

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

**RECEIVED**

The Honorable Robin B. Stilwell, Circuit Court Judge

JUN 24 2016

**SC Court of Appeals**

Appellate Case No. 2014-002317

Maria Moyao,

Appellant,

v.

South Carolina,

Respondent.

AMENDED RECORD ON APPEAL

Daniel J. Farnsworth, Jr. SC Bar #6922  
Farnsworth Law Offices, LLC  
211 Pettigru Street  
Post Office Box 8719  
Greenville, South Carolina 29604  
(864) 250-9119  
Attorney for Appellant

David A. Spencer  
Senior Assistance Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3970  
Attorney for Respondent

Alan McCrory Wilson  
Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3970  
Attorney for Respondent

## INDEX

|                                                                                 |     |
|---------------------------------------------------------------------------------|-----|
| Index.....                                                                      | 1   |
| Order of Judge Robin B. Stilwell, Circuit Court Judge on September 3, 2014..... | 2   |
| Answer of Summary Court (Return) filed April 23, 2014.....                      | 4   |
| Trial Transcript of Greenville County Magistrate Court on March 11, 2013.....   | 6   |
| Direct Examination of Deputy Jonathan Jackson by Mr. Byrd Begins.....           | 24  |
| Cross Examination of Deputy Jonathan Jackson by Mr. DeLoach Begins.....         | 51  |
| Redirect Examination Deputy Jonathan Jackson by Mr. Byrd Begins.....            | 70  |
| Recross Examination of Deputy Jonathan Jackson by Mr. DeLoach Begins.....       | 71  |
| Transcript of Circuit Court Appeal Hearing on September 2, 2014.....            | 104 |
| Appellant's Ticket for DUI No. 53541FV.....                                     | 128 |
| Solicitor's Notice to Defendant (Appellant) dated February 6, 2012.....         | 129 |
| Summary Court Pretrial Conference for week of February 6, 2012.....             | 130 |
| Solicitor's Notice to Defendant (Appellant) dated February 8, 2013.....         | 138 |
| Summary Court Jury Trial Docket for week of March 11, 2013.....                 | 139 |
| State's Exhibit 2: SLED Breath Analysis Test Report.....                        | 148 |
| Proof of Service.....                                                           | 149 |
| Certificate of Counsel.....                                                     | 150 |

## FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2013CP2301642

Maria Moyao

South Carolina State Of

2014 SEP 17 PM 2 51

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant  
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);  
☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This matter comes before the Court on appeal from the Summary Court's conviction of the Appellant for DUAC. The Defendant/Appellant argues that the lower court erred in allowing the admission of the incident site video recording and in allowing the State to proceed on DUAC charges after an original ticket for Driving Under the Influence. After having reviewed the record on appeal, the submissions of the parties and the law, the appeal is respectfully DENIED. The Summary Court Judge specifically found that the incident site video was in substantial compliance with Section 56-5-2953 of the South Carolina Code of Laws and found that it was admissible. This Court finds no error or abuse of discretion in that decision. Furthermore, the Summary Court found that the Defendant had received appropriate notice of the State's intent to proceed on DUAC charges. Specifically, the Summary Court found that a notice to the Defendant had been served on February 6, 2012, well in excess of a year before the trial. The Court found that this notice was sufficient and that no prejudice was visited upon the Defendant as a consequence of the notice. Again, this Court finds no error or abuse of discretion in that decision.

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

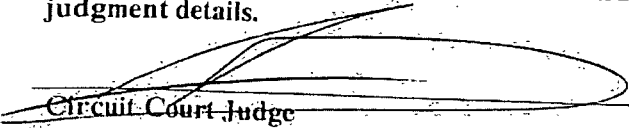
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |
|                                              |                                          |                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

  
Circuit Court Judge

2158

9/3/2014

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 9/17/14, and a copy mailed first class or placed in the appropriate attorney's box on 9/17/14 to attorneys of record or to parties (when appearing pro se) as follows:

Daniel Joseph Farnsworth Jr. Farnsworth Law Offices, LLC  
P.O. Box 8719 Greenville, SC 29604  
Christina Marie Bradford 27 Rawood Drive Travelers Rest,  
SC 29690

Mitchell K. Byrd Sr. 216 Pimlico Road Greenville, SC  
29607

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of  
Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

06/20/2014 11:16 8642681333

CHICK SPRINGS COURT

PAGE 02/05

FILED-CLERK OF COURT  
STATE OF SOUTH CAROLINA  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
COUNTY OF GREENVILLE  
2014 APR 23 AM 9 34

IN THE SUMMARY COURT

UTT# 53541FV DUI 1<sup>ST</sup>

-VS-

MARIA MOYAO

2013-CP-23-01642

ANSWER

This case came before me for trial by jury on March 13, 2013. The Defendant was charged with DUI in ticket number 53541. The Defendant and her attorney Perry DeLoach of the Farnsworth Law Offices were present along with the State's representative Mitchell Byrd and Deputy Jonathan Jackson of the Greenville County Sheriff's Office.

Prior to taking any testimony, counsel for the Defendant moved to dismiss the case upon the grounds that the in-car incident site video did not meet the minimum requirements of section 56-5-2953. Defense counsel argued that during portions of the video when Defendant was performing the walk and turn field sobriety test her feet were partially obscured for several steps. I observed the video and noted that the Defendant took several steps which were partially blocked by a bar of some sort on the front of the patrol car as well as by some numbering at the foot of the video as she approached the car. However, substantially all of that test as well as the other tests were clearly visible as was the Defendant's conduct. Accordingly I denied the Motion finding that the video complied with the statute and that a reasonable juror could weigh this evidence

06/20/2014 11:16 8642681333

CHICK SPRINGS COURT

PAGE 03/05

and decide whether Defendant failed or successfully completed the tests as instructed.

Prior to offering testimony, the State announced that it would be proceeding against the Defendant for DUAC pursuant to section 56-5-2933. Defense counsel objected whereupon the State produced a Notice To Defendant dated 2/6/12, acknowledged by Mr. Farnsworth, notifying Defendant that the State would be prosecuting her under section 2933. Finding that this notice was more than thirty days prior to trial, I overruled this objection.

Deputy Jackson testified regarding the stop, his observations and arrest of the Defendant and the State introduced documentary evidence including breath test results of 0.10% along with the incident site video and the breath test video.

Defense counsel cross examined Deputy Jackson and the State rested.

Defense counsel then moved for a directed verdict again arguing that the in car video did not meet the mandatory statutory requirements and that dismissal of the charge was appropriate. Again I disagreed and denied this motion.

The Defendant elected not to offer any evidence and following closing arguments and the court's charges the jury retired, deliberated and returned a verdict of guilty. Sentence per section 56-5-2933 was then pronounced.

Tapes on file.

Date: 9-23-14

  
Charles R. Garrett, Magistrate

STATE OF SOUTH CAROLINA

TICKET NO. 53541FV

STATE OF SOUTH CAROLINA,

VERSUS.

MARIA MOYAO,

DEFENDANT.

TRANSCRIPTION OF DIGITAL AUDIO FILE

BE IT KNOWN THAT BISHOP REPORTING SERVICES, LLC, WAS RETAINED TO TRANSCRIBE THE CONTENTS OF A DIGITAL AUDIO FILE PROVIDED TO IT BY FARNSWORTH LAW OFFICES, LLC.

BISHOP REPORTING SERVICES, LLC, WAS NOT PRESENT WHEN THE DIGITAL AUDIO FILE WAS RECORDED AND, THEREFORE, MAKES NO REPRESENTATIONS AS TO THE IDENTITY OF THE PERSONS WHOSE VOICES ARE RECORDED ON THE DIGITAL AUDIO FILE.

FURTHER, SINCE BISHOP REPORTING SERVICES, LLC, WAS NOT PRESENT TO ADMINISTER AN OATH IT MAKES NO REPRESENTATIONS AS TO THE TRUTH OF THE CONTENTS OF THE RECORDING.

FINALLY, BECAUSE BISHOP REPORTING SERVICES, LLC, CANNOT VERIFY THE CHAIN OF CUSTODY OF THE .WAV FILE PROVIDED TO IT BY FARNSWORTH LAW OFFICES, LLC, IT CANNOT CERTIFY THAT THE DIGITAL AUDIO FILE HAS NOT BEEN ALTERED OR EDITED IN ANY WAY.

TRANSCRIBED BY:  
JILL BISHOP EDWARDS, CVR

**BISHOP**  
REPORTING SERVICES, LLC  
WWW.BISHOPREPORTING.COM 864-640-1834

1 (BEGINNING OF RECORDING TAPE 1 FRONT)

2 BY JUDGE GARRETT:

3 This is State of South Carolina versus Maria  
4 Moyao, charged with driving under the influence  
5 first offense, 53541FV, scheduled for a jury trial  
6 this a.m. at 9:00. Ms. Moyao is represented by  
7 Attorney DeLoach. Solicitor Byrd is here, and so is  
8 the officer charging, Deputy Jackson.

9 Gentlemen, pre-conference?

10 MR. DELOACH:

11 Yes, sir. Your Honor, I have a motion to  
12 dismiss for the fact that the video does not comply  
13 with the statute. And I'll hand the Court some law  
14 that I have, as well as hand it to Mr. Byrd, as  
15 well.

16 Judge, to begin my argument, I just want to  
17 start with the statute. Basically, what the statute  
18 says is that -- in 2008, we had an amendment to the  
19 statute, as Your Honor well knows. And it included  
20 that the video provide any field sobriety test. In  
21 this particular video, the counter on the clock  
22 covers up Ms. Moyao's -- and I believe that the  
23 State will admit this -- covers up her feet for  
24 seven of the nine steps on the walk and turn and the  
25 entire one-legged stand.

1           It is my position that when the legislature  
2 amended the statute in 2008, it specifically wanted  
3 to address this because it is imperative that the  
4 jury be able to view the actions of the defendant to  
5 determine probable cause for the arrest. In this  
6 particular video, Judge -- I've got some law here,  
7 as well, Judge. And if you'll turn first to an  
8 order written by The Honorable Mark Hayes. Your  
9 Honor, this order is on point. This is a case in  
10 which the feet of the defendant were not viewed.  
11 Judge Hayes goes on to say this is an order  
12 upholding the magistrate's motion to dismiss. Now,  
13 in this case, the judge states clearly that in 2008  
14 -- and if you'll turn to page seven of seventeen.

15 BY JUDGE GARRETT:

16           Go ahead.

17 BY MR. DELOACH:

18           In 2008, the amendment to South Carolina Code  
19 56-5-2953(A)(1)(ii) added the language that any  
20 field sobriety test administered must be recorded.  
21 Basically, what he goes on to say later -- sorry,  
22 Judge. I apologize. If you'll turn to page ten of  
23 seventeen, he brings out *Murphy v. State*.  
24 Basically, what happened in this case was the State  
25 relied on *Murphy v. State*, which was a case that was

1           held before the amendment which stated that only the  
2           conduct of field sobriety tests should be viewed,  
3           should be considered. In footnote four, the supreme  
4           court made it clear that -- it stated -- footnote  
5           four basically stated, as amended, the current  
6           version of Section 2953 expressly requires the  
7           recording of any field sobriety test. We note that  
8           the legislature's amendment of the plain language of  
9           the statute that required the recording of the field  
10          test. Furthermore, it is our position that the  
11          plain language in the prior version in effect at the  
12          time of the accident did not require recording the  
13          test. That was *Murphy v. State*. That was the old  
14          law. Judge Hayes went on to say the obvious -- on  
15          footnote four in the board of appeals opinion in  
16          *Murphy v. State*, which was later upheld by the  
17          supreme court, is that if the complete recording of  
18          any field sobriety test is not required under the  
19          former statute, it is now required, the complete  
20          recording. It is now required under the amended  
21          statute. It goes on to say that the requirement  
22          that any field sobriety test be recorded would  
23          necessarily mean that a person watching the  
24          recording could completely or substantially view the  
25          test as it was administered and performed by the

1 driver/suspect such that a person watching the  
2 recording could make some meaningful assessment as  
3 to how well the driver performed the test. And this  
4 particular case is exactly on point. In fact, in  
5 this case, they got to see more than what is seen in  
6 my video. Because in our video, it's behind the  
7 counter for seven to nine steps and the entire one-  
8 legged stand. They had more than that in this  
9 video, Judge. And basically, what he said is the  
10 only remedy is dismissal. And that was upheld, as  
11 we all know, in (inaudible). That the only remedy  
12 in the case where the video does not comply with the  
13 statute is dismissal. And I've also got two more  
14 orders here. One from Judge Addy, as well as from  
15 Judge Alford, saying the exact same thing, Judge.  
16 And the order from Judge Alford is also on point,  
17 the same situation, not being able to view the  
18 video.

19 Judge, it's certainly -- we're not blaming the  
20 officer in this case. It's a counter. It's more of  
21 a technological problem that's probably been  
22 remedied now. These counters, I believe, are done.  
23 We're not blaming anybody. But there's no way that  
24 the jury in this case can view what happened on the  
25 one-legged stand and on the walk and turn. And

1           essentially, that equates to no video. If you can't  
2           view what's going on in the video, then the video  
3           itself is useless.

4           BY JUDGE GARRETT:

5                       Solicitor?

6           BY SOLICITOR BYRD:

7                       Judge, a couple points. I looked at my video  
8           last night, and I could clearly see the feet. I  
9           didn't have audio, however. So I called Deputy  
10          Jackson and told him that and said please bring your  
11          original VHS video with you. We looked at it again  
12          this morning, and you can clearly see her feet  
13          throughout all the field sobriety tests.

14                      Perry is correct in that at -- I think it was  
15          step seven of the walk and turn, she begins to --  
16          her feet go into where the numbers are. You can  
17          still see the feet, but the numbers are across the  
18          bottom of the screen. So I would simply quote Judge  
19          Hayes, which I think is the law of the land now.  
20          You have to have substantial compliance.

21                      We're not into making cinematographic motion  
22          pictures here. If the jury can view the conduct and  
23          substantially see what's happening out there, that  
24          passes muster and it goes to the weight of the  
25          evidence, not the admissibility. So it's not an

1           automatic dismissal, even if there are minor defects  
2           in the video.

3       BY JUDGE GARRETT:

4           (Inaudible).

5       BY MR. DELOACH:

6           And I agree, but let's look at the video, then,  
7           because I just have a disagreement with the  
8           solicitor. I ---

9       BY JUDGE GARRETT:

10           Well, here's the thing. Let's put it this way.  
11           And I understand what you're saying. Why would --  
12           why would Perry's tape not show the feet and your  
13           tape would show the feet?

14       BY SOLICITOR BYRD:

15           Well, I think it's a case of he says you can't  
16           see the feet because of the numbers on the screen.  
17           We don't agree with his interpretation of you can't  
18           see the feet, meaning I can see the feet. He's  
19           saying yes, you can see them, but the numbers cover  
20           up the feet at certain points. Again, I don't  
21           disagree with him. I'm just saying there is no  
22           point in the video where you cannot see her from  
23           head to toe. There is some steps toward the end of  
24           the walk and turn when she's walking into the screen  
25           portion where the numbers are. But you can still

1           see her. You can still see her walking.

2   BY JUDGE GARRETT:

3           All right. Hold on just a minute. In the  
4           video, can you see the field sobriety test so far as  
5           nystagmus?

6   BY MR. DELOACH:

7           Judge, you can see it. She's way back in the  
8           back. But yeah, I can't argue with nystagmus.

9   BY JUDGE GARRETT:

10          Okay. Second is can you see the person in the  
11          one-legged stand?

12   BY SOLICITOR BYRD:

13          Yes, sir.

14   BY MR. DELOACH:

15          You can see her person, but not her feet,  
16          Judge. I -- maybe I got a different version than  
17          the solicitor. In the version I have, she is  
18          clearly behind the nine on one of the counters.  
19          Now, I don't know whether they're looking through  
20          the circle on the nine or something. But even if  
21          that's the case, it's obstructed. I mean, this is  
22          -- the purpose of this tape is so that the jury can  
23          make a meaningful understanding of what they're  
24          seeing, whether or not she did the test right, the  
25          walk and turn and the one-legged stand.

1 I just disagree with the prosecutor on the  
2 quality of the video. I think that's the crux here.

3 BY SOLICITOR BYRD:

4 I do, too. I think the quality of the video is  
5 the issue, and if it -- if you can substantially  
6 view the conduct, I think the quality goes to --  
7 just like any other evidence. He can argue to the  
8 jury ---

9 BY JUDGE GARRETT:

10 All right. Here's the way we can settle this  
11 thing. Hook up the tape and let me see it.

12 BY SOLICITOR BYRD:

13 It's ready to go, Judge.

14 BY JUDGE GARRETT:

15 Hook up the tape and let me see it. We can see  
16 it in the back room, can't we?

17 BY SOLICITOR BYRD:

18 Yes, sir. That's where we looked at it this  
19 morning.

20 (VIDEOTAPE IS REVIEWED.)

21 BY JUDGE GARRETT:

22 We have reviewed the videotape of the field  
23 sobriety and the motion by the defense is overruled.

24 (BREAK IN RECORDING)

25 BY JUDGE GARRETT:

1           Solicitor and Mr. DeLoach, I'm beginning the  
2           previous tape right where we stopped. So we'll just  
3           continue right on with that one.

4           Good morning, ladies and gentlemen. We're  
5           ready to begin our trial for today. Solicitor, you  
6           and Mr. DeLoach, the juries have been polled.  
7           Everyone's present and I have appointed Ms. Darnell  
8           to serve as our foreperson for today.

9           Now, ladies and gentlemen of the jury, the case  
10          before you this morning is 53541FV, The State of  
11          South Carolina versus Maria Moyao. Is that correct,  
12          Moyao?

13       BY THE DEFENDANT:

14          Moyao.

15       BY JUDGE GARRETT:

16          Okay. Charged with the offense of driving  
17          under the influence on 9-4-11. She is represented  
18          by Mr. Perry DeLoach. And of course, Solicitor Byrd  
19          is here to represent the State. And of course, the  
20          arresting officer, Deputy Jackson, is present, also.

21          Now, we're ready ---

22       BY SOLICITOR BYRD:

23          Judge, just for purposes of clarification, this  
24          is going to be a DUAC case.

25       BY JUDGE GARRETT:

1                   Okay. Excuse me. D ---

2           BY MR. DELOACH:

3                   Judge, may I object to that?

4           BY JUDGE GARRETT:

5                   Yeah.

6           BY MR. DELOACH:

7                   May we approach?

8           BY JUDGE GARRETT:

9                   Come.

10                                   (BRIEF CONFERENCE)

11           BY JUDGE GARRETT:

12                   Ladies and gentlemen, the case before you this  
13                   morning is a DUAC, which is driving with an unlawful  
14                   alcohol concentration. Okay. And I'll explain that  
15                   more to you as we go into the charging phase of the  
16                   trial.

17                   I'll ask you, though, at this particular time  
18                   if you'll please stand and I'll ask you to raise  
19                   your right hands. And I'll ask you also to please  
20                   answer and don't just nod your head because the  
21                   machine cannot pick up a nod. Okay? All right. Do  
22                   you and each one of you solemnly affirm that you  
23                   will well and truly try this case and render a true  
24                   verdict according to the law and evidence produced  
25                   before you, so help you God?

1           (MEMBERS OF THE JURY ANSWER AFFIRMATIVELY.)

2           BY JUDGE GARRETT:

3                     Okay. Let the record reflect everyone in the  
4                     jury says that they do. You may be seated.

5                     Solicitor, Mr. DeLoach, is there a reason to  
6                     keep our alternate here if he chooses to go?

7           BY SOLICITOR BYRD:

8                     No, sir.

9           BY MR. DELOACH:

10                    I don't think so.

11           BY JUDGE GARRETT:

12                    Mr. (Inaudible), you are welcome to stay or  
13                    you're welcome to leave, whichever one you'd like to  
14                    do, sir. All right. Thank you so much.

15                    Now, again, ladies and gentlemen, we're ready  
16                    to begin our trial. As we talked yesterday in our  
17                    education portion, we are now ready for opening  
18                    remarks made by both of these fine attorneys. And  
19                    it is opening remarks. It is not evidence. Do you  
20                    remember we talked about the evidence is between the  
21                    goal posts. Gentlemen?

22           BY SOLICITOR BYRD:

23                    Thank you, Your Honor. May it please the  
24                    Court.

25           BY JUDGE GARRETT:

1 Yes, sir.

2 BY SOLICITOR BYRD:

3 Madame Forelady, ladies and gentlemen of the  
4 jury, I am Solicitor Byrd. I am with the  
5 solicitor's office here in Greenville. And I want  
6 to first thank you for your kind attendance here  
7 today and know you'll participate with everybody  
8 else.

9 I realize that jury service is a burden upon  
10 you. It's a burden upon your time and a hardship  
11 for you, but it's also a civic duty, a  
12 responsibility of citizenship, if you will. We  
13 enjoy the fruits of our free society and this is  
14 some payback, I guess you could say, to make sure  
15 that the system functions properly.

16 We all have responsibilities every day in our  
17 lives. We get up every day and take care of family  
18 and friends and neighbors and communities, and we go  
19 about our lives, accepting the responsibilities that  
20 are placed upon us. We always have the option to  
21 avoid responsibility, but as we know from our own  
22 experiences and common sense, sometimes avoiding  
23 responsibility has some repercussions. And that's  
24 what this case is about today, is driving with an  
25 unlawful alcohol concentration. And I want to read

1 that to you so that when it gets to the point where  
2 your deliberation begins, you'll hopefully have some  
3 idea of where we're going today.

4 It is unlawful for a person to drive a motor  
5 vehicle within this state while her alcohol  
6 concentration is eight one-hundredths of one percent  
7 or more. Point zero eight percent or higher.

8 So what does that mean? It really means two  
9 things. Number one, you have to be driving a motor  
10 vehicle within this state. If, in your  
11 deliberations, you determine that this lady was not  
12 driving a vehicle within this state on the occasion  
13 cited, then it would be your duty to find her not  
14 guilty. And we would want you to do that because  
15 we're not here to do something that's not truthful.

16 The second component of this charge is .08  
17 percent blood alcohol content. And that's  
18 determined based upon the evidence presented to you.

19 Again, you will have the testimony of the  
20 arresting officer, Deputy Jackson, for your  
21 consideration. And you will have evidence presented  
22 by the State of a Breathalyzer analysis, or a BA  
23 machine, which measures the blood alcohol  
24 concentration.

25 Once that evidence is presented to you, then

1           you will determine whether or not you believe the  
2           truth is this lady had .08 percent blood alcohol  
3           concentration or higher on this particular occasion.  
4           And if she did, then your verdict should be in favor  
5           of the State of South Carolina in that regard. And  
6           otherwise, if you find that she was not .08 or  
7           higher, then your verdict should be for the  
8           defendant.

9                     We're not here today to punish enemies or  
10           reward friends. We're here to find out what the  
11           truth is. And that's all we're asking. And the  
12           truth's going to come from this witness stand and  
13           from the evidence that's presented to you and to the  
14           Court. And all we ask is for your consideration and  
15           honest appraisal of that evidence, so that whatever  
16           verdict you render, it will speak the truth.

17       BY MR. DELOACH:

18                     May it please the Court.

19       BY JUDGE GARRETT:

20                     Yes, sir. Mr. DeLoach?

21       BY MR. DELOACH:

22                     Good morning, ladies and gentlemen. My name is  
23           Perry DeLoach. I'm a defense attorney in town, and  
24           I am happy to represent Ms. Moyao.

25                     Ladies and gentlemen, Winston Churchill once

1        said that the most important duty that you can  
2        perform for your country, outside of service in the  
3        military, is jury service. I say that before every  
4        trial. Every trial that I do. And the reason I say  
5        it is because I truly believe it. It's not just  
6        something I say for appearances. What y'all do in  
7        this courtroom is unbelievably important. It is  
8        used and allows not only the business that's being  
9        done here today, but other business that we've done.  
10       Your presence has allowed all of that to take place.  
11       And I thank you. And I thank you on behalf of my  
12       client for your service here today.

13       Ladies and gentlemen, the State is no longer  
14       going forward on DUI, as you just heard the judge  
15       say. They're going forward on DUAC. Okay. In a  
16       lot of ways, that's a lesser charge, okay, from the  
17       DUI. It's called driving with an unlawful alcohol  
18       concentration. That's (inaudible). Because I am  
19       sure when this case is over, you still will not be  
20       able to find Ms. Moyao guilty beyond any reasonable  
21       doubt. That's the key in this case, is is she  
22       guilty beyond any reasonable doubt. And that burden  
23       is placed squarely on these gentlemen. They have to  
24       prove to you not only that she's guilty, but that  
25       she's guilty of every element of this crime beyond

1 any reasonable doubt.

2 Now, the reason we say that is because that is  
3 what our founding fathers established. This is not  
4 something -- this is just not some legal jargon.  
5 This is extremely important and it is critical in  
6 our legal system, that any defendant (inaudible) be  
7 found guilty beyond every reasonable doubt. Reason  
8 being none of us were there. We don't know. We  
9 don't know what happened that night. That's the  
10 reason the standard is set so high in criminal  
11 cases.

12 I'm confident -- I'm going to get to talk to  
13 y'all later in what we call closing arguments. I  
14 try not to ramble on too much during my opening  
15 statements, and I'm not going to do that today,  
16 either. But I ask you to listen to each and every  
17 -- when the officer takes the stand, I'll ask that  
18 you pay attention, and I'm sure you will. Listen to  
19 everything. And I'm confident that at the end of  
20 this case, when you retire to your jury room, you'll  
21 have decided that we can't reach that verdict. And  
22 you will find this defendant not guilty.

23 BY JUDGE GARRETT:

24 Now, ladies and gentlemen of the jury and  
25 everyone in the court, we're honored to have some

1       folks here visiting with us today, monitoring our  
2       court. We welcome you and we hope you enjoy the  
3       court. And before you leave, if you have any  
4       questions, I'll be glad to speak with you about  
5       that, too. Okay?

6               Solicitor?

7       BY SOLICITOR BYRD:

8               Thank you, Your Honor. Call Deputy Jackson to  
9       the witness stand.

10      BY JUDGE GARRETT:

11              Come around, please.

12                      \*\*\*\*\*       \*\*\*\*\*       \*\*\*\*\*       \*\*\*\*\*

13      DEPUTY JONATHAN JACKSON, BEING DULY SWORN TO TELL THE  
14      TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,  
15      TESTIFIED CONCERNING THE MATTER HEREIN AS FOLLOWS:

16      BY JUDGE GARRETT:

17              State your full name and your occupation.

18      BY THE WITNESS:

19              Jonathan Jackson, Deputy with Greenville County  
20      Sheriff's Office.

21      BY JUDGE GARRETT:

22              Please have a seat. Answer any questions  
23      Solicitor may have for you. Solicitor, your  
24      witness.

25      BY SOLICITOR BYRD:

1 Thank you, Your Honor.

2 DIRECT EXAMINATION BY SOLICITOR BYRD:

3 Q Deputy Jackson, where do you live?

4 A I live within the county of Greenville.

5 Q All right. How long have you been in Greenville?

6 A I have lived here since 1996.

7 Q All right. And you're employed with the sheriff's  
8 office. And how long have you been employed with  
9 the sheriff's office?

10 A Since 1998. July of 1998.

11 Q In your employment with the sheriff's office, what  
12 are your basic responsibilities? What do you do,  
13 mostly?

14 A I am currently with the traffic division and I am  
15 working under a grant from the federal government,  
16 which is called H.E.A.T. Grant. It's a Highway  
17 Enforcement of Aggressive Traffic. And our primary  
18 responsibilities are to work night shift and detect  
19 impaired drivers.

20 Q All right. Do you have any certifications or  
21 training in this regard?

22 A I do. I am -- as far as traffic or just the  
23 impaired driver part?

24 Q Just traffic.

25 A As far as traffic, I'm an instructor in speed

1 measurement devices. I teach and certify officers  
2 in both the radar unit and the LIDAR unit, which is  
3 the laser. And I also am certified in advanced DUI  
4 and I'm an instructor, as well. I teach that class.

5 Q All right. Do you have any advanced training in  
6 reference to traffic offenses involving alcohol?

7 A Well, that would be the advanced DUI, in which I  
8 teach the standardized field sobriety testing.

9 Q All right, sir. And if you would, were you employed  
10 with the sheriff's office in September of 2011?

11 A Yes, sir.

12 Q On September 4, 2011, did you have occasion to come  
13 in contact with Maria Rosanna Moyao?

14 A Yes, I did.

15 Q All right. Is this Ms. Moyao seated here?

16 A It is.

17 Q All right. And what brought your attention to Ms.  
18 Moyao or her vehicle?

19 A As I was traveling southbound on 385 -- and that's  
20 outbound from Greenville city. I began to see the  
21 defendant's vehicle cross -- weaving in its lane and  
22 then cross over the dotted lined between her lane  
23 and the lane to her left. I believe I counted three  
24 times.

25 And after observing that, the vehicle weaving,

1 I decided to initiate my emergency equipment and  
2 stop the vehicle.

3 Q Do you recall what time of day this was?

4 A It was early in the morning, and I noted about 3:30.  
5 3:36.

6 Q 3:30 a.m.

7 A a.m.

8 Q Was it dark outside?

9 A I'm sorry?

10 Q Dark?

11 A Yes, it was. I'm sorry.

12 Q And did you stop her vehicle?

13 A I did.

14 Q And did you have a conversation? Did you speak to  
15 her?

16 A I did. I explained the reason for the stop and  
17 asked her to step out and explained that I was  
18 concerned. And I'm not quoting here, but to  
19 summarize, I was concerned about the driving that I  
20 had seen. And I wanted to give her some  
21 standardized field sobriety testing and make sure  
22 that she was safe to continue driving.

23 Q All right. When you spoke with her, did you notice  
24 anything about her or about her person that caused  
25 you any suspicion?

1       A     I did note a strong odor of alcoholic beverage  
2             coming from the vehicle when I first made contact as  
3             she rolled her window down and spoke with me. And  
4             that's when I asked her, you know -- coupling that,  
5             the odor, along with the driving I had observed,  
6             that's what caused me to ask her to step outside and  
7             ---

8       Q     Do you recall whether you had a conversation with  
9             her about whether or not she had had any alcohol to  
10            drink? Alcoholic beverages to drink?

11      A     I'll see if I noted it here. I did not note that.  
12             So, you know, I don't recall.

13      Q     All right. When you asked her to step out of your  
14             car, what was the purpose of that?

15      A     That is to make sure that she's safe to continue  
16             driving. We have standardized field sobriety  
17             testing, which the NHTSA, National Highway  
18             Transportation Safety Administration ---

19      Q     All right. Let's stop at that point.

20      A     Okay.

21      Q     What are field sobriety tests? What are they  
22             designed to do? What are they?

23      A     Okay. Field sobriety tests are -- there are three.  
24             And as I said, they are standardized. And the  
25             purpose of that is so that if you were to watch a

1 video of an officer on the West Coast giving this  
2 test, they should be the same test I'm giving here  
3 on the East Coast. There was a lot of research done  
4 into which were the best tests. Several different  
5 tests were looked at and these were chosen by the  
6 NHTSA as the most accurate. And so, they are  
7 standardized in the way that they're given and in  
8 the cues and clues that we look for.

9 And each test -- well, two of the tests are  
10 divided attention tests. And what that means is for  
11 an impaired person, it is difficult to focus their  
12 attention in two places. They are not difficult  
13 tests. They're tests that I give out many, many  
14 times every single night. And people that are not  
15 impaired do not have trouble passing these tests.  
16 So they're -- you know, they're not an over-the-top  
17 difficult thing to do. We ask you to do things like  
18 stand and walk while thinking about maybe counting  
19 or doing something like that at the same time. And  
20 you'll get to see that shortly.

21 Q Now, what do you mean by divided attention? Let's  
22 explain that. What are you trying to determine as  
23 you conduct the tests?

24 A Well, driving a vehicle is a divided attention task.  
25 What that means is you have to be able to do more

1           than just one thing at the same time. If you have  
2           driven a vehicle, you know that you have to be able  
3           to look, assess different -- if you want to call  
4           them threats or obstacles or whatever. You have to  
5           be able to apply a brake, maybe steer at the same  
6           time. You have to be able to do several different  
7           things at the same time, including with your thought  
8           process. And so the purpose of a divided attention  
9           test is to see if you're capable of doing more than  
10          one thing at the same time. If you're not, then I  
11          and the NHTSA would submit that driving is not a  
12          good idea for a person that's incapable of that.

13        Q   What are the field -- standard field sobriety tests?

14        A   The first is the horizontal gaze nystagmus, and that  
15            is when you -- you may have seen an officer moving  
16            his finger back and forth. And we're looking for  
17            six things -- six clues that are present if a person  
18            is impaired. And what that means is -- horizontal  
19            gaze nystagmus is a fancy word for the involuntary  
20            jerking of the eyes. What that means is if I was to  
21            come to any sober person, like you right now, and  
22            look at your eyes as they move back and forth, I  
23            should see -- the first thing we're looking for is a  
24            lack of smooth pursuit. If there's a lack of smooth  
25            pursuit, this is the first clue that we look for.

1           And what that means is if I was to move a stimulus  
2           in front of your eyes back and forth, your eyes  
3           should be able to follow that stimulus very  
4           smoothly. The analogy I like to use is maybe if I  
5           was to take a marble and roll it across this  
6           surface, it would roll smoothly.

7           Okay. What we see if a person has a  
8           depressant, which in this case would be represented  
9           by alcohol, is we see the involuntary jerking of the  
10          eye and we see a lack of smooth pursuit. And so a  
11          person who's impaired, rather than that marble  
12          rolling smoothly, it looks more like it's rolling  
13          across a washboard. Their eyes jerk and kind of  
14          check in at different points as they go back and  
15          forth. They do not roll smooth.

16          As I tested the defendant today, I saw that  
17          there was a lack of smooth pursuit in both of her  
18          eyes. So that was the first two clues I'm looking  
19          for.

20          The third and fourth clue that I'm testing for  
21          is called distinct and sustained nystagmus at  
22          maximum deviation. What that means is I'm going to  
23          take the stimulus and pull her eye out until I don't  
24          see any more white beside the lower part of her eye  
25          so that she's at what we call maximum deviation.

1           She's turning her eye as far as she can. And when I  
2           bring the eye over to that point and hold the  
3           stimulus there four seconds, if the depressant is  
4           present and if I'm looking at an impaired person,  
5           the eye will not be able to hold a steady gaze. The  
6           eye will bounce. And that's the involuntary  
7           jerking. The good part about this test is a person  
8           displaying this clue has no idea that they're doing  
9           it. It's not something that they can control. Some  
10          people have better balance than others. Some people  
11          have different physical capabilities. But nobody  
12          can practice or beat or however you want to say, to  
13          overcome this test. And so it's a very big clue for  
14          me as I'm trying to detect impairment. And so when  
15          I bring the eye over there, if I see a sustained  
16          bounce, the eye continues to -- and what it's doing  
17          is relaxing. It takes muscle -- it takes some form  
18          of muscle control to bring your eye that far over.  
19          If you try it, at some point, you'll get to a point  
20          where it's a little bit uncomfortable and your eye  
21          wants to come back. Well, what a depressant does is  
22          it causes the eye to give up just a little bit and  
23          then the decision-making process is trying to keep  
24          it there. So it's -- you're having an almost  
25          internal battle with the eye bouncing. And in a

1 person who is sober, you just don't see that. Okay.  
2 I test both the left and the right eye two times to  
3 make sure I've seen what I thought I saw the first  
4 time. And in both eyes, I did see the distinct and  
5 sustained nystagmus at maximum deviation. So now I  
6 have four clues that I'm checking for, and I've seen  
7 those four.

8 The final clue is to check for the onset of  
9 that nystagmus prior to 45 degrees. And we don't  
10 certainly get out a protractor or measure 45  
11 degrees. But as a general rule, we teach the  
12 student to bring the eye over to about the  
13 shoulder's width. And that's approximately 45  
14 degrees. This would be 90, of course, and then  
15 approximately right here is 45 degrees. And  
16 research shows that if I begin to see that bounce of  
17 the eye at that point before 45 degrees, then there  
18 is a statistical likelihood that the person is going  
19 to be over that .08. And so, I test both eyes again  
20 two times to make sure. Initially, I see it. I  
21 check this one and I go back to confirm what I've  
22 seen. And that is the standardized way to give the  
23 test. And again, I saw that nystagmus prior to the  
24 45 degrees in both of the defendant's eyes. So now  
25 I have six out of six clues that I'm checking for.

1 All six clues were absolutely present in the  
2 defendant and I made that note and continued with  
3 the second sobriety test.

4 Q And the second sobriety test is what?

5 A The second sobriety test is what we call the nine-  
6 step walk and turn. And what I'm going to ask the  
7 person to do is to, as I said earlier, basically  
8 stand and walk. It's going to be a little bit  
9 different from how a person typically stands, but  
10 nothing, you know, overtly challenging. I'm going  
11 to ask the person to put their left foot --  
12 sometimes we have a line and sometimes we don't. If  
13 I'm on the side of 385, I'm not going to ask the  
14 person to stand on the white line because they have  
15 cars going by. So sometimes I say let's not stand  
16 here and get hit. Let's pretend like there's a line  
17 running through -- for safety's sake, let's pretend  
18 there's a line running from you right to the front  
19 of my car. I'm not interested in seeing if they,  
20 you know, stayed necessarily dead on a line. I just  
21 want to see that they can walk a straight line.  
22 That's what I'm looking for. So I may say to a  
23 person, now, let's pretend there's a line. I want  
24 you to put your left foot down on that line and then  
25 I want you to put your right foot in front of your

1 left with your heel touching your toe. I'd now like  
2 you to just place your hands against your side and  
3 just stand there while I explain this test. Okay?  
4 That is the -- you know, the initial position, we  
5 ask them to maintain while we demonstrate the test.  
6 We don't only verbalize. We demonstrate the test.  
7 We're going to show you how to do it correctly. And  
8 so while they stand and maintain that position, if  
9 they can, I'm demonstrating the test. This is where  
10 the attention is divided. What I mean by that is if  
11 a person is impaired, they are going to struggle so  
12 much with maintaining that balance if there's a  
13 problem, that they're now not going to hear the  
14 things I'm saying. If you're not impaired, you  
15 should be able to stand there and pay attention and  
16 listen to the simple instructions. If this is a  
17 challenge and now you're concentrating so much on  
18 that that when I say take nine steps, you don't hear  
19 me say take nine steps. When I say turn in this  
20 manner, look at your feet, keep your hands to your  
21 sides, you're missing those things, okay? So these  
22 are all things I'm going to be looking for. I then  
23 demonstrate for the person how I wish them to  
24 perform the test. When they get to the last step,  
25 leave your foot on the line, take a series of small

1 steps, turn around and take nine steps back. Okay.  
2 I'm looking for things like stepping off of the  
3 line. I'm looking for things like having to raise  
4 your arms for balance, falling, not turning  
5 properly, taking an improper number of steps.  
6 There's any number of ways that impairment can  
7 demonstrate itself at that point. If a person is  
8 not struggling with impairment, they will stand  
9 there and listen to the test -- and again, I see  
10 this every night. They can perform it. It's not a  
11 challenge.

12 But the defendant today, she had -- she did  
13 struggle with her balance during the instruction  
14 phase and sidestepped a couple of times and had to  
15 get herself acclimated into the position I had asked  
16 her to maintain. And as I recall, I noted she did  
17 step off the line and I noted she did not touch her  
18 heel to her toe as I had demonstrated and requested  
19 that she do.

20 And we do provide, by the way -- we allow for a  
21 little bit of gap there, you know. If we're off by  
22 a half of an inch, I'm not going to count that as a  
23 clue. But when you're going for -- kind of going  
24 for a walk and it's clear you're not even trying to  
25 bring that heel against the toe, then I consider

1           that a clue. And so, that's how she -- those were  
2           the clues that I saw that were demonstrated during  
3           the nine-step walk and turn.

4       Q   All right, sir. And the third and final test?

5       A   The third, again, is a divided attention test. I'm  
6           going to ask you to just stand there and listen, and  
7           I'm going to demonstrate that I would like you to  
8           lift the foot of your choice. If you have one that  
9           you prefer over the other, you may lift any foot  
10          that you would like approximately six inches off the  
11          ground. I'm going to ask you to point your toe  
12          straight forward so the foot is just about parallel  
13          with the ground. Keep your hands against your  
14          sides. Look at the toe and count like this: a  
15          thousand and one, a thousand and two, a thousand and  
16          three, and so forth and so on. Just keep counting  
17          until I say stop. That's going to be for about a  
18          duration of 30 seconds. And so, after, you know,  
19          making sure that they understand and the directions  
20          are clear, I then ask any person being tested to  
21          perform that test. Obviously, a person who is  
22          struggling is not going to be able to keep the toe  
23          in the air and is going to have to touch it for  
24          balance. Or the arms are going to sway. I look for  
25          swaying, hopping around. Those are just some of the

1           clues we look for. And the defendant today did have  
2           to touch her foot to the ground to keep from  
3           falling.

4                     At that point, I have six out of six clues in  
5           the horizontal gaze nystagmus, as I demonstrated. I  
6           have several clues in the nine-step walk and turn.  
7           And then I have the issues with the one-legged  
8           stand. And so I determined, at that time, that it  
9           was not going to be a good idea to let the defendant  
10          continue driving and that she did pose a risk to  
11          herself and other people. And I placed her under  
12          arrest for driving under the influence.

13       Q   All right, sir. And where you stopped her, the  
14           location of that, what county is that in?

15       A   It's in Greenville County.

16       Q   All right. Was anybody in the vehicle with her when  
17           you stopped her?

18       A   She did have a passenger.

19       Q   And could you determine who was operating the  
20           vehicle?

21       A   Yes. It was clear that the defendant today was  
22           operating the vehicle.

23       Q   All right. And you got her out of the driver's  
24           side?

25       A   I did. She stepped out of the driver's side, was

1           there as I walked up. With my spotlights, I have a  
2           very, you know, clear view of the interior. So  
3           there wasn't any kind of swapping around. And I  
4           failed to mentioned I also did read her her Miranda  
5           rights after I arrested her.

6       Q     Okay. And is there any doubt in your mind regarding  
7           who was operating the vehicle when you stopped it?

8       A     No, sir. Not at all.

9       Q     Is there any doubt in your mind as to whether or not  
10          Ms. Moyao had consumed alcohol prior to the stop?

11      A     No, there's not.

12      Q     All right. Now, is your vehicle equipped with a  
13          video camera?

14      A     It is.

15      Q     And did you turn the video camera on when you  
16          initiated your blue lights?

17      A     I believe I had turned it on prior to the blue  
18          lights to -- as I began to -- or I might have even  
19          been running it. I think it was already running.

20      Q     Okay.

21      A     Before, you know, to capture the driving.

22      Q     Is this a copy of your video?

23      A     It is.

24      BY JUDGE GARRETT:

25                   Any objection?

1 BY MR. DELOACH:

2 No objection, Your Honor.

3 BY SOLICITOR BYRD:

4 All right. Would you be kind enough to try to  
5 plug that in for us, sir.

6 BY THE WITNESS:

7 I will.

8 BY SOLICITOR BYRD:

9 It will be kind of hard for you all to turn,  
10 but that's ---

11 BY THE WITNESS:

12 I'm not sure if there's a remote to select  
13 which input or ---

14 BY JUDGE GARRETT:

15 There's two.

16 (VIDEOTAPE IS REVIEWED.)

17 BY THE WITNESS:

18 The vehicle that we're watching is (inaudible).

19 BY JUDGE GARRETT:

20 Can our visitors see the TV? Can you see it?  
21 If you can't, you can move around here, if you like.  
22 Come around if you might see it better. Sorry we  
23 don't have any popcorn.

24 DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

25 Q Deputy Jackson, I noticed that the picture quality

1           was somewhat poor toward the end of your video. We  
2           watched the video this morning on a different  
3           machine, and it was fairly clear. Is it your belief  
4           that the machine itself is, in part, at fault in  
5           that regard?

6       A     Yeah, it was obviously much clearer than the one ---

7       Q     And if the jury wanted to see that again clearer, we  
8           could show it on a different ---

9       A     That's correct. That would be fine.

10      Q     All right. Based upon your visual observation of  
11           Ms. Moyao's operation of the vehicle and based upon  
12           your personal observations of her when you were  
13           communicating with her and based upon her  
14           performance in the field sobriety tests, is there  
15           any doubt in your mind that she was under the  
16           influence of alcohol?

17      A     No, sir. Not at all.

18      Q     Would you have felt comfortable allowing her to get  
19           back in her car and operate it?

20      A     No.

21      Q     Why not?

22      A     For the danger to other motorists or herself. I had  
23           already seen, you know, the weaving. And I was just  
24           not comfortable putting her near other motorists.

25      Q     All right. Now, did you transport her from that

1 point to the Law Enforcement Center?

2 A I did.

3 Q And when you got to the Law Enforcement Center, what  
4 was the purpose of that?

5 A Well, that is to administer the breath test, which I  
6 am certified through the Department of Public Safety  
7 in South Carolina to administer. And this involves  
8 the reading of the -- you begin by videotaping the  
9 procedure and advising a person they're being  
10 recorded and then reading the implied consent  
11 rights, which -- which all occurred on camera, of  
12 course. Would you like me to explain implied  
13 consent?

14 Q If you would, briefly, what do you mean by implied  
15 consent?

16 A Implied consent means this. It's this form here.  
17 It's a lot to read, but I will summarize it.  
18 Driving in the state of South Carolina is a  
19 privilege. It is not a right. And that means that  
20 there are certain things that go along with that  
21 privilege that the state requires of you. When you  
22 accept your driver's license, it is implied that you  
23 will agree or consent to any testing that is asked  
24 of you if your sobriety or your impairment are  
25 called into question.

1           And so I read her the ramifications of that  
2           implied consent, whether she does or does not choose  
3           to provide a breath sample because I was requesting  
4           it. And so I then -- after reading implied consent,  
5           there's a 20-minute waiting period that we have to  
6           wait. And that is to be fair to everyone. And I'm  
7           not saying that the defendant today falls into this  
8           circumstance, but if a person that I stop right  
9           before I stop had just taken a drink of alcohol and  
10          I took them and asked them to blow directly into the  
11          device, we would get a higher than is fair reading.  
12          And that's because there could be alcohol trapped  
13          between the gum and the cheek, between the teeth or  
14          whatever. And that would not be fair. So,  
15          scientists, medical personnel and the South Carolina  
16          legislature have said that 20 minutes is sufficient  
17          time to allow any residual alcohol in the mouth to  
18          cycle out so that we can get -- test only air from  
19          the lungs. And that's what we're interested in.

20                 And so after that 20-minute waiting period, I  
21          did offer her the opportunity to provide a breath  
22          sample and she did so. She did provide a sample.  
23         Q       All right. I want to show you this form and ask you  
24                 if you can identify it.  
25         A       This is the implied consent form. It is the one

1           that we -- the same one I read that night and it is  
2           the one we both signed, stating that we did ---

3       Q     Is that Ms. Moyao's signature on the top?

4       A     She did sign it. Yes, sir.

5       Q     Okay.

6       BY SOLICITOR BYRD:

7           Move to introduce, Your Honor.

8       BY JUDGE GARRETT:

9           So entered. State's Exhibit 1 or 2?

10       BY SOLICITOR BYRD:

11           Well, I've got -- the VHS would be 1.

12       BY JUDGE GARRETT:

13           Okay. Then State's Exhibit Number 2.

14       DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

15       Q     Now, by implied consent, do you mean that by law you  
16           agree to comply with the consent statute?

17       A     Correct.

18       Q     But you still have the option to take the test or  
19           decline to take the test. Is that correct?

20       A     That's correct. We will not -- we're not going to  
21           hold anybody down. It's their decision if they wish  
22           to blow or not.

23       Q     And in this case, did Ms. Moyao agree to take the  
24           test or not?

25       A     She did.

1       Q     And you read her the implied consent law and you  
2             followed the steps from telling her she was being  
3             video recorded until the time that 20 minutes  
4             elapsed and it was time to take the test?

5       A     Correct.

6       Q     And she opted to take the test?

7       A     She did.

8       Q     Now, how do you know that machine is functioning  
9             properly?

10      A     It goes through a series of self-tests. And again,  
11             this is for the benefit of, you know, the defendant  
12             or anybody sitting there. We certainly would not  
13             want an unfair reading or an inaccurate reading. So  
14             it goes through several self-tests to make sure that  
15             it's operating properly before it will allow a  
16             person to provide a breath sample.

17      Q     If there's a malfunction in the machine, what will  
18             happen?

19      A     It shuts down and we can no longer use it. Somebody  
20             from SLED has to address it.

21      Q     All right. Did you test this machine before you  
22             offered Ms. Moyao a test?

23      A     It performs self-tests. Yes, sir.

24      Q     All right. Is there any indication to you -- do you  
25             get anything from the machine that confirms ---

1       A     I do. It records and prints the results of the  
2             self-tests, along with the results from the test.  
3             It records all that on one form.

4       Q     All right, sir. And I'm going to show you this form  
5             and ask you if you can identify that.

6       A     That is the printed read-out of our time of the  
7             breath analysis, which reflects her signature.

8       Q     All right.

9       BY MR. DELOACH:

10            I object, Judge. I don't believe a proper  
11            foundation has been laid for it yet until  
12            the video is shown.

13       BY SOLICITOR BYRD:

14            You want to watch the video first? That's fine  
15            with me.

16       BY JUDGE GARRETT:

17            Fine with me.

18       BY SOLICITOR BYRD:

19            Is that what you'd like, though?

20       BY MR. DELOACH:

21            That's fine.

22       DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

23       Q     Did you video record the BA test?

24       A     Yeah, the State does. Yes, sir.

25       Q     Okay. Now ---

1 BY JUDGE GARRETT:

2 I'll accept it. I'll accept it. I'll accept  
3 it. Go ahead and introduce it. And the video, he's  
4 going to show the videotape. I'll go ahead and mark  
5 that as State Exhibit 3.

6 BY THE WITNESS:

7 All right, sir.

8 BY JUDGE GARRETT:

9 Do you have the ---

10 BY THE WITNESS:

11 Oh, I'm sorry.

12 BY JUDGE GARRETT:

13 So marked as State's Exhibit Number 3.

14 BY SOLICITOR BYRD:

15 Thank you.

16 DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

17 Q Now, Deputy Jackson, does the print-out from the  
18 machine reflect that a simulator type test was run  
19 on it?

20 A Yes.

21 Q And does it show whether or not those results of  
22 that pre-test testing reflected that the machine was  
23 operating -- functioning properly?

24 A Yes, it does. The blank test registered zero.  
25 That's what we're looking for. The internal

1 standard was verified. The temperature was verified  
2 and then the simulator was verified, as well.

3 Q All right. And once you determined that the machine  
4 was functioning properly, the read-out being that it  
5 would go forward as opposed to stopping, did you  
6 offer the test to Ms. Moyao?

7 A I did.

8 Q And did she elect to take the test?

9 A She did.

10 Q And what was the result of the test?

11 A .10.

12 Q All right, sir. Now, I'm going to ask you, if you  
13 would, please, to plug in this video.

14 BY JUDGE GARRETT:

15 Before we watch the tape, ladies and gentlemen  
16 of the jury, do you need a short break? Stretch?  
17 Water or anything? Restroom? Okay.

18 (VIDEOTAPE IS REVIEWED.)

19 BY SOLICITOR BYRD:

20 Your Honor, I move to introduce the  
21 Breathalyzer test.

22 BY MR. DELOACH:

23 No objection.

24 BY JUDGE GARRETT:

25 Okay. So entered.

1 BY SOLICITOR BYRD:

2 Thank you.

3 DIRECT EXAMINATION RESUMED BY SOLICITOR BYRD:

4 Q Deputy Jackson, I may have asked this before the  
5 video, but you read Ms. Moyao the implied consent  
6 rights stated on the form and you also provided her  
7 a copy of it?

8 A That is correct.

9 Q All right. And you checked the machine and provided  
10 her with a test and the test result is the one that  
11 we showed before the video?

12 A Correct.

13 Q Did Ms. Moyao ask you for assistance to obtain any  
14 other tests by any other means of her choosing?

15 A No, she did not.

16 Q When you offered her the mouthpiece to blow in, is  
17 there any way to manipulate the machine, in terms of  
18 the breath? Is there any way for me to blow softly  
19 or hard and manipulate the reading?

20 A No. No.

21 Q How do you know that?

22 A Well, because there's a certain amount of air that  
23 is required -- if I'm answering -- if I'm  
24 understanding what you're asking, if a person were  
25 to try to only blow with the air -- and I see this

1 sometimes, again, not the defendant today. But if a  
2 person were to try to blow with just the air in  
3 their cheeks, which many people want to do because  
4 they don't want the lung air to come, it doesn't --  
5 they don't have enough air. There's a requirement  
6 for how much air is needed to obtain a sample.

7 Q Does the machine make a noise of any kind?

8 A The beeping changes to that solid tone. Yes, sir.

9 Q All right. So if I were blowing too soft, it  
10 wouldn't make that solid sound?

11 (END OF RECORDING MOYAO TAPE 1 FRONT)

12 \* \* \* \* \*

13 (BEGINNING OF RECORDING TAPE 1 BACK)

14 (THE FIRST 30 MINUTES OF THIS RECORDING DUPLICATE PART OF  
15 RECORDING MOYAO TAPE 1 FRONT. TRANSCRIPTION BEGINS AT  
16 30:30.)

17 A That's correct. It would be an interrupted -- there  
18 would be some tones with interruption.

19 Q And once it starts that solid sound, does it make  
20 any difference if I'm blowing harder than Ms. Moyao,  
21 trying to force more air in? Does it change the  
22 test ---

23 A No, it does not.

24 Q All right. Does it regulate how the air comes in?

25 A It does.

1 Q All right. Any way that you know of that a person  
2 can manipulate the results based upon how soft or  
3 how hard they blow into the machine?

4 A No.

5 Q Any doubt in your mind that the machine was  
6 functioning properly on the occasion that Ms. Moyao  
7 gave her sample?

8 A No, sir.

9 Q Any question about the results of the test?

10 A No.

11 Q Any doubt in your mind, based upon your personal  
12 observations or the results of the machine, as to  
13 whether or not Ms. Moyao was under the influence of  
14 alcohol?

15 A There is no doubt. No, sir.

16 Q Any doubt about the reading on the test of .10?

17 A No, sir.

18 BY SOLICITOR BYRD:

19 That's all, Your Honor.

20 BY JUDGE GARRETT:

21 Ladies and gentlemen of the jury, now this  
22 witness is fixing to be cross examined. We're going  
23 to be a little lengthy here, I assume. And so,  
24 therefore, I need to give you a little break because  
25 I don't want you to get tired or whatever. So I'm

1 going to tell you let's take a break. And I have  
2 about 10:16. I'm a little bit fast because I try to  
3 stay out of trouble with my wife, you know, stay  
4 ahead of things. So let's come back somewhere in  
5 the neighborhood of 10:20, 10:21. Somewhere around  
6 there.

7 Now, I'll instruct you as not to discuss the  
8 case amongst yourselves. You're not to discuss it  
9 with anyone else or allow anyone else to discuss it  
10 around you. If that is attempted, tell them you're  
11 a juror and then report that to me when we come  
12 back. Okay? Restrooms are out and to the left.  
13 Water is out and to the left. If you're a smoker,  
14 you may step outside and smoke. But let's be back  
15 in here around 10:21, somewhere in that  
16 neighborhood. Okay? We stand in recess.

17 (RECESS)

18 BY JUDGE GARRETT:

19 Court's back in session. Mr. DeLoach?

20 CROSS EXAMINATION BY MR. DELOACH:

21 Q Good morning, Deputy Jackson. How you doing?

22 A I'm fine. And yourself?

23 Q I'm doing great. Deputy Jackson, I want to start  
24 with the stop that we had on the video, the first  
25 video that we saw. Now, that video was kind of

1           grainy, admittedly, with some tracking problems,  
2           correct?  
3       A     Uh-huh.  
4       Q     Okay.  
5       A     Yes, sir.  
6       Q     After you pulled -- you pulled over Ms. Moyao -- I  
7           am having a hard time pronouncing her name since  
8           we've been here. You pulled over Ms. Moyao based on  
9           weaving, correct?  
10      A     That's correct.  
11      Q     Now, when you drive, Deputy Jackson, do you always  
12           keep it directly between the lines? Do you ever  
13           deviate?  
14      A     I do my best.  
15      Q     Do you ever answer a cell phone, change the radio,  
16           laugh at a joke? Anything like that that may cause  
17           you to go slightly over the line, one way or the  
18           other?  
19      A     I like to laugh at jokes. Yes, sir.  
20      Q     So you had indicated that this drifting over the  
21           line was supposed to potentially mean you're  
22           intoxicated?  
23      A     By itself, no.  
24      Q     Okay. After you made this stop, you initiated a  
25           field sobriety test, correct? Well, first of all,

1           you said there was a strong odor of alcohol in the  
2           car, correct?  
3       A     That's correct.  
4       Q     All right.  
5       A     Alcoholic beverage, yes, sir.  
6       Q     Alcohol, alcoholic beverage, whatever you want to  
7           call it. There was another person in that car, was  
8           there not?  
9       A     There was.  
10      Q     Okay. You didn't let that person drive home, did  
11           you?  
12      A     No.  
13      Q     Okay. Is it possible that that strong alcoholic  
14           beverage that you smelled came from that person?  
15      A     Yes, and that's why I removed the driver to see if  
16           it persisted after she got out.  
17      Q     Okay. I understand. But that could have been him,  
18           and in fact, you did not let him drive home. You  
19           had the car towed, correct?  
20      A     Correct.  
21      Q     Okay. Now, let's move on to (inaudible). Now, you  
22           performed three field sobriety tests, correct?  
23      A     I did.  
24      Q     The first being the HGN.  
25      A     Uh-huh.

1 Q Now, when you performed -- what is it? The first  
2 test, what is it called?  
3 A Horizontal gaze nystagmus.  
4 Q Okay. And what's the first clue you're looking for  
5 or what's the first portion of that test?  
6 A I'm looking for a lack of smooth pursuit, is the  
7 first clue I'm looking for.  
8 Q Okay. And how long is that test supposed to take?  
9 A Well, I'd have to add it up to see. Without pen and  
10 paper, I believe 50 seconds, if I'm adding my total  
11 correctly.  
12 Q Is this not something that y'all learn when you're  
13 taking that class, how long the entire test is  
14 supposed to take?  
15 A No, sir.  
16 Q Okay. How long is a (inaudible) supposed to take  
17 (inaudible)?  
18 A There are -- I can break it down for you in each  
19 step.  
20 Q Sure.  
21 A There are two two-second passes, in which we're  
22 looking for the lack of a smooth pursuit, and two  
23 two-second passes in which we're looking for the  
24 equal tracking.  
25 Q Okay.

1       A     Then there is -- you take the eye out, hold it to  
2             maximum deviation for four seconds two times per  
3             eye.  
4       Q     Okay.  
5       A     And then you spend four seconds taking the eye -- or  
6             excuse me. A minimum of four seconds. And that's  
7             why we don't teach an exact total because it's a  
8             minimum on each pass. And you take a minimum of  
9             four seconds to get from the center to approximately  
10            45 degrees. And you do that twice per eye. And  
11            then there are two four-second checks for vertical  
12            nystagmus (inaudible).  
13       Q     Now, when you were doing (inaudible) smooth -- and I  
14             know it's kind of hard to see on this video. Do you  
15             believe you were making two-second passes?  
16       A     Yes, I do.  
17       Q     You're positive?  
18       A     Uh-huh.  
19       Q     Okay. Now, you also stated that, on direct  
20             examination, that when someone takes the HGN test,  
21             they will pass it if they haven't been drinking,  
22             correct?  
23       A     Say it one more time.  
24       Q     I thought -- I thought you said, and maybe I was  
25             wrong, that if someone has not been drinking

1 alcohol, they will pass it, correct?

2 A I believe I said I give it several times a night and  
3 people (inaudible) struggle with it, yes; sir.

4 Q Okay. But is it not true that the NHTSA manual only  
5 says that it is only 77 percent effective when done  
6 properly?

7 A I don't believe that's a direct quote.

8 Q All right, sir.

9 A I think you're referring to the research results.

10 Q Correct. But it's in the NHTSA manual, correct? Do  
11 they not quote that research in the NHTSA manual?

12 A I don't know if that was a direct quote or not.

13 Q Okay. Would you agree that this is the NHTSA  
14 manual?

15 A Yes, I would.

16 Q Would you read number five, bullet point one,  
17 please.

18 A Okay. HGN, by itself, and I think that's what you  
19 eliminated ---

20 Q Correct.

21 A Was 77 percent accurate.

22 Q Okay. So it does say that, correct?

23 A It says by itself, it's 77 percent. Yes, sir.

24 Q Okay. All right. Well, then, can you read -- well,  
25 we'll get to that in a second.

- 1       A     Okay.
- 2       Q     So, you admit that, by itself, it's only 77 percent
- 3             effective. Twenty-three percent of the time, it's
- 4             not effective. And that's when it's done properly.
- 5       A     I need to answer, and the answer is no to that.
- 6       Q     Okay.
- 7       A     No, sir. The research was conducted on many, many
- 8             individuals, and the research shows that in 77
- 9             percent of the cases, the officer made the correct
- 10            decision. It does not show that it's only 77
- 11            percent accurate. That means that in 23 percent of
- 12            the time, an officer should have made an arrest and
- 13            did not.
- 14       Q     Okay. But this analyzed laboratory test results and
- 15             found that HGN, by itself, is 77 percent accurate,
- 16             and that's what you just read, correct?
- 17       A     If we put it in the context of the experiment, yes,
- 18             sir.
- 19       Q     Okay. Now, let's move on -- or also, in the HGN
- 20             test on this case and the VPN, I believe. Is it
- 21             vertical gaze? Is that right?
- 22       A     The vertical gaze, we look for. Yes, sir.
- 23       Q     Okay. And you did that, as well, in this case?
- 24       A     I did.
- 25       Q     Okay. Is it not proper to have the blue lights on

1 the car off?

2 A The front-facing blue lights, yes, sir.

3 Q Okay. Were the blue lights on in this car in this  
4 case?

5 A The rear were for my protection and for her, but not  
6 the front.

7 Q Okay. Do you not think that it would cause a  
8 person's eye to deviate toward that light when  
9 they're seeing it out of the corner of their eye, if  
10 there's a ---

11 A There were -- there were no front-facing blue lights  
12 is what I'm telling you.

13 Q I understand, but there were lights flashing,  
14 correct? (Inaudible).

15 A There were lights from the rear facing the traffic  
16 behind us. Yes, sir.

17 Q Okay. Would you argue that you could see it on the  
18 tape if the jury wanted to go back there and look at  
19 it?

20 A You may or may not. I don't know. The research  
21 showed that the front-facing lights could play a  
22 role and those were turned off. They were not  
23 there.

24 Q Okay. Let's move on now to the walk and turn.

25 A Okay.

1 Q Okay. Now, admittedly, the video is not very good,  
2 but I think the jury might have a chance to go view  
3 it themselves. Did you watch this video outside of  
4 this courtroom with me and the prosecutor?

5 A Yes.

6 Q Okay. Do you agree that portions of her walking and  
7 turning is behind the counter on this tape and kind  
8 of out of view?

9 A Behind the satellite coordinates?

10 Q Correct. Or you had some counters with satellite  
11 coordinates.

12 A Yeah, there are satellite coordinates posted at the  
13 bottom of the screen.

14 Q Did they cover up her feet in certain situations?  
15 And the jury are going to watch it. I'm just  
16 asking.

17 A I mean, this is a -- I'll just -- I'll agree that  
18 there are satellite coordinates there. Yes, sir.

19 Q Okay. And I noticed that -- jumping ahead a little  
20 bit -- in the one-legged stand, you let her remove  
21 her heels. Correct?

22 A That's correct.

23 Q All right. So she did the walk and turn with her  
24 heels on?

25 A That's correct.

- 1 Q Okay. Now, do you think that would affect her  
2 ability to walk and turn if she had on ---  
3 A I have honestly not worn high heels, so I don't know  
4 if that would affect it.  
5 Q Okay. Also, on this test, as well, this is on the  
6 roadside on 385, correct?  
7 A Correct.  
8 Q Okay. In the median, gravel rough median where all  
9 of us have driven in it. We know what it sounds  
10 like when our cars run across it, correct?  
11 A It's paved. It's not gravel.  
12 Q Okay. Cars were passing. She's got a cop car  
13 behind her, a cop with a light on her. In that  
14 case, if you weren't an officer of the law, would  
15 you not be a little bit nervous?  
16 A Absolutely.  
17 Q Okay. Would you disagree that my client was  
18 possibly a little bit nervous that night?  
19 A It's possible, sure.  
20 Q Okay. And having said all that, she didn't do that  
21 bad on the walk and turn, did she?  
22 A She displayed enough clues to where it was a failure  
23 of the test.  
24 Q Okay. Now, let's go to the one-legged stand.  
25 A All right.

- 1 Q Now, we couldn't see this at all, really, on the  
2 tape because the tracking was real bad, at this  
3 point. But again, in that test, she was wearing her  
4 heels for the first portion of it and she had to  
5 take them off, correct?
- 6 A I believe she either asked to or I said if you'd  
7 like to, you can.
- 8 Q I think that's what happened.
- 9 A Yeah.
- 10 Q I think you could hear but you couldn't see it?
- 11 A Right.
- 12 Q And she was allowed to take them off and, again, she  
13 just didn't perform the test correctly?
- 14 A Correct. After they were removed, she still had --  
15 she still struggled.
- 16 Q Okay. Now, at that point, you placed her under  
17 arrest for DUI, correct?
- 18 A Correct.
- 19 Q Okay. You take her back to -- which testing site  
20 did y'all go to?
- 21 A At the Law Enforcement Center at 4 McGee Street.
- 22 Q Okay. Hold on one second. Let me look back.
- 23 A Okay.
- 24 Q Let me back up just a second on some of my notes.  
25 Now, your training, again, is advanced DUI, correct?

- 1     A     That's right.
- 2     Q     But you are not a chemist, correct?
- 3     A     No.
- 4     Q     You are not a doctor?
- 5     A     No.
- 6     Q     You have no testing whatsoever in the ability to
- 7           determine someone's effect from alcohol, correct?
- 8     A     Other than the field sobriety test. I'm trained to
- 9           detect impairment.
- 10    Q     Okay. But you're not a doctor. You're not a
- 11           chemist. You're not a PhD.
- 12    A     None of the above.
- 13    Q     Okay. So when you're making these statements that
- 14           you were positive she was intoxicated and you were
- 15           positive that she was drunk ---
- 16    A     I have not used the word intoxicated. I said
- 17           impaired.
- 18    Q     Okay. You were positive she was impaired?
- 19    A     That's correct.
- 20    Q     You were positive that she had been drinking
- 21           alcohol. Those statements were made, but being the
- 22           fact that you're not a technician (inaudible) or a
- 23           chemist or a doctor or anything else, you're just
- 24           basing it on your opinion. Is that not correct?
- 25    A     I'm basing it on my training.

1 Q Okay. Your training and opinion?

2 A Yes.

3 Q Okay. And again, that training does not include any  
4 chemistry or any medical classes or anything like  
5 that that would discuss the effect of alcohol on the  
6 body?

7 A Again, I think we've established I'm not a doctor or  
8 chemist, but we do discuss the effect of alcohol on  
9 the body in the advanced DUI classes.

10 Q Okay. How long does that class take?

11 A It is a 40-hour class.

12 Q Forty hours. And that's just a portion of that 40-  
13 hour class, correct?

14 A Yes.

15 Q Okay. Now, you also stated that people that are not  
16 intoxicated don't have a problem doing the walk and  
17 turn, generally. Correct?

18 A Correct.

19 Q Would you agree with me that the NHTSA manual agrees  
20 that that's only 68 percent accurate, or the  
21 research shows?

22 A No. I think what you're -- either what you're  
23 trying to state or what you may misunderstand from  
24 the manual is that it's only 68 percent accurate in  
25 that in thirty -- in that case, in 32 percent of the

1           time it is inaccurate. And that is not the case.

2           Thirty-two percent of the time, in the research,  
3           officers, just based on that test, that should have  
4           made an arrest did not.

5       Q    What else would we use to analyze the accuracy of  
6           the test? We have to use something, correct? So  
7           I'm trying to figure out why you don't think that  
8           ---

9       A    I'm trying to explain the number to you, okay?

10      Q    Okay.

11      A    I think at face value, if you don't read more of  
12           that manual and you read that one sentence, it  
13           sounds like, well, 68 percent of the time, that's  
14           right. And 32 percent of the time it's wrong. And  
15           that's not how to understand it.

16      Q    Okay.

17      A    That the research was done with officers making the  
18           correct decision whether they should arrest or not.  
19           And in some cases, 32 percent of the time, if they  
20           only gave that single test by itself, only gave the  
21           one-legged -- or the nine-step -- we're talking  
22           about the nine-step?

23      Q    Right now, we are. Yeah.

24      A    Yeah. If they only gave a nine-step, they were not  
25           comfortable making an arrest just based on that 32

1           percent of the time. So, when they should have  
2           arrested, they did not.

3       Q     Okay.

4       A     As far as it being an inaccurate test, I'm not  
5           comfortable, you know, saying that.

6       Q     Okay. Now, let's -- can we go back to five and I  
7           want you to read the last bullet point.

8       A     By combining the horizontal gaze nystagmus and the  
9           walk and turn -- and it says HGN and WAT, but that's  
10          what it stands for -- an 80 percent accuracy can be  
11          achieved.

12      Q     So only 80 percent of the time when you combine them  
13           is it accurate?

14      A     Just those two tests.

15      Q     Okay.

16                                (END OF RECORDING TAPE 1 BACK)

17                   \* \* \* \*       \* \* \* \*       \* \* \* \*       \* \* \* \*

18                                (BEGINNING OF RECORDING TAPE 2)

19      Q     Okay. Let's get to the BA room.

20      A     Yes, sir.

21      Q     Now, you get the BA room, and they watched the tape.

22           In your opinion, did Ms. Moyao ---

23      BY MS. MOYAO:

24           Moyao.

25      CROSS EXAMINATION RESUMED BY MR. DELOACH:

1 Q Ms. Moyao, I'm sorry. That's the third time. Did  
2 Ms. Moyao appear drunk to you, appear intoxicated,  
3 appear to be (inaudible) while she was sitting in  
4 that room?  
5 A She was able to sit.  
6 Q Okay. Did she appear (inaudible) she should have  
7 been impaired?  
8 A I don't have any training on testing a person just  
9 appearing, just by judging them as they sit. So I  
10 would not be able to answer that.  
11 Q Okay. And let's talk about the machine. Now, these  
12 machines are -- the (inaudible) are run by SLED,  
13 correct?  
14 A Oh, the (inaudible)  
15 Q SLED (inaudible) the machines, correct?  
16 A Yes.  
17 Q Okay. You don't do that?  
18 A No, I do not. Well, I change the solution when it's  
19 needed and make sure that new and sanitary  
20 mouthpieces are being used, but I do not work on the  
21 inner workings of the machine.  
22 Q And these machines have errors, do they not?  
23 A Errors?  
24 Q Errors from time to time.  
25 A Yes.

- 1 Q Okay. And I think you stated that when they have  
2 these errors that they shut down, correct?
- 3 A I have never experienced that, but I'm told that  
4 that's what happens. If there is an error with the  
5 self-testing, that it will turn off.
- 6 Q Would it shock you if this machine had had errors  
7 before, prior to this test?
- 8 A Well, we're basing this on my experience. I've  
9 never seen it, so I would be surprised, yes.
- 10 Q It would surprise you if this machine had had  
11 multiple errors the week prior, correct?
- 12 A By errors, you're talking about ---
- 13 Q An error, a self-generated error by the machine.
- 14 A Okay. Self-generated, yeah. I've never experienced  
15 this.
- 16 Q Okay. And this machine also -- you say you're  
17 certified to operate this machine, correct?
- 18 A Correct.
- 19 Q It also has a solution on it, does it not?
- 20 A It does.
- 21 Q And if that solution is within a certain range, then  
22 the test will go forward, correct?
- 23 A That's correct.
- 24 Q All right. Do you know what that range is?
- 25 A I believe it is .076 to .084.

1 Q And if it's within that range, it will go forward.  
2 A That's correct.  
3 Q And we're talking about someone who blew .02 over  
4 the legal limit, correct, or we wouldn't be here  
5 today?  
6 A Two-hundredths. That's right.  
7 Q Okay. So almost half that, correct? .078 is close  
8 to .01, correct?  
9 A You're in thousandths now.  
10 Q I know.  
11 A We're talking about hundredths and now you've moved  
12 into thousandths.  
13 Q Correct. And if it got to ten, it would be .01,  
14 correct? It was .007. So if it went to .09 and  
15 then one more, it would be .01, correct?  
16 A It would be .10.  
17 Q .01. Well, it's (inaudible).  
18 A No, that's the incorrect answer. It was .10. So,  
19 .09, if you add to it, becomes .10.  
20 Q Okay. Now, would you agree the solution is there  
21 and the solution, if it's within the range of error,  
22 will allow the test to go forward?  
23 A That is correct. Yeah.  
24 Q All right. Now, do you how old these machines are  
25 when they started? When we started using them in

1 the state of South Carolina?

2 A I could guess, but I think it was February of -- was  
3 it 2010? I don't know the date.

4 Q Would it surprise you if these machines had been in  
5 use since 1992 in the state?

6 A Yes. I know they have not.

7 Q Okay. Do you have -- would it surprise you if other  
8 states in this union use what they consider to be  
9 higher technology, better technology than what we  
10 use here in South Carolina?

11 A I don't -- I mean, I don't know if I could be  
12 surprised or not. I've not worked in any other  
13 state, so I don't know.

14 Q Now, finally, alcohol affects everybody differently,  
15 does it not?

16 A It absolutely does.

17 Q Okay. And so, someone that might have a .01 or a .1  
18 might be different than someone else, correct?

19 A Yes.

20 Q Okay. So just by a .1 alone, you can't tell whether  
21 or not it affected this person as it might me or  
22 someone else. Is that correct?

23 A Not by reading a result, no, sir.

24 Q Okay.

25 BY MR. DELOACH:

1 I have no more questions, Judge.

2 BY JUDGE GARRETT:

3 Re-direct?

4 BY SOLICITOR BYRD:

5 Yes, sir. Thank you, Your Honor. Just one  
6 quick thing.

7 RE-DIRECT EXAMINATION BY SOLICITOR BYRD:

8 Q Deputy Jackson, Mr. DeLoach mentioned that the NHTSA  
9 manual, National Highway Traffic Safety  
10 Administration manual. That manual, which is used  
11 in training, provides you with how to perform  
12 standardized field sobriety tests, correct?

13 A That's correct.

14 Q And if you performed those standard field sobriety  
15 tests substantially in compliance with the standards  
16 set out in the manual, what will you learn from the  
17 tests?

18 A Well, the statistics we failed to reach -- we read  
19 the correct decision-making based on one and two  
20 tests. The one we did not get to is that when all  
21 three tests are given and the results are taken into  
22 consideration, that there is a 95 percent accurate  
23 -- our officers made the correct arrest decision in  
24 95 percent of those cases. Five percent should have  
25 arrested and did not.

1 Q And do you know what level of alcohol to blow  
2 percentage an affirmative test result shows? Do you  
3 know? Under the NHTSA standard, if you give the  
4 test according to the manual and you record the  
5 clues according to the manual, what will that show  
6 in terms of the results of analysis of the blood?

7 A That was -- I believe those studies were done based  
8 on a .10.

9 Q All right. So under the NHTSA manual that's been  
10 referred to, if you perform those field sobriety  
11 tests according to the manual, that, with the clues  
12 shown, shows a blood alcohol ratio of .10 or higher.

13 A Or higher. That's right.

14 BY SOLICITOR BYRD:

15 That's all I have, Your Honor.

16 BY JUDGE GARRETT:

17 Re-cross?

18 BY MR. DELOACH:

19 Re-cross.

20 RE-CROSS EXAMINATION BY MR. DELOACH:

21 Q Now, was it 95 percent of the time that it was  
22 accurate?

23 A Yes, sir.

24 Q And you're sure about that?

25 A Positive.

1 Q Okay. Would you read four, the first bullet point?

2 A This is based on the San Diego test ---

3 Q Could you read it for me, please.

4 A Well, I can read that, but I think you're going to  
5 have to read the one above it, as well, to be fair.

6 In the San Diego test, correct arrest decisions were  
7 made 91 percent of the test. And then (inaudible)  
8 in the Florida test, correct decisions were made 95  
9 percent of the time.

10 Q And the San Diego is 91, correct?

11 A That's correct.

12 Q And Florida is 95. That's two different numbers,  
13 correct?

14 A Yes, it is.

15 Q So you chose to rely on the Florida, correct?

16 A Yes, I did..

17 Q Okay.

18 BY MR. DELOACH:

19 No more questions.

20 BY SOLICITOR BYRD:

21 That's the State's case, Your Honor.

22 BY JUDGE GARRETT:

23 You may step down, sir. Thank you so much.

24 Now, ladies and gentlemen, you've heard the  
25 State's case. It is now time for the defense to

1 present their defense. Mr. DeLoach?

2 BY MR. DELOACH:

3 Your Honor, we have a motion to (inaudible)

4 BY JUDGE GARRETT:

5 I'll ask you, if you will, step out in the jury  
6 room for just a moment and I'll call you back.

7 Okay? That second switch inside there, Mr.

8 (Inaudible), turns the light on in there. Okay?

9 Second switch. There you go. Thank you.

10 (JURY EXITS THE COURTROOM.)

11 BY JUDGE GARRETT:

12 You have a motion?

13 BY MR. DELOACH:

14 Yes, sir. Your Honor, at this time, the  
15 defense will renew its motion to have this case  
16 dismissed based on the lack of a proper or an  
17 appropriate video based on the statute, based not  
18 only on the argument we had this morning, Judge, but  
19 also on the tracking in this case.

20 The tracking in this case was poor as to what  
21 the jury ended up seeing. I think it further took  
22 away from the video, and I think that a proper video  
23 has not been provided to the jury. At this point, I  
24 think the case should be dismissed based on not  
25 having a video that meets the statute.

1 BY JUDGE GARRETT:

2 Solicitor?

3 BY SOLICITOR BYRD:

4 Same argument, Judge. I think it would go to  
5 the weight of the evidence as opposed to its  
6 admissibility.

7 BY JUDGE GARRETT:

8 This Court is going to have to disagree with  
9 Mr. DeLoach in this point. One is if there's a  
10 question here, it is a jury question, in my opinion.  
11 Second is, is I think both of you have made comments  
12 leading to the fact that this jury can review that  
13 tape or see that tape in the back where you,  
14 Solicitor and Deputy Jackson and I looked at it, if  
15 they so choose. If they do not, then, of course, as  
16 you well know, that they can just disregard the  
17 whole tape. So I think it's a jury question. So  
18 your motion, again, is denied. Okay.

19 BY MR. DELOACH:

20 One more motion.

21 BY JUDGE GARRETT:

22 Yes, sir.

23 BY MR. DELOACH:

24 I also have a motion that the case be dismissed  
25 for a lack of ample video or appropriate videotape

1 based on the sound, in this case. The video that I  
2 watched, I remember the sound coming on when the  
3 blue lights came on. This video, it didn't come on  
4 until well after the blue lights came on. I believe  
5 the statute expressly provides that there is  
6 supposed to be sound the minute the blue lights come  
7 on.

8 BY JUDGE GARRETT:

9 Solicitor?

10 BY SOLICITOR BYRD:

11 I'll be glad to pull the statute out, but I  
12 believe the statute says that the in-car video  
13 should be turned on no later than when the blue  
14 lights -- in this case, it was far in advance of the  
15 blue lights when he was following her. (Inaudible)

16 BY JUDGE GARRETT:

17 I think we're going back to the same thing  
18 again and we're whipping the same dog. If we need  
19 to, that videotape can be looked at by the jury.  
20 And in closing arguments or any kind of reference to  
21 that or whatever, but the fact still remains that I  
22 believe that it's sufficient on the -- as it stands  
23 now. But if the jury chooses to look at that, then  
24 I think we'll be more than happy to let them see it.  
25 Motion denied.

1 BY MR. DELOACH:

2 No more motions.

3 BY JUDGE GARRETT:

4 Ma'am, will you ask our jury to step back in?

5 I may keep you here to do that all day.

6 (JURY ENTERS COURTROOM.)

7 BY JUDGE GARRETT:

8 Now, ladies and gentlemen of the jury, the  
9 State has rested and the defense has rested, also.  
10 Now we come to the time to where there are closing  
11 arguments made by both of these fine gentlemen, and  
12 as I reiterate what we talked about yesterday.  
13 Closing arguments is not evidence, either. It is a  
14 summation.

15 Also, I will instruct you later that just  
16 because Ms. Moyao did not take the stand, you should  
17 not draw any inference from that because she has  
18 that right. She is not compelled to testify if she  
19 does not choose to or her counsel chooses not to.  
20 Okay? So I'll discuss that a little more with you  
21 in just a bit.

22 Gentlemen? Closing arguments?

23 BY SOLICITOR BYRD:

24 Thank you, Your Honor. Madame Forelady, ladies  
25 and gentlemen of the jury, I want to, again, thank

1           you for your attention. I could tell during the  
2           course of this that it was a little bit tedious and  
3           boring for you. But our obligation is to present  
4           everything, warts and all. We don't want anybody  
5           saying they didn't get a fair trial because they  
6           didn't have all the evidence (inaudible), witnesses  
7           or anything of that nature. So our job is to lay it  
8           all out there for you as best we can. And that's  
9           happened in this case. You heard the testimony from  
10          the witness stand under oath, and that's evidence.  
11          We have some exhibits the judge will provide you.  
12          And I will remind you, at that point, that should  
13          you feel the need to watch the video again for any  
14          reason of your concern, no matter what it is, we  
15          have another VHS machine in the back of the  
16          building. And we didn't have the difficulty with  
17          the visual tracking and audio that we did on this  
18          machine. And I apologize for that. But I'm not  
19          certain that it makes a lot of difference because  
20          what I heard the evidence say, and I encourage you  
21          to take the evidence as you heard it, not as I did.  
22          If you heard something different from me, then take  
23          what you heard. What I'm saying to you is not  
24          evidence at all. But what I heard was definitely,  
25          without a doubt, that Ms. Moyao was driving the

1 vehicle. That was question number one for your  
2 consideration. I don't think there's even a remote  
3 chance of a doubt about that. There's been no  
4 testimony or evidence offered to the contrary.

5 Now, there's also an abundance of evidence for  
6 your consideration that she had consumed alcohol.  
7 You have weaving. You can't tell whether somebody's  
8 been drinking alcohol if they're weaving, but that's  
9 certainly something that causes some suspicion. If  
10 you're driving down the road and you see a car  
11 weaving from side to side, you wonder is that person  
12 on the phone, distracted by the radio or possibly  
13 under the influence of alcohol. This gentleman's  
14 job is to continue that investigation in case the  
15 person is impaired. His job is to get them off of  
16 the roadway so that they don't hurt themselves and  
17 they don't hurt anyone else. And that's what  
18 happened in this case.

19 Now, Deputy Jackson detected an odor of  
20 alcohol. Again, that raises a reasonable suspicion  
21 that the operator of the vehicle could possibly be  
22 impaired by the consumption of alcohol. So that's  
23 the reason you ask them to get out of the car and go  
24 through some field sobriety tests. This is not  
25 science. It's certainly not rocket science. It's

1 just common sense. It's just ordinary human  
2 observation.

3 If we do these three standard, fully accepted  
4 field sobriety tests, we may or may not see signs  
5 that alcohol has impaired this person. May not. In  
6 this case, it did. All three tests, he noticed  
7 jerking eyes in the nystagmus test. That's evidence  
8 that the person is under the influence of alcohol  
9 and may be impaired by that alcohol. The walk and  
10 turn, again, the divided attention. You want to  
11 know if the person can walk and listen to you and  
12 follow instructions. Again, this lady did not pass  
13 that test. According to Deputy Jackson, she had  
14 some difficulty with her balance and touching heel  
15 to toe. I wasn't there. I don't know. You can  
16 certainly look at the video again if you want to,  
17 but again, the purpose of that is to determine is it  
18 possible that this lady is impaired by the alcohol  
19 that she may have consumed. And again, a failure of  
20 the test or, as they point out, clues that show this  
21 lady may be impaired by consumption of alcohol.  
22 Same with the one-legged stand. I mean, if you ask  
23 somebody to hold their foot out, I'm not sure I can  
24 do it. But it's in the situation they're in, does  
25 that person show clues that confirm what I'm

1           thinking, that this lady is not someone that I want  
2           to put back behind the wheel and let them drive off.

3           So everything in this case, up until that point  
4           in time, pointed directly at a young lady, nice  
5           young lady who made a mistake because she got behind  
6           the wheel after consuming too much alcohol. And  
7           that's what the law is designed to deter.

8           We don't have the ability to speak to people  
9           before they get behind the wheel. All we can do is  
10          say don't do it. And if you do it, you may be  
11          responsible for what you do. And that's what this  
12          case is all about, really, is responsibility.

13          Now, all of that evidence, uncontroverted  
14          evidence points directly toward a violation of this  
15          traffic ordinance, driving a motor vehicle with a  
16          blood alcohol concentration of .08 percent or more.  
17          Now, I'll remind you, at that point, the percentages  
18          are only to distinguish between someone who may have  
19          had some alcohol but is not over the line. .08 is  
20          the line.

21          It's not against the law in South Carolina to  
22          drink and drive. You hear that a lot, but it's not  
23          against the law. You can go out to a restaurant and  
24          have a glass of wine or a beer or a cocktail.  
25          Because of your constitution or experience with

1 alcohol, you might be able to have two or three and  
2 it won't phase you a bit. Won't impair your driving  
3 ability at all. And as long as you don't continue  
4 the consumption of alcohol to the point where your  
5 blood alcohol concentration goes over the line, then  
6 there's no infraction. And had this young lady gone  
7 to the BA room and registered below zero-eight, we  
8 wouldn't be here today because she would not have  
9 violated the statute.

10 So up until the BA exam, up until the machine  
11 functions, you have a clear case of a violation of  
12 the statute, based upon the evidence presented and  
13 the observations of this police officer, who's  
14 trained to do this and does it. This is -- again,  
15 keep in mind, this is 3:00 a.m. in the morning.  
16 He's out on the highway, and his job is to try to  
17 keep the highway safe. These are our highways.  
18 They belong to us. We have the right to use these  
19 highways. We pay for them. We pay for him. We ask  
20 him to go out there and risk his life to try to  
21 ensure that we have safe roads to operate on. So  
22 everything, at that point, was done properly.

23 Now, last but not least, you have the  
24 Breathalyzer machine. And again, totally for the  
25 benefit of people who are operating vehicles. If

1           you have not had anything to consume of an alcoholic  
2           nature, you would want to take that test because it  
3           would clearly show that you are not over .08 percent  
4           blood alcohol concentration. You have the right to  
5           take the test or you can refuse to take the test.  
6           Those are your rights. Ms. Moyao elected to take  
7           the test and no other test. She could have had her  
8           own test, if she disputed the test that she took.  
9           But she took a test on a machine that was  
10          functioning properly at that time. And it was  
11          administered by a young man who is certified to give  
12          that test, who has testified under oath that the  
13          machine was functioning properly. The test result  
14          shows that the machine was functioning properly.  
15          And Ms. Moyao's results were .10, or .02 over the  
16          line. Not on the line, not close to the line, but  
17          over the line. And that's what the law says you  
18          can't do. You can't get behind the wheel and  
19          operate a motor vehicle on the highways in South  
20          Carolina if your blood alcohol concentration is .08  
21          or above. And that's the truth.

22                 We've had enough car crashes in South Carolina.  
23                 We've had enough personal injury. We've had enough  
24                 death on the highway and we've had enough  
25                 heartbroken families. But mostly, we've had enough

1           excuses. It's time for people to accept  
2           responsibility and responsibility today is for this  
3           lady -- she seems to be intelligent, from what I can  
4           pick up. She knew she was doing the wrong thing.  
5           And all we ask is that the verdict that you render  
6           in this case speak the truth.

7           BY JUDGE GARRETT:

8                     Yes, sir.

9           BY MR. DELOACH:

10                    Ladies and gentlemen, first of all, I want to  
11           take the time (inaudible) the prosecutor stated.  
12           (Inaudible). But what we're telling you is that Ms.  
13           Moyao was not (inaudible). We all do. And just  
14           like the prosecutor said, you're allowed to go out  
15           and have a cocktail. You're allowed to go out and  
16           have a beer or whatever and get on the roads. It's  
17           our position that she was not anywhere near the .08,  
18           and we're going to get into that a little bit -- a  
19           little bit more.

20                    Now, I want to start with, first of all,  
21           thanking you again for your service. At the  
22           beginning of this trial in opening statements, I  
23           informed y'all that y'all had one real  
24           responsibility, and that was to make sure that the  
25           State met its burden. That it proved -- that it

1           proved the case beyond any reasonable doubt. Each  
2           and every one (inaudible). That is a significant  
3           burden. It is not to be taken lightly. This is not  
4           -- this is not the better weight of the evidence.  
5           Little more or a little less (inaudible) scales of  
6           justice. It's not that. It's beyond any reasonable  
7           doubt, have they proven it? And if they haven't  
8           proven one element of this case beyond every  
9           reasonable doubt, then the verdict must be not  
10          guilty. That's the (inaudible). That's what you  
11          are here to do.

12                 Now, the prosecutor, in his closing arguments,  
13           mentioned that my client didn't have any other tests  
14           done. It is not my client's responsibility to bring  
15           any other evidence. It's the State's  
16           responsibility. Don't let the State switch the  
17           burden on my client. She chose not to have any  
18           other tests done. It is -- the burden rests solely  
19           on the State to prove this case. Don't make her  
20           bring anything into this case.

21                 Now, when you go back and watch these videos, I  
22           want you to tell me if this woman, in your opinion,  
23           shouldn't have been driving that vehicle. Do you  
24           believe that her blood alcohol was over .08? And  
25           the reason I bring that up is the State wants you to

1 believe that this machine is be all, end all. This  
2 machine that they've had for years in this state,  
3 and I would submit well before 2010, is the be all,  
4 end all. That there's no other better technology in  
5 the world than what the state of South Carolina uses  
6 to determine if someone has a blood alcohol level of  
7 over .08. I submit to you that is absolutely  
8 incorrect. These machines themselves commit errors  
9 all the time and they shut down. This particular  
10 machine, I assure you, has committed several errors.  
11 And this machine also has a device on it that allows  
12 it to work within a certain range of error. Look at  
13 Ms. Moyao's (inaudible). Look at her in the BA  
14 room. Does that look like someone whose blood  
15 alcohol is over .08? Does that look like someone  
16 that you don't want to be driving your car with on  
17 the road? Does that look like someone who is  
18 materially and appreciably impaired? No. Just  
19 because some machine in a police station over in  
20 Greer says it -- or in Greenville says it doesn't  
21 mean you have to believe it. It's your decision.  
22 It's just one piece of evidence to be considered.  
23 And if you believe that that machine could have made  
24 a mistake, that machine which does have errors and  
25 which does have a range, could have made an error,

1 and you believe that that gives you reasonable  
2 doubt, something that you must be firmly convinced  
3 of, then you must find her not guilty.

4 Now, the officer (inaudible). There was never  
5 a SLED agent (inaudible). If he were in here, we  
6 could ask him questions about the machine. He  
7 wasn't here. We could ask him how accurate are  
8 they? How many times do these things have these  
9 errors? Do these errors happen a lot? How many  
10 times has this machine had an error? We could have  
11 asked all these questions, but he wasn't here. The  
12 State didn't provide him. SLED provides the  
13 maintenance on these machines, not these officers.  
14 This officer (inaudible) and doing it well. No one  
15 is taking that away from him. All we're saying is  
16 that this machine doesn't have to be accurate. I  
17 just -- I don't want y'all to believe that by the  
18 testimony here today. Go back and look at all the  
19 evidence. Don't just read a number on a page and  
20 decide whether you believe it or not. Look at all  
21 the evidence. Look at the way she acted and then  
22 determine whether you think it was possible that she  
23 might have (inaudible).

24 Ladies and gentlemen, y'all have heard all the  
25 evidence. You've heard us both talk. Now it's time

1           for you to make your decision. I just want you to  
2           go back and think about everything that you've  
3           (inaudible) and don't allow one piece of paper to  
4           determine the (inaudible) of this case. Think about  
5           it all. Remember your burden. (Inaudible). And  
6           I'm asking you to (inaudible).

7           BY JUDGE GARRETT:

8                     Thank you. Now, ladies and gentlemen, you've  
9           listened to the procedures and the evidence in this  
10          case. And it is now my duty to instruct you as to  
11          the law which applies to the facts in this matter.

12                    The law in the State of South Carolina does not  
13          permit me to comment on the facts in the case. You,  
14          as jurors, are the sole judges of the facts.  
15          However, it is my duty to give you the law and you  
16          must accept and apply the law as I give it to you  
17          and be guided thereby in your consideration and in  
18          your deliberation upon the evidence in the case,  
19          whether or not you agree with the law as I will be  
20          giving it to you.

21                    Since it is my duty to instruct you as to the  
22          law of the case, I will instruct you as to the facts  
23          -- I will not instruct you as to the facts. If at  
24          any time during the course of the trial you believe  
25          that I was expressing any opinion of the facts and

1 evidence presented or testimony of a witness, I  
2 direct you to disregard that because I have no  
3 opinion in this case.

4 Not only are you the sole judge of the facts in  
5 this case, but you, as the jury, are the sole and  
6 exclusive judges of the effect and value of the  
7 evidence in the case, as well as the credibility of  
8 all the witnesses who have testified. It is for you  
9 to determine which witness or witnesses are recalled  
10 and relating to what transpired at the time of the  
11 alleged commission of this offense.

12 Now, to weigh the evidence, you must consider  
13 the credibility of the witnesses. You will apply  
14 the test of truthfulness, to which you are  
15 accustomed to applying in your daily lives. You may  
16 consider such things as a matter of testifying, the  
17 appearance of the witnesses upon the witness stand,  
18 the reasonableness of the testimony, the opportunity  
19 each witness had to see and hear, the accuracy of a  
20 witness's memory, the intelligence of each witness,  
21 and the interest and bias of any of the witnesses,  
22 if any, together with all the facts and  
23 circumstances surrounding the case. You may believe  
24 or disbelieve all or any part of the testimony of  
25 any one of the witnesses. It is your provenance to

1 determine what testimony is worthy of belief and  
2 what testimony is not worth of belief, according to  
3 the weight that you, and you alone, assign to the  
4 testimony of each witness.

5 Now, the defendant in this case is charged with  
6 DUAC, which is driving with an unlawful alcohol  
7 concentration, and this is under 56-5-2933. And  
8 I'll respectfully submit to you the law of the State  
9 of South Carolina. It is unlawful for a person to  
10 drive a motor vehicle within this state while his or  
11 her alcohol concentration is .08, or one percent or  
12 more. A person who violates a provision of this  
13 section is guilty of the offense of driving with an  
14 unlawful alcohol concentration. A person may be  
15 charged with that, but you can't charge both for DUI  
16 and DUAC. Now, this section shall not apply to  
17 cases arising from a traffic stop, as in a  
18 roadblock. It does apply and it also has to be that  
19 the testing was done and that the sample taken  
20 within a two-hour period.

21 Now, ladies and gentlemen, it is to continue --  
22 constitute a violation of this law, the State must  
23 prove beyond a reasonable doubt the elements of this  
24 offense. One, that this Court has jurisdiction or  
25 the right to try this case, and that the offense

1 occurred within the County of Greenville. Second,  
2 that any time and place the defendant was driving a  
3 motor vehicle. The word drive requires the vehicle  
4 to be in motion in order to meet this element of the  
5 offense. This requirement may be met by showing  
6 through direct or circumstantial evidence that  
7 defendant has placed his or her vehicle in motion  
8 while they were under the influence of alcohol,  
9 drugs or a combination of that. Thirdly, that at  
10 the time and place alleged, the defendant was under  
11 the influence of alcohol, drugs or a combination of.  
12 For the purpose of this section, drugs means licit  
13 or illicit drugs.

14 Okay. Now, what is under the influence of  
15 alcohol? It is not necessary to show that defendant  
16 was in a helpless condition or the defendant was a  
17 dead drunk or even so drunk the defendant could not  
18 walk without staggering. On the other hand, proof  
19 the defendant had at some time before and during the  
20 occasion in question partaken some degree of  
21 alcohol, drugs or a combination thereof is not  
22 sufficient, in itself, to place one under the  
23 influence. A person is not under the influence  
24 simply because that person drinks or consumes  
25 something containing alcohol and then drives a motor

1           vehicle. A person is under the influence, then,  
2           when the person has consumed a sufficient quantity  
3           of alcohol, drugs or a combination such that his or  
4           her ability to operate a motor vehicle is materially  
5           and appreciably impaired. The person must be under  
6           the influence so as to cause the person to lose  
7           normal control of the person's mental or physical  
8           faculties, either one or both, to such an extent  
9           that there is an appreciable impairment to either or  
10          both of these faculties. Such impairment must  
11          prevent the defendant from exercising that care in  
12          the operation of a motor vehicle, which would have  
13          been exercised by a person of his or her ability as  
14          a driver who had not partaken of any alcohol or  
15          intoxicating (inaudible). One who drives or  
16          operates a motor vehicle, then, when that person's  
17          mental or physical faculties have been thus impaired  
18          is considered to be driving under the influence.

19                 Now, if there was, at that time, five one-  
20                 hundredths of one percent or less by weight of  
21                 alcohol in the defendant's blood, it shall be  
22                 conclusively determined that the defendant was not  
23                 under the influence of alcohol. If there was, at  
24                 that time, in excess of five one-hundredths of one  
25                 percent but less than ten one-hundredths of one

1           percent by weight of alcohol -- or excuse me. Eight  
2           percent, that is, by weight of alcohol in  
3           defendant's blood, such fact shall not give rise to  
4           any inference that the defendant was or was not  
5           under the influence of alcohol, but such may be  
6           considered with other competent evidence and  
7           determine the guilt or innocence of the defendant.  
8           Thirdly, that if at the time -- if there was, at  
9           that time, .08 of one-hundredths of one percent or  
10          more by weight of alcohol in defendant's blood, it  
11          may be inferred that the defendant was under the  
12          influence of alcohol.

13                 Now, I mentioned to you earlier that the  
14          defendant in this case did not take the stand. She  
15          has that right and you're to hold no inference to  
16          that. The failure of any defendant to take the  
17          stand and testify in his or her own behalf does not  
18          create any presumption against him or her. I charge  
19          you that you must not permit this fact to weigh in  
20          the slightest against defendant. Nor should this  
21          fact enter into the discussion or deliberation of  
22          the jury in any manner whatsoever.

23                 Now, you've heard reference being made to the  
24          HGN, which is the horizontal gaze nystagmus. This  
25          test involved watching a person's eyeballs when an

1 object is gradually moved out of the subject's  
2 vision to detect involuntary movement of the eye.  
3 This testing procedure is not conclusive with  
4 driving under the influence or determinative of a  
5 specific degree of alcohol content. But rather,  
6 it's simply one piece of evidence to be given  
7 whatever consideration you desire, along with all  
8 the other evidence in the case in determining guilt  
9 or innocence of the defendant.

10 Now, Madame Foreperson and ladies and gentlemen  
11 of the jury, I want to clarify the thing of  
12 reasonable doubt to you, as stated in *Victor versus*  
13 *Nebraska*, which is a renowned case and is what is  
14 used throughout this nation. The State has the  
15 burden of proving the defendant guilty beyond a  
16 reasonable doubt. As some of you may have served as  
17 jurors in civil cases, where you were told that it  
18 was only necessary to prove the facts as more true  
19 than not, such as by the greater weight or  
20 preponderance of the evidence. In criminal cases,  
21 the State's proof must be more powerful than that.  
22 It must be beyond a reasonable doubt. Ladies and  
23 gentlemen, proof beyond a reasonable doubt is proof  
24 that leaves you firmly convinced of defendant's  
25 guilt.

1           Now, there are very few things in this world  
2           that we know with absolute certainty, and in  
3           criminal cases, the law does not require proof that  
4           overcomes every possible doubt. The law just does  
5           not require that. If, based on your consideration  
6           of the evidence, you are firmly convinced that  
7           defendant is guilty, you should say so. If not, you  
8           should say so.

9           Now, Madame Foreperson, on this green ticket  
10          here, which is not evidence and should not be  
11          considered whatsoever, it is for the verdict that  
12          you and the rest of the jurors meet. We, the jury,  
13          find the defendant, Maria Moyao -- and my mom always  
14          told me alphabetical order -- guilty or not guilty,  
15          a place for your signature and then a place for  
16          today's date.

17          Your verdict must be absolute and so say you  
18          all, and it can only be one of two, either guilty or  
19          not guilty. When the jury has reached a verdict,  
20          then you will place beside either guilty or not  
21          guilty a check or X mark, whichever way you consider  
22          doing. And then, inside the door and on the first  
23          switch on the wall, you flip that up and that turns  
24          this light above the door and the light out in the  
25          common area where we will know that you're ready to

1 bring back a verdict.

2 Now, you've heard both parties refer to the  
3 tapes, and they're here. You have the right to see  
4 those tapes again, if you so choose. It will not be  
5 narrated. It will not be attended by anybody but  
6 you. It will be set up and then you can see and  
7 watch it on your own, if you choose necessary.  
8 That's your option. It also (inaudible) the  
9 evidence as presented to -- entered into the case as  
10 evidence by the State. It is for your review and  
11 you can review that, also.

12 Now, Madame Foreperson, do you have a pen?

13 BY MADAME FOREPERSON:

14 Yes, sir.

15 BY JUDGE GARRETT:

16 Okay, good. (Inaudible). I ask you to take  
17 these with you. And let us know, now, if you wish  
18 to see one of the tapes or whatever by turning the  
19 light on. If you do, then someone will come to you  
20 and ask you one of two things. Are you ready for a  
21 verdict or is there a question or to see the tapes.  
22 And then we will go there and set it up if you need  
23 to be. If you don't need to be, then just continue  
24 your deliberation until you reach a verdict.

25 Okay. Now, I ask you to take these with you.

1 And I'll ask you, members of the jury, to go to the  
2 jury room, but do not begin deliberating until I  
3 send you word, okay?

4 All right. You may be excused.

5 (JURY EXITS COURTROOM.)

6 BY JUDGE GARRETT:

7 Anything further from the State?

8 BY SOLICITOR BYRD:

9 Judge, we would just note for the record that  
10 it's my understanding -- and I want to state to  
11 everybody here that I have no research on this  
12 point, (inaudible) experience in dealing with this,  
13 but it's my understanding that the distinction  
14 between DUI and DUAC is the appreciable impairment,  
15 and that's not in the DUAC (inaudible). So we would  
16 just point that out to the Court. (Inaudible)  
17 further charge on that point. And the other thing,  
18 which is just sort of a housekeeping, I think under  
19 this current statute -- and you may want to take  
20 this up at a later point -- they have to determine  
21 what the percentage is for sentencing if they decide  
22 (inaudible).

23 BY JUDGE GARRETT:

24 Ask them to come back in, please.

25 There's a percentage on the ticket. If they

1 don't agree to it, then they have to set an amount.

2 BY SOLICITOR BYRD:

3 I think that's correct.

4 BY JUDGE GARRETT:

5 It is correct. I know it's correct, yeah. And  
6 if they -- and if that's simply their case. It can  
7 be .08 or what percent they think it is.

8 BY SOLICITOR BYRD:

9 Right.

10 (JURY ENTERS COURTROOM.)

11 BY JUDGE GARRETT:

12 Just as a housekeeping type chore or whatever,  
13 in the DUAC law, it says that if you disagree with  
14 the .10 that's on the charge it is stated that she  
15 blew, then you may come back to the Court and say  
16 what percentage you think it is. Okay? Now, that's  
17 up to you. I mean, how you determine that or  
18 whatever is a jury's (inaudible), but I must tell  
19 you to be fair that you (inaudible) you have a right  
20 to come back and say that we find the person guilty  
21 or not guilty, whichever one, with an alcohol  
22 concentration of. Okay? If you do not agree that  
23 .10 is that. Okay? Only on DUAC with the unlawful  
24 alcohol concentration is that allowed. Okay. But  
25 it is allowable in that, okay. And the amount there

1 of the appreciable and everything will be considered  
2 when you look at that. Okay. It's what we're  
3 saying to you.

4 So if you feel like, well, this didn't show  
5 that. I think it's .09 or I think it's .07 or I  
6 think it's .05, or whatever you think it is, based  
7 on whatever you use to determine that, then you have  
8 a right to say so. If not, you can come back and  
9 the .10 stays where it's at and you can either find  
10 the defendant guilty or not guilty. And then that's  
11 resolved. Okay. Clear as mud, right? Okay. You  
12 may be excused. Do not start until I send you word.  
13 Okay. Thank you so much.

14 (JURY EXITS COURTROOM.)

15 BY JUDGE GARRETT:

16 Solicitor, anything further?

17 BY SOLICITOR BYRD:

18 Nothing further, Your Honor.

19 BY MR. DELOACH:

20 Nothing from the defense.

21 BY JUDGE GARRETT:

22 Good. Madame, will you ask the jury to please  
23 start their deliberation.

24 We stand in recess for deliberation.

25 (RECESS)

1 BY JUDGE GARRETT:

2 The jury has a question. We'll ask them to  
3 step back in. It's 11:41.

4 (JURY ENTERS COURTROOM.)

5 BY JUDGE GARRETT:

6 Madame Foreperson, I understand the jury has a  
7 question?

8 BY MADAME FOREPERSON:

9 We would just like to review the videotape with  
10 the sobriety testing again, please.

11 BY JUDGE GARRETT:

12 Okay. We can do that. Solicitor, if y'all  
13 will, Deputy Jackson, give the tape -- carry the  
14 tapes and let them -- let them see. Which tape do  
15 you want to see? The field sobriety or do you want  
16 all of them?

17 BY MADAME FOREPERSON:

18 Just the field sobriety.

19 BY JUDGE GARRETT:

20 Field sobriety, okay.

21 BY UNIDENTIFIED SPEAKER:

22 (Inaudible)

23 BY JUDGE GARRETT:

24 No, that's a big TV.

25 BY SOLICITOR BYRD:

1                   That machine back there will work good.

2           BY JUDGE GARRETT:

3                   That's the reason I was wondering. Is it  
4                   possible that the jury could get in there and see  
5                   it?

6           BY UNIDENTIFIED SPEAKER:

7                   (Inaudible). I'll be glad to bring it down  
8                   (inaudible).

9           BY JUDGE GARRETT:

10                   No, it's not. No, it's not. That's the unit  
11                   over yonder that we moved from over here. That TV's  
12                   (inaudible). If you want to bring that TV down  
13                   here, well and good. Or you can get one of these  
14                   strong-arm big guys back there to help you. Or we  
15                   can let the jury go down there. Whichever one is  
16                   fine. There's not one in the jury room?

17           BY SOLICITOR BYRD:

18                   There's a disc type ---

19           BY JUDGE GARRETT:

20                   Oh, it's a disc. That's right. He can bring  
21                   that one down.

22           BY UNIDENTIFIED SPEAKER:

23                   There is one in the room.

24           BY JUDGE GARRETT:

25                   There's one in there, but it doesn't have the

1

2 BY UNIDENTIFIED SPEAKER:

3 It does (inaudible).

4 BY JUDGE GARRETT:5 It has -- the one in there has VHS. Want to  
6 try it? Try that one. It has the VHS on it.7 (INAUDIBLE DISCUSSION)8 BY JUDGE GARRETT:9 Whichever one. Deputy Jackson, that one in  
10 there has a VHS on it. And I will simply let y'all  
11 set it up (inaudible). Set it up. And once it is,  
12 they will -- they will start it and let you see it.  
13 But they cannot narrate it, okay, because that's  
14 (inaudible). You can see the tape as the tape,  
15 okay? And that way, you (inaudible).16 (INAUDIBLE DISCUSSION)17 BY JUDGE GARRETT:18 We stand in recess again for the jury to review  
19 the field sobriety test.20 (RECESS)21 BY JUDGE GARRETT:22 Court's back in session. The jury indicates  
23 they have a verdict. It is now nine minutes till  
24 12:00.

25 Now, Madame Foreperson, has the jury reached a

1           verdict?

2       BY MADAME FOREPERSON:

3           Yes, we have.

4                       (END OF RECORDING TAPE 2)

## STATE OF SOUTH CAROLINA      CERTIFICATE OF NOTARY PUBLIC

TICKET NO. 53541FV

STATE OF SOUTH CAROLINA,

VERSUS

MARIA MOYAO,

DEFENDANT.

I, JILL BISHOP EDWARDS, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 97 PAGES REPRESENT A TRUE AND ACCURATE TRANSCRIPT OF THE DIGITAL AUDIO FILE GIVEN TO BISHOP REPORTING SERVICES, LLC, BY FARNSWORTH LAW OFFICES, LLC.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 24TH DAY OF AUGUST, 2014.

JILL BISHOP EDWARDS, CVR  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 7/14/2020

\* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS  
2013-CP-23-1642

ORIGINAL

STATE OF SOUTH CAROLINA

PLAINTIFF

vs.

TRANSCRIPT OF RECORD

MARIA MOYAO

DEFENDANT

September 2, 2014  
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

MITCHELL BYRD, ESQ.  
Attorney for the State

DANIEL J. FARNSWORTH, JR., ESQ.  
CHRISTINA BRADFORD, ESQ.  
Attorneys for the Defendant

APRIL HERRON  
Official Court Reporter

There were no witnesses.

There were no exhibits.

» > ○ < «

Certificate of Reporter : . . . . . 24

1 THE COURT: Good afternoon, how's everybody  
2 doing today? Okay, we've got everybody rounded up?

3 MR. BYRD: I think so.

4 THE COURT: Okay, let's go ahead and call to bar  
5 the case of County of Greenville vs. Maria Moyao, did  
6 I pronounce that right?

7 MR. FARNSWORTH: Yes, Your Honor.

8 THE COURT: And that is case No.  
9 2013-CP-23-1642.

10 And Mr. Farnsworth, it's your appeal from the  
11 decision of the Summary Court, sir?

12 MR. FARNSWORTH: Yes, Your Honor.

13 THE COURT: Okay, I'll be happy to hear from  
14 you.

15 MR. FARNSWORTH: Thank you, Your Honor, may it  
16 please the Court? Judge, this case was actually --  
17 Perry DeLoach is here, was working with me at the  
18 time when we were trying this case. It was a DUI  
19 case with a .10 BA. We had gone to pre-trial, as  
20 usual, over at Judge Garrett's. Gotten an offer. I  
21 think from either Mitchell or George Wild. Back  
22 then, they don't do this anymore, but they did an  
23 offer sheet and they said, Hey, this will expire  
24 I'll pass it up to you.

25 THE COURT: I do have something in the file, I

1 think that may be it.

2 MR. FARNSWORTH: Basically, you have until 30  
3 days or so to accept or either we'll go ahead and  
4 proceed as charged.

5 THE COURT: Yes, sir.

6 MR. FARNSWORTH: They offered a DUAC instead of  
7 a DUI, time served. They also have the little box  
8 checked down at the bottom that said, DUAC notice.

9 The statute, of course, Judge, requires -- it  
10 use to be 14 days, now it requires 30 days notice if  
11 the State is going to proceed on DUAC. Because  
12 there's different things you want in your defense for  
13 a DUAC. You want to consider, typically, an expert  
14 coming in and attacking the breathalyzer. Because  
15 that's really all you're saying is, Hey, was it a  
16 .08 or more? Of course, you argue other things but  
17 that's the main thing. So, we got that notice.

18 And a year so or goes, maybe a year and a half  
19 goes by and this is called for trial. Well, Perry  
20 goes, does a pre-trial on Monday that week. As they  
21 do now. Typically do. And I think Mitchell was  
22 there. They discussed trying to work it out.

23 The Officer, I think Officer Jackson said, All I  
24 can do is the DUAC.

25 And we're like, No, thank you, but -- but that's

1 not acceptable.

2 Perry, who has presented an affidavit.

3 Did you see this, Mitchell?

4 In lieu of live testimony, obviously, we have an  
5 affidavit that we can submit that shows a little bit  
6 more of this factually. Perry came back from the  
7 trial that day and told me, Hey, I lost this trial.  
8 I had a couple of concerns, which are the two issues  
9 we appealed on. And said, you know, the officer on  
10 Monday said something like, Hey, you know, we can  
11 always try this as a DUAC, kind of tongue-in-cheek.  
12 I think Mitchell was busy with some other people,  
13 trying to work out a bunch of cases and didn't really  
14 respond to it.

15 They drew a jury the next day, Tuesday. It was  
16 docketed under DUI. So, drew the jury under DUI,  
17 everything docketed as a DUI. And then when they  
18 tried the case the following day, Wednesday, there was  
19 some pre-trial motions, mainly this video motion that  
20 we have here for you to address, Judge. And then  
21 after Judge Garrett found in favor for the State on  
22 that motion to dismiss based on the video issues,  
23 they proceeded to go to trial and swear the jury.  
24 And that's when my understanding that Mitchell says,  
25 Judge, just to be clear, we're proceeding under DUAC.

1           So our first point is the DUAC notice was  
2           invalid. A, on its face. And B, as a practical  
3           matter because even though that notice was sent more  
4           than 30 days before, it's contradictory on its face  
5           and their actions was driving DUI the entire time.  
6           Never was it ever told to Perry or me, other than  
7           this sort of routine offer that we get on every case,  
8           but they intended to go with DUAC. Which is sort  
9           of -- basically, not intentionally misleading but  
10          it's kind of the getting caught with your pants down  
11          or ambushed because you're expecting to tend to  
12          certain things and now all of a sudden that doesn't  
13          matter. It's just whether there's no --  
14          [indiscernible] -- that number is valid.

15                As far as the -- I'm kind of going backwards,  
16          Judge, because I really think the video issue is  
17          going to be dispositive on this. We can address that  
18          again. I suppose I should have done these in  
19          reverse. But this is no longer an issue, I don't  
20          think. So, it's really not an issue currently. But  
21          the first line of it says, you're charged -- Your  
22          client's charged with -- currently with DUI. If your  
23          client wishes to accept our offer, here it is. You  
24          have 30 days to accept this offer. And it's in bold  
25          underneath. If you do not the case will be tried as

1. charged.

2. So, that's telling us it's going to be tried as  
3. a DUI.

4. At the same time lower it's saying on the space  
5. that we first read, We're going to intend to --  
6. intends to try this case as a DUAC.

7. Well, I think the statute says, you know, Notice  
8. whether they're going to try it or not. Not whether  
9. they might, not whether they may, whether they  
10. intend. Again, this isn't Mitchell's fault, it's  
11. just the wording of the form that's used. But  
12. essentially, what it says is DUAC notice pursuant to  
13. these two code sections. It refers to both the DUI  
14. and the DUAC notice. I mean, they're both there.  
15. So, that's not necessarily telling it's a DUAC  
16. either. Not only does it say, Intend, which is to me  
17. sort of a soft or -- it doesn't really follow the  
18. statute. But it mentions both of them. Okay? So,  
19. that alone is contradictory or confusing.

20. But if you go back to the top where it says, You  
21. don't take this -- If you don't take this, we're  
22. trying you as charged.

23. Then you take the idea, the factual -- I'd like  
24. to hand this affidavit up. Sort of the conversation  
25. between Perry and the officer, actually not Mitchell.

1 MR. BYRD: Your Honor, if I may, and I don't  
2 want to interrupt too much, but we object to the  
3 affidavit. There was no new evidence presented at an  
4 appeal.

5 THE COURT: Okay, I'll consider it for what it's  
6 worth.

7 MR. FARNSWORTH: And Judge, so my point is,  
8 basically the picture of this, notice they were given  
9 at the time is not valid. It gives you more of a  
10 blanket, Hey, we intend to try this as a DUAC but not  
11 that we will try it. It is given 30 days ahead,  
12 which is the time limit, but it's not clear that  
13 that's what they're going to do. Especially when, as  
14 you meet in pre-trial, you don't say anything about  
15 it. You call it a DUI. The offer was reduction down  
16 to a DUAC. Draw a jury. I think the transcript is  
17 going to show that it was called as a DUI when the  
18 jury was struck. And again, I'm not, you know,  
19 blaming Mitchell. I think Mitchell was doing what he  
20 could do. At first glance notice seems to -- seems  
21 to -- I think shows what he thought was noticed to  
22 us. But that's our problem with the notice, Judge.  
23 Of course, the remedy of that is get a new trial.

24 Switch gears to what I should have already done,  
25 the video issue, Judge, in this case, again is a .10"

1 BA. Our client is there doing field sobriety tests  
2 on the video. At the end of the walk and turn, her  
3 feet looked kind of obscured by the -- like a bar on  
4 the front of the and then there's some numbers they  
5 have, I guess some tape numbers, they obscure her  
6 feet. And then for the whole one-leg stand, they're  
7 obscured. We brought that for you to see if you'd  
8 like.

9 THE COURT: I take your word for it.

10 MR. FARNSWORTH: Judge Garrett in his return  
11 admits -- says, Yes, they were obscured but he just  
12 thinks it goes to the weight. Which according to  
13 these other cases shows that that's not the case.  
14 It's got to be it's a mandatory requirement to show  
15 their conduct at the scene and not just have a jury  
16 assume so. That's really, I think, is the  
17 dispositive issue, Judge. If you'd like to see  
18 video, again I have that. I know that Mitchell,  
19 again, argued this with, you know, Buck is here. I  
20 think the Judge's findings are there.

21 Christina Bradford, Judge, I'm sorry if I  
22 haven't introduced you to her yet. She's one of my  
23 associates, she put the brief together and did a  
24 great job, much better than I could do. If there any  
25 questions, Judge, I can answer them and then Mitchell

1 can respond.

2 THE COURT: All right, Mr. Byrd, be happy to  
3 hear from you, sir.

4 MR. BYRD: Thank you, Your Honor, I'll start by  
5 addressing the DUAC notice issue first since that's  
6 what counsel brought up. You have in the  
7 Magistrate's Return a copy of the notice to  
8 Defendant. Which is dated February the 6th, 2012.  
9 That's also attached to the Defendant's brief as part  
10 of Exhibit C. And it is clearly marked with an X and  
11 acknowledged by counsel, Mr. Farnsworth. So, he's  
12 clearly put on notice, well over 30 days in advance  
13 of trial, that the State's going to proceed on a DUAC  
14 basis. So, the notice is good. He includes a second  
15 notice that I wasn't aware of. But again, there  
16 isn't any question that the Defendant was notified  
17 that the State will proceed with a DUAC.

18 But I think more important than just the  
19 document itself, when the case commenced, counsel for  
20 the defense made a motion to dismiss the case based  
21 upon the video. The Court denied that motion. And  
22 then proceeded to poll the jury, appoint a foreman,  
23 commence the trial. And starting on Page 10 of the  
24 transcript, which counsel has provided to the Court.  
25 You find where the judge says, Okay, charged with the

1 offense of driving under the influence.

2 Solicitor Byrd: Just for purposes of  
3 clarification, Judge, this is going to be a DUAC  
4 case.

5 No juror sworn yet. The trial hasn't started  
6 yet. No testimony.

7 Okay. Excuse me.

8 Mr. DeLoach: Judge, may I object to that?

9 Judge: Yeah.

10 Mr. DeLoach: May we approach?

11 We approached the bench. It was at that point,  
12 again, prior to swearing a jury, prior to any  
13 testimony, that the Court was presented with this  
14 notice that's attached to the Court's return.

15 Whereupon, the Court overruled the objection.

16 And you can tell that that occurred by virtue of  
17 the Judge's immediate comment.

18 Judge Garrett: Ladies and gentlemen, this case  
19 before you this morning is a DUAC. Which is Driving  
20 with an Unlawful Alcohol Concentration.

21 So, the case commenced on a DUAC basis. There  
22 was no objection raised by counsel after that. Not  
23 during any testimony, not at the directed verdict  
24 stage, not when the Court charged the jury that the  
25 jury was being asked to answer a question under the

1 DUAC statute. So, I don't want to belabor the point  
2 but it's almost disingenuous for the Defendant to  
3 say, Well, I let him go ahead and try this case as a  
4 DUAC but now that I see there's some issues with  
5 regard to the wording of notice, I'll raise that  
6 issue. No issue like that was raised to the trial  
7 court. I'll make one more point just to be sure it's  
8 in the record here.

9 This is Mr. DeLoach in his opening argument  
10 which commences on Page 15 of the transcript. Ladies  
11 and gentlemen, the State is no longer going forward  
12 on DUI. As you just heard the Judge say, they're  
13 going forward on DUAC. Okay.

14 This is defense counsel saying, Okay, here we  
15 go. We're playing basketball. But now that they've  
16 lost the game, they want to come back and say, Well,  
17 we really wanted to play football, we didn't want to  
18 play basketball. And I just don't think that's fair  
19 to the State of South Carolina.

20 Now, with regard to the video issue, again, not  
21 trying to be overly technical, I know this is  
22 Magistrate's Court and we just try to do justice but  
23 justice works in both directions here. Ms. Moyao had  
24 a fair trial. She lost. They're now saying that the  
25 Judge made a mistake in that he should have dismissed

1 this case prior to trial based upon a defective  
2 video. Well, there wasn't anything defective about  
3 the video. Moreover, the Defendant raised no  
4 objection to the video.

5 And I turn now to Page 33 of the transcript.  
6 Before, you know, to capture the driving, is this a  
7 copy of your video?

8 It is.

9 Judge Garrett: Any objection?

10 Mr. DeLoach: No objection, Your Honor.

11 VHS 1, the video that the officer took that  
12 night, was entered into evidence without objection.

13 They can offer whatever they want to offer  
14 today. I would simply point out to Your Honor that  
15 Judge Garrett looked at the VHS 1 that was entered  
16 into evidence and his findings were that that video  
17 tape was sufficient on the issue of what it captured.  
18 There is a group of numbers that show up on a film  
19 that I believe show the coordinance, the geographical  
20 coordinance of the film itself. Ms. Moyao walked on  
21 the nine step walk and turn toward the camera. And  
22 as she got to the end of her walk, I believe  
23 somewhere in the seventh, eighth, ninth step, she  
24 reaches those numbers on the screen. You can see --  
25 still see her feet. The numbers just run across the

1 feet at the very bottom.

2 The Judge looked at that. Said, I find this is  
3 sufficient. The jury can determine whether or not  
4 she passed or failed this test.

5 And the jury decided that she failed the test.  
6 I assume, although, they didn't make no findings of  
7 fact, they just found her guilty. Whether it was  
8 because of the field sobriety test or not, I don't  
9 know.

10 Just a couple of quick points and then I'll shut  
11 up. The Defendant here is asking for two remedies.  
12 He's asking that the case be reversed and the case  
13 dismissed because of the video issue. He's asking  
14 for a new trial based upon the DUAC notice issue.  
15 It's my understanding that on a motion for a directed  
16 verdict, the case is viewed in the light most  
17 favorable to the non-moving party, which is The  
18 State. And there's an abundance of evidence in this  
19 case of this lady's guilt. The officers watched her  
20 weaving in the line, the officers smelled the alcohol  
21 on her. The officer gave her field sobriety tests.  
22 He testified she failed the HGN, she failed the walk  
23 and turn, she failed the one-legged stand. She took  
24 the breathalyzer examine, blew a .10. This is  
25 substantial evidence, uncontradicted evidence that

1 she's guilty of driving with an unlawful alcohol  
2 concentration.

3 Last but not least, there is no motion in the  
4 record for the Trial Court objecting to the notice.  
5 There is no post-trial motion in this case and there  
6 is no new trial motion under 22-3-1000. Which gives  
7 every person 10 days to file a motion for a new  
8 trial. There was no new motion filed in this case.  
9 And it's the State's position that Ms. Moyao got a  
10 fair trial and she lost.

11 THE COURT: Okay, Mr. Farnsworth, I know you got  
12 a disk that you said I can look at?

13 MR. FARNSWORTH: Yes, Your Honor.

14 THE COURT: I just missed seeing it. And did  
15 you submit a brief as well?

16 MR. FARNSWORTH: Yes.

17 THE COURT: Okay. I just don't have it. It may  
18 have gone to the Clerk's office and it hasn't routed  
19 its way to me yet.

20 MS. BRADFORD: I believe a copy was dropped to  
21 you Friday afternoon.

22 THE COURT: On Friday afternoon?

23 MS. BRADFORD: In your box.

24 THE COURT: Okay, then I'll go look in my  
25 office.

1 MR. FARNSWORTH: Sure, Judge. And I apologize.

2 THE COURT: That's okay.

3 MR. FARNSWORTH: I thought it was with you  
4 because this --

5 MS. BRADFORD: If you'd like, Your Honor, I can  
6 approach with a copy of the brief. I know it does  
7 not include the exhibits for you but that's a filed,  
8 stamped copy.

9 THE COURT: Yeah, y'all have a transcript of the  
10 testimony?

11 MS. BRADFORD: Yes, Your Honor, do you need the  
12 certified copy from them --

13 THE COURT: No --

14 MS. BRADFORD: -- or the unsealed copy?

15 (WHEREUPON, the attorneys and the Judge were  
16 talking over each other.)

17 MR. BYRD: And Judge, just for the record.

18 THE COURT: Yes, sir.

19 MR. BYRD: That's not the video that was  
20 introduced into evidence.

21 THE COURT: No?

22 MR. BYRD: The video that was entered into  
23 evidence was a VHS video. The old kind.

24 THE COURT: I gotcha.

25 MR. BYRD: Because there was a variance of what

1 the disk showed and what the original VHS showed.

2 THE COURT: Okay.

3 MS. BRADFORD: Your Honor, if I may approach,  
4 I've got a certified copy of the transcript.

5 THE COURT: Is this it?

6 MR. FARNSWORTH: That's the brief, Judge. I'm  
7 not sure --

8 MS. BRADFORD: This is the actual transcript  
9 from the Magistrate Court, Your Honor.

10 THE COURT: Okay.

11 How does this disk vary from the VHS that was  
12 introduced?

13 MR. BYRD: I've not looked at that disk. I know  
14 I had a disk, as I have indicated in the transcript,  
15 at the hearing on the motion to dismiss, pre-trial  
16 motion to dismiss occurred. I don't remember exactly  
17 what page but I may be able to find it.

18 THE COURT: It's okay, I'll look at it.

19 MR. BYRD: We pointed out to the Court,  
20 initially, that there was distinction between the  
21 disk copy and the VHS copy because of, not only audio  
22 but video. So, the Court looked at the VHS during  
23 the pre-trial hearing. And that was one that was  
24 submitted into evidence.

25 THE COURT: Okay. All right. Good enough. All

1 right, anything else?

2 MR. FARNSWORTH: Just briefly, Judge.

3 THE COURT: Okay.

4 MR. FARNSWORTH: I was unaware of any difference  
5 in the VHS versus the digital copy. But Judge,  
6 the -- there's not -- this isn't about, obviously,  
7 other evidence that may support the conviction, but  
8 this is a low BA. They're other things that we could  
9 show that she did great on the field sobriety test.  
10 I know Perry knows that. There were a lot of things  
11 to point out. We know that Judge Garrett made  
12 decisions. I mean, that's clearly why we're  
13 appealing, based on decisions that were there.

14 Judge, but the point again, I think you  
15 understood me, Judge, unless I was not clear. The  
16 notice -- we think the notice on its face is  
17 contradictory. Which should be interpreted in our  
18 favor. Other than that, to practice what happened  
19 wasn't to use Mitchell's analogy, you know, they  
20 called a football game, we showed up. And then it's  
21 all of a sudden it's basketball or visa versa.

22 That's why we submitted that affidavit in  
23 support. Because, I mean, Perry, the first mentions  
24 he hears of it is, Well we could do this as a DUAC.  
25 But, you know, it didn't happen. Until he shows up.

1 Whether the jury is sworn or not you can't say, We're  
2 going to do it this way, Judge. We need 30 days as  
3 firm notice it's happening, notice it's clear. And  
4 then, even if you rule that notice is clear, not  
5 contradictory. What they're doing the entire time is  
6 DUI. And oh, we decided we're going to do DUAC.  
7 That's not the whole purpose of that notice is to  
8 make sure when I go in there or Perry goes in there  
9 or anyone goes in there to try a case, they know what  
10 they're being charged with.

11 Another thing too, Judge, the statute section, I  
12 haven't had this happen much with this change. I had  
13 it happen once and then the officer couldn't get the  
14 BA result so the case went away. But my  
15 understanding by statute, you're supposed to give a  
16 new ticket and charge someone with a DUAC before you  
17 proceed. Which wasn't done. So technically, you  
18 know, this person is not charged on a valid warrant  
19 either. A ticket wasn't done for DUAC. My  
20 understanding is by the statute is you have to, you  
21 know, write the new ticket. Which wasn't done.

22 And that's not really what we're arguing -- I  
23 guess that is one of our arguments, actually.  
24 Ms. Christina came up with for the brief. But  
25 they're several problems we have with this notice.

1 But the main thing with those, with the video Judge,  
2 Judge Garrett admits and says, Yes, the feet were  
3 blocked. It's clear now. It's not a substantial  
4 test. It's got to show. And the remedy is dismissal  
5 regardless of what the result was, regardless of what  
6 the -- what other evidence is there or not there for  
7 you to decide. Because, you know, it robs us of the  
8 idea of saying look how she did so well on the  
9 one-legged stand. Couldn't say that because you  
10 couldn't see it.

11 THE COURT: Okay.

12 MR. FARNSWORTH: That's what we have, Judge.  
13 Anything else you need? Should be attached to that  
14 brief.

15 THE COURT: I'm just going to take a look at it  
16 and read it.

17 MR. FARNSWORTH: Okay.

18 THE COURT: I am, you know, I recognize the DUI  
19 law is probably the most complicated law in the State  
20 of South Carolina as it's developed now, as it  
21 continues to change. Both legislatively and  
22 interpretations of all those various legislative  
23 modifications. But I do have a pretty good bit of  
24 experience with DUI.

25 MR. FARNSWORTH: Sure.

1 THE COURT: Having been on the summary bench for  
2 about eight years.

3 I'll take a look at this. I just want to read  
4 it. You know, you look at Summary Court proceedings,  
5 it's not a Court of Record. And I'm not very  
6 concerned with the technicalities. You know, I'm  
7 going to look at it and determine, essentially,  
8 whether Judge Garrett made an abusive discretion or  
9 an error of law. And to the extent that discretion  
10 is granted to the Summary Court Judge, I'll probably  
11 grant him discretion. Because I think that he  
12 deserves that. And that the trying Judge is entitled  
13 to a certain degree of discretion in making those  
14 types of determinations.

15 I just need to look at it. And see, in fact,  
16 whether there was an abuse of discretion or error of  
17 law. I'm not so sure right now.

18 MR. FARNSWORTH: The error of law with our  
19 [indiscernible] --

20 THE COURT: Do what?

21 MR. FARNSWORTH: The error of law issue is our  
22 point on the video.

23 THE COURT: Well, and the question is, was it in  
24 substantial compliance with the statute? And many  
25 times there are videos which don't appear for

1           whatever reason. And that could be overcome by and  
2           through the submission of an affidavit.

3           MR. FARNSWORTH: And that's typically when  
4           there's no video at all.

5           THE COURT: When there's no video at all.

6           MR. FARNSWORTH: Right. So that when there is a  
7           video it's under A. And that's the thing in the  
8           other case that's so helpful.

9           It says, It's not substantial compliance. It  
10          has to be shown ~~and~~ their conduct has to be shown  
11          completely. Particularly on the field sobriety test  
12          or ~~as~~

13          THE COURT: Well, that's why I want to look at  
14          that tape.

15          MR. FARNSWORTH: Right. Sure.

16          THE COURT: Because a part of it apparently was  
17          obfuscated. Y'all have an disagreement about how  
18          much was obfuscated. Judge Garrett looked at it said  
19          that they were in substantial complains. Now, if I  
20          look at that and there's a banner that says, Eat more  
21          chicken in front of the video camera, then Judge  
22          Garrett probably made a mistake.

23          MR. FARNSWORTH: Right.

24          THE COURT: If there's a banner which obscures  
25          the feet for a portion of the field sobriety test,

1           then Judge Garrett probably didn't make a mistake. I  
2           got to look at it and see.

3           MR. FARNSWORTH: Right. Thank you, Judge.

4           THE COURT: All right, y'all have a great day.

5           MS. BRADFORD: Your Honor, would you like a copy  
6           of all the Exhibits mentioned in the brief? Just in  
7           case your copy doesn't make it to you.

8           THE COURT: No, no, no. If you -- if I got it  
9           back there then --

10          MS. BRADFORD: Okay, certainly, Your Honor.

11          (WHEREUPON, the proceedings were concluded.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

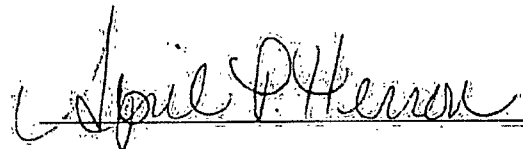
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA            )  
COUNTY OF GREENVILLE            )

I, APRIL P. HERRON, Official Court Reporter for  
the Thirteenth Judicial Circuit of the State of South  
Carolina, do hereby certify that the foregoing is a true,  
accurate and complete Transcript of Record of the  
proceedings had and evidence introduced in the trial of  
the captioned case, relative to appeal, in the Court of  
Common Pleas for Greenville County, South Carolina, on the  
Second day of September, 2014.

I do further certify that I am neither of kin,  
counsel nor interest to any party hereto.

April 21, 2015



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA  
UNIFORM TRAFFIC TICKET

|                                                                                                                     |                                                        |                                                                                      |                                |
|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|--------------------------------------------------------------------------------------|--------------------------------|
| CITY OR COUNTY OF <u>Greenville</u>                                                                                 |                                                        | VERSUS                                                                               |                                |
| FIRST NAME<br><u>John</u>                                                                                           | MIDDLE NAME<br><u>Lozano</u>                           | LAST NAME<br><u>Moya</u>                                                             |                                |
| STREET AND NO.<br><u>221 Hickory Lane</u>                                                                           | CITY<br><u>Mauldin</u>                                 | STATE<br><u>SC</u>                                                                   | ZIP CODE<br><u>29662</u>       |
| STATE LICENSED<br><u>SC</u>                                                                                         | DRIVER'S LICENSE NO.<br><u>011471041</u>               | COPIES<br><u>1</u> YES <u>0</u> NO                                                   | ORIGIN CLASS<br><u>1</u>       |
| VEH. LIC. NO.<br><u>E1F793</u>                                                                                      | STATE<br><u>SC</u>                                     | MAKE/TYPE<br><u>Ford</u>                                                             | YEAR<br><u>08</u>              |
| HAZ. MT.                                                                                                            |                                                        | AUTO                                                                                 | OTHER                          |
| YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT                                                                   |                                                        |                                                                                      |                                |
| NAME OF TRIAL COURT<br><u>Greenville</u>                                                                            |                                                        | STREET AND NO.<br><u>2301 Wade Hampton Blvd. #302</u>                                |                                |
| DATE<br><u>10/13/11</u>                                                                                             | TIME OF TRIAL<br><u>10:00am</u>                        | CITY<br><u>Mauldin</u>                                                               | STATE<br><u>SC</u>             |
| VIOLATION: COURT APPEARANCE REQUIRED YES NO                                                                         |                                                        | VIOLATION: SECTION NO.<br><u>56-5-2130</u>                                           |                                |
| OWNER OF VEHICLE<br><u>Same</u>                                                                                     |                                                        | DATE OF ARREST<br><u>9/14/11</u>                                                     |                                |
| ADDRESS OF OWNER                                                                                                    |                                                        | DATE OF VIOLATION<br><u>9/14/11</u>                                                  |                                |
| BAIL DEPOSITED<br><u>Jan</u>                                                                                        | NAME OF ARRESTING OFFICER<br><u>J. J. Jackson #557</u> |                                                                                      | RANK<br><u>Det</u>             |
| DESCRIPTION OF ACCUSED<br><u>10/13/11 10:00am 10/13/11 10:00am</u>                                                  |                                                        | COUNTY<br><u>Greenville</u>                                                          | AGE<br><u>33</u>               |
| DATE BAIL RECEIVED BY                                                                                               |                                                        | BADGE<br><u>412</u>                                                                  | DOCKET NO.<br><u>11-133634</u> |
| CASE BEFORE:                                                                                                        |                                                        | TIME OF VIOLATION<br><u>03:15</u>                                                    |                                |
| MAGISTRATE <input type="checkbox"/> MUN. COURT <input type="checkbox"/>                                             |                                                        | VEHICLE                                                                              |                                |
| CIRCUIT COURT <input type="checkbox"/> FAMILY COURT <input type="checkbox"/> FEDERAL COURT <input type="checkbox"/> |                                                        | DISTANCE IN FEET FROM INTERSECTION<br><u>3.85</u>                                    |                                |
| NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE                                                                         |                                                        | DEFENDANT: DID NOT APPEAR <input type="checkbox"/> APPEARED <input type="checkbox"/> |                                |
| DISPOSITION:                                                                                                        |                                                        | MILES<br><u>3.85</u>                                                                 |                                |
| NOLLE PROSSER <input type="checkbox"/> GUILTY <input type="checkbox"/>                                              |                                                        | MILES<br><u>3.85</u>                                                                 |                                |
| FORFEITED BOND <input type="checkbox"/> PLED: NOLO CONTENDERE <input type="checkbox"/>                              |                                                        | MILES<br><u>3.85</u>                                                                 |                                |
| TRIAL BY: TRIAL JUDGE <input type="checkbox"/> JURY <input type="checkbox"/>                                        |                                                        | MILES<br><u>3.85</u>                                                                 |                                |
| VERDICT OF TRIAL IF ANY                                                                                             |                                                        | MILES<br><u>3.85</u>                                                                 |                                |
| GUILTY <input type="checkbox"/> NOT GUILTY <input type="checkbox"/>                                                 |                                                        | MILES<br><u>3.85</u>                                                                 |                                |
| DATE OF TRIAL IF ANY                                                                                                |                                                        | MILES<br><u>3.85</u>                                                                 |                                |
| COMMITTED TO:                                                                                                       |                                                        | DEFENSE CODE<br><u>99</u>                                                            |                                |
| DATE                                                                                                                |                                                        | B.A. LEVEL<br><u>10</u>                                                              |                                |
| CERTIFIED CORRECT                                                                                                   |                                                        | DATE                                                                                 |                                |

53541 FV

TRIAL COURT COPY

06/20/2014 11:16 8642681333

CHICK SPRINGS COURT

PAGE 05/05

250-9120

## NOTICE TO DEFENDANT

Name: Maria Moya Ticket/Warrant No(s): 53541 FV

You or your client is currently charged with: DUI (BA: .10)  
If you or your client wishes to accept early responsibility and plead guilty, the State will offer the following as a recommendation to the Court:

DNAC [Time Served]

You have 30 days from the date of this form to accept this offer. If you or your client does not enter a guilty plea by 3/6/12 then the case will be placed on the docket for trial. At that time, the case will be tried as charged, and NO recommendation will be made.

If one or more of the boxes below is checked, the following additional information applies to your pending criminal case:

- ☐ **Trial in Absence:** If you do not appear for your trial, you will be tried in your absence. The Solicitor may consent to a trial in front of the judge (bench trial) at which time the Court would decide your guilt. If you are found guilty, the Court may issue a Bench Warrant for your arrest. All notices for trial will be sent to the address you provided to the Court. It is your responsibility to inform the Court of any changes to your contact information.
- ☐ **Legal Representation:** You have the right to have an attorney represent you in a criminal matter. If you cannot afford to hire an attorney, the State will appoint one to represent you if you qualify. If you would like an attorney to be appointed, it is your responsibility to apply for a Public Defender. The Office of Indigent Defense can assist you in applying for representation. Their office is located at the Greenville County Courthouse, 305 East North Street in downtown Greenville.

It is your responsibility to secure representation in a timely manner and to inform your attorney of any court notices you receive. If you have not informed the Court that you have secured an attorney before the case is set for trial, the State will go forward with the trial as scheduled. Your case will not be continued because you failed to obtain an attorney or obtained an attorney after the case was put on the trial docket.

- ☒ **DUAC Notice:** Pursuant to § 56-5-2933 and § 56-5-2930 (J) of the South Carolina Code of Laws, you are hereby notified that the State intends to try this case as a violation of Driving with an Unlawful Alcohol Concentration. The case will appear on an upcoming trial docket no sooner than 30 days from the date of this notice.

Defendant

Defense Attorney

Solicitor

Date

Updated 1/10/12

Judge Charles R. Garrett  
Date: Monday, February 6, 2012  
Pretrial Conferences

P-130

| TIME     | TICKET/<br>WARRANT        | DEFENDANT          | OFFENSE                                                                                                                   | ATTORNEY         | SOL | AGENCY                                 |
|----------|---------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------|------------------|-----|----------------------------------------|
| 9:00 AM  | F070306-7                 | Joe Nell Boyd Jr.  | Simple Possession, Driving under the Influence                                                                            | Amanda Wicker    | GKL | R Thompson, SCHP                       |
| 9:15 AM  | I482988-89                | Larry Truett       | Driving under the Influence, Uninsured Vehicle                                                                            | Amanda Wicker    | GKL | R Thompson, SCHP                       |
| 9:30 AM  | F275211                   | Joshua Gilkinson   | Driving under the Influence                                                                                               | Steve Sumner     | GKL | M George, SCHP                         |
| 9:45 AM  | F279523-24                | Judy Arrington     | Driving under the influence, ABC Violation                                                                                | Amanda Wicker    | GKL | M George, SCHP                         |
| 10:00 AM | F151898-900,<br>F274701-4 | Joshua Aiken       | Driving under the Influence, Driving under Suspension, Operating Uninsured, Leaving Scene, Possession Stolen Property x 2 | Amanda Wicker    | GKL | G Certain, SCHP                        |
| 10:15 AM | J994144                   | Natasha Gibbs      | Breach of Peace                                                                                                           | Amanda Wicker    | GKL | Myrtle Gibbs                           |
| 10:25 AM | F227570-73                | Wayne Campbell     | Driving under the Influence, Driving under Suspension, Operating Uninsured, Failure to Register                           | Amanda Wicker    | GKL |                                        |
| 10:40 AM | 56791FQ                   | Joshua Clark       | Driving under Suspension 3 <sup>rd</sup>                                                                                  | Amanda Wicker    | GKL |                                        |
| 10:50 AM | E696601                   | Oleg Konopadchenko | Simple Possession                                                                                                         | Amanda Wicker    | GKL |                                        |
| 11:00 AM | I434555                   | Oleg Konopadchenko | Reckless Driving                                                                                                          | Amanda Wicker    | GKL |                                        |
| 11:10 AM | J993968                   | Rachael Fowler     | Criminal Domestic Violence                                                                                                | Amanda Wicker    | GKL | J Burdine, GCSO;<br>Christopher Fowler |
| 11:20 AM | J993539                   | Lisa Gillespie     | Criminal Domestic Violence                                                                                                | Amanda Wicker    | GKL | K Azzara, GCSO;<br>Nathan Gillespie    |
| 11:30 AM | 49581FQ                   | Buddy McAllister   | Interfering with law enforcement                                                                                          | John Rollins     | GKL | K Azzara, GCSO                         |
| 11:40 AM | I408693                   | Randy Earle        | Petit Larceny                                                                                                             | Michael Cullinan | GKL | I Henderson, GCSO;<br>Ethel Lunsford   |
| 11:50 AM | J993059                   | Jerry Lowe         | Criminal Domestic Violence                                                                                                | John Rollins     | GKL | I Henderson, GCSO;<br>Sylvia Lowe      |

Judge Charles R. Garrett  
Date: Monday, February 6,, 2012  
Pretrial Conferences

| TIME    | TICKET/<br>WARRANT | DEFENDANT          | OFFENSE                                                  | ATTORNEY           | SOL | AGENCY                                 |
|---------|--------------------|--------------------|----------------------------------------------------------|--------------------|-----|----------------------------------------|
| 1:30 PM | J993224            | Christina Jackson  | Shoplifting                                              | Pro Se             | GKL | Vinnie Lopes, Walmart                  |
| 1:40 PM | F279469            | Melvin Johnson Jr. | Improper Turn                                            | Pro Se             | GKL | Ashley Richardson                      |
| 1:50 PM | 87839FK            | Terry Canada       | Negligent Driving                                        | Patrick Mangrum    | GKL |                                        |
| 2:00 PM | J993210            | Jesse McDonald     | Shoplifting                                              | Pro Se             | GKL | J Counts, GCSO;<br>Chris Fowler, Bi-Lo |
| 2:10 PM | I434698            | Wendy Batson       | Unlawful use of Telephone                                | Pro Se             | GKL | J Counts, GCSO; Larry Batson           |
| 2:20 PM | J993494            | Gary Lee Taylor    | Littering                                                | Pro Se             | GKL | G Porter, GCSO<br>Hardstone Dev. LLC   |
| 2:30 PM | J993473            | Starsha Limbaugh   | Shoplifting                                              | Pro Se             | GKL | G Porter, GCSO;<br>Melissa Johnson     |
| 2:40 PM | J993418            | Ruben Gurrero      | Criminal Domestic Violence                               | Joseph Baldwin     | GKL | R Frady, GCSO;<br>Marisela Guerrero    |
| 2:50 PM | J994145            | Tia Jones          | Assault & Battery                                        | David Holmes       | GKL | P DeRosa, GCSO; Adam Massengale        |
| 3:00 PM | 53541FV            | Maria Moyao        | Driving under the Influence                              | Dan Farnsworth Jr. | GKL | J Jackson, GCSO                        |
| 3:15 PM | 57010-11FV         | Douglas Humberger  | Driving under the Influence,<br>Disregard Red Light      | Todd Nichols       | GKL | J Jackson, GCSO                        |
| 3:30 PM | 53518-20FV         | Elviz Bonilla      | Driving under the Influence,<br>Open Container, No SC DL | Pro Se             | GKL | J Jackson, GCSO                        |
| 3:45 PM | 55920FQ            | Roy Powell         | Speeding 57/35                                           | Pro Se             | GKL | J Jackson, GCSO                        |
| 3:55 PM | 53530,32FV         | Susan Coble        | Public Disorderly Conduct,<br>Simple Possession          | Pro Se             | GKL | J Jackson, GCSO                        |

**Judge Charles R. Garrett**  
**Date: Tuesday, February 7, 2012**  
**Pretrial Conferences**

| TIME     | TICKET/<br>WARRANT | DEFENDANT        | OFFENSE                                             | ATTORNEY            | SOL | AGENCY                             |
|----------|--------------------|------------------|-----------------------------------------------------|---------------------|-----|------------------------------------|
| 9:00 AM  | I433859            | Paul Carter      | Criminal Domestic Violence                          | Jeffrey Merriam     | GKL | Faith Lanford                      |
| 9:10 AM  | J993735            | Valerie Shaw     | Criminal Domestic Violence                          | David<br>Armstrong  | GKL | Joseph Shaw                        |
| 9:20 AM  | I408681            | Ashley Dunbar    | Assault & Battery                                   | Robert Ianuario     | GKL | Steadman Brazel                    |
| 9:30 AM  | I481566            | Juan Ojeda Mier  | Malicious Injury to Personal<br>Property            | Matthew<br>Pinckney | GKL | Anayeli Duran                      |
| 9:40 AM  | 48561-62FQ         | Luis Cortes      | No Tag light, No SC DL 2 <sup>nd</sup>              | Matthew<br>Pinckney | GKL | M Cannon, GCSO                     |
| 9:50 AM  | F229206-7          | Joseph Gouveia   | Driving under the Influence,<br>Operating Uninsured | Steve Sumner        | GKL | TJ Genco, SCHP                     |
| 10:05 AM | F279458-59         | Clarence English | Driving under the Influence,<br>Open Container      | Steve Sumner        | GKL | TJ Genco, SCHP                     |
| 10:20 AM | F040677-78         | Michael Parenti  | DUAC, Open Container                                | Steve Sumner        | GKL | D McAlhany, SCHP                   |
| 10:30 AM | F279489            | Tara Arrington   | Driving under the Influence                         | Steve Sumner        | GKL |                                    |
| 10:45 AM | 45678FQ            | Paul Machin      | Driving under the Influence                         | Steve Sumner        | GKL | M Cannon, GCSO                     |
| 11:00 AM | 48569FQ            | David Dempsey    | Driving under the Influence                         | Steve Sumner        | GKL | M Cannon, GCSO                     |
| 11:15 AM | J993659            | Jonathan Edwards | Criminal Domestic Violence                          | Pro Se              | GKL | W McMurrer, GCSO;<br>Holly Edwards |

Judge Charles R. Garrett

Date: Tuesday, February 7, 2012

Pretrial Conferences

| TIME    | TICKET/<br>WARRANT | DEFENDANT            | OFFENSE                                                        | ATTORNEY        | SOL | AGENCY                                         |
|---------|--------------------|----------------------|----------------------------------------------------------------|-----------------|-----|------------------------------------------------|
| 1:00 PM | J993168            | Justan Fryson        | Criminal Domestic Violence                                     | Pro Se          | GKL | Rashanda Nichols                               |
| 1:10 PM | J993330-31         | Bobby Chapman        | Assault & Battery x 2                                          | Michael Coulter | GKL | M Moore, GCSO; Sarah Rutledge, Shelley Braziel |
| 1:20 PM | 49392-93FQ         | Benjamin LeGare      | Simple Possession, Poss Drug Para                              | Edward Boggs    | GKL | M Moore, GCSO                                  |
| 1:30 PM | 52958FQ            | Juan Granda          | Driving under Suspensio                                        | Pro Se          | GKL | M Moore, GCSO                                  |
| 1:40 PM | I433725-28         | Daniel Black         | Harassment 2 <sup>nd</sup> , Malicious Injury x 2, Trespassing | Mills Ariail    | GKL | M Moore, GCSO; Ellen Williams; John Wharton    |
| 1:50 PM | 52955FQ            | Andrew Peppers       | Simple Possession                                              | Randy Chambers  | GKL | M Moore, GCSO                                  |
| 2:00 PM | I408661            | Christopher Reynolds | Disturbing Schools                                             | Matthew Kappel  | GKL | C Husband, North Greenville University         |
| 2:10 PM | J992764            | Annette Ashby        | Shoplifting                                                    | John Newkirk    | GKL | Luis Sotomayor, Walmart                        |
| 2:20 PM | 48297FQ            | Angie Taylor         | Driving under the Influence                                    | Matthew Kappel  | GKL | P Clark, GCSO                                  |
| 2:35 PM | 53337-8FV          | William SAyegh       | Driving under the Influence, Open Container                    | John Newkirk    | GKL | P Clark, GCSO                                  |
| 2:50 PM | 55213FV            | Erik Martinson       | Driving under the Influence                                    | Amy Parker      | GKL | P Clark, GCSO                                  |
| 3:05 PM | 55203FV            | Lisa Soto            | Driving under the Influence                                    | Pro Se          | GKL | P Clark, GCSO                                  |

Judge Charles R. Garrett  
Date: Wednesday, February 8, 2012  
Pretrial Conferences

| TIME     | TICKET/<br>WARRANT | DEFENDANT          | OFFENSE                                  | ATTORNEY        | SOL | AGENCY                              |
|----------|--------------------|--------------------|------------------------------------------|-----------------|-----|-------------------------------------|
| 9:00 AM  | I408703CS<br>W     | Richard Adcock     | Assault & Battery                        | Pro Se          | GKL | Ryan Stokes                         |
| 9:10 AM  | J993287            | Christopher Reid   | Receiving Stolen Goods                   | Pro Se          | GKL | Rosetta Miller                      |
| 9:20 AM  | J93572             | Robert Quinn       | Shoplifting                              | Pro Se          | GKL | Luis Sotomayer,<br>Walmart          |
| 9:30AM   | 55876FQ            | Elizabeth Howerton | Driving under the Influence              | Paul Landis     | GKL |                                     |
| 9:45 AM  | J993396            | Matthew Hayden     | Criminal Domestic Violence               | Frank Eppes     | GKL | Brook McSwain                       |
| 9:55 AM  | J993718            | Martha Pickney     | Shoplifting                              | Richard Warder  | GKL | Alphonso Holmes                     |
| 10:05 AM | F147892            | Cheryl Satterfield | Driving under the Influence              | Richard Warder  | GKL |                                     |
| 10:20 AM | I433975            | Phillip Stegall    | Criminal Domestic Violence               | Richard Warder  | GKL | J Burdine, GCSO;<br>Jessica Stegall |
| 10:30 AM | J992861            | Jeffery Locke      | Assault & Battery 3 <sup>rd</sup> Degree | Pro Se          | GKL | T Bowers, GCSO;<br>Chrissy Shumate  |
| 10:40 AM | 55558FQ            | Zachary Gestwicki  | Simple Possession                        | Richard Warder  | GKL | T Bowers, GCSO                      |
| 10:50 AM | I434492            | Doyle Wright       | Assault & Battery                        | R. Mills Ariail | GKL | T Bowers, GCSO; Scott<br>Clark      |
| 11:00 AM | M990197            | Ashley Miller      | Criminal Domestic Violence               | Chad Groover    | GKL | Darryl Williams                     |

Judge Charles R. Garrett  
Date: Wednesday, February 8, 2012  
Pretrial Conferences

| TIME    | TICKET/<br>WARRANT | DEFENDANT               | OFFENSE                           | ATTORNEY           | SOL | AGENCY                           |
|---------|--------------------|-------------------------|-----------------------------------|--------------------|-----|----------------------------------|
| 1:00 PM | 70527-28EV         | Reginald Bland          | Open Container, Simple Possession | Pro Se             | GKL |                                  |
| 1:10 PM | F340070            | Thomas Cromer           | Driving under the Influence       | James Price        | GKL | Mark McGregor                    |
| 1:25 PM | J993873            | Amy Binder              | Criminal Domestic Violence        | James Calmes       | GKL | J Horne, GCSO; Weldon Holtzclaw  |
| 1:35 PM | J992504            | Julie Campbell          | Criminal Domestic Violence        | James Calmes       | GKL | J Horne, GCSO; Benjamin Campbell |
| 1:45 PM | 53691FF            | Mark Hopkins            | Unlawful Gambling                 | J. Bradley Bennett | GKL |                                  |
| 1:55 PM | I434962            | Todd Farmer             | Criminal Domestic Violence        | Daniel Hughes      | GKL | Patricia Stowe                   |
| 2:05 PM | J994386            | Holly Pruitt            | Criminal Domestic Violence        | Nihar Patel        | GKL | William Jackson                  |
| 2:15 PM | F280912            | Luis Reyes              | Speeding 57/40                    | Nihar Patel        | GKL |                                  |
| 2:25 PM | F284131            | Sammy Almad             | Speeding 100/60                   | Rosemary Parham    | GKL |                                  |
| 2:35 PM | E693754            | Juan Vallejo            | Driving under the Influence       | David Seay Jr      | GKL |                                  |
| 2:50 PM | I408707            | Antjuan Richardson      | Petit Larceny                     | Caroline Horlbeck  | GKL | Shelricka Duncan                 |
| 3:00 PM | 61286EV            | Alexis Martinez-Antonio | Loitering to Engage               | Elizabeth Wiygul   | GKL |                                  |

Judge Charles R. Garrett  
Date: Thursday, February 9, 2012  
Pretrial Conferences

| TIME     | TICKET/<br>WARRANT | DEFENDANT       | OFFENSE                                                                  | ATTORNEY      | SOL | AGENCY                                                               |
|----------|--------------------|-----------------|--------------------------------------------------------------------------|---------------|-----|----------------------------------------------------------------------|
| 9:00 AM  | 46295FQ            | Jerry Nixon     | Driving under suspension                                                 | Pro Se        | GKL |                                                                      |
| 9:10 AM  | J993512            | Suzanne Nugent  | Criminal Domestic Violence                                               | Pro Se        | GKL | Paul Greene                                                          |
| 9:20 AM  | J992709            | Osama Rabadi    | Assault & Battery                                                        | Susannah Ross | GKL | Alexis Webb                                                          |
| 9:30 AM  | J994155            | Dishawn Hunt    | Petit Larceny                                                            | Susannah Ross | GKL | W Campbell, GCSO;<br>Brandi Weaver                                   |
| 9:40 AM  | F275202-3          | David Howell    | Driving under Suspension,<br>Following too Closely                       | Alex Stalvey  | GKL | Yvette Cates                                                         |
| 9:50 AM  | J993150            | Stanley Rhome   | Petit Larceny                                                            | Brian Johnson | GKL | David Hogg                                                           |
| 10:00 AM | 94057DO            | Termaine Turman | Negligent Driving                                                        | Pro Se        | GKL | M Atwell, GCSO                                                       |
| 10:10 AM | J993999-<br>4001   | Kevin O'Shields | Theft of Electrical Current,<br>Receiving Stolen Goods, Petit<br>Larceny | Sarah Henry   | GKL | R Devore-Snow, GCSOR<br>Harrison, Duke Energy;<br>Shannon Massengale |
| 10:20 AM | 56612-13FV         | Edwin Ellison   | No Driver's License, False<br>info for Police                            | Sarah Henry   | GKL |                                                                      |
| 10:30 AM | J993710-11         | Reena Travers   | Petit Larceny x 2                                                        | Sarah Henry   | GKL | J Redman, GCSO;<br>Corey Freeman;                                    |

Judge Charles R. Garrett

Date: Thursday, February 9, 2012

Pretrial Conferences

| TIME    | TICKET/<br>WARRANT | DEFENDANT          | OFFENSE                                                  | ATTORNEY            | SOL | AGENCY                                           |
|---------|--------------------|--------------------|----------------------------------------------------------|---------------------|-----|--------------------------------------------------|
| 1:00 PM | 46411FQ            | Frederick Golden   | Driving under Suspension                                 | Pro Se              | GKL |                                                  |
| 1:10 PM | J992940            | Richard Caldwell   | Criminal Domestic Violence                               | Pro Se              | GKL | Jenna Lopez                                      |
| 1:20 PM | F152668-69         | Amber Smith        | Driving under the Influence,<br>Child Endangerment       | Pro Se              | GKL |                                                  |
| 1:35 PM | J993415            | Caitlin Greer      | Shoplifting                                              | Pro Se              | GKL | Melissa Johnson, Publix                          |
| 1:45 PM | 51371FQ            | Robert Zapata      | Possession Drug Para                                     | Timothy<br>Sullivan | GKL | J Redman, GCSO                                   |
| 1:55 PM | F275176-77         | Karl Schuetterle   | Driving under the Influence,<br>Driving under Suspension | Randolph<br>Hough   | GKL |                                                  |
| 2:10 PM | F340078            | Edward Bell        | Driving under the Influence                              | Tom Quinn           | GKL |                                                  |
| 2:25 PM | F279582            | James Nichols      | Too Fast for conditions                                  | J. Kirk Fisher      | GKL | Michael Griffin                                  |
| 2:35 PM | J993971            | Myron Walker       | Petit Larceny                                            | Jim Bannister       | GKL | Rhonda Price                                     |
| 2:45 PM | I484854            | Steven Jones       | Cruelty to Children                                      | Bill Godfrey        | GKL | J Proctor, GCSO;<br>James Link<br>Samantha Grace |
| 2:55 PM | I408678            | Clayton Angermeier | Violation Restraining Order                              | John Newkirk        | GKL | W Hinkle, GCSO; Mark<br>Vonostenbridge           |
| 3:05 PM | 80564FK            | Cameron Wilson     | Improper Passing                                         | Pro Se              | GKL | J Cordell, GCSO                                  |

P-137

# NOTICE TO DEFENDANT

Name: MARIA MOYAO Ticket/Warrant No(s): 53541FV

You or your client is currently charged with: DUI 10  
 If you or your client wishes to accept early responsibility and plead guilty, the State will offer the following as a recommendation to the Court:

DUAC . 08

You have 30 days from the date of this form to accept this offer. If you or your client does not enter a guilty plea by 3/8/13 then the case will be placed on the docket for trial. At that time, the case will be tried as charged, and NO recommendation will be made.

If one or more of the boxes below is checked, the following additional information applies to your pending criminal case:

☐ **Trial in Absence:** If you do not appear for your trial, you will be tried in your absence. The Solicitor may consent to a trial in front of the judge (bench trial) at which time the Court would decide your guilt. If you are found guilty, the Court may issue a Bench Warrant for your arrest. All notices for trial will be sent to the address you provided to the Court. It is your responsibility to inform the Court of any changes to your contact information.

☐ **Legal Representation:** You have the right to have an attorney represent you in a criminal matter. If you cannot afford to hire an attorney, the State will appoint one to represent you if you qualify. If you would like an attorney to be appointed, it is your responsibility to apply for a Public Defender. The Office of Indigent Defense can assist you in applying for representation. Their office is located at the Greenville County Courthouse, 305 East North Street in downtown Greenville.

It is your responsibility to secure representation in a timely manner and to inform your attorney of any court notices you receive. If you have not informed the Court that you have secured an attorney before the case is set for trial, the State will go forward with the trial as scheduled. Your case will not be continued because you failed to obtain an attorney or obtained an attorney after the case was put on the trial docket.

☒ **DUAC Notice:** Pursuant to § 56-5-2933 and § 56-5-2930 (J) of the South Carolina Code of Laws, you are hereby notified that the State intends to try this case as a violation of Driving with an Unlawful Alcohol Concentration. The case will appear on an upcoming trial docket no sooner than 30 days from the date of this notice.

Defendant

Solicitor

Defense Attorney

Date

2/8/13

**JURY TRIAL DOCKET**  
**MAGISTRATE C.R. GARRETT**  
**CHICK SPRINGS SUMMARY COURT**  
**WEEK OF MARCH 11-15, 2013**

\*\*All trial dockets are final. Please note if you are a defense attorney and need to be removed from the docket, please contact the  
**MAGISTRATE'S OFFICE.**\*\*

**PLEASE NOTE JURY SELECTION WILL BE Tuesday, March 12, 2013 AT 9:00 AM**

**MONDAY, MARCH 11, 2013**

| TIME    | OFFICER/<br>AFFIANT | DEFENDANT            | ATTORNEY              | CASE #              | TYPE                                                                                                   | VICTIM/<br>WITNESS                        | OUTCOME   |
|---------|---------------------|----------------------|-----------------------|---------------------|--------------------------------------------------------------------------------------------------------|-------------------------------------------|-----------|
| 9:00 AM | J Jackson, GCSO     | Juan Torres          | Barry Bland           | 57097, 98FV         | Driving under<br>the Influence,<br>No SC DL                                                            | J Loveless,<br>GCSO                       |           |
| 9:00 AM | J Jackson, GCSO     | Maria Moyao          | Dan<br>Farnsworth, Jr | 53541FV             | Driving under<br>the Influence                                                                         |                                           |           |
| 9:00 AM | J Jackson, GCSO     | Kenneth<br>Trofatter | Steve Sumner          | 57074FV             | Driving under<br>the Influence                                                                         | William<br>Kennedy<br>Skinner, GCSO       |           |
| 9:00 AM | J Jackson, GCSO     | Joshua McCord        | Steve Sumner          | 59805FF             | Driving under<br>the Influence                                                                         |                                           | 2010 case |
| 9:00 AM | J Jackson, GCSO     | Stanley Skiles       | Steve Sumner          | 55865FQ             | Driving under<br>the Influence                                                                         | Lt Taylor,<br>GCSO                        |           |
| 9:00 AM | J Jackson, GCSO     | Mary Smith           | Kirk Fisher           | 45942FQ,<br>1432837 | Driving under<br>the Influence,<br>Child<br>Endangerment                                               | G Martinez,<br>GCSO<br>Kathy<br>Thackston |           |
| 9:00 AM | J Jackson, GCSO     | Gregory<br>Jameson   | Manning<br>Culbertson | 57073FV,<br>61190FV | Driving under<br>the Influence,<br>Speeding                                                            | Raymond<br>Crawford                       |           |
| 9:00 AM | J Jackson, GCSO     | Howard Gregory       | Pro Se                | 64679, 80FV         | Driving under<br>the Influence,<br>Driving under<br>Suspension                                         |                                           |           |
| 9:00 AM | J Jackson, GCSO     | Thomas<br>Mahaffey   | Dick Warder           | 64675, 76, 77FV     | Seatbelt Vio,<br>Simple<br>Possession of<br>Marijuana,<br>Poss Drug<br>Paraphernalia                   | M Watson, P&E<br>K Dixon, Lab             |           |
| 9:00 AM | J Jackson, GCSO     | Cortney Long         | Kraig Pringle         | 64672, 73, 74FV     | Driving under<br>the Influence,<br>Simple<br>Possession of<br>Marijuana,<br>Poss Drug<br>Paraphernalia | M Watson, P&E<br>K Dixon, Lab             |           |
| 9:00 AM | J Jackson, GCSO     | David Parker         | Chase Harbin          | 57083FV             | Driving under<br>the Influence                                                                         |                                           |           |
| 9:00 AM | J Jackson, GCSO     | Terry Sims           | Amanda<br>Wicker      | 53544, 45FV         | Driving under<br>the Influence,<br>Open<br>Container                                                   | McGaha, GCSO                              |           |
| 9:00 AM | J Jackson, GCSO     | Robert Shirey        | Chase Harbin          | 61153FV             | Speeding                                                                                               |                                           |           |
| 9:00 AM | J Jackson, GCSO     | Stacy Little         | Dan<br>Farnsworth     | 53282, 83, 84FQ     | Driving under<br>the Influence,<br>Expired Tag,<br>Simple                                              | S Collins, Lab<br>M Watson, P&E           |           |

|                                       |                     |                     |                 |                                                     |                                                                                      |                                                                                    |                            |
|---------------------------------------|---------------------|---------------------|-----------------|-----------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|----------------------------|
|                                       |                     |                     |                 |                                                     | Possession of Marijuana                                                              |                                                                                    |                            |
| 9:00 AM                               | J Jackson, GCSO     | Elizabeth Howerton  | Paul Landis     | 55876FQ                                             | Driving under the Influence                                                          | Tracy McKinnon, SLED<br>RL Rivera, GCSO<br>Doris Yarbrough, SLED<br>J Thaxton, P&E |                            |
| 9:00 AM                               | J Jackson, GCSO     | Darren Hill         | Amanda Wicker   | 86815, 16FK                                         | Driving under the Influence, Driving under Suspension                                | Weinmueller, GCSO                                                                  | 2010 case                  |
| 9:00 AM                               | J Jackson, GCSO     | Charles Griswold    | James O'Connell | 75480FK                                             | Driving under the Influence                                                          | Megan Mebane, SLED<br>Tina Simpson<br>I Flounders, P&E                             | 2010 case                  |
| 9:00 AM                               | J Jackson, GCSO     | Sarah Furmanski     | Larry Crane     | 53547, 48, 49FV                                     | Driving under the Influence, Simple Possession of Marijuana, Poss Drug Paraphernalia | K Dixon, Lab<br>M Watson, P&E                                                      |                            |
| 9:00 AM                               | J Jackson, GCSO     | William Ferguson    | Amanda Wicker   | 57014, 15FV                                         | Driving under the Influence, Driving Left of Center                                  | J Thaxton, P&E<br>Quintus Young, SLED<br>Doris Yarbrough, SLED                     |                            |
| 9:00 AM                               | J Jackson, GCSO     | Marjorie Dorey      | Steve Sumner    | 57004FV                                             | Driving under the Influence                                                          |                                                                                    |                            |
| 9:00 AM<br>Continued by Judge Garrett | J Jackson, GCSO     | Larry Davis         | Ernie Hamilton  | 45933FQ                                             | Driving under the Influence                                                          | Sgt. Robertson, GCSO                                                               | Continued by Judge Garrett |
| 9:00 AM                               | JD Hand, STP        | Raymond Hobby       | Bill Bannister  | F219734                                             | Driving under the Influence                                                          |                                                                                    |                            |
| 9:00 AM                               | JD Hand, STP        | Jessie Craighead    | Michael A Brown | F219712                                             | Speeding                                                                             |                                                                                    |                            |
| 9:00 AM                               |                     | Mark Howard         | Dick Warder     | 1408988                                             | Petit Larceny                                                                        | Sharonicka Carter<br>Leroy Howard<br>Vilma Howard                                  |                            |
| 9:00 AM                               | EF Lee, CRB         | Johnada Young       | Amanda Wicker   | 1388905, 06, 07, 08, 09, 10, 12, 13, 14, 15, 17, 18 | Fraud Check x 12                                                                     | Bi-Lo                                                                              | 2004 cases                 |
|                                       |                     |                     |                 |                                                     |                                                                                      |                                                                                    |                            |
| 1:00 PM                               | Frank Jordan, SCDNR | Christina Greenwood | Theo Mitchell   | 757843, 44, 45                                      | Disorderly Conduct, Littering, Trespassing                                           |                                                                                    |                            |
| 1:00 PM                               | RF Thompson, SCHP   | Joshua Ashby        | Kraig Pringle   | F478610                                             | Driving under the Influence                                                          | Wooten, SCHP<br>M Looney, SCHP                                                     |                            |
| 1:00 PM                               | RF Thompson, SCHP   | Gladys Alvarez      | Pro Se          | F680013                                             | Driving under the Influence                                                          | Alex Manolopoulos                                                                  |                            |
| 1:00 PM                               | RF Thompson, SCHP   | Enriqueillo Rosario | Amanda Wicker   | F680010                                             | Driving under the Influence                                                          |                                                                                    |                            |
| 1:00 PM                               | RF Thompson, SCHP   | Adam Woods          | Pro Se          | F548268                                             | Driving under the Influence                                                          |                                                                                    |                            |

|                                |                                             |                  |                  |                 |                                                                          |                                                                                                                                     |                     |
|--------------------------------|---------------------------------------------|------------------|------------------|-----------------|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 1:00 PM                        | C Ladue, SCHP                               | Christina Rose   | Amanda Wicker    | F624885         | Driving under the Influence                                              |                                                                                                                                     |                     |
| 1:00 PM                        | C Ladue, SCHP                               | Derrick Byrd     | Pro Se           | F539865         | Speeding                                                                 |                                                                                                                                     |                     |
| 1:00 PM                        | C Ladue, SCHP                               | Augustus Fitzroy | Rose Mary Parham | F539838         | Speeding                                                                 |                                                                                                                                     |                     |
| 1:00 PM                        | C Ladue, SCHP                               | Henry Horn       | Dick Warder      | F285743         | Failure to Yield                                                         | Stephanie Terry<br>Mae Henson<br>Wendy Culbreath                                                                                    |                     |
| 1:00 PM<br>Disposed/<br>PG     | C Ladue, SCHP                               | Kathryn Howard   | Steve Evans      | F476874         | Driving under the Influence                                              | Stacy Alexander,<br>RN/St Francis<br>Downtown<br>Mercedes<br>Hughes<br>Shana Sorrels,<br>SLED<br>RA Frick,<br>SCHP<br>N Perry, SLED | Disposed/ PG        |
| 1:00 PM                        | C Ladue, SCHP                               | Jimmy Morgan     | Steve Sumner     | F285741         | Driving under the Influence                                              | M McCoy,<br>GCSO<br>Jason Semany,<br>GPD<br>M Huntington,<br>GPD                                                                    |                     |
| 1:00 PM                        | C Ladue, SCHP                               | Billy Owens      | Bill Bouton      | F539876, 77     | Driving under the Influence,<br>Leaving the Scene                        | Cedric Barber<br>William Barber<br>Jarrard Jenkins                                                                                  |                     |
| 1:00 PM                        | C Ladue, SCHP                               | Kelly Pruitt     | Ronnie Cole      | F539888         | Driving under the Influence                                              | Leigh Seawright,<br>RN/GHS<br>Carmen Tucker,<br>SLED                                                                                |                     |
| 1:00 PM                        | C Ladue, SCHP                               | Kelly Wolff      | Erick Barbare    | F544924         | Driving under the Influence                                              |                                                                                                                                     |                     |
| 1:00 PM                        | JD Howard, GCSO                             | Phillip Simmons  | Pro Se           | M994254         | Breach of Trust                                                          | Daria Glenn,<br>Resource MFG                                                                                                        |                     |
| 1:00 PM                        | JD Howard, GCSO                             | Kyle Coyle       | Mike MacKinnon   | N200324         | Larceny                                                                  | Jolynn Skelton<br>Ruben Hernandez<br>Trejo                                                                                          |                     |
| 1:00 PM                        | JD Howard, GCSO                             | Kyle Coyle       | Rob Ianaurio     | M990897         | Petit Larceny                                                            | Charles Frisby<br>Melvin Babb<br>T Fricks, P&E                                                                                      |                     |
| 1:00 PM                        | JD Howard, GCSO                             | Steven Haney     | Steve Evans      | N201592, 94, 95 | Petit Larceny x<br>2. Obtaining<br>Property<br>Under False<br>Pretenses, | Megan Todd<br>John Chapman<br>Amy Odom                                                                                              |                     |
| 1:00 PM<br>Waived up<br>to AOF | C Husband, N.<br>Greenville Univ.<br>Police | Javante Sykes    | Mike Barcroft    | I409011         | Assault and<br>Battery                                                   | Roy Comer<br>Donald Lilly, N.<br>Greenville Univ<br>Latrell Johnson                                                                 | Waived up to<br>AOF |
| 1:00 PM                        | Phil Roberts, GHS<br>Police                 | Gregory Williams | Robert Newton    | F417172         | Driving under the Influence                                              | Janet Stephens                                                                                                                      |                     |
| 1:00 PM                        | M Smith, GCSO                               | Ronald Cooper    | William Long     | 2012A2330201959 | Criminal<br>Domestic<br>Violence                                         | Ethel "Marlene"<br>Cooper                                                                                                           |                     |
| 1:00 PM                        | PG Clark, GCSO                              | Brandon Mooney   | Frank Eppes      | 77274FK         | Driving under the Influence                                              |                                                                                                                                     | 2010 case           |

TUESDAY, MARCH 12, 2013

| TIME     | OFFICER/<br>AFFIANT  | DEFENDANT    | ATTORNEY         | CASE #  | TYPE                              | VICTIM/<br>WITNESS   | OUTCOME         |
|----------|----------------------|--------------|------------------|---------|-----------------------------------|----------------------|-----------------|
| 9:00 AM  |                      | <i>JURY</i>  | <i>SELECTION</i> |         |                                   |                      |                 |
| 10:00 AM |                      |              |                  |         |                                   |                      |                 |
| 11:00 AM |                      |              |                  |         |                                   |                      |                 |
| 1:00 PM  | D Robertson,<br>SCHP | Aaron Cowden | Steve Sumner     | E679389 | Driving<br>under the<br>Influence | Randy Brown,<br>SLED | DATE<br>CERTAIN |
| 2:00 PM  |                      |              |                  |         |                                   |                      |                 |
| 3:00 PM  |                      |              |                  |         |                                   |                      |                 |
| 4:00 PM  |                      |              |                  |         |                                   |                      |                 |

WEDNESDAY MARCH 13, 2013

| TIME     | OFFICER/<br>AFFIANT | DEFENDANT | ATTORNEY | CASE # | TYPE | VICTIM/<br>WITNESS | OUTCOME |
|----------|---------------------|-----------|----------|--------|------|--------------------|---------|
| 9:00 AM  |                     |           |          |        |      |                    |         |
| 10:00 AM |                     |           |          |        |      |                    |         |
| 11:00 AM |                     |           |          |        |      |                    |         |
| 1:00 PM  |                     |           |          |        |      |                    |         |
| 2:00 PM  |                     |           |          |        |      |                    |         |
| 3:00 PM  |                     |           |          |        |      |                    |         |
| 4:00 PM  |                     |           |          |        |      |                    |         |

THURSDAY MARCH 14, 2013

| TIME | OFFICER/<br>AFFIANT | DEFENDANT | ATTORNEY | CASE # | TYPE | VICTIM/<br>WITNESS | OUTCOME |
|------|---------------------|-----------|----------|--------|------|--------------------|---------|
|------|---------------------|-----------|----------|--------|------|--------------------|---------|

|          |  |  |  |  |  |  |  |
|----------|--|--|--|--|--|--|--|
| 9:00 AM  |  |  |  |  |  |  |  |
| 10:00 AM |  |  |  |  |  |  |  |
| 11:00 AM |  |  |  |  |  |  |  |
| 1:00 PM  |  |  |  |  |  |  |  |
| 2:00 PM  |  |  |  |  |  |  |  |
| 3:00 PM  |  |  |  |  |  |  |  |
| 4:00 PM  |  |  |  |  |  |  |  |

**FRIDAY MARCH 15, 2013**

| TIME     | OFFICER/<br>AFFIANT | DEFENDANT | ATTORNEY | CASE # | TYPE | VICTIM/<br>WITNESS | OUTCOME |
|----------|---------------------|-----------|----------|--------|------|--------------------|---------|
| 9:00 AM  |                     |           |          |        |      |                    |         |
| 10:00 AM |                     |           |          |        |      |                    |         |
| 11:00 AM |                     |           |          |        |      |                    |         |
| 1:00 PM  |                     |           |          |        |      |                    |         |
| 2:00 PM  |                     |           |          |        |      |                    |         |
| 3:00 PM  |                     |           |          |        |      |                    |         |
| 4:00 PM  |                     |           |          |        |      |                    |         |

**JURY TRIAL DOCKET**

**MAGISTRATE C.R. GARRETT  
CHICK SPRINGS SUMMARY COURT  
WEEK OF MARCH 25-28, 2013**

\*\*All trial dockets are final. Please note if you are a defense attorney and need to be removed from the docket, please contact the  
**MAGISTRATE'S OFFICE.**\*\*

**PLEASE NOTE JURY SELECTION WILL BE Tuesday, March 26, 2013 AT 9:00 AM**

**MONDAY, MARCH 25, 2013**

| TIME    | OFFICER/<br>AFFIANT   | DEFENDANT      | ATTORNEY      | CASE #      | TYPE                                        | VICTIM/<br>WITNESS | OUTCOME |
|---------|-----------------------|----------------|---------------|-------------|---------------------------------------------|--------------------|---------|
| 9:00 AM | B Sutherland,<br>SCHP | James Byrd     | Steve Evans   | F618383     | Driving under<br>the Influence              |                    |         |
| 9:00 AM | B Sutherland,<br>SCHP | Paul Etheridge | Will McKibbin | F727708     | Driving under<br>Suspension                 |                    |         |
| 9:00 AM | B Sutherland,<br>SCHP | Julia Hickman  | Pro Se        | F678722, 23 | Driving under<br>the Influence,<br>No SC DL |                    |         |
| 9:00 AM | B Sutherland,<br>SCHP | John Sumerel   | Tom Quinn     | F546471     | Driving under<br>the Influence              |                    |         |

|         |                    |                   |                |                      |                                                                 |                                                                |
|---------|--------------------|-------------------|----------------|----------------------|-----------------------------------------------------------------|----------------------------------------------------------------|
| 9:00AM  | B Sutherland, SCHP | Cheritta Delaine  | Theo Mitchell  | F152653              | Disregarding Traffic Light                                      | Andrea Berry<br>R Thompson, SCHP<br>Stephanie Lawing           |
| 9:00 AM | B Sutherland, SCHP | Demico McDonald   | Steve Evans    | F483618              | Driving under Suspension                                        |                                                                |
| 9:00 AM | B Sutherland, SCHP | Richard Oref      | Kim Varner     | F152626              | Driving under the Influence                                     | John Sims                                                      |
| 9:00 AM | B Sutherland, SCHP | Alireza Reyhani   | Steve Sumner   | F483628              | Driving under the Influence                                     |                                                                |
| 9:00 AM | B Sutherland, SCHP | David Smith       | Nihar Patel    | F483648, 49          | Driving under the Influence, Open Container                     |                                                                |
| 9:00 AM | B Sutherland, SCHP | Scott Smith       | Mike Coulter   | F284301, F234900     | Driving under Suspension, Operating Uninsured                   |                                                                |
| 9:00 AM | B Sutherland, SCHP | Trifon Tyner      | Matt Kappel    | F284362              | Driving under the Influence                                     | Henry Peden<br>Leigh Seawright, RN/GMH<br>Jennifer Brown, SLED |
| 9:00 AM | M George, SCHP     | Douglas Hart      | Steve Sumner   | F731255              | Driving under the Influence                                     |                                                                |
| 9:00 AM | M George, SCHP     | Dalton Malecha    | Steve Sumner   | F731259, 60, 61      | Driving under the Influence, Minor in Poss, False DL            |                                                                |
| 9:00 AM | M George, SCHP     | Anthony Stribling | Chip Price     | F621761, 62          | Driving under the Influence, ABC Vio                            |                                                                |
| 9:00 AM | M George, SCHP     | Diana Tolles      | John Newkirk   | F621766              | Striking Fixtures                                               | Steven Kang                                                    |
| 9:00 AM | M George, SCHP     | Thomas Holliday   | Rob Ianuario   | F550871              | Driving under the Influence                                     |                                                                |
| 9:00 AM | M George, SCHP     | David Howell      | Alex Stalvey   | F275202, 03          | Driving under Suspension, Following too Close                   |                                                                |
| 9:00 AM | M George, SCHP     | James Nichols     | Kirk Fisher    | F279582              | Too Fast for Conditions                                         | Michael Griffin<br>Steve Campbell                              |
| 9:00 AM | M George, SCHP     | Derek Siegel      | Nihar Patel    | F343788, 89          | Driving under the Influence, ABC Violation                      |                                                                |
|         |                    |                   |                |                      |                                                                 |                                                                |
| 1:00 PM | D McElhany, SCHP   | Adam Hester       | Sara Henry     | I408566, 67          | Driving under Suspension, Too Fast for Conditions               |                                                                |
| 1:00 PM | D McElhany, SCHP   | Michael Parenti   | Steve Sumner   | F040677, 78          | DUAC, Open Container                                            | J Cannon, SCHP                                                 |
| 1:00 PM | J Johnson, SCHP    | Clarence Williams | Jake Erwin     | N200129, N200131, 33 | Reckless Driving, Child Restraint Vio, Driving under Suspension | McElhany, SCHP                                                 |
| 1:00 PM | McElhany, SCHP     | Clarence Williams | Jake Erwin     | M991766              | Driving under Suspension                                        |                                                                |
| 1:00 PM | E Turner, GCSO     | James Willard     | Dan Farnsworth | 63866EV              | Driving under Suspension                                        |                                                                |

|         |                   |                  |                |                 |                                                    |                                                                            |           |
|---------|-------------------|------------------|----------------|-----------------|----------------------------------------------------|----------------------------------------------------------------------------|-----------|
| 1:00 PM | G Porter, GCSO    | Benny Willimon   | Dan Farnsworth | J992881         | Shoplifting                                        | Micah Cline, Sam's Club                                                    |           |
| 1:00 PM | Ridgeway, SCHP    | Robert Ramey     | Dan Farnsworth | F686136         | Improper Turn                                      | Andrea Pilgrim                                                             |           |
| 1:00 PM | M Cannon, GCSO    | Jesse Priest     | Steve Sumner   | 81952FK         | Driving under the Influence                        |                                                                            | 2010 case |
| 1:00 PM | Atkins, SCHP      | Julian Alkhouri  | Pro Se         | F681339         | Too Fast for Conditions                            | Kenneth Titus                                                              |           |
| 1:00 PM | Atkins, SCHP      | Adam Dixon       | Nihar Patel    | F681315         | Simple Possession of Marijuana                     | J Armstrong, Lab                                                           |           |
| 1:00 PM | Atkins, SCHP      | Ryan Pace        | Pro Se         | F549885         | Improper Lane Change                               | Daniel Rzeszutek                                                           |           |
| 1:00 PM | Atkins, SCHP      | Melinda Rosemond | Pro Se         | F735636         | Speeding                                           |                                                                            |           |
| 1:00 PM | Atkins, SCHP      | Broadus Downs    | Amanda Wicker  | F064983         | Driving under the Influence                        | Jennifer Brown, SLED<br>Cathy Dykes, N. Greenville Hosp<br>Beverly Fajardo |           |
| 1:00 PM | Atkins, SCHP      | Ross Gillingham  | Rodney Brown   | F472355         | Driving under the Influence                        | Jose Vasquez, MLT/N. Greenville Hosp<br>S Sorrells, SLED                   |           |
| 1:00 PM | Atkins, SCHP      | Anthony Richard  | Kraig Pringle  | F416677         | Driving under Suspension                           |                                                                            |           |
| 1:00 PM | Weinmueller, GCSO | Timothy Lee      | Pro Se         | 2012A2310300015 | Petit Larceny                                      | Louise Brown<br>Lillie Evans<br>Stanley Heard                              |           |
| 1:00 PM | Weinmueller, GCSO | James Brockman   | Steve Sumner   | 75864, 65FK     | Driving under the Influence, Open Container        |                                                                            | 2010 case |
| 1:00 PM | Weinmueller, GCSO | Lisa Day         | Brian Johnson  | N200593, 95     | Criminal Domestic Violence, Malicious Damage       | Jeffrey Forant                                                             |           |
| 1:00 PM | Weinmueller, GCSO | Martha Pickney   | Dick Warder    | J993718         | Shoplifting                                        | Alphonso Holmes, Target                                                    |           |
| 1:00 PM | Weinmueller, GCSO | Joseph Williams  | Jake Erwin     | 59079, 81FV     | Driving under Suspension, Interfering with Officer |                                                                            |           |
| 1:00 PM | Weinmueller, GCSO | Sharon Wyatt     | Steve Sumner   | 71702, 03FD     | Driving under the Influence, Open Container        | J Armstrong, Lab<br>Hendricks, GCSO<br>Fricks, P&E                         | 2010 case |

TUESDAY, MARCH 26, 2013

| TIME | OFFICER/ | DEFENDANT | ATTORNEY | CASE # | TYPE | VICTIM/ | OUTCOME |
|------|----------|-----------|----------|--------|------|---------|---------|
|------|----------|-----------|----------|--------|------|---------|---------|

|          | AFFIANT |                       |  |  |  | WITNESS |  |
|----------|---------|-----------------------|--|--|--|---------|--|
| 9:00 AM  |         | <i>JURY SELECTION</i> |  |  |  |         |  |
| 10:00 AM |         |                       |  |  |  |         |  |
| 11:00 AM |         |                       |  |  |  |         |  |
| 1:00 PM  |         |                       |  |  |  |         |  |
| 2:00 PM  |         |                       |  |  |  |         |  |
| 3:00 PM  |         |                       |  |  |  |         |  |
| 4:00 PM  |         |                       |  |  |  |         |  |

WEDNESDAY MARCH 27, 2013

| TIME     | OFFICER/<br>AFFIANT | DEFENDANT | ATTORNEY | CASE # | TYPE | VICTIM/<br>WITNESS | OUTCOME |
|----------|---------------------|-----------|----------|--------|------|--------------------|---------|
| 9:00 AM  |                     |           |          |        |      |                    |         |
| 10:00 AM |                     |           |          |        |      |                    |         |
| 11:00 AM |                     |           |          |        |      |                    |         |
| 1:00 PM  |                     |           |          |        |      |                    |         |
| 2:00 PM  |                     |           |          |        |      |                    |         |
| 3:00 PM  |                     |           |          |        |      |                    |         |
| 4:00 PM  |                     |           |          |        |      |                    |         |

THURSDAY MARCH 28, 2013

| TIME     | OFFICER/<br>AFFIANT | DEFENDANT | ATTORNEY | CASE # | TYPE | VICTIM/<br>WITNESS | OUTCOME |
|----------|---------------------|-----------|----------|--------|------|--------------------|---------|
| 9:00 AM  |                     |           |          |        |      |                    |         |
| 10:00 AM |                     |           |          |        |      |                    |         |

|          |                       |               |              |         |                     |                                                                                        |                               |
|----------|-----------------------|---------------|--------------|---------|---------------------|----------------------------------------------------------------------------------------|-------------------------------|
| 11:00 AM |                       |               |              |         |                     |                                                                                        |                               |
| 1:00 PM  | Westmoreland,<br>GCSO | Reginald Epps | Darren Haley | 72402FD | Unlawful<br>Betting | Marchi, GCSO<br>Jacobsen, GCSO<br>Flounders, P&E<br>Ronnie Pitts<br>T Rodgers,<br>GCSO | 2010 case<br><br>DATE CERTAIN |
| 2:00 PM  |                       |               |              |         |                     |                                                                                        |                               |
| 3:00 PM  |                       |               |              |         |                     |                                                                                        |                               |
| 4:00 PM  |                       |               |              |         |                     |                                                                                        |                               |



**SOUTH CAROLINA LAW ENFORCEMENT DIVISION  
BREATH ALCOHOL ANALYSIS TEST REPORT  
DRIVING UNDER THE INFLUENCE**



**SUBJECT BIOGRAPHICAL INFORMATION**

SUBJECT NAME: MARIA/ASOYAN  
RACE: HISPANIC  
SEX: F  
DOB: 05/17/1983

DL NUMBER: 011471041  
DRIVER'S LICENSE: SC  
SUBJECT ADDRESS: 321 HICKORY LANE  
MAULDIN, SC

**ARREST INFORMATION**

OFFICER NAME: J/R/JACKSON  
TICKET NUMBER: 33341PV  
ARREST DATE: 09/04/2011

AGENCY ORI: SC0230000  
COUNTY OF ARREST: 23 - GREENVILLE  
ARREST TIME: 03:20

**OPERATOR INFORMATION**

TEST OPERATOR: J/R/JACKSON  
CERTIFICATION #: DMT000886  
SOLUTION LOT #: 11801  
BREATH TEST VIDEO RECORDED? YES  
SUBJECT'S MOUTH CHECKED AND  
ANY FOREIGN MATERIAL REMOVED? YES  
SUBJECT ADVISED OF APPLICABLE RIGHTS? YES

AGENCY ORI: SC0230000  
EXPIRATION DATE: 01/03/2013  
BOTTLE: 1014  
SUBJECT INFORMED OF VIDEO RECORDING? YES  
SUBJECT INFORMED OF TYPE SAMPLE REQUESTED? YES  
SUBJECT OBSERVED FOR A MINIMUM OF (20)  
TWENTY MINUTES? YES

**SUBJECT'S BREATH ALCOHOL TEST RESULTS**

DATAMASTER DMT SERIAL #117607

|                              |                 |                     |
|------------------------------|-----------------|---------------------|
| TEST DATE:                   |                 | 09/04/2011          |
| OBSERVATION START TIME:      |                 | 03:33:11            |
| BLANK TEST                   | 0.00            | 04:14:10            |
| INTERNAL STANDARD            | VERIFIED        | 04:14:16            |
| 0.08% SIMULATOR TEMPERATURE  | 33.99°C         | 04:14:35            |
| 0.08% SIMULATOR VERIFICATION | 0.079           | 04:14:35            |
| BLACK TEST                   | 8.00            | 04:15:28            |
| <del>INTERNAL STANDARD</del> | <del>0.00</del> | <del>04:16:49</del> |
| BLANK TEST                   | 0.00            | 04:16:49            |
| INTERNAL STANDARD            | VERIFIED        | 04:16:56            |

Subject's Signature

(Received Copy) Date/Time

Arresting Officer's Signature

Test Operator's Signature

VISIT [WWW.SLED.SC.GOV](http://WWW.SLED.SC.GOV) AND CLICK ON IMPLIED CONSENT. THEN CLICK ON BREATH TEST VIDEO RECORDINGS. ENTER THE REQUESTED INFORMATION FROM THE BOX BELOW TO ACCESS THE VIDEO RECORDING OF THIS BREATH TEST:

SUBJECT ID: 003FD603E1  
SUBJECT PASSWORD: 92DC8

Scanned by  
IPF

\*\*\*IMPORTANT NOTICE\*\*\*

INFORMATION FROM THIS REPORT WILL BE USED TO ACCESS THE BREATH TEST VIDEO. ANYONE WITH THIS INFORMATION WILL HAVE ACCESS TO THE VIDEO. PROTECT THIS REPORT AS YOU WOULD ANY IMPORTANT DOCUMENT. SLED ASSUMES NO RESPONSIBILITY FOR UNAUTHORIZED ACCESS.

SLED Form 1000-1 (Rev. April 2010)

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

JUN 24 2016

**SC Court of Appeals**

The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2014-002317

Maria Moyao,

Appellant,

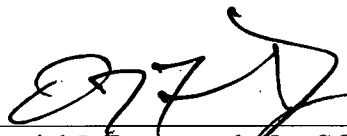
v.

South Carolina,

Respondent.

CERTIFICATE OF COUNSEL

I certify that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material. I also certify that the Amended Record on Appeal contains no matter which is irrelevant to this appeal.



Daniel J. Farnsworth, Jr. SC Bar #6922  
Farnsworth Law Offices, LLC  
211 Pettigru Street  
Post Office Box 8719  
Greenville, South Carolina 29604  
(864) 250-9119  
Attorney for Appellant

June 24<sup>th</sup>, 2015.