

VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Lexington County

S.C. SUPREME COURT

Honorable Walton J. McLeod, IV, Circuit Court Judge

CHRISTOPHER MANNING,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000831

APPENDIX

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JENNIFER BROWN -- IN CAMERA -- MR. MOBLEY

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1 However, what we may do -- and it just depends on what
2 her testimony will be in regards to this -- is ask her
3 about a synergistic effect to a system.

4 THE COURT: What does that word mean,
5 synergistic?

6 MR. MOBLEY: Meaning that with a combination
7 of a drug and an alcohol combined, if there is a
8 different type of elevated impairment that occurs at
9 that particular time.

10 THE COURT: Sure. You can ask her about that
11 in camera.

12 MR. MOBLEY: In camera, yes, sir.

13 THE COURT: Sure, I'll be glad to hear that.

14 MR. MOBLEY: Okay. Thank you, Your Honor.

15 **IN CAMERA EXAMINATION**

16 BY MR. MOBLEY:

17 Q Now, Ms. Brown, you got some results in this
18 particular case?

19 A Correct.

20 Q Okay. Do you mind telling the Court what those
21 results were?

22 A Sure. For ethanol we have a result of 0.173
23 percent, and for 11-carboxy tetrahydrocannabinol or
24 what we just call carboxy T.H.C., we have a result
25 of 2.2. And that's in micrograms per liter.

1 Q Now, is that above the threshold amount for
2 detection by S.L.E.D. standards?

3 A Yes.

4 Q Now, just explain to the Court what the threshold
5 amount is and why is that even relevant to this?

6 A Well, we set a threshold that if a number is below,
7 in this case a 2, then we don't report it out as
8 positive. So we report it as negative. So if this
9 was, for instance, a 1.9, it would have read as a
10 result of negative.

11 Q Now, if it's above that threshold amount, then --

12 A We report it.

13 Q -- you report it?

14 A Uh-huh. (Indicating affirmative response.)

15 Q And that's what we have present here?

16 A Correct.

17 Q Now, based off of these results, would you be able
18 to tell us what a synergistic effect would be and
19 if that would even be applicable according to these
20 results? Would it be -- first and foremost, would
21 it be applicable to these results?

22 A I wouldn't necessarily say it's synergistic, and
23 because it is the metabolite of T.H.C. and not an
24 active metabolite, and not having T.H.C. itself
25 present in our report, it's really hard to tell you

1 if it would have been synergistic or even additive
2 in the sense of -- just because I don't have the
3 parent there.

4 So the parent will narrow a window of time for
5 us. So it's kind of inconclusive if it would have
6 really had an effect with this amount that we
7 tested to say yes or no.

8 Q So just to -- let me ask you this, Ms. Brown. You
9 don't know affirmatively, but you also don't know
10 that it could not have? Could it have had? Let me
11 ask you that.

12 A Could?

13 Q A synergistic effect, an interaction between the
14 marijuana and the alcohol itself.

15 A In general marijuana and alcohol can have at least
16 an additive effect. Saying that, if you have one
17 drug alone, it's going to have such effects, but if
18 you combine the two, they're going to be -- it's
19 like a one plus one equals two type of scenario,
20 where synergistic is more like a one plus one
21 equals five.

22 So I'm not comfortable necessarily with saying
23 that it would be synergistic, but if we had
24 marijuana and alcohol, it could definitely be an
25 additive type of effect.

1 Q Now, based off of these results with the
2 cannabinoids which is another word, a scientific
3 version --

4 A Yes.

5 Q -- for marijuana, we can say that it was definitely
6 present in his system, maybe not active?

7 A He definitely had the metabolite present in his
8 system in the sample that we received.

9 Q Well, I guess the question would be, explain to the
10 Court what a metabolite is and how is that
11 relevant.

12 A Basically what a metabolite is is the way of --
13 your body's way of getting rid of something. So in
14 this case what you basically have happen is the
15 marijuana, the active component, the T.H.C. or the
16 tetrahydrocannabinol, it breaks down into the
17 different products.

18 So one of the things it breaks down into is
19 the 11-carboxy tetrahydrocannabinol. So it's just
20 basically your body's way of getting rid of the
21 parent or the original drug there.

22 Q Okay. So that is what is showing up present in
23 your detailed analysis on the second page?

24 A Correct.

25 Q Without the parent there --

JENNIFER BROWN -- IN CAMERA -- MR. MADSEN

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1 A Uh-huh. (Indicating affirmative response.)

2 Q -- are you able to tell how recently or how
3 infrequently this was used or how close to the time
4 that the blood was withdrawn?

5 A No.

6 Q No.

7 MR. MOBLEY: I think that is going to be the
8 extent of the questions, Your Honor.

9 THE COURT: All right. Mr. Madsen.

10 **IN CAMERA EXAMINATION**

11 BY MR. MADSEN:

12 Q So ultimately if it's a metabolite, the body, if I
13 understand, is breaking it down. It's not active
14 at that point in time, but you could certainly test
15 and find that in the blood; right?

16 A For the carboxy tetrahydrocannabinol or T.H.C., the
17 carboxy T.H.C., it's an inactive metabolite.
18 However, in some drugs you have active metabolites.
19 For instance, for T.H.C. we have hydroxy T.H.C.,
20 and that would be an active metabolite, which
21 wasn't found in this case, but --

22 Q It wasn't found in this case?

23 A It was not. That's why it wasn't reported on the
24 results. But, yeah, there are some active and
25 there are some inactive. It just depends on the

1 drug.

2 Q So if I understand, you don't feel comfortable
3 saying to a reasonable degree of certainty within
4 your field that given these results that this
5 person was under the influence of or actively had
6 the T.H.C., anything but the metabolite?

7 A Correct, when the sample was drawn.

8 MR. MADSEN: That's all the questions I
9 have.

10 THE COURT: Anything on redirect, Solicitor?

11 MR. MOBLEY: Nothing, Your Honor.

12 THE COURT: As I understand your testimony,
13 Ms. Brown, not having the parent metabolite would mean
14 that the body is breaking down the T.H.C., and it's
15 further along in that process, in that process of
16 breaking it down, and that you would have found a parent
17 metabolite?

18 THE WITNESS: The parent metabolite determines
19 where you start --

20 COURT REPORTER: I'm sorry. Could you say
21 that again.

22 THE WITNESS: The parent is where you start.
23 The initial drug that you take in is what we call the
24 parent. So the metabolite would be anything that goes
25 on after that. So in this case the metabolite would be

1 the carboxy T.H.C.

2 THE COURT: Do different labs have different
3 threshold levels?

4 THE WITNESS: I can't tell you for certain. I
5 would assume some might have a little lower, but I don't
6 really have any experience with what other labs would
7 have.

8 THE COURT: And the threshold level in this is
9 2.0? S.L.E.D.'s is 2.0 milligrams per liter?

10 THE WITNESS: Micro.

11 THE COURT: Micrograms per liter. That's the
12 correct terminology?

13 THE WITNESS: Uh huh. (Indicating affirmative
14 response.)

15 THE COURT: So if it would have been 2.0, if
16 your finding would have been 2.0 instead of 2.2, it
17 would have been reported out as negative?

18 THE WITNESS: No, it would have been less
19 than 2.0, so if it was like 1.9.

20 THE COURT: One point nine?

21 THE WITNESS: Correct.

22 THE COURT: Do you ever get to like 1.99 or
23 does it go up in tenths?

24 THE WITNESS: No, we -- our report will go to
25 two decimal places, so we can have a 1.99.

1 THE COURT: Okay. Are you familiar with the
2 effects of alcohol on the system?

3 THE WITNESS: Yes.

4 THE COURT: Are you familiar with the effects
5 of marijuana on a person's system?

6 THE WITNESS: Yes.

7 THE COURT: With this level of just the
8 marijuana --

9 THE WITNESS: The metabolite?

10 THE COURT: The metabolite, what would be the
11 effect on a person's system?

12 THE WITNESS: Without having the parent, the
13 T.H.C. itself, it's really hard to say because that
14 gives me a better time frame. So, if I have a better
15 time frame, I can narrow down what the effects might be.

16 THE COURT: And when you say time frame, in
17 other words, if by history --

18 THE WITNESS: Right.

19 THE COURT: -- someone could say this person
20 was ingesting -- or I guess you smoke cocaine -- excuse
21 me, you smoke marijuana.

22 THE WITNESS: Uh huh. (Indicating affirmative
23 response.)

24 THE COURT: If someone was smoking marijuana
25 12 hours or 24 hours or 48 hours before this event,

1 that's what you're talking about?

2 THE WITNESS: Right, yeah.

3 THE COURT: Then You have a time frame?

4 THE WITNESS: Right.

5 THE COURT: How long does T.H.C. stay in the
6 system?

7 THE WITNESS: It depends. It depends on if
8 the person is an infrequent user or a chronic user.
9 Because marijuana is the type of drug that actually will
10 stay in your fat. So because it does that, it can leech
11 out over time. So it's possible that in a chronic user,
12 they build up a lot. So it's dependent on the type of
13 user.

14 THE COURT: But if you're chronic --

15 THE WITNESS: Meaning like every day?

16 THE COURT: Right. I do probation violations,
17 and I hear that a lot in probation violations. But if
18 you are chronic, you would be more likely to find it?

19 THE WITNESS: It just depends on truthfully
20 how long ago it was when they smoked it.

21 THE COURT: What does the term half life mean?

22 THE WITNESS: Half life is the time it takes
23 half the drug to be out of the system.

24 THE COURT: Do they quantitate that for
25 marijuana?

1 THE WITNESS: There is a range of half life
2 for marijuana, but once again it's dependent on if it's
3 an infrequent user versus a chronic user. So, yes,
4 there is one generally.

5 THE COURT: So with your testing of this blood
6 sample, you have a .173 ethanol?

7 THE WITNESS: Correct.

8 THE COURT: And a 2.2 T.H.C. And based on
9 your responses to the solicitor, is this a correct
10 statement -- if it's incorrect, just tell me -- that you
11 would not see -- it would not be your opinion or you
12 would not form an opinion that this would cause a
13 synergistic effect --

14 THE WITNESS: No, not without --

15 THE COURT: -- with this level of T.H.C.?

16 THE WITNESS: Not without having the parent
17 because this is a metabolite.

18 THE COURT: Is it a fair statement that in
19 this sample then, you just happened to have T.H.C. on
20 board?

21 THE WITNESS: I would say that we just
22 happened to have the metabolite. So it would just come
23 to say that sometime in the past he would have had to
24 have smoked marijuana.

25 THE COURT: Can you quantitate that, sometime

1 in the past, at all?

2 THE WITNESS: Not really without having the
3 parent because the parent gives us a narrowing of time.

4 THE COURT: And if you had that parent, how
5 narrow would the time be within your field of expertise?

6 THE WITNESS: It depends really on the
7 concentration you would see and the concentration of the
8 carboxy. There have been different models formed to
9 narrow windows based on the amount of the parent and the
10 amount of carboxy.

11 THE COURT: What are those ranges?

12 THE WITNESS: It depends on the amount that
13 you see of the parent versus how much you see of the
14 metabolite.

15 THE COURT: All right. Solicitor, what
16 evidence do you have or are you going to have suggesting
17 that the Defendant was under the influence of
18 marijuana? Were there any physical observations
19 made as far as being under the influence of marijuana?

20 MR. MOBLEY: No, Your Honor. And pursuant to
21 the order of the Court and the wishes of the Public
22 Defender at the time, there was no mention of the
23 possibility of them leaving to go swim and smoke
24 marijuana at the time, not that they had smoked
25 marijuana.

1 THE COURT: I never heard that.

2 MR. MOBLEY: No, sir. It did not come out on
3 the stand because you remember, we could not mention
4 anything about marijuana.

5 THE COURT: I never heard that in camera. You
6 can say anything in front of me in camera within reason.
7 But, I mean, you can't -- that's the only way I can rule
8 on things is whatever I hear in camera, but I never even
9 heard that. That issue was never visited in front of me
10 in camera.

11 MR. MOBLEY: Well, not specifically from any
12 testimony of mine because I attempted and I did direct
13 my questioning on ways specifically for that purpose out
14 of respect for the motion that Mr. Madsen had made.
15 Maybe that's why you never heard any testimony because
16 there wasn't any provided in camera because of how I
17 culled my questions at the time.

18 THE COURT: Well, even if that's the plan --
19 and perhaps I don't have the geography properly in my
20 mind, but I thought this vehicle was headed west on 378
21 towards Saluda.

22 MR. MOBLEY: I'm bad with directions, but let
23 me ask my trooper.

24 THE COURT: Was he going towards Saluda as
25 opposed to coming towards Lexington?

1 TROOPER: Yes, sir.

2 THE COURT: Going towards Saluda?

3 TROOPER: Yes, sir.

4 THE COURT: And this is in Lexington County.

5 So I take it that the vehicle had not yet made it to the
6 turnoff for Ramp 4 of S.C.E. & G. because that's in
7 Saluda County?

8 TROOPER: That's correct.

9 THE COURT: You have to go past whatever that
10 restaurant is right there at the county line?

11 TROOPER: Yes, sir, and I'm from the area, so
12 I'm very familiar with it.

13 THE COURT: So even if that were the plan,
14 they had not -- not only had they not, they never made
15 it to the ramp or there's no evidence they made it to
16 the ramp, and there's no evidence they went swimming?

17 MR. MOBLEY: No, Your Honor. And there's no
18 physical evidence that they found at the scene that they
19 had smoked marijuana at that particular time. So I
20 think it's based off of the forensic toxicologist's
21 testimony as to the results. I think the writing is on
22 the wall as to what is going to happen with the --

23 THE COURT: The writing is on the wall. I've
24 heard several things about that. The writing is on the
25 wall. You have got to be man or woman enough to read

1 it.

2 MR. MOBLEY: Yes, sir.

3 THE COURT: And another one I heard is,
4 sometimes the writing that's on the wall is a forgery.
5 That's, of course, not with this witness. I don't mean
6 it like that at all. But I heard that one recently.
7 All right. Anything further, Solicitor, Mr. Madsen?

8 MR. MOBLEY: Not on this particular issue, but
9 we have another one to take up after this one.

10 THE COURT: All right. I've looked at some of
11 these cases, State versus Horton, 598 S.E.2d 279, and I
12 believe this is Kennedy versus Griffin, 595 S.E.2d 248.
13 They are citing -- the Kennedy case is cited in the
14 older Gullledge case, and they were all 403.

15 I believe in Horton it was allowed in and in
16 Kennedy it was not. In Kennedy they state that although
17 Kennedy tested positive for marijuana, the tests did not
18 measure the quantity of marijuana in Kennedy's system or
19 how recently Kennedy had been exposed to marijuana.

20 Unlike Gullledge, no evidence in the present
21 case indicated whether the marijuana was of such a level
22 as to impair Kennedy's judgment. Further, the
23 circumstantial evidence did not support an inference
24 that Kennedy was impaired due to the marijuana use.

25 No marijuana was found in or near Kennedy's

1 truck, and there was no testimony that Kennedy smelled
2 of marijuana, which has a very -- what's that word,
3 pungent?

4 MR. MOBLEY: Pungent.

5 THE COURT: Pungent smell. Although witnesses
6 noticed that Kennedy delayed in applying his brakes,
7 Kennedy's actions did not necessarily suggest that he
8 was driving under an impairment.

9 There are obviously suggestions that driving
10 was impaired, but the historical testimony is that over
11 the course of approximately five hours, the Defendant
12 ingested alcoholic beverages, including beer and perhaps
13 some shots.

14 I think under these circumstances, the
15 evidence of the mere presence of marijuana without any
16 further indications of impairment could mislead the
17 jury, given the fact that the expert witness is of the
18 opinion that it would not be a synergistic effect in
19 this regard and the threshold of 2.00 resulting in a
20 2.2.

21 So, with that, I'm going to sustain the 403
22 objection of Mr. Madsen in that regard to the marijuana.
23 I'm assuming I'm correct that there is no evidence
24 that's going to come down the road that there was a
25 smell of marijuana, location of marijuana, anything of

1 that nature?

2 MR. MOBLEY: You are correct, Your Honor.

3 THE COURT: All right. Why don't we take
4 about 15 minutes.

5 MR. MOBLEY: Yes, sir.

6 THE COURT: You have something further?

7 MR. MOBLEY: Briefly, Your Honor.

8 THE COURT: Yes, sir.

9 MR. MOBLEY: Pursuant to your granting of the
10 motion, we want to make sure that we do everything
11 correctly here. We are going to have to redact that
12 particular specific report, and I just want to get the
13 Court's permission to do so, so that we can take out any
14 reference to cannabinoids.

15 THE COURT: Certainly, you may do so, yes,
16 sir.

17 MR. MOBLEY: And we have another motion that
18 the State wants to put up at this particular point
19 before we take a break.

20 THE COURT: And what is that motion? Let me
21 hear the motion so when we come back out here, we will
22 be ready for the jury. Is that all right? Are you all
23 right, Madame Court Reporter?

24 COURT REPORTER: I'm close to the edge, Judge.

25 THE COURT: How much longer are you going to

1 be? How long is your motion?

2 MR. MOBLEY: It shouldn't be too long.

3 THE COURT: How long is your motion going to
4 be?

5 MR. MOBLEY: It shouldn't be but about ten
6 minutes. Do you want to take a break?

7 THE COURT: All right. Let's take a break.
8 We'll take about a 15-minute break. You may step down.
9 You may not discuss your testimony during this brief
10 recess, except you may discuss -- Mr. Madsen, you don't
11 have any objection if Ms. Brown does discuss with the
12 solicitor the issue of not mentioning marijuana during
13 the break?

14 MR. MADSEN: No, sir, I trust him.

15 THE COURT: All right. Thank you very much.
16 Court will be in recess 15 minutes.

17 MR. MOBLEY: Thank you, Your Honor.

18 (Whereupon there is a recess.)

19 THE COURT: All right. You have a motion,
20 Solicitor?

21 MR. MOBLEY: Yes, Your Honor.

22 THE COURT: Yes, sir.

23 MR. MOBLEY: Your Honor, listening to the
24 cross examination of the witnesses that have been
25 provided by S.L.E.D., I picked up on the fact that

1 Mr. Madsen is beginning to request and ask questions in
2 regards to the victim's blood, was it ever handled or
3 anything by some of these chain witnesses.

4 Now, at this point beginning where Ms. Brown
5 actually did the results for both the Defendant and the
6 victim, it's the State's position that Mr. Madsen cannot
7 ask her any questions in regards to the victim's blood
8 because a complete chain of custody has not, first and
9 foremost, been established by anyone, especially my
10 witnesses that have been provided at this particular
11 point.

12 First and foremost, Mr. Zeigler was not asked
13 about how he obtained the blood or who obtained it, how
14 was it obtained, the process that he went through to get
15 that blood.

16 Additionally to that, within that chain of
17 custody for Mr. Jacob Hill, our victim in this case,
18 Heather Dailey was part of that chain and actually did
19 some of the same functions that Mr. Brandon Landrum did
20 in his position with the Defendant's blood.

21 So we have two individuals, first from the
22 beginning of the chain, finding out where that blood
23 came from, who took it, how they took it, and what it
24 was contained in; and, secondly, what it was placed in
25 when it got to S.L.E.D.

1 One of the integral parts and the reason why
2 it got to Ms. Jennifer Brown was because of the analysis
3 that was performed by Ms. Heather Dailey. The State
4 does not intend to offer up the results of the victim,
5 Mr. Jacob Hill, in this particular case.

6 And without those particular witnesses
7 present, I don't think that the defense will be able to
8 ask any questions pertaining to it, Your Honor. We
9 would just like to have a ruling upon that before he
10 gets up and begins cross examining our forensic
11 toxicologist.

12 THE COURT: All right. Mr. Madsen.

13 MR. MADSEN: Judge, we think that we have
14 provided through the testimony a sufficient chain of
15 custody. I had asked Mr. Zeigler if they drew blood and
16 if he sent it to S.L.E.D., and he indicated that they
17 did.

18 We've gone through the chain from Amy Stephens
19 to Patricia Crooks to Brandon Williams. Then it picked
20 back up with Brandon Landrum. But he had indicated that
21 that had gone from Heather Dailey, who received it from
22 the toxicology fridge, which is where Brandon Williams
23 had placed it, and then it went back to the toxicology
24 refrigerator, which I believe is where Ms. Brown is
25 going to testify that she received it from.

1 So we do believe that a sufficient chain of
2 custody has been established. Obviously I think that if
3 there is -- their argument would be a weakness in the
4 chain, but I do believe that we could ask about that.

5 THE COURT: All right. Solicitor.

6 MR. MOBLEY: Your Honor, our argument is that
7 I don't think that there has been any testimony by
8 Mr. Zeigler. He testified about delivering blood to
9 S.L.E.D., but he never testified who drew that blood.

10 He states that, We did. But who is we and who
11 is that specific person? That person has to be
12 questioned in regards to the process about obtaining
13 that particular blood, how it was sealed, the amount of
14 blood, and things of that nature. That would come from
15 the cross examination without direct testimony.

16 Additionally, Ms. Heather Dailey would be an
17 integral part of this particular chain because in the
18 victim's blood, we have active components of T.H.C., as
19 well as numerous other prescription drugs that are
20 present in his particular -- in his blood. She is not
21 present and she is not going to be present during the
22 case in chief.

23 Now, if Mr. Madsen intends to offer that and
24 he can get Ms. Dailey and complete his chain during his
25 case, then we certainly welcome that and we invite him

1 to do so. We can actually have Ms. Brown come back to
2 testify to Mr. Hill's results when that has been
3 fulfilled on that particular end of it.

4 So we think that the individuals that are
5 missing is not -- it doesn't create a weakness. It
6 creates the chain as being fatal because the very first
7 person who took out the blood we don't know. There has
8 been no testimony in court that has been provided about
9 that. We don't know who that person was, and
10 Mr. Zeigler wasn't asked.

11 When it was at S.L.E.D., the forensic
12 toxicologist, Ms. Heather Dailey, did something very
13 integral with this particular blood, and she was the one
14 who identified in his blood these positive aspects of
15 drugs in his system to make it go from a level one to a
16 level two, to Ms. Brown.

17 THE COURT: What was the testimony of
18 Mr. Zeigler? I know he talked about the needle and all.
19 What was that testimony of Mr. Zeigler, the deputy
20 coroner?

21 MR. MOBLEY: Your Honor, are you asking me or
22 Mr. Madsen?

23 THE COURT: I am asking whoever is here to
24 respond.

25 MR. MOBLEY: From my recollection of the

1 events, it appears that he was talking about an autopsy
2 because he was asked by Mr. Madsen about an autopsy, why
3 an autopsy -- why or if an autopsy had been performed,
4 and he then goes --

5 MR. MADSEN: Judge, my understanding is that
6 they classify it as an autopsy if any fluids are
7 withdrawn. Our notes show that fluids were, that blood
8 was withdrawn from Mr. Hill, and then sent to S.L.E.D.
9 Then from there Ms. Stephens testified that they had
10 received it from the deputy coroner, Mr. Zeigler.

11 MR. MOBLEY: And the State's question would be
12 by whom was it drawn?

13 THE COURT: What is the answer to that? I
14 mean, I'm not going to sit here and play games with the
15 thing. What is the answer to that?

16 MR. MOBLEY: Your Honor, I do not know.

17 THE COURT: You mean, after an accident that
18 happened 8/1 of '09, the State doesn't know who drew the
19 blood on the victim --

20 MR. MOBLEY: That's correct, Your Honor.

21 THE COURT: -- on the deceased?

22 MR. MOBLEY: Our intentions at this particular
23 point, from the very beginning is that we were going to
24 keep out the blood from --

25 THE COURT: That's not my point. The point is

1 not trial tactics. My point is due process. You are
2 telling me that the State does not know who drew blood
3 on the victim of a fatality when another citizen of this
4 State is charged with felony D.U.I. and causing the
5 death of that individual?

6 MR. MOBLEY: Your Honor, no, we do not know.

7 THE COURT: All right. Bring in the jury,
8 please.

9 MR. MOBLEY: Your Honor, if I may---

10 THE COURT: No, sir, I don't want to hear from
11 you right now. I just sent for the jury.

12 (The jury returns to the courtroom.)

13 THE COURT: Welcome back, ladies and
14 gentlemen. I said 45 minutes, right? Y'all heard 15? I
15 apologize. It appears that I am not going to be able to
16 resolve this matter in a timely manner this afternoon.
17 I apologize for holding you captive, so to speak, back
18 there in the jury room without releasing you for the
19 evening.

20 But your time is very valuable to me. It's
21 sometimes very difficult to manage and determine the
22 flow of the Court. So I'm going to release you from
23 your jury service for the evening. Please remember my
24 instructions to you. Do not discuss this case with
25 anyone. This includes your fellow jurors, family,

1 friends or anyone else.

2 Do not read or listen to any news reports
3 about the case. Do not do any research personally or on
4 the internet. Please recall that information that I
5 said was prohibited. I know you will all be true to
6 your oath.

7 I have three matters to take up in the morning
8 starting at 9:00 o'clock. So I'm going to start, as far
9 as this case, a little later in the morning. We will
10 start at 10:00 o'clock in the morning. There is no need
11 to have you here at 9:30 and sit another 30 minutes.
12 Hopefully, I'll have you out of here timely in the
13 morning.

14 If you would please leave your notes
15 upside-down on the chair. The Clerk's Office will
16 secure them for the evening. You are now excused.
17 Please be back in your jury room promptly at 10:00
18 o'clock, at 10:00 o'clock in the morning. Thank you
19 very much. I hope y'all have a pleasant evening.

20 (The jury is excused for the day at 5:02 p.m.)

21 THE COURT: Court will be in recess until
22 8:00 o'clock in the morning. Thank you very much.
23 Court will be in recess.

24 (Whereupon the proceedings are concluded for
25 May 12, 2009.)

1 (The following proceedings are reported
2 on May 13, 2009.)

3 THE COURT: All right. I think the question
4 before the Court is -- where is our witness?

5 MR. MOBLEY: Jennifer Brown? She should be
6 here.

7 THE COURT: All right. She is here?

8 MR. MOBLEY: Well, we told her to be here at
9 8:00 o'clock. My investigator has gone downstairs
10 because they wouldn't allow her in before 8:00.

11 THE COURT: All right. Thank you. The
12 question before the Court is -- the motion -- I think is
13 the issue of the chain of custody on the blood of the
14 victim; is that correct?

15 MR. MOBLEY: That's correct, Your Honor.

16 THE COURT: All right. I will be glad to hear
17 from you now, Solicitor.

18 MR. MOBLEY: Your Honor, thank you. Thank you
19 very much. We apologize to the Court for you having to
20 start this early in the morning to address this issue.
21 At this particular time, the State would like to
22 withdraw such motion.

23 Additionally, we want to place on the record
24 that we are waiving any verification of the chain. We
25 think that it's going to be sufficient, and it is

1 sufficiently established from the testimony that was
2 provided earlier, and we are therefore waiving it.

3 However, the only thing that we do request is
4 that any testimony in regards to the actual results,
5 that there is a proper foundation laid by the defense
6 attorney, Your Honor.

7 THE COURT: Who performed the test, Solicitor?

8 MR. MOBLEY: What we did last night when we
9 got out of court, we called over to, I think it was
10 Terry White. He is the director over the
11 pathology department. We also called --

12 THE COURT: At the hospital?

13 MR. MOBLEY: Yes, Your Honor. We also called
14 over to Bill -- well, let me first start. We called to
15 Bill Zeigler. Bill Zeigler stated that he did not
16 perform it, which we erroneously --

17 THE COURT: Is this young lady -- are you all
18 right, ma'am?

19 UNIDENTIFIED LADY: I'm sorry. They just
20 showed a picture of my son on the screen. I'm sorry.

21 THE COURT: That's all right. You don't owe
22 me an apology.

23 UNIDENTIFIED LADY: I'm so sorry.

24 THE COURT: That's all right. You don't owe
25 me an apology.

1 UNIDENTIFIED LADY: I'm so sorry.

2 THE COURT: That's quite all right. Could
3 someone assist her?

4 MR. MOBLEY: Yes, Your Honor. I'll get
5 someone.

6 THE COURT: Thank you. All right, Solicitor.

7 MR. MOBLEY: I apologize, Your Honor.

8 THE COURT: That's all right.

9 MR. MOBLEY: We first called Mr. Bill Zeigler
10 at his home to find out if he was the one who actually
11 withdrew the blood from Mr. Hill. He states that he was
12 not. We erroneously thought that maybe he was the one,
13 that it was someone from the Coroner's Office.

14 He states that it was performed -- the blood
15 was withdrawn at the Lexington Medical Center. From
16 there what we ended up doing is getting in contact with,
17 I think it's the supervisor over the pathology
18 department over at Lexington Medical Center, left him --
19 well, we called. He wasn't there.

20 We left him an urgent message saying we
21 absolutely needed to get in contact with someone to find
22 out who that specific person was so we can get that
23 report as well, and let me give you a little context of
24 that as well, Your Honor.

25 When we went over to the Coroner's Office, I

1 personally went there to retrieve all personal records
2 and make a copy of the folder. Ms. Helen Gamble made a
3 copy of that folder. It did not have any information in
4 there in regards to any records that came from Lexington
5 Medical Center attesting to who withdrew blood from the
6 Medical Center, the pathology department specifically.

7 So we do not have that particular report. We
8 left him an urgent message saying immediately, once you
9 get this call, you need to give us a call. That was a
10 call from my investigator, Jill Smith's office phone,
11 letting him know exactly what it was. We have not
12 received a response at this time. We don't know if he
13 gets here at 8:00 o'clock or a little thereafter, Your
14 Honor.

15 The moment we get -- the moment we get that
16 particular information, we will definitely provide it to
17 the Court and let the Court become aware of that, as
18 well as the defense attorney as well. I had spoken with
19 Mr. Madsen yesterday.

20 Additionally, Your Honor, I have spoken with
21 the victim's family and explained exactly what we have.
22 They are under the understanding exactly what we are
23 doing today, and they are okay with me waiving the chain
24 and understand that I do not know specifically who
25 withdrew that blood, Your Honor.

1 As an officer of the Court, I'm telling the
2 Court that with my conversation with Mr. and Mrs. Corder
3 last night after we had a recess, Your Honor. So
4 respectfully I discussed it with the family. They are
5 okay with me actually waiving the chain and withdrawing
6 the motion this morning.

7 From my understanding -- and maybe if you want
8 to hear from Mr. Madsen -- he can clarify whether he's
9 okay with that as well. Or if he requires additional
10 information, we'll be more than happy to comply, and we
11 will expedite that as fast as possible. We will make
12 another call and check the voicemail. We have already
13 checked it, and we have not received anything. We will
14 make another call if we have to at this very moment,
15 Your Honor.

16 THE COURT: All right. Well, let me ask you
17 this, Solicitor. My notes reflect that the -- that's
18 kind of the front end or the beginning of the chain, who
19 withdrew the blood from Mr. Hill.

20 MR. MOBLEY: Yes, Your Honor.

21 THE COURT: The other end of the chain, of
22 course, is who performed the test.

23 MR. MOBLEY: Yes.

24 THE COURT: My notes reflect that Mr. Landrum
25 testified that he did the drug screen. Is that correct

1 or incorrect?

2 MR. MOBLEY: Well, he did the drug -- well,
3 now, this is or that's a separate portion of the chain
4 and a separate individual, Your Honor. Maybe I didn't
5 clarify myself.

6 THE COURT: My notes reflect and my notes may
7 be wrong or I may be misreading my notes -- here's my
8 question.

9 MR. MOBLEY: Okay.

10 THE COURT: Who performed the drug screen on
11 Mr. Hill's blood?

12 MR. MOBLEY: On Mr. Hill, that would be
13 Heather Dailey.

14 THE COURT: Well, I have that she did the
15 alcohol and Mr. Landrum did the drugs. Y'all are
16 telling me that's incorrect?

17 MR. MOBLEY: Yes, Your Honor, respectfully.

18 THE COURT: All right.

19 MR. MOBLEY: Mr. Landrum, he only performed
20 the drug screen on the Defendant's blood, not the
21 victim's blood because it ended up being --

22 THE COURT: Well, he didn't testify to that
23 though. He didn't testify to the drug screen on
24 Mr. Manning's blood, did he?

25 MR. MOBLEY: Yes, Your Honor.

1 THE COURT: Mr. Landrum did?

2 MR. MOBLEY: Yes, Your Honor.

3 THE COURT: He testified to those results?

4 MR. MOBLEY: Not to the results, no, sir.

5 THE COURT: All right.

6 MR. MOBLEY: And I guess what he did, he
7 testified what he did as to Mr. Manning's blood. He did
8 not do anything to Mr. Jacob Hill's blood. See, when
9 he --

10 THE COURT: All right. I'm going to have my
11 court reporter recheck that testimony.

12 MR. MOBLEY: Okay.

13 THE COURT: But that's all right, Solicitor.
14 So you're telling me though on that part of the chain,
15 that Ms. Dailey performed the forensic toxicology on the
16 samples of Mr. Hill's?

17 MR. MOBLEY: Mr. Hill's.

18 THE COURT: All right.

19 MR. MOBLEY: And not Mr. Manning's.

20 THE COURT: So to make sure I understand, you
21 are saying that you are trying to find out who actually
22 drew the samples, but you are still waiving the chain.
23 Your objection now would be to proper foundation?

24 MR. MOBLEY: When the results come in.

25 THE COURT: Right, they have to lay a proper

1 foundation for the results. I understand.

2 MR. MOBLEY: Yes, sir. Yes, sir.

3 THE COURT: Or I think I understand.

4 MR. MOBLEY: Okay.

5 THE COURT: All right. Thank you, Solicitor.

6 Mr. Madsen.

7 MR. MADSEN: Judge, the only question
8 that I would have is ultimately then I get one report
9 from S.L.E.D. through the Solicitor's office on
10 Mr. Manning and Mr. Hill that indicates that Jennifer
11 Brown is the forensic toxicologist on the results for
12 everything. I haven't gotten anything else.

13 THE COURT: I don't know the answer to that.
14 Now, I've seen that report only because we had a
15 different motion on that about the T.H.C. That's why I
16 asked that question.

17 MR. MADSEN: And my understanding is
18 that Mr. Landrum initially does both screens on the
19 blood from Mr. Manning. Then because there's drugs, it
20 kind of goes up the food chain to a level two, and
21 Ms. Brown then, I would assume, basically made sure that
22 those results are right. I think she does that on each
23 one of them and then issues her report indicating
24 what she found.

25 THE COURT: All right.

1 MR. MADSEN: And the Solicitor will correct me
2 if I'm wrong, but that's my understanding.

3 THE COURT: All right.

4 MR. MOBLEY: Yes, that is correct, Your Honor.
5 That's why we did the testimony the way we did. What
6 happens is being that Mr. Landrum and Ms. Dailey are
7 level one forensic toxicologists, once they do the
8 initial screens, then they can't complete a screen if
9 there's drugs inside the actual sample itself. So then
10 they have to go to a level two. They do not generate
11 any type of report.

12 What Ms. Jennifer Brown does, she then assumes
13 the case, verifies that there's positive drugs in the
14 actual screen itself. It goes to her. Then she
15 actually makes the report as to the amounts, whether
16 it reaches the threshold, as well as the ethanol as
17 well.

18 So a report is never generated by Mr. Landrum
19 nor Ms. Dailey in that regard. Jennifer Brown is
20 going to testify to the fact that basically the case
21 becomes hers once it goes through that initial screening
22 process, and all she does is re-verify by her own
23 testing methods as well, saying that these are the
24 results and this is the threshold amount as well. So
25 there's never a report that's ever generated.

1 Mr. Madsen is correct.

2 THE COURT: Well, I mean, if I understand what
3 you're saying, Solicitor, is that your objection on the
4 foundation would be Ms. Dailey?

5 MR. MOBLEY: Well, no, and probably it's my
6 clarification. I'm not speaking properly here to say
7 what my objection would be. My objection would be, if
8 Ms. Jennifer Brown -- I'm not objecting to Ms. Dailey
9 anymore. We are withdrawing that as well.

10 THE COURT: All right.

11 MR. MOBLEY: My objection would be if
12 Ms. Jennifer Brown is going to testify to the results,
13 that the report is entered in and the results are
14 reported that particular way, laying the foundation that
15 way. Yes, Your Honor.

16 THE COURT: All right. Well, let me see the
17 report, please.

18 (Hands to Court.)

19 THE COURT: Let's mark it as a Court's exhibit
20 at this time.

21 MR. MOBLEY: Thank you.

22 (Court's Exhibit Number 5 is marked for
23 purposes of the record).

24 MR. MADSEN: These are my only copies.

25 THE COURT: Do you have a copy, Solicitor?

1 (Pause.)

2 MR. MADSEN: Well, this is the one that has
3 already been marked. That's Mr. Manning's.

4 THE COURT: No, I want the one with the
5 victim's.

6 MR. MADSEN: I know. I was going to give you
7 both.

8 THE COURT: All right.

9 (Pause)

10 THE COURT: Do you want this entire report in,
11 Mr. Madsen?

12 MR. MADSEN: Judge, I -- personally I don't
13 think that either of the reports ultimately can come in
14 because I think that they're hearsay. I certainly think
15 the testimony can come in, but I'm not aware of any
16 hearsay exception that actually allows a report just
17 because it comes from an expert to be entered. So, you
18 know, ultimately I was anticipating drawing out through
19 testimony---

20 THE COURT: And what part of this report do
21 you intend to draw out through the testimony?

22 MR. MADSEN: The alcohol, Judge. There
23 is a difference -- and I'm trying to pull it up from the
24 discovery disk that they had given us so I can actually
25 take a look at it. Maybe the Solicitor will let me

1 borrow his copy for a second.

2 THE COURT: All right.

3 MR. MADSEN: It appears to me, Judge, if
4 you look on that, what's denoted as page 2 of 3 --

5 THE COURT: Yes, sir.

6 MR. MADSEN: -- which is the Benzodiazepine,
7 that looks like that is a metabolite, which I don't
8 believe that he would have been under the active
9 influence of, and certainly based on your ruling
10 yesterday, I would not ask about that.

11 It does look like he had therapeutic levels of
12 Valium or Diazepam in his system. He actually did have
13 the active component for T.H.C. and then obviously the
14 alcohol or the ethanol on page 1.

15 THE COURT: If the proper foundation is laid,
16 Solicitor, do you object to the ethanol?

17 MR. MOBLEY: No, Your Honor.

18 THE COURT: And what about the T.H.C.?

19 MR. MOBLEY: No, Your Honor. It's an active
20 component.

21 THE COURT: What's the difference in the
22 T.H.C. from Mr. Hill versus Mr. Manning?

23 MR. MOBLEY: From my interviews with Ms. Brown
24 over at S.L.E.D. several weeks ago, approximately two
25 weeks ago, from what she has informed me is that the

1 difference is with Mr. Hill, the parent shows up, which
2 she testified about, a little about, the parent and the
3 difference between the parent and the metabolite when we
4 were in camera yesterday.

5 She states that the parent appears in
6 Mr. Jacob Hill's blood, and with that particular parent,
7 she states that she can basically say, within her area
8 as an expert, that Mr. Hill would have possibly used the
9 drugs within the last two to six hours before his --
10 before the blood was withdrawn.

11 THE COURT: What evidence do you have of
12 any --

13 MR. MADSEN: Judge --

14 THE COURT: Yes, sir. I'm sorry.

15 MR. MADSEN: How about I just make it easy.
16 We'll just ask about the ethanol.

17 THE COURT: I think that would be prudent
18 because I don't see the evidence. Well, first off, it
19 cuts both ways. I always thought -- and you can ask
20 Ms. Brown -- that marijuana had a different effect on
21 individuals than alcohol.

22 Back 40 years ago when I policed, people that
23 were driving under the influence of marijuana were
24 driving 15 to 18 miles an hour in a 55-mile-an-hour zone
25 and looking at the rain drops individually on their

1 windshield and could see them. Then you have alcohol as
2 a cause of speed.

3 It's almost inconsistent to me if you have no
4 testimony as to the effect.. I mean, nobody sees
5 Mr. Hill nor Mr. Manning. As I said, there's no history
6 of them -- common sense history, not scientific
7 history -- there's no history of them smoking marijuana
8 on that evening of the 31st.

9 All right. Well, with that being said then,
10 that's maybe my best ruling in the case. If the proper
11 foundation is laid, then you have no objections under
12 401 or 403?

13 MR. MOBLEY: That's correct, Your Honor.

14 THE COURT: All right. Madame Clerk, would
15 you make a copy of this Court's Exhibit Number 5 so that
16 Mr. Madsen can have a copy.

17 CLERK: Yes, sir.

18 THE COURT: Any other matters?

19 MR. MOBLEY: Just one briefly. We made, per
20 the Court's request, a redacted version of Mr. Manning's
21 report, Your Honor. We have allowed Mr. Madsen to
22 view it. I think it would be prudent that we allow the
23 Court to see it and make sure it conforms to your
24 standards as well.

25 THE COURT: All right.

1 MR. MOBLEY: And that would be State's Exhibit
2 Number 15 for identification purposes only.

3 THE COURT: All right. Do you have the
4 redacted version? I have 15. Is this redacted?

5 MR. MOBLEY: This is the redacted version.

6 THE COURT: Solicitor, you intend to offer
7 State's 15 through Ms. Brown; correct?

8 MR. MOBLEY: That's correct, Your Honor.

9 THE COURT: All right. Mr. Madsen.

10 MR. MADSEN: Judge, I believe it would be
11 hearsay.

12 THE COURT: All right. I'm going to allow 15
13 in provided the proper foundation is laid. Do you also
14 want to redact Court's 5? Well, we'll see if that's
15 offered, I guess.

16 MR. MOBLEY: At the appropriate time what I
17 will do before that is go ahead and have it redacted so
18 I won't have to waste the Court's time.

19 THE COURT: All right. Any other matters?

20 MR. MADSEN: Judge, just under that
21 report, I would just object, like I said, as to hearsay
22 under 803, number (8), which indicates that in criminal
23 matters or in criminal cases, matters observed by police
24 officers and other law enforcement personnel; provided,
25 however, that investigative notes involving opinions,

1 judgment or conclusions are not admissible. It then
2 goes on to accident reports. It's not the most artfully
3 drafted section, but I don't believe that that gives an
4 exception.

5 THE COURT: All right. Well, I've ruled on
6 it. I've allowed it in. Thank you. You are protected
7 on the record.

8 MR. MADSEN: Thank you.

9 THE COURT: All right. Anything further,
10 Solicitor?

11 MR. MOBLEY: Nothing, Your Honor.

12 THE COURT: Mr. Madsen?

13 MR. MADSEN: No, sir.

14 (Pause.)

15 MR. MOBLEY: Your Honor, if I may, I've spoken
16 with Mr. Madsen. We're looking at the two reports. To
17 avoid any confusion that's created by the reports and
18 the verbiage thereon for both Mr. Manning as well as
19 Mr. Hill's toxicology, there is a portion of both
20 reports that says a partial report.

21 Mr. Madsen agrees with me that that could
22 potentially create a problem for the jury when they are
23 looking at the reports, and we are agreeing to redact
24 that portion as well if the Court will allow us to do
25 so.

1 THE COURT: Certainly.

2 MR. MADSEN: No objection.

3 THE COURT: All right. I'm going to take a
4 quick break.

5 (Whereupon, there is a recess.)

6 THE COURT: Mr. Madsen's objection on the
7 redacted version of State's 15 -- of course, it's a
8 motion in limine -- I think the proper foundation has to
9 be laid on the record, and it is not laid on the record
10 at this point.

11 As to the admissibility of the expert's report
12 under some exception to the hearsay rule, whether it's
13 803(6), which, of course, cites State versus Cutro, and
14 that line of cases, and State versus Rich, or if it's
15 803(8), which is the objection, the basis of
16 Mr. Madsen's objection, or if it's under the Uniform
17 Business Records Act under 19-5-50, that foundation, as
18 I recall -- we just haven't reached that point yet in
19 other words.

20 So my ruling is kind of like Judge Timmerman
21 used to always say, it's kind of anticipatory. You have
22 the person that ran the test on the stand, and you are
23 going to jump through those hoops. You haven't jumped
24 through the appropriate hoops yet.

25 So obviously my ruling is subject to the

1 proper foundations being laid under some exception to
2 the hearsay rule, the case law or the Uniform Business
3 Records Act. All right. You can, of course, object at
4 the appropriate time, Mr. Madsen, if that foundation is
5 not laid.

6 MR. MADSEN: Did you say under Statute
7 19-5-50?

8 THE COURT: Isn't that the Uniform Business
9 Records Act?

10 MR. MADSEN: I'm looking. It could be
11 under -- it's showing that it's evidence of appointment
12 of executor --

13 THE COURT: It's 19-5-510. I'm sorry.

14 MR. MADSEN: Okay. I just wanted to make
15 sure.

16 THE COURT: Yes, sir. The Uniform Business
17 Records as Evidence Act. It's not something I read
18 often unless I'm trying to fall asleep at night,
19 Mr. Madsen, so it didn't just pop into my head, and I
20 just happened to cite the wrong number.

21 That cites some criminal cases also, I think,
22 where some records came in. All I'm saying is a proper
23 foundation has to be laid on the record. I don't want
24 the Solicitor to think that I've already ruled it is
25 admissible when the record is not clear on that point.

1 I don't want to be ruling on it with the proper
2 foundation not being in the record, all right?

3 MR. MOBLEY: Yes, Your Honor.

4 THE COURT: Anything further on the case
5 before the jury returns, Solicitor or Mr. Madsen?

6 MR. MOBLEY: Nothing, Your Honor, other than
7 the fact that we've got the redacted versions, both
8 versions. I don't know if the Court wants to look at
9 them first and foremost. Mr. Madsen has looked at it,
10 and he says --

11 THE COURT: If y'all are fine with it -- I'll
12 look at it. I'll be glad to look at it. I'm probably
13 fine with it, but knowing his objection, Mr. Madsen's
14 objection, is still on the table.

15 MR. MOBLEY: Yes, Your Honor.

16 THE COURT: All right. Well, y'all can step
17 aside until 10:00 o'clock when the jury comes in.

18 MR. MOBLEY: Okay.

19 THE COURT: All right. Thank you very much.

20 MR. MOBLEY: Thank you, Your Honor.

21 (Whereupon there is a recess.)

22 THE COURT: All right. Solicitor, anything
23 before we bring in our jury?

24 MR. MOBLEY: Nothing, Your Honor.

25 THE COURT: From the defense?

1 MR. MADSEN: No, Your Honor.

2 THE COURT: Do we have our witness, Solicitor?

3 MR. MOBLEY: Yes, we do, Your Honor.

4 THE COURT: All right. Do you want to have
5 her come around?

6 MR. MOBLEY: Yes, Your Honor.

7 THE COURT: Oh, she's already on the stand.
8 You can bring in the jury. We have Ms. Brown and she
9 has already been sworn in and she is under oath.

10 MR. MOBLEY: Just for the record, we have
11 qualified Ms. Brown as a forensic toxicologist for the
12 record; correct?

13 THE COURT: Yes, sir.

14 MR. MOBLEY: Okay. I just wanted to make
15 certain.

16 THE COURT: And do we have our jury's notes?

17 CLERK: Yes, sir. They are right here, Your
18 Honor.

19 (The jury returns to the courtroom at
20 10:39 a.m.)

21 THE COURT: I did say 10:40, right? Isn't
22 that what time I said? Good morning, ladies and
23 gentlemen of the jury. I apologize for again holding
24 you captive. It took me a little bit longer than I
25 thought, and I will say these parties were here working

1 at 8:00 o'clock this morning in the courtroom.

2 So it has absolutely nothing to do with these
3 attorneys or these parties. I had some other matters
4 that needed to be addressed, and as always I thought I
5 would get them addressed a little more timely, but I did
6 not.

7 We also have a class with us today from
8 Gilbert High School, again, with their teachers that are
9 going to be observing for a short period of time. We
10 also may have -- how many is it, Sheriff, five, four
11 perhaps, justices from the courts of Nigeria.

12 They are over in magistrate's court now
13 observing mediation. They observed our Supreme Court
14 yesterday and are hoping to come over here after they
15 leave magistrate's court before they fly back out of our
16 country today. So if they do I will certainly point
17 that out for you. They may go to the downstairs
18 courtroom also. I'm not sure exactly what their
19 schedule is.

20 But again, ladies and gentlemen, if you would
21 please give the parties your complete and undivided
22 attention as you have done throughout the course of
23 these proceedings. With that being said, I believe we
24 are on direct of Ms. Brown by the State, the forensic
25 toxicologist; correct?

1 MR. MOBLEY: That is correct, Your Honor.

2 THE COURT: All right. Solicitor, you may
3 proceed.

4 MR. MOBLEY: Thank you, Your Honor. May it
5 please the Court.

6 THE COURT: Yes, sir.

7 DIRECT EXAMINATION

8 BY MR. MOBLEY:

9 Q Now, Ms. Brown, yesterday we were -- I was asking
10 you a few questions, and we were able to qualify
11 you as an expert witness in forensic toxicology.

12 A Uh-huh. (Indicating affirmative response.)

13 Q Now, just to give a brief synopsis again, what does
14 a forensic toxicologist do at S.L.E.D.?

15 A What a forensic toxicologist does at S.L.E.D. is
16 analyze biological samples, be it blood, urine,
17 ocular, the whole realm sometimes, different
18 liquids, for the presence or absence of drugs,
19 including alcohol and others, and then I interpret
20 those results for courts or pathologists, coroners
21 and other people.

22 Q Now, this is not your first time testifying; is it?

23 A No.

24 Q You have testified numerous times before, correct?

25 A Correct.

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1 Q Okay. Now, I asked you previously but have you
2 received any evidence in regards to Ms. Christopher
3 Manning?

4 A Right.

5 Q Okay. And you --

6 THE COURT: Speak up for me just a little
7 please, Ms. Brown. You can pull that mike down a little
8 closer if you would like. Thank you. Thank you very
9 much.

10 BY MR. MOBLEY:

11 Q And you stated, yes, you did receive some evidence
12 and you did analyze that particular evidence;
13 correct?

14 A Yes.

15 Q Now, once you received that evidence, do you mind
16 going through the process in very general terms so
17 that jury will understand exactly what you did to
18 come up with the analyzation of that particular
19 sample?

20 A Well, the way our case flow is now is that we have
21 initially a person analyze the sample for blood
22 alcohol content. And depending on the type of case
23 and the value of that, it would be given for a drug
24 screen.

25 It's kind of general for different classes of

1 drugs. If something is qualified as positive, if
2 it comes back being positive, then it would go on
3 to a different level, like me, like what we call
4 level two, for a confirmation of whatever screen
5 would be positive. And depending on the case, too,
6 there's other work that's involved with that.

7 Q Now, when you did -- when you analyzed
8 Mr. Manning's blood, were you able to come up with
9 a reading for -- and don't say what the reading
10 is -- but were you able to detect some alcohol?

11 A Yes.

12 Q Okay. Now, when you received this result, how is
13 it stored so that you can go back and reference it?
14 Is it in a computer base so that you can go back
15 and look at it or track that particular number or
16 whatever may be necessary in that process?

17 A Yes. First of all, a printout is made of the
18 results, so that's included in our case jacket.
19 It's also stored on our computer system and backed
20 up occasionally.

21 It's very specific to the run for that day.
22 It's given a specific number. Every vial that is
23 run is given a specific number, so it's easily
24 traceable.

25 We put together a packet, and in that packet

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1 it tells you all the different information about
2 who it is, the case number, and a lot of different
3 information.

4 Q Now, in Mr. Manning's particular case, do you
5 recall what the actual lab identification number
6 was?

7 A Yes.

8 Q And what is that number?

9 A It's L09-09291.

10 Q Now, in those particular reports, does anyone in
11 the general public have access to them or you?
12 You, as a forensic toxicologist, do you have access
13 to them and the people in S.L.E.D.?

14 A Yes, it would be just at S.L.E.D.

15 Q Now, is it a record that is kept in the regular
16 course of business there at S.L.E.D.?

17 A Yes.

18 Q And is that a procedure that is typically followed
19 at S.L.E.D. with obtaining and keeping records?

20 A Right. Every case has its own case jacket, and
21 then everything is saved to a computer and backed
22 up to the C.D.'s.

23 Q Now, I want to have you look at a document that is
24 marked as State's Exhibit Number 15 for
25 identification purposes only.

1 MR. MOBLEY: If I may approach the witness,
2 Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. MOBLEY:

5 Q I want to see if you recognize this document
6 without saying what the content thereof is.

7 A Uh-huh. (Indicating affirmative response.)

8 Q Do you recognize that document?

9 A Yes, it looks like my report for Mr. Manning.

10 Q Okay. Now, what is that document?

11 A It's the document that we send out, depending on
12 the type of case, to an officer, to a solicitor --
13 like I said, it just kind of depends on the case --
14 or a coroner. It is our official results and our
15 report.

16 Q Okay. Now, is that a report that is affiliated
17 with this case?

18 A Yes.

19 Q And does that lab number match this particular case
20 itself?

21 A Yes.

22 Q So the lab number that is there, do you mind
23 reading it out loud.

24 A Sure, it's L09-09291.

25 Q Now, Ms. Brown, does your signature appear on that

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1 document at all?

2 A Yes.

3 Q It does. And where does it appear?

4 A It's on the second page.

5 Q Now, does Mr. Manning's name appear anywhere on
6 that document?

7 A Yes.

8 Q It does. And one last question. On this document
9 does the results that you had in reference to
10 Mr. Manning appear on that document and is it
11 accurate as to what you computed when you did the
12 analyzation of the sample?

13 A Yes.

14 MR. MOBLEY: We offer it, Your Honor.

15 THE COURT: All right. State's 15,
16 Mr. Madsen?

17 MR. MADSEN: Judge, I've got an objection to
18 that under hearsay. Additionally, I would
19 like to renew my pretrial objection and motion.

20 THE COURT: All right. And is that the basis
21 of your objection, your pretrial motion?

22 MR. MADSEN: The pretrial motion and hearsay,
23 Judge.

24 THE COURT: All right. I'm with you. Thank
25 you. Thank you very much. I will renew my pretrial.

1 rulings, and I will allow it in under 803(6), State
2 versus Cooper, State versus Rich. State's Exhibit
3 Number 15 for identification is now in evidence.

4 (State's Exhibit Number 15 is received into
5 evidence.)

6 THE COURT: I would advise the jury, ladies
7 and gentlemen, that State's 15 is a copy. It is not the
8 original document because I have determined that part of
9 the original document was not to be introduced into
10 evidence.

11 The reason I tell you this is the fact that
12 this document is redacted, State's Exhibit Number 15,
13 should not be considered by you in any way for any
14 purpose during your deliberations. Thank you very much.
15 State's 15 is in evidence subject to previous and
16 current objections.

17 MR. MOBLEY: Thank you, Your Honor.

18 BY MR. MOBLEY:

19 Q Now, Ms. Brown, what I'm going to do is hand you
20 back now the same document that has changed from
21 State's Exhibit 15 for identification purposes only
22 to State's Exhibit Number 15 which has been
23 properly entered into evidence. Now, on that
24 particular document, you state that the results of
25 the blood sample is shown there?

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1 A Uh-huh. (Indicating affirmative response.)

2 Q Okay. And you have a result that is affiliated
3 with Mr. Christopher Manning?

4 A Correct.

5 Q Do you mind stating to the jury what that result
6 is?

7 A The result I have for Christopher Manning is a
8 blood ethanol result of 0.173 percent.

9 Q Now, what does a result of 0.173 percent mean in
10 terms of toxicology?

11 A In terms of the interpretation of that result and
12 in relation to a D.U.I. type of case, that means
13 that the person will have certain effects
14 associated with different levels.

15 For this value you would most likely see
16 results of some person that would have decreased
17 inhibitions and increased self-confidence. So they
18 are more likely to do something that they normally
19 wouldn't.

20 They are also going to have lessening of
21 attention, to being able to pay attention to
22 different things going on while they are driving,
23 also relating to multitasking, such as driving and
24 braking, driving and steering, driving and doing
25 all the tasks basically you need to do when

1 driving.

2 This person will most likely have problems
3 with increased reaction time. So it's going to
4 take you longer to brake or a longer time to notice
5 what else is going on around you. Along with that,
6 the person will most likely be drowsy.

7 Then at this point the alcohol level will --
8 mostly likely this person will be having slurred
9 speech and having problems walking, as well as
10 vision problems, like double vision and possibly
11 being dizzy.

12 Q Now, let me ask you, Ms. Brown, you state that
13 someone at 0.173 percent, you state that they may
14 have a problem with increased reaction time?

15 A Right.

16 Q Let me make sure we clarify this for the record.
17 Does that mean that they will have an increased
18 reaction time or they will have a delayed reaction
19 time?

20 A Basically kind of the same in the sense that if it
21 normally takes you like five seconds to brake, it
22 might now take you seven or ten. It's going to
23 take you longer to do something that you normally
24 would do.

25 Q Now, you also stated that there may be a problem

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1 with inattentiveness?

2 A Right.

3 Q What does that mean exactly in laymen's terms for
4 us, for me?

5 A Basically noticing what else is going on around
6 you, such as if there's other vehicles or other
7 obstacles.

8 Q Okay. Now, would those particular -- along with
9 the things that you stated earlier in the question
10 I just asked you, would that cause someone that's
11 driving a vehicle to have difficulty maintaining
12 that vehicle?

13 MR. MADSEN: Judge, objection to leading.

14 THE COURT: Rephrase the question, Solicitor.

15 BY MR. MOBLEY:

16 Q Would anyone driving a car have difficulty
17 maintaining a vehicle?

18 MR. MADSEN: Judge, I think that's still
19 leading.

20 THE COURT: All right. Well, she's an expert
21 witness. You may answer the question.

22 BY MR. MOBLEY:

23 Q Let's move on beyond that question. We'll come
24 back to it. If an individual has 0.173, in your
25 professional and expert opinion, would that person

1 be impaired?

2 A Yes. Their faculties to actually operate a motor
3 vehicle would be appreciably impaired to the point
4 where they shouldn't be driving.

5 Q You said appreciably impaired?

6 A Right.

7 Q Okay. And what do you mean by that?

8 A Basically it just means that their ability to drive
9 a vehicle would be impaired to an extent where they
10 should not be doing so.

11 Q Now, are you familiar with the American Medical
12 Association?

13 A Yes.

14 Q Okay. At what point does the American Medical
15 Association state that someone is under the
16 influence?

17 MR. MADSEN: Judge, I've got an objection to
18 hearsay on that.

19 THE COURT: All right. Well, until you lay
20 the foundation for her knowledge as a forensic
21 toxicologist, I'm going to sustain the objection at this
22 point. You would have to lay that foundation.

23 MR. MADSEN: Thank you, Your Honor.

24 BY MR. MOBLEY:

25 Q Now, during your -- within your field, do you all

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1 quite often reference or utilize the American
2 Medical Association journals, teachings, and things
3 of that nature?

4 A Yes, their journals and a variety of different
5 other ones.

6 Q Now, is it the proper practice within your
7 profession to utilize those when you're conducting
8 your opinions and your tests and things of that
9 nature?

10 A Yes.

11 Q Now, at any point have you read anything regarding
12 the impairment effect according to the American
13 Medical Association?

14 A Yes.

15 Q Okay. At what point does the American Medical
16 Association state that impairment may initially
17 occur?

18 MR. MADSEN: Judge, I would renew my
19 objection.

20 THE COURT: All right. I would overrule that
21 objection. You may answer the question.

22 A In their article, Alcohol and the Driver --

23 COURT REPORTER: I'm sorry. I didn't
24 understand you.

25 A In their article, Alcohol and the Driver, it is

1 their opinion that at a 0.05 percent blood alcohol
2 is where they are going to start to see effects of
3 driving being increased to the point where your
4 faculties to drive a motor vehicle are impaired and
5 increasing on along with that. But they also
6 recommend that in all-seasoned adults, a 0.05
7 percent blood alcohol is per se evidence of
8 impairment.

9 Q Now, are you currently familiar with the current
10 law in regards to impairment here in South
11 Carolina?

12 A A little.

13 Q Okay. Now, do you know what that number is as far
14 as impairment?

15 A For per se?

16 Q Per se, yes, ma'am.

17 A For the State of South Carolina, it's 0.08 percent.

18 Q Now, in relation to the reading that we've received
19 in Mr. Manning's case, what is the difference
20 between 0.08 and the 0.173 percent?

21 A It's about a little over twice.

22 Q A little over twice. Now, at that particular
23 level, is it your opinion that he would not
24 properly be able to operate a car?

25 A Correct.

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1 Q And what are some of the things, once again, that
2 he may not be able to do while functioning at this
3 particular level?

4 A Once again, problems with multitasking, such as
5 driving and braking, driving and steering. If you
6 are using a cell phone, if you are turning on the
7 radio and stuff like that, you're going to have
8 problems with the increased reaction time. The
9 person is going to most likely be drowsy and then
10 also, along with the slurred speech, problems with
11 motor functions, like walking around.

12 Q Now, once again, is it your opinion that this
13 person was definitely impaired?

14 A Yes.

15 MR. MOBLEY: Begging the Court's indulgence,
16 Your Honor.

17 (Pause.)

18 BY MR. MOBLEY:

19 Q Now, I'm looking at this document as well. It
20 appears on this document that a urine sample was
21 actually collected and submitted to you?

22 A Correct.

23 Q Was an analysis done on the urine?

24 A No. For the type of case this is, we wouldn't do
25 an analysis on the urine.

1 Q And that's normal procedure --

2 A Correct.

3 Q -- and policy within S.L.E.D.?

4 A Correct.

5 Q Okay. Thank you.

6 MR. MOBLEY: Nothing further for this witness,
7 Your Honor.

8 THE COURT: Thank you, Solicitor. Mr. Madsen.

9 CROSS EXAMINATION

10 BY MR. MADSEN:

11 Q How are you doing, Ms. Brown?

12 A I'm good.

13 Q You also ended up receiving a blood sample in
14 reference to a Jacob Hill, did you not?

15 A Correct.

16 Q And you received that from whom?

17 A Let me look back real quick. The evidence for
18 Jacob Hill was submitted by a William Zeigler.

19 Q And you ultimately got it from your toxicology
20 refrigerator, correct?

21 A Correct.

22 Q And that's the one that is inside of S.L.E.D., and
23 I think that's on the toxicology level. Don't
24 y'all have key cards or some way --

25 A Yes.

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1 Q -- that only you as toxicologists can access that,
2 right?

3 A Correct.

4 Q And the same tests that you had testified about
5 with the solicitor in relation to the blood
6 alcohol, you also did that test on that blood
7 relating to Jacob Hill?

8 A Correct.

9 Q And, in fact, on the ethanol, which I guess means
10 alcohol; right?

11 A Correct, the drinking alcohol.

12 Q The results of that was a .169?

13 A Correct.

14 Q And the effects that you had talked about on
15 alcohol with the solicitor, that would be the same
16 because those are almost identical amounts between
17 Mr. Hill and Mr. Manning; correct?

18 A Correct.

19 Q And when you got the test tube of Mr. Manning, is
20 there any type of anticoagulant or preservative in
21 there?

22 A Yes.

23 Q And it's important that those things were stored --
24 you kept them in the refrigerator, and it's
25 important that it is stored in the refrigerator?

1 A Yes.

2 Q And the reason for that being that if they are out
3 and about for a couple of hours, there are
4 micro-organisms, bacteria, something like that.
5 So you want to have it refrigerated the entire
6 time?

7 A Assuming they were able to get into a sterile test
8 tube.

9 MR. MADSEN: That's all the questions I
10 have.

11 THE COURT: Redirect, Solicitor?

12 MR. MOBLEY: Nothing, Your Honor.

13 THE COURT: Thank you. Thank you very much,
14 Ms. Brown. You may step down.

15 (Witness leaves the witness stand.)

16 THE COURT: All right. Solicitor, you may
17 call your next witness.

18 MR. MOBLEY: Thank you, Your Honor. The State
19 calls Corporal O'Donnell.

20 JAMES R. O'DONNELL, JR.,
21 being first duly sworn, testifies as follows:

22 CLERK: Have a seat, please, sir. Once you
23 are seated, I need you to state your full name on the
24 record spelling your last, please.

25 THE WITNESS: Corporal J.R. O'Donnell, James

1 R. O'Donnell, Jr., O-D-O-N-N-E-L-L.

2 **DIRECT EXAMINATION**

3 BY MR. MOBLEY:

4 Q Corporal O'Donnell, first and foremost, let me ask
5 you if you can just speak slowly for our court
6 reporter to make sure she takes down everything
7 properly; okay?

8 A Okay.

9 Q Where are you currently employed?

10 A The South Carolina Highway Patrol.

11 Q And we just want to make sure you speak up so that
12 the jury hears you as well, as well as the judge.
13 How long have you been employed with the South
14 Carolina Highway Patrol?

15 A Sixteen years.

16 Q Sixteen years. And during the course of those 16
17 years, what have been some of your positions and
18 your responsibilities?

19 A My foremost responsibility as a trooper is to
20 investigate motor vehicle collisions, crashes,
21 enforce traffic and criminal laws, any violations
22 that arise.

23 Q Okay. Now, are you with a special team at this
24 particular point with the Highway Patrol?

25 A I am.

1 Q And what is that team?

2 A The Multidisciplinary Accident Investigative Team
3 or M.A.I.T. as we commonly refer to it as.

4 Q And what is the formation of that team? What are
5 they responsible for?

6 A We investigate high-profile collisions, traffic
7 collisions, more serious complex things that
8 require more time than the road trooper can apply
9 to that particular case.

10 Q Now, how long have you been on M.A.I.T.? And let
11 me make sure, this team, is there an abbreviation
12 for it? You said it's the M.A.I.T team?

13 A It's M.A.I.T.

14 Q It's commonly known as the M.A.I.T. team?

15 A Correct.

16 Q Okay. Now, how long have you been with the
17 M.A.I.T. team?

18 A I received my training in 2007. So I was a
19 M.A.I.T. associate basically January through April
20 of 2007. I was permanently assigned to the team in
21 2008.

22 Q Now, within that team is there any special training
23 or anything you have to do in order to be able to
24 properly reconstruct an accident?

25 A I became, like I said, a M.A.I.T. associate in

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1 2007. You have to take basically three tiers of
2 training which is at-scene investigation, technical
3 investigation, and then reconstruction, which is
4 basically three blocks, two weeks of each --

5 COURT REPORTER: Which is what?

6 A Three blocks or three tiers of instruction. Having
7 completed that, you are made an associate, and that
8 fits the criteria to be assigned to a team.

9 Q Okay. Now, once you're assigned to that team,
10 aren't there other classes and instruction periods
11 that you have to go through and certifications and
12 things of that nature?

13 A That's correct. Basically when you are assigned to
14 a M.A.I.T. unit, you leave -- you still have your
15 trooper status, but you're classified actually on
16 payroll as an investigator or detective.

17 Q Now, Corporal O'Donnell, do you mind providing us
18 with a little synopsis of the type of training that
19 you have gone through over the years in relation to
20 accident reconstruction?

21 A Starting in 2007 the at-scene, the advanced traffic
22 and technical, which I mentioned earlier. You have
23 traffic reconstruction, crime scene photography. I
24 attended a conference in Florida at I.T.P.M., which
25 is the Institute for Police Management, Technology

1 Police Management.

2 They had a conference down in Florida --
3 fingerprinting, Department of Justice online
4 courses which is D.N.A. evidence and collection,
5 and first responders for crime scene analysis.
6 I've also taken detective, level one, crash data
7 retrieval, crash reconstruction at traffic signals.

8 I achieved my traffic -- my safety officer's
9 status in September of last year, also another
10 class on D.N.A. collection, an F.B.I. interrogation
11 class, which was brought down from Quantico.
12 Sergeant Breland, who heads up the Midlands
13 M.A.I.T., provided a casualty reconstruction class.
14 I do a lot of mechanical stuff and also Smart
15 Roads, which is a computer assisted --

16 COURT REPORTER: I didn't understand that.

17 THE WITNESS: The mechanical?

18 COURT REPORTER: No, the computer one.

19 THE WITNESS: Smart Roads is a software name.

20 COURT REPORTER: Smart Roads, okay.

21 A Yeah, Smart Roads, which is a computer-assisted
22 drawing class that we currently use. We also use
23 Auto Sketch, and Auto Sketch relates to the type we
24 are talking about today.

25 In addition to all of that, when I was

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1 assigned to the M.A.I.T. unit in '08, they take it
2 a step further and give us more reconstruction
3 classes. It's almost like a field training program
4 for M.A.I.T., which is 26 quizzes, a midterm, and a
5 final. So I achieved all of that in addition to
6 everything else I did, which that was more in-depth
7 than anything else I did.

8 Q So would it be safe to say that you have hundreds
9 of hours of reconstruction classes and training?

10 A Yes, sir. I can't quantify that particular number,
11 but I haven't reached my 602 yet. You are supposed
12 to get a raise at 602, so I haven't gotten that
13 yet.

14 Q Okay. And is it -- the training that you received
15 in the past, are you still currently receiving that
16 on a continuous -- a continuous timeline, that
17 particular training?

18 A You are constantly -- the reconstruction field is
19 currently evolving as most things do, and the level
20 of knowledge that you have to achieve is constantly
21 growing, so, yes.

22 Q And so you are making sure that you keep up with
23 things?

24 A You have to stay current, and then we learn new
25 topics and fields inside this field.

1 Q Now, approximately how many accidents did you have
2 to reconstruct up until this particular point
3 approximately, an approximate number?

4 A Technically every traffic investigation from April
5 of '94 when I was a little rookie guy up to this
6 point would be a reconstruction. That is probably
7 over 3,000, under four of red light, I got rear
8 ended.

9 With the M.A.I.T. unit in 2008, I think we had
10 140 caseload that year. In 2009 with Midlands, I
11 think we stopped at 100, and this year we are
12 currently on 28, so a substantial amount, and each
13 one of those numbers I represent is a case.

14 MR. MOBLEY: Now, Your Honor, the State would
15 move to have Corporal O'Donnell classified as an expert
16 in the field of accident reconstruction.

17 THE COURT: All right. Mr. Madsen?

18 MR. MADSEN: No objection or voir dire.

19 THE COURT: All right. Thank you very much.

20 Mr. Foreman, and ladies and gentlemen of the
21 jury, as you've heard me say previously, normally a
22 person cannot give opinion testimony. Normally when a
23 person testifies, they must testify as to what they
24 either saw, heard or sensed by smell or something of
25 that nature.

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1 However, there is an exception when someone is
2 qualified because of education or training or experience
3 in some particular field or art, science or profession.
4 They are permitted to give their opinion in certain
5 areas if the Court qualifies them that way.

6 This witness, Corporal O'Donnell, will be
7 qualified in the area of accident reconstruction to give
8 opinion testimony in that area. That does not mean that
9 you must accept the opinion, but it is evidence for you
10 to use in any way that you see fit. Thank you. Thank
11 you very much.

12 Solicitor, you may continue.

13 MR. MOBLEY: Thank you, Your Honor.

14 BY MR. MOBLEY:

15 Q Now, Corporal O'Donnell, did you have the occasion
16 to investigate an incident that occurred with a one
17 Christopher Manning?

18 A I did.

19 Q And when did you go out there and where did you go?

20 A The collision occurred in Lexington County. We
21 were notified through the troop. I think
22 Lieutenant Rabon was the individual called --

23 THE COURT: Corporal, could you pull that
24 microphone just a little closer and speak up just a
25 little bit, at least for me, please. I know these

1 younger folks can hear very well, but at least for me,
2 please.

3 A Our S.O.P. or standard operating procedure,
4 whenever we're called for assistance by the local
5 troop -- in this case we were notified by
6 Lieutenant Rabon to Sergeant Breland, who is in
7 charge of the Midlands M.A.I.T. unit. That
8 occurred on August 1st. He was notified at
9 6:40 a.m.

10 Because of manpower constraints, we were not
11 able to deploy at that time. We were set to go the
12 next working day, which was Monday, in which case
13 we picked up case 59, which was over the weekend,
14 and then also case 60. I believe this case number
15 was M.L.58.

16 M.L.60 was an active scene in basically the
17 Eastover area. So while we were going to this
18 scene, which was a deferred case, meaning it was
19 postponed until the next business day which was
20 Monday, we were set to go out Monday, we got an
21 active scene during the working hours, so we had to
22 go do that.

23 So this scene was deferred for an additional
24 day, which was Tuesday. So August 4th is when we
25 first arrived on scene, the M.A.I.T. unit arrived

1 on scene.

2 Q Okay. Now, let's -- do you mind telling me exactly
3 how a M.A.I.T. team operates, meaning are there
4 several members or is it just you?

5 A It's several members. Everyone is trained or cross
6 trained in a specific field. Everyone can do
7 photography, crime scene photography, video, field
8 sketch, which is basically a hand drawing.

9 We can also do the forensic mapping, which is
10 basically a survey of the crash site. Everyone can
11 do those particular things, also interrogations,
12 interviews, general vehicle exams or things that
13 relate to the vehicle. So when we go on scene,
14 basically everyone pitches in.

15 Q Okay. So you all are working as one team basically
16 to reconstruct one particular accident?

17 A Correct.

18 Q So it's several members, but you all are utilizing
19 various methods to come up with a final conclusion
20 or findings; correct?

21 A Correct. The team, basically you have -- in this
22 case we had three officers out there with three
23 interpretations, and then we come together with a
24 final M.A.I.T. report with one interpretation based
25 on the three sources.

1 Q Now, have you had the opportunity to review all
2 that information and make sure that the conclusions
3 that you all came up with are correct?

4 A I did.

5 Q You did. Okay. So you are fully confident in
6 those conclusions that you all have at this point?

7 A I am.

8 Q Now, you state you went out there on August 4th,
9 and was that during the daytime, nighttime,
10 morning, evening?

11 A I show us arriving on scene around 8:00 a.m. on
12 Tuesday.

13 Q At 8:00 a.m. Okay. Now, once you arrive on scene,
14 tell me, what do you see? Now, if you would like
15 to get some water --

16 A Yeah, I've been fighting a cold. Basically when we
17 arrived on scene, Sergeant Breland was the first on
18 scene. I was second and Lance Corporal Garren was
19 third. Sergeant Breland, because he was first,
20 started taking photographs. I did the video and
21 field sketch --

22 Q Who did the video?

23 A I did the video and also the field sketch. Lance
24 Corporal Garren handled the forensic mapping with
25 the assistance of myself and Sergeant Breland.

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1 Basically the crash location is on U.S. 378 in
2 Lexington County towards Saluda, the Saluda County
3 line.

4 If you're traveling down U.S. 378, you're
5 leaving a 45-zone near Old Lexington Highway. You
6 enter a 55-zone and you have a sweeping left-hand
7 curve. There's signage at the location, signs
8 being U.S.D.O.T. and S.C.D.O.T. signs, indicating
9 the speed enforcement for that zone or speed limit
10 and also the curvature of the highway that you are
11 required to follow.

12 Q So there are signs that direct you to try to help
13 you get around that particular curve?

14 A Correct.

15 Q Okay. They are unobstructed or anything of that
16 nature, correct?

17 A Correct.

18 Q Fully visible?

19 A Correct.

20 Q Okay. I'm sorry to interrupt you. You can
21 proceed.

22 A And during the overview of the scene, there's also
23 several tire impressions of not only your skid
24 marks on the asphalt, but there's impressions in
25 the grass and also in the ditch that parallels the

1 highway -- I mean that parallels, that runs
2 perpendicular beside the highway -- showing where
3 the vehicle that was involved in the crash, the
4 path of travel.

5 These continue down the ditch line parallel to
6 the highway mostly on the shoulder. There was no
7 visible marks on the asphalt or the fog lines, the
8 white line that runs along the asphalt, indicating
9 basically the path of the vehicle was entirely on
10 the shoulder after it left the traveled portion of
11 the highway.

12 Q Now, looking at that particular scene, when you are
13 coming out of that curve, what appears to have
14 happened there in regards to those skid marks on
15 the shoulder of the highway?

16 A The vehicle entered the left-hand curve, took the
17 left-hand curve, and failed to maintain the travel
18 on the highway. It veered off onto the right-hand
19 shoulder, and it continued.

20 Q Did it appear that he went straight, as opposed to
21 turning or curving around basically?

22 A He, if I'm not mistaken, entered the shoulder of
23 the road between the third and fourth arrow sign
24 showing the curve. So in order to do that, he
25 probably negotiated some of the curve with turning.

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1 Q So he negotiated some of the curve but didn't
2 negotiate it fully --

3 A Correct.

4 Q -- to stay on the highway?

5 A Correct.

6 Q Okay. Now, I want to show you State's Exhibit
7 Number 5 that's already been properly admitted into
8 evidence. Are these some of the shoulder markings
9 that you are referring to that you were able to
10 see?

11 A Exhibit 5, you are showing me the photograph taken
12 by Sergeant Breland, and it is showing the tire
13 impressions or path of travel of the vehicle up
14 into the driveway where the vehicle --

15 COURT REPORTER: Where the vehicle what?

16 A Where the vehicle went into an overturn.

17 MR. MOBLEY: I'd like to have these marked as
18 State's Exhibits for identification purposes only.

19 THE COURT: All right.

20 (State's Exhibits Number 16-17 are marked for
21 identification.)

22 BY MR. MOBLEY:

23 Q Now, Corporal O'Donnell, what I'm going to do is
24 hand you some photos that have been marked as
25 State's Exhibit 16 and 17. Do you recognize those

1 particular documents?

2 A I do.

3 Q And what are they?

4 A Photographs of the same highway, U.S. 378, in
5 Lexington going towards Saluda County. This is
6 going to represent the curvature of the roadway and
7 also the straight section of the roadway where the
8 vehicle left the traveled portion of the highway
9 and also the last signage showing what appears on
10 the drawing.

11 Q Now these, without objection from my understanding,
12 16 and 17, have been properly admitted into
13 evidence. Now, you were speaking about the
14 curvature of the road.

15 THE COURT: Is that correct, Mr. Madsen?

16 They are without objection?

17 MR. MADSEN: That is correct, Your Honor.

18 THE COURT: State's 16 and 17 are in evidence
19 without objection.

20 (State's Exhibits Number 16-17 are received
21 into evidence.)

22 BY MR. MOBLEY:

23 Q You were speaking about the curvature of the road,
24 as well as tire markings that you saw when you
25 arrived on August 4th; correct?

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1 A Correct.

2 Q Now, does this depict, this State's Exhibit Number
3 16, depict that same information that you were just
4 testifying to?

5 A It does. It also shows some of the paint that was
6 laid down that night by the investigating officer
7 or the trooper at the scene indicating the path of
8 travel.

9 Q And why do they mark it?

10 A So when you return to the scene, in this case like
11 we did several days later, whether the grass has
12 grown overnight, you still have the paint on the
13 roadway, or in this case the shoulder, showing the
14 path of travel of the vehicle.

15 Q Okay. And we are looking at State's Exhibit Number
16 17. What do we show here?

17 A It's showing the exit of the curve, showing the
18 sign that is represented in my drawing that I
19 performed for this investigation, and also Sergeant
20 Breland's parked vehicle is in the shot and the
21 driveway towards -- near the crash site.

22 MR. MOBLEY: Permission to publish to the
23 jury, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. MOBLEY:

1 Q You noticed these markings on the highway and on
2 the shoulder of the road. Tell us what that leads
3 you to believe and how you begin to mark the scene
4 and reconstruct this accident.

5 A With the marks on the shoulder, we were able to
6 ascertain the entrance, the position of the vehicle
7 entering the shoulder of the road, leaving the
8 traveled portion of the highway, and also how the
9 vehicle traveled down the length of the ditch.

10 There's one particular section where the
11 vehicle would have bounced over the ditch line a
12 little bit and become airborne and then returned to
13 the dirt section and continued traveling down the
14 ditch line.

15 Those continued parallel to the highway until
16 the vehicle starts to rotate clockwise facing away
17 from the highway. Twelve o'clock is U.S. 378,
18 Saluda's at 12:00 o'clock; Lexington is behind at
19 6:00. The vehicle rotates clockwise on the ditch
20 line and continues to mark leading up to the
21 driveway. I can't think of the house number at
22 this time.

23 Q So the car, it hits the shoulder of the highway and
24 kind of turns as if it's trying to get back onto
25 the highway?

1 A Because of the depth of the ditch that's there, the
2 right-side wheels basically become pinned in there.
3 It works like a groove. It allows the vehicle to
4 track along that section.

5 There's a slight embankment or something there
6 that caused the front end to come up, and you can
7 see on the photographs where that gouge and
8 scraping away of the grass takes place.

9 The vehicle then comes back down similarly in
10 the same position. These were all mapped at the
11 scene or survey station showing exactly where they
12 left the roadway and things of that nature.

13 Then when the vehicle proceeds to mark back on
14 the shoulder of the road, the tires are dragging
15 away the grass and creating what we call furrows,
16 which the furrows are created when the tire pulls
17 away the grass and starts to dig into the earth.
18 It shows the vehicle tracking on that length and
19 then starts to counterclockwise rotate -- or
20 clockwise rotate. I'm sorry.

21 Q And once it clockwise rotates, what happens then?

22 A It starts to become approaching 90 degrees with the
23 highway. The highway is running this way
24 (indicating), 90 degrees from this section, but it
25 did not quite completely achieve the 90 degrees,

1 but it's rotating clockwise.

2 Q Okay. Now, does it ever hit a culvert or anything?

3 A There is a culvert, the driveway that's at
4 basically the middle of the crash site, asphalt
5 construction, gravel-tar construction. It's a
6 mailbox at the location indicating the address.

7 The driveway is raised higher than the ground
8 level, so it's like an incline. The vehicle,
9 traveling clockwise at whatever velocity it's
10 traveling at, gets into a dip because the
11 driveway's up here (indicating). It comes up into
12 the culvert and causes a trip like if the earth
13 tripped the driveway and caused the vehicle to
14 basically launch.

15 Q Okay. So, at that point is that where the vehicle
16 begins to flip?

17 A Overturn, correct.

18 Q Overturn.

19 A Generally the last -- in our forensic map, we have
20 the last tire or furrow. Where that furrow stops,
21 the vehicle is essentially airborne and would have
22 no further contact with the earth until it reaches
23 its trip location, which would be the driveway at
24 the culvert, with these altogether. The culvert is
25 there for drainage for the ditch. It's running up

1 the driveway.

2 Q Now, according to your reconstruction, does this
3 vehicle flip numerous times?

4 A I cannot give you a specific number, but it
5 overturns. It travels a fair distance.

6 Q Now, from the beginning of the -- the tire mark is
7 on the shoulder of the highway to the final resting
8 spot of the S.U.V. itself. Exactly how far is
9 that?

10 A We mapped that and on the drawing that I completed,
11 it was 535 feet.

12 Q Now, that's quite a substantial amount of yardage,
13 of feet, there. What would be the cause of it
14 traveling that far if there is a 45-mile-per-hour
15 zone there?

16 A It's actually 45 going into 55.

17 Q Okay.

18 A So it's actually 55 where the collision was. The
19 reason it's 45 is cautionary for that intersection
20 that was back behind the crash site. So, velocity,
21 speed.

22 Q Velocity and speed. Now, you --

23 A Yeah, well they are basically the same thing, but
24 it's -- you know, it's whatever speed he is
25 traveling at. The higher the speed, the farther

1 you can travel.

2 Q Well, were you able to come up with a conclusion as
3 to the amount of speed he was going, the
4 approximate amount of speed he was going?

5 A We use several software programs and things with
6 M.A.I.T. for our calculations. We use A.R. Pros
7 which is basically a software name. I did
8 calculations on the distance based on our known
9 reconstruction methods and numbers, and 89 miles an
10 hour is what we calculated.

11 Q Can you repeat that?

12 A Eighty-nine miles an hour.

13 Q Okay. So 89 miles an hour when this incident
14 occurred?

15 A Yes. Generally that goes back to his pre-impact
16 speed.

17 Q Okay.

18 A In other words, for him to travel 535 feet where
19 that was done in the middle, it would be 89 miles
20 an hour. Now, that does not account for impact
21 with the tree which would have slowed his vehicle
22 down substantially.

23 Q Now, you state there was some impact with a tree.
24 How far from the initial starting point of the
25 shoulder is that away? Can you give an

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1 approximate amount there? Is it a fair distance,
2 short?

3 A I think it's 288 feet from first touch, the first
4 runoff, to the culvert, but that's a guesstimate,
5 and then another 100, 115, 120, something like
6 that.

7 Q Well, I guess what I want to ask you is to describe
8 the travel of that truck after it hits the culvert.
9 What does it do?

10 A After it hits the culvert, then also with the
11 orientation of the vehicle being clockwise, the
12 driver's side would have went down first or been
13 closest to the driveway, which would have put the
14 passenger side of the vehicle, the right side,
15 facing upward.

16 And as it continues to tumble or roll over,
17 overturn, there's a -- the highway's elevation is
18 higher than the yard that the vehicle was rolling
19 through. It got along that shoulder or embankment,
20 and it continued to tumble. It was a violent
21 tumble.

22 At some point the engine was dislodged from
23 the engine compartment. It ripped off the hood in
24 the process, and the engine continued on a separate
25 path, if you will. This path is marked by the

1 fluid trail from the radiator, the crank case. The
2 transmission went with it.

3 And when we went out there on Tuesday, the
4 grass was all dead, which was showing the path of
5 the motor. When the two separated, the Blazer is
6 still tumbling down the shoulder of the highway
7 with that raised embankment until it crosses the
8 ditch that's 90 degrees from the roadway and
9 strikes a tree several feet up.

10 Q So it crosses another ditch after beginning to
11 tumble itself?

12 A Correct. There's one ditch that runs along the
13 length of U.S. 378, then you have the driveway, and
14 then you have another ditch which was basically 90
15 degrees off that, that sort of went like this
16 (indicating).

17 So it went off the shoulder of the road, got
18 clockwise, tripped, overturned, kicked the motor
19 out, kept overturning, struck the tree, and then
20 came to final rest in the adjacent yard across that
21 last ditch.

22 Q Now, I want to show you some photos and see if you
23 recognize these particular photos.

24 A This is a photograph that Sergeant Breland took
25 showing the address for the driveway that I was

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1 referring to. It's 4024 on the house number.

2 Q Well, don't --

3 A It also shows tire marks or furrows in the grass
4 where the vehicle was rotating clockwise. It also
5 shows the culvert, the driveway, which is our trip
6 point, and several scratches that are on the
7 driveway. The paint marks representing those
8 scratches which would have been from the driver's
9 side of the Blazer.

10 It's also showing, farther down into the crash
11 site, the cross point where the motor killed the
12 grass and went across the ditch line and came to
13 final rest in the adjacent yard, and it's also
14 showing the tree strike to the left in the
15 photograph.

16 Q Now, do those --

17 THE COURT: Solicitor, could I stop you before
18 we get into publishing those photographs. I realize you
19 haven't been back in the courtroom but about 40 minutes,
20 but me and my court reporter have been here a couple of
21 hours. If we could take a brief recess.

22 MR. MOBLEY: Yes, Your Honor.

23 THE COURT: Mr. Foreman, ladies and gentlemen,
24 if you would leave your notes, please, upside-down on
25 your chair during this brief recess. Please remember,

1 do not discuss the case amongst yourselves. Thank you
2 very much.

3 (The jury retires to the jury room.)

4 THE COURT: Corporal, of course, you may step
5 down and refresh yourself during this brief recess.
6 Please do not discuss the case or your testimony with
7 anyone. You are subject to continuing direct and cross
8 examination. Thank you very much. Court will be in
9 recess about 20 minutes. Thank you. Thank you very
10 much.

11 (Whereupon there is a recess.)

12 THE COURT: Anything before we bring in our
13 jury, Solicitor?

14 MR. MOBLEY: Nothing, Your Honor.

15 MR. MADSEN: No, Your Honor.

16 THE COURT: Thank you. If you will bring us
17 our jury, please.

18 (The jury returns to the courtroom.)

19 THE COURT: All right. Welcome back. We are
20 continuing the trial of the case by the presentation of
21 testimony by the State in its case in chief of Corporal
22 O'Donnell. Solicitor, you may proceed.

23 MR. MOBLEY: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. MOBLEY:

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1 Q Now, Corporal O'Donnell, we were just looking at
2 some photos that we have here. Do those particular
3 photos accurately depict the scene, the scene as it
4 was when you went to the scene on August 4th?

5 A They do.

6 Q Do they appear to be tampered with or anything of
7 that nature as far as the photos itself?

8 A They do not.

9 Q Okay.

10 MR. MOBLEY: Your Honor, the State would move
11 to have State's Exhibits Number 18, 19, and 20 admitted
12 into evidence and published to the jury, Your Honor.

13 THE COURT: Mr. Madsen?

14 MR. MADSEN: I believe he has shown those
15 to me. I don't have any objection.

16 THE COURT: You have previously shown those to
17 him previous to the break?

18 MR. MOBLEY: Yes, Your Honor.

19 THE COURT: All right. Eighteen, 19, and 20
20 are in evidence without objection.

21 MR. MOBLEY: Thank you, Your Honor.

22 (State's Exhibits Number 18-20 are received
23 into evidence.)

24 BY MR. MOBLEY:

25 Q Now, you state when it hit the culvert, it was --

1 well, let me ask you this. When it hit the
2 culvert, was it a direct impact or was it sideways,
3 once again, the car?

4 A Sideways.

5 Q It was sideways. When it hit that culvert, did it
6 create a sideways turnover?

7 A It did cause the vehicle to overturn on its -- from
8 what I have, it's allowed to just tumble.

9 Q Tumble.

10 A Yeah, left, right, left, right, left, right.

11 Q Left, right, left, right, left, right. Now, I want
12 to show you some additional photos. Do you
13 recognize those photos?

14 A I do. These are the photos I took at the wrecker
15 yard of the vehicle involved in this crash.

16 Q Do they fairly and accurately depict the vehicle as
17 it was when you photographed it?

18 A It does.

19 Q Okay.

20 MR. MOBLEY: If I could get these marked.

21 (State's Exhibits Number 21-25 are marked for
22 identification.)

23 (Attorneys confer.)

24 MR. MOBLEY: Your Honor, at this time the
25 State would move to have these photographs, Number 21,

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1 22, 23, 24, and 25 admitted into evidence and published
2 to the jury at the appropriate time.

3 MR. MADSEN: No objection.

4 THE COURT: All right. And tell me those
5 numbers, 21 through what?

6 MR. MOBLEY: Twenty-one through 25, Your
7 Honor.

8 THE COURT: All right. State's 21 through 25
9 are in evidence without objection.

10 (State's Exhibits Number 21-25 are received
11 into evidence.)

12 BY MR. MOBLEY:

13 Q Now, Corporal O'Donnell, what I'm going to do is
14 show you State's Exhibit Number 21. Do you mind
15 holding it like this and describing what we see
16 here where the jury can see? We are also going to
17 publish it to the jury.

18 A Basically this is going to be the '98 Chevrolet
19 Blazer involved in the crash we are discussing
20 today. These photographs were taken -- the
21 photographs were taken where the wrecker service
22 had the vehicle stored.

23 It's got some impact damage to the right rear
24 of the vehicle. The principal direction of force
25 on this impact is going to be up and in. You can

1 see how the occupant section or the occupant
2 compartment of the vehicle has been compromised,
3 pushed up on the C-pillar. The C-pillar you can
4 see on the driver's side.

5 The side mirror, the driver's side mirror,
6 will be the A-pillar. Your B-pillar will be at
7 your shoulder. Your C-pillar will be in the back
8 section of the vehicle where your hatchback will be
9 or where your trunk starts.

10 The C-pillar, which in this case is the
11 tailgate section, it's pushed up. You've obviously
12 got a compromised section there. You also have --
13 the passenger side door has been bowed out at the
14 B-pillar, and the vehicle has also got some
15 structural damage here. You can also see some of
16 the structural damage to the engine compartment of
17 the vehicle from the side shot here.

18 Q We are going to look at State's Exhibit Number 2.
19 Which side is that? Is that the driver or
20 passenger side?

21 A This is the passenger side.

22 Q That is the passenger side. Now, we are going
23 to -- I'm going to show you State's Exhibit Number
24 22. What do we have there, and which side of the
25 car is it?

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1 A This is going to be the driver's side of the same
2 vehicle. This particular shot shows more of the
3 damage to the engine compartment. Of course, you
4 can see the engine is not in place. You can see
5 the radiator shaft or shroud where the support,
6 radiator support, has been pushed up.

7 Also, the left and right frame rails have been
8 pushed up and in. You can see some displacement on
9 the front axle, which would be the left front of
10 the vehicle in this location (indicating). This
11 (indicating) is going to be the A-pillar I was
12 referring to earlier. The B-pillar would be here
13 (indicating), and the C-pillar would be back here
14 (indicating), which is off the picture.

15 You've got some shearing away of the door
16 support in the A-pillar. You've also got some
17 striations or scratches that you can see visible in
18 the photograph, in the paint. In my opinion this
19 came from the asphalt at the launch point. But
20 also, the scratches continue along the door, the
21 driver's side door, along the roof line and the top
22 edge leading to the door on the driver's side.

23 Q Now, comparing State's Exhibit Number 21 and 22,
24 which side has the majority of the damage to it?

25 A Both of them are pretty severely damaged. Some is

1 more towards the front of the vehicle on the
2 driver's side. More damage is to the rear of the
3 vehicle on the passenger side.

4 Q Okay. So is that consistent with how you actually
5 reconstructed the incident itself of the lifts and
6 the turns?

7 A It's consistent with the damage profile, with the
8 overturn, the rapid overturn of the vehicle, and
9 then the damage would have been received at impact.

10 Q Now, I'm going to show you photograph Number 23.
11 What are we showing there?

12 A This is another close-up picture of the right rear
13 of the same vehicle. You can see some of the
14 crumpling, crumpling of the roof line of the
15 vehicle in the occupant's section, and also some
16 damage to the right rear support and chassis for
17 the right rear tire and axle location.

18 Q Now, does it appear in all of these photos that all
19 the windows have been busted out?

20 A It appears that way. All five of the windows are
21 knocked out. The front, as you can see from the
22 photograph, has still got some glass left in it,
23 but it has been compromised and shattered.

24 Q Okay. Now, I'm handing you State's Exhibit Number
25 22 and 25. Do you mind describing what we have

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1 here?

2 A This is going to be an interior shot that I took of
3 the same vehicle. You can see some of the front
4 windshield is still intact. Some of it has been
5 pushed out. You can also see the dash has been
6 compromised where the speedometer is at.

7 The airbags -- it was equipped with airbags,
8 but they had been duct taped in place, which means
9 they had been deployed or removed. I can't tell
10 you which.

11 Also, the vehicle is equipped with a tilt
12 steering wheel for the driver to adjust, but that
13 had been broken. It had been pushed down into the
14 driver's bottom seat.

15 Q And the next photo, which is State's Exhibit Number
16 23?

17 A Again, another shot of the right rear portion of
18 the Blazer. You can see some more of the chassis
19 component that has been damaged due to the impact.
20 The principal direction of force is going to be up,
21 which means the way the blow comes up, with the
22 metal being pushed up.

23 Also with your weakest links being between the
24 C- and B-pillar, they have been pushed down and
25 compromised somewhat because the passenger side of

1 the vehicle has formed a perfect triangle and is
2 bowed outward. Also, on this shot you can see that
3 the passenger door has come out from the roof line
4 of the vehicle and it's bowed out.

5 Q Now, on 25 that shows that the steering column is
6 still intact; correct? It has not been taken out
7 or adjusted in any way? It's still in the same
8 manner that it would be in with a normal vehicle,
9 correct? It hasn't been broken basically.

10 A When I found the vehicle -- this is representative
11 of the way I found the vehicle when I did my
12 examination on it and took photographs of it. In
13 this position it should be equipped with a tilt
14 steering wheel.

15 It's either broken mid-length support or, you
16 know, damaged at impact or adjusted down. I can't
17 tell you which one. I did have my hands on the
18 steering wheel for left/right operation to see if
19 it was turning, locked in place, things of that
20 nature, and I believe it was broken, just off of
21 memory.

22 Q Okay. Now, we are going to look back at State's
23 Exhibit Number 21 and 22. These are two different
24 sides of the vehicle. One is the passenger side
25 and one is the driver's side. Now, I'm going to

1 ask you a specific question here. According to
2 where the doors are located and the openings of the
3 window, which one is more open, the driver's side
4 or the passenger side, as far as unobstructed?

5 A I'm not sure exactly. Both of them are open. Both
6 windows are -- the glass is clear. The driver's
7 side has been pulled away. This might be due to
8 the impact with the driveway at the trip point.
9 Basically it's been sheared away or pulled away
10 through the asphalt contact.

11 Also, the passenger side door has been bowed
12 out, and it's still somewhat in place, but it's
13 bowed out where it's not uniform with the rest of
14 the vehicle in matching the damage.

15 Q Now, has the passenger door been obstructed like
16 the driver's side door, such as the closing of the
17 window itself?

18 A In the photographs, no. The driver's side door has
19 been pulled away along the length of the B-pillar,
20 and the passenger side door has been bowed out
21 along the B-pillar, which is the one beside your
22 shoulder.

23 Q Now, you all -- now, there was a drawing that you
24 all had to do when you were reconstructing this
25 particular incident; correct?

1 A That's correct.

2 Q And with that particular drawing, is that
3 computer-based or you do it by hand?

4 A When we first go to the scene, a crash scene, we do
5 our field sketch, which is done by hand, which is
6 included in our findings or our notes. Then we'll
7 do a forensic mapping of the scene, which is
8 basically a survey of the scene which is done with
9 our instruments, with the total station, you know,
10 data collectors --

11 COURT REPORTER: Wait a minute. Wait a
12 minute.

13 THE WITNESS: I'm sorry.

14 COURT REPORTER: Survey of the scene which
15 is---

16 A A survey of the scene. We use survey equipment
17 that you use in surveying property, length of
18 property. We did some things of that nature. We
19 had the total station, which is mounted centrally
20 on a tripod. We have a data collector which stores
21 the points that we shoot along each mark.

22 These points usually coincide with the dots
23 that are placed on the scene or the paint. Dots
24 that are placed on the scene are the length of the
25 tire marks or the furrows that we talked about

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1 earlier.

2 Also, a little map of the roadway -- well, not
3 map -- but we'll shoot the roadway points. We'll
4 also just basically shoot the entire collision
5 scene. Those points will be downloaded from a data
6 collector into a program.

7 We use Auto Sketch, which is a computer-
8 assisted drawing program. That drawing program was
9 used, too, with those points, and the points aren't
10 movable.

11 You basically are just stuck with what you've
12 got for the purposes of the survey, what we use to
13 create the drawing, a forensic drawing, to-scale
14 drawing of the collision site.

15 Q Okay. Now, you're speaking of that particular
16 drawing, the diagram itself. Does this accurately
17 depict what you are speaking of at this particular
18 point as far as the diagram in reconstructing this
19 particular incident?

20 A It does, and that's the drawing that I created for
21 this crime scene.

22 Q Okay.

23 MR. MOBLEY: Your Honor, the State would move
24 to have this exhibit entered into evidence as State's
25 Exhibit Number 26.

1 MR. MADSEN: No objection.

2 THE COURT: All right. State's 26 is in
3 evidence without objection.

4 (State's Exhibit Number 26 is received into
5 evidence.)

6 MR. MOBLEY: And to be published to the jury,
7 Your Honor. Permission to approach?

8 THE COURT: All right. Certainly.

9 MR. MOBLEY: Thank you, Your Honor.

10 BY MR. MOBLEY:

11 Q Now, show us on this diagram, show the jury exactly
12 what we have. We have talked about it. Now you
13 are able to put it into a diagram form. Just show
14 them exactly what we have, and I'm going to pass it
15 around to them as well -- well, they will be able
16 to take it back.

17 A This is going to be the forensic mapping that was
18 conducted. It shows U.S. 378. The Saluda County
19 line is down this way (indicating). Lexington is
20 back this way (indicating). Old Lexington Highway
21 which is included in our video of the scene, will
22 be back in this section (indicating).

23 This (indicating) is going to be one of the
24 depictions of the signage that's on the curve
25 showing that you are approaching a speed limit and

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1 a curve. There's like four or five of these posted
2 signs in the curve.

3 I have indicated the tire marks or furrows
4 that were created by the tires that go the length
5 of the ditch and also to allow us to track the
6 vehicle. Also, the ditch line is represented by
7 this line right here (indicating).

8 Grass has been represented by a random number
9 of dots that we have to show the roadway. Also, as
10 you come down, you can see the driveway which is
11 represented, that we discussed briefly in the
12 photographs.

13 The tree was not relative. It's put in there
14 for decoration showing that there's a line of trees
15 there, and the tree line that existed along this
16 length of U.S. 378.

17 The tire marks or red lines on this drawing
18 are representative of the actual length and placed
19 where the tire marks were at the scene for our
20 survey station.

21 We basically take the survey points and we'll
22 connect -- connect those lines for the particular
23 length, and they will be measured out to the
24 length, the width of the tire.

25 Like I say, if the tires are six and a half

1 inches, this (indicating) represents six and a half
2 inches. So we'll actually place the vehicle and
3 track the vehicle along the path of the travel.
4 The culvert was not shot, but we had representation
5 of the driveway.

6 Also, the last tire or tread mark that was
7 placed before the vehicle went airborne, indicating
8 the vehicle basically left the traveled portion of
9 the highway and was now airborne and was not making
10 contact with the roadway.

11 This location here (indicating) we had several
12 black marks or scratches that are also represented
13 in some photographs we collected that day on the
14 4th. This (indicating) is the mailbox I mentioned
15 earlier.

16 The embankment that is basically at the
17 roadway, sitting up higher than the collision
18 scene, is represented by this line (indicating) or
19 this colorization on the drawing. It's even
20 showing the elevation.

21 Then also we have the gouges that were created
22 where the vehicle, as it tumbled, scraped away the
23 grass, and all you have left is the dirt. It
24 scalped it as we kind of call it.

25 So you have several points where the vehicle

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1 scalped the grass and also had contact points. If
2 I'm not mistaken, this location here (indicating)
3 is where --

4 COURT REPORTER: Is where what?

5 A The engine was discharged. The path continues down
6 this long brown line right here (indicating), 90
7 degrees from the roadway, as represented by the
8 ditch that we talked about briefly which both the
9 engine and the vehicle crossed over. We have a
10 depiction of the '98 Blazer at final rest, in its
11 final position.

12 Q Now, when you speak of the 538 feet that the
13 vehicle --

14 A It was 535.

15 Q I'm sorry, 535. Excuse me. The 535 feet, are you
16 referring to from the beginning here (indicating)
17 when it goes off the highway to where it finally
18 rests across this ditch here (indicating)?

19 A Correct.

20 Q Okay. Now, during your investigation did you have
21 the opportunity to have D.N.A. testing on anything
22 inside the actual car?

23 A When I was at the wrecker yard -- during the
24 process we had obtained a warrant previous to allow
25 us to inspect the vehicle, allow me to inspect the

1 vehicle, which included photographs.

2 Also, a mechanic that is used for the M.A.I.T.
3 team and I serve the Midlands, Foothills, Chester,
4 and also the Pee Dee, which is out towards the
5 beach. So, in the process of doing the
6 investigation, I kind of serve several duties.

7 Also, one of the things that came up during
8 the investigation was possible identification of
9 the driver. We use D.N.A. collection to support
10 the findings of the investigating officer, things
11 of that nature. While at the wrecker yard, I took
12 D.N.A. samples, touch D.N.A. of the steering wheel
13 and took photographs and also the ignition key.

14 Q Okay. Were there any findings to conclude who was
15 the driver?

16 A Those were collected through the chain of custody
17 and submitted to S.L.E.D. To my knowledge I have
18 not seen those results.

19 Q And if I were to tell you that they did not match
20 anything or anyone, you can take that as a fact --

21 A I haven't seen it.

22 Q -- as a conclusion.

23 A Yes, I take your word for it because I have not
24 seen the results of that.

25 Q Now, with a tumble of this nature -- I'm going to

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1 give you a hypothetical. If a S.U.V. is tumbling
2 in sort of a sideways manner and all the windows
3 are busted out, could a steering wheel hold an
4 individual in there longer than someone who is
5 unrestrained or doesn't have anything in front of
6 them to keep them in that car?

7 A Occupant schematics, which is basically the --

8 COURT REPORTER: I'm sorry. I didn't
9 understand that.

10 A Occupant schematics. It deals with the motion
11 inside the vehicle as it pertains to the occupants
12 of the vehicle. If you put yourself in the
13 driver's seat, you've got the steering wheel, the
14 center console. It doesn't matter if it's four or
15 five-speed, you've got the gear shift in that
16 location. You've also got the gas pedal, brake,
17 and clutch in this case.

18 So all those things would hold you inside the
19 driver's compartment. Now, if put yourself in the
20 passenger's seat, you've got the center console,
21 just like the driver's got, the dash, the glove
22 compartment if it's closed, and that's it.

23 Generally speaking, there is nothing to hold a
24 passenger in the right front, the right rear, the
25 left rear, the center rear or even in the back of

1 the tailgate section, the storage compartment in
2 the vehicle, when you roll over. The driver has
3 more obstacles to escape from.

4 Q So would it be safe to say that a driver would stay
5 in that vehicle longer than a passenger in your
6 expert opinion?

7 A It would depend on the type of crash.

8 Q In this particular crash.

9 A In this particular crash, in a rollover
10 situation -- when you get into a rollover, think of
11 the inside of the vehicle as a washing machine.
12 It's agitating and then when you go through the
13 spin cycle, all your clothes get thrown to the
14 outside edge of the dishwasher, of the clothes
15 washer.

16 Bodies and things inside the vehicle act that
17 same way. They get thrown to the outside corners
18 as you're rotating. So in this case the driver and
19 passenger were pinned up against, in theory, the
20 outside edges of the doors, the door jambs, the
21 door panels.

22 Then also in a rotation like this crash, it
23 acts like a cork screw effect. You eventually have
24 to bail out, in theory, the back. That's how it
25 usually goes. So to answer your question, the

1 driver would be thrown up against the driver's
2 door, the passenger thrown against the passenger's
3 door as they continue to tumble.

4 Q Now, during this washing machine effect, would a
5 steering wheel and everything that goes along with
6 the driver's side, could it possibly cause an
7 abdomen wound in your expert opinion?

8 A It could cause a -- the steering wheel could cause
9 injury to the stomach area, the chest area.

10 Q Would it be consistent with a tumble of this
11 nature?

12 A It would be possible for you to receive an injury
13 of that nature.

14 Q Okay.

15 MR. MOBLEY: Begging the Court's indulgence,
16 Your Honor.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. MOBLEY: Nothing further for this witness,
20 Your Honor.

21 THE COURT: Thank you, Solicitor. Mr. Madsen.

22 **CROSS EXAMINATION**

23 **BY MR. MADSEN:**

24 Q How are you doing Trooper O'Donnell?

25 A Doing good, just fighting a cold.

1 Q Now, based on what you did with the M.A.I.T. team,
2 you can't sit here and tell the jury who was
3 driving that automobile or who was in the passenger
4 seat; right?

5 A Per our investigation, that was not one of our
6 findings that we were assigned with originally.

7 Q You could -- someone could have requested that you
8 do that, and that is part of your training and
9 experience, but that was not what the request was
10 in this case; correct?

11 A Originally in the investigation, that is correct.
12 Then we moved forward and got the D.N.A.

13 Q Ultimately your -- the request in this case was for
14 you to just map the scene?

15 A Conduct scene documentation representative to a
16 complete scale diagram and to exam the vehicle.

17 Q And when you get out there on 8/4, there's no
18 vehicle out there at that point in time; is there?

19 A There is not.

20 Q It has been removed from the scene?

21 A Correct.

22 Q And you don't get out there at any point in time on
23 8/1 and see the scene as it is that day, correct?

24 A I do not. We have photographs taken by the
25 investigating officer that night, and those were

1 also used to assist us with the investigation.

2 Q And so you can't tell this jury, based on your
3 experience, who comes out of the vehicle first?

4 A It's going to be -- just from my experience, I'm
5 going to say the deceased.

6 Q And you put that in your report?

7 A It wasn't asked for us to identify how the occupant
8 or the driver were placed in the vehicle.

9 Q So you have no idea, from your portion of it, who
10 was the driver or who was the passenger in that?

11 A We received that from the T.R.3 form.

12 Q But that's not part of your investigation, is it?

13 A We used that in our investigation, but we did not
14 fill out the T.R.3 form.

15 Q And so --

16 A -- I'm sorry, the accident report.

17 Q You said that someone could get a stomach injury
18 from that steering wheel, correct?

19 A It would depend on the type of injury. If it was a
20 slice, something sharp or a tear, where you
21 basically tear the skin apart and expose the meat.

22 Q And if someone had exposed meat or bleeding from
23 an abdomen wound and it was caused by the steering
24 wheel, you would expect to see blood on the
25 steering wheel; wouldn't you?

1 A It would depend on how long they stayed inside the
2 vehicle or at what point they received the injury
3 if it came from the steering wheel.

4 Q You can't tell this jury whether my client or
5 Mr. Hill, what window they come out of, whether
6 it's the front or either of the sides; correct?
7 That's not something that was requested for you to
8 do?

9 A It wasn't requested for us to do an occupant
10 examination.

11 Q And if you were requested, you can do something
12 where you potentially match up injuries of an
13 individual inside that car to damage inside the
14 car; is that correct?

15 A Generally. You have limitations there, but
16 generally you can work on that based on that and
17 also the damage found on the side of the vehicle.

18 Q And no one ever requested that you look at the
19 injuries of Mr. Hill and try to match that up to
20 the interior of the car, did they?

21 A No, sir.

22 Q And did you ever take any fingerprints from outside
23 the interior of the car?

24 A I did not.

25 Q Did you ever take any fingerprints of any evidence

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1 that was out on the scene?

2 A The scene was cleaned up prior to our arrival,
3 being debris in the field. Everything that was
4 ejected from the vehicle during the rollover was
5 picked up by the wrecker yard.

6 Q Something such as a beer bottle that was outside of
7 the car, whose responsibility would that have been
8 to have that fingerprinted?

9 A To identify ownership of the beer bottle?

10 Q Yes, sir. State's Exhibit Number 8, since that's
11 out on the scene and it's cleaned up, that is not
12 your responsibility; correct?

13 A No, sir. That was not there when we arrived on the
14 4th.

15 Q That would be someone else's?

16 A If it was collected by the primary investigating
17 officer or the officer on scene that night and
18 placed into evidence, it eventually wound up at
19 S.L.E.D. for processing.

20 Q It would be his responsibility?

21 A If that's -- if they wanted that to be identified
22 as to ownership, that's how it would go.

23 Q And then automobiles such as this have like, I
24 guess for lack of a better word, a black box; isn't
25 that true?

1 A Yes. If they have an airbag, they have an airbag
2 control on it.

3 Q And is that black box something that can tell us
4 the speed at impact that you can analyze through a
5 computer?

6 A Some of the year models. What I was referring to
7 is the crash data retrieval, the module that is
8 inside.

9 Q And that was taken on this one, wasn't it?

10 A It was not.

11 Q There wasn't a black box taken?

12 A We did not secure a black box.

13 Q Do you know --

14 A Typically -- I'm sorry. Go ahead.

15 Q Do you know if there was one?

16 A There was one.

17 Q Was there a reason that you wouldn't secure that?

18 A The crash data retrieval system is basically a
19 software that is designed by Bosh. Bosh kept this
20 software in place to access the airbag control
21 modules on vehicles with what we call a black box
22 to ascertain speed.

23 It gives you, depending on what vehicle you
24 are dealing with, whether it be a Chevrolet,
25 Chrysler, Ford or whatever, you'll likely gain

1 certain insights into the vehicle at the time of
2 the event.

3 Unfortunately, this is a newer technology and
4 generally 2000 and up vehicles are supported. G.M.
5 got online around '94 or '96, I understand,
6 basically when the software got in place. However,
7 the data that is obtained from the airbag control
8 module found in this vehicle would only show --

9 COURT REPORTER: I'm sorry. Would only show
10 what?

11 A Delta-V or a change in velocity. And due to the
12 circumstances surrounding this event, the rollover
13 and things of that nature, it would not provide us
14 with usable data.

15 Also the airbag control module that I'm
16 referring to is tiered or attached to the airbag.
17 In this case the airbag has already been deployed
18 at whatever date, so the airbag control module
19 would give us data based on that deployment. In
20 other words, he couldn't deploy an airbag because
21 he didn't have one. It had already been used.

22 Q Okay. So there's no airbag deployment in this
23 car --

24 A It's already been deployed --

25 Q Right. But, I mean---

1 A -- and duct taped back together.

2 Q Okay. But not on this crash, in other words, on
3 State's Exhibit Number 25 where it shows that tape
4 there, there's no airbag in there from this
5 accident; correct?

6 A I did not pull the tape off to confirm if the
7 airbag was still intact. When the airbag deploys,
8 it goes up like a balloon at like 150 miles an
9 hour. Then you are basically stuck with the
10 balloon, a deflated balloon, on your steering
11 wheel.

12 In this case you have two options, to cut it
13 out or to stuff it back in with tape, and those
14 usually run \$3,000 apiece. So when it was deployed
15 at whatever date, not this collision, \$3,000 gone.
16 Either you replace it or you tuck it back in. And
17 so is it still in there? I couldn't tell you, but
18 it's not usable.

19 Q But it didn't deploy on this accident?

20 A It did not.

21 THE COURT: It didn't deploy and you don't
22 know if there's an airbag in it; is that correct?

23 THE WITNESS: The airbag, whenever the
24 deployment date, whatever date that was, the airbag --
25 basically it's a one-shot deal. Once it's used, you've

1 got to do something with it, take a pair of scissors and
2 cut it out of the way or stuff it back in there and duct
3 tape it back.

4 Because you -- it's got to be replaced to be
5 reused at a dealership, and the data that would be
6 obtained by the airbag control module would be for the
7 deployment then that we don't know about.

8 THE COURT: Thank you.

9 BY MR. MADSEN:

10 Q Let me show you this. That photograph there shows
11 that there was no airbag deployment from this
12 crash, correct?

13 A Correct, it shows the tape on the steering wheel.

14 Q And based on your expertise or what you did out
15 there, you can't tell us how many times the vehicle
16 rolls over; correct?

17 A I cannot.

18 Q There's no way to tell that?

19 A It would be extremely difficult. You'd have to
20 match up each rotation contact point for the car
21 with each gouge or scrape or scalping of the grass
22 at each contact point.

23 Because that vehicle is rotating on three
24 axes, your X., Y., and your Z., and multiple damage
25 points, plus a tree strike. So it would be

1 extremely difficult on one vehicle, extremely
2 difficult.

3 Q And so even though you know it's rolling at some
4 point in time, you can't say the entire time it's
5 rolling on its side? It could also be rolling on
6 an axis that is diagonal or even frontwards,
7 correct?

8 A Correct.

9 Q But you kind of lump them all in -- just rolling --
10 to basically say it's going over, but it could do
11 one of the three things kind of?

12 A Based on my photographs and inspection of the
13 vehicle at the wrecker yard, it did what you are
14 describing. It got into multiple altitudes. We've
15 got impact points at multiple locations.

16 The frame rails are pushed inward because the
17 engine is not there anymore, which is extremely
18 hard to do. Dirt was pinned in at those locations.
19 So it rotated on all three of those.

20 Q Do you get any blood evidence out of the inside?

21 A I did not.

22 Q And no fingerprint evidence out of the inside of
23 the car, correct?

24 A I did not.

25 Q And I think the report that you did indicates no

1 witnesses, correct?

2 A As far as I know, there was no witnesses to the
3 collision.

4 Q And you don't do any analysis of any injuries?

5 A Like I said, where the occupants were placed inside
6 the vehicle was not a task for us to address.

7 Q You weren't requested to do that, correct?

8 A Correct.

9 MR. MADSEN: That's all the questions I
10 have, Judge.

11 THE COURT: Thank you, Mr. Madsen. Solicitor.

12 **REDIRECT EXAMINATION**

13 BY MR. MOBLEY:

14 Q Corporal O'Donnell, let me make sure I have this
15 correct. When you were speaking with Mr. Madsen,
16 you state that the deceased was the first
17 individual thrown out of the car?

18 A In my opinion, yes.

19 Q Okay. In that vehicle on the driver's side is a
20 steering wheel, correct?

21 A Correct.

22 Q On the passenger side, is there a steering wheel or
23 anything else other than the center console?

24 A There is not.

25 MR. MOBLEY: Nothing further, Your Honor.

1 THE COURT: Recross?

2 MR. MADSEN: No, sir.

3 THE COURT: Thank you. Thank you very much,
4 Corporal. You may step down.

5 (Witness leaves the witness stand.)

6 THE COURT: All right. Solicitor, you may
7 call your next witness.

8 MR. MOBLEY: Your Honor, the State rests at
9 this time.

10 THE COURT: All right. Thank you. Thank you
11 very much.

12 Ladies and gentlemen, the State has rested.
13 That means that you have heard all the evidence and all
14 the testimony you are going to hear from the State in
15 its case in chief.

16 I think what I will do -- I have certain
17 matters I must take up outside of your presence at this
18 stage of the proceedings -- is send y'all on to lunch.
19 I would remind you during lunch, do not discuss the case
20 with anyone, your fellow jurors, lunch mates or anyone
21 else. If anyone tries to talk with you, please let me
22 know immediately.

23 Do not do any research on the internet on any
24 issue or any independent research. Please remember to
25 keep an open mind and do not begin your deliberations

1 until I direct you to do so.

2 If you will leave your notes upside-down on
3 your chair, the Clerk's Office will secure them during
4 this recess. Please be back at, let's say, 2:15.

5 Please be back in your jury room at 2:15. Thank you
6 very much.

7 (The jury is excused for lunch at 12:35 p.m.)

8 THE COURT: There is one thing I want to put
9 on the record, Madame Court Reporter. As to the
10 penultimate witness, I guess you would say, Ms. Brown,
11 there was an objection concerning A.B.A. standards.

12 I allowed that testimony in based on the fact
13 that she was an expert and Rule 803(18) as an exception
14 to the hearsay rule. All right. Mr. Madsen, do you
15 have any motions?

16 MR. MADSEN: I do, Your Honor. We would
17 move for a directed verdict. Taking the evidence in the
18 light most favorable to the State, we do not believe
19 that they have met their burden of proof;
20 therefore, we would move for a directed verdict in that
21 instance.

22 Additionally, we do not believe that evidence
23 has been presented to where a reasonable jury could find
24 Mr. Manning guilty. So we would move for a directed
25 verdict on that.

1 Finally. Judge, there has been no testimony
2 whatsoever placed in the record as far as an in-court
3 identification of Mr. Manning. We believe that that is
4 an essential element of I.D. in any case, and therefore
5 we would move for a directed verdict.

6 THE COURT: All right. Solicitor?

7 MR. MOBLEY: Your Honor, thank you. First and
8 foremost, of course, as you know, Your Honor, you well
9 know, the existence -- the existence of evidence is what
10 we are looking here to weigh and is not of concern in a
11 directed verdict.

12 We are of the opinion that there is existence
13 of evidence for each and every element in this
14 particular case as far as the testimony is concerned,
15 beginning with the statements that were obtained through
16 E.M.S., from the E.M.S. workers where Mr. Manning
17 actually admits to driving: I wish I had not been
18 driving.

19 Additionally, there is specific information as
20 to alcohol being consumed by Ms. Fairchild, as well as
21 the intoxication that comes from the testimony of
22 Ms. Jennifer Brown.

23 We also have where a cause of death was caused
24 by this incident through the testimony of Mr. Bill
25 Zeigler, that the victim in this particular case was

1 pronounced dead at the scene. So we have satisfied that
2 particular element as well.

3 And obviously there is some -- there is
4 evidence proving that there was driving on the roads of
5 Lexington County here in South Carolina, Your Honor. So
6 we feel that a directed verdict would not be appropriate
7 in this case.

8 It goes to the weight. We have the existence
9 of evidence, and it's not the weight of the evidence
10 that is presented or should be presented to the jury,
11 Your Honor.

12 Additionally, in the record, there's numerous
13 identifications of the actual name of the individual
14 that the investigation was being done on. So we are of
15 the opinion that that motion needs to be denied as well.

16 Because on the record, through numerous
17 witnesses that the State has put up, the Defendant has
18 been identified through the blood collection, who it was
19 collected from. His name was on all of the reports as
20 well, Your Honor. So we don't feel that that would be
21 appropriate at this time, and it should be presented to
22 the jury.

23 THE COURT: All right. Thank you.

24 MR. MOBLEY: Thank you, Your Honor.

25 THE COURT: All right. I would respectfully

1 deny the motion. I think the witness Fairchild was
2 sufficient on the issue of identification, and there was
3 never any motion as to a question in the in camera
4 hearing concerning identification outside of the
5 presence of the jury.

6 Further, I think there is sufficient direct
7 and/or circumstantial -- substantial circumstantial
8 evidence -- on the essential elements of the offense of
9 felony D.U.I. for the case to go forward. Any other
10 motions, Mr. Madsen?

11 MR. MADSEN: No, Your Honor.

12 THE COURT: All right. Has the Defendant
13 made a decision about whether or not he is going to
14 testify?

15 MR. MADSEN: He has, Your Honor.

16 THE COURT: Do I need to interview him in that
17 regard?

18 MR. MADSEN: No, sir. I have gone over his
19 rights with him, but he is available to the Court if
20 you so desire, but he will not be testifying.

21 THE COURT: All right. Would you please
22 stand for me, Mr. Manning.

23 Place him under oath, please, Madame Clerk.

24 CLERK: Yes, sir, Your Honor.

25 CHRISTOPHER D. MANNING is first

1 duly sworn.

2 THE COURT: Mr. Manning, come around to the
3 microphone for me, please.

4 (Pause.)

5 THE COURT: I need to go over some things with
6 you. I have to do this with everyone who is on trial,
7 and I need your responses to be under oath. That's why
8 I had the Clerk place you under oath.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: We have reached the stage of the
11 trial where the State has rested and your side, the
12 defense, now has the opportunity to present evidence for
13 the jury to consider. Do you understand where we are at
14 in the trial?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: In that regard you may call
17 witnesses to testify or if you choose to testify --
18 and/or if you choose to testify -- you may do so
19 yourself. Do you understand?

20 THE DEFENDANT: A Yes, sir.

21 THE COURT: No one can force you to testify.
22 You have an absolute right to remain silent, and if you
23 choose not to testify, I will tell this jury that they
24 cannot hold your silence against you in any way. I will
25 further tell them that they are not to discuss that in

1 the jury room. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If your side offers no evidence at
4 all, in other words, if neither you nor anyone on your
5 behalf testifies or offers any exhibits, then your
6 attorney will get to make the last argument to the jury.
7 Otherwise, the prosecutor gets to make the last
8 argument. Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Solicitor, does Mr. Manning have a
11 record which would subject him to impeachment under 609?

12 MR. MOBLEY: Your Honor, we are -- he does,
13 Your Honor. What we are doing, without identifying the
14 actual record and the date -- if you will bear with me
15 one second.

16 MR. MADSEN: Judge, he does, and I have gone
17 over that with him if that assists the Court.

18 THE COURT: What is his record, Mr. Madsen?

19 MR. MADSEN: He has a strong arm robbery that
20 I believe is within the last ten years out of Florida.

21 MR. MOBLEY: That is August 19, 2005, Your
22 Honor.

23 THE COURT: Others?

24 MR. MADSEN: I remember a theft around that
25 date, but without looking at my notes --

1 THE COURT: All right.

2 MR. MOBLEY: We have a petty theft, Your
3 Honor, which was in March, 2003, and that was in the
4 State of Florida as well. Other than that, we don't
5 have anything else.

6 THE COURT: Strong armed robbery in August of
7 '05 and petty theft in March of '03?

8 MR. MOBLEY: That's correct, Your Honor.

9 MR. MADSEN: I believe those are the only
10 things that would be impeachable.

11 THE COURT: All right. Thank you.

12 What that means to you, Mr. Manning, is if you
13 took the witness stand, the Solicitor could ask you
14 about those certain convictions in front of the jury.
15 They could not go into the details of those prior
16 offenses, but they could ask you if you have ever been
17 convicted of strong arm robbery in August of '05 and
18 petty theft in March of '03.

19 If that were to happen, I would tell the jury
20 that they can only consider that evidence against you,
21 if they consider it at all, on the issue of whether your
22 testimony is believable and for no other purpose. Do
23 you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: The decision about whether you

1 testify or not is your decision to make and yours alone.
2 I expect that you have conferred with your attorneys and
3 others whose opinions you value on important decisions,
4 but the decision about whether you testify or not is
5 your call, your decision. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has anyone exercised any undue
8 influence over you to get you to choose to testify or
9 not to testify?

10 THE DEFENDANT: No, sir.

11 THE COURT: Today, are you under the influence
12 of any drugs, alcohol or medication or anything that
13 affects your thinking ability?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you suffer from any physical or
16 mental problems that affect your thinking today?

17 THE DEFENDANT: No, sir.

18 THE COURT: Whatever decision you have made
19 about whether or not to testify, is it your decision
20 made of your own free will and accord?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any questions you
23 would like to ask me about your right to testify or not
24 to testify?

25 THE DEFENDANT: No, sir.

1 THE COURT: How old are you, Mr. Manning?

2 THE DEFENDANT: Forty-one.

3 THE COURT: How old?

4 THE DEFENDANT: Forty-one.

5 THE COURT: How much education do you have?

6 THE DEFENDANT: Eleventh grade.

7 THE COURT: What type of work do you do?

8 THE DEFENDANT: I'm a carpenter, a tree
9 surgeon, and a cook.

10 THE COURT: A carpenter, tree surgeon and
11 what?

12 THE DEFENDANT: A cook.

13 THE COURT: Say it again.

14 THE DEFENDANT: A Cook.

15 THE COURT: A cook, certainly. I heard that
16 testimony. All right. Have you made your decision
17 about whether or not you are going to testify or not
18 testify?

19 (Pause.)

20 THE DEFENDANT: Yes, sir, I have made my
21 decision.

22 THE COURT: Do you need any more time to talk
23 with your lawyer about that decision?

24 THE DEFENDANT: No, sir.

25 THE COURT: And what is your decision?

1 THE DEFENDANT: I won't testify, no, sir.

2 THE COURT: And that is your decision, your
3 choice --

4 THE DEFENDANT: Yes, sir.

5 THE COURT: -- made of your own free will and
6 accord?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. I find that the
9 Defendant understands and comprehends his right to
10 testify or not to testify, that he has made a decision
11 not to testify, and that decision is made freely,
12 knowingly, and voluntarily of his own free will and
13 accord.

14 Thank you, Mr. Manning. You may return to
15 your seat.

16 Mr. Madsen, can you tell me now -- you don't
17 have to if you don't want to -- but can you tell me now
18 whether or not the defense intends to offer any evidence
19 or any testimony?

20 MR. MADSEN: We will not, Your Honor.

21 THE COURT: Are there any specific requests to
22 charge from the defense?

23 MR. MADSEN: No, Your Honor.

24 THE COURT: From the State?

25 MR. MOBLEY: No, Your Honor.

1 THE COURT: All right. Court will be in
2 recess until 2:15, and at that time we would, barring
3 any change of circumstance, we would be ready for our
4 closings. Solicitor, you would close first.

5 MR. MOBLEY: Thank you, Your Honor.

6 THE COURT: Thank you very much. Court will
7 be in recess until 2:15.

8 (Whereupon there is a luncheon recess.)

9 THE COURT: All right. Solicitor, Mr. Madsen,
10 before we bring the jury out, I was reviewing some
11 issues on my charge that I have some questions about,
12 and I'm sure y'all will be glad to answer them for me.
13 As to the statement of the Defendant, do you want a
14 charge on the statement of the Defendant, Mr. Madsen?

15 MR. MADSEN: Would Your Honor mind just
16 reading what it would be?

17 THE COURT: I think it would be something
18 along these lines, and the reason I say I think is that
19 so much of it, I think, does not apply. A statement
20 alleged to have been made by the Defendant has been
21 admitted into evidence in this case.

22 While the Court has determined that the
23 statement is admissible, I instruct you that you make
24 the ultimate decision of whether or not the Defendant
25 made the statement.

1 If the Defendant did make the statement, you
2 must determine whether the statement was made by the
3 Defendant voluntarily and of his own free will. The
4 State has the burden of proving beyond a reasonable
5 doubt that any alleged statement was voluntary.

6 If you determine it was voluntary, you may
7 give the statement any further consideration that you
8 deem proper. You must decide what weight, if any,
9 should be given to the alleged statement. If you
10 determine the alleged statement was not the free and
11 voluntary statement of the Defendant, you should not
12 consider the statement at all.

13 I've always questioned that phrase also
14 because I'm not too sure they couldn't consider an
15 involuntary statement on behalf of the Defendant. I'm
16 just academically thinking through it in my mind. Do
17 either one of y'all want a charge on the statement of
18 the Defendant?

19 MR. MADSEN: I don't have a problem with
20 what Your Honor just read.

21 THE COURT: Solicitor? And obviously all the
22 Miranda issues do not apply. I mean, I think y'all
23 agree on the facts. If the statements were made to
24 E.M.S. and fire, they were made without police
25 involvement prior to police arrival. In fact, the

1 Defendant was already in the ambulance en route to the
2 hospital before the police arrived.

3 MR. MOBLEY: I think the State would be fine
4 with that particular charge, Your Honor.

5 THE COURT: All right. Now, my next question
6 is the issue of what you would request I charge, if
7 anything, concerning his rights under Miranda that were
8 advised to him by Trooper Baker or under the implied
9 consent law. Do you want me to charge all that?

10 MR. MADSEN: I do not.

11 THE COURT: I'm not saying you can't argue it.
12 I'm not saying you can't talk about it. I'm just asking
13 if you want all that charged.

14 MR. MOBLEY: I think in the interest of trial
15 proceedings and in the interest of justice, we would
16 probably need to go ahead and have that charged, Your
17 Honor.

18 THE COURT: And that's by statute?

19 MR. MOBLEY: That is by statute, Your Honor.

20 THE COURT: Can you tell me the statute on
21 that, Solicitor?

22 MR. MOBLEY: I think it's 56-5-29...

23 THE COURT: Maybe 50?

24 MR. MOBLEY: Fifty. If it's not 50, it's 56,
25 Your Honor. I'll pull out my book. It's 2950. You are

1 correct, Your Honor.

2 THE COURT: You are talking about
3 56-5-2950(b): No test may be administered or samples
4 obtained unless --

5 MR. MOBLEY: You are reading directly from the
6 statute, Your Honor?

7 THE COURT: I think I am.

8 MR. MOBLEY: Yes, (b) I would think would need
9 to be charged, Your Honor. But for clarification would
10 you not read section (a) of that?

11 THE COURT: Yes, I'll read the part that may
12 apply. Let's see what applies. Well, obviously the
13 information about the breath test doesn't apply.

14 MR. MOBLEY: That's correct. And then when
15 you go down after that, Your Honor, it does state: If
16 the person is physically unable to provide an acceptable
17 breath test or breath sample because he has an injured
18 mouth, is unconscious or dead or any other reason
19 considered acceptable by the licensed medical personnel,
20 the arresting officer may request a blood sample to be
21 taken.

22 We would be in a position, Your Honor, that
23 that particular portion of Subsection (a), we would
24 request that that is read so it would explain why a
25 breath sample wasn't obtained because that could be a

1 question for the jury. They hear about breath samples
2 being taken all the time, and one wasn't taken in this
3 particular case, Your Honor.

4 THE COURT: All right.

5 MR. MOBLEY: And that may eliminate any
6 confusion they may have with the question later after
7 they get the charge.

8 THE COURT: All right. I think that's the
9 only question. Yes, sir, Mr. Madsen?

10 MR. MADSEN: Judge, I would just object.
11 I think that that would be confusing. Additionally, one
12 thing I wanted to say is it starts off with, A person
13 who drives, which I do believe would be a comment on the
14 facts.

15 THE COURT: Well, I am going to charge, if I
16 can find it now -- I'm glad you brought that up. I'm
17 going to charge, given that an issue in this case is the
18 identification of the Defendant as the person who
19 committed the crime charged, the State has the burden of
20 proving his identity beyond a reasonable doubt. You
21 must be satisfied beyond a reasonable doubt of the
22 accuracy of the identification of the Defendant before
23 you may convict the Defendant.

24 MR. MADSEN: I'm just worried about that in
25 context with the statute.

1 THE COURT: Right. Well, I was just saying
2 with my charge encapsulating all of that. Certainly,
3 I'm not trying to charge on the facts. That's one
4 reason I want to go over that issue of the statement
5 also with you. It's kind of related to the facts, but I
6 think I do have the duty to charge the law.

7 Obviously, one of the elements that they have
8 to determine, Mr. Madsen, is who was operating the motor
9 vehicle. All right. Well, I'm sure if y'all have any
10 exceptions or objections or additions, y'all will let me
11 know timely, that is, after I finish. Anything further,
12 Solicitor?

13 MR. MOBLEY: Nothing, Your Honor.

14 THE COURT: Mr. Madsen?

15 MR. MADSEN: No, Your Honor.

16 THE COURT: All right. Bring us the jury,
17 please.

18 (The jury returns to the courtroom at
19 2:45 p.m.)

20 THE COURT: All right. Welcome back, ladies
21 and gentlemen of the jury. I hope y'all had a pleasant
22 lunch. As you recall, before lunch the State rested.
23 The Defendant now has the opportunity to present
24 evidence if the Defendant chooses to do so.

25 A criminal defendant is never required to

1 prove himself or herself innocent. A criminal defendant
2 in South Carolina is presumed to be innocent, regardless
3 of the seriousness of the charge.

4 The State always has the burden of proving its
5 case beyond a reasonable doubt. However, if the
6 Defendant chooses to present evidence or testimony, he
7 may certainly do so.

8 With that being said, I will now ask
9 Mr. Madsen. You may call your first witness,
10 Mr. Madsen.

11 MR. MADSEN: Your Honor, the defense
12 rests.

13 THE COURT: Thank you. Thank you very much,
14 Mr. Madsen. You renew your motions?

15 MR. MADSEN: I do, Your Honor.

16 THE COURT: All right. And I'll renew my
17 previous rulings.

18 With that being said, ladies and gentlemen,
19 you have now heard all the evidence and all the
20 testimony that you are going to hear in the trial of
21 this case from both the State and the defense.

22 The stage of the proceedings we are at now is
23 the closing arguments. The procedure we will follow is
24 the solicitor will present his closing argument to you
25 on behalf of the State first. That will then be

1 followed by the closing argument by Mr. Madsen on behalf
2 of the Defendant, Mr. Manning.

3 After the closing arguments, I will then
4 charge or instruct you on the law that you are to apply
5 to the facts of this case. As you recall, Mr. Manning
6 is facing one charge of felony driving under the
7 influence with a death involved.

8 If you would please give -- and depending on
9 how long the attorneys' arguments are, we may take a
10 break after their closing arguments and before my charge
11 to you. It just depends on how long. If you need a
12 break, again, raise your hand. Y'all all look like
13 y'all are willing to take charge if you need to. So
14 please raise your hand if you need a break at any time,
15 and we will certainly do that.

16 After my instruction on the law to you, the
17 case will be submitted to you for your deliberations and
18 for your verdict. So if you would please give the
19 attorneys your complete and undivided attention.

20 I would remind those in the courtroom that I
21 do not allow any movement in and out of the courtroom
22 during the time in which the attorneys are addressing
23 the jury or the time I'm addressing the jury.

24 You may certainly leave after the solicitor's
25 closing and before Mr. Madsen starts or after

1 Mr. Madsen's closing and before I start. I find it's
2 distracting to me; therefore, I assume it would also
3 perhaps be distracting to the members of the jury.

4 So, please, ladies and gentlemen, if you would
5 give them your complete and undivided attention, as you
6 have done to all the parties throughout the trial of
7 this case. Thank you very much.

8 Solicitor?

9 **CLOSING ARGUMENT**

10 MR. MOBLEY: Thank you, Your Honor. At 4:45,
11 4:50 a.m. August 1st, 2009, the destination was Ramp 4
12 of Lake Murray with the purpose to get there as fast as
13 we can.

14 Highway 378 westbound going in that direction,
15 the Chevy Blazer picks up speed. We get up to at least
16 75 miles per hour, we get up to at least 80 miles per
17 hour, we get up to at least 89 miles per hour, speeding
18 down the highway..

19 We are almost to the destination. We
20 encounter a curve and start going into that curve.
21 Something is keeping us from staying with that curve.
22 We begin to go around it.

23 Before we totally get out of this curve, we
24 hit the shoulder, (clapping), bump, bump, bump, bump,
25 bump. Those are the tires hitting the shoulder of that

1 road tearing up that portion of the highway.

2 The grass is being thrown up in the air. Dirt
3 is being thrown in the air going 80 miles per hour, 89
4 miles per hour in that portion of the curve for several
5 feet.

6 We begin to go down into a ditch, one that is
7 already there. You can't drive out of it. You're stuck
8 in it. The car begins to turn. The reason we don't
9 know is you have to turn to try to get out of the
10 ditch.

11 The culvert comes up. It hits that front
12 passenger tire and begins a process of flipping. That
13 Chevrolet Blazer flips, flips, tumbles, tumbles,
14 tumbles. It flips and goes airborne, hits the ground,
15 flips, flips, tumbles, tumbles, tumbles, flips, goes
16 airborne again, comes across another ditch, continues to
17 flip.

18 The first person is thrown out. It flips,
19 flips, flips, and another person comes out. It comes to
20 a final rest. Jacob Hill lies motionless approximately
21 50 feet away from where the car rests at. Christopher
22 Manning lies within five to ten feet of that vehicle.

23 He is hurt. We've heard he has an abdominal
24 wound. You can almost see his intestines. He lays
25 there until comes help. Here come the sirens, fire

1 trucks, the ambulance, the paramedics. He lays there
2 and lays there. Someone gets to him and begins
3 treatment.

4 Is there anyone else in this car besides the
5 person that's over here, referring to Jacob Hill? No,
6 it was just me and my buddy. He was riding with me. He
7 begins treatment. They are trying to stabilize him.
8 Man, I f-ed up. They continue the treatment.

9 Jacob Hill is lifeless right now. We need to
10 save Christopher Manning. We don't know what the
11 severity of his injuries are, but we do know he has an
12 abdominal wound where basically his intestines is
13 showing. He's in pain. Man, I f-ed up, I f-ed up.

14 They stabilize him and begin to take him up on
15 the backboard. He gets inside the paramedic truck so
16 that they can transport him to a local hospital for the
17 correct care. While he's in there, he makes a
18 statement, I shouldn't have been driving.

19 Earlier that day Mr. Christopher Manning was
20 working at Boondocks. He worked and he got off. He had
21 no idea that his -- quote, unquote -- buddy would be
22 coming by. His buddy got off from work and walked
23 approximately a half a mile, a quarter of a mile, walked
24 there to catch him a ride.

25 They began to drink, began to drink around

1 11:00 or so, and they drank until a little after 4:00,
2 about 4:30, 4:40. During the time that they are
3 drinking, they are creating comradery with everyone, the
4 patrons that are there.

5 It's a private club so everyone basically
6 knows everyone. Jacob knows mostly everyone that's
7 there as well, including the Defendant, Christopher
8 Manning. Jacob is going to seek out that ride from
9 someone he knows that's familiar with that territory.

10 They drink a lot. There's no hiding that.
11 They drink a lot that day. It was Friday going into
12 Saturday. They start the weekend off. They started it
13 off. Now, during this time Heather Fairchild, she is
14 serving them, not exclusively, but enough to know that
15 they had had a lot.

16 Even in her own testimony, she states that
17 according to what they drank, Christopher Manning should
18 have been impaired. She overhears them saying about
19 going to Lake Murray to go swimming, overhears the
20 conversation of Christopher Manning saying, Don't worry,
21 I'll drive.

22 But she never does see it. She never does see
23 anyone get into the car because she's still cleaning up.
24 She's taking care of business inside the bar, but she
25 sees them leave together. They leave together. And

1 when they left, they were going to go take that swim.

2 At 89 miles per hour trying to maneuver a
3 curve when you've drank so much from approximately 11:00
4 o'clock to 4:00 a.m. in the morning, they didn't have a
5 chance of making that curve. They did not. Going
6 around that curve and losing control, they are basically
7 straightening out instead of curving around.

8 And when the wreck occurred, it was so violent
9 the entire assembly for the engine, as well as the
10 transmission, was several feet away from the actual
11 truck itself.

12 Now, ladies and gentlemen, we have a number of
13 issues in this particular case. One, we never had
14 anyone, found anyone behind the wheel of that car. Two,
15 we never had any D.N.A. that was gathered out of that
16 car from either of these two individuals. Three, we
17 never had a witness that placed anyone behind that car
18 wheel.

19 But, ladies and gentlemen, let me tell you
20 what we do have. We have some things that are going to
21 strike to common sense. We've got a car that
22 Mr. Manning had driven to work that day.

23 We have a car that is registered to Mr.
24 Manning's same address. The registration address and
25 Mr. Manning's address match. We have a bartender who

1 states that Mr. Manning said, I will drive, I will take
2 us. Lastly, ladies and gentlemen, we have Mr. Manning
3 saying, I should not have driven.

4 I was thinking about this particular case and
5 what I was going to present to you, and I thought about
6 all these facts. I said, It boils down to common sense.
7 Common sense will also tell us that that injury that he
8 received right there came from that steering wheel.

9 They were being shaken around like a washing
10 machine, as Corporal O'Donnell stated, when they were
11 being thrown around and thrown around and about. That's
12 the reason why Jacob was thrown out first because he had
13 nothing to restrain him in his seat.

14 That's the reason why Christopher Manning was
15 thrown out last because the only thing that saved him
16 from being thrown out first and possibly saved his life
17 was the fact that that steering wheel kept him in the
18 seat longer.

19 Now, this was a tragic event. Someone died in
20 this event. Christopher Manning made these decisions.
21 He made the decision to drink a lot, along with his
22 buddy. Christopher Manning made the decision to get
23 behind the wheel of that car.

24 Christopher Manning made the decision to speed
25 in a 55, 45 mile-per-hour area to 89 miles per hour

1 going around a curve. And Christopher Manning made the
2 decision, when he was laying on the ground, he said,
3 Man, I f-ed up. No, it was me and my buddy. He was
4 riding with me. Christopher Manning made the decision
5 to say, I should not have been driving.

6 It doesn't get much simpler than that.
7 Initially you would think that we've got a bunch of
8 problems. Thank you, Mr. Christopher Manning. You were
9 able to place yourself behind the wheel of the car. You
10 made that decision. You made that decision that night.

11 Jacob made the decision to get into the car
12 with him, but he didn't make the decision to go 89 miles
13 per hour traveling from the first time they leave the
14 side of the highway and travel another 535 feet before
15 that car rests. Jacob didn't have that decision to
16 make. He couldn't because he wasn't behind the wheel of
17 that car.

18 Now, ladies and gentlemen, we've presented a
19 lot of testimony to you related to just credibility of
20 them, how thorough they were at the time, how they were
21 able to create that puzzle that I spoke of before. We
22 are going to give you a lot of pieces. We are going to
23 paint a very wide picture.

24 We weren't going to hide the fact that Jacob
25 had been drinking as well. We wanted you to see the

1 complete picture, and we provided it to you. What we
2 did also, I told you about a string that was going to
3 string all those pieces together to create that puzzle,
4 to create that picture.

5 You know what that string was now that we
6 think about it? Mr. Manning. Mr. Manning told us
7 everything we needed to know: I should not have been
8 driving, I f-ed up. No, it was me and my buddy. He was
9 riding with me. And, ladies and gentlemen, with friends
10 like these, who needs enemies? Thank you.

11 THE COURT: Thank you. Thank you, Solicitor.
12 Mr. Madsen.

13 MR. MADSEN: May it please the Court,
14 Solicitor.

15 THE COURT: Yes, sir.

16 **CLOSING ARGUMENT**

17 MR. MADSEN: As I told you in the beginning,
18 in a case like this, there are no winners, and there are
19 no losers. The solicitor is right. This was a tragic
20 accident. It cost one man his life, and another man is
21 on trial for his life.

22 There are some bedrock principles in our law,
23 and once I sit down, the judge will give you what the
24 law in this case is. It's your job as a jury to come
25 together collectively and find the facts and then take

1 those facts as you find them and apply them to the law
2 as the judge gives it to you.

3 Now, by that bedrock principle system,
4 Christopher Manning is presumed innocent. The State has
5 the burden of proof to prove him guilty beyond a
6 reasonable doubt of each and every element.

7 The solicitor and I agree on something. When
8 you walked through that door, when you sit in this jury
9 box, when you go back and begin deliberation, you don't
10 leave your common sense behind. We ask you to use that
11 common sense. That is very, very important.

12 Now, let's talk a little bit about the facts.
13 We know in this case from Heather Fairchild who got up
14 on that stand, you heard her, how she was at Boondocks,
15 that Chris was working there, that Jacob had worked
16 there in the past, that they had made the decision to
17 leave, that Chris did have his car there.

18 But you also heard about how when they were
19 leaving, they stopped and they got together, and she
20 didn't hear what they were talking about. It's not
21 unusual for people to change plans.

22 What didn't you hear from inside of Boondocks?
23 Did you hear from the other bartender? Wouldn't you
24 want to know what he saw and what he heard? How about
25 the other patrons? Wouldn't you want to know what they

1 saw and what they heard? Wouldn't you have wanted to
2 see that video of the left side of the bar?

3 It's the State's burden of proof. If nothing
4 else, you don't hear from Lois Cannis. Remember who
5 Heather told you that was? She was the person who left
6 at the same time with Chris and Mr. Hill.

7 Do you think that if she helped the State's
8 case that you would have heard from her? Do you think
9 if, when she goes outside and Chris is behind that
10 wheel, the State would have called her as a witness?
11 You bet your bottom dollar. It is the State's burden of
12 proof beyond a reasonable doubt.

13 Let's talk about the scene. Who else might
14 you have wanted to hear from? How about the first
15 person out there? And I'm not talking about the fire
16 department. I'm not talking about E.M.S.

17 How about the person who made the 9-1-1 call
18 who was out there on the scene? Wouldn't you want to
19 know what they saw before anyone else gets out there?
20 It's the State's burden of proof. You don't hear any of
21 that. You don't see that person. What would they have
22 said?

23 We know this. It was a dark, rainy night.
24 The firefighter talked about how he had to illuminate
25 the scene. We know that a lot of vehicles are coming

1 out there, that there's lights, that there's sirens,
2 that people show up and more people show up and more
3 people show up. Does it sound kind of hectic? You bet
4 it is.

5 You know, one of the interesting things that
6 you hear from the stand is from people who see the same
7 thing and it's exactly opposite. You heard from the
8 first E.M.T. that, No, he's not bleeding, not from the
9 face, not from the side wound, a wound big enough that
10 shows the intestines that I can put my fist in, but, no,
11 no blood. Then you hear from another guy, Oh, he's
12 gushing blood. Oh, yeah, he's bleeding from there on
13 his side.

14 Use your common sense. You got a chance to
15 judge the demeanor of the witnesses. I'm asking you to
16 use your common sense. How can that be different? Is
17 someone downplaying the state that Chris is in?

18 You know, it seems like the tenor of the
19 testimony by certain State's witnesses is that Chris was
20 just like you sitting there and me standing here, being
21 able to carry on a conversation like nothing happened.

22 You've got the pictures of the car that will
23 come back in evidence. That's not going to shake
24 someone up? Someone with a head wound, someone who's
25 gushing blood, who has got their intestines in a hole on

1 their side the size of a fist. Use your common sense on
2 that. Does that make sense to you? There's no way that
3 anyone can reconcile those differences except for
4 someone who is downplaying it.

5 You heard from one of the volunteer firemen
6 that Chris was in and out, he hesitated, because he had
7 just gone through that crash. You heard some stuff
8 about some statements from someone who had just been
9 through a crash, the lights, the sirens, the hectic
10 nature of it. You heard, I f-ed up.

11 With everything going on out there, is that, I
12 messed up? Is that, I messed up and let my buddy drive?
13 Have you ever had a situation where something happened
14 that you didn't do and you apologized for it? I'm
15 sorry. I shouldn't have let my buddy drive. I'm sorry.

16 You have one person who says, I hear him say,
17 I shouldn't have drove. With everything going on, is
18 that, I shouldn't have drove or I should have drove?
19 And, remember, this is supposed to be when he's on a
20 spine board with at least six people.

21 Why don't you hear from five other people that
22 are right there? We've got lights. We've got sirens.
23 This is hectic. They are trying to get him out of
24 there. He ends up staying in the hospital 27 days. Is
25 it reasonable that someone is not shaken up, not messed

1 up from this accident? Use your common sense.

2 Ask yourself when you take a look at these
3 pictures and you see this driver's side is indented and
4 that window, someone coming out of there is going to
5 have a lot less likely ability to survive than that
6 window that is completely intact.

7 What do we know about the testimony from
8 Mr. Hill? What side of the car is he on? He's on that
9 driver's side. If you are heading down the right-hand
10 side of the road, he's off on that driver's side. We
11 know that.

12 Now, so is Chris. He's a lot closer to the
13 car, but that vehicle is sitting on its driver's side.
14 Is he coming out that driver's side? Not unless he's
15 going through the ground.

16 Let's talk about that incident report. Use
17 your common sense. You know, one of the other
18 interesting things is there's another player that y'all
19 didn't hear from that is so important, Tammy Hall, the
20 paramedic who was working on Chris, who was with
21 Elizabeth Simmons the entire time, and you never heard
22 from her.

23 Now, why is that important? Someone who is
24 with him the entire time, working on him, you never
25 heard from her. It's the State's burden of proof. Just

1 what you've heard there, is that a reasonable doubt? It
2 sure is. It sure is.

3 You know, one of the interesting things that I
4 think that you heard is that Elizabeth Simmons, when
5 they go to take him to the hospital -- when I say him, I
6 mean Chris -- and Tammy takes him in and Elizabeth
7 cleans up the ambulance for potentially, you know,
8 another run. I think they are about ready to get off
9 shift.

10 Elizabeth had no answer for why the medical
11 reports say Chris was the passenger and the driver was
12 signal nine, which in their lingo means deceased. Does
13 that come from Tammy? It's the State's burden of proof.
14 Is that a reasonable doubt? It sure is.

15 You know, the other thing -- and I had touched
16 upon this -- they want you to believe that Chris is just
17 fine, like you and me conversing. You have some people
18 around the scene who talk about how he's in and out.
19 Who is really important on that aspect? How about
20 Trooper Baker who sees Chris at the hospital?

21 He's in such bad shape that he can't even sign
22 his name. You'll have that paperwork back in here that
23 says, unable to sign, in and out of consciousness. That
24 certainly makes sense with someone who has been through
25 an accident like that.

1 You also have the M.A.I.T. team. All they are
2 requested to do is to document the scene, nothing more,
3 nothing less. And it was kind of interesting when he
4 was asked a question about, Well, how do you know he's
5 the passenger? How do you know he was thrown out first?

6 Because I was told he's the passenger. So if
7 I'm told he's the passenger, he's the passenger and
8 that's why he's thrown out first because he's the
9 passenger. That's just a statement. That sure is not
10 proof.

11 You know, the interesting thing is initially
12 when he testified, he makes it seem like it just rolls
13 over on its side. You will have the pictures. You'll
14 see damage to the front, and you'll see damage to the
15 back.

16 You know, I think -- and maybe it's just me --
17 but when I'm thinking about that, I'm thinking about
18 those people who get on the diving board and sometimes
19 they go over this way and sometimes they kind of twist
20 to the side and sometimes they kind of do both.

21 And he told you they can't tell you how many
22 times the car went over, how it went over, but there's
23 damage to a bunch of different sides. There are certain
24 things that we know. They could have done an analysis
25 of injuries and tried to match them up, and they didn't

1 do that. Is that evidence that you would have wanted?

2 Wouldn't you have wanted to know whose
3 fingerprints were on the key, whose fingerprints were on
4 the steering wheel, any blood from the inside? Wouldn't
5 you have wanted to have those pieces of evidence? So we
6 know in this case over here is no physical evidence and
7 over here there are no witnesses, but it's his
8 girlfriend's car so he must have been driving because no
9 one ever drives one of our cars at some point in time,
10 and plans never change.

11 It's the State's burden of proof. Have they
12 met that burden of proof? They have not. They could
13 have gotten an autopsy of Mr. Hill. They could have
14 tried to match up those wounds.

15 One of the very, very important things -- and
16 it was relatively near the beginning, and I don't know
17 if y'all picked up on it, but I do want to point it out
18 to you. The coroner talked about Mr. Hill and how he
19 died, a crushed chest.

20 We know that this car didn't have an airbag
21 that was working. It doesn't have any blood on it from
22 a wound. What is going to happen if you are the driver
23 and there's a violent crash and you come crashing into
24 this steering wheel? It's going to crush your chest.

25 As I told you, it is the State's burden of

1 proof. Chris doesn't have to prove anything. They must
2 prove each and every element to you beyond a reasonable
3 doubt.

4 I ask that you use your common sense because
5 they haven't met their burden of proof. They haven't
6 proved this case beyond a reasonable doubt, and because
7 of the lack of evidence that you heard in this case, I
8 ask that you find Christopher Manning not guilty. Thank
9 you.

10 THE COURT: Thank you. Thank you very much,
11 Mr. Madsen.

12 (Whereupon the Court charged the jury as
13 follows.)

14 THE COURT: Ladies and gentlemen of the jury,
15 if you would please give me your complete and undivided
16 attention. I am now going to charge you or instruct you
17 on the law as it applies in this case. The procedure I
18 follow is I am going to initially give you a backdrop of
19 the three elements of felony D.U.I.

20 I am then going to charge you the general
21 criminal law that applies to all criminal cases, all
22 criminal trials, in South Carolina. Then I will, in
23 more detail, explain to you the law of felony D.U.I.,
24 but I want you to have that kind of backdrop as I
25 explain the various areas of the law to you.

1 Felony D.U.I. requires proof of three
2 elements: Number one, the actor drives a vehicle while
3 under the influence of alcohol and/or drugs; number two,
4 the actor does an act forbidden by law or neglected a
5 duty imposed by law; and, number three, the act or
6 negligence, the act or neglect, proximately caused the
7 death to another person.

8 When I charge you the general law, I will give
9 you the caption of the paragraph I'm fixing to cover.
10 When I change from one topic to another, I will give you
11 the next topic I am fixing to cover.

12 Charge, arrest, indictment not evidence. The
13 indictment charges the Defendant with felony driving
14 under the influence resulting in death. I remind you
15 that the fact that the Defendant was arrested, charged
16 and indicted is not evidence in this case and cannot be
17 considered by you as evidence of guilt, nor does it
18 create any presumption or inference of guilt.

19 This document, this indictment, is simply the
20 formal written instrument which contains the charge made
21 against the Defendant. It is the formal document by
22 which this case is brought into court.

23 Presumption of innocence. The Defendant has
24 pled not guilty to this indictment, and that plea puts
25 the burden on the State to prove the Defendant guilty.

1 A person charged with committing a criminal offense in
2 South Carolina is never required to prove himself
3 innocent.

4 I charge you that it is an important rule of
5 the law that the defendant in a criminal trial, no
6 matter what the seriousness of the charge may be, will
7 always be presumed to be innocent of the crime for which
8 the indictment was issued unless guilt has been proven
9 by evidence satisfying you of that guilt beyond a
10 reasonable doubt.

11 This presumption of innocence does not end
12 when you begin your deliberations, but it accompanies
13 the Defendant throughout the trial until you reach a
14 verdict of guilt based on evidence satisfying you of
15 that guilt beyond a reasonable doubt.

16 This presumption of innocence is like a robe
17 of righteousness placed about the shoulders of the
18 Defendant which remains with the Defendant until it has
19 been stripped from the Defendant by evidence satisfying
20 you of the Defendant's guilt beyond a reasonable doubt.

21 The presumption of innocence is not a mere
22 legal theory. It is not just a legal phrase. It is a
23 substantial right to which every defendant is entitled
24 unless you the jury are satisfied from the evidence of
25 the Defendant's guilt beyond a reasonable doubt.

1 What is a reasonable doubt in the law? A
2 reasonable doubt is the kind of doubt that would cause a
3 reasonable person to hesitate to act. The State has the
4 burden of proving the Defendant guilty beyond a
5 reasonable doubt.

6 Some of you may have served as jurors in civil
7 cases in the past where you were told that it is only
8 necessary to prove that a fact is more likely true than
9 not true, such as by a greater weight or the
10 preponderance of the evidence.

11 In criminal cases the State's proof must be
12 more powerful than that. It must be proof beyond a
13 reasonable doubt. Proof beyond a reasonable doubt is
14 proof that leaves you firmly convinced of the
15 Defendant's guilt.

16 Now, we all know there are very few things in
17 this world that we know with absolute certainty, and in
18 criminal cases the law does not require proof that
19 overcomes every possible doubt.

20 If based on your consideration of the evidence
21 you are firmly convinced that the Defendant is guilty of
22 the crime charged, you must find the Defendant guilty.
23 If, on the other hand, you think there is a real
24 possibility that the Defendant is not guilty, you must
25 give the Defendant the benefit of that reasonable doubt

1 and find him not guilty.

2 Duties of the jury and trial judge. I remind
3 you that during this trial, you and I have certain
4 duties to perform. As the trial judge, it is my
5 responsibility to preside over the trial, and I also
6 have the duty to rule on the admissibility of the
7 evidence presented during the trial.

8 You are to consider only the competent
9 evidence before you. You are to consider only the
10 testimony which has been presented from the witness
11 stand and any exhibits which have been made part of the
12 record.

13 I have the additional duty to charge you the
14 law that applies in this case. As the presiding judge,
15 I am the sole judge of the law of this case, and it is
16 your duty as jurors to accept and apply the law as I now
17 state it to you.

18 If you already have any idea as to what the
19 law is or what the law ought to be and it does not agree
20 with what I now tell you the law is, you must abandon
21 your idea because you have been sworn, you have taken an
22 oath to accept the law and apply the law exactly as I
23 state it to you.

24 In every case tried in this court before a
25 jury, the jury becomes the sole and exclusive judge of

1 the facts in a case. A trial judge cannot intimate,
2 state, comment on or make any statement to a trial jury
3 about the facts in the case.

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

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

16 Direct and circumstantial evidence. There are
17 two types of evidence which are generally presented
18 during a trial, direct evidence and circumstantial
19 evidence.

20 Direct evidence is the testimony of a person
21 who claims to have actual knowledge about the facts,
22 such as an eyewitness or an ear witness. It is evidence
23 which immediately establishes the main fact to be
24 proved.

25 Circumstantial evidence is proof of a chain of

1 facts and circumstances indicating the existence of a
2 fact. Circumstantial evidence is evidence which
3 immediately establishes a collateral fact from which the
4 main fact may be inferred.

5 Circumstantial evidence is based on inference
6 and not on personal knowledge or observation. The law,
7 our law, makes absolutely no distinction between the
8 weight or the value to be given to either direct or
9 circumstantial evidence, nor is there a greater degree
10 of certainty required of circumstantial evidence than of
11 direct evidence.

12 You the jury should weigh all of the evidence
13 in the case. After weighing all of the evidence, if you
14 are not convinced of the guilt of the Defendant beyond a
15 reasonable doubt, you must find the Defendant not
16 guilty. If, after weighing all of the evidence, if you
17 are convinced of the guilt of the Defendant beyond a
18 reasonable doubt, you must find the Defendant guilty.

19 Credibility of witnesses. Necessarily as the
20 fact finders, you must determine the credibility of the
21 witnesses who have testified in this case. Credibility,
22 as you know, simply means believability, who are you
23 going to believe.

24 It becomes your duty as jurors to analyze and
25 to evaluate the evidence and determine which evidence

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

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

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

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

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

1 for that opinion.

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

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

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

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

1 did not testify.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 South Carolina.

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

6 Driving on roadways, lanes of traffic.

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

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

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

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

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

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

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

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

25 A person who is unconscious or otherwise in a

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (The jury retires to the jury room.)

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

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

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

25 MR. MOBLEY: Yes, Your Honor.

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

5 MR. MOBLEY: Okay.

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

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

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

16 THE COURT: All right. Mr. Madsen?

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

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

21 (Pause.)

22 THE COURT: Have they checked the evidence?

23 COURT REPORTER: Yes, sir.

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

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

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

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

7 MR. MOBLEY: Nothing, Your Honor.

8 THE COURT: From the defense?

9 MR. MADSEN: Nothing, Your Honor.

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

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

18 THE COURT: Madame Clerk.

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

21 MR. FOREMAN: Yes, ma'am.

22 CLERK: Please pass it up by the bailiff.

23 (Hands to Court.)

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

1 please, Madame Clerk.

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

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

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

12 (All jurors so indicate.)

13 CLERK: All hands are raised, Your Honor.

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

16 MR. MOBLEY: Nothing, Your Honor.

17 THE COURT: From the defense?

18 MR. MADSEN: Nothing, Your Honor.

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

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

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

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

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

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

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

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

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

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

23 (The jury is excused).

24 THE COURT: Any motions, Mr. Madsen?

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

1 renew all of our objections --

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

3 THE DEFENDANT: Thank you, sir.

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

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

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

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

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

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

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

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

8 MR. MADSEN: No, Your Honor.

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

11 MR. MOBLEY: Thank you, Your Honor.

12 (Pause.)

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

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

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

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

20 THE COURT: All right.

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

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

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

3 (Hands to Court.)

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Jake's family.

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

4 THE COURT: Jesse --

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

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

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

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

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

1 MS. CORDER: I'm mom.

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

3 MS. CORDER: Teresa Corder.

4 THE COURT: All right, Ms. Corder.

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

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

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

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

24 Yes, sir, your name, please?

25 MR. HILL: My name is Josh Hill.

1 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 THE COURT: Yes, sir.

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

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

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

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

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

18 THE COURT: All right, sir.

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

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

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

2 MS. RABON: April Rabon.

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

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

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

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

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

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

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

7 MR. MADSEN: No, Your Honor.

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

10 MR. MOBLEY: Lois Cannis?

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

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

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

25 THE COURT: So she had another mode of

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

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

6 THE COURT: I see.

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

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

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

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

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

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

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

9 MR. MOBLEY: Yes, Your Honor.

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

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

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

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

25 Generally I say there is not malice or intent

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Anything further, Solicitor?

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

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

3 MR. MOBLEY: Thank you, Your Honor.

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 11th through 13th days of May, 2010.

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

September 28, 2010

L Coconut Pantsari

Court Reporter

ORIGINAL

FORM 5

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

2014 AUG 25 P 3:26 AM

CHRISTOPHER MANNING # 340790
Full name and prison number (if any) of Applicant.BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2014CP3203075**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention SCDC - McCormick ; 386 Redemption Way, McCormick, SC 29844
2. Name and location of Court which imposed sentence Lexington Co. Court of General Sessions ; Lexington, SC 29072
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-32-2855 (Felony D.U.I. with Death)
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 13, 2010 (18 years ; \$ 10,000.00 Fine)
 - (b) _____

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(c)

6. Check whether a finding of guilty was made:

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(a) after a plea of guilty

(b) after a plea of not guilty ✓

2014 AUG 25 P 3 26

(c) after a plea of nolo contendere

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii.

iii.

(b) the result in each such Court to which you appealed:

i. Conviction "AFFIRMED"

ii.

iii.

(c) the date of each such result:

i. October 10, 2012

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. State v. Manning, 400 S.C. 257, 734 S.E.2d 314 (Ct. App. 2012)

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A(b) "(c) "

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) ... 'Ineffective Assistance of Trial Counsel' ("ATTACHMENT")
 (b) ... 'Ineffective Assistance of Appellate Counsel' ("ATTACHMENT")
 (c) ... 'Prosecutor (Solicitor) Misconduct' ("ATTACHMENT")
 (d) ... 'Fourth Amendment Violation of Person' ("ATTACHMENT")

11. State concisely and in the same order the facts which support each of the grounds set forth in (10):

- (a) (For Brevity Purposes, see "ATTACHMENT", Pp. 2-14)
 (b) (For Brevity Purposes, see "ATTACHMENT", Pp. 15-17)
 (c) (For Brevity Purposes, see "ATTACHMENT", Pp. 17-19)
 (d) (For Brevity Purposes, see "ATTACHMENT", Pp. 19-21)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. Petition For a Writ of Certiorari
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. S.C. Supreme Court ; Columbia, SC, 29201
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Petition Denied
 ii. _____
 iii. _____

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Revised 3/2003

iv.

(d) the date of each such disposition:

FILEDi. June 11, 2014

ii.

2014 AUG 25 P 3: 26

iii.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Citation Currently Unavailable

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

N/A

ii.

"

iii.

"

(b) the proceedings in which each ground was raised:

i.

N/A

ii.

"

iii.

"

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) 'PCR' proper remedy (S.C. Code Ann. § 17-27-20 (a))

(b)

(c)

17. Were you represented by an attorney at any time during the course of:

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- (a) your arraignment and plea? Yes (arraignment)
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Robert M. Madsen, Esq.; Current
 - ii. Lavelle Cantey Durant, Esq.; 1330 Lady St., Ste. 401, Columbia,
SC 29201
 - iii. 1
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, Trial, Sentencing
 - ii. Direct Appeal; Petition for a Writ of Certiorari
 - iii.

19. State clearly the relief you seek in filing this application:

New Trial; Dismissal of All Charges, Directed Verdict

20. Are you now under sentence from any other court that you have not challenged?

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2014 AUG 25 P 3:26

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STATE OF SOUTH CAROLINA)

County of LEXINGTON)

VERIFICATION

ICM, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Chris Manning

SWORN to and subscribed before me this 22
day of August, 2014.

[Signature] (L.S.)
Notary Public

2014CP3203075

My Commission Expires: 12-16-2019

AM

BETH A. CARRIG
CLERK OF COURT
LEXINGTON, SC

2014 AUG 25 P 3:26

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Lex. Co. C.C.P., G.S. & E.O.

Revised 3/2003

2014 CP 3203075

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

ORIGINAL

I/We hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Christy McVay
Applicant

SWORN or affirmed to and subscribed before me this

22 day of Aug, 2014.

J. Franklin
Notary Public

My Commission Expires:

12-16-2019

AM
FILED
2014 AUG 25 P 3:26
BETH A. GARRIGS
CLERK OF COURT
LEXINGTON, SC

A TRUE COPY

Lex. Co. C.C.P. G.S. & F.O.

Revised 3/2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Christopher Manning	)	C.A. No. 2014-CP-32-3075
S.C.D.C. No. 340790	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN¹
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed August 25, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the November 2009 term of the Lexington County Grand Jury for felony D.U.I. resulting in death (2009-GS-32-2855). Robert Madsen, Esq., represented Applicant. On May 11-13, 2013, Applicant proceeded to a trial before the Honorable R. Knox McMahon and a jury. He was found guilty as indicted. Judge McMahon sentenced Applicant to a term of eighteen (18) years imprisonment.

A timely notice of appeal was filed and perfected on Applicant's behalf. LaNelle Durant, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. Counsel for Applicant filed a petition for rehearing on August 16, 2012. On October 10, 2012, the Court of appeals withdrew the first opinion,

¹ By Order of October 21, 2014, Aimee Zmroczek has been appointed as Counsel.

substituted and refiled a second opinion still affirming Applicant's conviction and sentence. State v. Manning, 400 S.C. 257, 734 S.E.2d 314 (Ct. App. 2012). Counsel for Applicant then filed another Petition for Rehearing on October 24, 2012. By Order dated November 30, 2012, the South Carolina Court of Appeals denied the petition. Counsel for Applicant then filed a Petition for Writ of Certiorari on January 30, 2013. By Order dated June 11, 2014, the Supreme Court of South Carolina denied the Petition. The Remittitur was issued on June 26, 2014.

II.

In his current Application, Applicant alleges he is being held in custody unlawfully for the following reasons:²

1. "Ineffective Assistance of Trial Counsel"
 - a. "For brevity purposes, see 'Attachment' pp. 2-14"
2. "Ineffective Assistance of Appellate Counsel"
 - a. "For brevity purposes, see 'Attachment' pp. 15-17"
3. "Prosecutor (Solicitor) Misconduct"
 - a. "For brevity purposes, see 'Attachment' pp. 17-19"
4. "Fourth Amendment Violation of 'person'"
 - a. "For brevity purposes, see 'Attachment' pp. 19-21"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this return and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), Applicant's first PCR application, records regarding Applicant's Motion to Reconsider, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any records not attached will be

² Respondent has been unable to locate said attachment.

forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits that Applicant's claim of ineffective assistance of trial counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant

such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits Applicant's second claim of ineffective assistance of appellate counsel is without merit. Respondent submits that appellate counsel rendered effective assistance. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir.

1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Respondent interprets Applicant's remaining claims as allegations of due process violations. In the event Applicant alleges independent claims of due process violations, he fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) ("It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief." (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))).

Since Applicant has failed to make even a *prima facie* showing, Respondent would submit this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent

would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRCP, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

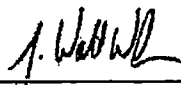
Respectfully submitted,

ALAN WILSON
Attorney General

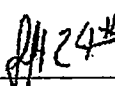
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

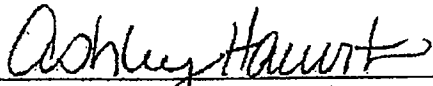
 24th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2014-CP-32-3075
CHRISTOPHER MANNING, #340790,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Aimee Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
PO Box 11961
Columbia, SC 29211

DATED this 24TH day of September, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
Christopher D. Manning,	)	
	)	
Applicant,	)	
v.	)	Case No. 14-CP-32-3075
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on April 18th, 2016, before The Honorable Perry H. Gravely in the Court of Common Pleas for Lexington County, South Carolina; attended by counsel as follows:

APPEARANCES:

Aimee J. Zmroczek, Esq.
P O Box 11961
Columbia, South Carolina 29211
... appearing for Applicant

Johanna C. Valenzuela, Esq.
Assistant Attorney General
OFFICE OF ATTORNEY GENERAL
P O Box 11549
Columbia, South Carolina 29211-1549
... appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616-7145
debgarrison@icloud.com

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Case No. 14-CP-32-3075
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Testimony of Applicant - Direct Examination

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2	Tax Report (Jacob)	75
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1

2

THE COURT: Good afternoon, Mr.

3

Manning.

4

APPLICANT: Good afternoon, Your Honor.

5

THE COURT: All right, I will be glad

6

to hear from you, Ms. Valenzuela.

7

MS. VALENZUELA: Thank you, Your Honor.

8

This is a case of Christopher Manning versus

9

the State of South Carolina, Case Number

10

2014-CP-32-3075.

11

The Applicant filed his post-conviction

12

relief application on August 25th, 2014.

13

He is presently confined in the Depart-

14

ment of Corrections after being indicted in

15

the November 2009 term by the Lexington

16

County Grand Jury for felony DUI resulting in

17

death, Indictment Number 2009-GS-32-3855.

18

Applicant was represented at the trial

19

level by Robert Madsen. That trial was held

20

on May 11th to the 13th of 2013 and it was

21

presided over by The Honorable Knox McMahon

22

and a jury.

23

The Applicant was found guilty as

24

indicted and Judge McMahon sentenced the

25

Applicant to a term of eighteen (18) years

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1 in prison.

2 A timely notice of appeal was filed and
3 perfected on the Applicant's behalf by Wynell
4 Durant.

5 The South Carolina Court of Appeals
6 confirmed the Applicant's conviction and
7 sentence.

8 He filed a Petition for rehearing on
9 August 16th of 2012. At -- while the Court
10 of Appeals did withdraw its first Opinion and
11 on the filing of a second Opinion, the Court
12 of Appeals still affirmed the Applicant's
13 conviction and sentence.

14 Another Petition for rehearing was filed
15 and that was denied.

16 Then a Petition for *writ of certiorari*
17 was filed on January 30th, 2013, and the
18 *remittitur* was issued on June 26th, 2014;
19 where the Supreme Court denied the Petition
20 in the *writ of certiorari*.

21 In his current application, the Applicant
22 alleges that he is being held in unlawful
23 custody for the following reasons -- and he
24 references, there's twenty-one pages, so I'll
25 allow petitioner's counsel to lay out the

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1 allegations that he's moving forward with
2 today if that is okay with Your Honor.

3 THE COURT: Yes, and I've reviewed
4 those too.

5 MS. VALENZUELA: Thank you, Your Honor.
6 Today the Applicant is represented by Aimee
7 Zmroczek.

8 Just for completeness, we did file the
9 Return in this case in September of 2015.

10 MS. ZMROCZEK: Excuse me, Judge. He
11 was talking to me and I didn't hear what she
12 said.

13 MS. VALENZUELA: Just that the
14 allegations, since there are so many, that I
15 was going to leave it to you to identify for
16 the Court what the allegations are moving
17 forward. Then the judge noted that he had
18 reviewed the attachments to your client's PCR
19 application.

20 MS. ZMROCZEK: Okay. Good. Thank
21 you. Sorry, Your Honor.

22 THE COURT: That's fine.

23 MS. ZMROCZEK: And, Your Honor, I
24 think that you -- he's kind of narrowed down
25 the issues.

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1 THE COURT: Okay.

2 MS. ZMROCZEK: But what I will do is,
3 we will put him on the stand and we will be
4 able to kind of go through those.

5 THE COURT: All right, thank you. I'll
6 be glad to hear from you.

7 MS. ZMROCZEK: Thank you. We call
8 Christopher Manning.

9 (APPLICANT TAKES STAND)

10 CHRISTOPHER D. MANNING, having been sworn
11 to tell the truth, and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. ZMROCZEK:

15 Q. Mr. Manning, is there something you
16 wanted to say to me?

17 THE COURT: Yes, you can ask her.

18 MS. ZMROCZEK: You have to tell me
19 something? Is there something that you need
20 to say?

21 APPLICANT: I just wanted to know if
22 that is the family?

23 MS. ZMROCZEK: I ---

24 APPLICANT: I would like to address
25 them before I ---

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1 THE COURT: You want to chat a minute
2 off the record? Why don't you do that first?

3 MS. ZMROCZEK: Yes, sir. Okay --
4 (sidebar with Applicant).

5 Before we get started, I understand that
6 without admitting guilt to what we are about
7 to -- that there was something that you
8 wanted to put on the record to the victim's
9 family that you didn't get an opportunity to
10 say?

11 APPLICANT: Yes, ma'am.

12 MS. ZMROCZEK: What was that?

13 APPLICANT: I am very sorry for y'all's
14 loss. Jake was a friend of mine too. It is
15 really unfortunate what happened. It wasn't
16 a planned thing. He was a good friend of
17 mine. I am sorry for your loss. I do think
18 about it every day.

19 DIRECT EXAMINATION RESUMED

20 BY MS. ZMROCZEK:

21 Q. How old are you, Mr. Manning?

22 A. Forty-seven (47).

23 Q. How old were you when you were
24 convicted?

25 A. Forty-one (41).

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Testimony of Applicant - Direct Examination

1 Q. Thirty-one?

2 A. Forty-one (41). It's been six
3 years.

4 Q. Oh, -- you're forty-seven?

5 A. (Affirmative nod).

6 Q. Sorry. Did you have an attorney
7 that was appointed to you or did you retain
8 an attorney?

9 A. No, Mr. Madsen.

10 Q. How many times did you meet with Mr.
11 Madsen?

12 A. I met with him on a couple of
13 occasions.

14 Q. Did you feel confident and ready to
15 go to trial?

16 A. Well, not really -- not confident,
17 but I had spoke with him on a few occasions,
18 yes.

19 Q. What were the issues that you felt
20 like weren't fully developed?

21 A. Well, the lack of autopsy, the blood
22 suppression was a big thing. Also the --
23 the, uh, chain of custody on the blood
24 issues. The lack of DNA and the handling of
25 that evidence.

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1 Q. There were evidentiary issues that
2 you felt there were a lack of, but did you
3 specifically -- you did ask that he ask that
4 there be an autopsy performed?

5 A. Yes, ma'am.

6 Q. And he did not do that?

7 A. No. No, ma'am.

8 Q. I understand that at some point
9 later you asked if I would have that done but
10 you understand the logistics of ---

11 A. Yeah, I now -- no, I don't want --
12 but, yeah.

13 Q. You understand the logistics of
14 having that done now?

15 A. Yeah, and I don't want that.

16 Q. But you felt like had the autopsy
17 been done that it would ---

18 A. Yes, it would ---

19 Q. --- have shown injuries that -- go
20 ahead.

21 A. Yes, it would have shown injuries of
22 driver side. Based off the ambulance
23 driver's report, I felt like that should have
24 been done off of -- I mean as soon as
25 possible, because that was the only report by

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1 anybody, EMS and the coroner, everybody, as
2 to who was the driver of the vehicle.

3 Like I said, there was no DNA report or
4 anything other than what the ambulance
5 driver's report said as to who was on the
6 driver's side at all. I felt like ---

7 Q. Okay. Since your main issue with
8 this case, from the time that you were
9 arrested, has always been what -- what issue?

10 A. (No verbal response).

11 Q. Who was driving?

12 A. (Affirmative nod), who was driving.
13 That was the total issue of the whole case.

14 Q. What do you remember about that day?

15 A. I had just got back from Georgia.
16 My sister was in the hospital. I went to
17 work, like every day. Are you asking me to
18 go through the events of the evening?

19 Q. That you recall.

20 A. Okay. Well, uh, ---

21 Q. And let me ask you this because you
22 were involved in the accident as well, did
23 you sustain immediate memory loss?

24 A. No. There's a few things that I
25 don't remember but I pretty much -- I

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1 remember a lot of stuff, more now than I did
2 at the time of the accident. You know, some
3 of the fog has lifted.

4 Q. Okay. Go ahead.

5 A. I worked at Boondocks, where Jake
6 used to work at. That's how we became
7 friends.

8 We stayed late one night, was going to go
9 to the lake; stop by, get my girlfriend; uh,
10 meet some other girls down there at Ramp 4
11 and -- it was about 4:30 in the morning, so
12 they were trying to get everybody out so that
13 the guy could clean up.

14 So we left the bar and, uh, -- we was
15 going to go with Lois, ride with her. But
16 then I wouldn't have had a way to get back to
17 work the next day. And I wasn't in no shape
18 to drive. Jake said that he could drive. I
19 said, 'Are you sure?' Because 'we have' --
20 she -- I mean, 'we can ride with her.' And
21 he said no, that he was okay.

22 So we are going down the road and --
23 well, I was rolling a joint -- sorry, y'all,
24 but -- I mean. The next thing I knew the
25 joint was gone and I was sitting in a field.

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1 I'm looking up and the truck is rolling
2 across the field and -- (pause). I tried to
3 get up, go over there and see if Jake was all
4 right.

5 And, uh, then I woke up again and the
6 lady was hollering 'this guy's alive, this
7 one is alive.' So I went to set up because I
8 was going to say, 'hey, I'm alive too, over
9 here.' She started telling me not to move.

10 She started asking me a couple of
11 questions, they started giving me some shots
12 and stuff and, uh, ---

13 Q. So these EMS people, the people that
14 you say were giving you shots, they gave you
15 medications immediately?

16 A. Yeah.

17 Q. Before anybody ever asked you any
18 questions?

19 A. Well, she was -- no, she was asking
20 me a few questions and she was, I mean,
21 packing me up and going through these
22 motions. Everybody is telling me 'don't
23 move, don't move.' I feel other people start
24 coming over. That's when the other lady came
25 over, the sergeant from the wrecker service

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1 came over and she said "the driver of the
2 vehicle is dead." I was like oh my god, you
3 know.

4 I was pretty messed up so I was saying,
5 "I'm f'ed up, I'm f'ed up." I was cussing.

6 They started giving me medication, put me
7 on a stretcher, taking me to the ambulance.

8 This is where -- I don't know if it is
9 proper to say it like this but an EMS worker
10 was saying that he heard me say that I
11 shouldn't have been driving. That is not
12 what I was saying. I mean, I was pretty
13 messed up. My nose was blowed apart, my eyes
14 busted wide open, blood was pouring down my
15 throat. What I said was I should have been
16 driving.

17 I should have been driving. You know,
18 because now she is saying that my buddy is
19 dead and I'm trying to say, you know, -- you
20 know, and I was messed up real bad too.

21 Then I don't remember nothing else until
22 I get to the hospital and the doctor -- when
23 I went to go in, I said 'I need to call my
24 girlfriend.' He said, 'You don't need --
25 we've got to get you in there now.' And I

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1 said, 'Well, I am not going to let you work
2 on me until I can tell my girlfriend
3 goodbye', because I thought that I was fixing
4 to die too. He said, 'I can't let you do
5 that, we've got to get you in there. We've
6 got to get you in there.' I said, uh, 'I'm
7 not letting you work on me until I tell her
8 bye.'

9 Q. Did Mr. Madsen have an opportunity
10 to interview and talk to your girlfriend and
11 all the other witnesses that were there that
12 night?

13 A. Well, there was -- (pause). Pretty
14 much. I don't know whether he ever talked to
15 Miss Kanus (phonetic) or not. There was
16 another guy that was in the bar that we
17 couldn't get in touch with because he was out
18 of town at the time.

19 And, uh, I can't remember -- I remember
20 that Mr. Madsen asked for a continuance on
21 the issues of trying to talk to some of the
22 other people and we were denied.

23 Q. You were denied that?

24 A. (Affirmative nod).

25 Q. Do you recall did Mr. Madsen go

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1 through the discovery with you as he was
2 getting it? As it was coming in, did he make
3 a time to come in and sit down and go through
4 the items with you?

5 A. (No verbal response).

6 Q. He brought them to the jail to show
7 you what they had given him?

8 A. Well, I said -- I think I got that
9 before he came. They sent me a little piece
10 of paper or a little pamphlet with some
11 things on it. They said that they had a
12 videotape and all this other stuff, but they
13 didn't have none of that.

14 Q. Did you learn the day of trial, when
15 Mr. Madsen asked for the continuance had you
16 learned about the new discovery that had
17 recently been provided?

18 A. He said something about one but then
19 they had another one.

20 Q. They had a couple of different
21 statements?

22 A. Yeah, they had come up with another
23 statement from somebody -- I believe that it
24 was, uh, ---

25 Q. The two EMS workers?

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1 A. One of the EMS workers that -- the
2 one that was saying that I was saying that I
3 shouldn't have been driving.

4 Q. And that came up the day before
5 trial or the day of?

6 A. Yes. He tried to get a continuance
7 for that and they wouldn't -- we weren't
8 allowed to have that.

9 Q. Do you feel that had the continuance
10 been granted and had you had all the
11 information that you could have assisted Mr.
12 Madsen in ---

13 A. Most definitely. If we had those.
14 Those along with the medical records -- I
15 believe that we was trying to get the medical
16 records to show that this wasn't a steering
17 wheel injury, because something had hit my
18 head and gouged out my hip and stabbed me;
19 that it would have shown that it wasn't a
20 steering wheel injury. Like I said, my DNA
21 nor my blood wasn't on the steering wheel or
22 nothing at all. Mr. Madsen argued that
23 point. I believe that we could have gotten
24 the medical records there that would have
25 been a lot different. But there was no

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1 continuance.

2 See, what we was thinking -- or what
3 conveyed to me was that the charges was
4 fixing to be dropped at any minute. You
5 know, no DNA, no fingerprints, no blood, no
6 witnesses that could put me behind the wheel
7 whatsoever until, at that the last minute,
8 uh, they found an EMS worker that said I said
9 I should or shouldn't have been driving,
10 something to that nature. Then that's when
11 they revoked my bond and held trial on me.

12 Q. You've had an opportunity -- you've
13 been following your case as it went through
14 the Court of Appeals?

15 A. Yes, ma'am.

16 Q. And what were your issues with the
17 -- that you wanted the Court to address?

18 A. It was the blood suppression where
19 the two officers -- one said that he --
20 Officer Baker testified that he had nothing
21 that put me behind the wheel at all, even to
22 this day in court. Except for what Officer
23 Baker said at the hospital -- and then
24 Officer Baker got up there and testified that
25 I never said anything -- and had a piece of

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1 paper that he signed for me because I was
2 unconscious the whole time. Uh, that it was
3 the other officer that called him and told
4 him to take my blood.

5 The other officer testified that, 'I had
6 nothing to put him behind the wheel' until
7 this day. Then he got up there and said, 'I
8 didn't say that. He said it.'

9 So that was one of the big issues for the
10 blood suppression.

11 Then the chain of custody on the blood,
12 they never determined who drew Jake's blood.

13 Q. Are you familiar with the Court of
14 Appeals' Opinion saying that there were
15 certain arguments that there was no ---

16 A. I don't know.

17 Q. Keep going. Keep going.

18 A. But that was a big -- that was one
19 of the big issues. Mr. Madsen started to ask
20 for it and the judge actually got mad and
21 sent everybody home that day, told them they
22 better have it figured out before the next
23 day, to have me there three hours before
24 court and, uh, because they had a man on
25 trial for his life and they didn't even

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1 follow the chain of custody on Jake. So.

2 Then we come back into court the next day
3 and, all of a sudden, it was just like it was
4 gone. They -- Mr. Madsen said that he didn't
5 see, didn't have no follow-up on that and
6 then carried on as planned -- or as normal.
7 It just kept going all of a sudden.

8 Even in my oral argument the judge asked
9 -- I don't know if it was Mr. Mobley or who
10 it was at the oral argument, you know, why
11 did he stop asking for the charge to be
12 dismissed or a directed verdict. He started
13 to ask for it and the district attorney said
14 he obviously shot himself in the foot, that
15 he should have asked for it. So that was one
16 of the big things on there.

17 Q. So your issues surround just the
18 legal errors that were made?

19 A. Yes.

20 Q. It's less of the factual but more of
21 the legal errors that you felt like weren't
22 preserved?

23 A. I mean, -- yeah. Everything that
24 the -- that we just went through was turned
25 down. It was like they weren't even looking

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1 for the truth, they were looking for somebody
2 to blame. That's the way that I feel it
3 really happened.

4 Q. Had you been involved in the court
5 system before?

6 A. Yes, ma'am.

7 Q. And were you able to get up and tell
8 your side of the story?

9 A. I didn't at this time. I was
10 instructed that it would be incriminating to
11 me at that point. Mr. Madsen had explained
12 it to me that what the EMS worker had said
13 didn't really matter because he would explain
14 what was said. He wanted the closing
15 argument for the trial and that if I
16 testified that Mr. Mobley would not have
17 gotten that and I ---

18 Q. You mean the last argument?

19 A. The last argument; yes, ma'am.

20 Q. Okay.

21 A. So he said that he would explain
22 what was really said there, that he wanted
23 the closing argument for the trial, so that's
24 why, you know, I didn't testify.

25 The fact that there was no DNA, the fact

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1 that there were no fingerprints, the lack of
2 blood, the two officers and -- you know, I
3 mean, uh, so right there before the end of
4 the trial he was like, 'you really don't need
5 to testify, there's nothing' really.

6 Q. So as you're sitting here -- I know
7 that you and I have had a lot of
8 correspondence and you've had a lot of time
9 to think about this and write issues out,
10 things that you really feel like were done
11 wrong in your case.

12 A. (Affirmative nod).

13 Q. I want to make sure, because this is
14 our opportunity to put it on the record --
15 and I want to make sure -- there will be
16 other testimony from the prosecutor and from
17 the, uh, from your trial attorney. We will
18 get to ask them questions.

19 But just so that you can have -- so that
20 the judge can know exactly what you think are
21 the things that went wrong, in your mind, as
22 we lay them out here you feel like it was the
23 lack of an autopsy?

24 A. Yes, ma'am.

25 Q. The failure to preserve arguments

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1 that could have been argued or possibly
2 suppressed evidence, in appellate procedures?

3 MS. VALENZUELA: Objection, Your Honor.
4 I don't know that I've heard that as
5 testimony from the witness, so I would object
6 to leading.

7 THE COURT: I'm going to -- I think it
8 is just a summary.

9 MS. ZMROCZEK: Yes, Your Honor, and I
10 will clarify that. Where I got that, Your
11 Honor, is just the fact that he said that he
12 started to make directed verdicts and he
13 started to argue chain of custody and then he
14 didn't continue with those. So that's where
15 I -- I didn't mean to put words in his mouth.

16 THE COURT: No, I know.

17 DIRECT EXAMINATION CONTINUED

18 BY MS. ZMROCZEK:

19 Q. And receiving evidence from the
20 prosecutor at a late date?

21 A. Yeah.

22 Q. What are the other issues that you
23 feel like really went wrong in your trial, in
24 your words? Even if you think that they are
25 miniscule, go ahead and put them out there.

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1 A. Okay. I've got -- you've got my
2 transcript. Can I have it? Can I have that?

3 Q. Yes.

4 MS. ZMROCZEK: Your Honor, may I ---

5 APPLICANT: Not my transcript. I mean
6 the issues that I sent you. In the yellow
7 envelope, PCR issues.

8 MS. ZMROCZEK: Your Honor, may I
9 approach?

10 THE COURT: Yeah.

11 MS. ZMROCZEK: Just to refresh his
12 memory. I think he wants to make it part of
13 the ---

14 APPLICANT: Yeah, I -- no, I'm not
15 going to read through it.

16 MS. ZMROCZEK: I know that he had
17 made specific notes, Your Honor.

18 THE COURT: I'll be glad for him to
19 have it.

20 MS. ZMROCZEK: I thought it might
21 just clarify it or make it shorter.

22 DIRECT EXAMINATION CONTINUED

23 BY MS. ZMROCZEK:

24 Q. (Tenders).

25 A. Here's one, the hearsay -- the

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1 statements that the EMS workers gave were
2 both uncorroborated. He was -- we were
3 standing around -- there were ten other
4 people sitting there and he's the only one
5 that said he heard me say something like
6 that. When the other drivers were asked, I
7 mean when other people around were asked if
8 they heard that, they said they heard no such
9 thing.

10 Heather's statement should have been
11 stricken from the -- the bartender's
12 statement should have been stricken from the
13 thing because -- and we didn't bring this
14 issue up in trial -- she was just as drunk as
15 everybody was there. You know. That's one
16 of the big statements that they went off of.
17 That was not brought up during the trial.

18 Q. So that would go to his legal
19 arguments regarding the admissibility of
20 certain testimony?

21 A. We didn't hear from Miss Kanus. She
22 was harassed and I had to get with Mr. Madsen
23 on several different occasions where the
24 district attorney threatened her in different
25 ways; showed up and almost had her fired from

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1 her job because he kept pressing the issue
2 with her, trying to get her to testify to
3 some things that she didn't hear or see,
4 wasn't even there for.

5 Nathan Probst (phonetic) was the EMS
6 worker that I was talking about.

7 Q. Okay.

8 A. We didn't get ---

9 THE COURT: The witness that you
10 mentioned, Kanus ---

11 APPLICANT: Yes, sir, Lois Kanus. She
12 was the lady that we left the ---

13 THE COURT: Did she testify?

14 APPLICANT: No, sir.

15 MS. ZMROCZEK: She did not, Your
16 Honor.

17 THE COURT: Okay.

18 DIRECT EXAMINATION CONTINUED

19 BY MS. ZMROCZEK:

20 Q. Please continue.

21 A. Failed to subpoena all EMS workers.

22 Failed to get expert pathologist to
23 testify to driver's injuries.

24 Failed to use the coroner as an expert,

25 Failed to make a Motion for continuance

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1 on the grounds that he had a witness who
2 could corroborate testimony.

3 Counsel failed to file a violation of
4 Rule 5 for discovery.

5 Q. I want to stop you right there
6 because I think that's -- a lot of these
7 things fall under that but when you're
8 talking about corroboration you're going back
9 to the late-received EMS statements.

10 A. (Affirmative nod).

11 Q. At that point when he received those
12 and he talked to you about those, that's when
13 you said 'no, no, there were other people
14 there that could say what I did or didn't
15 say'; is that right?

16 A. That's right.

17 Q. But you received those late?

18 A. Those -- yeah.

19 Q. Literally like the Friday before
20 trial?

21 A. The Friday before trial. Yes,
22 ma'am.

23 Q. Okay.

24 A. I'm sorry, y'all, I did not know --
25 I was unprepared for today.

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1 I believe that we should have had an
2 expert witness there like the coroner. I
3 think that I brought that up -- to testify to
4 driver's side injuries.

5 I mean, that's all that I can remember
6 right now without reading through everything.

7 Q. I just wanted to make sure -- and
8 that's what I had written down, too. I just
9 wanted to make sure that we hadn't missed
10 anything.

11 The only time that you felt that you
12 hadn't had enough time to meet or prepare
13 with Mr. Madsen was when you received these
14 things late; right? When you were provided
15 information that ---

16 A. Yeah. Well, we had -- we pretty
17 much had everything else. Like I said, they
18 didn't have anything else. There was nothing
19 else -- no physical evidence at all or
20 anything to put me behind the wheel. So, I
21 mean it was pretty cut-and-dried until the
22 last minute when -- and also when I thought
23 about, we didn't argue that correctly because
24 the officer testified to hearing something at
25 the scene when Nathan Probst had already said

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1 that he didn't speak to anybody, that he was
2 gone before any of them got there, so there
3 was no way that the district attorney or the,
4 uh, ---

5 Q. Solicitor.

6 A. (Affirmative nod), I'm sorry. There
7 was no way that the officers at the scene
8 could have heard or said anything from him at
9 that time to be used for probable cause to
10 take my blood that morning.

11 Q. How many days did you spend in the
12 hospital?

13 A. I was in the hospital for twenty-
14 eight days.

15 Q. And you would agree with me that
16 you'd had too much to drink to drive?

17 A. Yes, ma'am.

18 Q. And your statement is that that is
19 why you weren't driving?

20 A. That's why I wasn't driving.

21 Q. Just -- I know that the judge has
22 the record in front of him, but can you tell
23 during the twenty-eight days what injuries
24 were treated for you and where were they

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1 located?

2 A. On my hip.

3 Q. Which hip?

4 A. Left hip was gouged out. I was
5 impaled, stabbed in me. I lost part of my
6 large intestine, my small intestine, my
7 spleen, my appendix, my gallbladder is gone.
8 They had to sew my bladder back together.
9 They had to sew my stomach back together
10 where it loped off part of those. I am still
11 having surgery. I just went for a CAT scan
12 again the other day. This will be about my
13 fourteenth major operation. I still have
14 three hernias from that accident.

15 Q. Dr. Gould, Dr. Fleece, Dr. Nottingham
16 ham and Dr. Jones were some of the doctors
17 that treated you at the hospital, is that
18 correct?

19 A. I have no idea. I was in a coma for
20 twenty-eight days.

21 Q. All right. You knew that you had
22 several doctors that were treating you,
23 though?

24 A. Yes, ma'am, it was a team.

25 Q. Okay. Mr. Manning, please answer

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1 any questions that Ms. Valenzuela has for
2 you.

3 A. Yes, ma'am.

4 THE COURT: Cross-examination.

5 CROSS EXAMINATION

6 BY MS. VALENZUELA:

7 Q. Mr. Manning, how are you?

8 A. Hanging in there.

9 Q. Now, Mr. Manning, your attorney did
10 move for a mistrial during the trial;
11 correct?

12 A. Yes, ma'am.

13 Q. And he did make objections during
14 the trial, didn't he; correct?

15 A. Yes, ma'am.

16 Q. Going to -- starting with the
17 witnesses that you claim, the EMT witnesses
18 that were also present at the scene, if you'd
19 only had time you would have had them come in
20 and say that they hadn't heard those same
21 statements.

22 A. Yes, ma'am. One of them did.

23 Q. I'm sorry?

24 A. One of them did, the lady that was
25 there, that kept saying that I said I was

1 f'ed up, she said she didn't hear that
2 statement.

3 Q. So you actually did have a witness
4 at the trial who ---

5 A. That one. There were several others
6 carrying me up to the ambulance who didn't
7 hear nothing.

8 Q. But you did have -- and I'm just
9 going to ask for your patience here. If
10 you'll let me finish my question before you
11 answer, we won't be talking over each other.

12 A. I'm sorry.

13 Q. So you did actually have one witness
14 at trial who testified in front of the jury
15 that she had not heard that other statement?

16 A. Yes, ma'am.

17 Q. That statement made by you?

18 A. Yes, ma'am.

19 Q. Then the other witnesses that you
20 referenced, the ones that carried you on the
21 stretcher, are any of them here today?

22 A. No, ma'am.

23 Q. Do you have any testimony affidavits
24 or anything from any of those other people
25 who would claim that they didn't hear you say

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1 that?

2 A. We have the ambulance driver's
3 report, I believe, that stated that Jake was
4 the driver. She was the only one, other than
5 those other people, the random people on the
6 scene, that were carrying me up there; that I
7 know of. That would have made a big
8 difference in the case. The only medical
9 person that -- that looked at both of us --
10 could determine that Jake was the driver.

11 Q. You also mentioned a Lois Kanus; is
12 that right?

13 A. Kanus, (affirmative nod).

14 Q. Is Ms. Kanus here today?

15 A. No, ma'am.

16 Q. You also mentioned that you wished
17 that you had had an expert pathologist
18 testify. Have you had an expert pathologist
19 analyze your case?

20 A. (Negative gesture).

21 Q. Is that a "no"?

22 A. (Affirmative nod). No, ma'am.

23 Q. And I guess that goes without -- you
24 do not have an expert pathologist here to
25 testify today?

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1 A. No, ma'am.

2 Q. You also mentioned an expert coroner
3 -- or a coroner to testify. Have you had a
4 coroner look at any of this information?

5 A. No, I -- I have requested Ms.
6 Zmroczek to have all these people here today
7 but I guess ---

8 MS. ZMROCZEK: Your Honor, we can
9 address that at the appropriate time.

10 THE COURT: All right.

11 CROSS EXAMINATION CONTINUED

12 BY MS. VALENZUELA:

13 Q. But there is no coroner here?

14 A. No, ma'am.

15 Q. I want to go to early-on in your
16 testimony where you were talking about how
17 someone misheard you, instead of saying "I
18 should not have been driving" you actually
19 said, "I wish I had been driving."

20 A. That I should have been driving.

21 Q. So you do remember what you said
22 that night?

23 A. Yes.

24 Q. Did you share what you knew that you
25 had said that night with your attorney prior

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1 to trial?

2 A. Yes, he told them -- he argued that
3 point, that that was not what I said at all.
4 That I said I should have been driving. He
5 argued that during the closing arguments, I
6 believe.

7 Q. So even prior to the prosecutor
8 letting your attorney know what the EMT
9 witnesses were going to be testifying to,
10 you had already had discussions with your
11 attorney prior to that date as to the
12 statements that you had said on the scene?

13 A. No. None of that ever even came up
14 until they said that they had somebody there
15 that would say that. Then I informed Mr.
16 Madsen that was not what I was saying, that I
17 had said something else that night.

18 Q. But you were aware of what you'd
19 said separate and apart from what the EMT
20 witnesses had said?

21 A. When they said it; yes, ma'am. He
22 said that during the closing argument, I do
23 believe.

24 Q. So the words that you felt needed to
25 get out were said -- they weren't testified

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1 to but they were said by your counsel in
2 closing?

3 A. Yes, ma'am, I didn't testify during
4 the trial.

5 Q. Then you discussed with your counsel
6 about your decision whether to testify or not
7 to testify and the pros and cons about that?

8 A. Yes, ma'am.

9 Q. You were also advised by the judge
10 during the trial about your right to testify,
11 that you could testify if you wished to do
12 so?

13 A. That's right.

14 Q. And you made the decision not to
15 testify?

16 A. That's right.

17 Q. Yes?

18 A. Yes, ma'am. I made the decision
19 based on advice given to me by Mr. Madsen.

20 Q. Mr. Manning, can you clarify for me
21 what it is that you're asking for? What are
22 you asking the Court to do for you today?

23 A. I would just like to have a fair
24 trial.

25 Q. So you would like another trial?

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1 A. Yes, ma'am, and -- you know, -- or a
2 fair sentence. I don't know if I'd be --
3 I'm not totally innocent in all of this, you
4 know. We shouldn't have been doing what we
5 were doing. We both knew the risks when we
6 got out there drinking, riding around, what
7 could happen. I shouldn't have let him
8 drive. That's my problem, I am guilty of
9 that. But I'm not guilty of driving.

10 Q. During your trial there was
11 testimony that people had overheard you say
12 that you were going to drive when you left
13 the bar?

14 A. No, they overheard me saying that we
15 could take my truck. But Lois said, 'no,
16 y'all, I'll drive.' You know, we were
17 discussing it as we left the bar. But when
18 he said that he was all right to drive, we
19 decided to take my truck because I had to
20 come back to work the next day.

21 Q. You do admit that you made the
22 statements, "I f'ed up."

23 A. Yes.

24 Q. And you knew that you had made those
25 statements ---

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1 A. I was saying that "I'm f'ed up", you
2 know.

3 Q. Not that "I f'ed up", "I'm f'ed up."

4 A. Right. I let him drive but I -- I
5 think I was going back and forth on them
6 because, like I said, they'd done gave me a
7 bunch of shots and stuff and it was kinda
8 blurry.

9 Q. But you remember -- you testified
10 that you remember saying that that night?

11 A. I do.

12 Q. And that you knew that you had said
13 those things?

14 A. (Affirmative nod).

15 Q. Yes?

16 A. (Affirmative nod).

17 Q. I see you nodding your head, but the
18 court reporter ---

19 A. I'm sorry. Yes.

20 Q. Okay. You're fine, I'm just
21 repeating it so that the court reporter knows
22 what you're saying to me.

23 Then your attorney did move for a
24 continuance, is that right?

25 A. Yes, ma'am, on a couple of different

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1 issues.

2 Q. Then the issue with the officers
3 contradicting each other, that was testified
4 to in front of the jury; correct?

5 A. Yes, ma'am.

6 Q. And the officers actually
7 contradicting each other, that was all done
8 in front of the jury to where they could see
9 that?

10 A. Yes, ma'am.

11 Q. Okay. That was thanks to your
12 attorney's cross-examination?

13 A. Yes, ma'am. I think he filed the
14 Motion to suppress the blood based on the
15 contradicting testimony, and that was denied.

16 MS. VALENZUELA: Your Honor, may I have
17 a moment?

18 THE COURT: Yes, ma'am.

19 MS. VALENZUELA: Your Honor, I have
20 nothing further for this witness.

21 MS. ZMROCZEK: Your Honor, I don't
22 have anything further. I would ---

23 THE COURT: Let me ask a question
24 before you get into that. Who was the
25 witness that supposedly said -- that

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1 testified that he said, "I shouldn't have
2 been driving."

3 APPLICANT: Nathan Probst.

4 THE COURT: So that is in Nathan's
5 testimony?

6 APPLICANT: Yes, sir.

7 THE COURT: Thank you. I just wanted
8 to be able to pinpoint that.

9 MS. ZMROCZEK: Thank you. Your
10 Honor, I know that both the Solicitor and the
11 trial attorney are here. If they don't call
12 the Solicitor, I would -- depending on what
13 the trial attorney testifies to, I would
14 reserve the right to call him since he is
15 here. I believe that they are going to call
16 him anyway but I just wanted to put that on
17 the record.

18 THE COURT: I think that you have the
19 right to do that.

20 MS. ZMROCZEK: Thank you. That's all
21 that we have for right now.

22 THE COURT: All right. Mr. Manning,
23 you may step down.

24 APPLICANT: Thank you.

25 (APPLICANT STEPS DOWN)

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1 THE COURT: Ms. Valenzuela.

2 MS. VALENZUELA: Your Honor, we call
3 Robert Madsen to the stand.

4 (WITNESS TAKES STAND)

5 ROBERT MADSEN, having been sworn to tell
6 the truth, and nothing but the truth,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. VALENZUELA:

10 Q. Mr. Madsen, how are you?

11 A. Good. How about you?

12 Q. Mr. Madsen, tell us a little bit
13 about you. How long have you been practicing
14 criminal law?

15 A. Coming around to nineteen years.

16 Q. Not all of that has been for the
17 defense?

18 A. No. The first twelve years I was at
19 the Solicitor's Office -- Barnwell, Bamberg
20 and Aiken for the first six and then here in
21 Lexington for the next six. Then I've been
22 the Circuit Public Defender coming around
23 eight years now.

24 Q. Now, Mr. Madsen, did you meet with
25 your client before the trial?

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1 A. I did. My notes show that I met
2 with him -- I believe two or three times in
3 jail. I say two or three times, one we did
4 a bond reduction hearing in front of Judge
5 Young. I think that was denied but he
6 subsequently bonded out. We met a couple of
7 times after that, had a few phone
8 conversations.

9 Additionally I recall us meeting at the
10 Batesburg Leesville magistrate's/municipal --
11 I think he might have had some corresponding
12 municipal charges and I didn't want him to do
13 anything on those charges to get himself in
14 trouble on these. So I remember us meeting
15 out there.

16 My notes reflect that we met at least six
17 times.

18 Q. Did you discuss trial strategy with
19 your client?

20 A. I did.

21 Q. Did that involve discussing whether
22 he was going to testify or not?

23 A. It did.

24 Q. Tell us a little bit about the pros
25 and cons of the advice that you gave him in

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1 terms of testifying?

2 A. Well, with all due respect to Chris,
3 uh, when we spoke he told me that he really
4 couldn't really remember much about it
5 because of the time that he had spent in the
6 hospital. So he didn't necessary give me the
7 witnesses.

8 He'd also had at least two things on his
9 record that I believe that the court would
10 have found impeachable, so we discussed that.
11 In the end, my advice to him was that I did
12 not believe that he should testify.

13 Q. Were there any plea offers in this
14 case?

15 A. I believe that there was a plea
16 offer of fifteen years, which I communicated
17 to him. He rejected that.

18 Q. Did a plea offer involve dismissing
19 the associated charge of possession of a
20 Schedule III ---

21 A. I believe that it did. I am not a
22 hundred percent sure, but I believe that it
23 did.

24 Q. I want to focus a little bit about
25 what you said in terms of talking to your

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1 client about testifying at trial and that he
2 couldn't remember -- obviously you were in
3 the courtroom.

4 A. (Affirmative nod).

5 Q. Did your client ever tell you that
6 he had said things like, "I'm f'ed up" or "I
7 f'ed up." Or, "I should have been driving."
8 At the accident scene?

9 A. No. Like I said, he had indicated
10 to me that he didn't have any recollection of
11 anything going on. I think that that's part
12 of what I kind of argued at closing, was that
13 it was a loud and chaotic scene where
14 everyone was kind of running around. But
15 he'd never mentioned that to me.

16 Q. And when you said that he never
17 mentioned that to you, just following the
18 timeline, that would include prior to getting
19 the witness statements from prosecution that
20 he'd never mentioned that to you?

21 A. Correct. Well, I don't know if we
22 had ever discussed it prior as to those
23 individual witnesses because we didn't
24 realize that those would be witnesses for the
25 State. So I don't think that we brought that

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1 up.

2 Q Would you ---

3 A. But after we'd gotten it, we
4 discussed those.

5 Q. So after you talked about it, you
6 discussed it.

7 A. (No verbal response).

8 Q. And never at any time did he ever
9 tell you that he said something different?

10 A. Correct.

11 Q. You just chose to use a different
12 strategy at closing?

13 A. Correct.

14 Q. Now, prior to getting the witness
15 statements, would you have talked to your
16 client about what he remembered the night of
17 the accident?

18 A. Yes.

19 Q. Which would have involved statements
20 that he would have made at the accident
21 scene?

22 A. Yes. Witnesses, anyone that he
23 would have wanted me to talk to.

24 Q. And you did have that conversation
25 with him?

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1 A. Yes.

2 Q. And that would include any EMT
3 witness ---

4 A. Yes.

5 Q. Prior to getting the EMT statements
6 from the prosecution?

7 A. Yes, we start that early -- yes.

8 Q. There is nothing about getting
9 witness statement from the prosecution that
10 starts the timeline in terms of having that
11 discussion with your client about what he
12 recalls about the night in question?

13 A. Correct. His contention was that he
14 wasn't driving, so obviously I was interested
15 in witnesses that say, you know, that the
16 other fellow was driving or that he wasn't
17 driving.

18 Q. And were you provided -- after you'd
19 had the conversation with him about witness
20 statements that you'd received from the
21 prosecution, did he give you a list of
22 witnesses who would have heard him say the
23 opposite?

24 A. No. If I might, in fact the -- the
25 other witness that was on scene, I'd never

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1 heard that before; saying that the other
2 fellow, that the driver was dead.

3 Q. Now, tell me -- in preparing for a
4 trial, especially of this magnitude, how many
5 witnesses are there typically on a State's
6 witness list?

7 A. There could be thirty to forty, just
8 depending. They generally don't call all of
9 them, but there could be a number of
10 witnesses.

11 Q. And that's about how many witnesses
12 that you had in this case?

13 A. I don't recall how many witnesses
14 that they had on the witness list. They
15 didn't call that many as I recall, I'd say
16 about ten to fifteen is what my recollection
17 is. But I don't -- I'm not a hundred percent
18 sure.

19 Q. So going back to your point about
20 how occasionally the prosecution can have
21 additional witnesses on their witness list
22 than they end up actually calling, what is
23 your practice in terms of meeting and
24 interviewing every witness that they have on
25 their witness list?

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1 A. Well, it depends. If they are
2 helpful witnesses -- if I have a clear
3 understanding of what they are going to
4 testify, I won't always meet with every
5 single witness. In this case I tried to, and
6 I believe that I did, meet with most of the
7 new witnesses about a week out from trial.

8 Q. In determining the witnesses that
9 you are going to speak with when you are
10 trying to prioritize your time, do you take
11 information that your client has provided to
12 you based on his recollection of the event
13 that night?

14 A. Yes, I will. And there are certain
15 witnesses like chain witnesses that I
16 generally wouldn't go out and interview
17 because I know that they are not fact. I
18 kinda have a good enough understanding of
19 what they will probably testify to that I can
20 effectively cross examine them without
21 speaking to them prior to court.

22 Q. Now, strategically what were you
23 thinking in terms of an expert prior to
24 leading up to trial?

25 A. Well, as of a week before trial the

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1 only witness that the State had that dealt
2 with driving whatsoever was a bartender who
3 said that it was Christopher's girlfriend's
4 car. She did not say and there was nothing
5 in the statement that indicated that she had
6 seen them leave or had seen him driving, so
7 it was just kind of a 'hey, it was his
8 girlfriend's car, so he must have been
9 driving.' He and I discussed that. To me
10 that was not a strong case on the State's
11 behalf to prove the driving element. So we
12 had not retained any type of expert, be it a
13 pathologist or an accident reconstruction
14 expert.

15 Q. In determining whether you are going
16 to hire an expert, whether that's the right
17 plan to go with in terms of trial strategy,
18 do you depend on information that your client
19 gives you as to what he recollects from the
20 incident?

21 A. Part of it is that, part of it is
22 obviously what I receive in discovery from
23 the State.

24 Q. So it's fair to say both discovery
25 and your client's information?

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1 A. Right.

2 MS. VALENZUELA: Your Honor, if I could
3 just have a minute.

4 THE COURT: Yes.

5 DIRECT EXAMINATION CONTINUED

6 BY MS. VALENZUELA:

7 Q. Regarding the victim's blood and the
8 chain of evidence involved with that, how did
9 you perceive the fact that the victim also
10 had a high blood alcohol level? Did you
11 perceive that to be helpful to your case or
12 harmful?

13 A. I believed that it would be helpful
14 to show -- obviously this was a short drive
15 at a high rate of speed, so one of my
16 strategies was to show that the victim in
17 this case was under the influence also. Use
18 that to show that if he was driving that a
19 resulting crash could have occurred.

20 So from a chain of custody aspect, their
21 chain of custody kind of mirrored one another
22 as far as Christopher's blood and his blood.
23 So a lot of the questions that I recall
24 asking was to make sure that I was kind of
25 establishing that chain all the way along, so

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1 that I could get those results in without
2 having to call independent witness,
3 forfeiting closing argument.

4 Now, it became an issue at some point in
5 time where the State didn't have the initial
6 draw and the judge expressed frustration.
7 But I was able to get that information out.
8 I believe that the State just ended up
9 acquiescing to letting it come in.

10 I was trying to show that the victim in
11 the case was just as inebriated or had a
12 blood alcohol -- or maybe even a little bit
13 more so -- than Chris was.

14 Q. And you were able to get that in
15 front of the jury?

16 A. I was.

17 Q. And you were able to do it in a way
18 that still preserved the last argument for
19 your case, which was an important strategic
20 decision?

21 A. Yes, and that's what I was trying to
22 do.

23 Q. Now, tell me. In terms of
24 credibility issues when you have a witness
25 who you think may not be telling the truth or

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1 who you think has said different statements,
2 how do you traditionally handle that in
3 trial?

4 A. Just through cross examination.

5 Q. And why do you think cross
6 examination is the right strategy to use?

7 A. Well, you generally don't get -- if
8 a witness has changed their statement from
9 whatever their current statement is, they
10 generally don't get up and say, 'oh, by the
11 way, I lied.' So I try to point out those
12 inconsistencies or the fact that they've
13 changed their ---

14 Q. And did you do that in this case?

15 A. I attempted to.

16 Q. Did you -- I'm skipping around. The
17 Schedule III, -- when we were talking about
18 the plea offer and you said that there had
19 been a plea offer for fifteen years, possibly
20 dismissing the Schedule III charge, and that
21 then the way that this ended up was your
22 client got seventeen years after trial.

23 A. (Affirmative nod).

24 Q. What happened with that Schedule III
25 charge?

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1 A. It got dismissed. We made a Motion
2 -- I think he got eighteen years.

3 Q. I'm sorry. Yes.

4 A. We made a Motion to elect to sever
5 those charges and the judge granted the
6 Motion to sever. Then I think after the
7 trial that the charges got dismissed.

8 Q. In fact, talking on that point, that
9 Motion to sever led to one of your mistrial
10 Motions; correct?

11 A. It did, (affirmative nod). Once the
12 jury had heard about that, I moved for a
13 mistrial because it had already been put in
14 front of the jury.

15 Q. Then some of your objections were
16 in fact preserved for appeal and came out in
17 the published Decision; correct?

18 A. Yes.

19 Q. Do you have a strategy in terms of
20 when you decide whether you're going to
21 object to every objectionable item that comes
22 up in a trial?

23 A. It really just kind of depends. You
24 evaluate how important it is, whether or not
25 I want to draw more attention to it. I mean

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1 -- in nonlegal terms, it just depends on how
2 important it is and what I think is going to
3 happen, because not every objection is going
4 to necessarily help with what we're trying to
5 get out in our case. There are times when if
6 I feel something is relatively mundane, I'll
7 say "Leading" or something along those lines
8 to object to it.

9 Q. At any time did your client indicate
10 that he was hoping to plead to this case if
11 he could work on the time, the offer?

12 A. Not that I recall. My notes reflect
13 that I represented Chris about six months,
14 total, from the time that I got appointed to
15 when we went to trial. From what I recall,
16 that was the only offer that we had received.
17 And now that I -- it might have been a cap of
18 fifteen but I -- I know that there was
19 something to do with fifteen, but that was
20 the only offer that had been made. He'd
21 never indicated that he was interested in
22 that when we discussed it. His position
23 always was that he wasn't driving.

24 Q. Mr. Madsen, did you go over
25 discovery with your client prior to trial?

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1 A. Yes.

2 Q. And then just confirming -- in
3 covering that discovery with your client, at
4 no point did he indicate to you the
5 statements that he had made that night?

6 A. (No verbal response).

7 Q. Then the statements from the EMTs,
8 saying that they had heard your client saying
9 certain things, were given to you prior to
10 your client's decision to plead the fifth and
11 not take the stand -- I'm sorry, not plead
12 the fifth, but to not take the stand during
13 his trial?

14 A. Yes. We had discussed the discovery
15 once we'd first gotten it and then we got the
16 new statement, we talked about that because
17 that information was very damning and really
18 changed the complexion of his case. I
19 received those basically the week before
20 trial.

21 Q. Once you received those statements
22 and had conversation with your client, at no
23 point did he tell you that he actually had
24 said a different version ---

25 A. He did not.

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1 Q. Okay. Thank you.

2 MS. VALENZUELA: That's it. Thank you,
3 Your Honor.

4 THE COURT: Cross examination.

5 MS. ZMROCZEK: Your Honor, do you
6 have the Court of Appeals' Opinion up there?

7 THE COURT: I do not but I have it on
8 my computer. I've pulled it up and reviewed
9 it.

10 MS. VALENZUELA: All right. Okay. I
11 just wanted to make sure, because I want to
12 make sure that those get made a part of the
13 record.

14 THE COURT: Okay. I'm not sure that
15 it being on my computer is part of the
16 record, but I planned on reviewing it after
17 this hearing as well.

18 MS. ZMROCZEK: Okay. Thank you. All
19 right, and I may attach a half-page letter
20 with those as well.

21 THE COURT: Okay.

22 MS. ZMROCZEK: Okay. I believe that
23 those speak for themselves and we don't need
24 to waste time. I'm sorry -- sorry.

25 CROSS EXAMINATION

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1 BY MS. ZMROCZEK:

2 Q. Mr. Madsen, how are you?

3 A. Fine.

4 Q. You were a solicitor, as you said,
5 prior to becoming the public defender?

6 A. Yes, ma'am.

7 Q. How long were you a solicitor?

8 A. Twelve years, total.

9 Q. Twelve years, total?

10 A. (Affirmative nod).

11 Q. How many felony DUI cases did you
12 prosecute during that time?

13 A. Uh, ---

14 Q. Approximately?

15 A. Fifty.

16 Q. Fifty?

17 A. Not to trial, but -- yeah, through
18 all my life probably fifty.

19 Q. So you had experience prosecuting
20 these cases?

21 A. I did.

22 Q. How many -- do you think that you
23 have done since?

24 A. At that time. Oh, I'm not real sure
25 but at that time I'd probably done twenty to

1 twenty-five -- because this is the only one
2 that went to trial, that I recall.

3 Q. So it's fair to say that you have a
4 lot of experience with these type cases?

5 A. I do.

6 Q. Since you do have a lot of
7 experience, is it -- it's unusual to not have
8 an autopsy when there is a death; isn't that
9 correct?

10 A. No. Actually -- and that's
11 something that when I was at the solicitor's
12 that I would try to reach out, at least to
13 the highway patrol, to get it. But that was
14 not generally their standard. They usually
15 used the coroner only.

16 Q. But as ---

17 A. I've seen a few, uh, but a lot of
18 times they don't get an autopsy; which I've
19 always thought was kinda crazy.

20 Q. Because -- especially in this case,
21 because the one question was who was driving.
22 Correct?

23 A. Yes, ma'am.

24 Q. And you would agree that autopsy
25 could help identify injuries that would be

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1 consistent with either one side or the other?

2 A. Yes, ma'am.

3 MS. VALENZUELA: Objection, Your Honor.
4 Speculation.

5 THE COURT: I will allow it and
6 consider what is appropriate.

7 CROSS EXAMINATION CONTINUED

8 BY MS. ZMROCZEK:

9 Q. Did you receive the medical records
10 of the victim in this case?

11 A. I believe that I did.

12 Q. Did you have a doctor or did you go
13 through them and notice anything?

14 A. As far as medical records, since he
15 -- they were very limited. I think most of
16 the medical records that I had were probably
17 Christopher's, which is pretty much a box.

18 I had like EMS run reports in that. Then
19 obviously I had the stuff from the coroner's
20 office. But I don't recall there being a ton
21 of medical records on -- I've got my file
22 back there and I can certainly look and see,
23 but I don't recall there being a ton of
24 records associated with the victim. They'd
25 declared that he was dead out on the scene.

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1 Q. Okay. They were both ejected from
2 the vehicle?

3 A. Yes, ma'am.

4 Q. And they were far from the vehicle?

5 A. From what I recall, they were.

6 Yeah.

7 Q. Okay. You -- there's been
8 discussion of this late-received discovery.
9 Tell -- I believe that you said that really
10 changed the com-- -- that that really changed
11 the case. How long, typically, does it take
12 for a case -- for you to prepare and go to
13 trial. How long is that timeframe?

14 A. Well, it depends on the kind of
15 case, obviously.

16 Q. Right.

17 A. Uh, you know, it just depends on the
18 case. You know, I'd love to have a month's
19 notice and a month to work on a case but that
20 usually doesn't happen.

21 Q. Right.

22 A. Uh, ---

23 Q. What is the typical time that a case
24 is called for trial?

25 A. We get ten days notice, generally.

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1 Q. Okay.

2 A. So we get notice on the Friday
3 before, usually about 5:00 o'clock. So you
4 have that weekend and then the week -- the
5 next week.

6 Q. So you were aware ten days prior
7 that this was going to trial?

8 A. (No verbal response).

9 Q. What information did you receive
10 after that ten days?

11 A. All the EMS workers.

12 Q. All the EMS workers' statements?

13 A. Yeah, there -- dispute what Chris
14 testified to, there were a few of them. There
15 was Nathan Probst, there were a couple of
16 ladies. From what I recall I believe that
17 there were three or four in total that
18 testified that ---

19 Q. That testified ---

20 A. --- I received after he made -- that
21 I received after -- that testified as far as
22 the driving aspect.

23 Q. Okay. And you received all of those
24 after?

25 A. Correct.

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1 Q. In your experience as a prosecutor
2 and as a defense attorney, when M.A.I.T. is
3 involved do they generally take notes and
4 generate a report well within advance of a
5 trial?

6 A. They do.

7 Q. And those reports were not given to
8 you?

9 A. I think there was some stuff out of
10 the M.A.I.T. that I had not received until
11 afterwards. Generally those type of
12 statements from EMS -- or those type EMS
13 statements are generally not a portion of
14 M.A.I.T. I believe that those were sent over
15 to me from like the prosecutor and labeled
16 kind of like Brady-type stuff. Because I had
17 had the run sheets, which I don't recall
18 M.A.I.T. in any -- saying anything about
19 'hey, so-and-so admitted they were the
20 driver.'

21 So I assumed, since I had gotten those
22 run sheets and then there was something that
23 was either an add-on or an addition that that
24 is why I received it from the prosecutor. I
25 think probably once he started interviewing

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1 witnesses.

2 Q. But you did receive the M.A.I.T.
3 report that showed that the troopers
4 interviewed all the witnesses that were
5 involved?

6 A. Yes.

7 Q. And in those M.A.I.T. reports not
8 once did a trooper say that an EMS worker had
9 told them that he had ---

10 A. No. I mean, there was nothing in
11 any of the EMS reports that indicated that
12 there were going to be witnesses that said
13 that he was the driver.

14 Q. And I believe ---

15 A. Or that he had admitted to it.

16 Q. And in the M.A.I.T. report, it had
17 specific objectives, which were to, uh, --
18 who is the driver issue, uh, that was the
19 question on the M.A.I.T. report; correct?

20 A. From what I recall, yes.

21 Q. And your entire complexity of the
22 M.A.I.T. report -- all the calculations and
23 all the testing, they never answered that
24 question; is that correct?

25 A. Not that I recall, until we received

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1 the stuff from EMS.

2 Q. Until you received the supplemental
3 e-mails, which were -- and you received those
4 the Friday before trial, as you recall?

5 A. I believe so. I thought that they
6 were on -- I think that we went to trial on
7 -- I've got it in my notes as the 13th. I
8 don't know if that is when we started or if
9 that's when we ended, but some of them were
10 dated, I thought, the 7th -- maybe as early as
11 the 28th.

12 Q. So aside from those statements that
13 you got just a few days before trial, was
14 this case -- was this a case of overwhelming
15 evidence of guilt?

16 A. None whatsoever.

17 Q. There was DNA -- there were DNA
18 tests run on the steering wheel, correct?

19 A. From what I recall, (affirmative
20 nod).

21 Q. Did not come back to Mr. Manning?

22 A. Did not come back to anybody.

23 Q. Did not come back to anybody.

24 A. Right.

25 Q. They couldn't determine?

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1 A. Right.

2 Q. There was blood in the car?

3 A. I don't recall if there was or not.

4 Q. So they couldn't determine if people
5 were injured in the car?

6 A. From what I call, from forensically
7 there wasn't anyone to say, hey, that there
8 anything -- any type of evidence in the car,
9 that was turned over to me, to indicate that
10 Chris was driving or that he wasn't driving.

11 Q. Even the witness statements from the
12 ones that were at the bar, none of them could
13 say that they saw him get in the car. They
14 just heard them talking about driving.
15 Right?

16 A. Right, there wasn't any witnesses.
17 That was one of the things that we were
18 interested in, if anyone had seen them leave
19 the bar with -- obviously if there was
20 someone that had seen the victim get in the
21 car and was driving, we would have called
22 them.

23 Q. And you actually -- there were two
24 video cameras at the bar. Correct?

25 A. I believe so, but I don't recall

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1 that we were ever able to get anything from
2 those video cameras. I don't recall any type
3 of video associated with the case except for
4 the law enforcement video, but that was way
5 after the fact and really didn't show that
6 much.

7 Q. So the video from the bar, you
8 couldn't get?

9 A. Right.

10 Q. Do you know if those were available
11 to the State?

12 A. I don't know. Like I said, I got
13 this case like three months after he was
14 arrested. I don't recall off the top of my
15 head whether they had one and they didn't
16 tape anything or whether they had been taped
17 over by the time that I had been appointed on
18 this case. I don't recall. I just know that
19 there were videos.

20 Q. And that would have been something
21 that you obviously tried to do but -- but by
22 the time you received the case ---

23 A. That's right.

24 Q. But the State was aware of what bar
25 from where they'd left? They had statements

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1 from people at the bar?

2 A. I would assume.

3 Q. I mean that was provided to you in
4 discovery?

5 A. (Affirmative nod).

6 Q. So they knew which bar it was?

7 A. Yes.

8 Q. Are you familiar -- when you were a
9 solicitor or even as a defense attorney, are
10 you familiar with *Kyles v. Whitley*?

11 A. Yes.

12 Q. What is your understanding of what
13 is required for the prosecution to turn over
14 or to gather?

15 A. Well, they've got to turn over
16 anything that is exculpatory, which I think
17 *Kyles v. Whitley* talks about that if a
18 witness changes a statement then impeachable
19 information also becomes exculpatory and
20 should be turned over.

21 Q. Are you familiar that also it puts a
22 little more duty on them and all the arms of
23 the State, as the State calls them, to give
24 any and all information relevant to a
25 prosecution?

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1 A. I would agree.

2 Q. That wasn't done in this case,
3 though?

4 A. I got those, yes. I mean, the
5 information that I got, I got, like, ---

6 Q. And then some you weren't able to
7 get it all, like the videotapes?

8 A. Right.

9 Q. I want to talk to you a little bit
10 about the Motions that you argued. You
11 started to discuss the chain issue. Explain
12 to the court the chain issue.

13 A. They didn't have a chain of custody
14 or they didn't provide -- or they weren't
15 attempting to get the chain of custody of the
16 victim. But it seemed to mirror
17 Christopher's. So as soon as they would ask
18 the questions, on my cross examination I
19 would ask those questions, trying to develop
20 a chain of custody so that I could get his
21 blood in.

22 There came some point in time where the
23 State said that they had no idea who had
24 drawn the blood initially. The judge ended
25 up kinda blowing up about that, but we ended

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1 up getting in what we wanted to get in. So
2 saying that we didn't move to suppress the
3 chain of custody, I wasn't trying to suppress
4 evidence that I wanted to get in, that I
5 thought would be helpful on his behalf.

6 So with all due respect to Chris, that's
7 kind of a Red Herring.

8 Q. That is what I wanted to clarify.
9 The issue of -- the blood alcohol from the
10 victim was, I think, a .169 or something?

11 A. I seem to recall that it was a
12 little bit higher than Christopher's, plus
13 there some type of drugs -- whether it was
14 Xanax, marijuana or something in his blood.

15 Q. Okay. Were you able to do much
16 background research, sort of corroboration
17 or lack of corroboration with these EMS
18 statements once you got them, or had you ---

19 A. I spoke to as many of them as I --
20 one of them, I couldn't get in touch with.
21 The prosecutor's office did give me numbers
22 to them, because obviously I wanted to
23 independently talk with them.

24 Like I said, I remember -- I don't recall
25 which one but -- I believe that there were

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1 four and I was able to track down three of
2 the four. The fourth one, I don't believe
3 called me back. Obviously a witness doesn't
4 have to call me back if they don't want. So
5 I -- but I tried numerous times to get in
6 touch with all of them and, like I said, I'd
7 talked to three out of the four, I believe.

8 Q. So in fact the main basis of your
9 Motion for a continuance was to be able to
10 develop this information that you had
11 received late?

12 A. Well, my thought was that the
13 complexity of the case had changed
14 dramatically from basically a bartender who
15 says, 'hey, it was his car, so he must have
16 been driving' to an admission supposedly made
17 from these three independent non-law
18 enforcement. So I wanted to try that at that
19 point in time to see if we could get an
20 expert to develop any information.

21 Q. Aside from getting an expert, would
22 you have -- what else would you have done
23 differently?

24 A. The expert is kind of the main
25 thing.

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1 Q. Okay.

2 A. As far as any other statements, I
3 wasn't told or provided with any other
4 witnesses that could support his position of
5 that point in time.

6 Q. I want to talk to you a little bit
7 about the last argument. You mentioned that
8 you had medical records from Mr. -- from your
9 client, Mr. Manning. I notice that someone
10 had prepared a defense witness list that had
11 the doctors that treated him on there.

12 A. (No verbal response).

13 MS. ZMROCZEK: Your Honor, if I may
14 approach?

15 THE COURT: Yes.

16 CROSS EXAMINATION CONTINUED

17 BY MS. ZMROCZEK:

18 Q. (Tenders).

19 A. (Upon review), I might have done
20 that but I don't recall.

21 Q. You may have prepared a witness
22 list?

23 A. Yeah.

24 MS. ZMROCZEK: Your Honor, since I
25 asked him to look at it, I'll go ahead and

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1 mark it as an exhibit.

2 COURT REPORTER: Applicant's Exhibit 1.

3 WITNESS: I generally, unless forced to
4 will ---

5 MS. ZMROCZEK: Hang on.

6 COURT REPORTER: So marked as
7 Applicant's Exhibit 1.

8 MS. ZMROCZEK: Thank you.

9 CROSS EXAMINATION CONTINUED

10 BY MS. ZMROCZEK:

11 Q. I am showing you Applicant's Exhibit
12 1 again, (tendering).

13 A. Unless forced to, I generally don't
14 give the State a witness list prior to trial
15 or even at *voir dire*, because I don't think
16 we are required to. Whether you call
17 witnesses sometimes can be pretty fluid.

18 Q. Would it help if you looked through
19 his medical records to see if those are the
20 names of his doctors or ---

21 A. No. I would assume that they must
22 be.

23 Q. Now, you said that it was a trial
24 strategy not to call any witnesses. You said
25 that he had a few things on his record. Do

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1 you recall what those were?

2 A. The two things that I recall were a
3 petit larceny and a strong arm robbery. Those
4 were the two things that I thought were
5 within the timeframe, that would be
6 impeachable if he had taken the stand.

7 Q. Okay. But nothing to do with
8 driving or alcohol?

9 A. No, and my thoughts were that had he
10 had anything along those lines that those
11 wouldn't have been appropriate to come in and
12 should have kept out under 403. But I don't
13 think that petit larceny or strong arm -- I
14 don't think necessarily that the court had a
15 lot of discretion of that, I think it would
16 have been time limitations.

17 Q. I am going to ---

18 MS. ZMROCZEK: (Tenders documents to
19 be marked as exhibits).

20 COURT REPORTER: Applicant's Exhibits 2
21 and 3.

22 MS. ZMROCZEK: Thank you.

23 MS. VALENZUELA: Aimee, I have an
24 objection to those as exhibits. If your
25 intent is just to have him review ---

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1 MS. ZMROCZEK: Your Honor, what my
2 plan was to ask him -- just to show -- she
3 marked over the Court exhibit but I was going
4 to show them to him and the since I was
5 showing them to him mark them as exhibits.

6 THE COURT: Okay.

7 CROSS EXAMINATION CONTINUED

8 BY MS. ZMROCZEK:

9 Q. I am showing you Applicant's 2 and 3
10 to see if you recognize them.

11 A. (Upon review), I recognize both of
12 them.

13 Q. Are those the toxicology reports of
14 both Mr. Manning and Mr. Hill?

15 A. They are. Although (Exhibit) three
16 has been redacted, I believe, to take out
17 some marijuana metabolites; which I think was
18 the subject of one of the Motions. It wasn't
19 an active component at that point in time but
20 it would have shown -- it looks like that has
21 been deleted from this.

22 MS. ZMROCZEK: Your Honor, for the
23 purposes of this hearing we would move
24 Applicant's 2 and 3 into the record.

25 THE COURT: Any objection?

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1 MS. VALENZUELA: Your Honor, I am just
2 unclear as to the foundation or the basis to
3 get these documents in. I mean, if it's --
4 if we are talking about the relevance of the
5 victim's blood alcohol level versus the
6 defendant's blood alcohol level, that's been
7 established through testimony.

8 I just don't see a basis for her to be
9 able to get these things in.

10 THE COURT: Are these things that were
11 introduced at the trial?

12 MS. ZMROCZEK: They were, Your Honor.

13 THE COURT: I will let them in.

14 (SO ENTERED AS APPLICANT'S EXHIBIT 2)

15 (SO ENTERED AS APPLICANT'S EXHIBIT 3)

16 MS. ZMROCZEK: Thank you. And the
17 reason, Your Honor, is that it was testified
18 to before -- and I know that you cannot
19 remember every number, but those are the two
20 blood alcohol tests.

21 CROSS EXAMINATION CONTINUED

22 BY MS. ZMROCZEK:

23 Q. Which indicates that -- who has the
24 higher blood alcohol content according to
25 those ---

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1 A. Actually, according to these
2 Christopher by just a little bit -- .173, and
3 Mr. Hill was .169.

4 Q. So they were close but one was a
5 little higher?

6 A. (Affirmative nod).

7 Q. One of the reasons that Mr. Manning
8 told you that he didn't think he was driving
9 was because he said that he thought he'd had
10 more to drink than Mr. Hill. Is that
11 correct? Or at least that's what he
12 testified to today.

13 A. Yes.

14 MS. VALENZUELA: Objection, Your Honor.
15 That's mischaracterizing testimony. I don't
16 recall hearing that at all when the Applicant
17 testified.

18 THE COURT: I will go on what the
19 Applicant testified to.

20 MS. ZMROCZEK: I will rephrase.

21 CROSS EXAMINATION CONTINUED

22 BY MS. ZMROCZEK:

23 Q. Did he recall -- what did he recall
24 that night? You said that he didn't recall
25 much but the one thing that he adamant about

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1 was that he did not ---

2 A. That he didn't drive.

3 Q. --- drive?

4 A. (Affirmative nod), that Mr. Hill was
5 the driver.

6 Q. That was one thing that he -- of all
7 the other statements that he made, you are
8 certain about?

9 A. Yes.

10 Q. Okay. And you provided all of your
11 arguments to the Court of Appeals, all of
12 your Motions, everything that they asked for;
13 correct?

14 A. Yes.

15 MS. ZMROCZEK: Beg the Court's
16 indulgence -- (upon review of file), I have
17 no further questions, Your Honor.

18 THE COURT: Redirect?

19 MS. VALENZUELA: Nothing, Your Honor.

20 THE COURT: You may step down. Thank
21 you.

22 (WITNESS STEPS DOWN)

23 THE COURT: Any additional witnesses?

24 MS. VALENZUELA: Yes, Your Honor, we
25 call Derrick Mobley to the stand.

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(WITNESS TAKES STAND)

1
2 DERRICK MOBLEY, having been sworn to
3 tell the truth, and nothing but the truth,
4 testified as follows:

DIRECT EXAMINATION

BY MS. VALENZUELA:

7 Q. Mr. Mobley, can you tell the court
8 what your role was in this trial?

9 A. I was an assistant solicitor with
10 the Eleventh Judicial Circuit and I was the
11 prosecuting attorney, the lead prosecuting
12 attorney.

13 Q. Mr. Mobley, the statements from the
14 EMT witnesses that have been referenced
15 throughout today, do you remember getting
16 that information?

17 A. I do.

18 Q. How did you get that information?

19 A. I recall that -- I was making phone
20 calls to the potential witnesses while
21 getting prepared for the trial, identified
22 potential witnesses. I began to call those
23 from my office phone.

24 Q. Once those witnesses gave you their
25 statements, what did you do at that point?

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1 A. I immediately sent an e-mail
2 notifying the opposing counsel of these
3 statements that I had received via telephone
4 -- via the telephone.

5 MS. VALENZUELA: This is going to be
6 three different exhibits.

7 COURT REPORTER: Thank you.

8 MS. VALENZUELA: Can I put it in?

9 COURT REPORTER: So marked as State's
10 Exhibits 1, 2 and 3.

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

13 THE COURT: Yes, ma'am.

14 DIRECT EXAMINATION CONTINUED

15 BY MS. VALENZUELA:

16 Q. Mr. Mobley, I'm handing you State's
17 Exhibit 1. Can you -- what is that?

18 A. This is an e-mail that comes from my
19 former e-mail address, dated Friday, May 7th,
20 at 10:56 a.m. It appears that it was sent to
21 Robert Madsen and cc'ed on it is myself as
22 well as Angela Garrick, who was the co-
23 counsel in this case. She was an assistant
24 solicitor as well.

25 Q. Okay. Can you review that e-mail

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1 and then after reviewing it tell us if it is
2 accurate to the e-mail that you would have
3 sent?

4 A. (Upon review), yes.

5 MS. VALENZUELA: Your Honor, we would
6 move to enter State's Exhibit 1 and then
7 start questioning the witness?

8 THE COURT: Any objection?

9 MS. ZMROCZEK: Without objection.

10 (SO ENTERED AS STATE'S EXHIBIT 1)

11 DIRECT EXAMINATION CONTINUED

12 BY MS. VALENZUELA:

13 Q. So what does the e-mail -- you told
14 us the date. That would be May 7th, the date
15 before the trial started. So what does the
16 e-mail state?

17 A. The subject line states, "State v.
18 Manning, defendant's statement while on
19 scene."

20 It starts off with, (reading): "Rob:
21 I just got off the phone with Elizabeth.
22 During the conversation she states that while
23 attending to Mr. Manning that he made two
24 statements that she could remember from that
25 night. They are, as follows, quote, "I

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1 shouldn't have done this." End quote.

2 Quote, "Look what I've done."

3 And then states, "Elizabeth has been

4 subpoenaed and will testify to the same.

5 If there are any questions and/or concerns,

6 please feel free to contact me. Thanks,

7 Derrick E. Mobley, Assistant Solicitor."

8 Q. Now I am going to be handing you

9 what has been marked as State's Exhibit 2.

10 If you could, look over that and then tell us

11 what that is.

12 A. (Upon review), yes, this is an e-

13 mail correspondence between Rob, Rob Madsen,

14 and myself. It appears to be, according to

15 the caption here it's Friday, May 7th, which

16 is a reply e-mail to me at 4:21 p.m. from Rob

17 Madsen.

18 Then I respond to him on Friday, May 7th,

19 at 4:36 p.m.

20 Q. Okay. Having looked over it, does

21 that e-mail accurately reflect the e-mail

22 that you would have sent?

23 A. Yes.

24 Q. And received?

25 A. Yes.

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1 MS. VALENZUELA: Your Honor, we would
2 move to submit State's Exhibit 2.

3 MS. ZMROCZEK: Without objection,
4 Your Honor. These are all without objection.

5 THE COURT: All right. In without
6 objection.

7 (SO ENTERED AS STATE'S EXHIBIT 2)

8 DIRECT EXAMINATION CONTINUED

9 BY MS. VALENZUELA:

10 Q. So State's Exhibit 2, looking at
11 that one, which question does Mr. Madsen ask
12 you in the e-mail when he replies back to you
13 when you tell him about the statement?

14 A. Well, it appears that this is
15 actually a response to State's Exhibit 1. Rob
16 Madsen has an immediate question -- well, a
17 question that is sent that is sent to me at
18 4:21 p.m. on May 7th. It says, (reading):
19 "Derrick: Do you have a phone number for
20 Elizabeth? Thanks, Robert E. Madsen."

21 Q. And when you reply back, do you give
22 him the phone number to that witness?

23 A. I did.

24 Q. What else is included in that reply
25 e-mail to Mr. Madsen?

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1 A. Okay, in that reply e-mail is -- I
2 replied at 4:36 p.m. on May 7th, and I also
3 mark it so that I can tell when he opens it.
4 He opens it at 5:30 p.m. on May 7th, 2010.

5 It states, (reading): "Yes, her number
6 is 803-520-4443. Additionally, I was getting
7 ready to call you to personally inform you
8 that I was able to speak with Victor Tomano
9 (phonetic) approximately thirty to thirty-
10 five minutes ago. He is currently in drill
11 for the National Guard this weekend but will
12 return Sunday night and be present during the
13 course of the trial. During the conversa-
14 tion, he confirmed that he heard Christopher
15 Manning repeatedly state in the presence of
16 Jerry Wise that, "Man, I -- (pause)."

17 Q. You can just spell it out.

18 A. Okay. And this is in quotes.
19 "Man, I ..." -- f-u-c-k-e-d -- "(fucked) up."
20 End quote.

21 (Reading continued): "In addition to
22 this statement, Victor Tomano said that
23 Christopher Manning said, quote, "I should
24 not have been driving." End quote. Mr.
25 Tomano has been subpoenaed, will be present

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1 for the trial and will testify to the same.
2 In fact, he provided a number for you to
3 contact him this weekend. His number is [REDACTED]
4 [REDACTED]. I told him to expect a call from
5 you before the trial if there are any
6 questions and/or concerns. Thanks, Derrick
7 E. Mobley, Assistant Solicitor, Lexington
8 County" and my telephone numbers.

9 Q. Thank you. Now I am going to hand
10 you State's Exhibit 3. If you could look
11 over that.

12 A. (Reviewing).

13 Q. Is that also an e-mail?

14 A. Yes. These are e-mails between Rob
15 Madsen and myself.

16 Q. Having looked at them, are they an
17 accurate reflection of the e-mails that you
18 exchanged with him, or the set of e-mails
19 that you exchanged with him?

20 A. Yes, they appear to be.

21 MS. VALENZUELA: Okay, we would move
22 that State's Exhibit 3 be admitted.

23 MS. ZMROCZEK: Without objection.

24 (SO ENTERED AS STATE'S EXHIBIT 3)

25 DIRECT EXAMINATION CONTINUED

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1 BY MS. VALENZUELA:

2 Q. Then, Mr. Mobley, if you would --
3 starting with the first one, which would be
4 the back page, explain to the Court the dates
5 and put it in context to State's Exhibits 1
6 and 2.

7 A. Okay. This e-mail correspondence
8 starts ---

9 Q. Exhibit 3.

10 A. (Affirmative nod), Exhibit 3. It
11 starts on May the 5th, which is a Wednesday at
12 1:27 p.m. from me to Robert Madsen. Copied
13 on this e-mail is Jill Scott, who would have
14 been my assigned investigator in the office;
15 Angela Garrick, which was my co-counsel at
16 the time.

17 The subject line is, "State v. Manning,
18 Rule 5 Disclosure, Defendant's Statement" --
19 (reading): "Rob: I spoke with Jerry Wise of
20 the Lexington County Fire Department today
21 and he stated the following, he and Victor
22 Tomano were attending to Mr. Christopher
23 Manning's injuries at the scene of the
24 incident, at which time Mr. Manning stated to
25 them, "Man, I fucked up." End quote. Both

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1 will attend trial and will testify to the
2 same. Thanks, Derrick E. Mobley."

3 Rob responds on that same day at 3:18
4 p.m., which is May the 5th, (reading):
5 "Derrick: I need contact numbers for Mr.
6 Wise, Mr. Tomano and Nathan Probst. Also,
7 I would like to review your file tomorrow
8 afternoon, 2:00 p.m., if that offer is still
9 open. Thanks, Rob Madsen."

10 I respond to Rob Madsen at 3:41 p.m. that
11 same day, May the 5th, "Jerry Wise's number is
12 [REDACTED] and [REDACTED]; Mr. Tomano's
13 [REDACTED]; Nathan Probst [REDACTED]. I
14 will be in the office at 2:00 p.m., either in
15 my office or in the Grand Jury. You are
16 welcome to review my file. Derrick E.
17 Mobley."

18 Q. So, Mr. Mobley, let me just
19 interrupt you. The three people that are
20 listed out there with those telephone numbers
21 were the EMT and fire personnel that we've
22 heard from in the other e-mails talking about
23 statements that they overheard the defendant
24 say?

25 A. Yes.

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1 Q. Is there a final e-mail at the top?
2 Let me see -- (upon review), no. Okay,
3 that's it.

4 MS. VALENZUELA: Your Honor, these are
5 the three exhibits.

6 DIRECT EXAMINATION CONTINUED
7 BY MS. VALENZUELA:

8 Q. Now, there was a reference earlier
9 to a video at the bar that the defendant
10 worked at. Do you have any recollection of
11 receiving or reviewing a video that would
12 have been taken at the bar's location?

13 A. I don't recall receiving a video.
14 However, I don't recall whether there simply
15 wasn't one or whether it was recorded over or
16 what. But I never reviewed a video from the
17 bar, that I can recall at this point.

18 Q. You did give an offer in this case,
19 correct? A plea offer in this case?

20 A. I gave a plea offer, (affirmative
21 nod); the specifics, I can't remember.

22 Q. Would you have set a deadline prior
23 to trial ---

24 A. Yes.

25 Q. --- for that plea offer?

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1 A. Yes.

2 MS. VALENZUELA: If we could mark this
3 as State's Exhibit 4.

4 MS. ZMROCZEK: Four?

5 MS. VALENZUELA: Yes.

6 COURT REPORTER: So marked as State's
7 Exhibit 4.

8 DIRECT EXAMINATION CONTINUED

9 BY MS. VALENZUELA:

10 Q. Would you take a look at State's
11 Exhibit 4? Then, -- for brevity, is that a
12 letter that talks about *Brady* disclosures
13 sent from you to Rob Madsen?

14 A. Yes, ma'am.

15 MS. VALENZUELA: Your Honor, we would
16 move State's Exhibit 4 into evidence.
17 Without objection, correct?

18 MS. ZMROCZEK: Without objection.

19 THE COURT: So entered.

20 (SO ENTERED AS STATE'S EXHIBIT 4)

21 DIRECT EXAMINATION CONTINUED

22 BY MS. VALENZUELA:

23 Q. So could you please tell the court
24 the date of that letter and the content of
25 the letter?

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1 A. Okay. The date of the letter is
2 April 28th, 2010. It is titled, "In reference
3 to Nathan Probst, Lexington County Fire
4 Service".

5 The headline states, "Brady Disclosure,
6 State v. Christopher Manning, felony DUI with
7 death and possession of controlled
8 substance."

9 It's on the Solicitor's letterhead and
10 states, (reading): "Dear Rob: On April
11 27th, 2010, I spoke with Mr. Nathan Probst
12 over the telephone regarding the above-
13 referenced case. During the conversation, I
14 was informed that Mr. Probst was one of the
15 individuals at the scene of the incident.
16 Below is a synopsis of what he informed me:

17 He arrived on scene and did not
18 immediately see the vehicle due to how far
19 the vehicle was from the main highway.

20 During his scan of the field he was able
21 to locate the overturned vehicle and observed
22 Mr. Jacob Hill lying face down approximately
23 twenty-five yards away from the vehicle.

24 He also observed an EMS worker attempting
25 to -- observed an EMS worker attending to Mr.

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1 Christopher Manning. He approached the EMS
2 worker and Mr. Manning to provide assistance.
3 While Mr. Manning was being attended to by
4 the EMS worker, he asked Mr. Manning if there
5 was anyone else in the vehicle that he needed
6 to know about. Probst states that Mr.
7 Manning says, "No, it was just me and my
8 buddy. He was riding with me."

9 Mr. Probst will be subpoenaed for the
10 trial and states that he will testify to the
11 same during pretrial and the case in chief.

12 If there are any questions and/or
13 concerns, please let me know. Additionally,
14 please inform me of a day next week, May 3rd,
15 2010 that we can schedule a meeting to allow
16 you to go through my entire case file and
17 trial notebook so that you can identify
18 anything that may have been inadvertently not
19 given to you as discovery. I have gone
20 through the file and everything that I have
21 in the file itself, except work product that
22 I have compiled in preparation for trial.
23 However, out of an abundance of caution, I
24 encourage you to make time in your schedule
25 to read my file. Derrick E. Mobley."

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1 Q. Thank you, Mr. Mobley. Please
2 answer any questions that the Court or Aimee
3 Zmroczek has for you.

4 A. Yes, ma'am.

5 CROSS EXAMINATION

6 BY MS. ZMROCZEK:

7 Q. Good afternoon, Mr. Mobley.

8 A. Hi, Ms. Zmroczek.

9 Q. You and I have talked about this
10 case before; correct?

11 A. Yes.

12 Q. I asked you about the disclosure and
13 the timing issues. Correct?

14 A. Yes.

15 Q. One of the things that you would
16 agree with me that this case was, uh, -- was
17 called to trial fairly quickly for a
18 Lexington County cases after it was -- after
19 it happened?

20 A. Yes. I move my cases fairly
21 quickly.

22 Q. And the discovery, you would agree
23 with me there -- you provided a lot of
24 discovery. At first you provided fifty-four
25 pages or so. I'm not trying to trap you on

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1 the numbers. And then you provided a whole
2 bunch more with Mr. Manning's medical records
3 because, actually, the highway patrol got
4 those as well. Correct?

5 A. Yes.

6 Q. All right. I'm going to show you
7 the ---

8 MS. ZMROCZEK: First I want to mark
9 this as Applicant's ---

10 COURT REPORTER: Exhibit 4.

11 CROSS EXAMINATION CONTINUED

12 BY MS. ZMROCZEK:

13 Q. It's three pages. I'm going to hand
14 it to you and ask you if you recognize it.

15 A. (Reviewing).

16 Q. Do you recognize the law enforcement
17 numbers at the top?

18 A. Yes, that's the Highway ---

19 Q. And the case numbers?

20 A. Yes.

21 Q. Is that what they would -- and
22 that's how y'all would have turned it over
23 when you received it; right?

24 A. Yes.

25 Q. All right. Now, I know that there

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1 are eighteen hundred pages and I did not put
2 in all eighteen hundred pages.

3 A. All right.

4 MS. ZMROCZEK: Your Honor, at this
5 time we would like to move Applicant's
6 Exhibit 4, which is just the first three
7 pages of the Applicant's ---

8 THE COURT: Any objection?

9 MS. VALENZUELA: Your Honor, I don't
10 know what Mr. Mobley is going to be able to
11 testify to in terms of records that he did
12 not prepare. And he hasn't been asked if
13 the, uh, if they look familiar to him or if
14 he's aware of them or if they were part of
15 the file. So I would object because I don't
16 think that we have proper ---

17 MS. ZMROCZEK: I thought that I just
18 asked that but ---

19 THE COURT: I will consider them for
20 what they're worth. Overruled.

21 (SO ENTERED AS APPLICANT'S EXHIBIT 4)

22 CROSS EXAMINATION RESUMED

23 BY MS. ZMROCZEK:

24 Q. You do recognize those, Mr. Mobley?

25 A. I do.

1 Q. Those would be Mr. Manning's medical
2 reports; right?

3 A. Yes.

4 Q. Could you just read the line where
5 it describes how the patient is presented --
6 and I'll show it to you (indicating). Just
7 the history.

8 A. It states, (reading): "History of
9 Present Illness: The patient is a 40-year-
10 old Caucasian male, with no previous history,
11 who was involved in an MVC. The patient
12 apparently was an unrestrained passenger
13 involved in a rollover vehicle. EMS found
14 him outside of the vehicle. He does not
15 remember anything from the accident. At this
16 point he is complaining of chest pain,
17 abdominal pain and back pain. There was loss
18 of consciousness. His last tetanus shot was
19 three years ago.

20 Q. So you would agree with me that
21 there is some -- that there is some question
22 or confusion as to who the driver was?

23 A. If you're basing it off that report,
24 yes.

25 Q. Okay. And you would agree with me

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1 that you received the M.A.I.T. report and
2 that the only question that they were asked
3 to establish was who was the driver?

4 A. Yes.

5 Q. And the Highway Patrol in their
6 M.A.I.T. report could not provide an answer
7 as to who was the driver?

8 A. Correct.

9 Q. So the only -- and they listed
10 agencies and witnesses that provided
11 information to them, correct?

12 A. Within the M.A.I.T. report?

13 Q. Yes.

14 A. (No verbal response).

15 Q. And they took the two EMS reports
16 that had people with whom they had spoken and
17 the two fire (personnel) reports?

18 A. Yes.

19 Q. And Mr. Probst was not one of these
20 people?

21 A. I don't know. I'd have to see ---

22 Q. Just to refresh your recollection --
23 and we don't have to make it an exhibit --
24 (tendering document to witness).

25 A. (Upon review), his name doesn't

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1 appear there.

2 Q. So this case goes on. Then just a
3 short time before trial you went and you
4 spoke with Mr. Probst and all these other --
5 fire workers, I guess they were?

6 A. Yes.

7 Q. Who was with you when you spoke with
8 them?

9 A. That would have been in my office.

10 Q. Was there anybody in your office
11 with you or was it just the two of you?

12 A. Just him and me, I think.

13 Q. So in order to impeach or to
14 question what was asked, you can only ask the
15 witness or you; right?

16 A. (No verbal response).

17 Q. We couldn't have made you a witness
18 but the only two people that heard that
19 conversation were you and the person who made
20 the statement; right?

21 A. I heard the conversation -- Mr.
22 Probst provided me what he heard on the
23 scene.

24 Q. Right, but it was just you and he in
25 your office?

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1 A. Right.

2 Q. Okay.

3 A. Yes.

4 Q. So he disclosed it verbally, he
5 didn't do a written statement?

6 A. I can't remember. I don't recall.

7 Q. The e-mail that you sent to Mr.
8 Madsen, was that the only form of the
9 statement that he received?

10 A. As I recall.

11 Q. All right.

12 A. As I got it I sent it, immediately.

13 Q. Was it a verbatim account of what he
14 said in your office that day?

15 A. Over the phone, yes. That's why I
16 put it in quotation marks.

17 Q. It was a verbatim account of those
18 specific statements but not of the entire
19 conversation?

20 A. I would -- I wouldn't. No.

21 Q. Okay.

22 A. I didn't have a diction (sic)
23 machine or anything.

24 Q. Do you recall asking Mr. Probst why
25 this information hadn't been provided to

1 anybody else beforehand?

2 A. I don't recall that.

3 Q. Okay. Do you recall why there was
4 -- there's been a lot of talk about the chain
5 of custody and the blood, right?

6 A. Um-humm.

7 Q. And you're saying that there was not
8 an autopsy done; correct?

9 A. (No verbal response).

10 Q. There was no autopsy done, is that

11 ---

12 A. I don't recall one being done.
13 You're speaking of Jeremy (sic) Hill?

14 Q. Yes, Mr. Hill.

15 A. I mean Jacob Hill.

16 Q. Yes, the only person who ---

17 A. Yeah, okay. Yes, ma'am.

18 MS. ZMROCZEK: (Tenders document to
19 be marked as exhibit).

20 COURT REPORTER: Applicant's Exhibit 5
21 for identification.

22 CROSS EXAMINATION CONTINUED

23 BY MS. ZMROCZEK:

24 Q. I show you Applicant's Exhibit 5 and
25 ask if you recognize that e-mail.

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1 A. (Upon review), okay.

2 Q. Is that e-mail generated by someone
3 in your office?

4 A. Yes.

5 Q. And it refers to the blood of Mr.
6 Hill, correct?

7 A. It does.

8 MS. ZMROCZEK: Your Honor, at this
9 time we would move to admit Applicant's 6
10 (sic).

11 MS. VALENZUELA: No objection.

12 THE COURT: Without objection.

13 COURT REPORTER: Applicant's Exhibit 5.

14 (SO ENTERED AS APPLICANT'S EXHIBIT 5)

15 CROSS EXAMINATION CONTINUED

16 BY MS. ZMROCZEK:

17 Q. Would you read the pertinent part
18 where it talks about how you got the blood --
19 or you can just read the e-mail out, if you
20 like?

21 A. This was sent from Jill Smith, which
22 was the assigned investigator on my case.
23 It's to Rob Madsen. It cc's myself as well
24 as Al Ergel (phonetic), who a court
25 coordinator for the office, as well as Angela

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1 Garrick, co-counsel.

2 It has, (reading): "State v. Manning,
3 withdrawal of a chain custody Motion for
4 Jacob Hill's blood. Importance: High."

5 This states, "Rob: Per the request of
6 Derrick, I am typing up correspondence
7 between myself and Mr. Bill Zeigler in
8 reference to the withdrawal of blood from the
9 vic. I spoke with Bill Zeigler at 5:12 p.m.
10 and he informed me that the blood was
11 withdrawn at Lexington Medical Center instead
12 of by the coroner's office.

13 We have not received any reports from the
14 Lexington Medical Center regarding the blood
15 withdrawal and who performed it.

16 Derrick states that he picked up our
17 records that were provided by the coroner's
18 office in person.

19 There may or may not be any records
20 regarding Jacob Hill at Lexington Medical
21 Center because a subpoena has never been
22 supplied to them for such records. Did not
23 know if they did or did not exist at
24 Lexington Medical Center.

25 I called Lexington Medical Center

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1 pathology department at 5:15 p.m. after court
2 had recessed for the evening to inquire but
3 no one has answered. I left a voice message,
4 voice mail for a Ted Mitchell, supervisor for
5 that department.

6 In light of such information, the State
7 intends to waive the chain for Mr. Jacob
8 Hill's blood that was taken from an autopsy
9 (toxicology) and withdraw the Motion that's
10 currently before the court requiring a chain
11 of custody being established for Mr. Hill.

12 If you have any questions or concerns,
13 please feel free to call Derrick on his cell
14 phone at --- " ---

15 Q. Then it gives your number?

16 A. Right, it gives my number. (Reading
17 continued): "The cell phone will be on all
18 night, to include in the morning. Hopefully
19 this resolves the issue. If not, please give
20 me a heads up. The family is aware that the
21 chain is being waived and they do not have a
22 problem with it."

23 Q. Okay. So there's some question as
24 to whether or not there was an autopsy?

25 A. According to that e-mail.

1 Q. And this was in the middle of trial,
2 right; or at the beginning of trial?

3 A. Yeah, after court had ended.

4 Q. And it says that no subpoena was
5 issued because 'we didn't know if one needed
6 to be issued.' That's something that your
7 office would do. Right?

8 A. Yes.

9 Q. In preparation for a case that
10 you're going to try a man for his liberty,
11 you try to get all the information in a case.
12 Right?

13 A. Yes.

14 Q. And you would agree that you, you
15 and the State, are the ones that have the
16 power and the access to get this information
17 more easily. Correct?

18 A. No. Opposing counsel also has
19 subpoena powers.

20 Q. To get medical records from victims,
21 though, typically you have to have releases
22 and those come from the State; right?

23 A. Yes.

24 Q. Okay. So in this case any medical
25 records on Mr. Hill could have easily been

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1 gotten by the State?

2 A. Yes.

3 Q. And they could have identified some
4 injuries and perhaps an autopsy?

5 MS. VALENZUELA: Objection.

6 Speculation, Your Honor.

7 THE COURT: Overruled. I think I --
8 think it is an appropriate question.

9 CROSS EXAMINATION CONTINUED

10 BY MS. ZMROCZEK:

11 Q. And perhaps an autopsy?

12 A. I'm sorry?

13 Q. And perhaps provided an autopsy had
14 that been done?

15 A. (No verbal response).

16 Q. Had you subpoenaed the records, we
17 would know for sure if certain things had
18 been done?

19 A. Well, records had been subpoenaed.
20 Okay? What you're referring to, it seems to
21 me, is an incorrect characterization of the
22 medical treatment that had been performed for
23 Mr. Hill. She has it in that e-mail as an
24 autopsy, however there was no autopsy that
25 had been performed on him. The records that

1 were subpoenaed from the hospital were those
2 that were kept for the -- well, they were
3 from the coroner's office because they
4 pronounced the man dead on the scene. We
5 subpoenaed those records. The withdrawal
6 actually came from the coroner's office.

7 Q. Okay. The withdrawal of the blood,
8 you mean?

9 A. Yes. I apologize.

10 Q. So are you saying that you did
11 provide all the medical records for Mr. Hill
12 to ---

13 A. Everything that we had in that file,
14 we turned over.

15 Q. Okay, let me rephrase the question.

16 A. Okay.

17 Q. But did you -- do you know if you
18 did or did not -- I know that you provided
19 medical records for Mr. Manning.

20 A. (Affirmative nod).

21 Q. Did you provide medical records for
22 Mr. Hill?

23 A. (No verbal response).

24 Q. Even if it wasn't in your file, -- I
25 mean, if it was in your file, you would have.

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1 But if it was not in your file, you wouldn't
2 have done that.

3 A. If it was not in my file, I couldn't
4 have turned it over.

5 Q. You're familiar with *Kyle v.*
6 *Whitley*, which kind of places the burden on
7 the State to get these things?

8 A. (No verbal response).

9 Q. Right?

10 A. Yeah.

11 Q. And the videotape from the bar,
12 certainly y'all knew that they had been at
13 the bar that evening?

14 A. Yes.

15 Q. And -- I didn't make up the cameras,
16 it was in discovery that they were discussed
17 about.

18 A. Um-humm, (affirmative nod).

19 Q. Correct?

20 A. Correct.

21 Q. So you don't know or you don't have
22 an explanation for why that either was or
23 wasn't preserved or wasn't obtained?

24 A. I would have to look at the timeline
25 by which I was assigned that particular case.

1 If the State -- well, the Attorney General's
2 Office has my file. Maybe I could look
3 through it to identify whether I inquired
4 about that surveillance video, because those
5 surveillance videos only last about thirty
6 days or so.

7 Q. Right.

8 A. A lot of times it has be a solicitor
9 on the case -- a lot of times we're assigned
10 the cases many days after thirty days before
11 a ---

12 Q. My point exactly. So before that,
13 the people that are responsible would be the
14 officers doing the investigations?

15 A. Yes.

16 Q. And you rely on their investigations
17 to do your investigation?

18 A. Yes.

19 Q. That was kind of my point.

20 A. Yes.

21 Q. And they are familiar with that?

22 A. Yes.

23 Q. Okay. So a video -- but we know
24 that there were cameras, we just don't have
25 them.

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1 A. I don't recall any videos --
2 reviewing any video.

3 Q. Okay. And you'd agree with me that
4 the forensic evidence could not point to who
5 was driving?

6 A. No, I would not agree with you on
7 that.

8 Q. Okay. What forensic evidence would
9 point conclusively to who was driving?

10 A. Well, it's not conclusively. It's
11 up to the finder of fact, who would have been
12 the jury at the time, to find ---

13 Q. Wait a minute. I mean, forensic
14 evidence like scientific.

15 A. Well, there was some blood on the
16 door. That was actually swabbed. There
17 wasn't enough DNA to determine who was the
18 driver based off that blood on the driver's
19 side. Now, looking at the medical records
20 when I received the file, the only things
21 that I had to go by were the medical records
22 of Mr. Manning, which would have shown that
23 he had a significant injury of the abdomen
24 place. Furthermore, there was a statement
25 from Heather Fairchild that stated that while

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1 he was at the bar that he informed Mr. Hill,
2 "don't worry, I'll drive."

3 Q. But she never saw him get in the
4 car?

5 A. Well, she never saw him get in the
6 car. She never saw him -- and we actually
7 discussed that -- it was either during the
8 case in chief or during my closing argument
9 where I stated that she never acquiesced to
10 that, that she never saw him get in that car.

11 Q. And the same medical records that
12 you are relying on are the same ones that you
13 just read where they identified Mr. Manning
14 as the passenger, with his injuries?

15 A. Well, right, the history itself.

16 Q. Right. The history itself.

17 A. Yes.

18 Q. And that history would have been
19 given to them by either EMS or the fire
20 people that brought him there?

21 A. Not necessarily. Not necessarily.
22 Because when you have a treatment ER -- what
23 I found from doing those felony DUIs, and
24 I've tried numerous of those, they're not
25 getting the information directly from the EMS

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1 that transports them there.

2 Q. From whom are they getting the
3 information?

4 A. I'm not sure.

5 Q. Okay.

6 A. But what I've found -- from doing
7 those cases, I found from these doctors who
8 were putting the information in there, the
9 system, where they were getting the
10 information from, they could not be specific
11 that it was the EMS who was transporting them
12 there.

13 Q. Okay. So it could have come from a
14 fire worker or a highway patrol?

15 A. I can't testify where they got the
16 information from.

17 Q. Okay.

18 A. But that record does say passenger.

19 Q. And those were the records you were
20 basing your case off of?

21 A. I was basing it off the medical
22 records, the statement, the fact that the car
23 was registered to his girlfriend, uh, ---

24 Q. You would agree with me that the
25 evidence was not overwhelming?

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1 A. No, it wasn't overwhelming. There
2 would not have been a trial if that was the
3 case.

4 Q. Okay. And, uh, -- and that the
5 statement significantly changed the
6 complexity of the case, uh, a few days before
7 trial?

8 A. When was the date of the trial?
9 When did it start?

10 Q. The 9th.

11 A. The 9th?

12 Q. So three or four days before.

13 A. So, -- yes. When I received those,
14 yes.

15 Q. So, then ---

16 MS. VALENZUELA: Your Honor, just to
17 correct, I think that was a misstatement.
18 It started May 11th.

19 MS. ZMROCZEK: Thank you. I believe
20 that the pretrials probably started the 9th,
21 Your Honor, but ---

22 THE COURT: Looking at the transcript,
23 I think everything started the 11th.

24 MS. ZMROCZEK: Thank you, Your Honor.

25 CROSS EXAMINATION CONTINUED

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1 BY MS. ZMROCZEK:

2 Q. And you would agree that if Mr.
3 Madsen had been the defense attorney and
4 given you these statements, had given you
5 different statements of people that said that
6 they had seen Mr. Hill driving, you would
7 want time to be able to investigate -- to not
8 only be able to talk to those people but to
9 investigate their backgrounds to see if they
10 had any history of anything that could be
11 impeachable. Correct?

12 A. Well, ---

13 Q. If the shoe had been on the other
14 foot, if he had statements that 'I saw Mr.
15 Hill driving', you would ask for time -- you
16 wouldn't have called the case to trial
17 because you would have wanted to investigate
18 the statements that he had given you?

19 MS. VALENZUELA: Your Honor,
20 objection. This is highly speculative. This
21 is just speculation. That is not the case
22 here. I don't understand the relevance of
23 whether he would have asked for ---

24 MS. ZMROCZEK: I will rephrase.

25 THE COURT: I think just to ask what he

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1 would do ---

2 MS. ZMROCZEK: I will rephrase it.

3 CROSS EXAMINATION CONTINUED

4 BY MS. ZMROCZEK:

5 Q. You would agree that information to
6 the preparation of this case was turned over
7 very late, extremely late in the case?

8 A. I would say, because it appears that
9 this is an issue that -- it's one that wants
10 to be explored. So I would say -- as the
11 prosecutor on this case, I can give you a
12 synopsis of how it goes.

13 Q. Okay.

14 A. If I know what someone in a felony
15 DUI case, and I was the felony DUI attorney
16 here, if I noticed someone before trial then
17 I would immediately start writing up my
18 statement -- my eyewitness list to submit to
19 the court.

20 I begin to contact each of those
21 individuals. As I get that information, then
22 I immediately make sure that it's already
23 within discovery. If it is not, as I get it,
24 then I immediately turn it over -- as evident
25 in the e-mails.

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Testimony of Derrick Mobley - Cross Examination

1 So it was late in the discovery process
2 that I am getting that, then that is when I
3 discovered it. Literally it was turned over
4 within a matter of thirty minutes of when I
5 got it -- at the most thirty-five.

6 Q. But you agree that you received a
7 discovery request thirty days after the case
8 was brought to the court.

9 A. That's correct.

10 Q. And even though you have ongoing
11 continuation of discovery, that those were
12 things that were specifically asked for at
13 the very beginning of the start of the case?

14 A. Yes.

15 Q. Okay.

16 A. And also with that, and I'm sure
17 you're aware of it, when you're actually
18 going through preparing a case for trial
19 that's when you actually get statements from
20 someone and you're able to -- that's the
21 moment that you actually get them, during the
22 preparation for the trial, not what's in the
23 dockets.

24 Q. On that point, you said that you
25 recall making an offer. You don't recall if

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Testimony of Derrick Mobley - Cross Examination

1 it was before or after this statement, right?

2 A. I am pretty sure that it was before
3 then.

4 Q. And you would agree with me that
5 Justice -- that former-Justice Toal ordered
6 that all offers -- that they can't be revoked
7 or that they can't even be made until full
8 discovery has been done.

9 A. If there was an intentional with-
10 holding of evidence, which isn't the case in
11 this one.

12 Q. Right, it wasn't intentional. It
13 just wasn't done.

14 A. Because we hadn't received it.

15 Q. Right. Because nowhere had this
16 statement been given to law enforcement until
17 right before trial?

18 A. Right, because I didn't have them.

19 MS. ZMROCZEK: That's all. Thank you.

20 THE COURT: Anything else? Anything
21 further from the State?

22 MS. VALENZUELA: Nothing further, Your
23 Honor.

24 THE COURT: You may step down.

25 (WITNESS STEPS DOWN)

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Summation of Counsel & Ruling of The Court

1 THE COURT: Anything further from the
2 State?

3 MS. VALENZUELA: I have argument
4 prepared, just however the Court wants to
5 handle it.

6 THE COURT: Anything else from the
7 Applicant?

8 MS. ZMROCZEK: Nothing, Your Honor.
9 I would ask leave to provide the Appeals
10 Court Orders.

11 THE COURT: That's fine. That's
12 something that I can get from you. I mean,
13 it's kind of obvious what the issues are
14 here. I think that before I can make any
15 ruling that, one, I need to -- I'd like to
16 review certain testimony, now that I know
17 more of the issues. Also I'd like to review
18 the appellate court decision. I've reviewed
19 it but, like I said, it makes more sense now
20 that the issues have been identified and some
21 of the case law cited.

22 But I will be glad to briefly hear from
23 you if you need to.

24 MS. VALENZUELA: Your Honor, I under-
25 stand that you know the two prongs that we

1 are looking at. One is, was counsel ineffec-
2 tive.

3 But additionally they have the burden of
4 proving, too, that there is prejudice here,
5 but that for those errors the result would
6 have been different.

7 They frankly just have not met their
8 burden when it comes to the argument of the
9 autopsy and the expert. We don't have -- it
10 is pure speculation of what those experts --
11 or what would have been found had there been
12 any sort of autopsy done or had an expert
13 come in. There wasn't really any specific
14 clarity on what those experts would have had.

15 Additionally, focusing on what the
16 majority of the testimony was today, which
17 was that had those statements been given over
18 at an earlier time or had counsel been able
19 to call those people earlier, that he may
20 have made a different decision. Ms. Zmroczek
21 specifically asked what decision that would
22 have been and he just said an expert. So,
23 again, that routes back to no prejudice.

24 But importantly the Applicant himself
25 testified today that he knew his own

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Post-conviction Relief Hearing of April 18, 2016

Summation of Counsel & Ruling of The Court

1 statements, that he was aware of the
2 statements that he had made and that -- then
3 there was inconsistent testimony about
4 whether he elected to share that with his
5 counsel when counsel asked him to tell him
6 about the events of that night.

7 But then certainly after counsel came in
8 contact with the EMT statements, counsel
9 testified that there was inconsistent
10 testimony where counsel said that the
11 Applicant still did not tell him that he had
12 said something slightly different.

13 So I don't know what they could show in
14 terms of prejudice when there wouldn't have
15 been a different decision. They had the
16 testimony from the EMT witnesses ahead of
17 time when they made the decision for the
18 Applicant not to testify.

19 Additionally the Applicant was able to
20 see the State's case presented in front of
21 him and still made the decision not to
22 testify to these statements, that he either
23 did or did not remember at the time.

24 So it is frankly unfair, based on the
25 Applicant's different stories before you

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Post-conviction Relief Hearing of April 18, 2016

Summation of Counsel & Ruling of The Court

1 today.

2 Certainly there has been no -- they
3 have not met their burden of establishing
4 prejudice.

5 Frankly, I don't think that there have
6 been errors by counsel either but I think
7 that the prejudice prong answers this case.

8 THE COURT: All right.

9 MS. ZMROCZEK: Your Honor, we would
10 reserve anything for 59(e).

11 THE COURT: All right.

12 MS. ZMROCZEK: I think that in order
13 -- because I didn't know what was going to be
14 testified to either, so I need to go back and
15 review the appellate court Orders as well,
16 which is why I ask for that time.

17 THE COURT: All right.

18 MS. ZMROCZEK: Thank you.

19 THE COURT: You said you are going to
20 submit something additional?

21 MS. ZMROCZEK: Yes, the ---

22 THE COURT: How soon?

23 MS. ZMROCZEK: Within -- just a half
24 page -- before the week is out, probably
25 before Wednesday.

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Post-conviction Relief Hearing of April 18, 2016

Summation of Counsel & Ruling of The Court

1 THE COURT: Okay, and I need to review
2 those matters. I want to carefully consider
3 all matters before I make a ruling.

4 Thank you, Mr. Manning.

5 APPLICANT: Thank you, Your Honor.

6 (HEARING CONCLUDED)

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Christopher D. Manning v. State of South Carolina
Case No. 14-CP-32-3075
Post-conviction Relief Hearing of April 18, 2016
Certificate of Court Reporter

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter (Retired) for the 13th
Judicial Circuit, hereby certify that the foregoing
is a complete and accurate transcript of the
hearing held in the within action heard on April
18, 2016, before The Honorable Perry H. Gravely;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.

Nebovrah Harrison

Deborah Garrison

Greenville, South Carolina
December 20, 2018

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON 2016 AUG 26) A H: 20
FOR THE ELEVENTH JUDICIAL CIRCUIT

Christopher Manning,
S.C.D.C. No. 340790,

Applicant,

v.

State of South Carolina,

Respondent.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

C.A. No. 2014-CP-32-03075

ORDER OF DISMISSAL

ORIGINAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 25, 2014. Respondent made its return on or about September 24, 2015. An evidentiary hearing was held on April 18, 2016, at the Lexington County Courthouse. Applicant was present and represented by Aimee Zmorczek, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant, Applicant's trial counsel, Robert Madsen, Esquire, and the prosecutor in the original trial all testified at the hearing. The Court had before it Applicant's trial transcript, the Lexington County Clerk of Court records, Applicant's appellate records, the South Carolina Department of Corrections records, the PCR application, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the November 2009 term of the Lexington County Grand Jury for felony D.U.I. resulting in death

(2009-GS-32-2855). Robert Madsen, Esq., represented Applicant. On May 11-13, 2013, Applicant proceeded to a trial before the Honorable R. Knox McMahon and a jury. He was found guilty as indicted. Judge McMahon sentenced Applicant to a term of eighteen (18) years imprisonment.

A timely notice of appeal was filed and perfected on Applicant's behalf. LaNelle Durant, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. Counsel for Applicant filed a petition for rehearing on August 16, 2012. On October 10, 2012, the Court of appeals withdrew the first opinion, substituted and refiled a second opinion still affirming Applicant's conviction and sentence. State v. Manning, 400 S.C. 257, 734 S.E.2d 314 (Ct. App. 2012). Counsel for Applicant then filed another Petition for Rehearing on October 24, 2012. By Order dated November 30, 2012, the South Carolina Court of Appeals denied the petition. Counsel for Applicant then filed a Petition for Writ of Certiorari on January 30, 2013. By Order dated June 11, 2014, the Supreme Court of South Carolina denied the Petition. The Remittitur was issued on June 26, 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a

preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRCP 71.1(e)). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel’s performance “fell below an objective standard of reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, Counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; see Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) (“[T]he defendant must show that counsel’s representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel’s performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution.”); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) (“PCR applicant must prove: (1) that counsel failed to

render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

And "where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006 (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992))). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

This Court will now address each allegation of ineffective assistance of counsel:

I. Failure to order an autopsy

Applicant argues his trial counsel was ineffective for failing to ensure an autopsy of the victim was done. Applicant argues the autopsy may have shown injuries consistent with the victim being the driver the night of the accident. Trial counsel explained it was not standard to do an autopsy.

Other than his speculative statement that an autopsy may have revealed the victim was the driver, Applicant presented no evidence or testimony to support his claim that the victim's autopsy would have led to a different result or produced favorable evidence for him.

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed to meet his burden of proving trial counsel was ineffective or that he suffered any prejudice therefrom.

II. State's Witnesses

Applicant argues trial counsel was ineffective for failing to prevent the State's witnesses from testifying about incriminating statements made by Applicant that indicated he was the driver. Applicant claims he was prejudiced because he was not aware of those statements until shortly before trial. Applicant claims he never said he should not have been driving and thus one of the State's witnesses did not testify truthfully.

On cross-examination Applicant admitted he remembered the events of the night in question prior to going to trial, but he did not talk about his statements with his counsel because he had no notice of the statements. Applicant admits his trial counsel did request a continuance at the beginning of trial, but the Court denied that request. Applicant also recalled trial counsel noted contradictions in witnesses' testimony and used those contradictions to argue in support of suppressing Applicant's blood alcohol level. Applicant admits he did in fact say he "fed up" the night of the accident.

Trial counsel testified Applicant always claimed to have memory loss and no recollection of the accident or what he said that night. Trial counsel testified he interviewed upwards of fifteen witnesses prior to trial. Even though counsel received short notice of Applicant's

incriminating statements, he was able to interview three of the four witnesses prior to trial, and he did move for a continuance at the start of trial.

The prosecutor testified that in doing trial preparation he spoke to some of the emergency responders. Immediately upon learning of the Applicant's incriminating statements, the prosecutor emailed defense counsel with the witness name, witness contact information, and the statement that would be used against Applicant in trial. Those emails and notifications were admitted as exhibits.

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed to meet his burden of proving trial counsel was ineffective or in proving Applicant suffered any prejudice therefrom.

III. Failure to call Applicant as a witness

Applicant argues his trial counsel erred by not calling him to testify. However, Applicant admits the trial court advised him of his Fifth Amendment rights and that he elected not to testify. Applicant argues he did not testify because of his counsel's advice. If he had testified, he would have countered the statements made by the emergency personnel and explained that he had not ever said he was driving the car the night of the accident.

Trial counsel agrees he advised his client not to testify, but he says it was Applicant's ultimate decision. Trial counsel advised his client not to testify because Applicant claimed not to have any recollection of the night in question and because he had convictions for strong arm robbery and petit larceny that could be used against him.

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed to meet his burden of proving trial counsel was ineffective or in proving Applicant suffered any

prejudice therefrom.

IV. Failure to object to chain of evidence for victim's blood alcohol level

Applicant argues trial counsel failed to object to the chain of evidence for the victim's blood alcohol level. The State would not have been able to establish the chain of evidence for the victim's blood alcohol level had the State been challenged on it.

Trial counsel agrees that there were issues with the chain of evidence related to the victim's blood alcohol level. However, because the victim's blood alcohol level was as high if not higher than Applicant's blood alcohol level, trial counsel believed it was helpful for strategic reasons to have the jury know about the victim's blood alcohol level. Counsel testified that it is his strategy not to object to everything; he determines what is important and objects to that because not every objection is helpful.

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed to meet his burden of proving trial counsel was ineffective or in proving Applicant suffered any prejudice therefrom.

V. Failure to retain an expert

Applicant argues trial counsel should have retained an expert. Applicant presented no testimony or witnesses to establish what the expert testimony would have been or why it would have changed the outcome of the verdict.

Trial counsel testified that he relies on his client's recollection and the State's discovery to decide when he needs to retain an expert. Trial counsel's strategy focused on finding witnesses to show Applicant was not driving that night.

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed

plm

to meet his burden of proving trial counsel was ineffective or in proving Applicant suffered any prejudice therefrom.

VI. Failure to obtain video of the night of accident from the bar

Applicant argues counsel should have secured video of the parking lot of the bar from the night of the accident. Trial counsel stated there were two cameras in the parking lot, but by the time they went out there was no video. The prosecutor testified that he was not aware of any video; he did not know if there was never any video or if it had already been recorded over when the investigators went to retrieve it, but the State was not in possession of any videos from the parking lot of the bar.

After reviewing the transcript and hearing the testimony, this Court finds Applicant failed to meet his burden of proving trial counsel was ineffective or in proving Applicant suffered any prejudice therefrom.

VII. Failure to obtain medical records

Applicant argues trial counsel should have used his medical records to show his injuries were not consistent with him driving. Applicant presented no medical records that established prejudice.

VIII. Failure to preserve vehicle

Applicant argues trial counsel should have preserved the vehicle in order to have additional testing done. Blood evidence was taken from the vehicle but DNA was not tied to either Applicant or victim. Applicant failed to establish how this alleged error could have possibly prejudiced him or how counsel was ineffective for failing to preserve the vehicle.

All Other Allegations

As to any additional allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial. Trial counsel was not deficient in any manner, and Applicant was not prejudiced by his representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

DHL

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 23rd day of August, 2016.



Perry H. Gravely
Presiding Judge
Eleventh Judicial Circuit

Breenville, South Carolina.

FILED
2016 AUG 26 AM 11:20
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

SCANNED JUN-27-2018

FORM 5
FILED

STATE OF SOUTH CAROLINA

COUNTY OF

Lexington

2018 JUN 27 PM 2:54

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant

Christopher
Donald
Manning #340740
v.
State of South CarolinaLISA COMER
CLERK OF COURT
LEXINGTON, SC

APPLICATION FOR

POST-CONVICTION RELIEF

2018CP3202208

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention maxwell corr. Inst.
2. Name and location of Court which imposed sentence Judge McMahon Lexington Co
3. Name(s) of co-defendant(s) (if any) n/a
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) # 2010-161686
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 13, 2010
 - (b) _____

A TRUE COPY

Lex. Co. C.O.C.P., G.S. & F.C.

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel

(b) Denied right to Appeal(c)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Ineffective assistance of ^{Trial} counsel for failing to object Mr. Madison

(b) Bestin vs state review, because my per counsel failed to Appeal after this Decision instructed her to and she didn't notify me of the courts Decision
Denying me my one bite at the apple

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Direct appeal after conviction

ii. PCR

iii. ~~SC court of appeals~~

iv.

(b) the name and location of the Court in which each was filed:

i. SC court of appeals

ii. Lexco court of common pleas

iii.

iv.

(c) the disposition thereof:

i. denied direct appeal

ii. per application denied after evidentiary hearing

iii.

iv.

(d) the date of each such disposition:

Revised 3/2003

A TRUE COPY

John Connor
 Lex. Co. C.C.C.P., G.S. & F.O.

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) I was advised by the honorable Judge Daniel E. Shearouse to file the claim under Austria vs. State in order to have my appeal considered see enclosed Letters.
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? no
- (b) your trial, if any? yes
- (c) your sentencing? yes

- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Robert madson

ii. ms. Durant

iii. ms. Zimmerczsch

(b) the proceedings at which each such attorney represented you:

i. Robert madson Trial

ii. ms. Durant Appeal

iii. ms. Zimmerczsch P.C.R.

19. State clearly the relief you seek in filing this application:

To appeal my original for hearing and or whatever relief is right

20. Are you now under sentence from any other court that you have not challenged?

no

A TRUE COPY

John J. Comer
Lex. Co. C.O.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this _____
day of _____, 2_____.

Notary Public (L.S.)

My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Chad Williams, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Chad Williams
Applicant

SWORN or affirmed to and subscribed before me this
19th day of June, 2017.

David R. Chapman
Notary Public

My Commission Expires: 12-22-2026

A TRUE COPY

David R. Chapman
Lex. Co. C.O.C.P., G.S. & F.C.

Revised 3/2003

Dear sir/mam

I Just discovered that my P.C.R. was finalized back in Aug 26, 2016. I was never given a copy of the court's final order, neither was I informed by my P.C.R. Counsel that the Order was final. Also, my P.C.R. Counsel never appealed the ruling as I instructed her to do in case they ruled against me. She never told me anything.

I finally wrote the Lexington County Clerk's office to get the Judge's Address so I could write him and find out what was going on, and the Clerk wrote me back and told me my P.C.R. was final 2 years prior.

I am entitled to be informed of my right to appeal and I am requesting to file a belated appeal under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991) and *C.R. King v. State*, 308 S.C. 348, 417 S.E.2d 268 (1992). For my fair bite of the apple.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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May 01, 2018

Mr. Christopher Manning
M-1-B-11-B
McDougall CI
1516 Old Gilliard Road
Ridgeville, SC 29472

RE: *Christopher Manning v. State*, 2014CP3203075

Dear Mr. Manning:

This responds to your recent letter regarding the above case. If you believe that you have been denied the right to seek appellate review in the above post-conviction relief case, then I call your attention to the case of *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Please note that relief under *Austin* is sought by filing a new application for post-conviction relief in the circuit court. *Cf. King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) (setting forth the appellate procedures to be followed depending on the findings made by the post-conviction relief judge regarding the *Austin* claim).

I am providing your counsel of record in the above case with a copy of your letter.

Sincerely,

Daniel E. Shearouse

A TRUE COPY

Lex: Cb. C.C.O.P., G.S. & F.C.

cc: Aime J. Zmroczek, Esquire (with copy of letter)
Office of the Attorney General (with copy of letter)



COUNTY OF LEXINGTON
CLERK OF COURT
COUNTY JUDICIAL CENTER
EAST MAIN STREET
LEXINGTON, SC 29072-3494

mi
CHRIS Manning # 340790

M-I-B-I-B

McDougall CI
1516 Old Gilliard Rd
Ridgeville SC 29472

RECEIVED

APR 06 2018

MacDougall Corr. Inst.
Maitland

A TRUE COPY

John L. [Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Respondent.

RETURN AND PARTIAL MOTION TO DISMISS

1 of 9

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

Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by published opinion. *State v. Manning*, 400 S.C. 257, 734 S.E.2d 314 (Ct. App. 2012). Applicant then petitioned for rehearing, which was denied by written order on October 10, 2012. Subsequently, Applicant petitioned the South Carolina Supreme Court for a writ of certiorari. By written order dated June 11, 2014, the Supreme Court denied the petition for a writ of certiorari. The remittitur was issued on June 26, 2014.

2014-CP-32-03075

Applicant filed his first application for post-conviction relief on August 25, 2014. In that application, Applicant alleged he was being held in custody unlawfully based on:

1. Ineffective Assistance of Trial Counsel;
 - a. Trial Counsel's failure to object and move for a mistrial upon State's knowing use of false/perjured testimony constitutes ineffective assistance of trial counsel;

- b. Trial Counsel's failure to motion for State-funded independent forensic pathologist to review State expert's conclusion(s) of victim's manner of death, for probability of driver-related injuries as actual cause of death, constitutes ineffective assistance of trial counsel;
 - c. Trial Counsel's failure to object upon Solicitor's misconduct during closing arguments constitutes ineffective assistance of trial counsel;
 - d. Trial Counsel's failure to argue that State's negligent handling of vehicle caused [Applicant] to be deprived of a defense constitutes ineffective assistance of trial counsel; [and]
 - e. Trial Counsel's failure to argue that an insufficient chain of custody, of Hill's blood, deprived [Applicant] of a defense constitutes ineffective assistance of trial counsel.
2. Ineffective Assistance of Appellate Counsel;
 - a. Appellate Counsel's failure to brief the trial judge erred in denying Trial Counsel's motion to suppress constitutes ineffective assistance of appellate counsel.
 3. Prosecutor (Solicitor) Misconduct; [and]
 - a. Solicitor Mobley's act of knowingly presenting false/perjury evidence to the jury constitutes misconduct which deprived [Applicant] of his due process right to a fair trial.
 4. Fourth Amendment Violation of 'Person.'
 - a. Law enforcement violated [Applicant's] 'person' by ordering, then seizing, [Applicant's] blood without any substantial basis.

Respondent made its return on September 25, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on April 18, 2016, before the Honorable Perry H. Gravely. Applicant was present at the hearing and represented by Aimee J. Zmroczek, Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Johanna C. Valenzuela, of the South Carolina Attorney General's Office. After hearing all testimony and arguments presented, Judge Gravely issued an order of dismissal denying and dismissing the application with prejudice on August 23, 2016, and filed August 26, 2016. Applicant did not appeal Judge Gravely's order.

II. Current Application

In his second and current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; [and]
 - a. Ineffective assistance of trial counsel for failing to object.
2. Denied Right to Appeal.
 - a. Austin vs State review because my pcr counsel failed to appeal after this decision. I instructed her to and she didn't notify me of the court's decision denying [sic] me my one bite at the apple.

Attached to this Return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's trial, Applicant's appellate records, the records from Applicant's first post-conviction relief matter, and this current application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

Additionally, Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the post-conviction

relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. *See* Rule 15(a), SCRCF.

III. Summary Dismissal of All Claims Except Claim Pursuant to *Austin*¹ based on Statute of Limitations

Respondent submits Applicant's allegations of ineffective assistance of trial counsel should be summarily dismissed because this application for post-conviction relief was filed outside of the one-year statute of limitations outlined in the Uniform Post-Conviction Procedure Act. S.C. Code §17-27-45(A) (1976). Specifically, the Act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of offense or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, section 17-27-70(c) of the South Carolina Code authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Applicant was sentenced on May 13, 2010, the remittitur from his direct appeal was issued on June 26, 2014. Accordingly, Applicant was required to file this application on or before June 27, 2015. Applicant did not file this Application until June 27, 2018, exactly *three*

¹ *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

years beyond the statutory filing period. Therefore, Respondent moves to dismiss Applicant's allegations of ineffective assistance of trial counsel for failure to file within the time mandated by the Act.

IV. Summary Dismissal of All Claims Except Claim Pursuant to *Austin* based on Successiveness

The application, with respect to all allegations except for those alleging he was denied his right to an appeal from the denial of his first post-conviction relief, should be summarily dismissed because it is successive to Applicant's previous post-conviction relief application. Courts disfavor successive applications and place the burden on applicants to establish any new ground raised in a subsequent application could not have been raised in an earlier application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* at 450. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in

successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations of ineffective assistance of counsel could have been, or were in fact, raised in Applicant's prior application for post-conviction relief. Indeed, Applicant's current application is practically identical to his prior application. Applicant has wholly failed to establish any sufficient reason why he could not have raised these current allegations in his previous application for post-conviction relief. Therefore, he has failed to meet the burden imposed upon him, and the Court should summarily dismiss the allegations of ineffective assistance of trial counsel as successive to Applicant's previous post-conviction relief application.

V. *Austin v. State*

Successive applications such as the one before this Court are disfavored. S.C. Code Ann. § 17-27-90. Here, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application. Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722, (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under [S.C. Code Ann.] § 17-27-90." *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in *Austin v. State*. *Austin* provides for a belated appeal where prior post-conviction relief counsel fails to timely appeal the denial of the application. *Id.* at 454, 409 S.E.2d at 396; *see* S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-

conviction relief court). But *Austin* "is limited to its particular factual situation." *Aice*, 305 S.C. at 452, 409 S.E.2d at 394.² Pursuant to *Austin*, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application "on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review." *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. "If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding." *Id.* at 455, 409 S.E.2d at 396. *Austin*, therefore, allows an applicant to petition the Supreme Court of South Carolina for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal.

In light of the *Austin* rule, Respondent lacks sufficient information to admit or deny the allegation raised in this successive post-conviction relief action. Accordingly, Respondent requests an evidentiary hearing on this ground for relief.

VI. Denial of All Other Claims

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified, or explained is hereby denied.

VII. Conclusion

WHEREFORE, having made its Return, Respondent requests an evidentiary hearing be held solely on the allegation of ineffective assistance of post-conviction relief counsel in failing to file an appeal. Respondent further requests all other allegations raised or potentially raised in Applicant's application be dismissed as barred by the statute of limitations and as successive.

² *Aice* was issued in conjunction with *Austin*, limiting the reach of *Austin* and holding "that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel." 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
~~ATTORNEYS FOR RESPONDENT~~
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina. 29211

January 25, 2019

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

CHRISTOPHER MANNING, #340790

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

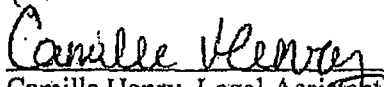
2018-CP-32-02208

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
 Mac | Vance Attorneys, LLC
 Post Office Box 5501
 West Columbia, SC 29169

DATED this the 25th day of January, 2019.


 Camille Henry, Legal Assistant
 For Respondent

State of South Carolina
County of Lexington

Court of Common Pleas

Christopher Manning	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2018-CP-32-02208
	)	
State of South Carolina	)	
	)	
<u>Respondent.</u>	)	

April 1, 2019
Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, IV, Judge.

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

Ashley McMahan, Esquire
Attorney for the Applicant

Megan Jameson, Esquire
Attorney for the Respondent

Bethanie K. Creppon
Circuit Court Reporter

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(No Exhibits.)

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1 P R O C E E D I N G S

2 * * *

3 MS. JAMESON: May it please the Court?

4 THE COURT: Yes, ma'am.

5 MS. JAMESON: Your Honor, the next matter is
6 Christopher Manning versus State of South Carolina,
7 Docket No. 2018-CP-32-2208. During the November
8 2009 term, the Lexington County Grand Jury indicted
9 Mr. Manning for felony driving under the influence
10 resulting in death. Circuit public defender Robert
11 Madsen represented him on this charge. He proceeded
12 to a jury trial before Judge McMahon.

13 In following deliberations, the jury convicted
14 Mr. Manning as indicted on May 13th, 2010. Judge
15 McMahon sentenced Mr. Manning to 18 years'
16 imprisonment and ordered him to pay a fine of
17 \$10,000. He filed a timely notice of appeal and the
18 Court of Appeals affirmed Mr. Manning's convictions
19 in a published opinion. The cite to that is State
20 v. Manning, 400 S.C. 257. That was filed by the
21 Court of Appeals on October 10th, 2012. His
22 subsequent petition for rehearing and petition for
23 certiorari to the Supreme Court was denied.

24 He filed his first PCR action on August 25th,
25 2014, alleging various claims of ineffective

1 assistance of trial counsel, ineffective assistance
2 of appellate counsel, and prosecutorial misconduct.
3 A hearing was convened on April 18th, 2016, before
4 Judge Gravely. Mr. Manning was present at the
5 hearing and represented by Aimee Zmroczek.

6 After hearing all the testimony and arguments,
7 Judge Gravely issued an order of dismissal denying
8 and dismissing the application with prejudice on
9 August 23rd, 2016, which was filed on August 26th,
10 2016. Mr. Manning did not timely appeal Judge
11 Gravely's order. He filed this instant PCR action
12 on June 27th, 2018, seeking belated appellate review
13 of his initial PCR action pursuant to Austin v.
14 State and alleging ineffective assistance of trial
15 counsel.

16 The State made its return on January 25th of
17 this year, moving for summary dismissal of the
18 claims of ineffective assistance of trial counsel
19 and all future claims beyond whether Mr. Manning is
20 entitled to an Austin review of the denial of his
21 first PCR as barred by the statute of limitations
22 and successive to his initial PCR action.

23 He's represented by Ashley McMahan. And at
24 this time, the State would renew our motion to
25 dismiss all claims beyond whether Mr. Manning is

1 entitled to an Austin review.

2 THE COURT: All right.

3 MS. MCMAHAN: Your Honor, we're not arguing
4 with the State about all the issues, except for
5 Austin. The issues were not, obviously, properly
6 raised in the second PCR. But I would like to call
7 Mr. Manning to the stand in regard to the Austin
8 issue.

9 THE COURT: All right. So you stipulate to the
10 issues noted by the State with exception of the
11 Austin issue; is that correct?

12 MS. MCMAHAN: Yes, sir.

13 THE COURT: All right.

14 MS. MCMAHAN: At this time, I'd like to call
15 Mr. Manning.

16 CHRISTOPHER MANNING

17 being first duly sworn, testified as follows:

18 THE APPLICANT: Yes, ma'am.

19 DIRECT EXAMINATION

20 BY MS. MCMAHAN:

21 Q. Mr. Manning, this is your second PCR
22 application. Who represented you on your first one?

23 A. Ms. Durant.

24 Q. Ms. Durant?. Was that at your --

25 A. No. That was my direct appeal.

1 Q. Yeah. Who represented you in your PCR? Was it
2 Ms. Zmroczek?.

3 A. Ms. Zmroczek.

4 Q. And did you talk to her about appealing your
5 PCR?

6 A. Yes, ma'am, before we left court that day.

7 Q. You're talking about the PCR hearing?

8 A. Uh-huh.

9 Q. You asked her specifically to appeal it for
10 you?

11 A. I asked was she going to appeal this. And she
12 said, one thing at a time, we'd be in contact. And
13 I never again heard from her.

14 Q. Okay. Was your PCR taken under advisement at
15 that time or did the judge rule the day of?

16 A. No. He was going to rule on it in a couple of
17 days. He had some laws he wanted to check.

18 Q. Okay.

19 A. And she didn't turn over her closing argument
20 for two or three more days. And I never heard
21 nothing back.

22 Q. And when did you find out that PCR had been
23 dismissed?

24 A. I wrote the clerk of court asking for the
25 Judge's information so I could get in touch with him

1 about my case. And that's how I found out. They
2 wrote me back and told me my case was ruled on three
3 days after that, matter of fact.

4 Q. Okay. And do you remember when you wrote the
5 clerk asking for an update?

6 A. No. Last year.

7 Q. So just before you filed this application?

8 A. Right before. As soon as I got that, I filed
9 this application.

10 Q. And you also wrote the Supreme Court too,
11 didn't you?

12 A. I can't remember.

13 Q. Well, if you attached that letter to your PCR
14 application, you --

15 A. Okay. Yes.

16 Q. Okay. So right before you found out that your
17 old PCR had been denied is when you filed this PCR?

18 A. Yes, ma'am.

19 Q. Okay. And you said you never heard back from
20 Ms. Zmroczek after that hearing?

21 A. No. I wrote her several times asking what was
22 going on and if she could send me the paperwork and
23 a transcript from the PCR and her closing argument
24 letters that she sent the Judge. And she sent me
25 some paperwork back that I had sent her, but never

1 anything from that PCR or anything about my case
2 being over.

3 Q. Did you ever write her about anything else?

4 A. Before I went to PCR, I sent her a lot of
5 paperwork. And I never got no replies.

6 Q. Did you ever write her asking her about sending
7 stuff to the Innocence Project?

8 A. Yes, ma'am.

9 Q. Okay. Do you know if she did that?

10 A. I don't know. I asked for expert witnesses and
11 several things that -- for my PCR that we didn't
12 get.

13 Q. Okay. I have no further questions. Answer any
14 questions Ms. Jameson has.

15 A. Yes, ma'am.

16 CROSS-EXAMINATION

17 BY MS. JAMESON:

18 Q. Good morning, Mr. Manning. You testified that
19 on the day of your evidentiary hearing, you talked
20 to Ms. Zmroczek about your right to appeal.

21 A. Yes, ma'am.

22 Q. Did you tell her you wanted an appeal?

23 A. Yes, ma'am.

24 Q. And she responded with, one thing at a time?

25 A. Yeah. She said, let's deal with this first

1 and, you know, one thing at a time.

2 Q. Did you ever ask her again for an appeal?

3 A. No, I didn't. I asked her for several things
4 about the transcripts and things like that, and I
5 never got any of that back. She sent me some of the
6 stuff that I sent her the first time. But I never
7 even knew my case was over. I was waiting for two
8 years, waiting on a ruling, and never anything on
9 the outcome of anything. As soon as I found out,
10 that's when I filed this paperwork for Austin.

11 Q. Okay. And so you did ask her for an appeal the
12 day of your evidentiary hearing before you knew it
13 was denied?

14 A. Yes, ma'am.

15 MS. JAMESON: No further questions, Your Honor.

16 MS. MCMAHAN: Quick followup.

17 REDIRECT EXAMINATION

18 BY MS. MCMAHAN:

19 Q. Did you think your PCR case was pending the
20 whole time?

21 A. Yes, ma'am, I thought it was. I was waiting.

22 Q. I have no further questions.

23 MS. JAMESON: Nothing else, Your Honor.

24 MS. MCMAHAN: I have no further witnesses
25 regarding this issue, Your Honor.

1 MS. JAMESON: The State would call prior PCR
2 counselor, Aimee Zmroczek.

3 THE COURT: You're still under oath.

4 AIMEE ZMROCZEK

5 having been previously sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. JAMESON:

8 Q. Good morning, Ms. Zmroczek.

9 A. Good morning.

10 Q. Did you represent Mr. Manning in his initial
11 PCR action?

12 A. I did.

13 Q. Were you appointed or retained?

14 A. Appointed.

15 Q. Were you part of the contract system for the
16 Eleventh Circuit at that time?

17 A. I was.

18 Q. Did you discuss his right to appeal the denial
19 of the PCR with him?

20 A. I did.

21 Q. When did you do that?

22 A. So immediately after we have the hearing, I
23 always go and talk to my clients about what the
24 possible outcomes were, if there's not a ruling from
25 the bench. We discussed the possibility of appeal.

1 He never specifically asked me for appeal. Later
2 on -- and I don't -- I was going to pull the
3 paperwork. I haven't had an opportunity to pull it.
4 I know I sent it to ODC. So it seems to be kind of
5 a trend in these cases that the clients will get
6 their cases dismissed and then complain to ODC. And
7 once that's denied, then they file a second PCR. So
8 that's kind of been the trend with a lot of the
9 cases I've had since then.

10 So I remember sitting -- he sent me numerous
11 letters. In fact, he was sending numerous letters
12 to one of my secretaries named Samantha Holt. And
13 he would send her numerous letters just asking for
14 stuff over and over. And I believe that we sent him
15 a letter with his entire file.

16 And when I responded to ODC, there was a letter
17 in there that said he doesn't want to discuss the
18 appeal; he wanted to focus on the Innocence Project.
19 And he sent a bunch of paperwork for me to fill out.
20 I filled out what I could and sent it back to him
21 and said I don't necessarily have the information,
22 this is kind of the information that you need.

23 But -- and I believe that I included in the ODC
24 response a copy of the letter saying I want to focus
25 on the Innocence Project. And I was in the process

1 of finding that. And, certainly, if I find it, I
2 can supplement it with the Court.

3 But, again, a lot of his focus was that he
4 wasn't driving; that it wasn't proper in this -- in
5 this case for him to have been convicted, and that
6 he was, in fact, innocent of the crime.

7 Q. When you say he sent you a letter saying he
8 wanted to -- or there was a letter saying he wanted
9 to focus on the Innocence Project and his innocence,
10 he sent that to you?

11 A. Yes.

12 Q. And in this letter, he said his focus was not
13 an appeal, he didn't want to pursue an appeal?

14 A. That's correct. And I think when he finally
15 did mention an appeal, I believe that the time had
16 passed. And I would have sent that letter back to
17 him saying that, you know, the time to appeal has
18 passed.

19 Q. When you advise clients -- your standard
20 practice to advise clients immediately after the
21 hearing, do you discuss the timeline they have to
22 file an appeal?

23 A. Yes, because they're time-lined for the 59(e).
24 And subsequent to return of the denial of the 59(e),
25 there's a timeline for an appeal process.

1 Q. And at that time, you did not ask for an
2 appeal?

3 A. That's correct.

4 Q. And did he finally ask for an appeal?

5 A. Yeah. I think he finally did ask for an
6 appeal, but it was well past the deadline. And I
7 believe that I had put that in the letter to him, or
8 Samantha did. Samantha Holt was a girl that worked
9 for me who also was responding to a lot of his
10 letters.

11 MS. JAMESON: A moment's indulgence, Your
12 Honor.

13 THE WITNESS: And I believe in his case, also,
14 there were a lot of photographs, because I
15 remember -- I think I had to send the photographs
16 via CD. We're not allowed to send pictures to SCDC.
17 So...

18 BY MS. JAMESON:

19 Q. And, to the best of your recollection, his
20 interest was not dealing with anything his attorney
21 had done wrong, but proving he was innocent and he
22 wasn't the driver?

23 A. Focusing on the Innocence Project. Yes.

24 MS. JAMESON: No further questions, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. MCMAHAN:

2 Q. When you notify your clients about a dismissal,
3 how do you typically do that?

4 A. Typically, I send them a letter and, I think,
5 reiterate -- it was a form letter, so I haven't read
6 it in quite a while because I'm not on this panel
7 anymore. But it was a form letter that said this is
8 a denial. A lot of times I will include the -- if I
9 have it, include a copy of the order and remind them
10 again of the timeline.

11 But Mr. Manning, I remember specifically, was
12 sending, I would say, weekly and sometimes biweekly
13 letters to our office requesting documents here and
14 there. I remember him specifically requesting PCR
15 transcripts, which I told him we hadn't ordered
16 because it wasn't appealed. But I remember sending
17 him everything else in the case, actually a couple
18 of times, including his entire trial transcript.

19 Q. So he was sending a letter asking for the PCR
20 transcript?

21 A. Right. He did ask for -- later on asking for
22 the PCR transcript. And I told him we didn't have
23 that.

24 Q. So was your practice that you wouldn't
25 automatically file an appeal? You would only wait

1 to see if they ask for one?

2 A. Right. And, in fact, I was instructed not to
3 automatically file appeals. I guess that the
4 paperwork was jamming up the courts, so they asked
5 unless -- the courts told us that unless there was a
6 specific request, not to automatically file.

7 Q. And these letters and stuff that you're
8 referencing, do you have those with you today or are
9 those the ones you were trying to --

10 A. Right. Right. I don't have them with me
11 today.

12 Q. Okay. Nothing further.

13 REDIRECT EXAMINATION

14 BY MS. JAMESON:

15 Q. Ms. Zmroczek, when Mr. Manning inquired about
16 the PCR transcript and you told him you didn't have
17 a copy because there wasn't an appeal, did he follow
18 up and say he wanted you to file an appeal?

19 A. I don't recall anything after that.

20 MS. JAMESON: No further questions, Your Honor.

21 MS. MCMAHAN: I have nothing further, Your
22 Honor.

23 THE COURT: All right. The witness may step
24 down.

25 MS. JAMESON: May this witness be excused, Your

1 Honor?

2 THE COURT: I believe so.

3 Ms. McMahan, any --

4 MS. MCMAHAN: Your Honor, can I recall

5 Mr. Manning for just one question?

6 THE COURT: Sure.

7 DIRECT EXAMINATION

8 BY MS. MCMAHAN:

9 Q. Did you ever send a complaint about
10 Ms. Zmroczek to the Office of Disciplinary Counsel
11 or to the Bar?

12 A. Yes.

13 Q. Nothing further.

14 MS. JAMESON: No additional questions for this
15 witness.

16 THE COURT: All right. The witness may step
17 down.

18 MS. JAMESON: And just briefly in argument,
19 Your Honor, the testimony of Ms. Zmroczek is that
20 she advised Mr. Manning of his right to file an
21 appeal at the evidentiary hearing. I believe that's
22 the uncontroverted testimony before this Court,
23 because Mr. Manning similarly testified he was
24 advised by Ms. Zmroczek.

25 Thereafter, Ms. Zmroczek testified that he

1 wrote her prolifically but never requested an appeal
2 in that 30-day window as he had been advised by her.
3 And so the State would ask that you deny his claim
4 for an Austin review.

5 THE COURT: Ms. McMahan?

6 MS. MCMAHAN: Yes, Your Honor. I believe
7 Mr. Manning did testify that he spoke to her
8 directly after the hearing and said that he did want
9 an appeal. There was a, you know,
10 let's-do-one-thing-at-a-time kind of situation.

11 And, you know, just to kind of belabor the
12 argument a little bit here, it seems highly unlikely
13 that Mr. Manning would constantly keep asking for
14 all this information if he didn't think his case was
15 still pending. So, therefore, we're asking for the
16 belated Austin to be granted.

17 THE COURT: All right. I'll take it under
18 advisement.

19 MS. JAMESON: Thank you, Your Honor.

20 -- END OF TRANSCRIPT OF RECORD --

21
22
23
24
25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 1st of April, 2019.

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

August 4, 2019

s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Christopher Manning, #340790,

Applicant,

v.

State of South Carolina,

Respondent.

**IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT**

Case No.: 2018-CP-32-02208

ORDER OF DISMISSAL

2019 MAY -8 PM 2:08

This matter comes before this court by way of an application for post-conviction relief filed on June 27, 2018, by Christopher Manning (Applicant). On June 23, 2016, the State of South Carolina (Respondent or the State) filed its return and partial motion to dismiss, requesting an evidentiary hearing as to whether Applicant was entitled to belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and moving for summary dismissal of all other claims as successive to his prior post-conviction relief action and barred by the statute of limitations. An evidentiary hearing into this application was held in Lexington County on April 1, 2019, before this court. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Senior Assistant Deputy Attorney General Megan Harrigan Jameson from the South Carolina Attorney General's Office appeared on behalf of the State. Following the evidentiary hearing, this court denies and dismisses this application in full.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its November 2009 term, the Lexington County Grand Jury indicted Applicant for felony driving under the influence (DUI)

resulting in death (2009-GS-32-02855). Circuit Public Defender for the Eleventh Judicial Circuit, Robert M. Madsen, represented him on this charge. On May 11-13, 2010, Applicant proceeded to a jury trial before Judge R. Knox McMahon, circuit court judge. Following deliberations, the jury convicted Applicant as indicted. Judge McMahon sentenced Applicant to a term of imprisonment of eighteen years and also ordered Applicant to pay a fine of ten thousand dollars (\$10,000.00).

Applicant filed a timely notice of appeal and Appellate Defender LaNelle C. DuRant of the South Carolina Commission on Indigent Defense-Office of Appellate Defense perfected an appeal on Applicant's behalf. On appeal, Applicant raised the following issues:

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

Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence by published opinion. State v. Manning, 400 S.C. 257, 734 S.E.2d 314 (Ct. App. 2012). Applicant then petitioned for rehearing, which was denied by written order on October 10, 2012. Subsequently, Applicant petitioned the South Carolina Supreme Court for a

writ of certiorari. By written order dated June 11, 2014, the South Carolina Supreme Court denied the petition for a writ of certiorari. The remittitur was issued on June 26, 2014.

Applicant then filed his first application for post-conviction (Case No. 2014-CP-32-03075) relief on August 25, 2014. In that application, Applicant alleged he was being held in custody unlawfully based on:

1. Ineffective Assistance of Trial Counsel;
 - a. Trial Counsel's failure to object and move for a mistrial upon State's knowing use of false/perjured testimony constitutes ineffective assistance of trial counsel;
 - b. Trial Counsel's failure to motion for State-funded independent forensic pathologist to review State expert's conclusion(s) of victim's manner of death, for probability of driver-related injuries as actual cause of death, constitutes ineffective assistance of trial counsel;
 - c. Trial Counsel's failure to object upon Solicitor's misconduct during closing arguments constitutes ineffective assistance of trial counsel;
 - d. Trial Counsel's failure to argue that State's negligent handling of vehicle caused [Applicant] to be deprived of a defense constitutes ineffective assistance of trial counsel; [and]
 - e. Trial Counsel's failure to argue that an insufficient chain of custody, of Hill's blood, deprived [Applicant] of a defense constitutes ineffective assistance of trial counsel.
2. Ineffective Assistance of Appellate Counsel;
 - a. Appellate Counsel's failure to brief the trial judge erred in denying Trial Counsel's motion to suppress constitutes ineffective assistance of appellate counsel.
3. Prosecutor (Solicitor) Misconduct; [and]
 - a. Solicitor Mobley's act of knowingly presenting false/perjury evidence to the jury constitutes misconduct which deprived [Applicant] of his due process right to a fair trial.
4. Fourth Amendment Violation of 'Person.'
 - a. Law enforcement violated [Applicant's] 'person' by ordering, then seizing, [Applicant's] blood without any substantial basis.

Respondent made its return on September 25, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on April 18, 2016, before Judge Perry H.

Gravely, circuit court judge. Applicant was present at the hearing and represented by Aimee J. Zmroczek, Esquire. Respondent was represented by Senior Assistant Deputy Attorney General Johanna C. Valenzuela of the South Carolina Attorney General's Office. After hearing all testimony and arguments presented, Judge Gravely issued an order of dismissal denying and dismissing the application with prejudice on August 23, 2016, and filed August 26, 2016. Applicant did not appeal Judge Gravely's order.

CURRENT ACTION

Applicant filed the current application for post-conviction relief on June 27, 2018, alleging he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; [and]
 - a. "Ineffective assistance of trial counsel for failing to object."
2. Denied Right to Appeal.
 - a. "Austin vs State review because my pcr counsel failed to appeal after this decision. I instructed her to and she didn't notify me of the court's decision den[y]ing me my one bite at the apple."

At the start of the evidentiary hearing, Applicant, though counsel, conceded the only allegation not barred by the statute of limitations and successiveness was whether Applicant was entitled to belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin and conceded summary dismissal was appropriate as to the remaining claims raised in the application. This court granted Respondent's motion to dismiss all remaining claims beyond where Applicant is entitled to belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin. Accordingly, the only allegation that will be addressed in this order is whether Applicant is entitled to belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This court has had the opportunity to review the record in its entirety. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Successive applications such as the one before this court are generally disfavored “because they allow an applicant to receive more than ‘one bite at the apple’ ” Odom v. State, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999); S.C. Code Ann. § 17-27-90. However, Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application, one of the rare circumstances that allows an applicant to proceed forward on a successive application. See Odom, 337 S.C. at 261, 523 S.E.2d at 755 (“This Court has allowed successive PCR applications where the applicant has been denied complete access to the appellate process.”).

Inherent in this allegation is a claim that former post-conviction relief counsel was ineffective. The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722 (1991). Therefore, “the contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under [S.C. Code Ann.]§ 17-27-90.” Aice v. State, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991). The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 454, 409 S.E.2d 395, 396 (1991). Austin provides for a belated appellate review of a prior post-conviction relief action where prior post-conviction relief counsel fails to timely appeal the denial of the application when Applicant requests an appeal. Id., 305 S.C. at 454, 409 S.E.2d at 396; see S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). But

Austin “is limited to its particular factual situation.” Aice, 305 S.C. at 452, 409 S.E.2d at 394.¹ Pursuant to Austin, an evidentiary hearing may be conducted in regards to a successive post-conviction relief application “on the issue of whether in fact the petitioner requested and was denied an opportunity to seek appellate review.” Austin, 305 S.C. at 454, 409 S.E.2d at 396. “If the circuit court finds that the petitioner never in fact sought discretionary review, the petitioner may appeal that finding.” Id. 305 S.C. at 455, 409 S.E.2d at 396. Austin, therefore, allows an applicant to petition the South Carolina Supreme Court for discretionary review of the dismissal of his initial post-conviction relief application, and may do so outside of the ordinary time limits for bringing such an appeal. To succeed on an Austin claim, an applicant must establish: “(1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived.” Odom, 337 S.C. at 262, 523 S.E.2d at 756 (1999)

Here, this court finds Applicant has failed to establish he was entitled to Austin relief, as he knowingly and voluntarily waived his right to appeal his prior post-conviction relief action when he was informed of the right to appeal and the time in which such an appeal must be filed and failed to make a timely request that counsel file an appeal on his behalf.

At the evidentiary hearing, testimony was taken from both Applicant and his prior post-conviction relief counsel, Aimee Zmroczek. Applicant testified he discussed appealing his post-conviction relief case with Zmroczek before his evidentiary hearing. He testified that he told Zmroczek he wanted to appeal his case and that Zmroczek responded they needed to focus on the

¹ Aice was issued in conjunction with Austin, limiting the reach of Austin and holding “that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel.” 305 S.C. at 454 n.1, 409 S.E.2d at 396 n.1.

hearing first, then would determine whether to appeal after the court ruled on his application. He testified that the court took his case under advisement at the end of the hearing and he never heard from Zmroczek again. He testified that he wrote to Zmroczek several times asking for his transcript and for her to send him materials on his case. He also testified that he wanted Zmroczek to send information and documents pertaining to his case to the innocence project. He testified he eventually wrote the clerk of court inquiring about the status of his case and found out three days later that his case has been denied. He then filed this instant action seeking an appeal of the denial of his initial post-conviction relief action. On cross-examination, Applicant acknowledged that he never requested Zmroczek file an appeal after his hearing in the several times he contacted Zmroczek, but stated it was because he did not know his case had been denied.

Zmroczek testified that she was appointed to represent Applicant during her time as a contract attorney for post-conviction relief cases in the Eleventh Judicial Circuit. She testified that she spoke with Applicant immediately after his evidentiary hearing to discuss possible outcomes, including his ability to file an appeal should his application be denied and the time such an appeal must be sought. She further testified that Applicant never specifically asked her to file an appeal should his case be denied. She testified that her standard practice is to notify applicants of the denial of their post-conviction relief case by letter and to advise them of the time for filing any post-hearing motions or appeals and she believed she did so in this case. She testified that her standard practice is not to file an appeal unless specifically requested to do so by an applicant and this is based on her understanding of the desire from the appellate courts not to file unnecessary appeals. She testified that Applicant sent numerous letters to her and member of her support staff following his hearing, including numerous requests that she provide information to the innocence project, but never requested she file an appeal on his behalf within the time allowed. She testified

that Applicant finally asked for her to file an appeal but it was well-beyond the time proscribed for filing an appeal. She testified that Applicant filed a complaint with the office of disciplinary counsel against her and once that was dismissed, he filed this second post-conviction relief action seeking belated appellate review pursuant to Austin.

Applicant was called in reply following Zmroczek's testimony and he testified that he never filed a complaint with the office of disciplinary counsel or state bar regarding Zmroczek's performance.

After reviewing the testimony presented, this court finds Zmroczek's testimony that Applicant did not timely request she file an appeal on his behalf after being advised on this right and the timelines for such an appeal to be credible. This court finds based on Zmroczek's credible testimony, Applicant cannot establish he is entitled to belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin because he knowingly and voluntarily waived his right to appeal when he failed to take action to secure appellate review after being properly advised of his appellate rights. Accordingly, this court finds Applicant is not entitled to file a notice of appeal seeking belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin.

CONCLUSION

Based on all the foregoing, this court finds Applicant is not entitled to seek belated appellate review of the denial of his initial post-conviction relief action pursuant to Austin. Accordingly, this application is denied and dismissed with prejudice.

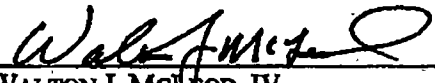
This court notes if Applicant wishes to secure appellate review of this dismissal, he must file and serve a notice of appeal within thirty days from the receipt of this order by counsel of record to secure the appropriate appellate review. See Rules 203 and 243, SCACR. Rule 71.1(g),

SCRCF, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 8TH day of MAY, 2019


WALTON J. MCLEOD, IV
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

WITNESSES

S.C. Highway Patrol Headquarters

Quest Hallman

Law Enforcement Case #:

DEM

ARREST WARRANT NUMBER

J849249

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 11-9-09

VERDICT

GUILTY

Foreperson of Petit Jury
Date: 5/13/10

DOCKET NO. 2009GS3202855

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2009

THE STATE

vs.

Christopher D Manning

CDR #: 0395

Indictment for

Felony D.U.I./Death

§ 56-05-2945(A)(2)

DONALD V. MYERS, SOLICITOR

A TRUE COPY
Lex. Co. C.C.P., G.S. § 10.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

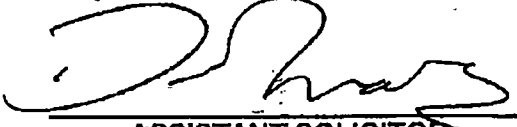
INDICTMENT FOR
Felony D.U.I./Death

§ 56-05-2945(A)(2)

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

That **Christopher D Manning** did in Lexington County, South Carolina on or about August 1, 2009, while driving a vehicle under the influence of alcohol and/or drugs, the Defendant, Christopher D Manning did an act forbidden by law or neglected a duty imposed by law in driving of said vehicle; To wit: failed to exercise due care by failing to maintain his proper lane of travel, and such act proximately caused death to Jacob Hill; all in violation of Section 56-5-2945, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

Y909 BUNN
11-11-09