

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

**RECEIVED**  
MAR 09 2020  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARY ANN GERMAN,

APPELLANT.

APPELLATE CASE NO. 2018-002090

\_\_\_\_\_  
RECORD ON APPEAL  
\_\_\_\_\_

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

**STATE’S EXHIBIT NOS. 36 (911 CALL) AND 48 (JAIL CALL).**

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 MR. LEE: ---that if the defense asks for it,  
2 Here's what you need to charge.

3 THE COURT: Do you have it?

4 MR. LEE: Do you have it or do you need it?

5 THE COURT: This is what, this is what you're  
6 supposed to say.

7 MR. LEE: It's nice when they tell us what to do,  
8 that's right.

9 THE COURT: It is. I've got, I've got it.

10 MR. LEE: Okay.

11 THE COURT: And, you know, I had a trial not long  
12 ago, and I brought that to the attention of defense  
13 counsel, and I'm sure the defendant didn't know about  
14 it.

15 MR. LEE: Yeah.

16 THE COURT: And he said, no, I like the old one  
17 better.

18 MR. LEE: Really?

19 THE COURT: I said, All right.

20 MR. LEE: Yes, sir.

21 MR. LEE: I like this one better.

22 THE COURT: All right. It's almost the same.  
23 Look. Come look at this one. We can pass that  
24 forward.

25 MR. WHETSEL: Judge, if you charge necessity, I, I

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 have no objection to that language. I think that's  
2 correct.

3 THE COURT: Almost.

4 MR. WHETSEL: Your Honor, Ms. Staggs is gonna  
5 print out that code section, the driving code section.

6 THE COURT: Give me that.

7 MR. WHETSEL: And we'll get that to you.

8 THE COURT: Let's see. One other thing. Mostly,  
9 the remaining charges are all just the standard  
10 charges.

11 MR. LEE: As far as reasonable doubt, you do  
12 Manning or Victor versus Nebraska or hybrid or neither  
13 or---

14 THE COURT: Both.

15 MR. LEE: Both. So, hesitate to act as well as  
16 firmly convinced?

17 THE COURT: Here's what I do. I give it -- what  
18 is a reasonable doubt. A reasonable doubt is the kind  
19 of doubt that would cause a reasonable person to  
20 hesitate to act. Then I would go to, of course, I've  
21 misplaced it, to the charge you wanted. I'll have it  
22 in a minute.

23 All right. Y'all see how this sounds?

24 MR. WHETSEL: Yes, sir.

25 THE COURT: The Defendant is charged with felony

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 driving under the influence resulting in death. For a  
2 felony DUI, the State must prove, beyond a reasonable  
3 doubt, that a person was driving under the influence of  
4 alcohol, drugs, or both. Number two, while driving the  
5 person did any act forbidden by law or neglects any  
6 duty imposed by law in, in the driving of the motor  
7 vehicle, and, number three, act or neglect proximately  
8 caused great bodily injury or death to another person  
9 other than the driver. The State must first prove,  
10 beyond a reasonable doubt, that the vehicle, that the  
11 Defendant drove a vehicle while under the influence of  
12 alcohol, drugs, or both. And driving means operating a  
13 vehicle which is in motion.

14 The State must prove, beyond a reasonable doubt,  
15 that the Defendant was sufficiently under the influence  
16 to impair her ability to drive with reasonable care,  
17 with due regard for others, and herself or as a  
18 reasonably prudent person would drive. It's not  
19 necessary to show that the Defendant was in a helpless  
20 condition or passed out or even intoxicated. On the  
21 other hand, the fact that the Defendant, at some  
22 point -- at some time prior to this incident drank an  
23 alcoholic, alcoholic beverage does not prove that the  
24 Defendant was driving under the influence.

25 Pursuant to Code Section, 56-5-2950, if the

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 alcohol concentration in the Defendant was, at the time  
2 of the test, .08 or more, it may be inferred that the  
3 defendant was under the influence of alcohol. It is  
4 simply, it is simply an evidentiary fact to be  
5 considered by you along with other evidence in the  
6 case, and you give it the weight you should decide that  
7 it should receive.

8 Next, the State must prove, beyond a reasonable  
9 doubt, that, while driving, the Defendant did an act  
10 forbidden by law, or neglected a duty imposed by law.  
11 And then I need to charge the statute.

12 And then, the State must prove, beyond a  
13 reasonable doubt, that the act or neglect of the  
14 defendant proximately caused the death to another  
15 person, and then give a proximate cause charge.

16 Does that sound right?

17 MR. LEE: Yes, sir. And not to be picky, I think  
18 the only thing I don't think needs to be in there is  
19 when you talk about under the influence of alcohol,  
20 drugs, or both. We -- this isn't a drug case.

21 THE COURT: Right.

22 MR. LEE: So, I just -- ask you just to do  
23 alcohol.

24 MR. WHETSEL: I'm fine with that, Judge, going  
25 with alcohol.

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 THE COURT: Okay.

2 MR. WHETSEL: Your Honor, may I, may I pass, or  
3 excuse me, may I pass this---

4 THE COURT: Yes.

5 MR. WHETSEL: ---statute up to you?

6 THE COURT: Yes.

7 MR. WHETSEL: Ms. Staggs printed the entire  
8 statute. I highlighted what I think is the -- as not  
9 to be confusing, what the appropriate language of that  
10 statute would be.

11 THE COURT: Okay. Okay. Anything else we need to  
12 do?

13 MR. WHETSEL: Nothing else from the State, Your  
14 Honor.

15 MR. LEE: Nothing for the Defense, Your Honor.

16 THE COURT: Okay. All right. Let's go to lunch.

17 (Lunch recess.)

18 THE COURT: All right. Let me go ahead and put on  
19 the record a few matters before we bring the jury back  
20 in. We had a conference in-chambers with the attorneys  
21 and the Court brought to the attention some concerns  
22 that have been raised by court personnel concerning one  
23 of our jurors. And his conduct gave concern that he  
24 may be having some trouble processing everything that  
25 is going on. And I believe that both the State and

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 defense have agreed that we would excuse juror number  
2 six and that the following procedure will be used.

3 And that is: At the conclusion of the case, when  
4 all of the jurors retire to the jury room, but before  
5 they begin deliberations, the Court would ask that  
6 juror to step back out into the courtroom and explain  
7 to him the concerns and tell him that he's being -- we  
8 will give him the rest of the day off and then call the  
9 alternate jurors in and select one of them.

10 As I read Code Section 14-7-1350 -- excuse me,  
11 1340, the name should be drawn by lot. Anybody have  
12 any objection to that procedure for the selection of  
13 the alternate juror?

14 MR. LEE: We wouldn't object to that, Judge.

15 MR. WHETSEL: Does it say it in circuit court, or  
16 is it in general sessions court?

17 THE COURT: It doesn't say. It is rules of court.

18 MR. WHETSEL: I have always thought -- I mean  
19 every time I have had one in general sessions court  
20 it's gone to the next one, but if that's what it --

21 THE COURT: Well, the Rules of Civil Procedure  
22 have a different rule. And in the Rules of Civil  
23 Procedure it is as drawn, as in -- as drawn, first  
24 juror number one takes over followed by juror number  
25 two, as I read it. Alternate jurors -- (reading).

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 Well now, if there's any disagreement about this, let's  
2 have it, let's resolve it now.

3 MR. WHETSEL: Your Honor, I have no objections as  
4 to what the Court wants to do.

5 MR. LEE: I have no problem with that, Judge.

6 THE COURT: I will be glad to let you have it. I  
7 have both of them sitting in front of me.

8 MR. LEE: That is fine. Your Honor, our  
9 preference would be to take the first alternate.

10 THE COURT: What does the State have to say?

11 MR. WHETSEL: We have no objection to that, Your  
12 Honor.

13 THE COURT: The first alternate it shall be. And  
14 it is my understanding, for the record, that that would  
15 be Ms. Alice Heyward.

16 MR. LEE: That is correct.

17 THE COURT: Anything else before the jury returns?

18 MR. WHETSEL: Not from the State, Judge.

19 MR. LEE: I have two quick things. One is I would  
20 just ask that there be no, by the solicitor, there be  
21 no comment on the defendant's failure to say anything.  
22 There was on direct and cross there was an issue about,  
23 this is the first time you have said anything about a  
24 gun. Obviously under (inaudible) that is improper, to  
25 comment on a defendant's silence because of the fifth

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 amendment rights. So I would just -- not telling  
2 Dustin how to do it, but I just don't want to -- I  
3 would move for a mistrial if that came up again, saying  
4 that this is the first time that she said anything  
5 about a gun. That is obviously improper under the law.

6 THE COURT: Then he switched his question around  
7 to --

8 MR. LEE: Yes, but I just don't want him to switch  
9 it back, right.

10 MR. WHETSEL: Judge, the intent was the fact of  
11 the jail call.

12 THE COURT: I know. I know. To the extent that  
13 he goes into that.

14 MR. LEE: Yes. Yes. Like I say, that is the  
15 first time that I heard it. Okay. Judge, the other  
16 thing is under Beatty, obviously since we put up a case  
17 the State is entitled to get them to open in full and  
18 then we respond and then they respond to things that we  
19 brought up; is that right?

20 THE COURT: New matters brought up by the defense.

21 MR. LEE: Yes, sir.

22 THE COURT: Solicitor, State agree?

23 MR. WHETSEL: I apologize. Yes, sir. So, I open  
24 in full.

25 THE COURT: Open in full.

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 MR. WHETSEL: And then Mr. Lee closes. And then I  
2 get to rebut, specifically.

3 THE COURT: Right.

4 MR. WHETSEL: Yes, sir, I would agree on that.

5 MR. LEE: Yeah. And, I mean, obviously the issue  
6 is --

7 THE COURT: Rebut, but you can't raise new  
8 matters.

9 MR. LEE: That's right. He can't stand back and  
10 have me do my closing --

11 THE COURT: And then sandbag you.

12 MR. LEE: Yes, sir.

13 THE COURT: Which he wouldn't do that anyhow.

14 MR. LEE: But I'm covering myself, Your Honor.

15 THE COURT: But you are right. All right, that is  
16 the agreed-upon procedure. Then I guess that we are  
17 ready for the jury. The State is ready for the jury?

18 MR. WHETSEL: Yes, sir.

19 MR. LEE: Yes, sir.

20 THE COURT: All right. Let's bring the jury in.

21 (The jury enters the courtroom at 1:25 p.m.)

22 THE COURT: Welcome back, ladies and gentlemen.  
23 In just a moment the attorneys are going to begin  
24 making their closing arguments to you. You have  
25 already received all of the information that you are

## CROSS EXAMINATION OF MS. GERMAN BY MR. WHETSEL

1 going to receive. No more evidence, or documents, no  
2 more anything except what the attorneys are going to  
3 argue to you. And let me tell you, the statements made  
4 to you by the attorneys is not evidence, as I told you  
5 when we began the trial. If your collective memory is  
6 different than what an attorney tells you, your  
7 collective memory, of course, supersedes what the  
8 attorney says.

9 If the attorney says that it was raining that day  
10 and your recollection is that it was not raining that  
11 day, then it was not raining that day because you are  
12 the fact finders.

13 After they finish doing this, I will then tell you  
14 about the law that applies in this case and you will  
15 retire and begin your deliberations. And we will begin  
16 with the state. Solicitor.

17 CLOSING ARGUMENT BY THE STATE

18 MR. WHETSEL: May it please the Court, Your Honor,  
19 Ladies and gentlemen, good afternoon. We told you when  
20 we started this case that this case was about choices,  
21 that is what you heard Ms. Staggs say. And it is still  
22 about choices. And I want to go through that and why  
23 that is important. And like I said during some of the  
24 cross examination of the Germans, there are some things  
25 that we know, and I think that's just uncontroverted at

## CLOSING ARGUMENT BY THE STATE

1 this point based on all of the evidence presented.

2 But choices. On July 9th, 2016, Mary German and  
3 Roger German made a decision to come here to Beaufort  
4 and to go to that little bar, Archie's at Highway 21.  
5 Which is a perfectly fine decision. But these are  
6 where the choices start to stack up and these are where  
7 the choices ultimately lead to Sher'Mann Palmer dying  
8 that night.

9 Mary German made the choice to consume alcohol and  
10 to consume it excessively, which in and of itself is  
11 not necessarily a bad thing. However, she made that  
12 choice. But then she made the choice to get into her  
13 truck, the truck which you have multiple photographs  
14 of, and that will go back with you. And made the  
15 choice to drive out of the parking lot and onto Highway  
16 21. And she made that choice to go into the wrong  
17 lane. And that choice led to this collision and killed  
18 Sher'Mann Palmer. So, this case is about choices. And  
19 every single one of these added up that ultimately  
20 resulted in Sher'Mann Palmer dying that night.

21 So, I want to talk a little bit about what we have  
22 to prove to you as far as what a felony DUI with death  
23 is. What are the elements and what evidence do we have  
24 to support each element. So, I'm going to start with  
25 that.

## CLOSING ARGUMENT BY THE STATE

1           So, you have one charge in front of you to resolve  
2 this week, and that is a felony DUI, driving under the  
3 influence resulting in death. There are three  
4 elements, main elements that we have to prove to you.  
5 One is that Mary German was driving under the influence  
6 of alcohol. And then, two, that she did an act that  
7 was forbidden by law, she committed a traffic  
8 violation. And three, that violation approximately  
9 caused the death of someone, in this case, Sher'Mann.  
10 That is what we have to prove to you.

11           And again, I think based on the testimony today,  
12 many of those elements are proven beyond, definitely  
13 beyond a reasonable doubt. You heard Mary and Roger  
14 themselves testify to much of it. But we still have  
15 the burden and I want to make sure that we all  
16 understand at least what the evidence is.

17           The first, Mary German driving under the  
18 influence. On that night, July 9th of 2016, going into  
19 the early morning hours of July 10th, 2016 Mary German  
20 was behind the wheel of that big Dodge Ram. Again,  
21 multiple witness. You heard Ms. Satori Williams who  
22 was in the parking lot that night who identified her.  
23 She wasn't drinking that night. She really has no  
24 interest in this case, except that she is a witness.  
25 She saw something, and she came to testify about it.

## CLOSING ARGUMENT BY THE STATE

1           She remembers her, she identified her in court.  
2           She was in the driver's side. She was trying to talk  
3           to her, trying to get her to stop from leaving. She  
4           had just struck her cousin's car. And when she was  
5           trying to talk to her, she says, she was just staring  
6           right through me.

7           And you have Officer Lofton, first law enforcement  
8           officer on scene. And you had his dash cam, and I know  
9           that it was quite lengthy, but it showed exactly what  
10          he saw as he initially arrives on scene as those two  
11          cars, those two vehicles having already impacted, and  
12          the actions that he took. But he also identified  
13          Ms. German in the driver's seat. And you have  
14          Paramedic Calcorzi saying the same thing.

15          So, the fact that Mary German is driving, again, I  
16          think is certainly beyond a reasonable doubt. We have  
17          proven that. She testified to it herself, Roger  
18          testified to it. So, we have proven that point.  
19          Impaired with alcohol. Again, multiple witnesses. She  
20          testified to herself, you heard the BAC amount of point  
21          27. You heard the fact that she had multiple vodka  
22          drinks that night in about an hour and a half to  
23          two-hour period.

24          Again, you had Satori testify that she was staring  
25          right through her. And you had Officer Lofton testify

## CLOSING ARGUMENT BY THE STATE

1 that when he came up to that driver's side of the truck  
2 that he could smell the odor of alcohol emanating from  
3 the truck and from the person. You had Dr. Cummins  
4 testify today that one of her medical diagnoses was  
5 alcohol intoxication. She was intoxicated on alcohol.

6 The second part, traffic violation. Again, I  
7 think just the photographs in and of itself would prove  
8 that. There's multiple photographs that you can see,  
9 you heard the witness' testimony. You have got the map  
10 that we have had multiple witnesses, you know, utilize  
11 in testifying that Highway 21 is a four-lane highway.  
12 You have got two lanes southbound going into Beaufort  
13 and you have got two lanes northbound going out of  
14 Beaufort.

15 And then Sher'Mann was driving right here on the  
16 northbound lane going out of Beaufort right at  
17 12:32 a.m. on July 10th, 2016. Driving 62 miles per  
18 hour in a 60-mile per hour zone, obeying the law.  
19 Going home because he had church the next morning. Not  
20 doing anything wrong. And at that moment Mary German  
21 as she speeds out of the parking lot crosses over the  
22 median directly into Sher'Mann's path. That is a  
23 traffic violation, I believe, as the Judge would charge  
24 and also Sergeant Booker testified to, driving left of  
25 center on a four lane highway is forbidden under South

## CLOSING ARGUMENT BY THE STATE

1 Carolina law. So, as far as the elements of DUI, the  
2 State has proven them.

3 So, now I want to talk a little bit about what I  
4 think the point in contention is, and that is: Was  
5 there a gun in the parking lot that night. And that is  
6 what the defense is. They want you to excuse what  
7 happened claiming that Roger German was threatened with  
8 a gun that night. And I believe that the Judge is  
9 going to charge you on something called a necessity  
10 defense.

11 I am going to tell you a little bit about it just  
12 so you have an idea, but I want to go through why I  
13 think that the evidence proves that there wasn't a gun  
14 there that night, that there wasn't a reason to flee  
15 except that Mary German had hit Alesia's car and they  
16 were attempting to leave and they knew the police were  
17 coming and they have had two years to come up with this  
18 version of events to try to excuse what happened.

19 What I believe that the Judge will charge you on,  
20 as far as necessity, is that you would have to find  
21 that there is a present and an imminent emergency  
22 arising without the fault of Mary German, and that that  
23 emergency gave a well-grounded apprehension of death or  
24 serious bodily injury if the criminal act, that being  
25 driving while intoxicated, was not done and that there

## CLOSING ARGUMENT BY THE STATE

1 were no other reasonable alternatives to avoid the  
2 threat of harm except to commit this act.

3 Let me go through the evidence as to why I think  
4 it proves that there was no gun in the parking lot that  
5 night. Something that I think is important that you  
6 should know, and that the Judge will charge you on, is  
7 the credibility of witnesses. That is within your  
8 purview as jurors. You get to decide the credibility  
9 of witnesses.

10 The Judge, as he tells you -- will tell you what  
11 the law is. Our job is to put on what we believe the  
12 evidence to be, but ultimately you make the decision,  
13 you are the fact finder as you will be charged. But  
14 part of that is the credibility of witnesses. And I  
15 think that's important for many reasons, but one in  
16 particular is that you heard evidence that there was a  
17 gun in the parking lot that night. But where have you  
18 heard that evidence? You heard it from two people, you  
19 heard it from Roger and Mary German. Two people with  
20 the most to lose in this particular case. They are the  
21 only people, the only evidence that you have that a gun  
22 was in the parking lot that night.

23 So, you have to think about the bias and the  
24 motivation to fabricate. You have to think about, why  
25 would somebody not be truthful with me while testifying

## CLOSING ARGUMENT BY THE STATE

1 under oath. Again, you have to think about  
2 credibility. You have got to think about bias. You  
3 have to think about, why would somebody lie. They are  
4 the only pieces of evidence that you have claiming that  
5 a gun was in the parking lot that night.

6 Let me go through some of what I believe shows  
7 that there was no gun or altercation in the parking lot  
8 that night. I think two big reasons is Satori Williams  
9 and Alesia Johnson, they were in the parking lot. They  
10 testified to you that they had gotten there maybe about  
11 30-45 minutes prior to them leaving. And when I say  
12 "them," I mean Mary and Roger German. They had not  
13 drank that night. They had gone out there because they  
14 knew that there was a party being hosted. But they  
15 were inside when they heard over the loud speaker that  
16 somebody's white Honda was hit. Satori and Alesia knew  
17 that that was likely Alesia's car, which caused them to  
18 go outside.

19 And this brings me to a point that I think  
20 ultimately will resolve, was there a gun or not in the  
21 parking lot -- and it's important -- is that 911 calls,  
22 the timing of 911 calls, and I want to remind you if  
23 you weren't already aware of this, but the evidence  
24 that's been admitted, that is your evidence. You  
25 can -- you can review it as much as you want. There's

## CLOSING ARGUMENT BY THE STATE

1 going to be photographs that go back with you. But  
2 there's obviously disks with videos, audios, calls on  
3 it, et cetera. You can hear that again, as much as you  
4 want. It is important that you understand the evidence  
5 so that you can make the correct decision.

6 So, if you want to hear anything again, you are  
7 more than welcome to. But I say why this is important  
8 is because Alesia testified, as did Satori that they  
9 heard about Alesia's car being struck, the white Honda,  
10 so they go outside. Alesia makes a 911 call at 12:29.  
11 That is what Ms. Moreira testified to, the custodian.  
12 And that was the first call that you heard. I know  
13 that it was a little bit disjointed, but that was the  
14 first call that you heard, Alesia Johnson. And why  
15 that is important is because you can hear for about the  
16 first three minutes as she's trying to report that her  
17 car was just hit. And then in real-time she's giving  
18 information about this truck that is trying to get out  
19 of the parking lot. She is giving the license plate.  
20 She is giving a description of the truck. This is all  
21 happening for about 3 minutes. And at 3 minutes and 4  
22 seconds into the call you can hear her demeanor  
23 absolutely change. That is when the crash happened, so  
24 at 12:32. I say that because the timing is important.

25 You have Mr. Wearien, Archie, who testified that

## CLOSING ARGUMENT BY THE STATE

1 he saw some activity in the parking lot so he called  
2 911. You heard that call as well and you also have  
3 that call. He made that call at 12:28, so he made that  
4 call right about a minute before Alesia made her call.  
5 So while Alesia's call is starting, it is overlapping  
6 with Alesia's call. This is why that is important.  
7 You heard the testimony today from Mary and Roger that,  
8 according to them at least, Roger is outside in the  
9 parking lot and he's surrounded by 8-10 African  
10 American males and someone pulls a gun on him. Seconds  
11 later, Mary German, supposedly, sees this, pulls the  
12 truck around, he jumps in, and they speed off. So, if  
13 you believe that testimony, within a matter of seconds  
14 all of this occurs and then the crash happens.

15 That brings us back to Alesia's car. She is on  
16 the phone with 911 in this very small parking lot right  
17 here. In real time describing to the dispatcher what  
18 is going on.

19 So, for these three minutes or so prior to the  
20 crash supposedly, if you believe the testimony of Mary  
21 German, when Roger is surrounded by this group of men  
22 and being threatened with a gun, what is interesting  
23 about that is from where Alesia is standing, she would  
24 have seen that and she testified that she didn't see  
25 that. But more importantly on the call you can hear

## CLOSING ARGUMENT BY THE STATE

1 her tone and her demeanor. She is trying to report a  
2 fender bender. There is no -- there is no altercation  
3 going on, there is no threatening, there is no pulling  
4 of guns. That is happening, supposedly, if you hear  
5 Roger and Mary German, at the same time. The fact of  
6 the matter is that there was no gun. The fact of the  
7 matter is that Mary and Roger German stopped there that  
8 night, they got way too drunk, and they made a very,  
9 very, very bad decision to leave.

10 That choice that Mary German, the choice that she  
11 made, it wasn't based on any gun or any threats in the  
12 parking lot. And I think that that brings us to the  
13 jail call. I understand it may have been a little hard  
14 to hear. Sometimes it's hard to get the speakers to  
15 play just right. But that call, again, is in evidence  
16 and you can hear it as many times as you want. But  
17 there is an important piece in there. I think that it  
18 is right at about 9 minutes. And I think I have the  
19 exact time frame. (audio played)

20 Yes, it is right after 9 minutes. Roger German  
21 asks her something along the lines of, do you remember,  
22 do you remember that gun, and she says, No, I didn't  
23 see it. See, what is important about the jail phone  
24 call, that jail phone call is made on July 11 at 10:30  
25 in the morning. Mary German was released from the

## CLOSING ARGUMENT BY THE STATE

1 hospital July 10th at 7:30, so we are talking over a  
2 full day when they are having this discussion, which is  
3 more than ample time for Roger German to start thinking  
4 of a way to try to excuse what happened.

5 But at that time, in that call, Mary German  
6 doesn't remember a gun, but now she does. But I think  
7 what you do is if you are unsure, you go back to the  
8 911 call. If you believe what they are saying, that  
9 means that in the parking lot at the time that Alesia  
10 is on the phone with 911 for those three minutes, this  
11 is supposedly going on. But the fact of the matter is  
12 that it wasn't. What is happening is that Mary German  
13 is in the driver's seat and Roger German is in the  
14 passenger's seat and they are trying to leave. They had  
15 hit Alesia's car and the announcement goes out over the  
16 loud speaker and people come outside to see what  
17 happened. That is what happened. And they are, at  
18 that point, determined to get out of there. And they  
19 make that choice. Mary German makes that choice. And  
20 she drives out of the parking lot. She speeds off.  
21 Crosses the median. And at that very moment Sher'Mann  
22 Palmer is coming through and that collision kills him,  
23 as is apparent from the photographs and the testimony.

24 Ladies and gentlemen, I don't want to belabor the  
25 point, Mary German made choices that night, made

## CLOSING ARGUMENT BY THE STATE

1 terrible choices, choices that made her criminally  
2 responsible for killing Sher'Mann Palmer. And I am  
3 going to come back right now and I am going to ask that  
4 you make a choice of finding her guilty because what  
5 she did was simply she drove drunk that night and she  
6 hit Sher'Mann head-on and she killed him. She is  
7 guilty of felony DUI and I ask that you find her so.  
8 Thank you.

## CLOSING BY THE DEFENSE

9  
10 MR. LEE: May it please the Court. Mr. Whetsel  
11 and Ms. Staggs. When we talked on Tuesday I told you  
12 that things sometimes don't always appear as they first  
13 seem. And maybe you can see how that happened on this  
14 night. When Roger and Mary went into that bar it  
15 didn't look like what it ended up looking like. And  
16 one thing I would like -- a couple of things that I  
17 would like to talk to you about. Think about the  
18 evidence that was submitted by the solicitor when,  
19 apparently he's now to our side, saying that the real  
20 issue is whether or not there was a real, genuine  
21 threat out in that parking lot and whether she had to  
22 act out of the defense of necessity.

23 But now think about the evidence that they  
24 presented, the State, which has the burden of proof  
25 beyond a reasonable doubt, think about the evidence

## CLOSING BY THE DEFENSE

1 that they presented over the three days that had  
2 anything to do with the real issue of necessity. They  
3 showed a video with no sound for 23 minutes of the  
4 wrecked vehicles. And tell me what evidence, what  
5 importance that evidence was to the case. It's 23  
6 minutes of our lives that we will never get back. Have  
7 to make the family watch it, make them watch it, and  
8 all it is is some guy walking around, walking around  
9 seeing how bad the wreck is.

10 There is no dispute about that. That is obvious.  
11 We have agreed about that from the beginning. So, why  
12 would they do that? To make y'all feel sympathy, to  
13 make you feel bad, to maybe make you mad at my client.  
14 There's no substantive evidence at all when they do  
15 that. AND then how many people did they bring up there  
16 talking about who signed the blood out and everything  
17 else? There's no issue about that at all. So, you  
18 need to think, why did they spend all of the time  
19 establishing things that aren't in dispute? Because  
20 they want to divert your attention from the issue about  
21 what happened.

22 And he's talking about these witnesses and how the  
23 911 -- why the 911 call is so important. Necessity  
24 means that someone has a situation occur that threatens  
25 life or limb or serious bodily injury or death and they

## CLOSING BY THE DEFENSE

1 react in a reasonable way because they have no other  
2 viable alternatives. And that is -- that is the -- the  
3 law recognizes that. The law says, Look, there may be  
4 technically a crime committed but it is justifiable --  
5 it's excusable in this situation of necessity. Which  
6 is all that we have said from the very beginning.

7 It is -- it was a tragic, horrible accident. Mary  
8 German is going to live with this for the rest of her  
9 life, and so is Roger and so are -- so are Mr. Palmer's  
10 family, there is no question about that. She has a  
11 lifetime sentence no matter what happens today.  
12 Lifetime. She's morally responsible because she knows  
13 that her car hit somebody and the person died.

14 The question today, and what is important, and  
15 what is important is taking yourself away from the  
16 emotional impact of what they are trying to show you  
17 is, is she criminally responsible? Criminally  
18 responsible. And that is where the law comes in. It  
19 says, Someone is not criminally responsible on a felony  
20 DUI if they acted out of necessity. And that is  
21 exactly what you have here. It was a bad situation  
22 that went from bad to worse to horrible in the span of  
23 just a couple of minutes.

24 So, let's talk about that, the situation that,  
25 that developed. And we are talking about necessity. A

## CLOSING BY THE DEFENSE

1 present and immediate emergency arising. Let's think  
2 about it. There were threats inside the bar. You  
3 heard about those from Roger. There were threats  
4 outside of the bar as the people followed him out.  
5 There was a gun that was pointed at him. The solicitor  
6 said, There wasn't any gun. Think about it.

7 Why was there a gun? Well, number one, remember  
8 he said it the day after it happened on the jail phone.  
9 He talked about it and he talked about all of the  
10 people out there, brought it up. And who else talked  
11 about it? Most importantly, Archie Wearien. The guy  
12 that is the security out there. The guy that is always  
13 out there. the guy who stays inside, why does he stay  
14 inside watching the camera? Because it's safe inside.

15 And if you listen to his 911 call, the very first  
16 one, the one before the two other ladies called, the  
17 very first one, he calls up and he says, and I wrote  
18 down the exact language and you can listen to the 911  
19 call because it's in evidence. 911 operator, Now, do  
20 you know what kind? You say it looks like they are  
21 fighting. Do you know if there are any weapons  
22 involved? His response, Yeah, but I'm sitting here  
23 looking at the screen and I don't like the motion going  
24 on. That is the first call. That is before Alesia  
25 Williams called. That is what is going on at the

## CLOSING BY THE DEFENSE

1 parking lot.

2 He's calling 911 because of a disturbance because  
3 of weapons, because of people raising up their hands  
4 and stuff like that. Whether Alesia Williams is even  
5 close to what is going on, that he's seeing with Roger  
6 German, we don't know. We don't know where she is. We  
7 don't know if she just ignored it. She may be more  
8 concerned about her car. She may be looking out for  
9 her buds who are out there at the party because this is  
10 a private party. Maybe she doesn't want to say, Hey,  
11 there's some other stuff going on. She has every  
12 reason not to say it. Maybe she didn't see it. There  
13 is a big crowd out there and maybe somebody can point a  
14 gun at somebody and somebody else doesn't see it.

15 Now, the other thing that is important in  
16 Mr. Wearien's testimony was the question I asked him  
17 about he said that he stayed inside watching the  
18 monitor and if anything happens he calls 911. He has  
19 had problems out there before. He stayed inside  
20 because it was safe. And then I said -- and then he  
21 said, and I read him the exact question from the  
22 previous sworn testimony, and he said that he watches  
23 individuals because people have a habit of bringing  
24 guns and weapons to A & J parking lot. A habit. A  
25 habit isn't something that you do every year or every

## CLOSING BY THE DEFENSE

1 couple of months, a habit is something that you do all  
2 of the time. People have a habit of bringing guns out  
3 there and weapons.

4 It's not farfetched to suggest that there was a  
5 weapon out there. It's not at all. And this party,  
6 this Grown and Sexy Bash that is going on, I asked one  
7 of the -- I think that it was Alesia, Do you go to this  
8 thing. Yeah. I said, At the bottom of the flyer it  
9 says, Security strictly enforced. I said, Is that  
10 important out there? Oh, yeah, that is important out  
11 there. Why is it important out there? Because it is a  
12 habit that the people bring guns and weapons out there.  
13 This isn't a one-time deal.

14 So, when you are talking about guns, it is  
15 certainly not unreasonable to suggest that there was a  
16 gun out there. Roger German under oath said it, talked  
17 about it the next day on the phone. Mary said -- Mary  
18 did say, No, but she said, I knew something was going  
19 on. And as she has thought about it, she says that  
20 there was a gun. This isn't some thing that was  
21 contrived to, you know, these people that work as  
22 electricians and cabinet makers, they did a bunch of  
23 research in the 24 hours that she was in the jail and  
24 decided that necessity was a defense. That is bologna,  
25 that didn't happen. This isn't some made-up thing.

## CLOSING BY THE DEFENSE

1           There was absolutely a gun. There was enough  
2           happening inside to make them leave, to put them in  
3           danger, with or without a gun. The gun is what made it  
4           real and made it even more of an emergency.

5           So, that is the -- there's also a sign out there,  
6           No weapons on this little bar. Why do you have to put  
7           up a no weapons sign? Because people bring weapons. I  
8           guess they just can't take them inside, although  
9           there's no security or anything, so maybe they could  
10          get one inside. So, there was clearly a present and  
11          immediate emergency. No question about it.

12          Now, what about trooper, Trooper Clarkson, the  
13          lead investigator on the case, did he do anything to  
14          look into any -- about what happened? He talked to  
15          three witnesses. He talked to Alesia Williams and  
16          Satori -- or Alesia Johnson and Satori Williams and a  
17          guy named Moultrely that they didn't call. All of those  
18          people in that parking lot, whole crowd, ton of --  
19          everybody agrees that there was a lot of people inside  
20          and outside. Clarkson the lead investigator comes in  
21          and he talks to three people. One of them they didn't  
22          call, who was apparently first on the scene. Those two  
23          women who testified, that is who he talked to.

24          What did those girls have in common? They came  
25          out after the truck was leaving. Anything that is

## CLOSING BY THE DEFENSE

1 important involving a gun or anything else happened  
2 before they even went outside. They didn't see what  
3 led up to it, they saw the truck leaving. So, to say  
4 that, Well, you can listen to Alesia Johnson, you know,  
5 and then you hear a bunch of screaming and stuff like  
6 that, that just simply isn't true. They heard it  
7 inside and went outside. At that point everything was  
8 done.

9 That is when everything was happening, when they  
10 were trying to get out of the parking lot, when Roger  
11 was in the car. So, but what did Clarkson do as far as  
12 interviewing people? What would help you as a jury to  
13 say, I would really like to know a little bit more about  
14 what happened up to the car pulling out of the parking  
15 lot. Let's talk to some people there. There's a ton  
16 of people there, there is a ton of people in the  
17 parking lot. Let's talk to some people there, Trooper  
18 Clarkson. Who did you talk to? Nobody. Why not?  
19 Well, apparently a lot of people had left. And he said  
20 that a lot of times people scatter when the police  
21 come. That is common. I mean, who - that is not  
22 unreasonable.

23 So the fact that the people left might suggest  
24 that there's guns out there or drugs or whatever else.  
25 That makes sense. But not a single person, other than

## CLOSING BY THE DEFENSE

1 people that walked out after it happened did you talk  
2 to. And the State, again, has the burden before they  
3 can convict somebody, ask you to convict somebody, they  
4 have to prove everything beyond a reasonable doubt.

5 There's nobody. Wouldn't it be nice to talk to  
6 people that were out there? And they are getting on to  
7 us, Mary and Roger, you know, they are biased,  
8 something like that. They are here. They were there  
9 when it happened. We, I put her on the stand, I didn't  
10 have to. I didn't have to put her on the stand and you  
11 couldn't -- the Judge will say, You can't hold it  
12 against her if she didn't testify. I put her on the  
13 stand, subject to all of his questions and everything  
14 else so that you can hear. Because they didn't give  
15 you anything during that important time.

16 So, there's clearly a present and immediate  
17 emergency. It has to show there is a reasonable  
18 apprehension of death or serious bodily harm. I think  
19 that you can see from the testimony or placing yourself  
20 in that position, that there was a risk of serious  
21 bodily harm to Mary and to Roger just for the reasons  
22 that I talked about to you before.

23 The other thing, when it happened both of their  
24 heads went into the windshield, right. Because no seat  
25 belts on. Well, guess what? One of the reasons, and

## CLOSING BY THE DEFENSE

1 Clarkson said this, one of the reasons you don't have  
2 your seat belt on, you don't have time to put it on  
3 because something is happening. Now, some people don't  
4 wear them and everything else, but that is interesting  
5 to know that their seat belts were not on which would  
6 suggest that it was done in a hurry, in response to an  
7 emergency.

8 Now, the third thing that has to be established,  
9 the emergency, the reasonable apprehension. The third  
10 thing is there is no reasonable alternatives other than  
11 what happened. So, one of the suggestions thrown out  
12 by the solicitor to Ms. German was, why didn't you call  
13 a cab? Well, the cab wasn't getting there in time to  
14 save them. There is no doubt about that. Uber, Lyft,  
15 cab, it doesn't matter. Particularly in Beaufort if  
16 you have ever tried to get a cab in Beaufort.

17 S, what are the other options? Well, she could  
18 have stayed there and, like, gotten out and tried to  
19 talk things over. That ain't going to work. She could  
20 have gotten out and helped him fight. That ain't going  
21 to work. They could have tried to run. That isn't  
22 gong to work. She could have left Roger there and  
23 saved herself. Or more importantly, under the defense  
24 of others or self-defense, she could have run over the  
25 guy who had the gun or other people. And that wouldn't

## CLOSING BY THE DEFENSE

1 have been a good choice. Could have hurt a lot of  
2 people, could have hurt Roger. If she had a gun, don't  
3 you think that she would be perfectly justified in  
4 pulling out a gun and defending Roger? Of course she  
5 would. It is called defense of others or defense --  
6 self-defense. Of course she would be able to do that.

7 She could have left him there. Now, the other  
8 thing, what she ultimately did, was get Roger in the  
9 truck and leave. Go around the people and leave.  
10 Which is what she ultimately did. There weren't  
11 choices -- they want to talk about choices. There were  
12 a lot of choices, but none of them good. And she  
13 picked the most reasonable one. And, unfortunately,  
14 unfortunately, that choice ended up with a wreck, an  
15 accident, a terrible accident that appears to have  
16 happened. Conley said it was 200 feet or so from where  
17 they left to where -- six to seven seconds.

18 Now, I think that it's important because that  
19 certainly -- it happened that quick. If they were  
20 10 miles down the road we wouldn't be standing here  
21 arguing this thing, because the emergency would have  
22 ended. They are still within gunshot range at that  
23 point. It happened like that (snapping). And I think  
24 that's important to talk about, is that it did happen  
25 that quickly and without warning.

## CLOSING BY THE DEFENSE

1           Now, the other thing as far as the number -- there  
2 is no question. Satori Williams said that there were  
3 two handfuls of people out there. There's no question  
4 that there was a lot of people out there at this.  
5 There is no question that this was a bad, bad  
6 situation. The question that you have got to answer  
7 is, was it essentially an emergent situation, was she  
8 scared, and did she have no other reasonable  
9 alternative to act on? And I think that, clearly, the  
10 evidence shows that, again it was a horrible tragic  
11 accident. She is morally responsible for it, she is  
12 never going to forget about it. No doubt about that.  
13 She's certainly civilly responsible for the wreck.

14           The question for you is, is she criminally  
15 responsible? And the criminal law says she is not. It  
16 is excused or justified if it is a necessity, and  
17 clearly it was a necessity. It was a horrible,  
18 horrible event that will affect everybody for a long  
19 time. But what I asked you in opening and I will tell  
20 you now is, I'm going to ask you to come back with a  
21 not guilty, to send her home to Roger and her daughter  
22 and son and her grandson.

23           She's never going to forget this no matter what  
24 you do, but there's not going to be anything served  
25 beneficial by convicting her of this when, in fact,

## CLOSING BY THE DEFENSE

1 this is what -- this is what happened, it was a  
2 necessity. It was a horrible circumstance, but it was  
3 a necessity.

4 I think if you follow your oath as a juror and  
5 follow the law that the one verdict that is true and  
6 just and appropriate and fair is a verdict of not  
7 guilty. Thank you.

8 THE COURT: Mr. Whetsel.

## 9 FURTHER CLOSING ARGUMENT BY THE STATE

10 MR. WHETSEL: May it please the Court, Your Honor.  
11 Thank you. Ladies and gentlemen, I get to provide a  
12 little bit of rebuttal to something that the defense  
13 said. First, it seems that the defense was upset that  
14 I made you watch the 23-minute video. I can't help but  
15 think about the six minutes that Sher'Mann was trapped  
16 in his car before Officer Lofton got there. We are  
17 splitting hairs on minutes.

18 I will tell you why we are very deliberate on  
19 evidence that we put up and why we called so many  
20 witnesses, because the State does have the burden. We  
21 have to prove every element to you beyond a reasonable  
22 doubt. We don't get to tell you about her blood  
23 alcohol level without putting everybody up that handled  
24 that blood. That is why we call so many witnesses.

25 We don't get to show that video to you without

## FURTHER CLOSING ARGUMENT BY THE STATE

1 having Officer Lofton here to testify. And that video  
2 is important because it shows you exactly what is  
3 happening minutes after the collision. So, what we do  
4 is very deliberate and it is for a reason. Because  
5 cases are important, and this case is important, and  
6 you deserve the evidence. That is why we give it to  
7 you.

8 There are a few points that I want to make and  
9 then the Judge will charge you on the law. I want to  
10 talk first about, say if you were to believe that there  
11 was a gun out there. I think that it just doesn't make  
12 sense. Because something that is uncontroverted,  
13 something that you can listen to again is Alesia's 911  
14 call and the timing of that is critical. Because you  
15 have the evidence, if you will, the testimony of Mary  
16 and Roger German is that they left seconds after the  
17 gun gets pulled on Roger, luckily she pulls around the  
18 corner and he gets in and they speed off. You can  
19 tell, when you are listening to the call, when this  
20 crash happens, Alesia's call. Three minutes and four  
21 seconds.

22 So, while she's standing in the parking lot where  
23 her car is parked, right there where the P is, is when  
24 she's making the call. That is where Mary and Roger  
25 German are claiming they were when this was all going

## FURTHER CLOSING ARGUMENT BY THE STATE

1 on. Which means, in real-time, on that 911 call of  
2 Alesia's, that this supposed gun is happening. You can  
3 listen to that call again. The timing of that is  
4 critical, it is crucial.

5 The defense wants to talk about Archie Wearien's  
6 call. And it is on the call about a dispatcher asking  
7 about, Do you see any weapons, but I want you, if you  
8 need to, to listen to the call again. Because this is  
9 important. One, Archie, Mr. Wearien did testify that  
10 he didn't see any weapons, but two, I think if you  
11 listen to the call and I want to say exactly what I  
12 heard, which I think matches up what Mr. Lee said,  
13 however, I think the tone or the way he said the words  
14 are what is important.

15 Dispatcher, at a minute and 30 seconds asked, Are  
16 any weapons involved? And he says, Yeah, but I'm  
17 looking at the screen and I don't like the commotion  
18 going on. What -- what I am hearing is, I am kind of  
19 going past your question, I am telling you, dispatcher,  
20 I don't like the commotion going on in the parking lot.  
21 He is not saying, I see weapons. He is saying, I don't  
22 like the commotion going on. Kind of one of those  
23 crutch words, if you will.

24 He is trying to tell her he has commotion going on  
25 in the parking lot, which makes sense. That is a

## FURTHER CLOSING ARGUMENT BY THE STATE

1 minute and 30 seconds into his call, which means that  
2 is 30 seconds into Alesia's call. Because, again, he  
3 makes his call at 12:28. She makes hers at 12:29. So,  
4 when that question is asked there is activity going on  
5 in the parking lot. That activity is what Alesia is  
6 seeing, which Mary German had just run into Alesia's  
7 car, she's trying to get out of the parking lot and  
8 people are coming out of the bar because they heard  
9 over the loud speaker that a car was hit. That is the  
10 activity that is going on.

11 There is not a group of black men with guns  
12 threatening Roger German, that is just not true. What  
13 is true is that Mary German is trying to get out of  
14 there because they want to leave, for whatever reason,  
15 maybe somebody did say something to them in the club,  
16 that doesn't make a difference. That is not a  
17 justifiable reason to drive at that point. What they  
18 want you to believe is that he had a gun pulled on him,  
19 which is just not true. It doesn't match up with the  
20 calls, it doesn't match up with the testimony.

21 The only testimony that you had that there is a  
22 gun is Roger and Mary German who has -- those are the  
23 individuals that have the most to lose in this case.  
24 So, credibility and bias.

25 Ladies and gentlemen, this case is simple. And I

## FURTHER CLOSING ARGUMENT BY THE STATE

1 don't mean simple in a moral way, I don't mean simple  
2 in a burden on you in making a decision way, I mean  
3 it's simple in the facts are what the facts are. And  
4 the facts are that Mary German drove drunk on  
5 July 10th, 2016 and she killed Sher'Mann Palmer. That  
6 are the facts, those are the facts, that is what  
7 happened. There was no gun. And she's guilty and I  
8 ask that you find her guilty. Thank you.

## JURY CHARGE

9  
10 THE COURT: Thank you, Mr. Whetsel.

11 Ladies and gentlemen, I remind you that the fact  
12 that the defendant was arrested, charged and indicted  
13 in this case is not evidence and cannot be considered  
14 by you as evidence of guilt, nor does it create any  
15 presumption of inference of guilt. This document is  
16 simply the written instrument that contains the charges  
17 against the defendant. It's the formal document which  
18 brings this case before the Court.

19 The defendant has pled not guilty to these  
20 indictments. That plea puts the burden upon the State  
21 to prove the defendant guilty. I tell you that a  
22 person in South Carolina charged with a criminal  
23 offense is never required to prove himself innocent. I  
24 charge you that it is an important rule of law that a  
25 defendant in a criminal trial, no matter what the

## JURY CHARGE

1       seriousness of the charge may be, will always be  
2       presumed to be innocent of the crime for which the  
3       indictment was issued, unless guilt has been proven by  
4       evidence that satisfies you of that guilt beyond a  
5       reasonable doubt.

6               The presumption of innocence does not end when you  
7       begin your deliberations, but it accompanies the  
8       defendant throughout the trial until you reach a  
9       verdict of guilt based on evidence that satisfies you  
10      of that guilt beyond a reasonable doubt. The  
11      presumption of innocence is like a robe of  
12      righteousness placed about the shoulders of a  
13      defendant, which remains with the defendant until it  
14      has been stripped from the defendant by evidence that  
15      satisfies you of the defendant's guilt beyond a  
16      reasonable doubt.

17              Presumption of innocence is not mere legal theory,  
18      it is not just a legal phrase, it is a substantial  
19      right to which every defendant is entitled, unless you,  
20      the jury, are satisfied from the evidence of the  
21      defendant's guilt beyond a reasonable doubt.

22              A reasonable doubt is a kind of doubt that would  
23      cause a reasonable person to hesitate to act. Some of  
24      you may have served on juries in civil cases where you  
25      were told that it was only necessary to prove that a

## JURY CHARGE

1 fact is more likely true than not true, such as by the  
2 greater weight or preponderance of the evidence. But  
3 in criminal cases, the State's proof must be more  
4 powerful than that, it must be beyond a reasonable  
5 doubt. Proof beyond a reasonable doubt is proof that  
6 leaves you firmly convinced of the defendant's guilt.

7 There are very few things in this world that we  
8 know of with absolute certainty, ladies and gentlemen.  
9 In criminal cases, the law does not require proof that  
10 overcomes every possible doubt. If, based upon your  
11 consideration of the evidence, you are firmly convinced  
12 that the defendant is guilty of the crime charged, you  
13 must find the defendant guilty. If on the other hand  
14 you think that there's a real possibility that the  
15 defendant is not guilty, you must give the defendant  
16 the benefit of the doubt and find the defendant not  
17 guilty.

18 I remind you during this trial you and I have had  
19 different duties to perform. As the trial judge it has  
20 been my responsibility to preside over the trial and  
21 rule on the admissibility of the evidence. If there  
22 was any testimony ordered stricken from the record  
23 during this trial, you must disregard that testimony.  
24 You are to consider only the testimony which was  
25 presented from the witness stand and in the exhibits.

## JURY CHARGE

1 which have been made part of the record in this case.

2 I also have the additional duty to charge you  
3 about the law that applies in this case. As the  
4 presiding judge, I am the sole judge of the law of the  
5 case. It is your duty as jurors to accept and apply  
6 the law as I now state it to you. If you already have  
7 any idea what the law is or what the law should be and  
8 it doesn't agree with what I tell you the law is, you  
9 must abandon that idea because under your oath you must  
10 accept the law exactly as I state it to you.

11 In every case tried before a jury, the jury  
12 becomes the sole and exclusive judge of the facts of a  
13 case. And a trial judge, such as myself, cannot  
14 comment on or make any statement to a jury about the  
15 facts of a case. You are the sole judges of the facts  
16 of the case and you are not to infer from anything that  
17 I've said or anything that I have ruled upon in the  
18 admissibility of the evidence or otherwise that I have  
19 an opinion about the facts of the case. The law does  
20 not allow me to have an opinion about the facts of a  
21 case, because that is a matter solely for you to  
22 determine.

23 It is your duty, ladies and gentlemen,  
24 necessarily, to determine the effect, the value, the  
25 weight, and the truth of the evidence presented during

## JURY CHARGE

1 this trial.

2 Generally speaking, there are two types of  
3 evidence presented during a trial, direct evidence and  
4 circumstantial evidence. Direct evidence directly  
5 proves the existence of a fact. It does not require  
6 any deduction. Circumstantial evidence is proof of a  
7 chain of facts and circumstances indicating the  
8 existence of a fact. Crimes may be proven by  
9 circumstantial evidence. The law makes no distinction  
10 between the weight or the value to be given to either  
11 direct or circumstantial evidence. However, to the  
12 extent that the State relies on circumstantial  
13 evidence, all of the circumstances must be consistent  
14 with each other, and when taken together, point  
15 conclusively to the guilt of the accused beyond a  
16 reasonable doubt. If these circumstances merely  
17 portray the defendant's behavior as suspicious, the  
18 proof has failed.

19 The State has the burden to prove the defendant  
20 guilty beyond a reasonable doubt. The burden rests  
21 upon the State, regardless of whether the State relies  
22 on direct evidence, circumstantial evidence, or some  
23 combination of the two.

24 The rules of evidence normally do not permit  
25 witnesses to testify to opinions or conclusions, but an

## JURY CHARGE

1 exception to that rule exists for witnesses who are  
2 called expert witnesses. That is, a witness who by  
3 education or experience has become an expert in some  
4 art, science, profession, or calling and they may state  
5 an opinion as to certain relevant and material matters  
6 in which this witness claims to be an expert, and they  
7 also give you the reasons for the opinion. You should  
8 consider an expert opinion received in this case, and  
9 like other evidence, give it the weight you think it  
10 deserves.

11 If you decide the opinion of an expert is not  
12 based on sufficient education and experience, or if you  
13 conclude that the reasons given in support of the  
14 opinion are not sound, or that the opinion is  
15 outweighed by other evidence, you may disregard it. An  
16 expert witness' testimony should be given no greater  
17 weight than that of other witnesses simply because that  
18 witness is an expert. Thirdly, you are not required to  
19 accept an expert's opinion, even though it is not  
20 contradicted.

21 Necessarily, ladies and gentlemen, you must  
22 determine the credibility of the witnesses who have  
23 testified. This simply means the believability of the  
24 witnesses. It becomes your duty as jurors to analyze,  
25 to evaluate the evidence, and to determine which

## JURY CHARGE

1 evidence convinces you of its truth. In determining  
2 the believability of witnesses who have testified, you  
3 may believe one witness over several witnesses, several  
4 witnesses over one witness. You may believe a part of  
5 a testimony of a witness and reject the remaining part  
6 of the testimony of that very same witness.

7 You may believe the testimony of a witness in its  
8 entirety or reject the testimony of a witness in its  
9 entirety. You may consider, of course, whether the  
10 witness has exhibited to you any interest, any bias,  
11 prejudice or motive in the case. And you may consider  
12 the appearance and manner of a witness while on the  
13 witness stand.

14 As you have heard, the defendant is charged with  
15 felony driving under the influence resulting in death.  
16 For a felony DUI the State must proof beyond a  
17 reasonable doubt, number one, a person was driving  
18 under the influence of alcohol. Number two, while  
19 driving the person did any act forbidden by law or  
20 neglects any duty imposed by law in the driving of the  
21 motor vehicle. Number three, that the act or neglect  
22 approximately caused great bodily injury or death to  
23 another driver.

24 The State must also -- must prove beyond a  
25 reasonable doubt that the defendant drove the vehicle

## JURY CHARGE

1 under the influence of alcohol. Driving or operating a  
2 vehicle means driving a vehicle which is in motion.  
3 This may be proved by direct or circumstantial  
4 evidence. The State must prove beyond a reasonable  
5 doubt that the defendant was sufficiently under the  
6 influence to impair her ability to drive with  
7 reasonable care, with due regard for others and  
8 herself, or as a reasonably prudent person would drive.

9 It's not necessary to show that the defendant was  
10 in a helpless condition, was passed out, or was even  
11 intoxicated. On the other hand, the fact that the  
12 defendant, at some time prior to the incident, drank an  
13 alcoholic beverage does not prove that the defendant  
14 was driving under the influence. Pursuant to South  
15 Carolina Code Section 56-5-2950, if the alcohol  
16 concentration of the defendant was at the time of the  
17 test point 08 or more, it may be inferred that the  
18 defendant was under the influence of alcohol. This  
19 inference is simply an evidentiary fact to be  
20 considered by you, along with the other evidence in  
21 this case. And you may give it the weight you decide  
22 it should receive.

23 Next, the State must prove beyond a reasonable  
24 doubt that while driving the defendant did an act  
25 forbidden by law or neglected a duty imposed by law.

## JURY CHARGE

1 And I tell you that the law of this state,  
2 Section 56-5-1810 provides, in part, that upon any  
3 roadway having four or more lanes for moving traffic  
4 and providing for two-way movement of traffic, no  
5 vehicle shall be driven to the left of the center line  
6 of that roadway except when authorized by official  
7 traffic control devices, designating certain lanes to  
8 the left of the center of the roadway for use by  
9 traffic not otherwise permitted to use such lanes.

10 Finally the State must proof beyond a reasonable  
11 doubt that the act or the neglect of the defendant  
12 approximately caused the death of another person. And  
13 proximate cause is the direct cause, it is the  
14 immediate cause, it is a cause without which the death  
15 of the victim would not have resulted.

16 The defendant has raised the defense of necessity.  
17 In order to excuse the crime on the grounds of  
18 necessity the defendant -- the defendant must show by  
19 preponderance or greater weight of the evidence three  
20 things: First, that there was a present and imminent  
21 emergency which arose without fault on the part of the  
22 defendant. Number two, that the emergency was of the  
23 type which would cause a well-rounded fear of death,  
24 serious bodily injury if the act was not done. And  
25 number three, if there was no other -- there was no

## JURY CHARGE

1 other reasonable alternative other than committing the  
2 crime to avoid the threat of harm.

3 If you find that the defendant has proven the  
4 defense of necessity by preponderance of the evidence,  
5 you must find the defendant not guilty.

6 Ladies and gentlemen, in a few moments I am going  
7 to ask you to retire to the jury room and begin your  
8 deliberations. Once you have reached a verdict in the  
9 case knock on the door and let the bailiff know and you  
10 will be received back in the courtroom. When I'm ready  
11 for you to begin deliberating I am going to send to the  
12 jury room the exhibits as well as the indictment.

13 And on the back of the indictments on the left  
14 portion or lower portion of the indictment there is  
15 something in blue ink that says, True billed, and above  
16 that in black the word, Verdict. And I will ask the  
17 foreperson if he would write there underneath the word  
18 "verdict" either guilty or not guilty because those are  
19 the only two verdicts that are possible. And once  
20 again, for there to be a verdict, it must be unanimous.  
21 All of you must agree.

22 Now, having said all of that, I am going to ask  
23 all of you, including my alternate jurors, to step in  
24 the jury room. But once again, don't begin  
25 deliberating until I send word. So, if you will please

## JURY CHARGE

1 retire to the jury room.

2 (The jury exits the courtroom.)

3 The time is now 2:28 p.m.

4 THE BAILIFF: The jury is clear, Your Honor.

5 THE COURT: From the State, exceptions?

6 MR. WHETSEL: No, not from the charge, no, sir.

7 MR. LEE: None from the defense, Your Honor.

8 THE COURT: Do you want to make sure that we have  
9 everything?

10 MR. WHETSEL: Yes, sir.

11 THE COURT: All right. I am going to ask the  
12 bailiff if he will ask juror number six to step back  
13 into the jury room and I will speak with him for a few  
14 minutes and then I'll ask both alternate jurors if they  
15 will come in here after we release him.

16 (Juror number six was brought into the courtroom  
17 and excused from service as a juror.)

18 THE COURT: I want to thank both of you for  
19 everything. You may not have noticed one of the jurors  
20 is no longer with you. One of them is not there  
21 anymore, so we need an alternate and under the rules  
22 the first person picked is the one who gets to go, so  
23 you are now going to be an official juror.

24 And I want to thank you for your service and you  
25 are free to either go or stay in the courtroom to see

## JURY CHARGE

1 what happens. A lot of alternate jurors in your  
2 situation want to go home and a lot of them want to  
3 stay here and see what happens. The bailiff will show  
4 you where to go.

5 THE JUROR: I left my phone number. Please call  
6 me.

7 (Alternate juror exits the courtroom.)

8 THE COURT: Okay. They are going to escort you  
9 back in the jury room and then ask you to begin  
10 deliberations.

11 All right. For the record, juror 144 I just  
12 instructed to become one of our official jurors and  
13 begin deliberating as soon as we send these exhibits  
14 into the courtroom. We excused juror number 74 and we  
15 are ready for the evidence to go back.

16 (Deliberations begin at 2:32 p.m.)

17 *(Whereupon, Court's Exhibit No(s) 12 marked for*  
18 *identification and received in evidence.)*

19 THE COURT: We have a note from the jury. Two  
20 questions. "May the jury hear the jail phone call,"  
21 and "May the jury hear the 911 calls". Apparently, we  
22 can hear all of that.

23 MR. LEE: I don't know which 911 they are talking  
24 about.

25 THE COURT: It's plural. 911 calls.

## JURY CHARGE

1 MR. WHETSEL: Yes, I can play those.

2 MR. LEE: We can play them out here or tell them  
3 that they can take it back there to play it.

4 MR. WHETSEL: I don't have a good computer to send  
5 them back is the problem.

6 THE COURT: Let's let them hear it. Let's bring  
7 the jury in.

8 MR. LEE: Judge, are you going to ask them if  
9 there is a specific part to play to save time, or are  
10 you going to play the whole thing?

11 THE COURT: I don't recall how long they are. Is  
12 it that long?

13 MR. LEE: That one is like eight minutes  
14 approximately, and the other, a couple of minutes.

15 MR. WHETSEL: The phone will call, 11 minutes and  
16 change. Wearien call, a minute 40. And Alesia's call  
17 is eight minutes and some seconds. I'm not sure what  
18 they want to hear.

19 THE COURT: By the time that we figure out how to  
20 get to the part, middle part.

21 MR. WHETSEL: If they want to hear it, I think we  
22 need to play the whole thing, Judge.

23 THE COURT: I will tell them if they get to the  
24 part they don't want to hear any more, let me know and  
25 we will cut it off.

## JURY CHARGE

1 THE BAILIFF: The jury is entering the courtroom,  
2 Your Honor.

3 (The jury enters the courtroom.)

4 THE COURT: Welcome back. I have a note from the  
5 jury. And the first question, May the jury hear the  
6 jail phone call, and the answer to that is yes. And  
7 may the jury hear the 911 calls, and the answer to that  
8 is yes.

9 I think that we are prepared to play them in their  
10 entirety. Let me ask you, if the jury here's a portion  
11 and they believe that that's all they need to hear and  
12 we are still running, if you will let me know we will  
13 stop it. But without knowing what you want to hear, we  
14 will play them all until you say we are through.

15 THE FOREPERSON: Okay.

16 MR. WHETSEL: Judge, I'll play at a reasonable  
17 volume. If they want it louder or softer, they can  
18 alert the Court and we can adjust it.

19 THE COURT: Okay. And I'll try to watch to see if  
20 anybody has a problem with it. This is the jail phone  
21 call being played first.

22 (Audio played.)

23 THE FOREPERSON: Your Honor, that is it.

24 THE COURT: All right. They are through.

25 THE FOREPERSON: Your Honor, we have heard enough.

## JURY CHARGE

1 THE COURT: All right. That was the 911 call made  
2 by the woman. Now being played is the 911 call made by  
3 the man, Mr. Wearien.

4 (Audio played.)

5 THE COURT: All right. Thank you, ladies and  
6 gentlemen. Please retire to the jury room and resume  
7 your deliberations.

8 (The jury exits the courtroom at 3:20 p.m.)

9 THE BAILIFF: The jury is clear, Your Honor.

10 (Jury deliberations resumed.)

11 THE COURT: The bailiffs indicate that the jury  
12 has reached a verdict. Is the State ready for the  
13 verdict?

14 MR. WHETSEL: Yes, Your Honor.

15 THE COURT: Is the defense ready for the verdict?

16 MR. LEE: Yes, Your Honor.

17 THE COURT: All right. Let's bring in the jury.

18 (The jury enters the courtroom.)

19 THE COURT: Welcome back. Ladies and gentlemen,  
20 let me ask you as foreperson of the jury, has the jury  
21 panel reached a verdict?

22 THE FOREPERSON: We have, Your Honor.

23 THE COURT: Was it unanimous?

24 THE FOREPERSON: Yes, sir, it was.

25 THE COURT: Did all of you agree?

## JURY CHARGE

1 THE FOREPERSON: Yes, we did.

2 THE COURT: Did you complete the verdict form?

3 THE FOREPERSON: Yes, we have.

4 THE COURT: Would you please pass it forward?

5 Madam clerk, would you please publish the verdict?

6 THE CLERK: Yes, Your Honor. "In the State of  
7 South Carolina, County of Beaufort County versus Mary  
8 German, indictment for felony driving under the  
9 influence death results, Indictment No. 2016GS0701356.  
10 We the jury find the defendant guilty."

11 THE COURT: All right. Anything further before  
12 the jury is discharged?

13 MR. WHETSEL: Not before the jury is discharged,  
14 Your Honor.

15 MR. LEE: I would ask for the jury to be polled.

16 THE COURT: Madam clerk.

17 THE CLERK: Yes, Your Honor. I'll call their  
18 numbers, Your Honor.

19 THE COURT: That will be fine.

20 THE CLERK: Juror No. 281. Is this your verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror No. 326. Is this your verdict?

25 THE JUROR: Yes.

## JURY CHARGE

1 THE CLERK: Is it still your verdict?  
2 THE JUROR: Yes.  
3 THE CLERK: Juror No. 339. Is this your verdict?  
4 THE JUROR: Yes.  
5 THE CLERK: Is it still your verdict?  
6 THE JUROR: Yes.  
7 THE CLERK: Juror No. 26. Is this your verdict?  
8 THE JUROR: Yes.  
9 THE CLERK: Is it still your verdict?  
10 THE JUROR: Yes.  
11 THE CLERK: Juror No. 29. Is this your verdict?  
12 THE JUROR: Yes.  
13 THE CLERK: Is it still your verdict?  
14 THE JUROR: Yes.  
15 THE CLERK: Juror No. 178. Is this your verdict?  
16 THE JUROR: Yes.  
17 THE CLERK: Is it still your verdict?  
18 THE JUROR: Yes.  
19 THE CLERK: Juror No. 373. Is this your verdict?  
20 THE JUROR: Yes.  
21 THE CLERK: Is it still your verdict?  
22 THE JUROR: Yes.  
23 THE CLERK: Juror No. 237. Is this your verdict?  
24 THE JUROR: Yes.  
25 THE CLERK: Is it still your verdict?

## JURY CHARGE

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 161. Is this your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: And Juror No. 144. Is this your  
7 verdict?

8 THE JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Okay. Juror No. 74.

12 THE COURT: That was an alternate juror. Anything  
13 further before the jury is discharged?

14 MR. WHETSEL: No, Your Honor.

15 MR. LEE: No, sir.

16 THE COURT REPORTER: We have a juror with a hand  
17 raised.

18 THE COURT: You have a question?

19 THE JUROR: I just never got asked the question.

20 THE CLERK: I apologize. Juror No. 122. Is this  
21 your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Thank you.

## JURY CHARGE

1 THE COURT: Thank you for pointing that out.  
2 Ladies and gentlemen, I want to thank you for your  
3 service. Previously I told that you couldn't talk  
4 about the case. Now you are completely free to talk  
5 about the case or not. If you want to talk about the  
6 case, you can talk about what happened in here as well  
7 as what happened in the jury room. You don't have to  
8 talk about the case though. And if anybody bugs you  
9 about the verdict or your participation, if you don't  
10 want to talk about it, you just tell them. I don't  
11 have any reason to think that that is going to happen.  
12 We tell every jury the same thing, you have the right  
13 to talk about it or not talk about it. If anybody  
14 really, really causes you a problem, please report them  
15 to the Clerk of Court. But, once again, I don't have  
16 any reason to think that is going to happen.

17 I'm getting ready to excuse you from this case as  
18 well as from jury duty for the week. Some jurors like  
19 to stay in the courtroom because it's likely that  
20 sentencing will occur shortly in the case. Court is  
21 required to sentence the defendant now that the  
22 defendant has been found guilty. You don't have to  
23 stay in here. Some people like to leave and go about  
24 their business and worry about it later, some want to  
25 stay. What I'll do is ask you to leave and go out into

## JURY CHARGE

1 the hall with the bailiff. If you want to stay, we  
2 will let you come around the back and you can come in  
3 the back door of the courtroom. If you don't want to,  
4 the bailiff will let you go out the door. Anybody have  
5 any problems or questions or anything that we can take  
6 care of?

7 Once again, I want to thank you for your service,  
8 ladies and gentlemen. You are excused.

9 (Jurors exit the courtroom.)

10 THE COURT: Is the State prepared to proceed with  
11 sentencing?

12 MR. WHETSEL: Yes, we are.

13 THE COURT: Is the defense ready?

14 MR. LEE: Yes, we are.

15 THE COURT: Are you required for the defense  
16 attorney to sign the sentencing sheet or no?

17 MR. LEE: I'll sign it.

18 MR. WHETSEL: I wasn't sure how you wanted to do  
19 that.

20 Your Honor, I do believe some of the family wishes  
21 to address the Court.

22 THE COURT: Certainly. Glad to hear from anybody  
23 who wishes to speak.

24 MS. GILCHRIST: Courtney Gilchrist from the law  
25 office of Clifford Bush the third, and we represent

## JURY CHARGE

1 Denise and Daniel Palmer on the civil litigation case  
2 that was brought before the defendant, Mary Ann German.  
3 On behalf of the family I would like to offer some  
4 words on behalf of Ms. Denise Palmer and Daniel Palmer,  
5 the natural parents of Sher'Mann Palmer. It is their  
6 words today, Your Honor, that they want the Court and  
7 the defendant, Mary Ann German, to know that they  
8 forgive her for the death of their son, that they ask  
9 God for forgiveness.

10 And it's been a tedious process for them. They  
11 will always mourn the loss of their child. It'll be  
12 something that they will have to live with for the rest  
13 of their lives, but they ask the Court to have mercy on  
14 her. We thank all of the jurors that served and we  
15 thank everyone carrying out to ensure that justice was  
16 served today on behalf of Sher'Mann Palmer. We thank  
17 you guys for your time and for your service.

18 THE COURT: Thank you, ma'am.

19 MR. WHETSEL: Your Honor, I believe that's all of  
20 the family statements that wish to be made. I would  
21 like to argue at the appropriate time.

22 THE COURT: Certainly, you may.

23 MR. WHETSEL: Your Honor, you have heard the facts  
24 of this case. You have heard the blood alcohol  
25 concentration. So that the Court is aware, Ms. German

## JURY CHARGE

1 does have a prior record. She has a 1995 battery  
2 conviction out of Maryland for which she received a  
3 year and six-month probation. She has a 2014  
4 disorderly conduct conviction out of Maryland for which  
5 she received a year probation. And a 2014 intoxication  
6 conviction out of Maryland for which she received 90  
7 days. I think that those are apparent on her face that  
8 there's an issue with alcohol. And that manifested  
9 itself on July 10th, 2016.

10 And as a theme and as the evidence came out, I  
11 think that it was very much apparent that she made the  
12 decision and choice, a terrible one, and took the life  
13 of Sher'Mann Palmer. This particular charge carries up  
14 to 25 years. I think that that cap was put on by the  
15 Legislature. I think that is, obviously, the Court  
16 can't go above that. I think that pretty close to that  
17 would be appropriate here. And the reason being is  
18 that the Sher'Mann Palmer was 24 years old at the time  
19 of his death and he doesn't get to make any more  
20 choices. He's no longer with us, Your Honor.

21 For those reasons and for the reasons -- and for  
22 the fact that Sher'Mann is no longer with us at the  
23 hands of Mary German, we would ask for 20 years in this  
24 case.

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

## JURY CHARGE

1 MR. LEE: Thank you, Your Honor, may it please the  
2 Court. This is always the hardest part of doing this  
3 job. And, you know, you fight so hard and you get  
4 attached to your client and get invested in them and it  
5 is always the hardest part.

6 However, one thing that always amazes me, it  
7 doesn't happen very much but to hear Attorney Gilchrist  
8 talk about the family just blows me away. I would like  
9 to think that I could feel that way, but I don't know  
10 that I could. I appreciate y'all and we are very, very  
11 sorry for what happened and, you know, that we are even  
12 here today.

13 Judge, you heard a little bit about Mary during  
14 the trial. You know she is the main bread winner in  
15 her family and has a lot of people that love her and  
16 support her. She is 47 years old. Works about as hard  
17 as anybody that I have ever represented before. She  
18 was in court yesterday and I looked over at her and she  
19 was putting some tissues in her shoes because she was  
20 wanting to wear the right kind of shoes for court,  
21 because she usually wears work boots everyday. And she  
22 wanted to be dressed appropriately. It just shows how  
23 hard of a worker she is and what kind of person she is.

24 Her and Roger are inseparable, always have been.  
25 They came down here, certainly, with no ill will or

## JURY CHARGE

1 intention or any idea that anything like this was going  
2 to happen. And it was a series of unfortunate events  
3 that led to this. And I just -- you know, I think  
4 about stuff like, I mean, if they would have left five  
5 minutes earlier or five minutes later, or even ten  
6 seconds earlier, this whole thing wouldn't have  
7 happened. And she, you know, had she left and had she  
8 driven she would have gotten a DUI like so many people  
9 do every day in every city and every place in the  
10 world, a regular DUI instead of the tragic thing that  
11 happened to their family.

12 So, you know, I know that they say that the Lord  
13 works in mysterious ways and Mary -- there is a reason  
14 for this. We may not know what it is. But she is  
15 heart broken, her family is heart broken for themselves  
16 but also for Mr. Palmer. We have never, you know, said  
17 that she isn't morally and ethically and forever  
18 responsible for this. Our issue was a legal one. The  
19 law does have that in there and we certainly believe  
20 that there was enough in there. And I'll take the  
21 blame and credit, I believe that there was enough there  
22 to challenge the State on this case.

23 The offer that was out there was for 18 years, and  
24 so it's not like she was walking away and thumbing her  
25 nose at a great deal. I would point out that she tells

## JURY CHARGE

1 me -- this happened over two years ago and she tells me  
2 that she hasn't had a drink since. And obviously  
3 before this she was drinking some.

4 And then her and Roger, as a matter of fact, last  
5 week, through no suggestion of mine at all they  
6 attended what is called a MADD victim impact panel in  
7 Charleston, and I have proof of attendance right here.  
8 And what that is is a class where families of DUI  
9 victims show up and kind of tell their story and people  
10 that -- like Mary and Roger that have been affected go  
11 to these things to hear these impact stories, and  
12 apparently it was quite compelling for her and for  
13 Roger.

14 So, Judge, she has a minimal record, all things  
15 considered, to be 47 years old. You know, the  
16 interesting thing, or one of the interesting things  
17 about felony DUI with death is that it has, perhaps,  
18 the largest range of sentence that there is, between  
19 one and 25 years. And I think that it recognizes that  
20 there are different types of these and different  
21 scenarios. And I would also point out that it is a no  
22 parole offense and any sentence that she gets, that  
23 she's not eligible for parole.

24 I would respectfully ask you to consider towards  
25 the -- towards the smaller end of the sentence, the

## JURY CHARGE

1 lower end of the sentence based on her record, the lack  
2 of serious prior record as well as the circumstances  
3 surrounding this. I realize that the, the BA level is  
4 high, and while the jury I guess believed that we  
5 didn't carry the burden -- and again, one of the legal  
6 issues that we had is that we had an affirmative  
7 burden, which the defense rarely if ever has. We had  
8 the burden of establishing it, so we don't know if the  
9 jury thought that it was 0 percent or 49 percent, but  
10 obviously they felt like we didn't establish necessity  
11 by a preponderance of the evidence. But I hope that  
12 you would agree that there was some mitigation in this  
13 situation and that this was not -- she did not go there  
14 knowing that this was going to happen and intentionally  
15 did anything, because she did not.

16 So, with that in mind, I would respectfully ask  
17 you to sentence her more towards the one than the 25,  
18 as far as your discretion as far as what you can do.  
19 Do you want to say anything?

20 MS. MARY GERMAN: Yes, sir, I appreciate the  
21 family and your forgiveness. That is all that I can  
22 ever ask for. In my days, I never never stop thinking  
23 about you. And I am a mother and I understand and I  
24 appreciate your forgiveness. And I am very very sorry.  
25 I wish that I could change time. I can't. If I could,

## JURY CHARGE

1 I would bring your son back. I would trade places with  
2 him. I want you to know that your forgiveness means  
3 everything to me.

4 And Your Honor, I'm so very sorry that I am  
5 standing here in front of you today and I can assure  
6 you that I am a different person today than I have ever  
7 been. Alcohol has been involved in my entire family,  
8 it has just destroyed my family. I would ask for your  
9 leniency for my family's sake. They desperately need  
10 me.

11 MR. LEE: Will you allow her husband to speak  
12 briefly, Your Honor?

13 THE COURT: Sure.

14 MR. GERMAN: Your Honor, the events that happened  
15 is the most devastating thing that ever happened in my  
16 family's life, her life, the family of Sher'Mann  
17 Palmer. And, again, as my wife said, their forgiveness  
18 means a lot. We never felt that we would get that or  
19 even ask for that. But to have that means a lot. We  
20 have a family. We have children and we understand the  
21 emotional toll and impact that that takes on family to  
22 lose such a young man in his prime of life and not  
23 having a chance to live fully.

24 My wife is a good woman. She is a great moral  
25 compass. She instilled great values in all of my kids'

## JURY CHARGE

1 lives and mine. If we could take this back, for sure,  
2 we would. And we apologize to the family. And I would  
3 ask Your Honor for leniency and understanding that  
4 being sorry doesn't make things okay, being sorry  
5 doesn't make this go away, and that this will never go  
6 way, regardless if my wife does a million years. I  
7 know how my wife feels and will feel for the rest of  
8 her life. It impacts her every day and impacts her  
9 family every day.

10 And Mr. Palmer will forever be in our prayers.  
11 And, again, I would ask the Court for leniency and  
12 understanding.

13 THE COURT: All right. Thank you, sir. When I  
14 first became a circuit judge, I was told by an older,  
15 wise judge that this kind of case, felony DUI, was  
16 going to be the toughest kind of case to rule on. And  
17 I can sentence armed robbers, rapists, murderers, but  
18 this is the hardest. And I agree with that.

19 I consider her minimal record, but in the statute  
20 you have to look at that high BA reading. And I  
21 consider the forgiveness by the family. I guess  
22 there's no -- I guess there's credit for time served of  
23 some sort.

24 MR. LEE: She's been on an ankle monitor as part  
25 of her -- since this happened, since she got out. So,

## JURY CHARGE

1 I think that the Court has the discretion, if she's  
2 been on that type of house arrest and ankle monitor,  
3 that you get discretion for time served.

4 THE COURT: House arrest for time served?

5 MR. WHETSEL: On an ankle monitor. I think that  
6 she cannot receive time for that. Jail time for  
7 certain, but not monitor.

8 MR. LEE: It is discretionary for the ankle  
9 monitor.

10 MR. WHETSEL: She's been out, Judge. On ankle  
11 monitor, but I ask that she not receive credit for that  
12 time.

13 THE COURT: I'll sentence you to the Department of  
14 Corrections for a period of 11 years and give you  
15 credit for the time served. Good luck to you, ma'am.

16 MR. LEE: Your Honor, for the record, I neglected  
17 to make some post-trial motions for a new trial based  
18 upon my previous objections, as well as the main issue  
19 about the introduction of the blood at the .275. So, I  
20 would renew that and make a motion for a new trial  
21 based on that.

22 In addition, and I assume that that's going to be  
23 denied but --

24 THE COURT: I would deny that.

25 MR. LEE: Your Honor, the next thing that I would

## JURY CHARGE

1 respectfully ask the Court to consider, given her lack  
2 of record, et cetera, as well as what I consider to be  
3 a realistic appeal issue on the warrantless blood draw,  
4 that I respectfully ask the Court to consider issuing  
5 her an appeal bond that would allow us to do the appeal  
6 with the Court of Appeals on the issue about the  
7 warrantless blood draw. I think it is a novel issue,  
8 and it does -- I think that it has some heat to it and  
9 I would respectfully ask you to consider an appeal bond  
10 while that appeal is being processed.

11 MR. WHETSEL: We would oppose that, Your Honor.  
12 If you take the BAC away, there's still ample evidence.  
13 I think that this case, even without a BAC, there's  
14 still beyond a reasonable. But the BAC obviously makes  
15 it stronger. That being said, the doubt. Jury found  
16 her guilty. If she wants to appeal, that is her  
17 prerogative. She should not be out on bond while that  
18 is happening. We oppose it.

19 MR. LEE: The BAC was obviously very important  
20 because it was very high and the State did argue about,  
21 you know, how she acted, you know, that she acted up in  
22 the room at the hospital and, you know, suggested that  
23 that high BA, you know, essentially, made her  
24 decisions, the choices that she made when she's pulling  
25 out of that parking lot. They suggest that because it

## JURY CHARGE

1 was such a high BA, she wasn't in a position to make a  
2 smart decision. So, that BA is very essential, not  
3 just for the inference that it creates but for the  
4 argument, you know, that it is that high so it did go  
5 into the decision making process. Which the jury  
6 obviously didn't think that she made the right  
7 decision. So, I think it is central to the case and if  
8 it stays out it is a whole different case, in my  
9 opinion.

10 THE COURT: I understand. But I'm going to deny  
11 the motion.

12 MR. LEE: Okay. Thank you, Judge.

13 THE COURT: All right. The Court will be in  
14 recess five minutes.

15 (Brief recess.)

16 THE COURT: I failed to say to all of the  
17 attorneys involved in the case, what a great job I  
18 thought both sides did. And as y'all both know, when  
19 you have great attorneys on both sides it sure makes it  
20 a lot easiest on the Judge. Thank you.

21 MR. WHETSEL: Thank you, Judge.

22 MR. LEE: Thank you.

23 (Trial concluded.)  
24  
25



Three witnesses testified at the suppression hearing. The first witness was the phlebotomist that obtained the blood sample from the Defendant. She testified to the procedure that she uses when obtaining a blood sample for a "legal" purpose. She further testified that she followed that procedure in this case and was the person that drew the blood from the Defendant in this case. The second witness was the SChP Trooper that responded to the hospital and obtained a blood sample from the Defendant. The third witness was the emergency room physician that treated the Defendant on the night of the vehicle collision.

The SChP Trooper testified that he first responded to the scene of the collision and assisted in taking photographs. He then went to the hospital to contact the Defendant and to obtain a blood sample. Once he contacted the Defendant, he read to her an "Advisement of Implied Consent Rights" from a standard SLED form. The rights form used by the Trooper is the form typically used for a misdemeanor DUI advisement. The Trooper testified that he did not have a copy of the standard SLED felony DUI implied consent rights form with him at the hospital. The Trooper testified that he read the "Advisement of Implied Consent Rights" form to her at 2:00 a.m. and she refused to sign the form once the Trooper finished reading it.

The advisement of rights form used by the Trooper references South Carolina statute 56-5-2950 which provides the procedure to obtain a breath sample and then a blood sample if the person is unable to provide a breath sample. One of the exceptions listed in the statute allows the law enforcement officer to obtain a blood sample if the person is unable to provide a breath sample "for any other reason considered acceptable by the licensed medical personnel..."

After reading the implied consent rights form, the Trooper then used a standard SLED "Urine/Blood Collection Report" to document the collection of the blood sample. The Trooper testified to the following information: The Defendant was under arrest at 2:00 a.m. for Felony

Driving Under the Influence with Death Resulting. He knew that he only had two hours to obtain a breath sample and he believed the Defendant would not be able to provide a breath sample within that timeframe. He was unable to obtain a breath sample from the Defendant at the hospital because he would have to take her to the jail or police station where the machine is located. The emergency room physician signed the collection report indicating that the Defendant was unable to provide a breath sample for any medically acceptable reason. The Trooper then had a blood sample collected from the Defendant by the phlebotomist who used a sealed kit provided by the Trooper. The Trooper did not get a search warrant for the blood sample. The Trooper testified that he had probable cause to believe the Defendant had violated the Felony DUI statute at the time he obtained the blood samples. The Trooper saw the scene of the collision and he knew the driver of the car was deceased on scene. When he went to the hospital he knew, based on being at the scene and other information provided to him by other law enforcement officers, the driver of the truck was a female named Mary German. Finally, based on his observations at the hospital, he believed the Defendant was intoxicated.

The emergency room doctor testified regarding her treatment of the Defendant on July 10, 2016. Specifically, she testified to her reason for signing the blood collection form and why she did not believe the Defendant was able to provide a breath sample. The doctor testified that the Defendant arrived at the emergency room at approximately 1:22 a.m. She was not discharged until about 7:30 a.m. The doctor testified that when she signed this form, which was at 2:00 a.m., the Defendant was not cooperating with the emergency room staff. She was cursing and yelling at the staff. She refused to open her mouth to comply with some of the medical testing that was required at the time. The doctor also testified that she was still undergoing tests to determine the extent of any injuries. Based on all of this, the doctor did not believe she was able

to provide a breath sample to law enforcement which is why she signed the collection form. The doctor further testified that alcohol intoxication was a medical diagnosis of the Defendant when she was discharged from the hospital.

S.C. Code Ann. § 56-5-2946 states that a person must submit to a breath, blood, and/or urine test to determine the presence of alcohol and/or drugs if there is probable cause to believe the person violated or is under arrest for a Felony DUI. The statute further states that the tests must be administered at the direction of a law enforcement officer. The South Carolina Supreme Court held that, pursuant to 56-5-2946, a law enforcement officer can direct a person suspected of Felony DUI to provide a blood sample without first offering a breath test or receiving a medical opinion regarding the ability of the suspect to provide a breath test. *State v. Long*, 363 S.C. 360, 610 S.E. 2d 809 (2005).

The United States Supreme Court considered the issue of warrantless blood draws in the seminal case of *Schmerber v. California*. *Schmerber v. California*, 384 U.S. 757, 86 S. Ct. 1826 (1966). The petitioner in *Schmerber* was convicted of driving under the influence of intoxicating liquor. *Id.* at 758. Part of the evidence admitted at trial was chemical analysis of blood drawn at the direction of law enforcement. *Id.* at 759. The Court held that a warrant, issued by a neutral and detached magistrate, is ordinarily required when an intrusion into the human body is concerned. *Id.* at 770. However, the warrantless blood draw was properly obtained because law enforcement could have believed that the time it took to obtain a warrant could have threatened the destruction of evidence. *Id.*

The United States Supreme Court more recently addressed this same issue in *Missouri v. McNeely* and *Birchfield v. North Dakota*. In *McNeely*, the Defendant was charged with driving while intoxicated (DWI). *Missouri v. McNeely*, 569 U.S. 141, 133 S. Ct. 1552 (2013). The

Defendant was arrested for DWI and refused to provide a breath test. *Id.* at 145. The law enforcement officer took him to a hospital where he obtained a blood sample without a warrant. *Id.* at 146. The Supreme Court, relying on *Schmerber*, held that the dissipation of alcohol in the blood stream does not create a per se exigency exception in every drunk driving case. *Id.* at 156. Any warrantless blood draw, based on an exigency exception, must be analyzed on a case-by-case basis. *Id.* at 164.

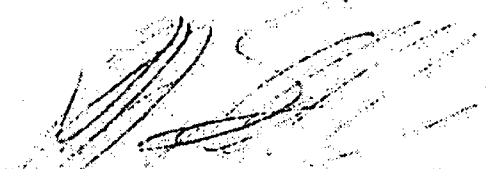
In *Birchfield*, the United States Supreme Court addressed the issue of warrantless breath tests and blood tests incident to arrest. *Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). The Supreme Court considered three separate cases that all dealt with driving while impaired and, specifically, the separate criminalization of failing to provide a blood and/or breath sample for testing. *Id.* at 2173. The Court cited to *Schmerber* and *McNeely* in emphasizing that the court must look at all facts and circumstances before determining if an exigency exception applies for a warrantless search. *Id.* at 2174. The Court then analyzed the search-incident-to-arrest exception. *Id.* The Court held that a breath test, search-incident-to-arrest, does not implicate significant privacy concerns and is permissible. *Id.* at 2178. The Court then analyzed blood tests search-incident-to-arrest. *Id.* The Court ultimately held that a warrantless blood test cannot be administered solely based on the search-incident-to-arrest exception. *Id.* at 2185.

The Court finds that S.C. Code Ann. § 56-5-2946 is not unconstitutional as applied in this case. The Court further finds that S.C. Code Ann. § 56-5-2946 is not changed by the holdings in *McNeely* or *Birchfield*. The Court distinguishes the blood draw in this case from *McNeely* and *Birchfield* because the blood draw in this case was not taken based on an exigency or search-incident-to-arrest exception. In this case, the Trooper testified to the reasons for determining probable cause to suspect the Defendant had violated the Felony DUI statute. S.C. Code Ann. §

56-5-2946, and as interpreted by *State v. Long*, provides that a law enforcement officer can direct that a blood sample be taken for testing to determine the presence of alcohol and/or drugs when the law enforcement officer has probable cause to suspect that person of Felony DUI. The results of the blood alcohol testing of the blood that was taken from the Defendant at the direction of the SChP Trooper was properly obtained pursuant to S.C. Code Ann. § 56-5-2946.

Therefore, it is Ordered that the Defendant's, Mary German, Motion to Suppress the Blood Alcohol Results is Denied.

IT IS SO ORDERED.



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Brooks Goldsmith  
Presiding Judge  
Fourteenth Judicial Circuit

September 25, 2018

WITNESSES

Clarkson, S. S. CHP

DOCKET NO. 2016GS0701356

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury. 575

Defendant

COURT OF GENERAL SESSIONS

September Term 2016

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

ARREST WARRANT NUMBER

2016A0710200242

THE STATE

vs.

Mary Ann German

Indictment For

Felony Driving Under the Influence, Death Results

SC Code: 56-5-2945(A)(2)

CDR Code: 0395

Defendant

Foreperson of Grand Jury

Date: SEP 15 2016

Witness:

VERDICT

Guilty

C.C.C. PLS. and G.S.

True Bill

Foreperson of Petit Jury

Date: 11/15/18

INDICT

576

STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

INDICTMENT

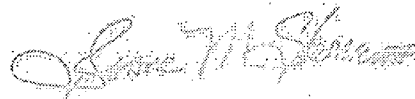
2016GS0701356

At a Court of General Sessions, convened on September 15, 2016, the Grand Jurors of Beaufort County present upon their oath:

**Felony Driving Under the Influence, Death Results**

That in Beaufort County, South Carolina, on or about July 10, 2016, the Defendant, Mary Ann German, did, while under the influence of alcohol, drugs, or both, drive a motor vehicle and while driving the motor vehicle Mary Ann German did commit an act forbidden by law or neglected a duty imposed by law in the driving of the motor vehicle, to wit: the Defenant violated SC Code Section 56-5-1810 by driving left of the center line of the roadway, and this act or neglect proximately caused death to Shermann Palmer, all in violation of Section 56-5-2945(A)(2), et al. of the Codes of Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



---

**Solicitor**

(1-25 years and \$10,000 - \$25,100)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort

STATE

INDICTMENT/CASE#

2016GS0701356

VS.

Mary Ann German

A/W#

2016A0710200242

AKA:

Date of Offense:

07/10/2016

Race: White Sex: Female Age: 45

S.C. Code §:

56-5-2945(A)(2)

DOB: [Redacted] SS#: [Redacted]

CDR Code#:

0395

Address: Myrtle Beach, SC 29577, Horry County

DL# SID#

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Felony DUI with Death Resulting

In violation of § 56-5-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395.

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  MANDATORY GPS  §17-25-45 (CSC winner 1 or CSC winner 3)

The charge is:  As indicted,  Lesser Included Offense,  Defendant Waives Presentation to Grand Jury (def's initials) The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State

ATTEST: [Signature] 78998 [Signature] [Signature] 66471 (Solicitor) (SC Bar #) (Defendant) (Attorney for Defendant) (SC Bar #)

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 11 days/months/years  under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_ provided that upon the service of \_\_\_\_\_ days/months/years and or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.  The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:  RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms:

Set by SCDPPPS  Obtain GED  Attend Voc. Rehab. Or Job Corp. \_\_\_\_\_

Recipient: <u>DUI Assault</u>		
*Fine:	\$	<u>100</u>
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ <u>100</u>
§56-5-2995 (DUI Assessment)	\$12	\$ <u>12</u>
§56-1-286 (DUI Breath Test)	\$25	\$ <u>25</u>
Proviso 61.6 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforcement Funding)	\$25	\$ _____
§14-1-213 (Drug Court Surcharge)	\$150	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/each	\$ _____
3% to County (if paid in installments)		\$ <u>411</u>

May serve W/E beginning \_\_\_\_\_  Substance Abuse Counseling  Random Drug/Alcohol Testing Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_ \$ \_\_\_\_\_ Paid to Public Defender Fund

TOTAL: \$341.11

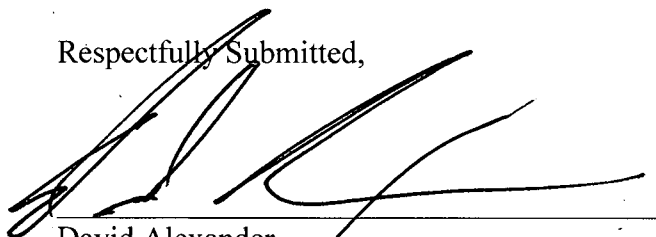
Clerk of Court/Deputy Clerk: [Signature] Court Reporter: [Signature]

Other: \_\_\_\_\_  Appointed PD or appointed other counsel Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees. Presiding Judge: [Signature] Judge Code: 2139 Sentence Date: November 15, 2018

## CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,



David Alexander  
Appellate Defender

This 9th day of March, 2020.

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

**RECEIVED**  
MAR 09 2020  
SC Court of Appeals