

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

R. Knox McMahon, Circuit Court Judge

RECEIVED
JAN 30 2013
S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MANNING,

APPELLANT

RECORD ON APPEAL

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PAGES 501-548

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1 convinces you of its truth using your good judgment and
2 your common sense.

3 In determining the believability of the
4 witnesses who have testified in this case, you may
5 believe one over several or several over one. You may
6 believe part of the testimony of a witness and reject
7 the remaining part of the testimony of that same
8 witness.

9 You may believe the testimony of a witness in
10 its entirety or reject the testimony of a witness in its
11 entirety. You may consider whether any witness has
12 exhibited to you any interest, any bias, any prejudice
13 or other motive in this case. You may also consider the
14 appearance or manner, the demeanor of the witness, while
15 he or she was on the witness stand.

16 Expert witnesses. Now, you have heard me
17 speak about this earlier during the course of the trial.
18 The rules of evidence, again, ordinarily do not permit
19 witnesses to testify to opinions or conclusions.

20 An exception to this rule exists for witnesses
21 that we call expert witnesses. A witness, who by
22 education and experience, has become expert in some art,
23 science, profession or calling may state an opinion as
24 to relevant and material matter in which the witness
25 claims to be an expert and may also state the reasons

1 for that opinion.

2 You should consider any expert opinion
3 received in evidence in this case and like any other
4 evidence give it the weight that you think it deserves.
5 If you decide the opinion of an expert is not based on
6 sufficient education or experience or if you conclude
7 that the reasons given in support of the opinions are
8 not sound or that the opinion is outweighed by other
9 evidence, you may disregard the opinion entirely.

10 An expert witness' testimony is to be given no
11 greater weight than that of any other witness simply
12 because the witness is called an expert or is an expert.
13 Further, you are not required to accept an expert's
14 opinion even though it is not contradicted.

15 I instruct you and emphasize the fact that the
16 Defendant did not testify is not a factor to be
17 considered by you in any way in your deliberations and
18 in your consideration on the question of the guilt or
19 the innocence of the Defendant. It must not be
20 considered by you in any manner whatsoever.

21 A defendant has the constitutional right to
22 remain silent, and the assertion of this right must not
23 be considered by you in your deliberation. I repeat,
24 under your oath you are to draw no conclusions
25 whatsoever from the fact that the Defendant in this case

1 did not testify.

2 The fact that this Defendant did not testify
3 should not even be discussed in the jury room. The
4 burden of proof, as I have stated to you, is on the
5 State. The Defendant is not required to prove his
6 innocence. The burden of proof remains on the State to
7 prove guilt beyond a reasonable doubt.

8 Statement of the Defendant. A statement
9 alleged to have been made by the Defendant has been
10 admitted into evidence in this case. While the Court
11 has determined that the statement is admissible, I
12 instruct you that you make the ultimate decision of
13 whether or not the Defendant made the statement.

14 If the Defendant did make the statement, you
15 must determine whether the statement was made by the
16 Defendant voluntarily and of his own free will and
17 accord.

18 The State has the burden of proving beyond a
19 reasonable doubt that any alleged statement was
20 voluntary. If you determine it was, you may give the
21 statement any further consideration that you deem
22 proper.

23 You must decide what weight, if any, should be
24 given to any alleged statement. If you determine the
25 statement was not the free and voluntary statement of

1 the Defendant, if it was coerced or there was any undue
2 influence or any intimidation in any manner, you should
3 not consider the statement at all.

4 Ladies and gentlemen, if you would please
5 continue to give me your complete and undivided
6 attention, I am now going to cover the charge in the
7 indictment of felony driving under the influence/death,
8 which is a statute in South Carolina, 56-5-2945.

9 The Defendant is charged with felony driving
10 under the influence. The State must first prove beyond
11 a reasonable doubt that the Defendant drove a vehicle in
12 this State while under the influence of alcohol and/or
13 drugs.

14 An issue in this case is the identification of
15 the Defendant as the person who committed the crime
16 charged. The State has the burden of proving identity
17 beyond a reasonable doubt. You the jury must be
18 satisfied beyond a reasonable doubt of the accuracy of
19 the identification of the Defendant before you may
20 convict the Defendant.

21 The State must further prove beyond a
22 reasonable doubt that the Defendant drove a vehicle
23 while under the influence of alcohol and/or drugs.
24 Well, what does driving a motor vehicle mean? It means
25 that the vehicle was in motion.

1 This, of course, may be proved by direct or
2 circumstantial evidence. The movement of the vehicle
3 might occur without any affirmative act by a driver or,
4 in fact, by any person. If a vehicle is moved by some
5 power beyond the control of the Defendant or by
6 accident, this would not be driving.

7 The State must also prove beyond a reasonable
8 doubt that the Defendant was sufficiently under the
9 influence to impair his ability to drive with reasonable
10 care, with due regard for others and himself or as a
11 reasonable and prudent person would drive.

12 It is not necessary to show that the Defendant
13 was in a helpless condition, passed out or even
14 intoxicated. On the other hand, the fact that the
15 Defendant, at some time prior to the incident, drank an
16 alcoholic beverage or took a drug does not prove that
17 the Defendant was driving under the influence.

18 Driving while under the influence means under
19 the influence of alcohol and/or drugs to the extent that
20 the person's faculties to drive are materially and
21 appreciably impaired.

22 Next, the State must prove beyond a reasonable
23 doubt that while driving the Defendant did an act
24 forbidden by law or neglected a duty imposed by law,
25 and, of course, there are many traffic regulations in

1 South Carolina.

2 By statute, 56-5-1810, drive on the right side
3 of roadways. Upon all roadways of sufficient width, a
4 vehicle shall be driven upon the right half of the
5 roadway.

6 Driving on roadways, lanes of traffic.

7 Whenever any roadway has been divided in two or more
8 clearly marked lanes for traffic, the following rules,
9 in addition to all other others consistent herewith,
10 shall apply. A vehicle shall be driven as nearly as
11 practical entirely within a single lane.

12 56-5-1520 is the general rule as to speed
13 limits. A person shall not drive a vehicle on a highway
14 at any speed greater than is reasonable and prudent,
15 under the conditions and having regard to the actual and
16 potential hazards then existing. Speed must be so
17 controlled to avoid colliding with any person, vehicle
18 or other conveyance on or entering the highway or
19 appertinent thereto.

20 Finally ladies and gentlemen, the State must
21 prove beyond a reasonable doubt that the act or neglect
22 of the Defendant proximately caused the death of another
23 person.

24 Well, what does that term mean, proximate
25 cause? Proximate cause is the direct cause. It is the

1 immediate cause. It is the efficient cause. It is that
2 without which the death of the victim would not have
3 resulted.

4 Ladies and gentlemen, under Section 56-5-2950,
5 which is the implied consent to testing for alcohol or
6 drugs, a person who drives a motor vehicle in this State
7 is considered to have given consent to a chemical test
8 of his breath, blood or urine for the purpose of
9 determining the presence of alcohol or drugs or a
10 combination of alcohol and drugs if arrested for
11 driving, if arrested for an offense arising out of acts
12 alleged to have been committed while the person was
13 driving a motor vehicle while under the influence of
14 alcohol and drugs or a combination of alcohol and drugs.

15 If the person is physically unable to provide
16 an acceptable breath sample because he has an injured
17 mouth, is unconscious or for any other reason considered
18 acceptable by licensed medical personnel, the arresting
19 officer may request a blood sample to be taken.

20 Blood and urine samples must be obtained by
21 physicians licensed by the State, registered nurses
22 licensed by the State, and other medical personnel
23 trained to obtain the samples in a licensed medical
24 facility.

25 A person who is unconscious or otherwise in a

1 condition rendering him incapable of refusal is
2 considered to be informed and not to have withdrawn the
3 consent provided by the implied consent statute.

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

10 Further, under our statute, if the alcohol
11 concentration was at the time in excess of eight
12 one-hundredths of 1 percent, .08, or more, it may be
13 inferred that the person was under the influence of
14 alcohol.

15 That may be considered by you in deciding
16 whether the Defendant was under the influence. This
17 inference is simply an evidentiary fact to be considered
18 by you, along with the other evidence in the case, and
19 you may give it what weight you the jury decide it
20 should receive.

21 Ladies and gentlemen, that is the jury charge
22 on the general law and the specific charge as to felony
23 driving under the influence resulting in death. There
24 are two possible verdicts which you may find in this
25 case, guilty or not guilty.

1 There is no significance whatsoever in the
2 order in which I have stated these possible verdicts.
3 It is simply one must be stated first. Ladies and
4 gentlemen, your verdict must be a unanimous verdict.
5 All 12 of you must agree.

6 Mr. Foreman, when the jury agrees on the
7 verdict, you would write the verdict. I have a form
8 of verdict for you. It will have the caption of the
9 case. It will have felony D.U.I./death, guilty or not
10 guilty.

11 If the verdict is guilty, you would check to
12 the left and circle the word guilty. If your verdict is
13 not guilty, you would check to the left -- there's a box
14 for you to check -- and circle the two words, not
15 guilty. Then sign and date the form.

16 Once you have done that, if you will knock on
17 the jury room door and inform your bailiff. Then we
18 will receive you back into the courtroom at that time.
19 Please remember, your verdict cannot be based on
20 passion, prejudice, emotion or any other consideration
21 not in evidence in this case.

22 I am going to ask you to please return to your
23 jury room, but do not begin your deliberations until I
24 instruct you to do so. If I have forgotten something, I
25 will have to bring you back out.

1 If I do not bring you back out, what will
2 happen is you will receive the form of verdict.
3 Everybody looks well. So you would receive the form of
4 verdict, the evidence, the documents into your jury
5 room. Our alternate would come out.

6 You will be informed by the bailiff or the
7 clerk to then begin your deliberations. If you have any
8 questions during the course of your deliberations,
9 Mr. Foreman, if you will just write me a note and knock
10 on the door, and the bailiff will get it to my
11 attention.

12 You may take your notes with you at this time;
13 however, do not begin your deliberations until I
14 instruct you to do so. Thank you very much.

15 (The jury retires to the jury room.)

16 THE COURT: All right. Solicitor, any
17 exceptions or additions?

18 MR. MOBLEY: Your Honor, maybe I missed
19 something or did not hear it. I don't think I heard any
20 language in regards to firm, firmly believe or firm
21 belief. I may have just missed it, Your Honor, to
22 be honest with you.

23 THE COURT: You are talking about a reasonable
24 doubt?

25 MR. MOBLEY: Yes, Your Honor.

1 THE COURT: I charged Manning, and I also
2 charged proof beyond a reasonable doubt is proof
3 that leaves you firmly convinced of the Defendant's
4 guilt.

5 MR. MOBLEY: Okay.

6 THE COURT: I went into absolute certainty,
7 real possibility that the Defendant is not guilty, you
8 must give him the benefit of doubt. If you are firmly
9 convinced the Defendant is guilty -- I'm sorry. I'm
10 talking too fast.

11 If you are firmly convinced that the Defendant
12 is guilty of the crime charged, you must find the
13 Defendant guilty. So I believe I charged that. Any
14 others?

15 MR. MOBLEY: No, nothing, Your Honor.

16 THE COURT: All right. Mr. Madsen?

17 MR. MADSEN: Nothing from the defense,
18 Your Honor.

19 THE COURT: All right. If y'all would please
20 check the exhibits.

21 (Pause.)

22 THE COURT: Have they checked the evidence?

23 COURT REPORTER: Yes, sir.

24 THE COURT: All right. It has gone to the
25 jury. We will be awaiting a verdict.

1 (The jury commences its deliberation at
2 3:55 p.m.)

3 (The following occurred at 4:45 p.m.)

4 THE COURT: I understand the jury has a
5 verdict. Anything before we bring in the jury from the
6 State?

7 MR. MOBLEY: Nothing, Your Honor.

8 THE COURT: From the defense?

9 MR. MADSEN: Nothing, Your Honor.

10 THE COURT: Please, everyone, I realize the
11 return of the jury with the verdict can be very
12 emotional. If you feel like you cannot keep your
13 emotions in check, I would suggest you leave at this
14 time. Because I will have the sheriff take anyone into
15 custody that has any outbursts of emotions.

16 (The jury returns to open court to report its
17 verdict.)

18 THE COURT: Madame Clerk.

19 CLERK: Mr. Foreman, have you reached your
20 verdict?

21 MR. FOREMAN: Yes, ma'am.

22 CLERK: Please pass it up by the bailiff.

23 (Hands to Court.)

24 THE COURT: All right. The verdict appears to
25 be in the proper form. If you will publish our verdict,

1 please, Madame Clerk.

2 (Whereupon the verdict of the jury is
3 published as follows.)

4 CLERK: Indictment 2009-GS-32-2855, the State
5 versus Christopher D. Manning, as to felony driving
6 under the influence resulting in death, we the jury
7 unanimously find the Defendant guilty, and it is so
8 signed by the foreperson.

9 Mr. Foreman, and ladies and gentlemen of the
10 jury, if this is your verdict, please indicate each of
11 you by raising your right hand.

12 (All jurors so indicate.)

13 CLERK: All hands are raised, Your Honor.

14 THE COURT: Thank you. Anything else for the
15 jury from the State?

16 MR. MOBLEY: Nothing, Your Honor.

17 THE COURT: From the defense?

18 MR. MADSEN: Nothing, Your Honor.

19 THE COURT: All right. Thank you. Thank you
20 very much, Mr. Madsen.

21 Mr. Foreman, ladies and gentlemen of the jury,
22 I never criticize nor commend a jury for their verdict.
23 As you heard me saying during the course of my
24 instructions to you, the law does not allow me to have
25 any opinion on the facts of the case.

1 However, although it has been a short week in
2 time -- I think we started Tuesday -- we have worked,
3 y'all have worked long and hard this week, and I commend
4 you for your service, for your dedication, for your
5 attention, and your promptness. I appreciate that very
6 much.

7 Without the participation of citizens like
8 yourselves week to week, week in and week out, in all
9 the courts of South Carolina, we could not go about the
10 very important business of administering your civil and
11 criminal justice system. It just would not get done.

12 It has been one of the honors and highlights
13 of my life to serve as a circuit court judge in
14 Lexington County and throughout South Carolina. The
15 majority of that is because of the quality of people I
16 get to serve with, jurors, court personnel on both
17 sides, the bailiffs, clerks, the officers, just
18 throughout South Carolina. I just can't tell you what
19 an honor it is to be in those folks' presence.

20 In Florence County, as a matter of fact,
21 there's one bailiff down there who is 87 years old and
22 as spry as he can be that landed on Omaha Beach. There
23 is a bailiff in McCormick, a female bailiff, that joined
24 the Navy as a W.A.V.E. in World War II. You just find
25 that throughout South Carolina.

1 One of our bailiffs passed away about a month
2 ago, Mr. Taylor, who has already retired, who was a
3 World War II vet. Quite frankly, I'm honored that they
4 stand up when I come in the courtroom because they
5 shouldn't. I should stand up when they come in the
6 courtroom.

7 But be that as it may, thank you very much.
8 This will conclude your jury service for the day and for
9 this week. You are protected for the remainder of this
10 calendar year as far as State circuit court of record is
11 concerned.

12 It doesn't protect you from magistrate's court
13 or city court. If you get both magistrate and city
14 courts before the year is out, I don't condone gambling
15 necessarily, but perhaps you should buy a lottery ticket
16 and see what happens.

17 With that being said, if you will leave your
18 buttons on the rail as you go out. You are now excused.
19 Thank you. Thank you very much. Mr. Foreman, the clerk
20 would like to have you conform the indictment. She'll
21 meet you in the hallway. Again, thank you. Thank you
22 very much.

23 (The jury is excused).

24 THE COURT: Any motions, Mr. Madsen?

25 MR. MADSEN: Yes, Your Honor. We would

1 renew all of our objections --

2 THE COURT: You may be seated, Mr. Manning.

3 THE DEFENDANT: Thank you, sir.

4 MR. MADSEN: We would renew all of our
5 objections and all of our motions during the trial. We
6 would also move at this point in time, Your Honor, for a
7 new trial. We do not believe that the evidence
8 presented by the State was sufficient for a jury to
9 return a verdict of guilty.

10 THE COURT: Thank you. Thank you very much.
11 Solicitor, do you care to respond?

12 MR. MOBLEY: I do not, Your Honor.

13 THE COURT: All right. I would renew all my
14 previous trial rulings. Further, I would find there is
15 substantial -- not only is there direct evidence, but
16 there is substantial circumstantial evidence in this
17 case for which the jury could reach the verdict which
18 they rendered. I would deny the Defendant's motion for
19 a new trial.

20 Any reason sentence cannot be imposed at this
21 time, Solicitor?

22 MR. MOBLEY: Yes, Your Honor. Just briefly,
23 what we are doing is printing the sentencing sheet. We
24 wanted to wait until after the verdict was read so that
25 we could print one. We are printing it now. I can run

1 downstairs and go get it at this time and sign it
2 appropriately. I'll be happy to print it, and Mr. Al
3 Eargle has gone to get it. It will just be
4 approximately two or three minutes, Your Honor, if the
5 Court doesn't mind.

6 THE COURT: All right. Mr. Madsen, any reason
7 sentence should not be imposed at this time?

8 MR. MADSEN: No, Your Honor.

9 THE COURT: All right. Thank you. I'll wait
10 on the sentencing sheet.

11 MR. MOBLEY: Thank you, Your Honor.

12 (Pause.)

13 THE COURT: All right. Solicitor, anything
14 from the State?

15 MR. MOBLEY: Yes, briefly, Your Honor. We
16 just want to speak briefly.

17 THE COURT: I'm sorry. I couldn't hear.

18 MR. MOBLEY: I apologize, Your Honor. We just
19 want to speak briefly --

20 THE COURT: All right.

21 MR. MOBLEY: -- before the Court before the
22 sentence is imposed. And if I may approach the Court
23 and provide a picture that has been provided by the
24 family of Mr. Jacob Hill.

25 THE COURT: Have you shown that to Mr. Madsen?

1 MR. MOBLEY: It has been shown to Mr. Madsen
2 now. Thank you, Your Honor.

3 (Hands to Court.)

4 MR. MOBLEY: Mr. Hill was born June 4, 1984.
5 He was a 25-year-old man loving life at the time. He
6 made some unfortunate decisions, but this trial was
7 about the decisions that Mr. Manning made.

8 You heard about the drinking that occurred at
9 that bar that night and the substantial recklessness
10 that he conducted himself while driving that vehicle,
11 which was his girlfriend's vehicle.

12 Your Honor, I don't have to provide you a
13 recap of all the facts because you were here, and I know
14 you heard the testimony from everyone. That night he
15 chose to drive that vehicle after being under
16 impairment, after drinking approximately four to five
17 hours, at a rate of 89 miles per hour and in a curve
18 which caused that violent accident that ultimately threw
19 both of them out. Mr. Manning was able to ultimately
20 survive. Mr. Hill was not able to do so. He was not as
21 fortunate as Mr. Manning at that particular time, Your
22 Honor.

23 Now, we have some certified convictions
24 that -- well, a certified conviction that we were able
25 to obtain from the State of Georgia. It is a 1989

1 escape that Mr. Madsen has already seen, Your Honor, and
2 that's out of the State of Georgia.

3 He also has some additional records that date
4 back to 1987. In 1987 he just has a probation violation
5 based out of Georgia. In 1988 we have possession of
6 alcohol by a person under 21. In 1989 we have a
7 criminal damage to property in the first degree, another
8 probation violation, driving while license is suspended,
9 the escape charge which was a felony charge. He
10 received 12 months confinement. In 1996 theft by
11 conversion of lease, rental or personal property. All
12 of those were out of the State of Georgia.

13 In the State of Florida, he has a record that
14 begins February 27th, 1995. We have a loitering or
15 prowling which was a misdemeanor, possession of less
16 than 20 grams of a controlled substance which was a
17 misdemeanor, possession of drug paraphernalia which was
18 also a misdemeanor.

19 In June of 1995, possession of another
20 unlisted 893 drug. It does not specify what that drug
21 is on the sentencing sheet. That was a felony.
22 Obstruction without violence, that was a misdemeanor;
23 possession of drug paraphernalia, that was a
24 misdemeanor; possession of less than 20 grams of
25 controlled substance, and that was misdemeanor.

1 In March of 2003, theft of property, a
2 misdemeanor, in the second degree. We have a strong
3 armed robbery out of Florida which was a felony as well,
4 Your Honor. On that particular charge, it does not show
5 the confinement -- excuse me -- on the N.C.I.C. search,
6 it does not show the confinement that Mr. Manning
7 received on that. Maybe the defense attorney can speak
8 upon that, Your Honor.

9 The family has tragically dealt with the loss
10 here of a son and a brother which they dearly loved.
11 I'm sure that you were able to see some of the emotions.
12 They were trying to keep it in check, but they
13 absolutely loved Jake, which they affectionately called
14 him. They would like to speak at the appropriate time
15 if the Court will allow, Your Honor.

16 It's the State's position, Your Honor, that
17 Mr. Jacob Hill was only 25 years old. This charge, the
18 felony D.U.I., ranges from a one-year mandatory up to
19 25-years confinement.

20 Your Honor, respectfully, the State would ask
21 for the 25 years that Mr. Jacob Hill was here on earth,
22 that Mr. Christopher Manning does that same amount of
23 time in prison.

24 THE COURT: Thank you. Thank you very much,
25 Solicitor. I will be glad to hear from any members of

1 Jake's family.

2 MS. DUBOIS: My name is Jesse Dubois, Jacob's
3 older sister.

4 THE COURT: Jesse --

5 MS. DUBOIS: Dubois, D-U-B-O-I-S. Mr. Manning
6 is a bad man. He did a lot of bad things. Jake messed
7 up by getting in the car with him. I blame Jake for
8 getting in the car with him to a point, but he paid for
9 what he did. He paid the ultimate price.

10 This is a 41-year-old man. He is grown. He
11 has a huge record. He should have known better. Jake
12 never had a chance to get married. He never had a
13 chance to have children. He never had chance to have an
14 adult life.

15 I just ask that you please consider him not
16 even getting a chance to get his life going good. This
17 man has had chance after chance after chance. Please
18 just do whatever you can to bring justice for my little
19 brother.

20 I never want to see this happen to anybody
21 else. It has been an awful, horrible experience. The
22 past ten months have just been awful. I have prayed
23 that nobody else has to deal with what my family has
24 been going through. Thank you.

25 THE COURT: Yes, ma'am. Thank you.

1 MS. CORDER: I'm mom.

2 THE COURT: And tell me your name, ma'am.

3 MS. CORDER: Teresa Corder.

4 THE COURT: All right, Ms. Corder.

5 MS. CORDER: Okay. I'm mom and, of course, my
6 son is -- I can say everything my daughter said but not
7 quite as eloquently. I do believe in poetic justice. I
8 do believe in 25 years.

9 I think the one thing that has bothered me
10 more than anything else about Mr. Manning is the fact
11 that there has not been -- according to the officers, we
12 were never, Jake's family, was never inquired about. No
13 sympathy was ever expressed towards us. No remorse was
14 ever shown. Not one sad look was ever given.

15 I think, to me, that shows no remorse, and I
16 just don't think somebody like that needs to be around.
17 I'm sorry. I'm sorry. I just don't think somebody like
18 that, that don't have any remorse for taking somebody
19 else's life -- I mean, my son was going to get blamed
20 because it was convenient that he was dead. I'm sorry.
21 I don't know what else to say except for he took my
22 sunshine away. I'm sorry.

23 THE COURT: That's all right, Ms. Corder.

24 Yes, sir, your name, please?

25 MR. HILL: My name is Josh Hill.

1 THE COURT: All right.

2 MR. HILL: I'm Jake's older brother. Your
3 Honor, I believe forgiveness is divine, and I don't know
4 anybody more forgiving than my brother was. I also
5 believe in the preservation of human life in any way,
6 shape or form for any amount of time.

7 I have never heard of Chris before. I know
8 all of Jake's friends. I have never heard him speak of
9 Mr. Manning at all before. Nobody knows my younger
10 brother better than me, Your Honor, and in my heart I
11 firmly believe that my brother would not get in somebody
12 else's vehicle under the influence on a dark night in
13 the rain going 89 miles an hour.

14 I also believe in an eye for an eye, and I
15 realize that is not going to happen, but the closest
16 thing we can get to that is 25 years for 25 years. And
17 given the nature of Mr. Manning's demeanor and behavior,
18 I would like to ask the Court for that. Thank you.

19 THE COURT: Thank you very much, Mr. Hill.
20 Anything further, Solicitor?

21 MR. MOBLEY: Nothing at this time, Your Honor.

22 THE COURT: All right. Thank you. Thank you
23 very much. Mr. Madsen.

24 MR. MADSEN: Thank you, Your Honor. As
25 you have heard, Chris is 41 years of age. He has lived

1 in a variety of places, growing up in Georgia, going to
2 the 11th grade there.

3 It's obvious from his record he has suffered
4 from substance abuse in the past. In fact, it ended in
5 or ended him up in a Georgia rehab center at a young
6 age.

7 Judge, as he has told you, he has worked as a
8 carpenter, a tree surgeon. Then when this happened, he
9 was actually a cook at Boondocks at that point in time.
10 Judge, for him, I think that this is a bitter pill to
11 swallow.

12 He has always told me that he wasn't driving
13 from the first time that I had met him, but he certainly
14 understands the court system, and he accepts the jury's
15 verdict and understands that Your Honor's job now is to
16 impose punishment.

17 He did suffer. Once he was taken to the
18 hospital, I have spoken to the doctors there.
19 Initially, Judge, he had lost his spleen. His nose was
20 cut down the middle, had lost his spleen, had a broken
21 rib on the back side, I believe also had a couple of
22 other broken bones.

23 They ended up taking him into surgery that
24 day. The doctor tells us he was critically ill.
25 Apparently over a period of time, he kept on bleeding

1 out, and so they ended up having to reopen him.

2 At other points in time, they ended up going
3 back in, taking out his appendix, re-cauterizing -- one
4 of the medical terms that I did understand -- some of
5 the wounds in his stomach.

6 It was to the point where they actually
7 couldn't shut him back up as far as his stomach. So he
8 was actually kept open for a period of time. The doctor
9 tells me that everything gets swollen with the
10 intestines and the blood to where he had to be kept open
11 for a period of time.

12 Obviously he was kept in a comma during that
13 period of time. He ultimately ended up staying in the
14 hospital for 27 days. Immediately when he was released,
15 he was actually brought over to the detention center,
16 and bond was set while he was still in the hospital
17 gown. He was sent to the detention center at that point
18 in time.

19 I obviously ended up -- well, actually
20 initially he did not qualify for the Public Defender's
21 Office. Someone needed to write after that, which I
22 don't quite understand given the nature of his injuries,
23 but I was later appointed to represent him.

24 I have found that he has always been available
25 to come to court when necessary. He has always come to

1 my office, has always been extremely respectful.
2 Generally, he has always been a very nice individual to
3 me.

4 Certainly, Judge, given the nature of this
5 charge, there is a price to pay. We know and he knows
6 that Your Honor is going to send him to prison for a
7 substantial period of time.

8 With all due respect to the victims, we would
9 request Your Honor to show him some leniency. My
10 thought has always been that on a felony D.U.I.
11 situation, which is different from a lot of the
12 different crimes that we see here, is that that top end
13 should maybe be more reserved for the individuals who
14 hurt someone who is going to buy ice cream or not, you
15 know, not involved in being in that car.

16 But there is certainly a price to pay. You
17 have a young man who is dead here, and that is a
18 tragedy. I have done this on both sides, not only
19 defended cases like this but prosecuted cases like this,
20 and they never get easier. They never will and they
21 probably never should because it's obviously a bad
22 situation.

23 But, Judge, I don't think that he is someone
24 who ought to be near that top range. We would certainly
25 ask for as much leniency as the Court can give. We

1 would ask for something in the nature of ten years. As
2 Your Honor knows, any time that you give him, he must
3 serve a minimum of 85 percent of that time, Judge.

4 THE COURT: Thank you, Mr. Madsen. Anything
5 you would like to say, Mr. Manning?

6 THE DEFENDANT: I would like to apologize to
7 the family for the loss of their son. I realize -- I do
8 realize what it would be like to lose a brother. I do
9 understand their loss. But he was my friend, too. His
10 brother might not have heard of me, but we worked
11 together on a couple of occasions. We hung out on a few
12 occasions. He wasn't my best friend, but we were good,
13 close friends.

14 I did make a mistake by letting Jake talk me
15 out of the keys, Your Honor. I thought I was doing the
16 right thing. Obviously, I didn't. But I would like to
17 say that I am sorry to the family for their loss, and
18 I'm not as inhuman as you might try to think I am. I do
19 care. Jake was a friend of mine. That's all, Your
20 Honor.

21 MR. MADSEN: Judge, one last thing I would
22 like to say.

23 THE COURT: Yes, sir.

24 MR. MADSEN: And the other thing is
25 Chris actually -- you know, we all have stomach muscles

1 that cover our intestines, our stomach, and that.
2 Actually, unfortunately he's going to eventually have to
3 have more surgery. I would gather now it would end up
4 being in the Department of Corrections.

5 But his stomach muscles have actually never
6 been reattached. He's shown that to me. He has to wear
7 kind of a brace around his stomach because those stomach
8 muscles are still on the side.

9 He tells me at some point in time -- and he
10 had an appointment later on this month where they are
11 going to assess as to when they are going take those
12 muscles and eventually put them back.

13 So, right now basically his intestines, his
14 stomach are just sitting up against skin if I understand
15 correctly. I had talked with the doctor about that.
16 Chris has shown me that in his office -- or in my
17 office, excuse me.

18 THE COURT: All right, sir.

19 MR. MADSEN: He does also have -- his
20 girlfriend is here. I think that she would like to
21 address the Court and also actually her parents.. That's
22 April Rabon. They have been together for, I believe, 12
23 years.

24 THE COURT: I will be glad to hear from them
25 if you would like for me to, Mr. Madsen.

1 Yes, ma'am, your name, please?

2 MS. RABON: April Rabon.

3 THE COURT: All right, Ms. Rabon, I'll be glad
4 to hear from you.

5 MS. RABON: Thank you. I just want to address
6 that I know Chris has a bad past. I'm a big believer
7 that everybody makes mistakes, and I know that. He has
8 paid for his mistakes.

9 He has done time for every crime, and he's
10 done all the time that he was supposed to. I mean, he
11 has actually gone and turned himself in to do past time,
12 like the charge in Georgia.

13 He is not a heartless person. I have been
14 with him many nights where he has cried and cried over
15 Jake. I just want the family to realize that he was not
16 able to contact them or to show them any sympathy
17 because he was not conscious enough to do anything in
18 the hospital, and they took him straight from the
19 hospital to the jail. He never had a chance to say
20 anything to them. It's not that.

21 He is not heartless. If there is anybody in
22 this situation that has been hurtful, it has been -- it
23 has been hurtful for everybody. It's not just one
24 person or two people that suffered. Both sides have
25 really suffered.

1 He is going through a lot. I just wanted to
2 say that he's not a bad person. He's not a heartless
3 person, and it's not that he didn't intend to express
4 that to the family. He didn't get a chance to.

5 THE COURT: All right. Thank you, Ms. Rabon.
6 Anything further, Mr. Madsen?

7 MR. MADSEN: No, Your Honor.

8 THE COURT: Solicitor, what happened with Lois
9 Cannis?

10 MR. MOBLEY: Lois Cannis?

11 THE COURT: Yes, sir. The testimony was such
12 that the three of them left together and they were going
13 to Ramp 4 in Saluda County to go swimming. What
14 happened to her from the time they headed out the door
15 to the car lot, to the parking lot?

16 MR. MOBLEY: Your Honor, the interview that
17 she provided to the Highway Patrol indicated -- which
18 was recorded -- that after they left out the door, she
19 decided to go her separate way. She stated that she
20 went home.

21 We had reason to believe that based off her
22 tone and her hesitancy to be detailed about it, that she
23 was withholding some information. So we decided to go
24 there, my investigator and I.

25 THE COURT: So she had another mode of

1 transportation? I assume her home wasn't close enough
2 to walk to.

3 MR. MOBLEY: That is correct, Your Honor. She
4 was driving a separate car, and her intentions that
5 night were basically for her to follow them --

6 THE COURT: I see.

7 MR. MOBLEY: -- to the swimming ramp, to swim
8 and possibly smoke pot, which did not come out on direct
9 testimony.

10 THE COURT: So she wouldn't have been in the
11 Blazer. Even under the plan, she was not going to be in
12 the Blazer.

13 MR. MOBLEY: That's correct, Your Honor. So
14 we went and interviewed her a second time, and she stuck
15 with that story. We subpoenaed her and we had her here
16 to testify.

17 We were going to place her up on the stand and
18 begin asking her questions. And if at any point any of
19 it ended up contradicting anything that she had said
20 prior to today or this week, if it was contradictory to
21 anything, we were going to try to qualify her as a
22 hostile witness and pull out what she was withholding.

23 It was obvious that she was withholding
24 something, but she stayed strong, through our interviews
25 anyway. We, during the course of the trial, we felt

1 that we were going to be able to get the testimony that
2 we needed from the other individuals to complete our
3 case and convict Mr. Manning. So we chose not to do
4 that as a trial strategy, Your Honor.

5 THE COURT: Well, I wasn't questioning you
6 about her, you calling her or not calling her as a
7 witness. I was just curious. I didn't know she had
8 another form of transportation.

9 MR. MOBLEY: Yes, Your Honor.

10 THE COURT: And I was just curious what
11 happened from inside of Boondocks to the parking
12 lot.

13 MR. MOBLEY: Yes, sir. She went her separate
14 way.

15 THE COURT: All right. Some judges think
16 felony D.U.I.s are some of the most difficult cases to
17 sentence. They think that because many times you will
18 have standing in front of you not necessarily public
19 enemy number one.

20 Although Mr. Manning has a prior criminal
21 history that goes back to the '80s, some of which are
22 crimes of violence, I do take into consideration in my
23 sentencing of Mr. Manning or any other individual,
24 generally there is not malice or intent involved.

25 Generally I say there is not malice or intent

1 involved in the commission of a felony, of a felony
2 D.U.I. with a death or great bodily injury involved.
3 What strikes me in this case is before Jake's life was
4 taken, according to the testimony, his free will was
5 also taken.

6 As I understand the testimony, he would not
7 have had the money to drink the amount of drinks that he
8 ingested to test .168, I believe it was, that
9 Mr. Manning and perhaps others provided alcohol to Jake.

10 Well, when we do that, we take away a person's
11 common sense, good judgment, reasoning ability to make
12 good choices. Their choices are not based on sound
13 reasoning because their mind has been affected by the
14 ingestion of alcohol. We know that from the testimony
15 of Ms. Brown.

16 So Jake, when he left the bar, was at that
17 point a dead man riding. Sooner or later people have to
18 learn to make decisions not to drive before they drink.
19 That is when you make that decision. You don't make it
20 after you've had a drink or you don't say, Well, I'm
21 going to have one and I'm going to go home or I'm going
22 to have two and I'm going to go home.

23 Because then you've had three and you forget
24 about home. Or you say, Well, I'm going to call a cab,
25 and then you have four and you forget about a cab. You

1 have to make those decisions before you are in those
2 circumstances.

3 There is not a person in this room observing
4 this trial, Jake's family, your girlfriend, your
5 girlfriend's family, that would not have come and got
6 both of y'all and taken you both home, not a person in
7 this courtroom.

8 But what happens? They take Jake to, I don't
9 know, Shealy's Funeral Home, I don't know,
10 Caughman-Harman, I don't know, the cemetery, and they
11 take you to the penitentiary.

12 I believe Ms. Rabon that you have paid your
13 debts to society for your prior crimes. I don't
14 question that. I think people ought to be able to pay
15 their debts and move on, but I have to take that into
16 consideration.

17 I'm not going to give you the maximum, and you
18 know I'm not going to give you the minimum. I never say
19 to a family, I know how you feel, because I don't know
20 how you feel. I don't know how Jake's mother feels or
21 Jake's brother or Jake's sister. It has never happened
22 to me. If it happened to me, they wouldn't let me up
23 here judging again if it happened to my brother or my
24 son. So I don't know how they feel.

25 You hear the word closure. I don't believe in

1 closure. I think it's an overused word, and I think
2 with some things there's never closure. It may be for
3 them. It may be for you. I don't know. I hope there's
4 closure for them, and I hope there's closure for you.

5 I will say your decision not to testify is
6 appropriate, that you did not get up here and make
7 statements before this jury. Your lawyer did an
8 excellent job in your defense.

9 09-GS-32-2855, Christopher D. Manning, the
10 jury having returned a verdict of guilty of felony
11 D.U.I., death involved, the Defendant is committed to
12 the State Department of Corrections for a determinate
13 term of 18 years, and he is ordered to pay a mandatory
14 minimum fine -- that's and pay a mandatory minimum
15 fine -- of \$10,100.

16 Good luck to you. Good luck to you,
17 Mr. Manning. You have been nothing but respectful to
18 the Court, both in the presence of all the parties and
19 when I walked in here in the morning to get my computer.
20 The deputies told me you've been respectful to them.
21 Good luck. Thank you very much. Thank you, Mr. Madsen.

22 Good luck to you, Ms. Corder and Josh and
23 Jesse. Thank you.

24 Anything further, Solicitor?

25 MR. MOBLEY: Nothing, Your Honor. Thank you.

1 THE COURT: All right. Thank you. Thank you
2 very much. Here are your photographs, Solicitor.

3 MR. MOBLEY: Thank you, Your Honor.

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

L/Cpl. Quest D. Hallman
S.C. Highway Patrol Troop #1
1626 Shop Road
Columbia, SC 29201

TOXICOLOGY DEPARTMENT

September 11, 2009
SLED No: L09-09291
Your Case No: 0932HP1C148
Incident Date: 08/01/2009

[S] Christopher Donald Manning
[V] Jacob E. Hill

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

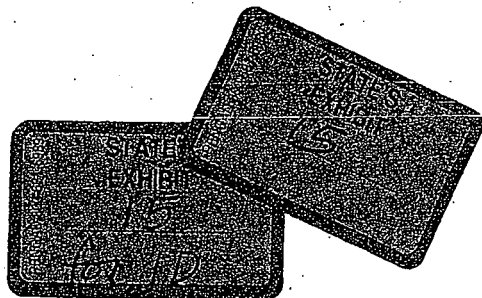
Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

Item: 1 **Sample Type: Blood (Toxicology) - labeled "Manning - Christopher"**

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.173	% w/v	0.01
(Calculated from serum/plasma Ethanol level.)			



9/11/09

Item: 2 **Sample Type: Urine - labeled "Manning - Christopher"**

No Analysis Performed



Jennifer M. G. Brown
Forensic Toxicologist

Biological specimens processed for testing which are not consumed during analysis will be maintained for 180 days from the completion date of the analysis and then destroyed unless otherwise notified.



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

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Governor



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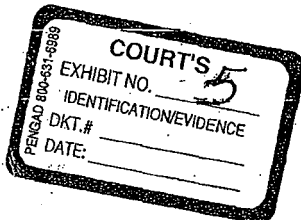
Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE

Item: 4 **Sample Type: Blood (Toxicology) - labeled "Jacob Hill"**

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.169	% w/v	0.01
Methanol	Negative	% w/v	0.01
Acetone	Negative	% w/v	0.01
Isopropanol	Negative	% w/v	0.01



9/11/09

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Benzodiazepines	Positive	mg/L	0.05
Cannabinoids	Positive	mg/L	0.03
Amphetamine	Negative	mg/L	0.15
Methamphetamine	Negative	mg/L	0.15
Oxycodone	Negative	mg/L	0.10

Screen by Fluorescence Polarization Immunoassay (FPIA)

Analyte	Result	Units	Threshold
Cocaine Metabolite	Negative	mg/L	0.10
Opiates	Negative	mg/L	0.10

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Tetrahydrocannabinol	3.4	µg/L	2.00
Synonyms: THC			
Notes: Tetrahydrocannabinol (THC) is a pharmacologically active component of marijuana.			
11-carboxy-Tetrahydrocannabinol	110	µg/L	2.00
Synonyms: THC metabolite			

Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)

Analyte	Result	Units	Threshold
Diazepam	0.02	mg/L	
Synonyms: Valium®, Zetran®, Valrelease®			
Notes: Therapeutic levels: 0.02-4.0 mg/L			
Toxic levels: 5-20 mg/L			
Lethal levels: >30 mg/L			
Nordiazepam	<0.01	mg/L	
Synonyms: Diazepam/Chlordiazepoxide/Chlorazepate metabolite			
Notes: Therapeutic levels: 0.1-2.6 mg/L			
Toxic levels: >5 mg/L			

Item: 5 Sample Type: Urine - labeled "Jacob Hill"

No Analysis Performed



SLED No :L09-09291

Page 3 of 3

9/11/09



Jennifer M. G. Brown

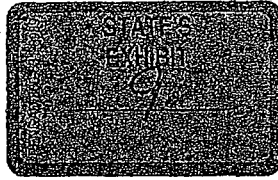
Forensic Toxicologist

CC: Coroner Harry Harman - Lexington County Coroner's Office

For any additional interpretation of results please contact the Toxicologist above at the SLED Toxicology Department, (803) 896-7385.

Biological specimens processed for testing which are not consumed during analysis will be maintained for 180 days from the completion date of the analysis and then destroyed unless otherwise notified.





ADVISEMENT OF IMPLIED CONSENT RIGHTS

Christopher Donald Manning

Subject's Name (Print)



05071967

Date of Birth

M558104671670

Driver's License Number

FL

State Licensed

FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT

- (A) Will test be video recorded? If answer is Yes, start here → - Inform subject of video recording.
If answer is No, start here → - Inform subject of type samples requested (i.e. breath, blood, urine).
- (B) Provide subject with a written copy of the following advisement and read the advisement to the subject:
- You are under arrest for Felony Driving Under the Influence (Felony DUI), Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section.
 - The officer has directed that samples be taken for alcohol and/or drug testing.
 - The samples will be taken and tested according to Section 56-5-2950 and SLED policies.
 - Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs.
 - The resistance, obstruction, or opposition to testing pursuant to Section 56-5-2946 is evidence admissible at trial.
 - If your tests or samples have an alcohol concentration of fifteen one-hundredths of one percent (0.15%) or more, your privilege to drive in South Carolina must be suspended for at least one (1) month.
 - You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer, upon request, must provide you affirmative assistance.
 - You have the right to request an administrative hearing within thirty (30) days of the issuance of the notice of suspension.
 - If you do not request an administrative hearing or if your suspension is upheld at the administrative hearing, you must enroll in an Alcohol and Drug Safety Action Program.

If applicable, perform the following procedures:

- (C) Check subject's mouth and remove any foreign material. (Not required if a refusal has occurred.)
- (D) Enter biographical data into DataMaster DMT. (Required for all tests, including refusals.)
- (E) Observe subject for a minimum of twenty (20) minutes before collecting breath sample. (Not required if a refusal has occurred.)

ADVERTENCIA POR EL DELITO DE MANEJAR BAJO LOS EFECTOS DE ALCÓHOL O DROGAS (FELONY DUI)

- (A) ¿Se grabará en video el análisis? Si la respuesta es Si, empieza aquí → - Informe al sujeto que va a ser grabado en video.
Si la respuesta es No, empieza aquí → - Informe al sujeto de lo que se requiere (ejemplo: soplar, sangre, urina.)
- (B) De al sujeto una copia escrita de la siguiente advertencia y lea la advertencia al sujeto:
- Usted queda detenido por el Delito de Manejar Bajo los Efectos de Alcohol o Drogas (Felony DUI), Sección 56-5-2945, del Código de Leyes de Carolina del Sur de 1976, según su enmienda, o un agente del orden público tiene motivo justificado para afirmar que usted ha quebrantado esta sección.
 - El agente ordenó que usted se someta a que le saquen muestras de alcohol y/o drogas.
 - Se obtendrán y se analizarán las muestras según la Sección 56-5-2950 y las normas de SLED.
 - Según la Sección 56-5-2946, usted tiene que someterse a alguno de los análisis químicos, o a una combinación de los mismos, para determinar si existe la presencia de alcohol, drogas o una combinación de alcohol y drogas.
 - Si usted se resiste, dificulta o se opone a los análisis, según la sección 56-5-2946, este hecho se considera prueba admisible ante un tribunal de justicia en un juicio oral.
 - Si en sus análisis o muestras se detecta una concentración de alcohol de quince centésimos del uno por ciento (0.15%) o más, se le deberá suspender el derecho de manejar en Carolina del Sur por lo menos durante un (1) mes.
 - Usted tiene el derecho de que una persona que usted elija y que esté capacitada para hacerlo, realice sus propios análisis adicionales, los cuales usted mismo tiene que pagar y en ese caso, el agente debe brindarle ayuda si usted lo solicita.
 - Usted tiene el derecho de solicitar una audiencia administrativa dentro de los treinta (30) días de la fecha en que se emitió la notificación de la suspensión.
 - Si usted no solicita una audiencia administrativa o si se le confirma la suspensión en la audiencia administrativa, usted tiene que matricularse en un Programa de Medidas Contra el Abuso del Consumo del Alcohol y las Drogas.

Si aplica, efectúe los procesos siguientes:

- (C) Inspeccione la boca del sujeto y quite material ajena de la boca. (Ignora si se niega el sujeto.)
- (D) Anade datos biograficos en el DataMaster DMT. (Esto es requerido para todos los exámenes aunque se niege el sujeto.)
- (E) Observe al sujeto un minimo de (20) minutos antes de obtener un ejemplar al soplar aire. (Ignora si se niega.)

Unable to sign
Subject's Signature
Firma del Sujeto (Recibió una copia)

EBB
Officer's Signature
Firma del Agente
080107 0716
date/time
fecha/hora



IMMEDIATE BLOOD COLLECTION REPORT

Subject: Manning Christopher Donald 168
 Last Name First Name Middle Name County of Arrest

Subject's Address: 2421 Springvale Dr
 Driver's License Number: A552109691670 State: FL DOB: 06071967 Sex: m Race: W
 Arresting Officer: J.B. Baker Agency: SCHP
 Date of Arrest: 080109 Time of Arrest: 0716 AM/PM Traffic Ticket Number:
 Date of Test: 080109 Time of Test: 0716 AM/PM Location of Collection: Palmdale, CA

CHECK THE FOLLOWING (CHECK BOTH IF APPLICABLE)

- ☒ Subject is under arrest for Section 56-5-2930, 56-5-2933, 56-5-2945, 56-1-2120, 50-21-112, 50-21-113 or 23-31-415; or is in violation of Section 56-5-2945, 50-21-113 or 56-1-286 of the 1976 South Carolina Code of Laws as amended.
- ☒ Subject has been advised in writing of his/her Implied Consent Rights.

CHECK THE CORRECT ONE (ONLY ONE CAN APPLY)

- ☐ Officer has reasonable suspicion that the subject is under the influence of drug(s) other than alcohol and a urine sample is requested.
- ☐ Subject is unconscious or otherwise incapable of refusal and is considered informed, therefore, a blood sample is requested.
- ☐ A blood sample is requested by the arresting officer because a licensed medical person has informed the officer that the subject is unable to take a breath test at this time due to any reason deemed acceptable by that licensed medical person.
- ☒ Subject is under arrest for, or in violation of, Section 56-5-2945 or 50-21-113, and, pursuant to Section 56-5-2946 or 50-21-116, a blood sample or a blood and urine sample is/are requested.
- ☐ A blood sample is requested by the subject for his/her own independent test.

Name and Title of Licensed Medical Personnel:

Nancy V. Chenausky RN
 (Please Print)

Signature of Licensed Medical Personnel:

Nancy V. Chenausky RN

THIS SECTION TO BE CHECKED BY SAMPLE COLLECTOR

- ☒ Using a non-ethanol prep, a blood sample was collected into an unused, uncontaminated vial and given directly to the arresting officer (or to the subject requesting sample for his/her independent test) after collection.
- ☐ A urine sample was collected into an unused, uncontaminated container and given directly to the arresting officer after collection.

Name of Licensed or Trained Collector:

Nancy V. Chenausky RN
 (Please Print)

Signature of Licensed or Trained Collector:

Nancy V. Chenausky RN

FINAL CHECKS FOR LAW ENFORCEMENT OFFICER

- ☒ Sample collection was under my direct supervision.
- ☒ Sample container is properly labeled with the subject's name and time of collection.
- ☒ Sample is properly sealed and ready for transport.

Signature of Officer:

J.B. Baker

Date: 08012009

I, unable to sign
 (Subject's Signature)

received a copy of this report on 08012009

Date

Copy to: Subject, Hospital, SLED

NESSES

Highway Patrol Headquarters

st Hallman

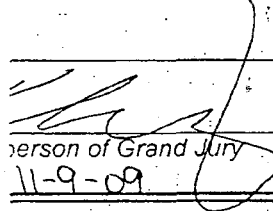
Enforcement Case #:

DEM

ARREST WARRANT NUMBER

9249

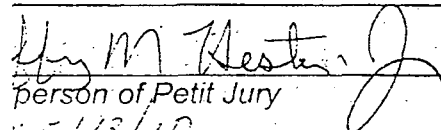
ION OF GRAND JURY


person of Grand Jury

11-9-09

DICT

241/tj


person of Petit Jury

5/13/10

DOCKET NO. 2009GS3202855

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2009

THE STATE
vs.

Christopher D Manning

CDR #: 0395

Indictment for

Felony D.U.I./Death

§ 56-05-2945(A)(2)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

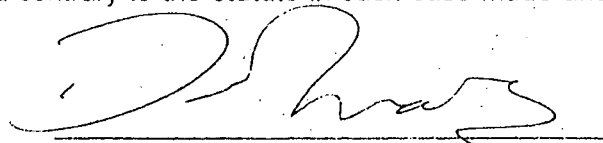
INDICTMENT FOR
Felony D.U.I./Death

§ 56-05-2945(A)(2)

At a Court of General Sessions, convened on November 2009, the Grand Jurors of Lexington County present upon their oath:

That **Christopher D Manning** did in Lexington County, South Carolina on or about August 1, 2009, while driving a vehicle under the influence of alcohol and/or drugs, the Defendant, Christopher D Manning did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle; To wit: failed to exercise due care by failing to maintain his proper lane of travel, and such act proximately caused death to Jacob Hill; all in violation of Section 56-5-2945, 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.

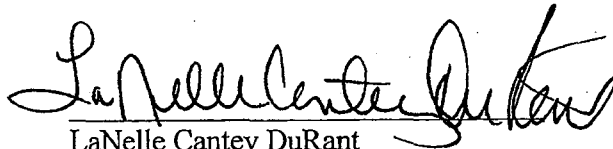


ASSISTANT SOLICITOR

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."

August 1st, 2011



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

RECEIVED

JAN 30 2013

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MANNING,

APPELLANT

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying appellant's motion to dismiss the case where the state violated S.C. Code Section 56-5-2953 because the arresting officer did not provide an affidavit certifying that it was physically impossible to provide a video recording as required by the statute because the person needed emergency medical treatment?
2. Did the trial court err in denying appellant's motion to suppress the blood test evidence pursuant to S.C. Code Section 56-5-2946 because there was not sufficient probable cause for an arrest which the statute requires before a blood sample can be drawn because the driver of the vehicle was not identified?
3. Did the trial court err in denying appellant's motion for a mistrial based on prejudice to appellant after the trial judge severed the felony DUI charge and the possession of a schedule three substance (hydrocodone) charge because the jury was told at the beginning of trial that appellant was being tried on both charges, and both indictments were read?
4. Did the trial court err in charging the jury on S.C. Code Section 56-5-2950 (b) which was a comment on the facts because the statute begins with: "A person who drives..." and the identification of the driver was the primary issue in the trial?

STATEMENT OF THE CASE

In November 2009, the Lexington County Grand Jury indicted Christopher D. Manning on the charge of Felony Driving Under the Influence/Death. On May 11 – 13, 2010, Manning proceeded to trial before the Honorable R. Knox McMahon and a jury. He was represented by Robert M. Masden and Bennett E. Casto. The jury returned a verdict of guilty as indicted. Judge McMahon sentenced Manning to eighteen years imprisonment and a \$10,000 fine. Manning's attorney filed a notice of appeal.

ARGUMENT

I.

The trial court erred in denying appellant's motion to dismiss the case where the state violated S.C. Code Section 56-5-2953 because the arresting officer did not provide an affidavit certifying that it was physically impossible to provide a video recording as required by the statute because the person needed emergency medical treatment.

On July 31, 2009, Christopher Manning was working at a private club, Boondocks, as a cook. R. 129 – 131. Jacob Hill was working at the nearby restaurant, Fisherman's Wharf. On this day, Hill needed a ride home from work so he walked to Boondocks where he knew people because he had previously worked there. When he arrived there, he started drinking with some of his friends. R. 119, ll. 21 – 25; R. 120, ll. 1 – 25.

Manning's work shift was over by 11:00 that night, so he began mingling and hanging out with Hill and other friends drinking and socializing. This went on until around 4:00 in the morning. R. 132, ll. 9 – 25; R. 145, ll. 1 – 25.

Heather Fairchild, who was one of the bartenders that night, testified that Manning and Hill were drinking beer and shots together along with the other people. She said Manning consumed a "pretty good amount of alcohol." R. 134 – 136. But neither Hill nor Manning appeared to be visibly drunk. R. 146, ll. 1 – 25; R. 147, ll. 1 – 6. Manning and Hill and a young woman left the bar together, but Fairchild did not see them get in the car. However, she heard Manning say that he had his car, and he would drive. R. 137 – 140.

Nathan Prouse, an employee of the Lexington County Fire Service, received a call shortly before 5:00 A.M. of a vehicle accident on Highway 378 near the Saluda County line. He was the first responder to arrive at the scene. When he arrived, he saw two bodies in the

field. R. 34 – 38; R. 187 – 188. EMS arrived immediately after him, and announced that Hill was deceased. Prouse went to assist Manning who was severely injured. R. 190; R. 28 – 30.

As Prouse was talking to Manning, who appeared alert as he was speaking to Prouse and to EMS, he said that Manning kept saying: “I f---cked up!” R. 192, ll. 14 – 25; R. 193, ll. 1 – 5; R. 195, ll. 11 – 25; R. 196, ll. 1 – 25.

Three other emergency responders testified that they heard Manning say those same words: “I f---cked up!” They were: (1) Elizabeth Simmons who was an EMT, R. 19 – 20; R. 37; (2) Jerry Wise who was a volunteer with the Lexington County Fire service as an EMT, R. 52; ll. 20 – 25; R. 53, ll. 1 – 8; R. 58; (3) Victor Tomaino who was a volunteer fireman, R. 63, ll. 16 – 25; R. 64 – 66. Tomaino testified that he also heard Manning say that he shouldn’t have been driving. R. 66, ll. 1 – 9.

The forensic toxicologist, Jennifer Brown, testified that Manning’s blood alcohol level was .173. R. 408, ll. 1 – 25; R. 409, ll. 1 – 25. Hill’s blood alcohol level was .169. R. 416, ll. 9 – 25; R. 417, ll. 1 – 18.

Corporal James O’Donnell testified that he worked for the South Carolina Highway Patrol with the Multidisciplinary Accident Investigative Team (MAIT). He was qualified as an expert in the field of accident reconstruction. R. 419 – 420; R. 568. He testified that his opinion was that the vehicle was going 89 miles per hour at the time of the accident. The vehicle went into a curve but went off the shoulder of the road. The vehicle kept overturning, struck a tree, and went across a ditch where it stopped. The path was 535 feet. The accident was so violent that the engine was dislodged from the engine compartment. R. 437 – 441.

Hill was found lying about 50 feet from the vehicle, and Manning was found about 15 feet from the vehicle. R. 123, ll. 12 – 16. The state argued that Manning was the driver. Manning's defense was that Hill was the driver. R. 119, ll. 21 – 25; R. 120 – 128. Corporal O'Donnell testified there was no forensic evidence identifying the driver, and no witnesses. R. 469 – 470.

Defense counsel made a pretrial motion for dismissal of the case against Manning because the state violated S.C. Code Section 56-5-2953 by not providing either a video of the scene or an affidavit from the law enforcement officer indicating the reason there was no video. Counsel cited City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007). The state argued that there was no video because Manning had been transported to the hospital by the time the first responding trooper arrived. R. 76, ll. 1 – 25.

The judge denied defense counsel's motion. Defense counsel then argued that Section B of the statute provided that a sworn affidavit was necessary to indicate that a video recording was physically impossible because the person needed emergency medical treatment. The judge denied the motion again. R. 77, ll. 1 – 25; R. 78, ll. 1 – 3.

At the close of pretrial motions, the judge revisited this issue again before the jury was brought in. He discussed The City of Rock Hill v. Suchenski, id. and the statute. He found that the video was not required because there was no conduct to record. He said that Section B allowed the judge to consider the totality of the circumstances for the video not being produced, and he ruled that under the totality of the circumstances, 56-5-2953 did not apply to the factual situation in Manning's case. R. 109, ll. 22 – 25; R. 110 – 111.

Trooper Quest Hallman with the Highway Patrol testified that by the time he arrived at the scene of the accident, Manning had already been transported to the hospital as the ambulance passed Trooper Hallman as he was on his way to the scene. R. 233 – 237.

South Carolina Code Section 56-5-2953 (A) provides: “A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site video recorded.” The statute identifies the requirements to be recorded:

(1) (a) The video recording at the incident site must:

(i) not begin later than the activation of the officer’s blue lights;

(ii) include any field sobriety tests administered; and

(iii) include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and show the person being advised of his Miranda rights.

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

S.C. Code Ann. § 56-5-2953(A) (Supp. 2008).

In City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E. 2d 879 (2007), the Supreme Court ruled that dismissal of the charge of DUAC (arrest was for DUI), for the arresting officer’s failure to provide a complete videotape from the incident site was the appropriate remedy. In that case, the officer began the tape and taped two field sobriety tests but ran out of tape before the third field sobriety test was administered. The officer said it had never happened before and he did not know the tape had run out. The municipal court denied the motion to dismiss on the grounds of exigent circumstances.

On appeal, the circuit court reversed and dismissed the charge based on the violation of Section 56-5-2953(A).because a complete tape was not produced. The Supreme Court did not address the issue of exigent circumstances because the circuit court did not address it.

Section 56-5-2953(B) of the South Carolina Code (Supp. 2006) requires the officer to produce the videotape or submit an affidavit explaining the failure to produce the videotape. It reads:

(B) Nothing in this section may be construed as prohibiting the introduction of other evidence in the trial of a violation of Section 56-5-2930, 56-5- 2933, or 56-5-2945. Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest, probable cause determination, or breath test device was in an inoperable condition, stating reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. . . . Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the video recording.

S.C. Code Ann. § 56-5-2953(B) (Supp. 2008).

In State v. Landis, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004), the Court of Appeals held that when a statute's language is plain and unambiguous, and conveys clear and definite meaning, there is no occasion for employing rules of statutory interpretation and a court has no right to look for or impose another meaning.

The statute is clear that the failure of the arresting officer to produce the video recording would not result in dismissal of the charge **IF** the officer submits a sworn affidavit certifying why the recording was not provided. In Manning's case, no affidavit was produced even when the specific reason for emergency medical treatment is stated in the statute. Therefore, according to the ruling in City of Rock Hill v. Suchenski, *supra*, the charge should have been dismissed because the Supreme Court said that 59-5-2953 provides for a dismissal of the charges when the statute was inexcusably violated.

The Supreme Court found in the Suchenski, *supra*, case, that under Section 56-5-2953, a violation of the statute with no mention of prejudice, may result in dismissal of the charges.

Manning's charge should have been dismissed by the trial judge.

ARGUMENT

II.

The trial court erred in denying appellant's motion to suppress the blood test evidence pursuant to S.C. Code Section 56-5-2946 because there was not sufficient probable cause for an arrest which the statute requires before a blood sample can be drawn because the driver of the vehicle was not identified.

Manning's attorney made a pretrial motion to suppress the blood test evidence taken from Manning pursuant to S.C. Code Section 56-5-2946 which provided that the "test must be administered at the direction of law enforcement who has probable cause to believe that the person violated or is under arrest for that section" or in Manning's case for felony DUI. R. 78, ll. 2 – 10.

Counsel argued that law enforcement did not have probable cause to support the arrest of Manning because the driver of the vehicle was unknown, and therefore the blood test could not be taken. Counsel argued that the blood test was taken around 7:00 A.M. and there were reports issued after that, around 8:00 A.M. stating that there was a driver issue because it was not known who was driving. He said that Trooper Breland issued the accident report at 8:00 A.M. stating the driver was unknown, and the coroner's report indicated they did not know who was driving. Also, the investigating officer completed the towing report showing there was a driver issue. R. 78 – 79.

William Zeigler was the deputy coroner who responded to the accident. R. 223, ll. 14 – 25; R. 224, ll. 1 – 25; R. 225, ll. 1 – 25. He testified that he was at the scene about an hour or two, and he was not able to identify the driver. He included in his report that the driver was not known. R. 228 – 232.

The judge held an *in camera hearing* where Trooper Quest Hallman testified as the investigating officer. Trooper Hallman received the call of the accident around 5:00 A.M. as he was on patrol. His normal procedure was to find out who the driver was. He looked at the evidence such as the seat and steering wheel position. R. 80 – 82.

He found a beer bottle among the debris in the field, and the vehicle had an odor of alcohol. R. 85, ll. 13 – R. 86, ll. 1 – 25. When he ran the tag on the vehicle, he found that it belonged to Manning's girlfriend, April Rabun. Heather Fairchild, the bartender at Boondocks, had told him Ms. Rabun was the girlfriend. Also, the address on Manning's license and the address on the vehicle registration were the same. R. 83 – 84.

Trooper Hallman sent Trooper Jeffrey B. Baker to the hospital to see Manning as Trooper Hallman was 35 miles away at the scene, and he needed to identify the driver. R. 82, ll. 12 – 25; R. 83, ll. 1 – 6. Trooper Hallman decided that Manning was the driver based on what Trooper Baker told him that he heard at the hospital, and that the vehicle belonged to Manning's girlfriend. Trooper Hallman's testimony was that Trooper Baker called him from the hospital and said Baker heard some statements when he went into the trauma area that Manning had said he was the driver, and that he and his buddy were riding to the lake. He could not remember exactly what Trooper Baker said. R. 83, ll. 1 – 25.

He did not know who Trooper Baker heard these comments from. R. 85, ll. 1 – 6.

Trooper Hallman told Trooper Baker to get a blood sample since Trooper Baker heard these statements and if Trooper Baker felt that Manning was the driver. R. 85, ll. 7 – 12.

Trooper Hallman admitted on cross examination that the blood was drawn from Manning at 7:19 A.M. The implied consent was completed at 7:16 A.M. However, he did

not talk to the bartender, Heather Fairchild, until 9:30 A.M. There was nothing in all of the reports that Trooper Hallman collected as the case agent to give to the solicitor any statements Manning made to Trooper Baker. R. 87 – R. 88. The report from Trooper Breland of the MAIT was dated 8/1/09 at 6:40 and it said driver unknown. R. 89 – 90.

Trooper Hallman completed the towing report at 8:08 A.M. on August 1, 2009 which indicated there was still an issue as to who was driving the vehicle. R. 91 – 92. He admitted that he was not able to develop any physical evidence to show who was the driver or that indicated Manning as the driver prior to the blood being drawn other than what he said Trooper Baker told him. R. 92, ll. 20 – 25; R. 93, ll. 1 – 11.

Trooper Baker testified that he talked to Manning in the trauma unit at Richland Memorial Emergency Room. Manning smelled of alcohol, and was not very coherent. He was not sure that Manning understood the Miranda warnings because he was in and out of consciousness. When asked if Manning requested an attorney, Trooper Baker responded: “no, sir. He wasn’t very coherent.” R. 265 – 268; R. 271, ll. 10 – 25; R. 272, ll. 1 – 23; R. 290.

At the direction of Trooper Hallman, Trooper Baker arrested Manning and obtained a blood sample. Defense counsel objected based on his pretrial motion. R. 268 – 269.

During Trooper Baker’s testimony, defense counsel asked for a hearing on a matter of law as he wanted to clarify if Manning made any statements to Trooper Baker. The solicitor said that Trooper Baker was going to say that no statements were made to him. R. 272 – 273. Defense counsel argued that that created a different issue as Trooper Hallman had testified that Trooper Baker told Hallman of statements Baker had overheard. R. 274 – 277.

After testimony about the blood sample, defense counsel renewed his motion to suppress the blood test based on the lack of probable cause. He argued that Trooper Hallman said Trooper Baker told him he overheard statements in the trauma room that Manning was the driver of the vehicle. However, Trooper Baker denied making any statements. R. 325 – 326.

The solicitor said defense counsel misunderstood the testimony. The judge replayed Trooper Hallman's testimony, and recalled Trooper Baker to testify *in camera*. R. 327 – 334.

During this testimony, Trooper Baker testified that Manning did not make any statements to him and he did not remember any statements that the emergency first responders said that Manning made. He did not remember the specifics of his conversation with Trooper Hallman. Trooper Baker said he had no evidence that Manning was the driver other than what Trooper Hallman told him. R. 335 – 338.

Defense counsel renewed his objection to the blood test pursuant to 56-5-2946 based on the lack of probable cause to believe Manning was the driver, and therefore the blood sample should not have been drawn. R. 338 – 339. The state argued that probable cause was established through Trooper Hallman, and that Trooper Baker smelled alcohol on Manning. R. 340 – 342.

The judge ruled that there was sufficient probable cause to arrest Manning for the felony DUI based on the beer bottle at the scene, the statements from EMS that Manning was the driver, Trooper Baker smelling alcohol on Manning, and that the vehicle was registered to Manning's girlfriend. R. 342, ll. 12 – 25; R. 343 – 346.

S.C. Code Section 56-5-2946 provides:

Notwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests for his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs if there is probable cause to believe that the person violated or is under arrest for a violation of Section 56-5-2945.

The tests must be administered at the direction of a law enforcement officer who has probable cause to believe that the person violated or is under arrest for a violation of Section 56-5-2945.

Probable cause to arrest without a warrant generally exists when facts and circumstances within an arresting officer's knowledge are sufficient for a reasonable person to believe that a crime has been or is being committed by the person to be arrested. State v. Cuevas, 365 S.C. 198, 616 S.E.2d 718 (Ct. App. 2005). A police officer has probable cause to arrest without a warrant where he in good faith believes that a person is guilty of a felony, and his belief rests on such grounds as would induce an ordinary prudent and cautious man, under the circumstances to believe likewise. Id.

A trial court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or the commission of legal error that results in prejudice to the defendant. State v. Cuevas, *supra*.

There was not sufficient probable cause to arrest Manning because Trooper Hallman relied on statements that he said Trooper Baker allegedly heard in the trauma room that Manning was the driver. Trooper Baker testified that he never heard such statements. This information from Trooper Baker was the determining factor for probable cause for Trooper Hallman, but that evidence did not exist. Consequently, there was not sufficient evidence to establish that Manning was the driver. The information about the vehicle belonging to

Manning's girlfriend was not known until after the arrest, and Trooper Hallman relied on this for probable cause.

There was no physical evidence indicating Manning as the driver; no DNA, no fingerprints, and no witnesses. R. 469 – 470.

ARGUMENT

III.

The trial court erred in denying appellant's motion for a mistrial based on prejudice to appellant after the trial judge severed the felony DUI charge and the possession of a schedule three substance (hydrocodone) charge because the jury was told at the beginning of trial that appellant was being tried on both charges, and both indictments were read.

Manning was indicted on two charges; felony DUI and possession of a quantity of hydrocodone and acetaminophen, a schedule three controlled substance. These two indictments were read to the jury at the beginning of the trial. R. 1 – 10. Manning's attorney made a pretrial motion to sever the charges as the drug charge would be highly prejudicial under Rule 403, SCRE, to Manning. R. 11 – 13.

The trial judge did sever the two charges, after both indictments had been read to the jury, as the state explained that this drug did not show up in the drug analysis of either Manning or Hill. R. 105, ll. 16 – 25; R. 106, ll. 1 – 25; R. 107, ll. 1 -3. Defense counsel then asked for a mistrial because he argued that Manning was already prejudiced because both indictments were read to the jury so the jury has already heard of the drug charge. Counsel argued that whatever the judge told the jury about the drug charge would only cause them to speculate. R. 107, ll. 4 – 25; R. 108, ll. 1 – 5.

The judge said he refused to “be trapped into a mistrial.” He said that if Manning were prejudiced, it was a “self-inflicted wound.” R. 108, ll. 6 – 25; R. 109, ll. 1 – 2.

Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. State v. Latimore, 390 S.C. 88, 700 S.E.2d 456 (Ct.

App. 2010); State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008); citing State v. Council, 335 S.C. 1, 12-13, 515 S.E.2d 508 (1999). In order to receive a mistrial, a defendant must show error and resulting prejudice. It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial. State v. Culbreath, *supra*; State v. White, 371 S.C. 439, 443-44, 639 S.E.2d 160, 162 (Ct. App. 2006).

The power of the circuit court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the circuit court. State v. Latimore, *supra*, citing State v. Stanley, 365 S.C. 24, 615 S.E.2d 455, 460 (Ct. App. 2005).

Rule 403, SCRE, provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

Manning was prejudiced by the judge not granting a mistrial because the jury knew he had a drug charge. This was prejudicial because this charge had nothing to do with the felony DUI for which he did go to trial.

ARGUMENT

IV.

The trial court erred in charging the jury on S.C. Code Section 56-5-2950 (b) which was a comment on the facts because the statute begins with: "A person who drives..." and the identification of the driver was the primary issue in the trial.

When discussing the appropriate jury charges to give, the judge asked both attorneys what he should charge concerning Manning's rights under Miranda advised to him by Trooper Baker and the implied consent law, or if they wanted him to charge them at all. Defense counsel immediately said he did not want the judge to charge them at all. The state argued that in the interest of justice, the statute needed to be charged: 56-5-2950. R. 474.

Defense counsel objected because he argued it would be confusing to the jury and a comment on the facts because the statute starts with the words: "A person who drives. " The main issue in the case was who was driving. R. 475 – 476.

The judge said that since the identification of the person who actually committed this crime was an issue, he was going to charge the jury that they must be satisfied beyond a reasonable doubt of the accuracy of the identification of the defendant before they could convict him. Defense counsel said that he was "worried about that in context with the statute." R. 476, ll. 15 – 25.

The judge said he had a duty to charge the law. R. 477, ll. 1 – 12. The judge did charge the statute 56-5-2950 to the jury. R. 507.

S.C. Code Section 56-5-2950 (A) provides in part:

A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood, or urine for the purpose of determining the

presence of alcohol or drugs or the combination of alcohol and drugs if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol or drugs or a combination of alcohol and drugs.

The law to be charged must be determined from the evidence presented at trial. State v. Knoten, 347 S.C. 296, 302, 555 S.E.2d 391 (2001); State v. Lee, 298 S.C. 362, 364, 380 S.E.2d 834, 835 (1989). A trial court's decision regarding jury charges will not be reversed, where the charges as a whole properly charged the law to be applied. State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007).

A jury charge is sufficient if, when considered as a whole, it covers the law applicable to the case. State v. Curry, 370 S.C. 674, 636 S.E.2d 649 (Ct. App. 2006). Jury instructions should be considered as a whole, and if as a whole they are free from error, any isolated portions which may be misleading do not constitute reversible error. State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994).

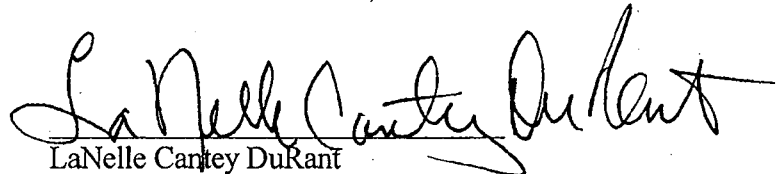
In State v. Roof, 298 S.C. 351, 380 S.E.2d 828 (1989), the appellant and his co-defendant were tried for the murder of a friend. Both defendants gave the same story. The trial judge instructed the jury that appellant's co-defendant could be found guilty of accessory after the fact, but the judge did not give that same instruction for appellant. The Supreme Court reversed appellant's case and remanded for a new trial because the Court wrote that the charge on accessory after the fact given for the co-defendant was a comment on the factual issue of witness credibility. The co-defendant testified but appellant did not. The Court cited Article V, Section 21 of the South Carolina Constitution which provides that "judges shall not charge juries in respect to matters of fact, but shall declare the law."

The trial judge's charge on the statute 56-5-2950 was a comment on the factual issue as to who was the driver of the car, since it was appellant whose case was processed under the statute rather than the decedent's. The jury could readily derive from the judge's charge that appellant was the driver.

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded for a new trial on Issues II, III, IV, and for a dismissal of the charges on Issue I.

Respectfully submitted,

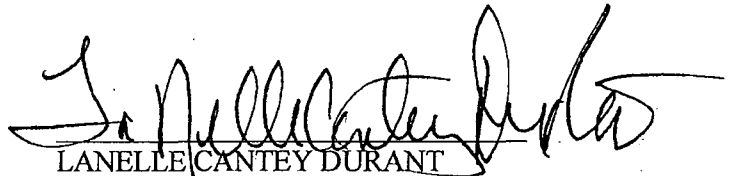

LaNelle Cantey DuRant
Appellate Defender

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This 22nd day of August, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

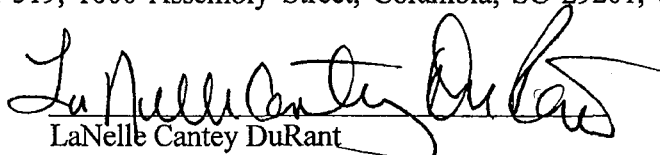
V.

CHRISTOPHER MANNING,

APPELLANT

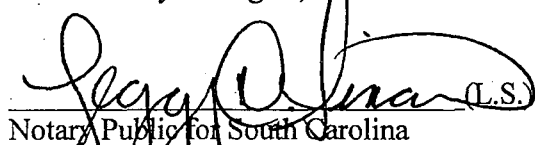
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 22nd day of August, 2011.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of August, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 30 2013

S.C. Supreme Court

Appeal from Lexington County
R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

vs.

CHRISTOPHER MANNING,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The arresting officer was not required to provide an affidavit concerning the reason why Appellant's conduct at the scene of the accident was not videotaped where law enforcement did not arrive at the scene of the accident until after Appellant was transported to the emergency room.

II.

Law enforcement had probable cause to believe Appellant committed felony DUI and therefore, the trial court did not err in denying the motion to suppress the blood test results.

III.

The trial court did not err in denying Appellant's motion for mistrial and the issue is not preserved, especially since Appellant failed to timely raise his motion to sever and refused a curative instruction.

IV.

The trial court's charge to the jury on implied consent was not a comment on the facts and the charge as a whole was not misleading and was free from error.

STATEMENT OF THE CASE

Appellant Manning was indicted by the Lexington County Grand Jury of Felony Driving Under the Influence resulting in Death. Manning was tried by jury on May 11-13, 2010 and convicted as charged. The Honorable R. Knox McMahon sentenced Appellant to eighteen years imprisonment.

STATEMENT OF FACTS

Appellant Manning and his friend, Jake Hill, had drinks together after Manning finished his shift as a cook at a private bar. Manning and Jake left in Manning's SUV to go swimming. Manning crashed his SUV at a sharp curve, severely injuring himself and killing Jake.

Heather Fairchild was the first witness to testify before the jury. She was a bartender at Boondocks, a private club. She was tending bar on the night of July 31 into the morning hours of August 1, 2009. She started serving Manning around 10:30 or 11:00 p.m. that night after Manning finished his shift as a cook. Manning, Jake, and others drank together for several hours. They drank beer and shots of liquor. Fairchild testified that Manning drank a good amount of alcohol. Although she contended he was not stumbling, Fairchild testified that in her opinion, Manning was impaired that night. She testified she was familiar with the vehicle Manning drove to work and noticed it in the parking lot. Her shift ended at 4:45 a.m. Manning and Jake left shortly before then. Jake did not have a vehicle, he walked to the club that night. Manning said he had his car, and they made plans to drive to a boat ramp to go swimming. ROA. pp. 129-142.

Elizabeth Grayson Simmons from the Lexington County EMS arrived at the accident scene at 4:57 a.m. She noticed the strong smell of alcohol as she approached Manning. Manning's nose was split open and she saw a wound as big as a fist in his abdomen. She could see his intestines. A firefighter who also responded fetched a long-spine board to carry Manning from the field. Manning said "I f'ed up. I should have never done this. Look what I've done." Simmons could smell alcohol when he spoke. ROA. pp. 156-172, pp. 175-176

(direct quote: ROA. p. 168, lines 18-19).

Firefighter Nathan Prouse testified that he was the first responder on the scene. The vehicle was in a field about 60 to 70 feet off the road and severely damaged. Two bodies lay in the field. EMS arrived almost simultaneously and went to Jake, quickly determining he was dead. Prouse approached Manning, who lay closer to the wreck. Prouse asked Manning if anyone else other than the victim was riding with Manning. Manning replied: "No, no, it was just me and my buddy who was riding with me. It was just me and my buddy." ROA. pp. 188-193 (direct quote: tr. p. 193, lines 17-19). Manning kept saying "I f-ed up" repeatedly. ROA. p. 195.

Another firefighter, Victor Tomaino, helped carry Manning on the spine board. He heard Manning repeatedly say "I f-ed up" and at one point, heard Manning say "I should not have been driving." ROA. p. 212. The Coroner's Office declared Jake dead, with the approximate time of death as 4:30 a.m. ROA. p. 228.

Lance Corporal Quest Hallman was the first officer on the scene of the crash, but Manning was already gone. It took Hallman about twenty-five to thirty minutes to respond to the scene, it was rainy and he was careful, but he did exceed the speed limit slightly. He arrived on the scene and could already see the reflectors of the crashed vehicle, but was directed to the vehicle by emergency personnel. ROA. pp. 235-237. Hallman explained as follows:

But . . . fire services said, hey, here's the car. They showed me the victim and said the other – the driver had been transported, which I pretty much assumed because I had passed the ambulance while I was en route to the scene.

ROA. p. 237, lines 17-21.

Jake's body was about fifty to seventy-five feet away from the wrecked vehicle. It appeared to Corporal Hallman that the vehicle left the road and flipped. The engine and transmission became unbolted from the vehicle and lay next to it. ROA. pp. 237-239. The odor of alcohol emanated from the vehicle. Hallman directed Trooper Baker to the hospital where Baker determined Manning to be the individual from the wreck. From Hallman's ensuing investigation, Hallman determined the address for Manning's driver's license and the registration for the vehicle were the same. The following testimony was elicited from Hallman in front of the jury:

Q: Okay. Now, you are still investigating this particular incident. Without going into any conversations that you had with some of these individuals, did you speak with anyone else that was still on the scene?

A: I did.

Q: Okay. During that course of -- well, were you still investigating this incident to determine who was the driver?

A: Yes, sir.

Q: Okay. And after speaking with them and conducting your investigation, did you ultimately charge Mr. Christopher Manning --

A: I did.

Q: -- with felony D.U.I.?

A: I did.

ROA. p. 251, line 11 - p. 252, line 1.

Manning was not in Corporal Hallman's presence at the time, so he directed Trooper

Baker, who was at the hospital, to have Manning's blood drawn. ROA. p. 252. Corporal Hallman explained why he directed Trooper Baker to do this as follows: "In my experience and my determination, I determined him as the driver of the vehicle. And with there being a death involved, a legal blood sample was drawn. . . ." ROA. p. 252, lines 16-21.

Manning's blood alcohol content was .173%. ROA. p. 409. As the forensic toxicologist testified, at this level of intoxication, an individual's reaction time would be slowed, their vision would be impaired, and their judgment adversely affected. ROA. pp. 409-410.

Corporal James O'Donnell of the South Carolina Highway Patrol testified as an expert in accident reconstruction. He determined that the vehicle veered off to the right of a left hand curve, traveled on the shoulder, struck a culvert, became airborne and flipped several times, ultimately traveling about 535 feet from where it left the road to the resting spot. The vehicle was going about 89 m.p.h. when it reached the curve. O'Donnell noted that the driver has more obstacles than a passenger would to keep from being ejected. He also testified that the steering wheel could have caused Manning's injuries in the abdomen. ROA. pp. 424-440; pp. 458-460.

Manning did not testify or call any witnesses in his defense.

ARGUMENT

I.

The arresting officer was not required to provide an affidavit concerning the reason why Appellant's conduct at the scene of the accident was not videotaped where law enforcement did not arrive at the scene of the accident until after Appellant was transported to the emergency room.

Appellant Manning argues that his felony DUI charge should have been dismissed because the arresting officer should have provided an affidavit concerning the failure to videotape Manning's conduct at the incident site. Manning misconstrues the statute. Videotaping was not required because law enforcement did not arrive at the incident site until after Manning was transported to the hospital. Manning's argument fails because no part of the statute applies where a defendant leaves the incident site before law enforcement arrives.¹ Since Manning allowed himself to be taken to the hospital for treatment before law enforcement arrived, law enforcement was not required to execute an affidavit.

Under S.C. Code Ann. § 56-5-2953:

(A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the

¹ In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Hitachi Data Systems Corp. v. Leatherman, 309 S.C. 174, 420 S.E.2d 843 (1992). Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992). A statute must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of the lawmakers. D.W. Flowe & Sons, Inc. v. Christopher Constr. Co., 326 S.C. 17, 482 S.E.2d 558 (1997) *overruled on other grounds by* Evins v. Richland County Historic Preservation Comm., 341 S.C. 15, 532 S.E.2d 876 (2000).

breath test site video recorded.

(1)(a) The video recording at the incident site must:

(i) not begin later than the activation of the officer's blue lights;

In the instant case, since law enforcement arrived after Manning left the incident site, blue lights were activated, if at all, after Manning left. There was no conduct to videotape at the incident site. The statute does not apply in the instant case.

Further, Manning misconstrues the requirements to meet the exceptions found in § 56-5-2953(B), which are set out as follows:

(B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the video required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the video equipment at the time of the arrest or probable cause determination, . . . was in an inoperable condition, . . . , in the alternative, submits a sworn affidavit that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based on the totality of circumstances; .

...

The videotaping was not done at the incident site because Manning was not there. Under the plain language of the statute, the arresting officer is required to submit an affidavit when videotaping is not performed only if: (1) videotaping equipment is inoperable, (2) the person needed emergency medical treatment, or (3) exigent circumstances existed.

The problem was not that the equipment was inoperable, so that provision does not apply. Law enforcement was never in a position to determine, first hand, whether Manning needed emergency medical treatment or whether another exigent circumstance existed; therefore, the arresting officer is not required to submit an affidavit concerning a subject to which neither he nor other law enforcement officers have first hand knowledge. Manning is in a superior position to determine if emergency medical treatment was needed, because he was there. By the time law enforcement arrived, there was no conduct to record. Manning allowed himself to be taken from the scene by emergency personnel.

The facts of the case are more aligned with the next set of enumerated exceptions, where the blue lights are not activated due to road blocks, traffic accident investigations, and citizen arrests, and where video taping is required once practicable. Perhaps most closely related is the citizen arrest exception, since Manning was removed by individuals other than law enforcement. In the instant case, video recording never became practicable at the site, since Manning was not there, and therefore video taping never needed to begin.

However, the totality of circumstances exception certainly applies to the instant case. Under the totality of circumstances, a video tape was not required because law enforcement was not at the incident site before Manning allowed himself to be taken away, and the blue lights were not activated.

Manning's reliance on City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007) is misplaced. In that case, as Manning concedes, the Supreme Court did not review whether the totality of circumstances exception applied, as determined by the magistrate, because the reviewing circuit court did not address the issue in its order and the City failed to preserve the issue. In the instant case, the totality of circumstances issue applies and, further, the statute only applies when the defendant is found at the incident site, not when he has absconded or was already taken away by medical personnel. Accordingly, the trial court did not err.

II.

Law enforcement had probable cause to believe Applicant committed felony DUI and therefore, the trial court did not err in denying the motion to suppress the blood test results.

Manning alleges that law enforcement did not have probable cause to believe Manning was the driver of the vehicle. However, evidence at trial shows otherwise. S.C. Code Ann. § 56-5-2946 provides, in relevant part, as follows:

Notwithstanding any other provision of law, a person must submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs if there is probable cause to believe that the person violated or is under arrest for a violation of Section 56-5-2945.

Corporal Hallman testified that when he arrived at the scene, a strong smell of alcohol emanated from what remained of the vehicle. At the hospital, Trooper Baker smelled the odor of alcohol on Manning. ROA. pp. 267-268. Jake was undoubtedly dead. Corporal Hallman spoke with the emergency personnel who heard Manning's comments implicating himself as the driver. ROA. pp. 251-252.² The DMV records tied the vehicle to Manning's residence.³

² There was some confusion as to whether emergency personnel relayed this information to Baker or Hallman or both. See ROA. p. 83, p. 85, p. 269, pp. 335-337. However, whether thru direct conversation with emergency personnel or relayed by Baker, it is apparent that Hallman became aware that emergency personnel heard statements indicating Manning was the driver when determining that Manning's blood should be taken.

³ Manning claims in his brief that Hallman was not aware of the matching addresses at the time he requested Baker to get the blood test. However, Hallman testified he had this information at the time he determined probable cause. ROA.

This Court should apply a deferential standard, reversing only where the trial court's ruling is not supported by evidence found in the record. See State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) (setting out the standard that should be applied for motions to suppress on Fourth Amendment grounds). The trial court's factual findings that relate to this analysis should be reviewed for clear error only. State v. Brockman, 339 S.C. 57, 528 S.E.2d 661 (2000) (finding review of Fourth Amendment issue that was largely a question of fact should be reviewed like any other trial court's factual findings and should be reversed only if there is clear error).

"Probable cause to arrest without a warrant generally exists when facts and circumstances within an arresting officer's knowledge are sufficient for a reasonable person to believe that a crime has been or is being committed by the person to be arrested." State v. Cuevas, 365 S.C. 198, 203, 616 S.E.2d 718, 721 (Ct. App. 2005) (citation omitted).

"Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officers disposal." State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 911 (1996). "Probable cause turns not on the individual's actual guilt or innocence, but on whether the facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of the crime." Jackson v. City of Abbeville, 366 S.C. 662, 666, 623 S.E.2d 656, 658 (Ct. App. 2005). "The determination of probable cause is not an academic exercise in hindsight." Id., 366 S.C. at 667, 623 S.E.2d at 659.

"The term 'probable cause' does not import absolute certainty." State v. Arnold, 319

S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1996). “Rather, in determining whether a search warrant should be issued, magistrates are concerned with probabilities, not certainties.” Id. “A finding of probable cause may be based upon less evidence than would be necessary to support a conviction.” Lapp v. South Carolina Dept. of Motor Vehicles, 387 S.C. 500, 692 S.E.2d 565 (Ct. App. 2010).

“In other words, a police officer has probable cause to arrest without a warrant where he in good faith believes that a person is guilty of a felony, and his belief rests on such grounds as would induce an ordinary prudent and cautious man, under the circumstances to believe likewise.” Cuevas, 335 S.C. at 204, 616 S.E.2d at 721 (Internal quotations and citations omitted).

Abundant information supported Corporal Hallman’s determination of probable cause. Manning and the wreck smelled of alcohol, and the address for his driver’s license and the registration were identical. That alone should be sufficient for probable cause. However, evidence supports that Corporal Hallman was informed that Manning indicated to emergency personnel that he was the driver, adding further evidence for Hallman to establish probable cause.

The information within Corporal Hallman’s knowledge was sufficient to establish probable cause and the evidence in the record supports the trial court’s ruling. Accordingly, the ruling should be affirmed.

III.

The trial court did not err in denying Appellant's motion for mistrial and the issue is not preserved, especially since Appellant failed to timely raise his motion to sever and refused a curative instruction.

Manning committed two crimes that night. When he was arrested, he was in possession of a quantity of hydrocodone and acetaminophen, a schedule three controlled substance. Manning waited until after both indictments were read to the jury to move to sever the two charges. The trial court granted the severance. The trial court offered to give an instruction to the jury to disregard the severed charge. Seemingly as an afterthought, Manning moved for a mistrial. After the trial court denied the mistrial motion, Manning declined the instruction. Yet Manning claims reading both indictments prejudiced him. The issue should not be reviewed.

An issue is not preserved for review unless a contemporaneous objection is made to and ruled upon by the trial court. State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). A party cannot complain of court error created by his own conduct. State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984). The Court of Appeals does not sit to relieve self-inflicted wounds. Rish v. Rish by and Through Barry, 296 S.C. 14, 17, 370 S.E.2d 102, 104 (Ct. App. 1988) (Bell, J., concurring).

Further, an issue is not preserved when the trial court's offer of a curative instruction is refused. State v. Tucker, 324 S.C. 155, 169, 478 S.E.2d 260, 267 (1996); see State v. Watts, 321 S.C. 158, 164, 467 S.E.2d 272, 276 (Ct. App. 1996) ("In rejecting the trial court's offer to strike the testimony or give a curative instruction, [the defendant] waived any

complaint he had to the challenged testimony”).

Manning waited for the indictments to be read before raising his challenge. Then he wanted a mistrial for the indictments being read to the jury. His objection to the reading of the indictments is too late, his alleged injury was self-inflicted. The trial court ruled as follows:

Well, I'm not going to get trapped into a mistrial. In that regard then, we're going to go forward. Now, you are not going to have it both ways. Either you want to go forward or you don't.

You didn't make that motion before the jury was qualified, and the Court is not going to be trapped like that. I'll be glad to give whatever instruction you want me to give them, but the case was called for trial in front of the Court. It was qualified.

There were no motions at the time, except one y'all brought up to me in chambers on the continuance. So if it prejudiced him, that's a self-inflicted wound. **That's not a wound inflicted by the State or by this Court.**

I'm not here to inflict any wounds on either the State nor the Defendant. I'll charge whatever you want in regard to that or I'll say nothing, but I don't see where it's – where the court could respond like that.

ROA. p. 108, lines 6-24 (emphasis added).

The trial court did not abuse its discretion. “A mistrial should not be granted except in cases of manifest necessity and ought to be granted with the greatest caution for very plain and obvious reasons.” State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989) *cited in* State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999) (noting trial judge should exhaust other methods to cure possible prejudice before aborting a trial). “The granting of a mistrial motion is an extreme measure to be taken only where an incident is so grievous that its prejudicial effect can be removed in no other way.” State v. Dempsey, 340 S.C. 565, 570,

532 S.E.2d 306, 309 (Ct. App. 2000). "A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 455, 460 (Ct. App. 2005) (citations omitted). "The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice." State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983).

In the instant case, Manning cannot show prejudice. If Manning thought he was going to be prejudiced by going forward on the felony DUI charge, he would have accepted the offer for an instruction. Instead, as evidenced by Manning declining the instruction, Manning must have thought it was more likely the jury would not focus on the severed charge and did not want to call further attention to the matter. Manning cannot show prejudice. Further, mistrial was not dictated by manifest necessity. The jury had ample evidence to convict Manning for felony DUI and there is no doubt that he was convicted on the evidence presented to the jury at trial, and not a pretrial event. See generally, State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ("[A] vague reference to a defendant's prior [crimes] is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes").

Accordingly, the trial court did not commit error.

IV.

The trial court's charge to the jury on implied consent was not a comment on the facts and the charge as a whole was not misleading and was free from error.

The trial court charged the exact language of the implied consent statute, S.C. Code Ann. § 56-5-2950 and Manning complains it was error as a comment on the facts. Even viewed in isolation, the jury was certain to understand that it was not a comment on the facts and understood its duty to make its own factual determination that Manning was the driver. However, looking at the charge as a whole, the trial court clearly charged the jury with the duty to determine if they were convinced beyond a reasonable doubt that Manning was the driver from their own view of the evidence.

The trial court included on its charge on the elements of felony DUI the following: "Felony D.U.I. requires proof of three elements: Number one, **the actor drives a vehicle** while under the influence of alcohol and/or drugs; . . ." ROA. p. 495, lines 1-3 (emphasis added). The trial court further instructed the jury as follows:

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in a case. A trial judge cannot intimate, state, comment on or make any statement to a trial jury about the facts in the case.

Since you the jury are the sole judge of the facts, you are not to infer from what I have said during the progress of this trial, in ruling upon the admissibility of evidence or otherwise, or anything that I now say during the course of this instruction to you that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case.

That is a matter solely for you the jury to determine. As jurors it is your duty to determine the effect, the value, the weight, and the truth of the evidence presented during this trial.

ROA. p. 498, line 24 - p. 499, line 15.

The trial court again charged the elements of felony DUI as follows:

... The State must first prove beyond a reasonable doubt that the Defendant drove a vehicle in this State while under the influence of alcohol and/or drugs.

An issue in this case is the identification of the Defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You the jury must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant.

The State must further prove beyond a reasonable doubt that the Defendant drove a vehicle while under the influence of alcohol and/or drugs. ...

ROA. p. 504, lines 9-23.

In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). An appellate court will not reverse a trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

A jury instruction must be viewed in the context of the overall charge. See State v. Hicks, 330 S.C. 207, 218, 499 S.E.2d 209, 215 (1998). While a court is not required to give any particular verbiage, instructions may not confuse or mislead the jury. State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987).

Article V, §21 of the South Carolina Constitution states: "Judges shall not charge juries in respect to matters of fact, but shall declare the law." South Carolina law dictates a trial judge should refrain from any comment which tends to indicate to the jury his opinion

on the credibility of the witnesses, the weight of the evidence, or the guilt of the accused. State v. Jackson, 297 S.C. 523, 377 S.E.2d 570, 572 (1989); State v. Smith, 288 S.C. 329, 342 S.E.2d 600, 601 (1986). However, jury instructions must be considered in their entirety and, if in their entirety they are free from error, then any potentially misleading portions do not constitute reversible error. State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869, 874 (1994); Jackson, 377 S.E.2d at 572.

“A charge that states the legal conclusions that would result from the establishment of certain facts is not necessarily an improper charge, nor a mandate to the jury to assume the truth of the facts as stated.” State v. Dickey, 380 S.C. 384, 402, 669 S.E.2d 917, 927 (Ct. App. 2008). “The test is how a reasonable juror would have understood the charge.” Id.

In the instant case, the trial court charged the exact language of the statute and did not intimate his belief as to whether Manning was in fact the driver. His instructions as a whole clearly require the jury to make their own decision on whether evidence proved beyond a reasonable doubt that Manning was the driver. The instructions in their entirety were not misleading and were free from error. Accordingly, the trial court did not err.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

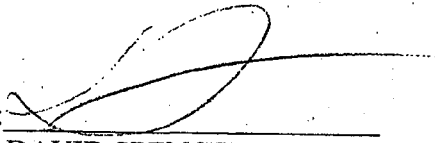
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August 17, 2011

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IN THE COURT OF APPEALS

Appeal From Lexington County
R. Knox McMahon, Circuit Court Judge

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vs.

CHRISTOPHER MANNING

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

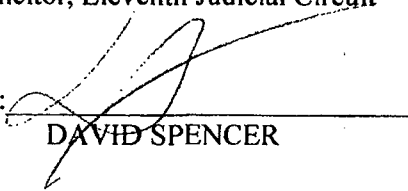
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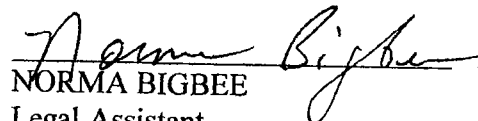
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 17th day of August, 2011


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