

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Grace Gilchrist Knie, Circuit Court Judge

SHERRA L. WERKMEISTER,

RECEIVED

FEB 15 2019

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001538

APPENDIX

VICTOR R. SEEGER
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (SEPTEMBER 19 – 20, 2016).....	1
APPLICATION FOR POST-CONVICTION RELIEF	147
RETURN.....	157
POST-CONVICTION RELIEF HEARING TRANSCRIPT (FEBRUARY 2, 2018).....	166
ORDER OF DISMISSAL.....	225
INDICTMENTS	237
SENTENCE SHEETS	241

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Sherra L. werkmeister,) 2014-GS-42-2494;2495
7 Defendant.) September 19 and 20, 2016
8) Spartanburg, South Carolina
9

10 B E F O R E :
11 HONORABLE J. DERHAM COLE, JUDGE
12
13

14 A P P E A R A N C E S :
15 LINDSEY HEGER OVERBY, ESQUIRE
16 SPENSER HOLLORAN SMITH, ESQUIRE
17 Attorneys for the State
18 THOMAS W. TRAXLER, ESQUIRE
19 Attorney for Victim Arrie Lee Lowry
20 ANDREW J. JOHNSTON, ESQUIRE
21 ANDRA JULIA TAT, ESQUIRE
22 Attorneys for the Defendant
23

24 Linda D. Moffitt
25 Circuit Court Reporter

INDEXWITNESSESPAGE

JEFF SMITH (SW) In-camera

Direct examination by Ms. Overby 26

Cross-examination by Mr. Johnston 32

Redirect examination by Ms. Overby 39

Recross-examination by Mr. Johnston 40

RANDALL BALLENGER (SW) In-camera

Direct examination by Ms. Overby 41

Cross-examination by Mr. Johnston 50

Redirect examination by Ms. Overby 74

DAVID VERDIER (SW) In-camera

Direct examination by Ms. Overby 78

Cross-examination by Mr. Johnston 80

Redirect examination by Ms. Overby 85

Guilty plea -- page 88.

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	Photographs	88	
S-2	E.M.S. report	88	
S-3	Spartanburg Regional blood draw	88	
S-4	D.N.A. report	88	
S-5	Photographs	88	
S-6	MAIT report	88	
S-7	Autopsy report	88	

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Affidavit and return		17
C-2	FR-10 report	52	53
C-3	9-1-1 report	53	
C-4	CAD report	55	55
C-5	History	56	

1 (Proceedings September 19, 2016)

2 THE COURT: All right. First case for trial is State
3 vs. Sherra Werkmeister.

4 Mr. Johnston, you and Ms. Tat represent her?

5 MR. JOHNSTON: That is correct, Your Honor.

6 THE COURT: Y'all ready to select a jury?

7 MR. JOHNSTON: We are, sir.

8 THE COURT: All right.

9 MS. OVERBY: Your Honor, I do have various witnesses
10 who are here. I don't know if you would like them to be
11 present when their names are read to the jury. I also have
12 some people that if we need more room I can send out.

13 THE COURT: Well, I think it's a good idea to have the
14 witnesses present so that the jury can see who they are,
15 but they can't sit in the jury panel.

16 (Pause.)

17 THE COURT: All right. Bring the panel around,
18 please.

19 Does the state have any voir dire requests?

20 MS. OVERBY: Yes, sir, Your Honor. I thought I
21 provided them. If I didn't, here's an extra copy.

22 THE COURT: I've got defense requests. I have it.

23 (Whereupon, a jury was qualified and impaneled.)

24 THE COURT: All right. Those who have been chosen,
25 I'll ask you to please go with the bailiff to a jury room,

1 and I'll bring you back in just a few minutes.

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are there any matters that need to be
5 addressed regarding jury selection by the state?

6 MS. OVERBY: Nothing from the state, Your Honor.

7 THE COURT: From the defense?

8 MR. JOHNSTON: Not from the defense.

9 (Whereupon, the remaining members of the jury venire
10 were excused.)

11 THE COURT: All right. Bring the jury panel in,
12 please, ma'am.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: Ladies and gentlemen, I've got some
16 matters that I need to address this afternoon. Some relate
17 to this case, some relate to other cases, but they've been
18 previously scheduled. But we didn't want to keep the whole
19 panel down here while we addressed those matters and then
20 had to select a jury.

21 So now that you have been selected you're going to be
22 excused for the balance of the afternoon. We will begin in
23 the morning at 9:45, at 9:45, with the trial of the case.

24 As you are excused for the afternoon, you must keep
25 certain things in mind. You are not permitted to talk

1 about the case. You can't discuss it with anybody in any
2 fashion whatsoever, with any person whatsoever.

3 That includes your fellow jurors. You're not
4 permitted to talk about the case until you are instructed
5 to begin deliberations, and that won't be until the end of
6 the trial after all of the evidence has been received and
7 I've instructed you on the law that's applicable in the
8 case.

9 So during the overnight recess and until you're
10 instructed to begin deliberations don't talk about the
11 case, don't discuss it, don't allow anyone to discuss it
12 with you.

13 Also, any time a jury is selected to make a decision
14 you have to base your decision upon what you see and hear
15 during the trial of this case.

16 You can't be influenced by any outside consideration.
17 You have to decide the case upon what's presented during
18 the trial and then the law that's applicable that I'll
19 provide you.

20 So from now until you are to begin deliberations there
21 can be no research, no investigation into any issue that
22 might arise during the trial. You can't consult any kind
23 of outside resource to find out about the case. You can't
24 go on the internet to search for it. You can't listen to
25 anything that might be on the radio, television.

1 You can't read anything that might appear in the
2 newspaper. Oftentimes, reports that are given about
3 something are incorrect, and that's why we have trials.
4 That's why we require witnesses to come to court and
5 testify.

6 If we could rely upon the media to get it right or
7 rely upon people outside the case to decide what it's
8 about, then that's what we'd do. But that doesn't work
9 because those people often don't know what the case is
10 about, and that's because they're not here in court.
11 They're not placed under oath. They're not subjected to
12 direct and cross-examination in order to determine what
13 they do know and don't know about the case.

14 So that's why you can't rely upon any outside
15 reference or any outside source for any information. So
16 don't consult any.

17 And of course, as I say, it's important that you not
18 allow yourselves to be exposed to any type of media
19 coverage that might relate to the case because it might not
20 be accurate. As I say, your decision has to be based upon
21 what you see and hear during the trial, not what someone
22 else might perceive they saw or heard during the trial.

23 So with that do have a good afternoon and a good
24 evening. Please report to your jury room at 9:45, 9:45 in
25 the morning. Have a good afternoon and evening.

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: All right. We'll be in recess for ten
4 minutes, and then we'll continue.

5 (Whereupon, a recess was taken.)

6 THE COURT: Mr. Johnston.

7 MR. JOHNSTON: Your Honor, I would suggest if the
8 Court finds it wise that Ms. Werkmeister be arraigned on
9 the other two charges, and she has never been either
10 formally served or arraigned on either of the two.

11 THE COURT: Okay. Have you been provided with
12 copies --

13 MR. JOHNSTON: I have, sir.

14 THE COURT: -- of the indictments?

15 MR. JOHNSTON: I have, sir.

16 THE COURT: And the indictments you're referring to
17 are the great bodily injury and assault and battery first
18 degree?

19 MR. JOHNSTON: No, sir. The reckless homicide and the
20 assault and battery first degree.

21 The original charges were felony D.U.I. death and
22 felony D.U.I. great body injury.

23 THE COURT: Have you been provided a copy of the
24 indictment containing the reckless homicide and assault and
25 battery first degree charges?

1 MR. JOHNSTON: Yes, sir, I have.

2 THE COURT: And have you shared that with
3 Ms. Werkmeister?

4 MR. JOHNSTON: Yes, sir, I have.

5 THE COURT: And have you explained those charges to
6 her?

7 MR. JOHNSTON: Yes, sir, I have.

8 THE COURT: And she doesn't wish arraigned -- wish to
9 waive arraignment? She prefers to be arraigned?

10 MR. JOHNSTON: If you will allow us to, she will waive
11 any arraignment.

12 THE COURT: Well, of course she can if she wants to.

13 MR. JOHNSTON: Let me just confer with her just one
14 second.

15 (Pause.)

16 MR. JOHNSTON: Your Honor, after having spoken with
17 her about it, she does agree to waive arraignment. She is
18 aware of all of the charges against her.

19 THE COURT: Okay. Thank you.

20 All right. What about your motions?

21 MR. JOHNSTON: Your Honor, if I may first, if I may
22 approach, I have a copy of Dr. Werkmeister's bond in this
23 case. And I do have the two sureties present here in court
24 if I could have them stand.

25 (Whereupon, the bondspersons complied.)

1 THE COURT: Okay.

2 MR. JOHNSTON: That's her father and step-mother.

3 THE COURT: Charles Nichols and Debra --

4 MR. JOHNSTON: Charles Richard.

5 THE COURT: Charles Richard?

6 MR. JOHNSTON: Yes, sir. Charles E. Richard, Jr. and
7 Debra A. Dillard.

8 THE COURT: And Debra Dillard.

9 Okay. You are Mr. Richard?

10 CHARLES E. RICHARD, JR.: Yes, I am, sir.

11 THE COURT: And you are Ms. Dillard.

12 DEBRA A. DILLARD: Yes, sir.

13 THE COURT: And each of you signed the bond securing
14 the release of Sherra Werkmeister from custody pending the
15 trial of her case.

16 CHARLES E. RICHARD, JR.: Yes, Your Honor.

17 THE COURT: And you're still on that bond. She's here
18 in court. And do each of you agree to continue with that
19 obligation to ensure that she'll be in court for the
20 balance of the trial?

21 CHARLES E. RICHARD, JR.: Yes, Your Honor.

22 THE COURT: And you wish to remain obligated on the
23 bond rather than have her re-incarcerated pending the
24 trial?

25 CHARLES E. RICHARD, JR.: Yes, sir.

1 DEBRA A. DILLARD: Yes, sir.

2 THE COURT: So you want to stay on the bond and
3 continue your obligation.

4 CHARLES E. RICHARD, JR.: Yes, sir.

5 THE COURT: That a yes?

6 CHARLES E. RICHARD, JR.: Yes, sir.

7 DEBRA A. DILLARD: Yes.

8 THE COURT: Okay. Thank you.

9 Does the state wish to be heard on the defendant being
10 continued on bond?

11 MS. OVERBY: No, sir, Your Honor. I'll leave that to
12 your discretion.

13 THE COURT: All right. We'll continue her on the bond
14 same terms and conditions.

15 Now, Ms. Werkmeister, do you understand that while
16 Mr. Richard and Ms. Dillard have agreed to stay on the bond
17 and continue with their obligations, you also have the
18 obligation to appear in court on time when instructed to
19 continue with the trial of this case? But whether or not
20 you appear on time or at all, this case will continue. If
21 you don't appear on time or you don't appear at all,
22 Mr. Richard and Ms. Dillard will be having to pay that
23 \$50,000. Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay.

1 MR. JOHNSTON: Thank you, Your Honor.

2 THE COURT: Thank you. All right.

3 MR. JOHNSTON: Our next motion would be one to
4 sequester the witnesses.

5 THE COURT: The state's position?

6 MS. OVERBY: Your Honor, with respect to -- the victim
7 has a right to be in here. She's a potential witness, so
8 under the Victim's Bill of Rights we would ask that she be
9 able to remain in here.

10 Other than that, I understand the sequestering of
11 witnesses is up to Your Honor's discretion. I've read the
12 rules.

13 THE COURT: Okay. So Ms. Rice will remain.

14 Do you oppose the sequestration request?

15 MS. OVERBY: Your Honor, there -- I don't have an --
16 no. I don't have a position regarding it. If that's what
17 Your Honor rules, then that's fine. I don't see any need
18 for it.

19 THE COURT: I understand my rule is fine because I'm
20 the one that gets to decide that, but I'm asking you what
21 y'all's position is.

22 MS. OVERBY: I don't see a need for it.

23 THE COURT: It's not that I'm going to accept yours.
24 It's just that I'm going to ask you what yours is.

25 MS. OVERBY: I don't see a need for it.

1 THE COURT: All right. Well, that's what I wanted to
2 hear.

3 what is the need for it, Mr. Johnston?

4 MR. JOHNSTON: Your Honor, I don't want the witnesses
5 to be able to -- I don't want them to be influenced by
6 hearing the testimony of other witnesses.

7 THE COURT: All right. What witnesses will be called
8 during the hearing, motion hearings, this afternoon?

9 MS. OVERBY: That will be Officer Ballenger and that
10 would be Sergeant Smith of the Greer Police Department,
11 both of whom are in here.

12 THE COURT: Those are the only two?

13 MS. OVERBY: Yes, sir, Your Honor.

14 THE COURT: All right. Well, we'll just ask one of
15 them to step out.

16 Have they provided a report or statement?

17 MS. OVERBY: They provided incident reports, Your
18 Honor. Is that what you mean?

19 THE COURT: Yes.

20 MS. OVERBY: Yes.

21 THE COURT: Whatever they're written down about what
22 they're going to testify to? Do we have documentation of
23 everything they're going to testify to?

24 MS. OVERBY: As to -- yes, sir, Your Honor. It's
25 contained within the narrative of that night.

1 THE COURT: Okay. Are they going to testify to
2 anything that's not contained in some type of document
3 that's been provided to the defense?

4 MS. OVERBY: There may be one or two details regarding
5 that there were other accidents that night that they were
6 working prior to this one. That is something that they
7 would testify to but the scene itself --

8 THE COURT: I'm talking about the material facts that
9 relate to this case, is what I'm talking about.

10 MS. OVERBY: That would go to exigency. That's why I
11 offer that. That's different than the narrative that they
12 wrote.

13 THE COURT: Okay. All right. We'll separate them.

14 MR. JOHNSTON: Yes, sir. Your Honor, I was going to
15 say that exigency has not been the theory throughout the
16 case. And they may have written some things down that
17 pertain to exigency, but they have not written a report in
18 support of a decision to request blood or to draw blood on
19 account of exigent circumstances.

20 THE COURT: All right. Well, let's separate them.
21 Who's going to testify first?

22 MS. OVERBY: Sergeant Smith.

23 THE COURT: All right. Where is Officer Ballenger?

24 MS. OVERBY: He's right there.

25 THE COURT: Have you got somebody to take him out

1 somewhere?

2 MS. OVERBY: May I ask the bailiff to? My
3 investigator --

4 THE COURT: Where do you want him to stay?

5 MS. OVERBY: Can he sit right outside the courtroom?

6 THE COURT: Sure.

7 MR. JOHNSTON: While they're doing that may I be heard
8 on a point?

9 THE COURT: Sure.

10 MR. JOHNSTON: Your Honor, the situation that I
11 believe we have come to realize about what happened in this
12 case, I'd like to put that on the record, put on the record
13 that the solicitor and I had a discussion in chambers with
14 the Court about this so everyone's aware of what's
15 happening here. There was a forensic --

16 THE COURT: Let me say this. We did have a discussion
17 about various things in chambers.

18 MR. JOHNSTON: Yes, sir, yes, sir.

19 THE COURT: But whatever was discussed there makes no
20 difference so far as what's occurring here now is
21 concerned, because anything that you want to place on the
22 record needs to be placed on the record. Any motion you
23 wish to be made -- you wish to make needs to be made, so.

24 MR. JOHNSTON: Yes, sir. Thank you. Thank you for
25 that. I intend to do that.

1 Your Honor, the first motion concerns the taking of a
2 purported forensic blood sample at Spartanburg Regional
3 Medical Center.

4 There is a document in this case --

5 THE COURT: Your motion is to exclude it?

6 MR. JOHNSTON: My motion is to exclude the results of
7 the forensic draw --

8 THE COURT: Okay.

9 MR. JOHNSTON: -- based upon it not being done
10 according to law.

11 THE COURT: Okay.

12 MR. JOHNSTON: Your Honor, I have a document which I
13 would like to make a Court's Exhibit at this time.

14 (Affidavit and returned marked Court's Exhibit No. 1.)

15 MR. JOHNSTON: And I'll hand that up to the Court so
16 that the Court might be able to see it.

17 Your Honor, that is the document that purported to be
18 a search warrant in this case. It is our argument to the
19 court that it is not a search warrant, and that is based
20 upon several factors.

21 The first is, as the Court well knows, there are three
22 parts to a search warrant. The first is the actual search
23 warrant itself, the directive by the judicial officer to
24 law enforcement to go to a particular location and search
25 and seize certain items which are permitted by the issuing

1 officer upon a finding of probable cause.

2 The second is an affidavit, usually sworn to,
3 requesting such a search warrant be issued and including
4 there, among other things, the affiant's belief for why
5 such evidence is subject to seizure and why they have
6 probable cause to believe that it might be located at a
7 given place.

8 The third of course is the return. The return is just
9 simply a recitation of what was found. And it's brought
10 back to the office of the issuing judicial officer.

11 In this case part one does not exist. Only parts two
12 and three exist.

13 It is our first position that without a judicial
14 directive based upon a finding of probable cause directing
15 law enforcement officers to go to a particular location and
16 search or seize a certain item that it is not a search
17 warrant.

18 In fact, the attorney general prescribes certain forms
19 to be used in the formation of a search warrant. And that
20 is set forth under 17-13-160.

21 That states, "Notwithstanding any other provision of
22 law, effective September 1, 1975, all arrest warrants and
23 search warrants issued by the state or any political
24 subdivision thereof shall be in a form as prescribed by the
25 attorney general and the attorney general's office shall

1 prescribe such forms to all law enforcement agencies."

2 I know the Court is very familiar having seen these
3 search warrants before. This document does not follow the
4 attorney general's requirements, nor does it follow any
5 sort of common law requirement for what a search warrant
6 should consist of. All this is is a request for a search
7 warrant and a return.

8 Secondly, Your Honor, the judicial officer before whom
9 the search warrant was at least discussed, but apparently
10 not issued, is Judge Murray. According to what I have been
11 able to find out about Judge Murray, Judge Murray is a
12 municipal judge for the City of Greer. This search warrant
13 or this request for a search warrant requests that it be
14 executed in Spartanburg County.

15 It would be our argument, Your Honor, that even if
16 there is some sort of cobbled-together request for a
17 search, that the judicial officer in this case who reviewed
18 it lacked jurisdiction over the territory where the search
19 warrant was to be executed.

20 I call the Court's attention to Code Section
21 17-13-140. And I think it's very clear there that an
22 issuing judge must have jurisdiction over the area where
23 the property sought is located. And so lacking such
24 jurisdiction, such territorial jurisdiction, it is null and
25 void even if the Court decided that there actually was a

1 search warrant.

2 Third, Your Honor, we would argue that there's not
3 probable cause set forth in the warrant. I would argue
4 that it's conclusory in nature.

5 And, fourth, I would argue, Your Honor, that there is
6 a balancing test when a bodily intrusion is sought. I'd
7 call the Court's attention to Gantt vs. the State, a 2003
8 Supreme Court case.

9 Quoting from that case, "A warrant allowing a bodily
10 intrusion must comply with 17-13-140 and requires the
11 following: A finding there is a clear indication that
12 material evidence of guilt will be found, a finding that
13 the method used to secure the evidence is safe and reliable
14 and, three, a balancing of the seriousness of the crime,
15 the importance of the evidence and the unavailability of
16 less intrusive means against the right to be free from
17 bodily intrusion."

18 Quoting State vs. Register and In re: Snyder.

19 In the Gantt case, which was a post conviction relief
20 action, the Court found that the search warrant in that
21 case, that the trial counsel was deficient in failing to
22 object to it because it did not meet those requirements and
23 the evidence would not have come in.

24 I don't have any testimony to offer on this point. I
25 think everything is clear from the face of the warrant, but

1 certainly if the solicitor wants to call a witness in
2 support of her position, I have no objection to that.

3 THE COURT: Ms. Overby.

4 MS. OVERBY: Thank you, Your Honor. May it please the
5 Court.

6 First as to the document that Mr. Johnston has pointed
7 to, it's entitled or it's labeled affidavit for blood,
8 alcohol, drugs and/or D.N.A.

9 It's the state's position this document does speak for
10 itself. The -- it just -- it lays out a description of the
11 property to be sought. That would be any and all evidence
12 that tends to prove the crime of felony D.U.I.

13 It also lays out a description of the premises to be
14 searched, which would be the person of the defendant. And
15 it's followed by what the state would argue is the support
16 or probable cause for the issuance of that warrant in the
17 reason for the affiant's belief section.

18 The second, at the top of the second page, the officer
19 who sought this warrant did appear before the magistrate
20 and request that the search warrant be issued based on the
21 information contained on the first page of this document.

22 There is not the magic language that I think Mr.
23 Johnston alluded to regarding a directive that says
24 something to the effect of two -- two officers be known,
25 ordering them to go execute that warrant. But it's the

1 state's position that that magic language isn't required to
2 make this not a search warrant.

3 Regarding the issue of the magistrate's jurisdiction
4 to issue it, the state acknowledges that -- or it's the
5 state's position that the magistrate had authority to issue
6 a search warrant based on this document. However, we do
7 recognize the jurisdictional issue that Mr. Johnston has
8 raised.

9 As far as I know, Terri Murray is either a city
10 recorder or judge in Greer. I received conflicting
11 information as to that. But she is within the city limits.
12 And the warrant was executed at Spartanburg Regional, which
13 was in the county.

14 It's the state's position however that there are
15 exceptions should the -- should the Court find that this
16 one doesn't amount to a search warrant or, two, amounts to
17 a deficient search warrant, there are exceptions to the
18 warrant requirement such as exigency -- exigent
19 circumstances that would justify the taking of this blood
20 sample at Spartanburg Regional, this sample that was sent
21 to SLED.

22 In support of that argument the state would offer the
23 testimony of a few officers if the Court would allow.

24 THE COURT: Well, sure.

25 What I have as Court's Exhibit No. 1 that Mr. Johnston

1 handed up, it's entitled affidavit for blood alcohol, drugs
2 and/or D.N.A.

3 It appears to be partially in the form of search
4 warrants that are routinely issued, but its title is
5 affidavit, and of course the affidavit sets forth what
6 Corporal Verdier was seeking and where he was seeking to
7 get it and for what reason he believed it existed and was
8 relevant to the case. So I get that part.

9 Where is the -- where is the authorization authorizing
10 him to do whatever he was requesting to do?

11 MS. OVERBY: Your Honor, I believe that would be the
12 language that we typically see in the other template of
13 search warrants, which is normally written in bold letters,
14 something to the effect of basically directing the
15 execution of it. That language is not in this document.

16 THE COURT: Well, that's what I'm saying.

17 What grants him authority to do anything? This is his
18 request, it appears. What grants him authority to do
19 anything?

20 MS. OVERBY: I would imagine, Your Honor, the -- the
21 judge having issued it would be his authority.

22 THE COURT: Issued what?

23 MS. OVERBY: This document when he requested the
24 search warrant.

25 THE COURT: The judge issued this document?

1 MS. OVERBY: Well, the second page of this document,
2 the affiant requested that the search warrant be issued
3 upon reviewing that information, and she signed it.

4 THE COURT: Right. Well, maybe I misunderstood.

5 She's not witnessing the affidavit. She's issuing the
6 warrant? This is supposed to be the warrant?

7 MS. OVERBY: Yes, sir, Your Honor, the purported
8 search warrant, yes.

9 THE COURT: All right. What else do you want to tell
10 me about it?

11 MS. OVERBY: Your Honor --

12 THE COURT: Oh, excuse me. One other thing.
13 This is a city recorder or municipal judge in Greer?

14 MS. OVERBY: Yes, sir, Your Honor.

15 THE COURT: And it's a she?

16 MS. OVERBY: Yes, sir.

17 THE COURT: Does she have authority to issue a search
18 warrant for Spartanburg Regional Medical Center?

19 MS. OVERBY: I would say she has the authority to
20 issue search warrants. I think the question --

21 THE COURT: For something located at Spartanburg
22 Regional Medical Center is what I'm asking.

23 MS. OVERBY: Her jurisdiction --

24 THE COURT: Let's make it more pronounced, although I
25 don't think it makes any difference.

1 If this were a Charleston County municipal judge would
2 a search warrant issued by that judge for Spartanburg
3 Regional Medical Center be valid?

4 MS. OVERBY: No, sir. I don't believe it would.

5 THE COURT: All right. Then what's the difference?

6 MS. OVERBY: None, Your Honor, other than she's
7 somewhat closer than Charleston.

8 THE COURT: Oh, well, that's why I made that point.
9 Being closer doesn't really help, does it?

10 MS. OVERBY: I believe the statute does speak to a
11 magistrate or recorder or city judge has the powers of such
12 that has jurisdiction over the area where the property
13 sought is located.

14 THE COURT: Right.

15 MS. OVERBY: So what I was trying to say -- perhaps
16 not eloquently -- is that the state would concede that
17 Judge Murray did not have jurisdiction over Spartanburg
18 Regional, yes.

19 THE COURT: All right. So then you're conceding that
20 even if this was a search warrant it's of no validity.

21 MS. OVERBY: Yes, sir, regarding the jurisdictional
22 issue, yes. But it would be the state's position that
23 exigent circumstances in this case did not require a
24 warrant before the blood sample was taken.

25 THE COURT: That's what I am saying.

Jeff Smith
Direct examination by Ms. Overby

1 All right. So you -- in other words, you're conceding
2 that this, whatever it's called, does not give anyone any
3 authority to seize anything at Spartanburg Regional Medical
4 Center?

5 MS. OVERBY: Yes, sir, based on Judge Murray being who
6 she is.

7 THE COURT: Okay. All right. Well, apparently the
8 state concedes that.

9 All right. So your position is there's other
10 authority for the seizure of blood samples or bodily
11 fluids?

12 MS. OVERBY: Yes, sir. As Your Honor is aware, there
13 are exceptions to warrant requirements, and one of which is
14 exigent circumstances.

15 THE COURT: All right. Well, that's what I want to
16 hear about.

17 MS. OVERBY: Okay. If I may, Your Honor, I would go
18 ahead and offer the testimony of those two.

19 THE COURT: Sure.

20 MS. OVERBY: The state would call Sergeant Smith.

21 JEFF SMITH, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. OVERBY

24 Q would you please start by giving your full name?

25 A Jeff Smith.

Jeff Smith
Direct examination by Ms. Overby

1 Q And can you please tell me where you're employed?

2 A City of Greer Police Department.

3 Q And what's your title there?

4 A I'm a patrol sergeant.

5 Q And were you a patrol sergeant in October of 2013?

6 A That's correct.

7 Q Were you involved in a motor vehicle accident within
8 Greer city limits on October the 11th of 2013?

9 A That is correct.

10 Q And where was that located?

11 A That was at East Poinsett Street and Lister Road.

12 Q Did you go to that scene?

13 A I did.

14 Q And when you arrived at that scene were there other
15 agencies there?

16 A That's correct. There was some personnel from the
17 Tyger River Fire Department and also from the South
18 Carolina Highway Patrol.

19 Q Before you responded to the scene at 290 and Lister
20 Road, where had you been?

21 A I was involved in another traffic fatality
22 investigation which was just north of Taylor Road on 14.

23 Q And is that within Greer?

24 A Yes.

25 Q And you say that was another fatal accident that day?

Jeff Smith
Direct examination by Ms. Overby

1 A That's correct.

2 Q When you arrived at the scene was the defendant,
3 Ms. Werkmeister, there?

4 A No.

5 Q Do you know where she was?

6 A I have no idea where she was. I just -- I was told
7 she was transported, but I don't know where.

8 Q How many traffic units or how many members of the
9 traffic team did you have working that night?

10 A At that time?

11 Q Uh-huh.

12 A We had none.

13 Q I'm sorry?

14 A We had none.

15 Q None or nine?

16 A None, zero.

17 Q When you learned of the accident did you send other
18 officers out there?

19 A Actually, on -- before I got there on scene I had
20 contacted the on-call traffic officer, which was Sergeant
21 Ballenger. I actually had called him because I knew that
22 we were as far as manpower goes, we were really tied up on
23 this fatality that we were already on, and had called him
24 telling him that I was on my way to a second one. And
25 there was some jurisdictional issues or questions with the

Jeff Smith
Direct examination by Ms. Overby

1 highway patrol, and I'd call him back when I got there.

2 Q okay. So you called Officer Ballenger who you said
3 was on call.

4 A Uh-huh.

5 Q So he was not technically on duty that night.

6 A Right. He had worked that day. If I remember
7 correctly, he had worked that day and had already went
8 home.

9 Q And did he respond out to the scene as well?

10 A He did when I called him back.

11 Q And the jurisdictional issue that you mentioned
12 earlier, between what agencies was that issue?

13 A That was with the South Carolina Highway Patrol and
14 the City of Greer. I believe --

15 Q I'm sorry. Go ahead.

16 A I believe they initially received the call, was my
17 understanding, and they had already responded.

18 Once they got there -- I don't know what made them
19 want to or what made them ask whether or not it was in the
20 city, but they did. And when dispatch advised me to meet
21 with the highway patrol, that's when I left that scene as
22 soon as I could and responded down to meet with them.

23 Q So was it determined between you and the highway
24 patrol who would be working the investigation of this
25 accident?

Jeff Smith
Direct examination by Ms. Overby

1 A That's correct.

2 Q And who was it that worked the investigation of this
3 accident?

4 A The City of Greer.

5 Q Do you recall about how long it took to -- to clear
6 the scene of this accident at 290 and Lister Road?

7 A I don't. I left. I left somewhere in the area of
8 7:00, maybe 7:30, if I recall correctly.

9 Q And when you left were other agencies still on scene?

10 A Oh, yeah.

11 Q And which agencies?

12 A I believe the highway patrol was still there, and
13 Sergeant Ballenger and the fire department.

14 Q Did you turn the investigation over to Sergeant
15 Ballenger, or how was that handled?

16 A Yeah. I mean, he -- he just took it up and started
17 investigating it. And I actually had some officers come
18 out to assist him. But I -- I went back to the other
19 fatality investigation.

20 Q The other officers that you had come to the scene to
21 assist Ballenger, who are they?

22 A I think it was Corporal Verdier at the time. And I
23 think I had Mike Ferrell, Officer Ferrell.

24 Q Did you see them at the scene --

25 A I think I left --

Jeff Smith

Direct examination by Ms. Overby

1 Q -- or did tell them to come out to the scene?

2 A I told them to come out to the scene, and I think that
3 I -- I'm pretty sure that I'd already left prior to them
4 getting there, or I think when Verdier got there I was in
5 the process of trying to get out of there. If anyone was
6 there, I think Corporal Verdier may have got there right
7 before I left.

8 Q Did you observe the vehicles that were at the scene?

9 A I did.

10 Q Did you observe the vehicle that was driven by
11 Ms. Werkmeister?

12 A I did.

13 Q And what did you notice about that vehicle?

14 A It was a Toyota 4Runner. It was kind of sitting
15 sideways in the lane. It had extensive front end damage to
16 the left front, I believe.

17 Q Did you notice anything else about whether or not that
18 vehicle had any type of odor?

19 A I did.

20 Q And what did you notice?

21 A It had an odor of an alcoholic beverage coming from
22 within the inside of it.

23 Q Did you and Officer Ballenger also investigate the
24 area around her vehicle?

25 A That's correct.

Jeff Smith
Cross-examination by Mr. Johnston

1 Q Was there any contents found around her vehicle?

2 A There was a good bit of debris around the vehicle and
3 in the roadway and in the ditch, and there was a blue like
4 a koozie that was maybe three or four feet from the
5 vehicle. If you were sitting in the driver's seat, it was
6 kind of back to the left rear of where that driver would
7 have been seated, in the ditch.

8 Q I'm sorry. What was in the koozie?

9 A It was a beer can.

10 Q And was that item collected?

11 A It was.

12 Q I'm sorry.

13 MS. OVERBY: I have no further questions for Sergeant
14 Smith.

15 Q Please answer anything Mr. Johnston asks you.

16 MR. JOHNSTON: Beg the Court's indulgence one minute.

17 (Pause.)

18 CROSS-EXAMINATION

19 BY MR. JOHNSTON

20 Q Sergeant, were you the ranking officer on the scene
21 that night, sir?

22 A At the beginning, yes, sir.

23 Q At some point did you cease to become the ranking
24 officer on the scene?

25 A Once I left and relinquished it to Sergeant Ballenger.

Jeff Smith
Cross-examination by Mr. Johnston

1 Q All right. I'm sorry. would you say that again,
2 please?

3 A Once I left it was relinquished to Sergeant Ballenger.

4 Q All right. So you were the ranking officer for a
5 time, and then you relinquished it to Sergeant Ballenger.

6 A Sure, yes, sir.

7 Q Were you involved in the planning of or consideration
8 of getting a search warrant for the blood of
9 Ms. Werkmeister?

10 A No, sir.

11 Q You had nothing to do with that.

12 A No, sir.

13 Q Some police agencies, municipal police agencies, in
14 this state are really small, aren't they?

15 A I would imagine so, yes, sir.

16 Q Like Campobello. They don't have but maybe like three
17 or four police officers. Are you familiar with them?

18 A I know where Campobello is. I don't know how many
19 police officers they have.

20 Q Well, are you familiar with the municipal departments
21 in this state that only have three or fours officers?

22 A Sure, sure.

23 Q Okay. Maybe even less for all I know. How many
24 officers does the Greer Municipal Police Department have?

25 A Presently?

Jeff Smith
Cross-examination by Mr. Johnston

1 Q Well, at the time.

2 A At the time?

3 Q And then now.

4 A Actual road officers, sworn, I think somewhere in the
5 area of 55 or 56 maybe.

6 Q Okay. Now, I don't want to confine it just -- you're
7 here wearing a uniform today. I don't want to confine it
8 necessarily to people that wear uniforms. I'm not talking
9 about staff people or records people, administrative type
10 people. But as far as detectives, investigators and actual
11 uniform-wearing officers, about how many would you have had
12 at that time?

13 A That would be about the same. That's sworn. Would be
14 from the chief down. That would be any support personnel
15 such as detectives or operational support division.

16 Q All right. Okay. So give me that total again.

17 A It's 55 or 56 at that time if I remember correctly.

18 Q It's 55 or 56.

19 A Yeah.

20 Q That's close enough.

21 You have -- where this accident occurred is very close
22 to the town of Duncan, is it not?

23 A I'm not exactly sure where their city limits start,
24 but it was headed in that direction of Duncan.

25 Q All right. Certainly not more than five miles away.

Jeff Smith
Cross-examination by Mr. Johnston

1 A No. I wouldn't think so.

2 Q Okay. Probably more like two?

3 A Probably two. Two or three miles.

4 Q Two or three miles away.

5 A Uh-huh.

6 Q Did you or any of the other officers contact the Town
7 of Duncan for assistance?

8 A I did not.

9 Q Do you know if anyone else did?

10 A I don't know.

11 Q All right. Spartanburg County is a very large law
12 enforcement organization, is that correct, sir?

13 A That's correct.

14 Q And they have large numbers of vehicles, officers,
15 uniformed officers --

16 A Uh-huh.

17 Q -- on patrol at most any given time of the day.

18 A That's safe to say.

19 Q All right. And although this accident occurred within
20 the city limits of Greer --

21 A Uh-huh.

22 Q -- it also was within Spartanburg County.

23 A That's correct.

24 Q Spartanburg County would certainly have had
25 jurisdiction over this accident or could have had

Jeff Smith
Cross-examination by Mr. Johnston

- 1 co-jurisdiction over this accident.
- 2 A Sure.
- 3 Q Did you or any other officers request assistance from
- 4 the Spartanburg County Sheriff's Office?
- 5 A I did not.
- 6 Q Okay. Do you know if anyone else did?
- 7 A I don't know.
- 8 Q Now, there was some involvement from the state highway
- 9 patrol in this situation, I understand.
- 10 A That's correct.
- 11 Q And of course the state highway patrol has
- 12 jurisdiction over, I guess, anywhere in the State of South
- 13 Carolina. Am I correct?
- 14 A That's correct.
- 15 Q And they are, among other things, one of the first on
- 16 the scene with accidents and that sort of thing. Am I
- 17 correct?
- 18 A Correct.
- 19 Q Now, how did the highway patrol get on the scene?
- 20 A I assume that they were dispatched. They were there
- 21 prior to me getting there.
- 22 Q Okay. So the highway patrol were dispatched --
- 23 A Uh-huh.
- 24 Q -- and they were already there --
- 25 A That's correct.

Jeff Smith
Cross-examination by Mr. Johnston

1 Q -- before you got there.

2 A That's correct.

3 Q And do you remember how many officers there were?

4 A I believe there was two.

5 Q Two patrolmen.

6 A Yes. I think one had already left and went to the
7 hospital.

8 Q All right. So one of the two officers before you even
9 arrived went to the hospital.

10 A No. There were two on scene when I got there.

11 Q Okay. I'm sorry. So there were two on scene. And
12 one had already left?

13 A That was my understanding, yes, sir.

14 Q So there was a total of three.

15 A I believe, yeah.

16 Q Two were there when you got there. One went straight
17 to the hospital.

18 A That's my understanding.

19 Q Okay.

20 A Yeah.

21 Q So did they decline to assist you?

22 A No.

23 Q Were they willing to help your agency in the
24 investigation of this case?

25 A Their MAIT team was called out eventually, I believe.

Jeff Smith
Cross-examination by Mr. Johnston

1 Q Before we get to the MAIT team. The MAIT team is
2 something special.

3 A Right.

4 Q I'm talking about the initial investigation. Clearing
5 up the accident and all of that kind of thing.

6 A No. They didn't refuse not to help us.

7 Q Okay. Well, did you ask them?

8 A They were already on scene. I mean, they --

9 Q So they were helping you.

10 A Right.

11 Q All right. And of course the highway patrol, they
12 have access to a lot of other officers too if should they
13 need that.

14 A Yes, sir.

15 Q And you do -- you are trained in the Greer Police
16 Department where your territorial limits are.

17 A The best I can be, sir.

18 Q The best you can be. I understand. And I know it's
19 confusing because Greer, unlike some other places, is in
20 two counties.

21 A That's right.

22 Q Okay. But you are trained within the best of your
23 ability -- and you train your officers that work with
24 you -- to know where the city limits of Greer are.

25 A That's correct.

Jeff Smith
Redirect examination by Ms. Overby

1 Q Were you involved -- it's my understanding from
2 reviewing the reports in this case that the solicitor,
3 solicitor Barnette, was phoned for legal advice about how
4 to handle the request for the blood.

5 A I was not there, but just through conversations I
6 believe that was Sergeant Ballenger. I didn't have
7 anything to do with that.

8 Q All right. So you don't remember being there at that
9 time.

10 A I wasn't there at that time.

11 Q You were not there.

12 A Right.

13 Q Okay. Please answer any other questions.

14 MS. OVERBY: Just a few things if may, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. OVERBY

17 Q You said there were two fatalities in Greer that day.
18 Is that a lot for Greer?

19 A I mean, yeah. It was a lot.

20 Q You also -- we talked a little bit about whether --
21 where the accident happened was within Spartanburg County.
22 Was -- to your knowledge was Spartanburg County ever
23 dispatched, Spartanburg County officers ever dispatched,
24 out there?

25 A Not that I know of.

Jeff Smith
Recross-examination by Mr. Johnston

1 MS. OVERBY: That's all the questions I have.

2 MR. JOHNSTON: Very briefly.

3 RECROSS-EXAMINATION

4 BY MR. JOHNSTON

5 Q You can call Spartanburg County and say we've got a
6 situation out here.

7 A Uh-huh.

8 Q You could have done that, could you not?

9 A I could have.

10 Q And are they not good about responding to situations
11 like that?

12 A Sometimes.

13 Q Sometimes they are.

14 A Depends on how busy they are.

15 Q Depends on how busy they are.

16 A Yeah.

17 Q But, in any event, you didn't feel the need to try to
18 get Spartanburg County out there to help.

19 A Not at that time, no.

20 Q Okay.

21 THE COURT: You may step down.

22 MS. OVERBY: Next we would call Randall Ballenger.
23
24
25

Randall Ballenger
Direct examination by Ms. Overby

1 RANDALL BALLENGER, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. OVERBY

4 Q Sir, can you start by giving us your name whenever
5 you're ready?

6 A Sergeant Randall Ballenger.

7 Q And where are you employed?

8 A Greer Police Department.

9 Q And where were you employed in October of 2013?

10 A At the Greer Police Department.

11 Q And what is your title?

12 A I'm the traffic sergeant.

13 Q Did you respond to the scene of a motor vehicle
14 accident near 290 and Lister Road on October the 11th of
15 2013?

16 A Yes, ma'am, I did.

17 Q And how were you notified of that accident?

18 A I had went home, and Sergeant Smith called me at home
19 as the traffic sergeant and told me that there had been a
20 collision and that he was on his way there and that there'd
21 been a previous collision and most of his guys were tied up
22 and there was a question of jurisdiction and he wanted me
23 to see if I could go to the scene and help.

24 Q Okay. Do you remember about what time you -- you said
25 you went home that -- that day -- about what time your

Randall Ballenger
Direct examination by Ms. Overby

1 shift ended and you went home?

2 A I'm a traffic guy. Usually around 5:00 or 5:15,
3 something like that. So I had been at home. I remember I
4 had taken the dogs out. So I would have gotten home around
5 5:00 or so.

6 Q And when did Sergeant Smith notify you of the
7 accident?

8 A Sometime around -- around 5:30 or so.

9 Q I'm sorry. Go ahead.

10 A Around 5:30, 5:40, somewhere in that area.

11 Q And did you go immediately from your house to the
12 accident?

13 A Yes, ma'am. I went back in and put my vest and shirt
14 back on, and my gun belt, and drove straight to the scene.

15 Q And about what time did you arrive at the accident?

16 A At approximately 1815, maybe 15 after 6:00 or so, I
17 arrived at the scene.

18 Q When you got out there did you observe the vehicles
19 that were involved?

20 A Yes, ma'am, I did.

21 Q Were any of the occupants of those vehicles at the
22 scene?

23 A Yes, ma'am. The deceased was still on the scene, but
24 everyone else had already departed.

25 Q And did you learn where they were?

Randall Ballenger
Direct examination by Ms. Overby

1 A Yes, ma'am. The Tyger River -- I had went around. I
2 spoke with the troopers on scene first and was talking to
3 them, and they said that they believed this collision was
4 in the City of Greer.

5 So I checked with our dispatch, and she said there was
6 a dual jurisdiction there. So we -- we agreed to take
7 the -- the collision. And from there we started getting
8 everything together as to where everyone had went and how
9 they had left and that kind of stuff.

10 Q And where did you learn the defendant in this case --
11 Sherra Werkmeister -- where was she?

12 A I learned that she had departed the scene by ambulance
13 and had went to Spartanburg Regional.

14 Q Was she ever at the scene when you were there?

15 A No, ma'am.

16 Q What other agencies? You mentioned highway patrol was
17 out there. Were there other agencies out there as well?

18 A Highway patrol was there. There was several -- the
19 Greer officers there. The coroner's office, obviously,
20 came to the scene. Tyger River Fire Department was there.

21 Q Did the coroner's office come after you or before you?

22 A They came -- I think they got there shortly after I
23 did.

24 Q You said there were other Greer -- you said there were
25 other Greer officers at the scene. Do you remember who

Randall Ballenger
Direct examination by Ms. Overby

1 those individuals were?

2 A Sergeant Smith was there. He -- he had met me. Kind
3 of as I got there he was -- he was already there. I
4 remember Detective Ferrell had come out to the scene. He
5 brought -- I think he brought some water and some Gatorade.
6 It was pretty warm that day.

7 Q Who called? Did Detective Ferrell -- was he out there
8 as part of the road patrol working with you guys?

9 A He was -- he was a shift corporal at that time, yes,
10 ma'am.

11 Q And how did -- how was he notified to come out there?

12 A I don't know.

13 Q Do you recall it was you or someone else?

14 A Someone else must have notified him.

15 Q During the course of viewing the accident did you
16 observe the defendant's vehicle?

17 A Yes, ma'am, I did.

18 Q And what did you notice about her vehicle?

19 A It -- both vehicles were at final rest. The vehicle
20 was -- was sitting kind of at an angle backed into -- into
21 the ditch area there. It had been struck in the front left
22 corner. It wasn't a -- it wasn't a square head-on, but it
23 was pretty close. Both vehicles had been hit in that front
24 left corner, and they were still at final rest at the
25 scene.

Randall Ballenger
Direct examination by Ms. Overby

1 Q Did you have the opportunity to come within a distance
2 of the defendant's vehicle where you were able to view any
3 items around it?

4 A I did. As is part of checking both vehicles, you
5 know, we took over the scene from highway. We checked Ms.
6 Werkmeister's vehicle, and it was immediately apparent.
7 The smell of beer was in the vehicle. And looking around
8 in the vehicle there was actually some what I would call
9 like spray or like a beer had pulled up in the front of the
10 vehicle, like a spilled beer, like you -- like you had hit
11 something and a -- and a beer spilled in the vehicle.

12 Q So was this in the front of the vehicle?

13 A Yes, ma'am. It was in a -- it was in a broken, like a
14 broken, piece of body molding that had come from the -- the
15 inside of the vehicle was extremely disarray. I mean,
16 there was stuff thrown everywhere, but it was like a piece
17 of broken body molding. There was some actual liquid
18 pooled up in it. And then there was other liquid that had
19 sprayed in the inside that had dried.

20 Q Now, was that on the driver's side or the passenger's
21 side or both?

22 A It was all over the front.

23 Q Was there anything else located around her vehicle?

24 A During an inventory around the vehicle there was a
25 couple of other items. Particularly, one of note was a

Randall Ballenger
Direct examination by Ms. Overby

1 Natural Light can in a koozie.

2 What drew -- drew my attention or drew our attention
3 to the koozie was the fact that it was still in a koozie.
4 Most people don't throw away perfectly good koozies. So we
5 had requested that it be photographed and then later
6 recovered it from the scene.

7 Q Okay. As part of -- when you were the officer
8 investigating the collision, what all does that entail?

9 A It's a -- it's a thorough investigation from beginning
10 to end. It's not just myself. It's, obviously, Detective
11 Bash and the other officers. We try to put together
12 everything that happened from --

13 Q I'm talking about on the road that night.

14 A Oh.

15 Q I'm talking about strictly the scene.

16 A At the scene that night we did -- we requested the
17 highway patrol come out and do a mapping of the scene.
18 That would be the MAIT team.

19 We also do a thorough -- everything is photographed,
20 painted. Pictures are taken that night.

21 Once the vehicles are moved from that scene it's --
22 you can really never put them back. So we did everything
23 that night. We -- I think we cleaned up around zero four
24 that morning, or zero five. We finally finished up, so.

25 Q After midnight?

Randall Ballenger
Direct examination by Ms. Overby

1 A Say from 5:00 o'clock until almost 4:00 or so the next
2 morning we were still on the scene.

3 Q At some point based on what you saw at the scene did
4 you begin to investigate this as more than just a traffic
5 accident but as a D.U.I. investigation?

6 A Yes, ma'am. Obviously, the -- the smell of the
7 alcoholic beverage in the -- in the vehicle kind of led me
8 to -- you know, it's kind of -- it's kind of like a -- a
9 puzzle. You kind -- you take -- you know, you get pieces
10 of the puzzle, and it makes a bigger picture.

11 The fact that her -- her vehicle was on the wrong side
12 of the road, that was readily apparent by the -- by the
13 marks and the gouges that were made in the road.

14 And then, obviously, we found a beer can there at the
15 scene. Had no way of knowing that night that it belonged
16 to her, but it still was part of -- it was right there by
17 the vehicle. So we, you know, immediately started looking
18 at this as a possible D.U.I.

19 Q Did you seek guidance on that night about how to
20 proceed with obtaining any samples?

21 A Yes, ma'am. I -- I contacted the -- the solicitor,
22 Mr. Barnette, that night by -- by cell phone.

23 Q And based on your conversation with him did you -- did
24 you make a determination about what the next step was in
25 that investigation?

Randall Ballenger
Direct examination by Ms. Overby

1 A Yes, ma'am. He -- he got -- he told us what we needed
2 to do and how we needed to proceed from there forward
3 and -- and advised us about the paperwork, proper
4 paperwork, and stuff to get that night before we could --
5 before we could move forward.

6 Q Was Captain -- Captain Verdier who -- who sought
7 that -- was heard from -- was he a party to your
8 conversation with Solicitor Barnette?

9 A No, ma'am. It was Corporal Verdier. He -- he was
10 there. I don't even think he was at the scene, maybe at
11 the time, or maybe had -- had -- you know, it was pretty
12 fluid. People were in and out. But I don't think he was
13 there when -- when the solicitor actually told me that we
14 needed to get a search warrant for her blood.

15 Q How was Corporal Verdier or by whom was Corporal
16 verdier directed to obtain a search warrant?

17 A I can't -- I don't recall if it was myself or Sergeant
18 Smith called and told him we needed to get a search warrant
19 for her blood.

20 Q Do you remember how long after the accident that
21 consultation with Solicitor Barnette was, how much time had
22 elapsed?

23 A It would have been -- oh, I was almost an hour after
24 the collision occurred that I got there. We were probably
25 bumping the two and a half, three-hour mark at that point.

Randall Ballenger
Direct examination by Ms. Overby

1 Maybe three hours. I can't recall. I didn't write it
2 down.

3 Q Do you have any training as a sergeant in -- in patrol
4 about the effects of alcohol over time generally?

5 A Yes, ma'am.

6 Q And what do you generally understand about alcohol
7 over time?

8 A It dissipates at a -- at a rate. From the time of the
9 last drink it starts leaving the body through various
10 means.

11 Q There's been some -- or the second fatal accident that
12 occurred in Greer that night, were you in any way involved
13 in that accident scene?

14 A This would have been the second. The first one
15 occurred before this one, and I was in no way involved in
16 that one.

17 Q Did you have -- let me make sure I understand.

18 What contact did you have with Corporal Verdier that
19 night? Do you know where he was working?

20 A I do not. I think maybe he might have been at the
21 jail that night. I mean, he -- he may have been back at
22 the police department.

23 I'm not sure that -- the shift that was on would be
24 Sergeant Smith's shift. Corporal Ferrell was assigned to
25 that shift, and various other patrol officers. But they

Randall Ballenger
Cross-examination by Mr. Johnston

1 were in and out. So I'm not exactly sure what his -- what
2 his role was that night.

3 Q So when he was requested to seek the search warrant,
4 you don't know his whereabouts at that time.

5 A I do not.

6 Q Okay. That's all the questions I have. Please answer
7 anything Mr. Johnston may have for you.

8 CROSS-EXAMINATION

9 BY MR. JOHNSTON

10 Q Sergeant Smith is the one who testified before you,
11 sir, is that correct?

12 A I believe so, yes, sir.

13 Q All right. And I understood from him that when he was
14 on scene he was the ranking officer for the Greer Police
15 Department, is that correct?

16 A He has seniority over me, yes, sir.

17 Q And he requested that you come to the scene.

18 A Yes, sir.

19 Q And when you came to the scene you took over the
20 investigation, and he left.

21 A That is correct, sir.

22 Q So after his departure you were the ranking officer
23 there for the Greer Police Department.

24 A Yes, sir.

25 Q And may I have your rank again?

Randall Ballenger
Cross-examination by Mr. Johnston

1 A Sergeant, sir.

2 Q And how long have you been with the Greer Police
3 Department?

4 A It will be 20 years in July or 19 -- 19 or 20 years --
5 20 years in July -- 1997.

6 Q All right. And were you a sergeant at the time back
7 in October of '13 when this accident occurred?

8 A Yes, sir, I was.

9 Q All right. You are a traffic officer?

10 A I am, sir.

11 Q And you were a traffic officer at that time?

12 A Yes, sir.

13 Q Okay. Very experienced in handling traffic matters?

14 A I have -- I have several years in traffic, yes, sir.

15 Q All right. Well, you agree you're very experienced in
16 handling traffic matters?

17 A That's -- that's based on the person. You know, if
18 it's somebody that's been doing it for 50 years, is way
19 more experienced than I am.

20 Q Well, I'm not --

21 A But I'll agree I have several years in traffic, yes,
22 sir.

23 Q All right. You've been to schools --

24 A I have, sir.

25 Q -- about how to investigate traffic accidents.

Randall Ballenger
Cross-examination by Mr. Johnston

- 1 A Yes, sir.
- 2 Q About how to investigate D.U.I. cases.
- 3 A I have, sir.
- 4 Q How to investigate felony D.U.I. cases.
- 5 A I have. May I -- well, I have been -- been to some
- 6 schools. I don't think there's one specifically on felony
- 7 D.U.I.
- 8 Q Schools that would cover the subject matter of felony
- 9 D.U.I. investigations.
- 10 A Yes, sir.
- 11 Q Okay. What time did the accident occur?
- 12 A It was -- I want to say 1727 was the time that was
- 13 listed in dispatch for -- for the collision occurring.
- 14 Q I'm going to show you.
- 15 MR. JOHNSTON: I'd like to have this marked for
- 16 identification as Court's Exhibit No. 2.
- 17 (FR-10 report marked Court's Exhibit No. 2 for
- 18 Identification.)
- 19 Q Showing you what has been marked for identification as
- 20 Court's Exhibit No. 2.
- 21 A Uh-huh.
- 22 Q Have you seen this document before?
- 23 A I have.
- 24 Q What is it?
- 25 A That is a financial responsibility document or an

Randall Ballenger
Cross-examination by Mr. Johnston

1 FR-10.

2 Q Okay. And did you prepare it?

3 A Yes, sir, I did.

4 MR. JOHNSTON: Your Honor, we'd like to offer this
5 into evidence, again, as a court's exhibit.

6 THE COURT: Okay.

7 (FR-10 report marked court's Exhibit No. 2.)

8 Q What time did you put on there the accident happened,
9 on that document?

10 A 1804.

11 Q Further information show you that that -- that that's
12 not precisely correct?

13 A That is correct.

14 Q All right.

15 MR. JOHNSTON: Your Honor, I'd like to have this
16 marked as Court's -- for a court's exhibit for
17 identification as well.

18 (9-1-1 report marked Court's Exhibit No. 3 for
19 Identification.)

20 Q Sir, showing you what has been marked for
21 identification as Court's Exhibit No. 3. Are you familiar
22 with this type of document?

23 A I've never seen one of these before.

24 Q Are you familiar?

25 A Particularly, from Spartanburg, but I kind of -- it

Randall Ballenger
Cross-examination by Mr. Johnston

1 kind of looks like a CAD dispatch printout to me.

2 Q You have identified it correctly. It is the CAD
3 printout from Spartanburg County. According to the CAD
4 printout from Spartanburg County, what time did the -- was
5 the accident called in?

6 A Looks like they -- looks like they -- they logged it
7 in at 1726 --

8 Q All right.

9 A -- as the time.

10 Q Would you -- would you agree with me that that's
11 probably a minute or two before the -- after the accident
12 actually occurred, just a minute or two after that?

13 A It could have been, or it could have been right after.
14 I'm not -- I wasn't there, so I don't know.

15 Q Yes, sir.

16 A I was looking to see when they had notified Greer.

17 Q Please do that.

18 A That's when -- that's when our CAD time starts, is
19 1804 but I --

20 Q Yes, sir. Does it say on there?

21 A I didn't see it. It doesn't look like they entered it
22 in the notes, but I didn't -- I didn't look at it very
23 thoroughly either, so.

24 Q All right. May have something to help you there.

25 (Pause.)

Randall Ballenger
Cross-examination by Mr. Johnston

1 MR. JOHNSTON: Your Honor, I'd like to have this
2 marked for identification as a court's exhibit.

3 THE COURT: All right.

4 (CAD report marked Court's Exhibit No. 4 for
5 Identification.)

6 Q Showing you what has been marked as Court's Exhibit
7 No. 4. Are you familiar with this type of document?

8 A I'm much more familiar with this one because it's --

9 Q All right. What is it?

10 A This is a Greer dispatch, CAD, incident sheet that was
11 printed from the computer.

12 Q What does CAD stand for?

13 A Computer aided dispatch.

14 Q All right. And does this appear to be for the
15 accident that we're here about today?

16 A It does.

17 MR. JOHNSTON: Your Honor, at this time we would move
18 this one into evidence as a court's exhibit.

19 THE COURT: Okay.

20 (CAD report marked Court's Exhibit No. 4.)

21 Q What time was Greer dispatched?

22 A Looks like the -- the first officer was dispatched at
23 1813.

24 Q The first Greer officer.

25 A Correct. But the actual call came in at 1804, the

Randall Ballenger
Cross-examination by Mr. Johnston

1 time that's on my FR-10 as the originating time.

2 Q All right, sir.

3 MR. JOHNSTON: Your Honor, I'd like to have this
4 marked as a court's exhibit.

5 (History marked Court's Exhibit No. 5 for
6 Identification.)

7 Q All right. Showing you what has been marked for
8 identification as Court's Exhibit No. 5. I tell you that
9 that that's a CAD report from the South Carolina Highway
10 Patrol for this incident.

11 A I have to trust you on that because I haven't ever
12 seen one of theirs before.

13 Q Yes, sir.

14 A But I'll take your word for it -- word on it.

15 Q I appreciate it. What time does that show that they
16 arrived?

17 A I'm not -- I'm not sure how to read theirs. It looks
18 like they were -- looks like maybe they dispatched at 1729,
19 but showing 1749. Maybe as a 10-6 time. I don't know if
20 their codes --

21 Q What is 10-6? Do you know what 10-6 is?

22 A No, sir. The codes are different for each county and
23 agency, but I would assume maybe that's when their first
24 unit arrived. I'm not --

25 Q Now, when you got there your other sergeant from Greer

Randall Ballenger
Cross-examination by Mr. Johnston

1 was there.

2 A That's correct.

3 Q Were there highway patrolmen there?

4 A Yes, there was.

5 Q How many highway patrolmen were there?

6 A I identified, I think, two in my report as being there
7 when I arrived.

8 Q Yes, sir. Can you tell me their names?

9 A A Corporal Shaw and a Lance Corporal Snow of the
10 highway patrol.

11 Q All right. And did -- was there also some involvement
12 that you learned of another highway patrolman?

13 A Apparently there'd been one that left the -- left the
14 scene and maybe had went to the hospital, but I never -- I
15 never got to -- I didn't really get to talk to him, so I
16 don't know.

17 Q All right. But that's what your understanding was,
18 that one of the highway patrolmen had gone to the hospital
19 to further investigate.

20 A Correct.

21 Q Now, did Greer agree to accept responsibility for this
22 investigation?

23 A It was a -- it was a mutual -- this is in the city
24 limits of Greer, so it's our collision type thing. Highway
25 patrol, as you are well aware, they don't really go into

Randall Ballenger
Cross-examination by Mr. Johnston

1 the cities and investigate collisions. So I had called our
2 dispatch to confirm that that is indeed in the city limits
3 of Greer.

4 Q All right, sir. The highway patrol does have
5 authority to investigate. They have jurisdiction to
6 investigate an accident anywhere in the State of South
7 Carolina, do they not?

8 A Correct, from Atlantic Ocean to the Blue Ridge
9 Mountains.

10 Q Yes, sir.

11 How about Spartanburg County? They have jurisdiction
12 to investigate any traffic accident in Spartanburg County
13 if they want.

14 A I don't know if their traffic unit does. I know they
15 work -- I know they did -- I know they investigate like
16 trooper collisions, but I don't think they do like private.

17 Q Well, I'm not talking about what they usually do. I'm
18 talking about what they have authority to do.

19 A Oh, I'm sure they do. I'm not familiar with their --
20 their policy, but I would say that they do.

21 Q All right. And this piece of the Town of Greer was in
22 Spartanburg County. I know there's part of Greer that's in
23 Greenville County, but this part happened to be in
24 Spartanburg County.

25 A Yes, sir. This is in Spartanburg County.

Randall Ballenger
Cross-examination by Mr. Johnston

1 Q Did you see the need to request additional officers
2 from the highway patrol to come and assist?

3 A I did.

4 Q All right. And did they respond?

5 A Yes, sir, they did.

6 Q And was that the MAIT team?

7 A Yes, sir.

8 Q And was that a whole swarm of them?

9 A I think it was maybe four or five. I'm not sure what
10 your definition of a swarm is.

11 Q Okay. Well, four will be fine.

12 You didn't see the need to call Spartanburg County to
13 tell them that you were overwhelmed, did you?

14 A Overwhelmed? I never said I was overwhelmed.

15 Q Well, were you overwhelmed?

16 A No. The MAIT team has equipment and technology that
17 we don't have, and that's why we requested their
18 assistance.

19 Q All right. Did you as the ranking officer believe
20 that the Greer Police Department had sufficient resources
21 and personnel to handle the investigation of this accident?

22 A Technology-wise, no.

23 Q Well, other than the technology, other than the
24 special equipment and training that the MAIT team has, did
25 you -- did you see that Greer P.D. had sufficient resources

Randall Ballenger
Cross-examination by Mr. Johnston

1 and personnel?

2 A Yes, sir.

3 Q All right. And if you hadn't, you would have called
4 for more.

5 A Correct. We would have called. That's correct.

6 Q And you did call for the MAIT team.

7 A Uh-huh.

8 Q For their specialized knowledge and training and
9 equipment and all of that.

10 A Yes, sir.

11 Q All right. Now, were you present when contact was
12 made with Solicitor Barnette?

13 A Yes, sir.

14 Q Who made that contact?

15 A The -- I want to say -- I can't remember if we made
16 contact or if one of the troopers actually made contact.

17 Q Okay.

18 A Somebody. One of us at the scene made contact.

19 Q Suffice it to say that one of the officers at the
20 scene got Solicitor Barnette on the phone.

21 A Uh-huh, correct.

22 Q What was said, at least on the part you could hear?

23 A The part that we needed to -- to get a search warrant
24 to get -- to do a blood draw based on -- you know, to -- to
25 further the investigation. At this point we were two to

Randall Ballenger
Cross-examination by Mr. Johnston

1 three hours in. So we were -- so somebody had notified
2 Corporal Verdier, and that's how that went from there.

3 Q Okay. Well, the notice to Corporal Verdier began
4 after the conversation with Solicitor Barnette.

5 A Correct.

6 Q Now, the consultation with Solicitor Barnette. I'm
7 sure you all receive any directions from or advice from
8 Solicitor Barnette, you take that very seriously.

9 A Correct.

10 Q But it's still your call on the scene or still some
11 officer's call on the scene, whether or not to follow it,
12 am I correct, sir?

13 A Yes, sir.

14 Q Who made the decision to seek the search warrant?

15 A To do what, now? To see the --

16 Q Who made the decision after you all talked to
17 Solicitor Barnette? Who made the decision to go get a
18 search warrant?

19 A I did.

20 Q You made that decision.

21 A I mean -- I mean, obviously, I would have made that as
22 the ranking officer.

23 Q All right, sir. Did you feel you had sufficient time
24 to arrange for the search warrant and get it to where it
25 needed to be executed at Spartanburg?

Randall Ballenger
Cross-examination by Mr. Johnston

1 A That was -- there's never enough time, but based on
2 where we were in the night, no, we did not.

3 Q You didn't think you had enough time to do it?

4 A I mean, we were already three or four hours in. We
5 knew that we were behind on getting a search warrant.

6 Q Okay. Well, you knew this was an alcohol -- from your
7 testimony, you knew that this was a potential alcohol
8 related accident --

9 A Correct.

10 Q -- very early on, did you not, sir?

11 A Correct. Probably an hour and a half, two-hour mark,
12 correct.

13 Q Okay. You smelled alcohol in the car.

14 A Uh-huh.

15 Q And the car that had the alcohol in it was apparently
16 the at-fault vehicle.

17 A Correct.

18 Q Okay. So from those two points is it fair to say you
19 concluded that this was an alcohol-involved investigation?

20 A Yes, sir.

21 Q Possible D.U.I.

22 A Yes, sir.

23 Q And when you have a possible D.U.I. one of the things
24 that you're going to try to do is to get a breath sample or
25 a blood sample from the person you suspect was D.U.I.

Randall Ballenger
Cross-examination by Mr. Johnston

1 A Yes, sir.

2 Q So at what point did you decide that it was an alcohol
3 investigation, alcohol-related investigation?

4 A At the point that we contacted the solicitor. I mean,
5 all of that --

6 Q Okay.

7 A There's a -- there's not a nice, crisp timeline like
8 you -- like you laid it out.

9 Q All right.

10 A There -- at some point we, you know, decided this is
11 possibly alcohol related and we need to get a solicitor on
12 the phone.

13 Q All right. Now, you must have felt that you had time
14 to speak to the solicitor.

15 A Correct.

16 Q And you or one of the other officers spoke to him.

17 A Correct.

18 Q And after receiving his advice you made the decision
19 to start the wheels in progress to get a search warrant.

20 A Yes, sir.

21 Q If you had felt you did not have enough time to get
22 the wheels in the process to obtain the search warrant and
23 execute it would you have bothered with it?

24 A Say that again. If I had I would have --

25 Q If you'd known -- was there any reason to believe that

Randall Ballenger
Cross-examination by Mr. Johnston

1 you didn't have enough time to get a search -- to first
2 talk to solicitor Barnette and after receiving his advice
3 to get a search warrant and then have it executed?

4 A Is there reason to believe that we couldn't get all of
5 that done? Is that the question?

6 Q Do you have a reason to believe that?

7 A I mean, like I say, time was ticking.

8 Q Yes, sir.

9 A So but based on what you'd said earlier -- was do what
10 the solicitor tells you -- so we went and got a search
11 warrant, and we executed it based on what we were told to
12 do.

13 Q Well, did you or the other officers say we don't feel
14 we have time to -- to get a search warrant, solicitor?
15 Maybe the solicitor was not on the scene, so he doesn't
16 have the benefit of everything perhaps. I know you guys
17 would try to tell him as much about it as you could.

18 A No, sir.

19 Q But did anybody say, solicitor, that's not going to
20 work because we don't have enough time?

21 A No, sir. We didn't do that.

22 Q So did you have enough time?

23 A In retrospect probably not but we --

24 Q Well, how about as it appeared to you at that time?

25 A As it appeared to us at that time, we were going to do

Randall Ballenger
Cross-examination by Mr. Johnston

1 the best we could with it.

2 Q Okay. And why were you running out of time?

3 A Well, we were late. We were late notified, getting to
4 the collision. We were almost an hour out when we arrived.
5 So the first officers on the scene were almost an hour from
6 the time of the collision.

7 Q Okay. So what time did Sergeant Ballenger get there?

8 A It was almost 15 after 6:00, or so. I can look on the
9 sheet.

10 Q All right. Please do.

11 (Pause.)

12 A It would have been 1825 -- 6:25.

13 Q All right. So --

14 A Fifty-eight minutes.

15 Q It takes him an hour to get there.

16 THE COURT: Excuse me just a minute.

17 MR. JOHNSTON: Yes, sir.

18 THE COURT: For clarification, 6:25 is when who
19 arrived?

20 THE WITNESS: That's when I arrived, sir.

21 THE COURT: When you arrived. Okay.

22 MR. JOHNSTON: Yes, sir.

23 Q The preceding officer, what time did he get there from
24 Greer?

25 A Looks he arrived at 1813.

Randall Ballenger
Cross-examination by Mr. Johnston

1 Q All right. So that would be 45 minutes roughly after
2 the accident.

3 A Uh-huh.

4 Q But by the time he arrived there were at least two
5 highway patrolmen who were already there.

6 A Correct.

7 Q And I presume those highway patrolmen had already
8 begun to investigate, at least look around at the cars.

9 A You'll have to ask them.

10 Q Okay.

11 A I would assume that's what they do.

12 Q That's a fair assumption.

13 A That's a fair assumption, but you've had to ask them.

14 Q I know you can't tell me for sure, but they were there
15 before the first Greer P.D. officer.

16 A That's correct, sir.

17 Q And you think it may have been one of them who called
18 Solicitor Barnette.

19 A Well, one of the -- I want to say Corporal Shaw stayed
20 on the scene with us --

21 Q Yes, sir.

22 A -- that night.

23 Q What time did y'all call Solicitor Barnette?

24 A I don't -- I don't know, sir. I don't -- I can look
25 and see if it -- if it was ever noted in the -- in the note

Randall Ballenger
Cross-examination by Mr. Johnston

1 for you.

2 Q Please do.

3 (Pause.)

4 A I don't -- I don't see anything. There's no way to --
5 for me to know what time he was actually called.

6 Q So we don't know what time Solicitor Barnette was
7 called.

8 A No, sir.

9 Q But y'all had his number from the -- somebody out
10 there had his number from the get-go, right?

11 A Somebody did.

12 Q Okay. Or could get it. I mean, your chief has got
13 it, surely.

14 A I would assume. I never asked Chief for Solicitor
15 Barnette's number.

16 Q Okay. You figure he could get in touch with him if he
17 needed to though, don't you?

18 A He probably could.

19 Q So the call to Solicitor Barnette may have been just a
20 few minutes after you arrived?

21 A No. It was -- it was further down the road.

22 Q How much further down?

23 A I don't know. I've answered that.

24 Q You don't?

25 A Could have been an hour. It could have been two

Randall Ballenger
Cross-examination by Mr. Johnston

1 hours. But it took us a while to kind of decipher where we
2 were with the scene. When you have a complex scene like
3 that it takes a few minutes to kind of look at the scene
4 and take it all in.

5 Q Okay. But you may have lost as much as an hour.

6 A Or two.

7 Q Or two before you decided to call.

8 A Correct.

9 Q All right. Now --

10 A And I'm speculating on that. Pure speculation.

11 Q That's fine. I'm taking it as your best estimate.

12 As soon as solicitor Barnette gave the advice you --
13 you began to -- the wheels of justice, so to speak, to
14 accomplish what he had suggested. Fair to say?

15 A The phone call was made to get a search warrant done,
16 yes.

17 Q Okay.

18 A If that's what you're referring to as the wheels of
19 justice.

20 Q Yes, sir. All right. Now, you didn't have to send
21 one of your guys from out there on East Poinsett over to
22 Greer.

23 A No, sir.

24 Q You did what?

25 A Either myself or somebody contacted.

Randall Ballenger
Cross-examination by Mr. Johnston

1 Q Corporal Verdier.

2 A Correct.

3 Q Who was, you believe, already present at the jail.

4 A I believe that's where he might have been at that
5 time, yes, sir.

6 Q Or close to it.

7 A Uh-huh.

8 Q And he is a sworn officer.

9 A He is.

10 Q Who talked to Verdier?

11 A I don't remember, sir.

12 Q All right. Somebody talked to Verdier and was able to
13 give him enough information that you would have been
14 comfortable with him going before a judge to ask for a
15 search warrant.

16 A Correct.

17 Q The judge was available.

18 A Correct.

19 Q The judge you chose to go see.

20 A I didn't choose.

21 Q Or somebody did. Who made the choice?

22 A I guess Corporal Verdier made the choice.

23 Q Okay. Well, anyway, as far as you know the judge was
24 right at the jail.

25 A I would assume. I wasn't at the jail.

Randall Ballenger
Cross-examination by Mr. Johnston

1 Q Are you aware that you can phone in a warrant? You
2 can phone in a request for a warrant.

3 A Okay. If you say so. I don't -- I've never done
4 that.

5 Q Well, I understand that you may not have ever done it.
6 But have you ever heard of it?

7 A I have not.

8 Q Okay. Well, would you agree with me that you could
9 have located a Spartanburg County magistrate or attempted
10 to locate a Spartanburg County magistrate?

11 A We -- we probably could.

12 Q All right. You probably could have found one.

13 A After hours Friday night, but I'm sure there's one at
14 the jail.

15 Q There's always one at the jail, right, or almost
16 always?

17 A Uh-huh.

18 Q Okay. And if you could phone it to the judge he could
19 have issued the warrant from the jail.

20 A If you could phone it in.

21 Q If you can.

22 A Yeah. I don't -- I've never done that. If you say
23 you can, I'll take your word.

24 Q All right, sir. That would have been a relatively
25 quick process if it went the way that I've described,

Randall Ballenger
Cross-examination by Mr. Johnston

1 right?

2 A If it goes, correct.

3 Q Phone call, discussion, sworn oath, issuance of search
4 warrant.

5 A I've never done that process, so I don't know how
6 quick it would be. But if you say so.

7 Q I understand.

8 Did you consider at the time that you did not -- even
9 though you say you're not familiar with telephonic warrant
10 procedures -- did you consider at the time that there was
11 insufficient time for you to get a search warrant to
12 further your investigation? Did you even consider it?

13 A No.

14 Q All right.

15 A We did what the solicitor told us to do, sir.

16 Q All right, sir. Is it fair to say that whatever the
17 solicitor told you to do, you would probably have done it?

18 A Correct.

19 Q As long as it was lawful or something like that.

20 A Within reason.

21 Q Fair to say, so --

22 A I don't think getting a warrant is unreasonable. I
23 mean, that's what he told us to do.

24 Q Yes, sir. Is it fair to say that the reason you got
25 the warrant was because the solicitor advised you to do so?

Randall Ballenger
Cross-examination by Mr. Johnston

1 A Well, based on his advice, that's what we did.

2 Q Right. And you didn't consider any other options.

3 A No, sir.

4 Q Were any police lives in danger at this point?

5 A Like on the -- at the scene or --

6 Q Yeah. Well --

7 A In Greer in general or --

8 Q If you hadn't -- if you hadn't gotten the blood, were
9 any policemen in danger as a result of that?

10 A Not so much danger, general -- I mean, we did have
11 officers blocking the road. And there was a general --
12 that is a state highway, and there is an exigency, I guess,
13 to get -- to get that cleaned up and taken care of. But as
14 far as in danger, per se, I wouldn't -- I wouldn't say so.

15 Q But you all were going to have to do that anyway.

16 A Clean up the road?

17 Q Yes.

18 A Absolutely.

19 Q And you didn't take any of your manpower from the
20 cleanup to go get the search warrant.

21 A No.

22 Q Because Corporal Verdier was already at the jailhouse.

23 A Uh-huh.

24 Q Anyone else's lives in danger if you didn't get the
25 blood draw?

Randall Ballenger
Cross-examination by Mr. Johnston

1 A I can't think of any.

2 Q Is it fair to say that your only concern time-wise was
3 the potential dissipation of what could have been blood
4 alcohol in the subject you were investigating?

5 A We were race -- it was a race against time, correct.

6 Q All right. Was there any other consideration other
7 than that?

8 A The consideration that we did what we were told to do.

9 Q Well, the consideration. Is there anything that you
10 knew of? Is there anything that you knew of that caused
11 you to question the time factor here other than the
12 potential dissipation of blood alcohol content from the
13 subject you were investigating?

14 A I mean, we -- we were limited on manpower, obviously,
15 with the two -- with the two collisions going on.

16 Q Yes, sir.

17 A And there was people pulled into this collision that
18 are not normally used in that role, and Corporal Verdier
19 would be an example of that but as --

20 Q Yes, sir.

21 A -- we did what, you know, based on the advice of the
22 solicitor, we were told to get a warrant, and that's what
23 we did.

24 Q All right. Well, I'm going to have to insist on an
25 answer to that question.

Randall Ballenger
Redirect examination by Ms. Overby

1 Was there anything else that you were concerned about
2 time-wise other than the potential dissipation of the blood
3 alcohol content of the subject you were investigating?

4 A No.

5 MR. JOHNSTON: Beg the Court's indulgence for one
6 moment.

7 (Pause.)

8 Q Please answer other questions.

9 MS. OVERBY: Thank you.

10 REDIRECT EXAMINATION

11 BY MS. OVERBY

12 Q Did you have any interaction with the defendant that
13 night?

14 A I did not, no, ma'am.

15 Q Did you have any -- we've talked a lot about alcohol.
16 Did you have any knowledge of any other substances that she
17 may have taken?

18 A No, ma'am.

19 Q Without any information to that would you have had
20 reason to suspect she had taken any other substances but
21 for a blood draw?

22 A No, ma'am.

23 MS. OVERBY: If I may, may I approach the witness?

24 (Pause.)

25 Q So Court's Exhibit 3 is the Spartanburg County

Randall Ballenger
Redirect examination by Ms. Overby

1 Communications. It -- this time right here -- where --
2 where did Greer receive the -- Greer dispatch receive
3 notice of the accident?

4 A Our first notification is on -- there's three
5 different agencies here.

6 Q Right.

7 A There -- there's the South Carolina Highway Patrol,
8 the City of Greer and Spartanburg E-9-1-1. All of those
9 clocks are obviously a little different, but the first
10 notification that Greer received of the collision was at
11 1804. That's the first official time that's logged into
12 the Greer CAD system of the collision.

13 Q Okay. But Court's Exhibit 3 is a Spartanburg County
14 Communications dispatch. It shows that the wreck happened
15 at least before 1726. Is that fair to say?

16 A That's correct.

17 Q Let me draw your attention to Court's Exhibit 5. It's
18 the South Carolina Highway Patrol History Record. This
19 discussion here regarding jurisdiction, at what point was
20 it determined according to the highway patrol records that
21 Greer was going to be the one handling the jurisdiction?

22 A At 1804. It looks like when it says check with Greer;
23 this is Greer city limits. It looks like at 1804. And
24 then at 1830 there's some communication that says Greer is
25 going to handle it. But he notifies his dispatch, which

Randall Ballenger
Redirect examination by Ms. Overby

1 notified our dispatch at 1804, that that's the city limits
2 of Greer.

3 Q Okay. So according to the highway patrol the
4 determination that Greer was going handle this was made an
5 hour after the accident.

6 A Or 30 -- oh, yeah. Officially, it was an hour and
7 three minutes after the collision.

8 Q Okay. We talked a little about other warrant
9 procedures. Does Greer -- or are you aware of any type of
10 electronic warrant procedure that is available in South
11 Carolina?

12 A I'm not.

13 Q As the investigating officer you talked about what was
14 required at the scene. When you took over the
15 investigation could you leave it until it was cleared?

16 A I could not.

17 Q We talked about Corporal Verdier's whereabouts. When
18 he was notified to get the warrant, you kept mentioning he
19 was at the jail. What jail was this?

20 A It would be the City of Greer's jail at 102 South Main
21 Street.

22 Q So he's not on California Avenue in Spartanburg
23 County.

24 A That's correct.

25 Q About how far is the jail from the accident scene?

Randall Ballenger
Redirect examination by Ms. Overby

1 A Three and a half miles maybe, three and a half or four
2 miles at most.

3 Q You also talked about the time in which the call to
4 Solicitor Barnette was made. You guessed that it was
5 sometime between an hour to two hours after your arrival,
6 is that correct?

7 A Somewhere in there. I have no recollection, but they
8 would assume it would have been somewhere in that
9 timeframe.

10 Q So if you arrived an hour after the accident happened,
11 it was one to two hours after your arrival in which the
12 warrant was sought.

13 A Correct.

14 Q So several hours after the accident the warrant was
15 sought.

16 A Correct.

17 MS. OVERBY: No further questions.

18 THE COURT: Step down.

19 MR. JOHNSTON: May we approach, Your Honor?

20 THE COURT: Yes.

21 (Bench conference held off the record.)

22 THE COURT: All right. What else do we need to
23 present?

24 MS. OVERBY: Your Honor, we would briefly call
25 Corporal Verdier if we may.

David Verdier
Direct examination by Ms. Overby

1 THE COURT: Okay. Briefly. I would have arranged a
2 different schedule had I known this was going to be as
3 lengthy as it's turned out to be, because I was told it was
4 not going to be. We could have done something different.

5 DAVID VERDIER, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. OVERBY

8 Q Corporal Verdier, can you tell me where you were
9 working in October of 2013?

10 A With the Greer Police Department.

11 Q What capacity?

12 A I was a shift corporal.

13 Q Okay. If I may hand you Court's Exhibit 1 and ask you
14 to look at this document, is this the search warrant that
15 you sought from Terri Murray on October the 11th of 2013?

16 A Yes, ma'am.

17 Q The information contained -- if I may -- in the
18 section, "Reason for affiant's belief that the property
19 sought is on the premises," this information, what was the
20 source of that?

21 A Sergeant Ballenger had told me about the incident.

22 Q Where? Do you recall where you were when you were
23 asked to get the search warrant?

24 A I don't recall specifically. I was at the scene very
25 briefly. It was close to the end of shift. We were very

David Verdier

Direct examination by Ms. Overby

1 busy that day. We were all kind of as many places as we
2 could be. I had briefly gone, and then I believe I had
3 left and gone back and --

4 Q Gone back to where?

5 A I'm sorry. Gone back to our office.

6 Q Okay.

7 A I believe I'd gone back to the office. And I had some
8 of the information because I'd been there. I'd seen kind
9 of what had happened out there. And then when I was asked
10 to get the search warrant, I believe that was by phone.

11 Q Do you recall who that was that asked you?

12 A Sergeant Ballenger.

13 Q Okay. And did you present the information contained
14 in that affidavit to --

15 A Judge Murray?

16 Q -- Judge Murray?

17 A Yes.

18 Q And did she sign those documents?

19 A Yes.

20 Q Based on her signature did you believe that you had
21 the authority to execute that search warrant?

22 A I did, and I sent Mike Ferrell to go execute it.

23 Q Where was he when you had that executed by Judge
24 Murray?

25 A He -- he was, I believe, at roll call at the -- our

David Verdier
Cross-examination by Mr. Johnston

1 end-of-shift roll call. I asked him if he'd be willing to
2 stay over and help us out because we were going to be there
3 for a while, if he would be willing to run over to the
4 hospital and have this executed.

5 Q Okay. So he went alone?

6 A I believe so, yes.

7 Q Okay. You did not go with him.

8 A No.

9 Q Okay. That -- at the time that that document was
10 executed did you believe that it authorized Greer Police
11 Department to collect a blood sample from the defendant at
12 Spartanburg Regional?

13 A Yes.

14 Q Okay.

15 MS. OVERBY: No further questions.

16 CROSS-EXAMINATION

17 BY MR. JOHNSTON

18 Q Do they teach you anything about search warrants down
19 at the academy? Did you go to the academy?

20 A To what extent? I did go to the academy, yes, sir.

21 Q Did they teach you anything about search warrants down
22 there?

23 A We speak about, yes, sir.

24 Q Okay. Did they -- do you know what a search warrant
25 is?

David Verdier
Cross-examination by Mr. Johnston

1 A Yes, sir.

2 Q What is it in your own words?

3 A It's an order from a judge to execute a search of
4 persons or property and seek specific things found there.

5 Q All right. The judge has to authorize it --

6 A Yes, sir.

7 Q -- in writing.

8 A Yes, sir.

9 Q Right? Specific things in a specific place.

10 Show me on here where the judge authorized a search.

11 A This top part in bold.

12 Q Yes.

13 A And then her signature.

14 Q Okay. Does it -- show me the language where she says
15 go, you have my permission and I'm authorizing you to do
16 this. Show me that language.

17 A Okay.

18 (Pause.)

19 Q It doesn't say it, does it?

20 A Well, the way I do read it is that I personally
21 appeared before her on that date and time.

22 Q Yes. You personally appeared.

23 A There was probable cause.

24 Q You said there was probable cause. Tell me where she
25 agreed with you.

David Verdier
Cross-examination by Mr. Johnston

1 A Well, this top section to me reads as the judge's
2 language.

3 Q Well, let's --

4 A It says personally appeared before me was Officer
5 Verdier -- Corporal Verdier.

6 Q Yes. That's what --

7 A And then she signed it.

8 Q But she never made any findings. Do you see a finding
9 that she made?

10 A Her signature to me.

11 Q Well, just does it say, "I find there is probable
12 cause," above that? Does it say that?

13 A I don't believe she'd sign it if there wasn't.

14 Q Well, does it say that?

15 A I mean --

16 Q Yes or no? Does it say that?

17 A Does it say what specifically?

18 Q "I find probable cause. I, the judge, find probable
19 cause." Does it say that?

20 A I don't see that verbiage.

21 Q Okay. All right. Does it say you are authorized to
22 execute this warrant? Does it say that?

23 A Verbatim, no, sir.

24 Q Well, even close to it, does it say that? It doesn't
25 say it, does it, sir?

David Verdier
Cross-examination by Mr. Johnston

1 A I don't see those words, no, sir.

2 Q Okay. So you told me what you knew a search warrant
3 was, which was an order by a judge allowing a search to
4 take place at a particular location. That language doesn't
5 appear there, does it?

6 A The specificity in the probable cause -- are here.

7 Q Well, didn't we already agree that she made no finding
8 of probable cause?

9 A I -- I believe that if she put her signature on this
10 that she agreed to probable cause.

11 Q Okay. But it doesn't say that, does it?

12 A I don't see that language, no, sir.

13 Q And a warrant has to be written, doesn't it?

14 A Yes, sir.

15 Q Okay. Do you know why the search warrant is not in
16 the log? You have a log over at -- well, maybe you don't
17 know. There's a log at the Greer magistrate court where
18 every search warrant request is listed. Are you familiar
19 with that?

20 A I believe there is one, yes, sir.

21 Q Do you know why this document, this request, does not
22 appear in that log?

23 A I don't, sir.

24 Q Do you have any idea --

25 A I don't.

David Verdier
Cross-examination by Mr. Johnston

- 1 Q -- why it doesn't?
- 2 A I don't.
- 3 Q Okay. Did they tell you what judge to go to?
- 4 A No, sir.
- 5 Q You know who magistrates are.
- 6 A Yes, sir.
- 7 Q Right? You've been in front of a magistrate before.
- 8 A At that time, I don't believe I had, sir.
- 9 Q Okay. Well, you know who they are now.
- 10 A Yes, sir.
- 11 Q You could ask someone, right? You could ask someone
- 12 where a magistrate, how can I get ahold of a magistrate.
- 13 A If I may, sir, I was told to seek a search warrant. I
- 14 found a template for this specific search warrant. I
- 15 presented it to the judge after I put my findings of fact
- 16 of probable cause statement in there, presented it to the
- 17 judge. She signed it. I asked Corporal Ferrell to go
- 18 return it.
- 19 Q Well, did you give any -- you knew where this was to
- 20 be executed, did you not?
- 21 A Yes, sir.
- 22 Q Where?
- 23 A Well, I knew it was to be executed at the hospital.
- 24 Q Which is located where?
- 25 A Now I know that it was at Spartanburg Regional. At

David Verdier
Redirect examination by Ms. Overby

1 the time I really didn't know that it was at Spartanburg
2 Regional.

3 Q You didn't know it was at Spartanburg Regional?

4 A Did I put that language in there?

5 Q Yes..

6 A Okay.

7 Q You said, "The driver of this vehicle, Sherra
8 Werkmeister, was taken from the vehicle and transported by
9 E.M.S. to Spartanburg Regional Medical Center."

10 A Yes, sir.

11 Q So you knew she was at Spartanburg Regional Medical
12 Center, did you not?

13 A Yes, sir, I did.

14 Q And you know where Spartanburg Regional Medical Center
15 is.

16 A Yes, sir.

17 Q And you know it's not in the City of Greer.

18 A No, sir. It's not.

19 Q Okay.

20 MR. JOHNSTON: No further questions.

21 REDIRECT EXAMINATION

22 BY MS. OVERBY

23 Q where did you understand that the wreck had occurred?

24 A Inside the city limits of Greer.

25 Q Okay.

1 THE COURT: Step down.

2 MS. OVERBY: That's all the testimony on that point,
3 Your Honor.

4 MR. JOHNSTON: I have no testimony on this point.

5 THE COURT: All right. Do y'all have some cases that
6 you want me to read in support of your positions?

7 MR. JOHNSTON: Yes, sir. I would like you to read the
8 United States Supreme Court decision in --

9 THE COURT: Are you going to give it to me, or do you
10 want me to go hunt it?

11 MR. JOHNSTON: I'll be happy to give it to you, sir.
12 May I e-mail it to your clerk, sir?

13 THE COURT: You can e-mail it to me.

14 MR. JOHNSTON: All right, sir.

15 THE COURT: E-mail it to him and me. He can read it
16 to me.

17 MR. JOHNSTON: I will e-mail it to both of you with a
18 copy to my friend, the solicitor.

19 THE COURT: Okay.

20 MR. JOHNSTON: And there may be some other materials
21 that I would forward to you if I may.

22 THE COURT: All right. You may.

23 MS. OVERBY: And also Schmerber. It's California,
24 Your Honor. We'll send it to you. I'm sure you're
25 familiar with it.

1 THE COURT: I've heard of it.

2 MS. OVERBY: McNeely case as well.

3 THE COURT: What?

4 MS. OVERBY: The McNeely case that Mr. Johnson said.

5 MR. JOHNSTON: There's also a U.S. Supreme Court case,

6 Kentucky vs. King, which deals with police-created

7 exigencies, if the police create the exigency themselves

8 they're not allowed to use it as an exigent circumstance.

9 THE COURT: All right. Anything else?

10 MS. OVERBY: Nothing else, Your Honor.

11 MR. JOHNSTON: No, sir.

12 THE COURT: All right. Court is in recess until 9:30
13 in the morning.

14 END OF PROCEEDINGS SEPTEMBER 19, 2016
15
16
17
18
19
20
21
22
23
24
25

guilty plea

1 (Proceedings September 20, 2016)

2 (Photographs marked State's Exhibit No. 1; E.M.S.
3 report marked State's Exhibit No. 2; Spartanburg Regional
4 blood draw marked State's Exhibit No. 3; D.N.A. report
5 marked State's Exhibit No. 4; photographs marked State's
6 Exhibit No. 5; MAIT report marked State's Exhibit No. 6;
7 autopsy report marked State's Exhibit No. 7.)

8 (The following takes place outside the presence of the
9 jury.)

10 THE COURT: All right. You are Sherra Werkmeister.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Johnston is and Ms. Tat are your
13 lawyers.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You indicated earlier through your lawyer
16 that you wished to have a jury trial and have a jury decide
17 whether or not you're guilty of the crimes the state claims
18 you committed.

19 I have been informed by your lawyer that you have
20 changed your decision in that regard and that rather than
21 going forward with a jury trial you prefer to withdraw your
22 plea of not guilty and to enter a plea of guilty to felony
23 driving under the influence resulting in death and felony
24 driving under the influence resulting in great bodily
25 injury and that the other two charges, the reckless

Guilty plea

1 homicide and the assault and battery first degree charges,
2 will be dismissed if I accept your pleas of guilty as to
3 the two felony driving under the influence charges.

4 Did I state that accurately?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And that is what you wish to do?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Before I can accept your pleas of guilty
9 there are a number of questions that I have to ask you.

10 The purpose of the questions is for me to determine
11 whether or not your decision to plead guilty is freely and
12 voluntarily made, that you have had plenty of time to
13 reflect upon that decision, that you understand the
14 consequences of that decision and that nobody has forced
15 you or pressured you into that decision.

16 Because I have those questions to ask you and some of
17 the responses to questions that I ask might result in you
18 incriminating yourself, that is admitting your guilt to
19 these charges, you have to be informed that you have the
20 right to remain silent.

21 Has Mr. Johnston explained to you your constitutional
22 rights that you give up if you decide to plead guilty to a
23 criminal charge? Did he talk to you about your right to
24 remain silent?

25 THE DEFENDANT: Yes, sir.

Guilty plea

1 THE COURT: All right. Do you understand that when
2 you're charged with a crime you always have an absolute
3 right to remain silent? And that simply means that nobody
4 can make you say anything. You can't be required to
5 testify; you can't be required to make any statement; you
6 can't be required to answer any questions that relate to
7 the charges brought against you, certainly not any of those
8 that might tend to incriminate you or to prove you guilty.
9 So you have an absolute right to remain silent right now.
10 That's your decision. Only you can give that right up.

11 If you want to plead guilty you must give that right
12 up, but you don't have to plead guilty. That's your
13 choice.

14 Do you understand your right to remain silent?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you wish to give that right up in order
17 to enter pleas of guilty to the two felony driving under
18 the influence charges?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. As you know, there are two
21 indictments charging you with felony driving under the
22 influence. One alleges that a death resulted; the other
23 alleges that great bodily injury resulted.

24 So far as the felony driving under the influence
25 resulting in death indictment is concerned the state

Guilty plea

1 alleges on October the 11th of 2013 that you drove a
2 vehicle while you were under the influence of alcohol
3 and/or some other drug, or some combination of those
4 substances, to such an extent that it materially and
5 appreciably impaired your ability to operate that vehicle
6 like you could have done had you not consumed those
7 intoxicating substances.

8 They further allege in addition to that that you
9 violated some section of law other than the driving under
10 the influence statute or that you neglected some duty
11 imposed upon you by the law in the operation of a motor
12 vehicle and that your driving under the influence and
13 violating that additional statute or duty proximately
14 resulted in the death of Arrie Lee Lowry.

15 If those allegations are established, if they're
16 proven in court, you could be convicted or found guilty of
17 driving under the influence, felony driving under the
18 influence, resulting in death.

19 If convicted of such an offense you could receive a
20 sentence of up to 25 years in jail and a fine of \$25,100.
21 A conviction for felony driving under the influence where
22 death results requires a mandatory minimum sentence of not
23 less than one year in jail and a fine of \$10,100, no part
24 of which may be suspended.

25 Do you understand that charge?

Guilty plea

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand the potential
3 punishment?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you still want to plead guilty to it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The separate second indictment charges you
8 with felony driving under the influence great bodily injury
9 resulting.

10 Again, the state alleges on October the 11th of 2013
11 you drove a motor vehicle while you were under the
12 influence of alcohol or some other intoxicating substance
13 to such an extent that it materially and appreciably
14 impaired your ability to operate the vehicle and that you
15 violated an additional statute or neglected some duty
16 imposed by you -- imposed upon you by the law in the
17 operation of a motor vehicle and that that driving under
18 the influence in violation of that statute or neglecting
19 that duty proximately resulted in great bodily injury to
20 Patricia S. Rice.

21 While it's the same course of events, it's a separate
22 and distinct criminal offense. Two different people
23 suffered a loss or death or injury as a result.

24 Felony driving under the influence where great bodily
25 injury results carries a potential sentence of 15 years in

guilty plea

1 jail and a fine of \$10,100. It requires a mandatory
2 minimum sentence of not less than 30 days in jail and a
3 fine of \$5,100, no part of which may be suspended.

4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You understand the charge and understand
7 the punishment.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you still want to plead guilty to it?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Johnston and Ms. Tat are representing
12 you. How long have they been assisting you in these cases?

13 THE DEFENDANT: Approximately three years.

14 THE COURT: And during that three years have you had
15 plenty of time to talk to them about your cases, as well as
16 your apparent decision to plead guilty today?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did they go over each of the indictments
19 with you and explain to you what the state claims you did?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did they explain to you what would have to
22 be proven in court before you could be convicted or found
23 guilty of felony driving under the influence?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Both resulting in death, as well as great

Guilty plea

1 bodily injury?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And did they tell you what kind of
4 sentences could be imposed if you were convicted or found
5 guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And did you tell them everything you know
8 about the facts that relate to these allegations?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And did you and they determine whether or
11 not you had a defense to either charge of felony driving
12 under the influence?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have a defense to either of those
15 charges, a defense being any reason based upon the law
16 and/or the facts as to why you should not be found guilty
17 of felony driving under the influence?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, you know that Mr. Johnston has made
20 some motions for the suppression and exclusion of certain
21 evidence that the state would tend to offer if your cases
22 proceeded with trial before the jury.

23 Do you understand that those motions have been made --
24 at least some of them have been made -- and that I have not
25 yet announced the decision about whether or not I would

guilty plea

1 suppress that evidence and exclude that evidence from the
2 admissibility in the trial of this case?

3 Do you understand that whatever that decision might be
4 that I would make, if I ruled in your favor and granted Mr.
5 Johnston's motion, that evidence would not be allowed to be
6 admitted during the trial of your case?

7 If I did not grant the motion and permitted the state
8 to introduce that evidence during the trial of the case,
9 that if you were convicted you would be able to appeal my
10 decision.

11 In other words, if I grant the motion the evidence
12 wouldn't come in. If I did not grant the motion it would
13 come in. But if you were convicted you could still appeal
14 my decision. You could say I got it wrong, that I
15 shouldn't have allowed it in. And if an appellate court
16 agreed with you, then the case, the conviction, would be
17 reversed and you'd come back and be in the position that
18 you are here today. But the evidence would not be allowed
19 to be admitted in a future trial.

20 Now, as you know, that decision has not been made.
21 When you plead guilty not only are you giving up your right
22 for me to announce that decision, but you're giving up your
23 right to contest or challenge the admission of that
24 evidence in court. And you can't later say that my lawyer
25 should have challenged that, we should have gone to trial,

Guilty plea

1 we should have appealed it and let the appellate court
2 decide it.

3 So when you plead guilty you waive any constitutional
4 defects. You give your right to challenge the legality of
5 the search or seizure of any evidence that might be used
6 against you if it is admitted in the trial of the case.

7 I know that's a long explanation and a long question,
8 but do you understand it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Ma'am?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you have discussed that with
13 Mr. Johnston and Ms. Tat.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And did they explain just what I told you
16 to you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That when you plead guilty you give up
19 your right to challenge any constitutional violation or
20 defect in the search or seizure of evidence that would be
21 used against you.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And is that what you wish to do?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, I've been over with you your right to

Guilty plea

1 remain silent, and you told me you understood it and you
2 wished to give that right up. And that's why you've been
3 answering my questions.

4 Is that true?

5 (Pause.)

6 THE COURT: Ma'am?

7 MR. JOHNSTON: If you don't understand the question,
8 ask him to say it again.

9 THE DEFENDANT: Because I answered your questions, I'm
10 giving up my right for silence?

11 THE COURT: Well, obviously, you would be. What I'm
12 saying is I've already talked to about your right to remain
13 silent.

14 THE DEFENDANT: Okay.

15 THE COURT: And you told that you wanted to give that
16 right up.

17 THE DEFENDANT: Okay.

18 THE COURT: And that's why you have been answering my
19 questions.

20 Is that true?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You look confused about that.

23 THE DEFENDANT: I am because --

24 THE COURT: Well, as I said, you have a right to
25 remain silent. You don't have to answer my questions

Guilty plea

1 unless you want to plead guilty. You told me that you did
2 want to plead guilty, and therefore you wanted to waive
3 your right to remain silent and you wanted to answer my
4 questions.

5 THE DEFENDANT: Okay.

6 THE COURT: Is that true?

7 THE DEFENDANT: Yes.

8 THE COURT: Is that what you still wish to do?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Did Mr. Johnston and Ms. Tat
11 also explain to you that you have a right to confront and
12 to examine any witness in court that might offer evidence
13 against you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And that means you've got a right to
16 require the state to bring each witness into court who
17 would provide evidence in your case.

18 You've got a right to require that they take the
19 witness stand, that they be placed under oath, that they
20 testify in your presence and that they be subjected to
21 cross-examination by your lawyers in order to test each
22 witness' credibility and the reliability of the information
23 that they're providing.

24 Do you understand your right to confront and to
25 examine witnesses in court who provide evidence against

Guilty plea

1 you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that if you plead guilty
4 that doesn't happen?

5 Now, I know that two witnesses have testified, but
6 that was in a pretrial hearing. They would have to testify
7 again in the presence of the jury, and they would be
8 subjected to examination in order to test their credibility
9 and reliability.

10 Do you understand the right to confront and examine
11 the witnesses?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you understand that if you plead
14 guilty that doesn't occur?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you wish to give that right up?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did Mr. Johnston and Ms. Tat also fully
19 explain to you your right to have a jury trial in these
20 cases and to have a jury determine whether or not you're
21 guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, as you are aware, if you elect to
24 have a jury trial you help pick the jury, which you have.
25 Twelve have been selected and chosen. They're waiting in

Guilty plea

1 the jury room for us to bring them back either to continue
2 with the trial or to dismiss them from any further service
3 because of your guilty plea. But you have a right to have
4 these cases tried before that jury.

5 The state would have the burden of proving you guilty
6 beyond a reasonable doubt of any charge they claim you
7 committed. Therefore they would have to present evidence
8 in the case. And you would see and hear that evidence.

9 During the trial of the case you could also testify if
10 you wanted to, but you would always still have the right to
11 remain silent. Nobody can make you testify.

12 You could not be required to call any witness or
13 produce any evidence, but you would be permitted to do so
14 if you chose to do so.

15 But the burden is on the state to establish your guilt
16 to the satisfaction of a jury beyond a reasonable doubt
17 before you could be found guilty.

18 Do you understand your right to have a jury trial and
19 to have a jury decide whether or not you're guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand when you plead guilty
22 you must give that right up?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is that what you wish to do?

25 THE DEFENDANT: Yes, sir.

Guilty plea

1 THE COURT: You do not wish to continue with the jury
2 trial?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has anybody promised you anything that
5 resulted in your decision to plead guilty?

6 THE DEFENDANT: No, sir.

7 THE COURT: Now, I do know that there have been some
8 negotiations going on between you and your lawyers and the
9 solicitor's office. And from what I understand -- and,
10 now, you listen to what I'm saying,

11 THE DEFENDANT: Yes, sir.

12 THE COURT: This is my understanding. If I get it
13 wrong or I leave something out, you're going to have to let
14 me know of that fact. Okay?

15 I understand that you're going to plead guilty to
16 felony driving under the influence where death results,
17 felony driving under the influence, great bodily injury
18 resulting.

19 The state is going to agree that any sentence imposed
20 on those two felony driving under the influence charges be
21 run concurrently and that they not exceed ten years in
22 jail.

23 They also have agreed to dismiss the reckless homicide
24 charge with prejudice and the assault and battery first
25 degree charge with prejudice, which means they can't bring

Guilty plea

1 those back.

2 Now, that's what I understood the negotiations to be.

3 Did I get that right?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did I leave anything out?

6 THE DEFENDANT: No, sir.

7 THE COURT: And is that all they've agreed to do for
8 you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And so you understand that based upon that
11 if I go along with that recommendation, I accept your
12 guilty pleas, that I could still sentence you to ten years
13 in jail.

14 Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. And nothing else has been
17 promised you?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you still want to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Has anybody forced you into that decision?

22 THE DEFENDANT: No, sir.

23 THE COURT: Has anybody threatened you in any way?

24 THE DEFENDANT: No, sir.

25 THE COURT: Coerced you in any fashion?

Guilty plea

1 THE DEFENDANT: No, sir.

2 THE COURT: Or pressured you in any way?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you pleading guilty freely and
5 voluntarily?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And are you pleading guilty because you
8 did commit the crimes of felony driving under the influence
9 just as they are described in each of these separate
10 indictments?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You are 51 years old.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: How far did you go in school?

15 THE DEFENDANT: I have a doctorate.

16 THE COURT: In what?

17 THE DEFENDANT: Chiropractic.

18 THE COURT: And do you practice chiropractic medicine?

19 THE DEFENDANT: I did until the accident. I had a lot
20 of injuries.

21 THE COURT: Are you married?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How long have you been married?

24 THE DEFENDANT: Almost 29 years.

25 THE COURT: Do you have children?

guilty plea

1 THE DEFENDANT: Yes, sir.

2 THE COURT: How many?

3 THE DEFENDANT: Two.

4 THE COURT: What age?

5 THE DEFENDANT: 23 and 27.

6 THE COURT: Are you working now?

7 THE DEFENDANT: Yes.

8 THE COURT: Doing what?

9 THE DEFENDANT: Part time for my father.

10 THE COURT: And what does he do?

11 THE DEFENDANT: He owns R.V. Service Center.

12 THE COURT: Have you ever been treated for any type of
13 substance abuse or addiction?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you suffer from such a condition?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you under the influence of any type of
18 an intoxicating substance or medication that would prevent
19 you from understanding fully what you're doing here today?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you consumed any type -- any alcohol
22 or any other drug during the last 72 hours?

23 THE DEFENDANT: I take prescriptions.

24 THE COURT: What do you take?

25 THE DEFENDANT: I take a pain prescription, anxiety

Guilty plea

1 medication.

2 THE COURT: And tell me what the medication is.

3 THE DEFENDANT: Norco. I have chronic pain that I'll
4 have the rest of my life.

5 I take an antidepressant called -- I'm sorry.

6 THE COURT: That's all right.

7 THE DEFENDANT: I'm a little nervous.

8 THE COURT: I understand. You're taking an
9 antidepressant.

10 THE DEFENDANT: Yes.

11 THE COURT: Anything else?

12 THE DEFENDANT: An anxiety medication.

13 THE COURT: Do you know what that is?

14 THE DEFENDANT: Clonopin.

15 THE COURT: All right. Anything else?

16 THE DEFENDANT: Ibuprofen. I take a sleeping
17 medication. And then that's all I can think of right now.

18 THE COURT: All right. Do you take those as
19 prescribed?

20 THE DEFENDANT: Yes.

21 THE COURT: And the doctors who have prescribed those
22 medications for you, are they aware of all of the
23 medications you are taking?

24 THE DEFENDANT: Yes, yes.

25 THE COURT: And you can take those in a combination?

Guilty plea

1 THE DEFENDANT: Yes. I take them at different times
2 during the day.

3 THE COURT: Okay. And you're taking them as
4 prescribed.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Is there anything about that
7 medication that you're taking that in any way impairs your
8 ability to fully understand what you're doing here today?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you ever been treated for any type of
11 mental illness or emotional disturbance?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you suffer from any such condition
14 today?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. I'm going to ask the
17 prosecutor to tell me about the facts that relate to this
18 case.

19 Listen to what she tells me because when she's through
20 I'm going to ask you if you agree or disagree with her
21 version of those facts.

22 THE DEFENDANT: Okay.

23 MS. OVERBY: May it please the Court, Your Honor.

24 On October the 11th of 2013 just before 5:30 p.m.
25 Spartanburg County 9-1-1 received a report of a motor

Guilty plea

1 vehicle accident that occurred on S.C. 290, also known as
2 Poinsett Street, near the intersection of Lister Road
3 within Greer city limits. That's in Spartanburg County.

4 There were two vehicles involved in the accident, a
5 black Chevy truck traveling eastbound from Greer to Lyman
6 that was driven by Ms. Patricia Rice and also a vehicle
7 traveling westbound, a dark green Toyota 4Runner that was
8 driven by Ms. Werkmeister. She was traveling from the
9 Moore area to Greer.

10 The passenger in Ms. Rice's vehicle, 85-year-old Lee
11 Lowry, died at the scene. Tyger River Fire Department
12 crews were the first on the scene. One member of that crew
13 observed the odor of alcohol in the defendant's vehicle.
14 Another member observed that the defendant was still seated
15 in the driver's seat of her vehicle at their arrival.

16 Both drivers required extrication from the vehicle,
17 Ms. Rice by mechanical means. She was transported by
18 helicopter to Spartanburg Regional.

19 The defendant was taken by ground E.M.S. from the
20 scene to Spartanburg Regional. Her major injuries
21 consisted of an ankle -- ankle injury. There was also a
22 hematoma noted on her left shoulder which would be
23 consistent with her having worn a seatbelt and being the
24 driver.

25 Before -- excuse me -- the defendant told E.M.S.

Guilty plea

1 workers that she took Lexapro and Xanax as needed when
2 asked about her social history and what she had taken that
3 day.

4 E.M.S. did administer her morphine on the trip from
5 the scene to the hospital. That is important because it
6 later appears in a toxicology report.

7 Both highway patrol and Greer police department
8 responded to the scene. There was initially a question of
9 jurisdiction, which was dual. The Greer Police Department
10 took over the scene.

11 Officer Ballenger whom you heard from yesterday
12 investigated the scene. He observed both vehicles having
13 significant front-end damage consistent with a head-on
14 collision. He noticed an odor of beer in the defendant's
15 vehicle, items that were strewn about her vehicle.

16 He also observed a piece of plastic molding that
17 smelled of pooled beer in the recess of her car.

18 Upon admission to Spartanburg Regional Medical Center
19 the treating physician for the defendant ordered an alcohol
20 screen on a blood sample that was collected from her for
21 medical treatment. That sample was collected between 6:59 and
22 7:06 p.m. in about an hour and a half after the accident.
23 The results of that screen were 107 milligrams over D.L.

24 The defendant did tell a nurse at Regional that she
25 had one drink and reported no drugs. That converts in and

Guilty plea

1. about a .09 or above.

2. A second blood sample was collected from the defendant
3. at 10:10 on the night of the accident, just shy of five
4. hours after the accident. This sample was collected from
5. Greer Police Department after they attempted to obtain a
6. search warrant that you heard about yesterday.

7. The sample that was sent to SLED for analysis revealed
8. alcohol, a .02, and various other central nervous system
9. depressants that included Ambien, Tramadol and its
10. metabolite, Lexapro, and its metabolite. And, again, I did
11. mention she -- morphine showed up in her SLED toxicology
12. report. It is the state's position that that was given to
13. her by E.M.S. for treatment. The other substances however
14. are unaccounted for.

15. The MAIT team with the South Carolina Department of
16. Public Safety performed an accident reconstruction of the
17. scene. Their findings were that the accident was caused
18. when the defendant crossed the center line of S.C. 290.

19. She -- as you'll see from the photos I'll hand Your
20. Honor in a minute, there was a solid yellow line in the
21. victim -- or excuse me -- solid yellow line in the
22. defendant's lane of travel. She crossed over that lane and
23. hit Ms. Rice's vehicle head on in Ms. Rice's lane.

24. The vehicle inspection was performed of Ms.
25. Werkmeister's vehicle. All systems checked as having no

guilty plea

1 system failures or anything else that would have
2 contributed to the accident.

3 On October the 14th of 2013, three days after the
4 accident, Detective Jason Bash with the Greer Police
5 Department interviewed the defendant at Spartanburg
6 Regional where she was still receiving treatment for her
7 injuries. He conducted an audio-recorded interview of her.
8 He did ask her about the accident and the timeline of that
9 day.

10 The defendant indicated to Investigator Bash that she
11 was going down the road and the car traveling towards her
12 came into her lane, that she hit the brakes and swerved and
13 that the vehicle hit her hard.

14 The timeline of that day, she told Detective Bash she
15 attended a job fair at Honeywell from about 7:30 to
16 11:00 that morning. She then went home for lunch and drank
17 beer from a kegerator on her back porch. She did not have
18 anything to drink after 3:00 p.m. She initially said a
19 drink, then acknowledged it was probably about two beers on
20 the back porch.

21 She did deny having beer in the vehicle with her on
22 the day of the accident.

23 She treated patients from 3:00 to 4:45 that afternoon,
24 returned to her home and then traveled to the Greer area on
25 S.C. 290.

Guilty plea

1 She indicated she was going to a friend's house in
2 Greer, never revealed the -- the destination or who that
3 friend was.

4 She did admit to taking Lexipro at 7:00 a.m. that
5 morning.

6 When she learns of the fate of the other -- the others
7 involved in the accident, she does end the interview, and
8 that's recorded on the audio recording.

9 A Natural Lite beer can with an insulated can cooler
10 or koozie was recovered a few feet from the defendant's
11 vehicle. That item was submitted to Greenville D.N.A. lab,
12 along with the defendant's buccal swabs, for comparison.

13 The mouth area of that can -- it was an open can. The
14 officers described as still cold with some contents in it.
15 They -- D.N.A. lab swabbed the lip area of that can, and
16 the report reveals that it was -- it matched the D.N.A.
17 profile of the defendant.

18 Regarding the nature of the injuries to Ms. Rice --
19 she is the surviving victim in this case -- she was
20 admitted in critical condition. She has extensive
21 injuries. She had a left hip fracture where the hip meets
22 the femur. She had fracture and dislocation of both hips,
23 fracture of the left radius and ulna, two bones in her
24 forearm, and fracture of the left heel.

25 She had several procedures that placed metal in her

Guilty plea

1 body and her arm, her hips, her foot. She couldn't walk
2 for several months as a result of her injuries. She
3 attended extensive rehab to regain mobility.

4 That would be the evidence the state would offer to
5 establish great bodily injury in this case.

6 As to Ms. Lowry, she succumbed to her internal
7 injuries at the scene. That included a fracture of the
8 vertebral column at the T-9 vertebra.

9 The medical examiner who performed the autopsy opined
10 in his report that that was the most significant injury
11 that she experienced, in addition to some other fractures
12 she did receive, but that that was caused by this accident.

13 The state would offer several exhibits that pertain to
14 the facts in this case.

15 State's Exhibit 1 is photos of the accident scene, of
16 the defendant's vehicle, the victim's vehicle. And also
17 the beer can that I mentioned was found near her car.

18 State's Exhibit 2 is the E.M.S. report. It does show
19 that morphine was administered to her prior to arrival at
20 Spartanburg Regional.

21 State's Exhibit 3 is the Spartanburg Regional blood
22 draw. It's the chain of custody, as well as the result
23 from the defendant's medical records.

24 State's Exhibit 4 would be the D.N.A. report from
25 Greenville that was done on the can and compared with the

Guilty plea

1 swab from the defendant.

2 State's Exhibit 5 are photos of the SLED blood sample
3 that was sent for testing in addition to the toxicology
4 report.

5 State's Exhibit 6 would be the MAIT report, the
6 accident reconstruction that was done at the scene.

7 And State's Exhibit 7 would be the autopsy report from
8 Ms. Lowry.

9 All of these items have been shared with the defense
10 in this case if I may hand them up.

11 MR. JOHNSTON: We have no objection, Your Honor.

12 THE COURT: And did I recall correctly the accident
13 was -- a collision took place about 5:30 in the afternoon?

14 MS. OVERBY: Just shy of 5:30. It's -- let me clarify
15 that point.

16 Spartanburg County Communications was the first area
17 that was dispatched. They received the call at -- I
18 believe it was at 5:25.

19 THE COURT: What day of the week?

20 MS. OVERBY: I'm sorry?

21 THE COURT: What day of the week was it?

22 MS. OVERBY: It was a Friday afternoon.

23 And, yes, Spartanburg -- or excuse me -- Spartanburg
24 9-1-1 was the first agency that was notified. And it would
25 be the state's position that, obviously, the wreck happened

Guilty plea

1 sometime just before 5:25. You can hear from the calls
2 that there are people coming right up on that scene and
3 calling 9-1-1.

4 THE COURT: All right. What about any criminal
5 history?

6 MS. OVERBY: She has no prior criminal history. She
7 does -- any pertinent driving history that she may have
8 includes a 2004 disobeying an official traffic device,
9 speeding tickets in 2006, 2010 and two in 2013, as well as
10 a careless or negligent driving in 2008.

11 I will say, Your Honor, there is -- she was charged
12 with domestic violence while out on bond for this charge.
13 That charge is still pending. So it's not a conviction,
14 but it's still pending.

15 MR. JOHNSTON: Your Honor, may I interject just one
16 point?

17 I've been told by Hope Colony [sic], assistant
18 solicitor, that that charge either has been or will be
19 dismissed, that criminal domestic violence charge.

20 THE COURT: Okay. All right. Ms. Werkmeister, you
21 heard what the solicitor told me about the facts that
22 relate to the case.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is there anything that she's told me that
25 you disagree with as it relates to the facts of the event?

Guilty plea

1 THE DEFENDANT: No, sir.

2 THE COURT: You heard what she told me about your
3 criminal history, including any driving record.

4 THE DEFENDANT: I don't remember or recall the tickets
5 or whatever, but they've been years --

6 THE COURT: You don't dispute them.

7 THE DEFENDANT: No.

8 THE COURT: You just don't recall them.

9 THE DEFENDANT: Right.

10 THE COURT: All right. Do you still wish for me to
11 accept your pleas of guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. I will accept them.

14 Is there anything else to be presented on behalf of
15 the state?

16 MS. OVERBY: Your Honor, we do have several members of
17 the deceased's family who wishes to address Your Honor, as
18 well as the surviving victim, Ms. Patricia Rice, at the
19 opportune time.

20 THE COURT: All right. Now is a good time.

21 MS. OVERBY: Okay.

22 CASEY LOWRY: My name is Casey. I'm the granddaughter
23 of Lee Lowry.

24 THE COURT: Your name's -- is your last name Lowry?

25 CASEY LOWRY: Yes, sir. Casey Lowry.

Guilty plea

1 THE COURT: Casey Lowry. Okay.

2 CASEY LOWRY: I've waited almost three years for this
3 day, a day that I'm supposed to sum up 30 years of my
4 memories with my nanny in just a few short sentences.

5 My nanny was such a special person on the inside, and
6 the out. She was so humble and sweet.

7 I was her only granddaughter. She had three grandsons
8 too. But every time I walked into her house she welcomed
9 me with a hug no one else could ever give but her -- she
10 was gracious in everything that she did. So many people
11 loved her for her kind heart but also her honesty.

12 She was the glue to our family. I miss her, and I
13 miss her cooking, more and more every day. No one can take
14 the place of your grandmother, and mine was taken from me
15 in the blink of an eye.

16 Not a day goes by that I don't think I wish I could
17 call my nanny and tell her this or tell her that. I can't.
18 I wish I could have told her good-by, that I loved her, one
19 more time.

20 I don't wish this on anyone, and I believe that
21 Ms. Werkmeister made a horrible mistake that day that has
22 caused so much pain to my family, but I also believe that
23 you -- when you make mistakes, you have to pay for them.

24 THE COURT: Okay. Thank you, ma'am.

25 MS. OVERBY: Your Honor, Ms. Renee McMahan did -- she

Guilty plea

1 doesn't wish to address Your Honor, but she does have
2 something she'd like for you to read. She also submits a
3 picture of her mother.

4 (Pause.)

5 THE COURT: All right.

6 KENNY LOWRY: My name is Kenny Lowry. I'm the middle
7 of her three children.

8 Friday, October the 11th of 2013, was like any other
9 Friday for us. My wife and I were at home with our
10 granddaughter getting her ready for bed because she had a
11 swim meet the next morning.

12 Around 9:00 p.m. -- excuse me -- around 9:00 p.m. the
13 door -- there was a ring at the door. And that's when our
14 lives changed forever. You see, the person at the front
15 door was someone from the Spartanburg County Coroner's
16 Office. He'd come to inform us that my mother had been
17 killed in an automobile accident by a drunk driver.

18 After the initial blow I asked the condition of
19 Ms. Rice because I knew that they went everywhere together.
20 Said she was alive but in very serious condition with most
21 of her bones broken.

22 Just imagine having to make the phone calls to your
23 brother and sister letting them know that their wonderful
24 mother had been murdered by a drunk driver. Believe me.
25 Nobody should have to do this.

Guilty plea

1 The day our mother was killed created a void or more
2 like a black hole in our lives. Our mother was the
3 backbone of our family. She raised three children with
4 strictness and love. And it's because of those strict
5 lessons that I'm here today talking to you and not sitting
6 at the defendant's table.

7 She was an avid reader and a wonderful artist. I
8 mean, she would create scenarios on canvases and some of
9 the most beautiful ceramics you've ever seen.

10 Besides her love for art, she loved to travel. The
11 beach and the Biltmore House were her two favorite spots in
12 the world. She just couldn't get enough of either one of
13 them. And until her death we spent every holiday and
14 special occasion with her. Her loss is felt especially
15 deeper during these times.

16 We no longer can watch her scurry around making some
17 of the most amazing holiday dinners you can imagine.
18 Christmas was her favorite time of the year. Although she
19 lived alone, she would decorate her home just like she did
20 when we were kids. My brother and sister and I weren't the
21 only ones that lost a wonderful mother. She had five
22 grandchildren and three beautiful great-granddaughters that
23 will never have the opportunity to spend time experiencing
24 her love, affection and all of her life stories.

25 It's been 1,075 days. That's two years, 11 months and

guilty plea

1 nine days since my mother was killed. When the coroner or
2 the police described her injuries to us they used words
3 like horrific, catastrophic and extremely violent.

4 My mother didn't deserve to die this way. She took
5 care of herself by walking every day. She didn't smoke,
6 and she never, never drove drunk.

7 My mother is dead because someone had no respect for
8 other lives when she drank and then chose to drive. We ask
9 that she be held accountable for her actions to the fullest
10 extent of the law.

11 THE COURT: Okay. Thank you, Mr. Lowry.

12 PATRICIA RICE: Your Honor, I think that Ms. -- my
13 name is Patricia Rice, and I think that Ms. Werkmeister
14 needs some time. She needs some time to think about what
15 she has done not only messing up her life but ours. And I
16 don't know what's ahead of me as far as my injuries. Thank
17 you.

18 THE COURT: Okay. Thank you, Ms. Rice. Good luck to
19 you.

20 MS. OVERBY: One thing I neglected to mention, Your
21 Honor. There is a pending civil suit regarding this case,
22 and Mr. Tom Traxler represents the estate of Ms. Lowry. He
23 does wish to address Your Honor as well.

24 THE COURT: Mr. Traxler.

25 MR. TRAXLER: Thank you, Your Honor. If it please the

Guilty plea

1 Court.

2 I am friends with the Lowry family, and I represent
3 them in the civil matter.

4 This case has been going on for three years. The
5 accident will have been three years this October the 11th.

6 There's a pending civil case. We've not been able to
7 do discovery or depositions or anything because of Ms.
8 Werkmeister's Fifth Amendment rights, which I understand.

9 She and her husband filed in bankruptcy, and that
10 bankruptcy case is pending. And they attempted to accept
11 any -- excuse me -- they attempted to discharge any civil
12 liability regarding this.

13 I don't want to suggest to you that was the only
14 motive for the bankruptcy, but the bankruptcy involved
15 discharging any civil liability on this. And that is being
16 dealt with in the bankruptcy court right now. And I think
17 the guilty plea takes care of that.

18 But for three years the family has had no real idea as
19 to exactly what happened -- when she consumed the alcohol,
20 how she consumed it, was she working when she consumed it,
21 who was she working for that day, where was she coming
22 from, where was she going to.

23 I would ask the Court to ask Ms. Werkmeister to tell
24 us who she was working for that afternoon and was she
25 consuming alcohol at the time that she was working and was

Guilty plea

1 she en route to somewhere on a business purpose. And I
2 think it's important for Ms. Werkmeister to explain that to
3 the family, because here we are two or three weeks short of
4 three years, and they still don't know the answer to those
5 questions. So we would ask the Court to inquire from Ms.
6 Werkmeister the answer to those questions. Thank you.

7 THE COURT: Okay. Thank you, Mr. Traxler.

8 MS. OVERBY: Nothing else from the state, Your Honor.

9 THE COURT: All right. Ms. Werkmeister, two other
10 things that I neglected to discuss with you.

11 One is did you discuss with Mr. Johnston and Ms. Tat
12 that felony driving under the influence resulting in a
13 death is designated and classified in the law as a violent
14 offense.

15 THE DEFENDANT: I believe so.

16 THE COURT: Did you also discuss with your lawyers the
17 fact that felony driving under the influence resulting in
18 death is classified as a serious offense?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you understand the significance of
21 those designations?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And that it's also classified as a
24 no-parole offense.

25 THE DEFENDANT: Yes, sir.

guilty plea

1 THE COURT: And you understand the significance of
2 that classification?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: On the day that this accident occurred --
5 I understand that it occurred around 5:25 in the
6 afternoon -- where had you been immediately prior to the
7 accident?

8 THE DEFENDANT: I left work around 4:45.

9 THE COURT: And where was work?

10 THE DEFENDANT: On the corner of 290 and Reidville
11 Road.

12 THE COURT: And what was work?

13 THE DEFENDANT: I'm a chiropractor.

14 MR. JOHNSTON: The name of the business.

15 THE DEFENDANT: River Falls Chiropractic. I was
16 called in on an emergency call. I was not on duty.

17 THE COURT: You were not on duty that day?

18 THE DEFENDANT: No.

19 THE COURT: But you were called in to work?

20 THE DEFENDANT: Yes.

21 THE COURT: What time did you go in?

22 THE DEFENDANT: About 3:00 o'clock.

23 THE COURT: And who requested that you come in?

24 THE DEFENDANT: I believe it was one of the massage
25 therapists called to see if I would see one of the patients

Guilty plea

1 that were in pain.

2 THE COURT: And who is your employer at River Falls
3 Chiropractic?

4 THE DEFENDANT: I'm an associate, independent, and Dr.
5 Peters is the owner of the office.

6 THE COURT: Would he have been the one to request that
7 you come in?

8 THE DEFENDANT: NO.

9 THE COURT: No. It was one of his employees,
10 requested that you come in?

11 THE DEFENDANT: They asked if I would. The lady
12 talked to me and told me she was in pain. I am not in the
13 practice -- of not turning them away, and I went to see
14 her.

15 THE COURT: All right. And that was 3:30?

16 THE DEFENDANT: 3:00.

17 THE COURT: 3:00 o'clock.

18 THE DEFENDANT: Uh-huh.

19 THE COURT: Okay.

20 THE DEFENDANT: And while I was there I saw a few more
21 patients that were coming out of massage rooms, and they
22 wanted to see me, so I saw them also. I was in a hurry to
23 get out of there, but I did see them.

24 I enjoyed my patients. I loved them, cared for them,
25 and I saw them, and I got out of there about 4:45.

guilty plea

1 I had a concert to go to that night, so I went to the
2 gas station. I went to the bank to get cash for parking.
3 And then I was traveling down 290 and had the accident.

4 THE COURT: All right. So from 3:00 o'clock until
5 4:45 you were working at the chiropractic clinic.

6 THE DEFENDANT: Uh-huh.

7 THE COURT: You left the chiropractic clinic to get
8 gas because you were going to a concert.

9 THE DEFENDANT: Uh-huh.

10 THE COURT: All right. Is that a yes?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Did you consume any alcohol or
13 any drug while you were at the chiropractic clinic --

14 THE DEFENDANT: No, sir.

15 THE COURT: -- from 3:00 o'clock until 4:45?

16 THE DEFENDANT: No, sir.

17 THE COURT: What had you consumed prior to
18 3:00 o'clock that would affect your ability to operate this
19 vehicle?

20 MR. JOHNSTON: Your Honor, may I speak with my client?
21 I have a matter of concern I need to address with her.

22 THE COURT: Sure.

23 (Pause.)

24 MR. JOHNSTON: Your Honor, may she -- she will address
25 the question posed to her, but she has something else she

Guilty plea

1 needs to tell you.

2 THE COURT: All right.

3 THE DEFENDANT: Before -- when I left the chiropractic
4 office I had gone home, changed my clothes into shorts and
5 had a beer on the back porch with my husband.

6 I had a place to go that night, and I didn't want to
7 get into the argument. So I grabbed a beer, got in my car,
8 and I went to the bank and the gas station and proceeded
9 down 290. So that all happened, but I went home before I
10 went to those places.

11 THE COURT: All right. And what had you taken by way
12 of alcohol or drug, whether illegal or prescribed? What
13 had you taken by way of alcohol or medication prior to
14 3:00 o'clock that day?

15 THE DEFENDANT: 7:00 o'clock in the morning I took my
16 antidepressant. It's a long time ago.

17 MR. JOHNSTON: Which was Lexapro at that time.

18 THE DEFENDANT: Uh-huh. And then I went. I had to be
19 out at Honeywell at 7:30. And I signed in, and there's a
20 guard. And I signed out with him at 11:15, I believe. And
21 then I went to Lowe's.

22 THE COURT: And what were you doing there?

23 THE DEFENDANT: Health fair.

24 THE COURT: Health fair. Besides the Lexapro at 7:00
25 o'clock, did you take anything else?

guilty plea

1 THE DEFENDANT: Yes.

2 THE COURT: What?

3 THE DEFENDANT: My A.D.H. medicine.

4 THE COURT: And what did you take?

5 THE DEFENDANT: Vyvanse.

6 THE COURT: What?

7 THE DEFENDANT: Vyvanse.

8 THE COURT: And when did you take it?

9 THE DEFENDANT: 7:00, around 7:00 o'clock, in the
10 morning.

11 THE COURT: That was also -- you took it at the same
12 time as you took the Lexapro?

13 THE DEFENDANT: Uh-huh.

14 THE COURT: All right. Anything else?

15 (Pause.)

16 THE DEFENDANT: Tramadol was found in my blood. I do
17 not remember taking it. It at that time was not a
18 controlled substance. It was a mild pain reliever. But I
19 thought at that time I could have taken it. I do not
20 remember taking it.

21 THE COURT: Where would you get it? Where did you get
22 it?

23 THE DEFENDANT: Out of the medicine cabinet thinking
24 it was something like, you know, Ibuprofen or something
25 like that.

Guilty plea

1 THE COURT: All right. When did you take that?

2 THE DEFENDANT: I'm not sure.

3 THE COURT: If you took it, would that have been 7:00
4 o'clock or later?

5 THE DEFENDANT: Probably the same time.

6 THE COURT: Okay. What else?

7 THE DEFENDANT: That's it of medications.

8 THE COURT: All right. You left Honeywell and went to
9 Lowe's?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. What were you doing at Lowe's?

12 THE DEFENDANT: I had to get staining for the deck.

13 THE COURT: How long were you there?

14 THE DEFENDANT: I'm not sure. It's on my bank
15 statement that I did go.

16 THE COURT: All right.

17 THE DEFENDANT: And that was in Greer.

18 THE COURT: And did you stop and purchase any alcohol
19 or take any other drug?

20 THE DEFENDANT: No.

21 THE COURT: All right. What happened after you left
22 Lowe's?

23 THE DEFENDANT: Went home and had lunch with my
24 husband, and a couple of beers on my back porch. It was
25 either one or two. We drink out of a kegerator, and I

guilty plea

1 drink out of a cup. I don't know what that contents
2 consists of.

3 THE COURT: So you think it was a couple of beers?

4 THE DEFENDANT: I would say out of that red cup, yes.

5 THE COURT: A draft beer?

6 THE DEFENDANT: Yes.

7 THE COURT: A red solo cup?

8 THE DEFENDANT: Uh-huh.

9 THE COURT: So you had two of those at lunchtime?

10 THE DEFENDANT: One. But I'm sure it was over one
11 beer, the contents, the ounces.

12 THE COURT: Well, I thought you said you had a couple.

13 THE DEFENDANT: Because the -- I don't remember that
14 far back. And because of the contents of the cup, I'm
15 saying that, because I don't want to underestimate it.

16 THE COURT: Well, is it the 16-ounce cup?

17 THE DEFENDANT: I believe so.

18 THE COURT: You had one of those or more than one of
19 those?

20 THE DEFENDANT: One that I remember.

21 THE COURT: One that you remember?

22 THE DEFENDANT: Yes.

23 THE COURT: Could it have been more than one?

24 THE DEFENDANT: I am not...

25 (Pause.)

Guilty plea

1 THE DEFENDANT: Possibly.

2 THE COURT: All right. So after you had the beer and
3 after you had your lunch, what happened?

4 THE DEFENDANT: I sat there for a while, and then I
5 got the call.

6 THE COURT: So you just sat at the house from lunch
7 time until 3:00 o'clock?

8 THE DEFENDANT: Uh-huh, on the back porch. We have a
9 big back porch, and my husband was working on my outdoor
10 sink.

11 THE COURT: All right. And you didn't drink anything
12 else after that?

13 THE DEFENDANT: Just what I've stated.

14 THE COURT: With lunch.

15 THE DEFENDANT: Yes.

16 THE COURT: Did you drink anything else before
17 3:00 o'clock?

18 THE DEFENDANT: No.

19 THE COURT: Did you take any other drug before
20 3:00 o'clock?

21 THE DEFENDANT: No.

22 THE COURT: And you went to the clinic.

23 THE DEFENDANT: Yes.

24 THE COURT: You were there until 4:45.

25 THE DEFENDANT: Exactly, yes.

Guilty plea

1 THE COURT: You went back home --

2 THE DEFENDANT: Uh-huh.

3 THE COURT: -- and changed clothes,

4 THE DEFENDANT: Uh-huh.

5 THE COURT: Did you drink a beer while you were at
6 home?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Another one of those out of the kegerator
9 and a cup?

10 THE DEFENDANT: Yes. I don't believe I finished it.
11 We started having an argument. We were having marital
12 problems at that time, and we started having an argument.
13 I didn't want to have the argument, so I left, grabbed a
14 beer and left, because I did -- I left the cup out.

15 THE COURT: So you took the cup with you?

16 THE DEFENDANT: No.

17 THE COURT: Took a beer with you.

18 THE DEFENDANT: Yes, a can.

19 THE COURT: Okay. Put that in the koozie that was
20 seen at the accident scene?

21 THE DEFENDANT: Uh-huh. There were a bunch in the car
22 because we had been at the beach.

23 THE COURT: A bunch of cans?

24 THE DEFENDANT: Koozies.

25 THE COURT: Koozies. All right. So you left home and

Guilty plea

1 went to the gas station?

2 THE DEFENDANT: Yes sir.

3 THE COURT: All right. And where did you go after you
4 left the gas station?

5 THE DEFENDANT: The bank to get money for parking and
6 whatever else we needed it for.

7 THE COURT: And that's because you were headed to
8 where?

9 THE DEFENDANT: A concert that night out in Boiling
10 Springs on a horse farm.

11 THE COURT: Okay. And did that have anything to do
12 with your employment?

13 THE DEFENDANT: No.

14 THE COURT: Did you take any other drug after you left
15 the clinic?

16 THE DEFENDANT: No, sir.

17 THE COURT: And then the accident occurred at sometime
18 after 5:00 o'clock, between 5:00 and 5:30.

19 THE DEFENDANT: Yes. Not a whole lot of time between
20 patients and then.

21 THE COURT: Okay. Mr. Traxler, does that cover what
22 you were seeking by way of information?

23 MR. TRAXLER: Yes, sir. We would ask -- we had heard
24 a rumor -- and maybe a rumor -- that alcohol was provided
25 where there was a party at her employment that afternoon,

Guilty plea

1 and she didn't respond to that. Otherwise, I would have no
2 other questions.

3 THE COURT: All right. Who -- when you went to work
4 at 3:00 o'clock, who was at the clinic?

5 THE DEFENDANT: Receptionist and a couple of massage
6 therapists and myself.

7 THE COURT: And is Friday afternoon a full schedule
8 ordinarily?

9 THE DEFENDANT: It is for the massage therapists. It
10 usually is for Dr. Peters, but he was not there that day.
11 So I saw his patients.

12 THE COURT: All right. And so it was you and the
13 receptionist and a massage therapist?

14 THE DEFENDANT: Two massage therapists, I believe.

15 THE COURT: Two massage therapists. So the four of
16 you.

17 THE DEFENDANT: Yes.

18 THE COURT: And what were they doing when you arrived?

19 THE DEFENDANT: Working.

20 THE COURT: And what were they doing while you were
21 there?

22 THE DEFENDANT: Working.

23 THE COURT: And what were they doing when you left
24 there?

25 THE DEFENDANT: Working.

Guilty plea

1 THE COURT: Was there any alcohol in the -- in the
2 clinic itself?

3 THE DEFENDANT: No.

4 THE COURT: Did anybody bring any in?

5 THE DEFENDANT: No.

6 THE COURT: Take any out?

7 THE DEFENDANT: No.

8 THE COURT: Did you notice any of those folks drinking
9 anything?

10 THE DEFENDANT: No.

11 THE COURT: And you say you did not.

12 THE DEFENDANT: No.

13 THE COURT: Okay. All right. I'll accept your guilty
14 pleas.

15 Mr. Johnston, I'll hear from you and Ms. Werkmeister
16 and Ms. Tat if she wishes to participate.

17 MR. JOHNSTON: Your Honor, just following up on that
18 line that you were just working on, I believe it was the
19 highway patrol or MAIT team members, some police officers,
20 interviewed the patients that she saw on that day, and I
21 believe they spoke with four of them and they took notes on
22 what the patients told them -- what the patients told
23 them -- and I was provided copies of those notes.

24 And all -- I believe maybe five of them -- said that
25 they detected no odor of alcohol about her while she was

Guilty plea

1 being treated -- while she was treating them -- and that
2 they detected no signs of impairment and if they had that
3 they would not have put up with that, so to speak.

4 So what I think you have with the alcohol intake is
5 more likely going to be what occurred at her house, as she
6 told you, and the one that she took with her.

7 The thing about a tragedy like this is that there is
8 a tendency to define a person by the events of this one
9 day. And I -- as I heard the presentations of the family
10 members and of Ms. Rice, I was effected, as I'm sure Your
11 Honor was.

12 But most of the time when someone stands before the
13 Court facing such serious charges with such high potential
14 penalties it's because they have made many, many mistakes
15 over their life and they have committed numerous
16 infractions of the law that have gradually become more and
17 more serious until they're standing before the Court with
18 something extremely serious. That's the thing about felony
19 D.U.I. It's the sort of thing that could happen to anyone
20 who makes a mistake.

21 She doesn't have any prior record at all. What I
22 think sums up her life is the vanity plate that she had on
23 her car, which was "Dr. Mom, D.C."

24 She raised two wonderful children. She went to school
25 to become a chiropractor. She did that later in life than

Guilty plea

1 many people do to choose their vocation. And she was just
2 sort of establishing herself in the field working part time
3 with Dr. Peters. But I know that she loved her patients.
4 I spoke. I had the pleasure of speaking with Sue Martin on
5 the phone, and she told me how much she thought of the
6 woman she called Dr. Sherra, and she told me that Dr.
7 Sherra had made special efforts to come in and see her that
8 day. And had all of that not occurred, then we perhaps
9 would not be here today.

10 Her marriage has been lengthy, 27 years. But the last
11 two or three years have been stormy. And on the day of the
12 accident they had a very bad fight. She confronted her
13 husband. There were some allegations of infidelity, and
14 that caused a great -- a great upset to come upon her, and
15 I think that contributed to what happened.

16 Your Honor, this -- although this is in the City of
17 Greer, it's not what you think of as Greer. When I think
18 of Greer I think of downtown. I think of Highway 29, all
19 of these cars and all of the brand new 4-lane roads.

20 This is an old country road. It's a 2-lane road not
21 in particularly good repair. How you can tell it's a
22 country road is that when we went out to look at it the
23 other day I was greeted by a donkey and a whole pasture
24 full of cows. So it's a rural location.

25 There is not a good shoulder on either side of the

Guilty plea

1 road. Where there is a shoulder, it's very narrow. I
2 think that contributed to the accident.

3 She was driving west bound at 5:25 in October. At
4 that location there was certainly a significant potential
5 for the sun to be in her eyes at that time of the year.
6 I'm not saying that she's not at fault in the accident.
7 I'm merely saying that that could be an explanation in what
8 happened.

9 Obviously, this wasn't an intentional act that anyone
10 got hurt. It was an intentional choice, however, to drink
11 and to drive while she was taking medications.

12 She and I have met in my office many times over the
13 three years, and I've become very, very fond of her and
14 particularly also of her father who is the rock in her
15 life. But there has not been a meeting that we've had that
16 she has not expressed remorse over her actions and over the
17 consequences of her actions.

18 She has been in professional therapy both for her
19 marital problem, problems, and for trying to deal with the
20 consequences of this accident and the anxiety that she
21 faced for what the outcome would be.

22 If the Court would, I have some of her family members
23 who would like to briefly speak on her behalf. If the
24 Court will allow me to hear from them. This is her father.

25 CHARLES E. RICHARD, JR.: Your Honor, I don't -- I

Guilty plea

1 don't have a prepared speech, but I know my daughter has
2 been a good woman. She's taken care of her children and
3 her family. She's worked hard to put herself through
4 college. She tried to make something of her life. She has
5 gotten into a field where she likes to help other people.

6 And I know this is a tragic accident, a tragic
7 situation, and we're sorry for the loss of those families,
8 but it was not intentional.

9 It is not in my daughter's heart to do something like
10 that. She is not a violent person in her life. She's
11 always been compassionate. And I just -- I just don't know
12 what to say about this situation other than I would ask
13 that you would find it in your heart to be lenient on her
14 and give her a chance to continue her life.

15 THE COURT: Thank you, sir.

16 MR. JOHNSTON: This is her step-mother.

17 DEBRA A. DILLARD: Your Honor, I'm Sherra's
18 step-mother, and I have known Sherra since she was 12 years
19 old.

20 She's a kind and caring person. She loves everyone
21 around her. She loves her family, and especially her
22 friends and things. She's a proud mother.

23 I know she's remorseful because she's told me several
24 times she wished it was her instead of Ms. Lowry, and I
25 have seen her break down. I know she's extremely sorry.

Guilty plea

1 We're all sorry. We're sorry for Ms. Lowry's family. I
2 know what it's like. I had a cousin killed by a drunk
3 driver. But you have to look for forgiveness.

4 THE COURT: Thank you, ma'am.

5 MR. JOHNSTON: And lastly her mother.

6 THE DEFENDANT'S MOTHER: Your Honor, Sherra is my
7 daughter.

8 She is loving and caring and dedicated. She is a
9 chiropractor that devotes all of her time to her patients.

10 She lovingly goes out of her way to take care of her
11 family. She is a mother to two children. She has raised
12 beautiful children.

13 Sherra has suffered these last three years, along with
14 everybody else in our family. I was with Sherra after the
15 accident side by side laying with her holding her hand
16 every night in bed as she slept.

17 She had very bad injuries, and I stayed with her all
18 of the while. Sherra cried every night. She didn't cry
19 for herself. She cried for the other family. And she is
20 dedicated. She is very, very stricken by this accident and
21 that she caused it. Please have mercy on her soul. Thank
22 you.

23 THE COURT: Thank you.

24 MR. JOHNSTON: Your Honor, just briefly before Sherra
25 addresses you, I'd like to say that asking the judge for

Guilty plea

1 mercy is almost cliché. But that is what I am doing in
2 this situation. I am asking to -- for you to show mercy on
3 her because of, in spite of what's happened, she'd like to
4 address you.

5 THE COURT: All right. Ms. Werkmeister.

6 THE DEFENDANT: Your Honor, I cannot express how sorry
7 I am for this happening.

8 I made a horrible mistake that I can't take back.
9 When the accident happened all I could see was no
10 children -- no children.

11 And when the officers interviewed me in the hospital
12 my first questions were who was in the car and are they
13 okay. That's all I cared about.

14 This is not who I am. I don't make these decisions on
15 a regular basis. I am a level-headed, smart woman, and I
16 take care of what's mine, and I do what I'm supposed to as
17 much as I can.

18 I am a Christian woman, and I love my family and my
19 profession and my patients like they are my own. I am not
20 a monster. I made a big mistake in haste from emotion, and
21 I'm so, so sorry for that family, both families.

22 I understand the driver had very similar injuries like
23 myself and went through multiple surgeries like myself. I
24 can sympathize with her. I too live with the pain for the
25 rest of my life, but it does not mean that it's her fault.

Guilty plea

1 I am sorry I caused this. I'm sorry for her pain and I'm
2 sorry for the family's loss that I can't give back. And I
3 cannot change it.

4 MR. JOHNSTON: Thank you, Your Honor.

5 THE COURT: Ms. Werkmeister, let me ask you this.

6 What do you believe was the cause -- what do you
7 believe was the cause of you crossing over the center line
8 to hit another vehicle head on?

9 THE DEFENDANT: It happened very, very fast. We were
10 very close to each other when it happened.

11 THE COURT: Are you in agreement that you were on her
12 side of the road?

13 THE DEFENDANT: I wasn't aware of that.

14 THE COURT: You weren't?

15 THE DEFENDANT: I was not aware that it was me
16 drifting. I thought it was her drifting.

17 THE COURT: What -- what do you believe -- what do you
18 perceive would be the reason that you would have gone into
19 her lane and not knowing it? I mean, what were you doing
20 or what was the reason for it?

21 THE DEFENDANT: Not on purpose.

22 THE COURT: Well, I don't think anybody believes you
23 did it on purpose. I'm trying to find out how it happened,
24 why it did happen.

25 THE DEFENDANT: It was -- I shouldn't have been on the

guilty plea

1 road, and it was a traffic accident. It was purely an
2 accident.

3 THE COURT: Are you just saying at the time of the
4 collision you didn't have any idea what happened or why
5 you -- why it happened?

6 THE DEFENDANT: I don't know what he's looking for.

7 THE COURT: Well, I'm just looking for your answers as
8 to why it happened.

9 MR. JOHNSTON: He wants to know if you have an
10 explanation for why it happened.

11 THE DEFENDANT: Because I was in the car, and I
12 shouldn't have been, I suppose.

13 THE COURT: All right. You obviously crossed over
14 into her lane. You don't remember that happening or why it
15 happened or what you were doing when it happened?

16 THE DEFENDANT: No. We were so close to each other, I
17 might have swerved. I -- Your Honor, I don't know.

18 THE COURT: You might have swerved into the lane
19 instead of away from the lane because of the closeness of
20 the vehicles?

21 THE DEFENDANT: I -- I don't have an explanation.

22 MR. JOHNSTON: Your Honor --

23 THE COURT: She just don't know. In other words, you
24 just don't know when it happened, you just don't know what
25 you were doing or what caused it or --

Guilty plea

1 THE DEFENDANT: I was driving.

2 THE COURT: Well, I know you were driving. But you
3 were in someone else's lane. I'm trying to find out why
4 you were there.

5 THE DEFENDANT: I don't know whether -- I could have
6 misjudged the yellow line. There -- at that time of the
7 day there is a glare, and I didn't realize that I was over
8 it. And when we came upon each other there was no time for
9 reaction. It was that -- we were very close to each other.
10 I don't even believe either one of us hit our brakes.

11 THE COURT: Well, but, I mean, it's -- Ms. Lowry
12 wasn't in your lane.

13 THE DEFENDANT: Uh-uh.

14 THE COURT: She was in her lane.

15 THE DEFENDANT: Uh-huh.

16 THE COURT: Okay. So if you misjudged the line, you
17 would still see a vehicle, wouldn't you?

18 THE DEFENDANT: No.

19 THE COURT: I mean, if -- if you thought it was close
20 to you, you would go to your right as opposed to your left,
21 would you not?

22 THE DEFENDANT: If I had time to think, yes, I would
23 have avoided it.

24 THE COURT: Well, you said you might have swerved. My
25 point is if you were going to go either direction you

Guilty plea

1 certainly wouldn't go into someone's lane of traffic.
2 You'd go away from it. I mean, even if she were in your
3 lane you wouldn't go into the front of her. You'd go to
4 the right of her, wouldn't you?

5 THE DEFENDANT: Right. But I did not swerve. I don't
6 -- I didn't swerve.

7 THE COURT: I'm not saying you did. I just thought
8 that's what you said, you may have swerved, and I'm --

9 THE DEFENDANT: Drifted.

10 THE COURT: So if you did, I'm trying to find out why
11 you would have.

12 THE DEFENDANT: Drifted into her lane. I don't --

13 THE COURT: But you're not sure why you would have
14 done that.

15 THE DEFENDANT: No.

16 THE COURT: Do you --

17 THE DEFENDANT: The glare possibly, not seeing the
18 line, not knowing exactly where I was in the lane.

19 MR. JOHNSTON: Your Honor, there's a grade there
20 and --

21 THE COURT: Well, I've looked at the photographs, and
22 I'm just trying to -- so it appears that it's -- there's
23 plenty of light, and it appears that it's on a
24 straightaway.

25 MR. JOHNSTON: Yes, sir.

Guilty plea

1 THE COURT: And there may be a grade.

2 MR. JOHNSTON: Judge, the reason I was pointing that
3 out is through my poor understanding of how things like
4 this occur I think that the vehicle, the other vehicle,
5 came over the grade and they were close together very
6 quickly.

7 It wasn't like they -- even though it's a
8 straightaway, because of the hill, they didn't come at each
9 other for one mile towards one another.

10 You know, I don't really know, but that was something
11 that I thought could have been a factor.

12 THE COURT: Okay. Anything else you would like to
13 tell me, Ms. Werkmeister?

14 THE DEFENDANT: No.

15 THE COURT: All right. On Indictment 2014-2494,
16 that's the indictment for felony driving under the
17 influence where death resulted, Sentence of the Court is
18 you, Sherra Werkmeister, be confined to the South Carolina
19 Department of Corrections for a period of ten years and pay
20 a fine of \$25,100, provided, however, that sentence is
21 suspended upon the service of seven years and payment of
22 \$10,100, plus the costs and assessments.

23 Probation for three years. Conditions of probation,
24 substance abuse counseling, submit to random drug and
25 alcohol testing.

Guilty plea

1 Indictment 2014-2495, felony driving under the
2 influence with great bodily injury, seven years concurrent
3 with that imposed on 2494. Good luck to you.

4 MR..JOHNSTON: Thank you, Your Honor.

5 Your Honor, may I withdraw to talk with her?

6 THE COURT: Yes.

7 (Whereupon, the jury was returned and excused outside
8 the presence of the defendant and counsel.)

9 END OF REQUESTED TRANSCRIPT OF RECORD

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

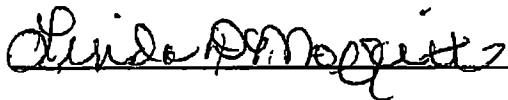
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 19th and 20th days of September 2016.

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

November 9, 2016



Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of

Spartanburg

IN THE COURT OF COMMON PLEAS

Shirley Westmeister 36785Defendant (Applicant)**2017-CP-42-1720**

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Carnell Siffin, Spartanburg Corr. Institution
Columbia SC 29210
2. Name and location of Court which imposed sentence Spartanburg
County General Sessions, Spartanburg
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which
sentence was imposed:
 - (a) 2014-65-4202-494 felony DUI/Death
 - (b) 2014-65-4202-495 felony DUI/Injury

FILED
MAY 15 AM 10:56

- (c) n/a
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Sept. 20th, 2016 10/SVS.7/3prob.
- (b) Sept. 20th, 2016 7 yrs.
- (c) n/a
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty n/a
- (c) after a plea of nolo contendere n/a
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. n/a
- ii. n/a
- iii. n/a
- (b) the result in each such Court to which you appealed:
- i. n/a
- ii. n/a
- iii. n/a
- (c) the date of each such result:
- i. n/a
- ii. n/a
- iii. n/a
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. n/a
- ii. n/a
- iii. n/a
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) my Attorney didn't file or converse w/me therefore I was prejudiced.
- (b) n/a

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective trial counsel
- (b) involuntary plea of guilty
- (c) failure to file direct appeal
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached sheet
- (b) " "
- (c) " "
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. n/a
- ii. n/a
- iii. n/a
- iv. n/a

(d) the date of each such disposition:

- i. n/a
- ii. n/a
- iii. n/a
- iv. n/a

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

- i. n/a
- ii. n/a
- iii. n/a
- iv. n/a

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

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

(a) which grounds have been presented:

- i. n/a
- ii. n/a
- iii. n/a

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

- i. n/a
- ii. n/a
- iii. n/a

2017 MAY 15 AM 10:56
H. HARRIS

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) n/a
 (b) n/a
 (c) n/a

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

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

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

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

i. Andrew Johnston
184 N. Daniel Morgan Ave., Spartanburg
SC 29304

ii. n/a
 iii. n/a

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

i. Ple and sentencing.

ii. n/a

iii. n/a

19. State clearly the relief you seek in filing this application:

Sentence to be reconsidered or
modified, vacate sentence, new trial,
lessor included offense.

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

None.

STATE OF SOUTH CAROLINA

County of

Spartanburg

VERIFICATION

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

Sherrae Werkmeister

SWORN to and subscribed before me this

day of

MAY

2017

Cynthia Davis

(L.S.)

Notary Public

My Commission Expires:

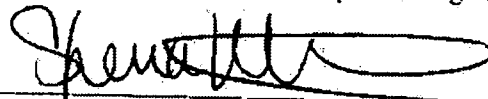
July 22nd, 2026

2017 MAY 15 AM 10:59
 M. NOTARY PUBLIC
 Revised 3/2013

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

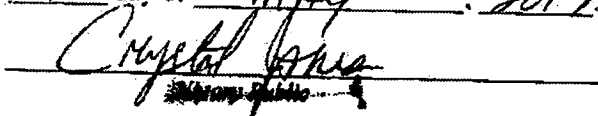
I, Sherra Werkmeister, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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



Applicant

SWORN or affirmed to and subscribed before me this
11th day of May, 2017.


Crystal Jones
~~Notary Public~~

My Commission Expires: July 22nd, 2026

2017 MAY 15 AM 10:56
NOTARY PUBLIC

Revised 3/2003

Ineffective Counsel

1) trial counsel failed to adequately prepare and present a defense

2) He failed to object to sentencing.

3) He failed to object to hearsay.

4) He failed to object to solicitors remarks + arguments.

5) He failed to include lesser included offense due to the evidence.

6) He failed to present expert witness testimony.

7) He failed to present pharmaceutical records.

8) Failed to adequately investigate + present investigative evidence.

2017 MAY 15 4:10:35
N. LOPEZ @ A. J. J.

9) coerced client into repeating closing statements, not of clients own words.

10) failed to follow up with proper character testimony on clients behalf.

11) B. Involuntary Plea of Guilty

Involuntary plea which was unlawfully induced and not made voluntarily or with a complete understanding of the nature of the charges and the inadequacies of the plea potential.

11) C. Attorney failed to file a notice of Appeal.

He felt there was no issue or merit which could be addressed or received on appeal.

JULY 15 11 18 57

Cover Letter
Clerk of Courts

County of Spartanburg
M. Hope Blackley
P.O. Box 3483
Spartanburg, SC 29304-3483

Dear Clerk,

Please find Enclosed PCR
Application pursuant to my
Case. Please send me a stamped
and dated copy at your
convenience.

Sincerely,
Sherral Workmeister
#369885
CG6CI-SRF4
4450 Broad River Rd.
Columbia, SC 29210

2017 MAY 15 AM 10:56
H. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) IN THE SEVENTH JUDICIAL CIRCUIT
)
)

Sherra Werkmeister, #369885,
Applicant,

) Case No.: 2017-CP-42-1720
)
)

v.

) RETURN
)
)

State of South Carolina,
Respondent.

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on May 15, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In March 2015, Applicant was indicted for first degree assault and battery (2015-GS-42-0889). Subsequently, in August 2016, Applicant was indicted for one count of felony driving under the influence (DUI) resulting in death and a count of reckless homicide (2014-GS-42-2494, counts I & II), and felony DUI resulting in great bodily injury (2014-GS-42-2495). Andrew J. Johnson, Esquire and Andra J. Tat, Esquire represented Applicant. Assistant Solicitors Lindsey Overby and Spenser Smith represented the State. On September 20, Applicant pled guilty as indicted to both counts of felony DUI before the Honorable J. Derham Cole. In exchange for his guilty plea, the State dismissed the charge of reckless homicide and first degree assault and battery. Pursuant to the State's recommendation, Judge Cole sentenced Applicant to imprisonment for ten years and a fine of \$25,100 for felony DUI where death results, suspended upon the service of seven years and payment of \$10,100 and probation for three years. Judge Cole sentenced Applicant to a concurrent seven year term for felony DUI where great

bodily injury results. Applicant did not appeal her convictions or sentences.

Attached to this Return and incorporated by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In her application for post-conviction relief, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Counsel failed to adequately prepare and present a defense"
 - b. "He failed to object to sentencing"
 - c. "He failed to object to hearsay"
 - d. "He failed to object to solicitor's remarks and arguments"
 - e. "He failed to include lesser included offense due to the evidence"
 - f. "He failed to present expert witness testimony"
 - g. "He failed to present pharmaceutical records"
 - h. "Failed to adequately investigate and present investigative evidence"
 - i. "Coerced [Applicant] into repeating closing statements, not of [Applicant's] own words"
 - j. "Failed to follow up with proper character testimony on [Applicant's] behalf"
 - k. "Attorney failed to file a notice of appeal"
 - i. "He felt there was no issue or merit which could be addressed or received on appeal"
2. Involuntary Guilty Plea
 - a. "Involuntary plea which was unlawfully induced and not made voluntarily or with a complete understanding of the nature of the charges and the inadequacies of the plea potential"

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits the allegation that counsel was ineffective for failing to file a direct appeal is without merit. Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. Turner v. State, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in Anders v. California, 386 U.S. 738 (1967). Id. However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Id.

This allegation regarding a direct appeal may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

Applicant also asserts her plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging her guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of

attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, “[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing.” McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, “whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases.” Id. at 771.

The record must establish the defendant had a full understanding of the consequences of her plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against Applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions “made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why she should be allowed to depart from the truth of her statements.” Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the

information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a), SCRCP. All claims should be made well in advance of the evidentiary hearing. If Applicant has is represented by an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits, witnesses, and materials used to produce potential expert witness testimony be provided to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to

request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

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

[Signature block on following page]

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and involuntary guilty plea.

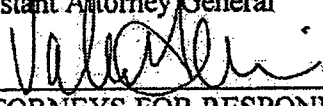
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

December 5, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

2017-CP-42-1720

SHERRA L. WERKMEISTER, #369885,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

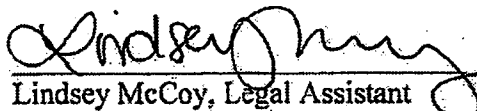
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Susannah C. Ross, Esquire
 Ross & Enderlin, PA
 330 East Coffee Street
 Greenville, South Carolina 29601

DATED this the 5th day of December, 2017.


 Lindsey McCoy, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS NONJURY

3
4 SHERRA L. WERKMEISTER,)
5 APPLICANT,) TRANSCRIPT
6 VS.) OF
7 STATE OF SOUTH CAROLINA,) RECORD
8 RESPONDENT.) 2017-CP-42-1720

9
10 February 2nd, 2018
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE GRACE GILCHRIST KNIE, Judge.

15
16 A P P E A R A N C E S:

17 SUSANNAH C. ROSS
18 ESQ.
Attorney for the Applicant

19 VALERIE GIOVANOLI
20 ASSISTANT ATTORNEY GENERAL
Attorney for the State

21
22
23 PAMELA E. GREEN
24 Circuit Court Reporter
Seventh Judicial Circuit
25

I N D E X O F W I T N E S S E SWITNESSESPAGE

SHERRA WERKMEISTER

Direct examination by Ms. Ross 7

Cross-examination by Ms. Giovanoli 11

CHARLES RICHARD

Direct examination by Ms. Ross 18

Cross-examination by Ms. Giovanoli 22

ANDREW JOHNSTON

Direct examination by Ms. Giovanoli 24

Cross-examination by Ms. Ross 46

Redirect examination by Ms. Giovanoli 55

Certificate 59

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T S

<u>NOS.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
-------------	--------------------	-----------	-----------

Applicant's Exhibits

A-1	Invoice		20
-----	---------	--	----

P R O C E E D I N G S

MS. GIOVANOLI: May it please---

THE COURT: Yes, ma'am.

MS. GIOVANOLI: Thank you, Your Honor.

This is Sherra Werkmeister versus the State of South Carolina. Docket Number 2017-CP-42-1720.

We're before the Court on an Application for Post-Conviction Relief filed May 15th, 2017. In March, 2015, Applicant was indicted for first degree assault and battery, and then, subsequently, in August of 2016, she was indicted for one count of Felony DUI Resulting in Death and a count of Reckless Homicide. She was also charged -- indicted for Felony DUI resulting in great bodily injury.

Andrew J. Johnston represented -- oh, and Andra Tat represented Applicant at -- Applicant at, at pretrial. Applicant pled guilty on September 20th to both counts of a Felony DUI before the Honor J. Derham Cole. In exchange for the guilty plea, the State dismissed the charge of reckless homicide and first degree assault and battery.

Pursuant to the State's recommendation, Judge Cole sentenced Applicant to imprisonment for ten years, and a fine of \$25,100 for the Felony DUI where Death Resulted, and that sentence was suspended upon the service of seven years and a payment of \$10,000 -- \$10,100 and probation for three

1 years. Judge Cole also sentenced Applicant to a concurrent
2 seven year term, term of imprisonment for Felony DUI where
3 great bodily injury results.

4 The Applicant did not appeal her convictions or her
5 sentences. Thereafter, she filed a Post-Conviction Relief
6 Application. The State is present and ready to proceed.
7 Applicant is also present. She's represented by Ms.
8 Susannah Ross to whom I will hand it over.

9 THE COURT: Good morning, Ms. Ross. I'm happy to hear
10 from you, ma'am.

11 MS. ROSS: Thank you, Your Honor.

12 May it please the Court.

13 This is Sherra Werkmeister. She's alleging ineffective
14 assistance of counsel conduct bringing into question the
15 outcome of the case. The basis for that would be failure to
16 object under Rule 3 of the indictment because it was not
17 indicted within 90 days as required. She's also arguing the
18 plea was not knowingly and voluntarily made, and that she
19 was -- that the toxicology expert that she had hired would
20 show that she was not legally under the influence at the
21 time of this wreck.

22 So, at this point, we would call Sherra Werkmeister.

23 MS. GIOVANOLI: And I'm just gonna object to one of
24 those allegations as they were not pled in the application,
25 and that's the failure to quash the indictment pursuant to

1 Rule Number 3 so that I have no notice of that allegation,
2 and, therefore, move to dismiss that.

3 THE COURT: Counsel.

4 MS. ROSS: That's a pretty basic allegation that I
5 bring in almost every case if it's not indicted within 90
6 days just in hopes that that rule will become enforced at
7 some point in the future.

8 THE COURT: Okay. Well, Ms. Giovanoli, as has been my
9 custom, as, as you know, if you need an opportunity to speak
10 with Mr. Johnston regarding that, I'm happy to give you that
11 opportunity. We can break now, take a few moments, or you
12 can talk with him about it before he testifies if, if we
13 break later in the morning. It's up to you, but I'm, I'm
14 going to allow that, ma'am.

15 MS. GIOVANOLI: Thank you, Your Honor.

16 THE COURT: Okay. Would you like to discuss it with
17 Mr. Johnston?

18 MS. GIOVANOLI: I am not gonna take the time, and I
19 just want to -- I only bring that issue up because this is a
20 constant reoccurrence of having new allegations for which
21 I'm not prepared to defend, and as my understanding as Rule
22 3 is purely procedural. So, we'll proceed.

23 THE COURT: Okay.

24 MS. GIOVANOLI: We're ready.

25 THE COURT: Thank you, ma'am.

Sherra Werkmeister - Direct examination
by Ms. Ross

1 Yes, ma'am, Ms. Ross.

2 MS. ROSS: Thank you, Your Honor.

3 We'd call Sherra Werkmeister to the stand.

4 THE COURT: Okay. Good morning, ma'am.

5 Before you get up there, if you'll raise your right
6 hand.

7 SHERRA WERKMEISTER, being first duly
8 sworn, testified as follows:

9 THE COURT: Okay. Now, watch your step, and make
10 yourself comfortable. Pull up to that microphone.

11 THE WITNESS: Okay.

12 DIRECT EXAMINATION

13 BY MS. ROSS:

14 Q Okay. Ms. Werkmeister, you're here for a
15 post-conviction relief.

16 You understand that, correct?

17 A Yes.

18 Q And do you understand that, if you prevail, you'll be
19 put back in the position you were in before the plea facing,
20 I guess, up to 25 plus 40 -- up to 40 years on both of those
21 charges?

22 A Yes, ma'am.

23 Q And is it your wish to proceed?

24 A Yes.

25 Q Now, you've alleged ineffective assistance of counsel.

1 why is that?

2 A Mainly because I feel that I was led into taking a
3 plea. I wanted to go to trial because of all the evidence
4 that we had, and -- excuse me. I'm very nervous.

5 Q Okay. Well, you didn't go to trial. You pled.

6 Can you tell me -- what led up to you pleading guilty?

7 A The offer was made to us on the first day that it went
8 to trial, that Monday, and I turned it down. I wanted to go
9 to trial. The second morning I come in -- came in feeling
10 comfortable because we had chosen, I felt, a good jury, and
11 I felt confident in going to trial. Up to that point, we
12 talked all about it.

13 That morning I was offered the plea again, and he
14 strongly advised that I take it. In my own heart, I wanted
15 to go to trial.

16 Q Did he use any pressure tactics, tactics to convince
17 you to take the plea?

18 A Yes, he talked to my family and told them to convince
19 me.

20 Q And, and did that happen?

21 Did they talk to you?

22 A Yes, their words made it impossible for me not.

23 Q Well, you say that.

24 How -- what, what did they say to make it impossible
25 for you not to?

Sherra Werkmeister - Direct examination
by Ms. Ross

1 MS. GIOVANOLI: Objection. Hearsay.

2 MS. ROSS: Judge, I, I---

3 THE COURT: Just rephrase and ask her what she did as a
4 result of statements from her family.

5 MS. ROSS: Okay. Okay.

6 THE COURT: Thank you.

7 Q What, what did you say or what did you do in result of
8 statements made by your family?

9 A We were all very, very scared. My father said he
10 wouldn't be here in 25, but he would be in ten.

11 Q And---

12 A I didn't have any other thoughts at that point.

13 Q All right. Now, had your family hired a toxicologist?

14 A Yes, we did. We hired one of the best.

15 Q And what was the basis for that?

16 Why did you do that?

17 A Because I felt I wasn't intoxicated at the time. The
18 levels were really low, and the medicines that I had in my
19 body were therapeutic levels, and they weren't -- and I felt
20 intoxicating.

21 Q All right. And, and when had you taken those pills?

22 A The sleeping pill, the night before, and my medicines
23 for the morning, in the morning.

24 Q All right.

25 A As far as my recollection right now.

1 Q So, you felt that you -- you were -- a strong feeling
2 that you were not legally under the influence---

3 A Yes. Yes.

4 Q ---at the time of the wreck?

5 A Definitely.

6 Q Okay. All right. Now -- all right. Is there anything
7 else that you'd like to say about why you pled or the, you
8 know, why you're alleging ineffective assistance of counsel?

9 A I just -- we had such a good chance, and I had -- we
10 had witnesses of where I was that day and the patients that
11 I saw, you know.

12 Q Okay.

13 A Well, a half hour before the accident, 45 minutes
14 before the accident.

15 Q And had you talked to them about what their testimony
16 may be?

17 A I had not, but my lawyer had.

18 Q And did you understand that their testimony all would
19 be favorable to you?

20 A Yes. Yes.

21 Q Okay.

22 A I felt very confident in what they had to say.

23 MS. ROSS: All right. I've got no further questions at
24 this time.

25 THE COURT: Cross-examination.

Sherra Werkmeister - Cross-examination
by Ms. Giovanoli

1 MS. GIOVANOLI: Yes, ma'am.

2 CROSS-EXAMINATION

3 BY MS. GIOVANOLI:

4 Q Good morning.

5 A Good morning.

6 Q You said, during your direct testimony, that you turned
7 down the first plea offer the first day.

8 A Yes.

9 Q Is that correct?

10 Just so -- some clarification, the first day your
11 attorney held some pretrial motions, right?

12 A Yes, I'm not real good with the legal meanings of
13 words. So --.

14 Q Okay. You remember he was making a motion to exclude
15 the blood results?

16 A Yes. Yes, I was very confident in that.

17 Q Okay. And your testimony is also that you didn't feel
18 intoxicated at the time of the accident?

19 A No.

20 Q But you reviewed the results of your blood tests, did
21 you not?

22 A Yes.

23 Q And your testimony today is that you took a Ambien the
24 night before or, excuse me, a sleeping pill the night
25 before?

- 1 A Yes.
- 2 Q Was that Ambien?
- 3 A Yes.
- 4 Q And then, the morning of the accident, you took
5 prescription medication?
- 6 A Yes.
- 7 Q And what was that?
- 8 A I have not reviewed that -- the test lately. I've been
9 in prison.
- 10 Q Well, not---
- 11 A But I take a anti-depressant and I take---
- 12 Q Do you remember what you took---
- 13 A Vyvanse.
- 14 Q Do you remember what you took that morning?
- 15 A Yes, Vyvanse and an anti-depressant.
- 16 Q Okay. And you're aware that the blood test results
17 show that you had Lexapro, Adderall, Tramadol, and alcohol
18 in your system?
- 19 A Lexapro, yeah, that's my antidepressant.
- 20 Q Tramadol.
- 21 A Tramadol.
- 22 Q Just a mild -- a pain killer?
- 23 A That's a -- yes, like a --.
- 24 Q And Adderall?
- 25 A Yes, that -- it's I think Vyvanse I took instead of

1 Adderall. I'm not real sure of the brand name at that time.

2 It's a non-stimulant, the Vyvanse.

3 Q Okay. And, also, there was a beer can found near the
4 scene that was in a Koozie.

5 Is that correct?

6 A Yes.

7 Q And you originally denied that that was your beer can.

8 Is that correct?

9 A It was -- I, I guess it was in the car.

10 Q And then do you recall that it -- the law enforcement
11 did a test on that can, the---

12 A Yes.

13 Q ---DNA swab of the opening, the mouth opening---

14 A Yes.

15 Q ---and it matched your DNA?

16 A Uh-huh. (Affirmative).

17 Q Did that influence your decision whether to proceed to
18 trial or plead guilty.

19 A No, because I still was not intoxicated.

20 Q Okay.

21 A At that point, I felt it's an open can. That's the
22 charge for that. It's not intoxication.

23 Q And this charge arose from an accident in which you
24 were driving and crossed the double yellow line on a two
25 lane highway and hit another car head on.

1 Is that right?

2 A Yes.

3 Q And the -- one of the passengers of that vehicle died,
4 did she not?

5 A Yes.

6 Q And you had also admitted, during the guilty plea and
7 to law enforcement, that you had been drinking at lunch that
8 day.

9 Is that correct?

10 A I had a beer with lunch, and that was hours before.

11 Q Okay. And then you saw clients after that, correct?

12 A That was at noon. I saw clients at 3:00.

13 Q Okay. And then, after that, you went back to your home
14 and had beers with your husband.

15 Is that correct?

16 A Yes, one beer there.

17 Q Okay. And then you also had the beer that you took
18 with you---

19 A Right.

20 Q ---in a can?

21 A I did not finish that. It was just there.

22 Q You didn't finish it because you got into an accident,
23 correct?

24 A I -- not necessarily.

25 Q But the can was opened in a koozie in your vehicle at

1 the time of the accident?

2 A Yes.

3 MS. GIOVANOLI: I have no further questions. Thank
4 you.

5 THE COURT: Redirect?

6 MS. ROSS: I've got no further questions.

7 THE COURT: Okay. Ma'am?

8 THE WITNESS: Yes.

9 THE COURT: You may step down.

10 THE WITNESS: Thank you.

11 THE COURT: Watch your step.

12 THE WITNESS: Thank you.

13 MS. ROSS: All right. I'd call Charles Richardson
14 (sic) to the stand.

15 MS. GIOVANOLI: And, Your Honor, I'm gonna object to
16 this witness. I had no notice of the witness, and no time
17 to prepare to cross-examine, which I'm entitled to do.

18 THE COURT: Okay. Counsel.

19 MS. ROSS: Judge, in PCRs, I don't know of any case law
20 where, where a witness list has to be provided to opposing
21 counsel. That, that -- it never existed in PCR.

22 This is a witness to corroborate what the Applicant
23 said, who was there. His testimony was discussed and, and
24 heard in her testimony as well. So, we would ask that
25 the---

1 THE COURT: Who, who is this gentleman?

2 MS. ROSS: This is Charles Richard. This is the father
3 of Sherra Werkmeister.

4 THE COURT: Her father?

5 MS. ROSS: Her father.

6 THE COURT: Okay.

7 MS. GIOVANOLI: And if I may just respond, there is --
8 she's correct that there's no case law that requires them to
9 turn over witness lists. As a -- it's a civil matter, and
10 the general, common practice is to allow the defendant, the
11 Respondent, to know who's going to be testifying in
12 Applicant's case.

13 THE COURT: Sure.

14 MS. GIOVANOLI: And, further, we couldn't ask for a
15 witness list without a discovery order, and the statute says
16 that we can not get discovery without a showing of good
17 cause. So, me merely speculating as to what witnesses she
18 may call, may call is not a basis for good cause and move
19 for discovery. So, if I have no basis to ask for the
20 witness list if I don't know---

21 THE COURT: Yes, ma'am.

22 MS. GIOVANOLI: ---puts us in an unfair position,
23 position.

24 THE COURT: well, and, of course, the purpose of
25 discovery is to make everything efficient, and, and to deter

1 voluminous litigation and undue surprise.

2 Okay. And so, counsel, why -- I mean I'm happy to give
3 Ms. Giovanoli an opportunity to talk with this witness
4 before he testifies, and, if there's another witness --
5 well, were, were you noticed of any witnesses?

6 MS. GIOVANOLI: No, I was not.

7 THE COURT: Okay. So, if -- I'm fine with y'all taking
8 a break right now, and why don't you -- I'm gonna give you
9 an opportunity to talk with him in the presence of counsel,
10 and then we'll come back maybe at five after 10:00.

11 MS. GIOVANOLI: Thank you.

12 THE COURT: I don't anticipate that his testimony is
13 gonna be lengthy based on what counsel said.

14 MS. GIOVANOLI: Okay.

15 THE COURT: Okay.

16 MS. GIOVANOLI: Thank you very much.

17 THE COURT: Yes, ma'am.

18 Sir?

19 THE WITNESS: Yes.

20 THE COURT: If you will step down. I believe you're
21 gonna talk to counsel, and then you'll be back up here in
22 just a moment.

23 THE WITNESS: Yes, ma'am. Thank you.

24 THE COURT: Thank you.

25 (WHEREUPON, a short recess was taken at this time.)

1 MS. GIOVANOLI: We're ready if Your Honor is.

2 THE COURT: Okay. Is it Mr. Richard?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Sir, if you'll come forward for me please,
5 and if you'll raise your right-hand.

6 CHARLES RICHARD, being first duly
7 sworn, testified as follows:

8 THE COURT: Thank you, sir. Please be seated, and pull
9 the chair up closer to that microphone.

10 Yes, ma'am.

11 DIRECT EXAMINATION

12 BY MS. ROSS:

13 Q All right. Mr. Richard, how are you related to the
14 Applicant, Sherra Werkmeister?

15 A Sherra's my daughter.

16 Q And did, did -- are you aware of the charges against
17 her?

18 A Yes, ma'am.

19 Q And did you have any involvement in her defense, her
20 criminal defense?

21 A Did I what?

22 Q Did you have involvement in defending her or hiring
23 her---

24 A Yes.

25 Q ---defense?

Charles Richard - Direct examination
by MS. ROSS

1 And, in doing so, did you, did you hire Andy Johnston
2 to be her lawyer?

3 A I did.

4 Q And also did you hire a toxology (sic) expert?

5 A I did.

6 Q And his name was Jimmie Valentine---

7 A Yes, ma'am.

8 Q ---correct?

9 I'm showing you this document.

10 Do you recognize it?

11 A Yes, ma'am, it's the invoice I was given from
12 Mr. Valentine through Andrew Johnston.

13 Q Okay. And it shows -- what does it show on
14 September 20th and 21st and 22nd?

15 A They -- professional time due to standing down for the
16 trial in Spartanburg, and reserving three days on a calendar
17 for trial at \$500 a day.

18 MS. ROSS: Okay. I'd have this marked as Applicant's
19 Exhibit 1.

20 THE COURT: Counsel, have you seen this?

21 MS. GIOVANOLI: I have seen it, and I'm not going to
22 object to it as it was part of the discovery prior to trial,
23 trial.

24 THE COURT: Okay. Applicant's No. 1. Thank you.

25 MS. ROSS: We'd offer it into evidence at this time.

1 THE COURT: Yes, ma'am.

2 (WHEREUPON, the invoice was marked as Applicant's
3 Exhibit No. 1 and received into evidence at this time.)

4 Q Now, as far as you know, was Mr. Valentine present at
5 the trial?

6 A No, ma'am, he never left his home.

7 Q And, and what does that indicate to you about the
8 position going forward with trial?

9 A Well, at the time we were all so upset I didn't think
10 about it, but, after the fact, he was told to stand down
11 before we even got to that, that first part of the trial,
12 and had -- apparently had no intention of coming according
13 to what turned out. There's no way he was gonna get here in
14 a couple hours. He lives in, I think, Missouri.

15 Q And did you hear the testimony by your daughter
16 earlier---

17 A Yes.

18 Q ---just now?

19 what did you tell her prior to her guilty plea?

20 A Well, we were in the chamber over there with
21 Mr. Johnston, and he presented the plea. We're all pretty
22 well upset, and he said to me, he said that the civil lawyer
23 on the other side was a high ranking person in the, in the
24 Republican party and had a lot of power. I don't know why
25 that even came up. Politics isn't suppose to be in jury

Charles Richard - Direct examination
by Ms. Ross

1 trials. However, that was given to me. That was like an
2 intimidation factor I felt.

3 As a matter of fact, I even felt, after the fact, that
4 Andrew Johnston was intimidated and caved in on it. He told
5 us that we better take the plea or we were gonna make
6 everybody mad and she'll get 25 years.

7 Q Okay. And what did you tell your daughter based on
8 what Mr. Johnston told you?

9 A Well, at that point, it -- I asked if we could have a
10 counterplea, and it was even a counterplea offered. So, we
11 were just stuck. We were -- didn't know what to expect,
12 didn't know what we could do, and it was -- looked like the
13 lawyer said we can't do anything. We're gonna lose no
14 matter what.

15 So, I told my daughter, I said seven years is a lot
16 better than 25 because it looked like they're gonna ram 25
17 years down on her for an accident that, that caused a death.
18 We're, we're remorseful for the family that lost the family
19 member, but I feel that this sentence that she was given was
20 exorbitant especially if you look at some of the other
21 sentences that were given at the same time for the same kind
22 of crime. They were much less, lesser sentences.

23 Q Okay. And did you -- was your impression that she
24 wanted to plea, your daughter?

25 A Yes, she fought with me and she wanted to go to trial,

1 and I just, I just got intimidated myself, I guess, and
2 caved in also.

3 MS. ROSS: All right. I've got no further questions.

4 THE COURT: Okay. Mr. Richard, answer any questions by
5 the Attorney General.

6 Ms. Giovanoli.

7 MS. GIOVANOLI: Thank you.

8 CROSS-EXAMINATION

9 BY MS. GIOVANOLI:

10 Q Good morning, Mr. Richard.

11 A Good morning.

12 Q I'm -- and I apologize. I missed your first name.
13 What was your first name?

14 A Charles.

15 Q Charles. Thank you.

16 So, there's been a bill admitted into evidence that
17 basically breaks down the expenses that the toxicologist
18 charged to you and Mr. Johnston.

19 Did you seek out the help of a toxicologist expert on
20 your own or was that something that Mr. Johnston helped you
21 with?

22 A I requested Mr. Johnston find us one.

23 Q And did he find this doctor?

24 A Yes.

25 Q And did he contract him to work on this case?

Charles Richard - Cross-examination
by Ms. Giovanoli

1 A Yes.

2 Q And you didn't pay all of that bill, did you?

3 A I, I paid a down payment of 90 some hundred dollars,
4 \$9,000, and I think the 61 is what I eventually paid. I'm
5 not sure exactly what the total was.

6 Q Didn't Mr. Johnston actually pay for part of that bill
7 because he felt bad that she ended up pleading guilty and
8 they didn't go to trial?

9 A Yes, he gave in on something. I don't remember what it
10 was.

11 Q Okay. I have no further questions. Thank you very
12 much.

13 A Thank you.

14 THE COURT: Any redirect?

15 MS. ROSS: No, Your Honor.

16 THE COURT: Okay. Mr. Richard, sir, thank you for
17 being here, and watch your step, sir. You may step down.
18 May this witness be excused?

19 THE WITNESS: Thank you.

20 MS. GIOVANOLI: No objection from the State.

21 THE COURT: Okay. Mr. Richard, you may leave if that
22 is your wish, sir.

23 Next witness.

24 MS. ROSS: We, we don't have any other witnesses.

25 THE COURT: Okay.

1 MS. GIOVANOLI: And the State would call Mr. Andrew
2 Johnston.

3 THE COURT: All right. Mr. Johnston.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: If you'll come forward, sir.

6 (Witness complies.)

7 THE COURT: If you'll raise your right-hand.

8 (Witness complies.)

9 THE COURT: Thank you, sir.

10 ANDREW JOHNSTON, being first duly
11 sworn, testified as follows:

12 THE COURT: Thank you. Watch your step. Make yourself
13 comfortable.

14 Yes, ma'am.

15 MS. GIOVANOLI: Thank you.

16 DIRECT EXAMINATION

17 BY MS. GIOVANOLI:

18 Q Good morning, Mr. Johnston. Thank you for being here.

19 A Yes, ma'am.

20 Q How long have you been practicing law?

21 A Since November of 1985.

22 Q And how much of that has been criminal?

23 A Mostly practice criminal law. Was a former assistant
24 solicitor, former assistant public defender, part-time. I
25 would say I've been primarily engaged in the practice of

1 criminal law since 1988.

2 Q Okay. And you represented Ms. Werkmeister in a private
3 capacity, correct?

4 A Yes, ma'am, I did.

5 Q Can you give us -- well, let's just jump straight in.
6 Can you give a brief summary of the evidence that was
7 against your client?

8 A Yes, ma'am, it was a two car accident on a straight
9 stretch of road. I did go to the scene and examine it
10 myself. I don't remember what the lighting conditions are
11 precisely. I want to say that it was early evening, and I
12 don't remember now what time of year, but it may of been
13 dusk/dark or dark or something like that.

14 And, according to the MAIT Team report, which was
15 thoroughly documented by all of the things that they do,
16 measurements, calculations, scientific equations,
17 photographs, examination of the physical damage to the, to
18 the motor vehicles, they prepared a report. It's called the
19 MAIT Team report.

20 Q Can you just explain what MAIT is?

21 A I think it stands for Multi Agency Investigation Team,
22 but I'm not one hundred percent sure about that, but it's a
23 Highway Patrol thing that they bring in generally for
24 anytime someone has, has died at, or even badly hurt, as a
25 result of an accident.

1 Q Okay. And so continue.

2 MAIT did an investigation out there?

3 A Yes, ma'am, they did, and the investigation standardly
4 includes an animation and a detailed report of their
5 findings, and they had what I interpreted to be an
6 unequivocal conclusion that Ms. Werkmeister crossed the
7 center line and struck the other vehicle head on.

8 Q Were---

9 A So, that -- that's what started the case.

10 where would you like me to go from here?

11 Q Okay. And then what evidence did -- was there that she
12 was under the influence?

13 A Well, that's -- I'll have to take my time with that
14 because there is -- that's somewhat complicated.

15 Q Okay. How about I break it down then---

16 A All right.

17 Q ---so it doesn't seem so long?

18 You did -- had a pretrial hearing in this case?

19 A We did.

20 Q Is that correct?

21 A Yes, ma'am.

22 Q So, you were expecting to go to trial?

23 A We were -- there had been expressly stated no offers,
24 going to trial.

25 Q Okay.

Andrew Johnston - Direct examination
by Ms. Giovanoli

1 A Other than perhaps they would of let me pick the judge
2 that we appeared before or concurrent sentencing or
3 something like that, but there was no, what I would call,
4 viable offer. So, throughout the process, I was preparing
5 for trial because my belief was that, by preparing for
6 trial, we could force them into, into negotiating someone
7 with us or something with us or, if that did not work,
8 winning the trial.

9 Q Okay. And so they were actually two different blood
10 tests taken.

11 Is that correct?

12 A That is correct.

13 Q Okay. So, let's go to the pretrial motion, and, the
14 first blood test.

15 Can you talk a little bit about the first blood test?

16 A The first blood test is what's called a forensic test,
17 which was performed by the State Law Enforcement Division.
18 There had been some recent changes in the law, and that Ms.
19 -- my understanding, from reading the report, that they
20 spoke directly with the solicitor. I'm, I'm talking now
21 about the Greer Police Department. They spoke directly with
22 the solicitor about what legal method to use to obtain a
23 sample of Ms. Werkmeister's blood.

24 Q Let me stop you right there because---

25 A Yes, ma'am.

1 Q ---I think you're talking about the blood test taken by
2 the Sheriff's Department. There was one taken by the doctor
3 first.

4 A Right.

5 Q Is that correct?

6 A In terms of chronological time---

7 Q Okay.

8 A ---yes.

9 Q Okay. So, you, you want to take up the one that was
10 taken later, which I think was 10:00PM.

11 A Okay. I can't remember the times as I sit here. I'm
12 confident that the hospital test was earlier.

13 Q Okay.

14 A And the forensic test was later.

15 Q Okay.

16 A But I don't know the times as I'm sitting right here.

17 Q Okay. Well, the record will reflect that, that the
18 doctors took the blood about seven o'clock'ish, and that
19 this occurred on a Friday afternoon, and then, later, the
20 police took it at ten o'clock.

21 So, with regard to your---

22 A That sounds correct.

23 Q Okay.

24 A I don't -- I'd certainly---

25 Q And the record will reflect that---

Andrew Johnston - Direct examination
by Ms. Giovanolì

1 A Yes, ma'am.

2 Q ---just as a way, a way to lead into your question.

3 So, your pretrial motion, I think that you're going to
4 the sheriff's -- the blood that the sheriff took.

5 A No, it's actually not the sheriff. It's Greer PD.

6 Q All right.

7 A But law enforcement, yes, ma'am.

8 Q Law enforcement.

9 A And that's what I call the forensic test. So, they
10 called the solicitor, and they didn't use implied consent,
11 for whatever reason. I don't know what their thinking was.
12 There had been a recent case out of the U.S. Supreme Court,
13 Missouri versus McNeely, that had changed some of the way --
14 some of the legal basis for obtaining blood tests.

15 So, my understanding, from reading the documents, is
16 that it was recommended that they obtain a search warrant,
17 which they did, but they made a, a colossal mistake.

18 Q And what was that mistake?

19 A They got a judge to issue the search warrant who had no
20 jurisdiction over the area where the blood sample was being
21 taken.

22 Q And was this issue presented to the Trial Court?

23 A Yes, it was.

24 Q And did you argue for suppression of that blood as a
25 result of the lack of jurisdiction on the search warrant?

1 A Absolutely. In, in my opinion, that's why we were able
2 to get the written -- the offer. As I told you, there'd
3 been no viable offer up to that point. When we began to
4 make what I call very effective headway with that issue, an
5 offer was forthcoming.

6 Q Okay. And about the---

7 A And, and when I say an offer, it's, it's an odd thing
8 because we were in chambers with the Court, and I think it
9 was one of these things where the solicitor was saying that
10 they would go along with it, but they weren't going to make
11 an offer per se, and that these were numbers that were
12 floated out. So, it really wasn't that -- it wasn't your
13 standard kind of offer.

14 Q It -- was it, was it a State's recommendation of a cap
15 of ten years?

16 Was that essentially what the offer was?

17 A I don't -- I can't -- I don't think so. I think it was
18 what she ended up getting.

19 Q Okay.

20 A But, but, again, I would -- I can't say that with
21 absolute certainty.

22 Q Did the offer also include a dismissal of a reckless
23 homicide and assault and battery first degree?

24 A That is correct.

25 Q Okay.

Andrew Johnston - Direct examination
by Ms. Giovanoli

1 A And, and, of course, the, the GBI, the Felony GBI, the
2 Felony DUI GBI, was gonna be run concurrently.

3 Q That's correct.

4 So, if, if -- you said you were making a leeway with
5 this pretrial motion.

6 Why not take it all the way to trial if you were gonna
7 get the blood test suppressed?

8 A Well, again, I was very confident that we were going to
9 get that suppressed. I think they knew we were gonna get it
10 suppressed. So, again, that's why we were able to break a
11 hole and get an offer that I felt very comfortable
12 recommending, but there was other evidence floating around
13 out there.

14 There was the beer can with the DNA results on it that
15 was mentioned earlier. Had they not done that, then we
16 could of probably -- if they -- the fact they just brought
17 in a beer can, said we found it near the car, I don't think
18 that would of been very, very impressive, and I might of
19 been able to exclude it as being more prejudicial than
20 probative. But they did an excellent job on that part, and
21 they got a search warrant to get a genetic sample from Ms.
22 Werkmeister, compared it at SLED with the can, and it was
23 her can --

24 Q So, you've got---

25 A -- with a koozie on it.

1 Q And you've got this detailed MAIT report, accident
2 reconstruction. You've got a beer can with the koozie that
3 she originally denied was hers, but, later, DNA testing
4 showed that she had been drinking from it or at least her
5 mouth had touched the can, and what about statements?

6 A She did give a statement, and the statement is on a --
7 an audio, and I apologize, but I did not have a chance to
8 listen to that again, but I do have it in my file if anyone
9 is interested. What they do is they go in and they commence
10 to talking to her, and she does a good job by eventually
11 cutting it off, but I think she makes some admissions.
12 Particularly about the medications that she had taken.

13 Q And there was also another blood test.

14 Is that correct?

15 A Yes. And that was the one that could have sunk us
16 depending on the circumstances.

17 Q And can you explain that a little bit more?

18 A Okay. She had a hospital blood test. The forensic
19 test showed blood sample -- a blood level. Again, it was
20 taken later as you said. A pretty low reading of 0.117.
21 Again, that's some three hours after the first test is
22 taken, and probably four hours after the accident, give or
23 take. But hospital, as part of the code trauma protocol,
24 did an ETOH evaluation on her as well, and that was reported
25 out as a .107.

Andrew Johnston - Direct examination
by Ms. Giovanoli

1 Now, there are many, many forensic considerations
2 concerning a hospital test versus a forensic test. One of
3 all, the most obvious is, hospital test is not a forensic
4 test. Hospital blood tests are usually performed with
5 plasma as opposed to the whole blood. What exactly -- and,
6 and that, that means that the 107 is actually higher than
7 what it actually is.

8 Q Okay.

9 A Because a hospital is not concerned about finding, you
10 know, a statutory inference or anything like that. They
11 just want to generally know how much this person -- you
12 know, what -- to what extent a person has been drinking.

13 Okay. So, there is a rule of thumb that I read about,
14 but, again, it's only a rule of thumb that a hospital blood
15 test is 15 percent higher than a forensic test taken at the
16 same time that a blood test, forensic blood test taken at
17 the same time. But that's merely a rule of thumb.

18 Okay. But if you took off 15 percent there, it would
19 still be close to the inference level, and certainly would
20 not have been a five or lower or which would of been a
21 conclusive presumption of not guilty. The other thing is
22 there's a concept called retrograde extrapolation.
23 Retrograde extrapolation is the ability of a qualified
24 forensic scientist, scientist to be able to estimate what a
25 person's blood alcohol level was at the time of the incident

1 when the blood is taken at a later time.

2 Now, there are other issues with hospital blood tests
3 about equipment that's used and about can they provide an
4 effective chain of custody. The other advantageous thing
5 about the hospital test was that apparently they didn't
6 check it for any drugs, but there, again, I believe there
7 was some admissions of her using drugs -- of, of her having
8 taking some -- her, her medications.

9 Okay. So, that would of come in.

10 So, we were faced with the circumstance that involved a
11 good deal of risk versus benefit. Had I been able to
12 suppress the hospital test, we would of been out of the
13 woods so to speak. I did not see a way for outright
14 suppression. Had we proceeded to trial, I was prepared to
15 bring the expert here and have him testify about the
16 limitations of the hospital blood test, and he had helped me
17 prepare cross-examination material to try to bring into
18 dispute what the hospital blood test actually meant.

19 Q And so you---

20 A That, that would of been where we were gonna go, but,
21 when he busted them loose on the forensic test, they started
22 to deal.

23 Q Okay. So, let me take you back to the expert that I
24 think you're, you're mentioning.

25 was your purpose in calling him to consult on this case

Andrew Johnston - Direct examination
by Ms. Giovanoli

1 and potentially testify with regard to that retrograde
2 extrapolation?

3 A We would have wanted him to counter the testimony of
4 what I would of anticipated the State would have presented
5 on retrograde extrapolation. And, while we're talking about
6 it, retrograde extrapolation, in the scientific community,
7 is not well thought of, and it's all kinds of
8 cross-examination material on that, but, nonetheless, it is
9 something that is out there.

10 Q So, you did research---

11 A And, and it has been allowed in some Courts of the
12 United States. I'm -- I think it's been allowed in at least
13 one courtroom here in Spartanburg, but I, again, I can't
14 state that with absolute certainty.

15 Q Did you research and consider moving to suppress the
16 hospital blood results?

17 A Oh, I would have absolutely.

18 Q Okay. And who -- whose idea was it to consult with
19 this expert?

20 A Mine.

21 Q And there's been a bill that's been admitted into
22 evidence.

23 A May I see it?

24 Q Yes, of course.

25 May I approach this witness?

1 THE COURT: Yes, ma'am.

2 Q Now, this, this came from your file.

3 Is that correct?

4 Do you have a copy of that in your file?

5 A I'm, I'm sure I do, yes.

6 Q Okay. Did Ms. Werkmeister's father pay for some of
7 that bill?

8 A Yes, he absolutely did.

9 Q And did you also pay for some of that bill?

10 A Yeah, I felt bad because I didn't realize that he was
11 gonna charge that much for standby time. So, I kicked in
12 1,500 of the, of 6,150 just as a courtesy to her father who
13 had been very supportive during the trial, and he had paid
14 my fees and he had paid the much earlier -- the fee of the
15 toxicologist to become involved. So, as a courtesy to him,
16 I kicked in that little bit.

17 Q Okay.

18 A But it's totally, totally a misunderstanding that he
19 was told to stand down before the trial was over. That's --
20 that is not correct at all. Had we proceeded to trial, I
21 would have called him as a witness. Doctor Valentine has
22 his own plane. He lives in Mississippi, and he and I had
23 made preparations that, had he come, he was gonna go hop in
24 his plane. He was gonna fly up here. He was gonna fly into
25 the city airport if I'm not correct -- not -- if I'm

Andrew Johnston - Direct examination
by Ms. Giovanoli

1 correct, and he would have been here.

2 Q So, you were prepared to go to trial and prepared to
3 call your expert witness?

4 A We were in trial.

5 Q Okay.

6 A I mean we were in trial.

7 Q Okay. So, once you got that sort of plea offer, a
8 viable plea offer, did you take it to Ms. Werkmeister?

9 A Yes, ma'am, I did.

10 Q And, at that time, who was present?

11 Just you and her or someone---

12 A Well, she and I talked about it by ourselves, and it's
13 my practice that, if I feel like the family can be helpful
14 in reaching a resolution -- she's very close to her father,
15 respected what her father had to say. So, I included him in
16 the plea negotiations.

17 Q Okay. Did you ever coerce Ms. Werkmeister to take the
18 plea deal?

19 A No, I, I never coerced her. I made her aware of what I
20 thought would happen if we went to trial and she was
21 convicted, and that would of been a bad thing. The victims
22 in this case were very, and I don't blame them, but I'm, I'm
23 just saying the victims in this case were very angry, and
24 there was a live victim as well, as well as the deceased.
25 And even though Doctor Werkmeister did not have any record,

1 I felt that, if we went to trial and she was convicted, that
2 she would get at least double this if not more.

3 Q Did you discuss the entire range of sentencing for
4 these charges---

5 A Absolutely.

6 Q ---if she went to trial?

7 Okay. And there were two victims in this case,
8 correct?

9 A That is correct.

10 Q And could you explain the, the result of -- well,
11 let's -- let me just make this easier.

12 One actually passed away?

13 A That is correct.

14 Q And the other one was---

15 A I believe she died either on scene or on route to the
16 hospital or something. She was an elderly lady.

17 Q And the other victim had great bodily injury?

18 A That is correct. I don't -- as I sit here now, I don't
19 remember the extent of, of what exactly it was, but I'm sure
20 it qualified under the statute.

21 Q And there was some testimony that---

22 A And she was the driver. The lady who did not pass away
23 was the driver.

24 Q There was some testimony that you talked to Ms.
25 werkmeister's family in order to convince her to accept a --

1 the plea.

2 A well, as I, as I said---

3 Q Can you elaborate on that?

4 A Pardon me?

5 Q Can you elaborate on that---

6 A Yeah.

7 Q ---decision?

8 A well, as I said a moment ago, her father had been with
9 us throughout the process. He was aware of the evidence in
10 the case. He's a very intelligent man, and Sherra had great
11 respect for him. She and her husband were estranged, and we
12 did not exactly trust her husband about what he might say or
13 what he might do. So, we excluded him from the process, but
14 the father was with us.

15 so, I felt that she would benefit from his counsel.
16 So, I included him in, in the negotiation or, or in, not the
17 negotiations, the discussions about whether or not to take
18 it.

19 Q There was some testimony that you -- well, I think I---

20 A If I may add, if I may just add, excuse me. It was my
21 opinion that Sherra was being -- that Doctor Werkmeister was
22 being unreasonable in her evaluation of what we were facing,
23 and I felt her father would be more reasonable.

24 Q Okay. And did she ever oppose you including her father
25 in any discussions about the case?

1 A Absolutely not.

2 Q And he was---

3 A She seemed to benefit from hearing what he had to say.

4 Q So, let's go back. You mentioned an estranged husband,
5 and one -- in any of your meetings with Ms. Werkmeister, did
6 you discuss her version of events?

7 A Yes, ma'am.

8 Q And could you explain that version of events that she
9 told you?

10 A First of all, I do not believe that she was intoxicated
11 during the day while she was seeing patients because the
12 police conducted an evaluation or conducted interviews with
13 people that had contact with her, patients, and, and that
14 sort of thing, and nobody indicated that she was under the
15 influence or I don't think anybody even said that they
16 smelled alcohol on her.

17 So, what I recall is that she and her husband -- she
18 suspected -- she -- there had been some allegations of
19 infidelity on his part, and I don't know if they had
20 resurfaced. I don't remember that. I think that that's
21 what happened, that there had been allegations and that he
22 told her it wasn't true or he wasn't gonna do it anymore,
23 but that she had reason to believe that he was, that he was
24 doing it again, and they were at their home, and a bitter
25 argument broke out. And, during the time of the bitter

1 argument, there was alcohol consumption.

2 Q Okay. And then she left her house?

3 A And she left her house driving, one presumes upset, and
4 with at least, according to the evidence, one open can of
5 beer. Now, how much she had before she left the house, I
6 can only tell you what she told me.

7 Q Which was?

8 A I had one or two.

9 Q And that was not counting the open beer can in her car?

10 A No. Actually, yeah, I go on to write down the second
11 beer was in a Koozie. So, she maintained, apparently, that
12 she had one and the second one was in the Koozie, and how
13 much of that one she actually drank I don't know. I didn't
14 write down.

15 Q Did she tell you that she was drinking earlier in the
16 day as well before she saw clients?

17 A Well, that came out in the investigation. It didn't
18 seem to me to be a factor because of the time that went by.
19 Even if, you know, she had had a beer at lunch or a glass of
20 wine at lunch, cause I think she told me at least that it
21 was one, that that wouldn't of affected her four or five
22 hours later.

23 Q Did she tell you she was also taking other medications?

24 A Yes, ma'am, she did.

25 Q And which were those?

1 A She told me she took Lexapro and an ADD med.

2 Q And, in, in fact, in the test, they were results for
3 other narcotics.

4 Is that correct?

5 A Yeah, I don't, I don't -- they're controlled
6 substances. I don't know if they're narcotics or not,
7 but---

8 Q All right.

9 A ---the forensic test indicated, and, again, I was, I
10 was getting that suppressed, but that indicated Tramadol and
11 Ambien, and Lexapro, and various metabolites of those drugs.
12 It also indicated Morphine, but she had Morphine on the way
13 to the hospital. So, that would not have been something
14 that she had before the accident.

15 Q Okay. And there was a little bit of discussion about a
16 civil lawyer.

17 Were the, the victim's estate represented by a civil
18 attorney?

19 A Yes, they were.

20 Q Was he present at the guilty plea?

21 A Yes, he was.

22 Q Okay. And he actually spoke on record.

23 Do you recall that?

24 A I believe he did, but, again, the deal was consummated.

25 I'm sure that he had a right to speak and all that, but it

1 didn't affect what happened.

2 Q Okay. It that---

3 A But I was concerned about it.

4 Q Okay. So, there's been an allegation that you used
5 this civil attorney's power and authority to, for lack of a
6 better term, intimidate the family and Ms. Werkmeister.

7 Is that true?

8 A No, I told them about this gentleman, what I knew about
9 him, and I told them -- I'm, I'm confident I didn't say he
10 had power or authority. I think that he may of been able to
11 influence what happened. When you have a prominent lawyer
12 involved in something like that, that certainly could
13 influence things. Should it, should it not, I; I -- you'd
14 have to ask somebody else that, but, my experience, that
15 would not have been a good thing.

16 Q Did---

17 A And I made them aware -- I mean all I did was make them
18 aware of it.

19 Q Did you tell her father that---

20 A But let me, let me add one thing. Taking that totally
21 out of the equation, she was still looking at some serious
22 double digit, double digit time, if convicted.

23 Q Do you know, off the, off the top of your head, the
24 maximum time she was facing for the charges for which she
25 was charged?

1 A Twenty-five years -- Felony DUI Death is a mandatory
2 one to 25 years. It's an 85 percent crime. Felony DUI GBI
3 is a mandatory 30 days up to 15 years. It's not 85 percent.

4 Q And then, on top of that, she also had a reckless
5 homicide and assault and battery first that were dismissed?

6 A That is correct.

7 Q In exchange for the guilty plea?

8 A That is correct. And, and I'm not sure that, that -- I
9 think, I think those were the, the fallbacks of the State,
10 which is another consideration that we really haven't talked
11 about here. I think that the State had those indictments
12 ready in case their blood case went bad. So, they would not
13 have had to prove that she was under the influence in order
14 to establish the elements of reckless homicide.

15 Now, the assault and battery, I don't think much of
16 that. I think that, I think that required -- would of
17 required some sort of intentional act or something, but they
18 certainly could have hit -- I mean she definitely could of
19 been convicted of reckless homicide based on the MAIT team
20 report alone.

21 Q Okay. And I think I only have one question left, and
22 that's did you ever tell the father to go convince Ms.
23 werkmeister to accept the plea?

24 A I didn't tell him go convince her. I told him I
25 thought it was in his interest -- it was in her interest to

Andrew Johnston - Direct examination
by Ms. Giovanoli

1 take the plea, and that, if he agreed with me, that him
2 stating his, his beliefs would be a positive thing.

3 Q Did he agree with you?

4 A He evidenced to me that he did. I mean it was a scary
5 situation I, I will say. Mr. Richard said that they were
6 scared. It, it was a scary situation. I was scared for Ms.
7 Werkmeister.

8 Q With regard to this other allegation that was made
9 today, you didn't move to quash the indictment pursuant to
10 Rule 3, which requires the solicitor to indict within 90
11 days of the arrest warrant.

12 A I can---

13 Q Why didn't you do that?

14 A I can truthfully tell you I never even thought about
15 it.

16 Q All right. What is your---

17 A I'm not aware of, of -- I'm not aware of any case law
18 that, that supports that, and I do not anticipate that I
19 would of received a favorable ruling on that, and, third of
20 all, all they would of done is just reindicted her. I mean
21 I guess that's what, what they would of done. I don't know
22 what the remedy for that would be, but I can truthfully tell
23 you that I never even considered that one.

24 Q Was it your understanding that Rule 3 is procedural and
25 not substantive?

1 A Well, I haven't really done any research on it, but
2 that's what it sounds like to me.

3 Q Have you ever heard of State v. Culbreath?

4 A I, I may have, but I don't have command of it as I sit
5 here.

6 Q Okay. I have no further questions. Thank you very
7 much. If you will, answer any questions that Ms. Ross may
8 have.

9 THE COURT: Cross.

10 MS. ROSS: Thank you.

11 THE COURT: Yes, ma'am.

12 CROSS-EXAMINATION

13 BY MS. ROSS:

14 Q Just tell me about, there about the toxicologist.

15 Did, did y'all discuss the effect of these legal
16 prescribed medications that Ms. Werkmeister was taking?

17 A Absolutely. We discussed it extensively.

18 Q Did you feel like you had the ability to take some bite
19 out of the fact that she did test positive for these
20 prescribed medications?

21 A Well, my first line of defense, of course, was to try
22 to keep out as much of that as I could, but, to the extent
23 that any of that came in, yes, I would of been prepared to
24 use his testimony to, I think you've captured it correctly,
25 take the bite out of some of that.

1 Q All right. And---

2 A And, and I think---

3 Q Excuse my slang.

4 A No, I mean I -- that -- I think that's a correct
5 statement of what was going on.

6 Q And that was part of the reasons -- because I do
7 understand that seeing, for the jury seeing prescribed
8 medications can look mysterious, but you have the ability to
9 explain that to the jury and explain their effect on her
10 intoxication?

11 A Well, my goal there is to create doubt, and to do all I
12 can to minimize the damage from that. Now, the Tramadol was
13 not prescribed. That was a medication that was not
14 prescribed.

15 Q And I believe she had said something to the effect that
16 it wasn't even a---

17 A It was not a controlled substance.

18 Q It wasn't a controlled substance?

19 A At the time of the accident. It was a controlled
20 substance at the time of the trial.

21 Q All right.

22 A But it is a fairly mild pain reliever, as, as I
23 understand it. It's not like Oxycodone or something like
24 that. But the fact that it appeared, and she didn't have a
25 script for it, I got the impression that she -- there was

1 some of it laying around the house, and she was experiencing
2 some pain, and she took somebody else's.

3 Q All right.

4 A What would of -- but the effect it would of had on her
5 I can't say. Again, I think it's a pretty mild kind of
6 thing.

7 Q And this is something you had discussed with the
8 toxicologist and that's---

9 A Absolutely.

10 Q ---why he was under contract to come to the trial?

11 A Absolutely.

12 Q Now, going back to your -- there was never a ruling on
13 the suppression hearing prior to trial -- the plea?

14 A Not a formally announced on the record ruling, but---

15 Q Go ahead.

16 A I don't want to interrupt you if you---

17 Q No, that's fine.

18 A It was not an on the record ruling on it, but, talking
19 in chambers, that thing was going away. That's how---

20 Q So, your understanding was it was gonna be suppressed?

21 A Yes.

22 Q And you believed that was the basis of the plea offer?

23 A That, that -- yes, ma'am, that is correct.

24 Q And, with the plea, you gave up any chance to challenge
25 anything that you, you might be able to suppress as far as

1 the hospital tests?

2 A Yes.

3 Q Okay. So, you were sort of saying okay, we've got the
4 forensic test out, but there's still this hospital test?

5 A Right.

6 Q But by being---

7 A And the other little extraneous pieces of evidence as
8 well.

9 Q Okay.

10 A Beer can and whatnot.

11 Q And, of course, with the plea, the, the issues were
12 appealable at that point---

13 A Well, I don't know---

14 Q ---if they weren't preserved?

15 A Technically, you -- I guess you can, but there, there
16 was no issue to appeal. So, it wasn't the type of thing
17 where you want to plea. She was sentenced within the
18 statutory parameters, and, further, she was sentenced
19 according -- along the lines of what I told her she was
20 gonna get.

21 Q All right. And so, just getting that, you didn't want
22 to appeal and you didn't appeal?

23 A Saw no reason to.

24 Q And she didn't ask to, to appeal?

25 A No, ma'am.

1 Q Did---

2 A Had, had she asked, I would of told her just what I
3 told you. I would of told her if she was dissatisfied with
4 the outcome, she needed to do what she did now, which is to
5 file a post-conviction relief.

6 Q All right. And as to any motion to reconsider, she
7 didn't request that either?

8 A No, ma'am, but I don't see that as having any chance of
9 succeeding.

10 Q All right. And just going to the, the amount of beer,
11 do you recall the testimony in the incident report that said
12 that beer was splashed all around the car---

13 A Yes, ma'am, I do.

14 Q ---and in the cup holder?

15 A I do.

16 Q And would an empty beer can splash all around the car
17 and the cup holder if she had drank that beer already?

18 MS. GIOVANOLI: Objection as to speculation.

19 THE COURT: I'll allow it.

20 A Okay. Will you please rephrase?

21 Q If she had finished the Natural Light can---

22 A I said -- okay. I see what you're saying. If she
23 drunk the whole can or almost all of its contents, it
24 wouldn't have spewed everywhere in the car.

25 Q Correct.

1 A Yes. Now, exactly how much was in there, I, I don't
2 know, but, yes, that would of been a good line of
3 cross-examination. Hey, how do we know she drank the whole
4 beer? Y'all found beer in the car. Yes, I agree that would
5 of been an avenue for cross.

6 Q And just going briefly to the MAIT report, it was --
7 the accident was, I believe, around 5:30 or so.

8 Is it possible that the MAIT report said that the sun
9 would of been in Ms. Werkmeister's eyes setting at the time
10 of the accident---

11 A I, I---

12 Q ---when she crossed over the center line?

13 A Now that you remind me, that is a correct statement.

14 Q And isn't it true that she was crossed over the center
15 line around 2-feet?

16 A Without looking at the thing, I can't tell you as I sit
17 here, but it wasn't a -- it definitely was not a full head
18 on. So, I will not dispute that characterization.

19 Q Okay. And wasn't the accident sort of left front
20 headlight to left front headlight?

21 A To my recollection, yes.

22 Q Okay.

23 A But, unfortunately, occurring on the other vehicle's
24 side of the line.

25 Q Correct.

1 Now---

2 A But it definitely was not a full head on thing.

3 Q Right.

4 And, and you admit that, that you did pressure Ms.
5 werkmeister to plead guilty?

6 A I don't -- I would disagree with your characterization
7 of the word pressure. I strongly recommended it to her.

8 Q All right.

9 A I did not overbear her will for mine. It was
10 definitely my strong recommendation.

11 Q And you told her she'd likely get a sentence in double
12 digit numbers?

13 A I don't know what, what phrase I -- exactly I used, but
14 I told her that I thought she would get a whole lot more
15 time. I mean -- and that was my belief then and that is my
16 belief now. That had she been convicted, she would have
17 gotten a whole lot of time and I told her that. I mean I
18 felt like that was my job to let her know.

19 You know, the client makes the decision, but I have to
20 give them the benefit of my knowledge and experience in
21 trying to help them make the appropriate decision, but had
22 she just come down to it and said I'm not going to accept
23 it, I would have proceeded to trial.

24 Q All right. Now, isn't it true that other people around
25 the State, I just have a small sampling of two, but not all

1 Felony DUIs with death resulting end up in -- incarcerated,
2 incarceration for more than the mandatory time?

3 A That's not---

4 MS. GIOVANOLI: Objection as to relevance.

5 THE COURT: Okay. I think that, if Mr. Johnston knows
6 the answer to that question, he can answer that question.

7 However, I can't imagine -- anyway, I'm---

8 MS. GIOVANOLI: Okay.

9 THE COURT: Mr. Johnston, if, if you are prepared and
10 can answer that question, sir, please try to do so.

11 A I can answer it this way. First of all, every case is
12 different. Felony DUIs particularly. Lots of times, it
13 seems to me, that, setting aside the strengths or weaknesses
14 of the evidence, let's just say a person's convictable, that
15 what they're gonna get is often driven by what the victim's
16 family has to say, and the position that they take.

17 In this case, I anticipated a full on assault for the
18 maximum time, which wouldn't have necessarily resulted in
19 the maximum time, but would of resulted in, as I say, I
20 think double digits.

21 Now, you have other cases, like I've handled several
22 cases like this, what we call in the trade a friendly fire.
23 A friendly fire is when the defendant is driving and that
24 the decedent is killed. Those cases are often easier to get
25 resolved. I had one just last month. I got the guy home

1 detention because the victim's family were not adamant.

2 They didn't appear at the plea.

3 Q So, it certainly happens where people get well under
4 double digit sentences for Felony DUIs?

5 A Oh, oh, absolutely it does. Again, I'm trying to gauge
6 my judge, and I'm trying to gauge victim's family, and the
7 circumstances of the case.

8 Q So, once Judge Cole said that he would be willing to
9 accept the plea to the ten year cap, would you of had any
10 ability to argue that he would be punishing Ms. Werkmeister
11 if she proceeded to trial and got a sentence of
12 substantially more than that?

13 A Would I have had an argument of that?

14 Q An argument that, that that would -- a substantially
15 higher sentence---

16 A Well, he never---

17 Q ---would, in effect, be punishing Ms. Werkmeister for
18 exercising her Constitutional right to a trial by jury?

19 A He never said that. He never said, if she goes to
20 trial and gets convicted, you know, I'm gonna load her up.
21 He didn't say -- he didn't say anything like that.

22 Q But isn't it true that, if he did load her up after,
23 you know, expressing a willingness to accept the ten years
24 prior, that would of been an argument that you could of
25 made?

Andrew Johnston - Redirect examination
by Ms. Giovanoli

1 A I---

2 MS. GIOVANOLI: Objection as to relevance.

3 MS. ROSS: Okay.

4 THE COURT: Okay. And I am gonna sustain that
5 objection.

6 MS. ROSS: Thank you.

7 THE COURT: All right.

8 MS. ROSS: All right. I've got no further questions.

9 MS. GIOVANOLI: And I---

10 THE COURT: Redirect?

11 MS. GIOVANOLI: Just real -- very briefly.

12 REDIRECT EXAMINATION

13 BY MS. GIOVANOLI:

14 Q It's your duty to represent your client's best
15 interest.

16 Is that correct?

17 A Absolutely, and I did in this case.

18 Q Okay. So, in advising her to plead guilty, that was,
19 in your professional judgment, in her best interest?

20 A Yeah, with, with the arrangement. I wouldn't have
21 advised her to plead straight up. We could of gone in and
22 plead straight up anytime we wanted to.

23 Q Sure.

24 So, in your professional judgment, would it have been
25 ineffective to tell, encourage her to go to trial instead of

1 accepting the plea?

2 A I don't know if it would of been ineffective.

3 Q With the evidence against her.

4 A I mean, I mean I told her that I thought that was the
5 better option.

6 Q Thank you.

7 A And I felt---

8 Q Nothing further.

9 A And I felt relatively strong about it, but to have done
10 the opposite, I don't know that I would be ineffective.

11 THE COURT: Okay. I have no further questions. Thank
12 you.

13 MS. ROSS: Nothing further.

14 THE COURT: Okay. Thank you, sir. You may step down.
15 May this witness be excused?

16 MS. ROSS: Yes.

17 MS. GIOVANOLI: No objection from the State.

18 THE COURT: Okay. Mr. Johnston, sir, you're free to
19 leave if that's your wish.

20 Next witness.

21 MS. GIOVANOLI: The State would rest.

22 THE COURT: Any motions?

23 Any, any other matters?

24 MS. ROSS: No. No, Your Honor.

25 MS. GIOVANOLI: Nothing from the State.

1 THE COURT: Okay. All right. And, Doctor Werkmeister,
2 ma'am, I apologize. I think I called you Ms. earlier, but
3 if you would please listen to me.

4 I just want you to understand what's going to happen.
5 I, traditionally, I do not rule from the bench in these
6 types of hearings because I have a lot of information to
7 review, and I've taken those notes. My law clerk up here
8 has also been taking notes today, and I want to review the
9 transcript. I want to review the sentencing sheets, and I
10 want to do that separately from trying to listen to
11 testimony and take notes.

12 And, and so it will be several weeks before I issue my
13 decision, ma'am, because I have heard several of these
14 hearings already this week, and, generally, I, I, I prepare
15 my orders in the order that they are heard. And, and so I
16 don't want you to get discouraged or -- and I don't want
17 your, your family members or any of the victim's
18 representatives that are here today, anyone else that, that
19 may be an interested party in this matter, to be discouraged
20 that this may take several weeks. I just want you to
21 understand that that's the way that I handle these matters.

22 I wish you the best of luck, ma'am.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you.

25 Thank you all.

1 MS. ROSS: Thank you, Your Honor.
2
3

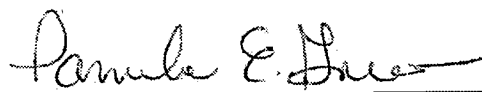
4 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 2nd day of February, 2018.

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

March 28th, 2018



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Sherra L. Werkmeister, #244320
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

2017-CP-42-1720

ORDER OF DISMISSAL

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 MAY 11 PM 3:42
H. ROSE ELLIOTT

This matter comes before the Court by way of an application for post-conviction relief filed on May 15, 2017, by Sherra L. Werkmeister (Applicant). Respondent made its Return on or about December 5, 2017, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on February 2, 2018, at the Spartanburg County Courthouse in Spartanburg, South Carolina. Applicant was present and represented by Susannah C. Ross, Esquire. Respondent was represented by Valerie Giovanoli, Esquire of the South Carolina Attorney General's Office. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet her requisite burden of proof and denies the application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of confinement of the Spartanburg County Clerk of Court. In March 2015, Applicant was indicted for first-degree assault and battery. Subsequently, in August 2016, Applicant was indicted for one count of felony driving under the influence (DUI) resulting in death, a count of reckless homicide, and felony DUI resulting in great bodily injury. Andrew J. Johnston, Esquire and Andra J. Tat, Esquire represented Applicant.

[Signature]

Assistant Solicitors Lindsey Overby and Spenser Smith represented the State. On September 20, 2016, Applicant pled guilty as indicted to both counts of felony DUI before the Honorable J. Derham Cole. In exchange for her guilty plea, the State dismissed the charge of reckless homicide and first-degree assault and battery.

Pursuant to the State's recommendation, Judge Cole sentenced Applicant to imprisonment for ten years and a fine of \$25,100 for felony DUI resulting in death, suspended upon the service of seven years and payment of \$10,100 and probation for three years. Judge Cole sentenced Applicant to a concurrent seven year term for felony DUI resulting in great bodily injury. Applicant did not appeal her convictions or sentences.

FACTUAL HISTORY

On October 11, 2013, Applicant was driving a dark green Toyota 4Runner while traveling westbound on S.C. Highway 290 in Spartanburg County, South Carolina. (Tr. p. 107, lines 1-9). At the same time and place, a black Chevrolet truck carrying two individuals was traveling eastbound, opposite of Applicant's vehicle. (Tr. p. 107, lines 4-6). Just before 5:30 p.m., the two vehicles were involved in a serious accident and the Tyger River Fire Dept. was the first agency to respond to the scene. (Tr. p. 107, lines 4-12).

The driver of the 4Runner, Ms. Patricia Rice, sustained great bodily injury and required extrication from her vehicle. (Tr. p. 111, lines 18-25; p. 112, lines 1-5). The passenger of the 4Runner, 85-year-old Lee Lowry, died at the scene. (Tr. p. 107, lines 10-11). It was later determined by the South Carolina Department of Public Safety's MAIT (Multidisciplinary Accident Investigation Team) team that the accident was caused when Applicant's vehicle crossed the solid-yellow center line, forcing a head-on collision with the victim's vehicle. (Tr. p. 109, lines 15-23). An investigation was performed on Applicant's vehicle, where it was determined that at

2

the time of the accident, Applicant's vehicle suffered no system failures or any other mechanical issues that may have caused the accident. (Tr. p. 109, lines 24-25; p. 110, lines 1-2).

Upon arriving at the scene, a member of the Tyger River observed the odor of alcohol coming from the Applicant's vehicle. (Tr. p. 107, lines 11-13). Applicant required E.M.S. transport to Spartanburg Regional Hospital, where she admitted to taking Lexapro and Xanax during the hours prior to the accident. (Tr. p. 19, 20, 25; p. 20, lines 1-3). At the hospital, Defendant was administered a blood alcohol screen at or about 7:00 p.m., where it was determined Applicant's blood alcohol level was at or above .09. (Tr. p. 108, lines 18-25). A second blood screen was collected by law enforcement at 10:10 p.m., where it was revealed the Applicant's blood contained levels of Ambien, Tramadol and Lexapro. (Tr. p. 109, lines 7-14).

While receiving treatment at Spartanburg Regional Hospital, Applicant disclosed to her nurse that she had consumed one (1) alcoholic beverage earlier in the day of the accident, but no drugs. (Tr. p. 108, lines 24-25). On October 14, 2013, three days following the accident, Applicant met with law enforcement at the hospital. During her interview, Applicant admitted to drinking beer at her home during lunch on the day of the accident, estimating her alcohol consumption to having been "probably about two beers on the back porch." (Tr. p. 110, lines 16-20). Applicant admitted to drinking beer from a "kegerator" during this time, but denied having anything to drink after 3:00 p.m. or having any alcohol in her vehicle at the time of the accident. (Tr. p. 110, lines 16-18). During their investigation of the accident scene, officers discovered an open Natural Light beer can a few feet from Applicant's vehicle. (Tr. p. 111, lines 9-12). The beer can was tested and matched the DNA profile of Applicant. (Tr. p. 111, lines 15-17).

ALLEGATIONS

In her application for post-conviction relief, Applicant alleges she is being held in custody

3

unlawfully for the following reasons:

1. Ineffective assistance of Counsel
 - a. "Counsel failed to adequately prepare and present a defense"
 - b. "He failed to object to sentencing"
 - c. "He failed to object to hearsay"
 - d. "He failed to object to Solicitor's remarks and arguments"
 - e. "He failed to include lesser included offense due to evidence"
 - f. "He failed to present expert witness testimony"
 - g. "He failed to present pharmaceutical records"
 - h. "Failed to adequately investigate and present investigative evidence"
 - i. Coerced [Applicant] into repeating closing statements, not of [Applicant's] own words"
 - j. "Failed to follow up with proper character testimony on [Applicant's] behalf"
 - k. "Attorney failed to file notice of appeal"
 1. "He felt there was no issue or merit which could be addressed or received on appeal"
2. Involuntary Guilty Plea
 - a. "Involuntary plea which was unlawfully induced and not made voluntarily or with a complete understanding of the nature of the charges and the inadequacies of the plea potential"

At the start of the evidentiary hearing, Applicant informed the Court that she intended to proceed with the additional allegation that plea counsel provided ineffective assistance, based on failure to object under Rule 3, alleging the charges were not indicted within 90 days. The Court allowed Applicant to proceed on the additional allegation.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant Testimony

At the evidentiary hearing, Applicant testified on her own behalf. Applicant testified that although she wanted to go to trial, but that her trial counsel have used "pressure tactics" to convince her to take a plea agreement. Specifically, Applicant testified that her trial counsel talked to her family and told them to convince the Applicant to take the plea. According to her testimony, Applicant's father had hired an independent toxicology expert to be used as a witness a trial. Applicant also testified that her lawyer had met with potential witnesses to be used at trial in order

to strengthen her case. None of these witnesses were called to trial.

During her testimony, Applicant admitted that on the day of the accident, she had taken Ambien, Vyvanse, Lexapro and Tramadol. Applicant testified that she was aware at the time of her plea that a beer can matching her DNA had been found, as well as being aware of the alcohol in her system at the time of the accident. At the end of her testimony, Applicant admitted that she had possession of an opened beer can in her vehicle prior to the accident.

Mr. Charles Richardson's Testimony

Mr. Charles Richardson is Applicant's father and testified at the evidentiary hearing on behalf of the Applicant. Mr. Richardson testified that he was the person who hired Applicant's trial counsel and toxicology expert. Mr. Richardson testified that Applicant had paid for the expert to appear as a witness for trial, but that the expert never left his home. Mr. Richardson testified that it was his belief that the expert was told to stand down. During his testimony, Mr. Richardson told the court that he believed Applicant's trial counsel was intimidated and as a result, became intimidated himself. He testified that he told Applicant that "seven years is a lot better than twenty-five."

Mr. Richardson testified that Applicant's trial counsel was responsible for seeking out and hiring the expert witness for trial. He testified that when it came to paying for Applicant's defense, Applicant's trial counsel ended up paying a portion of the expert fees himself.

Trial Counsel's Testimony

Andrew Johnston, Esquire testified on behalf of the State of South Carolina. Trial Counsel testified as having represented Applicant during her guilty plea. As a part of his representation of Applicant, Mr. Johnston prepared as if he was going to trial on all of the charges against his client. This was to attempt to force the State into negotiating a plea or, in the alternative, winning at trial.

95

Mr. Johnston testified as to the evidence that would be presented at trial against his client. Mr. Johnston testified that there had been no offers prior to trial.

Mr. Johnston testified that the toxicology expert was available for trial and was scheduled to fly in to Spartanburg on his private aircraft, had the need for his testimony arisen. During a pretrial hearing, Mr. Johnston testified that he was able to successfully argue for suppressing of blood evidence in the trial judge's chambers and this is what led to the first plea offer from the State. Mr. Johnston testified as to the remaining evidence against his client, but that he was prepared to continue on to trial if the plea had not been entered.

Mr. Johnston testified that he paid \$1,500 of the toxicology expert's bill as a courtesy to Applicant's father, who he described as very supportive during the trial. Mr. Johnston reiterated that at the time of Applicant's guilty plea, they were in fact in the beginning stages of her trial. He testified that he held discussions with Applicant about the risks of going to trial and the possible penalties facing her if she was convicted. Mr. Johnston denied having coerced Applicant into pleading guilty. During the hearing, Mr. Johnston testified that Applicant was being unreasonable in her evaluation of what she was facing at trial, and Mr. Johnston felt her father would be more reasonable. Mr. Johnston testified that he never told Applicant's father to convince her to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court's findings and conclusions set forth

[Handwritten signature]

below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).



After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden of proof and had not established any ineffectiveness of counsel. Below are the findings in regards to each specific allegation of ineffective assistance of counsel raised by Applicant:

Ineffective Assistance of Counsel

Applicant alleges that plea counsel was ineffective in his representation during her guilty plea. She asserts that plea counsel failed to adequately prepare and present a defense, including failing to present expert testimony. Although Applicant entered a guilty plea, counsel had begun to argue pretrial motions to suppress evidence that would have been used against Applicant at trial. Specifically, Counsel testified that the reason a plea offer was formally extended by the prosecution was based upon successfully arguing for the suppression of blood evidence that would have otherwise been used against the Applicant at trial.

Applicant also testified that an expert had been consulted prior to her guilty plea and was scheduled to testify at trial. Plea counsel testified that had the trial moved forward, the expert witness would have been available for his scheduled testimony whenever it was required. Based upon a review of the record and testimony, Applicant has failed to meet her burden of proof for this allegation.

Applicant has alleged ineffective assistance of counsel for failing to adequately investigate and present investigative evidence. Again, Applicant testified that she was confident in going to trial, because of the evidence and witnesses her defense case was prepared to present. Her plea counsel testified that he reviewed all of Applicant's medical documents and toxicology reports with their retained expert witness in order to build a defense strategy. Applicant failed to present

28

any evidence of the investigative evidence that counsel failed to present prior to her guilty plea. Therefore, Applicant has failed to meet her burden of proof for this allegation.

In her applicant for post-conviction relief, Applicant alleges the following additional claims of ineffective assistance of counsel:

- He failed to object to sentencing
- He failed to object to hearsay
- He failed to object to Solicitor's remarks and arguments
- He failed to include lesser included offense due to evidence
- He failed to present pharmaceutical records
- Coerced [Applicant] into repeating closing statements, not of [Applicant] own words
- Failed to follow up with proper character testimony on [Applicant]'s behalf
- Attorney failed to file a notice of appeal

During the PCR hearing, Applicant failed to present testimony or other evidence to support these claims. Additionally, a review of the record finds the allegations are without merit. Based upon a review of the entire record and her failure to produce supportive testimony at the PCR hearing, Applicant has failed to meet her burden of proof. Therefore, the remaining allegations of ineffective assistance of counsel are denied and dismissed with prejudice.

Involuntary Guilty Plea

A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137, 654 S.E. 2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 629 S.E. 2d 353 (2006). To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his



plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969); Roddy v. State, 339 S.C. 29 (2000).

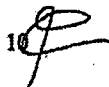
Applicant alleges her guilty plea was not knowingly and voluntarily made. Applicant also alleges her guilty plea was not made with a complete understanding of the nature of the charges and the inadequacies of the plea potential. This Court finds the record supports Applicant's plea was made knowingly, voluntarily and upon the sound advice from Counsel. The underlying facts to the crime are overwhelming to establish the Applicant's guilt of the offense to which she pled. Her plea counsel appeared credible when he testified during the evidentiary hearing. Also, the transcript of the plea hearing is thorough as to the Applicant's understanding of her right to a trial and her willingness to forgo the trial.

Specifically, the plea Court, in great detail, explained each indictment, the potential penalty, the mandatory minimum penalty, and the negotiations of counsel for concurrent sentencing. The plea Court also explained the negotiations of counsel for a cap of ten years total concurrent period of incarceration on both offenses. Therefore, the Applicant has failed to meet her burden of proof.

CONCLUSION

Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this allegation is denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an

10 

FILED
2018 MAY 11 P 3:53
CLERK OF COURT
JULIA E. LITTLE
JULIA E. LITTLE

appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 11 day of May, 2018.


 GRACE G. KNIE
 Presiding Judge
 Seventh Judicial Circuit

Spartanburg, South Carolina

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2018 MAY 11 PM 3:43
 11.100221.1





Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

May 11, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Shera L. Werkmeister
Applicant #244320

7TH JUDICIAL CIRCUIT

CASE # 2017 MCP42-1720

vs
Shel
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the

In this action dated 5-11-2018 on 5-11-18

Ord. Dismissal

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Megan Jamerson
Sherrill Ross

FILED
2018 MAY 11 PM 3:43
CLERK OF COURT
SPARTANBURG COUNTY

5-11-18
(Date)

Corrie Self
(Signature)

WITNESSES

Greer Police Department

MAC
6/17/14

ARREST WARRANT NUMBER

2013A2320501259 and Direct Indictment
(Reckless Homicide)

ACTION OF GRAND JURY

True Bill


Foreperson of Grand Jury
Date: JUN 12 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

14-GS-42-2494

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 16 2014

TERM

THE STATE
vs.

SHERRA L. WERKMEISTER

Indictment for

CAUSING DEATH BY OPERATING VEHICLE
WHILE UNDER THE INFLUENCE OF DRUGS
OR ALCOHOL
(FELONY DUI - DEATH)
RECKLESS HOMICIDE

SC Code: 56-5-2945(A)(2) and 56-5-2910
CDR Code: 0395 and 3097

CLERK OF COURT
SPARTANBURG COUNTY
2014 JUN 17 AM 10:36
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUN 12 2014

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

COUNT ONE - FELONY DUI - DEATH

That the Defendant, Sherra L. Werkmeister, did in Spartanburg County on or about October 11, 2013, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, and violated an act forbidden by law or neglected any duty imposed by law in the driving of the vehicle, to-wit:

- (1) Restrictions on Speeding (Article II, Section 56); and/or
- (2) Failure of driving on roadway laned for traffic (Section 56-5-1900); and/or
- (3) Failure to maintain proper control of vehicle; and/or
- (4) Driver's failure to exercise due care; and/or
- (5) Failure to follow right of way restrictions (Art. 17, Section 56); and/or
- (6) Driving Left of Center (Sections 56-5-1810 and 56-5-1880); and/or
- (7) Reckless Driving (Section 56-5-2920); and/or
- (8) Driver's failure to maintain proper lookout for other traffic; and/or
- (9) Driving too fast for conditions (Section 56-5-1560).

which proximately caused death to Arrie Lee Lowry, in violation of Section 56-5-2945(A)(2), of The Code of Laws of South Carolina (1976, as amended).

COUNT TWO - RECKLESS HOMICIDE

That the Defendant, Sherra L. Werkmeister, did in Spartanburg County on or about October 11, 2013, drive a motor vehicle in reckless disregard for the safety of others and such driving proximately caused the death of Victim Arrie Lee Lowry, in violation of Section 56-5-2910, 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.

Lindsey H. Overly
 Assistant Solicitor

WITNESSES

Greer Police Department

MCW
6/12/14

ARREST WARRANT NUMBER

2013A2320501260

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

JUN 12 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

14-GS-42-2495

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 16 2014

TERM

THE STATE

vs.

SHERRA L. WERKMEISTER

Indictment for

FELONY DUI - GREAT BODILY
INJURY

SC Code: 56-5-2945(A)(1)

CDR Code: 0406

Class FEL-D

CLERK OF COURT
SPARTANBURG COUNTY
2014 JUN 17 AM 10:36
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 12 2014 the
Grand Jurors of Spartanburg County present upon their oath:

FELONY DUI - GREAT BODILY INJURY

That the Defendant, Sherra L. Werkmeister, did in Spartanburg County on or about October 11, 2013, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, and violated an act forbidden by law or neglected a duty imposed by law in the driving of the vehicle, to-wit:

- (1) Restrictions on Speeding (Article II, Section 56); and/or
- (2) Failure of driving on roadway laned for traffic (Section 56-5-1900); and/or
- (3) Failure to maintain proper control of vehicle; and/or
- (4) Driver's failure to exercise due care; and/or
- (5) Failure to follow right of way restrictions (Art. 17, Section 56); and/or
- (6) Driving Left of Center (Sections 56-5-1810 and 56-5-1880); and/or
- (7) Reckless Driving (Section 56-5-2920); and/or
- (8) Driver's failure to maintain proper lookout for other traffic; and/or
- (9) Driving too fast for conditions (Section 56-5-1560).

Which proximately caused Great Bodily Injury to Patricia S. Rice, in violation of § 56-05-2945(A)(1), 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.

Lindsey H. Overly
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Sherril L Werkmeister

AKA:

Race: WHITE Sex: F Age: 51

DOB: 0964 SS#: [REDACTED]

Address:

City, State, Zip: Monro SC 29369

DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: DUI / Felony driving under the influence, death results (1 year - 25 years & \$10,100 to \$25,100)

in violation of § 56-05-2945(A)(2)

of the S.C. Code of Laws, bearing CDR Code #

0395

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

(defendant's initials)

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

Cup of 10,

ATTEST: Lindsey H. Overby 79869 Sherril

OVERBY, LINDSEY H.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

Cup of 10,

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of 10 days/months/years or

☐ under the

Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 25,100 ; provided that upon the service of

7

days/months/years and/or payment

of \$ 10,100 ; plus costs and assessments as applicable*, the balance is suspended with

probation for 3

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

§17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$ 10,100.00

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ 10,852.50

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$ 100.00

§ 56-5-2995 (DUI Assessment)

\$12

\$ 12.00

§ 56-1-286 (DUI Breath Test)

\$25

\$ 25.00

Proviso 61.6 (Public Def/Probation)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (DUI Breath Test Fee)

\$50

\$

§ 56-5-2942(1) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$ 636.59

TOTAL

\$ 21,856.09

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4202494

A/W#: 2013A2320501259

Date of Offense: 10/11/2013

S.C. Code § : 56-05-2945(A)(2)

CDR Code #: 0395

SENTENCE SHEET

☐ CONVICTED OF or☐ PLEADSThe charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

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

Cup of 10,

ATTEST: Lindsey H. Overby 79869 Sherril

OVERBY, LINDSEY H.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

Cup of 10,

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of 10 days/months/years or

☐ under the

Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 25,100 ; provided that upon the service of

7

days/months/years and/or payment

of \$ 10,100 ; plus costs and assessments as applicable*, the balance is suspended with

probation for 3

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

§17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$ 10,100.00

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ 10,852.50

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$ 100.00

§ 56-5-2995 (DUI Assessment)

\$12

\$ 12.00

§ 56-1-286 (DUI Breath Test)

\$25

\$ 25.00

Proviso 61.6 (Public Def/Probation)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (DUI Breath Test Fee)

\$50

\$

§ 56-5-2942(1) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$ 636.59

TOTAL

\$ 21,856.09

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date:

September 20, 2016

242 E OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Sherra I. Werkmeister

AKA:

Race: WHITE Sex: F Age: 31

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Moore SC 29369

DL#: [REDACTED] SID#: [REDACTED]

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

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

FO: DU / Felony driving under the influence, great bodily injury results (30 days - 15 years and \$5,000 to \$10,000)

in violation of § 56-05-2945(A)(1)

of the S.C. Code of Laws, bearing CDR Code #

0406

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

(defendant's initials)

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

Cap 0610

Lindsey H. Overby
OVERBY, LINDSEY H.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center.

for a determinate term of 7 days/months/years or

☐ under the

Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$

; plus costs and assessments as applicable*; the balance is suspended with

probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.

§ 24-13-40 to be calculated and applied

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

§17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$100.00

§ 56-5-2995 (DUI Assessment)

\$12

\$12.00

§ 56-1-286 (DUI Breath Test)

\$25

\$25.00

Proviso 61.6 (Public Def./Probation)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$7.86

TOTAL

\$269.86

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4202495

A/W#: 2013A2320501260

Date of Offense: 10/11/2013

S.C. Code § : 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-2945(A)(1)

of the S.C. Code of Laws, bearing CDR Code #

0406

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

(defendant's initials)

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

Cap 0610

Lindsey H. Overby
OVERBY, LINDSEY H.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center.

for a determinate term of 7 days/months/years or

☐ under the

Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$

; plus costs and assessments as applicable*; the balance is suspended with

probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.

§ 24-13-40 to be calculated and applied

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

§17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$100.00

§ 56-5-2995 (DUI Assessment)

\$12

\$12.00

§ 56-1-286 (DUI Breath Test)

\$25

\$25.00

Proviso 61.6 (Public Def./Probation)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$7.86

TOTAL

\$269.86

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4202495

A/W#: 2013A2320501260

Date of Offense: 10/11/2013

S.C. Code § : 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-2945(A)(1)

of the S.C. Code of Laws, bearing CDR Code #

0406

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

(defendant's initials)

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

Cap 0610

Lindsey H. Overby
OVERBY, LINDSEY H.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center.

for a determinate term of 7 days/months/years or

☐ under the

Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$

; plus costs and assessments as applicable*; the balance is suspended with

probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.

§ 24-13-40 to be calculated and applied

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

§17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$100.00

§ 56-5-2995 (DUI Assessment)

\$12

\$12.00

§ 56-1-286 (DUI Breath Test)

\$25

\$25.00

Proviso 61.6 (Public Def./Probation)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114 (BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$7.86

TOTAL

\$269.86

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

September 30, 2016