

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin H. Culbertson, Circuit Court Judge
Appellate Case No. 2012-211546

THE STATE,

Appellant,

vs.

MICHAEL J. HILTON,

Respondent.

RECORD ON APPEAL

ALAN WILSON
Attorney General

RICHARD A. HARPOOTLIAN
Attorney

MARK R. FARTHING
Assistant Attorney General

GRAHAM L. NEWMAN
Attorney

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

M. DAVID SCOTT
Attorney

ATTORNEYS FOR APPELLANT

Richard A. Harpootlian, P.A.
Post Office Box 1090
Columbia, SC 29202
(803) 252-4848

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY) IN THE COURT OF GENERAL SESSIONS
) FIFTEENTH JUDICIAL CIRCUIT
) INDICTMENT NUMBERS: 2008-GS-26-04056
) 2008-GS-26-04057

State of South Carolina)
)
 vs.) ORDER SUPPRESSING
) BREATHALYZER TEST RESULTS
 Michael J. Hilton,)
)
 Defendant.)
)
)

HEARING DATE.....October 25, 2011
 PRESIDING JUDGE.....Benjamin H. Culbertson
 ATTORNEY FOR THE STATE OF SOUTH CAROLINA.....Heather W. Weiss
 ATTORNEY FOR THE DEFENDANT.....Richard A. Harpootlian
 COURT REPORTER.....Grace Hurley

In this case, the defendant is charged with Felony Driving Under the Influence Involving Death and Felony Driving Under the Influence Involving Serious Bodily Injury. Before the court is the defendant's Motion to Suppress the results of the breathalyzer test administered to the defendant at the time of his arrest.

The defendant first argues that the breathalyzer test results should be suppressed because the DataMaster machine used in administering the test was not properly functioning. The defendant introduced evidence that the DataMaster machine used in this case failed to accurately report the alcohol level of the simulator solutions approximately 28 times out of 480 tests conducted in the year preceding the defendant's arrest. Further, the machine failed to accurately report the alcohol level of the simulator solution three times immediately prior to the defendant's breath test in this case. However, the machine tested within the acceptable range in this case when the simulator solution was changed, thus indicating that any errors in the initial three

¹ In addition to the arguments presented by counsel at the motion hearing, the attorneys also submitted briefs for the court's consideration in this motion.

simulator tests were due to the simulator solution and not the DataMaster machine. Therefore, the defendant's motion to suppress the breathalyzer test results because the DataMaster machine was not functioning properly should be denied.

Next, the defendant argues that the breathalyzer test results should be suppressed because the test was not administered within two hours of the defendant's arrest.

A month prior to the defendant's arrest, Code of Laws for South Carolina 1976 §56-5-2950(A) was amended to require that the breath sample taken from a person for testing must be collected within two hours of the person's arrest. However, the amendment did not take effect until nine months after the defendant's arrest. At the time of the defendant's arrest, the two hour time limit for collecting a breath sample was not the law.

Statutes that are remedial or procedural in nature are generally held to operate retrospectively. *South Carolina Department of Revenue v. Rosemary Coin Machines, Inc.*, 339 S.C. 25, 528 S.E.2d 416 (2000). Further, amendments relating to the admissibility of evidence are procedural in nature and apply retroactively. See *State v. Frey*, 362 S.C. 511, 608 S.E.2d 416 (S.C.App.2004). This court finds as a matter of law that the amendment to Code §56-5-2950(A) is procedural in nature and, thus, is to be applied retroactively. Therefore, the amendment to Code §56-5-2950(A) requiring that a person's breath sample be taken within two hours of the person's arrest is applicable in this case.

Pursuant to Code §56-5-2950(I), "[a] person required to submit to tests by the arresting law enforcement officer must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any trial or other proceeding in which the results of the tests are used as evidence." The purpose of the statute is to provide for reciprocal discovery between the State and defendant as to the time and results of alcohol and drug tests.

State v. Bull, 350 S.C. 58, 564 S.E.2d 351 (S.C.App. 2002). The timing of the administration of breathalyzer tests is crucial because of the ephemeral nature of blood intoxication levels. See *State v. Bull*, *ibid*.

In this case, the "Breath Alcohol Analysis Test Report" (BA report) issued to the defendant pursuant to Code §56-5-2950(I) indicates that the defendant was arrested on May 10, 2008 at 10:15 p.m. and that his breath sample was taken on May 11, 2008 at 12:32 a.m., more than 2 hours after the defendant's arrest. By letter dated October 3, 2011, the prosecutor in this case notified the defendant that the State was changing the time of arrest in this case to 10:40 p.m. on May 10, 2008, less than two hours prior to the taking of the defendant's breath sample.² This change in the time of arrest is based upon the prosecutor's review of the video of the defendant's breathalyzer test. However, the prosecutor was not present for the defendant's arrest, breathalyzer testing or the videoing of the defendant's testing. When the prosecutor first issued the defendant the letter that purportedly amends the BA report, she was relying upon the date and time on the recorded video without verification of its accuracy from the arresting officer or breathalyzer operator.³ The prosecutor's letter dated October 3, 2011, does not include the time of testing or the test results in this case as mandated by Code §56-5-2950(I). Therefore, the prosecutor's letter dated October 3, 2011 does not constitute a "written report" as required by Code §56-5-2950(I).

² The defendant's Motion to Suppress was originally scheduled for hearing on October 3, 2011. The prosecutor presented this letter to the defendant immediately prior to the motion hearing. Therefore, at the defendant's request, the court continued the motion hearing until October 25, 2011.

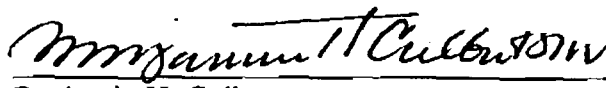
³ At the motion hearing, the breathalyzer operator testified that the prosecutor's letter dated October 3, 2011, accurately reflected the date and time of arrest and that the date and time of arrest on the BA report was not correct. However, the state has never issued an amended written report. Instead, the State argues that the original BA report combined with the prosecutor's letter amending the date and time of arrest satisfies the requirements of Code §56-5-2950(I).

Because the BA report issued to the defendant pursuant to Code §56-5-2950(I) indicates that the defendant was arrested on May 10, 2008 at 10:15 p.m. and his breath sample was taken on May 11, 2008 at 12:32 a.m., more than 2 hours after the defendant's arrest, the State failed to take the defendant's breath sample for testing within two hours of his arrest as mandated by Code §56-5-2950(A). On the other hand, if the breath sample was taken within two hours of the defendant's arrest as argued by the State, then the State has failed to provide the defendant with a correct written report that includes the defendant's time of arrest, time of testing and test results as mandated by Code §56-5-2950(I). Therefore, the defendant's breathalyzer test results in this case should be suppressed and the defendant's motion granted.

NOW, THEREFORE, based upon the above findings of fact and conclusions of law, it is hereby

ORDERED, that the defendant's Motion to Suppress the breathalyzer test results in this case is GRANTED.

AND IT IS SO ORDERED.


Benjamin H. Culbertson
Presiding Judge

March 26, 2012

Georgetown, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT

State of South Carolina,)

YS.

Michael J. Hilton,

Defendant.

**MOTION TO EXCLUDE
EVIDENCE**

2008-GS-26-04056

2008-GS-26-04057

The Defendant respectfully moves this Court for an Order excluding at trial all evidence of testing, including any and all field sobriety tests, chemical analyses and tests, including blood-alcohol tests and Data Master tests, performed on the Defendant both prior and subsequent to his arrest. Defendant will show that the field sobriety tests and chemical tests performed upon him were inherently unreliable and the testing procedures failed to comport with South Carolina law. Defendant will submit to the Court a memorandum of law in support of this Motion prior to the hearing on this Motion.

Respectfully submitted,

Richard A. Harpootlian
RICHARD A HARPOOTLIAN, P.A.
 1410 Laurel Street (29201)
 Post Office Box 1090
 Columbia, South Carolina 29202
 (803) 252-4848
 Facsimile (803) 252-4810
rah@harpootlianlaw.com

ATTORNEY FOR DEFENDANT

Columbia, South Carolina

September 23, 2011

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

State of South Carolina,

vs.

Michael J. Hilton,

Defendant.

IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT

**DEFENDANT'S MEMORANDUM IN
SUPPORT OF MOTION TO EXCLUDE
EVIDENCE**

2008-GS-26-04056

2008-GS-26-04057

Defendant Michael J. Hilton files this memorandum of law in support of his motion to exclude certain evidence from the trial of this matter. Defendant submits that the results of a breath test performed on him more than two (2) hours after the time of his arrest are unreliable because the DataMaster machine that generated the test results was not properly functioning and repeatedly and consistently failed to produce accurate results from simulator tests.

In addition, Defendant submits that the legislative amendment of South Carolina Code Section 56-5-2950 (Supp. 2010), requiring that breath tests be performed within two (2) hours of the time of arrest, should apply to this case. Defendant will show that the breath test here was unquestionably administered more than two (2) hours after his arrest, and therefore the results should not be admitted at trial.

Background Facts

Mr. Hilton was arrested at 10:15 p.m. on May 10, 2008, and charged with felony driving under the influence causing death and felony driving under the influence causing great bodily injury, following a traffic accident on Highway 17 in Myrtle Beach, South Carolina. He was transported to the Myrtle Beach Police Department where he was instructed to provide a breath sample for testing. A DataMaster machine bearing serial number 881279 was used to test Hilton's breath sample. This machine had been used to perform approximately 480 breath tests

in the year preceding Mr. Hilton's arrest. During this same period of time, the machine failed to accurately report the alcohol level of the simulator solution at least twenty-eight (28) times. This is a failure rate of almost six percent (6%). The undersigned has compared the failure rates of other machines across the State, as represented on the South Carolina Law Enforcement Division's ("SLED") website, and has found no other machine with a failure rate as high as DataMaster 881279. In fact, many machines have had no failures over this same period of time.

In addition, immediately prior to Mr. Hilton's breath test, the machine failed to accurately report the alcohol level of the simulator solution on three (3) occasions, first at 11:54 p.m., then at 11:56 p.m., and again at 11:59 p.m. Only after the arresting officer changed the simulator solution did the machine return a simulator test result within the SLED-prescribed tolerance range. After the machine failed in the first (3) three attempts, a test was performed at 12:32 a.m. on May 11, more than two hours after Mr. Hilton's arrest. The machine gave a reading of 0.15%. For the reasons below, Defendant submits that this result is inaccurate and that admission of the test results against him at trial is prejudicial and the results should be excluded from evidence.

DataMaster 881279

The South Carolina Supreme Court has held that the State, in seeking to offer the results of a breath test, bears the burden of laying a proper foundation that establishes that the test was properly administered under the statute prior to admitting the results of the test as evidence. State v. Parker, 271 S.C. 159, 162-63, 245 S.E.2d 904, 906 (1978). This requires the State to show:

(1) that the machine was in proper working order at the time of the test; (2) that the correct chemicals had been used; (3) that the accused was not allowed to put anything in his mouth for 20 minutes prior to the test, and (4) that the test was administered by a qualified person in the proper manner.

Id., at 163, 245 S.E.2d at 906 (emphasis added); see also, State v. Salisbury, 330 S.C. 250, 498 S.E.2d 655 (Ct.App.1998). "If there is any evidence challenging the *prima facie* showing made,

the judge must rule upon the admissibility in light of the entire evidence.” Parker, at 164, 245 S.E.2d at 906. The Parker foundation is “intended to insure that the results of the breathalyzer test if given are accurate and reliable as evidence at trial.” State v. Jansen, 305 S.C. 320, 322, 408 S.E.2d 235, 237 (1991).

Here, the State cannot meet its burden of showing the machine was in working order at the time of the test. To the contrary, the evidence shows the machine was not working properly and any test result produced by the machine is inaccurate, unfairly prejudicial, and inadmissible pursuant to Parker and Jansen. Dr. William Brewer, a forensic toxicologist and analytical chemist, formerly employed by SLED, will testify that DataMaster 881279 has had an unacceptable rate of failure, and that the results of any test performed on DataMaster 881279 are inherently unreliable. Dr. Brewer will further testify that the calibration procedures for DataMaster machines in general, and DataMaster 881279 in particular, are insufficient to a reasonable degree of scientific certainty to ensure accurate test results. It is noteworthy that DataMaster 881279 was placed into service in 1991.¹ According to records maintained on SLED’s website, there were no linearity checks performed on DataMaster 881279 between 1991, when it was placed in service, and the date of Mr. Hilton’s arrest, seventeen (17) years later. Dr. Brewer will further testify concerning the fields of infrared spectroscopy and quantitative analysis. He is expected to offer his expert opinion that the failure to perform periodic linearity checks leads to unreliable and untrustworthy breath test readings, particularly where the test results are different from the simulator solution concentration.

In sum, the serial failures of DataMaster 881279 render the test results performed on Michael Hilton on the morning of May 11, 2008, of no evidentiary value. SLED’s failure to

¹ The machine has apparently been removed from service since Mr. Hilton’s arrest.

The Defendant recognizes that in the construction of statutes, there is a presumption that statutory enactments are considered prospective rather than retroactive in their operation unless there is a specific provision in the enactment or clear legislative intent to the contrary. Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123 (1978). "However, statutes that are remedial or procedural in nature are generally held to operate retrospectively." South Carolina Dept. of Revenue v. Rosemary Coin Machines, Inc., 339 S.C. 25, 28, 528 S.E.2d 416, 418 (2000). Amendments relating to the admissibility of evidence are procedural in nature and apply retroactively. See, e.g., State v. Frey, 362 S.C. 511, 608 S.E.2d 874 (Ct. App. 2004).

In Frey, the Court of Appeals held that an amendment to §56-5-2950 applied retroactively to the defendant where the amendment addressed procedural rather than substantive rights and where the amendment was remedial in nature. Id. The court reached this conclusion even though the statute was amended after the conclusion of the defendant's trial. The amendment at issue in Frey, like the amendment at issue here, dealt with the admissibility of evidence in a DUI prosecution. The court reasoned that "[s]ince the statutory mandate in question is inextricably connected to the accuracy and reliability of . . . blood test results, we remand to the trial court" with instructions to apply the statute as amended. Id. at 518, 608 S.E.2d at 878. The court further reasoned that "[b]ecause [the amendment] addresses procedural rather than substantive rights, it is remedial in nature, and therefore retroactive in its application." Id. at n.3. Judge, now Justice, Kittredge authored the opinion in Frey, joined by Judge, now Justice, Hearn.

In State v. Bryant, 382 S.C. 505, 675 S.E.2d 816 (Ct. App. 2009) (cert. denied, April 8, 2010), the Court of Appeals held that a statutory amendment allowing the admission of videotaped interviews of child sexual abuse victims applied retroactively in the defendant's trial

for criminal sexual conduct with a minor. The court reached this conclusion despite the inclusion of a broadly-worded savings clause in the amendment. The savings clause provided that the amendment did “not affect pending actions, rights, duties, or liabilities . . . or alter, discharge, release, or extinguish any penalty, forfeiture, or liability . . . unless the [amendment] shall so expressly provide.” Id. at 509, 675 S.E.2d at 818. The court held that the amendment was not penal in nature, but instead dealt with “procedural, evidentiary matters” and, therefore, applied retroactively to Bryant’s pending prosecution regardless of the savings clause. Id. at 512, 675 S.E.2d at 820.

The Supreme Court has also recognized that statutory amendments affecting procedural rights and dictating the admissibility of evidence are to be applied retroactively. After the Court of Appeals decided Bryant, supra, the Supreme Court decided State v. Stahlnecker, 386 S.C. 609, 690 S.E.2d 565 (2010). Stahlnecker dealt with the same issue addressed in Bryant: retroactive application of S.C. Code Section 17-23-175, allowing out-of-court statements of children under twelve to be admitted at trial under certain circumstances. In holding that this evidence was admissible against the defendant even though the statute was enacted after he was indicted, the Court cited with approval the opinion in Bryant, supra.

In interpreting section 17-23-175, the court of appeals concluded the section was not penal in nature but rather “deals with procedural, evidentiary matters.” State v. Bryant, 382 S.C. 505, 512, 675 S.E.2d 816, 820 (Ct. App. 2009). . . . The amount or type of evidence required at the time of the commission of the offense in order to convict the offender is not altered by section 17-23-175. Because section 17-23-175 merely authorizes the introduction of new evidence and does not alter substantial personal rights, it does not violate the *ex post facto* laws.

State v. Stahlnecker, 386 S.C. 609, 619-20, 690 S.E.2d 565, 571 (2010). The Court concluded the trial court correctly determined §17-23-175 applied retroactively to the defendant’s pending prosecution.

Here, the amendment to Section 56-5-2950 does not affect substantive rights, change the elements of any offense, or change the quantum of evidence needed to sustain a conviction. Neither does the amendment alter the manner in which evidence is collected. The amendment merely establishes temporal requirements for the lawful collection of volatile evidence by revising "the procedure for administering breath tests or obtaining samples." The amendment, by the clear language used therein, is procedural in nature.

South Carolina appellate courts have consistently given retroactive effect to statutory enactments and amendments that are procedural in scope or that establish evidentiary rules. The amendment at issue is precisely the type of amendment our courts have applied retroactively. Because the arresting officer did not administer Mr. Hilton's breath test within two (2) hours of his arrest, as required by law, the test results are unreliable and should not be admitted at trial.

The Prosecutor's Letter Dated October 3, 2011 is not a "written report" as required by Section 56-5-2950(I)

Section 56-5-2950(I), provides, in part, that "[a] person required to submit to tests by the arresting law enforcement officer must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any trial or other proceeding in which the results of the tests are used as evidence."³ The State provided Mr. Hilton with four (4) DataMaster 881279 reports, attached as **Exhibit A**, titled "Breath Alcohol Analysis Test Report" ("BAAT Reports"). The BAAT Reports list the time of arrest, the time of the tests, and the

³ At the time of Mr. Hilton's arrest, this provision was codified at Section 56-5-2950(d). When the statute was amended effective on February 9, 2009, the requirement of a written report was moved to subsection (I) with no change in the language used.

results of the test. See Exhibit A.⁴ All of the BAAT Reports list Mr. Hilton's time of arrest as "22:15" or 10:15 p.m.

The only document produced to Mr. Hilton or his counsel that states the time of arrest was any time other than 10:15 p.m. is the October 3, 2011 letter signed by the prosecuting attorney and produced to the undersigned mere minutes before the parties were to initially argue this motion to suppress. (**Exhibit E**). According to the letter, the time of arrest was much later than the time reported in every other formal document containing an arrest time. The prosecutor's letter is not based on first-hand knowledge but appears to be based solely on the timestamp in the videotape produced by officers at the accident scene. The timestamp depicted in the videotape is classic hearsay: an out-of-court statement that the State now seeks to rely upon for the truth of the matter stated. As such, the timestamp and the prosecutor's letter based solely thereon are inadmissible pursuant to Rule 802, SCRE. Moreover, none of the exceptions set forth in the Rules 803 or 804, SCRE, allow admission of the letter or the time depicted in the videotape.

The arresting officer, not the prosecutor, is the person with firsthand knowledge of the actual time Mr. Hilton was no longer free to leave the scene and the time when Mr. Hilton had submitted to the officer's authority. The officer indicated the time of arrest was 10:15 p.m. on at least four different documents: the BAAT Reports, the uniform traffic citations (**Exhibit B**), the FR-10 collision report (**Exhibit C**), and the incident report (**Exhibit D**). The prosecutor's letter is not a "written report" for the purpose of Section 56-5-2950(I), and even if it included the requisite information, it is inadmissible hearsay evidence. Moreover, to the extent the Court does consider the prosecutor's letter, the letter contains only one (1) of the three (3) items of

⁴ The BAAT Reports also include additional information documenting simulator tests required by Section 56-5-2950(A), the arresting officer's name, and the test operator's name.

information required by Section 56-5-2950(I), the alleged time of arrest. The letter does not set forth the time of the tests or the results of the tests. Thus, the letter does not satisfy the requirements for a "written report" set forth in Section 56-5-2950(I).

The Defendant was arrested at the moment he was not free to leave the scene

Finally, even assuming arguendo that Mr. Hilton was formally under arrest at 10:40 p.m., his "time of arrest" as contemplated by Section 56-5-2950, must be measured from the first moment at which he was seized, as defined by the Fourth Amendment, and submitted to the authority of the police. Because a reasonable person in Mr. Hilton's position would believe he was not free to leave the scene of the collision and because Mr. Hilton at all times submitted to the authority of the police, the time of his arrest was at or about 10:15 p.m., as indicated by the arresting officer on the BAAT Reports, the uniform traffic citations, the FR-10 collision report, and the incident report.

In order to determine the proper "time of arrest," the Court must determine when Mr. Hilton was first under arrest. The South Carolina Supreme Court has held that an "arrest is an ongoing process, finalized only when the defendant is properly confined." State v. Dowd, 306 S.C. 268, 270, 411 S.E.2d 428, 429 (1991). Whether there is an arrest is typically a question of Fourth Amendment law. An arrest is the "quintessential" seizure regulated by the Fourth Amendment. Atwater v. City of Lago Vista, 532 U.S. 318, 360, 121 S. Ct. 1536, 1560-61, (2001) (O'Connor, J., dissenting); see, Payton v. New York, 445 U.S. 573, 585, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). The threshold question for the purpose of the Fourth Amendment is whether a seizure has occurred. Terry v. Ohio, 392 U.S. 1, 17, 88 S.Ct. 1868, 1877 (1968). A person is seized by police "if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." United States v. Robinette, 519 U.S.

33, 45, 117 S.Ct. 417, 424-25 (1996) (Ginsburg, J., concurring) (quoting, United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870, 1877 (1980) (opinion of Stewart, J.)).

In the present case, Mr. Hilton was seized by police the moment they arrived at the scene of the collision. A reasonable person in Mr. Hilton's position would know there were potential injuries to the occupants of the other vehicle and that the police were attempting to obtain information about the collision. In light of the totality of these circumstances, a reasonable person in Mr. Hilton's position would conclude they were not free to leave. Consequently, Mr. Hilton was "seized," i.e., "arrested" at the time of the wreck, or very shortly thereafter when the first officers arrived on the scene.

In addition to an objective review of whether Mr. Hilton was free to leave the scene of the collision, there must be either the application of force against his person or **the arrestee's submission** to police authority in restraining his liberty. See, California v. Hodari D., 499 U.S. 621, 111 S. Ct. 1547 (1991) (emphasis added). Again, the relevant inquiry is whether a reasonable man in Mr. Hilton's position would believe he is in custody based on the totality of the circumstances, including his ability to leave the scene and the purpose, place, and length of any questioning. State v. Easler, 327 S.C. 121, 127-28, 489 S.E.2d 617, 621 (1997) (citing, Bradley v. State, 316 S.C. 255, 449 S.E.2d 492 (1994)).

The conclusion that Mr. Hilton was arrested at 10:15 p.m. is consistent with Fourth Amendment law regarding time of arrest, and it is consistent with the recollection and belief of the arresting officer as recorded on the BAAT Reports, the uniform traffic citations, the FR-10 collision report, and the incident report.

The Court must construe any ambiguity in this criminal statute strictly in favor of the defendant. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Arrest is an ongoing

process. Clearly, Mr. Hilton was not free to leave from the time of the wreck until the time he was released on bond. The arresting officer repeatedly listed the time of arrest as 10:15 p.m. This time is consistently reflected on every formal document provided to the defendant prior to the first scheduled hearing on this a motion. The undersigned respectfully submits that the State should not be permitted to unilaterally change the time of arrest based on the prosecutor's reliance on hearsay evidence for the sole purpose of excusing its delay in administering a breath test.

Conclusion

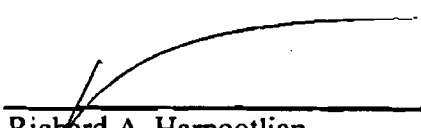
DataMaster 881279 has repeatedly and chronically failed to render accurate results of known alcohol quantities in simulator testing. Despite the machine's history of chronic failures, according to records maintained by SLED, the machine was not re-calibrated since it was placed into service seventeen (17) years before Mr. Hilton's arrest. Dr. Brewer will testify that the machine is unreliable and the test results generated by it are specious and untrustworthy.

Furthermore, the arresting officer failed to administer the breath test until more than two hours after Mr. Hilton's arrest. Prior to the arrest, the General Assembly amended the implied consent statute to provide that breath tests must be performed within two hours of arrest. Although the amendment did not become effective until after Mr. Hilton's arrest, the amendment is procedural and addresses evidentiary matters. Therefore, the amendment should apply retroactively to this case. Defendant submits that one reason the legislature amended the statute was in recognition that breath tests performed after a substantial lapse of time are inaccurate and unfairly prejudicial. Dr. Brewer offers his expert scientific opinion that breath test results conducted more than two hours after the arrest are unreliable.

In addition, the State provided Mr. Hilton with a "written report" as required by S.C. Code Section 56-5-2950(I) in the form of the BAAT Reports. These written reports, and all other documents from the night of the arrest, report that the time of arrest was 10:15 p.m. These documents, prepared by the state, prove that the state failed to conduct a breath test within the two hour requirement. The prosecuting attorney's hearsay letter, which does not conform with the statutory written report requirement, is the only document that claims the time of arrest was a time other than 10:15 p.m.

Certainly Defendant will suffer unfair prejudice if the test results from DataMaster 881279 are admitted against him at trial. He therefore asks the Court to exclude the results of the breath test from the trial of this matter.

Respectfully submitted,



Richard A. Harpootlian
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
Facsimile (803) 252-4810
rah@harpootlianlaw.com

ATTORNEY FOR DEFENDANT

Columbia, South Carolina

October 25, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

State of South Carolina,

vs.

Michael J. Hilton,

Defendant.IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT**DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION TO EXCLUDE EVIDENCE**

2008-GS-26-04056

2008-GS-26-04057

Defendant Michael J. Hilton files this supplemental memorandum of law in support of his motion to exclude the results of the DataMaster test from the trial of this matter. In addition to those reasons set forth in his original Memorandum in Support of Motion to Exclude, Mr. Hilton submits that the Court should prohibit the introduction of the test results which were obtained more than two hours after his arrest, in violation of the procedure prescribed by S.C. Code Section 56-5-2950. Furthermore, where the State previously provided Mr. Hilton with the written Breath Alcohol Test Report as required by S.C. Code Section 56-5-2950(I) and Mr. Hilton relied on that Report for three years while preparing his defense, it would be grossly unjust to now allow the State to change the time of arrest indicated in the Report, and in every other document provided to Mr. Hilton, to a time chosen by the prosecutor to conform with the State's statutory requirement under Section 56-5-2950(A). The State's attempt to alter the Report prejudices Mr. Hilton's ability to prepare and present a defense and denies him his statutory and due process rights, including his right to reasonable notice. As an additional reason for excluding the test results, Mr. Hilton submits that the witnesses who testified for the State at the Hearing of this motion, held in Georgetown County on October 25, 2011, failed to testify to a reasonable degree of scientific certainty that the DataMaster 881279 machine was working properly at the date and time in question.

The written report provided to Mr. Hilton establishes the test was not performed within two hours of arrest

The results of the DataMaster 881279 test should be excluded because the State failed to administer the test within two hours of Mr. Hilton's arrest, as required by Section 56-5-2950(A).

Defendant's original Memorandum in Support of Motion to Exclude sets forth his argument why the requirements contained in Section 56-5-2950(A) should be applied retroactively to this case. Without repeating those arguments, Defendant would reemphasize that the amendment is procedural in nature and deals with evidentiary matters as opposed to the substantive elements of the various driving under the influence offenses. Our Court have consistently construed procedural amendments to apply retroactively. See, e.g., State v. Stahlnecker, 386 S.C. 609, 690 S.E.2d 565 (2010); South Carolina Dept. of Revenue v. Rosemary Coin Machines, Inc., 339 S.C. 25, 28, 528 S.E.2d 416, 418 (2000); State v. Bryant, 382 S.C. 505, 675 S.E.2d 816 (Ct. App. 2009); and State v. Frey, 362 S.C. 511, 608 S.E.2d 874 (Ct. App. 2004). In State v. Frey, *supra*, the Court of Appeals held that a procedural amendment to Section 56-2-2950, the same section involved here, would be applied retroactively on remand where the statute was amended after the defendant's trial.

Clearly the 2008 amendment to §56-5-2950 should apply to Mr. Hilton's case. The State seems to have conceded this point at the motion hearing where the prosecutor raised hardly any challenge to the Defendant's argument in favor of retroactivity, but instead focused the State's argument on why the time of arrest should be amended to comply with the two-hour time limit contained in the amended law. Defendant submits the prosecutor lacks any first-hand knowledge of the actual time of arrest and the arresting officer could not testify that the time set forth in the written report, generated shortly after the arrest and provided to the Defendant the next morning, was inaccurate.

South Carolina Code §56-5-2950(I) (Supp. 2010), provides that:

A person required to submit to tests by the arresting law enforcement officer must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any trial or other proceeding in which the results of the tests are used as evidence.

The written Breath Alcohol Analysis Test Report provided to Mr. Hilton by police meets the statutory requirement. The Report lists the time of arrest as 10:15 p.m., on May 10, 2008, and the time of the breath test as 12:32 a.m., on May 11, 2008. Consequently, the officer's Report, which he provided to Mr. Hilton after the test, establishes that the time of the test was more than two hours after the time of the arrest. Because police failed to comply with the statute, the results of the test should not be admitted at trial.

The State has attempted to change the time of Mr. Hilton's arrest, as indicated by the Report generated by the police, by introducing a letter composed and signed by the prosecutor three years after the arrest which claims Mr. Hilton's arrest occurred much later than the time set forth in the Report. The source of the information in the prosecutor's letter is ostensibly the time stamp appearing on the video generated by the arresting officer's in-car camera on the night of the incident. The State called the arresting officer, Officer Schmidt, to testify at the October 25 hearing. However, Officer Schmidt could not recall the time of arrest and could not confirm that the time stamp appearing in the video was accurate. Officer Schmidt testified that he makes no distinction between the time of the violation and the time of arrest when recording the time on the Breath Alcohol Analysis Test Report. Both Dale Smith and Andrew Jordan confirmed that SLED does not make a distinction either, and does not train DataMaster operators to distinguish between time of violation and time of arrest for purposes of the Breath Alcohol Analysis Test Report.

The Prosecutor's letter purporting to change Mr. Hilton's time of arrest is inadmissible hearsay devoid of evidentiary value. The only written report that complies with Section 56-5-2950(I) is the Breath Alcohol Analysis Test Report which establishes Mr. Hilton's time of arrest as 10:15 p.m., more than two hours before his breath test, at 12:32 a.m. The Court should not give any evidentiary value to the Prosecutor's letter.

Further, Section 56-5-2950(I) clearly contemplates a "report" setting forth all of the required information, not multiple piecemeal "reports" as the State attempts to introduce here. A cardinal rule of statutory construction is that the words employed be given their plain and ordinary meaning. State v. Ramsey, 311 S.C. 555, 561, 430 S.E.2d 511, 515 (1993) ("In construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation."). Where the legislature used the singular "report" in describing the writing the State must provide to persons charged, the Court should not expand the statute's meaning to accommodate multiple writings, or "reports."

The State's failure to administer the test within two hours is prejudicial, as evidenced by Dr. Brewer's testimony that the reliability of breath test results becomes more and more suspect with the passage of time. Our Court of Appeals has acknowledged this fact. See, e.g., State v. Bull, 350 S.C. 58, 62, 564 S.E.2d 351, 354 (Ct. App. 2002) (finding that "[t]he timing of the administration of [blood alcohol] tests is crucial because of the ephemeral nature of blood intoxication levels."). Mr. Hilton submits the General Assembly recognized this phenomenon in amending Section 56-5-2950 to mandate that tests are administered within two hours of arrest and to exclude from trial unreliable evidence collected more than two hours post arrest.

In addition to attempting to introduce unreliable evidence, the State seeks to further unfairly prejudice Mr. Hilton's defense by allowing the Prosecutor to determine the time of arrest – a key provision in the statute – based on her speculative review of the video time stamp.

The Court should not allow what would constitute a denial of Mr. Hilton's right to due process. The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. S.C. Const. art. 1, § 22; see also, Stono River Envtl. Protection Ass'n v. South Carolina Dep't of Health and Envtl. Control, 305 S.C. 90, 406 S.E.2d 340 (1991). Defendant never received notice that the time of his arrest was any time other than 10:15 p.m. until October 3, 2011, when he first appeared to argue his Motion to Exclude. Until that point, Mr. Hilton had prepared his defense based on the accuracy and veracity of the written Report supplied to him by the State more than three years prior to the hearing. Assuming for the sake of argument that the time of arrest was something other than the time listed on the Breath Alcohol Analysis Test Report, Mr. Hilton is unaware of any reason, and the State has yet to provide one, why the State could not have provided this information prior to minutes before the first hearing. The Court should give no value to the opinion letter of the Prosecutor, who lacks firsthand knowledge of the representations set forth in her letter, where the sole purpose of the letter is to amend the information in the Breath Alcohol Analysis Test Report.

As set forth in Defendant's Memorandum in Support of Motion to Exclude Evidence, the General Assembly's amendment of Section 56-5-2950 requiring that breath tests be administered within two hours of the time of arrest should apply retroactively. Because the test here was not administered within this time frame, the results should not be admitted at trial. Finally, the State should not be permitted to change the time of arrest years after the arrest when Defendant's

opportunity to rebut the alleged time of arrest has been effectively foreclosed by the passage of more than three years' time since his arrest.

Finally, Defendant submits that fundamental fairness precludes the State from changing the time of arrest as set forth in the Report and from introducing results of a breath test administered more than two hours after the arrest. If convicted, Defendant faces a potential sentence of forty years' imprisonment.¹ His guilt or innocence cannot be objectively established, but is based solely on the subjective determination of "impairment." The legislature, perhaps in recognition of the subjective nature of these serious criminal offenses, has enacted important procedural safeguards in DUI cases. Among these safeguards are the requirement that those charged be provided a written report containing information critical to the subjective determination of guilt – the time of arrest, the time of breath or blood testing, and the purported results of these tests – and the requirement that any such tests be administered within two hours of arrest. Where these safeguards are ignored, as they were in this case, Defendant submits it would be patently unfair to permit the State to introduce evidence gathered in contravention of the law.

The amendment to Section 56-5-2950(A) requiring breath tests be administered within two hours of arrest should apply retroactively to Defendant's case. The State should not be permitted to alter the alleged time of Defendant's arrest to contradict the time set forth in the Breath Alcohol Analysis Test Report more than three years after the arrest. Finally, the breath test results should not be admitted at trial where the State has not complied with the important procedural safeguards mandated by Section 56-5-2950.

¹ S.C. Code §56-5-2945 (2006), provides the maximum punishment for felony DUI causing death is up to twenty-five years' imprisonment and the maximum punishment for felony DUI causing great bodily injury is up to fifteen years' imprisonment.

**The State failed to establish by expert testimony
that Datamaster 881279 was working properly**

Pursuant to South Carolina law, prior to introducing the results of chemical tests at trial, like the DataMaster 881279 test in issue here, the State must establish that the test results are reliable.

The requirement of laying a foundation for the introduction of the results of chemical tests is universally recognized.

'The party offering the results of any of these chemical tests (for drunkenness) must first lay a foundation by **producing expert witnesses** who will explain the way in which the test is conducted, identify it as approved under the statute, and **vouch for its correct administration in the particular case.**'

State v. Parker, 271 S.C. 159, 162-63, 245 S.E.2d 904, 906 (1978), citing State v. Baker, 56 Wash.2d 846, 355 P.2d 806 (1960) (emphasis added).

In addition to the foundational requirements cited above, the Parker Court held that "[p]rior to admitting such evidence, the State may be required to prove (1) that the machine was in proper working order at the time of the test" Id. While applying the first prong of the test, the Court found that:

The testimony of the operator that he had run a simulator test immediately before the actual test, and that the breathalyzer machine gave a reading equal to the percent of alcohol in the simulator solution, was sufficient to establish, *prima facie*, that the machine was working properly and that the correct chemicals had been used. **If the machine had not been working properly, or if faulty chemicals were used, a reading on the breathalyzer machine would not have been the same as the percent of alcohol in the simulator solution.**

State v. Parker, 271 S.C. 159, 163, 245 S.E.2d 904, 906 (1978) (emphasis added).

Here, DataMaster 881279 gave an incorrect reading of the alcohol concentration of the simulator solution three times prior to the test results the State now seeks to admit at trial. Mr. Hilton submits that the State has not made a prima facie showing that the machine was functioning properly at the time Mr. Hilton was tested.

Moreover, although the State called five witnesses at the motion hearing held on October 25, none of the witnesses offered competent expert testimony that DataMaster 881279 was working properly at the time of Mr. Hilton's test. Various witnesses testified to the operation and functionality of DataMaster machines in general, but the State failed to call a single witness to testify about the operation and functionality of Datamaster 881279. Furthermore, none of the State's witnesses testified to a reasonable degree of scientific certainty that the machine in question was functioning properly at the time of the test. Consequently, the evidence offered by the State is merely speculative and should not be considered by this Court. See Smalls v. South Carolina Dept. of Educ., 339 S.C. 208, 528 S.E.2d 682 (2000) (trial court correctly excluded expert testimony where proffered testimony was purely speculative).

The State called Andrew Jordan (Jordan) who works in SLED's Implied Consent division. Jordan admitted he had not inspected DataMaster 881279 and he could not testify the machine was working properly on May 10 and 11, 2008. In fact, Jordan offered no testimony specific to Datamaster 881279. The State also called Brett Baker (Baker), another SLED employee. Baker testified DataMaster 881279 was the most used DataMaster machine in the state for the year 2008. Despite this fact, Baker admitted he had no evidence the machine had undergone linearity testing or calibration since it was put into operation in 1991. Baker testified to repairs made on the machine in November 2007, but he did not testify to a reasonable degree

of certainty that DataMaster 881279 was properly functioning at the time of Mr. Hilton's test. Baker also admitted that the machine had recorded multiple failures prior to Mr. Hilton's test.²

Unlike the State, Mr. Hilton presented evidence about Datamaster 881279's record of unreliability through the testimony of Dr. William Brewer, a forensic chemist previously employed by SLED. Dr. Brewer testified to a reasonable degree of scientific certainty that the results of tests generated by DataMaster 881279 were unreliable. He based his opinion on the State's own records documenting the machine's regular failures and the State's failure to conduct multipoint linearity checks to insure the machine was able to generate an accurate result across a range of alcohol concentrations. Dr. Brewer testified that the failure to conduct a multipoint check was particularly disturbing because Datamaster 881279 had been in use for seventeen (17) years at the time of Mr. Hilton's arrest and had consistent simulator test failures, including the three failures just before Mr. Hilton's test. Dr. Brewer's testimony was uncontradicted by the prosecution.

The one witness called by the State to presumably challenge Dr. Brewer's testimony was Wendy Bell (Bell), a chemist and toxicologist employed by SLED. While Bell did not testify to a reasonable degree of certainty that DataMaster 881279 was in good working order at the time of Mr. Hilton's test, she did testify that a properly functioning DataMaster generates test results that are only accurate within 5% to 10% of the reported concentration. This is a troubling admission by one of the State's key witnesses about the accuracy of these machines generally. Mr. Hilton

² While the State's witnesses could not account for the machine's multiple failures in accurately recording the alcohol concentration of known simulator solutions, they speculated the cause was operator error, suggesting perhaps the simulator solution bottle was not properly attached. Although he did not separately raise the issue in his original Memorandum, Defendant submits that this explanation further supports his argument that the results should not be submitted. In addition to requiring the State to show the machine was working properly, Parker requires the State to show "the test was administered by a qualified person in the proper manner." Parker, at 163, 245 S.E.2d at 906.

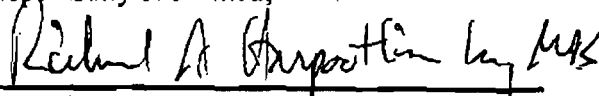
contends that if the State believes a properly working DataMaster has an inherent error range of 5% to 10%, then DataMaster 881279, which had a documented record of failure, was capable of producing a result in excess of this "normal" error range. While Bell did not testify to a degree of scientific certainty, her testimony suggests she is unable to ascribe much certainty DataMaster 881279's result.

Based on the above, and those additional reasons set forth in his original Memorandum in Support of Motion to Exclude, Defendant submits the State has failed to meet its burden under Parker of showing DataMaster 881279 was properly functioning at the time of the test.

CONCLUSION

For these reasons, as well as those previously set forth in Defendant's Memorandum in Support of his Motion to Exclude and the hearing held on October 25, 2011, Defendant asks the Court to exclude from trial the results of the DataMaster 881279 test.

Respectfully submitted,



Richard A. Harpootlian
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
Facsimile (803) 252-4810
www.rharpootlian.com

ATTORNEY FOR DEFENDANT

Columbia, South Carolina

November 8, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

State of South Carolina

vs.

Michael J. Hilton,
Defendant) IN THE COURT OF GENERAL SESSIONS
) FIFTEENTH JUDICIAL CIRCUIT) STATE'S MEMORANDUM IN
) OPPOSITION OF MOTION TO
) EXCLUDE EVIDENCE

2008-GS-26-04056

2008-GS-26-04057

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CLERK OF COURT

This case comes before the court on a motion filed by the Defendant, Michael J. Hilton, to suppress the DataMaster results from his arrest for Felony DUI on May 10, 2008. This motion was heard by this court on October 25th, 2011 in the Georgetown County Courthouse. The Defendant was present and waived his right to have the motion heard in Horry County. The issues raised in the motion are:

1. Was BAC DataMaster in proper working order at the time of the test?
2. Should the law in effect on May 10th, 2008 or the amendment which went into effect on February 9, 2009 apply?
3. If the amended law applies, was the DataMaster test completed within 2 hours of the time of arrest?

Statement of Facts

On May 10, 2008 at approximately 10:15pm during Myrtle Beach Bike Week, Michael Hilton turned his white Ford work truck in front of Angelo Gonzalez and Susan Reader causing a fatal collision. Hilton headed southbound on U.S. 17 business in Myrtle Beach, South Carolina. The area of the collision is a five lane highway with a wide grass median. There are three lanes going south including a left turning lane. Hilton slowed in the turning lane and then accelerated

in a left turn, failing to yield right of way to the oncoming motorcycle. Angelo Gonzalez was the driver of the motorcycle and Susan Reader was his passenger. Unable to avoid the truck, the motorcycle impacted the back end of the truck causing the motorcycle to spill to the ground. This collision fatally injured Mr. Gonzalez and caused great bodily injuries to Susan Reader who remains under medical care for her injuries.

Hilton continued through the intersection into his Grande Dunes subdivision and around the corner where he stopped to check the damage to his vehicle. A resident heard the commotion and came out to encourage Hilton to go back to the scene and walked him back. Once back on the scene, Hilton remained with the onlookers until someone pointed him out to an officer as possibly being involved. At that time, Officer Peter Schmidt brought Hilton into the median and went to get his police vehicle so he could record his interaction with Hilton. Officer Schmidt told Hilton he was not under arrest and asked if he would be willing to perform some field sobriety tests. Hilton stated that he understood and began talking with the officer. After the field sobriety tests, Officer Schmidt told him he was under arrest and placed him in handcuffs. At this time it was approximately 10:47pm according to the video of the scene. Hilton was then placed in the patrol vehicle and transported to the Myrtle Beach Police Department.

Hilton was instructed to provide a breath sample on the BAC DataMaster by Officer Schmidt. This procedure was also recorded. DataMaster 881279 was the instrument on site for breath testing at the Myrtle Beach Police Department. Officer Schmidt did not record the actual time he put handcuffs on Hilton, but did have the time of the dispatch call which was 22:15. He began the test procedure at 23:29 which began the 20 minute observation period.

Before the BAC DataMaster can process a sample from an arrested individual, it must undergo a minimum of nine (9) self-checks. The DataMaster on this evening showed a "status code" by reporting ".08% simulator failed" when the simulator solution did not read between .076% and .084%, as required, to check that the internal and external parts of the instrument are functioning properly. Officer Schmidt followed the procedure and changed the solution. Once properly changed, the solution must run five (5) calibration tests to make sure it is testing in the correct range before it will return to the subject's test. Once the instrument returns to the subject's test it begins its self-testing procedure again from the beginning. This time the solution tested at a perfect .080.

After every calibration and self-check was confirmed by the BAC DataMaster, the subject was given the opportunity to blow into the DataMaster at 12:32am. The BAC DataMaster ran another series of tests to ensure that it was reporting properly and then it reported Michael Hilton's alcohol level at a .15%. The BAC DataMaster had no more status codes or failures after the simulator solution was properly changed until June 27th, 2008, 47 days and 81 tests later. The status code at that time required a simulator solution change. The DataMaster was working properly and the results should be submitted to the jury.

1. BAC DataMaster 881279 in Proper Working Order

The State of South Carolina has provided through its statutes the requirements which must be met for BAC DataMaster results to be valid and admissible in trial. The State has met each of the required elements in this case and the results should be admitted into evidence and submitted to the jury. The South Carolina Supreme Court established in State v. Parker, 271 S.C. 159, 245 S.E.2d 904, the elements the State must establish to lay a proper foundation for the

introduction of results of the Breathalyzer.¹ The defense pointed to the first element which requires that there be a showing that the "machine was in proper working order at the time of the test." During the hearing, the defense also required a showing that the "test was administered by a qualified person in the proper manner." The defense conceded that the test was operated in a proper manner and after the testimony of Officer Peter Schmidt and Lt. Dale Smith of the South Carolina Criminal Justice Academy; there was a clear showing that Officer Schmidt was properly qualified. Therefore, the only question remaining is whether the machine was working properly.

South Carolina Code Section 56-5-2950 lays out the requirements for implied consent testing. The following parts of this law apply to the case at bar and the issues raised by the defense:

(A) Before the breath test is administered, an eight one- hundredths of one percent simulator test must be performed and the result must reflect a reading between 0.076 percent and 0.084 percent...

(E) SLED must administer the provisions of this subsection and must make regulations necessary to carry out its provisions...

(J) Policies, procedures, and regulations promulgated by SLED may be reviewed by the trial judge or hearing officer on motion of either party. The failure to follow any of these policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence any tests results, if the trial judge or hearing officer finds that such failure materially affected the accuracy or reliability of the tests results or the fairness of the testing procedure.

¹ The Court stated that the "State may be required to prove (1) that the machine was in proper working order at the time of the test; (2) that the correct chemicals had been used; (3) that the accused was not allowed to put anything in his mouth for 20 minutes prior to the test; and (4) that the test was administered by a qualified person in the proper manner."

State v. Parker, 271 S.C. 159, 163, 245 S.E.2d 904, 906 (1978)

§56-5-2950. Implied consent to testing for alcohol or drugs; procedures; inference of DUI., S.C
Code 1976 § 56-5-2950

SLED has promulgated policies, procedures and regulations in section 8.12 of the SLED Policies. The defense argues that the BAC DataMaster was not working properly. In reality, as the testimony and the Statutes and Policies describe, the BAC DataMaster was functioning exactly as it was designed. Dr. Bill Brewer testified to his personal opinion as to procedures which could be performed on the DataMaster to provide him with more exact calibration measurements.² However, this is not the standard provided in our law. Lt. Andy Jordan testified that he helped to write the best practices for the BAC DataMaster when it first was introduced in 1991. However, Lt. Jordan stated that there would always be people arguing for one more test or one more step. Lt. Jordan had to decide based on the practices of other states and recommendations of the experts, what would provide a scientifically valid and reliable result. As experts for the State testified, South Carolina through the policies required by SLED has more stringent testing requirements than other states that rely on the same instrument.

The BAC DataMaster is a linear test. As Dr. Wendy Bell testified, an initial test for linearity is performed for every instrument, with a repeated test every time the instrument is used. These tests measure whether the testing mechanics are in working order as well as perform additional calibrations at 0.0 at .08 to provide reliable results to a scientific certainty. She quoted studies which tested this exact premise and found that the results were reliable and the older machines tended to be even more reliable than the newer ones.³ In any case, as the results begin

² Dr. Brewer also testified that, prior to his testimony, he failed to read any peer reviews on the operation of the DataMaster machines.

³ The studies are Peter F. Method, "Stability of BAC DataMasters Used for Evidentiary Alcohol Breath Testing in Indiana," *Journal of the Alcohol Testing Alliance*, Vol. 5, No. 1, 2006, pp. 2-5, Peter F. Method "Linearity of BAC

to change, any discrepancy is in the third and fourth decimal places, beyond what SLED reports and they tend to be in favor of the defendant. Results tend to report lower, and therefore cause no prejudice to the defendant.

South Carolina Code Section 56-5-2950 subsection (e) specifically requires that the policies promulgated by SLED must be followed, but even the failure to follow one of these policies does not lead to exclusion unless that "failure materially affected the accuracy or reliability of the test results or the fairness of the testing procedure." In the case at bar, each policy from SLED was followed. Policy 8.12.1 requires that the BAC DataMaster is the approved Breath Alcohol Device. This particular BAC DataMaster was the approved device at the Myrtle Beach Police Department from October 11, 1991 until February 10, 2009. This DataMaster was removed because SLED had to change to a different model due to computer storage and processing capabilities. It had nothing to do with the ability of the BAC DataMaster to perform its job. In fact, the BAC DataMaster is still a NHTSA approved device and is still in use in several states.

SLED Policy 8.12.2 explains the proper policies to follow with the Wet Bath Simulator. Of particular interest in this case is the Solution Change Protocol. It states that the solution may be changed at any time before the mandatory change. A failure to meet the standards as provided by statute requires a mandatory change. Finally, the new solution will undergo five simulator tests and all five must fall between .076% and .084% or the instrument will not return to operating. Unlike the reports that can be pulled from SLED, the operator has no idea what the instrument has read in the recent tests. Therefore, when the simulator solution does not read properly and the test shows a failure, the operator is instructed to retry the test. After one or two

DataMasters Used for Evidentiary Alcohol Breath Testing in Indiana," *Journal of the Alcohol Testing Alliance*, Vol. 5, No. 1, 2006, pp. 6-9. Both are attached to this memorandum.

times, the next step is to change the simulator solution. Officer Pete Schmidt performed these steps properly

SLED policy 8.12.4 requires that the test operator be properly qualified. Officer Peter Schmidt was recertified for the period of 8/21/07 to 8/21/09 by the South Carolina Criminal Justice Academy to operate a BAC DataMaster, and was properly qualified under SLED policies.

SLED Policy 8.12.5 concerns the administration of breath alcohol tests. Of particular interest in this section is the topic concerning data entry. It states that data entry errors or omissions will not affect the accuracy of the test results or invalidate the test. Also, once data is properly entered into the computerized database it cannot be changed. It also states that the arrest time is to be the arrest time or the violation time. The violation time is recorded in several places and can be checked by the officer if he does not record it himself. The arrest time, while recorded on the video, is not easily retrievable at the time the data is being entered into the DataMaster. The arrest time is certainly at some point between the violation time and the breath test.

SLED Policy 8.12.6 discusses status code messages and inspections. Any status code message will cause the test to abort. "The instrument is programmed to eliminate any chance of an improper test." The policy goes on to state "This inspection ensures the instrument is working properly with every subject test, regardless of any prior or subsequent status code messages." The instrument is designed to ensure the accuracy of each test regardless of the one just before or after. The policy states that the ".08% simulator failed" does not immediately require the simulator solution change. The experts testified that this status code could be caused by the solution or some ambient air factor. The appropriate response is to retry the test once or

twice before changing the solution. This was the protocol followed with this test. Brett Baker, who has worked in SLED Implied Consent for years and specifically assigned to the area in which the Myrtle Beach DataMaster was located during 2008, testified that once the solution was changed it was heated to the required 34 degrees and then underwent 72 different checks before the subject sample was taken. During every one of these checks the instrument had to properly read in the required range. As Dr. Bell testified, because the operator is testing for a .08% on this test the results should start closest to a .08% ,which is what the results showed with the new bottle. As tests are performed the results should trend downward until they are no longer within range and a new bottle is required. Baker also testified, that he knows the instrument was working properly because the results fell back into the correct range after changing the simulator solution. Had the tests remained low after the change or been sporadic, even within the approved range, there would have been concern that the instrument needed repair. Policy 8.12.6 provides inspection instructions as well. It states that status code messages do not require and inspection or repair be undertaken. Only after the code occurs repeatedly, an inspection or repair may be performed. The policy allows for some inspections to be performed remotely. Brett Baker checks the status codes of the DataMasters throughout the state twice per week to see if there are any machines that need on site or remote inspections. The policies allow for those trained on the DataMaster to determine when remote or on-site inspections are needed and to perform them. This DataMaster had an inspection in 11/28/2007 and again on 12/29/2008. These inspections may have led to some adjustment and could be classified as a repair. These inspections had nothing to do with the simulator solution and were part of routine maintenance.

The Court of Appeals set out in State v. Murphy, 392 S.C. 626 709 S.E.2d 685 (Ct. App. 2011) the standard for admitting the DataMaster results in that case.

The State presented evidence that the DataMaster conducts a series of self-diagnosing checks to insure that it is operating correctly both prior to and subsequent to any actual breath testing. In this regard evidence exists to demonstrate that the DataMaster in question conducted this series of checks at least twenty-five times after Murphy's test without indicating a malfunction or need for repair.

Murphy v. State, 392 S.C. 626, 634, 709 S.E.2d 685, 690 (Ct. App. 2011)

In this case, the DataMaster conducted eighty-one checks after Hilton sample was taken without any status codes. Unlike Murphy, there was no malfunction anywhere close before or after Hilton's test to cause concern. The status code that occurred is the only human factor in the functioning of the DataMaster and can be affected as well as cured by a simple solution change. However, the human operator cannot make the ultimate decision as to whether the instrument is working properly. The ultimate decision is left to the computer to verify all of the internal self-checks.

The South Carolina Legislature put the decision as to the proper device and policies into the hands of SLED, but expressed its desire to have the SLED decisions verified by a qualified outside source. In 1998 the General Assembly required the BAC DataMaster instrument and SLED policies be independently evaluated by an expert selected by the Chairman of the House and Senate Judiciary Committees. Dr. Kurt M. Dubowski was selected to perform this evaluation.⁴ Dr. Dubowski evaluated three DataMasters on site in South Carolina and one at the manufacturer. Of the three evaluated in-state, two had serial numbers beginning with 88 just as the Myrtle Beach DataMaster. These serial numbers indicate these instruments were manufactured the same year. They were each installed at approximately the same time in 1991 as the DataMasters were rolled-out through-out the State. The Myrtle Beach instrument was the

⁴ The report can be found in its entirety on SLED's Implied Consent webpage, <http://services.sled.sc.gov/ImpCon/Documents/pdf%20files/independentevaluations/Dr.DubowskisReport.pdf>

most used instrument in the State of South Carolina at the time and led to the addition of another BAC DataMaster shortly thereafter to provide more than one option at the department. Dr. Dubowski performed the linearity testing referred to by Dr. Brewer as well as multiple other tests. Dr. Dubowski concluded that the BAC DataMaster instruments evaluated for accuracy and precision were "found to be acceptable and scientifically valid, in all relevant aspects, for forensic alcohol analyses for traffic enforcement and other applications." Dr. Dubowski reviewed all of the SLED policies which Lt. Andy Jordan testified are the same today as it pertains to linearity testing and the simulator solution. The main difference is the change the change in the law to the .08 standard. Dr. Dubowski found that in regards to accuracy and precision, the alcohol analyses "met or exceeded the most stringent accuracy and precision specifications among those established by NHTSA, NPAS, and SLED. The accuracy and precision of those alcohol analyses is in full compliance with nationally accepted standards for forensic breath-alcohol analyses."

2. Incident Occurred Before 2009 Effective Date⁵

At the time of the defendant's arrest for felony DUI on May 8, 2008, the only applicable law in place in regard to time limits for breath testing was S.C. Code Ann. §56-5-2953(2) which states:

The videotaping at the breath site:

- (a) must be completed within three hours of the person's arrest...[and]
- (d) must include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test.

⁵ Due to the length of the hearing on October 25, 2011, the Court permitted the State to answer the defenses arguments related the retroactivity of 2009 amendment to the Act in this memorandum.

It is agreed by both parties that the breath testing was performed in less than three hours from the time of arrest of the defendant. Therefore, there is no question that the officer complied with the law in place at the time of the arrest regarding the three hour time limit.

The defendant argues that the court should retroactively apply the amended statute enacted on February 10, 2009 to place a two hour time limit to the case at hand. Generally, statutory enactments are presumed to be prospective rather than retroactive, unless the statute is remedial or procedural- such as a statute of limitations or a statute allowing change of venue. See Jenkins v. Meares, 302 S.C. 142, 394 S.E.2d 317 (1990) (mentioning the statute of limitations as such a procedural rule, and holding Tort Reform Act was not retroactive); State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992) (new statute allowing change of venue was procedural and retroactive), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). However, those are rules of statutory construction and the paramount consideration is the intent of the Legislature. Meares, *supra* (finding dispositive the act's express statement that it would only apply to actions arising or accruing after the effective date of the act).

In Meares, the court was asked to find that a statute of limitations found within the Tort Reform Act was procedural and should be applied retroactively. The Court found that the intent of the Legislature was that the Tort Reform Act as a whole be applied prospectively per the Act's saving's clause, regardless of the procedural nature of a statute of limitations found within the Act.

Here not only is this statute clearly substantive in its intent, but the General Assembly in the Act's savings clause clearly expressed the intent that the Act not be applied to criminal and civil

actions, and rights, liabilities or duties in existence prior to the Act's effective date. Section 23 of the Act reads as follows:

The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of the act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

(Emphasis added). The General Assembly could not have been clearer. Just as in Meares, the General Assembly has expressly stated that this act is to be applied prospectively. To pull out a provision regarding a time limit and apply it retroactively would be improper.

Furthermore, South Carolina courts have already addressed whether this Act should be applied retroactively in at least two cases and found that it should not. In State v. Branham, 392 S.C. 225, 708 S.E.2d 806 (Ct. App. 2011), the defendant was arrested on March 4, 2008 for DUI. He was convicted in Magistrates Court and appealed. The Court of Appeals in applying the 2006 statute for DUI, writes in a footnote, "Section 56-5-2953 was amended effective February 10, 2009. See Act No. 201, 2008 S.C. Acts 1682-85. Thus, the amended statute is not applicable to Branham's March 4, 2008 arrest." Likewise, in Murphy v. State, 392 S.C. 626, 709 S.E.2d 685 (Ct. App. 2011), the Court of Appeals writes in a footnote that the Section 56-5-2953 was amended effective February 10, 2009 and therefore does not apply to the defendant's April 4, 2007 arrest.

The defendant relies on State v. Frey, 362 S.C. 511, 608 S.E.2d 874 (Ct. App. 2005). In Frey, the court remanded a conviction for DUI to the lower court for a new trial. In that case, a

2003 amendment to the DUI statute provided the court guidance on how to evaluate the requirements provided by the statute. The court only mentioned in a footnote that this was a procedural amendment and should be provided retroactively. However, the court did not address the longstanding precedent of the Supreme Court of South Carolina to follow the Savings Clause as evidence of the intent of the legislature or its direction against dissecting amendments to determine which sections are procedural and which are substantive. Although subsection (e) of 56-5-2950 may have been procedural in providing guidance to the court, it did not change the substance of how the test should be conducted which would cause the officers to predict the future in handling their ongoing cases. Frey dealt with the reliability and thus admissibility of evidence. It is never argued that a two hour time limit makes the results of the DataMaster more reliable, and in fact, the longer amount of time that passes between arrest and breath testing only works to the defendant's favor. The Defense's argument regarding time of arrest still places the time that the DataMaster is administered at two hours and fifteen minutes after the time of arrest as entered onto the DataMaster ticket.

The defendant relies on State v. Bryant, 391 S.C. 225, 705 S.E.2d 465 (Ct. App. 2010), as support for his argument that a statute should be applied retroactively despite a savings clause. In Bryant, the defendant was trying to use the savings clause to prevent videotaped testimony from being presented as evidence in his trial. The court stated in that case that, "Generally, a savings clause is intended to be 'a restriction in a repealing act, which is intended to save rights, pending proceedings, penalties, etc., from the annihilation which would result from an unrestricted appeal.'" Because the law in question in Bryant was only an addition to the statutory scheme that deals with the prosecution and punishment of sexual offenders, the court found that the new statute did not repeal or amend any previously existing law and so the savings

clause did not prohibit the application of the new law. In the case at hand, the new Act does amend and repeal the old law

Likewise, the defendant incorrectly relies on State v. Stahlnecker, 386 S.C. 609, 690 S.E.2d 565 (2010). Stahlnecker does reference Bryant in discussing the procedural nature of the statute regarding videotaped testimony, but only addresses the question of whether allowing such testimony violates the *ex post facto* laws. The court found that it did not violate *ex post facto* laws. However, there is no application to the case at hand.

Therefore, not only did the Legislature intend that the Act be applied prospectively and not retroactively, there is case law on point in at least two cases of South Carolina courts stating that the statute is not to be applied retroactively. For these reasons, the two hour time limit should not be applied to the case at hand. The videotaping and breath test were completed within three hours and the results should be admitted and presented to the jury.

3. Completed Breath Test within Two Hours of Arrest

Even if the Court finds that the two hour time limit should be applied to the case at hand, the actual time of arrest was within two hours of the breath testing of the defendant. Pursuant to Section 56-5-2950 the defendant must be given a report which includes the times of arrest, date of arrest and time the test was given. SLED procedures provide for the time of arrest to either be entered as the time of violation or the time of arrest. Although the time of arrest should be independently documented and put into the computer, SLED allows the next most reasonable time to be entered which is the time of violation. Once the information is entered into the computer it cannot be changed and once the officer is in the DataMaster room, if he has not independently written down the time of the arrest, he has no way to retrieve it. The Court of

Appeals reasoned, "Based on our review of section 56-5-2950 as a whole, we find the purpose of the statute is to provide for reciprocal discovery between the State and a defendant as to the time and results of tests conducted to determine the presence of alcohol or drugs in the operator of a motor vehicle." State v. Bull, 350 S.C. 58, 62, 564 S.E.2d 351, 353 (Ct. App. 2002). In this case, the issue is the time of the blood test. The Court found that although the time provided was the time the blood was drawn and not the time of the test, it provided the defendant with the information he needed to rebut whether he was driving with intoxicants in his system. The time of violation provided by Officer Schmidt provides the same information. It is clearly the earliest time the stop began and gives a time most favorable to the defendant. Clearly, the violation time does not prejudice the defendant or "materially affect the accuracy or reliability of the test results or the fairness of the testing procedure." §56-5-2950. Implied consent to testing for alcohol or drugs; procedures; inference of DUI., Code 1976 § 56-5-2950. The statute provides for a written report which states the three times must be provided, however there is no procedure for amendments to that report. Clearly, the intent of the legislature was for the defendant to have written notice of these times prior to any hearing to ensure fairness to the defense. In this case, the defense had copies of all of the pertinent reports and videos reviewed by the State. It was only in a final review for the initial hearing, that it became obvious that the time of violation was not exactly the same as the time of arrest.

The defense argues that the time listed on the BAAt Reports, the uniform traffic citations, the collision report and the incident report all indicate the time of arrest. In fact, The Traffic Collision Report provides a written notice that law enforcement was notified at 2215 and the first officer arrived on scene at 2224. The tickets provide a violation time of 2215. The FR-10 provides a time of 2215 which Officer Schmidt testified was the violation time. The defense also

had a copy of the Officer's report and the video from the scene. The officer's report as well as numerous other documents indicate the defendant drove his truck away from the accident scene and returned on foot to the accident scene without the assistance of law enforcement. The defense argues that the arrest should begin as soon as the defendant felt he was not free to leave the scene. However, no reasonable person can argue that he is not free to leave the scene when he actually drives away from the scene of the collision. Therefore, the arrest could not begin at 2215. Officer Schmidt reports that when he arrived on scene he was directed to the defendant who was voluntarily standing with a crowd of onlookers. Officer Schmidt was the first officer to give direction to the defendant by asking him to move away from the crowd. Officer Schmidt then moved his car to begin the videotaping. Officer Schmidt testified that the time on the video recorder is set by a master computer and he does not have the ability to change the time. The time reflected on the system when he moved his car to videotape the defendant is 2241. When Officer Schmidt approached the defendant he asked him what happened, clearly beginning his traffic investigation. The case law is clear that although the suspect was detained for the purposes of a routine traffic investigation he was not under arrest.

Even taking the argument the defense is making and using their own authority, "measured from the first moment at which he was seized, as defined by the Fourth Amendment , and submitted to the authority of the police." Defense motion pg. 10 line 6. The State maintains that the time presented in the letter and stipulated on the record of 2247 is the time the defendant was told he was under arrest and was placed in handcuffs. However even in the light most favorable to the defense and according to its own authority, the arrest could not begin until the defendant had some contact with law enforcement. According to all of the documents and

videos provided by the State in discovery, this was no earlier than 2240 which is within two hours of completion of the breath test.

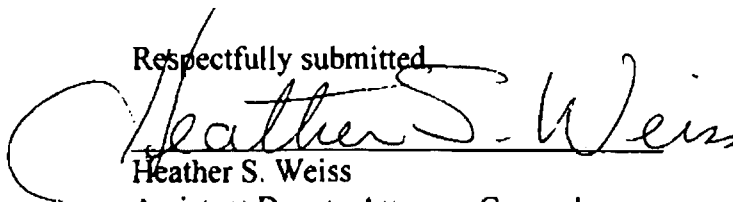
The letter from the State regarding time of arrest was provided prior to the hearing to provide written clarification. It was not meant to be evidence of the fact provided. The clear intent of the legislature is to provide written notice to the defendant. There is no way to change the information that was entered into the DataMaster, so the letter was to provide clarification of the testimony to be presented in the hearing and at trial. In fact, when the testimony of the time of arrest was to be presented, the defense stipulated to the video and the information contained therein. The defense also stipulated that the defendant was told he was under arrest at 2247. Most importantly, the defense argued that the test regarding time of arrest is when a reasonable man would believe he is not free to leave, and this cannot occur when the defendant has in fact left the scene and returns to observe without the assistance of law enforcement. Therefore, the arrest was within two hours of the completion of the breath test. The defendant was provided with a written report and written clarification of the time of arrest to be presented at trial which complies with the intent of the statute.

CONCLUSION

The BAC DataMaster was in proper working order at the time of arrest, as testified to by the State's witnesses. The 2009 DUI Amendment should not be applied retroactively to the case at hand. Even if the court finds the amendment should be applied retroactively, the testing falls

within the two hour limit from the time of arrest, and the results should be admitted into evidence.

Respectfully submitted,

A handwritten signature in dark ink, reading "Heather S. Weiss". The signature is fluid and cursive, with a large initial "H" and "W".

Heather S. Weiss
Assistant Deputy Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3693
Facsimile: (803) 253-4121
hweiss@scag.gov

Columbia, South Carolina
November 8, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

State of South Carolina,

vs.

Michael J. Hilton,

Defendant.

IN THE COURT OF GENERAL SESSIONS
FIFTEENTH JUDICIAL CIRCUIT

**DEFENDANT'S OBJECTIONS TO
STATE'S MEMORANDUM IN OPPOSITION
TO MOTION TO EXCLUDE EVIDENCE
AND MOTION TO STRIKE FACTUAL
ASSERTIONS SET FORTH THEREIN**

2008-GS-26-04056

2008-GS-26-04057

Defendant Michael J. Hilton files this motion objecting to a number of matters set forth in the State's Memorandum in Opposition to the Motion to Exclude Evidence, a copy of which was emailed to the undersigned on November 8, 2011. Defendant submits that the assertions of fact contained in the State's Memorandum have no support in the record. Defendant objects to the State's unsupported assertions and asks the Court to disregard and strike those portions of the Memorandum.

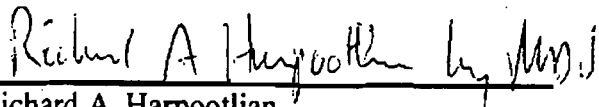
Beginning on the bottom of page one of its Memorandum and continuing on to page two, the State purports to recite a "Statement of Facts." The State's assertions contain a description of the accident, allegations that the Defendant turned in front of the decedent's vehicle and caused the accident, accusations that the Defendant left the scene, and a description of the Defendant's alleged interactions with the arresting officer shortly after the accident. Later, at page sixteen of the Memorandum, the State repeats some of these assertions and makes reference to the "officer's report," before going on to describe the Defendant's alleged conduct and as well as the actions of the arresting officer. However, the "officer's report" is clearly not admissible. See Rule 803(9), SCRE (in criminal cases records and reports of matters observed by police officers and other law enforcement personnel and investigative notes involving opinions, judgments, or

conclusions are not admissible). And although the State called the arresting officer to testify at the hearing, he did not testify to any of these highly prejudicial matters.

Defendant has never agreed to these "facts" by stipulation of counsel or otherwise. To the contrary, Defendant has consistently denied that he is guilty of these charges and he has insisted on his right to a jury trial, where the facts will be determined by his peers. None of the State's alleged "facts" surrounding the accident were presented at the October 25 hearing and none of them have any relevance to the pending motion to exclude the results of the DataMaster test. Defendant submits that the only reason the State included these allegations in its memorandum was to attempt to inflame the Court and to encourage a ruling based on unproven accusations instead of the letter of the law. Defendant vehemently objects to the State's tactics and respectfully asks the Court to refuse the State's invitation to prejudge the case.

A decision on the pending motion does not involve a determination of guilt or innocence. The State in its zeal ignores basic rules of evidence, and more egregiously, attempts to deny the Defendant his constitutional right to trial. Defendant respectfully asks the Court to confine its ruling on this motion to the evidence properly presented at the hearing and the relevant legal argument of counsel, and to disregard those substantial portions of State's Memorandum that go beyond those matters previously presented.

Respectfully submitted,


Richard A. Harpootlian
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848

Facsimile (803) 252-4810
rah@harpootlianlaw.com

ATTORNEY FOR DEFENDANT

Columbia, South Carolina

November 9, 2011.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2008-GS-26-04056, 04057

The State,)
Plaintiff,) Transcript of Record
vs.)
Michael J. Hilton,) October 25, 2011
Defendant.)

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

Heather Weiss, Esquire
Melissa Manning, Esquire
Attorneys for Plaintiff

Richard A. Harpootlian, Esquire
M. David Scott, Esquire
Attorneys for Defendant

Grace L. Hurley, CVR-CM
Circuit Court Reporter

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1 (On the record, October 25, 2011.)

2 THE COURT: All right, this is the case of the State
3 of South Carolina versus Michael J Hilton, case numbers 2008-
4 GS-26-4056 and 2008-GS-26-4057. The matter is before the
5 Court on a Defense motion to exclude evidence. Present at the
6 call of the case, Heather Weiss, Assistant Deputy Attorney
7 General representing the State, Richard A. Harpootlian as
8 Defendant's attorney. Does anybody else need to be identified
9 as counsel?

10 MR. HARPOOTLIAN: Your Honor, Mr. Hilton is present,
11 the Defendant is present in the courtroom.

12 THE COURT: All right.

13 MR. HARPOOTLIAN: And David Scott as co-counsel with
14 me, with my firm.

15 THE COURT: All right.

16 MS. WEISS: And Assistant Attorney General Melissa
17 Manning is co-counsel with me.

18 THE COURT: All right, all right, Mr. Harpootlian,
19 this is your motion?

20 MR. HARPOOTLIAN: Yes, sir.

21 THE COURT: All right.

22 MR. HARPOOTLIAN: If it please the Court.

23 THE COURT: Yes, sir.

24 MR. HARPOOTLIAN: Your Honor, let me for the record
25 state a couple of things. First of all, we have made a motion

1 to suppress the breathalyzer.

2 THE COURT: Okay, is that all we're talking about in
3 this motion hearing is the breathalyzer?

4 MR. HARPOOTLIAN: Yes, sir, that's all that we're
5 going to talk about in this, in this motion hearing, and
6 pursuant to the statute this is the proceeding in which Your
7 Honor will decide the admissibility of that breathalyzer.
8 Sometimes this is done at trial after jeopardy has attached.
9 Sometimes it's done pretrial, but for purposes of this record
10 we are proceeding at this time.

11 THE COURT: All right, let me ask you this, as far as
12 the standard on the Court or the Court's prerogative, is this
13 like a motion in limine where it can be denied at this point
14 in time but then raised again at trial or how ---

15 MR. HARPOOTLIAN: Well, Your Honor, if facts were
16 developed at trial that are contrary to what we hear today
17 obviously, yes.

18 THE COURT: Okay.

19 MR. HARPOOTLIAN: You could be, but if Your Honor were
20 to rule for the Defendant I'm sure that the Prosecution would
21 appeal it and then we'd be on an appellant.

22 THE COURT: And then we'd go on that way.

23 MR. HARPOOTLIAN: So, it'll go on. If you deny it,
24 then we would obviously renew it again at trial for the
25 record, which we'd have to do.

1 THE COURT: Okay.

2 MR. HARPOOTLIAN: And renew it again at the
3 appropriate times and renew it - used to be you could make it
4 once and it covered everything but now the Supreme Court
5 requires you to renew, renew, renew and renew.

6 THE COURT: All right, sounds good.

7 MR. HARPOOTLIAN: Your Honor, let me hand up to the
8 Court a copy of a memorandum that we prepared and I'll be
9 happy to - let me do this to do this right. You want one?

10 MS. WEISS: Yes, please.

11 MR. HARPOOTLIAN: Okay.

12 MS. WEISS: Thank you.

13 MR. HARPOOTLIAN: What I'd like to do is file with the
14 clerk an original. Is there a clerk here today?

15 THE COURT: All right, yes.

16 MR. HARPOOTLIAN: Okay, great, thank you.

17 THE COURT: Now, this is, this is an Horry County
18 case. So, how do we want to handle that? You might want to
19 just retain it and ---

20 MR. HARPOOTLIAN: You know what ---

21 THE COURT: --- will mark, either mark it as an
22 exhibit for this hearing or go ahead and submit it to the
23 Horry County Clerk on your own, however you want to.

24 MR. HARPOOTLIAN: Let me do this, if you will for the
25 purpose of the record, you note that the memorandum that's

1 being submitted here is one, we'll take it over and file it in
2 Horry today so it'll be part of the record.

3 THE COURT: All right, that'll be good. All right,
4 thank you.

5 MR. HARPOOTLIAN: But Your Honor, if you would - never
6 mind, I'll go ahead and file this.

7 THE COURT: Okay, sounds good, thank you.

8 MR. HARPOOTLIAN: Let me say that the bulk of what we
9 will deal with today are legal arguments. However, there has
10 to be a factual basis established, and we have attached to our
11 memorandum certain documents which I believe will be - let me
12 have Ms. Weiss look at Exhibits A through E that are attached,
13 and if she will stipulate as to the authenticity of those we
14 won't have to call a bunch of witnesses.

15 THE COURT: All right, Ms. Weiss, I know you just got
16 it. Do you need some time to look over it? I'll give you
17 some time if you want to.

18 MR. HARPOOTLIAN: Well, I can tell her what they, I
19 can tell her what they are and there are documents that were
20 given to us by, by her. So, I don't think she'll have any
21 objection. Your Honor, Exhibit A is a DataMaster report,
22 Breath Alcohol Analysis Test Report. B is, actually those are
23 all the test reports. There are four of them. B is the
24 uniform traffic ticket. C is the FR-10. D is the accident
25 report and E is the letter she submitted to the Court at the

1 last hearing.

2 THE COURT: All right. All right, Ms. Weiss, you
3 need some additional time to look over these?

4 MS. WEISS: Your Honor, it's not the attachments I'm
5 as concerned about. It's just having the opportunity to read
6 this memorandum before we begin so that I can know what it is
7 we're talking about, if I may have just - thanks.

8 THE COURT: Okay, all right, we can do ---

9 MS. WEISS: Ten minutes will probably give me long
10 enough to at least read it just to know what we're talking
11 about today.

12 THE COURT: All right, all right, let's take about 10
13 minutes, let her look over your memorandum. If you want the
14 Court to consider it then I'm going to give her an opportunity
15 to read over it. Okay?

16 MR. HARPOOTLIAN: So, ambush, ambush doesn't work in
17 Georgetown anymore?

18 THE COURT: All right, so, let's ---

19 MR. HARPOOTLIAN: I'm sorry, Your Honor. I was
20 brought up on the, the theory of ambush. I apologize.

21 THE COURT: That's fine, all right, let's take about
22 a 10 minute break and then we'll come back and get started.

23 MR. HARPOOTLIAN: Thank, Your Honor.

24 THE COURT: Okay.

25 MS. WEISS: Thank you, Your Honor.

1 THE COURT: Thank you.

2 OFF THE RECORD

3 (On the record.)

4 THE COURT: All right, let's go back on the record,
5 State versus Hilton, 2008-GS-26-4056 and 4057. Before the
6 Court is a motion to exclude evidence. All right, Ms. Weiss,
7 have you had an opportunity to look over the memorandum?

8 MS. WEISS: Yes, Your Honor, I have.

9 THE COURT: All right.

10 MS. WEISS: I am now familiar with at least what Mr.
11 Harpootlian is intending to offer and I do not object to the
12 exhibits that he has attached to the end of this memorandum
13 for the purposes of this hearing.

14 THE COURT: All right, do we want to go ahead and add
15 those, put those as evidence in the record?

16 MR. HARPOOTLIAN: Yes, sir, yes, sir, I do.

17 THE COURT: All right, and do you want them just
18 marked as Exhibits A, B, C, D and E?

19 MR. HARPOOTLIAN: Yes, sir.

20 THE COURT: All right, since you ---

21 MR. HARPOOTLIAN: I already have them marked.

22 THE COURT: All right, you've already got them
23 marked. All right, so, that would be Defense Exhibits A, B,
24 C, D and E are admitted into evidence without objection.

25 MR. HARPOOTLIAN: Yes, sir.

1 (Defense Exhibits A, B, C, D and E admitted into evidence
2 and appropriately marked.)

3 THE COURT: All right, Mr. Harpootlian.

4 MR. HARPOOTLIAN: If it please the Court, Your Honor,
5 this first part is, is primarily a legal argument based on the
6 uncontested facts and those are the documents that appear
7 before you. The statute, I think we both can agree, at the
8 time that Mr. Hilton was arrested did not require a
9 breathalyzer test to be had within two hours of arrest.
10 Within the year of his arrest it was changed to require a
11 breathalyzer test within two years - within two hours of the
12 arrest, and if not, if it was not within two hours the results
13 were inadmissible. Now, I want to hand up to the Court, let
14 me make sure, right, a and I'll give to the Solicitor a copy
15 of - this is the act that changed the law, and I will rather
16 than have you wade through it I've highlighted on both the
17 Solicitor's copy and your copy page three of this act, and as
18 you know, Your Honor, these acts are rambling, sort of almost
19 - they appear to be sometimes stream of consciousness, but
20 this particular part says, "To amend Section 56-5-2950
21 relating to a driver's implied consent to testing for alcohol
22 or drugs, so as to make technical changes, to provide that
23 when - to provide when breath tests must be collected under
24 this provision, to delete the provision that provides that an
25 officer may not require additional tests for a person under

1 certain circumstances, to delete the term Department of Public
2 Safety and replace it with the term South Carolina Criminal
3 Procedure Academy, to revise the provisions to provide the
4 procedures," and the important word here, Your Honor, is
5 procedure and I'll explain why in just a moment. "The
6 procedures for administering breath tests or obtaining
7 samples, to revise the information that a person charged with
8 violating this provision must be given, to provide the
9 circumstances in which a person may pay for the cost of
10 tests," etcetera, but this act is clear that the change in the
11 law was procedural and, Your Honor, we're going to argue and
12 we believe we're correct and we believe the Supreme Court has
13 already affirmed the same issue in the Frey case that a change
14 in procedural law is retroactive and I'm going to hand up to
15 the Court a copy of State versus Frey. There are three cases.

16 MS. WEISS: May I have a copy?

17 MR. HARPOOTLIAN: Yeah, he's getting them for you
18 right now.

19 There are three cases, Frey, Stahlnecker and Bryant, and
20 State versus Frey, Your Honor, is a case involving,
21 coincidentally, a change in the way samples, these were blood
22 samples were drawn in a DUI case and it was amended, the same
23 statute, 56-5-2950, was amended and changed so that a certain
24 - that you had to - so, show a certain procedure in drawing
25 the blood. I want to make sure that I quote this correctly.

1 The - let me find the part right here that spells out the
2 change. Okay, the statute requires that blood samples be
3 collected by qualified medical personnel. Blood and urine
4 samples must be obtained by physicians licensed by the State
5 Board of Medical Examiners, registered nurses licensed by the
6 State Board of Nursing and other medical personnel trained to
7 obtain the samples in a licensed medical facility. Now, that
8 was added. That was added after Frey was arrested and
9 charged.

10 THE COURT: All right.

11 MR. HARPOOTLIAN: Just as in this case, the two-hour
12 limit was added after the Defendant was arrested and charged
13 and the Supreme Court said in this case, in Frey, I'm sorry,
14 the Court of Appeals, Judge Kittredge writing for the Court of
15 Appeals, that since it was a procedural change it was
16 applicable to arrest, it was retroactive. It was applicable to
17 arrest that occurred prior to the Defendant's, prior to the
18 passage of the statute. So, I think it's on point foursquare
19 and they actually remanded the case back to the trial court to
20 see if, in fact, this procedure had been followed because the
21 record wasn't developed, that the Defendant took the position
22 that they had not met this requirement, the judge excluded or
23 said, "I'm not going to apply that statute because that wasn't
24 in effect at the time he was arrested," it went to the Court
25 of Appeals. They reversed, remanded it back for factual a

1 determination to see if the new statute had been complied
2 with. There was no cert granted by the Supreme Court. So,
3 this is, as far as we know, still good law and exactly, on
4 exactly the same statute we're talking about here today,
5 exactly the same, exactly the same statute.

6 Now, in addition, we've cited to you the Bryant case
7 which is a statutory amendment allowing the admission of
8 videotaped interviews of child abuse victims, applied
9 retroactively again. We've handed you that case in a criminal
10 sexual conduct trial, and the Stahlnecker case and that was a
11 retroactive application of allowing out-of-court statements of
12 children under 12 to be admitted at trial under certain
13 circumstances. So, we have one case - all these cases say if
14 it's procedural it's retroactive. One case, the Frey case, is
15 directly on the same statute and I would submit basically the
16 same - it's a procedure which requires a medical person to
17 draw, draw the blood sample. In this case there's a two-hour
18 limit put on it. So, they're exactly the same. Now, in
19 addition to all that if Your Honor and, and, you know, I'd be
20 happy to argue this more in a moment in terms of the legal
21 piece on it, but then we come up to the question and the
22 Solicitor raised this, the Attorney General raised this by
23 giving us a letter at the last hearing. If you will look at
24 Exhibits A - well, it's A, A is the DataMaster tickets; right?
25 The DataMaster tickets at the top of - where are they? Okay,

1 the, the top of those - at the top of every one of those
2 DataMaster tickets it says report, report, report, report.
3 Now, why is that important? Because on that report is a time
4 of arrest, every one of them, time of arrest 22-15, 10-15.
5 Now, the statute requires that the Defendant be given a
6 report, not - it says 56-5-2950(I) provides, "A person
7 required to submit to tests by the arresting law enforcement
8 officer must be provided with a written report including the
9 time of arrest, the time of the tests, the results of the
10 tests before any trial or other proceeding in which the
11 results of the tests are used as evidence." Now, we are in
12 that other proceeding today. The only reports we've been
13 given are those four DataMaster reports. That's the only.

14 THE COURT: All right, what was the statute you were
15 reading from?

16 MR. HARPOOTLIAN: 56-5-2950(I).

17 THE COURT: All right, okay.

18 MR. HARPOOTLIAN: Yes, sir. It used to be in part D
19 in the previous statute.

20 THE COURT: Okay, I see what you're saying now.

21 MR. HARPOOTLIAN: And it's, and it's I now.

22 THE COURT: All right, go ahead.

23 MR. HARPOOTLIAN: So, the Solicitor attempted to, I
24 guess, either supplement the report or create a new report.
25 I'm not quite sure what that letter is but it is not, not a

1 report. It doesn't comply with the statute. It doesn't say
2 reports. It says a report and the only report, and by the
3 way, her letter is based on her looking at a videotape, and if
4 the officer comes up here and testifies today, "I didn't
5 arrest him at 10-15," that's not good enough. We have to -
6 for you to admit this you have to - we have to have been given
7 a report, not told here today the report was wrong, the
8 report, and that's what it says, and the report, the only
9 report we have, and by the way the reason there are four in
10 there is the first time they ran the breathalyzer the
11 simulator solution didn't read correctly. It malfunctioned,
12 the machine did. The second time they did it it
13 malfunctioned. The third time they did it it malfunctioned.
14 They changed the simulator solution and they say the fourth
15 result is correct, and in a minute we're going to address the
16 malfunctioning of the machine and the unreliability of the
17 machine, but before you ever get to that, Judge, the question
18 is, A, is the statute retroactive, and we think Frey is
19 directly on the money, and B, is what - is - the report says
20 22-15 and there's no question if you look at the last one that
21 the test is more than two hours after the results are gotten,
22 more than two hours after the arrest. It's like two hours and
23 15 or 20 minutes.

24 THE COURT: And prior to the amendment there was just
25 no time limit?

1 MR. HARPOOTLIAN: Well, there was - it was a time
2 limit, this is interesting, there was a time limit on the per
3 se violation.

4 THE COURT: Okay.

5 MR. HARPOOTLIAN: You know, the 0-8 per se.

6 THE COURT: Right.

7 MR. HARPOOTLIAN: But not on, which is I think
8 somebody in the legislature figured out that if the machines
9 were, if, if the reliability of that result is not good enough
10 for a per se violation after two hours, why would it be good
11 for a DUI violation. So, they changed it, and we believe
12 rightly termed it a procedural change making it retroactive.
13 So, the statute is retroactive and that the only report we
14 have says two hours and I don't - I would submit to the Court
15 what the video says, what the officer says, what any other
16 extraneous outside this report evidence the State introduces
17 is not competent evidence for purposes of this statute because
18 we're entitled to a report.

19 THE COURT: All right.

20 MR. HARPOOTLIAN: Okay, now, let me and also I want to
21 point out that the, I want to point out one other thing. We
22 have argued in here that, that - there's an argument that the
23 minute he was not free to leave constitutes an arrest. I
24 don't think we need to reach that today. It's in the
25 memorandum. We're going to rely on it, but I really don't

1 want have to go through the argument of the, of the - when,
2 when the point of arrest occurs. There's some cases that
3 indicate that the field sobriety tests don't constitute a
4 custodial arrest. There are other cases that indicate when
5 the Defendant's freedom to leave is affected that's an arrest,
6 but we don't have to get there. I just threw that in just in
7 case Your Honor wanted it. There are two issues, what's the
8 time of arrest on the report as required by the statute, and
9 B, well, what's the time of arrest, what's the time of the
10 test and is it more than two hours, and if it is is the
11 statute a procedural one that makes it retroactive. So, that,
12 that is the first part of our argument.

13 THE COURT: All right, sir.

14 MR. HARPOOTLIAN: Now, the second part of the
15 argument, Your Honor, goes to the reliability of this machine,
16 and I'm going to call a witness on that, but by way of summary
17 this machine was put into service in 1991.

18 THE COURT: And I was reading your memorandum. When
19 you say this machine are you talking about this particular
20 machine or this model of machine?

21 MR. HARPOOTLIAN: This particular machine.

22 THE COURT: Okay, all right, I got you.

23 MR. HARPOOTLIAN: It would be as if I were talking
24 about this screen, this screen has been here since 1991.

25 THE COURT: All right.

1 MR. HARPOOTLIAN: That machine, that serial number on
2 that machine since 1991, and as Your Honor knows this is 2008
3 when this happened. So, that's 17 years for this machine to
4 be - and by the way, not long after this incident this machine
5 was taken out of service and we're going to talk a little bit
6 about that, but first of all, I'd like to call William Brewer
7 to the stand. I've got a copy of his CV, and I'd like to put
8 him - Mr. Brewer, go ahead and take the stand, please.

9 Whereupon, William Edward Brewer was called to the stand,
10 duly sworn by the clerk and testified as follows:

11 THE CLERK: Thank you. Please be seated and state
12 your name for the record.

13 MR. BREWER: My name is William Edward Brewer, B-R-E-W-
14 E-R.

15 DIRECT EXAMINATION

16 BY MR. HARPOOTLIAN:

17 Q Okay, is it Dr. Brewer?

18 A Yes, sir.

19 Q You have a PhD?

20 A Correct.

21 Q Tell the Court, please, your educational background.

22 A I have a bachelor's of science degree in chemistry from
23 North Carolina State University and a PhD in chemistry from
24 the University of South Carolina.

25 Q And your employment history, please.

1 A Upon graduation I worked at the University of Louisville
2 as a chemistry instructor for one year. I took a 10-month
3 appointment and then joined South Carolina Law Enforcement
4 Division as a forensic toxicologist. I worked there for six
5 and a half years. I left there and took a job as veterinary
6 toxicologist for Clemson University, the Veterinary Diagnostic
7 Center in Columbia, and then I took a job full time with the
8 University of South Carolina in the Department of Chemistry
9 and Biochemistry where I teach forensic chemistry and
10 analytical and physical chemistry labs.

11 Q Correct, now, let's go back to your stint with SLED, the
12 South Carolina Law Enforcement Division, what did you do for
13 them?

14 A I was a forensic toxicologist.

15 Q And you worked in their lab?

16 A Correct, I analyzed blood and urine, biological
17 specimens for the presence and quantitation of drugs and
18 metabolites.

19 Q And as such were you ever - did you ever testify in
20 court?

21 A Yes, sir.

22 Q Were you ever qualified as an expert in the area of
23 analyzing blood tissue samples using scientific means?

24 A Yes, sir.

25 Q And in state court?

1 A Yes, sir.

2 Q On how many occasions?

3 A Over 30 I'm sure.

4 Q Okay, in the courts of this state?

5 A Correct.

6 Q Now, you have a degree in chemistry and your PhD is in
7 what?

8 A In chemistry.

9 Q In chemistry and your undergraduate degree is in?

10 A Chemistry.

11 Q And as a toxicologist do you use instruments?

12 A Yes, sir.

13 Q Are you trained to be - to use those instruments?

14 A Yes, sir.

15 Q Like give me an example what you would use.

16 A The instruments in forensic toxicology laboratory gas
17 chromatography instruments, that includes gas chromatographs
18 with flame ionization detectors also with mass spectrometers,
19 HPLC, high performance liquid chromatographs.

20 Q Slow down just a little bit. I think the court reporter
21 may not be getting all this.

22 A Yeah, I'm sorry.

23 Q Okay, what, what else?

24 A Immunoassay instruments as well, we use the fluorescence
25 polarization immunoassay instrument when I worked there, also

1 did a little bit of metals testing but that was very
2 infrequent.

3 Q Now, in the process of using these machines do you or
4 the personnel at SLED calibrate these machines or test their,
5 their accuracy and reliability or somebody from outside do
6 that?

7 A We do.

8 Q And tell the Court, please, what you mean by
9 calibration?

10 A Well, a calibration is an analytical instrument. It's
11 electronic in nature and it gives electronic readouts. We
12 have to determine a response, we'll call that a response,
13 determine what the response is, how that relates to a
14 concentration; and so, when you're talking about calibrating
15 an instrument typically you're running multiple concentrations
16 of an analyte that you're trying to target, in this case let's
17 say ethanol, and you're running that at known concentrations
18 to determine what the response is of the instrument.

19 Q Okay, and are you familiar with how the DataMaster works
20 ---

21 A Yes, sir.

22 Q --- the chemistry of it and the technology of it?

23 A Yes, sir, I'm very, very familiar with the technology.

24 Q And why are you very familiar with it?

25 A My PhD, half of my PhD was in infrared spectroscopy

1 which is what ---

2 Q I'm sorry, what?

3 A Infrared spectroscopy is what the DataMaster is based
4 on.

5 Q And what is that ---

6 A It's ---

7 Q --- and I would appreciate it if you use words with less
8 than four syllables for the court reporter and I, actually
9 it's more important for her than me, but that we'll both
10 understand what you're talking about.

11 A Yeah, infrared light is or can be absorbed by molecules
12 in any material, in any chemical material. Most chemical
13 materials will absorb infrared light and the wavelengths of
14 light that are absorbed are dictated by the chemical structure
15 of that molecule or that chemical compound.

16 Q So, in a - any one of these like a DataMaster, anything
17 that uses that technology in simplistic terms let me see if I
18 can cut to the chase on this because I finally understood it,
19 a known light source, infrared light source is put through a
20 known sample; right?

21 A Correct.

22 Q And the amount of light that gets through that indicates
23 the concentration of alcohol?

24 A Yes.

25 Q Okay, and then you have the unknown sample either blood

1 or breath or something that again light would go through;
2 correct?

3 A Correct.

4 Q And then depending on the strength of the light there's
5 a formula that would then compute that into the relative
6 strengths, this is a known .10 for the sake of argument and
7 this - only half the light gets through this it is half as
8 this, and I'm - this is very simplistic now.

9 A Sure.

10 Q We're going to get a little more technical in a minute,
11 then you might assume all things, other things being equal
12 that this is a 20 rather than a 10?

13 A Yes, very simplistic terms that's correct.

14 Q Okay, we're going to talk about ---

15 A Yeah.

16 Q --- why that doesn't work totally in a moment but
17 that's, that's - it's how much light gets through; right?

18 A Yes, in simplistic terms, that's correct.

19 Q Well, we're going to be talking in simplistic terms
20 because I'm going to be doing - asking the questions and I'm
21 not sure I understand all of this but you have an expertise in
22 this area, you've studied this area. Have you testified about
23 this area previously?

24 A Not this specific area in terms of calibrations of a
25 DataMaster.

1 Q The data, DataMaster.

2 A --- but in general terms, yes, absolutely.

3 Q General terms on this, what's this area called again?

4 A Analytical chemistry.

5 Q And the specific, the light when you - you had a word
6 for it?

7 A Infrared light source, is that?

8 Q Yeah, but I mean spec, spec ---

9 A Spectroscopy.

10 Q Yeah, have you testified about that before?

11 A Yes, I have.

12 Q On how many occasions?

13 A Well, about spectroscopy in particular maybe just a
14 handful of times about spectroscopy.

15 Q Have you been qualified as an expert in that area by the
16 court?

17 A Yes, sir.

18 Q On a number of occasions?

19 A Yes, sir.

20 MR. HARPOOTLIAN: Your Honor, I would move to have this
21 witness qualified as an expert in the - and I can't pronounce
22 it - spec, spec, say it again.

23 A Spectroscopy.

24 MS. WEISS: Your Honor, without objection.

25 THE COURT: All right, I find this witness for the

1 purposes of this hearing qualified as an expert in the field
2 of spectroscopy.

3 MR. HARPOOTLIAN: And Your Honor, I want to - I've
4 given the Solicitor, Attorney General a copy of his vitae.
5 I'd like to put one into evidence and give you one.

6 THE COURT: I think you've already given me one.

7 MR. HARPOOTLIAN: Okay.

8 THE COURT: All right.

9 MR. HARPOOTLIAN: All right.

10 THE COURT: So, that'll be Defendant's Exhibit - what
11 do we want to put it?

12 REPORTER: F.

13 THE COURT: F, all right, it's Defendant's Exhibit F
14 admitted into evidence.

15 (Defense Exhibit Number F admitted into evidence and
16 appropriately marked.)

17 BY MR. HARPOOTLIAN:

18 Q Okay, now, I'm going to ask you about some opinions -
19 well, first of all, I'm going to ask you have you had a chance
20 to examine data concerning this machine?

21 A I have.

22 Q Now, the judge asked a question. There is a specific
23 databank for this specific machine?

24 A Yes, sir.

25 Q And is that online?

1 A It is.

2 MR. HARPOOTLIAN: And any objection to him testifying
3 concerning the online data?

4 MS. WEISS: No.

5 MR. HARPOOTLIAN: I mean, I - I mean, we all agree it
6 is what it is.

7 MS. WEISS: It is what it is, yeah.

8 MR. HARPOOTLIAN: Okay.

9 BY MR. HARPOOTLIAN:

10 Q And as a result of examining that data do you have an
11 opinion as to - to a degree of scientific certainty as to
12 whether or not the machine's reading in this case was reliable
13 or not reliable? First of all, do you have an opinion?

14 A I do have an opinion.

15 Q And that opinion is reliable or unreliable?

16 A Unreliable.

17 Q Okay, now, we're going to walk you through that. I just
18 wanted to get that out of the way. Now, first of all, do you
19 have - did you look at the statistical data on the - well, let
20 me back up a little bit. Maybe, maybe the best way we can do
21 it is this to start off with - I brought a - can't have a
22 professor without a chart, and okay, I'd like you to step down
23 here for a second and sort of draw out how an instrument like
24 the DataMaster works, just a rough sketch so the Judge gets an
25 idea and what I'd ask you to do is stand over here. I know .

1 that's tough.

2 A I'm right handed.

3 Q But, I don't want you - well, I know but I don't want you
4 between you and the judge.

5 A Right.

6 Q Would it be better if we put it over here?

7 A Yeah, it may be easier.

8 Q Okay, let's do that.

9 THE COURT: Okay, all right.

10 Q Does this make it easier for you to stand over there now
11 or stand over - no, wait, you just want to stand here.

12 A I'll stay.

13 Q Okay, there you go. Then you've got your back to us.

14 A I can, I can move out of the way as I write on here.
15 Instead of going through the theory of the absorption of light
16 you want me just to talk about calibration itself.

17 Q Well, I want you first of all to explain how it works so
18 then you can explain the calibration.

19 A Well, okay, how it works basically it's monitoring
20 infrared light at a specific wavelength.

21 Q And if you have a - and it's a simplistic solution?

22 A Yeah, okay.

23 Q You got one light source, two?

24 A Yeah, you have a light source it's filtered and then
25 that light source ethanol absorbs frequencies of that light.

1 Okay, it's not really truly monochromatic, meaning it's one
2 wavelength, but it's a band of wavelengths that pass through.
3 Ethanol absorbs that light. All it's doing is detecting, the
4 detective response it's monitoring the absorption of that
5 light. In simplistic terms that's all it's doing. It's
6 monitoring absorption of that light, okay, and so, initially
7 when the instrument is installed, when they first install it
8 they do a multipoint calibration to ensure that it's accurate
9 through a range.

10 Q Now, explain what a multipoint calibration is.

11 A Multipoint calibration is a run, in this particular case
12 they're required I think by statute or by their own
13 regulations to run three different concentrations of ethanol.
14 They're at a .049 percent, .10 percent and a .20 percent.

15 Q Okay, now, explain to the Court the theory behind doing
16 a multipoint calibration.

17 A Yeah, the basis of doing a multipoint calibration and if
18 I will I'm going to ---

19 Q Well, let me - strike that. Okay, so, what was the first
20 number they ran, they would run?

21 A I have the records over there but I believe it's a .049
22 percent.

23 Q Okay.

24 A Or maybe it's .05, zero percent.

25 Q Well, let's just assume for our argument right here it's

1 a .05.

2 A Okay.

3 Q Well, if, if it reads correctly, you put in a known
4 solution of 05 and another known solution of 05 and it reads
5 at the - that the - the unknown or the one, the second one you
6 put in is 05, why not stop? You've got, I mean, you've got -
7 it's reading correctly; isn't it?

8 A It's only reading correctly for that one concentration
9 only.

10 Q Well, why wouldn't it be ---

11 MS. WEISS: Objection, Your Honor. I know we're not
12 in front of a jury but the Defense is testifying for the
13 witness. I'd ask that he ---

14 THE COURT: Overruled, I'm going to allow.

15 MR. HARPOOTLIAN: Okay.

16 THE COURT: He asked him why. I'm going to allow the
17 questioning. Go ahead.

18 MR. HARPOOTLIAN: Thank you, Your Honor.

19 BY MR. HARPOOTLIAN:

20 Q So, but it's read 05. Why - and I think the term is
21 linear, why is it not linear, why doesn't, why wouldn't it
22 show a ten being a ten and a 15 being a 15 and a 20 being a
23 20? Why isn't it linear?

24 A It could, it may be linear, it may not be. There's only
25 one way to determine if it's linear, the response is linear.

1 What we mean by a linear response is that you have a response
2 what he's saying for 05, you would expect a response to be
3 twice that for a .10 or in this case we're really talking
4 about absorption. You would expect half the intensity of
5 light to strike the detector if it's twice the concentration
6 of ethanol that's present. That could be the case but not
7 necessarily.

8 Q Well, why could it not be the case?

9 A Because it - the response of the detector is not
10 necessarily linear throughout the range. There's limitations
11 of any analytical instrument. Every analytical instrument
12 has limitations.

13 Q So, how about by graph and we've talked about this
14 before, explain to the Judge as you've explained it to me
15 yesterday or last week or whenever.

16 A And I'm plotting absorbance, absorption of light and
17 this could be a detective response. It doesn't really matter
18 what the analytical instrument is itself, and if I plot it
19 versus concentration, okay, if I run a zero percent like blank
20 air you get a zero response or run. Let's keep the numbers
21 kind of simple here, 05, .015 and .20. Ideally if these
22 concentrations are linear, what you wind up with is a
23 response, the 05 gives you this absorbance, then 10 would be
24 twice that, 15 would be three times that value and .20 would
25 be four times that value and then if you look at your

1 calibration plot itself what you're doing is you're doing a
2 linear, what's called a linear least squares. So, basically
3 the best fit of a linear line through those points is your
4 calibration plot.

5 Q Now, why wouldn't that on the DataMaster or any
6 analytical instrument, why would that not be, or specifically
7 the DataMaster why would that not necessarily be true if they
8 ran that .05 and got the result they, you know, the .05.

9 What, what circumstances, what factors would come into play?

10 A Well, if it - if the detective response is still
11 behaving linearly, the instrument or machine is still behaving
12 linearly then, then that could be the case.

13 Q But why would it not be behaving linearly?

14 A Okay, well, true calibration plots because there's
15 limitations can never - there's always a limited detection as
16 an example. I mean, there's always error with every analysis.
17 Every analysis always has some error; and so, in true
18 calibrations when you look down in the lower region where you
19 have limits of detection you actually don't - you have a zero
20 response for a while until you're above an area where you
21 actually get a response. So, a true calibration plot would
22 actually look more like this and after a while it actually
23 will plateau off on a high end and what happens with this
24 particular, any, any particular DataMaster initially you're
25 looking at a linear calibration range when they first install

1 the instrument but over time the detective response becomes
2 weaker, if the light intensity changes, if there's something
3 present in the light tube itself, any factor, even electronic,
4 even room temperature, room temperature can effect the
5 detective response, any of those things can factor in to a
6 situation where your lowest calibrator, let's say, may fall
7 into question. That becomes an issue - the only way you know
8 for certain is to run a higher calibrator to see how accurate
9 it is for the higher calibrator to know that for certain.

10 Q Now, when this machine was put into service in 1991,
11 you've looked at the records, was there a multipoint
12 calibration done?

13 A There was.

14 Q Required by SLED?

15 A That's correct.

16 Q Now, is there a, is there a calibration required by
17 their policies and procedures on an annual basis?

18 A I don't know if it's an annual basis, but they do have a
19 requirement to - for calibrations.

20 Q And when you, when you run the breathalyzer test, when
21 you actually or data, I'm from the old time, the DataMaster
22 test, and they're using a simulator solution that's a .08 for
23 the sake of argument does it have to read exactly .08?

24 A It's plus or minus five percent I believe is the range
25 that they have.

1 Q So, even when they get this one - when they do one point
2 it's plus or minus five percent?

3 A That's correct, there's a - we'll call it an error bar
4 right here.

5 Q Okay.

6 A Okay, and so, what, when you do a multipoint calibration
7 you're actually ensuring that the slope of this line is
8 accurate all the way throughout the calibration range, okay.

9 Q Because the first one may read minus five percent;
10 right?

11 A Yes.

12 Q And then if you didn't know it this other one might
13 read?

14 A Plus five.

15 Q Plus five or whatever, but if it was reading for
16 instance this line then a lower alcohol reading, I mean, an
17 actual lower alcohol reading would read higher on the
18 DataMaster?

19 A You don't happen to have a meter stick or anything like
20 that; do you?

21 Q No, no, we're not going to draw any straight lines here
22 today.

23 A Anyway, just - the reason for doing multipoint also is
24 to ensure that if you're looking at a single data point and
25 let's say it's at the low end on the calibrator if you take

1 that slope, that slope or that line and this is exaggerated
2 for visual, if you take the lower end of that slope that slope
3 is much different than the slope that's linearly square or the
4 best fit. That slope at the lowest end is going to be
5 different than the best fit slope, and why is that important
6 because if you look at an absorption reading in this scenario
7 and somebody blows, let's say, let's say they blow a .10
8 percent and it's based on this calibration, on this
9 calibration in reality based on the best least fit they could
10 have blown a .07, just as an example. I'm just doing an
11 exaggerated example here. So, when they recalibrate using a
12 single data point that's not a good calibration, and as a
13 matter of a fact when I worked at South Carolina Law
14 Enforcement Division in the toxicology lab I don't believe
15 we've ever used a single point calibration on any instrument
16 that we used in that lab to the best of my knowledge.

17 Q Go ahead and take the stand. I want to go through a
18 couple of things with you. Now, again, you just mentioned the
19 SLED lab. You've talked about a number of pieces of equipment
20 that had to be - that you wanted to check the calibration on
21 to make sure they're accurate; is that right?

22 A Correct.

23 Q And on any of those machines do you use a single point
24 calibration?

25 A I've never, I've never used a single point calibration

1 for anything that was reported out except maybe for research
2 purposes only.

3 Q Now, when you say reported out what does that mean?

4 A Well, what I mean is I would never publish any, any data
5 that required or that used a single point calibration. I
6 would never, if I worked at South Carolina Law Enforcement
7 Division, I would never report a case result, a case report
8 that's, that's of judicial value using a single point
9 calibration.

10 Q You'd calibrate the machine before you ran the test?

11 A As a matter of a fact, when we ran these analyses, and
12 of course it's a little bit different with the
13 instrumentation, we ran quality control samples and
14 calibrators with every batch of samples that we ran.

15 Q So, you calibrated it every time, multipoint
16 calibrations?

17 A Yeah, but it - that may be a little exaggerated in this
18 scenario for breath testing purposes. I would say at a
19 minimum a quality control sample should probably be used at a
20 high standard to ensure that the instrument is behaving
21 linearly.

22 Q What does that mean? Tell me what you just said, what
23 that means.

24 A In this, in this particular case the law changed I guess
25 sometime in the early 2000 to where you now have a .15

1 percent and where a .15 percent if you blow a .15 or higher
2 you lose your driver's license. I would say at that point
3 they should be instigating a .15 standard to ensure that the
4 .15 is accurate and it should be accurate within plus or minus
5 five percent just like the .08 standard is.

6 Q Let me hand you this document and ask you to identify
7 it, please. Can you identify that?

8 A Yes, I can.

9 Q Okay, let me show this to the Prosecutor.

10 MS. WEISS: No objection, Your Honor.

11 THE COURT: All right.

12 MR. HARPOOTLIAN: Can I have this marked, please?

13 THE COURT: All right, so, this would be Defendant's
14 Exhibit G admitted without objection.

15 (Defense Exhibit G admitted into evidence and
16 appropriately marked.)

17 BY MR. HARPOOTLIAN:

18 Q Tell me what this document is, please.

19 A This is a - what's called a status record for the breath
20 testing instrument, the machine that we're talking about here
21 that's in question.

22 Q And so, is this record created automatically every time
23 they run a test?

24 A I believe this is created, this particular one and a
25 better suited person to answer that question would be somebody

1 from implied consent, but based on what I'm seeing it's based
2 on their failure status records.

3 Q Right, but I mean, it's ---

4 A What it's showing is reports when if ---

5 Q My question is it's electronically generated by the
6 machine ---

7 A Yes.

8 Q --- to a central data place; right?

9 A Yes, sir.

10 Q Okay, so, have you had a chance to review that document?

11 A I have.

12 Q And is that a report on the machine that was used in Mr.
13 Hilton's case?

14 A Yes.

15 Q And did you determine from looking at that machine how
16 many failures did it have in the 12 months prior to Mr.
17 Hilton's test?

18 A Yeah, in just, in just a one year prior to his test 35
19 failures are documented here and 25 simulator failures. This
20 isn't even counting the failures on the day that he blew into
21 the instrument or machine.

22 Q Not counting the three failures his day?

23 A That's correct.

24 Q Now, as someone, a forensic scientist, as someone
25 looking at the record of that machine would you have wanted to

1 run any tests on it prior to Mr. Hilton's exam on it?

2 A Yes, I'd absolutely.

3 Q What would those have been?

4 A I would have done a re-calibration to ensure that the
5 machine was reading accurately at high concentrations,
6 including the .15 percent in particular because of the new
7 statutes.

8 Q Now, you looked at the results, the testing on this
9 machine. Other than the original multipoint test done in 1991
10 has there ever been based on the records you looked at
11 anything other than a routine one point test?

12 A No, and I'd go one step further. There's never been an
13 analysis done greater than a .10, okay, that's standard where
14 you have a known concentration. There's never been a standard
15 run above a .10 percent since 1991.

16 Q On this machine?

17 A On this machine.

18 Q And now, there is a, from time to time, a calibration
19 done on this machine; correct?

20 A Yes.

21 Q And we've looked at records of that?

22 A Correct.

23 Q Okay, but was there a calibration done within the 12
24 months prior to Mr. Hilton's test?

25 A I believe there was actually.

1 Q And when was that done?

2 A I think I may have that record in front of me.

3 Q Okay.

4 A But it looks like if this is - if I'm reading this
5 correctly and the print is - the type size is very small, in
6 November 28th, 2007, I believe there was a calibration done
7 then.

8 Q Okay, and that would have been in November of '07.

9 A Correct.

10 Q And that's a one point calibration?

11 A Yes, they just run a .08 standard.

12 Q A .08 standard and would that - do you have an opinion
13 as to whether that would indicate whether the machine was
14 operating correctly or not, that one point?

15 A No, I mean, with all the problems that ---

16 Q Well, first of all do you have an opinion?

17 A I have an opinion, yes.

18 Q And to a degree of scientific certainty more probably
19 than not does that tell you, is that an adequate test to tell
20 you if the machine's operating correctly?

21 A No.

22 Q Now, you've looked at the SLED policies and procedures?

23 A I have.

24 Q And the policies and procedures require a one point
25 test; correct?

1 A Correct.

2 Q Is there anything in those policies and procedures that
3 prohibit a multipoint test being done when you have a machine
4 with multiple failures?

5 A No, they can certainly do a multipoint calibration.

6 Q Okay, now, and a multipoint calibration, when they
7 calibrate this they currently just run one point but a
8 multipoint calibration would allow them to know whether the
9 machine was accurate at higher concentrations; is that
10 correct?

11 A Correct, and more importantly when you're looking at a
12 calibration plot the slope of that, that plot is so critical
13 that to not do higher concentrations is setting up more
14 uncertainty or more error for higher concentrations.

15 Q And how many, again, how many times did this machine
16 fail in the 12 months prior?

17 A Yeah, 12 months prior it's 35 failures.

18 Q Thirty-five failures, is that significant?

19 A Yes, it is.

20 Q Okay, and if in the SLED lab you had a machine that
21 failed 35 times what would you do?

22 A I would call maintenance and hopefully remove the
23 instrument if it can't, can't be resolved.

24 Q Right, and in terms of resolving it if somebody said,
25 well, they'd fixed whatever was wrong, would you want to run a

1 multipoint test to evaluate that?

2 A Absolutely.

3 Q Now, let's talk about the DataMaster for just a minute.
4 What kind of internal things could affect the reading to make
5 it inaccurate?

6 A Well, I had mentioned this earlier, even as much as room
7 temperature can affect detector response. I, I mean, I've
8 seen a lot of crazy things happen to electronic instruments
9 and detectors; and so, a number of things could affect it, you
10 know, like I mentioned, I mentioned, you know, the detector
11 becoming less responsive over time, a light source just like a
12 light source that we're looking at here in this room can dim
13 over time. As a matter of a fact, they do show some records
14 where they actually changed the light source. I saw that.
15 That was one of the maintenance records that they did. When
16 you make a big change like that, again, multipoint calibration
17 would be the next step to ensure that the instrument is
18 accurate, any major change to that instrument.

19 Q Okay, now, as a result of looking at the data do you
20 have an opinion to a degree of scientific certainty more
21 probably than not whether the quality control procedures used
22 to ensure the reliability of this machine, I'm not talking
23 about all the machines, of this machine was adequate or
24 inadequate?

25 A Inadequate.

1 Q And to a degree of scientific certainty more probably
2 than not do you have an opinion as to the consistency of the
3 method they use, that is is the method that they use to
4 calibrate and determine if this machine was operating
5 correctly was it adequate or inadequate?

6 A Inadequate.

7 Q And as a result of those things being inadequate do you
8 have an opinion as to whether or not the .16 reading that was
9 given - well, let me back up. On this particular night, and
10 you've looked at the records, how many times did they attempt
11 to get the machine to work before they finally ran a test and
12 got a result?

13 A Three.

14 Q Three times, failed, failed, failed, and then they got a
15 result; is that correct?

16 A That's correct.

17 Q Now, from a scientific standpoint if you'd had a failure
18 or two failures should they have continued to use that
19 machine?

20 A Probably not if they can at least ensure through quality
21 control procedures of looking at higher standards but in this
22 case.

23 Q And you know from looking at the records there were
24 other machines; correct?

25 A That's correct.

1 Q At that location?

2 A No, I don't - I'm not, I'm not familiar with that.

3 Q Right.

4 A But I will say they also had a failure the day before on
5 this same machine.

6 Q On this machine it failed the day before?

7 A Yes, failed the day before.

8 Q And we've put in a record of all those failures. Now,
9 and you've looked at the records. That machine is no longer
10 in service; is it?

11 A No, it's not.

12 Q Okay, they're not using it anymore?

13 A That's correct.

14 MR. HARPOOTLIAN: Beg the Court's indulgence for just
15 a moment.

16 THE COURT: All right.

17 BY MR. HARPOOTLIAN:

18 Q You've, you've looked at this, the failure rate during
19 that one year period for this machine was what, what
20 percentage; do you remember? Five or six percent?

21 A Yeah, I think it, I think it's six..

22 Q The number is the number?

23 A Yeah.

24 Q Now, the other thing is if I could show you, you've got
25 the DataMaster tickets there; right?

1 A I don't, I don't believe I do.

2 Q I got them right here. Okay, and these are Exhibits A,
3 B, C and D. The time of arrest on every one of these tickets
4 is 22-15 which would be 10-15; correct?

5 A That's what it says.

6 Q And I want to make sure we understand when they finally
7 get a - on the fourth try they finally get a result a .15, the
8 time on that is at 12-32; is that correct?

9 A That's correct.

10 Q And that would be two hours and 17 minutes after his
11 arrest?

12 A Correct.

13 Q According to this report?

14 A According to this report.

15 Q Okay, now, you have done forensic analysis on blood?

16 A Yes, sir.

17 Q For alcohol?

18 A Correct.

19 Q And the longer you wait from - in this case the crime
20 would be driving while impaired, so you want to know as
21 accurate as possible the level of alcohol in a person's blood
22 at the time of the driving; correct?

23 A Correct.

24 Q The longer you wait from that time does it make the
25 sample more accurate or less accurate?

1 A Yeah, ideally you want to obtain the analysis the
2 closest time as possible to the driving ideally.

3 Q So, the longer that goes by between the driving and the
4 test does the result become more accurate or less accurate?

5 A Less accurate.

6 Q And the legislature as we've seen in a law that was
7 passed about a year after or eight months after this incident
8 limited it to two hours; is that correct?

9 MS. WEISS: Objection, Your Honor, beyond the scope.

10 THE COURT: Sustained.

11 Q All right.

12 MR. HARPOOTLIAN: One second, Judge. Beg the Court's
13 indulgence one more time.

14 BY MR. HARPOOTLIAN:

15 Q Do you have - well, I think you said this but let me
16 make sure it was correct. Do you have an opinion as to
17 whether or not the test run at 12-32, knowing what you know
18 about the machine, absorption rates, the records you've seen,
19 was reliable or unreliable?

20 A Yeah, based on the totality of the evidence that I
21 reviewed it's unreliable.

22 Q Okay, and should not be relied on?

23 A Should not be relied on.

24 Q And you state that to a degree of scientific certainty
25 more probably than not?

1 A Yes, sir.

2 Q Thank you. Please answer any questions the Prosecutor
3 may have for you.

4 MS. WEISS: Your Honor, may I ask for a brief recess
5 just so I can get my notes together on this?

6 THE COURT: Yeah, we'll do that. We'll take about a
7 five, five minute break.

8 MS. WEISS: Thank you, Your Honor.

9 THE COURT: All right, thank you.

10 OFF THE RECORD

11 (On the record.)

12 THE COURT: All right, Ms. Weiss, you ready to
13 proceed?

14 MS. WEISS: Yes, Your Honor. May it please the
15 Court?

16 THE COURT: All right, yes, ma'am.

17 MS. WEISS: Thank you.

18 CROSS EXAMINATION

19 BY MS. WEISS:

20 Q Good morning, Dr. Brewer. You stated in your direct
21 examination that you were a forensic toxicologist at SLED from
22 May 1992 to September 1998?

23 A I didn't state that but that's right.

24 Q Well, you stated six and a half years.

25 A Yeah.

1 Q And during that time you worked in forensic toxicology?

2 A Correct.

3 Q And did you ever work in implied consent?

4 A I did not work in implied consent, no.

5 Q Okay, and you had a PhD at that time?

6 A Yes, sir - yes, ma'am, I'm sorry. I apologize.

7 Q During your time as a forensic toxicologist according to
8 your curriculum vitae your duties included developing new
9 methods of analysis, revising the laboratory SAP manual and
10 overseeing the laboratory quality control and quality, I don't
11 know what the QA is, but ---

12 A Assurance.

13 Q And quality control, so, those were your duties, some of
14 your duties while you worked in forensic toxicology?

15 A Yes, ma'am.

16 Q And actually because of your PhD in analytical chemistry
17 and specifically in infrared spectroscopy you were actually
18 utilized by the implied consent unit to testify about the
19 admission, for admission of the DataMaster results?

20 A Yes, ma'am.

21 Q And you testified at that time that they should be
22 admitted; is that correct?

23 A That's correct. I believe they still should be.

24 Q That the results should be admitted?

25 A That infrared testing is a great way to do analyses of

1 ethanol in breath.

2 Q And you actually went around with the implied consent
3 people that worked in implied consent, analysts and looked at
4 machines with them?

5 A I don't - didn't look at machines with them. I went
6 around and testified in courts with them.

7 Q Okay, but you did actually review the machines and the
8 protocols of those machines, you knew how they worked. You
9 were actually trained as an operator; is that correct?

10 A Yes, that is correct.

11 Q Okay, and you testified that they should be admitted
12 based on what they were doing at that time?

13 A Yes, ma'am.

14 Q Okay, and you were working on quality assurance and
15 quality control in forensic toxicology, but at any point did
16 you say, "Wait a minute, I have a problem here testifying
17 because you're not doing linearity tests all the time"?

18 A No, but can I, could I build on that a little bit I
19 guess because it's in probably 1992 was probably the last time
20 I was used, you know, by SLED in that capacity, I'd say 19 -
21 probably 1993. I was never used by implied consent in that
22 capacity. I think it was only to get by the chemical test
23 issue in the Supreme Court. So, I had very, very little
24 involvement after my - gosh, I guess I would say my first
25 three months of employment at SLED.

1 Q So, you testified in your first three months there?

2 A I would say that's pretty accurate. I would say after
3 my first year I think once they got beyond the State Supreme
4 Court issue regarding the admissibility of evidence based on
5 chemical tests I don't believe I was used there any longer.
6 So, I'm not pretending to be - to have experience working in
7 implied consent department because I haven't worked in their,
8 in their department.

9 Q Okay, however, you did not make any suggestions as to
10 adding linearity testing to their protocol?

11 A No.

12 Q Okay.

13 A But I will tell you I was surprised when I found out
14 about the calibrations, that they weren't doing linear
15 calibrations when they calibrated the instrument.

16 Q You talking about linearity testing?

17 A Yes.

18 Q Or are you talking about calibrations?

19 A The calibration itself, the calibration itself should be
20 based on the linearity.

21 Q Okay, but calibration is based on linearity; is it not?

22 A Not the way that they're using the calibrations
23 currently.

24 Q You calibrate that 0.0 - well, they do a test at 0.0,
25 you calibrate at .08?

1 A One point calibration actually, say multipoint,
2 multipoint determines linearity, a single point doesn't
3 determine linearity. Two points always make a straight line.
4 That doesn't give you an idea about the linearity associated
5 with that calibration.

6 Q You're talking about two different things. You
7 calibrate at .08. There's always been a one point calibration
8 on the DataMaster; is that correct?

9 A Yes, but you were talking - you, you specifically said
10 linearity calibration I believe.

11 Q No, I said linearity testing.

12 A Okay.

13 Q So, you were talking about linearity testing because
14 you're aware there's always been a one point calibration on
15 the DataMaster?

16 A The first time it was installed actually it was a
17 multipoint calibration.

18 Q All right, I'm going to just ---

19 A I could be wrong on that, but I believe in 1991 they did
20 a multipoint calibration. As a matter of a fact I have, I
21 have the records on the multipoint calibration that they did
22 in 1991 and as a matter of a fact, it's ---

23 Q You know, we may be talking semantics. My understanding
24 was it was a multipoint linearity test?

25 A You know, it could be.

1 Q --- we could be talking semantics, but ---

2 A Well, yeah, it is, it is semantics, and ---

3 REPORTER: I can't hear but one at the time.

4 THE COURT: Yeah, just one at a time, please.

5 Q Have you ever done any sort of testing on the BAC
6 DataMaster?

7 A Any testing on it, yes, we've done - conducted some
8 tests on there regarding, yes, simply put, yes. I've done
9 some testing with DataMaster.

10 Q Okay, what type of testing have you done on the BAC
11 DataMaster?

12 A One of the things that we did going back and ---

13 Q I'm sorry, who's we?

14 A I believe I worked with Brett Baker on this. As a
15 matter of a fact we also did a sobriety test with mark
16 equation tests with - as a group of about seven or eight
17 forensic toxicologists at one time. We actually did breath
18 testing in drinking experience one night with Brett and one of
19 the other toxicologists, maybe it was Bruce or Mark Peavey is
20 who it was. We did a test on the residual alcohol, if after
21 20 minutes is that sufficient time to ensure there is no
22 residual alcohol. We did a few studies like that.

23 Q And the testing, the results were appropriate as you
24 would expect as a scientist?

25 A Yes, yes.

1 Q Okay, and have you ever done specific functionality
2 testing on the BAC DataMaster instrument itself?

3 A It's kind of an ambiguous question and I'm not sure. I
4 don't know the answer to that.

5 Q Okay, when you were working at SLED as a forensic
6 toxicologist you list out a bunch of initials here, different
7 types of machines that you worked on, different types of tests
8 you did. Were any of those with the BAC DataMaster?

9 A Like I say, we did some drinking experiments with the
10 DataMaster one night and then did some tests regarding
11 simulators and residual alcohol one day but ---

12 Q Okay, so, but they're not listed on your curriculum
13 vitae?

14 A No.

15 Q That's not something you worked with on a regular basis?

16 A No, I would say it's not part of my duty on a daily
17 basis, no.

18 Q Okay, and other than drinking tests that you did, the
19 results came out just as you would expect them to, came out
20 appropriate?

21 A Yes, they were similar, yes.

22 Q But you did not work with them on a regular basis with
23 the BAC DataMaster?

24 A No, no, ma'am.

25 Q Okay, but you did become qualified as an operator of a

1 BAC DataMaster?

2 A Yes, ma'am.

3 Q Is that correct?

4 A Yes, ma'am.

5 Q So, are you aware of the 12-step process the DataMaster
6 goes through before a test can actually be completed?

7 A I believe I'm familiar with most of the steps.

8 Q Okay, and can you explain those to the Court?

9 A I'd probably have to look at one of the reports that's
10 generated but it goes through an internal standard. It goes
11 through basically a filter check, a blank air check and a
12 simulator solution. There's only like five steps that I'm
13 familiar with that it goes through.

14 Q Okay, so, you've been testifying about the BAC
15 DataMaster but you're only testifying as to what was on this
16 sheet? I mean, are you actually familiar with all of the
17 internal quality control checks?

18 MR. HARPOOTLIAN: I'm sorry, Your Honor, I don't know
19 what she's showing him.

20 MS. WEISS: This is what you entered into evidence.

21 MR. HARPOOTLIAN: Okay, I'm sorry.

22 THE COURT: All right.

23 A Yeah.

24 Q The list here, but you are not familiar with all of the
25 quality control checks that the DataMaster must go through

1 before an actual test can be generated?

2 A Apparently not.

3 Q Okay, but in fact, there are 12 different quality
4 control checks; is that correct?

5 A You're stating that.

6 MR. HARPOOTLIAN: Objection, Your Honor, is she
7 wanting - is she going to testify? Objection.

8 A I mean, you're, you're stating that.

9 THE COURT: Hold, wait, wait a minute. We've got too
10 many people talking at one time. The court reporter can't
11 pick anybody up. All right, there's been an objection. Let
12 me hear your objection, Mr. Harpootlian.

13 MR. HARPOOTLIAN: The objection, Your Honor, is she's
14 testifying there's 12 steps. She hasn't shown him a document.
15 She hasn't - I mean, she's asked him. He said, "If you say
16 so." So, I would object to her testimony about 12 steps
17 unless she's got a document she's going to show him.

18 THE COURT: I'm going to overrule. I'll allow it.
19 Go ahead.

20 BY MS. WEISS:

21 Q So, one of these 12 steps would be one that you've been
22 testifying about today to be the simulator solution test, are
23 you familiar with that particular step?

24 A Yes, ma'am.

25 Q Okay, can you explain how that works for the Court?

1 A Yes, it's a bottle of simulator solution is - it's
2 equilibrated at 34 degrees Celsius or is it - I think it's 34.
3 I could be wrong about the temperature, plus or minus a
4 certain temperature degree, and that is the headspace from
5 that simulator solution is blown through the tube and what it
6 does is it tries to determine, it's within plus or minus five
7 percent of a .08 percent standard. In this case I'm assuming
8 that the simulator solution is a .08 percent.

9 Q You're assuming. So, you don't actually know?

10 A Well, in this particular case it is. I'm just talking
11 about in generality here. You know, the simulator solution
12 can be .10 which it used to be when I, when I worked at SLED.
13 They could make a simulator solution .15. They could make the
14 simulator solution anything that they want to.

15 Q And - but for this instrument on the date in question it
16 was a .08; is that correct?

17 A Correct.

18 Q And the instrument is a set - is made to self check.
19 Maybe you don't know all the 12 steps, but you would agree
20 it's made to self check?

21 A Yes, uh-huh.

22 Q And actually when you went from the breathalyzer to the
23 DataMaster it took out a lot of the operator decision-making;
24 is that correct?

25 A Absolutely, absolutely.

1 Q So, you're familiar with the differences, some of the
2 differences anyway between the breathalyzer and the
3 DataMaster?

4 A Correct, I think the DataMaster is much better in that
5 regard.

6 Q Okay, and when you say, you know, plus or minus five
7 percent, when you're talking .08 what is that number when you
8 say plus or minus five percent?

9 A I mean I can pull out, I could probably look at where
10 the report is but I think it's .076 to .084, in that range. I
11 could be off a .01 point but - or .001, but I believe it's in
12 that range. I could pull a calculator out but my, my phone
13 has a calculator and it's, it's off, so.

14 Q That's quite all right. So, when the simulator solution
15 is attached to the machine or to the instrument and the
16 instrument tests it it has to fall within five percent. Do
17 you know what the purpose is of that?

18 A Yes, I do.

19 Q What is it?

20 A To determine the reliability and accuracy of that
21 machine at that concentration, .08 percent.

22 Q And five percent is a fairly conservative percentage?

23 A That's a good number to work with.

24 Q And the instrument is made to measure whatever the
25 solution is that comes in through that tube for it to measure;

1 is that correct?

2 A Yes, for that wavelength, but yeah, in simplistic terms,
3 yeah, that's correct.

4 Q So ---

5 A That's correct.

6 Q --- when the simulator solution comes through if it's a
7 .08 then the instrument would register what result?

8 A If it's reading correctly, then a .08 would read a .08
9 for that simulator.

10 Q And in order to make sure that the instrument is reading
11 accurately like you said at .08 you got to be somewhere within
12 that five percent?

13 A Yes.

14 Q So, if - and the only way to check that is to have a
15 simulator solution that falls within that five percent of the
16 .08; correct?

17 A It's the best way to check it.

18 Q Right, and in some states are you aware don't even do
19 that on every test?

20 A I'm not familiar with other state policies with the
21 exception of Alabama.

22 Q So, a simulator solution works - operates off of Henry's
23 Law. Are you familiar with that?

24 A Simulator solution, yes, that's correct, the headspace
25 portion of dealing with the simulator solution is based on

1 Henry's Law.

2 Q And ---

3 A The whole basis of breath testing is based on Henry's
4 Law.

5 Q Right, and the instrument itself when you hook the
6 simulator solution to it, simulator solution is volatile; is
7 that correct?

8 A The ethanol is volatile, correct.

9 Q Okay, so, you have multiple containers of simulator
10 solution in the breath testing room and operators, because you
11 were trained as an operator, are trained how to switch those
12 out when it doesn't test properly, when it doesn't test at .08
13 or within five percent; is that correct?

14 A Yes.

15 Q Because it is expected that over time that simulator
16 solution is, it's going to, it's going to start decreasing and
17 if you look, I'll get that in a minute, but if you look over
18 time you will see that the simulator solution, that the
19 testing, the internal standard and the internal testing that
20 the DataMaster does it slowly goes down, starts usually right
21 at .08 and it slowly will go down?

22 A Yes.

23 Q And that's what you would expect as a scientist;
24 correct?

25 A Correct.

1 Q Understanding the laws that are applied to this, the
2 scientific laws, you would expect that?

3 A Yes, I would.

4 Q So, at the point that you're no longer within five
5 percent what does the DataMaster do?

6 A If it's not found within five percent it's registering a
7 failure.

8 Q Registering a failure which is also known as a status
9 code?

10 A Correct.

11 Q So, what's actually failing at that point?

12 A What's actually failing at that point, it's not reading
13 within the .08 percent, and in the scenario you gave it
14 depends on how many times that simulator solution is changing.
15 I'm, I'm assuming you're trying to get me to say that it's the
16 simulator solution itself, but it depends on how often and how
17 frequent that they're having to change that simulator
18 solution. In other words, you can't say one way or the other
19 if it's specifically just the simulator solution if you're
20 having an inordinate number of failures on a simulator
21 solution and you're having to change it more frequently. To
22 me that suggests that there very well could be a problem with
23 the machine itself.

24 Q If I put a - it's actually an instrument, it's a
25 scientific instrument; right?

1 A It's called a BAC DataMaster machine I thought but you
2 can call it an instruments or a machine.

3 Q But it actually, it actually performs scientific tests?

4 A It does.

5 Q Okay, and when you put a new bottle of simulator
6 solution onto the instrument, every time you do that the
7 instrument reads .08?

8 A I'm sorry, say that again.

9 Q Every time you put a new bottle of the simulator
10 solution, a new container onto the DataMaster, it reads .08,
11 it's a simulator solution. You're aware the simulator
12 solution is checked by an outside lab, it's also checked by
13 SLED before it ever goes into the DataMaster room?

14 A Yes.

15 Q Okay, so, can we say with a fair amount of confidence
16 the simulator solution is a .08 when it's first attached?

17 A I would say that that would be the most - it should be
18 the most accurate. It would be the most accurate
19 concentration is when it's unopened.

20 Q So, if the DataMaster is reading at a .08 each time a
21 new container is attached would you be willing at that point
22 to say that if at some point down the road it starts reading
23 below the five percent that it would be the solution that is
24 depleting?

25 A Yeah, if the data is showing that over - periodically

1 each time that it's used it's, it's just slowly going lower
2 and lower I would agree that the .08 may be more consistent at
3 that point.

4 MS. WEISS: Beg the Court's indulgence one moment.

5 THE COURT: All right.

6 BY MS. WEISS:

7 Q I'm going to show you what's been marked as State's
8 Exhibit A for identification. Do you recognize this?

9 A Yeah, I guess, yeah, let's cut to the chase. I'll say
10 yeah. I don't specifically recognize this but I can recognize
11 what it's for.

12 MS. WEISS: Your Honor, may I approach the witness?

13 THE COURT: All right.

14 MS. WEISS: Thank you.

15 A Yeah.

16 MS. WEISS: Your Honor ---

17 BY MS. WEISS:

18 Q Can you identify what it is?

19 A Yes, yes, I've never seen it before, but it's ---

20 Q What is it?

21 A It looks like it's given the breath records for -
22 probably easier to hold it out there as bad as my eyesight is
23 but it's for this particular machine and it's given the range
24 from November 11th, 2007 through November 11th, 2008, so, one
25 year's worth of breath records.

1 Q Okay.

2 A Okay.

3 MS. WEISS: Your Honor, at this time I'd like to move
4 State's Exhibit A into evidence.

5 MR. HARPOOTLIAN: No objection.

6 THE COURT: All right, State's Exhibit A admitted
7 into evidence without objection.

8 MS. WEISS: Thank you, Your Honor.

9 (State's Exhibit A admitted into evidence and
10 appropriately marked.)

11 BY MS. WEISS:

12 Q All right, now, I'm going to - sorry, I'm going to
13 direct your attention to or just ask you to look through - you
14 can see when the simulator solution is changed on these. As
15 you see it changes to a different number, different lot number
16 each time and each time that the number changes is when you
17 see the number go back up .079, .08?

18 A Okay.

19 Q I can give you time, would you like to look at that or
20 ---

21 A Yeah, I mean, that's fine.

22 Q Or would you just agree with that?

23 A Let me, let me back up one sec here because I want to
24 make sure that I'm looking at it correctly. I'll say that
25 it's showing what the simulator alcohol reading is. I don't,

1 I don't know what your question is. I'm sorry.

2 Q When the bottles of simulator solution are changed
3 throughout that year does the instrument in fact read .08 or
4 .079, very close to .08 during those times?

5 A Yeah, I mean, the very first few are .077. I'll just go
6 through it .077, .077, .077, .076, .077, .078, .077, .078.
7 So, but it does, it does fall within, it does fall within
8 range.

9 Q Right, and now, are those numbers go on as more tests are
10 done they actually go up and down a little bit but basically
11 get lower; is that correct?

12 A No, as I'm going from top to bottom, all right, first
13 line, .077, last line ---

14 Q All right, now ---

15 A --- .079.

16 Q I'm sorry.

17 A I don't, you told me to read top to bottom.

18 Q Well, maybe you don't know, maybe you don't - well,
19 maybe you don't know what you're looking at, but I'm showing
20 you ---

21 A I'm looking at ----

22 THE COURT: All right, one at a time. We still have
23 a court reporter that can only take this down one person
24 speaking at a time, please.

25 Q Each time as you see the simulator lot bottle number you

1 see the number's the same and then the number changes and as
2 the lot, the number changes it actually goes back up to the
3 .08 as you get a new bottle. Would you agree that that is how
4 it's working in this - on this machine or this instrument?

5 A On this, on this machine when they change the simulator
6 solution it's falling back within quality control.

7 Q Okay.

8 A .076 to .08, I don't know, if I can look at that again,
9 I'm wondering if it ever reports anything above .084 or .08.
10 So, everything right now it's showing it's .08 or less and
11 that to me suggests, again, that there could actually be a
12 problem and the reason being that if you run a .08 standard,
13 okay, a .08 simulator that should be plus or minus, plus or
14 minus five percent. So, this machine is actually reading low,
15 on that low end for some reason because every one of these
16 simulator solutions there should be as many numbers above .08
17 as there are below .08 statistically speaking; and so, this is
18 showing that this instrument, this machine is reading low, at
19 the low end for the simulator solution. I think this suggests
20 that there's actually a problem with the calibration.

21 Q Okay, if the instrument is actually reading accurately
22 on a .08 solution it should read .08; is that correct?

23 A Yes, if it, statistically speaking, it should be plus or
24 minus five percent.

25 Q Right, it's given that range, but accuracy speaking if

1 it's a .08 it should read .08; is that correct?

2 A Accurately speaking, again, I'm just trying to be
3 accurate here, a .08 standard if it's 0.080 percent standard
4 then that should read, statistically speaking, that .08 should
5 be right at the mean, however many test you run on that
6 machine for that simulator for a .08 percent standard there
7 should be just as many numbers above .08 as there are below
8 .08, and looking at what you just showed me suggests that
9 there's a problem with that particular machine. Statistically
10 speaking your mean should be right at that .08 and the numbers
11 that I - that you showed me right there that I looked at from
12 that material it's all showing a range from .076, which just
13 barely, you change the simulator solution and it's barely
14 making the quality control to .08 and that's the range that I
15 saw what you just showed me.

16 Q Actually the range I know goes through at least .081?

17 A Again, if you have a .076 then you should statistically
18 have a .084 in there as well, and I'm not trying to, you know,
19 blow this out of proportion. I'm just stating a fact.

20 Q But you're talking in statistics. I'm talking in actual
21 measuring of an amount. If it's it a .08 and you read a .08
22 under Henry's Law as you go along in time and you are testing,
23 testing, testing, doing multiple tests that number is going to
24 deplete because of the gas that's going to escape, the amount
25 that's being tested it's going to get lower; is that correct?

1 A Over time, that's correct, the more tests you do the
2 numbers should decrease. That's correct.

3 Q And are you aware of how many tests this DataMaster
4 conducted during the period of time that you were talking
5 about the number of DataMaster simulator failures?

6 A I didn't go through and count, no, no, ma'am.

7 Q So, when you give the generality that some, some
8 simulator tests had no failures and this one had a lot, a lot
9 of failures, you've not looked at how many overall tests this
10 DataMaster has done?

11 A I didn't go through and count how many. I saw that
12 there was a large number of tests that were done that's for
13 sure.

14 Q Right, this was actually one of the most frequently used
15 DataMasters in the state; did you know that?

16 A No, I didn't know that.

17 Q And these numbers, you gave a number of how many
18 failures there were on Defense's Exhibit - I don't know,
19 Defense Exhibit G, you were talking about the number of
20 failures, were you aware that many of those failures actually
21 were tests that were rerun one, two, three times in a row?

22 A Oh, yes, oh, yes. As a matter of a fact, I mean, I
23 could recount, recount just based on the dates, 6-12 was a
24 failure, 7-5 was a failure, 7-15, 8-4, 8-14, 8-23, 9-18, 10-5,
25 10-17, 10-19, 11-4, 11-12, 11-13, 11-25, 12-8, 12-20, 12-29,

1 1-18, 2-8, 2-17, 3-9, 3-13, 3-16, 3-24, 4-27, 5-9. If I did
2 my math right that's 26. That's a lot in my opinion.

3 Q Okay, and as a DataMaster operator when you're trained
4 to do that what are you trained to do if the simulator does
5 not test within the five percent?

6 A I have no problem with what the DataMaster trainer, the
7 guy doing the test, I think he followed his procedure.

8 Q I'm sorry, if you could just answer the question. What
9 are you trained to do as a DataMaster operator when you don't
10 fall within the five percent?

11 A In this case you retest like he did.

12 Q And then if it still doesn't fall within the five
13 percent, you know, after you retest one or two times what are
14 you directed to do as a DataMaster operator?

15 A Change the simulator solution.

16 Q Okay, and when you change the simulator solution if it
17 passes that time - now, when you change it how many checks
18 does the DataMaster do of the new bottle of simulator
19 solution?

20 A I don't know the specific answer but I believe you
21 already told me that it was 12.

22 Q No, actually, okay, so, you don't know the answer to
23 that one. We'll get to that with another expert that works
24 with these, but it tests - so, test the simulator solution
25 multiple times before you actually get into another subject.

1 A Oh, yes, yes, that's correct, I think four or five
2 times.

3 Q Okay, and if that simulator solution tests at a .08 or
4 within five percent of a .08 at that point what should you do?

5 A Oh, I assume you'd go ahead and perform the test, which
6 is what the operator did.

7 Q Because wouldn't you agree that if it was testing low
8 and then you change the solution and it tested at the same
9 level the solution was supposed to test at that it would be
10 the simulator solution that was low and was failing not the
11 DataMaster itself?

12 A I would - if I were the operator I would make that
13 assumption, that's correct but I think the trend is what's
14 important here for this particular case.

15 Q Okay, and in order to get these simulator failures would
16 you or would you not expect that over time eventually your
17 simulator solution is going to go below the five percent?

18 A Yes, over time it's going to deplete. That's correct.

19 Q It's going to show a status code otherwise known as a
20 simulator failure?

21 A That's correct.

22 Q And so, you would expect to see that in regular
23 intervals?

24 A In regular intervals I would say and the guys that work
25 in the DataMaster and breath testing and in implied consent

1 will know a lot better than I would in terms of their
2 frequency. They have an expectation on how long the simulator
3 solution should, how many tests that simulator solution should
4 be successful and what they do is they set a policy that after
5 that many number of tests, maybe it's four, maybe it's five,
6 that that simulator solution gets changed out so that they
7 don't have this scenario because you don't want a scenario
8 where every time every fourth person you test you have a
9 failure. You want it so that it's successful each and every
10 time you do a test. So, you're doing one test not multiple
11 tests. So, I would assume that every department and every
12 agency has a policy and procedure to change out that simulator
13 solution after X number of tests, and I don't know what that
14 is.

15 Q You're not suggesting that this DataMaster had to be
16 changed after every fourth test; are you?

17 A No, I just - I said X number of tests, whatever,
18 whatever the implied consent is saying that how long a
19 simulator solution should be good for.

20 Q Okay, but you were the one testifying that this is an
21 awful lot of failures; correct?

22 A Yes, it is.

23 Q But they are actually the experts on how long this
24 should last.

25 MR. HARPOOTLIAN: Object to the form, Your Honor.

1 THE COURT: Sustained.

2 Q So, what you can say is that you would expect to see a
3 failure after a period of time. Now, after a period of time
4 ---

5 A Let me back up and say this, what I would expect is the
6 simulator solution would be changed to the frequency that the
7 implied consent suggests and that you really shouldn't be
8 having any failures because if your simulator solution is
9 being handled properly and used properly after whatever
10 frequency that it is that it's good for to be within plus or
11 minus five percent that you won't see an inordinate number of
12 failures. As a matter of a fact you shouldn't see any
13 simulator failures if it's everything is working properly.

14 Q But in fact the DataMaster is made to be run by law
15 enforcement officers and other trained individuals who are run
16 through the academy training, people that run this in the
17 field throughout the day and night, not by scientists, PhD
18 scientists like yourself in a controlled lab scenario; is that
19 correct?

20 A Yes, they're trained to run the simulator solution in
21 whatever agency, whatever, whatever that may be.

22 Q All right, so, you're saying if the simulator solution
23 is handled properly then it should go for a certain period of
24 time, then it should be changed based on the implied consent
25 protocol and then you wouldn't see failures.

- 1 A That's correct.
- 2 Q Is that what you're saying?
- 3 A Yes.
- 4 Q Okay, however, is it not true or is it true that that
- 5 all relies on the - each operator and how the operator handles
- 6 that simulator solution?
- 7 A Yes, I guess, it's ambiguous, but yes.
- 8 Q Have you ever heard of cross threading?
- 9 A Cross threading, is that dealing with ---
- 10 Q Yes, in the simulator solution.
- 11 Q Oh, yeah, oh, yeah, yeah, yeah. I know what you're
- 12 talking about. You're talking about with screwing the cap on
- 13 and, and not screwing it correctly because it, it's cross
- 14 threading. I guess the threads of the screw cap is what
- 15 you're referring to I guess.
- 16 Q Correct.
- 17 A Okay.
- 18 Q So, what would happen if an officer cross threaded or
- 19 didn't screw the cap on straight on the simulator solution?
- 20 A That it's possible that in that scenario you would get a
- 21 depletion more readily. It's, so, you would have the
- 22 simulator solution fail more, more frequently.
- 23 Q And is that something that you think is possible?
- 24 A It's definitely possible.
- 25 Q And we're dealing with humans ---

1 A But, but ---

2 Q --- and human error; correct?

3 A Yeah, but in this case I guess to have it repetitive
4 like this the problem would have to be probably the thread to
5 the cap itself, right, because you're changing the bottles.
6 So, the threads of the bottles are always being changed, so,
7 but anyway it's possible.

8 Q Okay, and in fact, and you don't know what the span is
9 from implied consent of how long the simulator solution should
10 last as far as number of days; do you?

11 A No, I don't, I don't know.

12 Q And that would also vary depending on the number of
13 tests that were being administered?

14 A Well, that's the whole point. When I say that how many
15 tests right, that depends on the number of tests.

16 Q Okay, so, basically ---

17 A So, if they're doing five tests, if they're saying that
18 it should be good with five tests or six tests, I don't know
19 how many tests it would be, it's the number of tests.

20 Q But if it's cross threaded and it is in your scenario,
21 your hypothetical five tests and you put a new bottle of
22 simulator solution on there and it tests right at .08 just
23 like it's supposed to would you agree at that point that the
24 instrument is working properly?

25 A It's reading - what you can say is that .08 percent that

1 you're giving a value that falls within plus or minus five
2 percent at .08.

3 Q And so, in fact, it would not be the DataMaster failing
4 at that point?

5 A At that point when that simulator passes then obviously
6 it passed, so it didn't fail at that point.

7 Q Okay, and just before that when it had a status code
8 because the simulator solution was low would not be the
9 DataMaster failing?

10 A If, if the - if it is in effect - if it is the simulator
11 solution, okay, if the problem is the simulator solution then
12 that's correct. If you're trying to get me to say that it is
13 the simulator solution I would say I don't know. There's just
14 no way of knowing.

15 Q You can look at the data and say what is more probable
16 than not?

17 A You're seeing an inordinate number of failures in my
18 opinion that suggests that more work needs to be done to
19 troubleshoot and check this instrument or machine to check
20 this instrument out.

21 Q But you haven't looked at how many tests this machine
22 does?

23 A No.

24 Q Is that correct?

25 A I, I ---

1 Q Okay.

2 A --- I looked at it but I didn't count how many it does
3 in that year.

4 Q And you haven't compared it to other machines around the
5 state that were installed right at the same time, 1991, when
6 this instrument was installed?

7 A No.

8 Q Okay, and have you look at peer-review articles, NHTSA
9 testing, testing as to stability or, okay, stability or for
10 linearity from the manufacturer, other states, any of those?

11 A No, I haven't.

12 Q Okay, so ---

13 A Just, you know one state in particular is Alabama just
14 because we have some friends that actually run that breath
15 testing department and I've looked at their policies to some
16 extent.

17 Q I'm not talking about policies. Have you looked at
18 testing, linearity testing, stability testing that have been
19 done that's been peer reviewed that's been ---

20 A That's part of their policies. So, I have, I have
21 looked and discussed that with them in that department.

22 Q And you've - and you've looked at the results of the
23 testing?

24 A I didn't look at specific results, no.

25 Q So, you haven't looked at any results?

1 A No.

2 Q Okay, so, your opinion, and it's an expert opinion is
3 based on guessing what the problem could be?

4 A Not guessing at what the problem can be. I'm pointing
5 out that this machine is apparently giving unreliable results
6 consistently for the .08 simulator solution and that calls
7 into question the calibration itself and what concerns me
8 about this case and I very seldom get involved in, in DUI
9 cases and hardly any at all in breath testing cases but what
10 concerns me is going back and looking at the calibration and
11 then realizing that 1991 was the last time that a control was
12 run at greater than a .10 percent and that bothers me more
13 with the change in law with the .15 percent being a scenario
14 that if you blow .15 or higher you get your driver's license
15 revoked and that concerns me as a citizen and as a scientist.

16 Q But you realize that's not what we're here about today?

17 A When I - we're here about today is that what's in
18 question is the calibration of this particular machine and the
19 accuracy of this particular machine.

20 Q What we're here about today is a .08, all right.

21 A No, ma'am. We're not here about a .08. We're here
22 about the accuracy of a DataMaster machine.

23 Q So, you're talking about your concerns at a .15 based on
24 driver's license suspension but what we're here for is a
25 felony DUI and a .08 or higher.

1 MR. HARPOOTLIAN: Objection, Your Honor, argumentative
2 and repetitive.

3 THE COURT: Sustained.

4 Q And you would agree this machine has been calibrated at
5 .08?

6 A That's correct. It was calibrated at .08.

7 Q Numerous times?

8 A Apparently so.

9 Q Every time that a test was run?

10 A And I have concern about that.

11 Q Every time a test was run it was - a calibration check
12 was done at a .08.

13 A A check, not a calibration, but a check.

14 Q Calibration check was done at a .08, and every time ---

15 A A simulator check was done at .08. I'm not trying to
16 play semantics but it's not changing, it's not changing the
17 math that's, that's and the calculations. When you say
18 calibration a calibration suggests that it's changing the
19 actual concentrations of when somebody blows into the machine.
20 So, it's just a quality control check. So, a simulator check
21 is done at .08.

22 Q Every time a test was done there was an internal standard
23 using infrared spectroscopy and a court standard?

24 A That's correct.

25 Q Every time a test was done a zero test, a zero out test

1 was done?

2 A Correct.

3 Q Multiple times?

4 A Yes, I believe, yes, it's done early and it's done at
5 the end, that's correct.

6 Q And the internal standard was done multiple times?

7 A I don't remember per se but most likely.

8 Q And in fact you were involved in the Squire's decision
9 that said that judicial notice can be taken that this is
10 reliable science?

11 A Oh, it's a reliable science.

12 Q And no time during your time at SLED did you bring up
13 your concerns about linearity?

14 A No, I did not.

15 MS. WEISS: Beg the Court's indulgence.

16 THE COURT: All right.

17 MS. WEISS: Thank you. No further questions at this
18 time.

19 MR. HARPOOTLIAN: Just two brief questions.

20 THE COURT: All right, Mr. Harpootlian.

21 MR. HARPOOTLIAN: Very briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. HARPOOTLIAN:

24 Q Do you have that exhibit she just had, the big long one,
25 the big thick one?

- 1 A No, I don't.
- 2 Q Can I have the previous - do you have this exhibit?
- 3 A Yes, I do.
- 4 Q This is the - okay. Now, if you go to State's Exhibit
- 5 A, that's this, and you go back to the date we're talking
- 6 about, let me back to I - let me see if I can save a little
- 7 time here, here we go, and maybe if Your Honor will allow me
- 8 just to lead a little bit I can cut to the chase here and we
- 9 get done, done a little bit quicker. It appears to me that
- 10 the simulator solution was changed on April 27th; is that
- 11 correct? They went from lot or maybe they - or did they, O,
- 12 am I in the right year? Yeah, can you look and see when prior
- 13 to them beginning to use - I see when it was changed, okay, on
- 14 the 26th, on the 26th the lot number for the simulator solution
- 15 was what?
- 16 A That's the lot number, let me see where the first page
- 17 is where it says lot number, which one's the lot number?
- 18 Q Right.
- 19 A Which column?
- 20 Q Here, the second number down.
- 21 A Okay, okay, okay.
- 22 Q You have the number?
- 23 A I do.
- 24 Q What is it?
- 25 A 078030119.

1 Q No, I'm actually asking for this actual bottle number.
2 I'm sorry, not the lot number which would be this number right
3 here, 2-34 then 1-19?

4 A Okay.

5 Q Right?

6 A Yes.

7 Q Okay, so, the lot number on the April 26 is what?

8 A 1-19.

9 Q And the lot number at - was changed the next day, the
10 27th, is what?

11 A 1-19.

12 Q Now, 1-19 if you go all the way down to the date of our
13 arrest, the three failed simulator solutions were conducted on
14 - with the, with the simulator bottle 1-19; is that correct?

15 A That's correct.

16 Q And then they change it on the fourth test to bottle
17 number what?

18 A 1-20.

19 Q 1-20, so, when we look at State's, I mean Defense
20 Exhibit, whatever this chart is, no, that's it over there,
21 okay, when we look at Defense Exhibit Number G and we go down
22 to the test run, the failures after 1-19 is put into play
23 which would be on the, I guess the first time would be the 27th
24 if you look at this one?

25 A Okay, yes.

- 1 Q Is that right?
- 2 A Yes.
- 3 Q And what was the simulator solution reading on that day?
- 4 A .075.
- 5 Q Okay, and then it failed on the 9th; correct?
- 6 A Correct.
- 7 Q And it went down to what?
- 8 A 074.
- 9 Q Okay, now, on the 9th it went down to 074 and it failed.
- 10 Do they continue to use that same simulator solution for the
- 11 next three tests?
- 12 A Yes, they did.
- 13 Q And it failed three times on Mr. Hilton's case; right?
- 14 A Correct.
- 15 Q Now, it went from .074 the day before to what the next
- 16 day?
- 17 A 075.
- 18 Q So, it went up?
- 19 A Yes.
- 20 Q Is that inconsistent or consistent with what the
- 21 Solicitor just said a moment ago?
- 22 A Well, it's inconsistent in regards to what she's trying
- 23 to get me to say.
- 24 Q Which was that the concentration would go down with time
- 25 because it would evaporate in effect.

1 A Yeah, what, what, what this, what this really kind of
2 indicates though is that there's error involved in the
3 analysis; and so, and so, you know, even though theoretically,
4 yes, the ethanol concentration is depleting, there's error.
5 So, the analysis could actually be higher.

6 Q Now, you agree or disagree that the science of the
7 DataMaster is solid; is that correct?

8 A That's correct.

9 Q If the science of all the instruments you use to measure
10 blood, alcohol in blood or whatever you use in the lab, is all
11 that science solid?

12 A Yes.

13 Q And yet you calibrated, used a multipoint calibration
14 every time you ran a test?

15 A Yes, as a matter of a fact one step further, even the
16 simulator solution that's tested to determine its
17 concentration and the accuracy of a .08 simulator solution is
18 done by headspace gas chromatography using a multipoint
19 calibration.

20 Q And there's no policy that prohibits doing that
21 multipoint?

22 A No.

23 Q Now, let me back up a little bit. We argued a lot about
24 or talked a lot about the breathalyzer. We're not talking
25 about every, I mean, the DataMaster. We're not talking about

1 every DataMaster machine. Your opinion is this machine is not
2 reliable; is that correct?

3 A That's correct.

4 Q Okay, we're not talking about every machine in the
5 state?

6 A No.

7 Q Thank you.

8 THE COURT: All right.

9 MS. WEISS: Your Honor, may I ask one follow-up
10 question?

11 THE COURT: All right, only as to any new matters
12 that were brought out on redirect that were not addressed
13 previously.

14 RECROSS EXAMINATION

15 BY MS. WEISS:

16 Q A far as what's been marked as Defense Exhibit G that
17 you were just talking about, where you were going through the
18 simulator failures ---

19 A Yes.

20 Q --- prior to ---

21 A Yes, ma'am.

22 Q --- May 10th of 2008?

23 A May 10th.

24 Q The date of this test?

25 A Okay, yes.

1 Q Actually I guess it was early morning of May 11th when it
2 was ---

3 A That's okay. I understand.

4 Q Okay, but are you aware of when the next simulator
5 failure was after that?

6 A I don't have those records in front of me. Is it in
7 here or I don't have it in front of me.

8 Q Have you looked at any records to see when after this
9 test there were any failures?

10 A I don't believe I put any time into looking at that, no.

11 Q Okay.

12 MS. WEISS: And that's all, Your Honor.

13 MR. HARPOOTLIAN: Nothing further, Your Honor.

14 THE COURT: All right, you may step down.

15 MR. HARPOOTLIAN: Your Honor, that's all the - the
16 only witness we would have.

17 THE COURT: All right.

18 MR. HARPOOTLIAN: I don't know what the State's going
19 to and again, under, Your Honor, for purposes of the record
20 under Council and Jones the burden is on the State to prove
21 the admissibility of this data, not us.

22 THE COURT: All right, you all have anybody you want
23 to put up?

24 MS. WEISS: Yes, Your Honor, first of, first of all
25 before we, before we do that I would like to draw your

1 attention to State v. Squires which allows the Court to take
2 judicial notice of the infrared spectroscopy and says and take
3 judicial notice the DataMaster has gained general acceptance
4 in the scientific community.

5 THE COURT: Well, I acknowledge that and I think he
6 stipulates to that. I think his whole point is this one
7 particular machine is in and of itself unreliable and that is
8 what their defense is. They're not attacking the DataMaster
9 machine. They're not attacking the way that it's generally
10 administered or the way it's generally run or the way it's
11 generally tested. They're saying that this one particular
12 machine is inherently unreliable based upon the data they
13 reviewed.

14 MS. WEISS: And if that is the position that the
15 Court is taking, the Defense is taking I would just say that
16 at that point we're not talking about Council, what we're
17 talking about in the State's understanding is Parker which
18 states and what you're saying is that just the one that the
19 machine was in proper working order at the time of the test,
20 that that would be the one element that we are addressing in
21 this hearing?

22 THE COURT: That's my understanding.

23 MS. WEISS: And that everything else is stipulated
24 to.

25 THE COURT: I mean, I understand that they're

1 attacking it and I don't know what else is based on their
2 argument. My understanding is they are attacking - they're
3 saying that the statute is applied retroactively and that the
4 test was not administered within the two hours as required by
5 law, number one, and number two, even if you do meet that
6 threshold this particular machine is inherently unreliable;
7 and therefore, the test should not be admissible.

8 MR. HARPOOTLIAN: Right, Your Honor, the, as, as
9 Parker says if the machine, the State may be required to
10 prove, one, the machine was in proper working order at the
11 time of the test and that's the and she's correct which Parker
12 is the application of Council and Jones to the machine. So,
13 yes, she's correct.

14 THE COURT: Right, all right.

15 MS. WEISS: I just want to make sure that we're all
16 clear on ---

17 MR. HARPOOTLIAN: We're all on the same sheet of
18 music.

19 THE COURT: That's right.

20 MS. WEISS: Okay, Your Honor, would you like us to go
21 ahead and address this particular issue first?

22 THE COURT: I'll let you handle it any way you want
23 to handle it.

24 MS. WEISS: Okay, Your Honor, the State calls Brett
25 Baker.

1 THE COURT: All right.

2 MR. HARPOOTLIAN: Your Honor, could we take a two-
3 minute recess before Mr. Baker takes the stand?

4 THE COURT: All right, yeah, let's, let's go ahead
5 and take about a five-minute recess. Let me see the attorneys
6 up here for one second.

7 OFF THE RECORD

8 (On the record.)

9 THE COURT: All right, Ms. Weiss, you want to call
10 your first witness?

11 MS. WEISS: Yes, Your Honor, may it please the Court?
12 The State calls Trooper Pete Schmidt.

13 THE COURT: All right.

14 Whereupon, Peter Christopher Schmidt was called to the
15 stand, duly sworn by the clerk and testified as follows.

16 THE CLERK: Please be seated. I need you to state
17 and spell your last name for the record, please.

18 MR. SCHMIDT: My name is Peter Christopher Schmidt, S-
19 C-H-M-I-D-T.

20 THE COURT: All right, Ms. Weiss.

21 MS. WEISS: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. WEISS:

24 Q Good afternoon, Trooper. Trooper Schmidt, where are you
25 currently employed?

1 A South Carolina Highway Patrol.

2 Q Back on May 10th of 2008 where were you employed?

3 A Myrtle Beach Police Department.

4 Q Okay, and when did you start working for the Myrtle Beach
5 Police Department?

6 A June of 2003.

7 Q In the almost five years that you were there prior to the
8 incident we're here about today did you have the opportunity
9 to receive any specialized training?

10 A I have.

11 Q Did you have any specialized training as it involved the
12 DataMaster or DUI stops?

13 A I did or I was DataMaster certified as well as we are
14 taught field sobriety tests at the academy.

15 Q And these are reflected on your training record?

16 A Yes, ma'am.

17 Q Did you have the opportunity to get advanced DUI training
18 prior to the incident we're here about today?

19 A I don't believe it was prior to this as far as the
20 advanced standardized field sobriety tests.

21 Q Have you had that training since that time?

22 A I have.

23 Q Okay.

24 MR. HARPOOTLIAN: Does he have a certification?

25 Q Do you have the - your DataMaster certification with you?

1 A I have it in my patrol car but the DataMaster
2 certification I have now is not the same one at the time.
3 When I went through at the academy I was given a new one with
4 a new number. So, the ---

5 Q Do you have the one that you had at the time?

6 A I don't have it with me. I do - am I certified, yes, I
7 was - I believe it's in all my training records.

8 MR. HARPOOTLIAN: I would not stipulate to the fact he
9 was certified.

10 MS. WEISS: Would you stipulate to his training
11 records? We have the training records.

12 MR. HARPOOTLIAN: Wouldn't stipulate to the
13 authenticity of the training records.

14 THE COURT: All right.

15 BY MS. WEISS:

16 Q Are you aware of what your certification number was?

17 A Off the top of my head, I mean, I know it's on the
18 DataMaster slip.

19 Q I'm going to show you what's been marked as Defense
20 Exhibit A. Do you recognize these - this exhibit, what's been
21 entered as Defense Exhibit A?

22 A I do.

23 Q And did you type in the information in that form?

24 A I do believe I did.

25 Q And does the certification number on there is that your

1 DataMaster certification number?

2 A It was when I was employed with Myrtle Beach. Like I
3 said, when I went through the highway patrol training they
4 reissued - I went through the class once again and they
5 reissued a new number under the highway patrol number.

6 Q Okay.

7 A But as long as I was employed with the Myrtle Beach
8 certified through DataMaster that was my number.

9 Q And what was that number?

10 A 012028.

11 MS. WEISS: Beg the Court's indulgence one moment.

12 THE COURT: All right.

13 BY MS. WEISS:

14 Q Looking at Defense Exhibit A did - do you see a place on
15 there that's marked arrest date and arrest time?

16 A Yes, I do.

17 Q And did you type in those - that date and that time?

18 A Yes.

19 Q And what date did you type in?

20 A May 10th, 2008.

21 Q And what time did you type in?

22 A 22-15.

23 Q And do you have any independent recollection of what that
24 time ---

25 MR. HARPOOTLIAN: Your Honor, I'd object to this

1 entire line of questioning. I don't believe it's relevant to
2 the issues at hand.

3 THE COURT: All right, I'm going to overrule it. I'll
4 allow it. Go ahead.

5 Q Do you have any independent recollection of what that
6 time reflects?

7 A I believe that's the time of collision, the time of
8 violation so to speak.

9 Q Okay, and at that time was that the standard operating
10 procedure for ---

11 MR. HARPOOTLIAN: Objection, Your Honor, leading.

12 THE COURT: No, I'm going to allow it, go ahead.

13 Q Was that the standard operating procedure for Myrtle
14 Beach?

15 A It was.

16 Q I'm going to show you what has been marked as Defense
17 Exhibit B. Do you recognize these forms?

18 A I do.

19 Q And what are they?

20 A Uniform traffic tickets, citations.

21 Q And is there any time that's entered on those uniform
22 traffic citations?

23 A Yes, 22-15.

24 Q And what does that time reflect?

25 A Time of violation.

1 Q And when you say time of violation what is violation?

2 A The time that we put that the actual, the violation
3 occurred at.

4 Q Let me show you what's been entered as Defense Exhibit C.
5 Do you recognize this?

6 A I do.

7 Q And what is that?

8 A That's the FR-10. It's a collision report.

9 Q Is there a time that's entered on that form?

10 A There is.

11 Q What is that time?

12 A 22-15, 22-15 is the time of collision.

13 Q Let me show you what's been entered as State's exhibit D.
14 Do you recognize that form?

15 A I do.

16 Q And what is State's Exhibit D?

17 A That's the TR-310. It's the collision report.

18 Q And who fills that out?

19 A The investigating officer.

20 Q And what are the times that are entered on that form?

21 A There would be a notify time, an arrival time and a time
22 of collision.

23 Q And what are those times?

24 A 22-15 for the notified, 22-24 for arrived and 22-15 for
25 the collision time, violation time.

1 Q And do you have any independent recollection of what time
2 you arrived on the scene that day?

3 A To the exact minute I don't know. I mean, it was within,
4 within ten minutes I would say of that collision time.

5 Q Okay, so, did you arrive, were you on scene at the moment
6 of the collision?

7 A No, I was not.

8 Q And that violation time is 22-15?

9 A Correct.

10 Q Did you have a recorder in your car?

11 A I did, a camera system.

12 Q A camera system, and was that camera system working on
13 the night of May 10th, 2008?

14 A It was.

15 Q And did you provide that recording to the State?

16 A I did.

17 MS. WEISS: Your Honor, if we may turn on the
18 monitor.

19 THE COURT: All right, any objection?

20 MR. HARPOOTLIAN: Your Honor, I would object to
21 displaying the video of the arrest that night and I've got
22 several, several reasons for that, one, it's not relevant, and
23 two, the - she's going to be - if I might voir dire this
24 witness before he authenticates it briefly.

25 THE COURT: Okay, well, you're going to have to

1 identify this first before you can publish it even though
2 we're not with a jury.

3 MS. WEISS: Yes, Your Honor.

4 THE COURT: Number two, what is the relevance?

5 MS. WEISS: Your Honor, we're talking about the time
6 of arrest in this case and about the report that the State
7 furnished to the Defense, to the Defense, the supplemental
8 report laying out the facts of the time of arrest.

9 THE COURT: Well, now, what is the supplemental
10 report, what are you relying on as this ---

11 MS. WEISS: The letter, the letter, the reporting in
12 the letter that ---

13 THE COURT: Well, I don't - the statute is very clear
14 about the report that has to be given. I think they will
15 acknowledge or I'm assuming you stipulate that she gives you a
16 letter that changes the date of arrest, changes the time of
17 arrest that was different from what was on another report.
18 The question is is does that qualify as a report as mandated
19 by the statute. I think the problem you've got is that the
20 statute says prior to a hearing you've got to give them a
21 report that sets forth the date or it's about five things that
22 have to be on that report that you give to the Defendant.

23 MS. WEISS: Right, yes, Your Honor.

24 THE COURT: Okay, so, I think, I mean, I understand
25 why you're putting this up to show, I'm assuming you're

1 wanting to show that the breathalyzer test was given or the
2 DataMaster test was given within two hours of the arrest and
3 you want to show that the arrest is different than the report
4 that was given to them as mandated by the statute; is that
5 correct?

6 MS. WEISS: Yes, Your Honor.

7 THE COURT: Okay.

8 MS. WEISS: That the report I gave was based on ---

9 THE COURT: Okay, can we stipulate to that?

10 MR. HARPOOTLIAN: Yes, sir, Your Honor, with just this
11 caveat, that they would even stipulate and we'd save a lot of
12 time - well, no, no, that's fine. I'll just ask him, I'll ask
13 him. We can do that later on. I would stipulate - I'm not
14 stipulating what she gave me was a report, that letter that
15 she gave me.

16 THE COURT: That letter.

17 MR. HARPOOTLIAN: Right.

18 THE COURT: I understand that your letter which is
19 Defense Exhibit E, you don't stipulate that that is a report
20 within the mandates of the statute.

21 MR. HARPOOTLIAN: Yes, correct, Your Honor.

22 THE COURT: Okay.

23 MR. HARPOOTLIAN: We, we would, we would allege that
24 the DataMaster number D, well, no, it's A through - it's A,
25 I'm sorry, the four of them are A, that's the report we got,

1 the DataMaster tickets.

2 THE COURT: Okay.

3 MR. HARPOOTLIAN: The report, that the DataMaster
4 report is what it says at the top, that's our position. We
5 would stipulate that this video would show a time different
6 and would be, if you accept what you see here with the caveat
7 that that time is a time on a video camera which is no way
8 authenticated either. So, I mean, it's - there would be a
9 time on that video different than 10-15, would put it within
10 two hours. We would stipulate to that.

11 THE COURT: Let me ask you this, can you stipulate
12 that the time reflected on that video is the time set forth in
13 State's - in Defense Exhibit E?

14 MR. HARPOOTLIAN: Her letter?

15 THE COURT: Yes.

16 MR. HARPOOTLIAN: Yes, sir.

17 THE COURT: Okay, all right, so, we can go ahead and

18 ---

19 MS. WEISS: Okay, if you got it.

20 MR. HARPOOTLIAN: I'm just trying to cut to the chase.
21 I'm sorry.

22 MS. WEISS: That's fine, all right.

23 THE COURT: I don't think we need it. No, we don't
24 need that because they're going to stipulate that the video is
25 different than Defendant's Exhibit - the date and time on

1 Defense Exhibit A, but the video is consistent with the time
2 and date set forth on Defense Exhibit E?

3 MR. HARPOOTLIAN: Yes, sir.

4 THE COURT: All right, I've got you now.

5 MS. WEISS: Your Honor, just so we can cut to the
6 chase on this, it's my understanding as we discussed prior to
7 the break that according to Parker there is no objection by
8 the Defense that the DataMaster was administered properly,
9 that the only argument is being made as to whether or not the
10 DataMaster was reliable at the time but not whether or not it
11 was administered properly, that was what was specifically
12 stated I believe prior to the break.

13 MR. HARPOOTLIAN: We've never stipulated number four,
14 that the test was administered by a qualified person in the
15 proper manner. First of all, I don't believe that they ---

16 THE COURT: But for the purposes of this motion you
17 haven't offered that as ---

18 MR. HARPOOTLIAN: Well, I may now based on his
19 testimony that he's not a qualified person.

20 MS. WEISS: I can cover that if that's the part of
21 it.

22 THE COURT: All right, let's go ahead.

23 MS. WEISS: But as far as, but as far as the being
24 administered properly you're not going - would not go into
25 that.

1 MR. HARPOOTLIAN: I don't think so. I may on cross-
2 examination ask him a couple of questions but I may, I may - I
3 don't - there's no reason to go through all ---

4 THE COURT: I mean, let me - this is a pretrial
5 motion for the exclusion of evidence and there's a lot of
6 things that the Defense has presented that the State might not
7 be prepared to address in a trial situation not knowing what
8 your grounds were. As I understand coming into this motion
9 your primary grounds were, A, that they did not comply with
10 the statute by giving the report or based upon the report as
11 you say the report that satisfies the statute, it says that
12 the results - the test was not administered within two hours,
13 number one, and then number two, even if it was administered
14 within the timeframe of the statute the machine itself was not
15 a reliable working machine.

16 MR. HARPOOTLIAN: Yes, sir.

17 THE COURT: Okay.

18 MR. HARPOOTLIAN: The - that is entirely correct. The
19 only additional, I don't think this gentleman's been qualified
20 in my opinion. Your Honor may differ with me, but other than,
21 other than that and she came here today ready, I mean, we
22 challenged the breathalyzer, the DataMaster. There's the four
23 Parker elements that she has to comply with. We're not
24 arguing with whether he went through all the steps on the
25 DataMaster checklist if that's the question.

1 MS. WEISS: Okay.

2 MR. HARPOOTLIAN: We'd, we, we would concede he did
3 that.

4 THE COURT: All right.

5 MS. WEISS: Okay, and Your Honor, prior to the break
6 it was my understanding they conceded the - all the elements
7 of Parker except for whether it was operating properly. So, I
8 was - so, I did not specifically instruct the trooper to go
9 out and get his, but I think I can cover the certification
10 with adding another witness, so.

11 MR. HARPOOTLIAN: Okay.

12 THE COURT: All right.

13 MS. WEISS: So, if the, if the Court is not, if the
14 Court feels that we need to comply and the Defense is not
15 willing to agree that he is qualified based on the fact that
16 he was certified, testified he was certified I can put up an
17 extra witness, I believe, to authenticate that.

18 THE COURT: All right, well, just go ahead and
19 proceed and we'll see how it works.

20 MS. WEISS: Okay.

21 THE COURT: I'm going to give you a lot of leeway ---

22 MS. WEISS: Thank you, Your Honor.

23 THE COURT: --- for having been caught off guard on
24 some of these issues, okay.

25 MS. WEISS: Thank you.

1 THE COURT: All right, go ahead.

2 MS. WEISS: There's nothing further for this witness,
3 Your Honor.

4 THE COURT: All right.

5 CROSS EXAMINATION

6 BY MR. HARPOOTLIAN:

7 Q Now, you admit you have no independent recollection to
8 any of the times anything happened that night, no independent
9 recollection?

10 A Other than reading off this.

11 Q What you, what you wrote down?

12 A That's correct.

13 Q Okay, now, you were asked by the Attorney General how
14 you were trained and this DataMaster, this is a breath
15 alcohol, I mean breath alcohol analyst test report; right? Is
16 that what it says?

17 A Yes, sir.

18 Q And it says his date of birth, arrest date, 5-10-08 and
19 it says arrest time?

20 A Yes, sir.

21 Q Do you know what time you arrested him?

22 A We use dispatch ---

23 Q No, no, just - could - do you know what time you
24 answered him, arrested him?

25 A Without looking at any other notes or video I don't. I

1 mean, we go by what's documented. I mean, I don't just pick a
2 time out of the air. It's the time that's put down.

3 Q But, but you put 22-15 was when you arrested him?

4 A Yes, sir.

5 Q And when you - you got there at 22-15? When did you get
6 there?

7 A No.

8 Q What time did you get there?

9 A Like I said earlier I'm not sure of the exact minute I
10 pulled on scene.

11 Q But the report that you - you handed him this DataMaster
12 ticket that night; right?

13 A Yes, sir.

14 Q Have you handed him anything else, any other report?

15 A I believe there was a notice of suspension, advisement
16 of implied consent.

17 Q Right, but in terms of showing his arrest date, this is
18 the report you handed him?

19 A Yes.

20 Q Okay, and to your knowledge no other report titled
21 breath alcohol analyst - analysis test report has been given
22 to him or his lawyers?

23 A On that day, no.

24 Q Or since?

25 A I believe she typed up something to ---

1 Q She typed up a letter; right?

2 A Correcting the time on it, yes, sir.

3 Q Well, what that letter was from her. Was she out there
4 with you that night?

5 A No.

6 Q Was she there when you arrested him?

7 A No.

8 Q Was she there when you filed out this form?

9 A No.

10 Q But you would concede the form you handed him said the
11 arrest time is 22-15?

12 A That's correct.

13 Q Okay, now, you also would concede that you had to run
14 this simulator test three times; is that right?

15 A That's correct.

16 Q Now, and then and none of them would work correctly; is
17 that right?

18 A That's correct, none of them would test within the
19 specs.

20 Q And, and what are the specs?

21 A Plus or minus five percent of .08.

22 Q Which is - what were you looking for, what number were
23 you looking for?

24 A Well, it's the machine will shut down if it's not within
25 those specs but ---

1 Q So, the machine just - it shuts down when it doesn't
2 hit, it doesn't?

3 A If it, if it doesn't calibrate correctly, yes, sir.

4 Q Okay, now, were there - was there another machine at
5 Myrtle Beach?

6 A That's right around the time when a second machine was
7 brought in. I don't remember if that was in there at that
8 time or not. If you look, give or take a few months, I don't
9 remember when the second machine was added but at one time
10 that was the only machine.

11 Q Your training is that when the simulator solution fails
12 like this you're supposed to switch out the, the simulator
13 solution, go on to the next one; right?

14 A We were trained to retry it.

15 Q Retry it?

16 A Try again.

17 Q How many times?

18 A I don't believe there was a set number.

19 Q So, just keep trying until that works?

20 A Well, I mean, obviously I'm not going to sit there all
21 night and try it but if it's going to test within then that
22 says the machine is operating correctly. So, that's why I
23 tried it and once it didn't, I realized it wasn't going to go
24 through that's why I ended up putting the new solution in and
25 ---

1 Q But you tested it three times; correct?

2 A Yes, sir, that's correct.

3 Q And then a fourth time is the time you say it worked
4 correctly?

5 A That's correct.

6 Q And the fourth time when it worked correctly according
7 to you and the breath alcohol analysis test report you gave
8 him indicated he had a .15 blood alcohol; right?

9 A If that's what it says, yes.

10 Q And that this happened at - the test was verified at
11 12:32 a.m.?

12 A Okay.

13 Q Is that right?

14 A That's what you're saying.

15 Q 0032?

16 A Yes.

17 Q Okay, and you would concede with me that 12:32 a.m. is
18 more than two hours after 10:15 p.m. the previous night?

19 A Is it more than two hours?

20 Q Yes.

21 A Yes, it is more than two hours.

22 Q Okay, now, you're at the Highway Patrol now?

23 A Yes, sir.

24 Q Well, what time are you supposed to write in arrest time
25 when you're at the Highway Patrol?

1 A The time that we put the handcuffs on them and tell
2 them, "You're under arrest."

3 Q Is that different than what you did at Myrtle Beach?

4 A Yes.

5 Q Okay, and now, when you went through breathalyzer
6 training school what time did they tell you to fill in, the
7 time when you put the handcuffs on them?

8 A I don't recall any specific time them telling us when to
9 put it on. I can say that I know for a fact that in Myrtle
10 Beach at this time specifically Myrtle Beach, I'm sure you're
11 familiar with the area, it's not that big. We get into the
12 jail quick. At that time there was a three-hour time limit.
13 To my recollection there is no time where we haven't been able
14 to get somebody in under three hours, therefore ---

15 Q Nobody really cared?

16 A --- the time put on there as far as a violation time or
17 an arrest time we were never instructed as far as one or the
18 other.

19 Q Well, what about the per se time, wasn't the per se
20 time, you read above a certain amount, wasn't there a two-hour
21 limit at this, as this period on that?

22 A Not that I recall. I mean, I ---

23 Q Would that have made a difference to you if you knew
24 that you had to test it within two hours under the per se law?

25 A I, I thought that it was a three-hour time limit.

1 Q A three-hour time limit?

2 A At this time.

3 Q Okay, now ---

4 MR. HARPOOTLIAN: Let me check one thing, Your Honor.

5 BY MR. HARPOOTLIAN:

6 Q Were the simulator solution screwed on correctly or were
7 these - in other words, was it - was there some error with the
8 simulator solution ampule, was it screwed on correctly or was
9 it something wrong with the machine or something wrong with
10 the simulator solution or do you know?

11 A I don't know. I mean, I honestly can't say what's wrong
12 with the machine. I'm taught how to run it, not how to
13 diagnose problems or anything else with it.

14 Q Okay, how often are you instructed back then to change
15 the simulator solution?

16 A They don't give us any order on when to change it. I
17 mean, there's a - I'm trying to get - I'm getting a little
18 confused between the machine, the instrument then versus now
19 but I believe then there was a message that came across that
20 said either change soon or change now. I think that was on
21 that machine but there ---

22 Q Was that - go ahead, I'm sorry.

23 A I honestly don't recall as far as if it had it on that
24 machine or if it's on the new machine right now.

25 Q Well, I guess what I'm saying is this, was there a set

1 time, was it 30 days or 15 days or two months?

2 A I believe it was 30 days.

3 Q Thirty days?

4 A Yes, sir.

5 Q And you would agree - I mean, this one machine you've
6 been around, a lot of tests run on that one machine, a lot
7 more than the average machine; correct?

8 A Yes, sir.

9 Q So, 30 days on that machine there'd be a lot more tests
10 run on it than the average machine?

11 A Yes, sir.

12 Q Significantly more?

13 A I mean, I don't have any numbers to say, I mean, I would
14 assume so. I mean, I know it is a busy.

15 Q Busy place, Myrtle Beach?

16 A Yes, sir; yes, sir.

17 Q In May?

18 A Yes, sir.

19 Q Very busy, a lot of people being arrested for DUI;
20 correct?

21 A Yes, sir.

22 Q Okay, now, we heard the Prosecution suggest the
23 simulator solutions were cross threaded. Did you have
24 difficulty screwing the simulator solutions on or off?

25 A I don't recall. I don't believe I did, but I mean ---

1 Q Okay, but your independent knowledge without looking at
2 videos and you would concede the camera on your car wasn't -
3 you didn't synchronize that with a clock every time you change
4 the videotape; did you? I mean, it was approximately correct?

5 A We, we - I believe that's right on. Those, we don't
6 have the option of changing those. That system in that cannot
7 be altered or changed. It's, it's a digital system. There's
8 no videotapes or anything. It's saved to it when you pull
9 into the station. It automatically downloads and there's no
10 changing dates, times, anything with the video footage on
11 that.

12 Q What about the clock on the DataMaster? Who sets that?

13 A I believe SLED's the one that sets that.

14 Q Okay, so, I guess I'm asking you is, is the clock in
15 your camera is it, is it coordinated with the clock, you check
16 to see if the times line up with the DataMaster?

17 A I've never checked it.

18 Q So, you don't know. They could be off a half an hour?

19 A Well, I think that's a little much but ---

20 Q Could be?

21 A I mean, I've never checked it personally. So, I don't
22 know.

23 Q Okay, so, as you sit in the DataMaster room and you fill
24 out - this out you're filling it out based on looking at your
25 watch, the arrest time?

1 A I don't understand what - filling what out?

2 Q I mean, where did you get that arrest time from?

3 A That's the time of dispatch.

4 Q Even though it says arrest time?

5 A Yes, the difference with being like with the Highway

6 Patrol now obviously we're instructed to use a - the

7 difference between the stop or the offense time versus an

8 arrest time because obviously we need every minute as far as

9 getting them into the DataMaster room. We might be driving

10 halfway across the county to get them there, whereas with here

11 within 20 minutes we usually have them from the roadside into

12 the room. Therefore, it's the 20 minutes, I mean, especially

13 at this time with a three-hour window.

14 Q Right.

15 A It has never been addressed as an issue and we were

16 never instructed any differently.

17 Q Would you be shocked it was a two-hour window?

18 A At that time?

19 Q Yeah.

20 A I mean, this would be the first that I would have heard
21 of it.

22 Q Okay, well, you may make some firsts this afternoon.

23 You understand - I mean, why did you give, why did you give a
24 copy of this to the Defendant?

25 A A copy of what?

1 Q This report?

2 A I was instructed to give them.

3 Q By who?

4 A By who, by when I took the DataMaster class.

5 Q Right, you're supposed to give him a copy of his report
6 and all the information on here is supposed to be accurate; is
7 it not?

8 A Correct.

9 MR. HARPOOTLIAN: Beg the Court's indulgence.

10 THE COURT: All right.

11 MR. HARPOOTLIAN: Thank you, thank you.

12 THE COURT: All right, redirect.

13 MS. WEISS: Very briefly.

14 REDIRECT EXAMINATION

15 BY MS. WEISS:

16 Q Trooper Schmidt, are you familiar with the DUAC law,
17 also known as the per se law?

18 A Briefly.

19 Q Okay, did you make a lot of DUAC charges back in 2008?

20 A No, the city prosecutor would have us rather do DUI
21 instead of the DUAC.

22 Q Okay, so, it's fair to say you were not very familiar
23 with the specificity of the per se law?

24 MR. HARPOOTLIAN: Object to leading.

25 A No, I was ---

1 THE COURT: Overruled, go ahead.

2 A I was not familiar with that at all.

3 Q But you were familiar with the DUI law at the time?

4 A Yes.

5 Q And what was the window in which you had to get somebody
6 tested from the scene and tested for the DataMaster?

7 A Three hours.

8 Q Three hours, thank you.

9 MS. WEISS: No further questions.

10 THE COURT: All right.

11 MR. HARPOOTLIAN: No further questions, Your Honor.

12 THE COURT: You may step down.

13 MR. HARPOOTLIAN: Your Honor, I'd like to note for the
14 record though the code in effect at this time, Section 56-5-
15 2950, Section b, small B, 4, says if the alcohol concentration
16 was at the time eight one-hundredths of one percent or more in
17 the original testing of the person's breath or collection of
18 other bodily fluids was performed within two hours of the time
19 of arrest the person has violated 56-5-2933, which is the per
20 se, the per se law.

21 THE COURT: All right.

22 MR. HARPOOTLIAN: I just want to note that for the
23 record.

24 THE COURT: Any objection? I mean it is what it is,
25 so.

1 MS. WEISS: That has nothing - it's not relevant to
2 this case, but yes, Your Honor, it was under the alcohol
3 concentration law. It was a two-hour window. Under the DUI
4 law it was a three-hour window.

5 THE COURT: Okay.

6 MS. WEISS: We agree with that.

7 MR. HARPOOTLIAN: And there was no three-hour window,
8 Your Honor.

9 THE COURT: That's what I was wondering.

10 MS. WEISS: Yes, Your Honor.

11 THE COURT: There was no window prior to the
12 amendment; correct?

13 MS. WEISS: That's - no, no, Your Honor.

14 MR. HARPOOTLIAN: Correct.

15 MS. WEISS: That's incorrect.

16 THE COURT: Okay, there was, you're saying there was
17 under the old DUI law - I know there was a, what, a 20 minute
18 waiting period. I did not know that there was an hour.

19 MS. WEISS: Your Honor, under 56-5-2953 there was an
20 incident site and breath test - breath site videotaping law.

21 MR. HARPOOTLIAN: Oh, the videotaping.

22 MS. WEISS: And under that law the videotaping at the
23 breath site must be completed within three hours of the
24 person's arrest. So, that's what the training and I'll put up
25 a witness to that or somebody to testify to that, but that's

1 what the training is because the videotape had to be completed
2 within three hours. The testing had to be completed within
3 three hours because the testing had to be on the videotape.
4 So, there was a three-hour window at that time.

5 THE COURT: So, you're saying because the tape had to
6 be completed within three hours that just meant that the test
7 had to be administered within the three hours.

8 MS. WEISS: Yes, Your Honor.

9 THE COURT: Well, let me ask you this, if they
10 performed the test at two hours and 59 minutes would they be
11 able to complete the video testing within the three-hour
12 period? Are we talking about apples and oranges ---

13 MS. WEISS: No, Your Honor.

14 THE COURT: --- or are we talking about the same
15 thing? One's a video test or one is a video of the testing
16 and one is the actual testing; correct?

17 MS. WEISS: I mean, the test had to be completed
18 within the three hours regardless ---

19 THE COURT: All right.

20 MS. WEISS: --- as opposed to ---

21 THE COURT: But that - what you just read is what?

22 MS. WEISS: The videotaping at the breath site must
23 be completed ---

24 THE COURT: The videotaping ---

25 MS. WEISS: Right.

1 THE COURT: --- of the breath site.

2 MS. WEISS: Yes, Your Honor.

3 THE COURT: So, in other words they had to take a
4 videotape of the breath site and that had to be completed
5 within three hours.

6 MS. WEISS: Yes, Your Honor.

7 THE COURT: So, I guess because of the law of physics
8 the actual breath test had to be completed prior to that three
9 hours.

10 MS. WEISS: Within three hours, yes, Your Honor.

11 THE COURT: Okay.

12 MS. WEISS: Had to be completed within the three
13 hours.

14 THE COURT: Within the three hours, okay.

15 MS. WEISS: Yes, Your Honor.

16 MR. HARPOOTLIAN: Well, well, and what section?

17 THE COURT: But that, that doesn't, but ---

18 MS. WEISS: 56-5-2953.

19 THE COURT: But at the time there was no law in
20 effect that said you had to have the breath test completed
21 within a certain time period; was there?

22 MR. HARPOOTLIAN: Well, what - not to interrupt the
23 Attorney General, but what it says must include the person's
24 conduct during required 20 minute pretest waiting period
25 unless - I mean, it goes through the videotaping must be

1 completed within three hours and it says Miranda rights,
2 taking or refusing the actions of the breath test operator and
3 the pretest but it doesn't, it doesn't indicate the results I
4 would suggest.

5 MS. WEISS: Your Honor ---

6 THE COURT: Well, yeah, but I guess my point is my
7 understanding of the law was that you have somebody arrested
8 for DUI you're going to take them in, you're going to give
9 them this breath test. You're going to have your 20 minute
10 waiting period. You're going to have to advise them of their
11 rights. You're going to have to administer the test. You're
12 going to have to give them a report of the test and you're
13 going to have to videotape the whole thing.

14 MS. WEISS: Yes, Your Honor.

15 THE COURT: And the videotape of that whole thing has
16 to be within three hours.

17 MS. WEISS: Yes, Your Honor.

18 MR. HARPOOTLIAN: Right.

19 THE COURT: Okay, that's what I was thinking.

20 MS. WEISS: And it's in section, subsection B, and it
21 must include the reading of - just like you said, the reading
22 of Miranda rights, the entire breath test procedure, the
23 person being informed that he is being videotaped and that he
24 has the right to refuse the test.

25 THE COURT: Okay, so, the entire procedure, not just

1 the breath test, but the entire procedure from the observation
2 time, the administering of rights, the administering of the
3 test, the getting the test results, the providing them with
4 the reports of the results and videoing that whole thing had
5 to be done within three hours.

6 MS. WEISS: Yes, Your Honor.

7 THE COURT: Okay, got you.

8 MR. HARPOOTLIAN: But there was no statute requiring
9 giving, I mean, as we say as the new statute says.

10 THE COURT: The only time limit was the 20 minute
11 observation period.

12 MR. HARPOOTLIAN: Well, and the three hour
13 videotaping.

14 THE COURT: Videotaping, yeah.

15 MR. HARPOOTLIAN: Videotaping but in terms of giving,
16 giving the test there was no, except for the per se, which was
17 two hours, at this point there was no statute requiring the
18 test be given within two hours.

19 THE COURT: Okay, so, I guess just by the way the
20 statutes work it could not be given any more, any quicker than
21 20 minutes after the arrest and it couldn't be administered
22 anymore than three hours after the arrest.

23 MS. WEISS: Yes, Your Honor.

24 MR. HARPOOTLIAN: Right.

25 THE COURT: I got you, okay, all right, you can call

1 your next witness.

2 MS. WEISS: Thank you, Your Honor, the State calls
3 Lieutenant Dale Smith.

4 Whereupon, Dale Smith was called to the stand, duly sworn
5 by the clerk and testified as follows:

6 THE CLERK: Thank you. Please be seated and state
7 your name for the record.

8 MR. SMITH: My name is Dale Smith. My last name is
9 spelled S-M-I-T-H.

10 DIRECT EXAMINATION

11 BY MS. WEISS:

12 Q And what is your rank at the Academy?

13 A I'm a lieutenant and I am the traffic safety program
14 manager for the South Carolina Criminal Justice Academy.

15 Q Lieutenant Smith, how long have you been the Criminal
16 Justice traffic safety training coordinator?

17 A I've been over the traffic safety unit since 2006 when I
18 left the Highway Patrol.

19 Q And prior to that, how long were you with the Highway
20 Patrol?

21 A For 15 years.

22 Q Okay, so, in 2008 you were involved with traffic safety
23 training with the academy?

24 A Yes, ma'am, I've been over the program as far as breath
25 testing, SFST or DUI detection, collision investigation,

1 everything to do with traffic my unit is over.

2 Q And do you personally instruct students on different
3 aspects of the traffic safety laws?

4 A Yes, ma'am.

5 Q And does this include the DUI laws?

6 A Yes, ma'am.

7 Q And are you one of the people responsible for certifying
8 DataMaster operators?

9 A Yes, ma'am, myself and my unit.

10 Q Okay.

11 MR. HARPOOTLIAN: I don't know what she's having
12 marked but I'd object to it.

13 MS. WEISS: I'll show it to you if you want to take a
14 look.

15 THE COURT: She's just marking it for identification
16 right now.

17 MR. HARPOOTLIAN: Okay.

18 BY MS. WEISS:

19 Q Lieutenant Smith, I'm going to show you what's been
20 marked as State's Exhibit B for identification. Do you
21 recognize this?

22 A Yes, ma'am, I do.

23 Q And can you please tell the Court what it is?

24 A This is a copy of an officer's training record from our
25 Acadis system which is a system we use to track all the

1 training any officer receives in the State of South Carolina.

2 Q And are you familiar with the recordkeeping of that
3 system?

4 A Yes, ma'am.

5 Q And did - have you - were you able to actually obtain a
6 copy of this report?

7 A Yes, ma'am.

8 Q And whose report is it?

9 A This is for Peter C. Schmidt with - he's an officer with
10 the South Carolina Highway Patrol. He's seated in the back of
11 the room here.

12 Q Okay.

13 MS. WEISS: Your Honor, at this time I would like to
14 enter State's Exhibit B into evidence.

15 MR. HARPOOTLIAN: No objection.

16 THE COURT: All right, State's Exhibit B admitted
17 into evidence without objection.

18 MS. WEISS: Thank you.

19 (State's Exhibit B admitted into evidence and
20 appropriately marked.)

21 BY MS. WEISS:

22 Q Lieutenant Smith, can you tell by looking at that
23 training record whether or not on May 10th, 2008, Peter
24 Schmidt was certified to operate the DataMaster?

25 A Yes, ma'am, I can tell that.

1 Q And how can you tell that?

2 A He was first certified in DataMaster on October 12th,
3 2005. He had a recertification on 8-21 of 2007. That
4 recertification on 8-21 of 2007 would have been good for two
5 years, meaning he would not have expired until 8-21 of 2009.

6 Q Thank you. Lieutenant Smith, do you instruct the
7 students, do you have two different levels - well, I know
8 you're changing your protocol now. In 2008 did you have two
9 different levels of DUI training for officers?

10 A Yes, ma'am, at that time we did.

11 Q And what were those two different levels?

12 A We had our basic training environment which was a nine
13 week program and then we had our advanced training side that
14 the traffic safety unit taught the NHTSA based DUI SFST course
15 from.

16 Q And you teach the DataMaster but who actually puts
17 forward the regulations under which the DataMaster is supposed
18 to be operated?

19 A That would be SLED.

20 Q And do you teach, too, those regulations?

21 A Yes, we - SLED takes the law. They look at the law and
22 they form their regulations. We take the law and their
23 regulations and we develop the training for the officers to
24 explain to them how to operate the instrument and what
25 procedures they have to follow based on the law.

1 Q Okay, and how many days of that nine week basic training
2 is spent on DUI training?

3 A In the old nine-week program there was about five hours
4 total.

5 Q Okay, I want to show you what's been admitted as Defense
6 Exhibit A. Do you recognize this type of form?

7 A Yes, ma'am, this is the old BAC DataMaster report form.

8 Q And did you instruct officers during those five hours on
9 how to enter information in order to get those forms?

10 A No, ma'am, that would have been a class they would have
11 had to come back for for breath testing, which is an eight
12 hour class. At that time they would come back after they
13 graduated the academy and actually take the breath testing
14 class.

15 Q And would that be the certification class that you just
16 testified that Peter Schmidt obtained and had, I think got the
17 recertification for during the May 10th, 2008, time period?

18 A Yes, ma'am, it would.

19 Q Okay, and during that class you teach them about
20 entering information that prints out on that form?

21 A Yes, ma'am, in addition to the DUI law and talking to
22 them about the different characteristics, we also teach them
23 how to operate the instrument.

24 Q And do you see the mark, the space marked arrest time?

25 A I don't have my glasses, so, give me a minute.

1 Q Are you familiar that there is an area ---

2 A Yes, ma'am.

3 Q --- entitled arrest time?

4 A Yes, ma'am, I see it.

5 Q What, if you know, what were the instructions during or
6 what are the instructions during the certification class as
7 far as what is to be put in arrest time?

8 A Some agencies tell their officers to put the time of
9 violation.

10 MR. HARPOOTLIAN: Objection, Your Honor, unless he
11 knows.

12 THE COURT: Sustained.

13 MR. HARPOOTLIAN: Thank you.

14 Q Your personal knowledge what is the information that is
15 given to the officers as to what to put into arrest time?

16 A Okay, my personal knowledge from dealing with agencies
17 across the state, training agencies ---

18 MR. HARPOOTLIAN: Your Honor, I don't want - I object,
19 that would be hearsay. What does he instruct would be
20 appropriate.

21 THE COURT: Okay, I sustain the ---

22 MR. HARPOOTLIAN: Thank you.

23 THE COURT: Plus I don't know that there's a
24 relevancy. I mean, the question is is it administered
25 properly. So, just stick with what he instructs them to do;

1 okay, or if there is an instruction in that regard.

2 MS. WEISS: Okay.

3 BY MS. WEISS:

4 Q Do you instruct them as to how to fill in the arrest
5 time?

6 A Yes, ma'am.

7 Q Are you familiar as to what the SLED regulation is for
8 arrest time?

9 A Yes, ma'am.

10 Q And is it - so, what is it that you instruct them?

11 A We instruct them either time of violation or time of
12 arrest at that time.

13 Q Okay.

14 MS. WEISS: Beg the Court's indulgence.

15 BY MS. WEISS:

16 Q As far as the DUI class back in 2008 are you aware of
17 what the timeframe was at that time during which you
18 instructed them they had to complete the DUI DataMaster test?

19 A Yes, they were instructed that for DUI for Section 56-5-
20 2950 that because of 2953 the videotaping section they had
21 only three hours to complete the test procedure. That was
22 from the time they walked in the room, gave them their implied
23 consent warning, did everything they had to do and the subject
24 blowing into the instrument, everything had to be completed
25 within that three-hour time period. For DUAC it was two hours

1 but for the actual DUI it was a three-hour time period is what
2 the students, what the officers were instructed at that time.

3 Q And for the two or three-hour time period when did that
4 time period begin?

5 A From the time that they were placed under arrest.

6 MS. WEISS: No further questions at this time, Your
7 Honor.

8 THE COURT: All right.

9 CROSS EXAMINATION

10 BY MR. HARPOOTLIAN:

11 Q Let me understand this, you were aware that under - now,
12 what did you call it, it's where you read a point whatever the
13 amount is and you read over that, is that - you have an
14 acronym you call that, besides DUI it's?

15 A DUAC?

16 Q DUAC.

17 A Yes, sir.

18 Q Okay?

19 A Driving with an unlawful alcohol concentration.

20 Q Right.

21 A 56-5-2933.

22 Q And at the time in May of '08 that was - there was a two
23 our limit in the statute, you had to give them the test if you
24 were going to charge them with that within two hours?

25 A What the law said is the person could be arrested on

1 scene for DUI. If they submitted to a breath test within the
2 two hours then they could be charged with DUAC or driving with
3 an unlawful alcohol concentration, I'm sorry.

4 Q And what was that level?

5 A Do what, sir?

6 Q What was the level?

7 A .08 percent or greater.

8 Q Okay, so, there was a two-hour time limit if you're
9 going to charge - when you pick them up you know they're -
10 they appear to be, they have the smell of alcohol on their
11 breath, unstable on their feet and all that, we all know that
12 you take them down, at that point they're under arrest for
13 DUI?

14 A Yes, sir.

15 Q But if they read less than a .05 it's presumed they're
16 not under the influence; correct?

17 A Well, actually it's .05 or less ---

18 Q Or less.

19 A --- they're presumed to not be under the influence of
20 alcohol.

21 Q Right, right, well, we're talking about alcohol here.
22 So, there was a two-hour time limit if you were going to try
23 them, charge them with DUAC?

24 A If you want - if the officer chose to charge them with
25 DUAC he had two hours.

1 Q Right.

2 A But they were under arrest for DUI he's got three hours
3 pursuant to the videotaping clause.

4 Q Okay, now, is it your testimony that the instructions
5 and the and tell me the name of your agency again?

6 A South Carolina Criminal Justice Academy.

7 Q And the South Carolina Criminal Justice Academy was
8 instructing students at this time that they could fill in the
9 time of the incident or the time of arrest in that spot?

10 A Yes, sir, because of my knowledge from how the - our
11 agencies worked and what the SOPs were from different agencies
12 across the state some agencies tell them to put the time of
13 violation, some agencies tell them to put the time of arrest.

14 Q Well, but what does it say on the form?

15 A I understand what it says on the form, sir.

16 Q And what is it you've got to - you understand the
17 statute, you teach this, there's a statute that requires you
18 to provide a report; right?

19 A Yes, sir.

20 Q And one of the elements on that report is time of
21 arrest; right?

22 A Yes, sir.

23 Q And yet you intentionally instruct the students not to
24 put that in there? Is that what you did?

25 A We tell students that they have to follow what their SOP

1 is within their own agency.

2 Q Well, why did you tell the students you have to put the
3 time of arrest in? Isn't that what the law requires?

4 A Again, sir, we tell them what to follow their SOP based
5 on their agency, what their operating procedures are within
6 their agency.

7 Q So, you can't - so, you defer to the agency in terms of
8 the standard operating procedures, they don't have to abide by
9 SLED?

10 A There's a lot of things that we teach the students at
11 the academy on how to fill out a TR-310, a wreck report, and
12 their agencies instruct them to do otherwise.

13 Q But you would concede ---

14 A So.

15 Q --- you would concede that if the report, the report
16 requires you to give them the time of arrest and they're
17 filling in the time of the incident they're not complying with
18 the law; isn't that correct?

19 A I'm not sure, sir. I, I ---

20 Q What do you mean you're not sure?

21 A It depends on what all reports that they're giving them.
22 I don't know what all reports every agency is giving out.

23 Q Do you know - well, do you know what report other than -
24 assume that's the only report they get right there that has
25 all the elements on it?

1 A At this time, with the times in question, this would not
2 have mattered because you had a three-hour time period.

3 Q No, no, so, let's say they did it in four hours?

4 A In four hours it would have been, it would have been
5 kicked out because you ---

6 Q Well, how would you know?

7 A --- would've been over, you ---

8 Q Well, how would - how would you know if they're not
9 writing down the time of arrest correctly?

10 A In four hours you would have been over the time period
11 for the videotaping. Therefore, it would've been thrown out.

12 Q But how do you know if you're not writing down the time
13 of arrest correctly? How do you know four hours has passed?
14 How do you know, if it's on that report you write down the
15 wrong arrest time? What if you get that wrong?

16 A Based on all the paperwork that I've seen on this case,
17 based on the paperwork from the case it would have to be a
18 totality of the evidence you have before you.

19 Q No, well, it's not the totality of the evidence. Let me
20 ask you this, sir, let me ask you this, if the officer waited
21 too long and sits down at that breathalyzer machine, okay ---

22 A Uh-huh.

23 Q --- and understands that he's waited more than three
24 hours or he's waited more than two hours or he's waited
25 whatever what's to prevent him from putting in the wrong,

1 intentionally putting in the wrong arrest time?

2 A All I can say is I hope integrity that would not happen,
3 however ---

4 Q Well, let's assume for the sake, I understand.

5 A --- however ---

6 Q What ---

7 REPORTER: I can't get but one at the time.

8 THE COURT: One at a, one at a time, one at a time.

9 A I'm sorry.

10 Q That wasn't my question. I apologize. What is to
11 prevent him other than integrity?

12 A Sir, there's nothing.

13 Q Right.

14 A However, you've got a TR-310, which is a wreck report.
15 You have an FR-10 that has dispatch times, has arrival times
16 on it. You also have dispatch logs that you can verify all
17 this with.

18 Q Well, tell me what report would have the arrest time,
19 the test results, the name of the Defendant, the simulator
20 test, what - is there any other report other than this they
21 get?

22 A It depends ---

23 Q And I'm referring to Defendant's Exhibit A, is there any
24 other report with all those elements on one page, piece of
25 paper?

1 A It depends on the agency. Some agencies have extra DUI
2 paperwork that they give to violators when they're involved in
3 a case.

4 Q Well, let's assume this is the only piece of paper we
5 got from the Myrtle Beach Police Department.

6 A Well, assuming that then no.

7 Q This is the report then?

8 A Yeah, I guess, yes, sir.

9 Q Now, do you have something in writing where, I mean, I'm
10 sure you have a syllabus where you told people in writing they
11 could write in the arrest date or the date of the incident.
12 That's in writing somewhere; isn't it?

13 A Probably somewhere. I'd have to find it. I don't have
14 it with me because ---

15 Q You came up here to testify today and didn't bring it?

16 A Sir, I didn't know I was coming to testify to his
17 training records until this.

18 MR. HARPOOTLIAN: Beg the Court's indulgence. Thank
19 you.

20 A You're welcome, sir.

21 THE COURT: Redirect?

22 MS. WEISS: Nothing further, Your Honor.

23 THE COURT: All right, you may step down.

24 A Thank you, sir.

25 THE COURT: All right, call your next witness.

1 MS. WEISS: Thank you, Your Honor. The State calls
2 Andy Jordan. Your Honor, at this time can I ask that ---

3 THE COURT: Yes, ma'am.

4 MS. WEISS: All right, Your Honor, at this time may I
5 ask that Trooper Schmidt be allowed to be excused?

6 THE COURT: Any objection?

7 MR. HARPOOTLIAN: No objection.

8 THE COURT: All right, he's free to go. Thank you
9 very much.

10 MS. WEISS: Thank you, Your Honor.

11 Whereupon, Andrew Brice Jordan, III, was called to the
12 stand, duly sworn by the clerk and testified as follows:

13 THE CLERK: Please be seated and state and spell your
14 name for the record, please.

15 MR. JORDAN: Andrew Brice Jordan, III, J-O-R-D-A-N.

16 DIRECT EXAMINATION

17 BY MS. WEISS:

18 Q Good afternoon, Captain Jordan. How are you?

19 A Just fine.

20 Q Are you still a captain, retired?

21 A I'm a retired captain at SLED as of December 2010. I'm
22 now working a temporary job there in homeland security grants.

23 Q Okay, I'll call you Captain Jordan. Captain Jordan,
24 would that be appropriate?

25 A That'll be fine, yes, ma'am.

1 Q Okay, Captain Jordan ---

2 MS. WEISS: Your Honor, I guess I'll ask all these
3 questions.

4 BY MS. WEISS:

5 Q What is your familiarity with the BAC DataMaster?

6 A All right, and I'll answer briefly and then if I need to
7 elaborate more, I started SLED in February 1987 as a forensic
8 toxicologist. In the first couple of years I became
9 interested in breath alcohol testing, became somewhat involved
10 in the Breathalyzer Model 900 program and I asked to be
11 transferred to head up the breath alcohol program. In
12 January 1990 I was appointed supervisor of the breath alcohol
13 program in large part because they wanted a scientist or a
14 chemist to help lead the transition from Breathalyzer Model
15 900 to a infrared device. At that point we hadn't selected a
16 device.

17 MS. WEISS: Beg the Court's indulgence. Your Honor,
18 at this time I would move to qualify Andrew Jordan as an
19 expert in the BAC DataMaster.

20 MR. HARPOOTLIAN: No objection.

21 THE COURT: All right, so qualified.

22 BY MS. WEISS:

23 Q Captain Jordan, your original - you were originally a
24 forensic toxicologist and you were moved over to the implied
25 consent area to implement the BAC DataMaster?

1 A Yes, ma'am, I was - January 1990 I moved there as
2 supervisor of the implied consent unit which at that point was
3 Breathalyzer Model 900 but my main goal was to begin the
4 process toward - at that point we didn't know it would be BAC
5 DataMaster but an automated infrared type device.

6 Q Okay, and what process did you go through in order to,
7 briefly, in order to choose the BAC DataMaster? How did you
8 choose the BAC DataMaster?

9 A All right, and I'll be very brief because again it's ---

10 Q I know it can be a very complicated process.

11 A --- it was a process over about a year, but again,
12 I came from a science background. I looked - went to some -
13 read the literature. I had some manufacturers come in. I
14 went to some scientific groups like the International
15 Association of Chemical Testing, reviewed some devices. At
16 that point after I gained some knowledge of the field I
17 prepared a list of specifications because you had state
18 procurement to follow, had specifications. We looked
19 especially at the Intoxilyzer and the BAC DataMaster. After
20 we generated the specifications the only device that could
21 make it that passed specifications was the BAC DataMaster. At
22 that point we procured that device and we procured those in
23 1991 under some federal grants.

24 Q Okay, and the - one of the specifications for the BAC
25 DataMaster was that it be on the NHTSA conforming products

1 list?

2 A Yes, ma'am, that's a list by the - NHTSA or National
3 Highway Traffic Safety Administration, they published a list
4 of conforming products for evidential breath analysis and it
5 had - that was one of our specifications to be even considered
6 as the new breath alcohol device at SLED it had to be on that
7 list. The BAC DataMaster was on that list.

8 Q And being on that list what did that mean?

9 A It meant that they - and it's also published in the
10 Federal Register that they go through certain testing. It's
11 various types of testing they go through that they check
12 electrical, they check, they check accuracy and precision over
13 different levels of alcohol concentration. I believe there's
14 a vibration check. I'd have to look at the Federal Register.
15 This - the testing may have changed a little bit over time but
16 it's been basically the same. The conforming products list
17 goes back, oh, well over 20 years, maybe 30 or 40 years.

18 Q What was your main - what were your main concerns in
19 trying to set the specifications for the new breath testing
20 device?

21 A My, my main concerns and interests was while the
22 Breathalyzer Model 900 if operated properly would give an
23 accurate result, I wanted a fully automated device with
24 minimal - that would require minimal operator training that
25 had a lot of safeguards or quality control checks even to the

1 point of having redundant quality control checks. I wanted an
2 automated process that would be very accurate but also that
3 would not - where if you had the operator, it would not be as
4 operator dependent as the Breathalyzer Model 900, and I also
5 looked at infrared spectroscopy at that time was the prevalent
6 means of the automated device. So, that's what we looked at.

7 Q And how many control steps did the BAC DataMaster have?

8 A Well, it depended on how you had it programmed. I went
9 at that time to Hartford Connecticut several times. At that
10 point Eastern Electronics in Hartford, Connecticut, had it.
11 So, after we selected it we went up there for meetings about
12 how to set it up.

13 MR. HARPOOTLIAN: If it please the Court, Your Honor,
14 with all due respect this history lesson may be instructive
15 but I don't know that it's relevant to the objection, the
16 specific objections we've raised. We have stipulated he is a
17 qualified expert in the DataMaster and I would just ask just
18 in the interest of someday getting home that ---

19 THE COURT: Well, I mean, this is what we're getting
20 into is are you just challenging this particular machine on
21 this particular day or are you challenging all of the
22 qualifications whether it was administered properly, the -
23 whether the testing was adequate.

24 MR. HARPOOTLIAN: We are challenging this machine
25 because that's all we can do is challenge this machine on

1 that, on that specific day because of its aberrant conduct and
2 we've called an expert to say based on that pattern there was
3 a way to validate it which was not the policies and procedures
4 of SLED but should've been done to validate it, but based on
5 what he sees it was not operating correctly, not the machine
6 if operated, when I say operated correctly, if it's validated
7 correctly it's perfectly valid and he's testified to that.
8 So, is this the correct machine, fine, yes. Can it give
9 accurate results? Absolutely. We're saying in this instance
10 it did not for the variety of reasons that our expert has
11 listed.

12 THE COURT: All right, I sustain the objection.

13 MR. HARPOOTLIAN: Thank you.

14 THE COURT: Okay.

15 MS. WEISS: Your Honor, if I may respond to the
16 objection.

17 THE COURT: Yes.

18 MS. WEISS: Mr. Jordan, Captain Jordan was just
19 getting into the 12 steps that the machine goes through in
20 order to validate itself. I think their expert got up and
21 said that he wanted this one particular test that wasn't
22 included and Captain Jordan was just about to explain the
23 tests that are included in order to show that it is valid.

24 THE COURT: Well, let's, let's qualify first by going
25 by this one, this one test that they say should've been run.

1 I mean, let's kind of narrow your questioning. Is that the
2 only test, and if he says no, then find out how you verify
3 that the machine is working with these other tests. In other
4 words, I understand your argument is they're narrowing on this
5 one test. You're saying there's 12 tests to show that it's
6 ---

7 MS. WEISS: They're picking one that isn't there
8 versus the 12 that are.

9 MR. HARPOOTLIAN: Well, and Your Honor, there's a list
10 on this specific test, and if he wants to walk through those
11 on this test, I mean, I've got no objection, but to just talk
12 about, you know, the global why it works and, you know, what
13 these tests are we'll be here for two days.

14 THE COURT: Well, and I understand and I think I
15 understand everybody's points. So, I'm going to sustain the
16 objection. Just narrow your questioning on the testing on
17 this machine or the tests that they administered and what it
18 shows or what it doesn't show.

19 MS. WEISS: Okay.

20 BY MS. WEISS:

21 Q When you chose the BAC DataMaster how many points can
22 the BAC DataMaster be calibrated on?

23 A It's a - really a one point or you call it two point.
24 It forces it through zero at the time but it was .10 percent
25 and forced through zero, and at this point in time, later as

1 the law changed it's .08 percent and then forced through zero
2 and that's how the software and all the BAC DataMasters I know
3 we've always in South Carolina calibrated on ~ if you want to
4 call it one point. It's also got to force through zero
5 because it takes two points to make a line, but that's how
6 ours and all the other states operate.

7 Q The one point, so, it's 2.0 and .08 or .10 depending on
8 the year?

9 A Yes, ma'am.

10 Q And did you do linearity testing on the BAC DataMaster?

11 A Yes, ma'am, there's an initial quality control check
12 when it came in. When I took over I instituted that,
13 linearity testing because it was one of our specifications. I
14 also wanted to make sure when the device came in I did
15 institute linearity testing upon arrival. I did not feel it's
16 necessary to do it after that point unless there was some
17 reason, but upon arrival we did do linearity testing.

18 Q Okay, when you say there was some reason to do it after
19 that point, what would be a reason that you would do it after
20 that point?

21 A If and we kept other levels in the laboratory. If the
22 technician felt like he needed to check, he or she felt like
23 needed to check another level we had those available but the
24 linearity, breath alcohol is inherently linear. I didn't need
25 to prove something that everybody knows. It's inherently

1 linear. If its linear, if the .08 or .10 checks in specs then
2 it is going to be linear over that narrow range. Again, we're
3 talking about a range from zero to maybe .4 or .6 percent.
4 It's a very narrow range chemical test. So, we didn't need to
5 prove linearity over a large range.

6 Q Okay, and how did you set your specifications as far as
7 an error range compared or how did you set your error range
8 and how did that compare to other states?

9 A Okay, set and I would call it a variability range.
10 Every test has - and you could call it error. Every test has
11 some variability error in it. There's no test that's
12 absolute. If you measure it far enough out to enough
13 precision you will see some error of variability. At that
14 time I followed the - what we had on the Breathalyzer Model
15 900 had a plus or minus five percent and that, and throughout
16 the United States historically that was pretty typical. Some
17 states had, had a plus or minus 10 percent at that time but
18 plus or minus five percent was a pretty standard and also I
19 came from a toxicologist's background, that's what we were
20 using for blood alcohol testing and that seemed reasonable
21 because when you measured variability you weren't measuring
22 variability just in the instrument, you had to use something
23 to test the variability. Well, the variability, what you're
24 using to test is simulator solution, which we had checked by
25 an independent lab and I also checked it on a gas

1 chromatograph headspace. There's variability in the solution.
2 There's variability some in the simulator delivery. There's
3 variability in the simulator temperature and there's
4 variability in the instrument. So, you have probably at least
5 four main types of variability. Now, all of them won't
6 necessarily work in concert. So, some may, you know, cancel
7 each other out but you have different types of variability,
8 but looking at the sum of that, plus or minus five percent was
9 a good level. You also want to set your variability level so
10 that you do have some results outside that level. If we'd put
11 the variability plus or minus 10 percent you'd obviously have
12 a lot more, a lot less, I'm sorry, a lot less tests that go
13 outside of range. You want to set your ranges so you, you
14 constrain the program and constrain the test where you see
15 some outside the range but you don't want to set the range
16 abnormally low. If I put the range at plus or minus two
17 percent maybe every other test or one out of three would have
18 a simulator reading fail. So, we did some studies. We felt
19 it was a rigorous level, but a realistic level, but also a
20 level at which we'd have some go outside the range but the
21 vast majority would be within there and we also felt looking
22 at the levels we're talking about, .10 at that time or .08
23 later it was realistic because that was showing the
24 variability of the whole entire system, not just the
25 instrument.

1 Q And when you set up the system to report it did - does
2 it do multiple tests, multiple tests of the breath sample?

3 A Well, back, back then when it was set up, it was, it was
4 doing - it's - it does multiple tests, tests like I believe
5 four, four times a second, does like a slope and it makes sure
6 the slope levels off before it takes a reading. There's also
7 a minimum volume requirement of about one-half liters. There
8 were various quality control checks to ensure that you've got
9 an accurate reading. For example, if you had mouth alcohol
10 you would get a spike and it would probably abort and either
11 say detect overflow or invalid sample. So, different quality
12 control checks, but yes, it's taking multiple readings, it's -
13 because what should happen is if you have no alcohol your,
14 your line should be flat.

15 Q Right.

16 A If you have alcohol you should go and peak and plateau.
17 The computer is making sure that you get a correct breath
18 profile. If not, it will give you different - I call them
19 status codes. I mean, people - originally they were called
20 error codes. We changed the name to status, that's a better
21 reflection of what they are. It shows that the operational
22 safeguard is not within specifications.

23 Q So, does that mean that the DataMaster instrument's not
24 working?

25 A No, when I get status codes to me it means it is

1 working. If I saw a devise that's used much at all and I
2 didn't see status codes I would be concerned. When we
3 designed the program it was done rigorously. We put a lot of
4 checks, the 12-step process and everywhere it was the company
5 was told if there's any doubt about this procedure let's abort
6 it. I'd lots rather have aborted tests. Most of the status
7 codes you see, the vast majority would not affect the
8 scientific reading, but if there's any chance, so, to me
9 status codes is good. I don't look at a percent of status
10 codes on the instrument to make any determination. It is
11 something that we monitor at SLED on a weekly basis and gives
12 us information, but status codes show that the safeguards are
13 working and a lot of safeguards can be everything from the
14 ambient conditions to the instrument to the simulator. There
15 are various things that cause status codes.

16 Q And now, the simulator solution status code ---

17 A Yes, ma'am.

18 Q --- did you set a safeguard in the instrument itself to
19 change the simulator solution on a regular basis?

20 A Yes, ma'am, originally, you know, it was set up I
21 believe it was like every, every month, I believe 30 days, 30,
22 31 days or a hundred tests, whichever comes first because it
23 could be on day or it could be on the number of tests, but we
24 also did a warning like at 90 tests or like at 25, 26 days
25 change solution soon and that was something that we designed

1 back in 1991. I think it's basically been continued
2 throughout the years.

3 Q And is - was that an absolute? Was there any and those
4 are pretty round numbers, was there any absolute or is the
5 simulator solution status code in there for a reason as
6 another check?

7 A It's another check because like I said, again, you have
8 - we looked at the number of tests and days because you over
9 time will have some depletion. We did some studies and looked
10 at that and the scientific literature, but again, the
11 simulator test failure has about several variabilities. The
12 solution may be a little low or high and it has like a plus or
13 minus two percent variability. You also have the simulator
14 delivery. The jar may not be quite on, the hose may be kinked
15 a little bit. You also have the instrument has some
16 variability. Again, that five percent is an overall
17 variability. There's variability in the standard, variability
18 in the, in the, in the device delivering the standard, which
19 is the simulator, and variability in the instrument. So, you
20 have multiple types of variability.

21 Q Okay, and other than taking off the simulator solution
22 bottle and putting a new one on, is there really - is there
23 any other place for human error in the DataMaster, BAC
24 DataMaster?

25 A In the operation of the instrument I don't know of any

1 other error for human error. Now, it is important that the
2 mouth be checked, that the 20 minute period be observed for
3 mouth alcohol, and that, of course, the subject has to be
4 instructed to blow, you know, at some point. So, there are
5 some things the operator has to do, but all the internal
6 safeguards are built into the instrument into a computer
7 program. The operator cannot change or alter that program.
8 It's built into an EPROM.

9 Q And did you draft or did you write the initial
10 regulations for SLED?

11 A I wrote the initial - it was policies and procedures.
12 It was put in Chapter 12 of the South Carolina Law Enforcement
13 Division policies. I also was involved in some regulations,
14 too, in Chapter 73, but yes, the procedures are outlined in,
15 in - I'm sorry, Chapter Eight, subchapter 12 of the SLED
16 policy and procedure manual. I may note that has changed over
17 the years. I wrote the original one back in the, in the early
18 nineties. So, it's changed over the years.

19 MR. HARPOOTLIAN: Let me see it. Can I take just a
20 minute, I'm sorry. Your Honor, if you'd give me just a
21 minute. This is like a 30-page thing.

22 THE COURT: All right.

23 MR. HARPOOTLIAN: Just give me just two minutes here.

24 THE COURT: That'll be fine.

25 MR. HARPOOTLIAN: Are these the regulations that were

1 in effect at the time of the arrest?

2 MS. WEISS: Yes.

3 MR. HARPOOTLIAN: 11-1-06.

4 BY MS. WEISS:

5 Q Let me show you what's been marked as State's C for
6 identification. Do you recognize these regulations?

7 A I - yes, they're policies from the SLED policy and
8 procedure manual.

9 Q Policies, I'm sorry, okay.

10 A Yes, ma'am.

11 Q And were these the same policies that you originally
12 drafted?

13 A These are very similar but they - I was responsible for
14 drafting up through 1999.

15 Q Okay.

16 A That the elements are basically the same but there have
17 been some changes since then.

18 Q I refer you to page 10 of 13, subsection, subsection W.
19 Is that the way you wrote that?

20 A Yes, ma'am, this appears - it appears to have been no
21 change in this one.

22 Q Okay.

23 MS. WEISS: Your Honor, at this time I would like to
24 enter State's Exhibit C, at least page 10, subsection V.

25 MR. HARPOOTLIAN: I wouldn't object to the whole thing

1 coming in.

2 MS. WEISS: Okay, thank you, or subsection W.

3 THE COURT: All right, State's Exhibit C admitted
4 into evidence without objection.

5 (State's Exhibit C admitted into evidence and
6 appropriately marked.)

7 BY MS. WEISS:

8 Q What does subsection W refer to?

9 A It refers to the arrest time. It's part of the overall
10 talking about how to answer the questions as they come up.

11 Q And what does it say for the arrest, what the policy and
12 procedure is for the arrest time?

13 A Do you want me to read it verbatim or ---

14 Q Sure.

15 A Okay, it's got, "Arrest time, hh:mm - M, The arrest or
16 violation time in twelve hour format with either the 'A' for
17 AM or a 'P' for PM should be entered. Exactly 12:00 midnight
18 is 12 AM. Exactly 12:00 noon is 12 PM. The instrument will
19 convert this time to military time before it is printed on the
20 ticket."

21 Q And why did you put arrest or violation time when the
22 system itself says arrest time?

23 A Okay, that's going back many years, and to the best of
24 my recollection, like I said, it's always been that way. I
25 don't have the documents from 1991 in front of me, but again,

1 you got in a semantical question. Sometimes the violation
2 occurs and arrest and different agencies handle it
3 differently. So, I mean, we just - I guess to put arrest or
4 violation, there was just some differences in how it's handled
5 and also sometimes the violation would occur and the arrest
6 would occur right with it. I don't remember a whole lot of
7 specifics about this. It was just arrest or ---

8 Q That is what is in the regulations?

9 A I guess I always say ---

10 Q Arrest or violation.

11 A I always say policy, it's a policy.

12 Q A policy, that's within the policy.

13 REPORTER: You all are over each other. I'm sorry.
14 I apologize.

15 Q I'm sorry.

16 THE COURT: Yes.

17 REPORTER: But I can't get but one at the time.

18 Q That is what is in the policy, arrest or violation time?

19 A Yes, ma'am, this policy and to the best of my
20 recollection without having the documents in front of me I
21 believe that was in the policy prior to that.

22 Q Thank you.

23 MS. WEISS: No further questions, Your Honor.

24 MR. HARPOOTLIAN: Just a few questions.

25 CROSS EXAMINATION

1 BY MR. HARPOOTLIAN:

2 Q I'm an old breathalyzer guy before the DataMaster when I
3 did - were prosecuting and defending and back then the machine
4 didn't generate a ticket; did it? Didn't you have to fill it
5 out manually?

6 A Yes, sir, it did not generate a ticket. You did a
7 breath operator's test report.

8 Q Right, and he filled it out and that, and that, that was
9 what was given to the Defendant rather than this automatically
10 generated report; correct?

11 A Yes, sir, there was like - it was like a - first I think
12 it had carbon going way back and then it was like NCR ---

13 Q That's right.

14 A --- carbonless paper, you give them a copy of it.

15 Q Right, carbonless paper ---

16 A Yes.

17 Q --- and it was different colors?

18 A Yes, sir, so you knew which color.

19 Q And the officer kept the green one and the Defendant got
20 the yellow one, something like that?

21 A Something like that. I think the officer probably kept
22 the white original and the Defendant or the whoever took the
23 test got a copy, yes, sir.

24 Q Okay, and then we come up with this machine now that
25 automatically spits out this report; correct, when we look at

1 Defendant's Exhibit A, where are the tickets? Do you have
2 those? Oh, there they are. I'm sorry.

3 A Yes, it generates a report or evidence ticket, right,
4 yes, sir.

5 Q Well, I mean, and you help formulate this; right?

6 A Yes, sir.

7 Q It's called a breath alcohol analyst test report; is
8 that not the name of it?

9 A I'm just reading - I believe that's correct, yes, sir,
10 it's entitled South Carolina Law Enforcement Division breath
11 alcohol analysis test report.

12 Q Now, what other report in your procedures was to be
13 generated to be given to the Defendant like in the old days
14 where you filled one out and gave it to them, other than this
15 computer-generated or machine-generated report what report was
16 to be generated to be given to the Defendant?

17 A At that time in question with that DataMaster that was
18 the only automatically generated thing that would come out of
19 the DataMaster unless you - now, you could reprint a copy of
20 the ticket but it would still be the same ticket.

21 Q Right, but if this - this, this report was generated
22 automatically - let me make sure I got this correct, that's
23 the only report that includes the time of arrest, the date and
24 times of the test, the results of the test; is that right?

25 A Yes, sir, in, in the - in reference to the ones

1 generated by the DataMaster that would be the only report
2 generated, for the DataMaster in question at this time, yes,
3 sir.

4 Q Right, in May of '08.

5 A Right, I mean, I'm referencing everything because the
6 device has changed since that time.

7 Q Right.

8 A I'm answering the questions based on that time.

9 Q Right, when I ask you a question I'm only talking about
10 this DataMaster?

11 A Yes, sir, I just want to clarify that.

12 Q Okay?

13 A Yes, sir.

14 Q And that would be the only report generated?

15 A By the DataMaster unless you consider a copy of the
16 ticket or you print a copy of a solution change or report.
17 They could print that, but yes, sir, for what you're asking
18 basically yes, sir, that's it.

19 Q Now, you started this process back in '99, is that when
20 you started?

21 A No, no, sir, I, I started there in 1990 and I worked - I
22 was in charge of it through 1999.

23 Q Okay, and I was around back in 1990 as a prosecutor, and
24 if I remember the law back then there were no time limits at
25 all, you could give a breathalyzer six hours after the arrest;

1 isn't that right?

2 A Yes, that's my recollection also.

3 Q Okay, so, the time of arrest didn't matter ---

4 MS. WEISS: Objection, Your Honor.

5 Q --- in terms of the validity of the test.

6 THE COURT: Hold for a second. What's the objection?

7 MS. WEISS: Beyond the, beyond the scope of his
8 knowledge. He's talking about legal principles at this point.

9 THE COURT: Overruled, I'm going to allow it. Go
10 ahead.

11 Q But I mean, back in 1990 there was no time limit by
12 statute or regulation. I'm sorry, was there?

13 A I'm sorry. I was going to answer your first question
14 you said the time didn't matter, do you want me to answer
15 that?

16 Q No, no, no, I don't want you to say time - I mean,
17 perhaps - policy, procedure and statutorily time was not an
18 issue that you were computing into your policies and
19 procedures except as quick as you could do it?

20 A I'd still say, I'd say no to your thing because in
21 policies it's important to keep accurate records. I testified
22 in several cases where clerical errors were made on even a
23 breathalyzer test report or a DataMaster and there were
24 motions to exclude. So, it was important for the operator to
25 have accurate records in any tests they do, in any scientific

1 tests. So, there was some importance far as recordkeeping.

2 Q Some importance.

3 A Yes.

4 Q But there was no, there was no time limit back in 1990?

5 A No, sir, there was no legislative driven time limit, no,
6 sir.

7 Q Right, of course you didn't want to sit around, have him
8 sit around in jail ten hours before you gave him the
9 breathalyzer because whatever alcohol he had might dissipate;
10 right?

11 A Right, and of course, the test needs to be done - you
12 want to get done as soon as possible because it be close to
13 the time of the incident, yes.

14 Q Right, and back then the statute said if at the time of
15 the driving, right, and that's what the test, well, your
16 reading was A, B and C?

17 A I've got copies on it. It seems like that may be true.
18 It's been a while though.

19 Q Right, and now the statute says if the time of your
20 arrest or the time of the test, I'm sorry, if the time of the
21 test you read A, B or C?

22 A Yes, there were some differences over the years because
23 we just have to do extrapolation over time.

24 Q Right.

25 A Getting back in the late eighties and early nineties,

1 yes, sir.

2 Q That's right.

3 A Yes, sir.

4 Q So, the time of arrest back in the eighties and nineties
5 wasn't that critical; correct, before there were time limits?

6 A I would agree, yes, it's not as critical as now other
7 than just good record-keeping.

8 Q Right, other than just good record-keeping. Now our
9 statute keys off a number of issues whether it be videotaping
10 before the new statute or DUAC two hours; right?

11 A Yes.

12 Q That statute came into effect and now there's a new
13 statute says you got to give the, well, I say relatively new.
14 It's about three years old now. You've got to give the
15 breathalyzer or the DataMaster within two hours of arrest.

16 A Yes, sir.

17 Q And yet your form, when you say accurate, the form
18 that's been generated and you're asking people to input time
19 on you are telling me that you've instructed people
20 intentionally not to put the accurate time of arrest down
21 where it says time of arrest; is that what you're telling me?

22 A No, sir, the policy here and I believe it was before
23 then, which it's arrest or violation time, that, that was just
24 the policy, in some way - sometimes there's a difference,
25 sometimes there's not and it just, that's - I'm trying to

1 remember exactly why we said arrest or violation because
2 obviously in the statute it said arrest.

3 Q Well, at some point it didn't say arrest, it didn't
4 matter, the time didn't matter; right?

5 A Right, and it's changed over the years, and ---

6 Q Right, but the instructions have not?

7 A That's how they are at the time of this test and I
8 believe they were that way beforehand.

9 Q Right, they've always been that way?

10 A I believe, again, I'd have - the policy has changed
11 numerous times over the years.

12 Q Right, but, but ---

13 A I'd have to look at them.

14 Q --- to your knowledge it's always said time of arrest or
15 time of incident to be filled in?

16 A I believe so, yes, sir.

17 Q Okay, and while the statute's changed, your policies and
18 instruction to the officers has not?

19 A You talking about in this particular instance? Overall
20 they've changed over the years in response to statute. We
21 made numerous changes.

22 Q But not in terms of having them just write down the time
23 of arrest rather than time of incident?

24 A I don't believe so. I'd have to look back. This single
25 policy has probably changed eight or nine times. I'd have to

1 look at all of them but I don't believe so.

2 Q But were - you've represented that was the policy in
3 place at the time but we know there was a three-hour and a
4 two-hour window for different things?

5 A Yes, sir, at the time of this test, right.

6 Q Right.

7 A This is the policy in effect then.

8 Q And, and still the instructions given to the officers
9 were to write in either incident, the time of the incident or
10 the time of arrest.

11 MS. WEISS: Objection, Your Honor. This is outside
12 the scope of this witness. That was the last witness.

13 MR. HARPOOTLIAN: No, no, no.

14 THE COURT: No, he formulated, he wrote that policy.

15 MR. HARPOOTLIAN: Right.

16 THE COURT: I'm going to allow it. Go ahead.

17 MR. HARPOOTLIAN: Thank you.

18 BY MR. HARPOOTLIAN:

19 Q I mean, that's what the policy is; right?

20 A Well, it actually says arrest or violation time, not the
21 incident.

22 Q Arrest or violation?

23 A Yes.

24 Q Well, the violation would be different than the arrest
25 unless you're caught in the act; right?

1 A I would think so, yes, sir.

2 Q Okay, and in instances where there's been a wreck and
3 the police show up afterwards it'd be different; wouldn't it?

4 A Yes, I would think so.

5 Q Okay, so, that policy, would you concede, would you
6 agree with me that policy is not consistent with today's law?

7 A I don't know I'd make that ---

8 MS. WEISS: Objection, Your Honor.

9 THE COURT: Hold, basis for objection.

10 MS. WEISS: It's outside the scope of his knowledge,
11 so ---

12 THE COURT: Overruled. I'll allow it. Go ahead.

13 MR. HARPOOTLIAN: Thank you.

14 BY MR. HARPOOTLIAN:

15 Q Let me read the law to you; okay?

16 A All right.

17 Q "A person required to submit to tests by the arresting
18 officer must be, must be provided with a written report
19 including the time of arrest, the time of the test and the
20 results of the test before any trial or other proceeding in
21 which the results of the tests are used as evidence." Now,
22 your instructions are, according to the policy, and I
23 understand it's been there for 20 years, the policy is either
24 to put in the time of arrest or the time of the incident;
25 isn't that what that policy says?

- 1 A Probably semantical. It says arrest or violation.
- 2 Q Violation, I'm sorry.
- 3 A Which is basically, basically the same thing.
- 4 Q Okay, and let me make sure I'm - let me strike that.
- 5 Let me rephrase it. Your policy is to put in the time of the
- 6 arrest or the time of the violation?
- 7 A Yes, that was the one in effect at the time of this
- 8 test, yes, sir.
- 9 Q Right, and is that consistent or inconsistent with what
- 10 this statute requires you to give on that report?
- 11 A Obviously there is some difference there, but I - far as
- 12 making a legal determination I wouldn't make that.
- 13 Q Well, I'm not asking you to make a legal determination.
- 14 A But there - I see ---
- 15 Q You're the guy, you're the - excuse me.
- 16 A Oh, yes.
- 17 Q You're the guy that's drafting the procedures that the
- 18 officers have to follow. You're the one that drafted or
- 19 helped draft that procedure; correct?
- 20 A The precursor, I drafted it through 1999. I think it
- 21 was continued and - but I was responsible for it through 1999.
- 22 Q Right, but you, but you as a - I mean, it was
- 23 represented that you had some part in drafting these
- 24 procedures; correct?
- 25 A The elements of that, all that followed through the

1 years. There have been changes over the years. I was the
2 responsible party from 1991 through 1999.

3 Q Well, let me rephrase it, if you were drafting the
4 procedures today, me just having read the law to you and
5 reading that procedure, is that procedure consistent with this
6 statute, yes or no?

7 A I don't know. I'd say yes. I would seek legal advice
8 about how to word it. I do see that it could be considered
9 possibly inconsistent.

10 Q Okay, let's - okay, let's, let's start over again.

11 A Yes, sir.

12 Q Maybe I'm missing something here.

13 A Okay.

14 Q This says ---

15 THE COURT: Well, and I think that is a legal
16 determination, a matter of law for the Court to determine. I
17 understand the point you're trying to make, but I think that
18 that is a matter of law for this Court to decide rather than
19 him.

20 MR. HARPOOTLIAN: I was getting close.

21 THE COURT: Okay, all right, so, let's move on. I
22 mean, I understand the point you're trying to make.

23 MR. HARPOOTLIAN: Yes, okay.

24 THE COURT: So, let's move on.

25 MR. HARPOOTLIAN: I just felt like I was almost going

1 to get it.

2 BY MR. HARPOOTLIAN:

3 Q Okay, let me also ask you about a couple of other things
4 before I sit down. You indicate you all do a - let me get
5 this list over here. I want to make sure I don't screw up the
6 technical language. When you first got this machine in in
7 1991 you did a calibration test; right?

8 A Yes, we may have had some device in 1990, 1991. We did
9 a calibration test, yes, sir, we did some calibration tests.

10 Q Right, and as a matter of a fact it's on the report for
11 this machine you did a - you did a calibration test using
12 multipoints. You didn't do one .08 or .05 or .010. You did a
13 calibration test, a linear calibration test, I mean, a
14 calibration test to do - to determine linearity like the
15 doctor testified a little while ago, initially, the first time
16 with three separate points, four including zero.

17 A Yes, there was at least three or four points but it was
18 calibration checks, yes, sir.

19 Q Right.

20 A You can call it tests. We didn't calibrate on multiple
21 levels but we checked on multiple levels initially.

22 Q Right, so, that was in 1991?

23 A Right, when - or when the devices came in we did initial
24 quality control because we bought some later.

25 Q Right, have you looked at the records in this - for this

1 specific machine?

2 A Not in conjunction with this case. I have years ago but
3 not recently, no, sir.

4 Q Okay, why would you have looked at it years ago?

5 A Well, I was in charge of the program. I even helped
6 some after - I was supervisor till 1999. This - I helped even
7 put this instrument out in the field.

8 Q Okay, so, but you all - why did you do that initial test
9 with four points?

10 A Several reasons. One is that our specifications when we
11 selected the device one of the factors among others was
12 linearity; and so, when it came in there's a whole list of
13 quality control checks. Linearity is just one of maybe 10 or
14 more checks that we do like when you get any - if you get a
15 computer in or anything you run it through a certain series of
16 checks.

17 Q Well, and then - do you ever check it again that way?

18 A We only check linearity if there's a need but there -
19 checks are done throughout the process and with .08 or .10. I
20 didn't feel there was any need to do linearity after the fact.

21 Q So, your position is that if the 0-8 or 1-0 checked out,
22 there was no reason to do linearity, that's your position?

23 A It's my position. It's also in ---

24 Q And that was the position of SLED.

25 A Yes, sir, it's my position but also scientific

1 literature and I consulted with other experts in the breath
2 alcohol field. I didn't just, you know, make these decisions.

3 I talked to ---

4 Q Sure.

5 A --- you know, I went to - was A. W. Jones, Dubowski, I
6 went to all these classes with, you know, printed experts and
7 I learned about the field.

8 Q If someone runs a DataMaster test, this model DataMaster

9 ---

10 A Yes, sir.

11 Q --- and the simulator solution, you get a reading like
12 this top ticket on Exhibit A, which says failed ---

13 A Yes, sir.

14 Q --- what are you supposed to do?

15 A Supposed to retry it.

16 Q If it fails again what are you supposed to do?

17 A Either retry it or possibly because if - possibly could
18 so change the solution. If you get repeated failures you'll
19 need to change solution, but try it a couple of times and at
20 some point make a judgment to change the solution.

21 Q Well, is that telling you the solution is bad?

22 A Not necessarily, it's outside the five percent window as
23 I discussed. There's multiple variabilities in the system.
24 There's variability in the solution, variability in the
25 simulator, variability in the delivery system, variability in

1 the instrument. So, it's probably at least say four
2 variabilities and it, and well, you could even add a fifth is
3 ambient. I mean, there could be painting in the room which
4 could be subtracting off from it. So, there's four to five
5 different variabilities in that. I've been in cases where a
6 simulator test fail happened numerous times and it was a
7 question of them painting the room. I've been where ---

8 Q Where what now?

9 A Where they were painting in the room.

10 Q Right.

11 A I've been out there where the jar is cross-threaded.
12 I've been out there where, you know, the hose is kinked. The
13 solutions are really checked well. So, usually the solutions
14 going to have some variability, it'd be small, and also over
15 time toward the end there is some depletion. It's minimal,
16 but there is some depletion. There's - there are factors
17 involved in this. The plus or minus five percent window is
18 fairly tight.

19 Q Now, these things are maintained; right?

20 A The?

21 Q The machines maintained?

22 A Yes, sir, maintained.

23 Q When a light - when the light source is changed is there
24 any calibration done at that point?

25 A There may be and there may be calibration and

1 calibration check. I'll define both. Calibration to me is
2 when you change the response factors. That's a true
3 calibration. A calibration check is when you use other levels
4 or one level or multiple levels to check a device.

5 Q Was that ever done on this machine?

6 A You'd have to look through the records. I don't have
7 the records in front of me. There would be, there would be
8 maintenance records on this device.

9 Q Okay, but you don't know?

10 A I have not looked at the records.

11 Q Is, is it your opinion that one point calibration is
12 sufficient to determine linearity?

13 A Yes, sir.

14 Q Okay.

15 A Definitely be - with what - yes, sir, definitely in this
16 type of test with breath alcohol infrared testing over a
17 narrow response range based on the literature and all that a
18 one point or really it's zero and one - and another point is
19 sufficient for the purpose intended for this test. In most
20 scientific tests I wouldn't have that opinion because I've
21 done blood alcohols, I've done other, I've tested for drugs,
22 and this test is more than sufficient and that's how it's done
23 throughout the United States, not just in South Carolina.

24 Q I understand. On this machine, though, we had three
25 failures. Is that unusual, three failures in a row?

1 A Not necessarily. I mean, it's not typical but it's not
2 completely atypical because ---

3 Q Did you look, did you look at data before you came here
4 today to determine how atypical that is?

5 A Not in conjunction, I've looked at worlds today but not
6 in conjunction to this test, not in conjunction with this
7 case, no, sir.

8 Q Okay, and what - the variability of, of - you do a .08
9 during, you calibrate .08, 0.08; right?

10 A Currently.

11 Q Currently.

12 A It used to be .10 but yes, sir.

13 Q .10 but currently that's what you do?

14 A Yes, sir.

15 Q And that's what you're doing at this time, .08?

16 A Yes, sir, that's my - I believe that was in the .08.

17 Q And how does the variability of that measurement, if
18 it's - and it's plus or minus five percent; right?

19 A Yes, it'd be .076 percent to 0.084 percent. It'd be
20 plus or minus five percent of .080.

21 Q How does the variability of that, that is that plus or
22 minus five percent, affect linearity?

23 A Well, if it's, if it's - I'll have to define it. If
24 it's - it will affect - it's the plus or minus five percent
25 is, again, of the whole system, of the simulator delivery

1 system, the instrument, it may be ambient conditions, okay.
2 So, that's measuring a total variability. So, if, if all the
3 other factors, if the - if all those other things are held
4 constant, if your simulator was reading five percent low and
5 it truly was affected only by instrumental variability then
6 your readings further up the curve would be five percent low,
7 or if it was five percent high it would be five percent high,
8 if that variability was solely instrumental variability but
9 typically instrumental variability is a smaller part of the
10 variability. The variability in the simulator, the
11 temperature, the delivery system and the ambient is usually
12 larger typically.

13 Q But you would agree with me that if you did multiple
14 point linearity tests there would be no question?

15 A No, sir, I don't agree because there's always - I've
16 done this for 20 years. There's always questions. If we did
17 multiple points then it would be how many points do, how many
18 replicates of each point, how often do you do the linearity,
19 what levels do you choose. I mean, there will always be
20 questions.

21 Q Okay, now, the simulator solution it failed on May 10th
22 three times?

23 A No, sir, I wouldn't say - you've got - I would, I would
24 not agree with that. You got a simulator test failure. That
25 doesn't necessarily mean the simulator solution failed. It

1 means the system or the quality control check of the testing
2 simulator failed.

3 Q What was wrong with that machine?

4 A Well, we don't know.

5 Q Okay, we don't know; do we?

6 A No, sir, I mean there - we know what potential causes of
7 it is but we don't know, again, the quality control check did
8 not pass tolerance.

9 Q Okay, now, that machine is no longer in use; right?

10 A That's correct because when we went to the new
11 DataMaster all these - the, the - went to the DataMaster DMT
12 the regular DataMasters were removed.

13 Q Did you do linearity tests on the new DataMasters when
14 they came in?

15 A I was not involved in that at that time. You'd have
16 asked somebody else.

17 Q Okay, now, who tests the simulator solution to make sure
18 it's right?

19 A Okay, the - there's several levels of testing. The
20 simulator solution that we've been buying for years and during
21 this time in question was from Repco Marketing in Raleigh,
22 North Carolina. They do some in-house tests on DataMasters
23 but then it's sent to a laboratory, independent laboratory
24 actually that's right near SLED in Columbia, South Carolina,
25 does independent testing, not just for SLED solution, but all

1 Repco solutions and also internal at SLED we run on GC
2 headspace or gas chromatograph, gas chromatograph.

3 Q Chromatograph, yeah, right.

4 A Been saying too many big words, headspace.

5 Q Okay, okay.

6 MR. HARPOOTLIAN: Beg the Court's indulgence for a
7 moment.

8 THE COURT: All right.

9 MR. HARPOOTLIAN: No further questions.

10 THE COURT: All right, redirect?

11 MS. WEISS: No, Your Honor.

12 THE COURT: All right, you may step down.

13 A Yes.

14 THE COURT: All right.

15 MS. WEISS: The State calls Brett Baker.

16 THE COURT: Let's take a little break. We've been at
17 it about an hour and a half now. Everybody needs a little
18 break. All right, so, let's take about a 10 minute break.

19 MS. WEISS: Thank you.

20 MR. HARPOOTLIAN: Thank you, Your Honor.

21 THE COURT: Thank you.

22 OFF THE RECORD

23 (On the record.)

24 THE COURT: All right, you want to call your next
25 witness?

1 MS. WEISS: The State calls Brett Baker.

2 THE COURT: All right.

3 MR. HARPOOTLIAN: Your Honor, we have no objection to
4 him being qualified as an expert just the last witness, expert
5 in DataMaster.

6 MS. WEISS: BAC DataMaster.

7 THE COURT: All right.

8 Whereupon, Donald Brett Baker was called to the stand,
9 duly sworn by the clerk and testified as follows:

10 THE CLERK: Please be seated and state your name for
11 the record.

12 MR. BAKER: It's Donald Brett Baker, B-A-K-E-R.

13 THE COURT: All right, so, by stipulation he's
14 qualified as an expert in what field?

15 MS. WEISS: BAC DataMaster.

16 MR. HARPOOTLIAN: On the BAC DataMaster, Your Honor.

17 THE COURT: On the operation, the ---

18 MR. HARPOOTLIAN: The operation of. He's not a
19 chemist. He's not ---

20 THE COURT: Okay, on the operation of the BAC
21 DataMaster machine. All right.

22 MS. WEISS: Thank you.

23 DIRECT EXAMINATION

24 BY MS. WEISS:

25 Q Mr. Baker, I'm going to take you to the BAC DataMaster

1 in Myrtle Beach that was in place on May 10th of 2008. Are you
2 familiar with that machine or that instrument?

3 A I'm - yes, ma'am, I'm very familiar with the instrument
4 as well as the records that are on that instrument from that
5 date and time.

6 Q Have you had the opportunity to review the instruments,
7 records prior to that day and since that day?

8 A Yes, ma'am, I have.

9 Q Has that instrument been removed from Myrtle Beach?

10 A It is currently been retired from Myrtle Beach when we
11 upgraded to the second-generation of breath testing device
12 which is the DataMaster DMT.

13 Q Was it retired because there was something wrong with
14 the instrument?

15 A No, ma'am, on the contrary, it was retired because the
16 instrument could no longer meet statutory requirements and
17 that is post 2009, 2-10-2009 when the last law changed it -
18 the instrument had to have the ability to store an inquiry or
19 a complaint if necessary the officer wanted to make one. The
20 old instrument because of its processor and its age just
21 computer-wise could not handle any more data. We had maxed
22 out the memory. So, we went to a new device or explored new
23 devices and the next generation DataMaster was chosen and it's
24 a Windows-based which can facilitate those legislative
25 changes.

1 Q Prior to May 10th, 2008, when was the DataMaster, BAC
2 DataMaster in Myrtle Beach repaired in the light most
3 favorable to the Defense?

4 MS. WEISS: And Your Honor, I say that because I
5 believe the reflection of the records that he was looking at
6 there's a possibility that this was a repair date. So, in the
7 light most favorable to the Defense I just want to get this
8 out as a possible repair date.

9 THE COURT: All right.

10 A And you say prior to.

11 Q Prior to May 10th, 2008.

12 A That would have been 11-28-2008.

13 Q Two thousand and ---

14 A Seven, excuse me, 11-28-2007, that would've been
15 November 28th, 2007.

16 Q And what was the possible repair done at that time?

17 A At that time it says voltages were checked and/or
18 adjusted. So, you know, statutorily we're required to go out
19 at a minimum every 12 weeks. We go out every nine or if we
20 see that there may be some issues that we may be concerned
21 with ---

22 Q If we could ---

23 A --- we go check the voltage and we make sure the
24 instrument is working properly. At that point in time we put
25 in a code that the voltages were checked and/or adjusted. So,

1 it was a check of the instrument.

2 Q The voltages may have been adjusted?

3 A Correct, they may have been.

4 Q But were there any reports or complaints that caused you
5 to go out and check the voltages at that time?

6 A Not on this specific date and time, no, ma'am.

7 Q Since November 28th, 2007, what was the next time that
8 there was a possible repair in the light most favorable to the
9 State, to the Defense?

10 A And that would've been 12-29-2008, so, roughly six
11 months before and then six months after.

12 Q Were there any actual repairs done to the instrument in
13 Myrtle Beach that we know of between November 28th, 2007 and
14 December 29th, 2008?

15 A No, ma'am.

16 Q In that time period were simulator solutions changed?

17 A Multiple times.

18 Q And do you consider that a repair?

19 A No, ma'am, those are not repairs. Those are software
20 driven procedural things that must take place.

21 Q How does Myrtle Beach compare with other BAC DataMasters
22 or at the time in 2008 as far as the number of tests performed
23 on it?

24 A That particular instrument was the highest volume or
25 usage instrument in the state. Horry County in 2008 performed

1 as a county almost twice as many as any other county, but that
2 instrument was about a third higher than any other instrument
3 in the state as far as usage.

4 Q And it had status codes for simulator solution failure
5 during that time period?

6 A Absolutely, yes, ma'am.

7 Q And is that something you would expect?

8 A Again, yes, ma'am, we do expect, again, as Mr. Jordan
9 alluded to to have some failures because then you know the
10 safeguards that you've implemented are actually working. If
11 you implement a safeguard and it is never enacted or it never
12 - you reach that threshold how do you know your safeguard is
13 working. So, yes, ma'am, we do expect those.

14 Q How often do you review status codes from BAC
15 DataMasters or from the DataMaster machines?

16 A At this time as well as even currently today we review
17 data twice a week, every Monday and every Friday. So, when we
18 come in, we review it on Monday and then we review it Friday
19 at the end of the week.

20 Q And were you the person that reviewed the status codes
21 for the Myrtle Beach DataMaster?

22 A I don't remember specifically on that date and time but
23 I have been doing review of data or status codes for eight,
24 nine years now since I've been back in the implied consent
25 department.

1 Q And Mr. Harpootlian was asking Mr. Jordan about the
2 three status codes on May 10th, 2008. Do those concern you?

3 A No, ma'am, they, they, they give me no particular
4 concern as to functionality or reliability of this particular
5 instrument on that day and time, they do not.

6 Q And do you know what was wrong with the instrument that
7 it was giving - that it gave those three status codes?

8 A No, ma'am, I was not there, but I have an opinion of
9 what most probably was the cause of the problem or creating
10 those status codes.

11 Q And in your standard procedure when you get those status
12 codes what do you do with those status, what should you do
13 after you get the error status codes for the simulator
14 solution?

15 A Again, officers have been trained that you may retest.
16 If you get it again you may attempt another test or try
17 changing the solution, the standard it must check to verify
18 that it is working. In this particular case that's what leads
19 me to believe or have no problems with this instrument. You
20 had three status failures prior to the test. He changed the
21 solution. It goes through approximately or it does five
22 additional simulator tests on itself. All five of those pass.
23 He then conducts a test and those pass. That's - and, and
24 those - between those six tests are 72 different checks that
25 would take place, roughly 12 checks with each test. That

1 being said, I would have had more concern if I would've been
2 reviewing data and I'd seen the failure or three failures and
3 then someone attempted to change solution and it failed again.
4 Well, then I would go, okay, they followed procedure. Well,
5 then it must not be the delivery system, i.e., the simulator
6 the problem. The instrument is going to read what vapor is in
7 there. If a jar is loose or hose is kinked you get less
8 vapor in, lower concentration, that's what it reports.

9 Q So, so if, so, you're saying it would've concerned you
10 more if it had been changed and it was still failing?

11 A Correct.

12 Q The fact that it was passing what is your expert opinion
13 as to that instrument that day after those 72 checks had been
14 passed?

15 A And again for roughly another six weeks it didn't have
16 another failure, simulator failure until after another
17 solution change, so.

18 Q So, what was your expert opinion as to the BAC
19 DataMaster after those three failures after the simulator
20 solution was changed?

21 A That it was working properly.

22 Q And were there any status codes before the next
23 simulator solution change?

24 A No, ma'am, there was not.

25 Q So, that was just the - in the regular course of that 30

1 day, hundred test change?

2 A That's correct.

3 Q And how long was it before the next status code?

4 A It was roughly, I believe, six weeks before the next
5 status code.

6 Q Do you know what the date was the next status code?

7 A The next status code occurred was a sim failure on 6-27
8 and again, that would have been after the next time the
9 solution was changed and again ---

10 Q When was the solution changed?

11 A Excuse me?

12 Q When was the solution changed?

13 A I have to find - let me look at that record if you'd
14 give me one second, ma'am. I just know that that's past the
15 31 days. So, it had to have been changed.

16 Q That was June 7th, 2008?

17 A Correct.

18 Q Does that sound correct? Okay.

19 MS. WEISS: Beg the court's indulgence one moment.

20 Nothing further, Your Honor.

21 THE COURT: All right, Mr. Harpootlian.

22 CROSS EXAMINATION

23 BY MR. HARPOOTLIAN:

24 Q Just a, just a few questions, is your position that
25 after every one of these adjustments are made or repairs are

1 made to the machine that they do one calibration of .08, they
2 don't run any other tests to see if it's working correctly?

3 A Would you state your question again? I want to make
4 sure I actually understand what you're asking.

5 Q You testified about repairs being made to this machine;
6 right?

7 A In the light most favorable to the Defense you would say
8 is there a possibility that a repair or an adjustment was made
9 and there could have been again on those dates that I
10 specified prior to and after the tests.

11 Q Well, they indicate they replaced lights on one day;
12 right? Didn't they replace the light bulbs or the infrared
13 light source?

14 A Well, sir, I believe you'd be referring to many years
15 prior to this test.

16 Q But not, not in the last six months, not the six months
17 prior to this they didn't replace bulbs?

18 A No, sir, you would - wouldn't need to replace the
19 source.

20 Q Did they replace any piece of equipment on this machine
21 in the previous year?

22 A I don't remember specifically in the previous year and
23 if you have to - there was times that the printer cartridge
24 had been replaced if you want to call that a repair.

25 Q No, I'm talking about the functional pieces of the

1 machine that would affect it.

2 A I don't recall any, no, sir.

3 Q Okay, how about in the two years prior to?

4 A Sir, I'd have to go back and review all those. I would
5 hesitate to say. I know that over the course of its life
6 there had been many repairs made.

7 Q But not in the six months to a year prior to this test?

8 A No, sir.

9 Q Okay, and this test - this machine was used a third more
10 than any other machine in the state, high-volume?

11 A In 2008, that's correct.

12 Q In 2008 and was the simulator solution in this machine
13 changed more often than anywhere else in the state or was it
14 pretty much the same every 30 days?

15 A No, every 30, every 31 days or a hundred tests the
16 instrument will shut down, will not allow them. Now, again,
17 nothing precludes them from taking and changing this simulator
18 earlier if need be due to depletion or some ---

19 Q Or getting an error message?

20 A Or a status code, that's correct.

21 Q You call it a status code but it doesn't say status code
22 when it prints out; does it? What does it say?

23 A It says 0.0.

24 Q I'm sorry, what - well, I've got a little report here we
25 were given.

- 1 A Yes, sir.
- 2 Q Exhibit A, what's, what's the word on Exhibit A when -
- 3 on this first test, what's that word they use there?
- 4 A Outside, we say failed.
- 5 Q Failed, okay, so, the machine failed on this date three
- 6 times before the simulator solution was changed and then it
- 7 didn't fail; correct?
- 8 A If, if - depending on how you want to define failed.
- 9 Q No, no, I, I - look, this is a simple question. Who,
- 10 who creates this form?
- 11 A Who creates that form?
- 12 Q Yeah, I mean, who, who designed this form? Is this -
- 13 isn't this something you all would have done?
- 14 A It was created by SLED in conjunction with the
- 15 manufacturer.
- 16 Q Okay, you work at SLED?
- 17 A Yes, sir.
- 18 Q You help create this form?
- 19 A I had some input on various forms throughout my career,
- 20 yes, sir.
- 21 Q You decide the word failed was okay?
- 22 A Sir, you want to give the most accurate word that can
- 23 give the operator some indication that it's not a complete
- 24 test.
- 25 Q So, it failed three times?

1 A Yes, sir, if you want to use that word. It did not pass
2 the specifications as set forth.

3 Q Right, but I mean, and that's not my word. That's the
4 word SLED came up with to describe what had happened?

5 A Fair, yes, sir.

6 Q Okay, now, so, it failed three times and then they
7 changed the simulator solution; correct?

8 A That is correct.

9 Q And then they ran a test and it didn't say fail, it gave
10 a result.

11 A That is correct.

12 Q And you would attribute that to the simulator solution
13 then, a, a - the simulator solution was out of, out of, out of
14 tolerances?

15 A That is correct. At the time prior to them changing the
16 solution it did not pass the specifications that would allow
17 them to go forward. They tried the corrective action. It
18 worked. They changed solution. It passed five additional
19 tests independent readings of that simulator.

20 Q Right.

21 A It then conducts a sixth test which would have been the
22 test where he got the results on the individual that night and
23 they all pass, which gives me the indication there was
24 something with the simulator, the delivery of the sample that
25 needs to be checked but not the instrument.

1 Q And you don't believe that there needs to be any sort of
2 multipoint calibration done on any of these machines at any
3 point?

4 A To my knowledge there's no state that does breath
5 testing that utilizes multipoint calibration.

6 Q But you all do.

7 A No, sir, we don't do multipoint calibration. We do
8 linearity checks. In other words we calibrate. You force it
9 to read a number and then you verify that it is reading the
10 numbers around it appropriately or scientifically correct.

11 Q Are you testifying that this machine never had a
12 multipoint calibration test done on it?

13 A It had a linearity check not a multipoint calibration.

14 Q How about a multipoint linearity test?

15 A Yes, sir.

16 Q Okay.

17 A It has.

18 Q How many times?

19 A It had one initially prior to being put in in 1991 and
20 possibly some other time when repairs were made as it was
21 brought back to this.

22 Q Is there a record of that you've seen?

23 A No, sir.

24 Q You say possibly.

25 A There was no policy or no regulation requiring us to

1 keep it; so we didn't.

2 Q No, no, I understand. Well, there is a regulation
3 requiring you to keep records of all repairs; right, right?

4 A Correct.

5 Q And any tests done; correct? You show calibration tests
6 on your reports; correct?

7 A Calibration tests on our report, that's correct.

8 Q Where, where - right?

9 A That's correct.

10 Q Okay, so, if there had been a multipoint calibration
11 test it wouldn't be on your report?

12 A And, sir, the term you're using.

13 Q Multipoint - well, let me explain to you what I mean,
14 that you would test a solution at A or a - and then a solution
15 at or 16 and then a solution perhaps at 20 and a solution
16 higher than that. It'd be multiple tests on that one machine
17 of different levels of solution. Do you do that?

18 A We did it prior to it being put out. We felt like you
19 were, you know, you can't beat a dead horse but so many times.
20 It does - it is linear. Therefore, we don't do it again.

21 Q If that machine and it's plus or minus five percent;
22 right?

23 A That's correct.

24 Q And if you only have two points - let me, let me, let me
25 sort of see if I can make this a little clearer. I mean, it's

1 SLED policy not to do multiple points; right, except when,
2 when you - when it first came. Is that policy? Is there a
3 policy against it?

4 A We have a policy that says there will be some initial
5 checks or I guess checks when it comes in, the quality control
6 checks I believe is what we refer to them as.

7 Q Okay, this is zero?

8 A Yes, sir.

9 Q And this is let's say - let's use 10. I can't use .08
10 because that bothers me; okay? This is 10, okay. We're not
11 even going to call it .10 because I went to Clemson, the math
12 gets complicated for me.

13 A I understand.

14 Q Okay, so, if it's five percent above or that's 10 right
15 there and that's a line, that's linear, that's what you talk
16 about, you got two points, you know zero, you know ten; right?

17 A Correct.

18 Q But it never really reads 10. It reads something close
19 to 10 and plus or minus five percent; right?

20 A We allow plus or minus five percent, correct.

21 Q Okay, so, what's five, what's this five percent of?

22 A 095 to 105.

23 Q What now?

24 A Zero - .095 ---

25 Q Well, go with my ten.

1 A --- to .105. That is, that is five percent around the
2 ten.

3 Q Okay, so, that'd be 9.5. Let me do it this way.

4 A 095.

5 Q Yeah, let me do it this way. So, that's zero, that's
6 10, 9.5 would be down here; right?

7 MS. WEISS: Your Honor, objection, to relevance to
8 what we're talking about. It appears we're going into, I
9 believe we're going into chemistry at this point.

10 MR. HARPOOTLIAN: We're not going into chemistry. I'm
11 going into the testing procedure they use.

12 THE COURT: All right.

13 MS. WEISS: We're talking about this machine
14 specifically?

15 MR. HARPOOTLIAN: This machine specifically.

16 BY MR. HARPOOTLIAN:

17 Q And what was the, what was the five, ten ---

18 THE COURT: Overruled, go ahead.

19 Q --- 10.5; right?

20 A This machine, yes, sir, and I'm not trying to be
21 argumentative but we're wanting to refer to this machine
22 specifically at the date and time it was an 08. So, it would
23 have been 076 to 084 is the range it can read around an 08,
24 not a ten.

25 Q Yeah, but just humor me for a second. We'll get to that

1 in just a minute, okay. So, if it's, if it's 9.5, if it's ten
2 we follow this line out here; right?

3 A Correct.

4 Q So, if you go out twice it should be 20; right?

5 A That's correct.

6 Q But if it reads more than 10. - if it reads 10.5, which
7 is within your tolerance and you take it out here it's going
8 to read more than 20.

9 A Not necessarily, no, sir.

10 Q Why not?

11 A Because, again, you can't extrapolate that totally.

12 Q Why not?

13 A Because there are too many other variables that are
14 associated as Mr. Jordan spoke about with the simulator, the
15 calibration, the delivery of it, the heating, closed system,
16 but yes, there's roughly a five percent window up to a .08
17 that we allow.

18 Q And then what happens after a .08?

19 A There's some instrument variability.

20 Q How much?

21 A Sir, to be honest with you, not real concerned with it
22 much past an 08. You want to stay at your target
23 concentrations and that is the 08 where the inference level
24 is. This instrument is linear and has been shown to be linear
25 through many studies over the years.

1 Q But you have not done a multi - if you did a multipoint
2 test, you would know - you could say to this Judge this is
3 linear without any doubt.

4 A No, sir, I can tell you today it's linear without any
5 doubt. I don't have a problem saying and let me finish that
6 I'm not perjuring myself. The problem is, you're correct, we
7 have not kept documentation to be able to prove it to you
8 today other than there's other studies that have been done
9 nationwide. So, I don't have anything I can produce to you
10 other than my word that it is linear.

11 Q Okay, and by the way .08 is you say the inference level.
12 Isn't there something a .15?

13 A Automatic license revocation.

14 Q Right, that's not important?

15 A Yes, sir, it is, it is important.

16 Q I mean, you're not concerned with the accuracy up there?

17 A Yes, sir, and if you'd notice prior to us putting them
18 out they were tested at various levels and this instrument
19 will even show what it read at that level, those linearity
20 tests.

21 Q I'm taking your exhibits away. I apologize. Now, when
22 this thing finally didn't fail what does that .08 point
23 simulator solution read? What did it read?

24 A It read a 0.80.

25 Q Okay, on the simulator solution?

1 A That is correct.

2 Q What did the test read?

3 A The test read 0.15.

4 Q Okay, now, wait a minute, when you - I'm sorry. Okay,
5 so, you ran the simulator solution and it read .08?

6 A 0.08.

7 Q And that's correct?

8 A That is correct.

9 Q And the previous ones had read .75?

10 A 0.75, 0.74 I believe is correct.

11 Q And so, it doesn't work if it's that much below?

12 A If it's outside the five percent range it is programmed
13 to shut down to preclude the possibility of an improper test.

14 Q Okay, now, I guess my last question is this, do you
15 train anybody out there, do you train officers, do you work
16 with them?

17 A Yes, sir, I have done training at the South Carolina
18 Criminal Justice Academy. As a matter of a fact we do
19 training of many of the officers who are - then do the
20 training for the other officers in the field. So, we train
21 the academy personnel also.

22 Q This form, is this the report that's generated by the
23 machine?

24 A That is the form that the officers were instructed to
25 place into the machine and have print out.

1 Q Okay, where it says arrest date?

2 A That's correct.

3 Q Have you instructed officers on how to fill that out?

4 A I can only refer to what our policy had said.

5 Q And that's either violation time, I mean, arrest time,
6 violation time or arrest time?

7 A That is correct.

8 Q And that's been the consistent policy of SLED as long as
9 you've known?

10 A I was involved with it in the early nineties and then
11 left and back for the last eight, nine years now and that is
12 consistent policy, correct.

13 MR. HARPOOTLIAN: Beg the Court's indulgence for a
14 moment. Okay, thank you, no further questions.

15 THE COURT: Anything on redirect?

16 MS. WEISS: No, Your Honor.

17 THE COURT: All right, you may step down.

18 A Thank you, Your Honor.

19 THE COURT: Thank you. You can call your next
20 witness.

21 MS. WEISS: The last witness, Your Honor. The State
22 calls Dr. Wendy Bell.

23 Whereupon, Wendy Cannon Bell was called to the stand,
24 duly sworn by the clerk and testified as follows:

25 THE CLERK: Thank you. Please be seated and state

1 your name for the record.

2 MS. BELL: My name is Wendy Cannon Bell, B-E-L-L.

3 MS. WEISS: Beg the Court's indulgence one minute.

4 We're just trying to find the vitae.

5 MR. HARPOOTLIAN: No objection to her qualifications.

6 She can testify as an expert in the area of toxicology or
7 chemistry.

8 THE COURT: All right, by stipulation she's qualified
9 as an expert in the field of toxicology or what was the other?

10 MS. WEISS: Chemistry.

11 MR. HARPOOTLIAN: Chemistry, Your Honor.

12 THE COURT: Is that what she's being offered for
13 toxicology or chemistry, Ms. Weiss?

14 MS. WEISS: Forensic toxicology and chemistry?

15 A Yes.

16 MS. WEISS: Yes.

17 THE COURT: All right, so qualified.

18 MS. WEISS: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. WEISS:

21 Q Dr. Bell, you're currently a supervisor in the forensic
22 toxicology lab at SLED?

23 A Yes, that's correct.

24 Q And have you had the opportunity to test blood samples
25 for DUIs and correlate them, compare them to breath samples?

1 A We have.

2 Q And has it been from different parts of the state?

3 A They are. Typically we get those types of samples when
4 a breath test has been administered by an officer and then the
5 subject requests their own test. So, a blood sample is drawn
6 and submitted to us for comparison.

7 Q And oftentimes or would you say usually those tests are
8 above a .08?

9 A Yes, they are.

10 Q And have you found that those correlate?

11 MR. HARPOOTLIAN: Objection, Your Honor. We're
12 talking about this test. We're not talking about tests in
13 general and whether they correlate or not depends on a number
14 of different factors. I would object to any testimony about
15 what generally correlates or doesn't correlate.

16 THE COURT: All right, I'm going to overrule it.
17 I'll allow it. Go ahead.

18 Q Have you found that they correlate?

19 A They do.

20 Q And that would be different tests some level above .08?

21 A Yes, sometimes based on time factors we have to take
22 certain things into consideration because if a breath test is
23 given and then a blood sample is drawn sometime later
24 obviously there's elimination that takes place. So, we look
25 to make sure that there is a general correlation, typically,

1 you know, a 10 percent agreement or something to that effect.

2 Q And you've been in the courtroom and you've seen these
3 graphs and charts that have been drawn by Mr. Harpootlian and
4 by Dr. Brewer earlier today?

5 A Yes, I have.

6 Q Are you familiar with what these, with what the Defense
7 is trying to say with these charts and graphs?

8 A Certainly and I think we've all agreed that there is
9 some uncertainty with any measurement that's taken and I
10 believe that's what those, you know, they're trying to show
11 with the different uncertainty of measurement bands that are
12 around a measurement. There's, there's no measurement that's
13 going to be 100 percent accurate and 100 percent precise.
14 There is always a small amount of variability.

15 Q And you work with numerous different machines or
16 different instruments in the toxicology lab at SLED; correct?

17 A That is correct.

18 Q And are those machines linear machines, they're linear
19 instruments?

20 A We test for all our different substances in linear
21 ranges. Certainly all different, alcohol in particular, and
22 all different drugs have different linear ranges.

23 Q Okay.

24 A And so, we test for those substances in the ranges where
25 they're linear and sometimes you do dilutions or different

1 things that you need to do to test for them in the linear
2 range. Yes, the ethanol testing devices that we use, which is
3 headspace gas chromatography, are linear from a zero to a .4.

4 Q Okay, and you use multiple linearity checks when you're
5 doing tests in your lab?

6 A We do.

7 Q Okay, can you explain the difference between those
8 linearity checks that you do and the DataMaster, BAC
9 DataMaster with the 0.08 and how that correlates? I think
10 we've heard a lot of explanation today and a lot of different
11 conflicting views and I'm just asking you in your expert
12 opinion to please explain the difference in those different
13 instruments and the results that you would expect to see.

14 A Well, the BAC DataMaster is a, is a forensic instrument
15 and it was designed to give a reliable result. It is not
16 designed to have the exact same precision and accuracy than an
17 analytical laboratory instrument and used in a laboratory
18 setting by trained scientists. It would not necessarily have
19 to have the same precision and accuracy as that type of
20 instrument. It's an evidentiary instrument. It was designed
21 to be operated by officers with limited experience. Again,
22 it's designed to show impairment above a certain level. We
23 know that there's uncertainty of measurement and there's
24 certainly a trend in the field to move towards determining
25 that uncertainty of measurement around these results, but at

1 the time that this test was given and right now there is no
2 requirement to give any definition of uncertainty. We know
3 approximately what that uncertainty is. We know that in '08
4 it's five percent and because of the linearity checks that are
5 done when the instrument is first put into place we know that
6 it is five percent outside of that. Additionally, some states
7 use this exact same instrument in a very similar setting and
8 they have done these types of linearity studies on
9 instruments. I have some papers that were published that have
10 instruments that were up to 15 years old and they showed that
11 they were incredibly linear and stable over the entire 15 year
12 time period. They also only use a single point calibration
13 because that is how the BAC DataMaster is designed. It
14 calibrates around one point and that point is almost always
15 chosen at the point of threshold. So, in this state it would
16 be around a .08 and then checks can be done but they're not
17 required, and based on what these other states have proven,
18 again, I have a peer-reviewed article here where Indiana
19 tested over 1,746 inspections of 240 different instruments and
20 they showed that it was both stable and linear over a 15 year
21 period, and in fact, in most cases the older instruments
22 performed better, and some of that is based on electronics.

23 Q You've talking about BAC DataMasters?

24 A This particular model in use, yes, BAC DataMasters.

25 Q Have you been able to review linearity tests that were

1 done on BAC DataMasters in South Carolina at any point from
2 NHTSA or experts that have come in based on the legislature?

3 A Yes, I have, Dr. Dubowski's review in particular.

4 Q And was there any question, scientific error in those
5 that showed any problem with the linearity on those BAC
6 DataMasters?

7 A No, he did not have a problem with the way that the
8 tests were being conducted.

9 Q And when he ran the linearity checks did he come - were
10 there any issues with those?

11 A There were not.

12 Q And what about the NHTSA reviews of the South Carolina
13 tests?

14 A There were also no issues at all, that they were found
15 to be linear within the five percent range as defined.

16 Q So, what is your expert opinion as to the validity of
17 the reading of the BAC DataMaster, the Myrtle Beach BAC
18 DataMaster on May 10th, 2008?

19 MR. HARPOOTLIAN: Objection, Your Honor, unless she's
20 examined that machine and has specific findings as to that
21 machine I would object as to any generalities about because
22 all these other machines were working correctly. This one
23 wasn't. May I voir dire?

24 THE COURT: No, I'll sustain the objection.

25 MR. HARPOOTLIAN: Thank you.

1 Q Okay, you have .08 simulator solution. Are you familiar
2 with the solution?

3 A I am.

4 Q And how that works?

5 A Yes.

6 Q How it works with the BAC DataMaster?

7 A Yes.

8 Q All right, and you heard Dr. Brewer testified earlier
9 that - let me show you what's been admitted as State's Exhibit
10 A. Do you recognize this form?

11 A Yes, I do.

12 Q And you can see where the simulator solutions were
13 changed based on the bottle number being different?

14 A Yes, I can see that.

15 Q And when you see those more times than not or actually
16 most of the time it's either .79 or .079 or .08 or .081. I
17 think it was all within that, that one digit. When the
18 simulator solution bottle was changed you - it ran a
19 calibration check at that level. Is that what your, is that
20 what you see on there?

21 A Yes, and I believe, you know, one of the statements that
22 Dr. Brewer made was that with a BAC instrument you would
23 expect to see as many high readings as you would low, and
24 statistically for blood samples that is correct because the
25 variability in a blood measurement we often see that, but

1 these are very - these instruments are actually incredibly
2 linear and very precise and when they're, the calibration is
3 at a .08 typically when the simulator solution is changed it
4 reads that, an 08, and so, the trend is then to go low as a
5 simulator solution dissipates and this is not just - and this
6 is through observations through the documents that we have, as
7 well as in publications. This particular publication in
8 Indiana says that 97 percent of the time the instrument trends
9 low which again is with the simulator solution. You don't
10 usually see readings higher than the desired measurement.

11 Q When you say trends low who does that benefit, the State
12 or the Defense?

13 A Well, in this case it's for the simulator solution.
14 It's not necessarily with the evidentiary breath, but trending
15 low certainly if it was with the breath sample would benefit
16 the subject.

17 Q And Dr. Brewer said you'd want to see high and low.
18 You're saying no. Will you explain or can you show if you can
19 step down and perhaps show on the chart what you mean by
20 trending low ---

21 A Well ---

22 Q --- or you may be able to explain it verbally.

23 A --- it's, it's not necessarily referring to these
24 particular charts right here.

25 Q Right, I don't mean these. I just mean what do you mean

1 by that?

2 A Whenever you put a fresh batch of simulator solution you
3 expect it to be at its most precise and accurate because it's
4 freshly opened bottle, you put it in, there's been no time for
5 it to dissipate, no sample has been pulled off of it. With
6 time it dissipates some. Again, we know that these are, users
7 who are changing simulator solution that don't do this very
8 frequently, so, how they put the container back on can affect
9 it. In other words, it's expected for it to trend low and
10 it's not unusual for the simulation to fail.

11 Q And so, as it starts to trend low, so, it starts at a
12 .08 and starts to go down, is it, is it unusual to see perhaps
13 a .76, then a .75 and then back to a .76 and then go back down
14 to a .75? I mean, is that, is that unusual? Does that mean
15 it's not trending low?

16 A If it's jumping all around that is more of a sign that
17 there'd be something other than the simulator solution that
18 was wrong with the instrument.

19 Q Well, now, I'm not talking about jumping like .84, .76
20 but I mean if it's, if it's just sort of, you know, one test
21 and ---

22 A Oh, one, yeah, one test back to back does not
23 necessarily indicate a trend. A trend is over a period of
24 time. You can have up and down variations. Nothing is a
25 purely straight-line.

1 Q Back to back?

2 A There's ---

3 Q But it's a trend over a period of time?

4 A Right.

5 Q And the infrared spectroscopy, you're familiar with
6 that?

7 A Yes.

8 Q And would you say that's a fairly good scientific test?

9 A I think, again, this is an excellent instrument for this
10 type of noninvasive test.

11 Q And so, with the zero testing that forces a zero before
12 and after every test the DataMaster does; correct?

13 A Yes, it does.

14 Q And the .08 simulator solution that it does, as well as
15 the internal standard with the Court's standard, as a
16 scientist would you feel, is your opinion or do you have
17 confidence in the readings that are put out by the BAC
18 DataMaster?

19 A I do.

20 Q And is that changed by the fact that on May 10th, 2008,
21 that there were three in the course of this one test there
22 were three status codes or failures by this BAC DataMaster?

23 A Again, that - those status codes are an indication that
24 the instrument was working properly because it caught that the
25 QC was not passing, and it allowed the operator to make an

1 adjustment to allow it to come into specs prior to making any
2 type of measurement on an evidentiary sample.

3 Q And as a scientist what gives you confidence that this
4 instrument was working properly?

5 A Again, those failures, if it didn't occur and the test
6 was able to start with low measurements that's an indication
7 it's not working.

8 Q And then once the simulator solution was changed was
9 there something that gave you confidence in the results that
10 were then given by the BAC DataMaster?

11 A Yes, we know that at an 08 is incredibly accurate. It
12 was reading precisely on par, and again, we know up at a - at
13 where the evidentiary sample read that there is some
14 variability but there's no indication that it would be so
15 uncertain that it would put it down below an 08 or make the
16 reading invalid by any means. You know, I can't tell you
17 exactly what the uncertainty of that measurement is but I know
18 that it was not 50 percent. I know it was not a hundred
19 percent uncertainty. It was more likely five, and at a
20 greatest extent it would be 10. So, plus or minus 10 percent
21 would be a very conservative allowance that you could give on
22 a reading like that without having a test that checks that
23 point, but we know based on the studies, again I believe that
24 these over 1500 studies that were done on different
25 breathalyzer tests show that these instruments are linear and

1 stable over long periods of time.

2 Q So, it is your scientific opinion that most likely ---

3 MR. HARPOOTLIAN: Objection, Your Honor, if she can
4 ask it as a question rather than stating. I object.

5 Q So, what ---

6 THE COURT: Overruled. I'll allow it. Go ahead.

7 Q So, is your scientific opinion as to the .15 that it is
8 based on the studies most likely accurate within five percent?

9 A Yes.

10 Q And would also be either with the uncertainty because we
11 don't - we haven't done the linearity test recently on this
12 machine but be your scientific, scientific opinion that that
13 .15 is not going to be outside the 10 percent range?

14 A Yes, that is correct. That's ---

15 Q And would that ---

16 A I think that would be an incredibly conservative
17 uncertainty of measurement gap and would be greater probably
18 than the 95 percent confidence window that would be needed
19 based on how these instruments have performed in the past.
20 There's no indication that the instrument wasn't working
21 properly. It passed its quality control checks, all 12 of
22 them and it made a - gave a reading.

23 Q And is there any question in your mind that the reading
24 was ---

25 MR. HARPOOTLIAN: Objection, any question in your

1 mind?

2 THE COURT: Overruled. I'll allow it. Go ahead.

3 Q Any question in your mind that the reading that was
4 given was above a .08?

5 A There is no question that the reading was not above an
6 08. Is that ---

7 Q Okay, and was that ---

8 A Right, we -, I am certain that the reading was above an
9 08.

10 Q And there was an actual specific check for an 08 ---

11 A Yes, that's correct.

12 Q --- on this BAC DataMaster. Thank you. No further
13 questions.

14 CROSS EXAMINATION

15 BY MR. HARPOOTLIAN:

16 Q You indicate there is some uncertainty in all this;
17 right?

18 A All measurements have uncertainty.

19 Q Right, and there's uncertainty as to whether a machine
20 is working appropriately or not?

21 A Not if you perform the quality control checks.

22 Q Right, and the machines you work with in the lab you do
23 the multipoint calibration we're talking about here, we've
24 talked about here?

25 A We do multipoint calibration but we only do a single

1 point check when we run samples.

2 Q Right, but you calibrate them before you use them;
3 right?

4 A Not every time. We use historical curves for alcohol.

5 Q But for other tests you do?

6 A Just because we're running different drugs on different
7 days we have to calibrate for different drugs on different.

8 Q Okay, I guess maybe is this machine infallible?

9 A No machine is infallible.

10 Q Okay, I sort of got that impression a moment ago. I
11 wanted to make sure I wasn't, I wasn't wrong about that. So,
12 it's not infallible. So, could all these tests read the way
13 they're supposed to read and it still be wrong?

14 A You would have to put some type of ---

15 Q No, no, I'm just - assume that it prints out - assume a
16 test that they - it fails, it fails, it fails according to
17 that. They change the simulator solution and then it passes.

18 A No, in this particular case if it passes the quality
19 control checks then the reading is correct.

20 Q A hundred percent of the time?

21 A We don't know what the uncertainty is around that
22 meeting, reading, but the reading is correct.

23 Q Okay, but there's some uncertainty around that reading?

24 A There is.

25 Q It could be higher or lower?

1 A It could be higher or lower.

2 Q And you don't know by how much?

3 A We don't. We know that it is somewhere probably less
4 than five percent because of the stability studies and
5 linearity studies of this instrument.

6 Q Probably, but it could be more than five percent?

7 A I would conservatively give you up to 10 but it would
8 still be considerably above an 08.

9 Q Okay, I understand it would be above a .08 but in this
10 case it could be as low as a 13?

11 A That is a hypothetical situation. It could, but ---

12 Q Well, could it be based on the studies you looked at?
13 You've indicated could be as low as a 13?

14 A No, not based on the studies. The studies actually had
15 much tighter windows. They, they show that instruments are
16 more precise.

17 Q But you, you would concede that it ---

18 A Without running a test I can't say with 100 percent
19 certainty what the measurement of uncertainty is. So, I would
20 give a conservative window of 10 percent and feel very
21 comfortable with that.

22 Q Okay, so, 10 percent of a 15 would be one and a half and
23 taken it down to 13 and a half?

24 A Yes.

25 Q Right, and these things don't read in half percentages;

1 do they?

2 A I believe they do but it truncates.

3 Q Down to the 13?

4 A That's correct.

5 Q Okay, so, it could be as low as a 13 or as high as a ---

6 A .16.

7 Q .16 and that's the window; right?

8 A That is a very conservative window.

9 Q A very conservative window. So, the accuracy of the
10 test is it could be, I mean, even in your opinion as low as a
11 13 or as high as a 16; right?

12 A Could be.

13 Q And that's if the machine is working exactly 100 percent
14 correct?

15 A That's not correct. Then that is, that is the broadest
16 spectral range of the uncertainty curve that we would give. I
17 would expect it to be much better than that.

18 Q You would, but your expert opinion to a degree of
19 scientific certainty, more probably than not is it could be as
20 low as 13 or as high as a 16?

21 A I would agree with that.

22 Q Is that a yes?

23 A That is what I would consider a conservative range.

24 Q Okay, now, let me see, Dr. Brewer has given me a whole
25 bunch of questions here, most of which I don't understand.

1 So, let me see if I can wade through these really quick. Is
2 it possible that a breath test instrument can be calibrated at
3 .08 but not necessarily be linear at 08?

4 A No.

5 Q Okay, can a major change of an instrument part affect
6 the linear response, that is they replace the light bulb or
7 the receptor?

8 A It could.

9 Q What?

10 A There is a possibility.

11 Q Right, and should a calibration be done every time they
12 do that?

13 A I do believe they do a calibration against a one point
14 calibration.

15 Q It's one point and that's enough?

16 A It is, based on this instrument it is.

17 Q And the, the - are you aware of the quality control done
18 on the simulator solution? Have you - did they ask you to
19 look at that?

20 A Yes.

21 Q And you've looked at that?

22 A Yes.

23 Q And who does that quality control?

24 A Part of it is done by the laboratory that they purchase
25 it from which is, it comes certified and then also my

1 laboratory does the other testing to certify it.

2 MR. HARPOOTLIAN: Beg the Court's indulgence for a
3 moment.

4 THE COURT: All right.

5 MR. HARPOOTLIAN: Thank you. No further questions.

6 THE COURT: All right, anything on redirect?

7 MS. WEISS: No, Your Honor.

8 THE COURT: All right, you may step down. You can
9 call your next witness.

10 MS. WEISS: Your Honor, that would conclude the
11 State's witnesses. I would ask at this time because of the
12 hour of the day if we may be able to do our arguments in
13 written memorandum form. I think ---

14 THE COURT: Okay, well, I don't even know, I don't
15 need to even hear arguments. I just, I just want to collect
16 what I - I mean, I've gotten a memorandum from you. I'm going
17 to give both of you an opportunity to submit additional
18 memorandum or whatever you want to do because I'm going to
19 take it under advisement.

20 MR. HARPOOTLIAN: Well, Your Honor, Your Honor, I
21 think it's important we be able - after hearing this testimony
22 be able to advocate in those memorandums what our positions
23 are.

24 THE COURT: Yeah, you can do that, yes, that'll be
25 fine.

1 MR. HARPOOTLIAN: Will you give us two weeks to do
2 that?

3 THE COURT: How long do you need?

4 MS. WEISS: I mean, two weeks would be sufficient,
5 Your Honor.

6 THE COURT: Okay, I mean, I didn't know why this was
7 coming up now. Is this case on a docket for trial or what is
8 ---

9 MS. WEISS: Yes, Your Honor, it was on the docket the
10 last time. It was, it was supposed to be heard the last time
11 that we were scheduled to do these motions. This is just a
12 three and a half year old case that ---

13 MR. HARPOOTLIAN: Well, now, let me say this about
14 that, the Solicitor - it was up to the Solicitor to call the
15 case. She got into this late. I got into this late, and the
16 fact it's three and a half years old should not in any way
17 hurry this case up. I've been in this case six months.

18 MS. WEISS: Your Honor, we have, we have a deceased
19 victim and a severely injured victim; and so, whether I got
20 into this case late or Mr. Harpootlian got in this case let
21 ---

22 THE COURT: Well, then why isn't ---

23 MS. WEISS: We do ---

24 THE COURT: --- well, answer me this, why has it
25 taken three and a half years?

1 MS. WEISS: Your Honor, I came into this case in
2 January, and ---

3 THE COURT: Well, okay, but why wasn't this case
4 tried before you all came into it. I guess that's what I'm
5 trying to find out.

6 MR. HARPOOTLIAN: Well, Solicitor Hembree realized he
7 had a conflict.

8 MS. WEISS: Yes.

9 MR. HARPOOTLIAN: And then after and Tommy Brittain
10 was representing the Defendant and then because he was at the
11 party at the night of the ---

12 MS. WEISS: He was at the scene of it.

13 MR. HARPOOTLIAN: --- at the scene, a motion was made
14 to recuse him by the State. He was out. It took him time to
15 get me. I got in. I mean, that's and that's where we're at.

16 MS. WEISS: Your Honor ---

17 MR. HARPOOTLIAN: --- but I will say this in terms of
18 the expeditiousness of this case my client is facing 40 years,
19 no parole. This is a very, very important case to him. I'd
20 like the opportunity to not only to advocate to you in writing
21 but I'd almost like to see this transcript. We've made notes
22 but I think there's some important things that were in this
23 transcript and won't be in this transcript.

24 THE COURT: Well, let's do this. I'm going to give
25 both of you 14 days to submit your memorandums. You can

1 contain your arguments in there. Get that to me and then I'll
2 make a decision; okay?

3 MS. WEISS: And I will - and just to answer your
4 question before the attorney that had this case before me he -
5 they were working on some negotiations is my understanding for
6 a period of time and then it started to move towards a docket
7 and he is currently deceased. He passed away in January of
8 this year. So, that sort of - that just - it changed the face
9 of things but that's my understanding prior to this.

10 THE COURT: Okay, all right.

11 MR. HARPOOTLIAN: It's not us.

12 MS. WEISS: It's not us.

13 THE COURT: Right, and I understand that. I
14 understand.

15 MS. WEISS: The motion to recuse Mr. Brittain was done
16 prior to me coming in. I mean, that was all stuff that was
17 going on prior to the death of the attorney that had this
18 before me, so.

19 THE COURT: All right, that sounds good. Well,
20 please get me your memorandums within 14 days. Okay?

21 MS. WEISS: Thank you, Your Honor.

22 THE COURT: All right, thank you very much.

23 (Adjourned.)

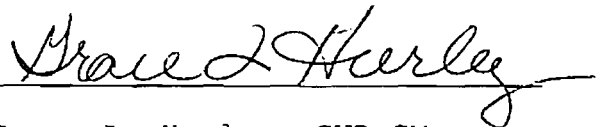
24

25

C E R T I F I C A T E

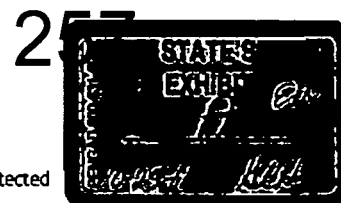
I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State versus Michael J. Hilton, held in the Court of General Sessions for Horry County, Georgetown County Courthouse, Georgetown, South Carolina, on October 25, 2011.

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


Grace L. Hurley, CVR-CM
Official Reporter

January 11, 2012.

South Carolina Law Enforcement Division - Breath Records



Date Range From 11/11/2007 To 11/11/2008
DataMaster (BAC/DMT) Serial Number - 881279
Report Date - 9/23/2011

Legend I - Incomplete
R - Refusal
V - Invalid Sample
X - Interference Detected

Serial Number	Loc Number	Test Date/Time	DOB	Sex/Race	Arrest Date/Time	Read Rights	Mouth Check	Obs. 20 m	Officer1 Name/Agency	Officer2 Name/Agency	Operator Name/Agency	Operator Number	Filter1 Filter2 Filter3	Subl. Alc.	Simulator Lot/Bottle	Expiration Date	Sim Temp (C)	Sim Alc.
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881279	0260600	11/21/2007 3:05:41 AM	04/16/88	M	11/21/07 01:27	Y	Y	Y	Thomas/J/K SC0260600		Thomas/J/K SC0260600	DM012393	0.2047 0.2041	0.204	07803 1437	12/14/2008	34	0.076
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881279	0260600	11/25/2007 1:42:18 AM	08/08/84	M	11/25/07 00:29	Y	Y	N	Cooke/D/ SC0260600		McMahon/V/ SC0260600	DM013055		R	07803 1437	12/14/2008	34	0.076
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881279	0260600	11/29/2007 1:15:05 AM	03/13/51	M	11/28/07 23:55	Y	Y	Y	Costa/C/F SC026SP00		Costa/C/F SC026SP00	DM008387	0.08 0.08	0.08	07803 0655	12/14/2008	34	0.08
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881279	0260600	12/7/2007 9:20:12 PM	01/24/53	M	12/07/07 20:15	Y	Y	Y	Preston/T/M SC0260600		Preston/T/M SC0260600	DM011947	0.1244 0.1241	V	07803 0655	12/14/2008	34	0.08
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881279	0260600	12/11/2007 12:52:41 AM	01/15/75	F	12/10/07 23:15	Y	Y	Y	Mccrackin/C/C SC0260600		Mccrackin/C/C SC0260600	DM012260	R	07803 0655	12/14/2008 34	0.078	
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881279	0260600	12/13/2007 10:51:40 PM	10/25/82	F	12/13/07 21:55	Y	Y	Y	Gardner/S/R SC02699SP		Gardner/S/R SC02699SP	DM005679	0.1716 0.1713	0.171 0.171	07803 0655	12/14/2008 34	0.079
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881279	0260600	12/21/2007 7:43:38 AM	03/16/58	M	12/21/07 06:35	Y	Y	Y	Weatherwax/D/R SC026SP00		Weatherwax/D/R SC026SP00	DM012574	R	07803 0655	12/14/2008 34	0.077	
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881279	0260600	12/23/2007 10:11:52 PM	01/08/55	W	12/23/07 20:35	Y	Y	Y	Burgos/X/Q SC026SP00		Burgos/X/Q SC026SP00	DM012824	0.1112 0.1108	0.11 0.11	07803 0655	12/14/2008 34	0.077
881279	0260600	12/25/2007 12:55:56 AM	04/12/86	M	12/24/07 23:30	Y	Y	Y	Dwyer/M/T SC026SP00		Dwyer/M/T SC026SP00	DM012544	0.0946 0.095	0.094 0.094	07803 0655	12/14/2008 34	0.077
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881279	0260600	1/3/2008 5:12:15 PM	03/05/63	M	01/03/08 16:00	Y	Y	Y	Griffith/L/P SC0260600		Truex/B/C SC0260600	DM009652	0.1671 0.1685	0.167 0.167	07803 1435	12/14/2008 34	0.08
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881279	0260600	1/9/2008 12:47:00 AM	05/17/58	M	01/08/08 23:35	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949	0.2135 0.2126	0.212 0.212	07803 1435	12/14/2008 34	0.079
881279	0260600	1/11/2008 4:53:34 AM	07/13/79	M	01/11/08 03:50	Y	Y	Y	Small/K/F SC026SP00		Small/K/F SC026SP00	DM013267	0.1499 0.1496	0.149 0.149	07803 1435	12/14/2008 34	0.079
881279	0260600	1/12/2008 2:19:54 AM	12/30/70	M	01/11/08 01:30	Y	Y	N	Davis/G/S SC026SP00		Davis/G/S SC026SP00	DM007802	0.1208 0.12	0.12 0.12	07803 1435	12/14/2008 34	0.079
881279	0260600	1/13/2008 8:41:58 AM	05/07/85	W	01/13/08 07:45	Y	Y	Y	Burgess/R/V SC026SP00		Burgess/R/V SC026SP00	DM007663	0.1207 0.12	0.12 0.12	07803 1435	12/14/2008 34	0.078
881279	0260600	1/16/2008 1:25:12 AM	05/07/82	M	01/16/08 00:20	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949	0.1678 0.169	0.169 0.169	07803 1435	12/14/2008 34	0.08
881279	0260600	1/16/2008 3:31:40 AM	03/04/71	M	01/16/08 02:10	Y	Y	Y	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551	0.1413 0.1414	0.141 0.141	07803 1435	12/14/2008 34	0.08
881279	0260600	1/16/2008 2:44:09 PM	11/02/64	W	01/16/08 13:30	Y	Y	Y	Poirer/K/A SC0260600		Shelton/N/M SC0260600	DM009930	R	07803 1435	12/14/2008 34	0.079	
881279	0260600	1/18/2008 12:08:09 AM	08/07/73	F	01/17/08 22:51	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	R	07803 1435	12/14/2008 34	0.079	
881279	0260600	1/18/2008 4:12:35 AM	11/17/86	F	01/18/08 02:25	Y	Y	Y	Gibson/B/L SC0260600		Gibson/B/L SC0260600	DM012084	0.2518 0.2513	0.251 0.251	07803 1435	12/14/2008 34	0.079
881279	0260600	1/19/2008 3:02:42 AM	04/25/86	F	01/19/08 01:20	Y	Y	Y	Moduskey/S/ SC0260600		Moduskey/S/ SC0260600	DM007680	0.11 0.1096	0.109 0.109	07803 1435	12/14/2008 34	0.079
881279	0260600	1/19/2008 3:45:58 AM	05/22/76	M	01/19/08 02:04	Y	Y	Y	Proulx/T/N SC0260600	Aies/K/ SC0260600	Proulx/T/N SC0260600	DM012303	0.1985 0.1981	0.198 0.198	07803 1435	12/14/2008 34	0.079
881279	0260600	1/20/2008 12:35:51 AM	03/06/85	M	01/19/08 23:08	Y	Y	Y	Moduskey/S/ SC0260600		Moduskey/S/ SC0260600	DM007680	0.1799 0.1801	0.179 0.180	07803 1435	12/14/2008 34	0.079
881279	0260600	1/22/2008 1:39:42 AM	06/27/77	M	01/22/08 00:14	Y	Y	N	Moduskey/S/ SC0260600		Moduskey/S/ SC0260600	DM007680	R	07803 1435	12/14/2008 34	0.079	
881279	0260600	1/24/2008 9:57:16 PM	08/11/86	M	01/24/08 20:30	Y	Y	Y	Hicks/D/B SC026SP00		Hicks/D/B SC026SP00	DM013253	0.1026 0.1033	0.102 0.103	07803 1435	12/14/2008 34	0.079
881279	0260600	1/26/2008 12:44:28 AM	05/31/84	W	01/25/08 23:30	Y	N	N	Sarvis/M/B SC026SP00		Sarvis/M/B SC026SP00	DM011922	R	07803 1435	12/14/2008 34	0.079	
881279	0260600	1/26/2008 1:56:55 AM	09/01/82	M	01/26/08 01:08	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.1417 0.1428	0.141 0.141	07803 1435	12/14/2008 34	0.079
881279	0260600	1/26/2008 2:35:25 AM	06/29/81	M	01/26/08 01:09	Y	Y	Y	Beatty/R/F SC0260600	Preston/T/M SC0260600	Preston/T/M SC0260600	DM011947	0.147 0.1467	0.146 0.146	07803 1435	12/14/2008 34	0.079
881279	0260600	1/26/2008 3:31:24 AM	07/21/86	M	01/26/08 01:48	Y	Y	N	Mindala/R/ SC0260600		Thomas/J/K SC0260600	DM012393	R	07803 1435	12/14/2008 34	0.079	
881279	0260600	1/26/2008 4:11:44 AM	09/16/87	F	01/26/08 01:48	Y	Y	Y	Thomas/J/K SC0260600		Thomas/J/K SC0260600	DM012393	0.2 0.1997	0.199 0.199	07803 1435	12/14/2008 34	0.078
881279	0260600	1/27/2008 11:25:18 PM	07/08/77														

881279	0260600	2/2/2008 12:19:38 AM	04/17/81	M	02/09/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1361	0.136	0.7803	12/14/2008	34.1	0.077
881279	0260600	2/2/2008 1:09:51 AM	06/10/64	F	02/10/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.1019	0.101	0.7803	12/14/2008	34	0.077
881279	0260600	2/2/2008 2:19:12 AM	12/31/80	M	02/10/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.1633	0.163	0.7803	12/14/2008	34	0.076
881279	0260600	2/2/2008 2:54:22 AM	12/11/71	M	02/10/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028			0.7803	12/14/2008	34	0.077
881279	0260600	2/3/2008 2:02:05 AM	03/17/85	F	02/11/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.1201	0.12	0.7803	12/14/2008	34	0.077
881279	0260600	2/4/2008 12:10:02 AM	08/30/81	M	02/03/08	Y	N	N	Spivey/T/L	Spivey/T/L	DM091149			0.7803	12/14/2008	34	0.08
881279	0260600	2/4/2008 11:54:06 PM	08/27/53	F	02/04/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.0003	0	0.7803	12/14/2008	34.1	0.079
881279	0260600	2/5/2008 1:41:57 AM	05/29/66	M	02/05/08	Y	N	N	Schmidt/P/	Schmidt/P/	DM012028			0.7803	12/14/2008	34.1	0.078
881279	0260600	2/5/2008 10:54:14 PM	01/15/51	F	02/05/08	Y	Y	N	Simmons/J/M	Simmons/J/M	DM012621			0.7803	12/14/2008	34	0.079
881279	0260600	2/6/2008 9:05:55 AM	09/05/75	M	02/06/08	Y	Y	Y	McCarthy/S/W	Lamparter/K/S	DM013149			0.7803	12/14/2008	34.1	0.078
881279	0260600	2/7/2008 4:53:09 AM	10/09/89	M	02/07/08	Y	Y	Y	McKowan/D/M	McKowan/D/M	DM013260	0	0	0.7803	12/14/2008	34.1	0.079
881279	0260600	2/7/2008 10:44:45 PM	11/12/81	M	02/07/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1935	0.193	0.7803	12/14/2008	34.1	0.077
881279	0260600	2/8/2008 1:28:37 AM	11/04/68	M	02/08/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028			0.7803	12/14/2008	34.1	0.076
881279	0260600	2/11/2008 7:55:31 PM	09/19/64	M	02/11/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.298	0.296	0.7803	12/14/2008	34	0.076
881279	0260600	2/12/2008 12:51:23 AM	11/17/64	B	02/11/08	Y	N	N	Schmidt/P/	Schmidt/P/	DM012028			0.7803	12/14/2008	34	0.077
881279	0260600	2/14/2008 1:00:37 AM	03/14/82	M	02/13/08	Y	Y	Y	Predado/D/	Predado/D/	DM013530	0.1196	0.119	0.7803	12/14/2008	34.1	0.077
881279	0260600	2/14/2008 2:05:50 AM	05/05/66	M	02/14/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.0595	0.059	0.7803	12/14/2008	34	0.076
881279	0260600	2/15/2008 11:36:57 PM	10/13/65	M	02/15/08	Y	Y	N	S/W/J	Stair/W/J	DM013062			0.7803	12/14/2008	34	0.076
881279	0260600	2/16/2008 12:09:04 AM	10/13/65	M	02/15/08	Y	Y	Y	Stair/W/J	Stair/W/J	DM013062			0.7803	12/14/2008	34	0.076
881279	0260600	2/16/2008 3:53:29 AM	05/26/78	F	02/16/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1767	0.176	0.7803	12/14/2008	34	0.076
881279	0260600	2/16/2008 4:32:11 AM	08/23/86	M	02/16/08	Y	Y	Y	Leach/J/T	Leach/J/T	DM005377	0.1648	0.164	0.7803	12/14/2008	34	0.076
881279	0260600	2/16/2008 5:12:56 AM	04/29/85	M	02/16/08	Y	Y	Y	Burgos/W/Q	Burgos/W/Q	DM012824			0.7803	12/14/2008	34	0.076
881279	0260600	2/16/2008 5:24:03 AM	04/29/85	M	02/16/08	Y	Y	Y	Burgos/W/	Burgos/W/	DM012824	0.1588	0.158	0.7803	12/14/2008	34	0.076
881279	0260600	2/16/2008 7:11:43 PM	08/23/84	M	02/16/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1248	0.124	0.7803	12/14/2008	34	0.076
881279	0260600	2/17/2008 2:42:43 AM	08/31/85	M	02/17/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.0127	0.012	0.7803	12/14/2008	34	0.076
881279	0260600	2/17/2008 4:12:03 AM	12/23/72	M	02/17/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1703	0.169	0.7803	12/14/2008	34	0.076
881279	0260600	2/18/2008 12:55:56 AM	08/15/80	M	02/17/08	Y	N	N	Schmidt/P/	Schmidt/P/	DM012028			0.7803	12/14/2008	34	0.08
881279	0260600	2/19/2008 4:56:47 AM	05/19/48	B	02/19/08	Y	Y	Y	Roberts/D/J	Harper/R/S	DM012388			0.7803	12/14/2008	34	0.081
881279	0260600	2/19/2008 5:08:55 AM	05/19/48	B	02/19/08	Y	Y	Y	Roberts/D/J	Harper/R/S	DM012388			0.7803	12/14/2008	34	0.08
881279	0260600	2/19/2008 6:11:04 AM	11/19/87	M	02/19/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.1827	0.182	0.7803	12/14/2008	34	0.08
881279	0260600	2/20/2008 8:00:55 PM	02/23/82	F	02/20/08	Y	Y	Y	Heine/W/D	Heine/W/D	DM012288	0.1409	0.14	0.7803	12/14/2008	34	0.08
881279	0260600	2/22/2008 10:36:24 PM	05/28/68	B	02/22/08	Y	Y	Y	Heine/W/D	Boley/K/S	DM012288	0.1864	0.186	0.7803	12/14/2008	34	0.08
881279	0260600	2/22/2008 11:10:25 PM	04/17/70	M	02/20/08	Y	Y	Y	Sarvis/M/B	Sarvis/M/B	DM011922	0.1111	0.111	0.7803	12/14/2008	34	0.079
881279	0260600	2/23/2008 1:20:52 AM	08/20/81	F	02/22/08	Y	Y	Y	Sarvis/M/B	Sarvis/M/B	DM011922	0.2101	0.209	0.7803	12/14/2008	34	0.079
881279	0260600	2/23/2008 2:00:27 AM	06/07/79	M	02/23/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.1289	0.128	0.7803	12/14/2008	34	0.079
881279	0260600	2/23/2008 3:30:39 AM	10/08/78	M	02/23/08	Y	N	N	Clary/J/A	Butler/M/A	DM010490			0.7803	12/14/2008	34	0.079
881279	0260600	2/23/2008 4:05:31 AM	05/19/88	F	02/23/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.1234	0.123	0.7803	12/14/2008	34	0.079
881279	0260600	2/23/2008 5:21:57 AM	07/07/76	M	02/23/08	Y	N	N	Hamilton/J/F	Hamilton/J/F	DM012415			0.7803	12/14/2008	34.1	0.079
881279	0260600	2/24/2008 1:17:26 AM	07/19/64	F	02/24/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028			0.7803	12/14/2008	34	0.079
881279	0260600	2/24/2008 2:25:03 AM	12/30/83	F	02/24/08	Y	Y	Y	Boley/K/S	Boley/K/S	DM012231	0.186	0.186	0.7803	12/14/2008	34	0.079
881279	0260600	2/24/2008 2:56:07 AM	04/17/84	M	02/24/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1416	0.14	0.7803	12/14/2008	34	0.078
881279	0260600	2/27/2008 12:00:09 AM	05/02/40	M	02/26/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1342	0.133	0.7803	12/14/2008	34.1	0.08
881279	0260600	2/27/2008 2:03:42 AM	06/15/71	M	02/27/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028			0.7803	12/14/2008	34	0.078
881279	0260600	2/27/2008 5:12:08 AM	06/03/90	M	02/27/08	Y	Y	Y	Small/K/F	Small/K/F	DM013267	0.1199	0.119	0.7803	12/14/2008	34	0.079
881279	0260600	2/27/2008 3:57:49 PM	05/04/64	M	02/27/08	Y	Y	N	Moduskey/S/	Moduskey/S/	DM007680			0.7803	12/14/2008	34	0.08
881279	0260600	2/27/2008 10:48:13 PM	11/08/77	F	02/27/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028			0.7803	12/14/2008	34	0.08
881279	0260600	2/27/2008 11:48:52 PM	07/24/66	M	02/27/08	Y	Y	N	Damm/D/A	Heine/W/D	DM012288			0.7803	12/14/2008	34	0.08
881279	0260600	2/28/2008 1:00:38 AM	10/28/85	M	02/28/08	Y	Y	Y	Sarvis/M/B	Sarvis/M/B	DM011922	0.0661	0.066	0.7803	12/14/2008	34	0.08
881279	0260600	2/28/2008 1:36:47 AM	11/30/83	M	02/28/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1332	0.133	0.7803	12/14/2008	34	0.08
881279	0260600	2/28/2008 3:52:32 AM	11/18/81	M	02/28/08	Y	Y	Y	Preston/T/M	Planten/J/B	DM013343	0.2565	0.256	0.7803	12/14/2008	34	0.076

881279	0260600	2/28/2008 4:34:29 AM	12/23/08	M	02/28/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.2002	0.2	07803	12/14/2008	34	0.079
				H	02:47				SC026SP00	SC026SP00		0.2003		0661			
881279	0260600	2/29/2008 12:15:12 AM	10/07/08	M	02/28/08	Y	Y	Y	Spivey/T/L	Spivey/T/L	DM011949	0.1201	0.12	07803	12/14/2008	34	0.079
				W	23:20				SC0260600	SC0260600		0.1201		0661			
881279	0260600	2/29/2008 2:27:23 AM	01/14/09	F	02/29/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.0998	0.099	07803	12/14/2008	34	0.079
				W	01:05				SC0260600	SC0260600		0.0997		0661			
881279	0260600	2/29/2008 3:02:43 AM	09/17/74	M	02/29/08	Y	Y	N	Sarvis/M/B	Sarvis/M/B	DM011922		R	07803	12/14/2008	34	0.079
				W	02:05				SC026SP00	SC026SP00				0661			
881279	0260600	2/29/2008 4:24:45 AM	02/19/84	M	02/29/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.1323	0.132	07803	12/14/2008	34	0.079
				W	03:29				SC026SP00	SC026SP00		0.1327		0661			
881279	0260600	2/29/2008 4:51:35 AM	11/20/69	M	02/29/08	Y	N	N	Thomas/J/K	Thomas/J/K	DM012393		R	07803	12/14/2008	34	0.079
				H	02:50				SC0260600	SC0260600				0661			
881279	0260600	3/1/2008 2:21:04 AM	04/08/70	F	03/01/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1352	0.135	07803	12/14/2008	34	0.08
				W	01:09				SC0260600	SC0260600		0.1354		0661			
881279	0260600	3/1/2008 2:58:23 AM	12/22/82	M	03/01/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.0551	0.055	07803	12/14/2008	34	0.079
				W	01:00				SC0260600	SC0260600		0.055		0661			
881279	0260600	3/1/2008 3:28:50 AM	09/20/75	M	03/01/08	Y	Y	N	Moduskey/S/	Moduskey/S/	DM007680		R	07803	12/14/2008	34	0.079
				W	01:47				SC0260600	SC0260600				0661			
881279	0260600	3/1/2008 8:48:20 PM	03/03/68	M	03/01/08	Y	N	Y	Miller/R/S	Miller/R/S	DM012645		R	07803	12/14/2008	34	0.079
				W	19:24				SC0260600	SC0260600				0661			
881279	0260600	3/1/2008 10:42:03 PM	08/23/62	M	03/01/08	Y	Y	N	Moduskey/S/	Moduskey/S/	DM007680		R	07803	12/14/2008	34	0.079
				W	21:45				SC0260600	SC0260600				0661			
881279	0260600	3/2/2008 12:28:53 AM	01/04/47	B	03/01/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.143	0.142	07803	12/14/2008	34	0.078
				W	23:16				SC0260600	SC0260600		0.1425		0661			
881279	0260600	3/2/2008 1:09:41 AM	11/14/78	F	03/02/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1627	0.162	07803	12/14/2008	34	0.078
				W	23:40				SC0260600	SC0260600		0.1623		0661			
881279	0260600	3/2/2008 2:24:51 AM	11/03/86	M	03/02/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1142	0.113	07803	12/14/2008	34	0.078
				W	01:15				SC0260600	SC0260600		0.1137		0661			
881279	0260600	3/2/2008 3:42:04 AM	02/09/79	M	03/02/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1397	0.139	07803	12/14/2008	34	0.078
				W	02:00				SC0260600	SC0260600		0.1396		0661			
881279	0260600	3/3/2008 1:55:24 AM	04/24/81	M	03/03/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1152	0.115	07803	12/14/2008	34	0.078
				W	00:27				SC0260600	SC0260600		0.1151		0661			
881279	0260600	3/4/2008 3:55:20 AM	06/06/76	M	03/04/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.2193	0.218	07803	12/14/2008	34	0.078
				W	02:56				SC026SP00	SC026SP00		0.2189		0661			
881279	0260600	3/5/2008 12:58:21 AM	09/19/72	M	03/05/08	Y	Y	N	Hardymon/W/A	Hardymon/W/A	DM012549		R	07803	12/14/2008	34	0.079
				H	00:12				SC026SP00	SC026SP00				0661			
881279	0260600	3/5/2008 4:26:26 AM	07/23/79	M	03/05/08	Y	Y	Y	Cleary/J/A	Miller/R/S	DM012645	0.1929	0.192	07803	12/14/2008	34.1	0.079
				W	03:15				SC0260600	SC0260600		0.193		0661			
881279	0260600	3/5/2008 1:32:51 PM	12/20/69	M	03/05/08	Y	Y	Y	Obryant/T/	Jones/W/	DM002259	0.1202	0.12	07803	12/14/2008	34	0.079
				W	12:30				SC0260600	SC0260600		0.1202		0661			
881279	0260600	3/5/2008 4:08:17 PM	06/24/76	M	03/05/08	Y	Y	Y	Allen/J/E	Allen/J/E	DM003109	0.3329	0.331	07803	12/14/2008	34	0.078
				W	14:24				SC0260600	SC0260600		0.331		0661			
881279	0260600	3/7/2008 11:32:08 PM	12/10/86	M	03/07/08	Y	Y	N	Predado/D/	Predado/D/	DM013530		R	07803	12/14/2008	34	0.079
				H	22:30				SC0260600	SC0260600				0661			
881279	0260600	3/8/2008 3:55:23 AM	05/15/65	M	03/08/08	Y	Y	N	Moduskey/S/	Moduskey/S/	DM007680		R	07803	12/14/2008	34	0.078
				W	02:04				SC0260600	SC0260600				0661			
881279	0260600	3/8/2008 4:56:22 AM	12/14/86	M	03/08/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.1647	0.163	07803	12/14/2008	34	0.078
				W	04:10				SC026SP00	SC026SP00		0.1638		0661			
881279	0260600	3/8/2008 7:06:35 AM	05/15/83	M	03/08/08	Y	Y	Y	Jones/E/H	Jones/E/H	DM002259	0.1167	0.116	07803	12/14/2008	34	0.077
				W	06:10				SC0260600	SC0260600		0.1162		0661			
881279	0260600	3/8/2008 7:08:44 PM	09/27/85	F	03/08/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028		R	07803	12/14/2008	34	0.077
				W	18:04				SC0260600	SC0260600				0661			
881279	0260600	3/9/2008 12:35:34 AM	06/27/89	M	03/08/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1263	0.126	07803	12/14/2008	34	0.077
				W	23:25				SC0260600	SC0260600		0.1265		0661			
881279	0260600	3/9/2008 1:27:06 AM	06/08/57	M	03/09/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.1356	0.135	07803	12/14/2008	34	0.077
				W	00:23				SC026SP00	SC026SP00		0.1356		0661			
881279	0260600	3/9/2008 4:19:22 AM	08/19/60	M	03/09/08	Y	Y	Y	Post/J/	Predado/D/	DM013530	0.1339	0.133	07803	12/14/2008	34	0.078
				H	03:10				SC0260600	SC0260600		0.1354		0661			
881279	0260600	3/9/2008 4:52:41 AM	08/11/82	M	03/09/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028		R	07803	12/14/2008	34	0.078
				W	03:30				SC0260600	SC0260600				0661			
881279	0260600	3/9/2008 5:20:30 AM	07/07/84	M	03/09/08	Y	Y	N	Hardymon/W/A	Hardymon/W/A	DM012549		R	07803	12/14/2008	34	0.078
				W	03:38				SC026SP00	SC026SP00				0661			
881279	0260600	3/9/2008 11:36:44 PM	02/03/83	M	03/09/08	Y	Y	Y	Fay/S/D	Fay/S/D	DM012150		R	07803	12/14/2008	34	0.079
				W	22:50				SC0260600	SC0260600				0661			
881279	0260600	3/10/2008 3:54:56 AM	03/08/58	M	03/10/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.0012	0.001	07803	12/14/2008	34	0.079
				W	02:34				SC0260600	SC0260600		0.0023		0661			
881279	0260600	3/11/2008 12:32:45 AM	07/11/87	M	03/10/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.0315	0.031	07803	12/14/2008	34	0.078
				W	23:20				SC0260600	SC0260600		0.0324		0661			
881279	0260600	3/12/2008 2:21:48 AM	08/25/70	M	03/12/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.2204	0.219	07803	12/14/2008	34	0.076
				H	01:10				SC0260600	SC0260600		0.2198		0661			
881279	0260600	3/13/2008 3:05:06 AM	05/11/72	M	03/13/08	Y	N	N	Sanders/C/C	Sanders/C/C	DM011551		R	07803	12/14/2008	34	0.077
				W	02:21				SC026SP00	SC026SP00				0661			
881279	0260600	3/14/2008 2:19:05 AM	03/29/89	M	03/14/09	Y	N	N	Sanders/C/C	Sanders/C/C	DM011551		R	07803	12/14/2008	34	0.079
				W	01:23				SC026SP00	SC026SP00				0233			
881279	0260600	3/14/2008 5:39:58 AM	09/11/89	F	03/14/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.1265	0.126	07803	12/14/2008	34	0.079
				W	04:34				SC026SP00	SC026SP00		0.1264		0233			
881279	0260600	3/15/2008 4:07:45 AM	01/05/81	M	03/15/08	Y	Y	Y	Burgos/X/Q	Burgos/X/Q	DM012824		R	07803	12/14/2008	34	0.079
				W	02:55				SC026SP00	SC026SP00				0233			
881279	0260600	3/16/2008 12:24:00 AM	11/25/84	M	03/15/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1911	0.189	07803	12/14/2008	34	0.08
				W	22:41				SC0260600	SC0260600		0.1897		0233			
881279	0260600	3/16/2008 12:54:10 AM	02/22/77	M	03/15/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.0023	0.002	07803	12/14/2008	34	0.08
				W	23:29												

881279	0260600	3/18/2008 9:43:50 AM	08/24/72	M	03/18/08	Y	Y	Y	Blackwood/J/B	Blackwood/J/B	DM009183	0.1883	0.188	0.233	12/14/2008	34	0.077
881279	0260600	3/19/2008 10:37:36 PM	12/10/80	M	03/19/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.188	0.188	0.233	12/14/2008	34	0.078
881279	0260600	3/21/2008 12:58:53 AM	04/05/61	M	03/20/08	Y	Y	Y	Burgos/X/Q	Burgos/X/Q	DM012824	0.211	0.211	0.233	12/14/2008	34	0.077
881279	0260600	3/21/2008 2:21:36 AM	11/22/82	M	03/21/08	Y	Y	Y	Post/J/A	Boley/C/S	DM012231	0.211	0.179	0.233	12/14/2008	34	0.077
881279	0260600	3/21/2008 9:37:30 PM	09/29/72	M	03/21/08	Y	Y	Y	Heine/W/D	Harrington/W/T	DM012288	0.1402	0.139	0.233	12/14/2008	34	0.077
881279	0260600	3/21/2008 11:00:29 PM	02/28/86	M	03/21/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.1186	0.118	0.233	12/14/2008	34	0.077
881279	0260600	3/22/2008 2:54:05 AM	07/04/66	M	03/22/08	Y	Y	Y	King/C/	Moduskey/S/	DM007680	0.1528	0.152	0.233	12/14/2008	34	0.078
881279	0260600	3/22/2008 3:52:03 AM	05/31/63	M	03/22/08	Y	Y	N	Post/J/A	Boley/C/S	DM012231	0.188	0.179	0.233	12/14/2008	34	0.077
881279	0260600	3/22/2008 6:09:53 AM	11/03/84	M	03/22/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.0886	0.088	0.233	12/14/2008	34	0.077
881279	0260600	3/22/2008 7:36:00 AM	09/08/86	M	03/22/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.1298	0.129	0.233	12/14/2008	34	0.077
881279	0260600	3/23/2008 4:20:37 AM	04/21/72	M	03/23/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.2036	0.203	0.233	12/14/2008	34	0.076
881279	0260600	3/24/2008 1:25:05 AM	01/01/62	F	03/24/08	Y	N	N	Spivey/T/L	Spivey/T/L	DM011949	0.0867	0.086	0.233	12/14/2008	34	0.077
881279	0260600	3/24/2008 10:57:17 PM	08/20/48	M	03/24/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.0867	0.086	0.233	12/14/2008	34	0.077
881279	0260600	3/25/2008 1:12:13 AM	01/16/90	F	03/24/08	Y	Y	Y	Spivey/T/L	Spivey/T/L	DM011949	0.0859	0.085	0.233	12/14/2008	34	0.076
881279	0260600	3/25/2008 12:39:55 PM	10/14/88	M	03/25/08	Y	Y	Y	Madkins/J/J	Kettle/R/G	DM011917	0.0855	0.085	0.233	12/14/2008	34	0.077
881279	0260600	3/26/2008 6:21:14 PM	07/24/63	M	03/26/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1312	0.13	0.233	12/14/2008	34	0.077
881279	0260600	3/26/2008 8:38:53 PM	07/29/85	M	03/26/08	Y	N	N	Spivey/T/L	Spivey/T/L	DM011949	0.1309	0.13	0.233	12/14/2008	34	0.076
881279	0260600	3/28/2008 12:55:22 AM	09/25/64	M	03/27/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1309	0.13	0.233	12/14/2008	34	0.076
881279	0260600	3/28/2008 1:19:09 AM	04/24/91	M	03/27/08	Y	Y	N	Sanders/C/C	Sanders/C/C	DM011551	0.1309	0.13	0.233	12/14/2008	34	0.076
881279	0260600	3/28/2008 6:25:23 AM							Non-Implied Consent Test	Dorris/J/R	DM013525	0.1309	0.13	0.233	12/14/2008	34	0.076
881279	0260600	3/28/2008 6:40:48 AM	11/21/52	M	03/28/08	Y	Y	N	Dorris/J/R	Dorris/J/R	DM013525	0.1309	0.13	0.233	12/14/2008	34	0.076
881279	0260600	3/29/2008 4:43:26 PM	10/31/79	M	03/29/08	Y	Y	Y	Truex/B/C	Truex/B/C	DM009652	0.223	0.222	0.233	12/14/2008	34	0.08
881279	0260600	3/31/2008 2:40:10 AM	07/28/85	M	03/31/08	Y	Y	N	Heine/W/D	Beatty/R/	DM012753	0.2226	0.222	0.233	12/14/2008	34	0.08
881279	0260600	4/1/2008 12:03:00 AM	11/17/85	M	03/31/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1471	0.147	0.233	12/14/2008	34	0.079
881279	0260600	4/1/2008 3:44:10 AM	03/31/75	M	04/01/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.1948	0.194	0.233	12/14/2008	34	0.079
881279	0260600	4/1/2008 7:46:53 PM	10/25/66	M	04/01/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.1943	0.194	0.233	12/14/2008	34	0.08
881279	0260600	4/2/2008 12:53:24 AM	11/07/78	M	04/01/08	Y	Y	Y	Sarvis/M/B	Sarvis/M/B	DM011922	0.1979	0.197	0.233	12/14/2008	34	0.08
881279	0260600	4/2/2008 10:59:57 PM	08/19/50	M	04/02/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1976	0.197	0.233	12/14/2008	34	0.08
881279	0260600	4/3/2008 4:47:09 AM	07/08/84	M	04/03/08	Y	Y	Y	Weatherwax/D/R	Weatherwax/D/R	DM012574	0.1665	0.166	0.233	12/14/2008	34	0.081
881279	0260600	4/3/2008 1:44:22 PM							Non-Implied Consent Test	Brown/R/T	DM013457	0.1366	0.136	0.233	12/14/2008	34	0.08
881279	0260600	4/5/2008 1:09:18 AM	09/21/59	M	04/04/08	Y	Y	Y	Cozene/O/B	Cozene/O/B	DM010133	0.2098	0.209	0.233	12/14/2008	34	0.079
881279	0260600	4/5/2008 3:30:01 AM	07/24/79	M	04/05/08	Y	Y	Y	Harrington/M/T	Damm/D/A	DM012645	0.2092	0.209	0.233	12/14/2008	34	0.079
881279	0260600	4/6/2008 3:02:42 AM	01/15/88	M	04/06/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1643	0.164	0.233	12/14/2008	34	0.079
881279	0260600	4/6/2008 3:32:49 AM	12/06/71	F	04/06/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.1471	0.147	0.233	12/14/2008	34	0.079
881279	0260600	4/7/2008 6:39:03 PM	11/15/82	M	04/07/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.0698	0.069	0.233	12/14/2008	34	0.079
881279	0260600	4/8/2008 10:39:52 PM	12/12/61	M	04/08/08	Y	Y	Y	Costa/C/F	Costa/C/F	DM008387	0.0751	0.075	0.233	12/14/2008	34	0.078
881279	0260600	4/9/2008 2:37:49 AM	02/25/75	M	04/09/08	Y	Y	Y	Costa/C/F	Costa/C/F	DM008387	0.1603	0.16	0.233	12/14/2008	34	0.078
881279	0260600	4/9/2008 3:29:11 AM	05/26/83	M	04/09/08	Y	Y	Y	Graham/J/C	Graham/J/C	DM009692	0.1604	0.1604	0.233	12/14/2008	34	0.078
881279	0260600	4/10/2008 9:20:42 PM	11/03/65	M	04/10/08	Y	Y	Y	Reznard/D/J	Johnson/J/	DM012467	0.1987	0.197	0.233	12/14/2008	34	0.076
881279	0260600	4/11/2008 2:13:54 AM	07/12/79	F	04/11/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1473	0.147	0.233	12/14/2008	34	0.078
881279	0260600	4/12/2008 3:27:54 AM	12/04/66	M	04/12/08	Y	Y	N	Moduskey/S/	Moduskey/S/	DM007680	0.1474	0.147	0.233	12/14/2008	34	0.078
881279	0260600	4/12/2008 10:16:28 PM	12/08/69	M	04/12/08	Y	Y	Y	Canfora/V/M	Canfora/V/M	DM006004	0.0871	0.087	0.233	12/14/2008	34	0.079
881279	0260600	4/13/2008 1:14:05 AM	05/04/90	M	04/12/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.2662	0.264	0.233	12/14/2008	34	0.078
881279	0260600	4/13/2008 2:16:42 AM	08/10/73	M	04/13/08	Y	Y	Y	Miller/R/S	Bresadola/H/	DM012645	0.0872	0.087	0.233	12/14/2008	34	0.079
881279	0260600	4/13/2008 3:16:01 AM	05/01/87	M	04/13/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1075	0.106	0.233	12/14/2008	34	0.079
881279	0260600	4/14/2008 3:11:59 AM	03/01/57	M	04/14/08	Y	Y	Y	Harrington/M/T	Boley/C/S	DM012231	0.0813	0.081	0.233	12/14/2008	34	0.079
881279	0260600	4/14/2008 4:33:09 AM	04/05/72	F	04/14/08	Y	Y	Y	Preston/T/M	Preston/T/M	DM011947	0.1095	0.109	0.233	12/14/2008	34	0.079
881279	0260600	4/15/2008 10:22:56 AM	04/16/69	F	04/15/08	Y	Y	Y	Jones/E/H	Jones/E/H	DM002259	0.1094	0.1094	0.233	12/14/2008	34	0.079
881279	0260600	4/15/2008 10:34:58 AM							Non-Implied Consent Test	Jones/E/H	DM002259	0.2096	0.208	0.233	12/14/2008	34	0.079
881279	0260600	4/17/2008 1:51:45 AM	02/22/62	M	04/17/08	Y	Y	Y	Cozene/O/B	Cozene/O/B	DM010133	0.1965	0.196	0.233	12/14/2008	34	0.078
881279	0260600											0.1852	0.184	0.233	12/14/2008	34	0.078

881279	0260600	4/18/2008 1:57:59 AM	01/06/85	M	04/18/08	Y	Y	Y	MacLuskey/S/		MacLuskey/S/	DM007680		R	07803	12/14/2008	34	0.078
881279	0260600	4/19/2008 6:08:46 AM	01/19/08	M	04/19/08	Y	Y	Y	Spurgeon/B/L		Spurgeon/B/L	DM010227	0.1549	0.1549	07803	12/14/2008	34	0.077
881279	0260600	4/20/2008 8:10:58 AM	01/14/56	F	04/20/08	Y	Y	Y	Davis/G/S		Davis/G/S	DM007802	0.1322	0.131	07803	12/14/2008	34	0.078
881279	0260600	4/20/2008 7:56:24 PM	10/03/74	M	04/20/08	Y	N	N	Spurgeon/B/L		Spurgeon/B/L	DM010227		R	07803	12/14/2008	34	0.077
881279	0260600	4/23/2008 10:39:07 PM	11/22/50	M	04/23/08	Y	Y	Y	Miller/R/S		Miller/R/S	DM012645	0	0	07803	12/14/2008	34	0.078
881279	0260600	4/24/2008 4:04:52 AM	06/21/76	F	04/24/08	Y	Y	Y	Star/W/J		Star/W/J	DM013062	0.1597	0.158	07803	12/14/2008	34	0.078
881279	0260600	4/24/2008 9:38:17 PM	08/04/78	M	04/24/08	Y	Y	Y	MacLuskey/S/		MacLuskey/S/	DM007680	0.1626	0.162	07803	12/14/2008	34	0.077
881279	0260600	4/24/2008 11:01:35 PM	06/15/87	F	04/24/08	Y	Y	Y	Spivey/T/L		Spivey/T/L	DM011949	0.2149	0.213	07803	12/14/2008	34	0.078
881279	0260600	4/24/2008 11:42:18 PM	06/04/41	M	04/24/08	Y	Y	Y	Sanders/C/C		Sanders/C/C	DM011551	0.0004	0	07803	12/14/2008	34	0.078
881279	0260600	4/26/2008 3:51:44 AM	07/31/60	M	04/26/08	Y	N	N	Spivey/T/L		Spivey/T/L	DM011949		R	07803	12/14/2008	34	0.079
881279	0260600	4/26/2008 5:50:25 AM	01/31/73	M	04/26/08	Y	N	N	Mindala/R/M		Mindala/R/M	DM012646		R	07803	12/14/2008	34	0.08
881279	0260600	4/27/2008 4:11:55 AM	09/07/79	F	04/27/08	Y	Y	Y	Spivey/T/L		Spivey/T/L	DM011949	0.1401	0.14	07803	12/14/2008	34	0.08
881279	0260600	4/27/2008 10:09:51 PM	08/09/86	M	04/27/08	Y	Y	Y	MacLuskey/S/		MacLuskey/S/	DM007680		R	07803	12/14/2008	34	0.08
881279	0260600	4/28/2008 11:44:00 PM	08/16/79	M	04/28/08	Y	Y	Y	Simmons/J/M		Simmons/J/M	DM012621	0.2557	0.254	07803	12/14/2008	34	0.077
881279	0260600	4/29/2008 1:30:48 AM	07/05/85	M	04/29/08	Y	Y	Y	MacLuskey/S/		MacLuskey/S/	DM007680	0.1219	0.121	07803	12/14/2008	34	0.08
881279	0260600	4/29/2008 1:36:18 PM	03/23/61	M	04/29/08	Y	Y	Y	Sutton/J/G		Sutton/J/G	DM013494	0.2308	0.23	07803	12/14/2008	34	0.079
881279	0260600	5/1/2008 10:56:03 AM	06/05/86	M	05/01/08	Y	Y	N	Leach/J/T		Leach/J/T	DM005377		R	07803	12/14/2008	34	0.079
881279	0260600	5/1/2008 10:38:37 PM	12/20/72	F	05/01/08	Y	Y	Y	Mckowan/D/M		Mckowan/D/M	DM013260	0.2668	0.265	07803	12/14/2008	34	0.078
881279	0260600	5/3/2008 10:41:12 PM	08/05/63	M	05/03/08	Y	Y	N	Simmons/J/M		Simmons/J/M	DM012621		R	07803	12/14/2008	34	0.077
881279	0260600	5/4/2008 1:18:34 AM	08/30/55	F	05/03/08	Y	Y	Y	Gibson/S/C		Gibson/S/C	DM008166	0.1138	0.113	07803	12/14/2008	34	0.079
881279	0260600	5/4/2008 5:46:01 AM	04/11/86	M	05/04/08	Y	Y	Y	Tucker/Q/H		Tucker/Q/H	DM009728	0.1635	0.163	07803	12/14/2008	34	0.076
881279	0260600	5/6/2008 1:52:49 AM	03/09/87	M	05/05/08	Y	Y	Y	Burgos/X/Q		Burgos/X/Q	DM012824	0.2148	0.213	07803	12/14/2008	34	0.078
881279	0260600	5/8/2008 3:11:55 AM	01/25/84	M	05/08/08	Y	Y	Y	Hardymon/W/A		Hardymon/W/A	DM012549	0.1652	0.164	07803	12/14/2008	34	0.078
881279	0260600	5/9/2008 12:54:19 AM	11/16/66	M	05/09/08	Y	Y	Y	Hager/B/M	Butler/M/	Hager/B/M	DM004824		R	07803	12/14/2008	34	0.076
881279	0260600	5/9/2008 1:49:32 AM	06/21/61	F	05/09/08	Y	Y	Y	Spivey/O/S		Heine/W/	DM012288	0.0459	0.045	07803	12/14/2008	34	0.078
881279	0260600	5/9/2008 2:36:07 AM	09/26/75	F	05/09/08	Y	Y	Y	Harrington/M/T		Heine/W/	DM012288	0.1524	0.151	07803	12/14/2008	34	0.078
881279	0260600	5/9/2008 8:41:11 PM	04/06/81	M	05/09/08	Y	Y	Y	Kitchens/T/C		Kitchens/T/C	DM004869	0.1535	0.152	07803	4/24/2008	34	0.079
881279	0260600	5/10/2008 4:14:26 AM	03/02/72	M	05/10/08	Y	Y	Y	MacLuskey/S/		MacLuskey/S/	DM007680	0.101	0.1	07803	12/14/2008	34	0.078
881279	0260600	5/11/2008 12:32:03 AM	10/20/51	M	05/10/08	Y	Y	Y	Schmidt/P/		Schmidt/P/	DM012028	0.1557	0.155	07803	12/14/2008	34	0.08
881279	0260600	5/11/2008 12:53:17 AM	01/02/81	M	05/10/08	Y	Y	N	Costa/C/F		Costa/C/F	DM008387		R	07803	12/14/2008	34	0.08
881279	0260600	5/11/2008 2:29:02 AM	01/25/56	M	05/11/08	Y	Y	Y	Mindala/R/M		Mindala/R/M	DM012646	0.1123	0.112	07803	12/14/2008	34	0.081
881279	0260600	5/11/2008 2:49:23 AM	08/17/64	M	05/11/08	Y	N	N	Tarr/N/A	Enzor/J/B	Tarr/N/A	DM007838		R	07803	12/14/2008	34	0.08
881279	0260600	5/11/2008 2:59:22 AM	09/14/72	M	05/11/08	Y	N	N	Tarr/N/A	Enzor/J/B	Tarr/N/A	DM007838		R	07803	12/14/2008	34	0.08
881279	0260600	5/11/2008 11:21:18 PM	08/23/54	M	05/11/08	Y	N	N	Spivey/T/L		Spivey/T/L	DM011949		R	07803	12/14/2008	34	0.081
881279	0260600	5/12/2008 2:17:53 AM	06/01/62	M	05/12/08	Y	Y	Y	Schmidt/P/		Schmidt/P/	DM012028		R	07803	12/14/2008	34	0.081
881279	0260600	5/13/2008 12:38:19 AM	04/11/54	M	05/12/08	Y	Y	Y	MacLuskey/S/		MacLuskey/S/	DM007680	0.0724	0.072	07803	12/14/2008	34	0.079
881279	0260600	5/13/2008 1:47:18 AM	07/17/78	M	05/13/08	Y	Y	N	Spivey/T/L		Spivey/T/L	DM011949		R	07803	12/14/2008	34	0.081
881279	0260600	5/13/2008 3:49:17 AM	11/03/79	M	05/13/08	Y	Y	Y	Schmidt/P/		Schmidt/P/	DM012028	0.1362	0.135	07803	12/14/2008	34	0.08
881279	0260600	5/13/2008 5:52:28 AM	08/12/82	M	05/13/08	Y	Y	Y	Mindala/R/M		Mindala/R/M	DM012246		R	07803	12/14/2008	34	0.081
881279	0260600	5/13/2008 11:42:38 PM	12/07/65	M	05/13/08	Y	Y	N	Schmidt/P/		Schmidt/P/	DM012028		R	07803	12/14/2008	34	0.081
881279	0260600	5/14/2008 4:01:27 AM	09/13/83	M	05/14/08	Y	N	N	Schmidt/P/		Schmidt/P/	DM012028		R	07803	12/14/2008	34	0.081
881279	0260600	5/14/2008 5:35:42 PM	03/02/69	M	05/14/08	Y	Y	Y	Jones/E/H	Bertang/J/	Jones/E/H	DM002259	0.2278	0.227	07803	12/14/2008	34	0.08
881279	0260600	5/14/2008 7:13:30 PM	05/21/65	F	05/14/08	Y	Y	N	Trues/B/C		Trues/B/C	DM009652		R	07803	12/14/2008	34	0.08
881279	0260600	5/14/2008 9:49:12 PM	08/25/47	M	05/14/08	Y	Y	Y	Schmidt/P/		Schmidt/P/	DM012028	0.1181	0.117	07803	12/14/2008	34	0.08
881279	0260600	5/14/2008 10:27:56 PM	06/06/61	M	05/14/08	Y	Y	Y	Cozene/O/B		Cozene/O/B	DM010133	0.184	0.183	07803	12/14/2008	34	0.08
881279	0260600	5/15/2008 12:27:42 AM	10/09/75	M	05/14/08	Y	Y	Y	MacLuskey/S/		MacLuskey/S/	DM007680	0.2387	0.238	07803	12/14/2008	34	0.08
881279	0260600	5/15/2008 1:42:34 AM	06/15/77	M	05/14/08	Y	Y	Y	Schmidt/P/		Schmidt/P/	DM012028	0.114	0.114	07803	12/14/2008	34	0.08
881279	0260600	5/15/2008 3:10:47 AM	11/14/83	M	05/15/08	Y	N	N	Spivey/T/L		Spivey/T/L	DM011949		R	07803	12/14/2008	34	0.08
881279	0260600	5/15/2008 7:37:55 PM	11/16/54	M	05/15/08	Y	Y	Y	Schmidt/P/		Schmidt/P/	DM012028	0.2333	0.232	07803	12/14/2008	34	0.08
881279	0260600	5/15/2008 9:37:19 PM	04/10/59	F	05/15/08	Y	Y	Y	MacLuskey/S/		MacLuskey/S/	DM007680	0.2566	0.256	07803	12/14/2008	34	0.08

881279	0260600	5/15/2008 10:20:44 PM	02/20/56	F	05/15/08	Y	Y	Y	Trues/B/C	Trues/B/C	DM009652	0.2082	0.207	07803	12/14/2008	34	0.079
881279	0260600	5/16/2008 3:24:36 AM	04/26/87	M	05/16/08	Y	Y	Y	Canfora/V/M	Canfora/V/M	DM006004	0.1316	0.131	07803	12/14/2008	34	0.08
881279	0260600	5/16/2008 4:32:12 AM	12/07/59	F	05/16/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1312	0.131	07803	12/14/2008	34	0.08
881279	0260600	5/16/2008 5:01:42 AM	04/04/60	M	05/16/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1638	0.163	07803	12/14/2008	34	0.078
881279	0260600	5/16/2008 4:50:54 PM	03/03/57	M	05/16/08	Y	Y	Y	Bertang/I/	Bertang/I/	DM007904	0.2561	0.255	07803	12/14/2008	34	0.079
881279	0260600	5/16/2008 9:34:30 PM	12/17/65	M	05/16/08	Y	N	N	Sanders/C/C	Sanders/C/C	DM011551	0.255	0.255	07803	12/14/2008	34	0.078
881279	0260600	5/17/2008 12:39:29 AM	03/22/80	M	05/17/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1644	0.164	07803	12/14/2008	34	0.08
881279	0260600	5/17/2008 1:25:26 AM	12/31/73	M	05/17/08	Y	N	N	Enzor/I/B	Enzor/I/B	DM011990	0.1648	0.1648	07803	12/14/2008	34	0.079
881279	0260600	5/17/2008 2:10:12 AM	01/15/61	M	05/17/08	Y	Y	Y	Tucker/Q/M	Tucker/Q/M	DM009728	0.0014	0.001	07803	12/14/2008	34	0.08
881279	0260600	5/17/2008 2:40:57 AM	09/16/80	F	05/17/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.003	0.003	07803	12/14/2008	34	0.08
881279	0260600	5/17/2008 4:05:47 AM	07/21/83	M	05/17/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1129	0.112	07803	12/14/2008	34	0.08
881279	0260600	5/17/2008 4:47:14 AM	04/19/68	F	05/17/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.0587	0.058	07803	12/14/2008	34	0.08
881279	0260600	5/17/2008 5:37:15 AM	05/27/57	M	05/17/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1901	0.189	07803	12/14/2008	34	0.079
881279	0260600	5/17/2008 8:08:28 AM	10/22/71	M	05/17/08	Y	Y	N	Pater/E/H	Pater/E/H	DM002259	0.1576	0.157	07803	12/14/2008	34.1	0.079
881279	0260600	5/17/2008 9:49:58 PM	01/30/73	F	05/17/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.0803	0.08	07803	12/14/2008	34	0.079
881279	0260600	5/17/2008 11:05:25 PM	07/27/82	M	05/17/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.081	0.081	07803	12/14/2008	34	0.079
881279	0260600	5/17/2008 11:43:41 PM	04/21/87	M	05/17/08	Y	Y	Y	Tart/N/A	Tart/N/A	DM007838	0.1131	0.113	07803	12/14/2008	34	0.078
881279	0260600	5/18/2008 12:21:10 AM	11/30/64	M	05/18/08	Y	Y	Y	Cozene/O/B	Cozene/O/B	DM010133	0.113	0.113	07803	12/14/2008	34	0.078
881279	0260600	5/18/2008 12:41:31 AM	06/22/52	M	05/18/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.081	0.081	07803	12/14/2008	34	0.079
881279	0260600	5/18/2008 1:20:34 AM	06/10/68	M	05/18/08	Y	Y	Y	Austriy/R/M	Austriy/R/M	DM000983	0.0721	0.072	07803	12/14/2008	34	0.079
881279	0260600	5/18/2008 1:56:20 AM	06/02/73	M	05/18/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.0721	0.072	07803	12/14/2008	34	0.079
881279	0260600	5/19/2008 9:05:18 PM	09/19/85	M	05/19/08	Y	Y	Y	Flitter/R/M	Flitter/R/M	DM012183	0.0829	0.082	07803	12/14/2008	34	0.08
881279	0260600	5/20/2008 3:04:56 AM	01/25/59	M	05/20/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.084	0.084	07803	12/14/2008	34	0.079
881279	0260600	5/20/2008 3:28:17 AM	05/13/85	M	05/20/08	Y	N	N	Liity/D/B	Liity/D/B	DM012560	0.1418	0.141	07803	12/14/2008	34	0.079
881279	0260600	5/20/2008 4:04:21 AM	08/25/76	M	05/20/08	Y	N	N	Mindala/R/M	Mindala/R/M	DM012646	0.1415	0.1415	07803	12/14/2008	34	0.08
881279	0260600	5/21/2008 2:48:55 AM	11/30/83	M	05/21/08	Y	N	N	Schmidt/P/	Schmidt/P/	DM012028	0.1489	0.148	07803	12/14/2008	34	0.08
881279	0260600	5/23/2008 12:10:09 AM	07/04/66	M	05/22/08	Y	Y	Y	Enzor/I/B	Enzor/I/B	DM011990	0.1486	0.1486	07803	12/14/2008	34	0.079
881279	0260600	5/23/2008 12:39:05 AM	10/09/80	M	05/23/08	Y	N	N	Tart/N/A	Tart/N/A	DM007838	0.2218	0.221	07803	12/14/2008	34	0.079
881279	0260600	5/23/2008 2:27:31 AM	08/10/86	M	05/23/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1489	0.148	07803	12/14/2008	34	0.078
881279	0260600	5/23/2008 7:25:13 AM	12/08/86	M	05/23/08	Y	Y	Y	Costa/C/F	Costa/C/F	DM008387	0.1815	0.181	07803	12/14/2008	34	0.079
881279	0260600	5/24/2008 4:01:11 AM	12/01/84	M	05/24/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.1814	0.1814	07803	12/14/2008	34	0.079
881279	0260600	5/24/2008 5:13:25 AM	06/19/56	M	05/24/08	Y	N	N	Schmidt/P/	Schmidt/P/	DM012028	0.1418	0.1415	07803	12/14/2008	34	0.078
881279	0260600	5/24/2008 5:56:36 AM	02/23/82	F	05/24/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.1415	0.1415	07803	12/14/2008	34	0.079
881279	0260600	5/24/2008 6:36:51 PM	07/17/82	M	05/24/08	Y	Y	Y	Leach/J/T	Leach/J/T	DM005377	0.0702	0.07	07803	12/14/2008	34	0.079
881279	0260600	5/24/2008 7:28:28 PM	10/31/73	M	05/24/08	Y	Y	Y	Allen/J/E	Allen/J/E	DM003109	0.1938	0.193	07803	12/14/2008	34	0.078
881279	0260600	5/24/2008 11:55:17 PM	09/12/83	M	05/24/08	Y	N	N	Enzor/I/B	Enzor/I/B	DM011990	0.1937	0.1937	07803	12/14/2008	34	0.077
881279	0260600	5/28/2008 12:25:24 AM	01/04/67	F	05/27/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.242	0.242	07803	12/14/2008	34	0.078
881279	0260600	5/29/2008 1:16:38 AM	01/19/84	M	05/28/08	Y	Y	N	Miller/R/S	Miller/R/S	DM012645	0.242	0.242	07803	12/14/2008	34	0.079
881279	0260600	5/29/2008 2:15:59 AM	01/25/64	M	05/29/08	Y	Y	Y	Liity/D/B	Liity/D/B	DM012560	0.1804	0.18	07803	12/14/2008	34	0.078
881279	0260600	5/30/2008 1:09:08 AM	06/04/82	M	05/30/08	Y	N	N	Sarvis/M/B	Sarvis/M/B	DM011922	0.181	0.181	07803	12/14/2008	34	0.077
881279	0260600	5/30/2008 2:34:23 AM	06/28/82	M	05/30/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.1827	0.1827	07803	12/14/2008	34	0.078
881279	0260600	5/30/2008 3:05:46 AM	02/14/89	M	05/30/08	Y	Y	N	Sarvis/M/B	Sarvis/M/B	DM011922	0.146	0.145	07803	12/14/2008	34	0.078
881279	0260600	5/31/2008 10:59:02 PM	01/03/82	F	05/31/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1458	0.1458	07803	12/14/2008	34	0.078
881279	0260600	6/3/2008 1:03:38 AM	08/25/70	M	06/03/08	Y	Y	Y	Sarvis/M/B	Sarvis/M/B	DM011922	0.0947	0.094	07803	12/14/2008	34	0.078
881279	0260600	6/3/2008 2:01:44 AM	06/07/55	M	06/03/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.0948	0.0948	07803	12/14/2008	34	0.078
881279	0260600	6/3/2008 2:39:44 AM	07/24/88	M	06/03/08	Y	Y	Y	Sarvis/M/B	Sarvis/M/B	DM011922	0.1223	0.122	07803	12/14/2008	34	0.078
881279	0260600	6/3/2008 3:12:06 AM	09/26/84	F	06/03/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1223	0.1223	07803	12/14/2008	34	0.078
881279	0260600	6/4/2008 1:47:21 AM	08/08/49	M	06/04/08	Y	Y	Y	Leach/J/T	Leach/J/T	DM005377	0.1834	0.182	07803	12/14/2008	34	0.077
881279	0260600	6/4/2008 2:20:53 AM	09/04/63	M	06/04/08	Y	Y	Y	Sarvis/M/B	Sarvis/M/B	DM011922	0.1385	0.138	07803	12/14/2008	34	0.078
881279	0260600	6/4/2008 3:24:03 AM	07/19/70	M	06/04/08	Y	N	N	Sanders/C/C	Sanders/C/C	DM011551	0.1384	0.1384	07803	12/14/2008	34	0.078
881279	0260600	6/4/2008 3:24:03 AM	07/19/70	M	06/04/08	Y	N	N	Sarvis/D/J	Sarvis/D/J	DM010186	0.1346	0.134	07803	12/14/2008	34	0.078
881279	0260600	6/4/2008 3:24:03 AM	07/19/70	M	06/04/08	Y	N	N	Sarvis/D/J	Sarvis/D/J	DM010186	0.1111	0.111	07803	12/14/2008	34	0.078
881279	0260600	6/4/2008 3:24:03 AM	07/19/70	M	06/04/08	Y	N	N	Sarvis/D/J	Sarvis/D/J	DM010186	0.1113	0.1113	07803	12/14/2008	34	0.077

881279	0260600	6/4/2008 5:20:43 AM	12/09/87	F	06/04/08 04:20	Y	Y	Y	Leach/J/T SC026SP00		Leach/J/T SC026SP00	DM005377	0.2136 0.2122	0.212	07803 0129	12/14/2008 34	0.078
881279	0260600	6/4/2008 8:45:37 PM	03/08/74	F	06/04/08 19:35	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949		R	07803 0129	12/14/2008 34	0.078
881279	0260600	6/6/2008 3:10:11 AM	12/21/71	M	06/06/08 02:13	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.0904 0.0901	0.09	07803 0120	12/14/2008 34	0.078
881279	0260600	6/6/2008 8:45:15 PM	12/10/70	M	06/06/08 19:30	Y	Y	Y	Sarvis/J/T SC026SP00	Costa/C/F SC026SP00	Sarvis/J/T SC026SP00	DM013613	0.0784 0.0781	0.078	07803 0120	12/14/2008 34	0.078
881279	0260600	6/7/2008 1:22:49 AM	11/20/78	H	06/07/08 00:35	Y	Y	Y	Earnest/M/D SC026SP00		Earnest/M/D SC026SP00	DM013595	0.1975 0.1975	0.197	07803 0120	12/14/2008 34	0.077
881279	0260600	6/7/2008 4:58:12 AM	07/13/82	M	06/07/08 03:55	Y	Y	Y	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551	0.1859 0.1854	0.185	07803 0120	12/14/2008 34	0.077
881279	0260600	6/7/2008 5:34:23 AM	06/10/80	B	06/07/08 04:32	Y	N	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	07803 0120	12/14/2008 34	0.078
881279	0260600	6/7/2008 10:17:21 AM	01/18/83	M	06/07/08 08:13	Y	Y	Y	Rose/C/E SC0260600		Rose/C/E SC0260600	DM010498	0.1429 0.1419	0.141	07803 0120	12/14/2008 34	0.078
881279	0260600	6/7/2008 11:30:43 AM							Non-Implied Consent Test		Rose/C/E SC0260600	DM010498	0	0	07803 0022	12/14/2008 34	0.081
881279	0260600	6/7/2008 10:51:45 PM	07/24/84	M	06/07/08 20:48	Y	Y	Y	Maduskey/S/ SC0260600		Maduskey/S/ SC0260600	DM007680	0.0868 0.086	0.086	07803 0022	12/14/2008 34	0.08
881279	0260600	6/8/2008 2:37:21 AM	01/11/89	F	06/08/08 00:52	Y	Y	Y	Maduskey/S/ SC0260600		Maduskey/S/ SC0260600	DM007680	0.0872 0.087	0.087	07803 0022	12/14/2008 34	0.08
881279	0260600	6/8/2008 3:13:34 AM	08/15/84	M	06/08/08 01:44	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	07803 0022	12/14/2008 34	0.08
881279	0260600	6/8/2008 6:21:15 PM	07/28/83	M	06/08/08 17:02	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0	0	07803 0022	12/14/2008 34	0.081
881279	0260600	6/10/2008 4:37:50 AM	07/02/87	M	06/10/08 03:04	Y	Y	Y	Maduskey/S/ SC0260600		Maduskey/S/ SC0260600	DM007680	0.1513 0.151	0.151	07803 0022	12/14/2008 34	0.08
881279	0260600	6/11/2008 1:13:04 PM							Non-Implied Consent Test		Brown/R/T SC0260000	DM013457	0	0	07803 0022	12/14/2008 34	0.08
881279	0260600	6/12/2008 2:43:09 AM	07/15/85	F	06/12/08 01:58	Y	Y	N	Sarvis/J/ SC026SP00	Costa/C/F SC026SP00	Sarvis/J/T SC026SP00	DM013613		R	07803 0022	12/14/2008 34	0.08
881279	0260600	6/12/2008 8:08:49 AM	05/08/81	M	06/12/08 07:05	Y	Y	Y	Jones/E/H SC0260600		Jones/E/H SC0260600	DM002259	0.1432 0.1424	0.142	07803 0022	12/14/2008 34	0.079
881279	0260600	6/12/2008 9:47:18 AM	08/14/92	F	06/12/08 09:15	Y	Y	Y	Marks/A/D SC0260600	Jones/E/H SC0260600	Jones/E/H SC0260600	DM002259	0.1756 0.1762	0.175	07803 0022	12/24/2008 34	0.079
881279	0260600	6/13/2008 11:14:43 PM	04/24/75	M	06/13/08 21:30	Y	Y	Y	Mindala/R/M SC0260600		Mindala/R/M SC0260600	DM012646	0.2006 0.2006	0.2	07803 0022	12/14/2008 34	0.078
881279	0260600	6/14/2008 4:22:00 AM	12/09/78	M	06/14/08 03:00	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949		R	07803 0022	12/14/2008 34	0.079
881279	0260600	6/15/2008 1:06:39 AM	04/19/73	M	06/14/08 23:40	Y	Y	N	Crews/D/A SC0260400		Dean/C/H SC0260400	DM013327		R	07803 0022	12/14/2008 34	0.078
881279	0260600	6/15/2008 4:28:34 AM	10/24/78	M	06/15/08 03:08	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.088 0.0876	0.087	07803 0022	12/14/2008 34	0.079
881279	0260600	6/16/2008 2:52:08 AM	07/18/79	F	06/16/08 02:00	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949	0.2369 0.236	0.236	07803 0022	12/14/2008 34	0.079
881279	0260600	6/17/2008 4:13:49 AM	05/15/87	M	06/17/08 02:42	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	07803 0022	12/14/2008 34	0.079
881279	0260600	6/17/2008 2:28:49 PM	02/27/82	M	06/17/08 12:56	Y	Y	Y	Rose/C/E SC0260600		Rose/C/E SC0260600	DM010498	0.2139 0.2131	0.213	07803 0022	12/14/2008 34	0.079
881279	0260600	6/18/2008 12:12:50 AM	01/31/75	M	06/17/08 23:14	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	07803 0022	12/14/2008 34	0.078
881279	0260600	6/20/2008 5:38:49 AM	10/04/68	M	06/20/08 03:03	Y	Y	Y	Maduskey/S/ SC0260600		Maduskey/S/ SC0260600	DM007680		R	07803 0022	12/14/2008 34	0.078
881279	0260600	6/21/2008 2:28:04 AM	12/20/65	F	06/21/08 00:23	Y	Y	Y	Maduskey/S/ SC0260600		Maduskey/S/ SC0260600	DM007680		R	07803 0022	12/14/2008 34	0.077
881279	0260600	6/21/2008 3:06:44 AM	06/20/84	M	06/21/08 02:05	Y	Y	Y	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551	0.1588 0.1586	0.158	07803 0022	12/14/2008 34	0.078
881279	0260600	6/21/2008 4:28:13 AM	02/01/62	M	06/21/08 04:00	Y	Y	Y	Weatherwalks/D/R SC026SP00		Weatherwalks/D/R SC026SP00	DM012574	0.226 0.2254	0.225	07803 0022	12/14/2008 34	0.077
881279	0260600	6/21/2008 6:13:20 AM	12/19/78	M	06/21/08 04:45	Y	Y	N	MacKin/J/J SC0260600		Roberts/D/J SC0260600	DM013689		R	07803 0022	12/14/2008 34	0.079
881279	0260600	6/21/2008 6:26:34 AM	12/19/78	M	06/21/08 04:45	Y	Y	N	MacKin/J/J SC0260600		Roberts/D/J SC0260600	DM013689		R	07803 0022	12/14/2008 34	0.079
881279	0260600	6/22/2008 3:42:42 AM	06/08/87	M	06/22/08 02:43	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.1224 0.1223	0.122	07803 0022	12/14/2008 34	0.078
881279	0260600	6/22/2008 4:21:47 AM	10/08/80	M	06/22/08 03:30	Y	N	N	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551		R	07803 0022	12/14/2008 34	0.078
881279	0260600	6/22/2008 8:45:13 PM	04/15/80	M	06/22/08 19:30	Y	Y	Y	Collins/B/S SC026SP00		Collins/B/S SC026SP00	DM012540	0.1326 0.1321	V	07803 0022	12/14/2008 34	0.077
881279	0260600	6/24/2008 7:45:20 PM	09/01/78	M	06/24/08 18:18	Y	Y	Y	Schmidt/P/ SC0265600		Schmidt/P/ SC0260600	DM012028	0.1132 0.113	0.113	07803 0022	12/14/2008 34	0.077
881279	0260600	6/24/2008 8:50:53 PM	01/20/86	M	06/24/08 20:21	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.0296 0.0299	0.029	07803 0022	12/14/2008 34	0.079
881279	0260600	6/25/2008 8:20:06 AM	10/30/87	M	06/25/08 07:20	Y	Y	Y	Jones/E/H SC0260600		Jones/E/H SC0260600	DM002259	0.2545 0.2538	0.253	07803 0022	12/14/2008 34	0.078
881279	0260600	6/26/2008 3:17:22 AM	07/11/84	M	06/26/08 02:15	Y	N	N	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551		R	07803 0022	12/14/2008 34	0.078
881279	0260600	6/27/2008 2:51:39 AM	10/07/82	F	06/27/08 01:40	Y	Y	Y	Sarvis/D/J SC026SP00		Sarvis/D/J SC026SP00	DM010186		R	07803 0022	12/14/2008 34	0.077
881279	0260600	6/27/2008 3:37:51 AM	10/03/81	M	06/27/08 02:02	Y	Y	Y	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551	0.193 0.1922	0.192	07803 0022	12/14/2008 34	0.078
881279	0260600	6/27/2008 4:27:37 AM	06/25/60	M	06/27/08 02:37	Y	Y	Y	Simmons/J/M SC026SP00		Simmons/J/M SC026SP00	DM012621		R	07803 0022	12/14/2008 34	0.077
881279	0260600	6/27/2008 11:00:05 PM	08/17/83	M	06/27/08 21:28	Y	Y	Y	Spivey/S/ SC0260400		Schmidt/P/ SC0260600	DM012028	0.1379 0.1375	0.137	07803 0022	12/14/2008 34	0.077
881279	0260600	6/27/2008 11:28:07 PM	05/24/51	M	06/27/08 22:03	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.0005 0.0008	0	07803 0022	12/14/2008 34	0.078
881279	0260600	6/28/2008 2:13:04 AM	05/10/83	M	06/28/08 01:09	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.041 0.0413	0.041	07803 0022	12/24/2008 34	0.078
881279	0260600	6/28/2008 4:20:23 AM	11/20/79	M	06/28/08 03:14	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	07803 0022	12/14/2008 34	0.077
881279	0260600	6/28/2008 7:49:21 PM	03/03/82	M	06/28/08 18:49	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.2408 0.2405	0.24	07803 0022	12/14/2008 34	0.077
881279	0260600	6/29/2008 3:10:10 AM	06/04/49	F	06/29/08 02:05	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.0465 0.0466	0.046	07803 0022	12/14/2008 34	0.078
881279	0260600	6/30/2008 5:24:47 AM	03/21/85	M	06/30/08 04:35	Y	Y	Y	Dwyer/M/T SC026SP00		Dwyer/M/T SC026SP00	DM012544		R	07803 0022	12/14/2008 34	0.078
881279	0260600	6/30/2008 11:26:56 PM	08/03/77	M	06/30/08 22:14	Y	Y	Y	MacKin/J/J SC0260600	Belue/D/J SC0260600	Belue/D/J SC0260600	DM013681	0.2453 0.2444	0.244	07808 0022	12/14/2008 34	0.077

881279	0260600	7/2/2008 12:22:56 AM	05/27/91	F	W	07/01/08 23:00	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM0120280	0	0	07803	12/14/2008 34	0.078
881279	0260600	7/2/2008 8:00:56 AM	03/11/87	F	W	07/02/08 06:48	Y	Y	Y	Davis/G/S SC026SP00	Davis/G/S SC026SP00	DM007802	0.1349	0.134	07803	12/14/2008 34	0.078
881279	0260600	7/3/2008 11:18:49 PM	08/03/84	M	W	07/03/08 21:37	Y	Y	Y	Preston/T/M SC0260600	Preston/T/M SC0260600	DM011947	0.1133	0.113	07803	12/14/2008 34	0.077
881279	0260600	7/4/2008 11:47:53 PM	07/26/78	M	W	07/04/08 10:17	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM0120280	0	0.0004	07803	12/14/2008 34	0.077
881279	0260600	7/5/2008 12:52:36 AM	04/06/83	M	H	07/04/08 23:20	Y	Y	Y	Modluskey/S/ SC0260600	Modluskey/S/ SC0260600	DM007680	0.1985	0.197	07803	12/14/2008 34	0.077
881279	0260600	7/5/2008 1:30:25 AM	07/12/65	M	W	07/04/08 23:45	Y	Y	Y	Sarvis/J/T SC026SP00	Sarvis/J/T SC026SP00	DM008387	0.1506	0.15	07803	12/14/2008 34	0.077
881279	0260600	7/5/2008 3:32:15 AM	01/17/71	M	H	07/05/08 02:00	Y	Y	Y	Sarvis/D/J SC026SP00	Sarvis/D/J SC026SP00	DM010186	0.141	0.14	07803	12/14/2008 34	0.077
881279	0260600	7/5/2008 4:19:26 AM	08/19/80	M	W	07/05/08 02:38	Y	Y	Y	Sanders/C/C SC026SP00	Sanders/C/C SC026SP00	DM011551	0.1427	0.142	07803	12/14/2008 34	0.077
881279	0260600	7/5/2008 6:44:54 AM	09/22/71	M	H	07/05/08 06:00	Y	Y	Y	Jones/E/H SC0260600	Jones/E/H SC0260600	DM002259	0.1382	0.137	07803	12/14/2008 34	0.08
881279	0260600	7/5/2008 4:18:46 PM								Non-Implied Consent Test	Jones/E/H SC0260600	DM0022590	0	0	07803	12/14/2008 34	0.08
881279	0260600	7/5/2008 4:45:22 PM	12/31/80	M	W	07/05/08 15:23	Y	Y	Y	Jones/E/H SC0260600	Jones/E/H SC0260600	DM002259	0.1859	0.185	07803	12/14/2008 34	0.08
881279	0260600	7/5/2008 11:26:09 PM	07/23/59	M	W	07/05/08 22:15	Y	Y	Y	Trues/B/V SC0260600	Trues/B/V SC0260600	DM009652	0.2071	0.206	07803	12/14/2008 34	0.078
881279	0260600	7/6/2008 12:37:38 AM	07/06/82	M	H	07/06/08 00:01	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	0.1956	0.195	07803	12/14/2008 34	0.08
881279	0260600	7/6/2008 3:31:49 AM	03/31/90	M	H	07/06/08 02:30	Y	Y	Y	Sanders/C/C SC026SP00	Sanders/C/C SC026SP00	DM011551	0.1862	0.186	07803	12/14/2008 34	0.081
881279	0260600	7/6/2008 4:29:33 AM	08/06/88	M	W	07/06/08 03:10	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028		R	07803	12/14/2008 34	0.081
881279	0260600	7/6/2008 6:29:21 AM	04/06/78	F	H	07/06/08 04:16	Y	Y	N	Simmons/J/M SC026SP00	Simmons/J/M SC026SP00	DM012621		R	07803	12/14/2008 34	0.08
881279	0260600	7/7/2008 1:02:12 AM	08/22/55	M	H	07/06/08 23:50	Y	Y	Y	Sarvis/D/J SC026SP00	Sarvis/D/J SC026SP00	DM010186	0.2083	0.208	07803	12/14/2008 34	0.08
881279	0260600	7/8/2008 1:30:34 PM								Non-Implied Consent Test	Jones/E/ SC0260600	DM0022590	0	0	07803	12/14/2008 34	0.079
881279	0260600	7/8/2008 1:44:55 PM	07/08/84	M	H	07/08/08 13:00	Y	Y	Y	Jones/E/H SC0260600	Jones/E/H SC0260600	DM002259	0.2008	0.2	07803	12/14/2008 34	0.08
881279	0260600	7/8/2008 11:17:18 PM	09/16/69	F	W	07/08/08 21:43	Y	N	N	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028		R	07803	12/14/2008 34	0.08
881279	0260600	7/9/2008 2:38:52 AM	05/25/87	M	W	07/09/08 01:46	Y	Y	Y	Spivey/T/L SC0260600	Spivey/T/L SC0260600	DM011949		R	07803	12/14/2008 34	0.081
881279	0260600	7/9/2008 3:31:25 AM	09/20/58	M	W	07/09/08 02:21	Y	N	N	Clayton/M/S SC026SP00	Clayton/M/S SC026SP00	DM012206		R	07803	12/14/2008 34	0.081
881279	0260600	7/10/2008 11:13:44 AM	04/23/86	M	W	07/10/08 10:30	Y	Y	Y	Weatherwalks/D/R SC026SP00	Weatherwalks/D/R SC026SP00	DM012574		R	07803	12/14/2008 34	0.08
881279	0260600	7/11/2008 2:53:03 AM	10/13/66	F	W	07/11/08 01:30	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	0.1859	0.185	07803	12/14/2008 34	0.08
881279	0260600	7/11/2008 3:49:44 AM	07/09/80	M	W	07/11/08 02:52	Y	Y	N	Sanders/C/C SC026SP00	Sanders/C/C SC026SP00	DM011551		R	07803	12/14/2008 34	0.08
881279	0260600	7/15/2008 7:44:25 AM	03/01/85	M	W	07/15/08 06:10	Y	Y	Y	Sarvis/J/T SC026SP00	Sarvis/J/T SC026SP00	DM013613	0.0804	0.08	07803	12/14/2008 34	0.079
881279	0260600	7/15/2008 8:59:21 AM	01/09/90	F	W	07/15/08 06:35	Y	Y	Y	Earnest/M/D SC026SP00	Earnest/M/D SC026SP00	DM013595	0.1449	0.144	07803	12/14/2008 34	0.08
881279	0260600	7/19/2008 6:29:04 PM	01/18/58	M	W	07/19/08 17:09	Y	Y	N	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028		R	07803	12/14/2008 34	0.079
881279	0260600	7/19/2008 6:56:15 PM	03/11/78	M	H	07/19/08 16:33	Y	Y	N	Ford/K/L SC0260600	Spivey/T/L SC0260600	DM011949		R	07803	12/14/2008 34	0.079
881279	0260600	7/20/2008 5:17:59 AM	06/29/87	M	W	07/20/08 03:30	Y	Y	N	Simmons/J/M SC026SP00	Simmons/J/M SC026SP00	DM012621		R	07803	12/14/2008 34	0.079
881279	0260600	7/22/2008 6:18:20 AM	07/23/82	F	W	07/22/08 05:30	Y	Y	N	Dorris/J/R SC0260600	Dorris/J/R SC0260600	DM013525		R	07803	12/14/2008 34	0.079
881279	0260600	7/22/2008 6:33:32 AM	07/23/82	F	W	07/22/08 05:30	Y	Y	N	Dorris/J/R SC0260600	Dorris/J/R SC0260600	DM013525		R	07803	12/14/2008 34	0.079
881279	0260600	7/22/2008 11:10:52 PM	09/15/53	M	W	07/22/08 21:37	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	0.0816	0.081	07803	12/14/2008 34	0.079
881279	0260600	7/23/2008 8:26:20 PM	11/03/83	F	W	07/23/08 18:35	Y	Y	Y	Mckowan/D/M SC026SP00	Mckowan/D/M SC026SP00	DM013260	0.0007	0	07803	12/14/2008 34	0.08
881279	0260600	7/24/2008 10:41:54 PM	08/18/52	M	W	07/24/08 21:33	Y	Y	Y	Simmons/J/M SC026SP00	Simmons/J/M SC026SP00	DM012621	0.1874	0.186	07803	12/14/2008 34	0.079
881279	0260600	7/25/2008 1:58:48 AM	03/23/81	M	W	07/25/08 00:35	Y	Y	Y	Frost/M/K SC026SP00	Frost/M/K SC026SP00	DM012832	0.14	0.14	07803	12/14/2008 34	0.079
881279	0260600	7/25/2008 2:26:34 AM	10/29/74	M	W	07/25/08 00:59	Y	Y	N	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028		R	07803	12/14/2008 34	0.079
881279	0260600	7/25/2008 3:56:16 AM	04/17/73	F	W	07/25/08 03:02	Y	Y	N	Sanders/C/C SC026SP00	Sanders/C/C SC026SP00	DM011551		R	07803	12/14/2008 34	0.079
881279	0260600	7/25/2008 10:24:52 PM	11/06/56	F	W	07/25/08 21:23	Y	Y	N	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028		R	07803	12/14/2008 34	0.079
881279	0260600	7/25/2008 11:06:59 PM	03/03/56	F	W	07/25/08 22:00	Y	Y	Y	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549	0.1112	0.1121	07803	12/14/2008 34	0.079
881279	0260600	7/25/2008 11:31:14 PM	03/03/56	F	W	07/25/08 22:00	Y	Y	Y	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549	0.1005	0.1	07803	12/14/2008 34	0.079
881279	0260600	7/26/2008 12:22:11 AM	04/15/80	M	W	07/25/08 23:05	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	0.1294	0.129	07803	12/14/2008 34	0.079
881279	0260600	7/26/2008 12:52:30 AM	07/19/69	M	H	07/26/08 00:01	Y	Y	N	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549		R	07803	12/14/2008 34	0.079
881279	0260600	7/26/2008 3:26:59 AM	12/16/76	M	W	07/26/08 02:00	Y	Y	Y	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549	0.0366	0.036	07803	12/14/2008 34	0.079
881279	0260600	7/26/2008 11:48:20 PM	04/04/91	F	W	07/26/08 23:21	Y	Y	Y	Cozene/O/B SC0260600	Cozene/O/B SC0260600	DM010133	0.1516	0.151	07803	12/14/2008 34	0.079
881279	0260600	7/27/2008 12:09:36 AM	09/23/83	M	W	07/26/08 23:00	Y	Y	N	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549		R	07803	12/14/2008 34	0.079
881279	0260600	7/27/2008 1:54:39 AM	09/29/72	M	W	07/27/08 00:59	Y	N	N	Sarvis/M/B SC026SP00	Sarvis/M/B SC026SP00	DM011922		R	07803	12/14/2008 34	0.079
881279	0260600	7/27/2008 2:04:04 AM	10/28/86	M	H	07/27/08 01:22	Y	Y	N	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	0.1351	0.135	07803	12/14/2008 34	0.079
881279	0260600	7/27/2008 2:34:13 AM	05/31/83	M	H	07/27/08 01:40	Y	Y	N	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549		R	07803	12/14/2008 34	0.079
881279	0260600	7/27/2008 3:37:29 AM	04/07/78	M	W	07/27/08 02:20	Y	Y	Y	Dwyer/M/T SC026SP00	Dwyer/M/T SC026SP00	DM012544	0.1323	0.132	07803	12/14/2008 34	0.079

881279	0260600	7/27/2008 3:52:22 AM	12/29/82	M	07/27/08 02:30	Y	Y	N	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549	R	07803 0023	12/14/2008	34	0.078	
881279	0260600	7/27/2008 6:22:02 PM	01/23/79	F	07/27/08 16:20	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	0.1608 0.1606	0.16 0.16	07803 0023	12/14/2008	34	0.079
881279	0260600	7/27/2008 11:16:20 PM	01/04/89	M	07/27/08 22:15	Y	Y	Y	Dwyer/M/T SC026SP00	Dwyer/M/T SC026SP00	DM012544	0.0487 0.051	0.048 0.051	07803 0023	12/14/2008	34	0.079
881279	0260600	7/27/2008 11:52:06 PM	02/27/65	M	07/27/08 22:42	Y	Y	N	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	R	07803 0023	12/14/2008	34	0.079	
881279	0260600	7/28/2008 1:21:45 AM	06/29/76	M	07/28/08 00:09	Y	Y	Y	Dwyer/M/T SC026SP00	Dwyer/M/T SC026SP00	DM012544	0.1967 0.1967	0.196 0.196	07803 0023	12/14/2008	34	0.078
881279	0260600	7/28/2008 1:33:25 AM	09/05/83	M	07/28/08 00:20	Y	Y	Y	Sarvis/M/B SC026SP00	Sarvis/M/B SC026SP00	DM011922	0.1476 0.1472	0.147 0.147	07803 0023	12/14/2008	34	0.079
881279	0260600	7/28/2008 1:42:56 AM	04/07/68	M	07/28/08 12:45	Y	Y	N	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549	0.1863 0.1862	0.186 0.186	07803 0023	12/14/2008	34	0.079
881279	0260600	7/28/2008 3:58:19 AM	01/23/85	M	07/28/08 02:50	Y	Y	Y	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549	0.0719 0.0719	0.071 0.071	07803 0023	12/14/2008	34	0.078
881279	0260600	7/28/2008 4:11:46 AM	03/05/55	B	07/28/08 03:20	Y	N	N	Dwyer/M/T SC026SP00	Dwyer/M/T SC026SP00	DM012544	R	07803 0023	12/14/2008	34	0.079	
881279	0260600	7/29/2008 1:25:16 AM	09/13/83	M	07/28/08 23:32	Y	Y	Y	Moduskey/S/ SC0260600	Moduskey/S/ SC0260600	DM007680	0.1639 0.1636	0.163 0.1636	07803 0023	12/14/2008	34	0.079
881279	0260600	7/30/2008 1:32:46 AM	06/01/60	F	07/30/08 00:30	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	R	07803 0023	12/14/2008	34	0.078	
881279	0260600	7/31/2008 1:43:13 AM	04/01/76	M	07/31/08 00:51	Y	N	N	Dwyer/M/T SC026SP00	Dwyer/M/T SC026SP00	DM012544	R	07803 0023	12/14/2008	34	0.078	
881279	0260600	8/2/2008 12:38:12 AM	01/20/66	M	08/01/08 23:30	Y	Y	Y	Leach/J/T SC026SP00	Leach/J/T SC026SP00	DM005377	0.1703 0.1699	0.1703 0.1699	07803 0023	12/14/2008	34	0.078
881279	0260600	8/2/2008 12:44:12 AM	01/20/66	M	08/01/08 23:30	Y	Y	Y	Leach/J/T SC026SP00	Leach/J/T SC026SP00	DM005377	0.1886 0.188	0.1886 0.188	07803 0023	12/14/2008	34	0.078
881279	0260600	8/2/2008 1:53:51 AM	11/23/57	M	08/02/08 00:46	Y	Y	N	Simmons/J/M SC026SP00	Simmons/J/M SC026SP00	DM012621	R	07803 0023	12/14/2008	34	0.078	
881279	0260600	8/2/2008 6:22:48 AM	08/23/82	M	08/02/08 05:15	Y	N	N	Sanders/C/C SC026SP00	Sanders/C/C SC026SP00	DM011551	R	07803 0023	12/14/2008	34	0.077	
881279	0260600	8/2/2008 9:14:15 PM	10/19/88	M	08/02/08 19:19	Y	Y	Y	Simmons/J/M SC026SP00	Simmons/J/M SC026SP00	DM012621	0 0.0003	0 0.0003	07803 0023	12/14/2008	34	0.078
881279	0260600	8/3/2008 12:52:07 AM	09/06/69	M	08/02/08 23:38	Y	N	N	Sarvis/D/J SC026SP00	Sarvis/D/J SC026SP00	DM010186	R	07803 0023	12/14/2008	34	0.077	
881279	0260600	8/3/2008 1:46:19 AM	03/29/82	M	08/03/08 00:38	Y	Y	N	Sanders/C/C SC026SP00	Sanders/C/C SC026SP00	DM011551	R	07803 0023	12/14/2008	34	0.077	
881279	0260600	8/4/2008 12:05:08 AM	01/17/76	M	08/03/08 22:37	Y	Y	Y	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	0.0246 0.0246	0.024 0.024	07803 0023	12/14/2008	34	0.078
881279	0260600	8/4/2008 3:57:55 AM	01/14/84	M	08/04/08 02:36	Y	Y	Y	Simmons/J/M SC026SP00	Simmons/J/M SC026SP00	DM012621	0.196 0.1949	0.194 0.1949	07803 0023	12/14/2008	34	0.078
881279	0260600	8/6/2008 7:00:05 AM	04/14/85	M	08/06/08 04:22	Y	Y	Y	Mckowan/D/M SC026SP00	Mckowan/D/M SC026SP00	DM013260	0.2066 0.2065	0.206 0.2065	08802 1321	8/25/2009	34	0.08
881279	0260600	8/6/2008 12:38:06 PM							Non-Implied Consent Test	Brown/R/T SCLED0000	DM013457	0 0	0 0	08802 1321	8/25/2009	34	0.081
881279	0260600	8/7/2008 12:21:36 AM	09/05/62	M	08/06/08 23:00	Y	N	N	Sarvis/D/J SC026SP00	Sarvis/D/J SC026SP00	DM010186	R	08802 1321	8/25/2009	34	0.081	
881279	0260600	8/7/2008 3:05:10 AM	05/29/86	M	08/07/08 01:55	Y	Y	Y	Sanders/C/C SC026SP00	Sanders/C/C SC026SP00	DM011551	0.2504 0.249	0.249 0.249	08802 1321	8/25/2009	34	0.081
881279	0260600	8/7/2008 5:13:42 AM	05/30/87	M	08/07/08 03:55	Y	Y	Y	Sarvis/D/J SC026SP00	Sarvis/D/J SC026SP00	DM010186	0.0922 0.0928	0.092 0.0928	08802 1321	8/25/2009	34.1	0.081
881279	0260600	8/8/2008 12:29:57 AM	05/21/84	F	08/07/08 23:05	Y	Y	Y	Simmons/J/M SC026SP00	Simmons/J/M SC026SP00	DM012621	0.1444 0.1447	0.144 0.1447	08802 1321	8/25/2009	34	0.08
881279	0260600	8/8/2008 2:58:06 AM	01/01/71	F	08/08/08 02:10	Y	N	N	Leach/J/T SC026SP00	Leach/J/T SC026SP00	DM005377	R	08802 1321	8/25/2009	34	0.081	
881279	0260600	8/8/2008 10:10:26 PM	03/11/66	F	08/08/08 19:41	Y	Y	Y	Clayton/M/S SC026SP00	Clayton/M/S SC026SP00	DM012206	0.2314 0.231	0.231 0.231	08802 1321	8/25/2009	34	0.08
881279	0260600	8/9/2008 2:40:20 AM	07/13/84	M	08/09/08 02:00	Y	Y	N	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549	R	08802 1321	8/25/2009	34	0.081	
881279	0260600	8/9/2008 3:42:05 AM	08/17/80	M	08/09/08 02:50	Y	Y	Y	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549	0.082 0.0823	0.082 0.0823	08802 1321	8/25/2009	34	0.081
881279	0260600	8/9/2008 4:37:22 AM	09/19/84	M	08/09/08 02:31	Y	Y	Y	Harrington/M/T SC0260600	Butler/M/A SC0260600	DM010490	0.1963 0.1973	0.197 0.1973	08802 2321	8/25/2009	34	0.081
881279	0260600	8/9/2008 4:45:51 PM	11/11/88	M	08/09/08 15:10	Y	Y	Y	Truex/B/C SC0260600	Truex/B/C SC0260600	DM009652	0.1272 0.1267	0.126 0.1267	08802 1321	8/25/2009	34	0.08
881279	0260600	8/9/2008 5:15:10 PM	12/01/88	M	08/09/08 15:10	Y	Y	N	Truex/B/C SC0260600	Truex/B/C SC0260600	DM009652	R	08802 1321	8/25/2009	34	0.08	
881279	0260600	8/10/2008 1:41:12 AM	01/01/81	M	08/10/08 00:45	Y	Y	Y	Dean/C/H SC0260400	Dean/C/H SC0260400	DM013327	0.1636 0.1639	0.163 0.1639	08802 1321	8/25/2009	34	0.081
881279	0260600	8/10/2008 2:11:45 AM	04/10/75	M	08/10/08 00:50	Y	Y	Y	Sarvis/M/B SC026SP00	Sarvis/M/B SC026SP00	DM011922	0.1569 0.1575	0.156 0.1575	08802 1321	8/25/2009	34	0.08
881279	0260600	8/10/2008 2:56:30 AM	07/26/87	M	08/10/08 00:56	Y	Y	Y	West/J/ SC0260600	West/J/ SC0260600	DM012946	0.2015 0.2006	0.2 0.2006	08802 1321	8/25/2009	34	0.08
881279	0260600	8/10/2008 4:26:22 AM	08/10/87	M	08/10/08 14:47	Y	Y	Y	Harrington/M/T SC0260600	Dorris/J/R SC0260600	DM013525	0.2225 0.2218	0.221 0.2218	08802 1321	8/25/2009	34	0.08
881279	0260600	8/10/2008 9:10:53 PM	04/03/80	M	08/10/08 20:30	Y	Y	N	Hardymon/W/A SC026SP00	Hardymon/W/A SC026SP00	DM012549	R	08802 1321	8/25/2009	34	0.08	
881279	0260600	8/11/2008 12:20:06 AM	06/24/76	M	08/10/08 23:22	Y	Y	Y	Dwyer/M/T SC026SP00	Dwyer/M/T SC026SP00	DM012544	0.1911 0.1909	0.19 0.1909	08802 1321	8/25/2009	34	0.08
881279	0260600	8/11/2008 3:48:50 AM	11/20/86	M	08/11/08 02:54	Y	N	N	Spivey/T/L SC0260600	Spivey/T/L SC0260600	DM011949	R	08802 1321	8/25/2009	34	0.08	
881279	0260600	8/12/2008 2:36:17 AM	05/26/44	M	08/12/08 00:55	Y	Y	Y	Lilly/D/B SC026SP00	Lilly/D/B SC026SP00	DM012560	0.1048 0.1053	0.1048 0.1053	08802 1321	8/25/2009	34	0.08
881279	0260600	8/12/2008 2:45:47 AM							Non-Implied Consent Test	Moduskey/S/ SC0260600	DM007680	0.0001 0.0004	0 0.0004	08802 1321	8/25/2009	34	0.08
881279	0260600	8/12/2008 3:29:49 AM	04/01/81	M	08/12/08 01:25	Y	Y	Y	Moduskey/S/ SC0260600	Moduskey/S/ SC0260600	DM007680	0.1566 0.1567	0.156 0.1567	08802 1321	8/25/2009	34	0.081
881279	0260600	8/13/2008 12:03:49 AM	10/13/54	M	08/12/08 23:00	Y	N	N	Schmidt/P/ SC0260600	Schmidt/P/ SC0260600	DM012028	R	08802 1321	8/25/2009	34.1	0.08	
881279	0260600	8/13/2008 1:37:02 AM	02/12/87	F	08/13/08 00:50	Y	Y	N	Spivey/T/L SC0260600	Spivey/T/L SC0260600	DM011949	R	08802 1321	8/25/2009	34	0.08	
881279	0260600	8/14/2008 3:11:09 AM	08/17/83	M	08/14/08 02:10	Y	Y	Y	Spivey/T/L SC0260600	Spivey/T/L SC0260600	DM011949	0.2129 0.212	0.212				

881279	0260600	8/15/2008 10:17:30 PM	12/17/85	M	H	08/15/08 20:48	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.2298	0.229	08802 1321	8/25/2009	34	0.08
881279	0260600	8/16/2008 3:00:40 AM	06/23/87	M	W	08/16/08 01:57	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949	0.1859	0.185	08802 1321	8/25/2009	34	0.08
881279	0260600	8/16/2008 3:27:16 AM	11/09/84	M	W	08/16/08 01:56	Y	Y	N	Simmons/Y/M SC026SP00		Simmons/Y/M SC026SP00	DM012621		R	08802 1321	8/25/2009	34	0.08
881279	0260600	8/16/2008 5:28:51 AM	08/27/67	M	H	08/16/08 04:40	Y	Y	N	Simmons/Y/M SC026SP00		Simmons/Y/M SC026SP00	DM012621		R	08802 1321	8/25/2009	34	0.08
881279	0260600	8/16/2008 6:15:21 AM	07/12/54	M	W	08/16/08 05:15	Y	Y	Y	Sarvis/D/J SC026SP00		Sarvis/D/J SC026SP00	DM010186	0.2161	0.214	08802 1321	8/25/2009	34	0.079
881279	0260600	8/17/2008 1:41:37 AM	01/20/49	M	W	08/17/08 00:40	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.0654	0.065	08802 1321	8/25/2009	34	0.08
881279	0260600	8/17/2008 2:35:41 AM	12/30/80	M	W	08/17/08 01:04	Y	Y	Y	Simmons/Y/M SC026SP00		Simmons/Y/M SC026SP00	DM012621	0.1558	0.155	08802 1321	8/25/2009	34	0.08
881279	0260600	8/18/2008 5:12:24 AM	10/10/83	M	H	08/18/08 04:20	Y	Y	Y	Graham/Y/C SC026SP00	Trevathan/D/ SC022SP00	Graham/Y/C SC026SP00	DM009692	0.0771	0.077	08802 1321	8/25/2009	34	0.08
881279	0260600	8/18/2008 8:13:50 PM	02/22/65	M	W	08/18/08 18:50	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	08802 1321	8/25/2009	34	0.078
881279	0260600	8/19/2008 10:45:54 PM	07/15/54	F	W	08/19/08 21:00	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856	0.1129	0.112	08802 1321	8/25/2009	34	0.08
881279	0260600	8/20/2008 12:34:09 AM	09/18/51	M	W	08/19/08 23:18	Y	Y	Y	Schmidt/P/ SC0260200		Schmidt/P/ SC0260600	DM012028	0.2009	0.2	08802 1321	8/25/2009	34	0.079
881279	0260600	8/20/2008 3:00:54 AM	09/14/80	M	W	08/20/08 02:00	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949		R	08802 1321	8/25/2009	34	0.08
881279	0260600	8/21/2008 2:29:38 AM	08/15/87	M	H	08/21/08 01:15	Y	Y	Y	Sarvis/D/J SC026SP00		Sarvis/D/J SC026SP00	DM010186	0.1898	0.189	08802 1321	8/25/2009	34	0.078
881279	0260600	8/21/2008 3:09:21 AM	04/20/83	F	W	08/21/08 01:25	Y	Y	Y	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551	0.1438	0.143	08802 1321	8/25/2009	34	0.079
881279	0260600	8/21/2008 3:53:45 AM	12/23/86	M	W	08/21/08 02:26	Y	Y	N	Simmons/Y/M SC026SP00		Simmons/Y/M SC026SP00	DM012621		R	08802 1321	8/25/2009	34	0.079
881279	0260600	8/21/2008 4:25:44 AM	03/26/86	M	W	08/21/08 03:35	Y	Y	N	Lilly/D/B SC026SP00		Lilly/D/B SC026SP00	DM012560		R	08802 1321	8/25/2009	34	0.08
881279	0260600	8/21/2008 7:31:19 PM	07/24/48	F	W	08/21/08 18:16	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949	0.2939	0.293	08802 1321	8/25/2009	34.1	0.08
881279	0260600	8/22/2008 12:19:37 AM	02/04/71	M	W	08/21/08 23:25	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949	0.1547	0.154	08802 1321	8/25/2009	34	0.08
881279	0260600	8/22/2008 3:49:41 AM	04/12/87	M	W	08/22/08 02:20	Y	Y	Y	Simmons/Y/M SC026SP00		Simmons/Y/M SC026SP00	DM012621	0.1095	0.109	08802 1321	8/22/2009	34	0.079
881279	0260600	8/23/2008 1:57:20 AM	11/07/69	M	W	08/23/08 00:20	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856	0.1513	0.151	08802 1321	8/25/2009	34	0.079
881279	0260600	8/23/2008 5:33:12 AM	04/28/83	M	W	08/23/08 03:53	Y	N	N	Davis/G/S SC026SP00		Davis/G/S SC026SP00	DM078002		R	08802 1321	8/25/2009	34.1	0.078
881279	0260600	8/24/2008 1:08:34 AM	05/21/55	M	W	08/24/08 00:50	Y	Y	N	Hardymon/W/A SC026SP00		Hardymon/W/A SC026SP00	DM012549		R	08802 1321	8/25/2009	34	0.078
881279	0260600	8/24/2008 2:45:53 AM	11/01/82	M	W	08/24/08 01:45	Y	Y	N	Hardymon/W/A SC026SP00		Hardymon/W/A SC026SP00	DM012549		R	08802 1321	8/25/2009	34	0.078
881279	0260600	8/24/2008 3:29:40 AM	06/10/81	F	W	08/24/08 01:43	Y	Y	Y	Harrington/M/T SC0260600		Gibson/B/L SC0260600	DM012084	0.2261	0.224	08802 1321	8/25/2009	34	0.079
881279	0260600	8/24/2008 4:15:22 AM	05/21/86	M	W	08/24/08 02:20	Y	Y	Y	Moduskey/S/ SC0260600		Moduskey/S/ SC0260600	DM007680		R	08802 1321	8/25/2009	34	0.078
881279	0260600	8/27/2008 4:44:00 PM	07/09/65	M	H	08/27/08 14:45	Y	Y	Y	Gibson/S/C SC026SP00		Gibson/S/C SC026SP00	DM008166	0.167	0.166	08802 1321	8/25/2009	34	0.079
881279	0260600	8/28/2008 12:45:52 AM	10/26/43	M	W	08/27/08 22:50	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856		R	08802 1321	8/25/2009	34	0.078
881279	0260600	8/28/2008 11:51:51 PM	07/01/69	M	W	08/28/08 22:25	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949	0.0726	0.072	08802 1321	8/25/2009	34	0.079
881279	0260600	8/29/2008 3:42:14 AM	08/01/80	M	W	04/29/08 02:57	Y	Y	Y	Devold/B/H SC0260600		Tucker/Q/H SC0260600	DM009728		R	08802 1321	8/25/2009	34	0.078
881279	0260600	8/29/2008 5:08:09 AM	09/10/79	M	W	08/29/08 03:32	Y	Y	Y	Mindala/R/M SC0260600		Mindala/R/M SC0260600	DM012646	0.143	0.142	08802 1321	8/25/2009	34	0.078
881279	0260600	8/29/2008 9:39:19 PM	01/05/79	M	W	08/29/08 20:15	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856	0.0328	0.032	08802 1321	8/25/2009	34	0.079
881279	0260600	8/30/2008 2:35:12 AM	12/16/80	F	B	08/30/08 01:00	Y	Y	Y	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551	0.1572	0.157	08802 1321	8/25/2009	34	0.078
881279	0260600	8/30/2008 4:28:16 AM	08/03/68	M	W	08/30/08 03:55	Y	N	N	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551		R	08802 1321	8/25/2009	34	0.078
881279	0260600	8/30/2008 8:24:35 PM	06/30/74	M	W	08/30/08 18:37	Y	Y	Y	Burgos/Y/Q SC026SP00		Burgos/Y/Q SC026SP00	DM012824	0.2475	0.245	08802 1321	8/25/2009	34	0.077
881279	0260600	8/31/2008 3:02:25 AM	02/12/78	F	W	08/31/08 01:28	Y	Y	Y	Burgos/Y/Q SC026SP00		Burgos/Y/Q SC026SP00	DM012824	0.1689	0.168	08802 1321	8/25/2009	34	0.078
881279	0260600	9/1/2008 12:50:41 AM	06/10/72	F	A	08/31/08 23:40	Y	Y	Y	Hardymon/W/A SC026SP00		Hardymon/W/A SC026SP00	DM012549	0	0	08802 1321	8/25/2009	34	0.078
881279	0260600	9/2/2008 12:31:16 AM	11/03/80	M	W	09/01/08 23:24	Y	Y	N	Clayton/M/S SC026SP00		Clayton/M/S SC026SP00	DM012206		R	08802 1321	8/25/2009	34	0.077
881279	0260600	9/3/2008 1:30:44 AM	07/25/87	M	W	09/02/08 23:40	Y	Y	Y	Cozene/O/B SC0260600		Cozene/O/B SC0260600	DM010133		R	08802 1321	8/25/2009	34	0.077
881279	0260600	9/4/2008 2:29:22 AM	05/26/78	F	W	09/04/08 01:17	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	08802 1321	8/25/2009	34	0.078
881279	0260600	9/4/2008 3:03:00 AM	04/21/66	M	W	09/04/08 01:40	Y	Y	Y	Sarvis/D/J SC026SP00		Sarvis/D/J SC026SP00	DM010186	0.1186	0.118	08802 1321	8/25/2009	34	0.078
881279	0260600	9/4/2008 4:09:53 AM	01/24/88	F	W	09/04/08 02:47	Y	Y	Y	Harrington/M/T SC0260600		Butler/M/A SC0260600	DM010490		R	08802 1321	8/25/2009	34	0.078
881279	0260600	9/4/2008 5:47:56 AM	07/17/85	F	W	09/04/08 04:00	Y	Y	Y	Earnest/M/D SC026SP00		Earnest/M/D SC026SP00	DM013595	0	0	08802 1320	9/4/2008	34	0.08
881279	0260600	9/4/2008 10:55:04 PM	08/02/56	M	W	09/04/08 21:40	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	08802 1320	8/25/2009	34	0.08
881279	0260600	9/4/2008 11:43:14 PM	08/21/45	M	W	09/04/08 22:00	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856	0	0	08802 1320	8/25/2009	34	0.08
881279	0260600	9/5/2008 12:21:06 AM	03/26/63	M	W	09/04/08 22:45	Y	Y	Y	Sarvis/D/J SC026SP00		Sarvis/D/J SC026SP00	DM010186	0.0003	0	08802 1320	8/25/2009	34	0.08
881279	0260600	9/5/2008 4:11:00 AM	08/28/89	M	W	09/05/08 02:28	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.098	0.098	08802 1320	8/25/2009	34	0.08
881279	0260600	9/5/2008 5:53:14 AM	08/13/67	M	W	09/05/08 04:29	Y	Y	Y	Mindala/R/M SC0260600		Mindala/R/M SC0260600	DM012646	0.1275	0.127	08802 1320	8/25/2009	34	0.079
881279	0260600	9/7/2008 1:40:35 AM	01/09/80	M	B	09/07/08 00:17	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.1984	0.197	08802 1320	8/25/2009	34	0.078
881279	0260600	9/7/2008 2:59:18 AM	04/06/83	M	H	09/07/08 01:50	Y	Y	N	Hardymon/W/A SC026SP00		Hardymon/W/A SC026SP00	DM012549		R	08802 1320	8/25/2009	34.1	0.079
881279	0260600	9/7/2008 3:38:06 AM	07/18/65	M	H	09/07/08 02:21	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	08802 1320	8/25/2009	34	0.078

881279	0260600	9/7/2008 9:52:58 PM	05/24/62	F	09/07/08	Y	Y	N	Lardymon/W/A	Hardymon/W/A	DM012549	R	08802	8/25/2009	34.1	0.078	
				W	20:40				SC026SP00	SC026SP00			1320				
881279	0260600	9/7/2008 11:06:25 PM	10/29/77	M	09/07/08	Y	N	N	Sarvis/M/B	Sarvis/M/B	DM011922	R	08802	8/25/2009	34.1	0.078	
				W	21:54				SC026SP00	SC026SP00			1320				
881279	0260600	9/7/2008 11:40:15 PM	09/21/70	M	09/07/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1332	0.133	08802	8/25/2009	34.1	0.078
				W	22:22				SC0260600	SC0260600		0.1356		1320			
881279	0260600	9/8/2008 1:26:21 AM	02/25/88	M	09/08/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0	0	08802	8/25/2009	34.1	0.079
				W	00:15				SC0260600	SC0260600				1320			
881279	0260600	9/9/2008 12:02:30 AM	08/06/65	F	09/08/08	Y	Y	Y	Tucker/Q/H	Tucker/Q/H	DM009728	R	08802	8/25/2009	34.1	0.078	
				W	22:30				SC0260600	SC0260600				1320			
881279	0260600	9/9/2008 4:00:01 AM	12/18/77	M	09/09/08	Y	Y	Y	Howitt/N/W	Butler/M/A	DM010490	0	0	08802	8/25/2009	34.1	0.078
				B	01:57				SC0260600	SC0260600				1320			
881279	0260600	9/11/2008 1:15:53 AM	11/25/89	M	09/11/08	Y	Y	Y	Poirier/K/A	Poirier/K/A	DM010856	0.1729	0.172	08802	8/25/2009	34.1	0.076
				W	00:00				SC0260600	SC0260600		0.1728		1320			
881279	0260600	9/11/2008 10:20:40 PM	01/04/86	F	09/11/08	Y	Y	Y	Truex/B/C	Truex/B/C	DM009652	0.2288	0.227	08802	8/25/2009	34.1	0.077
				W	21:20				SC0260600	SC0260600		0.2274		1320			
881279	0260600	9/12/2008 5:32:51 AM	11/23/72	M	09/12/08	Y	Y	N	Hardymon/W/A	Dwyer/M/T	DM012549	R	08802	8/25/2009	34	0.077	
				W	04:30				SC026SP00	SC026SP00				1320			
881279	0260600	9/13/2008 3:28:10 AM	07/09/66	M	09/13/08	Y	Y	Y	Howitt/N/W	Stair/W/J	DM013062	0.136	0.136	08802	8/25/2009	34.1	0.077
				W	01:05				SC0260600	SC0260600		0.1363		1320			
881279	0260600	9/13/2008 4:23:27 AM	06/08/84	M	09/13/08	Y	Y	Y	Preston/T/M	Preston/T/M	DM011947	0.1255	0.124	08802	8/25/2009	34.1	0.077
				B	02:30				SC0260600	SC0260600		0.1249		1320			
881279	0260600	9/14/2008 3:35:53 AM	01/07/69	M	09/14/08	Y	N	N	Sanders/C/C	Sanders/C/C	DM011551	R	08802	8/25/2009	34.1	0.077	
				W	02:33				SC026SP00	SC026SP00				1320			
881279	0260600	9/14/2008 4:09:26 AM	05/11/84	F	09/14/08	Y	Y	Y	Sarvis/D/J	Sarvis/D/J	DM010186	0.2092	0.208	08802	8/25/2009	34.1	0.076
				W	02:40				SC026SP00	SC026SP00		0.2088		1320			
881279	0260600	9/15/2008 1:07:22 AM	05/11/78	M	09/14/08	Y	Y	Y	Sanders/C/C	Sanders/C/C	DM011551	0.1198	0.119	08802	8/25/2009	34.1	0.077
				H	23:55				SC026SP00	SC026SP00		0.1194		1320			
881279	0260600	9/16/2008 12:30:31 AM	04/10/79	M	09/15/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.1862	V	08802	8/25/2009	34	0.077
				H	23:48				SC0260600	SC0260600		0.1853		1320			
881279	0260600	9/16/2008 2:07:57 AM	06/14/56	M	09/16/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1834	0.183	08802	8/25/2009	34.1	0.076
				W	01:00				SC0260600	SC0260600		0.1836		1320			
881279	0260600	9/18/2008 1:44:48 AM	01/05/85	M	09/18/08	Y	Y	Y	Johnson/J/	Johnson/J/	DM012467	R	08802	8/25/2009	34	0.076	
				H	00:10				SC0260000	SC0260000				1320			
881279	0260600	9/18/2008 2:21:43 AM	08/28/59	M	09/18/08	Y	N	N	Tucker/Q/H	Tucker/Q/H	DM009728	R	08802	8/25/2009	34.1	0.076	
				W	00:30				SC0260600	SC0260600				1320			
881279	0260600	9/18/2008 3:10:45 AM	02/01/79	M	09/18/08	Y	Y	Y	Frost/M/K	Frost/M/K	DM012832	R	08802	8/25/2009	34.1	0.076	
				W	02:10				SC026SP00	SC026SP00				1320			
881279	0260600	9/18/2008 4:01:45 AM	06/25/08	M	09/18/08	Y	Y	Y	Simmons/J/M	Simmons/J/M	DM012621	0.1725	V	08802	8/25/2009	34.1	0.076
				W	02:24				SC026SP00	SC026SP00		0.172		1320			
881279	0260600	9/18/2008 7:08:17 PM							Non-Implied Consent Test	McLean/P/R	DM009852	0	0	08802	8/25/2009	34	0.08
										SC0260600		0.0001		0755			
881279	0260600	9/20/2008 12:56:51 AM	11/26/61	F	09/19/08	Y	Y	Y	Batchelor/R/W	Batchelor/R/W	DM012283	R	08802	8/25/2009	34	0.08	
				W	23:25				SC026SP00	SC026SP00				0755			
881279	0260600	9/20/2008 4:27:10 AM	09/07/84	F	09/20/08	Y	Y	Y	Dwyer/M/T	Hardymon/W/A	DM012544	0.1054	0.105	08802	8/25/2009	34	0.08
				W	02:55				SC026SP00	SC026SP00		0.1051		0755			
881279	0260600	9/21/2008 12:43:13 AM	04/04/78	F	09/20/08	Y	Y	Y	Downey/S/R	Downey/S/R	DM005352	0.1417	0.141	08802	9/18/2008	34	0.08
				W	22:34				SC0260700	SC0260700		0.1416		0755			
881279	0260600	9/21/2008 7:38:25 PM	04/21/82	M	09/21/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.2345	0.233	08802	8/25/2009	34	0.08
				W	18:51				SC0260600	SC0260600		0.2339		0755			
881279	0260600	9/22/2008 11:08:16 PM	04/24/86	M	09/22/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1649	0.164	08802	8/25/2009	34.1	0.079
				W	22:01				SC0260600	SC0260600		0.1643		0755			
881279	0260600	9/23/2008 2:18:06 AM	10/12/70	F	09/23/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1189	0.118	08802	8/25/2009	34	0.079
				W	00:58				SC0260600	SC0260600		0.1189		0755			
881279	0260600	9/23/2008 10:05:58 PM	09/23/57	M	09/23/08	Y	Y	Y	Costa/C/F	Costa/C/F	DM008387	0.1382	0.137	08802	8/25/2009	34	0.079
				W	21:45				SC026SP00	SC026SP00		0.1378		0755			
881279	0260600	9/24/2008 12:47:20 AM	11/26/77	M	09/23/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1209	0.12	08802	8/25/2009	34.1	0.079
				H	23:38				SC0260600	SC0260600		0.121		0755			
881279	0260600	9/24/2008 2:14:26 AM	06/15/69	M	09/24/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	R	08802	8/25/2009	34.1	0.079	
				W	01:18				SC0260600	SC0260600				0755			
881279	0260600	9/24/2008 8:53:57 AM							Non-Implied Consent Test	Parrish/J/B	DM003280	0.1623	0.161	08802	8/25/2009	34	0.08
										SC026SP00		0.1612		0755			
881279	0260600	9/26/2008 2:21:40 AM	07/03/77	M	09/26/08	Y	Y	Y	Tucker/Q/H	Tucker/Q/H	DM009728	0.1167	0.116	08802	8/25/2009	34	0.079
				W	00:45				SC0260600	SC0260600		0.117		0755			
881279	0260600	9/27/2008 1:13:27 AM	06/15/87	F	09/26/08	Y	Y	Y	Giucak/K/	McLuskey/S/	DM007680	0.1133	0.112	08802	8/25/2009	34	0.079
				W	23:46				SC0260600	SC0260600		0.1127		0755			
881279	0260600	9/27/2008 2:17:11 AM	09/13/40	M	09/27/08	Y	N	N	Sarvis/D/J	Sarvis/D/J	DM010186	R	08802	8/25/2009	34	0.079	
				W	01:20				SC026SP00	SC026SP00				0755			
881279	0260600	9/27/2008 4:16:57 AM	05/18/54	M	09/27/08	Y	Y	Y	Burgos/X/Q	Burgos/X/Q	DM012824	R	08802	8/25/2009	34	0.078	
				W	02:56				SC026SP00	SC026SP00				0755			
881279	0260600	9/27/2008 4:37:00 AM	12/29/85	M	09/27/08	Y	Y	N	Simmons/J/M	Simmons/J/M	DM012621	R	08802	8/25/2009	34	0.078	
				W	03:20				SC026SP00	SC026SP00				0755			
881279	0260600	9/27/2008 5:52:00 AM	03/07/81	M	09/27/08	Y	Y	Y	Sarvis/D/J	Sarvis/D/J	DM010186	R	08802	8/25/2009	34	0.079	
				W	04:15				SC026SP00	SC026SP00				0755			
881279	0260600	9/27/2008 9:58:33 PM	01/01/57	M	09/27/08	Y	Y	N	Vaughn/I/	Best/A/M	DM012463	R	08802	8/25/2009	34	0.079	
				W	19:30				SC0260700	SC0260700				0755			
881279	0260600	9/27/2008 11:14:19 PM	07/08/83	M	09/27/08	Y	Y	Y	Pacileo/M/F	Pacileo/M/F	DM001629	R	08802	8/25/2009	34	0.077	
				W	21:27				SC0260700	SC0260700				00755			
881279	0260600	9/28/2008 12:22:12 AM	01/05/82	M	09/27/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.2462	0.245	08802	8/25/2009	34	0.077
				W	23:30				SC0260600	SC0260600		0.2457		0755			
881279	0260600	9/28/2008 2:24:31 AM	04/21/71	F	09/28/08	Y	Y	N	Downey/W/H	Lewis/E/C	DM005012	I	0755	8/25/2009	34	0.078	
				W	00:27				SC0267000	SC0260700				0755			
881279	0260600	9/28/2008 2:53:03 AM	04/21/71	F	09/28/08	Y	Y	Y	Downey/W/T	Lewis/E/C	DM005012	0.1352	0.134	08802	8/25/2009	34	0.079
				W	00:27				SC0260700	SC0260700		0.1349		0755			
881279</																	

881279	0260600	10/3/2008 10:21:48 PM	06/08/82	F	W	10/03/08 21:01	Y	Y	Y	Cozene/O/B SC0260600		Cozene/O/B SC0260600	DM010133	0.1108 0.1108	0.11	0.8802 0.755	8/25/2009	34	0.077
881279	0260600	10/4/2008 1:53:16 AM	08/27/49	M	W	10/04/08 00:50	Y	N	N	Clayton/M/S SC026SP00		Clayton/M/S SC026SP00	DM012206		R	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/4/2008 2:29:12 AM	09/18/61	M	W	10/04/08 01:05	Y	Y	Y	Dewitt/B/G SC02699SP		Dewitt/B/G SC02699SP	DM004231	0.1874 0.1867	0.186	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/4/2008 3:53:22 AM	03/30/82	M	W	10/04/08 02:50	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856	0.0889 0.0893	0.088	0.8802 0.755	8/25/2009	34	0.077
881279	0260600	10/4/2008 9:46:04 PM	07/02/64	M	W	10/04/08 20:30	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856	0.1558 0.1554	0.155	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/4/2008 10:34:07 PM	11/30/87	F	W	10/04/08 21:15	Y	Y	N	Hardymon/W/A SC026SP00		Hardymon/W/A SC026SP00	DM012549		R	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/4/2008 10:59:44 PM	02/23/65	M	W	10/04/08 21:36	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		0	0.8802 0.755	8/25/2009	34	0.077
881279	0260600	10/4/2008 11:28:15 PM	07/01/40	M	W	10/04/08 21:31	Y	Y	N	Sarvis/J/T SC026SP00		Sarvis/J/T SC026SP00	DM013613		R	0.8802 0.755	8/25/2009	34	0.077
881279	0260600	10/5/2008 12:48:33 AM	08/27/84	M	B	10/04/08 23:21	Y	Y	Y	Sarvis/M/B SC026SP00		Sarvis/M/B SC026SP00	DM011922	0.094 0.0942	0.094	0.8802 0.755	8/25/2009	34	0.077
881279	0260600	10/5/2008 3:13:33 AM	03/23/55	M	W	10/05/08 01:30	Y	Y	Y	Supps/K/ SC0260400		Lamparter/K/S SC0260400	DM013149	0.0763 0.0761	V	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/5/2008 3:22:35 AM	03/23/55	M	W	10/05/08 01:30	Y	Y	Y	Supps/K/ SC0260400		Lamparter/K/S SC0260400	DM013149		I	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/5/2008 3:47:22 AM	03/23/55	M	W	10/05/08 01:30	Y	Y	Y	Supps/K/ SC0260400		Lamparter/K/S SC0260400	DM013149	0.0592 0.059	0.059	0.8802 0.755	8/25/2009	34	0.077
881279	0260600	10/5/2008 4:15:23 AM	11/09/79	M	H	10/05/08 03:20	Y	Y	N	Sarvis/M/B SC026SP00		Sarvis/M/B SC026SP00	DM011922	0.0525 0.0526	0.052	0.8802 0.755	8/25/2008	34	0.077
881279	0260600	10/5/2008 7:54:25 PM	01/29/73	M	W	10/05/08 18:30	Y	Y	Y	Cozene/O/B SC0260600		Cozene/O/B SC0260600	DM010133	0.1226 0.1223	0.122	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/6/2008 12:04:32 AM	01/10/83	M	W	10/05/08 23:09	Y	Y	Y	Dwyer/M/T SC026SP00	Hardymon/W/A SC026SP00	Dwyer/M/T SC026SP00	DM012544	0.0918 0.092	V	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/6/2008 12:32:48 AM	01/10/83	M	W	10/05/08 23:09	Y	Y	Y	Dwyer/M/T SC026SP00	Hardymon/W/A SC026SP00	Dwyer/M/T SC026SP00	DM012544	0.0816 0.0816	0.081	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/6/2008 2:52:22 AM	03/16/85	F	W	10/06/08 01:00	Y	Y	Y	Hardymon/W/A SC026SP00	Dwyer/M/T SC026SP00	Hardymon/W/A SC026SP00	DM012549	0.1958 0.195	0.195	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/7/2008 12:56:18 AM	09/30/78	M	W	10/06/08 23:29	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856	0.0003 0.0004	0	0.8802 0.755	8/25/2009	34	0.077
881279	0260600	10/8/2008 12:11:26 AM	03/11/90	M	W	10/07/08 22:30	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856		0	0.8802 0.755	8/25/2009	34.1	0.076
881279	0260600	10/9/2008 4:15:10 AM	04/09/84	M	W	10/09/08 02:37	Y	Y	Y	Proudt/T/N SC0260600	Reed/R/ SC0260600	Proudt/T/N SC0260600	DM012303	0.1759 0.1758	0.175	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/10/2008 10:50:34 PM	07/21/72	F	W	10/10/08 21:45	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949	0.203 0.2023	0.202	0.8802 0.755	8/25/2009	34	0.076
881279	0260600	10/11/2008 5:29:05 PM								Non-Implied Consent Test		Jones/E/H SC0260600	DM002259		0	0.8802 0.740	8/25/2009	34	0.08
881279	0260600	10/11/2008 6:01:41 PM	03/14/62	M	W	10/11/08 15:50	Y	Y	Y	Jones/E/H SC0260600	Beam/I/ SC0260600	Jones/E/H SC0260600	DM002259	0.1685 0.168	0.168	0.8802 0.740	8/25/2009	34	0.079
881279	0260600	10/11/2008 9:33:18 PM	07/20/70	M	W	10/11/08 20:34	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.0168 0.0175	0.016	0.8802 0.740	8/25/2009	34.1	0.08
881279	0260600	10/11/2008 11:01:20 PM	12/22/81	M	W	10/11/08 21:51	Y	Y	Y	Tucker/Q/H SC0260600		Tucker/Q/ SC0260600	DM009728	0.2487 0.2475	0.247	0.8802 0.740	8/25/2009	34	0.079
881279	0260600	10/11/2008 11:58:14 PM	08/30/76	M	H	10/11/08 23:14	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.2451 0.2438	0.243	0.8802 0.740	8/25/2009	34.1	0.079
881279	0260600	10/12/2008 3:30:08 AM	03/06/81	M	W	10/12/08 02:37	Y	N	N	Sarvis/D/J SC026SP00		Sarvis/D/J SC026SP00	DM010186		R	0.8802 0.740	8/25/2009	34.1	0.079
881279	0260600	10/13/2008 1:55:37 AM	08/22/75	F	W	10/13/08 00:29	Y	Y	Y	Sanders/C/C SC026SP00		Sanders/C/C SC026SP00	DM011551	0.1525 0.1519	0.151	0.8802 0.740	8/25/2009	34.1	0.079
881279	0260600	10/13/2008 3:21:41 AM	07/25/70	M	W	10/13/08 01:55	Y	Y	N	Simmons/J/M SC026SP00		Simmons/J/M SC026SP00	DM012621		R	0.8802 0.740	8/25/2009	34.1	0.079
881279	0260600	10/13/2008 4:42:18 AM	04/04/69	M	W	10/13/08 03:51	Y	N	N	Sarvis/M/B SC026SP00		Sarvis/M/B SC026SP00	DM011922		R	0.8802 0.740	8/25/2009	34	0.079
881279	0260600	10/15/2008 2:25:57 AM	09/14/78	M	W	10/15/08 01:20	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856		R	0.8802 0.740	8/25/2009	34.1	0.078
881279	0260600	10/16/2008 2:07:59 AM	12/12/62	M	W	10/16/08 00:41	Y	N	N	Tucker/Q/H SC0260600		Tucker/Q/H SC0260600	DM009728		R	0.8802 0.740	8/25/2009	34	0.078
881279	0260600	10/16/2008 2:56:59 AM	09/09/50	M	W	10/16/08 01:47	Y	Y	Y	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	0.8802 0.740	8/25/2009	34	0.079
881279	0260600	10/16/2008 4:12:49 AM	06/02/79	M	H	10/16/08 02:30	Y	Y	Y	Frost/M/ SC026SP00		Frost/M/ SC026SP00	DM012832	0.1784 0.1776	0.177	0.8802 0.740	8/25/2009	34	0.078
881279	0260600	10/17/2008 12:10:30 AM	10/01/86	M	H	10/16/08 23:38	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.1769 0.1763	0.176	0.8802 0.740	8/25/2009	34.1	0.078
881279	0260600	10/17/2008 1:42:14 AM	09/05/62	M	W	10/17/08 00:55	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	0.8802 0.740	8/25/2009	34	0.078
881279	0260600	10/17/2008 9:45:50 PM	11/02/59	M	W	10/17/08 20:45	Y	Y	Y	Poirier/K/A SC0260600		Poirier/K/A SC0260600	DM010856		R	0.8802 0.740	8/25/2009	34	0.077
881279	0260600	10/18/2008 2:25:03 AM	07/06/66	M	W	10/18/08 01:00	Y	Y	Y	Hardymon/W/A SC026SP00		Hardymon/W/A SC026SP00	DM012549	0.0001 0.0006	0	0.8802 0.740	8/25/2009	34	0.078
881279	0260600	10/18/2008 4:06:47 AM	10/27/86	F	W	10/18/08 03:01	Y	Y	Y	Heine/W/D SC0260600		Heine/W/D SC0260600	DM012288	0.1765 0.1754	0.175	0.8802 0.740	8/25/2009	34.1	0.077
881279	0260600	10/20/2008 10:02:07 PM	04/10/60	M	W	10/20/08 21:05	Y	N	N	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949		R	0.8802 0.740	8/25/2009	34	0.077
881279	0260600	10/21/2008 12:14:59 AM	09/07/84	M	W	10/20/08 22:30	Y	Y	Y	Morrell/P/ SC0260600		Moduskey/S/ SC0260600	DM007680	0.1955 0.1949	0.194	0.8802 0.740	8/25/2009	34	0.077
881279	0260600	10/22/2008 10:52:16 PM	06/26/62	F	W	10/22/08 20:47	Y	Y	Y	Moduskey/S/ SC0260600		Moduskey/S/ SC0260600	DM007680	0.1555 0.1552	0.155	0.8802 0.740	8/25/2009	34	0.077
881279	0260600	10/25/2008 8:43:59 PM	06/12/54	F	W	10/25/08 19:00	Y	Y	Y	Butland/K/L SC0260600		Arroyo/R/A SC0260600	DM012793	0.1155 0.1151	0.115	0.8802 0.740	8/25/2009	34.1	0.076
881279	0260600	10/25/2008 8:57:25 PM	01/16/68	M	H	10/25/08 19:25	Y	Y	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028	0.211 0.211	0.211	0.8802 0.740	8/25/2009	34	0.076
881279	0260600	10/26/2008 1:53:12 AM	05/08/55	F	W	10/26/08 00:51	Y	N	N	Schmidt/P/ SC0260600		Schmidt/P/ SC0260600	DM012028		R	0.8802 0.740	8/25/2009	34.1	0.076
881279	0260600	10/26/2008 1:58:25 AM	01/15/71	F	W	10/26/08 01:20	Y	Y	Y	Simmons/J/M SC026SP00		Simmons/J/M SC026SP00	DM012621	0.1315 0.1337	0.131	0.8802 0.740	8/25/2009	34	0.076
881279	0260600	10/26/2008 10:29:19 PM	09/03/87	M	W	10/26/08 21:55	Y	Y	Y	Simmons/J/M SC026SP00		Simmons/J/M SC026SP00	DM012621	0.2088 0.2086	0.208	0.8802 0.740	8/25/2009	34.1	0.076
881279	0260600	10/28/2008 1:58:52 AM	10/08/81	F	W	10/28/08 00:45	Y	Y	Y	Spivey/T/L SC0260600		Spivey/T/L SC0260600	DM011949	0.2052 0.2052	0.205	0.8802 0.740	8/25/2009	34	0.076
881279	0260600	10/29/2008 10:35:17 AM								Non-Implied Consent Test		Brown/R/T SLED0000	DM013457		0	0.8803 0.821	2/10/2010	34	0.08
881279	0260600	10/30/2008 3:31:28 AM	10/31/72	M	B	10/30/08 02:06	Y	Y	Y	Hager/B/M SC0260600		Hager/B/M SC0260600	DM004824		R	0.8803 0.821	2/10/2010	34	0.079

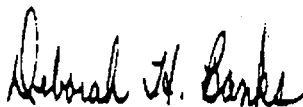
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881279	0260600	10/30/2008 9:47:23 PM	07/28/50	M	10/30/08	Y	Y	Y	Trues/B/C	Trues/B/C	DM009652	R	08803	2/10/2010	34	0.079	
881279	0260600	10/31/2008 2:42:41 AM	02/21/81	M	10/31/08	Y	Y	Y	Sarvis/M/B	Sarvis/M/B	DM011622	0.1772	0.177	08803	2/10/2010	34	0.08
881279	0260600	10/31/2008 3:24:24 AM	07/27/66	F	10/31/08	Y	Y	N	Sanders/C/C	Sanders/C/C	DM011551	0.1779	R	08803	2/10/2010	34	0.08
881279	0260600	10/31/2008 6:13:34 PM	10/03/83	M	10/31/08	Y	Y	Y	Rose/C/E	Rose/C/E	DM010498	0.2213	0.221	08803	2/10/2010	34	0.079
881279	0260600	10/31/2008 10:40:25 PM	12/03/85	M	10/31/08	Y	Y	Y	Damm/D/A	Cleary/J/A	DM012753	0.222	R	08803	2/10/2010	34	0.079
881279	0260600	11/1/2008 1:53:07 AM	10/05/89	M	11/01/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.0466	0.046	08803	2/10/2010	34	0.079
881279	0260600	11/1/2008 5:19:32 AM	09/01/80	M	11/01/08	Y	Y	Y	Anderson/I/W	Amos/J/E	DM012012	0.0472	0.148	08803	2/10/2010	34	0.079
881279	0260600	11/2/2008 12:30:03 AM	11/12/78	F	11/01/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.1486	0.1504	08803	2/10/2010	34	0.079
881279	0260600	11/2/2008 12:50:46 AM	02/06/84	M	11/01/08	Y	Y	N	Hardymon/W/A	Hardymon/W/A	DM012549	0.1606	0.16	08803	2/10/2010	34	0.078
881279	0260600	11/2/2008 2:06:16 AM	08/06/64	M	11/02/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1604	0.0763	08803	2/10/2010	34	0.079
881279	0260600	11/2/2008 3:13:00 AM	09/17/75	M	11/02/08	Y	Y	N	Schmidt/P/	Schmidt/P/	DM012028	0.0763	0.129	08803	2/10/2010	34	0.079
881279	0260600	11/3/2008 1:17:40 AM	08/27/87	F	11/03/08	Y	Y	Y	Schmidt/P/	Schmidt/P/	DM012028	0.1298	0.17	08803	2/10/2010	34	0.078
881279	0260600	11/3/2008 8:15:49 PM	02/27/59	M	11/03/08	Y	Y	Y	Wolff/K/B	Lardino/J/V	DM013487	0.1702	0	08803	2/10/2010	34	0.079
881279	0260600	11/4/2008 8:04:58 PM	12/21/83	M	11/04/08	Y	Y	Y	Frost/M/K	Frost/M/K	DM012832	0.0012	0.0692	08803	2/10/2010	34	0.079
881279	0260600	11/4/2008 8:12:44 PM	12/21/83	M	11/04/08	Y	Y	Y	Frost/M/K	Frost/M/K	DM012832	0.0702	0.0698	08803	2/10/2010	34	0.079
881279	0260600	11/5/2008 8:53:53 AM							Non-Implied Consent Test	Jones/E/H	DM002259	0	0	08803	2/10/2010	34	0.079
881279	0260600	11/5/2008 11:37:31 PM	03/23/80	M	11/05/08	Y	Y	N	Hardymon/W/A	Hardymon/W/A	DM012549	0.0704	0.1128	08803	2/10/2010	34	0.078
881279	0260600	11/6/2008 1:14:17 AM	10/14/62	M	11/06/08	Y	Y	Y	Simmons/J/M	Simmons/J/M	DM012621	0.1123	0.1499	08803	2/10/2010	34	0.078
881279	0260600	11/6/2008 2:42:37 AM	08/23/71	M	11/06/08	Y	Y	Y	Hardymon/W/A	Hardymon/W/A	DM012549	0.1499	0.1047	08803	2/10/2010	34	0.078
881279	0260600	11/6/2008 3:11:20 AM	01/08/76	M	11/06/08	Y	Y	N	Sarvis/M/B	Sarvis/M/B	DM011922	0.1043	0.104	08803	2/10/2010	34	0.078
881279	0260600	11/6/2008 4:07:01 AM	12/21/89	M	11/06/08	Y	Y	Y	Simmons/J/M	Simmons/J/M	DM012621	R	0	08803	2/10/2010	34	0.079
881279	0260600	11/7/2008 2:52:50 AM	01/04/82	M	11/07/08	Y	N	N	Sarvis/M/B	Sarvis/M/B	DM011922	0.0004	0	08803	2/10/2010	34	0.078
881279	0260600	11/7/2008 4:24:53 AM	09/22/85	M	11/07/08	Y	Y	Y	Sarvis/M/B	Sarvis/M/B	DM011922	0.0011	0.1142	08803	2/10/2010	34	0.078
881279	0260600	11/7/2008 9:24:19 PM	01/25/62	F	11/07/08	Y	N	N	Graham/J/C	Graham/J/C	DM009692	0.114	R	08803	2/10/2010	34	0.078
881279	0260600	11/8/2008 12:29:45 AM	09/22/65	M	11/07/08	Y	Y	Y	Moduskey/S/	Moduskey/S/	DM007680	0.1264	0.126	08803	2/10/2010	34	0.078
881279	0260600	11/8/2008 4:23:48 AM	03/05/86	M	11/08/08	Y	N	N	Harrington/M/T	Cleary/J/A	DM012753	0.1263	R	08803	2/10/2010	34	0.078
881279	0260600	11/8/2008 5:03:29 PM	09/04/69	F	11/08/08	Y	N	N	Bertang/J/	Bertang/J/	DM007904		R	08803	2/10/2010	34	0.079
881279	0260600	11/10/2008 2:43:54 AM	01/31/79	M	11/10/08	Y	Y	Y	Sarvis/D/J	Sarvis/D/J	DM010186	0.1087	0.1199	08803	2/10/2010	34	0.078
881279	0260600	11/10/2008 4:44:35 AM	11/28/83	M	11/10/08	Y	Y	Y	Sarvis/S/J	Sarvis/D/J	DM010186	0.1094	0.108	08803	2/10/2010	34	0.078
881279	0260600	11/11/2008 3:43:20 AM	05/11/80	M	11/11/08	Y	Y	Y	Planters/J/B	Planters/J/B	DM013343		R	08803	2/10/2010	34	0.078

According to SLED policy, a simulator solution reading of 0.076% through 0.084%, inclusive, constitutes a 0.08% reading and passes test. A simulator solution temperature reading of 33.5C through 34.5C, inclusive, constitutes a 34C reading and passes test.

Prior to August 19, 2003 at 12:00 p.m., a simulator solution reading of 0.095% through 0.105%, inclusive, constitutes a 0.10% reading and passes test.

NOTE If the subject's date of birth is entered, (either manually or scanned by card reader), as being prior to January 01, 1900, the breath test record(s) will not merge with this database. Subsequently, these particular breath records necessarily have had the dates of birth arbitrarily changed to 01/01/1900 in order to enable them to merge and be available for public viewing on this website. An incorrect date of birth does not invalidate any breath record or affect the accuracy of the tests results, per SLED Implied Consent Policy 8.12.5, Section K-2.

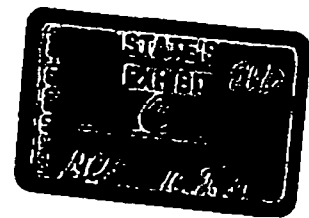
THIS REPORT REPRESENTS TRUE AND CORRECT COPIES OF THE ORIGINAL DOCUMENTS MAINTAINED BY SLED IN THE NORMAL COURSE OF BUSINESS.



DEBORAH H. BANKS, LIEUTENANT
SUPERVISORY SPECIAL AGENT
IMPLIED CONSENT DEPARTMENT

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

4400 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210



8.12.5 IMPLIED CONSENT - ADMINISTRATION OF BREATH ALCOHOL TESTS

POLICY #: 8.12.5	DATE: 09/01/93	REVISION DATE: 11/01/06
TITLE: IMPLIED CONSENT - ADMINISTRATION OF BREATH ALCOHOL TESTS		PAGE 1 OF 13

RESPONSIBLE AUTHORITY: SPECIAL AGENT IN CHARGE OF
FORENSIC SERVICES LABORATORY

RELATED STANDARDS/STATUTES/REFERENCES: S. C. Code of Laws, Section 23-31-410
S. C. Code of Laws, Section 50-21-114
S. C. Code of Laws, Section 55-1-100
S. C. Code of Laws, Section 56-1-10
S. C. Code of Laws, Section 56-1-286
S. C. Code of Laws, Section 56-1-2130
S. C. Code of Laws, Section 56-5-2950
S. C. Code of Laws, Section 56-5-2953
S. C. Code of Regulations, Chapter 73,
Article 1

GENERAL PURPOSE: To set forth policies for the administration of implied consent breath alcohol tests.

POLICY: The Division will establish procedures for properly conducting implied consent and non-implied consent DataMaster breath alcohol tests.

SPECIFIC PROCEDURES:

A. IMPLIED CONSENT TESTS

1. Any arresting and/or primary investigating officer may direct that a subject under arrest or detained for an implied consent related offense submit to a breath alcohol test.
2. Except for Flying Under the Influence (FUI), any officer (if a certified operator), including the arresting and/or primary investigating officer, may administer the breath test if the observation period is video recorded.
3. SLED approved methods do not require the breath test be administered within any particular time after the arrest. The test should be administered as soon as practicable without undue delay. However, statutory time requirements do exist for some implied consent offenses.

B. NON-IMPLIED CONSENT TESTS

1. A non-implied consent test is any breath test on a SLED certified instrument not performed under the authority of the implied consent laws of South Carolina.

2. After a high reading on an implied consent test, the operator may perform a non-implied consent test if he/she is concerned about the subject's health. A high reading is defined as any significant reading that gives the operator concern regarding the subject's welfare. This reading is typically 0.35% alcohol concentration or greater. The results of this second test should not be used for court purposes. The operator does not have to wait to perform a second test before seeking medical attention for a subject.
3. To perform a non-implied consent test, the operator will enter an "N" after the question, "DUI/CDL/BUI/FUI/<21 TEST".
4. During a non-implied consent test, only minimal test questions will be prompted. The operational protocol will be the same as in an implied consent test. If a non-implied consent test is performed, the instrument will denote this type of test on the evidence ticket.

C. BREATH TEST SEQUENCE

1. The breath test sequence for an implied consent test encompasses the following events: video recording of the breath test (if applicable), advisement process (Miranda and implied consent rights, if applicable), checking of the mouth, time stamp, observation period, data entry, operational protocol, and printout of the ticket. To ensure a proper test is administered, a test is considered complete only after the operational protocol has finished and the signature lines are printed on the ticket. For a non-implied consent test, video recording of the breath test, advisement process, checking of the mouth, time stamp, and observation period are not required. However, checking of the mouth, time stamp, and observation period are recommended to ensure an accurate test.
2. If a statute requires videotaping of the breath test, the test operator will activate the video recording equipment, advise the subject of Miranda rights, and inform the subject in writing of implied consent rights. If videotaping is not required, the operator is only required to inform the subject in writing of implied consent rights.
3. It is recommended, but not required, that the advisement process occur before checking of the mouth and time stamp (beginning of the observation period). A typical order of events would be advisement process, checking of the mouth, and time stamp the evidence ticket.
4. Checking of the mouth should occur before the time stamp (beginning of the observation period). However, if the time stamp occurs before checking of the mouth and if any foreign material and/or removable dental work is discovered and removed, another evidence ticket will be time stamped and a new observation period initiated.

5. The test operator will begin the data entry by pressing the run button. The ticket, which has previously been time stamped (except in refusals), is then inserted into the instrument. After all data has been entered and reviewed, the instrument begins the operational protocol. If all steps pass in the operational protocol, the subject is requested to provide a sample. After sample collection, the instrument completes the final steps of the operational protocol and prints the evidence ticket.
6. The test operator and the arresting officer should sign the completed evidence ticket on any implied consent test or refusal. Unless the subject is unruly, he/she should be given the opportunity to sign the ticket and receive a copy, regardless of whether it is a test or refusal. It is not required that the defendant be given a copy of aborted tests.

D. ADVISEMENT FORMS

1. SLED will provide rights advisement forms for implied consent tests. SLED will furnish all forms in a standard English version, and may furnish some forms in a Spanish version. In applicable circumstances, a Spanish version may be used in lieu of or in addition to the English version.
2. SLED's "DRIVING UNDER THE INFLUENCE ADVISEMENT" is to be read to subjects given breath alcohol tests for Driving Under the Influence (DUI) violations. The "FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT" is to be read to subjects given breath alcohol tests for Felony DUI violations.
3. SLED's "COMMERCIAL DRIVER'S LICENSE ADVISEMENT" is to be read to subjects given breath alcohol tests for Commercial Driver's License (CDL) violations. If a DUI or Felony DUI charge is also involved, that applicable advisement should also be read to the subject. However, if no DUI or Felony DUI charge is involved, only the CDL advisement should be read to the subject.
4. SLED's "ZERO TOLERANCE ADVISEMENT" is to be read to subjects given breath alcohol tests for zero tolerance violations. If a DUI or Felony DUI charge is involved, that applicable advisement should be read to the subject in lieu of the zero tolerance advisement. If no DUI or Felony DUI charge is involved, only the zero tolerance advisement should be read to the subject.
5. SLED's "BOATING UNDER THE INFLUENCE (BUI) ADVISEMENT" is to be read to subjects given breath alcohol tests for applicable Boating Under the Influence (BUI) violations. SLED's "BUI INVOLVING DEATH, BODILY INJURY, OR PROPERTY DAMAGE ADVISEMENT" is to be read to subjects given breath alcohol tests for applicable BUI violations.
6. SLED's "FLYING UNDER THE INFLUENCE ADVISEMENT" is to be read to subjects given breath alcohol tests for Flying Under the Influence (FUI) violations.

7. SLED's "SHOOTING UNDER THE INFLUENCE ADVISEMENT" is to be read to subjects given breath alcohol tests for shooting under the influence violations.

E. ADVISEMENT PROCESS

1. The advisement process consists of the officer reading any applicable advisements and furnishing the subject a copy. The reading of any applicable rights advisements and furnishing the subject a copy should be completed as soon as practical after the subject arrives at the testing site. The advisement process will be completed before the subject is requested to blow into the instrument.
2. Unless the subject is unruly, he/she should be given the opportunity to sign the advisement form. The subject's signature only signifies that he/she received a copy of the form. When the subject is provided a copy of the form, the subject has been informed in writing of his/her rights whether or not he/she signs the form.
3. The subject may sign the advisement form after the test as long as he/she is provided a copy before being requested to blow into the instrument. A subject is provided a copy if a copy is either given to him/her or made available by placing in his/her proximity where he/she can read it.
4. Whether or not the subject signs the advisement form, he/she will be furnished with a copy or a copy left with his/her items at the detention facility or other applicable location.

F. REFUSAL

1. A subject may be removed from the testing site at any time after a refusal occurs. If a subject gives the test operator a refusal after the advisement process, checking of the mouth, time stamp, and/or observation period may be waived.
2. In the event a refusal occurs during the observation period, this period may be terminated whether or not the evidence ticket has been time stamped. The instrument will print "REFUSED" by the subject sample after two minutes has elapsed and the operator has answered that the subject has refused the test.
3. Regardless of the type of refusal, the operator will proceed with the applicable breath test sequence on the DataMaster. Unless unusual circumstances exist, all refusals will be entered into the DataMaster. This action is done solely for documentary and statistical purposes, not to check the instrument.

4. A refusal to submit to a breath test can occur in any of the following ways:
 - a. The subject expresses a refusal to take the test after being advised of his/her implied consent rights.
 - b. The subject refuses to cooperate or interferes with the administration of the test.
 - c. The subject acts unruly while the test is being administered. This includes the entire process from the time the subject encounters the operator until the test is complete.
 - d. The subject delays the administration of the test. The test operator is not required to wait until an attorney or other individual arrives at the test site.
 - e. The subject does not cooperate in the checking of his/her mouth. This includes, but is not limited to, failure to open mouth, failure to accurately answer questions about foreign material and/or dental work, and failure to remove foreign material and/or removable dental work.
 - f. The subject ingests prohibited substances during the observation period. This prohibition includes smoking during the observation period.
 - g. The subject intentionally regurgitates or refuses to rinse out his/her mouth after unintentional regurgitation.
 - h. The subject refuses to answer or incorrectly answers biographical information required by the operator. The operator, may at his/her discretion, test a subject without complete biographical information, as long as the operator has sufficient information to identify the subject.
 - i. The subject does not attempt to blow, pretends to blow, or does not blow an adequate sample, as determined by the instrument. Any subject will be able to provide an adequate sample, as determined by the instrument.
 - j. The subject intentionally causes the instrument to have an error or failure.
6. CHECKING OF THE SUBJECT'S MOUTH FOR FOREIGN MATERIAL
 1. The operator will look inside the subject's mouth and/or ask the subject if he/she has any foreign material and/or removable dental work in his/her mouth.

2. Dental work (removable or permanent) is not considered foreign material. Even though the presence of dental work will not affect the breath test when a minimum twenty-minute observation period is utilized, any removable dental work discovered in the mouth will be removed as a precaution.
3. If any foreign material and/or dental work is discovered and removed, it is neither necessary nor required the mouth be rinsed out, as long as the observation period is used.
4. Any foreign material and/or removable dental work discovered in the mouth will be removed before the observation period begins. If foreign material and/or removable dental work discovered in the mouth is removed, it is not required the operator denote what foreign material was removed.
5. If a subject intentionally misleads an operator concerning any foreign material and/or removable dental work, the subject has forfeited his/her right to have it removed. Permanent dental work or dental work that is difficult to remove (such that a dentist is required to safely remove it) will be left in the mouth, because it will not affect breath test results when a minimum twenty-minute observation period is used.

H. EVIDENCE TICKET

1. Only SLED issued evidence tickets will be used. A copy of every ticket used in an implied consent test, including aborted tests, should be saved.
2. Whether or not the subject signs the ticket, he/she should be furnished with a copy or a copy left with his/her items at the detention facility.
3. If extra copies of the evidence ticket are needed, the operator may press the "CPY" button on the keyboard. After a ticket is inserted, the instrument will print a copy of the last test performed. The original ticket needs to be retained, because it has the time stamp information, while a copy will not.

I. TIME STAMP

1. A DataMaster will be used to time stamp the SLED evidence ticket to denote the beginning of the observation period unless a refusal has already occurred. In this case, a time stamp is not necessary. The ticket may be time stamped by any DataMaster, not necessarily the one on which the test is to be performed.
2. During the time stamp process, the operator will be required to enter his/her operator certification number and traffic ticket/warrant number. "NA" should be entered if there is no traffic ticket/warrant number.

3. After data review, the instrument will print the beginning observation time and date on the ticket and eject the ticket. The operator will then wait until time to administer the test.
4. For breath testing purposes, the "official time" is the time recorded by the DataMaster. This time is recorded on both the evidence ticket and internal memory of the DataMaster and is used to establish if the operator has followed proper protocol.
5. The time displayed on the VDS-2 (video recording system) is present to ensure integrity of the recording. The times on the VDS-2 and the DataMaster may often differ due to the separate time measurement systems used by these devices.

J. OBSERVATION PERIOD

1. The purpose of the observation period is to allow for the deprivation of mouth alcohol. While the DataMaster has the capability to detect the presence of mouth alcohol and will abort the test if significant mouth alcohol is detected, an observation period of a minimum of twenty minutes will be used as a precaution.
2. The operator is not required to maintain eye contact with the subject, but the operator will monitor the subject to ensure no external liquids and/or solids are ingested before providing a breath sample.
3. Except in refusals, there will be a minimum of twenty minutes between the time stamp and the time listed by the subject's sample on the evidence ticket. The actual test sequence may begin less than twenty minutes from the beginning observation time, as long as at least twenty minutes elapses before the subject provides his/her breath sample.
4. The test operator may observe multiple subjects during the same time, if the observation periods are performed properly. The operator must be able to verify none of the subjects ingested any external liquids and/or solids during the observation period.
5. The subject may not smoke during the observation period. If ingestion of prohibited substances or any other type of compromise of the observation period occurs and the operator proceeds with the test, he/she will again check the mouth, time stamp an evidence ticket, and begin another observation period. If the observation period must be restarted, the original evidence ticket should be saved.
6. Merely belching during the observation period will not affect the test results and therefore the mouth does not have to be rinsed out or another observation period begun.

7. If a subject regurgitates significant (as determined by the operator) solid and/or liquid matter into the mouth during the observation period, the operator will have the subject rinse his/her mouth out with water, check the mouth, and then time stamp another ticket to begin another observation period (unless a refusal occurs). If significant regurgitation that could affect the test went undetected by the operator, the instrument's mouth alcohol detection system should abort the test.

K. DATA ENTRY

1. For all displayed questions, except middle initials, the test operator is required to enter data. If an initial is not known or does not exist, press the enter key.
2. Data entry errors or omissions will not affect the accuracy of the test results or invalidate the test; however, the data should be entered accurately for documentary and statistical reasons.
3. The instrument will not accept entries of the wrong format for that particular question or obvious errors. For all questions that are to be answered by Yes or No, "Y" is entered for "YES" and "N" is entered for "NO". If a question, other than initials or date of birth, cannot be answered for whatever reason (unknown, not relevant to subject, etc.), "NA" (for non-applicable or not available) should be entered. For a date of birth that is unknown or unavailable, the operator should enter an arbitrary date of 01/01/00. If an answer is too long to enter completely, the information should be entered to the extent possible.
4. After proper entry into the computerized database, data will not be changed. If an operator discovers that incorrect data was entered either by error or incorrect information supplied by the subject, he/she should make the proper notations in his/her records. SLED does not need to be notified.
5. The operator has approximately three minutes to answer each question or the test will abort. The following test questions are prompted:
 - a. "DUI/CDL/BUI/FUI/<21 TEST"
A "Y" should be entered if the test is an implied consent test. An "N" should be entered if the test is a non-implied consent test.
 - b. "USING VIDEO?"
A "Y" or "N" should be entered.
 - c. "SLED ID: _ _ _ _ _"
This question will only appear if a "Y" is entered for "USING VIDEO?". This ID number is generated by the VDS-2 and will be displayed on the monitor each time the system is activated.
 - d. "TRAFFIC TICKET#"
The traffic ticket or warrant number should be entered.

- e. "ACCIDENT INVOLVED?" - A "Y" or "N" should be entered.
- f. "NUMBER OF INJURIES?"
This question will only appear if a "Y" is entered for "ACCIDENT INVOLVED". Deaths are counted as injuries.
- g. "SUBJECT ADVISED?"
A "Y" is the only acceptable entry, since the subject will be advised of his/her rights. If the subject has not been advised of his/her rights, the advisement(s) should be done at this point.
- h. "SUBJECT'S MOUTH CHECKED?"
A "Y" or "N" should be entered. If "N" is entered, a refusal situation should exist.
- i. "SUBJECT OBSERVED 20 MIN."
A "Y" or "N" should be entered. If "N" is entered, a refusal situation should exist.
- j. "COUNTY OF ARREST"
The two digit county code should be entered.
- k. "SUBJECT'S FIRST NAME"
The subject's first name should be entered.
- l. "MID INIT"
The subject's middle initial should be entered.
- m. "LAST NAME" - The subject's last name should be entered.
- n. "STREET/APT/BOX" - The subject's address should be entered.
- o. "CITY/TOWN" - The subject's city or town should be entered.
- p. "STATE"
The appropriate two letter state abbreviation, using the postal system abbreviations, for the subject's state should be entered.
- q. "STATE LICENSED"
The appropriate two letter state abbreviation, using the postal system abbreviations, for the state of issue of the subject's driver's license should be entered. If the subject has a highway department identification number, the state may be entered.
- r. "DL NUMBER"
The subject's driver's license number should be entered. A social security number should be entered only if it is also the driver's license number. If the subject has a highway department identification number or a driver's license from a foreign country, that number may be entered.

- s. "SEX:"
Either an "M" (male) or an "F" (female) should be entered.
- t. "RACE:"
The following are acceptable abbreviations for race/ethnic group:
- | | |
|-------------------------------|---------------------|
| A - Asian or Pacific Islander | B - Black |
| H - Hispanic | I - American Indian |
| U - Unknown | W - White |
- u. "DATE OF BIRTH
mm/dd/yy"
The subject's date of birth in the month, day, and year format should be entered.
- v. "ARREST DATE
mm/dd/yy"
The arrest or violation date in the month, day, and year format should be entered.
- w. "ARREST TIME
hh:mm _M"
The arrest or violation time in twelve hour format with either an "A" for AM or a "P" for PM should be entered. Exactly 12:00 midnight is 12:00 AM. Exactly 12:00 noon is 12:00 PM. The instrument will convert this time to military time before it is printed on the ticket.
- x. "ARREST OFF FIRST INIT"
The arresting officer's first initial should be entered.
- y. "MIDDLE INIT"
The arresting officer's middle initial should be entered.
- z. "LAST NAME"
The arresting officer's last name should be entered.
- aa. "AGENCY ORI:"
The arresting officer's agency's ORI should be entered. If an agency does not have an ORI number, SC0000000 may be entered.
- bb. "ANOTHER ARREST OFF?"
If "N" is entered, the next topic will appear. If "Y" is entered, another arresting officer may be entered.
- cc. "TEST OPERATOR FIRST INIT"
The test operator's first initial should be entered.
- dd. "MID INIT"
The test operator's middle initial should be entered.
- ee. "LAST NAME"
The test operator's last name should be entered.

- ff. "AGENCY ORI:"
The test operator's agency's ORI should be entered.
- gg. "OPERATOR CERTIFICATION #"
The operator's DataMaster certificate number should be entered.
- hh. "SIM. SOLUTION LOT #"
The simulator solution lot number should be entered.
- ii. "SIM. SOLUTION BOTTLE #"
The simulator solution bottle number should be entered.
- jj. "SOLUTION EXPIRATION:
mm/dd/yy"
The simulator solution expiration date in the month, day, and year format should be entered.
- kk. "REVIEW DATA? <Y/N>"
A "Y" will be entered. Data will be reviewed one item at a time and changes may be made during this process. After all questions are reviewed, the operational protocol ensues.

L. OPERATIONAL PROTOCOL

1. The DataMaster operational protocol consists of the following steps in this order:
 - a. PURGING
 - b. AMBIENT ZEROING
 - c. BLANK TEST
 - d. INTERNAL STANDARD
 - e. EXTERNAL STANDARD
 - f. PURGING
 - g. AMBIENT ZEROING
 - h. BLANK TEST
 - i. PLEASE BLOW
 - j. PURGING
 - k. BLANK TEST
 - l. INTERNAL STANDARD
2. These steps are defined as follows:
 - a. PURGING - Flushes sample chamber with room air.
 - b. AMBIENT ZEROING - Establishes a reference point for measurements. The test will abort if significant alcohol and/or interference is present in the room air and/or sample chamber.
 - c. BLANK TEST - A test to ensure no significant alcohol and/or interference is present in the room air and/or sample chamber. The test will abort if significant alcohol and/or interference is present.

- d. INTERNAL STANDARD - A check of optical and electronic accuracy by using a quartz plate of known infrared absorption.
- e. EXTERNAL STANDARD (0.08% SIMULATOR) - A reading of 0.076% through 0.084%, inclusive, constitutes a 0.08% alcohol concentration reading according to SLED policy and passes test. Any reading outside this range constitutes a failure and the test aborts. The external standard (simulator) test serves as a calibration check for the system and shows whether the instrument is functioning properly (along with the other checks).
- f. PLEASE BLOW - The instrument will display, "PLEASE BLOW", at the time for the subject to blow. The test operator will ensure a new mouthpiece is placed on the breath tube, unless a refusal has already occurred. The subject may use the same mouthpiece in the event the test is aborted and must be started again. The subject is given approximately two minutes to provide an acceptable breath sample.
 - i. The subject will provide a continuous breath sample, acceptable to the instrument, containing a minimum of approximately one and one half liters. "PLEASE BLOW" will display until an adequate sample is obtained or time expires.
 - ii. The instrument will indicate if the subject has significant mouth alcohol on his/her breath. Belching during the process of providing a breath sample will have no effect on the breath test reading.
 - iii. Regurgitating during the process of providing a breath sample, to an extent that would affect the test results, would cause the instrument to abort the test.
 - iv. An "INVALID SAMPLE" or "DETECTOR OVERFLOW" reading is not a completed test. Additionally, an "INVALID SAMPLE" or "DETECTOR OVERFLOW" reading, by itself, is not a refusal situation. If an "INVALID SAMPLE" (prints "INVALID") or "DETECTOR OVERFLOW" (prints "DETECTOR OVERFLOW") reading is obtained and the arresting officer still desires a breath test, the checking of the mouth, time stamp, and observation period are required to be repeated. However, the advisement process is not required to be repeated.
 - v. The instrument will indicate if significant interference is present in the subject's breath. In this case, the breath sample is not acceptable, and the instrument will display "INTERFERENCE DETECTED" (prints "INTERFERENCE").

- vi. An "INTERFERENCE DETECTED" reading is not a completed test and, by itself, is not a refusal situation. If necessary, medical attention should be given to the subject. The operator may elect to continue to administer a breath test. In this case, the advisement process, checking of the mouth and observation period are not required to be repeated.
- vii. If an acceptable breath sample is not provided in two minutes, the instrument will display "SUBJECT REFUSE? <Y/N>". If "Y" is entered, the instrument will print "REFUSED" by "SUBJECT SAMPLE", after the final steps of the operational protocol are completed. If "N" is entered, the test will abort and the instrument will print "INCOMPLETE" by "SUBJECT SAMPLE". An "INCOMPLETE" reading, by itself, is not a refusal situation. An "N" should only be entered if the subject failed to provide an acceptable breath sample through no fault of his/her own. In the event of an "INCOMPLETE", the breath test sequence may be repeated, except the advisement process, checking of the mouth and observation period are not required to be repeated. However, if the observation period has been invalidated, the checking of the mouth, time stamp, and another observation period are required to be repeated.

M. EVIDENCE TICKET PRINTOUT

- 1. The time stamp and instrument serial number will be printed on the evidence ticket. With the exception of accident and injury data, all other entered data will be printed on the ticket. Simulator test results will be displayed in thousandths of a percent. Blank tests and subject test results will be truncated and displayed in hundredths of a percent.
- 2. Alcohol concentration is used for reporting results of breath alcohol tests. Alcohol concentration is the number of grams of alcohol for each two hundred and ten liters of breath by weight (pursuant to Section 56-1-10, S.C. Code of Laws, 1976, as amended for breath, a bodily fluid other than blood). The forensically and medically accepted alveolar air to blood conversion factor of 2100 to 1 is used in converting breath alcohol measurements to blood alcohol measurements. This ratio means that 1 milliliter of blood contains approximately the same amount of alcohol as 2100 milliliters of alveolar air.

BY ORDER OF:


CHIEF OF SLED



SOUTH CAROLINA
LAW ENFORCEMENT DIVISION

Breath Alcohol Analysis Test Report

DM812028 TICKET: 35636E1
OBSERVATION TIME BEGINS 23:29 05/10/08

BAC DataMaster SERIAL # 881279

TICKET: 35636E1 COUNTY: 26
SUB NAME: MICHAEL/A/HILTON
MYRTLE BEACH/SC
DRIVER'S LICENSE: SC/001902749
SEX: M RACE: W DOB: 10/20/51
ARREST DATE: 05/10/08 ARREST TIME: 22:15
ARRESTING OFFICER: P//SCHMIDT
AGENCY ORI: SC0260600
TEST OPERATOR: P//SCHMIDT
AGENCY ORI: SC0260600 CERT. #: DM812028
LOT #: 07503 BOTTLE #: 0119
SOLUTION EXPIRATION DATE: 12/14/08

BREATH ANALYSIS ----- TEST DATE 05/10/08

BLANK TEST	0.00%	23:53
INTERNAL STANDARD	VERIFIED	23:53
0.00% SIMULATOR TEMP	34c	23:53
0.00% SIMULATOR	0.075%	23:54
0.00% SIMULATOR	FAILED	

VISIT WWW.SLED.SC.GOV AND CLICK ON "IMPLIED CONSENT" TO VIEW A VIDEO
RECORDING OF THIS BREATH TEST. ENTER INFORMATION FROM THE BOX BELOW:

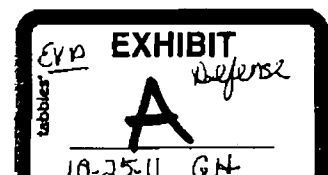
IMPORTANT NOTICE

INFORMATION FROM THIS REPORT WILL BE USED TO ACCESS THE BREATH
TEST VIDEO. ANYONE WITH THIS INFORMATION WILL HAVE ACCESS.
DO NOT FURNISH THIS REPORT AS YOU WOULD ANY IMPORTANT DOCUMENT. SLED
ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED ACCESS.

(LAB 006)

SLED Forensic Form # ICS 003, April 2004

Harpootlian 00125



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SOUTH CAROLINA
LAW ENFORCEMENT DIVISION

Breath Alcohol Analysis Test Report

BAC DataMaster SERIAL # 081279

TICKET: 35636E1 COUNTY: 26
SUB NAME: MICHAEL A HILTON
[REDACTED] MYRTLE BEACH/SC
DRIVER'S LICENSE: SC/001902749
SEX: M RACE: W DOB: 10/20/51
ARREST DATE: 05/10/08 ARREST TIME: 22:15
ARRESTING OFFICER: P//SCHMIDT
AGENCY ORI: SC0260600
TEST OPERATOR: P//SCHMIDT
AGENCY ORI: SC0260600 CERT. #: DM012028
LOT #: 07803 BOTTLE #: 0119
SOLUTION EXPIRATION DATE: 12/14/08

BREATH ANALYSIS ----- TEST DATE 05/10/08

BLANK TEST	0.00%	23:55
INTERNAL STANDARD	VERIFIED	23:56
0.08% SIMULATOR TEMP	34c	23:56
0.08% SIMULATOR	0.075%	23:56
0.08% SIMULATOR	FAILED	

VISIT WWW.SLED.SC.GOV AND CLICK ON "IMPLIED CONSENT" TO VIEW A VIDEO
RECORDING OF THIS BREATH TEST. ENTER INFORMATION FROM THE BOX BELOW:

IMPORTANT NOTICE

INFORMATION FROM THIS REPORT WILL BE USED TO ACCESS THE BREATH
TEST VIDEO. ANYONE WITH THIS INFORMATION WILL HAVE ACCESS
TO THIS REPORT AS YOU WOULD ANY IMPORTANT DOCUMENT. SLED
ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED ACCESS.

7-49 (Rev)

© 2007 Electronic Form # 105-078 April 2007

Harpootlian 00127



**SOUTH CAROLINA
LAW ENFORCEMENT DIVISION**

Breath Alcohol Analysis Test Report

BAC DataMaster SERIAL # 001279

TICKET: 35636E1 COUNTY: 26
 SUB NAME: MICHAEL A/HILTON
 [REDACTED] MYRTLE BEACH/SC
 DRIVER'S LICENSE: SC/001902749
 SEX: M RACE: W DOB: 10/20/51
 ARREST DATE: 05/10/08 ARREST TIME: 22:15
 ARRESTING OFFICER: P//SCHMIDT
 AGENCY ORI: SC0260600
 TEST OPERATOR: P//SCHMIDT
 AGENCY ORI: SC0260600 CERT. #: DM012020
 LOT #: 07003 BOTTLE #: 0119
 SOLUTION EXPIRATION DATE: 12/14/08

BREATH ANALYSIS ----- TEST DATE 05/10/08

BLANK TEST	0.00%	23:50
INTERNAL STANDARD	VERIFIED	23:50
0.08% SIMULATOR TEMP	34c	23:50
0.08% SIMULATOR	0.075%	23:59
0.08% SIMULATOR	FAILED	

VISIT WWW.SLED.SC.GOV AND CLICK ON "IMPLIED CONSENT" TO VIEW A VIDEO
 RECORDING OF THIS BREATH TEST. ENTER INFORMATION FROM THE BOX BELOW

*****IMPORTANT NOTICE*****

INFORMATION FROM THIS REPORT WILL BE USED TO ACCESS THE BREATH
 TEST VIDEO. ANYONE WITH THIS INFORMATION WILL HAVE ACCESS
 TO THIS REPORT AS YOU WOULD ANY IMPORTANT DOCUMENT. SLED
 ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED ACCESS.

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SI-RTI Forensic Form # ICS 003, April 200

Harpootlian 00126



**SOUTH CAROLINA
LAW ENFORCEMENT DIVISION**

Breath Alcohol Analysis Test Report

SAC DataMaster SERIAL # 981279

TICKET: 35636EI COUNTY: 26
 SUB NAME: MICHAEL A/HILTON
 MYRTLE BEACH/SC
 DRIVER'S LICENSE: SC/001902749
 SEX: M RACE: W DOB: 10/20/51
 ARREST DATE: 05/10/08 ARREST TIME: 22:15
 ARRESTING OFFICER: P//SCHMIDT
 AGENCY ORI: SC0260600
 TEST OPERATOR: P//SCHMIDT
 AGENCY ORI: SC0260600 CERT. #: DM012028
 LOT #: 87603 BOTTLE #: 0120
 SOLUTION EXPIRATION DATE: 12/14/08

BREATH ANALYSIS ----- TEST DATE 05/11/08

BLANK TEST	0.00%	00:30
INTERNAL STANDARD	VERIFIED	00:30
0.00% SIMULATOR TEMP	34c	00:30
0.00% SIMULATOR PASSED	0.000%	00:30
BLANK TEST	0.00%	00:31
SUBJECT SAMPLE	0.15%	00:32
BLANK TEST	0.00%	00:32
INTERNAL STANDARD	VERIFIED	00:32

TEST OPERATOR'S SIGNATURE

ARRESTING OFFICER'S SIGNATURE

SUBJECT'S SIGNATURE (RECEIVED COPY)/DATE 5-11-08

VISIT WWW.SLED.SC.GOV AND CLICK ON "IMPLIED CONSENT" TO VIEW A VIDEO
 RECORDING OF THIS BREATH TEST. ENTER INFORMATION FROM THE BOX BELOW:

SUBJECT ID: 01E369E22D
 SUBJECT PASSWORD: 2CD99

*****IMPORTANT NOTICE*****

INFORMATION FROM THIS REPORT WILL BE USED TO ACCESS THE BREATH
 TEST VIDEO. ANYONE WITH THIS INFORMATION WILL HAVE ACCESS.
 PROTECT THIS REPORT AS YOU WOULD ANY IMPORTANT DOCUMENT. SLED
 ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED ACCESS.

UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF **MB** VERSUS

FIRST NAME **Michael** MIDDLE NAME **Hilton** LAST NAME

STREET AND NO. **[REDACTED]** CITY **MB SC** STATE **SC** ZIP CODE **[REDACTED]**

LICENSED ☒ DRIVER'S LICENSE NO. **001902749** COL ☒ YES ☐ NO DRI. LIC. CLASS **7K**

VEH. LIC. NO. **RF 1950** STATE **SC** MAKE OF VEH **Ford** YEAR **2006** COMB. VEH. ☐ MOTOR ☒ IN PRER. VEH. ☐ COMB. ☐ HAZ. MT. ☐ MOPED ☐ MTRCYCL. ☐ OTHER ☐

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER **Judge** STREET AND NO. **1102 Oak St. / 1201, 3rd Ave**

DATE OF TRIAL **05/27/2008** TIME OF TRIAL **10:00 AM** CITY **MB SC** STATE **SC** ZIP CODE **29527**

VIOLATION - COURT APPEARANCE REQUIRED **YES** VIOLATION SECTION NO. **56-5-2945**

OWNER OF VEHICLE **Kelony Dui (Fatal)** DATE OF ARREST **05/10/2008**

ADDRESS OF OWNER **05/10/2008**

BAIL DEPOSITED **Jail** NAME OF ARRESTING OFFICER **Schmidt** RANK **PFC**

DESCRIPTION OF ACCUSED **W.M. 10/20/51/62/180/220/80** COUNTY **Harley** BADGE **7128** DISTRICT **4**

DATE BAIL RECD. **BY**

CASE BEFORE ☐ MAGISTRATE ☐ JURY ☐ COURT ☐ TIME OF VIOLATION **2215 AM** WEATHER **Clear**

CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER **Judge** IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

NOLLE PROSSED ☐ DISPOSITION **Guilty** FORFEITED BOND ☐ PLED: NOLLE CONTENDERE ☐

TRIAL BY: TRIAL OFFICER ☐ JURY ☐

VERDICT OF TRIAL IF ANY **Guilty**

COMMITTED TO: **Vehicle Searched** **Arrest as Result of Collision** OFFENSE CODE **99** S.A. LEVEL **35639 EI**

CERTIFIED CORRECT **DATE**

DRIVER'S RECORD COPY

Judge

33935

50,000
Surrey
1/4

UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF **MB** VERSUS

FIRST NAME **Michael** MIDDLE NAME **Hilton** LAST NAME

STREET AND NO. **[REDACTED]** CITY **MB SC** STATE **SC** ZIP CODE **[REDACTED]**

LICENSED ☒ DRIVER'S LICENSE NO. **001902749** COL ☒ YES ☐ NO DRI. LIC. CLASS **7K**

VEH. LIC. NO. **RF 1950** STATE **SC** MAKE OF VEH **Ford** YEAR **2006** COMB. VEH. ☐ MOTOR ☒ IN PRER. VEH. ☐ COMB. ☐ HAZ. MT. ☐ MOPED ☐ MTRCYCL. ☐ OTHER ☐

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER

NAME OF TRIAL OFFICER **Judge** STREET AND NO. **1102 Oak St. / 1201, 3rd Ave**

DATE OF TRIAL **05/27/2008** TIME OF TRIAL **10:00 AM** CITY **MB SC** STATE **SC** ZIP CODE **29527**

VIOLATION - COURT APPEARANCE REQUIRED **YES** VIOLATION SECTION NO. **56-5-2945**

OWNER OF VEHICLE **Kelony Dui** DATE OF ARREST **05/10/2008**

ADDRESS OF OWNER **05/10/2008**

BAIL DEPOSITED **Jail** NAME OF ARRESTING OFFICER **Schmidt** RANK **PFC**

DESCRIPTION OF ACCUSED **W.M. 10/20/51/62/180/220/80** COUNTY **Harley** BADGE **7128** DISTRICT **4**

DATE BAIL RECD. **BY**

CASE BEFORE ☐ MAGISTRATE ☐ JURY ☐ COURT ☐ TIME OF VIOLATION **2215 AM** WEATHER **Clear**

CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL OFFICER **Judge** IF DIFFERENT FROM ABOVE

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐

NOLLE PROSSED ☐ DISPOSITION **Guilty** FORFEITED BOND ☐ PLED: NOLLE CONTENDERE ☐

TRIAL BY: TRIAL OFFICER ☐ JURY ☐

VERDICT OF TRIAL IF ANY **Guilty**

COMMITTED TO: **Vehicle Searched** **Arrest as Result of Collision** OFFENSE CODE **99** S.A. LEVEL **35636 EI**

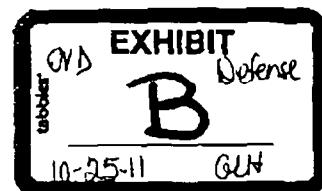
CERTIFIED CORRECT **DATE**

DRIVER'S RECORD COPY

Judge

33935

25,000
Surrey
1/4



CITY OR COUNTY OF **ME** VERSUS **Michael** FIRST NAME
Michael LAST NAME
 STREET AND NO. **1101** CITY **ME** STATE **SC** ZIP CODE **29527**
 DRIVER'S LICENSE NO. **001902779** COL. **DRIVER** DVS QAO **DRIVER** CLASS **DRIVER**
 YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER
 NAME OF TRIAL OFFICER **1101 APC 57** STREET AND NO. **1201, 38 Ave**
 DATE OF TRIAL **05/27/2005** TIME OF TRIAL **4:00** CITY **ME** STATE **SC** ZIP CODE **29527**
 VIOLATION - COURT APPEARANCE REQUIRED YES **NO** VIOLATION SECTION NO. **57-5-2020**
 OWNER OF VEHICLE **1101 APC 57** DATE OF ARREST **05/10/2005**
 ADDRESS OF OWNER **1101 APC 57** DATE OF VIOLATION **05/10/2005**
 BAIL DEPOSITED **1001** NAME OF ARRESTING OFFICER **Schmidt** RANK **PFC**
 DESCRIPTION OF ACCUSED **W/M 10/10/2010 51623 Red 25 R** COUNTY **Horry** NAME **Michael** RANK **PFC**
 DATE BAIL RECD. **05/10/2005** BY **1101 APC 57** DOCKET NO. **35637E1**
 CASE BEFORE **05/10/2005** MAGISTRATE ☐ JUDGE ☐ JURY ☐
 CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐
 NAME OF TRIAL OFFICER **1101 APC 57** IF DIFFERENT FROM ABOVE
 DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐
 MOLE PROSSED ☐ QUALITY ☐ QUANTITY ☐
 FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐
 TRIAL BY: TRIAL OFFICER ☐ JURY ☐
 VERDICT OF TRIAL IF ANY **05/10/2005** DATE OF TRIAL IF ANY **05/10/2005**
 JURY SUSPENDED **05/10/2005** AMT. SUSPENDED **05/10/2005**
 COMMITTED TO: **05/10/2005** OFFENSE CODE **05/10/2005** B.A. LEVEL **05/10/2005**
 CERTIFIED CORRECT **05/10/2005** DATE **05/10/2005**

DRIVER'S RECORD COPY

35637E1

CITY OR COUNTY OF **WHP** VERSUS **Michael** FIRST NAME
Michael LAST NAME
 STREET AND NO. **1101** CITY **ME** STATE **SC** ZIP CODE **29527**
 DRIVER'S LICENSE NO. **001902779** COL. **DRIVER** DVS QAO **DRIVER** CLASS **DRIVER**
 YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER
 NAME OF TRIAL OFFICER **1101 APC 57** STREET AND NO. **1201, 38 Ave**
 DATE OF TRIAL **05/27/2005** TIME OF TRIAL **4:00** CITY **ME** STATE **SC** ZIP CODE **29527**
 VIOLATION - COURT APPEARANCE REQUIRED YES **NO** VIOLATION SECTION NO. **57-5-2020**
 OWNER OF VEHICLE **1101 APC 57** DATE OF ARREST **05/10/2005**
 ADDRESS OF OWNER **1101 APC 57** DATE OF VIOLATION **05/10/2005**
 BAIL DEPOSITED **1001** NAME OF ARRESTING OFFICER **Schmidt** RANK **PFC**
 DESCRIPTION OF ACCUSED **W/M 10/10/2010 51623 Red 25 R** COUNTY **Horry** NAME **Michael** RANK **PFC**
 DATE BAIL RECD. **05/10/2005** BY **1101 APC 57** DOCKET NO. **35636E1**
 CASE BEFORE **05/10/2005** MAGISTRATE ☐ JUDGE ☐ JURY ☐
 CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐
 NAME OF TRIAL OFFICER **1101 APC 57** IF DIFFERENT FROM ABOVE
 DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐
 MOLE PROSSED ☐ QUALITY ☐ QUANTITY ☐
 FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐
 TRIAL BY: TRIAL OFFICER ☐ JURY ☐
 VERDICT OF TRIAL IF ANY **05/10/2005** DATE OF TRIAL IF ANY **05/10/2005**
 JURY SUSPENDED **05/10/2005** AMT. SUSPENDED **05/10/2005**
 COMMITTED TO: **05/10/2005** OFFENSE CODE **05/10/2005** B.A. LEVEL **05/10/2005**
 CERTIFIED CORRECT **05/10/2005** DATE **05/10/2005**

DRIVER'S RECORD COPY

35636E1

STATE OF SOUTH CAROLINA
 UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF **ME** VERSUS **Michael** FIRST NAME
Michael LAST NAME
 STREET AND NO. **1101** CITY **ME** STATE **SC** ZIP CODE **29527**
 DRIVER'S LICENSE NO. **001902779** COL. **DRIVER** DVS QAO **DRIVER** CLASS **DRIVER**
 YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL OFFICER
 NAME OF TRIAL OFFICER **1101 APC 57** STREET AND NO. **1201, 38 Ave**
 DATE OF TRIAL **05/27/2005** TIME OF TRIAL **4:00** CITY **ME** STATE **SC** ZIP CODE **29527**
 VIOLATION - COURT APPEARANCE REQUIRED YES **NO** VIOLATION SECTION NO. **57-5-2020**
 OWNER OF VEHICLE **1101 APC 57** DATE OF ARREST **05/10/2005**
 ADDRESS OF OWNER **1101 APC 57** DATE OF VIOLATION **05/10/2005**
 BAIL DEPOSITED **1001** NAME OF ARRESTING OFFICER **Schmidt** RANK **PFC**
 DESCRIPTION OF ACCUSED **W/M 10/10/2010 51623 Red 25 R** COUNTY **Horry** NAME **Michael** RANK **PFC**
 DATE BAIL RECD. **05/10/2005** BY **1101 APC 57** DOCKET NO. **35639E1**
 CASE BEFORE **05/10/2005** MAGISTRATE ☐ JUDGE ☐ JURY ☐
 CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐
 NAME OF TRIAL OFFICER **1101 APC 57** IF DIFFERENT FROM ABOVE
 DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐
 MOLE PROSSED ☐ QUALITY ☐ QUANTITY ☐
 FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐
 TRIAL BY: TRIAL OFFICER ☐ JURY ☐
 VERDICT OF TRIAL IF ANY **05/10/2005** DATE OF TRIAL IF ANY **05/10/2005**
 JURY SUSPENDED **05/10/2005** AMT. SUSPENDED **05/10/2005**
 COMMITTED TO: **05/10/2005** OFFENSE CODE **05/10/2005** B.A. LEVEL **05/10/2005**
 CERTIFIED CORRECT **05/10/2005** DATE **05/10/2005**

DRIVER'S RECORD COPY

35639E1

Harpootian 00055

Judge

33935

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289

0108 033435

Form FR-10 to: SC Department of Motor Vehicles Official Responsibility (803) 896-5000 PO Box 1498, Blythewood, SC 29016		South Carolina Department of Motor Vehicles (DMV) FR-10 (REV. 10/05) NOTICE OF REQUIREMENT		Submit Electronically: Agents or Company Representatives can submit insurance information at WWW.SC-ALIR.COM					
Date: 10/2/08	Time: 2:15	County: 36	1- Interstate 4- Secondary 2- US Primary 5- County 3- SC Primary	Collision Location (Rt. # / Name): 5 U.S. 17 BUS 1455	0- Main line 2- Alternate 5- Spur	Connection: 7- Business	Miles: 0	Dir.: N E S W	In / Near City or Town of:

To Vehicle Owner/Operator: Failure to return this form to the Department of Motor Vehicles within 15 days from the date of the collision could result in the suspension of your driver license and registration privileges pursuant to South Carolina Code of Laws 56-9-351 and 56-10-530.

FR10 Audit No. V-292450		Driver/Pedestrian's Full Name Michael Allen		FR10 Audit No. V-292451		Driver/Pedestrian's Full Name Gonzalez / Angelo L. Jr.	
Unit # 1	Sex M	Race W	Street	Unit # 2	Sex M	Race W	Street
Birth Date 10/21/1951	City, State, & Zip Myrtle Beach, SC			Birth Date 12/2/1963	City, State, & Zip Boardman, OH		
State SC	Driver's License # 001902749	Insurance Company: N/A		State OH	Driver's License # 121962620	Insurance Company: N/A	
Year 2006	Body JK	Vehicle Make Ford	VIN # 1F1PW11V86F367270	Year 1985	Body MC	Vehicle Make H/D	VIN # 1H1D11221704614586
State SC	Year 2008	License Plate # 1F1930	Owner's D.L. # N/A	State OH	Year 2008	License Plate # 51PDB	Owner's D.L. # 121962620
Home Telephone		Owner's Full Name VIR of Myrtle Beach INC.		Home Telephone		Owner's Full Name Gonzalez / Angelo L. Jr.	
Bus. Telephone		Street		Bus. Telephone		Street	
Contributed To Collision Yes		City, State, & Zip Myrtle Beach, SC		Contributed To Collision No		City, State, & Zip Mansfield, OH	

FR10 Audit No. V-292452		Driver/Pedestrian's Full Name		State		Year		License Plate #		Owner's D.L. #	
Unit # 1	Sex M	Race W	Street	Home Telephone		Owner's Full Name					
Birth Date	City, State, & Zip			Bus. Telephone		Street					
State	Driver's License #		Insurance Company:		Contributed To Collision Yes		City, State, & Zip				
Year	Body	Vehicle Make	VIN #	Automobile liability insurance information for Unit # 2							
All Units Insurance Information (to be completed by Investigator/Officer)				Company Name N/A				Area Code/Phone Number			
				Agency Name				Policy Number			
Automobile liability insurance information for Unit #				Company Name N/A				Area Code/Phone Number			
				Agency Name				Policy Number			

Notice of Requirement Accepted		Signature		Y N Refused to Affix Signature?	
To Be Completed Below or Entered at WWW.SC-ALIR.COM By Insurance Company Representative. This form should not be mailed to DMV if insurance information has been submitted electronically.		The information as contained herein is based solely upon my knowledge and belief as a representative of the above insurance company and no warranty of liability is implied into the above mentioned insurance as I have listed herein.		Y N Vehicle Subject to Registration in SC?	
Reference to Unit #: I here by affirm that to the best of my knowledge the vehicle described above was insured by the below stated insurance company on the date of the collision.		Insurance Company		Policy #	
Beginning Date:		Ending Date:		Policy Holder:	
Signature		Date		NAIC# (Assigned by S.C. Dept. of Ins.)	
Bus. Telephone					

Notice: If liability insurance was not in effect for your vehicle involved in the collision, The Department of Motor Vehicles could suspend your driver license and registration privileges pursuant to South Carolina Code of Laws 56-9-351 and 56-10-530.

If any of the below are applicable, disregard the above portion.		Form FR-10 Not Issued: Section 58-10-520	
☐ Check here if a Form SR-23, Fleet Policy of 25 or more vehicles is on file with the Department of Motor Vehicles covering the vehicle.	No FR-10 Issued to Operator/ Owner of Unit #:		Summons Issued to:
☐ Check here if a certificate of self-insurance has been issued by the Department of Motor Vehicles covering the vehicle and indicate the certificate number: St -	For operating or allowing the operation of an		Summons Number:
☐ Check here if liability insurance was not in effect to comply with South Carolina statutory requirements.	Signature		Signature

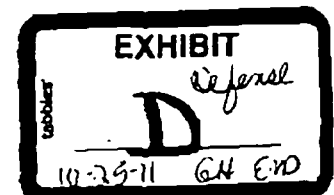
Officer's Name	Rank	Badge #	Code	Date	Rev
Harpoottian		00241	00000		
EXHIBIT					
C - EVD					
Internal Agency Code					

ORIGINAL

01-08-033935

Date		Time		County		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- Other		Collision Location (Rt. # / Name)		5- Main 6- Alternate 7- Spur		8- Connection 9- Other		Mileage: 1- Dr. 2- N 3- E 4- S 5- W		Near or Opposite Town of:																																																								
05-10-2000		2215		26						8 U.S. 17 Business								Myrtle Beach																																																								
Lane # / R		Distance		Offset		Direction		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other		Base Intersection (Rt. # / Name)		1- Main 2- Alternate 3- Spur		4- Connection 5- Other		7- Spur 8- Connection 9- Other		Latitude																																																								
2 / 5		6				W				Wildwood Dunes Tr.								33°45'54".50"																																																								
RR. Id.		From		Ramp Only		To		1- Interstate 2- US Primary 3- SC Primary 4- Secondary 5- County 6- Other		Second Intersection (Rt. # / Name)		1- Main 2- Alternate 3- Spur		4- Connection 5- Other		7- Spur 8- Connection 9- Other		Longitude																																																								
		N E		1 - Entrance		N E				Cove Dr.								78°48'21.60"																																																								
V-292450										V-292451																																																																
Hilton/ Michael/ Allen										Gonzalez/ Angelo/ L.																																																																
Unit #		Sex		Race		Birth Date		City, State, & Zip		Unit #		Sex		Race		Birth Date		City, State, & Zip																																																								
1		M		W		10-20-1951		Myrtle Beach- S.C.		2		M		W		12-12-63		Boardman- OH.																																																								
State		Driver's License #		Insurance Company		State		Driver's License #		Insurance Company		State		Driver's License #		Insurance Company		State																																																								
SC		001902749				OH		962620				OH		962620				OH																																																								
Year		Body		Vehicle Make		VIN #		Year		Body		Vehicle Make		VIN #		Year		Body																																																								
2008		TR		Ford		1FTPW14V86F867270		1998		MC		H/D		1HD1FERR17WY614586		2008		59PDB																																																								
State		Year		License Plate		Owner's Full Name		State		Year		License Plate		Owner's Full Name		State		Year																																																								
SC		2008		RF1936		N/A		OH		2008		59PDB		Gonzalez/ Angelo/ L.		OH		2008																																																								
Home Telephone		Company Full Name		Home Telephone		Company Full Name		Home Telephone		Company Full Name		Home Telephone		Company Full Name		Home Telephone		Company Full Name																																																								
		VIP of Myrtle Beach INC.																																																																								
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip																																																								
Yes		Myrtle Beach- SC		Yes		Youngstown- OH		Yes		Youngstown- OH		Yes		Youngstown- OH		Yes		Youngstown- OH																																																								
Speed		C.O.L. Reg. Year (Rt. #)		T.O.B. Reg. Year (Rt. #)		Along Info (see back) (Y/N)		Speed		C.O.L. Reg. Year (Rt. #)		T.O.B. Reg. Year (Rt. #)		Along Info (see back) (Y/N)		Speed		C.O.L. Reg. Year (Rt. #)																																																								
50		35638E		1991		35639E		50		N/A		N/A		N/A		50		N/A																																																								
Code		Towed by		Code		Towed by		Code		Towed by		Code		Towed by		Code		Towed by																																																								
50		Autobody Works		50		Autobody Works		50		Autobody Works		50		Autobody Works		50		Autobody Works																																																								
V292452																																																																										
										<table border="1"> <thead> <tr> <th>Unit 1 Dam.</th> <th>Unit 2 Dam.</th> <th>Unit 3 Dam.</th> <th>Prop. Dam. 1</th> <th>Prop. Dam. 2</th> </tr> </thead> <tbody> <tr> <td>3500</td> <td>7000</td> <td>N/A</td> <td>N/A</td> <td>N/A</td> </tr> <tr> <td colspan="5">Property Owner (Address)</td> </tr> <tr> <td colspan="5">Livingston/ Leel/ Jr</td> </tr> <tr> <td colspan="5">Property Owner (Address)</td> </tr> <tr> <td colspan="5">Rose/ Brittany</td> </tr> <tr> <td colspan="5">State</td> </tr> <tr> <td colspan="5">SC</td> </tr> <tr> <td colspan="5">Police (Describe What Happened (State to Units by Number))</td> </tr> <tr> <td colspan="5">(U) Unit #2 north on U.S. 17 Business line #2. Unit #1 south on U.S. 17 Business line #1 attempting to turn left to eastbound Wild Wood Dunes Tr.</td> </tr> <tr> <td colspan="5">Unit #1 failed to yield to Unit #2 with Unit #2 striking Unit #1 in the right rear quarter panel. The impact caused Unit #2 to spin to the ground fatally injuring the driver and seriously injuring the rear passenger. Neither person on Unit #2 were wearing helmets.</td> </tr> </tbody> </table>										Unit 1 Dam.	Unit 2 Dam.	Unit 3 Dam.	Prop. Dam. 1	Prop. Dam. 2	3500	7000	N/A	N/A	N/A	Property Owner (Address)					Livingston/ Leel/ Jr					Property Owner (Address)					Rose/ Brittany					State					SC					Police (Describe What Happened (State to Units by Number))					(U) Unit #2 north on U.S. 17 Business line #2. Unit #1 south on U.S. 17 Business line #1 attempting to turn left to eastbound Wild Wood Dunes Tr.					Unit #1 failed to yield to Unit #2 with Unit #2 striking Unit #1 in the right rear quarter panel. The impact caused Unit #2 to spin to the ground fatally injuring the driver and seriously injuring the rear passenger. Neither person on Unit #2 were wearing helmets.				
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NOTES: THE ABOVE INFORMATION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE COLLISION REPORTING OFFICER IS NOT TO BE USED FOR ANY OTHER PURPOSE.										NOTES: THE ABOVE INFORMATION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE COLLISION REPORTING OFFICER IS NOT TO BE USED FOR ANY OTHER PURPOSE.																																																																
Investigator's Name										Investigator's Name																																																																
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ORIGINAL

01-08-033935

D.P.R. USE ONLY		Page 2		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM		1 of 2 Units		Arrived - Agent Copy Notified at Original Report		Arrived									
2		2		1A-1101 (Rev. 01-2001)		2		2215		2224									
Date: 1-10-2008		Time: 2215		County: 28		Collision Location (Rt. # / Name): U.S. 17 Business		City: Myrtle Beach		State: SC									
Type of Collision: 1- Interstate 2- US Primary 3- SC Primary		Type of Collision: 4- Secondary 5- County 6- Other		Basic Intersection (Rt. # / Name): Wildwood Dunes Tr.		Type of Collision: 1- Main 2- Alternate 3- Spur		Type of Collision: 4- Connection 5- Business 6- Other		Latitude: 33° 45' 54" 50"									
From: N 1 - Entrance 2 - Exit		To: S 1 - Entrance 2 - Exit		Second Intersection (Rt. # / Name): Cove Dr.		Type of Collision: 1- Main 2- Alternate 3- Spur		Type of Collision: 4- Connection 5- Business 6- Other		Longitude: 78° 48' 21" 60"									
V-292453				Driver/Operator's Full Name				V-292454				Driver/Operator's Full Name							
Unit # 2		Sex: M		Race: W		Street/R.F.D.		Unit # 2		Sex: M		Race: W		Street/R.F.D.					
Birth Date: N/A		City, State, & Zip		State		Driver's License #		Insurance Company		Birth Date: N/A		City, State, & Zip		State					
Year: 2007		Body: 8		Vehicle Make: 8		VIN #		Year: 2007		Body: 8		Vehicle Make: 8		VIN #					
State: SC		Year: 2007		License Plate #		Owner's D.L. #		State: SC		Year: 2007		License Plate #		Owner's D.L. #					
Home Telephone: ()		Owner's Full Name		Home Telephone: ()		Owner's Full Name		Home Telephone: ()		Owner's Full Name		Home Telephone: ()		Owner's Full Name					
Bus. Telephone: ()		Street/R.F.D.		Bus. Telephone: ()		Street/R.F.D.		Bus. Telephone: ()		Street/R.F.D.		Bus. Telephone: ()		Street/R.F.D.					
Contributed To Collision: Yes		City, State, & Zip		Contributed To Collision: Yes		City, State, & Zip		Contributed To Collision: Yes		City, State, & Zip		Contributed To Collision: Yes		City, State, & Zip					
Estimated Speed: 20		Special Unit: 8		C.D.L. Req. Yes No		T.A.S. Req. Yes No		Alcohol Info (see back): Yes No		Estimated Speed: 20		Special Unit: 8		C.D.L. Req. Yes No					
Code: 8		Summons #		Code: 8		Summons #		Code: 8		Summons #		Code: 8		Summons #					
Code: 8		Towed By		Code: 8		Towed By		Code: 8		Towed By		Code: 8		Towed By					
V-292455																			
Dir. of Travel: Unit 1: N S E W Unit 2: N S E W Unit 3: N S E W																			
Unit 1 Dam. \$												Unit 2 Dam. \$		Unit 3 Dam. \$		Prop. Dam. 1 \$		Prop. Dam. 2 \$	
Property Owner: Halght/Kathleen												Property Owner: N/A		Address		Address		Address	
State: NC												City		State: NC		City		State: NC	
Phone: 716												Owner's What Happened (Refer to Units by Number)		Phone: 716		Owner's What Happened (Refer to Units by Number)		Phone: 716	
Investigating Officer's Name: Solvey-T.												Rank: P/C		Badge # 6043		Code: 280000		Unit: 3-11-08	
Investigating Officer's Name: J. ALLEN												Rank: JUV		Internal Agency Code: 01-08-033935		Date: 01-08-033935		Page 406 of 618	

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ORIGINAL

01-08-033935

O.P.R. USE ONLY		SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM		Units		Injured - Name, Date of Birth, Sex, Race, Height, Weight, Blood Type, and Address		Injured - Name, Date of Birth, Sex, Race, Height, Weight, Blood Type, and Address	
Case No.	13-10-2008	File No.	2215	County	26	Collision Location (Rt. # / Name)	U.S. 17 Business		
1- Interstate	4- Secondary	2- US Primary	5- County	3- SC Primary		0- Main	1- Correction	2- Alternate	3- Business
Base Intersection (Rt. # / Name)						Wildwood Dunes Tr.			
Second Intersection (Rt. # / Name)						Cove Dr.			
City, State, & Zip						Myrtle Beach			
Latitude						33° 45' 54" .50"			
Longitude						78° 48' 21" .60"			
Driver/Operator's Full Name					Driver/Operator's Full Name				
V-292450 Hilton/ Michael/ Allen					V-292451 Gonzalez/ Angelo/ L.				
Date of Birth					Date of Birth				
10-20-1951					12-12-63				
City, State, & Zip					City, State, & Zip				
Myrtle Beach- S.C.					Boardman- OH.				
State					State				
SC					OH				
Driver's License #					Driver's License #				
001902749					RE982620				
Year					Year				
2008					2008				
Vehicle Make					Vehicle Make				
Ford					MC H/D				
Vehicle Model					Vehicle Model				
1FTPW14V86FB67270					1H01ERR17WY614586				
State					State				
SC					OH				
Year					Year				
2008					2008				
License Plate #					License Plate #				
RF-1950					59PDB				
Owner's Full Name					Owner's Full Name				
VIP of Myrtle Beach INC.					Gonzalez/ Angelo/ I				
Home Telephone					Home Telephone				
N/A					N/A				
Bus. Telephone					Bus. Telephone				
N/A					N/A				
Contributed To Collision					Contributed To Collision				
Yes					Yes				
Myrtle Beach- SC					Youngstown- OH				
City, State, & Zip					City, State, & Zip				
Myrtle Beach- SC					Youngstown- OH				
Estimated Speed					Estimated Speed				
50					50				
Code Towed By					Code Towed By				
99					99				
Autobody Works					Autobody Works				
V292452									
Unit 1 Dam. Unit 2 Dam. Unit 3 Dam. Prop. Dam. 1 Prop. Dam. 2 Property Owner/Witness Livingston/ Lee/ Jr Rose/ Brittany State / Zip Phone State / Zip Phone SC NC Photo: Describe what happened prior to crash by Unit 1 Y N Unit #2 north on U.S. 17 Business lane #2. Unit #1 south on U.S. 17 Business lane #1 attempting to turn left to eastbound Wild Wood Dunes Tr. Unit #1 failed to yield to Unit #2 with Unit #2 striking Unit #1 in the right rear quarter panel. The impact caused Unit #2 to spill to the ground fatally injuring the driver and seriously injuring the rear passenger. Neither person on Unit #2 were wearing helmets.									
NOTES: THE REPORTER'S STATEMENT IS FOR INFORMATION PURPOSES ONLY AND IS NOT A GUARANTEE OF THE FACTS. THE REPORTER'S KNOWLEDGE OF THE FACTS IS BASED ON THE INFORMATION PROVIDED BY THE INVOLVED PARTIES. Investigating Officer's Name Rank Badge # Code Date Reviewer's Name Rank Internal Agency Code									

[illegible]



ALAN WILSON
ATTORNEY GENERAL

October 3, 2011

Mr. Michael Hilton
404 Pine Circle
Myrtle Beach, SC 29572

RE: State v. Michael Hilton
2008-GS-26-4056, 4057, 4058

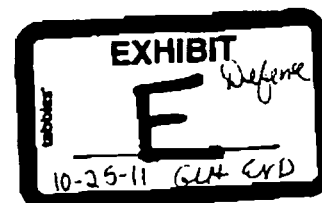
Dear Mr. Hilton:

It has come to the attention of the State in your case that the time of arrest as indicated on the Datamaster report of 22:15 reflected the time of violation or time of incident and not the actual time of arrest. This was discovered after reviewing the written and video documentation associated with your case. Pursuant to South Carolina Code Section 56-5-2950 subsection (d) you must be informed of the actual time of arrest in writing. The actual time of arrest in your case was 22:47:54 as recorded on the roadside video.

Sincerely,

Heather S. Weiss
Assistant Deputy Attorney General

cc: Richard Harpootlian, Esquire

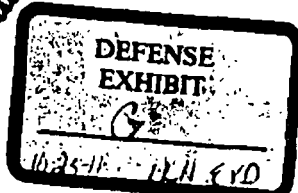


South Carolina Law Enforcement Division - Status Records

296



Date Range From 05/10/2007 To 05/10/2008
DataMaster (BAC/DMT) Serial Number - 881279
Report Date - 10/2/2011

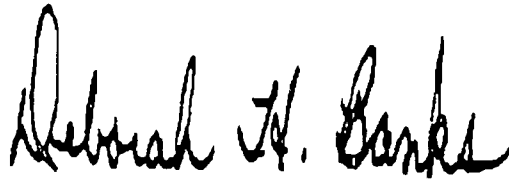


Legend I - Incomplete
R - Refusal
V - Invalid Sample
X - Interference Detected

Serial Number	Loc Number	Date/Time	Status Record	Status Info
881279	0260600	6/12/2007 3:32:50 AM	26 0.08% Simulator Failed	.075
881279	0260600	6/12/2007 3:41:45 AM	26 0.08% Simulator Failed	.075
881279	0260600	7/5/2007 3:44:31 AM	11 Ambient Failure	
881279	0260600	7/15/2007 4:18:19 AM	26 0.08% Simulator Failed	.075
881279	0260600	7/15/2007 4:24:36 AM	26 0.08% Simulator Failed	.072
881279	0260600	7/15/2007 4:28:01 AM	27 0.08 Simulator Temp Failed	23.8
881279	0260600	8/4/2007 4:41:27 AM	26 0.08% Simulator Failed	.075
881279	0260600	8/4/2007 9:31:50 AM	26 0.08% Simulator Failed	.075
881279	0260600	8/14/2007 12:34:11 AM	26 0.08% Simulator Failed	.075
881279	0260600	8/23/2007 1:00:17 AM	26 0.08% Simulator Failed	.075
881279	0260600	8/23/2007 1:02:43 AM	26 0.08% Simulator Failed	.075
881279	0260600	9/18/2007 11:13:40 PM	26 0.08% Simulator Failed	.075
881279	0260600	10/5/2007 8:51:07 PM	11 Ambient Failure	
881279	0260600	10/17/2007 1:58:07 AM	26 0.08% Simulator Failed	.075
881279	0260600	10/19/2007 12:29:52 AM	26 0.08% Simulator Failed	.075
881279	0260600	10/19/2007 12:38:07 AM	26 0.08% Simulator Failed	.075
881279	0260600	11/4/2007 1:57:19 AM	11 Ambient Failure	
881279	0260600	11/12/2007 6:22:26 PM	26 0.08% Simulator Failed	.074
881279	0260600	11/12/2007 6:25:49 PM	26 0.08% Simulator Failed	.073
881279	0260600	11/13/2007 7:52:03 AM	26 0.08% Simulator Failed	.075
881279	0260600	11/25/2007 7:37:17 AM	26 0.08% Simulator Failed	.075
881279	0260600	12/8/2007 10:59:10 PM	11 Ambient Failure	
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881279	0260600	1/18/2008 12:01:39 AM	11 Ambient Failure	
881279	0260600	2/8/2008 1:22:21 AM	26 0.08% Simulator Failed	.074
881279	0260600	2/17/2008 4:07:57 AM	26 0.08% Simulator Failed	.075
881279	0260600	3/9/2008 4:09:56 AM	19 Blank Error	
881279	0260600	3/13/2008 10:36:23 PM	26 0.08% Simulator Failed	.075
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881279	0260600	3/16/2008 12:19:40 AM	11 Ambient Failure	
881279	0260600	3/24/2008 10:52:15 PM	26 0.08% Simulator Failed	.075
881279	0260600	4/27/2008 4:06:45 AM	26 0.08% Simulator Failed	.075
881279	0260600	5/9/2008 2:31:46 AM	26 0.08% Simulator Failed	.074

881279	0260600	5/10/2008 11:54:38 PM	26 0.08% Simulator Failed	297
881279	0260600	5/10/2008 11:56:53 PM	26 0.08% Simulator Failed	.075
881279	0260600	5/10/2008 11:59:37 PM	26 0.08% Simulator Failed	.075

THIS REPORT REPRESENTS TRUE AND CORRECT COPIES OF THE ORIGINAL DOCUMENTS MAINTAINED BY SLED IN THE NORMAL COURSE OF BUSINESS.



**DEBORAH H. BANKS, LIEUTENANT
SUPERVISORY SPECIAL AGENT
IMPLIED CONSENT DEPARTMENT**

WITNESSES

Docket Number 2008-GS-26-*04256*

298

The State of South Carolina
County of Horry

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment
or to _____

ARREST WARRANT NUMBER

COURT OF GENERAL SESSIONS

September 2008 Term

Ticket No. 35639 EI

Defendant

ACTION OF GRAND JURY

THE STATE

vs.

MICHAEL HILTON

DEFENDANT

Witness:

C.C.C. Pls. And G.S.

TRUE BILL

Foreperson of Grand Jury

Date: *SEP 25 2008*

VERDICT OCT 3 0 2008

Indictment for

Felony Driving Under the Influence
Resulting in Death
S.C. Code: § 56-5-2945
CDR Code: 2975

After being fully advised as to my legal
rights, I hereby waive presentment to
the Grand Jury.

Defendant

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on Sept. 25, 2008, the Grand Jurors of Horry County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE RESULTING IN DEATH

That Michael Hilton did, in Horry County on or about May 10, 2008, commit the crime of Felony Driving Under the Influence Resulting in Death, in that the Defendant, Michael Hilton, did drive a vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, and when driving did an act forbidden by law or neglected a duty imposed by law in the driving of the vehicle, which act or neglect proximately caused the death of Angelo L. Gonzalez, in violation of § 56-5-2945, 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.



HENRY MCMASTER (JKC)
SOUTH CAROLINA ATTORNEY GENERAL

WITNESSES

ARREST WARRANT NUMBER

Ticket No. 35636 EI

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: SEP 25 2008

VERDICT OCT 30 2008

Foreperson of Petit Jury

Date:

Docket Number 2008-GS-26-04057

The State of South Carolina
County of Horry

COURT OF GENERAL SESSIONS

September 2008 Term

THE STATE

vs.

MICHAEL HILTON

DEFENDANT

Indictment for

Felony Driving Under the Influence,
Great Bodily Injury Results
S.C. Code: § 56-5-2945(A)(1)
CDR Code: 2974
Class D Felony

After being fully advised as to my legal
rights, I hereby waive presentment to
the Grand Jury.

ORIGINAL

Defendant

300

I, _____
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. Pls. And G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

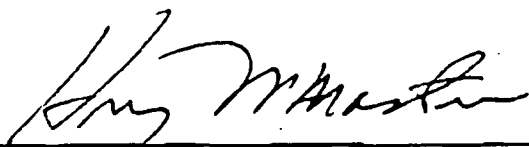
INDICTMENT

At a Court of General Sessions, convened on September 25th, 2008, the Grand Jurors of Horry County present upon their oath:

FELONY DRIVING UNDER THE INFLUENCE,
GREAT BODILY INJURY RESULTS

That Michael Hilton did, in Horry County on or about May 10, 2008, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drive a vehicle and when driving did an act forbidden by law or did neglect a duty imposed by law in the driving of said vehicle, which act or neglect proximately caused great bodily injury to a person other than himself, to wit: the defendant struck Susan Reader with his vehicle while driving intoxicated. All in violation of S.C. Code Ann. § 56-5-2945(A)(1).

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



HENRY MCMASTER (JKC)
SOUTH CAROLINA ATTORNEY GENERAL

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeals complies to the best of my ability with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY: 
Mark R. Farthing

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

March 26, 2013

RECEIVED
MAR 26 2013

SC Court of Appeals