

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

R. Ferrell Cothran, Circuit Court Judge

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S.C. SUPREME COURT

RODNEY GALIMORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-001338

APPENDIX

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT) INDICTMENT NO: 2007-GS-07-1584
 2007-GS-07-1616
 2007-GS-07-1617
 2008-GS-07-2690

STATE OF SOUTH CAROLINA)
)
)
 VS.)
)
)
 RODNEY L. GALIMORE)
)
)
 DEFENDANT.)
 _____)

JURY SELECTION

held before the Honorable Carmen T. Mullen
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Beaufort County Courthouse
 Beaufort, South Carolina
 on Monday, November 17, 2008, Commencing at 2:38 p.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
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PROCEEDINGS

1
2 THE COURT: Well, ladies and gentlemen, welcome.
3 And as Liz pointed out, I apologize for my throat. For
4 one time, I cannot blame my children for giving me this
5 cold. It, in fact, was someone from the clerk's
6 office, and probably from the clerk herself. So,
7 anyway, please just bear with me. I'm going to shout
8 as loud as I can. And I laughingly say this, because I
9 usually don't even need a microphone, I talk so loud.
10 So that probably has something to do with yelling at my
11 kids most of the time. But, anyway, ladies and
12 gentlemen, I'm sure, as everyone told you, we are
13 qualifying this jury in stages, I should say. And it's
14 my understanding that our clerk has done roll call.

15 I might want to go ahead and introduce myself,
16 since I don't believe I have done so. My name is
17 Carmen Mullen. I am one of two resident circuit court
18 judges here in the fourteenth circuit, which
19 encompasses Beaufort, Jasper, Hampton, Allendale and
20 Colleton counties. And it's my pleasure to be in my
21 home office, in my home courthouse, which is here in
22 Beaufort, although I do live on Hilton Head, ladies and
23 gentlemen.

24 But, respectfully, I want to tell you that this
25 term of court -- and I'm assuming Ms. Smith has already

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1 told you that our term of court for this week is for
2 one week. I am currently trying a medical malpractice
3 case that has kind of fallen over from last week. So
4 what I intend on doing this afternoon is pulling one
5 jury, a criminal jury, and then to have you-all come
6 back in the morning. So with that said, that's what
7 our plan is, ladies and gentlemen.

8 But at this time, what I am going to do is go
9 through a list of qualifications and --

10 Yes, ma'am?

11 THE CLERK OF COURT: May I swear your jury?

12 THE COURT: Absolutely.

13 THE CLERK OF COURT: I will not swear at your
14 jury, of course.

15 THE COURT: Thank you.

16 THE CLERK OF COURT: Ladies and gentlemen, if
17 you could please stand and raise your right hand.

18 [Whereupon, the jury panel is duly sworn by the
19 clerk of court as follows: do you solemnly swear or
20 affirm that all of the answers you will give this Court
21 shall be the truth, so help you God]

22 THE CLERK OF COURT: If you take this oath,
23 please have a seat while saying I do.

24 [Whereupon, the jury panel complies]

25 THE COURT: Thank you. I appreciate you sparing

1 me the few extra words I would have had to have done to
2 swear them in.

3 - - - - -

4 JURY QUALIFICATION

5 THE COURT: Ladies and gentlemen, I'm going to
6 ask you a series of questions. They are mandated by
7 statute. Respectfully, what I ask is that you stand,
8 give me your name and juror number, and then respond to
9 the question when called upon.

10 I will also tell you, ladies and gentlemen, that
11 these questions are vitally important to the lawyers in
12 this case to be able to fairly determine a good and
13 fair jury; therefore, it is incredibly important that
14 you respond truthfully and accurately to all of the
15 questions. Ladies and gentlemen, there is no dumb
16 question. If you don't know if you should or should
17 not respond, you can just stand up and ask me and I
18 will let you know whether or not it's appropriate.

19 Additionally, ladies and gentlemen, maybe not
20 the first questions, but a few of the questions, are
21 quite personal in nature and because of that, ladies
22 and gentlemen, you may not want to disclose the answer
23 to those questions in front of your fellow jurors.
24 What I ask is you do one or two things: you can either
25 stand, give me your name and juror number and ask to

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1 approach, and then you and I will have a conversation
2 out of the hearing of the rest of the jurors; or,
3 ladies and gentlemen, at the very end I'm going to ask
4 just a catch-all question that says is there anything
5 you need to discuss with me before I go ahead and
6 qualify this jury. It would be at that time that you
7 would come forward and approach me.

8 Again, ladies and gentlemen, I need you to
9 understand how important it is that you respond to
10 these questions. If for some reason you fail to
11 respond to one of these questions and it comes to my
12 attention, and you end up sitting on my jury, it is
13 possible that I will have to miss-try the case. Again,
14 I would want that -- never want that to happen in one
15 of my courtrooms. So, again, it is vitally important
16 that you respond truthfully and accurately. All right?

17 So with that said, ladies and gentlemen, if
18 anyone cannot hear me during any of this, just start
19 waving your hands. Okay?

20 Is there any member of the jury panel that is
21 not a citizen of the United States? If so, please
22 stand.

23 [Whereupon, there is no response]

24 THE COURT: Is there any member of the jury
25 panel who is not a resident and citizen of Beaufort

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1 County? If so, please stand.

2 [Whereupon, there is no response]

3 THE COURT: Is there any member of the jury
4 panel that is unable to read, write, speak, or
5 understand the English language? If so, please stand.
6 And I always say this: if you can't understand the
7 English language, I have no idea how you are going to
8 respond to this question. But, again, it's statutorily
9 required, so I'm asking it.

10 Is there any member of the jury panel who is
11 unable to read, write, speak, or understand the English
12 language?

13 [Whereupon, there is no response]

14 THE COURT: Is there any member of the jury
15 panel that has less than a sixth-grade education or its
16 equivalent?

17 [Whereupon, there is no response]

18 THE COURT: Is there any member of the jury
19 panel who is unable, because of physical or mental
20 infirmities, to render efficient jury service?

21 Ladies and gentlemen, this question is specific
22 to those of you who are unable to sit at an hour or an
23 hour and a half at a time and listen to the evidence as
24 it's presented during the trial. We typically take
25 breaks about every hour, hour and a half or so. We've

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1 got coffee, Cokes, Nabs, food, whatever you need to
2 keep you going. But I need anyone that is unable to
3 sit in a jury box for up to an hour, hour and a half,
4 at a time to respond at this time.

5 [Whereupon, there is no response]

6 THE COURT: Thank you.

7 Is there any member of the jury panel that has
8 been convicted by guilty plea or trial, in a state or
9 federal court of record, of a crime punishable by
10 imprisonment for more than one year and your civil
11 rights have not been restored by pardon or amnesty?

12 Now, ladies and gentlemen, this does not mean
13 you have to have served over a year in prison. It
14 simply means the charge for which you were either
15 convicted of, or pled guilty to, carried a sentence
16 that exceeded one year.

17 Yes, sir? If you would stand, please, and give
18 me your name and number.

19 MR. LEGREE: Juror number 89.

20 THE COURT: Sir, would you like to approach me,
21 or are you fine right there?

22 MR. LEGREE: Pretty much okay.

23 THE COURT: All right, sir.

24 MR. LEGREE: It was for -- well, it was a breach
25 of trust charge, and it was a possession of cocaine.

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1 THE COURT: Okay, sir.

2 MR. LEGREE: Yeah.

3 THE COURT: All right, sir. Those do carry more
4 than up to a year in prison, so I'm going to go ahead
5 and allow you to be excused. But, sir, I appreciate
6 you being here. Thank you, sir.

7 MR. LEGREE: Thank you.

8 THE COURT: Thank you.

9 Yes, ma'am? Your name and jury number.

10 MS. BOLDEN: I'm Lakeisha Bolden, and my juror
11 number is 19.

12 I don't know if it will matter or not, but I
13 know when I checked my background check it came up and
14 it was for a simple possession of marijuana.

15 THE COURT: Okay. Ma'am, that would not carry
16 more than a year in jail so I'm going to go ahead and
17 invite you to stay, unless there is anything else on
18 our records that we have.

19 [Off the record momentarily]

20 THE COURT: No, ma'am. That would not
21 disqualify you, so I'm going to ask you to stay with
22 us. Thank you for bringing that to my attention.

23 MS. BOLDEN: Okay.

24 THE COURT: Anyone else?

25 [Whereupon, there is no response]

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1 THE COURT: Is there any member of the jury
2 panel that is a clerk or deputy clerk of court,
3 constable, sheriff, or other commissioned law
4 enforcement officer, probate judge, county
5 commissioner, magistrate, or other county officer, or
6 employed within the walls of any courthouse? If so,
7 please stand.

8 [Whereupon, there is no response]

9 THE COURT: Is there any member of the jury
10 panel who has previously served on jury duty here in
11 circuit court, which means right up here at this
12 courthouse -- not city court, not magistrate court, not
13 federal court -- during the last calendar year? If so,
14 please stand.

15 Yes, ma'am?

16 MS. BOLDEN: I'm sorry.

17 THE COURT: We, luckily, got you twice.

18 MS. BOLDEN: I don't -- I'm not exactly sure
19 what the date was. But I was staying in Long Castle
20 right then, and I had to come here but we got
21 dismissed.

22 THE COURT: Okay. Give me your full name again.

23 MS. BOLDEN: Lakeisha Bolden.

24 THE COURT: Ms. Bolden --

25 MS. BOLDEN: Uh-huh. B-O-L-D-E-N.

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1 THE COURT: Addie, can you look her up for me?

2 Ms. Bolden, I'm going to ask that you stay with
3 us. We're going to look you up, and we can tell you
4 when you were here last. All right? And if it's
5 appropriate, I will excuse you. But just sit tight for
6 right now. Okay?

7 MS. BOLDEN: All right. Thank you.

8 THE COURT: Thank you.

9 Has any member of the jury panel served as a
10 member of the Beaufort County Grand Jury during the
11 last -- for the past several years? If so, please
12 stand.

13 [Whereupon, there is no response]

14 THE COURT: Ladies and gentlemen, we now move to
15 what are called jury exemptions. State law provides
16 several exemptions to jury service. Now, exemption
17 does not mean you are not qualified to serve, it means
18 you can choose not to serve if you so wish. Of course,
19 I'll encourage you to stay, if you are inclined to.
20 But, again, if are qualified to serve and you would
21 like to claim an appropriate exemption, I will honor
22 it.

23 Ladies and gentlemen, those of you who are
24 sixty-five years of age or older may be exempted from
25 jury service, if you choose.

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1 Is there anyone on the jury panel that is over
2 sixty-five that would like to be excused from jury
3 service here this week? If so, please stand.

4 [Whereupon, there is no response]

5 THE COURT: Thank you.

6 Another exemption concerns prior jury service.
7 No person is required to serve as a juror more often
8 than once every three years; therefore, if any member
9 of the jury panel has served up here in circuit court
10 during the last two calendar years and would like to be
11 exempted, of course I will honor that exemption. Is
12 there anyone that has served during the last two
13 calendar years that would like to be exempted this
14 week?

15 Ms. Bolden, we are still looking for you, so sit
16 tight with me.

17 Anyone else?

18 [Whereupon, there is no response]

19 THE COURT: Ladies and gentlemen, those people
20 who have served as grand jurors in the last five
21 calendar years may also be exempt from jury service, if
22 they so choose; therefore, if there is anyone on my
23 jury panel that has served on the Beaufort County Grand
24 Jury during the last five calendar years and would like
25 to claim this exemption, I will honor it at this time.

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1 [Whereupon, there is no response]

2 THE COURT: Thank you.

3 Ladies and gentlemen, the next exemption deals
4 with those of you who have small children. And,
5 respectfully, I ask that you listen carefully to the
6 question. It involves four parts, all of which must
7 apply for you to be able to claim this exemption.

8 You may be exempted from jury duty if you have a
9 small child or small children under the age of seven
10 years, you have a legal custody of that child or
11 children, you have the principle care, custody and
12 control of that child or children, and, lastly, you are
13 unable to make arrangements for the adequate care of
14 your child or children while performing jury duty.

15 My first question is going to be who has your
16 children right now. Okay? Ladies and gentlemen, this
17 is for parents who are stay-at-home parents, or maybe a
18 husband and wife who work opposite shifts so they're
19 able to care for their young ones that are home.

20 Is there anyone that needs to go ahead and claim
21 this exemption? If so, please stand at this time.

22 [Whereupon, there is no response]

23 THE COURT: The next exemption involves those of
24 you who may be attending school at this time or working
25 in some capacity at a school. If this exemption

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1 applies to you and you wish to be exempted, I can
2 transfer your service to another term of court at a
3 time that does not conflict with your school service or
4 duties.

5 Ladies and gentlemen, is there any member of the
6 jury panel that is a full-time student, school teacher,
7 school crossing guard, school bus driver, or who serves
8 in any other school-related function, who is unable to
9 serve on jury duty here this week as a result of that
10 school involvement? If so, please stand.

11 Yes, ma'am? Your name and juror number?

12 MS. CONLEY: Tishanna Conley. I'm juror number
13 30.

14 THE COURT: Yes, ma'am.

15 MS. CONLEY: If it's going to take -- if it's
16 going to go into next week it would be a problem, but
17 if it's going to be this week it shouldn't be a
18 problem.

19 THE COURT: Okay. Ms. Conley, I can tell you it
20 is not going to go into next week. I can absolutely
21 assure you of that. All right?

22 MS. CONLEY: Thank you.

23 THE COURT: Thank you.

24 Anyone else?

25 [Whereupon, there is no response]

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1 THE COURT: Is there any member of the jury
2 panel who is employed with the Department of
3 Corrections at a penitentiary? If so, please stand.

4 [Whereupon, there is no response]

5 Is there any member of the jury panel who
6 performs services for a business, commercial, or
7 agricultural enterprise, which are so essential to the
8 operation of that business that if you were required to
9 perform jury duty here this week that your enterprise
10 would have to close, or shut its doors down, or quit
11 functioning for the week?

12 Now, ladies and gentlemen, again, because you
13 would be a qualified juror, I can't permanently excuse
14 you from jury duty, but what I can do is transfer you
15 to a term of court that works better with your
16 schedule; for instance, a slower week or possibly when
17 you can make sure you have coverage.

18 I will also warn you, though, once I transfer
19 you once, you don't get transferred again. Okay?

20 So is there anyone that would like to claim this
21 exemption?

22 [Whereupon, there is no response]

23 THE COURT: Thank you.

24 Ladies and gentlemen, that concludes the
25 statutory list of qualifications and exemptions.

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1 Yes, ma'am?

2 THE CLERK OF COURT: Ms. Bolden; I don't have
3 her listed. She may have served in magistrate court
4 when magistrate court was using this courtroom.

5 THE COURT: Up here? Okay.

6 All right. Ms. Bolden, Ms. Addie, from the
7 clerk's office, tells me that she does not believe and
8 does not have you on the records as having served here
9 in circuit court. It might be that -- for a time, we
10 had magistrate's court up here in what we call the big
11 courtroom in the big courthouse.

12 But she has stated that our rolls do not reflect
13 you having sat on a circuit court jury during the last
14 three calendar years. Okay? And I don't doubt that
15 you were here, and I -- our best guess is is that you
16 were here for magistrate's court. But, of course, that
17 wouldn't be an exemption, so I can't honor it. Okay?
18 But, again, thank you for being here.

19 All right. Ladies and gentlemen, as I was
20 stating before, it may be that you are qualified to
21 serve and no exemption applies to you; however, this
22 would be the absolute worse possible week to serve on
23 jury duty. Now, let me tell you, though, in my
24 experience, some weeks are better than others. And I
25 can tell you, as far as the court week is concerned, we

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1 have a relatively short court week because of my case
2 from last week being carried over. I don't believe
3 jury service is going to extend probably past Thursday
4 for this term of court. So, again, this is quite a
5 good week to serve. And, of course, if you do stay on
6 the panel, you have claimed and earned your exemption
7 for the next three years. So I'm going to encourage
8 you to stay.

9 However, if this is the absolute worse possible
10 week out of fifty-two weeks in the year for you to sit
11 on jury service, I'm going to do everything I can to
12 transfer your jury service to a more convenient term.
13 All right?

14 And, ladies and gentlemen, I can't transfer you
15 for some frivolous reason. But some reasons that I
16 have transferred people in the past are if you have a
17 family member who possibly is undergoing surgery this
18 week, or you've got something else going on that is
19 just absolutely taking up every last bit and energy of
20 your time. I'm going to make vitally sure that if you
21 sit on my jury here this week, that you're going to be
22 able to pay attention and process the information
23 that's put in front of you and it's vitally important
24 that a hundred percent of your attention is in this
25 courtroom, because these -- this is these litigants'

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1 only day in court, and I want you to understand how
2 vitally important it is that we have your full
3 attention.

4 So with that said, ladies and gentlemen, if
5 there is anyone at this time who either would like to
6 speak to me about a transfer or would like to respond
7 to one of the earlier questions, ladies and gentlemen,
8 now is the appropriate time to do that.

9 If you'll just form a line over on this side
10 with Bob, and I'll have you approach me and speak to me
11 individually, and I'll see you and I'll do the very
12 best I can for you. Okay?

13 THE BAILIFF: Juror 129, Mr. Rodriguez.

14 THE COURT: Hi.

15 MR. RODRIGUEZ: Hi.

16 THE COURT: I'm not going to shake your hand.
17 I'm so sick, I would hate to make you ill.

18 Yes, sir?

19 MR. RODRIGUEZ: I'm in the middle of a big
20 mission in my home church here in town, Calvary Baptist
21 Church, and I am the moderator and coordinator of that
22 conference and as of right now I have missionaries that
23 are coming into town, and I'm their point of contact,
24 and I'm trying to coordinate places for them to stay.
25 And I'm going to be doing this from today until

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1 Wednesday, and so if I was to be selected onto the
2 jury, I'm going to have a hard time concentrating. Do
3 you understand what I'm saying?

4 THE COURT: Absolutely.

5 What I am going to do is this: I'm going to go
6 ahead and transfer you to another term of court that
7 would be -- just understand the next time, make sure
8 that --

9 MR. RODRIGUEZ: Sure.

10 THE COURT: -- there is no conflict. And if
11 there is, when you get your notice call in and --

12 MR. RODRIGUEZ: Okay.

13 THE COURT: Okay?

14 MR. RODRIGUEZ: Yes, ma'am.

15 THE COURT: But I'm going to go ahead and excuse
16 you. It's Mr. Rodriguez; is that correct?

17 MR. RODRIGUEZ: Yes, ma'am.

18 THE COURT: I'll go ahead and excuse you, sir.
19 We'll transfer your service. Okay. Thank you.

20 MR. RODRIGUEZ: I can leave the courtroom now?
21 Or should I --

22 THE COURT: You may leave the courtroom now.
23 Thank you.

24 THE BAILIFF: Juror 159, Ms. Vanwoert.

25 THE COURT: Hi.

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1 MS. VANWOERT: Hi.

2 THE COURT: I'm not going to shake your hand.

3 Okay?

4 MS. VANWOERT: I have four kids at home --

5 The only thing I have is a conflict on Friday.

6 I have a -- I'm a single sole business owner.

7 THE COURT: You're covered. Don't you worry
8 about it. I got you.

9 Okay. You say you're a sole business owner?

10 MS. VANWOERT: Yeah. I mean, I'm all right
11 until -- because I have an advertised sale going on
12 Friday, because I'm closing the business. So I have an
13 advertised sale that's going on from Friday. I mean, I
14 can -- Thursday I'm fine. But I just need to be in the
15 store on Friday.

16 THE COURT: Okay. I can protect you for Friday.
17 No problem.

18 MS. VANWOERT: Okay.

19 THE COURT: We're going to protect Ms. Vanwoert
20 for Friday. Okay? Thank you.

21 MS. VANWOERT: Thank you.

22 THE COURT: Thank you.

23 THE BAILIFF: Juror 142, Mr. Singleton.

24 THE COURT: How are you, sir?

25 MR. SINGLETON: My boss is out. I'm the only

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1 one on call this week.

2 THE COURT: Okay.

3 MR. SINGLETON: I just --

4 THE COURT: Okay. Okay. Again, I can transfer
5 your service, if that's what you want me to do, but I
6 can't excuse you permanently. Is that what you want me
7 to do?

8 MR. SINGLETON: It would be better for me.

9 THE COURT: Okay. All right, Mr. Singleton.

10 MR. SINGLETON: When you say transfer, do you
11 mean transfer until later in the --

12 THE COURT: To another term of court. Right.
13 But once we transfer you, next time they won't transfer
14 you again. Okay?

15 MR. SINGLETON: All right.

16 THE COURT: But we'll go ahead and let you go.
17 Thank you, Mr. Singleton.

18 MR. SINGLETON: Thank you.

19 THE COURT: I appreciate it, sir.

20 MR. SINGLETON: Uh-huh. Thank you.

21 THE COURT: Okay.

22 THE BAILIFF: Juror 150, Ms. Stokes.

23 THE COURT: Hi, Ms. Stokes.

24 MS. STOKES: Hi.

25 I'm not sure if I should be here or not. I was

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1 not convicted of it, but I got involved in a mail-fraud
2 thing. I'm on probation for it. I'm off this month.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: You don't ever remember being in
6 court, then?

7 MS. STOKES: I've never --

8 THE COURT: You've never pled guilty to it?

9 MS. STOKES: No. I never went to court.

10 THE COURT: It's a little strange for you to
11 have probation and never having either been convicted
12 or pled guilty.

13 MS. STOKES: I talked to a lawyer. We went into
14 an office, and we talked in there.

15 THE COURT: Okay. But you never went in front
16 of a judge?

17 MS. STOKES: No.

18 THE COURT: Okay.

19 [Whereupon, an off-the-record bench conference
20 is held]

21 THE COURT: Okay. I think you are qualified to
22 serve, because it has a diversion and it's not a
23 conviction.

24 MS. STOKES: Uh-huh.

25 THE COURT: And so I'm going to ask that you

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1 stay with us. Okay?

2 MS. STOKES: okay.

3 THE COURT: But I appreciate you letting me
4 know. Thank you.

5 MS. STOKES: Okay.

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: Is Frances Scott here? Frances
9 Scott?

10 [Whereupon, Ms. Scott indicates]

11 THE COURT: Ms. Scott, will you please come
12 forward.

13 [Whereupon, Ms. Scott complies]

14 THE COURT: Hi, Ms. Scott. How are you?

15 MS. SCOTT: Fine. And you?

16 THE COURT: Good. Come here for a second. You
17 need to get a little closer.

18 Ma'am, in your past were you ever convicted of
19 any type of a housebreaking, maybe, in Richland County?
20 It could be the wrong person --

21 MS. SCOTT: Yes. Wrong one.

22 THE COURT: Wrong person?

23 MS. SCOTT: Yes.

24 THE COURT: Okay. I just wanted to make sure.

25 MS. SCOTT: Okay.

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1 THE COURT: Have you always been from here?
2 MS. SCOTT: YES.
3 THE COURT: How long have you lived here?
4 MS. SCOTT: Sixty-three years.
5 THE COURT: Sixty-three years?
6 MS. SCOTT: Uh-huh.
7 THE COURT: You were born and raised here?
8 MS. SCOTT: Uh-huh.
9 THE COURT: All right, ma'am. So this is not
10 you.
11 MS. SCOTT: No.
12 THE COURT: I've got some names that had you
13 under as Dorothy Comstock, Linda Durand, Linda Maxwell.
14 Any of those --
15 MS. SCOTT: Huh-uh.
16 THE COURT: -- anything familiar? Okay.
17 MS. SCOTT: No.
18 THE COURT: All right. It's not you.
19 MS. SCOTT: No.
20 THE COURT: I appreciate it.
21 MS. SCOTT: Okay.
22 THE COURT: Okay. Well, I thought so. You are
23 going to stay with us. Okay?
24 MS. SCOTT: Yes, ma'am.
25 THE COURT: Go ahead and follow Al over there.

1 [Whereupon, Ms. Scott complies]

2 THE COURT: Ladies and gentlemen, does anyone
3 else need to respond to any of the questions that I
4 asked earlier?

5 [Whereupon, there is no response]

6 THE COURT: All right. I find this jury panel
7 qualified.

8 All right. Ladies and gentlemen, you're going
9 to -- what we do at this point is we're going to put
10 y'all's names in a hopper. I've got to go through now
11 and ask you just a few more questions in response to
12 this specific case that we intend on trying here this
13 week. So, ladies and gentlemen, I'm going to go ahead
14 and excuse you, if you don't mind, to outside the
15 courtroom. And, respectfully, I've got to ask you to
16 leave the courtroom. You can't keep your seats. Go
17 refresh yourselves. Right now it is -- by my clock,
18 it's 3:05. Y'all be back at quarter after. All right?
19 At 3:15, we'll go ahead and pull this first jury.

20 [Whereupon, a recess is taken from 3:01 p.m. to
21 3:10 p.m.]

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JURY VOIR DIRE

THE COURT: All right. Well, ladies and gentlemen --

At this time, solicitor, if you would call your case.

MS. TANNER: Thank you, Your Honor.

The State of South Carolina is ready in the State vs. Rodney Galimore, charging him with felony driving under the influence where death results.

We are ready in reckless -- the State of South Carolina vs. Rodney Galimore for reckless homicide.

The State of South Carolina vs. Rodney Galimore, driving under suspension third or subsequent offense within last five years.

And the State is also ready in the State of South Carolina vs. Rodney Galimore, charging him with child endangerment.

I'll present these.

[Whereupon, the solicitor proffers documents to the Court]

THE COURT: Thank you.

All right. Ladies and gentlemen -- and again, I will do my best. If anyone cannot hear me, please wave again. All right?

At this time, ladies and gentlemen, we are about

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1 to pull the jury in the case of the State of South
2 Carolina vs. Mr. Rodney Galimore, who is charged in the
3 bill of indictments with the offenses of DUI felony
4 driving under the influence where death results,
5 reckless homicide, driving under suspension, and child
6 endangerment.

7 Now, ladies and gentlemen, the State in this
8 case is being represented by Ms. Angela Tanner.

9 If you would stand up and face the jury panel,
10 please.

11 [Whereupon, Ms. Tanner complies]

12 THE COURT: Thank you.

13 And Mr. Galimore in this case -- Mr. Galimore,
14 if you would stand, please, and face the jury panel.

15 [Whereupon, Mr. Galimore complies]

16 THE COURT: Thank you.

17 Mr. Galimore is being represented by Mr. Gene
18 Hood of the Beaufort bar.

19 Ladies and gentlemen, I have the following
20 questions to ask you. And as we did before, if you
21 need to respond to any of the questions, respectfully,
22 I ask you to stand, give me your name and juror number,
23 and then I will call on you to respond.

24 I will remind you, ladies and gentlemen, that
25 this is a court of record, which just means everything

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1 both you and I are saying is taken down by my court
2 reporter. So as loud as I am trying to speak,
3 respectfully, I ask the same from y'all. And I
4 understand we do not have microphones.

5 Ladies and gentlemen of the jury panel; is there
6 any member of the panel that is related by blood or
7 connected by marriage with the defendant in this case,
8 Mr. Rodney Galimore? If so, please stand.

9 [Whereupon, there is no response]

10 THE COURT: Is there any member of the jury
11 panel that is a close personal friend or share a
12 special relationship with the defendant, Mr. Rodney
13 Galimore? If so, please stand.

14 [Whereupon, there is no response]

15 THE COURT: Ladies and gentlemen, the alleged
16 victim in this case is a Ms. Mary Dion. Ladies and
17 gentlemen, my question is the same: are there any
18 members of the jury panel that are related by blood or
19 connected by marriage with the alleged victim, Mary
20 Dion?

21 [Whereupon, there is no response]

22 THE COURT: And, again, is there any member of
23 the jury panel that is a close personal friend or share
24 -- or shared a close personal relationship or
25 friendship with Ms. Mary Dion? If so, please stand.

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1 [Whereupon, there is no response]

2 THE COURT: Ladies and gentlemen, potential
3 witnesses in this case are as follows: Lieutenant
4 Corporal Russell Scott Ash, Ms. Jacquelyn Cook Jackson,
5 Lieutenant Joseph Denbeck, Ms. Denise Diggs, Mr. Rodney
6 Galimore, Jr., Ms. Ashley Goldman, Corporal Issac
7 Gregory, Deputy Selena Nelson, Ms. Catheryn Richardson,
8 Corporal Johnny Rezado, Dr. Roger Sorg, Agent Shana
9 Sorrels, Trooper Nick Sprouse, and Lieutenant Corporal
10 Carl Woods.

11 Ladies and gentlemen, the questions are the same
12 as I stated before. Is there any member of the panel
13 that is related by blood or connected by marriage, or a
14 close personal friend, or share a special relationship
15 with any of these potential witnesses? If so, please
16 stand.

17 All right. Yes, sir? Your name and juror
18 number.

19 MR. FORNARI: Juror number 54, Gabriel Fornari.
20 Two of the named individuals are my patients.

21 THE COURT: Okay. Which ones are those, sir?

22 MR. FORNARI: Jacquelyn Cook, and Denise Diggs.

23 THE COURT: Sir, the fact that two of the
24 potential witnesses in this case are patients of yours,
25 would that affect your ability to be fair and impartial

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1 in the trial of this case?

2 MR. FORNARI: I guess it would depend on what
3 they were talking about.

4 THE COURT: What they were going to testify to?

5 MR. FORNARI: Right.

6 THE COURT: Is that correct? All right, sir.
7 Will you come approach for a moment.

8 And can I see the attorneys?

9 [Whereupon, the Court, Mr. Fornari, and
10 attorneys confer]

11 THE COURT: All right. You understand the gist
12 of the testimony?

13 MR. FORNARI: Yes.

14 THE COURT: Do you think that would affect your
15 ability to be fair and impartial in the trial of this
16 case?

17 MR. FORNARI: Probably, yes.

18 THE COURT: Okay. I'm going to go ahead and
19 excuse you from the trial of this case, but
20 respectfully I'm going to ask you to just sit tight
21 with me, okay --

22 MR. FORNARI: Sure.

23 THE COURT: -- until I excuse everyone. And,
24 Doctor, what is your last name?

25 MR. FORNARI: Fornari.

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1 THE COURT: Fornari. Okay. I appreciate it,
2 but I'm going to go ahead and excuse you from the trial
3 of this case.

4 MR. FORNARI: Thank you.

5 THE COURT: But sit tight, and we'll let you go
6 after this. Okay?

7 MR. FORNARI: Thank you.

8 THE COURT: All right. I might want to just
9 stay right here.

10 Ma'am, give me your name and juror number.

11 MS. EASLER: Andrea Easler, juror number 44.

12 THE COURT: Ms. Easler, who do you know?

13 MS. EASLER: I serve on the board of Volunteers
14 in Medicine, with Dr. Sorg.

15 THE COURT: Okay. Ma'am, the fact that Dr. Sorg
16 may testify in this case as to a medical outcome, would
17 that affect your ability to be fair and impartial in
18 the trial of this case?

19 MS. EASLER: No. It would not.

20 THE COURT: Are you personal friends with Dr.
21 Sorg?

22 MS. EASLER: No, other than just my relationship
23 on the board.

24 THE COURT: Okay. I appreciate it. And I want
25 to make absolutely sure, just based on the evidence and

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1 the totality of everything that is presented in this
2 case, you believe you can be fair and impartial as a
3 juror?

4 MS. EASLER: Yes, I do.

5 THE COURT: Thank you, ma'am. I appreciate it.
6 You may be seated.

7 Ma'am, your name and juror number?

8 MS. BLIGEN: Karen Lagdon Bligen.

9 THE COURT: Yes, ma'am. Who do you know?

10 MS. BLIGEN: Selena Nelson.

11 THE COURT: All right. Just a moment.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE COURT: Ma'am, the fact that you know that
15 officer, would that affect your ability to be fair and
16 impartial in the trial of this case?

17 MS. BLIGEN: No.

18 THE COURT: Are you convinced of that?

19 MS. BLIGEN: Yes.

20 THE COURT: All right. How well do you know
21 her, ma'am?

22 MS. BLIGEN: We were friends. I don't see her
23 or talk to her. Lately, I haven't been in touch.

24 THE COURT: Okay. I mean, have you socialized
25 with her say in the --

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1 MS. BLIGEN: Not every day, or not like that.

2 THE COURT: Okay. All right. I appreciate it.
3 I am going to go ahead and ask that you stay with us.
4 Thank you.

5 [Whereupon, an off-the-record bench conference
6 is held]

7 THE COURT: Okay. Anyone else?

8 [Whereupon, there is no response]

9 THE COURT: Ladies and gentlemen, I introduced
10 you earlier to the attorneys that are going to be
11 trying this case. As I told you before, they are
12 Angela Tanner of the Solicitor's office, and Mr. Gene
13 Hood of the Beaufort bar. My question is the same to
14 those of you as I stated before. Is there any person
15 on the panel related by blood, or connected by
16 marriage, or share a close personal or special
17 relationship with either of the attorneys that are
18 going to be involved in this case? If so, please
19 stand.

20 [Whereupon, there is no response]

21 THE COURT: Ladies and gentlemen, is there any
22 member of the jury panel that is related by blood or
23 marriage, or a friend or acquaintances of, a member of
24 any law enforcement agency? If so, please stand.

25 I know that was a pretty broad question.

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1 UNIDENTIFIED: Could you say that again, please?

2 THE COURT: I'll repeat it again.

3 Is there any member of the jury panel related by
4 blood or marriage to, or a friend of acquaintances of,
5 a member of any law enforcement agency? And basically
6 what I want to know is do any of you have any immediate
7 family members or close friends, people that you talk
8 to on a daily basis, that work for law enforcement.
9 That's really the question.

10 All right. Ma'am, your name and juror number?

11 MS. WALSTON: I'm Laura Walston, 162, and my
12 brother is in law enforcement in Georgia.

13 THE COURT: Who does he work for, specifically,
14 in Georgia?

15 MS. WALSTON: He works for the Georgia Bureau of
16 Investigation.

17 THE COURT: Okay. And what specifically does he
18 do? Do you know?

19 MS. WALSTON: I most definitely know what --
20 he's a drug and alcohol agent.

21 THE COURT: Okay. Thank you. I appreciate
22 that.

23 Ma'am, if you don't mind: the fact that your
24 brother works for law enforcement in Georgia, would
25 that affect your ability to be fair and impartial in

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1 the trial of this case?

2 MS. WALSTON: No. I don't think so.

3 THE COURT: Okay. Thank you.

4 Yes, sir?

5 MR. HAMOUEA: I'm juror number 68, Shariff

6 Hamouea --

7 THE COURT: Yes, sir.

8 MR. HAMOUEA: -- and one of my best friends is a

9 Richland County sheriff's deputy.

10 THE COURT: Okay. Sir, the fact that one of
11 your best friends is a Richland County -- I'm sorry.

12 You said Ridgeland?

13 MR. HAMOUEA: Richland.

14 THE COURT: -- Richland County sheriff's deputy,
15 would that affect your ability to be fair and impartial
16 in the trial of this case?

17 MR. HAMOUEA: No.

18 THE COURT: Are you sure, sir?

19 MR. HAMOUEA: Yes.

20 THE COURT: Thank you.

21 Anybody else?

22 [Whereupon, there is no response]

23 THE COURT: Is there any member of the jury
24 panel employed by, related to either by blood or
25 marriage, or a friend or a close acquaintances of

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1 anyone employed by the Attorney General's office, the
2 solicitor, or any prosecuting attorney's office? If
3 so, please stand.

4 [Whereupon, there is no response]

5 THE COURT: Has any member of the jury panel
6 ever been employed by any civilian or military law
7 enforcement agency? If so, please stand.

8 [Whereupon, juror indicates]

9 THE COURT: Is there any member of the jury
10 panel who is a member of or a contributor of --

11 THE BAILIFF: Your Honor --

12 THE COURT: Oh.

13 MS. REYLE: Your Honor --

14 THE COURT: Yes, ma'am?

15 MS. REYLE: -- where I work right now is we work
16 in conjunction with the Department of Juvenile Justice.

17 THE COURT: Okay. Where do you work currently,
18 ma'am?

19 MS. REYLE: Associated Marine Institute of
20 Beaufort. Beaufort Marine Institute --

21 THE COURT: Okay.

22 MS. REYLE: -- with associate marine institutes.

23 THE COURT: Okay. And would you give me your
24 name and juror number.

25 MS. REYLE: Joan Reyle, R-E-Y-L-E, and it's 127.

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1 THE COURT: Ma'am, the fact that you work, it
2 sounds like, at the Marine Institute, would that affect
3 your ability to be fair and impartial in the trial of
4 this case?

5 MS. REYLE: No.

6 THE COURT: Thank you, ma'am.
7 Anybody else?

8 [Whereupon, there is no response]

9 THE COURT: And the next question: is there any
10 member of the jury panel who is a member of or
11 contributor to any group which has as its primary
12 concern the promotion of law enforcement or victims'
13 rights? Ladies and gentlemen, these groups would
14 include but is not limited to such groups as CAVC,
15 which is Citizens Against Violent Crime; MADD, Mothers
16 Against Drunk Driving; SADD, Students Against Drunk
17 Driving; or CADRA.

18 Again, the question is is there any member of
19 the jury panel that is a member of or a contributor to
20 any types of these groups, again, that has as its
21 primary goal the promotion of law enforcement or
22 victims' rights?

23 MS. BERRY: I'm juror number 15.

24 THE COURT: Yes, ma'am?

25 MS. BERRY: I have contributed to MADD,

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1 financially.

2 THE COURT: Thank you, ma'am. And your name,
3 please?

4 MS. BERRY: Judith Berry.

5 THE COURT: Berry?

6 MS. BERRY: Uh-huh.

7 THE COURT: Thank you, ma'am. That's exactly
8 what I am asking. Again, it's either contributor to or
9 a member of. Thank you, Ms. Berry. You may be seated.
10 I appreciate that.

11 Yes, ma'am?

12 MS. MARION: I've made donations to MADD.

13 THE COURT: Okay. Ma'am, your name and juror
14 number?

15 MS. MARION: Rose Marion, number 96.

16 THE COURT: Thank you, ma'am.

17 Anybody else? Yes, sir?

18 MR. STAKE: Number 147. I've also made
19 contributions to MADD.

20 THE COURT: Sir, your name?

21 MR. STAKE: Terry Stake.

22 THE COURT: Stake? Thank you, Mr. Stake.

23 Yes, ma'am. Your name and juror number?

24 MS. VANWOERT: Sherilyn Vanwoert, 159. Just
25 involving with when our children were going through the

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1 school systems.

2 THE COURT: Okay. What type of groups were you
3 involved in?

4 MS. VANWOERT: It was DARE and MADD. It was in
5 upstate New York.

6 THE COURT: Okay. Thank you, ma'am. I
7 appreciate that.

8 Anybody else?

9 [Whereupon, there is no response]

10 THE COURT: Has any member of the jury panel
11 ever been a witness in a criminal trial? If so, please
12 stand.

13 Ma'am, your name and juror number?

14 MS. PARLAGRECO: Erin Parlagreco, number 115.

15 THE COURT: Yes, ma'am. Were you a witness for
16 the State, or the defense?

17 MS. PARLAGRECO: Defense.

18 THE COURT: What type of case was it?

19 MS. PARLAGRECO: Criminal.

20 THE COURT: Criminal case? Do you know what,
21 specifically, the allegations were?

22 MS. PARLAGRECO: I think a stolen car.

23 THE COURT: All right. Thank you, ma'am. I
24 appreciate that.

25 Anybody else?

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1 [Whereupon, there is no response]

2 THE COURT: Is there any member of the jury
3 panel that believes that it is against the law to
4 consume an alcoholic beverage and then operate a motor
5 vehicle? If so, please stand.

6 I'll repeat that again. Ladies and gentlemen,
7 is there any member of the jury panel that believes
8 that it is against the law to consume an alcoholic
9 beverage and then operate a motor vehicle?

10 Mr. Hood and Ms. Tanner, if you'll come here for
11 a second?

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE COURT: All right. Ladies and gentlemen,
15 what I'm going to do first is I'm just going to go down
16 the line, and all I need from y'all is your name and
17 juror number. Okay? But I'm going to also ask that
18 y'all remain standing. Okay? We're going to start
19 over here.

20 Ma'am, your name and juror number.

21 MS. STOKES: Elizabeth Stokes, 154 [sic].

22 THE COURT: Okay.

23 MS. CARTER: Joan Carter, 24.

24 MS. EUGENE: Lorinda Eugene, 49.

25 MS. SCOTT: Frances Scott, 135.

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1 THE COURT: Yes, ma'am?
2 MS. RHODAN: Brenda Rhodan, 128.
3 MS. WALSTON: Laura Walston, 162.
4 MS. MOTA-KOVES: Myla Mata-Koves, number 97.
5 MS. CONLEY: Tishanna Conley, number 30.
6 THE COURT: Thank you. Okay. Yes, sir?
7 MR. SMEREKA: Eugene Smereka, 143.
8 THE COURT: All right. Yes, ma'am?
9 MS. GARDNER: Carol Gardner, number 61.
10 THE COURT: Yes, sir?
11 MR. TREADAWAY: 153, John Treadaway.
12 THE COURT: Okay. Yes, ma'am?
13 MS. BERRY: Judith Berry, 15.
14 THE COURT: Thank you. Sir?
15 MR. HAMOUEA: Number 68, Shariff Hamouea.
16 THE COURT: Okay. Yes, ma'am? Back there.
17 MS. NICOLAI: 109, Bonnie Nicolai.
18 THE COURT: Okay. Yes, ma'am?
19 MS. WILSON: 173, Charlesetta Wilson.
20 MS. SOLLY: 145, Carolyn Solly.
21 THE COURT: Yes, ma'am? Go ahead and -- from
22 the back, sir.
23 MR. UFFELMAN: 154, Robert Uffelman.
24 THE COURT: Okay. Back up here, ma'am.
25 MS. BARTLEY: 11, Gayle Bartley.

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1 MR. PETRO: 122, Ashley Petro.

2 MR. LOWELL: 90, Chandler Lowell.

3 THE COURT: Okay. The row before, that I
4 missed. Yes, ma'am? In the red.

5 MS. FULGINITI: 56, Eviene Fulginiti.

6 MS. WEAVER: 169, Janet Weaver.

7 MS. MARION: Rose Marion, 96.

8 THE COURT: Thank you, ma'am.

9 MS. ANDRADE: June Andrade, number 80.

10 THE COURT: And, sir, I believe -- I don't think
11 we had you originally. Or did we?

12 UNIDENTIFIED: Yes.

13 THE COURT: We had you? All right. Is that
14 everybody? Is that everybody?

15 THE COURT: All right. Ladies and gentlemen,
16 for those of you that stood up, I want to explain to
17 you -- and at the end of this case, I am going to
18 instruct you on the law in this state. And the
19 question I know is a bit difficult and a bit difficult
20 to understand. What I need you to all understand is
21 that it is not against the law to consume an alcoholic
22 beverage and then operate a motor vehicle. It is only
23 illegal to consume an alcoholic beverage or beverages
24 to the extent that it impares your ability to drive.
25 All right? So I want to make sure y'all understand

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1 that that is the law of this state.

2 Now, is there anyone, that is currently
3 standing, that would not be able to follow the law as I
4 have just stated it to you and as the judge is going to
5 state to you at the end of the trial of this case?
6 Because, ladies and gentlemen, what you are going to be
7 explained to when the case and the trial begins is that
8 as a juror, you will be the finders of fact; however,
9 the judge in this case, whether it be myself or Judge
10 Buckner, is the finder of the law or the determiner of
11 the law, and, as such, you are required to apply the
12 facts as you find them, to the law as I instruct.

13 And, again, as I told you, it's not illegal to
14 drink an alcoholic beverage and drive. It's only
15 illegal if you drink an alcoholic beverage to the
16 extent that it impairs your ability to drive. And I
17 want to make sure y'all absolutely understand that.

18 Is there anyone that is not going to be able to
19 follow that law as it's instructed to you?

20 [Whereupon, there is no response]

21 THE COURT: All right. Well, let me ask you
22 this. If there is anyone that is not able to follow
23 that law as it's going to be instructed to you, I want
24 you to remain standing. And the rest of you that can
25 tell me you can follow the law, you can go ahead and

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1 take a seat.

2 [Whereupon, members of the jury panel comply]

3 THE COURT: Okay. Ladies and gentlemen, is
4 there any member of the jury panel, or a member of
5 their immediate family, ever been the victim of or
6 accused of an alcohol-related crime? If so, please
7 stand.

8 All right. And I'm going to -- yes, ma'am?

9 UNIDENTIFIED: Could I ask you to repeat that?

10 THE COURT: Yes, ma'am.

11 Is there any member of the jury panel, or a
12 member of their immediate family, ever been the victim
13 of or accused of an alcohol related crime?

14 What I am going to ask is that each of you just
15 come forward and speak with me privately at the bar.
16 All right?

17 You can give me their name and juror number as
18 they come. Bob, will you call it out for me?

19 THE BAILIFF: Juror 160, Mr. Wade.

20 THE COURT: Mr. Wade, how are you, sir?

21 MR. WADE: Good. DUI conviction twenty years
22 ago --

23 THE COURT: Okay. Who was it --

24 MR. WADE: -- in North Carolina.

25 THE COURT: -- you or --

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1 MR. WADE: Me.

2 THE COURT: Okay. You? Okay. I appreciate you
3 letting us know that, and you're still qualified.

4 MR. WADE: Just community service.

5 THE COURT: Okay.

6 MR. WADE: Thank you.

7 THE COURT: Thank you, Mr. Wade. I appreciate
8 it, sir.

9 THE BAILIFF: Juror 174, Mr. Wilson.

10 THE COURT: Mr. Wilson, how are you?

11 MR. WILSON: I had a operating under the
12 influence, in New York --

13 THE COURT: Okay, sir. I appreciate you letting
14 me know that. Thank you.

15 THE BAILIFF: Juror 44, Ms. Easler.

16 THE COURT: How are you?

17 MS. EASLER: Before my husband and I were
18 married, he was convicted of DUI when we were in
19 college.

20 THE COURT: Okay. I appreciate knowing that.
21 Thank you.

22 THE BAILIFF: Juror 164, Mr. Ward.

23 THE COURT: Hey. How are you?

24 MR. WARD: Good. Thank you. I have a prior
25 conviction for DUI.

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1 THE COURT: Okay. The fact of a prior
2 conviction of DUI, would that affect your ability to be
3 fair and impartial in the trial of this case?

4 MR. WARD: I don't think so.

5 THE COURT: Okay. Thank you. I need -- Mr.
6 Ward, come here. I need to make sure that you know for
7 sure that --

8 MR. WARD: Yes. Yes.

9 THE COURT: That's a yes? Okay. Thank you.

10 THE BAILIFF: Juror 76, Mr. Ward.

11 MR. HOUSTON: Houston.

12 THE BAILIFF: I'm sorry. Mr. Houston. Beg your
13 pardon. I'm getting old.

14 THE COURT: Hi, Mr. Houston.

15 MR. HOUSTON: I was pulled over for suspicion
16 of --

17 THE COURT: Come a little closer.

18 MR. HOUSTON: I was pulled over for suspicion of
19 DUI.

20 THE COURT: Okay. But were never convicted, or
21 anything like that?

22 MR. HOUSTON: It was pled out.

23 THE COURT: It was -- you pled guilty to it?
24 Okay. How long ago was that?

25 MR. HOUSTON: Five years ago, about.

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1 THE COURT: Would that affect your ability to be
2 fair and impartial in the trial of this case?

3 MR. HOUSTON: [Indicates negatively]

4 THE COURT: Are you sure?

5 MR. HOUSTON: Uh-huh.

6 THE COURT: Okay. Thank you.

7 THE BAILIFF: Juror 150, Ms. Stokes.

8 MS. STOKES: My husband is an alcoholic. He's
9 been -- had four DUIs. He's been involved in a wreck
10 that -- it was just bodily injury, but --

11 THE COURT: Okay. Obviously, this case involves
12 a DUI. Would it affect your ability to be fair and
13 impartial in the trial of this case, based on your
14 husband's history and your past?

15 MS. STOKES: No, because I know my husband.

16 THE COURT: Okay. You're convinced of that?

17 MS. STOKES: Yes.

18 THE COURT: Okay. You can take the evidence, as
19 presented from the jury box, and make a fair decision
20 in --

21 MS. STOKES: Oh. Sure.

22 THE COURT: -- this case? Okay. Is that
23 correct?

24 MS. STOKES: Yeah. I do that all the time
25 at--

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1 THE COURT: Okay.

2 THE BAILIFF: Juror 145, Ms. Solly.

3 THE COURT: Hi, Ms. Solly.

4 MS. SOLLY: How are you?

5 THE COURT: I'm well. Thank you.

6 MS. SOLLY: 2003, my brother was killed by a
7 drunk driver.

8 THE COURT: Okay. Your brother?

9 MS. SOLLY: My brother.

10 THE COURT: Where was that?

11 MS. SOLLY: In New Jersey.

12 THE COURT: Okay.

13 MS. SOLLY: It was not --

14 THE COURT: Were you close with your brother?

15 MS. SOLLY: He was a recovering alcoholic
16 himself, and he had gotten over it -- well, a drink was
17 going to get him one way or the other.

18 THE COURT: Okay. The fact that your brother
19 was killed as a result of a drunk driver, would that
20 affect your ability to be fair and impartial in the
21 trial of this case?

22 MS. SOLLY: I would hope not. I would hope not.

23 THE COURT: I need you to be absolutely sure,
24 and if you -- if you don't know, and you can't be sure,
25 you need to tell me.

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1 MS. SOLLY: I can't be sure.

2 THE COURT: You can't be sure? All right. Ms.
3 Solly, I'm going to go ahead and excuse you from the
4 trial of this case. But I appreciate you being here.
5 I am going to ask you to stay with us, because I'm
6 going to give y'all some instructions at the end.
7 Okay?

8 MS. SOLLY: Okay.

9 THE COURT: Okay.

10 THE BAILIFF: Juror 35, Mr. Demint.

11 [Off the record momentarily]

12 THE COURT: How are you?

13 MR. DEMINT: How are you?

14 THE COURT: Good to see you. I'm well.

15 MR. DEMINT: I'm just getting over probably what
16 you've got, but --

17 THE COURT: Exactly.

18 MR. DEMINT: My daughter-in-law was accused of
19 driving under the influence. I'm not sure -- you know,
20 I think she either did PTI or something.

21 THE COURT: PTI. That sounds right.

22 MR. DEMINT: Yeah. Yeah. And but --

23 THE COURT: Would that affect your ability to be
24 fair and impartial --

25 MR. DEMINT: No.

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1 THE COURT: -- in the trial of this case, do you
2 think?

3 MR. DEMINT: No.

4 THE COURT: All right. Well, listen, I
5 appreciate your being here. Thank you, Mr. Demint.

6 MR. DEMINT: Okay. You're welcome. Thank you.

7 THE COURT: Is that everybody? All right.

8 Ladies and gentlemen of the jury panel, is there
9 any member of the paddle -- panel, I'm sorry, that's
10 read in any newspaper, or seen on any TV news program,
11 or heard any radio broadcasts, about this case that we
12 are going to try here today? If so, please stand.

13 And I'm going to also open that question up just
14 a little bit broader. That would include if you have
15 heard from any source anything about the case we're
16 going to try here today, whether it be word of mouth or
17 as you walked in today at two o'clock. Okay?

18 All right. Ma'am, if you would give me your
19 name and juror number.

20 MS. WALSTON: Laura Walston, 162.

21 THE COURT: Yes, ma'am?

22 MS. WALSTON: I read it in the newspaper this
23 morning.

24 THE COURT: Which newspaper?

25 MS. WALSTON: The Island Packet.

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1 THE COURT: Y'all give me one moment.
2 Solicitor and Mr. Hood.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: All right. I'm going to go down the
6 list of each of you. Just as we did with the first
7 juror, give me your name, your number, and how you
8 heard about this case. All right? And, again, if you
9 don't mind, for the record give me your name and juror
10 number one more time.

11 MS. WALSTON: Laura Walston, 152. The Island
12 Packet.

13 THE COURT: And you read it in the Island
14 Packet.

15 Yes, sir?

16 MR. FAGAN: Charles Fagan, juror number 50. I
17 read it in the Packet. And I live in Long Cove where
18 she worked, and I knew her. Not as a great friend, but
19 I did know her.

20 THE COURT: Okay. All right, sir. I'm going to
21 go ahead and excuse you from the trial of the case,
22 because you personally knew the woman, but I'm going to
23 ask that you go ahead and be seated at this time.

24 And, ma'am, I'm going to ask that you continue
25 to stay standing for me. Okay? I appreciate that.

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1 Mr. Demint?

2 MR. DEMINT: Yeah. Number 35. I read the
3 account this morning in the Island Packet and a
4 previous account I think when the incident occurred.

5 THE COURT: Okay. Thank you, Mr. Demint. I
6 want you to stay standing, if you would.

7 Is it Ms. Berry? Ms. Berry.

8 MS. BERRY: I'm Judith Berry, number 15. I read
9 it this morning in the Island Packet. And I also had
10 recollection of when it occurred, having read it in the
11 newspaper.

12 THE COURT: Okay. Thank you.

13 [Off the record momentarily]

14 THE COURT: Yes, sir? Your name?

15 And I'm sorry, ma'am. I didn't mean to skip
16 over you. Yes, ma'am?

17 MS. GARDNER: Carol Gardner. My number is 61.
18 I read it in the Island Packet.

19 THE COURT: Thank you, ma'am. Yes, sir?

20 MR. TREADAWAY: 153, John Treadaway. I also
21 read it in the Packet this morning, and recall when it
22 happened originally.

23 THE COURT: Okay. You read it in the newspaper
24 at that time, too; is that correct, sir?

25 MR. TREADAWAY: Yes.

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1 THE COURT: All right. Yes, sir?

2 MR. VAN-SLYKE: 157, Douglas M. Van-Slyke. In
3 the Beaufort Gazette this morning.

4 THE COURT: Thank you, sir.

5 Yes, ma'am? Your name and juror number.

6 MS. JEFFERS: Kay Jeffers, number 79. I read it
7 this morning in the Island Packet.

8 THE COURT: Thank you. Yes, ma'am?

9 MS. BRYA: 22; Elizabeth Brya; Beaufort Gazette
10 this morning.

11 THE COURT: Thank you, ma'am.

12 Yes, ma'am? Your name and juror number?

13 MS. WEAVER: Number 169; Janet Weaver; read it
14 in the Island Packet this morning.

15 THE COURT: Thank you. Yes, ma'am?

16 MS. CHEATHAM: 26, Sue Cheatham. My husband
17 mentioned that it was in the Beaufort Gazette.

18 THE COURT: Okay. Did you discuss the article
19 with him at all?

20 MS. CHEATHAM: He mentioned that --

21 THE COURT: Okay. Before you say anything --

22 MS. CHEATHAM: He mentioned -- and I said,
23 that's not -- he said something about --

24 THE COURT: Okay. I don't want you to say in
25 open court --

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1 MS. CHEATHAM: Okay.

2 THE COURT: -- what he talked about.

3 MS. CHEATHAM: I said, that's not me because we
4 are doing -- I said this is civil, it won't -- this
5 won't include me.

6 THE COURT: You thought you were in civil court.
7 Okay. All right. So did you talk about the substance
8 of the article in any way?

9 MS. CHEATHAM: No. I just went on with my --

10 THE COURT: Okay. Your name is Ms. Cheatham; is
11 that correct?

12 MS. CHEATHAM: Right.

13 THE COURT: Okay. Thank you, Ms. Cheatham. You
14 can go ahead and sit down.

15 Yes, sir?

16 MR. DIMMLING: Arno Dimmling, juror number 41;
17 Island Packet.

18 THE COURT: Thank you, sir. Yes, ma'am?

19 MS. JOHNSON: Helen Johnson, juror number 81,
20 Island Packet.

21 THE COURT: Thank you, ma'am. Sir?

22 MR. UFFELMAN: Robert Uffelman, 154. I read it
23 in the Packet the day that it happened.

24 THE COURT: Okay. Thank you, sir. Yes, ma'am?

25 MS. MARION: Rose Marion, 96; in the Gazette.

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1 THE COURT: Okay. Yes, ma'am?

2 MS. ANDRADE: June Andrade, 8, Beaufort Gazette.

3 THE COURT: Okay. Is there anyone I didn't call
4 on?

5 [Whereupon, there is no response]

6 [Off the record momentarily]

7 THE COURT: All right. For those of you that
8 are standing, ladies and gentlemen, the fact that you
9 have read about this case in the Island Packet today,
10 or the Beaufort Gazette, would that affect your ability
11 to be fair and impartial in the trial of this case? If
12 it would, I am going to ask that you remain standing
13 and, if not, go ahead and take a seat.

14 [Whereupon, potential jurors comply]

15 THE COURT: Okay. Can we go through, and just
16 name and juror number again, ma'am.

17 MS. WEAVER: Janet Weaver, 169.

18 THE COURT: Okay.

19 MS. WALSTON: Laura Walston, 162.

20 THE COURT: Walston?

21 MS. WALSTON: Yes, ma'am.

22 THE COURT: Okay. And, ma'am?

23 MS. JEFFERS: Kay Jeffers, 79.

24 THE COURT: Thank you, Ms. Jeffers. Ladies, you
25 may be seated.

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1 MS. BRYA: You didn't get to me.

2 THE COURT: Oh. I'm sorry, ma'am.

3 MS. BRYA: 22, Elizabeth Brya.

4 THE COURT: Brya?

5 MS. BRYA: Brya.

6 THE COURT: Thank you, ma'am.

7 Okay. Ladies and gentlemen, is there anything
8 in the nature of the allegations in this case, that
9 we're going to try here, which would cause any member
10 of the panel any problem in sitting as an impartial
11 juror? If so, please stand.

12 And if you have any question in your mind
13 whatsoever, you need to respond to this.

14 Again, the question is is there anything in the
15 nature of the allegations in this case which would
16 cause any member of the panel any problem in sitting as
17 an impartial juror in this case.

18 [Whereupon, potential jurors indicate]

19 All right. I am going to ask you both to
20 approach, if you would.

21 THE BAILIFF: 159, Ms. Vanwoert.

22 MS. VANWOERT: Do you know the victim's person's
23 sister's name?

24 MS. TANNER: Sharon Perry.

25 MS. VANWOERT: I'm really good friends with

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1 Sharon Perry. I'm just -- and I knew Mary.

2 THE COURT: Okay.

3 MS. VANWOERT: I had a feeling as soon as I --
4 something clicked, and I think it's that.

5 THE COURT: Okay. I'm going to go ahead and
6 excuse you from the trial of this case --

7 MS. VANWOERT: Yeah. I don't know --

8 THE COURT: -- that's okay.

9 MS. VANWOERT: Okay.

10 THE COURT: It's Vanwoert?

11 MS. VANWOERT: Uh-huh.

12 THE COURT: Okay. 159 I'm going to take out,
13 just excuse.

14 MS. VANWOERT: Okay.

15 THE COURT: I'm going to ask you to stay with
16 us, though. Okay?

17 MS. VANWOERT: Okay.

18 THE COURT: Just --

19 MS. VANWOERT: That's fine.

20 THE COURT: -- not for this case, but just to
21 follow some instructions at the end. Okay?

22 MS. VANWOERT: Okay.

23 THE BAILIFF: Juror 96, Ms. Marion.

24 THE COURT: Ms. Marion? Yes, ma'am?

25 MS. MARION: From the account of it in the

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1 newspaper, I think I might be impartial.

2 THE COURT: Okay. And I appreciate your being
3 honest.

4 MS. MARION: Uh-huh.

5 THE COURT: What about it that is bothering you?

6 MS. MARION: Well, children being in the car,
7 and not having a license, breaking the law. You know,
8 the newspaper had him convicted. I think I could be
9 fair and impartial, but I'm not sure.

10 THE COURT: Okay. I'm going to go ahead and
11 excuse you from the trial of this case but I'm going to
12 ask that you stay with us, because I'm going to have
13 some instructions for y'all for afterwards. Okay?

14 MS. MARION: Thank you.

15 THE BAILIFF: Juror 15, Ms. Berry.

16 THE COURT: Ms. Berry?

17 MS. BERRY: Your Honor, I gave an abbreviated
18 version of my career path, and I'm feeling that I need
19 to just --

20 THE COURT: Okay. Absolutely.

21 MS. BERRY: -- fill in the gaps on that.

22 THE COURT: Sure.

23 MS. BERRY: I was a psychiatric assistant for
24 five years, and I had training in psychology. And in
25 the state of Virginia, I was a member of an accident

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1 investigation team. It was an engineer and myself and
2 a state trooper, and we would study accidents and mine
3 was the contributing psychological factors, and the
4 engineer was the road condition, and the trooper was
5 investigating. And I just -- I was in sales for
6 Eastern Airlines for ten years, and I've taught school.
7 I just -- you know, I didn't know.

8 THE COURT: Wanted to make sure we all knew?

9 MS. BERRY: Yeah. I just --

10 THE COURT: Let me ask you: your history and
11 your background, would that affect your ability to be
12 fair and impartial in the trial of this case,
13 understanding it involves a felony DUI which is, of
14 course, an accident?

15 MS. BERRY: Right.

16 THE COURT: Can you be fair and impartial in the
17 trial of this case?

18 MS. BERRY: I believe I can, Your Honor.

19 THE COURT: I need you to be absolutely sure.
20 If you can't, it's okay, but I just need to know if you
21 can -- of course, you know, everyone comes to the table
22 with their experience. But I want to make sure that
23 you don't come forward with any preconceived notions
24 whatsoever.

25 MS. BERRY: The time review that I experienced

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1 during the studies was very graphic, and I can't say
2 that it's out of my memory, but I understand how to
3 respond to the instructions of a judge and make a fair
4 and impartial decision.

5 THE COURT: Okay. I am going to go ahead and
6 keep you.

7 MS. BERRY: Thank you.

8 [Whereupon, an off-the-record bench conference
9 is held]

10 THE COURT: Is there any member of the jury
11 panel that is conscious of any interest, any bias, or
12 any prejudice, for or against the defendant in this
13 case, Mr. Galimore, or the State? If so, please stand.

14 [Whereupon, there is no response]

15 THE COURT: Is there any member of the jury
16 panel that knows of any reason whatsoever that you
17 cannot give both the State and the defendant, Mr.
18 Galimore, in this case a fair and impartial trial? If
19 so, please stand.

20 [Whereupon, there is no response]

21 THE COURT: Is there any member of the jury
22 panel that has formed any type of opinion in this case?
23 If so, please stand.

24 [Whereupon, there is no response]

25 THE COURT: Are there any further questions

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1 requested of this panel? From the State?

2 MS. TANNER: Nothing from the State.

3 THE COURT: From the defense?

4 MR. HOOD: Nothing, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, at
6 this time what we are going to end up doing is having
7 to put your names into what we call the hopper. It's
8 computerized. I'm going to go ahead and excuse you for
9 about ten minutes while we do this. At that time we're
10 going to come forward and we're going to go ahead and
11 strike the panel of this case. And at that point,
12 after that, I'm going to be able to release y'all for
13 the day. All right?

14 So with that said, respectfully, I do need you
15 to leave the courtroom, and we'll let you back in as
16 soon as we possibly can. Thank you.

17 [Whereupon, the jury panel exits the courtroom
18 at 3:55 p.m.]

19 [Whereupon, an off-the-record bench conference
20 is held]

21 THE COURT: Let's go on the record.

22 Mr. Hood, we had a bench conference in regards
23 to the fifteen persons that stood up and stated that
24 they had read the article about this case in the Island
25 Packet this morning, and I think there was two that had

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1 read it in the Beaufort Gazette. For other reasons, or
2 reasons in conjunction with that, I excused I think
3 four or five of them at this point. There remains,
4 though, I believe another it's either ten or nine that
5 are still on the panel.

6 Do you have a position on that, Mr. Hood?

7 MR. HOOD: Well, Judge, I just can't possibly
8 see how anyone who has read either one of these
9 articles can sit as a juror. I mean, there is no way
10 in this world that this gentlemen can get a fair trial,
11 period.

12 In each one of the articles it states that he is
13 facing sixty-five years. In each one of the articles
14 they talk about the person, Ms. Dion, as being a
15 compassionate person that took in stray cats, and
16 things of this nature, going on and on and on about
17 that, and her working as a security guard, and it went
18 on.

19 You have in there a variety of other crimes
20 which they've accused him of, which he's not being
21 tried for. They even mention things like no insurance,
22 and no driver's license, and da-da-da-da-da, and, you
23 know, a variety -- well, the driver's license I think
24 was covered. But they talk about insurance, they talk
25 about just other things that supposedly -- like in one

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1 they say, well, we don't know whether he's going to be
2 tried for the ABHAN. And this was in the Island
3 Packet, where he left supposedly his girlfriend's
4 child's party after pistol-whipping the pregnant, you
5 know, woman, and this and that and the other. I mean,
6 that article was so prejudicial that there's just no
7 way in the world that anybody who read that article
8 could give this gentlemen a fair trial, period. And I
9 feel the same thing about the Beaufort Gazette article.

10 I mean, there's just no way in the world that
11 they could have read those articles and now walk in
12 here and give this man a fair trial.

13 THE COURT: Okay. Thank you, Mr. Hood.

14 MR. HOOD: Impossible.

15 THE COURT: Ms. Tanner?

16 MS. TANNER: Your Honor, the standard is not
17 whether a juror has any knowledge about a case when
18 they come in here. The standard is whether they can
19 put any knowledge that they do have aside and still
20 remain fair and impartial and base their decision on
21 what they hear in this courtroom. You have asked these
22 jurors, under oath, those questions: based on what you
23 have read, can you still be fair and impartial. Some
24 said yes, and some said no, which indicates honesty on
25 their part. The ones who said they could not come

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1 forward. They've been excused.

2 I believe the ones that have said, I've read
3 this article, half of them said, I remember reading
4 about it or I read about it when it first happened. It
5 wasn't even this particular article that they read
6 today. Half of them were aware of when it happened,
7 because there were articles back then.

8 The general public comes in with any amount of
9 knowledge. Any one of those jurors can come to court
10 any day. They could have been present for a bond
11 hearing for Mr. Galimore where any bit of that
12 information would have been presented to the Court, his
13 prior record.

14 Now, as far as his prior record, they talk about
15 him not having a license. Well, he is charged today --
16 and one of the indictments is for DUS third or greater.
17 That's one of the issues they're going to decide. So
18 they're going to know, if it's third or greater,
19 there's at least two prior convictions. So that's not
20 even an issue.

21 THE COURT: Actually -- well, go ahead and
22 finish. Go ahead and finish.

23 MS. TANNER: Your Honor, the case law, the
24 statute regarding voir dire, it's not whether or not
25 they come in with any knowledge; it's whether or not

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1 they can put that knowledge aside and be fair and
2 impartial. And these jurors have said they can. The
3 only repercussion now is to call them liars in open
4 court because they have said, here's what I know, yeah,
5 I read this today, but based on that I can be fair, I
6 can be impartial, and listen to what is said in this
7 courtroom and make my decision based on what is said in
8 this courtroom. The ones who can't do that have
9 already marked themselves and have already been
10 excused. I don't see any basis for now striking the
11 ones who have answered honestly and said they can be
12 fair and impartial.

13 THE COURT: Okay. Well, obviously, as we all
14 know, most of the time we're looking at these issues
15 based on a change of venue motion. It's typically the
16 State that wants the change of venue. The defendant,
17 of course, has a right to be tried in the county from
18 which they reside. And, of course, in this case -- or
19 I should say also where the crime occurred. In this
20 case it's a little bit of a reversal.

21 I can tell you that I have serious concerns
22 about the Island Packet article, of which out of these
23 fifteen people, twelve or thirteen had read. And
24 specifically the paragraph on the second page, it says
25 that he was convicted of a DUI in New Jersey in 2001

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1 and has several convictions in New York, including
2 property damage, theft, resisting arrest, possession of
3 stolen property, and possession of burglary tools. It
4 goes on to say he also skipped bail on two occasions,
5 Stone, our solicitor, has said. And then it goes
6 through and gives a re-count: about an hour before the
7 fatal wreck, he was charged with pistol-whipping his
8 pregnant ex-girlfriend at a child's birthday party.
9 She had reportedly -- I'm sorry -- she reportedly had
10 broken up with him that evening because of his
11 drinking. It's unlikely the high and aggravated
12 assault charge will be heard during his trial this
13 week.

14 Let me ask you this, solicitor: do you intend
15 on trying the ABHAN here this week?

16 MS. TANNER: I do not intend on trying the
17 ABHAN. I do have the victim in that case coming to
18 testify to a pertinent part, based on the felony DUI
19 charge. So she will mention the fact that he pistol-
20 whipped her and left with the children.

21 THE COURT: It says: authorities have said that
22 Galimore hid the gun used in that attack behind an ice
23 cooler, at the Country Store in Pritchardville, just
24 before pulling out in front of Dion, who died at the
25 scene.

1 MS. TANNER: That's not exactly correct. He hid
2 it after. But that is -- the State does intend to
3 introduce that, as well.

4 THE COURT: Okay. Well, I can tell you this.
5 It is my understanding that even if I strike those
6 jurors that read the article, we still have thirty-
7 three jurors, so we will have adequate jurors to strike
8 a panel in this case.

9 I can tell you -- and, Mr. Hood, please do not
10 take this as precedent in any way, that I'm going to
11 strike every juror that has every read -- ever read a
12 news article in a case that's coming up. However, I
13 will tell you this: I am so concerned about this
14 Island Packet article and his discussion -- and when I
15 say his, the reporter's discussion of the defendant's
16 prior record, which of course you and I both know is
17 inadmissible unless your client takes the stand, and
18 also some of the background that we don't know whether
19 or not has come in. But I am not going to allow those
20 jurors to sit on this case.

21 But, again, please don't allow it as precedent.

22 I will tell you this is an issue that I think we
23 have struggled with for a long time in Beaufort County.
24 We have such a fight between the first and fifth
25 amendment, as you well know. You know, obviously we

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1 have freedom of press and we have freedom of speech.
2 But you have to counter that with the defendant's right
3 to a fair trial. And in this case I do not believe,
4 having read both of these articles, that the people
5 that read them could be fair and impartial in the trial
6 of this specific case. And because of that, I am going
7 to pull the names of those people from this panel. We
8 still have another thirty-three people.

9 With that said, I am going to go ahead and make
10 both of these articles exhibits in the trial of this
11 case, just to preserve them for posterity's sake.

12 But, again, this is not precedent. This is just
13 simply in this case because I believe this article is
14 so detailed, and, additionally, details his prior
15 criminal record, as well as incidents that I don't
16 think necessarily would be admissible in the trial of
17 this case. Of course, we're not at that juncture yet,
18 so I don't know that. But just from looking at it
19 first blush, it's pretty bad. Okay?

20 [Off the record momentarily]

21 THE COURT: For both of you: I do believe, Mr.
22 Hood, that we have been very careful about who is on
23 there. But if for some reason someone gets called up
24 here that you know was on that list, you need to let me
25 know right then and there. Okay?

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1 How many alternates do we need, y'all? I'm
2 assuming just one.

3 We're going to take one day to try it; is that
4 correct, solicitor?

5 MS. TANNER: I believe, unless we have to argue
6 and charge on Wednesday. It's always safer with two,
7 if possible.

8 THE COURT: Mr. Hood?

9 MR. HOOD: I would say two. But, you know, I
10 could live with one.

11 THE COURT: Okay. All right. Well, let me see
12 how our numbers are and if we've got enough to do two,
13 we'll do two. Okay?

14 MR. HOOD: And what is your position as to the
15 number of challenges for each of us?

16 MS. TANNER: Five and five.

17 THE COURT: Do you have anything to show me
18 otherwise?

19 MS. TANNER: I can give you the statute.

20 THE COURT: I'm just going to go straight to the
21 statute, Mr. Hood. My understanding, it was five and
22 five. But I'll look at it again.

23 MS. TANNER: It is not listed as one of the
24 exemptions that get ten. 14-7-1110.

25 [Whereupon, the Court reviews documents]

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1 THE COURT: Mr. Hood, unless you have an
2 argument otherwise, I do believe it is five and five.

3 MR. HOOD: Well, I think that it's -- you know,
4 the fact that it's a no-parole offense, and the maximum
5 punishment in the case has a mandatory minimum, would
6 create an inference that it would be, in fact, one of
7 those defenses that would allow for ten strikes.

8 THE COURT: Let me ask you this, Mr. Hood. Is
9 there any other non-paroleable offense that is not on
10 the list?

11 MR. HOOD: Not that I'm aware of.

12 THE COURT: Solicitor, help me out.

13 MS. TANNER: Well, Your Honor, I think we have
14 to go by the statute. I mean, that's a great argument
15 to make to the legislature, if they want to change the
16 statute. But currently the statute is that he gets
17 five strikes on these charges.

18 THE COURT: Mr. Hood, I believe it's five and
19 five, and we're going to stay to that. All right, sir?

20 MR. HOOD: Okay.

21 THE COURT: Thank you. Your objection is noted
22 for the record.

23 Anything further before we go ahead and --

24 [Off the record momentarily]

25 THE COURT: All right. Are y'all ready to go?

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1 Is the State ready?

2 MS. TANNER: Yes, ma'am.

3 THE COURT: Is the defense ready?

4 MR. HOOD: Yes, Your Honor.

5 THE COURT: Do you need any time to look it
6 over, y'all, or are you --

7 MR. HOOD: Well, it's just that the names don't
8 correspond in the order of the number and --

9 THE COURT: They never do.

10 MR. HOOD: -- that are on the front sheet. So
11 now I've got to try to --

12 MS. TANNER: If we could just have a couple of
13 minutes?

14 THE COURT: Do you want just a few minutes, Mr.
15 Hood?

16 MR. HOOD: Just a --

17 THE COURT: Y'all, let's just go ahead and we'll
18 keep them out there. Y'all take about five minutes,
19 that's fine, or ten minutes, whatever you need.

20 [Whereupon, a recess is taken from 4:11 p.m. to
21 4:21 p.m.]

22 [Whereupon, Court's Exhibit Number 1, Beaufort
23 Gazette article, is marked by the court reporter]

24 [Whereupon, Court's Exhibit Number 2, Island
25 Packet article, is marked by the court reporter]

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1 THE COURT: All right, y'all. Why don't you
2 keep reviewing your list as the jury panel comes in.
3 It's going to take them five minutes to get seated,
4 anyway. Okay?

5 Bob, go ahead and let them in.

6 [Whereupon, the jury panel enters the courtroom
7 at 4:21 p.m.]

8 - - - - -

9 STRIKING OF THE JURY

10 THE COURT: All right. Is the State ready?

11 MS. TANNER: Yes, ma'am.

12 THE COURT: Is the defense ready?

13 MR. HOOD: Ready, Your Honor.

14 THE COURT: Thank you.

15 All right. Mike, whenever you are ready.

16 THE CLERK OF COURT: Yes, ma'am.

17 Jurors, when I call your number and your name,
18 please come forward and stand up here.

19 Juror number 173, Charlesetta Wilson.

20 [Whereupon, Ms. Wilson comes forward]

21 THE COURT: Just turn around and face the panel.
22 Thank you. And just stay right there.

23 THE CLERK OF COURT: What says the State?

24 MS. TANNER: Please present Ms. Wilson.

25 THE CLERK OF COURT: What says the defense?

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1 MR. HOOD: Please seat the juror, please.

2 THE BAILIFF: Right this way, please.

3 [Whereupon, Ms. Wilson is seated in the jury
4 box]

5 THE CLERK OF COURT: Juror number 30, Tishanna
6 Conley.

7 [Whereupon, Ms. Conley comes forward]

8 THE CLERK OF COURT: What says the State?

9 MS. TANNER: Please seat Ms. Conley.

10 THE CLERK OF COURT: What says the defense?

11 MR. HOOD: Please excuse Ms. Conley, please.

12 [Whereupon, Ms. Conley returns to the audience]

13 THE CLERK OF COURT: Juror Number 49, Lorinda
14 Eugene.

15 [Whereupon, Ms. Eugene comes forward]

16 THE CLERK OF COURT: What says the State?

17 MS. TANNER: Please present Ms. Eugene.

18 THE CLERK OF COURT: What says the defense?

19 MR. HOOD: Please seat the juror, please.

20 [Whereupon, Ms. Eugene is seated in the jury
21 box]

22 THE CLERK OF COURT: Juror number 108, Ella Mae
23 Mouzon.

24 [Whereupon, Ms. Mouzon comes forward]

25 THE CLERK OF COURT: What says the State?

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1 MS. TANNER: Please present Ms. Mouzon.
2 THE CLERK OF COURT: What says the defense?
3 MR. HOOD: Please seat the juror, please.
4 THE COURT: Right over there. Yes, ma'am.
5 THE BAILIFF: Excuse, or seat?
6 THE COURT: No. Seat.
7 THE BAILIFF: I'm sorry. I beg your pardon.
8 THE COURT: Yes.
9 THE BAILIFF: I'm sorry.
10 THE COURT: Thank you. That's all right.
11 [Whereupon, Ms. Mouzon is seated in the jury
12 box]
13 THE CLERK OF COURT: Juror number 109, Bonnie
14 Nicolai.
15 [Whereupon, Ms. Nicolai comes forward]
16 THE CLERK OF COURT: What says the State?
17 MS. TANNER: Please present Ms. Nicolai.
18 THE CLERK OF COURT: What says the defense?
19 MR. HOOD: Please excuse Ms. Nicolai, please.
20 [Whereupon, Ms. Nicolai returns to the audience]
21 THE CLERK OF COURT: Juror number 175, Latoya
22 Young.
23 [Whereupon, Ms. Young comes forward]
24 THE CLERK OF COURT: What says the State?
25 MS. TANNER: Please present Ms. Young.

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1 THE CLERK OF COURT: What says the defense?

2 MR. HOOD: Please seat the juror, please.

3 [Whereupon, Ms. Young is seated in the jury box]

4 THE CLERK OF COURT: Juror number 143, Eugene
5 Smereka.

6 [Whereupon, Mr. Smereka comes forward]

7 THE CLERK OF COURT: What says the State?

8 MS. TANNER: Please present Mr. Smereka.

9 MR. HOOD: Please excuse the juror from this
10 case.

11 [Whereupon, Mr. Smereka returns to the audience]

12 THE CLERK OF COURT: Juror number 14, Sarina
13 Bentley.

14 [Whereupon, Ms. Bentley comes forward]

15 THE CLERK OF COURT: What says the State?

16 MS. TANNER: Please present Ms. Bentley.

17 THE CLERK OF COURT: What says the defense?

18 MR. HOOD: Please seat Ms. Bentley.

19 [Whereupon, Ms. Bentley is seated in the jury
20 box]

21 THE CLERK OF COURT: Juror number 36, Barbara
22 Dempsey.

23 [Whereupon, Ms. Dempsey comes forward]

24 THE CLERK OF COURT: What says the State?

25 MS. TANNER: Please present Ms. Dempsey.

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1 THE CLERK OF COURT: What says the defense?

2 MR. HOOD: Please seat the juror, please.

3 [Whereupon, Ms. Dempsey is seated in the jury
4 box]

5 THE CLERK OF COURT: Juror number 97, Myla Mata-
6 Koves.

7 [Whereupon, Ms. Mata-Koves comes forward]

8 THE CLERK OF COURT: What says the State?

9 MS. TANNER: Please present Ms. Mata-Koves.

10 THE CLERK OF COURT: What says the defense?

11 MR. HOOD: Please excuse the juror, please.

12 [Whereupon, Ms. Mata-Koves returns to the
13 audience]

14 THE CLERK OF COURT: Juror number 164, Allen
15 Ward.

16 [Whereupon, Mr. Ward comes forward]

17 THE CLERK OF COURT: What says the State?

18 MS. TANNER: Please excuse Mr. Ward.

19 [Whereupon, Mr. Ward returns to the audience]

20 THE CLERK OF COURT: Juror number 127, Joan
21 Reyle.

22 [Whereupon, Ms. Reyle comes forward]

23 THE CLERK OF COURT: What says the State?

24 MS. TANNER: Please present Ms. Reyle.

25 THE CLERK OF COURT: What says the defense?

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1 MR. HOOD: Please excuse Ms. Reyle, please.

2 [Whereupon, Ms. Reyle returns to the audience]

3 THE CLERK OF COURT: Juror number 18, Karen
4 Bligen.

5 [Whereupon, Ms. Bligen comes forward]

6 THE CLERK OF COURT: What says the State?

7 MS. TANNER: Please present Ms. Bligen.

8 THE CLERK OF COURT: Mr. Hood, any challenges
9 for cause?

10 MR. HOOD: Please seat the juror.

11 [Whereupon, Ms. Bligen is seated in the jury
12 box]

13 THE CLERK OF COURT: Juror number 160, Stanley
14 Wade.

15 [Whereupon, Mr. Wade comes forward]

16 THE CLERK OF COURT: What says the State?

17 MS. TANNER: Please excuse Mr. Wade.

18 [Whereupon, Mr. Wade returns to the audience]

19 THE CLERK OF COURT: Juror number 19, Lakeisha
20 Bolden.

21 THE CLERK OF COURT: What says the State?

22 MS. TANNER: Please excuse Ms. Bolden.

23 [Whereupon, Ms. Bolden returns to the audience]

24 THE CLERK OF COURT: Juror number 40, Hugh
25 Dilson.

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1 [Whereupon, Mr. Dilson comes forward]

2 THE CLERK OF COURT: What says the State?

3 MS. TANNER: Please excuse Mr. Dilson.

4 [Whereupon, Mr. Dilson returns to the audience]

5 THE CLERK OF COURT: Juror number 26, Sue

6 Cheatham.

7 [Whereupon, Ms. Cheatham comes forward]

8 THE CLERK OF COURT: What says the State?

9 MS. TANNER: Please present Ms. Cheatham.

10 THE CLERK OF COURT: Mr. Hood, any challenges?

11 MR. HOOD: I would like to discuss --

12 THE COURT: Go ahead and approach.

13 [Whereupon, an off-the-record bench conference
14 is held]

15 MR. HOOD: Please seat the juror.

16 [Whereupon, Ms. Cheatham is seated in the jury
17 box]

18 THE CLERK OF COURT: Juror number 115, Erin
19 Parlagreco.

20 [Whereupon, Ms. Parlagreco comes forward]

21 THE CLERK OF COURT: What says the State?

22 MS. TANNER: Please present the juror.

23 THE CLERK OF COURT: Mr. Hood?

24 MR. HOOD: Please seat the juror.

25 [Whereupon, Ms. Parlagreco is seated in the jury

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1 box]

2 THE CLERK OF COURT: Juror number 114, Michael
3 Oliva.

4 [Whereupon, Mr. Oliva comes forward]

5 THE CLERK OF COURT: What says the State?

6 MS. TANNER: Please present Mr. Oliva.

7 THE CLERK OF COURT: Mr. Hood?

8 MR. HOOD: Please seat the juror.

9 [Whereupon, Mr. Oliva is seated in the jury box]

10 THE CLERK OF COURT: Juror number 128, Brenda
11 Rhodan.

12 [Whereupon, Ms. Rhodan comes forward]

13 THE CLERK OF COURT: What says the State?

14 MS. TANNER: Please present Ms. Rhodan.

15 THE CLERK OF COURT: Mr. Hood?

16 MR. HOOD: Please seat the juror.

17 [Whereupon, Ms. Rhodan is seated in the jury
18 box]

19 THE CLERK OF COURT: Juror number 76, Douglas
20 Houston.

21 [Whereupon, Mr. Houston comes forward]

22 THE CLERK OF COURT: What says the State?

23 MS. TANNER: Please excuse Mr. Houston.

24 [Whereupon, Mr. Houston returns to the audience]

25 THE CLERK OF COURT: Juror number 122, Ashley

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1 Petro.

2 [Whereupon, Ms. Petro comes forward]

3 THE CLERK OF COURT: Ms. Tanner?

4 MS. TANNER: Please present Ms. Petro.

5 THE CLERK OF COURT: Mr. Hood?

6 MR. HOOD: Please seat the juror, please.

7 [Whereupon, Ms. Petro is seated in the jury box]

8 THE CLERK OF COURT: Juror number 45, Alexandra
9 Stern.

10 [Whereupon, Ms. Ebbe-Stern comes forward]

11 MS. TANNER: Please present --

12 THE CLERK OF COURT: What says the State?

13 MS. TANNER: Please present Ms. Ebbe-Stern.

14 THE CLERK OF COURT: What says the defense?

15 MR. HOOD: Please seat the juror.

16 [Whereupon, Ms. Ebbe-Stern is seated in the jury
17 box]

18 THE COURT: The alternate --

19 THE CLERK OF COURT: Juror 126, Bruce Reeder.

20 [Whereupon, Mr. Reeder comes forward]

21 THE CLERK OF COURT: What says the State?

22 MS. TANNER: Please present Mr. Reeder.

23 THE CLERK OF COURT: What says the defense?

24 MR. HOOD: Please seat the juror.

25 [Whereupon, Mr. Reeder is seated in the jury

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1 box]

2 THE COURT: All right. Is there any matters of
3 law we need to take up in regards to the jury strikes?
4 From the State?

5 MS. TANNER: Nothing from the State.

6 THE COURT: From the defense?

7 MR. HOOD: Nothing, Your Honor.

8 THE COURT: Thank you.

9 All right. Ladies and gentlemen, as I'm sure
10 you now understand, you are sitting as the jury in this
11 case.

12 Before I send you home for the evening, I need
13 to give you a few instructions. It is my understanding
14 as of right now that Judge Buckner, who is from
15 Colleton, is going to come and try this case tomorrow
16 morning, and it's my understanding that he will be here
17 to begin the trial involving y'all at 9:30. Of course,
18 he will be here a little earlier for some pre-trial
19 motions. But, respectfully, I'm going to need y'all
20 here timely, by 9:30, where we can start the trial of
21 this case.

22 Additionally, ladies and gentlemen, there's a
23 few rules, now that you've been sat as a juror -- as
24 jurors in a trial. To begin with, you are not allowed
25 to bring any type of cell phone or electronic device or

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1 any type of laptop, Blackberry, anything like that,
2 back to the jury room with you. Number one, you can
3 access so much information now days. Respectfully, if
4 you want to bring a book with you in between, you're
5 free to do that, or any other paperwork or anything
6 else. But we're going to have to go ahead and take any
7 cell phones, or anything along those lines, from you.

8 If you have any type of emergency, or if you
9 have someone that needs to get in contact with you,
10 just give them the clerk of court's phone number. I
11 assure you that once they tell them that you are a
12 juror sitting on a case, they will go straight to the
13 judge and that judge will find you immediately. So
14 don't worry about being out of touch.

15 Additionally, ladies and gentlemen, this case
16 has had some coverage, as far as news coverage is
17 concerned, as y'all heard during voir dire.
18 Respectfully, ladies and gentlemen, you are not to read
19 anything in the newspaper tomorrow morning in regard to
20 this case, nor are you to go read anything from today's
21 newspaper.

22 Ladies and gentlemen, you are going to get
23 everything you need to decide this case right here in
24 the courtroom, taking the evidence and the testimony,
25 and you're going to hear the arguments from the

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1 lawyers, as well as the judge's charge on the law.

2 So, again, ladies and gentlemen, I'm instructing
3 you -- and Judge Buckner is going to ask you tomorrow
4 morning whether or not you have looked at or read
5 anything. That also goes for, ladies and gentlemen,
6 any potential newscast. I don't think there is going
7 to be anything, because I haven't had any requests by
8 any reporters. But out of an abundance of caution,
9 ladies and gentlemen, if you happen to be flipping
10 channels tonight or you see anything in regards to
11 what's going on at the Beaufort courthouse -- I can
12 tell you that this is the only case, other than my
13 medical malpractice case that's still going on, that's
14 happening here. So if you hear anything in regard to
15 the courthouse, turn the TV off, turn the channel.

16 Again, you are going to get everything you need
17 right here in the courtroom. You are not to have any
18 independent or outside influence.

19 Additionally, ladies and gentlemen, when you go
20 home tonight and see family members or friends, they're
21 going to ask you what you're doing up at the
22 courthouse. All you can say is that, I've been chosen
23 on a criminal jury. And that's it. You're not allowed
24 to say what type it is, you're not allowed to say who
25 it involves. At the end of the case, it will be up to

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1 you whether or not you wish to speak about the case.
2 But at this time, it is simply not appropriate for you
3 to do so. So that would also consider if you have a
4 husband or a wife that maybe reads the newspaper,
5 they're not allowed to tell you anything about the
6 case.

7 I will additionally say, ladies and gentlemen, I
8 know you know very little about it. However, you are
9 also not to do any of your own independent research,
10 involving this case, from anything you may or may not
11 know. Again, my only orders are to you is to go home,
12 have a good night's sleep, and come back at 9:30 in the
13 morning refreshed and ready to go. All right?

14 Lastly, I will tell you that the attorneys and
15 the parties in this case have been instructed not to
16 speak to you, as well as any potential witnesses. If
17 you happen to pass them in the courthouse coming and
18 going either tonight or tomorrow morning and they don't
19 even say hello, please, no one is being unfriendly.
20 They are just following my instructions. Even innocent
21 conversations can be misconstrued, and we wouldn't want
22 that to happen. All right?

23 So with that said, I'm going to excuse you back
24 to your jury room. It's where you are going to report
25 tomorrow morning at 9:30, where we're going to begin

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1 the trial of this case. All right? Thank you, y'all,
2 and good night.

3 [Whereupon, the jury exits the courtroom at 4:41
4 p.m.]

5 THE COURT: All right. Ladies and gentlemen,
6 I've got some good news for the remainder of you, and I
7 wanted to send them off before I told you. It's my
8 understanding, from the solicitor's office -- and it's
9 the solicitors that call the cases to trial. The judge
10 doesn't control the docket; their office does. And
11 it's my understanding from them that this is the only
12 criminal case that they intend on trying this week. So
13 the good news for you is is that I'm going to be able
14 to release you from jury service. But I want to do
15 that with just a few comments.

16 I will always tell you, and I always say this,
17 Monday is always the hardest day when I have to qualify
18 a jury. I can also tell you that this case was made
19 much more complicated by the newspaper article. As I
20 instructed this jury, and as y'all understand, every
21 person is entitled to a fair and impartial trial and
22 any time that we have either evidence or background
23 information put in on a case in the newspaper, it
24 simply makes it sometimes difficult to pull a fair and
25 impartial jury.

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1 To give you a good example, in the article in
2 the Island Packet, it did talk about the alleged
3 defendant's background, or criminal record, which is
4 completely inadmissible in the trial of the case. It
5 additionally talks about other things, that are
6 potentially inadmissible, that simply are not
7 appropriate to be put in front of a jury. That's why
8 it's so important, ladies and gentlemen, again, that we
9 go through in detail and ask these questions.

10 I know many of you said you have read the
11 article, and you can be fair and impartial. But
12 sometimes, ladies and gentlemen, an article reaches
13 such a level that I have enormous concern that you are
14 unable -- and certainly not intentionally -- but just
15 simply unable to put that out of your mind and try the
16 case before you. I think it's only human nature. And
17 that's part of what my concern was today, which is why
18 we really went through and were detailed and asked you
19 questions.

20 I'll tell you, in my experience and in studying
21 constitutional law, both as an undergraduate when I got
22 my master's, and then law school, the first and fifth
23 amendment I think are obviously and constantly pulling
24 on each other. Our right to free press versus our
25 right to a free trial are difficult. We want the press

1 here. We want to make sure our courtrooms are open
2 because I think it is vital to this system -- and it's
3 certainly what the American system is based on.

4 The flip side of it is is that every defendant
5 should be and must be insured a fair and impartial
6 trial. This is their only day and chance in court.
7 And what I will tell you, ladies and gentlemen, is what
8 I am going to tell this jury at the end of my charge:
9 as the judge of the law of the case, which is what I
10 am, if I make a mistake, there is a higher court that
11 can reverse me, if appropriate and necessary.

12 If a jury of twelve people make an erroneous
13 determination of the facts in the case, there is no one
14 to overturn them. That stays, and the facts are as
15 they are. And that's why it is so vitally important
16 that you get the facts of the case right here in the
17 courtroom and not from some newspaper article and not
18 from some other source that tells you what they think
19 or they believe them to be. Okay?

20 So I just wanted to explain that so y'all can
21 understand the significance of it. To me, it just goes
22 to the very heart of our judicial system and our jury
23 system. And it's just so important, that it's not
24 something that we can compromise in any way.

25 So with that said, ladies and gentlemen, it's

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1 about ten minutes to 5:00. I'm going to release you at
2 rush-hour traffic, and I apologize for that, but you
3 are free to go for the remainder of the week. Again,
4 you have fulfilled your duty for jury service for the
5 next three years. And, again, thank you, and thank you
6 for being here. Y'all are excused.

7 [Whereupon, the jury panel is excused and exits
8 the courtroom at 4:46 p.m.]

9 THE COURT: Just for on the record: if the
10 attorneys will be here at nine o'clock tomorrow morning
11 for pre-trial motions, and Judge Buckner will take them
12 up with y'all. Okay?

13 MS. TANNER: Thank you.

14 MR. HOOD: Thank you.

15 THE COURT: Thank you, y'all.

16 [JURY TRIAL ADJOURNS AT 4:47 P.M.]

17

18

19

20

21

22

23

24

25

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Carmen T. Mullen, on Monday, November 17, 2008.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 6th day of August, 2009.

Mia Perron

Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF BEAUFORT) CASE NO.: 2007-GS-07-1584,
 1616-1617, 2008-GS07-2690

STATE OF SOUTH CAROLINA,)
)
 THE STATE,)
)
 V.) TRANSCRIPT OF RECORD
)
 RODNEY GALIMORE,)
)
 DEFENDANT.)

NOVEMBER 18, 2008
 BEAUFORT, SOUTH CAROLINA
 BEFORE THE HONORABLE PERRY M. BUCKNER

APPEARANCES:

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EXHIBITS

NONE.

1 **THE COURT:** All right, counsel. I think I need to put
2 a couple of things on the record. Good morning to each of
3 you. I met with you briefly in chambers.

4 First of all, I was assigned this week -- even though
5 I'm a resident judge and chief administrator judge in
6 General Sessions for the 14th Circuit, I was assigned to
7 Hampton Common Pleas. I've stopped court there, which I
8 have to resume at 10:00 in the morning, which both parties
9 know, which means I have just a day to try this case.

10 I have a special order from court administration that
11 gives me concurrent jurisdiction for the General Sessions in
12 Beaufort County today in order for me to stop the people in
13 Hampton, with a promise that I'll come back, since I have 11
14 hearings scheduled tomorrow in Hampton starting in the
15 morning.

16 I am aware that Judge Mullen struck the jury in this
17 case yesterday. I understand the jury has not been sworn;
18 is that right, Mike?

19 **CLERK:** Yes, sir.

20 **THE COURT:** I also understand a foreperson has not been
21 selected on the jury. I understand that Mr. Hood advised me
22 in chambers this morning that he has four pre-trial motions
23 that he wishes to take up. The first is a Request for
24 Sequestration of witnesses. I was handed a list by the
25 State of their potential witnesses. On this list is one,

1 two, three, four, five, six, seven, eight, nine, ten,
2 eleven, twelve, thirteen, fourteen people, so I need to move
3 -- I understand from the Defendant that the Defendant would
4 only have one witness, being the Defendant; is that right,
5 Mr. Hood?

6 **MR. HOOD:** That is true. That's possibly all.

7 **THE COURT:** Does the State have any objection to
8 Defense's motion for sequestration?

9 **DEPUTY SOLICITOR TANNER:** No, sir.

10 **THE COURT:** All right. Ms. Tanner, I'm going to ask
11 you -- you are aware we actually have a rule on it, but --
12 that I've discussed with you in the past and you're aware --
13 I want you to take a moment to educate your witnesses. I
14 will allow you to keep in the courtroom -- I'm granting
15 defense motion for sequestration. Of course, it would be
16 applied to both sides, but Mr. Hood advises he only has the
17 one witness, his client, who, of course, is allowed to
18 remain in the courtroom. And you're allowed to keep your
19 case manager, or the person in charge of the investigation.
20 Who will that be, Ms. Tanner?

21 **DEPUTY SOLICITOR TANNER:** Trooper Nick Sprouse, Your
22 Honor.

23 **THE COURT:** Trooper, pleasure to have you.

24 **TROOPER SPROUSE:** Thank you, sir.

25 **THE COURT:** You will be allowed to remain in the

1 courtroom. Now, Ms. Tanner, I realize that there are other
2 people here. In addition to the Trooper, I believe that the
3 victim's bill of rights allows a victim to remain in the
4 courtroom. You have any objection to that, Mr. Hood?

5 **MR. HOOD:** None.

6 **THE COURT:** Ms. Tanner, I've asked you to designate
7 what members of the victim's family would be allowed to
8 remain in the courtroom in light of my granting
9 sequestration.

10 **DEPUTY SOLICITOR TANNER:** Thank you, Your Honor.

11 **THE COURT:** Pardon?

12 **DEPUTY SOLICITOR TANNER:** Thank you, Your Honor. There
13 are no victim's family members who will be testifying. They
14 are not witnesses, so we would ask that they all be allowed
15 to remain.

16 **THE COURT:** I agree that if they are not witnesses,
17 they will be allowed to remain. Any objection, Mr. Hood?

18 **MR. HOOD:** None.

19 **THE COURT:** Very well. Now, as to your other witnesses
20 on this list, Ms. Tanner, have you had an opportunity to
21 advise them of my order of sequestration?

22 **DEPUTY SOLICITOR TANNER:** Yes, Your Honor. I informed
23 them this morning that probably would be coming and Sergeant
24 Vaughn has prepared a room for our witnesses.

25 **THE COURT:** Hello, Sergeant Vaughn.

1 **SERGEANT VAUGHN:** Good morning, Judge.

2 **THE COURT:** I want to say, again, in the presence of
3 everybody in this courtroom, a judge could not ask for a
4 better person to handle security in a courtroom than
5 Sergeant Anthony Vaughn. Pleasure to have you.

6 **SERGEANT VAUGHN:** Thank you.

7 **THE COURT:** All right, Ms. Tanner, I'm going to ask --
8 you're responsible for your witnesses, each one that's on
9 the list. I'm going to ask you at this time, please advise
10 them of the following: that they're not allowed to discuss
11 their testimony, and please remember that if you intend on
12 calling any witnesses in reply, that even if you had someone
13 testify, they're not allowed to discuss their testimony if
14 they are a potential reply witness, with any other witness
15 who has not testified in the trial of this case.

16 They need to be kept in a designated area of this
17 courthouse, so that when you get ready to call the witness,
18 we do not have to send Sergeant Vaughn on a search for the
19 witnesses, so the trial can continue and move in an orderly
20 fashion. Do you understand?

21 **DEPUTY SOLICITOR TANNER:** Yes, sir.

22 **THE COURT:** And I'll give you that opportunity in just
23 a moment. I understand, Mr. Hood, that you have an
24 objection to a statement of the Defendant that you believe
25 you're entitled to have me conduct an *in camera* hearing to

1 establish the circumstances under which the statement was
2 obtained; is that correct?

3 **MR. HOOD:** Judge, that's correct. But, see, my problem
4 is, I don't know what statements he made. I'm getting bits
5 and pieces. I was notified yesterday that the trooper was
6 going to testify as to some statement my client made to him.

7 **THE COURT:** Ms. Tanner, let's make this a little
8 simpler. You know which witnesses may testify to anything
9 said by the Defendant and I'm certainly not asking you to
10 concede there was or was not custodial interrogation.
11 However, tell me which witnesses possibly could testify to
12 any statement and let's handle that right now, rather than
13 have to stop the trial once I bring the jury in.

14 **DEPUTY SOLICITOR TANNER:** The only statements -- our
15 witness is going to present statements that wouldn't have
16 anything to do with Miranda or custodial custody would be
17 Trooper Sprouse. There are lay witnesses who arrived prior
18 to law enforcement and who did observe the Defendant on the
19 scene and heard him making statements on the telephone.
20 However, that has nothing to do with custody or anything of
21 that nature.

22 **THE COURT:** Mr. Hood, obviously, I assume you've served
23 a Rule 5 in this case and you ---

24 **MR. HOOD:** Yes, sir.

25 **THE COURT:** --- understand I'm referring -- I'm

1 assuming that we're talking about law enforcement
2 interrogation, or custodial interrogation, or voluntariness,
3 but obviously, that would not necessarily apply to a lay
4 witness, and I know you understand that.

5 Now, would you like to have your *in camera* hearing now
6 with Trooper Sprouse to determine the voluntariness of what
7 he will testify to concerning any statement he heard your
8 client make at the time of this incident?

9 **MR. HOOD:** Well, if they intend to introduce any
10 statements, then I certainly would like that opportunity.

11 **THE COURT:** Very well. Solicitor, call your witness.

12 **DEPUTY SOLICITOR TANNER:** Thank you, Your Honor. The
13 State calls Trooper Nick Sprouse to the stand.

14 **THE COURT:** He's going to swear you right over here.

15 **CLERK:** Raise your right hand and place your left hand
16 on the Bible, please.

17 WHEREUPON, TROOPER NICK SPROUSE WAS DULY SWORN TO TELL
18 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH.

19 **CLERK:** Please state your full name and spell your last
20 name:

21 **TROOPER SPROUSE:** Nicholas Lee Sprouse. Last name: S-
22 P-R-O-U-S-E.

23 **CLERK:** Thank you. You can have a seat.

24 **THE COURT:** Good morning to you, Officer Sprouse.

25 **TROOPER SPROUSE:** How are you doing, sir?

1 **THE COURT:** Make yourself comfortable. Adjust it as
2 you need. Pull it down to you. State your full name and
3 spell your last name for the court reporter.

4 **TROOPER SPROUSE:** Nicholas Lee Sprouse. Last name, S-
5 P-R-O-U-S-E.

6 **DEPUTY SOLICITOR TANNER:** Your Honor, do you want me to
7 sequester the witness prior to doing this? Do you want the
8 witnesses to leave the courtroom prior to this?

9 **THE COURT:** Yes, I do. I'm sorry; I'll give you an
10 opportunity.

11 **DEPUTY SOLICITOR TANNER:** Okay.

12 **THE COURT:** All right, Solicitor. I'll ask you to look
13 out in the courtroom. I see that I have one, two, three,
14 four, five, six, seven, eight, nine people sitting in the
15 public section of the courtroom. Solicitor, does the State
16 have any witnesses subject to my order of sequestration that
17 are present in the courtroom or in any adjourning room for
18 which there is audio communication?

19 **DEPUTY SOLICITOR TANNER:** No, sir, Your Honor.

20 **THE COURT:** Mr. Hood, does the Defendant have any
21 witnesses in the courtroom for which there are present now
22 or in an adjourning room for which there is audio
23 communication?

24 **MR. HOOD:** None, Your Honor.

25 **THE COURT:** Very well. Solicitor, the witness has been

1 sworn, you may proceed with the Jackson Denno hearing.

2 **DEPUTY SOLICITOR TANNER:** Thank you, Your Honor.

3 **DIRECT EXAMINATION**

4 **BY DEPUTY SOLICITOR TANNER:**

5 **Q** Trooper Sprouse, I'm going to ask you about an incident
6 you responded to on August 11th, 2007 in Beaufort County.

7 On that date, did you come in contact with a Rodney
8 Galimore?

9 **A** Yes, ma'am.

10 **Q** At -- prior to -- and I'm assuming he was taken in
11 custody, we're here for his trial today. Prior to him being
12 taken into custody, did he make any statements to you or did
13 you ask him any questions?

14 **A** I did ask him a question once he was in the rear of the
15 county car ---

16 **Q** All right.

17 **A** --- police car.

18 **Q** So at that point, he's in custody?

19 **A** Yes, ma'am.

20 **Q** And prior to you asking that question, did you give him
21 his Miranda rights?

22 **A** Yes, ma'am, I did.

23 **Q** And could you tell the Court how you did that?

24 **A** I have a card that I always keep in my left pocket.

25 It's -- it's trained policy for the highway patrol and I

1 have it with me now if anybody care ---

2 **THE COURT:** Pull it out and we'll take a look at it.

3 **A** --- which has the Miranda warning on it. And just like
4 I do in any case that I apply Miranda to a subject, I always
5 read it verbatim off the card. Do I need to read it?

6 **THE COURT:** You can read it.

7 **A** Okay. And I informed Mr. Galimore of his rights by
8 reading this card:

9 "You have the right to remain silent. Anything you say
10 can and will be used against you in a court of law. You
11 have the right to talk to a lawyer and have him present with
12 you while you are being questioned. If you cannot afford to
13 hire a lawyer, one will be appointed to represent you before
14 any questions, if you wish. You can decide at any time to
15 exercise these rights and not answer any further questions
16 or make any additional statements. Do you understand each
17 of these rights I have explained to you? Having these
18 rights in mind, do you wish to talk with us now?"

19 **Q** And upon reading that to Mr. Galimore, did he respond?

20 **A** He did respond to me when I asked him a question.

21 **Q** And did he respond to whether or not he understood what
22 you had just told him about his rights?

23 **A** He nodded his head, but no verbal.

24 **Q** And -- and how did he nod his head, in the affirmative
25 or negative?

1 **A** In -- in the affirmative.

2 **Q** And once he did that, did you then ask him a question?

3 **A** I did. I asked him how the collision happened. That's
4 just a standard protocol question that I will ask any person
5 involved in a collision. At that point, he didn't respond
6 immediately when I had asked him a question, but once I
7 asked him again, he said that it wasn't his fault, she was
8 in his lane. And I said, "Do you understand what is going
9 on?" And, again, he didn't respond. And I said, "Do you
10 understand that the lady is deceased?" He said, "She is not
11 dead and it's not my fault. She was in my lane."

12 **Q** Did he make any further statements at that time?

13 **A** No. At that point in time he began to lean over and he
14 didn't answer anymore questions. He was in and out once
15 he's -- once -- after he had made his statements.

16 **DEPUTY SOLICITOR TANNER:** All right. That would be the
17 extent of the statements, Your Honor.

18 **THE COURT:** Cross-examination?

19 **MR. HOOD:** I don't have any.

20 **THE COURT:** Any questions?

21 **DEPUTY SOLICITOR TANNER:** None.

22 **THE COURT:** You may step down, Officer.

23 **TROOPER SPROUSE:** Thank you, sir.

24 **THE COURT:** Any further witnesses for purposes of this?

25 **DEPUTY SOLICITOR TANNER:** Not for the purposes of this

1 hearing, Your Honor, no.

2 **THE COURT:** Any evidence that you wish to introduce,
3 Mr. Hood, in support of your motion to suppress the
4 statement?

5 **MR. HOOD:** If that's the only statement we're talking
6 about --

7 **THE COURT:** Ms. Tanner is an officer of this Court.
8 She assures this Court -- have a seat, Officer. Have a
9 seat, Ms. Tanner. She assures this Court that Trooper
10 Sprouse is the only law enforcement witness that would
11 testify as to any statement made by your client. Is there
12 any further objection?

13 **MR. HOOD:** None.

14 **THE COURT:** Very well. Is the objection withdrawn?

15 **MR. HOOD:** Yes.

16 **THE COURT:** Then it won't be necessary for me to rule
17 on it. Mr. Hood, your next motion, please.

18 **MR. HOOD:** The next motion, Judge, I'd like to get to
19 the quashing of the indictment, quote, of the reckless
20 homicide -- I mean, for the Felony DUI.

21 **THE COURT:** All right. Do you have the indictments?

22 **MR. HOOD:** I don't have any indictments, Your Honor.

23 **THE COURT:** All right. Let the record reflect that I
24 am holding Indictment 2007-GS-07-01615, The State v. Rodney
25 Galimore, or am I pronouncing that correctly?

1 **MR. HOOD:** That is correct.

2 **THE COURT:** G-A-L-I-M-O-R-E, Madam Court Reporter.
3 Indictment for felony, driving under the influence, true
4 billed by the Beaufort County Grand Jury. This is a
5 certified copy by the Clerk of Court of Beaufort County.

6 This indictment alleges that at a Court of General
7 Sessions convened on September 20th, 2007, the Grand Jurors
8 of Beaufort County presented upon their oath that in
9 Beaufort County, South Carolina, on or about August the
10 11th, 2007, while driving a vehicle under the influence of
11 alcohol, drugs, or both alcohol and drugs, the defendant,
12 Rodney Galimore, did an act forbidden by law, or neglected a
13 duty imposed by law, in driving of said vehicle, and such
14 act proximately caused death to Merry C. Deon, D-E-O-N, all
15 in violation of SC Code Section 56-5-2945 of the Code of
16 Laws of South Carolina 1976, as amended. Is that the
17 indictment that is the subject matter of your motion?

18 **MR. HOOD:** That is correct.

19 **THE COURT:** Happy to hear from you at this time, Mr.
20 Hood.

21 **MR. HOOD:** Your Honor, in my opinion, based on the
22 present state of the law, that -- that particular indictment
23 fails to state an offense. Specifically, because the State
24 -- I mean, the indictment does not include an act or
25 omission, which is required by law to be stated in the

1 indictment. And that particular item has to be determined
2 by the grand jury when the grand jury indicts the person for
3 the crime, and there is no allegation of what that act or
4 omission is. That was simply a statement taken directly out
5 of the form book which elements -- it states you have to
6 allege certain elements. And then it comes down to that
7 particular element and it's listed just as that. It's
8 either this or that and you have to decide what that element
9 is and fill it in at the time you indict the person. It,
10 basically, without that particular element, it fails to
11 state an offense.

12 **THE COURT:** So you think the indictment lacks
13 sufficient specificity in order to put your client on notice
14 of the charges; is that the basis of your motion?

15 **MR. HOOD:** The basis of my motion is not only that, but
16 it simply fails to state an offense because the Grand Jury
17 did not have the opportunity, and the Grand Jury chose,
18 apparently, not to, you know, list that particular element
19 of the crime at the time it took its action.

20 **THE COURT:** Well, what element are you referring to?

21 **MR. HOOD:** The act or omission that we're here -- the
22 cause -- who was the proximate cause of this.

23 **THE COURT:** So you think the alleging of driving the
24 vehicle in a -- that your client did an act forbidden by law
25 or neglected the duty imposed by law in driving of said

1 vehicle, and that such act proximately caused death to Merry
2 C. Deon, in violation of the code of laws, is insufficient
3 because it fails to allege what?

4 **MR. HOOD:** It fails to allege what the act was that was
5 a violation of the law or an omission.

6 **THE COURT:** And you have case law to support that
7 position?

8 **MR. HOOD:** State v. Grampus.

9 **THE COURT:** And is that "Grampus"?

10 **MR. HOOD:** That is correct, I believe.

11 **THE COURT:** Let the record reflect that counsel for the
12 Defendant has handed the Court 343, SE 2d, 26, State v.
13 Grampus. This is a 1986 case and the Supreme Court --
14 apparently, the Defendant was tried and convicted in
15 magistrate's court -- now, wait a minute. He was tried and
16 convicted in General Sessions of felony, driving under the
17 influence and simple possession of marijuana. He had some
18 other traffic violations which were nol prossed and -- no,
19 he was convicted in his absence, and then, apparently, the
20 tickets were nol prossed after the conviction and absence.
21 He moved before the circuit court to dismiss the felony DUI
22 on the grounds of double jeopardy.

23 His allegation in this case was that his felony DUI
24 prosecution, after his earlier conviction in magistrate
25 court, violated his constitutional protection against double

1 jeopardy, and he cited the United States Supreme Court case
2 of Illinois v. Vitale, V-I-T-A-L-E, which is a 1980 case.

3 In that case, the United States Supreme Court was
4 presented with the question of double jeopardy regarding the
5 speeding violation and a subsequent manslaughter charge.
6 And the manslaughter charge in that case had not taken
7 place, but the Court said if in the pending manslaughter
8 prosecution that Illinois relies on and proves a failure to
9 slow to avoid an accident as a reckless act necessary to
10 prove manslaughter, then Mr. Vitale, V-I-T-A-L-E, would have
11 had a substantial claim of double jeopardy.

12 Therefore, his argument depended on whether his traffic
13 violation of improper use of lanes, crossing the center
14 line, was used to establish an element of felony DUI. The
15 Court went on to say that our statute requires proof of
16 three elements: The actor drives a vehicle while under the
17 influence of alcohol and/or drugs; the actor does an act
18 forbidden by law or neglects a duty imposed by law; and the
19 act or neglect proximately causes great bodily injury or
20 death to another person, which is the elements of 56-5-2945,
21 our code.

22 The Court pointed out, for purposes of the double
23 jeopardy argument in this case, that the lane change
24 violation was critical to establish an act forbidden by law.
25 The State argued that the record is unclear regarding this

1 element.

2 In this particular case, it involved a head-on
3 collision caused by an alleged lane change violation. And
4 according to the Court, the record, on appeal, clearly
5 showed that the lane change violation served as the only
6 basis for the act forbidden by law in the felony DUI
7 prosecution.

8 In a footnote, the Court said this: Footnote 2:
9 "Appellant", and in this case I'm referring to Mr. Grampus,
10 "has not argued the sufficiency of the indictment on its
11 face. However, we note that the indictment must state, with
12 particularity, the act forbidden by law, or duty imposed by
13 law, which will be relied on by the state to support the
14 felony DUI charge." And they cite 56-5-2945, 41 AmJur2nd,
15 Indictments and Information Section 93, Note 8, State v.
16 Tabory, T-A-B-O-R-Y, 202 SE 2nd 852. The Court went on to
17 put -- to say, "Therefore, unlike Vitale, the United States
18 Supreme Court case, the issue of double jeopardy should be
19 apparent on the face of the indictment."

20 All right, Solicitor. I'll be happy to hear from you.
21 And have you had a chance to see this case?

22 **DEPUTY SOLICITOR TANNER:** I'm familiar with Grampus,
23 Your Honor. However, that case is from 1986. There has
24 been a tremendous amount of case law recently about the
25 sufficiency of an indictment, particularly the Gentry case,

1 which makes the indictment a notice document only. And, in
2 fact, in January of --

3 **THE COURT:** I don't think there's any argument that
4 this -- I mean, Mr. Hood is not arguing this is
5 jurisdictional, I don't believe; do you?

6 **MR. HOOD:** Judge, what I'm arguing is that it fails to
7 state an offense.

8 **THE COURT:** Mr. Hood, I'm aware of what you told me,
9 and my question is you are not arguing that the indictment
10 is a jurisdictional argument in light of our recent case
11 law?

12 **MR. HOOD:** That's correct.

13 **THE COURT:** All right. Take a seat, Mr. Hood. One
14 lawyer speaks at a time, one lawyer stands at a time in my
15 courtroom. Yes, ma'am?

16 **DEPUTY SOLICITOR TANNER:** Thank you, Your Honor. In
17 January of 2008, our Court actually noted that an indictment
18 passes legal muster when it charges the crime substantially
19 in the language of the statute prohibiting the crime. This
20 indictment, verbatim, cites the statute. The case I'm
21 citing is from January, 2008. It is State v. Tumbleston and
22 it is at 654 SE 2nd 849.

23 **THE COURT:** Do you have a copy?

24 **DEPUTY SOLICITOR TANNER:** I do not have a copy, Your
25 Honor. So that's the -- if the issue is whether or not this

1 indictment passes legal muster, and it does, it quotes the
2 statute verbatim. It lists every element that the State
3 must prove and the State must prove evidence -- provide
4 evidence that satisfies each element which has been put in
5 the indictment. There is nothing missing from this
6 indictment and it passes legal muster. All the recent case
7 laws support that. Grampus is from 1986.

8 **THE COURT:** Well, Grampus does say in the footnote, and
9 I call that to your attention, that although Mr. Grampus
10 didn't raise in his appeal, because it was a double jeopardy
11 argument -- he did not raise the sufficiency of the
12 indictment. The Court suggested that the indictment must
13 state, with particularity, the act forbidden by law rather
14 than just stating general terms, which is Mr. Hood's
15 argument that the indictment here fails to state, with
16 particularity, the act forbidden by law.

17 Now, I agree with you, Solicitor, that an indictment is
18 a notice document, and Mr. Hood concedes it's not
19 jurisdictional, even though there were arguments in the
20 past. I agree with you this is a 1986 case.

21 The question, I guess, for the Court at this point is
22 whether or not the indictment sufficiently -- he -- he
23 couches it in terms of "fails to state an offense", but I
24 believe that the essence of this argument is whether or not
25 the indictment sufficiently notifies the Defendant from a

1 due process standpoint of the charge against him, so that he
2 can respond to the charge from a due process standpoint. I
3 need to hear from you on that. And given the fact that I'm
4 bound by Grampus, unless it's been overruled -- Mr. Hood,
5 have you Shepardized this case?

6 **MR. HOOD:** I have, Your Honor. Matter of fact, in --
7 let's see, January 9, 2008, Stanley Antonio v. State of
8 South Carolina cites that -- within the body of that
9 particular decision it says, "State v. Grampus is the
10 leading case in South Carolina setting forth the elements of
11 the offense of felony driving under the influence."

12 **THE COURT:** Well, interestingly enough, Mr. Hood, the
13 elements that are set forth in felony DUI in Grampus are
14 included in this indictment. It is the footnote, when they
15 were talking about double jeopardy, which suggests that the
16 indictment "must, with particularity, state the act
17 forbidden by law." The elements that Grampus requires for a
18 felony DUI are "that an actor drive a vehicle while under
19 the influence of alcohol or drugs, and the actor does an act
20 forbidden by law or neglects a duty imposed by law, and the
21 act or neglect proximately causes great bodily injury or
22 death to another person"; those elements, I believe, you
23 concede are alleged in the indictment; isn't that true?

24 **MR. HOOD:** I -- I think those words are alleged in the
25 indictment.

1 **THE COURT:** What you -- what you believe ---

2 **MR. HOOD:** But I see ---

3 **THE COURT:** --- is fatal to the indictment is the
4 failure to state, with particularity, the act forbidden by
5 law?

6 **MR. HOOD:** What I'm saying is that the Grand Jury, who
7 has the responsibility to indict for this particular crime,
8 was not given information for them to indict, for that
9 particular element "a act or omission" that they could
10 allege in the indictment, which would satisfy the
11 indictment. It's like ---

12 **THE COURT:** I understand that. What you're telling me,
13 Mr. Hood -- I'm not trying to mince words with you, I want
14 to make sure the record is clear for purposes of your
15 argument. You're alleging, based on the footnote in the
16 Grampus case, which you've handed to me, that the indictment
17 does not state, with particularity, the act forbidden by law
18 or duty imposed by law?

19 **MR. HOOD:** That's correct. They ---

20 **THE COURT:** Thank you. Anything else, counsel?

21 **DEPUTY SOLICITOR TANNER:** Your Honor, the Grand Jury
22 proceedings are confidential. We don't know what went on.
23 We don't know what the Grand Jury was told. We know that
24 based on the elements they were provided in the statute ---

25 **THE COURT:** Well, I don't think that matters,

1 Solicitor. I agree with Mr. Hood on that. It's the notice
2 of his client, from the Grand Jury, that is critical here,
3 not what - obviously, the Grand Jury's proceedings are
4 secret. The Grand Jury could have considered many things,
5 but its notice to the defendant that is the key here,
6 whether or not the defendant has been placed on notice of
7 the act forbidden by law, so that he can respond to the
8 charge in the indictment issued by the Grand Jury.

9 **DEPUTY SOLICITOR TANNER:** Yes, sir. And the State's
10 position is there's no question he's on notice and it
11 satisfies the current case law. As recent as 2008, January,
12 it says, "An indictment passes legal muster so long as it
13 contains the language of the statute." This indictment
14 contains the -- the language of the statute verbatim. He is
15 absolutely on notice for what he was charged with and what
16 type of evidence the State will present against him.

17 **THE COURT:** All right. I'm going to -- I'm going to
18 take a little, quick look at this for a moment. You had
19 another motion, Mr. Hood, I believe, but it's -- I believe
20 that motion was something that I would have to take up
21 during the course of the trial; is that correct?

22 **MR. HOOD:** One of them, Your Honor, with respect to the
23 -- the suppression of the blood results.

24 **THE COURT:** In -- in order to -- to take up that,
25 you're going to make that contemporaneously with their

1 attempt to introduce it into evidence?

2 **MR. HOOD:** That's correct. I'll make the objection.

3 **THE COURT:** Does that take care, now, of all your pre-
4 trial motions?

5 **MR. HOOD:** No. We also have a motion concerning this
6 animation that the MAIT team has -- has developed and -- and
7 the State intends to play.

8 **THE COURT:** Are you going to make any mention in
9 opening statement of an animation? Well, I'm ruling that
10 you're not ---

11 **DEPUTY SOLICITOR TANNER:** Okay.

12 **THE COURT:** --- until I have an opportunity to rule on
13 it at the trial, Solicitor.

14 **DEPUTY SOLICITOR TANNER:** That handles that.

15 **THE COURT:** You can make that contemporaneously -- when
16 you reach the point that they attempt to introduce that,
17 just let me know. Give me the opportunity at that point
18 rather than having rule on it pre-trial. It will not be
19 mentioned in opening statement. You understand, Mr. Hood?

20 **MR. HOOD:** That is correct. Thank you.

21 **THE COURT:** Anything else?

22 **MR. HOOD:** The only ---

23 **THE COURT:** Because I want to take a minute on this
24 other motion.

25 **MR. HOOD:** Right. The only other matter is, I -- we

1 have a DUS Third here and above. A DUS Third and above is
2 an indictment that we also have here. And it is --

3 **THE COURT:** Right.

4 **MR. HOOD:** -- alleged that it's non-alcohol related. I
5 would move to have that particular indictment dismissed from
6 the presence of this jury to make a determination, mainly,
7 because, in my opinion, the only thing that that's going to
8 do ---

9 **THE COURT:** I do not send indictments to the jury. I
10 prepare my own verdict forms and have a foreman sign the
11 verdict on the indictment to commemorate it on the
12 indictment after the verdict, so that will not be published
13 to the jury. Mr. Hood, if you're worried about the fact
14 that the indictment alleges third offense, is that your
15 concern?

16 **MR. HOOD:** Well, I think it's already been told to
17 them, Your Honor, at ---

18 **THE COURT:** Is that true?

19 **DEPUTY SOLICITOR TANNER:** The case was called and he's
20 charged with driving under suspension, third offense; that's
21 what he's charged with. It'll be up to the State to prove
22 whether or not it is a third offense. We do have his
23 certified driving record --

24 **THE COURT:** Did you offer to concede it was a third
25 offense prior to the calling of the case, Mr. Hood?

1 **MR. HOOD:** Judge, I didn't even know what cases they
2 were going to call until --

3 **THE COURT:** Well, you certainly knew what indictments
4 had been issued. You were on notice that that indictment
5 had a third offense in it.

6 **MR. HOOD:** I -- I was notified of that, but I also know
7 that it's a magistrate court offense and would be handled in
8 magistrate --

9 **THE COURT:** Not -- third offense is not a magistrate's
10 court offense.

11 **MR. HOOD:** If it's non-DUI related, it is handled in
12 magistrate's court and --

13 **THE COURT:** It might be subject to transfer, but
14 it's -- it's not just within the jurisdiction of
15 magistrate's court.

16 **MR. HOOD:** Well, that particular crime carries with it
17 a punishment of 90 days to six months and the magistrate's
18 courts have been handling all of those DUS non ---

19 **THE COURT:** --- DUI related. I understand that's been
20 the practice, but obviously, that is an offense that's
21 tryable in General Sessions Court, as well as magistrate's
22 court, if it isn't transferred.

23 **MR. HOOD:** Well, I look at this as being simply another
24 aggravating matter which the State just wants to, you
25 know ---

1 **THE COURT:** Well, what's the basis of your grounds to
2 dismiss the DUS Third, Mr. Hood? I assumed it was where --
3 I want to move it along now. Tell me exactly what your
4 argument is, because this is not a motion you advised me of
5 in chambers.

6 **MR. HOOD:** The probative value of that particular crime
7 is far outweighed by the prejudice that it would -- would
8 create, and the confusion that it would create during the
9 course of this trial.

10 **THE COURT:** Very well. Thank you. Solicitor?

11 **DEPUTY SOLICITOR TANNER:** Your Honor, all crimes
12 charged are prejudicial to the defendant. We're accusing
13 him of committing a crime. I don't know how he just gets to
14 dismiss an indictment, because ---

15 **THE COURT:** I agree, Solicitor. Your motion to dismiss
16 the indictment for DUS Third is respectfully denied on those
17 grounds.

18 I want to place on the record I was not here yesterday
19 when the case was called for trial. It is my understanding,
20 even though I was not present, and I'll be happy to confirm
21 this with Judge Mullen, the reason I'm here is because the
22 State advised they could only try this case today due to --
23 to the availability of witnesses and that's why I stopped
24 court in Hampton to come here. And my understanding from
25 Judge Mullen is no motion was made about this indictment

1 prior to the call of the case. I am not going to send the
2 indictments to the jury so that they will not have that in
3 front of them.

4 I'm going to ask the Solicitor -- if Mr. Hood is
5 willing to concede that there are two prior DUI -- I mean,
6 two prior DUS offenses; there is absolutely no reason for
7 you to publish any information to this jury about that. You
8 understand? Because I don't know whether the Defendant's
9 going to testify in this case or not. Are you willing to so
10 concede there are two prior DUS's, Mr. Hood, which you had
11 not done so prior to the call of the case?

12 **MR. HOOD:** Yes, Your Honor.

13 **THE COURT:** Very well. Then that takes care of that.
14 Now, give me five minutes to look over this case. Bring me
15 your computer so I can read your case, and, Ryan, I need 56.
16 I'll be with you in just a moment. I'm going to take a
17 five-minute break while I look at it. Thank you very much.

18 (WHEREUPON, AN IN CAMERA REVIEW OF CASE LAW WAS HELD
19 OFF THE RECORD. THEREAFTER, AT 11:00 A.M., THE JURY ENTERED
20 THE COURTROOM AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE
21 RECORD IN THE PRESENCE OF THE JURY PANEL:)

22 **THE COURT:** Let the record reflect that I have taken a
23 break and I have reviewed, with particularity, and I use
24 that word because it's in the opinion too much. I've
25 reviewed 56-5-2945. I've reviewed and read again, State v.

1 Grampus, SE 2nd, 26. The Solicitor had me look at -- give
2 me the site for your case, Angie, that I read on the
3 computer.

4 **DEPUTY SOLICITOR TANNER:** State v. Tumbleston, that is
5 654, SE 2d, 849.

6 **THE COURT:** My law clerk then found for me State v.
7 Dantonio and it referred me, also, to State v. Eastler. I
8 read Dantonio which was a 2008 Court of Appeals decision,
9 which said that Grampus is the leading case in South
10 Carolina on the elements of felony DUI.

11 I have Shepardized the Grampus case, which was decided
12 back in 1986, and Grampus has not been overruled. It was
13 abrogated double jeopardy grounds. In Grampus, there is a
14 footnote which states, "The appellant has not argued," as
15 was made here, "the sufficiency of the indictment on its
16 face." Mr. Hood has made his motion prior to the swearing
17 of the jury, which he is required to do. However, we note
18 that the indictment must state, with particularity, the act
19 forbidden by law or duty imposed by law, which will be
20 relied on by the State to support the felony DUI charge.

21 The Court then cites, as I pointed out, several
22 different things, AmJur, the code section in State v.
23 Jaborie, in support of that. I can find no law overruling
24 that requirement. In light of that, I have no choice but to
25 grant defense motion to quash the indictment for felony DUI.

1 The jury has not been sworn, therefore, jeopardy does not
2 attach. The State will be permitted to resubmit the
3 information with "the act forbidden by law" to the Grand
4 Jury, however, we cannot proceed on that indictment today.

5 I assume that in light of my ruling, now, Solicitor,
6 that the State wishes to put off the remaining charges; is
7 that correct?

8 **DEPUTY SOLICITOR TANNER:** I believe the State has to at
9 this point, Your Honor.

10 **THE COURT:** Any objection, Mr. Hood?

11 **MR. HOOD:** Well, Your Honor, I would object to that
12 simply because this case dates back to August 17th of 2007.
13 That indictment was in September of 2007.

14 **THE COURT:** I don't believe you raised the sufficiency
15 of it until today?

16 **MR. HOOD:** That is correct, Your Honor, because I was
17 never given the opportunity to do that until today. The
18 case has been sitting around for over a year and a half. At
19 the last minute ---

20 **THE COURT:** Well, Mr. Hood, I respectfully disagree
21 with that statement in fairness to the Solicitor. This
22 indictment has been issued since September 2007, and you, as
23 counsel for the defendant, could have raised the sufficiency
24 at any time for the past year and a half.

25 **MR. HOOD:** I agree, Your Honor, but I was told

1 initially that this particular indictment went to the Grand
2 Jury and the Grand Jury dismissed that indictment, along
3 with the ---

4 **THE COURT:** Well, now that was never argued to me.

5 **MR. HOOD:** Well, see, I'm just going by the information
6 that I was given, that it was dismissed, not indicted, back
7 in 9-5-07, and they've got these ---

8 **THE COURT:** Now, Mr. Hood, the issue before the Court
9 at this stage, I've got a jury waiting, is whether or not
10 you object to the State's request to continue the remaining
11 charges?

12 **MR. HOOD:** Yes, I do.

13 **THE COURT:** Overruled. I'll grant your motion for
14 continuance, Solicitor. I clearly believe he was the
15 architect of the problem that I had by making the motion
16 today, which I feel could have been made any time for the
17 past year and a half. I will grant your continuance and I
18 will expect you, however, to see that the indictment is
19 cured in compliance with the State v. Grampus and I will
20 point out the footnote in that case. I would also want to
21 point out that I do not like delaying the case, that's why I
22 came here today to try it at the convenience of witnesses.
23 I feel that I don't have any choice in light of the language
24 of the Supreme Court of South Carolina. Bring in the jury.

25 **BAILIFF:** Yes, sir.

1 (11:15 A.M. JURY ENTERS COURTROOM.)

2 **THE COURT:** Good morning, ladies and gentlemen. First
3 of all, let me introduce myself to you. I'm Perry Buckner,
4 and I'm one of the judges of the 14th Circuit. I was not
5 assigned to you this week. I'm actually holding court over
6 in Hampton. I stopped my court in Hampton to come here and
7 try this case today, that is why Judge Mullen, who has run
8 over in a case that is going on simultaneously down the
9 hall, a medical malpractice case, was scheduled to try this
10 case, but she can't finish her case down there and try this
11 case.

12 When I arrived here this morning, the defendant had
13 five pre-trial motions that he wanted me to hear. One of
14 the pre-trial motions involved the sufficiency of the
15 indictment in the case. There is a case from the South
16 Carolina Supreme Court, which I was required to review,
17 which requires that in an indictment, certain facts have to
18 be alleged with particularity.

19 You have not been sworn in this case, therefore,
20 jeopardy has not attached to the defendant. Counsel for the
21 defendant has to make a motion concerning the sufficiency of
22 the indictment prior to the swearing of the jury, which is
23 why I asked for your patience this morning.

24 When I arrived here at 9:15, we begin working on those
25 five pre-trial motions while you were waiting. I had to

1 grant one of the motions involving the particularity of the
2 indictment because of the language in the Supreme Court
3 Opinion, which requires that certain facts be set out with
4 particularity.

5 Therefore, this case, on my order, is going to be
6 continued, which means you will not be required to serve as
7 a juror in the case because the indictment will have to be
8 corrected to conform with the case that was requiring the
9 language of particularity and by the Supreme Court of South
10 Carolina.

11 Thank you for your patience during this time. I had no
12 idea of the change. I've got to go back to Hampton in the
13 morning and resume my court, but I was hoping we could get
14 this case tried today. We were doing this for the
15 convenience of witnesses who were available today, and
16 that's why I stopped my court in Hampton and drove to
17 Beaufort this morning to try to do it. But because of my
18 ruling, as a matter of law, on the sufficiency of the
19 indictment it requires that the indictment be corrected and
20 that the case will be tried at a later term of court.

21 I want to thank each and every one of you for your
22 patience while I had to hear the arguments and research
23 these motions. I know that you were thinking many times
24 that things are going on and you wonder, "What's going on
25 out there? They asked me to be here at 9:30." But very

1 often until you can hear motions, you do not know exactly
2 how long a matter will take. Because of the seriousness of
3 this matter, which also, not only a serious charge, but also
4 the seriousness meaning that my ruling on the matter would
5 cause a delay in the trial, which is something I don't want
6 or the parties want. We want the matter to be ended.

7 Unfortunately, however, I had to continue the case
8 after I ruled on the matter of law dealing with the
9 sufficiency of the indictment. I wanted each of you to know
10 exactly what's been going on out here, so that you'll
11 understand we weren't out here drinking coffee and smoking
12 cigarettes while you were waiting in your jury room this
13 morning. We were working. This does mean that I can excuse
14 you for the balance of today, because your presence for this
15 case will no longer be required. Now, I need to know, Mike,
16 do they have the number to call back?

17 **CLERK:** I believe they do. If not, I would certainly
18 provide that.

19 **THE COURT:** Now, I don't know -- I understand Judge
20 Mullen's case is going to the jury today. Is that both of
21 you all's understanding, so y'all can resume General
22 Sessions tomorrow?

23 **MR. HOOD:** That's correct, Your Honor. And she
24 released all of the other jury members for the entire week.

25 **DEPUTY SOLICITOR TANNER:** We're done.

1 **MR. HOOD:** So these people can be released.

2 **THE COURT:** Wonderful. Well, I've got even better news
3 for you, ladies and gentlemen. This concludes your jury
4 service. Thank you very much, counsel. This concludes your
5 jury service for this week. And I'll tell you, so you'll
6 know, that they have enough non-jury matters to go through
7 that they don't need a jury for, so if you're wondering why
8 we let you go early, it's because we have probation matters
9 that don't involve a jury. We have guilty pleas that don't
10 involve a jury. We have bond matters that don't involve a
11 jury. And we have motions that don't involve a jury. And
12 we don't make you sit and wait while we do non-jury matters
13 like I had to make you do this morning in order to hear the
14 motions that were involved in this case.

15 If you listened carefully when you were qualified this
16 week, you heard my sister judge, Judge Mullen, tell you that
17 if you have been a juror in circuit court within the past
18 three years, you can claim an exemption. That means, ladies
19 and gentlemen, because of your service this week, even if
20 the computer were to draw your name during the next three
21 years as a juror in either civil or criminal circuit court,
22 you are exempt from jury duty by virtue of your being here
23 this week, if you choose to claim your exemption; so I want
24 you to know you also have that.

25 We will be mailing you a check for that exorbitant

1 amount of money that we pay jurors for their service. And I
2 tell all my jurors, ladies and gentlemen, this: Without
3 you, ladies and gentlemen, the juror, justice can never be
4 accomplished in a courtroom. Our forefathers knew what they
5 were doing in creating the right to trial by jury. Winston
6 Churchill once said, "The greatest duty one can give one's
7 country during peace time is to serve on a jury." And I'll
8 tell you, I watch many juries. I've been a judge now for
9 nine years, practiced law for 26 before I was a judge, and I
10 can tell you that I see many verdicts and see many juries,
11 and I can assure you that I believe, with all my heart,
12 having been on the bench, that juries usually get it right.
13 When you take 12 people from all walks of life, from all
14 different backgrounds, and let them listen to evidence, it's
15 amazing how much they can accomplish. Our system is a
16 wonderful system and I thank you for your service on the
17 jury.

18 Now, I'm not only going to excuse you for today,
19 I'm now being told I can excuse you for the balance of the
20 week, so this concludes your jury service for the week.
21 Before I let you go, I always extend the opportunity to find
22 out what we can do to make it better, to find out if anybody
23 had a problem, anybody got a suggestion, or if anybody's got
24 a question they want to ask me about anything that's gone on
25 in this case or anything that happened in court this week.

1 Anybody got a question, problem, or suggestion?

2 (No response.)

3 **THE COURT:** Everybody's ready to go home. I
4 understand.

5 Thank you very much for your service, ladies and
6 gentlemen. This concludes your service. You are now
7 excused for the balance of the week. You're exempt for the
8 next three years. We'll be mailing your exorbitant check to
9 you in the mail at the address you provided to us. You are
10 now excused and may leave the courtroom at this time. Watch
11 your step on the steps. Thank you.

12 (NOVEMBER 2008, WHEREUPON JURY PANEL EXITS THE
13 COURTROOM; THEREAFTER, THE FOLLOWING PROCEEDINGS WERE HELD
14 ON THE RECORD:)

15 (Sotto voice discussion between the Court and the
16 Clerk.)

17 **THE COURT:** Well, it might be the Clerk's, yes. It
18 might be -- she took the -- are our copies on -- on the
19 bench?

20 **MR. HOOD:** No, sir. I handed it back to you.

21 **THE COURT:** Somebody brought those certified copies
22 back to me. I don't know -- you handed them to --

23 **DEPUTY SOLICITOR TANNER:** Yes, sir.

24 **THE COURT:** Are they the clerk's copies? Because we --

25 **DEPUTY SOLICITOR TANNER:** They are the clerk's copies

1 because they are certified originals. Your Honor, if I
2 could run out and try to catch a couple of witnesses before
3 they get here from Columbia and stop them?

4 **THE COURT:** All right. Sergeant Vaughn, Angie needs to
5 talk to the witnesses that you've got in sequestration.
6 This case will be rescheduled, ladies and gentlemen,
7 forthwith. Ms. Tanner and I are going to meet about her
8 schedule. Unfortunately, she has a pretty substantial trial
9 schedule, which I'm trying to relieve and get some help for
10 her on, because I'm trying to see that all cases that are in
11 -- been in custody in the Beaufort County Detention Center
12 are tried. And unfortunately, Ms. Tanner, whose workload is
13 so heavy, she has most of those cases. So I'm trying real
14 hard to schedule a time with her that we can reschedule this
15 case. Thank you, Mr. Hood.

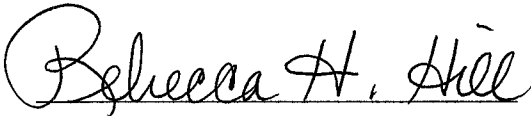
16 As to this case, the Court now stands adjourned.
17
18
19
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF COLLETON)
4

5 I, REBECCA H. HILL, Official Court Reporter for the
6 Judicial Department of the State of South Carolina, do
7 hereby certify that the foregoing is a true, accurate and
8 complete Transcript of Record of the proceedings had in the
9 hearing of the captioned case, in the Court of General
10 Sessions for Beaufort County, South Carolina, on the 18th day
11 of November, 2008.

12 I do further certify that I am neither of kin, counsel,
13 nor interest to any party hereto.
14
15

16 August 4, 2009
17

18 
19

20 Rebecca H. Hill,
21

22 Official Court Reporter
23
24
25

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS
	)	COURT OF BEAUFORT
	)	
	)	CASE NO.: 2007-GS-07-1584
	)	2007-GS-07-1616, 1617
	)	2008-GS-07-2690
	)	
COUNTY OF BEAUFORT	)	

STATE OF SOUTH CAROLINA	)	
	)	
PLAINTIFF,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
RODNEY L. GALIMORE	)	
	)	
DEFENDANT.	)	
	)	

DECEMBER 8, 9, 10, 2008
BEAUFORT, SOUTH CAROLINA

B E F O R E:

HONORABLE JOHN C. HAYES, III, JUDGE, and a jury.

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

MS. ANGELA MCCALL-TANNER
FOURTEEN JUDICIAL CIRCUIT
SOLICITOR'S OFFICE
FOR THE PLAINTIFF

MR. GENE G. HOOD
PUBLIC DEFENDER CORPORATION
BEAUFORT COUNTY
FOR THE DEFENDANT

WANDA NELSON
OFFICIAL COURT REPORTER
SIXTEEN JUDICIAL CIRCUIT
AT-LARGE

ORIGINAL

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REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE
BEAUFORT COUNTY CLERK OF COURT'S OFFICE.

1 (ON THE RECORD AT 2:25 P. M..)

2 THE COURT: Members of the jury panel, I am John
3 Hayes, I am from Rock Hill and I am assigned this week to
4 hold criminal court here in Beaufort County. It's
5 technically called General Sessions Court but it's what we
6 deal with in criminal trials. I have held court quite a
7 bit down here and look forward to having this term. There
8 are certain qualifications and disqualifications and
9 exemptions for jury service. I will go over those after
10 the Clerk calls the roll. The Clerk will call your name
11 and ask you to give certain information and if you would if
12 you will give us that information and give it in a good
13 strong voice. You don't need to shout but we do want to
14 hear you. This is our opportunity to hear what you do and
15 kind of meet you even though it's at a distance. After we
16 do that I will go through the qualifications and
17 disqualifications and exemptions so please respond to the
18 information that the Clerk request.

19 MADAME CLERK: Thank you, Judge. And who is your law
20 clerk, Judge?

21 THE COURT: My law clerk is Scott Forester a Citadel
22 graduate who is now an attorney and I am glad to have him
23 aboard.

24 THE CLERK: Yes very good. You know the law clerk's
25 work all too often without recognition. Judge Hayes has

1 been down here a lot; he got into a wrestling match with a
2 River Birch.

3 Judge, the last time you were here guess who lost?
4 His car had - I mean that was right where those trees are
5 off the woods and they attached the poor soul.

6 THE COURT: Yea they did. They jumped right out in
7 front of me. If it was in front of me I might have missed
8 it. I had to go home with no . . .

9 THE COURT: I will call your name -- I think what I am
10 going to do is ask you all to stand right now and we'll go
11 ahead and get you all sworn in. Raise your right hand.

12 (JURY POOL SWORN AT 2:25 P. M..)

13 (ROLL CALL AT 2:30 P. M..)

14 THE COURT: Members of the jury panel, thank you. Now
15 I am going to ask you to give me your attention. I am
16 going to go over these qualifications and disqualifications
17 and exemptions. Your response to some of them could be
18 somewhat personal so I am not going to ask if you need to
19 talk to me about any of these for you to stand up in front
20 of every one to do it what I would do is after going
21 through the list I will step down by the court reporter and
22 you can come up and form a line over here. This little
23 gate one of the bailiff's will be down and you can come up
24 one at a time. It will be semi-private, you won't have to
25 stand up in front of everyone but the attorneys who have

1 cases this week have a right to hear what we say. We'll
2 step down and do that if you need to talk with me.

3 First if any of you in order to serve as a juror you
4 must fall into one of the following categories. You may
5 not fall into all three but you must fall into one. You
6 must be a qualified elector that is a registered voter or
7 you must hold a valid South Carolina driver's license or
8 you must hold a valid South Carolina Department of Safety
9 -- Department of Public Safety Identification Card. If you
10 do not fall into one of those categories please come
11 forward in just a moment.

12 If any of you are not a United States citizen or if
13 you reside in a county other than Beaufort County, South
14 Carolina please come forward in just a moment.

15 If any of you have less than a sixth grade education
16 or its equivalent or if you are unable to read, write,
17 speak or understand the English language please come
18 forward in just a moment.

19 If any of you work in this courthouse or hold any
20 elected office in Beaufort County please come forward in
21 just a moment.

22 If any of you have -- possess or have a constable
23 license, if any of you are a licensed constable either with
24 or without pay please come forward in just a moment.

25 If any of you have any mental or physical infirmity

1 that would prevent you from serving with us as a juror
2 please come forward in just a moment.

3 If any of you have been convicted or pled guilty in a
4 state or federal court to a crime for which you could have
5 been punished for a sentence exceeding one year in jail and
6 if your civil rights have not been restored by pardon or
7 amnesty please come forward in just a moment.

8 Now this has to do with offenses which carry a penalty
9 exceeding one year. It has nothing to do with any sentence
10 one may have received for an offense. It has to do with
11 the penalty you could have receive.

12 If any of you have served on a jury such as this, a
13 county wide grand jury, within the last three calendar
14 years; or if any of you have served on a state wide or a
15 Beaufort County Grand Jury within the last five calendar
16 years please come forward in just a moment. We do not take
17 into account Magistrate, Municipal, or Federal Court. It
18 would have to be a Circuit Court jury such as this or a
19 Grand Jury.

20 If any of you are sixty-five or older you have an
21 exemption. If you are sixty-five or older and wish to
22 serve simply keep your seat. If you are sixty-five or
23 older and wish to exercise your exemption please come
24 forward in just a moment.

25 If any of you are the primary care-giver for a child

1 under the age of seven and if you do not work outside the
2 home please come forward in just a moment. Or if any of
3 you are the care-taker for an individual who has a serious
4 disability and cannot take care of themselves and cannot be
5 left unattended please come forward in just a moment.

6 If any of you are a student or a teacher and engaged
7 in teaching or are attending school at this time and
8 service on the jury panel this week would interfere with
9 that please come forward and we can transfer you to another
10 term that would not interfere with your service or your
11 educational pursuits.

12 If any of you work for the South Carolina Department
13 of Corrections please come forward in just a moment.

14 Finally if any of you have any compelling reason why
15 you cannot serve with us as a juror this week please come
16 forward.

17 Now I am going to stand down by the court reporter and
18 one of the bailiffs's will place themselves right there at
19 the little gate and if any of you need to discuss any of
20 those with me please come forward.

21 THE BAILIFF: Juror 205, Ms. Tierney.

22 THE COURT: Good morning.

23 MS. TIERNEY: Good afternoon.

24 THE COURT: We usually do this in the morning in York
25 County. I am a little off schedule. Good afternoon.

1 MS. TIERNEY: I am a teacher, I have no problem
2 because I won't be here this summer to reschedule.

3 THE COURT: Okay we will let you serve then.
4 She will remain then.

5 THE BAILIFF: Juror 37, Terence Cermak.

6 THE COURT: Good afternoon.

7 MR. CERMAK: Hi. Two months ago my twelve year old
8 son died due to a battle with cancer. My wife is not
9 handling it very well.

10 THE COURT: All right I will excuse you. You are
11 excused. You have our best thoughts.

12 He will be excused.

13 THE BAILIFF: Juror 72, Mr. Gathers.

14 THE COURT: Good afternoon. I keep wanting to say
15 afternoon. Good afternoon.

16 MR. GATHERS: I served two years ago on a murder
17 trial. I actually served on the jury - -

18 THE COURT: Why don't you have a seat over here.

19 Madame Clerk, he says he doesn't think he knows he
20 served - sat on a murder trial as a juror within the last
21 two years.

22 Just step over there then.

23 THE BAILIFF: Juror 223, Mr. Williams.

24 THE COURT: Good afternoon.

25 MR. WILLIAMS: There was a domestic violence.

1 THE COURT: That wouldn't carry - Magistrate's Court
2 or was it a big court?

3 MR. WILLIAMS: No.

4 THE COURT: That will be all right.

5 He will serve with us.

6 Thank you.

7 THE BAILIFF: Juror 76, Ms. Grant.

8 THE COURT: Good afternoon.

9 MS. GRANT: Good afternoon. Due to the fact that I
10 own my own business I'm the only one that does anything.
11 If I am not there my place can be shut down.

12 THE COURT: All right we will excuse you then.

13 MS. GRANT: All right, thank you very much.

14 THE COURT: She will be excused.

15 THE BAILIFF: Juror 190, Mr. Siddens.

16 THE COURT: Good afternoon.

17 MR. SIDDENS: How are you?

18 THE COURT: I'm good.

19 MR. SIDDENS: Two complications, we're building our
20 military contracts and I have to be in North Carolina.

21 THE COURT: Seymore Johnson. I have a son there for
22 three and a half years. You know what he did? He was in
23 contracting.

24 MR. SIDDENS: That's what we're doing.

25 THE COURT: That's exactly what he was doing like two

1 hundred and fifty million dollar purchasing. Anyway he was
2 doing big stuff up there.

3 MR. SIDDENS: They're building four hundred and fifty-
4 four houses. That's what we're pouring on this week.

5 THE COURT: We'll transfer you to another time.

6 MR. SIDDENS: That will be fine.

7 THE COURT: He'll be transferred.

8 MR. SIDDENS: Thank you.

9 THE BAILIFF: Juror 21, Ms. Bishop.

10 THE COURT: Good afternoon.

11 MS. BISHOP: I would love to do this. I am over
12 sixty-five and I have a doctor's appointment this week so
13 if the trial is going to begin right now. This is a long
14 standing for a physical.

15 THE COURT: What day is it?

16 MS. BISHOP: Thursday.

17 THE COURT: I can't let you be exempt. I can let you
18 go transfer. I know we got one trial we're going to start
19 today. There is probably another trial I think you will be
20 through on Thursday but I can't promise.

21 MS. BISHOP: I really need to have this physical. I
22 never been on a jury. Maybe I'll get a call again. Yes
23 I'll let my age serve.

24 THE COURT: All right. She's exempt.

25 THE BAILIFF: Juror Number 10, Mr. Andrews.

1 MR. ANDREWS: Good morning, your Honor. My wife is
2 high-risk pregnancy this is her first time.

3 THE COURT: We'll transfer you to sometime later like
4 May or June.

5 He needs a transfer May, June, pretty good ways out.

6 MR. ANDREWS: Yes, sir.

7 THE COURT: Good luck to you.

8 THE COURT: All right, members of the jury panel,
9 we're going to take a short break. So until we know who
10 all is here we really can't all of our stuff ready that we
11 need to use to utilize to draw our panel plus you've been
12 sitting for about an hour and I'll meet real quickly with
13 the attorneys to see where we are as far as what we are
14 going to be doing for the rest of the afternoon. We'll
15 take a break. That clock says it's about almost three,
16 we'll break until 3:15 and hopefully be in a position to
17 draw our first jury at that time. See you back at 3:15,
18 thank you.

19 And, Counsel, in the trial will come forward, come up.

20 (SHORT RECESS AT 3:00 P. M..)

21 (BACK ON THE RECORD AT 3:20 P. M..)

22 THE COURT: Members of the jury panel, we are going to
23 start our first trial for the week and it is the case of
24 the State versus Rodney Galimore G-a-l-i-m-o-r-e.

25 Mr. Galimore, would you please stand and let the jury

1 see who you are. He is represented by Mr. Gene Hood. You
2 may be seated. The State is represented by Angie Tanner.

3 Ms. Tanner, do you want to call the case?

4 MS. TANNER: Yes, sir, your Honor. The State is ready
5 in Indictment 2008-GS-07-2690 the State of South Carolina
6 versus Rodney Galimore charging him with one count of
7 felony, driving under the influence when death results.
8 The State is ready in 2007-GS-07-1616 the State of South
9 Carolina versus Rodney Galimore charging him with reckless
10 homicide. The State is ready in 2007-GS-07-1617 the State
11 of South Carolina versus Rodney Galimore charging him with
12 driving under suspension or a greater offense. The State
13 is ready in 2007-GS-07-1584 the State of South Carolina
14 versus Rodney Galimore charging him with child
15 endangerment.

16 May I pass these forward?

17 THE COURT: Members of the jury panel, you've heard
18 the Solicitor go over the charges. This event is alleged
19 to have occurred -- there is one event that gives rise to
20 these. It is alleged to have occurred here in Beaufort
21 County, South Carolina on August the 11th 2007. It is
22 alleged that at that time because of ingestion of some
23 alcoholic or other substance Mr. Galimore was under the
24 influence at the time of an automobile accident on that
25 date and as a result a Mary C. Deon died and it is alleged

1 that at that time Mr. Galimore was operating under a
2 suspended license and that he had a passenger under the age
3 of sixteen in the automobile with him. This is alleged to
4 have occurred in what location?

5 Ms. Tanner, what intersection or streets or some
6 landmark?

7 MS. TANNER: Highway 46 also known is the May River
8 Road near Gibbet Road here in Beaufort County.

9 THE COURT: All right. Now first are any of you
10 related by blood or marriage or are you a close personal
11 friend of Mr. Rodney Galimore, if so please stand?

12 No one stands. Next were any of you members of the
13 Grand Jury which passed on these four indictments at an
14 earlier time, if so please stand?

15 No one stands. Have any of you been represented by
16 Ms. Tanner or anyone from Solicitor Stone's office or
17 participated in any programs with our Beaufort County
18 Solicitor's Office or our Victim's Witness Assistance
19 Program, if so please stand?

20 No one stands. Have any of you been represented by
21 Mr. Hood at any time? You or a member of your immediate
22 family, please stand.

23 No one stands. Are any of you members of or
24 contributors to organizations such as Students Against
25 Drunk Drivers, Mother's Against Drunk Drivers, Citizens

1 Against Violence sometimes referred to as CAV; Troopers
2 Association, Paternal Order of Police or the Sheriff's
3 Organization, if so please stand?

4 No one stands. Are any of you or a member of your
5 immediate family involved or have been involved in law
6 enforcement or the prosecution of criminal cases anything
7 like the Attorney General, Solicitor; DA, District
8 Attorney; anything from local sheriff, police, JAG,
9 anything like that, if so please stand?

10 All right, your name and number?

11 A. Cecilia Collins, Number 43.

12 THE COURT: All right. And how are you involved or
13 your family?

14 MS. COLLINS: My husband is a retired state trooper
15 and currently a deputy sheriff.

16 THE COURT: In what county?

17 MS. COLLINS: Beaufort County.

18 THE COURT: Was this a county case, county worker's
19 case?

20 MS. COLLINS: Highway Patrol.

21 THE COURT: When did he retire?

22 MS. COLLINS: About a year and a half ago.

23 THE COURT: Was it before August of last year?

24 MS. COLLINS: About that time.

25 THE COURT: I am going to excuse you from serving.

1 Don't leave. I am a little concerned. You just have a
2 seat. Don't leave.

3 All right, yes, sir, your name and number.

4 A. Gerald Haynes, Number 91. I am related to the Officer
5 Contrina.

6 THE COURT: Officer who?

7 MR. HAYES: Contrina.

8 THE COURT: All right. He's with who?

9 MR. HAYNES: Beaufort County Sheriff's Department.

10 THE COURT: All right. How close are you related,
11 like cousin?

12 MR. HAYNES: Cousins.

13 THE COURT: All right. Would that factor affect your
14 ability to be fair and impartial in the trial of this case?

15 MR. HAYNES: No, sir.

16 THE COURT: Would you be able to base your verdict on
17 the law and the evidence in the trial?

18 MR. HAYNES: Yes, sir.

19 THE COURT: All right. Thank you. I appreciate it,
20 you can have a seat. I appreciate you sharing that with
21 us.

22 Yes, ma'am, your name and number.

23 A. Kathleen Tyminski, 211. My son is with the Beaufort
24 County Sheriff's Department for eleven years. He's no
25 longer with the department.

1 THE COURT: He's not working with them now?

2 MS. TYMINSKI: No he's in Texas.

3 THE COURT: Would the fact that he had worked with
4 them and they're not involved at least -- well there would
5 be some witnesses from the Beaufort County Sheriff's
6 Office. He's been retired?

7 MS. TYMINSKI: No they moved to Texas.

8 THE COURT: Okay.

9 MS. TYMINSKI: He's in security.

10 THE COURT: How long ago was it when he was with the
11 Beaufort County Sheriff's Office?

12 MS. TYMINSKI: The last time I would guess about four
13 or five years.

14 THE COURT: Okay. Would the fact that he had for some
15 time been with them affect your ability to be fair and
16 impartial?

17 MS. TYMINSKI: No.

18 THE COURT: Would you be able to base your verdict on
19 the law and the evidence?

20 MS. TYMINSKI: Yes, sir.

21 THE COURT: All right thank you. Have any of you --
22 I'm not going to ask you to be real specific about this but
23 I am going to ask for you to stand - don't blurt out - I
24 will ask you what I need to find out. Have any of you or a
25 member of your family been what you consider the victim of

1 an alcohol related crime or you or a member of your family
2 have been charged with an alcohol related crime, if so
3 please stand?

4 All right, again just stand and stay standing. I am
5 not going to ask you to go into the particulars about this.
6 What I'm going to do is I am going to go across this way
7 and ask each of you to give me your name and number and
8 then I'll ask all of you that question about impartiality.

9 So we'll start here with the lady in the red and then
10 we'll go way across and then start and then we'll work our
11 way back.

12 A. Martha Dorwart, Number 56.

13 THE COURT: Yes, ma'am.

14 A. David Dockum, Number 55.

15 THE COURT: All right.

16 A. 123.

17 THE COURT: Yes, ma'am.

18 A. 116.

19 THE COURT: Yes, ma'am.

20 A. Jean Stokes, Number 200.

21 THE COURT: All right.

22 A. Dianna Bennett, 18.

23 A. Barbara Tierney, 205.

24 THE COURT: All right.

25 A. Thomas Radden, 161.

1 THE COURT: All right. Yes, ma'am.

2 A. Henrietta Jefferson, 106.

3 A. Lee W. Conniff, Number 45.

4 THE COURT: Now there are six or seven of you who are
5 standing. Nine of you are standing. If the fact that you
6 have in your past this experience -- I am not going to ask
7 you to go into particulars -- would that prevent you from
8 being fair and impartial in a trial involving an alcohol
9 related offense if so please raise your right hand?

10 No one does. You may be seated, thank you.

11 Have any of you heard about this case from any source
12 whatsoever? Have any of you read anything about it, heard
13 anything on the radio or television? I don't know if there
14 has been anything but if there has have any of you heard
15 anything or heard about it at the water cooler at work or
16 at the restaurant where you eat or a coffee shop or
17 anything like that. Have any of you heard about this case
18 if so please stand?

19 All right I am going to ask you to give me your name
20 and number. I am not going to ask what you've heard but I
21 have some follow up questions.

22 A. David Dockum, 153.

23 THE COURT: All right. I am going to go ahead. You
24 indicated you've heard something about this case. Could
25 you remove that from your mind and base your verdict in

1 this case on the law and the evidence that is developed in
2 the trial?

3 MR. DOCKUM: I think it would be a little bit of a
4 challenge.

5 THE COURT: I will excuse you.

6 He will be excused.

7 Yes, ma'am.

8 A. Henrietta Jefferson, 106. I read about it in the
9 paper.

10 THE COURT: Would you be able to remove that from your
11 mind and base your verdict solely on what you hear and see
12 in regard to the trial in the case?

13 MS. JEFFERSON: Yes.

14 THE COURT: Okay you will remain with us be seated.

15 She'll remain with us.

16 THE COURT: Yes, sir.

17 A. Brian Hill, Number 94. I read about it and heard
18 about it.

19 THE COURT: Would you be able to take that out of your
20 mind and base your verdict solely on the law and the
21 evidence that you hear in this trial?

22 MR. HILL: Yes, sir.

23 THE COURT: All right. I will allow you to remain
24 also.

25 All right the lady in the purple.

1 A. Number 112. I read about it in the paper.

2 THE COURT: Would you be able to remove that from your
3 mind and base your verdict solely on the law and the
4 evidence that is developed in the trial?

5 JUROR NUMBER 112: I don't think so.

6 THE COURT: I'll excuse you. Just have a seat. I'm
7 having a little trouble hearing.

8 Yes, ma'am, your name and number.

9 A. Mary Jane Knight, 114.

10 THE COURT: And you've heard about the case?

11 MS. KNIGHT: I read about it yes.

12 THE COURT: Would you be able to remove that from your
13 mind and base your verdict in this case on the law and the
14 evidence that is developed in the trial?

15 MS. KNIGHT: I believe so.

16 THE COURT: I will allow you to remain with us and
17 thank you.

18 I appreciate all of you standing in response to that.

19 The following are possible witnesses in this trial. I
20 don't know if all of these will testify but they have been
21 listed as possible witnesses. Lieutenant Corporal Russell
22 Scott Ashe.

23 Let me stop just a minute. If you are related by
24 blood or marriage or a close personal friend or
25 acquaintance of any of these individuals please stand? If

1 you go to church with them, if you belong to some social
2 group with them those kinds of things; or if you are a next
3 door neighbor or live in the neighborhood or socialize.

4 Lieutenant Corporal Russell Scott Ashe of the Highway
5 Patrol. Ms. Jaqueline Cook-Jackson of Bluffton.
6 Lieutenant Joseph Dembeck of the Bluffton Fire and EMS.
7 Ms. Denise Diggs of Bluffton. Mr. Rodney Galimore, Junior
8 of New Rochelle, New York; Ms. Ashley Goldman of Beaufort,
9 South Carolina; Corporal Isaac Gregorie from the South
10 Carolina Highway Patrol; Deputy Selena Nelson, Beaufort
11 County Sheriff's Office; Ms. Kathryn Richardson, Bluffton;
12 Corporal Johnny Rosado, South Carolina Highway Patrol;
13 Doctor Roger Sorg S-o-r-g, Hilton Head; Agent Shana
14 Sorrells, State Law Enforcement Division; Trooper Nick
15 Sprouse, State Carolina Highway Patrol; Lieutenant Corporal
16 Carl Woods, South Carolina Highway Patrol. Anybody related
17 by blood or marriage, close personal friend or acquaintance
18 of any of them if so please stand.

19 Yes, ma'am. You've already been excused. And thank
20 you.

21 All right. Anything else from the State?

22 MS. TANNER: Nothing from the State.

23 THE COURT: Anything else from the Defense?

24 MR. HOOD: Nothing, your Honor.

25 THE COURT: Members of the jury panel, finally if any

1 of you have any reason why you could not or should not
2 serve as a fair and impartial juror in this particular case
3 please stand at this time.

4 No one stands. Now the way they draw juries in this
5 case I believe the strikes are five and ten. Five and
6 five. Both sides consent to the Clerk drawing the jury?

7 MS. TANNER: Yes, sir, State contends.

8 MR. HOOD: Yes, your Honor.

9 THE COURT: All right. If you hear your number and
10 name called the Bailiff will be standing over here, please
11 come up, come through the little swinging gate there and
12 stand by the Bailiff and turn around and face the table
13 where the Solicitor is seated. She will say either present
14 the juror or excuse the juror. If she says excuse the
15 juror you may return to your seat. Don't leave, just
16 return to your seat. If she says present the juror turn to
17 the table where Mr. Galimore and Mr. Hood are seated and
18 Mr. Hood will say either swear the juror which means you
19 will take a seat in the jury box and the Bailiff will tell
20 you how to arrange yourself in the jury box. Or he will
21 say excuse the juror. If he says that again you may just
22 simply return to your seat. Don't leave. We are going to
23 draw two alternates. The strikes on those will be one and
24 two so we will need to space people with that in mind. So
25 please come forward. You will get the hang of it after we

1 do a couple of them so please come forward if you hear your
2 name called. Bring with you if you have any personal
3 belongings, a coat or anything like that, so that you won't
4 have to go back to your seat. It will take them a minute.
5 We can't do what we call the strike sheets until we know
6 who we got to pull from because as you see some people have
7 been excused. It will take a minute while we do that. We
8 do it by computer now and sometimes that's quicker
9 sometimes its not.

10 (PAUSE.)

11 THE COURT: Please come forward if you hear your name
12 called.

13 THE CLERK: Juror Number 56, Martha Dorwart.

14 (WHITE FEMALE.)

15 THE COURT: That's good right there. Face this table
16 where Ms. Tanner is seated.

17 THE CLERK: What says the State?

18 MS. TANNER: Please present Ms. Dorwart.

19 THE CLERK: What says the Defense?

20 MR. HOOD: Please excuse the juror from the trial in
21 this case.

22 THE COURT: That means you may return to your seat.

23 THE CLERK: Juror Number 58, Dianna Earnst.

24 (WHITE FEMALE.)

25 What says the State?

1 MS. TANNER: Present Ms. Earnst.

2 THE CLERK: What says the Defense?

3 MR. HOOD: Please excuse the juror from the trial in
4 this case.

5 THE CLERK: Juror Number 55, David Dockum.

6 (WHITE MALE.)

7 What says the State?

8 MS. TANNER: Please present Mr. Dockum.

9 THE CLERK: What says the Defense?

10 MR. HOOD: Please seat the juror.

11 THE CLERK: Juror Number 116, Sharon Kreul.

12 (WHITE FEMALE.)

13 What says the State?

14 MS. TANNER: Please present Ms. Kreul.

15 THE CLERK: What says the Defense?

16 MR. HOOD: Please excuse the juror from the trial in
17 this case.

18 THE CLERK: Juror Number 145, Kevin O'Brien.

19 (WHITE MALE.)

20 What says the State?

21 MS. TANNER: Please present Mr. O'Brien.

22 THE CLERK: What says the Defense?

23 MR. HOOD: Please seat the juror.

24 THE CLERK: Juror 180, Yvonne Sarver.

25 (BLACK FEMALE.)

1 What says the State?

2 MS. TANNER: Please present Ms. Sarver.

3 THE CLERK: What says the Defense?

4 MR. HOOD: Please seat the juror.

5 THE CLERK: Juror Number 148, Donald Quimette.

6 (WHITE MALE.)

7 What says the State?

8 MS. TANNER: Please present Mr. Quimette.

9 THE CLERK: What says the Defense?

10 MR. HOOD: Please seat the juror please.

11 THE CLERK: Juror Number 162, Barbara Ray.

12 (WHITE FEMALE.)

13 What says the State?

14 MS. TANNER: Please present Ms. Ray.

15 THE CLERK: What says the Defense?

16 MR. HOOD: Please seat the juror please.

17 THE CLERK: Juror Number 143, David Newkirk.

18 (WHITE MALE.)

19 What says the State?

20 MS. TANNER: Please present Mr. Newkirk.

21 THE CLERK: What says the Defense?

22 MR. HOOD: Please seat the juror.

23 THE CLERK: Juror Number 126, Donna Mackey.

24 (BLACK FEMALE.)

25 What says the State?

1 MS. TANNER: Please present Ms. Mackey.

2 THE CLERK: What says the Defense?

3 MR. HOOD: Please seat the juror in this case.

4 THE CLERK: Juror Number 119, Kim Laughlin.

5 (WHITE FEMALE.)

6 What says the State?

7 MS. TANNER: Please present Ms. Laughlin.

8 THE CLERK: What says the Defense?

9 MR. HOOD: Please seat the juror please.

10 THE CLERK: Juror Number 224, Susan Williams.

11 (WHITE FEMALE.)

12 THE CLERK: What says the State?

13 MS. TANNER: Please present Ms. Williams.

14 THE CLERK: What says the Defense?

15 MR. HOOD: Please seat the juror please.

16 THE CLERK: Juror Number 211, Kathleen Tyminski.

17 (WHITE FEMALE.)

18 THE CLERK: What says the State?

19 MS. TANNER: Please present Ms. Tyminski.

20 THE CLERK: What says the Defense?

21 MR. HOOD: Please excuse the juror from this case.

22 THE CLERK: Juror Number 123, Mark Levy.

23 (WHITE MALE.)

24 THE CLERK: What says the State?

25 MS. TANNER: Please excuse this juror.

1 THE CLERK: Juror Number 95, Jean Hill.

2 (WHITE FEMALE.)

3 THE CLERK: What says the State?

4 MS. TANNER: Please excuse the juror.

5 THE CLERK: Juror Number 223, Lee Williams.

6 (BLACK MALE.)

7 THE CLERK: What says the State?

8 MS. TANNER: Please present Mr. Williams.

9 THE CLERK: What says the Defense?

10 MR. HOOD: Please seat the juror please.

11 THE CLERK: Juror Number 18, Dianna Bennett.

12 (WHITE FEMALE.)

13 THE CLERK: What says the State?

14 MS. TANNER: Please present Ms. Bennett.

15 THE CLERK: What says the Defense?

16 MR. HOOD: Please excuse the juror from the trial in
17 this case.

18 THE CLERK: Juror Number 77, Charles Gray.

19 (WHITE MALE.)

20 THE CLERK: What says the State?

21 MS. TANNER: Please present Mr. Gray.

22 THE CLERK: What says the Defense?

23 MR. HOOD: Please seat the juror please.

24 THE CLERK: Juror Number 114, Mary Jane Knight.

25 (WHITE FEMALE.)

1 THE CLERK: What says the State?

2 MS. TANNER: Please present Ms. Knight.

3 THE CLERK: What say the Defense?

4 MR. HOOD: Your Honor, could we approach please.

5 (BENCH CONFERENCE OFF THE RECORD AT 3:50 P. M..)

6 THE COURT: All right there is a challenge for cause
7 and I denied the challenge.

8 You can be seated. All right we will draw an
9 alternate. Strikes will be one and two each. We will draw
10 two alternates.

11 THE CLERK: Juror Number 218, Sally Warren.

12 (WHITE FEMALE.)

13 THE CLERK: What says the State?

14 MS. TANNER: Please present Ms. Warren.

15 THE CLERK: What says the Defense?

16 MR. HOOD: Please excuse the juror for cause in this
17 case.

18 THE CLERK: Juror Number 101, Jane Hudson.

19 (WHITE FEMALE.)

20 THE CLERK: What says the State?

21 MS. TANNER: Please present Ms. Hudson.

22 THE CLERK: What says the Defense?

23 MR. HOOD: Please excuse Ms. Hudson.

24 THE CLERK: Juror Number 45, Lee Conniff.

25 (WHITE MALE.)

1 THE CLERK: What says the State?

2 MS. TANNER: Please excuse this juror.

3 THE CLERK: Juror Number 11, Luther Baker.

4 (WHITE MALE.)

5 THE CLERK: What says the State? Ms. Tanner, any
6 challenges?

7 MS. TANNER: No challenge. Please present Mr. Baker.

8 THE CLERK: Mr. Hood.

9 MR. HOOD: Please seat Mr. Baker.

10 THE COURT: We'll draw a second alternate.

11 THE CLERK: Juror Number 106, Henrietta Jefferson.

12 (BLACK FEMALE.)

13 THE CLERK: What says the State?

14 MS. TANNER: Please present Ms. Jefferson.

15 THE CLERK: What says the Defense?

16 MR. HOOD: Please seat the juror in this case.

17 THE COURT: All right anything from the State
18 regarding strikes of the panel?

19 MS. TANNER: Nothing from the State, your Honor.

20 THE COURT: Anything from Defense?

21 MR. HOOD: Nothing, your Honor.

22 THE COURT: Do they have a number to call in?

23 THE CLERK: Yes, sir.

24 THE COURT: Those of you who are not chosen I am going
25 to allow you to leave in just in a moment. Please do so

1 quietly so we can start working with this panel. Call back
2 tonight after seven to receive instructions. It's very
3 important that you receive whatever instructions you are
4 given; it may be to call back at another time and if it is
5 please do so. If it is to report here at a certain time
6 please do so. It is very important that we try to stick to
7 a schedule and that you are here when you are supposed to.
8 Under my job description if you are not here when you are
9 supposed to be I have to ask the sheriff under his job
10 description to find you. I don't mean that by way of a
11 threat but that's just the way our system works. We have
12 to know why you are here and if you are supposed to be here
13 and you are not however we are easy to work with.

14 If you have some emergency and I hope none of you do
15 but if you have car trouble or illness or some reason a
16 legitimate reason why you cannot be here when you are
17 supposed to call the Clerk. Tell the Clerk your problem,
18 tell the Clerk when we can expect you, that we can deal
19 with. So I am going to ask you to leave quietly. I may
20 see you later in the week.

21 (JURY POOL DISMISSED AT 3:55 P. M..)

22 THE COURT: Those of you who were chosen if you will
23 stand and raise your right hand the Clerk is going to
24 administer the oath.

25 And when you sit down, Mr. Gray, I am going to ask you

1 and this gentleman here to swap seats. I am going to ask
2 you to be the foreman. Isn't that right, Gray?

3 A. Yes, sir.

4 THE COURT: All right. Why don't you all be swapping
5 and we'll give them a minute to clear out.

6 All right now raise your right hand.

7 (JURY PANEL SWORN AT 4:56 P. M..)

8 THE CLERK: All affirmed.

9 THE COURT: Members of the jury panel I am going to
10 give you some instructions this afternoon and then we are
11 going to stop for the day and start with the opening
12 statements of the attorneys first thing in the morning at
13 nine o'clock. I am going to go ahead and tell you now I
14 will tell you again that you need to be here by nine in the
15 morning. When you leave this afternoon you will go out
16 this door and the Bailiff will show you the jury room which
17 will be where you are when you are not away from the
18 courthouse and you are not in the courtroom. He will show
19 you and tell you how to get in and out of the building
20 while you are serving as a juror.

21 In the morning -- well first let me say that Mr.
22 Galimore to these four charges have entered pleas of not
23 guilty. His pleas of not guilty place on the State the
24 burden of proving of his guilt beyond a reasonable doubt.
25 Anyone charged with any offense in our system is presumed

1 innocent. They do not have to come into court and prove
2 they are innocent. They are presumed innocent. The State
3 must prove someone's guilt beyond a reasonable doubt before
4 a trial jury can convict that person.

5 In the morning each attorney has the right no
6 obligation to come before you and make an opening
7 statement. They are not witnesses so they are not
8 testifying and they are not arguing their case. And at a
9 later point in the trial they have the right to appear
10 before you and sum up or take the facts that have been
11 presented and apply the law and tell you why your verdict
12 should be a certain verdict. That's not what they're doing
13 now. To start off with they will be giving you an over
14 view or a blueprint of the case. Some people call it
15 previews of what's to come. They know more about the case
16 than I do and they will tell you a little bit more about it
17 but they are not arguing it and they are not giving you
18 facts for your consideration they are not witnesses. In
19 this case I have three primary jobs. One is the logistic
20 person sometimes called the wagon master. I make sure we
21 all move in the right direction; that one person speaks at
22 a time but we do take breaks we do stop at a decent time,
23 the mechanical part of the trial. Another job of mine is
24 ruling on questions and the admissibility of evidence. If
25 one party believes certain evidence should be admitted and

1 the other for some legal reason believes it should not it's
2 up to me to make a ruling on that and once I have ruled on
3 the admissibility of the evidence it is binding. It is
4 binding on the witnesses, it is binding on the attorneys
5 and it's binding on you as the trial jury in this case. My
6 third job is that I am the sole judge of the law. You must
7 take and accept and apply the law as I charge it. This is
8 true even if you think I charge the law in error or if you
9 think the law should be different. Your oath requires you
10 to take and accept and apply the law as I charge it.

11 You are not to infer from anything that I say or do at
12 anytime during this trial as being indicative of an opinion
13 of mine on the facts. The law in our state does not allow
14 a judge to formulate or express to a jury any opinion on
15 the facts. That's solely your job. It's solely up to you
16 to examine the evidence give to the evidence the effect,
17 the value, the weight and the truth you believe it should
18 have. During this you may believe one witness as opposed
19 to several several witnesses as opposed to one. You may
20 believe all or part or none of a witnesses testimony. In
21 analyzing the evidence use your common sense, your sense of
22 logic, your sense of reason. Use your experiences in life.
23 In judging the evidence and determining the true facts you
24 must judge the credibility and the believability of the
25 witnesses who testify. In accessing believability and

1 credibility use the things I just discussed. Use those
2 things that you find in your day to day life as indicating
3 truthfulness. And you can use certain evaluators, the
4 witness's demeanor, how they act on the stand or are they
5 hesitant or straight forward. Is the testimony consistent
6 or inconsistent? You can consider the opportunity a
7 witness has or had to know those things about which the
8 witness testified. And you can consider whether a witness
9 has any bias or prejudice. Whether a witness wishes to
10 help or hurt one side or the other. All of these things
11 you can consider to determine the true facts and apply the
12 law and you will be in a position to return a verdict that
13 speaks the truth.

14 You are not to discuss the case or try to make up on
15 your own mind until we reach the point in the trial where I
16 instruct you to jointly deliberate and return an unanimous
17 verdict. Prior to that time you are not equipped with all
18 the tools you need to make a fair and reasonable decision
19 so don't discuss the case among yourselves and try to make
20 up your own mind until we reach that point. Do not let
21 anyone discuss this case with you outside the courtroom.
22 If anyone tries to discuss the case with you tell them you
23 cannot do it as you are serving as a juror and report back
24 to me if anyone tries to discuss this case with you because
25 I would have to take action against anyone who tries to

1 talk to a seated juror.

2 Do not let yourselves be exposed to anything about
3 this case. If anything I'm not from this area so I don't
4 know what the papers reported or the television coverage or
5 paper coverage so if anything catches your eye or ear that
6 remotely deals with this trial don't let yourself be
7 exposed to it; don't read anything or watch anything or
8 listen to anything that remotely deals with this trial.
9 Your obligation and your oath requires you to make your
10 verdict based on the law and the evidence that you receive
11 here in the courtroom. You cannot let anything come into
12 your mind for consideration outside the courtroom. I don't
13 think any of you would have any reason to go and examine
14 the scene of the accident. You haven't heard much about it
15 but other than the general description about where it is
16 but please do not go by there. Go some other way while you
17 are serving as a juror. Because this happened in 2007
18 things may have changed; if you go by and a witness
19 testifies to something as being X, Y or Z and you say well
20 I went out there and it wasn't. Well you don't know what
21 it was like in August of 2007 so just stay away from this
22 particular location.

23 A new thing I've added to my admonitions as I call them
24 based on the case from our Supreme Court don't go on line
25 and do any research. Don't research the law on what we're

1 dealing. Don't go on MapQuest and figure out maps. Don't
2 do anything. No independent research. Don't go on line or
3 go anywhere to receive any information about this case
4 outside the courtroom. If you can't see and you can't hear
5 let me know; cup your ear or give me a voice raising
6 gesture or a nudging gesture and I'll try to correct that
7 because it's not fair to ask you to help us resolve this
8 matter and then not let you see and hear what you need to
9 see and hear.

10 We take breaks about every hour and a half. I find
11 that's a good time for people to take a break. Everybody's
12 comfort level is different. If you need a break at any
13 time raise your right hand and with no questions ask we'll
14 take a break and I extend that to counsel and Mr. Galimore.
15 We do want to move along but we're not in that big a hurry
16 so if you need a break at any time simply raise your hand
17 and with no questions ask we will take a break.

18 Mr. Foreman, you will be the liaison between the jury
19 and myself. You will preside over the jury's
20 deliberations. You will ultimately sign the unanimous
21 verdict of the jury.

22 Anything else from the State before we are dismissed
23 for the day?

24 MS. TANNER: Nothing from the State, your Honor.

25 THE COURT: Mr. Hood?

1 MR. HOOD: Nothing, your Honor.

2 THE COURT: All right. Keep in mind what I told you.

3 I am not going to repeat all of this again; you don't have
4 to listen to me again in the morning. The attorneys will
5 make their opening statements when you arrive. If you will
6 exit this way the bailiff's will show you how to egress and
7 regress while you are serving on the jury panel. See you
8 in the morning at 9:00 A. M..

9 (JURY PANEL DISMISSED FOR THE DAY AT 4:05 P. M..)

10 THE COURT: For the record as to Mary Jane Knight the
11 last juror drawn she was challenged. She was challenged
12 because - by the Defense -- I am going to let him speak for
13 himself. I'll relate what was told to me on the sidebar on
14 the basis that he did not believe that anyone who had read
15 about this case could excuse from their mind what they had
16 read. She had indicated of course being under oath to me
17 that she could. When we made on the record -- well Mr.
18 Hood made on the record his challenge for cause I denied
19 it. It was timely made but I did not want to put him in a
20 position of having to make that statement in front of her
21 or in front of the jury so I allowed him to make it at a
22 bench conference and told them that I would put it on the
23 record that I feel that protects him because it was timely
24 made. Not only made - he not only made a challenge but he
25 did give a reason for it.

1 Anything you want to add to that, Mr. Hood?

2 MR. HOOD: Nothing, your Honor. Other than you know I
3 had privy to those articles obviously from the last
4 proceeding that we had which caused quite a controversy
5 which almost caused us not to be able to pick a jury two
6 weeks ago when we tried this case. And those two articles
7 were so inflammatory and they provided the viewer with the
8 entire past history, criminal history of the defendant.
9 They also talked about other charges in which they did not
10 -- the State had said that they were not going to pursue.
11 They talked about all kinds of things that one should not
12 have any privy to at the time that you know to hear this
13 particular case.

14 THE COURT: I understand. I have not read the
15 articles but I did do - I quizzed her. I guess somewhere
16 in the back of my mind I always think if somebody wants to
17 quote sandbag end quote and wants to use something against
18 somebody that just won't stand up and we did have some that
19 indicated that they -- in fact she was the last one -- when
20 I went through some said they could not and so she
21 certainly was equipped with all the tools she needed to say
22 I cannot or I can and she did say she could. I appreciate
23 your challenge and I appreciate the way you handled it and
24 we've got it on the record now. Anything else we can do
25 before the day is out?

1 MS. TANNER: Nothing from the State.

2 MR. HOOD: Nothing, your Honor.

3 THE COURT: All right. I see two three solicitors in
4 the room now so I am sure we've got work to do.

5 Ms. Tanner, you're closest to the bench. Do you want
6 to confer with the galley?

7 MS. TANNER: Yes, sir.

8 THE COURT: Do you want to take a break a minute?

9 MS. TANNER: Your Honor, I don't think we are going to
10 have anything this afternoon. I think all the defense
11 lawyers have already bailed out as well. If we could begin
12 at 9:00 a. m. with the trial?

13 THE COURT: 9:00 a. m. in the morning we will
14 reconvene.

15 MS. TANNER: Thank you, your Honor.

16 THE COURT: Thank all of you.

17 (COURT IN RECESS: TIME IS 4:10 P. M..)

18 (BACK ON THE RECORD DECEMBER 9, 2008 AT 9:00 A. M..)

19 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE THROUGH
20 TWENTY-SIX PREMARKED FOR IDENTIFICATION.)

21 THE COURT: Mr. Hood, you ready to proceed?

22 MR. HOOD: Yes, sir.

23 THE COURT: Bring in the jury.

24 THE COURT: One of the alternates?

25 THE BAILIFF: I'm not sure, sir.

1 THE COURT: One of the Alternates is ill and we
2 relieved him of further obligation. Baker.

3 (JURY ENTERING THE COURTROOM AT 9:05 A. M..)

4 THE BAILIFF: Jurors entering, your Honor. .

5 THE COURT: Thank you.

6 THE BAILIFF: Your Honor, the jury is seated.

7 THE COURT: Good morning. Through communication with
8 the bailiff of course I told you that you could bring
9 drinks in if you wanted to in cups but not in a can. We
10 can't have a can in the courtroom for reasons of our own
11 and also there's no need to take notes there's just reasons
12 why. Some court's allow jurors to take notes. I'm just
13 going to ask you to -- the case is not going to take that
14 long I am going to ask you to pay real close attention and
15 no need to take notes.

16 Mr. baker one of our alternates is ill and rather than
17 make him come in and be uncomfortable and also to cut down
18 on us getting sick he's been relieved of duty so we are
19 down to one alternate.

20 Madame Solicitor.

21 MS. TANNER: Thank you, your Honor. May it please the
22 court.

23 THE COURT: Yes, ma'am.

24 MS. TANNER: Good morning, Ladies and Gentlemen, I see
25 you are here for jury duty and you are going to hear a case

1 today the State of South Carolina versus Rodney Galimore.
2 Opening statements are an opportunity to give you an idea
3 of what this case is about. What this case is about is
4 that Mary Deon the victim in the case was at the wrong
5 place at the wrong time. She was driving home from work on
6 her motorcycle and at that one moment in that one spot she
7 was just at the wrong place at the wrong time. You are
8 going to hear a lot of testimony about the how, the where,
9 the when, but I won't be able to answer why her. Nobody
10 can answer that for her, for the family. But I will answer
11 for you why him, why Rodney Galimore.

12 Why him? Because he put himself there. He wasn't at
13 the wrong place at the wrong time. He made choices.
14 Choices that put him there, choices that put him there at
15 that time doing what he was doing. That's why him. He
16 made choices that day. You are going to hear that those
17 choices are what put him in that chair today on trial for
18 felony driving under the influence that results in death;
19 charged with reckless homicide; charged with driving under
20 suspension; charged with child endangerment. His choices
21 put him in that chair in this courtroom.

22 You will hear from a variety of witnesses; you will
23 hear from lay witnesses, some citizens that knew him, some
24 that didn't, some that arrived on the scene, some that saw
25 him that day prior to the accident. You will hear from

1 medical professionals, you will hear from law enforcement
2 professionals and what you will hear is that on August the
3 11th 2007 here in Beaufort County Rodney Galimore started
4 out at a child's birthday party. You will hear that he
5 arrived at the child's birthday party drunk. You will hear
6 that while at the child's birthday party he continued to
7 drink. You will hear that he got into an argument with his
8 girlfriend at the party, loaded his two children into his
9 car and drove off and into the path of Mary Deon.

10 You are going to hear that on the crash scene that
11 Mary Deon didn't have a chance. She died within a minute
12 of impact. You will hear that Mr. Galimore and Ms. Deon
13 were actually driving in the same direction to begin with
14 but then as he approaches the country store right there on
15 the May River Road he veers off into the parking lot and
16 does a U turn but he never makes it back across the yellow
17 line because he gets into on coming traffic. He gets head
18 on into Mary Deon's lane and she never had a chance. She
19 was at the wrong place at the wrong time because Rodney
20 Galimore put himself in her path.

21 At the end of this case the Judge is going to give you
22 the law. He is going to tell you what felony DUI is; he's
23 going to tell you what reckless homicide is; he is going to
24 tell you what driving under suspension and child
25 endangerment and what all that law includes. And then

1 after you hear that I am going to ask you to return a
2 verdict. The term verdict comes from the Latin word
3 meaning speaks the truth and that's what your verdict does
4 it speaks the truth. And the truth is Ladies and
5 Gentlemen, Rodney Galimore is guilty of felony driving
6 under the influence that cause death the death of Mary
7 Deon. He is guilty of reckless homicide. His recklessness
8 caused the death of Mary Deon. He is guilty of driving
9 under suspension. He is guilty of putting his own children
10 in danger. And he is guilty because he made those choices
11 and that's the truth. And at the end of this case I will
12 ask that your verdict speak the truth. Thank you.

13 THE COURT: Mr. Hood.

14 MR. HOOD: Thank you, your Honor. I am getting over a
15 cold but I promise you I am not contagious. For thirty-
16 five years I've been doing this type of work. My first
17 twenty years I spent in the United States Army JAG Core
18 where I prosecuted people, I defended people, and I was a
19 judge for many years. The most important thing that I
20 found in all of these years including my last sixteen years
21 where I was the public defender here in Beaufort County is
22 that when you have a trial the most important element of
23 that trial is the jury because they are the ones who have
24 to make that decision as to guilt or innocence. So
25 therefore when we have a jury and when we pick a jury we do

1 that for certain reasons. We want people who have the
2 clear mind that they have not been tainted; that they are
3 not prejudiced, they are not biased. When they walk in
4 here they walk in here with a clean sheet and they start
5 from there.

6 Everything that Ms. Tanner says, everything that I say
7 is not evidence. It doesn't mean a thing. She can talk
8 about guilt and guilt and guilt all she wants to. That's
9 not evidence. The evidence that you are going to hear
10 comes from that seat right there. And you are the sole
11 judges of that evidence and that's the reason why you have
12 to have a clean slate; have no prejudices, have no biases,
13 have no outside information that you pull on to be able to
14 determine the facts of the case. So we don't want any
15 outside influences. We don't want anything other than your
16 clear decisions. It will be a joint effort. It will be
17 all twelve of you, not ten, not eleven, all twelve of you
18 who must agree before any decision can be made.

19 Now probably some of my client's don't even know what
20 a public defender is. I am not here to tell you that you
21 don't know what it is but we are actually attorneys. And
22 I've been practicing like I say for thirty-five years. Now
23 I found that although people are concerned about the fact
24 that we are public defenders. Well the preamble to the
25 constitution the last words of that particular event states

1 "with liberty and justice for all". That does not mean
2 some, it doesn't mean a few, it means everybody. Whether
3 you have the funds to go out and hire yourself a private
4 attorney to represent you on your case or whether you do
5 not everybody is entitled to a fair trial; a trial that is
6 unencumbered by outside influences. The things that I was
7 telling you about what you bring here today those are the
8 things that you use to make your decisions. If you feel
9 that you would not want to be sitting over there and have a
10 person like you making those decisions then you shouldn't
11 be here. For everyone is entitled to the same benefits of
12 a fair and impartial jury.

13 Now you are going to have to listen to the evidence.
14 I am not going to tell you what the evidence is. I am
15 going to let you do exactly what your job is. You are
16 going to hear the evidence and you are going to have to
17 make the decision. Not either one of us because we don't
18 have that privilege. You have that privilege - burden.

19 There will be a lot of witnesses. I may or may not
20 have any witnesses whatsoever. It depends upon what the
21 state because the state has the burden of proving guilt
22 beyond a reasonable doubt. We do not have to prove to you
23 that Rodney Galimore is innocent. The state has to prove
24 that he is guilty beyond a reasonable doubt. That's our
25 law, that's our justice system and you are sworn to follow

1 that law as you gave your oath. So often times we do it
2 for technical reasons. You know technical reasons. Why
3 are we talking about technical reasons? Well sometimes the
4 evidence comes out and everything has been said and we can
5 add nothing to what's been said. So therefore I make the
6 decision that we will present no evidence and why would I
7 do that? Well it's simply because of the fact that if I
8 present no evidence then I would get the last word to
9 determine and it's a very important tactical decision. So
10 whether you present anything or not you shouldn't be
11 concerned with it because we have no burden no burden
12 whatsoever. The state has the burden because they are the
13 ones that brought the case with all of their power and all
14 of their people, all of their investigators. All of these
15 people come into court to put together a case to be tried
16 together. Now Rodney Galimore as - so therefore you have
17 to understand that again you have the final decision to
18 make the authority in this case. And I want to make
19 absolutely sure that all of you are satisfied that you can
20 sit with unbiased unprejudiced on anything and make the
21 decision which is fair and just in the eyes of the law and
22 not in the eyes of some experience that you've had. Thank
23 you very much.

24 THE COURT: All right. Call your first witness.

25 MS. TANNER: Thank you, your Honor. The state would

1 call Lieutenant Joseph Dembeck.

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

4 THE CLERK: Have a seat. State your full name and
5 spell your last name for the record.

6 A. Joseph Dembeck. J-o-s-e-p-h, D-e-m-b-e-c-k.

7 DIRECT EXAMINATION

8 LIEUTENANT JOSEPH DEMBECK BY MS. TANNER:

9 Q. Good morning, Lieutenant.

10 A. Good morning. How are you?

11 Q. Good. Where are you employed?

12 A. The Bluffton Township Fire District.

13 Q. And what are your duties there?

14 A. I am a firefighter/paramedic.

15 Q. So you do firefighting and I guess what we would
16 commonly call EMS or a paramedic?

17 A. Correct.

18 Q. What we call a paramedic?

19 A. Yes.

20 Q. And what is the difference in a paramedic and anyone
21 else on a scene like that?

22 A. A paramedic can hook people up to a heart monitor;
23 start IV's, plurdy compression, things like that.

24 Q. Is that more advanced than someone who is just
25 starting out with the fire department?

1 A. Yes.

2 Q. What type of education and training do you have to be
3 a paramedic?

4 A. A paramedic you are required to go to school for about
5 -- approximately about a year. You have clinicals, you've
6 got models you have to do. That's pretty much it.

7 Q. And are you trained or skilled in life-saving
8 procedures?

9 A. Yes.

10 Q. And how long have you been doing this?

11 A. As a fire fighter or a paramedic?

12 Q. Both.

13 A. I've been a fire fighter for ten years and a paramedic
14 -- I been in the EMS field for probably about twelve years.

15 Q. And, Lieutenant, were you working on the late evening
16 hours of August the 11th 2007?

17 A. Yes.

18 Q. And were you called to a scene on Highway 46 in the
19 Bluffton area?

20 A. Yes.

21 Q. And can you tell the jury what kind of call did you
22 receive? How do you go out?

23 A. That night we had some people come up to the front pad
24 of the fire station in Prichardville. They were honking
25 their horn and they said there was an accident on the

1 corner of May River and Gibbit Road. So I notified
2 dispatch told them that we would go over there and I found
3 a vehicle versus a motorcycle. And when I got on the scene
4 I found a patient that was unconscious, unresponsive, not
5 breathing. The patient had some trauma to her head and
6 neck and her lower extremities. And from there I hooked
7 the patient up to a heart monitor and the heart monitor
8 read a flat line or a systole and at that point I just
9 decided that the patient was incompatible with life. The
10 highway patrol arrived on the scene and I gave them my
11 report of what I saw and what happened at the fire station
12 with the people coming up and just kind of turned the scene
13 over to them. EMS they also arrived on the scene and they
14 confirmed my findings and they called for the coroner and
15 basically we just kind of waited there and assisted the
16 highway patrol as much as we could.

17 Q. And are you there with the body until it is removed
18 from the scene?

19 A. Yes.

20 Q. Now you said that you put a heart monitor. What other
21 I guess life saving techniques do you try to employ or what
22 type of test are you doing when you get there?

23 Q. Well there's - if there's a lot of trauma to somebody
24 you kind of -- the trauma that she had to her was to the
25 point where I really couldn't do anything. We attempted to

1 do some ventilation to see if we had any response or
2 anything like that and I had some of the fire fighters do
3 some of those to use some of those things. I mean the
4 trauma that she had to her body I mean there wasn't really
5 anything that we could do.

6 Q. Now you said a systole. What does that mean?

7 A. On TV they call it like flat line time type of thing.
8 There's basically -- that means there is no electrical
9 activity in the heart. The heart requires electro activity
10 to live and to beat it didn't have that. But the trauma
11 and the fact that pretty much tells us as rescue people
12 that there's not really much you can do in a situation like
13 that.

14 Q. You said there were no signs of compatible life. What
15 does that mean?

16 A. Well I mean with the trauma and with the heart monitor
17 hooked up and things like that I mean the lady you know she
18 was on a motorcycle and there's just no evidence that she
19 could be alive. I mean there's nothing that we could do.

20 Q. You couldn't restart her heart?

21 A. No.

22 Q. Or make her breath?

23 A. Not with the trauma and stuff like that.

24 Q. Were you able to identify your patient?

25 A. What do you mean by that?

1 Q. Do you know her name? Were you able to identify her
2 name?

3 A. From the Highway Patrol yes.

4 Q. And was it Mary Deon?

5 A. Yes.

6 Q. Thank you, Lieutenant, please answer anything Mr. Hood
7 may have.

8 CROSS EXAMINATION

9 LIEUTENANT JOSEPH DEMBECK BY MR. HOOD:

10 Q. Good morning.

11 A. Good morning. How are you?

12 Q. How long have you been working out there in that area?

13 A. In that area I been out there for about a year and a
14 half.

15 Q. About a year and a half. And have you driven that
16 particular road -- been down that road many times before?

17 A. Gibbet Road or May River Road?

18 Q. May River Road.

19 A. Yes.

20 Q. Did you come in down May River Road?

21 A. Yes.

22 Q. And did you come in the same direction as the other
23 cars had come like the motor cycle had come?

24 A. No.

25 Q. Did you come in the opposite direction?

1 A. I came east bound on May River Road.

2 Q. Okay. So you came up behind where the accident was
3 at, is that correct?

4 A. Correct, yes.

5 Q. Okay. Now are you familiar with the road that is in
6 front of where your car or where your vehicle was parked?
7 In other words the May River Road itself.

8 A. Yes..

9 Q. Okay. Now that particular convenient store sits on
10 the corner where there is a stop sign and a road
11 intersects, is that correct?

12 A. That is correct.

13 Q. And what is the name of that particular road?

14 A. That's Gibbet Road.

15 Q. Gibbet Road, okay. So we have a stop sign and we have
16 a convenient store, is that correct?

17 A. Correct.

18 Q. And that convenient sits fairly close to the road,
19 isn't that correct?

20 A. I agree with that yes.

21 Q. And it's a well lit and it was lit that particular
22 night, isn't that correct?

23 A. The lighting in that area -- I mean I wouldn't think
24 that it would be lit very well no.

25 Q. Was the store lit or not?

1 A. Yes.

2 Q. Okay. So we've got this store, this lighting it on
3 and it's well lit. The road that's in front of you would
4 you describe that as a long straight road?

5 A. May River Road?

6 Q. Yes.

7 A. Yes.

8 Q. So you can clearly see for quite some distance if you
9 were out looking back in the direction of the May River
10 Road, is that correct?

11 A. Correct.

12 Q. Okay. And consequently if you were going the other
13 way you could see the convenient store lights and things of
14 that nature could you not?

15 A. Correct.

16 Q. Okay. Now do you ever drive a motor cycle?

17 A. I have not.

18 Q. Okay. Probably a good idea. Thank you I have no
19 further questions.

20 THE COURT: Redirect?

21 MS. TANNER: Nothing from me, your Honor.

22 THE COURT: You can step down and be excused and we
23 appreciate your time and thank you.

24 LIEUTENANT JOSEPH DEMBECK: Thank you.

25 THE COURT: Call your next witness.

1 MS. TANNER: Your Honor, the State calls Kathryn
2 Richardson.

3 THE CLERK: Raise your left hand and place your right
4 hand on the bible please.

5 (WHEREUPON: KATHRYN
6 RICHARDSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
7 FOLLOWS.)

8 THE CLERK: State your full name and spell your last
9 name.

10 A. My name is Kathryn Richardson, R-i-c-h-a-r-d-s-o-n.

11 DIRECT EXAMINATION

12 KATHRYN RICHARDSON BY MS. TANNER:

13 Q. Good morning, Ms. Richardson.

14 A. Good morning.

15 Q. What part of the county do you live in?

16 A. I live in Bluffton Park.

17 Q. And how long have you been living in the Bluffton
18 area?

19 A. March 19 -- 2006. I'm sorry.

20 Q. And where are you employed?

21 A. Scrontengobble Restaurant.

22 Q. I am going to ask you about some events from August
23 the 11th 2007 around 10:00 p. m.. What were you doing
24 around that time?

25 A. I was coming back from Savannah on Highway 46.

1 Q. And what did you see near the country store?

2 A. As we was approaching the country store I saw a couple
3 of cars pulled over and some brake lights and in the middle
4 of the road was a four-wheel car vehicle and on the left in
5 front of the country store was a motorcycle on it's side
6 and a body a distance away and a couple of people standing
7 there.

8 Q. And when you saw this what did you do?

9 A. Immediately I called 9 1 1. I assumed that someone
10 else was on the phone with them because I saw a gentleman
11 in the parking lot on the phone. I said I'm not sure if
12 anybody else has called 9 1 1 but I'm in front of the
13 country store on Highway 46b and there's been an accident.
14 It looks like a motorcycle has been hit and the person is
15 laying on the ground. And I told them I was going to get
16 out of the car because the motorcycle was whitish -- it was
17 a white motorcycle and my boss drives that kind of
18 motorcycle and from where I stood it looked like a small
19 body and my boss isn't real tall and I got nervous and I
20 got out of the car and looked -- well I finished talking to
21 them and they said nobody else was on the phone but they
22 would send some people out immediately. I got out of the
23 car and ran over to check the person on the ground. It
24 wasn't my boss but it was a small woman and I checked to
25 see if she was breathing and she wasn't. There was a young

1 man standing over the body and to the right about five
2 feet, five, ten feet away was a man on a cell phone all
3 agitated slurring his words and moving weirdly yelling and
4 screaming how he was just run into by a motorcycle and da,
5 da, da, and kept repeating what he said all mad and
6 agitated. You know there was this young boy standing over
7 this body and the woman's not alive and it was just
8 horrific, it was terrible. You could tell by the way the
9 car was parked in the middle of the street that it was not
10 her that was at fault that this person cut in front of her.

11 MR. HOOD: Your Honor, I am going to object.

12 THE COURT: Don't go into what you didn't see.

13 THE WITNESS: Okay.

14 BY MS. TANNER:

15 Q. Ms. Richardson, describe how you seen the vehicle.

16 Let's talk about the vehicle before the motorcycle. How do
17 you see the -- where do you find the vehicle when you get
18 on the scene?

19 A. Okay we're coming up 46 from Savannah. He's not in
20 that lane but he's going in that direction and he's in the
21 other lane at an angle if I'm making any sense. He's on
22 the oncoming traffic lane at an angle.

23 Q. Okay. And where is the motorcycle located?

24 A. The motorcycle -- if this is the front of his vehicle
25 the motorcycle is here in the parking lot of the country

1 store.

2 Q. Now when you arrived are there any fire fighters or
3 paramedics on the scene?

4 A. Not yet.

5 Q. No police officers?

6 A. No police officers.

7 Q. And you said there was a man on a cell phone?

8 A. Yes.

9 Q. And do you see that man in this courtroom?

10 A. Well I see a man that looks very -- this gentleman
11 over here but he is certainly a lot more clean today than
12 he was that day.

13 Q. And describe his appearance that day.

14 A. Just shoveled, dirty. You know you can tell he had
15 been I don't know. He wasn't dressed in a suit and nice
16 and looking good.

17 Q. And what did you hear him say?

18 A. He kept yelling in the phone. You know this person
19 just hit me; this person just hit me taking no
20 responsibility for his actions. He wasn't even checking
21 out to see if the person was okay. He didn't care about
22 that person. I found out later it was his son standing
23 over the body. This child shouldn't even have even been
24 there. This woman is dead on the ground and he's standing
25 over her body. I didn't get that. It made no sense to me.

KATHRYN RICHARDSON: DIRECT EXAMINATION BY MS. TANNER
CROSS EXAMINATION BY MR. HOOD

1 And he's more worried with what ever on the cell phone and
2 he should be concerned with what's going on. He should
3 have called 9 1 1. He should have been concerned about the
4 safety of this human being whoever -- whoever he thought
5 was at fault.

6 Q. Now, Ms. Richardson, how long did you stay on the
7 scene?

8 A. I stayed until the ambulance and the police arrived
9 because it wasn't a very big area and when they arrived and
10 took off I left and then I did inform the policeman they
11 knew from the 9 1 1 call who I was and then the next
12 morning I informed the police that if they needed me for
13 anything that I was there and that the reason I didn't stay
14 it wasn't bit enough for all of us. There was a fire
15 truck, there was an ambulance and there was a police car.
16 There wasn't a lot of room in that vicinity and I just
17 didn't know if I would be in the way or not. Plus I was
18 very upset.

19 Q. Thank you, Ms. Richardson. Please answer anything
20 defense counsel has.

21 CROSS EXAMINATION

22 KATHRYN RICHARDSON BY MR. HOOD:

23 Q. Now Ms. Richardson, which direction did you come from?

24 A. We were coming from Savannah so we were going east on
25 46.

1 Q. So you were on May River Road, is that correct?

2 A. Yes.

3 Q. And you were approaching the country store, is that
4 correct?

5 A. Yes.

6 Q. And you would have been coming from the same direction
7 as the motorcycle driver, is that correct?

8 A. No opposite direction.

9 Q. Opposite direction, okay. Now was there somebody with
10 you in the vehicle?

11 A. There was a few of us in the vehicle yes.

12 Q. How many people were in the vehicle?

13 A. Three others besides me.

14 Q. Okay. And were these adults that were in the car with
15 you?

16 A. One was a sixteen year old and two were adults yes.

17 Q. Okay. Were you the only one to exit the vehicle?

18 A. Yes I was.

19 Q. Okay. And you exited the vehicle to check on seeing
20 whether or not this was your boss, is that correct?

21 A. Wanted to see if it was my boss first of all because I
22 got scared but second of all to make sure the person on the
23 ground if they needed any help if I could help them at all.

24 Q. Well you didn't know how long it had been since this
25 accident occurred, is that correct?

1 A. Not a hundred percent sure no.

2 Q. So you didn't see it, is that correct?

3 A. No I did not.

4 Q. Okay. All right so you don't know what took place
5 prior to your arrival is that correct?

6 A. No. I only know where the vehicle was and where the
7 motor cycle was.

8 Q. Okay. Now isn't it true that the first thing you did
9 was went over and checked the motorcycle to make sure it
10 wasn't your boss's?

11 A. No I called 9 1 1 first.

12 Q. 9 1 1 first. But when you got out of the vehicle you
13 went and checked the motorcycle to make sure it wasn't your
14 boss?

15 A. I looked at the motorcycle and then I went to the body
16 because I'm sorry if you were in my position you really
17 don't want to see somebody on the ground in that position.
18 It was disgusting.

19 Q. All right. Well but your first thought was to check
20 the motorcycle to make sure it wasn't your boss.

21 A. Oh yes.

22 Q. All right. So once you check the motorcycle and it's
23 not your boss's then you go over and check the body, is
24 that correct?

25 A. Yes that is correct, sir.

1 Q. Okay. All right. Now was it raining that night?

2 A. Not when I came up on it no. Whether it was earlier
3 I'm not sure.

4 Q. And the lights there at the country store were on and
5 illuminating the area - - -

6 A. Yes they were.

7 Q. - - - isn't that correct?

8 A. Uh-huh.

9 Q. Okay. I don't have any further questions.

10 THE COURT: Redirect?

11 MS. TANNER: Nothing further, your Honor.

12 THE COURT: Ms. Richardson, thank you very much. We
13 appreciate your time and you can be excused.

14 Call your next witness.

15 MS. TANNER: Thank you, your Honor. The State calls
16 Jaqueline Cook-Jackson.

17 THE CLERK: Raise your right hand and place your left
18 hand on the bible.

19 A. Raise my right hand?

20 THE CLERK: Yes, ma'am.

21 (WHEREUPON: JAQUELINE COOK-
22 JACKSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
23 FOLLOWS:)

24 THE CLERK: Have a seat. State your full name and
25 spell your last name for the record.

1 A. My full name is Jaqueline Roberta Cook-Jackson,
2 J-a-c-k-s-o-n.

3 DIRECT EXAMINATION

4 JAQUELINE COOK-JACKSON BY MS. TANNER:

5 Q. Good morning, ma'am.

6 A. Good morning.

7 Q. I am going to start off by asking you if you know
8 Rodney Galimore?

9 A. Yes I do.

10 Q. And could you describe your relationship back in
11 August of 2007?

12 A. We were dating.

13 Q. Pull the microphone just a little bit to you. I'm
14 sorry could you describe your relationship?

15 A. We were dating.

16 Q. I am going to ask you about a specific date August the
17 11th 2007. Did you see him that day?

18 A. Yes.

19 Q. All right and where is the first place you see him?

20 A. At his house.

21 Q. And what were you doing that day?

22 A. I was planning a birthday party well getting ready for
23 a birthday party for my son. We were going to try and tie
24 it in with his son's birthday was around the same time.

25 Q. And about what time were you having the party?

1 A. I would say about 3:30, 4:00.

2 Q. In the afternoon?

3 A. In the afternoon yes.

4 Q. And where were you having the party?

5 A. At my house.

6 Q. And did you actually have that party?

7 A. Yes I did.

8 Q. And who was there?

9 A. Well it was a bunch of kids there. A bunch of kids
10 there and my mom. I think my mom stopped by for a minute
11 earlier. Rodney was there. My girlfriend Denise and her
12 kids were there and myself but most of the kids were
13 dropped off.

14 Q. And - -

15 A. Rodney and his kids were there. His kids were there
16 as well.

17 Q. And when Rodney arrives at the party does Rodney come
18 back to you, come back to your house with you or does he
19 arrive later?

20 A. He arrived later.

21 Q. I'm sorry you said you first saw him at his house.
22 Tell me about that.

23 A. Yea I first saw him at his house. I stopped by his
24 house to let him know that I was breaking it off with him
25 and to let him know that I was basically breaking it off

1 with him; we can still remain friends and that I was still
2 going to do what I said as far as putting his son's name on
3 the birthday cake and celebrating his son's birthday his
4 oldest son's birthday.

5 Q. And did you do that?

6 A. Yes I did.

7 Q. It sounds like they came to the party.

8 A. Yes.

9 Q. And when Mr. Galimore arrives for the party - -

10 A. Well he came earlier and you know and he was drinking.
11 You know he came earlier and he ask me you know was I
12 really serious about doing what I said I was going to do as
13 far as breaking it off with him. And also ask me did I
14 still do what I said I was going to do as far as putting
15 his son's name on the birthday cake and I said yes.

16 Q. So prior to the birthday you say he's already
17 drinking?

18 A. Yes he was drinking.

19 Q. And does he then remain at your house?

20 A. For a little while. He kind of dozed off a little bit
21 and then he woke up and then he got up to go take care of
22 something he went to do something. And then he later on
23 called me and ask me if I needed anything from the store
24 because he called me from my cell phone that he was using
25 at the time.

1 Q. All right. And when is the next time you see him?

2 A. When he came back with some meat to put on the grill
3 and to start the grill.

4 Q. And how does everything go at the party?

5 A. Everything was going okay. Everything was going fine
6 you know and then he left again and came back. And when he
7 came back he had a gun with him and I told him he couldn't
8 have that here. I told him -- I ask Denise if she would
9 watch the kids while I took him home so that he could put
10 it away and that's what I did.

11 Q. And that's what you did?

12 A. Yea. I took him home so that he could put the gun
13 away because I didn't want it at my house. I don't like
14 guns.

15 Q. And then what happened?

16 A. And then you know we talked there for a little while
17 and I ask him to get some clothes so he can take a shower
18 because he was drunk you know he was slurring a little bit.
19 And I told him to get some clothes he could take a shower
20 at my house and lay down while the kids are you know having
21 fun. I thought he put the gun away. You know I didn't
22 know he still had the gun until he got back to the house.
23 I think my son was saying that he had a gun and I was in
24 the house. I was pregnant at the time so Denise went
25 outside. It was like he shouldn't have the gun because he

1 went to his house to put the gun away.

2 Q. And then what happened?

3 A. Then Denise went outside. I don't know what she said
4 to him.

5 Q. Did you see him again?

6 A. I saw him again later on.

7 Q. All right. Describe that for me.

8 A. When I saw him again and he told me he had the gun and
9 I told him I thought I took him to the house to put that
10 gun. When did you get that gun? And I told him I you know
11 I just want you to leave. Just leave. Get your stuff.
12 I've already got your stuff together and leave. I want you
13 to leave. And then at the time I ask him for my cell phone
14 that he was using because I didn't want him to come back to
15 the house. He told me he had some people calling therefore
16 and I said well if they call I will give them a message but
17 I want my cell phone. And I think he got upset to the fact
18 that I wanted my cell phone. I even told him that you can
19 leave you can leave the kids but you have to go. He got
20 mad to the fact pushing me in the house, pushing me in the
21 room and started hitting me.

22 MR. HOOD: Your Honor, I am going to object.

23 THE COURT: I sustain the objection. I sustain the
24 objection about that. Go ahead.

25 BY MS. TANNER:

1 Q. Now Ms. Jackson, earlier you said that Mr. Galimore
2 was drunk. How do you know that?

3 A. Because he was slurring and he was stumbled a little
4 bit. That's why I wanted him to lay down. Take a shower
5 and lay down so he could sleep it off.

6 Q. And did he do that?

7 A. No he didn't.

8 Q. Did he eventually leave your house that night?

9 A. Yes.

10 Q. Was he alone when he left?

11 A. No he took his kids with him.

12 Q. What was he driving?

13 A. He was driving his SUV.

14 Q. Do you recall about what time he left your house?

15 A. No. That's a whole year ago.

16 Q. Was it night time?

17 A. It was night time. I would say maybe ten, eleven
18 o'clock something like that.

19 Q. And could you describe his state when he left your
20 house? How was he acting when he left?

21 A. He was mad.

22 Q. Would you say he was still intoxicated?

23 A. Yea.

24 Q. All right, Ms. Cook-Jackson, you're talking about
25 Rodney Galimore. Do you see him in the courtroom?

1 A. Yes.

2 Q. Could you point him out please?

3 (WITNESS POINTED.)

4 Q. Let the record indicate that she has indicated the
5 defendant.

6 Please answer anything defense counsel has.

7 A. Okay.

8 CROSS EXAMINATION

9 JACQUELINE COOK-JACKSON BY MR. HOOD:

10 Q. Now what time in the morning did you go to Rodney's
11 house?

12 A. I would say probably about nine, nine o'clock, between
13 nine and ten o'clock because I went to Publix to order a
14 cake.

15 Q. And he had been staying in your house previously?

16 A. No he didn't stay there. He spent a couple of nights
17 here and there helping the kids.

18 Q. Well he had a lot of his belongings there didn't he?

19 A. He had some work clothes and because kids always spend
20 the night at my house and so do his kids and they had a
21 couple of items there. He didn't have a lot of stuff
22 there.

23 Q. Well - -

24 A. Just enough to put inside a grocery bag.

25 Q. He had a colored television set didn't he?

1 A. Yea because my TV went out and so he went and got his
2 TV and plus he took the TV either earlier that day or the
3 day -- yea earlier that day or later on that day when he
4 was leaving because I wanted him -- because I had broken
5 things off.

6 Q. Well isn't it true - -

7 A. It was a small TV.

8 Q. Isn't it true that he broke things off with you?

9 A. No.

10 Q. No. Okay. So he takes his colored TV and I believe
11 he had a whole bunch of DVD's and things of that nature and
12 a digital also, isn't that correct?

13 A. No. No not really. He had some of my DVD's I had
14 some of his. There weren't a bunch of them maybe about two
15 or three.

16 Q. He took all of those didn't he?

17 A. No actually his -- I want to say his cousin or his
18 aunt's husband came and picked up the three or four of the
19 DVD's that he had left. I can name them for you if you
20 like.

21 Q. That's all right.

22 A. Okay.

23 Q. Now also he had a vehicle in your garage didn't he?

24 A. He was working on a vehicle there for somebody because
25 he didn't want to work on it at his house because it was

1 outside. I had a garage that he ask me if he could work in
2 my garage on that vehicle. It was a Mercedes for somebody.

3 Q. Yea and he was a mechanic isn't that correct?

4 A. Yea a very good mechanic.

5 Q. Uh-huh. And Rodney was doing quite well isn't that
6 correct?

7 A. I can't answer that. I don't know what his finances
8 were.

9 Q. I mean you were staying with him isn't that correct?

10 A. No I wasn't staying with him. He spent a couple of
11 nights at my house. I've never spent the night at his
12 house.

13 Q. Well wasn't there an issue over whose child you were
14 actually carrying?

15 A. Yea.

16 Q. Whether it was Rodney's. Rodney thought it was his
17 didn't he?

18 A. Yea.

19 Q. And Rodney when he left that particular night he also
20 mentioned the fact that he was going to leave the Mercedes
21 there if he could ask you if you would let him leave the
22 Mercedes there until he could it back together, isn't that
23 correct?

24 A. No. No I don't think that was the discussion when he
25 left.

1 Q. Well was it a discussion earlier?

2 A. Yea if he could work on the Mercedes at my house until
3 he got finished with it and I said yea because we were
4 friends.

5 Q. Yea. And that's after when supposedly you told him
6 you were breaking things off - - -

7 A. Yea.

8 Q. - - - isn't that correct?

9 A. We were friends before we started dating and I wanted
10 to be friends afterwards too.

11 Q. And you were pretty upset at Rodney weren't you?

12 A. No not really. I just -- I didn't like the idea that
13 he was still drinking.

14 Q. Uh-huh. Well isn't it a fact -

15 A. That was my main reason for breaking it off. I know
16 he said he was working on that you know.

17 Q. Uh-huh. Yea well what about the kitchen, your
18 kitchen.

19 A. That he caught on fire?

20 Q. Yea.

21 A. That was an accident. I was sleeping I mean he was
22 trying to cook some chicken for the kids. That was an
23 accident.

24 Q. And I believe you blamed that on him didn't you?

25 A. Well he caught it on fire. I didn't blame it on him.

1 I know he said he was going to fix it so I didn't bring it
2 up and I didn't say anymore about it.

3 Q. Well - -

4 A. It's still burned up. It's still not fixed.

5 Q. And you weren't concerned about that isn't that true?

6 A. Well wouldn't you be?

7 Q. Yea. And after Rodney left that night you called him
8 several times on his cell phone didn't you?

9 A. No. No. Rodney actually when he left I didn't know he
10 grabbed my cell -- he took my cell phone again and my other
11 phone was in the room so I really didn't know he had called
12 me. I didn't call him. He had called me until after the
13 police left.

14 Q. Now wait a minute.

15 A. And then I went and got my phone because I had called
16 the police because he had hit me with a gun.

17 Q. Your Honor, I am going to object to that.

18 THE COURT: I over rule your objection.

19 Q. All right listen. You called Rodney on the cell phone
20 is that correct?

21 A. No. No I didn't.

22 Q. You called Rodney. Did you call him at all?

23 A. No.

24 Q. No?

25 A. For what? He hit me.

1 Q. Oh he hit you?

2 A. He hit me with the gun in my face. I'm three months
3 pregnant. I mean if you was a woman you three months
4 pregnant and some man hit you possibly you could be
5 carrying his baby and he hit you with a gun in your face?

6 Q. Well didn't you tell him it wasn't his baby?

7 A. No I didn't tell him that until he hit me with the
8 gun. I was afraid of him. I didn't want him around me or
9 my unborn baby.

10 Q. So - -

11 A. No I never told him that until he called me from the
12 jail house and because he hurt me and my unborn baby. I
13 told him that.

14 Q. You told him what?

15 A. That it's not his baby.

16 Q. Uh-huh. You never talked to him at all that night
17 after he left your house, is that correct?

18 A. I didn't talk to him until he called me from the jail
19 house.

20 Q. So there was - -

21 A. Even when he called me to come pick up his kids from
22 the accident I didn't talk to him then. I didn't talk to
23 him until he called me from the jail house.

24 Q. Well who called you to have you pick up the kids?

25 A. The officer.

1 Q. From the accident?

2 A. The officer, the female officer.

3 Q. The female officer.

4 A. Uh-huh.

5 Q. And you told them you would pick up the kids is that
6 correct?

7 A. Yea when she called me she ask me she said -- she said
8 we got Mr. Galimore.

9 I said oh.

10 And she said yea. She said does he have any relatives
11 around?

12 And I said well he has an aunt in St. Helena.

13 And she said he doesn't have anybody here?

14 And I said no not that I know of.

15 And she said -- well I'm going to be honest with you
16 she said well will you come pick up the kids?

17 I said no I would rather not.

18 And she said well I'm going to be honest with you Mr.
19 Galimore was involved in an accident.

20 And I said oh my God I'll come get the kids.

21 Q. Okay. All right. So Mr. Galimore has been involved in
22 an accident and I'll come pick up the kids.

23 A. And he killed somebody.

24 Q. Did you pick up the kids?

25 A. I did.

1 Q. Okay. All right.

2 A. I love his kids.

3 Q. Now you indicated that Rodney was dozing off and he
4 was sleeping for a period of time at your house. Was that
5 in your house or his house?

6 A. My house.

7 Q. Your house. And did he go to his house at anytime by
8 himself and stay gone for quite some time?

9 A. I do know he left where he went I don't know.

10 Q. Well you also indicated that you and he talked to each
11 other over the telephone when he was purchasing these from
12 the store isn't that correct?

13 A. Yea. I don't know what he was doing but he was on his
14 way to the store and he ask me did I need anything.

15 Q. Okay. So he ask you if you needed anything. About
16 what time was that?

17 A. I don't know.

18 Q. Well was it dark?

19 A. No it was day time.

20 Q. It was day time?

21 A. It was just before the cook out started.

22 Q. Okay. Now you indicated that Rodney was driving an
23 SUV, is that correct?

24 A. Yes, sir.

25 Q. And was he driving that when he left your house that

1 night?

2 A. Yes.

3 Q. And your house is it located very near to the roadway
4 or some distance from the roadway?

5 A. Well you can see the road. You can see Buck Island
6 Road from the back of my house.

7 Q. And did you see him travel out in that direction?

8 A. Really I was in the house with a pack of ice on my eye
9 so no I did not see. I saw - -

10 Q. So you never saw him operate the vehicle?

11 A. I saw the car driving out when I went to the door with
12 the police.

13 Q. Uh-huh.

14 A. And when I went outside to double check my grill and
15 everything to make sure that the fire was out the SUV was
16 gone.

17 Q. So you never saw him leave?

18 A. Yea. No I didn't see it leave. It was gone out of my
19 driveway where he was parked.

20 Q. Well when did he pack up his television and his DVD's
21 and all of this other stuff?

22 A. Just before he pushed me in the house to hit me.

23 Q. So he didn't pack them up earlier that afternoon?

24 A. Uh-huh.

25 Q. So after you and he get into some kind of an argument

1 he packs up all of his things - -

2 A. Huh-huh. Before we got in -- no there was no
3 argument. That's what I can't understand. There wasn't an
4 argument. He got his TV before I had bagged up his
5 clothes. All he got was his TV and put it in his truck his
6 SUV.

7 Q. And you bagged up his clothes and you put that in his
8 truck too?

9 A. He put it in his truck yea. Him or his kids I don't
10 know exactly.

11 Q. But you bagged it up is that correct?

12 A. Right.

13 Q. And somebody put it into the SUV?

14 A. Uh-huh.

15 Q. Okay. And when he left did his kids get in the
16 vehicle with him?

17 A. I didn't see them get in the vehicle with him but they
18 weren't at my house any more and when I got to the accident
19 they were there.

20 Q. And did you see Rodney at the accident?

21 A. Yea he was laying down in the back seat of the police
22 car.

23 Q. When you say he was laying down in the back seat of
24 the police car how was he laying down in the back seat?

25 A. He was back like that.

1 Q. Was he face down in the floor board of the vehicle?

2 A. No. Back seat.

3 Q. Was he face down in the back seat of the vehicle?

4 A. Uh-huh and then he raised his head up and that's when
5 I turned away.

6 Q. So you looked into the window and he raised up is that
7 correct?

8 A. Uh-huh.

9 Q. Okay. All right. Now so he packs up all of his
10 stuff.

11 A. He packed up the TV I packed his clothes and the kids
12 clothes.

13 Q. And boom they put it all in the vehicle and he gets
14 the kids and away he goes, is that correct?

15 A. Uh-huh.

16 THE COURT: You need to say yes or no.

17 A. Oh, yes, sir.

18 Q. Okay I don't have any further questions.

19 THE COURT: Redirect?

20 MS. TANNER: Nothing further, your Honor.

21 THE COURT: All right you can step down and be
22 excused. We appreciate your time and thank you.

23 Call your next witness.

24 MS. TANNER: Thank you, your Honor. State calls
25 Denise Diggs.

1 THE CLERK: Raise your right hand and place your left
2 hand on the Bible.

3 (WHEREUPON: DENISE DIGGS,
4 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5 THE CLERK: Please have a seat. State your full name
6 and spell your last name.

7 A. My full name is Denise Meline Diggs, D-i-g-g-s.

8 DIRECT EXAMINATION

9 DENISE MELINE DIGGS BY MS. TANNER:

10 Q. Good morning, Ms. Diggs. DO you know Jaqueline Cook-
11 Jackson?

12 A. Yes.

13 Q. And how do you know her?

14 A. We were neighbors maybe I would say about eleven years
15 ago and we still remain friends.

16 Q. Do you remain friends today?

17 A. Yes.

18 Q. I am going to ask you were you friends in August of
19 2007?

20 A. Yes.

21 Q. I am going to ask you about a particular date of
22 August the 11th of 2007. Were you visiting Ms. Jackson's
23 house that day?

24 A. Yes.

25 Q. And what was the purpose of your visit?

1 A. Her son was having a birthday party and she invited me
2 and my children.

3 Q. And how many children do you have?

4 A. I have three.

5 Q. And what are their ages?

6 A. Now they are fourteen, ten and nine.

7 Q. And all three of them went to the party with you?

8 A. Yes.

9 Q. Who else was at the party?

10 A. There were some neighborhood children and her
11 boyfriend at the time and his two boys and her children.

12 Q. Do you know boyfriend's name.

13 A. Rodney that's all I know.

14 Q. And would you know Rodney if you saw Robbie again?

15 A. Yes.

16 Q. Do you see him in the courtroom?

17 A. Yes.

18 Q. Could you point to him please?

19 (WITNESS POINTED.)

20 Q. Thank you.

21 Please let the record reflect she indicated the
22 defendant Rodney Galimore.

23 Ms. Diggs, what time did you arrive at the party?

24 A. I don't remember exactly but I would say it was around
25 five o'clock.

1 Q. P. M.?

2 A. P. M. yes.

3 Q. All right and what was going on when you arrived?

4 What was everybody doing?

5 A. Children were outside playing. Rodney was cooking
6 food on the grill; Jaqueline was in the house so I went
7 into the house and Ha how you doing, you know, just started
8 mingling with her and spoke to him. You know it's like
9 really the first time I really seen him but I spoke to him
10 and let the kid go their way and they all have their fun
11 outside playing on the trampoline and running around in the
12 yard.

13 Q. And did you have an opportunity during the party to
14 observe Mr. Galimore?

15 A. Yes.

16 Q. Did you see him drink anything while at the party?

17 A. Beer.

18 Q. Beer? Did you see how many he drank?

19 A. No.

20 Q. And did you have an opportunity to observe his
21 behavior at the party?

22 A. When I first arrived he seemed to be fine but he
23 looked as if he had been drinking already. But as the
24 evening went on things seem to be okay but they kind of
25 like a little out of control.

Q. And what do you mean by out of control?

A. Before I left the party there was an incident where Rodney's children ran into the house and told me that Mr. Rodney was outside swinging around a gun. So I sent all of the kids to the back of the house to get them away because I didn't know what was going on and I went outside to talk to him. At that time he had a gun in his hand but he was just like pointing it to the sky so I ask him could he you know please put it away because the kids was outside. We talked you and you know he came over and talked to me and I said well can I see it. It was just a threat in my mind and to get it out of his hand and once he did let me see it but then he asked for it back. So he ask for it back and I gave it back to him and then I went in the house and told Jackie to please talk to him because the kids say he's playing with a gun and I don't want anybody to get hurt.

Q. And when you were talking to him how did he seem?

A. He seemed to be aware of what I was asking him. He didn't argue with me or anything. He just put the gun away.

Q. Was his speech slurred at all? Could you understand him?

A. Yea I could understand him.

Q. Did you notice anything different about the way he was talking from earlier in the party until later in the party?

1 A. No because he really didn't say too much. It was just
2 like yea you know give it back. You know it wasn't like
3 full sentences where you could really say like he was
4 slurring you know slur or anything like that it was like
5 one word answers and stuff.

6 Q. Did you see him when he left Jackie's residence?

7 A. Yes.

8 Q. And how did he appear when he left?

9 A. A little upset, angry. Personally I think he might
10 have had a little bit too much to drink.

11 Q. And what makes you think that?

12 A. Because before he left the house there was a
13 confrontation between him and Jackie. You know I was in
14 her house on the phone talking and I heard thumping and
15 bumping. I didn't know what was going on so when I knocked
16 on her bedroom door to ask her if she was okay instead of
17 her answering he answered and he was like everything was
18 okay. So I ask again Jackie are you okay? And she asked
19 me to call the cops.

20 Q. But you said you had thought he was drunk. What made
21 you think he was drunk?

22 MR. HOOD: Objection, your Honor, that's not what she
23 said.

24 THE COURT: Rephrase your question.

25 MS. TANNER: I'm sorry.

DENISE MELINE DIGGS: DIRECT EXAMINATION BY MS. TANNER
CROSS EXAMINATION BY MR. HOOD

1 You said you thought he had too much to drink. I
2 think that's how you said it. What makes you say that?

3 A. Because during the course of the night you could see
4 he was starting to stagger a little bit. We were cooking
5 outside on the grill and towards the end of the night the
6 food that was made to cook on the grill starting getting
7 burnt. You know he was in control of the grill and
8 everything was starting to burn you know things like that.
9 And I personally brought beer with me to the party in which
10 he drank some of that also. I don't know what he drank
11 prior to me arriving but he also drank some of what I
12 brought too.

13 Q. All right. Thank you, Ms. Diggs, please answer
14 anything Mr. Hood has.

15 CROSS EXAMINATION

16 DENISE MELINE DIGGS BY MR. HOOD:

17 Q. So you brought beer to the party also, is that
18 correct?

19 A. Yes.

20 Q. And did Jackie have beer already there at that party?

21 A. If there was beer already there I can't say that
22 Jackie brought it because to my knowledge Jackie doesn't
23 drink.

24 Q. But you were drinking, is that correct?

25 A. Yes.

1 Q. Okay. And did you bring a boyfriend or anybody with
2 you at that time?

3 A. No just me and my children.

4 Q. And you and Jackie are close friends, is that correct?

5 A. Yea we been neighbors. We're not neighbors currently
6 but we were neighbors in the past.

7 Q. And I believe its Jackie was the one who indicated to
8 you to call the police, isn't that correct?

9 A. Yes.

10 Q. And you told Jackie no and then said you do it?

11 A. I told Jackie -- I didn't know what was going on.
12 They were behind closed doors.

13 Q. Okay. So in other words you weren't going to get
14 involved in this, isn't that correct?

15 A. No it wasn't that I wasn't going to get involved. I
16 just didn't know what was going on. because I don't know why
17 she was asking me to call the cops.

18 Q. Now would you say that you were intoxicated at the
19 time?

20 A. No.

21 Q. And how many beers did you say you had?

22 A. During the course of the night I would say I had about
23 four.

24 Q. About four. And how many hours are we talking about
25 these four beers you are talking about?

1 A. I think I arrived at the party around five o'clock.

2 By the time all this stuff took place or whatever it was

3 about 8:30, 9:00.

4 Q. 8:30 or 9:00 okay. Now so you had about four beers.

5 What kind of beer did you have?

6 A. I drink Icehouse.

7 Q. Icehouse. Okay. And were these twelve ounces or

8 twenty-four ounces?

9 A. The little short case twelve ounces.

10 Q. Okay so you had about four of those?

11 A. Yes.

12 Q. Could you have had five?

13 A. No I had about four.

14 Q. About four okay. Now so you are drinking; Rodney is

15 drinking and the two of you have conversations together, is

16 that correct?

17 A. The only real conversation him and I had was when I

18 ask him to put the gun away.

19 Q. Okay. And he did that, isn't that correct?

20 A. Yes.

21 Q. Okay. All right now at the time Rodney was leaving he

22 had or did Jacqueline pack up his clothes and give them to

23 him or what?

24 A. No we just ask him to leave and we ask him could the

25 kids stay with us because you know he has two children. He

1 said -- he just told his boys to get in the truck.

2 Q. Okay. So they go and get in the vehicle, is that
3 correct?

4 A. Yes.

5 Q. The boys do. And do they get into the back seat or
6 the front seat?

7 A. The truck had a back seat.

8 Q. Okay. Well did they get in the back seat?

9 A. Yes.

10 Q. And I believe they buckled up, isn't that correct?

11 A. I don't know if they buckled up because I didn't walk
12 all the way toward the doors of the vehicle. I stood in
13 the doorway and watched them get into the truck.

14 Q. Okay. But you didn't see Rodney put any items in his
15 vehicle or anything of that nature, is that correct?

16 A. No.

17 Q. Okay. So where was Jaqueline at at that time?

18 A. At the time he got in his vehicle?

19 Q. Yea.

20 A. Obviously I don't know. I don't know if she was there
21 or if she was in the house. I just know I saw him get in
22 the vehicle.

23 Q. Did you go back inside?

24 A. I didn't go back inside the house until he pulled off.

25 Q. Okay. When you went back inside was she inside the

1 house or standing at the door?

2 A. The next time I saw her she was sitting on the couch
3 with an ice bag to her head talking on the phone.

4 Q. Okay. So there is a confrontation in the bedroom.
5 Jackie tells you to call the police. You tell her no I am
6 not getting involved in this you call the police. Rodney
7 leaves and tells his two children to get in the vehicle, is
8 that correct?

9 A. That sounds like it. I mean it's been over a year but
10 that sounds pretty close.

11 Q. And you go outside with Rodney, is that correct?

12 A. I walked outside back yea behind him.

13 Q. Behind him. And were the children in front of Rodney
14 or something of that nature?

15 A. The children were still around the back like playing
16 but he called his kids to come on.

17 Q. Okay. So he called his kids and they came around.

18 A. They came around and we ask him could he leave the
19 kids with us.

20 Q. And he said no he was going to take them home.

21 A. Right.

22 Q. Okay. And so he gets in the vehicle his two kids get
23 in the vehicle and he drives off, is that correct?

24 A. Right.

25 Q. Okay. Well is there anything unusual about his

1 driving? I mean he drives off is that correct?

2 A. Not when he left out of the driveway. You know there
3 was like a camper on the back. Not a camper, like a cargo
4 on the back of the truck but he made it out of the drive-
5 way fine to me.

6 Q. Okay. So he didn't have any problems operating the
7 vehicle is that correct?

8 A. It didn't look like it.

9 Q. Okay. I don't have any further questions.

10 MS. TANNER: Nothing further.

11 THE COURT: Thank you. We appreciate your time you
12 can be excused.

13 Call your next witness.

14 MS. TANNER: Your Honor, may we approach?

15 (BENCH CONFERENCE AT 10:00 A. M. OFF THE RECORD OUT OF
16 THE HEARING OF THE JURY.)

17 THE COURT: Members of the jury panel, we are going to
18 take a break at this time; I am going to let you go to the
19 jury room and we will send for you promptly as we can.
20 Well we'll give you at least ten or so minutes to refresh.

21 (JURY LEAVING COURTROOM AT 10:11 A. M..)

22 THE COURT: We will take a break and while we're on
23 break I'll check with the lawyers in the other situation,
24 the matter we got, and then we'll decide how we'll proceed.

25 Why don't you go ahead and get set up for your next

1 witness.

2 MS. TANNER: Thank you, your Honor.

3 THE COURT: Before I leave - -

4 Let's stay on the record.

5 Are there any issues -- I know there was a discussion
6 about a witness that we might have to take up on a matter
7 before they testify. Is this the witness?

8 MS. TANNER: There is one witness; there's one issue
9 with this witness, your Honor, I spoke with Mr. Hood this
10 morning. One of the charges is driving under suspension
11 third or greater offense. The State does have his
12 certified driving record which we could introduce however
13 it's a complete driving record and I don't know that Mr.
14 Hood wants me to introduce the cause of the suspension and
15 all of that stuff to the jury so I have proposed if he
16 allows me to speak to the trooper or while the troopers is
17 on the stand and ask the trooper if he collected his
18 certified driving record and if he has any driving under
19 suspension convictions and then he can outline the three
20 convictions not listing the why or the cause but just those
21 three convictions and that would preclude me from having to
22 introduce the actual record which I believe is going to
23 contain more information than Mr. Hood wants the jury to
24 have but I think the State is entitled to introduce.

25 THE COURT: Comment?

1 MR. HOOD: Judge, we are satisfied based upon my
2 examination of the driving record and things of that nature
3 and my client telling that he was driving under suspension
4 third offense so I don't think there is any issue involved
5 in that rule.

6 THE COURT: If he hasn't pled guilty to it they still
7 going - -

8 MR. HOOD: We're willing to stipulate to that
9 particular - -

10 MS. TANNER: We're not willing to stipulate; we still
11 want to prove the fact that he has three prior convictions.

12 THE COURT: Then what it boils down to is do you
13 object to him testifying regarding the suspensions without
14 putting in the certified record into evidence?

15 MR. HOOD: No I don't have any objection.

16 MS. TANNER: Thank you, your Honor.

17 (SHORT RECESS AT 10:15 A. M.)

18 (BACK ON THE RECORD AT 10:43 A. M.)

19 THE COURT: Thank you, take your seats.

20 State ready?

21 MS. TANNER: State's ready, your Honor.

22 THE COURT: Defense ready?

23 MR. HOOD: Yes, your Honor.

24 THE COURT: Bring in the jury.

25 THE BAILIFF: Yes, sir.

1 Jurors entering, your Honor.

2 THE COURT: Thank you.

3 (JURY ENTERING COURTROOM AT 10: 44 A. M..)

4 THE COURT: Call your next witness.

5 MS. TANNER: Thank you, your Honor. The State calls
6 Trooper Nick Sprouse to the stand.

7 (WHEREUPON: TROOPER NICK
8 SPROUSE, BEING CALLED AND DULY SWORN, TESTIFIED AS
9 FOLLOWS:)

10 THE CLERK: Please state your full name and spell your
11 last name for the record.

12 A. Nickolas L. Sprouse. Last name S-p-r-o-u-s-e.

13 DIRECT EXAMINATION

14 TROOPER NICK SPROUSE BY MS. TANNER

15 Q. Good afternoon, Trooper.

16 A. Good afternoon.

17 Q. Where are you employed?

18 A. I am employed with the South Carolina Highway Patrol.
19 I am assigned to Beaufort and Jasper Counties.

20 Q. And what are your duties with the Highway Patrol?

21 A. To reduce fatalities of car collisions; enforce the
22 laws and the statutes in the State of South Carolina.

23 Q. And what is your training for this position?

24 A. My training? I been on the job for over three years.
25 I was trained at the South Carolina Criminal Justice

1 Academy for over eighteen weeks; that was the initial
2 training. Since then I have been back for nine months of
3 additional training as far as firearms. I actually
4 reconstruct DUI classes, prosecution radar, field training
5 officer, pretty much anything you could think of I go back
6 to training for.

7 Q. And Trooper, were you working on August the 11, 2007
8 here in Beaufort County?

9 A. I was.

10 Q. And were you dispatched to a fatal collision on
11 Highway 46 - - -

12 A. Yes.

13 Q. - - - known as the May River Road?

14 A. Yes I was.

15 Q. Was that here in Beaufort County?

16 A. Yes it was in Beaufort County.

17 Q. All right when you first arrived on the scene what did
18 you find?

19 A. I find a vehicle in the roadway; I find a motorcycle
20 shortly there from it. I see a body under a sheet well
21 actually I said sheet which I infer there is a body under
22 it. Given the call there are EMS and fire personnel on the
23 scene. There is also Beaufort County Sheriff's Department
24 on the scene which is already roped off my scene for me
25 which is standard protocol for us anytime we have a fatal

1 collision or a possible fatal collision we go ahead and
2 cord off an area to preserve any short term or long term
3 evidence.

4 Q. And as part of your investigation do you identify the
5 body under the sheet?

6 A. I do.

7 Q. And how do you do that?

8 A. I do that through the Beaufort County Sheriff's
9 Department who had have obtained ID from the motorcycle of
10 the victim. We matched up that photo ID with the
11 individual on the ground and identified her as Mary Deon.

12 Q. And did you identify anyone else on the scene that
13 night?

14 A. Mr. Galimore who was identified by the Beaufort County
15 Sheriff's Department to myself and through his ID which I
16 never received from him was placed in the back of a
17 sheriff's department vehicle at that point in time.

18 Q. And did you come in contact with Mr. Galimore that
19 night?

20 A. I did.

21 Q. And can you describe for the jury his demeanor when
22 you came in contact with him on the scene?

23 A. I was instructed to go to the back of the car. Like I
24 say we have a certain protocol what we do with collisions
25 since I have one deceased I cannot talk to the deceased so

1 I talk to the other party. At that point in time I go to
2 the rear of the Beaufort County Sheriff's Department's
3 vehicle to talk to Mr. Galimore to ask him his side of the
4 story. However I did not get a side of the story. I got
5 more or less a man that kept dozing off while I was talking
6 emitting the odor of alcohol which I have detected before
7 on people. His eyes were very glassy and red. The only
8 comments that he made to me was that she was in his lane
9 and it was not his fault. I then instructed Mr. Galimore
10 that this was a collision there was an individual that was
11 on a motorcycle that was deceased. While I was talking to
12 Mr. Galimore he either dozed off or fell asleep again and
13 made no sense while I was talking. He was read his maranda
14 rights even though he was already detained from the
15 Beaufort County Sheriff's Department. My protocol is to
16 read him his rights he was placed under arrest by myself at
17 that scene that night.

18 Q. And you say you read him his Maranda rights. Is that
19 what we see on television you have the right to remain
20 silent?

21 A. Yes, ma'am. But to be fair and accurate we read word
22 for word off the card.

23 Q. And did you do that that night?

24 A. Yes, ma'am.

25 Q. And could you for the jury reenact what you read to

1 Mr. Galimore on the scene that night? I see you are taking
2 something out of your pocket. What is that?

3 A. This would be our Maranda warning. I always keep it in
4 my pocket. This is a training tool that we always were
5 taught in the academy to keep our Maranda warning in our
6 highway patrol of -- actually core values in our front left
7 pocket. The Maranda warning was as follows and read off
8 this Maranda card issued to us by the South Carolina
9 Department of Public Safety. You have the right to remain
10 silent anything you say can and will be used against you in
11 a court of law. You have the right to talk to a lawyer and
12 have him present with you while you are being questioned.
13 If you cannot afford to hire a lawyer one will be appointed
14 to represent you before any questions if you wish. You can
15 decide at any time to exercise these rights and not answer
16 any further questions or make any additional statements.
17 Do you understand each of these rights I've explained to
18 you? Having these rights in mind and do you wish to talk
19 now?

20 Q. And once you read these rights to Mr. Galimore did he
21 make any response?

22 A. The only response he made was like I said it was not
23 his fault she was in his lane.

24 Q. Now as part of your investigation did you collect Mr.
25 Galimore's driving record?

1 A. Yes, ma'am. Not that night but over the radio waves I
2 Did have an official what we call a hard copy I was not
3 able to obtain that that night because the DMV of course
4 was closed however we are able to run a driver's license
5 which I was given and crossed referenced it for South
6 Carolina and at that point in time the violation and
7 description was read to me so technically yes.

8 Q. If I may approach the witness, your Honor.

9 Can I ask you what's been marked as State's Exhibit
10 Number Twenty-Six if you can identify this item?

11 A. This is a Certified Driver Record for Court Purposes
12 issued by the South Carolina Department of Motor Vehicles
13 for a Rodney L. Galimore.

14 Q. Looking at Mr. Galimore's driving record was his
15 privilege to drive suspended on August the 11th 2007?

16 A. At first glance the status of DL says suspended and
17 then it gives the explanation or dates and cause of dates
18 so yes it is suspended and at that time it was suspended.

19 Q. All right can you give me the date or the dates of the
20 suspension of his driver's license?

21 A. Yes, ma'am. The first one showing is dating back to
22 8/25/2006 is a driving under suspension violation. The
23 next one: Driving under suspension 4/26/2007. The next:
24 This would be DUS 3rd driving under suspension; suspension
25 began 7/27 of 2007 which was one month prior to this

1 collision.

2 Q. Thank you, Trooper. Now going back to the scene that
3 night did you -- were there any other passengers involved
4 in this collision?

5 A. Yes, ma'am. There were two young children that were
6 involved in the collision as well. They were in Mr.
7 Galimore's vehicle.

8 Q. And were you able to identify those children and their
9 ages?

10 A. Yes, ma'am. I noted it on my General Sessions Report.

11 Q. And do you recall their ages?

12 A. I believe eleven and six were their ages.

13 Q. And where were these children located when you arrived
14 on the scene?

15 A. They were standing outside. If you were looking at
16 the store down the Gibbett Road side in the shadows where
17 the two children were and they were standing with adults.
18 I don't know exactly who they were but that's where they
19 were located when I arrived on the scene.

20 Q. And were you able to identify which vehicle they had
21 been in?

22 A. Yes, ma'am.

23 Q. And which one was that?

24 A. They were in the dark colored, blue colored Blazer
25 that was still at final rest in the middle of May River

1 Road which is South Carolina 46.

2 Q. Now let's talk about that. On the scene can you
3 describe the location of the vehicle when you arrived?

4 A. When I arrived the first one I noticed because it was
5 obvious it was the bigger vehicle is the Blazer. The
6 Blazer was what we call in the on-coming traffic lane. I
7 now noticed that it was turned at an angle as in if you got
8 your lanes just like this it's just turned in its lane kind
9 of diagonal. At that point in time I also noticed
10 approximately twenty-five to thirty feet from it was a
11 motorcycle laying on its side with severe damage to it as
12 well. The damage to the Blazer was to the front left which
13 we could pretty much infer that that was the impact point.
14 Prior to my investigation the impact point was on the front
15 left of the motorcycle that was laying down and just
16 probably five feet, six feet from the motorcycle
17 would be where the victim was laying.

18 Q. If I may approach the witness, your Honor.

19 THE COURT: Yes, ma'am.

20 BY MS. TANNER:

21 Q. Trooper, I am going to ask if you can identify what's
22 been marked as State's Exhibit One through Six -- One
23 through Seven, if you can identify those items.

24 A. Do you want me to go through each and every one of
25 them or just tell you that item?

1 Q. Tell us whether or not you can identify them.

2 A. I can identify every one of these photos.

3 Q. And are they a fair and accurate depiction of how that
4 scene looked that night?

5 A. Yes, ma'am. As a matter of fact these pictures were
6 taken prior to any -- prior to any spray painting of our
7 scene which is what we do when we start to investigate the
8 collision and get our measurements. These pictures are how
9 it was.

10 Q. Well start with Picture Number One. What is shown in
11 State's Exhibit Number One?

12 THE COURT: Are these into evidence?

13 MR. HOOD: I'm sorry, your Honor.

14 MS. TANNER: They are not, your Honor. I would move
15 State's One through Seven into evidence and they have been
16 shown to defense counsel.

17 MR. HOOD: I don't have any objections.

18 THE COURT: All right they are in the record.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER ONE THROUGH SEVEN
20 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

21 MS. TANNER: And, your Honor, if I may publish them to
22 the jury on this large screen and have the trooper come

23 - - -

24 THE COURT: That will be fine.

25 MS. TANNER: - - - down and describe - -

1 You can hold those I'll publish these to the jury.

2 Trooper, starting with State's Exhibit Number One can
3 you describe for the jury what is depicted in this
4 photograph?

5 A. This is going to be a scene focusing at an angle of
6 the country store which you would be looking at right now
7 is May River Road, South Carolina 46. The intersection
8 right here would be Gibbitt Road which would run parallel
9 to the side of the store there. This is the vehicle that
10 Mr. Galimore was driving at the time. As you can see a
11 part from there like I said was the motorcycle and just shy
12 of it you can see where the body was laying. This was the
13 scene when we got there. As you can see it was corded off
14 all the important areas; all the debris and everything
15 important as far as skid marks or anything that we needed
16 for our investigation was inside of these lines. This line
17 was not tampered or damaged with or anything. The only
18 people that were in there were law enforcement personnel
19 and the Beaufort County Sheriff's Department. They know
20 any time there is a fatality no body goes in it. And the
21 only time you go in there is to render aid and apparently
22 aid cannot be rendered to the victim at that time.

23 Q. Now I see that the road actually coincides with the
24 yellow double line in this photograph.

25 A. Right.

1 Q. Describe -- I think we all know what a yellow line is
2 but I want to make sure the jury understands on this road
3 what that line indicates.

4 A. A double yellow line indicates that you cannot pass
5 you cannot cross it whatsoever okay. The reason there is a
6 break right here is because there is an intersection there
7 for you to make a left into that intersection so
8 technically you are not crossing a double yellow line.
9 Therefore that line stretches far back. There is another
10 intersection down here but it remains a double yellow line.

11 Q. And Mr. Galimore's vehicle is located on what side of
12 that yellow line?

13 A. This would be the west bound side of South Carolina 46
14 which if you are in that lane it would mean the vehicle
15 would be pointing in the other direction.

16 Q. I am going to show you State's Exhibit Number Two.
17 What is depicted in this exhibit?

18 A. This is the Blazer that was involved in the collision.
19 As you can see this is the final rest where the collision
20 occurred. It is what it is. Here you can see clearly the
21 double yellow line that I explained that you should not
22 cross. It's crossed. The vehicle sets in the opposite
23 lane of the on-coming traffic where on-coming traffic would
24 be coming. Like I say this vehicle had not moved and it
25 was actually unmovable when we got there.

1 Q. What do you mean unmovable?

2 A. We will probably have to do -- I have to see another
3 photo.

4 Q. Let's see that was Three.

5 A. Here is our photo. This is the front end where the
6 impact point was. As you can see that tire was broke and
7 flat to the side so there was no way you can start it and
8 roll without it -- I mean it was not going to move. The
9 wrecker even had to load it up a special way. This right
10 here shows you the complete impact point of the collision
11 which was on the driver's side. The force was so strong
12 that I believe it broke one of the springs and rods down
13 near in the tire.

14 Q. State's Exhibit Number Four.

15 A. As you can see there's the rod I was talking about
16 being broke. This is a little bit more clear picture. All
17 of this was what we call debris as far as the stuff coming
18 out of the radiator the coolant. You can see the
19 headlights were completely busted out. This is the induced
20 damage. The main impact point was here. The induced
21 damage caused a ripple all the way back which would have
22 made it hard for the door open. I can't verify that it
23 caused that however it may have. That's speculation; I'm
24 not going to say it did but as you can see this was a blunt
25 force right here.

1 Q. State's Exhibit Number Five.

2 A. Once again this is the side view where you can see
3 where the impact hit and fluid actually come up out of the
4 vehicle instead of just pouring down so this also notes a
5 significant collision impact. You see the tires are flat
6 and as I showed you in the previous picture that we also
7 have a rod broken.

8 Q. State's Exhibit Number Six.

9 A. This is going to be the struck vehicle, the
10 motorcycle. There's significant damage to this bike. This
11 dent right here most people may think that it was caused
12 because of the hit to the vehicle it's actually not. If
13 anybody rides a motorcycle you will know that that mark
14 right there is caused due to when a motorcycle collides
15 your legs squeeze together. That is the force Ms. Deon's
16 legs flexing when she was preparing for that impact. The
17 main collision as you can see it hits here and it goes all
18 the way back there which the collision was a jarred it. It
19 wasn't a glancing or blow it was kind of a lick. This
20 motorcycle is not that far from the motor vehicle - the
21 Blazer - because it was jam lick. It wasn't a glancing
22 blow and she just fell on the side. It was just like
23 running into a wall and falling over.

24 Q. State's Exhibit Number Seven.

25 A. This here that's a shield from her mask where she had

1 it on. This is a part of the motorcycle I believe its
2 actually a pipe an exhaust pipe. This is just the angle
3 showing where the final lying was in contrast to where her
4 basic maneuver would have had to have been to get out of
5 the way of the oncoming vehicle.

6 Q. Thank you, Trooper, you may return to the stand. Now,
7 Trooper, as part of your investigation did you search Mr.
8 Galimore's vehicle?

9 A. Yes, ma'am.

10 Q. And did you locate anything of interest inside his
11 vehicle?

12 A. Pertaining to the case yes, ma'am, I did. The first
13 thing I look for in any case when I have suspicion of DUI
14 is open containers of course and any other thing that would
15 be relevant such as you know illegal drugs whatever
16 inhibited the driver's vision. At that point in time I did
17 locate a bottle of Sky Vodka that had been opened which is
18 liquor not beer.

19 Q. If I may approach the witness. I ask you if you can
20 identify State's Exhibit Number Eight.

21 A. Yes, ma'am.

22 Q. Is that a fair and accurate depiction of how it
23 appeared that night?

24 A. Yes, ma'am.

25 Q. Now is that location in the photograph where you found

1 it?

2 A. No, ma'am.

3 Q. And what does that indicate, you had moved it?

4 A. Yes, ma'am. I had moved it from the area of the
5 driver's seat. I noticed it laying on the ground. It
6 wasn't in a particular spot where I could say that it was
7 up there the whole time during the collision but it was in
8 the immediate area of the driver's seat.

9 Q. State moves Exhibit Eight into evidence. We have
10 previously shown this photograph to the defense.

11 MR. HOOD: I have no objections.

12 THE COURT: Entered without objection.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER EIGHT IDENTIFIED
14 AND MARKED, ENTERED INTO EVIDENCE.)

15 BY MS. TANNER:

16 Q. If I may publish Number Eight to the jury, your Honor.

17 (STATE'S EXHIBIT NUMBER EIGHT PUBLISHED TO THE JURY.)

18 Q. Now, Trooper, what if anything did you do with this
19 bottle of vodka?

20 A. I took it in for evidence. What we do is we call bag
21 and tag. With a bottle that's large, it was a 1.75 liter
22 bottle, we put it into an evidence bag which we have to
23 have a chain of custody, seal it and send it off to SLED
24 for analyzing. Pretty much we send it to SLED for them to
25 determine what the contents of the bottle is alcohol. That

1 is documented, chain of custody, sent to Columbia, they
2 send us back a confirmation of what the bottle contained.

3 Q. And was this bottle full when you found it?

4 A. I don't recall it being full. I know the seal was
5 broken. I'm not going to say it was completely empty but I
6 would say about half way.

7 Q. If I may approach the witness, your Honor.

8 I am going to show you what's been marked State's
9 Exhibit Number Nine. Can you identify this item?

10 A. Yes, ma'am, this is a South Carolina Department of
11 Public Safety Chain of Custody when I entered it in the one
12 item, the one quantity of the 1.75 liters of Sky Vodka
13 bottle. Do you want me to go through the chain?

14 Q. First the state would move State Exhibit Nine into
15 evidence. It's previously been shown to defense counsel.

16 MR. HOOD: No objection.

17 THE COURT: Entered without objection.

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

20 BY MS. TANNER:

21 Q. Now Trooper, what is this form used for again?

22 A. This form is used pretty much to say who touched it
23 and where it has been. That helps us keep up with evidence
24 and evidence tampering and to make sure that we secure the
25 integrity of our evidence preserve it for court.

1 Q. All right. Thank you, sir. Now while you're on the
2 scene are you looking for any other items related to this
3 defendant? For information you've received during your
4 investigation that night.

5 A. Yes, ma'am. We were told of the prior incident which
6 was not our dealing with as far as the Beaufort County
7 Sheriff's Department was at the scene but we were told that
8 there may be a fire arm in the vehicle. If there is we
9 have to investigate that. I searched the vehicle I did not
10 find one in the vehicle. However while I was searching the
11 vehicle it was brought to my attention by a sheriff's
12 county deputy that a gun had been located on the scene.

13 Q. And did you actually view that yourself?

14 A. Yes, ma'am, I did.

15 Q. I show you what's been marked as State's Exhibit Ten
16 and Eleven.

17 If I may approach.

18 Can you identify those two items?

19 A. Yes, ma'am.

20 Q. And is that a fair and accurate depiction of how it
21 appeared that night?

22 A. Yes, ma'am.

23 Q. All right. And at this point the State moves Ten and
24 Eleven into evidence. These are photographs previously
25 shown to defense counsel.

1 MR. HOOD: No objections.

2 THE COURT: Entered without objection.

3 (STATE'S EXHIBIT NUMBER TEN AND ELEVEN IDENTIFIED AND
4 MARKED, ENTERED INTO EVIDENCE.)

5 BY MS. TANNER:

6 Q. Trooper, what is depicted in Ten and Eleven?

7 A. I take it this is Ten?

8 Q. Yes.

9 A. Ten just shows the Ice Box outside of the country
10 store where you're able to purchase ice. It's locked at
11 that point in time. The next photo shows the crevice
12 behind the wall in the ice machine in which a pistol was
13 found and recovered.

14 Q. And Trooper, go back to the previous photographs One
15 through Seven. Are there any photographs - first I publish
16 these to the jury and Ten and Eleven. Going back to the
17 previous photographs showing where this ice box is located
18 and then Number Ten is actually a close up view?

19 A. Yes, ma'am, I believe Picture Number One as a matter
20 of fact.

21 Q. All right. That's the ice box indicated in the
22 photograph Number One that would be between the defendant's
23 vehicle past Ms. Dion's body to the ice box?

24 A. Yes, ma'am, it would be in the west corner of the
25 store.

1 Q. And that's where the gun was located?

2 A. Yes, ma'am.

3 Q. Okay. Thank you. All right, Trooper, going back to
4 your observations on the scene and the roadway itself what
5 if any observations do you make about the actual roadway
6 where this occurred?

7 A. Well first I have to note due to the fact the way we
8 treat fatalities we have to look at weather conditions,
9 roadway conditions, et cetera. The roadway was dry, I
10 noticed that. There is really no -- there was not a curve.
11 I mean it's obvious in the photos that it's a straight a
12 way not really a grade. I noticed that the collision
13 didn't happen in an intersection. The reason I note that
14 is because that is very important to our investigations
15 when we have intersection collisions. The obvious as far
16 as the vehicle being on the opposite of the road I noticed
17 in those skid marks from Ms. Dion's motorcycle which is
18 another important factor that we always look at which helps
19 us determine the speed. I also noticed mud -- mud sandy
20 type tracks on the roadway more west bound behind the
21 vehicle -- the Blazer that was in the roadway.

22 Q. And what are you able to gather from these muddy tire
23 tracks?

24 A. Gathering of our investigation our pictures my
25 experience these tire marks led right to the vehicle's

1 tires which come right out of the parking lot. So we can
2 infer through our investigation that those same tires made
3 those tracks that came out of that parking lot and led
4 right to the back of the tires.

5 Q. And what is the origin of the sand and tire tracks?
6 Are you able to tell?

7 A. Let me see if I can find it here. Those are not the
8 photos that you have given me. In the parking lot there is
9 like any type of run off that you would see from a roadway
10 there is sand and grit and dirt that had washed off the
11 roadway apparently over time -- like I said that night that
12 the roadway was not wet. This sand and this grit had just
13 made a long kind of a little pile where it had rested from
14 off the roadway and it was in the parking lot well past
15 where the parking lot was on South Carolina 46.

16 Q. All right. So going back to Photograph Number One..

17 If I can have the witness to come off the stand again,
18 your Honor.

19 THE COURT: Sure.

20 BY MS. TANNER:

21 q. Could you indicate on State's Exhibit Number One where
22 this muddy puddle is located?

23 A. I'll tell you what right here where her motor cycle is
24 would be where the puddle is because we had difficulty
25 trying to dig up the spray where we had to put the tires.

1 So that right there where that little mark is at would be
2 the line where the sand and the sand was probably about
3 that wide. And like I say it probably extended from the
4 corner there to the other corner of the store where he had
5 pulled up so right past the fine line to where her
6 motorcycle had come to final rest.

7 Q. And why is that important to Mr. Galimore's vehicle?

8 A. A it shows that he did in fact come from that
9 particular area. It shows that he drove in here. The
10 whole pattern is shown from when he entered here went
11 through and made the first tracks. So these other tracks
12 come wide of the sand which what I'm saying is once he
13 entered the right side tires stayed on the clean portion so
14 it left side debris. Now then he enters back into the sand
15 and comes back out and it wrapped right to his tires so it
16 shows his complete route of just turning around.

17 Q. Stand right there for one moment. I ask you if you
18 can identify what's been marked as State's Twelve, Thirteen
19 and Fourteen?

20 A. Yes, ma'am.

21 Q. And is that a fair and accurate depiction of how it
22 appeared that night?

23 A. Yes, ma'am, untouched.

24 Q. Your Honor, the state moves Twelve, Thirteen and
25 Fourteen into evidence. They've been previously shown to

1 defense counsel.

2 MR. HOOD: No objection.

3 THE COURT: Without objection.

4 (WHEREUPON: STATE'S EXHIBIT TWELVE, THIRTEEN AND
5 FOURTEEN IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

6 BY MS. TANNER:

7 Q. Starting with State's Exhibit Number Twelve can you
8 show what is indicated in this exhibit?

9 A. Here's your pool of sand and debris and as you can see
10 the tire mark that goes out it never establishes the
11 correct lane. Stays right here and leads right up to the
12 back left wheel of the violators vehicle.

13 Q. Thirteen?

14 A. This also shows a different angle of the tire marks
15 coming out leading up to the vehicle. These are not
16 related to the scene right here.

17 Q. Now this is the back of Mr. Galimore's vehicle?

18 A. Correct.

19 Q. And we're talking about these sandy tire tracks here?

20 A. Yes, ma'am. We're talking about those tracks right
21 there.

22 Q. And that's just the opposite view of the first
23 photograph?

24 A. Correct.

25 Q. And Fourteen?

1 A. This is even better. This is your little sandy area
2 and once again it shows the tire track. As a matter of
3 fact that's where your left side would have been. And
4 where they cross you can still see that it was well
5 defined. It was able to be seen by the naked eye where it
6 was at.

7 Q. Thank you, Trooper, you may retake the stand. Now
8 once you've observed all of these items and all of these
9 things do you perform any type of measurement for lack of a
10 better word on this area?

11 A. Yes, ma'am. The first thing we do it get the -- both
12 vehicles that are involved and we spray to make sure that
13 we can preserve where they were at the final rest so we can
14 go back if we need to. Had this road happened to not be as
15 busy but for some reason that night there was a lot of
16 traffic maybe people got wind of a collision so we were not
17 able to stay the length we wanted to. However a full
18 investigation with myself and my sergeant out there we
19 spray paint all four tires of the vehicle Mr. Galimore's.
20 We indicate left front, right front, left rear, right rear
21 and so forth and so on; we note the direction of the
22 vehicle. We spray painted the motorcycle, describe where
23 his front tire was; his back tire; which way it was laying.
24 We also have to spray where the victim's body was. We
25 circled, we made note of any relevant debris such as the

1 helmet, the helmet's face mask, any debris from the
2 motorcycle and at what location; any gouge marks whatsoever
3 that we have. And at that point in time once we pretty
4 much get that taken care of we then take post-scene
5 photographs which is just simply showing where we had spray
6 painted and that we had come in and changed the scene as
7 far as spray painting. We then do measurements. We have
8 to get a zero point and so forth and so on so what we do is
9 we do what we call a basing. We get pretty much a ninety
10 degree angle and we get a starting point and what we'll do
11 is we'll go from our starting point which is normally a
12 nail into the ground and at a zero location from GPS and we
13 then go either east, west, north or south however and then
14 once we run out of line we'll go up north or south, down,
15 however from the line to each point of debris and then we
16 can map. So if like everything had washed away once we had
17 done this we can go right back to our center point where it
18 was and put everything back just like it was accurately and
19 that's what we performed.

20 Q. And you did that that night on this scene?

21 A. Yes, ma'am.

22 Q. May I approach the witness, your Honor.

23 See if you can identify Fifteen, Sixteen, Seventeen
24 and Eighteen.

25 A. Yes, ma'am.

1 Q. And is that a fair and accurate depiction of how it
2 appeared that night?

3 A. Yes, ma'am. That is my spray painting and my letters.

4 Q. Your Honor, the State moves Fifteen, Sixteen and
5 Seventeen and Eighteen into evidence. These are
6 photographs previously shown to defense counsel.

7 MR. HOOD: No objections.

8 THE COURT: Entered without objection.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER FIFTEEN, SIXTEEN
10 AND SEVENTEEN IDENTIFIED AND MARKED, ENTERED INTO
11 EVIDENCE.)

12 MS. TANNER: Thank you, your Honor.

13 All right. First, Trooper, starting with Fifteen can
14 you tell the jury what is depicted in that photograph?

15 A. That's going to be your left rear tire. The reason
16 why we have a T shape that the extension that comes out
17 from the T it is the -- shows where the center of the tire
18 is so we know exactly where to put that tire in what
19 particular position. And the left rear they are just to
20 let us know that it's the left rear tire when we go back.

21 Q. All right. The next photograph.

22 A. That's going to be the left front. Positioning is key
23 on that. The reason for it it shows that the tire is
24 broken and that it wasn't straight on and there was damage
25 to the left front vehicle; the left front tire of the

1 vehicle. And once again we made the orange T.

2 Q. And the next photograph.

3 A. Much of the same. It's the right front. It shows
4 that it was straight on and where the intention of the
5 vehicle is going. It is undamaged.

6 Q. And finally.

7 A. The final is the left rear. As you can also see on
8 the right side of the tire underneath the wheel well you
9 should be able to see where there is sandy dirt and debris
10 on there placing that vehicle through that sandy area that
11 I described earlier.

12 Q. And that's the right rear?

13 A. That is the right rear.

14 Q. All right. Thank you, sir. Now you said the reason
15 you do this is so that you can then take measurements for
16 all the involved items, is that correct?

17 A. Correct.

18 Q. And did you do that in this case?

19 A. I did.

20 Q. And did you keep those notes as part of your file?

21 A. I did.

22 Q. If I may approach the witness, your Honor.

23 If you can identify State's Nineteen and Twenty?

24 A. Nineteen is going to be my field sketch of the scene
25 which is mandatory policy for us. Any time we have a

1 collision be it fatal or be it a rear ending we have to
2 draw a field sketch. Just like anybody you can forget but
3 if you do it right now when it's fresh on my mind you
4 remember details. That's what Nineteen is. Twenty is
5 going to be simply all of my measurements as far as the
6 gouges leading to the final rest; my zero point which is my
7 reference point in other words the road width. The lane
8 width where my left right front tires were, left rear
9 tires, motorcycle front, motorcycle rear, the head of the
10 victim, the center mass which is the chest area and the
11 helmet and that is my reference points here.

12 Q. And those are your hand written notes?

13 A. Yes, ma'am.

14 Q. Your Honor, the state moves Nineteen and Twenty into
15 evidence. They've previously been shown to defense counsel
16 and he has been provided a copy.

17 MR. HOOD: I would like to see that one more time,
18 your Honor. There's something I'm concerned about.

19 (MR. HOOD REVIEWING STATE'S EXHIBIT NINETEEN AND
20 TWENTY.)

21 MR. HOOD: No objections.

22 THE COURT: All right it will be without objection.

23 MS. TANNER: Thank you, your Honor.

24 (WHEREUPON: STATE'S EXHIBIT NUMBER NINETEEN AND
25 TWENTY IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

1 BY MS. TANNER:

2 Q. Now, Trooper, you said again it was a zero point and
3 you mentioned a nail. Is that where you commonly think of
4 as a nail or is that something special the highway patrol
5 uses?

6 A. No that's a technical term for us. It's just a nail.
7 It's a zero point. It's a nail that drives through asphalt
8 and what we do is we drive it through and we put a circular
9 orange neon tab on it which it says South Carolina Highway
10 Patrol Department of Public Safety and it just helps us go
11 back and identify instead of us walking around and looking
12 around for a nail in the asphalt.

13 Q. How long does that nail stay there do you think?

14 A. It's still there today. I'll put it that a way. I
15 don't know how long they can stay there but I guess until
16 they get paved over but it's still there to this day.

17 Q. And have you been back to the scene and used that nail
18 and used your measurements?

19 A. Yes, ma'am.

20 Q. Since this accident?

21 A. I have.

22 Q. Okay. And were you able to still use your
23 measurements?

24 A. Yes, ma'am.

25 Q. How do you actually take the measurements?

1 A. First what we do is we run -- we get a center point
2 and I'm going to explain how we do that. Find lines that's
3 exactly how we do it. We run measuring tape not like the
4 metal tape but the one with the big roll. We just run it
5 from what was South Carolina 46 the Find line that was
6 nearest the collision we run one line straight out. We
7 went on Gibbitt Road and ran one straight out and come up
8 with a reference point and from that reference point we
9 just use our measuring tape. We have a latch on the end
10 just latch it onto the nail and we are able to run it
11 straight out. And then once we have it straight out we
12 take another measuring tape; we had the measuring tape that
13 is on the find line or on a zero point and we stretch you
14 know we make sure it's tight, there's no loose, there's
15 anything, no gap in it so it's fair and accurate and then
16 from that point we go from our zero point measurement and
17 go either -- I believe in this case it was north and south
18 or east and west. I can't really recall which direction we
19 were doing it but that's exactly how we did it from that
20 and that's how we measure from a trooper's level which we
21 are the first on the scene until another team can take care
22 of it.

23 Q. Now these measurements that you take are they kept in
24 a standard way that any other Trooper can pick them up and
25 use them?

1 A. Yes, ma'am, they're universal. We're taught that.

2 Q. And you said that other teams can use them. Have you
3 been out with another team to use these measurements?

4 A. I have.

5 Q. Okay. Now going back to that night aside from the
6 investigation of the crash scene did you have more dealings
7 with Mr. Galimore outside of this crash scene?

8 A. Yea. As a matter of fact during all felony DUI cases
9 involving death or great bodily injury in the State of
10 South Carolina it's mandatory for your blood to be drawn.
11 You don't have an option you have to give it. Once we were
12 at Beaufort County -- at Beaufort Memorial Hospital here in
13 Beaufort we informed Mr. Galimore of the blood draw and the
14 implied consent and the rights again. However he doesn't
15 have an option to refuse but here again as what I've been
16 taught in my protocol I read you your rights just like
17 you're supposed to be read. It was from the same card that
18 I read to you earlier. At that point in time when he was
19 informed that he was going to be given blood he refused.
20 It's by any means a necessary type deal. He had to be
21 held down. He fought; I believe a nurse was kicked during
22 the process and eventually he just gave up and gave consent
23 for the blood. This was nothing against his rights
24 whatsoever. Each and every one of us are held to this same
25 standard when it comes to a felony DUI death or great

1 bodily injury.

2 Q. Now were you present when the blood was drawn from Mr.
3 Galimore?

4 A. I was.

5 Q. And who actually drew the blood?

6 A. I believe Ashley from the emergency room.

7 Q. And does she work at the hospital?

8 A. Yes, ma'am.

9 Q. Do you know what he position at the hospital would be?

10 A. I do not know. She does work in the emergency room.
11 She's still there as of last night. I had to go back.

12 Q. Now once the blood is drawn and in your presence what
13 happens to it?

14 A. It's directly handed to me. I have gloves on I put it
15 in my SLED kit which we have a blood and urine SLED kit
16 issued to every law enforcement officer pretty much in this
17 state. At that point in time I fill out a form stating how
18 many vials of blood, who's it from, pretty much all the
19 vitals of Mr. Galimore who it was drawn from. Next I also
20 put the victim's information of who was involved and who
21 was affected in the collision. At that point in time
22 everything is sealed with an integrity seal twice. Then
23 it's taken by me from Beaufort Memorial to our evidence
24 locker, actually our evidence refrigerator, in Ridgeland,
25 South Carolina which is the Highway Patrol's head quarters

1 for Post C Beaufort and Jasper counties and it is opened by
2 a lock from my sergeant that night. I placed it in there
3 myself. At that point in time we have seventy-two hours to
4 send it up. We sent it up I believe the next day or the
5 day after. I can't really remember it was real soon but it
6 was also taken up there. And the chain of custody as I
7 explained with the alcohol still applies to this so the
8 integrity of the evidence is sealed and contained and
9 everything is preserved for court.

10 Q. All right. If I may approach, your Honor.

11 And have you identify what's been marked as State's
12 Exhibit Number Twenty-One.

13 A. Yes, ma'am. This is an Advisement of Implied Consent
14 Rights. Its' read to anyone and everyone who is either
15 under arrest for driving under the influence or a felony
16 driving under the influence.

17 Q. And is that particular form relevant to this case?

18 A. Yes, ma'am, very much so.

19 Q. And how is it indicated?

20 A. At the bottom there's two sections to it. One the top
21 part is just regular DUI driving under the influence. The
22 bottom is felony driving under the influence. You pretty
23 much read it verbatim. I could not inform to say that he
24 was being video recorded. I did advise him of his rights
25 and I did advise him that we were going to be taking blood.

1 Q. And who's the suspect on this warrant?

2 A. This is Rodney L. Galimore.

3 Q. Your Honor, at this time State moves Twenty-One into
4 evidence. It has been previously shown to defense counsel
5 and he - -

6 MR. HOOD: I have no objections.

7 THE COURT: Without objection.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-ONE MARKED
9 AND IDENTIFIED, ENTERED INTO EVIDENCE.

10 BY MS. TANNER:

11 Q. If I may approach. If you can identify what's been
12 marked as State's Exhibit Twenty-Three.

13 A. This again is a South Carolina Department of Public
14 Safety Chain of Custody in reference to Item One, Quantity
15 Two, vile of blood from the defendant on his subject slash
16 violator Rodney L. Galimore. And it was taken technically
17 on 8/12 of 07 because of the time it was the next night.
18 This collision happened late at night and this was the date
19 that the blood was taken.

20 Q. So earlier a. m. on the 12th, is that correct?

21 A. Yes, ma'am.

22 Q. And this is the form you were talking about that keeps
23 track of the blood?

24 A. Yes, ma'am.

25 Q. And are you on there?

1 A. I am.

2 Q. If I may approach the witness, your Honor.

3 I show you what's been marked as State's Exhibit
4 Number Twenty-Two. Can you identify what that is and what
5 that item is?

6 A. Yes, ma'am. This is our blood and urine sample kit
7 that we receive from the South Carolina Law Enforcement
8 Division otherwise known as SLED for toxicology reasons
9 only. As you can see every box we get has an integrity
10 seal. If that seal is ripped we do not use it. It's no
11 good to us. Once we have to use it we rip this seal we
12 open it up. You have a urine canister that you can use and
13 you also have two vials, empty vials that you can use to
14 withdraw blood. At that point you put it in a plastic bag
15 that is in here, seal it up, sign it, put your name on it.
16 There is also a form in here like I stated earlier that you
17 have to put the violator and the victims name on it. At
18 that point in time I don't know if any of you can see it
19 but it says affix seal here so once we're done we have to
20 make this side look like that. We have a seal in here that
21 seals this. And if this thing is brought to SLED and the
22 seal is ripped whatsoever they reject it as evidence lost
23 and the integrity of the case is lost.

24 Q. And this is the type of box you used in Mr. Galimore's
25 case?

1 A. This is the exact same box that we use.

2 Q. Your Honor, the state at this time moves Twenty-Two
3 into evidence.

4 MR. HOOD: Is that the box?

5 MS. TANNER: It's not Mr. Galimore's box.

6 A. No, sir, no, sir. That box will be destroyed. These
7 are just the box's we use.

8 MR. HOOD: I don't see any relevance and too, your
9 Honor its not the box that was actually used.

10 THE COURT: I'll allow it in.

11 MS. TANNER: Its demonstrative yes, sir.

12 THE WITNESS: It's to show that that's what we use.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-TWO
14 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

15 And this indicates the safety precautions that are
16 taken in securing this blood sample?

17 A. Yes, ma'am.

18 Q. Now the suspect we're talking about, the one you
19 arrested on the scene of this crash, the one that this
20 blood was drawn from, is he in the courtroom today?

21 A. Yes, ma'am.

22 Q. Can you identify for the jury who you've been talking
23 about that was charged with a felony DUI?

24 A. I'm talking to Mr. Galimore right there in the suit.

25 Q. Thank you, Trooper, please answer anything defense

1 counsel has.

2 A. Yes, ma'am.

3 THE COURT: Members of the jury panel, we are going to
4 break for lunch. I've got another hearing in an unrelated
5 matter that I had set for eleven or as soon as we could
6 break. It's already set up in the next courtroom. We'll
7 just run over there and hear a matter. We are going to
8 break for lunch until two o'clock. Again you remember what
9 I told you about not discussing the case and not let
10 yourself to be exposed to anything, not going to the scene
11 or anything like that. So please be back at two. We'll
12 start promptly at two as we can so have a pleasant lunch.

13 (JURY OUT FOR LUNCH AT 12:35 P. M..)

14 THE COURT: All right. Thank you we'll be at ease
15 until two o'clock.

16 (RECESS FOR LUNCH AT 1:00 P. M.)

17 (BACK ON THE RECORD AT 2:05 P. M.)

18 THE COURT: Come on back up and take the stand and of
19 course you are still under oath.

20 Are you ready for the jury?

21 (JURY IN AT 2:10 P. M..)

22 THE BAILIFF: The jury is seated, your Honor

23 THE COURT: All right cross examination.

24 MR. HOOD: Thank you, your Honor.

25 CROSS EXAMINATION

1 TROOPER NICK SPROUSE BY MR. HOOD:

2 Q. Trooper, let's go back, let's start basically about
3 what time did you receive the call?

4 A. I cannot recall. I know it was late in the night
5 time. I can't really recall off the top of my head.

6 Q. And was there anybody traveling with you?

7 A. No, sir.

8 Q. So you were by yourself is that correct?

9 A. Yes, sir.

10 Q. And is your vehicle equipped with a camera?

11 A. Yes, sir.

12 Q. Okay. And it was on operational, is that correct?

13 A. Yes, sir.

14 Q. When you arrived on the scene did you film what you
15 saw as you arrived?

16 A. No, sir.

17 Q. Why not?

18 A. I just didn't turn my camera on. That's not standard
19 protocol for us.

20 Q. Okay. Now you said there were other officers there
21 and other vehicles, is that correct?

22 A. Yes, sir.

23 Q. And were these vehicles equipped with video tape?

24 A. I could not tell you, sir, it's a different agency.

25 Q. I'm sorry.

- 1 A. It's a different agency.
- 2 Q. Okay. Well did you have any conversation with those
3 people who were there also investigating the matter?
- 4 A. Yes, sir.
- 5 Q. Okay. And did you ask any of them if they had video
6 taped any of the matters as they arrived?
- 7 A. No, sir.
- 8 Q. Okay. So we don't know whether any of it exist or
9 not, is that correct?
- 10 A. Any of what, sir?
- 11 Q. Tape of the - - -
- 12 A. A tape.
- 13 Q. - - - actual scene.
- 14 A. On my part I do not know. I do not have anything on
15 their part I cannot answer that.
- 16 Q. Now when you arrived Rodney Galimore was not present
17 outside standing around - - -
- 18 A. No, sir.
- 19 Q. - - - is that correct?
- 20 A. No, sir, he wasn't.
- 21 Q. Okay. And who was the first person that you came into
22 contact with?
- 23 A. I cannot recall who the first person was at that
24 night. There were several people on the scene that night.
25 I cannot remember who the first one was.

1 Q. Well what was the first thing you did when you
2 arrived?

3 A. Evaluate the scene.

4 Q. By evaluate the scene what do you mean?

5 A. I mean I looked at the scene at hand.

6 Q. Okay. And then what did you do from that point?

7 A. At that point in time I figured out who was involved
8 in the collision being it the deceased A; what vehicle they
9 come from, who was in the other vehicle, the Blazer, and at
10 that point in time I talked a Staff Sergeant on the
11 Beaufort County Sheriff's Department.

12 Q. Okay. Now you indicated that you came into contact
13 with Mr. Galimore some time after you arrived.

14 A. Yes, sir.

15 Q. Approximately how long was it after you arrived that
16 you actually made contact with Mr. Galimore?

17 A. Probably ten minutes.

18 Q. Ten minutes. And this was after your contact with the
19 Staff Sergeant from the Sheriff's Department?

20 A. Yes, sir. That's who directed me to Mr. Galimore.

21 Q. Uh-huh. And was that whose vehicle that Mr. Galimore
22 was in?

23 A. No, sir.

24 Q. Okay. Whose vehicle was it?

25 A. I believe it was Deputy Nelson.

1 Q. Okay. So how many officers outside of yourself were
2 present at the scene?

3 A. I could not tell you how many from the sheriff's
4 office. For highway patrol it would be myself and at that
5 point in time a corporal who is now a sergeant, Isaac
6 Gregorie.

7 Q. When did this sergeant arrive? The Corporal Sergeant.

8 A. The Corporal he arrived probably around the time that
9 I began to talk to the Staff Sergeant. He and I left the
10 office at the same time once we were dispatched. He just
11 got caught up in red lights behind me.

12 Q. Okay. Now was he operating his camera?

13 A. Not that I'm aware of.

14 Q. Did you ever ask him about it?

15 A. No, sir.

16 Q. Okay. All right now this Staff Sergeant that you
17 talked to from the Sheriff's Department it wasn't his
18 vehicle that Mr. Galimore was in, is that correct?

19 A. Correct.

20 Q. But did you had found out how -- who put Mr. Galimore
21 in the back of that vehicle?

22 A. No, sir.

23 Q. Okay. And at the time you saw him his hands were
24 handcuffed behind his back, isn't that correct?

25 A. Correct.

1 Q. And he made comments about them being too tight and
2 needed to be loosened, isn't that correct?

3 A. No, sir.

4 Q. Okay. So he never complained about the handcuffs or
5 his being face down in the back seat of the vehicle or
6 anything of that nature?

7 A. Not to me, sir.

8 Q. Okay. Okay. Were you at Mr. Galimore's head as you
9 were talking to him in the back of the vehicle?

10 A. I was on the back left side where he was. He had
11 initially been sitting there but if you will he was kind of
12 leaned over not completely laying down but kind of propped
13 up against the chair such as this and when I was talking to
14 him he was not laying down in the seat or his face was not
15 obstructed if that's the question you're asking.

16 Q. Yea.

17 A. Okay.

18 Q. Yea that's the question I'm asking yea. Now did he
19 understand his rights?

20 A. Sir, I cannot tell you if he understood his rights. I
21 did my part as far as reading them to him.

22 Q. Well did you ask him do you understand?

23 A. I read off the card.

24 Q. Did you say do you understand your rights?

25 A. It was on the Miranda Rights Card therefore I read it

- 1 so yes, sir, I did.
- 2 Q. And what was his response?
- 3 A. He didn't have much of a response.
- 4 Q. Well what was his response?
- 5 A. It wasn't a response. The only thing I got was the
- 6 two statements I told you.
- 7 Q. The two statements?
- 8 A. Right. That she was in his lane and it wasn't his
- 9 fault.
- 10 Q. Okay. Now she was in his lane and it wasn't his
- 11 fault?
- 12 A. Correct.
- 13 Q. Now you filled out a General Sessions Report, is that
- 14 correct?
- 15 A. Yes, sir.
- 16 Q. And have you had an opportunity to review that?
- 17 A. Yes, sir.
- 18 Q. And you filled that out immediately after this event,
- 19 is that correct?
- 20 A. Yes, sir.
- 21 Q. And do you recall stating in there that Mr. Galimore
- 22 stated that he was turning around in the country store on
- 23 South Carolina 46 when he struck the motorcycle Ms. Deon
- 24 was driving?
- 25 A. Okay.

1 Q. So that's not true?

2 A. That is true. If it was in my report it's true. My
3 recollections are a totally different thing.

4 Q. Well that's what it says in this report isn't it?

5 A. Yes, sir.

6 Q. Okay. But now you're saying that's not true?

7 A. Saying what's not true, sir.

8 Q. Saying that's not true that's not what he said?

9 A. No, sir. I'm not saying that's not what he said. I am
10 not going to contest my own report.

11 Q. Well what I'm asking is you stated that he only made
12 two statements to you?

13 A. Yes, sir, that I recall at this point in time a year
14 later.

15 Q. And those two statements you just gave us, is that
16 correct?

17 A. Correct.

18 Q. And then this report which is back in 2007 you state
19 something exactly the opposite.

20 A. If anything I admit that what I said. I put that in
21 there because that's more than likely what was said if I
22 said -- if it's in that report that happened that night.

23 Q. Okay. Now you also put in this report that neither
24 child was wearing a seat belt - - -

25 A. Correct.

- 1 Q. - - - or a restraint.
- 2 A. Correct.
- 3 Q. Did you see that?
- 4 A. I was told that by the children.
- 5 Q. Okay. So you questioned the children?
- 6 A. The children told me.
- 7 Q. Well did you ask them?
- 8 A. No, sir, I never questioned a child not once that
- 9 night.
- 10 Q. So they come up to you and told you I wasn't wearing a
- 11 seat belt or restraint?
- 12 A. No, sir, they did not come up and tell me. This is
- 13 coming from the Sheriff's Department who questioned them.
- 14 Q. Okay. So you never questioned the children? The
- 15 Sheriff's Department did that?
- 16 A. Correct.
- 17 Q. Who in the Sheriff's Department did all this?
- 18 A. I could not tell you.
- 19 Q. All right. Now at the time you saw Mr. Galimore's
- 20 vehicle did you notice it being some object being towed
- 21 behind that vehicle?
- 22 A. No, sir.
- 23 Q. So there wasn't some kind of a trailer attached to it
- 24 or anything of that nature?
- 25 A. No, sir.

1 Q. Did anybody from any of the agencies tell you that
2 there was a trailer attached to the back of the vehicle?

3 A. No, sir.

4 Q. Have you ever heard that there was a trailer attached
5 to the back of the vehicle?

6 A. Yea, you just shed this light on me if there was one.

7 Q. So you don't recall and you don't believe there was a
8 trailer behind his vehicle?

9 A. What type of trailer are we talking about, Counsel?

10 Q. I don't know something that's being pulled.

11 A. If there was something being pulled it was not within
12 a thousand feet of the collision scene.

13 Q. All right that's good. Now the May River Road did you
14 come in the direction or from the direction that the victim
15 was riding the motorcycle on?

16 A. No, sir.

17 Q. So what direction did you come from?

18 A. I was coming from Gibbett Road.

19 Q. Gibbett Road. So you came down to the stop sign and
20 that's where you saw the event?

21 A. Yes, sir.

22 Q. Okay. Now did you actually go out to the highway and
23 look down the road left and right?

24 A. Yes, sir.

25 Q. Okay. And if you looked back to the left in other

1 words the direction in which the motorcycle was coming
2 from.

3 A. Okay.

4 Q. It was a clear shot of the road, isn't that correct?

5 A. Yes, sir.

6 Q. A straight clear road. Okay. No obstructions on
7 there okay.

8 THE COURT: You've got to answer.

9 A. Yes, sir. There was no obstruction.

10 Q. Okay. When you looked back the other way are there
11 any obstructions?

12 A. As far as back towards?

13 Q. Back down the other end of May Road?

14 A. No, sir.

15 Q. Okay. All right. Now did you actually take the
16 pictures that we saw in here earlier?

17 A. I took some of the pictures and the Beaufort Sheriff's
18 Department took some of the pictures.

19 Q. Okay. And do you recall who you got these pictures
20 from?

21 A. I got them from Staff Sergeant Langford.

22 Q. Langford. And was Langford present at the scene that
23 night?

24 A. Yes, sir.

25 Q. So he was one of the officer's, is that correct?

1 A. Yes, sir.

2 Q. And you say there was another officer in which the
3 defendant was placed in the back seat of the car?

4 A. Yes, sir.

5 Q. Is that correct?

6 A. Yes, sir.

7 Q. Okay. And who was that officer?

8 A. That was Officer Nelson.

9 Q. Nelson. Now who was the Staff Sergeant that you were
10 talking to from the Sheriff's Department?

11 A. Staff Sergeant Langford.

12 Q. Langford okay. Were there any other officers there
13 other than your sergeant who arrived a little later or
14 corporal?

15 A. From any other agencies?

16 Q. That's correct.

17 A. I believe so.

18 Q. Okay who were they?

19 A. I could not tell you.

20 Q. Were they Sheriff's Department?

21 A. They were Sheriff's Department.

22 Q. Okay. Did you talk to any of these people and get
23 statements from them about what they had seen, heard, or
24 otherwise?

25 A. No, sir.

1 Q. Did you ever get any statements from anybody
2 concerning what had happened?

3 A. As far as who?

4 Q. As far as anybody who arrived on the scene and what
5 they saw, heard or otherwise?

6 A. There were no witnesses at the scene when I arrived.

7 Q. There were no witnesses at the scene?

8 A. Not when I arrived.

9 Q. Not when you arrived okay. Now when you arrived were
10 the children there?

11 A. Yes, sir.

12 Q. Okay. So the children were still there?

13 A. Yes, sir.

14 Q. Okay. All right. What kind of motorcycle was this
15 that Ms. Dion was driving?

16 A. I recall it being a Honda I believe. I can't tell you
17 the exact model. I'm not a motorcycle buff.

18 Q. Well didn't you check out what kind of motorcycle it
19 was and the number of CC's and all these things that give
20 it the power and the strength to do certain things?

21 A. Yes, sir.

22 Q. Okay. So what was it?

23 A. Everything is listed in the report in front of you.

24 Q. Well this is your report, right?

25 A. Yes, sir.

1 Q. Take a look at that.

2 A. Let me see the General Sessions Report please, sir.

3 Q. You need this one too, sir?

4 A. Thank you, sir.

5 Q. Okay.

6 A. It states here as seen on scene is a 2000 Honda BT
7 750. As far as the horsepower is concerned I'm real sure
8 the MAIT Team would be able to tell you that. That's our
9 Multi-Accidental Investigation Team for the Highway Patrol.

10 Q. All righty. Now the MAIT Team seems how we brought
11 that up did you notify the MAIT Team and have them come out
12 to do accidents?

13 A. We notified them, sir.

14 Q. And did they show up?

15 A. No, sir.

16 Q. And the MAIT is responsible for actually coming to the
17 scenes gathering all of this information whenever there is
18 a death involved, isn't that correct?

19 A. At that time in our policies they had to qualify for a
20 MAIT call. At this point in time in our policies and
21 procedures it did not qualify.

22 Q. But you called it out?

23 A. Correct. That is our standard protocol to call MAIT.

24 Q. And they refused?

25 A. They didn't refuse; they didn't meet their

1 qualifications.

2 Q. Why didn't it meet their qualifications?

3 A. That's a MAIT Team issue.

4 Q. MAIT Team issue? Okay, okay. So the MAIT Team never
5 came out examined the vehicles or anything of that nature,
6 is that correct?

7 A. Not that night.

8 Q. Not that night?

9 A. Yes, sir.

10 Q. When did they ever come out?

11 A. They came out actually this year to do the scene and
12 do the investigation.

13 Q. And wasn't that about a month ago?

14 A. I'm going to say in October. Possibly October, sir.

15 Q. And that was after I requested from or had been
16 requested for months a copy of the MAIT Team report, isn't
17 that correct?

18 A. I couldn't tell you, sir. You haven't never contacted
19 me.

20 Q. Well to your knowledge was the MAIT Team contacted and
21 requested to provide a report?

22 A. Not to my knowledge.

23 Q. Okay. Do you work in the office with those guys?

24 A. No, sir.

25 Q. Okay. So you don't know what they did is that

1 correct?

2 A. Come again.

3 Q. So you don't know what was requested of them is that
4 correct?

5 A. I understand what was requested of them. I know the
6 MAIT Team's procedures, what they do. I don't know the
7 technicalities of how they do it.

8 Q. Okay. But you were the investigating officer is that
9 correct?

10 A. Yes, sir.

11 Q. Okay. And as the investigating officer you were
12 responsible for gathering all of the evidence and putting
13 this case together, is that correct?

14 A. Correct.

15 Q. Okay. Now the victim in the case do you know where
16 she was coming from?

17 A. Yes, sir, I do.

18 Q. Did you interview any of the people who she was
19 present with prior to her coming out on the May River Road?

20 A. I do not.

21 Q. Well did you contact any of them?

22 A. No, sir, I actually didn't. The Sheriff's Department
23 had contacted her last employer. She at that point in time
24 that night had worked two jobs. She worked at Lawn Cove
25 had got off work there went to Lowe's that night where she

1 worked in Bluffton; clocked out at approximately ten
2 something and on the estimated time of death by twenty
3 minutes later she was deceased due to this collision.

4 Q. Yea but you didn't gather that information is that
5 correct?

6 A. I didn't do what?

7 A. You're not the one who personally contacted Lowe's or
8 anybody else is that correct?

9 A. No, sir.

10 Q. So basically all of this is hearsay is that correct?

11 A. No, sir, the time card can be checked at Lowe's if
12 needed be but we didn't document anything but her time card
13 will reflect when she signed -- when she clocked out of
14 work from her second job that night.

15 Q. But none of that is in your report is that correct?

16 A. No, sir, not at the time we were not able to find that
17 out.

18 Q. Okay. All right. Now the two vehicles involved in
19 this event, the motorcycle and the SUV, what did you do
20 with them after you released the accident scene?

21 A. They were towed; both of them were towed.

22 Q. And what happened to them?

23 A. I guess they went to the respective towing company's
24 property.

25 Q. And what happened to them?

1 A. Sir, I'm not really understanding what you're getting
2 at here.

3 Q. Well they are evidence in a homicide, isn't that
4 correct?

5 A. Correct.

6 Q. And you are the officer responsible for determining
7 what happens to that evidence, isn't that correct?

8 A. Correct.

9 Q. What happened to the vehicles?

10 A. The vehicles I believe one went to Morris's and the
11 motorcycle went to National Towing as I recall. At the
12 point in time this is not -- we're not trying to get
13 fingerprints off somebody that's stabbed or shot somebody
14 so once I collect all the evidence at the scene and take
15 pictures and spray paint where the accident how it occurred
16 that's my job that's what my job entails.

17 Q. Well isn't it also important that we maintain the
18 structure of the vehicle in order for someone an expert
19 quote expert to come in and determine the rate of speed of
20 the vehicles; all these kinds of things that are related to
21 the damage done to the vehicle, isn't that correct?

22 A. Yes, sir.

23 Q. What happened to the vehicles?

24 A. To answer your last question or your last statement
25 that's what the MAIT Team is for and the MAIT Team did

1 exactly what you said. They have done the street
2 estimates; they have done the investigation as far as what
3 caused the damage and what caused the induced damage. It's
4 in a full report that you have received.

5 Q. Were those vehicles at least the SUV destroyed back in
6 2007?

7 A. Destroyed?

8 Q. I mean like smashed, smooshed. A big heavy weight
9 comes down on it and it crushes it, isn't that correct?

10 A. Not to my knowledge. If it did it did.

11 Q. Well when did the MAIT Team go out and examine these
12 vehicles?

13 A. That would be an issue you need to take up with the
14 MAIT Team. I cannot tell you.

15 Q. But again you are the investigating officer. You are
16 the person pulling all of this information together. You
17 are responsible for releasing the vehicles which is
18 evidence in this case. Did you not in any way work with
19 the MAIT Team to come up with this MAIT Report?

20 A. Yes, sir, I worked with them back in October at the
21 collision scene.

22 Q. And that was October of this year wasn't it?

23 A. Correct.

24 Q. That's right after I called you guys or somebody after
25 I had been hounding a lot of people about I need a report

1 and they said there was no report, isn't that correct?

2 A. I cannot recall what they told you. I wasn't in the
3 loop on that sir, sorry.

4 Q. So you guys went out in October, is that correct?

5 A. Yes, sir.

6 Q. And you went with them to examine the vehicles is that
7 correct?

8 A. No not the vehicles the collision scene.

9 Q. Well how do you know they examined the vehicles?

10 A. Sir, I didn't ask them. Was it in the report?

11 Q. I have no clue.

12 A. Did you read the report?

13 Q. I got a report about a week ago.

14 A. We did it in October.

15 Q. But I don't recall seeing anything in the report about
16 examining the vehicles or anything of that nature. Okay.

17 All right. Let's go to the report that you prepared here.

18 Now during the course of your testimony on direct
19 examination you indicated that the defendant pulled up into
20 this convenient store and was executing a U turn, is that
21 correct?

22 A. That's correct.

23 Q. And a U turn in this particular state is legal under
24 those conditions, isn't that correct?

25 A. A U turn yes, sir. Unless posted a U turn is legal.

1 Q. Okay. So what he was doing was not illegal when he
2 made the turn and came back out on the highway, is that
3 correct?

4 A. No, sir, but it is illegal to be in another's one
5 lane.

6 Q. Well can you tell me how it's possible to make a U
7 turn from the left hand side of the road to get to the
8 right hand side of the road without going in the other
9 person's lane?

10 A. You are going to have to ask that question again, sir.
11 You went left to right right to left on me so I don't know.

12 Q. You know you have this vehicle here okay.

13 A. Okay.

14 Q. The store is here and you're saying he did this.

15 A. I went into the parking lot.

16 Q. Into the parking lot and did like that?

17 A. Right came back around.

18 Q. And then he was going back towards his lane, isn't
19 that correct?

20 A. No, sir.

21 Q. Oh he wasn't?

22 A. No, sir. In the evidence it even showed that he
23 wasn't going back into his lane, sir.

24 Q. Well now you had -- you took some tire pictures,
25 pictures of tire tracks didn't you?

1 A. Yes, sir.

2 Q. And those tire tracks are turning like that aren't
3 they?

4 A. They were turning. Don't misconstrue me here. When
5 they were turning they were turning and staying in the
6 opposite lane which is unlawful. That's what they were
7 doing. Now what you are looking at right there is not to
8 scale, sir, and they was meant to be to scale.

9 Q. So I can just take this evidence and just get rid of
10 it because it's of no value is that correct?

11 A. Did you read the MAIT Report?

12 Q. Unfortunately you were the officer on the scene; you
13 were the guy that gathered all of the data, all of the
14 information and all of the pictures. The MAIT Team has
15 nothing to do with this other than a failure to show.

16 A. So the MAIT Team has no bearing whatsoever on coming
17 back and placing my measurements that I did, reconstructing
18 the accident scene, finding out coordination's, finding out
19 speed, grade, the level of the road, nothing.

20 Q. You know we don't know what they did.

21 THE COURT: Let's kind of get back on track. Let's
22 get back to the question. Let me - wait a minute. It's
23 not like I'm at home. Just ask questions and answers; keep
24 it like that. We're getting a little bit of a failure
25 here.

1 BY MR. HOOD:

2 Q. Now you took pictures of the tracks of the vehicle,
3 isn't that correct?

4 A. Yes, sir.

5 Q. And we all saw those pictures of the tracks of the
6 vehicle?

7 A. Yes, sir.

8 Q. Now how fast did you estimate the speed of the
9 motorcycle being driven by Ms. Dion?

10 A. At my estimation is on the report right there in front
11 of you.

12 Q. Well do you know what it is?

13 A. Its on the report, sir. I am not going to go from
14 memory anything that's on the report.

15 Q. Let's just say -- I'm going to say what was the speed
16 limit on that, the posted speed limit?

17 A. The posted speed limit to that particular area is 45
18 miles an hour.

19 Q. And would you agree that what you've put in your
20 report here is the speed limit of the motorcycle was 45
21 miles an hour?

22 A. There is no other evidence at the scene to indicate
23 otherwise.

24 Q. So you indicated on your report that she's doing 45
25 miles an hour, is that correct?

1 A. Correct.

2 Q. Now you also have the speed of Mr. Galimore's vehicle,
3 is that correct?

4 A. Yes, sir.

5 Q. And you estimated that speed at 15 miles per hour,
6 isn't that correct?

7 A. Yes, sir.

8 Q. Okay now how many feet would a vehicle travel at 15
9 miles per hour from the point of where you saw the tracks
10 begin and where the tracks ended?

11 A. Exactly where the defendant ended up.

12 Q. Well how many feet was that?

13 A. I don't recall that. MAIT Team has that on their
14 report.

15 Q. Well you didn't measure the distance from the
16 beginning of the tire track to the end of the tire track?

17 A. No, sir.

18 Q. Okay. Now when you looked at the tires that were on
19 the vehicle and on your pictures - - -

20 A. Yes, sir.

21 Q. - - - there was sand, dirt, and other things on the
22 tire wasn't there and on the treads?

23 A. Correct.

24 Q. So it was either barely moving or not moving at all
25 isn't that correct?

1 A. No, sir. It was moving. The vehicle was moving.

2 That's where I laid down the tire tracks as was seen in the
3 pictures.

4 Q. But you don't know whether the vehicle stopped in that
5 road or not do you?

6 A. Well if he stopped that's illegal to stop in the
7 middle of the road wouldn't it?

8 Q. Okay. Did you charge him with that?

9 A. I charged him left to center. Felony DUI here. I
10 mean his action was left to center. He never established
11 his lane.

12 Q. Well let's go to this left to center because you never
13 charged him with left of center until November of this
14 year, isn't that correct?

15 A. Actually I never charged him with left to center, sir.

16 Q. Well you never charged him, isn't that correct?

17 A. No, sir.

18 Q. And the problem was that you guys charged him with
19 felony DUI and did not allege what the act or violation of
20 the law or omission of the law was that was the approximate
21 cause of this accident, isn't that correct?

22 A. I believe what Counsel is referring to is the
23 Indictment.

24 THE COURT: Don't look to me.

25 A. This does not have - does not have no bearing on me.

1 In the State of South Carolina down here in Beaufort/Jasper
2 counties do you not tack on for a DUI or a felony DUI
3 multiple moving violations so if he had ran four stop signs
4 and went through a red light we would only charge him with
5 a felony DUI or a DUI so therefore I do not charge people
6 with multiple offenses. The reason I wrote on this that he
7 went to left to center is it's on the report that he
8 crossed the line.

9 Q. Well how did he cross the line if he never got to the
10 line?

11 A. Well the statute in itself is what says that. Anytime
12 that you do not give right of way to somebody in their lane
13 the statute you know of he never established his lane to be
14 going back east bound. He stayed pretty much -- he only
15 had like one tire that even come close to the yellow line.

16 Q. And that was you know there was an impact is that
17 correct?

18 A. I would say so.

19 Q. And a mighty forceful impact, isn't that correct?

20 A. Yes, sir.

21 Q. Because it ripped and tore and cut the bumper of the
22 vehicle and tore up rods and things and sheared them off,
23 isn't that correct?

24 A. Yes, sir.

25 Q. Now the impact of such a nature and it being that the

1 motorcycle went to the right, is that correct?

2 A. Yes, sir.

3 Q. Would that not indicate to you that the vehicle was
4 pushed and turned back the opposite way in the same
5 direction that the motorcycle goes in?

6 A. I'm not sure what you're asking on this one.

7 Q. Well you're driving down the road you know like this
8 and something hit you this way.

9 A. Okay.

10 Q. You're going to go that way, right?

11 A. Possible yes, sir, you would.

12 Q. Well the tire on that vehicle was turned all the way
13 out this way - - -

14 A. Uh-huh.

15 Q. - - - which would indicate that the vehicle went that
16 way after impact, isn't that correct?

17 A. Are we talking about the violator Mr. Galimore's
18 vehicle?

19 Q. Yes.

20 A. We had three tires that were straight and the only
21 reason that his left front tire even broke like it did was
22 due to the damage to the front end not necessarily saying
23 he was steering to the left. That was just damage caused
24 due to the collision.

25 Q. Well did you examine -- did you find any skid marks

1 anywhere at the scene?

2 A. No, sir.

3 Q. Okay. Did you find any indications of breaking at any
4 point by the motorcycle?

5 A. No, sir.

6 Q. Okay. Now again I go back to what I said before. I
7 ask you about the speed of the defendant's vehicle. You
8 estimated it at 15 miles per hour, is that correct?

9 A. Yes, sir.

10 Q. He pulls out and you can very plainly see the tracks
11 of the vehicle getting out into the roadway, is that
12 correct?

13 A. Yes, sir.

14 Q. And you did not measure the distance between where the
15 track began and where the track ended, is that correct?

16 A. That's correct yes, sir.

17 Q. Okay. Wouldn't that tell you how many feet the
18 vehicle had traveled and how many seconds it took for that
19 vehicle to get from that point to that point?

20 A. It's not relevant to the case.

21 Q. Not relevant to the case?

22 A. No, sir. He could have went one mile an hour and
23 crept if he would a wanted too. Now he could have pushed
24 his vehicle into that spot. It's not relevant the distance
25 that he traveled. The relevancy is that he was in someone

1 else's lane and caused a collision.

2 Q. Well if you were stopped in somebody else's lane if
3 you had an emergency or something and you stopped you know
4 you've got to go across to get to your lane, is that
5 correct?

6 A. If somebody was stopped for an emergency they had to
7 do what now?

8 Q. Well if a car is stopped in the on coming lane of
9 traffic - - -

10 A. Okay.

11 Q. - - - and there is an accident involved.

12 A. Okay.

13 Q. When the person is attempting to get into their lane.
14 Okay in other words you are driving out and you stop and
15 you're going to that lane but you haven't got to that lane
16 yet what have you done that's wrong?

17 A. I'm a very educated individual but I am having a
18 difficult time figure out what you're talking about.

19 Q. Well okay all right let's start again. You said he
20 was driving left of center, is that correct?

21 A. Opposite lane. He was technically driving in on
22 coming traffic. I'm with you.

23 Q. But in order for him to make a U turn to get back up
24 into his lane - - -

25 A. Uh-huh.

1 Q. - - - he must travel in the on coming traffic's lane
2 for a period.

3 A. Absolutely not, absolutely not. It would be no
4 different than somebody at a stop sign and they wanted to
5 go down the roadway to the left to make another left. They
6 wouldn't stay in on coming traffic and drive down that lane
7 just to make a left. They would go into their lane travel
8 the correct way stop put their blinker on and then make a
9 left.

10 Q. Okay. But there at that intersection there is a gap
11 in the double yellow line.

12 A. Correct.

13 Q. Okay now we're on the same sheet of music. So what
14 you are saying is that he was making a proper U turn. You
15 said that earlier, is that correct?

16 A. I'm with you yes, sir.

17 Q. And that he should have gone and pulled around in
18 front of the store and gone all the way back to the stop
19 sign and gone around the stop sign and came out that way in
20 order to avoid driving in the other persons lane?

21 A. No, sir, that would be illegal too what he would be
22 doing. No what I stated was when he made a U turn and he
23 drove down into the parking lot at that point in time just
24 like the law says for failure to yield right of way he
25 needs to wait until its clear necessary and prudent before

1 he can pull out into traffic. Therefore once he pulls out
2 into traffic he must establish his correct lane then go and
3 proceed to make his left turn. He cannot stay in someone
4 else's lane and drive. He's not making a U turn in the
5 parking lot, sir. He come back onto the roadway South
6 Carolina 46 that was his action. I see what you're trying
7 to get at but that is not the case at hand.

8 Q. Okay. Okay. Let's talk about the motorcycle a little
9 bit. Let's forget about the double yellow line and
10 crossing it. Now we know the size of the motorcycle, is
11 that correct?

12 A. Yes, sir.

13 Q. And it's going 45 miles an hour?

14 A. From my estimate.

15 Q. Okay. How many feet would it take that motorcycle to
16 stop?

17 A. I don't have the calculation in front of me. She
18 would have had to have laid down skid marks for it to be
19 able to be determined. The MAIT Team would be able to
20 better assist you in that question.

21 Q. Well would you agree that if you are traveling 45
22 miles an hour that in the normal circumstances how many
23 feet per second are you traveling? Would it be about 66?

24 A. I'm not going to be dead on it and I'm not going to
25 give an estimate.

1 Q. So how did you estimate the speed of the motorcycle?

2 A. There was nothing else at the scene given. A when the
3 collision happened and the vehicle had been going -- if the
4 motorcycle would have been going anywhere faster than 45 or
5 below her body and her motorcycle would not be laying 25
6 feet away from the collision scene. I've worked many a
7 motorcycle fatalities at high rates of speed and let me
8 tell you nothing is near anything and this was tight,
9 bunched together.

10 Q. Now you say you worked many of these.

11 A. Yes, sir.

12 Q. People have difficulties seeing motorcycles don't
13 they?

14 A. They do.

15 Q. That's ninety percent of the problem with motorcycles
16 is that the other drivers don't often see them, isn't that
17 correct, when an accident occurs?

18 A. Not all the time no, sir.

19 Q. Okay. Would you say the majority of the time?

20 A. No, sir, I would not say the majority.

21 Q. Okay. So you have investigated a lot of these
22 accidents?

23 A. Yes, sir.

24 Q. And nobody has ever said to you I didn't see it then?

25 A. No, sir.

1 Q. Okay. All right. Now this store that this accident
2 occurred in front of it had Christmas lights on it didn't
3 it?

4 A. Yes, sir.

5 Q. And it had a great big outside light on a pole that
6 was illuminating, isn't that correct?

7 A. A bug head. Probably two according to the picture.

8 Q. Yea and also there was additional lighting coming from
9 the store, isn't that correct?

10 A. Yes, sir.

11 Q. So in other words if someone were traveling down the
12 May River Road in the direction coming like the motorcycle
13 - - -

14 A. Yes, sir.

15 Q. - - - you would see that particular lit up spot in the
16 road, isn't that correct?

17 A. You should.

18 Q. You should because there are no other spots out there,
19 isn't that correct?

20 A. Not lit that I believe.

21 Q. Okay. So this is the only spot out there. So my
22 client Mr. Galimore executing a U turn driving 15 miles an
23 hour underneath all those lights and boom there's an
24 impact.

25 A. Yes, sir.

1 Q. And there's not one skid mark?

2 A. Yes, sir.

3 Q. Not one braking mark?

4 A. No, sir.

5 Q. Why not? Do you know?

6 A. I can't ask her, sir.

7 Q. You can't answer that question can you?

8 A. No, sir, I can't.

9 Q. But you also identified the fact that you said that
10 this particular gas tank had some compression on it?

11 A. Yes, sir.

12 Q. And that was in your words when she was preparing for
13 the impact, is that correct?

14 A. Yes, sir. Actually -- yea it's preparing for the
15 impact and it is impact. If you've ever worked a
16 motorcycle collision you can see that a few times.

17 Q. Now you indicated that you don't charge people with a
18 lot of crimes and this and that and the other because - -

19 A. Well I charge with a lot of crimes I just don't stack
20 offenses on somebody when it's not our policy procedure.

21 Q. But you also charged this individual with driving an
22 uninsured vehicle didn't you?

23 A. Yes, sir.

24 Q. And that turned out not to be true, correct?

25 A. Yes, sir, there just was not any proof in there.

1 Q. And you never charged him with making an illegal U
2 turn did you?

3 A. I thought we discussed that making a U turn wasn't
4 illegal, sir.

5 Q. Well I just saying you did is that correct?

6 A. I won't charge somebody for an unchargeable offense.

7 Q. And it wasn't until October of this year or November -
8 actually it was November of this year when you guys finally
9 decided and you told then that we need to state that the
10 act, violation of the law was in fact driving in the wrong
11 lane?

12 A. No, sir. I believe you brought that up the last time
13 I did not.

14 Q. Well what I brought up was the fact that you guys had
15 never told anybody what violation of the law or omission of
16 the law my client committed that allowed him to be charged
17 with felony DUI, isn't that correct?

18 A. That's what you said.

19 Q. Okay. And immediately thereafter you guys get
20 together the solicitor and yourself.

21 A. Yes, sir.

22 Q. And come up with the fact that we got to come up with
23 some violation of the law so therefore you put in there
24 that he was driving in the wrong lane, isn't that correct?

25 A. You ask for a reason we gave you one.

1 Q. Well you put it in there, isn't that correct?

2 A. Yes, sir.

3 Q. Okay. All right. And that's how we got here today
4 with that particular charge, isn't that correct?

5 A. Yes, sir, along with the felony DUI and DUS.

6 Q. And the MAIT Team did their investigation in October
7 or the last month, the last part of October or the first
8 part of November. I believe it was November but anyway I
9 would say it was November rather than October. They did
10 their investigation in November of this year, is that
11 correct?

12 A. I believe it was October. I think the final report
13 may have came out beginning of November but I'm not sure
14 about that. I'm not going to say exactly when the dates
15 however I believe it was in October.

16 Q. Right. Well okay. Now we're sure that Mr. Galimore
17 made the statement the motorcycle hit me, it was not my
18 fault.

19 A. She was in my lane it was not my fault is what I said.

20 Q. Okay. All right. And you are satisfied that the
21 impact of this motorcycle and the front end of this vehicle
22 did not in any way cause that vehicle to move? I guess it
23 would be to the left.

24 A. Are you talking about it moving more towards the
25 store?

1 Q. Yes.

2 Q. No, sir, it didn't move any at all. I mean the tire
3 marks with the debris that we had talked about earlier the
4 sand and the debris led right up to the tire. There was no
5 shift it was straight on so that leads us to believe as
6 educated law enforcement professionals that the vehicle did
7 not move.

8 Q. Which tire was that?

9 A. I have to look back on the - -

10 Q. It was one tire, is that correct?

11 A. Yes, sir.

12 Q. Okay. And that was the tire on the inside that came
13 out on the parking lot that was doing like that isn't that
14 correct?

15 A. I believe so from the picture.

16 Q. Yea. And that's behind the driver's side, is that
17 correct?

18 A. Yes, sir.

19 Q. Okay. Okay. I don't have anything, Trooper, enough
20 of that. Now whose vehicle did Mr. Galimore travel in to
21 the Beaufort Memorial Hospital?

22 A. It would be Deputy Nelson.

23 Q. Okay. And did you have any contact with him while he
24 was being transported to Beaufort Memorial Hospital?

25 A. Of course not.

- 1 Q. Okay. So you came in your vehicle is that correct?
- 2 A. Yes, sir.
- 3 Q. Okay. And Deputy Nelson is the one that took him to
- 4 the hospital, is that correct?
- 5 A. Correct. She did it for me because I had to finish
- 6 the investigation.
- 7 Q. Okay. And did you arrive on the scene at the
- 8 hospital?
- 9 A. Yes, sir.
- 10 Q. Okay. And who was present when you arrived?
- 11 A. Myself and Deputy Nelson and several ER staff and what
- 12 not. But as far as law enforcement officials it was just
- 13 us pertaining to this case.
- 14 Q. Okay. And about what time did you arrive at the
- 15 scene?
- 16 A. Which scene?
- 17 Q. At the hospital.
- 18 A. At the hospital something like after midnight. I
- 19 cannot exactly remember when I know it was at twelve.
- 20 Q. And how long had they been there before you arrived?
- 21 A. I could not recall to be honest with you.
- 22 Q. Well was it ten minutes or thirty minutes or an hour?
- 23 A. Here again I cannot recall how long it had been.
- 24 Q. Okay. But you recall Officer Nelson taking Mr.
- 25 Galimore and moving him to the hospital is that correct?

1 A. Yes, sir. Yes, sir.

2 Q. All right. And you continued with your investigation?

3 A. Yes, sir.

4 Q. But you don't know how long that actual period of time
5 was?

6 A. No, sir. By the time she decided to take him I was
7 pretty much three quarters of the way through my
8 investigation. I didn't have much longer but he was
9 already detained in her vehicle and she went ahead and
10 transported and waited on my arrival to Beaufort County
11 Hospital.

12 Q. So you never arrested Mr. Galimore at all, is that
13 correct?

14 A. Yes, sir. Once he was already detained by the
15 Beaufort County Sheriff's Department that was the whole
16 reading of the rights and telling him.

17 Q. Okay. All right now did you have any other
18 conversations with Mr. Galimore other than the one in which
19 he was in the back of the vehicle?

20 A. Any time else no, sir.

21 Q. Okay. So you never talked to him at the hospital?

22 A. The only time I talked to him at the hospital was the
23 implied consent, the reading of the rights and in telling
24 him that he didn't have the right to refuse which he was
25 being very belligerent at that point in time.

1 Q. Okay. And he never made any comments to you or did
2 you hear any comments made to any of the other officers
3 about the handcuffs being too tight and they were behind
4 his back and this and that and the other?

5 A. No, sir, I hadn't heard anything about that.

6 Q. And did you make the statement to Mr. Galimore you
7 killed that woman?

8 A. No.

9 Q. Okay. Well did you hear that statement made by any of
10 the other officers at the time you guys were out there at
11 that scene?

12 A. Outside of his presence yea everybody said it. I mean
13 it was apparently what happened during the case but nobody
14 directly talked to Mr. Galimore from him passing out left
15 and right.

16 Q. So everybody was making those statements is that
17 correct?

18 A. Amongst law enforcement officials we have the right to
19 talk about the case amongst each other yes, sir.

20 Q. So Mr. Galimore was not well thought of at that time
21 isn't that correct?

22 A. He wasn't being corporative but nobody did anything to
23 violate his rights or do anything derogatory towards him.

24 Q. Okay. All right now when you get to the hospital and
25 you ask him about giving the blood what does he say?

1 A. He refuses.

2 Q. Okay. And did he tell you anything about there wasn't
3 anything wrong with him and he needed no medical
4 assistance?

5 A. I don't recall him saying anything about that. He was
6 in the room with the nurses he may have told the nurses
7 that he didn't need medical assistance however I would
8 never render any medical assistance to him I was there to
9 get my evidence.

10 Q. So you were there to get your evidence?

11 A. Correct.

12 Q. Okay. All right now how many officers did it take to
13 subdue Mr. Galimore?

14 A. It took -- Deputy Nelson was involved; a Beaufort City
15 officer who happened to be there for an unrelated incident
16 coming in and I believe four nurses.

17 Q. Well now the Beaufort City Police did you call them?

18 A. No, sir, I just said he was there for an unrelated
19 incident and heard the commotion.

20 Q. Did anybody call the Beaufort City Police and ask for
21 assistance in the taking of blood from an individual?

22 A. I never did. I can't vouch for anybody else.

23 Q. So you don't know whether or not they said no we don't
24 do that kind of thing?

25 A. No, sir, I just said I'm not aware of it.

1 Q. Okay. Now when you say -- Mr. Galimore was still
2 Handcuffed, isn't that correct?

3 A. Yes, sir.

4 Q. And he remained handcuffed the whole time, isn't that
5 correct?

6 A. Correct.

7 Q. Okay. I think you recall the name of the nurse who
8 took the blood, is that correct?

9 A. Yes, sir.

10 Q. Was there a doctor present?

11 A. There probably was. I'm not sure if there was or
12 wasn't.

13 Q. Well did anybody -- did you ever talk to any doctor or
14 anybody or any other staff in there and indicated to you
15 that Mr. Galimore did not have any injuries that were life
16 threatening or anything of that nature?

17 A. I think they got a fully staffed personnel there that
18 would have determined that. A doctor doesn't need to be
19 the only person that can determine if somebody has any
20 injuries but I never discussed it with anybody because I
21 try to stay away because of how crowded it was in the room
22 trying to deal with him.

23 Q. Okay. But you never heard him complain about the
24 handcuffs or anything of that nature?

25 A. Here again at any point in time between the time I got

1 on the scene at the collision and the time I went home and
2 went to bed that night I never heard him complain about
3 that to me.

4 Q. And to your knowledge did EMS render any assistance to
5 Mr. Galimore at the scene?

6 A. If they did they did it before I got there.

7 Q. Okay.

8 A. When I had gotten there they had already tried to do
9 their procedures on Ms. Dion as well and I didn't see them
10 do that. So normally we're the last people to get there;
11 we're not the first responders.

12 Q. And did you offer or try to give Mr. Galimore any
13 field sobriety test?

14 A. I couldn't he was uncooperative.

15 Q. A field sobriety test are what?

16 A. They are simply test that would determine if a
17 person's judgment or physical being is impaired to drive a
18 vehicle.

19 Q. And you never gave him any of those test, isn't that
20 correct?

21 A. You are unable to.

22 Q. You are unable to?

23 A. Yes, sir.

24 Q. Did you ask him to submit to any field sobriety test?

25 A. There was no need. A he had been in a collision and

1 he kept passing out and he was not going to get up. He
2 wasn't even going to give us blood which is his duty he has
3 no choice. He was uncooperative the whole night. It would
4 have been physically impossible for an officer's safety to
5 release him out of handcuffs to let him do a field sobriety
6 test which you cannot do a field sobriety test in handcuffs
7 so therefore why release an individual who has been hostile
8 and uncooperative to do a test? It just doesn't make
9 sense. Officer's safety wise it just makes no sense.

10 Q. Well who was the officer who arrested him and put him
11 in the back of the vehicle before you arrived?

12 A. I cannot tell you who the officer or officers were. I
13 could not tell you. He was already detained while I got
14 there.

15 Q. So you don't know what happened to him prior to his
16 being thrown in the back seat of this car?

17 A. Before he was placed in the back seat of the patrol
18 car I have no clue what had happened to him.

19 Q. Okay. Where was Mr. Galimore from?

20 A. According to his driver's license I believe it was
21 like Rochelle or something New York.

22 Q. So he's not from around here?

23 A. Actually he does have a physical address on Buck
24 Island Road which was cross referenced with South Carolina
25 so yes, sir, he does have a residence in the State of South

- 1 Carolina.
- 2 Q. And the vehicle license tag was for what state?
- 3 A. For New York.
- 4 Q. Okay. Okay. Okay let's go to the vehicle itself on
- 5 the inside.
- 6 A. Yes, sir.
- 7 Q. Now when you are on the inside of the vehicle when you
- 8 arrive.
- 9 A. Okay.
- 10 Q. What do you see?
- 11 A. I see clutter and mess that's what I see.
- 12 Q. What do you see in the front seat of the vehicle?
- 13 A. Like I say I don't recall what I see. I knew the main
- 14 thing that sticks out in my mind was the absolute or the
- 15 Sky Vodka bottle of liquor.
- 16 Q. Okay. So you missed the color TV that was sitting on
- 17 the front seat?
- 18 A. I missed the color TV that was sitting in the back but
- 19 not in the front seat.
- 20 Q. Well it was in the back seat then.
- 21 A. Yes, sir.
- 22 Q. Well what was in the front seat?
- 23 A. I cannot recall.
- 24 Q. Well you took pictures of it didn't you?
- 25 A. I took pictures of the whole vehicle yes, sir.

1 Q. And what else was in the back area of the vehicle?

2 A. Tools, DVD's, stuff like that. Like I say it was a
3 scattered mess.

4 Q. What about clothing and things of that nature?

5 A. It could have been.

6 Q. So you didn't look at any of that stuff is that
7 correct?

8 A. It wasn't important.

9 Q. It wasn't important. Okay. Now were these bucket
10 seats that we're talking about in this vehicle?

11 A. I don't recall.

12 Q. Well you said it was in the back this bottle of Vodka.

13 A. No I didn't say it was in the back. No, sir, I said
14 the TV was in the back. The bottle as in my statements
15 earlier was in the immediate vicinity of the driver's seat
16 that's what I said.

17 Q. I know that's what you said but you also said the fact
18 is that it could have slid down or something of that
19 nature.

20 A. Yes, sir.

21 Q. You don't know how it got there in other words?

22 A. It could not have slid down underneath the seat. If
23 it would have done that the bottle was too big. There's
24 too much mechanisms up underneath the seat for a bottle of
25 this stature to roll under the seat so it had to be

- 1 somewhere in the front compartment. But like I say I don't
2 know. When I found it it was near full that's what it was.
- 3 Q. Near the floor board?
- 4 A. Actually near was the wrong word. On the floor board.
- 5 Q. The back floor board?
- 6 A. No, sir.
- 7 Q. On the front floor board?
- 8 A. Yes, sir.
- 9 Q. So in other words he can just reach right over there
10 and grab it and take a shot?
- 11 A. There you have it.
- 12 Q. Uh-huh. Okay. Did you notice whether or not there
13 was anything inside of the vehicle?
- 14 A. There were lots of things, Counsel, inside the
15 vehicle.
- 16 Q. But there wasn't any exposed alcohol outside of the
17 bottle, is that correct?
- 18 A. No there was just a broken seal liquor bottle
19 violation.
- 20 Q. Were you the only person to have seen that particular
21 Sky Vodka bottle?
- 22 A. No, sir, I was not the only one.
- 23 Q. Well who was the first person to actually discover
24 this bottle?
- 25 A. Who knows who that was? The vehicle was looked at

- 1 before I got there. I mean the door was already open and
2 everything was out there. I don't know who seen it before
3 I did however I seen it and that's what matters but I could
4 not tell you who the first person to see the bottle was.
- 5 Q. But the doors were open isn't that correct?
- 6 A. The driver side door was.
- 7 Q. Okay. And you indicated that the children had been
8 talked to, is that correct?
- 9 A. Yes.
- 10 Q. Okay. Did you ask any of the children was daddy
11 drinking this bottle and riding down the road and driving?
- 12 A. No, sir, I didn't ask that.
- 13 Q. And you didn't ask them whether they were wearing seat
14 belts or any restraints?
- 15 A. I was told from a reliable source of good faith from
16 another officer.
- 17 Q. Now who took Mr. Galimore to the detention center?
- 18 A. Officer Nelson.
- 19 Q. Did you go with him?
- 20 A. Uh-huh.
- 21 Q. Well how did he get out of the hospital?
- 22 A. He was escorted to his car. Actually escorted to the
23 deputies car.
- 24 Q. So he walked out of the hospital, is that correct?
- 25 A. Yes, sir.

1 Q. And I believe he had a conversation with one of the
2 doctor's, is that correct?

3 A. I could not tell you.

4 Q. Did he fill out some forms or anything of this nature
5 for the doctors?

6 A. I could not tell you.

7 Q. And he never said anything to you at the hospital
8 other than I am not going to give you my blood?

9 A. That's all he told me because I said that it was
10 mandatory; read the implied consent forms which you have.
11 I read him the Maranda rights and eventually he gave up and
12 said okay but that wasn't to me, that wasn't to me, that
13 was to others when he gave his blood up.

14 Q. Well but you heard it?

15 A. No, sir, I did not hear it. I'm going off from what
16 the phlebotomist said.

17 Q. Well were you present at the time of the taking of the
18 blood?

19 A. I was at the door. I do not hold anybody down for
20 blood I do not get involved in that.

21 Q. Well which officers got involved in it?

22 A. As I stated earlier Officer Nelson and a Beaufort City
23 Officer.

24 Q. Okay. All right. I think that's all I have.

25 Thank you, your Honor.

TROOPER NICK SPROUSE: REDIRECT EXAMINATION MS. TANNER
RE CROSS EXAMINATION BY MR. HOOD

1 THE COURT: Redirect.

2 MS. TANNER: Very briefly.

3 REDIRECT EXAMINATION

4 TROOPER NICK SPROUSE BY MS. TANNER:

5 Q. And I only ask this because Mr. Hood tried to make it
6 sound like we colluded recently and decided that Mr.
7 Galimore was driving left to center.

8 A. Correct.

9 Q. At what point in your investigation did you determine
10 that Mr. Galimore was driving left of the center?

11 A. That night.

12 Q. No further questions.

13 THE COURT: Recross?

14 MR. HOOD: I only have one question.

15 RECROSS EXAMINATION

16 TROOPER NICK SPROUSE BY MR. HOOD:

17 Q. Why didn't you put that in your report?

18 A. Because I actually put it in the diagram drawing.

19 Q. Why didn't you put it in your report?

20 A. I have to read my report again. Can I have a copy of
21 it?

22 THE COURT: You can step down.

23 A. Yes, sir.

24 THE COURT: You can be excused if you wish or remain
25 as the investigating officer. I thank you for your time.

1 We'll take an afternoon break. If you will just
2 follow the bailiff to the jury room we will take a break.

3 (JURY LEAVING COURTROOM AT 3:15 P. M..)

4 THE COURT: We'll take a ten minute break.

5 (SHORT RECESS AT 3:16 P. M..)

6 (BACK ON THE RECORD AT 3:45 P. M..)

7 THE BAILIFF: All rise.

8 THE COURT: Take your seats.

9 The State ready?

10 MS. TANNER: Yes, sir, your Honor.

11 THE COURT: Defense ready?

12 THE COURT: Ready, your Honor.

13 THE COURT: Bring in the jury.

14 THE BAILIFF: Juror's are entering, your Honor.

15 (JURY ENTERING COURTROOM AT 3:46 P. M..)

16 THE COURT: All right call your next witness.

17 MS. TANNER: Thank you, your Honor. The State calls
18 Ashley Goldman.

19 THE CLERK: Raise your right hand and place your left
20 hand on the bible.

21 (WHEREUPON: ASHLEY GOLDMAN,
22 BEING FIRST CALLED AND DULY SWORN, TESTIFED AS FOLLOWS:)

23 THE CLERK: Please have a seat. State your full name
24 and spell your last name.

25 A. Ashley Marie Goldman, G-o-l-d-m-a-n.

1 DIRECT EXAMINATION

2 ASHLEY MARIE GOLDMAN BY MS. TANNER:

3 Q. Good afternoon, Ms. Goldman. Where are you employed?

4 A. Beaufort Memorial Hospital.

5 Q. You're actually working today?

6 A. I am.

7 Q. And how long have you worked at the hospital?

8 A. About five and a half years now.

9 Q. And what are your duties, your responsibilities at the
10 hospital?

11 A. I'm a charge nurse in the emergency department so
12 anything that comes in or out of the emergency room.

13 Q. And what kind of education or training do you have in
14 that position?

15 A. I have an Associates Degree from a technical college
16 and three months away from my Bachelor's Degree in the same
17 field.

18 Q. And as part of your job in ER would one of your duties
19 be to draw blood from a person?

20 A. It is.

21 Q. Now were you working on August the 11th 2007 the late
22 hours or early morning hours of August 12?

23 A. I was I was working night shift.

24 Q. And do you recall drawing blood from an individual by
25 the name of Rodney Galimore?

- 1 A. I recall after looking over the notes.
- 2 Q. All right let me show you what's been marked as
- 3 State's Exhibit Number Twenty-Seven.
- 4 If I may approach, your Honor.
- 5 If you can identify this item?
- 6 A. Yes the evidence seal that we use.
- 7 Q. It is still active. I can open it for you.
- 8 A. I identified the name on this blood drawn that is in
- 9 my handwriting.
- 10 Q. And is that your name on the blood drawn?
- 11 A. It is yes.
- 12 Q. And who is the blood drawn from according to these
- 13 documents?
- 14 A. It's from the subject Rodney L. Galimore.
- 15 Q. And the date?
- 16 A. The date says 8/11/07.
- 17 Q. All right. Thank you, ma'am.
- 18 Your Honor, at this time -- but before I do that I am
- 19 going to ask you this has already been entered into
- 20 evidence State's Exhibit Twenty-Two.
- 21 A. Yes, ma'am.
- 22 Q. Have you ever seen one of these before?
- 23 A. I have numerous times.
- 24 Q. And what is that and what do you use it for?
- 25 A. This is our blood draw kit for biological specimens.

1 Sometimes we call them suspect kits and this is what we
2 place the blood in whenever we draw blood.

3 Q. And would you have done that the night Rodney Galimore
4 came in?

5 A. Yes.

6 Q. An item -- the last item I gave you is that part of
7 one of those kits?

8 A. Yes.

9 Q. Your Honor, at this time the State moves Twenty-Five
10 and Twenty-Seven into evidence.

11 MR. HOOD: No objections.

12 THE COURT: Be in without objection.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-FIVE AND
14 TWENTY-SEVEN IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)
15 BY MS. TANNER:

16 Q. After the blood is drawn what do you do with it?

17 A. Immediately after drawing it I label it and in this
18 particular case I would hand it to the investigating
19 officer after it was labeled and place it in the kit and
20 seal it.

21 Q. And in this case that was Trooper Sprouse?

22 A. Yes it was.

23 Q. And do you recall anything -- I know it's been over a
24 year ago I can't imagine how many people you've seen in the
25 last year but do you recall anything in particular about

1 this blood draw and how the defendant was acting?

2 A. I do remember that upon arrival to the emergency room
3 he said he didn't need any treatment, didn't need any care.
4 He said I will not cooperate and he said he did not want
5 his blood drawn. I do remember that.

6 Q. And did you have any difficulty drawing his blood that
7 night?

8 A. We did. For my safety and for my staffs' safety that
9 particular night I requested that we have someone in the
10 room to help us obviously with an open needle in drawing
11 blood we have difficult -- I asked the officer to send
12 someone else in to help us do that.

13 Q. Thank you, Ms. Goldman. Please answer anything Mr.
14 Hood has.

15 A. Yes, ma'am.

16 CROSS EXAMINATION

17 ASHLEY MARIE GOLDMAN BY MR. HOOD:

18 Q. Ms. Goldman.

19 A. Yes, sir.

20 Q. You were present at the time that Rodney was brought
21 in, is that correct?

22 A. I was working that night. I mean I wouldn't have been
23 in the room the exact second that he was brought in but I
24 was working that night yes, sir.

25 Q. And I believe that he signed some documents and things

1 of that nature releasing the hospital from any liability
2 and things of that nature, isn't that correct?

3 A. I remember that registration handles the documents
4 that are signed not the emergency room nurses. Generally
5 it is practice for the registration or the registrar to
6 come forward and ask them questions about signing documents
7 but that's not part of my job description or something that
8 I'm responsible for.

9 Q. But before you normally take blood you have to get
10 someone to sign a release, is that correct?

11 A. If the registrar gets them to sign for treatment yes,
12 sir. In the case of someone who voluntarily presents to
13 the emergency room yes.

14 Q. Okay. Did you examine or see any documents concerning
15 the taking of the blood of Rodney Galimore?

16 A. As far as documents different from what we have or
17 just our general consent?

18 Q. General consent.

19 A. No I did not look at it no, sir.

20 Q. Well did you know that you had it?

21 A. We had a person who came in in handcuffs and I was
22 informed by the officer on seeing that this patient could
23 not refuse the blood draw so that's what we knew.

24 Q. Well do you have a doctor that is present during this
25 procedure?

1 A. Of course yes, sir.

2 Q. So who was the doctor that was present?

3 A. Doctor Rehman, R-e-h-m-a-n.

4 Q. Did Doctor Rehman have any conversations with Rodney
5 Galimore?

6 A. Yes, sir.

7 Q. Okay. And Rodney was cooperative with Doctor Rehman,
8 is that correct?

9 A. I'm not sure but the definition of cooperative would
10 be he did say he did not need an exam. He didn't want the
11 doctor to do any x-rays and was not hurt anywhere. He did
12 say that yes, sir.

13 Q. So he made all of those verbal comments to the doctor
14 in your presence, is that correct?

15 A. Per the doctor -- I don't know that I was necessarily
16 in the room the entire time -- the doctor related to me
17 that the patient did not -- he did not want any x-rays and
18 did not want a full physical exam.

19 Q. And in your opinion did Mr. Galimore understand what
20 you guys were telling him?

21 A. He seemed to be. Yes, sir, he seemed to understand.

22 Q. Okay. So he didn't have any problems communicating
23 with you and you didn't have any problems understanding
24 him, isn't that correct?

25 A. He said he did not need any treatment. I understood

1 that yes, sir.

2 Q. Okay. Did he in your presence ever mention anything
3 about the handcuffs being too tight?

4 A. Not that I can recall.

5 Q. When did you have first contact with him?

6 A. I don't remember the exact time. Again we see about
7 thirty-six thousand patients a year. I do know that I was
8 not the primary nurse assigned to this case. Again I was
9 the charge nurse that night. The primary nurse that was
10 assigned to the case or to this particular patient and
11 assigned to that room ask for my help because it was a
12 little bit of a different circumstance than what we would
13 normally see in the emergency room and as the charge nurse
14 she deferred to me and said can you come help me with this.
15 So I'm not sure at what point I entered the room I don't
16 remember.

17 Q. Okay. Now when you say that he was handcuffed behind
18 his back, is that correct?

19 A. I don't remember. That's generally protocol but I
20 don't remember.

21 Q. And you were the one that actually drew the blood?

22 A. Yes, sir, I did draw the blood.

23 Q. All right. And describe what you did and how you did
24 it and what you used.

25 A. We use a non-latex tourniquet. The tourniquet is

1 generally placed above you in a cubical space; the site is
2 then prepped with a solution called cloraprep. After we
3 obviously pat the vein first to clean the particular area
4 that we are going to use with cloraprep and then we proceed
5 to draw the blood. Sometimes we use a butterfly needle,
6 other times we use a syringe with a needle, a safety
7 needle, and then transfer the blood from that syringe into
8 a tube.

9 Q. And is he face down at the time that you are doing
10 this?

11 A. I honestly don't remember. I'm sorry.

12 Q. Okay. Now you say you used a solution to swab the
13 area.

14 A. Yes, sir.

15 Q. What's in that solution?

16 A. Cloraprep?

17 Q. Yea.

18 A. I'm not sure what the active ingredients are. I do
19 know that we use it for patients who are allergic to
20 betadyne. We generally use this on every draw that we use
21 now because we have seen a lot of betadyne allergies so it
22 doesn't have any iodine in it. It also does not contain
23 alcohol which is why we are able to use it for any legal
24 blood draws that we need to do.

25 Q. Okay. How many people were in the room at the time of

1 the taking of the blood? Do you recall?

2 A. Again I don't. I do know that I did ask that we have
3 some help again for the safety of myself and for the staff.
4 I know that there were other people in the room other than
5 just myself and the defendant but I don't know.

6 Q. And you weren't injured during this process?

7 A. No, sir.

8 Q. Or anything of that nature?

9 A. No, sir.

10 Q. Mr. Galimore didn't spit on you or scream at you or
11 anything of that nature did he?

12 A. He didn't spit on me no, sir. I remember the tone of
13 the voice but . . .

14 Q. Okay. Thank you, ma'am.

15 Q. You're welcome.

16 MS. TANNER: Noting further, your Honor.

17 THE COURT: You may be excused. We appreciate your
18 time and thank you.

19 Call your next witness.

20 MS. TANNER: Thank you. Corporal Isaac Gregorie.

21 THE CLERK: Place your right hand please.

22 (WHEREUPON: ISAAC GREGORIE,
23 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 THE CLERK: Be seated. State your full name and spell
25 your last name.

1 A. Excuse me.

2 THE CLERK: State your full name and spell your last
3 name.

4 A. My full name is Isaac Nelson Gregorie, Junior.
5 Gregorie is G-r-e-g-o-r-i-e.

6 DIRECT EXAMINATION

7 CORPORAL ISAAC GREGORIE BY MS. TANNER:

8 Q. Good afternoon, sir. Where are you employed?

9 A. South Carolina Highway Patrol.

10 Q. And how long have you worked there?

11 A. Over thirty-five years.

12 Q. What kind of training and background do you have to
13 work with the Highway Patrol?

14 A. I've been trained in the South Carolina Criminal
15 Justice Academy. I've been through Mid-Level Management
16 Supervision classes; MAIT Classes, Breathalyzer; Radar, all
17 the normal things that a police officer has to do to be on
18 the Highway Patrol.

19 Q. And as part of what you do at the Highway Patrol do
20 you ever handle evidence in a case?

21 A. Yes I do.

22 Q. I am going to ask you about a specific piece of
23 evidence. I am going to show you what's been entered as
24 State's Exhibit Number Twenty-Seven.

25 If I may approach the witness, your Honor.

1 THE COURT: Yes, ma'am.

2 BY MS. TANNER:

3 Q. Can you identify this bag and this item?

4 A. This is an evidence bag that contained the vial of
5 blood that I took to SLED for analyzation on August the 13th
6 of 2007.

7 Q. And where did you get that blood from?

8 A. Out of the blood safe refrigerator that is located in
9 my office at Ridgeland at the Highway Patrol Office in
10 Ridgeland.

11 Q. Now we heard earlier that Trooper Sprouse placed the
12 blood in the refrigerator. Who has access to open that
13 refrigerator?

14 A. Myself and First Sergeant Weiss.

15 Q. And how is it secured?

16 A. It's secured by a lock and has a combination lock and
17 First Sergeant Weiss and myself are the only two that have
18 the combination.

19 Q. And you said on August the 13th you removed it.

20 A. I removed it I did.

21 Q. And once you removed it -- when you removed it what
22 did it look like? Did it look just like this or did it
23 look different?

24 A. It looked different. It was in a box a vile specimen
25 box.

1 Q. Like State's Exhibit Twenty-Two?

2 A. That's exactly what it was in.

3 Q. And once you take it out of the refrigerator what do
4 you do with it?

5 A. I placed in the evidence bag and sealed it and I took
6 it directly to SLED in Columbia and turned it over for
7 analyzation.

8 Q. I ask if you can identify what's been marked as
9 State's Exhibit Twenty-Three?

10 If I may approach the witness?

11 THE COURT: Yes, ma'am.

12 BY MS. TANNER:

13 Q. Can you identify this item?

14 A. Yes I can. This is the chain of custody in evidence
15 that when we are carrying the blood to SLED and putting it
16 in the hospital to give us our chain and this is the form,
17 a copy of the form that I took to SLED and was signed in as
18 evidence at 2:17 p.m. on August the 13th.

19 Q. And does that form indicate everyone who touched it
20 and who passed it to who?

21 A. Yes it does.

22 Q. And where is the beginning of the chain?

23 A. The beginning of the chain was actually with the
24 defendant and the Buford Memorial nurse who actually took
25 the blood.

1 Q. All right and then who does it go to?

2 A. It went from the Buford Memorial nurse to Trooper

3 N. L. Sprouse and from Sprouse to our refrigerator in the
4 office that I secured.

5 Q. And at any point did you tamper with or alter this
6 blood at any point before you turned it over to SLED?

7 A. No I did not.

8 Q. All right. Thank you, sir.

9 Your Honor, State moves Exhibit Number Twenty-Three
10 into evidence. It's previously been shown to the defense
11 counsel and he does have a copy of it.

12 MR. HOOD: I have no objection.

13 THE COURT: In without objection.

14 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-THREE
15 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

16 MS. TANNER: Thank you, your Honor, no further
17 questions.

18 Please answer any questions Mr. Hood has.

19 MR. HOOD: I only have one question.

20 CROSS EXAMINATION

21 CORPORAL ISAAC GREGORIE BY MR. HOOD:

22 Q. You weren't present at the scene of this accident?

23 A. Yes I was.

24 Q. You were? Were you the officer that Officer Sprouse
25 talked about being the Corporal at the time?

1 A. I was a corporal then yes, sir.

2 Q. Oh okay. So you were present?

3 A. Yes, sir.

4 Q. And did you participate in taking any of these
5 pictures that were taken of the vehicle and things of that
6 nature?

7 A. No, sir.

8 Q. Did you examine the vehicle?

9 A. No, sir.

10 Q. Did you ever look inside of the vehicle?

11 A. I walked around it.

12 Q. Okay. Well maybe in the front seat of this vehicle do
13 you recall what was in the front seat on the floor board?

14 A. No, sir, I didn't look inside the vehicle. I was the
15 supervisor on scene. When I arrived Trooper Sprouse was
16 already there. I did not do anything with the vehicle.
17 They were working the accident and I was just notifying our
18 command staff as to what was going on.

19 Q. Okay. Let me show you what's been marked as State's
20 Exhibit Fifteen and tell me if you recognize that.

21 A. This looks like the left rear tire of the Ford vehicle
22 that was on the scene.

23 Q. Uh-huh. And look closer at the -- the door, the
24 driver's door is open isn't it, correct?

25 A. In this picture it is yes, sir.

1 Q. And what's that item that's sitting right over there
2 on the floor board?

3 A. I cannot -- I have no idea.

4 Q. Well does it look like a television to you?

5 A. It's a very good possibility it could be. I can't
6 say. I did not examine the inside of the vehicle.

7 Q. So you never looked inside the vehicle. Now look at
8 State's Exhibit Number Seventeen. What is that that is
9 hanging out of the passenger front door?

10 A. Some type of wire.

11 Q. All right. Does it look like a cable TV connection?

12 A. I could not honestly say. I was on scene but I was
13 not the primary investigating officer. Like I told you I
14 was on the telephone talking to command staff and informing
15 them of the violation. I really did not examine the inside
16 of the vehicle.

17 Q. Okay. And what are those little items sitting out
18 there right outside of the door where this cable is
19 protruding out?

20 A. It looks like two books.

21 Q. Could they be DVD's?

22 A. It's a possibly they could be.

23 Q. Did you see any DVD's that particular night?

24 A. Not that I recall.

25 Q. Okay. I don't have any further questions.

1 MS. TANNER: Nothing further.

2 THE COURT: All right you can step down and be excused
3 and we appreciate your time.

4 Call your next witness.

5 MS. TANNER: Thank you, your Honor. The State calls
6 Agent Shannon Sorrells.

7 THE CLERK: Raise your right hand and put your left
8 hand on the bible.

9 (WHEREUPON: SHANNON
10 SORRELLS, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
11 FOLLOWS:)

12 THE CLERK: State your full name and spell your last
13 name.

14 A. My name is Shannon Burnette Sorrells. Last name S-o-
15 r-r-e-l-l-s.

16 DIRECT EXAMINATION

17 AGENT SHANNON BURNETTE SORRELLS BY MS. TANNER:

18 Q. Good afternoon. Where are you employed?

19 A. The South Carolina Law Enforcement Division. We're
20 commonly known as SLED.

21 Q. And what do you do at SLED?

22 A. I'm a Forensic Toxicologist.

23 Q. And what kind of training or background do you have to
24 be a Forensic Toxicologist?

25 A. I have my Bachelor's Degree in Chemistry from the

1 University of South Carolina. I also have my Master's
2 Degree in Analytical Chemistry also from the University of
3 South Carolina. I've also been through the Police Academy
4 and attended the Boykin's Vine School for Alcohol and
5 Driving at Indiana University.

6 Q. And what is forensic toxicology?

7 A. Forensic toxicology is a science where we analyze
8 biological samples, blood, urine, tissues such as brain and
9 liver and we analyze those samples for alcohol, drugs and
10 poisons and we interpret what we find in courts of law.

11 Q. And have you ever testified before regarding your
12 area?

13 A. Yes.

14 Q. And have you ever been qualified as an expert in your
15 area of forensic toxicology?

16 A. Yes I have.

17 Q. Your Honor, at this time the State moves that Agent
18 Sorrell's be declared as an expert in the area of forensic
19 toxicology?

20 THE COURT: Any voir dire?

21 MR. HOOD: No, your Honor, we accept her.

22 THE COURT: I find you are qualified.

23 MS. TANNER: Okay.

24 As a forensic toxicologist you said you analyze blood
25 for example for alcohol, is that correct?

1 A. Yes.

2 Q. And are you familiar with the presumptive level of
3 alcohol in South Carolina under the law of intoxication?

4 Are you familiar with what that level would be?

5 A. For impairment yes.

6 Q. Okay. And what would that be?

7 A. Point 08.

8 Q. But what does that mean? In your .08 what does that
9 mean I guess in the context of a person's blood?

10 A. It's a percentage of the weight per volume, the weight
11 of alcohol per the volume of blood so in looking at .08
12 percentage which is a very small amount per volume of
13 blood.

14 Q. But that is the presumptive level in South Carolina
15 for what intoxication?

16 A. Yes it is.

17 Q. Now I am going to ask you specifically if you
18 performed any analysis on items involving a case for Mr.
19 Rodney Galimore?

20 A. Yes I did.

21 Q. I ask you first if you were presented with a bottle of
22 Sky Vodka?

23 A. Yes I was.

24 Q. And did you perform any analysis on that item?

25 A. I did. I performed an alcohol analysis on that.

1 Q. All right and after your analysis what were your
2 results or your findings?

3 A. I do not have my report with me.

4 Q. After you performed your analysis do you then generate
5 a report?

6 A. Yes I do.

7 Q. Then I will ask you if you can identify State's
8 Exhibit Twenty-Five?

9 If I may approach?

10 A. Yes this is my report.

11 Q. All right. And what were your findings regarding this
12 Sky Vodka bottle?

13 A. I found that it had 32.6 percent volume per volume on
14 the alcohol which is equivalent to sixty-five proof.

15 Q. And what does that tell us in regard to Sky Vodka?

16 A. Well most of your average vodka's are eighty proof of
17 forty percent alcohol. So this is very close to what it
18 should have been. A lot of the alcohol could have
19 evaporated it's a volatile compound and it does evaporate
20 after it's been opened.

21 Q. But the substance inside the bottle you would say is
22 consistent with Vodka?

23 A. It's consistent with alcohol. Specifically vodka I
24 couldn't say.

25 Q. Okay. But it is alcohol?

1 A. It is alcohol.

2 Q. All right. And did you also perform an analysis on
3 a blood sample from a Mr. Rodney Galimore?

4 A. Yes I did.

5 Q. And I show you what's been marked State's Exhibit
6 Number Twenty-Seven, it's already been entered into
7 evidence, and if you can identify this item?

8 A. This is the SLED evidence bag that is submitted to me
9 once the officer drops off the evidence.

10 Q. And what would have been contained in this bag?

11 A. Contained in this bag when I received it was the
12 collection kit; the blood urine collection kits that we
13 send out to hospitals and officers and law enforcement
14 agencies. And inside this kit I also received a tube of
15 blood, a gray top tube inside the kit.

16 Q. And when you received it was it tampered with in any
17 way?

18 A. No it was not.

19 Q. And how would you be able to tell if it had been
20 tampered with?

21 A. Down in our evidence log in the officer brings it in
22 and its heat sealed and he initials it. When I receive
23 this bag it still had the heat seal intact and it was
24 initialed and dated as it was supposed to be.

25 Q. So you actually had to cut open the bag to get to it?

1 A. I did.

2 Q. And what happens to that blood sample once you perform
3 your test? Do you put it back in the bag?

4 A. Yes I do. I'm sorry.

5 Q. And do you still have the blood sample from Mr.
6 Galimore?

7 A. No I do not. After six months it is destroyed.

8 Q. All right. And what were the findings of your
9 analysis of the blood from Rodney Galimore?

10 A. I don't know the exact number.

11 Q. And I will provide you with State's Exhibit Number
12 Twenty-Four. Did you prepare a report indicating your
13 findings of the blood results?

14 A. Yes I did.

15 Q. If I may approach, your Honor?

16 State's Exhibit Number Twenty-Four, if you can
17 identify this item?

18 A. This is my report on the blood for Rodney Galimore?

19 Q. And you prepared that report?

20 A. Yes I did.

21 Q. Your Honor, at this time State moves Number Twenty-
22 Four into evidence.

23 MR. HOOD: No objection.

24 THE COURT: Entered without objection.

25 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-FOUR,

1 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

2 MS. TANNER: Thank you, your Honor.

3 Agent, what were findings regarding the blood of
4 Rodney Galimore?

5 A. It had a .153 percent weight per volume of alcohol.

6 Q. Point 153.

7 A. Yes.

8 Q. Almost twice the presumptive legal level?

9 A. Yes.

10 Q. Thank you, Agent. Please answer anything Mr. Hood may
11 have.

12 CROSS EXAMINATION

13 AGENT SHANNON BURNETTE SORRELLS BY MR. HOOD:

14 Q. Now what was the legal limit back in 2007?

15 A. Point 08.

16 Q. When did it change?

17 A. I'm not exactly sure.

18 Q. Well it was 1 for a period time, isn't that correct?

19 A. Yes it was.

20 Q. And do you recall when that took effect?

21 A. No I do not.

22 Q. So it could have taken place after this incident
23 occurred back in August of 2007, isn't that correct?

24 A. As long as I've been working at SLED the legal limit
25 has been .08.

1 Q. So .08 four beers?

2 A. No. For the average hundred and fifty pound man one
3 beer can raise the blood alcohol -- raise the blood alcohol
4 to a .02. If the man weighs more than that it takes more
5 alcohol to raise it.

6 Q. Okay. So depending upon the person that you're
7 dealing with will determine how many ounces of beer or how
8 many ounces of vodka they can take before they reach the
9 grand old limit, is that correct?

10 A. It varies slightly yes.

11 Q. Uh-huh. So if you had four beers would you be over
12 the legal limit?

13 A. It depends on the weight and size of the person.

14 Q. Okay. Well you never saw Mr. Galimore did you?

15 A. No I did not.

16 Q. So you have no idea about any physical attributes of
17 Mr. Galimore, is that correct?

18 A. No I do not.

19 Q. Okay. So the Sky Vodka that you were talking about
20 you said that it was about sixty-five percent proof, is
21 that correct?

22 A. From what I found yes.

23 Q. And what did the label on the bottle say was the proof
24 of that vodka?

25 A. I do not remember. I just know that most Vodka's -

1 I'm not specific on this one -- is about eighty proof.

2 Q. And you said that once it's opened it starts losing
3 its potency?

4 A. The alcohol evaporates; it's very volatile so the
5 alcohol does start evaporating out of the vodka.

6 Q. And it does the same thing in your system doesn't it?

7 A. You eliminate it at a certain rate out of your system.
8 It can be volatile once the blood is open to air yes it
9 does escape.

10 Q. So in other words when you draw blood out of a person
11 does that mean that it goes up?

12 A. No it does not. If you are drawing the blood out of a
13 person you're drawing it directly into the tube. The tube
14 is then directly sealed. That way the blood alcohol is
15 sealed inside that and it would not evaporate.

16 Q. Okay. So what would you say the proof of Mr.
17 Galimore's blood was?

18 A. You can't really put a proof on the blood. Well you
19 probably could. Proof is just twice the alcohol level
20 that's all that proof is. Like if it was sixty proof it
21 was thirty percent alcohol. In this case if you want to
22 put a proof on his blood it would be close to .3 percent
23 proof.

24 Q. So in other words what he was drinking was three
25 percent proof?

1 A. No.

2 Q. His blood was only three percent proof?

3 A. You can't really put a proof on the blood.

4 Distribution in blood you're drinking a small amount and
5 you are spreading it over an entire portion. It's going --
6 you are eliminating about the same amount as you're --
7 almost the same amount as you are drinking if you are
8 drinking it at a slow rate so you can't really put a
9 specific proof on the blood because it's never constant.

10 Q. Okay. So what you're saying is that a person who
11 blows into a data master and a person who gives blood those
12 two results would be different.

13 A. No they would not be different they would be the same.

14 Q. They are going to be exactly the same?

15 A. Just about. The data master will actually read --
16 most of the time it will read just slightly higher than the
17 blood does.

18 Q. So the blood test doesn't give you a more accurate and
19 higher level than the breathalyzer does, is that correct?

20 A. I wouldn't say it gives a more accurate because the
21 breathalyzer and the way it's designed it's designed based
22 on a ratio towards the blood so that they are pretty much
23 one in the same.

24 Q. But you said that it escapes through the air isn't
25 that correct?

1 A. It evaporates over time.

2 Q. So a person who is taking a breathalyzer is constantly
3 breathing, isn't that correct?

4 A. Yes.

5 Q. So that means that the alcohol is constantly escaping,
6 isn't that correct?

7 A. No it's not. It's not constantly escaping. It
8 evaporates over time. That does not mean escaping. When
9 you are blowing out alcohol you're blowing out alcohol but
10 you're blowing out what's in the blood. You're blowing out
11 what's in your system at that time. You're not losing
12 alcohol you're losing the ratio. It's a ratio factor.
13 It's not escaping.

14 Q. Yea. Okay well the bottom line is that what we're
15 talking about here is this is only an inference isn't that
16 correct based on what a person's blood alcohol is isn't
17 that correct? The blood alcohol level that you read off
18 the 153?

19 A. Yes.

20 Q. That is just an inference, okay. Isn't that correct?

21 A. No. That is his alcohol level at that time.

22 Q. No. But as far as his ability to do that, is that
23 correct?

24 A. I don't understand the question.

25 Q. Well one person could have a blood alcohol of 8.8 and

1 another person can have a 153 and they being just as -- and
2 the person with the 8 not be any more capable of doing the
3 things that the person with the 5, is that correct?

4 A. Yes it could be depending on the experience of the
5 drinker.

6 Q. That's right. So we're talking about you know this is
7 merely the alcohol level that a person has is only an
8 inference as to their driving ability, is that correct?

9 A. No not necessarily.

10 Q. No not necessarily?

11 A. What I mean is at a .153 which is what we say.
12 Everybody reacts to the alcohol in a different way. I
13 guess to say that our actions we act differently. Once you
14 been drinking for a while you know how you act when you're
15 at we'll just say a .1 you know that you start stumbling
16 around so you will lean up against the wall to show that
17 you're not stumbling near as much as you used to be but
18 inside you're still reacting the same way. The alcohol is
19 still having the same effect on the brain which is a CNS
20 depression effect or the central nervous system depression
21 effect and it happens the same way on every person. It's
22 always going to be a central nervous system depressant at
23 that level no matter how you're showing on the outside; no
24 matter how you are appearing to be you are still going to
25 have the impairment at a .15 that everybody is going to

1 have that at .15.

2 Q. And you say that in other words people who can hold
3 their alcohol appear differently than people who cannot
4 hold their alcohol per se?

5 A. Yes.

6 Q. Is that correct?

7 A. That is correct.

8 Q. So in other words a 153 might not be anything for a
9 person who repeatedly drinks, isn't that correct?

10 A. It might not appear that way but they are still under
11 the influence and they are still affected by it.

12 Q. But -- okay thank you.

13 THE COURT: Redirect?

14 MS. TANNER: Nothing further, your Honor.

15 THE COURT: You can step down and be excused. We
16 appreciate your time.

17 MS. SORRELLS: Thank you.

18 THE COURT: Call your next witness.

19 MS. TANNER: Our next witness will be here in the
20 morning.

21 THE COURT: All right. Do you want to stop for today?
22 Is that what you're telling me?

23 MS. TANNER: Our next witness is actually arriving
24 into town tonight. He's been on vacation so he'll be here
25 first thing in the morning.

1 THE COURT: All right, members of the jury panel, the
2 next witness will be first thing in the morning. We'll
3 start at 9:30; we started at 9:00 this morning. I know
4 some of you I remember in the questions the other day while
5 being excused I don't know if any of you have thirty-five
6 or forty miles to drive - the reason we started at 9:00
7 this morning was because I had that other thing I had to
8 sandwich in somehow which we did work out. 9:30 I think is
9 a more appropriate time because some of you may have to
10 drive an hour or forty-five minutes to get here. We'll
11 start at 9:30 please be in the jury room ready to go and
12 we'll start promptly at 9:30 if you can. Keep in mind
13 those things I told you about in not discussing the case
14 and not letting yourself being exposed to anything about
15 the case so we'll see you at 9:30 in the morning and have a
16 pleasant evening.

17 (JURY DISMISSED FOR THE EVENING AT 4:20 P. M..)

18 THE COURT: All right just for planning purposes what
19 else do we have?

20 MS. TANNER: Your Honor, I have the pathologist; he's
21 scheduled first in the morning and then the two members of
22 the MAIT Team who I intend to put up for the purposes of
23 introducing the animation that was prepared for this case.
24 I know that defense counsel has a motion it may be that
25 that is something we handle at 9:00 before the jury comes

1 in. The witnesses were told to be here at 9:00 so they
2 will be here. We can go ahead in case they need to take
3 the stand.

4 THE COURT: Why don't we convene at 9:00 then and that
5 will give us some time to be looking at that issue?

6 MS. HOOD: That's fine with me, your Honor.

7 THE COURT: What was you other issue about; something
8 being sent to - -

9 MS. TANNER: I believe Mr. Hood has some question
10 about my pathologist qualification however I have spoken to
11 Mr. Hood and he is a clinical pathologist.

12 THE COURT: I weren't so much concerned about that.
13 It was something about a report that was done by a lab.
14 Maybe I'm thinking about another case but I thought it was
15 something because I remember Ms. Tanner saying it was the
16 same people that MUSC used or something like that.

17 MS. TANNER: Yes, sir, the toxicology report that is
18 part of the autopsy report that the pathologist uses in
19 rendering his opinion. My position was that he does take
20 that into account when rendering his opinion and is
21 something he could testify to as far as his results he used
22 in forming his opinion and I believe Mr. Hood was objecting
23 that. I think that's where we got to.

24 THE COURT: Well we stopped a little early. Either
25 one of you -- generally an opinion can be rendered on

1 hearsay but there are some limits. Why don't each of you
2 see if there are any particular law on the use of a
3 toxicology report generated by a third party who's not
4 going to be examined under oath about it? Okay?

5 MS. TANNER: Yes, sir.

6 THE COURT: See you at 9:00 in the morning.

7 (NOTE: OFF THE RECORD AT 4:20 P. M..)

8 (NOTE: PLEAS TAKEN FROM 4:20 UNTIL 5:15 P. M..)

9 (NOTE: COURT RECESSED FOR THE DAY AT 5:15 P. M..)

10 (NOTE: BACK ON THE RECORD DECEMBER 10 AT 9:00 A. M..)

11 THE COURT: Madame Solicitor, you ready to proceed?

12 MS. TANNER: Yes, sir, your Honor.

13 MR. HOOD: Yes, your Honor.

14 THE COURT: All right.

15 MS. TANNER: Yes, your Honor. Last night you ask us
16 to research the issue of whether or not the pathologist
17 could refer to the toxicology report in his testimony. The
18 State is going to rely on the South Carolina Rule of
19 Evidence 703 which allows that an expert witness is to base
20 his testimony on the facts or information provided to him
21 that are not sometimes even admissible in another way. I
22 pulled two cases; Todd versus Joyner it's a 2007 case and
23 John's versus Jones which is a 2006 case. They both give
24 the follow: Experts may testify regarding facts or data
25 not as substantive proof of the facts so stated but rather

1 as information upon which they have relied in reaching
2 their professional opinions. I think that applies to the
3 toxicology report. He did use that in relying upon the
4 information he was given in the toxicology report to make
5 his findings regarding the autopsy and the cause of death.

6 THE COURT: All right. And the very learned judge in
7 the Jones Case allowed it in?

8 MS. TANNER: Yes, sir.

9 THE COURT: That was me. I always be consistent.

10 All right, Mr. Hood.

11 MR. HOOD: Judge, I can agree with letting those types
12 of things in except for the fact that what we're talking
13 about here is an autopsy that this was not needed to
14 determine the cause of death. Cause of death in this
15 particular case is indicated blunt force trauma and things
16 of that nature. It has nothing to do with whether or not
17 there was any chemical or anything that could have possibly
18 caused the death of this particular person.

19 THE COURT: Well I think that whatever they have that
20 would rule out other causes I mean obviously you know I
21 think it's somewhat unique that we argue about these things
22 in a case where somebody in a horrific automobile accident
23 and dead within a few minutes that we still have to prove
24 how they died but I think I am going to allow it in.

25 MR. HOOD: Thank you, sir.

1 MS. TANNER: Thank you, your Honor. The next issue
2 the State intends this afternoon or this morning to
3 introduce an animation prepared by the South Carolina
4 Highway Patrol MAIT Team. My understanding is the defense
5 counsel is objecting to the admission of the animation.
6 The State has prepared a memorandum of law supporting the
7 introduction of the animation. I provided your clerk a
8 copy; I provided the defense counsel a copy. Basically,
9 your Honor, the State intends to introduce the animation as
10 a demonstrative piece of evidence not a scientific piece of
11 evidence. It is going to be used to illustrate their
12 testimony therefore we'll be using -- I got off track.

13 The basis for allowing the animation is that it is
14 based on scientific evidence that is established well
15 established its' based on the mathematics and the physics
16 and calculations that have been around for a very long time
17 and accepted widely around the world and used to
18 reconstruct accidents. That information is widely
19 accepted; it is what they base this on. They did take that
20 information and basically applied it in to make an
21 illustration of their testimony. That is the purpose for
22 introducing the animation. And I believe the standard is
23 whether or not the animation will assist the tryer's of
24 fact. The State contends absolutely. I think yesterday
25 you saw during the testimony that there is some confusion

1 and it is very easily confused when it comes to talking
2 about measurements, traveling east or west, whether or not
3 the impact was on this side of the lane or that side of the
4 lane. It's easily confused. Defense counsel illustrated
5 that yesterday during testimony and I believe this
6 animation would clearly assist the tryer of fact in
7 understanding the testimony.

8 THE COURT: All right. Mr. Hood.

9 MR. HOOD: Your Honor, I would like to point out that
10 in my opinion that this thing was generated solely for the
11 purposes of prosecution. It has nothing to do with
12 providing the tryer of fact with any type of information
13 that it has not already received during the course of this
14 trial. We have drawings by the officer that have been
15 admitted and things of that nature describing how this
16 vehicle was struck and this in no way serves any purpose.
17 And I would go back to what I originally said with respect
18 to this -- these people did not come to the scene the night
19 of this incident. They did not take any of the
20 measurements. We don't even have measurements of the
21 distance from where the tire track began to where the tire
22 track ended. You know how many feet that was or anything
23 of that nature. And what I'm saying is that a year and
24 three months later, four months later, they generate this
25 animation without having ever had the opportunity to

1 examine the vehicles the night that this incident occurred
2 or any time in close proximity to the accident itself.

3 This is a year like I said almost a year and a half or
4 later that they come up with this particular animation.

5 THE COURT: I am going to allow it in. I think it
6 will assist. I actually went down and looked at the
7 pictures yesterday myself to try to get me oriented because
8 everybody's hand gestures east and west and somebody would
9 say east and then west. I certainly think that this will
10 help clarify. I don't find that this falls into the junk
11 science area; I find it actually reconstructs it and of
12 course they have to be qualified that they can give it that
13 they are able to testify and come up with the diagram or
14 the animation. And of course they are subject to cross
15 examination as to the things you just talked about like the
16 length of the tire track. The tire pattern for lack of a
17 better word although as the officer said yesterday that it
18 didn't matter the car was where it was or where it was or
19 where it was. It didn't it matter where it started from
20 it's where it ended up that was important. Although I
21 guess there is some importance in those patterns. You know
22 that's subject to cross examination.

23 Incidentally on the first issue there is a case
24 pending before the United States Supreme Court that -- I'm
25 not familiar with the name of it -- that may address that

1 issue that is rely on experts reports from other -- it's
2 the United States Supreme Court not the State Supreme Court
3 -- that hasn't been ruled on. I know they are going to
4 rule obviously they reversed me twice so they obviously
5 always right. But just for your information this is a hot
6 topic; this is an issue that's pending right now before the
7 Supreme Court and also our Supreme Court is looking at and
8 I'm on the rules committee working on some revisions to
9 this whole expert issue. I think the law is very clear at
10 this point but we may anticipate some -- I'm not going to
11 call it radical changes but some changes in the near future
12 on both of these issues.

13 MS. TANNER: That being said, your Honor, I'm looking
14 forward that it could be reviewed by the appellate courts
15 for that issue. I will put on the record that the State's
16 argument is absolutely not prejudicial to the defendant
17 that a pathologist testified that there were not substances
18 in the victim's body at the time of the accident. I don't
19 think in any way that could be prejudicial to the defendant
20 and I wanted that to be part of the record for future
21 purposes.

22 THE COURT: I was told by a judge at one time that
23 everything you presented ought to be prejudicial in some
24 way or else it's not relevant. You don't remember that
25 part do you?

1 MS. TANNER: I do not. I did argue that the charges
2 were meant to be prejudicial. All criminal charges against
3 the defendant are meant to be prejudicial but that piece of
4 evidence I don't think under the analysis of prejudice to
5 the defendant would be too bad.

6 THE COURT: All right. Anything else? Got the jury
7 back at 9:30.

8 MS. TANNER: Nothing from the State, your Honor.

9 MR. HOOD: Nothing, your Honor.

10 THE COURT: All right as soon as the jury is assembled
11 we'll let you know if they get here a little bit before
12 9:30 and if you are ready and we'll start before 9:30.

13 MS. TANNER: Thank you, sir. I am going to get this
14 set up and under way.

15 (NOTE: SHORT RECESS AT 9:20 A. M..)

16 (NOTE: ON THE RECORD AT 10:40 A. M..)

17 THE BAILIFF: Juror's entering, your Honor.

18 THE COURT: Thank you.

19 (JURY ENTERING THE COURTROOM AT 9:41 A. M..)

20 THE BAILIFF: Your Honor, the jury is seated.

21 THE COURT: Good morning.

22 Call your next witness.

23 MS. TANNER: Thank you, your Honor. The State calls
24 Doctor Roger Sorg.

25 THE CLERK: Okay. Raise your right hand and left hand

1 on the bible please.

2 (WHEREUPON: ROGER SORG,
3 BEING CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 THE CLERK: Please state your full name and spell your
5 last name.

6 A. Thank you. Roger James Sorg, S-o-r-g.

7 DIRECT EXAMINATION

8 DOCTOR ROGER SORG BY MS. TANNER:

9 Q. Good morning, Doctor Sorg.

10 A. Good morning.

11 Q. What line of work are you in?

12 A. I'm a pathologist, an anatomical clinical pathologist
13 and I've been practicing for about forty some years now.

14 Q. All right now - -

15 A. Since '72.

16 Q. And what is a pathologist?

17 A. Pathologist are the physicians that for the most part
18 work in hospitals and develop the laboratories with a
19 dispensing of blood. We do all the chemical test, urine
20 test. And in addition they use the microscopes most of
21 them as the anatomic pathology part and biopsies that are
22 taken by surgeries and physicians; simple pathology and we
23 prepare the specimens and look at them under a microscope
24 and give them the diagnostic, give the diagnosis, the logic
25 diagnosis and issue a report. Most of my time was that.

1 And forensic pathology was a segment of what I did and
2 since '93 when I was a pathologist at Beaufort Memorial
3 coming from Chicago where I had been for ten years. I've
4 also did about half of the coroner's autopsies in Beaufort
5 County and I continue to do about half of the autopsies for
6 the Beaufort County Coroner's system since '93.

7 Q. Now what kind of educational background do you have to
8 allow you to perform these autopsies?

9 A. I got my BS in chemistry from Bowling Green State
10 University in Ohio. I was a resident and raised in Ohio
11 and then I went to medical school in Des Moines, Iowa for
12 four years and received my medical degree and then I spent
13 an additional four years in Detroit, Michigan where I took
14 anatomic and clinical pathology residencies so that was
15 twelve years total. And my first job from Detroit in '72
16 was in Atlanta where I worked for thirteen years as the
17 general pathologist in one of the hospitals doctor's
18 hospital. And then anatomic in clinical pathology. After
19 that I went back to Chicago and taught pathology in one of
20 the medical schools and practiced in two of the hospitals
21 that were related with that medical school. And following
22 that I came down to Beaufort. We always had a condo that
23 we never used that much and had an opportunity to come back
24 and that was in '93 and I practiced here in Beaufort
25 Memorial for four years. I have this amputation which was

1 a complication of being a paraplegic since high school. I
2 broke my back in high school and I had paralyzes since I
3 was age seventeen and then about thirty some years later we
4 had complications and they had to do amputations on both
5 legs at USMC. I'm retired from full practice but I
6 continue to do forensic pathology cases for the coroner
7 part time. I do about twenty-five a year. I also
8 volunteered -- since '93 I volunteered in a clinic where I
9 do help run a diabetes clinic there and I'm on the board.

10 Q. And, Doctor Sorg, have you ever testified in court as
11 an expert regarding your pathology?

12 A. Yes I have probably half a dozen times.

13 Q. Have you been qualified as an expert in court - - -

14 A. Yes I have.

15 Q. - - - as a pathologist?

16 Your Honor, at this time the State moves to have
17 Doctor Sorg qualified as an expert in pathology.

18 THE COURT: Excuse me. Any voir dire?

19 MR. HOOD: None, your Honor.

20 THE COURT: All right I find he is qualified to
21 testify in that area.

22 MS. TANNER: Thank you, your Honor.

23 And, Doctor Sorg, I am going to ask you about a
24 specific autopsy you performed on a lady by the name of
25 Mary Dion. Did you perform that autopsy?

1 A. Yes I did.

2 Q. And can you just give the jury a general idea of what
3 is involved in an autopsy, just what you're doing and what
4 you are looking for?

5 A. Well basically we are looking for cause of death. The
6 other thing that I think is important is that when a person
7 dies all of the medical team that has been associated with
8 the person who died leave the scene. They can't sustain
9 the life and they don't have much of an interest in a
10 person after they die other than the fact that whatever
11 they did practice helped them hopefully to prolong their
12 life. But pathology offers anyone that dies in every
13 county in the country has assisted the coroner related in
14 the investigation of deaths and we offer patients the
15 opportunity to find out why they died. It's an important
16 contribution to society and basically we give the history
17 of the body that is presented to us and go with the history
18 looking for cause of death and related items. So in
19 forensic pathology with Beaufort County the standard that
20 we apply is we do a full toxicology on all of our deaths
21 because it cost several hundred dollars; it involves
22 several hundred deaths that are screened for. The blood
23 and urine are sent to Philadelphia National Medical
24 Services Lab. It's one of only a few large regional labs
25 that have sophisticated looking into analyzed blood and

1 urine for agents that shouldn't be there so this is
2 routinely done by us in Beaufort County and most places so
3 we did do that on this deceased patient.

4 Q. I need to clarify that. Generally you work along side
5 the county coroner but in this case you were actually
6 contacted by the family of Ms. Dion to perform the autopsy?

7 A. Yes I was. I'm not sure how the -- the coroner's get
8 a call on deaths, on all deaths that aren't in a hospital
9 at the time of death. And the coroner who ever answers the
10 phone makes the decision is this something we should look
11 at for cause of death or if it is a patient in a hospital
12 that died after three years of cancer. It's just a routine
13 knowledge. And this one the coroner decided that there was
14 no reason for Beaufort County to bear the expense of the
15 autopsy based on the facts of what happened. And then the
16 family contacted me through information supplied by the
17 coroner's office that I do autopsies and ask if I could do
18 an autopsy for their family member that died.

19 Q. All right let's talk about the findings of your
20 autopsy of Mary Dion. What are some of the significant
21 findings?

22 A. Well basically Mary was forty-two years old and was
23 involved in a motorcycle-truck or vehicular accident. As I
24 understand the sequence the motorcycle was traveling at a
25 reasonable speed and ran into a truck that suddenly

1 appeared in front of her and resulted in a severe
2 collision. The combined speed it was very high and
3 resulted in her immediate death. And that body was
4 transferred to the hospital where I do the autopsies in the
5 morgue there. And the next day I did the autopsy and her
6 findings were basically negative. And when you look an
7 autopsy includes an external exam and an internal exam. It
8 takes about three hours of study on an autopsy table and
9 additional time is taken later. But on her external exam
10 it shows lots of evidence of trauma from sudden and rapid
11 deceleration when the motorcycle and the truck met. She
12 had multiple fractures, multiple lacerations on the outside
13 of her external surface. After we document all of those
14 and measured them and take accurate drawings of that
15 material and then we do what we call a Unilateral or Y
16 shaped incision on the chest and look at the internal
17 organs and of all the organs are examined; the heart and
18 the respiratory system and her lungs, the liver and the
19 spleen. She had multiple signs of blunt force trauma like
20 a lacerated liver. I believe the spleen was lacerated and
21 in addition to that she had lots of fractures. And the
22 most important one the reason she died instantly was in the
23 skull there's about thirty small bones but she had at the
24 base of the skull complete fracture of that base of the
25 skull where the spinal cord goes through and that fracture

1 injured the medulla and the pons. This is the connection
2 between the brain and the spinal cord and that's where your
3 messages are sent to breath and control all of your normal
4 physiological activities. So because of that sudden blunt
5 force trauma she had several fractures but the most
6 important one was at the base of the skull that damaged the
7 spinal cord at the medulla and the pons and caused lack of
8 respiration and sudden death.

9 Q. Doctor, let me ask you if she is traveling forward and
10 the collision is basically a face forward collision how
11 does that then cause a skull fracture near the spine?

12 A. I'm not sure she had the helmet as it wasn't there
13 when I was examining the body but it may have been there
14 but regardless with the helmet it's the sudden
15 deceleration. The body which weighs about a hundred I
16 think it was probably a hundred and forty pounds, she was
17 an average weight individual stops suddenly but their head
18 is sort of on a tether and so it's going to do like a whip
19 lash no matter whether there's a helmet or not because it
20 has to decelerate independently of the shoulders and the
21 main body mass. And that sudden deceleration and she
22 probably that hit probably hit something in the truck that
23 stopped the head as it was being whipped, thrown
24 independently of the body forward and that sudden stoppage
25 resulted in a fracture.

1 Q. All right now do you find any other significant
2 findings with regards to the injuries?

3 A. If you will let me pull the report that you have. I
4 started at eleven o'clock last night I just got home from
5 San Francisco in a medical meeting and I may be a little
6 slow.

7 Q. That is fine. I ask you specifically about any
8 injuries to her thorax area or her heart.

9 A. Okay. The heart was normal size. A normal heart is
10 about 250 to 300 grams. Hers was 295 and it was in -- the
11 heart is covered with the pericardial sac, a very thin
12 lining that traps a little bit of fluid on the heart. It
13 keeps it moist, the outside of the heart. That's called
14 the pericardial sac. That was ruptured from the blunt
15 force trauma. That sac had been ruptured and there was
16 blood between and in amongst that heart and in the
17 pericardial sac.

18 Q. And what does that do to a person?

19 A. Well you could live without your pericardial sac but
20 all it represents is the fact in order to lacerate that sac
21 just reflects a very massive trauma, a massive force, the
22 heart was trying to push through the pericardial sac and
23 actually busted through that. It's not delicate; it's just
24 a thin fibrous sac and it just reflects that it ruptured.

25 Q. Now does that cause a lot of bleeding?

1 A. We have bleeding yes sure. As soon as you rupture
2 anything inside the body you are going to get bleeding.

3 Q. And what do you note about the bleeding inside the
4 body?

5 A. I think most of the bleeding -- the hearts in the
6 middle here it's called the medium sternum and on each side
7 these are where the lungs are and that's the hemi-thorax.
8 There's a right hemi-thorax or half thorax and then the
9 left and most of her blood there was fifteen hundred C C's
10 of blood I believe in her left -- the left lung cavity
11 contained or held the left lung had fifteen hundred C C's
12 of blood pressure wise. Normally you would have none. So
13 we have a laceration of the lung and the sac that covers
14 the pericardial probably because of rib fracture. She
15 fractured some ribs and that caused holes to occur in the
16 lung tissue and she had a fifteen hundred C C's of blood in
17 that.

18 Q. Is 1500 CC's of blood a lot?

19 A. 1500 CC's is a quart; a little more than a quart

20 Q. Is that a lot for a human body?

21 A. Yea the body has 5,000 CC's of blood; five quarts.
22 You can loose a quart, you can even loose two quarts but
23 you can't have it lost immediately. It has to be lost over
24 a time so if you loose 1500 CC's just in that lung that's
25 enough to cause irregular heart rhythms and you die from

1 that sudden lose of blood. So it's another one of the
2 factors that led to her immediate cause of death was the
3 amount of bleeding that was in the hemi-thorax, the left
4 side, from the lacerations to the left lung probably from
5 the fractures.

6 Q. Now based on both of these injuries that you know how
7 would you characterize how quickly she would have passed?

8 A. Well these things you can live for several minutes but
9 you can't live for more than a few micro-seconds. If you
10 have a fracture in the skull so with that fracture at the
11 base of the skull and the immediate injury to the
12 respiratory center which is the medulla you get sudden
13 death within seconds. And the rest of the time she's
14 unconscious and brain dead probably right within a few
15 seconds. But the heart can still pump for a little bit,
16 several minutes. That's part of the reason there was blood
17 that was accumulated in the hemi-thorax. A total time
18 would be from several minutes but she had been brain dead
19 probably immediately.

20 Q. Now, Doctor, you mentioned that this could have
21 happened; this skull fracture would have happened whether
22 or not she was wearing a helmet, she could have had a
23 helmet on and still the whiplash?

24 A. Yea I think so. Yea and simply because of the
25 mechanics of the tethered skull everything has to stop

1 suddenly and things that in the body to stop together but
2 that head is like a free agent it has an extended range to
3 stop and that's why the fracture.

4 Q. Now, Doctor, you said toxicology was done on Ms. Dion
5 as well. Did you review that as part of the findings?

6 A. I do and I did. Urine and blood was sent out and it
7 takes three or four weeks for that to come back. It comes
8 back quicker when they scan looking for large families of
9 chemicals and agents and they also look for drugs,
10 pharmaceutical drugs, drugs that you might be taking as a
11 patient from a doctor. And most important in our society
12 and most societies we schedule to look for alcohol and
13 drugs of abuse and all of those were done and they were all
14 negative except for caffeine and caffeine she had a normal
15 amount, a couple of cups, reflecting a couple of cups of
16 coffee. It's not uncommon where you have coffee during the
17 last six hours or the last hours of your life the caffeine
18 level will be in that blood.

19 Q. Consistent with someone working two jobs in one day?

20 A. Yea. And also it tells you that a through job was
21 done to find that they are using very sophisticated
22 chemical instruments but all the agents of abuse, all the
23 therapeutic drugs that we screen for were negative.

24 Q. You didn't find anything that could have contributed
25 to a death in that area?

1 A. Nothing at all.

2 Q. So in your professional opinion the cause of death of
3 Mary Dion would be what?

4 A. Well its' actually done -- it's also due to sudden
5 brain injury that caused from the fracture at the base of
6 the skull that resulted in her sudden death.

7 Q. And that could not have been prevented by a helmet?
8 It could not have been stopped by EMS being on the scene
9 within a second? My understanding from your testimony is
10 this is immediate and there's nothing that could have
11 prevented it?

12 A. Yea that's my testimony. Helmets are important on a
13 lot of injuries and they do reduce the number of injuries.
14 They protect the head. But in a high speed accident with
15 sudden - with sudden when the body has to stop suddenly
16 it's that whip force thing. Helmets are good for if you
17 fall down off your motorcycle and you bounce along the
18 ground. If you survive that the sudden removal from your
19 vehicle it protects you in those kinds of injuries but a
20 sudden rapid deceleration I don't have any answers for
21 that.

22 Q. So if you are told this is a lady who wears her helmet
23 she still would have died in this collision?

24 A. Yea I think so. To get that fracture at the base of
25 the skull it all shows that the deceleration between the

1 tuberal column that holds the skull and the skull itself
2 there was a discrepancy there and that they had traveled a
3 little further and the top of the cervical vertebra that
4 holds the skull did their job but the skull kept going and
5 then resulting in that fracture at the base of the skull.

6 Q. Thank you, Doctor Sorg. Please answer anything
7 defense counsel may have.

8 CROSS EXAMINATION

9 DOCTOR ROGER SORG BY MR. HOOD:

10 Q. Good morning.

11 A. Good morning.

12 Q. Were you ever contacted by law enforcement about
13 performing this autopsy?

14 A. I don't know if I have notes that describe that
15 sequence. I could have been. I don't know why I don't
16 have that information. If I can go to my -- I have one
17 more note in my briefcase that possibly could answer it. I
18 believe the family for whatever reason the coroner used in
19 evaluating the case and I'm not sure who the coroner was
20 who answered the call, who was on call, determined that
21 this was an obvious death from a motor vehicle accident.
22 They determine in their experience in doing the autopsy but
23 the family was concerned why did this happen and they
24 wanted a complete analysis of her situation so they called
25 me. I did the autopsy for them but I'm not sure that

1 sequence precise time frame I don't know if a doctor all I
2 know is I got a call from a family member.

3 Q. So you were not presented with any facts by any law
4 enforcement officers, is that correct?

5 A. Well somehow I got the information about the motor
6 vehicle accident. I'm not sure. I don't know how I got
7 that information. Normally I will get a two page coroner's
8 report that describes the events when a coroner ask for an
9 autopsy but I didn't get that.

10 Q. Okay. Now you used the term reasonable speed and when
11 you started this by saying that she was traveling a
12 reasonable speed. You don't know what the speed was do
13 you?

14 A. No I don't I have no idea.

15 Q. And where you got that information probably most
16 probably came from the family, isn't that correct?

17 A. I want to just make sure I don't have something that
18 would be of any value. I don't think I have. If I can
19 have a moment I will go to my blue brief case out there.

20 Q. Well wait just a minute. I'll let you do that in a
21 second I just have a couple of questions really.

22 A. Okay.

23 Q. So the items, the blood and the urine that you took,
24 you never turned those over to any law enforcement agent or
25 anybody in law enforcement to send off and maintain a chain

1 of custody and things of that nature in respect to this?

2 A. No but I think as a deputy coroner I think I have the
3 authority to label, to draw the blood samples and label the
4 tubes and send them out for analysis which is what I did
5 and they came back and it is a forensic lab for medical --
6 where we send them to the reference lab they do forensic
7 work and this was all set out on the same legal forensic
8 request form that we use in the coroner's office.

9 Q. Okay. Thank you.

10 A. You're welcome.

11 Q. If you would like you can check.

12 A. I'm not sure I have -- I don't think I have the
13 information in hard copy that would explain the accident
14 that I normally get.

15 Q. Okay. But it's your understanding that law
16 enforcement never requested that you perform this autopsy
17 isn't that correct?

18 A. I don't think so. It's been about a year and a half.
19 No it was requested by the family. The family asked me if
20 I would do it.

21 Q. Thank you very much.

22 A. You're welcome.

23 MS. TANNER: Just briefly.

24 REDIRECT EXAMINATION

25 JAMES SORG BY MS. TANNER:

1 Q. Doctor Sorg, in your opinion Mr. Hood ask you about
2 this being and I know you don't have any idea what the
3 speed was but in your opinion if the body were traveling
4 forty-five miles an hour when it collided is that enough
5 speed to cause the damage that you observed? We're talking
6 about a body hitting a vehicle.

7 A. Yea most certainly. And I don't know the speed of
8 either vehicle but my assumption has always been that they
9 were both at some rate of speed and you have to double --
10 you have to add the speeds together. It's the same as one
11 vehicle going into a brick wall and stopping at the double
12 speed or whatever the total speed of both vehicles is. So
13 if someone at a total of forty-five miles and hour can have
14 these injuries in a sudden deceleration.

15 Q. Thank you, sir, no further questions.

16 MR. HOOD: I have no questions.

17 THE COURT: Thank you, Doctor, we appreciate your time
18 and you can be excused.

19 Could I see counsel over here just one moment?

20 MS. TANNER: Yes, sir.

21 (BENCH CONFERENCE AT 10:10 A. M.. OFF THE RECORD.)

22 THE COURT: All right. Members of the jury panel, I
23 have to put some matters on the record; it won't take but a
24 few minutes but I have to do it outside your presence so I
25 am going to let you go to the jury room just for a couple

1 of minutes.

2 (JURY LEAVING COURTROOM AT 10:00 A. M..)

3 THE COURT: In ruling on the admissibility of the MAIT
4 Team animation I spoke in very general terms but I want to
5 make sure that the record does reflect that in inquiring
6 State versus Counsel and Rule 702 I have affirmatively
7 found that this evidence as offered and I haven't see it
8 yet but is represented to the court will assist the jury in
9 this case that the individuals introducing the evidence are
10 reasonably qualified of course if they are not qualified
11 we'll stop before they get to the animation and that the
12 underlying sciences is reliable. Again I am basing that on
13 what I'm told at this point and if it turns out that that
14 is not the case of course we have to deal with that. But I
15 also find that the probative value outweighs any
16 prejudicial effect pursuant to Rule 403 of the Rules of
17 Evidence. One case that the factors outlined in Counsel,
18 State versus Counsel that's broken down into seven factors
19 by other cases. In that regard they've already found that
20 the information will assist the tryer of fact reserving the
21 qualifications of the expert and the underlying science.
22 Until I have more information on that but based on the
23 representation at this point it would appear that these
24 individuals are qualified and I do find that the underlying
25 science is reliable that is acts of reconstruction I find

1 that the testimony would be relevant and it is more
2 probative than prejudicial. As to being a fair and
3 accurate representation of the evidence of course I can't
4 judge that until I've heard it but again based on the
5 testimony of the other officer and the gathering the very
6 detailed gathering of information which I understand the
7 MAIT Team relied on it appears that that factor would be
8 met. One factor which I'm not really sure what the court
9 means is whether or not the animation is authentic. I
10 guess that means whether or not it is a true representation
11 of what occurred which appears to being it was a fair and
12 accurate representation of the evidence. I'm not real
13 clear what the court is suggesting. The appellate court is
14 suggesting that the trial court use in analyzing the
15 authenticity other than whether or not it is accurate. The
16 presentation is accurate based on the evidence in the
17 record. I just want to make sure I got that on the record.

18 All right let's bring the jury back in.

19 THE BAILIFF: Jurors entering, your Honor.

20 (JURY ENTERING COURTROOM AT 10:15 A. M.)

21 THE COURT: All right call your next witness.

22 MS. TANNER: Thank you, your Honor. The State calls
23 Corporal Russell Scott Ashe.

24 THE CLERK: Raise your right hand.

25 (WHEREUPON: RUSSELL SCOTT

1 ASHE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
2 FOLLOWS:)

3 THE CLERK: Please state your full name and spell your
4 last name.

5 A. Russell Scott Ashe, A-s-h-e.

6 DIRECT EXAMINATION

7 CORPORAL RUSSELL SCOTT ASHE BY MS. TANNER:

8 Q. Good morning, Trooper, where are you employed?

9 A. South Carolina Highway Patrol.

10 Q. And what do you do or what are your duties in the
11 highway patrol?

12 A. I am a member of the Coastal MAIT Team. MAIT is an
13 acronym - excuse me, Multi-Disciplinary Accident
14 Investigation Team.

15 Q. And what - what's your primary concentration on the
16 MAIT Team? Is it different than what Trooper Sprouse would
17 be doing?

18 A. It is. We don't do enforcement work. We are an
19 investigative arm of the highway patrol. We investigate
20 the more serious of collisions and we help the troopers who
21 are on the road with any number of tasks that would be ask
22 of us that is a little above and beyond what may be not
23 only what a regular trooper may be able to do but also what
24 would be too time consuming for him to concentrate on. But
25 mainly for the more severe collisions, fatalities, things

1 like that.

2 Q. And do you have any specialized training or knowledge
3 or skill to do this part of your work?

4 A. Yes, ma'am. I've been trained in at scene
5 investigation, technical investigation and collision
6 reconstruction of three individual courses that you take
7 and numerous on the job training type things. We go to
8 conferences and things of that nature.

9 Q. How long have you been with the highway patrol?

10 A. Almost eighteen years.

11 Q. And is this training, this specialized training that
12 you have is this what we commonly refer to as accident
13 reconstruction?

14 A. Yes, ma'am.

15 Q. And what is that? What do you do? What are you
16 investigating?

17 A. Well each case is unique and what we're ask to do from
18 a trooper or even ask from other agencies is to assist with
19 their investigations as well. On a general type of scale
20 we go if we are able to go to the scene when a collision
21 has occurred. If not we call it deferred call out where
22 the evidence is collected or marked as best as possible,
23 photographs are taken at the time and then we arrive at
24 some point later and we conduct whatever investigation is
25 ask from us at that point in time.

1 Q. Wouldn't you say your investigation is more technical

2 - - -

3 A. Definitely.

4 Q. - - - than the initial investigation?

5 A. Definitely.

6 Q. And Trooper, do you then testify in court regarding
7 your investigation?

8 A. Yes, ma'am.

9 Q. And have you testified in the courts of South
10 Carolina?

11 A. Yes, ma'am.

12 Q. Your Honor, at this time the State would move to have
13 Trooper Ashe qualified as an expert in accident
14 reconstruction.

15 THE COURT: Any voir dire?

16 MR. HOOD: Yes, your Honor.

17 CROSS EXAMINATION

18 RUSSELL SCOTT ASHE BY MR. HOOD:

19 Q. Now back in August of last year 2007 did you visit
20 this scene?

21 A. No, sir.

22 Q. Okay. Did you visit the scene within two days after
23 this incident occurred?

24 A. No, sir.

25 MS. TANNER: Your Honor, I am going to object. This

1 doesn't have anything to do with his qualification. This
2 is his cross examination with regard to his testimony
3 later.

4 MR. HOOD: I agree but we're also talking about where
5 he gets his data from and things of this nature.

6 THE COURT: I think technically the State is right.
7 This sounds more like cross examination but I'm going to
8 let you go on into it if you feel that you are -- if it's
9 being developed for the purposes of determining whether or
10 not he qualifies not whether or not he did his job.

11 MR. HOOD: That is correct.

12 Whose information did you rely upon in doing this
13 investigation?

14 A. The investigating officer primarily.

15 Q. And when was the first time you ever visited the scene
16 in this case?

17 A. I am not sure of the date it was several months ago.
18 When we were first asked from the Solicitor's office for
19 assistance in this is the first time we went to it. That
20 was the first knowledge I had of this case.

21 Q. Okay. So you had no knowledge of the case at all
22 prior to this?

23 A. I didn't personally no, sir.

24 Q. Did you examine the vehicles in this case?

25 A. No, sir.

1 Q. I don't have any further questions.

2 THE COURT: I find he is qualified to testify in the
3 area of accident construction.

4 MS. TANNER: Thank you, sir.

5 THE COURT: Reconstruction.

6 MS. TANNER: All right.

7 So let's start when you received a request from my
8 office to follow up and do what you do on the MAIT Team in
9 this case, is that correct?

10 A. Yes, ma'

11 Q. And once you received a request what do you then do?
12 Who do you contact; get in touch with?

13 A. Outside of the numerous people within the department
14 we contacted the primary investigating officer and we made
15 arrangements to meet down at the collision scene where it
16 happened at. The day we met down there was obviously some
17 time later; roughly a year or so later. And the day
18 actually was just a nice sunny day so we were at least able
19 to see what we could for that particular day but that's who
20 the initial people that we first started contact and we
21 went through the chain of command within the highway patrol
22 for our department as well as Troop 6.

23 Q. Now let me clarify that the request you received was
24 not to redo an investigation is that correct?

25 A. No, ma'am. To my knowledge the request was just to

1 provide an animation based on the data that we had.

2 Q. All right. Okay so in order to produce an animation -
3 what is an animation?

4 A. Basically it's just a computer drawing. Animation
5 sounds -- it is just what it sounds like. Excuse me a
6 computer takes and draws a video essentially. Just like a
7 movie is several stills put together at such a high frame
8 rate that it looks like its moving. It's the same with an
9 animation. It's just that the computer is taking a bunch
10 of stills and putting it together at such a speed that it
11 looks like that the vehicle or in this case the vehicles
12 are actually moving.

13 Q. And that's the sole purpose for your being called into
14 this case?

15 A. That's correct.

16 Q. All right let's go into how you go about preparing one
17 of these animations. What do you do?

18 A. Specifically for this particular collision obviously
19 it was some time later so we had the trooper who was
20 actually at the scene that night there and we had his
21 pictures there as well and we were standing on the scene.
22 That night he was -- he told us and showed us the piece of
23 paper that he had that had his measurements on there. He
24 took several measurements of where the final rest of the
25 vehicle was and the final rest of the body and the final

1 rest of the motorcycle. And all of this was based on
2 basically just taking a nail and sticking it at a place in
3 the ground the asphalt which was easily identifiable. The
4 two roads that meet they meet at an intersection at this
5 point. If you stand on this point you are looking down a
6 straight line of one road way and a straight line of
7 another roadway and those two meet. And what we're talking
8 about is essentially the edge of the pavement or where the
9 pavement stops and the grass starts. In this particular
10 area there is a store that is there on the corner and there
11 is a large area that is paved there as well so basically
12 you are just taking a visual guide and get as close as you
13 can and he put a nail in the ground that night. From that
14 nail we put down a piece of tape or a measuring tape and
15 laid it out in a straight line that went parallel down the
16 roadway. To find those particular areas in other words to
17 find an area right here maybe the left front tire went down
18 that tape and said at so many feet and so many inches. You
19 take another piece of tape and laid it perpendicular to
20 that one and said that this tire is approximately twenty
21 feet three inches west and four feet three inches south.
22 So we have those measurements that day as well as the
23 pictures and we laid the tape out just as he did. He
24 assisted with us as well saying yes this is exactly what I
25 did there is the nail that I put in the ground.

1 Q. So a year later you actually find this nail that he
2 put down on August the 11th?

3 A. Yes, ma'am. And when we found the measurements,
4 excuse me when we laid the measurements down because of the
5 passage of time paint doesn't stay forever many thousands
6 of vehicles have driven over this area most of the paint
7 the vast majority of that paint was gone however if you
8 look at asphalt closely or any type of roadway surface it's
9 not completely flat. It has bumps and ridges and grooves
10 and things like. In the low portions that were not being
11 run over by tires for the majority of the portion there
12 were still hints of that orange paint that was still there
13 and that was present on all four tires so we had something
14 to verify that yes this is a pretty good indication that we
15 have it in the right spot. We used his same measurements;
16 laid it out and sure enough when we go to the end of that
17 spot there's paint still there in that area that matched
18 where he had marked for that evening.

19 Q. So a year later you go back and you're still finding a
20 little bit of orange paint and the nail and that still
21 corroborates your measurements? Still corroborates with
22 the trooper's measurements from that night?

23 A. Yes, ma'am. Now that was for the vehicle in the
24 roadway yes, ma'am.

25 Q. Okay. Now I guess as far as the technical terms used

1 for what you do what is the science behind what you are
2 doing in your accident reconstruction? What are you using?
3 A. As many of you have probably seen surveyors out doing
4 their job on the side of the road before they've got a
5 tripod and they've got a piece of equipment on the top of
6 it and you see some guy looking through a little eye piece
7 and maybe further down the road some other guy has got a
8 stick that he's holding up. I'm sure you've all seen it as
9 you've driven down the roadway. These are surveyors and
10 they're surveying the land out there. It's done world
11 wide. And what we use is called a Feota light and a
12 distance measuring instrument and that is a piece of
13 equipment that sets on top of the tripod. It's more or
14 less a two man operation. Through modern technologies they
15 are making it work to a one man operation but it's very
16 expensive to do it as a one man operation. A two man
17 operation is what we use and what most everybody uses
18 simply because it's more cost effective to do it that way.
19 But simply saying this Feota light measures angles. Once
20 it's set on the tripod we have it perfectly plumed which
21 means it's balanced. We verify this is the spot we want to
22 use. We put a nail directly up underneath it and look
23 through a little scope directly underneath it you put a
24 nail there you reference another mark that is beyond it
25 north of that. We reference that to the exact north put

1 another nail there and we measure that nail. Now that
2 we've established where north is at we can what is called
3 shooting points essentially. We shoot many points
4 throughout the area. What that consist of is the Feota
5 light or the distance measuring instrument that is on there
6 is a little laser that shoots a little laser out from the
7 end of this little scope essentially and it measures the
8 distance. The Feota light -- all of this is one piece mind
9 you -- the Feota light moves left and right and up and down
10 so it measures left and right how far you went to the left
11 and how much you went down or how much you went up. The
12 laser test how far away whatever it is you are shooting at.
13 So now based on my reference measurement or my reference
14 mark on where I am sitting at right now I can tell exactly
15 at what angle a particular person would be or a particular
16 object or whatever and exactly what height and how far it
17 is away what angle away from north and things like that
18 okay. To shoot the points as I stated it's a two man
19 operation and we use one of essentially two methods. One
20 is to use a small cone. We've all seen traffic cones in
21 the road way. Orange cones that are roughly three or four
22 feet high we have to drive around every day. We use small
23 ones that are about this big they are four inches tall. We
24 put a piece of reflective tape at three inches high on this
25 little cone and the other person walks around with a big

1 stack of cones and he puts the cones down in every spot
2 that he wants the person who is shooting at the machine
3 this is where I want you to put or to measure at this
4 particular spot. As in every accident we measure what is
5 relative but we also try to get a few other things to help
6 better identify what's in the area. For instance in this
7 particular area trees that we measured really have no
8 bearing on a collision. It just helps them better identify
9 the area. The building itself may or may not have anything
10 to do with the collision at all but we measure the building
11 as well. The ice box on the outside of the building. We
12 measure all of these things. But the little cones all it
13 does is the laser shoots and bounces back and reflects off
14 the little reflector. Now granted I told you that the
15 reflector was three inches high so what we hold in our hand
16 at the machine is roughly termed a collector is what it is.
17 It's a piece of software. It's a little computer with a
18 piece of software in it that interprets all this data and
19 puts it on a little drawing. It's a little tiny screen
20 about this big and we're telling the machine well we just
21 shot this point here but the point I want to measure is
22 actually three inches below it. So it interrelates that
23 data as well I know that he shot right here but this is the
24 spot he wants is right there. So we tell the machine that
25 it's three inches tall the target is three inches tall.

1 The other method is to have what I was telling you before
2 is a pole with a prism on the top of it. It's about that
3 big around and the person stands and puts the tip of the
4 pole -- it comes to a very sharp point just like a pencil
5 -- puts it right on the spot where he wants and then it has
6 a tripod that he aligns it to make it perfectly plum. Plum
7 is the same thing as level it's just up and down. He makes
8 it with a little bubble makes it perfectly plum and then he
9 gets on the radio and says okay this is the spot that I
10 want you to measure. That we typically do at six and a
11 half feet tall. It can be changed from three feet all the
12 way up to fifteen feet is the largest poles that we have
13 right now. And as I stated the computer interprelates that
14 data saying well I measure something this tall but the
15 point he is measuring is actually six and a half feet below
16 that.

17 Q. This sounds like a lot of math.

18 A. Somewhat but the computer does all the math work for
19 us luckily. It draws out the drawing for us on that screen
20 so that we are able to look at it and say yes this is an
21 accurate representation of what I am looking at. If I
22 shoot a point here and it pops up at something over there
23 something must be wrong.

24 Q. So you would be aware of any mistake that it made if
25 that happened?

1 A. Yes, ma'am.

2 Q. All right now on this scene from Ms. Dion's crash what
3 points were you shooting with your Theona light?

4 A. Feota light.

5 Q. Feota light.

6 A. Mainly just what we -- what we knew was that at the
7 time even though it was a year later we knew the roadway
8 was there, we knew the store was there, both roadways
9 actually. Excuse me. We knew approximately where the
10 vehicles were at based on the measurements that he gave us.
11 And when I say approximate you know we've got the
12 measurements laid out as best as we humanly can and we were
13 at least able to verify that we were in the exact same
14 position to be as much again as humanly possible as we
15 could create. But as I stated we did the building, the
16 little ice box out front, a few trees, utility poles,
17 things like that. As far as the roadway we have to map
18 everything. The computer has no idea what you're mapping
19 because the software it uses is a CAD drawing. CAD is an
20 acronym for computer aided design. Again this is something
21 that is used world wide in almost every industry anything
22 to do with design or production or anything else like that
23 they use a CAD program and that's basically the same that
24 we're using so we're having to actually tell it where the
25 little dotted lines that go down the roadway. We have to

1 map out the beginning and the end of each and every line
2 the beginning and the end of the fog lines on the side of
3 the road. There's even a little bit of extra pavement that
4 was over where I was mapping at and sure enough we mapped
5 around that little bit of extra pavement. Whether or not
6 it had anything to do with the collision we were going to
7 map it because it was part of the scene.

8 Q. Now for purposes of animation why is doing it that way
9 necessary? Why can't you just take the trooper's
10 measurements and type them into a computer and get your
11 animation?

12 A. Well the animation is going -- it's the same thing.
13 The animation you think of it as a CAD machine that is
14 running multiple frames of the same thing. When you look
15 at a drawing that is created on CAD it is a still drawing
16 that looks at it from the top down. Technically you can
17 look at it in a 3D view but for the most part you are
18 looking at it from a top down view in a 2D view. The
19 animation needs that so that it knows widths of roadways
20 and how big the vehicles are and how far the store is from
21 the side of the road and where exactly does the two
22 roadways intersect, where exactly is the stop sign at.
23 Just knowing how far the vehicle is off the side of the
24 road is nowhere near what an animator is going to need to
25 be able to produce that product.

1 Q. Now once you've completed the collection of all this
2 information what do you do with it?

3 A. We take it back to the office and download it into the
4 computer and we use a program called Auto Sketch and you
5 take all the data that is on there and you kind of dress it
6 up a little bit to put a black point to it. The data that
7 we have given if I was to show it to you you would see the
8 side of the road. You would see the lines in the road.
9 You would see a bunch of symbols, a thousand numbers,
10 letters on there that describe -- each point has different
11 data that it collects and it wraps it around each
12 individual point that we have to map so it is very
13 cluttered and we take it and put it in this program and we
14 layer it so that a certain layer is for a reference
15 material and a certain layer is just the roadway. Another
16 certain layer may be the final rest of where the vehicles
17 are at. We even go a far more or less for aesthetic
18 purposes but add a little bit of grass on the side of the
19 road. If there is grass present then we add a little bit
20 of grass there to it. And like I said depending on how
21 close you can zoom in this program because it's a CAD
22 program it allows you to zoom in incredibly close and to
23 zoom out as far as you want to so you can zoom into an
24 object and look at just thirty seconds of an inch on your
25 entire screen if you wanted to.

1 Q. Now as far as the vehicles in the animation do you
2 actually have to look at the vehicle involved in the crash
3 in order to produce your animation?

4 A. I don't have to physically look at it but I need to
5 know what type of vehicle it is.

6 Q. Okay. So if you are told it's a Blazer versus a Honda
7 motorcycle can you take that information without actually
8 seeing those vehicles and use it in your animation?

9 A. Yes, ma'am.

10 Q. And how does that work?

11 A. Published data simple as that. If I know a vehicle is
12 a '92 Chevy Blazer or whatever year that this one is I can
13 go on published data and I can find numerous amounts of
14 statistics on that vehicle and that's obviously provided by
15 the manufacturer. But you can find every measurement that
16 is on that vehicle that you would possible think of from
17 wheel track, wheel base, the maximum width of the vehicle,
18 the center of mass, the height of the center mass, the
19 distance from the axel of center mass, the turn radius.

20 You can find anything you want on this published data if
21 you already know what type of vehicle you are looking at.

22 Q. Now did you actually create the animation for this
23 case?

24 A. I did not.

25 Q. So where did you end in this part of this

1 investigation?

2 A. I ended with the 2D drawing that we did on Auto Sketch
3 simply because the Coastal MAIT Team although we are very
4 vast we cover twelve counties. There are five different
5 MAIT teams within the state and we have people who are
6 specialized in different areas as well. We do not have the
7 animation software within Coastal MAIT so we simply ask
8 someone from another MAIT Team and in this case the PEE DEE
9 MAIT Team which covers up obviously the PEE DEE area of the
10 state up around Florence and Myrtle Beach and that area.
11 He has an expertise at animation. He's done it in the past
12 he has the software to do it so that was our only recourse
13 to provide that. Of course that would be what would happen
14 no matter what the case would be right now at this moment
15 if we got a case that required an animation we would have
16 to ask him to take what we give him and provide the
17 animation based on that data.

18 Q. And who are we talking about?

19 A. Johnny Rosado.

20 Q. And that's who you provided your collected data to?

21 A. Yes, ma'am.

22 Q. Thank you, sir, please answer anything the defense
23 counsel has.

24 CROSS EXAMINATION

25 CORPORAL RUSSELL SCOTT ASHE BY MR. HOOD:

1 Q. Did you help prepare this document?

2 A. Yes, sir.

3 Q. You did? So you are familiar with what's in here is
4 that correct?

5 A. Yes, sir.

6 Q. And your introduction here in this particular document
7 you indicate that Rodney L. Galimore of 70 Horton Avenue 2F
8 in New Rochelle, New York was the driver and owner of Unit
9 Two. You know that for a fact? Who gave you that
10 information?

11 A. I did not write the written report that you are
12 reading from right now. I am aware of the report because I
13 actually packaged that particular one together and I
14 prepared the report. I did not write the report. Any
15 information that we would have got would have been from the
16 primary investigating officer.

17 Q. Okay. So you would have gotten that information from
18 the officer on the scene on that particular night, is that
19 correct?

20 A. Yes, sir.

21 Q. Okay. So you don't know whether he's the owner or
22 not, is that correct?

23 A. I'm not exactly sure. We may be able -- I have it in
24 my notes or whatever what the vin number and the tag pulled
25 up as far as who the owner of a vehicle was based on

1 Department of Motor Vehicle registrations.

2 Q. Okay. And you also have the next sentence in this
3 case in this document Mr. Galimore is a black male and he
4 received injuries as the result of his collision. Where
5 did you get that information?

6 A. Again from the primary investigating officer.

7 Q. Okay. Okay.

8 A. The only thing that would have been different that's
9 probably going to be one of two different things that he
10 received no injuries, that he received injuries or that he
11 received fatal injuries. Those -- one of those three would
12 be written in that sentence that you just read from there.

13 Q. Okay. Thank you. Now you indicated that this was a
14 Chevy Blazer, is that correct?

15 A. I believe so whatever.

16 Q. Okay. So all of your data that you gathered was on a
17 Chevy Blazer, is that correct?

18 A. Whatever we were given on the 2R310 and from the
19 primary investigating officer would have been the data that
20 we pulled.

21 Q. Well what is the Chevy Blazer's wheel drive? Is it
22 four wheel drive, two wheel drive?

23 A. For this particular one I'm not sure but they make
24 both.

25 Q. Okay. Do you know what this one was?

1 A. No, sir. I can look at my notes to tell you but I'm
2 not sure if it's two wheel drive or four wheel drive. I
3 don't recall.

4 Q. Well is that important when you look at the
5 positioning of vehicles after a collision?

6 A. If it's a two wheel drive or a four wheel drive?

7 Q. Yea.

8 A. The only difference would be whenever we pull a
9 program called VIN Assist and Auto Stats that's the program
10 I was telling you that we get all the data from the
11 vehicle. We would pull it as either a two wheel or a four
12 wheel drive portion of it. It just depends on what we're
13 being asked to do again. You know if we're being asked to
14 identify the capabilities of a vehicle or something that
15 may be important. If the wheel base was different and if
16 we were having a problem with trying to figure out
17 something with it that may be important but in this
18 particular case as far as the difference in a two wheel
19 drive and a four wheel drive I'm not sure where it would
20 make a difference. Our data is accurate to that vehicle
21 but I'm not sure if it would have been a four wheel drive
22 if it would have changed any of the data.

23 Q. Well if you are driving a four wheel drive vehicle do
24 the tires act independently of each other or how does it
25 work?

1 A. Are you talking about a turn radius?

2 Q. No I'm talking about the tires themselves.

3 A. Do they turn independent of each other?

4 Q. Yea.

5 A. The front wheels are the only wheels that turn.

6 Q. Front wheel drive once?

7 A. No, sir, no, sir. What I said was the front wheels
8 are the only ones that turn. I believe there's only a very
9 few manufacturers of any automobile that all four wheels
10 turn. Honda is one of them but not a Chevy Blazer. The
11 rear wheels are stationary on an axel they don't turn.

12 Q. All right a Chevy Blazer. Well maybe we're talking
13 about a different accident. What's that little word right
14 there on that document on the side of the vehicle there?

15 A. Jimmy.

16 Q. Okay. It doesn't say Blazer does it?

17 A. A GMC Jimmy and a Chevy Blazer are very identical to
18 each other. They're almost the same vehicle; they're
19 produced by the same company General Motors.

20 Q. Absolutely. But what's the difference between the way
21 their wheels move?

22 A. I'm sure very minimal.

23 Q. Well is one a four wheel drive and one is a two wheel
24 drive or not?

25 A. I'm not sure. However the difference in a two wheel

1 drive and a four wheel drive is the pulling of the vehicle.
2 A two wheel drive means that the vehicle has one
3 transmission on one axel the front or the rear. The four
4 wheel drive has two transmissions one in the front and one
5 in the rear and they may both have two wheel and four wheel
6 drive versions of that vehicle of the Jimmy or a Blazer.
7 They're made by the same manufacturer; they look almost
8 identical except for the badging and maybe the dash.
9 Q. Now you say you went out to the scene in October of
10 this year, is that correct?
11 A. Approximately.
12 Q. Yea. Now were you able to determine based on the
13 measurements that you were given by the officer how long
14 and how many feet that particular vehicle had traveled in
15 Ms. Dion's lane before impact?
16 A. It would have only been whatever was maximum for its
17 final rest back to even in a straight line back to the
18 proper side of the roadway or his side of the roadway.
19 It's my understanding that the vehicle was making a U turn
20 in a counter clock wise fashion to the left in other words
21 from the store parking lot and back around in that left
22 turn radius. But we did not see any marks in the roadway
23 on that day either from the vehicle any type of skid marks
24 or from the motorcycle. We did not map any nor did we see
25 any type of marks in the roadway.

1 Q. Were you looking for them?

2 A. Yes, sir. We shot pictures, videos. We studied that
3 scene pretty hard.

4 Q. Is that right? Well the officer who did the
5 investigation indicated in all of his notes that there were
6 no skid marks, no breaking marks or anything of that
7 nature.

8 A. Yes, sir.

9 Q. Isn't that correct?

10 A. Yes, sir. But it is my job as an investigator to
11 follow up on any investigation as much as I can. But also
12 to look for maybe what somebody else may have missed. If I
13 am going to a wreck scene and I'm looking at wrecked
14 vehicles even if it's an active one I'm looking for things
15 that maybe someone else may have missed sometimes so I am
16 looking a little above and beyond I guess you could say.
17 But even a year later sure I am just going to look to see
18 what's out there to see if maybe there was something that
19 was maybe a gouge mark or something. A year later who
20 knows if that was even going to be the same one. I'm going
21 to be at least looking for it. I certainly don't want to
22 say well the only thing I was going to look at was what he
23 told me and nothing else. I wouldn't be doing my job.

24 Q. Okay. The vehicles involved in this particular
25 accident did you examine them?

1 A. No, sir.

2 Q. Why not?

3 A. We were asked to do like I said the animation on this
4 and I do not know the location of those vehicles a year
5 later. And regardless a year later it is unknown as to how
6 many people have already had their hands on that vehicle to
7 do whatever to it to add evidence or to take evidence away.
8 That vehicle a year later would not be a fair
9 representation of what it would have been that evening the
10 night of the collision.

11 Q. Well isn't that evidence in a case of this nature?

12 A. Its evidence but we have no resources to hold every
13 vehicle involved in every collision no matter the
14 magnitude. I'm sure if it was used as a weapon against
15 somebody you know it may be what we classified as different
16 evidence but we do the best we can with the resources we
17 have and we catalog every bit of information that we can.
18 As I stated we arrived a year later so we were not a part
19 of it for that evening's investigation so we have no
20 control over that vehicle. The MAIT Team has no control
21 over what happened to the vehicle prior to us being
22 involved.

23 Q. Well isn't that the primary responsibility of the
24 investigating officer?

25 A. As far as what?

1 Q. The control of that vehicle? Those vehicles?

2 A. Well he cataloged everything he needed from that that
3 I know of. Again I don't know what was needed at the time
4 of the collision or even all the evidence that he has.
5 However as I stated we don't have the resources to hold
6 every vehicle for every single collision that we have. We
7 catalog what we can with photographs, video if possible, do
8 a vehicle examination look at it. It depends on who's
9 involved. Is it the primary investigating officer who's
10 doing this, is it the MAIT Team that's doing this or even
11 the sheriff's office for who's doing this. To my knowledge
12 I cannot tell you of a single department anywhere that
13 holds all the vehicles for every collision even fatal
14 collisions for the entire process all the way through
15 criminal trials and even a civil trial. I cannot think of
16 the first department that has a lot big enough to do that.

17 Q. Well the MAIT Team has mechanics and engineers and
18 people like that on its team isn't that correct?

19 A. Yes, sir.

20 Q. Okay. And this particular report that you've issued
21 here there is no engineer listed; there is no mechanical
22 specialist listed. Why not?

23 A. Because we didn't use any.

24 Q. Okay. And those are the people who examine the
25 particular vehicles and help you in determining the rate of

1 speed and things of that nature, the amount of force that
2 is necessary to break, tear, sheer and things of this
3 nature parts of an automobile, isn't that correct?

4 A. We all do that. However a mechanical specialist is
5 someone who is more or less a mechanic. He has been SA
6 certified as a mechanic so he's going to look at a vehicle
7 and be able to tell us vehicular problems. Regardless we
8 didn't use one because even in any testimony that he would
9 have been able to provide would be suspect saying that it
10 was a year later but he was able to look at the vehicle.
11 No mater what he would have found on that vehicle it would
12 have been suspect by you or someone else.

13 Q. That's true.

14 A. That's true.

15 Q. I sort of agree with you. You know on this particular
16 incident were you're on duty back in August of last year
17 2007?

18 A. I would have no idea. We work on a call out status as
19 well.

20 Q. But were you part of the MAIT Team in August of 2007?

21 A. I was just coming on yes, sir.

22 Q. Okay. When did you come on the team?

23 A. Right around there.

24 Q. Right around?

25 A. Somewhere right around there yes, sir.

1 Q. Now you indicated that you are all basically trained
2 to estimate speed based upon damage to vehicles and things
3 of this nature, is that correct?

4 A. Some more than others but of course it does take a
5 little bit of experience to do that as well and this is not
6 my first accident.

7 Q. Right. So where did you get your speed for your
8 animation?

9 A. Any speeds that were calculating were based basically
10 for instance the motorcycle. The motorcycle was brought in
11 at the speed limit. There is absolutely nothing to
12 indicate that the motorcycle was going anything above the
13 speed limit. Where the final rest of the vehicle was the
14 car and where final rest of the motor cycle was is very
15 consistent with a vehicle that is traveling at the speed
16 limit or even less. There is nothing to indicate that
17 obviously the vehicle was driving any faster than the speed
18 limit obviously especially with him doing a left turn like
19 that. But the motor cycle was basically brought in at the
20 speed limit. We have no way of determining its exact
21 speed. There's no marks' leading up to that. Even in
22 looking at just crushed damage alone is not enough to say
23 well this vehicle was doing 56.32 miles an hour as a for
24 instance. There is nothing on crush that can give us that
25 type of accuracy. The most we can ever get either using

1 crush or even using speed -- skid marks is the minimum
2 speed. What's the minimum speed this vehicle could have
3 possibly been doing? And the minimum speed this vehicle
4 possibly could have been doing the motorcycle could be very
5 low just a few miles an hour still be able to glance off
6 the vehicle over turn and come to rest with his. Let's
7 face it is a two wheel vehicle. It doesn't have the same
8 stability as a four wheel vehicle. Now the Jimmy itself
9 what we use for that is just basically what is its minimum
10 turn ratio? What's the published data that says what is
11 the minimum amount that it can turn if you turn the wheel
12 all the way to the left and you held it hard over what is
13 the radius that it can possibly turn? And that amount we
14 can say well for this then on an average asphalt roadway
15 with a coefficient friction of about .7 that's published
16 data that's just average. The roadway that was not brand
17 new, it wasn't wet, it wasn't highly sloped, and it wasn't
18 really slick from it being -- we've all seen those really
19 slick roads where they've never been paved in sixty years
20 it seems like. It was an average roadway so we used the
21 coefficient friction of .7 come up with all of that you can
22 find what the speed of the vehicle would be in that turn.
23 What's the most that it can do given that coefficient of
24 friction and if I recall it was somewhere right around 18
25 miles an hour or so. It's not very fast. That's about as

1 much as that vehicle could do in a left hand turn if you
2 held it hard over and it would able to safely make that
3 turn without skidding or spinning out or anything else like
4 that's about as fast as it can go. And as I stated for the
5 motorcycle we have no evidence to show that it would be
6 going any faster than the speed limit. Certainly its final
7 rest as far as where impact was at would certainly suggest
8 the vehicle was going at the speed limit or even less.

9 Q. Well you state all of that. Tell me how much did the
10 motorcycle weigh?

11 A. I have to get my notes out to tell you. Like I said
12 we're just using basic published data is all we're using on
13 that. No more than say six, eight hundred pounds for a
14 small motorcycle like that.

15 Q. But you're telling me that there's no difference
16 between a Jimmy and its undercarriage and its tire
17 whatever. There's no difference between a Jimmy and a
18 Blazer is that correct?

19 A. They're roughly the same vehicle. Roughly. Now I'm
20 sure that a four wheel drive one may be a little higher off
21 the ground. The wheel track may be a few inches one way or
22 another. You know it's going to be extremely close. The
23 same thing like with Ford and Mercury. They both produce
24 vehicles. They both - Ford produced a Thunderbird; Mercury
25 produced a Cougar. They're both the same company - Ford.

1 GM does the same thing. There are many vehicles they badge
2 differently for what reason I don't know but to the
3 manufacturer their going to use most of the same parts.

4 Q. So there are suspensions and there are axels and all
5 are identical?

6 A. Not identical. I didn't say they were identical. I'm
7 saying they are probably going to use the same parts. They
8 may use identical parts for all that too. Suspensions may
9 be the exact same one but the vehicles are so close. As I
10 stated the only difference that you can see sometimes is in
11 the badging maybe in the dash, the interior. GM when they
12 made the pickup truck they may make a GMC that's a little
13 more sturdy; maybe a little bit more hearty or something
14 but to be able to use more in a working environment. It
15 may be just what they're telling the public. I don't know.

16 Q. Now let me ask you a question seeing how you were part
17 of this animation is that correct?

18 A. I was part of the -- I drew the 2D drawing not the
19 animation. I saw the final product once it was completed.

20 Q. Okay. Now the vehicle driven by Mr. Galimore upon
21 impact with that motorcycle did it move any distance
22 towards the convenience store?

23 A. There's nothing to indicate that. Certainly not in
24 the pictures that were provided to us. Nothing in the
25 roadway that day. There's nothing that would have

1 indicated that as well as just looking at the damaged
2 profile of the vehicle itself. There's nothing to indicate
3 that there would have been enough force of that vehicle to
4 shove that vehicle over that far for it to final rest. As
5 well there would have been a lot of debris on the other
6 side of the roadway if what you're suggesting is that he
7 was in the correct lane and he was forced over there from
8 the motorcycle. There would have been a lot of debris from
9 both vehicles that would been in the other side of the
10 roadway at maybe an area where that first impact was and
11 the vehicle was pushed off. I mean we've all seen
12 collisions. You can just picture in your mind if you have
13 a little motorcycle hitting it there's going to be debris
14 left right there and some debris thrown off too.

15 Q. Well so what you're saying is that this is the
16 absolute position of the vehicle at the time of the impact
17 is that correct?

18 A. No, sir. I'm saying there's no suggestion that the
19 vehicle was too far from where this is at. And when I say
20 too far I mean very close tolerances. Not thirty feet.
21 I'm saying very close tolerances where this vehicle was at
22 was very close to where final impact -- excuse me, where
23 impact was.

24 Q. But what you're saying then is the vehicle actually
25 did move as a result of the impact?

1 A. I didn't say it did; I said it may have. It could
2 have stopped exactly where it was. That is obviously a
3 vehicle that is much heavier and has more kinetic energy
4 than a motorcycle does. There's nothing to suggest that it
5 was very far whatsoever from where it was marked there at
6 the scene, excuse me, from impact to final rest. As well
7 there may not have been anything for him to mark either. A
8 motorcycle striking a large vehicle like that there may not
9 be any gouges in the roadway or on the surface until the
10 motorcycle over turns. There's just not enough force there
11 to drive that many parts down in the ground. Two vehicles
12 hitting head on sometimes the parts will drive down in the
13 ground and we're able to see gouge marks in the roadway and
14 a spot that we can estimate as the exact point of impact.

15 Q. I show you another little picture here. What are all
16 of these little dots running that way in this tire
17 apparently comes out here? Do you see this moving there?

18 THE COURT: I need you to voice up so the jury can
19 hear you.

20 A. I'm not sure about any of these notes or even a mark
21 but as with any collision there are marks in the roadway
22 that were there prior to the collision happening. That's
23 actually quite common. Sometimes you arrive and there may
24 be a set of skid marks that are there that have happened
25 ten minutes prior; ten months prior depending on what they

1 are so it's our job to try to determine which ones are for
2 this particular collision but I wasn't there and I don't
3 know what those marks were and I don't remember seeing them
4 when we were there.

5 Q. Now if you were doing this investigation the night of
6 this event and you had track marks indicating the perhaps
7 trail of the vehicle from where it started to where it came
8 to rest would you want to know how long in other words in
9 feet these particular marks, these tire tracks were?

10 A. What kind of tire marks are we talking about here?
11 Are we talking about skid marks? A skid mark is different
12 than a tire rolling across a roadway.

13 Q. No, no, no, we're talking about tire marks.

14 A. On what surface?

15 Q. We're talking about tire marks on the surface of the
16 road like that.

17 A. Okay I see what you're saying. What I want to know if
18 I can correlate that these marks go to that vehicle then I
19 would probably want to know at least how long but because
20 they're not skid marks I really can't tell any type of
21 speed based on those marks. That would be basically just
22 to show travel path. But I would not be able to use those
23 marks to determine any type of speed only because you don't
24 know if the vehicle is accelerating, decelerating, normal
25 braking without skidding, there's no way for me to

1 determine speed on that. I would have to be able to
2 determine that those were the marks that led up to that
3 vehicle and they do belong to that vehicle.

4 Q. Well you did all this turning radius and all of this
5 kind of stuff and you said that the maximum speed that you
6 could do was about 18, isn't that correct?

7 A. Yes, sir.

8 Q. So it would be relevant to giving you the information
9 as to how long this particular vehicle in terms of seconds
10 was in the actual lane heading towards the other side of
11 the road, isn't that correct?

12 A. Your question is would I find the marks useful?

13 Q. Yes.

14 A. Well yes, sir, I find any evidence useful.

15 Q. Okay. So it would give you an idea of how many feet
16 this vehicle was in the oncoming lane prior to impact?

17 A. It would tell me feet it would not tell me seconds.

18 Q. Okay but it would tell you feet?

19 A. It would tell me feet but yes, sir, but seconds could
20 be -- the time could be from seconds to hours. The vehicle
21 could theoretically if we're going to talk theoretics
22 theoretically it can stop in the middle of the roadway and
23 set there for two or three days and turn again and the mark
24 may look the same.

25 Q. Right. So in other words this vehicle could have been

1 stopped, is that correct?

2 A. There's nothing -- there's nothing to indicate the
3 vehicle was stopped. It could have been stopped it could
4 have been moving but I would not be able to tell simply by
5 looking at the photographs if the vehicle stopped in the
6 roadway on the side of the road or wherever. Again if
7 there are not skid marks and I can't tell what it's doing
8 in time I can only tell you what it's doing in space.

9 Q. But this vehicle that was involved in this accident
10 was clearly all the way into the oncoming lane of traffic
11 headed in the direction to the right side of the road is
12 that correct?

13 A. The final rest of this vehicle is pointing toward that
14 little side road and it's in the wrong lane of travel. Its
15 about forty-five degree -- I don't know what the angle is
16 exactly but it's headed toward that direction. However
17 it's like I said on the wrong side of the roadway not
18 headed toward its correct side that would be the other
19 direction that would be towards the right it's headed
20 toward the left.

21 Q. But that's depending upon the movement of the vehicle
22 isn't that correct upon impact?

23 A. That would depend -- well final rest is all we have
24 and if it's been moved from the impact area to final rest
25 then that would be -- beyond my knowledge there's nothing

1 like I said in the pictures or what we looked at that day
2 to indicate that that vehicle moved at all.

3 Q. Okay. Thank you.

4 THE COURT: Redirect?

5 MS. TANNER: Nothing further, your Honor.

6 THE COURT: All right you can step down and be
7 excused. We appreciate your time.

8 We are going to take a break.

9 MS. TANNER: Yes, sir.

10 THE COURT: Members of the jury, we are going to take
11 a break. You all got to go out for a few minutes we did
12 not so we will take a break at this time. We will be about
13 a ten minute break.

14 (NOTE: JURY LEAVING COURTROOM AT 11:10 A. M..)

15 THE COURT: We'll be at ease for about ten minutes.

16 (NOTE: SHORT RECESS AT 11:10 A. M..)

17 (NOTE: BACK ON THE RECORD AT 11:25 A. M..)

18 THE COURT: The State ready?

19 MS. TANNER: The State's ready, your Honor.

20 THE COURT: Defense?

21 MR. HOOD: Ready, your Honor.

22 THE COURT: All right bring in the jury.

23 THE BAILIFF: Yes, sir.

24 THE COURT: Ms. Tanner, how many more witnesses?

25 MS. TANNER: Just one more.

1 THE BAILIFF: Jurors are entering, your Honor.

2 THE COURT: Thank you.

3 (JURY ENTERING THE COURTROOM AT 11:26 A. M.)

4 THE BAILIFF: The jury is seated, your Honor.

5 THE COURT: All right. Call your next witness.

6 MS. TANNER: Thank you, your Honor. The State calls
7 Corporal Johnny Rosado.

8 A. Your Honor.

9 THE COURT: Right there and let him administer the
10 oath.

11 THE CLERK: Raise your right hand.

12 (WHEREUPON: JOHNNY ROSADO,
13 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 THE CLERK: Please be seated. Please state your full
15 name and spell your last name.

16 A. My name is Johnny Rosado. Rosado R-o-s-a-d-o.

17 DIRECT EXAMINATION

18 CORPORAL JOHNNY ROSANO BY MS. TANNER:

19 Q. Good afternoon. Where are you employed?

20 A. I'm employed with the South Carolina Highway Patrol.

21 Q. And what are your duties and functions with the
22 highway patrol?

23 A. Currently I am assigned to the MAIT Team, Pee Dee
24 Region.

25 Q. And what do you do with the MAIT Team?

1 A. I do collision reconstruction.

2 Q. And what type of training do you have involving that
3 type of work?

4 A. I have training in accident investigation, collision
5 scene investigation, pedestrian, bicycle investigation,
6 motorcycle, commercial vehicle, interview, interrogation,
7 animation and the like.

8 Q. And how long have you been working with the highway
9 patrol?

10 A. I have nineteen years in February.

11 Q. And have you ever testified to your involvement in
12 investigations?

13 A. Yes.

14 Q. Your Honor, at this time the State moves to have
15 Corporal Rosado as an expert in accident reconstruction and
16 also preparation for animation.

17 THE COURT: Any voir dire?

18 CROSS EXAMINATION

19 CORPORAL JOHNNY ROSADO BY MR. HOOD:

20 Q. How many accident reconstructions have you done?

21 A. I'VE been with the MAIT Team approximately a little
22 more than six years. First with the team in Columbia in
23 the Midlands and then the Pee Dee and we worked this year
24 with the Pee Dee a hundred and twenty-three cases which I
25 have been in some facet involved with. So to date this

1 year I would say a hundred and twenty-three collision
2 reconstructions.

3 Q. And did you do animations for all of those
4 reconstructions?

5 A. No we don't do an animation for every reconstruction.
6 I've done not including this animation five.

7 Q. I have nothing, your Honor.

8 THE COURT: I find he's qualified.

9 MS. TANNER: Thank you, your Honor.

10 Corporal Rosado, for this case you were called in to
11 prepare an animation, is that correct?

12 A. Yes, ma'am.

13 Q. And what is your part in this process?

14 A. Okay as the animator of the collision for any of the
15 teams, my own team, including my own team, usually I'm not
16 involved in the actual reconstruction for those cases
17 unless it's determined after we work the scene the
18 animation is needed. In this case as in other cases the
19 primary team who owns the case so to speak will do their
20 reconstruction or make their findings and they will provide
21 them to the animator who will provide a visual
22 representation of what they're reporting.

23 Q. And in this case who did you receive that information
24 from?

25 A. I spoke with Sergeant Leigh on the Coastal MAIT and

1 with Lance Corporal Ashe.

2 Q. And are they ones who actually collected the data?

3 A. To the best of my knowledge yes they were both
4 involved in that.

5 Q. And then you received the data that had already been
6 collected is that right?

7 A. Right.

8 Q. And then what did you then do with that data?

9 A. Well we take that data and using the program that the
10 highway patrol uses is called Vista FX and take that
11 information and create based on that report a three
12 dimensional representation of how the collision would have
13 occurred.

14 Q. And for members of the jury who have never seen one of
15 these before what does it look like and what does it
16 actually depict?

17 A. Again it's very -- to put it very simply if you have a
18 reconstruction and lets say in the course of that
19 reconstruction a diagram is prepared and types of vehicles
20 are determined based on what is actually out there the
21 positions of the vehicles are determined, the speeds of the
22 vehicles are determined pre and post impact. What is done
23 in the animation is that a representation of the roadway
24 and any characteristics that were included in the diagram
25 are then represented in the animation. The vehicles are

1 represented and they are to scale and they are according to
2 the stats or the specification of the actual vehicles
3 involved. And while in some cases they won't look exactly
4 like the vehicle they are represented by length, width and
5 height so they are dimensionally correct. And then the
6 animator assigns say once we flush out the roadway and use
7 land marks or what have you and then put a vehicle into the
8 animation. You can assign a pre and post impact path for
9 that vehicle so that you can move that vehicle in the
10 animation and you would assign a speed before impact and
11 after impact for that so you can have the vehicle move to
12 the impact and then moved after the impact. Now in an
13 animation of two vehicles what I do is I place -- I start
14 at the impact with both vehicles and then I move first to
15 their pre-impact path and then I move them post-impact to
16 their positions at final rest and this would be according
17 to the report where they ended up and according to any
18 positions that were mapped for these vehicles. Then I
19 assign the speeds that were already determined to these
20 segments of the vehicles movement so that when the
21 animation is run and in this particular program for
22 instance if you have the different speeds of two vehicles
23 the program will sync the collision so that they meet at
24 impact at their appointed time and then they move out to
25 the post-impact positions.

1 Q. And I guess in layman's terms an animation would be a
2 picture or a visual representation of the investigators
3 investigation of a crime scene?

4 A. Right.

5 Q. So you would get to see it?

6 A. Yes you just get to see it as close as we can get it
7 to being there.

8 Q. And you did prepare one in this case is that correct?

9 A. Yes I did.

10 Q. And this morning you and I have reviewed your
11 creation?

12 A. That is correct.

13 Q. And we have set it up on the computer screen this
14 morning?

15 A. Right.

16 Q. Your Honor, at this time the State would like to
17 publish that to the jury and have the officer describe - -

18 THE COURT: I'm going to step down where I can see it.

19 MS. TANNER: All right I'll get the computer started.

20 THE BAILIFF: Right here, your Honor.

21 MS. TANNER: Maybe you can help me with this I can't
22 get it started.

23 (VISUAL ANIMATION PUBLISHED TO THE JURY.)

24 BY MS. TANNER:

25 Q. Describe what this shows.

1 A. This is the outline of the roadway and this is the
2 area of the building or the small store that was there. It
3 shows both vehicles traveling down the roadway. The Jimmy
4 enters this parking lot and it takes a turn and then its
5 impacted by the motorcycle.

6 q. And this is based on the calculations you received
7 from the crime scene?

8 A. It's based on the information I received from the
9 investigating trooper's report the Coastal MAIT's report.
10 And just clarifying in speaking with Sergeant Leigh and
11 Lance Corporal Ashe.

12 Q. So this is a photographic illustration of their
13 investigation?

14 A. Yes.

15 Q. Thank you, trooper, you can retake your seat.

16 (NOTE: THE COURT AND THE WITNESS RETURNED TO THE
17 BENCH AND THE WITNESS STAND.)

18 MS. TANNER: Thank you, sir, please answer anything
19 the defense counsel has.

20 CROSS EXAMINATION

21 CORPORAL JOHNNY ROSADO BY MR. HOOD:

22 Q. Now in coming up with this animation you were given
23 data by whom again?

24 A. Sergeant Leigh and Lance Corporal Ashe, Coastal MAIT.

25 Q. And were either one of them the investigating officer

1 of this incident back in August of last year?

2 A. I do not know.

3 Q. Do you know where they got their data from?

4 A. In reference to what they provided me?

5 Q. Yes.

6 A. I would have to say they got that through their
7 investigation. The normal recourse would have been that
8 they would have received information from the troop what
9 ever was available. They would have returned to the scene
10 at some point to complete the forensic mapping to come up
11 with their findings and reviewed any information that still
12 existed that was available to them.

13 Q. Well on your animation there how many seconds would
14 you say the Jimmy was in in making its turn in the oncoming
15 traffic lane before impact?

16 A. How many seconds was the Jimmy in the oncoming lane
17 before the impact?

18 Q. Yea.

19 A. I wouldn't care to hazard a guess. It could be
20 checked. You can look at the counter on the animation.

21 Q. And where did you get the speeds from on these
22 vehicles?

23 A. Those were provided by Coastal MAIT.

24 Q. Coastal MAIT?

25 A. When I say Sergeant Leigh and Lance Corporal Ashe and

1 I say Coastal MAIT I'm saying the same thing because they
2 are members of the Coastal MAIT.

3 Q. Did you examine either one of these vehicles?

4 A. No. As I mentioned before as the animator I would not
5 reconstruct the collision. I would simply animate it. I
6 did see photos of the vehicles.

7 Q. I don't have nay other questions.

8 MS. TANNER: Nothing further, your Honor.

9 THE COURT: All right you can step down. Thank you.

10 MR. ROSADO: Thank you.

11 THE COURT: You can be excused if you wish.

12 MS. TANNER: Your Honor, with that the State rest.

13 THE COURT: Members of the jury panel, the State has
14 rested; that is the State has presented its evidence and
15 under circumstances it may have a right to present evidence
16 at a later time but you heard their case. I'm going to let
17 you go to the jury room we have to take up some matters
18 outside of your presence and also while we're out I'll get
19 some idea of the logistics for lunch and those sort of
20 things. I am going to let you got out. It won't be a long
21 break but we do have some matters to take up outside of
22 your presence.

23 (JURY LEAVING COURTROOM AT 11:50 A. M.)

24 THE COURT: All right anything from the State?

25 MS. TANNER: Nothing further from the State.

1 THE COURT: Mr. Hood.

2 MR. HOOD: Your Honor, at this point in time we make a
3 motion for a directed verdict based on the State's evidence
4 that the State presented. It is the defense's intention
5 that we would like for you to inquire - - -

6 THE COURT: I will.

7 MR. HOOD: - - - of my client but we would make a
8 motion for a directed verdict on the charges of child
9 endangerment. The evidence as to felony DUI there is an
10 element of that particular offense which is missing and
11 that is in violation of the law or omission of the law
12 which was the approximate cause of the accident in this
13 case.

14 THE COURT: Well based on the evidence I deny that
15 motion for a directed verdict. I feel there is sufficient
16 direct evidence that this incident occurred in a fashion
17 from which a jury could conclude the findings of fact and
18 there is evidence from which this accident occurred in Ms.
19 Dion's lane of travel. And at the time Mr. Galimore was
20 under suspension; had children in the car while occupying
21 in an improper lane of travel and that he was at that time
22 under the influence of intoxicants so I deny your motion
23 for directed verdict.

24 MR. HOOD: Thank you.

25 THE COURT: Mr. Galimore, can you hear me?

1 MR. GALIMORE: Yes, sir.

2 THE COURT: We have reached the point in the trial
3 where you have a right to present a defense if you wish but
4 you do not have to present a defense because you are
5 presumed innocent of these charges. You can call witnesses
6 and they can testify and you can present whatever defense
7 you wish but you do not have to. You do not have to prove
8 your innocence. The State can prove your guilt beyond a
9 reasonable doubt. Again you are presumed innocent. You
10 have a right to testify but you also have a right to remain
11 silent.

12 Does he have any impeachable offenses?

13 MS. TANNER: He has a possession of a stolen property
14 from New York.

15 THE COURT: What year?

16 MS. TANNER: It was committed in 1988, resisting
17 arrest in 1990, bail jumping 3rd Degree in 1990, attempt to
18 damage property '91, possession of burglary tools, he was
19 committed in '91. These are all New York offenses. An
20 unauthorized use of a vehicle 2001, reckless endangerment
21 2nd Degree; aggravated unlicensed operator of a motor
22 vehicle 2nd and that's in 2003.

23 THE COURT: All right let's maybe go over them a
24 little slower. Under Rule 609 B do you have any
25 suggestions of those that are over ten years, those

1 convictions that are over ten years or even some that would
2 be admissible even if the court does allow it's 609 A 1
3 basically a ten year from the time of confinement either
4 confinement or whatever we probably don't even have that
5 information. I know '88 is twenty years ago.

6 MS. TANNER: Yes, sir.

7 THE COURT: What do you have that is within the last
8 ten years?

9 MS. TANNER: Going backward 2003 the aggravated
10 unlicensed operation of a motor vehicle 2nd offense.

11 THE COURT: All right. What do I see motor vehicle?

12 MS. TANNER: And reckless endangerment those two
13 charges are in 2003 and then in 2001 looks like there is a
14 grand larceny for auto over one hundred dollars or a
15 thousand dollars and an unauthorized use of a vehicle
16 without the owner's consent that's coming out of New York
17 in 2001. The last one within ten years is a 1998 bail
18 jumping 3rd Degree also coming out of New Rochelle, New
19 York.

20 THE COURT: Do we know in the first one in 2003 was
21 that New York or South Carolina?

22 MS. TANNER: It was New York yes, sir.

23 THE COURT: It was. Do you know what the penalties
24 were for them because that does not appear at the bottom to
25 the perpetrude or credibility?

1 MS. TANNER: It looks like on the aggravated
2 unlicensed authorization the sentence was time served with
3 a fine of five hundred dollars pending and a probation fro
4 three years. He was sentenced on August the 4th of 2003 and
5 I believe that the reckless endangerment charge went with
6 that one. It looks like they have the same Helentown Court
7 or Mount Vernon City Court. Actually these might be
8 separate charges. I don't see the sentence on the reckless
9 endangerment.

10 THE COURT: What about the use of a vehicle?

11 MS. TANNER: The sentence date was January 21, 2001.
12 Looks like probation it says P-r-o-b. That's all I can
13 get. And it looks like discharge was January 23, '06 so it
14 looks like a five year probationary sentence on that.

15 THE COURT: That would be confinement. Well grand
16 larceny would be something that would reflect on somebody's
17 truthfulness.

18 MS. TANNER: Yes, sir.

19 THE COURT: I want to hear from Mr. Hood but I don't
20 believe the others could be used for impeachment purposes
21 but I believe the grand larceny could.

22 MS. TANNER: Well your Honor, I could agree with you
23 the only offense that he comes close to is the grand
24 larceny. Again we're dealing with New York and there's no
25 actual -- I haven't been provided with this data.

1 THE COURT: Well the larceny is stealing.

2 MR. HOOD: Absolutely.

3 THE COURT: I think in any jurisdiction that I ever
4 heard of larceny would be defined as stealing.

5 MR. HOOD: That is correct.

6 THE COURT: And I find that the probative value of
7 admitting this evidence outweighs any prejudicial effect to
8 the accused.

9 So, Mr. Galimore, after all of that if you take the
10 stand and exercise your right to testify they can ask you
11 about this prior conviction of grand larceny. They can ask
12 you about it only regarding your credibility. That is I
13 would tell the jury they cannot use any prior conviction as
14 evidence that you committed these offenses. I will tell
15 them that they can only use that prior offense to judge
16 your credibility, your believability. If you exercise
17 your right to remain silent I will tell the jury that
18 that's what you're doing that you're exercising your
19 constitutional right to remain silent that they cannot use
20 that against you in any way whatsoever; that you are
21 presumed innocent the State has the burden of proving your
22 guilt beyond a reasonable doubt. I can tell them that they
23 cannot discuss it in the jury room you exercise of that
24 right. I will tell them they in fact cannot even factor
25 that into their own consideration if that issue is before

1 them whether or not you are guilty of any of these
2 offenses. Do you understand that?

3 MR. GALIMORE: Yes, sir.

4 THE COURT: Do you have any questions about it?

5 MR. GALIMORE: No, sir.

6 THE COURT: This is the time I say that -- you will
7 have a little time - -

8 Mr. Hood, have you explained that to him?

9 MR. HOOD: I have your Honor.

10 THE COURT: Do you believe he understands that?

11 MR. HOOD: I do, your Honor.

12 THE COURT: And it's your right, Mr. Galimore, it's
13 not your attorneys. Of course it's not the State's nor
14 mine. You can get advice from your attorney, your family,
15 your friends as to whether to testify or not. Have you
16 made a decision as to whether you choose to testify or are
17 you going to exercise your right to remain silent?

18 MR. GALIMORE: I think I'm going to just exercise my
19 right.

20 THE COURT: You are going to remain silent?

21 MR. GALIMORE: Yes, sir.

22 THE COURT: All right, thank you. Now that leads me
23 to the next question. Mr. Hood, I'll take time this
24 morning; do you plan to present any witnesses?

25 MR. HOOD: We do not, your Honor.

1 THE COURT: Okay. All right well its twelve o'clock
2 why don't we break till one. Give them an hour; give you
3 time to prepare whatever you need to. You can look at my
4 proposed charge. I haven't been handed any charges. I
5 don't believe there are any lesser includes in any of these
6 but my charge is kind of quick. It's got my handwriting.
7 I think you can tell from it. I ask both of you to look at
8 it so you will know what I am going to charge and you can
9 place any objections on the record. Why don't we go ahead
10 and let the jury go? I'll say 1:15; why don't we do that?
11 That's an hour and fifteen minutes.

12 MS. TANNER: Also, your Honor, I would like to put on
13 the record that the defense counsel received a copy of Mr.
14 Galimore's rap sheet and driving record and all materials
15 contained in the State's file on January 15th, 2008. I have
16 discovery letters that I can make a copy of and make it a
17 court's exhibit if that's necessary.

18 MR. HOOD: That's not necessary, your Honor. The only
19 issue I had was as far as any description of what this
20 larceny was from New York. That's the only issue. I
21 didn't know whether I had the same thing she had. But I've
22 got it.

23 THE COURT: I'm going to call the jury back in and
24 we'll break till 1:15.

25 MR. HOOD: Judge, do you want me to go ahead and rest

1 now on the record?

2 THE COURT: Why don't you go ahead and rest in front
3 of the jury when they come back and that way I will tell
4 them that the next part of the procedure will be closing
5 arguments and my charge and we'll just do that. They can
6 expect that as soon as we get back from lunch.

7 MR. HOOD: Do you want me to go ahead and now renew my
8 motion for the directed verdict?

9 THE COURT: You can. I don't know that you
10 technically need to because there hasn't been any other
11 evidence produced between the first motion but I need to
12 take a motion for directed verdict based on your resting
13 which you are going to formally do which you are now doing
14 but you will formally do in front of the jury.

15 MR. HOOD: So you are going to deny - -

16 THE COURT: The motion is remade as earlier stated and
17 denied.

18 MR. HOOD: Thank you, your Honor.

19 THE COURT: All right.

20 Let's bring in the jury.

21 THE BAILIFF: Jurors entering, your Honor.

22 (JURY ENTERING COURTROOM AT 12:00 P.M..)

23 THE BAILIFF: Jury is seated, your Honor.

24 THE COURT: Mr. Hood.

25 MR. HOOD: Your Honor, at this time the Defense would

1 rest.

2 THE COURT: All right. Members of the jury panel the
3 State rest before you and now the Defense has rested and
4 you have received all of the evidence you are going to
5 receive. The next part of this procedural process will be
6 the closing arguments of the attorneys. First the State
7 and then the closing argument of Mr. Hood on behalf of Mr.
8 Galimore. We are going to break for lunch before we do
9 that. We are going to break till 1:15; this is right at
10 12:00. When you come back you will hear the arguments and
11 then my charge and we will have the case in your hands for
12 your deliberation. You are not yet in a position to
13 discuss the case so you haven't heard those things; you
14 haven't heard the law nor the charge. You haven't heard
15 the attorneys tell you why the evidence should lead you to
16 a certain conclusion so don't try to make up your mind yet.
17 Don't discuss the case; don't -- I remind you don't let
18 anybody discuss the case with you. Have a nice lunch.
19 It's actually pretty outside today; I haven't been out but
20 I understand its supposed to be right pretty today but have
21 a pleasant lunch and we'll see you back in the jury room at
22 1:15 and thank you.

23 (JURY LEAVING COURTROOM FOR LUNCH AT 12:05 P. M..)

24 THE COURT: All right we will break for lunch. A
25 couple of things I am going to put my charge down. Again

1 its got some of my hieroglyphics on it but I think you can
2 tell basically the charge and we'll talk about it when we
3 come back. Generally on these subsequent DUS's the
4 indictment driving under suspension is probably going to
5 have to be redacted but even though you presented evidence
6 that it was a third offense within a five year period it
7 also says - it says not suspended for DUS I guess. Maybe
8 you don't need to redact it. Take a look.

9 Mr. Hood, do you think the indictment needs to be
10 redacted? Generally we take out the fact that it is
11 anything other than a first offense but in this case it's
12 already been evidence presented that there also was a
13 subsequent offense although this says third or subsequent.
14 That's what I think you did present two.

15 MR. HOOD: Your Honor, could I have a look at what you
16 have there? I want to make absolutely sure I have the
17 same?

18 (MR. HOOD REVIEWING CHARGE BY THE COURT.)

19 MR. HOOD: I'm satisfied its okay.

20 THE COURT: Okay. One other quick thing on the
21 indictment of homicide where it's supposed to say death
22 resulted within one year it says one comma CD. Does
23 anybody object to me changing the comma and the CD to YEAR
24 and make it read a year?

25 MS. TANNER: No, sir, I don't have any objections.

1 THE COURT: I'll put that down before you look at it
2 also.

3 MS. TANNER: Yes, sir.

4 THE COURT: All right we'll be at ease until 1:15.

5 MS. TANNER: Thank you, your Honor.

6 (COURT RECESSED FOR LUNCH AT 12:10 P. M..)

7 (BACK ON THE RECORD AT 1:21 P. M..)

8 THE COURT: Is the State ready?

9 MS. TANNER: State's ready, your Honor.

10 THE COURT: Is the Defense ready?

11 MR. HOOD: We are, your Honor.

12 THE COURT: Now you've had a chance to look at the
13 charges and also the indictments. Anything we need to
14 offer or adjust?

15 MS. TANNER: Nothing from the State.

16 MR. HOOD: Nothing from Defense, your Honor.

17 THE COURT: All right. The State of course opens
18 Defense has the right to close as it presented no evidence.

19 All right bring in the jury.

20 THE BAILIFF: Jurors are entering, your Honor.

21 (JURY ENTERING THE COURTROOM AT 1:23 P. M..)

22 THE BAILIFF: The jury is seated, your Honor.

23 THE COURT: Members of the jury panel, as I told you
24 before we broke for lunch you will now hear the closing
25 arguments of the attorneys. Unlike their opening

1 statements at this point they are trying to convince you
2 your verdict should be a certain verdict based on the
3 record that is the evidence and the charge that I will
4 charge. You heard the testimony and have seen the
5 exhibits. If an attorney inadvertently says something that
6 you don't recall from the record I am sure it would be
7 inadvertent but you recall what the actual record reflects
8 that is the testimony of the actual witnesses. The
9 attorneys know what I am going to charge you regarding the
10 law. They may tell you about a legal principal. Again it
11 would be inadvertent if they tell you one wrong but I
12 remind you that when I charge you the law you have to take
13 and accept it and apply the law as I charge it.

14 All right, Solicitor.

15 MS. TANNER: Thank you, your Honor, may it please the
16 court, Defense counsel.

17 Ladies and Gentlemen, this is the end of the trial
18 where we make our final arguments. Defense counsel -- I'm
19 sorry -- the Defendant is charged with four charges, four
20 separate charges that you will have to consider. One is
21 felony driving under the influence where death results.
22 That means that he was impaired; he was intoxicated by some
23 substance in this case alcohol. He was so impaired that by
24 while driving a vehicle he caused the death of another
25 person. Secondly he's charged with reckless homicide.

1 That means that he disregarded the safety of others to the
2 point where he caused the death of another person. And
3 he's charged with driving under suspension. That means
4 that within the last five years his license was suspended
5 and he was still driving. You heard testimony that in fact
6 he'd been suspended three times within the last one year.
7 The fourth is charging endangerment; that means that during
8 these offenses he actually put his children in danger.

9 Now going back to August 11 2007 you heard a lot of
10 testimony about that day from different witnesses. You
11 heard that Mr. Galimore showed up at a birthday party for a
12 child drunk. You heard that while he's at the party he
13 continues to drink. You hear that at some point during the
14 party he flashes a gun in front of children; he gets into
15 an argument with his girlfriend. They tried to get him to
16 either lay down and take a nap; take a shower, something to
17 help him being intoxicated or else if you are going to
18 leave about leaving the children with us but he doesn't.

19 He takes his two children from the birthday party and puts
20 them in his car and he gets in the vehicle and drives away.
21 Those are all his choices. Those are all choices he made
22 on August 11 2007 and all those choices led up to him
23 colliding with Mary Dion, Mary Dion whose choices that day
24 -- now she worked two jobs and one day and she's just
25 trying to get home from work but she winds up in the path

1 of this man who made different choices that day.

2 You heard some testimony, you heard cross examination
3 by defense. You know some of it he was so drunk that night
4 that he made the comment that she was in his lane. State's
5 Exhibit Number Two "he's so drunk he thinks she's in his
6 lane". You will have these photographs in the jury room
7 with you. Really who's in whose lane? And he's so upset
8 about it he doesn't even render aid; he doesn't try to help
9 Ms. Dion who is lying on the ground right beside his
10 vehicle after the collision. He doesn't call 9 1 1; he
11 doesn't try to help her. He makes some angry phone call to
12 someone else complaining that she ran into him. He leaves
13 his two children to stand over a dead body; he steps past
14 her body to hide his gun. Remember the gun is found behind
15 the ice box. Look at where Ms. Dion's body was located and
16 where he went. He's drunk; he disregards the safety of
17 anybody else including his own children.

18 I cannot answer for you why Mary Dion paid the price
19 for Rodney Galimore's choices on August the 11th of 2007
20 and you don't have to answer that either. What you have to
21 do is render a verdict that speaks the truth and the truth
22 is it's time for justice for Rodney Galimore. It's time he
23 faces the consequences for his choices. And Ladies and
24 Gentlemen, he is guilty, he is guilty of felony DUI that
25 caused death, he is guilty of reckless homicide, he is

CLOSING: BY MS. TANNER
BY MR. HOOD

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1 guilty of driving while under suspension and he is guilty
2 of child endangerment. Thank you.

3 MR. HOOD: I told you at the start of this trial that
4 all the testimony was going to come from that witness stand
5 and anything that the solicitor says as I say is not
6 evidence. That has nothing to do with anything but it's
7 the testimony that you hear from that stand is what's
8 important. And you have to use that testimony in arriving
9 at the decision as to guilt or innocence as to certain
10 charges. Now he's charged with a multitude of charges as
11 you well know.

12 Now let's sort of take a look at them one at a time.
13 You know what we're going to have to do is rely upon again
14 what the testimony was from the witness stand. Let's start
15 with the felony DUI. Now felony DUI with death has
16 elements to the offense and one of those elements of the
17 offense is what violation of the law was it that was the
18 approximate cause of the death of this person. Now the
19 element of the offense that they have alleged is driving on
20 the wrong side of the road right of the center. Now if you
21 believe the testimony that you have heard here then you
22 know that what Rodney Galimore did and according to the
23 only words of the trooper who investigated the crime was at
24 the time of the accident he was executing a proper legal U
25 turn. So if he was executing a proper legal U turn at the

1 time it is impossible for him to have done that without
2 being in the lane of the oncoming traffic left of center
3 impossible. But he said it was legal to do that and he
4 could not charge him. Do you remember all of that?
5 Remember the fact that back in November of this year as the
6 officers recalled it I brought it to their attention that
7 what is the violation of the law that was the approximate
8 cause of the death. They didn't have one. And you will
9 notice from your indictment they had to go back and add
10 some thing that element for the offense in order to satisfy
11 this charge because without that offense and without that
12 allegation they have no felony DUI. That's it plain and
13 simple. So if you believe the trooper's testimony that he
14 could not charge him with making an improper U turn and his
15 statement that he was making a proper U turn at the time of
16 the accident then it's totally inconsistent with their
17 charge of driving left of center. It's impossible. It's
18 impossible to do it. I'm not telling you that an element
19 of reckless homicide is some violation of the law okay. In
20 other words reckless homicide does not include that
21 particular element of committing a violation of the law at
22 the time of this impact. You don't have to have one for
23 reckless homicide. All you have to have for reckless
24 homicide is that a person was driving under the influence
25 at the time and boom there was a death as a result of his

1 driving under the influence because driving under the
2 influence of evidence of reckless driving. Plain and
3 simple that's the law. So what we have is reckless
4 homicide now. Well in order to find him guilty of reckless
5 homicide you have to find that his faculties were so
6 impaired and were materially and appreciably impaired to
7 operate a vehicle on the highways of this state at the time
8 of this incident. So if you can find that he was driving
9 under the influence then and only then can you find that
10 he's guilty of reckless homicide.

11 Finally child endangerment. Well child endangerment
12 can be a lot of things and the Judge is going to instruct
13 you on that on the law in that particular area. And you
14 will find that it's very possible if you find that he was
15 driving under the influence and this reckless homicide
16 occurred that he in fact is guilty of child endangerment
17 because allegedly he has two children in the car.

18 The DUS. No way around it okay. I more or less
19 stipulated to the fact. Yes he admitted that he was
20 driving the vehicle to the officers. Now you've heard the
21 stories that supposedly of the statements that my client
22 made to the officer. Well they changed and they have
23 changed on several different occasions. They are different
24 from what he had in his written report different from what
25 he said initially when he testified that my client said he

1 hit her. And then he tells you that she hit me. So
2 whatever statement was made and I think you can go back to
3 the lady who arrived on the scene who says he was telling
4 everybody on the phone whoever that person was that it
5 wasn't his fault that she hit him.

6 So again you have to remember all of the evidence.
7 You have to put all of this together. Look at all of the
8 circumstances that we're talking about. You know I am
9 going to go over just a few of them with you. I would hate
10 to think that we would jeopardize a man's life based on
11 what you've heard from that witness stand. We didn't even
12 know what kind of vehicle he was driving. It plainly says
13 on the side of it Jimmy but then they always refer to it as
14 a Blazer. If any of you have ever known a Blazer you know
15 right on the side it says a Blazer and there is a
16 substantial difference between a Blazer and a Jimmy. But
17 the police and the investigators there is no difference.
18 One is perhaps a four wheel drive; one is perhaps a two
19 wheel drive. You know they don't even know. How do they
20 get their speed? Again the speed limit is forty-five so
21 we're not going to jeopardize our case by saying that this
22 motorcycle could have been going sixty-five or seventy-
23 five. You look at that animation and it looks like the car
24 is right up -- the car comes in moving and this motorcycle
25 is right behind it almost split second in a turn just like

1 that. Where did they get that information from? It
2 certainly is not part of the trooper's actual drawings and
3 things of that nature.

4 The tire tracks. We know there were tire tracks
5 because they were saying that mud was on the tires so he
6 wasn't traveling at any rapid turning. He went through the
7 parking and shew shoot out onto the highway and boom that
8 happened. It's apparent that it was a gradual -- if it was
9 not even a stop and then pull out to make a quote legal U
10 turn in the words of the officer. You couldn't charge him
11 with that. They had to come up with something to satisfy
12 their need to get Mr. Galimore because you heard the words
13 he killed that woman. And so what do they do? They jerk
14 him up and hand cuff him throw him in the back seat of a
15 vehicle face down and then they come in and supposedly want
16 to read him his rights and he keeps falling asleep. Not
17 minutes before he was talking on the cell phone to
18 somebody. He was walking, talking no problems whatsoever.
19 It's just totally inconsistent when he kept dozing off you
20 know. And they never tried to give him any field sobriety
21 test because and I didn't ask him to. Field sobriety test
22 are given for one reason and that's to determine whether or
23 not you are physically capable of operating a vehicle.
24 Just because you've had alcohol to drink does not make you
25 reasonably impaired to operate a vehicle on the highways of

1 the State of South Carolina in a safe manner. Anybody can
2 go anywhere and have one beer, two beers, three beers and
3 some people can have five or six and not even reach the
4 legal limit. It depends how fast you process it. It
5 depends upon your weight. It depends upon all kinds of
6 things. What you eat, things all kind of things which
7 changes that particular result.

8 Now we know some things about the party supposedly. The
9 party's a different story and I just want to tell you right
10 off the bat you know when we talk about this particular
11 party what you should be concerned with is only that
12 evidence which goes to alcohol consumption and impairment.
13 Was he incapable of walking, talking, things of that
14 nature. We know other people were drinking at this quote
15 birthday party and I'm not even going to get into that
16 because that's something for you to decide. You are the
17 ones that judge the credibility of the witnesses who
18 testified on that stand and only you can do that. So
19 therefore you are going to have to judge those people's
20 credibility and their opportunity to observe what's going
21 on to understand what's going on. We had one lady who says
22 he was pulling a trailer or some kind of a thing behind his
23 vehicle as he left to get out on the May River Road. Well
24 the officer didn't find any but then again the officer
25 didn't see the color TV that was in the front seat of the

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1 automobile that he said was in the back seat of the
2 vehicle. When you get these pictures look at that cable
3 hanging out. And look at the pictures and look at that big
4 sort of a white screen that's up there in the passenger
5 side of the vehicle where he claims this bottle of alcohol
6 that he pulled out a half bottle of alcohol that was there
7 within reach of this person. But he missed the television
8 which is a big object sitting right there. DVD's out on
9 the road beside the car with the cable. Did you see the
10 television cable hanging out that door but it was just a
11 wire to the other guy because he never looked in the
12 vehicle. Do you remember the Sergeant who came in and
13 testified? He didn't even look in the vehicle. He didn't
14 do anything. He coordinated with headquarters.

15 Well where was the MAIT Team that's supposed to come
16 out and investigate these homicides, these deaths that
17 occur on the highways? When they called them but they
18 didn't show up they didn't come. But now they come up with
19 a story well sometimes we do sometimes we don't it just
20 depends upon the circumstances. Well apparently they
21 called them because he said they called them and they said
22 they're not coming the MAIT Team. How in the world is it
23 possible to come up with the data that they came up with
24 without physically examining the vehicles that was involved
25 in this particular incident? Now we're not here to tell

1 you that you throw away your common sense when you walk
2 into this court. You're here to exercise your common
3 sense. Use your common sense and think about what occurred
4 and what you heard on that stand up there because you're
5 not supposed to give up your common sense and your
6 knowledge of the ways of the world your own experiences and
7 things of that nature. You don't give that up when you
8 come in here to make this decision. The only things that
9 you give up or anything that you might know about this
10 particular event that you should not know or whether that
11 could be in that statement by somebody else and you're not
12 knowing it because you're listening to hearsay. But what
13 you did hear is not supposed to be hearsay or there wasn't
14 hearsay because they must have been. I don't know how many
15 people were at this scene at the incident but we only heard
16 from how many? One. Actually two if you take the lady in
17 consideration who arrives with two adults I believe and a
18 juvenile in a vehicle and she comes up and she sees the
19 accident she calls 9 1 1. She gets out of the vehicle and
20 what is the first thing that she does? She goes and checks
21 the motorcycle. Not the person on the ground, not the
22 victim. And then she screams bloody murder about this guy
23 having no compassion for the victim and doing nothing for
24 the victim. One of the first things she does is not check
25 the vehicle. She checked the motorcycle. I want to see if

1 that's my boss's. It shows you a lot about what we're
2 dealing with here you know. They have no clue, no idea how
3 long that person had been there at the scene before this
4 woman arrives. In other words before this woman arrives.
5 So they don't know what he did, what efforts he made or
6 anything of that nature. If you believe the doctor which
7 I'm pretty sure you probably would and I have no reason to
8 believe that you wouldn't she died instantaneous. Boom
9 just like that as a result of the trauma to her. Yet Mr.
10 Galimore he killed that woman. That's the only thought in
11 their minds not that it could have been a true accident.
12 No they snatch him up handcuff him behind his back and
13 throw him face down in the back seat of the car. And then
14 they want him to cooperate. I don't know how in the world
15 you're going to get a person to cooperate after you've done
16 those types of things to them without giving them the
17 courtesy, the opportunity, of talking to them in a manner
18 that would allow him to cooperate with them. The highway
19 patrolman he arrives; Rodney's already snatched up by
20 somebody, he don't know even know who did that. I mean
21 there are all these people, millions of people out there
22 what did they see, what did they hear, what was, you know
23 what went on before the officer even got there? None of
24 those people walked up here and took that stand. Rodney
25 Galimore killed that woman that's all they were talking

1 about. A woman's dead Rodney Galimore is walking around
2 talking or whatever boom he killed that woman. That's the
3 end of the story right there. And you take no other
4 evidence at that point in time other than I'm going to get
5 his blood. I'm going to get my evidence and introduce it.
6 Rodney totally had no interest; there's nothing wrong with
7 EMS. Apparently they don't know whether EMS has any
8 conversations with him. We had some guy who from the fire
9 department I believe it was but you know EMS checks people
10 for injuries and things of that nature at accident scenes
11 and all this kind of stuff and yet there was no evidence of
12 any EMS person stating that Rodney required any type of
13 medical treatment or anything of that nature.

14 I would go back -- there are just so many things that
15 went on in this case. You've heard the evidence and you've
16 listened to it. And I think that again I want you to use
17 your good common sense. It's impossible for him to make an
18 improper and legal U turn and not drive on the wrong side
19 of the road and that's exactly what he's charged with. If
20 it was an illegal U turn and that's what he was charged
21 with I probably would be hard pressed. But he was not
22 doing anything illegal in making that U turn because the
23 officer told you that and he knew he couldn't charge him
24 with that. He charged him with everything else he could
25 possibly charge him with. But you can't -- impossible to

1 ever not go into another lane without making a U turn;
2 without going in the other lane. So fourteen months later
3 they come up with this driving to the left of the center.
4 You're drawing at straws. Gotta get Rodney some how and by
5 doing they depend upon you to do that. But if you use your
6 common sense and understanding of what these people have
7 testified to you will be satisfied that number one it was
8 not a felony DUI because there was no illegal violation of
9 the law and his driving at the time of the impact.

10 Reckless homicide different story again. You don't
11 have to have an illegal act in order to hang your hat on
12 reckless homicide. But what you do have to be able to
13 satisfy is that his ability, he was under the influence of
14 drugs and or alcohol to such an extent that his faculties
15 were materially and appreciably affected while he was
16 operating that vehicle. And again it goes back to the
17 intoxication. It goes back to what you heard from the
18 witnesses on the stand as to whether he understood; whether
19 he was wobbling, falling, you know all these kinds of
20 things. Now if you believe the officer's statement his
21 speech was slurred but he wasn't saying anything. His eyes
22 were blood shot and he kept falling asleep. Well the nurse
23 at the ER says he answers questions, he fully understood
24 his rights and things of that nature and simply refused to
25 give the blood voluntarily. Well does that mean that he

1 doesn't know what he's doing? That he is materially and
2 appreciably at such a state that he doesn't understand and
3 cannot safely operate a vehicle on the highway? Again I go
4 back to what I said before. You can drive and drink in
5 this state. There's no law against that. That little .8
6 is nothing more than one of these little things that they
7 said is a level where they say okay there is an inference
8 but you've got to have more than the inference. You have
9 to have some driving, they've added driving, this that and
10 the other and all these things. The wobbling, the falling
11 down, you know incoherent, his speech, this that and the
12 other before you can come up with the impairment. So the
13 alcohol and the .8 is not bottom line you got it, you're
14 over it, it's finished so you have to find all these
15 factors. That's going to be your job. But what we want
16 here is the truth. We want you to make an honest decision
17 as to exactly what Rodney Galimore is guilty of. And don't
18 let the fact that all of this testimony came in about the
19 woman involved in this. Nobody hates this any worse than
20 Rodney Galimore. Nobody. Because Rodney Galimore is
21 sitting right here and he knows why he's here. Because as
22 a result of an accident another person lost their life.
23 And it's unfortunate that his children had to be with him.
24 But you go back to what I said originally. You must be
25 satisfied of what he is guilty of. Not just because there

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1 are bad facts here; not just because you think that Rodney
2 Galimore is a bad person. That is not enough. You've got
3 to follow the law. Bad people is not evidence of a crime.
4 You have to look at all of the facts and circumstances and
5 make a decision as to whether or not you are satisfied
6 beyond a reasonable doubt as to each and every element of
7 each and every offense before you can make a finding of
8 guilty.

9 I think I pretty much covered everything that I
10 intended to do. I mean I can go back over all of the
11 discrepancies and all of the testimony this and that and
12 the other but you should be aware of that. I mean you
13 heard them on the stand. They never did anything with
14 respect to gathering the information in this case. That
15 particular track on the road you could see the track coming
16 off. If he had been flying like the animation shows there
17 would be something to skid around because remember they
18 went over that mud puddle that was there with all the sand
19 in it and stuff you know and he's got it all over his
20 tires. So if it was a proper as the officer said a proper
21 U turn, a legal U turn, then you would have all of that
22 because it was done at a very slow pace. And at that slow
23 pace he was in her lane probably for a couple of seconds.
24 Now we know this is a long straight road and we know that
25 it's dark out there in the direction that she's coming

1 from. But right there where this incident occurs it's
2 fully lighted. There are two big lights up on poles.
3 There are Christmas tree lights all over the front of the
4 store. The store was lit up and plainly he's right in
5 front of her in plain view for anybody who sees him. I'm
6 not saying that she did anything wrong. I know that people
7 who ride motorcycles and people who drive automobiles
8 sometimes don't see each other and particularly
9 motorcycles. You take your attention off the road for some
10 time particularly with a motorcycle the motorcycle is not
11 going to drive down a dark road in the far right hand side
12 of its' road. Why? Because of things, animals, all kinds
13 of things that step out into the road and if you are riding
14 close to the shoulder like our automobiles because we're so
15 wide so a motorcycle quite naturally is going to be riding
16 more on the center line than it would be on the far
17 outside. When you are looking and you take your eyes off
18 and it only takes two or three seconds whatever it is.

19 I thank you very much for patience. I hope that I
20 have not in any way offended anyone due to my questioning
21 of witnesses or anything of that nature. I had no intent
22 to do that but I think it's vitally important that you
23 understand the significance of what you're hearing here
24 today and I'm assured I believe that you will make the
25 right decision in this case. Rodney Galimore is definitely

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1 not guilty of felony DUI. Thank you very much.

2 THE COURT: Members of the jury panel, I appreciate
3 your attention you have given all of us at this point. I
4 am now going to ask you to give your attention as I charge
5 you the law that you are to apply to the facts as you
6 determine the facts to be in this case. You will have with
7 you in the jury room these four indictments. I tell you in
8 advance that even though you have these in the jury room
9 they are not evidence. They are the charging papers; the
10 papers which have set forth there on the charges against
11 the alleged -- the charges against Mr. Galimore. But they
12 are not evidence. They are not to be considered by you as
13 evidence.

14 They are also where Mr. Foreman, I will tell you later
15 more about this, where you will enroll the unanimous
16 verdict of the jury. On the reckless homicide there was a
17 typo and you will see kind of normal letters crossed out
18 and I have written in the word year over it but that is of
19 no importance. That was just a typographical error that I
20 had corrected. I wanted you to be aware of that.

21 The charges are reckless homicide that caused a death;
22 felony driving under the influence resulting in death;
23 child endangerment and driving under suspended license.
24 The fact that there are four charges is of no importance.
25 The State has the right to charge an individual with the

1 charges that they think are applicable. That does not
2 prove anyone's guilt. That is for you to determine under
3 the facts and the laws as I charge it. But each indictment
4 must stand on its own that is each indictment must be
5 considered as I charge you the law which applies to these
6 indictments on these charges applying the facts to that and
7 from that make a determination as to whether or not a
8 particular indictment charge has been proven beyond a
9 reasonable doubt. With one exception the child
10 endangerment the indictment alleges that he Mr. Galimore
11 endangered these children while intoxicated while violating
12 the law that prohibits an individual from operating a motor
13 vehicle while under the influence. If you find that he was
14 not under the influence of course you have found him not
15 guilty on that as you would on the felony DUI.

16 To these charges Mr. Galimore has entered pleas of not
17 guilty. His pleas of not guilty place on the State the
18 burden of proving his guilt beyond a reasonable doubt. In
19 our State anyone charged with any offense regardless of the
20 magnitude of the charge is presumed innocent of that
21 charge. This presumption of innocence is a substantial
22 right. It's not just a legal theory or a legal phrase it
23 is a substantial right which is used to the benefit of
24 anyone charged with any offense in our legal system. The
25 presumption of innocence attaches to an individual at the

1 time they are arrested; it remains with them as their case
2 is processed through our court system. The presumption of
3 innocence in Mr. Galimore's favor exists at this moment.
4 It even exists as you deliberate. The presumption of
5 innocence in Mr. Galimore's favor is removed if and when
6 and only if and when you as the trial jury in this case
7 determine that the State has proven his guilt as to a
8 particular charge beyond a reasonable doubt.

9 Now the State is not required to prove his guilt
10 beyond all or beyond every doubt but beyond a reasonable
11 doubt. A reasonable doubt has been described by our courts
12 as the kind of doubt that would cause a reasonable person
13 to hesitate to act. Proof beyond a reasonable doubt is
14 proof that leaves you firmly convinced of an individual's
15 guilt. There are of course very few things in our world
16 that we can know with absolutely certainty and our law does
17 not allow absolute certainty in a case such as this. If
18 based on your consideration of the evidence you are firmly
19 convinced that Mr. Galimore is guilty of one or more of
20 these charges you are to find him guilty. On the other
21 hand if you think there is a real possibility that he is
22 not guilty you must give him the benefit of that doubt and
23 find him not guilty. Mr. Galimore is entitled to the
24 benefit of any reasonable doubt you have as to any issue in
25 this case. I remind you that I am the sole judge of the

1 law in this case you must take and accept and apply the law
2 as I charge it. This is true even if you think I charge
3 the law in error or even when you think the law should be
4 different. Your oath requires to you take and accept and
5 apply the law as I charge it. You are not to infer from
6 anything that I have said or anything I now say or do as
7 indicating an opinion of mine on the facts. Our state does
8 not allow a trial judge to formulate or express to a jury
9 any opinion on the facts. That is solely your job. It is
10 solely up to you as the trial jury in this case to examine
11 the evidence and give the evidence the effect and the value
12 and the weight and the truth you believe the evidence
13 should have. If you wish you may believe one witness as
14 opposed to several; several witnesses as opposed to one.
15 You may believe all, part, or none of a witnesses
16 testimony. And in analyzing the evidence use your common
17 sense, your sense of logic, your sense of reason, your
18 experiences in life. As judges of the facts you
19 necessarily must judge the credibility that is the
20 believability of the witnesses who have testified. In
21 accessing the credibility you use the things that I've
22 already talked about. You can use the things that you in
23 your day to day life find as being indicators of
24 truthfulness. And you can use certain evaluators the
25 witnesses demeanor, how they act on the stand. Are they

1 hesitant or straight forward? Is their testimony
2 consistent or inconsistent? Do they have any bias or
3 prejudice? That is do they wish to help one side or the
4 other. And you can consider the opportunity a witness had
5 to know those things about which the witness testified.
6 All of these things you consider in determining the true
7 facts apply the law and you will be in a position to return
8 a verdict that speaks the truth.

9 Now in this case we've had several witnesses who were
10 qualified by me as experts. An expert witness is someone
11 who can render an opinion. Generally a witness can only
12 testify as to something they have sensed with one of their
13 five senses. Usually it's something they've heard or seen
14 but could be taste, touch or smell. However where an
15 individual has an experience, training and knowledge in a
16 particular area that person can take facts and from those
17 facts render an opinion. Now the opinions of experts are
18 allowed into evidence to assist you. They are not binding
19 on you. You can accept in whole or in part or reject it in
20 whole any expert's testimony that is up to you. Again
21 their testimony is allowed into evidence to help you. They
22 are not binding on you. Now as to expert witnesses you
23 look at their testimony using those same criteria that I
24 talked about a minute ago. You also in addition to looking
25 at the things I've already discussed about the way you look

1 at all witnesses as to an expert look at their
2 qualifications. You determine even though I've allowed
3 them to testify as an expert you determine whether you feel
4 they are qualified to reach the opinions they reached. And
5 you also can examine and determine whether or not to accept
6 their opinion based on their explanation and the reasons
7 they reached the opinion they reached. That is you are not
8 bound by their testimony and you can examine it using the
9 criteria that I just discussed.

10 There are cases just as this there are generally two
11 types of evidence that are permitted to come in and they do
12 come in during the trial. Direct and Circumstantial
13 evidence. Direct evidence is evidence which is presented
14 through the testimony of an individual who claims to have
15 actual knowledge of a fact such as an eye witness. Direct
16 evidence immediately establishes the main facts sought to
17 be proven.

18 Circumstantial evidence is proof of a chain of facts
19 and circumstances which indicate the existence of a fact.
20 Circumstantial evidence is evidence which immediately
21 establishes collateral facts from which the main fact may
22 be inferred. Circumstantial evidence is based on inference
23 and not on personal knowledge or observation. Our law
24 makes no difference absolutely no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence. Nor is a greater degree of
2 certainty required of circumstantial evidence than of
3 direct evidence. What you must do in this case is examine
4 all of the evidence. After weighing all of the evidence if
5 you are not convinced of Mr. Galimore's guilt beyond a
6 reasonable doubt you will find him not guilty.

7 I instruct you at this time and emphasize that the
8 fact that Mr. Galimore did not testify is not a factor to
9 be considered by you in any way in your deliberations or in
10 your consideration of the question of whether the State has
11 proven his guilt beyond a reasonable doubt. He as I told
12 you earlier is presumed innocent. He does not have to
13 prove his innocence. Our law presumes him innocent. As I
14 told you earlier that presumption of innocence exist as you
15 deliberate and is removed only if you determine the State
16 has proven his guilt beyond a reasonable doubt. Therefore
17 you must not consider in any fashion or any matter
18 whatsoever his exercising of his constitutional right to
19 remain silent. You cannot discuss it among yourselves nor
20 can you factor it into your own consideration. Again he is
21 presumed innocent. The State must prove his guilt beyond a
22 reasonable doubt. His exercising of his right to remain
23 silent cannot be used against him.

24 As to the charges these are all statutory charges.
25 That is charges that in the date the statute of laws that

1 our legislature has passed and enacted. I am going to talk
2 to you first about felony driving under the influence.

3 As to this charge the State must prove beyond a
4 reasonable doubt that Mr. Galimore drove a vehicle while
5 under the influence of alcohol or drugs. The State must
6 prove beyond a reasonable doubt that Mr. Galimore was
7 sufficiently under the influence to materially and
8 appreciably impair his ability to drive with reasonable
9 care with due regard for others and due regard for himself.
10 Or that he was unable to operate his vehicle as a
11 reasonably prudent person will drive based on that
12 impairment. It is not necessary to show that the
13 individual charged with this offense was in a helpless
14 condition or passed out or even intoxicated. On the other
15 hand the fact that someone had at some time prior to an
16 incident consumed an alcoholic beverage does not prove that
17 the defendant was driving under the influence. In addition
18 the State must prove as to felony driving under the
19 influence that Mr. Galimore while driving did an act
20 forbidden by law or neglected a duty imposed by law. In
21 that regard we have a statute in South Carolina involving
22 what are sometimes referred to as rules of the road which
23 states very simply and to the point it says upon all
24 roadways of sufficient width a vehicle shall be driven upon
25 the right path of the roadway. There are some exceptions

1 that don't apply here. So what he is charged with in the
2 indictment is violation of that statute. Again it says
3 upon all roadways of sufficient width a vehicle shall be
4 driven from the right path of the roadway. Finally as to
5 this charge felony driving under the influence the State
6 must prove beyond a reasonable doubt that the act or
7 neglect of the defendant Mr. Galimore approximately caused
8 the death of another person. Approximate cause is defined
9 by our law as the direct cause, it is the immediate cause,
10 it is the official cause, it is the cause without which a
11 death would have not resulted. Now the State must prove
12 those elements driving under the influence, violation of a
13 statute, and the approximate death as a result thereof
14 beyond a reasonable doubt before you can convict Mr.
15 Galimore as to that charge.

16 The second charge is another statutory charge. It's
17 very -- again a very straight forward it says that it is
18 against the law for any individual to operate a motor
19 vehicle at the time their driver's license is cancelled,
20 suspended or revoked. And the State has said he did that.
21 The State must prove that beyond a reasonable doubt.

22 He is also charged with child endangerment in the
23 third indictment. The statutory -- another statutory
24 provision again it's not that long. The State must prove
25 these elements that I'm going to mention in just a moment

1 beyond a reasonable doubt. Child endangerment is defined
2 by our law it states that a person eighteen years of age or
3 older is guilty of child endangerment when that person is
4 in violation of Section 56 5 2945 and the person has one or
5 more passengers under the age of sixteen years in the motor
6 vehicle at the time the violation occurred. The Section
7 that they reference Section 56-5-2945 you will see when you
8 have these indictments that that is the code section he is
9 alleged to have violated. That is the code section that
10 makes it an offense, makes a felony DUI an offense so the
11 State must prove beyond a reasonable doubt in order for you
12 to convict Mr. Galimore of child endangerment that he was
13 over eighteen and that at the time he had one or more
14 passengers under sixteen he violated the law regarding
15 felony DUI a provision of our law.

16 The final charge is set forth in the fourth indictment
17 is called reckless homicide. Again it's a statutory
18 provision. That statute states from the death of a person
19 ensues within three years as a proximate result of injury
20 received by the driving of a vehicle and reckless disregard
21 for the safety of others the person operating the vehicle
22 is guilty of reckless homicide. Reckless disregard for the
23 safety of others means an indifference to the consequences
24 or the results of one's act. Reckless disregard is the
25 conscious indifference to the rights and safety of others.

1 It is a conscious failure to exercise ordinary care.
2 Reckless disregard for the safety of others is something
3 more than mere negligence and more than carelessness. A
4 violation of the statute is not recklessness per se but can
5 be considered as some evidence of recklessness.

6 Now in this case your verdicts must be unanimous. All
7 twelve jurors must agree on your verdict. When you have
8 reached a verdict, Mr. Foreman, you will write the verdicts
9 on the indictments as I will show you in just a minute.
10 Your verdict cannot be based on passion, public opinion,
11 sympathy, prejudice or matters outside the record. Again
12 it must be unanimous. You can take breaks if you wish. If
13 you take a break you all need to be on break because it has
14 to be a unanimous verdict so you either are all working or
15 you are all on break. If you work for a while and you feel
16 like you need to take a break that's fine. You don't need
17 my permission to do that you do it on your own. If while
18 you're deliberating you have any questions please write
19 them down knock on the door and give them to the bailiff.
20 The bailiff will bring them to me and I will respond. It
21 may be that I can write an answer on the note itself. It
22 may be that I have to bring you back here in the courtroom
23 and answer your question. In South Carolina we do not send
24 in with the jury a written charge on the law. If any of
25 you wish me to go over any part or all of the law send out

1 a note and I will bring you back and here in open court I
2 will recharge you any part or all of the law you desire.
3 We also can have testimony replayed or read back for you.
4 If you wish us to do that let us know and specify what you
5 want to hear and we will bring you back in and make sure we
6 will allow you to hear any testimony you need to hear. Now
7 your verdict must be unanimous.

8 As I said once you have reached a verdict Mr. Foreman,
9 knock on the door and tell the bailiff. I am going to be
10 doing some other work but I will send for you as promptly
11 as possible.

12 Ms. Jefferson, you are the alternate, you will stay in
13 here when the jury exists this time. All twelve jurors are
14 still with us. Now when you first go into the jury room do
15 not start deliberating and do not get too comfortable
16 because I have to go over my charge with the attorneys. If
17 I have made an error I will bring you back in and correct
18 it. If I have not I will send in the exhibits and the
19 indictments and the bailiff will tell you to start
20 deliberating but don't start until you hear from me to do
21 so. On these indictments in the bottom left hand corner of
22 one side is the word verdict.

23 There are four lines beneath that Mr. Foreman, the
24 bottom line is for you to sign. There is a place for the
25 date the date is the tenth. On one of the other lines you

1 will write the unanimous verdict of the jury. If as to a
2 particular charge the State has failed to prove Mr.
3 Galimore guilty beyond a reasonable doubt of that offense
4 you would write the two words not guilty. If as to one or
5 more of the indictments you find the State has proven Mr.
6 Galimore's guilt beyond a reasonable doubt you would write
7 the one word guilty and of course as I said sign. Now I am
8 going to let all of you but Ms. Jefferson go into the jury
9 room but don't start deliberating.

10 (JURY LEAVING COURTROOM AT 2:20 P. M..)

11 THE COURT: Ms. Jefferson, I'll be with you in just a
12 minute just keep your seat.

13 All right anything from the State?

14 MS. TANNER: Nothing from the State.

15 THE COURT: Anything from the Defense?

16 MR. HOOD: Nothing.

17 THE COURT: All right then if you will check the
18 exhibits and the indictments and make sure everything is in
19 order we'll send them back and the bailiff will tell them
20 to start deliberating and the court will be at ease. I
21 know the Solicitor has some other work for us to do.

22 And Ms. Jefferson, thank you for your help. This
23 concludes your week of service. You are free to leave or
24 you can stay. You will be mailed I believe a check.

25 Mr. Clerk?

1 THE CLERK: Yes, sir, I believe that's correct.

2 THE COURT: You will be mailed a check. Do you think
3 you need a statement today to take to somebody to say this
4 is where you were? Okay we'll get you one if you need it.
5 If you will just turn in your badge to one of the bailiffs
6 and thank you so very much.

7 All right we'll take a short break.

8 (RECESS AT 11:23 P. M..)

9 THE BAILIFF: Your Honor, may I approach?

10 THE COURT: Yes, sir.

11 All right I understand we have a verdict in the
12 Galimore case.

13 (BACK ON THE RECORD IN STATE VERSUS RODNEY GALIMORE AT
14 4:50 P.M..)

15 THE COURT: We will come to order. We got a verdict
16 in the Galimore case. Is the State ready?

17 MS. TANNER: State's ready.

18 THE COURT: Defense ready?

19 MR. HOOD: Yes, sir.

20 THE COURT: Mr. Galimore is present.

21 Bring in the jury.

22 THE BAILIFF: Juror's entering, your Honor.

23 (JURY ENTERING COURTROOM AT 4:53 P. M..)

24 THE COURT: Mr. Foreman, I understand the jury has
25 reached its verdicts.

1 MR. FOREMAN: Yes, sir, we have, your Honor.

2 THE COURT: Would you hand it to the bailiff please.

3 THE BAILIFF: Your Honor.

4 THE COURT: Thank you.

5 Mr. Clerk.

6 THE CLERK: Yes, sir. Indictment Number 2007-GS-07-

7 01617 the State of South Carolina County of Beaufort versus

8 Rodney Galimore we the jury find the defendant guilty of

9 DUS driving under suspension license now suspended for DUI.

10 Indictment Number 2007-GS-07-01584 the State of South

11 Carolina County of Beaufort State versus Rodney Galimore

12 indictment for child endangerment to commit certain vehicle

13 offense we the jury find the defendant guilty.

14 Indictment Number 2007-GS-07-01616 the State of South

15 Carolina County of Beaufort State versus Rodney Galimore

16 indictment for homicide, reckless homicide death results

17 within one year caused by injury from vehicle we the jury

18 find the defendant guilty.

19 Indictment Number 2008-GS-07-02690 the State of South

20 Carolina County of Beaufort State versus Rodney Galimore

21 indictment for felony driving under the influence death

22 results we the jury find the defendant guilty.

23 THE COURT: This be your verdict so say you all by

24 raising your right hand. All twelve jurors confirmed the

25 verdict.

1 All right anything from the State before the jury is
2 dismissed?

3 MS. TANNER: Nothing from the State, your Honor.

4 THE COURT: Anything from the Defense?

5 MR. HOOD: Nothing, your Honor.

6 THE COURT: All right. Members of the jury panel, I
7 appreciate your help with this case this week. This
8 concludes our week of jury use that is regarding the pleas
9 and things that do not require the use of a jury. We are
10 not going to stop for the week; we are going to stop using
11 the jury so we appreciate your help. You feel free to
12 leave. You will be mailed a check and I appreciate you so
13 much for your help.

14 (JURY DISMISSED AT 4:55 P. M..)

15 THE COURT: All right anything from the State?

16 MS. TANNER: Nothing from the State. We're preparing
17 the sentencing sheets.

18 THE COURT: Anything from the Defense?

19 MR. HOOD: Your Honor, I would like to at this time
20 renew all of my previous motions that I made during the
21 course of this trial. I would also like to have you
22 entertain a motion for a new trial at this particular
23 point.

24 THE COURT: I'll be glad to hear you.

25 MR. HOOD: Your Honor, we believe that based on the

1 evidence that was submitted to the jury that there was no
2 way that the jury had any evidence to find the element of
3 in violation of the law in the felony DUI statute.

4 THE COURT: I deny the motion. I looked at the
5 photographs. There may be some grounds for an appeal
6 because we did have some interesting issues in this case.
7 It appears that he did violate, he occupied the lane that
8 the deceased Ms. Dion had a right to occupy. He was over
9 into her lane when this occurred and that violated the
10 statute so I deny that motion.

11 MR. HOOD: Thank you, your Honor.

12 THE COURT: Do you want to bring Mr. Galimore around
13 once the sentencing sheets are prepared?

14 MS. TANNER: I need just a couple of more minutes,
15 your Honor, I'm sorry.

16 THE COURT: I'll give you a hint. In the future you
17 can do them before this point so you won't have to hold
18 anybody up. Thank you. Let's bring Mr. Galimore around
19 for sentencing.

20 And first, Ms. Tanner, are the victim's family
21 present?

22 MS. TANNER: Yes, your Honor, the victim's sister and
23 brother-in-law are present.

24 THE COURT: Would they like to say anything to the
25 court?

1 MS. TANNER: No, sir, your Honor, they do not wish to
2 speak however they have been here.

3 THE COURT: All right. I figured that's who they
4 were. Go ahead.

5 MS. TANNER: One item I would like to put on the
6 record I did not mention earlier.

7 THE COURT: Go over the whole record again because I
8 don't remember it all.

9 MS. TANNER: Okay. Your Honor, Mr. Galimore's most
10 recent conviction was for driving under the influence.
11 That charge was pending like just before or very near this
12 incident. He was actually arrested for that on September
13 24th of 2005. I don't have his actual conviction date but I
14 have confirmed that he was convicted of DUI first offense
15 in 2005. Also -- I apologize, I'm reading backwards. He
16 was convicted in 2005 for driving under the influence; he
17 has a driving under the influence 2nd, conviction was in
18 June, June 10, 2007 so just two months prior to this
19 incident was his second DUI conviction. As you heard his
20 New York rap sheet goes back to 1988 possession of stolen
21 property; 1990 resisting arrest; bail jumping 3rd degree;
22 1991 criminal intent to damage property, possession of
23 burglary tools, petit larceny; 1990 same charge. And then
24 in 2003 aggravated unlicensed operation of a motor vehicle
25 2nd degree; and those are the prior convictions that show up

1 on his rap sheet, your Honor.

2 THE COURT: Anything else the State wants to offer in
3 regard to sentencing?

4 MS. TANNER: Your Honor, you heard the facts in the
5 case something that particularly concerns the State and I
6 think is relevant for sentencing and not only is this not
7 his first conviction for driving under the influence but
8 its absolute malice when it comes to what he did. There
9 was no concern for his actions when he came to what he had
10 done to the victim. It was all about him that night. It
11 was all about she's hit me by getting in my way. There was
12 no attempt to render aid. His own children are standing
13 over a dead body and he's not showing any concern for that
14 either. I don't think there's any remorse from this
15 defendant. I believe that if anybody deserves consecutive
16 sentencing it's going to be Mr. Galimore. I believe he's a
17 danger to society; I believe he will continue doing it
18 because in his mind he's done nothing wrong. He didn't
19 care that night; he's never expressed any remorse for what
20 he did to Ms. Dion. And we're talking about a woman who's
21 coming home that night from a second job of the day. And
22 like I expressed there's absolutely no way to explain why
23 this happened to her. Why did this happen to her family?
24 She's doing everything right. There is some evidence she
25 was wearing a helmet. It's lying several feet from her

1 body but she's doing everything right. She's even doing
2 the speed limit when he enters her path. She didn't
3 deserve that but he deserves every single day of every
4 single minute he can get for these offenses.

5 THE COURT: Thank you. Mr. Hood.

6 MR. HOOD: Judge, the only issue we have I think Mr.
7 Galimore is one previous DUI not two.

8 THE COURT: All right.

9 MR. HOOD: Judge, Mr. Galimore is thirty-nine years
10 old. As you've heard through the course of this trial he
11 has two small boys and at this year they are now six and
12 twelve if I recall correctly. His mother and brother have
13 been here during the course of this trial for the duration
14 of the trial. They were previously at a previous trial
15 that we started but unfortunately we weren't able to
16 proceed because of a defect in the indictment relating to
17 the felony DUI. And I will say that Rodney is -- when
18 people say he is not remorseful about what happened he's
19 definitely remorseful about the fact that someone died as a
20 result of his actions. Now whether those actions were
21 neglect whether to see the motorcycle or the motorcycle
22 failing to see him you know there is obviously some concern
23 on his part over the fact that somebody died as a result of
24 his conduct so to say he is not remorseful is probably not
25 true. And whether or not he rendered aid at the scene they

1 don't know that. As you heard from the doctor she died
2 instantaneously. Mr. Galimore is a mechanic he has been a
3 mechanic for many many years and also a motorcycle driver.
4 But unfortunately you know he did not see that particular
5 motorcycle on that particular night and it's apparent that
6 he was not going at any high rate of speed doing anything
7 that was that dangerous lets say other than being under the
8 influence of alcohol. And as you well know we wouldn't be
9 here if it hadn't been for alcohol more than likely. You
10 know every time we come into one of these situations where
11 we have a highway death its unfortunate that most of the
12 time there is some kind of alcohol or something, drugs or
13 whatever involved in these types of offenses. They are bad
14 offenses and there is no doubt about that. But I think you
15 have to consider Mr. Galimore and that he's never spent any
16 time in prison. Most of his offenses as you've noticed are
17 driving offenses.

18 THE COURT: Every time he drives he escapes.

19 MR. HOOD: That was really not an escape, your Honor.

20 THE COURT: They never are what they say.

21 MR. HOOD: What happened actually was he missed a day
22 in court. That's just the way they termed it but he showed
23 up the next day. But any way that's what they charged him
24 with. Rodney might like to say a few words and I'll leave
25 it up to him at this point.

1 THE COURT: Mr. Galimore, anything you want to say?

2 MR. GALIMORE: I just want to say that at no time did
3 I you know that I -- I did try to render aid to this
4 person. These people you know they made statements in this
5 trial, they weren't there. They formed opinions on what
6 happened okay. I'm really really sorry about what happened
7 you know and no way did I mean to hurt this person. I
8 stopped attempted to make a U turn and it didn't work out.
9 I'm sorry that it happened you know. You know what I
10 understand there was no way I could see that motorcycle
11 coming. I just feel bad that it happened. I am very
12 remorseful of the fact that the woman died you know and
13 that is -- that is the underlying fact in this whole
14 situation. Whether or not they are going to gain anything
15 by me going to prison out of this I mean I don't know. You
16 know but the underlying fact that somebody did die at this
17 scene and at no time nobody focused on the accident.
18 Nobody focused on that situation. Everybody focused on how
19 they were going to prove me wrong for doing that. You know
20 I just feel that nobody focused not even the person who
21 came up on the scene. She cared about the motorcycle. She
22 didn't care about me, she didn't care about the victim.
23 The officers they didn't care. They didn't do their job.
24 They cared about punishing me you know he did it. I feel
25 bad that somebody died. That's all I have to say.

1 THE COURT: All right the sentence on the felony DUI
2 is twenty-five years. On the reckless homicide sentence is
3 ten years that's to run concurrent. I'm running these
4 concurrent because it was only one fatality even though it
5 did give rise to two separate charges. Driving under
6 suspension six months that's to run concurrent also with
7 the sentence I just imposed on the other two twenty-five
8 and ten.

9 And then on the child endangerment that sentence is
10 for ten years but that's consecutive to the other
11 sentences.

12 Do you understand all of that?

13 MR. GALIMORE: Yes, sir.

14 THE COURT: All right. Thank you.

15 MS. TANNER: Thank you, your Honor.

16 MR. HOOD: Thank you, your Honor.

17 (END OF TRANSCRIPT)

18 (TRIAL ENDED AT 5:25 P.M..)

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STATE OF SOUTH CAROLINA

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)

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C-E-R-T-I-F-I-C-A-T-E

)

COUNTY OF YORK

)

I, WANDA NELSON, OFFICIAL COURT REPORTER, CERTIFIED VERBATIM REPORTER AND NOTARY PUBLIC, DO HERBY CERTIFY THE FOREGOING HEARING WAS HEARD AND TRANSCRIBED UNDER MY SUPERVISION AND THAT THE FOREGOING THREE HUNDRED AND THIRTY-ONE (331) PAGES CONSTITUTE A VERBATIM TRANSCRIPTION OF THE PROCEEDING HEREIN.

I DO FUTHER CERTIFY THAT I AM NOT OF COUNSEL FOR OR IN THE EMPLOYMENT OF ANY OF THE PARTIES TO THIS ACTION, NOR DO I HAVE ANY INTEREST, FINANCIAL OR OTHERWISE, IN THE OUTCOME HEREOF.

IN WITNESS THEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME, THIS 20TH DAY OF FEBRUARY, 2009.



WANDA NELSON

OFFICIAL COURT REPORTER
CERTIFIED VERBATIM REPORTER
AND NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA.

MY COMMISSION EXPIRES:
12/06/2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY L. GALIMORE,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by refusing to direct a verdict on the charge of felony DUI where the police officer testified appellant made a legal U-turn since an element of felony DUI is an act prohibited by law or the failure to observe a duty imposed by the law and the state failed to prove that element of the offense?

2.

Whether the court erred by refusing to direct a verdict on the charge of child endangerment which was based on a violation of the felony DUI statute since the child endangerment charge was dependant on appellant also being guilty of felony DUI, and the judge erred by refusing to direct a verdict on that charge?

3.

Whether the court erred by granting the state a continuance after quashing the indictment for felony DUI because the state did not specify an act prohibited by law or the failure to follow a duty imposed by law since it incorrectly reasoned that appellant should have had a hearing on his motion to quash the indictment earlier where the state should have been forced to go forward on its remaining charges, including reckless homicide?

STATEMENT OF THE CASE

Appellant was indicted at the September 20, 2007 term of the Beaufort County Grand Jury on the charges of reckless homicide, driving under suspension, child endangerment and felony DUI. R. 205 - 212 Jury selection occurred on November 17, 2008. R.1. A hearing on the motion to quash the indictment was held the next day, November 18, 2008, before the Honorable Perry M. Buckner. The judge ruled the state had failed to allege in the indictment an act "forbidden by law." R. 17, l. 6 – 18, l. 4.

After the felony DUI indictment was quashed, defense counsel objected to the state's request to "put off the remaining charges." Defense counsel pointed out "this case dates back to August 17th of 2007. That indictment was in September of 2007." The following occurred between the court and defense counsel:

The Court: I don't believe you raised the sufficiency of it until today?

Mr. Hood: That is correct, Your Honor, because I was never given the opportunity to do that until today. The case has been sitting around for over a year and a half. At the last minute ---

The Court: Well, Mr. Hood, I respectfully disagree with statement in fairness to the Solicitor. This indictment has been issued since September 2007, and you, as counsel for the defendant, *could have raised the sufficiency at any time for the past year and a half.*

Mr. Hood: I agree, Your Honor, but I was told initially that this particular indictment went to the Grand Jury and the Grand Jury dismissed that indictment, along with the - -

The Court: Well, now that was never argued to me.

Mr. Hood: Well, see, I'm just going by the information that I was given, that it was dismissed, not indicted back in 9-5-07, and they've got these ---

The Court: No, Mr. Hood, the issue before the Court at this stage, I've got a jury waiting, is whether or not you object to the State's request to continue the remaining charges?

Mr. Hood: Yes, I do.

The Court: Overruled. I'll grant your motion for continuance, Solicitor. I clearly believe he was the architect of the problem that I had by making the motion today, which I feel could have been made any time for the past year and a half. I will grant your continuance and I will expect you, however, to see that indictment is cured in compliance with the State v. Grampus and I will point out the footnote in that case.

Tr. 30, l. 14 – 31, l. 20. (emphasis added).

Appellant was then indicted on November 20, 2008 by the Beaufort County Grand Jury for felony DUI. The present indictment alleged appellant "failed to drive on the right side of the roadway . . . " R. 211. As will be seen infra, the state's own evidence was that appellant was making a legal U-turn. The judge denied appellant's motion for a directed verdict on that basis as to felony DUI and child endangerment. R. 201, ll. 1-23.

Defense counsel continued to argue to the jury that appellant was making a "proper U-turn at the time of the accident" and that the state had failed to prove appellant was guilty of felony DUI or reckless homicide.

This appeal follows.

ARGUMENT

1.

The state's own evidence was that appellant was making a proper U-turn at the time of the accident. The state did not prove appellant was guilty of felony DUI pursuant to South Carolina Code §56-5-2945 because it failed to prove appellant did an act forbidden by law or neglected a duty imposed by law that is required under the statute. The felony DUI statute was carefully drafted to make clear that it was not a strict liability offense. The intoxicated driver still must break the law in some other recognized manner – it cannot just be an accident involving a driver who was over the limit.

Relevant Facts

As seen, defense counsel moved to quash the indictment on the grounds that the state failed to even allege appellant committed an act prohibited by law or failed to comply with a duty imposed by the law. The utter failure of the state to allege that act or omission - - even given its lame late indictment - - continued throughout appellant's trial. Trooper Nick Sprous testified that it is legal to make a U-turn in South Carolina but he claimed, essentially, that appellant was strictly liable because an accident occurred when he failed to see the motorcycle that was coming towards him. The officer admitted it was sometimes hard for motorists to notice motorcycles in the same manner as they would another car. R. 120, l. 22 – 133, l. 25.

The state offered evidence that appellant was drinking at a birthday party and that when he made a U-turn at a country store the motorcycle ran into him and that the woman driving the motorcycle was killed. The motorcycle collided with appellant at his front left driver's side. R. 38, l. 10 – 43, l. 11; R. 107, l. 21 – 108, l. 10; R. 120, l. 23 – 126, l. 8.

Trooper Sprouse testified that there was no indication the motorcycle tried to brake before the collision. R. 128, ll. 3-5. As stated, Sprouse admitted people often have problems seeing motorcycles on the roadway. R. 132, ll. 12-14.¹

Defense counsel moved for a directed verdict continuing to argue that the state had failed to prove an essential element of felony DUI -- that appellant had violated the law in any other way or failed to follow a duty mandated by the law. R. 201, ll. 2-13. The judge stated that the accident occurred in the decedent's "lane of travel" and that was sufficient to take the case to jury. R. 201, ll. 14-23.

Defense counsel argued to the jury -- as he had argued throughout --that appellant made a legal U-turn and that the state had not proved the element of felony DUI because it had failed to prove that appellant had done an act forbidden by law. Counsel argued to the jury that if appellant was intoxicated, he was guilty of reckless homicide but not felony DUI given the circumstances of this case.

Discussion

There were no testifying eyewitnesses to the automobile accident in this case. The state was therefore relying exclusively on circumstantial evidence. The trial judge was only required to submit the case to the jury if there is any *substantial* circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

¹ Appellant's blood-alcohol content in *his blood* was .153. It is important to note that the blood-alcohol inference of intoxication used to be .150, and not .10, and now .08. There is respectfully no rational indication that the inference of intoxication was lowered by the legislature based on people being less able today to handle their alcohol. Instead there is every indication to believe the inference of intoxication was lowered to avoid the loss of federal highway funds.

If the state fails to produce substantial circumstantial evidence the defendant committed the particular crime - - here felony DUI - - the defendant is entitled to a directed verdict. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002). Mere suspicion of guilt is insufficient to take the case to the jury and to get beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

The state in this case failed to prove appellant did an act prohibited by law where he made a legal U-turn and simply failed to see the motorcycle. See State v. Martin, 340 S.C. 597, 533 S.E.2d 532 (2000); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). Although the automobile accident involved the tragic death of the driver of the motorcycle, felony DUI is not a “strict liability” offense. The state failed to prove by substantial circumstantial evidence that appellant did an act forbidden by law or failed to follow a duty required by law.

Felony DUI is not a strict liability offense where a driver over the legal blood-alcohol limit *plus* a car accident *equals* guilty of felony DUI. As with many statutory crimes felony DUI seems to get broadened beyond its original intent by overaggressive prosecutors. Consequently, this Court should direct a verdict of acquittal on the charge of felony DUI and the child endangerment conviction that is dependant on the felony DUI conviction.²

² Respectfully, this Court cannot determine why the jury found appellant guilty of reckless homicide. The reckless homicide indictment simply alleges that appellant’s “reckless driving” caused the injury and death of the victim. R. 207. Consequently, absent the “driving under the influence” conviction the reckless endangerment conviction for a violation of S.C. Code §56-05-2945 -- the DUI statute -- cannot stand.

2.

The court erred by refusing to direct a verdict on the charge of child endangerment which was based on a violation of the felony DUI statute since the child endangerment charge was dependant on appellant also being guilty of felony DUI.

Defense counsel moved for a directed verdict on the charge of child endangerment at the same time he moved for a directed verdict on the charge of felony DUI. R. 201, ll. 1-23. The indictment alleged appellant endangered the lives his passengers under the age of sixteen by driving "while under the influence." It cited the felony DUI statute. R. 209.

The judge's denial of the directed verdict was based in large part on his belief that appellant was driving intoxicated with children in the car. That ruling -- based on the indictment -- cannot survive a proper holding by this Court that appellant should have been granted a directed verdict on the charge of felony DUI for the reasons stated above.

The state failed to prove appellant intentionally endangered the lives of his children by committing the crime of felony DUI while they were in the car.

Where the state fails to produce substantial circumstantial evidence the defendant committed the particular crime - - here child endangerment - - the defendant is entitled to a directed verdict. State v. Rothschild, 351 S.C. 238, 569 S.E.2d 346 (2002); State v. Walker, 349 S.C. 49, 562 S.E.2d 313 (2002). Mere suspicion of guilt is insufficient to take the case to the jury and to get beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001).

Appellant was entitled to a directed verdict because the state had failed to offer substantial circumstantial evidence he was guilty of felony DUI and appellant was not indicted for nor was he convicted of regular DUI. See See State v. Martin, 340 S.C. 597, 533 S.E.2d 532 (2000); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). The child

endangerment indictment specifically cited the felony DUI statute as the reason appellant was indicted for child endangerment. R. 205. This Court should now direct a verdict on the attendant child endangerment charge.

3.

The court abused its discretion by granting the state a continuance after quashing the indictment for felony DUI because the state did not specify an act prohibited by law or the failure to follow a duty imposed by law since it incorrectly reasoned that appellant should have had a hearing on his motion to quash the indictment earlier. In this case the state should have been forced to go forward on its remaining charges, including reckless homicide after the judge quashed the indictment.

The jury selection in this case was held on November 17, 2008 before the Honorable Carmen Mullen. R. 1. On November 18, 2008, Judge Buckner heard motions prior to trial. The judge granted appellant's motion to quash the indictment based on the failure of the state to allege an act forbidden by law or the failure to comply with a duty mandated by the DUI statute. R. 17, l. 6 – 18, l. 4.

The judge then invited the state to “put off the remaining charges” until it could seek another felony DUI indictment. Defense counsel vehemently objected to the case not going forward on the remaining charges which included reckless homicide. The judge incorrectly blamed appellant for not having argued his motion to quash on the indictment on an earlier occasion. R. 18, l. 5 – 19, l. 14. The judge granted a continuance for the state over appellant's objection. R. 18, l. 5 – 19, l. 14.

Discussion

The state in this case failed to obtain an indictment for felony DUI charging appellant with a material element of that crime - - the commission of an act forbidden by law or the omission of a duty imposed by law. This was not a case in which the state should

have been caught by surprise at the judge's obviously correct decision to quash the defective indictment. Cf. State v. Rainwater, 376 S.C. 256, 657 S.E.2d 449 (2008).

The state indicted appellant for felony DUI and reckless homicide. The two indictments were based on the same automobile accident. Appellant had suffered for a long time before the state finally called his case to trial. See Doggett v. United States, 505 U.S. 647 (1992)(the anxiety of awaiting trial is substantial and should be strongly weighed when determining whether a speedy trial violation has occurred). This is not a speedy trial violation case but the state should not have been rewarded with a continuance when one of the two charges (felony DUI) arising from the same incident was properly dismissed by way of the improper indictment being quashed.

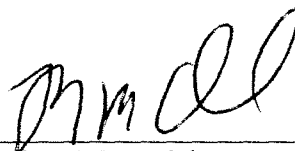
This is an abuse of discretion case where the judge abused his discretion by granting a continuance to the state *as a matter of entitlement rather than upon a showing of cause where the state was without fault*. The state should have been made to go forward with the reckless homicide and the other charges arising from this traffic accident. The state was unjustly enriched by the continuance where it was clearly in the wrong forcing the judge to quash the indictment.

The state and not appellant calls criminal cases to trial in this case. Appellant was obligated to argue the motion to quash the indictment prior to the jury being sworn. He did so. The judge erred and abused his discretion by ruling appellant was at fault by not making the motion sooner, and this Court should reverse that erroneous ruling. This Court should now issue an order of acquittal on the felony DUI indictment and the child endangerment conviction that is dependant on that conviction. Appellant should be granted a new trial on the remaining charges. See Plyler v. Burns, 373 S.C. 637, 647 S.E.2d 188 (2007).

CONCLUSION

By reason of the foregoing arguments, an order of acquittal on the felony DUI charge and the child endangerment charge should be issued. By reason of argument three appellant should be granted a new trial on the remaining charges.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

August 23, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."



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August 23, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

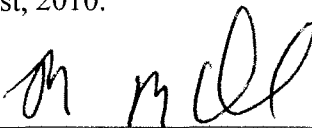
V.

RODNEY L. GALIMORE,

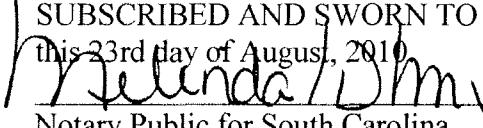
APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina Catoe, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 23rd day of August, 2010.


 Robert M. Dudek
 Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
 this 23rd day of August, 2010.
 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: October 30, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RODNEY L. GALIMORE,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court acted within its discretion when it granted a continuance of the other charges after quashing the first felony DUI indictment.**
- II. The trial court properly denied a directed verdict regarding felony DUI and child endangerment, where the evidence supported that Appellant was improperly driving in the victim's lane of travel when the collision occurred.**

STATEMENT OF THE CASE

Appellant was indicted in September 2007 in Beaufort County for reckless homicide, driving under suspension (“DUS”), child endangerment, and felony driving under the influence (“DUI”), death resulting. (R. p. 205-10). Jury selection took place on November 17, 2008, before the Honorable Carmen T. Mullen. On November 18, 2008, Appellant made a motion to quash the felony DUI indictment for failure to state an offense. (R. p. 2-3). The Honorable Perry M. Buckner granted the motion and quashed the indictment, concluding that the State did not specify the “act forbidden by law.” (R. p. 17-19). Judge Buckner indicated that the State would be permitted to re-submit an indictment to the grand jury, and he continued the trial with respect to the other three charges. (R. p. 18-19).

Thereafter, on November 20, 2008, Appellant was re-indicted for felony DUI, death resulting. (R. p. 211-12). The new indictment alleged that Appellant violated the law by failing to drive on the right side of the roadway. (See R. p. 211). Appellant proceeded to trial on December 8-10, 2008, before the Honorable John C. Hayes, III. (R. p. 21). The jury found Appellant guilty on all four charges, and Judge Hayes sentenced him to twenty-five (25) years for felony DUI, ten (10) years, concurrent, for reckless homicide, ten (10) years, consecutive, for child endangerment, and six (6) months, concurrent, for DUS. (R. p. 203, lines 6-22; p. 204, lines 1-11). A Notice of Appeal was timely served and filed.

ARGUMENT

I. The trial court acted within its discretion when it granted a continuance of the other charges after quashing the first felony DUI indictment.

After granting Appellant's motion to quash the first felony DUI indictment, the trial judge noted that because the jury had not yet been sworn, double jeopardy had not attached. (R. p. 18, lines 1-2). Therefore, the judge ruled, it was permissible for the State to cure the problem by resubmitting a more specific indictment to the grand jury at a future grand jury term.¹ (R. p. 18-19). After the solicitor indicated her desire to continue the remaining charges in light of the court's ruling, Appellant's counsel stated that he objected "simply because this case dates back to August 17, 2007." (R. p. 18, lines 5-12). He also stated that the indictment had been true-billed in September of 2007. (R. p. 18, line 13). The trial judge pointed out that Appellant could have raised the sufficiency of the indictment issue at any time since the issuance of the indictment. (R. p. 18-19). The judge overruled Appellant's objection and continued the trial of the other charges. (R. p 19, lines 13-24). The trial was ultimately held three weeks later. (See R. p. 21).

A motion for continuance is addressed to the sound discretion of the trial court; a judge's ruling on such a motion will not be reversed absent a clear showing of abuse of discretion. State v. Tanner, 299 S.C. 459, 462, 385 S.E.2d 832, 834 (1989). In Appellant's case, the trial court properly pointed out that double jeopardy had not attached; that the State could resubmit an indictment regarding felony DUI; and that Appellant could have moved to quash the first indictment at any time since September 2007. See State v. Baum, 355 S.C. 209, 214, 584 S.E.2d 419, 422 (Ct. App. 2003) (generally, double jeopardy

¹ The trial court found that the first felony DUI indictment should have been more specific in that it should have alleged with particularity the "act forbidden by law" committed by Appellant that caused the collision. (R. p. 16-18). See S.C. Code Ann. § 56-5-2945(A); see State v. Grampus, 288 S.C. 395, 397, 343 S.E.2d 26, 27 (1986).

attaches once the jury is impaneled and sworn). In addition, there was no reason to believe that the State deliberately did anything improper with respect to the first DUI indictment; the solicitor honestly believed that the first indictment was sufficient. (See R. p. 6-11). Furthermore, it was in the interest of judicial economy and conservation of resources to try the new felony DUI indictment along with the other three charges, since they all arose out of the same set of facts. See, e.g., State v. Grace, 350 S.C. 19, 24, 564 S.E.2d 331, 333 (Ct. App. 2002) (pointing out that judicial economy is fostered when related or interconnected charges are tried together) (citations omitted). In any event, Appellant failed to assert any prejudice he would suffer from a continuance on the three remaining charges.² (See R. p. 18-19; see also p. 22, lines 21-22). See State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002). Accordingly, the trial judge did not abuse his discretion by continuing the case so that all four related charges could be tried together. See State v. Tanner, *supra*.

II. The trial court properly denied a directed verdict regarding felony DUI and child endangerment, where the evidence supported that Appellant was improperly driving in the victim's lane of travel when the collision occurred.

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). If the State presents direct or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, including evidence from which his guilt can be logically deduced, the defendant's directed verdict motion is properly denied. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). On appeal from the denial of a motion for a directed verdict, the appellate court

² As mentioned previously, the case was only continued for three weeks. (See R. p. 1; p. 21).

may reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

Appellant argues that the evidence reflected that he was making a proper U-turn at the time of the accident and that the State failed to show that he broke the law. Respondent submits that, to the contrary, the State's evidence showed that Appellant did violate the law by failing to properly establish his correct lane - instead remaining in the victim's lane - which resulted in the collision and the victim's death. Trooper Sprouse testified that when he arrived at the scene a few minutes after the collision, he found Appellant's vehicle positioned in the oncoming traffic lane. (R. p. 73-76). The vehicle was immobile due to the damage from the collision, and the position of the tires indicated that the vehicle (a Chevy Blazer) had not moved or been pushed as a result of the collision with the victim's motorcycle. (App. p. 76-77; p. 127; p. 137; see also p. 193-94). Trooper Sprouse determined, from the evidence gathered that night, that Appellant had been making a U-turn, but instead of attempting to return to his proper lane after turning around, he continued to drive straight ahead in the oncoming traffic lane. (R. p. 73-76; p. 84-92; p. 107-135; p. 121, lines 18-23; p. 127, lines 20-24; p. 150; see also p. 193-97). The officer agreed that a U-turn is not unlawful in itself; however, he testified that Appellant's conduct in failing to establish his proper lane, and in driving left-of-center in the oncoming traffic lane, was illegal. (R. p. 120-122; p. 130, line 22 – p. 131, line 6; p. 125-35; p. 150, lines 5-18). See S.C. Code Ann. § 56-5-1810 (a).

The above evidence clearly supports that Appellant did, in fact, break the law by improperly driving in the wrong lane of travel immediately prior to the collision. Further, the record also supports that Appellant was driving under the influence of alcohol; that his conduct in violating the law resulted in the death of the victim; and that he had his two

young children, ages 6 and 11, in the car at the time. (R. p. 39-44; p. 56-60; p. 72, lines 2-24; p. 79-80; p. 108, line 23 – p. 109, line 16; p. 121-37; p. 167-173; p. 180-92; p. 193-97). See S.C. Code Ann. § 56-5-2945 (A); S.C. Code Ann. § 56-5-2947 (A). Accordingly, the trial court properly denied Appellant's directed verdict motion as to both felony DUI and child endangerment.³ (See R. p. 201, lines 14-23). See State v. Gaster, supra.

CONCLUSION

For all of the reasons discussed above, Respondent requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

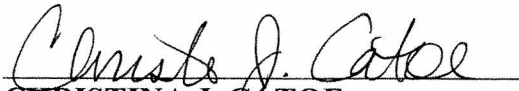
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ATTORNEYS FOR RESPONDENT

August 23, 2010

³ Appellant argues that the trial court should have granted a directed verdict regarding child endangerment because it was based upon the felony DUI charge. (See Brief of Appellant, p. 10-11).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

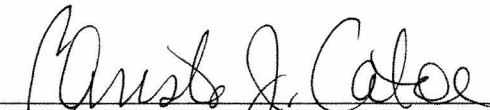
v.

RODNEY L. GALIMORE,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


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ATTORNEYS FOR RESPONDENT

August 23, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Beaufort County
 The Honorable John C. Hayes, III, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

RODNEY L. GALIMORE,

APPELLANT.

AFFIDAVIT OF SERVICE

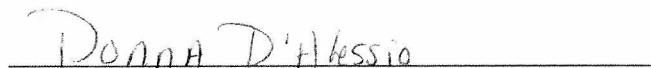
The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **ROBERT M. DUDEK**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **23rd day of August, 2010**.



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SWORN to before me this 23rd day of August, 2010.


Notary Public for South Carolina.

My Commission Expires: 3-21-2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Rodney L. Galimore,

Appellant.

Appeal from Beaufort County
John C. Hayes III, Circuit Court Judge

Opinion No. 4934
Heard November 17, 2011 – Filed January 25, 2012

AFFIRMED

Chief Appellate Defender Robert M. Dudek and Michael J. Anzelmo, both of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Christina J. Catoe, all of Columbia; and Solicitor Issac McDuffie Ston, III, of Beaufort, for Respondent.

LOCKEMY, J.: In this criminal action resulting from a vehicular accident, Rodney Galimore contends the trial court erred in (1) denying his motion for a directed verdict on the charge of felony DUI; (2) denying his motion for a directed verdict on the charge of child endangerment; and (3) granting the State a continuance for three indictments after quashing one indictment for felony DUI. We affirm.

FACTS

Galimore was indicted during the September 20, 2007 term of the Beaufort County Grand Jury (Grand Jury) on the charges of reckless homicide, driving under suspension, child endangerment, and felony DUI. A jury was selected for trial of these indictments on November 17, 2008. On November 18, 2008, Galimore raised a motion to quash the indictment on the charge of felony DUI, arguing the State failed to identify a violation of a traffic offense. The trial court ruled the State had failed to allege a specific act "forbidden by law," which is an element of felony DUI, and therefore, it quashed the indictment. The State then made a motion for a continuance on the remaining indictments. Galimore objected to the motion, stating the case dated back to August 17, 2007, and the indictment was issued in September of 2007. The trial court granted the State's motion for a continuance on the three indictments, finding Galimore had the previous year-and-a-half to question the sufficiency of the indictment for felony DUI.

Galimore was re-indicted on November 20, 2008, by the Grand Jury for felony DUI, with the indictment alleging Galimore "failed to drive on the right side of the roadway," in violation of section 56-5-1810 of the South Carolina Code. The case was brought before a jury on December 8, 2008. At the close of evidence, Galimore made motions for directed verdicts on the charges of felony DUI and child endangerment, arguing the State presented no evidence that Galimore acted in a way "forbidden by law." The trial court denied Galimore's motions. The jury found Galimore guilty on all four charges. This appeal followed.

ISSUES ON APPEAL

1. Did the trial court err in denying Galimore's motion for a directed verdict on the charge of felony DUI when Galimore contends the State presented no evidence he committed an act prohibited by law or failed to observe a duty imposed by law?
2. Did the trial court err in denying Galimore's motion for a directed verdict on the charge of child endangerment when the charge was based upon the violation of the felony DUI statute, a charge on which Galimore argues he was entitled to a directed verdict?
3. Did the trial court err in granting the State a continuance after quashing the indictment for felony DUI when Galimore contends it incorrectly reasoned he should have had a hearing on his motion earlier?

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.

LAW/ANALYSIS

I. Directed verdict motion on felony DUI

Galimore contends the trial court erred in denying his motion for a directed verdict on the charge of felony DUI. Specifically, Galimore argues the police officer testified Galimore made a legal turn-around. Thus, the State failed to prove an element of felony DUI because they did not present any evidence Galimore committed an act prohibited by law or failed to observe a duty imposed by the law. We disagree.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When

reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this [c]ourt must find the case was properly submitted to the jury." Id. at 292-93, 625 S.E.2d at 648. The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. State v. Hernandez, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Ladner, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

Here, the indictment for felony DUI states Galimore "failed to drive on the right side of the roadway pursuant to § 56-5-1810" Section 56-5-1810 of the South Carolina Code states:

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway except as follows: (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement; (2) When an obstruction exists making it necessary to drive to the left of the center of the highway. Any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance so as not to constitute an immediate hazard; (3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or (4) Upon a roadway restricted to one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or

when preparing for a left turn at an intersection or into a private road or driveway.

(c) Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the center line of the roadway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the roadway for use by traffic not otherwise permitted to use such lanes, or except as permitted under item 2 of subsection (a). This subsection shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road or driveway.

S.C. Code Ann. § 56-5-1810 (2006)

Trooper Nick Sprouse testified many times to evidence supporting that indictment. He explained at length about why debris found in the road was important to show Galimore failed to drive on the right side of the roadway. Sprouse specifically stated, "Here's your pool of sand and debris and as you can see the tire mark that goes out it never established the correct lane." He then stated on cross-examination that the evidence at the scene supports the allegation that Galimore never drove in the proper lane after executing his turn-around. In looking at the record and all reasonable inferences in the light most favorable to the State, we find evidence existed for the jury to weigh whether Galimore violated section 56-5-1810, thus supporting a charge of felony DUI. Accordingly, we affirm the decision of the trial court.

II. Directed verdict on child endangerment charge

Galimore argues the trial court erred in denying his motion for a directed verdict on the charge of child endangerment. He specifically contends that because the charge of child endangerment is premised upon his felony DUI charge, and his motion for a directed verdict on the felony DUI

charge should have been granted, his motion for a directed verdict on the child endangerment charge should have been granted as well. We disagree.

Since we find evidence existed for the jury to weigh whether Galimore violated section 56-5-1810, thus supporting a charge of felony DUI, we also find evidence existed for the jury to weigh the charge of child endangerment. Therefore, we affirm the decision of the trial court as to the denial of a directed verdict on the child endangerment charge.

III. State's motion for continuance

Galimore contends the trial court erred in granting the State's motion for a continuance on the remaining three charges after quashing his indictment for felony DUI. We disagree.

"The granting of a motion for a continuance is within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion." State v. Geer, 391 S.C. 179, 189, 705 S.E.2d 441, 447 (Ct. App. 2010) (quoting State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005)). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." Id. (quoting State v. Irick, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001)); see also State v. Funderburk, 367 S.C. 236, 239, 625 S.E.2d 248, 249-50 (Ct. App. 2006) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law."). Even if there was no evidentiary support, "[i]n order for an error to warrant reversal, the error must result in prejudice to the appellant." Geer, 391 S.C. at 190, 705 S.E.2d at 447 (quoting State v. Preslar, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005)); see also State v. Wyatt, 317 S.C. 370, 372-73, 453 S.E.2d 890, 891-92 (1995) (stating that error without prejudice does not warrant reversal).

Here, the trial court explained its reasoning behind granting the State's motion for a continuance, stating it felt Galimore was "the architect of the problem that [it] had by making the motion [that day]." The trial was held approximately three weeks after the continuance was granted. Considering the high degree of deference this court gives the trial court in granting a

motion for continuance, we find the trial court was within its discretion in this instance. Accordingly, we affirm the trial court.

CONCLUSION

Based on the foregoing reasons, the trial court's decision is

AFFIRMED.

HUFF and PIEPER, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

The State of South Carolina, ... Respondent,
v.
Rodney L. Galimore, ... Appellant.

Petition for Rehearing and Suggestion for Rehearing *En Banc*

Pursuant to Rules 219 and 221(a) of the South Carolina Appellate Court Rules, Appellant Rodney L. Galimore ("Galimore") hereby files this petition for rehearing and suggestion for rehearing *en banc*. Galimore respectfully submits that rehearing and/or issuance of a new opinion reversing the trial court and granting a direct verdict in favor of Galimore is warranted in this action. The motion is predicated on the basis that the Panel's opinion in this matter overlooked or misapprehended several matters of fact and law. Thus, rehearing or rehearing *en banc* should be granted.

Argument

- I. The Panel misapprehended the testimony on which it relied to affirm the trial court's decision to deny Galimore's motion for direct verdict on the felony DUI charge.**

In the opinion, the Panel found sufficient evidence existed to send the issue of whether Galimore violated Section 56-5-1810 of the South Carolina Code to the jury.

State v. Galimore, Op. No. 4934 (S.C. Ct. App. filed January 25, 2012) (Shearouse

Adv. Sh. No. 3 at 77, 79-80). The Panel relied solely on the testimony of Trooper Nick Sprouse. Galimore, Op. No. 4934 at 80. However, Trooper Sprouse's testimony contradicts the physical evidence admitted at trial.

This Court and our Supreme Court hold that testimony contradictory or inconsistent with the physical evidence lacks probative value. Lail v. S.C. State Highway Dept., 244 S.C. 237, 136 S.E.2d 306 (1964); Legette v. Piggly Wiggly, Inc., 368 S.C. 576, 580, 629 S.E.2d 375, 377 (Ct. App. 2006) (applying this rule to hold that unsupported testimony cannot be used to overcome the physical evidence). Such testimony does not create issues of fact suitable for resolution by the jury. Legette, 368 S.C. at 581, 629 S.E.2d at 378.

Here, the physical evidence only supports one conclusion—the accident occurred in the decedent's lane of travel immediately upon Galimore exiting the parking lot. Galimore has consistently maintained that the fact that the accident occurred in decedent's lane is insufficient to support a charge under Section 56-5-1810. In fact, Trooper Sprouse's testimony supports Galimore's position. As noted by the Panel, Trooper Sprouse admitted that Galimore "never established the correct lane." Galimore, Op. No. 4934 at 81. This proves that Galimore could not have driven in the wrong lane because he never had the opportunity to establish his correct lane. The evidence unequivocally establishes that the accident occurred immediately upon Galimore exiting the parking lot. {R.131}. Because the accident occurred immediately upon leaving the lot, Galimore could not have had time to establish decedent's lane as his lane of travel as found by the Panel.

This is illustrated by the fact that the evidence shows Galimore entered the parking lot and gathered sand and debris on his tires from the lot. {R.84-86}. The sand and debris tracks left by his car follow directly to the impact point with the motorcycle. {R.77, 85}. Impact occurred immediately because (1) the decedent's motorcycle never hit the breaks prior to impact {R.128} and (2) impact occurred on the driver's side front tire (the precise point where impact would occur on a car exiting a parking lot to complete a left turn) {R.77, 90-91}. Lastly, the evidence definitively proves the impact point of the vehicles was the same as the final resting place of the cars and that the final resting place of Galimore's car was in the decedent's lane. {R.77}.

Thus, the evidence establishes the following absolutes: (1) Galimore never had the opportunity to establish his lane of travel, and (2) he never had time to establish decedent's lane as his lane of travel, either. Both facts lead to the inescapable fact that Galimore was executing a legal left turn out of the parking lot at the time of the accident.¹ While the accident occurred in decedent's lane, Galimore was not driving in decedent's lane as testified by Trooper Sprouse. He was utilizing that lane incident to his left turn out of the parking lot. Stated differently, he did not establish decedent's lane as his lane. Therefore, Trooper Sprouse's testimony conflicts with the physical

¹ Further, Section 56-5-1810 indicates it is inapplicable to vehicles making left turns. The statute exempts its application "when preparing for a left turn at an intersection or into a private road or driveway." S.C. Code Ann. § 56-5-1810(b). Further, the statute "shall not be construed as prohibiting the crossing of the center line in making a left turn or from an alley, private road or driveway." S.C. Code Ann. § 56-5-1810(c). Such a reading of Section 56-5-1810 dovetails with the fact that the State has other charges specifically applicable to a person who improperly executes a left turn or improperly exits a parking lot. See, e.g., S.C. Code Ann. § 56-5-2350 (governing vehicle entering roadway). There is no reason to expand the application of Section 56-5-1810 when other remedies are already available to the State.

evidence and cannot be used to support the denial of Galimore's directed verdict motion. The Panel overlooked this point. Thus, rehearing is warranted.²

While the evidence may be sufficient to support a charge such as failure to yield, failure to keep proper lookout, or a violation of the vehicle entering a roadway statute, the fact of the matter is the State only charged a violation of Section 56-5-1810. Thus, as that violation was the only charge included in the indictment, the State was required to prove the elements of that charge, and that charge alone, in order to obtain a felony DUI conviction. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) (holding a defendant is entitled to a directed verdict when the State fails to produce evidence of the charge included in the indictment). The State and this Court cannot find sufficient evidence of an uncharged offense was sufficient to allow the Section 56-5-1810 charge to go to the jury. The Panel overlooked this fact in rendering the opinion. Thus, because the evidence cannot establish a violation of Section 56-5-1810, rehearing is warranted to enter a directed verdict in favor of Galimore on the felony DUI charge.

The Panel also overlooked Galimore's argument that Section 56-5-1810 applies only to vehicles already established as travelling on the roadway. This section has been applied in State v. Nathari, 303 S.C. 188, 399 S.E.2d 597 (Ct. App. 1998), and State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978). In both cases, the State proved a violation of Section 56-5-1810 when direct evidence established that the driver

² In addition, if the Panel's opinion is left as written, every left turn would be per se illegal from the time the turn is initiated, through the time it is crossing the right lane, and until it completely establishes the left lane. Such a position directly contradicts Section 56-5-2120 of the South Carolina Code. That section governs left turns and specifically authorizes the act of crossing the improper lane while executing a left turn.

established in the correct lane of travel and then crossed the center-line into the wrong lane. In Nathari, this Court found the charge was proper because “[d]irect testimony from three witnesses place Nathari driving outside the right lane numerous times.” Nathari, 303 S.C. at 199, 399 S.E.2d at 604. Such observations were made while observing Nathari “weaving back and forth across the road.” Id. at 192, 399 S.E.2d at 600. Likewise in Parker, the Supreme Court found arrest was proper under Section 56-5-1810 because the arresting officer witnessed Parker driving across the center-line after observing Parker drive down the roadway for some period, including a period in the correct lane. Parker, 271 S.C. at 161-62, 245 S.E.2d at 905. These cases prove that Section 56-5-1810 applies only to vehicles that have previously established the correct lane and/or have been travelling on the roadway for some time. The Panel overlooked these cases in rendering the opinion.

Simply put, Galimore did not commit the offense charged by the State. It was incumbent on the State to charge a provable offense, but the State failed to do so. Felony DUI is not a strict-liability offense, and Galimore cannot be convicted when the evidence (even that cited by the Panel) proves he did not drive on the wrong side of the road in violation of Section 56-5-1810. Thus, rehearing and/or rehearing *en banc* is warranted to correct these issues overlooked and misapprehended by the Panel.

II. The Panel overlooked the fact that the trial court committed an abuse of discretion in improperly shifting the burden of proof to Galimore on the State’s motion for a continuance.

The Panel found the trial court did not abuse its discretion in granting the State’s motion for continuance. However, this holding overlooked the fact that the trial court improperly shifted the burden to prove the entitlement for a continuance away from the

moving party, the State. Instead of requiring the State to carry its burden to prove why a continuance was warranted, the trial court required Galimore to prove why the State was not entitled to a continuance. This decision to grant the State a continuance as a matter of right rather than requiring the State to carry its burden that a continuance was warranted constituted an abuse of discretion.

The requirement that the party requesting the continuance has the burden to prove good cause exists to warrant the continuance is axiomatic in South Carolina. See, e.g., Heyward v. Middleton, 65 S.C. 493, ___, 43 S.E. 956, 957 (1903) (holding that the “burden was on the [moving party] to show good cause for the continuance”). Thus, the trial court’s failure to require the State to carry its burden for the continuance, but instead shift that burden to Galimore, constituted an abuse of discretion. The Panel overlooked this fact in rendering its opinion. Thus, rehearing is warranted, and the Panel should enter an opinion granting the relief request in Galimore’s appellate brief.³

Conclusion

Based on the foregoing, the Panel should grant rehearing or rehearing *en banc* to issue a new opinion acquitting Galimore.

{Signature Page Follows}

³ The State’s judicial economy argument does not alter this analysis. This argument is an attempt to get around the fact that the State failed to carry its burden as to the continuance. Judicial economy cannot be used to overcome an abuse of discretion. Further, had the trial court denied the motion and required the matter to proceed to trial on the reckless homicide charge alone, then jeopardy would have attached to the felony DUI and child endangerment charges. Galimore could not be tried for those charges. Judicial economy cannot be used to avoid jeopardy attaching. Thus, the Panel should order acquittal.