

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Lee S. Alford, Circuit Court Judge

RECEIVED
MAR 28 2013
SOUTH CAROLINA COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TIMOTHY WAYNE ALFORD,

APPELLANT

Appellate Case No. 2012-211997

RECORD ON APPEAL

DAYNE C. PHILLIPS
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

Salley W. Elliott, Esquire
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

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STATE OF SOUTH CAROLINA)	
COUNTY OF YORK)	IN THE COURT OF GENERAL SESSIONS
THE STATE)	
-vs-)	TRANSCRIPT OF RECORD
TIMOTHY WAYNE ALFORD,)	2012-GS-46-00298
DEFENDANT.)	MAY 7, 2012
)	YORK, SOUTH CAROLINA

(VOLUME I)

B E F O R E :

THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

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

JOHN SHIFLET, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

AMY SIKORA, ASSISTANT PUBLIC DEFENDER
MARK MCKINNON, ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, MAY 7, 2012)

2 THE COURT: All right, solicitor.

3 MR. SHIFLET: May it please the court, Your Honor,
4 at this time the State calls the case of Timothy Wayne
5 Alford for driving under the influence, second offense, B.A.
6 level less than .10, True Billed indictment
7 2112-GS-46-00298.

8 Your Honor, it's my understanding at this time
9 that the defense counsel and I have agreed that at this
10 point we will simply pick a jury in this case and not enter
11 into the pretrial phase at this point. I think we might
12 take care of a few housekeeping matters, if the court is in
13 agreement with that.

14 THE COURT: Is there any pretrial matters we need
15 to take up that would be pertinent to the drawing of a jury,
16 counsel?

17 MS. SIKORA: Nothing from the defense, Your Honor,
18 other than the fact that at 2:30 I did bring up a suit for
19 my client and asked him if he would wear it for the trial
20 and he told me that he was not interested in wearing it
21 and --

22 THE COURT: Let me explain that to him. Let me go
23 over that with him. I understood that he didn't want to
24 dress in civil attire but wanted to stay in a jumpsuit.

25 Let me explain to you, Mr. Alford, you have a

1 right -- our interests, the court's interests, is to seeing
2 to it that you get a fair trial, fair to you and fair to the
3 State as well, but a fair trial, and it has been required by
4 the court when a person is going to trial, that they have a
5 right to dress out in civilian attire to avoid any prejudice
6 to the defendant which might occur as a result of a jury
7 seeing that person in an orange jumpsuit knowing they are in
8 jail. So that's the purpose of it is to allow you to dress
9 out. Obviously you don't have to dress out. You can be in
10 an orange jumpsuit, but that could result in some prejudice
11 to you with members of the jury. I don't know whether it
12 would or wouldn't, but the courts have ruled -- our courts
13 have ruled that a person is entitled to be dressed in
14 civilian attire for the trial to avoid any possible
15 prejudice that might result to them as a result of the jury
16 seeing them in an orange jumpsuit and knowing that they are
17 in jail at the present time. Do you understand the purpose
18 of the ruling why you would be allowed to dress out?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Sir, you have to speak so the court
21 reporter has to hear you.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Whatever we say has to be on the
24 record, since we are getting started with your case.

25 Would you like to change your mind and go get

1 dressed?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Why don't we do this. We
4 really won't be able to get started -- well, we are not
5 doing any pretrial. Let's let him get dressed before we
6 bring any jurors up here so he won't be prejudiced by that.
7 We can't do anything without his presence, so we will just
8 take five.

9 I would say strikes are five and five. We can do
10 that and we will go ahead and draw an alternate while we got
11 a chance. It would be two and one.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: Is there anything else we need to do
15 before we bring the jury up?

16 MR. SHIFLET: Just briefly, Your Honor.

17 The State's understanding with regard to
18 jurisdiction in this case is that the defense does intend to
19 stipulate to the jurisdiction.

20 THE COURT: Is that correct, counsel?

21 MS. SIKORA: May it please the court, yes, Your
22 Honor.

23 THE COURT: All right. For the benefit of the
24 defendant, in case he doesn't really understand that is if
25 you -- in order to try the defendant for a second offense

1 DUI, they have to prove first offense DUI. And if you
2 stipulate that this would be a second offense, then the
3 State cannot bring before the jury that you have been
4 convicted of another DUI. So all they would know is that
5 this is a DUI, like a first.

6 If you didn't stipulate to the jurisdiction, they
7 would be entitled to bring out that you had a prior DUI.
8 Now they would not, based on the stipulation. Do you
9 understand, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. All right. I think we are
12 ready then to bring the jury up. All we are going to get
13 done today I think is draw the jury, and I will give them
14 some instructions and then we will save the other. We will
15 see if we have any time to do any pretrial this afternoon.
16 If not, we will do it in the morning, but we will see.

17 All right, is everybody ready then? We are ready.

18 MS. SIKORA: Yes, Your Honor.

19 MR. SHIFLET: Yes, Your Honor.

20 THE COURT: Strikes, as I told you before, would
21 be five for defense and five for the State. We will draw
22 one alternate juror. Defense would get two strikes. The
23 State would get one strike. That's as to the alternate.

24 Let's bring the jury up, please, ma'am.

25 THE CLERK: They are on their way.

1 (Whereupon, the jury venire panel entered the
2 courtroom)

3 THE COURT: Good afternoon, ladies and gentlemen
4 of the jury panel.

5 We are about to go into a trial in the matter of
6 the State of South Carolina versus Timothy Wayne Alford,
7 spelled A-L-F-O-R-D.

8 The State charges Mr. Alford with the offense of
9 driving under the influence. To that charge the defendant
10 has pled not guilty, and we are about to go into a trial on
11 that charge.

12 The State is represented in this case by assistant
13 solicitor John Mark Shiflet.

14 Solicitor, please stand and let the jury see who
15 you are.

16 Thank you. You may be seated.

17 Is anyone on the jury panel related by blood or
18 marriage, friends with, or have any other type social,
19 business, or professional relationship with John Mark
20 Shiflet? If so, please stand.

21 (No response)

22 THE COURT: Is anyone on the jury panel related by
23 blood or marriage, friends with, or have any other type
24 social, business, or professional relationship with anyone
25 who works in the Sixteenth Circuit solicitor's office? If

1 so, please stand.

2 (No response)

3 THE COURT: The defendant, Timothy Wayne Alford,
4 is represented in this case by attorneys Amy Sikora and Mark
5 McKinnon.

6 Counsel, please stand, and ask Mr. Alford if he
7 will stand, just so the jury can see who he is in person.

8 Thank you. You may be seated.

9 Is anyone on the jury panel related by blood or
10 marriage, friends with, or have any other type social,
11 business, or professional relationship with Timothy Wayne
12 Alford? If so, please stand.

13 (No response)

14 THE COURT: Is anyone on the jury panel related by
15 blood or marriage, friends with, or have any other type
16 social, business, or professional relationship with either
17 Amy Sikora or Mark McKinnon? If so, please stand.

18 (No response)

19 THE COURT: Is anyone on the jury panel related by
20 blood or marriage, friends with, or have any other type
21 social, business, or professional relationship with anyone
22 who works in the York County Public Defender's office? If
23 so, please stand.

24 (No response)

25 THE COURT: Has any member of the jury panel

1 either -- well, let me back up one and ask you with regard
2 to possible witnesses in this case.

3 Is anyone on the jury panel related by blood or
4 marriage, friends with, or have any other type social,
5 business or professional relationship with Deputy Matthew
6 Palmer, who is employed with the York County Sheriff's
7 Department? If so, please stand.

8 Is anyone on the jury panel related by blood or
9 marriage, friends with, or have any other type social,
10 business, or professional relationship with William Russell
11 Adkins, spelled A-D-K-I-N-S? If so, please stand.

12 (No response)

13 THE COURT: Has any member of the jury panel,
14 either presently or in the past, ever been employed by or
15 volunteered with any city, county, state or federal law
16 enforcement agency or law enforcement's victim witness
17 assistance program? If so, please stand.

18 (No response)

19 THE COURT: Is any member of the jury panel
20 related by blood or marriage or close personal friends with
21 any person who is now or has ever been employed by or
22 volunteered with any city, county, state, or federal law
23 enforcement agency or law enforcement's victim assistance
24 program? If so, please stand.

25 Yes, sir, please give us your name and number,

1 sir.

2 JUROR NUMBER 65: Juror 65, Jason T. Herring, and
3 my father was a police officer. He retired -- for the City
4 of Rock Hill and he retired in late seventies.

5 THE COURT: Sir, is there anything about that
6 relationship that would interfere in any way with your
7 ability to give both sides a fair and impartial trial in
8 this case?

9 JUROR NUMBER 65: No.

10 THE COURT: Please give us your number again.

11 JUROR NUMBER 65: Juror 65.

12 THE COURT: 65. Thank you, sir.

13 JUROR NUMBER 65: Thank you.

14 THE COURT: Yes, sir, please -- I'm sorry, yes,
15 sir, please give us your name and number.

16 JUROR NUMBER 83: My name is Wallace Martin. My
17 number is 82.

18 THE COURT: Yes, sir.

19 JUROR NUMBER 83: 83. 83.

20 I have got a lot of friends that are deputies, as
21 far as within the City of Charlotte. My daughter's best
22 friend and her husband, they live side by side in Rock Hill.
23 He is a member of the Rock Hill Police Department.

24 THE COURT: Sir, is there anything about those
25 relationships that would interfere in any way with your

1 ability to give both the State and the defendant Timothy
2 Wayne Alford a fair and impartial trial in this case?

3 JUROR NUMBER 83: No, sir.

4 THE COURT: Thank you, sir. You may be seated.
5 Please give us your name and number, sir.

6 JUROR NUMBER 160: My name is Otha Smith, number
7 160.

8 THE COURT: Yes, sir.

9 JUROR NUMBER 160: I was a volunteer chaplain for
10 the Chester County Sheriff's Department.

11 THE COURT: Sir, is there anything about that
12 relationship that would interfere in any way with your
13 ability to give both sides a fair and impartial trial in
14 this case?

15 JUROR NUMBER 160: No, sir.

16 THE COURT: Thank you, sir. You may be seated.
17 Yes, sir, please give us your name and number.

18 JUROR NUMBER 117: Carl Robinson, number 117. My
19 son is currently a police officer in Fort Mill.

20 THE COURT: Sir, is there anything about that
21 relationship that would interfere in any way with your
22 ability to give both sides a fair and impartial trial in
23 this case?

24 JUROR NUMBER 117: No, sir.

25 THE COURT: Thank you, sir. You may be seated.

1 Anyone else?

2 (No response)

3 THE COURT: Is any member of the jury panel,
4 either presently or in the past, ever been employed by or
5 volunteered with any city, county, state, or federal
6 prosecutor's office or prosecutor's victim witness
7 assistance program? If so, please stand.

8 (No response)

9 THE COURT: Has any member of the jury panel,
10 either presently or in the past, ever been employed by or
11 volunteered with any city, county, state, or federal public
12 defender's program? If so, please stand.

13 (No response)

14 THE COURT: Is any member of the jury panel
15 related by blood or marriage or close personal friends with
16 any person who is now or has ever been employed by or
17 volunteered with any city, county, state, or federal
18 prosecutor's office or prosecutor's victim witness
19 assistance program? If so, please stand.

20 (No response)

21 THE COURT: Has any member of the jury panel ever
22 contributed to or volunteered time with Mothers Against
23 Drunk Driving, Students Against Drunk Driving, Citizens
24 Against Violence Everywhere, or any other similar
25 organization that lobbies on behalf of victims or lobbies

1 for tougher sentences for criminal offenders? If so, please
2 stand.

3 (No response)

4 THE COURT: Has any member of the jury panel ever
5 contributed money to the Fraternal Order of Police, the
6 South Carolina Law Enforcement Officers Association, or any
7 organization that supports the police or law enforcement?
8 If so, please stand.

9 Yes, ma'am, please give us your name and number,
10 ma'am.

11 JUROR NUMBER 159: Janet Rainey, 159.

12 THE COURT: Yes, ma'am.

13 JUROR NUMBER 159: Contributions to the FOP.

14 THE COURT: Ma'am, is there anything about your
15 support of that organization that would interfere in any way
16 with your ability to give both sides a fair and impartial
17 trial in this case?

18 JUROR NUMBER 159: No, sir.

19 THE COURT: Thank you, ma'am. You may be seated.

20 Yes, ma'am.

21 JUROR NUMBER 62: Juror 62. I have contributed to
22 the FOP also.

23 THE COURT: Please give your name for the record.

24 JUROR NUMBER 62: Susan Haugh.

25 THE COURT: Ma'am, is there anything about your

1 support of that organization that would interfere in any way
2 with your ability to give both sides a fair and impartial
3 trial in this case?

4 JUROR NUMBER 62: No, sir.

5 THE COURT: Thank you, ma'am. You may be seated.

6 Yes, sir.

7 JUROR NUMBER 160: Otha Smith, number 160. I

8 contribute to the --

9 THE COURT: I'm sorry, who?

10 JUROR NUMBER 160: Contributions to the FOP.

11 THE COURT: FOP.

12 Sir, is there anything about your support of that
13 organization that would interfere in any way with your
14 ability to give both sides a fair and impartial trial in
15 this case?

16 JUROR NUMBER 160: No, sir.

17 THE COURT: Thank you.

18 Yes, ma'am, please give us your name and number,
19 ma'am.

20 JUROR NUMBER 143: Juror 143, Deanna Williams.

21 I have also contributed to the FOP.

22 THE COURT: Ma'am, is there anything about your
23 support of that organization that would interfere in any way
24 with your ability to give both sides a fair and impartial
25 trial in this case?

1 JUROR NUMBER 143: No, sir.

2 THE COURT: Thank you, ma'am.

3 Yes, sir.

4 JUROR NUMBER 119: Larry Sanderson, number 119.
5 Contributions to York County Sheriff's Department.

6 THE COURT: Sir, is there anything about your
7 support of that organization that would interfere in any way
8 with your ability to give both the State and the defendant a
9 fair and impartial trial in this case?

10 JUROR NUMBER 119: No, sir.

11 THE COURT: Thank you, sir. You may be seated.
12 Anyone else?

13 (No response)

14 THE COURT: Has any member of the jury panel --
15 and this allegedly occurred on November the 6th, 2011, in
16 York County, in case that would cause you to know if you
17 knew anything about this case.

18 Has any member of the jury panel had any prior
19 knowledge about this case from any source, including the
20 media, before coming here to court today? If so, please
21 stand.

22 (No response)

23 THE COURT: Has any member of the jury panel
24 formed or expressed an opinion as to the guilt or innocence
25 of the defendant Timothy Wayne Alford? If so, please stand.

1 (No response)

2 THE COURT: Is any member of the jury panel
3 conscious of any interest, bias, or prejudice for or against
4 the defendant Timothy Wayne Alford? If so, please stand.

5 (No response)

6 THE COURT: Can each member of the jury panel give
7 both the State and the defendant Timothy Wayne Alford a fair
8 and impartial trial in this case? If not, please stand.

9 (No response).

10 THE COURT: Does any member of the jury panel know
11 of any reason whatsoever why he or she should not serve as a
12 juror in this particular case? If so, please stand.

13 (No response)

14 Yes, ma'am, I'm going to get you -- I'm going to
15 take your response down front. Please come down front.

16 (Whereupon, the following was an on-the-record
17 bench conference)

18 THE COURT: Give us your name and number for the
19 record.

20 JUROR NUMBER 20: Doris Cain. 20.

21 THE COURT: Yes, ma'am.

22 JUROR NUMBER 20: My brother-in-law was struck and
23 killed by a drunk driver.

24 THE COURT: Okay. Let me ask you, given your
25 experience in that regard --

1 JUROR NUMBER 20: I don't think I would be fair.

2 THE COURT: You don't think that you could be fair
3 and impartial in this case?

4 JUROR NUMBER 20: No.

5 THE COURT: Well, I understand. I appreciate your
6 honesty. I'm not going to require you to sit on this
7 particular jury, so just stay with the jury panel and follow
8 instructions. We will excuse you from this case. Thank
9 you.

10 JUROR NUMBER 20: Thank you.

11 (Whereupon, the on-the-record bench conference was
12 concluded)

13 THE COURT: Any additional questions requested of
14 the jury panel from the State?

15 MR. SHIFLET: None from the State, Your Honor.

16 THE COURT: From the defense?

17 MS. SIKORA: None, Your Honor.

18 THE COURT: Madam Clerk, please give us a jury.

19 THE CLERK: When I call your name, if you would
20 come forward. There will be a bailiff standing up front.

21 Number 139, Wendy Watson.

22 What says the State?

23 MR. SHIFLET: Please present the juror.

24 THE CLERK: And the defense?

25 MS. SIKORA: Please seat this juror.

1 THE CLERK: Please have a seat in the jury box.
2 When I call your name, if you have any belongings
3 with you, if you would bring those up as well when you come
4 forward.

5 Number 32, John Cook.

6 What say you for the State?

7 MR. SHIFLET: Please present the juror.

8 THE CLERK: And the defense?

9 MS. SIKORA: Please seat this juror.

10 THE CLERK: Please have a seat in the jury box.

11 Number 61, Brian Hartzog.

12 What say you for the State?

13 MR. SHIFLET: Please present the juror.

14 THE CLERK: And the defense?

15 MS. SIKORA: Please excuse this juror.

16 THE CLERK: You are excused from this case.

17 Number 83, Wallace Martin.

18 What say you for the State?

19 MR. SHIFLET: Please present the juror.

20 THE CLERK: And the defense?

21 MS. SIKORA: Please excuse this juror.

22 THE CLERK: You are excused from this case.

23 Number 49, Linda Foster.

24 What say you for the State?

25 MR. SHIFLET: Please present the juror.

1 THE CLERK: And the defense?
2 MS. SIKORA: Please seat this juror.
3 THE CLERK: Please have a seat in the jury box.
4 Number 146, Brenda Williamson.
5 What say you for the State?
6 MR. SHIFLET: Please present the juror.
7 THE CLERK: And the defense?
8 MS. SIKORA: Please seat this juror.
9 THE CLERK: Please have a seat in the jury box.
10 Number 156, Michael G. Matus.
11 What say you for the State?
12 MR. SHIFLET: Please present the juror.
13 THE CLERK: And the defense?
14 MS. SIKORA: Please seat this juror.
15 THE CLERK: Please have a seat in the jury box.
16 Number 38, Melissa Dietrich.
17 What say you for the State?
18 MR. SHIFLET: Please present the juror.
19 THE CLERK: And the defense?
20 MS. SIKORA: Please seat this juror.
21 THE CLERK: Please have a seat in the jury box.
22 Number 1, Hannah Adams.
23 What say you for the State?
24 MR. SHIFLET: Please present the juror.
25 THE CLERK: And the defense?

1 MS. SIKORA: Please seat this juror.
2 THE CLERK: Please have a seat in the jury box.
3 Number 77, Claudie Knox-Soulette.
4 What say you for the State?
5 MR. SHIFLET: Please present the juror.
6 THE CLERK: And the defense?
7 MS. SIKORA: Please seat this juror.
8 THE CLERK: Please have a seat in the jury box.
9 Number 122, Rosemary Shropshire.
10 What say you for the State?
11 MR. SHIFLET: Please excuse this juror.
12 THE CLERK: You are excused from this case.
13 Number 48, Sandra Fordham.
14 What say you for the State?
15 MR. SHIFLET: Please present the juror.
16 THE CLERK: And the defense?
17 MS. SIKORA: Please seat this juror.
18 THE CLERK: Please have a seat in the jury box.
19 Number 153, Richard Currence.
20 What say you for the State?
21 MR. SHIFLET: Please excuse this juror.
22 THE CLERK: You are excused from this case.
23 Number 159, Jan Rainey.
24 What say you for the State?
25 MR. SHIFLET: Please present the juror.

1 THE CLERK: And the defense?

2 MS. SIKORA: Please excuse this juror.

3 THE CLERK: You are excused from this case.

4 Number 65, Jason Herring.

5 What say you for the State?

6 MR. SHIFLET: Please present the juror.

7 THE CLERK: And the defense?

8 MS. SIKORA: Please seat this juror.

9 THE CLERK: Please have a seat in the jury box.

10 Number 161, Teresa Smith.

11 What say you for the State?

12 MR. SHIFLET: Please present the juror.

13 THE CLERK: And the defense?

14 MS. SIKORA: Please seat this juror.

15 THE CLERK: Please have a seat in the jury box.

16 Number 76, Sharon Knight.

17 What say you for the State?

18 MR. SHIFLET: Please present the juror.

19 THE CLERK: And the defense?

20 MS. SIKORA: Please seat this juror.

21 THE CLERK: Please have a seat in the jury box.

22 This will be for the alternate.

23 Number 125, Brian Spittle.

24 What say you for the State?

25 MR. SHIFLET: Please present the juror.

1 THE CLERK: And the defense?

2 MS. SIKORA: Please seat this juror.

3 THE CLERK: Please have a seat in the jury box.

4 THE COURT: Any questions concerning the selection
5 process, from the State?

6 MR. SHIFLET: None from the State, Your Honor.

7 THE COURT: From the defense?

8 MS. SIKORA: No, Your Honor.

9 THE COURT: Ladies and gentlemen of the jury panel
10 who were not selected for this particular case, we are going
11 to excuse you at this time. It's a little unusual wrinkle
12 that happens sometimes. We are going to excuse you for the
13 night, and in the morning we are going to ask you to call in
14 to your juror call-in number about one o'clock tomorrow,
15 around one o'clock tomorrow, and you will get instructions
16 as to when you either need to report back or call back
17 again, as the case may be. So you are excused for the day
18 and the morning. Please call in around one o'clock to your
19 voicemail number tomorrow. Thank you for your patience,
20 ladies and gentlemen. You are free to leave.

21 (Whereupon, the jury venire panel left the
22 courtroom)

23 THE COURT: All right, counsel, I don't think we
24 will swear the jury panel this afternoon. We will wait and
25 do that in the morning. I'm going to give them -- I might

1 as well go ahead and give them a preliminary instruction. I
2 think we have enough time to do that.

3 Ladies and gentlemen of the jury panel, if you
4 would give me your attention, please. We wanted to go ahead
5 and get a jury drawn this afternoon so we can get started
6 with this case in the morning. We are not actually going to
7 have time to actually get into the case this afternoon.
8 And, of course, we have some other business to take care of
9 as well this afternoon, but I want to give you what I call a
10 preliminary charge or instruction so that you will have some
11 idea of what to expect as we go through the trial. It is
12 expected to be a very short trial. We should finish it
13 easily tomorrow, but I want to explain to you the format of
14 the trial and what to expect, so you would be a little more
15 comfortable in these unfamiliar surroundings.

16 The first thing that will happen after we get
17 started with the case in the morning is that an attorney for
18 the State, who is an assistant solicitor, will make an
19 opening statement to you. Then one of the attorneys for the
20 defendant will have the same opportunity to address you in
21 opening statement.

22 Now, these opening statements by the attorneys are
23 not evidence, but you should pay close attention because
24 they are, in essence, going to identify to you what they
25 perceive or say the issues in the case are.

1 After they have made their opening statements to
2 you, then the State will proceed by presenting the testimony
3 and evidence they want you to consider.

4 The reason the State goes first is that the State
5 has the burden of proof in this case. There is no burden of
6 proof upon the defendant to prove his innocence. The burden
7 of proof is upon the State of South Carolina to prove the
8 charge against this defendant by evidence that satisfies
9 you, the jury, beyond a reasonable doubt before you can
10 return a verdict of guilty. If the State fails to meet that
11 burden of proof, then your verdict must be not guilty.

12 After the assistant solicitor has presented to you
13 the evidence they want you to consider on behalf of the
14 State, then the same opportunity will be afforded to the
15 defense. The defendant may, but is not required to, present
16 any testimony or evidence, because the State has the burden
17 of proving the defendant guilty beyond a reasonable doubt.
18 The defendant does not have to prove he is innocent. He is
19 presumed innocent and that presumption stays with him
20 throughout the trial and may only be removed if the State
21 meets its burden of proving the guilt of the defendant
22 beyond a reasonable doubt.

23 What is evidence in the case? Evidence is the
24 sworn testimony you will hear from the witness stand to my
25 right; exhibits admitted into the record for your

1 consideration by me, the presiding judge; and any
2 stipulation of counsel.

3 Exhibits may take many forms, such as documents,
4 pictures, videotapes, maps, diagrams, and so forth.

5 Stipulations are agreements of facts by the
6 attorneys. If the attorneys enter into a stipulation of
7 fact, that will be made known to you and you can consider
8 that, along with all of the other facts and evidence and
9 give it such consideration as you deem appropriate, once you
10 begin your deliberations.

11 Counsel has entered into a stipulation in this
12 case, and that is that this case has jurisdiction -- excuse
13 me, this court has jurisdiction to try this case. They have
14 stipulated to that.

15 Now, sworn testimony, exhibits and stipulations
16 are the only evidence you may consider in your deliberations
17 of the innocence or guilt of the defendant. You may not
18 consider anything you heard from any other source about this
19 case in making your decision, because that is not evidence.

20 After you have heard all the evidence, then the
21 attorneys for the State and the defendant will once again
22 appear before you and make what we call closing arguments.
23 We call them arguments because the attorneys are allowed at
24 that time to argue their positions, will attempt to persuade
25 you as to their view or position as to the facts.

1 When you have heard final arguments from counsel,
2 I will then charge you, which simply means to instruct you
3 as to the law that applies to the issues in this case. You
4 will then retire to the jury room to deliberate and reach
5 your verdict.

6 That's how a case is tried in General Sessions
7 Court, whether it be this case or any other case. Some
8 cases take a half a day or a day. Some cases take weeks,
9 but the same format applies in every case.

10 As the trial judge I have three functions to
11 perform during the trial. I am the presiding officer, and,
12 therefore, must see that the trial is run on an orderly
13 manner. I decide based on rules of civil and criminal
14 procedure whether testimony and exhibits are admissible into
15 evidence for your consideration. And at the conclusion of
16 the trial I instruct you as to the law you must apply to the
17 facts in this case in reaching your verdict.

18 You, ladies and gentlemen, are also judges in this
19 case. You are the judges of the facts. In other words, you
20 determine the truth of the facts in this case. Under our
21 Constitution I am not permitted as the judge of the law to
22 have an opinion about the facts, so I do not get into
23 whether I believe a witness or not. That is not my
24 function. I'm not even permitted to express an opinion, if
25 I had one, as to the facts in this case, so you, the jury,

1 determine what is the truth of the facts.

2 Now, I do not permit jurors to take notes during
3 the trial because it is my experience that while writing
4 notes you may miss something very important for you to hear
5 and you may fail to observe a witness when testifying. It
6 is important that you pay careful attention to all testimony
7 and introduction of evidence, since you must judge the
8 credibility or believability of the witnesses and the
9 weight, determine the weight to give all evidence introduced
10 in this case in determining the truth of the facts.

11 During the trial the attorneys may object to the
12 admissibility of certain testimony or other evidence. I
13 will either sustain the objection, which means I agree and
14 the testimony or evidence may not be made part of the record
15 for your consideration; or, I will overrule the objection,
16 which means as the judge of the law I have determined that
17 it is admissible as part of the record for your
18 consideration. The mere fact that I have admitted it does
19 not mean that you must believe it or disbelieve it. I have
20 simply determined that it is admissible under our rules and
21 it is up to you then to believe it or disbelieve it and to
22 assign such weight to it as you determine to be appropriate.

23 At the conclusion of the trial when we send you to
24 the jury room every exhibit that is admitted into evidence
25 will be sent to the jury room for you to examine further and

1 to consider.

2 I remind you that one of the most important
3 aspects of your duty as a jury lies essentially in the oath
4 that you will take, to well and truly try this case and to
5 determine the truth of the facts in this case. That oath,
6 once again, in a very essential way will say that you are
7 the sole judges of the facts in this case.

8 Ladies and gentlemen, whatever your verdict in
9 this case, it must be your unanimous verdict. All twelve
10 jurors must agree on the verdict, which the foreperson will
11 be authorized to write for the jury.

12 Ladies and gentlemen, you are not to discuss this
13 case at any time during the trial until I tell you and that
14 will not occur until you have received all of the evidence
15 and I have instructed you upon the law. You should not
16 discuss the case among yourselves and you should not discuss
17 it with your family, friends, or anyone else you might see
18 on recess from the court. Now, you might say to the court
19 "well, what's wrong with our discussing the case as we go
20 along? If somebody finds out I'm on a jury, they want to
21 know something about the case, what's wrong with discussing
22 the case with them?" Well, I think you can tell them what
23 kind of case you are on you, but do not discuss the case
24 with them. And the problem with discussing the case among
25 yourselves or with anyone else you might see is once you

1 start discussing the case, you start forming opinions, and
2 you wouldn't be fair to both sides of this case if you
3 didn't wait until you have heard all the testimony and
4 evidence and I have instructed you upon the law that applies
5 before you start forming opinions. Until then you should
6 keep an open mind. Wait until you have all the information
7 that you need before you start forming opinions in this
8 case.

9 Now, if anyone should deliberately try to discuss
10 the case with you, you should not discuss it with them, but
11 leave and report that attempt to me through the bailiff or
12 Clerk of Court. Get the best description that you can of
13 that person. They will let me know and I will deal
14 appropriately with that person. No one should try to
15 discuss the case with you. If they do, I certainly wish to
16 be made aware of it.

17 Now, if there should be any media coverage of this
18 trial, please do not read, listen to, or watch any media
19 account of the trial until after the trial is over. I don't
20 know of any media coverage in this trial and there may very
21 well not be any media coverage of this trial, but if there
22 should be, please do not read, listen to, or watch any media
23 account until after the trial is over and the verdict is in.
24 If there should be any and someone wanted to save it for
25 you, you are welcome to read, listen to, or watch any media

1 account after the trial is over the and verdict is in.

2 I'm well aware that a lot of people get their
3 information these days from the media and from other sources
4 over electronic devices, including cell phones, computers,
5 I-Pads, whatever. Please do not use any kind of electronic
6 device to try to find out anything about this case from any
7 source, including the media. Again, this will be a short
8 trial and I'm satisfied it will be over with tomorrow. That
9 shouldn't be a hardship on anybody. Please do not, again,
10 go on any kind of electronic device or read anything about
11 this case, should there be any.

12 Now, I'm concerned about your comfort and your
13 ability to see and hear.

14 Let me say the reason for that is there no way we
15 can guarantee the accuracy of any account of this trial from
16 any other source, so you have to rely solely on the sworn
17 testimony and evidence that comes in during the course of
18 this trial and not any other source of information.

19 Now, if you cannot -- I'm concerned about your
20 comfort and your ability to see and hear the testimony and
21 evidence so you can properly do your job. I'll try to take
22 a break about every hour and a half. If you need a break
23 before the time a break is taken, just raise your right hand
24 and let me know and I'll take a break as quickly after that
25 as I can.

1 If you cannot see or hear something you need to
2 hear or see as we go through the trial, I will try to
3 anticipate that, but some of you are much further away from
4 the witness stand and where the attorneys might be standing
5 than I, so if you cannot hear or see something that you need
6 to hear or see and I don't anticipate it, do not hesitate to
7 raise your right hand and let me know and I'll make sure
8 that you are able to hear or see so you can properly do your
9 job.

10 Now, if you wish to communicate with the court,
11 other than needing a break or the inability to see or hear,
12 please write the message down on a tablet that will be
13 provided for you back in the jury room. Give that to the
14 bailiff and the bailiff will bring it to me and I will
15 correspond appropriately. That's how we should communicate,
16 you now having been selected as jurors in this case.

17 I'm going to ask you --

18 Well, let me tell you also as a housekeeping
19 matter. The Clerk of Court is in charge of the courthouse.
20 He allows the jurors to bring something to drink back in the
21 jury box, and I do as well. So if you are in the jury room
22 and you want to bring some coffee, water, Coke, whatever,
23 tea, into the jury box to sip along as we go through the
24 trial, you are welcome to do that. Counsel and myself will
25 be drinking water. If you want something to drink, you are

1 welcome to bring it back with you.

2 I'm going to ask you as your first official act
3 when you go back into the jury room just now, the bailiff
4 will take you back, I want you to go into the jury room and
5 from the first twelve jurors chosen, not the alternate, but
6 from the first twelve jurors chosen I want you to elect a
7 foreperson.

8 And I'll explain the role of the foreperson. The
9 foreperson is asked to serve as spokesperson for the jury
10 back to the court. So if there is a matter that needs to
11 come to the attention of the court from the jury, I ask that
12 the foreperson write the message down on a tablet provided
13 in the jury room, give that to the bailiff, and the bailiff
14 will bring it to me and I'll correspond appropriately.

15 We also ask that the foreperson serve as the
16 moderator, once you have reached the deliberative stage of
17 the trial, to keep some order in those deliberations, make
18 sure everyone is allowed to participate and be heard in
19 those deliberations; and then, finally, once a unanimous
20 verdict is reached by the jury, to record that verdict on a
21 verdict form which will be provided to you and explained to
22 you at the appropriate time, at the conclusion of the trial.

23 The primary role of the foreperson is the same as
24 every other juror, and that's to listen carefully to the
25 testimony and evidence so you will be in a position to

1 deliberate and help reach a verdict in this case.

2 Now, we like to keep -- let me explain the role of
3 the alternate. Mr. Spittle, the role of the alternate is
4 the same as the first twelve jurors chosen, because if for
5 any reason an emergency should develop with regard to one of
6 the first twelve jurors chosen and we had to excuse that
7 juror, you would automatically fill in for the missing
8 juror. You could not do that if you hadn't listened
9 carefully to the testimony and evidence and were in a
10 position to deliberate and help reach a verdict in this
11 case.

12 We like to have the alternate keep that same seat
13 throughout the trial. The foreperson will sit in the first
14 seat on the front row directly in front of the alternate.
15 All the other seats are interchangeable, so it really does
16 not matter where you sit, but we like to have the alternate
17 and foreperson in the same seat, and the bailiff will attend
18 to that in the morning when you come in.

19 Counsel, I want to start about 9:30?

20 MR. SHIFLET: Yes, Your Honor.

21 MS. SIKORA: That's fine.

22 THE COURT: We will start about 9:30 in the
23 morning, so I'm going to ask you to please be back in the
24 jury room ready to go at -- or do we need a little bit more
25 time than that?

1 MR. SHIFLET: May we approach, Your Honor?

2 THE COURT: Yes, sir.

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 THE COURT: All right, ladies and gentlemen of the
6 jury panel, I'm informed that we have a couple of matters
7 that we are going to have to take up in the morning before
8 we get started with this trial. That's kind of the way it
9 is, particularly when you got one judge and one court going
10 on, you just -- it's coming from everywhere. So in the
11 morning I'm going to -- I don't want you sitting in the jury
12 room while we are out here working, so I'll ask you to be
13 back in the jury room ready to go at ten o'clock in the
14 morning. At ten o'clock.

15 Please have a pleasant night and be back --

16 Now, once the foreperson is elected, if that
17 person will write their name down on a piece of paper given
18 back on the tablet provided back in the jury room and juror
19 number and give that to the bailiff before you leave. Once
20 you do that you are free to leave. Have a pleasant night
21 tonight and please be back in the jury room tomorrow at ten
22 o'clock. Thank you.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: All right. Do you want to try to get

1 a little bit done on the pretrial now? I got drug court at
2 5:30, but that will give us about twenty minutes.

3 MS. SIKORA: Yes, Your Honor.

4 MR. SHIFLET: Your Honor, first of all, the State,
5 we agreed to jurisdiction.

6 Counsel and I have agreed with regard to the
7 redactions to be made to the videos pertaining to a prior
8 offense. We have agreed on what those are and I have
9 performed those redactions.

10 THE COURT: Have y'all had a chance to look at
11 them?

12 MS. SIKORA: Yes, Your Honor. Mr. Shiflet and I
13 have talked about the mentions of the prior DUI and he tells
14 me that he has agreed to redact all the requested things we
15 had asked to have removed from the video and it's already
16 been done, Your Honor.

17 THE COURT: All right. Well -- okay. Make sure
18 that y'all are in agreement with that. We can't publish the
19 defendant -- any mention of a prior can't come in on this
20 video if there an objection to it. Of course, once you have
21 stipulated jurisdiction they are not allowed to go that in
22 that and that would be taken out.

23 All right, anything else?

24 MR. SHIFLET: Nothing from the State, Your Honor.

25 MS. SIKORA: May it please the court, Your Honor,

1 with respect to the defense motions, the defense is making a
2 motion to determine whether or not the State has complied
3 with Rule Five and Brady in this case.

4 MR. SHIFLET: The State has so complied.

5 MS. SIKORA: With respect to the second defense
6 motion, Your Honor, we are asking for a motion to determine
7 the prior record of the defendant the State intends to
8 introduce, should he testify in this trial, Your Honor.

9 MR. SHIFLET: The State sees no prior offense that
10 we would be able to use for that purpose.

11 THE COURT: All right.

12 MS. SIKORA: The State has complied, Your Honor,
13 with defense motion number three for a list of all
14 witnesses, as well as the criminal history.

15 With respect to defense motion number four, Your
16 Honor, the defense would ask that all witnesses for the
17 State and the defense be sequestered, other than the case
18 agent.

19 THE COURT: Magnanimously, since you only have one
20 witness who is allowed to be near here, but that's fine.

21 You have two witnesses, right?

22 MR. SHIFLET: That's correct.

23 THE COURT: So -- of course, the case agent is
24 allowed to stay in here, so I guess the other witness would
25 stay out until that witness testifies.

1 MR. SHIFLET: That's correct.

2 THE COURT: So we will grant that motion.

3 MS. SIKORA: Thank you, Your Honor.

4 The fifth defense motion would be to determine the
5 existence and admissibility of any prior bad act testimony
6 the State intends to introduce under Rule 404 or Lyle.

7 MR. SHIFLET: The State has no intention to
8 introduce any of that evidence.

9 MS. SIKORA: And, finally, Your Honor, the defense
10 makes a motion to determine the existence and admissibility
11 of any statements which the defendant is alleged to have
12 made at the time of the incident which the State intends to
13 introduce against him at the time of the trial.

14 MR. SHIFLET: Your Honor, this is the motion that
15 we will probably have to take up tomorrow. We were under
16 the impression we would wait for pretrial for tomorrow and I
17 don't have the officer here at this point.

18 THE COURT: We will have a Jackson v. Denno
19 hearing to determine the voluntariness of the statement when
20 he comes in. We will have to do that through the officer,
21 so we will do that the first thing before we get started.

22 MS. SIKORA: Thank you, Your Honor.

23 Nothing further from the defense.

24 THE COURT: Anything else that we can do this
25 afternoon?

1 MR. SHIFLET: I don't believe so, Your Honor.

2 MS. SIKORA: Nothing from the defense, Your Honor.

3 THE COURT: Everybody have a pleasant night and we
4 will try to start about ten o'clock.

5 Oh, let me ask you, was there a datamaster reading
6 in this case, a datamaster?

7 MR. SHIFLET: Refusal, Your Honor.

8 MS. SIKORA: Refusal.

9 THE COURT: He refused the test. Okay. That's
10 what I need to know to charge, to get the charge together.
11 Okay.

12 All right. For your information, the jury has
13 selected Sandra Fordham, juror number 48, as the foreperson.

14 MS. SIKORA: Did Your Honor want the attorneys in
15 here early to start the Jackson v. Denno hearing?

16 THE COURT: Yeah, we do. We do need to do that.
17 Let's shoot for let's say about 9:30 --

18 MR. SHIFLET: Okay.

19 THE COURT: -- if you will be ready and we -- it
20 may be a few minutes after that, but around 9:30. And as
21 soon as we get through whatever pleas we got, we will get
22 started.

23 MS. SIKORA: Yes, Your Honor. Thank you.

24 (Whereupon, proceedings were recessed until May 8,
25 2012)

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
 4 THE STATE)
 5 -vs-) TRANSCRIPT OF RECORD
 6 TIMOTHY WAYNE ALFORD,) 2012-GS-46-00298
 7 DEFENDANT.) MAY 8, 2012
 YORK, SOUTH CAROLINA

(VOLUME II)

B E F O R E :

THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

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

JOHN SHIFLET, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

AMY SIKORA, ASSISTANT PUBLIC DEFENDER
MARK MCKINNON, ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, MAY 8, 2012)

2 (Videotape marked as State's Exhibit No. 1 for
3 identification)

4 (Certificate marked as State's Exhibit No. 2 for
5 identification)

6 (Implied Consent Rights marked as State's Exhibit
7 No. 3 for identification)

8 (Breath Alcohol Analysis marked as State's Exhibit
9 No. 4 for identification)

10 (Notice of Suspension marked as State's Exhibit
11 No. 5 for identification)

12 (Videotape marked as State's Exhibit No. 6 for
13 identification)

14 THE COURT: All right, counsel, you ready to
15 proceed?

16 MR. SHIFLET: The State is ready to proceed, Your
17 Honor.

18 MS. SIKORA: The defense is ready.

19 THE COURT: Anything we need to take up before I
20 bring the jury in?

21 MR. SHIFLET: Not from the State, Your Honor.

22 THE COURT: All right.

23 MR. SHIFLET: Your Honor?

24 THE COURT: I beg your pardon.

25 MS. SIKORA: May it please the court, Your Honor.

1 THE COURT: Oh, we did have a Jackson v. Denno.
2 Do you want to do that first?

3 MR. SHIFLET: Yes, Your Honor.

4 THE COURT: Let's do that.

5 MR. SHIFLET: Your Honor, the State would call
6 Officer Deputy Palmer.

7 DEPUTY MATTHEW PALMER, having been first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. SHIFLET:

10 Q. Good morning, Deputy Palmer.

11 A. Good morning.

12 Q. Could you please state your full name for the record?

13 A. Matthew Briggs Palmer.

14 Q. Deputy, were you on patrol on the early morning of
15 November the 6th, 2011?

16 A. I was.

17 Q. How did you first come into contact with the defendant
18 Mr. Alford?

19 A. I received a dispatch call about an intoxicated driver.
20 At that point I learned his location, turned around,
21 initiated -- with another Tega Cay officer initiated a
22 traffic stop, and that's how I made contact with Mr. Alford.

23 Q. So did you have an opportunity to speak to him and
24 confront him as a result of the traffic stop?

25 A. Yes, sir.

1 Q. At that point was he under arrest?

2 A. No, sir.

3 Q. Did you Mirandize him at that point?

4 A. Not at that point.

5 Q. Why not?

6 A. He was not under arrest. And as far as the DUI law
7 states, I don't have to Mirandize until I place him in
8 custody.

9 Q. How would you describe the condition of the defendant
10 at that time?

11 A. He was grossly intoxicated. He had an odor associated
12 with alcoholic beverages emanating from his person, red
13 bloodshot eyes and slowed slurred speech.

14 Q. Could you describe for the court the environment or
15 surroundings where this traffic stop took place?

16 A. The traffic stop ended at Highway 160 and Gold Hill
17 Road, the intersection. The stop ended in the Gate station,
18 which is a gas station.

19 Q. How many officers were there on the scene?

20 A. I believe four total.

21 Q. As a result of the traffic stop did you engage in some
22 conversation with the defendant, asked him some questions?

23 A. I did.

24 Q. Did you ask the defendant a series of questions whether
25 he had had anything to drink?

1 A. Yes, I did.

2 Q. Did he state that he had had two beers?

3 A. Yes, he did.

4 Q. Did you ask him where he was headed?

5 A. Yes, I did.

6 Q. Did he state that he didn't know?

7 A. Correct.

8 Q. Did you ask the defendant if he was coming from the KOA
9 campground?

10 A. I did.

11 Q. Did he first say no?

12 A. He did.

13 Q. Did you then follow up and ask him if he was coming
14 from John's Place?

15 A. Correct.

16 Q. Where is John's Place?

17 A. KOA campground.

18 Q. Did he then say yes?

19 A. Correct.

20 Q. Did someone -- did you ask the defendant where he was
21 planning to sleep?

22 A. Yes.

23 Q. Did he say right there?

24 A. I can't remember.

25 Q. You don't recall.

1 At some point prior to conducting the field sobriety
2 did the defendant state -- make the statement "you got me"?

3 A. Yes, he did.

4 Q. And as part of the HGN test, do you inquire of the
5 defendant if they have any eye problems?

6 A. Yes.

7 Q. Did you ask this defendant if he had any eye problems?

8 A. I did.

9 Q. What was his response?

10 A. He says "I have horrible eye problems," or "several eye
11 problems," something of that nature.

12 Q. Was it "serious eye problems"?

13 A. "Serious eye problems."

14 Q. Did you ask him to go into detail about what those
15 problems were?

16 A. Yes, I did.

17 Q. Did he then say "I don't know"?

18 A. Correct.

19 Q. As part of the one leg stand phase of the field
20 sobriety, did the defendant state several times that "I'm
21 sorry"?

22 A. I believe so, yes, sir.

23 Q. Deputy Palmer, did you force the defendant to make any
24 of those statements in any way?

25 A. No, sir.

1 Q. Did he make them voluntarily?

2 A. Yes, sir.

3 Q. Where was your gun at the time that you made those
4 statements?

5 A. In my holster.

6 Q. How about your taser?

7 A. In the holster.

8 Q. At that point was he cuffs for any of those statements?

9 A. No.

10 Q. Did you threaten the defendant in any way to get those
11 statements or make him any promises so that he would make
12 those statements?

13 A. I did not.

14 Q. Deputy Palmer, at some point did you place the
15 defendant under arrest?

16 A. I did.

17 Q. Was he advised of his Miranda Warnings?

18 A. He was.

19 Q. Did he ever indicate to you in any way that he didn't
20 wish to speak to you or that he wanted a lawyer?

21 A. In the -- I think after several moments he did, yes,
22 sir.

23 Q. Do you recall what he said?

24 A. I believe it was in the BA room. He said he going to
25 get the best damn Mississippi lawyer there was.

1 Q. Okay. Did he ever indicate that he didn't wish to
2 speak to you?

3 A. Not initially, but in the BA room he did.

4 Q. What did he say specifically?

5 A. I can't remember, sir.

6 Q. Where was the defendant taken after he was arrested?

7 A. He went to the Fort Mill Police Department where he was
8 offered a breath test.

9 Q. And where did that test place in the police department?

10 A. It's the datamaster room.

11 Q. Who was present for that test?

12 A. Just me and Mr. Alford.

13 Q. Did you provide the defendant at that time any
14 additional advisements?

15 A. The -- I wrote -- the advisement that you are supposed
16 to read regarding the SLED policy.

17 Q. Did you observe the defendant for the required 20
18 minutes?

19 A. I did.

20 Q. During that period did you and the defendant engage in
21 additional conversation?

22 A. Yes, sir.

23 Q. Did he make any more statements during the BA phase of
24 the test?

25 A. Yes, he made several.

1 Q. As to those statements, taking them in chronological
2 order on the video, did he state that -- at some point did
3 he say that he wasn't driving?

4 A. Correct.

5 Q. Did he at some point state that he wanted to smoke a
6 cigarette?

7 A. Correct.

8 Q. At some point did he say "I'm going to sit in this jail
9 all day long and y'all have to put up with me"?

10 A. Correct.

11 Q. At some point did you ask the defendant if he was born
12 in Mississippi?

13 A. I did.

14 Q. Do you recall what he said?

15 A. He says "I don't know."

16 Q. Was it possible that he said "I was born from my
17 momma"?

18 A. I could have been, yes, sir.

19 Q. Did he keep referring to his involvement in the
20 military and his being in Iraq?

21 A. Yes, sir, he advised he was in special operations.

22 Q. At some point did the defendant engage in a threatening
23 tone of voice with you?

24 A. I believe so.

25 Q. Do you recall him saying "I want to fuckin' strangle

1 your ass?"

2 A. Yes, sir.

3 Q. I believe you referred to a statement about regarding
4 getting the best lawyer in Mississippi?

5 A. Yes.

6 Q. Him making that statement?

7 A. Yes.

8 Q. Later on in the video did the defendant make the
9 statement that he was drunk on two occasions?

10 A. Yes, while he was sitting in the corner, yes, sir.

11 Q. Did he also say "someone told y'all something. That's
12 what's happened. The only way that you caught me, the only
13 way?"

14 A. Yes, he did say that.

15 Q. Did he follow up by saying "I'm going to find out who
16 that SOB is and I'm going to kill him?"

17 A. Uh-huh, yes, sir.

18 Q. Deputy Palmer, did you force the defendant to make any
19 of those statements?

20 A. I did not.

21 Q. Were they voluntarily made?

22 A. Yes, sir.

23 Q. Again, where was your gun and your taser in that
24 situation?

25 A. In my holsters.

1 Q. Did you make him any promises?

2 A. I did not.

3 MR. SHIFLET: No further questions, Your Honor.

4 MS. SIKORA: May it please the court, Your Honor?

5 THE COURT: Counsel.

6 CROSS EXAMINATION BY MS. SIKORA:

7 Q. Deputy Palmer, you testified that at the roadside there
8 was approximately -- was it four other officers in addition
9 to yourself that were present?

10 A. I believe so.

11 Q. And whenever you were having a conversation with Mr.
12 Alford that night, were the other officers in range that
13 they could hear that conversation that you were having?

14 A. They were I would say two to three car lengths back, so
15 I don't think that they could hear everything that I was
16 saying to Mr. Alford, no.

17 Q. Did you observe any of the other officers on the scene
18 question or have a conversation with Mr. Alford that night?

19 A. After the arrest I can't recall. I know I had one or
20 two officers do a search of the -- or inventory his tractor
21 and that's the only time that I believe that they came in
22 contact with my case. And also whenever I was reading him
23 Miranda, because he was kind of getting a little disgruntled
24 and disorderly, so I had to hold him down in my car, but I
25 can't -- I can't remember if they got involved in my case or

1 not.

2 Q. And you testified that you didn't draw your weapon,
3 correct?

4 A. No.

5 Q. You never pointed it at Mr. Alford?

6 A. No, ma'am.

7 Q. You didn't threaten him?

8 A. No, ma'am.

9 Q. Physically put your hands on him, other than when you
10 had to cuff him for the arrest, correct?

11 A. Yeah, I put my hands on him whenever I had to search
12 him.

13 Q. And when you had to search him.

14 Did you ever see any of the other officers that were
15 present with you out on the side of the road either threaten
16 Mr. Alford?

17 A. No.

18 Q. Make any promises to him in exchange for his statement?

19 A. No.

20 Q. Draw their weapon?

21 A. No, ma'am.

22 Q. Point their weapon at Mr. Alford?

23 A. No, ma'am.

24 Q. Get physical with Mr. Alford?

25 A. No, ma'am.

1 Q. And you testified that when you initially pulled him
2 over and began your conversation or interaction with him
3 that night, that you did not read Miranda to him at that
4 point in time, correct?

5 A. Correct.

6 Q. But you did read it whenever he was actually placed
7 under arrest?

8 A. Correct.

9 Q. But is it fair to say that when you initially pulled
10 over Mr. Alford he was not, in fact, free to leave, correct?

11 A. Correct.

12 Q. So he would have been in custody at that time?

13 A. Not in custody. Just further investigation.

14 Q. Detained for purposes of investigation?

15 A. Yes, ma'am.

16 Q. And you testified this happened in the parking lot of a
17 gas station up in Fort Mill?

18 A. Uh-huh.

19 Q. Was the public that could have been on the roadway,
20 would they have been able to view your interactions with Mr.
21 Alford if they passed by?

22 A. They could have, yes, ma'am.

23 Q. People walking in and out of the gas station would have
24 been in a position to view your exchanges with Mr. Alford?

25 A. Yes, ma'am.

1 Q. And you mentioned that once you got back into the
2 datamaster room, that at some point Mr. Alford indicated
3 that he didn't want to talk any more and said something
4 about getting an attorney, correct?

5 A. That was towards the end of the datamaster.

6 Q. And after he invoked that right to an attorney, did you
7 question him any further after that point?

8 A. I did not.

9 Q. Thank you.

10 MS. SIKORA: No further questions.

11 MR. SHIFLET: Just real brief, Your Honor.

12 REDIRECT EXAMINATION BY MR. SHIFLET:

13 Q. With regard to his statement in the BA room about his
14 wishing to speak to you, would it refresh your memory to
15 possibly see the portion of the BA video in that regard?

16 A. Yes, sir.

17 MR. SHIFLET: Your Honor, may we approach?

18 THE COURT: Please.

19 (Whereupon, the lawyers approached the bench for
20 an off-the-record discussion)

21 MR. SHIFLET: No further questions.

22 THE COURT: All right. You may step down, sir.

23 Thank you.

24 All right, any motions that you wish to make at
25 this time?

1 MS. SIKORA: May it please the court, Your Honor,
2 the only motion that the defense would raise at this point
3 is the statement that Deputy Palmer testified to about my
4 client during the course of the BA video making a threat to
5 kill the person that turned him in or reported his alleged
6 bad driving or the fact that he was intoxicated to the
7 police, Your Honor. While the defense understands that that
8 statement may be relevant in this case, our concern is that
9 may be more prejudicial than probative and we would ask that
10 that portion of the video not be played and there be no
11 testimony about that.

12 MR. SHIFLET: By way of agreement, Your Honor, the
13 State has no problem with simply cutting out the volume for
14 that particular portion of the tape.

15 THE COURT: Why don't we do that. I think it
16 is -- certainly it's relevant. The question is whether it's
17 more prejudicial than probative, and I have to make that
18 analysis as well, in addition to relevancy.

19 403, Rule 403, the evidentiary rule, would require
20 some analysis, even the relevant evidence or testimony, and
21 so some determination as to whether it's more prejudicial
22 than probative. So that will work with the court if you
23 agree we will just -- that would be very prejudicial I
24 think -- more prejudicial I believe than probative, so we
25 would just mute that part of it when we come to it, if you

1 would, solicitor.

2 All right. Anything else we need to raise at this
3 time?

4 MS. SIKORA: Nothing further, Your Honor.

5 MR. SHIFLET: Nothing from the State.

6 THE COURT: All right. We will bring the jury in.
7 The clerk will have to swear the jury panel, then we will go
8 right in and do opening statements.

9 We'll take a quick five minute.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: Please bring the jury in.

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

15 THE COURT: Good morning, ladies and gentlemen of
16 the jury panel. I hope you had a pleasant night last night.
17 We are ready now to begin the trial in this case.

18 I had your note yesterday afternoon that you have
19 elected juror number 48, Sandra Fordham, as your foreperson.

20 Ma'am, that's you in the front seat, right?

21 JUROR NUMBER 48: Yes.

22 THE COURT: Thank you.

23 We are ready to proceed.

24 I would ask the clerk, please, to swear the jury
25 panel.

1 THE CLERK: Madam Forelady, ladies and gentlemen
2 of the jury panel, please stand and raise your right hand.

3 You shall well and truly try and in true
4 deliverance make between the State of South Carolina and the
5 defendant at the bar whom you shall have in charge and a
6 true verdict give according to the evidence and the law, so
7 help you God? Please acknowledge by saying I will.

8 JURY PANEL: (Collective said I will)

9 THE CLERK: Let the record show all affirmed.

10 THE COURT: Thank you. Please be seated.

11 Madam Forelady, members of the jury panel, we are
12 to that part of the trial where counsel will make their
13 opening statements to you. I ask that you listen
14 attentively now as counsel address you in opening statement.

15 Solicitor.

16 MR. SHIFLET: May it please the court.

17 THE COURT: Yes, sir.

18 MR. SHIFLET: Thank you, Your Honor.

19 "You got me. You got me." Ladies and gentlemen,
20 those are the words of the defendant, Timothy Wayne Alford,
21 on the night that he was arrested for driving under the
22 influence.

23 This case is about public safety and operating not
24 just a typical motor vehicle, but a cab of a tractor
25 trailer, a 18-wheeler without the trailer on it, while under

1 the influence and jeopardizing the safety of anybody else
2 out on the roadway.

3 Ladies and gentlemen, my name is John Shiflet and
4 I represent the State of South Carolina in this case. As
5 I'm sure you have figured out, we are here today because the
6 defendant is charged with driving under the influence. It's
7 a drunk driving case.

8 The facts and evidence will reveal that in the
9 early morning of November 6th, 2011, law enforcement
10 received a call from a gentleman who you will have an
11 opportunity to hear from during the course of this trial, a
12 Mr. Adkins, who was at the KOA campground in Fort Mill,
13 South Carolina, and he observed the defendant there at the
14 campground and then later operating his truck and operating
15 it in an unsafe and dangerous manner. As a result, Mr.
16 Adkins called 911. He proceeded to follow the truck so he
17 could assist law enforcement in locating his whereabouts.

18 Now, law enforcement responded to the call.
19 Deputy Palmer with the York County Sheriff's Department will
20 also testify for you here today. Deputy Palmer was on
21 patrol and received a call and he went to that location.
22 Along with other law enforcement, they initiated a traffic
23 stop on the defendant's truck based on the information from
24 Mr. Adkins, as well as they observed the defendant's failure
25 or fail to use a proper turning signal.

1 Now, as a result of the traffic stop Deputy Palmer
2 had an opportunity to observe the defendant up close.
3 Deputy Palmer is trained in detecting impaired drivers. As
4 a result of his observations of the defendant up close, as
5 well as the driving beforehand, he was concerned that the
6 defendant was under the influence. As a result he offered
7 him a chance to perform some field sobriety tasks. The
8 defendant did perform those tests but didn't do so
9 adequately. So based on his performance, as well as
10 everything else I have mentioned, he was arrested for
11 driving under the influence.

12 He was transported to the Fort Mill Police
13 Department where he was offered a breath test, a blood
14 alcohol concentration test. I'm sure you are all familiar
15 with what that is. Ultimately he refused to provide a
16 sample. Those are the facts. It's a simple case.

17 Now, it's my job to seek justice in this case;
18 that is, to prove the defendant's guilt beyond a reasonable
19 doubt.

20 The law in South Carolina is clear that it is
21 unlawful to operate a motor vehicle in South Carolina while
22 under the influence of alcohol or drugs, or a combination of
23 those, to the extent that person's faculties to drive are
24 materially and appreciably impaired.

25 Now, that's really three things that we have to

1 prove. First, jurisdictionally that it took place in the
2 State of South Carolina and in York County; that the
3 defendant was, in fact, driving; and that he was impaired to
4 the extent contemplated by the law.

5 Now, what does beyond a reasonable doubt mean? I
6 mentioned that's the burden we have in this case, and I'm
7 sure you are all familiar with that term. You heard it
8 before. The judge will instruct you at the conclusion of
9 this trial that a few things in life are certain. It's not
10 beyond all doubt. It's beyond a reasonable doubt. It's
11 been described as the kind of doubt that would cause a
12 reasonable person to hesitate to act.

13 Don't be confused by the term hesitation. At the
14 end of the trial you are going to go in the jury room. You
15 are going to sit down and you are going to deliberate about
16 this case. That's, in fact, exactly why you are here, to
17 give this case careful consideration, but that deliberation
18 is not hesitation, ladies and gentlemen. You need only be
19 left firmly convinced of the defendant's guilt.

20 Each of us in the courtroom has a role. I have
21 told you what mine is. The judge will instruct you on the
22 law. He will make rulings and interpretations based on the
23 law as it applies to the facts of this case, but it's your
24 role, you, the jury, to receive all the facts and evidence
25 and piece it together into a picture in your own minds as to

1 what actually took place in the early morning of November
2 6th, 2011. This is an extremely important role and it's one
3 that belongs only to you.

4 After you have heard all the facts and the judge
5 has provided you the law, I ask that you return -- you will
6 return to the jury room and render a decision that speaks
7 the truth. Hold the defendant accountable for his actions
8 and his decisions. Thank you for your time.

9 THE COURT: Counsel.

10 MS. SIKORA: May it please the court, Your Honor?

11 THE COURT: Yes.

12 MS. SIKORA: How many times have you gotten up in
13 the morning, gotten you a cup of coffee and are watching the
14 morning news as you are getting ready to start your day?
15 And often when you are watching the news they will have a
16 story about the police arresting someone that they believe
17 has committed a crime. If you are like most people on the
18 face of the earth, your natural and human reaction may be to
19 think to yourself "thank goodness they caught him." You may
20 feel a sense of relief that the police made an arrest in
21 that case. But the very interesting thing about that
22 feeling is that what you did in that moment is assumed that
23 the person that the police arrested for that particular
24 crime was, in fact, guilty of that offense. And that is a
25 very natural and human thing to do, but your role in this

1 world changed dramatically when you got seated as jurors in
2 this case, because as the judge instructed you at the
3 beginning -- or at the end of the day, rather, yesterday,
4 Mr. Alford, my client, is presumed innocent throughout this
5 trial. So your role as jurors in deciding the facts and
6 what actually happened that night back on November 6th of
7 2011 is to put aside any natural inclination you may have to
8 believe that Mr. Alford is guilty, simply because he has
9 requested a trial and is sitting in that chair today.

10 I expect the State is going to show you several
11 videos in this case about what happened that night and
12 that's a great benefit that you have, because you are not
13 just going to be hearing from people on the stand giving
14 their testimony about what they remember or saw that night.
15 You are actually going to get to see for yourself much of
16 what happened on the videos. And after you watch those
17 videos in this case, you may not like Mr. Alford very much.
18 You may not approve of the way he behaved that night or the
19 way he treated Deputy Palmer. You may not want to have him
20 over for dinner, but that's not the issue before you today.
21 The issue in this case is not whether or not you like Mr.
22 Alford as a person, whether or not you would choose him to
23 be one of your friends. The issue in this case is whether
24 or not the State has met their burden and is able to prove
25 beyond a reasonable doubt that Mr. Alford's ability to drive

1 his vehicle that night safely was impaired by the use of
2 alcohol.

3 The evidence will show in the videos again taken
4 from Deputy Palmer's in-car camera mounted on his dashboard,
5 you are going to get to see Mr. Alford's driving that night
6 for yourself at the beginning of the video, and you are
7 going to see his tractor-trailer in his appropriate lane of
8 travel. The video is going to show him stopping at a red
9 light and then making a right-hand turn. And Mr. Shiflet
10 was right, he doesn't use his turn signal when he makes that
11 right-hand turn, but the video does not show Mr. Alford
12 barreling down the highway. And after that right-hand turn
13 is made the officers turn on their blue lights and initiate
14 a traffic stop of Mr. Alford's vehicle. And you will see
15 him pull over into a gas station parking lot in Fort Mill.
16 And I would ask you when you watch that portion of the video
17 to pay attention to how he parks his vehicle that night.
18 Pay attention to whether or not it's lined up with the other
19 cars that are parked in that gas station parking lot or
20 whether it's parked all out of sorts.

21 You will see Mr. Alford then get down out of his
22 truck that night to speak with the officer. And then when
23 he gets down out of his truck he stumbles a little, and
24 Deputy Palmer says to Mr. Alford "I think you have had a
25 little bit too much to drink tonight." Mr. Alford says

1 immediately in response to that "I'm really tired. I'm
2 sleepy."

3 The officer asked Mr. Alford to perform some field
4 sobriety tests that evening. And he does ask Mr. Alford,
5 the first test that you are going to see another video is
6 what we refer to as the HGN test, but basically what that
7 means is the officer uses his finger or a pen and will take
8 it and ask Mr. Alford to follow the pen or his finger with
9 his eyes. And Deputy Palmer is very good, as you will see
10 on the video, about asking Mr. Alford whether or not he has
11 any medical issues or problems with his eyes that may affect
12 his performance on the field sobriety tests, but there are
13 two field sobriety tests after that initial pen test that I
14 just spoke about, tests that involve walking and turning and
15 holding one leg up for a certain period of time to see if
16 Mr. Alford is able to balance his leg. And before Deputy
17 Palmer asks Mr. Alford to perform those two series of field
18 sobriety tests, you will not hear on the video him asking
19 Mr. Alford if he has any issues with his back, or his leg,
20 or any other medical condition that may affect his ability
21 to perform those field sobriety tests.

22 You will see when you watch the video that it's
23 late. It's about 1:45 in the morning when Mr. Alford is
24 pulled over that day. And he is a tractor-trailer driver,
25 but when you see on the video, what you are only going to

1 see is the actual tractor portion of the vehicle, because he
2 has already dropped his load or the trailer for that day.

3 You are going to hear him say repeatedly to the
4 officer throughout the course of his interactions with
5 Deputy Palmer how tired he is, "let's go. I just want to go
6 to sleep."

7 You will also see on the video Mr. Alford tell the
8 officer that he did have two beers that night, but you will
9 not see on the video Deputy Palmer asking him when he had
10 those beers, how close in time he had those beers. No
11 questioning on the video about whether he had two in the
12 last 15 minutes, or two over the course of the period of
13 several hours.

14 Like Mr. Shiflet mentioned, and as the judge will
15 instruct you at the end of the case, it is the burden of the
16 State to prove this case beyond a reasonable doubt. And
17 practically -- we have all heard that term on TV, but now
18 that you are sitting here in these chairs having to make a
19 decision serving as jurors in this case, what does that
20 realistically mean? I think a good example to illustrate
21 what that burden means is pole vaulting. You know on TV
22 they get give the person a real long skinny stick and they
23 go running with the stick, plump that stick in the ground
24 and then have to jump over a bar, throw their body up over
25 the bar. And in criminal cases that bar is set very high.

1 So what the State has to do is clear that bar with the
2 evidence they have presented against you. Not knock the bar
3 down as they are trying to reach that point, not hit the bar
4 with any point of their body. It is a high burden. And at
5 the end of this case after you have seen all the evidence
6 before you, I ask that you make a decision, not based on
7 emotions or your feelings about Mr. Alford, but the facts or
8 evidence before you. And the State, ladies and gentlemen,
9 the evidence they will present does not meet that burden,
10 and for that reason we will ask you to find Mr. Alford not
11 guilty. Thank you.

12 THE COURT: The State may call its first witness.

13 MR. SHIFLET: Mr. Bailiff, could you get Russell
14 Adkins out in the hallway, please?

15 Step up here and she will swear you in.

16 WILLIAM RUSSELL ADKINS, JR., having been first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. SHIFLET:

19 Q. Good morning, Mr. Adkins. How are you doing?

20 A. Good. How are you?

21 Q. Do you mind stating your full name for the record,
22 please?

23 A. William Russell Adkins, Jr..

24 Q. Are you doing all right this morning? Would you like
25 some water or --

1 A. I'm fine. Thank you.

2 Q. Mr. Adkins, would you please tell the jury where you
3 were on the evening of November the 5th, 2011, into the
4 morning of November the 6th, 2011?

5 A. 940 Gold Hill Road, which is the Charlotte, Fort Mill
6 KOA and John's Place Bar.

7 Q. And where is that located?

8 A. Fort Mill, South Carolina, on Gold Hill Road.

9 Q. Why were you at that location?

10 A. I'm an employee of the establishment and the owner was
11 out of town and I was just stopping in to make sure
12 everything was going well with the employees and then I was
13 heading home.

14 Q. Mr. Adkins, first of all, do you personally know the
15 defendant Mr. Alford?

16 A. I do not.

17 Q. So you have no other knowledge of him before November
18 the 6th, 2011?

19 A. No, sir.

20 Q. Mr. Adkins, when did you first observe or encounter the
21 defendant?

22 A. At the jukebox inside John's Place Bar.

23 Q. What is John's Place?

24 A. It's a bar. It's a local bar.

25 Q. And is that located on the campground?

1 A. It's located on the campground.

2 Q. Do you know about what time that was when you first
3 observed him?

4 A. Midnight, somewhere in that area, where time wasn't
5 really -- I wasn't keeping track of time at that point.

6 Q. You said he was at the jukebox. Do you recall what he
7 was doing?

8 A. I would assume he was playing songs on the jukebox. I
9 mean, that's where he was standing. He had one hand on the
10 jukebox and that is when I was walking in the door, and
11 after that I paid him no attention.

12 Q. Did you happen to notice if he was drinking?

13 A. I did not see a beverage in his hand at that point.

14 Q. What happened next, Mr. Adkins?

15 A. I saw a couple of my friends, walked outside to the
16 outside patio for 20 to 40 minutes and then that's when I
17 saw him bring his truck -- well, I saw an altercation
18 between the bouncer and him, because he had brought the
19 truck down into the parking lot.

20 Q. At the John's Place?

21 A. At the John's Place. It's actually -- it's a side area
22 that we use for playing corn hole tournaments. It's really
23 not meant for parking, but sometimes people do park there.

24 Q. Do you know if he was staying there at the campground?

25 A. He was not a registered guest of the campground.

1 Q. Was his truck there at the campground somewhere else
2 before he came to John's Place?

3 A. His truck was on a camping site at the campground, yes,
4 sir.

5 Q. So he arrived there at John's Place, and then what
6 happened?

7 A. Are you speaking of when he came -- when I encountered
8 him the second time?

9 Q. When he was driving the truck.

10 A. He brought his truck down from the campsite that he had
11 it parked on and -- at a high rate of speed. I would
12 probably say 10 miles an hour, which is way too fast for
13 this little area; brought his truck and stopped. I mean, he
14 didn't hit anything. And that's when the bouncer informed
15 him that he needed to get back to his campsite and go to
16 sleep or get out of his truck. And at that point he shut
17 his door and locked it so the bouncer could not intervene
18 with him and made a three-point turn in an area the size --
19 less the size of this courtroom and proceeded back into the
20 back of the campground.

21 Q. Now, did you, yourself, see the defendant driving the
22 truck?

23 A. I did.

24 Q. And did the individual that you stated was driving the
25 truck, is he in the courtroom today?

1 A. Yes, sir.

2 MR. SHIFLET: Let the record reflect that --

3 BY MR. SHIFLET:

4 Q. This gentleman in the sport coat to the far right side
5 of the defense counsel?

6 A. Yes.

7 Q. So he locks his door and proceeds to drive somewhere
8 else. Where does he go at that point?

9 A. At that point he heads down from what we call the front
10 of the property where ere the store is back into the long
11 term section of the campground into the owner's personal
12 section of the property where we have our maintenance shop.

13 Q. Is he allowed to be in that area?

14 A. Not in the maintenance area, no. It is posted no
15 trespassing.

16 Q. So what did you do at that point?

17 A. At that point I called 911 and asked them to send
18 somebody else out to help me get this gentleman off the
19 property. At this point I really didn't -- I wasn't worried
20 what he was doing. I just wanted the sheriffs out there in
21 case there was an altercation.

22 Q. After he was in this restricted area, I guess you could
23 call it, what did he do next?

24 A. He found himself in another tight spot and had to make
25 another turnaround, which he managed to pull off without

1 incident to any of our property, and proceeded back out of
2 the campground.

3 Q. So he left the campground?

4 A. He at this point -- well, as I'm speaking he is in the
5 process of leaving. He drives through the campground and
6 makes a right onto Gold Hill Road.

7 Q. Did you -- how did know this? Where were you?

8 A. I was behind him. I was -- when he was in the
9 maintenance area I was sitting in my car with my lights off
10 at the top of the property. Basically I can look down into
11 that area and see what people are doing. And as soon as he
12 left that area, I got behind him in my vehicle and followed
13 him.

14 Q. When he pulled onto Gold Hill, how would you describe
15 his driving?

16 A. Terrible.

17 Q. What -- could you be more specific?

18 A. As he made a right-hand turn, he went into the center
19 lane and proceeded all the way into the far left lane of
20 what would be the slow lane of oncoming traffic.

21 Q. I apologize, how many lanes is that?

22 A. Four lanes with a center turn lane.

23 Q. And he went into the far lane?

24 A. He turned right, went to center and then proceeded all
25 the way far left.

1 Q. Then what?

2 A. At that point I was still on the phone with the
3 dispatch and just informing them of his every move until we
4 got to the intersection of Gold Hill and 160, when they
5 initiated a traffic stop.

6 Q. What did you do next?

7 A. Pulled over in the gas station in case they needed
8 anything from me and then I went back to the property just
9 to make sure no damage was caused.

10 Q. Was there any damage?

11 A. There was no damage that I could find.

12 Q. Mr. Adkins, did you cooperate with law enforcement as
13 best you could?

14 A. Absolutely.

15 Q. Have you testified truthfully here today?

16 A. I have.

17 MR. SHIFLET: No further questions.

18 Please answer any questions that defense counsel
19 may have.

20 MS. SIKORA: Nothing from the defense, Your Honor.

21 THE COURT: Thank you, sir. You may stand down.

22 MR. SHIFLET: Your Honor, the State would ask Mr.
23 Adkins be excused.

24 THE COURT: No objection?

25 MS. SIKORA: No objection.

1 THE COURT: Thank you for coming, sir. You may be
2 excused at this time.

3 Please call your next witness.

4 MR. SHIFLET: Your Honor, the State would call
5 Deputy Palmer of the York County sheriff's department.

6 DEPUTY MATTHEW PALMER, having been first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. SHIFLET:

9 Q. Good morning, Deputy Palmer.

10 A. Good morning.

11 Q. Please state your full name for the record.

12 A. Matthew Briggs Palmer.

13 Q. How about you? Do you need some water or are you okay?

14 A. I'm good right now.

15 Q. Deputy Palmer, where are you employed?

16 A. The York County sheriff's office.

17 Q. What's your rank in that agency?

18 A. Deputy II.

19 Q. How long have you been with the sheriff's department?

20 A. Starting my fourth year.

21 Q. What was your rank at the time of -- on November 6th,
22 2011?

23 A. I believe Deputy I.

24 Q. Deputy Palmer, what sort of training do you have as a
25 result of your employment as a law enforcement officer?

1 A. Nine weeks at the academy was my initial training.
2 Throughout the sheriff's office we have monthly training
3 every month, and we also can sign up for advanced training.
4 I have taken advanced DUI courses, datamaster course,
5 interdiction courses, and further certifications for radar,
6 taser, things of that nature.

7 Q. Deputy Palmer, did you arrest the defendant Timothy
8 Alford on November 6th, 2011?

9 A. I did.

10 Q. Is the person that you arrested in the courtroom today?

11 A. Yes, he is.

12 Q. Is this the gentleman at the defense counsel table on
13 the far right?

14 A. Yes, it is.

15 Q. Deputy Palmer, were you on patrol on the night of
16 November 6th, 2011?

17 A. I was.

18 Q. Did you receive a call regarding a possible impaired
19 driver?

20 A. I did.

21 Q. What kind of information did you receive?

22 A. Dispatch advised us that there was a tractor-trailer
23 driving through the KOA campground and they advised the
24 caller was still behind it.

25 Then the dispatch advised us that the tractor-trailer

1 turned right onto Gold Hill Road from KOA campground driving
2 in the wrong lane of travel.

3 And then at that time I actually probably passed him
4 somewhere down the road and I did a U-turn and I was able to
5 catch up with the tractor-trailer truck and a Tega Cay
6 police officer at the intersection of Gold Hill and Highway
7 160. At that point you could see Mr. Alford not use his
8 turn signal in making a right turn onto 160 and that's when
9 we initiated a traffic stop.

10 Q. And where exactly did the traffic stop take place?

11 A. Highway 160 and Gold Hill Road in Fort Mill, South
12 Carolina.

13 Q. Is there a gas station there?

14 A. He yielded in the Gate gas station.

15 Q. Do you know about what time the traffic stop took
16 place?

17 A. I believe about 1:45 in the morning.

18 Q. Deputy Palmer, who was driving the truck?

19 A. Mr. Alford.

20 Q. Was anybody else in the truck with the defendant?

21 A. No, sir.

22 Q. You pulled him over. I guess you approached the truck
23 at some point?

24 A. Yes, sir.

25 Q. What were your initial observations when you

1 encountered Mr. Alford?

2 A. When I encountered Mr. Alford, I asked him to step out
3 of the vehicle, because it was high up. And as he stepped
4 down he kind of stumbled out of his car, and at that time,
5 you know, made casual conversation about where he was going,
6 where he was coming from. At that time I noticed an odor
7 associated with alcoholic beverages emanating from his
8 person. He had red bloodshot eyes and slow and slurred
9 speech.

10 Q. Did you ask the defendant if he had been drinking?

11 A. I did.

12 Q. What did he say?

13 A. He said "I had two beers."

14 Q. Did you ask the defendant where he was coming from?

15 A. I did.

16 Q. Did you ask if he was coming from the KOA campground?

17 A. I did.

18 Q. What did he say?

19 A. He said "I'm not coming from the KOA campground."

20 Q. Did you ask him if he was coming from John's Place?

21 A. I did.

22 Q. What did he say?

23 A. He said "yes, I'm coming from John's Place."

24 Q. What is John's Place?

25 A. John's Place is a bar that's attached to the KOA

1 campground.

2 Q. Did you ask the defendant where he was headed?

3 A. I did.

4 Q. What did he say?

5 A. "I don't know."

6 Q. At some point before field sobriety did the defendant
7 make any other statements?

8 A. He did.

9 Q. What was that?

10 A. He said "you got me."

11 Q. Based on your observations, were you concerned the
12 defendant might be under the influence?

13 A. I was, yes, sir.

14 Q. Did you offer him the opportunity to perform the
15 standard field sobriety tests?

16 A. I did.

17 Q. Deputy Palmer, how many times would you say that you
18 have administered field sobriety tests?

19 A. Anywhere from 30 to 40 times.

20 Q. So do you administer those tests on every person that
21 you stop?

22 A. No, sir.

23 Q. Well, then why did you choose to administer on the
24 defendant in this case as opposed to other people?

25 A. Mr. Alford was intoxicated. You could smell the odor

1 of alcoholic beverages coming from his person. And, you
2 know, I observed his red bloodshot eyes and slow and slurred
3 speech. And based off the testimony from the witness that
4 he was driving in the wrong lane, it was good indicators
5 that he was under the influence of alcohol.

6 Q. What field sobriety tests did you offer?

7 A. I offered him the Horizontal Gaze Nystagmus Test, the
8 Walk and Turn Test, and the One Leg Stand Test.

9 Q. Are you trained and certified to administer these
10 tests?

11 A. I am.

12 Q. What sort of training does that include?

13 A. That is two or three day class. It teaches you how to
14 administer those tests. If you want me to go into detail, I
15 can.

16 Q. Did the defendant agree to perform these tests?

17 A. He did.

18 Q. What is the first test that you gave him?

19 A. The horizontal Gaze Nystagmus Test.

20 Q. What's exactly is that test?

21 A. Nystagmus is the involuntary jerking of your eyes that
22 you cannot control whenever you have alcohol and certain
23 types of drugs in your system. And basically what happens
24 is I move my pen back and forth, you know, certain ways and
25 it gives me indicators about alcohol and/or drugs being in

1 the system.

2 Q. What sort of clues are you looking for as part of the
3 test?

4 A. Lack of smooth -- first you check for a medical reason
5 to make sure he doesn't have any medical conditions, make
6 sure his pupils are the correct size.

7 Q. Did you ask the defendant if he had any?

8 A. I did, and he said he had -- he had some type of
9 serious problems with his eyes, but he couldn't tell me what
10 it was.

11 Q. Okay.

12 A. So at that time I checked for equal pupil size and
13 equal tracking and he had -- both of those were fine, so he
14 didn't have any medical problems.

15 The next thing I checked for was lack of smooth
16 pursuit, which is when the eyes -- if you are sober, your
17 eyes are supposed to move smooth. Like windshield wipers on
18 a car when it's wet, they are smooth. But when there is
19 alcohol in your system or a certain type of drug, the lack
20 of smooth pursuit looks like windshield wipers on a dry
21 windshield. It kind of staggers.

22 I also look for distinct and sustained nystagmua at
23 maximum deviation, which is when your eyes taken all the way
24 to the side, both left and right sides, and also nystagmus
25 prior to 45 degrees.

1 Q. Now, does this test, you know, conclusively prove
2 impairment?

3 A. Not conclusively, no, sir.

4 Q. Officer, did you administer this test as you were
5 trained to do?

6 A. I did.

7 Q. What did you observe as part of this test on Mr.
8 Alford?

9 A. He had indicators in both eyes for all three of those
10 tests.

11 Q. What was the next test that you offered?

12 A. The Walk and Turn Test.

13 Q. What kind of test is that? What's it indicate?

14 A. It's a divided attention test.

15 Q. What does that mean?

16 A. He has to listen to my instructions and maintain what I
17 tell them to do while I'm giving him instructions.

18 Q. How is this test administered?

19 A. He has to stand in a starting position with his right
20 foot in front of his left foot, and he has to stand in that
21 position with his hand down by his side. He has to pay
22 attention to me while I give him instructions on how to do
23 the test. It's nine heel to toe steps in a straight line,
24 take a series of small steps, turn yourself around, nine
25 heel to toe steps back to where we started.

1 Q. Did you administer this test as you were trained to do
2 so?

3 A. I did, yes, sir.

4 Q. What did you observe regarding the defendant?

5 A. I would have to refer back to my report, I believe.

6 MR. SHIFLET: May I approach, Your Honor?

7 THE COURT: You may.

8 A. Thank you, sir.

9 He could not stand in the starting position as
10 instructed. He did not touch heel to toe, and he stepped
11 off the line.

12 BY MR. SHIFLET:

13 Q. Thank you, deputy.

14 What was the next test?

15 A. The next test was the one leg stand.

16 Q. Is this also a divided attention test?

17 A. Yes, sir.

18 Q. How is this test administered?

19 A. He has to stand with his feet together while I'm giving
20 instructions. Basically I'm demonstrating as I give him,
21 the instructor, instructions how to do a one leg stand.
22 What that entitles is both legs are straight and you raise
23 one leg approximately six inches off the ground making the
24 bottom of your foot parallel with the ground. Keep your
25 hands down by your side. You look down at your foot that

1 you have elevated and you count out loud in the following
2 manner: 1,001, 1,002, 1,003, so on, until I tell him to
3 stop. It's a time test for 30 seconds.

4 Q. Deputy Palmer, do you recall if the defendant made any
5 statements when you were providing instructions on this
6 test?

7 A. I can't recall.

8 Q. What were the observations?

9 A. He put his foot down multiple times and said that, you
10 know, "I can't do it."

11 Q. Deputy Palmer, let's talk about your patrol car a
12 little bit. Is it equipped with a recording system?

13 A. Yes, it is.

14 Q. How does system work? When does it start recording?

15 A. The video starts recording as soon as I turn my blue
16 lights on and -- actually when I turn my blue lights on and
17 also if I hit the record button. Now, either one of those
18 starts the initial recording, but it also records 30 seconds
19 before I actually turn it on, so it can catch a violation or
20 whatever I'm doing to catch up to this vehicle, something of
21 that nature.

22 Q. Now, does your system produce an actual videotape
23 recording or a digital recording?

24 A. It's a digital recording that is downloaded into a
25 database?

1 Q. Where is that downloading taking place?

2 A. Basically all I have to do is pull into one of the
3 sub-offices for the sheriff's office and it downloads into
4 the database.

5 Q. Were you then able to create a DVD from that recording?

6 A. Yes. The correct procedure for that is to create a
7 file on our website that we have to watch and create the
8 videos. And you -- you e-mail your supervise saying that
9 you need this video changed into a DVD for court purposes,
10 and then he e-mails the evidence technician and they create
11 it into a DVD.

12 Q. Deputy, was your car equipped with a recording system
13 on the day in question, November 6th, 2011?

14 A. Yes, it was.

15 Q. Was it in proper working order?

16 A. Yes, it was.

17 Q. Were you able to produce a video as a result of that
18 recording?

19 A. Yes, I was.

20 Q. Have you watched that video before coming to trial
21 today?

22 A. I have.

23 Q. Does it truthfully and accurately reflect the events
24 and conditions on that evening?

25 A. It does.

1 MR. SHIFLET: May I approach, Your Honor?

2 THE COURT: You may.

3 BY MR. SHIFLET:

4 Q. I'm showing you what's been previously marked as
5 State's Exhibit 1. Can you tell the court what that is?

6 A. That is the DVD from the DUI arrest from Mr. Alford.

7 Q. How do you know it's the same DVD?

8 A. It got my initials on it.

9 Q. Thank you.

10 MR. SHIFLET: Your Honor, the State offers this
11 Exhibit 1 into evidence at this time.

12 MS. SIKORA: Without objection, Your Honor.

13 THE COURT: Admitted without objection.

14 MR. SHIFLET: Request to publish.

15 THE COURT: You may publish.

16 (Whereupon, State's Exhibit No. 1 was played to
17 the jury panel)

18 (Video started)

19 (Video stopped)

20 MR. SHIFLET: Your Honor, may we approach real
21 quick?

22 THE COURT: You may.

23 (Whereupon, the lawyers approached the bench for
24 an off-the-record discussion)

25 THE COURT: Madam Forelady, members of the jury

1 panel, this is a rather long video having to do with
2 checking to see if there is any damage of that to this
3 campground, that sort of thing. But, at any rate, it's
4 probably about an hour in length. We are going to skip
5 forward through that part of it while they are waiting and
6 get towards the end of it. So we are fast forwarding it
7 until we get towards the end of it. All right.

8 (Whereupon, State's Exhibit No. 1 was concluded
9 playing to the jury panel)

10 BY MR. SHIFLET:

11 Q. Deputy Palmer, based on your training and experience,
12 what do all the facts and totality of the circumstances
13 suggests to you?

14 A. That Mr. Alford was under the influence of alcohol and
15 that his abilities to drive a motor vehicle were materially
16 and appreciably impaired.

17 Q. Did you arrest him for DUI?

18 A. I did.

19 Q. Was he advised of his rights?

20 A. Yes, he was.

21 Q. Did you place him in handcuffs and put him in your
22 patrol car?

23 A. I did.

24 Q. Did you transport the defendant from the scene?

25 A. I did.

1 Q. Where did you take him?

2 A. Fort Mill Police Department.

3 Q. Why did you take him there?

4 A. So I could offer him a datamaster test.

5 Q. Deputy Palmer, are you a certified datamaster operator?

6 A. I am.

7 Q. How do you get that certification?

8 A. Through the academy.

9 Q. When did you get that?

10 A. My initial one was I believe in 2009. Re-certification
11 was 2011.

12 MR. SHIFLET: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. SHIFLET:

15 Q. Deputy Palmer, I'm showing you what's been previously
16 marked for identification as State's Exhibit 2. Could you
17 please identify that for the court?

18 A. Yes, that's my certificate to perform breath alcohol
19 tests, which is known as datamaster.

20 Q. Does that certificate show that you are current?

21 A. Uh-huh. It's good through April 19th, 2013.

22 Q. Thank you, deputy.

23 MR. SHIFLET: Your Honor, the State does offer
24 this exhibit into evidence at this time.

25 MS. SIKORA: Without objection.

1 THE COURT: Admitted without objection.

2 BY MR. SHIFLET:

3 Q. Deputy Palmer, what is the datamaster? What does it
4 measure?

5 A. The datamaster measures the blood alcohol concentration
6 of a person's breath sample.

7 Q. Who maintains those machines to make sure they are
8 working properly?

9 A. SLED does.

10 Q. Do you know about how often they do that?

11 A. I really don't know.

12 Q. Well, is the machine programmed to check itself to make
13 sure it's working properly before you can offer someone a
14 test?

15 A. Yes, it is.

16 Q. What sort of internal checks does it perform on itself?

17 A. It has a solution sample that has to measure. It has
18 to be in a certain -- it has to calibrate and measure that
19 certain solution and it has been to be within a certain
20 number. If it's not, then it won't allow you to perform the
21 test.

22 If that solution is okay, then it goes on to its other
23 tests, which it purges the system, which means after it
24 checks that solution, gets rid of everything else that's in
25 that machine, and it does like two or three tests to make

1 sure it reads zero, it reads zero, it reads zero. And if
2 there is any malfunction with the datamaster, it will not
3 give the test.

4 Q. So you won't be able to offer somebody the test?

5 A. No. I would have to go somewhere else.

6 Q. Deputy, the machine that you used in this case, did it
7 check itself?

8 A. It did.

9 Q. Did the machine pass its internal check?

10 A. It did.

11 Q. Did it appear to be working properly?

12 A. It was.

13 Q. Were there any problems with the machine with this
14 defendant's breath sample?

15 A. No, sir.

16 Q. Did you offer the defendant a chance to provide a
17 breath sample on this machine?

18 A. I did.

19 Q. Did you follow all the proper procedures in offering
20 someone a breath test?

21 A. I did.

22 Q. Did you advise the defendant that he was being
23 videotaped?

24 A. I did.

25 Q. Did you advise the defendant of his implied consent

1 rights?

2 A. I did.

3 Q. Now, did you hand him those in writing?

4 A. I have a copy and he has copy that he followed along
5 where me as I read it to him.

6 Q. So --

7 A. He had a copy.

8 Q. You read it aloud?

9 A. Yes.

10 Q. Did you check the defendant's mouth for any foreign
11 objects?

12 A. I did.

13 Q. Anything there?

14 A. No.

15 Q. Was the defendant observed for the required 20 minute
16 observation period?

17 A. Yes, he was.

18 Q. Tell the court what that 20 minute period is intended
19 to do?

20 A. Basically it allows any kind of alcohol that's on the
21 surface of your mouth to dissolve so it gets a more accurate
22 reading once you administer the breath test.

23 MR. SHIFLET: May I approach, Your Honor?

24 THE COURT: You may.

25 BY MR. SHIFLET:

1 Q. Deputy Palmer, I'm showing you what's been previously
2 marked as State's 3. Could you please identify that?

3 A. That is the advisement of implied consent rights.

4 Q. Deputy, is that the same form that you used in this
5 case?

6 A. It is.

7 Q. Did the defendant get a copy of that form?

8 A. He did.

9 Q. Is that your signature indicating that you read and
10 gave the defendant a copy?

11 A. Yes, it is.

12 Q. Did the defendant sign that form?

13 A. He refused to sign.

14 MR. SHIFLET: Your Honor, the State ask to admit
15 this into evidence at this time.

16 MS. SIKORA: No objection.

17 THE COURT: Admitted without objection.

18 MR. SHIFLET: Thank you.

19 BY MR. SHIFLET:

20 Q. Deputy, did the defendant give a breath sample?

21 A. He refused.

22 Q. He refused?

23 A. Uh-huh.

24 MR. SHIFLET: May I approach, Your Honor?

25 THE COURT: You may.

1 BY MR. SHIFLET:

2 Q. State's Exhibit 4, could you please identify this for
3 the court?

4 A. This is the breath alcohol analysis test report that's
5 printed out from the datamaster.

6 Q. What's recorded on that document, deputy?

7 A. His personal information, my information, my datamaster
8 certification number, as well as the date and time that it
9 was administered; whether I, you know, told him that this
10 test is being video recorded, checked his mouth, things of
11 that nature; and also prints out the results and how many
12 times the datamaster did its test, and it's time stamped.

13 Q. Deputy Palmer, is that the same form or a copy that
14 would have been used the same night?

15 A. Yes, it is.

16 Q. Is your signature on that form?

17 A. It is.

18 Q. Did the defendant sign that form?

19 A. He refused to sign it.

20 MR. SHIFLET: The State offers State's 4 in
21 evidence at this time.

22 MS. SIKORA: No objection, Your Honor.

23 THE COURT: Admitted without objection.

24 BY MR. SHIFLET:

25 Q. Deputy Palmer, you indicated that the defendant did

1 refuse to provide a sample?

2 A. That's correct.

3 Q. What's the consequence of refusing to provide a breath
4 sample?

5 A. Immediate suspension of your driver's license or the
6 privilege to drive in South Carolina for at least six
7 months.

8 Q. All right.

9 MR. SHIFLET: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MR. SHIFLET:

12 Q. Deputy, this is State's Exhibit 5. Could you please
13 identify that for us?

14 A. This is the notice of suspension that was given to him
15 after he refused to give a breath test.

16 Q. Deputy, is that the same form that would have been used
17 that night? I understand it's a copy.

18 A. Yes, it's the same form.

19 Q. Would your signature have been on that form?

20 A. It is.

21 Q. And the defendant's?

22 A. Uh-huh. Actually -- hang on. It's hard to tell on
23 this. If you had an original, I could verify, but --

24 Q. That's the form that you would have used on the night
25 in question?

1 A. That's correct.

2 Q. Thank you.

3 MR. SHIFLET: Your Honor, the State offers the
4 notice of suspension into evidence.

5 MS. SIKORA: No objection.

6 THE COURT: Admitted without objection.

7 BY MR. SHIFLET:

8 Q. Deputy Palmer, does the BA room at the Fort Mill Police
9 Department have a video camera?

10 A. It does.

11 Q. Did it have a camera on November the 6th, 2011?

12 A. It did.

13 Q. Now, how is that video saved or maintained?

14 A. It's saved and maintained by the SLED policies and
15 procedures and it goes through their database.

16 Q. How is that made available to you?

17 A. It's accessible by the test results that are printed
18 out. It gives you codes that only you have, as well as the
19 SLED has, to access that video. You can pull it up on the
20 Internet and create a DVD.

21 Q. Now, was there a videotape that was a result and
22 recorded the events and procedures that you just described?

23 A. Yes, sir.

24 Q. Have you had a chance to review the video before coming
25 to court today?

1 A. I have.

2 Q. I'm showing you what's previously been marked as
3 State's Exhibit 6. Can you please identify this?

4 A. This is a DVD of the datamaster room.

5 Q. Now, does that video truly and accurately reflect the
6 events and conditions from the BA room?

7 A. Uh-huh.

8 Q. How do you know it's the same video?

9 A. It has my initials on it.

10 Q. Thank you, deputy.

11 MR. SHIFLET: The State offers State's Exhibit 6
12 into evidence at this time.

13 MS. SIKORA: No objection.

14 THE COURT: Admitted without objection.

15 MR. SHIFLET: And request to publish.

16 THE COURT: You may publish.

17 MR. SHIFLET: Your Honor, may we approach briefly?

18 THE COURT: You may.

19 (Whereupon, the lawyers approached the bench for
20 an off-the-record discussion).

21 (Whereupon, State's Exhibit No. 6 was played to
22 the jury panel)

23 BY MR. SHIFLET:

24 Q. I just have a few more questions, Deputy Palmer.

25 Did all these events that you have just described that

1 we watched on video occur in the State of South Carolina?

2 A. Yes, it did.

3 Q. Did they occur within York County?

4 A. They did.

5 Q. Deputy, based on your training and experience as a law
6 enforcement officer, trained in DUI detection, do you have
7 an opinion as to whether or not the defendant was under the
8 influence of alcohol that night?

9 A. He was under the influence of alcohol.

10 MR. SHIFLET: No further questions, Your Honor.

11 Please answer any questions that the defense
12 counsel may have.

13 THE COURT: Let's take a short break before we do
14 that, please.

15 Madam Forelady, members of the jury panel, we will
16 take a short recess at this time. You may refresh
17 yourselves during the break. I will remind you if you want
18 to bring something to drink back with you, you are welcome
19 to do that. Please retire to the jury room.

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: Deputy Palmer, during the break you
23 can step down and refresh yourself. What you cannot do is
24 discuss the case with anyone.

25 THE WITNESS: Okay.

1 THE COURT: It's the same as you were still on the
2 stand. You can't discuss the case with your attorney, or
3 with the solicitor, or anyone else.

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. But you can refresh yourself.
6 Thank you. You may stand down.

7 Let's take about ten minutes or so.

8 MS. SIKORA: Thank you, Your Honor.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: Sir, you can come back to the stand.
12 All right, please bring the jury in.

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

15 THE COURT: All right, counsel, ready to proceed.

16 MS. SIKORA: Yes, Your Honor. May it please the
17 court.

18 THE COURT: Yes.

19 CROSS EXAMINATION BY MS. SIKORA:

20 Q. Good afternoon, Deputy Palmer.

21 A. How are you doing.

22 Q. Whenever we were watching the video, it looked like
23 there were several other officers out there on the scene
24 with you?

25 A. Uh-huh.

1 Q. Do you remember about how many other officers were
2 there?

3 A. The Tega Cay officer and I believe two people from my
4 shift. Would you like the names?

5 Q. No.

6 A. Okay.

7 Q. And at some point did the highway patrol also show up
8 to assist y'all that night?

9 A. He showed up to assess Mr. Alford's vehicle, as well as
10 part of the KOA campground to make sure there was no other
11 accidents that were involved or anything like that, and he
12 determined that there was no further cause for him to
13 complete his investigation.

14 Q. And at the beginning of your video we saw Mr. Alford
15 driving in a proper line of travel, given the direction that
16 he was headed, correct?

17 A. Yes.

18 Q. And that he came upon a red light?

19 A. (Shaking head yes).

20 Q. And made a right-hand turn?

21 A. Uh-huh.

22 Q. And at that point you turned on your blue light,
23 correct?

24 A. Yes.

25 Q. And you said Mr. Alford --

1 THE COURT: Excuse me. I'm going to get you to
2 answer yes or no, because it's hard to record.

3 THE WITNESS: Sorry about that.

4 A. Yes, he did.

5 BY MS. SIKORA:

6 Q. And did Mr. Alford pull over in response to your blue
7 lights within a reasonable time period?

8 A. Yes, he did.

9 Q. And that parking lot that we saw, was that a gas
10 station parking lot?

11 A. It was.

12 Q. And when Mr. Alford parked his vehicle in that lot, did
13 he park his vehicle appropriately in line with the other
14 vehicles there?

15 A. In my opinion, no. He parked in front of a dumpster.

16 Q. But other than that, did you have any other issue with
17 his parking job?

18 A. No, ma'am.

19 Q. And you testified that you have taken classes on
20 performing field sobriety tests?

21 A. Yes, ma'am.

22 Q. And that you have performed them before this incident
23 somewhere between 30 and 40 times?

24 A. In the ballpark, yes, ma'am.

25 Q. And whenever you began field sobriety tests with Mr.

1 Alford, one of the first things that you asked him before
2 giving the HGN or the pen test was whether he had any
3 problems with his eyes, correct?

4 A. Yes, correct.

5 Q. And what was the reason you asked him that question?

6 A. Just in case he does have a medical problem that does
7 cause a form of nystagmus.

8 Q. Okay. And some people, in fact, do naturally have a
9 presence of nystagmus in their eyes without introducing
10 alcohol, correct?

11 A. Correct.

12 Q. And then after he performed the pen test for you, you
13 asked him to perform two more field sobriety tests, correct?

14 A. Correct.

15 Q. And do you recall about how old Mr. Alford is?

16 A. I believe after booking he said he was around 54 years
17 old, maybe.

18 Q. And did you verify that with the information on his
19 license?

20 A. Yes.

21 Q. And is that accurate?

22 A. I believe so, yes, ma'am.

23 Q. But you do not ask Mr. Alford before performing the
24 second field sobriety test if he has any medical issues with
25 his legs?

1 A. Correct.

2 Q. Or his back?

3 A. Correct.

4 Q. His feet?

5 A. No.

6 Q. Any inner ear problems which may affect his balance?

7 A. Correct.

8 Q. And you go ahead and have him perform the following two
9 tests, the walk and turn and the one legged stand that we
10 just saw on the video?

11 A. Yes, ma'am.

12 Q. So you don't know whether or not Mr. Alford has any
13 medical conditions which could have affected his ability to
14 perform those following two tests, correct?

15 A. Well, he did not advise me anyways. Even if he did,
16 because most people tell they do have a leg problem before
17 you even begin. And also he walked fine from his vehicle to
18 the front of my patrol car and then from the testing site.

19 Q. Do you have any type of medical training in addition to
20 your police training?

21 A. No, ma'am.

22 Q. Ever been an EMT before?

23 A. No, ma'am.

24 Q. Is it part of your job to diagnose or treat people for
25 the medical conditions?

1 A. It is not.

2 Q. If somebody came to you with complaints about their
3 legs or their back, would you refer them to a doctor, or
4 would you feel qualified to diagnose them yourself?

5 A. Neither. I'll take into consideration of the test.

6 Q. Because if somebody does have medical issues, it could
7 affect your their performance on the test?

8 A. There is a possibility.

9 Q. And in addition to medical conditions which could
10 affect performance on field sobriety, if the person is
11 nervous, couldn't that also be a factor?

12 A. Not to the extent the way Mr. Alford was, no.

13 Q. Your testimony here today is that he was not nervous?

14 A. Well, I'm pretty sure he was nervous, but nervousness
15 is not going to cause you to fail a field sobriety.

16 Q. And Mr. Alford also repeatedly said to you that he was
17 tired that night, correct?

18 A. Correct.

19 Q. In fact, a portion of the video that we fast forwarded
20 through in the interests of time involved Mr. Alford sitting
21 in the back of your patrol vehicle, correct?

22 A. Uh-huh. Yes, ma'am.

23 Q. And there were several instances, not only that we did
24 see on video, but throughout the time that he was in the
25 back of your patrol car where he kept complaining that he

1 just wanted to go to sleep?

2 A. That's correct.

3 Q. And this all happened about 1:45 in the morning?

4 A. Yes, ma'am.

5 Q. And as we saw, Mr. Alford at the time was operating a
6 tractor, correct?

7 A. Yes, ma'am.

8 Q. And part of the responsibilities of being a
9 tractor-trailer driver is that they have to log the hours
10 because there are laws regarding how many hours a day they
11 can drive, correct?

12 A. Correct.

13 Q. And we did see an officer on the video search the
14 inside of Mr. Alford's truck?

15 A. Correct.

16 Q. And was that you or another officer?

17 A. That was Deputy Whitty and Deputy Price.

18 Q. Are they officers that work with you at the sheriff's
19 office?

20 A. Yes, ma'am. They are on my shift, yes, ma'am, or they
21 were on my shift.

22 Q. And through the course of the searching of the inside
23 of Mr. Alford's tractor, did you all take into evidence or
24 obtain information about how long he had been on the road
25 that day?

1 A. No, ma'am. Initially when we first started the traffic
2 stop I did ask him where he was coming from, where he was
3 going. And when you pull over a tractor-trailer driver,
4 they are supposed to hand you their credentials as well as
5 their log that they are supposed to keep. He did not.

6 Q. So whenever you referenced the log, that's the book
7 that tractor-trailer drivers are supposed to document how
8 many hours they are actually driving?

9 A. Correct.

10 Q. How many hours they may spend working in addition to
11 driving, correct?

12 A. Correct.

13 Q. And whenever I say hours spent working in addition to
14 driving, that would be things like time spent unloading a
15 truck or dropping off a delivery?

16 A. Correct.

17 Q. And Mr. Alford did not hand you the log book that
18 night, correct?

19 A. No, ma'am.

20 Q. Did you ever at any point ask him for that information?

21 A. No, ma'am.

22 Q. Did you ever at any point take his log book into
23 evidence?

24 A. No, ma'am.

25 Q. Do you have any idea how long he had been on the road

1 earlier that day?

2 A. No, ma'am.

3 Q. And is it your understanding that a driver, a
4 tractor-trailer driver, can drive legally on the road for up
5 to 11 hours per day, but not more?

6 A. I really don't know.

7 Q. And isn't it fair that being tired after a long day's
8 work could affect your performance on field sobriety tests?

9 A. There is possibility, yes, ma'am.

10 Q. And also on the video we saw that you had a
11 conversation with Mr. Alford about how many beers he had had
12 that night?

13 A. Yes, ma'am.

14 Q. And I believe he responded to you that he had two
15 beers, correct?

16 A. Yes, ma'am, that's the general answer.

17 Q. And whenever he told you that, did you question him
18 about what time he consumed those beers?

19 A. I did not.

20 Q. Did you question him about how large the beers were
21 that he had?

22 A. I don't believe so.

23 Q. Do you know if the beers he had were 12 ounce beers?

24 A. I do not know.

25 Q. Do you know over what time frame he had those two

1 drinks?

2 A. I do not know.

3 Q. Do you know what time he arrived at John's Place
4 earlier that night?

5 A. I was not with him. I do not know.

6 Q. Did you ask him?

7 A. No, ma'am.

8 Q. And knowing over what period of time Mr. Alford
9 consumed those two beers, whether it was 15 minutes or two
10 hours, would be information helpful to this jury in reaching
11 a decision as to whether or not he was impaired, would it
12 not?

13 A. It could.

14 Q. Now, we also saw on the video I believe you testified
15 that it was Deputy Whitty that did the search of Mr.
16 Alford's tractor?

17 A. I believe so, yes, ma'am.

18 Q. And that was at the end of the first video that we saw?

19 A. Uh-huh.

20 Q. And was it Deputy Whitty that then brings the open
21 container? There was a can of beer that he put on the hood
22 of your patrol car?

23 A. No, he handed it to me and I put it on the hood of my
24 patrol car.

25 Q. Okay.

1 A. And then Deputy Price brought they -- she handed me the
2 bag, I believe, that had the other container of beer.

3 Q. But the actual can of beer was handed to you and you
4 placed it on the hood of your patrol car?

5 A. Yes, ma'am.

6 Q. And you don't make any comment on the video or any
7 reference in the police report that you prepared in this
8 case to the fact that of whether or not that beer was
9 actually cold?

10 A. I mean, I pulled it out -- or he handed it to me. I
11 dumped it because it was open, and realized -- and looked at
12 the name brand and I believe it was Coors that night.

13 Q. But in response to my earlier question, there is no
14 comment on the video or any notation in your police report
15 about what happened that night indicating that beer was
16 cold?

17 A. No, ma'am, but he did have an open container in his car
18 or in the cab?

19 Q. Did you ever speak with a bartender at John's Place to
20 find out how much Mr. Alford had to drink that night?

21 A. I did not. It's not a typical part of the
22 investigation.

23 Q. To your knowledge, were any of the other officers,
24 either from the sheriff's office, Tega Cay police
25 department, South Carolina Highway Patrol, to your

1 knowledge, did any of those officers speak with the
2 bartender at John's Place regarding what Mr. Alford had to
3 drink that night?

4 A. No, ma'am.

5 Q. And how far is John's Place from where we saw this
6 traffic stop on the video?

7 A. Maybe about a mile, mile and a half at most..

8 Q. And did you speak with Mr. Adkins that night as part of
9 your investigation?

10 A. I did.

11 Q. And I believe you were in the courtroom when Mr. Adkins
12 testified earlier?

13 A. Uh-huh.

14 Q. And Mr. Adkins told us all today that he's an employee
15 of the KOA campground and John's Place, correct?

16 A. Correct.

17 Q. Did you ever ask Mr. Adkins to obtain a copy of Mr.
18 Alford's bar bill from that evening?

19 A. I did not.

20 Q. Did you ever identify any witnesses from John's Place
21 that saw Mr. Alford in John's Place that evening?

22 A. Mr. Adkins said that he was a witness about the
23 incident that occurred before Mr. Alford left the KOA
24 campground and as his driving on Gold Hill Road.

25 Q. But other than Mr. Adkins, you never went to the bar to

1 identify any other witnesses?

2 A. No, ma'am.

3 Q. And, to your knowledge, no one from either of those
4 police departments we spoke about did that?

5 A. No, ma'am.

6 Q. And had the police gone to John's Place, it's possible
7 that they may have found information which would be useful
8 to the jury in reaching a decision in this case?

9 A. It's possible.

10 Q. Thank you.

11 MS. SIKORA: No further questions.

12 MR. SHIFLET: Just really quick, Your Honor.

13 REDIRECT EXAMINATION BY MR. SHIFLET:

14 Q. Deputy Palmer, other than the defendant's serious eye
15 problem that he stated to you that he also had no
16 indicated -- or he couldn't explain what that was, did he
17 ever state that he had any other medical problems that would
18 impact those?

19 A. He did not.

20 Q. With regard to the two beers, did he just simply tell
21 you that he had had two beers?

22 A. That's correct.

23 Q. Do you know if, in fact, that's how many beers he
24 drank?

25 A. In my opinion, I believe he had more.

1 Q. So is it possible that he could have had more than two
2 beers?

3 A. Yes.

4 Q. One of the beers that was removed from the truck, was
5 it actually open?

6 A. It was.

7 Q. Officer Palmer, do you normally go and interview
8 bartenders as part of your investigation when you make a DUI
9 case?

10 A. No, I do not.

11 MR. SHIFLET: Nothing further, Your Honor.

12 MS. SIKORA: Just briefly, Your Honor.

13 THE COURT: Yes, ma'am.

14 RE-CROSS EXAMINATION BY MS. SIKORA:

15 Q. Mr. Shiflet just asked you about the medical problems
16 that Mr. Alford may or may not have had that night, correct?

17 A. Correct.

18 Q. And there was talk on the video of him being booked
19 into the jail after you were finished with him in the BA
20 room, correct?

21 A. Correct.

22 Q. And isn't it part of the assessment when someone is
23 booked into the jail to go over what medical conditions they
24 may or may not have?

25 A. That's correct.

1 Q. Did you ever obtain a copy of that paperwork from the
2 jail?

3 A. I did. I -- the form that we have to -- that we are
4 required to fill out during the booking process asked him of
5 any kind of medical conditions that he may have, and he
6 advised me that he didn't have any medical problems or
7 anything that we should know about.

8 Q. And do you have a copy of that paperwork?

9 A. It's in his booking form. It's in the detention
10 center.

11 Q. Okay. Let me make sure we are talking about talking
12 the same thing. Are you talking about the booking form, or
13 are you actually the person that books him into the jail?

14 A. When we book somebody into the jail, we fill out the
15 booking report that has all his personal information, as
16 well as the charges.

17 Q. Right.

18 A. The other form that we fill out -- well, since he was
19 booked in Fort Mill, they have their own medical
20 questionnaire. And I asked him each question about the
21 problems that he had. He did not have any medical problems.
22 And then I went onto the York County one that is transferred
23 with him to the detention center.

24 Q. Uh-huh.

25 A. He advised me that he did not have any medical

1 information or medical problems that we needed to know
2 about.

3 Q. And don't you think that if that is, in fact, what he
4 said, that would be useful information to provide the State
5 and the defense in this case?

6 A. Sure.

7 Q. But you have not provided such a form where he claimed
8 that he -- where you claim, I should say, that he told you
9 that he didn't have any medical problems?

10 A. Because that information is turned into the detention
11 center.

12 Q. Have you provided it to Mr. Shiflet or not?

13 A. No.

14 Q. Thank you.

15 A. It's not part of the requirements.

16 MS. SIKORA: No further questions.

17 MR. SHIFLET: No.

18 THE COURT: Thank you, sir. You may stand down.

19 THE WITNESS: Okay.

20 THE COURT: Counsel, we will take lunch now.

21 Madam Forelady, members of the jury panel, it's by
22 the courtroom clock a little after 12:30. We are going to
23 go ahead and recess for lunch at this time.

24 I'm going to ask you to be back in the jury room
25 ready to go at 1:45. At 1:45. That will give everybody

1 plenty of time to get lunch and to get back, so please enjoy
2 your lunch and be back at 1:45.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: I guess I hadn't really given you a
6 chance to address it. Did you plan to call any other
7 witnesses?

8 MR. SHIFLET: I didn't, Your Honor.

9 THE COURT: The State is going to rest and I will
10 have you do that before the jury.

11 MR. SHIFLET: The State intends to rest.

12 THE COURT: Let's consider that he has rested, the
13 State is resting. Any motions that you might wish to make
14 at this time?

15 MS. SIKORA: Yes, Your Honor. May it please the
16 court, at this time the defense would move for a motion of
17 directed verdict in this case. Even viewing the light in --
18 I'm sorry, even viewing the evidence in the light most
19 favorable to the State, the defense's position, Your Honor,
20 is there has not been enough evidence set forth to meet the
21 elements of this offense, and, therefore, we would ask for a
22 directed verdict at this time.

23 THE COURT: Okay. Do you wish to be heard on the
24 motion, solicitor?

25 MR. SHIFLET: Not unless the court needs to.

1 THE COURT: In looking at a motion for a directed
2 verdict, the court is required to look at the evidence in
3 the light most favorable to the party against whom the
4 motion is being made.

5 In this case, looking at the evidence in the light
6 most favorable to the State, I find there is substantial
7 evidence from which the jury could infer the State had
8 proven the elements of this offense beyond a reasonable
9 doubt.

10 Credibility of the witnesses and weighing the
11 evidence is a matter for the jury to determine. The court's
12 only determination is whether there is any substantial
13 evidence from which they could infer the elements hadn't
14 been met, and I find that there is substantial evidence,
15 and, therefore, deny your motion for a directed verdict.

16 Now, has the defendant decided whether he's going
17 to testify or not in this case?

18 MS. SIKORA: May I just have one moment, Your
19 Honor?

20 THE COURT: You may.

21 We can do this after lunch, if you want to. I'll
22 give you a little more time to do that, but I --

23 MS. SIKORA: Your Honor, he said he would like to
24 think about it a little while, if you are willing to do
25 that.

1 THE COURT: All right. Be sure that he
2 understands he doesn't have to testify, that I will give the
3 jury instruction that they can't consider that against him
4 in any way, but it's up to him whether he wants to testify
5 or not, and I'll ask him about that after lunch.

6 Let's be back then ready to go at 1:45.

7 Before we break for lunch I'll get you to come up
8 and let me run through the charge right quick with you.
9 It's a short charge. If you will let come up and let me run
10 through it.

11 MS. SIKORA: Yes, sir, Your Honor.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: All right, counsel, has Mr. Alford
15 decided whether he's going to testify or not testify?

16 MS. SIKORA: Yes, Your Honor, may it please the
17 court, he's decided not to testify.

18 THE COURT: You know I have to question him under
19 oath about that right.

20 MS. SIKORA: Yes, Your Honor.

21 THE COURT: If you will bring him right around
22 here to the bench and let's place him under oath.

23 TIMOTHY WAYNE ALFORD, having been first duly
24 sworn, testified as follows:

25 THE COURT: Mr. Alford, I'm required to place you

1 under oath and question you concerning -- explaining to you
2 your rights to testify or not to testify and let you make
3 that decision, okay?

4 We have reached the stage of your trial where you
5 may present your defense. You have the right to testify in
6 your own behalf. However, no one can make you testify.

7 In the event you have a record for any conviction
8 involving dishonesty or false statement, I don't think they
9 have that in this case, but if you had that, or for a crime
10 punishable by imprisonment for more than one year and this
11 court determines that the probative value of admitting this
12 evidence outweighs its prejudicial effect to you, the
13 solicitor would be able to introduce this record for
14 impeachment purposes to attack your credibility.

15 If you elect not to take the stand, I would charge
16 the jury that they are not to give the fact that you did not
17 testify any consideration whatsoever and there is to be
18 absolutely no prejudice to you because you did not testify.

19 It is left entirely up to you whether or not you
20 testify. You may talk with your attorney, family, friends,
21 or anyone else, but the ultimate decision is left entirely
22 up to you.

23 Do you understand that it is your decision as to
24 whether you will or will not testify in your case?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you discussed with your attorneys
2 the advantages and disadvantages of testifying?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you wish to testify in your
5 case, sir?

6 THE DEFENDANT: No, sir.

7 THE COURT: Is that your decision, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Thank you. Please return to your
10 seat.

11 MS. SIKORA: Thank you, Your Honor.

12 THE COURT: All right, counsel, then let me
13 suggest that what we do, I'll bring the jury back. I'm
14 going to ask the State to rest.

15 The defense's motion was timely made when made, so
16 that's on the record for a directed verdict.

17 And do you wish to renew that motion? Even though
18 you will be resting to present no testimony, I don't know
19 that that's necessary to make another directed verdict
20 motion.

21 MS. SIKORA: Yes, Your Honor.

22 The defense isn't going to put up any kind of
23 case, so we will be resting in front of the jury as well,
24 and at this time I do renew all previous motions, Your
25 Honor.

1 THE COURT: Of course, they are considered timely
2 made, and I'll deny them for the same reason you gave
3 earlier when I denied them.

4 With that then bring the jury back in and the
5 State will rest, then the defense will rest, and then I'll
6 tell the jury we are going into final argument.

7 The defense not having put up any testimony or
8 evidence will get the last argument to the jury, so the
9 State will go first, solicitor.

10 MR. SHIFLET: Yes, sir.

11 THE COURT: All right, please bring in the jury
12 in.

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

15 THE COURT: Good afternoon, Madam Forelady,
16 members of the jury panel. I hope you've enjoyed your
17 lunch. We are now ready to resume with the trial.

18 Counsel, we are ready to proceed.

19 MR. SHIFLET: Yes, Your Honor.

20 At this time, Your Honor, the State rests.

21 THE COURT: Okay. Counsel?

22 MS. SIKORA: May it please the court, Your Honor,
23 the defense rests.

24 THE COURT: Okay. Madam Forelady, members of the
25 jury panel, the State has rested. The defense has rested as

1 well, and so that concludes all the taking of testimony and
2 evidence in the case. We have yet remaining the final
3 arguments from counsel, and my instruction to you with regard
4 to the law that applies to the issues in this case.

5 We are to that part of the trial where counsel
6 will make their final arguments to you. I ask that you
7 listen attentively now as counsel address you in final
8 argument.

9 MR. SHIFLET: May it please the court?

10 THE COURT: Counsel.

11 MR. SHIFLET: Thank you, Your Honor.

12 Ladies and gentlemen of the jury, first of all I
13 just want to thank each and every one of you for your time
14 and your careful attention in this case. I'm sure there are
15 a lot of other things that you would rather be doing than
16 sitting here watching these lengthy videos, but we wouldn't
17 be able to do what we do without your help and we surely
18 appreciate that.

19 As I explained to you in opening argument, you
20 have the most important role, decision, to make in this
21 case; that is, to receive facts and evidence and return with
22 a decision that only you can make. All I can do is
23 reexamine the facts that were presented and review the
24 elements of the law.

25 As I told you before, in the State of South

1 Carolina it is unlawful to operate a motor vehicle while
2 under the influence of alcohol, or drugs, to the extent that
3 person's faculties to drive are materially and appreciably
4 impaired.

5 And, again, that's three things:

6 Jurisdictionally, did this take place in South Carolina, in
7 York County; was the defendant, in fact, driving; and also
8 was the defendant under the influence. Was he impaired to
9 the extent contemplated under the law.

10 Well, let's start with what's not in question.

11 First of all, there is no question that this took place in
12 York County in the State of South Carolina. The defendant
13 was observed driving his truck on Gold Hill Road. He was on
14 video driving his truck on Gold Hill Road, so there is no
15 question this was in York County, in Fort Mill.

16 Secondly, whether or not he was driving. It can
17 be an issue in some cases. Maybe a collision where somebody
18 has already left their vehicle or someone is asleep in the
19 car. The State has to prove the individual was, in fact,
20 driving, then it must be so with circumstantial evidence.
21 Maybe their seat belt was on and the car was running or the
22 key was in the ignition. That's not what happened in this
23 case. There is no question that the defendant was driving.
24 Again, he was observed driving by Mr. Adkins. He was
25 observed driving by law enforcement. You heard that

1 testimony. Again, he was on video driving. He pulled over.
2 He was the only one in the truck. There is no question that
3 the defendant was driving a motor vehicle in this case. You
4 can consider, however, that he made the statement on more
5 than one occasion that he wasn't driving. Ask yourselves
6 why did he try to maintain that position?

7 Ladies and gentlemen, in a case like this we have
8 determined there is no question as to driving or
9 jurisdictionally where it occurred. What we are left with
10 is whether or not the defendant was impaired. That's what
11 this case is -- that's what the whole case is about. I
12 submit to you that even that isn't a close call in this
13 particular case.

14 As you try to answer this question, I invite you
15 to recall all of the testimony that was presented. You have
16 heard from Mr. Adkins. You have heard from Deputy Palmer.
17 But importantly, as the defense attorney said in her
18 opening, you have a special advantage in a case like this.
19 You get to see for yourselves. You get two different videos
20 in this case. You don't have to believe anything anybody
21 else says, but you can watch with your own eyes and watch
22 those videos and make a determination about whether the
23 defendant was impaired, but I would ask you to begin by
24 recalling the testimony of Mr. Adkins. He came down here
25 today to testify to you. He took time off from work, came

1 down and testified truthfully. He didn't know who Mr.
2 Alford was before this night. No reason to come to court
3 and tell anything but the truth. That's what he did. He
4 told you how he was at the KOA campground and that he
5 observed the defendant there. He was in the bar. He
6 observed him leave and then was driving in an area where he
7 shouldn't be. He was concerned. He called 911 as a result
8 of this concern and then he pursued the defendant. He
9 followed behind him to try to assist law enforcement as to
10 the location of the defendant. He observed the defendant
11 driving his truck in the far left lane on Gold Hill Road.
12 That's what he testified to. So recall his testimony when
13 you are trying to decide for yourselves whether or not the
14 defendant was impaired.

15 Secondly, Deputy Matthew Palmer from the York
16 County sheriff's department came in and testified before
17 you. Deputy Palmer is trained in DUI detection. That's
18 what he does as a part of his job. He observed the
19 defendant up close. He encountered him and made
20 observations based on the defendant's demeanor, his conduct,
21 his statements, all of that, and he informed you that it was
22 his opinion that the defendant was under the influence.

23 And, again, we have this roadside video. Ladies
24 and gentlemen, the video corroborates a lot of what Deputy
25 Palmer testified to, but he's pulled over. He's pulled over

1 for previous information of Mr. Adkins, as well as failing
2 to use his turn signal, which law enforcement observed. He
3 pulls into the gas station and is asked to exit the truck.
4 The officers engaged in some questions with him at that
5 time. They asked him where he's coming from. Was he coming
6 from the KOA campground and he says no, but then they say
7 was at John's Place and he answers affirmatively that's
8 where he was coming from. A little bit of confusion there.
9 Asked him where he was headed. He said he didn't know.
10 Also officers asked him where he was planning to sleep that
11 night. He stated that he was going to sleep there at that
12 gas station. And that may be the case, ladies and
13 gentlemen, but it's certainly convenient that he happened to
14 be pulled over at the same time that he was going to pull
15 into this location and go to sleep.

16 Right after he was removed from the truck the
17 officer testified he smelled the odor of alcoholic beverage.
18 You saw him on the video. And, again, I'll remind you on
19 the video like this you are more than welcome to take
20 another look at it. If you don't remember something
21 clearly, it's available for you, it's in evidence, and you
22 have an opportunity to watch it again, if you think you need
23 to do that, but as he exits the truck and then he's about to
24 walk back with Deputy Palmer you see him stumble. It gives
25 Deputy Palmer more cause for concern, but he walks him over

1 to his car and he is standing there and he makes a statement
2 that I think is pretty interesting in this case. He says
3 "you got me." Deputy Palmer tries to clarify, "you got me?
4 What do you mean I got you?" He says again "you got me."

5 It's a lot like the statement he made in the BA
6 room. "I know what happened. Someone called in and said
7 that there was a drunk person driving and that's how you
8 caught me. That's the only way that you caught me."

9 So the statements are kind of similar, ladies and
10 gentlemen, and I ask you to think about that. What does a
11 person mean when they make a statement "you got me," or
12 "that's how you caught me"? Well, they are referring to
13 something that they have done. And you don't usually make
14 that statement when you are doing something that you are
15 supposed to be doing.

16 Deputy Palmer then, based on all of his concerns
17 and observations about the smell of alcohol, he admits to
18 having two beers, ladies and gentlemen, he offers the
19 defendant a chance to perform field sobriety.

20 The first test is the HGN, and you saw all these
21 on video. He asked him if he has any problems with his eyes
22 as a part of this test. The defendant says he's got serious
23 problems. Deputy Palmer tries to get an explanation about
24 that, "can you go into detail about it?"

25 "I don't know."

1 So he's got serious problems with his eyes, but
2 then he doesn't know anything about that. Just another
3 piece of evidence for you to consider in a case like this.

4 It's important to understand that in a case like
5 this all of these little pieces of evidence, you put it
6 together and it all adds up. Use your common sense as you
7 add these pieces of the puzzle together, ladies and
8 gentlemen.

9 But he performed the HGN test. And you heard the
10 officer's testimony that he observed all the clues as a
11 result of the Horizontal Gaze Nystagmus Test, but he also
12 testified that that test doesn't conclusively prove
13 impairment, but it is, however, an opportunity or a test
14 that does show the presence of alcohol or some other
15 impairing drug. So, again, it's another piece of the puzzle
16 for you to consider, along with all the others.

17 Next you have the walk and turn. And I can talk
18 about it all I want to, but, again, you saw it, ladies and
19 gentlemen. You say the video. Deputy Palmer testified that
20 as to the reasons that he failed the test. He couldn't
21 maintain the position and he failed to follow instructions,
22 didn't walk heel to toe, walked off the line, improper turn.
23 And all of that is well and good, but, ladies and gentlemen,
24 you saw the video. You saw how he was walking. Just
25 consider that in the big picture.

1 Finally he did the one leg stand. And as Deputy
2 Palmer is providing the instructions as a part of this test,
3 the defendant made another statement, and I listened
4 closely. He said "I'm sorry," and I counted -- you can
5 watch the video and count it yourself, but I believe he said
6 "I'm sorry" eight times. What's he sorry for? Is he sorry
7 for driving in a condition when he knows he shouldn't be, or
8 is he sorry he got caught? What's he sorry for, ladies and
9 gentlemen?

10 He does the one leg stand test, but you saw it on
11 the video. He can't hold his foot up for more than a matter
12 of moments. Each time he puts it down and he failed that
13 test.

14 As a result of that Deputy Palmer takes him over
15 to the car and he arrests him for driving under the
16 influence. He's handcuffed, read Miranda and put in the
17 car.

18 At that point we did fast forward a portion of the
19 video in the interests of time. I know it's a long video
20 anyway and no need to waste everyone's time with matters
21 that wouldn't necessarily bear on the case at hand.

22 Officers then did a search of the cab of this
23 tractor. I'll just call it tractor. I keep wanting to say
24 an 18-wheeler without the trailer, but the tractor, and what
25 did they find? They found a bunch of alcohol. So he's

1 admitted he's had two beers. He smells like alcohol. He's
2 slurring his words, stumbling around, performing terribly on
3 field sobriety. Then there is a bunch of alcohol in the
4 truck.

5 So after he's in the car and they leave the gas
6 station where he was pulled over, he's transported for a
7 breath test. Now, you know what that is. You have heard
8 the officer's testimony. The officer took him into the BA
9 room. He observed him for the 20 minutes. He administered
10 the test, as he's instructed to do, but interestingly, and,
11 again, going back to the videos, as a part of that 20 minute
12 video you get some monumental insight into the condition or
13 the frame of mind of Mr. Alford that night. There is a lot
14 of time there where he's talking, Deputy Palmer is talking
15 with him, but he makes several statements, but consider his
16 demeanor, consider his mannerisms, his argumentative and
17 combative and aggressive nature towards Deputy Palmer on a
18 couple of different occasions.

19 Let's talk about a few of the things that he said
20 in the BA room. First of all, again he said he wasn't
21 driving. It's interesting that he maintains that position.
22 He asked to smoke a cigarette. Who wants to -- who in their
23 right frame of mind would try to smoke a cigarette in a
24 situation like that, ladies and gentlemen? Just consider it
25 as a part of your evaluation.

1 He says he's going to sit in the jail all day long
2 and then they are going to have to put up with him, and he
3 chuckled a little bit. What does he mean by that, they are
4 going to have to put up with him? Yes, Deputy Palmer asked
5 him if he was born in Mississippi and I don't know if he
6 thought he was being clever. He said no, he was born from
7 his momma, and was entertained by that comment as well. He
8 tried to ask him how old he was. He wouldn't give an answer
9 to that either.

10 Ladies and gentlemen, he also gets pretty
11 frustrated with Deputy Palmer at one point and walks up to
12 him and gets in his face. For some reason he feels like
13 Deputy Palmer is not paying him any attention I believe is
14 what he's said. And he says "I'm going to F'n strangle your
15 ass." He says it right to the officer. He asked him if he
16 thinks he can do it. He says that he can because he was in
17 the Special Forces. Ladies and gentlemen, who says that to
18 an officer that's just doing his job? What kind of frame of
19 mind does he have to be in to make that statement? Either
20 he speaks that way to anybody on a daily basis or maybe
21 there was something else going on. Maybe he had too much to
22 drink and that was part of the reason he was behaving the
23 way he was.

24 At one point in the video, and, again, feel free
25 to watch it again if you think you need to, but he's leaning

1 up against the wall toward the end and he made the statement
2 "I'm drunk." He said it a second time. Right after that he
3 went on to say "well, you think I'm drunk." Ladies and
4 gentlemen, you saw the video. Decide for yourselves what he
5 meant. I submit to you that he was drunk and he found
6 himself saying that -- caught himself and then tried to
7 cover it up by saying "you think I'm drunk," but he made the
8 statement. You decide for yourselves what it means.

9 Ladies and gentlemen, it is the State's burden to
10 prove the defendant's guilt beyond a reasonable doubt, and I
11 have talked to you a little bit about that earlier. It's
12 not beyond all doubt. It's beyond a reasonable doubt.
13 After all the facts and evidence have been presented to you,
14 you need only be left firmly convinced that the defendant is
15 guilty of driving under the influence.

16 The defense provided what I thought was a good
17 analogy in her opening statement. It's like pole vaulting
18 over a bar. We have to get over the bar without touching it
19 or causing it to fall. Ladies and gentlemen, I submit to
20 you that with the defendant's mannerisms, conduct,
21 statement, everything that was presented to you, ladies and
22 gentlemen, I think we went well above, well beyond that bar
23 in this case.

24 It's important to use your common sense in a case
25 like this. It's not something that you have to check when

1 you come into the courtroom. It's one of your most valuable
2 tools. Use your common sense and ask yourselves how did the
3 defendant find himself in this situation - in a bar, in a
4 campground, driving around in this big rig, in an area where
5 he shouldn't be, in the campground and then leaving; driving
6 on the wrong side of the road for a substantial amount of
7 time. Thank God nobody else was out on the road that night.
8 And the fact that he's driving this big 18-wheeler tractor
9 doesn't make him any more guilty of DUI than if he was
10 driving a Camry, but it certainly does make him a lot more
11 dangerous to anybody else that might have been on the road.
12 But, again, how did he find himself in this situation?
13 Pulled over for DUI; stumbling out of the truck; smelling
14 like alcohol; admitting to drinking beers; not sure where
15 he's going; claiming to sleep here, although that's where he
16 was pulled over; asked to perform field sobriety; making the
17 statement "you got me"; performing terribly on the field
18 sobriety, not even close; and then finally transported to
19 the BA room for a breath test. And we talked about
20 everything that happened in the breath test. I'm not going
21 keep pounding you with that, but it is important in a case
22 like this.

23 And then finally he refused. He refused to
24 provide a sample. You get to ask yourselves what that
25 means. Certainly you can't conclude that based on that

1 refusal he's guilty, but, again, it's certainly free for you
2 to consider it. Consider it for what it means. Why did he
3 refuse? He made a conscious decision to have his driver's
4 license suspended for six months instead of providing a
5 sample, ladies and gentlemen. It's a pretty significant
6 decision to make. Why did he make that decision? I submit
7 that he was concerned what the result was going to be. And
8 if he's concerned about what the result is, certainly we all
9 should be as well, and you should be.

10 Ladies and gentlemen, again I thank you for your
11 time. When you return to the jury room today I ask that you
12 consider all these facts in evidence and deliberate in this
13 case. Make a decision in your hearts that you feel speak
14 the truth and hold the defendant accountable for his actions
15 and his decisions on November 6th, 2011. Thank you.

16 THE COURT: Counsel.

17 MS. SIKORA: May it please the court, Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. SIKORA: When I first spoke to you at the
20 beginning of the trial I talked to you about human nature
21 and how it can be quite an interesting thing; how it can
22 affect the conclusions that we reach and the presumption
23 that we make.

24 Let's talk about Deputy Palmer and what happened
25 that night and the presumptions that he might have made

1 about Mr. Alford. You saw the video. Right after Mr.
2 Alford gets out of the truck, before he performs any field
3 sobriety, before the officer has completed his investigation
4 in this case, Deputy Palmer says to Mr. Alford, "I think you
5 have had a little too much to drink." That statement sets
6 the tone for the rest that went on that night in the
7 investigation and sets the tone for the things that Deputy
8 Palmer chose to do and chose not to do in the course of his
9 investigation.

10 Deputy Palmer, when he was on the stand, admitted
11 to you that some people can have natural nystagmus present
12 in their eyes and that the HGN or that pen test that we saw
13 in the video is not conclusive evidence of whether or not
14 somebody is impaired. He tells Mr. Alford, if you watched
15 the video, right after he completes that first field
16 sobriety test, and at this point after Mr. Alford has said
17 several times how tired he is, "well, the sooner you get
18 done with these tests, the sooner you can go to bed."

19 He proceeds to explain the next two tests to Mr.
20 Alford, the walk and turn and the one legged stand, and he
21 tells you, yes, if somebody has an underlying medical
22 condition, if they are nervous, if they are tired, all those
23 things can affect someone's performance on field sobriety,
24 but he didn't bother to ask Mr. Alford about whether or not
25 he had any medical conditions with his back, or his leg, or

1 his knees, or his feet, anything that could have affected
2 his performance on field sobriety. And if you recall when
3 Deputy Palmer was on the stand and I asked him why he did
4 not ask Mr. Alford the question that night, do you remember
5 what he said? "Mr. Alford was walking around just fine."

6 I asked Deputy Palmer about the medical assessment
7 that would have been done on Mr. Alford that night when he
8 was booked into the jail. And you heard Deputy Palmer tell
9 us "oh, yeah, there is documentation out there and at that
10 time Mr. Alford said there was nothing wrong with him," but
11 he didn't think that was important enough to provide to Mr.
12 Shiflet to present to you today. We have one, two, three,
13 four pieces of paper in documentation the State put in
14 evidence before you, but not that. Ask yourself why not.

15 He has a conversation with Mr. Alford about what
16 he had to drink that night and Mr. Alford tells Deputy
17 Palmer "I had two beers." There was no further questioning
18 by Deputy Palmer about what size those beers were; no
19 further questioning by Deputy Palmer over what period of
20 time he consumed those beers.

21 Mr. Shiflet remarked in his closing on the fact
22 that Mr. Alford said to the deputy. "Well, I don't know
23 where I'm headed." Well, about that 17 minutes of video
24 that we fast forwarded through today, there is a
25 conversation in that part of that video, and that video is

1 in evidence for you, so you have the ability to come back
2 and watch it, where Mr. Alford explains that he wouldn't
3 find out until the next morning from dispatch where he was
4 supposed to go to pick up his next load. He thought it
5 might be Georgia.

6 Now, after they get Mr. Alford and put him back in
7 the patrol car, all those officers that we have out on the
8 scene - several officers from the York County sheriff's
9 department, Tega Cay police department, South Carolina
10 Highway Patrol - they have searched the cab of his truck, as
11 you saw on the video, and they pull out an open beer
12 container from the cab of Mr. Alford's truck. Am I up here
13 to tell you today that I think it's okay to have an open
14 container in your car while you are driving? Absolutely
15 not, but pay attention to what you didn't hear and what the
16 officer wasn't able to tell you. He didn't testify for you
17 today that he thought that beer felt cold, indicating that
18 it would be something that would have been freshly drunk.

19 Deputy Palmer told you that when a tractor-trailer
20 driver is stopped by police he is supposed to hand over, not
21 only his driver's license, but a log book. And that log
22 book is supposed to keep records, because there are laws in
23 place about how many hours an 18-wheeler driver can be on
24 the road. And Deputy Palmer said, "well, Mr. Alford didn't
25 hand to it me." Well, we had at least one police officer go

1 into the cab of his truck. Did they ever bother to look in
2 the log book to see how many hours Mr. Alford had, in fact,
3 driven that day; if there was any validity to what he kept
4 repeatedly telling the officer about how tired he was? A
5 log book would have shown what time he got done working that
6 day, which could have given the officers some more insight
7 into what time he could have gone to John's Place. There
8 was never any discussion on the video about what time he got
9 there or how much time he spent there.

10 What evidence we have about what happened at
11 John's Place back on November the 6th, that came from Mr.
12 Adkins. Do you remember what he told you? "Yeah, it was
13 about midnight. I saw Mr. Alford in the bar, but he didn't
14 have a drink in his hand." And Mr. Shiflet asked him,
15 "well, what was he doing at John's Place?

16 "Well, he was over by the jukebox playing some
17 music."

18 Notice what he didn't tell you. He didn't tell
19 you Mr. Alford was in the bar acting drunk and unruly or
20 showing out. He didn't tell you that whenever he saw Mr.
21 Alford in the bar that he looked intoxicated to him. He
22 didn't tell you at that point he called 911 asking that Mr.
23 Alford be escorted out of the bar. It was only after Mr.
24 Alford leaves John's Place and had some words with the
25 bouncer about where he can and cannot park or have his

1 vehicle on the ground that Mr. Adkins calls the police. Do
2 you remember why he said he called the place? Because he
3 just wanted to get him out of there. So he calls 911. And
4 what better way to get the police out there quickly and to
5 get him out of there than to say, "oh, my, a tractor-trailer
6 driver barreling down the road, driving on the wrong side of
7 the road. Y'all better get out here quick. It's big danger
8 to everyone out on the road." But when Mr. Shiflet asked
9 him about how fast he was going, Mr. Adkins first responds,
10 "well, you know, he was going at a high rate of speed." 10
11 miles per hour was how he described that high rate of speed.

12 He also told you in describing Mr. Alford's
13 driving -- and mind you, Mr. Alford is in a tractor-trailer.
14 He is not in a Toyota Camry, as Mr. Shiflet mentioned. A
15 big difference between driving the two. A lot more gears on
16 a tractor, double clutch, more difficult sight line, but yet
17 Mr. Alford is able to, by Mr. Adkins own testimony, maneuver
18 at nighttime this tractor amongst a KOA campground, makes
19 maybe one, two three-point turns I believe Mr. Adkins
20 testified to, in a real tight space, not even as big as this
21 courtroom, and he didn't hit a thing. Does that sound like
22 driving while impaired to you?

23 He says after he leaves the campground he was
24 driving on the wrong side of the road.

25 And Deputy Palmer was right in the area that

1 night, and what did he tell you about that when he was on
2 the stand? "Well, I passed Mr. Alford, but it wasn't until
3 dispatch called and said that somebody reported this erratic
4 driving tractor-trailer driver that I turned around."
5 Deputy Palmer passed him. He didn't see him driving on the
6 wrong side of the road. You didn't hear that come out of
7 the deputy's mouth. He passed him on that road and saw no
8 such thing.

9 And like I told you at the beginning of this case,
10 the start of that video shows Mr. Alford's driving that
11 night. Is he barreling down Gold Hill Road? Does he seem
12 to you to be driving at a high weight of speed? Is he in
13 his proper lane? You will have that video back there with
14 you. Does he slow down as he approaches the intersection?
15 Does he observe the traffic signal? Yeah, he fails to use
16 his turn signal and the officers blue light him for that,
17 and he pulls over right away. He doesn't lead them on some
18 long chase, and parked at the gas station parking lot. And
19 the worst thing that the officer can tell me about his park
20 job, and you saw there was another car a few feet over from
21 where he parked his tractor-trailer, right in line of how
22 the other car was parked, but that he parked in front of a
23 dumpster.

24 The officer had Mr. Adkins there on the scene that
25 night. Mr. Adkins, he told you and he told the officer,

1 that he worked for KOA campground and John's Place. He
2 works there, but yet John's Place being right down the road
3 from where this traffic stop occurred and Mr. Alford being
4 the extreme danger that he was to the people of York County
5 that night, putting all their lives at risk, the officers
6 didn't think it was important enough to go right down the
7 road to John's Place and talk to the people there. He had
8 an employee that worked there. Certainly it would take him
9 five minutes to talk to the bartender, pull Mr. Alford's bar
10 tab and clarify what exactly he had to drink that night.
11 Not only did Deputy Palmer think it wasn't worth the
12 trouble, but neither did any of the officers from the York
13 County Sheriff's Department that were out there with him
14 that night, the officer from Tega Cay, or the officers from
15 the South Carolina Highway Patrol. In fact, Mr. Adkins, who
16 was so worried and called 911 in the first place, didn't
17 bother to do that either.

18 As the judge will instruct you at the end of this
19 case, and as we have already discussed, it is not the
20 defense's job to prove to you anything. Mr. Alford has the
21 right not to take a datamaster test, not to explain to the
22 officer what he means by certain phrases. That burden of
23 proof beyond a reasonable doubt lies one place, and one
24 place only, and that is with the State.

25 This trial is very important to Mr. Alford. This

1 is a big deal to him, and I ask on his behalf that you hold
2 the State to that burden. They have not proven beyond a
3 reasonable doubt that Mr. Alford's ability to drive his
4 vehicle safely was impaired by the use of alcohol, and for
5 that reason find him not guilty.

6 (Whereupon, at 2:28 p.m., the court instructed the
7 jury panel)

8 THE COURT: Madam Forelady, members of the jury
9 panel, that concludes the final arguments from counsel.
10 It's now time for me to charge you, that is, to instruct you
11 with regard to the law that applies to the issues in this
12 case.

13 In this case the State of South Carolina charges
14 Timothy Wayne Alford with the offense of driving under the
15 influence. To this charge the defendant has pled not
16 guilty, which then places upon the State the burden of
17 proving the defendant guilty.

18 A person charged with committing a criminal
19 offense in South Carolina is never required to prove himself
20 innocent.

21 I charge you that it is a vial important rule of
22 law that a defendant in a crime trial must always be
23 presumed innocent until his guilt has been proved beyond a
24 reasonable doubt. This presumption of innocence remains
25 with the defendant at all times throughout the trial and is

1 only removed when, and if, the State has proved guilt beyond
2 a reasonable doubt. For it is your solemn duty, ladies and
3 gentlemen, if not clearly convinced of guilt beyond every
4 reasonable doubt to the contrary to find the defendant not
5 guilty.

6 Madam Forelady, members of the jury panel, I
7 instruct you and emphasize to you that the fact that the
8 defendant did not testify in this case is not a factor to be
9 considered by you in any way in your deliberation. You must
10 not consider the fact that the defendant has chosen not to
11 testify or put up any evidence when you determine the guilt
12 or innocence of the defendant. It must not be considered by
13 you in any manner whatsoever either against or for the
14 defendant.

15 A defendant has the Constitutional Right to remain
16 silent. The assertion of that Constitutional Right cannot
17 and must not be considered by you in your deliberations.
18 Under your oath then you are to reach no inference and draw
19 no conclusion whatsoever from the fact that the defendant
20 has chosen not to testify. The fact that the defendant did
21 not testify should not even be discussed in your jury room.

22 The burden of proof, as I have stated to you, is
23 upon the State. It is not the burden of the accused to
24 prove his innocence. The burden of proof remains upon the
25 State to prove guilt beyond every reasonable doubt.

1 Again, I emphasize the fact that the defendant did
2 not testify is not a factor to be considered by you in
3 determining the guilt or innocence of the defendant or in
4 any other aspect of your deliberations.

5 So the State has the burden of proving the
6 defendant guilty beyond a reasonable doubt. What is a
7 reasonable doubt? Some of you may have served as jurors in
8 civil cases where you were told it is only necessary to
9 prove the fact is more likely true than not, such as by the
10 greater weight or preponderance of the evidence. However,
11 in criminal cases the State's proof must be more powerful
12 than that. It must be beyond a reasonable doubt.

13 Now, ladies and gentlemen, proof beyond a
14 reasonable doubt is proof that leaves you firmly convinced
15 of the defendant's guilt. There are very few things in this
16 world that we know with absolute certainty and in criminal
17 cases the law does not require proof that overcomes every
18 possible doubt.

19 A reasonable doubt may also be described as the
20 kind of doubt that would cause a reasonable person to
21 hesitate to act. If you have such a doubt as to the guilt
22 of the defendant, then he would be entitled to a verdict of
23 not guilty. Reasonable doubt may arise from evidence which
24 is in the case or from the absence or lack of evidence in
25 the case.

1 If, based on your consideration of the evidence,
2 you are firmly convinced that the defendant is guilty of the
3 crime charged, you must find him guilty.

4 If, on the other hand, you think there is a real
5 possibility that he is not guilty, you must give him the
6 benefit of the doubt and find him not guilty.

7 You alone must make the determination of whether
8 or not reasonable doubt exists as to the guilt of the
9 defendant.

10 Madam Forelady, members of the jury panel, there
11 are two types of evidence which are generally presented
12 during a trial; direct evidence and circumstantial evidence.

13 Direct evidence is the testimony of a person who
14 asserts or claims to have actual knowledge of a fact, such
15 as an eyewitness.

16 Circumstantial evidence is proof of a chain of
17 facts and circumstances indicating the existence of a fact.

18 The law makes absolutely no distinction between
19 weight or value to be given to either direct or
20 circumstantial evidence, nor is a greater degree of
21 certainty required of circumstantial evidence than of direct
22 evidence.

23 You should weigh all the evidence in the case.
24 After weighing all the evidence, if you are not convinced of
25 the guilt of the defendant beyond a reasonable doubt, you

1 must find the defendant not guilty.

2 Madam Forelady, members of the jury panel, under
3 the Constitution of South Carolina you are the finders of
4 facts in this case. I do not have the right to pass upon
5 the facts or even to express any opinion I might have as to
6 the facts, nor may I suggest in any way what I may think
7 about the guilt or innocence of the defendant. You should
8 form no opinion in that regard from anything I may have said
9 or any ruling I have made during the course of the trial.

10 As the sole judges of the facts in this case you
11 are also necessarily the sole judges of the credibility or
12 believability of each of the witnesses that have testified
13 during the course of the trial.

14 There are number of factors which you may consider
15 in arriving at your assessment as to a particular witness'
16 credibility or believability. Some factors I'm going to
17 list for you, and should you think of other factors that you
18 believe also ought to be considered when you go back into
19 your jury room on the question of credibility, then you
20 should consider those factors as well, but you may consider
21 the demeanor of the witness from the witness stand. What
22 was that witness' manner of appearance? Was the witness
23 straightforward in answering questions or hesitant in
24 responding to questions? Simply put, do you believe the
25 witness was telling the truth or not telling the truth? Do

1 you believe the witness knew of what that witness testified
2 or did not know of what that witness testified?

3 You may consider whether or not the testimony of a
4 witness is consistent or inconsistent with that witness' own
5 testimony or with other testimony or evidence presented
6 during the course of the trial.

7 You may also consider how the witness came to know
8 the facts to which he testified.

9 You may consider the opportunity that a witness
10 had to observe or hear, that is, to perceive the existence
11 of a fact by means of their senses.

12 You may also consider whether or not a witness is
13 biased or prejudiced. That simply means do you find that a
14 particular witness had some reason to come into court and
15 testify one way or another to help or hurt one side or the
16 other.

17 You may also consider whether or not the testimony
18 of a witness was strengthened or weakened by other testimony
19 or other evidence presented during the course of the trial.

20 Madam Forelady, members of the jury panel, the
21 same Constitution that makes you the finders of the facts
22 makes me the sole and only instructor in the law. You must
23 accept as correct the law that I charge and apply to the law
24 the evidence as you find it and reach your verdict. Put
25 aside any conceptions you may have had as to the law before

1 coming here today and accept the law as I instruct it to be.
2 You, for purposes of your duty as jurors today, should not
3 be concerned about what the law ought to be, but what I
4 charge you the law is now in this state.

5 Now, Madam Forelady, I charge you, and members of
6 the jury panel, I charge you now specifically with the law
7 concerning driving under the influence in this state.

8 I have instructed you that the defendant, Mr.
9 Timothy Wayne Alford, is charged with the offense known in
10 law as driving under the influence. I will now read to you
11 in part Section 56-5-2930, 1976 Code of Laws of South
12 Carolina, which states as follows:

13 It is unlawful for a person to drive a motor
14 vehicle within this state while under the influence of
15 alcohol to the extent the person's mental and physical
16 faculties to drive are materially and appreciably impaired.

17 To constitute a violation of this law, the State
18 must prove beyond a reasonable doubt three elements of this
19 offense.

20 First, that this court has jurisdiction or the
21 right to try this case. Now, the solicitor and counsel for
22 the defendant have agreed or stipulated that this court has
23 the right to and jurisdiction of this case.

24 Second, that at the time and place alleged in the
25 indictment the defendant was the driver of a motor vehicle.

1 And, third, that at the time and place alleged in
2 the indictment the defendant was under the influence of
3 alcoholic beverage.

4 It is a violation of the criminal law of South
5 Carolina for anyone to operate a motor vehicle in this state
6 when he or she is under the influence of alcoholic beverage.

7 Let me explain to you now what I mean by being
8 under the influence. A person is not under the influence
9 simply because he or she drinks something alcoholic and
10 thereafter drives a vehicle.

11 On the other hand, in order to prove a defendant
12 guilty of driving under the influence, the State does not
13 have to prove that the defendant was dead drunk, that he was
14 wallowing drunk, that he was falling down drunk.

15 The dividing line is between those two extremes,
16 the drunk on the one hand and the person who simply had
17 something alcoholic to drink on the other.

18 A person is under the influence when that person
19 has consumed such a quantity of alcoholic beverage that his
20 or her ability to operate a motor vehicle is materially and
21 appreciably impaired. In other words, when a motorist
22 drinks so much alcohol that he or she is materially less
23 able to drive than he or she would be, had he or she had
24 nothing to drink, then that person is under the influence.
25 And if that person drives while in that condition, that

1 person is guilty of violating the statute which says a
2 person shall not drive while under the influence of alcohol.

3 Madam Forelady, members of the jury, in this state
4 we have what is known as the implied consent law. This law
5 provides for the use of a datamaster machine to determine
6 blood alcohol content. It states that when an officer
7 arrests an individual and charges that individual with
8 driving under the influence, the arresting officer must take
9 that person to a place where he or she can be tested on the
10 datamaster machine.

11 Now, a person may refuse to take the datamaster
12 test, but if he does so, his driver's license will be
13 suspended for a period of six months, even though he may in
14 a trial at a later time be found not guilty of the charge.

15 In the case before you today the defendant refused
16 to take the datamaster test, as he had a right to do.
17 Therefore, there is no evidence of any results of such a
18 test in this case, so that you must make your determination
19 of whether or not the defendant was under the influence of
20 alcohol on the basis of the instruction which I have already
21 given you.

22 In this case there is testimony that the defendant
23 refused to take the breath and alcohol test, the datamaster
24 test, when it was offered to him under lawful conditions.
25 It was the Constitutional Right of the defendant to so

1 refuse, but it is also the right of the State to tell you
2 through proper testimony that he did refuse. You may not
3 infer guilt from his refusal to take the test. You may
4 consider this fact, along with all of the other facts and
5 evidence in your deliberations as to the defendant's
6 innocence or guilt.

7 The burden of proof, as I have stated to you, is
8 upon the State to prove the elements of this offense beyond
9 a reasonable doubt.

10 Madam Forelady, members of the jury panel, nothing
11 that I may have said or done during the course of this trial
12 has been in any way intended to express or suggest a view of
13 the case or an opinion as to the facts, the weight of the
14 evidence, or the credibility of the witnesses. If any of my
15 actions or words have seemed to so indicate, you will
16 disregard such. Form your own opinion as to these matters.

17 You have been selected as fair and impartial
18 jurors, sworn to impartially try and determine the facts of
19 this case. And when you comply with your oath to do so,
20 then no one will have a right to criticize your verdict and
21 you will have fully discharged your duty as jurors.

22 You are to decide this case according to the
23 testimony you have heard from the lips of the sworn
24 witnesses, along with other evidence introduced during the
25 course of the trial.

1 I charge you that as jurors you must decide the
2 issues in this proceeding without bias and without prejudice
3 to any party. You cannot allow yourselves to be governed by
4 sympathy, by prejudice, by passion, by public opinion, or
5 any other arbitrary factor. Both the State and the
6 defendant have the right to expect that each of you will
7 carefully and impartially consider all of the evidence in
8 the case and that you will follow the law as I have
9 explained it to you.

10 Madam Forelady, members of the jury panel,
11 whatever your verdict in this case, it must be your
12 unanimous verdict. All twelve jurors must agree on the
13 verdict which the foreperson would be authorized to write on
14 behalf of the jury.

15 Madam Forelady, I charge you that once you begin
16 your deliberations, that you maintain some order in those
17 deliberations. Everyone who wishes to be heard and
18 participate in deliberations be allowed to do so.

19 If for any reason any members of the jury panel
20 take a break from the deliberations, all should take a
21 break. By that I mean all twelve jurors should be present
22 and deliberating when deliberations are going on.

23 I have prepared for your use in the jury room a
24 verdict form. I'm going to go over that with you at this
25 time.

1 On the verdict form there are two possible
2 verdicts the jury could reach.

3 The first is as follows: We, the jury, find the
4 defendant, Timothy Wayne Alford, guilty of driving a vehicle
5 while under the influence of control.

6 The second possible verdict that appears on the
7 verdict form is, we, the jury, find the defendant, Timothy
8 Wayne Alford, not guilty.

9 Now, in putting the possible verdicts on the
10 verdict form I have to put them down in some order. I do it
11 the same way every time, but the order in which the possible
12 verdicts appear on the verdict form means absolutely nothing
13 and you should infer nothing from it. What you should do is
14 deliberate.

15 Madam Forelady, once the jury has reached a
16 unanimous verdict, you will simply go to the verdict on the
17 verdict form which corresponds to the unanimous verdict
18 reached by the jury. You will simply put a check mark in
19 the blank beside that particular verdict. Sign your name on
20 the line above the word foreperson's signature and date it.
21 Once you have done that, you knock on the door and let the
22 bailiff know that you have reached a verdict and I will
23 bring you back out to receive that verdict.

24 Now, if you should begin deliberating and you
25 become divided and you send me a note out to that effect,

1 please do not tell me how you are divided. I do not wish to
2 know numbers. So if you are divided, you can tell me you
3 are divided, but please if you are divided don't give me the
4 numbers of the division, if you don't mind. Thank you.

5 Now, I'm going to get you to, if you will, at this
6 time to retire to the jury room, but do not yet begin your
7 deliberations. I have to give counsel an opportunity to
8 request additional instructions on the law. If additional
9 instructions are requested and I deem them necessary, I will
10 bring you back out and give you those additional
11 instructions. It follows that we should make sure all
12 instructions are complete before you begin deliberations.

13 If you will retire to the jury room at this time,
14 all except the alternate. Sir, I'll ask you at this time
15 not to go into the jury room, but wait just outside the
16 courtroom door for further instructions.

17 (Whereupon, at 2:45 p.m., the jury retired to the
18 jury room, awaiting instructions to begin deliberations)

19 THE COURT: Exceptions or additional requests to
20 charge from the State?

21 MR. SHIFLET: No, Your Honor.

22 THE COURT: From the defense?

23 MS. SIKORA: No, Your Honor.

24 THE COURT: All right. I did notice one thing I
25 wanted to change on the verdict form, so I'm getting that

1 done right quick. We had under the influence of alcohol
2 and/or drugs. There is no evidence of any drugs, so I
3 wanted to eliminate that from the verdict form. She will
4 have that in just a moment.

5 If you all will check the exhibits and make sure
6 only those that actually got admitted into evidence go back
7 to the jury, please.

8 (Off the record)

9 (Back on the record)

10 MS. SIKORA: May we approach, Your Honor?

11 THE COURT: Sure.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 THE COURT: If they request to hear some of these
15 videos, we will bring them back out in the courtroom and
16 play them. Okay.

17 (Off the record)

18 (Back on the record)

19 THE COURT: You can have the alternate come on in
20 now.

21 (Whereupon, the alternate juror was brought into
22 the courtroom)

23 THE COURT: Sir, you can stand right there, if you
24 will.

25 Mr. Spittle, as it turned out we made it through

1 the trial without an emergency developing, so it will not be
2 necessary for you to replace a juror, so this will conclude
3 your service on this particular case. In a moment we will
4 find out what you need to do.

5 (Off the record)

6 (Back on the record)

7 THE CLERK: Call after seven tonight.

8 THE COURT: All right. We will excuse you for the
9 balance of the day. Please call your voicemail number
10 tonight after seven o'clock and you will get instruction as
11 to when or if you have to report back, okay? Thank you for
12 your service and your patience and you are free to go at
13 this time.

14 (Whereupon, the alternate juror was discharged)

15 (Whereupon, at 2:47 p.m., the jury panel was
16 instructed to begin deliberations)

17 THE COURT: Okay, we will be at ease.

18 (Whereupon, at 2:48 p.m., proceedings were
19 recessed, pending the verdict of the jury panel)

20 (Whereupon, at 3:30 p.m., proceedings were
21 reconvened)

22 THE COURT: All right, counsel, we have got a
23 verdict in the case.

24 Please bring the jury in.

25 (Whereupon, at 3:31 p.m. the jury returned to open

1 court to report its verdict)

2 THE COURT: Madam Forelady, have you and the jury
3 reached a unanimous verdict in this case?

4 JURY FOREPERSON: Yes, Your Honor, we have.

5 THE COURT: Okay, please hand the verdict form up
6 to the bailiff, if you will, please, ma'am.

7 The clerk may please publish the verdict.

8 THE CLERK: In the State of South Carolina versus
9 Timothy Wayne Alford, Indictment Number 2112-GS-46-00298,
10 we, the jury, find the defendant, Timothy Wayne Alford,
11 guilty of driving a motor vehicle under the influence of
12 alcohol. Signed by the foreperson this day.

13 If this so be your verdict, so say you all by
14 raising your right hands.

15 Let the record show all affirmed.

16 THE COURT: Any questions of the jury panel from
17 the State?

18 MR. SHIFLET: None from the State.

19 THE COURT: From the defense?

20 MS. SIKORA: No, Your Honor.

21 THE COURT: Thank you.

22 Madam Forelady, members of the jury panel, this
23 will conclude your service on this case.

24 I'm going to ask you, if you will, to call in
25 tonight after seven o'clock from your voicemail number and

1 you will get instructions then as to when or if you are
2 going to have to report back or when you are going to have
3 to report back. I think we will probably start another
4 trial in the morning, as far as I know, but I'm not sure if
5 you will be needed for that or not. But, in any event, if
6 you will just call your voicemail number after seven,
7 anytime after seven tonight, and you will get instructions
8 as to how to proceed.

9 I want to take this opportunity to thank you for
10 your service this week and your sacrifices you made this
11 week. We appreciate it very much. You are free to go at
12 this time with our thanks.

13 (Whereupon, at 3:32 p.m., the jury panel was
14 discharged)

15 THE COURT: All right, I'll hear you with regard
16 to any motions that you might want to make at this time.

17 MS. SIKORA: May it please the court, Your Honor,
18 at this time the defense would review all previous motions
19 and make a motion for a new trial based on lack of
20 sufficiency of evidence in this case, Your Honor.

21 THE COURT: All right. Your motion is noted for
22 the record and the motion is denied for the same reasons I
23 gave previously, and, that is, I find there is substantial
24 evidence from which a jury could infer guilt of the
25 defendant and the State had proven the elements of this

1 offense beyond a reasonable doubt.

2 Do you have your sentencing sheet ready, counsel?

3 MR. SHIFLET: Yes.

4 THE CLERK: I'm working on it.

5 THE COURT: Is there anything that you wish to
6 say?

7 MR. SHIFLET: I would just point out for the court
8 his prior driving under the influence conviction from
9 November the 23rd, 2007.

10 THE COURT: Does he have any other record?

11 MR. SHIFLET: No, Your Honor.

12 THE COURT: Okay. Counsel, how much time has he
13 served on this?

14 MS. SIKORA: 185 days.

15 THE COURT: I don't understand that, but I will be
16 glad to hear from you at this time.

17 MS. SIKORA: May it please the court, Your Honor,
18 as you have heard, my client has served 185 days already on
19 this charge.

20 He has served as a military contractor working in
21 the field of logistics from 2005 through 2010, and
22 throughout the course of the trial I believe Your Honor
23 heard testimony that he has worked as truck driver
24 throughout his life.

25 He does have two children; a son age 26 in

1 Mississippi, and a daughter, age 30, also in Mississippi.
2 He is not local to this area, Your Honor, and is from Silver
3 Creek initially.

4 He does have some medical problems, including
5 hypertension that he's currently suffering now from, Your
6 Honor.

7 He did want me to let the court know that he's
8 been having an especially hard time over the course of these
9 last two weeks. He was rather close with Mr. Spagnoli in
10 the jail, Your Honor.

11 THE COURT: Mr. Alford, is there anything that you
12 want to you say to the court?

13 THE DEFENDANT: No, sir.

14 THE COURT: Where are you living now? What's your
15 home? Where would you go once you are released from jail?

16 THE DEFENDANT: To Jackson.

17 THE COURT: Mississippi?

18 THE DEFENDANT: Yes.

19 THE COURT: Is that where your home is?

20 THE DEFENDANT: That's where I will be staying.

21 THE COURT: Okay. We have to -- you are going to
22 be on probation for this. Monies has got to be paid. If it
23 wasn't for that we wouldn't have to put you on probation.
24 You have already served more than the minimum time, which is
25 what I don't understand. You could have gotten out of jail

1 a long time ago, and you -- you know, of course you would
2 have had to plead guilty and I guess they couldn't get it
3 scheduled. You don't have to plead guilty. Obviously you
4 got a right to a jury trial, but resulting you spent a lot
5 of time in jail.

6 In any event, there is a fine, a good bit of money
7 that's going to have be to paid, so I have to put you on
8 probation for that. And we will -- I'm going to transfer
9 the supervision to Mississippi so that you can report to a
10 probation agent down there.

11 Now, it's going to take a little bit of time to
12 get that done, so you will get out right away, but they will
13 have to fill out the paperwork on you here. They will have
14 to transfer it down there. So you can leave to go back
15 there and be transferred down there, whenever they say, but
16 they will get the paperwork down there. When you get down
17 there, sometimes there is a little time lost in getting the
18 paperwork and getting you set for a meeting. Some people
19 just walk away from it. Don't walk away from it, okay?
20 Make sure you get with your local office down there,
21 probation office. Report to them so you can get started
22 with this.

23 If you somehow get this money paid, I'm going to
24 allow you to get off probation after a year, but it's a lot
25 of money.

1 THE DEFENDANT: Do you have any idea how much it
2 is, sir?

3 THE COURT: They can tell you in a minute. The
4 minimum fine is \$1,100, but you can triple that with all the
5 add-ons this state has to put on these things, so it going
6 to be a lot; plus you are going to have a \$500 fee to the
7 Public Defense Fund, which is required by statute if you get
8 placed on probation. So you are going to be looking in the
9 neighborhood of probably 3,500 to \$4,000. The clerk can
10 probably tell you pretty quick, but it's a lot of money.

11 Now, if you can get all that paid, you can get off
12 probation after a year. I'm going to require you to be on
13 probation for a year. I always do with a DUI. After that
14 you can get off, get it terminated, but I'm going to put you
15 on for five, you know, get as long as possible to get this
16 money paid back. Once it's paid you can get off after a
17 year. You don't have to stay on it the whole time. Do you
18 understand?

19 THE WITNESS: Yes, sir. One year?

20 THE COURT: One. Well, it's five years, but if
21 you get all the monies paid off, you can get off after one.
22 Do you understand? You will have to stay on at least a
23 year.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I have to go back to my old spelling

1 of Mississippi; M-I crooked back crooked back, whatever,
2 when I learned to spell that, back when I had to learn to
3 spell it in school.

4 All right, in case number 2112-GS-46-298, Timothy
5 Wayne Alford, having been found guilty by a jury of driving
6 under the influence less than .10, second offense, the
7 sentence of the court is to be committed to the State
8 Department of Corrections for a determinate term of one year
9 and pay a fine of \$2,100, provided upon the service of time
10 served and payment of \$1,100, plus costs and assessments.
11 The balance is suspended with probation for five years.

12 He is given credit for 185 days of jail time.

13 He's also required to pay the \$500 fee to the
14 Public Defense fund.

15 Provided further that he can get off probation
16 early, have it terminated early, after one year if he gets
17 everything paid out and is otherwise in good standing.

18 Provided further that supervision for probation
19 may be transferred to Mississippi.

20 MR. SHIFLET: Thank you, Your Honor.

21 THE COURT: Good luck to you, sir.

22 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 7th and 8th days of May, 2012.

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

AUGUST 21, 2012



Michael R. Watts
Circuit Court Reporter

WITNESSES

SD/Parlmer

749 FJ

ACTION OF GRAND JURY

TRUE BILL

representative of Grand Jury

date: 1/19/12

VERDICT

Guilty

representative of Petit Jury

date: 5/8/12

DOCKET NO. 2012-GS-46-00298

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

January 19, Term 2012

THE STATE

vs.

TIMOTHY WAYNE ALFORD

Indictment for

**DRIVING VEHICLE WHILE UNDER THE
INFLUENCE OF ALCOHOL AND/OR DRUGS**

SC Code: 56-5-2930

CDR Code: 3356

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

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 YORK)

INDICTMENT

CERTIFIED TRUE COPY

2012 MAY -9 PM 3:09

At a Court of General Sessions, convened on January 19, 2012, the Grand Jurors of York County present upon the return of
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

DRIVING VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL AND/OR DRUGS

The Defendant Timothy Wayne Alford, did in York County, South Carolina, on or about November 6, 2011, drive a vehicle while under the influence of alcohol and/or any other drug or a combination of drugs and/or substances which cause impairment and while having a blood alcohol level less than .10, to the extent that his faculties to drive are materially and appreciably impaired; such not being the first offense within a period of ten years including and immediately preceding the foregoing date, all in violation of Section 56-5-2930, Code of Laws of South Carolina (1976, as amended).

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF York)
 STATE VS.)
 Timothy Wayne Alford)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4600298
 A/W#: 50749FJ
 Date of Offense: 11/6/2011
 S.C. Code §: 56-05-2930(A)
 CDR Code #: 3356

AKA: _____
 Race: WHITE Sex: M Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____

CERTIFIED TRUE COPY
 2012 MAY -9 PM 3:00

DL#: 802087107 SID#: SC02025403
 *CDL Yes No CMV Yes No Hazmat
 In disposition of the said indictment comes now the Defendant who was
 TO: DUI / Driving under the the influence, less than .10, 2nd offense

SENTENCE SHEET
ORIGINAL

in violation of § 56-05-2930(A) of the S.C. Code of Laws, bearing CDR Code # 3356
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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

ATTEST:
 Shiflet, John M 79692 Defendant
 Attorney for Defendant 73035 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ 2,100.00 provided that upon the service of TIME SERVED days/months/years and/or payment
 of \$ 1,100.00; plus costs and assessments as applicable*; the balance is suspended with probation for 5

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 185 Days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP *after 1 year*
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____

*Fine:		\$1100-
§ 14-1-206 (Assessments 107.5 %)		\$1182.50
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100 -
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100 -
§ 56-5-2995 (DUI Assessment)	\$12	\$ 12 -
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500 -
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25 -
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5 -
3% to County (if paid in installments)		\$
TOTAL		\$3024.50

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

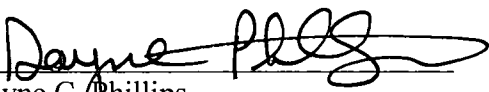
Clerk of Court/ Deputy Clerk David Hamilton
 Court Reporter: Michael Watts
 SCCA/217 (03/2011)

Presiding Judge *John O'Connell*
 Judge Code: 2113
 Sentence Date: 5-8-12

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the 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."

This 28th day of March, 2013


Dayne C. Phillips
Appellate Defender

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

ATTORNEY FOR APPELLANT