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VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Clifton Newman, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM CRAIG CAUGHMAN,

APPELLANT

APPELLATE CASE NO 2015-001867

RECORD ON APPEAL

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

V. HENRY GUNTER, JR.
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR APPELLANT

S.R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit
205 East Main Street
Lexington, SC 29072
(803) 785-8352

ATTORNEYS FOR RESPONDENT

PAGES 501-779

INDEX

INDEX	i
PRE-TRIAL TRANSCRIPT DATED MAY 20, 2013	1
JURY VOIR DIRE	6
JURY SELECTION	23
MOTION TO QUASH ON THE OBSTRUCTION OF JUSTICE	36
RULING BY THE COURT	39
<u>JACKSON V. DENNO HEARING</u>	
TESTIMONY	
EDWARD LEWIS PEREIRA (IN CAMERA)	
Direct examination by Ms. Mayes	41
Cross examination by Mr. Floyd	54
RULING BY THE COURT	55
OPENING STATEMENT BY MR. MCNAIR	69
OPENING STATEMENT BY MR. FLOYD	77
TESTIMONY	
JENNIFER PRATHER	
Direct examination by Ms. Mayes	80
Cross examination by Mr. Floyd	89
Redirect examination by Ms. Mayes	94
Recross examination by Mr. Floyd	97
LESLIE HAYES	
Direct examination by Ms. Mayes	99
In Camera examination by Mr. Floyd	106
In Camera examination by Ms. Mayes	107
Continued direct examination by Ms. Mayes	109
MARION GREGORY GREEN	
Direct examination by Mr. McNair	113
Cross examination by Mr. Floyd	129
Redirect examination by Mr. McNair	133

Recross examination by Mr. Floyd	135
JAMES MONROE HAGGARD, JR.	
Direct examination by Mr. McNair	136
Cross examination by Mr. Floyd	149
COURT'S EXHIBIT #2 (TRANSCRIPT)	156
TRIAL TRANSCRIPT DATED MARY 21-23, 2013	248
TESTIMONY	
TROY BOSTICK	
Direct examination by Mr. McNair	258
Cross examination by Mr. Floyd	262
CLANTON AUSTELL	
Direct examination by Ms. Mayes	263
Cross examination by Mr. Floyd	272
Redirect examination by Mr. McNair	273
CHARLES CAMPBELL	
Direct examination by Ms. Mayes	274
Cross examination by Mr. Floyd	293
LAWRENCE GILBERT, JR.	
Direct examination by Mr. McNair	297
Cross examination by Mr. Floyd	310
Redirect examination by Mr. McNair	313
Recross examination by Mr. Floyd	314
PETER KOUTRAKOS	
Direct examination by Ms. Mayes	319
Cross examination by Mr. Floyd	325
Redirect examination by Ms. Mayes	328
DAWN HURLEY	
Direct examination by Ms. Mayes	328
CLARISSA MACK	
Direct examination by Mr. McNair	334
LAWRENCE GILBERT, JR. (RECALLED)	
Direct examination by Mr. Floyd	338

JEFF SIMMONS	
Direct examination by Ms. Mayes	340
Examination by Ms. Mayes (IN CAMERA)	351
Examination by Mr. Floyd (IN CAMERA)	352
MIKE ROBINSON (IN CAMERA)	
Direct examination by Ms. Mayes	353
Cross examination by Mr. Floyd	359
Redirect examination by Ms. Mayes	360
RICK COLLINS (IN CAMERA)	
Direct examination by Ms. Mayes	366
EDWARD PEREIRA (IN CAMERA)	
Direct examination by Ms. Mayes	368
Cross examination by Mr. Floyd	374
JEFF SIMMONS	
Direct examination continued by Ms. Mayes	375
Cross examination by Mr. Floyd	384
EDWARD PEREIRA	
Direct examination by Ms. Mayes	385
Cross examination by Mr. Floyd	429
Redirect examination by Ms. Mayes	435
Recross examination by Mr. Floyd	437
ELIZABETH JANE MOFFATT	
Direct examination by Ms. Mayes	438
Cross examination by Mr. Floyd	459
Redirect examination by Ms. Mayes	462
Recross examination by Mr. Floyd	462
MICHAEL MOSKAL	
Direct examination by Ms. Mayes	466
Cross examination by Mr. Floyd	503
Redirect examination by Ms. Mayes	508
Recross examination by Mr. Floyd	510
MOTION FOR A DIRECTED VERDICT	516
RULING BY THE COURT	519
MOTION TO SUPPRESS ALL EVIDENCE SEIZED AT THE DEFENDANT'S RESIDENCE	519

RULING BY THE COURT.....	520
STATE RESTED.....	520
COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY	521
DEFENSE RESTS	524
JURY CHARGE ON THE LAW	539
VERDICT	556
SENTENCING	574
COURT'S EXHIBIT #3 (TRAFFIC AGREEMENT).....	576
MOTION FOR NEW TRIAL AND RECONSIDERATION OF SENTENCE	581
POST-TRIAL HEARING DATED MAY 21, 2015.....	585
MOTION TO HOLD APPEAL IN ABEYANCE AND MOTION TO REMAND FOR RECONSTRUCTION OF THE RECORD	634
RETURN TO MOTION TO REMAND FOR RECONSTRUCTION OF THE RECORD.....	652
ORDER GRANTING REMAND TO RECONSTRUCT DATED AUGUST 11, 2016.....	657
RECONSTRUCTION HEARING TRANSCRIPT DATED SEPTEMBER 16, 2016	658
RECONSTRUCTION HEARING TRANSCRIPT DATED MAY 1, 2017	727
ORDER REGARDING RECONSTRUCTION DATED MAY 26, 2017.....	765
INDICTMENT.....	777
CERTIFICATE OF COUNSEL	779

M. MOSKAL ON DIRECT

1 and chemistry as the fender still attached. It was ini-
2 tially one item.

3 The other fender was analyzed in 2011. Our basic
4 protocol was the side of the tire where I collected three
5 different areas of paint.

6 All three of those paint chips appeared physically
7 to have the same layer sequence, and they physically were
8 consistent with each other. When we focus on one of them,
9 we don't analyze the additional samples, and so it was re-
10 quested in 2011 that I go ahead and analyze the additional
11 samples.

12 Q. And you did so?

13 A. Yes, maam, I did.

14 Q. And can you tell us whether or not all of those were
15 matching the first one?

16 A. They all had the same layers and physical and chemical
17 properties that were consistent with an area of
18 the Ford vehicle.

19 Q. All right. Now, you mentioned nine individual layers
20 of paint that were on that motorcycle. So there was the
21 original paint and the repainting as to the others. Is
22 that correct?

23 A. Yes, maam.

24 Q. I want to show you what is State's Exhibit 16 and ask
25 you to take a look at this photo in terms of additional

M. MOSKAL ON DIRECT

1 discoloration such as the white here and the reddish
2 color here?

3 A. Yes, maam.

4 Q. All right, and do you have an opinion as to whether
5 that involved a foreign paint or are those colors asso-
6 ciated with the motorcycle itself?

7 A. The white areas are going to be areas of fiberglass
8 that were exposed when the fender broke, and the brown-
9 ish areas are -- the way they look here I believe are
10 actually red areas that the portion of the motorcycle paint
11 chip.

12 Q. Of the previous underlying layer?

13 A. Of the previous underlying layer, yes, maam.

14 Q. All right, and, Agent Moskal, having -- when you were
15 actually collecting the foreign paint transfers from the
16 motorcycle, how thoroughly did you examine it?

17 A. The entire motorcycle from front to back.

18 Q. All right, and at any point during your collection
19 of paint samples, did you see any evidence of different
20 foreign paint transfers other than the green from the Ford
21 Ranger on the rim of the tires?

22 A. No, maam, I did not.

23 SOL. MAYES: May I have just a moment, Your Honor?

24 (Brief pause in proceeding)

25 BY SOL. MAYES:

M. MOSKAL ON DIRECT

1 Q. Agent Moskal, you mentioned earlier when speaking of
2 paint transfer the term smearing. Can you tell us whether
3 or not there is evidence of paint smearing in this case?

4 A. There did appear to be some paint smearing on the
5 fender that had been removed of the motorcycle.

6 Q. All right, and that is State's Exhibit 10?

7 A. Yes, maam.

8 Q. Is there anything significant -- tell us what is sig-
9 nificant about paint smearing?

10 A. Paint smearing implies that it was put there with a
11 force. Paint chips may result when a piece of metal bends
12 or cracks or may just flake off and wind up on another piece
13 of material, but the actual smear itself implies the two
14 of them made contact with force behind it.

15 Q. Thank you.

16 SOL. MAYES: Nothing further from the State at this
17 time, Your Honor.

18 THE COURT: Mr. Floyd, cross examine.

19 CROSS EXAMINATION

20 BY MR. FLOYD:

21 Q. Agent Moskal, . . .

22 A. Yes, sir.

23 Q. . . basically from what you've said you can go to the
24 data-base and say this is a paint chip that could be from
25 some manufacturer. Is that right?

M. MOSKAL ON CROSS

1 A. Yes, sir.

2 Q. And this was between 1999 and 2001 manufactured?

3 A. Yes, sir.

4 Q. A Ford Ranger 1999 to 2001 manufactured in Twin Cit-
5 ies, Michigan?

6 A. Yes, sir.

7 Q. Or a Ford Escort 1998 to 1999, a Ford Expedition 1998
8 to 2001, a Ford Focus 2000 to 2001, a Mercury Tracer 1998
9 to 1999, a Ford Navigator 1998 to 2000 and 2002?

10 A. Yes, sir.

11 Q. So basically this paint chip could come from any one
12 of these vehicles?

13 A. Yes, sir.

14 Q. Is that correct?

15 A. Yes.

16 Q. And all these vehicles were manufactured and painted
17 in the same fashion?

18 A. They have the same paint in them but different layers.
19 You're going to have different pigments in them to give
20 them different colors but the basics of each layer have a
21 potential to be found on each of those other vehicles.

22 But they would also have to have the exact same color
23 in them as well for us to say they were a match or poten-
24 tial . . .

25 Q. So you've got a paint chip and you have a chip taken

M. MOSKAL ON CROSS

1 from the motorcycle, and this is a vehicle -- this is a
2 paint chip transferred to this vehicle?

3 A. Yes, sir.

4 Q. From a Ford Ranger, and basically that chip could have
5 come from any one of these vehicles you have listed?

6 A. Yes, sir, but when you apply different layers to a
7 sample it does become closer to a fingerprint. If you ap-
8 ply different repaints to a sample, two different vehicles
9 would have to be repainted at the exact same frequency,
10 the same color and same sequence of repaint.

11 So as you apply more layers you can get a fingerprint
12 that is not quite a fingerprint.

13 Q. This was an older vehicle?

14 A. Yes, sir.

15 Q. So basically what you've said is that this paint chip
16 removed from the motorcycle could be from this Ford Ranger
17 or it could be from one of these other vehicles?

18 A. Yes, sir.

19 Q. Is that correct?

20 A. That is correct.

21 Q. And there is no way you can say for certain that this
22 paint was from the Ford Ranger?

23 A. There's no way to say for certain but we have two dif-
24 ferent types of paint chips that match. So to get paint
25 chips from different areas of a vehicle, differently painted

M. MOSKAL ON CROSS

1 areas of a vehicle, I believe it comes to a point where it
2 starts to make it more likely that it came from this ve-
3 hicle than from something else.

4 Q. How many Ford Rangers are in use today?

5 A. They don't publish that information.

6 Q. Are many of them green?

7 A. Yes, sir, but, sir, again, to match the specific one
8 it would still have had to have the same paint color prim-
9 ers.

10 Manufacturers as they go through a daily process may
11 run out of a batch of paint and change it in mid-stream,
12 so portions of it may be similar but you could potentially
13 get some underlying colors on there.

14 Q. So are you saying there may be more than one particu-
15 lar paint on a vehicle?

16 A. Not on a vehicle, no, sir.

17 Q. And, for example, you said a while ago in the test on
18 the rocker panel that was not the rocker panel from the
19 side that was struck?

20 A. No, sir, it was not.

21 Q. So it was the rocker panel from the other side?

22 A. Yes, sir.

23 Q. And you could have a paint chip that would be differ-
24 ent from what you've said from one side to the other?

25 A. The potential does exist.

R. MOSKAL ON CROSS

1 Q. So from your testimony . .

2 A. Let me back up a little. I think I said earlier --

3 I don't think they would run out midstream in a particular

4 vehicle itself so the paint chemistry involved on a ve-

5 hicle would be the same although further down the line it

6 may have a different or is going to have a different paint

7 sequence to it.

8 Q. So what you are saying is that this paint chip could

9 have been from this Ford Ranger?

10 A. Yes, sir.

11 Q. However, it could possible come from another Ford

12 Ranger?

13 A. If it had the same paint sequence.

14 Q. Or a Ford Escort, 1998 to 1999, a Ford Expedition,

15 1998 to 2001, a Ford Focus, 2000 to 2001, a 1998 to 1999

16 Mercury Tracer, a 1998 to 2000 and 2002 Ford Navigator?

17 A. Any of those that would have the same layer sequence,

18 colors, chemistry, would be a potential. Yes, sir.

19 Q. Are they pretty much painted the same?

20 A. No, sir. I mean, every Ford truck that comes off the

21 line is not painted the same. You have different colors

22 and . .

23 Q. You have different colors?

24 A. Yes, sir.

25 Q. So what is different between the paint?

261

R. MOSKAL ON CROSS

1 A. The layer sequences on each of them in terms of your
2 Ecoat and your primers and your color coat and your clear
3 coat. They do basically have the same format.

4 Q. Same foremat?

5 A. Yes, sir.

6 Q. Thank you. No further questions.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY SOL. MAYES:

10 Q. Agent Moskal, is every Ford Ranger manufactured the
11 same?

12 A. Could you say that one more time?

13 Q. Is every -- is the paint sequence
14 on every green Ford Ranger necessarily manufactured the
15 same?

16 A. No, maam.

17 Q. And why is that?

18 A. Again, as they are going through production, if they
19 run out of a color coordinated primer one day and they have
20 a demand to get vehicles out, they may grab another primer
21 they have. So they are going to paint things according to
22 what they have in supply at the time.

23 Q. And in this particular paint does every sequence of
24 the paint match?

25 A. Yes, maam.

M. MOSKAL ON REDIRECT

1 Q. Now, you mentioned before about the rocker panel. Do
2 Ford Escorts have a rocker panel?

3 A. Yes, maam. It's going to have a rocker panel, I be-
4 lieve.

5 Q. All right, and is every rocker panel necessarily --
6 on that list necessarily the same sequence down to the E-
7 coat?

8 A. I would have to see some of those vehicles to be able
9 to answer that one.

10 Q. All right, and in this particular paint the E-coat
11 existed on the rocker panel of the Ford Ranger?

12 A. Say that one more time. I'm sorry.

13 Q. The E-coat existed on the rocker panel of the Ford
14 Ranger?

15 A. Yes, maam.

16 Q. And it was also found on the fender?

17 A. Yes, maam.

18 Q. Now, what is the significance of the fact that dif-
19 ferent paint chips match?

20 A. There were actually two different paint chips. The
21 rocker panel as well as the portion on the exterior of the
22 vehicle that kind of went down and sloped underneath the
23 vehicle -- those two areas of that Ford pick-up truck had
24 different sequences and there was a section that matched
25 what was found on the fender and there was a piece of the

M. MOSKAL ON REDIRECT

1 other that matched what was found on the motorcycle.

2 Q. And the other cars that were manufactured by Ford,
3 would you necessarily expect them to contain all of the
4 same sequence of layers?

5 A. No, but that is a possibility.

6 Q. Let me ask you specifically about the rocker panel on
7 the driver's side. Is there any reason to believe that
8 the rocker panel on the driver's side would have been dif-
9 ferent from the rocker panel on the passenger side?

10 A. No, maam. There is no reason to believe that the two
11 sides would have been painted differently.

12 Q. Nothing further.

13 THE COURT: Anything further?

14 RE CROSS EXAMINATION

15 BY MR. FLOYD:

16 Q. Agent Moskal, . .

17 A. Yes, sir.

18 Q. . . most all of them have E-coats on them?

19 A. Yes, sir. I believe most of them are.

20 Q. And all of them have primer?

21 A. Correct.

22 Q. So that doesn't make them unique, the vehicles that
23 have an E-coat?

24 A. That does not make those vehicles unique. No, sir.

25 Q. And do you have any information on whether or not the

M. MOSKAL ON RECROSS

- 1 paint, the green paint, ran out?
- 2 A. I don't have any information on that, no, sir.
- 3 Q. Don't have any information on how long it might have
- 4 been out of use?
- 5 A. No, sir.
- 6 Q. And that is kind of speculation . .
- 7 A. It's not speculation. It is a factor that does occur.
- 8 Yes, sir.
- 9 Q. Does occur?
- 10 A. Yes, sir.
- 11 Q. How often?
- 12 A. That I don't have. I wouldn't have that information
- 13 as I was not given the information.
- 14 Q. Do you know if that had happened in the Twin Cities
- 15 plant?
- 16 A. I'm sorry.
- 17 Q. Do you know if that happened at the Twin Cities plant?
- 18 A. I don't know which plants it has or has not happened.
- 19 A. Thank you, sir.
- 20 THE COURT: All right, you can step down.
- 21 (Witness excused from stand)
- 22 THE COURT: Solicitor.
- 23 SOL. MAYES: The State rests, Your Honor.
- 24 THE COURT: Ladies and gentlemen, the State's case
- 25 is now complete.

1 If you would approach briefly?

2 (Conference at the bench between counsel and the Court
3 off the record)

4 THE COURT: Ladies and gentlemen, I'm going to send
5 you to your jury room at this time for a few minutes.

6 Please do not discuss the case.

7 (Jury excused from the Courtroom)

8 THE COURT: All right, Mr. Floyd.

9 MR. FLOYD: Your Honor, at this time the Defense would
10 move for a directed verdict of acquittal. The basis of
11 our motion -- we have several things.

12 First of all, I would like to address the obstruction
13 of justice. I would also renew my motion to quash the
14 Indictment, based on the statute referred to in our motion
15 to quash and the common law involving the crime of obstruc-
16 tion of justice.

17 It is our position that the State has failed to estab-
18 lish the required elements to convict on obstruction of
19 justice.

20 It is our position under the very premise of our
21 country that a person charged with a crime has a right not
22 to incriminate himself, and that my client in this case
23 would have the same right as anyone else in that regard,
24 Your Honor.

25 It was his own property that was involved and he would

1 have a right to privacy on his own property as he exercised
2 his right not to incriminate himself.

3 There was no proof obstruction of justice.

4 THE COURT: All right. Does the State wish to re-
5 spond?

6 SOL. MAYES: Yes, sir, Your Honor.

7 THE COURT: All right.

8 SOL. MAYES: In this particular case, it may be this
9 was property that he owned, but the evidence that the State
10 has presented is that he took preventative action toward
11 the authorities and the law enforcement agencies.

12 One of the State's witnesses testified that the De-
13 fendant had said to him that nobody would ever find the
14 door, which certainly indicates an action that he took
15 to conceal evidence of guilt related to himself.

16 He disposed of property, and although it was his
17 own property as Mr. Floyd said, it was crucial evidence
18 in the case as to his guilt, as he made efforts to con-
19 ceal the vehicle, as well as get rid of the truck door.

20 During the interview with law enforcement, he hid the
21 fact that he had gotten rid of evidence, and in that way
22 he certainly hindered law enforcement in their investi-
23 gation.

24 That is certainly relevant, and it is the State's posi-
25 tion that during the interview he maintained he was at a

1 certain location and that he knew nothing about this
2 event.

3 Plus the fact that he had gotten rid of evidence and
4 made efforts to hide the truck.

5 So he hindered the investigation by law enforcement
6 in several ways.

7 MR. FLOYD: There was evidence by a person who testi-
8 fied that he knew the Defendant had attempted to hide evi-
9 dence from the police when they came looking for it and
10 that person did not come forward at first.

11 He later did come forward with this information, and
12 that could as well be considered by the jury as obstruction
13 of justice.

14 He at first decided not to be involved and then he did
15 come forward which changed the events.

16 THE COURT: That is not before us here. We are here
17 on the question of whether the State has proven the guilt
18 of your client of hit and run involving the death of Mr.
19 Morris.

20 SOL. MAYES: Yes, sir, and it is the State's position
21 that he destroyed physical evidence of his guilt, so it
22 is not just the fact that he did not cooperate with the
23 law enforcement agencies in their investigation into the
24 case.

25 268

1 That would create a separate action to destroy and to
2 hide physical evidence.

3 THE COURT: It is a matter for the jury to determine,
4 but as far as what crime . .

5 SOL. MAYES: I think the State . .

6 THE COURT: I would deny the motions. He is only on
7 trial for one crime, hit and run accident.

8 SOL. MAYES: It is the State's position that there
9 would have to be a separate action involving the hiding or
10 concealing evidence.

11 It appears that this was during the ongoing investiga-
12 tion being conducted by the police.

13 THE COURT: The question is whether he was the one
14 who was driving the vehicle at the time of the collision
15 and whether he left the scene without doing the necessary
16 things that are called for.

17 I believe it would be a separate crime, the destruc-
18 tion of evidence. I don't know of anything in the State
19 of South Carolina history or United States history where
20 it has not been considered a separate crime.

21 SOL. MAYES: And I don't have a case on point, Your
22 Honor, on the issue but it is the State's position it is
23 a separate act and would be a separate charge.

24 THE COURT: That is something for the State or the
25 proper prosecutor to look at.

1 SOL. MAYES: According to information provided by the
2 State's witnesses, that would have occurred several days
3 later.

4 One witness testified to seeing the truck in the gar-
5 age in damaged condition, after which the truck was moved
6 and then it was covered by a tarp behind a shed.

7 Then there was testimony by another witness that the
8 door had been removed when he saw it next.

9 So those would have been separate acts by the Defen-
10 dant. Your Honor.

11 THE COURT: So we will go forward at this time, Mr.
12 Floyd.

13 MR. FLOYD: Thank you, Your Honor.

14 We would next move for a directed verdict on these
15 two grounds. First of all, Your Honor, the State has failed
16 to prove that the collision is what caused the death of
17 Mr. Morris.

18 It has not proven that anything my client did was the
19 actual cause of death. There was testimony about a blood
20 clot but there is no proof that the blood clot did not oc-
21 cur simultaneously and unrelated to those injuries that
22 were described.

23 The State provided no evidence whatsoever that would
24 prove -- as to why he died. He survived the collision, was
25 taken to the hospital and was known to be mobile before he

1 died. There is no chain of causation as required between
2 the accident and this man's death.

3 We asked about the toxicology reports because that
4 would show whether or not he was being given any drugs to
5 -- any drug that would have prevented such a thing from oc-
6 ccurring such as a blood thinner of some kind.

7 There was no such testimony, and the State has failed
8 to establish causation of death.

9 THE COURT: Are you saying there was simple negligence
10 or gross negligence?

11 MR. FLOYD: I would say gross negligence, Your Honor,
12 because it is such a known risk factor.

13 THE COURT: The South Carolina Code says that all per-
14 sons driving a vehicle -- a driver of vehicle involved in
15 an accident resulting in injury or death of a person must
16 stop their vehicle and -- this is South Carolina Code 6 5
17 1210.

18 It says a driver involved in an accident resulting in
19 injury to or death of a person shall immediately stop --
20 no question. That's the code. It says the driver shall
21 immediately stop when involved in an accident.

22 Now, the South Carolina Code goes to the impact on
23 the victim so it is saying in the immediate sense -- so
24 it is required that a death -- charging a person with not
25 stopping immediately, regardless of the chain of causation,

1 so I could not direct a verdict of acquittal on the charge
2 of leaving the scene of a wreck. You can see that when you
3 consider the statute.

4 The way the word immediately is used -- it says re-
5 sulting in death of a person immediately -- then it says
6 shall stop.

7 The (inaudible) Code says resulting in injury or death
8 shall immediately stop, rather than resulting in death imme-
9 diately shall stop. South Carolina says immediately shall
10 stop.

11 MR. FLOYD: We would suggest that immediately goes to
12 define injury or death of a person -- there is immediate
13 injury or death.

14 THE COURT: That would mean as long as there is indi-
15 cation a person is alive there is no indication to stop.
16 There is also mention of leaving the scene with great bod-
17 ily injury. You may have immediate injury and not have im-
18 mediate death.

19 How about it, Ms. Mayes?

20 SOL. MAYES: Yes, sir, Your Honor. The State does
21 not agree with the interpretation posed by Mr. Floyd. There
22 is absolutely nothing to suggest that that was what was in-
23 tended by the legislation.

24 The words, immediately shall stop at the scene of the
25 accident, describe the duty of the driver, regardless of

1 whether it resulted in injury or death.

2 THE COURT: If you look at the Georgia law, it is just
3 the opposite of South Carolina law, so it doesn't do any
4 good to consider that, to look at Georgia law.

5 MR. FLOYD: I think it would rise to the same inter-
6 pretation, Your Honor.

7 THE COURT: All right. Well, under a reasonable in-
8 terpretation of the statute, if the State's evidence is
9 correct, the Defendant could be found guilty of leaving
10 the scene of an accident involving injury or death.

11 It is up to the jury to determine whether or not the
12 death, Mr. Morris' death, was proximately caused by the
13 wreck as claimed by the State. They heard the pathologist.

14 It is the jury's determination to make. So, Mr. Floyd,
15 I would have to deny that motion.

16 MR. FLOYD: Thank you, Your Honor.

17 Specifically at this time we would move in behalf of
18 the Defendant to suppress all evidence seized at the De-
19 fendant's residence pursuant to the search warrant.

20 It is our position that the search warrant is invalid in
21 this case because it was issued actually in Cayce and it
22 was executed in West Columbia in Lexington County.

23 We have previously argued that motion.

24 THE COURT: Yes, sir, the Court heard argument on the
25 issue yesterday and concerning this agency agreement.

1 MR. FLOYD: We would move to suppress all of the evi-
2 dence that was obtained.

3 THE COURT: We spent a good bit of time on that issue
4 yesterday, and whether the agency agreement was signed by
5 County Council or the required officials and all of that,
6 and who had to approve the agreement.

7 The case that you had -- the issue came up in the
8 case of State versus Burgess which is a 2011 case, a Court
9 of Appeals case, and the agency agreement, so called, was
10 referenced, another Lexington case.

11 The State v. Burgess case is a multi-jurisdictional
12 drug enforcement case.

13 In this case we're talking about an agreement that
14 would pertain to traffic enforcement.

15 (Colloquy between the Court and Mr. Floyd that was not aud-
16 ible on the record)

17 THE COURT: I would deny your motion at this time. We
18 need to proceed on.

19 MR. FLOYD: Thank you, Your Honor.

20 THE COURT: All right, is there anything further, Mr.
21 Floyd?

22 MR. FLOYD: No, Your Honor.

23 THE COURT: All right. Mr. Caughman, the State at
24 this time has -- you need to be sworn.

25 (Whereupon, the Defendant, Mr. Caughman, was sworn

1 by the Clerk)

2 CLERK: Judge, I don't believe he can be heard on the
3 record.

4 What was your response?

5 DEFENDANT: Yes, maam.

6 THE COURT: The State as you heard has rested, and
7 the time has come for the Defense case. I need to explain
8 to you certain of your rights. If you do not understand
9 anything that I say or if you need me to explain anything
10 further, please let me know and I will do that.

11 We have now reached the stage of the trial where you
12 may present your defense. You have the right to claim the
13 protection given to you by the Fifth Amendment of the Con-
14 stitution of the United States.

15 This Amendment states in part that no person shall
16 be compelled in any criminal case to be a witness against
17 himself. This means you cannot be required to testify in
18 this case.

19 You have the right to testify in your own behalf if
20 you want to, but whether or not you choose to testify is a
21 personal right. No one can waive this right except you.

22 If you decide to testify you will be subject to the
23 same rules as govern other witnesses. You can be examined
24 and cross examined on any relevant issue in this case.

25 In addition, if you have a conviction that involves

1 dishonesty or false statements or crimes punishable by im-
2 prisonment for more than one year and I determine the pro-
3 bative value of the testimony outweighs the prejudicial ef-
4 fect to you, the Solicitor can question you as to your re-
5 cord as it may attack your credibility.

6 If you desire to testify, it must be a free, voluntary
7 and intelligent decision, made by you, considering the pro-
8 tections given to you by the Fifth Amendment as well as
9 the consequences of your decision.

10 If you decide not to testify, I would instruct the
11 jurors that they cannot give the fact that you did not tes-
12 tify any consideration whatsoever, and that there is to be
13 absolutely no prejudice to you that you did not testify.
14 They cannot even talk about the fact that you did not tes-
15 tify.

16 This must be a decision made solely by you. You can
17 talk with your lawyer, your family, friends or anyone else
18 you would like to, but the final decision will be left en-
19 tirely up to you as to whether or not you testify.

20 Do you understand what I've explained to you?

21 DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions regarding any-
23 thing I've told you?

24 DEFENDANT: No.

25 THE COURT: Have you talked with Mr. Floyd about whether

1 or not you should testify?

2 DEFENDANT: Yes, sir.

3 THE COURT: Do you want to talk to him any more about
4 it?

5 DEFENDANT: No, sir.

6 THE COURT: Have you made up your mind as to whether
7 or not you're going to testify?

8 DEFENDANT: Yes, sir.

9 THE COURT: Do you wish to testify?

10 DEFENDANT: No, sir.

11 THE COURT: All right. Does the Defense wish to call
12 any witnesses?

13 MR. FLOYD: No, Your Honor.

14 THE COURT: All right. We will go forward and allow
15 the Defense to rest in the presence of the jury, and then
16 we will talk about jury charges.

17 We'll come back tomorrow morning for arguments, charge
18 and deliberation.

19 Does that sound like a good plan?

20 SOL. MAYES: Yes, sir.

21 MR. FLOYD: Yes, sir.

22 THE COURT: Bring the jury in.

23 (Jury returned to the Courtroom)

24 THE COURT: All right, ladies and gentlemen. Since
25 the State has rested, it is the Defense's turn.

1 All right, Mr. Floyd.

2 MR. FLOYD: The Defense rests.

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, the Defense has now rested its case, so you have now
5 heard all of the evidence to be presented in this
6 case.

7 Given that it is four o'clock, we are not going to
8 proceed further today. We will have closing arguments
9 and your deliberations tomorrow, as well as I will give
10 you my charge on the law.

11 So I am going to let you go at this time. Please be
12 back in your jury room at nine thirty tomorrow morning.

13 (Jurors were excused for the evening)

14 THE COURT: All right. We are going to talk about the
15 jury charges, and we will give the State overnight to work
16 on second indictment issues.

17 Then we will come back tomorrow morning for your open-
18 ing statements and the charge.

19 (The Court took a brief recess, after which the case
20 was resumed)

21 THE COURT: All right, thank you.

22 With respect to the charges, let me hear from the
23 State.

24 SOL. MAYES: Yes, sir, Your Honor. The only thing in
25 addition to what I've submitted as proposed charges, it

1 would be the Court's standard charge concerning direct and
2 circumstantial evidence.

3 THE COURT: All right. Mr. Floyd. Any objection to
4 what is submitted by the State?

5 What do you say about the statutes?

6 MR. FLOYD: I have no problem with the statutes.

7 THE COURT: Okay. Let me ask this question before we
8 go further with the charges. In one of the requests to
9 charge you handed up is concerning a lesser included of-
10 fense. What's your position on it?

11 MR. FLOYD: It is our contention that there is a ques-
12 tion of whether the death resulted from the accident.

13 THE COURT: What says the State?

14 SOL. MAYES: Your Honor, looking at the definition of
15 the great bodily injury, it is injury which creates a sub-
16 stantial risk of death.

17 It is true, however, that you can't have death with-
18 out substantial risk of death. If that is enough to create
19 an emphasis in that particular statute as a lesser included
20 offense we believe that is important, and we would like to
21 hand up case law on it.

22 We would leave that to the Court's discretion, Your
23 Honor.

24 THE COURT: Well, there can be great bodily injury not
25 resulting in death. I think it is an issue for the jury,

1 given the fact that you can leave the hospital and start
2 to take therapy with the expectation of recovery from
3 the great bodily injury.

4 The jury would have to determine the proximate cause
5 issue regarding the death. You have brought up the issue
6 of negligence, gross negligence, within the victim's hos-
7 pital treatment.

8 The great bodily injury could have been the cause of
9 death as well. If there was a charge of great bodily in-
10 jury, the jury would have to answer the question of whether
11 or not he is guilty of leaving the scene of the accident
12 causing great bodily injury, and not resulting in death.

13 All right. How about the other charges that have been
14 submitted?

15 MR. FLOYD: We would object to Number One. I think
16 that is taken out of content. I think the statute is suffi-
17 cient and gives the purpose of the statute, although it is
18 all somewhat cumulative.

19 Our position is that the State would have to show the
20 Defendant's failure to stop somehow lends to the possibil-
21 ity that the victim would die because of his failure to
22 stop.

23 We think that is not the intent of the statute, so
24 we would ask that it not be charged.

25 THE COURT: All right.

1 I think the evidence is clear that the victim did be-
2 gin to make a recovery until what happened that caused his
3 death.

4 All right. What says the State?

5 SOL. MAYES: Your Honor, on that portion of the stat-
6 ute that says the Defendant would have a duty to stop and
7 render aid and give information. The initial duty was not
8 to leave the scene after the impact.

9 It is possible the victim would not have died except
10 for the failure of that person to render aid. The Defen-
11 dant did leave the scene and the victim ultimately died at
12 the hospital after receiving initial treatment.

13 Our position is that the initial portion cannot set
14 up -- it is not relevant to what we have.

15 (Brief pause in the proceeding)

16 THE COURT: All right, the failure to stop and render
17 aid would benefit the person injured. Giving assistance --
18 the statute does not impose any duty but just gives the
19 -- does not impose any duty of proof but just gives the
20 stages, to stop and render aid.

21 The statutes says the driver has a duty to give the
22 information stated to the person injured and to render
23 assistance, including seeing the person is taken to a hos-
24 pital or arrange for treatment.

25 The statute is clear in its wording, duty to stop

1 and to render aid and so forth, as is stated therein.

2 I think the statute speaks for itself and so I'm going to
3 leave it in as it is stated with the requirements.

4 MR. FLOYD: Thank you, Your Honor.

5 THE COURT: As to number two, go ahead.

6 MR. FLOYD: Your Honor, number two we think is not
7 the wording of the statute. (Portion inaudible)

8 THE COURT: How about that, Ms. Mayes?

9 SOL. MAYES: Yes, sir, Your Honor. Again, I do not
10 believe the interpretation of the word immediately. It is
11 the State's position that it means the driver shall imme-
12 diately stop, speaking of the duty of the driver to stop,
13 rather than immediate death of the victim.

14 Beyond that, we believe the wording in the statute is
15 clear. Mr. Floyd would give a wrong application to the
16 wording.

17 MR. FLOYD: The statute speaks for itself.

18 THE COURT: All right.

19 (Brief pause in the proceeding)

20 THE COURT: I will give the statute as it exists, and
21 it is up to the jury to determine whether or not death or
22 serious bodily injury occurred as result of the accident.

23 (Whereupon, the disc ended for the day, and the case
24 resumed on May 23, 2013)

25 THE COURT: Good morning.

1 SOLICITOR MAYES: I have this ready as a redaction
2 of that other document.

3 THE COURT: Okay.

4 SOLICITOR MAYES: What we did is we leave the pages
5 that deal with the certification and the name, the ad-
6 dress and account number, and the transactions would
7 be substituted for the page.

8 THE COURT: All right.

9 (Brief pause)

10 (Colloquy between counsel and the Court off the
11 record)

12 THE COURT: Again, good morning.

13 There are a couple of things I understand we need
14 to take up.

15 SOLICITOR MAYES: Yes, sir. An exhibit was testi-
16 fied to on the stand by Detective Pereira, and it is
17 now with the Court Reporter.

18 The other item that we had addressed at the bench
19 this morning -- when we approached the bench the agree-
20 ment was the document would go into evidence subject to
21 later redaction.

22 We have now agreed upon a redacted page, which does
23 show the transaction in question on that particular day,
24 and we are going to pull out the other pages that are
25 dealing with other transactions and substitute that

1 PAGE. This is Exhibit 23.

2 I just wanted to verify that it is in evidence, Your
3 Honor.

4 (Bank of America document previously entered at page
5 84 of this record)

6 THE COURT: Are you satisfied with that, Mr. Floyd?

7 MR. FLOYD: Yes, Your Honor.

8 THE COURT: All right. We discussed the obstruction
9 of evidence charge that was requested, and rather than to
10 give that charge I would grant the Defendant's motion as to
11 that charge. I will not give the charge.

12 MR. FLOYD: Thank you, Your Honor.

13 THE COURT: Mr. Floyd had cases from Florida, Georgia
14 and Pennsylvania, I believe.

15 MR. FLOYD: And I believe there was a case from the
16 First Circuit on the issue.

17 THE COURT: All right.

18 MR. McNAIR: The grounds for wanting to not have the
19 Court give the obstruction of evidence charge is that it
20 would violate the Defendant's Fifth Amendment rights, and
21 I don't see how Fifth Amendment rights in this scenario
22 are involved.

23 THE COURT: What are you talking about?

24 MR. McNAIR: This Defendant. Mr. Floyd's grounds are
25 that his Fifth Amendment right to receive the protection

1 of the Fifth Amendment.

2 As you know, it has to be a statement of a testimonial
3 nature. This act of cutting the doors off were not com-
4 pelled by any government agency. It was a voluntary and a
5 wilful act on his part.

6 He is not charged with failing to turn the door over
7 to law enforcement so his Fifth Amendment rights are not
8 even invoked.

9 Second of all, I don't think his failure to testify
10 or communicate -- there is ample case law that states the
11 Fifth Amendment protections or his invoking those rights
12 are of a testimonial nature.

13 I thought this sort of case would have been helpful
14 to reenact that there was no violation. So I don't think
15 the Fifth Amendment applies in this case at all. This is a
16 case of a voluntary and wilful act, not compelled by law
17 enforcement.

18 Furthermore, Your Honor, there are cases -- there is
19 a murder case where the wife destroys the murder weapon,
20 and oftentimes they are not charged with obstruction al-
21 though that may not be common strategy. I don't think
22 there is anything to prohibit someone though from being
23 charged.

24 Your Honor, there is . .

25 THE COURT: I don't think there is a South Carolina

1 case on it. There is a jury trial where there was a des-
2 truction of a computer hard drive that was sought in the
3 investigation of the case, and I believe the charge was
4 possession of child pornography.

5 After learning that law enforcement agencies were seek-
6 ing it, he destroyed the hard drive, and he was charged
7 with destroying the evidence. Whether his Fifth Amend-
8 ment rights were violated were in question.

9 In this case, the Defendant is charged with leaving
10 an accident and before any communication by law enforcement
11 which was sometime later he -- some period of time later
12 he is said to have removed the door of his truck.

13 MR. McNAIR: Your Honor, the first sentence of that
14 case is that he destroyed the computer hard drive after
15 knowledge that the agencies were seeking that.

16 THE COURT: There they could not prosecute him for
17 the child pornography case, and he is on trial in this case
18 for leaving the scene of an accident. So this fact alone
19 -- if he were charged with something else in the case, it
20 might be different.

21 MR. McNAIR: Your Honor, in addition there were other
22 acts. He was aware that someone was injured and the next
23 day he told Mr. Gilbert he removed the doors or was going
24 to move the doors and nobody would ever find them.

25 THE COURT: I believe that was later though.

1 MR. McNAIR: But that puts knowledge in his mind. I
2 mean, he knows he is the target of an investigation. He
3 knows that there is an ongoing criminal investigation.

4 THE COURT: In some of those cases it says there was a
5 communication with law enforcement before the alleged de-
6 struction occurred.

7 In this case, the Defendant is charged with being in
8 an accident and leaving the scene.

9 So unless you have something else, I have ruled.

10 MR. McNAIR: Only that he had seen reports of an acci-
11 dent so that he was aware they could be looking for him.
12 It's just like that Hicks case.

13 THE COURT: Well, when we start questioning the stat-
14 utes, I mean, and any federal statutes that could apply --
15 I have said I would not charge obstruction. I would say
16 under the obstruction of justice charge which was handed
17 up, under the federal statute it would increase the Defen-
18 dant's potential duty to defend from the obstruction of
19 justice charge. He is not required to put up a defense.
20 Why should the State have to stretch its case when this
21 guy is charged with failure to hang around after the acci-
22 dent?

23 Why should the State be allowed to stretch the of-
24 fense and create a separate trial on something he was not
25 originally charged with?

1 I would think that people who commit crimes in every
2 case do something to help their situation, and the distinc-
3 tion in this case is clear. He was not arrested until a
4 call was made to the authorities giving his identity.

5 MR. McNAIR: Because you have no constitutional right
6 to destroy evidence, Your Honor, and that is obstruction
7 of justice, regardless of when a defendant was charged by
8 law enforcement.

9 THE COURT: But that's my question. Why -- the State
10 can try and convict him on what he's charged with, so why
11 try to create a separate offense?

12 I'm not questioning the action of the State, but this
13 can occur all the time where someone is charged
14 with a crime and you seek to charge him with as many as
15 possible.

16 The question is not whether it is a valid charge as
17 to what we have in this case.

18 MR. McNAIR: Your Honor, . .

19 THE COURT: Yes, sir.

20 MR. McNAIR: I don't think there is anything that pro-
21 hibits somebody from being charged with a principal offense
22 and then an investigation into . .

23 THE COURT: You all have not produced anything yet to
24 show it would be a valid charge. It is not a charge as
25 to the main offense, which is the one that he is on trial

1 for, the primary offense.

2 We should not re-invent the wheel on this case unless
3 there is something more that you have. If you don't have
4 anything more then there is no reason to add another charge
5 in when in reality is that what you've charged is a proper
6 charge and the primary charge.

7 Unfortunately, there is no South Carolina precedent,
8 but I don't see where the State could violate the Defen-
9 dant's Fifth Amendment rights . .

10 MR. McNAIR: It is our position that we are not vio-
11 lating his Fifth Amendment rights, but that he . .

12 THE COURT: It is my responsibility to rule in the
13 way I see is proper and not to allow violation of anyone's
14 rights.

15 Again, I'm going to charge the statute.

16 MR. McNAIR: I understand, Your Honor. There are
17 federal cases where someone has been charged with some-
18 thing like securities fraud and then they are charged with
19 obstruction in an investigation on securities fraud, and
20 that is similar to what we have here.

21 (Counsel and the Court speaking at the same time)

22 THE COURT: I have a (inaudible) where it says the
23 very parameters in obstruction of justice in American crim-
24 inal law -- this goes through some federal case law, and
25 some pending judicial proceedings, right not to put up any

1 testimony, obstruction of justice . .

2 MR. McNAIR: Your Honor, . .

3 THE COURT: Yes.

4 MR. McNAIR: The question is, did he know he was the
5 subject of an investigation or aware of an ongoing inves-
6 tigation, and I think there is evidence of that in the
7 record.

8 THE COURT: That would be a jury question, when he
9 knew about it.

10 MR. McNAIR: I think there is some evidence on that.

11 THE COURT: The Judge's charge is within the discre-
12 tion of the Judge.

13 In this case he can be found guilty or not guilty of
14 hit and run accident but he cannot be found guilty of ob-
15 struction of justice.

16 I will tell the jury they can find guilty of hit and
17 run accident, not guilty of hit and run accident, and that
18 is it.

19 If you have something else on it, show it to me, but
20 we need to move on.

21 (Discussion off the record between counsel and the
22 Court)

23 THE COURT: Let's take about two minutes and then we
24 will proceed.

25 SOL. MAYES: Your Honor, I have submitted a charge in

1 my initial proposal -- there was mention yesterday on the
2 offense of great bodily injury. I have submitted a pro-
3 posed charge in my initial proposal that is directly from
4 the statute, subsection C of 56-5-110, a definition of great
5 bodily injury.

6 THE COURT: I believe that is covered in my charge.
7 Just a minute.

8 Great bodily injury mens bodily injury which would
9 cause a substantial risk of death or which causes serious
10 permanent disfigurement or extended loss or impairment of
11 function of any bodily member or organ.

12 SOL. MAYES: And then a charge on proximate cause.

13 THE COURT: Proximate cause would be the direct cause,
14 immediate cause, efficient cause. I have covered that.

15 It is the cause without which the death or serious in-
16 jury would not have occurred.

17 Well, from my charge, the State must prove that the
18 accident in question was the proximate cause of the great
19 bodily injury to or death of the victim.

20 Direct cause, immediate cause, efficient cause, that
21 cause without which the injury to or death of the victim
22 would not have resulted. Not the sole cause but contributing--
23 Must be a chain of causation and so forth. May be more
24 than one cause. Can be more than one proximate cause. Con-
25 tributing cause.

1 That's a pretty standard charge.

2 SOL. MAYES: And is the Court going to let the jury
3 hear the obstruction of justice charge?

4 THE COURT: The charge is long enough. That is too
5 long and not a charge the Defendant is facing. It is
6 not a part of the charge.

7 (Brief recess taken by the Court)

8 THE COURT: Thank you. Be seated.

9 THE COURT: As I said, I am granting a motion as to
10 the obstruction of justice charge.

11 SOL. MAYES: Your Honor, are you going to discuss it
12 with the jury in any manner?

13 THE COURT: I will tell them we are proceeding on the
14 hit and run accident. Do you want me to tell them that?

15 SOL. MAYES: Well, I just wasn't sure how to proceed
16 or whether to cover that.

17 THE COURT: Okay, bring the jury.

18 (Jury brought to Courtroom)

19 THE COURT: Welcome back, ladies and gentlemen, mem-
20 bers of the jury.

21 You will now hear the closing statements from the
22 State and Defendant.

23 (Closing statements to the jury were not transcribed
24 due to difficulty in hearing them. There were no objec-
25 tions made during these statements.)

1 THE COURT: Mr. Foreman and members of the jury,
2 you have heard the testimony, the evidence and the ar-
3 guments from the State and the Defendant.

4 You will last hear the law that applies to the case.
5 Under the Constitution and laws of South Carolina, you
6 are the finders of the facts. I do not have the right
7 to pass upon the facts or to express any opinion that I
8 might have because it is a matter solely for you, the
9 jury, to determine.

10 Now, as the jurors, it is your duty to determine the
11 value, the weight and the truth of the evidence presented
12 during this trial.

13 You are all judges, the sole judges, of the credi-
14 bility; that is, the believability, of the witnesses who
15 have testified and of the evidence which has been pre-
16 sented during the trial.

17 In passing upon credibility, you may take into con-
18 sideration many things, such as the demeanor or manner of
19 testifying, whether the witness had reason to be biased
20 or prejudiced, or whether a witness' testimony was con-
21 tradicted on the one hand or supported and corroborated
22 on the other hand.

23 All of these things you are to consider, bearing in
24 mind that you should give the Defendant the benefit of
25 any reasonable doubt.

1 It becomes your duty as jurors to analyze and to
2 evaluate the evidence and determine that evidence which
3 convinces you of its truth.

4 Our rules of evidence ordinarily do not permit wit-
5 nesses to testify to opinion or conclusion. An exception
6 to this ruling is a witness that we call an expert. A
7 witness who by education and experience has become expert
8 in some art, science, profession or calling may state an
9 opinion as to relevant and material matters in which the
10 witness claims to be an expert, and may also state the
11 reason for the opinion.

12 You should consider any expert opinion received in
13 evidence in this case and, like any other evidence, give
14 it the weight you think it deserves.

15 If you find that the opinion of an expert is not
16 based on sufficient education and experience, or if you
17 should conclude that the reasons in support of the opin-
18 ion are not valid, or that the opinion is outweighed by
19 other evidence, you may disregard the opinion entirely.

20 An expert witness' testimony is to be given no
21 greater weight than that of any other witness simply be-
22 cause the witness is an expert.

23 Further, you are not required to accept an expert's
24 opinion even though it is not contradicted.

25 There are two types of evidence that are generally

1 presented during a trial, direct evidence and circumstan-
2 tial evidence.

3 Direct evidence is the testimony of a person who
4 claims to have actual knowledge of a fact, such as an eye
5 witness.

6 It is evidence which immediately establishes the
7 main facts to be proven.

8 Circumstantial evidence is proof of a chain of facts
9 and circumstances indicating the existence of a fact. } It
10 is evidence which immediately establishes collateral facts
11 from which the main fact may be inferred.

12 Circumstantial evidence is based on events and not
13 on personal knowledge or observation. The law in fact
14 makes no distinction between the weight or the value to
15 be given to direct or circumstantial evidence, nor is a
16 greater degree of certainty required for circumstantial
17 evidence than for direct evidence.

18 You should weigh all of the evidence in this case,
19 and after weighing all the evidence if you are not con-
20 vinced of the guilt of the Defendant beyond a reasonable
21 doubt you must find the Defendant not guilty.

22 Now, as the Trial Judge, it is my responsibillity to
23 preside over the trial of the case and to rule upon the
24 admissibility of the evidence during the trial.

25 You are to consider only the testimony that has been

1 presented from this witness stand, together with any
2 exhibits that may have been marked in the record.

3 I have the additional duty to charge you the law as
4 applicable to this case, and as the Presiding Judge I am
5 the sole judge of the law of this case.

6 It is your duty then as jurors to accept as correct
7 and to apply the law as I state it to you and then reach
8 your verdict.

9 Finally, I charge you in this regard, that you should
10 not be concerned with what you think the law ought to be,
11 but rather with what I charge you that the law is.

12 Now, the fact that the Defendant was arrested, was
13 charged and indicted is not evidence in this case and it
14 cannot be considered as evidence of guilt in this case, nor
15 is it to be any presumption or inference of guilt.

16 The Indictment is simply the formal written instru-
17 ment which contains the charge made against the Defendant.
18 The Indictment is the formal instrument by which the De-
19 fendant is brought into Court.

20 The Defendant has pled not guilty to the charge in
21 the Indictment, and that plea places the burden upon the
22 State to prove the Defendant guilty.

23 A person charged with a criminal offense in South
24 Carolina is never required to prove himself innocent. I
25 charge you that it is an important rule of the law that

1 a defendant in a criminal trial, no matter what the
2 seriousness of the charge may be, will always be presumed
3 to be not guilty of the crime for which the Indictment
4 was issued unless guilt has been proven by evidence sat-
5 isfying you of his guilt beyond a reasonable doubt.

6 The presumption of innocence does not end as you be-
7 gin your deliberations, but it accompanies the Defendant
8 throughout the trial until you reach a verdict of guilt
9 based on evidence that satisfies you of that guilt beyond
10 a reasonable doubt.

11 The presumption of innocence is like a robe of
12 righteousness placed about the shoulders of the Defendant
13 which remains with the Defendant until it has been
14 stripped from the Defendant by evidence satisfying you of
15 the Defendant's guilt beyond a reasonable doubt.

16 Now, the presumption of innocence is not merely a
17 theory. It is not just a legal phrase, but it is a sub-
18 stantial right to which every defendant is entitled un-
19 less you, the jury, are satisfied from the evidence of
20 the Defendant's guilt beyond a reasonable doubt.

21 The State must prove the Defendant guilty beyond a
22 reasonable doubt, so what is a reasonable doubt in the
23 law?

24 A reasonable doubt is doubt which would leave an
25 honest, sincere and conscientious juror, in search of the

1 truth hesitate to act.

2 Proof beyond a reasonable doubt is that form of
3 proof that is of such a convincing character that a rea-
4 sonable person would not hesitate to rely and act upon
5 in the most important of his or her own affairs.

6 Proof beyond a reasonable doubt can be described as
7 proof that leaves you firmly convinced of a Defendant's
8 guilt.

9 There are very few things we know in this world with
10 absolute certainty, and in a criminal case the law does
11 not require proof that overcomes every possible doubt.

12 If, based on your consideration of the evidence, you
13 are firmly convinced that the Defendant is guilty, you
14 must find him guilty.

15 On the other hand, if you think that there is a rea-
16 sonable possibility that he is not guilty, you must give
17 to the Defendant the benefit of that reasonable doubt and
18 find him not guilty.

19 Now, I instruct you that the fact that the Defendant
20 did not testify is not a factor to be considered by you
21 in any way in your deliberations in your consideration
22 of the guilt or the innocence of the Defendant.

23 That must not be considered by you in any manner at
24 all whatsoever. The Defendant has a constitutional right
25 to remain silent, and the assertion of this right must

1 not be considered by you in your deliberations.

2 So I repeat that under your oath, you are to draw no
3 conclusion whatsoever from the fact that the Defendant in
4 this case did not testify. The fact that the Defendant
5 did not testify should not even be discussed in your jury
6 room.

7 The burden of proof, as I have stated to you, is
8 upon the State and is not placed upon the Defendant. It
9 remains -- the burden of proof remains on the State to
10 prove guilt beyond a reasonable doubt.

11 Now, a statement allegedly made by the Defendant has
12 been admitted into evidence in this case, and while the
13 Court has determined that the statement is admissible, I
14 instruct you that you make the ultimate decision of whe-
15 ther or not the Defendant made the statement.

16 If the Defendant did make the statement, then you
17 must determine whether the statement was made by the De-
18 fendant voluntarily and of his own free will, and this
19 means the statement was not caused by pressure, force,
20 fear or duress, by coercion or intimidation, or by hope
21 or a promise^{or hope} of a reward of any kind.

22 To determine whether a statement was voluntary, you
23 should consider both the characteristics of the Defendant
24 and the details of the questioning.

25 Other facts you must consider would be the age of

1 the Defendant, his education or lack of education, the
2 Defendant's mental ability or capacity, the Defendant's
3 IQ or intelligence, the Defendant's background, his men-
4 tal attention, the nature of the questioning, and the
5 advice or lack thereof of his constitutional rights, in-
6 cluding but not limited to his right to remain silent;
7 that any statement could be used against him in Court;
8 the right to have a lawyer present; that if he could not
9 afford one, one would be appointed to represent him with-
10 out any cost; that he could stop making the statement at
11 any time.

12 You must carefully consider all of the surrounding
13 circumstances before you give any weight to any alleged
14 statement, and, further, the State has the burden of
15 proving beyond a reasonable doubt that the alleged state-
16 ment was voluntary.

17 If you determine that it was, you may give the state-
18 ment such further consideration that you deem proper, and
19 you must decide what weight, if any, is to be given to
20 the alleged statement.

21 If you determine the alleged statement was not a free
22 and voluntary statement by the Defendant, you should not
23 consider the statement at all.

24 The Defendant is charged with the offense of hit and
25 run accident resulting in death.

1 The State must further prove beyond a reasonable doubt
2 that the Defendant was the driver of a vehicle involved in
3 an accident resulting in the death of a person, and that he
4 failed to immediately stop the vehicle at the scene of the
5 accident or as close to it as possible.

6 The driver -- our law in South Carolina provides that
7 the driver of a vehicle involved in an accident resulting
8 in injury to or the death of a person has a duty to imme-
9 diately stop the vehicle at the scene of the accident or
10 as close to it as possible.

11 The law requires the driver of a vehicle involved in an
12 accident resulting in injury to or death or any person or
13 damages to any vehicle which is driven or attended by any
14 person to give name, address and registration number of the
15 vehicle he is driving if someone is present and available --
16 give his driver's license to the person struck, the driver
17 or occupant or other person attending any vehicle collided
18 with.

19 He shall render to any person injured in such accident
20 reasonable assistance, including the carrying or making ar-
21 rangements for the carrying of such person to a physician,
22 surgeon or hospital for medical or surgical treatment if it
23 is apparent that such treatment is necessary, or if such car-
24 rying is requested by the injured person.

25 The driver has a duty to return to and in every event

1 shall remain at the scene of the accident until he has ful-
2 filled these requirements. However, he may temporarily
3 leave the scene to report the accident to the proper au-
4 thorities.

5 If you find the State has failed to prove beyond a
6 reasonable doubt that the Defendant committed the offense
7 of hit and run accident resulting in death, you may con-
8 sider whether the State has proven beyond a reasonable
9 doubt that the Defendant committed the offense of hit and
10 run accident resulting in great bodily injury.

11 To prove hit and run accident resulting in great bod-
12 ily injury, the State must prove beyond a reasonable doubt
13 that the Defendant was the driver of a vehicle involved
14 in an accident resulting in great bodily injury to a per-
15 son, and that he failed to immediately stop the vehicle at
16 the scene of the accident or as close to it as possible,
17 as I have previously explained.

18 Great bodily injury means bodily injury which would
19 have substantial risk of death or which causes serious per-
20 manent disfigurement or extended loss or impairment of the
21 function of any bodily member or organ.

22 Now, in order to be guilty of the offense -- in order
23 to prove the Defendant guilty of hit and run accident that
24 resulted in death, or hit and run accident resulting in
25 great bodily injury, the State must prove that the accident

1 in question was the proximate cause of the great bodily
2 injury to or death of the victim.

3 Proximate cause means the direct cause. It is the
4 immediate cause. It is the efficient cause. It is that
5 cause without which the injury to or death of the victim
6 would not have resulted.

7 There must be a chain of causation from the time of
8 the accident inflicted by the Defendant until the time of
9 the victim's death.

10 Proximate cause does not necessarily mean death oc-
11 ccurring immediately following the accident. There may
12 be more than one proximate cause.

13 In fact, two or more persons may combine together
14 to be the proximate cause of injury to or the death of a
15 person.

16 The Defendant may be regarded as the proximate
17 cause if it is a contributing cause of injury to or
18 the death of the victim.

19 The fact that more than one probable cause contri-
20 buted to the injury to or the death of the victim does
21 not relieve the Defendant of responsibility.

22 The Defendant's acts need not be the sole cause
23 of the injury or death but it must be the proximate
24 cause contributing to the injury of or death of the
25 victim.

1 It is not a defense to show that the victim might
2 have recovered if he had been treated according to the
3 most approved surgical or medical standards, or that if
4 a reasonably prudent doctor would have treated him, or
5 even by showing that the treatment was negligent.

6 If, however, the death was caused not by the wound
7 or injury that the victim had, but was caused by the
8 gross, erroneous, wilful, deliberate treatment, the De-
9 fendant would not be liable.

10 In other words, negligence on the part of someone
11 else would not relieve the Defendant from liability if
12 the injury was the proximate cause of the victim's
13 death.

14 However, gross negligent or intentional activity
15 on the part of the practitioner would relieve the Defen-
16 dant of liability.

17 The propriety of the medical procedure is a crit-
18 ical question to be determined. In order to establish
19 criminal liability, criminal intent is required.

20 For example, the negligence may be proven by other
21 things for a particular crime, which might be purpose,
22 intent, knowledge, recklessness or criminal negligence.

23 Criminal intent must be proven by the State be-
24 yond a reasonable doubt, and criminal intent is always
25 a matter that must be determined by the jury from the

1 circumstances arising in the situation.

2 There is no way medical science can dissect a per-
3 son's brain to determine what the person had in mind,
4 but the law says that criminal intent may be inferred
5 from the circumstances shown.

6 This is how you make a determination of whether
7 or not the element requiring intent was proven.

8 It is not necessary to establish intent by direct
9 and positive evidence, but intent may be established
10 by inference in the same way as any other fact, by a
11 taking into consideration the parties and all of the
12 facts and circumstances of the case.

13 Criminal intent is a mental state, a conscious
14 wrongdoing. It is up to you to determine what the De-
15 fendant intended to do based on the circumstances shown
16 to have existed.

17 Criminal intent may arise from actions or the fail-
18 ure to act. It may arise from negligence, recklessness
19 or an indifference to what the consequences are and it
20 is considered by the law to be criminal intent.

21 Mr. Foreman and members of the jury, I am required
22 to charge you the law as I have done. These instruc-
23 tions are being given to guide you to a just and lawful
24 verdict.

25 Whether some of these instructions will apply

1 will depend upon what you find to be the facts. The
2 fact that I've instructed you on various subjects of
3 this case is not indicated as an indication of any
4 opinion as to what you should find as facts or what
5 your verdict should be.

6 In conclusion, you have been selected by both
7 the State and the Defendant to be fair and impartial
8 jurors. It is your duty in your joint deliberations
9 to determine the truth in this case, giving the Defen-
10 dant the benefit of every reasonable doubt.

11 From the facts that you determine to be true, you
12 take and apply the law I have just given you and thus
13 bring back a verdict which speaks the truth. I have
14 told you the standards you have to apply to the charge
15 of hit and run accident resulting in death.

16 I will give you a copy of these instructions and
17 you may refer to these instructions in your deliberations
18 to guide you in your decision-making, as well as a ver-
19 dict form. You must consider the instructions as a whole
20 and apply them to the evidence. Whatever your verdict
21 is, Mr. Foreman, you must indicate it on the verdict
22 form which reads:

23 We, the jury, by unanimous consent, find the De-
24 fendant William Craig Caughman, as to the charge of hit
25 and run accident resulting in death,

1 Guilty of hit and run accident resulting in
2 death, or
3 Guilty of hit and run accident resulting in
4 great bodily injury, or
5 Not guilty.

6 You are to select the one of the three which have
7 been just stated. Remember that the verdict of each
8 juror is not his verdict alone, but it has to be a unan-
9 imous verdict.

10 Mr. Foreman, you are not authorized to write the
11 verdict until ^{all} of you have agreed as to what the one ver-
12 dict should be.

13 Ladies and gentlemen, I am going to send you to the
14 jury room, all the jurors except for the last two jur-
15 ors who were selected as alternates.

16 Do not begin to discuss the case until you have
17 received a copy of this jury charge, the verdict form
18 and these exhibits.

19 Once you receive these things, that will be your
20 signal to begin your deliberations. Once you begin de-
21 liberations, you will deliberate until you have reached
22 a verdict, at which time you will knock on the door to
23 advise the bailiff. We will then bring you back out
24 to receive your verdict.

25 You may go to the jury room at this time.

1 (Twelve Jurors excused from Courtroom. Alternate
2 Jurors remained.)

3 THE COURT: I'll speak to you in just a moment,
4 but, first, are there any corrections or additions to
5 the charge by the State, or any objections?

6 SOLICITOR MAYES: Nothing from the State, Your
7 Honor.

8 THE COURT: From the Defendant?

9 MR. FLOYD: Your Honor, we would take exception to
10 Your Honor's failure to charge Defendant's Requests to
11 -- the Defendant takes exception to Your Honor refusing
12 to charge numbers 1, 2, 3, 4, 5, 6, 7.

13 THE COURT: Okay. I think we reviewed that yester-
14 day.

15 MR. FLOYD: I don't think you charged them that the
16 jury must consider whether or not the State has proved
17 beyond a reasonable doubt the charge of hit and run re-
18 sulting in death, but if they do not find the State did
19 prove that then they must consider the lesser charge of
20 hit and run resulting in . .

21 THE COURT: What says the State?

22 SOLICITOR MAYES: Your Honor, I believe that was
23 charged actually, although it is no longer required to
24 be charged.

25 MR. FLOYD: I believe that is Defendant's Request

1 Number 6.

2 THE COURT: If you have any doubt as to whether or
3 not the Defendant is guilty of a greater charge or a
4 lesser charge, you must give the Defendant the benefit
5 of the doubt and only convict in the lesser charge.

6 Likewise, if you have any doubt as to whether the
7 Defendant is guilty or not guilty of any charge, you
8 must give the benefit of that doubt to the Defendant
9 and find him not guilty.

10 MR. FLOYD: Yes, sir.

11 THE COURT: I think that I essentially told them
12 that. I am sure I told them what the State's burden
13 of proof is and they are to consider each charge.

14 MR. FLOYD: I would note my objection.

15 THE COURT: All right.

16 MR. FLOYD: What you have quoted is from the
17 charge, State versus King.

18 THE COURT: Check the exhibits before they are
19 taken back with the verdict form and the charge.

20 (Jury commenced deliberations at 11:47 A.M. The
21 alternate jurors were excused by the Court)

22 (The Court stood in recess as to this matter until
23 it continued at 2:55 P.M.)

24 THE COURT: I understand we have a verdict.

25 Please ask the jury to come in.

1 (Jury returned to the Courtroom)

2 THE COURT: I understand that you have reached a
3 verdict, Mr. Foreman.

4 FOREMAN: We have, Your Honor.

5 THE COURT: And is it a unanimous verdict?

6 FOREMAN: It is, Your Honor.

7 (Verdict form exhibited to the Court)

8 THE COURT: You may publish the verdict.

9 CLERK: Indictment 2010 GS 32 2294, the State ver-
10 sus William Craig Caughman, we, the jury, by unanimous
11 consent, find the Defendant, William Craig Caughman, as
12 to the charge of hit and run accident resulting in
13 death, guilty of the offense of hit and run accident
14 resulting in death.

15 It is so signed by the Foreman on, May 23rd, 2013.

16 Mr. Foreman, ladies and gentlemen of the jury,
17 if this is your verdict, please indicate each of you
18 by raising your right hands.

19 All hands are raised, Your Honor.

20 THE COURT: Thank you. Any additional polling
21 requested?

22 MR. FLOYD: We would request polling.

23 THE COURT: All right.

24 CLERK: As I call your name, if you will hold up
25 your hand so I can recognize you, please.

1 I will ask you as to the verdict was this your
2 verdict and is it still your verdict. At that time,
3 please respond.

4 (Whereupon, the name of each juror was called in-
5 dividually by the Clerk, and each juror answered in
6 the affirmative to both questions, that it was their
7 verdict and was still their verdict.)

8 CLERK: All jurors were polled, Your Honor.

9 THE COURT: The verdict is the unanimous verdict
10 of the jury

11 Are there any post-trial motions?

12 MR. FLOYD: Your Honor, we would move to reserve
13 our right to make post-trial motions.

14 THE COURT: All right. Solicitor, Mr. Floyd has
15 moved to reserve his right to make post-trial motions.
16 What is your response?

17 SOLICITOR MAYES: Your Honor, we would ask that
18 any post-trial motions be made on the record at this
19 time. It is our position that there is no additional
20 information concerning the case that has not been al-
21 ready heard.

22 THE COURT: Mr. Floyd, anything further regarding
23 your request?

24 MR. FLOYD: Your Honor, I believe under the rules
25 we are entitled to some additional time.

1 THE COURT: Well, under Rule 29 of the Rules of
2 Criminal Procedure -- motions for new trial based on
3 after-discovered evidence -- post-trial motions shall
4 be made within ten days after imposition of sentence, I
5 believe.

6 So we will proceed with sentencing.

7 MR. FLOYD: I would request of Your Honor the ten
8 days that we would be allowed . .

9 THE COURT: Well, I agree with you on that, but
10 that would not affect our proceeding with the sentenc-
11 ing portion.

12 Ladies and gentlemen, you have made your decision
13 and found the Defendant guilty of the charge. Given
14 your amount of time taken in reviewing the evidence and
15 your deliberations in the process, you twelve citizens
16 of this County have unanimously concluded that the De-
17 fendant is guilty as charged in this case.

18 When you find someone guilty, it is my duty to
19 impose sentence, and we will proceed with sentencing
20 at this time.

21 (Jury was excused by the Court)

22 THE COURT: With regard to discharge and also ob-
23 struction of justice charge, I decided as a matter of
24 law that that should not be charged, and those charges
25 were dismissed.

1 There is only one charge, and that is the charge
2 of hit and run resulting in death, and I just wanted
3 to say what happened to that and my decision as to that.

4 So we will now proceed with sentencing. Would you
5 state his record?

6 (Brief pause in proceeding)

7 SOLICITOR MAYES: Yes, sir, Your Honor.

8 Your Honor, as far as a prior record, there is a
9 1987 arrest for driving under the influence in the State
10 of Georgia.

11 That ended up being a plea of nolo contendere in
12 the State of Georgia to driving under the influence,
13 first offense. Also in 1988.

14 He was sentenced to ten days, Four Hundred Forty
15 Dollar fine, and was ordered to participate in some
16 type of alcohol education.

17 In addition there is a 2005 arrest for driving
18 under the influence, and he ended up pleading to that
19 charge as a reckless driving, and that conviction date
20 is 2005.

21 THE COURT: All right.

22 SOLICITOR MAYES: Present, Your Honor, to address
23 the Court in terms of victim impact are the mother and
24 father of Toby Morris. They are Mike Morris and (in-
25 audible) Morris.

1 They came down from Oklahoma for this trial.

2 Toby had actually been an employee of Tulane in
3 New Orleans, and he left New Orleans due to the Hur-
4 ricane Katrina hit.

5 He was working at the University of South Carolina
6 because he had associates in the area, and that is how
7 he became a professor at USC.

8 Also to address the Court is Eric Clay. He is a
9 close friend and associate of Toby.

10 THE COURT: Very well. Mr. Clay, I'll hear from
11 you first.

12 MR. CLAY: Thank you. Thank you.

13 THE COURT: Yes, sir.

14 MR. CLAY: Your Honor, when Toby Morris wasn't
15 working on motorcycles or developing pictures at USC's
16 photography lab, he spent a good bit of time on my
17 couch. Sometimes he slept there if he got off late or
18 between classes, or sometimes he would stay late at
19 something at school. I lived closer to campus and he
20 lived in Lexington.

21 He is the best male friend I've had in my life and
22 most of the time he spent on my couch was a great time
23 for me. We had many conversations when he was on my
24 couch.

25 We talked about innovative photography projects

1 and how to stretch ourselves in more compelling ways. We
2 talked about things to others, sometimes together and
3 sometimes on our own.

4 There were things we hoped to learn from those ex-
5 periences.

6 We talked about the women we loved at the moment
7 and how to make sense of our relationships with them.
8 We counseled one another on who were the right people
9 for us.

10 When I started dating Theresa he offered me the
11 soundest advice that anyone, any place, any time, has
12 even given me about how not to screw things up this
13 time around.

14 When I had to change apartments suddenly in 2009
15 because of a bad situation, Toby came over and helped
16 Theresa to pack up everything in my place, even though
17 it took a lot of time.

18 When they were done with the boxes, they sat down
19 on my couch, and Toby gave Theresa some invaluable re-
20 lationship advice too, advice that Theresa and I rely on
21 to this day when we come up with some rough waters.

22 It was on that couch that we planned a business to-
23 gether. We both loved nature photography, and we both
24 feared the consequences of what we as a people are doing
25 to our most valuable natural and historic landscapes.

1 So we came up with a plan to build a mobile photo-
2 graphy lab in a panel van and drive to a different his-
3 toric site somewhere in this amazing country to teach a
4 dozen students how to do dark room photography on the
5 road.

6 We agreed that because of the skilled classroom
7 experience that the prints they made would then be do-
8 nated to the park in question to be used for publicity
9 or fund-raising for that park.

10 Not only would the photographs capture that astound-
11 ing beauty, but they would help to preserve it too. We
12 spent hours on that couch crunching numbers, talking to
13 figure out how to make everything work so we could scrape
14 out a living and also giving back to the places that
15 have changed our lives so many times, and teaching some
16 others how to give back too.

17 We were going to start in October to many places
18 in the State. Even though when Toby was at my house
19 and we were usually on my couch, we were often in my
20 kitchen cooking an amazing variety of and experiment-
21 ing with food.

22 Toby was a master at that and a generous soul in
23 sharing that with others. Toby and our closest friends
24 and I would share stories about the wondrous things
25 we had seen in our lives, the unbelievable places we've

1 been, and the dreams we wanted to fulfill one day, and
2 then when the food was ready we would plate everything
3 and make our way back to the couch to continue exactly
4 where we had left off.

5 I can safely say that to a soul everyone who took
6 part in those means would swear it was the most satis-
7 fying moment in their lives.

8 When Toby died, I sat with Toby's parents on that
9 couch and comforted them more times than I can count.
10 Yet it was never enough.

11 When I returned home one night two weeks later,
12 alone in the house on my own, I felt inconsolable grief.
13 I sat there on my couch and cried for a good long time.

14 Then I talked to Toby for a bit even though he
15 wasn't there in person because he really was there in
16 spirit. At that time it occurred to me that I should
17 just take a moment and slow down and (inaudible). Even
18 in death he was my closest friend.

19 Toby died more than three years ago, and three
20 months after his passing in May of 2010 the Defendant
21 was arrested and permitted to return to his home with an
22 ankle bracelet to monitor his trips to and from work,
23 to church, his lawyer's office, and to the grocery
24 store. This was the County's definition of imprisonment
25 of a person while awaiting trial.

1 This man left my best friend dying in the street
2 and then bragged to his own friends about how he had
3 committed this vile act and covered the door on his
4 truck to cover his crime. He didn't expect he would
5 ever be caught.

6 During the three years awaiting this trial, William
7 Craig Caughman was allowed to spend his days at home,
8 sitting on his own couch. He was allowed to have friends
9 and loved ones over to sit on that couch with him and
10 to talk with him about things that mattered to him, to
11 comfort him, laugh with him, share time and share many
12 meals with him, watch television and movies with him, to
13 take delight in his comforts.

14 There were no limitations on who could come and
15 go from Mr. Caughman's home, and they could sit on his
16 couch with him at any time, day and night.

17 I can't even begin to describe the depth of my anger
18 at how really unjust this is, that this man who has taken
19 so much from me and my life, from Toby's family and a
20 vast host of dear friends who feel regret at Toby's pass-
21 ing -- that this man nevertheless -- he nevertheless got
22 to sit on his couch for three years in lieu of jail, as
23 we suffered. As we suffered, he lounged.

24 And so as Your Honor weighs this man's fate, I ask
25 that you keep Toby and my couch in mind. I ask that

1 you think deeply about what justice is, and, if you have
2 the remotest thought of giving Mr. Caughman a break on
3 his sentence while he was wearing an ankle bracelet at
4 home, to remember this.

5 I would gladly, without even a second of hesitation,
6 sit -- sit there for three years in a row on my couch,
7 never leaving it, if it meant that for just one day of
8 that time Toby would come and sit on my couch with me.

9 Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 (Brief pause in the proceeding)

12 MOTHER OF MR. MORRIS: I am Toby's mother. Toby is
13 dead, but I am still his mother. He is still my son.

14 But our relationship was more than mother and son.
15 We were in tune, we were connected. We would read the
16 same books, take the same photographs, and we would think
17 similar thoughts.

18 He was the one who knew me best and still loved me,
19 not only as his mother but as a person. To be a true
20 friend with an offspring is rare. Toby was a rare person.
21 He was not a person-person, but a rare individual with
22 good values, good choices.

23 Toby was smart. He was creative, thoughtful, consid-
24 erate. He was easy to laugh and easy to shed a tear. He
25 has always been trust-worthy, honest and respectful.

1 What you saw was who he was. He lived with an open
2 mind and an open heart. He loved best the things of the
3 earth. He had both common sense and scholarly knowledge.
4 He was mechanical, analytical, an abstract thinker, and
5 he took time for people. He was very approachable. It
6 was his imperative to make sure that everyone he loved
7 knew he loved them every day.

8 Toby talked about reciprocity a lot. He listened
9 well to people without judging them.

10 He had a passion for creating (inaudible) photography
11 and he shared that passion and the craft at the University
12 of South Carolina. His students learned well, and it was
13 his care, counsel and concern for them personally that the
14 students most valued.

15 He validated their importance and led them to listen
16 to their true selves. To Toby it was okay to be an out-
17 sider, to be different, to think differently. He was a
18 hugger and he was caring.

19 Since he died, we have had Toby's laptop, and on it
20 we found a self-description. This is Toby speaking of
21 Toby.

22 Respecters of others and differing opinions is im-
23 portant to me. I understand the world is relative and that
24 we can possibly get along with acceptance of tolerance is
25 probably the best strategy.

1 That doesn't mean that I am a push-over in my core
2 values. It just means I can easily agree to disagree.

3 Don't smoke, don't drink. What do I do? I am no
4 goody-goody two-shoes. Boy, that's for sure. I am a non-
5 conformist with a purpose.

6 I look like a hippy biker to many. I ride a motor-
7 cycle everywhere I go. I go to a bar but never drink. I
8 am passionate and intense in a laid-back fashion.

9 I try to live my life without regret. I try to find
10 humor in most things, especially myself.

11 To those words I would add these thoughts. He loved
12 well and was well-loved.

13 Death is a part of living, part of everyone's life,
14 and the loss of a precious son and kindred spirit has neg-
15 atively impacted us spiritually, emotionally, financially,
16 physically, and creatively.

17 Between us, we express our feelings. We see the look
18 in the other one's eyes, and we hear that sudden intake of
19 breath of the other, that gut reaction to our loss. To
20 see that pain in those I love is excruciating. Pain sits
21 on the rim of my heart like a vulture, picking at the re-
22 mains of our lives.

23 The instant I heard Jim's voice say, he did not make
24 it, I have known the permanance of Toby being dead. Every
25 inch of me knows that, at every moment of every day. It is

1 like cutting off your left arm and you don't know either
2 awake or asleep that your arm is no longer attached to
3 your body. There is change, life is changed, life is now
4 harder, and it shows in my creativity, my projects, my pas-
5 sion, and what I was able to give to others had diminished.

6 Often I cannot listen to music. I cry every day, every
7 day.

8 We are here in the Courtroom one thousand one hundred
9 miles from home, our lives fractured by the indifference of
10 a stranger.

11 June 17th is Toby's birthday. He was born on Father's
12 Day. I don't think I have ever seen such sweetness, pure
13 sweetness, as Toby and his dad when they were together.
14 Hugging, talking, sharing, working, thinking, laughing,
15 and walking side by side, in full engagement with each
16 other.

17 I used to shed sweet tears watching them. Now, I have
18 tears of sadness and loss, overwhelming loss. Toby's older
19 brother is left without a companion of shared history, with
20 someone to talk to about his adventures, someone who would
21 always be there for him when we, their parents, are not.

22 Toby was a happy young boy who grew into a happy man
23 who listened and encouraged and loved his brother, no mat-
24 ter what.

25 Toby had so much more of life to experience. He was

1 robbed, we all were robbed.

2 Toby understood the sacredness of life. He was re-
3 spectful of and obeyed the law as we certainly do. Toby
4 has respect for every living thing.

5 When he was a teenager I found him crying in the
6 bathroom at the sink while trying to put a bandaid on a
7 toad that he had accidentally hit with the lawnmower.

8 As an adult, Toby was gentle even to road kill to move
9 it to the side of the road.

10 It is abhorrent to me that the Defendant cowardly and
11 callously left Toby lying on the road after fatally strik-
12 ing him with his truck.

13 Toby's older brother survived Desert Storm and two
14 Tours in Iraq with the Oklahoma National Guard and while
15 attired in protective gear from helmet to boots, while
16 Toby did not survive a short drive, a short drive home on
17 a South Carolina street.

18 We live in a culture that allows impaired drivers to
19 mimic other citizens and cause undeserved consequences
20 as this Defendant has done. He left Toby on the road, went
21 on his way and camouflaged his truck to conceal evidence
22 of his crime.

23 Further revealing his self-indulgent, unscrupulous
24 life choices. I hope you will sentence this man to as
25 long as the law allows.

1 SOL. MAYES: Finally, Your Honor, the family has asked
2 me to submit to the Court several photographs and letters
3 in support and recognition of Mr. Morris.

4 (Brief pause in proceeding)

5 (Portions of letters read to the Court)

6 THE COURT: That was one of the letters submitted, and
7 there are others as well, from his father, family members.

8 (Other statements made to the Court in behalf of the
9 victim)

10 THE COURT: Thank you. Anything further from the
11 State?

12 SOL. MAYES: Nothing further.

13 THE COURT: Mr. Floyd.

14 MR. FLOYD: Thank you, Your Honor.

15 Craig is forty-nine years of age, a lifetime resident
16 of the County, has been gainfully employed all of his life.
17 (Portion inaudible)

18 He has been a contributing member of society all of
19 his life. He raised a family with his ex-wife. As you
20 have heard, he doesn't have much of a record.

21 It is clear that he certainly never intended to kill
22 this man, and as shown by the evidence he was trying to
23 make a turn when the accident occurred. The way the acci-
24 dent occurred contributed to his panic, I believe, and he
25 did not stop the way he should have.

1 It is a situation that he deeply regrets, Your Honor,
2 and he regretted it as soon as that happened. If he had
3 gone back to the scene, I don't know that it would have
4 made a difference.

5 I don't know if he wishes to say anything.

6 (Brief pause)

7 He is not able to say anything, Your Honor. His fam-
8 ily has expressed to me, and I would pass it on, Your Honor,
9 their remorse and sympathy for the Morris Family. They
10 are sorry for what has occurred.

11 (Portion inaudible)

12 THE COURT: Anything further?

13 MR. FLOYD: Nothing further.

14 THE COURT: Under the Statute, Mr. Caughman, a person
15 who fails to stop or to aid and give information is guilty
16 of a felony.

17 It requires that you be sentenced to prison for not
18 less than one year nor more than twenty-five years, and a
19 fine of not less than Ten Thousand Dollars or more than
20 Twenty-five Thousand Dollars.

21 When we started off with the trial the State had in-
22 dicted Mr. Caughman for obstruction of justice which would
23 carry an additional ten years. It was determined that he
24 should be charged with the larger crime.

25 In some of the materials handed up by the State and

1 by Mr. McNair in particular, and in cases from other states.
2 including Massachusetts there is an issue as to whether
3 this obstruction charge should be charged.

4 When someone goes to the measures that Mr. Caughman
5 went to to try to conceal his guilt, it may not constitute
6 obstruction of justice but in this case it is something
7 that may go to enhance the penalty because of his conduct.

8 There are a number of police officers that dedicated
9 time to this case in trying to apprehend Mr. Caughman.

10 When he was arrested?

11 SOL. MAYES: He was arrested May 17, Your Honor, and
12 the incident occurred on February 21st.

13 THE COURT: I understand that the police officers had
14 worked almost around the clock in trying to nail this down
15 as a result of Mr. Caughman's decision to try to conceal
16 his vehicle and his guilt, and I think that the facts of
17 the situation are revealing as to the nature of the type of
18 person Mr. Caughman is.

19 He went to great lengths to try to avoid being appre-
20 hended for the crime and cover up his action. We have law
21 enforcement officers locally and Agent Robinson pleading
22 with him to come clean, and he just never did.

23 There is some question in my mind as to why -- first
24 of all, as to why he didn't stop, and we know he was drink-
25 ing which was probably why he didn't stop.

1 We have discussed cases where a person sought to cover
2 up detection, and in many instances they were successful.
3 That did not occur in this case due to good police work
4 and the decision of the person who turned him in, so he
5 did not get away and is here standing before the Bar of
6 Justice.

7 The actions Mr. Caughman took were shown by the tes-
8 timony of the police officers.

9 Since you could not bring yourself to the reality of
10 acknowledging what you did, Mr. Caughman, is something to
11 be considered.

12 Of course, you were under no obligation to say any-
13 thing to anyone then, nor are you at this time. You have
14 said nothing today. You had nothing to say to the offi-
15 cers when you were arrested.

16 All of that is telling to me as to making an assess-
17 ment in this case. The law says you must serve not less
18 than one nor more than twenty-five years. That wide range
19 is there because of the discretion given me, and I have
20 tried to figure out what kind of person is standing be-
21 fore the Court here today.

22 Whether you are someone who just panicked or for what-
23 ever reason, it really does not matter at this point. You
24 have not offered anything different, but as far as the
25 sentence that you should receive I will sentence you to

1 less than the maximum number of years. As you stand here
2 you are facing twenty-five years.

3 This is a sad situation for the family of Mr. Morris
4 as well as for your family. This was a well-known inci-
5 dent. Mr. Morris was well liked and respected. Maybe if
6 you had not been drinking and did not leave the scene after
7 the accident things would be different.

8 (Portion inaudible)

9 THE COURT: We know you had been drinking earlier on
10 that day.

11 Mrs. Morris said she had been attacked by a stranger
12 over a thousand miles away, and I could understand what
13 she said. She has asked for justice for her son, and has
14 described her sorrow.

15 A Judge must tender justice with mercy, and there
16 is, as I said, a wide range of sentence under the statute
17 for that reason.

18 The sentence, Mr. Caughman, is that you be committed
19 to the State Department of Corrections for a period of
20 twenty years, and you will be given credit for any time
21 that you may have served.

22 Good luck to you.

23 MR. FLOYD: Thank you, Your Honor.

24 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

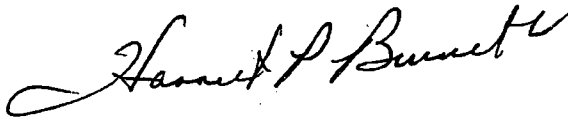
25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South Carolina
3 Court Administration, do hereby certify that the foregoing
4 Transcript was prepared from the records of Carol Thueme to
5 the best of my ability, having been heard in the Court of
6 General Sessions for Lexington County, South Carolina, on
7 May 21, 22, 23, 2013. The beginning day of the trial was
8 taken by another Reporter.

9 FURTHER, I Certify that I am neither of kin or coun-
10 sel, nor do I have any interest in the matter.

11 December 14, 2015

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**STATE OF SOUTH CAROLINA
11th JUDICIAL CIRCUIT**

**11th JUDICIAL CIRCUIT SELECTIVE
TRAFFIC ENFORCEMENT
UNIT AGREEMENT**

This agreement is made among the Lexington, Saluda, Edgefield and McCormick County Law Enforcement Agencies including the South Carolina Highway Patrol, the Batesburg-Leesville Police Department, the Cayce Department of Public Safety, the Chapin Police Department, the Gaston Police Department, the Irmo Police Department, the Lexington Police Department, the Pine Ridge Police Department, the South Congaree Police Department, the Springdale Police Department, the West Columbia Police Department, the Columbia Metropolitan Police Department, the Saluda Police Department, the Ridge Spring Police Department, the Edgefield Police Department, the Johnston Police Department, the Trenton Police Department, the McCormick Police Department, the Lexington County Sheriff's Office, the Saluda County Sheriff's Office, the Edgefield County Sheriff's Office and the McCormick County Sheriff's Office, collectively, as the participating agencies.

The term of this agreement begins on December 01, 2006, and it will remain in full force and effect until a replacement agreement or termination is entered by the participating agencies. The termination by any single agency shall have no effect on the relationship between the remaining participating agencies.

There is evidence that the prevention, detection, and enforcement of motor vehicle violations, such as driving under the influence, and other traffic violations in the 11th Judicial Circuit have a substantial and positive effect on the health, welfare and safety of the citizens in the State of South Carolina. Further, the participating agencies believe that a coordinated regional approach to traffic law enforcement can be more effective than the individual efforts of each participating agency alone.

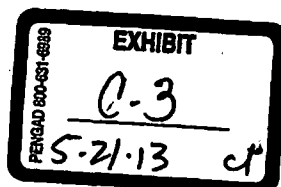
South Carolina Code Ann. § 23-1-210 provides for the temporary transfer of law enforcement officers pursuant to written agreement; South Carolina Code Ann. § 23-1-215 provides for agreements between multiple law enforcement jurisdictions for the purpose of criminal investigation; Article VIII, Section 13 of the South Carolina Constitution authorizes counties and municipalities to provide by agreement for the joint administration of any function, the exercise of powers, and the sharing of the costs thereof; and South Carolina Code Ann. § 17-13-45 provides that when a law enforcement officer responds to a distress call or a request for assistance in an adjacent jurisdiction, the authority, rights, privileges, and immunities, including the workers' compensation laws, and tort liability coverage obtained pursuant to the provisions of Chapter 78 of Title 15, that are applicable to an officer within the jurisdiction in which he is employed are extended to and include the adjacent jurisdiction.

The participating agencies agree as follows:

1. Each of the chief executive officers of the participating agencies will assign an officer to serve as its agency's respective commander of the Selective Traffic Enforcement Unit. The commanders will determine the manpower and equipment allocations for each joint operation, depending on the type of enforcement actions and the resources available.
2. The chief executive officers of the participating agencies will appoint one commander or designee to serve as coordinator of unit operations for the term of the agreement.
3. Joint traffic enforcement actions will be planned by the commanders, one in each of the ten (10) participating jurisdictions, and others selected according to need.
4. During the joint operations, all Selective Traffic Unit Officers will be under the direct supervision and control of a commander selected to implement each operation.
5. The Selective Traffic Unit Officers will have the following responsibilities:
 - a. To gather and compile data relating to traffic enforcement needs;
 - b. To devise plans for joint traffic enforcement actions, including coordination with court and detention services;

11th Judicial Circuit
Selective Traffic Enforcement
Unit of Agreement

1 of 4



- c. To conduct briefings immediately preceding each joint traffic enforcement action to disseminate information from the plan;
- d. To conduct joint enforcement actions and engage in public education efforts as necessary in order to effectively reduce traffic violations in the 11th Judicial Circuit;
- e. To prepare after action reports and evaluate the success of each event.

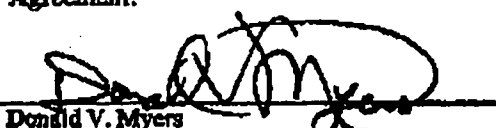
Paragraphs 23-1-210 and 23-1-213, Code of Laws of South Carolina (2006), as amended, and other applicable provisions of law, all state, county, and municipal officers will have the power and authority ordinarily granted to a law enforcement officer in their own jurisdiction while participating in joint traffic enforcement actions in other jurisdictions. It is the intent of the parties that to the fullest extent permitted by the law of this State, officers, deputies, and agents assigned under this agreement and so transferred shall be vested with authority, jurisdiction, rights, immunities, and privileges to include the authority to execute criminal process and the power of arrest as any other duly commissioned officer, deputy, or agent of any other party.

- 7. Insurance and bond coverage for these officers will remain in force while performing duties of the Unit regardless where the duties are performed. Assignment of the Unit in no way effects or reduces the pension, compensation or retirement rights of the Unit's members. Each jurisdiction shall maintain its own insurance coverage for general liability, workers' compensation, and any other such coverage as may be required by law or deemed advisable by individual parties.
- 8. Joint traffic enforcement action will be rotated among the participating jurisdictions so that all areas in 11th Judicial Circuit may benefit from the enhanced traffic enforcement capability.
- 9. The Chief of Police of the respective city jurisdiction or Sheriff, County Police, or Highway Patrol, in non-incorporated areas of the county, will be responsible for press releases for operations conducted by the Unit. These duties may be assigned to one or more commanders from time to time.
- 10. All non-custodial arrests made in connection with joint enforcement actions will be processed by the Unit member issuing the citation and summons. Custodial arrests will be transported to the County Detention Centers for processing.
- 11. All cases made in connection with joint enforcement actions will be set for court in the appropriate venue of the host agency (municipal court for a city agency and the magistrate court for an unincorporated area), provided however the SC Highway Patrol may set cases in the magistrate court. Reports for custodial arrests will be completed on the host agency report forms using the host agency ORI.
- 12. The parties agree to divide the proceeds of any seizure and resultant asset forfeiture as provided by equity and law. Such division will be set out in a court order as prepared by the proper Circuit Solicitor based upon the facts of the individual seizure.
- 13. Each participating agency agrees to be responsible for its costs associated with joint enforcement actions, whether operating in or outside its jurisdiction. The parties to this agreement hereby expressly agree that compensation and/or reimbursement for services provided hereunder shall be limited to the reciprocal provision of services of like kind between the agencies involved to include the ancillary benefits of increased investigation and prosecution of offenses in their respective jurisdictions. Any other agreement for reimbursement between the parties must be written and executed in the same manner as this agreement.
- 14. It is agreed by and between the parties that each will hold each other harmless for any acts or omissions of their respective officers working or transferred pursuant to this agreement. The parties shall be solely responsible for the acts and omissions of their respective employees, officers, and officials. No right of indemnification is created by this agreement and the parties expressly disclaim

such. The provision of this agreement shall not be deemed to give rise to or vest any rights or obligations in favor of any party or entity not a party to this agreement.

15. The chief executive officer of each participating agency reserves the right to recall personnel from participation in a joint enforcement action if an operational necessity arises in its home jurisdiction.
16. Withdrawal from this agreement will be made by 30 days written notice by the withdrawing agency to the remaining participating agencies. Such notice is to be made by personal delivery of same or by mail with return receipt requested. Such notice made by the withdrawing agency will not invalidate the Unit agreement among the remaining agencies.
17. Each law enforcement agency entering into this agreement will notify and or seek approval as may be required by law of the respective government body of its political division.
18. All joint enforcement actions will be governed by the written protocols attached to this agreement.

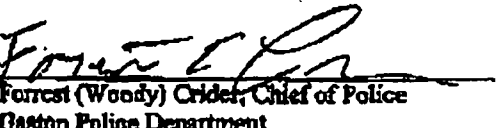
I, with competent authority, hereby consent to the terms of and agree to be bound by this Agreement.


Donald V. Myers
Eleventh Judicial Circuit Solicitor


Wallace Oswald, Chief of Police
Batesburg-Leesville Police Department

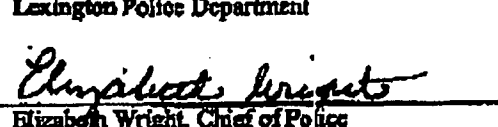

Charles E. McNair, Director
Cayce Department of Public Safety

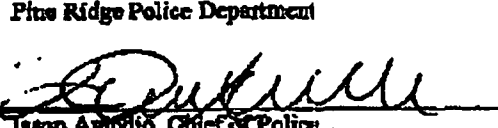

Dave Rodgers, Chief of Police
Chapin Police Department

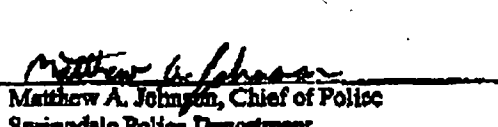

Forrest (Woody) Corder, Chief of Police
Gaston Police Department

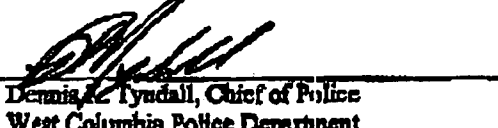

Brian Buck, Chief of Police
Inno Police Department


Terrence Green, Chief of Police
Lexington Police Department


Elizabeth Wright, Chief of Police
Plus Ridge Police Department


Jason Antonio, Chief of Police
South Congaree Police Department


Matthew A. Johnson, Chief of Police
Springdale Police Department


Dennis R. Tyndall, Chief of Police
West Columbia Police Department


Randy M. Blackmon, Chief of Police
Columbia Metropolitan Airport Police
Department

STATE OF SOUTH CAROLINA

11th Judicial Circuit
Selective Traffic Enforcement
Unit of Agreement

11th JUDICIAL CIRCUIT SELECTIVE

11th JUDICIAL CIRCUITTRAFFIC ENFORCEMENT
UNIT AGREEMENT

David W. Farmer, Chief of Police
Saluda Police Department

J. R. Metts
James R. Metts, Ed.D. Sheriff
Lexington County Sheriff's Office

Beth Settle, Chief of Police
Ridge Spring Police Department

J. C. Booth
Jason C. Booth, Sheriff
Saluda County Sheriff's Office

R. Carter
Ronnice Carter, Chief of Police
Edgefield Police Department

Adell Doboy, Sheriff
Edgefield County Sheriff's Office

C. H. Reld
George H. Reld, Sheriff
McCormick County Sheriff's Office

Albert Tanks, Chief of Police
Trenton Police Department

L. Taylor
Leroy Taylor, Captain
S.C. Highway Patrol - Troop One

Leroy Martin, Chief of Police
McCormick Police Department

A. Jones
Aime Jones, Captain
S.C. Highway Patrol - Troop Two

PROTOCOL FOR JOINT TRAFFIC ENFORCEMENT ACTIONS

1. Officers will engage in pursuits only when they can reasonably determine the potential harm to persons or property threatened by the pursuit does not outweigh the potential harm to persons and property threatened by the fleeing offender. Officers will operate only within their agency's pursuit policies and applicable state and federal law.
2. All Unit officers will be thoroughly familiar with the laws of the State of South Carolina concerning the use of emergency vehicles and equipment and will operate their vehicle in accordance with those laws.
3. Traffic law enforcement is important to the overall safety of any community. However, proactive law enforcement should be conducted in a manner that strikes a balance between the right of citizens to enjoy safe streets and the right to be free from unnecessary inconvenience and unreasonably intrusive police conduct. Traffic laws will be enforced equally and impartially. Joint enforcement action plans will emphasize the requirements to respect the right of all citizens to be free from unreasonable and unlawful traffic stops, searches, and seizures and other inappropriate police actions. All enforcement operations will be conducted with respect for each person's constitutional rights.
4. In selecting locations for traffic safety assignments, we will concentrate our efforts in areas where there is a high incidence of traffic crashes resulting in injuries or fatalities.
5. The host agency commander will file a proposed operational plan with the other participating agencies prior to a scheduled enforcement action. Other commanders may respond with any comments, questions, or requested changes to a scheduled enforcement action.
6. A uniformed supervisor for the host agency will be present at all times.
7. Special care will be taken to warn approaching motorists of the enforcement actions so they may safely approach the enforcement location. Warning signs will be used and marked patrol cars will be on scene. Officers will wear reflective traffic vests, and if at night, use flashlights.
8. The chief of Police of the respective city jurisdiction or the Sheriff or Highway Patrol, in non-incorporated areas of the county, will be responsible for press releases for operations conducted by the Unit. These duties may be assigned to one or more commanders from time to time.

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)
113 MAY 31 Doc# 2010-GS-32-02294

STATE OF SOUTH CAROLINA)

Plaintiff,)

vs.)

**MOTION FOR NEW TRIAL AND
RECONSIDERATION OF SENTENCE**

WILLIAM CRAIG CAUGHMAN,)

Defendant.)
_____)

Defendant moves this Court to grant him a new trial and to reconsider the sentence given to him on May 23, 2013 for the following reasons:

1. MOTION FOR NEW TRIAL

- A. The Court erred when it denied Defendant's Motion to Suppress all evidence seized by the Cayce Police Department during a search of Defendant's residence in the City of West Columbia as the Cayce Police Department did not have jurisdiction to execute a search warrant in the City of West Columbia.
- B. The Court erred when it denied Defendant's Motion in Limine to prevent the Pathologist from testifying as to the contents of the records of Lexington Medical Center concerning the victim as those records were hearsay and the records had not been provided to the Defendant in violation of Rule 5, South Carolina Rules of Criminal Procedures.
- C. The Court erred when it ruled that the 11th Judicial Circuit Selective Traffic Enforcement Unit Agreement (Court's Exhibit 3) was valid and that it authorized the Cayce Police Department to execute a Search Warrant in the City of West Columbia.
- D. The Court erred when it ruled that the initial presence of a SLED Agent on the premises to be searched made the search legal.

- E. The Court erred when it denied the Defendant's Motion for Directed Verdict on the charge of Hit and Run with Death as the evidence failed to prove that the victim died as a result of the accident rather than some other cause and the Defendant did not die at the scene or immediately thereafter.
- F. The Court erred when it refused Defendant's Request to Charge #1 as the Defendant leaving the scene must either enhance the possibility of death or decrease the possibility of survival to result in guilt.
- G. The Court erred when it refused Defendant's Request to Charge #2 as the Hit and Run Statute with death requires that the death occur on the scene or immediately thereafter.
- H. The Court erred when it refused to charge Defendant's Request to Charge #6 instructing the jury that it must resolve any doubt between a greater and lesser offense in favor of the Defendant and only convict on the lesser charge.

2. MOTION TO RECONSIDER THE SENTENCE

Defendant's only prior record was a DUI over twenty years ago. His actions of leaving the scene did not in any way compromise the victims condition as other people stopped immediately and medical help was immediately summoned.

Defendant is 48 years of age and the 20 year sentence will require him to serve seventeen years which is basically a life sentence. Defendant has worked all his life, raised a family and been a contributing member of society.

Defendant requests that the Court reconsider the sentence as it is unduly harsh for this one transgressions.

Respectfully submitted,
Wayne Floyd Law Office, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171
(803) 739-1824

By: Wayne Floyd

West Columbia, South Carolina

May 31, 2013.

COPY

CERTIFICATE OF SERVICE

This is to certify that the undersigned, Michelle M. Wash, Paralegal to Wayne Floyd, Esquire, has this 31st day of May, 2013, served the **MOTION FOR NEW TRIAL AND RECONSIDERATION OF SENTENCE**.

☐ Hand delivering a copy hereof.

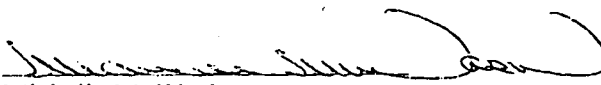
☒ Depositing a copy hereof in the United States mail postage prepaid

☐ Certified Mail (Return Receipt Requested).

☐ Facsimile Transmission.

upon:

Suzanne Mayes, Assistant Solicitor
Lexington County Solicitor's Office
205 East Main Street, 3rd Floor
Lexington, SC 29072


Michelle M. Wash,
Paralegal to Wayne Floyd
WAYNE FLOYD LAW OFFICE, P.A.
1611 Augusta Road
P.O. Box 3972
West Columbia, S.C. 29171-3972
(803) 739-1824

MAY 31 P 12:31

1 State of South Carolina

Court of General Sessions

2 County of Lexington

3

4 State of South Carolina,)

Transcript of Record

5 vs.)

2010-GS-32-2294

6 William Craig Caughman,)

7 Defendant.)

8

9

May 21, 2015

Lexington, South Carolina

10

B E F O R E:

11

The Honorable Clifton Newman, Judge

12

13

A P P E A R A N C E S:

14

Suzanne Mayes, Assistant Solicitor
Attorney for the State

15

16 H. Wayne Floyd, Esquire
Attorney for Defendant

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Stacy S. Johnson, RPR
Circuit Court Reporter

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I N D E X

PAGE

CERTIFICATE OF REPORTER

49

E X H I B I T S

NO.

DESCRIPTION

ID. EVD.

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held on May 21, 2015.)

2 **BAILIFF:** All rise. Court is now in session. The
3 Honorable Clifton Newman presiding.

4 **THE COURT:** All right. Good afternoon. You may be
5 seated. All right, Mr. Floyd.

6 **MR. FLOYD:** Thank you, Your Honor.

7 **THE COURT:** All right.

8 **MR. FLOYD:** Your Honor, of course, we're here today
9 on the motion we filed for both a new trial and for
10 reconsideration of the sentence. As to the motion for a
11 new trial, there are a couple of issues that -- that we
12 were concerned about and we wanted to ask Your Honor to
13 reconsider. The first issue has to do with the search of
14 the Defendant's residence, which also resulted in the
15 discovery of the pick-up truck that was involved in the
16 incident.

17 We moved to suppress the results of the search at
18 trial on the grounds that the search was conducted in the
19 city of West Columbia by the Cayce Police Department,
20 and it's our position they did not have territorial
21 jurisdiction or authority to conduct law enforcement
22 operations in the city of West Columbia. It's a pretty
23 well-established principle of law that unless there's
24 some kind of special authority, a municipal officer only
25 has authority to exercise police matters within the

1 territorial limitations of the municipality for which they
2 are employed. Now during the trial --

3 **THE COURT:** Well, how about the -- the case that the
4 State submitted, this Hammond case, that says that a search
5 warrant can be executed anyplace within the county?

6 **MR. FLOYD:** Well, I think it can be executed, but
7 then the Hammond case is distinguishable from the case
8 at bar because in the Hammond case a county -- I forget
9 which county it was in, but a county sheriff's department
10 employee actively participated in the search along with
11 the municipal officers and I think that in the Hammond
12 case that was what was the saving grace for the ruling in
13 favor of the admission of the evidence.

14 **THE COURT:** And the State says in this case you had a
15 SLED agent there.

16 **MR. FLOYD:** Well, there was a SLED agent on the scene,
17 but there was no testimony that the SLED agent actually
18 participated in the search and seizure.

19 **THE COURT:** What was he doing?

20 **MR. FLOYD:** He was just there as an observer. He
21 denied --

22 **THE COURT:** Did he happen to be looking around?

23 **MR. FLOYD:** He was there as an observer, did not
24 participate in the search.

25 **THE COURT:** He wasn't working or he was --

1 **MR. FLOYD:** I would assume he was on the clock, I
2 would assume that, but it didn't come out as to what his
3 actual role was there. So he was present, but he didn't
4 -- he admitted he did not participate in the search and
5 I think that's the distinguishing feature with the -- with
6 the Hammond case and this case.

7 There was an agreement that the State attempted to
8 rely upon, this Joint Traffic Enforcement Agreement;
9 however, we don't think it applies. It doesn't really
10 give any authority to the Cayce Police Department to
11 operate in West Columbia because that agreement -- if you
12 read it closely, that agreement is only for joint traffic
13 operations and this was not a joint traffic operation.
14 This particular incident for which Mr. Caughman was tried
15 was strictly a city of Cayce operation and West Columbia
16 was not involved in it at all.

17 And, furthermore, the agreement in our opinion does
18 not satisfy the requirements of 23-1-210 and 23-1-215,
19 the two statutes that apply to give extraterritorial
20 jurisdiction to law enforcement officers. First of all,
21 one of those sections, the 215 -- the 210 section only
22 applies to temporary transfers of officers. That was not
23 the case in this situation. And 23-215 requires the --
24 the approval of the governing bodies. That also requires
25 the approval of governing bodies. The other one requires

1 the approval of governing bodies within seventy-two hours
2 of the execution of the agreement, and there was no
3 evidence that was done either, nor is there any indication
4 in the form that the governing bodies ever considered the
5 agreement.

6 So we don't think the agreement gives them any
7 authority and for these reasons we feel that the Court
8 should have suppressed the introduction of the evidence.
9 And that was probably the most important piece of evidence
10 against the Defendant, that being the truck itself because
11 parts of the body had been removed, and also SLED was able
12 to match up some paint chips from the vehicle and the
13 motorcycle. So it's our position without that physical
14 evidence the State most likely would not have been able to
15 convict Mr. Caughman.

16 The second ground, Your Honor, has to do with cause
17 of death. And I'm sure Your Honor remembers, but may not
18 remember all the details of the case --

19 **THE COURT:** Well, which is -- the hearing was -- the
20 trial was when, May?

21 **MR. FLOYD:** May of 2013. Two years ago.

22 **THE COURT:** Two years ago. I mean, so that's -- you
23 know, if we had a transcript it certainly would be helpful.
24 And no one has ordered a transcript?

25 **MR. FLOYD:** No, we haven't ordered one, Judge. We did

1 include --

2 **THE COURT:** So we're just sort of going on memory of
3 who did what when.

4 **MR. FLOYD:** Well, somewhat; although we've got some
5 -- we did enclose the autopsy report and it has sufficient
6 evidence in it, I think, to consider this point.

7 **THE COURT:** You did what with it?

8 **MR. FLOYD:** We enclosed it with our memorandum.
9 Attached it to it. It's the last thing attached.

10 **THE COURT:** All right.

11 **MR. FLOYD:** Your Honor, I would suggest that what this
12 indicates is that Mr. Morriss was, of course, transported
13 to the hospital from the scene of the accident and he was
14 in distress and he had some broken bones and other evidence
15 of an impact with an -- an automobile collision. However,
16 after a short period of time in the hospital, his condition
17 markedly improved and he was up and walking around, and it
18 reflects that in the report. And actually at the time of
19 his death, he was actually walking up the steps -- I
20 believe it was with a friend of his, they kind of do
21 physical therapy on their own -- walking up the steps
22 when he collapsed and the primary cause of death was a
23 pulmonary embolism. Now the doctor, of course, opined
24 that the pulmonary embolism was as a result of the
25 accident, but she did have to admit that anybody could

1 have a pulmonary embolism at any time, which brings up
2 another point in connection with the pathologist's
3 testimony.

4 When she was testifying, she began referring to --
5 and she said she based her opinion somewhat on some records
6 from the hospital that she had used; however, those records
7 were never disclosed either to the State or to the defense,
8 even though we filed a Rule 5 Brady motion. We did file a
9 motion at that time -- or made a motion at that time.

10 **THE COURT:** So that would be a violation by who?

11 **MR. FLOYD:** Well, I think it was --

12 **THE COURT:** If it wasn't disclosed to the State or to
13 the defense, then who violated Rule 5?

14 **MR. FLOYD:** Well, I believe it would have to be the
15 State would be violating, even though they didn't have
16 them, because the State would be the one obligated to give
17 us all the records. Now I don't accuse them of withholding
18 because I agree -- I accept their statement that they
19 didn't have them; however, it's the Defendant that's
20 entitled to them, so if they're not given to him, who's got
21 to be held responsible and we would suggest it would have
22 to be the State.

23 **THE COURT:** So these are records that --

24 **MR. FLOYD:** The pathologist was using to render her
25 opinion.

1 **THE COURT:** These are records at this point in time
2 that you've never seen or have you --

3 **MR. FLOYD:** I don't think they were even put in
4 evidence. We moved in limine to prevent her from using the
5 records, but that was denied, and so that's part of -- part
6 and parcel, I guess, of our whole attack on the cause of
7 death argument.

8 **THE COURT:** The question is have you ever seen
9 whatever it is that you said you wanted to see, the
10 records?

11 **MR. FLOYD:** No, I don't think that they ever came out.

12 **MS. MAYES:** No.

13 **MR. FLOYD:** No, we never saw them. I didn't have in
14 my notes I'd seen them and --

15 **THE COURT:** It's just the doctor said that she saw
16 when she reviewed --

17 **MR. FLOYD:** Some records from the hospital.

18 **THE COURT:** -- some records from the hospital and you
19 wanted to see what records she saw?

20 **MR. FLOYD:** That's correct, sir.

21 **THE COURT:** All right.

22 **MR. FLOYD:** So that's our second major point, Your
23 Honor.

24 **THE COURT:** And you wanted me to do what that I didn't
25 do?

1 **MR. FLOYD:** Well, Your Honor, we would ask --

2 **THE COURT:** What did you want me to do at that time
3 that I didn't do or you thought I should have done?

4 **MR. FLOYD:** Oh, I'm sorry. We asked that -- we moved
5 in limine to prevent her from testifying as to anything
6 that was from those notes that had not been produced.

7 **THE COURT:** And what -- did she testify from the notes
8 that was produced?

9 **MR. FLOYD:** (Nods head.)

10 **THE COURT:** What did she say?

11 **MR. FLOYD:** In her opinion the cause of death was a
12 pulmonary embolism that would be related to the automobile
13 accident.

14 **THE COURT:** And she based it on some records from the
15 hospital or her own opinion?

16 **MR. FLOYD:** Well, her opinion based upon the records
17 that she had from the hospital that were not produced.

18 **THE COURT:** Okay.

19 **MR. FLOYD:** Your Honor, the -- the next point, Your
20 Honor, there's a statute, 56-5 -- 56-5-1210, which is a
21 statute that has to deal with hit and run with death.
22 Your Honor, the way it reads it's -- our interpretation
23 of the statute is that it requires that the death must
24 occur immediately or very shortly thereafter. The term
25 "immediately" is used in the statute and I was trying to

1 -- it's our position that the term "immediately" in the
2 statute refers to the death occurring immediately or
3 shortly thereafter and not to stopping immediately, which
4 I think is the interpretation --

5 **THE COURT:** How long was it before he died in this
6 case?

7 **MR. FLOYD:** Four to five days, Your Honor.

8 **THE COURT:** Four --

9 **MR. FLOYD:** Four to five days.

10 **THE COURT:** I beg your pardon?

11 **MR. FLOYD:** Four or five days.

12 **THE COURT:** Four or five days.

13 **MR. FLOYD:** And the statute -- depending on the
14 way you read what "immediately" is, it's our position
15 "immediately" refers to the death and not to the stopping
16 because the statute goes on to say that a person can
17 leave the scene, call for help and then return to the
18 scene. So the statute doesn't necessarily require
19 immediate stopping, so the adjective "immediately" -- or
20 the modifier "immediately" refers to the death is our
21 position on the statute.

22 **THE COURT:** All right. So the -- are you referring to
23 the indictment for a hit and run accident involving death
24 or --

25 **MR. FLOYD:** Yeah, and to the statute that covers it,

1 56-5-1210.

2 **THE COURT:** So he's -- the indictment says that he,
3 Mr. Caughman, being a driver involved in an accident
4 resulting in the death of Fredric T. Morriss, did
5 unlawfully fail to stop and remain at the scene of the
6 accident and fulfill the requirements of 56-5-1210,
7 relative to giving information and rendering aid, and
8 you're saying that -- what?

9 **MR. FLOYD:** Our position is that he would only be in
10 violation of that statute if the death of the decedent
11 occurred immediately upon the accident or very shortly
12 thereafter and in this situation --

13 **THE COURT:** And your interpretation of "shortly
14 thereafter" would not include four or five days?

15 **MR. FLOYD:** No, Your Honor; particularly when there
16 was a period of marked improvement in the decedent's
17 condition as occurred in this case.

18 **THE COURT:** Wasn't it a jury question as to whether
19 or not the death -- I mean, I don't have a copy of the
20 jury charge, but weren't they charged that the State has
21 to prove that the death resulted from the accident?

22 **MR. FLOYD:** Yes, Your Honor. And, of course, that
23 will get me to my next argument of the jury charges that
24 we had requested, but I agree with Your Honor that you did
25 charge something along those lines.

1 **THE COURT:** So what is it you're complaining about
2 then with regard to that?

3 **MR. FLOYD:** Because, Your Honor, we had requested a --
4 a different jury charge on that issue, and I've attached
5 those also to our memorandum. There was a Defendant's
6 Request to Charge Number 1 and Number 2 in which we stated
7 the interpretation of the statute which we felt should
8 apply in the case.

9 **THE COURT:** After the Court gave the jury charge, did
10 you make an objection to all of these things that you're
11 now objecting to?

12 **MR. FLOYD:** I think I did, Your Honor. I don't have
13 the transcript, but I think I did.

14 **THE COURT:** All right.

15 **MR. FLOYD:** But we -- we attached our --

16 **THE COURT:** It's kind of -- so that's why it's very
17 difficult for me sitting here, you know. You're -- even
18 including the next -- the next point you have mention of,
19 the jury had to consider between the greater and the lesser
20 that would give the Defendant the benefit of the doubt. If
21 they had a reasonable doubt as to whether he was guilty of
22 the greater offense, they would then give him the benefit
23 of the doubt and find him guilty of the lesser offense.
24 Now that's something typically included in a jury charge
25 when someone requests it. You're saying it wasn't in the

1 jury charge and I guess you're also saying that after the
2 charge was given, you would have objected to it and I still
3 didn't give it to them, and that's -- I would be surprised
4 if that's accurate, and so that's why without the benefit
5 of the transcript then I have -- I have no way of having a
6 basis to agree or disagree with you other than what -- the
7 way I typically do it and that's something that the jury
8 is almost always instructed, if they have a reasonable
9 doubt as to whether he's guilty of failure to stop.

10 And the verdict form is in here where the jury --
11 that they have the option as to the charge of hit and run
12 accident resulting in death, either he's guilty of the
13 offense of hit and run accident resulting in death or
14 guilty of hit and run accident resulting in great bodily
15 injury, or not guilty, so the jury was given all those
16 options and -- and so I would really need to know how you
17 disagreed -- if you disagreed with what I told the jury as
18 to what they should consider in order for me to at this
19 point make an informed decision on this particular point.

20 Now I understand there was basically a fundamental
21 difference of opinion between the State and the defense
22 concerning whether or not the -- how does it go -- the
23 Cayce police should be conducting a search warrant in
24 West Columbia. Is that the way it went?

25 **MR. FLOYD:** Yes, sir.

1 **THE COURT:** And that's a -- that's a good issue, you
2 know, particularly in light of the Burgess case that came
3 out as far as the court being focussed on these agreements
4 between agencies where the agreements are not properly
5 approved and all that, then the State comes and says well,
6 that doesn't matter in this case because those cases
7 involve someone being arrested outside of the jurisdiction
8 of the law enforcement officer and I think Burgess did and
9 the Boswell case did, but in this case we're not dealing
10 with that, we're dealing with a search warrant that says
11 any law enforcement officer within the county can execute
12 this warrant. So you're saying, well, that doesn't -- so
13 you're arguing that even if there's a problem with this
14 agreement, then it still doesn't apply in this case because
15 you have the search warrant here and SLED was present
16 during the execution of the search warrant.

17 Now, again, I don't -- I know we had -- I recall the
18 whole issue and recall really, you know, because it -- you
19 know, you made some very pointed questions concerning it
20 and objections and all that of whether the -- the presence
21 of SLED at that time was the tipping point that just said
22 okay, well, hey, maybe they shouldn't have been there
23 carrying out this search warrant without West Columbia
24 being notified and being present, but they had SLED there,
25 so that covers it. That's the -- I'm sure that's what the

1 State would want to argue; that SLED made it all good
2 because they have statewide jurisdiction and the search
3 warrant is -- you've attached the search warrant to your
4 motion and I was looking at that to see what the magistrate
5 directed. Here, the reasonable grounds to property seized
6 -- certain property subject to seizure under the provision
7 of 17-13-140 located on the following premises in West
8 Columbia, 1149 Gunter Circle, and, therefore, you're
9 authorized to search the subject premises and seize the
10 property and they authorized -- let's see. Judge
11 Collins -- let's see. The search warrant says to any
12 bonded law enforcement officer of this state or county or
13 of the municipality of Cayce, so the question is does that
14 cover the people that were out there?

15 **MR. FLOYD:** Your Honor, it would be our position that
16 it would authorize maybe any officer, but only if they
17 exercised the -- executed the warrant within their
18 territorial jurisdiction.

19 **THE COURT:** Well, that's why they said in State v.
20 Hammond that it doesn't have to be.

21 **MR. HAMMOND:** Well, in State v. Hammond --

22 **THE COURT:** And then in the Burgess case they had the
23 -- I guess, the -- well, then in Burgess didn't they have
24 someone who was -- some other person present that made the
25 -- because Burgess was despite their -- well, the court's

1 disagreement with the -- them not following that proper
2 protocol, they still justified the search because -- who
3 was there? A county officer? Somebody was present that
4 made it --

5 **MR. FLOYD:** Right. Of course, in Burgess also they
6 did mention that the Batesburg-Leesville town council had
7 authorized the -- Gilliam.

8 **THE COURT:** So Lexington County is a hotbed of all
9 this confusion regarding multicounty agreements and who
10 should be where when they're searching various things.

11 **MR. FLOYD:** And in Hammond, Your Honor -- of course,
12 remember in Hammond there was a --

13 **THE COURT:** Which is Greenville County.

14 **MR. FLOYD:** Yeah, but in that case the sheriff deputy
15 did accompany the man that participated in the search and I
16 think that's what Hammond kind of relied upon.

17 Your Honor, one other matter, and I've already argued
18 this point to you, but I just would refer you to -- it's
19 the case of State v. Burton.

20 **THE COURT:** Burton?

21 **MR. FLOYD:** Burton, B-U-R-T-O-N.

22 **THE COURT:** All right. Tell me about that one.

23 **MR. FLOYD:** In that case -- this goes back to the
24 cause of death issue. In that case, the defense was --
25 was trying to put their expert on to counter the State's

1 expert on the cause of death and they attempted to -- they
2 were trying to do it by way of a hypothetical question
3 and when they framed their hypothetical -- when he first
4 questioned the expert, he said I don't have enough
5 information, so then they added some hypotheticals, some
6 facts and hypotheticals, that were off the autopsy report
7 and notes and so forth from the pathologist. The autopsy
8 report though had not been placed in evidence and the
9 State -- and so they weren't allowed to ask and use those
10 facts. That was affirmed by the Supreme Court who ruled
11 that he could not -- he could only testify as to facts
12 that were in evidence and I think that may go back to our
13 argument about the notes that the pathologist was referring
14 to when she based her opinion on those notes.

15 **THE COURT:** Did she give a clear reference to some
16 notes or was that some vague recollection of looking at
17 something else?

18 **MR. FLOYD:** She talked about her notes -- her hospital
19 records that she had looked at.

20 **THE COURT:** And you never saw the hospital records?

21 **MR. FLOYD:** That's correct. She didn't have them.

22 **THE COURT:** And the State didn't have them?

23 **MR. FLOYD:** The State didn't have them either. The
24 Burton cite, Your Honor, is 302 SC 494, 397 SE 2d 90. It's
25 a 1990 Supreme Court case.

1 **THE COURT:** Let's take a quick look at that one.

2 **MR. FLOYD:** I have a copy if you want.

3 **THE COURT:** Okay.

4 **MR. FLOYD:** That's my only copy of the --

5 **THE COURT:** State v. Ronnie Burton. Sexual
6 intercourse with his four-year-old daughter --
7 stepdaughter. Afterwards her face was observed with a
8 purple hue, her lips were dark purple, her stomach swollen
9 and she exhibited diminished responsiveness. An ambulance
10 took her to Devine Saviour Hospital and Piedmont Medical
11 Center. She experienced difficulty regaining consciousness
12 after the operation and was transferred to Charlotte where
13 her condition deteriorated within thirty-six hours. She
14 remained hospitalized until she died forty-five days later
15 and the autopsy revealed her lungs were nonviable, she
16 suffered brain death due to lack of oxygen. The coroner
17 performed an autopsy and stated he believed the cause of
18 death was asphyxiation caused by a hand being placed over
19 the victim's mouth. And Burton, the defendant, was
20 convicted of murder and criminal sexual conduct and given
21 life plus thirty years. At trial, the appellant claims
22 the doctors' negligence was an intervening cause of her
23 death and contends the judge's charge was inadequate in
24 that it failed to fully and accurately state the law
25 regarding intervening cause. It says the judge erred in

1 failing to charge the jury on the distinction between
2 simple negligence and gross negligence and incorrectly
3 charged mediate cause and omitted foreseeability from the
4 instruction, and then they go through what the judge told
5 the jury and whether the appellate claim would have been
6 appropriate and the appellate court says the charge is
7 sufficient if, when considered as a whole, it covers the
8 law applicable to the case. The trial judge charged if,
9 however, the death was caused not by the wound or the
10 injury that the deceased had, but was merely by the gross,
11 erroneous treatment, that is, where a treatment was so
12 gross, where a treatment was so deliberate, so willful,
13 that it caused death, then the defendant would not be
14 liable. The court said even though the charge didn't
15 contain the exact language of the State v. Matthews case
16 they believed that the charge sufficiently and adequately
17 covered the substance. And appellant also challenges the
18 specific language of the charge which states that one is
19 deemed guilty of a homicide if the injury inflicted
20 contributes immediately to the death of the deceased.
21 Further stuff they're complaining about and then the
22 appellant argues that the trial court's exclusion of
23 Dr. Hudson's opinion as to cause of death was error and
24 deprived appellant of an opportunity to present a defense.
25 The appellant argues that the trial court's exclusion of

1 Dr. Hudson's opinion as to the cause of death was error
2 and deprived the appellant of an opportunity to present a
3 defense in violation of his constitutional right. The
4 court disagreed. In the trial, the appellant asked
5 Dr. Hudson his opinion as to cause of death based upon the
6 same hypothetical question used by the State. Dr. Hudson
7 replied he did not have an opinion and needed additional
8 information. Appellant's counsel then posed a hypothetical
9 question which included information from the medical
10 reports of the deceased, the testimony of the State's
11 expert and the autopsy report. The trial court disallowed
12 this testimony based upon the fact that the medical and
13 autopsy reports were not admitted into evidence. An expert
14 may give his opinion based upon personal observance or an
15 answer to a properly framed hypothetical. An opinion by
16 an expert without firsthand knowledge of the fact must
17 be based on a hypothetical question. The hypothetical
18 question, however, should be based upon facts supported by
19 the record. According to the record, Dr. Hudson was not
20 precluded from rendering an opinion. He was prohibited
21 from basing his opinion on records not received into
22 evidence and we believe the trial judge's ruling was in
23 compliance with the law and, therefore, the sentence and
24 conviction were affirmed.

25 Now how do you tie that scenario into this scenario?

1 **MR. FLOYD:** The same issue, Your Honor, about the fact
2 that the pathologist based her opinion on documents that
3 were not in evidence in the case.

4 **THE COURT:** But she didn't base it on anything
5 hypothetical. She said she based it on her review of the
6 records. In this case, it looks as if the -- they said
7 okay, I mean, you can give an opinion, Dr. Hudson, but if
8 it's based on a hypothetical, the hypothetical has to be
9 based on things in the record, it can't be based on
10 something that's not a factor in the case that's not in
11 the record. I mean, I understand. I can see I would have
12 done the same thing in that instance if you're -- but we're
13 not dealing with any hypothetical questions here. We're
14 dealing with -- you're complaining that you didn't see all
15 the records and the records the State didn't see either and
16 -- and the doctor obviously had her opinion. She had the
17 autopsy and she's the doctor and she had an opinion as to
18 the cause of death being this pulmonary embolism.

19 **MR. FLOYD:** That's correct.

20 **THE COURT:** And she believed that's the cause of death
21 and that was caused by the wreck. Now the fact that she
22 did, what you might say, a thorough job, and that is that
23 she then went and looked at all the decedent's hospital
24 records and -- and she didn't have all those records with
25 her in court that she looked at so that you could look at

1 them, we don't have a situation where you have competing
2 experts. You didn't have an expert, did you?

3 **MR. FLOYD:** No, Your Honor.

4 **THE COURT:** So we don't have it where one expert
5 wasn't able to see what the expert saw so they can
6 criticize what the other one's conclusion was, which was
7 the case in this Burton case, then, you know, I would have
8 to really go back to the record itself to -- for my basis
9 for a conclusion that she could give her opinion even
10 though she didn't have the hospital records that she also
11 might have made reference to at the time that she was
12 testifying, whether that would prevent her from giving an
13 opinion and whether or not what was in the hospital records
14 was the basis of her opinion as opposed to the autopsy and
15 things that she did see. I don't know. It's a -- it's a
16 quandary for me and may be a quandary for someone else, but
17 I understand your point. I just don't see how Burton ties
18 into what we were dealing with in this case.

19 **MR. FLOYD:** Thank you, Your Honor. Lastly, Your
20 Honor, we also would ask Your Honor to reconsider the
21 sentence given to Mr. Caughman. Mr. Caughman was given a
22 twenty-year sentence. He was forty-eight at the time of
23 the trial.

24 **THE COURT:** Was that the maximum sentence?

25 **MR. FLOYD:** Twenty-five would be the maximum.

1 **THE COURT:** Twenty-five was the maximum?

2 **MR. FLOYD:** He was given twenty years. He was
3 forty-eight years old at the time of the trial. His only
4 record was over twenty years earlier he had gotten a DUI.
5 He had been a lifelong member of the community, raised a
6 family, worked all his life. He's now -- according to
7 this sentence, he'll be over sixty-five before he'll be
8 eligible to be released. We're asking Your Honor to take
9 all of those factors into mind. It was a terrible
10 situation and Mr. Morriss was a fine man. We heard all
11 about him and we were very impressed with him at the trial.
12 It's a tragedy what happened here.

13 Now I think Mr. Caughman would like the opportunity to
14 address you on that point very briefly.

15 **THE COURT:** All right. Absolutely. May I hear from
16 the State first or Mr. Caughman first?

17 **MR. FLOYD:** Do you want us to just go ahead and talk
18 first, Suzanne?

19 **MS. MAYES:** Yes.

20 **MR. FLOYD:** Okay.

21 **THE COURT:** Yes, sir, Mr. Caughman.

22 **THE DEFENDANT:** Yes, sir. I'm so sorry that this
23 accident ever happened and I'm so sorry Toby Morriss lost
24 his life. I'm so sorry Mr. and Mrs. Morriss lost their
25 son. I'm not a bad person. I know right from wrong, I

1 was wrong, and I have to live with that. I don't ever want
2 to see anyone get hurt. I have a daughter of my own. I
3 can't imagine what it would be like if anything ever
4 happened to her. I ask Mr. and Ms. Morriss, their family,
5 their many friends and this Court to please forgive me for
6 this tragic accident. Thank you, Your Honor.

7 **THE COURT:** All right. Thank you.

8 **MR. FLOYD:** Your Honor, that concludes our
9 presentation.

10 **THE COURT:** I would just say this now. Of course,
11 we'll hear from the State, but, you know, you have -- you
12 have crimes and then you have the coverup from the crimes
13 and in some instances even though the crimes are bad, the
14 -- it's often exacerbated by the attempt to cover up the
15 crime and so whereas standing alone -- I mean, of course,
16 you have accidents and in many instances -- accidents are
17 unavoidable in some instances. People tragically die in
18 accidents all the time and no one's held accountable
19 criminally because it's an accident and in this case it's
20 referred to as an accident. I don't -- I don't even know
21 if we were here even dealing with -- I forgot really the
22 -- trying to -- well, just being the driver of a vehicle
23 involved in an accident, it didn't allege felony DUI, it
24 didn't allege drunk driving and racing down the road doing
25 a hundred miles an hour in a thirty-five mile an hour zone,

1 it says hit and run involving an accident and the -- and
2 the crime in failing to stop and remain at the scene and
3 doing the things the law requires, so. And -- but sitting
4 through the trial and hearing the extent of the coverup
5 that was presented at the time, and none of it -- well, to
6 the extent that that reflects on -- none of it reflects on
7 whether or not Mr. Caughman is a good person or not. You
8 know, it's a sad and unfortunate situation. It's certainly
9 unfortunate that he made the choices that he made that may
10 have exacerbated the situation, which made it much worse
11 than -- or worse than it otherwise would have been. Go
12 ahead, Mr. -- or Ms. Mays.

13 **MS. MAYES:** Yes, sir, Your Honor. May it please the
14 Court? As the Court has noted, the State's position is
15 it's very much in reliance on the case of State versus
16 Hammond, the Supreme Court case which is directly on
17 point. And then, in addition, the South Carolina Code
18 which governs the issuance, execution and return of search
19 warrants, South Carolina Code Section 17-13-140.

20 Your Honor, the State's position is that the statute
21 on search warrants supercedes any preexisting limitations
22 on municipal jurisdiction. It does give lawful authority
23 to any peace officer within the county. That application
24 of the statute was used by the Supreme Court in State
25 versus Hammond where it was a municipal officer in the

1 county of Greenville who obtained a search warrant for an
2 area outside of his municipality and in that case the
3 Supreme Court determined that it was, in fact, a valid
4 search warrant even though it goes outside his territorial
5 jurisdiction. And in this case we're talking about a
6 statute that gives authority to obtain -- to obtain a
7 search warrant outside your jurisdiction, but then the
8 argument of defense counsel is but you can't execute it.
9 The State's position is that the intent of the statute is
10 to include all matters concerning issue, execution and
11 return of these search warrants. If it had been the intent
12 of the statute to restrict the execution once that officer
13 obtains a valid search warrant, the State's position is
14 that it would have expressly addressed that in the statute.

15 The statute has very specific positions on certain
16 matters. For example, if the search warrant is issued by
17 a certain type of judge, being a judge on the record, then
18 it directs in that circumstance that the return must be
19 issued to a judge where the property is located. So it's
20 very specific on that matter about returning it where the
21 property is located, but it's completely silent about the
22 fact that it must be executed by an officer where the
23 property is located. And from that, the -- the logical
24 application of the statute is that it is intended to be
25 broad and once the valid search warrant is issued to a

1 municipal officer anywhere in the county, it can then be
2 lawfully executed. And from a practical standpoint, it
3 makes perfect sense that that would be the intent of the
4 Legislature. It would be such a duplication of resources
5 and manpower if we were having to involve a separate agency
6 every time a search warrant is executed within the county,
7 but simply outside the jurisdiction of that municipal
8 officer. So that is the State's position, Your Honor, on
9 the broad scope of that statute.

10 **THE COURT:** So you're saying that the -- even though
11 the case is in -- the case is in Cayce, they can still just
12 -- if they get a warrant, they can go anywhere in the
13 county?

14 **MS. MAYES:** Your Honor, I believe that the broad scope
15 of that statute, that is the intent. That once the search
16 warrant is issued by a judge with countywide jurisdiction,
17 being a magistrate, which is what happened in this case and
18 in Hammond, that once that countywide magistrate issues the
19 search warrant, it is then valid and can appropriately be
20 executed by that same agency, that same municipal agency..

21 **THE COURT:** Well, just thinking, I mean, if you have
22 a Cayce police officer and say they -- it deals with a town
23 of Lexington case or a Pelion or, say, we'll go far out
24 to Gilbert or something, that the Cayce police can get a
25 search warrant and go to a house in Gilbert and execute the

1 search warrant?

2 **MS. MAYES:** Your Honor, I do believe the statute
3 allows for that. I believe that the scope of the statute
4 is intended to be that broad, as long as it's within the
5 county. Now in State versus Hammond, the Supreme Court
6 did address the fact that an officer with -- at least
7 one officer with original jurisdiction was present, and
8 although arguably not required by the statute, it was
9 another factor for the Supreme Court to consider in
10 upholding that conviction in Hammond. And the State's
11 position, as the Court has already noted, is that like
12 in Hammond there was an officer with authority, lawful
13 authority, statewide authority to be there, being agent
14 Mike Robinson.

15 **THE COURT:** Was he there because he was working on the
16 case?

17 **MS. MAYES:** Yes, sir, Your Honor. The record had
18 already established through some of the other witnesses
19 before we even got to the execution of the search warrant
20 that he had been involved in developing probable cause
21 for that search warrant. He was assisting Cayce in this
22 ongoing investigation and it was ongoing for several months
23 prior to them actually locating that vehicle. SLED had
24 become involved two ways. One was that an anonymous tip
25 had come in to Crimestoppers, which is filtered through

1 the State Law Enforcement Division, and that anonymous
2 tip named Mr. Caughman, or at least his address. It gave
3 certain information that led to him and also it gave
4 information about his truck being used. In follow-up,
5 Agent Robinson was one of the officers who went and did a
6 plain view examination of the property. They were in an
7 area where they weren't on the property, but they could
8 visualize his backyard and from there they could see
9 what appeared to be a vehicle under tarp which met the
10 description and matched the anonymous tip that had come
11 in through Crimestoppers. As a result of that information,
12 Agent Robinson and Cayce law enforcement consulted together
13 in obtaining the probable cause for the search warrant.
14 It was a Cayce officer, Detective Carrera, who actually
15 physically obtained the search warrant or wrote the search
16 warrant, but Agent Robinson was involved throughout that
17 process and then once it was obtained, he was present
18 with them for the execution of the search warrant at the
19 address. He was there when the truck was located in the
20 backyard, it was under tarp, and the testimony was that he
21 was there as they were removing the tarp. The State's
22 position is at that point that item and that property is
23 seized. It is then in the possession of law enforcement
24 who are lawfully there. They're securing it. It's not
25 gonna go anywhere until it's physically removed and taken

1 back to Cayce headquarters. After Agent Robinson left, I
2 believe there was some additional search that led to an
3 electric saw. The saw is the only other item that comes to
4 mind as being of any consequence during the course of the
5 trial. That saw was also the subject of a statement made
6 by the Defendant. It was a voluntary statement that he
7 made to law enforcement following a waiver of Miranda and
8 he admitted to using an electric truck saw to cut the doors
9 off the truck.

10 So to that extent, the fact that the saw was
11 physically recovered or may have physically been recovered
12 after Agent Robinson left the scene, the State's position
13 is that would be harmless error, if anything, because
14 his own admission about using the saw was far more
15 incriminating than the fact that the saw existed. And
16 in this case, Agent Robinson and Detective Carrera were
17 at the scene and then the reason that he left the scene
18 was in furtherance of the investigation in order to
19 interview the suspect and even while they were interviewing
20 the suspect and at headquarters, they were still in
21 communication with the officers back at the scene. A tow
22 truck, which would be a private citizen or a business,
23 actually removed the truck from the premises of the
24 Defendant and then took it back to Cayce and once it was
25 back within the jurisdiction of Cayce headquarters, it

1 was processed for evidence, including removal of the
2 paint samples that were ultimately used as evidence in
3 this case.

4 **THE COURT:** Removed by SLED or someone else?

5 **MS. MAYES:** Yes, sir, Your Honor. The State Law
6 Enforcement Division.

7 **THE COURT:** So with regard to this agency agreement,
8 is the State -- that I guess was admitted, is the State
9 placing any credence into the validity of that or your
10 entire justification for the search is the State v. Hammond
11 and Mike Robinson being present?

12 **MS. MAYES:** Yes, sir, Your Honor. Although I do
13 want to add that there was a good faith reliance by the
14 officers on that multi-jurisdictional agreement. That
15 case -- the most recent, State versus Burgess, decision
16 that came out this past summer in 2014, which found the
17 agreement invalid, we didn't have the benefit of that
18 ruling at the time; however, in retrospect, although we
19 cannot establish compliance with each and every term of
20 that multi-jurisdictional agreement that is required under
21 Burgess, such as approval by each town council or city
22 counsel and the compliance with time limitations and
23 reports and things of that nature, although we can't
24 now in retrospect show compliance with each and every
25 provision, there would have been a good faith reliance by

1 the officers. They were aware of the agreement. That was
2 the testimony during trial. They were aware that was a
3 multi-jurisdictional agreement and they knew that their
4 chief had entered the agreement and that the West Columbia
5 Police Department chief had entered the agreement, and
6 even if it is now technically invalid or we cannot
7 establish validity, it would have still been good faith
8 reliance on that in addition, of course, to good faith
9 reliance on the execution of the search warrant in the
10 presence of an officer with statewide jurisdiction.

11 Your Honor, I also would like to add on this matter
12 that if any violation whatsoever would have occurred
13 concerning the actual execution of that search warrant,
14 and we know pursuant to the statute and pursuant to State
15 versus Hammond it was lawfully obtained and it was a valid
16 search warrant based on probable cause, so the only issue
17 would be a technical violation in the process of execution.
18 And, Your Honor, the State's position on that is that if
19 it's a technical violation in this circumstance, it would
20 be ministerial in nature, very similar to how that same
21 statute addresses the ten-day rule in the requirement for
22 the filing of returns with the search warrant, it would be
23 very similar in nature if there was a technical violation
24 of the execution of that search warrant. It would not
25 involve a due process violation or a constitutional Fourth

1 Amendment-type violation that we see in cases such as
2 Burgess where there is an arrest without a warrant. And
3 that's a completely different scenario because arrest and
4 jurisdiction for arrests is -- are governed by separate
5 statutes.

6 And, Your Honor, on that matter I do have a case of
7 State -- or U.S. versus Green that I will past up. And
8 this is a case from Kansas, but it also deals with the
9 execution of a search warrant outside the territorial
10 jurisdiction of the municipal agency that obtained the
11 search warrant. In this case, it was determined that it
12 did not amount to a constitutional or Fourth Amendment
13 violation and, therefore, the exclusionary rule did not
14 apply, and ultimately that's the State's position, is that
15 if any violation occurred the exclusionary rule would not
16 be the remedy.

17 **THE COURT:** All right. How about some other points
18 Mr. Floyd hit you with?

19 **MS. MAYES:** Yes, Your Honor. As to the pathologist,
20 and in looking at the autopsy report, just -- just a little
21 history because I realize it's been two years since we all
22 heard the facts of the case on the record, but Mr. Morriss
23 was admitted to Lexington Medical Center in critical
24 condition following the accident. He had been hit while on
25 his motorcycle. He was a professor at USC. He was coming

1 from the direction of Columbia into the city of Lexington
2 on Knox Abbott Drive when he was struck.

3 **THE COURT:** The county of Lexington? Did you say city
4 of Lexington?

5 **MS. MAYES:** Cayce. Into the city of Cayce when he
6 was struck by Mr. Caughman. He was taken to Lexington
7 Medical Center and treated there for several days. He
8 died still at Lexington County Medical Center and so the
9 pathologist, who is a staff member at Lexington Medical
10 Center, performed the autopsy there at the same facility.
11 In my understanding of how it works within the hospital
12 and their staff, is that any physician on staff can access
13 the electronic database with the medical records. In
14 this case, although he is at that point deceased, she is
15 still issuing a diagnosis, so she's performing -- as the
16 pathologist she's performing the autopsy to determine cause
17 and manner of death. So she then uses that electronic
18 database to gain access to several days before and look at
19 his records there. She addressed it in her autopsy report,
20 so it was no secret to either the State or the defense what
21 portions of the medical records she had considered in her
22 medical diagnosis and treatment or medical diagnosis and
23 cause of death in this case. And ultimately when she
24 performed the autopsy, she visualized the same injuries
25 that had been mentioned in the medical records, so for that

1 reason the State's position is if there were any error at
2 all it would be harmless. The State's position, of course,
3 is that it was not error because it would be a separate
4 exception to hearsay, specifically Rule 803. She is
5 relying on those records and that information is for
6 purposes of medical diagnosis. She was specific in her
7 testimony, Your Honor, and it's actually noted on the final
8 page of the autopsy report that she was able to visualize
9 during her examination the pulmonary embolism as well as
10 injuries consistent with trauma being identified to the
11 rib -- which were rib fractures, pulmonary contusions or
12 bruising of the lungs and a hematoma of the right adrenal
13 gland, and then she went on to define other injuries or
14 trauma that she noted as well. So she is, in effect, able
15 to visualize the same type of injuries that she referred to
16 as being identified in his medical treatment several days
17 beforehand. So the State's position is that her testimony
18 was properly admitted. Your Honor, we did not have the
19 records, Mr. Floyd did not have the records, and we were
20 both on notice that that would be included as part of her
21 findings it because it was specifically noted in her
22 autopsy report.

23 Your Honor, as to the charges that were given by the
24 Court, the State's position is that the charges were
25 carefully considered by the Court. We had lengthy

1 discussions on the record leading up to the charges which
2 were given by the court to the jury and all of those
3 charges were appropriate and in accordance with law.

4 And finally, Your Honor, on the matter of
5 reconsideration of sentence, he received a sentence of
6 twenty years which is not the maximum. The testimony
7 presented during trial was of someone who had virtually no
8 remorse. He committed this act and then spoke about it to
9 his friends and when he spoke about it to his friends it
10 was not in the context of feeling guilt or remorse, it was
11 in the context of not wanting to get caught. One of his
12 acquaintances testified that he told him they'll never find
13 the doors. His intent was to get away with it. And that
14 same friend said the reason he ultimately provided a tip
15 to Crimestoppers was because of -- he was aware that
16 Mr. Caughman was continuing to use alcohol and, in fact,
17 part of what was addressed at sentencing is that we had
18 obtained some records from his debit card and right up
19 virtually until the point of his arrest in this case he
20 was continuing to purchase large amounts of alcohol on a
21 weekly basis. So all of those factors were considered by
22 the Court, as well as the victim impact testimony in this
23 cause, Your Honor.

24 Mr. Morriss has family which are out of state. He
25 had parents here, many, many friends. There were many

1 letters from his students at the university and people who
2 had been affected by his life over the course of many years
3 and all of those factors were considered by the Court and,
4 Your Honor, we believe be that the twenty year sentence is
5 very fair. He -- he could have easily gotten the maximum
6 considering the facts of this case and what we know about
7 the lengthy efforts that he -- that he went to to evade law
8 enforcement and conceal this crime.

9 **THE COURT:** What part of the autopsy you said
10 referenced the finding that she corroborated looking
11 through the electronic records?

12 **MS. MAYES:** Your Honor, on the very final page of the
13 autopsy, Page 5 of 5, where it says interpretation and case
14 summary, in the first paragraph she addresses information
15 that she would have been aware of having looked at the
16 patient record there in the data base, and that was that
17 Mr. Morriss had been admitted to LMC for treatment of his
18 injuries, which included surgical repair of a left rib
19 fracture. In the second paragraph, she notes that her
20 postmortem examination demonstrated a large pulmonary
21 embolism and injuries consistent with a history of trauma
22 were identified, including bilateral rib fractures, the
23 pulmonary contusions and hematoma of the right adrenal
24 gland, and then she goes into her other findings. So in
25 that she is, in effect, visualizing herself firsthand the

1 various types of injuries that had been set forth earlier
2 in the medical records.

3 **THE COURT:** Well, what part of it was subject to this
4 Rule 5 issue that Mr. Floyd is now raising?

5 **MS. MAYES:** Your Honor, I -- the State's position is
6 that there would not be any type of Rule 5 violation here.
7 The State didn't have the records, Mr. Floyd did not have
8 the records. The witness had reviewed the records and had
9 noted that in her autopsy report that she had, in fact --
10 when she gives the history, I believe she also gives the
11 history on the first page as well. I'm sorry, that would
12 actually be Page 2 of 5 under clinical history. She is
13 noting that he was admitted to Lexington Medical Center
14 and then also mentions the injuries, so with that both the
15 State and the defense had access to what she had access to.
16 We may not be looking at the records, but she is putting
17 both the State and the defense on notice that she had
18 reviewed the records and this is what they said and that
19 she was incorporating that in her own evaluation of the
20 deceased patient. And so with that, Your Honor --

21 **THE COURT:** And this copy of the autopsy report was
22 made available to -- to all sides?

23 **MS. MAYES:** Yes, sir, Your Honor. Yes, sir.

24 **THE COURT:** And with regard to not charging the jury
25 on the lesser, giving the Defendant the benefit of the

1 doubt of the lesser offense and the -- Mr. Floyd's
2 interpretation of the statute about death being immediately
3 or stopping being immediately, I can't recite exactly the
4 way he cited it, but you can comment on the --

5 **MS. MAYES:** Yes, sir, Your Honor. The Court had a
6 charge which was very descriptive about proximate cause of
7 death, and I don't have the Court's charge in front of me
8 at the moment, but both Mr. Floyd and I were aware of the
9 Court's charge on the proximate cause and it was very
10 detailed in explaining to the jury all of the factors to
11 consider in determining whether the injuries were, in
12 fact -- and ultimately in this case a death potentially,
13 were caused by the preceding event, which would be the
14 motor vehicle accident. The Court also charged on the
15 great bodily injury and all of the factors and elements
16 of that charge for the jury's consideration, so they
17 certainly had extensive information on it with the Court's
18 charge and it was very clear with -- with how it was
19 presented to the jury. I don't recall the issue that
20 Mr. Floyd raised about -- exactly how it was termed to
21 them that they could find a lesser included offense, but
22 regardless the lesser included offense was submitted to
23 the jury for consideration and rejected after they heard a
24 charge on the law, specifically on proximate cause.

25 **THE COURT:** All right. Response, Mr. Floyd?

1 **MR. FLOYD:** Just briefly, Your Honor. First of all,
2 although the State's interpretation of the search warrant
3 statute may be efficient, I don't think efficiency is the
4 touchstone of what we have in the criminal system. I think
5 there's a constitution in there that sometimes perhaps
6 contrasts with efficiency and due process and equal
7 protection of the law would be two factors that would, in
8 our opinion, prohibit such an interpretation that anybody'
9 -- any municipal officer in the county can serve a search
10 warrant anywhere in the county so long as it's issued by a
11 magistrate, and I just don't think that's the law nor the
12 intent of the law.

13 As to the other point, if, in fact, the State was
14 aware that the pathologist was going to use medical records
15 in their testimony, then it seems to me they'd be on notice
16 that they need to provide those to the Defendant as part of
17 the Rule 5 Brady process.

18 As to the reconsideration, we say nothing bad about
19 Mr. Morriss and his familiar. He was quite an accomplished
20 man. He had close family, he had close friends, he was
21 well-respected. We in no way tried to in any way diminish
22 from his accomplishments in life. We only ask that Your
23 Honor consider the fact that Mr. Caughman had a pretty
24 exemplary life as far as the criminal law is concerned
25 having only been convicted of a DUI some twenty years

1 earlier. He made a bad judgment in this situation. I
2 don't guess we told you specifically, you probably
3 remember, but basically the truck -- the truck made a left
4 turn at an intersection and the motorcycle ran into the
5 side of it as it made the left turn. We had the cameras at
6 the Hertz rental place. I think you remember that. That
7 was on the --

8 **THE COURT:** U-Haul? Was it Hertz or U-Haul?

9 **MR. FLOYD:** He made a bad choices, he's aware of
10 that. He's had ample time to reflect upon it. He's been
11 over there over two years now. And, as he said, he's not
12 a bad person, he made a bad choice, he's paying for it, he
13 understands that, he appreciates that, he accepts that, he
14 just asks that Your Honor consider shortening the length of
15 the incarceration so that he'll have an opportunity to come
16 back and contribute to society and perhaps spend some
17 quality time with his family. Thank you.

18 **THE COURT:** Was it an eighty-five percent sentence or
19 no?

20 **MR. FLOYD:** Yes, sir, it's eighty-five percent.

21 **THE COURT:** Anything else from the State?

22 **MS. MAYES:** Yes, sir, Your Honor, briefly. I had
23 neglected moments ago to mention that also the testimony
24 at trial was that Mr. Caughman had actually been using
25 alcohol on the incident date. There were two friends

1 that testified they had all been together at -- I believe
2 they were doing some type of work on a deck or something
3 like that and they had all been consuming beer and that
4 Mr. Caughman then left that location and went to a local
5 establishment, a restaurant that serves alcohol here in
6 Lexington County, which is the Hard Knox Grill, and we had
7 a credit card receipt from the Hard Knox Grill, and that he
8 had also made purchases there and I believe the testimony
9 was that those purchases were made at the bar area. Now
10 that may have included food and alcohol. We don't know
11 exactly how much alcohol was consumed there, but ultimately
12 we believe that the motive to flee the scene was the fact
13 that he had consumed alcohol prior to the accident.

14 Your Honor, I'm also gonna pass up -- I know we had
15 submitted to the Court's law clerk yesterday a packet of
16 information concerning victim impact. We are also going to
17 -- I believe we had several additions come in this morning
18 from friends and family as well, so we're gonna submit a
19 copy to the Court, as well as to Mr. Floyd.

20 **THE COURT:** All right. Mr. Floyd, did you have anyone
21 else who wanted to say anything?

22 **MR. FLOYD:** Just a moment, Your Honor.

23 **MS. ROCHA:** Yes, Judge. I'm a first cousin to Craig
24 and so, of course, I've known him all my life. I also am
25 an adjunct professor at Broward College in Fort Lauderdale.

1 **THE COURT:** Tell me your full name, please.

2 **MS. ROCHA:** Jeannine, J-E-A-N-N-I-N-E. My last name
3 is Rocha, R-O-C-H-A. Throughout my life, whenever there's
4 been something that I've needed, Craig has always been
5 there for me. And he was there when my brother died, he
6 spent the day with me. He was there at my wedding. I
7 greatly love Craig. And for him to have to spend so much
8 time in jail for what initially was an accident -- I know
9 the coverup was very bad -- just seems to me that he --
10 that he's been taken away from his family, and we need him.
11 His parents are here. They're in their eighties. They
12 very much want him to be around them, so that I would like
13 for the Court to show him some compassion. Thank you.

14 **THE COURT:** All right. Thank you, ma'am. Anything
15 else? Anyone else?

16 **MR. FLOYD:** No thank you, Your Honor. If I might add
17 one thing, and I understand that you've got quite a factor
18 here of victim impact, and that's significant. There's no
19 doubt that Mr. Morriss was an accomplished man, but I'm not
20 sure the factors in the sentencing should necessarily rely
21 on that because the other side of that argument is that
22 well, if the victim had been homeless maybe he shouldn't
23 have got much jail time. And we're not punishing -- we're
24 punishing the act, not so much the consequences of the act,
25 although that -- that is a factor, but we just ask for

1 whatever mercy you can give him, Your Honor.

2 **MS. MAYES:** Your Honor, I will also pass up the NCIC
3 record, which does support the prior conviction of the DUI
4 in this case. I beg the Court's indulgence. And then, I
5 believe, in addition to that, there was a previous or a
6 separate violation for open container and driving under
7 suspension.

8 **THE COURT:** All right.

9 **MS. MAYES:** And, Your Honor, the victim's family are
10 residents of Oklahoma. His parents could not be here.
11 There is a friend who is here, Diane Mosley. He did have
12 a large group of friends here in the Columbia area after
13 relocating here and I do believe she wishes to briefly
14 address the Court. Diane Mosley.

15 **THE COURT:** All right. Yes, ma'am.

16 **MS. MOSLEY:** Hello, sir. I'm Diane Mosley. Toby
17 Morriss was a friend of mine. He was a better friend to my
18 husband. He was my son's professor in graduate school.
19 Toby had parked his camping trailer on some property of
20 ours for a while, so we knew him quite well. We saw him
21 often. When I heard the word "exemplary" used, I couldn't
22 help but think that that's the word for Toby and if
23 exemplary is how we describe Mr. Caughman, I cannot imagine
24 the comparison that we might choose to use for Toby. We
25 miss him very much. His parents would love to be able to

1 ask for him to come home. We can't. He didn't get a
2 twenty year sentence, he got a death sentence. I
3 understand the whole concept of compassion. I understand
4 mercy, I understand forgiveness, but I also understand that
5 part of true love involves tough love and that there are
6 consequences to behavior. I am sorry for everyone
7 affected. It is tragic all the way around, for
8 Mr. Caughman's family and for Mr. Morriss's family, but
9 there are consequences to behavior. You don't just say
10 I'm sorry and walk away. I am glad to hear Mr. Caughman
11 say he's sorry. I didn't believe it since I hadn't heard
12 it until today. I am glad that there is time to reflect
13 on personal behavior, but I do not think that reducing a
14 sentence which is just is a good idea in this case and I
15 hope Your Honor will let it stand.

16 **MS. MAYES:** And, finally, Your Honor, I believe in
17 some of the victim impact submissions they had spoken
18 about seventeen years. They are aware of the twenty year
19 sentence, but seventeen is what we estimated he would
20 serve because even with eighty-five percent it's not a
21 full sentence.

22 **THE COURT:** All right. Well, the State has submitted
23 a big stack of papers which include some perhaps that might
24 have been submitted previously --

25 **MS. MAYES:** Uh-huh.

1 **THE COURT:** -- and some that are -- some that were
2 not. I'll need to take time to review everything that
3 has been submitted, including -- and also to more fully
4 consider all that has been stated and submitted here today,
5 and I'd asked the parties to submit before today whatever
6 authority that y'all were basing your arguments on -- or
7 would be basing your arguments on. Certainly at the time
8 that I made rulings during the course of the trial, I think
9 I was fairly deliberate, considered all sides and tried to
10 make a fair decision with regard to everything that I had
11 to make rulings on and to leave the decision in the hands
12 of the jury as to whether Mr. Caughman is guilty or not
13 guilty and for what crime.

14 With regard to the issue of whether or not there was
15 some intervening negligence which caused the death versus
16 the injuries that he sustained on February 21st, whether
17 that was the cause of death, that's something that I
18 remember distinctly being attune to and to have the jury
19 closely examine that issue and make a decision on that
20 question. Mr. Floyd engaged in a rather rigorous
21 cross-examination of State's witnesses who offered opinions
22 that the death was caused by the wreck and not by any
23 medical malpractice or any other independent or intervening
24 injury.

25 I probably have a copy of my jury charge, it would

1 amaze me if I didn't have a copy of it, but I haven't been
2 able to locate it yet or review that charge. I usually
3 have the clerk return the charge to me that I give to the
4 jury and it may be in the Lexington clerk's office's file,
5 if not on my computer. So I'm going to take it all into
6 consideration and issue a decision after having fully
7 considered all that has been presented today.

8 **MR. FLOYD:** Thank you, Your Honor.

9 **THE COURT:** I thank all of you for coming. I
10 certainly thank all of the parties for your interest in
11 this matter. As it was just stated, it's certainly
12 tragic for everyone involved and tragic most of all for
13 Mr. Fredric T. Morriss. All right. Thank you all.

14 **MS. MAYES:** Thank you, Your Honor.

15 **MR. FLOYD:** Thank you, Judge.

16 (Proceedings were concluded at 1:24 PM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 21st day of May, 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

December 7, 2015

Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM CRAIG CAUGHMAN,

APPELLANT

APPELLATE CASE NO. 2015-001867

MOTION TO HOLD APPEAL IN ABEYANCE

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order placing Appellant's appeal in abeyance pending receipt of a second reconstruction hearing transcript. In support of this motion, Appellant alleges the following:

- 1) On June 21, 2016, prior appellate counsel moved to hold this appeal in abeyance and requested a remand to the circuit court for reconstruction of the record.
- 2) On August 11, 2016, this Court granted Appellant's motion and held the appeal in abeyance while the matter was remanded to the circuit court for reconstruction.
- 3) While this appeal was held in abeyance, two reconstruction hearings took place before the Honorable Clifton Newman: one on September 16, 2016, and one on May 1, 2017.

4) An Order was issued by Judge Newman on May 26, 2017 (Exhibit A). Judge Newman ordered that the transcripts from both hearings, September 16, 2016 and May 1, 2017 should be obtained for submission to this Court. He ordered that "the transcripts combined with other evidence submitted at the reconstruction hearing and the Defendant's written request for jury charges, sufficiently reconstruct the record so as to provide a full and complete record which satisfies the interests of due process and fundamental fairness as to allow for a meaningful appellate review." (p. 12).

5) This Court informed the parties via letter on October 20, 2017 that this appeal was no longer held in abeyance.

6) Due to inadvertency, prior appellate counsel did not order the transcript from the May 1, 2017 hearing.

7) That transcript has now been ordered. The initial due date is February 5, 2018. (Exhibit B).

8) The undersigned spoke with opposing counsel and received consent for this motion.

9) The undersigned will notify this Court immediately when the transcript is received. The undersigned will provide updates to this Court while the matter is held in abeyance.

WHEREFORE, in order to comply with Judge Newman's Order and to ensure that the record is complete, Appellant respectfully requests that this Court hold the timelines in abeyance for his appeal until the transcript from the May 1, 2017 hearing is received.

Respectfully submitted,



Taylor D. Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of December, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Clifton Newman, Circuit Court Judge

WILLIAM CRAIG CAUGHMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Motion to Hold Appeal in Abeyance in the above referenced case has been served upon opposing counsel, J. Benjamin Aplin, Esquire and William Craig Caughman, #355503 at Broad River Correctional Institution this 28th day of December, 2017.



Taylor D. Gilliam
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 28th day of December, 2017.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023

Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

State of South Carolina,)

v.)

William Craig Caughman,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment Number: 2010-GS-32-2294

(Appellate Case No. 2015-001867)

ORDER

This matter came before this Court pursuant to an Order to Reconstruct the Record which was issued by the South Carolina Court of Appeals on August 11, 2016. On September 16, 2016, a reconstruction hearing was convened at the Lexington County Courthouse. The Defendant was present at the hearing and was represented by Assistant Appellate Defender John P. Strom, Esquire, of the South Carolina Office of Indigent Defense. The State was represented by J. Benjamin Aplin, Senior Assistant Deputy Attorney General, and L. Suzanne Mayes, Assistant Solicitor for the Eleventh Judicial Circuit.

The Defendant is currently confined testify but presented the testimony of his trial attorney H. Wayne Floyd, Esquire. He also introduced, without objection, a copy of Mr. Floyd's hand written notes from the trial. Also testifying at the hearing was Assistant Solicitor L. Suzanne Mayes. In addition, this Court had before it: (1) a copy of the transcript of Defendant's May 20-23, 2013 trial, which included notations from the court reporter indicating which portions were inaudible or otherwise unable to be transcribed;¹ (2) a copy of the transcript of this

¹ The trial transcript is divided into two separate volumes due to a change in court.

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Court's May 21, 2015, hearing on Defendant's post-trial motions for a new trial and for reconsideration of the sentence; (3) Defendant's June 17, 2016, "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record" which was filed with the Court of Appeals; (4) the State's July 12, 2016, "Return to Motion to Remand for Reconstruction of the Record" which was filed with the Court of Appeals; and (5) the August 11, 2016, Order of the Court of Appeals granting Defendant's motion and remanding to this Court for reconstruction of the record.

On May 1, 2017, this Court convened a follow-up hearing at the Lexington County Courthouse to finalize the reconstruction proceedings and render a decision. The Defendant was again present and represented by Mr. Strom and the State was again represented by Mr. Aplin. Also present were Mr. Floyd and Ms. Mayes.

PROCEDURAL HISTORY

The Defendant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. He was indicted at the May, 2013 term of the grand jury for Lexington County for "hit and run accident resulting in death" under Section 56-5-1210 of the South Carolina Code. He was represented by H. Wayne Floyd, Esquire. On May 20-23, 2013, Defendant proceeded to a jury trial before this Court pursuant to which he was found guilty as indicted. He was sentenced to twenty (20) years' imprisonment.

reporters. The first volume covers the first day of trial, May 20, 2013, and is paginated 1-155, and the second volume is of the remainder of trial, May 21-23, 2013, and is paginated 1-329.

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A notice of appeal was filed and served on Defendant's behalf and on October 22, 2015, Defendant/Appellant timely requested a complete copy of the transcript of his trial. On June 17, 2016, Defendant submitted a "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record" with the Court of Appeals. On July 12, 2016, the State submitted a "Return to Motion to Remand for Reconstruction of the Record" with the Court of Appeals opposing remand for reconstruction. In an Order filed August 11, 2016, the Court of Appeals granted Defendant's motion and remanded this matter to this Court for reconstruction of the missing portions of the record.

In his motion to the Court of Appeals, Defendant identified four "missing" portions of the trial which were not transcribed because, as indicated by the court reporter, they were inaudible. These consisted of:

- (1) "An indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of [Defendant's] residence";
- (2) Closing arguments;
- (3) "Portions of the trial testimony of Dr. Elizabeth Moffatt; and
- (4) "Portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute."

At the reconstruction hearing, Defendant raised two additional concerns about missing portions of the record, specifically in regard to: (1) a discussion at trial about his requests to charge, which this Court ultimately declined to charge to the jury; and (2) a portion of the testimony of State's witness Amy Stephens. Without objection from the State, this Court left the

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record of the reconstruction hearing open to allow Defendant to obtain copies of the written requests to charge from Mr. Floyd's file and include them in the reconstructed record. Defendant subsequently submitted eight written requests to charge, numbered Defendant's #1, #2, #3, #4, #5, #7, #8, and #9, which are now before the Court. There was no Defendant's #6 in Mr. Floyd's file and consequently, Appellant did not submit Defendant's #6 to this Court. At the May 1, 2017, follow-up hearing; however, it was discovered that sometime before the initial September 16, 2016, reconstruction hearing, this Court had been sent an email from Mr. Floyd's office with an attached copy of his post-trial motions for a new trial and for reconsideration of his sentence. Those motions included a copy of Defendant's #6, a requested jury charge on giving "the benefit of any doubt" to the Defendant. As a result of this discovery, the parties agreed to add it to the reconstruction proceedings and all nine of Defendant's requests to charge are now part of the record before this Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has had the opportunity to review the record in its entirety and has heard the testimony at the reconstruction hearing. The Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law in response to the Court Of Appeals Order of August 11, 2016.

I.

RECONSTRUCTED RECORD

A reconstructed record on appeal is only sufficient if it allows for meaningful appellate review. State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 274-75 (Ct. App. 2007). A new

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trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review. Id.

A. Multi-Jurisdictional Task Force Agreement

The Defendant complained to the Court of Appeals that the transcript omits: "an indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of [Defendant's] residence." The Court finds that a review of pages 271-76 of the transcript reveals that immediately prior to the Court denying Defendant's motion to suppress, a "colloquy between the Court and Mr. Floyd that was not audible" was not transcribed. However, prior to this colloquy, Mr. Floyd noted: "We have previously argued that motion." As the trial judge, I agreed stating: "Yes, sir, the Court heard argument on the issue yesterday concerning this agency agreement" and "We spent a good bit of time on that issued yesterday, and whether the agency agreement was signed by County Council or the required officials and all of that, and who had to approve the agreement."

At the reconstruction hearing the parties agreed that pages 104-129 of the May 21-23, 2013, trial transcript reflect the preceding day's arguments regarding the search warrant and the Multi-Jurisdictional Task Force Agreement. Mr. Floyd testified that to the best of his recollection, the transcribed arguments articulate the particular grounds he raised at trial for seeking to suppress evidence gathered pursuant to the search warrant obtained as a result of the agreement. The Court finds that the trial transcript combined with the testimony offered at the reconstruction hearing sufficiently reconstructs the record of the missing portions of Defendant's argument, the State's response, and the Court's ruling, so as to provide an adequate record for

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meaningful appellate review.

B. Testimony of Dr. Elizabeth Moffatt

The Defendant asserts: "Additional missing sections of the trial transcript include portions of the trial testimony of Dr. Elizabeth Moffatt" as well as "arguments on objections by defense counsel related to Dr. Moffatt's testimony." The Court finds that a review of pages 196 to 210 of the May 21-23, 2013, of the trial transcript demonstrate that in each instance where Dr. Moffatt's testimony was inaudible, either the solicitor or the Court asked her to speak up and repeat her testimony, or the particular answer was not germane to any possible issue on appeal. The Court finds the inaudible portions of Dr. Moffatt's testimony would not impact Appellant's ability to seek meaningful appellate review. Nevertheless, the Court heard testimony on the missing portions of Dr. Moffatt's testimony at the reconstruction hearing and now finds that to the extent it was lacking, it has been adequately reconstructed so as to provide an adequate record for meaningful appellate review.

As to the objections raised to Dr. Moffatt's testimony, particular attention was focused on two objections the Defendant made at trial, one that the State had not sufficiently disclosed documents pursuant to Rule 5, SCRCrimP, and that Dr. Moffatt's testimony was hearsay. The Court finds the existing record on pages 196 to 203 of the May 21-23, 2013, of the trial transcript combined with the testimony at the reconstruction hearing adequately reflect Dr. Moffatt's testimony, Defendant's objections to that testimony, the State's responses to those objections, and the rulings of this Court. The testimony of Dr. Moffatt and the Defendant's objections to that testimony were sufficiently reconstructed to allow for meaningful appellate review.

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C. Statutory Interpretation of § 56-5-1210

The Defendant states that "portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute were inaudible." However, this Court finds that a review of pages 281 to 283 of the May 21-23, 2013, of the trial transcript reveals that the only portion inaudible is Mr. Floyd's explanation for his assertion that: "number two we think is not the wording of the statute." Immediately after the inaudible portion, the solicitor specifically identified the challenged wording in her response by stating: "I do not believe the interpretation of the word immediately. It is the State's position that it means the driver shall immediately stop, speaking of the duty of the driver to stop, rather than the immediate death of the victim. Beyond that, we believe the wording of the statute is clear. Mr. Floyd would give the wrong application of the wording." The Court finds the statute itself, coupled with the solicitor's response and the testimony offered at the reconstruction hearing provide sufficient clarity of Defendant's argument at trial to allow for meaningful appellate review.

D. Closing Arguments

The Defendant notes that: "none of the prosecution's or defense's closing arguments were transcribed." This Court finds that although the closing arguments were not transcribed, the court reporter notes at page 292 of the transcript that: "There were no objections made during these statements." Thus, the Court concludes where no objections were made to the closing arguments, there are no issues preserved for appellate review.

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At the reconstruction hearing, Defendant's counsel suggested that without a transcript of the closing arguments there is no way to confirm that the court reporter's notation was correct. The Court finds however, that there is no evidence to suggest it is not.

Also at the reconstruction hearing and at the follow-up hearing, Defendant's counsel argued that a transcript of the closing arguments is necessary for adequate appellate review because it could impact an analysis of a claim of harmless error. The Court disagrees and finds the record that exists along with the portions reconstructed provide a sufficient record for appellate review, including a review of claims of harmless error if raised on appeal. As to the substance of the State's close, the Court finds the testimony of Solicitor sufficiently reconstructed closing argument to allow for meaningful appellate review.

E. Defendant's Requests to Charge

Following the reconstruction hearing, the Defendant submitted eight written requests to charge, numbered Defendant's #1, #2, #3, #4, #5, #7, #8, and #9. Defendant's #6 was subsequently discovered and, with the consent of the parties, accepted into the record at the May 1, 2017 follow-up hearing; thus, all nine written requests to charge are now before the Court. The Court finds these written requests to charge sufficiently and adequately reconstruct the substance of the Defendant's requests to charge as they were presented to and rejected by the Court and therefore, provide for meaningful appellate review of any issues regarding the jury charge.

F. Testimony of Amy Stephens

At the reconstruction hearing, the Defendant directed Mr. Floyd's attention to page 218 of the May 21-23, 2013, trial transcript and questioned him about the missing direct examination

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testimony of witness Amy Stephens. (Reconstruction Tr.p.26). The Court notes the transcript includes the following notation:

TRANSCRIPTION NOTE: Audio portion not on disc which next has Witness Amy Stephens on the stand. Direct Examination of witness by Solicitor not present. Audio beginning with Cross Examination of witness by Mr. Floyd.

(May 21-23, 2013 Tr.p.218, lines 21-24). It then includes approximately 19 lines of cross-examination by Mr. Floyd indicating Ms. Stephens was employed as a forensic technician at SLED during which she explained her role in receiving items that were submitted to SLED for forensic testing. (May 21-23, 2013 Tr.p.218-p.219).

During the reconstruction hearing, Mr. Floyd first testified he had no independent recollection as to the substance of Stephens' testimony or whether he objected to any of her testimony. He opined that based on her appearance immediately before State's witness Michael Moskal, it was possible she was a chain-of-evidence witness because Moskal testified about paint chips recovered from the victim's motorcycle, which were a "pretty significant" issue in the case. Mr. Floyd testified he made an objection to the chain of evidence, and assumes he repeated the objection with Stephens, but could not specifically remember doing so, or what that particular objection might have been. (Reconstruction Tr.p.26-p.30). On cross-examination, Mr. Floyd explained the significance of the paint chips to the case, but noted they were not introduced into evidence and was unable to articulate what "chain-of-evidence" objection he would have made in regard to Stephens testimony. (Reconstruction Tr.p.30-p.33). The Court sought further explanation from Mr. Strom in regard to the significance of Stephens' testimony and the need for reconstruction for possible appellate issues and noted the brevity of Mr. Floyd's

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cross-examination as indicative of the non-substantive nature of her missing testimony on direct. (Reconstruction Tr.p.33-p.38).

Ms. Mayes was called to the stand to assist with reconstruction. She testified that Ms. Stephens is the evidence log-in technician at SLED, which means she works in the evidence lobby area where she receives any evidence being delivered from other law enforcement agencies, logs that evidence in, and assigns it a SLED lab number for tracking. Ms. Mayes explained that Stephens does not test evidence or have any involvement in any case besides logging the evidence in and having it sent to the appropriate analyst. Ms. Mayes testified her recollection was that Stephens trial testimony was limited to chain of custody and would merely have consisted of a description of her logging the evidence delivered by the relevant law enforcement agency, and her releasing that evidence to a SLED analyst for testing. Ms. Mayes testified that in the Defendant's case, Stephens would have testified the evidence in question went to Michael Moskal for testing. She explained Moskal is the trace analyst who conducted all of the testing of paint samples in this case and that the State would have had to make a showing the chain of custody of that evidence was complete prior to Agent Moskal giving his opinion as to the results of the trace analysis. Ms. Mayes then reviewed the cross-examination of Ms. Stephens that is transcribed and testified, it does not appear that any of Mr. Floyd's cross was missing. (Reconstruction Tr.p.59-p.62). Under cross-examination from Mr. Strom, Ms. Mayes gave additional details of the specific evidence collected and tested in the case, which helped clarify Ms. Stephens limited role in this case. (Reconstruction Tr.p.62-p.64).

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At the follow-up hearing, the parties presented additional arguments concerning Ms. Stephens' testimony, Mr. Floyd's purported objection to the chain-of-evidence, and the import of the testimony in regard to possible appellate issues.

This Court concludes the testimony of Solicitor Mayes at the reconstruction hearing sufficiently reconstructed the substance of Stephens' direct testimony to allow for meaningful appellate review. In regard to the Defendant's alleged objection to testimony about the paint chips on chain-of-custody grounds, the Court finds that any such objection, if made, would have been made in other portions of the record which have been transcribed. Further, any attack on the integrity of Stephens' role in the chain of custody would have been made during cross-examination.

Based on the testimony at the reconstruction hearing, the Court finds the transcription of Ms. Stephens' cross-examination testimony from trial is complete. Based on the cursory nature of the cross-examination, the Court concludes Defendant has failed to demonstrate any prejudice flowing from the lack of a transcript of Ms. Stephens' direct examination testimony. This portion of the record has been sufficiently reconstructed to allow for meaningful appellate review.

CONCLUSION

The Court convened the reconstruction hearing on September 16, 2016, in Lexington County and devoted significant time in reviewing the existing trial transcript as well as hearing testimony and the presentation of other evidence. The Court concludes that the matters presented at the reconstruction hearing regarding the issues alleged in Defendant's motion to remand for reconstruction are addressed in this Order. Based on the foregoing, the Court concludes that, a

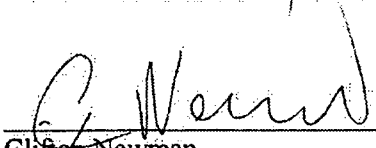
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diligent and good faith effort has been made to reconstruct the missing portions of the record. The missing portions of the record have been sufficiently reconstructed. This Court finds the record is now sufficiently reconstructed to allow the appellate court to conduct a meaningful review.

IT IS THEREFORE ORDERED:

1. The transcripts of both the September 16, 2016, reconstruction hearing and the May 1, 2017, follow-up hearing be obtained by Defendant for submission to the Court of Appeals;
2. The transcripts combined with other evidence submitted at the reconstruction hearing and Defendant's written request for jury charges, sufficiently reconstruct the record so as to provide a full and complete record which satisfies the interests of due process and fundamental fairness so as to allow for a meaningful appellate review; and
3. The Defendant is remanded to the custody of the Department of Corrections pending resolution of his direct appeal.

AND IT IS SO ORDERED this 26th day of May, 2017


 Clifton Newman
 Trial & Reconstruction Hearing Judge
 Eleventh Judicial Circuit

Columbia, South Carolina

Exhibit B



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401

Columbia, South Carolina 29201-3332

Post Office Box 11589

Columbia, South Carolina 29211-1589

Telephone: (803) 734-1330

Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 06, 2017

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DEC 06 2017
SC Court of Appeals

Ms. Stacy L. Sheppard
Circuit Court Reporter
P. O. Box 345
Lexington, SC 29071

Dear Ms. Sheppard:

Please provide us with the following transcript:

The State v. William Craig Caughman

Appellate Case No. 2015-001867

County: Lexington

Presiding Judge: Clifton Newman

Case #: 10-GS-32-2294

Date of Trial: May 1, 2017

Pursuant to the SC Court Reporter's Manual, please number the lines on the paper from 1-25 and include any and all recorded motions (pretrial and post-trial). Consecutive numbering of pages must be used throughout all volumes regardless of the number of volumes involved. Additionally, please transcribe the jury selection and the State and defense counsel's opening and closing arguments and include the jury strike sheet. Please be sure to include headers and a complete index including a listing of exhibits.

If you are aware of any co-defendants, additional transcripts, or if the Attorney General's Office has already requested a transcript, please let us know.

SCCID prefers that all transcripts are sent via certified mail. If you would prefer the convenience of sending transcripts electronically, please use SCCID's file transfer servers found by navigating to <https://scfiledrop.sc.gov>. For further assistance or questions with this service, please contact Ryan Cole at rcole@sccid.sc.gov or by phone at 803-734-1239.

To ensure prompt payment, please sign and complete the enclosed form and include the original criminal case number (indictment number) where the space is provided.

Sincerely,

Chris Swenski
Administrative Assistant

cc: S.C. Court of Appeals
Attorney General's Office

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM LEXINGTON COUNTY
Clifton Newman, Circuit Court Judge

Appellate Case No. 2015-001867

THE STATE,

Respondent,

v.

WILLIAM CRAIG CAUGHMAN,

Appellant.

**RETURN TO MOTION TO REMAND FOR
RECONSTRUCTION OF THE RECORD**

Respondent (the State), through undersigned counsel and making return to Appellant's "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record," would respectfully show unto this Court:

1. Appellant was convicted in Lexington County of hit and run resulting in death after a jury trial held before the Honorable Clifton Newman on May 20-23, 2013. Appellant was sentenced to twenty (20) years' imprisonment. (Appellant's Exhibit A).
2. Appellant timely filed and served notice of appeal and is currently represented by Assistant Appellate Defender John H. Strom of the South Carolina Office of Appellate Defense.
3. On June 17, 2016, Appellant filed a "Motion to Remand for Reconstruction of the Record" which is the subject of this return. Attached to the motion, Appellant submitted five Exhibits, labeled A, B, C, D, & E, which consist of the indictment and sentencing sheet

(Appellant's Exhibit A), and several multi-page portions of the trial transcript which was prepared by certified court reporter Harriet P. Bennett (Appellant's Exhibits B to E).

4. In his motion, Appellant identifies four "missing" portions of the trial transcript which were not transcribed because, as indicated by the court reporter, they were inaudible. He argues these un-transcribed portions of the trial are critical, and that a full and complete transcript is necessary in the interests of due process and fundamental fairness so as to allow for meaningful appellate review. The State disagrees and will address each of the four un-transcribed portions of the proceedings below.

5. First, Appellant complains that the transcript omits "an indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of Appellant's residence." He contends he plans to raise this issue on appeal.

A review of pages 271 to 276 of the transcript does reveal that immediately prior to the trial court denying Appellant's motion to suppress, a "[c]olloquy between the Court and Mr. Floyd that was not audible" was not transcribed. However, prior to this colloquy, Mr. Floyd noted: "We have previously argued that motion." The trial judge agreed stating: "Yes, sir, the Court heard argument on the issue yesterday concerning this agency agreement" and "We spent a good bit of time on that issue yesterday, and whether the agency agreement was signed by County Council or the required officials and all of that, and who had to approve the agreement." (Appellant's Exhibit B, Tr.p.273-p.274). Thus, even if the colloquy was a continuation of Appellant's previously presented argument, the State submits the apparently lengthy argument from the preceding day coupled with the brief re-statement of that argument before the inaudible colloquy occurred; provide more than a sufficient record for appellate review.

6. Second, Appellant notes that "none of the prosecution's or defense's closing arguments

were transcribed” and that as a result, “meaningful appellate review of the prejudicial impact of any errors is, in effect, impossible.” Yet, in noting closing arguments were not transcribed, the court reporter also notes “[t]here were no objections made during these statements.” (Appellant’s Exhibit C, Tr.p.292). Where no objections were made by Appellant to the solicitor’s closing argument, there can be no issue preserved for appellate review.

7. Third, Appellant asserts: “Additional missing sections of the trial transcript include portions of the trial testimony of Dr. Elizabeth Moffatt.” However, a review of pages 196 to 210 of the transcript demonstrate that each instance where Dr. Moffatt’s testimony was inaudible, either the solicitor or the trial judge asked her to speak up and repeat her testimony (Appellant’s Exhibit D, Tr.p.208-p.209), or the particular answer was not germane to any possible issue on appeal (Appellant’s Exhibit D, Tr.p.210) (explaining the location of a person’s adrenal glands). Thus, the inaudible portions of Dr. Moffatt’s testimony would not impact Appellant’s ability to seek meaningful appellate review.

8. Fourth, Appellant states that “portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute were inaudible.” However, a review of pages 281 to 283 of the transcript reveals the only portion inaudible is Mr. Floyd’s explanation for his assertion that: “number two we think is not the wording of the statute.” Immediately after the inaudible portion, the solicitor specifically identified the challenged wording in her response, by stating: “I do not believe the interpretation of the word immediately. It is the State’s position that it means the driver shall immediately stop, speaking of the duty of the driver to stop, rather than immediate death of the victim. Beyond that, we believe the wording in the statute is clear. Mr. Floyd would give a wrong application of the wording.” The State submits the statute itself, coupled with the solicitor’s response, provide more than sufficient clarity to understand Appellant’s argument at trial and whether he wishes to pursue

that argument to enable this Court to conduct a meaningful appellate review.

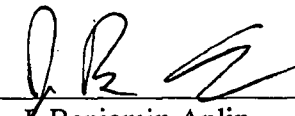
WHEREFORE, having made Return, and for all of the reasons stated above, the State opposes Appellant's motion to remand for reconstruction of the record. The transcript provided by the court reporter in this matter is sufficient to allow for meaningful appellate review, and thereby fully protects Appellant's rights to due process and fundamental fairness. The State has no objection to Appellant's motion to hold the appeal in abeyance pending resolution of his motion to remand.

Respectfully submitted,

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit

BY: 

Benjamin Aplin
S.C. Bar No: 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

July 12, 2016

STATE OF SOUTH CAROLINA
In the Court Of Appeals

APPEAL FROM LEXINGTON COUNTY
Clifton Newman, Circuit Court Judge

Appellate Case No. 2015-001867

THE STATE,

Respondent,

v.

WILLIAM CRAIG CAUGHMAN,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the Return to Motion to Remand for Reconstruction of the Record on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to John H. Strom, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 12th day of July, 2016.


ANGELA BENNETT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

The South Carolina Court of Appeals

The State, Respondent,

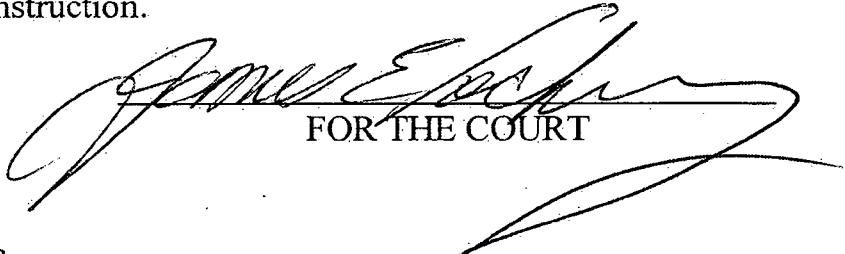
v.

William Craig Caughman, Appellant.

Appellate Case No. 2015-001867.

ORDER

Appellant has filed a motion to hold this appeal in abeyance and remand to the circuit court for reconstruction of the record. The motion is granted and this case is remanded to the Lexington County Court of General Sessions. Counsel for Appellant is ordered to contact counsel for Respondent and the circuit court judge, the Honorable Clifton Newman, within ten days of this order to schedule such hearings as the circuit court judge deems appropriate. Counsel for Appellant shall provide an update to the clerk of this court no later than fifteen days from the date of this order, and shall immediately notify this court when the circuit court issues an order relating the reconstruction.


FOR THE COURT

Columbia, South Carolina

cc:

The Honorable Clifton Newman
The Honorable Beth Carrigg
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
John Harrison Strom, Esquire

FILED

August 11, 2016

RECEIVED

AUG 11 2016

1 State of South Carolina
2 County of Lexington Court of General Sessions
3
4 State of South Carolina,) Transcript of Record
5 vs.) 2010-GS-32-2294
6 William Craig Caughman,)
7 Defendant/Appellant.)

8
9 September 16, 2016
10 Lexington, South Carolina

11 B E F O R E:

12 The Honorable Clifton Newman, Judge
13

14 A P P E A R A N C E S:

15 John Benjamin Aplin, Esquire
16 On behalf of the Office of the Attorney General

17 John Harrison Strom, Esquire
18 On behalf of the Defendant/Appellant
19

20 Stacy S. Johnson, RPR
21 Circuit Court Reporter
22
23
24
25

I N D E X

PAGE

Wayne Floyd

Direct Examination by Mr. Strom	10
Cross-Examination by Mr. Aplin	17
Continued Direct Examination by Mr. Strom	18
Continued Cross-Examination by Mr. Aplin	22
Continued Direct Examination by Mr. Strom	26
Continued Cross-Examination by Mr. Aplin	30
Continued Direct Examination by Mr. Strom	38
Continued Cross-Examination by Mr. Aplin	40
Continued Direct Examination by Mr. Strom	41
Further Direct Examination by Mr. Strom	47

Suzanne Mayes

Direct Examination by Aplin	53
Cross-Examination by Mr. Strom	58
Continued Direct Examination by Mr. Aplin	59
Continued Cross-Examination by Mr. Strom	62
Continued Direct Examination by Mr. Aplin	64
Further Direct Examination by Mr. Aplin	66

Certificate of Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Defendant's 1	Trial/Hearing Transcripts	4	4
Defendant's 2	Defense Attorney's Notes	4	4

1 (Defendant's Exhibit Number 1, Trial/Hearing
2 Transcripts, and Defendant's Exhibit Number 2, Defense
3 Attorney's Trial Notes, were marked and admitted into
4 evidence.)

5 **BAILIFF:** All rise. Court's now in session. The
6 Honorable Judge Clifton Newman presiding. Please take your
7 seats.

8 **THE COURT:** Good morning. I've got -- there's a
9 letter that was forwarded to me by, I guess, the Attorney
10 General's Office enclosing an order sending this case back
11 -- or having me to say that I am to -- the Appellant is
12 ordered to contact counsel for Respondent and the circuit
13 court judge hearing as to the -- within ten days of this
14 order to schedule such hearing as the circuit court judge
15 deems appropriate, and that was filed August the 11th, and
16 something was sent stamped August 17th to me and subsequent
17 to that another e-mail -- or another letter was sent saying
18 that I had not made contact with counsel so, therefore, it
19 needed to be -- wasn't ready to be heard.

20 I received that. It was sent to Kingstree while I was
21 presiding in Columbia, it was forwarded to me, and I then
22 scheduled this hearing and then counsel e-mailed saying
23 they weren't ready to hold the hearing and I denied -- and
24 wanted it continued and I denied that request and we're
25 here this morning. And I don't know the parties who sent

1 the letters and I don't know who's who and what's what.

2 Yes, sir.

3 **MR. STROM:** Your Honor, John Strom, appearing on
4 behalf of John Caughman with appellate defense. I
5 apologize for the confusion on -- on mailing the letters
6 to the wrong location where you weren't presiding.

7 **THE COURT:** Well, people usually use e-mail these
8 days or at least have an e-mail address where if it's sent
9 to one location and if it's forwarded to me I can e-mail
10 the person who sent it.

11 **MR. STROM:** Yes, sir.

12 **THE COURT:** I notice none of that's on your
13 letterhead, I don't think, no e-mail addresses.

14 **MR. STROM:** No, sir.

15 **THE COURT:** All right. Nevertheless, we're here.

16 **MR. STROM:** Yes, Your Honor. Just to provide a
17 brief background, this trial was held back in May of 2013.
18 It was determined that portions of the transcript were
19 either listed as inaudible or that the tapes somehow
20 malfunctioned, so several sections of -- of unknown length
21 are -- are missing.

22 We have Mr. Floyd here who was Mr. Caughman's defense
23 attorney, as well as Suzanne Mayes from the solicitor's
24 office, we've got their notes -- or Mr. Floyd's notes and
25 we'd just like to put up some testimony about what they

1 remember regarding those missing portions.

2 **THE COURT:** Did you say what your name -- did you
3 state your name for the record?

4 **MR. STROM:** Yes, sir. John Strom.

5 **THE COURT:** John Strom.

6 All right. Yes, sir.

7 **MR. APLIN:** Judge Newman, I'm Ben Aplin --

8 **THE COURT:** Ben Aplin.

9 **MR. APLIN:** -- with the Attorney General's Office --

10 **THE COURT:** All right.

11 **MR. APLIN:** -- and Ms. Mayes, Suzanne Mayes with the
12 solicitor's office, is sitting here with me.

13 If I could approach Your Honor and just hand you a
14 couple of documents. I showed these to Mr. Strom. Really
15 I think these are things that are a part of the appellate
16 record, but they may be helpful for your purposes in
17 following along with what we're doing today.

18 **THE COURT:** Okay.

19 **MR. APLIN:** And I'll state for the record what the
20 items are in this packet I'm handing you. There's not a --
21 not lot of things there, but the first thing is actually
22 Mr. Strom's motion to hold the appeal in abeyance and to
23 remand for the reconstruction hearing that was filed with
24 the Court of Appeals.

25 **THE COURT:** Okay.

1 **MR. APLIN:** And I have some tabs in there which all
2 that does is direct your attention to the specific pages of
3 the transcript where it says a portion is inaudible. Just
4 to make it easier for you to find.

5 **THE COURT:** All right.

6 **MR. APLIN:** And you have, I think, a copy of the
7 entire transcript that Mr. Strom gave you --

8 **THE COURT:** I think that was brought in here today.

9 **MR. APLIN:** -- today.

10 **THE COURT:** Yes, sir.

11 **MR. APLIN:** And so those portions that are marked are
12 obviously from the larger trial transcript itself.

13 **THE COURT:** All right.

14 **MR. APLIN:** You also have a copy of the return that
15 the State did to the motion to reconstruct the record. I
16 included a copy of Section 56-5-1210 of the code, which is
17 one of the issues that I think allegedly wasn't transcribed
18 with arguments.

19 **THE COURT:** 56-5 --

20 **MR. APLIN:** I'm sorry. 56-5-1210 --

21 **THE COURT:** 1210. All right.

22 **MR. APLIN:** -- which is the duties of drivers involved
23 in an accident resulting in death or personal injury. And
24 then lastly in that packet is a copy of State versus
25 Ladson, which is a Court of Appeal's opinion from, I think,

1 2007 that sort of lays out where our appellate courts found
2 reconstruction hearings should go.

3 **THE COURT:** What does it generally say?

4 **MR. APLIN:** It basically says that there needs to be
5 an adequate record -- there needs to be a record that's
6 sufficient to allow adequate appellate review and that the
7 appellate court has the ability to send it back to the
8 trial court to attempt to reconstruct the record to make it
9 sufficient to do that. In the Ladson case, the Court of
10 Appeals found that it was not sufficiently reinstructed, so
11 it's -- it's fairly instructive because it gives an idea of
12 an example of when that couldn't be done.

13 **THE COURT:** Well, one thing I -- well, my eyes
14 immediately go to the portion that says we recognize that
15 the excellent trial judge did the best he could to
16 reconstruct the records under difficult circumstances.

17 **MR. APLIN:** Right. And they made a point to point
18 that out several times in that opinion.

19 **THE COURT:** Okay.

20 **MR. APLIN:** On Page -- if you flip to the third page
21 of that opinion you have there, that's where they -- over
22 in, I think, headnote two and just above there is where
23 they talk a little bit about what the standard is for
24 reconstructing the record.

25 **THE COURT:** Okay.

1 **MR. APLIN:** But I thought that might be useful for
2 you to have. Those are the four items. And I -- I
3 apologize as well for the request for the continuance. My
4 primary reason for doing that was I had not actually until
5 this morning seen the entire transcript yet. All I've seen
6 are the little -- the portions that are attached to that
7 motion and I felt like we'd better have it all to be
8 prepared, but we've got it all now and I do think we can --
9 given the limited nature of what's missing, we should be
10 able to go forward today.

11 **THE COURT:** Okay.

12 **MR. APLIN:** Thank you, Your Honor.

13 **THE COURT:** What do you say, Mr. Strom?

14 **MR. STROM:** If Your Honor's ready, I call Wayne Floyd.

15 **THE COURT:** Okay.

16 **THE CLERK:** I'm looking for the Bible. Where's my
17 Bible? I didn't realize it had disappeared.

18 **THE COURT:** You can swear him without a Bible, can't
19 you?

20 **THE CLERK:** Yes, sir. Raise your hand.

21 (Whereupon, Wayne Floyd was duly sworn by the Clerk of
22 Court.)

23 **THE CLERK:** State your name on the record, please.

24 **THE WITNESS:** Wayne Floyd.

25 **THE COURT:** Once they find the Bible, we'll re-swear

1 him. Oh, there it is. Since we're reconstructing the
2 record, we better be sure.

3 (Whereupon, Wayne Floyd was re-sworn by the Clerk of
4 Court.)

5 WAYNE FLOYD,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. STROM:

9 Q. Good morning, Mr. Floyd.

10 A. Good morning.

11 Q. Do you recall representing Mr. Caughman?

12 A. Yes.

13 Q. How -- how did you come about -- how did you come
14 about to represent him?

15 A. He was originally represented by Richard Briebart
16 and after Mr. Briebart got suspended, I stepped in to help
17 him.

18 Q. Do you recall exactly when that was?

19 A. I -- I don't recall the exact date. The case had
20 some age on it by that time, but Suzanne gave me enough
21 time to get ready before she called it for trial.

22 Q. Okay. And have you had a chance to review the
23 transcript from the trial that we provided you?

24 A. Some.

25 Q. Okay. Do you recall Dr. Moffatt's testimony during

1 trial?

2 A. Yes.

3 Q. And was Dr. Moffatt his treating physician -- the
4 victim's treating physician?

5 A. No, she was the person who did the autopsy.

6 Q. Okay. Do you recall any objections you may have made
7 to her testimony?

8 A. Yes. There was several, if I recall correctly. I
9 objected that -- she based her opinion on some records that
10 had not been provided to us, which we felt were required
11 to be produced if she was gonna base her opinion on them
12 pursuant to Rule 5. I also objected to her testifying to
13 hearsay. She was not a treating physician, she just did
14 the autopsy, and she testified as to findings and so forth
15 from the treating physicians, which we didn't have an
16 opportunity to cross-examine.

17 Q. Well, a portion of that -- of your argument on that
18 objection is inaudible. Do you think perhaps looking
19 through it you could see just how much of it is missing?

20 A. Yeah, it might -- it might help me.

21 **MR. STROM:** Your Honor, may I approach?

22 **THE COURT:** Yes, sir.

23 BY MR. STROM:

24 Q. So on Page 196 --

25 **MR. STROM:** And, Your Honor, this is Defense

1 Exhibit 1. It's the trial transcript.

2 **THE COURT:** All right.

3 **MR. STROM:** I don't think there's any objections to
4 it being in.

5 **MR. APLIN:** No, Your Honor.

6 BY MR. STROM:

7 Q. Beginning really on Line 10 of Page 196, you have the
8 beginning of your objection, Mr. Floyd.

9 A. Right.

10 Q. And then on Line 23 it says portion inaudible. If you
11 could review beginning at Line 10 to try to get a -- some
12 idea of how much of your argument is missing.

13 A. Wow, it's hard to say. I don't know that I could tell
14 you with any exactitude. I know that it was an important
15 part of the trial and her testimony was really germane to
16 the issue of causation and so I would assume I probably
17 said a lot more than just a couple of lines, like it just
18 says portion inaudible, but I couldn't tell you with any
19 certainty.

20 Q. All right. Would looking at your notes from the trial
21 perhaps help your memory?

22 A. I could try.

23 **MR. STROM:** Your Honor, may I approach?

24 **THE COURT:** All right.

25 **MR. STROM:** This is Defense Exhibit 2. It's

1 Mr. Floyd's notes from the trial. I believe it's also
2 without objection.

3 **MR. APLIN:** That's correct.

4 **THE WITNESS:** Which -- which witness?

5 **MR. STROM:** She is wit -- she's W-17.

6 **THE WITNESS:** 17.

7 **THE COURT:** And what's he looking at now?

8 **MR. STROM:** Your Honor, he's looking at his trial
9 notes.

10 **THE COURT:** His trial notes. And what -- what's
11 that?

12 **MR. STROM:** The notes that Mr. Floyd took
13 contemporaneous to -- as the trial was ongoing. So it's
14 his --

15 **THE COURT:** Is that --

16 BY MR. STROM:

17 Q. I'm sorry. Is it an accurate reflection of your
18 notes, Mr. Floyd?

19 A. Yes; although I wouldn't say my notes are always
20 complete --

21 Q. Okay.

22 A. -- of everything that was going on, but, yeah, this
23 is -- this accurately represents what I wrote down. It
24 appears I made a motion in limine based on hearsay and
25 a Rule 5 violation. I don't really see that in here though

1 unless that was before this.

2 Q. Okay. Moving on to Page 210 of the trial
3 transcript --

4 **THE COURT:** You're moving to a different point now?

5 **MR. STROM:** Yes, Your Honor.

6 **THE COURT:** Well, just --

7 **MR. APLIN:** And just for point of suggestion, maybe
8 we would want to address each section like -- and do the
9 direct and cross with back and forth. Would that make more
10 sense? I'm just throwing that out there as a possibility.

11 **MR. STROM:** That's absolutely fine, Your Honor.

12 **THE COURT:** All right.

13 **MR. STROM:** I think it does make a lot of sense.

14 **THE COURT:** Well --

15 **THE WITNESS:** If I could continue to -- it appears
16 from the next page of my notes that -- that there was some
17 extensive notes I made on the testimony of Dr. Moffatt
18 concerning the treatment that she did testify to.

19 BY MR. STROM:

20 Q. So to the best of your recollection, she did no
21 treatment with regard to the decedent?

22 A. That's correct. She --

23 **THE COURT:** Well, it's stated in the question. He
24 made a hearsay objection, the State responded to the
25 hearsay objection, so are you now trying to reconstruct

1 something beyond the objection or the basis for the
2 objection, the theory behind the objection? He made an
3 objection --

4 **MR. STROM:** Uh-huh.

5 **THE COURT:** -- and -- and the solicitor responded and
6 the Court ruled. So what else could there possibly be on
7 -- from this Line 23 that would make any difference one
8 way or the other based on the fact that it's a hearsay
9 objection?

10 **MR. STROM:** Your Honor, I'm just attempting to sort
11 of flesh out the full portion of -- of whatever is missing.

12 **THE COURT:** Well, I can understand if you're trying
13 to flesh out some evidence that -- that's not recorded in
14 the record. I mean, this is not, you know, any discussion
15 about evidence, this is discussion about an objection. He
16 -- he's made an objection because the person who testified
17 -- who's testifying, Dr. Moffatt, wasn't a treating
18 physician, was the person who, I guess, did the autopsy;
19 is that right?

20 **MR. STROM:** Yes, Your Honor.

21 **THE COURT:** Well, and he's saying well, that's a
22 hearsay objection because she didn't -- she didn't treat
23 him. She's basically talking about what's in the record.
24 This is not an inaudible as to her response, this is --
25 so it's not inaudible as to any evidence, it's inaudible

1 as to if he said anything else in making an objection,
2 what else did he say, and does it matter whatever else
3 he -- it doesn't matter what else he said if he said
4 anything else because he objected based on hearsay, the
5 State responded and the Court ruled. So I'm not sure what
6 else going back to his trial notes, his theory as to the
7 defense and all those things, I don't see how that as
8 relates to this particular question matters one way or
9 the other.

10 **MR. STROM:** Yes, Your Honor. I'll -- I'll move on
11 and touch on these remaining points.

12 **THE COURT:** As to this particular objection.

13 **MR. STROM:** As to the other inaudible portions, I --
14 I under -- I appreciate Your Honor --

15 **THE COURT:** All right. I thought we were gonna --
16 I thought we were gonna do them one at a time and the
17 State --

18 **MR. STROM:** Oh, I'm sorry.

19 **THE COURT:** -- and the State hasn't had their
20 opportunity.

21 **MR. STROM:** That's correct, Your Honor.

22 **THE COURT:** All right.

23 **MR. APLIN:** Thank you, Your Honor. I'll just try to
24 be brief because I think I was gonna hit along some of the
25 same points you just made.

CROSS-EXAMINATION

BY MR. APLIN:

Q. Mr. Floyd, your two objections to Ms. Moffatt's testimony seem to be a Rule 5 objection and then a hearsay objection, correct?

A. That's correct. And whether I had anything else, I don't know of it. Those -- those two are right here, yes.

Q. And you're looking at Page 196 of the transcript, right?

A. That's correct.

Q. Now if you turn over to Page 201 of the transcript and do you see the middle of the page, Line 13, where the solicitor is making an argument on the record? Can you just read that portion of her argument, please.

A. Yes, sir, Your Honor. The State's position, Your Honor, in this regard is consistent with her -- her testimony is consistent in regard to her autopsy report, her medical findings as supported by Rule 703 which allows for an expert to make reference to any information that she had reasonably relied upon as other input and in reaching an informed opinion.

Q. Okay. And then if you'd just entertain me and turn two more pages over to 203 at the very top of the page. And this is continuing over from the bottom of 202, I guess, where the Court is making a statement. Do you see

1 where the judge says an expert can rely on hearsay in
2 forming an expert opinion?

3 A. Right.

4 Q. So it appears that the judge ruled on your objection?

5 A. Certainly ruled on -- yeah, that's the hearsay part,
6 uh-huh.

7 **MR. APLIN:** Okay. That's all I have. Thank you.

8 **MR. STROM:** Your Honor, we'll move on to Page 208 and
9 209.

10 **THE COURT:** All right.

11 CONTINUED DIRECT EXAMINATION

12 BY MR. STROM:

13 Q. Mr. Floyd, this portion of Dr. -- the doctor's
14 testimony in front of the jury beginning at the top of
15 Page 208, it would appear that she's moving towards her
16 ultimate diagnosis as the cause of death. On Line 14, if
17 you'll read that question and then read your answer -- or
18 excuse me, read her answer and -- and what do you recall
19 if there's anything additional there?

20 A. Okay. Line 14, is that --

21 Q. Yeah, you can just -- just read it and if you'll --
22 her answer is in this area here he had rib fractures,
23 portion inaudible, bilaterally. Do you have any specific
24 recollection as to what that missing portion is?

25 A. Well, no, I -- I don't. I don't have any independent

1 recollection as to what the missing part of that testimony
2 is.

3 Q. Okay. And if you can turn to Page 209, Line 6, she's
4 asked the question about rib facts -- the rib fractures
5 and the surgery the decedent underwent on his left wrist,
6 what other injuries did she observe. Do you have any
7 independent recollection of her response?

8 A. No, I don't have any independent recollection of how
9 she responded to that question.

10 Q. Would looking at your notes about her direct testimony
11 refresh your memory at all?

12 A. I don't know whether there's -- it's somewhere else
13 in here or not. Is there some other place where we cover
14 the blood clots?

15 Q. It covers -- the blood clots are also on your --
16 part of your redirect examination -- or, excuse me,
17 cross-examination --

18 A. Okay.

19 Q. -- beginning on Page -- excuse me. Beginning on
20 Page 213.

21 A. Okay. Okay. I just don't know what would -- what's
22 missing from this --

23 Q. Okay.

24 A. -- portion on Page 214. I have no memory of that.

25 Q. Turning to Page 210, beginning at Line 6 -- excuse me,

1 really beginning at -- at 209, Line 22, Solicitor Mayes
2 asked the question of whether or not the decedent's
3 injuries are consistent with blunt force trauma as
4 sustained in a motor vehicle accident. The doctor responds
5 it would be consistent. There's an issue with His Honor
6 hearing the response and then she repeats her answer and
7 then on Line 6 she begins this is the area of the
8 contusion. The remainder of her response is inaudible. Do
9 you have any specific recollection of her response?

10 A. No, I have no independent recollection of how she
11 responded.

12 Q. Do you recall if any exhibits were used or any --
13 well, I retract that question, Your Honor.

14 Moving on to Line 12, she's asked where the adrenal
15 glands are located. That portion of the testimony is also
16 inaudible. Any recollection as to what her answer was and
17 how long it may have been?

18 A. No, I have no independent recollection of that either.

19 **THE COURT:** Well, she wouldn't have said where this
20 gland is located? You couldn't remember whether she said
21 -- the question is where are the adrenal glands located.
22 You can't recall whether she -- you know, if she -- is it
23 in the head, the foot, the neck, the -- I mean --

24 **THE WITNESS:** I have no memory --

25 **THE COURT:** -- you can't --

1 **THE WITNESS:** I have no memory of what she said.

2 **THE COURT:** Pardon?

3 **THE WITNESS:** I have no memory of what she said in
4 that --

5 **THE COURT:** You have no memory, no -- you have no clue
6 what would have gone there, what would be the substance of
7 that answer? I mean, did you cross-examine her if she --
8 where is the -- where are the adrenal glands? Can anyone
9 tell me? Can you tell me?

10 **THE WITNESS:** I think they're --

11 **MR. STROM:** I'd have to look that up, Your Honor.

12 **THE WITNESS:** I'm not sure, Judge.

13 **THE COURT:** Well, that was the question of the witness
14 and --

15 **THE WITNESS:** I think I would have known it at the
16 time.

17 **THE COURT:** -- if she said it was some place it wasn't
18 and it was not -- where are the adrenal glands? Located in
19 the top of both kidneys. So if she said they're in the
20 foot, I mean, you'd have -- there would have been some
21 cross-examination I would assume. Anyway, go ahead, sir.

22 **MR. STROM:** Thank you, Your Honor. That's covers my
23 questions about the doctor's testimony.

24 **THE COURT:** All right.

25 **MR. APLIN:** Thank you, Your Honor.

1 CONTINUED CROSS-EXAMINATION

2 BY MR. APLIN:

3 Q. Mr. Floyd, it appears in reviewing the doctor's
4 testimony through here, there are several examples where
5 she was either speaking quietly or low. People were having
6 trouble understanding her, it appears, right?

7 A. Well, yeah, there are several places where it says
8 portion inaudible, so.

9 Q. Or even places where either Ms. Mayes or the judge
10 said could you please speak up or I couldn't hear you?

11 A. Yes.

12 Q. And in those situations, she either repeated her
13 testimony or tried to speak up so she could be heard it
14 sounds like. Would you agree with that?

15 A. Well, when she was specifically asked about that, yes.

16 Q. Okay. During this direct testimony from Dr. Moffatt,
17 do you recall -- when she's giving this medical testimony,
18 did you object to any of it?

19 A. Well, I objected to all of it at -- at the beginning.

20 Q. But during this portion of the testimony when there's
21 parts inaudible, do you remember standing up or raising an
22 objection during her testimony about the medical evidence?

23 A. I don't recall one way or the other whether I did or
24 not.

25 Q. Okay.

1 A. I may have, but I don't recall that either.

2 Q. And as far as you know, the adrenal gland are located
3 in the same place in every person?

4 A. Well, as far as I know.

5 Q. Okay.

6 A. I'm not a doctor, but yeah.

7 **MR. APLIN:** I have nothing further right here, Your
8 Honor.

9 **THE COURT:** Well, just concerning this 209, there
10 were -- where we started here for this particular one, it
11 says now in addition to the rib fractures and the surgery
12 on the left wrist, what other injuries did you observe,
13 and whatever she said I couldn't hear and I said I can't
14 hear you, you need to talk up, and the answer is he had a
15 fracture on the base of his skull at the point of the
16 first vertebrae -- vertebra or the base of the skull that
17 impacts with that vertebra. So as to Line Number 8 that
18 appears to be inaudible, Mr. Floyd, wouldn't you think
19 that the -- what's inaudible was the response that she
20 gave when I told her I couldn't hear her which started
21 from Line Number 9?

22 **THE WITNESS:** Well, I think that's --

23 **THE COURT:** Or starting at Line Number 10 when she
24 answered the question, was she answering the question that
25 was asked in Line Number 6?

1 **THE WITNESS:** Well, that -- that would be a logical
2 approach to it; although I have no memory of what she
3 said.

4 **THE COURT:** Well, I mean, I think our -- if the role
5 here is to kind of reconstruct this -- what was said back
6 then, if someone asked the question, the solicitor or the
7 defense asked the question -- who was asking here? Was it
8 the solicitor or --

9 **MR. STROM:** It was the solicitor, Your Honor.

10 **THE COURT:** If Solicitor Mayes was asking the question
11 and she mumbled something and I said I can't hear you,
12 speak up and then she spoke up and answered the question,
13 then wouldn't it seem to you that there's no issue as
14 relates to this particular area of the transcript because
15 the answer -- her response, her audible response, was given
16 beginning at Line Number 10?

17 **THE WITNESS:** Well, I understand what you're saying,
18 Your Honor, but I still have no memory of what --

19 **THE COURT:** Well, none of us would have any memory of
20 anything. What year was this?

21 **THE WITNESS:** 2013.

22 **MR. STROM:** 2013, Your Honor.

23 **THE COURT:** Yeah, 2013. I don't think that I would
24 -- it would be amazing if all the business and cases and
25 people and testimony you've had since -- from that period

1 of time to have a particular member of -- of what anyone
2 said back then, but in reconstructing this transcript when
3 you look at that, isn't that pretty obvious what her --
4 what the inaudible response was is what's indicated in her
5 answer on Line Number 10?

6 **THE WITNESS:** Well, it's clear that's -- clearly
7 that's what she said when you asked her.

8 **THE COURT:** Well, that was her answer. She -- I said
9 speak up, we couldn't hear, she spoke up and answered. If
10 I say -- you know, if the question was at Line Number 6
11 what's your name and you said Wayne Floyd and I said I
12 can't hear you and you said Wayne Floyd, then that's a
13 clear answer, so that one -- that one's pretty easy as
14 well.

15 **MR. STROM:** Yes, Your Honor. Moving on.

16 **THE COURT:** As to where the adrenal glands were
17 located, I mean, well, is that of any consequence to
18 anything? Is that a medical fact or physiological or --
19 is that the right word? It's just a fact where they're --
20 where it's located. If it's located the same on every --
21 every person at the top of the kidney, then we know what
22 her answer was if she's a doctor, she -- she said where it
23 was, even if the court reporter couldn't hear her. By the
24 way, where's this court reporter now?

25 **MR. STROM:** I believe she is retired presently. We

1 had -- this is Harriet Bennett.

2 **THE COURT:** Harriet Bennett?

3 **MR. STROM:** Yes, sir.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. STROM:

6 Q. Moving on to Page 218, Mr. Floyd --

7 A. Yes.

8 Q. -- the State calls a witness who is an Amy Stephens.

9 If you'll look at -- beginning on Line 21, there's a
10 transcription note that Amy Stephens' direct examination
11 was not available. Do you recall what her position is or
12 what her position at SLED was?

13 If you'd like to, your -- a portion of your
14 cross-examination is available -- or, excuse me, was
15 transcribed on Page 19.

16 A. Okay. It appears she was a forensic technician with
17 SLED.

18 **MR. STROM:** And, Your Honor, I apologize. My version
19 of the transcript that I handed up doesn't have a red tab
20 on 218. I apologize.

21 **THE COURT:** Okay. No problem.

22 BY MR. STROM:

23 Q. Is that a forensic technician?

24 **MR. APLIN:** Your Honor --

25 **THE COURT:** There's nothing on yours which you handed

1 me.

2 **MR. APLIN:** -- I've never seen this actually, the
3 portion of the transcript, at all. Or it wasn't a part of
4 the motion as far as I recall, so. I apologize. It's the
5 first that I've seen this or realized this was part of the
6 issue with the reconstruction today.

7 **THE COURT:** Well, the areas that were problematic,
8 were those specified --

9 **MR. STROM:** Most --

10 **THE COURT:** -- in something to the Court or am I just
11 to go through the entire transcript regarding any and
12 everything that --

13 **MR. STROM:** I'm sorry, Your Honor. I didn't mean to
14 interrupt.

15 **THE COURT:** No. Are we limited to specific things
16 that you raised in the motion? Did you raise line and --
17 did you raise in your motion specific things that were
18 inaudible or just many things were inaudible without
19 specifying what they were?

20 **MR. STROM:** Well, many of the portions that are
21 inaudible were specified. The terms of the remand is that
22 it's entirely at your discretion, Your Honor, as to which
23 portions you feel are necessary for a meaningful appellate
24 review.

25 **THE COURT:** Okay.

1 **MR. STROM:** I -- I believe --

2 **THE COURT:** Maybe it's part of the transcript of the
3 record to the appellate court is the entire transcript.

4 **MR. STROM:** Yes, Your Honor.

5 **THE COURT:** Okay.

6 **MR. STROM:** And, again, to sort of compare what --
7 what the -- where the adrenal gland's located, the
8 determination as to relevancy to the appeal is entirely --
9 is in your discretion --

10 **THE COURT:** Okay.

11 **MR. STROM:** -- and that's a part of the reconstruction
12 process.

13 **THE COURT:** All right. Well, where are we now then?

14 **MR. STROM:** Sorry, Your Honor. 218, Line 21.

15 **THE COURT:** Okay.

16 **MR. STROM:** It's a transcription note from the court
17 reporter noting that her direct testimony -- Amy Stephens'
18 direct testimony is missing. Mr. Floyd, after reviewing
19 what portion of his cross-examination was transcribed on
20 219, has said that she was a SLED technician and then I
21 believe that was the extent of it.

22 **BY MR. STROM:**

23 **Q:** Do you have any recollection as to how long her
24 testimony was or what role her she played in the trial?

25 **A.** No, I don't have any independent recollection of what

1 she testified to or whether or not I objected to anything
2 she testified to.

3 Q. Given her placement in the proceedings, do you believe
4 there's a possibility -- and I'm sorry if this is poorly
5 phrased, that she's a chain of evidence witness?

6 A. Well, I think that's possible. She testified right
7 before Moskal -- Witness Moskal, who testified to some
8 paint chips that were discovered.

9 Q. Uh-huh. To your recollection, were there any issues
10 or objections made to the chain of evidence?

11 A. Yeah, that was a pretty significant issue on the paint
12 chips, if I recall correctly, and I imagine I made an
13 objection to any testimony about the paint chips. The --
14 when the incident occurred, the motorcycle on which the --
15 the victim was riding, driving, was picked up and carried
16 to a -- to Tillman's Garage, I think, Tillman's Towing,
17 then some friends of the victim, the motorbike was -- bicyc
18 -- motorbike was turned over to them, and then there were
19 some parts of the bike that were left just in a debris
20 pile --

21 Q. Uh-huh.

22 A. -- and I think, if my memory is correct, that Cayce --
23 Cayce later went to the debris pile and got the parts that
24 the paint was on from the motorbike.

25 Q. After the motorbike had been taken away by the

1 friends?

2 A. Yeah, the motorbike had already been taken away by
3 friends or released to friends of the victim, but there was
4 a debris pile, so there was a question there as to whether
5 or not that debris pile would contain items that would be
6 relevant to this case.

7 Q. And so you don't have a specific recollection as to an
8 objection -- whether you objected or didn't object to that
9 chain of evidence, but it was an issue at trial?

10 A. Oh, I made objection to the chain of evidence. Now
11 whether I repeated the objection to this witness, I assume
12 I did, but, you know, it's not -- it's not there.

13 Q. Okay. And if you could turn to Page 219, do you
14 recall the length of your cross-examination? I -- the
15 transcription note says the audio begins with the
16 cross-examination, but to the best of your recollection is
17 that your complete cross-examination of this witness?

18 A. I have no independent recollection of that. It is a
19 short cross-examination. Whether that was all or not, I --
20 I couldn't say.

21 **MR. STROM:** Okay. Thank you. That's all for this
22 portion of the record.

23 CONTINUED CROSS-EXAMINATION

24 BY MR. APLIN:

25 Q. Mr. Floyd, if I understood you correctly, you said

1 that there was an objection to chain of custody or chain
2 of evidence to the paint chips involved in the case?

3 Something to do with paint chips?

4 A. The items from which the paint chips were taken --

5 Q. Okay.

6 A. -- it's my memory came from the debris pile that was
7 left there -- that was -- came from Tillman's. Tillman's
8 towed the bike the night of the wreck. There were some --
9 there were some items that really came loose from the bike
10 in the roadway which were cleaned up by the wrecker, they
11 took it all to their lot, covered it with a tarp, and then
12 there was a debris pile from the debris. My recollection
13 is that they ended up releasing the bike to friends of the
14 victim. The debris pile was still there. Whether it was
15 the same debris pile or not, there was a debris pile still
16 there. Cayce came out and got the items from the debris
17 pile.

18 Q. Okay. And on Page 219, that brief section of
19 cross-examination, whether that's all of it or a portion
20 of it, Line 4 you reference -- the question you're asking
21 of Ms. Stephens you reference Numbers 15 and 16 as far as
22 exhibits. Do you see that?

23 A. Yeah, I see that.

24 Q. And, again, I apologize, Judge, because I'm piecing
25 this together a little bit. Looking at the start of the

1 transcript where they list the exhibits, the court reporter
2 on Page 4 talks about State's 15 and 16. Those appear to
3 be photo boards, correct?

4 A. It does.

5 Q. And there's nothing about physical evidence or paint
6 chips or any items that might have lost paint chips,
7 anything that you can tell from looking at that exhibit
8 list?

9 A. Well, they didn't introduce the paint chips
10 themselves.

11 Q. Okay. But you said items that the paint chips came
12 off of?

13 A. Okay. I don't remember all the photos that were
14 there. There were photos of the bike or photos of
15 Mr. Caughman's vehicle. I believe there are even photos of
16 the debris pile --

17 Q. Okay. But those --

18 A. -- so I don't know which photos these particular ones
19 were.

20 Q. But there wouldn't have been chain of custody or chain
21 of evidence objections to photos, would there?

22 A. Well, I think it had to do -- I don't -- see, I don't
23 know what she testified to, I don't have no memory of it,
24 but I would assume she would have testified to the paint
25 chips themselves, the chain, to get to -- to the next

1 witness, Mr. Moskal --

2 Q. Okay.

3 A. -- because he -- he didn't testify from photos, he
4 testified from the paint chips and the investigation he did
5 with the paint chips.

6 Q. Okay. But as far as looking at the little bit of your
7 cross we have, you said it was previously discussed Items
8 Number 15 and 16 -- those items previously discussed were
9 photo boards it looks like?

10 A. It looks that way. Now whether they were discussed
11 with her, I -- I guess if they were with her --

12 Q. Okay.

13 A. -- then -- then the testimony that's missing is fairly
14 long. I don't know.

15 Q. Okay.

16 **MR. APLIN:** That's all I have, Your Honor.

17 **MR. STROM:** Your Honor, moving on to Page 274 --

18 **THE COURT:** Okay. Before you move on --

19 **MR. STROM:** Yes, Your Honor.

20 **THE COURT:** -- let me just try to understand whatever
21 it is we're talking about for this lady, whoever she --
22 Stephens?

23 **MR. STROM:** Yes, sir.

24 **THE COURT:** What's your understanding as to what's
25 involved here?

1 **MR. STROM:** I believe, Your Honor, she is chain of
2 custody for a link between SLED and the Cayce-West Columbia
3 Task Force that investigated the wreck. I don't know
4 whether she performed any of the tests on the paint chips
5 to determine if they matched the same -- within a range the
6 same make and model of Mr. Caughman's car or if she was
7 just literally the transporter. I -- I don't -- you can't
8 tell that based on what's in the record.

9 **THE COURT:** You don't know if she -- who she was, Amy
10 Stephens?

11 **MR. STROM:** For what her role was as far as -- we know
12 she's a SLED evidence technician.

13 **THE COURT:** Okay.

14 **MR. STROM:** We don't know if she simply opened the
15 -- you know, took it from the evidence locker and put it
16 into the SLED lab or if she performed any of the tests on
17 there. Agent Moskal is the one who testifies extensively
18 about the match of the paint, but, again, there is this
19 issue as we're floating through the trial about the
20 motorcycle being removed and the parts from it being
21 collected or the alleged parts of it being collected later
22 that Mr. Floyd was -- was testifying to.

23 **THE COURT:** Okay. Okay.

24 **MR. APLIN:** And, Your Honor, I know this is a -- sort
25 of a loose proceeding as far as procedure goes, but the

1 solicitor, Ms. Mayes, remembers quite about this witness,
2 about Ms. Stephens, and could answer some of those
3 questions if you'd allow her or do you want to wait and
4 have her to testify later about that?

5 **THE COURT:** No, I think later. We'll have Mr. --

6 **MR. APLIN:** Okay. That's fine.

7 **THE COURT:** -- Mr. Strom go and then the State will
8 have a chance to go.

9 **MR. APLIN:** Thank you.

10 **THE COURT:** I'm just trying to make sure that I don't
11 -- my understanding is on parr. So right here we have the
12 entire direct examination of Ms. Stephens missing?

13 **MR. STROM:** Yes, Your Honor.

14 **THE COURT:** And Ms. Stephens is a SLED forensic
15 technician and it just seems as if Mr. Floyd on his cross
16 came in and said well, you're -- so you were employed as
17 this technician on March 15, 2010, when the evidence came
18 in and it was received by you that was previously
19 discussed, I believe numbers 15 and 16, so. And 15 and 16
20 were what?

21 **MR. STROM:** 15 and 16 as far as State's exhibits, Your
22 Honor, are two photo boards. They were not -- if you turn
23 to Page 4 where the exhibit index is --

24 **THE COURT:** Okay.

25 **MR. STROM:** -- they were never listed as entered into

1 evidence or -- or even identified.

2 **THE COURT:** Well --

3 **MR. STROM:** They appear out of order for her to have
4 been the one to necessarily identify them. It could also
5 be, Your Honor, that those are SLED item numbers relating
6 to the testing done as opposed to State's exhibits. And I,
7 again --

8 **THE COURT:** So -- so the next question --

9 **MR. STROM:** Ms. Mayes, do you have any recollection of
10 that?

11 **THE COURT:** -- so the next question says they were
12 taken in on the 15th of 2010 and also have the same items
13 resubmitted to our lab in 2011 and these are the same items
14 she previously received and -- so she didn't do any testing
15 or anything, that was done -- was done by the next witness,
16 Michael Moskal?

17 **MR. STROM:** Yes, Your Honor. And I don't -- Michael
18 Moskal definitely does the analysis on it. I don't know if
19 she did any testing or -- or not.

20 **THE COURT:** So considering the limited
21 cross-examination which consists of fifteen -- fifteen
22 lines, kind of has you conclude that she was the evidence
23 custodian who just -- who received -- the technician who
24 received something and had someone else to test it?

25 **MR. STROM:** That could very well be the case, Your

1 Honor.

2 **THE COURT:** So -- so I guess you'll give the argument
3 later after we hear everything. So if -- if there's some
4 dispute as to whether she said something significant is
5 missing or whether or not we have the gist of it or not
6 because typically these evidence custodians is someone
7 who receives it, marks it and then passes it on to someone
8 else and they typically don't do -- don't give much
9 testimony of substance and if they give something of
10 substance, then typically the cross-examination would be
11 pretty rigorous in challenging what they testified to, and
12 it appears here that Mr. Floyd didn't challenge her on
13 anything, he just got clarification of what she did or what
14 her role in it was. Am I missing anything?

15 **MR. STROM:** The only potential other issue there is
16 that we don't know if that's the entirety of Mr. Floyd's
17 cross-examination as of yet. Ms. -- Ms. Mayes may have a
18 better recollection.

19 **THE COURT:** Okay. All right. So let's see. Well, it
20 doesn't say anything is missing from cross-examination.

21 **MR. STROM:** No, Your Honor. It just says the
22 beginning.

23 **THE COURT:** It says cross-examination and then -- then
24 Stephens on cross that starts on the bottom of 218, top of
25 219, and that cross takes fifteen -- fifteen lines. So

1 there's no indication that any cross is missing, only the
2 direct.

3 **MR. STROM:** Yes, Your Honor.

4 **THE COURT:** So we'll -- you can move on.

5 **MR. STROM:** Thank you, Your Honor.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. STROM:

8 Q. Mr. Floyd, turning to Page 274, it's the next red tab
9 on the transcript, you're talking about State v. Burgess
10 and the multi-jurisdictional traffic enforcement agreement
11 that was at issue in this case.

12 **MR. STROM:** And, Your Honor, I have a copy of that
13 agreement if you -- if you'd like to look at that.

14 **THE COURT:** Okay. Yes, sir.

15 BY MR. STROM:

16 Q. And, Mr. Floyd, would a copy of the agreement refresh
17 your memory?

18 A. Yes.

19 Q. (Handing.)

20 A. Thank you.

21 Q. What do you -- Mr. Floyd, what do you recall the basis
22 for your objection to the multi-jurisdiction traffic
23 enforcement agreement was?

24 A. Well, the context with which this issue arose was that
25 a search warrant was issued for Mr. Caughman's residence

1 and the search warrant was issued in Cayce, Cayce was the
2 one -- the agency investigating this incident because it
3 occurred in Cayce, but Mr. Caughman, however, resided in
4 West Columbia. The West Columbia officers came and
5 exercised the warrant in West Columbia at Mr. Caughman's
6 residence and so we raised the question of whether or not
7 they had jurisdiction to execute the search warrant and it
8 was during the execution of that search warrant that the
9 vehicle which they claim was involved in the accident was
10 located in Mr. Caughman's garage and, of course, from that
11 vehicle there was some evidence that was obtained and used
12 against Mr. Caughman in the trial including the condition
13 of the vehicle, the doors were missing, and paint chips
14 from the vehicle which Agent Moskal tried to tie in with
15 the paint chips from the motor -- motorcycle parts.

16 Q. And your argument was that this agreement didn't give
17 them jurisdiction, that it wasn't properly executed?

18 A. That's correct. I didn't see anything in the
19 agreement that covered the execution of search warrants or
20 the obtaining of any evidence whatsoever, nor did I -- nor
21 -- and it also was my position at trial that the agreement
22 was invalid because it was not signed by the governing
23 bodies. Pursuant to the stat -- statute it required the
24 governing bodies to approve it.

25 Q. And just to move things along just a little bit, the

1 State's argument was that it was valid because there was
2 also a SLED agent present who gave them statewide
3 jurisdiction, that he participated in the search even
4 though he didn't sign the warrant or the return?

5 A. Well, I don't think there was any evidence he
6 participated in the search, but there was some evidence he
7 was present.

8 Q. Okay. Turning to the specifics of your testimony --
9 of the -- of the arguments, beginning in Line 11, you
10 reference State v. Burgess, which is 408 S.C. 421. It's a
11 2014 case from the Supreme Court -- or our Supreme Court,
12 and then obviously at Line 15 and 16 you and His Honor have
13 a -- a colloquy that is not recorded. Do you have any
14 recollection as to the length of that?

15 A. I don't know how long that would have been. This was
16 a big issue and we did have -- to my memory, we did have
17 significant conversation concerning it, but as to the
18 length I couldn't tell you for sure.

19 **MR. STROM:** Thank you, Mr. Floyd. We don't have any
20 other questions on that.

21 CONTINUED CROSS-EXAMINATION

22 BY MR. APLIN:

23 Q. Just briefly, Mr. Floyd, flipping back to Page 273 of
24 that transcript --

25 A. Yeah.

1 Q. -- and if you look at Line 16 through 23, does that
2 summarize or put forth your -- essentially your argument
3 for why that multi-jurisdictional task force wasn't
4 sufficient for jurisdiction?

5 **THE COURT:** Line what?

6 **MR. APLIN:** Lines 16 to 23 on Page 273.

7 **THE COURT:** Okay. 273.

8 A. Yeah, that -- that's it in a nutshell.

9 Q. That's it in a nutshell. And then don't you say we
10 previously argued that motion and the Court goes on at the
11 bottom of that page, top of the next page talking about
12 having heard arguments on the issue yesterday. It even
13 says in Lines 3 through 6 we heard it -- we spent a good
14 bit of time on the issue yesterday whether the agency
15 agreement was signed by county council, et cetera.

16 And if I could have you look down at Page -- I mean,
17 Line 17 on Page 274, after the missing colloquy where the
18 judge says he's gonna deny your motion, does that appear to
19 be a recorded on the record denial of your motion that was
20 previously argued to the Court?

21 A. Yeah, he says that he denies it.

22 Q. Okay.

23 **MR. APLIN:** That's all I have, Your Honor.

24 CONTINUED DIRECT EXAMINATION

25 BY MR. STROM:

1 Q. Just a quick follow-up question, Mr. Floyd. Do you
2 recall the Judge's reasoning, if there was any specific
3 reasoning laid out in that inaudible section? I know that
4 he's talked about it previously. Was it simply just a
5 reiteration of -- a renewal of that prior argument and --
6 or objection and argument and ruling?

7 A. I mean, I assume that's correct. I'm sure we'd argued
8 the motion earlier when the Cayce police officers were
9 testifying as to what they found at the location and so
10 forth, so -- so we -- we had -- we had made the motion to
11 try to suppress any testimony about that at the time the
12 Cayce officers testified earlier in the trial.

13 **MR. STROM:** Your Honor, I'm ready to move on to the
14 next section if --

15 **THE COURT:** Okay.

16 **MR. STROM:** -- if the Court is ready.

17 **THE COURT:** Yes, sir.

18 BY MR. STROM:

19 Q. Getting to Page 282, very briefly, Line 23 and 24,
20 whereupon the disc ended for the day and the case resumed
21 on May 23, 2013, if you could briefly read the preceding
22 pages, do you have any recollection as to whether that is
23 the end of discussions about the applicable statute and I
24 believe also jury instructions? The bottom of 282.

25 A. 282?

1 Q. Lines 23 and 24.

2 A. No, I have no independent recollection as to whether
3 or not there was anything else argued after that statement.

4 Q. Moving on to --

5 **MR. STROM:** Well, Ben, do you want to ask any
6 questions about that?

7 **MR. APLIN:** No. No, thank you.

8 BY MR. STROM:

9 Q. Just saying that the disc has ended for that day to
10 my mind sort of mirrors the issues with Amy Stephens. I
11 just wanted to see if you had any recollection as to an
12 additional charge made or discussion about the charges or
13 the interpretation of the statute?

14 A. No, I have no independent recollection.

15 **MR. STROM:** And then finally, Your Honor, the last --

16 **THE COURT:** Let me just ask you on that -- on that
17 point just looking at this Page 282, does it seem to you
18 that I was agreeing with you and not agreeing with the
19 State where Ms. -- starting back at Line 9, let's see --
20 well, or Page 6. Your Honor, number two, we think is not
21 the wording of the statute. How about that Ms. Mayes?
22 Yes, Your Honor. Yes, sir, Your Honor. Again, I do not
23 believe the interpretation of the word "immediately". It
24 is the State's position that it means the driver shall
25 immediately stop, speaking of the duty of the driver to

1 stop, rather than immediate death of the victim. Beyond
2 that we believe the wording in the statute is clear.
3 Mr. Floyd: Would give the wrong application to the
4 wording. Mr. Floyd: The statute speaks for itself. The
5 Court: All right. The Court: I will give the statute
6 as -- as it exists and it's up to the jury to determine
7 whether or not death or serious bodily injury occurred as
8 a result of the accident.

9 **THE WITNESS:** Now, Judge, I remember that point and
10 you ruled -- you gave the statute as it was.

11 **THE COURT:** Okay.

12 **THE WITNESS:** But I was trying to get you to accept --
13 or to give us a jury charge of -- I argued that the term
14 "immediately" in the statute meant that the death must
15 immediately occur as a result of the accident --

16 **THE COURT:** All right.

17 **THE WITNESS:** -- rather than "immediately" referred to
18 the time of the death rather than the time of stopping, if
19 that makes sense.

20 **THE COURT:** And you were trying to get me to explain
21 something in the statute or explain death as part of the
22 statute?

23 **THE WITNESS:** Yeah, I think I had a jury charge
24 asking -- asking that you accept our interpretation of the
25 statute.

1 **THE COURT:** So the jury charge would be -- that you
2 requested would be part of the record?

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** And then I gave the -- I said I'm giving
5 the statute as it is.

6 **THE WITNESS:** That's correct.

7 **THE COURT:** Okay. And let the jury decide this
8 question of whether or not this wreck resulted in the man's
9 death. So if we're talking about a jury charge, jury
10 charges, and the defense requested a charge that's --
11 that's a part of the record and I gave the charge different
12 from what was requested, then that issue was -- all of
13 that's pretty much preserved it appears. Because here
14 we're talking about jury charges, we're not talking about
15 testimony anymore, and if someone submits a request to
16 charge and I don't give that charge, the charge that they
17 requested is made a part of the record. That request to
18 charge was in the record here that Mr. Floyd requested?

19 **MR. STROM:** The request to charges are listed as
20 Court's exhibits. And my additional concerns -- my main
21 concern was whether or not there was any further argument
22 or any other requested instructions that either weren't
23 reflected in the previously listed ones, but if you'll turn
24 -- Page 6 of the Court's exhibit index --

25 **THE COURT:** Okay.

1 **MR. STROM:** -- it -- it's advise of rights form, a
2 transcript -- a transcript and then a traffic agreement, so
3 it doesn't list the Court's exhibits as an exhibit. Now
4 that could also be a function of they were just simply
5 marked after the disc stopped, but that's my concern -- my
6 only concern from a preservation standpoint.

7 **THE WITNESS:** And, Your Honor, if I might add
8 something?

9 **THE COURT:** Yes, sir.

10 **THE WITNESS:** It seems -- it appears back at Page 282
11 when we were discussing this issue, it looks like my
12 argument was inaudible. If you look over to Line 7 of
13 that page, that's where I started to argue -- to present
14 our argument about the way that the statute should be
15 interpreted and it looks like that's all inaudible.

16 **THE COURT:** The only thing is that if -- if the
17 reason is that that requested jury charge is -- should be
18 or are supposed to be preserved is that if someone requests
19 that the Court charge a particular law, statute or whatever
20 the request to charge, if the Court doesn't give that
21 charge -- give that charge and there's an objection in the
22 end after the charge is given to the jury, then all of that
23 is preserved. The specific details as to why you wanted
24 the Court to give that charge, I imagine that could be
25 important for your argument for why you wanted it and, of

1 course, your argument for what you wanted -- why you wanted
2 it seems to be here. I'm not sure what else can be done
3 with this if you have the request to charge that he wanted
4 that I didn't give, assuming that he objected at the end of
5 the jury charge to the charge that I ultimately gave --

6 **MR. STROM:** Yes, Your Honor.

7 **THE COURT:** -- if he needed to. I don't know if he
8 did or not.

9 **MR. STROM:** Yes, Your Honor. Moving on to the closing
10 argument --

11 **THE COURT:** All right.

12 **MR. STROM:** -- being missed -- being not transcribed,
13 on Page 292 -- and this is the last -- the last point, Your
14 Honor.

15 **THE COURT:** All right.

16 FURTHER DIRECT EXAMINATION

17 BY MR. STROM:

18 Q. Obviously closing statements of both sides were not
19 transcribed, but there were no objections. Mr. Floyd, do
20 you have any recollection as to, again, from an appellate
21 review, as to whether or not you made any objections,
22 whether this note by the court reporter is correct?

23 A. I don't -- I have no independent recollection of
24 whether or not I made any objections during the argument.

25 Q. As a general practice, some attorneys don't make

1 objections. They, you know, are very reticent to make
2 objections. What is your just general practice just to
3 give us an idea of how likely it may have been that there
4 was an objection?

5 A. I frequently make objections. Whether I did at this
6 time, I have no clue.

7 Q. No -- no specific recollection?

8 A. But I frequently do.

9 **MR. STROM:** And -- and that's all for the defense,
10 Your Honor.

11 **THE COURT:** All right. Any other questions for
12 Mr. Floyd?

13 **MR. APLIN:** Not on that issue, Your Honor.

14 **THE COURT:** All right. Okay. Well, just looking
15 on Page 308 where Mr. Floyd would take exception to
16 Your Honor's failure to charge Defendant's request --
17 Defendant's -- refusing to charge numbers one, two, three,
18 four, five, six and seven, so those particular ones, are
19 they part of the record somewhere?

20 **MR. STROM:** If you'll give me one moment to find the
21 page where they're argued, Your Honor.

22 **THE COURT:** All right.

23 **MR. STROM:** Your Honor, the -- beginning on -- I
24 just want to make sure that I'm stating it correctly.
25 Beginning on 270 -- 277, this is right after you've asked \

1 Mr. Caughman whether he wishes to testify, you then excuse
2 the jury. Turning to 279 is where the discussion -- 278
3 and 279 is where the discussion begins about the jury
4 charges. And then, again, at 282 is when the disc ends.
5 There's no specific reference made in that section to
6 numbered charges.

7 **THE COURT:** Okay. So Line -- 280, Line 15, Mr. Floyd:
8 We would object to number one. I think that is taken out
9 of content, it should be context. I think the statute is
10 sufficient and gives the purpose of the statute although it
11 was all somewhat cumulative. Our position is that the
12 State would have to show the Defendant's failure to stop
13 somehow lent to the possibility that the victim would have
14 died because of his failure to stop. We think that's not
15 the intent of the statute, so we would ask that it not be
16 charged.

17 So looking -- he's talking about number one here, so
18 back on Page 308 where after I've charged the jury he says
19 we would take exception to Your Honor's failure to charge
20 Defendant's request to -- the Defendant takes exception to
21 Your Honor refusing to charge one, two, three, four, five,
22 six, seven. I guess he -- he has to be talking about the
23 Defendant's -- well, he did object to me charging the
24 State's request number one because that's what was being
25 talked about on 280, but on Page 308 he's, I guess,

1 referring to his own requested charges one, two, three,
2 four, five, six, seven. Does that -- does that seem to be
3 what they're talking about there?

4 **MR. STROM:** Yes, Your Honor.

5 **THE COURT:** So -- so the question I have is where are
6 his one, two, three, four, five, six, seven? Where are
7 those requested charges? Typically at the -- their request
8 to charges are marked, turned over and made a part of the
9 record, so that was my question. Are they a part of the
10 record in this case?

11 **MR. STROM:** They are not listed in the exhibits and I
12 don't believe they're a part of the record in this case.

13 **THE COURT:** All right.

14 **THE WITNESS:** It must be when it says brief pause.

15 **THE COURT:** Yeah. Well, do you have a copy of your
16 one, two, three, four, a five, six, seven, if that's what
17 you were talking about?

18 **MR. STROM:** Yes, sir.

19 **THE COURT:** Something you wanted me to charge and I
20 didn't charge. Do you have those in your file?

21 **MR. STROM:** Yes, Your Honor, they're in the defense
22 attorney's file and I can e-mail those to the Court.

23 **THE COURT:** Well, then if you-all would look at that
24 and agree that this was discussed --

25 **MR. STROM:** I'll -- I'll send you a copy of it.

1 **THE COURT:** If you're in agreement, if we were to
2 reconstruct and that's missing and we put it in there, then
3 that covers -- probably covers most of that because if he's
4 requesting a charge and we had a charge conference after
5 all the evidence is in and if you-all agreed or disagreed,
6 but whatever it is the requests speak for -- will speak for
7 themselves.

8 **MR. APLIN:** I agree with that, Your Honor, and I think
9 that discussion on 282 as far as Mr. Floyd's reasoning, his
10 argument about what the word "immediately" means in the
11 Statute --

12 **THE COURT:** Right.

13 **MR. APLIN:** -- if you have that request to charge, I
14 think it would be fairly obvious how that argument ties in
15 to which charge it was that he was requesting, but --

16 **THE COURT:** Okay.

17 **MR. STROM:** And, Your Honor, again, that was just all
18 from the defense.

19 **THE COURT:** All right. Are we through with Mr. Floyd
20 or do you need him some more?

21 **MR. STROM:** Just the closing argument is all we would
22 have.

23 **THE COURT:** Mister, are you through with Floyd?

24 **MR. APLIN:** I think so, Your Honor. I don't think it
25 would serve any purpose to have him tell us what he thinks

1 his closing argument was or would that be worthwhile?

2 **THE COURT:** I don't know.

3 **MR. APLIN:** I was gonna ask Ms. Mayes to do that
4 because it's more relevant to whether there are appellate
5 issues because if Mr. Floyd did or didn't object to that
6 argument would be the issue. But as far as the substance
7 of Mr. Floyd's closing argument, I -- I don't think it's
8 relevant or necessary, but I wanted to check with Your
9 Honor since we're reconstructing.

10 **THE COURT:** Well, I don't know. I -- I have no idea.
11 I mean, I don't know if it is or isn't, so.

12 **MR. STROM:** I don't believe the defense's closing
13 argument is relevant. I do think for the purposes of
14 harmless error analysis or weighing the importance of
15 different evidence to the State, I think trying to get some
16 rough idea of what Ms. Mayes' closing is, if Mr. Floyd
17 doesn't remember an objection, if Ms. Mayes doesn't
18 remember being interrupted by an objection, if Your Honor
19 doesn't remember ruling on one, you know, then sort of so
20 be it, but I do think perhaps getting a rough outline of
21 Ms. Mayes' closing would be good.

22 **THE COURT:** That's fine.

23 **MR. APLIN:** Thank you, Your Honor.

24 **THE COURT:** You can step down, Mr. Floyd.

25 **THE WITNESS:** Thank you, Your Honor.

1 (Witness excused.)

2 **THE COURT:** All right, Mr. Aplin.

3 **MR. APLIN:** Thank you, Your Honor. The State would
4 call Ms. Suzanne Mayes.

5 (Whereupon, Suzanne Mayes was duly sworn by the Clerk
6 of Court.)

7 **THE CLERK:** Now have a seat and state your name on the
8 record, please.

9 **THE WITNESS:** Suzanne Mayes.

10 SUZANNE MAYES,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. APLIN:

14 Q. Solicitor Mayes, I'm gonna hand you stack of the
15 defense exhibits that Mr. Floyd was referring to so we're
16 all on the same page here at what we're looking at. And I
17 guess to start off with and it may be in reverse order
18 since we were just discussing closing arguments, do you
19 recall giving a closing argument in this case?

20 A. I did.

21 Q. Okay. Do you have a recollection of the general
22 substance of that closing argument, what was the State's
23 theory of the case?

24 A. It would have been a combination of the direct
25 evidence that was presented during the trial and the

1 circumstantial evidence that had been collected at the
2 crime scene.

3 Q. Do you remember enough about that direct and
4 circumstantial evidence to do a brief rundown of what your
5 argument would have consisted of substantively?

6 A. So with the direct evidence there was a witness that
7 the Defendant had actually made a confession to and this
8 was a longtime friend and acquaintance and so his testimony
9 was that he directly heard an admission from Mr. Caughman
10 that he was driving the vehicle on the night in question,
11 where he had come from, he had come from a bar that was
12 known as the Hard Knox Grill on Knox Abbott Drive and that
13 he had fled the scene after he had hit someone on a
14 motorcycle and that witness actually observed the truck in
15 Mr. Caughman's garage and it was severely damaged, so that
16 was the direct evidence in the case. There was also an
17 additional witness who had been with Mr. Caughman and that
18 other witness -- earlier in the night and both of them were
19 able to substantiate that he had been drinking, he was
20 driving that vehicle, and all of that is what I would
21 consider direct evidence in the case.

22 Q. So your closing would have recounted or focussed on
23 that direct evidence?

24 A. Primarily. And then the circumstantial evidence
25 consisted of the evidence recovered from the crime scene,

1 which is the motorcycle that the victim was riding, and
2 then ultimately paint that was left on that motorcycle was
3 a match to the paint on the Defendant's truck which had
4 been recovered from his residence, so that would be the
5 circumstantial evidence.

6 Q. Would you have referenced statutory language as well
7 in your closing?

8 A. Yes, I would have addressed the law.

9 Q. Do you recall in this case Mr. Floyd objecting to your
10 closing argument?

11 A. I don't recall any objections and if the court
12 reporter noted in the transcript that there were no
13 objections, I would trust her --

14 Q. Okay.

15 A. -- her account.

16 Q. And would you agree or disagree with his assessment
17 that he frequently objects to closing arguments? Do you --
18 I mean, you've tried cases with Mr. Floyd before?

19 A. I don't know that we have tried any others. Maybe
20 this one and one more --

21 Q. Okay.

22 A. -- so I really can't say.

23 Q. Okay. So you can't say. That's fine.

24 **MR. APLIN:** I think that's all I have with regard to
25 closing arguments and I'll do the same procedure we had

1 before and pass it over to Mr. Strom.

2 **THE COURT:** All right, Mr. Strom.

3 **MR. STROM:** I don't have any cross or questions.

4 **THE COURT:** All right.

5 BY MR. APLIN:

6 Q. And, Ms. Mayes -- and I'll try to go quickly through
7 the -- the specific points that were raised as far as the
8 missing portions of the transcript and I'll direct you to
9 those pages. Again, I'll try to go in the same order that
10 we covered before.

11 Looking first at Pages 208 and 209, and this is when
12 Dr. Moffatt was testifying, do you recall her testimony
13 being sort of soft-spoken or hard to hear at points?

14 A. I don't recall that, but the record reflects that she
15 was requested to speak up.

16 Q. Okay. And in looking at that portion of the
17 transcript at 208 through about 210, there are several
18 specific examples where she was asked to speak up. Did you
19 see any place where either you or Mr. Floyd was asked to
20 speak up?

21 A. No.

22 Q. Do you recall the judge having any trouble hearing or
23 understanding the things that you two said as advocates in
24 the courtroom?

25 A. No, I don't recall any issues with that.

1 Q. And do you happen to recall if Mr. Floyd objected
2 during her testimony?

3 A. He did.

4 Q. Do you remember him objecting in this portion of the
5 testimony we're looking at about the medical evidence
6 itself?

7 A. No, his objection was about her referencing -- her
8 referencing the fact that he had been hospitalized. It was
9 actually noted in the autopsy report and I think she was
10 able to clear that up; that she knew where he was when he
11 died and the reason he was there.

12 Q. And if I could have you turn back to Page 196 of the
13 transcript, do you recall this hearsay objection that
14 Mr. Floyd made during the trial?

15 A. Yes.

16 Q. And this was to Dr. Moffatt's testimony?

17 A. Correct.

18 Q. The portion that's reflected here on Page 196, the
19 argument that he makes, do you recall that capturing the
20 essence of his hearsay argument or is there something
21 missing that you can tell?

22 A. That seems to be the essence of it.

23 Q. But as far as you recall, the Judge ruled on that
24 objection?

25 A. Correct.

1 Q. You even argued at one point on the record, I think at
2 Page 201, what the State's position was with regard to the
3 objection?

4 A. Correct. I believe 1 -- 196 through 201 was all
5 conducted, -- or 196 through 200 was all conducted
6 in-camera.

7 Q. Okay. And that's largely been transcribed. There's
8 only those points we mentioned that were inaudible,
9 correct?

10 A. Correct.

11 Q. And then moving on to Page 218 of the transcript --

12 **MR. STROM:** Your Honor --

13 **MR. APLIN:** Oh, I'm sorry.

14 **MR. STROM:** I'm sorry. No, I'm sorry.

15 **MR. APLIN:** I forgot to give him a chance to ask.

16 CROSS-EXAMINATION

17 BY MR. STROM:

18 Q. Just a quick point on 196. Ms. Mayes, obviously
19 Line 23, Page 196 says portion inaudible. In addition to
20 the hearsay argument, there was also a Rule 5 argument. To
21 your recollection, was it in that inaudible portion either
22 reiterated or expanded upon there?

23 A. I believe that had been covered -- that had been
24 covered in-camera as well that she had access to certain --
25 she had access to certain information because he was in the

1 hospital when he died and then she works at the hospital.

2 Q. Right.

3 A. As far as Rule 5, we didn't have what she had to
4 provide to Mr. Floyd, but she made it clear to both of us
5 that she was referencing what was in her autopsy and in her
6 autopsy she had made reference to the fact that she, I
7 guess, had access to his computer file there and could see
8 the date he was admitted and the type of surgery he
9 received.

10 Q. And those weren't files that you received, his
11 treatment files?

12 A. We gave Mr. Floyd everything we had, so we did not
13 have that. The autopsy referenced those facts and she
14 explained that in her testimony.

15 Q. Okay. And just Page 196, Line 23, portion inaudible,
16 any recollection -- did he renew it there? Did he, you
17 know, expand on it? Do you have any recollection as to
18 what may have been inaudible?

19 A. I do not.

20 **MR. STROM:** Okay. No further questions, Your Honor.

21 **THE COURT:** All right.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. APLIN:

24 Q. Ms. Mayes, moving on to Page 218, this was the missing
25 direct examination of witness Amy Stephens. Who -- who is

1 Amy Stephens?

2 A. Amy Stephens is the evidence log-in technician at the
3 State Law Enforcement Division, so she works in what I
4 would reference the evidence lobby area where any law
5 enforcement agency who is bringing evidence into SLED will
6 actually see her or I believe there's a -- a second analyst
7 who also has the same job title, but she actually logs in
8 the evidence and enters it into a computer and gives it a
9 specific number that is consistent with the SLED lab number
10 for that case. She does not test evidence, she does not
11 have any involvement in any case other than to simply log
12 in the evidence and then it is sent on to the individual
13 analyst depending on what type of testing needs to be done.

14 Q. And your recollection of why she was called in this
15 case is in that function?

16 A. Correct. It was limited to chain of custody and she
17 would have identified any of the items that were submitted
18 to the State Law Enforcement Division for analysis and
19 then she would have also stated who that item went to for
20 further testing and in this case all of the items that were
21 tested went to Michael Moskal. He is the trace analyst who
22 conducted the testing on all of the paint samples in this
23 case. So, in essence, Mike -- Mike Moskal's testimony
24 would have also identified those same evidence items and
25 there would have to have been a showing by the State that

1 the chain of custody was complete prior to Agent Moskal
2 giving his opinion as to the results of the trace analysis.

3 Q. Do you recall whether she was on the stand for a long
4 time, a short time?

5 A. She would be a very brief witness.

6 Q. And that's actually your recollection of it or just --

7 A. Correct.

8 Q. -- you know, she would have been --

9 A. Correct, and in general.

10 Q. Okay. And then I -- you know, we do have in the
11 transcript on Page 219 some cross-examination by Mr. Floyd.
12 Do you recall that that is the extent of the
13 cross-examination or does it seem that something's missing?

14 A. That would be the extent of it to my recollection.
15 He's basically asking her about the items that were
16 submitted and she's saying yes, that the records do reflect
17 those items were submitted and on what date and that would
18 have been summarizing what she had testified to in direct
19 in my opinion just looking at the cross.

20 Q. Do you remember that reference to numbers 15 and 16 in
21 his cross? Do you have any recollection if that referenced
22 the State's exhibits, SLED's identification numbers or
23 what? And if you don't remember, that's fine. I'm just --

24 A. I don't recall what items 15 and 16 were.

25 Q. Okay. Do you recall during your direct examination

1 of Ms. Stephens whether Mr. Floyd -- Ms. Stephens whether
2 Mr. Floyd objected at all?

3 A. I don't recall.

4 Q. You don't recall.

5 **MR. APLIN:** I think that's all I have on this.

6 **MR. STROM:** Just briefly, Your Honor.

7 **THE COURT:** Yes, sir.

8 CONTINUED CROSS-EXAMINATION

9 BY MR. STROM:

10 Q. Who did -- to the best of your recollection, who did
11 Stephens receive the evidence from?

12 A. It would have been submitted by either the Cayce
13 Department of Public Safety or by Agent Moskal himself.
14 He actually came out to the Cayce Department of Public
15 Safety and removed some of the paint chips himself. Both
16 the truck and the motorcycle were maintained by Cayce
17 Department of Public Safety on their lot pursuant to chain
18 of custody standards and Agent Moskal actually did an
19 on-site visit and collected multiple paint chips, so he may
20 have submitted some of them himself to Amy Stephens for
21 log-in so that they could get a lab number associated with
22 the case and then they would ultimately make their way back
23 to him and then there would also have been some items
24 submitted to her most likely from the evidence custodian at
25 Cayce Department of Public Safety.

1 Q. So it won't have been -- 15 and 16 then wouldn't have
2 been the photo boards, they would have been actual items of
3 evidence?

4 A. I don't know.

5 Q. Okay.

6 A. She could have been identifying items that are on a
7 photograph.

8 Q. Sure. Sort of a spread of the evidence?

9 A. Correct. If -- if I recall, the way we handled the
10 motorcycle because it was so large, and the truck as well,
11 we didn't physically bring the motorcycle or the truck into
12 the courtroom and have them marked as exhibits. We were
13 using photographs.

14 Q. And your recollection of the chain of evidence is
15 the wreck happens, it goes to Tillman's yard, friends
16 pick it up and then Cayce gets it? Because it was stored
17 for a period of time at one of -- an individual who's a
18 professor, at one of his houses because he's a friend of
19 the guy, I think he worked on the motorcycles with him.

20 A. The body of the motorcycle, that does sound correct.
21 There was also a fender that I believe came from the
22 motorcycle and also had some paint chips on it that were
23 a match to the truck and then there was -- as Mr. Floyd
24 referenced, there was also some various debris that had
25 been collected from the accident scene.

1 Q. Right. And the debris went from the accident site to
2 Tillman's yard, stayed at Tillman's yard --

3 A. Correct.

4 Q. -- and was at some point later collected after the
5 motorcycle was removed?

6 A. Correct. And I do recall that the fender from the
7 motorcycle, which had the truck paint left behind on it,
8 the paint from that fender was matched to the actual
9 motorcycle so we were able to establish that the fender
10 came from the motorcycle.

11 Q. Okay. But, again, numbers 15 and 16, no recollection?

12 A. I do not recall.

13 **MR. STROM:** Okay. No further questions, Your Honor.

14 CONTINUED DIRECT EXAMINATION

15 BY MR. APLIN:

16 Q. Ms. Mayes, looking at Page 273 of the transcript,
17 there's -- onto 274 as well, there's a discussion of this
18 jurisdictional issue with the multi-jurisdiction task force
19 agreement, whatever that document was, do you remember that
20 being an issue at the trial?

21 A. Yes.

22 Q. And the references on those two pages to the fact that
23 there was some argument on that issue yesterday it says or
24 the day before --

25 A. Right.

1 Q. -- do you remember actually having an in-camera
2 hearing calling various witnesses in regard to that
3 agreement?

4 A. Yes, there had been an extensive in-camera proceeding
5 the day before.

6 Q. Okay. And if you look at Page 104 of that transcript,
7 just turn back and keep your thumb on the page where you
8 are now, at the top of 104 do you see it says jury excused
9 from the courtroom for lunch period? If you just scan
10 through that page really quickly, does that appear to be
11 where that in-camera hearing started or discussion started
12 about jurisdiction?

13 A. Yes, that is it.

14 Q. Okay. And I think that carries the witnesses all the
15 way over to Page 129 approximately.

16 **MR. STROM:** That's right.

17 Q. And so there were several witnesses. It looks like a
18 Rick Collins and an E. Pareia -- Pereira, I can't say that
19 name, I'm sorry, and also a J. Simmons, the three people
20 who testified at that hearing?

21 A. Uh-huh.

22 Q. Okay. So I guess the question is do you remember if
23 this issue was fleshed out pretty thoroughly in front of
24 Judge Newman?

25 A. Correct. There was testimony and then counsel for

1 both the State and the defense argued this matter.

2 Q. Do you remember what the State's position was, why
3 that this wasn't a jurisdictional problem?

4 A. Because SLED agent Mike Robinson was present at the
5 scene for the execution of the search warrant.

6 **MR. APLIN:** I think that's all I have on this issue,
7 Your Honor.

8 **MR. STROM:** No questions, Your Honor.

9 **THE COURT:** All right.

10 **MR. APLIN:** Your Honor, I'm trying to make sure I
11 haven't missed something. There's Page 282. Okay. Yes.

12 **FURTHER DIRECT EXAMINATION**

13 **BY MR. APLIN:**

14 Q. On Page 282 of the transcript at the bottom of the
15 page, right after the judge gives the ruling about that
16 he's gonna charge the statute as it exists, then it says
17 the disc ended for the day and the case resumed on May 23rd
18 and then all of a sudden it says good morning, and flipping
19 to the part at the top of Page 283 you say you have
20 something ready as a redaction of the other document. Do
21 you remember if anything else happened that day after the
22 judge made his ruling on that particular issue and then the
23 beginning of the next morning?

24 A. I do not.

25 **MR. APLIN:** That's all I have, Your Honor.

1 **MR. STROM:** No questions, Your Honor.

2 **THE COURT:** All right. Thank you.

3 (Witness excused.)

4 **MR. APLIN:** And, Your Honor, the State doesn't have
5 any other witnesses to call. I would ask to keep the
6 record open for us to attempt to get the audio recordings
7 from the court reporter or court administration. I have
8 not attempted to do that yet. I know Mr. Strom and I
9 talked about it, but neither one of us have gotten those
10 audio recordings. My thought was that if Ms. Mayes and
11 Mr. Floyd could sit down and listen perhaps they could
12 understand things the court reporter said were inaudible
13 and we might be able to fill in some of these blanks. It
14 may be they can't, but we just haven't had a chance to try
15 that yet.

16 **THE COURT:** All right. Mr. --

17 **MR. STROM:** And we'd agree and then rather than maybe
18 having a second hearing if they listen to it and happen to
19 just do an affidavit if it jogs any of their memory as well
20 as also, Your Honor, submit to the Court the proposed jury
21 instructions from the defense.

22 **THE COURT:** All right. At this time we'll leave the
23 record open and if we need to have a further hearing, we
24 will; otherwise, if you-all agree on what it says, then
25 that will be fine as well.

1 **MR. APLIN:** Thank you, Your Honor.

2 **MR. STROM:** Thank you, Your Honor.

3 **THE COURT:** Or if you need to me to rule without
4 having anything further, I'll do that as well.

5 **MR. APLIN:** Okay.

6 **MR. STROM:** Yes, sir. .

7 **THE COURT:** All right. Thank you-all.

8 **MR. FLOYD:** Thank you, Your Honor.

9 (Whereupon, the proceedings were concluded at
10 12:45 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 16th day of September, 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

March 12, 2017

SI Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

1 State of South Carolina

Court of General Sessions

2 County of Lexington

3
4
5 State)

6)
7 v.)

Transcript of Record

10-GS-32-2294

8 William Craig Caughman)

9 Defendant.)

10 May 1, 2017

11 Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable Clifton B. Newman, Judge.

15
16 A P P E A R A N C E S:

17 John B. Aplin, Assist. Attorney General
Attorney for the State

18 John H. Strom, Esquire
19 Attorney for the Defendant

20
21
22
23
24 Stacy L. Sheppard, RPR
25 Circuit Court Reporter

1

I N D E X

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WITNESSESDIRECTCROSSREDIRECTRE CROSS

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/ (There were no witnesses.)

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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on May
2 1, 2017.)

3 **THE COURT:** If I can have everyone introduce
4 themselves for the record.

5 **MR. STROM:** John Strom appearing on behalf of
6 Appellant Defendant Craig Caughman.

7 **MR. APLIN:** Ben Aplin with the Attorney
8 General's Office here on behalf of the State.

9 **THE COURT:** All right. This is our, what,
10 second or third time?

11 **MR. APLIN:** Yes, Your Honor. I think it's the
12 second time. We were here September 16th of last
13 year for a reconstruction hearing.

14 **THE COURT:** All right. And I received proposed
15 orders from both sides and wanted to see you all one
16 more time and then submit my order to the appellate
17 court. With regard to the proposed order by the
18 attorney general -- you work for the -- deputy
19 attorney general, Mr. Strom, anything you'd like to
20 comment?

21 **MR. STROM:** Thank you, Your Honor. May it
22 please the Court.

23 The first comment with regards to the State's
24 proposed order is that it omits two of the issues
25 that we raised. Specifically, it omits the issues

1 regarding the defendant's requests to charge. And
2 I've got copies of those requests to charge. We
3 submitted some by e-mail after the record was held
4 open.

5 **THE COURT:** All right.

6 **MR. STROM:** We were able to find, I believe,
7 charges -- it lists charges one through nine. I was
8 unable to find charge number six. You may recall,
9 Your Honor, that during the trial, the defense
10 submitted nine requests to charge.

11 **THE COURT:** Yeah. I don't recall anything, not
12 specifically. How many years ago was that?

13 **MR. STROM:** This would have been back in May of
14 2013.

15 **THE COURT:** No, I don't remember what Mr. Floyd
16 may have requested.

17 **MR. STROM:** Yes, Your Honor. On page 308
18 through 312 of the trial record, the defense request
19 charges numbers one through -- and it lists one
20 through seven, but there is numbers one through
21 nine. And I apologize, that's on line 12 of page
22 308. The Court, Your Honor, then says, We reviewed
23 that yesterday, and he simply -- Mr. Floyd simply
24 renews the motion.

25 We discussed back in the September hearing,

1 that they would submit those charges because I do
2 have Mr. Floyd's file and I was able to find
3 requests one through five and then seven through
4 nine. So we are missing requests to charge number
5 six.

6 **THE COURT:** What was it?

7 **MR. STROM:** We don't know, Your Honor. I mean,
8 it was just denied. That's part of the missing
9 record is request number six.

10 **THE COURT:** So what do you want me to do about
11 that?

12 **MR. STROM:** Well, under State v. Ladson, the
13 remedy is, essentially, where there's a specific
14 appellate claim that the court will be unable to
15 review effectively using the reconstructed record is
16 the standard for a finding that can't be
17 reconstructed. And so along with the other grounds
18 raised in our proposed order, the lack of a number
19 six jury -- requested jury instruction from the
20 defense would be a grounds for granting a new trial
21 or at least an order determining that the record
22 cannot be reconstructed.

23 **THE COURT:** And you said that that wasn't
24 addressed in the State's proposed order?

25 **MR. STROM:** No, Your Honor. And it's number

1 six in my proposed order.

2 **THE COURT:** It says, The defendant submitted a
3 list of eight written requests to charge. This
4 Court denied all of the requests to charge
5 instructions. This Court has had the opportunity to
6 review seven of those requested charges.
7 Defendant's six requested charges could not be
8 located and no one had any recollection as to what
9 it was. So, therefore, the Court finds that the
10 missing proposed jury instruction prevents the Court
11 from adequately restructuring the record so as to
12 allow meaningful review. That's -- that's your
13 proposed order addressing that. And the --

14 **MR. STROM:** Yes, Your Honor, and I believe --

15 **THE COURT:** Just a moment, you'll get a chance
16 to talk.

17 The other side says, As noted, following the
18 reconstruction hearing, defendant submitted eight
19 requested charges. This Court finds these written
20 requests to charge efficiently and adequately
21 reconstructs the substance of the requests to charge
22 as they were presented to and rejected by the Court
23 and, therefore, provide meaningful appellate review
24 on any issues regarding the charge.

25 All right. Go ahead.

1 **MR. STROM:** May I approach, Your Honor?

2 **THE COURT:** Yes, sir.

3 **MR. STROM:** When it's referred to the eight
4 requests to charge, sir, there are nine total
5 requests. So eight were submitted because we're
6 missing number six. I'm sorry if that language was
7 unclear on my part.

8 **THE COURT:** No. I was just reading what you
9 each submitted to me.

10 (Pause.)

11 **THE COURT:** All right. Go ahead.

12 **MR. STROM:** The additional grounds, pursuant to
13 the Ladson test, would be the chain of custody issue
14 surrounding the missing testimony of SLED evidence
15 technician, Amy Stephens. She was the, I guess, the
16 State's witness right before the paint chip analyst.
17 Her entire testimony is missing. I believe at the
18 reconstruction hearing, we established that she is
19 the evidence technician that takes it from the field
20 into the state -- in the SLED system.

21 The issue here is at the September hearing,
22 Mr. Floyd testified that he absolutely would have
23 objected to the issue regarding the chain of custody
24 of the paint chips, of the motorcycle parts that the
25 paint chips were taken from. The motorcycle was in

1 a private lockup for a number of days to weeks and
2 then it was allowed to go home with friends of the
3 deceased. And so having already released it, the
4 police had sort of, my understanding, had to
5 scramble to get the motorcycle back into their
6 custody and then had to go collect the remaining
7 parts or parts in the same area where they had
8 placed the motorcycle that were still there.

9 And so there's a chain of custody issue that
10 the objection doesn't appear in the transcript, but
11 Mr. Floyd's testimony was to the effect that this
12 was on my radar, that I would have objected to this,
13 it's my practice to object to it. And so, again,
14 looking at the test of whether or not there's a
15 specific appellate issue that can be reviewed, this
16 is one that, because of the missing testimony,
17 because of the missing objection itself, would not
18 be available for appellate review.

19 **THE COURT:** Now, the appellate court sent this
20 back to me to help reconstruct the record; is that
21 right -- or to reconstruct the record?

22 **MR. STROM:** I believe --

23 **THE COURT:** Or to consider the hearing as a
24 motion for a new trial?

25 **MR. STROM:** I believe it would be whether or

1 not in order -- determining whether or not the
2 record can be reconstructed. Unfortunately, the
3 wording of the remand -- and I may have it right
4 here.

5 **THE COURT:** Well, what was their charge to me?

6 Let me just read what I have: Appellant has
7 filed a motion to hold this appeal in abeyance and
8 remand to the circuit court to reconstruct the
9 record. The motion is granted and it's remanded, an
10 order to contact me within ten days to schedule such
11 a hearing. Counsel shall provide an update to the
12 clerk and shall immediately notify this court when
13 the circuit court issues an order relating to a
14 reconstruction.

15 So they sent it to me to reconstruct. And you
16 want me to conclude it can't be reconstructed?

17 **MR. STROM:** Correct, Your Honor.

18 **THE COURT:** And, therefore, he should get a new
19 trial?

20 **MR. STROM:** Correct, Your Honor.

21 **THE COURT:** So, in effect, your motion to me is
22 grant him a new trial?

23 **MR. STROM:** Correct, Your Honor, as a finding
24 that there are specific appellate issues that aren't
25 preserved for review based on the ability to

1 reconstruct this record from a 2013 trial.

2 **THE COURT:** And so you want me to tell them I
3 can't do it?

4 **MR. STROM:** Is that based on the -- applying
5 the Ladson standard to the testimony that we've had
6 to the evidence that's been presented is that it
7 cannot be reconstructed so as to allow for a
8 meaningful appellate review.

9 **THE COURT:** All right. Any other comments
10 about the proposed order for the State?

11 **MR. STROM:** Just to touch briefly on the lack
12 of closing arguments from either side is from a
13 appellate perspective, while it's not a stand alone
14 issue, Your Honor, it does factor strongly as to
15 whether or not an evidentiary ruling can be
16 challenged to overcome a harmless error analysis.
17 One of the major portions of that is whether or not
18 it's used in closing argument. And so without the
19 closing argument, it's very difficult to argue that
20 any particular evidentiary ruling, if incorrect,
21 constitutes reversible error.

22 I would also note that there are -- with
23 respect to the multijurisdictional agreement, while
24 the main argument takes place on page 104 through
25 129 of the record, there's additional unreported --

1 or additional argument that was not transcribed
2 beginning on page 274 and 276. And those are
3 really --

4 **THE COURT:** Was anything important transcribed
5 or just the important things were the things not
6 transcribed?

7 **MR. STROM:** Well, no, the -- it -- argued
8 extensively between page 104 and 129. Mr. Floyd
9 does make a reference to, I guess, being, I guess,
10 somewhat surprised by the State's order of
11 presentation, so he says he's not fully prepared to
12 present on the issue, but he does argue State v.
13 Burgess, which is a major case on that issue. He
14 does mention -- he does refer to the different
15 jurisdictional agreement statutes.

16 There is a second argument that is taken up
17 afterwards. It's hard to say whether it's a renewal
18 or whether it is additional grounds because it's
19 just not there. But in fairness, Your Honor, it is
20 covered extensively in that earlier portion.

21 **THE COURT:** All right.

22 **MR. STROM:** Thank you, Your Honor.

23 **THE COURT:** Mr. Aplin.

24 **MR. APLIN:** Thank you, Judge Newman.

25 Just quickly in response to some of the

1 comments, I think that Mr. Strom pointed out there
2 were two things that he said the State's proposed
3 order didn't cover. I think the order did cover the
4 requests to charge. There's a specific portion in
5 the State's proposed order that actually does talk
6 about those requests to charge and proposes findings
7 that the Court can make.

8 It does acknowledge that that charge number
9 six, that we're not able to find the specific
10 whatever that charge was that was requested by
11 Mr. Floyd. I would, for that point, fall back to
12 State v. Ladson and the burden of proof on the party
13 seeking to -- a new trial for an inadequately
14 reconstructed record, that the court has found that
15 the party challenging the reconstructed record on
16 appeal has to demonstrate specific prejudice flowing
17 from an inadequate record.

18 And without any suggestion of what this
19 proposed request to charge was, now I understand
20 that's what we're trying to do is reconstruct the
21 record, but I think the burden still is on
22 Mr. Caughman to give us some idea what that charge
23 was so we would then know whether there was any
24 significance in the Court's denying, basically out
25 of hand, all the requests to charge whether that

1 particular charge had any bearing on what would be a
2 valid appellate issue.

3 And, frankly, if all that we have of this
4 transcript, including everything that we were able
5 to reconstruct at that last hearing, if this isn't
6 sufficient to reconstruct a record that's going to
7 get somebody a new trial, then I would suggest
8 there's no point in having reconstruction hearings
9 because this is such a minor little point compared
10 to the grand picture of what we've done here. It
11 doesn't fit at all in what we're talking about
12 happened in Ladson where they couldn't really not
13 reconstruct anything despite the best efforts of the
14 trial judge to do so. The appellate court said,
15 This is all conclusory. There's really nothing to
16 go from for where we can review an appeal.

17 **THE COURT:** Well, when looking at the requested
18 charges, you've got number one is the statute in
19 Title 56, there's a title in section -- under 56-5,
20 that's the first charge. The second one, same
21 thing. The third one, No person can be compelled to
22 be a witness against themselves. Fourth one, In order
23 to convict, must be convinced beyond a reasonable
24 doubt, under State v. Burton, that the defendant --
25 that the defendant was the cause of death.

1 The next one, number five, it's not a defense
2 that the victim might have recovered according to
3 the most approved surgical or medical standards or
4 reasonable -- as a reasonable doctor would have
5 treated in the case or even showing -- by showing
6 that the treatment was negligent. Another State v.
7 Burton request. And the next one, State v.
8 Peterson, in order to establish that the death was
9 the natural and probable consequences. The conduct
10 of the defendant, the State must prove beyond a
11 reasonable doubt that a reasonable person in the
12 defendant's position could have foreseen that the
13 death would result, foreseeability request. Then
14 definition of reasonable doubt under Victor v.
15 Nebraska, State v. Manning, and then criminal intent
16 in number nine.

17 Now, how did I treat these requests? Did I
18 give them in substance or I gave the standard
19 charges in these areas?

20 **MR. APLIN:** My recollection, I think it was
21 just very short in the transcript that you just
22 rejected the requests to charge. And I -- maybe
23 Mr. Strom can clarify, but I think you said that,
24 yeah, your general charge covered the substance of
25 what was here.

1 **THE COURT:** I mean, because I don't see
2 anything earth shattering in any of this other --
3 that would not be addressed in the standard charge.
4 So to the extent that one is missing, it's hard to
5 figure anything unusual would be included in that
6 because the substance of these requests are
7 something generally like standard requests, some
8 from statutes, some Ralph King Anderson, some just
9 standard. And there's no objection, apparently, to
10 what I opted to charge. So what are we talking
11 about?

12 We're trying to figure out something unusual
13 that might have existed that the jury should have
14 heard that no objection was made to, but
15 nevertheless it's such a flaw by the court reporter
16 or someone that a new trial should be granted?

17 **MR. APLIN:** Your Honor, if I may, in two
18 points, I think that is a good point you make that
19 when you did make your requests to charge, which I
20 believe is transcribed, if there wasn't an objection
21 to it, renewing the request to have this charge at
22 the end of it, then there's -- arguably, it wasn't
23 preserved for appellate review anyway.

24 **THE COURT:** So the Court of Appeals will need
25 to judge whether or not a good charge was given to

1 the jury.

2 **MR. APLIN:** Correct. And that charge is
3 available to them in the transcript.

4 The second point I was going to make is if you
5 look at the flow of these requests to charge, number
6 six is the one that's allegedly missing. And number
7 five and number seven both have to do with -- one's
8 about foreseeability of the death and one is about
9 proximate cause. And I would argue it's reasonable
10 to suggest that number six that's missing, if it is
11 in fact missing, is somewhere along the same lines,
12 having to do with state of mind or something --

13 **THE COURT:** We don't know whether number six
14 existed, ever existed.

15 **MR. STROM:** If I may, Your Honor, it's listed
16 among the ones that are rejected. You do say, with
17 regards to the Victor v. Nebraska charge, that
18 you'll give that, but that the other ones are all
19 denied. And then Mr. Floyd renews that objection
20 just prior to the charges being given.

21 **THE COURT:** All right. Well, I think the Court
22 of Appeals should be able to determine whether or
23 not, given the nature of the charge and the evidence
24 presented, whether the charge given to the jury was
25 a proper charge under the law. And they could gauge

1 that without any consideration of what Mr. Floyd
2 would have requested, can't they?

3 **MR. STROM:** Respectfully, Your Honor, no,
4 because the standard is any evidence. And so it's a
5 -- it's a charge that was requested by the defense.
6 It would be the failure to give that in and of
7 itself as opposed to the rest of the charge. If we
8 knew what that charge was, you could then compare it
9 to whether the charge, when given as a whole, is
10 still -- is a correct and adequate statement such to
11 -- one potentially improper charge or --

12 **THE COURT:** No, but as his lawyer -- as his
13 lawyer, wouldn't you go and say, well, Caughman has
14 been prejudiced because the judge should have said
15 -- should have told the jury this, that -- that the
16 charge that was given is flawed in that the court
17 should have done something differently? Shouldn't
18 you have to come up with some kind of prejudice
19 rather than just kind of taking advantage of the
20 fact that the court reporter didn't take something
21 down?

22 **MR. STROM:** The issue, Your Honor, is that it's
23 a specific -- one specific charge we're missing, not
24 we could have charged this, could have charged this,
25 could have charged this. It's a --

1 **THE COURT:** But you don't know what's missing.
2 And, you know, with all the mines of someone charged
3 with, you know, leaving the scene of an accident
4 involving death -- was that the charge?

5 **MR. STROM:** Yes, Your Honor.

6 **THE COURT:** Given the nature of the charge, the
7 evidence, wouldn't you -- wouldn't it be incumbent
8 upon you to say that, well, the judge told the jury
9 what is reflected in the transcript; what is missing
10 is that the judge should have told the jury such and
11 such pursuant to State v. Burton, State v. Peterson
12 statute otherwise and because he didn't, the jury
13 did not fairly consider the charge?

14 **MR. STROM:** I agree, Your Honor, but we're
15 restricted to an error preservation state, so that
16 has to be presented to you first. Without knowing
17 what charge has been presented, we don't have a
18 specific appellate issue to raise on appeal.

19 **THE COURT:** Well, I mean, obviously, I think
20 that the jury was properly charged and that I gave
21 them a good charge, and at the end of the trial, no
22 one objected. So for me to figure out something
23 else that might have been on Mr. Floyd's mind and
24 said, oh, yeah, I should have told the jury that --
25 and to get back to what the Court of Appeals asked

1 me to do and that is to reconstruct it, the best I
2 can do is confer with you all and reconstruct it as
3 good as possible. If they're -- if they're not
4 satisfied that they have a complete record for
5 appellate review, that would be what you would be
6 arguing to them not to me.

7 **MR. STROM:** Correct, Your Honor, and that would
8 be, regardless of the ruling here, the next stage
9 would be the appeal from this. But, again, it's --
10 ultimately, it's been remanded to you, Judge, to
11 make that initial determination so that it can be a
12 written order.

13 **THE COURT:** Yeah. And I can't go back and
14 re-create anything other than giving a reasonable
15 assessment of what was presented. And -- and if
16 appellate courts are satisfied, fine; if they're
17 not, that would be their prerogative.

18 Well, as we speak, we go back in our database
19 of things. Defendant's request number six, it's an
20 e-mail from Michelle at Wayne Floyd Law May 20th,
21 2015: Good afternoon. Attached please find our
22 memorandum along with supporting documentation in
23 connection with the Caughman hearing scheduled
24 tomorrow and attached exhibits.

25 And number six says, The defendant is always

1 entitled to the benefit of any doubt. So if you
2 have any doubt as to whether or not the defendant is
3 guilty of a greater charge or a lesser charge, you
4 must give the defendant the benefit of the doubt and
5 only convict on the lesser charge. Likewise, if you
6 have any doubt as to whether the defendant is guilty
7 of -- guilty of not guilty of any charge, you must
8 give the defendant the benefit of that doubt to the
9 defendant and find him not guilty, State v. King,
10 Brightman v. State.

11 So that's under number six that Mr. --

12 **MR. STROM:** That's prior to the post-trial
13 hearing, Your Honor, an e-mail that was sent?

14 **THE COURT:** All right.

15 **MR. STROM:** I'm sorry. I just don't have that.

16 **THE COURT:** No. We just pulled up -- my law
17 clerk has pulled it up. It was sent to us by
18 Mr. Floyd. That was, I guess, before the hearing.
19 But he couldn't find it after the hearing?

20 **MR. STROM:** In the hard copy, the two boxes
21 that I have just don't have number six in the files.

22 **THE COURT:** Okay. Well, we now have it.

23 **MR. STROM:** I mean, that would essentially do
24 it for the issue with the jury instruction, Your
25 Honor.

1 **THE COURT:** So we'll reconstruct it and then
2 let the appellate court consider whose charge is
3 best or --

4 **MR. STROM:** Yes, Your Honor --

5 **THE COURT:** In regard to the charges. So do
6 you all e-mail -- do y'all accept that? Mr. Floyd
7 is here. Does he want to look at it?

8 **MR. FLOYD:** If it came from my office, it came
9 from my office.

10 **THE COURT:** So number six has appeared through
11 the wonderful world of law clerk's computer saving
12 techniques.

13 **MR. APLIN:** All right. Thank you, Your Honor.

14 And still responding, I think, to originally
15 why I stood up, the other issue about Amy Stephens
16 being the forensic technician in the chain of
17 custody testimony, I admit I did inadvertently omit
18 that issue from my proposed order. So that one was
19 not covered in what I submitted to you, so I would
20 need to add some language to address that.

21 **THE COURT:** All right.. Well, let's just talk
22 about that because I mean I, you know, trying to --
23 the reason I'm coming over and meeting with you all
24 rather than trying to deal with this in the abstract
25 is I see a reconstruction hearing as putting all

1 heads together to come up with the best response to
2 the court as we can. So what is -- what's the issue
3 again?

4 **MR. APLIN:** I think, and again Mr. Strom can
5 jump in and correct me, but the transcript reflects
6 that her direct -- the direct testimony of
7 Ms. Stephens, as a State's witness, is not -- was
8 not transcribed.

9 **THE COURT:** And who was she again?

10 **MR. APLIN:** She was, based on the testimony
11 from a reconstruction hearing, was the log-in
12 technician, the evidence technician, who worked at
13 SLED, who -- according to Ms. Mayes' testimony from
14 this reconstruction hearing, she's the person who
15 would log the evidence in that came from the
16 sheriff's department and then somebody else would
17 actually do testing, that Ms. Stephens didn't do any
18 testing of evidence. She was literally an evidence
19 technician.

20 **THE COURT:** Quite often we don't see that
21 person, do we, if we've got a law enforcement
22 officer says, we sealed the evidence in a bag and we
23 put it in a drop box at SLED, and someone else gets
24 it out of the drop box and tests it and come here
25 and talk about it?

1 **MR. APLIN:** Right. And Mr. Floyd's testimony
2 was that he did object to the chain of custody of
3 some paint chips that came from this motorcycle at
4 the accident scene or something to that effect. But
5 our position would be, I think the cross-examination
6 at least -- we would submit the entire
7 cross-examination of Ms. Stephens is in the record.
8 I think there's been a suggestion that maybe it's
9 only part of the cross-examination, but either way,
10 it's hard to understand how, based on what was cross
11 that we have in the testimony from the trial, what
12 possible appellate issues could come from a chain of
13 custody issue when the chain of custody person was
14 there and actually did testify. So if the --

15 **THE COURT:** What page did you talk about in the
16 transcript again?

17 **MR. STROM:** It begins on 218, Your Honor, and
18 that's 218 of the trial transcript. Just before
19 Michael Moscow's testimony. /

20 **THE COURT:** I'm just looking at something that
21 Stacy Johnson -- who is that? Oh, this is the
22 transcript of the September hearing. I need the
23 transcript of the original hearing.

24 I'm looking at a transcript of Stacy Johnson's
25 who transcribed the hearing we had in September.

1 Can I see one of these original transcripts that
2 y'all might be talking about?

3 **MR. APLIN:** I can hand him mine.

4 Your Honor, if I can approach.

5 **THE COURT:** Okay. I'm going to start on this
6 line ten on page 218: Ladies and gentlemen, we'll
7 stop for you to get your lunch at this time. We'll
8 take an hour, and please do not discuss the case.

9 We came back after that.

10 Audio portion on disk which next has witness
11 Amy Stephens on the stand. Direct examination of
12 witness by solicitor was not present.

13 Audio beginning with cross-examination of
14 Mr. Floyd: Okay. She's Employed with SLED on March
15 15th, 2010. When the evidence came in and received
16 by you and was previously discussed, I believe,
17 numbers 15 and 16. Original items were taken in.
18 We also have the same items resubmitted to our lab
19 in 2011. They're the same items that were
20 previously submitted. I guess our record reflects
21 they're the same items that had been previously
22 submitted.

23 Same exactly?

24 Yes, sir.

25 I have no further questions.

1 Well, that's a rather short cross-examination.
2 And what's the problem with it?

3 **MR. STROM:** Your Honor, the first issue is that
4 exhibits number 15 and 16, which on the index are
5 titled as photo boards, were never entered into
6 evidence according to the index or the exhibit
7 index.

8 The other issue is, again, Mr. Floyd testified
9 at the September hearing that he objected to the
10 chain of custody. There is no objection in this
11 record. And with the gaps, we don't know where it
12 is. And so my thought at the September hearing was
13 that he objected some time when 15 and 16 were
14 entered into evidence, but since -- those are the
15 photo boards of the pieces of the motorcycle, but
16 since it's -- it's impossible to tell where it is in
17 the evidence because it's just not in there.

18 **THE COURT:** What evidentiary value -- was that
19 chips or whatever --

20 **MR. STROM:** Sure. The chips -- I'm sorry, Your
21 Honor. I didn't mean to interrupt.

22 **THE COURT:** No. Go ahead.

23 **MR. STROM:** The chips are paint chips taken off
24 of the motorcycle. The motorcycle was released to
25 the deceased family and friends almost immediately

1 after the accident. Some time later the police
2 decided that they need to test the motorcycle and so
3 they go retrieve it from the friends. They also go
4 into the junk yard --

5 **THE COURT:** In order to determine what?

6 **MR. STROM:** In order to determine whether
7 there's a paint match between Mr. Caughman's car and
8 scrapings on the motorcycle fenders.

9 The issue here is that for an unknow -- period
10 of time, you have the parts just sitting in the
11 junkyard. And so there's an issue as to whether or
12 not these parts are the motorcycle parts, whether
13 it's a complete chain for the purposes of it being
14 admissible. So that would be the appellate issue,
15 but it's a twofold problem if there's no
16 objection --

17 **THE COURT:** And, again, the defense in the case
18 is that Mr. Caughman didn't hit the motorcycle? Is
19 that an issue or --

20 **MR. STROM:** Well, again, without the closing
21 arguments, it's hard to see how the defense's theory
22 sort of finally --

23 **THE COURT:** You seem to have a real good
24 working knowledge of the transcript. I was just
25 wondering what -- does it tie in with the defense

1 or --

2 **MR. STROM:** Well, it ties in with the defense,
3 but to both a -- it's a common car and a whole
4 general putting -- testing the State's evidence.
5 The other issue is, again, the cause of death issue
6 is somewhat attenuated because he does survive and
7 is beginning rehab when he essentially has a brain
8 clot.

9 **THE COURT:** Right. And that was sort of a
10 separate issue.

11 **MR. STROM:** Correct.

12 **THE COURT:** And I do recall there was a
13 vigorous cross-examination on cause of death and
14 whether or not there's an intervening cause by the
15 negligence of the hospital and all of those things
16 or someone else.

17 **MR. STROM:** But the argument that the paint
18 chips are from a common car is part of the defense's
19 case, as best they can tell without --

20 **THE COURT:** The paint chips was from the
21 motorcycle, did you say?

22 **MR. STROM:** Correct. Were taken off of the
23 motorcycle fender and the State says, well, this is
24 the link.

25 **THE COURT:** It came from Caughman's truck.

1 **MR. STROM:** Correct.

2 **THE COURT:** All right. What do you say about
3 that, Mr. Aplin?

4 **MR. APLIN:** Your Honor, I think the record that
5 we do have, I think, speaks for itself as to the
6 cross-examination of this witness. It doesn't
7 appear to have anything to do with the specifics of
8 these paint chips and the evidentiary value
9 themselves, the chain of custody. I mean, it looks
10 like a fairly cursory examination of what would be a
11 chain of custody witness who got up and said, yes, I
12 received the evidence and I processed it. So I
13 don't see that the missing portions of the direct
14 testimony would be particularly relevant.

15 I think Ms. Mayes, her testimony from the
16 reconstruction hearing, she didn't recall that there
17 was any particular objection one way or the other
18 made during that testimony. And it just strikes me,
19 again, it's a very -- very minor piece of missing
20 testimony from this trial, that there hasn't been a
21 showing of, in my mind, how it would be an appellate
22 issue.

23 **THE COURT:** And this is evidence that
24 Mr. Michael Moscow testified concerning --

25 **MR. APLIN:** He testified about the actual

1 evidence itself and was cross-examined extensively
2 about the testing of those paint chips and the
3 matching to the car and all the rest of it.

4 **THE COURT:** So you're saying that Mr. --
5 Mr. Floyd says he objected to it and it's not in the
6 transcript. There's nothing in his
7 cross-examination that challenged anything in regard
8 to a defective chain of custody.

9 **MR. APLIN:** Yeah. I think his testimony at the
10 reconstruction hearing was that he think -- he
11 remembers he objected to the chain some time during
12 the trial. He doesn't have any recollection of
13 objecting to it necessarily during Ms. Steven's
14 testimony, but he feels that he did --

15 **THE COURT:** If you object to the chain and the
16 -- as far as if the Court allows it in, wouldn't you
17 have to show the jury that there's something flawed
18 in what the witness did or some gap in the chain
19 since that's something that ultimately you would
20 then argue to the jury, well, how do we know that
21 it's -- this paint came from there because their
22 chain was disrupted and this witness' testimony
23 bears that out?

24 **MR. APLIN:** That is what you would have to do.
25 And I believe you also would have to object when the

1 evidence was introduced at trial on that basis. I
2 don't know that just objecting -- raising some
3 challenge to it during a particular witness'
4 testimony until that piece of evidence is introduced
5 at trial for error preservation purposes, you would
6 have to object to the introduction of that evidence
7 or else you're going to waive any objection you had
8 to her testimony anyway. So, again, I think this
9 record is sufficient for appellate review.

10 **THE COURT:** I see the witness on page 210 talks
11 pretty extensively about the pain and what he
12 observed and all that. Does this tie in with the
13 same thing or is this something different? Because
14 he's on the stand for quite a while. Of course, the
15 reference was to the motorcycle chips embedded in
16 the motorcycle and his testimony about the paint
17 chips and all. And then, of course, he starts out
18 saying, There's no evidence of any tampering, on
19 page 228.

20 Was he sort of a chain of custody type witness
21 as well?

22 **MR. STROM:** Moscow is the SLED analyst. So
23 he's not involved -- my understanding -- and, again,
24 if I'm mistaken, let me know -- is that he's not
25 involved in the collection of the -- the Cayce, West

1 Columbia Police Department took it to the impound
2 lot, released it to the family and, at some point
3 later in time, took it back.

4 **THE COURT:** Well, he's talking about the paint
5 chips that was on the motorcycle. That's what this
6 witness was testifying to, right?

7 **MR. STROM:** Correct. And I think State's
8 Evidence 15 and 16 are the photo boards that are the
9 pieces of this motorcycle. That's what we can't
10 place into evidence as to when it was moved into
11 evidence. And as far as the objection goes, Your
12 Honor, the objection will be when it's moved into
13 evidence, and that goes to this issue of
14 preservation of this potential issue with the chain
15 of custody.

16 And I can point Your Honor to where in the
17 September hearing Mr. Floyd speaks at length about
18 how the paint chips were a significant issue for the
19 defense and that would begin on page 28 line 11.

20 **THE COURT:** Page 28?

21 **MR. STROM:** Two-eight, yes, Your Honor, line 11
22 and through page 31.

23 **THE COURT:** Okay. 28 line 11.

24 **MR. STROM:** Yes, sir.

25 (Pause.)

1 **MR. STROM:** And, Your Honor, also on the
2 September 2016 hearing, page 62 is -- Ms. Stephens'
3 recollection is that Cayce, West Columbia maintained
4 control over these parts the entire time when that's
5 not the case.

6 **THE COURT:** Did Moscow also do the testing to
7 determine that the paint chips came from Caughman's
8 truck?

9 **MR. STROM:** Yes. He did the later testing at
10 the SLED lab, but the initial collection at the
11 accident scene was all done by the police
12 departments.

13 **THE COURT:** Well, of course, this says Agent
14 Moscow actually did an on-sight visit and collected
15 multiple paint chips.

16 **MR. STROM:** And I believe that's from after
17 Cayce and West Columbia took it back from the
18 friends and family and then picked up the pieces
19 again in the junkyard.

20 **THE COURT:** Well, he said he -- and that's his
21 testimony in the original transcript, paint chips
22 being embedded and paint chips that he collected and
23 his conclusions.

24 Yes, sir.

25 **MR. APLIN:** Just if I might, I'm just trying to

1 kind of bring all this back together. The bigger
2 picture here is what exactly is the objection we're
3 talking about? And they keep referring to a chain
4 of custody objection or a problem with the chain.
5 In all of these talks about who collected the paint
6 chips and who gave them to who and all that,
7 Ms. Stephens' only role, and I don't think this is a
8 dispute, is she's the evidence technician at SLED.
9 She wasn't involved in collecting the paint. She
10 wasn't transporting it anywhere. She was working at
11 SLED, someone brought the evidence to her, she
12 logged it or whatever she did it with it, maybe
13 logged it back out.

14 We don't know what her exact testimony was, but
15 I'm not sure what challenge to the chain we're
16 talking about that can be a viable appellate issue
17 that we don't have enough of a transcript that can
18 be reviewed by the Court of Appeals. I guess, I'm
19 having a hard time wrapping my brain around that.

20 **THE COURT:** We get challenges to chain of
21 custody, you know, blood, saliva, drugs. Trying to
22 figure out whether paint chips came from a certain
23 vehicle, that's not a typical chain of custody type
24 issue.

25 **MR. APLIN:** And, of course, the fender itself

1 is not even a fungible item. I mean, it was a
2 broken fender. They had the fender. The motorcycle
3 itself, those aren't things that chain of custody
4 are even an issue or involved --

5 **THE COURT:** Fungible items are the ones that
6 are usually the most significantly contested chain
7 of custody type items.

8 But -- yes, sir.

9 **MR. STROM:** Just very, very briefly, Your
10 Honor. The issue is that we don't have the
11 objection in the trial transcript that Mr. Floyd
12 testified that he made. And so trying to place it
13 in the broader scheme of the transcript is the issue
14 for the reconstruction. You know, the merits of it,
15 everything else aside, it's whether or not we have
16 this specific appellate issue. And in this
17 transcript with all it's little gaps, and it's sort
18 of little, almost like, razor cuts, we just don't
19 have it. And so he testified that he recalls an
20 objection to it, that he would have objected to it
21 and it's just in one of these sort of vaguely
22 annotated or described gaps.

23 You know, again, Your Honor, a finding that the
24 objection was made so that it can be preserved for
25 appellate review, that it is these issues that we're

1 talking about, you know, would be fine. It's just
2 that we don't know where this objection was made or
3 again, because it doesn't show up in the transcript,
4 if it was made.

5 **THE COURT:** Okay. Well, Mr. Aplin acknowledges
6 that he didn't address that issue. You did, didn't
7 you?

8 **MR. APLIN:** Right. I did not put that in the
9 proposed order. We addressed it at the hearing, but
10 I forgot to --

11 **THE COURT:** You need to put that in the
12 proposed order and share it with Mr. Strom.

13 **MR. APLIN:** Yes, Your Honor. And I -- I mean,
14 if you would like, I can address any other issues,
15 but I think they're addressed in the proposed order,
16 the rest of the specific allegations that were made
17 as far as the reconstruction and --

18 **THE COURT:** Well, the defendant's proposed
19 order that, in essence, saying I can't reconstruct
20 it sufficiently to help the appellate courts out, I
21 don't believe I can make that conclusion. I think
22 that -- I didn't review the entire transcript or
23 maybe if I did, I don't recall the specifics of it.

24 We were provided this transcript and I think I
25 did review it prior to the first hearing. I won't

1 express my opinion as to the quality of it or the
2 meaning of it. I'll let the appellate courts do
3 their job. They'll make their own assessments and
4 hear your arguments as to whether or not it's --
5 well, I will give my view, that it adequately -- we
6 have adequately reconstructed the essence of it, but
7 on the argument as to what they need for them to
8 make their determination, that's their -- within
9 their purview. But I'm ready to wrap this up and
10 get it on to them and let you all take it from
11 there.

12 So I think that -- I've tweaked some of what
13 was in the original order that was given to me, but
14 you can still send me what you have addressing the
15 additional issue and also including -- including in
16 it that number six has emerged that fill -- fills in
17 that blank, so that's one significant thing we've
18 done here today. And then, you know, I'm ready
19 to -- how many days do you think it'll take you? We
20 need to get this done.

21 **MR. APLIN:** I can do it within ten days, Your
22 Honor.

23 **THE COURT:** Ten days? To write the one
24 paragraph?

25 **MR. APLIN:** We can do five. We can do three if

1 you want.

2 **THE COURT:** How about three? While we're all
3 working on it, let's get it done and get it to
4 Mr. Strom and get it to wherever it needs to go.

5 **MR. APLIN:** Okay. We can do that.

6 **THE COURT:** Anything else, Mr. Floyd,
7 Ms. Mayes, Mr. Caughman, anybody?

8 **MR. STROM:** I don't believe so, Your Honor.

9 **MR. FLOYD:** No, Your Honor. It's good to see
10 you again.

11 **MS. MAYES:** Nothing further, Your Honor.

12 **THE COURT:** How are you getting along,
13 Mr. Caughman?

14 **DEFENDANT:** I'm doing okay.

15 **THE COURT:** All right. Thank you all. And
16 here's your transcript back.

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18 END OF PROCEEDINGS

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 1st of May, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 30, 2018

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

State of South Carolina,

v.

William Craig Caughman,

Defendant.

IN THE COURT OF GENERAL SESSIONS

Indictment Number: **2010-GS-32-2294**
(Appellate Case No. 2015-001867)**ORDER**

This matter came before this Court pursuant to an Order to Reconstruct the Record which was issued by the South Carolina Court of Appeals on August 11, 2016. On September 16, 2016, a reconstruction hearing was convened at the Lexington County Courthouse. The Defendant was present at the hearing and was represented by Assistant Appellate Defender John P. Strom, Esquire, of the South Carolina Office of Indigent Defense. The State was represented by J. Benjamin Aplin, Senior Assistant Deputy Attorney General, and L. Suzanne Mayes, Assistant Solicitor for the Eleventh Judicial Circuit.

The Defendant is currently confined but presented the testimony of his trial attorney H. Wayne Floyd, Esquire. He also introduced, without objection, a copy of Mr. Floyd's hand written notes from the trial. Also testifying at the hearing was Assistant Solicitor L. Suzanne Mayes. In addition, this Court had before it: (1) a copy of the transcript of Defendant's May 20-23, 2013 trial, which included notations from the court reporter indicating which portions were inaudible or otherwise unable to be transcribed;¹ (2) a copy of the transcript of this

¹ The trial transcript is divided into two separate volumes due to a change in court

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Court's May 21, 2015, hearing on Defendant's post-trial motions for a new trial and for reconsideration of the sentence; (3) Defendant's June 17, 2016, "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record" which was filed with the Court of Appeals; (4) the State's July 12, 2016, "Return to Motion to Remand for Reconstruction of the Record" which was filed with the Court of Appeals; and (5) the August 11, 2016, Order of the Court of Appeals granting Defendant's motion and remanding to this Court for reconstruction of the record.

On May 1, 2017, this Court convened a follow-up hearing at the Lexington County Courthouse to finalize the reconstruction proceedings and render a decision. The Defendant was again present and represented by Mr. Strom and the State was again represented by Mr. Aplin. Also present were Mr. Floyd and Ms. Mayes.

PROCEDURAL HISTORY

The Defendant is currently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. He was indicted at the May, 2013 term of the grand jury for Lexington County for "hit and run accident resulting in death" under Section 56-5-1210 of the South Carolina Code. He was represented by H. Wayne Floyd, Esquire. On May 20-23, 2013, Defendant proceeded to a jury trial before this Court pursuant to which he was found guilty as indicted. He was sentenced to twenty (20) years' imprisonment.

reporters. The first volume covers the first day of trial, May 20, 2013, and is paginated 1-155, and the second volume is of the remainder of trial, May 21-23, 2013, and is paginated 1-329.

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A notice of appeal was filed and served on Defendant's behalf and on October 22, 2015, Defendant/Appellant timely requested a complete copy of the transcript of his trial. On June 17, 2016, Defendant submitted a "Motion to Hold Appeal in Abeyance and Motion to Remand for Reconstruction of the Record" with the Court of Appeals. On July 12, 2016, the State submitted a "Return to Motion to Remand for Reconstruction of the Record" with the Court of Appeals opposing remand for reconstruction. In an Order filed August 11, 2016, the Court of Appeals granted Defendant's motion and remanded this matter to this Court for reconstruction of the missing portions of the record.

In his motion to the Court of Appeals, Defendant identified four "missing" portions of the trial which were not transcribed because, as indicated by the court reporter, they were inaudible. These consisted of:

- (1) "An indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of [Defendant's] residence";
- (2) Closing arguments;
- (3) "Portions of the trial testimony of Dr. Elizabeth Moffatt; and
- (4) "Portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute."

At the reconstruction hearing, Defendant raised two additional concerns about missing portions of the record, specifically in regard to: (1) a discussion at trial about his requests to charge, which this Court ultimately declined to charge to the jury, and (2) a portion of the testimony of State's witness Amy Stephens. Without objection from the State, this Court left the

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record of the reconstruction hearing open to allow Defendant to obtain copies of the written requests to charge from Mr. Floyd's file and include them in the reconstructed record. Defendant subsequently submitted eight written requests to charge, numbered Defendant's #1, #2, #3, #4, #5, #7, #8, and #9, which are now before the Court. There was no Defendant's #6 in Mr. Floyd's file and consequently, Appellant did not submit Defendant's #6 to this Court. At the May 1, 2017, follow-up hearing, however, it was discovered that sometime before the initial September 16, 2016, reconstruction hearing, this Court had been sent an email from Mr. Floyd's office with an attached copy of his post-trial motions for a new trial and for reconsideration of his sentence. Those motions included a copy of Defendant's #6, a requested jury charge on giving "the benefit of any doubt" to the Defendant. As a result of this discovery, the parties agreed to add it to the reconstruction proceedings and all nine of Defendant's requests to charge are now part of the record before this Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has had the opportunity to review the record in its entirety and has heard the testimony at the reconstruction hearing. The Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law in response to the Court Of Appeals Order of August 11, 2016.

I.

RECONSTRUCTED RECORD

A reconstructed record on appeal is only sufficient if it allows for meaningful appellate review. State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 274-75 (Ct. App. 2007). A new

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trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review. Id.

A. Multi-Jurisdictional Task Force Agreement

The Defendant complained to the Court of Appeals that the transcript omits: "an indeterminate amount of arguments by defense counsel and the prosecution regarding the validity of a multi-jurisdictional police taskforce agreement, which the police relied on for jurisdiction when seeking a search warrant of [Defendant's] residence." The Court finds that a review of pages 271-76 of the transcript reveals that immediately prior to the Court denying Defendant's motion to suppress, a "colloquy between the Court and Mr. Floyd that was not audible" was not transcribed. However, prior to this colloquy, Mr. Floyd noted: "We have previously argued that motion." As the trial judge, I agreed stating: "Yes, sir, the Court heard argument on the issue yesterday concerning this agency agreement" and "We spent a good bit of time on that issued yesterday, and whether the agency agreement was signed by County Council or the required officials and all of that, and who had to approve the agreement."

At the reconstruction hearing the parties agreed that pages 104-129 of the May 21-23, 2013, trial transcript reflect the preceding day's arguments regarding the search warrant and the Multi-Jurisdictional Task Force Agreement. Mr. Floyd testified that to the best of his recollection, the transcribed arguments articulate the particular grounds he raised at trial for seeking to suppress evidence gathered pursuant to the search warrant obtained as a result of the agreement. The Court finds that the trial transcript combined with the testimony offered at the reconstruction hearing sufficiently reconstructs the record of the missing portions of Defendant's argument, the State's response, and the Court's ruling, so as to provide an adequate record for

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meaningful appellate review.

B. Testimony of Dr. Elizabeth Moffatt

The Defendant asserts: "Additional missing sections of the trial transcript include portions of the trial testimony of Dr. Elizabeth Moffatt" as well as "arguments on objections by defense counsel related to Dr. Moffatt's testimony." The Court finds that a review of pages 196 to 210 of the May 21-23, 2013, of the trial transcript demonstrate that in each instance where Dr. Moffatt's testimony was inaudible, either the solicitor or the Court asked her to speak up and repeat her testimony, or the particular answer was not germane to any possible issue on appeal. The Court finds the inaudible portions of Dr. Moffatt's testimony would not impact Appellant's ability to seek meaningful appellate review. Nevertheless, the Court heard testimony on the missing portions of Dr. Moffatt's testimony at the reconstruction hearing and now finds that to the extent it was lacking, it has been adequately reconstructed so as to provide an adequate record for meaningful appellate review.

As to the objections raised to Dr. Moffatt's testimony, particular attention was focused on two objections the Defendant made at trial, one that the State had not sufficiently disclosed documents pursuant to Rule 5, SCRCrimP, and that Dr. Moffatt's testimony was hearsay. The Court finds the existing record on pages 196 to 203 of the May 21-23, 2013, of the trial transcript combined with the testimony at the reconstruction hearing adequately reflect Dr. Moffatt's testimony, Defendant's objections to that testimony, the State's responses to those objections, and the rulings of this Court. The testimony of Dr. Moffatt and the Defendant's objections to that testimony were sufficiently reconstructed to allow for meaningful appellate review.

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C. Statutory Interpretation of § 56-5-1210

The Defendant states that "portions of arguments between defense counsel and the prosecutor about the correct interpretation of the hit and run resulting in death statute were inaudible." However, this Court finds that a review of pages 281 to 283 of the May 21-23, 2013, of the trial transcript reveals that the only portion inaudible is Mr. Floyd's explanation for his assertion that: "number two we think is not the wording of the statute." Immediately after the inaudible portion, the solicitor specifically identified the challenged wording in her response by stating: "I do not believe the interpretation of the word immediately. It is the State's position that it means the driver shall immediately stop, speaking of the duty of the driver to stop, rather than the immediate death of the victim. Beyond that, we believe the wording of the statute is clear. Mr. Floyd would give the wrong application of the wording." The Court finds the statute itself, coupled with the solicitor's response and the testimony offered at the reconstruction hearing provide sufficient clarity of Defendant's argument at trial to allow for meaningful appellate review.

D. Closing Arguments

The Defendant notes that: "none of the prosecution's or defense's closing arguments were transcribed." This Court finds that although the closing arguments were not transcribed, the court reporter notes at page 292 of the transcript that: "There were no objections made during these statements." Thus, the Court concludes where no objections were made to the closing arguments, there are no issues preserved for appellate review.

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At the reconstruction hearing, Defendant's counsel suggested that without a transcript of the closing arguments there is no way to confirm that the court reporter's notation was correct. The Court finds however, that there is no evidence to suggest it is not.

Also at the reconstruction hearing and at the follow-up hearing, Defendant's counsel argued that a transcript of the closing arguments is necessary for adequate appellate review because it could impact an analysis of a claim of harmless error. The Court disagrees and finds the record that exists along with the portions reconstructed provide a sufficient record for appellate review, including a review of claims of harmless error if raised on appeal. As to the substance of the State's close, the Court finds the testimony of Solicitor sufficiently reconstructed closing argument to allow for meaningful appellate review.

E. Defendant's Requests to Charge

Following the reconstruction hearing, the Defendant submitted eight written requests to charge, numbered Defendant's #1, #2, #3, #4, #5, #7, #8, and #9. Defendant's #6 was subsequently discovered and, with the consent of the parties, accepted into the record at the May 1, 2017 follow-up hearing; thus, all nine written requests to charge are now before the Court. The Court finds these written requests to charge sufficiently and adequately reconstruct the substance of the Defendant's requests to charge as they were presented to and rejected by the Court and therefore, provide for meaningful appellate review of any issues regarding the jury charge.

F. Testimony of Amy Stephens

At the reconstruction hearing, the Defendant directed Mr. Floyd's attention to page 218 of the May 21-23, 2013, trial transcript and questioned him about the missing direct examination

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testimony of witness Amy Stephens. (Reconstruction Tr.p.26). The Court notes the transcript includes the following notation:

TRANSCRIPTION NOTE: Audio portion not on disc which next has Witness Amy Stephens on the stand. Direct Examination of witness by Solicitor not present. Audio beginning with Cross Examination of witness by Mr. Floyd.

(May 21-23, 2013 Tr.p.218, lines 21-24). It then includes approximately 19 lines of cross-examination by Mr. Floyd indicating Ms. Stephens was employed as a forensic technician at SLED during which she explained her role in receiving items that were submitted to SLED for forensic testing. (May 21-23, 2013 Tr.p.218-p.219).

During the reconstruction hearing, Mr. Floyd first testified he had no independent recollection as to the substance of Stephens' testimony or whether he objected to any of her testimony. He opined that based on her appearance immediately before State's witness Michael Moskal, it was possible she was a chain-of-evidence witness because Moskal testified about paint chips recovered from the victim's motorcycle, which were a "pretty significant" issue in the case. Mr. Floyd testified he made an objection to the chain of evidence, and assumes he repeated the objection with Stephens, but could not specifically remember doing so, or what that particular objection might have been. (Reconstruction Tr.p.26-p.30). On cross-examination, Mr. Floyd explained the significance of the paint chips to the case, but noted they were not introduced into evidence and was unable to articulate what "chain-of-evidence" objection he would have made in regard to Stephens testimony. (Reconstruction Tr.p.30-p.33). The Court sought further explanation from Mr. Strom in regard to the significance of Stephens' testimony and the need for reconstruction for possible appellate issues and noted the brevity of Mr. Floyd's

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cross-examination as indicative of the non-substantive nature of her missing testimony on direct. (Reconstruction Tr.p.33-p.38).

Ms. Mayes was called to the stand to assist with reconstruction. She testified that Ms. Stephens is the evidence log-in technician at SLED, which means she works in the evidence lobby area where she receives any evidence being delivered from other law enforcement agencies, logs that evidence in, and assigns it a SLED lab number for tracking. Ms. Mayes explained that Stephens does not test evidence or have any involvement in any case besides logging the evidence in and having it sent to the appropriate analyst. Ms. Mayes testified her recollection was that Stephens' trial testimony was limited to chain of custody and would merely have consisted of a description of her logging the evidence delivered by the relevant law enforcement agency, and her releasing that evidence to a SLED analyst for testing. Ms. Mayes testified that in the Defendant's case, Stephens would have testified the evidence in question went to Michael Moskal for testing. She explained Moskal is the trace analyst who conducted all of the testing of paint samples in this case and that the State would have had to make a showing the chain of custody of that evidence was complete prior to Agent Moskal giving his opinion as to the results of the trace analysis. Ms. Mayes then reviewed the cross-examination of Ms. Stephens that is transcribed and testified, it does not appear that any of Mr. Floyd's cross was missing. (Reconstruction Tr.p.59-p.62). Under cross-examination from Mr. Strom, Ms. Mayes gave additional details of the specific evidence collected and tested in the case, which helped clarify Ms. Stephens' limited role in this case. (Reconstruction Tr.p.62-p.64).

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At the follow-up hearing, the parties presented additional arguments concerning Ms. Stephens' testimony, Mr. Floyd's purported objection to the chain-of-evidence, and the import of the testimony in regard to possible appellate issues.

This Court concludes the testimony of Solicitor Mayes at the reconstruction hearing sufficiently reconstructed the substance of Stephens' direct testimony to allow for meaningful appellate review. In regard to the Defendant's alleged objection to testimony about the paint chips on chain-of-custody grounds, the Court finds that any such objection, if made, would have been made in other portions of the record which have been transcribed. Further, any attack on the integrity of Stephens' role in the chain of custody would have been made during cross-examination.

Based on the testimony at the reconstruction hearing, the Court finds the transcription of Ms. Stephens' cross-examination testimony from trial is complete. Based on the cursory nature of the cross-examination, the Court concludes Defendant has failed to demonstrate any prejudice flowing from the lack of a transcript of Ms. Stephens' direct examination testimony. This portion of the record has been sufficiently reconstructed to allow for meaningful appellate review.

CONCLUSION

The Court convened the reconstruction hearing on September 16, 2016, in Lexington County and devoted significant time in reviewing the existing trial transcript as well as hearing testimony and the presentation of other evidence. The Court concludes that the matters presented at the reconstruction hearing regarding the issues alleged in Defendant's motion to remand for reconstruction are addressed in this Order. Based on the foregoing, the Court concludes that, a

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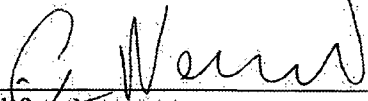
diligent and good faith effort has been made to reconstruct the missing portions of the record.

The missing portions of the record have been sufficiently reconstructed. This Court finds the record is now sufficiently reconstructed to allow the appellate court to conduct a meaningful review.

IT IS THEREFORE ORDERED:

1. The transcripts of both the September 16, 2016, reconstruction hearing and the May 1, 2017, follow-up hearing be obtained by Defendant for submission to the Court of Appeals;
2. The transcripts combined with other evidence submitted at the reconstruction hearing and Defendant's written request for jury charges, sufficiently reconstruct the record so as to provide a full and complete record which satisfies the interests of due process and fundamental fairness so as to allow for a meaningful appellate review; and
3. The Defendant is remanded to the custody of the Department of Corrections pending resolution of his direct appeal.

AND IT IS SO ORDERED this 26th day of May, 2017


 Clifton Newman
 Trial & Reconstruction Hearing Judge
 Eleventh Judicial Circuit

Columb-2, South Carolina

WITNESSES

Cayce Department of Public Safety

Edward L. Pereira

Law Enforcement Case #: 1001243

DEM

ARREST WARRANT NUMBER

I203629

ACTION OF GRAND JURY

THE FULL

Ron Brasington
Foreperson of Grand Jury

Date: 5-6-13

VERDICT

GUilty AS CHARGED

BRUCE GRAMMER
Foreperson of Petit Jury

Date: 5-23-13

DOCKET NO. 2010GS3202294

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2013

THE STATE

vs.

William Craig Caughman

CDR #: 2463

Indictment for

HIT AND RUN
ACCIDENT RESULTING IN DEATH

§ 56-05-1210(A)(3)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

INDICTMENT FOR
 HIT AND RUN
 ACCIDENT INVOLVING DEATH

§ 56-05-1210(A)(3)

At a Court of General Sessions, convened on MAY 2013, the Grand Jurors of Lexington County present upon their oath:

That **William Craig Caughman** did in Lexington County, on or about February 21, 2010, being the driver of a vehicle involved in an accident resulting in injury to or the death of a person, to wit: Fredric Tobias Morriss, did unlawfully fail to immediately stop the vehicle at the scene of the accident or as close to it as possible, furthermore he did fail to return to and in every event remain at the scene of the accident until he had fulfilled the requirements of S.C. Code Section 56-5-1230, 1976, as amended, setting forth the duty to give information and render aid or reasonable assistance to any person injured in such accident, the aforesaid actions of failing to stop or comply with the requirements of law in violation of Section 56-5-1210 (A) and Section 56-5-1210(A)(3) of the 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:

Suzanne Mayes
 ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,


Taylor D Gilliam
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 16th day of August, 2018.

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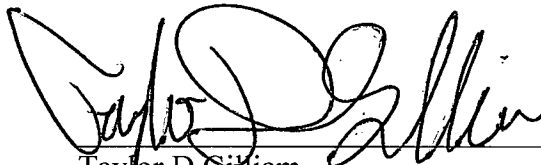
SC Court of Appeals

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CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Taylor D. Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 16th day of August, 2018.