREPRESENTATION OF THE FACTS AND DEFENSES IN HIS CASE. SEE TOWER V. PHILLIPS, 979 F.2d 807 (11TH CIR. 1992).
4. DEFENSE COUNSEL COERCED AND INDUCED GUILTY PLEA BASED ON MATERIAL MISADVICE. SEE OSTRANDER V. GREEN, 46 F.3d 347 (4TH CIR. 1995).

COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED DEFENDANT IN CONTENTION WITH STRECKLAND V. WASHINGTON, 104 S.C.T. 2052 (1984).

12-20-10
DATE:

RESPECTFULLY SUBMITTED,

X JOSE LUIS LUNA COBARRUVIAS
JOSE LUIS LUNA COBARRUVIAS
#342601

MCORMICK C.F.

386 REDEMPTION WAY

MCORMICK S.C. 29875

AGENCY I.D. 1
SC004SP00

INCIDENT REPORT

CASE NUMBER
1993-042135NCC
INQ INTO
X

EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM																																																																
	1. Driving Under the Influence (90D)		☒ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley		☐ Individual ☐ Business ☐ Commercial Inst. ☐ Government ☐ Relg. Orgn. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.																																																																
	2. Driving Under the Influence (90D)		☐ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley																																																																		
	3. Driving Under the Influence (90D)		☐ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley																																																																		
VICTIM NO. 1	INCIDENT LOCATION (DIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)					ZIP CODE		WEAPON TYPE																																																															
	US 29 NORTH NEAR MCCOMBS RD.																																																																						
	INCIDENT DATE	24 HR. CLOCK	TO DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	TIME ARRIVED	DEPART. TIME	LOCATION NO.																																																															
	5/16/2009	10:00	5/16/2009	19:00	5/16/2009	7:00:00 PM	12:30:00 PM																																																																
SUBJECT NO. 1	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE																																																															
	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.																																																																
NARRATIVE	VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE																																																															
	Society/Pu bli																																																																						
	HEIGHT		WEIGHT		HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																																																																
PROPERTY EST.	ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.																																																																
	VISIBLE INJURY (VICT. 1) ☐ YES ☐ NO		EXPLAIN.		COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☐ NO																																																																		
	VICTIM (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☐ DUNK		DRUGS: ☐ YES ☐ NO ☐ DUNK		TYPE:																																																																		
ADMINISTRATIVE	TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐		ALONE ☐ ASSISTED ☐		J - This Jurisdiction, S - State, O - Out of State, U - Unknown																																																																		
	☐ SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.																																																															
	☐ RUNAWAY		LUNA-COBARRUVIAS, JOSE LUIS		W	M	43	H																																																															
	☐ WANTED		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																																																																				
ADMINISTRATIVE	☐ WARRANT		ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.																																																															
	☐ ARREST				BELTON	SC	29627																																																																
	☐ JAIL		SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☐ DUNK		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐ DUNK		DATE/TIME OF OFFENSE																																																																
	☐ SUMMONS		DRUGS ☐ YES ☐ NO ☐ DUNK TYPE:		TOTAL # ARRESTED:		DATE/TIME OF ARREST																																																																
ON THE ABOVE DATE AND TIME I RESPONDED TO A TRAFFIC COLLISION ON US 29 NEAR MCCOMBS RD. IN ANDERSON COUNTY. WHEN I ARRIVED ON THE SCENE ALL THE DRIVERS AND PASSENGERS HAD ALREADY BEEN TRANSPORTED TO THE ANMED HOSPITAL. THERE WAS TWO VEHICLES INVOLVED AT THE COLLISION SITE. THERE WAS A 1995 CHEVY ASTRO VAN THAT HAD BEEN STRUCK IN THE PASSENGER SIDE BY A 1998 BUICK SEDAN. I HAD THREE WITNESSES ON THE SCENE THAT STATED THEY SAW THE CHEVY VAN TRAVELING SOUTH ON US 29 IN A HEAVY RAIN, HYDRO-PLANE AND SPIN OUT OF CONTROL, CROSSING THE CENTER LINE SIDEWAYS AND WAS STRUCK IN THE SIDE BY THE BUICK SEDAN. ONCE MY INVESTIGATION AT THE COLLISION SCENE WAS COMPLETED I WENT TO THE HOSPITAL TO INTERVIEW ALL THE VICTIMS. WHEN I ARRIVED AT THE ER A NURSE COME UP TO ME AND INFORMED ME THAT SHE COULD SMELL A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM MR. LUNA-COBARRUVIAS THE																																																																							
					JURISDICTION OF THEFT		JURISDICTION OF RECOVERY																																																																
<table border="1"> <tr> <td>TYPE(GROUP)</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>TOTAL VALUE</td> </tr> <tr> <td>STOLEN</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>DAMAGED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>BURNED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>RECOVERED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>SEIZED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>FORGED</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>									TYPE(GROUP)								TOTAL VALUE	STOLEN									DAMAGED									BURNED									RECOVERED									SEIZED									FORGED								
TYPE(GROUP)								TOTAL VALUE																																																															
STOLEN																																																																							
DAMAGED																																																																							
BURNED																																																																							
RECOVERED																																																																							
SEIZED																																																																							
FORGED																																																																							
SUBJECT IDENTIFIED ☐ YES ☐ NO		SUBJECT LOCATED ☐ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER																																																															
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY																																																																							
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER																																																																
WARREN, ADAM SCOTT		5/17/2009	353	CARSON, MICHAEL C			352																																																																
FOLLOW-UP INVESTIGATION ☐ YES ☐ NO																																																																							

AGENCY I.D.
SC004SP00

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER	NDC
1993-042135	EMTD

☐ ORIGINAL REPORT ☐ MODIFIES ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY		PAGE 2 OF 2 PAGES	

VICTIM OVERFLOW	☐ COMPLAINT ☐ VICTIM #2 ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS	NAME (LAST, FIRST, MIDDLE) - Society/Public HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. ADDRESS CITY STATE ZIP CODE LOCATION NO. DAY PHONE EVENING PHONE VICTIM NO. 2 VISIBLE INJURY ☐ YES ☐ NO COMPLAINT OF NON-VISIBLE INJURIES ☐ YES ☐ NO VICTIM USING ALCOHOL ☐ YES ☐ NO DRUGS ☐ YES ☐ NO DUNK. TYPE EXPLAIN: ☐ TWO-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ ONE-MAN VEH. ☐ OTHER ☐ LONE ☐ ASSISTED
	☐ COMPLAINT ☐ VICTIM #3 ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS	NAME (LAST, FIRST, MIDDLE) Society/Public HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC. ADDRESS CITY STATE ZIP CODE LOCATION NO. DAY PHONE EVENING PHONE VICTIM NO. 2 VISIBLE INJURY ☐ YES ☐ NO COMPLAINT OF NON-VISIBLE INJURIES ☐ YES ☐ NO VICTIM USING ALCOHOL ☐ YES ☐ NO DRUGS ☐ YES ☐ NO DUNK. TYPE EXPLAIN: ☐ TWO-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ ONE-MAN VEH. ☐ OTHER ☐ LONE ☐ ASSISTED
	DRIVER OF THE CHEVY VAN. THE SUBJECT COULD NOT SPEAK FLUENT ENGLISH AND I HAD HEATHER CAZARAIN AN ON STAFF TRANSLATOR TO HELP ME QUESTION HIM. I ASKED THE SUBJECT WHAT HAD HAPPENED FOR HIM TO HAVE THE COLLISION AND HE RESPONDED TO ME THAT HE HADN'T BEEN IN A COLLISION. ONCE THE SUBJECT BEGAN SPEAKING I COULD ALSO SMELL A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM HIS BODY. I ASKED MR. LUNA-COBARRUVIAS IF HE WOULD SUBMIT ME A SAMPLE OF BLOOD TO DETERMINE BAC AND HE AGREED. I HAD THE TRANSLATOR TO READ HIM HIS MIRANDA RIGHTS AND IMPLIED CONSENT RIGHTS BEFORE THE BLOOD WAS TAKEN. ONCE THE HOSPITAL RELEASED THE SUBJECT HE WAS PLACED UNDER ARREST AND TRANSPORTED TO THE ANDERSON COUNTY DETENTION CENTER. THE DRIVER AND PASSENGERS OF THE BUICK SEDAN ALL SUSTAINED SERIOUS INJURIES AND REMAINED IN THE HOSPITAL. THE DRIVER MRS. SUSAN SIGMAN SUSTAINED A SERIOUS	
	JURISDICTION OF THEFT JURISDICTION OF RECOVERY	

VEHICLE	STATUS TYPE ☐ STOLEN ☐ VEHICLE ☐ RECOVERED ☐ GUN ☐ FOUND ☐ BOAT ☐ TOWED ☐ LICENSE PLATE ☐ SUSPECT ☐ SECURITIES/BONDS/STOCKS ☐ VICTIM ☐ ARTICLE	VIN AND/OR LICENSE NO. SERIAL AND/OR OWNER APPLIED NO. YEAR OF REGISTRATION YEAR OF EXPIRATION YEAR MAKE TYPE MODEL STYLE COLOR BRAND NAME CALIBER NIC NO. DENOMINATION ISSUER SECURITIES DATE MISCELLANEOUS	BOAT HULL NO. AND/OR REG. NO.
	TYPE (GROUP) TOTAL VALUE		
	STOLEN DAMAGED BURNED RECOVERED SEIZED FORGED		
	REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE NO CUSTODY		

ADMINISTRATIVE	SUBJECT IDENTIFIED ☐ YES ☐ NO	SUBJECT LOCATED ☐ YES ☐ NO	ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
	REPORTING OFFICER(S) WARREN, ADAM SCOTT		DATE 5/17/2009	UNIT NUMBER 653	APPROVING OFFICER CARSON, MICHAEL C
	FOLLOW-UP INVESTIGATION ☐ YES ☐ NO		DATE UNIT NUMBER 552		

AGENCY I.D. - 3
 SC004SP00

SUPPLEMENTARY INCIDENT REPORT

CASE NUMBER	INC. ENTD.
1993-042135	X

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 1 of 3 PAGES

NECK INJURY AND A CRUSHED HEEL ON HER RIGHT FOOT. THE FRONT PASSENGER MS. KATY EATON HAD INTERNAL INJURIES AND WAS UNSTABLE. THE REAR SEAT PASSENGER MR. RAYMOND SIGMAN HAD A BROKEN LEFT ANKLE AND WAS GOING TO REQUIRE IMMEDIATE SURGERY.

NARRATIVE

ADMINISTRATIVE

		JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	
SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☒ YES ☐ NO	☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☒ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE-NO CUSTODY					
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
WARREN, ADAM SCOTT	5/17/2009	653	CARSON, MICHAEL C		552
			FOLLOW-UP OFFICER		
			INVESTIGATION ☐ YES ☒ NO		



EXHIBIT - 2

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF Anderson

PERSONALLY appeared before me James E. Smith, who states:

Case # Not the Same

Case Number 09-04-HP3A-08

as other two

I reside at [redacted] in Palace
City
State SC Telephone: [redacted] - 9429 Work: Home:

Date of Birth: [redacted] Social Security Number [redacted]
I have 10 years of education, and can read and write. This statement is given on 5-16, 2009
at 11:00 am in the presence of Trooper A.S. Warren who has officially identified
himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

We were South on Hwy 29 when a green
Van Hydroplaned, spun side ways and the rear of
the Van lifted off the ground. The Van had hit a
another car. This happened 5-16-2009 on Hwy 29
in Anderson County.

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomsoever.

This statement was completed at 11:00 am on the 16th day of May, 2009.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 16 DAY OF MAY, 2009

Notary Public For South Carolina

My Commission Expires

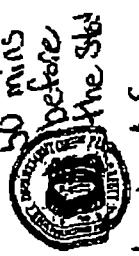
James Edward Smith
Affiant
[Signature]
Witness
Ralph E. [Signature]
Witness

Page 1 of 1 pages

This Statement was
completed 4 mins before
given. How?

Statement was taken 50 min before the other today and all statements were taken 1 hr and 50 min before the other today.

Mr. Riggs



Time Arrived on scene: 1:30:00pm How is this?
Time he took statement: 11:20:00am, 11:40:00am, and 11:44:00am

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

EXHIBIT -3

STATE OF SOUTH CAROLINA
COUNTY OF Anderson
PERSONALLY appeared before me RALPH C. RIGGS, who states:

Case Number 09-04-HP3A-089

I reside at [redacted] in WILKINSON
State SC Home Address [redacted] 1130 City CEL Telephone: [redacted] Work: [redacted] Home: [redacted] -1913

Date of Birth: [redacted], Social Security Number [redacted]
I have 12 years of education, and I can/cannot read and write. This statement is given on 5-16, 2009
at 11:20 am/pm in the presence of Trooper A.S. Warren who has officially identified himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

I RALPH RIGGS WAS DRIVING SOUTH ON Hwy 29
When I observed a white mini van going at high speed
during a heavy rain shower,
the hydroplaned on wet surface
lost control spun around in center of highway
went into north bound lane and struck another
vehicle right side resulting in 3 people being
hurt.

THIS IS TRUE TO BEST OF KNOWLEDGE

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomever.
This statement was completed at 1140 am/pm on the 16th day of May, 2009.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS DAY OF , 20

Notary Public For South Carolina

My Commission Expires

Ralph C. Riggs
Affiant
Alan S. Warren
Witness
Kassandra L. Smith
Witness

Page 1 of 1 pages

EXHIBIT-4

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVITSTATE OF SOUTH CAROLINA
COUNTY OF AndersonPERSONALLY appeared before me Nessandra Jewell Smith who states:Case Number Same
07-04-HP24-089I reside at [redacted] in Pelzer
Address City
SC [redacted] - 9429 [redacted] - 8907
State Telephone: Work: Home:Date of Birth: [redacted], Social Security Number [redacted]
I have 11 1/2 years of education, and I can cannot read and write. This statement is given on May 16, 20 09
at 11:40 am pm in the presence of Trooper A.S. Warren who has officially identified
himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

Going South bound on 29. It was raining
and the Grey Van lost control of and hydro-
plane and went over the yellow line and it the
grey car. This happen in Anderson County
on 5-16-09.

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomever.

This statement was completed at 1140 am pm on the 16th day of May, 20 09.SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS DAY OF , 20

Notary Public For South Carolina

My Commission Expires

Nessandra J. Smith
Affiant
A.S. Warren
Witness
Ralph C. [redacted]
Witness

Page 1 of 1 pages

PHYSICIAN DOCUMENTATION SHEET

Sat May 16 17:25:12 EDT 2009

AnMed Health
Emergency Department
800 N. Fant St.
Anderson, SC 29621
PHONE: (864) 512-1333
FAX: (864) -

MRN: 000538178

Name: Luna Cobarruvias, Jose L.

Age: 43

Complaint: Motor vehicle traffic accident

Arrival Time: 05/16/2009 13:48

All Providers: ED physician Dr. Bridget BRENNAN

Account #: 6404907

Sex: M

DOB: [REDACTED]

Primary Diagnosis: Fracture Clavicle shaft-closed

Discharge Time: 05/16/2009 17:25

HPI:

The patient is a 43-year-old male who presents with a chief complaint of motor vehicle traffic accident. The Room number is CCZA. The history was provided by the patient, translator and EMS. The pmh is limited by language barrier. Arrival is by ambulance. The symptoms started just prior to arrival. The Position in Vehicle is driver. The patient is complaining of discomfort in the left chest and right shoulder. Per EMS pt was in and out of consciousness during transport. Current severity of pain: moderate. During the accident an no air bag present. The Context is car collision. The symptoms have been associated with loss consciousness / dazed and memory impairment, while the symptoms have not been associated with seizure. The Site of Impact is direct and passenger's side. Severe damage to van pt was driving with significant passenger compartment intrusion into drivers side. Pts seat was broken. The protective measures employed during the collision were long extrication and seat belt.

14:54 05/16/2009 by Dr. Bridget BRENNAN, ED physician

ROS:

Constitutional: NOTE - *****A ROS is unobtainable owing to the constraints imposed by the patient's clinical condition on arrival.*****

NOTE - *****A ROS is unobtainable owing to the constraints imposed by the patient's clinical condition on arrival.*****

Level 5 indication: language difficulty

14:54 05/16/2009 by Dr. Bridget BRENNAN, ED physician

PMH:

Reviewed by: nurse

Historian: patient, translator

Social History: smoker, alcohol use-occasional

Travel History: no recent foreign travel

Medical History: *Hypertension

Surgical History: unknown

Family History: unknown

Immunization status: tetanus unknown, pneumovax - Unknown

Injuries that were sustained from passenger seat belt. If pt was in and out of consciousness, how could he make it up?

54
165

OAKTREE ORTHOPAEDICS

127 Straight Street
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSE CODARRUVIAZ
DATE OF BIRTH: [REDACTED]
MRN: 59832
DATE OF INJURY: 05/16/09
DATE OF SERVICE: 07/20/09

X-RAY INTERPRETATION:

RIGHT SHOULDER

X-rays were taken today in my clinic compared to previous x-rays, which show once again the overriding mid clavicular fracture. I do not appreciate any callus formation yet at this point.

DD:ats6
Voice File: 0720-020



OAKTREE ORTHOPAEDICS

127 Straight Street
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSE CODARRUVIAZ
DATE OF BIRTH: [REDACTED]
MRN: 59832
DATE OF INJURY: 05/16/09
DATE OF SERVICE: 07/20/09

HISTORY OF PRESENT ILLNESS:

The patient is accompanied by a police officer. He is here for reevaluation of his right clavicle. He states his pain is about a 6/10.

All patient history as recorded in the initial history and physical remains the same today's date.

EXAMINATION:

Physical examination of his shoulder shows symmetrical range of motion. He has continued pain on palpation over his right clavicle. The patient is neurovascularly intact.

X-rays were taken today in my clinic compared to previous x-rays, which show once again the overriding mid clavicular fracture. I do not appreciate any callus formation yet at this point.

ASSESSMENT/PLAN:**1. RIGHT CLAVICLE FRACTURE.**

I wrote him his last prescription for Lortab 5.0 one to two every four to six hours p.r.n. pain dispense #40, with no refills. He is to continue his range of motion exercises. He is to wear his sling as needed. He is to wear into heavy lifting, pulling, pushing, and twisting. I will repeat x-rays in four weeks.

Darius Divina, DO
Board Certified Orthopedic Surgeon

DD:ats6
Voice File: 0720-020

Transcription dictated but not read in order to expedite records.



57

WITNESSES

A Warren, SCHP

ARREST WARRANT NUMBER

D759037

ACTION OF GRAND JURY

TRUE BILL

AUG 25 2009

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009GS04 01993

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

AUG 25 2009

Term

THE STATE

vs.

Jose Luis Luna Cabarruvias

EJB

Indictment for

DUI / Felony DUI - Great Bodily Injury

SC Code: 56-05-2945(A)(1)

CDR Code: 0406

COMMITMENT

9-3-10/RT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on AUG 25 2009, the Grand Jurors of Anderson County present upon their oath:

DUI / Felony DUI - Great Bodily Injury

That Jose Luis Luna Cabarruvias, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did in Anderson County, on or about May 16, 2009, drive a vehicle and while driving did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, to wit: driving left of center and/or failure to exercise due care and/or driving too fast for conditions, which act or neglect proximately caused great bodily injury to Susan Sigmon. All in violation of Section 56-5-2945(A)(1), *Code of Laws of South Carolina*, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Anderson

VS.

Jose Luis Luna Cabarruvias

AKA: Jose Luna Cabarruvias

Race: H Sex: M Age: 44

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Belton, SC 29627

DL# * SID# SC01389864

INDICTMENT/CASE#

2009GS0401893

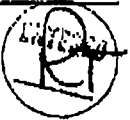
AW#: D759037

Date of Offense: 5/16/2009

S.C. Code §: 56-05-2945(A)(1)

CDR Code #: 0408

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: DUI / Felony driving under the influence, great bodily injury results

In violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act)☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury,

(defendant's initials)

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

ATTEST:

Solicitor General x Jose Luis Cabarruvias Defendant Attorney for Defendant SC Bar # 14224

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: w/all charges☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. (476 days)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$ 12.00
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47.12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$100	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90.7 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 4.11
TOTAL	\$	\$ 141.11

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

Clerk of Court/Deputy Clerk Martha A. Newton
Court Reporter: J. Rice

SCCA/217 (11/2009)

DLS✓

Form 430
Rev. 12/90SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME MIDDLE NAME LAST NAME

Jase Luis Luna-Cobarruvias

STREET AND NO. CITY STATE ZIP CODE

Belton SC 29627

STATE LICENSED DRIVER'S LICENSE NO. CDL DRI. LIC. CLASS

VEH. LIC. NO. STATE MAKE OF VEH. YEAR COMM. VEL. AUTO ☒ YES ☐ NO

SC Chevy 95 HAZ. MT. MOPED MTRCYCL OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER STREET AND NO. STATE ZIP CODE

General Sessions 107 S. Main St Anderson SC 29624

DATE OF TRIAL TIME OF TRIAL CITY STATE ZIP CODE

T.B. Anderson SC 29624

VIOLATION - COUNTY OF VIOLATION VIOLATION SECTION NO.

Felony Driving Under the Influence 56-5-2945

OWNER OF VEHICLE DATE OF ARREST

Luna-Cobarruvias 5/16/2009

ADDRESS OF OWNER DATE OF VIOLATION

Belton SC 5/16/2009

BAIL DEPOSITED NAME OF ARRESTING OFFICER RANK

Jail A.S. Warren TFC

DESCRIPTION OF ACCUSED COUNTY NUMBER

11 M. 104 HK 25 570 Anderson 04

DATE BAIL REQ'D BY BADGE DISTRICT

20 653 03

CASE BEFORE MAGISTRATE ☐ MUN. COURT ☐CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER TIME OF VIOLATION

IF DIFFERENT FROM ABOVE. 1300

DEFENDANT DID NOT APPEAR ☐ APPEARED ☐

DISPOSITION

NOLLE PROSSED ☐ GUILTY ☐FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐TRIAL BY: TRIAL OFFICER ☐ JURY ☐VERDICT OF GUILTY ☐ DATE OF TRIAL IF ANYTRIAL IF ANY NOT GUILTY ☐ 20

JAIL SUSPENDED FINE AMT. COLLECTED AMT. SUSPENDED

COMMITTED TO: Vehicle Searched ☒ Arrest as Result of Collision ☒

OFFENSE CODE B.A. LEVEL

99 blood

CERTIFIED CORRECT DATE

D 759037

TRIAL OFFICER'S COPY

STATE OF SOUTH CAROLINA

0000GS04
INDICTMENT NUMBER

COUNTY OF ANDERSON

D759038
CASE NUMBER**CASE DISPOSITION HISTORY****Defendant:**

Luna Cabarruvias, Jose Luis

SS#

DOB:

Sex: M

DL#:

Race: H

DL State:

Belton, SC

Date of Arrest:

Filed with Clerk:

May 19, 2009

Offense Description:
results

DUI / Felony driving under the influence, great bodily injury

Disposition:

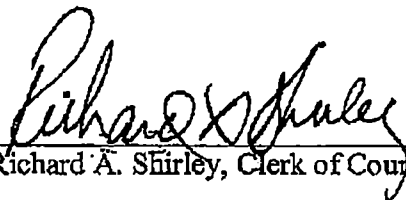
Nolle Prosequi

Disposition Judge:

Solicitor / Master In Equity G S And C P

Disposition Date:

September 3, 2010


Richard A. Shirley, Clerk of Court

General Sessions, Anderson County

WITNESSES

A Warren, SCHP

DOCKET NO: 2009GS04 01994

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

AUG 25 2009

Term

ARREST WARRANT NUMBER

D759039

THE STATE

vs.

Jose Luis Luna Cabarruvias

COMMITMENT

9-3-10/RT

ACTION OF GRAND JURY

TRUE BILL

AUG 25 2009

Foreperson of Grand Jury

Date:

Foreperson

VERDICT

EJB

Indictment for

DUI / Felony DUI - Great Bodily Injury

SC Code: 56-05-2945(A)(1)

CDR Code: 0406

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on AUG 25 2009, the Grand Jurors of Anderson County present upon their oath:

DUI / Felony DUI - Great Bodily Injury

That Jose Luis Luna Cabarruvias, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did in Anderson County, on or about May 16, 2009, drive a vehicle and while driving did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, to wit: driving left of center and/or failure to exercise due care and/or driving too fast for conditions, which act or neglect proximately caused great bodily injury to Raymond Sigmon. All in violation of Section 56-5-2945(A)(1), *Code of Laws of South Carolina*, (1976), as amended

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Anderson

VS.

Jose Luis Luna Cabarruvias

AKA: Jose Luna Cabarruvias
 Race: H Sex: M Age: 44
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Belton, SC 29627
 DL# * SID# SC01389864

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2009GS0401994AW#: D759039Date of Offense: 5/16/2009S.C. Code §: 56-05-2945(A)(1)CDR Code #: 0406

SENTENCE SHEET



*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: DUI / Felony driving under the influence, great bodily injury results.In violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

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

ATTEST:

[Signature] Solicitor SC Bar # 14224
[Signature] Defendant
[Signature] Attorney for Defendant SC Bar # 14224

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Wald Chapel☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 6476 Days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]Judge Code: 2155Sentence Date 9-3-10

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ <u>100.00</u>
§56-5-2995 (DUI Assessment)	\$12	\$ <u>12.00</u>
§56-1-286 (DUI Breath Test)	\$25	\$ <u>25.00</u>
§47.12 (Public Def/Prob)	\$500	\$ <u>25.00</u>
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$100	\$ <u>100.00</u>
§50-21-114 (BUI Breath Test Fee)	\$50	\$ <u>50.00</u>
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u>40.00</u>
§90.7 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>4.11</u>
TOTAL	\$	\$ <u>141.11</u>

Clerk of Court/Deputy Clerk: Martha A. Newton
 Court Reporter: J. Ricci

SCCA/217 (11/2009)

DLS✓

Form 432
Rev. 4/2/88

**SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET**

STATE OF SOUTH CAROLINA VERSUS:

FIRST NAME: Jose MIDDLE NAME: Luis LAST NAME: Luna-Cobarruvia

STREET AND NO.: [REDACTED] CITY: Beaufort STATE: SC ZIP CODE: 29607

STATE LICENSED: [REDACTED] DRIVER'S LICENSE NO.: [REDACTED] ODL: [REDACTED] DRI. LIC. CLASS: [REDACTED]

VEH. LIC. NO.: [REDACTED] STATE: SC MAKE OF VEH: Chrysler YEAR: 85 COMM. VEH.: NO HAZ. MT.: NO MOPED: NO MOTORCYCL.: NO OTHER: NO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER.

NAME OF TRIAL OFFICER: General Sessions STREET AND NO.: 107 S. Main St

DATE: 11/6/09 TIME OF TRIAL: 10:00 AM NAME OF TRIAL OFFICER: Anderson STATE: SC ZIP CODE: 29604

VIOLATION - COURT APPEARANCE REQUIRED (YES/NO): YES VIOLATION SECTION NO.: 56-5-2945

OWNER OF VEHICLE: Luna-Cobarruvia DATE OF ARREST: 5/16/09

ADDRESS OF OWNER: Beaufort SC DATE OF VIOLATION: 5/16/09

BAILED: YES NAME OF ARRESTING OFFICER: A. S. Anderson RANK: TFC

PLATE: 1W DESCRIPTION OF ACCIDENT: 6416 105 1510 COUNTY: Anderson NUMBER: 04

DATE BAIL RECEIVED BY: [REDACTED] BADGE: 653 DISTRICT: 03

CASE BEFORE: TR. MAGISTRATE ☐ GEN. COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER: [REDACTED] TIME OF VIOLATION: 1300 MILITARY TIME: NO

DEFENDANT: ☐ DID NOT APPEAR ☐ APPEARED ☐

NOLE PROSSED: ☐ DISPOSITION: NOLE ☐ FORFEITED BOND: ☐ FILED: NOLE ☐ NOLE CONTENDERE: ☐

TRIAL BY: ☐ TRIAL OFFICER ☐ JURY: ☐

VERDICT OF: ☐ GUILTY ☐ DATE OF TRIAL IF ANY: 34 38 0150

TRIAL IF ANY: ☐ NOT GUILTY ☐

JAIL: ☐ SUSPENDED: ☐ FINE: ☐ AMT. COLLECTED: ☐ AMT. SUSPENDED: ☐

COMMITTED TO: ☐ Vehicle Seized: N Arrest as Result of Collision: Y

CERTIFIED CORRECT: ☐ DATE: 5/16/09

OFFENSE CODE: 99 LEVEL: 6/1000

D 759039

TRIAL OFFICER'S COPY

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT JOSE LUIS COBARRUVIAS #342601
 DID MAIL TO THE CLERK OF COURT, ANDERSON COUNTY, AT
 100 S. MAIN ST. ANDERSON S.C. 29621 HIS PCR APPLICATION
 TO BE FILED, PLACED IN THE MAIL ON THIS 21 DAY OF
Dec., 2010 WITH POSTAGE PREPAID.

SWORN AND SUBSCRIBED BEFORE ME Jose Luis Cobarruvias
 THIS 21 DAY OF Dec, 2010 JOSE LUIS COBARRUVIAS
Jose L Young #342601
 NOTARY PUBLIC SOUTH CAROLINA M^{rs} CORNICK C.F.
 MY COMMISSION EXPIRES F-2-B-120 ROOM
 8 28 2011 386 REDEMPTION WAY
 M^{rs} CORNICK S.C.

28899

2011-CP-04-00015

FILED IN 2010 OFFICE
 ANDERSON SC
 2011 JAN -4 P 4:03
 GENERAL SESSIONS

CLERK OF COURT
ANDERSON COUNTY
100 S. MAIN ST.
ANDERSON S.C. 29621

12-20-10

2011-CP-04-00015

Clerk,
Will you please file my PCR APPLICATION AND RETURN
TO ME A STAMPED CLOCKED COPY OF MY PETITION ONCE
IT IS FILED WITH CASE NUMBER.

Sincerely,

JOSE (UE) COBARRUVIAS
#34260/
M^E CORMICK C.F.

FILED CLERK'S OFFICE
ANDERSON SC
2011 JAN -4 P 4:03
COBARRUVIAS AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
)
)
)
Jose Luis Luna Cobarruvias, #342601,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

2011-CP-04-0015

RETURN

FILED IN CLERK'S OFFICE
ANDERSON CO
JAN 11 2011
2:11 PM - 9 A 11:43
GENERAL SERVICES

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 5, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the August 2009 term of the Anderson County Grand Jury for two counts of Felony DUI Resulting in Great Bodily Injury (2009-GS-04-1993, -1994), and one count of Felony DUI Resulting in Death (2009-GS-04-1940). He was represented by Jennifer Johnson, Esquire. On September 3, 2010, the Applicant pled guilty. He was sentenced by the Honorable R. Lawton McIntosh to confinement for an aggregate period of twenty (20) years. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. "Counsel did not appeal, failed to preserve issues;"
 - b. "Failed to investigate, failed to hire expert reconstructionist and doctor's testimony, failed to impeach state's witnesses;"
 - c. "Failed to allege Brady violations, failed to explain defense of physical facts rule, withholding discovery;"
2. Involuntary Guilty Plea
 - a. "Failed to explain elements of offense and the requirements reall (sic) of charges, coerced guilty plea, facts was misrepresented."
3. Prosecutorial Misconduct
 - a. "State failed to disclose witness who stated Applicant was driver and withheld statement."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered

adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Here, in addition to making general allegations pertaining to Plea Counsel's performance, the Applicant also specifically claims that he was denied effective assistance of counsel because his attorney did not inform him of his right to appeal his guilty plea conviction. Absent extraordinary

circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). Counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 120 S.Ct. 1029 (2000). In making this determination, courts must take into account all the information counsel knew or should have known. Id. Although not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings. Id.

There being nothing in the record to indicate that the Applicant reasonably demonstrated to Counsel that he was interested in appealing, the State submits that the allegation is totally without merit and should be dismissed. Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability

that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

VI.

Respondent submits that the Applicant's third allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VII.

Each and every allegation contained within the application not hereinbefore expressly admitted,
qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

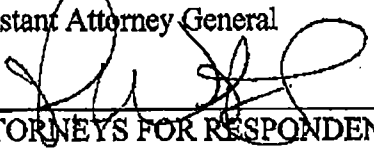
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 1, 2011

74
STATE OF SOUTH CAROLINA

County of ANDERSON

#342601

JOSE LUIS (UNA COBARRUVIAS)

Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA

Name of Respondent.

In the Court of Common Pleas

APPLICATION FOR
POST-CONVICTION RELIEF

2011 - CP - 04 - 00015

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention MCCORMICK C.I. F-2-B-120, 386 REDEMPTION
WAY, MCCORMICK S.C. 29855
2. Name and location of Court which imposed sentence ANDERSON COUNTY COURT OF
GENERAL SESSIONS
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) FELONY DUI GREAT BODILY INJURY - 2 COUNTS
 - (b) FELONY DUI CAUSING DEATH - 1 COUNT
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SEPT 3, 2010 - 20 YEARS
 - (b) _____
 - (c) _____

A TRUE COPY

JAN - 5 2011

Richard A. Shiley
CLERK OF COURTS

5. Check whether a finding ~~guilty~~ guilty was made

- (a) after a plea of guilty ✓
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. _____
 ii. N/A
 iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
 ii. N/A
 iii. _____

(c) the date of each such result:

- i. _____
 ii. N/A
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
 ii. N/A
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) COUNSEL DID NOT APPEAL FAILED TO PRESERVE ISSUES
 (b) N/A
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) INVOLUNTARY GUILTY PLEA
 (c) PROSECUTORIAL MISCONDUCT - BRADY VIOLATION RULES

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) FAILED TO INVESTIGATE, FAILED TO HIRE EXPERT RECONSTRUCTIONIST
 (b) AND DOCTORS TESTIMONY, FAILED TO IMPEACH STATES WITNESSES
 (c) FAILED TO ALIQUOT BRADY VIOLATIONS, FAILED TO EXPLAIN DEFENSE
OF PHYSICAL FACTS RULE, WITHHOLDING DISCOVERY,
B) FAILED TO EXPLAIN ELEMENTS OF OFFENSE AND THE "REQUISITE MENS
REAS OF CHARGES, COERCED GUILTY PLEA, FACTS WAS MISREPRESENTED.
C) STATE FAILED TO DISCLOSE 2 WITNESS WHO STATED APPLICANT
WAS DRIVER AND WITHHELD STATEMENT - SEE ATTACHMENTS

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. N/A
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

(a) which grounds have been presented:

- i. _____
- ii. N/A
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. N/A
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) FAILED TO PRESERVE ISSUES FOR APPELLATE REVIEW.
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ✓
- (b) your trial, if any? NO
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. DAVID F. STODDARD
- ii. JENNIFER C. JOHNSON
- iii. ANDERSON COUNTY PUBLIC DEFENDER

(b) the proceedings at which each such attorney represented you:

- i. INITIAL CHARGE
- ii. SENTENCING - GUILTY PLEA
- iii. _____

18. State clearly the relief you seek in filing this application.

THAT I BE GIVEN A TRIAL OR DISMISSAL OF CHARGES AND
APPOINTED EXPERTS FOR MY DEFENSE.

19. Are you now under sentence from any other court that you have not challenged?

NO.

STATE OF SOUTH CAROLINA

County of

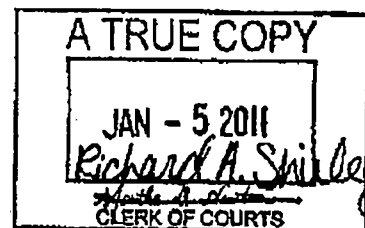
ANDERSON

VERIFICATION

I, JOSE LUIS COBARRUVIAS, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

X Jose Luis Cobarruvias

SWORN to and subscribed before me this 21
day of Dec, 19 2010
J. Franklin (L.S.)
Notary Public



My Commission Expires: 12-16-2019

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, JOSE LUIS COBARRUVIAS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

X Jose Luis Zuna Cobarruvias
Applicant

SWORN or affirmed to and subscribed before me this

21 day of Dec, 19 2010
J. Franklin
Notary Public

My Commission Expires 12-16-2019

I. INEFFECTIVE ASSISTANCE OF COUNSEL

A. COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE THE WITNESS TESTIMONY AT PRELIMINARY HEARING THAT IT WAS DIFFERENT FROM THE WRITTEN STATEMENTS.

SEE STATE V. STANLEY, 365 S.C. 24, 615 S.E. 2d 445

S.C. 2005). S.C. COURT OF APPEALS HELD THAT A "WITNESS" INITIAL TRIAL TESTIMONY DIRECTLY CONTRADICTED HIS PRIOR TESTIMONY GIVEN IN A POLICE STATEMENT, WITNESS WAS GUILTY OF "PERJURY" IF THE INFORMATION WAS FALSE, AND IF THE INFORMATION WAS TRUE, WITNESS PERJURED HIMSELF ON THE STAND BY CONTRADICTING IT. HAD COUNSEL QUESTIONED THE WITNESS PROPERLY IT WOULD HAVE SHOWN INCONSISTENT TESTIMONY DIFFERENT FROM THE POLICE REPORTS SEE EXHIBITS TO BE INCLUDED LATER 1-4. NO IDENTIFICATION WAS SHOWN IN THESE STATEMENTS. THE U.S. SUPREME COURT WAS CLEAR WHEN IT SAID THAT THE 14TH AMENDMENT CANNOT TOLERATE A STATE CRIMINAL CONVICTIONS OBTAINED BY KNOWING USE OF FALSE EVIDENCE. MILLER V. PATE, 87 S.C.T. 785, 788 (1967).

B. COUNSEL WAS INEFFECTIVE FOR FAILING TO CHALLENGE STATEMENT OF OFFICER WARREN STATING HE TOOK STATEMENTS FROM WITNESSES BETWEEN 11:22 A.M. AND 11:44 A.M. WHEN HE DID NOT ARRIVE AT THE SCENE OF THE ACCIDENT UNTIL 1:30 P.M. COUNSEL SHOULD HAVE ALLEGED FALSE AFFIDAVITS TO SUPPORT THE ACCIDENT. U.S. V. MATOS 905 F.2d 30 (2d CIR. 1990), TRIAL COUNSEL'S WILLINGNESS TO ACCEPT GOVERNMENT'S VERSION OF FACTS AND FAILED TO FILE ANY MOTIONS BECAUSE HE RELIED

ON GOVERNMENT'S VERSION (ALLS COUNSEL) A REPRESENTATION IN
SERIOUS QUESTION OF INADEQUACY. ALSO SEE RICHARDSON V.
STATE, 355 S.E. 2d 59 (6.A. APP. 1988).

C. COUNSEL WITHHELD DISCOVERY MATERIAL FROM APPLICANT
WHICH SHOWED A CONFLICT OF INTEREST IN VIOLATION
OF THE SIXTH AMENDMENT.

1. COUNSEL FAILED TO DISCLOSE THE STATEMENTS FROM E.M.S.
PERSONNEL AND RESULTS OF THE INVESTIGATION.
2. COUNSEL FAILED TO DISCLOSE THE REPORTS OF STATEMENTS
FROM THE MAIT TEAM INVESTIGATOR).
3. COUNSEL FAILED TO DISCLOSE ALL THE PICTURES FROM INSIDE
THE VEHICLE AND FAILED TO DISCLOSE ALL THE MISSING X-RAYS
FROM SHOULDER INJURY.
4. COUNSEL WITHHELD STATEMENTS FROM PRELIMINARY HEARING
AS TO THE INDIVIDUAL WHO CLAIMED DEFENDANT WAS DRIVING.
SEE EXHIBIT - 1

D. COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY INVEST-
IGATE HIS CLAIM HE WAS THE PASSENGER NOT THE DRIVER.
COUNSEL WAS INEFFECTIVE FOR FAILING TO PREPARE FOR TRIAL.
SEE YOUNG V. ZANT, 677 F.2d 782, 798 (11TH CIR. 1982).

TRIAL COUNSEL'S FAILURE TO UNDERSTAND DEFENDANT'S FACTUAL
OR LEGAL CLAIMS FAILED TO PROVIDE PERFORMANCE WITHIN
THE COMPETENCY EXPECTED FROM CRIMINAL DEFENSE COUNSEL.
SEE HAWKMAN V. PARCATT, 661 F.2d 1161 (8TH CIR. 1981). ALSO
SEE HOLSLAW V. SMITH, 822 F.2d 1041 (11TH CIR. 1987).

1. COUNSEL FAILED TO LOCATE THE DRIVER AND PASSENGER OF
HIS VEHICLE WHEN DEFENDANT TOLD COUNSEL THEIR NAMES.

2. COUNSEL FAILED TO QUESTION THE HIGHWAY PATROL OFFICER TO DOCUMENT WHO EXTRACTED DEFENDANT FROM VEHICLE.
3. COUNSEL FAILED TO QUESTION THE HIGHWAY PATROL OFFICER TO EXPLAIN HOW HE TOOK STATEMENTS BETWEEN 11:22 A.M. AND 11:44 A.M. WHEN HE DIDN'T ARRIVE UNTIL 1:30 P.M.
4. COUNSEL FAILED TO INTERVIEW THE E.M.S. PERSONNEL TO DISCOVER WHICH SEAT DEFENDANT WAS EXTRACTED FROM AND WHO EXTRACTED HIM FROM THE VEHICLE.

E. COUNSEL WAS INEFFECTIVE FOR FAILING TO PRESENT AND

1. EXPLAIN ALL DEFENSES AND PRESENT TO DEFENDANT THE DEFENSE OF THE PHYSICAL FACTS RULE, UNDER RULE 704 RULES OF EVIDENCE. CRIMINAL LAW 553, EVIDENCE 588, CRIMINAL LAW §§1099, 1101-1102, EVIDENCE §§ 1318-1320 1322, 1329.

THE PRINCIPLE THAT ORAL TESTIMONY MAY BE DISREGARDED WHEN IT IS INCONSISTENT OR IRRECONCILABLE WITH THE PHYSICAL EVIDENCE IN THE CASE. ALSO CALLED INCONTRASTABLE PHYSICAL FACTS DOCTRINE.

F. COUNSEL WAS INEFFECTIVE FOR FAILING TO HIRE ACCIDENT EXPERT RECONSTRUCTIONIST AND PRODUCE DOCTOR'S TESTIMONY TO SHOW INJURY TO SHOULDER CAME FROM IMPACT ON PASSENGER SIDE AND BEING STRAPPED IN PASSENGER SEAT. SEE STATE V. FRAZIER, 592 S.E.2d 621 (S.C. 2004).

PURPOSE OF INTRODUCTION OF EVIDENCE BASED ON AN EXPERIMENT OUT OF COURT, THE EXPERIMENT MUST HAVE BEEN MADE UNDER CONDITIONS AND CIRCUMSTANCES SIMILAR TO THOSE PREVAILING AT THE TIME OF THE

OCCURRENCE INVOLVED IN THE CONTROVERSY, SEE STATE V. RAMSEY, 550 S.E.2d 294 (2001); STATE V. JONES, 541 S.E.2d 513 (2001) RULES OF EVIDENCE RULE 702, AND STATE V. COUNCIL, 515 S.E.2d 506 (1999).

G. COUNSEL FAILED TO CONDUCT INDEPENDANT INVESTIGATION ON VEHICLE TO SHOW INJURIES MATCHED DAMAGE TO VEHICLE ON RIGHT HAND SIDE.

H. COUNSEL FAILED TO CHALLENGE THE STATE ON A MOTION TO DISMISS THAT THE STATE FAILED TO ESTABLISH THE "CORPUS DELICTI" OF THE CRIME SEE STATE V. SMITH, 493 S.E.2d 506 (1997).

BRADY VIOLATION

PROSECUTORIAL MISCONDUCT - VIOLATION OF RULE 5

1. APPLICANT CONTENDS THAT THE PROSECUTION PRESENTED FALSE TESTIMONY TO SUPPORT THE "CORPUS DELICTI" OF THE CRIME. THAT WITNESS STATEMENTS AT ACCIDENT DO NOT STATE HE WAS THE DRIVER OF THE VEHICLE. SEE STATEMENTS. ALSO THE TROOPER CLAIMED HE TOOK THE STATEMENTS AT 11:22 A.M. OR 11:44 A.M. AND HE DIDNIT ARRIVE ON SCENE UNTIL 1:30 P.M.
2. THE PROSECUTION NEVER PRODUCED A WRITTEN STATEMENT OR NAME OF WITNESS WHO CLAIMED DEFENDANT WAS THE DRIVER.
3. THE PROSECUTION WITHHELD THE MAET ACCIDENT WRITTEN REPORTS.

THE PROSECUTOR MAY NOT KNOWABLY PRESENT FALSE TESTIMONY. NAPHE V. ILLINOIS, 360 U.S. 264, 267 (1959); U. V. YOUNG.

17 F.3d 1201 (4TH CIR. 1994).

INVOLUNTARY GUILTY PLEA

1. APPLICANT CONTENDS THAT HIS GUILTY PLEA WAS INVOLUNTARY ON THE GROUNDS HE WAS NOT ADVISED OF THE ELEMENTS OF THE OFFENSE AND THE DEFENSE OF THE PHYSICAL FACTS RULE. SEE ANDERSON V. STATE, 535 S.E.2d 645 (2000) AND BOYLEIN V. ALABAMA, 99 S.C.T. 1709.
2. APPLICANT WAS NOT GIVEN AN INTERPRETER TO EXPLAIN THE "REQUISITE MENS REA" OF THE OFFENSE OF FELONY "DUI" AND HE WAS ENTITLED TO AN EXPERT AND DOCTOR'S TESTIMONY TO SUPPORT HIS CLAIMS.
3. APPLICANT CLAIMS HIS PLEA WAS INVOLUNTARY BASED ON COUNSEL'S MISREPRESENTATION OF THE FACTS AND DEFENSES IN HIS CASE. SEE TOWER V. PHILLIPS, 979 F.3d 807 (11TH CIR. 1992).
4. DEFENSE COUNSEL COERCED AND INDUCED GUILTY PLEA BASED ON MATERIAL MISADVICE, SEE OSTRANDER V. GREEN, 46 F.3d 347 (4TH CIR. 1995).

COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED DEFENDANT IN CONTENTION WITH STRECKLAND V. WASHINGTON, 104 S.C.T. 2052 (1984).

12-20-10

DATE:

RESPECTFULLY SUBMITTED,

X JOSE LUNA COBARRUVIAS

JOSE LUIS LUNA COBARRUVIAS

#342601

MT=CORMICK C.F.

386 REDEMPTION WAY

MT=CORMICK S.C. 29855

AGENCY I.D. 1
3C004SP00

INCIDENT REPORT

CASE NUMBER
1993-042135HCC
IN? X
CNTO

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Driving Under the Influence (900)	☐ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley		☐ Individual ☐ Business ☐ Functional ☐ Government ☐ Religious ☐ Social ☐ Other	
2. Driving Under the Influence (900)	☐ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley			
3. Driving Under the Influence (900)	☐ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE
US 29 NORTH NEAR MCCOMBS RD.						
INCIDENT DATE	24 HR. CLOCK	TO DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK	LOCATION NO.
5/16/2009	10:00	5/16/2009	19:00	5/16/2009	7:00:00 PM	1:30:00 PM
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
			☐ YES ☐ NO			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
Society/Public			☐ YES ☐ NO			
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
VISIBLE INJURY (VICT 1)		☐ YES ☐ NO	EXPLAIN:		COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☐ NO	
VICTIM (NO. 1) USING: ALCOHOL		☐ YES ☐ NO ☐ UNK.	DRUGS: ☐ YES ☐ NO ☐ UNK.		TYPE:	
TWO-MAN VEH. ☐		ONE-MAN VEH. ☐	DETECTIVE/PLASMT. ☐	OTHER ☐	ALONE OR ASSISTED ☐	
1. This Jurisdiction, 2. State, 3. Out of State, 4. Unknown						
☐ SUSPECT	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.
☐ RUNAWAY	LUNA-COBARRUVIAS, JOSE LUIS		W	M	43	H
☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
☐ WARRANT	ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
☐ ARREST			BELTON	SC	29827	
☐ JAIL	SUBJECT (NO. 1) USING ALCOHOL		☐ YES ☐ NO ☐ UNK.	ARRESTED NEAR OFFENSE SCENE		☐ YES ☐ NO ☐ UNK.
☐ SUMMONS	DRUGS		☐ YES ☐ NO ☐ UNK.	DATE/TIME OF OFFENSE		DATE/TIME OF ARREST
		TOTAL # ARRESTED:				
ON THE ABOVE DATE AND TIME I RESPONDED TO A TRAFFIC COLLISION ON US 29 NEAR MCCOMBS RD.						
IN ANDERSON COUNTY. WHEN I ARRIVED ON THE SCENE ALL THE DRIVERS AND PASSENGERS HAD						
ALREADY BEEN TRANSPORTED TO THE ANMED HOSPITAL. THERE WAS TWO VEHICLES INVOLVED AT THE						
COLLISION SITE. THERE WAS A 1995 CHEVY ASTRO VAN THAT HAD BEEN STRUCK IN THE PASSENGER						
SIDE BY A 1998 BUICK SEDAN. I HAD THREE WITNESSES ON THE SCENE THAT STATED THEY SAW THE						
CHEVY VAN TRAVELING SOUTH ON US 29 IN A HEAVY RAIN, HYDRO-PLANE AND SPIN OUT OF CONTROL,						
CROSSING THE CENTER LINE SIDEWAYS AND WAS STRUCK IN THE SIDE BY THE BUICK SEDAN. ONCE MY						
INVESTIGATION AT THE COLLISION SCENE WAS COMPLETED I WENT TO THE HOSPITAL TO INTERVIEW						
ALL THE VICTIMS. WHEN I ARRIVED AT THE ER A NURSE CAME UP TO ME AND INFORMED ME THAT SHE						
COULD SMELL A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM MR. LUNA-COBARRUVIAS THE						
			JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	
TYPE (GROUP)					TOTAL VALUE	
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
CEIVED						
FORGOT						
SUBJECT IDENTIFIED	☐ YES ☐ NO	SUBJECT LOCATED	☐ YES ☐ NO	☐ ACTIVE ☐ AGM. CLOSED	☐ ARRESTED UNDER 13	☐ EX-CLEAR UNDER 13
				☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
FRANCHISE FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION, 5. ☐ JUVENILE NO JUSTIFY						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
WAHREN, ADAM TROY		5/17/2009	053	CARSON, MICHAEL C		5/22
				FOLLOW-UP OFFICER		
				INVESTIGATION ☐ YES ☐ NO		

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIM	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIED ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 OF 3 PAGES

VICTIM OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH.
	☐ VICTIM #1	Society/Public			J(S)OU					
	☐ SUBJECT #1	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
	☐ RUNAWAY	ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING P. ONE		
VICTIM OVERFLOW	☐ WANTED									
	☐ WARRANT									
	☐ ARREST									
	☐ JAIL									
VICTIM OVERFLOW	☐ SUMMONS									
	☐									
	☐									
	☐									

DRIVER OF THE CHEVY VAN. THE SUBJECT COULD NOT SPEAK FLUENT ENGLISH AND I HAD HEATHER CAZARAIN AN ON STAFF TRANSLATOR TO HELP ME QUESTION HIM. I ASKED THE SUBJECT WHAT HAD HAPPENED FOR HIM TO HAVE THE COLLISION AND HE RESPONDED TO ME THAT HE HADN'T BEEN IN A COLLISION. ONCE THE SUBJECT BEGAN SPEAKING I COULD ALSO SMELL A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM HIS BODY. I ASKED MR. LUNA-COBARRUVIAS IF HE WOULD SUBMIT ME A SAMPLE OF BLOOD TO DETERMINE BAC AND HE AGREED. I HAD THE TRANSLATOR TO READ HIM HIS MIRANDA RIGHTS AND IMPLIED CONSENT RIGHTS BEFORE THE BLOOD WAS TAKEN. ONCE THE HOSPITAL RELEASED THE SUBJECT HE WAS PLACED UNDER ARREST AND TRANSPORTED TO THE ANDERSON COUNTY DETENTION CENTER. THE DRIVER AND PASSENGERS OF THE BUICK SEDAN ALL SUSTAINED SERIOUS INJURIES AND REMAINED IN THE HOSPITAL. THE DRIVER MRS. SUSAN SIGMAN SUSTAINED A SERIOUS

JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	

VEHICLE C1	STATUS	TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO.		STATE	
	☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR	MAKE
	☐ FOUND	☐ BOAT	MODEL	STYLE	COLOR	BRAND NAME
	☐ TOWED	☐ LICENSE PLATE	NC NO.	DENOMINATION	ISSUER	SECURITIES DATE
	☐ SUSPECT	☐ SECURITIES/BONDS/STOCKS	MISCELLANEOUS			
	☐ VICTIM	☐ ARTICLE				

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

SUBJECT IDENTIFIED ☐ YES ☐ NO	SUBJECT LOCATED ☐ YES ☐ NO	ACTIVE ☐ ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ AVOIDING CUSTODY				
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE
WARREN, ADAM SCOTT	5/17/2008	653	CARSON, MICHAEL G	5/22
FOLLOW-UP OFFICER INVESTIGATION ☐ YES ☐ NO				

☐ ORIGINAL REPORT ☐ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIED ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 3 of 3 PAGES

NECK INJURY AND A CRUSHED HEEL ON HER RIGHT FOOT. THE FRONT PASSENGER MS. KATY EATON HAD INTERNAL INJURIES AND WAS UNSTABLE. THE REAR SEAT PASSENGER MR. RAYMOND SIGMAN HAD A BROKEN LEFT ANKLE AND WAS GOING TO REQUIRE IMMEDIATE SURGERY.

NARRATIVE

ADMINISTRATIVE

JURISDICTION OF THEFT

JURISDICTION OF RECOVERY

SUBJECT IDENTIFIED

☒ YES ☐ NO

SUBJECT LOCATED

☒ YES ☐ NO☒ ACTIVE ☐ ADM. CLOSED☐ UNFOUNDED☐ ARRESTED UNDER 18☐ ARRESTED 18 AND OVER☐ EX-CLEAR UNDER 18☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE:

1. ☐ OFFENDER DEATH2. ☐ NO PROSECUTION3. ☐ EXTRADITION DENIED4. ☐ VICTIM DECLINES COOPERATION5. ☐ JUVENILE NO CUSTODY

REPORTING OFFICER(S)

DATE

UNIT NUMBER

APPROVING OFFICER

DATE

UNIT NUMBER

WARREN, ADAM SCOTT

5/17/2009

653

CARSON, MICHAEL C

SS2

FOLLOW-UP

OFFICER

INVESTIGATION ☐ YES ☒ NO



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF Anderson
PERSONALLY appeared before me James E. Smith, who states:

Case # Not the Same
Case Number 09-04-HP34-05
as other two

I reside at _____ in Palmer
Address City
State SC Telephone: 9429 Work: Home:

Date of Birth: _____, Social Security Number _____
I have 10 years of education, and can read and write. This statement is given on 5-16, 2009
at 11:54 am in the presence of Tracy A. S. Warren who has officially identified
himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

We were South on Hwy 29. When a grey
Van Hydroplaned, spun side ways and the rear of
the Van lifted off the ground. The Van had hit a
another car. This happened 5-16-2009 on Hwy 29
in Anderson County.

Completed 4 mins before given. How?

I have read each page of this statement of _____ page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomever.
This statement was completed at 1140 am on the 16th day of May, 2009.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS _____ DAY OF _____, 20____

Notary Public For South Carolina

My Commission Expires _____

James Edward Smith
Affiant
Tracy A. S. Warren
Witness
Ralph E. [Signature]
Witness

Page 1 of 1 pages

Statement was taken within 50 mins before the other two, and will be taken before the other two. Statement's were taken 1 hr on before the other two.

Mr. Riggs



Time Arrived ~~on~~ scene! 11:30:00pm How is this?
The he took statement: 11:22:00pm, 11:40:00pm, and 11:44:00pm

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

EXHIBIT -3

STATE OF SOUTH CAROLINA
COUNTY OF Anderson
PERSONALLY appeared before me RALPH C. RIGGS, who states:

Case Number Same 09-04-HP3A-089

I reside at [redacted] in WILKINSON
State SC Home Address [redacted] City [redacted]
Telephone 1130 Work [redacted] Home [redacted] -1913

Date of Birth: [redacted] Social Security Number [redacted]
I have 12 years of education, and I can/cannot read and write. This statement is given on 5-16, 2009
at 11:17 am/pm in the presence of Trooper A.S. Warren who has officially identified himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

I RALPH RIGGS WAS DRIVING SOUTH ON Hwy 29
When I observed a white mini van going at high speed
during a heavy rain shower,
the hydroplaned on wet surface
lost control spun around in center of highway
went into north bound lane and struck another
vehicle right side resulting in 3 people being
hurt.
THIS IS TRUE TO BEST OF KNOWLEDGE

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomsoever.
This statement was completed at 1140 am/pm on the 16th day of May, 2009.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 16 DAY OF MAY, 2009

Notary Public For South Carolina

My Commission Expires

Ralph C. Riggs Affiant
Alan S. Warren Witness
Kassandra J. Smith Witness

Page 1 of 1 pages

EXHIBIT-4



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

STATE OF SOUTH CAROLINA
COUNTY OF Anderson

Case Number Same
09-04-HP3A-08

PERSONALLY appeared before me Kassandra Jewell Smith who states:

I reside at [redacted] in Pelzer
SC Address [redacted] City Pelzer
Telephone: [redacted]-9429 Work: [redacted]-8907 Home: [redacted]

Date of Birth: [redacted] Social Security Number [redacted]
I have 14 years of education, and I can read and write. This statement is given on May 16, 2009
at 1140 am in the presence of Trooper M.S. Warren who has officially identified
himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY..

Going South bound on 29. It was raining
and the Grey Van lost control of and hydro-
planed and went over the yellow line and it the
grey car. This happen in Anderson county
on 5-16-09.

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomever.

This statement was completed at 1140 am on the 16th day of May, 2009.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 16 DAY OF May, 2009

Notary Public For South Carolina

My Commission Expires [redacted]

Kassandra Jewell Smith
Affiant
[Signature]
Witness
Ralph C. [Signature]

PHYSICIAN DOCUMENTATION SHEET

Sat May 16 17:25:12 EDT 2009

AnMed Health
Emergency Department
800 N. Fant St.
Anderson, SC 29621
PHONE: (864) 512-1333
FAX: (864) -

MRN: 000538178

Name: Luna Cobarruvias, Jose L.

Age: 43

Complaint: Motor vehicle traffic accident

Account #: 6404907

Sex: M

DOB: [REDACTED]

Primary Diagnosis: Fracture Clavicle shaft-closed

Arrival Time: 05/16/2009 13:48

Discharge Time: 05/16/2009 17:25

All Providers: ED physician Dr. Bridget BRENNAN

HPI:

The patient is a 43-year-old male who presents with a chief complaint of motor vehicle traffic accident. The Room number is CC2A. The history was provided by the patient, translator and EMS. The pmh is limited by language barrier. Arrival is by ambulance. The symptoms started just prior to arrival. The Position in Vehicle is driver. The patient is complaining of discomfort in the left chest and right shoulder. Per EMS pt was in and out of consciousness during transport. Current severity of pain: moderate. During the accident an no air bag present. The Context is car collision. The symptoms have been associated with lost consciousness / dazed and memory impairment, while the symptoms have not been associated with seizure. The Site of Impact is direct and passenger's Side. Severe damage to van pt was driving with significant passenger compartment intrusion into drivers side. Pts seat was broken. The protective measures employed during the collision were long extrication and seat belt.

14:54 05/16/2009 by Dr. Bridget BRENNAN, ED physician

ROS:

Constitutional: NOTE - *****A ROS is unobtainable owing to the constraints imposed by the patient's clinical condition on arrival.*****

NOTE - *****A ROS is unobtainable owing to the constraints imposed by the patient's clinical condition on arrival.*****

Level 5 indication: language difficulty

14:54 05/16/2009 by Dr. Bridget BRENNAN, ED physician

PMH:

Reviewed by: nurse

Historian: patient, translator

Social History: smoker, alcohol use-occasional

Travel History: no recent foreign travel

Medical History: *Hypertension

Surgical History: unknown

Family History: unknown

Immunization status: tetanus unknown, pneumovax - Unknown

Injuries that were sustained from passenger seat belt. If pt was in and out of consciousness. How could he make it up?

OAKTREE ORTHOPAEDICS

127 Straight Street
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSE CODARRUVIAZ
DATE OF BIRTH: [REDACTED]
MRN: 59832
DATE OF INJURY: 05/16/09
DATE OF SERVICE: 07/20/09

X-RAY INTERPRETATION:

RIGHT SHOULDER

X-rays were taken today in my clinic compared to previous x-rays, which show once again the overriding mid clavicular fracture. I do not appreciate any callus formation yet at this point.

DD:ats6
Voice File: 0720-020



92
1/22

OAKTREE ORTHOPAEDICS

127 Straight Street
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSE CODARRUVIAZ
DATE OF BIRTH: [REDACTED]
MRN: 59832
DATE OF INJURY: 05/16/09
DATE OF SERVICE: 07/20/09

HISTORY OF PRESENT ILLNESS:

The patient is accompanied by a police officer. He is here for reevaluation of his right clavicle. He states his pain is about a 6/10.

All patient history as recorded in the initial history and physical remains the same today's date.

EXAMINATION:

Physical examination of his shoulder shows symmetrical range of motion. He has continued pain on palpation over his right clavicle. The patient is neurovascularly intact.

X-rays were taken today in my clinic compared to previous x-rays, which show once again the overriding mid clavicular fracture. I do not appreciate any callus formation yet at this point.

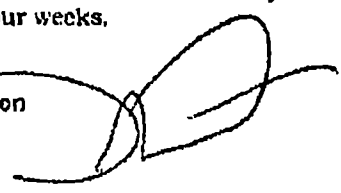
ASSESSMENT/PLAN:

1. RIGHT CLAVICLE FRACTURE.

I wrote him his last prescription for Lortab 5.0 one to two every four to six hours p.r.n. pain dispense #10, with no refills. He is to continue his range of motion exercises. He is to wear his sling as needed. He is to wean into heavy lifting, pulling, pushing, and twisting. I will repeat x-rays in four weeks.

Darius Divina, DO
Board Certified Orthopedic Surgeon

DD:ats6
Voice File: 0720-020



Transcription dictated but not read in order to expedite records.



WITNESSES

A Warren, SCHP

DOCKET NO. 2009GS04 01993

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

AUG 25 2009

Term

ARREST WARRANT NUMBER

D759037

THE STATE

vs.

Jose Luis Luna Cabarruvias

COMMITMENT

9-3-10/R

A TRUE COPY
JAN - 5 2011
Richard A. Sordley
Clerk of Courts

ACTION OF GRAND JURY

TRUE BILL

AUG 25 2009

Foreperson of Grand Jury
Date:

VERDICT

EJB

Indictment for

DUI / Felony DUI - Great Bodily Injury

SC Code: 56-05-2945(A)(1)
CDR Code: 0406

Foreperson of Petit Jury
Date:

COUNTY OF
STATE

Anderson

INDICTMENT/CASE#

2009GS0401993

VS.

Jose Luis Luna Cabarruvias

AW#: D759037

AKA: Jose Luna Cabarruvias

Date of Offense: 5/16/2009

Race: H Sex: M Age: 44

S.C. Code §: 56-05-2945(A)(1)

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0406

Address: [REDACTED]

City, State, Zip: Belton, SC 29627

DL# [REDACTED] SID# SC01389864

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: DUI / Felony driving under the influence, great bodily injury results

In violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentation to Grand Jury.

(defendant's initials)

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

ATTEST:

Solicitor SC Bar # 14224 Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment

of \$; plus costs and assessments as applicable*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: w/all charges☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. (476 days)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 18-25-20 or 18-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$14-1-211 (A)(2)(DUI Surcharge)

\$100

\$56-5-2995 (DUI Assessment)

\$12

\$56-1-286 (DUI Breath Test)

\$25

\$47.12 (Public Def/Prob)

\$500

\$14-1-212 (Law Enforce. Funding)

\$25

\$14-1-213 (Drug Court Surcharge)

\$100

\$50-21-114 (BUI Breath Test Fee)

\$50

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$90.7 (SCCJA Surcharge)

\$5

3% to County (if paid in installments)

\$4.11

TOTAL

\$141.11

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (11/2009)

A TRUE COPY

JAN - 5 2011

Richard A. Shirley
Clerk of Courts

DLS✓

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

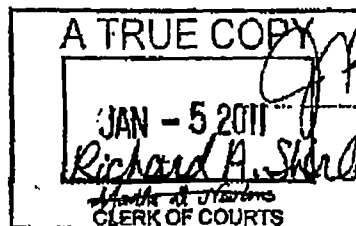
AUG 25 2009

At a Court of General Sessions, convened on _____, the Grand Jurors of
Anderson County present upon their oath:

DUI / Felony DUI - Great Bodily Injury

That Jose Luis Luna Cabarruvias, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did in Anderson County, on or about May 16, 2009, drive a vehicle and while driving did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, to wit: driving left of center and/or failure to exercise due care and/or driving too fast for conditions, which act or neglect proximately caused great bodily injury to Susan Sigmon. All in violation of Section 56-5-2945(A)(1), *Code of Laws of South Carolina*, (1976), as amended.

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



ASSISTANT SOLICITOR

Form 438
Rev. 12/08

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY

UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME Jose	MIDDLE NAME LOUIS	LAST NAME Luna-Cobarruvias
STREET AND NO. [REDACTED]	CITY Belton	STATE SC
STATE LICENSED [REDACTED]	DRIVER'S LICENSE NO. [REDACTED]	CDL ☐ YES ☒ NO
VEH. LIC. NO. [REDACTED]	STATE SC	MAKE OF VEH. YEAR Chevy 75
	HAZ. MT. [REDACTED]	HAZ. MT. [REDACTED]

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER General Sessions	STREET AND NO. 107 S. Main St
DATE OF TRIAL T.B. 1/11/09	TIME OF TRIAL 10:00
CITY Anderson	STATE SC
VIOLATION - COURT APPEARANCE INSURANCE Felony Driving Under the Influence	VIOLATION SECTION NO. 56-5-2945
OWNER OF VEHICLE Luna-Cobarruvias	DATE OF ARREST 5/16/09
ADDRESS OF OWNER Belton SC	DATE OF VIOLATION 5/16/09

SAL. DEPOSITED Yes	NAME OF ARRESTING OFFICER A.S. Warden	RANK TFC
DESCRIPTION OF ACCUSED [REDACTED]	COUNTY Anderson	NUMBER 04
DATE SAL. REC'D. BY [REDACTED]	BADGE 653	DISTRICT 03

CASE BEFORE ☒ MAGISTRATE ☐ MUN. COURT ☐	TIME OF VIOLATION 1300
CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐	MILITARY TIME [REDACTED]
NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE	DEFENDANT Anderson
DEFENDANT: DID NOT APPEAR ☐ APPEARED ☒	DISPOSITION 3
NOLLE PROSSO: ☐ DISPOSITION FORFEITED BOND: ☐ PLED: NOLO CONTENDERE ☐	CODE 1
TRIAL BY: TRIAL OFFICER ☒ JURY ☐	DATE OF TRIAL IF ANY 34330150
VERDICT OF TRIAL IF ANY GUILTY ☐ NOT GUILTY ☒	Long 34330150
AMT. SUSPENDED [REDACTED]	OFFENSE CODE 99
COMMITTED TO: Vehicle Searched ☒ Arrested by Sheriff or Constable ☒	B.A. LEVEL blood
CERTIFIED CORRECT [REDACTED]	DATE 1/11/09

TRIAL OFFICER'S COPY

A TRUE COPY

JAN - 5 2011

Richard A. Skiles
CLERK OF COURTS

STATE OF SOUTH CAROLINA)

0000GS04
INDICTMENT NUMBER

COUNTY OF ANDERSON)

D759038
CASE NUMBER**CASE DISPOSITION HISTORY****Defendant:**

Luna Cabarruvias, Jose Luis

SS# [REDACTED]

DOB [REDACTED]

Sex: M

DL#:

Race: H

DL State:

Belton, SC

Date of Arrest:

Filed with Clerk:

May 19, 2009

Offense Description:
results

DUI / Felony driving under the influence, great bodily injury

Disposition:

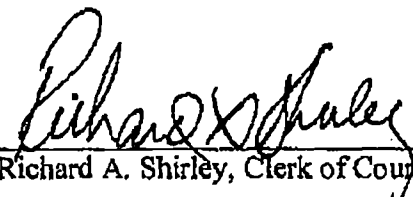
Nolle Prosequi

Disposition Judge:

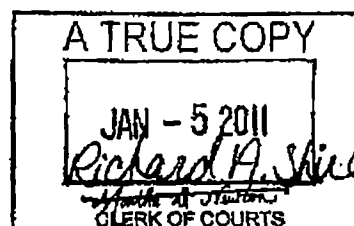
Solicitor / Master In Equity G S And C P

Disposition Date:

September 3, 2010


Richard A. Shirley, Clerk of Court

General Sessions, Anderson County



99

WITNESSES

A Warren, SCHP

DOCKET NO: 2009GS04 01994

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

AUG 25 2009

Term

ARREST WARRANT NUMBER

D759039

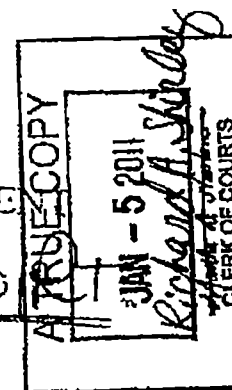
THE STATE

VS.

Jose Luis Luna Cabarruvias

COMMITMENT

9-3-10



ACTION OF GRAND JURY

TRUE BILL

AUG 25 2009

Foreperson of Grand Jury

Date: Foreperson

VERDICT

EJB

Indictment for

DUI / Felony DUI - Great Bodily Injury

SC Code: 56-05-2945(A)(1)

CDR Code: 0406

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

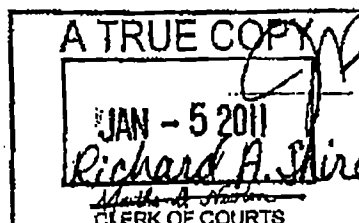
INDICTMENT

At a Court of General Sessions, convened on AUG 25 2009, the Grand Jurors of Anderson County present upon their oath:

DUI / Felony DUI - Great Bodily Injury

That Jose Luis Luna Cabarruvias, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did in Anderson County, on or about May 16, 2009, drive a vehicle and while driving did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, to wit: driving left of center and/or failure to exercise due care and/or driving too fast for conditions, which act or neglect proximately caused great bodily injury to Raymond Sigmon. All in violation of Section 56-5-2945(A)(1), *Code of Laws of South Carolina*, (1976), as amended

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



ASSISTANT SOLICITOR

COUNTY OF
STATE

Atkinson

VS.

Jose Luis Luna Cabarruvias,

AKA: Jose Luna CabarruviasRace: H Sex: M Age: 44DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Belton, SC 29627DL# [REDACTED] SID# SC01389864*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUI / Felony driving under the influence, great bodily injury resultsIn violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] 14224Solicitor [Signature] SC Bar # 14224 Defendant [Signature] Attorney for Defendant [Signature] SC Bar # 14224WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 15 yearsand/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and or payment of \$ [REDACTED]; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4 other charges☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 476 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 18-25-20 or 18-25-45 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP [REDACTED]Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED] days/hours Public Service EmploymentPayment Terms: [REDACTED]☐ Set by SCDPPPS [REDACTED]Recipient: [REDACTED]

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 100.00
§56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§56-1-288 (DUI Breath Test)	\$25	\$ 25.00
§47.12 (Public Def/Prob)	\$500	\$ 500.00
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$ 100.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$ 50.00
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
§90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 4.11
TOTAL	\$	\$ 141.11

Clerk of Court/Deputy Clerk: Martha d. Newton
Court Reporter: J. Rice

SCCA/217 (11/2009)

INDICTMENT/CASE#

2009GS0401994

AW#: D759039

Date of Offense: 5/16/2009

S.C. Code §: 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 15 yearsand/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and or payment of \$ [REDACTED]; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4 other charges☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 476 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 18-25-20 or 18-25-45 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP [REDACTED]Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED] days/hours Public Service EmploymentPayment Terms: [REDACTED]☐ Set by SCDPPPS [REDACTED]Recipient: [REDACTED]

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 100.00
§56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§56-1-288 (DUI Breath Test)	\$25	\$ 25.00
§47.12 (Public Def/Prob)	\$500	\$ 500.00
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$ 100.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$ 50.00
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
§90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 4.11
TOTAL	\$	\$ 141.11

Clerk of Court/Deputy Clerk: Martha d. Newton
Court Reporter: J. Rice

SCCA/217 (11/2009)

INDICTMENT/CASE#

2009GS0401994

AW#: D759039

Date of Offense: 5/16/2009

S.C. Code §: 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 15 yearsand/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and or payment of \$ [REDACTED]; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4 other charges☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 476 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 18-25-20 or 18-25-45 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP [REDACTED]Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED] days/hours Public Service EmploymentPayment Terms: [REDACTED]☐ Set by SCDPPPS [REDACTED]Recipient: [REDACTED]

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 100.00
§56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§56-1-288 (DUI Breath Test)	\$25	\$ 25.00
§47.12 (Public Def/Prob)	\$500	\$ 500.00
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$ 100.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$ 50.00
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
§90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 4.11
TOTAL	\$	\$ 141.11

Clerk of Court/Deputy Clerk: Martha d. Newton
Court Reporter: J. Rice

SCCA/217 (11/2009)

Presiding Judge

Judge Code: 2155Sentence Date: 9-3-10

JAN - 5 2011

Richard A. Shilley
Clerk of Courts

DLS✓

Form 430
Rev. 4-2008

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME Jose MIDDLE NAME Luis LAST NAME Luna-Cobarruvias

STREET AND NO. [REDACTED] CITY Bethlehem STATE SC ZIP CODE 29607

STATE LICENSED [REDACTED] DRIVER'S LICENSE NO. [REDACTED] CDL [REDACTED] ORI. LIC. CLASS [REDACTED]

VEH. LIC. NO. [REDACTED] STATE SC MAKE OF VEH Chrysler YEAR 95 COMAL YER NO 16/30R VEH NO COMB. [REDACTED]

HAZ. MT. NO MOPED NO MTRCYCL NO OTHER NO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER.

NAME OF TRIAL OFFICER General Sessions STREET AND NO. 107 S. Main St

DATE 1/3/11 TIME OF TRIAL 10:00 AM NAME OF TRIAL OFFICER Anderson STATE SC ZIP CODE 29607

VIOLATION - COURT APPEARANCE REQUIRED YES NO VIOLATION SECTION NO. 56-5-2995

OWNER OF VEHICLE Luna-Cobarruvias DATE OF ARREST 5-11-09

ADDRESS OF OWNER Bethlehem SC DATE OF VIOLATION 5-11-09

BAIL DEPOSITED [REDACTED] NAME OF ARRESTING OFFICER A. S. Wilson BAIL 1FC

DESCRIPTION OF ACCUSED [REDACTED] COUNTY Anderson NUMBER 04

DATE BAIL RECEIVED BY [REDACTED] BADGE 653 DISTRICT 03

CASE BEFORE [REDACTED] MAGISTRATE [REDACTED] JUDGE [REDACTED]

CIRCUIT COURT [REDACTED] FAMILY COURT [REDACTED] FEDERAL COURT [REDACTED]

NAME OF TRIAL OFFICER [REDACTED] TIME OF VIOLATION 1300 WHETHER [REDACTED]

DEFENDANT: DID NOT APPEAR [REDACTED] APPEARED [REDACTED]

DISPOSITION [REDACTED] MILES 3 E 1 S 1 W 1

NOLLE PROSSES [REDACTED] GUILTY [REDACTED] FORFEITED BOND [REDACTED] PLED: NOLLO CONTENDERE [REDACTED]

TRIAL BY: TRIAL OFFICER [REDACTED] JURY [REDACTED] NAME Anderson CODE 1

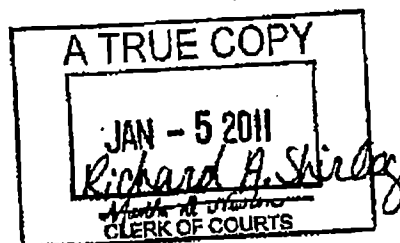
VERDICT OF TRIAL IF ANY [REDACTED] DATE OF TRIAL IF ANY [REDACTED] LBI 34330150

JAIL [REDACTED] SUSPEND [REDACTED] FINE [REDACTED] AMT. COLLECTED [REDACTED] AMT. SUSPENDED [REDACTED] Long 82330150

COMMITTED TO: [REDACTED] Vehicle Searched N Arrest as Result of Collision Y OFFENSE CODE 99 BIA LEVEL 61000

CERTIFIED CORRECT [REDACTED] DATE [REDACTED] D 759039

TRIAL OFFICER'S COPY



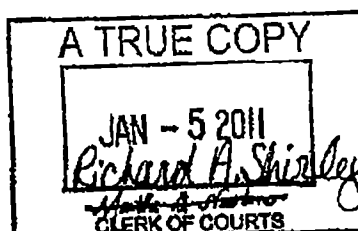
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT JOSE (LUI) COBARRUVIAS #342601
 DID MAIL TO THE CLERK OF COURT, ANDERSON COUNTY, AT
 100 S. MAIN ST. ANDERSON S.C. 29621 HIS PDK APPLICATION
 TO BE FILED, PLACED IN THE MAIL ON THIS 21 DAY OF
Dec., 2010 WITH POSTAGE PREPAID

SWORN AND SUBSCRIBED BEFORE ME JOSE LUIS LUNA COBARRUVIAS
 THIS 21 DAY OF Dec, 2010 JOSE (LUI) COBARRUVIAS
JOE L. YOUNG #342601
 NOTARY PUBLIC SOUTH CAROLINA M^cCORMICK C.I.
 MY COMMISSION EXPIRES F-2-B-120 ROOM
 8 28 2011 386 REDEMPTION WAY
 M^cCORMICK S.C.
 29859

2011-CP-04-00015

2011 JAN - 4 PM 10:03
 2011 JAN - 4 PM 10:03



CLERK OF COURT
ANDERSON COUNTY
100 S. MAIN ST.
ANDERSON S.C. 29621

12-20-10

2011-CP-04-00015

Clerk,

Will you please file my PCR APPLICATION and RETURN
TO ME A STAMPED (clocked) copy of my petition once
it is filed with case number.

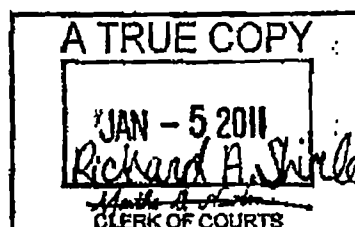
Sincerely,

JOSE LUIS COBARRUVIAS

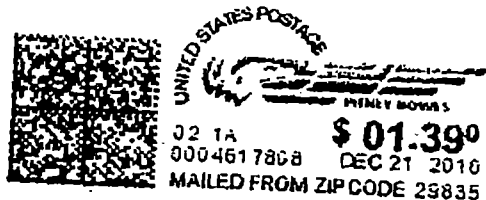
#342601

M=CURMICK C.F.

FILED IN CLERK'S OFFICE
ANDERSON SC
2011 JAN - 4 P 4:03
CLERK OF COURTS AND
GENERAL SESSIONS



JOSE LUIS COBARRAVIAS #342601
M^cCORMICK C.F. F2-B-120
386 REDEMPTION WAY
M^cCORMICK S.C. 29859



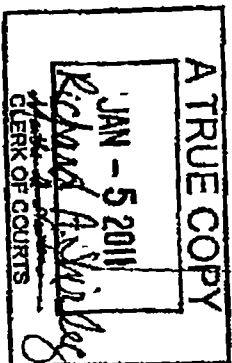
Clerk of Court
ANDERSON COUNTY
100 S. MAIN ST.
ANDERSON S.C. 29622

2011-CP-04-00015

CHG. DIV. 5.

2011 DEC 14 11:13

139



[illegible]

COUNTY OF Anderson
STATE _____

INDICTMENT/CASE# 2009GS0401994

VS.
Jose Luis Luna Cabarruvias
AKA: Jose Luna Cabarruvias
Race: H Sex: M Age: 44
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Belton, SC 29627
DL# [REDACTED] SID# SC01389864

AW# D759039
Date of Offense: 5/16/2009
S.C. Code §: 56-05-2945(A)(1)
CDR Code #: 0406

SENTENCE SHEET



*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: DUI/Felony driving under the influence, great bodily injury results

In violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

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

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury,

(defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor SC Bar # 14224
[Signature] Defendant SC Bar # [REDACTED]
[Signature] Attorney for Defendant SC Bar # [REDACTED]

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4000 hours

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2476 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

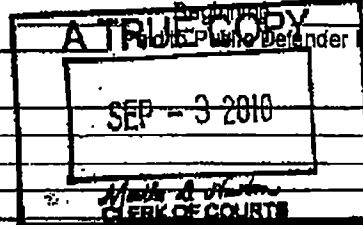
Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ 100.00
\$56-5-2995 (DUI Assessment) \$12 \$ 12.00
\$56-1-286 (DUI Breath Test) \$25 \$ 25.00
\$47.12 (Public Def/Prob) \$500 \$ 25.00
\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
\$14-1-213 (Drug Court Surcharge) \$100 \$ 100.00
\$50-21-114 (BUI Breath Test Fee) \$50 \$ 50.00
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 40.00
\$90.7 (SCCA Surcharge) \$5 \$ 4.54
3% to County (if paid in installments) \$ 4.11
TOTAL \$ 141.11

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmt. of \$ _____
\$ _____ Public Defender Fund

Other: _____



☐ Appointee PD or appointed other counsel.
\$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Judge Code: 2155

Sentence Date: 9-3-10

Clerk of Court/Deputy Clerk: Martha A. Newton
Court Reporter: J. Rice

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF Anderson
STATE

INDICTMENT/CASE# 2009GS0401993

VS.
Jose Luis Luna Cabarruvias
AKA: Jose Luna Cabarruvias
Race: H Sex: M Age: 44
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Belton, SC 29627
DL# * SID# SCD1389864

AW#: D759037
Date of Offense: 5/16/2009
S.C. Code §: 56-05-2945(A)(1)
CDR Code #: 0406

SENTENCE SHEET



*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: DUI / Felony driving under the influence, great bodily injury results

In violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC within 1st or Lowd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 14224
Solicitor SC Bar # 14224 Defendant Attorney for Defendant SC Bar # 14224

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: w/ all charges
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections. (476 days)

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-85 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐
☐ Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	
\$56-5-2995 (DUI Assessment)	\$12	12.00
\$56-1-286 (DUI Breath Test)	\$25	
\$47.12 (Public Def/Prob)	\$500	
\$14-1-212 (Law Enforce. Funding)	\$25	25.00
\$14-1-213 (Drug Court Surcharge)	\$100	
\$50-21-114 (BUI Breath Test Fee)	\$50	
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	
\$90.7 (SCCJA Surcharge)	\$5	
3% to County (If paid in installments)	\$	
TOTAL	\$	

Clerk of Court/Deputy Clerk Martha de Newton
Court Reporter: J. Rice

SCCA/217 (11/2009)

DLS✓

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ Register _____
\$ _____ Defendant Fund

Other: _____
SEP - 3 2010

☐ Appoint. PD or Appointed other counsel, \$47.12 requires \$600 be paid to Clerk during probation.

Presiding Judge _____
Judge Code: 2155
Sentence Date: 9-3-10

COUNTY OF
STATE

Anderson

VS.

Jose Luis Luna Cabarruvias

AKA: Jose Luna Cabarruvias

Race: Sex: Age: 2009

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Belton, SC 29627

DL# SID# SC01389864

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said Indictment comes now the Defendant who was

TO: DUI / Felony driving under the influence death resultsIn violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code# 0395☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicated, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor [Signature] SC Bar # 14224 Defendant Jose Luna Cabarruvias Attorney for Defendant [Signature] SC Bar # 14224WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Wall Chicks
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. (416 Days)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ 100.00
\$56-5-2995 (DUI Assessment)	\$12	\$ 12.00
\$56-1-286 (DUI Breath Test)	\$25	\$ 25.00
\$47.12 (Public Def/Prob)	\$500	\$ 500.00
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$100	\$ 100.00
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ 50.00
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
\$90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 4.11
TOTAL	\$	\$ 141.11

Clerk of Court [Signature]
Court Reporter: J. Rice

SCCA217 (11/2009)

DLS✓

IN COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2009GS0401940✓

AW#: DIRECTDate of Offense: 5/16/2009S.C. Code §: 56-05-2945(A)(2)CDR Code #: 0395

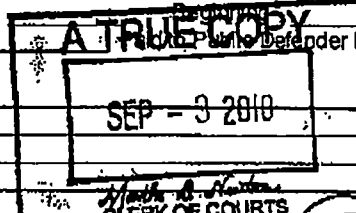
SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)
☐ Negotiated Sentence, ☐ Recommendation by the State.Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____
Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____
\$ _____ to be paid to Defender Fund

Other: _____

☐ Appointed or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]
Judge Code: 2155
Sentence Date 9-3-10



ALAN WILSON
ATTORNEY GENERAL

March 8, 2011

The Honorable Richard A. Shirley
Anderson County Clerk of Court
P.O. Box 8002
Anderson, SC 29622

Re: Jose Luis Luna Cobarruvias, #342601 v. State of South Carolina
2011-CP-04-0015

Dear Mr. Shirley:

Enclosed please find the original Return of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

A. West Lee
Assistant Attorney General

AWL/lp

Enclosure

Anderson County Clerk's Records
SCDC Records
Guilty Plea Transcript¹

cc: Daniel L. Draisen, Esquire

FILED
CLERK OF COURT
ANDERSON SC
2011 MAR -9 A 11:43
GENERAL SESSIONS

¹The Guilty Plea Transcript has not yet been received but will be forwarded upon receipt.

State of South	)	In the Court of Common Pleas
Carolina	)	
County of Anderson	)	Case No: 2011-CP-04-00015

Jose Luis Luna	)	
Cobarruvias,	)	
Applicant,	)	
-vs-	)	Transcript of Record
	)	Post-Conviction Relief
State of South	)	Hearing
Carolina,	)	
Respondent.	)	

June 8, 2011
Anderson, South Carolina

B e f o r e:

The Honorable Alexander S. Macaulay, Judge.

A p p e a r a n c e s:

Daniel L. Draisen, Esq.
Attorney for the Applicant

Kaelon E. May, Esq.
Attorney for the Respondent/State

Gilberto Gonzales, Interpreter

Robin Sue Hild, FCRR, RPR
10th Circuit Court Reporter

Index

1		
2		
3	Witnesses	Page
4		
5	Jose Luis Luna Cobarruvias	
6	Direct Examination by Mr. Draisen	8
	Cross-Examination by Ms. May	30
7	Redirect Examination by Mr. Draisen	43
8	David Stoddard	
9	Direct Examination by Ms. May	46
	Cross-Examination by Mr. Draisen	56
10	Redirect Examination by Ms. May	63
11	Jennifer Johnson	
12	Direct Examination by Ms. May	65
	Cross-Examination by Mr. Draisen	76
13		
14		
15	Argument on behalf of the Applicant	91
	Argument on Behalf of the Respondent	93
16	The Court's Ruling	96
	Certificate of Court Reporter	98

Exhibits

21	No.	Description	Id/Ev.
22			
23		Applicant's Exhibits Numbers 1 and 2, black-and-white eight-and-a-half-by-eleven copies of photographs of the accident scene	26/27
24			

1 Post-Conviction Relief Hearing

2 June 8, 2011

3 10:53 a.m.

4 ***

5 THE COURT: Let's move on to our next case.

6 MS. MAY: Mr. Jose Luis Luna Cobarruvias is next,
7 Your Honor.8 MR. DRAISEN: Your Honor, my apologies, but I
9 wasn't aware that we would need a court reporter -- I
10 mean an interpreter for sure until this morning, and so
11 I brought an interpreter but I had to get him at the
12 last minute so he wanted me to apologize for being in
13 jeans and not proper court attire.

14 THE COURT: Well, this is your interpreter?

15 MR. DRAISEN: My interpreter.

16 THE COURT: All right.

17 MR. DRAISEN: He's my interpreter, and that's why I
18 wanted to let you know. He was afraid to come into your
19 courtroom and ---

20 THE COURT: No, that's all right.

21 MR. DRAISEN: --- I said it will be on me. It's my
22 fault. But I got written letters from the gentleman in
23 pretty good English, but somebody must have assisted him
24 in writing those, so you're gonna need an interpreter.

25 THE COURT: Very well.

1 (Discussion off the record between the Interpreter
2 and Court Reporter.)

3 **THE COURT:** All right. This next case is Jose Luis
4 Luna Cobarruvias, 2011-CP-04-15, versus the State.
5 Mr. Draisen represents the Applicant, Ms. May represents
6 the State.

7 I understand that an interpreter, Mr. Gilberto
8 Gonzales, is going to assist the Applicant in this case.
9 Mr. Gonzales, if you would please stand.

10 (Whereupon, the Interpreter was sworn by the Court,
11 as follows:)

12 **THE COURT:** Do you swear or affirm that you will
13 apply your best skill and judgment and as an officer of
14 the court render a complete and accurate interpretation,
15 without altering, omitting, or adding anything to what
16 is stated, without explanation or summarization, while
17 preserving the nuances and matters of formality or
18 informality of the speech?

19 **THE INTERPRETER:** I do.

20 **THE COURT:** Very good. Thank you, sir.

21 Mr. Draisen, what are the grounds for the
22 Application?

23 **MR. DRAISEN:** Mr. Cobarruvias has alleged
24 ineffective assistance of counsel, involuntary guilty
25 plea, prosecutorial misconduct as a result of

1 Brady/Rule 5 violations. He has asserted in his
2 Application that there was a failure on the part of
3 Ms. Johnson and David Stoddard to adequately
4 investigate the facts.

5 And the issues seem to be primarily related to
6 whether or not he was the driver of the vehicle, which,
7 of course, would be a critical issue the in the case.
8 And in reviewing the file there are some inconsistencies
9 with regard to timing and dates, that he had injuries
10 that he feels indicate that he was a passenger rather
11 than the driver, and certain other aspects of the case
12 that he believes would warrant him being allowed to have
13 a trial in the case in regard to those issues of whether
14 or not he was the driver.

15 THE COURT: All right. Well, let me see if I
16 have -- your grounds are ineffective assistance of
17 counsel based on inadequate investigation of the facts
18 as to whether or not there was sufficient evidence of
19 the Defendant being the driver rather than the
20 passenger?

21 MR. DRAISEN: That's correct.

22 THE COURT: The coerced plea, what was that?

23 MR. DRAISEN: Involuntary. He, he indicated to me,
24 Your Honor, in our discussions that he had no -- very
25 little understanding of the law, that he was advised by

1 Counsel that it was their opinion that he had little
2 chance of defending himself and what he needed to do was
3 to accept the plea without addressing his concerns about
4 the evidence, and he thought that he would address those
5 issues through this process, through the PCR process
6 when he would have more time to gather the evidence and
7 have his family help contact possible witnesses and
8 things of that nature. And he says that he didn't
9 understand the nature of the, how this process would be
10 where it is today, essentially due to a language barrier
11 primarily, he said.

12 THE COURT: All right. And the prosecutorial
13 misconduct?

14 MR. DRAISEN: He's alleging the prosecutorial
15 misconduct, if I understand it, on the basis that he
16 feels that his counsel either failed to obtain evidence
17 and information that he requested or failed to disclose
18 the evidence to him so that he could make an informed
19 decision about the plea. And essentially as a result of
20 that, you know, gave him advice based on limited amounts
21 of the evidence and not the totality of the evidence
22 that they received such that it amounts to some sort of
23 a coerced plea.

24 THE COURT: So it goes back as far as his plea as
25 well?

1 MR. DRAISEN: Yes, sir.

2 THE COURT: All right. You may call your first
3 witness.

4 MR. DRAISEN: Your Honor, at this time we would
5 call Mr. Cobarruvias. Do you want him to go up?

6 THE COURT: Please.

7 (The Applicant approaches the witness stand.)

8 THE COURT: Would you raise your right hand,
9 please.

10 THE APPLICANT: (Complies.)

11 MR. DRAISEN: If you will permit me, Your Honor,
12 just one minute off the record?

13 (Discussion off the record between Mr. Draisen and
14 the Applicant through the Interpreter.)

15 THE COURT: If you would please raise your right
16 hand.

17 THE APPLICANT: (Complies.)

18 (Whereupon, the Applicant was sworn by the Court
19 through the Interpreter, as follows:)

20 THE COURT: Do you solemnly swear or affirm that
21 the testimony you are about to give is the truth, the
22 whole truth, and nothing but the truth?

23 THE APPLICANT: In the name of Jesus.

24 THE INTERPRETER: In the name of Jesus.

25 THE COURT: Very good. Thank you.

1 Whereupon,

2 Jose Luis Luna Cobarruvias,
3 after first having been duly sworn, testified as
4 follows:

5 Direct Examination by Mr. Draisen:

6 Q. Mr. Cobarruvias, would you state your full name
7 into the record, please.

8 A. Jose Luis Luna Cobarruvias.

9 Q. And, Mr. Cobarruvias, you were charged with two
10 counts of felony DUI, great bodily injury, and one
11 count of felony DUI causing death; is that correct?

12 THE WITNESS: That's *correcto*. That's correct.

13 THE INTERPRETER: Yes, that is correct.

14 By Mr. Draisen:

15 Q. And that incident occurred on May 16, 2009?

16 THE WITNESS: *Correcto*.

17 THE INTERPRETER: Correct.

18 By Mr. Draisen:

19 Q. And at the time of the accident were you conscious
20 or unconscious?

21 A. I recall when I was with my friend, Ricardo ---

22 Q. No, no. Just answer the question.

23 A. I don't recall anything. I came back to my senses
24 at the hospital.

25 Q. Okay. All right. So, from the time of the

1 accident, the next thing you remember is being in the
2 hospital?

3 THE WITNESS: *Correcto.*

4 THE INTERPRETER: Correct.

5 By Mr. Draisen:

6 Q. Now, and then you received these charges?

7 THE WITNESS: Correct.

8 THE INTERPRETER: Correct.

9 By Mr. Draisen:

10 Q. And who did you hire to represent you?

11 A. At first --

12 THE WITNESS: (Interrupting and speaking in
13 Spanish.)

14 THE INTERPRETER: And then I hired James, Dick
15 James --

16 THE WITNESS: Dick James.

17 (Speaking in Spanish) at that time. Then suddenly
18 my --

19 THE INTERPRETER: Suddenly my ---

20 THE WITNESS: -- *familia* --

21 THE INTERPRETER: Family ---

22 THE WITNESS: -- hired -- and the County --

23 THE INTERPRETER: County ---

24 THE WITNESS: (Interrupting and speaking in
25 Spanish.)

1 THE INTERPRETER: Called Immigration and
2 Immigration put a hold on me. And then ---

3 THE WITNESS: (Interrupting and speaking in
4 Spanish) ---

5 THE INTERPRETER: I said ---

6 THE WITNESS: (Interrupting and speaking in
7 Spanish) ---

8 THE INTERPRETER: I'm gonna be deported ---

9 THE WITNESS: (Speaking in Spanish.)

10 THE INTERPRETER: They won't give me a bond.

11 THE WITNESS: (Speaking in Spanish.)

12 THE INTERPRETER: I'm gonna be locked up.

13 THE WITNESS: Then I told *mi familia* ---

14 THE INTERPRETER: Then I told my family ---

15 By Mr. Draisen:

16 Q. Mr. Cobarruvias, just answer the question that I
17 have. Don't explain.

18 THE WITNESS: *Si*. (Speaking in Spanish.)

19 THE INTERPRETER: Later my family hired David
20 Stoddard.

21 By Mr. Draisen:

22 Q. Okay.

23 A. He visit me there one time at the Detention Center.

24 THE COURT: All right. Just a moment.

25 THE INTERPRETER: *Un momento*.

1 **THE COURT:** Answer the question that is asked, and
2 then, if he wants to explain the answer, you may do so.
3 But answer the question that is asked first.

4 **THE WITNESS:** Thank you. I'll do it correct.

5 By Mr. Draisen:

6 Q. So David Stoddard was hired?

7 A. Uh-huh.

8 Q. Did anyone else represent you? *Si* or no?

9 A. *Si*.

10 **THE INTERPRETER:** Yes.

11 By Mr. Draisen:

12 Q. Who?

13 A. Ms. Jennifer Johnson.

14 Q. Okay. And who primarily represented you through
15 the guilty plea phase?

16 A. Ms. Jennifer Johnson.

17 Q. Okay. Was David Stoddard still involved at all at
18 that time, *si* or no?

19 A. Yes, he was involved.

20 Q. So did you receive advice regarding your plea from
21 both Ms. Johnson and Mr. Stoddard?

22 A. They -- I did, but they was not clear about it.

23 Q. Okay. Did they use a translator with you?

24 A. At the last minute. When Judge McIntosh stopped
25 the process, then the interpreter was called in.

1 Q. That was during the plea?

2 THE APPLICANT: Si.

3 By Mr. Draisen:

4 Q. Did Ms. Johnson and Mr. Stoddard have an
5 interpreter present when you discussed the case with
6 them?

7 THE INTERPRETER: Two times that ---

8 THE WITNESS: (Interrupting and speaking in
9 Spanish.)

10 THE INTERPRETER: A week before the 16 months ---

11 THE WITNESS: (Interrupting and speaking in
12 Spanish.)

13 THE INTERPRETER: I was twice ---

14 THE WITNESS: (Interrupting and speaking in
15 Spanish.)

16 THE INTERPRETER: I was seen by Ms. Johnson. The
17 last time I saw Ms. Johnson was Mr. David was with her,
18 he -- and what we talked about did not ---

19 THE WITNESS: (Interrupting and speaking in
20 Spanish.)

21 THE INTERPRETER: -- satisfy me then ---

22 THE WITNESS: (Interrupting and speaking in
23 Spanish.)

24 THE INTERPRETER: -- because I didn't know nothing
25 about ---

1 THE COURT: Just a moment.

2 THE INTERPRETER: *Un momento.*

3 THE COURT: The question was: Did Mr. Stoddard or
4 Ms. Johnson use a translator?

5 MS. MAY: May I ask him to do just a sentence at a
6 time just so we could have everything clear? It's a
7 little difficult.

8 THE COURT: Well, as I say, the easiest way to do
9 that is to listen to the question, answer the question,
10 and then if you need to explain your answer, do that
11 after you have answered the question.

12 THE WITNESS: *Correcto.*

13 THE INTERPRETER: Correct.

14 THE COURT: All right. Once again, coming back to
15 the question: Did Mr. Stoddard or Ms. Johnson have an
16 interpreter during their interview?

17 THE WITNESS: No, sir, Your Honor.

18 THE INTERPRETER: No, sir, Your Honor.

19 THE COURT: All right.

20 By Mr. Draisen:

21 Q. Were you completely able to understand the
22 discussions that you had with Ms. Johnson without an
23 interpreter?

24 A. Not really. I, I understand some English, but not
25 all of it.

1 Q. Did you have a problem, did you have any problem
2 understanding the legal explanations that you were
3 given?

4 A. That is the problem: I didn't understand them.

5 Q. Okay. And what was your -- what did Ms. Johnson
6 explain to you about the plea deal?

7 A. (No response.)

8 Q. Briefly.

9 A. I was not offered a deal.

10 Q. Okay. What were you instructed with regard to you
11 pleading guilty?

12 A. I was only told that, whether I plead guilty or
13 not, the State, the State did not have a time frame for
14 how long they was gonna give me. She stated there's 20
15 years, there's a number of 20 years.

16 The first time, the first offer was 25 years, the
17 second time she stated 20 years, 20 years for the, Miss
18 Kathy. That's what I was told. 25 years, she stated a
19 maximum of 25 years for Miss Kathy -- there were two
20 charges previously, maximum time, but I did not
21 understand it completely.

22 Q. Was it explained to you what the State had to prove
23 for you to be found guilty?

24 A. Si.

25 THE INTERPRETER: Yes.

1 By Mr. Draisen:

2 Q. And was all of the evidence that the State had
3 reviewed with you?

4 A. They showed me pictures, but there's a lot more
5 paperwork that I would like to have that I don't have.
6 I was told that the EMS personnel pulled me out of my
7 vehicle, and I do not have that statement. But I did
8 have Miss Kathy's statement. I don't understand.
9 Miss Kathy -- I don't have two more statements from the
10 other two people, nor mine.

11 Q. So you reviewed some evidence?

12 THE WITNESS: Si.

13 THE INTERPRETER: Yes.

14 By Mr. Draisen:

15 Q. Since your plea, have you now seen more of the
16 evidence?

17 A. Yes, I have received some.

18 Q. Okay. Do you have questions about the witness
19 statements?

20 A. Yes.

21 Q. Have you identified a concern or problem with those
22 statements?

23 A. The first problems are the three witnesses do not
24 identify here who was in the van completely. And --
25 how can I say -- the Supreme Court stated very clear in

1 the 14th Amendment ---

2 Q. Stick to the question.

3 THE WITNESS: Si.

4 By Mr. Draisen:

5 Q. First, the witness statements don't mention
6 anything about who was driving the van? They don't
7 even mention the driver?

8 THE WITNESS: No.

9 THE INTERPRETER: No.

10 By Mr. Draisen:

11 Q. Did the witness statements mention that anyone saw
12 anybody else get out of your van and flee?

13 A. In their statements they do not mention no one.
14 They only talk about three injuries. And I was also
15 injured.

16 Q. Okay. And the third thing, was there a problem
17 with the time on the statements about when the
18 statements were given?

19 A. There are several contradictions. The accident
20 occurred allegedly at 1:00. The Highway Patrol arrived
21 at 1:30. The first statement, Mr. Ralph's (phonetic),
22 was taken at 11:23 a.m. The second one was taken at
23 11:44 -- No. I'm sorry -- 11:41st [sic], and the other
24 one was taken at 11:44.

25 Q. So the accident occurred at 1:00 p.m.; however, the

1 Highway Patrol arrived at 1:30 p.m., and yet the
2 witness statements all indicated that their statements
3 were taken at 11:40 a.m. on the same day of the
4 accident prior to the accident?

5 A. That's correct, according to the statements.

6 Q. Now, did Ms. Johnson or Mr. Stoddard discuss that
7 inconsistency with you in the statements?

8 A. Yes. Yes.

9 Q. Okay. And what was the result of your discussion
10 with them about these inconsistencies?

11 A. I was told that the Judge would not pay any
12 attention to that, to the times that those statements
13 were taken. The statements specifically state that
14 they're accusing me, and you have to be very clear.

15 Q. What about, what about, did you discuss with
16 Ms. Johnson or Mr. Stoddard the fact that the
17 statements don't say anything about who the driver was?

18 A. Yes. Yes, I did. I spoke with them about that.

19 Q. And what did you understand ---

20 A. The last time that I saw, Ms. Johnson saw me when
21 Mr. Stoddard was there, he called Ms. Cassandra
22 (phonetic) and asked her questions about what did she
23 saw. And he also asked her ---

24 Q. So your lawyers called the witnesses?

25 A. Yes.

1 Q. Okay. End result. And then, and spoke to them on
2 your behalf?

3 A. One of them.

4 Q. Okay. All right. And were you satisfied with the
5 response that you received?

6 A. No.

7 Q. Why were you not satisfied?

8 A. I understood that he was helping -- the reason why
9 the statements were signed at that time was because
10 they did it the following day. Mr. Stoddard stated,
11 God as my witness, he don't lie.

12 Q. So you think the date, the date is wrong?

13 A. What they told me is not correct. Ms. Cassandra, I
14 don't think she understood what Mr. Stoddard was
15 telling her.

16 MS. MAY: Your Honor, I object to that. That's
17 speculation. He doesn't know what Mr. Stoddard was
18 thinking or ---

19 MR. DRAISEN: I didn't ask that question.

20 MS. MAY: --- or what the person was thinking.

21 THE COURT: We have a bit of a problem with hearing
22 things that weren't asked. So with that I'll sustain
23 the objection because it goes to speculation as to what
24 might be in somebody's mind.

25 All right.

1 By Mr. Draisen:

2 Q. All right. Did you receive injuries in the
3 accident?

4 A. Yes.

5 Q. Number one, what's the first part of your body --
6 show me one part that you hurt.

7 A. My right shoulder side (indicating).

8 Q. Okay. And was there another part of your body that
9 you hurt?

10 A. Just on my shoulder, that's all, my back all the
11 way to my --

12 THE INTERPRETER: The last mark was where he is
13 pointing.

14 By Mr. Draisen:

15 Q. Okay. And did you have some concern about how you
16 injured your right shoulder?

17 A. Yes.

18 Q. Briefly.

19 A. With me being in jail, there was three inmates with
20 me ---

21 Q. The question is: What in your mind was the concern
22 that you had an injury to your right shoulder?

23 A. At that moment I don't -- my mind was not
24 working -- it was working -- thinking how did, this
25 thing could have happened. Because I remember that I

1 was the last time with my friend, Ricardo, and I
2 remember that I sat on the passenger's side when, to
3 wait for Miguel Miranda to come so he would drive
4 behind my van and Ricardo would take me home.

5 And I fell asleep. I assume I fell asleep because
6 I woke up at the hospital. I think that I saw him
7 sitting on the driver's seat. That's it.

8 Q. Okay. Did you have a question in your mind about
9 whether you were the passenger?

10 A. I have five witnesses. I saw the marks of the
11 seatbelt that they saw in jail. An officer when I
12 arrived from the prison, Mrs. Jones saw me and
13 stated ---

14 Q. Mr. Cobarruvias, the question was -- you didn't
15 answer the question. The question was: Did you have
16 concerns about whether you were the passenger? Yes or
17 no.

18 A. Si. I was the passenger.

19 Q. Okay. Did you happen to address those concerns
20 with Ms. Johnson and Mr. Stoddard?

21 A. Si, si.

22 Q. Did you request that Ms. Johnson and Mr. Stoddard
23 take steps to ascertain through some scientific means
24 who was driving the van?

25 THE WITNESS: Si.

1 THE INTERPRETER: Yes.

2 By Mr. Draisen:

3 Q. To your knowledge did they do that?

4 A. No. They ignored me.

5 Q. And what did you ask that they do? Briefly.

6 A. I wanted to visit the doctors so they would state,
7 so they would state their professional, an expert
8 accident reconstructionist so they could produce a
9 doctor's testimony.

10 Q. About who was the driver?

11 A. Exactly.

12 Q. Was that investigated, to your knowledge, by ---

13 A. No, that was not investigated.

14 Q. And have you ever seen the report from EMS?

15 A. To this day I haven't. Robert Gamble and the
16 Public Defender, the Public Defender's Office, Robert
17 Gamble sent me the second Motion of Discovery and the
18 same, and that was there in the first one, is the same
19 documents that I received the second time.

20 Q. You haven't seen an accident, an EMS report
21 regarding your being transported to the hospital?

22 A. No.

23 Q. To your knowledge did Ms. Johnson or Mr. Stoddard
24 ever obtain the EMS report?

25 A. (Answering in Spanish.)

1 Q. Si or no?

2 A. No. That's clear enough.

3 (There was a pause in the proceedings.)

4 By Mr. Draisen:

5 Q. Did you provide to your lawyers the names of
6 persons that you believed to have been in your van at
7 the time of the accident?

8 A. I told to the lady there that wouldn't tell me who
9 was gonna be my Public Defender.

10 Q. Did you tell your lawyers, Jennifer Johnson or
11 David Stoddard ---

12 THE WITNESS: (Interrupting in Spanish.)

13 By Mr. Draisen:

14 Q. Wait for a minute. Jennifer Johnson or David
15 Stoddard, did you give them the names of other people
16 that you believe were in your van at the time of the
17 accident? Si or no?

18 THE WITNESS: Si.

19 THE INTERPRETER: Yes.

20 By Mr. Draisen:

21 Q. To your knowledge did they locate or try to locate
22 those individuals?

23 A. The last time, day that I spoke to Mrs. Johnson and
24 Mr. Stoddard, I asked them -- I -- I asked Mr. Stoddard
25 and Mrs. Johnson -- I'm sorry, Mrs. Johnson to go to

1 Ricardo's address and try to investigate whether or not
2 he, in fact, drove the van or had anything to do with
3 that day in question and make certain that that was not
4 the case. And, with God as my witness, she told me
5 that my -- who was gonna cooperate with me, that she
6 had helped a lot of Hispanics in other cases in
7 Anderson, and she was always...

8 Q. My question is: Did you get -- to your knowledge
9 did Ms. Johnson go see the gentleman whose address you
10 gave her? *Si* or no?

11 THE WITNESS: No.

12 THE INTERPRETER: No.

13 By Mr. Draisen:

14 Q. Did she ever discuss with you that she sent an
15 investigator to talk about the case?

16 A. No.

17 Q. Did she ever report back to you that she tried to
18 locate him but couldn't locate him? *Si* or no?

19 A. I never knew anything. She never mentioned
20 anything about that.

21 Q. So you were never told that she couldn't locate the
22 witness?

23 A. Never, never mentioned, she never mentioned
24 anything about, about going before or other people.

25 Q. Do you know whether or not your lawyers made any

1 effort to hire anyone to match your injuries with the
2 injury, with the damage to your van? Si or no?

3 A. No. I was told that the investigators, the State
4 investigators, that the State had their own
5 investigators, that that was enough.

6 Q. Okay. But did anyone, did anyone hire anyone on
7 your behalf to check that evidence?

8 A. No. That's what I was told, what she told me. On
9 my behalf there was no help to me. We didn't see a lot
10 of the paperwork on my case.

11 Q. And the only time that you had -- at your guilty
12 plea the only time an interpreter that was present was
13 during the plea itself?

14 A. The judge, Judge McIntosh, Mister McIntosh stopped
15 the proceedings so an interpreter could be called in.

16 Q. Was that during the plea itself?

17 A. Exactly. Exactly.

18 Q. And when the interpreter came, was there any break
19 so that you could consult with your lawyers and the
20 interpreter prior to continuing your plea?

21 A. Only when the interpreter arrived, because the
22 explanation, about five or ten minutes, was not enough.

23 Q. Okay. Was the discussion only about the plea
24 itself?

25 A. It was about -- it was about what it would -- it

1 was explained to me what was the maximum time that I
2 could have gotten for each charge that day and the fact
3 that whether or not I understood them. But I was -- if
4 I understood my rights, which I didn't know that I had
5 any or there would have existed any Constitutional
6 rights. The only thing that in my life I knew about
7 rights were human rights. That's all.

8 Q. But there was a discussion that you had certain
9 rights prior to your plea?

10 THE WITNESS: Si.

11 THE INTERPRETER: Yes.

12 By Mr. Draisen:

13 Q. Did you understand that by pleading you would be
14 waiving those rights?

15 A. I did it innocently because I didn't have another
16 option.

17 Q. You felt like you had no other option?

18 A. I felt like I was threatened, like I was in an
19 order. Nobody bothered to investigate anything in my
20 behalf, so I assumed based on what I, the knowledge
21 that I had, I wanted to take whatever they will give me
22 with the least time and go to jail.

23 And later in the prison's library I tried to
24 investigate on my own how to go back to court and
25 fight. It seems that somebody would reconsider about

1 me.

2 Q. Are there any other concerns that you have that I
3 haven't addressed that covers, that cover the evidence,
4 that cover the discussions with your attorney and the
5 problems that you had there? Is there anything that I
6 haven't covered? Specifically regarding the
7 representation of your lawyers, not the facts of the
8 case.

9 A. I would like for you to know, I would like for them
10 to have pictures of the, to enter as an exhibit of the
11 accident, just the pictures.

12 MR. DRAISEN: May I approach, Your Honor?

13 THE COURT: Certainly.

14 MR. DRAISEN: If I could mark these.

15 (Applicant's Exhibits Numbers 1 and 2,
16 black-and-white eight-and-a-half-by-eleven copies
17 of photographs of the accident scene, were marked
18 for identification.)

19 (Discussion off the record.)

20 MR. DRAISEN: Your Honor, we would like to move one
21 and two into evidence at this time.

22 THE COURT: Any objection?

23 MS. MAY: No objection.

24 THE COURT: Applicant's one and two are admitted
25 into evidence.

1 (Applicant's Exhibits Numbers 1 and 2 were received
2 in evidence.)

3 By Mr. Draisen:

4 Q. Tell the judge what you would like to tell him
5 about the photos.

6 A. According to how the pictures show, how, if it can
7 be explained that my right shoulder, where it was
8 injured, and I was in the driver's seat. If the impact
9 was on the right side, my body reacted opposite. If
10 someone says that I was in the driver's seat and I
11 didn't have no seatbelt when the paramedics arrived,
12 that's what the statement states.

13 Then, if I turned, I injured my, my right shoulder,
14 I would have fallen in the middle of the seat.

15 MS. MAY: Your Honor, I'd like to object at this
16 time. This is speculation. He has already testified he
17 has no idea what happened at the time when he fell
18 asleep in the van till when he woke up in the hospital.

19 MR. DRAISEN: Your Honor, I think he's trying to
20 address what his concerns were with his lawyers is where
21 I think is where he's going. He is saying this wasn't
22 addressed by Counsel, if I'm not mistaken. I mean, I
23 could ask him that question. But I think that's the
24 purpose for which he's raising this issue, not for the
25 truth of the matter.

1 **THE COURT:** I understand. I understand. I'm gonna
2 permit the question. But let's -- but again, I think
3 the photographs speak for themselves. And I've read the
4 transcript and noticed that there were questions about
5 the injuries, so I'm going to permit it. Go ahead.

6 **THE WITNESS:** (Through Interpreter) The truth of
7 the matter, if I could say something about the accident,
8 I would say it, but I don't know. What good would it do
9 me to lie about it? I'm already in prison anyway. I
10 guess, well, for a, for an honest investigation to take
11 place with regards to my, how I got my injuries, like I
12 stated, I got five different people that looked at me
13 and saw the marks of the seatbelt, and in the jailhouse
14 they had cameras also when I was showing my injuries.

15 And the Magistrate Judge on May the 17th of 2009,
16 when I went before him in jail, I had my arm in a sling
17 hanging there. That's more than enough, I'd say.

18 By Mr. Draisen:

19 Q. Okay. Did you give the names of those witnesses to
20 your lawyers?

21 A. The last letter that I sent, I sent four, and
22 there's one more, it was the Officer, Ms. Jones, and I
23 saw her yesterday and she told me that she would
24 testify that she saw the marks on my -- she clearly
25 remembers when I arrived there.

1 Q. Okay. Did -- the question was: Did you give those
2 names of these people to your lawyers?

3 A. (No response.)

4 Q. Si or no?

5 A. Ms. Johnson wouldn't take them.

6 Q. So you tried to discuss them with her?

7 A. Yes, yes, exactly. Seven letters. And a week
8 before the sixteenth month I sent her seven letters.

9 Q. Are you talking about while you were being held
10 awaiting trial?

11 A. Yes. My PCR I sent three, four witnesses,
12 including the nurse, Ms. Langston, and my friends --
13 oh, my ---

14 Q. The question is: Did you ask Ms. Johnson prior to
15 your plea ---

16 A. (Witness interrupting question speaking in
17 Spanish.)

18 Q. --- to contact those witnesses?

19 A. In the letters I wrote there I stated the only two
20 times that I ever saw her -- we argued for about, like
21 she was not there of her own free will, it looked like
22 she was upset, like that she did not want to help me.
23 That's how I felt. That's what I perceived. I really
24 felt verbally discriminated.

25 Q. All right. Have you covered everything that you

1 wanted to cover here this morning?

2 THE WITNESS: Exactly.

3 THE INTERPRETER: Exactly.

4 By Mr. Draisen:

5 Q. Okay. I want to make sure that you got to tell the
6 Judge everything you want that's relevant to your
7 representation.

8 A. I just want that, that someone wants to hire an
9 expert. This 'cause if possible the doctors would
10 testify. They're professionals. The x-rays that they
11 have. I think that's about it.

12 MR. DRAISEN: All right. Thank you.

13 THE WITNESS: *Gracias*.

14 MR. DRAISEN: Answer any questions that Ms. May may
15 have.

16 Cross-Examination by Ms. May:

17 Q. Mr. Cobarruvias ---

18 A. Luna, that's my other last name.

19 Q. Okay. How long have you been in the United States?

20 A. 29 years would be this year.

21 Q. Okay. And, when you first came here, during the
22 time you have been here, what kind of work have you
23 done?

24 A. Well, I worked in California in restaurants. Here
25 in South Carolina possibly throughout, since '99 I've

1 worked remodeling houses, carpenter; plumbing, I'm very
2 good at plumbing. I have worked for three different
3 companies. And I've learned lots about electricity.
4 Like I said, I'm a carpenter, also. I know lots about
5 it. It's not difficult for me to, to find a job. And
6 that kind of job -- the last three months before the
7 accident I wasn't employed.

8 MR. DRAISEN: Your Honor, again, I hate to do this.
9 Can you direct my client to please answer the question
10 that he's asked?

11 THE COURT: Do I need to do it again?

12 (Interpreter confers with witness.)

13 THE WITNESS: Okay. I'm okay now.

14 THE COURT: Very good.

15 By Ms. May:

16 Q. All right. And I believe you stated, Mr. Stoddard,
17 he was your first attorney?

18 A. Second.

19 Q. Your second?

20 A. Second attorney.

21 THE COURT: Mr. James was the first.

22 MS. MAY: Okay.

23 THE WITNESS: James, yeah, Dick James.

24 By Ms. May:

25 Q. And when did you first -- do you remember how long

1 after the incident about that you met with
2 Mr. Stoddard?

3 A. About mid-June.

4 Q. And do you remember what you discussed at that
5 meeting with Mr. Stoddard?

6 A. Very little. I explained to him my accident and
7 where, where I was before and what happened, that I was
8 in the passenger's side and I think I fell asleep.
9 That's why I requested from my friend, Ricardo, and I
10 did not have anything to eat that morning and I felt
11 like I couldn't drive.

12 I moved from three houses. I stopped at
13 Ricardo's ---

14 MS. MAY: Let me just go ahead and stop you.

15 MR. DRAISEN: Yes. Your Honor, I just want to
16 instruct my client that he shouldn't discuss the
17 specific facts of the case in this process, but to
18 answer the question that he's asked specifically.

19 Again, Your Honor, I'm sorry. I don't want to
20 taint the record.

21 (Interpreter confers with witness.)

22 THE WITNESS: Okay.

23 By Ms. May:

24 Q. Okay. So the first thing y'all discussed was just
25 what you remembered?

1 A. Exactly.

2 Q. Okay. And did you discuss with him your stay at
3 the hospital after the accident?

4 A. Very little. We spoke probably for about not even
5 15 minutes.

6 Q. Okay. Okay. And at that first meeting did you ask
7 him to do anything for you in regards to trying to find
8 out what you couldn't remember?

9 THE WITNESS: Si.

10 THE INTERPRETER: Yes.

11 By Ms. May:

12 Q. Do you recall what you asked him?

13 A. I told him if he would investigate how it happened.
14 I think I told him that, that if he, if he would try to
15 find the drivers up at the hospital, and I showed him
16 my wounds, and he, and herein lies about the impact and
17 how he reacted according to where the accident had
18 happened. And he stated that, "I'm gonna try to
19 investigate that."

20 Q. Okay.

21 A. But the only thing that I saw, and I asked him,
22 "When you come back to see me?"

23 He said, "I'm not coming often."

24 Q. You asked him how many times he was going to come
25 meet with you?

1 THE WITNESS: Si.

2 THE INTERPRETER: Yes.

3 By Ms. May:

4 Q. And what was the response?

5 A. His answer was that my family did not pay me enough
6 money.

7 And I said, "We paid you two thousand dollars. Why
8 did you take the case if you didn't like it?"

9 Q. And this is your first meeting. At that point he
10 had only said ---

11 A. (Witness interrupts speaking in Spanish.)

12 Q. I'm just talking about the first meeting, that's
13 it.

14 A. Exactly. Maybe that question I asked, I think I
15 totally ended the interview. What happened is I saw
16 him, I felt like if he didn't really want to help me.

17 Q. I'm just asking about the first meeting ---

18 A. That's what happened the first time. He clearly
19 told me, "I'm not gonna be here to see you often."

20 Q. Okay. Okay.

21 MS. MAY: Your Honor, may I approach the witness?

22 THE COURT: Certainly.

23 By Ms. May:

24 Q. This is the copy of the plea transcript. I'm gonna
25 point out some pages and some lines specifically.

1 THE WITNESS: Si.

2 By Ms. May:

3 Q. Okay. I'd like to just direct your attention to
4 the first page, page 2. And it starts at line 15, the
5 Judge asks you, "You are Jose Luis Cobarruvias?"

6 THE WITNESS: Si.

7 By Ms. May:

8 Q. Si? And this is -- there's no interpreter there
9 now; is that right?

10 A. No.

11 Q. Okay. And prior to that, that's on line 12, the
12 Judge, Judge McIntosh asks Mr. Stoddard if you were
13 proficient in English, and he says yes.

14 If you weren't understanding or you didn't really
15 understand any of the meetings that you had with your
16 attorneys, at that point did you feel like you wanted
17 to tell the Judge that?

18 THE WITNESS: Si.

19 A. (Through Interpreter): If you look in the
20 transcript, he stopped me several times.

21 By Ms. May:

22 Q. Okay. What -- and is it your -- as well as at your
23 plea hearing and today, it's your testimony that you
24 don't remember the accident?

25 A. I started asking at the hospital because when I

1 woke up I asked, "Where am I?"

2 Q. Okay. So the last thing you remember is waiting
3 for your friend in the car?

4 THE WITNESS: That's all.

5 THE INTERPRETER: That's all.

6 By Ms. May:

7 Q. Okay. And the next thing you remember is you woke
8 up in the hospital?

9 A. I woke up in the hospital. I was surprised that I
10 was in the hospital.

11 Q. But that is the next thing you remember?

12 A. Yes.

13 Q. Okay. So in between that time you have no memory?

14 THE WITNESS: *Nada*.

15 THE INTERPRETER: Nothing.

16 By Ms. May:

17 Q. So it's possible that you did drive?

18 MR. DRAISEN: Objection, Your Honor. It calls for
19 speculation.

20 MS. MAY: I'm speculating that he didn't drive.

21 THE COURT: I understand. I think your question is
22 answered.

23 MS. MAY: Okay.

24 By Ms. May:

25 Q. You've covered in brief already. But, in regards

1 to the investigation that you wanted done, you wanted
2 your attorneys to interview witnesses?

3 A. My witnesses, yes.

4 Q. And I'm gonna specifically ask you about Ricardo,
5 that was the witness that you asked your attorneys
6 to ---

7 A. He was the driver. The witnesses I'm talking about
8 are ---

9 Q. I'm asking about Ricardo.

10 THE WITNESS: Ricardo is the driver.

11 THE INTERPRETER: He is the driver.

12 By Ms. May:

13 Q. Hold on. If you don't remember the accident, how
14 do you know he was the driver?

15 A. What I remember is I was at his house waiting for
16 him, okay? And how can you understand that I drove
17 here -- I'm not ignoring the fact of the alcohol.

18 And ---

19 MR. DRAISEN: Your Honor ---

20 MS. MAY: I'm asking you ---

21 MR. DRAISEN: --- I'm gonna instruct my client not
22 to answer if it violates his Fifth Amendment rights.
23 He's not answering the question that he's being asked,
24 so I'm gonna object to the question to the extent that
25 it would ask him to waive his rights.

1 **MS. MAY:** Well, this is a civil proceeding. I
2 think he's already to the extent waived that.

3 **THE COURT:** I understand.

4 But, very simply, the question was about a witness
5 named Ricardo ---

6 (The witness interrupted the Court, speaking in
7 Spanish.)

8 **THE COURT:** You go ahead and talk. When you
9 finish, I'll talk.

10 **THE WITNESS:** I'm sorry.

11 (Witness answering in Spanish.)

12 **THE INTERPRETER:** I never stated that Ricardo was a
13 witness.

14 **THE COURT:** Okay. Very good.

15 By Ms. May:

16 Q. You never asked your attorneys to go talk to
17 Ricardo?

18 A. I asked them to go look for him. Look for Ricardo
19 and Miguel Miranda. Miguel Miranda was supposed to be
20 driving behind him.

21 Q. Okay. Why did you want them to go look for
22 Ricardo?

23 A. Because I asked him if he would drive our van
24 because I couldn't, but he said wait. If you want me
25 to drive you home, Miguel is on his way home. When he

1 arrives, yo -- I will take you because I have no way of
2 getting back here. That's all.

3 Q. Okay. Do you recall telling your attorneys that
4 Ricardo had moved?

5 A. I'd heard tales about it, but I believe he's
6 somewhere around here. But he was hiding, I know.

7 Q. Okay. That's fine. So you asked them to go find
8 Ricardo?

9 THE WITNESS: Exactly.

10 THE INTERPRETER: Exactly.

11 By Ms. May:

12 Q. Okay. And then you told them that he had moved?

13 A. I heard somebody said that he could possibly have
14 moved back to Mexico.

15 Q. I just wanted to know if you had ---

16 A. There was a person, his name is Refriauto
17 (phonetic), used to work in McDonald's where my son,
18 Eduardo Luna ---

19 MS. MAY: Your Honor --

20 THE COURT: Let's move on. I think he's already
21 testified that he was hiding, I know, never said he was
22 a witness. So let's get to something that's...

23 THE WITNESS: Sorry.

24 MS. MAY: Beg the Court's indulgence.

25 THE COURT: Certainly.

1 MS. MAY: Your Honor, may I approach?

2 THE COURT: Certainly.

3 MS. MAY: I would like to refer to a document that
4 Mr. Cobarruvias filed with his Application.

5 MR. DRAISEN: I object to it on the basis that it's
6 hearsay. It's not his document. It's in the hospital
7 record. She gonna ask him a question about a hospital
8 record that's got somebody else's statement in it.

9 MS. MAY: He filed it with his Application.

10 THE COURT: It's a part of the record.

11 MR. DRAISEN: I'm not objecting that it's part of
12 the record. But she can ask questions about somebody
13 else's statement. Then that's gonna be, either calls
14 for speculation or it's gonna ask for hearsay, so...

15 THE COURT: Well, let me see what it is. If it's a
16 medical record, obviously it's not hearsay, its
17 reliability is established by our Rules.

18 MR. DRAISEN: It's not about a diagnosis or
19 treatment, it's about what his position was. Somebody
20 had to tell them that.

21 THE COURT: Well, that's exactly what it is. It's
22 a history and it says that it was provided by the
23 patient.

24 MR. DRAISEN: Your Honor, I believe it says
25 patient, EMT and somebody else. We don't know which

1 part of that was provided by whom. And I don't have the
2 opportunity to cross-examine whoever wrote that note.

3 THE COURT: Well, the idea is that it is a record,
4 a medical record and it's a history and it's admissible.

5 MR. DRAISEN: I understand.

6 THE COURT: Your objection is noted and it's
7 overruled.

8 All right. You can ask him about it.

9 MS. MAY: (To Interpreter) I'll let you borrow
10 this.

11 (Interpreter confers with Defendant off the
12 record.)

13 By Ms. May:

14 Q. Did you have enough time to read it?

15 A. I've had enough. And they've referred ---

16 Q. I just want to know that you were able to read it.
17 Okay?

18 THE WITNESS: Exactly.

19 THE INTERPRETER: Yes.

20 By Ms. May:

21 Q. Specifically I would like you to look at the part
22 where, the history. It says it's given by the patient,
23 translator, which I believe would help you with that
24 information; and the EMS?

25 A. First of all, they're referring that I was

1 complaining on my left side to my right side.

2 Q. Right. I'm aware of that. It's stated there,
3 you're right.

4 In addition to giving that information ---

5 A. I would like -- it was very important that they
6 would have had a video camera there.

7 Q. At where?

8 A. When they was asking me those questions.

9 Q. That's just a hospital intake sheet.

10 A. Here it also states that there was, that I was in
11 and out of consciousness.

12 Q. Yes. I'm gonna point out exactly what I'd like to
13 refer to you first ---

14 (Witness interrupts, speaking in Spanish.)

15 THE COURT: All right. This is Cross-Examination,
16 so wait until you are asked a question before you
17 respond.

18 Now, ask a question before he responds.

19 By Ms. May:

20 Q. In the intake sheet where is it, what does it say
21 about your position in the vehicle?

22 A. It states that I was in the driver's.

23 Q. And who, based on that information there, were the
24 people that gave that information?

25 A. Possibly a nurse.

1 Q. Right before that it said, who does it say gave
2 this information?

3 A. It's very complicated.

4 MS. MAY: Okay, Your Honor, it's part of the
5 record.

6 THE COURT: Exactly. And also I notice -- if you
7 will forgive me, I notice down in the area of PMH, I'm
8 not sure what that is, unless that's patient's medical
9 history, it says historian: patient and translator. So
10 that's the source of the history.

11 THE WITNESS: The report to the EMS report the
12 mistakes. It's very different before.

13 THE COURT: Just a moment. Just respond to
14 questions.

15 THE WITNESS: Okay. Okay.

16 THE COURT: All right. Anything else?

17 MS. MAY: I don't have any more questions.

18 THE COURT: Very good.

19 Re-exam?

20 Redirect Examination by Mr. Draisen:

21 Q. Just briefly, on that record, and in the record, I
22 just want to address real quickly, the record also
23 indicates the history was provided by patient,
24 translator and EMS. Is that correct?

25 A. That's what the record states.

1 Q. Then it says, The PMH is limited by language
2 barrier.

3 A. (No response.)

4 Q. That's what it says?

5 A. Yeah, that's what it says.

6 Q. And then next in italics it says, per EMS, PT was
7 in and out of consciousness during transport?

8 A. Exactly.

9 Q. And then there's a section down here that says ROS?
10 And it's got a note, Constitutional note, an ROS is
11 unobtainable owing to the constraints imposed by the
12 patient's clinical condition on arrival.

13 Is that what it says?

14 A. Condition...

15 THE COURT: Mr. Draisen?

16 MR. DRAISEN: Yes, sir.

17 THE COURT: I can read.

18 MR. DRAISEN: I know, Your Honor. I'm just putting
19 it in the record, Your Honor.

20 THE COURT: Well, it's in the record. It's a part
21 of the record.

22 THE WITNESS: (Speaking in Spanish.)

23 THE INTERPRETER: I don't understand that word.

24 By Mr. Draisen:

25 Q. Okay. You don't have to.

1 But the last part of that level five indication, it
2 says "language difficulty." Do you see?

3 A. I don't know, really.

4 Q. Do you recall anything about talking to the people
5 when you immediately arrived at the hospital?

6 A. After I woke up, when I reacted, there was an
7 officer and a nurse, that's when I started asking
8 questions. And I thought, "What happened here? What
9 am I doing here?"

10 Q. Was there a translator immediately present?

11 A. No, I don't recall anything, really. If I would
12 have remembered, I would have denied it.

13 MR. DRAISEN: Thank you. That's all.

14 THE COURT: All right. You may step down. Thank
15 you.

16 (Whereupon, the witness left the witness stand.)

17 THE COURT: All right. Do we need to take a short
18 break?

19 How many more witnesses do you have?

20 MR. DRAISEN: I don't have any other witnesses,
21 Your Honor.

22 THE COURT: All right. Let's take a short break,
23 and then when we come back, we'll see if we can finish
24 the testimony.

25 (A recess was taken.)

1 THE COURT: You may call your first witness.

2 MS. MAY: May it please the Court, Your Honor, we
3 would like to call Mr. David Stoddard.

4 Whereupon,

5 David Stoddard

6 Having first been duly sworn, was examined and
7 testified as follows:

8 Direct Examination by Ms. May:

9 Q. Mr. Stoddard, how long have you been practicing
10 law?

11 A. About 26 years.

12 Q. About how much of that has been criminal law?

13 A. Well, I was a prosecutor for eight years, so that
14 was all criminal law, and since then it's probably 15
15 to 30 percent criminal law.

16 Q. And have you had experience with DUI cases before
17 taking Mister...

18 A. I have.

19 Q. And were any of them felony DUI cases?

20 A. I've prosecuted felony DUIs, yes, and I've defended
21 a few prior to this case.

22 Q. So you are familiar with the issues involved in
23 those type of cases?

24 A. I'm familiar.

25 Q. Okay. How did -- and you were retained by the

1 Applicant's family?

2 A. I was.

3 Q. Okay. And how long -- the first few meetings that
4 you had with Mr. Cobarruvias, just briefly, what did
5 you-all discuss?

6 A. I think I may have only had one meeting prior to --
7 at one point the family came and said, We can't, we
8 can't pay you, that we want a refund, and that's how I
9 got off the case or why I got off the case. And before
10 that happened I think I only had my initial meeting
11 with him. I may have had one more.

12 But in the initial meeting we had zero information.
13 We knew that his van was in a wreck, we knew that he
14 had been driving the van earlier -- this is what he
15 knew, and, of course, the family shared a lot of this
16 with me. That he wound up in the hospital and some
17 people were dead. But we had no information of what
18 was in between, so he and I talked about that. And I
19 explained to him some of the things, some of our
20 questions that we needed answered. You know, why, why
21 did the police think he was driving? Was there a
22 witness? If there wasn't any witnesses, he doesn't
23 remember what happened.

24 I'm not even sure -- in fact, there was a death in
25 the case -- at the time we didn't know there was a

1 death because it happened a little bit later, or the
2 victim died a little bit later. I didn't know if there
3 would be, even the passengers would know what happened,
4 so I discussed the possibility of getting an accident
5 reconstruction if there were no witnesses.

6 There was supposedly an individual in the jail that
7 had some information about the case. I can't remember
8 what the information was. But he had somebody. It
9 seems that the information might have been that they
10 had heard a rumor that somebody ran from his van. And
11 so I asked the people at the jail if he could take me
12 around to the jail and try to find this person.

13 And we actually talked to the people in his jail
14 cell about who this individual was. I think the
15 individual may have been released earlier and somebody
16 might have given me a first name. Those are some of
17 the things I remember.

18 Q. And was there an interpreter present in your first
19 meeting?

20 A. There was not.

21 Q. And was there any problem between y'all
22 communicating?

23 A. Not, not a big problem. His English is not the
24 best. I've represented a number of clients, Hispanic,
25 Korean, that their first language is not English. He

1 would -- I was able to communicate with him as well as
2 a lot of other clients I've represented without
3 interpreters.

4 Q. Okay. And then at this point in the case was that
5 the last time that --

6 A. Yes.

7 Q. And then I believe Ms. Johnson was brought on to
8 represent him?

9 A. Yes. She got, she was appointed to represent him
10 at some point.

11 Q. All right. And then at what point did you rejoin
12 the defense?

13 A. It was probably within a month or two of his
14 ultimate plea. I had not -- I did not give a full
15 refund of the initial payment the family gave me. They
16 expressed an interest in rehiring me. I knew it was
17 pretty late in the case and I did not think it was in
18 his interests to have a brand-new attorney.

19 And I know that was a lot of money for them, and so
20 I said, Look, I will be happy to represent him with
21 Ms. Johnson and help her in any way I can, which is
22 what I did.

23 Q. Okay. And you and Ms. Johnson met with
24 Mr. Cobarruvias together?

25 A. We did.

1 Q. Okay. And in your meetings with Ms. Johnson and
2 Mr. Cobarruvias did you and Ms. Johnson confer about
3 you-all's strategy of representing him and --

4 A. We did. We did. One of the things that -- again,
5 when I left off, one of the big questions I wanted
6 answered was who were the witnesses, how did the police
7 put him behind the wheel -- well, she knew this already
8 because she had gotten the discovery from the State.
9 But there were three statements from the witnesses, and
10 I think Mr. Cobarruvias referred to that in his Direct
11 Testimony. There were these three witness statements.
12 They were very brief, they weren't very detailed, and
13 they did not talk about who was driving. So I actually
14 had my secretary call the witnesses because I was in
15 court doing something else, and she interviewed at
16 least two of them, and I interviewed a third witness.
17 And all of the witnesses actually saw the accident.
18 That was one of our questions: Who was at fault? I
19 mean, because that's an element of felony DUI. And all
20 of the witnesses said the van fishtailed, crossed the
21 centerline and hit the other car head-on so that
22 established fault pretty well. They all were there
23 when EMS arrived and they said there was one person in
24 the van and he was loaded onto the EMS vehicle.

25 So, and we specifically asked, did anybody else at

1 any time leave the van, and they all agreed that no one
2 left the van, just the one person was in the van.

3 Q. And did you discuss all these witness statements
4 that you originally gathered with Mr. Cobarruvias?

5 A. I did.

6 Q. And, from what you could tell, did he understand?
7 Did he ask any questions about that?

8 A. Yes, he asked questions. And he would, he would go
9 into other issues a lot. I think we would talk about
10 this and he would talk about that injury he had and
11 things of that nature. And sometimes he had trouble
12 accepting our view of the evidence.

13 Q. Okay. I want to talk about that reconstruction. I
14 think there was prior discussion in regard to that.
15 Did you-all consider looking into reconstructing the
16 accident --

17 A. After interviewing witnesses I didn't, because
18 again, my whole reason for a reconstruction is if there
19 were no witnesses, was to have somebody reconstruct
20 what happened. But we had these three independent
21 witnesses that all described the accident the same way,
22 and I felt like their testimony would be more reliable
23 than any accident reconstruction which would be by
24 definition based on circumstantial evidence.

25 Q. And again, Mr. Cobarruvias was well aware of those

1 three witnesses and what their testimony would be?

2 A. Yes.

3 Q. Okay. And deciding not to go and do a
4 reconstruction of the scene, was that based on your
5 experience with felony DUI cases?

6 A. Yes. And logic. Again ---

7 Q. Was it based on the facts --

8 A. It was unnecessary when you have witnesses like
9 that.

10 Q. And did you explain the reasoning that went into
11 not hiring an expert to reconstruct the scene?

12 A. Not a whole lot, because again, it just seemed to
13 be a nonissue. You know, again, in our initial
14 conversation how the accident happened was a big
15 question mark, you know? He had no information as to
16 how it happened, who was at fault, what had happened.
17 And then, when I realized there were these three
18 witnesses, the whole idea of an accident reconstruction
19 just kind of went out the window. So I may have
20 discussed it briefly, but it was not a big deal.

21 I don't recall him ever himself making a big deal:
22 We need to have an accident reconstruction. Had he
23 done so, I probably would have explained all that in
24 great detail. If he could have convinced me that there
25 was a reason, I maybe would have considered it more,

1 but it just never was a big issue.

2 Q. Okay. I'm gonna go closer towards the time of the
3 plea. Were you involved in the plea offers or
4 negotiations?

5 A. A little bit, yes.

6 Q. The ones that you were involved with, tell me a
7 little bit about those and whether you relayed those to
8 Mr. Cobarruvias.

9 A. Well, on the day of the plea, as I recall, there
10 was no offer, and I cannot remember if that was by
11 choice, because it may have been -- see, a lot of times
12 with a prosecutor they give you an option to plead, to
13 make an offer, and if you don't like that offer, it's
14 sometimes better to plead straight up. So there may
15 have been an offer to plead that we decided not to
16 take. But, if there was an offer, I'm sure it was 20
17 or more years. But I'm not thinking there was ever a,
18 there was an offer. It was just one of these straight
19 up.

20 Q. And did you -- before the plea did you advise him
21 as to the procedure of a plea and what it meant and --

22 A. Yes. And his options. And again, you can either
23 plead guilty or go to trial. On this occasion we
24 actually had an option I think of going to another term
25 of court because I think the jury was gone for the week

1 and we could have, because of that, not pled that day.
2 And I remember we had a long discussion as to whether
3 this was the judge we would like to plead in front of
4 and we made that decision along with him.

5 And Jennifer and I know those issues more than he
6 would. I think the next judge coming in, Jennifer had
7 seen a plea or seen him do a plea on a very similar
8 case and got a very harsh sentence, so we decided this
9 would be a better judge.

10 Q. And, considering the judges, that's based on your
11 experience as a prosecutor, as a defender, as a...

12 A. And you don't get to choose your judge. But one
13 thing that attorneys do, and that's a consideration,
14 when you see judges coming up, that's something that
15 has to be considered, and always is.

16 Q. And you discussed going to trial versus a plea of
17 guilty with him?

18 A. We did. And he, because of the questions he's
19 expressed today, he had reservations about pleading
20 versus trial. And my personal opinion was this was a
21 case that would be very difficult to win with those
22 three witnesses. His only issue was whether he was
23 driving or not. He can't say whether or not he was
24 driving. We had three witnesses that say there was
25 only one person in the car.

1 Q. So you advised him of his rights to plead and
2 his --

3 A. Yeah, I think he understood. I know he understood
4 he had a right to trial.

5 Q. And whose ultimate decision was it to plead?

6 A. It was his decision.

7 Q. Before the guilty plea and during the guilty plea
8 did Mr. Cobarruvias engage in conversations with
9 yourself and when y'all were both present --

10 A. Yes.

11 Q. -- that he understood what the plea was going to
12 entail?

13 A. He did. He did. He asked a lot, he asked a lot of
14 questions. He asked a lot of questions. Oh, yes, he
15 asked a lot of questions, and we answered every one of
16 them. There was a lot of back and forth, and things
17 were explained at length. The file was gone over
18 several times, all of the evidence was gone over. If
19 there was anything else he wanted us to do, there was
20 plenty of time to tell us. And I can't think of
21 anything else that we could have done.

22 Q. Okay. And he was aware that there was the option
23 of maybe waiting till the next term?

24 A. Yes.

25 MS. MAY: That's all the questions I have.

1 THE COURT: Cross-Examination?

2 MR. DRAISEN: Thank you, Your Honor.

3 Cross-Examination by Mr. Draisen:

4 Q. Mr. Stoddard, how was it that you came to come back
5 into the case? Did Mr. Cobarruvias ask you to come
6 back in?

7 A. His family approached me wanting to hire me, and I
8 told them I didn't think that would be a good idea at
9 this point. I frankly was worried that, with Jennifer
10 having been on the case so long, and it was so close to
11 trial, she's a very good attorney, I told them that,
12 you know, I thought that it would be better with her
13 representing him. But I did tell them, since they had
14 paid me money previously and I didn't refund all of it
15 because I had already spent time on the case, I would
16 be happy to assist her sort of co-counsel. I did
17 contact her to see if that would be all right, and she
18 was certainly okay with that. But I felt like they
19 needed her because she had a lot more time in this case
20 than me. If there was ever any insight I could have
21 that would help her, I would do that. Sometimes two
22 heads are better than one.

23 Q. I guess I'm asking whether or not Mr. Cobarruvias
24 himself -- you mentioned the family asked you to do
25 that. Was there a point where you talked it over with

1 him, though?

2 A. Yes. Well, the next time we met with him, I
3 explained why I'm here and what I'm doing, and he was
4 okay with it and certainly did not object.

5 Q. All right. Would you agree with me that, based on
6 what you were saying before about your review of the
7 evidence, and I think you used the word strong
8 possibility he would be convicted or something along
9 those lines, evidence was not good, would that be
10 accurate? You thought the evidence was not good for a
11 trial?

12 A. For defending the case. It was certainly good for
13 the prosecution.

14 Q. Right, that's what I meant.

15 A. Yeah. Yeah. I felt like there was a substantial
16 probability that he would get convicted to the point of
17 almost certainty.

18 Q. And you conveyed that strong sense of certainty or
19 probability to Mr. Cobarruvias, right?

20 A. Yes.

21 Q. And do you feel like your opinions about the
22 probability of conviction weighed heavily in his
23 decision to plead?

24 A. Probably. Although I didn't, I didn't force him in
25 any way. But those were my honest opinions and I think

1 he needed to know that. I don't think he could make
2 a -- I'll put it this way -- had I not done that and he
3 went to trial, I think he might have a legitimate
4 complaint that "My attorney should have given me more
5 information about the probabilities."

6 Q. Do you think there's a possibility that he felt
7 like there was not much of an option? I mean, if you
8 tried the case, he was likely gonna be convicted, and
9 so his only real option was to plead?

10 A. I would put it, he understood he had options. His
11 best option was to plead. He could go to trial and
12 take his chances, but that would not be a wise chance
13 to take, and I think he understood that. So, yeah, in
14 that sense, go to trial, get found guilty and perhaps
15 get a harsher sentence versus pleading guilty, you're
16 gonna get convicted either way, yeah. In that sense
17 you don't have a choice.

18 MR. DRAISEN: Just one minute, Your Honor.

19 (Discussion off the record.)

20 By Mr. Draisen:

21 Q. I believe he wants me to ask you, how did you rely
22 on the witness statements that you received when, in
23 fact, I think the written statements they gave were
24 inconsistent with the later statements they gave you?
25 Because they didn't mention in the written statements

1 anything about who was the, who was the driver or
2 anything about that in the written statements.

3 A. I didn't find them inconsistent. Let me find the
4 statements to make sure. But they didn't say, for
5 example, "We don't know how many passengers were
6 driving." It was, they were brief statements, and the
7 only information they supplied when I interviewed them
8 was more information. There was nothing contradictory.
9 They just went into more detail. I think the
10 statements, the focus ---

11 Q. I've got them here.

12 A. Okay. Yeah. The focus on the statements, if I
13 recall, is how the accident happened and not about who
14 was driving. For example, I'm reading Janice
15 (phonetic) Smith (reading): Van hydroplanes, spun
16 sideways -- and I can't read that word, I think it's
17 head of the van lifted off the ground. The van had hit
18 another car. This happened 5-16-2000 on Highway 29.

19 (End of reading.)

20 He just didn't give me any information about who
21 was driving, how many drivers, because apparently he
22 didn't think it was important. So I didn't find it
23 inconsistent at all.

24 Q. Okay. Did you notice on these statements that the
25 date and time was inconsistent with the date and time

1 of the accident?

2 A. Yes. I had forgotten about that. I think he's the
3 one -- he may have been the one that brought that to my
4 attention. I do remember talking about that and I
5 think I actually called one witness. By the way, our
6 initial hypothesis to Mr. Cobarruvias was that probably
7 they put the wrong date on it. They probably took
8 these statements the next day and put the wrong date as
9 I often do on checks when I sign them. And I
10 interviewed one of the witnesses, and they said, yes,
11 the day we witnessed the accident, we came back later
12 or they came to us later. But the one I talked to
13 indicated it was the next day that they took the
14 statement. And I was satisfied with that.

15 Q. So you didn't find the written statements
16 inherently impeachable as a result of that?

17 A. Not at all.

18 (Discussion off the record.)

19 By Mr. Draisen:

20 Q. Mr. Stoddard, did you ever see a copy of an EMS
21 report?

22 A. I still haven't today. I would love to see it.

23 Q. Okay. So, did you ever speak with the EMS drivers
24 that transported Mr. Cobarruvias?

25 A. We did.

1 Q. And did you ever speak with anybody who confirmed
2 where he was when he was removed from the vehicle, like
3 the person who actually pulled him out?

4 A. No.

5 Q. Okay.

6 A. Although we did, as I say, the witnesses we
7 interviewed said they saw the EMS pull a man out and he
8 was, of course, later treated at the hospital the same
9 day.

10 Q. Let's, let me ask you a question. You saw pictures
11 of the vehicle, right?

12 A. Right.

13 Q. Okay. His van was creamed on the driver's --
14 passenger's side?

15 A. Right.

16 Q. In fact, you couldn't even get the door open on the
17 passenger's side at all.

18 A. Probably not.

19 Q. Okay. The other vehicle [sic] was still in the
20 vehicle at the scene.

21 A. Right, I agree.

22 Q. You've seen those pictures, right?

23 A. Yes.

24 Q. So, if EMS retrieved him from the vehicle, the most
25 logical place to go in to get him would be through the

1 driver's door, which was on the roadside?

2 A. Right.

3 Q. So, if he didn't actually get out and go look in
4 his van to see where he was positioned, they could have
5 easily climbed over the driver's seat and pulled him
6 out of the middle or anything. We don't know the
7 answer, right? Because you would have seen him coming
8 out the driver's door. That is not dispositive of the
9 fact that he may not have been in the driver's seat.

10 A. In my opinion, even when EMS got there, if he was
11 in the passenger's seat, the key to me is there's no
12 one else left in the van, there's only one person in
13 the van according to the witnesses, one of whom I
14 believe actually looked in the van.

15 Q. Okay. And, but the question that I'm asking is,
16 you never actually spoke with the paramedics --

17 A. No.

18 Q. -- or the fire people, or whoever actually
19 extracted him from the vehicle to verify that he, in
20 fact, was the only person when they arrived and then
21 took him out where he was located in the vehicle?

22 A. That's correct.

23 Q. All right. And those folks, the paramedics and the
24 EMS and the, the EMS paramedics and the fire personnel
25 and law enforcement, they were still available for you

1 to interview?

2 A. Presumably.

3 Q. But you never, you never tried to do that, right?

4 A. I, I recall making some efforts to get the EMS
5 report because we didn't even have the report, but the
6 case being on the trial list and us having to make the
7 decision to plead guilty, that was something that, my
8 personal opinion was those three witnesses were so
9 strong that I didn't think it was necessary.

10 Q. Okay.

11 (Discussion off the record.)

12 MR. DRAISEN: I think that's all the questions I
13 have, Your Honor.

14 THE COURT: Re-exam?

15 MS. MAY: I just have less than five questions.

16 Redirect Examination by Ms. May:

17 Q. When you came back to represent the Applicant, were
18 you ever refused from that point on to confer with him
19 or had you ever refused to confer with him?

20 A. No.

21 Q. And, in regards to advising him about the guilty
22 plea, and I guess any client, how, do you apprise them
23 of all the facts, the risks, and the benefits?

24 A. Yes.

25 Q. Even if they are scary sometimes?

1 A. Even if there's what?

2 Q. Even if they're scary, I guess, or they're not
3 something that you would want to hear?

4 A. Yeah. If you are talking about the certainty that
5 I talked about earlier, which I never use the word
6 "certain." "You're certain to get that." I would
7 never do that. But he was asking my assessment, and
8 I'm saying to him now it's near certain. But, yeah.
9 And even if it's -- and I don't think I'm doing my job
10 if I don't give them, if I think there's a substantial
11 chance you're gonna get convicted, that I don't tell
12 them that.

13 Q. And one last thing. The inconsistent time on the
14 witness statements, that, you discussed that with him
15 and what they had related back to you?

16 A. Yes. And he seemed satisfied, also.

17 MS. MAY: I have no other questions.

18 THE COURT: All right. You may step down.

19 (Whereupon, the Witness left the witness stand.)

20 MR. DRAISEN: Your Honor, he could be excused if --
21 I don't need him.

22 MS. MAY: No objection.

23 THE COURT: Without objection you may be excused.

24 Thank you, Mr. Stoddard.

25 (Whereupon, the witness was excused.)

1 You may call your next witness.

2 MS. MAY: We would like to call Ms. Johnson.

3 (Whereupon, the witness was sworn.)

4 THE BAILIFF: State your name for the record,
5 please.

6 THE WITNESS: Jennifer Johnson.

7 Whereupon,

8 Jennifer Johnson

9 Having first been duly sworn, was examined and
10 testified as follows:

11 Direct Examination by Ms. May:

12 Q. Ms. Johnson, is it fair to say that you were
13 appointed to represent Mr. Cobarruvias?

14 A. Yes, I was.

15 Q. And what did you-all discuss at your initial
16 meeting with him?

17 A. The initial meeting -- let me see if I can find a
18 date, I don't know that I have one -- but we reviewed
19 the discovery materials, um ---

20 Q. At that point do you recall specifically what you
21 would have reviewed with him or what you had at that
22 point?

23 A. Well, what I had at that point, and that's what I
24 was trying to see if I had a date as to the initial
25 meeting, and I don't know that I have that date. I

1 mean, we would have gone over whatever I had at that
2 point, and it looks like the -- I was gonna see if I
3 could find a date on the, on the discovery materials,
4 but I'm having trouble putting my hands on that.

5 It seems like initially we had sort of the basic
6 incident report, witness statements. I don't know at
7 the initial meeting that I had the MAIT report or the
8 medical records from either Mr. Cobarruvias or the
9 decedent in this case.

10 Q. And, upon receiving those materials, did you review
11 them --

12 A. Yes.

13 Q. -- with Mr. Cobarruvias?

14 And specifically the MAIT report.

15 A. Uh-huh.

16 Q. What does that consist of?

17 A. The MAIT report is conducted by the Highway Patrol
18 team and basically it is an accident investigation
19 team. The report consists of pictures, it gives a
20 scale diagram of the area, the roadway impact, shows
21 where the vehicles came to a final resting point,
22 there's a roadway examination where they locate the
23 conditions of the roadway. It's a fairly extensive
24 report relating to the accident.

25 Q. And were you able to discuss that and go over it

1 with Mr. Cobarruvias?

2 A. Yes, I was.

3 Q. And did he ask questions about it and...

4 A. He did seem engaged with that. And just to echo
5 what Mr. Stoddard had testified to earlier, because
6 Mr. Cobarruvias did not remember the accident, he does
7 not remember either -- frankly either being a passenger
8 or a driver in the vehicle. The last thing he
9 remembers is being at his friend's house getting into
10 the vehicle on the passenger's side, but he then could
11 not say what had transpired between then and when he
12 woke up, came back to consciousness at the hospital.

13 So for that reason obviously we had to put the
14 puzzle pieces together about what had likely transpired
15 in the interim. One of the pieces of evidence that
16 seemed to sort of turn how he was feeling about the
17 case, because he always said absolutely he was not
18 driving. Even though he didn't remember it, he was
19 certain he had not been driving the van.

20 What was part of this MAIT report, one of the
21 things that you are given is a disk containing
22 photographs, interviews, and there was the actual
23 audio-recorded interviews with the witnesses who were
24 traveling in the vehicle that was behind the van at the
25 time of the accident. And upon hearing those, that

1 really did seem to have an impact on him, you know, to
2 hear, you know, the interview with the Highway
3 Patrolman as part of that. And it gave him a preview
4 frankly of what, you know, what that testimony would
5 have been had we gone to trial.

6 Q. And did he, was he able to comprehend what was
7 being said on the audio ---

8 A. Yes.

9 Q. --- from the MAIT report?

10 Did he ask questions about the audio and about the
11 photos and about that disk?

12 A. Yes. He had appropriate interactions relating to
13 the materials we reviewed. He asked appropriate
14 questions. As David Stoddard testified, I think he is
15 the one who had pointed out the inconsistent date on
16 one of the witness statements. So, yes, he did seem
17 actively and appropriately engaged in his defense.

18 Q. And, with regards to the request that he made of
19 going to interview witnesses, did you make those
20 efforts?

21 A. Yes. What -- the only names that -- he had
22 actually given me was his brother's name and phone
23 number to contact about trying to get in touch with
24 some of these other witnesses. And I did, in fact,
25 call his brother. I think initially the cell phone

1 number I had, the voice mail was full and I was not
2 able to leave a message. I then talked to
3 Mr. Cobarruvias's daughter and, you know, explained to
4 her that basically if there was any assistance that the
5 family could provide in locating, in looking for these
6 witnesses because, as to this Ricardo individual that
7 Mr. Cobarruvias has alleged was driving the van,
8 Mr. Cobarruvias told me that he heard, and that's what
9 he testified earlier, that Ricardo had moved and was in
10 hiding. You know, I know from my experience of doing
11 this, I'm not gonna have much luck of finding a needle
12 in a haystack, of finding a guy who doesn't want to be
13 found, and I thought that if somebody who is familiar
14 with him, i.e., Mr. Cobarruvias's family, could assist
15 me with that, that would be the best way to go about
16 it. But there was never any, there was never any
17 information gathered about this Ricardo or any way that
18 we may be able to actually contact him to interview
19 him.

20 Q. Let me just back up briefly. How much experience
21 have you had practicing criminal law?

22 A. About 13 years.

23 Q. And have you had experience with DUI cases before?

24 A. Many.

25 Q. So you are familiar with the issues that were

1 involved in...

2 A. Yes.

3 (There was a pause in the proceedings.)

4 By Ms. May:

5 Q. And, when you initially started meeting with
6 Mr. Cobarruvias and helped working on his case, was
7 there a language barrier or did you feel that he wasn't
8 able to understand you or you weren't able to
9 understand him?

10 A. No, I don't feel like there was -- I mean, yes,
11 there were times when I had to go back over materials
12 or ask a question in a different way. But I think it
13 was not so much a language problem as an education. He
14 reported to me that he had gone through the fourth
15 grade in Mexico and that when he moved to the United
16 States, that they placed him in the 12th grade here,
17 which he never completed. So there was -- you know,
18 there was a disconnect with the culture, there was a
19 disconnect with different court systems.

20 And so, you know, yes, I went over those things,
21 but I do not feel like the fact that there was not an
22 interpreter present, I guess based on his responses to
23 me, I felt like there was not a language barrier. I
24 don't think he had any unusual trouble with
25 communication.

1 Q. And I guess with respect to educational level, did
2 you feel like he understood the reports and photos and
3 all the facts that were coming in, based on the
4 discovery and evidence?

5 A. I do. And my practice is, basically with all of my
6 clients, is that I would read the material to them. I
7 do not hand them over and ask them to read it whether
8 English is their native language or not. So in going
9 through these reports I would have read all of these
10 materials to him and, of course, you know, gone over
11 any questions or anything that he had.

12 Q. Okay. And did you and Mr. Stoddard develop a
13 strategy, whether trial or looking at a plea, which was
14 better?

15 A. Yes. We absolutely, from the review of all of the
16 information that we were able to obtain in this case,
17 felt that there was a substantial likelihood that he
18 would be convicted if he went to trial.

19 Q. And did you-all discuss that with Mr. Cobarruvias?

20 A. Yes.

21 Q. And I guess in regard to the plea negotiations,
22 were there, was [sic] there ever any offers?

23 A. No, there was never any offer.

24 Q. And Mr. Cobarruvias was aware of that?

25 A. Yes.

1 Q. And the day of the plea, did you discuss with
2 Mr. Stoddard, did you-all discuss again with
3 Mr. Cobarruvias what was going to happen that day and
4 he was aware of what he was going to go do?

5 A. Yes.

6 Q. And did he ever indicate during the plea that he
7 wasn't sure if he should do this or if he should go
8 forward?

9 A. No. Again, the only hesitation from him was I
10 really feel like he thought, you know, he was between a
11 rock and a hard place, you know? He did not like
12 either option that he had before him. But I believe
13 knowing and being educated on what his options were and
14 what the facts that would likely be ferreted out at
15 trial were, that he made the decision voluntarily to
16 plead guilty.

17 Q. And it was his decision --

18 A. Absolutely.

19 Q. -- to plead?

20 What -- and what advice, what advice, if any, did
21 you give him about the plea negotiation?

22 A. We did have some discussion, as David mentioned,
23 about what would be our best plea judge because this
24 was going to be a straight-up plea, meaning we did not
25 have any recommendations for a negotiated sentence.

1 Ultimately we elected, both David and I talking with
2 Mr. Cobarruvias, to plead the case in front of Judge
3 McIntosh. And so, yes, I mean all, all aspects from a
4 strategy standpoint were discussed with
5 Mr. Cobarruvias.

6 Q. And he understood the penalties, what he was
7 facing --

8 A. Yes.

9 Q. -- at the plea?

10 And just briefly going back to the investigation.
11 Did Mr. Cobarruvias ask for testimony from the doctor
12 to show that he was the passenger?

13 A. Yes. I mean, he, as David alluded to, from very
14 early on Mr. Cobarruvias had, he did have an injury to
15 his right clavicle, I believe it was, which he always
16 asserted that he had a passenger seatbelt restraint and
17 that was a restraint kind of injury. And while it
18 could be consistent with that kind of injury, it could
19 also be consistent with hitting the steering wheel.

20 And so the testimony in the case, I don't believe
21 that a physician would have testified to a reasonable
22 degree of medical certainty that a seatbelt was what
23 caused that injury. There was certainly nothing in the
24 records, the medical records that I had reviewed to
25 indicate that it was a seatbelt injury.

1 Q. Okay. And in reviewing those and making, coming to
2 that conclusion, was that based on your experience and
3 the facts of the case and...

4 A. Yes, yes.

5 Q. Okay. And the State's, their investigation and the
6 discovery that you received from them, was there any
7 additional investigation that you conducted or that you
8 felt had been left out?

9 A. Again, I felt the State's investigation was fairly
10 thorough, particularly anytime I see a MAIT report,
11 again, those are fairly thorough reports. But to me
12 the compelling piece of information, I had a client who
13 could not tell me what had happened because he didn't
14 remember, and so the only thing I had to rely on were
15 people who were there and saw what happened. These
16 were three independent witnesses who did not have an ax
17 to grind with Mr. Cobarruvias. All three gave
18 essentially the same account of what happened: that
19 they had been following behind his van, the van was
20 traveling at somewhat of a high rate of speed, that due
21 to the rainy conditions that he hydroplaned and went
22 into the other lane of traffic and hit this oncoming
23 car.

24 So there was -- yeah, so the investigation, we did
25 follow up with those witnesses, as David pointed out,

1 there were initial statements to law enforcement; their
2 written statements were short but there were not
3 inconsistencies between the written statement and the
4 interviews that were later conducted with them.

5 Q. And the interviews that were later conducted with
6 these witnesses, was Mr. Cobarruvias, was he present or
7 did --

8 A. Yes.

9 Q. -- was he able to hear them?

10 A. There was -- I believe -- I'm relying on memory
11 here -- that David's paralegal had interviewed two of
12 the witnesses by telephone. And then there was a third
13 witness that, when David and I met with
14 Mr. Cobarruvias, David actually pulled out his cell
15 phone, called this witness and put it on speaker phone
16 so that the questions and answers could be heard. So
17 Mr. Cobarruvias was present for at least one of the
18 witness interviews.

19 Q. Skipping back to the facts of the plea, did he, did
20 he ever indicate to you or tell you that he didn't
21 understand the conversations y'all had with him about
22 pleading guilty?

23 A. No.

24 Q. And I believe you might -- I believe you said this
25 earlier. Mr. Cobarruvias was active in his defense, he

1 was providing information to y'all about what he might
2 have wanted and was asking questions?

3 A. Yes.

4 Q. And you had no reason to believe that he was having
5 problems not comprehending?

6 A. No reason whatsoever.

7 MS. MAY: Those are all the questions I have.

8 THE COURT: Cross-Examination?

9 MR. DRAISEN: Thank you, Your Honor.

10 Cross-Examination by Mr. Draisen:

11 Q. Ms. Johnson, did the Public Defender's Office
12 undertake to hire an investigator to go out and look
13 for any of these witnesses Mr. Cobarruvias asked you to
14 locate?

15 A. No. We have an investigator in-house, but I don't
16 send them out unless I have more than a first name and
17 a last known address that's more than a year old.

18 Q. So the only thing you did was contact the family
19 and asked them. There weren't any other steps taken by
20 the PD's Office to try to locate them?

21 A. Correct.

22 Q. Okay. All right. Did you discuss with
23 Mr. Cobarruvias around the time of his plea whether or
24 not you would be speaking on his behalf or giving the
25 judge any mitigating factors to try to lessen the

1 sentence that the judge imposed?

2 A. Yes.

3 Q. And specifically do you recall what you talked
4 about and what the factors were that you concluded you
5 were going to present to the Court for him?

6 A. The main thing was that -- obviously, with felony
7 DUIs, they're one of the toughest kinds of cases,
8 because otherwise law-abiding citizens, which for all
9 intents and purposes Mr. Cobarruvias was, can find
10 themselves in a heap of trouble with the felony DUI
11 cases. It's not a crime of intent necessarily. No one
12 gets behind the wheel thinking, "I'm gonna go out and
13 kill somebody." And it's hard to come to grips with
14 that.

15 He is someone who had struggled with alcoholism
16 and, but shortly before this accident happened had been
17 sober for a period of time. And I believe I actually
18 spoke with the pastor who had been counseling him
19 relating to sobriety and getting him in the church.

20 But yes. We talked about a number of mitigating
21 factors. But, again, when you are talking about felony
22 DUI, because it's different in many ways than, you
23 know, breaking into somebody's house to steal something
24 to sell it for drugs, or what have you, it's, it's a
25 more difficult kind of mitigation.

1 Q. Did you explain to Mr. Cobarruvias that you would
2 be making that effort, though, to get the judge to try
3 to reduce the sentence from the maximum?

4 A. Absolutely.

5 Q. I assume you also said there were no guarantees he
6 was gonna accept any of that information?

7 A. Yes. I mean, you know, I would have said he's free
8 to sentence you up to the maximum, and obviously we
9 hoped that that was not what would happen.

10 Q. Do you feel like that the possibility of mitigation
11 weighed on Mr. Cobarruvias's mind in terms of agreeing
12 to plead?

13 A. I'm sure it did. I mean, you know, I mean that's
14 part of the factors in considering whether to enter a
15 guilty plea is this idea that by accepting
16 responsibility for what you have done that the judge
17 cuts you some slack for that, by admitting that you
18 made a mistake and it was a problem and, you know, in
19 some cases apologizing for the harm that you have
20 caused, that a judge looks favorably upon that.

21 Q. And did you recommend that if Mr. Cobarruvias was
22 given an opportunity to speak, that he would say
23 something to that effect?

24 A. I did. And I haven't reviewed that portion of the
25 transcript. But I did -- sometimes in cases I will do

1 a memo to my file, like after the plea is done, and I
2 did do that here. And I just happened -- (reading):

3 I felt -- I felt the plea and mitigation was going
4 well until Defendant spoke. The Defendant basically
5 hedged about guilt and made no apology for his actions.
6 (End of reading.)

7 Q. Okay. And so is there a chance that
8 Mr. Cobarruvias didn't understand the importance of the
9 advice you gave him about the mitigation regarding his
10 plea?

11 A. I don't see how he didn't understand that. I mean,
12 because when you are pleading without a recommendation,
13 the mitigation is all you've got.

14 Q. But he didn't do that; he didn't do what you
15 recommended?

16 A. No. But he's certainly not the first of my clients
17 to not do what I recommended.

18 Q. I assume you discussed with -- well, let me strike
19 that.

20 Did you along with Mr. Stoddard discuss with
21 Mr. Cobarruvias your opinion of his likelihood of
22 conviction if he went to trial?

23 A. Yes.

24 Q. Would you agree that your feelings about conviction
25 were as strong as Mr. Stoddard indicated?

1 A. Yes.

2 Q. Do you feel like there is anything else you could
3 have done to address these concerns that
4 Mr. Cobarruvias has spoken of today with regard to the
5 investigation that might have made any difference?

6 A. There is, there is nothing I can think of, either
7 at the time or even with the benefit of hindsight now,
8 that would have -- that I feel would have made a
9 difference in the case.

10 We had witnesses who saw what happened, they
11 actually saw the accident; they remained there until
12 EMS was called and responded. These people said, No
13 one fled from the van. The only individual in the van
14 was the person who was taken out by EMS.

15 And although we didn't interview EMS -- of course,
16 they weren't on scene when the accident happened, which
17 I think you alluded to in your questioning with
18 Mr. Stoddard, is that, you know, even if they had taken
19 him out of some other position, they still couldn't say
20 who was driving the van at the time of the accident.
21 We have three independent witnesses who said there was
22 one person, there was nobody else there. From the
23 pictures that we reviewed in the case it didn't appear
24 to be a situation where somebody could have gotten out
25 of the passenger's side or out of the back without

1 being noticed.

2 And, as to this Ricardo person, you know, if you
3 were to follow it to its logical conclusion, even if I
4 had been able to find that person, I can't imagine he
5 would have admitted driving that van and causing the
6 accident.

7 So, no, I'm not aware of anything else that we
8 could have done in terms of the investigation or
9 preparation of mitigation in this case that would have,
10 that would have benefitted Mr. Cobarruvias.

11 Q. Now, you agree that you also did not obtain a copy
12 of the EMS run report regarding his transport?

13 A. Correct.

14 Q. And did you actually speak with the EMS personnel
15 with regard to ---

16 A. No, I did not.

17 Q. Now, you said that he had a fourth-grade education
18 in Mexico, he was put into the twelfth grade here but
19 he didn't complete that. And so you, you seemed to
20 indicate to me that there were times when you would
21 talk about things, maybe legal, specifically legal
22 things, that he would go off on factual questions, may
23 have been questions of facts?

24 A. Sure. I mean, much as he did during his testimony
25 today.

1 Q. And with me.

2 So did any of that give you any indication that he
3 wasn't quite following the elements of a crime and how
4 you prove a crime in the courts of South Carolina and
5 that these are the factors the State will introduce,
6 and if they put the dots together, that equals
7 conviction, as opposed to addressing the facts you're
8 dealing with?

9 A. I feel like he was properly educated as to how the
10 legal system worked and what specifically the State
11 would have had to prove in his case. It's hard to
12 separate out the legal from the facts because, you
13 know, they merge together when you're talking about a
14 specific case and not some concept of law.

15 I don't have any hesitation that, at the time that
16 he entered his guilty plea and made the decision to
17 enter his guilty plea, that he knew what his options
18 were and that he knew, had we gone to trial, what that
19 procedure would have looked like.

20 Q. But you did make it clear to him that trial was an
21 option?

22 A. Absolutely.

23 Q. I mean, you told him you would try the case --

24 A. Sure.

25 Q. -- if that's what he wanted?

1 A. Yes.

2 MR. DRAISEN: Give me just a minute, Your Honor, to
3 see if there are any other questions he wants me to ask.

4 (Discussion off the record.)

5 By Mr. Draisen:

6 Q. Ms. Johnson, did you have Mr. Cobarruvias sign
7 medical authorizations or medical releases?

8 A. I did.

9 Q. Was that for the purpose of being able to obtain
10 his medical records and EMS, anything related to his
11 treatment?

12 A. Anything related to his treatment. And we did
13 obtain all the medical records with the exception of I
14 don't have an EMS report. And I would assume that
15 there is one -- I know from other cases that I've
16 worked on I've seen, you know, those reports, but I did
17 not, I did not have one in this case.

18 (Discussion off the record.)

19 By Mr. Draisen:

20 Q. Ms. Johnson, Mr. Cobarruvias wants me to ask, with
21 regard to his injury, did you speak with, did you
22 actually speak with any medical professionals who
23 could, who may have been able to indicate if injuries
24 were consistent with wearing a seatbelt on, the
25 passenger's side seatbelt?

1 A. I didn't, because it was consistent potentially
2 with wearing a seatbelt, but it was also consistent
3 with hitting a steering wheel. I mean, it wasn't -- I
4 mean, it's -- I...

5 Q. If you were gonna try the case, though, if he made
6 you try the case --

7 A. Right.

8 Q. -- I assume you would want to call a doctor that
9 would say at least --

10 A. Right.

11 Q. -- to a jury that that was consistent?

12 A. Yes. And there would have been medical
13 professionals who would have testified, and that is a
14 question that I could have asked and would have asked.
15 But, again, this one injury, he wants to say that this
16 one injury is dispositive of the fact that he was
17 sitting in the passenger's side and couldn't have been
18 driving. And it's not. That never was the case.

19 Q. But, I guess, as his advocate in the case, you look
20 at the evidence the State presents you -- correct?

21 A. Right.

22 Q. -- you see if there are inconsistencies or holes in
23 that evidence?

24 A. Correct.

25 Q. And the Defense strategy typically is, what holes

1 can we poke in the State's case?

2 A. Sure.

3 Q. Because, if we poke enough of them, that creates
4 reasonable doubt.

5 A. Reasonable doubt, sure.

6 Q. You know, then you have a defensible case?

7 A. Yes.

8 Q. So, in this particular instance, the EMS run report
9 that would have said where they extracted him from --
10 presumably it would have given some information about
11 where the extraction was, maybe where it was located,
12 maybe the conditions, et cetera, might have had some
13 information that was important. We don't know because
14 nobody has seen it. Correct?

15 A. Correct.

16 Q. We have, we have witnesses who saw the accident
17 itself happen, but we don't know -- I mean,
18 specifically -- and I listened to those tapes as well
19 and I read their statements and I actually talked to
20 some of them myself just so you know. I didn't get
21 anybody to tell me whether or not the shock of the
22 accident happening and getting to the scene, whether
23 someone could have immediately fled, I didn't get a
24 dispositive, "Did you, absolutely for sure, nobody
25 left?"

1 And I didn't get that "Yes, I'm positive that
2 nobody left." It's just "I didn't see anybody" is what
3 I got.

4 A. Right. But their testimony again, from the notes
5 that we took during the conversation, was that they had
6 been following this vehicle for a period of several
7 miles. I mean, they were right there. It was not a
8 situation where there was, you know, where they drove
9 up on it right after it happened. I mean, they saw the
10 impact. They were there for the whole thing.

11 Q. So you got -- follow me on this to see if this
12 makes sense, and I'm basing this on pictures from the
13 MAIT Team.

14 A. Uh-huh.

15 Q. It's a two-lane road --

16 A. Uh-huh.

17 Q. -- and he's driving in one lane presumably in one
18 direction and the car he had the accident with is
19 driving in the opposite direction?

20 A. Correct.

21 Q. The vehicle the witnesses are in are behind him?

22 A. Yes.

23 Q. We don't know how far behind they are. We don't
24 know if they're right behind him or if they're ten car
25 lengths behind him, or how far, right? And the MAIT

1 report says that.

2 A. I believe I have notes to that effect if you want
3 me to try to put my hands on it. I mean, these are
4 questions that we did ask these witnesses.

5 Q. I mean, I'm assuming. But what I'm asking you,
6 because what I want to know is, if they are behind the
7 car that leaves the centerline and goes into the other
8 lane and hits it, do they drive past the accident and
9 have to turn around and come back to the accident
10 scene, or what happened? Did they just stop on the
11 side of the road that they were on? Have you got any
12 of that information?

13 A. Let's see here. I'm just trying to see whose...
14 I don't have specific information as to car lengths
15 or as to where they pulled over, no.

16 Q. So they could very well have driven past the
17 accident, had to turn around, there could have been a
18 slight gap in time between the time they turned around
19 and got to the actual scene and they came back?
20 Possible. Possible.

21 A. Sure.

22 Q. We don't have an answer. And the reason I'm asking
23 you is simply from the Defense perspective, if your job
24 is to find ways to poke holes in this, these are things
25 you would consider, correct?

1 A. And did consider.

2 Q. And so the position of the witnesses, the position
3 of the driver, whether or not the possibility if
4 somebody else was there, all those things are important
5 factors, whether or not you can locate supposedly
6 another driver, what efforts you put in, that may be
7 critical, even if it is a needle in a haystack, you're
8 gonna put whatever efforts you can afford to put in to
9 find that out, reasonable efforts?

10 A. Which we did. And I, you know, and again, perhaps
11 it doesn't seem reasonable to you, but I am looking for
12 someone who is a friend of his who lives in the
13 Hispanic community. My client obviously had been
14 locked up for some time before he went to trial. The
15 best resource for trying to find that individual was
16 through his family, was through his community, and I
17 did reach out and I did do that. They did not produce
18 anything. But I'm not aware of anything else that me
19 or my office, my investigator could have done to locate
20 that witness.

21 Q. Okay. And, in addition to those things, you could
22 have also actually consulted with a doctor to see if
23 you would have gotten somebody who would say it was
24 consistent with wearing a seatbelt?

25 A. I didn't question that I could get a doctor who

1 would say it was consistent with a seatbelt injury.
2 That's why I didn't -- I mean, I knew that. I mean,
3 that to me was not a fact in dispute.

4 THE COURT: Just a moment. I think we're getting a
5 little far afield. Obviously, the burden of proof is
6 upon the Applicant to establish his case, and if we're
7 trying to raise some question about would a doctor
8 testify that it was consistent, the Applicant in a PCR
9 proceeding has the responsibility and the duty to
10 produce such a witness to show that they missed
11 something. So I'm not sure that I understand where
12 you're going with this ---

13 THE WITNESS: Well, I mean ---

14 THE COURT: Just a moment.

15 You have given me a little opportunity to look at
16 the record. You're talking about how far back was the
17 van with the three witnesses in it, did it ride past it,
18 did they confront it.

19 I'm looking at the statement of James E. Smith, it
20 says dated May the 16th, '09, I don't know whether
21 that's correct or not.

22 But the fact is he says (reading):

23 We were south on Highway 29 when a gray van
24 hydroplaned, spun sideways, and the rear of the van
25 lifted off the ground. (End of reading.)

1 Now, obviously it couldn't have been down the road
2 somewhere if they saw the van lift off the ground. So,
3 I mean, again, if you've got something more than just a
4 question, the Court is interested in that, but if we're
5 just trying to create a question when there's apparently
6 direct testimony here that they were close enough to see
7 it lift up, obviously it wasn't suspended in the air for
8 minutes or hours or anything like that. So let's move
9 on.

10 **MR. DRAISEN:** Your Honor, the questions are
11 directed at what efforts Counsel provided to Defense ---

12 **THE COURT:** Well, this is also to show that it
13 would have some effect ---

14 **MR. DRAISEN:** Well, I understand.

15 **THE COURT:** --- and we haven't heard anything. We
16 haven't heard, we haven't got an Affidavit even that
17 says this Ricardo would have said he was driving. We
18 haven't got anything. The burden of proof is upon the
19 Applicant in a PCR.

20 All right. Go ahead. But, as I say, it's only,
21 you can ask a question only so many ways, and by the
22 time that you get to it, I'm looking through the record
23 and the record reflects that apparently the eyewitnesses
24 were a lot closer than down the road past the accident
25 or something like that. So you may proceed.

1 (Discussion off the record.)

2 MR. DRAISEN: That's all the questions I have, Your
3 Honor.

4 THE COURT: All right. Very good. Any re-exam?

5 MS. MAY: No, sir.

6 THE COURT: You may step down. May the witness be
7 excused?

8 MS. MAY: Yes, sir.

9 MR. DRAISEN: Yes, sir.

10 (Whereupon, the Witness was excused.)

11 THE COURT: You may call your next witness.

12 MS. MAY: No more witnesses.

13 THE COURT: Argument?

14 (Discussion off the record.)

15 Argument on behalf of the Applicant:

16 MR. DRAISEN: Just briefly, Your Honor.

17 Our position is that we believe that Ms. Johnson
18 and Mr. Stoddard failed to adequately investigate the
19 matter and to procure the EMS run report, to procure
20 doctors' statements with regard to the injury and the
21 nature of Mr. Cobarruvias's injury. They didn't have a
22 biomechanics expert of any kind to reconstruct how his
23 body may have moved in the vehicle with regard to the
24 impact.

25 That while there is evidence that supports the

1 State's case, our position is that it doesn't seem to be
2 completely insurmountable in terms of their ability to
3 raise doubt. And yet their testimony was that they felt
4 very strongly that he would be convicted based on the
5 evidence, and essentially he was put in a position where
6 he understood that if he tried the case he would be
7 convicted and that he would likely face a long sentence
8 and understood that if he pled, that he may get a
9 reduced sentence, and instead, of course, received
10 nearly the maximum sentence, 20 years out of 25, I
11 believe.

12 And, Your Honor, of course we cite Cherry versus
13 State and Hill versus Lockhart for the standard that but
14 for their errors, he would not have pled guilty and
15 would have insisted on going to trial.

16 THE COURT: You mean he would have gone to trial?

17 MR. DRAISEN: He would have gone to trial in the
18 matter, but for the errors in the evidence.

19 THE COURT: Well, I think that Judge McIntosh
20 advised him that it might be as high as 25 years, he
21 advised him it was 55.

22 MR. DRAISEN: That would be if each count was
23 consecutive.

24 THE COURT: 15 and 25.

25 MR. DRAISEN: Yes, sir.

1 **THE COURT:** So, I mean, he would be looking at more
2 than, 55 than 25.

3 **MR. DRAISEN:** Yes, sir.

4 **THE COURT:** All right.

5 **MR. DRAISEN:** And that's our position on behalf of
6 the Applicant, Your Honor.

7 **THE COURT:** All right. Anything from the State?
8 Argument on Behalf of the Respondent:

9 **MS. MAY:** Briefly, may it please the Court.

10 Your Honor, the testimony presented by Ms. Johnson
11 and Mr. Stoddard and also by Mr. Cobarruvias, they,
12 their investigation that they conducted and received
13 from the State's discovery, they reviewed with
14 Mr. Cobarruvias. They had no reason to think that he
15 didn't understand it. He was engaged with them and
16 asking questions and asking them to solicit other
17 information.

18 There is no -- as to we still don't have an EMS
19 report, we don't have a doctor report. That's
20 speculation as to what that would bring. So there's no
21 prejudice as to not having an EMS report or not having a
22 doctor report because we don't have one now so there's
23 no way to know.

24 Mr. Cobarruvias never said at any point, I don't
25 think, that he wants to go to trial or he would have

1 gone to trial. And the State would submit that the
2 Applicant hasn't met their burden that his trial
3 counsel, or that his plea counsels were ineffective.

4 THE COURT: All right. Anything further from the
5 Applicant?

6 MR. DRAISEN: No, Your Honor.

7 THE COURT: Well, of course, in a plea we have a
8 record where the Applicant is under oath. And I note
9 here that, of course, Judge McIntosh is very careful
10 about assuring that the Applicant actually knew his
11 rights, that he was -- and the effect of a plea.

12 On page 18 he's asked, of course, did he know he
13 had the right to a jury trial, to confront witnesses,
14 and to remain silent, and the fact that if he went to
15 trial, the jury would be instructed the jury would not
16 hold the fact that the Defendant did not testify against
17 him.

18 And then on page 19 (reading):

19 Do you wish to waive these Constitutional rights
20 and instead plead guilty today?

21 And the Applicant there -- or the Applicant here
22 stated, Yes.

23 The Court comes back again. (Reading): Do you
24 maintain that if you have a defense to any of these
25 charges, do you understand you give up the right to

1 assert that defense or defenses by pleading guilty?

2 And the Applicant stated, I understood.

3 (End of reading.)

4 Then, of course, as far as the facts in the
5 Indictment, as to one Indictment the Court inquires on
6 page 20 that (reading):

7 The Indictment says that on or about May the 16th,
8 2009, while you were under the influence of alcohol or
9 drugs, that you caused the death of Katie Eaton by
10 driving left of center or driving too fast for the
11 conditions. Do you admit these allegations?

12 Yes, sir.

13 Do you admit that you were under the influence of
14 alcohol or drugs at the time of the accident?

15 Yes, sir.

16 (End of reading.)

17 Later he was asked if the attorneys, if he was
18 completely satisfied with his attorneys. (Reading):
19 Are you completely satisfied with the services of your
20 attorneys?

21 Yes, sir.

22 And that is to both Mr. Stoddard and Ms. Johnson?

23 Yes, sir.

24 (End of reading.)

25 And then the Solicitor, recounting the facts, says

1 that (reading): There was another vehicle that was
2 behind him that witnessed the accident. All three of
3 those individuals got out immediately. When they got to
4 the car, they found the Defendant unconscious behind the
5 wheel. There was no one else in the car. His alcohol
6 level was a point 271.

7 (End of reading.)

8 And, as I say, that apparently the credibility of
9 those witnesses is reflected in their statement where
10 one witness says that he actually saw the rear of the
11 van lift up, and so he couldn't see something unless the
12 observation was made of Wile E. Coyote hanging up in the
13 air...

14 Also, I did look at the sentence sheet and it was a
15 non-negotiated plea, "without negotiations" is written
16 on the sentence sheets.

17 The Court's Ruling:

18 **THE COURT:** I do find that the Applicant has failed
19 to carry its burden in establishing that there was
20 ineffective assistance of counsel because of the
21 interview. Apparently they had went to great lengths to
22 try to find someone.

23 And I might note that, I think it's Glover versus
24 State, even when you've got alibi witnesses and you do
25 not call them, the Applicant fails to establish the

1 basis for ineffective assistance of counsel as to
2 witnesses.

3 So the application is denied and it will be
4 dismissed with prejudice.

5 MR. DRAISEN: Your Honor, may it please the Court,
6 one more issue?

7 THE COURT: Certainly.

8 MR. DRAISEN: I need to make a motion that the
9 interpreter's fees be covered in this matter by the
10 Court.

11 THE COURT: Certainly.

12 All right. If the Attorney General will prepare a
13 proposed Order. All right.

14 Good luck to you, sir.

15 THE APPLICANT: Thank you, sir.

16 (Whereupon, the Post-Conviction Relief Hearing was
17 concluded at approximately 1:37 p.m.)

18

19

20

21

22

23

24

25

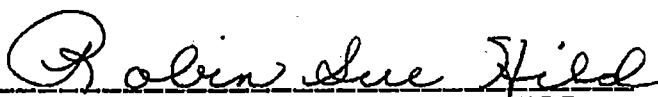
Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, Federal Certified Realtime Reporter and Registered Professional Reporter, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the Post-Conviction Relief hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the 8th day of June, 2011.

There may be quoted material which was read into the record by counsel or other persons. Such quoted material is transcribed as read by the reader.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 12, 2016


Robin Sue Hild, FCRR, RPR
10th Circuit Court Reporter

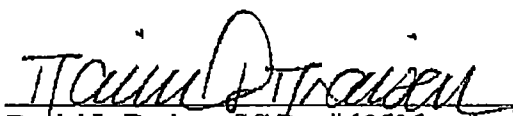
STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS
JOSE LUIS LUNA CABARRUVIAS SCDC ID: 00342601 SID: SC01389864, Plaintiff, vs. THE STATE OF SOUTH CAROLINA, Defendant.	NOTICE OF MOTION AND MOTION TO REOPEN RECORD TO ALLOW TESTIMONY OF SUBPOENAED WITNESSES C/A No. 2011-CP-04-0015

PLEASE TAKE NOTICE that the above-named Plaintiff, by and through his undersigned counsel, hereby requests and moves that the Court, within ten (10) days of the date hereof or as soon as is convenient to the Court, reopen the record in the above Post-Conviction Relief action to allow the Plaintiff to call to the witness stand and to introduce into evidence direct witness testimony of certain witnesses (list attached hereto) that the Plaintiff believes should have been subpoenaed to testify at the PCR hearing held on June 8, 2011.

This Motion is made pursuant to the statutory and common laws of the State of South Carolina.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.



Daniel L. Draisen, SC Bar # 13536

207 East Calhoun Street

Anderson, South Carolina 29621

(864) 225-4000

(864) 964-0788 facsimile

Court Appointed Counsel for the Plaintiff

Dated: June 30, 2011

FILED - CLERK'S OFFICE
ANDERSON SC
JUN 30 - 7 P 2:00
COMMON PLEAS AND
GENERAL SESSIONS

List of Witnesses to be Subpoenaed:

Ms. Young – Anderson County Jail
Ms. Langston – Nurse at Anderson County Jail
Tim Owens – Cellmate
Larry Durrance – Cellmate
David Eskew – Cellmate



**ORDER OF APPOINTMENT OF
QUALIFIED INTERPRETER**

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF ANDERSON)

TENTH JUDICIAL CIRCUIT)

Jose Luis Luna Cobarruvias)
Plaintiff)

CASE NO. 2011-CP-04-15)

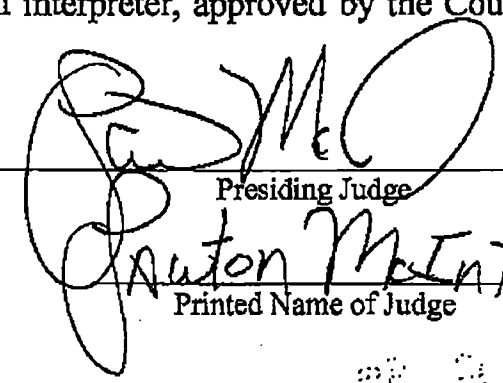
vs.)

☐ Deaf/Sign Language
☒ Non-English speaking)State of South Carolina)
Defendant)Spanish
(Specify Language))

Jose Luis Luna Cobarruvias is a deaf or non-English speaking person and/or a juror, or a party to a legal proceeding or a witness therein, or confined to an institution and is in need of the services of a qualified interpreter. Therefore, pursuant to S.C. CODE ANN. Section 15-27-15, 15-27-155, or 17-1-50, it is ordered that Gilberto Gonzalez, a qualified interpreter, approved by the Court, is appointed.

7-20-11

Date

at Anderson, South Carolina
City

Presiding Judge
Anton McIntosh
Printed Name of Judge

Note: Original form or Certified True Copy only. Forms not in compliance will be returned.

SCCA/262 (1/2010)

FILED-CLERK'S OFFICE
JUL 21 AM 10:54
AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA FILED - CLERK'S OFFICE IN THE COURT OF COMMON PLEAS
 COUNTY OF ANDERSON ANDERSON SC TENTH JUDICIAL CIRCUIT

2011 AUG 10 A 11:41 2011-CP-04-0015

Jose Luis Luna Cobarruvias, #342601, IN THE COURT OF COMMON PLEAS AND
 Applicant, GENERAL SESSIONS **RETURN TO MOTION TO RE-OPEN**
 v. **RECORD TO ALLOW TESTIMONY**
OF SUBPOENAED WITNESSES
 State of South Carolina,
 Respondent.

This matter comes before the Court by way of Applicant's Motion to Re-open the Record to Allow Testimony of Subpoenaed Witness. The Respondent (the State) would submit the following:

I.

The post-conviction relief (PCR) evidentiary hearing convened in this matter at the Anderson County Courthouse on June 8, 2011, before the Honorable Alexander S. Macaulay. The Applicant was present at the hearing and was represented by Daniel L. Draisen, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office. At the hearing Applicant presented testimony on his own behalf. The State offered the testimony of David Stoddard, Esquire and Jennifer Johnson, Esquire, Applicant's plea attorneys. The hearing lasted approximately three (3) hours. Respondent submits that the testimony and evidence presented at the PCR hearing adequately addressed all of the Applicant's claims. Applicant had the opportunity to present any witnesses he wished at the PCR hearing, but did not do so. Applicant provides a list of five (5) witnesses he proposes to subpoena for additional testimony. Respondent submits there has been no showing by the Applicant as to why these witnesses' testimony is necessary and why the evidentiary record is incomplete. Respondent submits Applicant has failed to show that he was prejudiced at the

evidentiary hearing without the testimony of these witnesses. Moreover, the names of witnesses that Applicant complained his plea counselors failed to procure are not any of the witnesses proposed to be subpoenaed by the Applicant.

II.

The State therefore requests that the relief requested by the Applicant be denied and that his Motion be dismissed.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: Kaelon E. May
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 9, 2011

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMON PLEAS
JOSE LUIS LUNA CABARRUVIAS SCDC ID: 00342601 SID: SC01389864, Plaintiff, vs. THE STATE OF SOUTH CAROLINA, Defendant.	EX PARTE ORDER AUTHORIZING STATE FUNDING OF INVESTIGATIVE COSTS AND FEES C/A No. 2011-CP-04-0015

This matter came on for hearing before me on the 27th day of November, 2012 pursuant to an *Ex Parte* Motion filed by the Plaintiff requesting financial assistance from the State of South Carolina, Office of Indigent Defense, pursuant to SC Code Ann., Section 17-3-50(B) to cover investigative costs and fees for the location of witnesses that Plaintiff asserts are critical to the presentation of his case.

Having heard fully the arguments of counsel on behalf of the Plaintiff, and having duly considered the necessity of the request, I find that investigative, expert, or other services are reasonably necessary for the representation of the Plaintiff.

Accordingly, I hereby authorize the Plaintiff's attorney to obtain such services on behalf of the Plaintiff, and order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed One Thousand Five Hundred and 00/100 Dollars (\$1,500.00).

I make the following specific findings of fact in support of payment in excess of the \$500.00 limit and deem that the services to be provided will be reasonably and necessarily incurred:

1. Plaintiff asserts that for the full adjudication of his PCR application that certain witnesses must be located and called to testify at his hearing;

CLERK'S OFFICE
ANDERSON SC
2012 DEC 10 A 8:38
COMMON PLEAS AND
GENERAL SESSIONS

1.02
C.

2. Several of these witnesses were inmates at the Anderson County Detention Center at the time Plaintiff was being held on the charges that are the subject of the pending PCR *reb* application;
3. These witnesses are no longer inmates at the Anderson County Detention Center and their present whereabouts are unknown to the Plaintiff;
4. Accordingly, an investigator must be retained for the purpose of attempting to locate these persons that the Plaintiff considers necessary and material witnesses;
5. The Plaintiff is presently incarcerated with the SC Department of Corrections, and his application to proceed *in forma pauperis* has been granted by the Court;
6. The Plaintiff does not have the financial resources necessary to pay for the required investigative costs; and
7. The funding of an investigator is necessary for the full adjudication of the Plaintiff's PCR application.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

Plaintiff's attorney is authorized to obtain investigative or other such services on behalf of the Plaintiff, and that payment for such investigative or other services be made from funds available to the Office of Indigent Defense of fees and expenses not to exceed One Thousand Five Hundred and 00/100 Dollars (\$1,500.00).

IT IS SO ORDERED.


ALEXANDER S. MACAULAY, Judge

December 6, 2012
Walhalla, South Carolina

202

CLERK'S OFFICE
ANDERSON SC
2012 DEC 10 A 8:38
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS
JOSE LUIS LUNA CABARRUVIAS SCDC ID: 00342601 SID: SC01389864, Plaintiff, vs. THE STATE OF SOUTH CAROLINA, Defendant.	MOTION PURSUANT TO SCRPC, RULE 15(b), TO AMEND PCR APPLICATION TO CONFORM TO THE EVIDENCE C/A No. 2011-CP-04-0015

PLEASE TAKE NOTICE that the above-named Plaintiff, by and through his undersigned counsel, hereby requests and moves that the Court, within ten (10) days of the date hereof or as soon as is convenient to the Court, to consider the attached Motion and exhibits, and to allow Plaintiff to amend his PCR application, to the extent necessary, to conform to the evidence submitted herewith and evidence introduced hereafter by direct witness testimony.

This Motion is made pursuant to the statutory and common laws of the State of South Carolina.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.



Daniel L. Draisen, SC Bar # 13536
207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
Court Appointed Counsel for the Plaintiff

Dated: January 28, 2013

FILED-CLERK'S OFFICE
ANDERSON SC
2013 JAN 29 A 9 04
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Jose Luis Cabaruvias

1389864
Applicant

vs

The State

IN THE COURT OF COMMON PLEAS

#

FILED-CLERK'S OFFICE
ANDERSON SC

2013 JAN 29 A 9:04

NOTICE AND MOTION FOR
COMMON PLEAS AND
GENERAL SESSIONS

15 (b)

NOW COMES the above named Applicant by and through his unsigned counsel who moves this Hon. Court in the above entitled matter per. S.C.R. Civil P. Rule 15 (b).

An evidentiary hearing was held in Applicant's P.C.R. on June 8, 2011. At this hearing Applicant testified to the fact that he was not the driver of the van that cause the traffic collision - he was the passenger.

At this hearing, the State alleged that they had 3 witnesses. That said Applicant was the driver.

Applicant would like to enter into evidence, to confirm his testimony the 3 witnesses statements which none of the witnesses even alleged that Applicant was the driver SEE: Ex 2, 3, and

4. Also see: Applicant's P.C.R. Ex. 5
 Applicant further argue that none of the
 3 witnesses statements stated how many
 people was in this van.

Also Applicant testified that on the police
 report and it was stated at his preliminary
 hearing that the police arrived at the scene at
 1:30 pm SEE: Ex A and Ex B. Although the
 time on the witnesses statement is 11:44 A.M See
 Ex 2; 11:22 AM See Ex 3; 11:40 See Ex 4: Also
 see Ex C / DHEC Patient care form. Thus, these
 3 statements is before the traffic collision even
 happen.

Further, Applicant would like to enter into
 evidence his 5 sheets of med. records, which
 clearly shows that his right clavicular fracture,
 which Applicant strongly argue that he was in
 fact the passenger, "NOT" the driver.

DATE: 1-~~24~~-2013

/s/ JOSE LUNA COBARRUVIAS
 Daniel L. Draisen

AGENCY I.D. 1
3CD04SP00

INCIDENT REPORT

CASE NUMBER
1993-042135NOC
INT. ENT
X

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Driving Under the Influence (90D)	☒ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.	
2. Driving Under the Influence (90D)	☒ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley			
3. Driving Under the Influence (90D)	☒ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley			
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE	
US 29 NORTH NEAR MCCOMBS RD.						
INCIDENT DATE	24 HR. CLOCK	TO DATE	24 HR. CLOCK	DISPATCH DATE/TIME	24 HR. CLOCK	LOCATION NO.
5/16/2009	10:00	5/16/2009	19:00	5/16/2009	7:00:00 PM	1:30:00 PM
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
		1 2 3	☒ JSOU			
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
Society/Public		1 2 3	☒ JSOU			
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.	
VISIBLE INJURY (VICT. 1)		☐ YES ☐ NO	EXPLAIN -			
VICTIM (NO. 1) USING ALCOHOL		☐ YES ☐ NO	DUNK DRUGS: ☐ YES ☐ NO ☐ DUNK TYPE:			
TWO-MAN VEH.		☐	ONE-MAN VEH. ☐			
DETECTIVE/SPLASH		☐	OTHER ☐			
ALONE ☐		ASSISTED ☐		J. This Jurisdiction, B - State, C - Out of State, U - Unknown		
☐ SUSPECT	NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.
☐ RUNAWAY	LUNA-COBARRUVIAS, JOSE LUIS		W	M	43	H
☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
☐ WARRANT	ADDRESS					
☐ ARREST			CITY	STATE	ZIP CODE	LOCATION NO.
☐ JAIL			BELTON	SC	28627	
☐ SUMMONS	SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☐ DUNK		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐ DUNK		DATE/TIME OF OFFENSE	
	DRUGS ☐ YES ☐ NO ☐ DUNK TYPE:		TOTAL # ARRESTED:		DATE/TIME OF ARREST	
ON THE ABOVE DATE AND TIME I RESPONDED TO A TRAFFIC COLLISION ON US 29 NEAR MCCOMBS RD.						
IN ANDERSON COUNTY. WHEN I ARRIVED ON THE SCENE ALL THE DRIVERS AND PASSENGERS HAD						
ALREADY BEEN TRANSPORTED TO THE ANMED HOSPITAL. THERE WAS TWO VEHICLES INVOLVED AT THE						
COLLISION SITE. THERE WAS A 1995 CHEVY ASTRO VAN THAT HAD BEEN STRUCK IN THE PASSENGER						
SIDE BY A 1998 BUICK SEDAN. I HAD THREE WITNESSES ON THE SCENE THAT STATED THEY SAW THE						
CHEVY VAN TRAVELING SOUTH ON US 29 IN A HEAVY RAIN, HYDRO-PLANE AND SPIN OUT OF CONTROL,						
CROSSING THE CENTER LINE SIDEWAYS AND WAS STRUCK IN THE SIDE BY THE BUICK SEDAN. ONCE MY						
INVESTIGATION AT THE COLLISION SCENE WAS COMPLETED I WENT TO THE HOSPITAL TO INTERVIEW						
ALL THE VICTIMS. WHEN I ARRIVED AT THE ER A NURSE CAME UP TO ME AND INFORMED ME THAT SHE						
COULD SMELL A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM MR. LUNA-COBARRUVIAS THE						
			JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	
TYPE (GROUP)						TOTAL VALUE
STOLEN						
DAMAGED						
BURNED						
RECOVERED						
SKIPPED						
FORGED						
SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ☐ AOM CLOSED ☐		ARRESTED UNDER 18
☒ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE NO CUSTODY						
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE
WARREN, ADAM SCOTT		5/17/2009	033	CARSON, MICHAEL C		5/17/2009
				FOLLOWUP OFFICER		
				INVESTIGATION ☐ YES ☐ NO		

AGENCY I.D. -
 SC004SP00

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER	NCC
1993-042135	ENTD

ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☒ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 OF 3 PAGES

VICTIM SUBJ OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #2	- Society/Public								
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				
	☐ RUNAWAY	ADDRESS	CITY	STATE/ZIP CODE	LOCATION NO.	DAY PHONE	EVENING P. ONE			
VICTIM SUBJ OVERFLOW	☐ WANTED									
	☐ WARRANT									
	☐ ARREST									
	☐ JAIL									
VICTIM SUBJ OVERFLOW	☐ SUMMONS									
	☐									
	☐									
	☐									

NARRATIVE	DRIVER OF THE CHEVY VAN. THE SUBJECT COULD NOT SPEAK FLUENT ENGLISH AND I HAD HEATHER CAZARAIN AS ON STAFF TRANSLATOR TO HELP ME QUESTION HIM. I ASKED THE SUBJECT WHAT HAD HAPPENED FOR HIM TO HAVE THE COLLISION AND HE RESPONDED TO ME THAT HE HADN'T BEEN IN A COLLISION. ONCE THE SUBJECT BEGAN SPEAKING I COULD ALSO SMELL A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM HIS BODY. I ASKED MR. LUNA-COBARRUVIAS IF HE WOULD SUBMIT ME A SAMPLE OF BLOOD TO DETERMINE BAC AND HE AGREED. I HAD THE TRANSLATOR TO READ HIM HIS MIRANDA RIGHTS AND IMPLIED CONSENT RIGHTS BEFORE THE BLOOD WAS TAKEN. ONCE THE HOSPITAL RELEASED THE SUBJECT HE WAS PLACED UNDER ARREST AND TRANSPORTED TO THE ANDERSON COUNTY DETENTION CENTER. THE DRIVER AND PASSENGERS OF THE BUICK SEDAN ALL SUSTAINED SERIOUS INJURIES AND REMAINED IN THE HOSPITAL. THE DRIVER MRS. SUSAN SIGMAN SUSTAINED A SERIOUS									

VEHICLE 1	STATUS	TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ VEHICLE	SERIAL AND/OR OWNER APPLIED NO.		STATE	
	☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION	YEAR OF EXPIRATION	YEAR	MAKE
	☐ FOUND	☐ BOAT	MODEL	STYLE	COLOR	BRAND NAME
	☐ TOWED	☐ LICENSE PLATE	NIC NO.	DENOMINATION	ISSUER	SECURITIES DATE
	☐ SUSPECT	☐ SECURITIES/BONDS/STOCKS	MISCELLANEOUS			
	☐ VICTIM	☐ ARTICLE				

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

ADMINISTRATIVE	SUBJECT IDENTIFIED	SUBJECT LOCATED	ACTIVE ☐ ☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
	☒ YES ☐ NO	☒ YES ☐ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRADITION DENIED, 4. ☐ VICTIM DECLINES COOPERATION, 5. ☐ REVENUE NO CUS. JUDY				
	REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE
	WARREN, ADAM SCOTT	5/17/2008	553	CARSON, MICHAEL G	

 FOLLOW-UP
 INVESTIGATION ☐ YES ☒ NO

AGENCY I.D. 3
 3C004SP00

SUPPLEMENTARY INCIDENT REPORT

CASE NUMBER	1993-042135	INC.	INTD.
		X	

☐ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 3 PAGES

NECK INJURY AND A CRUSHED HEEL ON HER RIGHT FOOT. THE FRONT PASSENGER MS. KATY EATON HAD INTERNAL INJURIES AND WAS UNSTABLE. THE REAR SEAT PASSENGER MR. RAYMOND SIGMAN HAD A BROKEN LEFT ANKLE AND WAS GOING TO REQUIRE IMMEDIATE SURGERY.

NARRATIVE

ADMINISTRATIVE

		JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	
SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☒ YES ☐ NO	☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE NO CUSTODY					
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
WARREN, ADAM SCOTT	5/17/2009	553	CARSON, MICHAEL C		552
		FOLLOWUP OFFICER			
		INVESTIGATION ☐ YES ☒ NO			

INTRODUCTION

This limited report will outline the findings of the Piedmont Multi-Disciplinary Accident Investigation Team as they relate to a traffic collision that occurred at approximately 1300 hours on May 16, 2009, in Anderson County, State of South Carolina on US 29. A copy of the South Carolina Traffic Collision Report is attached in the Appendix section of this report.

On May 16, 2009, Lieutenant Don Dickerson / SCHP / Troop 3 Headquarters requested the Piedmont MAIT to assist with this investigation. This collision involved two vehicles and a possible Felony DUI.

EXHIBIT - 2



**SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT**

STATE OF SOUTH CAROLINA
COUNTY OF Anderson

PERSONALLY appeared before me

James E. Smith, who states:

Case # Not the Same

Case Number 09-04-HP3A-05

as other two

I reside at [redacted] in Palmer City

SC
State

Telephone: [redacted]

-9429

Work:

Home:

Date of Birth: [redacted] Social Security Number [redacted]

I have 10 years of education, and I can cannot read and write. This statement is given on 5-16, 20 09
at 11:54 am in the presence of Trapper A. E. Warren who has officially identified
himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

We were South on Hwy 29 when a grey
Van Hydroplaned, spun side ways and the rear of
the Van lifted off the ground. The Van had hit a
another car. This happened 5-16-2009 on Hwy 29
in Anderson County.

completed 4 mins before given. How:

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomever.

This statement was completed at 11:40 am on the 16th day of May, 20 09.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS DAY OF , 20

Notary Public For South Carolina

My Commission Expires

James Edward Smith
Affiant
Trapper A. E. Warren
Witness
Ralph E. [redacted]
Witness

Page 1 of 1 pages

Time Arrived on scene: 1:30:30 pm How is this?
Time he took statement: 11:22:00 am, 11:40:00 am, and 11:44:00 am

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

EXHIBIT - 3

STATE OF SOUTH CAROLINA
COUNTY OF Anderson
PERSONALLY appeared before me RALPH C. RIGGS, who states:

Case Number Same 09-04-HP3A-089

I reside at [redacted] in WILKINSON
State SC Home Address [redacted] City [redacted]
Telephone: [redacted] Work: [redacted] Home: [redacted]

Date of Birth: [redacted] Social Security Number [redacted]
I have 12 years of education, and I can read and write. This statement is given on 5-16, 2009
at 11:17 am/pm in the presence of Trooper A.S. Warren who has officially identified himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

I RALPH RIGGS WAS DRIVING SOUTH ON HWY 29
WHEN I OBSERVED A WHITE MINI VAN GOING AT HIGH SPEED
DURING A HEAVY RAIN SHOWER,
THE HYDRO PLANED ON WET SURFACE
LOST CONTROL SPUN AROUND IN CENTER OF HWY 29
WENT INTO NORTH BOUND LANE AND STUCK ANOTHER
VEHICLE RIGHT SIDE RESULTING IN 3 PEOPLE BEING
HURT.
THIS IS TRUE TO BEST OF KNOWLEDGE

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomsoever.
This statement was completed at 1140 am/pm on the 16th day of May, 2009

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS DAY OF , 20

Notary Public For South Carolina

My Commission Expires

Ralph C. Riggs Affiant
Alan S. Warren Witness
Harmanda L. Smith Witness

Mr. Riggs before the other two, and all statements were taken 1 hr and 50 mins before the statement was taken. How?

EXHIBIT-4



**SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT**

STATE OF SOUTH CAROLINA

COUNTY OF AndersonPERSONALLY appeared before me Kassandra Jewell Smith, who states:Case Number Same 09-04-HP3A-089

I reside at [redacted] in Pelzer
SC [redacted] Address [redacted] City
State Telephone: -9429 Work: -8907 Home:

Date of Birth: [redacted], Social Security Number [redacted]

I have 11 1/2 years of education, and I can cannot read and write. This statement is given on May 16, 20 09
 at 1140 am/pm in the presence of Trooper M.S. Warren who has officially identified
 himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY..

Graig Smith turned on 29. It was raining
and the Grey Van lost control of and hydro-
planed and went over the yellow line and it the
grey car. This happen in Anderson county
on 5-16-09.

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomever.

This statement was completed at 1140 am/pm on the 16th day of May, 20 09.

SWORN TO AND SUBSCRIBED TO BEFORE
 ME THIS DAY OF , 20

Notary Public For South Carolina

My Commission Expires

Kassandra Jewell Smith
[Signature] Affiant
[Signature] Witness
Ralph C. [Signature] Witness

Page 1 of 1 pages

DHEC PATIENT CARE FORM

Q.A. NO.

TRAP NO. 98047 A

[illegible]

IMPORTANT MATERIAL

OAKTREE ORTHOPAEDICS127 Straight Street
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSE CODARRUVIS
DATE OF BIRTH: [REDACTED]
MRN: 59832
DATE OF SERVICE: 05/16/09

HISTORY OF PRESENT ILLNESS:

The patient is here accompanied by a police officer for reevaluation of his right clavicle fracture. He still has pain of about 6/10. The patient states it is not as bad as it was when he first got here. The patient also wants to remind me and make statement that he was the passenger, not the driver.

All patient history as recorded in the initial history and physical remains the same today's date.

EXAMINATION:

No tenting of the skin is noted. He is neurovascularly intact without paresthesias of his right upper extremity. There is pain upon palpation at his clavicle.

X-rays are taken today in my office. Compared to the previous x-rays, it shows no change of his alignment.

ASSESSMENT/PLAN:**1. RIGHT CLAVICLE FRACTURE.**

We will continue utilizing a sling as well as Lortab 5 one to two every four to six hours p.r.n. pain #40 dispensed. No refills are prescribed. This is his last narcotics prescription. I will repeat x-rays in four weeks.

Darius Divina, DO

DD:ats12
Voice File: 0630-001

Transcription dictated but not read in order to expedite records.

CT CHEST W, ABD W/VO AND PELVIS W
 ANDERSON AREA MEDICAL CENTER
 800 NORTH FANT STREET
 ANDERSON SC 29621

RADIOLOGY REPORT

Pat. Name: LUNA, JOSE LUIS
 Address: [REDACTED]
 GREENVILLE, SC 29611
 Unit/Room: ED/0000
 DOB: [REDACTED]
 Sex: M

MR#: 000538178
 Ord. Phys.: BRIDGET AILEEN BRENNAN
 Service Date/Time: 05/16/2009 3:36 PM
 Order#: E-03789419
 PROC: CT CHEST W, ABD W/VO AND PELVIS
 Attend. Prov.: BRIDGET AILEEN BRENNAN

LUNA CT CHEST, ABDOMEN \T\ PELVIS W/VO CONTRAST

CLINICAL HISTORY: Trauma. MVA.

TECHNIQUE: Following the administration of oral contrast only, axial images were obtained through the liver at 10 mm slice thickness and 20 mm table increments. Then, following the intravenous administration of 100 ml of Optiray 320, multiple helical images were obtained at 5 mm from the level of the thoracic inlet through the ischial tuberosities. Delayed images were obtained using similar technique through the abdomen and pelvis at approximately five minutes post-contrast administration. Additional sagittal and coronal 2D reconstructions were performed after axial helical acquisition.

FINDINGS: CHEST: CT examination demonstrates symmetry of the thyroid lobes. No mediastinal abnormality is identified.

There is no evidence for pleural or pericardial effusion.

Parenchymal lung windows demonstrate no evidence for pneumothorax. There is patchy airspace density peripherally within the right midlung which measures 3.1mm possibly representing a contusion. There is another nodular density seen medial to this measuring 3.1mm. There is atelectasis in the lung bases.

~~There is no mediastinal abnormality. A right clavicular fracture is identified. A displaced rib fracture is seen. Increased blastic density is identified within the disc space of T11-T12.~~

IMPRESSION:

COMMINUTED RIGHT CLAVICULAR FRACTURE.

TWO NODULAR DENSITIES MEASURING 3.1MM IN THE RIGHT MIDDLE LOBE WHICH MAY REPRESENT SMALL CONTUSIONS.

BIBASILAR ATELECTASIS.

*** report continues next page ***

Dictated Date/Time: 05/16/2009 3:38 PM
 Transcr. By: JJORDAN
 Transcr. Date/Time: 05/16/2009 4:26 PM

Dictated By: MONICA HOIER GRIER, M.D.
 Reviewed By:
 Approved Date/Time: 05/16/2009 8:14 PM
 Page 1

274

OAKTREE ORTHOPAEDICS

3277 Clemson Blvd
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSE COBARRUVIAS
DATE OF BIRTH: [REDACTED]
MRN#: 5932
DATE OF SERVICE: 06/15/09

CHIEF COMPLAINT: Right shoulder injury

HISTORY OF PRESENT ILLNESS:

This 43-year-old, right hand dominant male presents to my clinic today in regards to the above. The patient is accompanied by a police officer. He is currently an inmate. The patient on 05/16/09 was involved in a motor vehicle accident, which he does not remember. He does wear a sling and states the pain is about a 5/10.

The patient's complete history and physical as well as medication survey has been reviewed by me and included in the chart.

ALLERGIES:

None

CURRENT MEDICATIONS:

Lortab
Tagamet

PAST MEDICAL HISTORY:

Ulcers

PAST SURGICAL HISTORY:

None

SOCIAL HISTORY:

Admits to very minimal tobacco use. Denies any alcohol use.

FAMILY HISTORY:

Father deceased. Mother is alive in good health.

Continued . . .

JOSE COBARRUVIAS

June 15, 2009

PAGE 2

PHYSICAL EXAMINATION:

Ht: 5'2" Wt: 110 lbs BP: 130/84 Temp: Afebrile

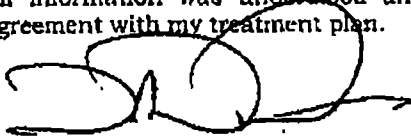
General: The patient is alert and oriented x 3 and in no acute distress.

Examination of his shoulder: Decreased range of motion secondary to the clavicle fracture. Pain on palpation to his clavicle. There is no tenting of skin. His neurovascular exam is intact without paresthesias to his upper extremities.

X-rays were taken today in my office today of his right clavicle, which shows an overriding midshaft clavicle fracture.

ASSESSMENT/PLAN:**1. RIGHT CLAVICLE FRACTURE.**

I took the opportunity, in great detail, to discuss the patient's symptoms. This is going to be treated nonsurgically. He is to remain in his sling. Repeat x-rays in two weeks. Lortab 5's one to two every four to six hours p.r.n. pain, with no refills were prescribed. All information was understood and all questions were answered. He is well in agreement with my treatment plan.



Darius Divina, DO
Board Certified Orthopedic Surgeon

DD:ats42
Voice File: 0617-023

Transcription dictated but not read in order to expedite records.

OAKTREE ORTHOPAEDICS

127 Straight Street
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSE CODARRUVIAZ
DATE OF BIRTH: [REDACTED]
MRN: 59832
DATE OF INJURY: 05/16/09
DATE OF SERVICE: 07/20/09

HISTORY OF PRESENT ILLNESS:

The patient is accompanied by a police officer. He is here for reevaluation of his right clavicle. He states his pain is about a 6/10.

All patient history as recorded in the initial history and physical remains the same today's date.

EXAMINATION:

Physical examination of his shoulder shows symmetrical range of motion. He has continued pain on palpation over his right clavicle. The patient is neurovascularly intact.

X-rays were taken today in my clinic compared to previous x-rays, which show once again the overriding mid clavicular fracture. I do not appreciate any callus formation yet at this point.

ASSESSMENT/PLAN:**1. RIGHT CLAVICLE FRACTURE.**

I wrote him his last prescription for Lortab 5.0 one to two every four to six hours p.r.n. pain dispense #40, with no refills. He is to continue his range of motion exercises. He is to wear his sling as needed. He is to wean into heavy lifting, pulling, pushing, and twisting. I will repeat x-rays in four weeks.

Darius Divina, DO
Board Certified Orthopedic Surgeon

DD:ats6
Voice File: 0720-020

Transcription dictated but not read in order to expedite records.

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

JOSE LUIS LUNA CABARRUVIAS

Plaintiff,

vs.

THE STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
10th JUDICIAL CIRCUIT

CASE NO.: 2011-CP-04-0015

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET****Plaintiff's Attorney:**

Daniel L. Dralsen, Esq., Bar No. 13536

Address:

207 E. Calhoun Street, Anderson, SC 29621

Phone: 864 225-4000 Fax 864 964-0788

E-mail: ddralsen@kmdlawyers.com Other: _____

Defendant's Attorney:

Kaelon May, Esq., Bar No. _____

Address:

P.O. Box 11549, Columbia, SC 29211

Phone: 803 734-3747 Fax _____

E-mail: KMay@scag.gov Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information**

Nature of Motion: Motion to Amend PRC Application

Estimated Time Needed: 30 min

Court Reporter Needed: ☒ YES / ☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

01-28-13

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☒ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATIONCollected by: W/A Date Filed: _____☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____FILED - CLERK'S OFFICE
ANDERSON SC
2013 JAN 29 A 9:03
COMMON PLEAS AND
GENERAL SESSIONS



STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	
JOSE LUIS LUNA CABARRUVIAS SCDC ID: 00342601 SID: SC01389864, Plaintiff,	EX PARTE MOTION FOR STATE FUNDING OF COSTS C/A No. 2011-CP-04-0015
vs. THE STATE OF SOUTH CAROLINA, Defendant.	

PLEASE TAKE NOTICE that Daniel L. Draisen, Esq., PCR counsel for the above-named Plaintiff hereby requests and moves that the Court, within ten (10) days of the date hereof or as soon as is convenient to the Court, for a hearing to determine if the Plaintiff is entitled to receive financial assistance from the State of South Carolina, Office of Indigent Defense, pursuant to SC Code Ann., Section 17-3-50(B) to cover medical expert review fees that Plaintiff asserts are critical to the presentation of his case.

In support of this Motion, counsel attaches the proposed Ex Parte Order Approving Fees submitted by the Plaintiff. This Motion is made pursuant to the statutory and common laws of the State of South Carolina.

Respectfully submitted,

KRAUSE, MOORHEAD AND DRAISEN, P.A.


Daniel L. Draisen, SC Bar # 13536
207 East Calhoun Street
Anderson, South Carolina 29621
(864) 225-4000
(864) 964-0788 facsimile
Court Appointed Counsel for the Plaintiff

Dated: May 13, 2013

FILED-CLERK'S OFFICE
ANDERSON SC
2013 MAY 14 P 4 43
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
#2011-CP-04-0015

Jose Luis Luna Cabarrivias
#342601
Applicant

EX PARTE ORDER
APPROVING FEES

VS

The State
Respondent

FILED-CLERK'S OFFICE
ANDERSON SC
2013 MAY 14 P 4:48
COMMON PLEAS AND
GENERAL SESSIONS

This matter is before this court on motion of the undersigned counsel requesting approval of expense pursuant to S.C. Code Ann § 17-3-50 and 17-27-60.

Applicant was involved in collision involving two vehicles / death. It has been indicated by several witnesses that Applicant was the driver of the van that caused the collision. But nobody never said that they saw Applicant driving.

Although, there are med. reporters of Applicant's injuries, they're not in agreement with Applicant being the driver - as he has always contested. SEE: 15(6) motion.

It should also be noted that trial counsel refused to hire his own expert to review any med. reports. Thus, a med. Dr./expert is very

critical in the interest of justice and to
the presentation of Mr. Cabarruias case,
which is needed.

WHEREFORE: This motion is submitted in
the interest of justice, that Applicant get
his FULL bit at the P.C.R apple - DUE
PROCESS which is owed to every person
seeking collateral review of their conviction/
Sentence. Where the P.C.R process must
operate as checks and balances in our
judicial process.

DATE
04-9-13

Respectfully Submitted
JOSE LUIS LUNA CABARRUIAS

s/_____
Atty. for Applicant

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

JOSE LUIS LUNA CABARRUVIAS

Plaintiff,

vs.

THE STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
10th JUDICIAL CIRCUIT

CASE NO.: 2011-CP-04-0015

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Daniel L. Draisen, Esq., Bar No. 13536 Address: 207 E. Calhoun Street, Anderson, SC 29621 Phone: 864 225-4000 Fax 864 964-0788 E-mail: ddraisen@kmdlawyers.com Other:		Defendant's Attorney: Kaelon May, Esq., Bar No. _____ Address: P.O. Box 11549, Columbia, SC 29211 Phone: 803 734-3747 Fax _____ E-mail: KMay@scag.gov Other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion for Ex Parte Order Approving Fees Estimated Time Needed: 15 min Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
<u>TDRAISEN & T. C. DRAISEN</u> Signature of Attorney for ☒ Plaintiff / ☐ Defendant		05-13-13 Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☒ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE _____ Date:	
CLERK'S VERIFICATION			
Collected by: <u>N/A</u> Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

 FILED-CLERK'S OFFICE
 ANDERSON SC
 2013 MAY 14 PM 4:33
 COMMON PLEAS AND
 GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

JOSE LUIS LUNA CABARRUVIAS,

Plaintiff,

vs.

THE STATE OF SOUTH CAROLINA,

Defendant.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-04-0015

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET****Plaintiff's Attorney:**

Daniel L. Draisen, Bar No. 13536

Address:

207 E. Calhoun St., Anderson, SC 29621

Phone: 864-225-4000 Fax 864-964-0788

E-mail: ddraisen@kmdlawyers.com Other: _____

Defendant's Attorney:

John W. Whitmire, Bar No. _____

Address:

P.O. Box 11549, Columbia, SC 29211

Phone: 803-734-37447 Fax _____

E-mail: jwhitmire@scag.gov Other: _____

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

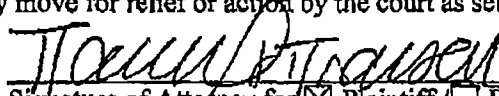
Nature of Motion: Motion to Amend PCR Application

Estimated Time Needed: 15 min.

Court Reporter Needed: ☒ YES / ☐ NO**SECTION II: Motion/Order Type**

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for ☒ Plaintiff / ☐ Defendant

12-10-15

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☒ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATIONCollected by: N/A Date Filed: _____☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____



FILED-CLERK'S OFFICE
ANDERSON SC

State of South Carolina
County of Anderson

2015 DEC 11 PM 4:29

In the Court of Common Pleas

Jose Luis Luna Cabarruvias

COMMON PLEAS AND
GENERAL SESSIONS

Case No: 2011-CP-04-0015

Applicant,

State of South Carolina

Motion to Amend PCR Application

Respondent.

Now comes the above named applicant (Jose Cabarruvias), in the above captioned motion. In support of this request, the applicant would show unto this Hon. Court the following:

The applicant argues, that the court of General Sessions of Anderson County, of the tenth Judicial Circuit, did not have subject matter of jurisdiction, to convict and sentence, the applicant to (20) twenty years, for two counts of Felony DUI resulting in Great Bodily Harm, (2009-GS-04-1993) and (2009-GS-04-1994) also Felony DUI resulting in Death, (2009-GS-04-1940) on September 3, 2010, at the applicant's plea hearing. The reason being, the applicant's warrants/tickets were fraudulent, due to the number of egregious violations, done by Highway Patrolman Trooper, Officer Adam Scott Warren. "Due Process" was "never" fulfilled, because of this and many "deliberate" conspiring violations, committed by Officer Adam Scott Warren, and the county of Anderson S.C. emergency units. NO valid warrants, NO video footage, NO valid witness statements, NO valid acceptance of (BAC), Blood/Urine samples. A perjury incident report, False statements, by Officer Adam Scott Warren, and Solicitor Jennifer Byford, Tenth Circuit Anderson County, before the grand jury of Anderson County of the tenth Judicial Circuit. Equals to NO valid power, for the court to convict and sentence the applicant, because of these offenses, which under S.C. code Ann § 17-27-20(a)(2) [relief is available if convicting court was without jurisdiction to impose sentence.]

Attachment (a)

The applicant argues, that his trial (plea) counsels, Mr. Jennifer Johnson, and Mr. David Stoddard, was ineffective and prejudiced, the applicant's case entirely, on September 3, 2010, at the applicant's plea hearing. When he was convicted and sentenced, to (20) twenty years, for Felony DUI resulting in great Bodily Harm (2009-GS-04-1993, 1994) and Felony DUI resulting in death (2009-GS-04-1940). Due to the fact, that Trial counsels, Mr. Jennifer Johnson and Mr. David Stoddard, "never," advised the applicant at all, concerning the "egregious misconduct," on the behalf of Highway patrolman officer Adam Scott Warren, on May 16, 2009, and the Anderson county Emergency units. The reason being, officer Adam Scott Warren, decided to conspire with Anderson County Emergency units, concerning the May 16, 2009, Highway 29, McCombs Rd. accident, by making fraudulent warrants/tickets. Because on the warrants/tickets Nos (D-759037), (D-759038), and (D-759039), a "suppose," violation of S.C. code of law § 56-5-2945, Felony Driving under the influence. [SEE EXHIBITS 1-3 lines 1-25] These warrants/tickets have "another vehicle license plate number" on them. The warrants/tickets, have the applicant's name Jose Luna Cabarruvias; make of the vehicle, which is a Chevy Astro van, and year 1995. But not the right license plate number when the license plates, can be visibly seen on the two vehicles involved in the accident [SEE photo EXHIBIT 6, lines 1-25]. The applicant argues, this is a violation of Article 1 § 10 S.C. constitution and the 4th amendment U.S. Constitution, illegal search and seizures. The applicant argues, the license plate numbers, are "vital," for any ticket to be made, "legal" according to Due Process, especially a warrant/ticket. To receive "imperative information," concerning the owner/driver of the vehicle, for a legitimate, ["tag check"]. See *State v Harris* S.E.2d 2007 WL 8400 127 S.C. App 2007 (Dec 14). "Tag check," license plate number [REDACTED], come back to a 1983 BMW. And it was registered to a Barrett Bernard Harris. Officer Eldridge also testified, without objection that he ran a check of the plates on the

BMW." The applicant argues, his trial counsel's "never" advised him, that this is number 1 step (B), to a legitimate DUI Felony arrest. According to Due process Article 1 & 3, S.C. constitution and 14th amendment U.S. constitution. In which the applicant had a designated driver, who Fled the scene of the accident, when he was the passenger. When you look on these warrants/tickets you'll see [REDACTED] which is not the registered license plate no. for this 1995 Chevy Astro van. That has the registry of the applicant's name, Jose Luis Luna Cabarrurias. But when "tag checked", according to Due process, by officer Adam Scott Warren, these warrants/tickets would be found registered in another name and information. Which would come up under Driver/owner Mr. Juran Sigmund [REDACTED] Greenville S.C. 29617. The one who really caused the Highway 29. McCombs Rd. accident. The applicant argues, this makes these warrants/tickets "legally dead," having no legal life standard to arrest, Jose Luis Luna Cabarrurias, for the offense of Felony DUI, S.C. code of law § 56-5-2945. This shows "deliberate misconduct," on the behalf of Highway patrolman, officer Adam Scott Warren. The applicant argues, this cannot be in the class of an "Harmless error," because this is a "absolute mandate," for Due course and process of law to be fulfilled. Officer Adam Scott Warren, did this "Heinous act," on 5 document Exhibits, in which on the sixth one, is a picture of both vehicles, clearly seen is both license plates, for each vehicle. [SEE EXHIBITS 1-6. lines 1-25] The applicant argues, that S.C. code of law Section 22-3-710 states, "that all proceedings before magistrates in criminal cases shall be commenced on "information under oath," plainly, and substantially setting forth the offense charged upon which and only which shall a (valid) warrant of arrest be issued." The applicant argues, that both trial counselors Mr. Jennifer Johnson, and Mr. David Stoddard, knew about this "deliberate misconduct," and then committed their own, by being ineffective and prejudicing the applicants Due-

process rights. See Stackland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064-74, 80 L.Ed.2d 674 (1984). and Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 283 (1985). For even counselor Mr. Jennifer Johnson stated, on September 3, 2010, at the applicant's plea hearing [See Exhibits 7 and 8, pgs. 11 and 12 lines 23-1]. "Your Honor I've represented him since May of 2009, so [over a year.]. And still yet, did not advise the applicant, who did not speak fluent English, at the time about these violations. The applicant argues, that even according to law: South Carolina state own vehicles "must have the proper license plate tag number" on their state issued vehicles. "That "No" vehicles, shall be exempt from the requirements for identification." See S.C. code of law 1976 § 1-11-320. Not even officer Adam Scott Warren, himself can ride around in a state own vehicle, without the proper license plate tag number, an absolute requirement for identification. This is a Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) 4 prong test violation. [SEE EXHIBITS 1-8 lines 1-25] This was and is a violation of the applicant's Due process rights. See Article 1 § 3, 10, 11, 14, and 15 of S.C. constitution and 4th, 5th, 6th, 8th, and 14th amendment to the U.S. constitution.

Argument (2)

The applicant argues, that his trial (plea) counsel, Mr. Jennifer Johnson and Mr. David Stoddard, were ineffective and prejudiced, the applicant's case entirely, on September 3, 2010, at the applicant's plea hearing. Due to the fact, that trial counsel, Mr. Jennifer Johnson, and Mr. David Stoddard "never" advised, the applicant at all, concerning the, "egregious misconduct," on the behalf of

Highway patrolman Trooper officer Adam Scott Warren, on May 16, 2009, and the Anderson County Emergency Unit. The reason being, officer Adam Scott Warren, decided to conspire with Anderson County Emergency unit, Williamston EMS, on May 16, 2009, at the accident site, Highway 29, McCombs Rd. By making "Fraudulent" warrants/tickets Nos (D-759037), (D-759038), and (D-759039) "suppose", violations of S.C. code of law 56-5-2945; Felony Driving under the influence. The applicant argues, on these warrants/tickets is another perjury, malicious, attempt to send Jose Luis Luna Cabarruvias to prison, when he is "innocent." Because Highway patrolman Trooper officer Adam Scott Warren, wrote the time of, on these warrants/tickets for 1:00 pm when in fact, he lied and conspired, with Williamston EMS, about the time of the accident. [SEE EXHIBITS 1-3, and 15 lines 1-25]. The applicant argues, he can prove such claims of "egregious misconduct", on all parties. Due to the fact, he has copies of the warrants/tickets a copy of Highway patrolman officer Adam Scott Warren's Incident report. In which all documents have officer Adam Scott Warren, manuscripts and signatures on them. Witness statements, who "supposedly", seen the accident at 11:22 AM-11:40 AM on May 16, 2009. And a copy of Williamston EMS report of Incident times. The applicant argues, that this overwhelming evidence manifests, that not only officer Adam Scott Warren conspired, but all mention above participants conspired as well. The applicant argues, that in Adam Scott Warren incident report, it's stated explicitly, that the accident happen at 10:00 AM, on May 16, 2009. Under the side heading Event. And didn't get clean up until 7:00 pm, on May 16, 2009. The applicant argues, that officer Adam Scott Warren, stated in his incident report, "I arrived on the scene all the drivers and passengers had already been transported to the ANMED Hospital," on May 16, 2009. He later stated, in the incident report, "I had three witnesses on the scene that stated, they saw the-

Cherry van Hydro place, on May 16, 2009. The applicant argues, that officer Adam Scott Warren, said he arrived at the scene at 1:30 pm, on May 16, 2009, according to the incident report. Then signed the fraudulent warrant/tickets, violating the applicant of DUI Felony # 56-5-2945, at 1:00 pm. on May 16, 2009. The applicant argues, then Trooper Adam Scott Warren, took the three witness statements, that he mentioned in the incident report, between the time of 11:22 AM - 11:44 AM, on May 16, 2009. [SEE EXHIBITS 1-3, 4-15, lines 1-25]

The applicant argues, that highway patrolman officer Trooper Adam Scott Warren who headed the ["May 16, 2009"] Highway 29 McCombs Rd. Accident, concerning the applicant, is nothing more than a "perjure, compulsive liar."

The applicant ask this Hon. Court, how can you be there and not be there at the same time? The applicant argues, what makes this conspiracy even worse is that the people meant to help the applicant, after the accident, conspired to go along with Officer Adam Scott Warren, on May 16, 2009. Which is the Williamston EMS; on their incident time report, they stated, "they received the call at 1:06 pm, on May 16, 2009, concerning the accident. When the accident been took place at around 10:00 AM; which is in officer Adam Scott Warren's incident report on May 16, 2009. The applicant asks this Hon. Court, the question, what kind of Emergency service is that?

To wait until 1:00 pm, as an emergency ambulance unit, when the accident been took place around 10:00 AM? The applicant argues, that he heard of slow emergency units before, but to wait 3 hrs, to help someone in need is absurd! The applicant asks, this Hon Court, why did all above parties that this matter concerns decide to commit this Heinous crime against the applicant? The applicant argues, because he was and is innocent of the crime of Felony DUI, resulting in great bodily harm, and Felony DUI resulting-

in death, in that he was the passenger of the car, on May 16, 2009. In which the applicant had designated drivers who fled the scene. And that the parties, who committed this "draconian act," against the applicant, were bias against him and decided to cover up the one who truly cause the accident. Mr. Susan Sigman, the driver of the 1998 Buick, license plate number [REDACTED], on May 16, 2009. Which officer Adam Scott Warren, has another license plate number as well, [REDACTED] for the applicant... how? [SEE EXHIBIT 5, lines 1-25]. Which also according to officer Adam Scott Warren, these license plate nos, belong to the applicant. Which is a "fallacious, perjure" statement. The applicant argues, that all emergency parties on May 16, 2009, decided to conspire against the applicant and sign false statements, to get the applicant convicted of a crime he did not commit. The applicant argues, this is a violation of law. See S.C. code of law 1976 § 22-3-920, sufficiency of affidavit. The facts must be stated, in such a manner in the affidavit, that the officer (official) statement if false, would constitute a basis for an indictment for perjury. The applicant argues, that his trial (plea) counsel Mr. Jennifer Johnson, and Mr. David Stoddard, was ineffective and prejudiced the applicants case. Because they never advised, the applicant of all these constitutional violations. This is a Brady v. Maryland 4 prong test violation. See *Strickland v. Washington*, 466 U.S. 668 104 S.Ct. 2052, 2064-74 80 L.Ed.2d 674 (1984). "Counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 300 S.C. at 117-18. 386 S.E.2d at 625. "with respect to guilty plea counsel, the applicant must show that there is a reasonable probability that but for counsel's alleged errors he would have not plead guilty."

and would have insisted on going to trial. See Hill v. Lockhart 474 U.S. 82, 106 S.Ct. 366 & L.Ed. 2d 203 (1985). The applicant argues, that his case should be "vacated" because of these deliberate Due Process violations. See Article 1, 3, 10, 11, 14, and 15. of S.C. constitution, and 4th, 5th, 6th, 8th, and 14th amendments to the U.S. Constitution.

Argument 3

The applicant argues, that his trial (plea) counsels, Mr. Jennifer Johnson, and Mr. David Stoddard, was ineffective and prejudiced the applicants case entirely, On September 3, 2010, at the applicants plea hearing. Due to the fact, that trial counsels Mr. Jennifer Johnson, and Mr. David Stoddard, never advised, the applicant at all concerning the "egregious, draconian, deliberate misconduct," on the behalf of Highway Patrolman officer Adam Scott Warren, on May 16, 2009, the Anderson County Emergency Units, and the Anderson County office of the Public Defender. The reason being, Mr. Jennifer Johnson, attorney for the applicant, from the office of Public Defender, on September 3, 2010, who been with the applicant for over a year. [SEE EXHIBITS 7+8 pgs 11-12 lines 23-25, and lines 1-4] Conspired with officer Adam Scott Warren, by committing an egregious, false statement on September 3, 2010, stating, that there were ["videos" taken of the Accident"] on May 16, 2009. [SEE EXHIBITS 17+18 pgs 27+28 lines 18-25 and line 1] When in fact, there is and never was video footage, of the accident, which is an extreme violation of state law. See S.C. code of law, section 56-5-2953 (a) It states, "Provided, a person who commits a DUI offense must have his conduct at the accident site... video recorded." The applicant argues, that counsel Mr. Jennifer Johnson, knew there was no such video footage taken of

8.

the accident, because there's no such evidence preserved with the South Carolina Law Enforcement Division, NO SLED Lab NO. nothing in chain of custody, dealing with any "video evidence," of the May 16, 2009, accident. The applicant argues, he wrote SLED on March 5, 2015, asking for full discovery and on April 21, 2015, SLED's response was to send \$22.00, for what's under the applicant's name. The applicant states, he did just that, and on June 17, 2015, he received a confirmation letter and outline of everything in his discovery / chain of custody. In which there was "no" evidence of any video footage, according to law, that was preserved in their Database See S.C. code of law section 56-5-2953 and 17-28-310 through 360, preservation of evidence act. [SEE EXHIBITS 19-24, lines 1-25.]

The applicant asks this Hon. Court, the question: where is the video footage that trial counsel, Ms. Jennifer Johnson spoke of? The applicant argues, that trial (plea) counsel, Ms. Jennifer Johnson Counsel for the applicant, stated on September 3, 2010, at the applicant's plea hearing, that there were, "videos taken of the accident. After reviewing those items," then she abruptly without explaining what she saw in these "imaginary videos," goes on to say, "Mister Cabarrunas says, even though he does not remember what happened, he believes that he was in fact, the driver of that vehicle." [SEE EXHIBIT 18 pg. 28 lines 1-4].

The applicant asks this Hon. Court, who was counsel Ms. Jennifer Johnson, "supposedly" Defense Attorney, for the Anderson County Public Defenders office working for? When she doesn't mention anything, about what these so-called "imaginary videos" have on them to help get rid of the false accusation, concerning the applicant being the driver of the 1995 Chevy Astro van vehicle, on May 16, 2009 at 10:00 AM. That is the date, morning, and time of the accident. The applicant argues, that he knows exactly who counsel Ms. Jennifer Johnson, was working for and now you know as well. Counsel Johnson, was working for Highway Patrolman Trooper

He never had, true counsel of Defense, therefore his right to effective counsel was, "illegally abrogated," when he had a perfect Defense. And that his plea on September 3, 2010, unknowingly, unintelligently, and involuntarily entered on the record. See Powell v. Alabama, 287 U.S. 45, 77 L.Ed 158, 53, S.Ct. 5584 ALR 527 (1932): "The right to be heard would be, in many cases of little avail if it did not comprehend the right to counsel... [A defendant] is unfamiliar with rules of evidence. He lacks both skill and knowledge to adequately prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step of the proceeding against him." The applicant argues, that he "absolutely never received effective counsel," which violated his constitutional rights to Due Process. This was and is a violation of Article 153, 10, 11, 14, and 15 of S.C. Constitution and 4th, 5th, 6th, 8th, and 14th amendments of the U.S. Constitution.

Argument 4

The applicant further argues, that his trial (plea) counsels, Ms. Jennifer Johnson, and Mr. David Stoddard, was ineffective and prejudiced the applicant's case entirely, on September 3, 2010, at the applicant's plea hearing. For they conspired against and coerced the applicant to plead guilty to the offenses of DUI Felony resulting in great bodily harm (2009-GS-04-1993) and (2009-GS-04-1994) also DUI Felony resulting in Death (2009-GS-04-1940). Which the applicant was "perhaps," direct indicted for. The applicant argues, that trials counsels Ms. Jennifer Johnson, and Mr. David Stoddard, knew that the applicant's blood and urine samples (BAC) was taken illegally, by Highway patrolman Trooper officer Adam Scott Warren. The applicant argues, that the burden of proof has been met by an "extreme preponderance", of evidence. See S.C. code of law § 17-27-10, § 17-27-160, § 17-27-160, and S.C. Rules of Civil Procedure Rule 71.1(c). Because the applicant's Due process-

Officer Adam Scott Warren, the three witnesses [SEE EXHIBIT 17, pg. 27 lines 18-25] Williamson EMS, White Field Fire Dept, Ms Jennifer Byford, Attorney at Law Tenth Circuit Solicitor office, S.C Attorney General office, the court Hon. R. Lawton Mcintosh, Anderson County Detention Center, and S.C.D.C. Because that's where the applicant went and is still being held, illegally, unconstitutionally, and most of all as an "innocent man". The applicant argues that trial counsels, Ms Jennifer Johnson, and Mr. David Stoddard, were definitely without question, "egregiously ineffective and prejudice" to the applicant by conspiring this unlawful act. See *Woodard v. Collins* 898 F.2d 1027 (5th Cir. 1990). The court held, that a remand was required, to determine whether petitioner was prejudiced by his counselor's failure, to investigate a crime to which upon counsel advised, petitioner to plead guilty. "Reversed and remanded." The applicant argues, that trial counsels, Ms. Jennifer Johnson, and Mr. David Stoddard, knew that there was never any video footage, and still conspired to send an innocent man to jail and prison. See *State v. Baggett*. The applicant argues, this evidence was withheld from the applicant by his "so-called" defense attorneys which rendered the plea invalid. See *U.S. v. Giardina*, 797 F.2d 30 (1st Cir 1986). "Trial counsel lied to defendant to induce a guilty plea, constitutes ineffective assistance and requires the plea to be aside." The applicant argues, his plea was "never valid", due to the violations which was committed against him. And the evidence, record establishes that. See *Joseph v. State* 571 S.E.2d 280 (S.C. 2002) "A guilty plea is properly accepted if the record establishes it was voluntarily and knowingly made." See also *Tollet v. Henderson* 411 U.S. 258 93 S.Ct. 1602 36 L.Ed. 2d 235 (1973). "A criminal defendant can only attack the voluntary and intelligent character of guilty plea, based on advice he received from counsel." The applicant argues, the evidence is overwhelming, that he never received legitimate proper advisement, from Trial counsels Ms. Jennifer Johnson, and Mr. David Stoddard.

rights. Article 1 § 3 S.C. constitution and 14th amendment to the U.S. constitution, have been "annihilated." Due to the fact, the applicant has "NO" video footage of the accident, when it's mandatory according to law. See S.C. code of Law section 56-5-2953. Perjure statements, manuscripts, signatures, by Highway Patrolman Trooper officer Adam Scott Warren, the three witnesses who claimed to see the accident. Conspiracy of the Anderson county emergency units, going along with officer Adam Scott Warren, so the applicant could be charged, convicted, and sentenced to offenses he didn't commit. Because he had designated drivers, who fled the scene. Officer Adam Scott Warren, had committed perjury throughout, especially on the warrants/tickets. Which according to Due course and process of law, Article 1 § 3 S.C. constitution and 14th amendment U.S. constitution, is mandatory to charge anyone for an offense. The applicant argues, due to all these violations, especially these warrants/tickets, the taking of the applicants (BAC) blood and urine sample is thereby (Fruit of the poisonous tree), a Heinous violation of the applicants Due Process rights. See Article 1 § 10 S.C. constitution and 4th amendment U.S. constitution. The applicant argues, that officer Adam Scott Warren, knew this, yet still pursued and charged the applicant with these offenses, illegally taking the applicants Blood, urine samples, (BAC) even without the applicant understanding his miranda rights to Due process. See Miranda v. Arizona 384 U.S. 436 (1966). Without video footage recordings while in the AmMed Hospital, Anderson S.C. which makes the applicants sample inadmissible. The applicant argues, when especially he never spoke fluent English, and was still recovering from the accident, being taken out on a stretcher [SEE PHOTO EXHIBITS 25-26]. The applicant argues, that he was, "incoherent," during the "so-called" reading, of his miranda rights, which makes the illegal apprehension, of his Blood/urine (BAC) sample "insufficient evidence." See State v. Abraham 408 S.C. 589, 759 S.E.2d 440 S.C. App. (2014) [SEE EXHIBITS 27-28 lines 1-25]. The applicant argues, just examine these South Carolina Law Enforcement DUI advisement of implied consent rights document, and SLED's urine/Blood collection report document.

The applicant argues, the signatures or so-called manuscripts on both of these imperative documents in order to get the (BAC) urine/Blood samples, are "illegally ridiculous." On Exhibit 27, SLED's DUI Advisement of implied consent rights, the handwriting is ["careless scribble"], On Exhibit 28, of SLED's urine/Blood Collection report document, the handwriting is ["careless scribble"] SEE Forensic Science Book 101. The applicant argues, that is:

Signature Handwriting - has to have a naturalness consistency, and rarity in which combination of class characteristics, which provide the basis for elimination not identification.

The applicant argues, there are three types of signatures:

1. Formal signature - used on an important document, conscious of subject matter.
2. Informal - personal correspondence, letters etc.
3. Careless scribble - not serious, careless not important hand writing.

In which handwriting is effected by manual dexterity - which is the ease of using ones hands, mental skill, state of mind, health, age and other factors, are important.

The applicant argues, if you look at Exhibits 27 and 28's ["careless scribble"], in a serious situation. This is not the signature of a person who understands the seriousness, severity of what's going on. Not a person who has been read their rights legally, properly according to the course and process of law especially to an innocent person. See the contrast of a informal signature versus this careless scribble. [Examine Exhibit 20 lines 1-25.] When these SLED documents are formal documents that need formal signatures.

The applicant argues, that his trial (plea) counsels Mr. Jennifer Johnson, and Mr. David Stoddard, was egregiously ineffective and prejudice the applicant, because they knew about all these deliberate violations. And yet proceeded forth, to help the opposing parties, to send the applicant to prison. When they stated, that they were diligent in reviewing everything concerning the applicant's case.

[SEE EXHIBIT 11 pg. 27 lines 21-25.] This is a Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 10 L.Ed. 2d 215 (1963) 4 prong test violation. The applicant argues, according to Brady, evidence (1) must be favorable to the accused (2) in the possession of or known by the prosecution (3) was suppressed by the state, and (4) was material to the accused guilt or innocence or was impeaching.

The applicant argues, all 4 of these prongs are met and therefore post conviction relief must be granted.

The applicant argues, his trial (plea) counsels Mr. Jennifer Johnson, and Mr. David Stoddard, was "detrimental," to the sense of "fundamental fairness." Because of these issues, in which they "did not advise" the applicant, they were ineffective and prejudiced the applicant. See Smith v. State 364 S.C. 135, 631 S.E.2d 260 (2006) "applicant seeking relief from a guilty plea must present probative evidence to support the allegations in the post-conviction relief application that, but for trial counsel's erroneous advice, the applicant would not have pled guilty. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064-74 80 L.Ed. 2d 674 (1984). Cherry v. State, 300 S.C. at 117-18, 386 S.E. 2d at 625 and Hill v. Lockhart 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). The applicant argues, that this (BAC) Blood/wine sample should be inadmissible and destroyed. And his case should be "vacated," because of these due process violations. See Article 1, 3, 10, 11, 14, and 15 of U.S. Constitution and to the 4th, 5th, 6th, 8th, and 14th amendment to the U.S. Constitution.

Attachment (b)

The applicant argues, that prosecutor solicitor Mr. Jennifer Byford, for the Tenth Circuit solicitor's office committed prosecutorial misconduct, on September 3, 2010, at the applicant's plea hearing, when he was convicted and sentenced to (20) twenty years for two counts of [Felony DUI, resulting in great Bodily Harm] (2009-GS-04-1993 and 1994) also [Felony DUI resulting in death] (2009-GS-04-1940). Because she knew, that she violated the applicant's Due Process rights, Article 1 § 3, S.C. constitution and 14th amendment U.S. constitution, entirely through his case. Due to the fact, that Highway patrolman officer Adam Scott Warren, decided to conspire with Anderson County Emergency Units and prosecutor Ms. Jennifer Byford, concerning the May 16, 2009, Highway 29 McCombs Rd. accident; by making fraudulent warrants/tickets. Because on the warrants/tickets Nos (D-759037), (D-759038), and (D-759039) is a "supposedly," violation of S.C. code of law § 56-5-2945 Felony Driving under the influence. Prosecutor Mr. Jennifer Byford, knew that these warrants/tickets have another vehicle license plate number on them. The warrants/tickets have the applicant's name Jose Luna Cabarruvias make of the vehicle, which is a Chevy Astro van and year 1995 but not the right license plate number. When the license plates can be visibly seen on the two vehicles involved in the accident. [SEE EXHIBITS 1-6. lines 1-25] The applicant argues, this is a violation of Article 1 § 10 S.C. constitution and the 4th amendment U.S. constitution illegal search and seizures. The applicant argues, Prosecutor Ms. Jennifer Byford, examined these warrants/tickets, and knew the license plate numbers are vital for any ticket to be made "legal," according to Due Process, especially a warrant/ticket. To receive imperative information concerning the owner/driver of the vehicle for a legitimate ["tag check"]. See State v. Harris J.E. 2d 2007 WL 8400 127 S.C App 2007 (Dec 14). "tag check," license plate number [REDACTED], came back to a 1983 BMW. And it was registered to a Barrett Bernard Harris Officer Eldridge also testified, without objection that he ran a check of the plates on the BMW."

The applicant argues, that Prosecutor Mr. Jennifer Byford, knew that these invalid, illegal warrants/tickets "did not give," Officer Adam Scott Warren the "Authority," to arrest the applicant for the offenses mentioned. In which prosecutor Mr. Jennifer Byford, acted and pursued "maliciously," to send the applicant to prison anyway, when she has the duty to disclose such information, even in the absence of a request by the applicant. See United States v. Agurs 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed. 2d. 342 (1976).

"Furthermore the prosecution has the duty to disclose such evidence even in the 'absence' of a request by the accused." The applicant argues, Prosecutor Mr. Jennifer Byford, knew that having the right license plate number on these warrants/tickets to identify who the car and warrants/tickets belongs to, is according to Due Process. When you look on these warrants/tickets you'll see [REDACTED], which is not the registered license plate no. for this 1995 Chevy Astro van. That has the registry of the applicant's name Jose Luis Luna Cabarrunias, but when "tag checked," according to Due Process by officer Adam Scott Warren these warrants/tickets would be found registered in the name and information of owner/driver Mr. Jwan Symon [REDACTED]

Greenville, S.C. 29617. The one who really caused the Highway 29 McComb Rd. Accident. The applicant argues, this makes these warrants/tickets ["legally dead,"] having "no legal life standard," to arrest Jose Luis Luna Cabarrunias, for the offense of Felony DUI 56-5-2945. This shows "deliberate misconduct," on the behalf of Highway patrolman Trooper officer Adam Scott Warren, and prosecutor Mr. Jennifer Byford. The applicant argues, this is not an harmless error, this is a "mandate" for Due process. Officer Adam Scott Warren, did this Heinous Act on 5 document Exhibits, in which on the sixth one, is a picture of both vehicles, clearly seen, is both licenses plates for each vehicle [SEE Photo Exhibit 6, lines 1-25]. The applicant argues, that prosecutor Mr. Jennifer Byford, committed this "heinous act of misconduct" with Officer Adam Scott Warren, by "egregious" means, helping send the applicant to prison, when he is innocent, withholding this information. See State v. King 71 S.F. 2d. 29 (S.C. 1952) "Generally states, failure to disclose information warrants reversal only

if omission deprives defendant of a fair trial." The applicant argues, that even according to law, South Carolina state own vehicles, must have the right license plate tag number on their state issued vehicles. "That no vehicles, shall be exempt from the requirements for identification." See S.C. code of law 1976 § 1-11-320 also Gibson v. State, 514 S.E.2d 320 (S.C. 1999) "The government's obligation to make disclosures of exculpatory material under Brady v. Maryland is pertinent not only to an accused's preparation for trial, but also to his determination of whether to plead guilty. The defendant is entitled to make that decision with full awareness of favorable material evidence known to the government." This is a Brady v. Maryland 373 U.S. 83, 83 S.Ct. 1194 to L.Ed.2d 815 (1963) 4 prong test violation. [SEE EXHIBITS 1-8 lines 1-25]. This was and is a violation of the applicant's Due Process rights. See Article 1 § 3, 10, 11, 14, and 15 of S.C. constitution, and to the 4th, 5th, 6th, 8th, and 14th amendment to the U.S. constitution.

Argument 6

The applicant argues, that prosecutor Mr. Jennifer Byford, for the tenth circuit solicitor's office, committed a second act of misconduct, on September 3, 2010, at the applicant's plea hearing. Due to the fact, she knew about the "egregious misconduct," on the behalf of Highway patrolman Trooper officer Adam Scott Warren, on May 16, 2009, and the Anderson County Emergency Units. And partook in the violation of the applicant's Due Process rights, by pursuing the applicant's conviction. The applicant argues, that prosecutor Mr. Jennifer Byford, knew that officer Adam Scott Warren, made fraudulent warrants/tickets, Nos (D-759037), (D-759038), also (D-759039), and suppose violations of S.C. code of law 36-5-2945, Felony driving under the influence. [SEE EXHIBITS 1-3 lines 1-25]. The applicant argues, on these warrants/tickets another perjury, malicious, attempt to send Jose Luis Luna Cabarranas, to prison when he is innocent. Because Highway patrolman Trooper officer Adam Scott Warren, wrote the time of violation on these warrants/tickets for 1:00pm, when in fact

he lied and conspired with Williamston EMS, about the time of accident.

[SEE EXHIBITS 1-3 lines 1-25] The applicant argues, he can prove such claims of "egregious misconduct," on all parties. Due to the fact, he has copies of the warrants/tickets, a copy of Highway patrolman officer Adam Scott Warren's Incident report. In which all documents, have officer Adam Scott Warren's manuscripts and signatures; on them, witness statements, who "perhaps," seen the accident at 11:22 AM - 11:40 AM, on May 16, 2009. And a copy of Williamston EMS report of Incident Times. The applicant argues, that this overwhelming evidence, manifests that not only officer Adam Scott Warren conspired, but all mention above participants conspired as well. The applicant argues, that in Officer's Adam Scott Warren's incident report. It states, explicitly that the accident happen at 10:00 AM, on May 16, 2009! Under the side heading Event. And didn't get clean up until 7:00pm, on May 16, 2009. The applicant argues, that officer Adam Scott Warren, stated in his incident report, "I arrived on the scene all the drivers and passengers had already been transported to the AnnMed Hospital on May 16, 2009." He later stated, in the incident report, "I had three witnesses on the scene that stated, they saw the cherry van Hydro plane on May 16, 2009. The applicant argues, that officer Adam Scott Warren, said he arrived at 1:30 pm on May 16, 2009, according to the incident report. Then signed the fraudulent warrants/tickets, violating the applicant of DUI Felony 56-5-2945, at 1:00pm on May 16, 2009. The applicant argues, then Trooper officer Adam Scott Warren, took the three witness statements, that he mentioned in the incident report between the time of 11:22 AM - 11:44 AM, on May 16, 2009. [SEE Exhibit 1-3, 9-15, lines 1-25] The applicant argues, that Highway patrolman Trooper officer Adam Scott Warren, who headed the ["May 16, 2009"], Highway 29 McLamb Rd. Accident, concerning the applicant is nothing more than a "Perjure compulsive liar." The applicant ask, this Hon. Court, how can you be there, and not be there, at the same time? The applicant argues, what makes this conspiracy even worse, is that the people, meant to help the applicant after the accident,

conspired to go along with officer Adam Scott Warren, on May 16, 2009. Which is the Williamston EMS; on their incident time report, they stated, they received the call at 1:06 pm on May 16, 2009, concerning the accident. When the accident been took place at around 10:00 AM. Which is in officer Adam Scott Warren's incident report, on May 16, 2009. The applicant asks, this Hon. Court, the question... what kind of Emergency service is that? To wait until 1:00 pm as an emergency Ambulance unit, when the accident been took place around 10:00 AM? The applicant argues, that he heard of slow emergency units before, but to wait this, to help someone in need is... absolutely absurd. The applicant asks, this Hon. Court, why did all above parties, that this matter concerns, decide to commit this heinous crime, against the applicant? The applicant argues, because he was and is, innocent of the crime of Felony DUI, resulting in great bodily harm, and Felony DUI resulting in death, in that he was the passenger of the car, on May 16, 2009. In fact the applicant had designated drivers who fled the scene. The applicant argues, that prosecutor Mr. Jennifer Byford, knew all about this extreme violation of the Due course and process of law, yet proceeded anyway to prosecute the applicant. Prosecutor Mr. Jennifer Byford, committed misconduct, because she knew that the parties who committed this draconian act, against the applicant were bias against him. The applicant argues, that prosecutor Mr. Jennifer Byford, examined all the applicant's evidence, pertaining to his case and knew, he was innocent of Felony DUI resulting in Bodily harm (2009-GS-40-1993, 1994) and Felony DUI resulting in Death (2009-GS-40-1940). Prosecutor Byford, knew about these absolute violations, which were committed against him, yet proceeded forth, depriving him of a fair trial, and his liberty. See *State v. Galtner*, 369 S.E. 2d 140 (S.C. 1988), "When solicitors know something is wrong with the judicial process it used merely as a 'legal subterfuge,' for wrongfully depriving a defendant of his liberty." See also *Murray v. Holahan* 294 U.S. 163 Section 340 (1934), "conduct of solicitor calculated to prevent a defendant from having a fair trial will not be tolerated." The applicant argues, that all Emergency parties, on May 16, 2009, decided

to conspire against the applicant by signing false statements, to get the applicant convicted of a crime he didn't commit. The applicant argues, this is a violation of law, See S.C. code of law 1976 § 22-3-920 sufficiency of affidavit. "The facts must be stated, in such a manner in the affidavit that the officer (official) statement if false would constitute a basis for an indictment for perjury." This is a *Brady v. Maryland* 4 prong test violation. The applicant argues, that his case should be [vacated], because of these deliberate Due Process violations, See Article 1 § 3, 10, 11, 14, and 15 of S.C. constitution, and 4th, 5th, 6th, 8th, and 14th amendments to the U.S. constitution.

ARGUMENT 7

The applicant argues, that prosecutor Mr. Jennifer Byford, for the Tenth Circuit solicitor's office, committed a third act of misconduct, on September 3, 2010, at the applicant's plea hearing. Due to the fact, she knew there was "never" any video footage of the accident, which was "draconian deliberate misconduct," on the behalf of Highway Patrolman officer Adam Scott Warren, on May 16, 2009, concerning the Highway 29 McCombs Rd. accident. The applicant argues, prosecutor Mr. Jennifer Byford, examined the evidence which was against the applicant and knew, that there was ["no video footage"], which is according to law a "mandate." See S.C. code of law section 56-5-2453 (A) It states, "Providing a person who commits a DUI offense, must have his conduct at incident site... video recorded." The applicant argues, that prosecutor Mr. Jennifer Byford, knew according to the overwhelming evidence, that Highway patrolman Trooper officer Adam Scott Warren, lied extremely, and conspired with the Anderson County Emergency Units. When he stated, "I arrived on the scene all the drivers and passengers had already been transported to the PRIME Hospital on May 16, 2009." [SEE EXHIBIT 9 lines 1-25] The evidence already has determined, that to be a false statement on his behalf. So he could get away with "not producing this vital video footage," that's a mandate. The applicant argues, but on September 3, 2010, at the applicant's plea hearing, prosecutor Mr. Jennifer Byford, heard the

applicant's trial counsel, Mr. Jennifer Johnson, state there were ["videos taken of the President"] on May 16, 2009. [SEE EXHIBIT 18, pg 28, line 1] And yet said, nothing, when she examined the evidence and knew about this "heinous conspiracy and partook of it," to send the applicant to prison, because she knew that there was "no videos," at all which is a mandate according to S.C. code of law § 56-5-2953(A). The applicant argues, because prosecutor Mr. Jennifer Byford, went along with this conspiracy by saying nothing to rebut the statement of trial counsel, Mr. Jennifer Johnson, and correct it, because all parties, that this matter concerns was privy to it. When she Mr. Jennifer Byford, solicitor for the Tenth Circuit solicitors office, had a "special responsibility to uphold justice and not help send a innocent man to prison." See *State v. Quattlebaum* 338, S.C. 441 (2000), 527 S.E. 2d 105. "The S.C. Supreme Court, held that a Prosecutor has special responsibilities to do justice and is held to the highest standard of professional ethics... and that deliberate prosecutorial misconduct which threatens rights... fundamental to liberty and justice will not be tolerated, and of such nature to render the trial fundamentally unfair." The applicant argues, he wrote the South Carolina Law Enforcement Division (S.L.E.D) on March 5, 2015, asking for full discovery and on April 21, 2015, SLED stated, to send \$ 22,000, for what's under the applicant's name. The applicant states, he did just that, and on June 17, 2015, he received a confirmation letter and outline of everything in his discovery / chain of custody. In which there was "no evidence of any video footage," according to law, that was preserved in their database. See S.C. code of law 17-28-340 through 360 preservation of evidence act. [SEE EXHIBITS 19-24 lines 1-25.] See *State v. McAllister*. The applicant argues, that prosecutor Mr. Jennifer Byford, knew she was deliberately violating the applicant's Due Process rights, by vehemently prosecuting, the applicant on a prison conspiracy, of the Anderson County Emergency officials. This in it self, is a "hard foul blow" by prosecutor Mr. Jennifer Byford. One that must be rectified by a "vacate" of the applicant's conviction and sentence. See *Donnelly v. Dechisto Faro* 614 U.S. 637, 94 S.Ct. 1868 (1974). "Solicitor are at liberty to strike hard blow, but he is not at liberty

to strike foul ones" Berger v. U.S. 295 U.S. 79. This was and is a violation of the applicant's Due Process rights. See Article 1, 3, 10, 11, 14, and 15, and 4th, 5th, 6th, 8th, and 14th amendment to the U.S. Constitution. Brady v. Maryland 373 U.S. 83, 83 S.Ct. 1194, 10 L.ed 2d 215 (1963) 4 prong test forbids such actions.

Argument 8

The applicant argues, that prosecutor Mr. Jennifer Byford, for the tenth circuit solicitor's office, committed a fourth act of misconduct, on September 3, 2010, at the applicant's plea hearing. For prosecutor Mr. Jennifer Byford, knew she did not have any "legal standard," to stand on to pursue, the offense of DUI Felony resulting in great bodily harm (2009-CR-04-1993, and 1994) also DUI Felony resulting in death (2009-CR-04-1940), which the applicant was "perhaps" direct indicted for. The applicant argues, that prosecutor Mr. Jennifer Byford, knew that the applicant's blood and urine samples (BAC) was taken illegally, by Highway patrolman Trooper officer Adam Scott Warren. Due to all the egregious, miscarriage of justice, that's been proven throughout this brief, Officer Adam Scott Warren, had committed perjury throughout, especially on the warrants/tickets, which according to the course and process of law Article 1, 3, U.S. Constitution, and the 14th amendment U.S. Constitution, is mandatory to have valid warrants, to charge anyone for an offense. The applicant argues, due to all these violations especially these warrants/tickets the taking of the applicant's (BAC) blood and urine samples, is thereby (fruit of the poisonous tree). Because the "warrants don't belong to the applicant, they belong to someone else." [SEE EXHIBITS 1-6, lines 1-25.] The applicant argues, this is a heinous violation, of the applicant's Due Process rights See Article 1, 3, U.S. Constitution and the 4th amendment U.S. Constitution. The applicant argues, prosecutor Mr. Jennifer Byford knew that officer Adam Scott Warren, knew this yet still pursued and charged the applicant, with these offenses illegally taking the applicant's blood urine samples (BAC) even without the applicant understanding his miranda rights, to the process. See Miranda v. Arizona 384 U.S. 436 (1966). Without video footage recording while in the

hospital at DAIMED, Anderson S.C. which makes the applicant's sample inadmissible. See State v. Abraham, 401 S.C. 584, 759 S.E.2d 440 S.C. App. (2004). The applicant argues, when especially he never spoke fluent English and was still recovering from the accident, being taken out on a stretcher. [SEE PHOTO EXHIBITS 25-26] The applicant argues, that he was "incoherent," during the "so-called," reading of his miranda rights. The applicant can prove this by the South Carolina Law Enforcement Division DUI advisement of implied consent rights document and SLED's urine/Blood collection report document [See Exhibit 27-28, lines 1-25]. The applicant argues, just examine the signatures of these so-called manuscripts, on both of these impoortive documents, in order to get the (BAC) urine/Blood samples. On Exhibit 27, SLED's DUI Advisement of implied consent rights, the handwriting is ["careless scribble"]. On Exhibit 28 of SLED's urine/Blood collection report document, the handwriting is ["careless scribble"] See Forensic Book of Science. The applicant argues, that in.

Signature Handwriting - has to have a naturalness consistency and rarity in which combination of class characteristics, which provide the basis for elimination not identification.

The applicant argues there are three types of signatures:

1. formal signatures - used on an important document conscious of subject matter.
2. informal - personal correspondence letters etc.
3. Careless scribble - not serious, careless not important hand writing. In which handwriting is affected by manual dexterity - which is the ease of using one's hands, mental skill, state of mind, health, age, and other factors, are important.

The applicant argues, if you look at Exhibits 27 and 28's "careless scribble," in a serious situation.

This is not the signature of a person who understands the seriousness, severity of what's going on. Not a person who has been read their rights legally, properly, according to due course and process of law. Especially to an innocent person. See the contrast of an informal signature versus this "careless scribble." [Examine Exhibit 20, lines 1-25] "When these SLED documents are formal documents, that need formal signatures."

The applicant argues that prosecutor Mr. Jennifer Byford, for the tenth circuit solicitors office, knew about this egregious evidence. Yet still used this evidence, to get a unjust conviction on a innocent man. When she's obligated to disclose such evidence even in the absence of a request by the accused. "Furthermore the prosecution has the duty to disclose such evidence even in the absence of a request by the accused." *United States v. Agurs* 427 U.S. 97, 107, 96 S.Ct. 2342, 49 L.Ed.2d 342 (1976). See *Gibson v. State*, 514 S.E.2d 320 (S.C. 1999).

"The government's obligation to make disclosures of exculpatory material under *Brady v. Maryland* is pertinent not only to an accused's preparation for trial, but also to his determination of whether to plead guilty; the defendant is entitled to make that decision with full awareness of favorable material evidence known to the government." See also *Riddle v. Ozment*, 631 S.E.2d 70 (S.C. 2006) "The failure to correct false evidence, is as reprehensible as its presentation."

The applicant argues that it will be absolutely reprehensible, if the applicants conviction and sentence is not "vacated". The applicant argues, this was and is a violation of his constitutional rights to due process. See Article 1 & 3, 10, 11, 14, and 15 S.C. constitution and 4th, 5th, 6th, 8th, and 14th amendment U.S. constitution.

Attachment (C)

The applicant argues that the court of General Sessions of Anderson County, of the tenth judicial circuit. The Hon. R. Lawton McIntosh, did not have subject matter of jurisdiction, to convict and sentence the applicant to (20) twenty years, for two counts of felony DUI resulting in Great Bodily Harm (2009-GS-04-1993), and (2009-GS-04-1994) also felony DUI resulting in death (2009-GS-04-1940) on September 3, 2010. Due to overwhelming evidence, facts of merit of egregious violations of Due Process, Article 1 & 3 S.C. constitution and 14th amendment U.S. constitution. By Highway Patrolman Trooper officer Adam Scott Warren, the county of Anderson S.C. emergency units; The applicant's Trial (plea) counselors, Mr. Jennifer Johnson, for the office of the public defender, Anderson County, Mr. David Stoddard Esquire, 320 East River Street, for the State; Prosecutor Mr. Jennifer Byford, for the tenth Circuit solicitor's office Anderson County. Because of fraudulent warrant/tickets... SEE Attachment (a) to Argument 3; and Attachment (b) to Argument 7. No video footage... SEE Argument 4 to Attachment (b) and Argument 7 to Argument 8. No valid witness statements... SEE Argument 2 and Argument 6. Illegal taking of (BAC) Blood/urine samples... SEE Argument 4 to Attachment (b) and Argument 8 to Attachment (C). Perjure incident report... SEE Argument (2) and Argument 6.

The applicant further argues, that the court of General Sessions did not have subject matter of jurisdiction, because of perjure, false statements by witness Officer Adam Scott Warren, and solicitor Mr. Jennifer Byford, for the tenth Circuit of Anderson County, before the grand jury of Anderson County of the tenth Judicial Circuit, on August 25, 2009. [SEE EXHIBITS 29-32 lines 1-25]. The applicant argues, that such violations can be raised at any time. See Carter v. State 495 S.E. 2d 73, 777 (1998), S.C. code Ann Section 17-19-10 (1985). "lack of subject matter of jurisdiction may not be waived and may be raised at any time." See S.C. code Ann § 17-27-20(a)(2) [relief is available if convicting court was without

jurisdiction to impose sentence. See State v. Gentry, 363, S.C. 43, 610 S.E.2d 494 (2005).
Edwards v. State, 372 S.C. 493 642 S.E. 2d 738 (2007). The applicant argues that
 because of all these egregious violations and false statements before the grand jury
 of Anderson County, on August 25, 2004, the court lacked subject matter of
 jurisdiction to convict and sentence the applicant to (20) years for DUI Felony resulting
 in Bodily harm and DUI Felony resulting in death, which was perhaps direct indicted.
 The applicant argues, her in agreement with these laws and case laws, because his
 attorneys: Mr. Jennifer Johnson, and Mr. David Stoddard, should have raised the issue of
 Perjury. Which is an absolute crime to sign a perjure, false statement or affidavit.
 See S.C. code of law 1476 § 22-3-920 sufficiency of affidavit. The facts must be
 stated in such a manner in the affidavit that the officer (official) statement if false
 would constitute a basis for an indictment for perjury. The applicant argues, because of
 all these violations his case should be vacated, because if he would have known about
 all these violations, he would not have pled guilty, he would have proceeded to trial.
 See Shirckland v. Washington 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 679 (1984).
 Two prong test. The applicant argues that this was and is a violation of Article 1 § 3, 10, 11, 14,
 and 15 of S.C. constitution and 4th, 5th, 6th, 8th, and 14th amendment to U.S. constitution. [SEE EXHIBITS
 1-32 lines 1-25 in the applicant's supplemental appendix.

Conclusion

The applicant submits that a hearing needs to be held to address his Constitutional Rights being violated concerning his case, and to address the egregious misconduct, of Officer Adam Scott Warren, Plea Counselor, Mrs. Jennifer Johnson, and Mr. David Shickel, also counsel for the state, Mrs. Jennifer Byford, including the misconduct of all personnel in this brief. The applicant further argues, that he is entitled for his conviction and sentence to be vacated. See Article 1, 3, 10, 11, 14, and 15 of S.C. constitution. Also see U.S. constitution 4th, 5th, 6th, 8th, and 14th amendment, U.S. Fundamental rights. NO participating party addressed these violations before the applicant's plea was taken. The applicant states, that his plea was unknowingly, involuntarily, and unintelligently entered into the record. Because had the applicant known about these many violations concerning his discovery of evidence, which was not provided to him eleven (11) days before trial, he would not have plead guilty, and would have wanted to proceed to trial.

SCDC 342601

(S) Jose Luis Luna Cabarrunas

Jose Luis Luna Cabarrunas

Attachment (d)

Jose Luis Luna Cabarruias
Applicant.

v.

State of South Carolina
Respondent.

FILED-CLERK'S OFFICE
ANDERSON SC
2015 DEC 11 PM 4:30
COMMON PLEAS AND
GENERAL SESSIONS

Applicant's Motion to Supplement Appendix

The applicant would like for the Honorable Court to please file these, thirty two (32) Exhibits into the record on his behalf. Because, these document Exhibits prove how the applicant's Due Process Rights to the 4th, 5th, 6th, 8th and 14th amendment to the U.S. constitution Rights were violated, and these document Exhibits show how the applicant's state constitutional Rights were violated as well, see Article 1 § 3, 10, 11, 14, and 15 of the S.C. constitution on September 3, 2010, at the applicant's Plea hearing before, Judge R. Lawton McIntosh Court, which these documents show the ineffectiveness, prejudice, and misconduct of officer Adam Scott Warren, Attorneys for the applicant Mr. Jennifer Johnson, Mr. David Stoddard, and Attorney for the State, solicitor Mr. Jennifer Byford, of Anderson County South Carolina. Due to numerous, countless, and egregious violations.

Attachment (D)

Jose Luis Luna Cabarruvias

Applicant,

v.

State of South Carolina,

Respondant.

Applicant's Supplemental Appendix

FILED-CLERK'S OFFICE
ANDERSON SC
2015 DEC 11 PM 4:29
COMMON PLEAS AND
GENERAL SESSIONS

Form 438
Rev. 12/08SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME Jose MIDDLE NAME Louis LAST NAME Luna-CobarrubiasSTREET AND NO. [REDACTED] CITY Belton STATE SC ZIP CODE 29627STATE LICENSED [REDACTED] DRIVER'S LICENSE NO. [REDACTED] CDL [REDACTED] DRI. LIC. CLASS [REDACTED]MAKE OF VEH. SC YEAR 95 COMB. VEH. X AUTO [REDACTED] MOTOR VEH. [REDACTED] COMB. [REDACTED]
HAZ. MT. [REDACTED] MOPED [REDACTED] MOTORCYCL. [REDACTED] OTHER [REDACTED]

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER Gregory Sessions STREET AND NO. 107 S. Main StDATE OF TRIAL T.B. TIME OF TRIAL [REDACTED] CITY Anderson STATE SC ZIP CODE 29624VIOLATION - COURT APPEARANCE REQUIREMENT NO VIOLATION SECTION NO. 56-5-2945OWNER OF VEHICLE Luna-Cobarrubias DATE OF ARREST 5/16/2009ADDRESS OF OWNER Belton SC DATE OF VIOLATION 5/16/2009BAIL DEPOSITED Jail NAME OF ARRESTING OFFICER Asst. Warden RANK TFCDESCRIPTION OF ACCUSED [REDACTED] COUNTY Anderson NUMBER 04DATE BAIL RECD. 20 BY [REDACTED] BADGE 653 DISTRICT 03CASE BEFORE: MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE [REDACTED] TIME OF VIOLATION 1300DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐ MILES 3 CITY Anderson CODE 1NOLLE PROSEQUI ☐ DISPOSITION [REDACTED] GUILTY ☐ FORFEITED BOND ☐ PLED: NOLLO CONTENDERE ☐TRIAL BY: TRIAL OFFICER ☐ JURY ☐ DATE OF TRIAL IF ANY 34330150VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐ DATE 34330150JUL. SUSPENS. [REDACTED] FINE [REDACTED] AMT. COLLECTED [REDACTED] AMT. SUSPENDED [REDACTED]COMMITTED TO: [REDACTED] Vehicle Searched N Arrest as Result of Collision YOFFENSE CODE 99 B.A. LEVEL bloodCERTIFIED CORRECT [REDACTED] DATE 5/16/2009

TRIAL OFFICER'S COPY

A TRUE COPY

JAN - 5 2011

Richard A. Shihbey
Clerk of CourtsExhibit
1

Code

Form 439
Rev. 12/96SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
UNIFORM TRAFFIC TICKET

STATE OF SOUTH CAROLINA VERSUS

FIRST NAME Case MIDDLE NAME Lucas LAST NAME Long - CoburniasSTREET AND NO. [REDACTED] CITY Ballin STATE SC ZIP CODE 29697STATE LICENSED [REDACTED] DRIVER'S LICENSE NO. [REDACTED] CDL [REDACTED] ORI, LIC. CLASS [REDACTED]
VEH. LIC. NO. [REDACTED] STATE SC MAKE OF VEH. 1995 YEAR 95 COVA. VEH. NO HAZ. MT. NO MOPEO NO MTRCYCL NO OTHER NO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

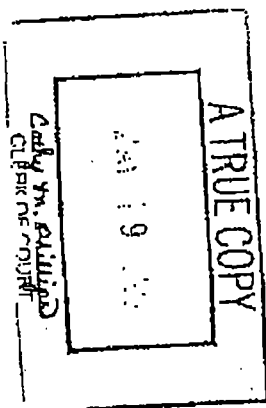
NAME OF TRIAL OFFICER General S. Simon STREET AND NO. 157 S. Main StDATE OF TRIAL T 3 2004 TIME OF TRIAL [REDACTED] CITY Anderson STATE SC ZIP CODE 29624VIOLATION - COURT APPEARANCE REQUIRED (YES/NO) NO VIOLATION SECTION NO. 2-5-3945OWNER OF VEHICLE Long - Coburnias DATE OF ARREST 5/16/2009ADDRESS OF OWNER Ballin SC DATE OF VIOLATION 5/16/2009BAIL DEPOSITED [REDACTED] NAME OF ARRESTING OFFICER A. S. Simon RANK TCDESCRIPTION OF ACCUSED [REDACTED] COUNTY Anderson NUMBER 33DATE BAIL RECD. BY [REDACTED] BADGE 653 DISTRICT 33CASE BEFORE: MAGISTRATE ☐ MUN. COURT ☐ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐NAME OF TRIAL OFFICER IF DIFFERENT FROM ABOVE [REDACTED] TIME OF VIOLATION 1300 WEATHER [REDACTED]DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐ MILES 3 N 2 E 3 W 4NOLLE PROSSED ☐ DISPOSITION [REDACTED] GUILTY ☐ FORFEITED BOND ☐ PLED: NOLLO CONTENDERE ☐TRIAL BY: TRIAL OFFICER ☐ JURY ☐ VERDICT OF TRIAL IF ANY: GUILTY ☐ NOT GUILTY ☐DATE OF TRIAL IF ANY 20 Lat 34° 33' 00" Long 82° 33' 00"JAIL [REDACTED] SUSPEND [REDACTED] FINE [REDACTED] AMT. COLLECTED [REDACTED] AMT. SUSPENDED [REDACTED]COMMITTED TO: Vehicle Searched [REDACTED] Arrest as Result of Citation [REDACTED] OFFENSE CODE [REDACTED] B.A. LEVEL [REDACTED]CERTIFIED CORRECT [REDACTED] DATE [REDACTED] D 759038

TRIAL OFFICER'S COPY

Exhibit
2

Label

DOCKET NO.



STATE LICENSE NO.		VEH. LIC. NO.		STATE	MAKE OF VEH	YEAR	COMM. VER.	HAZ. MT.	MOPED	MTRCYCL	OTHER
		SC 29684		SC	96						
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER											
NAME OF TRIAL OFFICER				STREET AND NO.							
Lok General Sessions				107 S. Main St							
DATE	OF	TRIAL	TIME OF TRIAL	CITY	STATE	ZIP CODE					
10/20	10/20	10/20	10/20	Anderson	SC	29684					
VIOLATION - COURT APPEARANCE REQUIRED (YES, NO)						VIOLATION SECTION NO.					
Felony Driving Under the Influence						56-5-2945					
OWNER OF VEHICLE						DATE OF ARREST					
Luna-Cobarrubias						5/16/2009					
ADDRESS OF OWNER						DATE OF VIOLATION					
Belton SC						5/16/2009					
BAIL DEPOSITED				NAME OF ARRESTING OFFICER				RANK			
Jail				A.S. L. Brown				TFC			
DESCRIPTION OF ACCUSED				COUNTY				NUMBER			
RACE	SEX	DATE OF BIRTH	HT	WT	EYES	HAIR	Anderson	04			
W	M	10/20/1968	5'10"	125	BRO	BLK	BADGE	03			
DATE BAIL REC'D. BY				D				DISTRICT			
20				653				03			
CASE BEFORE				MAGISTRATE				MUN. COURT			
				☐				☐			
CIRCUIT COURT				FAMILY COURT				FEDERAL COURT			
☐				☐				☐			
NAME OF TRIAL OFFICER				TIME OF VIOLATION				WEATHER			
IF DIFFERENT FROM ABOVE				1300				11			
DEFENDANT DID NOT APPEAR				APPEARED				Hwy. No.			
☐				☐				117			
NOLLE PROSSO				DISPOSITION				MILES			
☐				GUILTY				3			
FORFEITED BOND				PLND: NOLO CONTENDERE				CITY			
☐				☐				Anderson			
TRIAL BY				TRIAL OFFICER				JURY			
☐				☐				☐			
VERDICT OF				GUILTY				DATE OF TRIAL IF ANY			
☐				☐				10/20			
TRIAL IF ANY				NOT GUILTY				LAI			
☐				☐				34 J20150			
JAIL	SUSPEND	FINE	AMT COLLECTED	AMT SUGHTHORN				Long			
								3233 0150			
COMMITTED TO				Vehicle Searched				OFFENCE CODE			
				N				99 11000			
CERTIFIED CORRECT				DATE				D759039			
								20			

DRIVER RECORDS COPY

Exhibit 3

ORIGINAL

S.S. USE ONLY

SOUTH CAROLINA
TRAFFIC COLLISION REPORT FORM

Of Units

2

Amended or Original

Original

Date

5-16-2009

Time

13:00

County

04

Collision Location (Rt. # / Name)

5 09

Main

2-Alternate

5-Spur

6-Connection

7-Business

8-Other

Miles

3

Dir.

NE

Near City or Town of

Anderson

Latitude

34° 33' 55.40"

Longitude

82° 33' 01.50"

Base Intersection (Rt. # / Name)

McCombs Rd

Second Intersection (Rt. # / Name)

63

From

Toward

1- Interstate

2- US Primary

3- SC Primary

4- Secondary

5- County

6- Other

1- Entrance

2- Exit

1- Interstate

2- US Primary

3- SC Primary

4- Secondary

5- County

6- Other

Driver's License #

N/A

Driver's Full Name

Sisman - Susan

Unit #

1

Sex

F

Race

W

Street

City, State, & Zip

Greenville SC 29617

State

SC

Driver's License #

N/A

Insurance Company

Allstate

Year

1998

Body

45

Vehicle Make

Buick

VIN #

254W55AM6WLS49857

State

SC

Year

2009

Owner's D.L. #

Unknown

Home Telephone

430

Owner's Full Name

Eaton - Katie Kirk

Bus. Telephone

Street

Contributed To Collision

Yes

City, State, & Zip

Greenville SC 29617

Estimated Speed

40

Speed Limit

50

G.O.L. Req. Yes (No)

T/S S Req. Yes (No)

Alc/Drg Info (see back) Yes (No)

Code

NA

Summons #

NA

Code

NA

Towed By

(Ref)

Main Street

X-373485

Dir. of Travel: (Unit 1: N) S E W (Unit 2: N) S E W (Unit 3: N) S E W

Unit 1 Dam.

Unit 2 Dam.

Unit 3 Dam.

Prop. Dam. 1

Prop. Dam. 2

\$3500

\$1000

\$N/A

\$N/A

\$N/A

Smith - Kassandra

Kiss - Kalph

State

Zip

Phone

SC 29669

9429

SC 29627

1130

Photo: Describe What Happened (Refer to Units by Number)

(VIN:)

Unit #1 Was traveling north on US 29. Unit #2 Was traveling South on US 29 when it Hydro-Planned, lost Control, Crossed the Center line Sideways and Was Struck in the Passenger Side by Unit #1. Unit #2 Was driving Under the Influence of Alcohol.

Investigating Officer's Name

Rank

Badge #

Code

Date

Reviewer's Name

Rank

Internal Agency Code

Warrin - A.S.

JRC

653

HP03

5-16-2009

Cad # 022379

5-2009 US 29 @ McCoskel

75

#1 phone # [REDACTED] 4330

#2 phone # [REDACTED] 5091

Driver #1 - Susan Sigman

Driver #2 Jose Luis Luna - Cobarrubias

Greenville, SC 29617

Belton, SC 29627

10-28 - [REDACTED] SC

10-28 - [REDACTED] SC

1998 Buick

1995 Chevy Astro

Look!!

Passenger #1 - Katy Eaton

Witness #1 - Kassandra Smith

Greenville, SC 29617

Pelzer, SC 29669

Phone # - 864- unknown

Phone # [REDACTED] - 9429

Passenger #1 - Raymond Sigman

Address/phone same as #1

Witness #3 - Ralph Riggs

Greenville, SC 29617

Phone # [REDACTED] 4330

Belton, SC 29627

Phone # [REDACTED] 1130

Unit #2 Insurance - First Acceptance

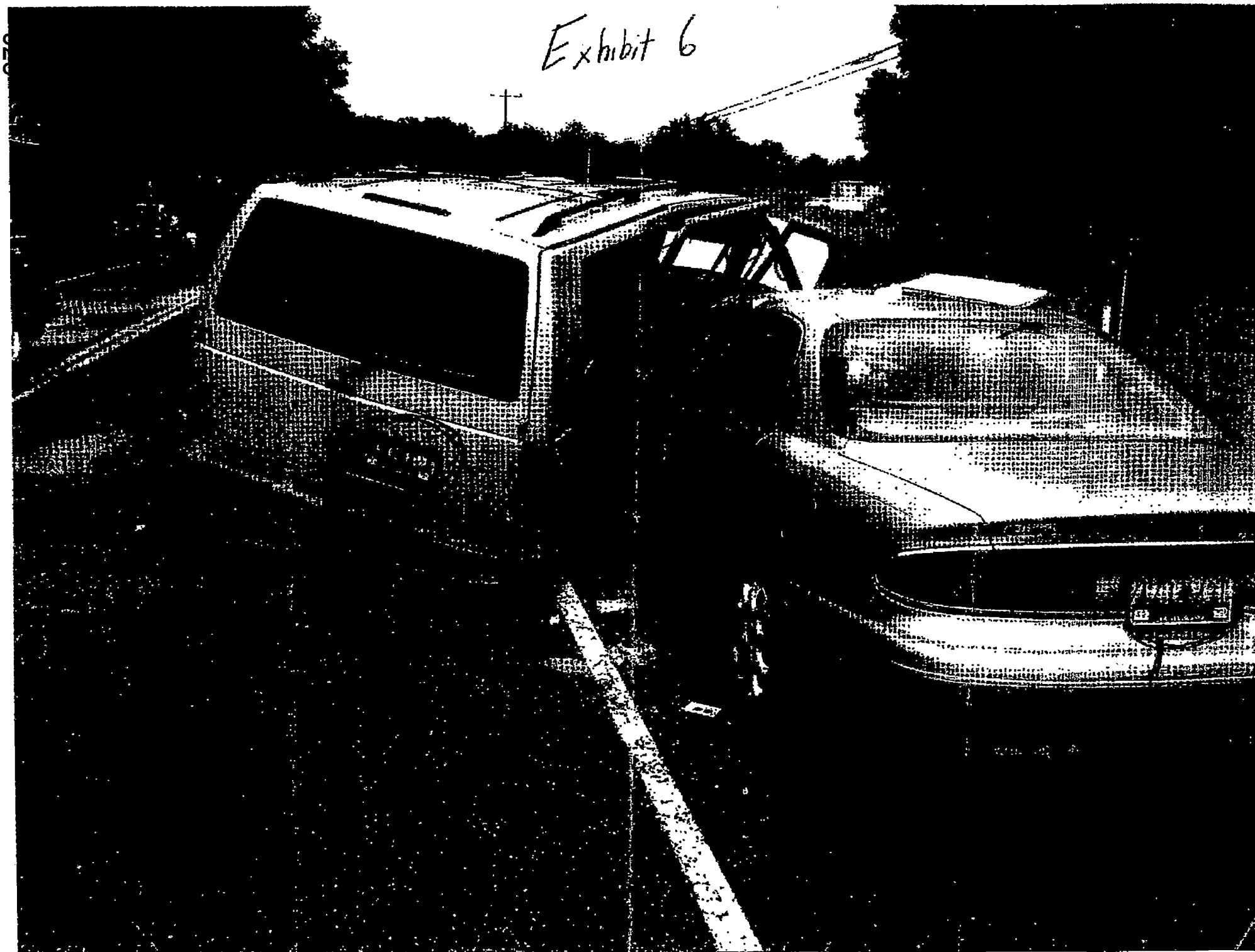
Policy # LBSC000059594

TFC A.S. Warren

5-16-2009

Exhibit 5

Exhibit 6



1 **MS. JOHNSON:** AND WE'VE ALWAYS BEEN ABLE TO COMMUNICATE. I'VE
2 GOTTEN LETTERS FROM HIM THAT ARE, YOU KNOW, PERFECTLY
3 UNDERSTANDABLE. WE CAN GET ONE, BUT ONE OF HIS CONCERNS WAS,
4 WITH THE INTERPRETATION, HE'S LISTENING IN ENGLISH AND ALSO HAVING
5 SOMEBODY SPEAK TO HIM. HE THOUGHT IT MIGHT BE MORE CONFUSING
6 HAVING AN INTERPRETER PRESENT. I'M HAPPY TO CALL SOMEONE. I HAVE
7 SOMEONE I THINK WE CAN GET HERE RELATIVELY QUICKLY IF WE NEED TO.

8 **THE COURT:** WELL, LISTEN, YOU'VE DEALT WITH THIS GENTLEMAN. I
9 HAVEN'T. MY CONCERN IS IT'S JUST NOT, WHAT I'M ASKING HIM IS JUST NOT
10 SINKING IN. I KNOW HE'S NERVOUS AND WE ALL UNDERSTAND THAT.

11 **MS. JOHNSON:** RIGHT.

12 **THE COURT:** AND A CERTAIN AMOUNT OF THAT GOES TO BEING
13 NERVOUS.

14 **MS. JOHNSON:** RIGHT.

15 **THE COURT:** BUT —

16 **MS. JOHNSON:** AND I DID ASK HIM THAT IF HE HAD ANY QUESTION
17 ABOUT WHAT YOU WERE ASKING TO PLEASE LET ME KNOW AND THEN IF
18 THERE WAS -- I DON'T THINK IT'S SO MUCH TROUBLE UNDERSTANDING THE
19 LANGUAGE AS IT IS, THIS IS HIS FIRST TIME IN A COURT OF GENERAL
20 SESSIONS AND THIS IS-- THE WHOLE PROCESS IS NEW TO HIM AND SO IT'S
21 NOT JUST THAT THERE'S A LANGUAGE BARRIER, BUT IT'S A, YOU KNOW, NEW
22 TO THE PROCESS.

→ 23 **THE COURT:** I UNDERSTAND. WELL, LET ME ASK YOU, COUNSEL, HOW
→ 24 LONG HAVE YOU BEEN DEALING WITH THIS GENTLEMAN?

→ 25 **MS. JOHNSON:** YOUR HONOR, I'VE REPRESENTED HIM SINCE MAY OF

Exhibit 7

Exhibit 8.

→ *1 * 2009, SO OVER A YEAR.

→ *2 * THE COURT: AND MISTER STODDARD, HOW LONG HAVE YOU

→ *3 * REPRESENTED HIM?

→ *4 * MR. STODDARD: ABOUT A -- I REPRESENTED HIM FOR ABOUT A MONTH.

5 I GOT OFF THE CASE AND I'VE BEEN BACK IN IT FOR ABOUT A MONTH.

6 THE COURT: WELL, DURING ANY OF EITHER ONE OF Y'ALL'S DEALINGS

7 WITH MR. CABARRUVIAS, AM I PRONOUNCING HIS NAME RIGHT?

8 MS. JOHNSON: COBRRUVIAS.

9 THE COURT: COBRUVIAS. HAS THERE EVER BEEN ANY INDICATION
10 THAT THERE WAS A LANGUAGE BARRIER, THAT HE DIDN'T UNDERSTAND AND
11 WAS ABLE TO COMMUNICATE WITH YOU ABOUT THE CASE?

12 MS. JOHNSON: THERE'S NEVER BEEN ANY PROBLEM WITH THE
13 LANGUAGE. AGAIN, SOMETIMES, WITH PEOPLE WHO ARE NOT FROM THE
14 UNITED STATES AND MAY NOT BE AS AWARE OF THE JUDICIAL SYSTEM HERE,
15 CONCEPTS SUCH AS JURY TRIALS, WAIVING RIGHTS, THOSE ARE -- AND
16 FRANKLY, I HAVE TO EDUCATE A LOT OF MY CLIENTS AS TO WHAT THOSE
17 ACTUALLY MEAN, BUT NO, I DO NOT THINK IT'S A LANGUAGE PROBLEM. I'VE
18 ALWAYS BEEN ABLE TO UNDERSTAND HIM AND, YOU KNOW, HE SAYS THAT
19 HE UNDERSTANDS ME AND OUR CONVERSATIONS AND I'VE NEVER GOTTEN
20 AN INDICATION FROM ANYTHING THAT HE HAS SAID THAT I THOUGHT, "OH,
21 WAIT, HE DIDN'T UNDERSTAND SOME CONCEPT AS I WAS DISCUSSING IT."

22 THE COURT: YOU AGREE WITH THAT MISTER STODDARD?

23 MR. STODDARD: I AGREE WITH THAT.

24 THE COURT: MISTER CABARRUVIAS, DO YOU UNDERSTAND WHAT
25 YOUR ATTORNEY JUST STATED?

AGENCY I.D.
3C004SP00

Exhibit 9.
INCIDENT REPORT

CASE NUMBER	INQ.	ENTR
1993-042135	X	

INCIDENT TYPE				COMPLETED	FORGED ENTRY	PREMISE TYPE				UNITS ENTERED	TITLE VICTIM ☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Reg. Organ. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.	
1. Driving Under the Influence {90D}				☒ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley						
2. Driving Under the Influence {90D}				☐ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley						
3. Driving Under the Influence {90D}				☐ YES ☐ NO	☐ YES ☐ NO	Highway/Road/Alley						
INCIDENT LOCATION ON SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER										ZIP CODE	WEAPON TYPE	
US 29 NORTH NEAR MCCOMBS RD.												
INCIDENT DATE		24 HR. CLOCK	TO DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	TIME ARRIVED		DEPART. TIME		LOCATION NO.		
5/16/2009		10:00		5/16/2009	7:00:00 PM	1:30:00 PM						
COMPLAINANT'S NAME (LAST FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE	
				"1"	*JSOU							
ADDRESS					CITY	STATE	ZIP CODE	LOCATION NO.				
VICTIM'S NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
Society/Public					"1"	*JSOU						
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS					CITY	STATE	ZIP CODE	LOCATION NO.				
VISIBLE INJURY (VICT.1) ☐ YES ☐ NO EXPLAIN -					COMPLAINT OF NON-VISIBLE INJURIES: ☐ YES ☐ NO							
VICTIM (NO.1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK. DRUGS: ☐ YES ☐ NO ☐ UNK. TYPE:												
TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASHMT. ☐ OTHER ☐					ALONE ☐ ASSISTED ☐							
☐ SUSPECT					NAME (LAST, FIRST, MIDDLE)							
☐ RUNAWAY					LUNA-COBARRUVIAS, JOSE LUIS							
☐ WANTED					RACE SEX AGE ETH. DATE OF BIRTH HEIGHT WEIGHT HAIR EYES							
☐ WARRANT					W M 43 H [REDACTED] 504 125 BLK BRO							
☐ ARREST					FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
☐ JAIL					ADDRESS CITY STATE ZIP CODE LOCATION NO.							
☐ SUMMONS					[REDACTED] BELTON SC 29627							
☐ SUBJECT (NO.1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK. DRUGS: ☐ YES ☐ NO ☐ UNK. TYPE:					ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐ UNK. TOTAL # ARRESTED:		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST			
ON THE ABOVE DATE AND TIME I RESPONDED TO A TRAFFIC COLLISION ON US 29 NEAR MCCOMBS RD.												
IN ANDERSON COUNTY. WHEN I ARRIVED ON THE SCENE ALL THE DRIVERS AND PASSENGERS HAD												
ALREADY BEEN TRANSPORTED TO THE ANMED HOSPITAL. THERE WAS TWO VEHICLES INVOLVED AT THE												
COLLISION SITE. THERE WAS A 1995 CHEVY ASTRO VAN THAT HAD BEEN STRUCK IN THE PASSENGER												
SIDE BY A 1998 BUICK SEDAN. I HAD THREE WITNESSES ON THE SCENE THAT STATED THEY SAW THE												
CHEVY VAN TRAVELING SOUTH ON US 29 IN A HEAVY RAIN, HYDRO-PLANE AND SPIN OUT OF CONTROL,												
CROSSING THE CENTER LINE SIDEWAYS AND WAS STRUCK IN THE SIDE BY THE BUICK SEDAN. ONCE MY												
INVESTIGATION AT THE COLLISION SCENE WAS COMPLETED I WENT TO THE HOSPITAL TO INTERVIEW												
ALL THE VICTIMS. WHEN I ARRIVED AT THE ER A NURSE CAME UP TO ME AND INFORMED ME THAT SHE												
COULD SMELL A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM MR. LUNA-COBARRUVIAS THE												
						JURISDICTION OF THEFT			JURISDICTION OF RECOVERY			
TYPE(GROUP)										TOTAL VALUE		
STOLEN												
DAMAGED												
BURNED												
RECOVERED												
CRIZED												
FORGED												
SUB IFGT IDENTIFIED		SUBJECT LOCATED		ACTIVE ADM. CLOSED		ARRESTED UNDER 18		EX-CLEAR UNDER 18				
☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER				
REASON FOR EXCEPTIONAL CLEARANCE:				1. OFFENDER DEATH. 2. NO PROSECUTION. 3. EXTRADITION DENIED. 4. VICTIM DECLINES COOPERATION. 5. JUVENILE-NO CUSTODY								
REPORTING OFFICER(S)				DATE		UNIT NUMBER		APPROVING OFFICER		DATE UNIT NUMBER		
WAIGREN, ADAM SCOTT				5/17/2009		553		CARSON, MICHAEL C		552		
								OFFICER				
								FOLLOWUP INVESTIGATION		☐ YES ☐ NO		

AGENCY I.D. - 2
SC004SP00

SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER	1993-042135	NCIC	ENTD
		X	

☐ ORIGINAL REPORT
☐ MODIFIES ORIGINAL
☐ SUPPLEMENTAL REPORT
☐ CASE STATUS CHANGE
☐ ADDITIONAL VICTIMS
☐ ADDITIONAL OFFENDERS
☐ ADDITIONAL STOLEN PROPERTY
☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 OF 3 PAGES

VICTIM OVERFLOW	☐ COMPLAINT	NAME (LAST, FIRST, MIDDLE)	VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH.			
	☐ VICTIM #2	- Society/Public												
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY	ADDRESS												
☐ WANTED	CITY													
☐ ARREST	STATE ZIP CODE													
☐ WARRANT	LOCATION NO.													
☐ JAIL	DAY PHONE													
☐ SUMMONS	EVENING P. ONE													
☐	☐ VICTIM NO. 2	☐ VISIBLE INJURY	☐ YES	☐ NO	☐ COMPLAINT OF NON-VISIBLE INJURIES	☐ YES	☐ NO	☐ VICTIM USING ALCOHOL	☐ YES	☐ NO	☐ DRUGS	☐ YES	☐ NO	☐ TYPE
	☐ TWO-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ LONE ☐ ONE-MAN VEH. ☐ OTHER ☐ ASSISTED													
	☐ SUBJECT NO. ☐ USING ALCOHOL ☐ YES ☐ NO ☐ USING DRUGS ☐ YES ☐ NO ☐ TYPE													

DRIVER OF THE CHEVY VAN. THE SUBJECT COULD NOT SPEAK FLUENT ENGLISH AND I HAD HEATHER CAZARAIN AN ON STAFF TRANSLATOR TO HELP ME QUESTION HIM. I ASKED THE SUBJECT WHAT HAD HAPPENED FOR HIM TO HAVE THE COLLISION AND HE RESPONDED TO ME THAT HE HADN'T BEEN IN A COLLISION. ONCE THE SUBJECT BEGAN SPEAKING I COULD ALSO SMELL A STRONG ODOR OF AN ALCOHOLIC BEVERAGE COMING FROM HIS BODY. I ASKED MR. LUNA-COBARRUVIAS IF HE WOULD SUBMIT ME A SAMPLE OF BLOOD TO DETERMINE BAC AND HE AGREED. I HAD THE TRANSLATOR TO READ HIM HIS MIRANDA RIGHTS AND IMPLIED CONSENT RIGHTS BEFORE THE BLOOD WAS TAKEN. ONCE THE HOSPITAL RELEASED THE SUBJECT HE WAS PLACED UNDER ARREST AND TRANSPORTED TO THE ANDERSON COUNTY DETENTION CENTER. THE DRIVER AND PASSENGERS OF THE BUICK SEDAN ALL SUSTAINED SERIOUS INJURIES AND REMAINED IN THE HOSPITAL. THE DRIVER MRS. SUSAN SIGMAN SUSTAINED A SERIOUS

VEHICLE/ETC 1	STATUS	TYPE	VIN AND/OR LICENSE NO.		BOAT HULL NO. AND/OR REG. NO.	
	☐ STOLEN	☐ OVERHEAD	SERIAL AND/OR OWNER APPLIED NO.		STATE	
	☐ RECOVERED	☐ GUN	YEAR OF REGISTRATION		YEAR OF EXPIRATION	
	☐ FOUND	☐ BOAT	MODEL		STYLE	
☐ TOWED	☐ LICENSE PLATE	COLOR		BRAND NAME		
☐ SUSPECT	☐ SECURITIES/BONDS/STOCKS	RVC NO.		DENOMINATION		
☐ VICTIM	☐ ARTICLE	ISSUER		SECURITIES DATE		
		MISCELLANEOUS				

PROPERTY EST.	TYPE(GROUP)						TOTAL VALUE
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
	SEIZED						
☐ FORGED							

SUBJECT IDENTIFIED	SUBJECT LOCATED	ACTIVE ☐ ADM. CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
☐ YES ☐ NO	☐ YES ☐ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE NO CUST. JCY				
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE
WARREN, ADAM SCOTT	5/17/2009	553	CARSON, MICHAEL C	
		FOLLOW-UP OFFICER		
		INVESTIGATION ☐ YES ☐ NO		

278

Exhibit 11

AGENCY I.D. 3
SC004SP00

SUPPLEMENTARY INCIDENT REPORT

CASE NUMBER	INC.	ENTD.
1993-042135	X	

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY

PAGE 2 of 3 PAGES

NECK INJURY AND A CRUSHED HEEL ON HER RIGHT FOOT. THE FRONT PASSENGER MS. KATY EATON HAD INTERNAL INJURIES AND WAS UNSTABLE. THE REAR SEAT PASSENGER MR. RAYMOND SIGMAN HAD A BROKEN LEFT ANKLE AND WAS GOING TO REQUIRE IMMEDIATE SURGERY.

NARRATIVE

ADMINISTRATIVE

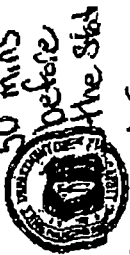
		JURISDICTION OF THEFT		JURISDICTION OF RECOVERY	
SUBJECT IDENTIFIED ☒ YES ☐ NO	SUBJECT LOCATED ☒ YES ☐ NO	☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE-NO CUSTODY					
REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
WARREN, ADAM SCOTT	5/17/2009	653	CARSON, MICHAEL C		S52
		FOLLOW-UP INVESTIGATION ☐ YES ☒ NO		OFFICER	

statements were taken before the other two, and all statements were taken 1 hr and 50 mins before the other two.

Mr. Riggs

look!

50 mins before the other two
Trooper A. S. Warren got to the scene
How?



Time Arrived on scene: 11:30:00pm
Time he took statement: 11:22:00pm, 11:40:00pm, and 11:44:00pm

279
How is this?
11:44

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

EXHIBIT - 3 Exhibit 12

STATE OF SOUTH CAROLINA
COUNTY OF Anderson

Case Number 09-04-HE3A-089

PERSONALLY appeared before me RALPH C. RIGGS, who states:

I reside at [redacted] in WILKINSON
SC [redacted] 1130 CEL [redacted] -1913
State Telephone: Work: Home:

Date of Birth: [redacted], Social Security Number [redacted]
I have 12 years of education, and I can/cannot read and write. This statement is given on 5-16, 2009
at 4:15 pm in the presence of Trooper A. S. Warren look who has officially identified
himself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

RALPH RIGGS WAS DRIVING SOUTH ON Hwy 29
When I observed a white mini van going at high speed
during a heavy rain shower,
the hydroplaned on wet surface
lost control spun around in center of highway
went into north bound lane and struck another
vehicle right side resulting in 3 people being
hurt.

THIS IS TRUE TO BEST OF KNOWLEDGE

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomever.

This statement was completed at 1140 am/pm on the 16th day of May, 2009

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 16th DAY OF May, 2009

Notary Public For South Carolina

My Commission Expires [redacted]

Ralph C. Riggs
Affiant

Alan S. Warren
Witness

Kassandra G. Smith
Witness

Page 1 of 1 pages

EXHIBIT-4



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

Exhibit 13.

STATE OF SOUTH CAROLINA

COUNTY OF AndersonPERSONALLY appeared before me Hassandra Jewell Smith who states:Case Number Same 09-04-HF3A-089

I reside at [redacted] in Pelzer
SC [redacted] Address [redacted] City [redacted]
 State Telephone: [redacted]-9429 Work: [redacted]-8907 Home: [redacted]

Date of Birth: [redacted], Social Security Number [redacted]
 I have 14 years of education, and I can cannot read and write. This statement is given on May 16, 20 09
 at 1140 am in the presence of Trooper A.S. Warren look! who has officially identified
 himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

look! Going South bound on 29. It was raining
and the Grey Van lost control of and hydro-
planed and went over the yellow line and it the
grey car. This happen in Anderson County
on 5-16-09.

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomsoever.

This statement was completed at 1140 am on the 16th day of May, 20 09.

SWORN TO AND SUBSCRIBED TO BEFORE
 ME THIS 16th DAY OF May, 20 09

Notary Public For South Carolina

My Commission Expires [redacted]

Hassandra Jewell Smith
 Affiant

look! Ralph C. [redacted]
 Witness

Page 1 of 1 pages



SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
AFFIDAVIT

Exhibit 14

STATE OF SOUTH CAROLINA
COUNTY OF Anderson

PERSONALLY appeared before me James E. Smith, who states:

Case # Not the Same

Case Number 09-04-HP3A-05

as other two

I reside at [redacted] in Palmer City
State SC Telephone: [redacted] - 9429 Work: Home:

Date of Birth: [redacted] Social Security Number [redacted]
I have 10 years of education, and can/cannot read and write. This statement is given on 5-16, 20 09
at 11:44 am in the presence of Inspector A.S. Warren & Look who has officially identified
himself/herself as an officer of the SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

Look! We were South on Hwy 29, when a grey
Van Hydroplaned, spun side ways and the rear of
the Van lifted off the ground. The Van had hit a
another car. This happened 5-16-2009 on Hwy 29
in Anderson County.

I have read each page of this statement of 1 page(s). Each page of which bears my signature, and corrections, if any, bear my initials. I certify that this statement is true and correct to the best of my knowledge and belief. I also declare that I was not told or prompted what to say in this statement and that I give the above statement of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, and without leniency or offer of leniency, by any person or persons whomsoever.
This statement was completed at 11:40 am on the 16th day of May, 20 09.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS Look! DAY OF Look!, 20 09

Notary Public For South Carolina

My Commission Expires

James Edward Smith Affiant
Inspector A.S. Warren Witness
Look! Ralph C. [redacted] Witness

Page 1 of 1 pages

*How?
completed 4 mins before given.*

Exhibit 15

Late!

Incident Details		Destination Details		Incident Times	
Location	HIGHWAY 29	Disposition	Transport Lights/Sirens	Call Received	13:06:00
Address	HWY 29@MCCOMBS RD	Transport Due To	Patient	Dispatched	13:06:00
City	Belton	Treatment Level	Advanced Life Support	En Route	13:06:00
State	South Carolina	Physician/RN	DR BRENNAN / JOYCE LOLLIS RN	On Scene	13:10:00
County	Anderson	Receiving Report		At Patient	
Zip	29627			Depart Scene	13:30:00
Medic Unit	MC46	Destination	AnMed Health Medical Center	At Destination	13:40:00
RunType	911 call	Address	800 N Fant St	Incident Close	13:40:00
Priority	Lights/Sirens	City	Anderson		
Scene		State	South Carolina		
RequestedBy	Bystander	Zip	29621		
Zone	Whitefield Station 22				

Crew Members			
Personnel	Employee Number	Position	Certification
HUFF BOBBY	4204	Lead Medic	Paramedic
BARR JESSICA	4409	Driver	EMT-I

Insurance Details	
Unable to obtain Insurance	
Next of Kin Name	
Relationship to Insured	
Address	
City	
State	
Zip	
Phone	

Medical Necessity	Reason for Hospital to Hospital Transfer	Consumables/Loaded Mileage
Emergency	PT UNABLE TO SIGN DUE TO BEING IN CT SCAN	Qty Consumables Loaded Mileage : 8

	Signature Obtained	Signature Not Obtained	Unable To Sign
Billing Consent	☐	☐	☐

Section I - Authorization for Billing

I request that payment of authorized Medicare, Medicaid, or any other insurance benefits be made on my behalf to Williamston EMS for any services provided to me by Williamston EMS now or in the future. I understand that I am financially responsible for the services provided to me by Williamston EMS, regardless of my insurance coverage, and in some cases, may be responsible for an amount in addition to that which was paid by my insurance. I agree to immediately remit to Williamston EMS any payments that I receive directly from insurance or any source whatsoever for the services provided to me and I assign all rights to such payments to Williamston EMS. I authorize Williamston EMS to appeal payment denials or other adverse decisions on my behalf without further authorization. I authorize and direct any holder of medical information or documentation about me to release such information to Williamston EMS service and its billing agents, and/or the Centers for Medicare and Medicaid Services and its carriers and agents, and/or any other payers or insurers as may be necessary to determine these or other benefits payable for any services provided to me by Williamston EMS, now or in the future. A copy of this form is as valid as an original.

Privacy Practices Acknowledgment: by signing below, I acknowledge that I have received Williamston EMS's Notice of Privacy Practices.

Authorization for Billing

☐ I Agree ☐ I Disagree ☒ Patient Unable to Sign

HIPPA Acknowledgement

☐ I Agree ☐ I Disagree ☒ Patient Unable to Sign

Section II - Authorized Representative Signature

Complete this section only if patient is physically or mentally incapable of signing.

Exhibit 16

Assessment	
Category	Abnormalities
Skin	No Abnormalities
Heart	No Abnormalities
Chest	No Abnormalities
Back	No Abnormalities
Abdomen	No Abnormalities
Pelvis/GU/	No Abnormalities
Extremities	No Abnormalities
Mental Status	Mental Status: Unresponsive
Neurological	No Abnormalities

Narrative
911: RESPONDED TO 43YO H/M INVOLVED IN 2 CAR MVA WITH MAJOR DAMAGE TO PASSENGER SIDE OF MINIVAN. ARRIVED TO FIND HISPANIC MALE IN DRIVERS SEAT OF MINIVAN WITH SEATBELT STILL ON. PT UNRESPONSIVE. PT ATTEMPTING TO TURN HEAD WHEN NOISE IS MADE. PT VERY LETHARGIC. DRIVERS SEAT OF VEHICLE BROKEN AND LAYING FULLY RECLINED. PT HAS SMELL OF ETOH. EMS HAS LANGUAGE BARRIER WITH PT. PT UNABLE TO SPEAK OR COMMUNICATE WITH EMS DURING EXTRICATION. FIRE DEPT ONSCENE AND FORCED DRIVERS DOOR OPEN TO GAIN ACCESS TO PT. PT MINIVAN HAS INTRUSION INTO DRIVERS COMPARTMENT. PT HAS NO OBVIOUS INJURIES. PT SEATBELT CUT TO REMOVE PT FROM VEHICLE. C-SPINE MAINTAINED DURING EXTRICATION UNTIL PT PLACED IN FULL C-SPINE PRECAUTIONS. PT REMOVED FROM VEHICLE AND PLACED IN FULL C-SPINE PRECAUTIONS. PT PLACED ON STRETCHER AND SECURED WITH STRAPS X2 AND RAILS UP. PT PLACED IN UNIT FOR X-PORT. PT ON MONITOR SHOWING SINUS RHYTHM. PT ON HIGH FLOW O2 @ 15LPM VIA NRB. IV LEFT AC 14G USING ASEPTIC TECHNIQUE. IV RIGHT AC 14G USING ASEPTIC TECHNIQUE. BOTH IV'S FLOWING WITHOUT INFILTRATION. HEAD TO TOE EXAM SHOWS NO OBVIOUS INJURIES. PT CLOTHS CUT OFF FOR FULL BODY EXAM. DURING X-PORT PT NOW ALERT AND ABLE TO ANSWER SOME QUESTIONS. EMS STILL HAVING LANGUAGE BARRIER DUE TO PT NOT SPEAKING ENGLISH. AAMC NOTIFIED DURING X-PORT OF INCOMING TRAUMA. PT PLACED IN ROOM 28 WITH REPORT TO RN JOYCE LOLLIS AND DR. BRENNAN.

Specialty Patients																					
MVC Patient Injured In Collision ☒ Yes ☐ No Vehicle Type : Automobile Position In Vehicle : Driver Collision Indicators <table border="0"> <tr> <td>☐ Ejection</td> <td>☒ Intrusion > 12"</td> <td>☐ Steering Wheel Deformity</td> </tr> <tr> <td>☐ Roll Over</td> <td>☐ Death (Same Vehicle)</td> <td>☐ Dash Deformity</td> </tr> <tr> <td>☐ Fire</td> <td>☒ Side Post Deformity</td> <td>☒ WindShield Spider/Star</td> </tr> </table> Estimated Speed mph Safety Devices <table border="0"> <tr> <td>☒ Lap Belt</td> <td>☐ Eye Protection</td> <td>☐ Other</td> </tr> <tr> <td>☒ Shoulder Belt</td> <td>☐ Protective Clothing</td> <td>☐ None</td> </tr> <tr> <td>☐ Child Restraint</td> <td>☐ Protective Gear (Non-Clothing)</td> <td>☐ Not Known</td> </tr> <tr> <td>☐ Helmet Worn</td> <td>☐ Personal Flotation Device</td> <td></td> </tr> </table> Extrication Required ☒ Yes ☐ No Extrication Comments : DRIVERS DOOR FORCED OPEN BY FD Weather : Overcast Law Enforcement Case : Seat Row Location of Patient in Vehicle : 0	☐ Ejection	☒ Intrusion > 12"	☐ Steering Wheel Deformity	☐ Roll Over	☐ Death (Same Vehicle)	☐ Dash Deformity	☐ Fire	☒ Side Post Deformity	☒ WindShield Spider/Star	☒ Lap Belt	☐ Eye Protection	☐ Other	☒ Shoulder Belt	☐ Protective Clothing	☐ None	☐ Child Restraint	☐ Protective Gear (Non-Clothing)	☐ Not Known	☐ Helmet Worn	☐ Personal Flotation Device	
☐ Ejection	☒ Intrusion > 12"	☐ Steering Wheel Deformity																			
☐ Roll Over	☐ Death (Same Vehicle)	☐ Dash Deformity																			
☐ Fire	☒ Side Post Deformity	☒ WindShield Spider/Star																			
☒ Lap Belt	☐ Eye Protection	☐ Other																			
☒ Shoulder Belt	☐ Protective Clothing	☐ None																			
☐ Child Restraint	☐ Protective Gear (Non-Clothing)	☐ Not Known																			
☐ Helmet Worn	☐ Personal Flotation Device																				

1 THAT MORNING. HE ACTUALLY DOES NOT REMEMBER THE ACCIDENT
2 HAPPENING. THE LAST THING THAT HE REMEMBERS IS GETTING INTO HIS
3 VAN -- AND IT WAS HIS VAN THAT WAS INVOLVED IN THIS ACCIDENT --
4 GETTING INTO HIS VAN, GETTING INTO THE PASSENGER SIDE AND ASKING
5 THIS OTHER INDIVIDUAL TO GIVE HIM A RIDE. HOWEVER, I THINK BECAUSE OF
6 THE HIGH BLOOD ALCOHOL CONCENTRATION AND, AS WAS MENTIONED
7 WHEN HE WAS FOUND AT THE SCENE OF THE ACCIDENT, EVEN THOUGH
8 THESE INDIVIDUALS RAN UP TO THE CAR TRYING TO GET HIM TO RESPOND,
9 HE WAS NOT RESPONSIVE AT THAT TIME, SO THERE'S NO DOUBT IN MY MIND
10 THAT HE DOES NOT REMEMBER BEING IN THE ACCIDENT. SO, YOU KNOW, HE
11 OBVIOUSLY LEFT THERE. FROM A REVIEW OF THE EVIDENCE IN THIS CASE,
12 THERE ARE, AS MS. BYFORD MENTIONED, THERE WERE THREE WITNESSES
13 WHO WERE IN A TRUCK THAT WAS FOLLOWING HIM ON 29 THAT SAW THE
14 ACCIDENT HAPPEN, WHO STOPPED AND IMMEDIATELY WENT TO RENDER AID.
15 THEY ACTUALLY WENT TO HIS VEHICLE FIRST. THERE WERE THREE
16 INDIVIDUALS IN THE OTHER CAR THAT HE STRUCK. IT WAS A SMALLER BUICK
17 AND HE WAS IN LIKE A CHEVY ASTRO VAN. THE PASSENGER SIDE OF HIS
→ 18 VEHICLE WAS BASICALLY CRUSHED IN. (THERE WAS NO WAY THAT ANYONE
→ 19 COULD HAVE EXITED THE PASSENGER SIDE DOOR AND THERE ACTUALLY
→ 20 WASN'T A PASSENGER REAR DOOR ON THE CAR, JUST THE FRONT
→ 21 PASSENGER DOOR. SO, I THINK FROM A REVIEW OF THE EVIDENCE, WHICH
→ 22 MISTER STODDARD AND I HAVE SPENT A GREAT DEAL OF TIME GOING
→ 23 THROUGH THAT WITH HIM, WE REVIEWED THE DOCUMENTS THAT CAME WITH
→ 24 THE REPORTS, INTERVIEWS ACTUALLY CONDUCTED OVER THE PHONE BY
→ 25 THE HIGHWAY PATROL, WITH THE THREE WITNESSES, OBVIOUSLY

↑
Look↑
Look

→1 NUMEROUS PICTURES, VIDEOS TAKEN OF THE ACCIDENT. AFTER REVIEWING
→2 THOSE ITEMS, MISTER CABARRUVIAS SAYS, EVEN THOUGH HE DOES NOT
→3 REMEMBER WHAT HAPPENED, HE BELIEVES THAT HE WAS, IN FACT, THE
→4 DRIVER OF THAT VEHICLE. HE HAS -- OBVIOUSLY, THIS HAS BEEN VERY
5 DIFFICULT FOR HIM. HE DID SUSTAIN SOME INJURIES IN THE ACCIDENT
6 WHICH HE ELUDED TO EARLIER. HE HAD BROKEN HIS RIGHT COLLARBONE
7 AND AT THE TIME HE COULD NOT REMEMBER WHAT HAD HAPPENED, HE
8 THOUGHT IT WAS A SEATBELT INJURY FROM THE PASSENGER'S SIDE, THAT
9 HE WAS, IN FACT, STILL A PASSENGER IN THAT VEHICLE WHICH WAS THE
10 LAST THING HE REMEMBERED PRIOR TO GETTING INTO THE ACCIDENT.
11 UNFORTUNATELY, THOUGH, FROM THE INVESTIGATION OF THIS CASE, I DO
12 NOT HAVE, AND I THINK I SPEAK FOR MISTER STODDARD AS WELL, ANY
13 HESITATION IN SAYING THAT FROM THE EVIDENCE OVERWHELMINGLY IN THE
14 CASE, THAT HE WAS THE ONLY PERSON IN THE VEHICLE, NUMBER ONE, AND
15 THAT HE WAS, IN FACT, THE DRIVER OF THAT VEHICLE AT THE TIME OF THE
16 ACCIDENT.

17 THE COURT: AND THAT HE WAS GREATLY INTOXICATED AND THAT THE
18 ACCIDENT CAUSED INJURIES TO OTHERS?

19 MS. JOHNSON: YES, SIR. ABSOLUTELY, ABSOLUTELY. HE DOES NOT
20 DISPUTE THOSE FACTS. AGAIN, THESE ARE ALWAYS DIFFICULT CASES
21 BECAUSE NATURALLY, WHEN SOMEONE -- HE DID NOT INTEND TO GO OUT
22 AND HURT OR KILL SOMEONE THAT DAY AND I KNOW AND HE UNDERSTANDS
23 THAT HE IS RESPONSIBLE AND THAT, ULTIMATELY, THAT IS WHAT HAPPENED
24 AND IT'S, IT'S A TRAGEDY FOR EVERYONE INVOLVED. IT'S CERTAINLY A
25 TRAGEDY FOR THE VICTIMS AND THEIR FAMILIES IN THIS CASE. THEY LOST A

COPY

Jose Luis Luna Cabarrunas
#342601

Perry Corr. Inst. Q4B#121
430 Oaklawn Rd.

Pelzer S.C. 29669

Mar 5 2015

Lt. Michael J. Brown

S.I.E.D. Supervisory Special Agent

P.O. Box 21398

Columbia S.C. 29221-1398

Exhibit

19

Freedom of Information Act request.

Lt. Michael J. Brown,

According to the Freedom of Information Act 30-4-10, and S.C. Rules of criminal procedure Rule 5(a) disclosure of evidence I am authorized by the 14th Amendment, U.S. Constitution and Article 1.3 S.C. constitution Due Process To obtain vital information of chain of custody any and all material of evidence pertaining to my case, warrant No# D759039 and indictment NO.2009-681401994. From the Highway 29 McCombs Rd. City of Belton S.C. county of Anderson Zip 29627, May 16, 2009 Accident. Your database holds this necessary information. It's imperative that I receive this information. For in my due diligence, I can prove my innocence of not being the driver of the 1995 Astro van License plate No. [REDACTED] that caused the wreck and Felony DUI. I truly appreciate your help concerning this matter.

Respectfully submitted
Jose Luis Luna Cabarrunas

COPY

Certificate of Service

Mr. Jose Luis Luna Cabarrunier 342601 would hereby certify that a true and correct copy of his letter to Lt. Michael J. Brown S.L.E.D. P.O. Box 21398 Columbia S.C. 29221-1398. To receive his "full discovery," chain of custody. That a certificate of service has been forwarded via the United States Postal Service Postage Pre-paid and addressed as follows This 5 day of MARCH 2015.

To:

Lt. Michael J. Brown
 S.L.E.D. Supervisory Special Agent
 P.O. Box 21398
 Columbia S.C. 29221-1398

Exhibit
 20.

sworn to and subscribed before me

This 5 day of March 2015

Lamar C. Currell LS

my commission expires: My Commission Expires
 September 25, 2023

151 JOSE 2 LUNA cabarrunier

Mr. Jose Luis Luna Cabarrunier
 #342601

Perry Corr. Inst. J-4B 221

430 Oaklawn Rd.

Pebble S.C. 29669

2

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

April 21, 2015

*Exhibit
21.*

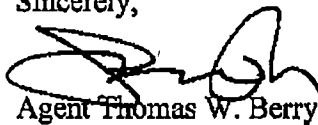
Jose Luis Luna Cabarruvias, #342601
Perry C. I. / Q4B #221
430 Oaklawn Road
Pelzer, SC 29669

RE: Freedom of Information Act Request #2015-0180
SLED Lab #: L09-6024
May 16, 2009, Felony DUI in Anderson, SC

Dear Mr. Cabarruvias:

A search of our database reveals that the above referenced file is currently housed at a contract storage facility in Columbia. The fee for retrieval, delivery and staff research time is \$22.00 per file. A money order in the exact amount of \$22.00 is required before the file will be ordered and any work begun. Please make your money order payable to the State Law Enforcement Division and address your envelope to SLED FOIA Processing PO Box 21398, Columbia, SC 29221-1398. Please make sure your name and FOI#2015-0180 are referenced on the money order. Depending on the number of pages contained in the file, there may be additional charges for copying.

Sincerely,



Agent Thomas W. Berry
Freedom of Information Coordinator

TWB/mcp



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

June 17, 2015

*Exhibit
22.*

Jose Luis Luna Cabarruvias, #342601
Perry C. I. / Q4B #221
430 Oaklawn Road
Pelzer, SC 29669

Re: Freedom of Information Act Request #2015-0180
SLED Lab No.: L09-6024
Chain of Custody – May 16, 2009, Felony DUI in Anderson, SC

Dear Mr. Cabarruvias:

This letter is to confirm that we are in receipt of your money order in the amount of \$22.00. Please find enclosed the information available to you under the Freedom of Information Act.

Sincerely,

Thomas W. Berry / mcp

Agent Thomas W. Berry
Freedom of Information Coordinator

TWB/mcp
Enclosure







ADVISEMENT OF IMPLIED CONSENT RIGHTS

Jose Luis Luna-Cobarruvias

Subject's Name (Print)

N/A



Date of Birth

N/A

Driver's License Number

State Licensed

DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here → ♦ Inform subject of video recording.
♦ Advise subject of Miranda rights.
If answer is No, start here → ♦ Inform subject of the type (breath, blood, urine) samples requested.

(B) Then read the following advisement to subject:

- ♦ You are under arrest for Driving Under the Influence (DUI), Section 56-5-2930, South Carolina Code of Laws 1976, as amended.
- ♦ The arresting officer has directed that samples be taken for alcohol and/or drug testing.
- ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- ♦ You do not have to take the tests or give the samples, but if you refuse to submit to the tests, your privilege to drive in South Carolina must be suspended or denied for at least ninety (90) days and your refusal may be used against you in court.
- ♦ If you take the tests or give the samples and have an alcohol concentration of eight one-hundredths of one percent (0.08%) or more, you may instead be charged with Driving with an Unlawful Alcohol Concentration (DUAC), Section 56-5-2933.
- ♦ If you have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
- ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- ♦ You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
(D) Time stamp Breath Alcohol Analysis Test Report. (Not required if a refusal has occurred.)
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)
(F) Enter biographical data into BAC DataMaster. (Required for all tests, including refusals.)

FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT

- (B) Will test be video recorded? If answer is Yes, start here → ♦ Inform subject of video recording.
♦ Advise subject of Miranda rights.
If answer is No, start here → ♦ Inform subject of the type (breath, blood, urine) samples requested.

(B) Then read the following advisement to subject:

- ♦ You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
- ♦ The officer has directed that samples be taken for alcohol and/or drug testing.
- ♦ The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
- ♦ Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
- ♦ The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.
- ♦ If your tests or samples have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least thirty (30) days.
- ♦ You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
- ♦ You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
- ♦ If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material.
(D) Time stamp Breath Alcohol Analysis Test Report.
(E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample.
(F) Enter biographical data into BAC DataMaster.

A. S. Warren

Officer's Name (Print)

A. S. Warren

Officer's Signature

Subject's Signature (Received Copy)

5-16-2009

Date

1453

Time

SOUTH CAROLINA LAW ENFORCEMENT DIVISION - URINE/BLOOD COLLECTION REPORT

Subject: Luis - Cobarruvias Jose Luis Anderson
 Last Name First Name Middle Name New York County of Arrest
 Subject's Address: Greenville SC 29611
 Driver's License Number: N/A State: N/A DOB: [REDACTED] Sex: M Race: H
 Arresting Officer: A.S. Warren Agency: South Carolina Highway Patrol
 Arresting Officer's Address: P.O. Box 531, US 29 bypass, Anderson SC 29621
 Date of Arrest: 5-16-2009 Time of Arrest: 2:53 AM/PM Traffic Ticket Number: D759037
 Date of Test: 5-16-2009 Time of Test: 3:30 AM/PM Location of Collection: ANNEX Hospital, Anderson SC

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

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

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

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

Name and Title of Licensed Medical Personnel:

Alicia Michalski / Phlebotomist
(Please Print)

Signature of Licensed Medical Personnel:

Alicia Michalski

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

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

Name of Licensed or Trained Collector:

Alicia Michalski
(Please Print)

Signature of Licensed or Trained Collector:

Alicia Michalski

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

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

Signature of Officer:

A.S. Warren

Date:

5-16-2009

José 2017 + C
 (Subject's Signature)

received a copy of this report on

5-16-2009

Date

White Copy: Arresting Officer

Canary Copy: Hospital

Pink Copy: Subject

Goldenrod Copy: SLED

DOCKET NO. 2009GS04 01993

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS
AUG 25 2009

Term

THE STATE

vs.

Jose Luis Luna Cabarruvias

EJB

Indictment for

DUI / Felony DUI - Great Bodily Injury

SC Code: 56-05-2945(A)(1)
CDR Code: 0406

WITNESSES

A Warren, SCHP

ARREST WARRANT NUMBER

D759037

ACTION OF GRAND JURY

TRUE BILL

AUG 25 2009

Person of Grand Jury

Date:

VERDICT

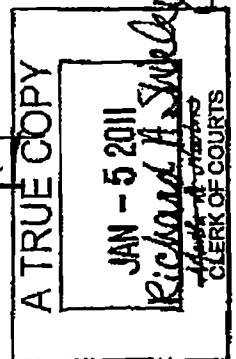
Foreperson of Petit Jury

Date:

COMMITMENT

9-3-10/R

Exhibit 29.



STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

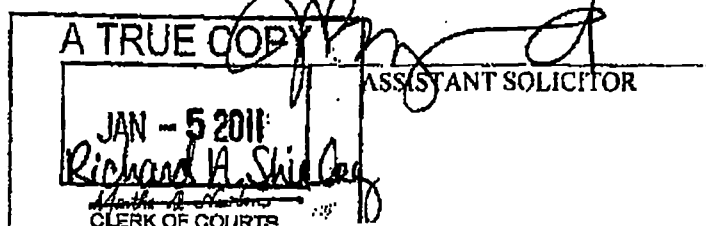
At a Court of General Sessions, convened on AUG 25 2009, the Grand Jurors of Anderson County present upon their oath:

DUI / Felony DUI - Great Bodily Injury

That Jose Luis Luna Cabarruvias, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did in Anderson County, on or about May 16, 2009, drive a vehicle and while driving did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, to wit: driving left of center and/or failure to exercise due care and/or driving too fast for conditions, which act or neglect proximately caused great bodily injury to Raymond Sigmon. All in violation of Section 56-5-2945(A)(1), Code of Laws of South Carolina, (1976), as amended

Exhibit 30.

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



WITNESSES

A Warren, SCHP

DOCKET NO: 2009GS04 01994

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

AUG 25 2009

Term

ARREST WARRANT NUMBER

D759039

THE STATE

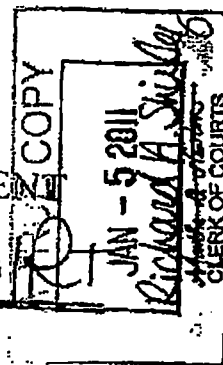
vs.

Jose Luis Luna Cabarruvias

Exhibit 31

COMMITMENT

9-3-10



ACTION OF GRAND JURY

TRUE BILL

AUG 25 2009

Person of Grand Jury

Date:

Foreperson

VERDICT

EJB

Indictment for

DUI / Felony DUI - Great Bodily Injury

SC Code: 56-05-2945(A)(1)

CDR Code: 0406

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

AUG 25 2009

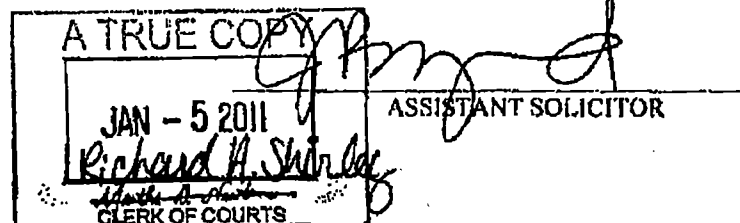
At a Court of General Sessions, convened on _____, the Grand Jurors of
Anderson County present upon their oath:

DUI / Felony DUI - Great Bodily Injury

That Jose Luis Luna Cabarruvias, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did in Anderson County, on or about May 16, 2009, drive a vehicle and while driving did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, to wit: driving left of center and/or failure to exercise due care and/or driving too fast for conditions, which act or neglect proximately caused great bodily injury to Susan Sigmon. All in violation of Section 56-5-2945(A)(1), Code of Laws of South Carolina, (1976), as amended.

Exhibit 32.

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



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Jose Cabarruvias, #342601,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE TENTH JUDICIAL CIRCUIT

Case No.: 2011-CP-04-0015

ORDER OF CONTINUANCE

This matter comes before the Court by way of an application for post-conviction relief. This matter was originally scheduled to be heard on February 8, 2016, at the Anderson County Courthouse. However, a continuance has been requested by the Attorney General's Office, and the Applicant's attorney has consented. Accordingly, this Court finds that this matter should be continued until the next appropriate term of court for post-conviction relief matters in the Tenth Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and re-scheduled for the next appropriate term of post-conviction relief hearings.

AND IT IS SO ORDERED

This 21 day of January, 2016.



R. SCOTT SPROUSE
Chief Administrative Judge
Tenth Judicial Circuit

1-21-16, South Carolina.

COMMON PLEAS AND
GENERAL SESSIONS

FILED 01/21/16 PM 4:25

FILED CLERK'S OFFICE
ANDERSON SC

STATE OF SOUTH CAROLINA .)
)
 COUNTY OF ANDERSON)
 -----)

IN THE COURT OF
 COMMON PLEAS
 2011-CP-04-00015

JOSE L. CABARRUVIAS,)
 PLAINTIFF)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
 DEFENDANT)
 -----)

TRANSCRIPT OF RECORD

JUNE 28, 2017
 ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOCELYN J. NEWMAN

A P P E A R A N C E S:

DANIEL L. DRAISEN, ESQUIRE
 ATTORNEY FOR APPLICANT

MEGAN HARRIGAN JAMESON, ESQUIRE
 ATTORNEY FOR DEFENDANT/STATE

VIVIAN CROSS,
 CIRCUIT COURT REPORTER

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
TIMOTHY LEE OWENS				
BY MR. DRAISEN	19		31	
BY MS. JAMESON		28		
JOSE TREJOS				
BY MR. DRAISEN	34			
BY MS. JAMESON		41		
DAVID TIMOTHY ESKEW				
BY MR. DRAISEN	43			
BY MS. JAMESON		47		
KAREN ELIZABETH LANGSTON				
BY MR. DRAISEN	48			
BY MS. JAMESON		56		
LENORA TAMASHA JOHNSON				
BY MR. DRAISEN	57			
BY MS. JAMESON		62		
JENNIFER JOHNSON				
BY MS. JAMESON	75			
BY MR. DRAISEN		85		
DAVID F. STODDARD				
BY MS. JAMESON	98			
BY MR. DRAISEN		100		

E X H I B I T S

COURT'S EXHIBIT NO. 1	SUBPOENA/DIVINA	70
COURT'S EXHIBIT NO. 2	SUBPOENA/WARREN	71

APPLICANT'S EXHIBIT NO. 1 MEDICAL RECORDS

STATE'S EXHIBIT NO. 1 M.A.I.T REPORT 79

* * * JUNE 28, 2017 * * *

MS. JAMESON: May it please the court?

THE COURT: Yes, ma'am.

MS. JAMESON: This is the matter of Jose Luna Cabarruvias vs. the State of South Carolina. The docket number is 2011-CP-04-0015. Mr. Cabarruvias was indicted during the August 2009 term of the Anderson County Grand Jury for two counts of felony DUI resulting in great bodily injury, and one count of felony DUI resulting in death. He was represented by Jennifer Johnson and David Stoddard.

On September 3, 2010, he appeared before the Honorable Lawton McIntosh and pled guilty to all three offenses as indicted. Judge McIntosh sentenced Mr. Cabarruvias to 15 years imprisonment for each count of felony DUI resulting in great bodily injury, and 20 years for felony DUI resulting in death, with all sentences to be served concurrently. He did not appeal his guilty pleas or sentences.

On January 5, 2011, he filed an application for post conviction relief alleging he was being held in custody based on the following allegations --

COURT REPORTER: I'm sorry, alleging...?

MS. JAMESON: Alleging the following -- being held

1 in custody based on the following allegations:
2 Ineffective assistance of counsel for failure to
3 investigate; failure to hire an accident reconstruction
4 expert and a medical expert; failure to challenge
5 inconsistencies in the State's --

6 COURT REPORTER: I'm sorry, could you slow down
7 just a bit.

8 MS. JAMESON: Certainly. Failure to challenge
9 inconsistencies in the witness' statements; failure to
10 allege discovery violations against the Solicitor's
11 Office; failure to explain defenses and physical facts
12 and withholding discovery; involuntary guilty plea for
13 failure to explain elements of the requirements of
14 these offenses; and that the guilty plea was coerced;
15 and prosecutorial misconduct for failure to disclose the
16 witness' statements, who said -- the names of the
17 witnesses who said he was the driver. The statement as
18 returned on March 1, 2011 for an evidentiary hearing,
19 Daniel Draisen was appointed to represent Mr.
20 Cabarruvias.

21 An initial hearing into the application was held
22 on June 8, 2011 before Judge Macaulay. Applicant was
23 present and testified, and testimony was also taken
24 from plea counsel, Jennifer Johnson and David Stoddard.
25 At the conclusion of the hearing, Judge Macaulay denied

1 and dismissed the application and requested the State
2 prepare a proposed order of dismissal.

3 Thereafter, by motion filed on July 7, 2011, Mr.
4 Cabarruvias, through his counsel, filed a motion to
5 re-open the record and allow testimony from five
6 additional witnesses.

7 The State filed a Return to this Motion on
8 August 10, 2011, asking the motion be denied and
9 dismissed. The State also submitted a proposed order
10 of dismissal to Judge Macaulay, and this order was
11 never signed.

12 On May 30, 2012, Mr. Cabarruvias filed a pro se
13 motion for approval of fees, and the State responded
14 that is Mr. Cabarruvias was previous represented by
15 counsel and did not consider this Motion a part of the
16 record pursuant to Rule 11.

17 Thereafter, on July 25th, Mr. Cabarruvias,
18 through counsel, filed a subsequent motion for
19 investigative costs. A motion hearing was held
20 November 27, 2012 before Judge Macaulay. After which,
21 Judge Macaulay issued a written order, filed December
22 10, 2012, granting Mr. Cabarruvias funds to -- to track
23 down the additional witnesses to support his PCR
24 allegations. We're here today for that subsequent
25 hearing.

1 It's the State's understanding this is not a de
2 novo hearing, and we've provided Your Honor with a copy
3 of the transcript from the initial hearing before Judge
4 Macaulay from 2011.

5 Thereafter, on January 29, 2013, Mr. Cabarruvias
6 filed a pro se motion to conform his pleadings to the
7 evidence. And on December 11, 2015, he filed a pro se
8 motion to amend his PCR application with numerous
9 exhibits. And the State is moving to strike both of
10 these pro se pleadings, as he already is represented by
11 counsel. And his counsel merely placed his cover
12 letter and a one page motion on top of them. They are
13 clearly pro se filings pursuant to Rule 11, and Jones
14 v. State, the State moves to strike these pleadings.

15 THE COURT: Yes, sir.

16 MR. DRAISEN: Please the court, Your Honor. I
17 believe in terms of the facts and the procedural
18 history in the case, that's accurate grounds as stated
19 are -- the grounds that have been asserted. And I can
20 tell from the prior transcript that Mr. Cabarruvias
21 alleges ineffective assistance of counsel; involuntary
22 guilty plea; prosecutorial misconduct as a result of
23 failing a challenge, Rule 5 and Brady violations;
24 failure on the part of Ms. Johnson and Mr. Stoddard to
25 adequately investigate the facts; and involuntary

1 guilty plea, as well as the other grounds which have
2 been asserted in the application and subsequent
3 application.

4 With regard to any of the motions that have been
5 filed, including the most recent, my position would be
6 that Mr. Cabarruvias provided me with a request to file
7 those motions. I reviewed his motions. And rather
8 than recite -- re-recite them again, the grounds in
9 which he stated, I did do a one page motion and
10 attached those to his motions, so I do believe that
11 that's a technical distinction from -- from the law,
12 which says that you can't have a pro se filing when
13 you're represented by counsel.

14 Those -- those pleadings actually were filed by
15 me, as requested by my client, and on the grounds as
16 stated in his particular motions. Those were adopted
17 for purposes of making sure that was included in the
18 record. We'd ask that those motions be allowed for the
19 purposes for which they were filed because they were
20 filed by me. They were actually filed by counsel.

21 MS. JAMESON: If the State could briefly respond?

22 THE COURT: Sure.

23 MS. JAMESON: I just want to quote a portion from
24 Jones vs. State, which is a case from the United
25 States -- or excuse me -- from our South Carolina

1 Supreme Court 348 SC 13. It's a 2002 case. And the
2 portion that is relevant here is there is no
3 constitutional right to hybrid representation of
4 counsel --

5 COURT REPORTER: I'm sorry --

6 MS. JAMESON: -- either at trial or on appeal.
7 While counsel may choose to submit arguments urged by
8 his client, counsel has an obligation to review those
9 arguments for possible relevance and merit before
10 submitting them. In other words, counsel cannot serve
11 as a mere conduit for pro se documents in an effort to
12 avoid the prohibition against hybrid representation at
13 the displeasure of his client. So the State would ask
14 that these be struck.

15 MR. DRAISEN: I would just say briefly that I
16 think making a motion for the application to conform to
17 the evidence is certainly within the realm of
18 reasonableness. If my client believes, and I believe
19 in looking at it that there's a possibility that he
20 left some allegations of his prior petition, or some
21 things that he's discovered as we have found other
22 witnesses, that made it so that he believed it was
23 necessary to include other grounds, and if there are --
24 if there is evidence that has been submitted to the
25 court subsequent to the initial application, you know,

1 this is a civil proceeding. It's not a criminal
2 proceeding. And in most courts, making the pleadings
3 conform to the evidence is a normal request. So I
4 don't believe that that's out of the ordinary in a
5 civil procedure.

6 THE COURT: The court will allow the amendments
7 filed by counsel on behalf of his client because they
8 were, in fact, filed by counsel on behalf of his
9 client. I know that there may be a fine line there.
10 And that to some extent, Jones does address that, but
11 I -- I don't see that in this case as sort of a
12 technicality to avoid hybrid representation.

13 One of the filings in particular is rather
14 lengthy. And while Mr. Cabarruvias might have been the
15 scrivener of those documents, I think it was probably
16 in some manner efficient for counsel not to retype --
17 or rewrite those things. He has asserted that he did
18 review before filing. And because his signature is
19 placed upon the cover sheets, and in one case there is
20 a type written motion that bears counsel's signature,
21 he would equally be subject to Rule 11 sanctions for
22 filing those things. And so he can't be subject to the
23 detriment without giving the benefit. And I think in
24 this case -- and particularly because these things were
25 filed so long ago, I don't see any real prejudice to

1 the State in allowing the filings.

2 MS. JAMESON: Thank you, Your Honor. The only
3 other preliminary matter is I understand an interpreter
4 is going to be used in this hearing today. And it's
5 the State's understanding that he is not on the court's
6 approved interpreter list, and so we would request that
7 Your Honor have a colloquy regarding his requirements
8 and that is certified pursuant 15-27-155.

9 THE COURT: Okay. Who is that interpreter, sir?

10 MR. DRAISEN: Your Honor, that's Gilberto
11 Gonzalez.

12 THE COURT: Mr. Gonzalez, come forward please.

13 MR. DRAISEN: Judge, for the record, I will put on
14 there that Mr. Gonzalez was previously certified, just
15 for your information. He's served as the interpreter
16 during Mr. Cabarruvias' original plea. He was also the
17 interpreter during the last -- the original PCR hearing
18 in this case before Judge Macaulay. So, he's elected
19 not to be on the court's list for his own reasons since
20 then, but he has been previously qualified.

21 THE COURT: Okay. Mr. Gonzalez, would you raise
22 your right hand?

23 GILBERTO GONZALEZ, having
24 been first duly sworn, testified as follows:

25 THE COURT: All right. Mr. Gonzalez, how old are

1 you?

2 MR. GONZALEZ: Fifty three years old.

3 THE COURT: Are you related to Mr. Cabarruvias?

4 MR. GONZALEZ: No, ma'am.

5 THE COURT: Okay. You have no blood relation to
6 him?

7 MR. GONZALEZ: No, ma'am.

8 THE COURT: Do you know him at all?

9 MR. GONZALEZ: The only times I've ever had any
10 contact with him has been through the court system when
11 he's been through the system.

12 THE COURT: Okay. And how have you become -- why
13 do you believe that you are qualified to translate from
14 English to Spanish and Spanish to English? Tell me
15 your background.

16 MR. GONZALEZ: I went through the University of
17 South Carolina Upstate School in Spartanburg to qualify
18 me as a court qualified interpreter. I also completed
19 some courses at the Greenville Technical College to be
20 qualified as a medical interpreter, and I have been
21 doing interpretations for the last 27 years in the
22 court system.

23 THE COURT: Okay. And you were, in fact, involved
24 in this case at the post conviction relief hearing in
25 June of 2011; is that correct?

1 MR. GONZALEZ: As well as his guilty admission
2 trial or hearing.

3 THE COURT: Okay. Well, I was going to ask you
4 about the two separate things, there was a guilty plea
5 that happened in September of 2010?

6 MR. GONZALEZ: I cannot recall that, Your Honor.
7 I do recall being at -- at the one of the hearings
8 where pleaded guilty.

9 THE COURT: Okay. And then there was another post
10 conviction relief hearing, similar to what we're going
11 to do today, where witnesses testified; were you
12 involved in that?

13 MR. GONZALEZ: I was involved in that, yes, Your
14 Honor.

15 THE COURT: Okay. All right. I will find
16 pursuant to South Carolina code section 15-27-155 that
17 Mr. Gonzalez is a qualified interpreter and will be
18 allowed to translate from Spanish to English and from
19 English to Spanish for any witnesses necessary in this
20 case based on his education, experience, et cetera. In
21 addition, I think it will be prudent to do so because
22 Mr. Gonzalez was the translator or served as the
23 translator in both the guilty plea in 2010 and the
24 first PCR hearing in June of 2011 in this case. So for
25 purposes of continuity, efficiency, et cetera, I will

1 allow it. I'll also note for the record that the
2 Anderson County Clerk of Court communicated with me and
3 made attempts yesterday -- and I believe maybe even
4 this morning -- to contact a number of interpreters on
5 the court approved list, and was unable to find anyone
6 who was available to be here this morning.

7 I mention that, Mr. Gonzalez, because I have
8 gotten communications from South Carolina Court
9 Administration that suggest that perhaps you've been
10 invited to participate in the program to get you on the
11 court approved list, but you have declined to do so,
12 and I'm not in charge of that.

13 But I'll tell you, they are not happy with you
14 coming into court because you have not participated in
15 that program, and that they strongly believe that you
16 should and urged -- to some extent -- to disallow your
17 participation here today, but I'm not going to do that.
18 I will allow you to participate here today. I'm just
19 making you aware because you may have some problems
20 down the road as least as far as folks contacting Court
21 Administration about that. And no need to respond to
22 that. That's neither here nor there. I'm going to
23 allow it in this case.

24 MR. GONZALEZ: Thank you.

25 THE COURT: I just wanted to let you know that.

1 MR. GONZALEZ: Thank you, ma'am.

2 THE COURT: All right. Thank you. You can have a
3 seat.

4 MS. JAMESON: Thank you, Your Honor.

5 MR. DRAISEN: Judge, in the last -- excuse me --
6 in the last hearing -- and I don't know if it's
7 required or that, but there was some sort of an oath
8 administered to Mr. Gonzalez about him translating --
9 truly translating from English to Spanish, and I think
10 you probably ought to swear him in -- I think you need
11 to swear him in that regard. I'm not sure of the
12 particular language.

13 THE COURT: Absolutely. There is an oath for Mr.
14 Gonzalez. But my next question to you was going to be,
15 who does he need to translate for? Evidently not for
16 your client as he is not sitting here now --

17 MR. DRAISEN: Well, if there is any issue where he
18 doesn't understand, I may ask him to step over and
19 translate if necessary. But he's not testifying today
20 as he did last time.

21 THE COURT: Okay.

22 MR. DRAISEN: We do have a gentleman, his name is
23 Jose Trejos. Mr. Trejos is there, who he has
24 translated to tell me what he was going to say if he
25 came to court, so he's going to have to translate for

1 him.

2 THE COURT: Okay.

3 MR. DRAISEN: And I believe that will probably be
4 the only other witness I know that is going to need
5 translation services unless -- for example, if Mr.
6 Cabarruvias says he doesn't understand something that
7 happens in the proceeding, then he's instructed to
8 translate to him. So I just want to say Mr.
9 Cabarruvias, do you understand if you need something
10 translated, you need to signal that you need it?

11 MR. CABARRUVIAS: I will.

12 THE COURT: Okay. And if you think that there is
13 a high likelihood that that will arise, then we
14 probably need to go ahead and place Mr. Gonzalez under
15 oath, and have him sitting near your client to
16 facilitate that translation.

17 MR. DRAISEN: I think that was kind of my around
18 about way of saying that is probably how we should do
19 it. And at least that way, he is already sworn and we
20 don't have that issue pop up at any point.

21 THE COURT: Absolutely. The only reason I didn't
22 do it is because he didn't appear to be translating
23 anything.

24 Come forward, sir. The clerk will swear you in.

25 (INTERPRETER, GILBERTO GONZALEZ, SWORN IN.)

1 THE COURT: If you just pull up one of those
2 chairs and sit next to him in case you need to
3 translate for him. But, sir, he does understand
4 English for the most part; is that correct?

5 MR. DRAISEN: Your Honor, in all years that I've
6 been dealing with him, and I don't know how much
7 assistance he gets through the court -- through the
8 prison system with what he writes -- of course, we
9 primarily communicated in writing. The times that we
10 have spoken about matters, I believe that he has been
11 able to understand.

12 Now, I have had the benefit each time actually
13 Mr. Gonzalez has been available to make certain because
14 I don't want to have any issues with there being a lack
15 of understanding. And I may think he understands. He
16 may look like he understands, and I don't know whether
17 he does or he doesn't. So what I have always done is
18 made sure that I have Mr. Gonzalez available. I feel
19 like I have been able to communicate with him well.
20 He's been able to communicate with me well, as I
21 understand what he is asking of me.

22 But there have been times when Mr. Gonzalez has
23 translated certain things that we were talking about
24 just to make absolutely certain that there is no --
25 nothing missed in the translation, and that's how I

1 have conducted this case to make sure that Mr.
2 Cabarruvias is getting what I believe is effective
3 counsel in the matter.

4 THE COURT: Mr. Cabarruvias, you speak English; is
5 that correct?

6 MR. CABARRUVIAS: Yes, in such a place like
7 spelling and stuff like that, especially in law terms,
8 it is difficult for me to understood the --

9 COURT REPORTER: Your Honor, I'm not following.

10 THE COURT: Hold on.

11 COURT REPORTER: I'm not following him.

12 THE COURT: All right. Say it again, I'm sorry.

13 MR. DRAISEN: Speak slow. Speak slow.

14 MR. CABARRUVIAS: Okay. In such things as
15 especially spelling and -- or in the terms of law, I
16 might not be able to understood them. That's -- mostly
17 the rest of them, I -- I believe I understood. In
18 some -- in some part, if I may not understood, I will
19 ask him to translate it for me.

20 THE COURT: Okay. I just wanted to make sure. So
21 you understand most --

22 MR. CABARRUVIAS: Most of it.

23 THE COURT: English --

24 MR. CABARRUVIAS: Close -- if they say something
25 that -- the paperwork that I have been doing and the

1 motions and stuff like that, I got someone to help me
2 to do it. I just go around and, you know --

3 THE COURT: Get help?

4 MR. CABARRUVIAS: Yes.

5 THE COURT: Okay. So it's legal terms and things
6 like spelling you --

7 MR. CABARRUVIAS: Spelling -- spelling a little
8 bit. But working out and write all my motions, and
9 kind of my in mind and stuff like that, sometimes I
10 have keep on track and see what -- how to spell this
11 and spell that.

12 THE COURT: Okay. I just wanted to make sure
13 that, you know, sometimes I have a translator come in
14 and they're sitting there not translating anything, and
15 I wonder why. But I guess in your case, it would be
16 because you understand unless you ask him?

17 MR. CABARRUVIAS: Yeah. And like I say, it is
18 just be -- some terms that I can't really -- can't get,
19 I just got to go up there and ask it.

20 THE COURT: Okay. So just so you know, he is
21 there in case you need to ask him.

22 MR. CABARRUVIAS: I appreciate it. Thank you.

23 THE COURT: All right. Any other preliminary
24 matters?

25 MS. JAMESON: No, Your Honor.

TIMOTHY OWENS -- DIRECT

1 THE COURT: All right. We're ready to proceed?

2 MR. DRAISEN: Yes, ma'am.

3 THE COURT: All right. Call your first witness.

4 MR. DRAISEN: Thank you. We would call Timothy
5 Owens.

6 TIMOTHY LEE OWENS, having
7 been first duly sworn, testified as follows:

8 THE CLERK: Please state your full name for the
9 court's record.

10 THE WITNESS: Timothy Lee Owens.

11 DIRECT EXAMINATION BY MR. DRAISEN:

12 Q. Mr. Owens, I'm only going to have a few
13 questions for you, I hope, today. Where are you
14 currently residing?

15 A. Perry Correctional Institute.

16 Q. Okay. And how long have you been there?

17 A. I've been there about two months.

18 Q. Okay. And prior to that, were you somewhere
19 else?

20 A. Yes, sir.

21 Q. In the system?

22 A. Yes, sir.

23 Q. The Department of Corrections?

24 A. Yes, sir.

25 Q. Have you been in the Department of Corrections

TIMOTHY OWENS -- DIRECT

1 since 2011 or before?

2 A. I was released in '09, and I came back in
3 2012.

4 Q. Okay. All right. Back in that period of time
5 in '09, do you recall being at the Anderson County
6 Detention Center with Mr. Cabarruvias?

7 A. Yes, sir, I do.

8 Q. Okay. And can you tell me what you recall
9 about Mr. Cabarruvias, anything that you might have
10 seen or observed about him when you were at the
11 detention center?

12 A. Yes, sir. I was housed in the medical unit at
13 Anderson County Detention Center because I had received
14 a broken leg at the detention center. One evening,
15 they brought that gentleman in and he was very
16 intoxicated and very beat up. I tried to talk to him.
17 He was on the bunk right beside mine, but there wasn't
18 very much talking to him that day.

19 The next day, I got to talking to him. He was
20 in very bad pain and I was too. I asked him what had
21 happened, and he said he had been in a car wreck. And
22 that they -- he had been charged for the wreck.

23 And at that time, I said, well, me looking at
24 you, you don't look like you was the driver of the
25 wreck. And he couldn't understand what I was talking

TIMOTHY OWENS -- DIRECT

1 about. And so another Hispanic --

2 Q. Let me -- before you go there, let me ask you
3 what -- what -- what do you mean by he didn't look like
4 he would be the driver of the vehicle; what did you
5 see?

6 A. Well, first of all, let me give a little
7 history on myself here, I'm an auto mechanic and raised
8 in the automotive business, so I know quite a bit about
9 cars and wrecks. And how I was brought up, and me
10 pulling wrecks and stuff like that with my step-boy and
11 my father, Mr. -- I still don't get his name.

12 Q. Cabarruvias.

13 A. He had a black mark the next day from this
14 shoulder, across his chest, and he had a large
15 grapefruit size knot on his head, on this side.

16 MR. DRAISEN: Just for the record, it will reflect
17 that Mr. Owens back --

18 A. -- is right here.

19 BY MR. DRAISEN:

20 Q. Right.

21 A. The -- the big lump on the right side of his
22 head, right above his ear --

23 Q. I just want to stop you for a second. I just
24 want to note for -- the record to indicate that what
25 you did was, you took your right hand and placed it on

TIMOTHY OWENS -- DIRECT

1 your right shoulder, and you went in the left downward
2 direction across your chest?

3 A. Yes, sir.

4 Q. Is that right?

5 A. Yes, sir.

6 Q. In talking about his marks?

7 A. From his right shoulder down -- down.

8 Q. Okay.

9 A. And I told him that I said, sir, I said, I
10 don't think you was driving the car. He said, what do
11 you mean. He say, they say I was driving the car. I
12 said, well, from the looks of you, you wasn't driving
13 the car. He said, what do you mean? I said, well, I
14 told him about the history. And I said, if you was in
15 the driver's seat --

16 MS. JAMESON: Your Honor, the State would object.
17 I don't -- he is giving expert opinion testimony and he
18 hasn't been qualified as an expert. We haven't had a
19 chance to voir dire him on it. And this is -- my
20 understanding this is different from the testimony we
21 were expecting regarding the injuries.

22 MR. DRAISEN: No. I think I only asked him what
23 he observed and what he saw, but --

24 THE COURT: Well, he's getting into --

25 MR. DRAISEN: I understand.

TIMOTHY OWENS -- DIRECT

1 THE COURT: -- explanations based on his
2 background.

3 A. I was --

4 THE COURT: Sustained.

5 BY MR. DRAISEN:

6 Q. I -- I wasn't planning on qualifying you as
7 any kind of expert, so I understand it. And let me
8 just explain to you that you need to answer the
9 questions that you're asked. I appreciate it. What
10 I'm really after is what you observed and what you saw.
11 And I think you explained the injury that you saw, and
12 the details about the injury that you had. So in terms
13 of the objection, basically, is that you can't serve as
14 an expert unless you're qualified. Okay?

15 A. Okay.

16 Q. So you described the knot on the right hand
17 side of his head -- grapefruit size you said -- and the
18 mark across his chest, is there anything else that you
19 observed about his injury?

20 A. No. That was -- that was the main thing the
21 knot on his head.

22 Q. And I assume that you -- have you ever seen
23 the cars that were involved in the accident?

24 A. No, sir.

25 Q. Were you -- were you there at the wreck scene?

TIMOTHY OWENS -- DIRECT

1 A. No.

2 Q. You don't -- do you know anything that
3 happened in the accident?

4 A. No, sir.

5 Q. So what your observations are is the physical
6 observations of Mr. Cabarruvias at the time he was
7 brought into the detention center?

8 A. Yes, sir.

9 Q. Is that right?

10 A. Yes, sir.

11 Q. And how long were you in the detention center
12 with him; do you recall?

13 A. Probably a little over a month.

14 Q. Okay. And did you see those injuries heal or
15 progress?

16 A. Yes, sir, I did.

17 Q. What did you witness with the injuries?

18 A. The color started going away, and it started
19 coming back to its original color. It was blue the
20 next day. The night he came in, it was more of a
21 reddish. He didn't have a shirt on. It was more
22 reddish. The next day, it was solid blue across his
23 chest. And the night he came in, I really didn't
24 notice how big the knot was, but he had a little bit
25 more hair back then if I'm not mistaken. The next day,

TIMOTHY OWENS -- DIRECT

1 it was humongous. I mean, he has a grapefruit on the
2 side of his head and --

3 Q. And how -- how long would you say it took for
4 those visible signs to diminish to the point where it
5 was not obvious?

6 A. Ten days, a couple -- a couple of weeks.

7 Q. Ten days to a couple of weeks. So within the
8 month that you were there, the -- the -- the outward
9 signs of the injury would have sort of resolved
10 themselves; is that accurate?

11 A. Yes, sir.

12 Q. So back -- so from a year or two later --
13 well, you wouldn't know. You didn't see him a year or
14 two later; is that right?

15 A. Today is the first time I have saw him since
16 then.

17 Q. You haven't communicated with him since that
18 time?

19 A. No.

20 Q. Did you know him before you were incarcerated;
21 do you know his family?

22 A. No, sir.

23 Q. Are you related by blood to him?

24 A. No, sir.

25 Q. Had any conversation with him?

TIMOTHY OWENS -- DIRECT

1 A. If he had walked up to me, I would have knew
2 who he was.

3 Q. Okay. All right. Okay.

4 MR. DRAISEN: Okay. That's all the questions I
5 have for you, Mr. Owens --

6 MR. CABARRUVIAS: Before --

7 MR. DRAISEN: Hold on.

8 THE COURT: Hold on. Hold on.

9 MR. DRAISEN: You have to tell me.

10 THE COURT: You have to tell your lawyer.

11 (Pause.)

12 MR. DRAISEN: Just one more question if may, Your
13 Honor?

14 THE COURT: Yes, sir.

15 BY MR. DRAISEN:

16 Q. Mr. Owens, at some point did -- do you know
17 whether or not anyone was asked to photograph Mr.
18 Cabarruvias' injury?

19 A. Yes, sir.

20 Q. What can you tell me about that?

21 A. I told him the next day, the second day he was
22 in there, that he needed to get photographs of all
23 that. I told him to go to medical and get the
24 photographs. He told me that he thought they had took
25 photographs at the hospital the night of the accident.

TIMOTHY OWENS -- DIRECT

1 And I told him that he needed to be sure that there
2 were photographs of his injury.

3 Q. Do you personally know whether or not
4 photographs were ever taken, or whether or not he was
5 denied photographs being taken; do you personally know?

6 A. I personally know --

7 Q. Do you personally know?

8 A. I know that he was denied going to medical and
9 getting those photographs at the initial time he asked
10 for them. Whether they took him at the later date, I
11 don't think they did, but I don't know for sure. But I
12 know from the first two or three days to a week, he
13 didn't leave that cell and neither did I.

14 MR. DRAISEN: Okay. Anything else?

15 (Pause.)

16 BY MR. DRAISEN:

17 Q. Mr. Owens, were you present with Mr.
18 Cabarruvias when he spoke with Karen Langston, the
19 nurse at the detention center?

20 A. I believe I was. I don't remember. I know he
21 talked to a lot of people about getting some pictures
22 and he was complaining about being in pain.

23 Q. Did you witness -- yourself, did you witness
24 Mr. Cabarruvias pulling his -- his jumpsuit back and
25 showing the nurse the marks on his shoulder and the

TIMOTHY OWENS -- CROSS

1 chest?

2 A. Yes, I do remember that. I do remember that.

3 Q. Okay. So, you actually saw and were aware
4 that the detention officers or the nurse was made aware
5 of those injuries?

6 A. Yes, sir. I, myself, even told him that he
7 needed follow-up medical treatment.

8 MR. DRAISEN: All right, sir. That's all I have,
9 Your Honor. Thank you.

10 **CROSS EXAMINATION BY MS. JAMESON:**

11 Q. Mr. Owens, what offenses are you currently
12 being housed at Perry for right now? What are you
13 incarcerated on, what charges?

14 A. That conviction has nothing to do with this
15 case.

16 THE COURT: I need you to answer the question,
17 sir.

18 A. Burglary.

19 BY MS. JAMESON:

20 Q. Just burglary?

21 A. Burglary, grand larceny. I mean, I have got
22 multiple charges against me.

23 Q. What -- what charges are you currently in
24 Perry for?

25 A. Burglary, grand larceny, sanitation, violation

TIMOTHY OWENS -- CROSS

1 where people dumped trash in my yard after I was in
2 jail.

3 Q. How many burglary convictions are you
4 currently in for?

5 A. I'm convicted of one.

6 Q. You're not convicted of three burglary
7 offenses?

8 A. Not at this time, no.

9 Q. How many grand larceny offenses are you in
10 jail for right now?

11 A. No, ma'am. You are right, I have two
12 burglaries right now and two grand larcenies.

13 Q. Do you have any convictions for breaking into
14 motor vehicles; and if, so how many?

15 A. Yes, ma'am. Five.

16 Q. Five. And those offenses are all in
17 Greenville County; correct?

18 A. Yes, they are.

19 Q. Are you currently being detained within the
20 Department of Corrections for any Anderson County
21 charges?

22 A. No.

23 Q. What charges were you in the Anderson County
24 Detention Center for back in 2009?

25 A. Burglary.

TIMOTHY OWENS -- CROSS

1 Q. Okay. What happened to those Anderson County
2 burglary charges?

3 A. Five years.

4 Q. You've already completed that time?

5 A. Yes, ma'am.

6 Q. Do you recall the date when you first saw Mr.
7 Cabarruvias come into the detention center?

8 A. Yes, sir.

9 Q. Do you recall the time of year?

10 A. Yeah, it was around Spring.

11 Q. No month?

12 A. I'm guessing it was April or May.

13 Q. So you can recall detailed conversations
14 between you and Mr. Cabarruvias and the nurse, Ms.
15 Langston, but you can't recall what month he was housed
16 with you in Anderson County?

17 A. It was April or May, I'm sure.

18 Q. Do you have a medical background at all?

19 A. Ma'am?

20 Q. Do you have a medical background? Do you have
21 any medical training?

22 A. No.

23 Q. Have you worked in the medical profession
24 before?

25 A. No.

TIMOTHY OWENS -- CROSS

1 Q. Are you on the medical team at Anderson County
2 Detention Center or were you at the time?

3 A. No.

4 Q. And you don't know why Mr. Cabarruvias'
5 request for documentation of his injuries was denied,
6 do you?

7 A. Ma'am?

8 Q. You don't know why his -- his -- you testified
9 previously that the medical team denied taking pictures
10 -- or denied his requests to take pictures; correct?

11 A. Yes.

12 Q. Do you know why that request was denied?

13 A. I thought it was because he was an inmate at
14 the Anderson County Jail.

15 Q. But, again, you weren't privy for all of his
16 conversations with the medical team; were you?

17 A. No, ma'am.

18 Q. Okay.

19 A. I mean, I am locked in a holding room with him
20 though. If he spoke, I heard him.

21 Q. How long were you and the Applicant in this
22 cell housed together at Anderson County?

23 A. Probably about a month, maybe a little longer.
24 I would like to state on the record at this time, I was
25 in the medical unit also. So, you know, it's close

1 quarters in there. The rooms are probably less than a
2 fourth of the size of this room. And it's probably 12
3 people or more in there.

4 Q. And you weren't present at the scene of this
5 wreck, were you?

6 A. No, ma'am.

7 Q. And, again, you don't have any medical
8 background or training?

9 A. No, ma'am.

10 MS. JAMESON: No further questions, Your Honor.

11 THE COURT: Anything else?

12 MR. DRAISEN: Just real briefly.

13 **REDIRECT EXAMINATION BY MR. DRAISEN:**

14 Q. Mr. Owens, were you ever interviewed by anyone
15 on behalf of Mr. Cabarruvias before coming to court
16 today to testify?

17 A. No, sir.

18 Q. Did any lawyers on behalf of Mr. Cabarruvias
19 ever come and see you --

20 MS. JAMESON: Your Honor, this is beyond the scope
21 of my cross examination.

22 THE COURT: I'll allow it.

23 MR. DRAISEN: I just want to establish it for the
24 record.

25

1 BY MR. DRAISEN:

2 Q. So did you have -- did you have any
3 communications with any lawyers that represented Mr.
4 Cabarruvias prior to today?

5 A. Yes, I did.

6 Q. Who?

7 A. I don't know how long along ago it was,
8 probably a few years back, someone -- an attorney had
9 wrote me and asked me to give a written affidavit about
10 this case. And I wrote him back and told him basically
11 whatever I told him, and drew up a sketch of the
12 injuries and what happened, and told him that basically
13 the same thing I'm saying today.

14 Q. And do you know how long ago that would have
15 been? I think that's -- I think that was me when I
16 looked for it.

17 MS. JAMESON: Your Honor, counsel is testifying.
18 And this is, again, beyond -- well beyond the scope of
19 cross.

20 MR. DRAISEN: The question was --

21 THE WITNESS: It was on this bid, and I have been
22 on this bid five years, so it was somewhere over the
23 past five years.

24 MR. DRAISEN: Well. Okay. Well, that helps. All
25 right. Thank you, sir. That's all I have.

JOSE TREJOS -- DIRECT

1 THE COURT: Thank you. You may step down. Are we
2 -- anything further from this witness?

3 MR. DRAISEN: No, Your Honor. He can be excused.
4 Thank you. Thank you, sir.

5 THE COURT: Thank you. Call your next witness.

6 MR. DRAISEN: Thank you. We call Jose Trejos. We
7 need the interpreter, Your Honor.

8 THE COURT: Mr. Trejos, if you would please step
9 forward here to be sworn in.

10 JOSE TREJOS, having been first
11 duly sworn, testified as follows:

12 THE CLERK: Thank you. Please have a seat.
13 Please state your full name for the court's record.

14 THE WITNESS: Jose Trejos.

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION BY MR. DRAISEN:

17 Q. Mr. Trejos, where do you live?

18 A. (BY INTERPRETER) Pelzer.

19 Q. Okay. And how long have you been in Pelzer?

20 A. (BY INTERPRETER) About four years.

21 Q. Where did you live before that?

22 A. (BY INTERPRETER) I also lived in Pelzer at a
23 different address from the one I live in now.

24 Q. How many years have you been in Pelzer?

25 A. (BY INTERPRETER) In total, about 18 years.

JOSE TREJOS -- DIRECT

1 Q. Okay. Do you recall the date of May 16, 2009?

2 A. (BY INTERPRETER) I have a vague memory of it,
3 but I do remember the place where he was.

4 Q. Okay. And he can you tell me where -- what --
5 tell me where you and what you remember specifically,
6 and please go slow.

7 A. (BY INTERPRETER) The place is a place where
8 we -- a lot of us used to gather and drink beer.

9 Q. Is that someone's home?

10 A. (BY INTERPRETER) Yes, it was a house.

11 Q. Did you know whose home it was?

12 A. (BY INTERPRETER) Yes. I remember his name,
13 but I don't remember his last name. His name is
14 Marino.

15 Q. And where -- where is the home located?

16 A. (BY INTERPRETER) I know the town is
17 Williamston, but I cannot recall the exact physical
18 address.

19 Q. Okay. All right. Please tell me what you
20 recall about that day.

21 A. (BY INTERPRETER) That day, yeah, right,
22 that's when I saw him, but I also notice that he was
23 extremely intoxicated.

24 Q. Okay.

25 A. (BY INTERPRETER) I noticed he received a

JOSE TREJOS -- DIRECT

1 phone call, and there was a friend of his from Anderson
2 that wanted him to come over.

3 Q. Okay.

4 A. (BY INTERPRETER) And there was one of my
5 cousins with -- Amonsi(ph), and we asked him to take
6 the vehicle keys away from him because we saw that he
7 was extremely intoxicated and we did not want him to
8 drive.

9 Q. And what happened?

10 A. (BY INTERPRETER) And -- and someone took the
11 keys away from him, he got upset. And normally we all
12 were drinking, and we noticed he was very upset, and
13 someone showed up. When that person, I know him as
14 Chno showed up --

15 COURT REPORTER: As who?

16 A. (BY INTERPRETER) Chno.

17 COURT REPORTER: Spell please.

18 A. (BY INTERPRETER) C-H-N-O. And he asked us
19 why is my friend upset. That's when my cousin told him
20 he is upset because I took his vehicles keys away from
21 him, and he said some friends from Anderson have called
22 him and he wants to ride with them. That's when the
23 gentleman says, give me the keys to the vehicle, and
24 I'll take you down there.

25 Q. Which -- which gentleman was this?

JOSE TREJOS -- DIRECT

1 A. (BY INTERPRETER) I would say he was a friend
2 of his because he was -- I hardly knew of him, so he
3 just showed up at the place.

4 Q. Okay. What happened next?

5 A. (BY INTERPRETER) That's when my cousin gave
6 Chno the keys to the vehicle, and I noticed him getting
7 in the passenger side and reclining on to the side like
8 he was going to sleep.

9 Q. "Him" meaning Mr. Cabarruvias?

10 A. (BY INTERPRETER) Yep -- I didn't understand
11 the question.

12 Q. My question was -- my question was, was the
13 person you're referring to getting in the passenger
14 side, was that Mr. Cabarruvias?

15 A. (BY INTERPRETER) Yes, him.

16 Q. And did you personally witness that?

17 A. (BY INTERPRETER) Did I see that?

18 Q. Yeah.

19 A. (BY INTERPRETER) Yes. That's all I witnessed.
20 But I saw him, when he got in the vehicle, and I know
21 for a fact that he was not driving, Chno was driving.

22 Q. Okay. When did he learn that there had been
23 an accident?

24 MS. JAMESON: Your Honor, if we could clarify who
25 "he" is for the record.

JOSE TREJOS -- DIRECT

1 MR. DRAISEN: He, the witness.

2 THE COURT: Right.

3 MS. JAMESON: Okay. I was a little unclear of
4 that.

5 A. (BY INTERPRETER) About two hours later, we was
6 told that an accident had occurred.

7 Q. Does he recall who told him?

8 A. (BY INTERPRETER) About four different people
9 came and told us.

10 Q. Does he -- does he know where the Chno -- or
11 whatever the name of the driver was he said -- does he
12 know where he is now?

13 A. (BY INTERPRETER) Right now, I don't think I
14 can say exactly where he is. Because a week after the
15 accident happened, one day we saw him, the next day he
16 was gone.

17 Q. Okay.

18 THE COURT: Let me interrupt and ask a question.
19 I'm confused. Who was driving, was it Chno or Luciano?

20 A. (BY INTERPRETER) Chno.

21 THE COURT: Who was Luciano?

22 A. (BY INTERPRETER) I ask him, that's the same
23 person. I knew him as Chno.

24 THE COURT: But his real name is Luciano?

25 A. (BY INTERPRETER) Honestly, I don't know. All

JOSE TREJOS -- DIRECT

1 I knew him was as Chno.

2 THE COURT: Okay. So, when you say Chno and
3 Luciano, that is the same person?

4 A. (BY INTERPRETER) Yes.

5 THE COURT: Thank you.

6 MR. DRAISEN: Judge, I had that note written down.
7 I could have written that down myself. The last
8 letters of Luciano are C-i-a-n-o-, so I figured it was
9 the same man as well.

10 BY MR. DRAISEN:

11 Q. Mr. Trejos, how long have you known Mr.
12 Cabarruvias?

13 A. (BY INTERPRETER) As of the accident date,
14 eight years before that.

15 Q. So you have known him eight years prior to the
16 accident?

17 A. (BY INTERPRETER) Yes.

18 Q. And how -- how did you know him?

19 A. (BY INTERPRETER) My cousin and him very good
20 friends, and he went out to my cousin's house often,
21 and that's how we would gather over there.

22 Q. Okay. Is he married -- is he related by blood
23 or marriage to him at all?

24 A. (BY INTERPRETER) No, no. We only are friends.

25 Q. Prior to Mr. Cabarruvias' family recently

JOSE TREJOS -- DIRECT

1 making contact with him about this, has he ever been
2 contacted by an attorney or anyone on behalf of Mr.
3 Cabarruvias?

4 A. (BY INTERPRETER) No.

5 Q. Prior to meeting in my office, had he told
6 anyone else what he witnessed?

7 A. (BY INTERPRETER) No.

8 Q. Has anyone ever approached him or asked him if
9 he knew what happened?

10 A. (BY INTERPRETER) No.

11 Q. Did he ever -- why did he not come forward and
12 tell someone what he knew?

13 A. (BY INTERPRETER) The reason why I never said
14 nothing to no one because most of the time, I would
15 stay working far away in others places, and had not had
16 the opportunity to see his family.

17 Q. Mr. Cabarruvias' family?

18 A. (BY INTERPRETER) Yes.

19 Q. So what he is saying is he hasn't had contact
20 with Mr. Cabarruvias' family since -- since he saw him
21 at the party?

22 A. No. Only about four months ago, I had to go
23 and I had to buy a cellular phone at the cell phone
24 store. It just happens that he is down there and
25 happened to be working there. And that's when I saw

JOSE TREJOS -- CROSS

1 her for the first time, and I asked her about him.
2 That's when she told me what problems he was going
3 through.

4 MR. DRAISEN: Your Honor, that's all the questions
5 I have for him.

6 THE COURT: Cross examination.

7 CROSS EXAMINATION BY MS. JAMESON:

8 Q. Mr. Trejos, what time did you arrive at the
9 party in Williamston?

10 A. (BY INTERPRETER) I arrived there about 12:30.

11 Q. And when you arrived, Mr. Cabarruvias was
12 already extremely intoxicated?

13 A. (BY INTERPRETER) Yes, sir(ph).

14 Q. How long did you observe Mr. Cabarruvias at
15 the party?

16 A. (BY INTERPRETER) From the time I arrived
17 around 12:30 until the moment that he left.

18 Q. What time did they leave? How long was that
19 span?

20 A. (BY INTERPRETER) About two hours later.

21 Q. So they left -- Mr. Cabarruvias left the party
22 two hours after 12:30?

23 A. (BY INTERPRETER) Yes.

24 Q. Around 2:30 p.m.?

25 A. (BY INTERPRETER) I think so, somewhere around

JOSE TREJOS -- CROSS

1 there.

2 Q. And you testified Mr. Cabarruvias got very
3 upset when his keys were taken?

4 A. (BY INTERPRETER) Yes.

5 Q. Can you describe his behavior?

6 A. (BY INTERPRETER) He -- kind of was grabbing on
7 to my cousin and forcing him and asking him to give him
8 back the keys, because that was his vehicle. He had no
9 right taking the keys away from him.

10 Q. And he wanted to drive away from the party,
11 correct?

12 A. (BY INTERPRETER) Yes.

13 Q. And you -- after then, you said Chano -- Chno
14 showed up at the party; correct?

15 A. (BY INTERPRETER) Exactly.

16 Q. And he agreed to drive Mr. Cabarruvias to his
17 friends's house in Anderson?

18 A. (BY INTERPRETER) Yes.

19 Q. And you personally witnessed Mr. Cabarruvias
20 get into the passenger side of the van?

21 A. (BY INTERPRETER) Yes.

22 Q. Did you see the van leave the party?

23 A. (BY INTERPRETER) Yes, exactly.

24 Q. Do you know which direction it left in?

25 A. (BY INTERPRETER) When they left the house,

JOSE TREJOS -- CROSS

1 they had to make a left turn out of the driveway,
2 headed towards 29.

3 Q. Mr. Trejos, how far is Williamston from
4 Anderson?

5 A. (BY INTERPRETER) I estimate it to be about 25
6 minutes.

7 MS. JAMESON: A moment's indulgence, Your Honor.
8 No further questions, Your Honor.

9 THE COURT: Any redirect?

10 MR. DRAISEN: No, no, your Honor.

11 THE COURT: Okay. Thank you, sir.

12 MR. DRAISEN: May he be excused?

13 THE COURT: Any objection to him being excused?

14 MS. JAMESON: No, Your Honor.

15 THE COURT: Okay. You're free to go -- tell him
16 he is free to go. Thank you. Call your next witness.

17 MR. DRAISEN: Your Honor, at this time we call
18 David Eskew.

19 THE CLERK: Mr. Eskew, if you would step forward
20 and be sworn in.

21 DAVID TIMOTHY ESKEW, having
22 been first duly sworn, testified as follows:

23 THE CLERK: Thank you. Please have a seat on the
24 witness stand. After you're seated, please give us
25 your full name for the court's record.

DAVID ESKEW -- DIRECT

1 THE WITNESS: My name is Timothy Eskew.

2 THE CLERK: Could you spell your last name,
3 please, sir?

4 THE WITNESS: E-s-k-e-w.

5 DIRECT EXAMINATION BY MR. DRAISEN:

6 Q. Mr. Eskew, you were subpoenaed to be here
7 today; is that right?

8 A. Yes, sir.

9 Q. Okay. And can you tell me where you live?

10 A. I live [REDACTED] Street, Pelzer.

11 Q. Okay. How long have you lived there?

12 A. Four years probably.

13 Q. Okay. Where did you live before that?

14 A. I lived on Badger Street, Pelzer.

15 Q. How long have you been in that area?

16 A. All my life.

17 Q. Okay. All right. Do you recall the time
18 around May of 2009 where you worked?

19 A. Yeah. I was in incarcerated.

20 Q. Where?

21 A. Anderson County.

22 Q. Okay. And while you were there, do you ever
23 remember seeing Mr. Cabarruvias there?

24 A. I do remember him.

25 Q. Okay. Would you tell the court what you

DAVID ESKEW -- DIRECT

1 recall when you saw him and what you saw?

2 A. Excuse me -- they brought him in, and he was
3 intoxicated, and had been in a car wreck. His right
4 shoulder was bummed up, and that's -- that's about all
5 I remember. That's was about eight years ago.

6 Q. I understand. Did you -- did you actually see
7 his injury? Did you see his injury to him?

8 A. Yeah.

9 Q. What -- can you describe for us what you saw
10 in terms of the injury?

11 A. It was red on his chest.

12 Q. And -- and I -- forgive me, why I'm asking you
13 this the way I'm asking you, is because the court
14 reporter is taking down everything that we say. And
15 when you point and you do this without using words of
16 what you're describing, the record doesn't show that.
17 There is no photograph of what you're talking about.
18 So I'm not trying to be -- you know -- picky when I
19 tell you, you can sort of point and describe what part
20 of your body you saw this on by using you as an example
21 is fine, but can you describe for us what you saw and
22 where it was on Mr. Cabarruvias and what it looked
23 like?

24 A. Yeah. He had -- he had a red -- red mark from
25 his right shoulder across his chest.

DAVID ESKEW -- DIRECT

1 Q. And you're pointing in a downward direction
2 towards the left side?

3 A. Right. And that's pretty much all I remember.

4 Q. Okay. Did you ever speak with him at all
5 about what happened?

6 A. Not about what happened. I talked to him, but
7 not about what happened.

8 Q. Where were you at -- in the detention center
9 at the time you saw him?

10 A. In the sixth cell.

11 Q. You were medical unit as well?

12 A. Yeah.

13 Q. Okay. And how long were you in the medical
14 unit with him?

15 A. I don't know, two weeks to a month.

16 Q. Was there something wrong with you?

17 A. Yeah. I'm diabetic and everything. I've had
18 quadruple bypass since then.

19 Q. But at the time you were there, why were you
20 in the medical unit?

21 A. I'm a diabetic, high blood pressure, a few
22 things that I had to have medication for, so that's why
23 I was in the medical unit.

24 Q. Did you ever hear any conversation -- did you
25 personally hear any conversation of Mr. Cabarruvias and

1 the nurse?

2 A. No.

3 Q. All right. And let me ask you this: Did
4 anyone -- has anyone, prior to my firm contacting you,
5 has anyone on behalf of Mr. Cabarruvias ever contacted
6 you about what you saw or what you knew?

7 A. No, sir.

8 Q. Did any lawyers for Mr. Cabarruvias, back in
9 2009 or 2010, make contact with you?

10 A. No, sir.

11 Q. So prior to us making contact with you a few
12 years ago, that's the first anybody ever communicated
13 with you; is that right?

14 A. Did -- when y'all contacted me this time?

15 Q. The first time.

16 A. Yeah.

17 Q. Is that right?

18 A. Yeah.

19 MR. DRAISEN: I think that's all I have for you,
20 sir. If you'll answer any questions that the State
21 has.

22 **CROSS EXAMINATION BY MS. JAMESON:**

23 Q. Sir, when did you first arrive at the Anderson
24 County Detention Center?

25 A. I don't remember, ma'am.

DAVID ESKEW -- CROSS

1 Q. Do you know what year?

2 A. In 2009. I was there for over 45 days I
3 think.

4 Q. What -- what charges were you in jailed
5 because of?

6 A. Of violation of probation.

7 Q. When did you first encounter Mr. Cabarruvias
8 in the detention center?

9 A. When they brought him in.

10 Q. Do you know what date that was?

11 A. No, I don't remember.

12 MS. JAMESON: No further questions, Your Honor.

13 MR. DRAISEN: That's all I have. May he be
14 excused, Judge?

15 THE COURT: Any objection?

16 MS. JAMESON: No, Your Honor.

17 THE COURT: Okay. You're free to go, sir. Thank
18 you. Let's take a 10 minute break.

19 (After a recess, court reconvened.)

20 THE COURT: Y'all can be seated. All right. Mr.
21 Draisen, call your next witness.

22 MR. DRAISEN: Thank you, Your Honor. At this
23 time, we would call Karen Langston.

24 THE CLERK: Ms. Langston, if you would step
25 forward to be sworn in.

KAREN LANGSTON -- DIRECT

1 KAREN ELIZABETH LANGSTON, having
2 been first duly sworn, testified as follows:

3 THE CLERK: Please have a seat around the witness
4 stand. Once you're seated, please give us your full
5 name for the record.

6 THE WITNESS: Karen Elizabeth Langston.

7 **DIRECT EXAMINATION BY MR. DRAISEN:**

8 Q. Ms. Langston, where are you currently
9 employed?

10 A. Patrick V. Harris State Psychiatric Hospital.

11 Q. And in what capacity do you work?

12 A. Registered nurse.

13 Q. Okay. And how long have you been a registered
14 nurse?

15 A. I graduated nursing school in 1993.

16 Q. Okay. And are you licensed in South Carolina?

17 A. Yes, sir.

18 Q. As a registered nurse?

19 A. Yes, sir.

20 Q. Do you have any training beyond that, are you
21 board certified in anything?

22 A. No. No, sir.

23 Q. All right. And in May of 2009, where did you
24 work?

25 A. Anderson county Detention Center.

KAREN LANGSTON -- DIRECT

1 Q. What was your job there?

2 A. I was a registered nurse there.

3 Q. What were your job duties?

4 A. Medical caring of the detainees, trustees,
5 occupational health, too.

6 Q. Can you tell me at the detention center, was
7 there a specific part of the detention center that you
8 worked in?

9 A. I worked -- I worked in 2006, I worked in the
10 A, B, & C Hall, and I worked all over the jail. A, B,
11 C are in the newer parts of the jail, and then I worked
12 in the old jail.

13 Q. Is there something that they call a medical
14 clinic?

15 A. Yeah, medical unit. It was a medical unit was
16 a cell closest to the medical office, which was an open
17 face cell in the old jail.

18 Q. Can you describe it for us?

19 A. Yeah. It was a big, not big -- probably 12 to
20 15 patients depending the number of detainees in there
21 at the time, usually our diabetics stayed there because
22 they had regular insulin shots and blood sugar testing.
23 And any patient who came in with injuries sustained
24 during arrest -- or prior to arrest would be in there.

25 Q. Okay. And you described it -- it is open bar

KAREN LANGSTON -- DIRECT

1 --

2 A. It's an opened faced bar cell, yeah.

3 Q. Like when you first come into the detention
4 center?

5 A. When you first come down the main corridor on
6 the left-hand side, yes.

7 Q. Okay. All right. And there is just a number
8 of bunks in there?

9 A. Yes. Yeah, there are bunks on just -- single
10 bunks.

11 Q. And so are the inmates allowed to basically
12 roam in that area?

13 A. Yes, sir.

14 Q. Freely?

15 A. Yes, sir.

16 Q. Communicate freely?

17 A. Yes, sir.

18 Q. Okay. All right. Now, do you have a
19 recollection of Mr. Cabarruvias?

20 A. I do remember Mr. Cabarruvias, yes.

21 Q. Can you tell us what you remember about him?

22 A. I do remember thinking it was strange that his
23 injuries were on the right hand -- right hand side of
24 his body.

25 Q. Okay.

KAREN LANGSTON -- DIRECT

1 A. That was the most thing I do remember, was his
2 injuries on -- were the right-hand side of his body.
3 We are -- we are privy to what they come -- when they
4 come in, I wasn't on duty the night he came in, or
5 early morning -- I work day shifts.

6 Q. Can you tell us what -- do you have a
7 recollection of what you saw?

8 A. I don't remember what I saw. I have seen
9 hundreds of patients in the last eight years.

10 Q. Okay.

11 A. But I do remember thinking it was odd that his
12 injuries were on the right hand side of his body and
13 not the left hand side of his body.

14 Q. And do you recall why did you --

15 A. Because he was allegedly driving. And, you
16 know, normally with a seat belt, the left hand side of
17 the body is where the seat belt injuries are in a
18 wreck. And then his injuries were on the right hand
19 side.

20 Q. Do you recall seeing any bruising?

21 A. As I said I don't recall a lot of this
22 unfortunately.

23 Q. That's fine.

24 A. Yes.

25 Q. I mean, I'm just asking what you remember.

KAREN LANGSTON -- DIRECT

1 A. Yes.

2 Q. Do you recall ever being asked to take
3 pictures?

4 A. I don't recall that, but I know that we never
5 took pictures. That wasn't our job to take pictures.
6 We were there to take care of their medical needs. If
7 pictures were needed, we -- if we took pictures of
8 every injured detainee at request, we would have a --
9 books and books. That wasn't our job unless a lawyer
10 had asked us to do it or had ordered -- it had been
11 court ordered, we won't take pictures.

12 Q. And that was to be my next question, do you
13 recall ever specifically being requested by an attorney
14 or anyone to take pictures?

15 A. No, sir.

16 Q. Of Mr. Cabarruvias' injuries?

17 A. No, sir.

18 Q. Okay. Prior to my office contacting you, and
19 probably as well as a few years ago the first time,
20 have you ever been contacted by an attorney on behalf
21 of Mr. Cabarruvias?

22 A. It was years ago after his -- after his
23 conviction, I believe. I don't remember the year, but
24 somebody did ask me if I remembered his injuries and I
25 remembered them.

KAREN LANGSTON -- DIRECT

1 Q. That would have been in 2011, 2012?

2 A. It may well have been. I couldn't give you an
3 exact number.

4 Q. But we're not talking about back in 2009 or
5 2010, prior to conviction?

6 A. No, sir.

7 Q. Did you ever speak with attorneys representing
8 him in -- in the -- in the accident?

9 A. No, sir.

10 Q. Did ever speak to anyone on his behalf who
11 come and ask you what you observed prior to the
12 accident?

13 A. No, sir. I was one of several nurses working
14 there, several medical staff.

15 Q. Okay. All right. And did you recall seeing
16 Mr. Owens, the first person that testified today?

17 A. I remember Mr. Owens' face, but I couldn't
18 tell you exactly what his -- I remember he had a broken
19 leg, but that's all I remember. I do remember him.

20 Q. Do you remember any conversation where Mr.
21 Owens asked for pictures be taken?

22 A. I don't.

23 Q. All right. Let me just check with my client.

24 BY MR. DRAISEN:

25 Q. Just real quickly, I just want to make sure

KAREN LANGSTON -- DIRECT

1 the record is clear, Mr. Cabarruvias wanted me to ask
2 you -- do you have any recollection of them pulling his
3 jumpsuit over and showing you his shoulder?

4 A. He probably did, but I see so many -- I've
5 seen so people since then. He probably did, because I
6 would have -- I would have looked him over. I took
7 patients -- if any of the detainees said they were
8 injured, I took it seriously.

9 Q. Sure.

10 A. But I don't remember exactly, but I do
11 remember just the oddity of the injuries on the right
12 hand side than on the left hand side, you know.

13 Q. Okay. And how long -- I'm sorry -- how
14 long -- in 2009, how long had you been a nurse?

15 A. Since 1993, yes, sir.

16 Q. So, 13 years?

17 A. Uh-huh.

18 Q. Is that right?

19 A. Yes, sir.

20 Q. Did you ever work in like the ER trauma?

21 A. No, sir.

22 Q. So how often did you -- how familiar would you
23 be with people that were in accidents?

24 A. I have had a car accident myself and I was
25 rear ended and had a seat belt injury myself on the

KAREN LANGSTON -- CROSS

1 left hand side of my body, so I remember it quite well,
2 yes.

3 MR. DRAISEN: That's all the questions I have.

4 THE COURT: Cross examination.

5 CROSS EXAMINATION BY MS. JAMESON:

6 Q. Ms. Langston, have you seen the accident
7 photographs from this case?

8 A. No, sir -- ma'am -- sorry.

9 Q. Have you seen the M.A.I.T. reports?

10 A. No, ma'am.

11 Q. Have you seen any investigative notes?

12 A. No, ma'am. That's not my job.

13 Q. Have you seen any of the case file?

14 A. No, ma'am.

15 Q. Do you know which side his van was hit on?

16 A. No, ma'am.

17 Q. And you testified that you really have no
18 recollection as to what his injuries were other than
19 them being on the right side of his body?

20 A. As I said, I have seen so many patients since
21 then, no, ma'am, I'm sorry.

22 Q. So you don't have any recollection other than
23 that?

24 A. I just remember he had a shoulder injury.

25 Q. Can you testify to any medical certainty that

LENORA JOHNSON -- DIRECT

1 these injuries were the result of him being a
2 passenger, not a driver?

3 A. No, I cannot.

4 MS. JAMESON: No further questions.

5 THE COURT: All right. Thank you, ma'am. You may
6 step down.

7 MR. DRAISEN: May she be excused?

8 THE COURT: Any objection?

9 MS. JAMESON: No.

10 THE COURT: All right. You are free to go, ma'am.
11 Thank you.

12 MR. DRAISEN: Thank you.

13 THE COURT: Call your next witness.

14 MR. DRAISEN: Thank you, Your Honor. We call
15 Lenora Young Johnson.

16 THE CLERK: Ms. Johnson, would you come forward to
17 be sworn. Please raise your right hand.

18 LENORA YOUNG JOHNSON, having
19 been first duly sworn, testified as follows:

20 THE CLERK: Please state your full name for the
21 court, please.

22 THE WITNESS: Lenora Tamasha Young Johnson.

23 THE COURT: Your witness.

24 MR. DRAISEN: Thank you, ma'am.

25 DIRECT EXAMINATION BY MR. DRAISEN:

LENORA JOHNSON -- DIRECT

1 Q. Ms. Johnson, were you subpoenaed to be here
2 today as well?

3 A. Yes.

4 Q. Okay. All right. And if you would, tell us
5 where you live.

6 A. I live at [REDACTED], Anderson.

7 Q. Okay. And how long have you been in the
8 Anderson area?

9 A. My whole life.

10 Q. Okay. And what is your educational
11 background?

12 A. I have a Bachelor in Human Services.

13 Q. Okay. And back in 2009, were you employed?

14 A. Yes.

15 Q. Where did you work?

16 A. At the Anderson County Detention Center.

17 Q. And what was your job?

18 A. I was a detention officer and front office
19 staff.

20 Q. Okay. And what did that mean, your duties
21 were?

22 A. Monitor the inmates. And I was over the
23 commissary.

24 Q. The commissary?

25 A. The inmate commissary where they purchased

LENORA JOHNSON -- DIRECT

1 goods, shirts, underwear, whatever -- whatever they
2 needed that we didn't supply.

3 Q. Okay. Back in May of 2009, that was your job
4 duty?

5 A. Uh-huh.

6 Q. Is that a yes?

7 A. Yes.

8 Q. All right. Do you have any recollection or do
9 you recognize Mr. Cabarruvias?

10 A. I do.

11 Q. Okay. All right. And can you tell us what
12 you recall, if anything, specifically about Mr.
13 Cabarruvias back in May of 2009?

14 A. The only thing I remember about him is when
15 the officers walked by on the medical cell, he was
16 pulling his jumpsuit down showing his injuries. That's
17 about it.

18 Q. Did you see them?

19 A. I did.

20 Q. Do you recall what you saw?

21 A. I do. I remember the different officers
22 talking about his injuries being on the opposite side
23 as -- as the being in the driver seat vs. the passenger
24 seat. I can remember that much, but just to say
25 exactly what it was, no, I don't remember that.

LENORA JOHNSON -- DIRECT

1 Q. Do you remember seeing any bruising or marks
2 on his body?

3 A. Yes, he had bruising.

4 Q. Can you describe where it was located?

5 A. He did have bruising on the right shoulder,
6 the right shoulder area.

7 Q. You see -- you're motioning from your right
8 shoulder across your chest?

9 A. Yes.

10 Q. Did you actually see marks from the right
11 shoulder across the chest?

12 A. From what I remember, yes.

13 Q. Okay. All right. Do you know anything
14 about -- is there a policy at the detention center
15 about taking or not taking photographs of injuries?

16 A. We didn't take photographs unless it was
17 ordered.

18 Q. Okay, so that was the policy of the detention
19 center?

20 A. Pretty much, yeah. We couldn't just take
21 pictures of inmates because they wanted it, no. We
22 couldn't do that.

23 Q. When you say there was a discussion, you are
24 talking about -- you are saying there was a discussion
25 amongst detention officers?

LENORA JOHNSON -- DIRECT

1 A. Exactly.

2 Q. About what -- about -- how in your own words?

3 MS. JAMESON: Your Honor, the State would object
4 as this is hearsay testimony.

5 MR. DRAISEN: Well, if she heard the conversation.

6 THE COURT: That's what hearsay is.

7 MR. DRAISEN: She participated in it.

8 MS. JAMESON: No. I believe she -- her testimony
9 was she overheard the conversation.

10 MR. DRAISEN: Let me ask that.

11 THE COURT: Rephrase the question.

12 MR. DRAISEN: So strike my prior. Let me re-ask
13 it.

14 BY MR. DRAISEN:

15 Q. Did you participate in any conversation about
16 Mr. Cabarruvias' injuries?

17 A. Okay. As detention officers, we discussed his
18 injuries, yes.

19 Q. Okay. And so can you tell me what the
20 discussion was that you had?

21 A. That was the discussion, that he was -- that
22 he was --

23 MS. JAMESON: Your Honor, this is still hearsay.

24 THE COURT: Sustained.

25 MR. DRAISEN: Okay. I think it's already in the

LENORA JOHNSON -- CROSS

1 record anyway, the first objection.

2 BY MR. DRAISEN:

3 Q. Did you take any action or do anything as a
4 result of your observations?

5 A. No.

6 Q. Were you ever contacted by anybody prior to us
7 making contact with you for the P.C.R, were you ever
8 contacted by any lawyer on behalf of Mr. Cabarruvias?

9 A. No.

10 Q. Anyone ask you about what you witnessed or
11 what you saw prior to his plea?

12 A. No.

13 Q. Do you have any medical training?

14 A. No.

15 Q. Let me just check.

16 MR. DRAISEN: That's all I have.

17 THE COURT: Cross examination.

18 CROSS EXAMINATION BY MS. JAMESON:

19 Q. Have you seen any of the accident photographs
20 from this case?

21 A. No.

22 Q. Any of the M.A.I.T. reports?

23 A. No.

24 Q. Any of the investigative notes?

25 A. No.

1 Q. Any of this case file?

2 A. No.

3 Q. So your knowledge is limited to just observing
4 him and chitchat with other officers?

5 A. Yes.

6 MS. JAMESON: No further questions.

7 THE COURT: All right.

8 MR. DRAISEN: That's all. Can she be excused?

9 THE COURT: Any objection?

10 MS. JAMESON: No, Your Honor.

11 THE COURT: Thank you, ma'am. You are free to go.
12 Call your next witness.

13 MR. DRAISEN: Judge, at this time, I need to
14 advise the court that we subpoenaed Dr. Darius Divina
15 at Anmed Health Community Orthopedics, which is at
16 2000 East Greenville Street. That's the new health
17 campus on 81. The card was signed for by certified
18 mail on June 23rd. We advised, by letter -- by the
19 way, we originally sent this to a different address.
20 And we were informed by that office that he was now at
21 this other office.

22 And so this was served at his current office, as
23 I said, at 2000 East Greenville Street, signed for June
24 23rd. The cover letter said you need to be here at the
25 courthouse on June 28th at 9:30. The subpoena

1 continues until you are released, and to provide us
2 with a contact number. And so our position, Judge, is
3 that Dr. Divina was duly served with a subpoena to be
4 here.

5 I think we had the bailiff call -- I'm
6 informed -- I believe Jennifer has checked upstairs and
7 the bailiff has called out here, I'm not aware that Dr.
8 Divina is here.

9 THE COURT: Would you like this made a court's
10 exhibit?

11 MR. DRAISEN: Yes, ma'am. And I hate to -- I hate
12 to have a deputy sent to bring him in. But, quite
13 frankly, I don't know what other power we have to
14 compel people to come to court when they are served
15 with a subpoena if the deputies don't go get him and
16 drag him in.

17 I will say, for the record, that I believe in
18 the prior -- you're going to -- you remember, I know, I
19 believe in the prior P.C.R. hearing, medical records
20 were admitted into evidence; is that right?

21 MS. JAMESON: I don't believe they were. We have
22 a list of exhibits and we can also check with the
23 clerk's office here. No, photographs of the accident
24 scene were the only thing that were introduced as
25 Exhibits 26 and 27.

1 MR. DRAISEN: I thought I read through that and
2 there was some testimony about it.

3 MS. JAMESON: None were introduced.

4 MR. DRAISEN: Well, if they're not, these are Dr.
5 Divina's records about the injury, and a statement in
6 his records. So, if they are not in --

7 MS. JAMESON: If the State could be heard briefly.
8 We do have both former counsels here. They can be
9 questioned regarding medical records and whether or not
10 they had them in their file.

11 MR. DRAISEN: Well, I mean, I have an affidavit
12 from the record custodian of the records saying that
13 they are true and correct copies. So, I don't think
14 there is any real issue about putting the records in.

15 MS. JAMESON: I was not provided with a copy of
16 those ahead of time, so I would certainly like an
17 opportunity to review those, and then possibly respond
18 to those. Because, again, I thought the allegations
19 were more limited to testimony regarding what his
20 injury was, and that would happen here in person, but
21 this --

22 MR. DRAISEN: This is his hearing. I mean, I
23 don't care if she gets the records, but these would
24 have been provided in response to any requests we had
25 years ago -- I assume -- I mean, I can't tell you that

1 for sure. But if they -- they asked us to provide
2 something back in 2011, prior to the P.C.R. hearing, I
3 believe we would have provided anything that we had.
4 We didn't just get these -- let's see. We got these --
5 it would have been more recent because we got them in
6 2013.

7 MS. JAMESON: Our file has pretty extensive
8 documentation that I can advise the court I spent well
9 over a day pouring through, and we have not received a
10 copy of these.

11 THE COURT: What specifically is your objection to
12 their introduction?

13 MS. JAMESON: Is he moving to introduce? I
14 thought we were just addressing the subpoena issue.

15 MR. DRAISEN: Well, as to the subpoena, what I was
16 trying to say was is that we can either -- I can either
17 have you send a deputy, which I hate to do to an
18 orthopedic doctor and drag him into court -- he's
19 probably not going to be happy about it, or I can
20 submit the records which basically probably say what he
21 would say in terms of the injury. And there is a
22 statement in one of the records where he insists that
23 he was the passenger, so --

24 THE COURT: I assume you mean you can request the
25 court to send a deputy?

1 MR. DRAISEN: Yes, ma'am.

2 THE COURT: Instead that you will have me send a
3 deputy?

4 MR. DRAISEN: I'm sorry, did I say that?

5 THE COURT: You did. I'm sorry.

6 MR. DRAISEN: I was thinking about what I was
7 saying -- yes, ma'am, I would request that the court
8 send a deputy.

9 THE COURT: And that request would be declined.

10 MR. DRAISEN: Please -- please -- please accept my
11 policies. My brain was obviously on something else if
12 I said it that way. I definitely apologize.

13 THE COURT: Denied in any event. I'm not going
14 yank a doctor off of his -- I mean, I know doctors are
15 just like anybody else, but that seems extreme.

16 MS. JAMESON: Your Honor?

17 THE COURT: If they --

18 MS. JAMESON: If -- if Mr. Draisen is seeking to
19 introduce these records, the State has no objection,
20 but we would ask that we be provided with a copy of
21 these.

22 MR. DRAISEN: I think some of them are duplicates,
23 but actually --

24 MS. JAMESON: Do these all -- that's what concerns
25 me, is if they are duplicates, there are nothing

1 affixing these. And I know some of these were attached
2 as exhibits to my client's pro se filings, so I do have
3 a little bit of a concern about what is actually
4 included.

5 MR. DRAISEN: And everything is in here -- but if
6 it got copied for some reason for him or whatever, we
7 can just put one copy of each one in there. What I'm
8 saying is some of them are folded -- what happened was
9 he provided me with some copies. Apparently he had
10 them -- some of them.

11 MS. JAMESON: Your client did?

12 MR. DRAISEN: Originally had some records. And
13 then we subpoenaed the whole file to make sure we had
14 all the records.

15 MS. JAMESON: Is this the whole file?

16 MR. DRAISEN: That's -- that's everything they
17 sent us.

18 THE COURT: All right, folks. I've allowed the
19 Applicant's amended filing. I know that those -- that
20 includes some medical records. It may not be
21 everything that is there. However, just so that y'all
22 know, I'm not going to rule on this case today anyway.
23 So if your only objection is that you have not been
24 able to review them, or that there are some duplicates,
25 you know, of course the court can weed out what is a

1 duplicate and what isn't, and you will also have the
2 opportunity to review those after today's hearing and
3 respond to them in writing, if there is some --

4 MS. JAMESON: Your Honor, I do have one concern in
5 response to Mr. Draisen's previous comment that he
6 was -- interpret the entire file, or what he received
7 from his client -- I think we need a copy of everything
8 that was provided in response to subpoena, not loose
9 papers that might be copies from four years ago.

10 MR. DRAISEN: That's it. That's the whole --
11 that's my entire file on medical records that I had on
12 Mr. Cabarruvias, including whatever -- whether it's his
13 copy or my copy, that's why --

14 MS. JAMESON: As an alternative the State would
15 prefer that perhaps another subpoena be sent and we get
16 those responsive pleadings put in as opposed to loose
17 leaf papers that might also include his client's
18 personal documentation from his own file. This is four
19 years old and it's --

20 THE COURT: I assume you haven't seen that
21 document since then -- since he has been in the
22 Department of Corrections?

23 MR. DRAISEN: No, he hasn't.

24 THE COURT: So the age is not a concern?

25 MS. JAMESON: The age of the subpoena -- I'm

1 sorry, Your Honor? They were provided four years ago.
2 And by his own admission, he might have documents his
3 client provided not in response to this subpoena.

4 MR. DRAISEN: No. They are all the same.

5 THE COURT: All right. I want y'all to work that
6 out outside of this courtroom. I'm going to allow the
7 introduction of those medical records. Mr. Draisen,
8 you are to -- after today's hearing, review your
9 records to ensure that the State has been provided with
10 a copy of everything.

11 MR. DRAISEN: I'll try this --

12 THE COURT: And we'll go ahead and mark these
13 copies of the subpoena and return receipt.

14 MS. JAMESON: Can you introduce them?

15 MR. DRAISEN: This is asking for that -- this
16 exact one, this is the record, so. Judge, what we did
17 was --

18 THE COURT: Hold on. Hold on. She is marking it.

19 (Court's Exhibit No. 1, Divina subpoena,
20 marked.)

21 MR. DRAISEN: What we did was -- apparently my
22 office back in December of 2012, sent a letter to
23 Oaktree Orthopedics and said basically that we needed
24 an affidavit of the records custodian, so please verify
25 that these records are true and correct records from

1 the file, and these are stamped to that letter. Then
2 we got this back. So I think it is pretty easy to
3 determine what they verified were true and correct
4 copies from his record, so we would put that in as
5 the -- that's what we were provided.

6 MS. JAMESON: No objection.

7 THE COURT: Okay. Those are admitted without
8 objection.

9 MR. DRAISEN: And just --

10 THE COURT: Hold on. All right. Yes, sir.

11 MR. DRAISEN: Judge, I'm just going to -- if I can
12 just for the record note that we -- as you said, we did
13 subpoena Dr. Divina. In lieu of his not appearing, we
14 put the records in. I would just note there is a
15 record signed by Dr. Divina in the file where he is
16 stating that Mr. Cabarruvias is presenting and
17 accompanied by a police officer for re-evaluation of
18 his right clavicle fracture.

19 And then he makes a statement in the record,
20 says "patient also wants to remind me and make a
21 statement that he was a passenger and not the driver".
22 There's a specific notation in Dr. Divina's record at
23 or near the time of the incident.

24 The rest of this, Judge, frankly was -- just for
25 the record, indicate that Mr. Cabarruvias had a right

1 clavicular fracture --

2 THE COURT: I don't mean to cut you off -- I think
3 the records will will speak for themselves.

4 MR. DRAISEN: They will. And just because we
5 don't have anybody here, you know, to say -- I just
6 wanted to point out those two things for you, that's
7 the purpose -- would have been the purpose of Dr.
8 Divina's live testimony.

9 THE COURT: I understand, but you can't testify
10 instead of him.

11 MR. DRAISEN: I understand. The other thing,
12 Judge, is that we also -- the next matter if I may?

13 THE COURT: Yes, sir.

14 MR. DRAISEN: We subpoenaed Troop Adam Warren from
15 the South Carolina Highway Patrol, who was the officer
16 who investigated the accident as shown on the accident
17 report. And he was, likewise, served at the South
18 Carolina Highway Patrol, 33 Villa Road, Suite 200, Box
19 103, Greenville, South Carolina. This was sent on June
20 the 5th. They did not put a date on there when they
21 signed for it, but he was likewise subpoenaed to be
22 here with a similar cover letter.

23 And I don't know that Trooper Warren is a member
24 of the M.A.I.T. team, I'm not sure, because he's --
25 he's the name on the actual accident report as opposed

1 to being a subsequent investigator. So we --
2 originally these guys were housed at 29 here in
3 Anderson, but they have moved them to Greenville
4 recently. So this had to be sent to Greenville where
5 they are now. But he also is not here. I would like
6 to mark this and put it in as an exhibit to the court
7 file.

8 THE COURT: That will be a court's exhibit.

9 MS. JAMESON: If the State can briefly be heard in
10 response?

11 THE COURT: I'm sorry. Yes, ma'am.

12 MS. JAMESON: The State does just want to note for
13 the record that a copy of the M.A.I.T. report, which
14 was in the Solicitor's and the Public Defender's file
15 in this case, as well as private counsel, Mr.
16 Stoddard's file --

17 COURT REPORTER: Could you slow down please.

18 MS. JAMESON: The second page of the M.A.I.T.
19 report indicates that all subpoenas for M.A.I.T.
20 personnel should be directed to their FOIA Officer, the
21 Office of General Counsel in Blythewood, so the State
22 would submit that the subpoena wasn't properly served
23 to the correct location. And it indicates at the top
24 of that page, that the primary investigating officer
25 was Trooper Warren.

1 MR. DRAISEN: Yeah, and the primary investigating
2 officer was Trooper Warren; that doesn't mean he is a
3 M.A.I.T. officer.

4 THE COURT: Right.

5 MR. DRAISEN: So, I mean, so I don't know -- I
6 mean, you know, quite frankly, he was the first officer
7 that was on the scene working the wreck. I know who
8 Trooper Warren is because I've handled traffic tickets
9 occasionally. So I'm not aware, at least back in 2009,
10 I don't know if he is now -- but he wasn't on the
11 M.A.I.T. team to my knowledge, but he's on the actual
12 wreck report. That's why he would be the Chief
13 Investigating Officer.

14 THE COURT: I understand it. I mean the court
15 accepts it for what it is.

16 MS. JAMESON: Certainly, Your Honor. I'm just
17 trying to protect the record.

18 THE COURT: Absolutely. I understand the CYA move
19 on Mr. Draisen's part, you know. Of course, the
20 trooper is not here. It is what it is, but I can't
21 glean anything from him not being in court or whatever,
22 just -- in case anyone was going to ask -- I'm
23 certainly not going to send any deputies to bring a
24 trooper in here. I don't -- I don't want to drag him
25 in here, although that might be fun for them.

JENNIFER JOHNSON -- DIRECT

1 MS. JAMESON: The State does have witnesses in
2 reply, Your Honor.

3 THE COURT: I'm sorry, was that the Applicant's
4 case?

5 MR. DRAISEN: I'm sorry. That is the witnesses we
6 intend to offer, Your Honor.

7 THE COURT: All right. Yes, ma'am.

8 MS. JAMESON: Your Honor, the State would call
9 Jennifer Johnson.

10 THE CLERK: If you'll please raise your right
11 hand.

12 JENNIFER JOHNSON, having been first
13 duly sworn, testified as follows:

14 THE CLERK: Please have a seat. Please state your
15 full name for the court's records.

16 THE WITNESS: Jennifer Lane Johnson.

17 **DIRECT EXAMINATION BY MS. JAMESON:**

18 Q. Ms. Johnson, where are you presently employed?

19 A. The 10th Circuit Public Defender's Office.

20 Q. What is your role at the office?

21 A. I'm actually the Chief Circuit Public
22 Defender.

23 Q. Do you recall representing Mr. Cabarruvias?

24 A. I do.

25 Q. Do you recall testifying at his initial P.C.R.

JENNIFER JOHNSON -- DIRECT

1 hearing on June 8, 2011?

2 A. Yes, I do.

3 Q. And a copy of that has been -- has been
4 provided to the Judge, so we already have all of your
5 previous testimony from the last hearing, so hopefully
6 this will be an abbreviated examination. Can you
7 describe the State's evidence in this case?

8 A. Yes. Mr. Cabarruvias -- well, initially, I
9 believe he was represented by Mr. Stoddard. My file
10 indicates that our office interviewed him on -- it was
11 July -- either seventh or ninth -- but it was close to
12 the two months after the accident happened -- July 9th
13 was the date our case file was opened in the office.

14 Yes, I mean, I -- there were -- the evidence
15 against him primarily consisted -- there were three
16 witnesses who were traveling in a vehicle behind his
17 vehicle, who were interviewed by the M.A.I.T. team I
18 think the day after the accident happened. All three
19 were on scene.

20 I believe that that evidence was compelling that
21 there were was only occupant of the vehicle, and that
22 occupant was the driver of the vehicle, that
23 occupant -- although not identified, it was not any
24 sort of photographic ID procedure or anything like that
25 in the case. But, again, each of those people

JENNIFER JOHNSON -- DIRECT

1 indicated that there was a sole occupant of the vehicle
2 and that was the driver. Of course, the intoxication
3 blood alcohol level -- I think it was a point 271. The
4 witness' testimony was that he was unconscious at the
5 time. He immediately -- after the witnesses went to
6 the van -- his testimony was he went to van first, and
7 that the driver was unconscious at that time, behind
8 the wheel of the van.

9 Of course, there were accident photos. The
10 photographs depicts evidence -- again, I am not a
11 medical profession, but looking at the damage that was
12 done to the passenger compartment of that van, it's
13 hard to believe that if someone had been seated in the
14 passenger seat, that they would not have been severely
15 injured or killed. And Mr. Cabarruvias, of his own,
16 did not remember the accident. He was -- either due to
17 injuries or due to intoxication, or a combination of
18 those two, he was unable to remember the accident or
19 what immediately proceeded the accident.

20 Q. Did any of the witnesses, in their statements,
21 describe seeing someone flee the scene?

22 A. No one described anyone fleeing the scene.

23 Q. Did you investigate your client's claims that
24 there was a possible driver and he was the passenger?

25 A. Yes. We discussed -- yeah, who these people

JENNIFER JOHNSON -- DIRECT

1 may be. And two names -- I have actually reviewed my
2 notes this morning while I've been sitting in court --
3 the person who he told me was the driver was a person
4 named Ricardo. He never gave me a last name for that
5 person, or how I can reach them.

6 I did reach out to Mr. Cabarruvias' family
7 members to see if they may be able to assist us in
8 identifying this person or locating this Ricardo, but
9 we were never able to identify enough information about
10 this individual to be able to interview that person.

11 Q. You did reach out to his family?

12 A. Yes.

13 Q. Where -- were you provided with a copy of the
14 M.A.I.T. report in this case?

15 A. Yes.

16 MS. JAMESON: Your Honor, may I approach?

17 THE COURT: Yes.

18 BY MS. JAMESON:

19 Q. Do you recognize this document?

20 A. Yes. This appears to a copy of the M.A.I.T.
21 report relevant to this case.

22 Q. And that was in your file?

23 A. Correct.

24 MS. JAMESON: The State would move to introduce a
25 copy of the M.A.I.T. report as State's Exhibit No. 1.

JENNIFER JOHNSON -- DIRECT

1 THE COURT: Any objection?

2 MR. DRAISEN: No objection.

3 MS. JAMESON: I have a courtesy copy, Your Honor,
4 if I may approach.

5 (State's Exhibit No. 1 received into evidence.)

6 THE COURT: Thank you.

7 BY MS. JAMESON:

8 Q. Does the M.A.I.T. report have any photographs
9 of the accident in there?

10 A. Yes, it does. It looks like starting with
11 page seven and continuing through page nine.

12 Q. Can you describe those pictures for the
13 record?

14 A. Yes.

15 MR. DRAISEN: Your Honor, I'm going to object to
16 the photographs.

17 THE COURT: Sustained.

18 BY MS. JAMESON:

19 Q. Where is the impact made in those photographs?

20 MR. DRAISEN: Your Honor, I'm going to object. I
21 don't know that she's qualified.

22 THE COURT: Sustained.

23 MS. JAMESON: May I approach again, Your Honor?

24 THE COURT: Yes, ma'am.

25 BY MS. JAMESON:

JENNIFER JOHNSON -- DIRECT

1 Q. Do you have a copy of the -- of this document
2 in your file?

3 A. Maybe notes will give me -- hold on. Sorry.
4 The file was rather lengthy for the years. Actually --
5 actually, I do not see a copy of the document, M.A.I.T.
6 notes in my file.

7 Q. Do you recall if you were provided that during
8 representation with Mr. Cabarruvias?

9 A. To be perfectly honest, I can't recall. Yeah,
10 I know that I have looked at this, but to say when I --
11 I honestly cannot recall.

12 Q. Based on your review of the file, what side of
13 the car was -- of the van was struck?

14 A. The passenger side both, front and rear
15 passenger side appear to be the point of impact.

16 Q. Did you --

17 MR. DRAISEN: I'm just going -- I'm going to have
18 to object and move the strike respectfully.

19 THE COURT: Sustained. That's the same question
20 that I sustained the objection previously.

21 BY MS. JAMESON:

22 Q. Based on your review of the file, in your
23 representation of Mr. Cabarruvias, did you discuss with
24 him in your professional opinion where the car was
25 struck, that that would match up with his injuries?

JENNIFER JOHNSON -- DIRECT

1 A. Yes.

2 MR. DRAISEN: Your Honor, I'm going to have to
3 object to that as well. First of all, I would say that
4 although I am fully aware of Ms. Johnson's
5 qualifications, she has not been qualified or offered
6 as an expert witness in this case. If she -- to the
7 extent the State is asking if she relied on someone
8 else's information or whatever, in an expert opinion
9 sense, I wouldn't necessarily raise that objection, but
10 she hasn't been qualified as much.

11 MS. JAMESON: Your Honor, if the State can briefly
12 respond. I don't think we are seeking any sort of
13 expert testimony. She represented Applicant in this
14 case. The pictures show the car was struck on the
15 right side. I think we can all see the car was struck
16 on the right side --

17 THE COURT: Right. It is an unnecessary question,
18 so let's move on anyway.

19 MS. JAMESON: Well, Your Honor, if I could, for
20 the record, I don't know that it is irrelevant because
21 the application alleges that counsel was ineffective
22 for failing to investigate and his injuries matched up
23 with the evidence in this case. The evidence in this
24 case shows the car was struck from the right side, so
25 the State would submit it is very relevant and it is

JENNIFER JOHNSON -- DIRECT

1 the exact issue we're here for today. And that we're
2 not asking for expert testimony on this, but we're
3 asking the same leave allowed of the inmates from
4 another detention center.

5 THE COURT: Well, I think she can testify as to
6 whether she investigated and to some extent why she
7 did -- if she did not investigate. But any expert
8 opinion or getting along that line as to it looks like
9 his injury matches up with this, that or the other, is
10 a bit more.

11 MS. JAMESON: For the record, Your Honor, we do
12 have testimony of that for several of Mr. Cabarruvias's
13 witnesses this morning, and the State did not object to
14 that testimony.

15 THE COURT: Maybe not.

16 BY MS. JAMESON:

17 Q. Did you consider calling -- did you look into
18 any experts to testify about Mr. Cabarruvias' injuries
19 compared to -- or your review of the evidence in this
20 case?

21 A. No.

22 Q. Why not?

23 A. Because I don't believe that there -- well,
24 there is no question, as you are aware, this injury
25 occurred. It was a right clavicle fracture. If the

JENNIFER JOHNSON -- DIRECT

1 case had gone to trial, I fully believe the State would
2 have called a physician as a part of that, through
3 cross examination I could have brought out testimony
4 that that injury was consistent with a passenger seat
5 belt injury. But I don't believe, and still don't
6 believe, that there is a doctor or other person who
7 would say to a reasonable medical certainty that that
8 was caused by a -- a passenger seat belt.

9 Again, I mean, again, jurors are smart people.
10 They understand those sorts -- I mean -- I don't think
11 you necessarily need expert testimony to say that this
12 injury could be consistent with a seat belt. In fact,
13 Mr. Owens testified earlier that he's the one that told
14 Mr. Cabarruvias that's what caused his injury.

15 Q. Based on your review of the file, do you think
16 it's consistent with making other type of injuries
17 other than the seat belt?

18 A. Again, I'm not a medical provider, but I think
19 that a point of impact with a steering wheel or
20 something else in the vehicle, could have caused such
21 an injury, but I can't say that for certain anymore
22 than I can say for certain that it was caused by a
23 passenger seat belt.

24 Q. If the case has proceeded to trial, would you
25 have to sought out an expert to testify to that?

JENNIFER JOHNSON -- DIRECT

1 A. I honestly don't know. I mean, I probably
2 wouldn't have. I mean, the injury and the nature of
3 the injury were not in question. There -- no, I mean I
4 don't think I would have.

5 Q. You have been in court this morning listening
6 to testimony; correct?

7 A. Yes.

8 Q. Have you heard any new information today that
9 you didn't know at the time of your presentation of Mr.
10 Cabarruvias?

11 A. I think the only thing new is that I now know
12 the source of why Mr. Cabarruvias believes he was the
13 passenger in the vehicle, that it appears that Mr.
14 Owens was the one who gave him that idea. I believe
15 the testimony from the two people who were in jail with
16 him, was he was still grossly intoxicated at the time
17 he arrived at the jail. This would have been hours
18 after the accident, and that he had no memory of what
19 happened. There was no -- he had no independent memory
20 of what happened.

21 So the thing I remember this morning is Mr.
22 Owens decided that his injuries were consistent with
23 being a passenger, and Mr. Owens told Mr. Cabarruvias
24 that that's what must have happened.

25 Q. If you were representing him today, would you

1 your advice still be to plead guilty?

2 A. Yes.

3 MS. JAMESON: No further questions, Your Honor.

4 THE COURT: Cross examination.

5 MR. DRAISEN: Yes. May it please the court,
6 Judge.

7 **CROSS EXAMINATION BY MR. DRAISEN:**

8 Q. Ms. Johnson, I apologize in advance for having
9 to do my job.

10 A. Okay.

11 THE COURT: You don't have to apologize for doing
12 that.

13 MR. DRAISEN: Well, we go back. I have a great
14 deal of respect for Ms. Johnson and what she does, and
15 I appreciate what she does for people in Anderson
16 County, and so I apologize for asking.

17 THE COURT: All right.

18 MR. DRAISEN: None of us like to be on the witness
19 stand, so I'm just going to try to be brief if I can.

20 BY MR. DRAISEN:

21 Q. All right, so -- I understand that you
22 explained sort of your rationale -- but my question you
23 did not seek an expert medical opinion with regard to
24 whether any doctor would say to a reasonable degree of
25 medical certainty whether or not this injury was caused

JENNIFER JOHNSON -- CROSS

1 by a seat belt; is that right?

2 A. That's correct.

3 Q. So you don't know -- you made some
4 suppositions about the fact that other things could
5 cause the accident, you made some suppositions about
6 whether it or not might have been a steering wheel or
7 things of that nature, or whether a doctor even could
8 tell us, but you didn't actually seek out a medical
9 opinion and have a doctor say no one could tell you
10 that?

11 A. Correct.

12 Q. Is that right?

13 A. Yes.

14 Q. So you don't know, as you sit here today,
15 whether or not having reviewed the radiology, maybe
16 physical signs on the person's body, if we had for
17 example the testimony today about the bruising across
18 his body -- you heard several witnesses say that, if a
19 doctor was provided all of those information -- all
20 that information, maybe photographs of the vehicles,
21 things of that nature, you simply don't know whether a
22 doctor would have offered an opinion, to a reasonable
23 degree of medical certainty, as to whether or not the
24 wreck was the most probable or likely cause of that --
25 that broken clavicle; is that right?

JENNIFER JOHNSON -- CROSS

1 A. Correct.

2 Q. And that was never investigated to that
3 extent?

4 A. No, I didn't seek medical expert opinion.

5 Q. All right. And I believe you were asked just
6 a minute ago about, you know, whether or not you heard
7 anything new today -- I assume you never interviewed
8 Mr. Trejos prior to today?

9 A. No.

10 Q. Did you hear his testimony here today?

11 A. I did.

12 Q. Mr. Trejos was the gentleman who said he was
13 at the party?

14 A. Correct. And that was the first time I ever
15 heard that person's name.

16 Q. And I understand, I mean, we -- it took a lot
17 for us to locate him as well. But I'm saying -- did
18 you locate anyone during your investigation from the
19 party that Mr. Cabarruvias was at before he left?

20 A. No.

21 Q. And what efforts were made, other than talking
22 to his family, what efforts were made to locate anyone
23 who might have seen him prior to the accident?

24 A. Again, the information that he gave me was a
25 first name of Ricardo. I believe he informed me that

JENNIFER JOHNSON -- CROSS

1 he thought Ricardo might have gone back to Mexico. I
2 asked his family, being a member of the community where
3 he was, and because it is a Hispanic community, I
4 thought the family was in a better position than me
5 sending someone down there, who they don't know, who
6 they don't trust, who they don't have any connection
7 with, to find out -- okay, this loved one of yours was
8 at a family -- a party where there are other people,
9 help me find -- I mean, how do you identify someone?
10 Absolutely I would have made arrangements to take a
11 statement or interview them, or what have you. But the
12 problem was simply identifying who these people were.
13 We simply weren't able to do that.

14 Q. Well, I -- again, with all due respect, I
15 understand. And at the time that you were working with
16 this case, you were the public defender?

17 A. Yes.

18 Q. And do you have any idea what your case load
19 was at that time?

20 A. Not at that time, no. I mean, I can estimate.

21 Q. Was it heavy?

22 A. Yes.

23 Q. A heavy case load, right?

24 A. Yes.

25 Q. It's not the only case --

JENNIFER JOHNSON -- CROSS

1 A. It's certainly not the only case I had.

2 Q. And maybe not even the most serious case you
3 had?

4 A. Probably not.

5 Q. So it's fair to say, I mean, you know
6 through -- strike that. Did you have the ability to
7 send investigators to talk to people in the community?

8 A. Yes.

9 Q. Did you do that?

10 A. No.

11 Q. All right. And I understand your explanation
12 for why you did it, but the question is, you know --
13 and I understand the testimony today was this Ricardo
14 -- I think the testimony from Mr. Trejos was that he
15 didn't see him a few days after the wreck ever again.
16 So I don't know that we ever could have found the
17 driver. But in terms of efforts to find other people
18 who might have had some knowledge, other than talking
19 to the family or relying on them to produce somebody,
20 what did the PD's office do to try to locate any
21 potential witnesses in their case?

22 A. That was -- I was relying on what my client
23 could tell me.

24 Q. I understand.

25 A. And, you know, other than going out and

JENNIFER JOHNSON -- CROSS

1 knocking on -- I mean, I didn't have an address for
2 what we were -- for where this party had been. I mean,
3 other than going to Williamston, South Carolina, and
4 knocking on every door, which I don't think is a
5 reasonable thing to do --

6 Q. And I'm not suggesting that that either, but I
7 mean, you have -- you had access to people that are
8 trained as investigators; is that right?

9 A. Yes.

10 Q. And those investigators oftentimes work the
11 cases where there might be a language barrier or
12 somebody from a different community?

13 A. Yes.

14 Q. In this case, the Hispanic community?

15 A. Yes.

16 Q. Right -- and those investigators are trained
17 and they know how to find people?

18 MS. JAMESON: Your Honor, Mr. Draisen is
19 testifying.

20 THE COURT: He sure is.

21 MR. DRAISEN: Judge, I'm sorry.

22 BY MR. DRAISEN:

23 Q. Those people are trained on how to locate,
24 work the streets, and how to find people with
25 information?

JENNIFER JOHNSON -- CROSS

1 A. Yes.

2 Q. That's part of the -- to investigate; is that
3 right?

4 A. It is.

5 Q. All right. And unless you actually hit the
6 road, or send somebody out to do it, you don't know
7 what you can find?

8 A. I do know this -- in times I have used
9 investigator services, and I have had occasion to use
10 many, I need more information than a person's first
11 name and the community from which they come.

12 Q. Maybe.

13 MS. JAMESON: Your Honor, we'd ask that be
14 stricken. He's testifying.

15 THE COURT: He can ask some leading questions.

16 BY MR. DRAISEN:

17 Q. And my point is that sometimes you have very
18 limited information, and you're able to still give what
19 information is out there, and the professionals then
20 take that information and surprise you with what they
21 turn up; does that happen?

22 A. I suppose it can, yes.

23 Q. And I'm not -- you know -- look, again, I'm
24 not attacking you.

25 A. It's fine. It doesn't hurt me.

JENNIFER JOHNSON -- CROSS

1 Q. You know, but we're talking about in the realm
2 of things that could have or maybe should have been
3 done in terms of investigating this case?

4 A. Correct.

5 Q. So that's what I'm asking about.

6 A. But I'll say this, too, I mean in terms of
7 investigation, you're asking me not only to locate
8 someone who I didn't have information about, but you're
9 asking me to locate someone that the evidence suggested
10 did not exist. The evidence did not point to anyone
11 else being in that vehicle.

12 Q. And I understand that there is other evidence
13 that was available in the case beside what we're asking
14 you about or what was testified to. I recognize that
15 entirely. But in -- in doing your job as a defender,
16 do you give your client the benefit of the doubt?

17 A. I follow the Rock Wise rule, believe
18 everything your client says, believe nothing your
19 client says. And that results in doing an independent
20 investigation, which is what we are required to do.

21 Q. Okay. And I assume that's how you base the
22 advice that you give your clients?

23 A. Yes.

24 Q. Based on your investigation?

25 A. Yes.

JENNIFER JOHNSON -- CROSS

1 Q. But in order to give accurate advice, would
2 you agree with me that the more information you have
3 that the better advice that you can get?

4 A. Generally, yes.

5 Q. Okay. Is it accurate that in this case, when
6 Mr. Cabarruvias was entering his plea, he did not have
7 an interpreter to begin with?

8 A. That's correct.

9 Q. And at some point during the plea, the court
10 felt that an interpreter should be brought in?

11 A. The court stopped the proceedings and asked if
12 an interpreter would assist. There were -- and
13 ultimately we did get an interpreter that -- I think as
14 you indicated earlier to the court, communication with
15 Mr. Cabarruvias -- I never had an interpreter present
16 during my communication with him. And certainly --

17 MS. JAMESON: Your Honor, the State would object.
18 The record was re-opened to call five specific
19 witnesses totally unrelated to this issue. The motion
20 wasn't made to go into any sort of allegations
21 regarding an interpreter. We are well beyond the scope
22 of what we're here for today.

23 MR. DRAISEN: And my response would be that they
24 called her as a witness to rebut the testimony provided
25 today. So if I can have some leeway to talk about

JENNIFER JOHNSON -- CROSS

1 whether or not -- it was offered -- she's testified
2 about what she was offered in terms of the
3 investigation. We talked about the specifics of the
4 medical, we talked about the specifics of the
5 investigation. Now, I'm going to ask her about the
6 specifics of whether or not there was anyone present,
7 but at what point there was an interpreter present
8 during the process.

9 MS. JAMESON: The record --

10 THE COURT: It is not rebutting --

11 MR. DRAISEN: It is not specifically.

12 MS. JAMESON: And the State would submit the
13 record speaks for itself. Your Honor has a copy of the
14 guilty plea transcript and we are well beyond the scope
15 of what the record was re-opened for today.

16 THE COURT: Objection sustained. Move on.

17 MR. DRAISEN: All right.

18 BY MR. DRAISEN:

19 Q. Did you, during your representation, go to the
20 detention center or send someone to the detention
21 center to speak with Mr. Eskew or Mr. Owens or Mr.
22 Durants?

23 A. Who is Mr. Durants?

24 Q. Did -- he couldn't get subpoenaed today --

25 A. No.

JENNIFER JOHNSON -- CROSS

1 Q. Did you ever speak with Karen Langston or
2 Lenora Johnson from the detention center?

3 A. No.

4 Q. About Mr. Cabarruvias' injuries when he first
5 came to the detention center?

6 A. I did not.

7 Q. Did you ever see any photographs of what the
8 injuries looked liked or see what his injuries looked
9 liked immediately after the accident?

10 A. No. Again, I didn't get the case until it was
11 almost two months after the incident had happened, so I
12 didn't have that -- I do have his medical records that
13 I -- well, that I requested as part of the -- as part
14 of the case, but that did not include any sort of
15 photographic evidence.

16 Q. But you didn't talk to anybody about what the
17 injuries looked like?

18 A. No, I had the medical records there.

19 Q. And the records that you have, is there
20 anything specific that you recall about noting what his
21 injury looked liked exteriorly?

22 A. I'll be happy to review those. Obviously,
23 it's a long time since I -- and I'm sorry, I started
24 reading the medical records and I sort of forgotten
25 what you had asked me.

1 Q. I just asked if you recall a specific notation
2 in the records that described what the injury looked
3 like on the exterior of his body?

4 A. Not from an observation. It's more from a
5 medical record, it was a clavicle fracture -- as
6 opposed to -- it looked like --

7 Q. Did you mention anything about bruising or
8 where the bruising was located or anything of that
9 nature in the record? I'm not asking for you to
10 provide -- if you recall.

11 A. I mean, other than this radiology report, the
12 chest x-ray, a right clavicle fracture. But in terms
13 of saying a bruising and that sort of thing, that does
14 not appear to be part of the record.

15 Q. Okay. Just one second.

16 MR. DRAISEN: That's all I have, Your Honor.

17 THE COURT: Any redirect?

18 MS. JAMESON: Briefly, Your Honor.

19 **REDIRECT EXAMINATION BY MS. JAMESON:**

20 Q. Ms. Johnson, do you remember or recall from
21 looking at your file what time this accident occurred?

22 A. I believe the accident occurred around 1:00
23 p.m., but I mean -- I'm not certain about that.

24 MR. DRAISEN: Judge, are we going into new areas?

25 MS. JAMESON: This is in response to the testimony

1 from Mr. Trejos who was asked about any cross
2 examination.

3 MR. DRAISEN: She didn't asked him on direct.

4 MS. JAMESON: The M.A.I.T. report includes this
5 information.

6 THE COURT: Okay. I'll allow it. I don't know
7 what the necessity is; either she remembers or she
8 doesn't.

9 BY MS. JAMESON:

10 Q. Do you recall what time the accident occurred?
11 I believe you said you thought 1:00 p.m.?

12 A. About 1:00 p.m. or 1300 hours.

13 MS. JAMESON: No further questions.

14 THE COURT: Okay. Thank you, ma'am. You may step
15 down. Any additional witnesses from the State?

16 MS. JAMESON: Yes. The State would call David
17 Stoddard briefly. Can Ms. Johnson be released from her
18 subpoena?

19 THE COURT: Any objection?

20 MR. DRAISEN: No.

21 THE COURT: Thank you, ma'am.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Stoddard, if you would step
24 forward to be sworn in.

25 DAVID STODDARD, having been first

DAVID STODDARD -- DIRECT

1 duly sworn, testified as follows: I do.

2 THE CLERK: Please have a seat on the witness
3 stand. State your name for the court's record.

4 THE WITNESS: David L. Stoddard.

5 THE COURT: Thank you, sir.

6 DIRECT EXAMINATION BY MS. JAMESON:

7 Q. Mr. Stoddard, do you remember testifying at
8 Applicant's prior P.C.R. hearing on June 8, 2011?

9 A. Yes.

10 Q. Do you recall when you were retained to
11 represent Mr. Cabarruvias?

12 A. I actually checked my records to see, and it
13 was June 11, 2009, I believe. I think that was the
14 year. I know that was June 11th.

15 Q. Do you recall whether there were any witnesses
16 who observed the accident in this case?

17 A. Well, yes, I mean -- from the investigation --
18 and actually I don't know if I learned -- at one point,
19 the family -- I got off the case -- and I don't
20 remember all the circumstances. I remember his
21 daughter is the one that came and hired me on his
22 behalf. And as an independent -- I got off the case.
23 And I don't know at that time if I had -- had enough
24 information to know about any witnesses. But then I
25 got -- I agreed to -- to become involved again, to sort

DAVID STODDARD -- DIRECT

1 of help Ms. Johnson to see if there was anything else
2 that could be done. And I learned there were several
3 witnesses.

4 Q. Do you recall -- can you summarize what those
5 witnesses -- what statements they had?

6 MR. DRAISEN: Your Honor, I'm going to object to
7 hearsay. Witness statements -- she is asking him to
8 recall what witness statements are. They are not
9 parties.

10 THE COURT: Overruled.

11 A. I -- it would help -- it seems like we were
12 recording some of them, but it would help -- I haven't
13 been able to review the statements other than I have
14 got the notes of the witnesses I interviewed. But my
15 recollection is these were people on the road that day
16 that actually saw the accident. And my recollection is
17 they never saw anyone leave the van in the whole time
18 that they were there. I cannot recall if the witnesses
19 were still there when the ambulance got there.

20 I interviewed a witness who told me, it was a --
21 Ms. Smith, Casandra Smith. She was on the road that
22 day with her husband. They were following the van.
23 They saw it fish-tale and go across the center line.
24 And when it came to rest, they got out of their car.
25 She said they didn't realize it had struck another car

DAVID STODDARD -- DIRECT

1 until they got out of their car -- or at least her
2 husband got out. He approached the van. He stated --
3 now, this is what he stated to her, because I'm
4 interviewing her. He wasn't available that day. He
5 wasn't home. That he looked in the van, he -- he --
6 the driver was unresponsive.

7 If I can just read my notes if that's okay. It
8 was 5/12/2010, I spoke with Ms. Smith over the phone.
9 She described what happened the day of the accident,
10 which was 5/16/09. "She and her husband were following
11 behind the minivan. It was going about 45 or 50 miles
12 per hour and it was pouring rain. She saw the van
13 sliding around, hydroplaning, and go over the middle
14 line. The van came up on two wheels and back down.
15 She and her husband stopped to see how everyone was
16 doing. They did not realize the van had hit another
17 vehicle until they got out of their car. Mr. Smith
18 tried to get a response from the man driving the van.
19 No response. Mr. Smith looked into the van to make
20 sure there was no one else in the van that was hurt.
21 It was only the driver. He was buckled in the driver's
22 seat. Another woman tried to talk to man driving the
23 van. He could not speak English and all he could do
24 was nod."

25 MS. JAMESON: No further questions, Your Honor.

DAVID STODDARD -- CROSS

1 THE COURT: Cross examination?

2 MR. DRAISEN: Just briefly, Mr. Stoddard.

3 CROSS EXAMINATION BY MR. DRAISEN:

4 Q. Did you ever -- did you ever see the actual
5 written statements given by the witnesses?

6 A. I don't remember. I don't believe I had
7 gotten -- when I got off of the case, I don't believe I
8 had gotten any discovery. I know that I met with Ms.
9 Johnson and she shared parts of her file. I do
10 remember listening to an -- an oral interview that was
11 on the record -- on a recording, I believe.

12 Q. Are you aware of inconsistencies in witness'
13 statements that were given?

14 A. I'm not aware of any -- well, actually in
15 reviewing the transcript from the previous hearing
16 here, I think one of the witnesses had an incorrect
17 date as far as the date of the accident.

18 Q. Well -- and you testified about some things
19 that they were -- that you were -- you were told and
20 your notes reflect, and you're aware that that
21 information is in statements or were given to Trooper
22 Warren in the prior statements, written Statement?

23 A. I don't recall anything inconsistent. I
24 reviewed my testimony yesterday, I don't -- I don't
25 know what you're talking about.

DAVID STODDARD -- CROSS

1 Q. Okay. Well, let me show you some statements
2 if you haven't seen them.

3 MS. JAMESON: Your Honor, if we could see a copy
4 of those. And I believe --

5 MR. DRAISEN: Yeah, I'm pulling them right out of
6 the report.

7 MS. JAMESON: These say exhibit -- they're
8 attached to your client's pro se pleadings, so we would
9 have an objection to those coming in, because they
10 can't be authenticated. They have your client's
11 handwriting with exhibit on the top.

12 MR. DRAISEN: I mean, I'm going to ask him to look
13 at the actual statement of the witness portion only.

14 THE COURT: Your objection is overruled for the
15 same reasons.

16 BY MR. DRAISEN:

17 Q. Was the person that you said you spoke to, was
18 it James Smith?

19 A. I spoke to a Casandra Smith, which may be his
20 wife.

21 Q. Okay. Well, I'm going to show you a
22 statement. This is says South Carolina Department of
23 Public Safety Affidavit. You're going to see that it
24 says "Casandra Jewel Smith" on there?

25 A. Okay.

DAVID STODDARD -- CROSS

1 Q. Let's take a look at it. Does her statement
2 to Trooper Warren give the details that you just
3 testified to?

4 A. It doesn't.

5 Q. And if you will look, this report indicates
6 that the statement was given at 11:40 a.m.?

7 A. Right.

8 Q. In the presence of Trooper Warren?

9 A. Right.

10 Q. And it says was it completed at 11:40, right?

11 A. That's what it says.

12 Q. So it took zero minutes to complete --

13 MS. JAMESON: Your Honor, he's testifying.

14 THE COURT: It's cross examination. Overruled.

15 A. Well according to that --

16 BY MR. DRAISEN:

17 Q. I'm just asking you what the paper says?

18 A. Yeah. It says that.

19 Q. Did you ever talk to a James Smith?

20 A. I did -- I don't believe I did.

21 Q. Okay. All right. Have you seen this
22 statement before today?

23 A. I can't recall it. It's possible, but I don't
24 --

25 Q. What about Ralph Riggs; do you recall seeing

DAVID STODDARD -- CROSS

1 his statement?

2 A. I don't recall seeing it, but I'm not saying I
3 didn't.

4 Q. I understand. I'm just asking you, if you
5 look at Mr. Smith's statement real quick there, it is
6 likewise -- did Mr. Smith give you an opportunity to --
7 significant details about the driver?

8 A. Well, yes. He gave less details than what the
9 statement I got from Ms. Smith, but he does say it --
10 he came -- it hydroplaned, spun side ways, and reared
11 the van, lifted off of the ground. The van had hit
12 another car and it gives the date -- on Highway 29.
13 No, he doesn't give -- at first, I think he said he
14 crossed the center line. This one doesn't so --

15 Q. Is there any mention about the driver?

16 A. No.

17 Q. Or about seeing the driver or talking to the
18 driver, or anything in that nature?

19 A. Not in there.

20 Q. Okay. All right. Let me just ask you a few
21 questions about what you did. Were you on this case
22 maybe a month -- Jennifer testified that she was -- her
23 file was opened July 9, 2009, you said June 11, 2009?

24 A. That sounds about right -- well, a month. And
25 then, again, I got back involved later on probably

1 around May of 2010.

2 Q. At any point in time in your representation,
3 did you ever seek the opinion of a medical expert with
4 regard to whether or not there was any probability that
5 Mr. Cabarruvias' right clavicle injury could be
6 explained by being a passenger in the car?

7 A. I did not.

8 Q. At any point in time, did you hire an
9 investigator or do any investigation to locate any
10 witnesses who may have been able to tell us, you know,
11 about Mr. Cabarruvias, whether he was driving the car?

12 A. I did not. But I will tell you that -- for
13 both of those, I -- my representation terminated --
14 those are things that I may or may not have done. I
15 don't know if I ever had a chance or -- of course, the
16 client, he would speak -- discuss, hey, who is going to
17 pay for that. None of that ever came up.

18 Q. I understand. And I guess I was going to
19 establish for the record, in the time you represented
20 him, or the subsequent time you came in, that's not
21 part of the scope of what you did?

22 A. I didn't do that.

23 Q. Did you ever interview anyone that was at the
24 jail with Mr. Cabarruvias about his injuries?

25 A. No.

DAVID STODDARD -- CROSS

1 Q. About what they looked like prior to
2 treatment?

3 A. I did not.

4 Q. Did you ever talk to the nurse at the jail or
5 any jailers about his injuries?

6 A. I did not.

7 Q. And I'm going to assume that -- did you
8 likewise today hear Mr. Trejos' testimony?

9 A. I was not in the courtroom.

10 Q. You weren't in here. You don't know who he
11 is?

12 A. Trejos?

13 Q. Mr. Trejos? You didn't know who he was?

14 A. I don't know who he was.

15 Q. Okay.

16 A. Now, the time I met with my client -- with Mr.
17 Cabarruvias, I recall him telling me that somebody at
18 the jail, another inmate, had some information that was
19 relevant. And I don't remember what the information
20 was, but it had to do with a rumor that there was
21 another driver, or had some information that there was
22 another -- another person in the car. And if I'm not
23 mistaken, I took -- but he didn't know the name of the
24 inmate.

25 And I asked the jail if I could take him around

1 the jail to -- so he could find the person for me to
2 interview. And we walked around the jail, and looked
3 in all the different cells, and couldn't find him.

4 Q. Okay.

5 A. I believe that happened. It's been a long
6 time ago.

7 MR. DRAISEN: That's all I have, Your Honor.

8 THE COURT: Any redirect?

9 MS. JAMESON: Briefly, Your Honor.

10 BY MS. JAMESON:

11 Q. Mr. Stoddard, do you recall if any oral
12 statements were provided to law enforcement after the
13 written statements Mr. Draisen showed you?

14 A. No, ma'am. Well, other than -- again, this --
15 but I believe that I heard a recorded statement of some
16 sort, it may have been one of these witnesses.

17 Q. Other than the one witness you personally
18 spoke with, did you have any of your office staff talk
19 to additional witnesses?

20 A. No -- well, if I'm not -- just from my
21 testimony, I believe that I read yesterday -- and I
22 don't recall this today -- but apparently when I
23 testified the first time, I think my secretary may have
24 interviewed witnesses. And that -- that is not
25 unusual in my office. She will call people and tell me

1 what they said. And if there is something that sounds
2 like it needs to be explored further, I'll call that
3 person. If it's not anything helpful to my case, then
4 I'll leave it alone.

5 MS. JAMESON: One moment's indulgence. (Pause.)
6 No further questions, Your Honor.

7 THE COURT: All right. Thank you, sir. Any
8 objection to this witness being excused?

9 MR. DRAISEN: No.

10 MS. JAMESON: No, Your Honor.

11 THE COURT: Thank you. Any additional witnesses?

12 MR. DRAISEN: None from the defendant.

13 MS. JAMESON: No, Your Honor.

14 THE COURT: Would y'all like to make argument or
15 you can submit proposed orders?

16 MS. JAMESON: Whichever Your Honor would prefer.

17 THE COURT: Proposed orders.

18 MS. JAMESON: Certainly, Your Honor.

19 THE COURT: Give them to me within 20 days -- yeah
20 20 days.

21 MS. JAMESON: Thank you, Your Honor.

22 MR. DRAISEN: Um --

23 THE COURT: By email directly to me. Today is my
24 clerk's last day. I'll have a break in there getting
25 --

1 MS. JAMESON: Certainly, Your Honor.

2 MR. DRAISEN: Now, I've asked this question --
3 because Anderson County is on e-filing now, the way
4 you're supposed to do orders is that you're supposed to
5 submit it as a proposed order electronically and a copy
6 to you.

7 THE COURT: Right. I actually meant to ask the
8 clerk that. Because -- I mean I know that you have
9 binders for these things, and that -- on some of these
10 case are e-filings, but I thought P.C.R.s were exempt
11 from electronic.

12 MR. DRAISEN: They are exempt.

13 THE COURT: We need to scan them and create a
14 binder as well?

15 MR. DRAISEN: So we don't have -- so we don't go
16 through you?

17 THE CLERK: No.

18 THE COURT: Because they are exempt.

19 MR. DRAISEN: Okay. We can email them directly to
20 you, and a copy to opposing counsel?

21 THE COURT: Yes, in Word Format.

22 MR. DRAISEN: Word.

23 MS. JAMESON: Certainly, Your Honor. Thank you.

24 THE COURT: Thank you.

25 MR. DRAISEN: Thank you.

1 THE COURT: That's it.

2 (Whereupon the hearing adjourned.)

3 CERTIFICATE OF REPORTER

4
5 I, SHARON D. JONES, CERTIFIED COURT REPORTER,
6 DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
7 ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
8 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
9 THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
10 COURT FOR ANDERSON COUNTY ON THE 28TH OF JUNE, 2017.

11 I DO FURTHER CERTIFY THAT I AM NEITHER OF
12 KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

13
14
15 4.13.2018

16 ***Sharon D. Jones***

17
18 SHARON D. JONES,
19 CERTIFIED COURT REPORTER
20 COMMISSION EXPIRES 9.22.2024
21
22
23
24
25



KRAUSE MOORHEAD & DRAISEN P.A.

409
207 EAST CALHOUN STREET
ANDERSON • SOUTH CAROLINA • 29621
PHONE (864) 225-4000
FAX (864) 964-0788
WWW.KMDLAWYERS.COM

June 19, 2017

**CERTIFIED DELIVERY
RETURN RECEIPT REQUESTED**

Dr. Darius Davina
AnMed Health Community Orthopaedics
2000 E. Greenville St., Suite 3950
Anderson, SC 29621

RE: Jose Luis Luna Cabarruvias vs. The State of South Carolina
C/A No.: 2011-CP-04-0015

Dear Dr. Davina:

Please find enclosed a subpoena regarding the above-referenced matter. This case is scheduled to be heard on June 28, 2017 at 9:30 a.m. in the Anderson County Courthouse.

As you will note, the subpoena is continuing until you are released. In the event this case is not called this term and we are in line for trial during the next term of court, I will simply notify you without having to issue a new subpoena. I would ask that you provide my paralegal, Kathy with a phone number where you can be reached at anytime and also that you advise me if you have to go out of town or if something arises that would prevent you from being available for court.

Should you have any questions or if I can be of any assistance to you, please feel free to contact me at anytime.

With kind regards, I remain

Sincerely,

KRAUSE, MOORHEAD & DRAISEN, P.A.

Daniel L. Draisen

DLD:kcc
Enclosure

FILED-CLERK'S OFFICE
ANDERSON SC
2017 JUL -3 PM 3:51
COMMON PLEAS AND
GENERAL SESSIONS

FILED ANDERSON COUNTY	COURT'S	
	EXHIBIT NO.	①
	IDENTIFICATION/EVIDENCE	
	DKT. #	11-CP-04-0015
DATE:		6-28-17

STATE OF SOUTH CAROLINA
ISSUED BY THE
COMMON PLEAS COURT IN THE COUNTY OF ANDERSON

Jose Luis Luna Cabarruvias, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

The State of South Carolina, Defendant

Case Number: 2011-CP-04-0015

Pending in Anderson County

TO: DR. DARIUS DIVINA, 2000 E. Greenville St., Ste. 3950, Anderson, SC 29621

☒ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY
Anderson County Courthouse
100 Main St.
Anderson, SC 29623

COURTROOM Fourth Floor

DATE AND TIME June 28, 2017, 9:30 AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME, AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

PLACE

DATE AND TIME, AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME, AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature

06-1-17

Daniel L. Draisen, Esq.

Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :

Date

Print Name

207 E. Calhoun St., Anderson, SC 29621

864/225-4000

PROOF OF SERVICE

SERVED	DATE 06-19-17	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$
	PLACE 2000 E. Greenville St., Ste. 3950, Anderson, SC 29621	
SERVED ON Dr. Darius Divina		MANNER OF SERVICE Certified Mail
SERVED BY Kathy B. Campbell		TITLE Paralegal

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 06-19-17

Kathy B. Campbell
SIGNATURE OF SERVER

207 E. Calhoun St. Anderson, SC 29621

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

KMD

KRAUSE MOORHEAD & DRAISEN, P.A.
207 East Calhoun Street
Anderson, South Carolina 29621



CERTIFIED MAIL



7016 2140 0001 1386 5559

CERTIFIED DELIVERY
RETURN RECEIPT REQUESTED

Dr. Darius Davina
AnMed Health Community Orthopaedics
2000 E. Greenville St., Suite 3950
Anderson, SC 29621

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70162140000113865559



Delivered

Updated Delivery Day: Friday, June 23, 2017 ⓘ

Product & Tracking Information

See Available Actions

Postal Product:

Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 23, 2017, 9:32 am	Delivered	ANDERSON, SC 29621
Your item was delivered at 9:32 am on June 23, 2017 in ANDERSON, SC 29621.		
June 22, 2017, 11:26 am	Available for Pickup	ANDERSON, SC 29621
June 22, 2017, 10:53 am	Arrived at Unit	ANDERSON, SC 29621
June 21, 2017, 1:14 am	Departed USPS Facility	GREENVILLE, SC 29607

See More ▾

Available Actions

Text Updates



Email Updates



See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<http://faq.usps.com/?articleId=220900>)

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®**OFFICIAL USE**

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy) \$ _____
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

Postmark
Here

Postage

\$

Total Postage and Fees

\$

Sent to

By

Street and Apt. No., or P.O. Box No.

City (State) Zip+4

PS Form 3800, April 2015 PSN 7530-02-000-9007 See Reverse for Instructions

Dr. Darius Davina - Comm. Dr. Ho.

2600 E. G.W. St. SL 3950

Anderson SC 29621



KRAUSE MOORHEAD & DRAISEN P.A.

415

207 EAST CALHOUN STREET
ANDERSON • SOUTH CAROLINA • 29621
PHONE (864) 225-4000
FAX (864) 964-0788
WWW.KMDLAWYERS.COM

June 5, 2017

**CERTIFIED DELIVERY
RETURN RECEIPT REQUESTED**

Trooper Adam Scott Warren
South Carolina Highway Patrol/Troop Three
33 Villa Rd., Suite 200, Box 103
Greenville, South Carolina 29615

FILED-CLERK'S OFFICE
ANDERSON SC
2017 JUN -3 PM 3:51
COMMON PLEAS AND
GENERAL SESSIONS

RE: Jose Luis Luna Cabarruvias vs. The State of South Carolina
C/A No.: 2011-CP-04-0015

Dear Trooper Warren:

Please find enclosed a subpoena regarding the above-referenced matter. This case is scheduled to be heard on June 28, 2017 at 9:30 a.m. in the Anderson County Courthouse.

As you will note, the subpoena is continuing until you are released. In the event this case is not called this term and we are in line for trial during the next term of court, I will simply notify you without having to issue a new subpoena. I would ask that you provide my paralegal, Kathy with a phone number where you can be reached at anytime and also that you advise me if you have to go out of town or if something arises that would prevent you from being available for court. I have enclosed a copy of the Traffic Accident Report for your convenience.

Should you have any questions or if I can be of any assistance to you, please feel free to contact me at anytime.

With kind regards, I remain

Sincerely,

KRAUSE, MOORHEAD & DRAISEN, P.A.

[Handwritten Signature: Daniel L. Draisen]
Daniel L. Draisen

DLD:kcc
Enclosure

[Handwritten "ENTERED" stamp]

FILED 800-451-1500	COURT'S	②
	EXHIBIT NO.	
	IDENTIFICATION/EVIDENCE	
	DKT. #	11-CP-04-115
	DATE	6-28-17

STATE OF SOUTH CAROLINA

ISSUED BY THE

COMMON PLEAS COURT IN THE COUNTY OF ANDERSON

Jose Luis Luna Cabarruvias, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

The State of South Carolina, Defendant

Case Number: 2011-CP-04-0015

Pending in Anderson County

TO: TROOPER ADAM SCOTT WARREN, 33 Villa Rd., Suite 200, Box 103, Greenville, SC 29615

☒ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

Anderson County Courthouse

100 Main St.

Anderson, SC 29623

COURTROOM Fourth Floor

DATE AND TIME June 28, 20017, 9:30 AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME, AM

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects:

PLACE

DATE AND TIME, AM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME, AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(e)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

T. L. Drais
 Attorney/Issuing Officer's Signature
 Indicate if Attorney for Plaintiff or Defendant
 Attorney's Address and Telephone Number:

06-517
 Date

Daniel L. Drais, Esq.

Print Name

207 E. Calhoun St., Anderson, SC 29621

864/225-4000

PROOF OF SERVICE

SERVED	DATE 06-0517	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☒ NO AMOUNT \$
	PLACE 33 Villa Rd., Ste. 200, Box 103 Greenville, SC 29615	
SERVED ON Trooper Adam Scott Warren		MANNER OF SERVICE Certified Mail
SERVED BY Kathy B. Campbell		TITLE Paralegal

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 06-05-17

SIGNATURE OF SERVER

207 E. Calhoun St. Anderson, SC 29621

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

418 ORIGINAL

Q.S. USE ONLY

Page #

SOUTH CAROLINA
TRAFFIC COLLISION REPORT FORM

CI

Units

n

a

Amended

of Original

Continued

Date

Time

County

1- Interstate

4- Secondary

2- US Primary

5- County

3- SC Primary

Collision Location (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Date: 5-16-2009
Time: 13:00
County: 04

1- Interstate

4- Secondary

2- US Primary

5- County

3- SC Primary

Collision Location (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Base Intersection (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Second Intersection (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Latitude

34° 33' 55.40"

Longitude

82° 33' 01.50"

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

Base Intersection (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Second Intersection (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Latitude

34° 33' 55.40"

Longitude

82° 33' 01.50"

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

Base Intersection (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Second Intersection (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Latitude

34° 33' 55.40"

Longitude

82° 33' 01.50"

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

Base Intersection (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Second Intersection (Rt. # / Name)

0- Main

2- Alternate

5- Spur

6- Connection

7- Business

Miles:

Dir.

N

E

S

W

Near City or Town of:

Anderson

Latitude

34° 33' 55.40"

Longitude

82° 33' 01.50"

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

MP/Grnd

ASRU Code

[illegible]

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Trooper Adam Scott Warren
 SC Highway Patrol
 33 Villa Rd., Ste 200, Box 103
 Greenville, SC 29615



9590 9402 2328 6225 6217 97

2. Article Number (Transfer from service label)

7016 2140 0001 1386 5160

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]* ☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature	☐ Priority Mail Express®
☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☒ Certified Mail®	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☒ Return Receipt for Merchandise
☐ Collect on Delivery	☐ Signature Confirmation™
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Insured Mail	
☐ Mail Restricted Delivery (09)	

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

CERTIFIED MAIL® RECEIPT

Domestic Mail Only

421

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy)	\$	
☐ Return Receipt (electronic)	\$	
☐ Certified Mail Restricted Delivery	\$	
☐ Adult Signature Required	\$	
☐ Adult Signature Restricted Delivery	\$	

Postmark
Here

Postage

\$

Total Postage and Fees

\$

Send To
Trooper Adam Scott Warren / Hwy. Pat.

33 Villa Rd., Ste. 200, Box 103

Greenville, SC 29615

December 13, 2012

LAW OFFICES
OF
KRAUSE,
MOORHEAD
AND
DRAISEN, P.A.

207 EAST CALHOUN ST.
ANDERSON, SC 29621

PHONE (864) 225-4000
FAX (864) 964-0788

STEVEN M. KRAUSE
skrause@kmdlawyers.com
CERTIFIED NATIONAL BOARD
OF TRIAL ADVOCACY

J. KIRKMAN MOORHEAD
kmoorhead@kmdlawyers.com

DANIEL L. DRAISEN
ddraisen@kmdlawyers.com
ALSO A MEMBER OF
THE OKLAHOMA BAR

STEVEN B. LEFEVRE
slefevr@kmdlawyers.com

Oaktree Orthopaedics
108 Montgomery Dr.
Anderson, South Carolina 29621

ATTN: Custodian of Medical Records

RE: Jose Luis Luna Cobarruvias, #342601 vs. State of South
Carolina
C.A. No. 2011-CP-04-0015

Dear Sirs:

Please be advised that I have been appointed to represent Mr. Jose Luis Luna Cobarruvias in regard to a Post-Conviction Relief action currently pending. Please find enclosed a copy of medical records Mr. Cobarruvias remitted to my attention to be submitted to the Court in this matter. If you can verify these records are true, accurate and were generated from your office, I would ask that you sign the enclosed Affidavit of the Custodian of Medical Records. This form will need to be notarized as it will be submitted to the Court as verification the medical records are authentic. Please forward the signed Affidavit back to my attention in the self-addressee, stamped envelope I have provided for your convenience.

Should you have any questions or further concerns, please feel free to contact me at anytime.

With kind regards.

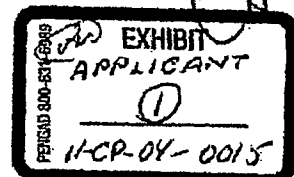
Sincerely,

KRAUSE, MOORHEAD AND DRAISEN, P.A.

Daniel L. Draisen
Daniel L. Draisen

DLD:kbc
Enclosures

FILED-CLERK'S OFFICE
ANDERSON SC
2012 DEC -3 PM 3:50
COMMON PLEAS AND
GENERAL SESSIONS



6-28-12

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS
JOSE LUIS LUNA CABARRUVIAS SCDC ID: 00342601 SID: SC01389864, Plaintiff, vs. THE STATE OF SOUTH CAROLINA, Defendant.	AFFIDAVIT OF THE CUSTODIAN OF MEDICAL RECORDS FOR OAKTREE ORTHOPAEDICS C/A No. 2011-CP-04-0015

I, _____, am the Custodian of Records for Oaktree Orthopaedics. I verify that the foregoing medical records submitted on behalf of Jose Cobarruvias, DOB: [REDACTED] are true and accurate medical records that are kept and maintained in the course and scope of the regular course of business.

The medical records submitted are as follows:

Dates of Service: 05-16-09;
06-15-09; and
07-20-09

This statement is true to the best of my knowledge and belief.

CUSTODIAN OF RECORDS
OAKTREE ORTHOPAEDICS

Sworn to before me this
_____ day of December, 2012.

Notary Public for South Carolina
My Commission Expires: _____

OAKTREE ORTHOPAEDICS

127 Straight Street
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSE CODARRUVIS
DATE OF BIRTH: [REDACTED]
MRN: 59832
DATE OF SERVICE: 05/16/09

HISTORY OF PRESENT ILLNESS:

The patient is here accompanied by a police officer for reevaluation of his right clavicle fracture. He still has pain of about 6/10. The patient states it is not as bad as it was when he first got here. The patient also wants to remind me and make statement that he was the passenger, not the driver.

All patient history as recorded in the initial history and physical remains the same today's date.

EXAMINATION:

No tenting of the skin is noted. He is neurovascularly intact without paresthesias of his right upper extremity. There is pain upon palpation at his clavicle.

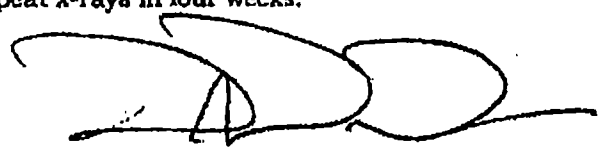
X-rays are taken today in my office. Compared to the previous x-rays, it shows no change of his alignment.

ASSESSMENT/PLAN:**1. RIGHT CLAVICLE FRACTURE.**

We will continue utilizing a sling as well as Lortab 5 one to two every four to six hours p.r.n. pain #40 dispensed. No refills are prescribed. This is his last narcotics prescription. I will repeat x-rays in four weeks.

Darius Divina, DO

DD:ats12
Voice File: 0630-001



Transcription dictated but not read in order to expedite records.

ANDERSON AREA MEDICAL CENTER
800 NORTH FANT STREET
ANDERSON SC 29621

RADIOLOGY REPORT

Pat. Name: LUNA, JOSE LUIS
Address: [REDACTED] MARIO STREET
GREENVILLE, SC 29611
Unit/Room: ED/0000
DOB: [REDACTED]
Sex: M

MR#: 000538178
Ord. Phys.: BRIDGET AILEEN BRENNAN
Service Date/Time: 05/16/2009 3:36 PM
Order#: E-03789419
PROC: CT CHEST W, ABD W/NO AND PELVIS
Attend. Prov.: BRIDGET AILEEN BRENNAN

LUNA CT CHEST, ABDOMEN \T\ PELVIS W/NO CONTRAST

CLINICAL HISTORY: Trauma. MVA.

TECHNIQUE: Following the administration of oral contrast only, axial images were obtained through the liver at 10 mm slice thickness and 20 mm table increments. Then, following the intravenous administration of 100 ml of Optiray 320, multiple helical images were obtained at 5 mm from the level of the thoracic inlet through the ischial tuberosities. Delayed images were obtained using similar technique through the abdomen and pelvis at approximately five minutes post-contrast administration. Additional sagittal and coronal 2D reconstructions were performed after axial helical acquisition.

FINDINGS: CHEST: CT examination demonstrates symmetry of the thyroid lobes. No mediastinal abnormality is identified.

There is no evidence for pleural or pericardial effusion.

Parenchymal lung windows demonstrate no evidence for pneumothorax. There is patchy airspace density peripherally within the right midlung which measures 3.1mm possibly representing a contusion. There is another nodular density seen medial to this measuring 3.1mm. There is atelectasis in the lung bases.

There is no mediastinal abnormality. A right clavicular fracture is identified. Displaced rib fracture is seen. Increased blastic density is identified within the disc space of T11 T12.

IMPRESSION:

COMMINUTED RIGHT CLAVICULAR FRACTURE.

TWO NODULAR DENSITIES MEASURING 3.1MM IN THE RIGHT MIDDLE LOBE WHICH MAY REPRESENT SMALL CONTUSIONS

BIBASILAR ATELECTASIS.

*** report continues next page ***

Dictated Date/Time: 05/16/2009 3:38 PM
Transcr. By: JJORDAN
Transcr. Date/Time: 05/16/2009 4:26 PM

Dictated By: MONICA HOIER GRIER, M.D.
Reviewed By:
Approved Date/Time: 05/16/2009 8:14 PM
Page 1

OAKTREE ORTHOPAEDICS

3277 Clemson Blvd
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSÉ COBARRUVIAS
DATE OF BIRTH: [REDACTED]
MRN#: 5932
DATE OF SERVICE: 06/15/09

CHIEF COMPLAINT: Right shoulder injury

HISTORY OF PRESENT ILLNESS:

This 43-year-old, right hand dominant male presents to my clinic today in regards to the above. The patient is accompanied by a police officer. He is currently an inmate. The patient on 05/16/09 was involved in a motor vehicle accident, which he does not remember. He does wear a sling and states the pain is about a 5/10.

The patient's complete history and physical as well as medication survey has been reviewed by me and included in the chart.

ALLERGIES:

None

CURRENT MEDICATIONS:

Lortab
Tagamet

PAST MEDICAL HISTORY:

Ulcers

PAST SURGICAL HISTORY:

None

SOCIAL HISTORY:

Admits to very minimal tobacco use. Denies any alcohol use.

FAMILY HISTORY:

Father deceased. Mother is alive in good health.

Continued . . .

JOSE COBARRUVIAS

June 15, 2009

PAGE 2

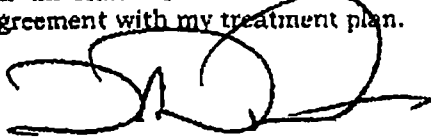
PHYSICAL EXAMINATION:**Ht:** 5'2" **Wt:** 110 lbs **BP:** 130/84 **Temp:** Afebrile**General:** The patient is alert and oriented x 3 and in no acute distress.

Examination of his shoulder: Decreased range of motion secondary to the clavicle fracture. Pain on palpation to his clavicle. There is no tenting of skin. His neurovascular exam is intact without paresthesias to his upper extremities.

X-rays were taken today in my office today of his right clavicle, which shows an overriding midshaft clavicle fracture.

ASSESSMENT/PLAN:**1. RIGHT CLAVICLE FRACTURE.**

I took the opportunity, in great detail, to discuss the patient's symptoms. This is going to be treated nonsurgically. He is to remain in his sling. Repeat x-rays in two weeks. Lortab 5's one to two every four to six hours p.r.n. pain, with no refills were prescribed. All information was understood and all questions were answered. He is well in agreement with my treatment plan.



Darius Divina, DO
Board Certified Orthopedic Surgeon

DD:ats42
Voice File: 0617-023

Transcription dictated but not read in order to expedite records.

OAKTREE ORTHOPAEDICS

127 Straight Street
Anderson, SC 29621

Phone: 864-231-7373

Fax: 864-231-7379

PATIENT'S NAME: JOSE CODARRUVIAZ
DATE OF BIRTH: [REDACTED]
MRN: 59832
DATE OF INJURY: 05/16/09
DATE OF SERVICE: 07/20/09

HISTORY OF PRESENT ILLNESS:

The patient is accompanied by a police officer. He is here for reevaluation of his right clavicle. He states his pain is about a 6/10.

All patient history as recorded in the initial history and physical remains the same today's date.

EXAMINATION:

Physical examination of his shoulder shows symmetrical range of motion. He has continued pain on palpation over his right clavicle. The patient is neurovascularly intact.

X-rays were taken today in my clinic compared to previous x-rays, which show once again the overriding mid clavicular fracture. I do not appreciate any callus formation yet at this point.

ASSESSMENT/PLAN:

1. RIGHT CLAVICLE FRACTURE.

I wrote him his last prescription for Lortab 5.0 one to two every four to six hours p.r.n. pain dispense #40, with no refills. He is to continue his range of motion exercises. He is to wear his sling as needed. He is to wean into heavy lifting, pulling, pushing, and twisting. I will repeat x-rays in four weeks.

Darius Divina, DO
Board Certified Orthopedic Surgeon

DD:ats6
Voice File: 0720-020

Transcription dictated but not read in order to expedite records.

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF COMMON PLEAS
JOSE LUIS LUNA CABARRUVIAS SCDC ID: 00342601 SID: SC01389864, Plaintiff, vs. THE STATE OF SOUTH CAROLINA, Defendant.	AFFIDAVIT OF THE CUSTODIAN OF MEDICAL RECORDS FOR OAKTREE ORTHOPAEDICS C/A No. 2011-CP-04-0015

I, Laura Brown, am the Custodian of Records for Oaktree Orthopaedics. I verify that the foregoing medical records submitted on behalf of Jose Cobarruvias, DOB: [REDACTED] are true and accurate medical records that are kept and maintained in the course and scope of the regular course of business.

The medical records submitted are as follows:

Dates of Service: 05-16-09;
06-15-09; and
07-20-09

Please see attached records

This statement is true to the best of my knowledge and belief.

Laura Brown
CUSTODIAN OF RECORDS
OAKTREE ORTHOPAEDICS

Sworn to before me this

15th day of ~~December, 2012~~
January, 2013

William Roden
Notary Public for South Carolina
My Commission Expires: 11-16-2020



South Carolina Department of Public Safety

South Carolina Highway Patrol

PL-046-09
Anderson
County

FILED-CLERK'S OFFICE
ANDERSON SC
2017 JUL -3 PM 3:50
COMMON PLEAS AND
GENERAL SESSIONS

Piedmont
M.A.I.T.

Team Members

Lt. P.M. Sims
Sgt. B.S. Brock
L/Cpl. T.D. Ayers
L/Cpl. C.M. Burgess
L/Cpl. T.J. Brooks
L/Cpl. M.E. Duncan

Primary Investigating Officer

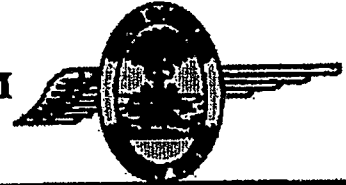
TFC. A.S. Warren

Attorney's Copy



SCHP-M-001
Revised 10-07.

**SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM**



COVER SHEET

TEAM
PIEDMONT

DATE OF COLLISION
May 16, 2009

TIME (2400)
1300 HOURS

PRIMARY INVESTIGATING AGENCY
SCHP / TROOP 3 / ANDERSON COUNTY

PRIMARY INVESTIGATING OFFICER
TFC. A.S. Warren

CASE NUMBER
PL-046-09

LOCATION
US 29

CAD NUMBER
022379

GPS COORDINATES
Latitude: 34° 33' 55.40" N
Longitude: 82° 33' 01.50" W

TEAM LEADER
LT. P.M. SIMS

SCDOT ENGINEER(S)
N/A

MECHANICAL SPECIALIST
N/A

OTHER TEAM MEMBERS
SGT. B. S. BROCK
L/CPL. T.D. AYERS
L/CPL. C.M. BURGESS
L/CPL. T.J. BROOKS
L/CPL. M.E. DUNCAN

SUBPOENAS FOR M.A.I.T. PERSONNEL SHOULD BE DIRECTED TO:
FOIA Officer
SCDPS Office of General Counsel
POB 1993
Blythewood, SC 29016

INTRODUCTION

This limited report will outline the findings of the Piedmont Multi-Disciplinary Accident Investigation Team as they relate to a traffic collision that occurred at approximately 1300 hours on May 16, 2009, in Anderson County, State of South Carolina on US 29. A copy of the South Carolina Traffic Collision Report is attached in the Appendix section of this report.

On May 16, 2009, Lieutenant Don Dickerson / SCHP / Troop 3 Headquarters requested the Piedmont MAIT to assist with this investigation. This collision involved two vehicles and a possible Felony DUI.

SCALE DIAGRAM

The following three pages contain scale diagrams made by the Piedmont MAIT. The scale diagrams were made using a *Sokkia* total station, which is both a theodolite and an electronic distance-measuring instrument (EDMI).

The Piedmont MAIT made the scale diagrams on June 1, 2009. The compass, signs, and title box were placed in the drawing using a computer-assisted drawing (CAD) program. The CAD program also was used in placing unit #1 and #2 in the diagram. Physical evidence found at the scene allowed the Piedmont MAIT to determine the location that units # 1 and # 2 should be placed.

The first diagram represents the roadway as it would have been found prior to the collision. The second diagram depicts the impact, and the third diagram depicts the evidence and final rest of units # 1 and # 2.

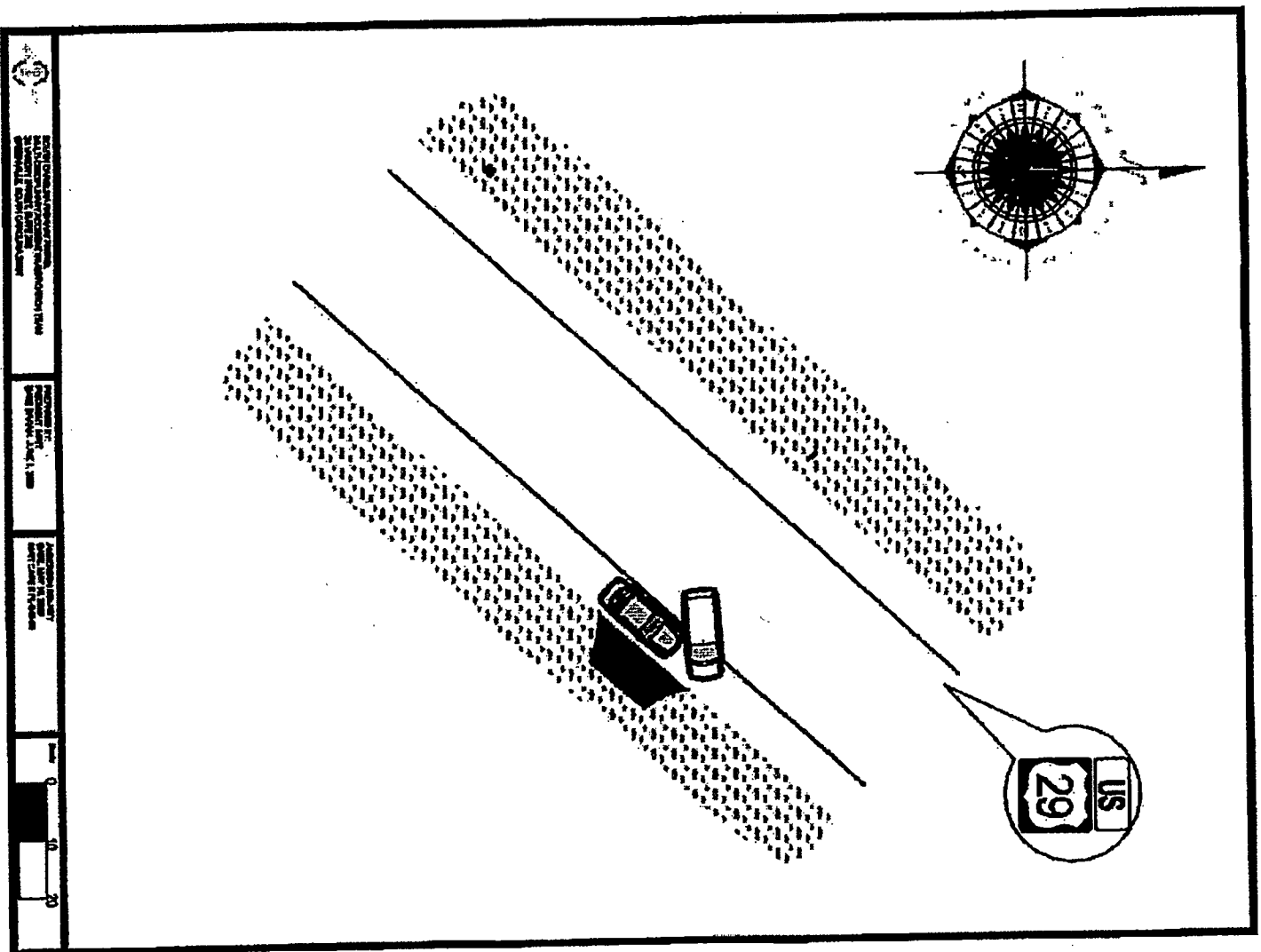


ROADWAY

Piedmont MALT

4

PL-046-03

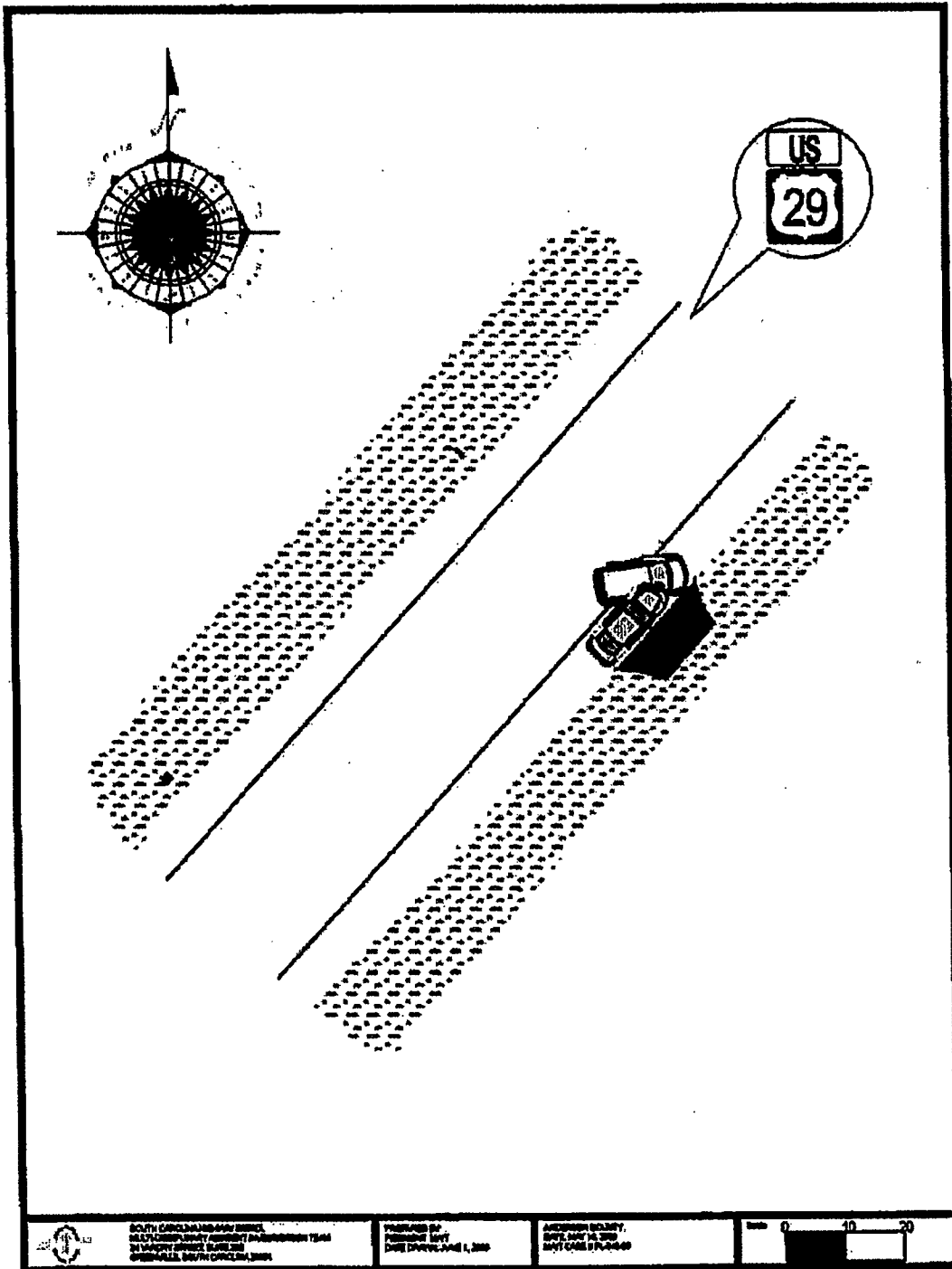


IMPACT

Piedmont MATI

4

PL-046-09



EVIDENCE AND FINAL REST

ROADWAY EXAMINATION

The collision scene is located in Anderson County on US 29. The following is a brief description of the roadway.

US 29:

US 29 is a two-lane, state-maintained highway in the area of the collision scene. US 29 is composed of asphalt and is in good condition at and around the collision scene. The travel lanes on US 29 are divided by painted double yellow lines at the collision scene. The speed limit on US 29 is posted 50 mph at the collision scene.



Photo looking north on US 29 toward the area of impact

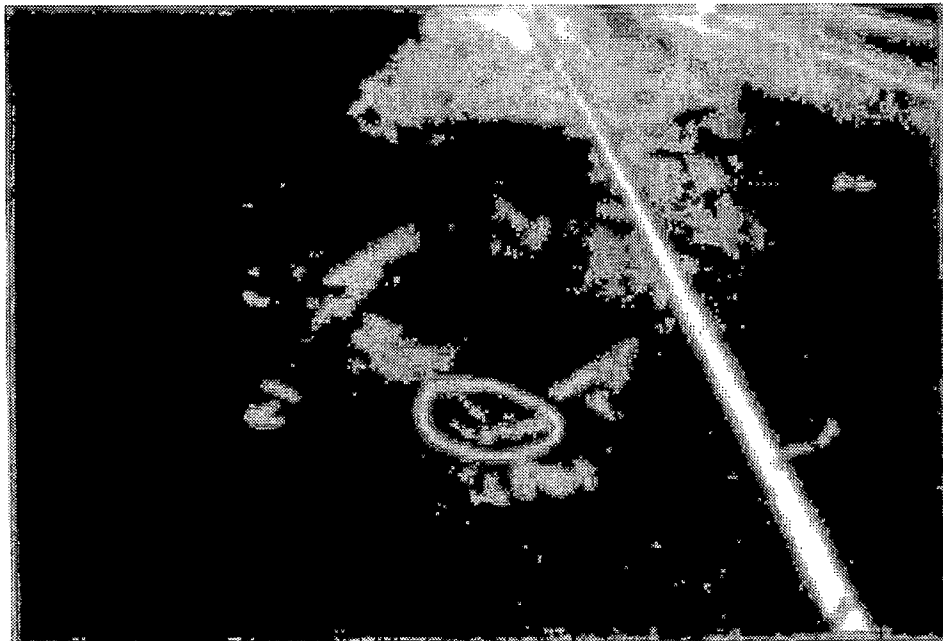


Photo showing area of impact on US 29



Photo showing damage profile of the 1998 Buick



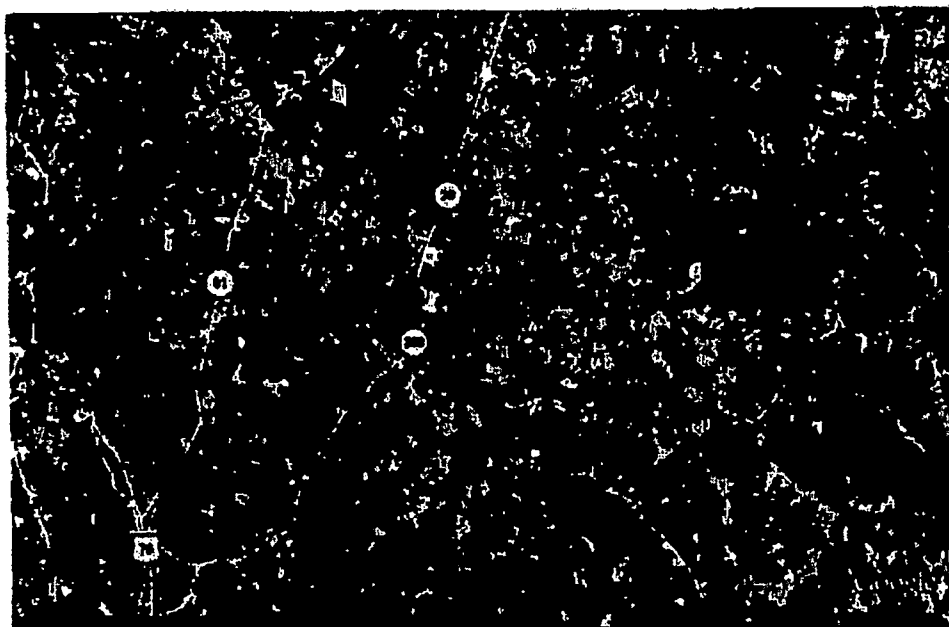
Photo showing damage profile of the 1995 Chevy van



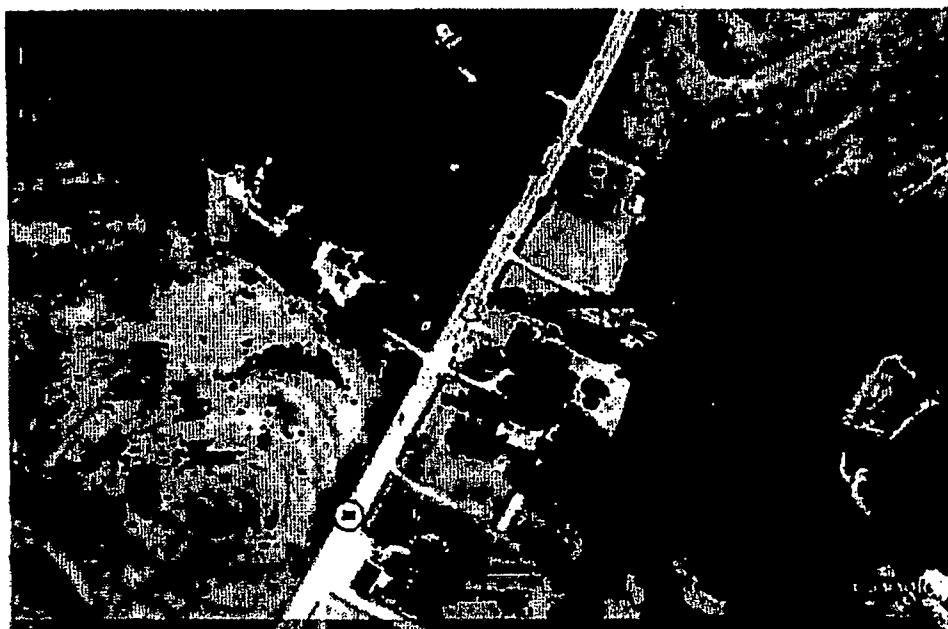
Photo showing the final rest position of the Buick and Chevy



Photo showing the final rest position of the Buick and Chevy



Map location showing collision location in South Carolina



Aerial photograph showing collision scene

MEDIA LOG**PHOTOGRAPHS**

The Piedmont MAIT took digital photographs during the course of this investigation. Photographs are on file in the Piedmont MAIT office.

VIDEO

The Piedmont MAIT took video footage during the course of this investigation. The video footage is on file at the Piedmont MAIT office.

AUDIO

The Piedmont MAIT conducted audio recordings during the course of this investigation. The audio recordings are on file at the Piedmont MAIT office.

AUTOPSY

No autopsy photos are in this case file.

APPENDIX

The following pages contain copies of documents pertinent to this investigation. The appendix section includes, but is not limited to, the following:

- South Carolina Traffic Collision Report.

S.S. USE ONLY

Page #

SOUTH CAROLINA
TRAFFIC COLLISION REPORT FORM

of Units

Amount of Damage

City

State

County

Zip

Unit #

Unit #

Unit #

Unit #

Unit #

Unit #

Unit #

Unit #

Unit #

Unit #

PL-046-09

13011330

Date	Time	County	1- Interstate 2- US Primary 3- SC Primary	4- Secondary 5- County 6- Other	Collision Location (RL #7 Name)	5- 29	6- Main 7- Alternate 8- Spur	9- Connector 10- Business 11- Other	12- Near City or Town of	Anderson

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Unit #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Jose Luna Cobarruvias (SCDC #342601),

Applicant,

v.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS

FOR THE TENTH JUDICIAL CIRCUIT

Civil Action No. 2011-CP-04-0015

ORDER OF DISMISSAL

COMMON PLEAS 100
GENERAL CLERK

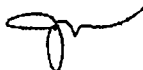
2017 DEC 11 AM 11:33

FILED CLERK'S OFFICE
ANDERSON SC

This matter comes before this Court by way of an application for post-conviction relief filed January 5, 2011, by Jose Luna Cobarruvias (Applicant) alleging ineffective assistance of counsel, involuntary guilty plea, and prosecutorial misconduct. Respondent made its Return on March 1, 2011, requesting an evidentiary hearing be held.

An initial evidentiary hearing into the matter was convened June 8, 2011, at the Anderson County Courthouse before the Honorable Alexander S. Macaulay. Applicant was present at the hearing and represented by Daniel L. Draisen, Esquire. Respondent was represented by Assistant Attorney General Kaelon E. May. Applicant and plea counsel, Jennifer Johnson, Esquire, and David Stoddard, Esquire, testified. At the conclusion of the evidentiary hearing, Judge Macaulay denied and dismissed the application with prejudice and asked the State to prepare a proposed order.

On July 7, 2011, Applicant filed a motion to reopen the record and allow testimony from five additional witnesses. The State filed a Return to this motion on August 10, 2011, asking the motion be denied and dismissed. The State also submitted a proposed order of dismissal to Judge Macaulay; however, this order was never signed.



On May 30, 2012, Applicant filed a *pro se* motion for approval of fees, and the State responded that as Applicant was represented by counsel, it did not consider this motion a part of the record of this case. Thereafter, on July 25, 2012, Applicant, through counsel, filed a subsequent motion for investigative costs. A motions hearing was held on November 27, 2012, before Judge Macaulay, after which Judge Macaulay issued a written order, filed December 10, 2012, granting Applicant's motion for funds and leave to locate additional witnesses to support his allegations.

On January 29, 2013, Applicant filed a motion to conform his pleadings to evidence. On December 11, 2015, Applicant filed a motion to amend his PCR application. Both motions were subsequently granted.

This Court convened a second evidentiary hearing on June 28, 2017, at the Anderson County Courthouse. Applicant was present at the hearing alongside Attorney Draisen. Senior Assistant Deputy Attorney General Megan Harrigan Jameson appeared on behalf of the State. Applicant presented testimony from five witnesses, and the State again presented testimony from plea counsel.

Based on this Court's review of the transcript of Applicant's guilty plea proceeding, the transcript of the initial evidentiary hearing before Judge Macaulay, the records of the Anderson County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the State's return, and the testimony and evidence presented at the second evidentiary hearing, this Court finds that Applicant has failed to establish any constitutional deprivations or other grounds entitling him to relief; therefore, the application is DENIED and DISMISSED WITH PREJUDICE.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections ("SCDC") pursuant to orders of commitment of the Anderson County Clerk of Court. During its August 2009 term of court, the Anderson County Grand Jury indicted Applicant for two counts of Felony DUI resulting in Great Bodily Injury and one count of Felony DUI resulting in Death following a head-on collision which occurred on May 16, 2009. He was represented on those charges by Jennifer Johnson, Esquire, and David Stoddard, Esquire. Assistant Solicitor Jennifer Byford prosecuted the case.

On September 3, 2010, Applicant appeared before the Honorable Lawton McIntosh and pled guilty to all three offenses as indicted. At the plea proceeding, Applicant expressed understanding of the potential consequences of the plea, including the maximum possible prison sentence and potential deportation, but nevertheless chose to plead guilty. He told the plea court he had not been forced, threatened or promised anything in exchange for his guilty plea and that he was pleading guilty freely and voluntarily. Applicant also said that he did not want a jury trial and wanted to waive his right to present any defenses he might have to the charges. He admitted committing the offenses for which he was indicted and told the plea court he was under the influence while driving, that he was satisfied with the services of Johnson and Stoddard and that there was no additional investigation he wanted them to perform.

The court found that Applicant's plea was knowing, intelligent, and voluntary; accepted the plea; and sentenced Applicant to fifteen years imprisonment for each count of Felony DUI resulting in Great Bodily Injury and twenty years for Felony DUI resulting in Death, with all sentences to be served concurrently. Applicant did not appeal his guilty plea or sentences.

ALLEGATIONS RAISED

In his application, Applicant alleged he is being held in custody unlawfully based on allegations of (1) ineffective assistance of counsel for failure to investigate, failure to hire an accident reconstruction expert and medical expert, failure to challenge inconsistencies in the witnesses' statements, failure to allege discovery violations against the Solicitor's office, failure to explain defense and physical facts, withholding discovery, and failing to file an appeal; (2) involuntary guilty plea for failure to explain elements of offense the requirements on the State to prove the elements, coerced guilty plea; and (3) prosecutorial misconduct for failure to disclose the names of witnesses who stated he was the driver. Each of his allegations center on Applicant's assertion he was the passenger, not the driver, of the vehicle and that counsel should have done more to establish this defense.

TESTIMONY PRESENTED AT EVIDENTIARY HEARINGS

A. June 8, 2011

Applicant testified that he does not remember anything from the accident and he "came back to [his] senses at the hospital." Applicant testified that his family originally hired Dick James to represent him, and then after one visit at the jail, he hired David Stoddard as his attorney. Jennifer Johnson also represented him and came to be his lead counsel, but Stoddard was still involved in his case. He testified that after their initial meeting, Stoddard told him he would not be coming to visit him often.

He testified his attorneys did not have an interpreter when they met with him but that he understands some English. Applicant testified he was not offered a plea deal, but later testified there were plea offers for twenty years and twenty-five years. Counsel explained what the State

had to prove in order for him to be found guilty and reviewed some evidence with him, including pictures and one witness statement. Applicant complained that he was not shown the other witnesses' statements but testified that he has now reviewed the statements, none of which identify him as the driver of the vehicle. He elaborated that the statements do not mention his injuries and that he believed there to be inconsistencies in the times of the statements (because the accident occurred at approximately 1 p.m., but the statements indicate they were taken earlier). He testified he told his lawyers about these inconsistencies and his lawyers informed him the statements were taken the following day after the accident.

Applicant testified he hurt his right shoulder and argued that this establishes he was the passenger, not the driver. He asserted that various people at the detention center agreed with his assessment that he must have been the passenger. According to Applicant, he fell asleep while in the passenger seat of his van waiting for his friend Ricardo to drive him home, and therefore, he assumes he was the passenger and not the driver. He testified he wanted counsel to establish he was not the driver through scientific means, such as an accident reconstruction expert, but counsel ignored this request and told him the State had already reconstructed the accident with their own expert. He testified he gave his attorneys the names of the other people who were in his van at the time of the accident, but they also failed to investigate this claim or locate other witnesses from the jail who could have testified about his injuries. Finally, Applicant testified that he pled guilty because he felt like he had no other option, that he felt that his attorneys did not want to help him, and that he felt "verbally discriminated [against]."

Next, the State presented David Stoddard, Esquire, who was retained to represent Applicant. Stoddard, a former prosecutor, had been practicing law for twenty-six years and had

handled numerous felony DUI cases. He testified that Applicant told him someone at the jail said the van's driver ran from the car and that he investigated this claim but was unable to locate the alleged witness. Stoddard admitted not procuring an interpreter for his meetings with Applicant but stated that Applicant understood English.

Stoddard testified after his initial meeting with Applicant, the family was unable to pay him and he was relieved of his representation. Jennifer Johnson was subsequently appointed to represent Applicant, but Stoddard agreed to assist Johnson with the case. He testified he reviewed the discovery with Johnson, including the three witness statements, all of which were brief and none of which indicated who was driving the vehicle in question. All three witnesses were interviewed and stated they saw the van "fishtail," cross the center line and hit the victims' car head-on. All witnesses said they were present when EMS arrived and saw the sole occupant of the van – Applicant – placed in the ambulance. Stoddard testified that the witnesses' written statements were not inconsistent with their oral statements, but rather, the oral statements and interviews provided much more detail. Because of the witnesses' statements, he felt it unnecessary to retain an accident reconstruction expert.

Finally, Stoddard testified that he advised Applicant to plead guilty because the case would have been very hard to win at trial in light of the existence of three eyewitnesses and Applicant's inability to recall what happened. He testified that he and Johnson discussed a plea with Applicant, answered all of Applicant's questions, and reviewed their entire files with Applicant numerous times. According to Stoddard, it was ultimately Applicant's decision to plead guilty.



The final witness presented by the State was Jennifer Johnson, Esquire. She testified that she was unaware of any communication barrier with Applicant, that she reviewed discovery materials with Applicant, including the MAIT¹ report, and that Stoddard or his paralegal interviewed all eyewitnesses. Johnson discussed pleading guilty with Applicant and believed that he understood those conversations.

Johnson also stated that she attempted to locate all witnesses named by Applicant but was unsuccessful due to having limited information. She testified she also reviewed Plaintiff's medical records but believed that no physician could offer competent, credible testimony to suggest that Applicant suffered a passenger-side seatbelt injury. Johnson knew of no additional investigation that she could have, or should have, done before Applicant's conviction. She testified that she is confident Applicant was aware of his options and made a informed decision to plead guilty.

B. June 28, 2017

Applicant's first witness was Timothy Owens, an inmate currently at SCDC pursuant to orders of commitment from Greenville County Clerk of Court for a litany of offenses, including burglary, grand larceny, and breaking into motor vehicles.² Although he was unsure of the precise dates, Owens testified that he was in the Anderson County Detention Center ("ACDC") with Applicant in April or May 2009. He recalled Applicant arriving to the detention center because Applicant was extremely intoxicated. Owens was housed in the medical unit with Applicant for approximately one month and was aware of Applicant's right shoulder injury and

¹ The South Carolina Department of Public Safety's Multi-Disciplinary Accident Investigation Team

² See <https://public.doc.state.sc.us/scdc-public/inmateDetails.do?id=%2000169604> (last visited Dec. 5, 2017)



other bruises. He opined, based on Applicant's injuries, that he must have been a passenger in the vehicle; however, Owens acknowledged his lack of medical training.

Next, Applicant presented testimony from Jose Trejos, who had been at a party in Williamston, South Carolina, with Applicant on the day of the accident. Trejos testified that Applicant was intoxicated by 12:30 p.m., so someone took Applicant's car keys from him. Later, Applicant's friend, Luciano, obtained the keys and set out to drive Applicant to a friend's house in Anderson, South Carolina. Trejos saw Applicant enter the passenger's side of the van and saw Luciano drive away, but he did not witness anything that happened once Luciano and Applicant left the party.

Applicant also presented testimony from David Eskew, who was also incarcerated with Applicant in the medical unit of ACDC. Eskew corroborated the testimony of Timothy Owens.

Karen Langston, a registered nurse who worked at ACDC in 2009, testified next. Langston recalled Applicant in general but could not recall being shown his injuries. She did remember there being injuries to the right side of his body, which she thought was odd if he was the driver of the vehicle. Langston testified that she has not seen any of the evidence of this case and acknowledged she does not know what side of Applicant's vehicle was struck in the accident.

Finally, Applicant presented testimony from Lenora Johnson, a former staff member at ACDC. She testified she remembered Applicant and recalled him pulling down his jumpsuit to show others his injuries to his right shoulder. She testified she did not take pictures of his injuries.

Each of Applicant's witnesses testified that they had never been contacted by plea counsel.

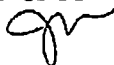
In reply, the State again offered the testimony of Johnson and Stoddard. Johnson testified first. Supplementing her previous testimony, Johnson opined that there was overwhelming evidence of Applicant's guilt, including Applicant's blood alcohol concentration of 0.271 and her belief that the passenger side of Applicant's van was so badly mangled from the collision that if anyone had been in the passenger seat, they likely would have been severely injured or killed. Stoddard offered testimony similar to that presented at the first evidentiary hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence." Rule 71.1(e), SCRCP. Specifically, "[a] defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty." *Johnson v. Catoe*, 336 S.C. 354, 358, 520 S.E.2d 617, 619 (1999) (citing *Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) and *Satterwhite v. State*, 325 S.C. 254, 481 S.E.2d 709 (1997)).

A. Ineffective Assistance of Counsel

When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether an attorney provided representation within the range



of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. *Strickland*, 466 U.S. at 689. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citation omitted).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985).

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to meet his burden in this action regarding any of his allegations of ineffective assistance

of counsel. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel:

I. Failure to Investigate

Applicant alleges plea counsel failed to adequately investigate his case prior to recommending Applicant plead guilty, contending that plea counsel should have located and investigated additional witnesses who could have testified that he was the passenger of the car. Although Applicant offered the testimony of Jose Trejos to support this allegation, the Court rejects Applicant's contention that Trejos's testimony is probative. Even assuming that the testimony was credible, the times noted by Trejos are inconsistent with the other evidence in this case (as he recalled seeing Applicant at a party more than 90 minutes after the accident occurred). Additionally, because Trejos did not see Applicant after he left the party, his testimony cannot conclusively establish that Applicant remained a passenger at the time of the collision. Finally, Trejos testified he recently got a phone and ran into Applicant's daughter by happenstance, both of which support counsel's repeated assertions that they had difficulty tracking down potential witnesses before Applicant's conviction.

Additionally, counsel testified that any independent investigation would not have yielded beneficial information that would have affected the outcome of the case, as all reported that only one person – a driver – was in the van. In addition to the witnesses' statements, Applicant himself was unable to provide any useful information to his attorneys because he had no memory of what occurred.

Therefore, this Court finds Applicant has failed to meet his requisite burden of proof. *See Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding failure to conduct

an independent investigation is not per se ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information); *See also Strickland*, 466 U.S. at 691 (“[W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel’s failure to pursue those investigations may not later be challenged as unreasonable.”) This Court finds plea counsel’s performance was reasonable according to professional standards and his allegations that plea counsel was ineffective must be denied and dismissed with prejudice.

Furthermore, this Court finds Applicant is unable to establish any requisite prejudice from plea counsel’s alleged deficiencies based on the overwhelming evidence establishing Applicant’s guilt. Therefore, it is unlikely that the result of Applicant’s proceeding would have been different had he proceeded to trial. As Applicant is unable to meet his requisite burden of proof, this allegation must be denied and dismissed with prejudice.

II. Failure to Retain Accident Reconstruction and Medical Experts

Applicant alleges plea counsel failed to hire an accident reconstruction expert or medical expert to challenge the State’s evidence in this case. Applicant asserts these experts would have established he was the passenger of the vehicle, not the driver. Applicant failed to present an accident reconstruction expert or a medical expert at either evidentiary hearing. However, Applicant did present medical records from Applicant’s treating physician establishing injuries to his right clavicle.

Initially, this Court finds this allegation must be denied and dismissed because Applicant failed to present either such expert. *See Lorenzen v. State*, 376 S.C. 521, 530, 657 S.E.2d 771, 776–77 (2008); *see also Dempsey v. State*, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (“A

PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence."); *see also Porter v. State*, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR.").

Additionally, this Court finds Applicant's presentation of medical records also does not meet his burden of proof required for relief. It is uncontroverted, both through exhibits and witnesses presented by both Applicant and the State, that Applicant had an injury to his right clavicle. However, an injury to Applicant's right clavicle does not establish he was not the driver of the van. Therefore, this Court finds Applicant has failed to meet his requisite burden of proof and this allegation must be denied and dismissed with prejudice.

III. Failure to Challenge Inconsistencies in Witnesses' Statements

Applicant alleges plea counsel failed to challenge inconsistencies in the three eyewitnesses' statements, including inconsistencies with the time the statements were taken and that the statements do not identify who was the driver of the van. Again, Applicant asserts that if counsel had challenged these statements, it would have established he was not the driver of the van. This Court finds this allegation to be without merit.

Counsel testified that either they or a member of their support staff personally spoke with all three eyewitnesses and their interviews were consistent with the prior statements, including their video statements. Johnson testified the videotaped witness statements were very powerful and provided a good preview as to what their testimony would be at trial. Counsel also testified that they believed that Applicant would likely have been convicted at trial in large part due to

testimony from these witnesses. This Court agrees and finds this allegation must be denied and dismissed with prejudice.

IV. Failure to Allege Discovery Violations Against the State

Applicant alleges plea counsel failed to alleged discovery violations against the State and withheld discovery from him, including failing to review defenses and physical facts of the case. Applicant testified that he reviewed discovery with counsel, including the most critical parts of the State's case – the eyewitnesses' statements. Moreover, counsel testified that they received discovery from the State and reviewed it with Applicant. Furthermore, Applicant was unable to establish what materials the State failed to provide Applicant's counsel or how any missing material caused him prejudice. This Court finds this allegation must be denied and dismissed with prejudice.

V. Failure to File Appeal

Applicant alleges plea counsel failed to file a notice of appeal on his behalf. Through post-conviction relief, an applicant can assert he is entitled to a belated review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), by asserting his counsel failed to file a direct appeal on his behalf when requested. When the question is whether counsel was ineffective in failing to file a direct appeal from a conviction and sentence, the United States Supreme Court has held that counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). There is no constitutional obligation necessitating plea

counsel inform a criminal defendant of his right to appeal, following a guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995); *see also Simuel v. State*, 390 S.C. 267, 270 n.1, 701 S.E.2d 738, 739 n.1 (2010).

In the present case, Applicant failed to present any testimony or evidence that he requested counsel file an appeal from his guilty plea. Therefore, he has failed to meet his requisite burden of proof. This Court finds this allegation must be denied and dismissed with prejudice.

B. Involuntary Guilty Plea

Applicant also alleges that his plea was involuntarily given. Specifically, Applicant argues counsel failed to explain the elements of the offense to him, misrepresented the facts and evidence the State would present against him, and coerced him into pleading guilty. This Court finds this allegation is without merit

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Dover v. State*, 304 S.C. 433, 405 S.E.2d 391 (1991). "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." *Rolen v. State*, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "A defendant's

knowing and voluntary waiver of the constitutional rights which accompany a guilty plea 'may be accomplished by colloquy between the Court and the defendant, between the Court and defendant's counsel, or both.'" *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 625 (1999) (quoting *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" *Hill*, 474 U.S. at 56 (quoting *North Carolina v. Alford*, 400 U.S. 25, 31, (1970)).

"In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). "Specifically, the voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." *Roddy*, 339 S.C. at 33, 528 S.E.2d at 420.

After reviewing the records before this Court, it is abundantly clear that Applicant's plea was entered into knowingly, voluntarily, and intelligently with a full understanding of the evidence that would be presented by the State if he elected to proceed to trial. At the evidentiary hearings, Applicant testified counsel reviewed discovery with him and explained the elements of the offenses, including what the State would have to prove to establish his guilt at trial.

Moreover, during the plea proceeding, Applicant acknowledged that he was aware that he could receive up to fifty-five years imprisonment and he wanted to plead guilty. He told the plea court he had not been forced, threatened or promised anything in exchange for his guilty plea and he was pleading guilty freely and voluntarily. Applicant told the plea court he did not want a jury

trial and wanted to waive his right to present any defense he had to these charges. Applicant admitted the allegations against him and expressed satisfaction with the services of Johnson and Stoddard, saying that there was no additional investigation he wanted them to perform. Applicant has not presented any evidence or valid reasons why he should now be able to contradict these statements, which were made under oath to the plea court. *Crawford v. U.S.*, 519 F.2d 317 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976). This Court finds Applicant's guilty plea was entered with a full understanding of the charges and the consequences of the plea; therefore, this allegation is denied and dismissed with prejudice.

C. Prosecutorial Misconduct

Applicant alleges the State committed prosecutorial misconduct and/or a *Brady* violation by withholding the name(s) of the witness(es) who identified him as the driver and failed to turn over any statements. This Court finds this allegation is without merit and must be denied and dismissed.

An applicant asserting a *Brady* violation must demonstrate that evidence: (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) was suppressed by the State; and (4) was material to the accused's guilt or innocence or was impeaching. *Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006) (citations omitted). If a *Brady* violation is found to have occurred, post-conviction relief must be granted. *Gibson v. State*, 334 S.C. 515, 514 S.E.2d 320 (1999).

Applicant asserts the State failed to disclose the identity of witnesses establishing he was the driver and any witness statements; however, this allegation is sharply refuted by the record, as the guilty plea transcript and the testimony presented at both evidentiary hearings conclusively

establish that the State provided counsel with this information and that counsel shared this information with Applicant. This allegation is denied and dismissed with prejudice.

CONCLUSION

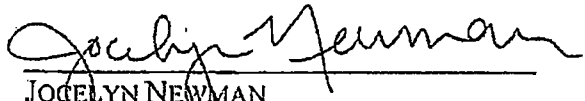
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED that the Application for Post-Conviction Relief, including all amendments thereof, is DENIED and DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that Applicant be remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED.


JOCELYN NEWMAN

December 5, 2017
Columbia, South Carolina.

FILED CLERK'S OFFICE
ANDERSON SC
2017 DEC 11 AM 11:33
COMMON PLEAS AND
GENERAL SESSIONS

DOCKET NO: 2009GS04 01994

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

AUG 25 2009

Term

THE STATE

vs.

Jose Luis Luna Cabarruvias

COMMITMENT

9-3-10/RT

EJB

Indictment for

DUI / Felony DUI - Great Bodily Injury

SC Code: 56-05-2945(A)(1)
CDR Code: 0406

WITNESSES

A Warren, SCHP

ARREST WARRANT NUMBER

D759039

ACTION OF GRAND JURY

TRUE BILL

AUG 25 2009

[Signature]

Foreperson of Grand Jury
Date: Foreperson

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

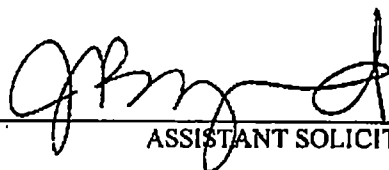
INDICTMENT

At a Court of General Sessions, convened on AUG 25 2009, the Grand Jurors of Anderson County present upon their oath:

DUI / Felony DUI - Great Bodily Injury

That Jose Luis Luna Cabarruvias, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did in Anderson County, on or about May 16, 2009, drive a vehicle and while driving did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, to wit: driving left of center and/or failure to exercise due care and/or driving too fast for conditions, which act or neglect proximately caused great bodily injury to Susan Sigmon. All in violation of Section 56-5-2945(A)(1), *Code of Laws of South Carolina, (1976)*, as amended.

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


ASSISTANT SOLICITOR

COUNTY OF
STATE

Anderson

VS.

Jose Luis Luna Cabarruvias,

AKA: Jose Luna CabarruviasRace: H Sex: M Age: 44DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Belton, SC 29627DL# * SID# SC01389864*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUI/Felony driving under the influence, great bodily injury resultsIn violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS: ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

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

ATTEST:

Solicitor [Signature] SC Bar # 68297 Defendant Jose Luis Luna Cabarruvias Attorney for Defendant [Signature] SC Bar # 14224WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 14 yearsand/or to pay a fine of \$ [REDACTED]; provided that upon the service of [REDACTED] days/months/years and or paymentof \$ [REDACTED]; plus costs and assessments as applicable; the balance is suspended with probation for☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: WORLD CHARGE☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Departmentof Corrections. (476 Days)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ [REDACTED] plus 20% fee: \$ [REDACTED][REDACTED] days/hours Public Service EmploymentPayment Terms: [REDACTED]Obtain GED ☐☐ Set by SCDPPPS [REDACTED]Attend Voc. Rehab. Or Job Corp. [REDACTED]Recipient: [REDACTED]May serve W/E beginning [REDACTED]
Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%) \$ [REDACTED]\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ [REDACTED]\$56-5-2995 (DUI Assessment) \$12 \$ 12.00\$56-1-286 (DUI Breath Test) \$25 \$ [REDACTED]\$47.12 (Public Def/Prob) \$500 \$ [REDACTED]\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00\$14-1-213 (Drug Court Surcharge) \$100 \$ [REDACTED]\$50-21-114 (BUJ Breath Test Fee) \$50 \$ [REDACTED]\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ [REDACTED]\$90.7 (SCCJA Surcharge) \$5 \$ [REDACTED]3% to County (if paid in installments) \$ 4.11TOTAL \$ 141.11Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ [REDACTED] Beginning [REDACTED]\$ [REDACTED] Paid to Public Defender FundOther: [REDACTED]☐ Appointed PD or appointed other counsel

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk Martha A. NewtonCourt Reporter: J. RicciPresiding Judge [Signature]Judge Code: 2155Sentence Date 9-3-10

DOCKET NO. 2009GS04 01940

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

AUG 25 2009

Term

THE STATE

vs.

Jose Luis Luna Cabarruvias

COMMITMENT

9-3-10

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

TRUE BILL

AUG 25 2009

Foreperson of Grand Jury

Date:

Foreperson

VERDICT

EJB

Indictment for

DUI / Felony DUI - Death

SC Code: 56-05-2945(A)(2)

CDR Code: 0395

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

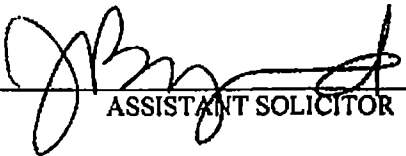
INDICTMENT

At a Court of General Sessions, convened on AUG 25 2009, the Grand Jurors of Anderson County present upon their oath:

DUI / Felony DUI - Death

That Jose Luis Luna Cabarruvias did in Anderson County, on or about May 16, 2009, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of both, and did an act forbidden by law and/or neglected a duty imposed by law, to wit: driving left of center and/or failure to exercise due care and/or driving too fast for conditions, which acts and/or neglect proximately caused the death of Katie Eaton. This is in violation of §56-5-2945(A)(2) of the South Carolina Code of Laws (1976) as amended.

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


ASSISTANT SOLICITOR

COUNTY OF Anderson
STATE

VS.

Jose Luis Luna Cabarruvias

AKA: Jose Luna CabarruviasRace: Sex: Age: 2009DOB: SS#: Address: City, State, Zip: Belton, SC 29627DL# SID# SC01389864*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUI/Felony driving under the influence death resultsIn violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lawd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar # Defendant Jose Luna Cabarruvias Attorney for Defendant SC Bar # 14224WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: wall charges☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. (476 days)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	<u> </u>
§14-1-206 (Assessments 107.5%)	\$	<u> </u>
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ <u> </u>
§56-5-2995 (DUI Assessment)	\$12	\$ <u>12.00</u>
§56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
§47.12 (Public Def/Prob)	\$500	\$ <u> </u>
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$100	\$ <u> </u>
§50-21-114 (BUI Breath Test Fee)	\$50	\$ <u> </u>
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
§90.7 (SCCJA Surcharge)	\$5	\$ <u> </u>
3% to County (if paid in installments)	\$	\$ <u>4.11</u>
TOTAL	\$	\$ <u>141.11</u>

Clerk of Court/Deputy Clerk

Court Reporter: J. Rice

SCCA/217 (11/2009)

DLS✓

INDICTMENT/CASE# 2009GS0401940AW# DIRECTDate of Offense: 5/16/2009S.C. Code §: 56-05-2945(A)(2)CDR Code #: 0395

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. Or Job Corp. May serve W/E beginning
Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ Beginning
\$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge Judge Code: Sentence Date 2155 9-3-10

DOCKET NO: 2009GS04 01993

WITNESSES

A Warren, SCHP

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

AUG 25 2009

Term

ARREST WARRANT NUMBER

D759037

THE STATE

vs.

COMMITMENT

9-3-10/RT

Jose Luis Luna Cabarruvias

ACTION OF GRAND JURY

TRUE BILL

AUG 25 2009

[Signature]

Foreperson of Grand Jury

Date:

EJB

Indictment for

VERDICT

DUI / Felony DUI - Great Bodily Injury

SC Code: 56-05-2945(A)(1)

CDR Code: 0406

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

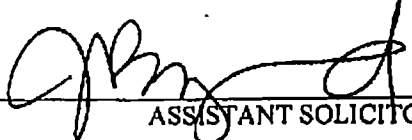
INDICTMENT

At a Court of General Sessions, convened on AUG 25 2009, the Grand Jurors of
Anderson County present upon their oath:

DUI / Felony DUI - Great Bodily Injury

That Jose Luis Luna Cabarruvias, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, did in Anderson County, on or about May 16, 2009, drive a vehicle and while driving did an act forbidden by law and/or neglected a duty imposed by law in the driving of the vehicle, to wit: driving left of center and/or failure to exercise due care and/or driving too fast for conditions, which act or neglect proximately caused great bodily injury to Raymond Sigmon. All in violation of Section 56-5-2945(A)(1), *Code of Laws of South Carolina*, (1976), as amended

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


ASSISTANT SOLICITOR

COUNTY OF
STATE

Anderson

VS.

Jose Luis Luna Cabarruvias

AKA: Jose Luis Luna Cabarruvias

Race: H Sex: M Age: 44

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Belton, SC 29627

DL# * SID# SC01389864

*CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUI / Felony driving under the influence, great bodily injury results

In violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/milhor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment

of \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: w/ all charges☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. (476 days)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning
Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$ 12.00
\$56-1-286 (DUI Breath Test)	\$25	\$
\$47.12 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$100	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
\$90.7 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 4.11
TOTAL	\$	\$ 141.11

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ Beginning
\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$600 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk Martha A. Newton
Court Reporter: J. RicePresiding Judge
Judge Code: 2155
Sentence Date 9-3-10

INDICTMENT/CASE#: 2009GS0401993

AW#: D759037

Date of Offense: 5/16/2009

S.C. Code §: 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

