

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

**RECEIVED**  
JUL 11 2014  
**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

CATHY KENNINGTON ROCKET,

APPELLANT

APPELLATE CASE NO. 2013-002523

RECORD ON APPEAL

ROBERT M. PACHAK  
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

JENNIFER ELLIS ROBERTS  
Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211  
(803) 734-3727

KEVIN S. BRACKETT  
Solicitor, Sixteenth Judicial Circuit  
Moss Justice Center  
1675 York Highway, Ste. 1-A  
York, SC 29745-7495  
(803) 628-3020

Attorneys for Respondent

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:  
STATE’S EXHIBIT #1 (CD-OFFICER PROULX IN-CAR VIDEO – 5/13/12)**

State of South Carolina., ) In the General Sessions Court  
 ) Of York County  
 )  
 ) Case No.: 2012-GS-46-03177  
 ) 2012-GS-46-03178  
 County of York. )

State of South Carolina., )  
 )  
 Plaintiff., )  
 )  
 -vs- ) Transcript of Record  
 )  
 Cathy Kennington Rockett., )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

November 18-20, 2013  
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge, and a jury.

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

Mr. Chris Jones  
 Assistant Solicitor  
 Sixteenth Judicial Circuit  
 Solicitor's Office, Union and York Counties  
 Moss Justice Center  
 1675-1A York Highway  
 York, South Carolina 29745  
 803-628-3020  
[Chris.jones@yorkcountygov.com](mailto:Chris.jones@yorkcountygov.com)  
 For The Plaintiff

Mr. James W. Boyd  
 Attorney at Law  
 1544 Ebenezer Road  
 Post Office Box 36425  
 Rock Hill, South Carolina 29732  
 803-328-2600  
[Jamesboyd@comporium.net](mailto:Jamesboyd@comporium.net)  
 For the Defendant

**ORIGINAL**

Wanda Nelson, CVR-M  
 Sixteenth Judicial Circuit  
 To the Honorable John C. Hayes, III

1 (COURT IN SESSION IN THE MATTER OF STATE V. CATHY  
2 KENNINGTON ROCKETT MONDAY, NOVEMBER 18, 2013 AT 03:01  
3 P.M..)

4 THE COURT: Is the State ready to go forward on Ms.  
5 Rockett?

6 SOLICITOR JONES: Yes, Your Honor, the State's ready  
7 to go forward on *State versus Cathy Rockett* for DUI and  
8 Habitual Traffic Offender.

9 THE COURT: Mr. Boyd, any matters we need to take up  
10 before we get the jury panel up?

11 MR. BOYD: Your Honor, just a few pretrial motions.

12 THE COURT: What?

13 MR. BOYD: Just a few pretrial motions.

14 THE COURT: All right, let's go ahead and start on  
15 those.

16 Is the panel downstairs?

17 MADAME CLERK: They won't be here until 3:30.

18 THE COURT: The panel won't be here until 3:30 anyway  
19 so lets start. Go ahead, what pretrial motions do we have?

20 MR. BOYD: Your Honor, I filed - I can pass up this,  
21 it's a written motion to dismiss that goes to the DUI.

22 THE COURT: All right.

23 MR. BOYD: Do you need it?

24 THE COURT: Yeah, I don't have it so it would be nice  
25 to have it. You can just bring it around.

1 (DOCUMENTS RECEIVED UP BY THE COURT.)

2 THE COURT: Thank you.

3 MR. BOYD: Your Honor, the background of this motion,  
4 my client was on May 13th, 2012 was found to be - basically  
5 officers arrested her in a parking lot at the Exxon station  
6 on Cherry Road. During the - My motion goes to the failure  
7 of the State to video tape my client's conduct and field  
8 sobriety test in accordance to 56-5-2953.

9 Basically, Your Honor, what we have in this situation  
10 is that the video was on the patrol car. My client for  
11 approximately the first eighteen minutes of the video is,  
12 give or take a few seconds, is not shown on the video.  
13 There is conversation with her, questioning of her and for  
14 quite a bit of questioning in conversation with her on the  
15 video which she is completely off the video during this  
16 time except perhaps for a few seconds where she comes on  
17 and goes back off so she is not seen on the video during  
18 that period of time.

19 Of course, Your Honor, 56-5-2953 provides that a  
20 person must - in the situation must have his conduct at the  
21 incident site and the breath test site video recorded.

22 The court interpreted this in the case of Murphy  
23 versus State and basically in the Murphy case it was a  
24 situation in which the defendant was being given field  
25 sobriety test and the legs and feet were cut off during the

1 - a portion of the field sobriety test so the field  
2 sobriety test wasn't fully recorded. The court in Murphy  
3 said that it was conduct that counted so even though the  
4 field sobriety test were not fully recorded the defendant's  
5 conduct was recorded. And Murphy defined in conduct -  
6 conduct they quoted from the Oxford Dictionary and said -  
7 defined conduct as one's behavior, action or demeanor and  
8 that's what has to be video recorded.

9 In this particular case Ms. Rockett during eighteen  
10 minutes approximately of the video her behavior, action and  
11 demeanor is not video recorded. You can hear her speaking,  
12 you can hear the officer speaking but you can't see her at  
13 all. And I submit that that violates the statute. It  
14 certainly violates the definition that was set down in  
15 *Murphy*.

16 Now since Murphy the statute has been amended and now  
17 the requirement that the conduct be recorded is still in  
18 there but the legislature has added certain portions that  
19 have to be recorded and provided that the video recording  
20 at the incident site must include any field sobriety test  
21 administered. In this case at - after approximately  
22 eighteen minutes my client is brought in front of the video  
23 camera in front of a patrol car and they proceed to conduct  
24 three field sobriety tests on her one of which is a walk  
25 and turn test. During the walk and turn test she is - she

1 walks towards the patrol car and back from the patrol car.

2 Two problems with that, Your Honor. One is that she's  
3 positioned such that she walks toward the car and back from  
4 the car that you cannot actually see the heels touch the  
5 toes that's required to do in the walk and turn test. But  
6 even more importantly than that as she approaches the  
7 patrol car the hood of the patrol car cuts off her feet and  
8 you cannot see her steps and see her feet at all during  
9 that portion of it and she turns around and walks back  
10 until she walks back toward the officers and you can't see  
11 her feet. So there's a portion of that field sobriety test  
12 that one cannot see completely.

13 Your Honor, the requirements of the of Section 56-5-  
14 2953 are mandatory and the courts have held *Town of Mount*  
15 *Pleasant versus Roberts*, *City of Rock Hill versus Suchenski*  
16 that the remedy for non compliance is dismissal of the case  
17 and in this particular case that is the remedy.

18 Your Honor, I would just frankly quote from a decision  
19 you've written recently passed down in an appeal from a  
20 magistrate court, the case of *State versus Shelby Larusso*.  
21 You stated admittedly the sanction of dismissal is severe  
22 but as the South Carolina Supreme Court observed in the  
23 *Town of Mount Pleasant versus Roberts* the legislature has  
24 clearly intended strict compliance with the provisions of  
25 Section 56-5-2953 an interment - a severe sanction from

1 dismissal from non compliance.

2 What we have here is certainly a much worse non  
3 compliance than it was in that case I quoted.

4 THE COURT: What was that? I've had this heel to toe  
5 within the last month or so.

6 MR. BOYD: Right. And that's the decision you had,  
7 Your Honor.

8 THE COURT: That's Larusso?

9 MR. BOYD: Yes, sir.

10 THE COURT: Okay. Was that from Union County?

11 MR. BOYD: No, sir, that was from York. So basically,  
12 Your Honor, my motion is the dismissal on the grounds that  
13 the video tape and this video recording in this case and  
14 fails in two respects basically. It fails to record  
15 conduct for approximately eighteen minutes and I believe  
16 that's alone enough to warrant a dismissal. And it also  
17 fails to fully record the field sobriety test of a walk and  
18 turn test which I submit also was alone and by itself  
19 enough to warrant a dismissal. Certainly both of them  
20 combined warrants dismissal.

21 THE COURT: All right. Mr. Jones.

22 SOLICITOR JONES: Thank you, Your Honor.

23 First I want to notice this is a pretrial hearing but  
24 I want to point out to the court this is the defendant's  
25 ninth DUI arrest, she had eight prior convictions.

1           And now to get to Mr. Boyd's points. . It's the state's  
2 position that we complied with --

3           THE COURT: That's interesting to know but if she had  
4 had a hundred I think its egregious that anybody would get  
5 that many and not worry about whoever this lady or anybody  
6 that accumulate that kind of record but that's not part of  
7 the analysis.

8           SOLICITOR JONES: Right. And I understand that, Your  
9 Honor. It's the State's position that we complied with  
10 2953(A) because the video shows the defendant's conduct and  
11 it shows the field sobriety test that were administered.

12           2953(A) provides the same broader conduct requirement  
13 that existed when the old version of the statute that was  
14 part of the *Murphy - Murphy's* court's analysis. But I  
15 think the *Murphy* case is still relevant to the analysis of  
16 this case. And the broader conduct requirement is the  
17 context in which the specific requirements of 2953(A1)(A)  
18 should be considered. So in other words when interrupting  
19 the statute you should read it as saying the video  
20 recording at the incident site must include the person's  
21 conduct during any field sobriety test administered. And  
22 to read these specifically enumerated requirements out of  
23 context I think would miss the entire thrust of the  
24 statute.

25           The second: The video recording at the incident site

1 did include the field sobriety test. More specifically it  
2 included the defendant's conduct during the field sobriety  
3 test. And the statute doesn't make any additional  
4 requirements other than the video includes field sobriety  
5 test. The statute does not say the video must be  
6 unobstructed and a person must continuously within - be  
7 within the view of the camera from start to finish.

8 And if I can go and talk a little bit about - -

9 THE COURT: It does say that they must have their  
10 conduct. If you try to read it like you are, which is  
11 there's nothing wrong with it, (A) says a person must have  
12 their conduct at the incident site recorded, period.

13 SOLICITOR JONES: Right.

14 THE COURT: And then it says the video recording site  
15 must not begin later than the activation of the officer's  
16 blue light. So to read it as you read it I still believe  
17 you come up with the conduct at the incident site must  
18 begin not later than the activation of the officer's blue  
19 light.

20 SOLICITOR JONES: Yes. Yes, Your Honor, I agree with  
21 that. The conduct must be recorded but I think - -

22 THE COURT: When they are not on the camera for  
23 eighteen months - eighteen months - eighteen minutes how  
24 are their conduct being recorded?

25 SOLICITOR JONES: I'll get to that portion of it in a

1 minute, Your Honor.

2 THE COURT: I don't want you to get to it in a minute.  
3 I want you to get to it now cause it's on my mind.

4 SOLICITOR JONES: Yes, sir. When the officers  
5 responded to this call they responded to a domestic  
6 disturbance so when they were first called out on 911 they  
7 were going to an address [REDACTED] Street in Rock Hill.  
8 In route there a dispatch said well never mind the suspects  
9 are now leaving and they're going down Rutledge. Then law  
10 enforcement had to - went down the road to this Exxon  
11 station and when they got to the Exxon and they were  
12 questioning this defendant, they were asking her what  
13 happened at [REDACTED] Street and they were trying to  
14 figure out her story. And if we're able to watch the video  
15 in a second you can hear they ask her well where were you  
16 and what were you doing at this house and what happened  
17 there. And in my talking with law enforcement they said  
18 they were investigating a domestic disturbance, that then  
19 after they talked to the defendant they smelled alcohol and  
20 she was slurring her speech and that's when they decided to  
21 do the field sobriety test.

22 It's a little bit different than just a regular ole  
23 traffic stop in that regard, Your Honor. Does that make  
24 sense?

25 THE COURT: Well factually it makes sense. But it

1 says here a person who violates and then it list the three  
2 sections that forbid you to drive while under the  
3 influence. It says what it says, that their conduct must  
4 be recorded from the time the lights turned on. It says a  
5 person who violates it may if stopped for that it says that  
6 they - -

7 SOLICITOR JONES: Well how would it be different from  
8 a traffic stop where you can't see the person when they're  
9 sitting in the car and it normally takes two to three  
10 minutes for an officer to talk to the person, have your  
11 license and registration, where you've been, have you had  
12 anything to drink? You don't actually see the person just  
13 on the - I guess that would be more typical DUI case. In  
14 this particular instance there had to be a little more  
15 investigation as to what was going on because they thought  
16 they were responding to a domestic disturbance. That would  
17 be the reason for the I guess the eighteen minutes of the  
18 defendant not being on the camera.

19 THE COURT: All right. And it took them eighteen  
20 minutes to smell alcohol?

21 SOLICITOR JONES: Well if you - If we didn't --

22 THE COURT: Part of the problem is - I follow your  
23 logic about getting somebody out of the car. But once  
24 somebody is out of the car how much leeway can an officer  
25 have before they decide to start filming the alleged

1 violator?

2 SOLICITOR JONES: Once she got out of the car she was  
3 on the video. I don't know if I'm confusing the court.

4 THE COURT: She was in the car for eighteen minutes  
5 and they talked to her in a car for eighteen minutes?

6 SOLICITOR JONES: Yes, Your Honor.

7 THE COURT: Oh. Okay. I'm sorry, I got the  
8 impression she was outside the car out of the camera. Go  
9 ahead.

10 SOLICITOR JONES: If I can go back to the point I was  
11 making about Murphy in a broader conduct context. If I can  
12 quote Murphy for a second it says "nothing in the plain  
13 language of the statute indicates the accused remains in  
14 the full view of the camera for the duration of the  
15 encounter. Rather the statute only requires her conduct to  
16 be recorded. Failure of the video to maintain a full view  
17 of the accused for the duration of the field sobriety test  
18 in which she is made to walk a line does not fail to  
19 display her behavior, demeanor and general estate so an  
20 accused need not remain in full view of the camera at all  
21 times in order for the recording to capture her conduct."

22 And I think the court in Murphy read the more specific  
23 requirements of the statute in the context of the broader  
24 conduct analysis as the state's - excuse me - as I assert  
25 that it should be read.

1           And I know a lot's been made about Footnote IV but I  
2 think that Footnote IV they're simply noting that the  
3 statute in question was the old version of the law and the  
4 law was amended in 2009. So I think Footnote 4 is dicta  
5 and it contains on presidential value in that regard.

6           THE COURT: Well what does (A), (1A), the two little  
7 i's any ---

8           SOLICITOR JONES: (1A) two little i's.

9           THE COURT: --- field sobriety test administered.

10          SOLICITOR JONES: I think, if you read the top part of  
11 the statute first --

12          THE COURT: No, just tell me what that means.

13          SOLICITOR JONES: It means that you have to have a  
14 field sobriety test recorded, that you have to be able to  
15 see the field sobriety test.

16          THE COURT: All right.. And you're saying you can't  
17 because heel to toe you can't tell whether she's doing heel  
18 to toe or not.

19          SOLICITOR JONES: I think if we take that logic to  
20 other steps of the field sobriety test then when officers  
21 do the HGN are we gonna have to have an officer actually  
22 stand there with a video camera where you can actually see  
23 the eyes go back and forth and see what they're talking  
24 about? I think that's putting more of a burden on the  
25 state than the statute does.

1 THE COURT: Okay. Go ahead.

2 SOLICITOR JONES: And finally 295 3(B) says that  
3 nothing in the statute prohibits the court from considering  
4 any other valid reason and for failure to produce the video  
5 recording based upon the totality of the circumstances.  
6 And in this case if the court finds that 2953(A) has not  
7 been or excuse me, has been violated which I'm not  
8 conceding it has, then I think that the state - excuse me -  
9 that I'm entitled to - the state is entitled to rely on the  
10 totality of the circumstances exception of Subsection B.  
11 And I do have an affidavit from law enforcement to pass up  
12 to the court for your consideration.

13 THE COURT: All right, well I always have trouble with  
14 B. I read B to say that that applies to the other part  
15 where you're talking about the totality of the  
16 circumstances and the sworn affidavit. That to me does not  
17 eviscerate A. It has to do with the lack of the video in  
18 it's entirety, not a defective video.

19 SOLICITOR JONES: Well I think if we look at - is it  
20 *Suchenski* where the court kicked out the case because the  
21 recording cut off in the middle of it and they said well  
22 the state could have reserved this on appeal if they had  
23 given an affidavit in Subsection B and they didn't do that  
24 so we're not able to consider that. But I think if  
25 Subsection B had been complied with and an affidavit would

1 have been given I think that would have saved *Suchenski* and  
2 that case would have not been dismissed.

3 THE COURT: Let's see what your affidavit...

4 SOLICITOR JONES: Say that again, Your Honor. I'm  
5 sorry.

6 THE COURT: Let's see what your affidavit says. You  
7 said you had an affidavit. Have you shared it with Mr.  
8 Boyd?

9 SOLICITOR JONES: I'm sorry, Your Honor, I have not.

10 (SIDE BAR BETWEEN ATTORNEYS OFF THE RECORD.)

11 (DOCUMENTS RECEIVED UP BY THE COURT AT 03:21 P.M..)

12 THE COURT: You want to make this a part of the  
13 record?

14 SOLICITOR JONES: Yes, Your Honor.

15 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE REMARKED FOR  
16 IDENTIFICATION.)

17 THE COURT: You got a copy of the Larusso case and see  
18 what I said?

19 MR. BOYD: Yes, Your Honor. Your Honor, I'd just like  
20 to point out what I - that's not an affidavit, it's not  
21 sworn, there is no notary.

22 THE COURT: Well for whatever value it has I'm gonna  
23 let him put it in. The affidavit will have to be sworn.

24 Doesn't qualify as an affidavit but you can put it in.

25 SOLICITOR JONES: Yes, Your Honor.

1 THE COURT: Put it in.

2 MADAME COURT REPORTER: Court's, Judge?

3 THE COURT: Yeah, make it a court's.

4 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE IDENTIFIED AND  
5 MARKED, RECEIVED INTO THE RECORD.)

6 THE COURT: Anything else?

7 SOLICITOR JONES: Your Honor, I again point out the  
8 statute requires a conduct be recorded and in Murphy the  
9 court has defined what conduct is and it's the State's  
10 position that we - excuse me, Your Honor.

11 It's the State's position that we have complied with  
12 2953(A). And, Your Honor, if I could, could I pull back  
13 the affidavit and actually have a notary sign it and make  
14 it an actual affidavit. That's completely my mistake, Your  
15 Honor.

16 THE COURT: Its already in evidence now.

17 What's your position on that, Mr. Boyd?

18 MR. BOYD: Like you say its already in evidence at  
19 this point.

20 THE COURT: You can't change that. You admitted it as  
21 it's submitted.

22 SOLICITOR JONES: Yes, Your Honor.

23 Your Honor, I would like to proffer the video if  
24 that's acceptable to the court.

25 THE COURT: Yeah, that'll be fine.

1 SOLICITOR JONES: Mr. Boyd stipulated this will be  
2 part of the record.

3 SOLICITOR JONES: Your Honor, would you like for me to  
4 skip through the eighteen minutes of their discussion to  
5 the field sobriety test?

6 THE COURT: That will be fine.

7 SOLICITOR JONES: Your Honor, I'm sorry, I'm having  
8 some technical difficulties. I watched this in my office  
9 and it played directly and now for whatever reason -

10 THE COURT: Take your time.

11 (VIDEO PUBLISHED TO THE COURT AT 03:35 P.M..)

12 (VIDEO STOPPED AT 03:40 P.M..)

13 THE COURT: Anything else from the State?

14 SOLICITOR JONES: Nothing, Your Honor.

15 THE COURT: The Defense?

16 MR. BOYD: Your Honor, just briefly. If I could see  
17 the statement again.

18 Your Honor, just going by the statement that was made  
19 it states that the officer said when they got to the gas  
20 station I saw Rockett driving a motor vehicle, she was  
21 backing the vehicle out of a parking place at the gas  
22 station. Rockett's vehicle was blocked by a police car to  
23 prevent her from leaving so we could investigate. And then  
24 it goes while speaking with Rockett it became apparent she  
25 was under the influence of alcohol or drugs at that time.

1           Your Honor, I -- certainly that was apparent. If that  
2 was the case well very early on and in fact I think early  
3 on in there they ask her how much she had to drink and she  
4 explains all that and it's many minutes after that that she  
5 appears on the video. So as far as the conduct part of it  
6 I --

7           THE COURT: Are you asking me to consider something  
8 you said I can't consider? Is the so called affidavit not  
9 sworn?

10          MR. BOYD: Yes, sir.

11          THE COURT: You want me to consider it?

12          MR. BOYD: I don't think it can be considered as  
13 complying with the statute because it's not an affidavit.  
14 It is a statement that the officer made but in any event  
15 I'll agree. But however now even I think if you look at  
16 the video very early on she is questioned about her - how  
17 much she had had to drink and on and on. I mean it's  
18 apparent there was a DUI investigation going on during that  
19 time. It's quite a length of time before she appears on  
20 the video.

21          SOLICITOR JONES: Your Honor, if I may.

22                I understand what you stated about Court's Exhibit  
23 One, but I have an actual affidavit now that's sworn by a  
24 notary and signed by the officer. If I could move this in  
25 as Court's Exhibit Two?

1 THE COURT: That would be fine.

2 Any objection?

3 MR. BOYD: No, sir.

4 (WHEREUPON: COURT'S EXHIBIT NUMBER TWO IDENTIFIED AND  
5 MARKED, RECEIVED INTO THE RECORD.)

6 THE COURT: I'm gonna take a few minutes to take a  
7 look at this.

8 Mr. Jones, there is a lot of logic in what you say and  
9 regarding the Stagnus Test and the inability of that to be  
10 recorded. Probably in this day and time someone, an expert  
11 can get up and testify that they can put a little camera on  
12 the end of a pen and could record it. But from a practical  
13 standpoint that's just not practical.

14 SOLICITOR JONES: Right, Your Honor.

15 THE COURT: So that does give me some concern. The  
16 language that the court uses bothers me too because in  
17 Murphy they talk about conduct not requiring, quote an  
18 unbroken recording of the test end quote.

19 SOLICITOR JONES: Right.

20 THE COURT: Then they note that the legislature made a  
21 change and the implication - or it's not stated - is that  
22 the change now requires an unbroken recording of the test.  
23 Earlier under Murphy the law did not require display - the  
24 court stated the recording need not display all field  
25 sobriety test provided it captures the accused's conduct.

1           Then the footnote they basically say that the  
2           implication is that now an unbroken recording of the test  
3           is necessary. However all the statute does say - and I  
4           interpreted it in the Larusso so case - it just says the  
5           conduct must quote include any field sobriety test  
6           administered end quote.

7           My position by dealing with Larusso was that while the  
8           video tool for the prosecution was also a tool for the  
9           defense. That is the defense is entitled to show that the  
10          field sobriety test was not only administered but must show  
11          the driver's passing or failing the test. What bothers me  
12          also is factually the facts are different in Murphy which  
13          were somewhat similar to what we have here with the video  
14          cutting off the heel to toe and the legislature - court  
15          saying it's okay but you still got the conduct and the  
16          legislature changed the law which again implies that the  
17          Supreme Court got it wrong in saying that you don't have to  
18          capture everything. But they say foolish consistencies  
19          are the hob goblins of a little mind. So I don't know.

20          To be consistent of course I would rule the same way  
21          that I ruled in Larusso so. I don't want to be hedging my  
22          best or hedging but the statute and it is plain reading in  
23          leaving out the Murphy case the Supreme Court interpreted  
24          and the Supreme Court's footnote which of course is not law  
25          56-5-2953 simply requires that the video recording of the

1 site must have their conduct - the court has already said  
2 what conduct is, they've already said that. Said it  
3 doesn't include a hundred percent of all the test. It says  
4 video recording incident site must quote include any field  
5 sobriety test administered end quote. But it did not go  
6 further and say what I said logically follow, maybe now not  
7 so logical, should not only include field sobriety test  
8 administered but the driver's performance thereon which the  
9 legislature said could have said if they wanted to.

10 And your analogy included the Stagnus test makes it  
11 logical that the legislature - again consistent with what I  
12 ruled in Larusso so that the test - the sobriety test  
13 administered must be shown but it does not say as it could  
14 have that the driver's performance - it could say any field  
15 sobriety test administered and the driver's performance so  
16 I'm gonna reverse myself. I think that this particular  
17 video passes muster under 56-5-2953. It shows the  
18 defendant's conduct and shows the field sobriety test quote  
19 administered end quote. I know now I've got two opinions -  
20 two cases I've had that are contradictory to each other.  
21 Just have to live with that.

22 But I'm not gonna dismiss based on the failure to  
23 comply with 56-5-2953 (A). And I need not rely on (B) and  
24 I still don't think (B) gives it the solace that the state  
25 if I ruled the other way on (A) so I'm not gonna dismiss

1 Ms. Rockett's case.

2 SOLICITOR JONES: Thank you, Your Honor.

3 THE COURT: On that ground.

4 All right, anything else before we get the jury up?

5 SOLICITOR JONES: Nothing from the State, Your Honor.

6 MR. BOYD: Your Honor, I think I just have a short  
7 thought. I have subpoenaed a witness who is incarcerated  
8 at the Moss Center. His name is Smitty Montgomery. I would  
9 - He has pending charges, I assume the State has a copy of  
10 his criminal record. I would just ask to be provided a  
11 copy of his record.

12 THE COURT: Okay.

13 MR. BOYD: That's all.

14 SOLICITOR JONES: That's fine, Your Honor, we can  
15 provide that.

16 THE COURT: Let's take a short break and get the jury  
17 up here. It's ten till four, get the jury up here at four.  
18 I've got drug Court tonight so we'll start with the  
19 arguments and with my initial statements and hope we get  
20 into arguments and then start with the presentation of the  
21 witnesses' tomorrow.

22 SOLICITOR JONES: Yes, Your Honor.

23 (COURT IN RECESS AT 03:52 P.M..)

24 (COURT BACK IN SESSION AT 04:10 P.M..)

25 THE COURT: Thank you, you may take your seats.

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 THE COURT: Defense ready?

2 MR. BOYD: Ready, Your Honor.

3 THE COURT: All right, bring in the jury.

4 (JURY REENTERS COURTROOM AT 10:30 A.M..)

5 THE COURT: Good morning.

6 You may proceed.

7 SOLICITOR JONES: Thank you, Your Honor.

8 The State calls Officer Michelle Del Castillo.

9 (WHEREUPON: MICHELLE DEL

10 CASTILLO, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS

11 FOLLOWS:)

12 DIRECT EXAMINATION

13 OFFICER MICHELLE DEL CASTILLO BY SOLICITOR JONES:

14 Q. Would you please state your name, ma'am.

15 A. Michelle Del Castillo.

16 Q. And, Ms. Castillo, where are you currently employed?

17 A. The city of Rock Hill.

18 Q. How long have you been working for the city of Rock

19 Hill?

20 A. Ten years.

21 Q. And what's your current position?

22 A. Patrol officer.

23 Q. And how long have you been a patrol officer?

24 A. Ten years. For about five years I was on the York

25 County Drug Unit.

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 Q. Do you have any prior law enforcement experience?

2 A. Yes I was also employed in Georgia two years as a  
3 police officer.

4 Q. And what are some of your current responsibilities as  
5 a patrol officer?

6 A. Primarily we respond to calls for service. We  
7 investigate traffic collisions. We also initiate traffic  
8 stops. We're in court. But primarily we answer calls for  
9 service.

10 Q. And when you answer calls for service, part of your  
11 responsibilities are duties to gather and collect evidence?

12 A. Yes.

13 Q. And you also speak to witnesses, anybody that might  
14 be involved in what you're responding to?

15 A. Yes.

16 Q. Can you tell the jury some of your training for your  
17 current position?

18 A. Primarily when you become a police officer you have to  
19 go through the basic police academy which is approximately  
20 ten weeks. We also have to go through firearms  
21 qualification, driving defensive tactics. There's also  
22 some specialized training that we can do to include field  
23 sobriety, running the data master which is also known as  
24 the breathalyser. We can go through drug training and all  
25 sorts of other - accident reconstruction training. The

1 list is very long.

2 Q. On May 13th of 2012 were you dispatched to 1308 Cherry  
3 Road in Rock Hill, South Carolina?

4 A. Yes we were actually dispatched nearby to a residence  
5 for a disturbance.

6 Q. So you were first dispatched to a residence. Did  
7 you ever make it to that residence?

8 A. No.

9 Q. Tell us what happened on the way there that caused you  
10 to go somewhere else.

11 A. I was on patrol and dispatch told me by radio we need  
12 you to go to [REDACTED] Street which is in Rock Hill for a  
13 disturbance. So I was primary, Officer Proulx also was  
14 headed to that residence to figure out what was going on.  
15 While we were there - While we were going there dispatch  
16 told me that there was a beige vehicle that had left the  
17 residence and that the - apparently that the driver was  
18 allegedly intoxicated so as I was going there to Bradley  
19 Street I made the turn onto Bradley Street from Cherry and  
20 we were told that the vehicle had pulled into Elliott's  
21 Exxon which is at 1308 Cherry Road.

22 Q. So you then pulled into the Exxon station; is that  
23 right?

24 A. Yes.

25 Q. And dispatch told you to look for a beige - what kind

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 Q. So when you pulled up to the Exxon did you see - you  
2 saw the car in reverse?

3 A. Yes.

4 Q. Approximately how far did the car travel?

5 A. It wasn't very far. Like I said she never left the  
6 parking lot. You know it might a maybe been ten or twenty  
7 feet.

8 Q. Is it fair to say that she was operating the motor  
9 vehicle?

10 A. Yes.

11 Q. And you said you talked to the complainant?

12 A. Yes.

13 Q. Did you then talk to the defendant?

14 A. Yes.

15 Q. At any point in time?

16 A. Yes.

17 Q. Tell us about that conversation. What was that  
18 conversation?

19 A. After I got done speaking with the original caller,  
20 I went and approached the beige car and I met with the  
21 defendant Ms. Rockett. She was the only person in the car  
22 and we were trying to figure out why we had gotten called;  
23 what the problem was. And so while I was talking with her  
24 I could smell an odor of an alcoholic beverage coming from  
25 her. And also in speaking with her I saw her face and her

1 speech was kind of thick and like heavy and her eyes were  
2 also kind of red and blood shot and kind of glazed over.

3 Q. Now tell us some of the specifics of the conversation.  
4 Where did the defendant say she was going and where was she  
5 coming from?

6 A. My conversation with her was a little difficult  
7 because she changed her story quite a few times. She did  
8 tell me that she was - she had driven from the residence on  
9 Bradley Street to the gas station to get away from the  
10 disturbance that was going on there. And she at one point  
11 did say that she had four beers. She at one point said she  
12 was at a bar with another person. I spoke with her at  
13 length because her story it just really kind of didn't make  
14 sense. I was trying to determine what was going on with  
15 this disturbance originally and then also trying to figure  
16 out where she was going, where she was coming from. So I  
17 mean the conversation lasted at least probably ten minutes  
18 on my part.

19 Q. And I think you already mentioned this but was anyone  
20 else in the vehicle with the defendant?

21 A. No. She was the only person in the car.

22 Q. Did you ever see anyone leaving the vehicle?

23 A. No.

24 Q. And was the patrol that was at the scene equipped with  
25 a video recording system?

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 A. Yes.

2 Q. And on the day in question was that recording system  
3 working properly?

4 A. Yes it was.

5 Q. Can you tell the jury how the video's in patrol cars  
6 work?

7 A. It's basically automatic. When we activate our blue  
8 lights the camera automatically comes on. And we also have  
9 microphones that we wear on our duty belts so we can -  
10 everything is visually recorded and audio recorded. This  
11 particular instance was on Officer Proulx's camera and  
12 using her microphone. So like I said when we turn on our  
13 blue lights the camera automatically starts recording. The  
14 audio is already recording and you can see everything, you  
15 can hear everything.

16 Q. And have you watched the video before the trial here  
17 today?

18 A. Yes.

19 SOLICITOR JONES: May I approach the witness, Your  
20 Honor?

21 THE COURT: Yes.

22 BY SOLICITOR JONES:

23 Q. I'm handing you State's Exhibit One. Will you take a  
24 look at that for me?

25 A. Yes, sir.

OFFICER DEL CASTILLO: BY SOLICITOR JONES.

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1 Q. Do you recognize this?

2 A. I do.

3 Q. And how do you recognize it?

4 A. It has my initials on it and that's the in car  
5 video recording of this evening.

6 Q. So this depicts the roadside video of the defendant?

7 A. Yes.

8 Q. Is it a true and accurate depiction of the events of  
9 that day?

10 A. Yes.

11 SOLICITOR JONES: Your Honor, at this time I move  
12 State's Exhibit One into evidence.

13 MR. BOYD: Your Honor, subject to the objections I  
14 made yesterday, pretrial.

15 THE COURT; Subject to earlier rulings it's in over  
16 objection.

17 SOLICITOR JONES: Thank you, Your Honor.

18 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE IDENTIFIED  
19 AND MARKED, RECEIVED INTO EVIDENCE.)

20 SOLICITOR JONES: And at this time may I publish the  
21 video to the jury?

22 THE COURT: You may.

23 SOLICITOR JONES: Thank you, Your Honor.

24 (STATE'S EXHIBIT NUMBER ONE PUBLISHED TO THE JURY  
25 AT 10:42 A.M..)(STOPPED AT 11:06 A.M..)

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 BY SOLICITOR JONES:

2 Q. Officer, we just watched the video but could you  
3 describe the defendant's appearance when you're talking  
4 with her, please?

5 A. When I initially spoke with her she was in the  
6 driver's seat and we were trying to figure out exactly what  
7 the original disturbance was. Like I said when I  
8 originally walked up to her and she began speaking I could  
9 detect an odor of an alcoholic beverage coming from her.  
10 He speech was thick and slurred and her eyes were kind of  
11 red and blood shot and kind of glazed over.

12 Q. Some of it might a been difficult for the jury to  
13 hear. Did the defendant ever admit to drinking alcohol?

14 A. She did. To me she - well to Officer Proulx she  
15 stated four beers. To me she said three beers.

16 Q. Did she say she went to any bars that day?

17 A. Yes. If you can kind of hear her story to change  
18 multiple times. She did say that she was at the bar  
19 earlier.

20 Q. Did she tell you that she drove?

21 A. Yes. You can clearly hear in there she does state  
22 that she drove from the address on Bradley Street to the  
23 store was when we ask her what went on at the house. You  
24 can hear her say Oh God and she said she got in the car and  
25 drove to call her mom.

1 Q. And again we all heard it but did she - did the  
2 defendant ever change her story while she was talking to  
3 you and Officer Proulx?

4 A. Yes. Yes she did. Yes.

5 Q. But she did admit to driving?

6 A. Yes.

7 Q. And did you see her driving?

8 A. We did there in the parking lot.

9 Q. After the initial conversation what were you thinking?

10 A. After speaking with her and again the conversation  
11 lasted for a while because we were originally trying to get  
12 one issue figured out and in the meantime determine if she  
13 was impaired. After speaking with her I felt that she  
14 needed to go through field sobriety test to see if she was  
15 or was not impaired and capable of operating a vehicle.

16 Q. Have you had any training on field sobriety test?

17 A. I have. Approximately ten years ago when I first got  
18 hired here I went through a week long forty hour class that  
19 specifically teaches about doing the standardized field  
20 sobriety test.

21 Q. Do you give a field sobriety test every time you pull  
22 somebody over?

23 A. No.

24 Q. Do you always arrest someone when you give a field  
25 sobriety test?

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 A. No.

2 Q. So why did you administer field sobriety test here as  
3 opposed to other times when you stop people?

4 A. Based upon the totality of what was going on while  
5 speaking with her while listening to what she was saying  
6 like I said I could smell the alcohol on her breath I felt  
7 like I needed to administer the test to see if she was  
8 impaired or not.

9 Q. Did the defendant appear to have any mental or  
10 physical disabilities?

11 A. No.

12 Q. Was the defendant wearing any glasses or contacts?

13 A. No.

14 Q. Did the defendant agree to perform the field  
15 sobriety test?

16 A. Yes she did.

17 Q. Which field sobriety test in particular did you  
18 administer?

19 A. The very first test you see on the video is what  
20 we call the Horizontal Gaze Nystagmus test and that's  
21 basically where I'm checking her eyes. And you see there  
22 in the video I had her stand with her hands down by her  
23 side and I specifically ask her if she was wearing any  
24 contacts. It was obviously she didn't have any glasses on.  
25 And this is a standardized test you have to go through

1 testing.

2           And what I first do is look in her pupils and I look  
3 to make sure that they're both dilated to the same. You  
4 know that one isn't smaller and the other one is bigger.  
5 So that was the first thing that I was looking for. Then I  
6 just used my finger and I held it about twelve inches away  
7 from her face and the first thing I'm doing is as I'm  
8 checking both her eyes to make that they're tracking  
9 together; that their both going in the same direction  
10 because sometimes people have a disorder where their eyes  
11 don't go in the same direction. So that's the first thing  
12 that I'm doing is checking to make sure her eyes are moving  
13 together.

14           Depending upon a person's impairment level sometimes  
15 the Nystagmus basically means an involuntary jerking. The  
16 person cannot control it. You all can go home and try it  
17 on each other. You would be amazed. So basically what you  
18 do is you - I just took my finger and I just took a couple  
19 of passes slowly to check her eyes. The first pass is to  
20 make that they are moving together. She had involuntary  
21 jerking just while I was doing that. Just having her move  
22 her eyes from side to side.

23           Once I did that I moved my finger all the way over  
24 toward the corners of her eyes were all the way out where  
25 you couldn't see the corners and I held it there for just a

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 second and you can actually see the eye jerk depending upon  
2 a persons impairment level. If they're not impaired you  
3 won't see it. So as I did that I could see it in both  
4 eyes. As I held my finger all the way over here both of  
5 her eyes were involuntary jerking. And when I went to the  
6 side again her eyes were jerking.

7 The next thing I did is I go out to forty-five degrees  
8 which is about - kind of about right here.

9 (WITNESS DEMONSTRATED.)

10 A. And again depending upon a person's impairment level  
11 you may or may not see it. In Ms. Rockett I did see it.  
12 And I held it there and I could see her eyes involuntary  
13 jerking. Basically each eye is considered an individual  
14 clue. With her I saw all six clues which means the  
15 involuntary jerking, the smooth, the smoothness she didn't  
16 have that. Each eye is considered a clue. At maximum  
17 deviation when her eyes were all the way over here each eye  
18 that's two more clues. And then at forty-five degrees I  
19 did see that so that's another clue. She showed me all six  
20 clues.

21 Q. You hit on this briefly but you're saying clues.

22 Clues to what?

23 A. Basically I'm looking for the involuntary jerking.  
24 That's an indicator to her impairment. If you don't see it  
25 she's maybe not impaired or maybe on some other sort of

1 drugs or could possibly be - You can see it if you're sleep  
2 deprived. You can see it. But basically if I see the  
3 jerking of her eyes that's an indicator to me.

4 Q. So is the HGN test an exact science?

5 A. It's not an exact science but it is one of the best  
6 test that we can do.

7 Q. Is it a strong indicator of impairment?

8 A. Yes.

9 Q. And you said you did observe all six indications of  
10 the defendant was impaired.

11 A. I did. And also in the video I forgot to mention if  
12 you watch it when she's standing if you look ever so  
13 closely my camera's here, you can see her swaying and  
14 you'll have the opportunity to watch the video. You can  
15 see her swaying as I'm checking her eyes. Most people that  
16 have good balance they should just be able to stand up  
17 straight.

18 Q. And the next field sobriety test you gave her I  
19 believe was the one legged stand; is that right?

20 A. Yes.

21 Q. Tell the jury about that test please, ma'am.

22 A. The next test that you see on the video is the one  
23 legged stand. Basically I explained it to her and then I  
24 demonstrated it. Basically I told her she could choose  
25 either leg. Before I ask her I ask her if she had any back

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 problems or leg problems. She stated no but she said she  
2 did have arthritis. So I explained the one legged stand to  
3 her; I told her to keep her arms down by her side. She  
4 could pick up either foot, it was her choice, raise it  
5 about six inches off the ground. I wanted her to point her  
6 toe and look at it and count one thousand and one, one  
7 thousand and two, and so on until I told her to stop.

8 I ask her if she understood and she stated yes. She  
9 then - You saw on the video she stood there and she said -  
10 I believe she said one thousand and three. Again there's  
11 various clues that we're looking for in this particular  
12 test. One of the clues is that she counted incorrectly  
13 which you will be able to hear. She wasn't able to really  
14 perform the test. She put her foot down and stopped. That  
15 is not what we're looking for. And also she raised her  
16 arms to kind of keep her balance. So those - Based upon  
17 those clues she didn't do very well.

18 Q. And how long was or is someone that's performing the  
19 one legged stand how long are they supposed to keep their  
20 foot in the air?

21 A. Approximately thirty seconds or until I tell them to  
22 stop.

23 Q. And did you explain to the defendant that she was to  
24 keep one leg in the air until you told her to stop?

25 A. Yes.

1 Q. And how long did she keep that foot in the air before  
2 she stopped?

3 A. Again the first time she stood there and she said  
4 one thousand and three and I kind of had to explain it to  
5 her again that she needed to raise a leg six inches off the  
6 ground and begin counting one thousand and one, one  
7 thousand and two. She did count to about one thousand and  
8 eight but it's a little difficult. She counted - she  
9 stated with I think one thousand and three, one thousand  
10 and four, and then she went to like one thousand and two  
11 but she eventually got up to about one thousand and eight  
12 and then she stopped on her own. I did not tell her to  
13 stop so I had her perform the test again.

14 Q. Were you giving her instructions to do one simple  
15 task or were there a few task she was supposed to do in  
16 this test?

17 A. Well in general these test are pretty simple but  
18 they are also supposed to make your attention be divided.  
19 Meaning we want you to do a couple of different things.  
20 Again they're simple but it's to divert your attention to  
21 have a couple of different things to do.

22 Q. And just briefly can you go back over the indications  
23 or indicators on this particular test that you observed in  
24 the defendant?

25 A. Yes. She raised her arms to over six inches to keep

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 her balance so she wouldn't tip over. Her putting her foot  
2 down and stopping, she did that a couple of times. And  
3 also she counted incorrectly.

4 Q. What was the next field sobriety test you offered  
5 to the defendant?

6 A. The next test is called the walk and turn test. And  
7 again I explained it to her and I demonstrated it. The  
8 very first thing I had her do - and I did it as well as I  
9 told her to keep her arms down by her side - I told her to  
10 put her right foot in front of her left foot touching heel  
11 to toe. Now I wanted her to stand just in that position  
12 while I continued to explain it and demonstrate it. And  
13 you saw on the video she actually - she actually wasn't  
14 able to keep her balance. She kind of wobbled and put her  
15 foot back down so she wouldn't tip over and so I had to  
16 tell her again to put her foot touching heel to toe and  
17 just stand just like that.

18 I explained to her that she needed to take nine heel  
19 to toe steps in a line, once she got to the ninth step to  
20 take a series of steps around and return back nine heel to  
21 toe steps in a line. I ask her if she understood the test,  
22 she stated yes. In the beginning she did touch heel to  
23 toe. She did raise her arms a little bit over six inches.  
24 She took nine steps in a row and when you see her turn she  
25 turns kind of quickly which is not what I instructed her to

1 do. I told her to take a series of small steps around and  
2 come back.

3 When she comes back she did not touch heel to toe at  
4 all. And in fact it wasn't even a line. You can see her  
5 feet are kind of almost doing like that.

6 (WITNESS DEMONSTRATED.)

7 Q. So again to summarize for the walk and turn, what  
8 specific indicators did you observe?

9 A. She wasn't able to keep her balance while I was  
10 explaining and demonstrating the test. That was the first  
11 thing. She wasn't able to touch heel to toe. She stepped  
12 off - what we say off line which means she kind of - she  
13 stepped off of that line to catch her balance. She raised  
14 her arms more than six inches to keep her balance. And  
15 again she turned incorrectly. She on - when she was to  
16 come back she turned incorrectly.

17 Q. Were the field sobriety test the only reason you  
18 arrested the defendant for driving under the influence?

19 A. It was the totality of everything. The Horizontal  
20 Gaze Nystagmus, the walk and turn, the one leg stand,  
21 speaking with her, watching her, listening to her; based  
22 upon all of that is why I placed her under arrest.

23 Q. Was there - At the incident scene was there ever  
24 any question the defendant was or was not operating this  
25 vehicle?

OFFICER DEL CASTILLO: BY SOLICITOR JONES

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1 A. No.

2 Q. After the arrest where did you take the defendant?

3 A. She was placed in Officer Proulx's vehicle and taken  
4 to the Rock Hill Police Department.

5 Q. And did all these events occur in York County, South  
6 Carolina?

7 A. Yes.

8 Q. In your opinion based on all your interactions with  
9 the defendant the night of this incident was she under the  
10 influence of alcohol?

11 A. Yes.

12 Q. A few other brief questions. Did the defendant  
13 admit to driving her vehicle?

14 A. Yes she did.

15 Q. And the beginning of the road side video you can hear  
16 that you and Officer Proulx are questioning someone and  
17 they say they had four beers and they say that they had  
18 three beers and then I believe that they say that they  
19 drove there and they drove because of their sister or  
20 something of that effect. Who said those things?

21 A. The defendant.

22 Q. And do you see the defendant in the courtroom today?

23 A. I do.

24 Q. Can you point her out please?

25 A. She's standing there at the defendant table. Or

1 Police Department?

2 A. About two and a half years now.

3 Q. What's your current position with the police  
4 department?

5 A. I'm a patrol officer.

6 Q. Tell the jury some of your responsibilities and  
7 duties as a patrol officer.

8 A. Primarily we'll respond to for calls for service,  
9 we work vehicle collisions, conduct traffic stops, we have  
10 to go to court, and things of that nature.

11 Q. Tell the jury some of your training you had for your  
12 current position.

13 A. State of South Carolina we go to a twelve week  
14 academy here. Once you complete the academy you go through  
15 approximately seventeen weeks of field training with the  
16 other experienced officers. And then once you complete  
17 that you'll go out on your own. And we can also go to  
18 different training such as field sobriety, become certified  
19 to the data master machine, range training, driving  
20 training and just multiple, multiple opportunities for  
21 training.

22 Q. On May 13th of 2012 were you involved in the arrest of  
23 Cathy Rockett for driving under the influence?

24 A. Yes I was.

25 Q. And do you see Cathy Rockett in the courtroom today?

OFFICER KRISTINE PROULX: BY SOLICITOR JONES

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1 A. Yes I do.

2 Q. Can you point her out for the jury please, ma'am?

3 A. Yes, sir. Sitting at the defense table.

4 SOLICITOR JONES: Let the record reflect she pointed  
5 to the defendant.

6 (WITNESS POINTED TO DEFENDANT AT DEFENSE TABLE.)

7 Q. And were you dispatched to 1308 Cherry Road in Rock  
8 Hill, South Carolina on that night?

9 A. Originally we were dispatched to a residence on  
10 Bradley Street, [REDACTED].

11 Q. Were there any other officers with you that night?

12 A. Yes. Officer Del Castillo.

13 Q. And were you all the only two officers on the scene?

14 A. Yes.

15 Q. The jury's watched the video so they understand a  
16 little bit about your conversation with the defendant. But  
17 could you explain to them what you saw and what that  
18 conversation was about?

19 A. In regards to my conversation with her?

20 Q. With the defendant.

21 A. While I was speaking with her Officer Del Castillo  
22 was speaking with the complainant. It was difficult to  
23 understand Ms. Rockett, she appeared to be disoriented. I  
24 did detect an order of alcoholic beverage on her person. I  
25 ask her multiple times I needed her to repeat herself. It

1 was because I couldn't understand what she was saying or I  
2 couldn't hear her. And her eyes did appear to be blood  
3 shot and glazed over. And ultimately the conversation - it  
4 was just very difficult to track what she was telling me.

5 Q. When you first approached the car did you ask the  
6 defendant what her name was?

7 A. I can't recall if I did right when I first got out  
8 with her but I know at some point I did and was writing it  
9 down to get her information.

10 Q. Did you recall what she told you her name was?

11 A. I - I don't. Actually I needed to ask her to spell  
12 it, to spell it for me. I can't recall.

13 Q. Was the defendant the driver of the vehicle?

14 A. She was sitting in the driver's seat yes, sir.

15 Q. And as you pulled into the gas station did you see  
16 the vehicle moving in any particular direction?

17 A. Yes, sir, the vehicle was in reverse. It was going  
18 backward.

19 Q. And how long did the vehicle go in reverse?

20 A. From by the time that I approached the vehicle or I  
21 got there I arrived on scene it was probably just in motion  
22 for a few seconds, maybe a minute.

23 Q. Was anyone else in the vehicle with the defendant?

24 A. No.

25 Q. In your conversation with the defendant did she admit

OFFICER KRISTINE PROULX: BY SOLICITOR JONES

-89-

1 to drinking alcohol?

2 A. Yes she did.

3 Q. Did she say she had been to any bars that day?

4 A. Yes she did.

5 Q. And after that conversation, after your initial  
6 conversation with the defendant, did you actually talk to  
7 her first; is that right?

8 A. I did.

9 Q. And after talking with her did you then speak with  
10 Officer Del Castillo?

11 A. Yes.

12 Q. And what was the purpose of talking with that officer?

13 A. Officer Del Castillo had been speaking with the  
14 complainant in regards to the initial call of why we were  
15 out there and I was speaking with the defendant Ms. Rockett  
16 to try and figure out what was going on. And so ultimately  
17 Officer Del Castillo and I met and were conversing about it  
18 because again she's speaking to the other parties. We were  
19 just trying to figure out what had happened and ultimately  
20 why we were there.

21 Q. Was this case a little different than a typical  
22 traffic stop and then you find that there - you think there  
23 might be driving under the influence?

24 A. Yes it was.

25 Q. And why was that?

1 A. Because ultimately we had originally been dispatched  
2 for a different reason. We weren't dispatched due to  
3 an intoxicated driver. We were dispatched because of a  
4 disorderly so that is why we are responding and that is  
5 what we were trying to figure out in the beginning and  
6 ultimately it led into a DUI investigation.

7 Q. After talking with the defendant did you administer  
8 field sobriety test?

9 A. I did not.

10 Q. Who did administer the field sobriety test?

11 A. Officer Del Castillo.

12 Q. But you were present on the scene during that time?

13 A. Yes I was.

14 Q. Did you do anything after Del Castillo administered  
15 the field sobriety test?

16 A. I transported the defendant on to the law center in  
17 order to administer the data master to get a breath sample.

18 Q. And how far is the breath sample site from the actual  
19 arrest?

20 A. Approximately three to five minutes.

21 Q. Can you explain to the jury please what a breath test  
22 is; what the data master machine is?

23 A. Ultimately what it is is just a machine that we use  
24 or that it's used to measure the breath alcohol content on  
25 a subject.

OFFICER KRISTINE PROULX: BY MR. BOYD

-100-

1 I was speaking to the defendant in the car.

2 Q. When you were speaking to her?

3 A. Yes.

4 Q. How did you turn the video on?

5 A. We have body mics that go on our belts and I flipped  
6 my mic on and ultimately it turned on the camera.

7 Q. Okay. So when you - When you turned your blue light  
8 on, that did not initiate the video coming on?

9 A. I believe it did ultimately. In all honesty I can't  
10 remember one hundred percent clearly at the time but I  
11 believe at some point I think I turned my recording off  
12 because at that time we were not there for a DUI  
13 investigation. We were there for a disorderly so my lights  
14 were on before I exited the vehicle. I believe I turned my  
15 camera off and then when I started speaking with her at the  
16 car I turned it back on.

17 Q. So you turned it back on?

18 A. I did.

19 Q. Thank you.

20 MR. BOYD: That's all I have.

21 THE COURT: Redirect?

22 SOLICITOR JONES: No further questions, Your Honor.

23 THE COURT: All right. You can step down and be  
24 excused. We appreciate your time.

25 (WITNESS LEAVING WITNESS STAND.)

1 A. Yes, sir.

2 Q. Okay. Now let me ask, take you back to May 13, 2012.

3 Did you have occasion to see Cathy on that date?

4 A. Yes, sir, I did.

5 Q. Let me ask you before that did you have a conversation  
6 with an individual named Smitty Montgomery?

7 A. Yes, sir, I know Smitty.

8 Q. Okay. Did you ask SMitty Montgomery anything?

9 A. Yes, sir. That evening I borrowed his vehicle.

10 Q. Okay. And tell us where did you get his vehicle from?

11 A. I went to his residence and got it.

12 Q. Okay.

13 A. Go ahead. Excuse me.

14 Q. All right. And when you - Is that a beige Infinite?

15 A. Yes, sir.

16 Q. Where did you go after you got his vehicle?

17 A. Well I went several different places but before I  
18 met up with Cathy. I met up with Cathy in a bar out on  
19 72 Bypass.

20 Q. All right.

21 A. And - -

22 q. What's the name of that bar?

23 A. Sledge Hammer is the name of it I'm pretty sure.

24 Q. Okay. So you went to the Sledge Hammer?

25 A. Yes, sir.

ROBERT HARRIS: BY MR. BOYD

-150-

1 Q. Is that correct? Okay. And when you went to the  
2 Sledge Hammer was Cathy there?

3 A. Yes, sir, she was.

4 Q. Okay. Did you and Cathy decide to go anywhere?

5 A. Yes, sir. She left with me.

6 Q. All right. And where were you all going?

7 A. Well she was going with me. She was gonna go to  
8 Savannah, Georgia with me the next day. I ask her if she  
9 would and in which she said she would. But of course we  
10 didn't make it there. But we left the Sledge Hammer and  
11 we went toward my house which is [REDACTED] Street.

12 Q. Did anything happen when you got to Bradley Street?

13 A. Yes, sir.

14 Q. All right. Tell us what happened?

15 A. Well I pulled up over at my house, the reason I pulled  
16 over I was going - I pulled over to the side of the road,  
17 I couldn't pull in the driveway cause Allen's Wrecker  
18 Service's was in my driveway with my vehicle on the back  
19 bed of it. So I pulled over in which my girlfriend at  
20 that time me and he wasn't supposed to see each other  
21 which that's my house. Well I stopped and got out the car  
22 and she was out there in the yard.

23 Q. All right. What's her name?

24 A. Her name is Jacqueline Nichols.

25 Q. Okay. So you stopped there and she was in the yard?

1 A. Yes, sir. And a man was in the truck with my car on  
2 the back. And so I got out of the car and Cathy got out  
3 with me. So we you know to start with Jackie started  
4 raising Cain, you know, pointing fingers, this, that, and  
5 the other. And she went to talking about calling Rock Hill  
6 Police which of course she did. But when she started  
7 talking about that I just went ahead and left cause me  
8 and her wasn't supposed to be around each other anyway.  
9 So I got back in the car and Cathy told me she wanted to  
10 get out of there anyway so we went and got back in the  
11 car I pulled down just a few houses where Exxon is and I  
12 pulled right up to the stop sign. I pulled back in the  
13 gas station and pulled up and got out and I left her in  
14 the car. It's my fault she's here.

15 Q. Okay. When you say you pulled into the gas station,  
16 who drove from Bradley Street down to the gas station?

17 A. I did. I drove from the bar to my house and then  
18 we got back in the car and I drove over there and I left  
19 her in it. I left her there.

20 Q. Okay. At any time was she driving the car?

21 A. No, sir, not with me she wasn't. No, sir.

22 Q. And you say you left her. Were you in the driver's  
23 seat?

24 A. Yes, sir.

25 Q. And why did you get out of the car?

CATHY ROCKETT: BY MR. BOYD

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1 MR. BOYD: We call Cathy Rockett.

2 (WHEREUPON: CATHY ROCKETT,  
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 MADAME CLERK: Please have a seat.

5 DIRECT EXAMINATION

6 CATHY ROCKETT BY MR. BOYD:

7 Q. State your name please.

8 A. Cathy Kennington Rockett.

9 Q. Okay. And, Cathy, where do you live?

10 A. [REDACTED] Court.

11 Q. And how old are you?

12 A. Fifty-nine.

13 Q. And have you lived around here all your life?

14 A. Since I was thirteen.

15 Q. And are you employed?

16 A. Yes.

17 Q. Where do you work?

18 A. Fort Mill Family Restaurant in Fort Mill.

19 Q. Let me ask you, do you remember May the 13th of 2012?

20 A. Yes.

21 Q. Okay. Let me take you back earlier that day. Did  
22 you have occasion to go to a bar called the Sledge  
23 Hammer?

24 A. Yes I did.

25 Q. Okay. How did you get to the Sledge Hammer?

CATHY ROCKETT: BY MR. BOYD

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1 A. My sister.

2 Q. And who is your sister?

3 A. Jenny McCorkle.

4 Q. And do you recall about what time you got to the  
5 Sledge Hammer?

6 A. It was had to been around five or six cause I just  
7 had dinner with my daughter and my sister. It was  
8 Mother's Day.

9 Q. Okay. And when you - What did you do at the Sledge  
10 Hammer?

11 A. I was - They were having a fund raiser for a little  
12 boy and I was just over there seeing a lot of people I  
13 knew and I drank.

14 Q. And did you drink the whole time you were there?

15 A. Pretty much. I mean I had a beer. I had some beers  
16 you know but I wasn't just slugging them down. I was  
17 drinking yes.

18 Q. Okay. Did - That evening did you have an occasion to  
19 see Robert Harris?

20 A. Yes.

21 Q. Okay. And where did you see him?

22 A. At the Sledge Hammer.

23 Q. Okay. And had you been there for a while when you  
24 saw him?

25 A. No, sir.

CATHY ROCKETT: BY MR. BOYD

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1 Q. And did you talk with him?

2 A. Yeah he kept calling my mom's house wanting my phone  
3 number and all that and then finally I called him back to  
4 where he was.

5 Q. Okay. So he had been trying to contact you?

6 A. Uh-huh.

7 Q. You - Have you known - How long have you known Robert  
8 Harris?

9 A. I've known Bobby since he was sixteen, seventeen  
10 years old.

11 Q. And did - He came to the Sledge Hammer did you talk  
12 with him?

13 A. Uh-huh.

14 THE COURT: You have to say yes or no.

15 A. Yes. Yes, sir.

16 Q. You need to give a verbal answer.

17 A. Yes, sir.

18 Q. And when you - After you - Well when you talked to him  
19 did you all agree to go somewhere?

20 A. Yes. He had promised that he could get me a job as  
21 a fire watch the next day when he would be leaving out and  
22 I said heck yeah I'll do it. You know at that time I was  
23 out of work and so he talked about having to go get his  
24 work clothes and stuff like that.

25 Q. Okay. So it was a discussion about you getting a job;

1 is that correct?

2 A. Yes, sir.

3 Q. Okay. And so did you all leave the Sledge Hammer  
4 together?

5 A. Yes, sir.

6 Q. And who was driving?

7 A. Bobby.

8 Q. Okay. And what kind of car were you in?

9 A. It's a '96 Infinite.

10 Q. And did you drive that car to the Sledge Hammer?

11 A. No.

12 Q. Do you know Smitty Montgomery the owner of that car?

13 A. Yes.

14 Q. Did at any time from - Well let me, any time that day  
15 did you drive that car?

16 A. No.

17 Q. So you left the Sledge Hammer. And where were you all  
18 going at that time?

19 A. Uh - we were supposed to go by Ponderosa to talk to  
20 somebody that Bobby works with but we went to by - He said  
21 that Jackie wasn't home because they had kicked her out.  
22 They were moving or something this is what he told me. He  
23 kicked - Jackie got kicked out. He needed to go by there  
24 and she wasn't there to get his work clothes.

25 Q. Okay. Is that the house on Bradley Street?

CATHY ROCKETT: BY MR. BOYD

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1 A. Yes. Yes, sir.

2 Q. Now did you all go by there?

3 A. Yes, sir.

4 Q. Okay. Tell us what occurred when you got to Bradley  
5 Street.

6 A. Uh pulled up right in front. Didn't pull in the  
7 driveway, pulled up in front and Jackie pulled in behind  
8 us. She jumped out of the car and there was a wrecker  
9 there. And everybody was screaming and hollering at each  
10 other. She was throwing stuff everywhere, running up and  
11 down the street screaming and hollering and all that kind  
12 of stuff and I was telling Bobby to take me so I was  
13 gonna call my sister where she could find me cause she  
14 had never been there.

15 Q. And so you ask - You wanted to get away from there?

16 A. Yeah.

17 Q. Okay. What did you all do at that point?

18 A. Her and Bobby cussed - her - Bobby and Jackie cussed  
19 each other for a while and she was calling the police and  
20 all this kind of stuff and we jumped in the car and took  
21 off down the road.

22 Q. Okay. When you all jumped in the car and took off  
23 down the road, who was driving?

24 A. Bobby.

25 Q. And where were you?

- 1 A. I was in the passenger seat.
- 2 Q. And where did you go?
- 3 A. To that little place down the street from there.
- 4 Q. To the Exxon --
- 5 A. To the Exxon station yes.
- 6 Q. Okay. What happened there?
- 7 A. When Bobby pulled in there he just slammed the thing
- 8 and he jumped out and I was just sittin there like you
- 9 know kind of dumb founded for a minute. And how he pulled
- 10 in there is a car wash right here and then there is a drive
- 11 and these are all gas pumps. And then when he just pulled
- 12 in and flipped it and got out the car had started moving
- 13 a little bit and it started moving a little faster and I
- 14 just jumped over which now I wished I hadn't. But I jumped
- 15 over and when I finally got over there I looked and there
- 16 was Jackie right there. She was pulling in. And I looked
- 17 at Jackie and then a second or two the police come in.
- 18 Q. Did you put your foot on the break?
- 19 A. Uh-huh.
- 20 Q. Did you stop the car?
- 21 A. Yeah cause it was in neutral.
- 22 Q. Okay.
- 23 A. And then I was putting it up in - pushed the button
- 24 thing in and was doing like that and that's when the
- 25 police and all come up. Jackie was there first before

CATHY ROCKETT: BY SOLICITOR JONES

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1 I was drunk.

2 Q. Well three or four - four beers you know you are  
3 usually pretty well.

4 Q. So you were pretty lite?

5 A. You could honestly see that I had been drinking yes.

6 Q. Okay. So you were pretty well and the man you were  
7 at the bar with drove to Bradley Street. He and his  
8 girlfriend got into some sort of argument and then you  
9 road with him to the gas station. He all of a sudden just  
10 hopped out of the car with it - -

11 A. Well he was cussing and all that kind of stuff on the  
12 way down there. Screaming and hollering and all that and  
13 that's when he slammed that.

14 Q. And he just jumped out and you didn't say anything  
15 to him?

16 A. Huh-huh.

17 Q. And then while you were drunk you were able to  
18 manuever yourself from the passenger side to the driver's  
19 side without any other type of accident occurring?

20 A. Huh-huh.

21 THE COURT: You got to say yes.

22 A. Yes. Yes, sir.

23 Q. Well was the car ever in reverse?

24 A. I think it was yes.

25 Q. You think it was?

CATHY ROCKETT: BY SOLICITOR JONES

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1 A. Yes cause by the time I got over there that's when  
2 I put - I just pushed the button and put it up once.  
3 I had already stopped it and pushed it over. I don't  
4 think I ever got it all the way into park.

5 Q. So when law enforcement came the car was in  
6 reverse?

7 A. I think by the time they got there it was in  
8 reverse and then after they were there a while I put it  
9 in park.

10 Q. Okay. I'm sorry to ask the same question again but  
11 just to clarify. The car was in reverse and --

12 A. It had to go in reverse to get it into park.

13 Q. Well I guess what I'm asking was the car in reverse  
14 and moving backwards in reverse? Was the actual ---

15 A. No.

16 Q. --- motor vehicle moving? You're saying it was not.

17 A. No it was not. It was in reverse when they came and  
18 then after they kept me talking for a while all that, I put  
19 it up in park.

20 Q. And you told law enforcement that you drove the  
21 vehicle only so they would not think you were involved  
22 with the argument between Mr. Harris and Ms. Nichols?

23 A. That I what?

24 Q. You told law enforcement that you drove the vehicle  
25 that night but now you're telling us - -

VERDICT

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1 THE COURT: We're back on the record in Ms. Rockett's  
2 case. We received a note that they have a verdict.

3 Is the State ready?

4 SOLICITOR JONES: Yes, sir, Your Honor.

5 THE COURT: The Defense?

6 MR. BOYD: Ready, Your Honor.

7 THE COURT: Bring in the jury.

8 (WHEREUPON: COURT'S EXHIBIT NUMBER FOUR IDENTIFIED  
9 AND MARKED, RECEIVED INTO THE RECORD.)

10 (JURY REENTERS COURTROOM AT 11:53 P.M..)

11 THE COURT: Mr. Foreman, I understand the jury has  
12 reached verdicts.

13 MR. FOREMAN: Sir?

14 THE COURT: If you will hand the verdicts - hand the  
15 indictments to the bailiff.

16 MR. FOREMAN: All right.

17 (VERDICTS AND INDICTMENTS RECEIVED UP BY THE COURT.)

18 MADAME CLERK: In the State of South Carolina versus  
19 Cathy Kennington Rockett under Indictment 2012-GS-46-  
20 0-3-1-7-8 for Habitual Traffic Offender we the jury find  
21 the defendant guilty signed by the foreperson dated today's  
22 date.

23 In the State of South Carolina versus Cathy Kennington  
24 Rockett under Indictment 2012-GS-46-0-3-1-7-7 for DUI we  
25 the jury find the defendant guilty signed by the foreperson

SENTENCING:

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1 MS. ROCKETT: No.

2 MR. BOYD: Before you got on bond. How long were you  
3 in jail before you got out on bond?

4 MS. ROCKETT: Oh, I served I think it was like three  
5 days.

6 THE COURT: Well I'm gonna give you credit for three  
7 days on each of these and they are each to run concurrent  
8 they each are for five years. Thank you.

9 SOLICITOR JONES: Thank you, Your Honor.

10 MR. BOYD: Your Honor, would you consider setting an  
11 appeal bond at this point? There are numerous legal  
12 issues.

13 THE COURT: There is no question that there are a lot  
14 of legal canumdries in this case. I don't know if I can  
15 set an appeal bond before Notice of Appeal is filed. As  
16 soon as you file a Notice of Intent to Appeal I will more  
17 than happy and feel it appropriate to set an appeal bond.

18 What's the State's - of course it's out of the State's  
19 hands. You don't handle the appeal.

20 SOLICITOR JONES: Obviously oppose any type of an  
21 appeal bond.

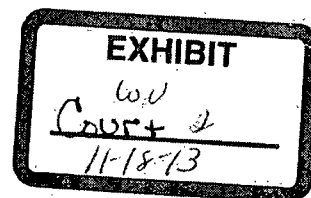
22 THE COURT: I think by law she's entitled to one where  
23 the defendant is arrested for ten years. And I have to go  
24 back and look but we don't get into that very often. I  
25 think it was over ten years and it goes up the Court of

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 State of South Carolina, )  
 )  
 vs. )  
 )  
 Cathy Kenning Rockett, )  
 )  
 Defendant. )

IN THE COURT OF GENERAL SESSIONS  
 COUNTY OF YORK

**AFFIDAVIT**

Indictment No. 2012GS4603177



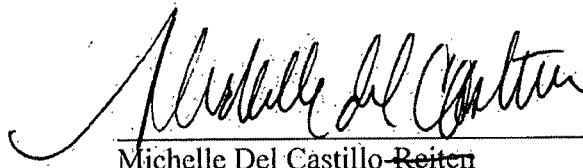
PERSONALLY APPEARED BEFORE ME, Michelle Del Castillo-Reiten, and after being duly sworn deposes and says the following:

My name is Michel Del Castillo-Reiten and I am a sworn police officer with the Rock Hill Police Department. I am the arresting officer in the above-captioned case. Officer Kristine Proulx assisted me with this case. On May 13, 2012, the night of this incident, Officer Proulx and I received a call from dispatch regarding a disturbance at a residence located at [REDACTED] Street in Rock Hill, SC. On our way to the residence we were re-routed to the Exxon gas station at 1308 Cherry Road in Rock Hill, SC. The caller regarding the disturbance at the residence had followed the Defendant and another individual as they left from her house and ended up at the gas station. When I got to the gas station, I saw Rockett driving a motor vehicle. She was backing the vehicle out of a parking space at the gas station. Rockett's vehicle was blocked by a police car to prevent her from leaving so we could investigate. Officer Proulx and I spoke with Defendant Rockett and the complainant about the residence disturbance in an attempt to figure out what was going on. While speaking with Rockett it became apparent that she was under the influence of alcohol and/or drugs at that time. As soon as was practicable I walked Rockett in front of Officer Proulx's police car in view of her in-car camera to administer field sobriety tests.

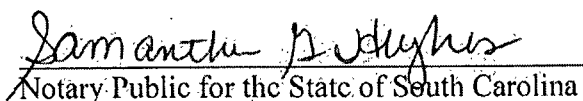
Pursuant to South Carolina Code of Laws Ann. § 56-5-2953 (B) (2009 as amended), I hereby certify that Rockett was placed in front of the video camera as soon as was practicable under the totality of the circumstances in this case.

During the DUI investigation Officer Proulx and I were outside of our patrol cars with Rockett while field sobriety tests were administered. While outside of our vehicles we had no way to control the video camera and the manner in which it was recording the DUI investigation. Moreover, we had no reason to believe the video recording statute 56-5-2953 was not being complied with at that time. Rockett's conduct during the field sobriety tests was recorded. However, during the walk and turn test the hood of the patrol car obstructed the camera's view of some of Rockett's legs during part of that test. We were not aware of that at the time.

FURTHER AFFIANT SAYETH NAUGHT.

  
Michelle Del Castillo-Reiten

SWORN TO and subscribed before  
me, this 18 day of  
November, 2013.

  
Notary Public for the State of South Carolina

DOCKET NO. 2012-GS-46-03177

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

67  
WITNESSES  
RHPD/del Castillo

The State of South Carolina  
County of York

Defendant

COURT OF GENERAL SESSIONS

September 13, Term 2012

hereby appear in my own proper person and plead guilty to the within indictment or to

ab

ARREST WARRANT NUMBER

97534 FS

THE STATE

vs.

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

CATHY KENNINGTON ROCKETT

*Paul V...*  
Foreperson of Grand Jury  
Date: 9/13/12

VERDICT

*Guilty BY AW*

*11-20-12*

Indictment for

DRIVING VEHICLE WHILE UNDER THE  
INFLUENCE OF ALCOHOL AND/OR DRUGS

*David C. W...*  
Foreperson of Petit Jury  
Date:

SC Code: 56-5-2930  
CDR Code: 3363

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )


INDICTMENT

At a Court of General Sessions, convened on September 13, 2012, the Grand Jurors of York County present upon their oath:

**DRIVING VEHICLE WHILE UNDER THE INFLUENCE OF  
ALCOHOL AND/OR DRUGS**

The Defendant, Cathy Kennington Rockett, did in York County, South Carolina, on or about May 13, 2012, drive a motor vehicle while under the influence of alcohol and/or any other drug or a combination of drugs and/or substances which cause impairment to the extent that her faculties to drive were materially and appreciably impaired; such being at least the fourth 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

WITNESSES  
RHPD\del Castillo  
jcv

ARREST WARRANT NUMBER  
Direct Indictment: 97534 FS

ACTION OF GRAND JURY  
TRUE BILL

*Paul VA*  
Foreperson of Grand Jury  
Date: 9/13/12

VERDICT  
GUILTY BY ALL

*Grady C. Webb*  
Foreperson of Petit Jury  
Date:

DOCKET NO. 2012-GS-46-03178

The State of South Carolina  
County of York

COURT OF GENERAL SESSIONS  
September 13, Term 2012

THE STATE  
vs.  
CATHY KENNINGTON ROCKETT

Indictment for  
HABITUAL TRAFFIC OFFENDER

SC Code: 56-1-1100  
CDR Code: 0057

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant  
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.



## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 11th, 2014



Robert M. Pachak  
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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

ORIGINAL

RECEIVED

JUL 11 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

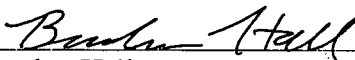
CATHY KENNINGTON ROCKET,

APPELLANT

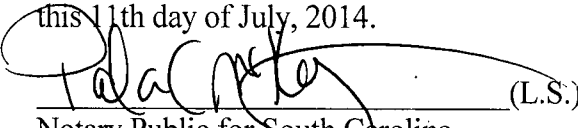
APPELLATE CASE NO. 2013-002523

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of July, 2014.

  
\_\_\_\_\_  
Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 11th day of July, 2014.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina

My Commission Expires: July 24, 2022