

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM LEXINGTON COUNTY

COURT OF COMMON PLEAS

WILLIAM A. MCKINNON CIRCUIT COURT JUDGE

CASE NO. 2014-CP-32-02548

APPELLATE CASE NO. 2019-000031

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S.C. SUPREME COURT

ANDRA B. JAMISON, PRO SE LITIGANT.....PETITIONER

V

STATE OF SOUTH CAROLINA.....RESPONDENT

AMENDED APPENDIX (PART 2 OF 3)

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1 MR. MOBLEY: Nothing Your Honor.

2 THE COURT: Thank you. Thank you very much
3 for being with us this morning, Ms. Marzol.

4 (Witness leaves the witness stand.)

5 THE COURT: Solicitor, you may call your next
6 witness.

7 MR. MOBLEY: Your Honor, may we approach for a
8 moment?

9 THE COURT: Yes, sir.

10 (Whereupon there is a bench conference off the
11 record in the presence of the jury but out of the
12 hearing of the jury.)

13 THE COURT: Mr. Foreman, and ladies and
14 gentlemen of the jury, we are going to take a quick
15 recess, quick a 15-minute recess. That may be quick and
16 it may be slow.

17 During this recess do not discuss this case
18 with your fellow jurors. Remember to keep an open mind
19 until you have heard all the evidence and testimony in
20 the case.

21 Also the clerk is going to take your lunch
22 menus today and try to eat in. When you finish your
23 lunch, we will start right back, unless someone has a
24 commitment at lunchtime or wants to go out and play in
25 the rain or sit in traffic. I thought we would do it

1 like that to move along more efficiently. With that
2 being said, if you would go with your bailiff.

3 (The jury retires to the jury room.)

4 THE COURT: Anything further, Solicitor?

5 MR. MOBLEY: Nothing, Your Honor.

6 THE COURT: Mr. Williams.

7 MR. WILLIAMS: No, Your Honor. Your Honor, I
8 am going to release Ernestine from her subpoena. I had
9 her subpoenaed to get those documents.

10 THE COURT: Ernestine being Ms. McDaniel?

11 MR. WILLIAMS: Yes, sir.

12 THE COURT: Court will be in recess 15
13 minutes.

14 (Whereupon there is a recess.)

15 THE COURT: Anything before we bring in our
16 jury, Solicitor?

17 MR. MOBLEY: Nothing, Your Honor.

18 THE COURT: Mr. Williams?

19 MR. WILLIAMS: Nothing from the Defendant,
20 Your Honor.

21 (The jury returns to the courtroom.)

22 THE COURT: Our jury is back present in the
23 courtroom.

24 Solicitor, you may call your next witness.

25 MR. MOBLEY: Your Honor, the State calls

DARWIN WEAVER -- DIRECT -- MR. MOBLEY

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1 Sergeant Weaver.

2 DARWIN WEAVER, being
3 first duly sworn, testifies as follows:

4 CLERK: Have a seat, please, sir. One you are
5 seated, state your full name on the record, please.

6 THE WITNESS: My name is Darwin Weaver.

7 DIRECT EXAMINATION

8 BY MR. MOBLEY:

9 Q Sergeant Weaver, where are you currently employed?

10 A City of Cayce.

11 Q What is your position there?

12 A I'm an investigator for the City of Cayce. I've
13 been there 15 years.

14 Q Fifteen years. As an investigator what are some of
15 your duties there?

16 A In investigations I do crime scenes. I'm a
17 supervisor so I make schedules for the guys who
18 work for me. I'm the backup evidence custodian,
19 just general investigative duties. I handle
20 monthly reports, things like that.

21 Q When you state you are backup evidence custodian,
22 when are you tasked with that particular position?

23 A When the regular evidence custodian isn't there.

24 Q Who would the regular custodian be?

25 A Detective Merrill.

DARWIN WEAVER -- DIRECT -- MR. MOBLEY

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1 Q I want to jump back a little. Can you provide us
2 with a little bit of your employment history and
3 training.

4 A I started out in '94 in animal control with the
5 City of Cayce, was there for about eight months.
6 They sent me to the academy. I worked on the road
7 until 2000 when I went up for promotion. I got a
8 sergeant's position in 2000, was a patrol sergeant
9 from 2000 to 2007. In 2007 I was moved into the
10 investigative division. I have got all kinds of
11 classes.

12 Q Sergeant Weaver, I will take you back to the date
13 of August 1, 2008. Were you on duty that day?

14 A Yes.

15 Q When did you come in?

16 A I come in around 8:00 o'clock.

17 Q At 8:00 o'clock that morning.

18 A Yes, sir.

19 Q When you arrived there, what were some of your
20 first duties that you had to take care of?

21 A Usually when I come in first thing, I go over the
22 reports that came in that night, go through our law
23 track messages to see if we have been left messages
24 by other officers needing us to do anything.

25 At some point in time, I probably went into

DARWIN WEAVER -- DIRECT -- MR. MOBLEY

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1 the lab. I am also a marijuana analyst. So the
2 lab is where we keep our drug locker. I go in and
3 check that to make sure there is nothing that needs
4 to be tested for court. The other, our biological
5 evidence refrigerator, I check for that.

6 Q At times, Sergeant Weaver, do you have the
7 responsibility of delivering items to S.L.E.D.?

8 A At times, yes.

9 Q Only when there is a request?

10 A If there is evidence that needs to go out there and
11 the regular evidence custodian isn't able to go
12 there or something just needs to go on out to
13 S.L.E.D.

14 Q How would you know?

15 A Just like checking the law track, which is our
16 reporting system, the officers sending us messages
17 that they have submitted some type of evidence that
18 needs to go to S.L.E.D. or checking the log in the
19 lab to make sure there is nothing that needs to go
20 out there.

21 Q August 1, 2008, did you notice that something
22 needed to be taken to S.L.E.D.?

23 A Yes.

24 Q How did you know that, sir?

25 A I can't remember exactly how I knew it. I don't

DARWIN WEAVER -- DIRECT -- MR. MOBLEY

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1 remember whether I just checked the log itself or
2 whether they had sent me a message. I knew that we
3 had had an incident the night before and that there
4 was blood that needed to go to S.L.E.D.

5 Q So from there what did you do?

6 A Went into the lab. After I finished my stuff that
7 needed to be done that morning, went into the lab,
8 removed the evidence from the refrigerator,
9 transported it to S.L.E.D., and logged it in at
10 S.L.E.D.

11 Q The blood or the evidence that you are referring
12 to, who was that for?

13 A Mr. Andra Jamison was who it was for.

14 Q Was the blood properly labeled?

15 A To my knowledge, yes. The vial was inside a
16 secured bag. Sometimes, depending on how it is
17 wrapped, you may or may not be able to see exactly
18 everything on it.

19 Q So was it in a secure bag?

20 A Yes, it was in a secured bag.

21 Q Had it been tampered or opened or anything of that
22 nature?

23 A No.

24 Q Did anyone else have access to that refrigerator
25 that is not law enforcement?

DARWIN WEAVER -- DIRECT -- MR. MOBLEY

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1 A No, it's a refrigerator inside a secured lab that
2 only the officers have access to.

3 Q Now, you went into the refrigerator and you
4 obtained the blood; correct?

5 A That's correct.

6 Q Once you obtained that blood, what did you do?

7 A I signed the chain of custody that is with it
8 showing that I have taken it out to S.L.E.D. Once
9 I get to S.L.E.D., I have them sign that they have
10 received it, ending my chain of custody and
11 beginning their chain of custody.

12 Q I want to hand you a document listed as State's
13 Exhibit Number 60. Do you recognize what that
14 document is?

15 A Yes, sir, this is our chain of custody.

16 Q And do you see your name appear there anywhere?

17 A Yes, sir, it's signed under where I released it to
18 S.L.E.D.

19 Q Did you sign that?

20 A Yes, sir, I signed that.

21 Q What is the date on that?

22 A August 1, 2008.

23 MR. MOBLEY: Your Honor, this is just for
24 identification purposes only.

25 THE COURT: All right.

DARWIN WEAVER -- DIRECT -- MR. MOBLEY

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1 BY MR. MOBLEY:

2 Q Now, you have signed this form and you are
3 transporting the blood to S.L.E.D.; correct?

4 A Yes, sir.

5 Q You get to S.L.E.D. -- before you even get to
6 S.L.E.D., where do you store the blood while you
7 transport it there?

8 A As far as?

9 Q Is it in the car with you?

10 A Yes, it's in the car with me.

11 Q And you have ready access to it?

12 A Yes, sir, I usually put everything in the seat
13 beside me and take it straight over.

14 Q There was no one else there with you?

15 A No, sir, it was just me.

16 Q You arrive at S.L.E.D. What happens?

17 A When we get to S.L.E.D., we are required to log it
18 into their evidence. Again, I believe Selena was
19 the one who helped me that day. She signed that
20 she received it. I signed their paperwork, and
21 it's all transferred to them.

22 Q Now, I will refer you back to State's Exhibit
23 Number 60. Did you witness Ms. Kinard sign that
24 form?

25 A Yes, I did. I handed it to her and had her sign

DARWIN WEAVER -- DIRECT -- MR. MOBLEY

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1 it.

2 Q And the signature is located on State's Exhibit 60?

3 A Yes.

4 Q I want to hand you another form. Do you recognize
5 what this is?

6 A Yes, this is S.L.E.D.'s paperwork where they take
7 custody of the items, and we signed it into their
8 evidence.

9 Q Is that your signature there?

10 A Yes, it is.

11 Q Now, who is that for?

12 A This is for Andra Jamison.

13 Q Is there another signature there?

14 A Yes.

15 Q Let me see it a moment. Is there a sticker on the
16 third page that you can recognize?

17 A That's S.L.E.D.'s, I guess, bar coding and their
18 tracking stuff.

19 Q What is that number that is located there?

20 MR. WILLIAMS: Objection to publishing the
21 number. It's not in evidence.

22 MR. MOBLEY: Withdraw the question, Your
23 Honor.

24 THE COURT: All right.

25 MR. MOBLEY: Your Honor, the State would move

DARWIN WEAVER -- DIRECT -- MR. MOBLEY

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1 to have this next one listed as State's Exhibit Number
2 70.

3 THE COURT: State's 70 for identification
4 purposes only.

5 (State's Exhibit Number 70 is marked for
6 identification.)

7 BY MR. MOBLEY:

8 Q Once you get there and have Selena actually sign
9 that particular document?

10 A Yes, sir.

11 Q Is the evidence still in a secured bag at the time?

12 A Yes, sir, and I believe they secure it in another
13 bag.

14 Q Do you witness them secure it in another bag?

15 A Yes, sir. I have to sign where they secure it.

16 Q You were able to witness that?

17 A Yes, sir.

18 Q Who sealed that bag for security?

19 A The evidence custodian. They place it in their
20 evidence bag or whatever and seal it right there in
21 front of me and have me sign and date it.

22 Q I want to hand you another document. Do you
23 recognize what that is?

24 A I believe this is S.L.E.D.'s chain of custody. It
25 has ended mine and begun theirs.

DARWIN WEAVER -- DIRECT -- MR. MOBLEY

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1 Q Is that your signature there?

2 A Yes, it is.

3 Q You signed that?

4 A Yes, sir.

5 MR. MOBLEY: Your Honor, the State would like
6 to this listed as State's Exhibit Number 71.

7 (State's Exhibit Number 71 is marked for
8 identification.)

9 THE COURT: Solicitor, would you hand me 70
10 and 71, Solicitor.

11 MR. MOBLEY: Yes, sir.

12 (Hands to Court.)

13 BY MR. MOBLEY:

14 Q So now you have witnessed the evidence being sealed
15 again?

16 A Yes, sir.

17 Q What happens next?

18 A I release everything to them and they have custody
19 of it from that point.

20 Q Do you come back in contact with the blood at all?

21 A No.

22 Q Do you have any contact with the Defendant after
23 that point?

24 A No, sir.

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

DARWIN WEAVER -- CROSS -- MR. WILLIAMS

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1 further for this witness.

2 THE COURT: Thank you. Mr. Williams.

3 CROSS EXAMINATION

4 BY MR. WILLIAMS:

5 Q Good morning, Sergeant, how are you?

6 A All right, sir. How are you?

7 Q Just fine. You had no involvement with this case

8 other than to run blood from Cayce Police

9 Department to S.L.E.D.?

10 A That's correct.

11 MR. WILLIAMS: That's all I have.

12 THE COURT: Thank you. Thank you very much,
13 Sergeant. You may step down.

14 THE WITNESS: Thank you, sir.

15 (Witness leaves the witness stand.)

16 THE COURT: Call your next witness, Solicitor.

17 MR. MOBLEY: The State calls Selena Kinard.

18 SELENA KINARD, being
19 first duly sworn, testifies as follows:

20 CLERK: State your full name on the record.

21 THE WITNESS: My name is Selena Kinard.

22 DIRECT EXAMINATION

23 BY MR. MOBLEY:

24 Q Good morning. Ms. Kinard.

25 A Good morning.

SELENA KINARD -- DIRECT -- MR. MOBLEY

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1 Q Do you mind telling us where you are currently
2 employed?

3 A I am employed with the South Carolina Law
4 Enforcement Division, also known as S.L.E.D.

5 Q How long have you been employed there?

6 A I have been there June 4th was two years.

7 Q Two years. What is your current position there?

8 A I am a forensic technician in the evidence control
9 department.

10 Q What exactly does a forensic technician do?

11 A In our department forensic technicians are
12 responsible for taking in evidence from officers
13 across the State and logging that evidence in and
14 ensuring that it's kept in a sealed evidence room.

15 Q Now, when you are accepting evidence from an
16 officer, can you briefly describe the procedure for
17 that.

18 A Yes, sir. What we do is the officer will come in.
19 They will have what we call log-in sheets. They
20 should have that information filled out and ready,
21 which includes who the investigating officer is,
22 what type of case it is, when the offense occurred,
23 subject, victim's names, just case information.

24 The second page is what we call the inventory
25 sheet which tells us what they are bringing into us

SELENA KINARD -- DIRECT -- MR. MOBLEY

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1 because we do work on a said-to-contain basis. So
2 what they put on that log-in sheet is what we go by
3 as what they are bringing us.

4 Q Once you accept some evidence from an officer, what
5 happens then?

6 A What we do is when the officers hands us the
7 evidence, in this particular case it was blood, so
8 that goes into what we call a heat-seal pouch. We
9 heat seal the top of the pouch. They sign and date
10 on that heat-seal pouch, and they initial and date
11 on the heat seal.

12 That just shows that it is sealed before they
13 leave our office, and we log it into our computer
14 system. Once that is done, I take it in my custody
15 because I logged it in, and at that time I put it
16 into the refrigerator that is in our evidence room.

17 Q I am going to take you back to August 1, 2008. Was
18 there some evidence deposited there by the Cayce
19 Police Department?

20 A Yes.

21 Q Who deposited it there?

22 A It was Darwin Weaver.

23 Q When Mr. Weaver came in, what transpired?

24 A He came in. He had log-in sheets and brought in
25 what he listed as a vial of blood for toxicology.

SELENA KINARD -- DIRECT -- MR. MOBLEY

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1 I logged that evidence in. He signed and sealed
2 the heat sealed pouch, and I stored it in the
3 toxicology refrigerator.

4 Q Now, when he logged in his evidence, did he provide
5 you with any documents to sign?

6 A No, we do not usually sign anything. What we do is
7 when the case is generated and a lab number is
8 generated, our system automatically generates a
9 receipt which has my signature on it.

10 He signs once I have logged in the evidence.
11 Everything is in the system. He signs a signature
12 pad. So his signature is at the bottom of the
13 receipt, along with mine, with the date and time
14 that he submitted the evidence.

15 Q I want to show you a document, State's Exhibit
16 Number 60.

17 A Okay.

18 Q Can you tell us what that document is at the top?

19 A This would be from the Cayce Police Department,
20 their evidence and property custody report. They
21 do have us sign -- or at that time he did have me
22 sign, print and sign on that page. I do apologize.

23 Q Is your signature there?

24 A Yes, it is. Most agencies, we don't have this. I
25 apologize for that. But, yes, my signature and my

SELENA KINARD -- DIRECT -- MR. MOBLEY

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1 printed name and signature is on here.

2 Q Is there a date located near your signature?

3 A Yes, it's August 1, 2008.

4 Q Thank you.

5 MR. MOBLEY: Your Honor, the State would move
6 to have State's Exhibit Number 60 admitted into
7 evidence.

8 MR. WILLIAMS: Your Honor, may we approach?

9 THE COURT: Yes, sir.

10 (Whereupon there is a bench conference off the
11 record in the presence of the jury but out of the
12 hearing of the jury.)

13 THE COURT: State's 60 is in evidence subject
14 to previous objections.

15 (State's Exhibit Number 60 is received into
16 evidence.)

17 BY MR. MOBLEY:

18 Q Ms. Kinard, looking at that document do you see the
19 name who is listed up there at the top?

20 A Yes. It says name of person from whom received?

21 Q Yes.

22 A Andra Jamison, Andra B. Jamison.

23 Q What item is indicated there?

24 A It says item Number A., quantity one, one vial of
25 subject's blood.

SELENA KINARD -- DIRECT -- MR. MOBLEY

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1 Q Thank you.

2 A You're welcome.

3 Q I want to hand to you a second document. It's
4 State's Exhibit Number 70. Can you look at that
5 document and tell us what it is.

6 A Yes, the top two pages are a copy of our receipt we
7 give the officers once the evidence is logged in.
8 The front page basically tells what he put on the
9 log-in sheet, who the investigating officer is,
10 their agency, what type of case it is. It has the
11 subject's name and the victim's name. On the
12 second page on this particular receipt, it has
13 Sergeant Weaver's signature, along with my
14 signature.

15 Q Is that your signature?

16 A Yes.

17 Q Is that an electronic signature that goes with your
18 proper proceeds and protocols at S.L.E.D.?

19 A Yes, that is correct. When I first started at
20 S.L.E.D., I was required to sign my name. That is
21 tracked throughout every case that I log in and
22 every time a receipt is generated, my signature
23 will be on that receipt.

24 Q That is for verification purposes?

25 A That's correct.

SELENA KINARD -- DIRECT -- MR. MOBLEY

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1 MR. MOBLEY: Your Honor, the State would move
2 to have State's 70 admitted into evidence.

3 THE COURT: Subject to previous objections?

4 MR. WILLIAMS: That's correct, Your Honor.

5 THE COURT: State's 70 is in evidence subject
6 to previous objections.

7 (State's Exhibit Number 70 is received into
8 evidence.)

9 BY MR. MOBLEY:

10 Q Ms. Kinard, do you mind looking at the third page
11 of that document?

12 A Okay.

13 Q Can you tell us what that describes there. What is
14 it?

15 A Yes, this is the actual log-in sheet that Sergeant
16 Weaver brought to me on August 1st, 2008, along
17 with the vial of blood. This was the information
18 that he had filled out. We do give back their
19 original paperwork. We do not keep any paperwork.
20 We scan it into our system. So this is the
21 original documentation that he brought to me.

22 Q What information is filled out there?

23 A At the top is the name of the investigating
24 officer, the agency, their phone number, fax
25 number, address, where they are located, their

SELENA KINARD -- DIRECT -- MR. MOBLEY

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1 particular case number that they use at their
2 agency, what type of case it was, the offense date,
3 what county it was in, and also lists subject's
4 name and the victim's name.

5 Q What subject name is listed there and the victim's
6 name?

7 A The subject is last name first, Jamison, first
8 name, Andra, middle initial B. It also lists his
9 sex and race. The victim, last name first is
10 Gamble, first name, Jesse, middle initial M.

11 Q There is a sticker, a yellow sticker, in the top
12 right-hand corner. Can you tell us what that is.

13 A Yes. Once we log in a case into our system and
14 after the officer has signed, the computer system
15 automatically generates what we call a lab number.
16 That is how -- that number is on the evidence
17 throughout the lab. That's how we track it. Once
18 it leaves us and goes to toxicology and comes back
19 to us, that type of thing. That's how it tracked.
20 It's a unique number by case.

21 Q A unique number?

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

23 Q I want to hand you another document, State's
24 Exhibit Number 71. Can you tell us what that is.

25 A Yes, this is our chain of custody. It is again

SELENA KINARD -- DIRECT -- MR. MOBLEY

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1 unique to each lab number.

2 Q What is the lab number that is indicated?

3 A L0811873.

4 Q Does your name appear on that document anywhere?

5 A Yes, it does.

6 Q Is it the normal policies and procedures of
7 S.L.E.D. to print out a document of that nature?

8 A Any time a case comes into S.L.E.D. and we log it
9 in and the officer signs and it generates that lab
10 number, that is when the chain of custody begins.
11 So from the moment that case was logged in, the
12 chain starts, and we can generate this from each
13 case.

14 Q So it essentially tracks where the evidence is
15 located and who has it?

16 A Yes.

17 Q On that form how long does it state that you had
18 it?

19 A On August 1, 2008, I took it from Sergeant Weaver
20 at 14:47, and on the same date at 15:06, I put it
21 into toxicology evidence intake storage, which is
22 our refrigerator.

23 Q When you place it into the storage area, is that a
24 secure area?

25 A Yes, it is. It is in our locked evidence room.

SELENA KINARD -- DIRECT -- MR. MOBLEY

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1 Q Does anyone else other than employees there have
2 access to it?

3 A No.

4 Q Whenever you log anything in or out, do you have a
5 tracking mechanism?

6 A Yes. Each time -- and in this case when I logged
7 this case in, it was automatically in my custody
8 because I logged it in. We have a pass word to get
9 into our computer system.

10 Once I had it in my custody and I was putting
11 up my evidence or storing it in this case in the
12 refrigerator, I had to actually scan it to the
13 refrigerator.

14 So that's why on the chain it says it was in
15 the evidence room, toxicology evidence intake
16 storage. Each location we have, we have to scan.
17 So if I took it back out of the refrigerator, I
18 would scan myself. We each have bar codes as well.
19 That's how it's tracked.

20 Q When you deposited the evidence into the
21 refrigerator, was it in substantially the same
22 condition as it was when you received it from
23 Sergeant Weaver?

24 A Well, after I packaged it.

25 Q After you packaged it?

SELENA KINARD -- CROSS -- MR. WILLIAMS

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1 A Right, right. He would have brought in -- I'm not
2 sure what he would have had it in. I can't
3 remember that. He may have had it in a plastic
4 bag, but once it came to me, I put it in a
5 heat-sealed pouch. He sealed it, signed it, dated
6 it. That's how it stayed. That's when I put it in
7 the refrigerator.

8 Q You did not tamper with it or do anything to change
9 it characteristics?

10 A No, sir.

11 MR. MOBLEY: Nothing further for this witness.

12 **CROSS EXAMINATION**

13 BY MR. WILLIAMS:

14 Q Are you an agent with S.L.E.D. or are you called --
15 what is your title, I guess I should ask?

16 A Forensic technician.

17 Q Your last name is?

18 A Kinard.

19 Q Kinard?

20 A K-I-N-A-R-D.

21 Q Ms. Kinard, in terms of this particular case that
22 we are talking about, these items which you have
23 documented, you are, correct me if I'm wrong,
24 merely the person at S.L.E.D. who received one --
25 one -- vial of blood from the Cayce Police

SELENA KINARD -- CROSS -- MR. WILLIAMS

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1 Department in reference to Andra Jamison?

2 A That is correct. That is what was documented on
3 the log-in sheets by the officer.

4 Q And did you have any other association with this
5 case?

6 A No, I did not. According to my chain, I did not.

7 Q And did you perform any type of analysis on the
8 second blood vial which was drawn?

9 A No, sir.

10 Q Do you have any notation on any of the paperwork
11 that you have that there was a second vial of blood
12 which was drawn?

13 A Not on my paperwork. The paperwork that I have
14 strictly says that I have -- what the officer wrote
15 was one vial of blood.

16 Q And you were not involved in the drawing of the
17 blood, the transporting of the blood, up until the
18 time you got it in your possession at S.L.E.D. the
19 next day?

20 A That is correct.

21 Q So you can't attest to what happened, what the
22 situation was with the blood, prior to you
23 receiving it?

24 A No, I cannot.

25 MR. WILLIAMS: That's all the questions I

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1 have, Your Honor.

2 THE COURT: Redirect, Solicitor?

3 MR. MOBLEY: Nothing, Your Honor.

4 THE COURT: Thank you very much, Ms. Kinard.

5 You may step down. May she be excused? Any objection
6 from the State?

7 MR. MOBLEY: No, Your Honor.

8 THE COURT: Defense?

9 MR. WILLIAMS: No, Your Honor.

10 (Witness leaves the witness stand.)

11 THE COURT: Solicitor, you may call your next
12 witness.

13 MR. MOBLEY: The State calls Amy Stephens.

14 AMY STEPHENS, being
15 first duly sworn, testifies as follows:

16 CLERK: Have a seat and state your full name
17 on the record.

18 THE WITNESS: My name is Amy Stephens,
19 S-T-E-P-H-E-N-S.

20 DIRECT EXAMINATION

21 BY MR. MOBLEY:

22 Q Good morning, Ms. Stephens?

23 A Good morning.

24 Q Where are you currently employed?

25 A I am employed with the South Carolina Law

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1 Enforcement Division, also knowns as S.L.E.D.

2 Q How long have you been with S.L.E.D.?

3 A I have been with S.L.E.D. since March of 2006.

4 Q What position are you in at S.L.E.D.?

5 A I am a forensic technician in the evidence control
6 department.

7 Q What does that entail?

8 A We log in the evidence that the agencies throughout
9 the State of South Carolina bring into us. We log
10 them into the computer system, which assigns it a
11 lab number. We then put that evidence into our
12 evidence room. We also will retrieve that evidence
13 to give to our analysts or other technicians for
14 analysis.

15 Q Is there a tracking system that S.L.E.D. has when
16 evidence is logged in?

17 A Yes. We have a chain of custody that is generated
18 when the evidence is logged into our computer
19 system. The computer system assigns it a lab
20 number and an item number.

21 Q That is for all evidence that comes into S.L.E.D.?

22 A Yes.

23 Q I want to take you back to August 1st, 2008. There
24 was some evidence that was logged into S.L.E.D.?

25 A Yes.

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1 Q By the Cayce Police Department. Did you have to
2 handle it at any time?

3 A I did.

4 Q And what exactly would be your duties with that
5 particular evidence that day?

6 A This particular case, which was S.L.E.D.
7 Number L0811873, I retrieved from our toxicology
8 intake refrigerator and transferred the evidence to
9 forensic technician, Brandon Williams.

10 Q Now, when you received the actual evidence, was it
11 sealed?

12 A To my knowledge, yes. There was no notes made in
13 the case.

14 Q If it was tampered with, would there be a note?

15 A There would be.

16 Q And there was not one made on this particular item?

17 A No.

18 Q If a note was there, what would happen to that
19 particular evidence?

20 A We would send it all the way up to toxicology, but
21 we would let the analyst know.

22 Q That was not the case in this one?

23 A No.

24 Q So before you delivered it to Brandon Williams, you
25 did not see any tampering; correct?

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1 A No.

2 Q Was it in substantially the same condition when you
3 received it as to when you actually gave it to
4 Mr. Williams?

5 A Yes, it was.

6 Q I want to hand you a document. It's State's
7 Exhibit Number 71. What is that document?

8 A This is a verified S.L.E.D. chain of custody.

9 Q Is that kept in the regular course of business
10 there at S.L.E.D.?

11 A Yes, it is.

12 Q What does it do?

13 A It tracks or lists every person that has contact
14 with the evidence itself and also lists where we
15 put the evidence each time a piece of evidence is
16 transferred to a person or to a location.

17 Q Now, the lab number that you read out earlier, is
18 that the same lab number that appears on that
19 document?

20 A Yes, it is.

21 Q On that document how many times does your name
22 appear?

23 A Once.

24 Q What time does it appear?

25 A At 15:50 p.m.

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1 Q And then from there?

2 A I gave it to Brandon Williams at 15:53.

3 Q Once you gave it to Mr. Williams, what else did you
4 do in regards to this evidence?

5 A That was it.

6 Q You had no other contact with the evidence at all?

7 A No, I did not.

8 Q Did you have contact with Mr. Andra Jamison?

9 A No, I did not.

10 MR. MOBLEY: Nothing further for this witness,
11 Your Honor.

12 THE COURT: Thank you, Solicitor.
13 Mr. Williams.

14 MR. WILLIAMS: Thank you Your Honor.

15 **CROSS EXAMINATION**

16 BY MR. WILLIAMS:

17 Q Ms. Stephens, good to see you again.

18 A You too.

19 Q In terms of your involvement with this case, you
20 simply received a vial of blood in the intake
21 storage and gave it to Brandon Landrum, who is
22 another forensic tech?

23 A I actually give it to Brandon Williams.

24 Q Williams, I'm sorry.

25 A That's all I did.

AMY STEPHENS -- CROSS -- MR. WILLIAMS

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1 Q That's all you did?

2 A Yes, sir.

3 Q You have no knowledge about how the blood was
4 drawn, how the blood was maintained?

5 A No.

6 Q You don't have any knowledge about the second vial
7 of blood that was taken?

8 A No.

9 Q And you have no notation about the second vial of
10 blood?

11 A No.

12 MR. WILLIAMS: That's all the questions we
13 have, Your Honor.

14 THE COURT: Redirect?

15 MR. MOBLEY: None, Your Honor.

16 THE COURT: Thank you. Thank you for being
17 with us this morning, Officer Stephens. You may step
18 down. May she be excused? Any objection from the
19 State?

20 MR. MOBLEY: None, Your Honor.

21 THE COURT: Defense?

22 MR. WILLIAMS: None from the defense, Your
23 Honor.

24 (Witness leaves the witness stand.)

25 MR. MOBLEY: The State calls Brandon Williams.

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1 BRANDON WILLIAMS, being
2 first duly sworn, testifies as follows:

3 CLERK: State your name on the record.

4 THE WITNESS: My name is Brandon Williams.

5 **DIRECT EXAMINATION**

6 BY MR. MOBLEY:

7 Q Good morning, Mr. Williams.

8 A Good morning.

9 Q Where are you currently employed?

10 A South Carolina Law Enforcement Division.

11 Q And how long have you been employed there?

12 A Three and a half years.

13 Q What is your current position there?

14 A A forensic technician.

15 Q What does a forensic technician do?

16 A I'm in the toxicology department. We transport
17 evidence for the analysts, and we help out the
18 analysts whenever need.

19 Q You intake evidence, you stated?

20 A No.

21 Q I'm sorry?

22 A I transport evidence from log-in up to my
23 department.

24 Q When you transport evidence, what does that entail?

25 A I receive it from one of the girls at log-in, and I

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1 take it and place it into our walk-in refrigerator.

2 Q Now, where is your walk-in refrigerator located?

3 A On the fourth floor.

4 Q Is intake on the fourth floor?

5 A No, sir.

6 Q You have to go downstairs to get the actual
7 evidence?

8 A Yes, sir.

9 Q That's what happens most of the time, correct?

10 A Yes, sir.

11 Q You are picking up the evidence for toxicologist
12 typically?

13 A Yes, sir.

14 Q Can you tell us the procedure of when you actually
15 receive evidence from intake. What happens? What
16 do you do?

17 A It's scanned into my custody. Then I scan it into
18 our refrigerator. I actually physically take it
19 and place it into our refrigerator.

20 Q Is there a unique number that is being tracked at
21 that time?

22 A It has a S.L.E.D. number.

23 Q And that tracks the progress of the evidence from
24 place to place?

25 A Yes, sir.

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1 Q Is there a chain of custody that can be followed
2 using that particular number?

3 A Yes, sir.

4 Q I want to take you back to August 1, 2008. Did you
5 come into contact with some evidence for Mr. Andra
6 Jamison?

7 A Yes, sir.

8 Q How do you know?

9 A I have a chain of custody.

10 Q You have a chain of custody?

11 A Yes, sir.

12 Q What is the number that is associated with the
13 chain of custody for Mr. Andra Jamison?

14 A L07811873.

15 Q Once you picked up the evidence from intake, did
16 you see that it was tampered with in any way?

17 A No, sir.

18 Q Was it in substantially the same condition as when
19 you received it as when you took to the fourth
20 floor?

21 A Yes, sir.

22 Q Did you tamper with it in any way?

23 A No, sir.

24 Q If it had been tampered with, would there have been
25 some type of indicator there?

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1 A I would be able to notice that it was tampered
2 with, and I would let someone know.

3 Q Was that evidence sealed in some type of container?

4 A A heat-seal pouch.

5 Q I want to hand you a document and it State's
6 Exhibit Number 71. Do you recognize what that
7 document is?

8 A Yes, sir.

9 Q What is it?

10 A It is a chain of custody from S.L.E.D.

11 Q The number that you spoke of earlier, does that
12 number appear on that document?

13 A Yes, sir.

14 Q What is that number?

15 A L0811873.

16 Q Is it the same one you spoke of earlier?

17 A Yes, sir.

18 Q On that document as well, does your name appear at
19 all?

20 A Yes, sir.

21 Q Where does it appear?

22 A It appears after I received it from Amy Stephens.

23 Q What time is that?

24 A 3:53 p.m.

25 Q The date?

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1 A August 1, 2008.

2 Q Does your name appear anywhere else on that
3 document?

4 A Yes, it does.

5 Q Where is that?

6 A September 3rd, 2008.

7 Q What is significant about that date?

8 A After all analysis is completed, we take it and we
9 put it in another bin and hold it for six months.

10 Q After six months what happens to it?

11 A It's destroyed.

12 Q It's destroyed?

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

14 Q So the date your name appears earlier there, where
15 are you taking that vial of blood to for the
16 analysis? Before the analysis occurs, what is that
17 date?

18 A August 1st.

19 Q And then you take it to where?

20 A To the refrigerator.

21 Q And on that form where does it show it goes from
22 the refrigerator where?

23 A To Brandon Landrum.

24 Q Okay. At any point did you come back in contact
25 after the disposal of the blood with the Defendant

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1 or any other evidence in regards to this case?

2 A No, sir.

3 MR. MOBLEY: Nothing further for this witness,
4 Your Honor.

5 THE COURT: Thank you, Solicitor.
6 Mr. Williams.

7 **CROSS EXAMINATION**

8 BY MR. WILLIAMS:

9 Q Mr. Williams.

10 A Hey.

11 Q Good to see you again.

12 A You too.

13 Q Your involvement with this case, do you have any
14 independent recall of these events or are you
15 simply saying what you've- got on your chain?

16 A What I have on my chain.

17 Q Because it's hard to recall something like this
18 from a long time ago, right?

19 A Yes, sir.

20 Q What you basically have you are going by some typed
21 information that you had in regards to your chain;
22 is that correct?

23 A Yes, sir.

24 Q Let me ask you, do you have any knowledge about any
25 second vial of blood?

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1 A No, sir.

2 Q And you don't have anything typed out for you to
3 indicate anything about a second vial of blood?

4 A No, sir.

5 Q You weren't involved in any way with the drawing of
6 the blood or the maintaining of the blood until you
7 got to S.L.E.D.?

8 A That's correct.

9 Q The only thing you did, you take whatever you had
10 in your evidence bag and took it to the
11 toxicologist who happens to have the same first
12 name as you, Brandon Landrum?

13 A Yes, sir.

14 MR. WILLIAMS: That's all I have, Your Honor.

15 THE COURT: Redirect, Solicitor?

16 MR. MOBLEY: Nothing, Your Honor.

17 THE COURT: Thank you. Thank you very much,
18 Mr. Williams. Any objections to Mr. Williams being
19 excused, Solicitor.

20 MR. MOBLEY: None, Your Honor.

21 MR. WILLIAMS: No objection.

22 THE COURT: You may be excused.

23 (Witness leaves the witness stand.)

24 THE COURT: Solicitor, you may call your next
25 witness.

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1 MR. MOBLEY: The State calls Brandon Landrum.

2 BRANDON JAMEL LANDRUM, being
3 first duly sworn, testifies as follows:

4 CLERK: Once you are seated, state your full
5 name on the record, please.

6 THE WITNESS: Brandon Jamel Landrum.

7 **DIRECT EXAMINATION**

8 BY MR. MOBLEY:

9 Q Good morning, Mr. Landrum.

10 A Good morning.

11 Q Where are you currently employed?

12 A The South Carolina Law Enforcement Division also
13 known as S.L.E.D.

14 Q How long have you been employed there?

15 A A little over five years.

16 Q Do you mind giving us a little of your educational
17 background, please.

18 A I have a B.S. degree in Biology with a minor in
19 Chemistry from Winthrop University. Upon
20 completion of my degree at Winthrop, I went to
21 Carolina's Medical College in Charlotte, North
22 Carolina where I received my certification as a
23 medical technologist. Upon completion there I also
24 became board certified through the American Society
25 of Clinical Pathology.

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1 Q What is your current position at S.L.E.D.?

2 A I'm a forensic toxicologist.

3 Q What exactly does a forensic toxicologist do?

4 A A forensic toxicologist is a scientist who applies
5 science to law. What we do is we take and we
6 analyze biological and known biological samples
7 such as blood, urine, tissue, samples for the
8 presence or absence of alcohol, drugs and poisons.

9 Then we take those results and find
10 interpretation results for courts of law for
11 coroners and whoever might need the interpretation
12 of what those results might be.

13 Q You stated that you were in the toxicology
14 department?

15 A Correct.

16 Q How long have you been in that particular
17 department?

18 A A little over five years.

19 Q Have you held any other positions within S.L.E.D.?

20 A Since being hired on at S.L.E.D., I have been a
21 forensic toxicologist, which is my main job. I am
22 also part of the weapons and mass destruction
23 response team where we have a mobile lab unit that
24 goes out and analyzes any types of powders,
25 chemicals that might be suspected threats.

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1 Q You have described some of your responsibilities as
2 a forensic toxicologist. Can you tell us what the
3 toxicology department at S.L.E.D. is actually
4 responsible for.

5 A The toxicology department, basically we have
6 samples submitted to us, and our job is to analyze
7 those samples for the presence or absence of drugs,
8 poisons, alcohol, and then provide those results
9 out to coroners, police departments for the legal
10 aspects and for a court of law. We also provide
11 interpretation of results for those cases.

12 Q I may have missed it earlier. You stated -- well,
13 are you certified as a forensic toxicologist?

14 A Yes. Upon getting hired on at S.L.E.D., we have to
15 go through a rigorous training protocol or
16 procedure. It's about a year and a half program to
17 get trained up. What that includes is both oral,
18 written and hands-on or practical tests --

19 Part of that is we have to analyze a thousand
20 samples of previously reported blood samples from
21 other analysts that have already signed reports and
22 sent them out. Our results have to be within
23 5 percent of what the analyst found.

24 We also have oral tests, as well as written
25 exams. While being at S.L.E.D., I also attended

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1 the Borkenstein School of Alcohol and Highway
2 Safety at Indiana University in Indiana, which
3 basically we went over the alcohol effects, how it
4 affects people with different levels and things
5 like that.

6 I have also attended what we call wet labs,
7 which is basically where you take volunteers as far
8 as sober people, and you dose them at different
9 levels. Then you watch to see their responses to
10 divided attention tasks.

11 Part of that was I attended some of the
12 classes where they had officers and troopers who
13 weren't privy to watching the people get dosed.
14 Then they take those people and they have the
15 officers conduct field sobriety tests on those
16 people.

17 You watch how they performed under these
18 different levels. They dose people from about a
19 .05 all the way up to about .1. That is about the
20 highest they dose people up to. You don't want to
21 get people too drunk that they are falling over and
22 endangering themselves.

23 Q Now, Mr. Landrum, have you ever been qualified as
24 an expert witness in court before?

25 A Yes, I have.

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1 Q And what fields were you qualified as an expert in?

2 A Qualified in the field of forensic toxicology. I
3 guess what that includes is both alcohol and drug
4 analysis and the interpretation of those results.

5 Q Do you know approximately how many times you have
6 been qualified as an expert witness before?

7 A Going on about 15 times.

8 Q Fifteen times?

9 A Yes.

10 MR. MOBLEY: Your Honor, at this time the
11 State would move that this witness be qualified as an
12 expert witness in forensic toxicology. He is going to
13 testify to the impairing effects of alcohol and/or drugs
14 and the ability to interpret results doing an analysis.

15 THE COURT: All right, Solicitor.
16 Mr. Williams.

17 MR. WILLIAMS: Could I question the expert?

18 THE COURT: Yes, sir, you may question him as
19 to his qualifications.

20 VOIR DIRE EXAMINATION

21 BY MR. WILLIAMS:

22 Q Good morning.

23 A Good morning.

24 Q It's my understanding your education is from
25 Winthrop in chemistry?

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1 A It's a biology degree with a minor in chemistry.

2 Q Have you taken any classes or have you gotten any
3 degrees from medical school?

4 A Not from medical school, no. I have not gone to
5 any medical schools.

6 Q Those times that you have testified to, you said
7 you have testified 15 times, as what type of
8 expert?

9 A A forensic toxicologist.

10 Q And in terms of what other education you have other
11 than chemistry -- other than chemistry -- what
12 other classes have you taken involving the human
13 body and the reaction of the human body to drugs?

14 A Part of getting certified as a medical technologist
15 is in that course, it covers your blood bank and
16 your clinical chemistry, clinical hematology, all
17 the times we have to document, say, when we draw
18 blood and send it to the lab and have it analyzed.

19 Also included in that course for the training
20 is a toxicology course where we learn about the
21 effects of drugs and how they affect the human
22 body. So that's part of the training to become a
23 medical technologist.

24 Then upon getting hired on with S.L.E.D., we
25 also went through in-house training where we

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1 learned about the effects of alcohol on a human
2 body, but also going to the Borkenstein School on
3 Alcohol and Highway Safety in Indiana where we also
4 learned about the effects of alcohol on the human
5 body.

6 Q When did you go to this Borkenstein school?

7 A 2007.

8 Q Did you receive a degree from it?

9 A I received a certification, yes, I did.

10 Q And how long were you there?

11 A We were there for -- I think it was a week. It's a
12 week course where you go every day from 8:30 to 5.

13 Q Like an extended seminar?

14 A It's a course provided where you actually get, I
15 believe, some college credits from it.

16 Q Did you receive any specialized treatment (sic)
17 about how various human beings would differ in
18 regards to reaction to alcohol, depending on how
19 much they weighed, what their sex was, if they had
20 diseases, if they had whatever? Did you receive
21 any specialized training on that?

22 A That was covered through the in-house training. I
23 also attended a course provided by the Department
24 of Public Safety. Actually, I guess, it's the
25 police academy now where they do the drug

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1 recognition and evaluator school. I attended that.

2 It's where they also actually had videotapes
3 of people under the influence of different drugs,
4 as well as alcohol, and observed those people under
5 those influences trying to perform divided
6 attention tasks, as well as just sitting there, I
7 guess, sitting there waiting and answering
8 questions.

9 Q And were you tested so that you would know the
10 difference between -- by looking at the individual
11 whether or not he was on alcohol or on drugs? Were
12 you tested in regards to that?

13 A No.

14 MR. WILLIAMS: We would object to his
15 qualifications, Your Honor, as being a true forensic
16 toxicologist.

17 THE COURT: Thank you.

18 Mr. Foreman, ladies and gentlemen of the jury,
19 normally a person cannot give opinion testimony.
20 Normally when a person testifies, they must testify as
21 to what they either saw, heard or sensed by smell or
22 something of that nature.

23 However, there is an exception when someone is
24 qualified because of education or experience or training
25 or background. They are permitted to give their

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1 opinions in certain areas if the Court qualifies them
2 that way.

3 This witness, Agent Brandon Landrum, will be
4 qualified in the area of forensic toxicology, both
5 alcohol and drug analysis, the analysis of blood for the
6 presence of alcohol and/or drugs and also the effects to
7 give opinion testimony in that area. That does not mean
8 that you must accept the opinion, but it is evidence for
9 you the jury to use in any way that you see fit.

10 Solicitor, you may continue.

11 MR. MOBLEY: Thank you, Your Honor.

12 **DIRECT EXAMINATION**

13 BY MR. MOBLEY:

14 Q Mr. Landrum, are you familiar with the procedure in
15 which evidence is received into S.L.E.D.?

16 A Yes, I am.

17 Q Now, was a specimen submitted for this particular
18 case of Andra Jamison to S.L.E.D. for analysis?

19 A Yes, there was.

20 Q And what is the procedure by which you would know
21 that?

22 A The protocol for not just our department but
23 building wide protocol is that an officer from an
24 outside agency would bring in evidence into our
25 log-in department. Then it gets logged in. The

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1 officers places the evidence into what we call a
2 heat-seal pouch or tamper-evident pouch.

3 Then it is heat sealed, and then the officer
4 put his initials and date across the seal. That's
5 to show that it's a tamper-evident bag. If anybody
6 tampers with it, they have to basically cut into it
7 or there would be some way to tell the evidence has
8 been tampered with.

9 Q Now, in this particular case, was such a bag
10 received by you?

11 A Yes, there was.

12 Q Do you have possession of that bag?

13 A Yes, I do.

14 Q May I see it.

15 A (Witness complies.)

16 Q Mr. Landrum, when you received this bag, did it --
17 what was located in that bag?

18 A Tubes of blood was what was in the bag, one vial of
19 blood.

20 Q And how do you know one vial of blood was located
21 in that bag?

22 A On the evidence property bag, it actually says one
23 vial of blood. That's the main way I know.

24 Q Now, looking at those markings on that bag, can you
25 tell me what that is.

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1 A On this bigger bag or the actual smaller one?

2 Q The larger bag.

3 A This is what we call our tamper-evident or
4 heat-seal pouch. Basically when the officer brings
5 it in, he will place the evidence in here. He will
6 heat seal it and initial and date it. Every time
7 that someone goes into that bag, they have to cut
8 and they heat seal it again and put the date and
9 the initials.

10 It shows that, I think, D.J.W. put the first
11 heat seal on 08/01/08 is when this was done. Then
12 on 08/05/08, I cut into the bag and start my
13 analysis. It looks like three other times I cut
14 into the bag and then heat sealed it.

15 Q Now, when you received that bag, was there any
16 indication that that bag had been tampered with in
17 any shape, form or fashion?

18 A No. There wasn't.

19 Q How would it be indicated if something had been
20 tampered with there?

21 A Basically it's a clear sort of thick bag. So
22 basically that's the only way to get into. You
23 will have to cut or put a hole there, and there is
24 no cuts, tears or holes in the bag when I receive
25 it.

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1 Q Now, I want to show you a document. We are looking
2 at State's Exhibit Number 71. What is that
3 document?

4 A It is a chain of custody from S.L.E.D.

5 Q Is that always utilized at S.L.E.D.?

6 A Yes.

7 Q And what is it used for?

8 A It basically shows who, from the time a sample is
9 brought into S.L.E.D., who it's brought in by, who
10 receives it, and everybody that touches the bag or
11 everybody that takes custody of the bag and
12 transports it, would have to take custody of the
13 bag into their custody and then it would be
14 transported.

15 So it shows that on 8/01 Selena had custody
16 of it, and then it went into the intake storage
17 fridge on 8/01. Then Amy Stephens then transferred
18 the evidence from 8/01/08 to Brandon Williams on
19 8/01. From there Brandon William brought it up to
20 our -- we have a walk-in refrigerator which only
21 the staff in the toxicology department has access
22 to.

23 It shows that he transferred evidence from his
24 custody into that refrigerator on our fourth floor,
25 and then on 8/4/08, I then took custody of the

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1 evidence into my custody.

2 Then on 9/2/08 is when I transferred the
3 evidence from my custody into what I have -- kind
4 of a hold bin when I am finished with the case. We
5 have to hold evidence for a 160 days.

6 Then the evidence gets disposed of unless
7 requested by somebody that they need it for some
8 other reason, and we will hold onto it longer. So
9 I transferred it into my hold bin on 9/02/08.

10 Then 9/3/08 Brandon Williams took custody of
11 that hold bin and put it into the hold bin in the
12 refrigerator, and then on 3/3/09, the evidence was
13 disposed of.

14 Q Now, looking at that form, the chain of custody
15 there, which is State's Exhibit Number 71, and
16 comparing that to your bag that is located there,
17 does those dates and times mesh up with one
18 another?

19 A Yeah. It looks like on 8/4/08 at 19:03, that's
20 roughly 7:00 o'clock, regular time,
21 7:00 o'clock p.m. So I took custody out of the
22 evidence out of the refrigerator, but I didn't
23 start doing my analysis on it until 8/5, which was
24 the following day. That's when I actually cut into
25 the bag, on 8/5.

BRANDON LANDRUM -- DIRECT -- MR. MOBLEY

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1 Then on 9/2 is the last seal on the bag and
2 initial date. That shows when I -- what we have to
3 do is we have to take a scalpel and take the label
4 off the tube of blood and put it into this
5 heat-seal pouch and keep it with our record for
6 that case jacket.

7 Then the tube of blood gets heat sealed into a
8 separate evidence tamper pack with its lab number,
9 initials, and all on that. Then that goes to the
10 hold bin. That shows on 9/2/08 was the last time I
11 actually cut into the bag and dealt with the
12 evidence.

13 Q So by looking at both the document and the bag
14 itself, was the evidence submitted and analyzed
15 through your department by the normal procedure and
16 policies at S.L.E.D.?

17 A Yes, it was.

18 MR. MOBLEY: Your Honor, first, the State
19 would move to have State's Exhibit Number 71 admitted
20 into evidence.

21 THE COURT: And that is subject to previous
22 objection?

23 MR. WILLIAMS: It would be, Your Honor.

24 THE COURT: State's 71 is in evidence subject
25 to previous objection.

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1 (State's Exhibit Number 71 is received into
2 evidence.)

3 MR. MOBLEY: Secondly, Your Honor, the State
4 would move to have the bag itself marked as State's
5 Exhibit number 72 and moved into evidence.

6 MR. WILLIAMS: Again, subject to previous
7 objection.

8 THE COURT: State's 72 is in evidence subject
9 to previous objection.

10 (State's Exhibit Number 72 is received into
11 evidence.)

12 BY MR. MOBLEY:

13 Q I hand you back State's Exhibit Number 71 and 72.
14 At some point -- well, can you look at that bag.
15 Is there a smaller container in it?

16 A Yes, there is a smaller evidence pouch. It says
17 agency is from Cayce and has suspect, Jamison. It
18 says the victim is unknown. The date and time of
19 recovery is 8/01. It says one vial of subject's
20 blood. It shows that I cut into this bag on
21 8/5/08 where I have my initials and the date I cut
22 into that heat-sealed pouch.

23 Q When you cut into that bag, what happened next?

24 A Once I cut into that bag, then I take the sample,
25 and I do the blood alcohol analysis on it basically

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1 to determine if any alcohol is present and if so
2 what level of alcohol is present in the sample.
3 Then also if further testing needs to be done, also
4 do further testing on it, for instance, like drug
5 screens or further testing past drug screens.

6 Q For this particular evidence, did you perform any
7 type of analysis on this specimen?

8 A Yes, I performed a blood alcohol analysis on this
9 specimen, as well as a drug screen on this sample.

10 Q What is the procedure about performing those type
11 of analyses that you did that day? What do they
12 entail?

13 A Basically with the blood alcohol analysis, what we
14 do is we take a portion of the tube, from the tube
15 of blood, and we put it into what is called a
16 heat-sealed vial.

17 We put it into the vial and put a septum on
18 it, like a rubber stopper, and crimp it down tight.
19 It gets put onto the instrument where it's run, and
20 then we get our results back from the
21 instrumentation.

22 Then with this being that this case was logged
23 in as a felony D.U.I., then we also perform -- I
24 also performed a drug screen on this case where we
25 allocate another sample from that tube and

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1 performed the drug screen. The drug screen, what a
2 drug screen basically entails is your more popular
3 abused drugs is what our drug screens include.

4 Q So you did an alcohol and drug screen on this
5 particular specimen?

6 A Yes, I did.

7 Q Did you receive any results -- don't publish what
8 they were -- but did you receive any results from
9 that analysis?

10 A Yes, I did.

11 Q What I want to do is hand you a document, and I
12 want you to tell me what that document is.

13 A This is our report that we send out to the officer
14 or whoever submitted the sample stating what our
15 results were, what we found in the specimen or
16 sample.

17 Q Does your signature appear anywhere on that
18 document?

19 A Yes, it's on the second page.

20 Q Does Mr. Jamison's name appear anywhere on that
21 document?

22 A Yes, it's under -- it's on the right-hand side
23 toward the top. It says subject. I cannot
24 pronounce the first name B. Jamison. Then down
25 where we actually type in what the tube of blood --

BRANDON LANDRUM -- DIRECT -- MR. MOBLEY

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1 what we received and how it was actually labeled.

2 The tube of blood was actually labeled Jamison,

3 A-N-D-R-A., B. is actually how it was labeled.

4 MR. MOBLEY: Your Honor, the State would move

5 to have this document listed as State's Exhibit

6 Number 73 and admitted into evidence.

7 MR. WILLIAMS: Subject to those prior

8 objections.

9 THE COURT: State's 73 is in evidence subject

10 to previous objections.

11 (State's Exhibit Number 73 is received into

12 evidence.)

13 BY MR. MOBLEY:

14 Q Mr. Landrum, I am going to hand you back State's

15 Exhibit Number 73. Now, that is a form that is

16 utilized when you do a blood analysis?

17 A Yes. Every time we do any type of analysis on any

18 sample, we prepare a report that gets sent out.

19 This one falls in line with what our normal reports

20 look like.

21 Q Looking at that particular report, that is one that

22 was generated based off your information that you

23 received in this case; correct?

24 A Correct.

25 Q If you look at that document, are there any results

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1 in regards to ethanol or alcohol that are there?

2 A Yes. Ethanol that was found in this sample is
3 0.225 percent weight per volume.

4 Q If you could can you tell us what is the difference
5 between the word ethanol and alcohol, if there is a
6 difference.

7 A Alcohol is basically a broad name for a chemical.
8 Alcohol can include methanol, isopropanol, ethanol.
9 Ethanol is actual the drinking alcohol. It's
10 basically what you have in your beers, wines. It's
11 your ethanol. So that's basically the difference
12 is ethanol is a type of alcohol.

13 Q Now, what were those results again?

14 A 0.225 percent weight per volume of ethanol.

15 Q So this test was specific to ethanol or alcohol,
16 the general term alcohol; correct?

17 A Yes.

18 Q Did you pick up any drugs in this particular blood
19 sample?

20 A No, I performed a drug screen and it came back
21 negative for amphetamines, benzodiazepines,
22 methamphetamine, oxycodone, cannabinoids, which is
23 components of marijuana, and it came back negative
24 also for cocaine and opiates.

25 Q So alcohol or ethanol was the only thing that was

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1 present in Mr. Jamison's blood at the time?

2 A Yes, yes.

3 Q I want to ask you, can you describe to the jury the
4 effect of ethanol and the general term of alcohol
5 on individuals as far as their faculties?

6 A Ethanol is a central nervous system depressant. It
7 will cause a lot of your cognitive, as well as
8 other motor skills, to be delayed or slowed down.
9 Some effects that you can see is you will have
10 delayed reaction time. It will take you longer to
11 perceive something and then react to it.

12 You will have double vision from it. You have
13 slurred speech. Your inhibitions are going to be
14 alleviated. Basically things that you normally
15 wouldn't do, some people tend to do just because
16 that part of the brain is suppressed a little bit.

17 Some of the other things you have from ethanol
18 being a central nervous system depressant is you
19 have sedation, sleepiness, drowsiness. At high
20 enough levels, you can actually have loss of
21 consciousness. You can actually go into a coma,
22 and real high level, you can actually die from
23 alcohol poisoning.

24 Q Does alcohol act as a depressant for everyone?

25 A Yes, it does.

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1 Q It does. When it acts as a depressant, what is
2 that affect on someone's cognitive skills?

3 A Basically ethanol, you are going to see the main
4 effects when you start going to divided attention
5 tasks, multitasking. Simple tasks at low levels
6 you probably won't see any outwardly signs, but
7 when you get higher levels and you start doing more
8 complex tasks, such as driving a car, doing some
9 different hands-on tests that require you do
10 several things at once, then your ability to do
11 those is going to be inhibited. You will not be
12 able to do those properly.

13 Q Every individual is different, correct?

14 A Correct.

15 Q How would alcohol, how would the effects of
16 alcohol, treat each individual differently? Well,
17 let me ask you this. What factors would help to
18 determine someone's blood alcohol level?

19 A Basically things that can determine what someone's
20 blood alcohol level might be basically is how many
21 drinks they have had to drink. Because depending
22 on the weight, if someone weighs more than another
23 person, it will take a person who weighs more, more
24 drinks to reach that same level, ethanol
25 concentration, as it would the person who doesn't

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1 weigh at much.

2 Some of the other things that could come into
3 factor is whether someone has something to eat or
4 not. If you have food on your stomach, that can
5 delay some of the absorption of ethanol into the
6 system.

7 Q Is absorption a very important part of alcohol
8 concentration itself?

9 A Yes. Because absorption, basically it's absorbed
10 mainly from the gastrointestinal tract, but some of
11 it is actually absorbed from the stomach -- well,
12 not so much absorbed from the stomach, but if you
13 have food on your stomach, then the body is going
14 to be trying to break down the food a little bit
15 more, and it will take a little bit longer for the
16 alcohol to actually be released from the stomach
17 and be absorbed by the gastrointestinal tract into
18 the blood stream.

19 Q Does metabolism have anything to do with the
20 alcohol absorption at all?

21 A Yes, everybody is going to metabolize ethanol down
22 to where it can be discarded by the body.
23 Metabolism, the average -- there is a range for
24 what everybody sort of eliminates ethanol in a
25 specific period of time.

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1 The range is .01 to .02 you eliminate ethanol
2 from the blood per hour. The average person is
3 about a .015 percent is how much ethanol they
4 metabolize or get rid out of the blood system per
5 hour.

6 Q Mr. Landrum, exactly how much alcohol would someone
7 have to consume to reach a 0.225 percent blood
8 alcohol level?

9 A For basically an average 150-pound male to reach a
10 .025, it's about one 12-ounce domestic beer, which
11 is about 4 percent ethanol in it. So that is for
12 .025. So basically it would take roughly about ten
13 beers within an hour for the person to achieve that
14 level.

15 Because with absorption and metabolism, once
16 you reach absorption and you start metabolizing,
17 then you have to drink a beer every hour to keep
18 that same level. You have drink about ten beers
19 within an hour to reach that level, and then you
20 have to drink a beer each hour to keep that level
21 for an extended period.

22 Q Based on your training and your experience with
23 these matters, are you able to predict what effect
24 as 0.225 blood alcohol level would have on
25 Mr. Jamison that night?

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1 A With a .225 percent ethanol level, you definitely
2 are going to have -- your divided attention tasking
3 is going to be impaired, basically to be able to
4 drive down the road, stay within the two lines on
5 the road, watch the rear view mirrors, watch the
6 side view mirrors, keep a constant speed, as well
7 as watching everything going on around you. That's
8 when you are impaired. Your reaction time will be
9 delayed.

10 Basically if you are driving down the road and
11 you see a dog or something run across the road, it
12 will take you longer to perceive that coming across
13 the road, then for your mind to perceive it, and
14 for you to actually put on brakes to stop.

15 You are also going to have -- you can have, at
16 levels as far as .15, you start seeing double
17 vision. A .08 or a .1 is usually where you have
18 some of your slurred speech actually starting to
19 show, as well as your .2s, and as you get a little
20 bit higher, you also start having your staggering
21 gait, basically having trouble walking a straight
22 line and things of that situation.

23 Q Now, when is the first noticeable time when
24 someone, an average person, would begin to feel the
25 effects? At what blood alcohol level would they

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1 begin to feel the effects of alcohol according to
2 the American Medical Association?

3 A A .05 percent ethanol level is what the American
4 Medical Association has said is where you can
5 actually start seeing your fine motor skills and
6 things like that start to be impaired. Then, of
7 course, as you increase the alcohol level, you are
8 also going to have that increase as your alcohol
9 level gets increased.

10 Q Now, based off the results you received in this
11 particular case on Mr. Andra Jamison at 0.225, is
12 it your opinion that Mr. Jamison was too impaired
13 to be behind the wheel that night?

14 A Yes. With a .225 percent, he would not have been
15 able to safely operate a motor vehicle.

16 MR. MOBLEY: Nothing further for this witness,
17 Your Honor.

18 MR. WILLIAMS: May it please the Court.

19 THE COURT: I think I will take a break,
20 Mr. Williams, prior to cross examination. How long are
21 you going to be?

22 MR. WILLIAMS: I think it will be about 15, 20
23 minutes.

24 THE COURT: I think will I take a break.

25 Mr. Foreman, and ladies and gentlemen of the

1 jury, if you will please step to your jury room. Do not
2 discuss this case during this recess. Thank you very
3 much.

4 (The jury retires to the jury room.)

5 THE COURT: You may certainly step down during
6 the recess and refresh yourself. You are subject to
7 cross examination, perhaps redirect, so you may not
8 discuss your testimony with anyone.

9 Court will be in recess 15 minutes. Thank
10 you. Thank you very much.

11 (Whereupon there is a recess.)

12 THE COURT: Anything from the State before we
13 bring in our jury?

14 MR. MOBLEY: None, Your Honor.

15 THE COURT: Defense?

16 MR. WILLIAMS: Nothing from the defense, Your
17 Honor.

18 (The jury returns to the courtroom.)

19 THE COURT: Our jury is back present in the
20 courtroom.

21 We are continuing the trial of the case by the
22 cross examination of Mr. Landrum by Mr. Williams. If
23 you would please give the parties your complete and
24 undivided attention.

25 Mr. Williams.

CROSS EXAMINATION

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BY MR. WILLIAMS:

Q Good morning, Mr. Landrum.

A Good morning.

Q Mr. Landrum, if I could I would like to ask you a couple of questions about one of the things which you touched on when you were giving your testimony as being a forensic toxicologist, and that is you were talking about elimination of alcohol?

A Correct.

Q And what was the amount that you said would be eliminated per hour?

A There is a range. It's .01 percent to a .015 percent -- I'm sorry -- to .02 percent is the range that people eliminate ethanol from the body per hour, the average being about .15 percent. It's the average of the population.

Q So if you had a reading at any point in time which was a .225 -- is that what you said the reading was here?

A Yes, sir.

Q A .225. What was the time that you have recorded as being when the blood was drawn?

A (Pause.) The actual label from the hospital was labeled 01:52, so 1:52 a.m.

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1 Q Approximately 2:00 o'clock in the morning?

2 A Approximately, yes, sir.

3 Q So -- and I don't want to put words in your mouth.
4 I want you to tell me what is correct.

5 A Okay.

6 Q What you are saying is when you analyzed that blood
7 is that if the sample is correct, if the blood was
8 accurate, if it was drawn properly, all the things
9 you have to do in advance before you get there,
10 that at 2:00 o'clock or approximately 2:00 o'clock
11 when the blood was drawn, the blood sample would
12 have recorded a .225 then, if you had analyzed it
13 then?

14 A Correct.

15 Q By your other testimony, you said that it
16 eliminates, for every hour, it would eliminate
17 .01 percent?

18 A It would eliminate .01 to .02 percent. That is
19 also assuming that the person is on an empty
20 stomach. When you have food on the stomach, that
21 delays absorption and the elimination rate. On a
22 empty stomach that's what the rate would be if
23 there was no food in the system. A .01 to .02 is
24 the range of elimination.

25 Q I think you picked an average. You said .015 is

BRANDON LANDRUM -- CROSS -- MR. WILLIAMS

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1 the average?

2 A Yes.

3 Q What should the reading have been at 3:00 o'clock
4 based on what you just testified to, what the blood
5 alcohol level should have been?

6 A Assuming, once again, the person is in the
7 elimination phase, they are on an empty stomach,
8 then there would be -- they could have, basically
9 subtracting an hour later, it could have been a
10 .215 to a .205. That's assuming that the person is
11 on an empty stomach and they are in the elimination
12 phase.

13 Q I will ask you to do the math one more time then
14 for one more time.

15 A Okay.

16 Q At 4:00 o'clock in the morning, which would be two
17 hours removed from the time which you have
18 testified to.

19 A Okay.

20 Q What should the average -- what should the blood
21 have been?

22 A Once again, assuming that the person is in the
23 elimination phase and they are on an empty stomach,
24 it could have been a .205 to a .195 is what it
25 could have been, the, range.

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1 That's from taking the .01, multiply it by two
2 hours is .02. You subtract that from the .225 --
3 I'm sorry, I did the .015. But if you do the .02
4 times four and subtract the .04 from .225, it
5 actually would have been a .185.

6 Q So it would be .185 is the low amount?

7 A Yes, sir.

8 Q If you would, would you go through your testimony
9 in regards to what items or factors or observations
10 you would expect to see on a person who had -- you
11 went through a list of things like .05 -- no, .005?

12 A No, .05.

13 Q .05?

14 A Yes.

15 Q What would you expect to see on that person?

16 A That's when you start having your increased
17 talkativeness. You start having your fine motor
18 skills start to be impaired is basically what you
19 would start seeing at .05.

20 Q What would you expect to see at .10?

21 A At .10 you can start to see some of your delayed
22 reaction time. If you are doing divided attention
23 tasks, you might start seeing your delayed reaction
24 time. Your multitasking will be impaired. Once
25 again, your fine motor skills will be more impaired

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1 because you have a higher amount of ethanol.

2 You can actually start seeing some double
3 vision starting to occur, as well as you can start
4 having -- start seeing some of the slurred speech
5 possibly.

6 Q Let me take you to a .15.

7 A Okay. A .15, all those that I have just mentioned
8 would have been increased. You also start seeing
9 some of your stumbling, what we call your gait will
10 be sort of -- your walking will start to be
11 impaired. Once again, divided attention tasks and
12 pretty much all those other things that I have
13 mentioned before will start to be even more
14 impaired.

15 Q One last one, a .20?

16 A At .20 you can actually start seeing some signs of
17 drowsiness, sedation starting to show-up. Your
18 slurred speech will even be more. You will also
19 start having your vision, when it comes to being at
20 night, being able to adjust to dark and light, that
21 will be delayed to adjust from dark to light.

22 That's one of the other things you start
23 seeing at a .2 is your vision will start having
24 some problems with adjusting from the light when
25 you are at night, from the light hitting you to

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1 going back to dark or vice-versa.

2 Q Now, let me ask you some questions dealing with the
3 testing that you do. The type of machine that you
4 use is what?

5 A It's headspace gas chromatography, which is the
6 gold standard in the forensic society to use.

7 Q And how do you physically go through and take your
8 sample and perform your test on your machine?

9 A Okay. What we do we allocate out a sample from the
10 test tube of blood. We take the sample or a
11 portion of the blood, we place it into what we call
12 a G.C. valve or headspace G.C. valve, and we also
13 put an internal standard in that.

14 We put a rubber stopper or septum on top of
15 that and crimp it down to make sure it's sealed.
16 Then it's put onto the instrument with standards
17 before and after the sample that were known
18 certified standards. We actually use a .08
19 standard is our certified standard from an outside
20 manufacturer to show that the instrument is
21 actually working properly.

22 We put it on the instrument and the instrument
23 then -- the way a headspace gas chromatographer
24 works, it uses Henry's law, which basically says
25 that the amount of substance or whatever you are

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1 looking for that is in a liquid portion, when you
2 put it in the closed vial and you put it under
3 specific pressure and you heat it up.

4 Then any volatile, which ethanol or alcohol is
5 a volatile compound, it will be proportional to
6 what is in the head space or the airspace above
7 that liquid.

8 So then once the sample is put on the
9 instrument, it is heated up and put under that
10 pressure. So then a needle injects into the air
11 space of that, and it gives us the reading of what
12 the amount of -- in this case ethanol -- was in
13 that blood sample.

14 Q The amount of sample that you use that you put in
15 this tube is how much?

16 A Two hundred microliters.

17 Q How big is 200 microliters?

18 A Depending on what you use, it's about four drops to
19 20 drops of blood. It depends on how big the drops
20 are, but most of the time it's about four drops of
21 blood.

22 That is concurrent with the way we set up the
23 instrument. We have to calibrate the instrument to
24 run as we take the certified standards we use. We
25 use several different levels of ethanol levels.

BRANDON LANDRUM -- CROSS -- MR. WILLIAMS

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1 We take the same 200 microliters of those
2 certified standards that are known and certified to
3 be those specific levels, and we put our internal
4 standards with that 200 microliters and heat the
5 vial, heat seal it, and we run it and it calibrates
6 the instrument.

7 That's how we know when we take our sample
8 when we run it. That's why we also run certified
9 standards before and after our samples to show that
10 we run .08s as our standard.

11 So before that sample it should read the .08,
12 and then after that sample it should be a .08.
13 That's the way we know our instrument is actually
14 working properly.

15 Q In that you take approximately four drops of blood
16 from the tube, how many samples could you run from
17 the vial of blood that you have?

18 A It depends on how much blood is actually provided
19 in the tube.

20 Q How much blood was in the tube?

21 A That I cannot remember off the top of my head. I
22 do know that after doing my testing, there was
23 insufficient testing for further analysis, which
24 basically means in these type of cases where it's a
25 speculated felony D.U.I. case, I think on the

BRANDON LANDRUM -- CROSS -- MR. WILLIAMS

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1 request form that was submitted to us, they
2 submitted it for us to do an alcohol analysis, drug
3 screen, and also suspected barbiturates, which is a
4 drug, as well as -- one second -- barbiturates and
5 stimulants or drugs that they wanted to us to look
6 for as well.

7 Our drug screen does not cover barbiturates,
8 and it doesn't always cover all the stimulants that
9 are out there in the market. So we were not able
10 to perform a general one to look for any other
11 drug, as far as prescription drugs and things that
12 aren't covered under our drug screen.

13 That is where insufficient sample for analysis
14 comes from. I just know that there was not enough
15 to do further testing. I'm not sure how much blood
16 was submitted.

17 I know it had to be -- you figure 400
18 microliters total, which is almost half a mill was
19 used for the blood alcohol analysis. Because we
20 run the samples in duplicate.

21 We run them back to back, and they have to
22 agree within 5 percent. That's how we know that
23 that sample, the number we got, is actually
24 correct. Then we also run a drug screen, and that
25 requires another a mill of blood.

BRANDON LANDRUM -- CROSS -- MR. WILLIAMS

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1 So really I know I used at least a mill and a
2 half of blood. So depending on how much blood was
3 submitted, I didn't have enough to perform it. I
4 might have had a minimum of 1.5 mills of blood
5 submitted to me.

6 Q Please tell the jury how much 1.5 mills of blood
7 is.

8 A It's 1.5 mills.

9 Q Can you describe it in anything which they could
10 see in their mind's eye? Could we pour it into a
11 cup. Could you pour into a cup?

12 A It's going to be less than a cup. I'm trying to
13 find something. Basically if you had a tube about
14 that big around (indicating), and it was about --
15 it would be about that much blood filled in that
16 tube of blood. Without having an exact measurement
17 or exact way to measure out 1.5 mills of blood,
18 it's hard to demonstrate.

19 Q So it wouldn't have been a full vial of blood by
20 any stretch of the imagination?

21 A No, it wouldn't.

22 Q It wouldn't even be a half a vial of blood, would
23 it?

24 A Depending on what size vial of blood you have.
25 Test tubes come in different vials. You can get

BRANDON LANDRUM -- CROSS -- MR. WILLIAMS

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1 them from five mills to ten mills. If it was a
2 five mill or ten mill tube of blood, then 1.5 mills
3 isn't half of that.

4 Q Do you show what size container you received?

5 A I do not have that, no, sir.

6 Q Now, in terms of your involvement with this case,
7 the only thing you know is that you received a vial
8 of blood from what location?

9 A What do you mean by what location?

10 Q Where did you get it at S.L.E.D.?

11 A It was in the tox refrigerator is where I received
12 it from.

13 Q You took it out on what date?

14 A I took it out on 8/4/08.

15 Q When did you perform the analysis on it?

16 A 8/5/08.

17 Q So you took it out. Where did you put it when you
18 took it out?

19 A As far as?

20 Q To store it.

21 A When I take it out of the refrigerator, I pipe it
22 out for my analysis, I seal it, and then I put it
23 back in our walk-in refrigerator on my shelf that
24 is labeled with my initials for where I have my
25 evidence.

BRANDON LANDRUM -- CROSS -- MR. WILLIAMS

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1 Q Do you leave your sample out that you have drawn
2 out of it? You have indicated --

3 A I've got you. Basically when I pipe it out, the
4 sample, I heat seal it, I crimp it, and it goes
5 directly onto the instrument. So I mean from the
6 time I piped it out, to sealing it and putting it
7 on the instrument, that's where it was. It ran on
8 the instrument. Once I got my results, I took it
9 off the instrument.

10 Q Are you saying that you put it on the instrument on
11 8/4?

12 A No, not 8/4. 8/4 is when I originally took the
13 evidence into my custody, looked at it to make sure
14 it had not been tampered with, and then I placed it
15 back in the refrigerator. Then on 8/5 is when I
16 did my analysis.

17 Q You took it out of the refrigerator again and did
18 your analysis?

19 A Correct.

20 Q Does any of your paperwork indicate what happened
21 to a second vial of blood which was drawn?

22 A I do not have any paperwork that indicates what
23 happens to a second vial of blood, not that I have
24 in front of me.

25 Q You were not involved in the drawing of the blood,

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1 the transporting of the blood, preservation of the
2 blood, except for the limited period of time which
3 you had it in your possession?

4 A Correct. Once it comes into S.L.E.D.'s lab, it's
5 kept in the refrigerated unit.

6 Q Did it have anticoagulate in it when you received
7 it?

8 A Yes, sir, it would have because it would have been
9 a gray top tube. A gray top tube of blood has
10 anticoagulants which keeps the blood from clotting
11 and also has antimicrobial which keeps anything
12 from growing.

13 Q Did you note that it was a gray top tube?

14 A I didn't specifically note that it was a gray top
15 tube, but any time it's not a gray top tube --
16 because gray top tubes is the standard that we
17 analyze samples. So if it wasn't a gray top tube,
18 then I would have had to notate that it would have
19 been something other than a gray top tube.

20 Q What is the other color top tube that someone would
21 draw blood from, red?

22 A We get from red tops, green tops, purple tops.
23 They all have -- in the hospital the different tops
24 have different reasons for different testing.
25 That's why there is the different versions.

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1 Q And the only type of blood that you can test
2 working for S.L.E.D. would be one that was in a
3 gray top tube because of the anticoagulants?

4 A We prefer to have gray top tubes. We can test any
5 color top tube. When it comes to a red top tube,
6 they don't have any anticoagulants in them or any
7 antimicrobials. A gray top tube is a sterile tube
8 that comes with a seal on it.

9 Basically if we had a sample that was a red
10 top tube, we would analyze that sample, and then we
11 have to do a correction factor for it being serum
12 due to the fact that red top tubes can clot due to
13 not having anticoagulants.

14 So we have to take our result and do a
15 conversion factor from it being serum slash plasma,
16 which is what you have when blood clots. The
17 liquid portion that you have left is serum, and
18 then we have to do that conversion so that it would
19 correlate to what the whole blood sample would be
20 or a blood sample in a gray top tube would be.

21 Q Because the kind you are supposed to test is whole
22 blood; is that correct?

23 A Like I said, we can test any type of blood, but
24 according to the State statute, the results have to
25 be reported in whole blood. That's why we have to

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1 do the correction factor for whole blood.

2 Q When you were talking about drawing that sample,
3 putting it in another tube, crimping the top, and
4 heating the item, you talked about the theorem?

5 A Henry's law.

6 Q Henry's law. What you are talking about is you are
7 sticking a needle inside of it, and you are
8 retrieving vapor, air, or what is it you are
9 retrieving?

10 A You are retrieving the headspace. So basically
11 it's the air sample that is provided. When you
12 heat a volatile, then basically some of it will
13 stay in that liquid portion and some of it --
14 basically a proportional you will have in this case
15 .225 alcohol concentration. So that much alcohol
16 will stay in the liquid.

17 It will be proportional. You will have that
18 amount of molecules in the blood, and you will have
19 that same amount of molecules in the air space or
20 headspace. So the needle draws an air sample from
21 that headspace, and it injects it onto the
22 instrument.

23 Then it flows through the column. It comes
24 out and does a reading based off how much ethanol
25 or whatever, in this case ethanol, how much ethanol

1 was actually present in that sample.

2 Q When you say it does a reading, you are actually
3 shooting some sort of beam of light and it's
4 reading off the air some sort of percentage?

5 A What it's actually doing is you inject the sample
6 or the air sample onto the column. It's heated up
7 and goes into the column. The column interacts.
8 It's sort of like you think about a race track.

9 You have all the cars on the race track. All
10 the cars, depending -- they are all on the same
11 track, but depending on the wear of the tires, how
12 long the tires have been going, they separate
13 differently based on how they interact with the
14 track.

15 So just like the column is based off the
16 compound and how the compound interacts with the
17 column, and it separates based off of -- we look
18 for ethanol, isopropanol, methanol, acetaldehyde
19 and acetone. We look for all those different
20 components.

21 They separate based off of their -- the way
22 they interact with the column based off their
23 chemical composition. Then it comes off the
24 column, and then it goes through a flame where --
25 it's a flame ionization detector.

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1 The flame ionizes the compound as it comes off
2 the column, and the detector reads that, and then
3 the internal standard comes last off the column.
4 What it does is it takes the amount of ionization
5 detected from the compound and relates it to the
6 amount of concentration of the internal standard
7 there, and that's how it comes up with how much is
8 actually there.

9 The reason we are able to use the internal
10 standard is that's what the instrument was
11 calibrated off of was the internal standard known
12 to the standards that I mentioned before.

13 When we calibrate an instrument, we go from
14 0.01 percent known ethanol standard, all the way up
15 to .4 alcohol concentration. We have five points
16 which we use: .01, a .025, a .05, .08 and a .4 are
17 calibration points on there.

18 That's how we know that whenever we get a
19 reading, it relates it to the amount of internal
20 standard which is always constant. It's always the
21 same amount of internal standard. It does a
22 mathematical calculation and determines that's how
23 much ethanol or whatever you are looking for is
24 actually in that sample.

25 Q And if you had had Mr. Jamison's other vial of

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1 blood, you could have tested that other vial of
2 blood; couldn't you?

3 A We could have, but according to protocol we only
4 open -- we basically test our one sample and report
5 out our results. So a lot of times we get two,
6 three, four tubes of blood. We only test one tube
7 of blood.

8 Q Did you get more than one tube of blood?

9 MR. MOBLEY: Your Honor, we would like to
10 stipulate that S.L.E.D. was only submitted one vial of
11 blood, Your Honor.

12 THE COURT: You may ask your question,
13 Mr. Williams.

14 BY MR. WILLIAMS:

15 Q Did you only get one vial of blood or did you get
16 more than one vial of blood?

17 A I only received one vial of blood according to what
18 was submitted to S.L.E.D.

19 Q According to your notes?

20 A Yes.

21 MR. WILLIAMS: That's all the questions I
22 have, Your Honor.

23 THE COURT: Redirect, Solicitor?

24 MR. MOBLEY: Yes, Your Honor, briefly.

25 THE COURT: Yes, sir.

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REDIRECT EXAMINATION

2 BY MR. MOBLEY:

3 Q Mr. Landrum, do you know what the standard is that
4 is established by S.L.E.D. for legal intoxication
5 here in South Carolina?

6 MR. WILLIAMS: Your Honor, I would object to
7 that.

8 THE COURT: I would sustain that objection.

9 BY MR. MOBLEY:

10 Q Now, I want to ask you, Mr. Landrum, can you
11 describe what an elimination phase is, as well as
12 an absorption phase and what those two distinctions
13 are.

14 A Absorption phase is basically, as to ethanol, is
15 starting to be absorbed out of your stomach and
16 gastrointestinal tract into your bloodstream. Then
17 the elimination is basically as it's been through,
18 it goes and gets eliminated through the liver --
19 well, first, it gets absorbed into the blood
20 system, goes to the brain and things, different
21 body parts or body organs, and it's eliminated
22 through the liver.

23 According to the effects that you have from
24 absorptions, it's what they call the Mellaney,
25 M-E-L-L-A-N-E-Y, effect. It's basically where, as

1 you absorb the alcohol, you have the more
2 pronounced outward effects. You have the more
3 pronounced outwardly effects of the alcohol as you
4 are absorbing it compared to once you start on the
5 elimination side, you might not always have those
6 outwardly signs.

7 For instance, if, say, your peak blood alcohol
8 level is a .1, to get to that .1 you have to pass a
9 .05, and on your way back down, you have to cross a
10 .05 again. When you are in the absorption phase,
11 you have the Mellaney effect, which basically means
12 when you come to the first .05, you will have no
13 outwardly signs of the effects of the alcohol on
14 your way up.

15 Then as you come back down, your body sort of
16 starts to -- you have learned how to mask it or
17 it's not affecting you quite as much. So once you
18 cross that .05 on the way back down, outwardly you
19 are not showing the effects, but inwardly you are
20 still having the same effects happening.

21 It's sort of like when you get sick or you
22 come up with a cold. When you first get your cold,
23 that's when you have your most signs and symptoms
24 that you are having a cold. You go to the doctor.
25 They give you medicine for whatever it is to cure

1 it.

2 They tell you to take it all the way through
3 until you have taken all the pills, not just stop
4 when you think you are feeling better. Even though
5 you might start feeling better, whatever is causing
6 that cold or sickness is not totally out of your
7 system yet. That's why you have to take it all the
8 way to the end.

9 Q Mr. Landrum, what you are describing is kind of
10 like a bell curve effect?

11 A Correct.

12 Q Or one in, you have the absorption, which is the
13 beginning stage when you begin to drink?

14 A Correct.

15 Q That's when you are going -- in layman's terms you
16 are getting higher?

17 A Correct.

18 Q That's when you begin to show more outwardly
19 effects?

20 A That's correct.

21 Q You cross the threshold at your highest peak
22 though, according to your alcohol consumption, you
23 cross that peak and then you begin to decelerate or
24 decline --

25 MR. WILLIAMS: Objection to the form of the

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1 question.

2 THE COURT: I will allow him to ask that
3 question.

4 BY MR. MOBLEY:

5 Q So once you hit the peak, do you begin to decline
6 off your effects of alcohol?

7 A That's correct.

8 Q During that elimination phase, would that be on the
9 back side of that curve?

10 A The elimination phase is going to be more
11 pronounced on the back side. Of course, you will
12 start, once you start drinking and things like
13 that, you will start metabolizing the alcohol and
14 eliminating it.

15 You will have more elimination, say, if you
16 stopped drinking or you are no longer absorbing the
17 alcohol. Now you will be in the total elimination
18 where you are eliminating the alcohol all the way
19 because you are not taking in anymore alcohol. So
20 that elimination phase is going to be on the back
21 side of the bell curve, decreasing.

22 Q Maybe I'm incorrect here. You stated on this back
23 side of the curve, you may show more outwardly
24 effects?

25 A On the back side of the curve, you might not show

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1 the more outwardly effects. You will still have
2 the same effects, basically cognitive. Your brain
3 will still be affected. The way the brain is
4 affected at .05 will still be affected at .05 on
5 the absorption side and on the elimination side.
6 It will be affected the same.

7 Q So if someone is not showing those outwardly
8 effects that someone typically would at .225,
9 hypothetically in your opinion would they be at the
10 elimination phase or the absorption phase?

11 A They could be at the elimination phase, yes.

12 Q Now, based off of that hypothetical, we have -- you
13 gave a range of elimination of 0.05, correct?

14 A 0.01 to 0.02.

15 Q And the average is what?

16 A 0.15.

17 Q Okay.

18 A I'm sorry, .015.

19 Q Let me write that down so I won't forget it. Have
20 you ever heard of extrapolation before?

21 A Yes.

22 Q What exactly is extrapolation?

23 A Extrapolation, you have to take several things into
24 effect to be able to do an extrapolation.

25 Basically you take a known blood alcohol level, and

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1 then you, depending on how much time has proceeded,
2 you try and figure out what the blood alcohol level
3 would have been prior to the time of the known one
4 you have.

5 Some of the factors that you have to take into
6 account is that the person had to have been on --
7 to do an accurate extrapolation, the person would
8 have to be on an empty stomach.

9 They would have to be in the elimination
10 phase, and basically they would have had to have
11 stopped drinking an hour to an hour and a half
12 prior to the time the known sample was collected.

13 The elimination phase is on an empty stomach
14 and they had to stop drinking an hour to an hour
15 and a half prior to the time the sample was
16 collected.

17 Q Looking at this hypothetical, let's say for
18 instance Mr. Jamison was in the elimination phase.

19 A Okay.

20 Q We have a blood withdrawal at 1:52 a.m.

21 A Okay.

22 Q We want to revert back to the time of the incident
23 that we are here in court before back at 11:26?

24 A Okay.

25 Q Approximately two and a half hours. If we were to

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1 do an extrapolation based off those factors that we
2 provided you with, would that make his blood
3 alcohol level at the time of the incident higher or
4 make it lower?

5 A If he was in the elimination phase, like I stated
6 with all the stipulations, if he was in the
7 elimination phase, his alcohol level would be
8 higher at the time of the incident.

9 Q Now, if we are looking at two and a half hours
10 later, how much higher would it have been instead
11 of .225? What could it have possibly been?

12 A If he hadn't had anything to drink an hour, hour
13 and a half prior to the two and a half hours, then
14 a .245 to a .265 would be the range. Within the
15 two and a half hours, assuming he hasn't had
16 anything to drink since the accident, so had he not
17 drank -- so if you take two and a half hours and
18 you subtract an hour off due to elimination, say,
19 if he had something to drink up to the point of the
20 accident, then an hour -- if you do an hour and a
21 half, that would be a .235 to .245 would have been
22 the range that he could have had.

23 Q That's just hypothetical?

24 A That's hypothetical, yes.

25 Q That's just if he was in the elimination phase?

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1 A If he was in the elimination phase, if he was on an
2 empty stomach, and if he hadn't had anything to
3 drink an hour to an hour and a half prior to the
4 time the blood was drawn.

5 Q In layman terms would someone in the elimination
6 stage, would their outward appearance be like
7 someone who is going up on alcohol?

8 A No, it wouldn't.

9 Q Instead of coming down?

10 A Coming down. Of course, once again, it's like if
11 you have a cold that is just starting to come on,
12 you have more pronounced outward effects than you
13 do once you are starting to get better. You are on
14 the way down. So your outwardly effects on the
15 elimination side would not be as pronounced as on
16 the absorption side.

17 Q We are going to go away from that a little. Does
18 each individual handle alcohol differently?

19 A Yes. Basically if you take a chronic drinker or
20 chronic alcoholic or chronic drinker compared to
21 someone who is first time drinking, you take a
22 chronic drinker and you get him at .1 and you take
23 somebody who is first time drinking and put them at
24 a .1, and put them both in a chair.

25 The person who just has just started drinking

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1 and has reached that .1, they might be falling out
2 of the chair; whereas, the more chronic alcoholic
3 and the person who is an experienced drinker, once
4 they get to .1, they might be able to sit there in
5 that chair and carry on a conversation with you and
6 you not think twice about it.

7 But then when you put them both in a car and
8 have them driving down the road, that's when you
9 have those multitasks going on with driving the
10 car, staying in the lane and all that.

11 Say you have a dog or a ball or a kid or
12 somebody run out in front of that car, then they
13 are both going to have the same delayed reaction
14 time, and it's going to be -- they are both going
15 to be impaired or be affected and not able to
16 see -- both their reaction times are going to be
17 delayed in order to stop from that .1.

18 So they will still be effected cognitively or
19 with the brain at the same -- pretty much at the
20 same level at a .1, compared to just sitting there
21 watching them sitting in a chair.

22 Q So just to summarize that, a beginning and an
23 experienced drinker will still both be impaired the
24 same way. One is just able to handle the alcohol
25 intoxication better than the other?

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1 A Yes. If you think about it sort of like being able
2 to put on a mask. The one that is the experienced
3 drinker is able to put on a mask and hide it
4 outwardly a little bit better.

5 Sometimes you see experienced drinkers, they
6 are going to lean up against the bar when they are
7 talking to keep them from swaying. It's just
8 different things like that, where someone that is
9 just learning to drink, they might not know, Okay,
10 I'm starting to feel the effects of alcohol. They
11 might start leaning and falling all over the place
12 because they haven't learned to, Hey, I'm starting
13 to feel it and lean against the bar to keep myself
14 steady.

15 Q So in essence an experienced drinker has built-in
16 judgments that they know how to adjust to?

17 A Correct.

18 MR. MOBLEY: Nothing further from this
19 witness, Your Honor.

20 THE COURT: Mr. Williams.

21 **RECROSS EXAMINATION**

22 BY MR. WILLIAMS:

23 Q You were asked about extrapolation. You did some
24 extrapolation to .235 and .245?

25 A Correct.

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1 Q And what types of effects would you expect that
2 that person to exhibit?

3 A They are still going to have the same type of
4 effects I mentioned with a .225. They might be a
5 little bit more pronounced. You will have some of
6 the double vision, the slurred speech.

7 You can have some staggering gait, not being
8 able to walk a straight line, ability to adjust
9 from light to dark. If a car light is coming at
10 you, your eyes will -- it will take your eyes
11 longer to adjust back from that light back to the
12 dark or somewhat dark.

13 Q And would you expect that regardless of whether or
14 not the person was in the stage which was going --
15 what did you call it?

16 A Absorption versus elimination.

17 Q Absorption versus elimination.

18 A You would. Like I mentioned earlier with not
19 necessarily a chronic but an experienced drinker,
20 sometimes they have learned -- not necessarily
21 learned -- they talk a little bit slower to keep
22 from slurring their words, which is one of the
23 things that can offset slurred speech.

24 Q Do you have any knowledge as to whether Mr. Andra
25 Byron Jamison is an experienced drinker and would

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1 be able to blow a .245 and be straight talking and
2 fine?

3 A I do not have any experience with his drinking.

4 Q There is another answer to the question, isn't
5 there?

6 A Which question?

7 Q Well, if someone presents himself and the blood
8 analysis is .225 and they appear okay, then either
9 they are masking it -- would that be your best
10 guess as a forensic toxicologist?

11 A That would be possible yes.

12 Q They are masking it or there is something wrong
13 with the sample which you tested?

14 A I cannot -- as far as there being something wrong
15 with the sample, what we test as far as our testing
16 on our end, there is nothing. As far as what was
17 going on with the sample prior to us getting it, we
18 can't say. We just test what we get.

19 MR. WILLIAMS: That's all the questions I
20 have.

21 THE COURT: Thank you. Thank you very much,
22 Mr. Landrum. You may step down. May this witness be
23 excused. Any objection, Solicitor?

24 MR. MOBLEY: I have none.

25 THE COURT: Mr. Williams?

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1 MR. WILLIAMS: None from the Defendant, Your
2 Honor.

3 THE COURT: You may be excused. Thank you
4 very much for being with us.

5 (Witness leaves the witness stand.)

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

8 MR. BURN: Your Honor, the State calls Barrett
9 Raymond.

10 BARRETT RAYMOND, being
11 first duly sworn, testifies as follows:

12 CLERK: State your full name on the record
13 once you are seated.

14 THE WITNESS: My name is Barrett Raymond.

15 **DIRECT EXAMINATION**

16 BY MR. BURN:

17 Q Now, Barrett, where do you work presently?

18 A I currently work with Capital City Ambulance in
19 Columbia.

20 Q Where did you work on July 31st and August 1st of
21 last year?

22 A I was working with Lexington County E.M.S.

23 Q And what level of education and training do you
24 need to get before that?

25 A I am currently a licensed paramedic in South

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1 Carolina. I completed my Associate's Degree in
2 para medicine at B.Y.U. Idaho in 2001.

3 Q Let's go back to the night of July 31, 2008. Did
4 you receive a call relating to an incident involved
5 in this case?

6 A Yes, I did.

7 Q At what time did you receive that call?

8 A The call came in 23:28. That's 11:28 p.m. on
9 July 31.

10 Q And about how long did it take you to get to the
11 scene?

12 A According to the records, it took us approximately
13 two minutes. We were just down the road from the
14 call.

15 Q Once you arrived on the scene, could you describe
16 what you came up on?

17 A We came up on the scene of an accident. It was a
18 summer night. It was dry. It was clear
19 conditions. The scene was pretty well lit. The
20 fire department and police were already on scene.

21 When we rolled up, we saw the patient laying
22 in the roadway. We parked immediately next to the
23 patient where we could have easy access to him and
24 also help illuminate the scene with our own lights.

25 MR. BURN: Begging the Court's indulgence.

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1 (Pause.)

2 BY MR. BURN:

3 Q Mr. Barrett, I am showing you State's Exhibit 23.

4 Is this the individual and is he in the -- was he
5 in the location and position that is depicted in
6 this photograph?

7 A Yes, it is. This is how we found the patient.

8 Q When you initially got there, was anybody already
9 giving any kind of treatment or care?

10 A There was. Cayce Public Safety, the fire
11 firefighters and first responders were on the
12 scene. One of them was holding the patient's head
13 and maintaining C-spine immobilization.

14 Q All right. What did you do at that point?

15 A At that point immediately assessed the situation.
16 We assessed the patient. He was unresponsive. He
17 was breathing. He did have a heart rate. He did
18 have a pulse.

19 There was a large pool of blood around his
20 neck and head from different lacerations that we
21 could see, but his immediate concerns at that time
22 was his unresponsiveness, his altered mental
23 status.

24 Q And what did that indicate to you?

25 A To me that indicated that this was a serious

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1 condition. Any time a patient has altered mental
2 status, they are unresponsive, this becomes quite a
3 serious case, whether this is a head injury --
4 which this appeared to be the case in this
5 instance.

6 Q And what kind of an injury would this indicate
7 specifically?

8 A Once I got a chance to assess the patient a little
9 bit further, I notice the pupils were fixed and
10 dilated. He was having some posturing. That would
11 be where he would extend his arms when we applied
12 papal stimuli.

13 It would indicate that he had some type of
14 brain injury going on, some type of a head injury
15 that would either indicate bleeding inside the
16 brain or something that would create pressure that
17 would alter his ability to function.

18 Q Did you do anything to stabilize him?

19 A At this point after the initial assessment, we
20 applied a C-collar, log rolled the patient,
21 assessed his back for any other injuries. We did
22 also note he had a broken -- the right lower leg
23 was broken, not initially life threatening at the
24 time, but these are all injuries that we take into
25 account.

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1 Once we rolled him onto the board, we secured
2 him onto that board. We then placed him on a cot
3 and put him in the truck. Then my partner and I
4 treated the patient in the back of the truck while
5 a firefighter drove the ambulance on into the
6 hospital.

7 I believe our on scene time was roughly eight,
8 nine minutes. It was very quick. Everything went
9 very well with the call. There was no issues, no
10 complications as far as equipment or assessing the
11 patient. Everything was done by the book and
12 functioned pretty well.

13 Q En route to the hospital did you communicate to the
14 hospital?

15 A Absolutely. En route to the hospital, after I did
16 my initial treatments, including intubating the
17 patient and suctioning his airway of the blood that
18 was in there, as well as starting I.Vs. and
19 splinting the extremity, we are about three minutes
20 out from the hospital.

21 I called and notified them, initiated what is
22 considered a trauma code, which alerts the hospital
23 to have all the proper surgeons and physicians and
24 everybody ready to receive the patient.

25 I advised them as to what my general

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1 impression was at the scene. When I rolled up, I
2 noted a bicycle that was in a somewhat mangled
3 condition. There was also a vehicle down the road,
4 and according to my partner who had checked on the
5 other --

6 MR. WILLIAMS: Objection to hearsay, Your
7 Honor.

8 THE COURT: All right. I would sustain that
9 objection, Solicitor. You can't go into what his
10 partner says.

11 BY MR. BURN:

12 Q Mr. Raymond, your communication to the hospital,
13 did it give them -- did it inform them the nature
14 of his injuries?

15 A Yes. I advised the nurse that this appeared to be
16 a motor vehicle versus bicycle accident, and I
17 advised them that the patient was unresponsive, had
18 an apparent head injury. I advised them of the
19 other injuries that we noted, as well as my
20 treatments and his current vital signs and our
21 current E.T.A.

22 Q So would you say overall that Mr. Gamble, could he
23 have received in any way better treatment than what
24 he initially got?

25 A No. I believe, as I said before, this call went

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1 very well for us. It was by the book. There were
2 no issues with any procedure that we do for the
3 patient. In other words, we did everything that we
4 possibly could have done for him in a pre-hospital
5 setting.

6 MR. BURN: No further questions, Your Honor.

7 THE COURT: Mr. Williams?

8 MR. WILLIAMS: A couple of questions.

9 CROSS EXAMINATION

10 BY MR. WILLIAMS:

11 Q What is the Glasgow, G-L-A-S-C-O-W?

12 A The Glasgow Coma Scale is a way to evaluate the
13 patient's level of consciousness. It gives the
14 physicians a good estimate as to how serious the
15 patient is.

16 Q And what is the range on a Glasgow? You assign a
17 number to the patient, and then you report that to
18 the hospital?

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

20 Q What is the range that you acknowledge?

21 A The range is 3 to 15. Three is the lowest score
22 you can get. Fifteen is the best score you can
23 get.

24 Q What was Mr. Gamble's?

25 A According to my paperwork here, his score was a 5.

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1 Q And in terms of what you did at the scene when you
2 came to the scene, did you remove any clothing from
3 the victim?

4 A Initially, no. When we did flip him over to assess
5 him from the backside, we did cut away some of his
6 clothes in order to be able to assess his back for
7 injuries.

8 Q So you would have cut away the clothing on the
9 upper torso?

10 A That is correct.

11 Q Did you remove any other clothing off the victim?

12 A I don't really recall if we did.

13 Q If you remember taking away or cutting away the
14 clothes on the upper torso, you would remember if
15 you removed any other clothes; wouldn't you?

16 A It's hard to say. At the time I don't really
17 recall if we cut away his lower extremity clothes,
18 his shorts, that he was wearing at the time.

19 Q You wouldn't have done things like take off his
20 shoes and stuff like that?

21 A Yes. Actually if we need to assess the patient, we
22 would have taken off his shoes and socks.

23 Q Did you do that in this situation?

24 A I don't believe he was actually wearing shoes at
25 the time.

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1 Q He had no shoes on?

2 A I believe he had one shoe on, but I don't think he
3 had the other shoe on.

4 Q What did you do with the other shoe?

5 A All the clothes that were removed from the patient
6 were packaged with the patient and left with him at
7 the hospital.

8 Q So you took all the shoes with you when you went to
9 the hospital?

10 A Negative.

11 Q Who took the shoes to the hospital?

12 A If he was wearing a shoe, which I don't recall if
13 he was actually wearing a shoe by the time he got
14 into the ambulance because there was multiple
15 people working on the patient at that time, it
16 would have been transported with him. However, I
17 don't believe he was wearing but one shoe when we
18 found him on the scene when I did my initial
19 assessment.

20 Q And the one shoe which he was wearing when you made
21 your initial assessment, did you take that back
22 with him to the hospital?

23 A I do not know.

24 Q I thought you just said that you would take it
25 unless it was not on him. You would take what he

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1 had on him back to the hospital; isn't that
2 correct?

3 A If we removed his clothes while he was in the
4 ambulance, all those clothes would go with him to
5 the hospital.

6 Q You just don't recall whether or not you took a
7 shoe off or not?

8 A The shoe may have been taken off when he was on
9 scene or it may have been taken off in the
10 ambulance. I don't recall.

11 Q Well, if you took it off in the ambulance, you
12 would have it with you at the hospital; wouldn't
13 you?

14 MR. BURN: Your Honor, asked and answer on
15 this whole line of questioning.

16 THE COURT: Overruled.

17 BY MR. WILLIAMS:

18 Q If you took it off in the ambulance, you would have
19 it with you at the hospital?

20 A That's correct.

21 Q Were you gone before people starting taking
22 pictures at the scene and drawing it off with
23 orange stuff, orange paint?

24 A Since the police were on scene before we got there,
25 I can't say whether or not they were taking

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1 pictures before we arrived or not.

2 Q Did you know the name of the person you were
3 treating?

4 A At the time I did not.

5 Q How long was it before you found out the name of
6 the person you were treating?

7 A It was approximately 10, 20 minutes after we got
8 back to the station that I was able to contact the
9 hospital, and they were able to provide that
10 information.

11 Q And it wasn't the police that gave you that
12 information, it was that hospital that gave you
13 that information?

14 A I believe so.

15 MR. WILLIAMS: That's all the questions, I
16 have.

17 THE COURT: Redirect, Solicitor?

18 MR. BURN: None, Your Honor.

19 THE COURT: Thank you. Thank you, sir. You
20 may step down. Thank you for being with us. Any
21 objections to Mr. Raymond being excused?

22 MR. WILLIAMS: None from the Defendant.

23 MR. BURN: None from the State, Your Honor.

24 THE COURT: Thank you. You are excused.

25 THE WITNESS: Thank you, Your Honor.

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1 (Witness leaves the witness stand.)

2 THE COURT: You may call your next witness,
3 Solicitor.

4 MR. BURN: Your Honor, the State calls Daniel
5 Boyce.

6 DANIEL JAMES BOYCE, being
7 first duly sworn, testifies as follows:

8 CLERK: Once you are seated, speak up loud and
9 clear and state your full name on the record.

10 THE WITNESS: Daniel James Boyce.

11 **DIRECT EXAMINATION**

12 BY MR. BURN:

13 Q Mr. Boyce, where do you work?

14 A I currently do not work.

15 Q Where did you work on the night of July 31, 2008,
16 and the morning of August 1, 2008, of that year?

17 A Lexington County E.M.S.

18 Q What level of education and training did you need
19 to get to get that job, that particular job?

20 A My current position, I was an E.M.T. intermediate,
21 which is a trauma level.

22 Q Now, on the night of July 31, 2008, did you receive
23 a call relating to the incident involved in this
24 case?

25 A Yes, sir.

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1 Q What time did you receive that call?

2 A I'm not sure of the exact time. I don't have it in
3 front of me. It was at night.

4 Q How quickly was the response time to it once it was
5 received?

6 A Just a few minutes, a couple of minutes.

7 Q Once you got on the scene, where were you called
8 to, in fact?

9 A We were called to respond to a motor vehicle
10 collision involving an injured rider right at the
11 Knox Abbott Drive bridge.

12 Q A rider of?

13 A A bicycle.

14 Q A bicycle. Where was that located?

15 A At the Knox Abbott bridge. I don't remember the
16 numerics they gave us for Knox Abbott.

17 Q Could you describe the conditions as they were that
18 night?

19 A Yes, sir. As we were arriving on scene, there was
20 one police car in the middle of the road already.
21 We pulled up and came around to where we saw the
22 victim lying in the roadway.

23 So we passed him and pulled into that lane in
24 front of him. My partner went immediately to the
25 injured pedestrian, and I began to gather

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1 information from the scene.

2 Q Did you observe Mr. Gamble, the patient that you
3 were there to see, the individual you were there to
4 give treatment to? What observations, if any, did
5 you have of him?

6 A He was lying supine or face up on the roadway flat
7 on his back, a lot of blood on the ground already
8 around his head and his neck. He was unresponsive
9 to any verbal or painful stimuli at all. He was
10 unresponsive.

11 Q You say now your partner, Mr. Raymond, was actually
12 giving treatment to him while you were -- what you
13 were doing at that time?

14 A At that point I was gathering information about the
15 call itself. I mean, when you first arrive on
16 scene, you don't know how many people are involved,
17 how many injured parties may be involved. I don't
18 recall who it was, somebody --

19 MR. WILLIAMS: Objection to hearsay, Your
20 Honor, if he doesn't recall or to saying what anybody
21 said.

22 THE COURT: It would be hearsay. I would
23 sustain that objection.

24 BY MR. BURN:

25 Q Who all do you remember speaking to at the scene?

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1 A I spoke to Mr. Jamison directly.

2 Q What was Mr. Jamison's demeanor?

3 A Mr. Jamison was sitting on a curb in a sulking
4 position with his head in his hands towards his
5 knees. I don't know if I can say but somebody
6 directed me to --

7 MR. WILLIAMS: Objection to hearsay.

8 THE WITNESS: I was directed to Mr. Jamison as
9 the driver --

10 THE COURT: Wait just a minute. Wait just a
11 minute. If somebody objects, give me the opportunity
12 please to rule.

13 THE WITNESS: Yes, sir.

14 THE COURT: I would sustain the objection.

15 Solicitor, you may ask your next question.

16 BY MR. BURN:

17 Q All right. Tell me more about what you observed of
18 Mr. Jamison at the scene.

19 A Mr. Jamison was sitting on the curb with his head
20 in his hands down towards his knees. I asked him
21 if he was involved, if he was okay, if he was
22 injured in any way. His speech was slurred, barely
23 comprehensible. His statement to me was, I'm okay.
24 I thought I hit a garbage can.

25 Q Was there anything else you noticed about him? You

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1 said slurred speech. Was this individual in your
2 opinion, was he intoxicated?

3 MR. WILLIAMS: Objection to the leading.

4 THE COURT: Reask the question please,
5 Solicitor.

6 BY MR. BURN:

7 Q Could you tell us more about Mr. Jamison's
8 demeanor.

9 A His physical presence to me led me to think if he
10 was a patient, my clinical impression he was
11 intoxicated. There was a definite presence of an
12 odor of alcohol on him.

13 Q Go ahead and explain what you did from there.

14 A I again tried to ascertain if Mr. Jamison was
15 injured in any way. He didn't appear to have any
16 what we call obvious injuries. I was mildly
17 concerned about his, what we would refer to as his
18 mental status.

19 At that point I still have a responsibility to
20 determine if he is injured or not, if he can't
21 communicate with me well. Again, my clinical
22 impression was that he was intoxicated or the
23 proper definition would be impairment similar to
24 alcohol.

25 I determined that he had no physical injuries

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1 that I could see or that he could relate to me, and
2 I went back to my partner and began to render care
3 to Mr. Gamble.

4 Q And what did you guys, you and Mr. Raymond, do at
5 that point?

6 A Give me just a minute. Typically we will
7 immobilize the patient. In this case we did.
8 Mr. Gamble was fully immobilized in what is
9 referred to as full spinal precautions. His head
10 was immobilized with a cervical collar, and he was
11 placed on a backboard. His body and his head were
12 secured to the backboard, and then he was moved to
13 the unit.

14 Q Did he continue to receive treatment once he was in
15 the unit?

16 A Yes. in the ambulance.

17 Q And where did you then take Mr. Gamble?

18 A Mr. Gamble was transported to Palmetto Richland.

19 Q To your knowledge did you and Mr. Raymond
20 communicate with the hospital?

21 A Yes, sir.

22 Q To let them know what?

23 A I mean, we called in a radio report, what we refer
24 to as a radio report. It gives them the status and
25 condition of the patient, our estimated time of

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1 arrival.

2 Q When you say status and condition, would they have
3 been informed of his injuries?

4 A Yes, sir.

5 Q How would you characterize this particular incident
6 from the prospective of whether or not it was a
7 good call, clean call or whether it was a bad,
8 messy call if you understand what I'm saying?

9 MR. WILLIAMS: Objection to the form of the
10 question, Your Honor.

11 THE COURT: If you will restate the question,
12 please, Solicitor.

13 BY MR. BURN:

14 Q Given the circumstances, did everything from your
15 prospective go as well with this call as it could
16 have or not?

17 A It would be, in my professional opinion, it would
18 be clinically textbook.

19 Q Was Mr. Gamble given good medical treatment?

20 A Absolutely.

21 MR. BURN: I have no further questions, Your
22 Honor.

23 THE COURT: Thank you very much, Solicitor.
24 Mr. Williams, you may examine the witness.

25 MR. WILLIAMS: Thank you, Your Honor.

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CROSS EXAMINATION

BY MR. WILLIAMS:

Q You used the comment in your professional opinion that it was clinically textbook. Can you please tell me something about your degrees or your schools that you have gone to.

A Yes, sir. I have been doing this job since 1990. I was a previous A.L.S. provider in another state that was not reciprocal here in South Carolina.

Q So did you go to any colleges? Did you go to any schools? Do you hold any degrees?

A I have gone to several colleges. I took my pharmacology at Brown University. I took my first medic class through the University of Rhode Island.

Q The degrees which you hold are what?

A Currently it's not a degree course. It's a licensing course.

Q So you are licensed as what?

A In the State of South Carolina, I'm certified as an E.M.T. intermediate.

Q So you are certified as an E.M.T. intermediate?

A Yes, sir.

Q What is the difference between an E.M.T. intermediate and an E.M.T.?

A Scope of practice.

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1 Q When was the last time you were a practicing
2 E.M.T.?

3 A September the 24th.

4 Q Where was that?

5 A Lexington County.

6 Q But you no longer practice there?

7 A That's correct.

8 Q Let me ask you about -- I believe your comment
9 about my client was that he was incapable -- or you
10 were incapable of understanding what he was saying?

11 A His speech was not legible (sic), yes, sir.

12 Q Could not understand him; is that correct?

13 A I didn't say I couldn't understand him. I
14 understood the words he was saying, but he was
15 barely comprehensible.

16 Q Barely comprehensible. Let me ask you about when
17 you loaded -- you and your partner -- loaded the
18 decedent into the ambulance. Did you remove
19 anything off of the decedent?

20 A Some clothing. I mean, we would cut.

21 Q Which clothing did you remove?

22 A I don't know if I personally removed any of it. I
23 recall cutting the center of his shirt open. I
24 can't say that I removed any.

25 Q To your knowledge, did you remove anything off the

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1 decedent?

2 A No, sir.

3 Q To your knowledge did your partner who was there
4 remove anything off the decedent?

5 A Not to my knowledge.

6 MR. WILLIAMS: That's all the questions I
7 have.

8 THE COURT: Redirect, Solicitor?

9 MR. BURN: None, Your Honor.

10 THE COURT: Thank you. Thank you very much
11 for being with us this afternoon, Mr. Boyce. You may
12 now step down.

13 (Witness leaves the witness stand.)

14 THE COURT: Any objection to Mr. Boyce being
15 excused, Solicitor?

16 MR. BURN: None, Your Honor.

17 THE COURT: Mr. Williams?

18 MR. WILLIAMS: None from the Defendant.

19 THE COURT: Solicitor, you may call your next
20 witness.

21 MR. MOBLEY: Your Honor, may we approach?

22 THE COURT: Yes, sir.

23 (Whereupon there is a bench conference off the
24 record in the presence of the jury but out of the
25 hearing of the jury.)

1 THE COURT: Mr. Foreman, ladies and gentlemen
2 of the jury, we are going to take our luncheon recess at
3 this time. Your lunch is supposed to be here at quarter
4 till one. I imagine your clerk is taking care of that
5 now.

6 Please remember during the brief recess --
7 excuse me -- during this lunch recess, you are not to
8 discuss this case with anyone. That includes your
9 fellow jurors.

10 If anyone tries to talk with you about the
11 case, please let me know immediately. Remember to keep
12 an open mind and not begin your deliberations until I
13 direct you to do so.

14 We will start back at quarter till two. If
15 y'all would remain here. If you want to walk out or
16 stretch your legs or something -- as long as one of the
17 bailiffs would accompany them. If they want to go out,
18 that will be fine also. You may now retire to your jury
19 room. Thank you very much.

20 (The jury is excused for lunch at 12:39 p.m.)

21 THE COURT: Anything from the State?

22 MR. MOBLEY: Nothing, Your Honor.

23 THE COURT: Defense?

24 MR. WILLIAMS: Nothing from the defense, Your
25 Honor.

1 THE COURT: Court will be in recess until
2 quarter till two.

3 (Whereupon there is a luncheon recess.)

4 THE COURT: Solicitor, anything before we
5 bring in our jury?

6 MR. MOBLEY: Nothing, Your Honor.

7 THE COURT: Mr. Williams?

8 MR. WILLIAMS: Nothing, Your Honor.

9 THE COURT: Bring the jury, please.

10 (The jury returns to the courtroom at
11 1:45 p.m.)

12 THE COURT: It appears our jury is present in
13 the courtroom. We are continuing the trial of the case
14 by the presentation of testimony by the State in its
15 case in chief. I would ask you to please continue to
16 give the parties your complete and undivided attention.

17 Solicitor, you may call your next witness.

18 MR. MOBLEY: Thank you, Your Honor. The State
19 calls Sergeant Breland.

20 STEVEN BRELAND, being
21 first duly sworn, testifies as follows:

22 CLERK: State your full name and spell your
23 last name.

24 THE WITNESS: My name is Steven Breland,
25 B-R-E-L-A-N-D.

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DIRECT EXAMINATION

BY MR. MOBLEY:

Q Sergeant Breland, where are you currently employed?

A With the South Carolina Highway Patrol.

Q And how long have you been employed there?

A Coming up on 20 years.

Q What are some of your duties in employment?

A I am currently the regional commander for the collision reconstruction team or the M.A.I.T. team, and I'm the commander over the Midlands foothills and the Chester region, which is about 22 counties within the State.

Q During that entire period of time, have you been with the M.A.I.T. team with the Highway Patrol?

A I have been with M.A.I.T. team for coming up on 11 years of that 20-year career.

Q Now, Sergeant Breland, were you a member of the M.A.I.T. team back on August 1, 2008?

A Yes, I was.

Q What was your position at that time?

A At that time I was the assistant team leader for the same region I just talked about, the Midlands region, and I was the assistant team leader of the team.

Q We are going to go back to some of your training

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1 and specialization and things of that nature. Do
2 you mind providing us with a little synopsis of
3 some of your relevant experience in collision work.

4 A I started my law enforcement career in 1985. I was
5 in the United States Marine Corps where I was a
6 military police accident investigator. What I did
7 was basically the same thing I do on the Highway
8 Patrol now. I was a traffic enforcement officer as
9 well as a collision investigator.

10 While assigned to that duty in the Marine
11 Corps, I did receive advanced training in collision
12 investigation. I took some courses through
13 Northwestern University on at-scene and advanced
14 collision investigation.

15 Also, when I came on the Highway Patrol in
16 1990, I received some specialized training in
17 collision investigation. Then starting about 1994
18 I received training in accident and collision
19 investigation, advanced collision investigation,
20 collision reconstruction.

21 I received training since then in advanced
22 collision reconstruction and the reconstruction of
23 pedestrian and bicycle collisions, the
24 reconstruction of motorcycle collisions, commercial
25 vehicle collisions.

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1 I have received specialized training in
2 biomechanics, which is basically what happens to
3 people during collisions. I have received training
4 in low speed collisions, tire forensics. Basically
5 I have had somewhere in the neighborhood of 4,000
6 hours of specialized training in collision
7 reconstruction specific training.

8 Q Now, Sergeant Breland, is this type of training
9 ongoing or you can stop doing it? Is your training
10 ongoing?

11 A It's ongoing. I recently attended a training
12 conference in Florida. I will be attending another
13 training conference in Jacksonville, Florida coming
14 up in the fall. I have already registered for that
15 conference.

16 It's an ongoing process. We receive
17 additional training, updates to training. I also
18 have several certifications which require me to get
19 continuing education credits.

20 I'm an accredited collision reconstructionist
21 due to A.C.T.A.R., which is the Accreditation
22 Commission for Traffic Accident Reconstruction.
23 I'm one of only a couple thousand people or less
24 than a couple thousand people in the world that are
25 accredited reconstructionists.

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1 I have been accredited going on 12 years now,
2 10 or 11, 12 years, is when I actually received my
3 accreditation, but we do have to continually update
4 our education and get so many credit hours to be
5 reaccredited during a five-year period.

6 Q Have you ever had a break in your accreditation?

7 A No, I haven't.

8 Q Are you at this time accredited?

9 A Yes, I am.

10 Q The training you have spoken of very extensively
11 there, was it hands-on experience?

12 A A lot of it is hands-on. We not only have book
13 training and instructor training, but we also are
14 involved in crash testing. Many of the courses
15 have crash testing.

16 I have observed or been involved in and also
17 conducted my own crash testing and planned crash
18 testing, to include car-to-car collision crash
19 testing and also pedestrian and bicycle crash
20 testing.

21 I also am involved in teaching. I teach
22 classes in conjunction with the South Carolina
23 Criminal Justice Academy, as well as the Highway
24 Patrol, on many of these collision reconstruction
25 topics.

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1 At one time I was an adjunct instructor for
2 the Texas A&M University Systems Engineering
3 program. I was one of their adjunct instructors in
4 collision, advanced investigation, and also
5 collision reconstruction.

6 Q During these trainings did you have to test for
7 your proficiency in these areas?

8 A Yes.

9 Q Did you successfully pass those?

10 A Yes, I have successfully passed every one of the
11 proficiency examinations I have taken.

12 Q So you never failed one at all?

13 A No, I haven't.

14 Q Are you currently a member, currently a member, of
15 any accident reconstruction associations?

16 A I am currently a member -- like I said, I am an
17 accredited reconstructionist through A.C.T.A.R.
18 I'm also a member of the South Carolina Association
19 of Collision Reconstruction Specialists, as well as
20 the Society of Professional Forensic Mapping.

21 Q Over the course of your employment as an accident
22 reconstructionist, have you had many opportunities
23 to investigate actual collisions?

24 A Yes. Our specific unit that I'm over, we handle
25 anywhere from 150 to 200 advanced investigations

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1 per year. That's gone up over the past few years,
2 so I can't say that I have done that many every
3 single year in my whole 11-year M.A.I.T. career,
4 but it has been somewhere in that neighborhood. I
5 have investigated over a thousand collisions where
6 I have done some advanced investigation or
7 reconstruction on.

8 Q Now, during the course of investigating these
9 particular collisions, did you have to use specific
10 equipment with reconstructing these collisions?

11 A Yes, we have lot of high-tech equipment that we
12 use. It's not quite as fancy as some of the things
13 you see on C.S.I., but we do have digital
14 photography equipment that we use.

15 We also use what you might know as surveying
16 equipment. You might have seen a surveyor, the
17 equipment they use to survey your land. We use
18 that same sort of equipment in different aspects.
19 We use it to do scale drawings of collision scenes
20 so we can determine distances and come up with
21 scales to make a scale drawing.

22 We also have high-tech equipment that we can
23 plug our computers up to certain automobiles and
24 download certain data from those vehicles. We do
25 have all of the same sort of forensic gear you

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1 might see on C.S.I., like fingerprint kits and
2 D.N.A. kits and other things that we utilize as
3 well.

4 Q So the equipment that you utilize is sufficient to
5 actually carry out your duties?

6 A That's correct.

7 Q Sergeant Breland, have you ever testified in court
8 before as an expert witness?

9 A Yes, I have.

10 Q How many times approximately, if we can just get an
11 approximate amount, have you testified in court as
12 an expert?

13 A It's been over 20 times that I have been qualified
14 as an expert witness.

15 MR. MOBLEY: Your Honor, the State would move
16 to have this witness qualified as an expert witness in
17 accident reconstruction.

18 MR. WILLIAMS: Without objection, Your Honor.

19 THE COURT: Thank you. Thank you very much,
20 Mr. Williams.

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

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

6 This witness Sergeant Breland -- what is your
7 first name, Sergeant?

8 THE WITNESS: Steve.

9 THE COURT: Sergeant Steve Breland will be
10 qualified in the area of accident reconstruction to give
11 opinion testimony in that area. That does not mean that
12 you must accept the opinion, but it is evidence for you
13 the jury to use in any way you see fit.

14 Solicitor, you may proceed.

15 MR. MOBLEY: Thank you, Your Honor.

16 BY MR. MOBLEY:

17 Q Sergeant Breland, with the M.A.I.T. team, how many
18 members are composed -- that make up the actual
19 M.A.I.T. team?

20 A We have got 40 members statewide and on my
21 particular unit I have 13.

22 Q Thirteen. Now, when you all are doing accident
23 reconstructions, do you work in a team?

24 A Yes, we do.

25 Q Are there specific assignments that each individual

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1 has to do?

2 A Yes, there are specific assignments. Everybody is
3 pretty much equal as far as training or fairly
4 equal. So we kind of split the activities up. One
5 guy doesn't do the same thing every time, but I do
6 assign specific duties to different guys.

7 Q Now, during the reconstruction itself, are you
8 relying upon the data that is gathered by each
9 individual team member?

10 A That's correct.

11 Q That's to come up with your conclusions and things
12 of that nature?

13 A We take all of the data that each individual
14 investigator collects. We then typically as a
15 group review that data and then as a group usually
16 come to some sort of opinion or decision on that.

17 Q Are you in a supervisory role at this moment?

18 A Yes, I am.

19 Q When your team actually completes an accident
20 reconstruction, do you go back and look over the
21 conclusions and calculations to make sure they are
22 correct?

23 A Yes, I do.

24 Q And if something is incorrect, what would happen?
25 What do you do in regard to it?

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1 A If there was something incorrect or improper or
2 analyzed improperly, then I would go back and
3 review that and make any corrections to that before
4 we have a final opinion that we report.

5 Q Now, Sergeant Breland, I will take you back to the
6 date of August 1, 2008. Did you have the
7 opportunity, along with the M.A.I.T. team, to get
8 involved with a collision here in Lexington County?

9 A Yes, I did.

10 Q And where would that collision be located?

11 A It was on Knox Abbott Drive coming out of Cayce
12 right before you get to the Blossom Street Bridge
13 to come over into Columbia.

14 Q What time did you all arrive there?

15 A It was in the morning. In the daylight is when we
16 got out there. I can't remember the exact time
17 which we actually got there. We basically start
18 our day at eight.

19 We met at the office, which is a short drive.
20 Our office is on Shop Road. So we basically just
21 met at our office and drove to Knox Abbott,
22 sometime shortly after eight, between eight and
23 nine.

24 Q What was the exact purpose of going to that
25 particular location to investigate that collision?

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1 A The Cayce Police Department had requested our
2 assistance in the investigation of this collision,
3 which is typical. We not only investigate
4 collisions or reconstruct collisions at the Highway
5 Patrol, but we commonly assist other police
6 departments, Sheriff's Offices.

7 We have assisted S.L.E.D. with investigations.
8 We have assisted the F.B.I. We have helped out
9 with the N.T.S.B. on the airplane crash that
10 happened at the airport last year when the plane
11 ran off the runway. So it's typical that other
12 agencies call us to assist.

13 Q That day what were your specific duties?

14 A On that particular day what I did was I walked
15 through the scene that the Cayce Police Department
16 had previously marked with orange paint. They
17 marked things like where the bicycle ended up and
18 where Jesse ended up and some other places.

19 They were out there with us to point out the
20 things they had marked, as well as we had
21 photographs. They had digital photographs that
22 they had taken. They printed those off for us.

23 Basically I walked through the scene to see
24 what they had done the night before and what
25 evidence was there. Then I began taking

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1 photographs of the scene while some of the other
2 guys did some of the other assignments that I had
3 them do.

4 Q So you were mainly taking photographs of the scene
5 at that time, correct?

6 A That's the main thing I did, yes.

7 Q I want to hand you a set of photographs.

8 MR. MOBLEY: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 MR. MOBLEY: If I may approach, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. MOBLEY:

13 Q I am handing you a set of pictures there. I want
14 you to look at those, look through them, and tell
15 me if you recognize those particular photos.

16 A (Pause.) Yes, I do.

17 Q Are those the pictures you took that night?

18 A Some of these photos -- I didn't actually take any
19 pictures that night.

20 Q Excuse me, I'm sorry.

21 A I came out the next day. All the photos that were
22 taken at night were actually -- I think that is
23 starting there, that group -- those were taken by
24 the Cayce P.D., and this is the whole group of
25 photos that I took.

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1 (Attorneys confer.)

2 MR. WILLIAMS: No objection, Your Honor.

3 MR. MOBLEY: The State would move these into
4 evidence as State's Exhibits 24 through -- it appears to
5 be 48, Your Honor.

6 THE COURT: State's 24 through 48 in evidence
7 without objection.

8 (State's Exhibits Number 24-48 are received
9 into evidence.)

10 BY MR. MOBLEY:

11 Q Sergeant Breland, what I want to do is hand you an
12 actual pointer here.

13 MR. MOBLEY: With the Court's permission, I
14 want to actually display these to the jury on the
15 overhead projector.

16 THE COURT: Certainly.

17 BY MR. MOBLEY:

18 Q Sergeant Breland, I am going to present some photos
19 here on the projector. I will call out the State's
20 Exhibit Number. I want you to tell you us what we
21 are looking at here, okay?

22 A Okay.

23 Q The first photo we have is State's Exhibit
24 Number 24. Can you tell me what we are viewing
25 here.

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1 A This is a photo that is taken on Knox Abbott, and
2 if you look towards the top of the photo, that's
3 looking back towards Cayce, and looking down at the
4 bottom of the photo, would be towards the Blossom
5 Street Bridge and towards Columbia.

6 So, I guess, going down would be north in that
7 photo, I think. But basically what this photo is,
8 if you look, Knox Abbott is a basically four-lane
9 highway.

10 You have got two lanes going across the bridge
11 and two lanes that come back across the bridge, and
12 there is a little painted area, which stretches
13 out -- basically a median area, painted median.

14 Then right up against there is what is called
15 a bicycle lane. So that white line right there
16 (indicating) is the outside edge of the car travel
17 lane. In between there and the curb is the bicycle
18 lane.

19 Also there were a couple of areas of interest
20 that we documented, one of which are those two
21 cones right there (indicating) that we placed out.
22 This cone is just used when we documented the white
23 line, and that cone is used to mark the edge of the
24 pavement and the curb line. Then those two cones
25 are some evidence we wanted to capture.

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1 Q Before we begin speaking about that particular
2 evidence, I have actually blown up this photo so
3 the jury will see a little more clearly. I will
4 show you this poster board and you tell me if it
5 accurately redepicts that same picture that is
6 there?

7 A Yes, it does.

8 Q It has not been altered or changed in any
9 substantial way?

10 A No, it hasn't.

11 MR. MOBLEY: Your Honor, with the permission
12 of the Court, I would like to have this displayed so
13 that the jury can see it a little more closely.

14 THE COURT: Are you offering that into
15 evidence?

16 MR. MOBLEY: Yes, it will be State's Exhibit
17 for I.D. purposes Number 74. I'm sorry, Your Honor, I
18 will go ahead and admit into evidence as State's 74.

19 MR. WILLIAMS: Without objection.

20 THE COURT: State's Exhibit 74 is in evidence
21 without objection.

22 (State's Exhibit Number 74 is received into
23 evidence.)

24 BY MR. MOBLEY:

25 Q What I want you to do, you can go ahead and speak

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1 about the cones that are marked there.

2 A About the cones specifically or what they are
3 marking?

4 Q What they are marking.

5 A Right between those two cones right there
6 (indicating) is a bicycle tire scuff mark.

7 Q You state that's a bicycle scuff mark?

8 A From a bicycle tire.

9 Q How were you able to determine that?

10 A It's definitely a tire scuff mark or a skid mark.
11 Any type of tire mark or a tire that is sliding or
12 a breaking tire or a tire that is pushed and it
13 leaves a black mark, we call that a scuff mark.

14 Basically any of those type of tire marks that
15 you have seen on roadways before, we call them
16 scuffs. I knew it was a tire scuff mark. Then a
17 car tire is about six inches wide, eight inches
18 wide, depending on the size of the tire. This was
19 only an inch or so wide.

20 It was a defined tire mark. So you had
21 inside, outside edges. So I knew that it wasn't a
22 car tire, and I knew we were investigating a
23 bicycle collision, so I determined that it is a
24 bicycle tire scuff.

25 Q We are going to move to the second set of cones

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1 here. What I want you to do, I want to have you
2 step down. I will place this on the easel board
3 here and you point it out for the jury what we
4 have.

5 THE COURT: Yes, he may step down.

6 (Witness leaves the witness stand.)

7 THE COURT: What about the lights now,
8 Solicitor?

9 MR. MOBLEY: Yes, Your Honor.

10 BY MR. MOBLEY:

11 Q Okay. Can you explain to us, Sergeant Breland,
12 what those second set of markers are there, orange
13 cones?

14 A The second set of orange cones, this particular
15 cone (indicating) is used just so we can document
16 the outside edge of the pavement. As you can see,
17 there are cones there (indicating), and they go
18 along. So we are actually connecting the dots and
19 drawing a drawing of that.

20 But we have also put the cones there, and if
21 you look on the curb there, there is a tire scuff.
22 Like I said before, any kind of black tire mark on
23 the road, we refer to that as a scuff. There is a
24 black tire scuff on the curbing right there
25 (indicating).

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1 Q Now, that third single cone here (indicating), does
2 it have any distinction?

3 A This cone is not marking any sort of evidence,
4 other than the white line. As you can see, there
5 is a cone there and there (indicating). Basically
6 when we use that survey equipment, we will shoot a
7 laser at those cones to document them, and
8 basically, for lack of a better term, connect the
9 dots.

10 So everywhere we shoot that cone, it puts a
11 dot, and the computer will draw a line. We are
12 actually documenting that white line, as well as
13 that one is documenting it, along with those other
14 cones to that edge of the pavement, and that is
15 documenting the other curb line. We have also got
16 that cone marking where that tire stuff is.

17 We later came back and put more cones. If you
18 put too many cones out, it will get kind of
19 confusing. We will take the ones in the road or
20 whatever, we will take those cones up, and we might
21 lay some more down.

22 Since there were going to be so many cones in
23 that area, we actually removed that cone later and
24 put some more cones to actually make a scale
25 representation of that tire scuff mark.

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1 Q Sergeant Breland, being that you are a little
2 closer now to the jury and have this poster board
3 here, can you again point out the actual bicycle,
4 where the cones are located that mark the bicycle
5 tire.

6 A Right in this area (indicating). You can see
7 between the two cones, there is a little skinny
8 skid mark. Basically that is the tire scuff mark
9 between those two cones.

10 Q Are both sets of those cones clearly within the
11 bicycle lane?

12 A That is correct. This (indicating) is the bicycle
13 lane. This (indicating) is the car travel lane.
14 If you were traveling down the direction of the
15 road, the bicycle lane would be to your right.
16 That tire, bicycle tire mark, is clearly to the
17 right of this white line.

18 Q You can step back up now. Thank you.

19 A (Witness resumes the witness stand.)

20 Q I want to show you some additional pictures. We
21 have State's Exhibit Number 25. Can you just let
22 us know what we are looking at here.

23 A That photo was also a photo taken of the collision
24 scene on Knox Abbott. Basically it's the reverse
25 direction from the photo we just looked at it. So

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1 you are looking towards Columbia, and that's the
2 Blossom Street Bridge right there (indicating).
3 Then I believe the cones have already been removed
4 here, but they would have been in this general area
5 over here (indicating), the cones we looked at
6 before.

7 Q Now, looking at this photo, there is actually a
8 gentleman riding his bicycle on the sidewalk;
9 correct?

10 A That's correct.

11 Q Would someone be able to ride their bicycle on the
12 sidewalk or the bike lane?

13 A Yes. That lane right there (indicating) is
14 actually a bicycle lane, and that's designated a
15 bicycle lane by D.O.T. So they can ride their
16 bicycle in that lane there.

17 Q We have State's Exhibit Number 26. Is there
18 anything significant here?

19 A Again, that's Knox Abbott Drive. This (indicating)
20 is the bicycle lane. Then that's (indicating) the
21 curbing. Unfortunately with the lights where they
22 are, I think that photo right there is that tire
23 scuff mark that is on the curb. It's hard to see
24 with the shadow, but it's right in that area.

25 Q This is going to be the same thing, State's Exhibit

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1 27?

2 A Again, that's the collision scene. In there you
3 can see the bicycle lane. You can see the curb
4 that we have been talking about. Then up on the
5 curb is where the car tire scuff mark is.

6 Q It appears on State's Exhibit 27 that there are
7 some additional tire scuff marks there?

8 A That's correct.

9 MR. WILLIAMS: Objection to leading, Your
10 Honor.

11 THE COURT: Yes, if you would rephrase the
12 question, Solicitor.

13 BY MR. MOBLEY:

14 Q Are there any other tire marks indicated on that
15 curb?

16 A There were actually some black marks that go down a
17 couple of other areas on that curb, yes.

18 Q And State's Exhibit Number 30, what are we looking
19 at here?

20 A On that particular photo, we have got -- that's
21 Knox Abbott. It's the right-hand lane of Knox
22 Abbott. As you are looking up to the top of the
23 photo, that is heading towards Columbia. That's
24 the same area as the other photos we have been
25 looking at.

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1 In that circle right there (indicating) was a
2 piece of evidence that was marked by the Cayce
3 Police Department, and they marked that with a
4 circle. So that's a photo of that circle.

5 Q So you were taking photos of evidence that you had
6 found, your team had found, as well as Cayce?

7 A That's correct. Previously, the night before that
8 I went out there and with the wreck happening, it
9 carried on into early hours of the morning. Then
10 got involved in the daytime.

11 But they had marked stuff like pieces of the
12 bicycle. I believe they had marked some pieces of
13 the minivan that had come off. They had several
14 pieces of evidence that they had marked.

15 They had marked where the bicycle ended up.
16 They had markings where Jesse ended up. There were
17 several areas that they had previously marked, and
18 we had a list of what they had marked. We had
19 their photos from the night before showing each
20 one. So I was just basically redocumenting what
21 they had already documented.

22 Q Now, speaking of pieces of evidence that was on the
23 roadside that Cayce had documented earlier, I want
24 to show you this photo. Can you tell me what this
25 is or do you need to get closer? Do I need to give

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1 it to you first?

2 A I would like to look at it first if you don't mind.

3 MR. MOBLEY: If I may approach, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. MOBLEY:

6 Q Also look at this one too. This is State's Exhibit
7 Number 35. What is that?

8 A That's a piece of a vehicle light.

9 Q And State's Exhibit Number 36?

10 A Right there in that photo is also kind of the light
11 housing from the vehicle, from the van.

12 Q Now, we have -- well, State's Exhibit Number 38,
13 the first set of cones, what is that?

14 A Can I look at the photo a little bit closer?

15 Q Yes.

16 A I'm sorry. It just the way that light is.

17 Q I understand.

18 A This first set of cones right here, again, when
19 we -- you will see a lot of cones in some of these
20 photos. Like I was explaining earlier, basically
21 we set these cones up and in-a-connect-the-dot
22 fashion.

23 So if we want to draw that white line, we will
24 put cones all the way down that white line and put
25 a laser against each one. When we put that into

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1 the computer, it actually connects the dots and
2 will draw that white line.

3 A lot of these cones are just used to document
4 where the lines on the road are, like every little
5 divider lines between the lanes, we put cones on
6 those, and the yellow line that separates the other
7 direction of travel.

8 Also on the curbing, we designate that, the
9 edge of the pavement in that curb. But this right
10 in there (indicating) is also a tire scuff mark
11 that the van left.

12 Q Now, Sergeant Breland, isn't this tire scuff mark
13 the same one that is depicted in the first photo we
14 saw, 24?

15 A That is correct. It's just from a different angle.

16 Q What is this, State's Exhibit 39?

17 A That's a picture of the bicycle that Jesse was
18 riding.

19 Q Where was that taken?

20 A The Cayce Police Department had taken it back to
21 their building. I believe it was kind of a fire
22 department slash police building that they have.
23 It was secured inside a little garage size bay they
24 have over there.

25 They had taken the bicycle over there. So

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1 when I got finish, when we got finished,
2 documenting the collision scene, we rode over
3 there, and I took pictures of the bicycle there.

4 Q Looking at State's Exhibit Number 41, what is the
5 significance of that photo?

6 A I was just taking a photo to document the damage to
7 the bike. That's the rear tire of the bike. So I
8 was just wanting to show that the tire had suffered
9 an impact. It's no longer round, it has been
10 impacted and bent and pushed down.

11 Q Based off your experience in looking at this photo,
12 was that a significant impact there?

13 A I would consider that a significant impact to that
14 bicycle, yes.

15 Q What do we have here?

16 A Once we left the Cayce Police Department and I took
17 photos of the bike, then we went to the wrecker
18 service where they had stored the car. So that's
19 at the wrecker service where I took pictures of the
20 Chrysler minivan that was involved.

21 Q What type damage are we seeing here?

22 A On that particular vehicle, there was some damage
23 along the front side up here (indicating), and the
24 damage just travels up the hood. Then you have
25 damage obviously to the windshield there and the

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1 top portion of that windshield is knocked in.

2 Q That was State's Exhibit Number 42. Now, State's
3 Exhibit Number 45, is this just simply a different
4 angle?

5 A That's correct.

6 Q In State's Exhibit Number 46 you spoke of some
7 damage to the front bumper, lower bumper; correct?

8 A That's correct.

9 Q Is this (indicating) what you were referring to?

10 A Yes. Right here (indicating) on the front bumper,
11 you can see where the plastic is -- the bumper is
12 plastic material. It's actually cut right there,
13 and then you can also see some scratching and
14 gouging of the material. Then you can also see a
15 little bit of transfer of red color onto the color
16 of the van.

17 Q You spoke of red color. We have one photo, State's
18 Exhibit Number 47, that actually gives a closer
19 view. Is that what you were referring to?

20 A That's correct. That just a closer photo of the
21 same one that we just looked at, and that is that
22 cut that I referenced. Right there (indicating) is
23 that red paint that transferred.

24 Q Sergeant Breland, I want to take you back once
25 again to State's Exhibit Number 24. Looking at the

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1 positions of your cones and these markings that are
2 there, are these particular items interconnected in
3 anyway based off your professional opinion?

4 A Yes.

5 Q How so?

6 A You have got the bicycle tire scuff right there
7 (indicating), and then as you travel down, there is
8 a tire scuff on the curb that was left by the
9 minivan.

10 So you have got basically the minivan coming
11 from his lane of travel, hits the bicycle right
12 there in the bicycle lane, then continues on. His
13 right front tire hits the curb right there
14 (indicating), and it leaves a mark right there
15 (indicating). So they are basically connected in
16 that you can follow the vehicle's path of travel.

17 Q Is this before the actual bridge itself?

18 A That's correct. It's just prior to -- one of the
19 other photos that we looked at, you can see that
20 the Blossom Street Bridge is 20 feet away, 30 feet
21 away. I mean, it's not far. I hate to say 20 or
22 30 feet, but it's not very far.

23 Q Without getting into any calculations at this
24 point, Sergeant Breland, do you have any
25 professional opinion as to what happened that night

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1 during this incident?

2 A Without getting into the actual calculations, there
3 is no question in my mind that the Chrysler minivan
4 that was driven by Mr. Jamison, that he struck the
5 bike that Jesse Gamble was riding. He struck him
6 in the bicycle lane on Knox Abbott, and that his --
7 after striking that bicycle and from looking at the
8 damage to the bicycle, there was a substantial
9 impact to the bicycle.

10 And where the bicycle ended up coming to rest
11 and where Jesse came to rest, which was some
12 distance away, and then based on the photos that we
13 looked at so far, I can also form an opinion that
14 the vehicle that Mr. Jamison was driving, the
15 minivan, also after he hit the bicycle, went up and
16 left a tire scuff mark on that curb right there
17 (indicating) with his right front tire.

18 Q Now, you are basing these calculations based off of
19 reviewing all the data that was gathered at the
20 scene?

21 A I'm basing this opinion on all of the data that had
22 been gathered from the scene. I was also standing
23 there taking the photos. So not only did I take
24 photos of these tire marks that we have been
25 talking about, but I actually saw them with my own

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1 eyes and was able to stand over them and look at
2 them from different angles and angles of light
3 hitting them. So they are definitely well defined
4 marks. I also was able to look at the bicycle.

5 I was able to look at and take photos of
6 Mr. Jamison's vehicle. I was able to look at his
7 right front tire, and his right front tire has nice
8 little scuff marks around it from where it hit the
9 curb. So taking everything that the Cayce Police
10 Department did in their initial investigation,
11 everything that either I did personally or my guys
12 did is what I base my opinion on.

13 MR. MOBLEY: Beg the Court's indulgence, Your
14 Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 BY MR. MOBLEY:

18 Q Based off your investigation and gathering of the
19 information as well, at the time of this incident
20 do you have any reason to believe that the roadway
21 was not clear?

22 A The roadway was clear. The site distance is clear.
23 As you can see from those photos, the road is
24 fairly straight. Although as you coming across the
25 bridge, it does get a little bit more narrow than

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1 it was back in Cayce.

2 It still stays four lanes, but it does get a
3 little bit more narrow right across the bridge.
4 It's clear, straight, no vision obstructions, no
5 signs in the way. There is nothing that would
6 hinder anybody's vision.

7 Q Do you know if it was raining or anything that
8 night, a severe thunderstorm or anything?

9 A No, it wasn't.

10 MR. MOBLEY: Nothing further for this witness,
11 Your Honor.

12 THE COURT: Thank you, Solicitor.
13 Mr. Williams.

14 MR. WILLIAMS: May it please the Court.

15 THE COURT: Yes, sir.

16 **CROSS EXAMINATION**

17 BY MR. WILLIAMS:

18 Q Sergeant, good afternoon.

19 A Good afternoon.

20 Q Now, as I understand your testimony, you were there
21 to draw conclusions based on the location -- I
22 can't see -- based on evidence which you observed
23 while you were there, as well as evidence that was
24 documented or placed there by the Cayce Police
25 Department?

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1 A Evidence that was documented by the Cayce Police
2 Department, but they didn't actually leave any
3 evidence.

4 Q So when you were there, there was no evidence that
5 was on the roadway. What you were operating from
6 was the orange circles and marks which were drawn
7 on it. There wasn't a sock there. There wasn't a
8 shoe there. The bicycle wasn't there.

9 A The bicycle wasn't there. There were no -- the
10 clothing wasn't there. There were a couple of car
11 pieces that were still there. Knowing that it was
12 at night when they were working at the scene and we
13 were out there the next morning, there were a
14 couple of pieces that had not been picked up that
15 we did mark.

16 There was still some blood on the road. There
17 was a patch of hair on the road that was still
18 there. I mean, there was some stuff that was still
19 there.

20 Q Right. You said because it was night that they
21 obviously didn't find all the evidence or didn't
22 secure all the evidence because it was night; is
23 that right? Is that kind of what you -- you
24 couldn't see it all at night is what you are
25 saying?

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1 A There were a couple of pieces of evidence that were
2 close to the rail on the bridge and right at the
3 start of the bridge that they may not have seen and
4 was still there the next day.

5 Q Did you take this picture?

6 A I don't believe I took that photo.

7 Q How about this picture?

8 A I will have to look at my sheet. Showing pictures
9 that are just closeups of items, I may or may not
10 have taken them. I did take closeups, but I also
11 usually take reference photos so that when I get to
12 that photo, that closeup, I can know what it is. I
13 can look at my contact sheet and able to tell you
14 if I took that exact photo.

15 Q Maybe I can simplify the question for you. State's
16 Exhibit Number 11 and State's Exhibit Number 12
17 appear to be part of -- and you can look at that --
18 appear to be part of the lens cover that you
19 referenced earlier; is that right?

20 A That's correct.

21 Q So let me backtrack to what we were just talking
22 about. As I understand what you just testified
23 to --

24 THE COURT: Will you cut the lights back on,
25 please.

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1 MR. WILLIAMS: I'm sorry, Your Honor. I
2 didn't mean to leave us in the dark.

3 THE COURT: That's all right.

4 BY MR. WILLIAMS:

5 Q As I understand what you just said earlier, you
6 said that when you came there, the area was marked.
7 Cayce Police Department had marked it with orange
8 circles and things of that nature but that any
9 evidence that was out there, they had taken their
10 evidence in. But the evidence that was out there
11 was evidence that you found because it was dark the
12 night before?

13 A No, that's not exactly what I said. What I said is
14 they had taken -- pretty much taken evidence in.
15 They didn't leave any new evidence. When he asked
16 me did they leave any evidence, I said they didn't
17 leave any evidence.

18 They may have left some parts out there, and
19 then I talked about that there were a couple of
20 things that we found that day that had not been
21 previously marked.

22 That's what I referenced to that they had left
23 some things out there that obviously they had not
24 seen the night before. There were a couple of
25 pieces, those light pieces to be specific, that

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1 were left. They were on the sidewalk on the
2 bridge.

3 Q So it's your testimony that the Cayce Police
4 Department discovered these light housing things,
5 part of a vehicle the night or the early morning
6 hours of the wreck, and they left them out there on
7 the scene, didn't secure them into evidence but
8 just left them out there on the scene, and then
9 when you came in five or six hours later you
10 discovered them?

11 A I wouldn't say I discovered them. To be quite
12 honest with you, I don't even know if those parts
13 belonged to the minivan. They did get all the
14 important stuff out, which was they collected the
15 entire van and they collected the bicycle. They
16 collected the clothing, and they documented
17 everything they needed to document.

18 Q Let me ask you this. Don't you think that the
19 light housing and the light is an important piece
20 of evidence if it fits up to the van and if it's
21 found on a particular location? Don't you think
22 that is important?

23 A I wouldn't consider that as important as like the
24 tire scuff mark in the bicycle lane, the mark on
25 the curb and the van itself and the bicycle, which

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1 we had all of that.

2 Q So it would be important because it would show that
3 it came from the van, and it would show where it
4 dislodged from the van; wouldn't it?

5 A No. Vehicle debris is definitely not a good
6 indication of where anything becomes dislodged from
7 that particular vehicle. If a vehicle is traveling
8 down the road and he hits a bicyclist, pedestrian
9 or another vehicle, you don't typically see those
10 parts sitting right there where the impact
11 happened.

12 You typically see them up the road a distance,
13 and depending on the speed of the vehicle,
14 sometimes that's a great distance from where the
15 actual impact happened.

16 Q So vehicle debris is not an indication of where the
17 accident happened?

18 A That's correct. It typically is not. As a
19 practice, the Highway Patrol M.A.I.T. team does not
20 collect all vehicle debris from collision scenes.

21 The majority of the vehicle debris that is left at
22 collision scenes gets swept up and is usually stuck
23 in the wrecked car in a bucket by the wrecker
24 service when they clean the road up.

25 Q Do you know whether or not anyone has ever compared

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1 the numbers -- I assume most car parts have numbers
2 on them. That's how you order when you break one
3 at the Ford place or the Chrysler place.

4 A That's correct.

5 Q Do you know if anyone has compared these two items
6 to see if they actually come back to the Chrysler
7 minivan?

8 A I know we haven't. I would assume the Cayce Police
9 Department hasn't either.

10 Q Why would you assume they haven't done it?

11 A They had the van, which was actually still at the
12 scene. They had the bicycle and they had Jesse,
13 and they knew the wreck happened right there. So I
14 couldn't see any reason for them to have to match
15 up that particular piece to the van.

16 Q What would it mean if it didn't come off the van?

17 A It would just mean it didn't come off the van.

18 Q So let's talk about what you think is extremely
19 important, and that is the scuff marks; right?
20 That's your crucial factor in determining where the
21 accident occurred?

22 A Yes, it was.

23 Q That is the whole factor in regards to where the
24 accident occurred?

25 A That's a pretty big factor in determining where

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1 that happened.

2 Q Now, do you know how old the roadway was?

3 A I have no idea.

4 Q I hate to admit it, but it looks like it needs --

5 It looks like it needs a little work on it, doesn't

6 it. It looks like it needs resurfacing, doesn't

7 it?

8 A No more than any other road.

9 Q It's been there for a while without any
10 resurfacing?

11 A I will not argue to that. I will agree to that.

12 Q As a matter of fact, I will get you to step down
13 here. If you would step down here, Sergeant, and
14 come to the other side so they can hear you.

15 A (Witness leaves the witness stand.)

16 THE COURT: Find out why somebody is waving in
17 the back of the courtroom. I don't want anybody coming
18 in or going out while a witness is on the stand,
19 Mr. Bailiff and Sheriff.

20 Mr. Williams, you may continue.

21 MR. WILLIAMS: Thank you, Your Honor.

22 BY MR. WILLIAMS:

23 Q This is the blown-up picture. It's State's Exhibit
24 Number 74. This is where all your cones are. If
25 you will point to the tire scuff mark which you say

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1 is located here.

2 A This (indicating) is the bicycle tire scuff mark,
3 and that's (indicating) the scuff mark from the
4 van.

5 Q As I understood your testimony, there were several
6 other locations along the roadway where there was
7 tire scuff marks?

8 A If you look on here, there's some scuff marks up
9 here (indicating) and some scuff marks back up
10 there (indicating). I'm sure as you went down the
11 curb, you would probably see some more.

12 Q Because the road has been there a while, and there
13 is probably a lot of scuff marks on that road?

14 A That's true.

15 Q So we know that the roadway has got a lot of scuff
16 marks along the roadway and on that curb leading up
17 to the bridge. Would there be scuff marks maybe on
18 the curbing on the bridge?

19 A I'm sure there is probably scuff marks. There's
20 probably more scuff marks on the bridge. This
21 bridge is fairly narrow.

22 Q And at 5:00 o'clock traffic, you have a lot of
23 people -- 5:00 o'clock in the morning traffic as
24 you are leaving Cayce, you have a lot of people
25 maybe scuffing their tires as they move over and

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1 not paying attention; wouldn't you?

2 A It's possible, yes.

3 Q Having said that this tire mark right here
4 (indicating), how long is that tire mark?

5 A I can't tell you the distance off the top of my
6 head. We have documented that. I could pull up
7 the C.A.D. drawing to tell you. It's approximately
8 a foot long or so, about a foot.

9 Q You can have your seat. Oh, let me ask you one
10 more question before you sit down. This bicycle
11 lane, what is located here (indicating)? Part is
12 concrete and part is road, isn't it?

13 A That's correct. This is an asphalt surface and
14 that's concrete.

15 Q And it's not really even either, is it? I mean, if
16 you were riding over it, this part might be smooth
17 or this part might be smooth, but going back and
18 forth it would be a little rough; wouldn't it?

19 A Yeah, there is a little transition area between the
20 two surfaces.

21 Q So really the smoothest area on the road would be
22 over here (indicating), wouldn't it?

23 A I believe that would probably be equally smooth.
24 It would just be getting from one to the other that
25 would be the rough part. (Witness leaves the

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1 witness stand.)

2 Q Do you know how wide the white marks are on the
3 road?

4 A The white lines are supposed to be four inches.
5 That's what they are supposed to be drawn at, and
6 the little truck that drives around with the
7 machine that they use to paint those lines are
8 supposed to paint them four inches, but I don't
9 know whether it's 3.95 inches or 4.1.

10 Q Is that (indicating) about four inches?

11 A I would agree that is about four inches, yeah.

12 Q You had the bicycle, right?

13 A That's right. We looked at the bicycle.

14 Q And you had the tire, right?

15 A That's correct.

16 Q Did you perform any type of analysis on this
17 tire -- well, either tire, the front tire or the
18 back tire to see if that rubber was consistent with
19 the scrapings that you found on the roadway?

20 A No, we didn't.

21 Q Well, now in this day and age, you certainly can do
22 that; can't you?

23 A As a matter of fact, you can do that nowadays.

24 Q And years ago you used to have to do the tire
25 tracks and stuff like that and then match them, but

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1 you can test the substance to see if the substance
2 is the same substance that is on the roadway?

3 A You can't test to see if it's the exact same
4 substance. The analysis and the results that you
5 would get would say that the two are consistent
6 with each other.

7 Q Now, how long do you think we have had bicycles in
8 the United States. Did you have a bicycle when you
9 were growing up?

10 A Yes, I did.

11 Q How many bicycles did you have when you were
12 growing up?

13 A Not as many as I wanted but I had several.

14 Q Each bicycle had a different type of tire, didn't
15 it?

16 A That's correct.

17 Q And as time got -- as we came into the
18 20th century, the tires, the composites of the
19 tires, changed, too; didn't they?

20 A I'm sure they have.

21 Q Make them tougher, lighter; right?

22 A That's correct.

23 Q But no analysis was done to this tire scuff mark to
24 see if it came from this bicycle?

25 A No, there wasn't.

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1 Q Now, what causes a scuff mark from a tire?

2 A Several things. You can lock the brakes and leave
3 a skid mark. You can push a car sideways and it
4 leaves a scuff mark. A car that spins around
5 leaves scuff marks.

6 In this particular case a bicycle that is hit
7 in the back with a minivan and pushed the tire down
8 and pinning the tire under the bumper, cutting the
9 bumper, can leave a tire scuff from the bicycle on
10 the pavement.

11 Q And simply riding your bicycle and hitting your
12 brakes could cause a scuff mark?

13 A Yes.

14 Q Having thought about that, don't you think it would
15 really have been important to have checked the
16 tires that are on this bicycle to the scuff mark
17 which you found out there on the roadway?

18 A In terms of analyzing the components?

19 Q To see if it's the same, sure, to see if it's the
20 same?

21 A At that particular time we utilized the South
22 Carolina Law Enforcement Division to do our
23 analysis of stuff like that. They didn't actually
24 have that capability. Like I said earlier,
25 actually now they do.

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1 I have got evidence over there right now being
2 analyzed, similar rubber to rubber evidence. At
3 that time they didn't. So basically we didn't have
4 any -- we didn't have the capability of doing that
5 at that time.

6 And then the second reason that we didn't
7 because there was no need to. I mean, if there was
8 a wreck there involving a bicycle and a car -- and
9 I have seen hundreds, thousands of wrecks,
10 thousands of scuff marks and tire marks. Those two
11 were fresh.

12 So I made the opinion that they had
13 happened -- you had a bicycle wreck. You had a
14 van, had damage to the bicycle, damage to the van.
15 When you take all those things into consideration,
16 it's not hard to say that that mark came from this
17 bicycle and that mark on the curb came from that
18 minivan.

19 Q When did S.L.E.D. just get the ability to analyze
20 the tire substances to see if they are consistent
21 or not?

22 A I can't recall her name. She just recently has
23 been employed at S.L.E.D., and she has written a
24 paper on comparing -- matching up a rubber scuff
25 mark with the actual rubber source.

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1 The evidence that I have over there now is
2 the first time she is actually applying that. So
3 I guess within the past -- whenever it is she got
4 hired.

5 Q But you don't know who she is?

6 A I do know who she is. I can't think of her name
7 right now. One of my investigators actually has
8 talked to her. I could make a quick phone call to
9 find out what her name is.

10 Q Did you check to see if anyone could compare the
11 tread marks?

12 A Again, for the reasons I just stated, I didn't see
13 there was any need. We work hundreds of collisions
14 a year across the State. We use skid mark from
15 cars and bicycles all the time to analyze them. I
16 have never, in the thousands of wrecks, taken a
17 sample of rubber from the road to match up with a
18 tire.

19 Typically if you have got a car or a bicycle
20 that is basically sitting at the end of skid marks,
21 it's not too hard to make the assumption that that
22 car made those skid marks. So in this particular
23 case, we had a wrecked bicycle and a wrecked van at
24 the end of these marks. So it wasn't -- I didn't
25 see any need to have anything analyzed by S.L.E.D.

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1 Q Well, where was the van located?

2 A The van was actually located up on the Blossom
3 Street Bridge.

4 Q How far away from this area was the van located?

5 A The van was actually located about half way across
6 the Blossom Street Bridge.

7 Q How far is half way across the Blossom Street
8 Bridge?

9 A I can't give you the distance. I know I walked it
10 and it's a few hundred feet, a couple of football
11 fields or more. It was a good distance.

12 Q How far was the bicycle located away from this
13 area?

14 A The bicycle was located about 150 or so feet from
15 the impact spot.

16 Q So it was 30-yards away?

17 A Right. From the point of impact to where Jesse
18 ended up was 165 feet, thereabouts, 164, something
19 like that. The bicycle was a little bit beyond
20 that or it might have been right before it. It was
21 in the area of 150, 160 feet away.

22 Q What was 160 feet away, from where?

23 A From where the impact happened.

24 Q What was 160 feet, the bicycle or the van?

25 A No, no. Jesse and the bicycle became separated.

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1 They were 150, 160. I could look at the notes and
2 give you a more exact number. When you were asking
3 me a distance, I am giving you a rough estimate of
4 how far it was away.

5 Q When you determined your calculations, it's
6 important that you have -- that your evidence be
7 marked in the right location, isn't it?

8 A That's correct.

9 Q And if you are wrong on your assumption of the
10 evidence, whether it be the tire marks or the
11 placement of the evidence, then that throws your
12 conclusion off; doesn't it?

13 A I mean, it would alter the conclusion, yes.

14 Q Did you notice a scratch mark going down the side
15 of the van?

16 A Off the top of my head, I don't remember seeing a
17 scratch mark. There may have been.

18 Q Is this the mark of the bicycle right here
19 (indicating)?

20 A I'm going to say yeah. Like I said, whenever I
21 take photos, especially of close-up things, I will
22 take some photos walking up to them and referencing
23 that. Since you have shown me the last final
24 photo, I will say yes, that looks like a scuff
25 mark.

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1 Q But it could be the scuff mark from another bike?

2 A In my opinion it's the scuff mark from Jesse's
3 bike.

4 Q Could it be the scuff mark of another bike?

5 A If you will agree that that's not my opinion, then
6 I will agree that it could be whatever you want it
7 to be.

8 Q I just want to know what the possibilities are.

9 A I don't know what the possibilities are. In my
10 opinion it's from Jesse's bike. Is it possible
11 that it's something else? Yes. That's not my
12 opinion, but I will say anything is possible.

13 Q And the way you prove whether or not things are
14 possible or not possible is you test them, don't
15 you?

16 A In my mind I did test that. I didn't do a chemical
17 analysis that you referred to, but I did the test
18 that -- you know, I have been doing this for 25
19 years and, you know, that looks like a tire scuff
20 mark. I had a wreck involving a bicycle and a car,
21 and all that stuff was there. So that's how --
22 that's the test that I used to determine, make my
23 opinion as to what that mark was.

24 Q Do you know what is being shown in Exhibit 35?

25 A That looks, again, like that light housing, car

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1 light housing.

2 Q And in exhibit 36?

3 A Just another light, piece of a light of the car, it
4 looks like.

5 Q And did we decide if these photographs were the
6 same as the ones which I showed you earlier? They
7 are pictures of the same things, aren't they?

8 A That's correct.

9 Q Were they taken at the same time?

10 A No. The two photos you showed me looked like they
11 were taken at night, and then I took some photos in
12 the daytime.

13 Q So pictures of the light and the housings were
14 taken by the Cayce Police Department at night, left
15 there, you came back the next morning and then took
16 pictures of them; is that right?

17 A That's correct.

18 Q Even though they were circled and left on the
19 ground?

20 A Yes, I did take pictures of them again the next
21 day.

22 Q Did you say if there was or not a scratch alongside
23 the passenger side of the van?

24 A I just said I don't recall there being one, but I
25 will not dispute if there is one.

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1 Q The key here is not whether or not the van hit the
2 bicycle, the key is where the bicycle was; wasn't
3 it?

4 A That is a good point, yes.

5 Q Unless you determine where the bicycle was by
6 comparing the tire skid marks to the tire, then you
7 can't really answer that question; can you?

8 A Yes, sir, I believe I have answered that question.

9 MR. WILLIAMS: That's all I have for him, Your
10 Honor.

11 THE COURT: Thank you. Mr. Williams.
12 Solicitor, anything on redirect?

13 MR. MOBLEY: Nothing, Your Honor.

14 THE COURT: Thank you. Thank you very much
15 for being with us today, Sergeant. You may step down.
16 May this witness be excused? Any objection from the
17 State?

18 MR. MOBLEY: Your Honor, subject to recall.

19 THE COURT: Subject to recall. You are still
20 under subpoena.

21 (Witness leaves the witness stand.)

22 THE COURT: You may call your next witness.

23 MR. MOBLEY: Thank you, Your Honor. The State
24 calls Corporal Coats of the South Carolina Highway
25 Patrol.

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1 CHARLES M. COATS, JR., being
2 first duly sworn, testifies as follows:

3 CLERK: State your full name and spell your
4 last name.

5 THE WITNESS: I'm corporal Charles M. Coats,
6 Jr. with the South Carolina Highway Patrol M.A.I.T.
7 unit. My last name C-O-A-T-S.

8 **DIRECT EXAMINATION**

9 BY MR. MOBLEY:

10 Q Corporal Coats, how long have you been employed
11 with the South Carolina M.A.I.T. team?

12 A Since January 1999.

13 Q 1999. What is your current position there?

14 A I'm a corporal with the South Carolina Highway
15 Patrol's M.A.I.T. unit assigned to the Midlands
16 region.

17 Q What does the Midlands region consist of?

18 A All right. It just expanded. We have got 22
19 counties.

20 Q You don't have to name all the countries.

21 A At this particular time or the date of this
22 collision, it was troop one or district one, which
23 is Richland, Lexington, Sumter, Clarendon, Kershaw,
24 Lee, and we have one county in troop 7 which is
25 Aiken.

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1 Q But it did include Lexington County?

2 A Yes.

3 Q Now, as a corporal what are some of your duties
4 with the M.A.I.T. team?

5 A Primary duties is to investigate major collisions,
6 major incidents. As a corporal I am a supervisor
7 with the Highway Patrol and do have supervisory
8 duties over junior troopers that are assigned to
9 the M.A.I.T. team or the Highway Patrol.

10 Q Now, Corporal Coats, were you employed in this
11 capacity back on August 1st, 2008?

12 A In the capacity of an investigator with the
13 M.A.I.T. team, yes. I was recently promoted
14 September 2nd of this year.

15 Q Congratulations.

16 A Thank you, sir.

17 Q Have you received any type specialized training or
18 anything with collision reconstruction?

19 A Yes, sir.

20 Q Can you describe those trainings for us.

21 A Let's see, at-scene collision investigation,
22 technical collision investigation, collision
23 reconstruction, several conferences, crash data
24 retrieval, interview and interrogation. There's
25 some more I have got listed down in my notes here,

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1 but a bunch of stuff.

2 Q Let's read off a few of them. Just read off a few
3 of them.

4 A Advanced accident investigation, phase II;
5 collision forensic investigative techniques;
6 interviewing and interrogation; at-scene traffic
7 collision investigation; advanced traffic
8 investigation; traffic collision reconstruction;
9 crash data retrieval system technician;
10 fundamentals of crime scene investigation; advanced
11 crime scene photography techniques.

12 Q Corporal Coats, there seems to be a number of those
13 training schools that you attended; correct?

14 A Yes, sir.

15 Q And you still have a longer list there, correct?

16 A Yes, sir.

17 Q That you have not read off. Are those trainings a
18 continuous thing that you go to?

19 A Yes, we continue to do this. There's a certain
20 amount of annual stuff we have to do. From this
21 point I am still doing training, still slotted for
22 training. I continue that.

23 Q Where are some of the locations that you actually
24 had those trainings, here in South Carolina?

25 A At the Criminal Justice Academy. We do some

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1 training in-house with the Highway Patrol,
2 specifically with the M.A.I.T. unit. Statewide,
3 I.P.T.M. Institute of Technology, Institute of
4 Police Technology and Management in Florida. We do
5 some online training through the F.B.I. Virtual
6 Academy along with the Department of Justice,
7 D.N.A., training at S.L.E.D.

8 Q These trainings that you have gone through and are
9 recalling, were they hands on?

10 A Some were; some were not.

11 Q Did you have classroom training?

12 A Yes.

13 Q Was this individual and group assignments along
14 with those particular trainings?

15 A Some were; some were not.

16 Q During this particular time were you tested to
17 determine your degree of proficiency in these
18 classes?

19 A In some particular ones there were, and some of
20 them were conferences. Again, some were hands on
21 just for application to be able to demonstrate that
22 you can perform certain -- I can't think of the
23 word -- just certain things we do.

24 Q Now, did you pass the trainings or classes with
25 satisfactory grades?

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1 A Yes.

2 Q Were you issued any type of certificate or
3 certification in any type classes that you now
4 hold?

5 A In some, yes, and some were just, like I said,
6 conferences.

7 Q What are you currently certified in?

8 A I hold certificates in advanced accident
9 investigation, phase II; hold certificates in
10 collision forensic investigative techniques;
11 certificate in interview and interrogation;
12 certificates in at-scene traffic collision
13 investigation, along with advanced traffic
14 investigation; traffic collision reconstruction,
15 crash data retrieval system technician; crime scene
16 investigation; fundamentals of crime scene
17 investigation; advance crime scene photography;
18 training hours with special problems in crash
19 reconstruction; D.N.A.; another D.N.A.; and that's
20 just a few that I do have with me.

21 Q Now, Corporal Coats, are you a member of any
22 association dealing with collision reconstruction?

23 A South Carolina Association of Accident
24 Reconstructionist, S.C.A.R.S.

25 Q It's called S.C.A.R.S.?

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1 A Yes, sir.

2 Q Now, since becoming a member and completing all
3 those trainings, have you had the opportunity to
4 investigate collisions to this point?

5 A Since then, yes, and prior to, yes.

6 Q Approximately how many have you had the opportunity
7 to do?

8 A In my ten years with the Highway Patrol?

9 Q We just need an approximate figure.

10 A It will be in the thousands as far as the since the
11 Highway Patrol. Since the M.A.I.T. team, 300 to
12 400 collisions or incidents, yes.

13 Q During the investigation of those particular
14 incidents, did you have to utilize any type of
15 specialized equipment?

16 A Yes, we did.

17 Q Were you proficient with the use of that equipment?

18 A Yes.

19 Q Do you continuously receive training on those?

20 A Yes.

21 Q And any advancements as well?

22 A Yes.

23 Q Have you ever been previously called to testify as
24 an expert witness in court before?

25 A In court, no, not an as an expert witness.

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1 Q Now, you have never been qualified up until this
2 point, but do you feel based off your training and
3 experience that you are an expert in accident
4 reconstruction?

5 A Yes.

6 MR. MOBLEY: Your Honor, the State would move
7 to have this witness classified an expert witness in the
8 field of accident reconstruct.

9 THE COURT: Mr. Williams?

10 MR. WILLIAMS: We have no objection, Your
11 Honor.

12 THE COURT: Thank you, Mr. Williams.

13 Again, ladies and gentlemen of the jury, as
14 you heard me say on other occasions, normally a person
15 may not testify to opinion testimony. Normally when a
16 person testifies, they must testify as to either what
17 they saw, heard or sensed by smell or something of that
18 nature.

19 However, there is an exception when someone is
20 qualified because of education, background, training or
21 experience. They are permitted to give opinion in
22 certain areas if the Court qualifies them that way.

23 This witness, Corporal Charles Coats, will be
24 qualified in the area of accident reconstruction to give
25 opinion testimony in that area. That does not mean that

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1 you must accept the opinion, but it is evidence for you
2 the jury to use in any way you see fit.

3 Thank you, Solicitor. You may continue.

4 MR. MOBLEY: Thank you, Your Honor.

5 BY MR. WILLIAMS:

6 Q Corporal Coats, when you are you working with the
7 M.A.I.T. team at an accident reconstruction scene,
8 are there other team members there with you?

9 A Yes, we do have other team members.

10 Q How many?

11 A We do have other team members. At that particular
12 time, five. I believe it was five of us at that
13 particular time.

14 Q There was five of you at that particular time?

15 A Now we have more investigators as our unit has
16 started to expand. We do have more on board, but
17 at that particular time we had five M.A.I.T.
18 members here for the Midlands team.

19 Q When you all go to an accident scene, are you
20 tasked with specific things to do at that scene?

21 A Yes and no. There's certain things we take up.
22 One may do the photography. One may be doing the
23 video. One may set up the transom and the
24 surveying equipment.

25 So it just depends. It rotates around.

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1 Whoever wants to do or whoever feels this is what
2 they want to do this time. We do photography. We
3 do videography. We do the setting of the scenes,
4 do mapping, forensic mapping. So it's not
5 necessarily a task. It's just one of the things we
6 to do work out amongst each other.

7 Q So you get to do a variety of things at each
8 different collision scene?

9 A Right.

10 Q Depending on the circumstances?

11 A Right.

12 Q I want to take you back to the date of August 1,
13 2008. Did you have the opportunity to investigate
14 an accident here in Lexington County?

15 A Yes.

16 Q Now, was that accident over in the Cayce area of
17 Lexington County?

18 A Yes.

19 Q Can you tell us a little bit about that
20 investigation when you proceeded there.

21 A In this particular investigation, I did not travel
22 to the scene that day. So I did not do the
23 videography. I did not do the photography. I
24 don't recall if I was on call or if maybe a holiday
25 or something.

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1 Anyway, I did not rotate out at that
2 particular time to go out to that particular scene.
3 But once the evidence, once the data, once our
4 investigation, field investigation, was done, then
5 we bring all this information back in and then we
6 process it, do our analysis, calculations, whatever
7 is going on with the particular collision. On the
8 back end, yes, I was involved.

9 Q So on the back end, what exactly did you do? Did
10 you utilize that information that other members had
11 gathered at the scene?

12 A Yes.

13 Q When you utilized that information, what did you
14 gather and come up with?

15 A With this particular collision investigation and
16 the points that I took on, were to actually draft
17 the report, the formal report, that gave the
18 findings and the conclusions. Then also I did the
19 calculations for the speed analysis on this
20 particular collision.

21 Q Now, you received reports from the field M.A.I.T.
22 team?

23 A Yes.

24 Q Were you able to come up with a C.A.D. drawing?

25 A Yes.

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1 Q Based off of that?

2 A Yes.

3 Q I have two poster boards I want to present to you
4 and see if you recognize these. The first one, do
5 you recognize that?

6 A Yes.

7 Q Is that a C.A.D. drawing that you actually did?

8 A No, I believe Sergeant Breland is the actual person
9 who completed the C.A.D. drawing.

10 Q But you do recognize it, correct?

11 A Yes.

12 Q Does it look like it has been altered or amended in
13 anyway?

14 A The only thing I do note, and I'm not sure how this
15 was made, but this one will be identified in our
16 report or findings of evidence as final rest.

17 Q So that is a separate C.A.D. drawing?

18 A Yes.

19 Q What about this particular drawing, C.A.D. drawing?

20 A This one be will be identified in our report as
21 impact.

22 Q Did you assist with the creation of this C.A.D.
23 drawing as well?

24 A No, sir, I didn't assist with the creation of it.
25 I utilized it for calculations. But, again,

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1 Sergeant Breland is the one that actually, for lack
2 of better term, did the C.A.D. drawing, filled in
3 everything that makes it look the way it does right
4 now.

5 Q So you did utilize both these posters for your own
6 calculations?

7 A Yes.

8 MR. MOBLEY: Your Honor, the State would move
9 to have these two exhibits marked into evidence as
10 State's Exhibits 75 and 76.

11 MR. WILLIAMS: Your Honor, we would object
12 because the other witness who supposedly drew the C.A.D.
13 drawings never testified to all of those items.

14 MR. MOBLEY: We will do it for identification
15 purposes only, Your Honor.

16 THE COURT: Step out momentarily, Mr. Foreman,
17 and ladies and gentlemen of the jury. Do not discuss
18 the case during this brief recess.

19 (The jury retires to the jury room.)

20 THE COURT: I don't know of a requirement that
21 the individual that prepared the diagram has to testify
22 to the diagram.

23 MR. WILLIAMS: Before it's introduced into
24 evidence?

25 THE COURT: Yes, sir. I don't know of a

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1 requirement. The threshold is whether or not it assists
2 this witness in his testimony before the jury today. I
3 just don't know of a requirement that requires the
4 person that prepared the diagram to testify as to the
5 diagram.

6 MR. WILLIAMS: Then I will withdraw the
7 objection.

8 THE COURT: What does C.A.D. mean, Solicitor?

9 THE WITNESS: Computer Aided Drawing.

10 THE COURT: I was asking the Solicitor.
11 That's all right, Corporal.

12 MR. MOBLEY: I knew but I had to bring it back
13 a little. Your Honor, it's computer aided drawing. I
14 can get the sergeant --

15 THE COURT: I was just asking for me.

16 MR. MOBLEY: Yes, Your Honor.

17 THE COURT: The question is whether or not it
18 assists him in his testimony. If not, it wouldn't be
19 admissible of course. And if it's identification
20 purposes only, I'm not sure you can display it to the
21 jury right now.

22 So you end up with a cart with no horse at
23 all, and then you have to recall your other witness,
24 whoever prepared them, and then recall this officer. As
25 I say, I don't know of a requirement that states that

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1 the preparer of the diagram has to testify.

2 MR. MOBLEY: Your Honor, the State's position
3 is that being that they work in teams together, they are
4 utilizing reports and documents amongst one another to
5 come up with the final calculations.

6 This Officer, Corporal Coats, has already
7 testified that he utilized the information that was
8 provided to him by prior members that were at the scene
9 in order to come up with his final conclusions and
10 calculations, and that includes the actual C.A.D.
11 drawing itself.

12 THE COURT: You withdrew your objection?

13 MR. WILLIAMS: I did.

14 THE COURT: We will let it in. Let's take
15 about ten minutes while the jury is out then. Court
16 will be in recess ten minutes.

17 You may step down. Do not discuss your
18 testimony.

19 THE WITNESS: Yes, sir.

20 (Whereupon there is a recess.)

21 THE COURT: Solicitor, anything before we
22 bring in our jury?

23 MR. MOBLEY: Just wanted to confirm we are
24 getting those admitted into evidence.

25 THE COURT: He withdrew his objection.

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1 MR. WILLIAMS: I did, Your Honor.

2 THE COURT: Before I was going to rule against
3 him. They will be introduced into evidence provided
4 this witness testifies appropriately. Anything further,
5 Mr. Williams?

6 MR. WILLIAMS: No, sir.

7 THE COURT: Y'all do understand I would like
8 to finish the testimony today?

9 MR. MOBLEY: We will.

10 THE COURT: Thank you. Thank you very much.
11 If you would bring us our jury, please.

12 (The jury returns to the courtroom.)

13 THE COURT: It appears our jury is back
14 present in the courtroom.

15 Solicitor, you may proceed.

16 MR. MOBLEY: Thank you, Your Honor.

17 BY MR. MOBLEY:

18 Q Previously, Corporal Coats, I was showing you these
19 diagrams here. One last thing I wanted to ask you
20 was that you came up with some calculations after
21 reviewing all the information gathering and things
22 of that nature from your other team members;
23 correct?

24 A That's correct.

25 Q Your calculation were based off of evidence that

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1 was collected at the scene?

2 A That's correct.

3 Q Is that information documented through this C.A.D.
4 drawing?

5 A Yes.

6 Q What is a C.A.D. drawing exactly?

7 A Computer assisted, computer aided drawing. From
8 what we do at the scene, we use a Sokkia station,
9 S-O-K-K-I-A, equipment to mark evidence points,
10 roadways, markings on the roadways, evidence,
11 trees, final placements of vehicles or any type of
12 evidence to use. We use that to -- instead of
13 going out with the old school, drawing it out on a
14 piece of paper with a rolling wheel or tape
15 measure, they use the engineering survey --

16 THE COURT: You may have to speak up just a
17 little bit for the jury.

18 THE WITNESS: Sorry.

19 THE COURT: That's all right.

20 A We use the Sokkia total station, which is a
21 surveying piece of equipment. A person with a
22 prism pole with a prism on the end, and we take
23 measurements. We take that information, import it
24 into our software to do a computer assisted,
25 computer aided drawing to have a finished,

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1 nice-looking product.

2 Q What you are referring to is the exhibits here,
3 State's Exhibit 75 and 76?

4 A Yes.

5 MR. MOBLEY: Your Honor, the State would look
6 to move into evidence as State's Exhibit Numbers 75 and
7 76.

8 MR. WILLIAMS: No objection.

9 THE COURT: State's 75 and 76 are in evidence
10 without objection.

11 (State's Exhibits Number 75-76 are received
12 into evidence.)

13 BY MR. MOBLEY:

14 Q If you can step down for a moment from the
15 standpoint if the Court will allow.

16 THE COURT: Yes, you may step down.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Keep your voice up when you are
19 away from the microphone.

20 (Witness leaves the witness stand.)

21 BY MR. MOBLEY:

22 Q On State's Exhibit 75 -- and if you need this
23 pointer to show anything, you can go ahead and
24 utilize it -- can you tell us what we are looking
25 at here.

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1 A This is a scaled drawing, C.A.D. drawing, of the
2 collision scene Knox Abbott Road, U.S. 21, made on
3 August 1, 2003, (sic) by M.A.I.T. That's actually
4 when they went to the scene to take the
5 measurements with the surveying equipment.

6 Q There are little dots located here (indicating) in
7 the center of this. Do you know what they are and
8 how are you able to determine that?

9 A Okay. This is hard to see, but let me get in here
10 with it. There is a legend here (indicating). If
11 this thing could be blown up a little more, I guess
12 you could see it a little bit better. But let me
13 see. Specifically what question do you want to
14 know, which one is which?

15 Q No, I don't want to know specifically what is there
16 in those dots. Did you utilize that gray box?

17 A The legend, there are markings out here that are
18 beside these particular evidence points. This
19 gives you the definition or the description of what
20 is actually in this portion of the drawing.

21 It shows number one, being a scuff mark or
22 scatch from bike at impact; number two, showing a
23 sock; number three, showing a hair; number four,
24 showing a shoe; number five, showing hair trail or
25 fiber trail; and number 6, showing a sock;

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1 number 7, showing silver lens housing; and
2 number 8, showing clear lens covering as some of
3 the evidence points that were located here.

4 Q I will tilt it just a little. We think we have
5 some jurors on the end that may not able to see
6 what is going on. Corporal Coats, up in the top
7 far corner on that roadway there is something that
8 is visible there. What is that?

9 A That is going to be the final resting of the
10 minivan.

11 Q Would that be the minivan involved in this
12 incident?

13 A Yes, specifically a Chrysler Caravan, 1998 Chrysler
14 Town and Country minivan.

15 Q Now, if you can step to this side. We have a line
16 here drawn there (indicating).

17 A Okay.

18 Q What is that line for?

19 A This particular line, I believe it's going to be
20 where the bridge, a portion of the bridge starts
21 maybe. Let me go back and look.

22 (Pause.)

23 A I want to say and I will have to look at some
24 pictures to tell you for sure, but this may be from
25 the asphalt to another type of roadway surface. I

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1 can't tell you.

2 Q Based off this photo, you can't tell where it
3 actually starts?

4 A No, I believe this is where the bridge portion --
5 sometime you see the difference in the asphalt and
6 maybe the concrete. The specific place I can tell
7 you is coming outbound 126 from Columbia where the
8 bridge starts and you have got the bump. I want to
9 say that might be a separator between the two
10 different road surfaces on where the actual bridge
11 going across the river starts.

12 Q That sounds good. We want to look at State's
13 Exhibit Number 76. Can you tell me what we are
14 looking at and what is the purpose of this
15 particular diagram?

16 A It's still the scene of U.S. 21, Knox Abbott, that
17 they made that particular day when they went out
18 with the surveying equipment. This particular
19 scene is showing the minivan and the impact with
20 the bicyclist or the bicycle.

21 Q Based off this C.A.D. drawing -- this C.A.D.
22 drawing is based off the evidence that was gathered
23 at the scene, correct?

24 A Yes.

25 Q Based off this C.A.D. drawing, does it appear that

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1 the bicycle is in the bicycle lane or the highway?

2 A The bicycle lane.

3 Q What about the actual van there?

4 A The van is also in the bicycle lane, half and half
5 in the bicycle lane and we call it lane number two,
6 one being closest to either the median or the
7 painted line and lane number two being the one
8 furthest away. The minivan is straddling the line
9 that shows bicycle occupancy lane and the number
10 two lane.

11 Q You can go ahead and have a seat now.

12 A (Witness resumes the witness stand.)

13 Q Thank you very much. In that particular area where
14 the incident occurred, are you aware what the
15 people speed limit was?

16 A The speed limit I have here is 35 miles per hour.

17 Q You said 35 miles per hour?

18 A Yes, sir.

19 Q Based off all the evidence that was gathered,
20 presented to you, and documented, were you able to
21 come up with a calculation for Mr. Jamison's
22 vehicle speed --

23 A Yes.

24 Q -- that night before the incident?

25 A Yes.

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1 Q What was that speed that you came up with?

2 A Forty-seven to 57 miles per hour.

3 Q The speed limit there is 35 miles per hour?

4 A Yes.

5 Q Now, additionally were you able to come up with
6 from the point of impact, where the incident
7 occurred, to where Jesse came to rest at, where he
8 was laying before he was transported, exactly how
9 far was that particular distance?

10 A From impact to final rest of the pedestrian or the
11 bicyclist was going to be 165 feet.

12 Q I want to ask the Court if you may step down and
13 demonstrate to us you exactly how far it is from
14 the end of this bench all the way to end of the
15 door down the aisleway if the Court will allow.

16 THE COURT: You may step down.

17 (Witness leaves the witness stand.)

18 BY MR. MOBLEY:

19 Q Do you have equipment that is going to be able to
20 provide you with that information?

21 A I do.

22 Q What do you have?

23 A This is a rolling wheel, measuring device. It
24 measures in feet, feet and decimals of inches or
25 decimals of feet.

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1 Q When I have you do this, if I ask you anything and
2 you have to make any statement, please keep your
3 voice high enough so that the jury can hear you. I
4 want to have you come here and start from the
5 closest point you can to that console there, and I
6 want you to walk all the way to the end of the
7 courtroom.

8 A (Witness complies.)

9 Q Corporal Coats, how far exactly is that?

10 A This measures actually in inches 51 feet 11 inches.

11 Q Fifty-one feet and eleven inches?

12 A Right.

13 Q Can we have you step back up here, please.

14 A (Witness complies.)

15 Q Corporal Coats, you testified earlier the distance
16 from the point where the incident occurred to where
17 Jesse came to final rest was 165 feet?

18 A Yes.

19 Q The distance from this center, I guess we can call
20 it, desk here to the end of the courtroom was
21 51 feet?

22 A Yes, almost 52 feet, 51 feet 11 inches.

23 Q So the distance that Jesse traveled was almost then
24 tripled?

25 A Three times, yes, sir.

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1 Q Three times the length of this courtroom?

2 A Yes.

3 Q Now, based off your calculations, reviewing the
4 evidence and things of that nature, and the speed
5 of the possible bicycle or Mr. Jamison's vehicle,
6 how could that occur? Would that be through the
7 air or would that be more than likely on the
8 vehicle itself?

9 MR. WILLIAMS: Objection to leading.

10 MR. MOBLEY: I'm sorry.

11 BY MR. MOBLEY:

12 Q How would Mr. Gamble get from the point of impact
13 to that location? What are the possibilities?

14 A Let me see how I can explain this. It could either
15 be a vault, a forward projection, or there could be
16 some riding on the vehicle itself, the minivan,
17 either on the hood portion or the windshield
18 portion, for some unknown period of time until the
19 actual pedestrian broke free, came free, and came
20 to final rest.

21 MR. MOBLEY: Your Honor, there is nothing
22 further for this witness.

23 THE COURT: Thank you very much, Solicitor.
24 Mr. Williams.

25 MR. WILLIAMS: May it please the Court.

CHARLES COATS -- CROSS -- MR. WILLIAMS

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1 CROSS EXAMINATION

2 BY MR. WILLIAMS:

3 Q Officer, I understand your testimony, number one,
4 you didn't draw these drawings at all; did you?

5 A No, sir, I did not draw the drawings.

6 Q And essentially what you did was you took some spot
7 that somebody else prepared and you measured to
8 another spot and you determined that distance?

9 A Yes.

10 Q Now, you testified that the van was going between
11 47 and 57 miles an hour?

12 A Yes.

13 Q How fast was the bicycle going?

14 A I don't know.

15 Q Well --

16 A He was going slower than the van.

17 Q Would it make a difference if the bicycle were
18 going 30 miles an hour?

19 A (Witness shakes head.) (Indicating negative
20 response.)

21 THE COURT: That's a no?

22 THE WITNESS: No, sir.

23 BY MR. WILLIAMS:

24 Q So it doesn't matter how fast the bicycle is going,
25 it is all built on how fast the van is going;

CHARLES COATS -- CROSS -- MR. WILLIAMS

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1 correct?

2 A That's correct.

3 Q In terms of?

4 A In terms of the calculation we use, yes.

5 Q And the calculations you are using are based on a
6 beginning point where somebody else has said that
7 there were skid marks; is that correct?

8 A Say that one more time, please.

9 Q The calculations you are setting forth are based on
10 where somebody else has said that the skid marks
11 began?

12 A The variables to the calculation, yes.

13 Q Well, does the fact that the van applies the brakes
14 or doesn't apply the brakes affect the speed
15 calculations you have decided on?

16 A No.

17 Q Why?

18 A This particular calculation or the calculation that
19 we use, with the distance that we use, shows at
20 impact. It doesn't show the average speed
21 throughout the whole incident. It shows from
22 impact.

23 Q So are you saying that the speed of the van is
24 being determined based on the distance that the
25 vehicles travel once the collision occurs?

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1 A No. What I'm saying is at the point of impact is
2 the speed that we calculated here, 47 to 57 miles
3 per hour, and this is being used to utilize the
4 distance -- and getting into the technician portion
5 of it. This is the Searle's minimum/maximum
6 formula that has been scientifically proven and
7 used in the reconstruction field.

8 It's actually called a throw distance, the
9 distance that a pedestrian travels from the point
10 of impact to final rest. That gives you the range
11 of speed, from 47 to 57 miles an hour, the
12 minimum/maximum speed, that the vehicle was
13 traveling at the point of impact.

14 Q Are you saying that because of the location of the
15 victim, that because of the distance from what you
16 determined to be the point of impact, that that's
17 how you determined what the speed is for the van?

18 A What I'm saying is from the point of impact to the
19 final rest of the victim, which is 165 feet, the
20 minimum/maximum speed is 47 to 57 miles per hour.

21 Q And you determined that because there is some study
22 that says if you are going 47 to 57 miles an hour
23 and you hit an individual and that individual lands
24 a certain distance away, then that determines what
25 your speed is?

CHARLES COATS -- CROSS -- MR. WILLIAMS

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1 A Try that one more time, please.

2 Q You are saying that if you determine what the point
3 of impact is, right, and if an object strikes a
4 pedestrian and it travels a certain distance, that
5 determines what your speed is at impact?

6 A Correct.

7 Q And it doesn't matter if the pedestrian is on foot
8 or on bicycle?

9 A Correct.

10 Q It doesn't matter how fast the bicycle is going?

11 A Correct?

12 Q It doesn't matter if the pedestrian is rolling
13 along the highway or if he is being projected along
14 the highway?

15 A I don't understand that line of questioning.

16 Q Meaning, it doesn't matter if he is rolling on the
17 highway or simply thrown out?

18 A He is rolling?

19 Q If you roll a ball, it's not going to go as far as
20 if you throw it because there's friction and it's
21 going to slow the object down; correct?

22 A We are not talking about balls here.

23 Q We are talking about bodies. We are talking about
24 physics, aren't we?

25 A Yes.

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1 Q That's the point of my question. Does it make any
2 difference if the body is rolling on the ground or
3 if the body is being thrown?

4 A I will ask you again, please state your question.
5 I can't grasp it.

6 Q To determine what the speed is.

7 A For the speed, using this particular form, goes
8 from point of impact to final rest of the body or
9 the victim, the pedestrian, I guess to be more
10 characteristically correct.

11 Q So it doesn't matter how he gets to that position?
12 It doesn't matter if he is rolling or if he is
13 thrown through the air?

14 A There's probably going to be some throw involved,
15 and there is probably going to be some riding
16 involved, if you want to characterize it that way.
17 From the point of impact, from the distance he
18 traveled, whether he is rolling, whether he is on
19 the vehicle traveling, using Searle's
20 minimum/maximum formula, then it shows he was
21 traveling 47 to 57 miles an hour over the 165 feet
22 distance.

23 Q So if you have the point of impact the individual
24 is struck and he is on top or on the hood of the
25 vehicle, and he is traveling down the road trapped

CHARLES COATS -- CROSS -- MR. WILLIAMS

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1 on top of the van, then he falls off?

2 A Yes.

3 Q It doesn't make any difference?

4 A No.

5 Q You have not been to the scene and observed any of
6 the bike marks that were on the scene, have you?

7 A No, sir.

8 Q You didn't do any testing to determine whether or
9 not the marks which your cohort has testified to
10 matched up to the bicycle or whether or not those
11 marks have matched up to the van that we are
12 talking about?

13 A I don't know what my cohort testified to.

14 Q You haven't done any testing on the tires of either
15 vehicle, have you?

16 A Have I done any testing on the tires of any
17 vehicles?

18 Q Of these vehicles, the ones we are concerned about
19 in this courtroom today.

20 A Have I done...

21 Q I can slow it down.

22 A I wish you would.

23 Q This bicycle here, have you done any testing?

24 A Have I examined the bicycle?

25 Q Yes.

CHARLES COATS -- CROSS -- MR. WILLIAMS

1 A Yes, I have.

2 Q Did you do any testing on the tires?

3 A Testing meaning what?

4 THE COURT: Forensic testing.

5 BY MR. WILLIAMS:

6 Q Forensic testing.

7 A No, sir, I do not do forensic testing.

8 Q Did you do any forensic testing on the tires on the
9 minivan which allegedly was involved in this
10 particular case which was supposedly owned by Andra
11 Jamison, the Defendant?

12 A I guess you've got to -- I've got to understand
13 what the definition of testing is going to be.

14 Q Did you test the tires?

15 A Did we sit around and talk about or discuss this
16 case and examine the evidence, either photographic
17 evidence that was at the scene, evidence that my
18 cohorts looked at, yes, if that's the definition of
19 testing, yes, I did.

20 Q Did you take a part of the tire off the van and
21 compare that to the scrapings on the highway to see
22 if they matched?

23 A No, I did not take anything off the tire, no.

24 Q Let me get you to step down a minute and look at
25 this exhibit.

CHARLES COATS -- CROSS -- MR. WILLIAMS

1 A (Witness leaves the witness stand.)

2 Q Tell me again what items are reflected on the
3 legend which are subsequently marked on this
4 diagram.

5 A Number one, scuff marks, scatch mark from bike at
6 impact; number two, two sock; number three, hair;
7 number four, shoe; number five, hair trail, fiber
8 trail; number six, sock; number seven, silver lens
9 housing; and number eight is a clear lens cover.

10 Q Are those supposedly marked as a result of some
11 orange paint which was placed on the highway?

12 A The question again?

13 Q The marks here on your diagram, are those
14 supposedly marks which were painted on the highway?

15 A I believe some were and some were not.

16 Q Which ones were not painted on the highway?

17 A I couldn't tell you.

18 Q So are you saying there are some things in this
19 legend which were not painted on the highway?

20 A I don't know.

21 MR. WILLIAMS: I don't have any other
22 questions, Your Honor.

23 THE COURT: Thank you, Mr. Williams. Anything
24 in redirect, Solicitor?

25 MR. MOBLEY: Nothing, Your Honor.

RANDALL FITZGERALD -- DIRECT -- MR. BURN

1 THE COURT: Thank you. Corporal, you may step
2 down. May this witness be excused, Solicitor?

3 MR. WILLIAMS: No objection, Your Honor.

4 THE COURT: Solicitor?

5 MR. MOBLEY: No objections, Your Honor.

6 THE COURT: Thank you. Thank you very much.
7 You may step down and you may be excused.

8 THE WITNESS: Thank you, Your Honor.

9 (Witness leaves the witness stand.)

10 THE COURT: Solicitor, you may call your next
11 witness.

12 MR. BURN: Your Honor, the State calls Todd
13 Fitzgerald to the stand.

14 RANDALL TODD FITZGERALD,
15 being first duly sworn, testifies as follows:

16 CLERK: Please be seated. State your full
17 name and spell your last name.

18 THE WITNESS: My name is Randall Todd
19 Fitzgerald, F-I-T-Z-G-E-R-A-L-D.

20 THE COURT: Solicitor.

21 DIRECT EXAMINATION

22 BY MR. BURN:

23 Q Todd, where do you work?

24 A I work for the Columbia Police Department.

25 Q And what level of education do you have?

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1 A I have a four-year degree from the University of
2 South Carolina in Criminal Justice.

3 Q And at the time that we are going to be discussing
4 here, July 31, August 1st of last year, were you
5 working for the Columbia Police Department at that
6 point?

7 A I was not.

8 Q What were you doing at that point?

9 A I was working at the Colonial Center.

10 Q Could you tell us what you were doing on the night
11 of July 31, 2008?

12 A I was driving back to my apartment in Columbia from
13 my girlfriend's apartment in Cayce. I was on Knox
14 Abbott driving, intending to cross the bridge on
15 Blossom Street Bridge.

16 Q Could you describe the conditions that night.

17 A They were clear. I believe it might have rained
18 earlier that day or the road might have been wet.
19 It was clear at that time.

20 Q Now, you were on Knox Abbott Drive. Could you tell
21 us what happened then.

22 A As I was driving, I first noticed a shoe in the
23 road, then a bicycle, and then a person lying in
24 the road. I stopped to offer any assistance that I
25 could.

RANDALL FITZGERALD -- DIRECT -- MR. BURN

1 Q Approximately what time was this?

2 A I couldn't tell you with any degree of certainty.

3 It was late.

4 MR. BURN: If I may approach, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. BURN:

7 Q I am showing you State's Exhibit Number 23. Is
8 this the individual that you saw on the road that
9 night?

10 A Yes, it is.

11 Q You say you stopped to render aid?

12 A Yes.

13 Q Go ahead.

14 A I stopped. A few other people stopped with me.
15 One of them got out their cell phone to dial 9-1-1.
16 I was looking around to see if there was anybody
17 else that might have been hit or seen what
18 happened.

19 I noticed a vehicle further down the road on
20 the bridge, approximately 50-yards. I went down to
21 that vehicle and the person standing outside that
22 vehicle.

23 I talked to him. I asked him, Did you hit the
24 person? Because he appeared to be looking in his
25 vehicle assessing some sort of damage. He said

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1 who? I said the man lying in the road.

2 Q One second. We will get to that. I don't know if
3 you can see this from there. Could you come down
4 here for just a moment with the Court's permission.

5 THE COURT: Yes, sir, you can step down.

6 (Witness leaves the witness stand.)

7 BY MR. BURN:

8 Q Now, Mr. Fitzgerald, does this diagram fairly and
9 accurately depict the scene as it was on the night
10 in question? As an explanation, part of that, we
11 have a couple of unlabeled things on here. This
12 particular blurb right here (indicating) would be
13 the bicycle. This (indicating) would be Jesse
14 Gamble's body. The other main point of interest
15 would be the aforementioned man that you mentioned.
16 Does this fairly and accurately depict the scene
17 you saw on that night?

18 A Yes, it does.

19 Q You can have a seat.

20 A (Witness resumes the witness stand.)

21 Q Now, you say you approached a van?

22 A Yes. As I got closer, like I said, I could tell
23 somebody was outside the vehicle. I asked him, Did
24 you hit him? He looked at me and said, Hit who? I
25 said, The man lying in the road. He kind of looked

RANDALL FITZGERALD -- DIRECT -- MR. BURN

701

1 back as I gestured and he said, Did I hit him? He
2 seemed very confused, very -- almost disoriented.

3 Q Was the individual that you are speaking of, was it
4 the Defendant, Mr. Jamison?

5 A Yes.

6 Q What was his demeanor that night?

7 A His demeanor seemed to me to be intoxicated. As I
8 said, he seemed disoriented and confused. He had a
9 bit of a stagger to his stance. His eyes were
10 glassy from what I could tell from the limited
11 light, and he did have an odor of alcohol about
12 him.

13 MR. BURN: Begging the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Pause.)

16 BY MR. BURN:

17 Q Mr. Fitzgerald, I am showing you State's Exhibits
18 19 and 45. They are in evidence. Was this the van
19 that you saw that night?

20 A Yes, I can tell from 19. I did not get any look at
21 the damage to the vehicle. I just saw a dark -- a
22 large, dark van.

23 Q You did not see the damage to the vehicle, but did
24 you notice what area of the vehicle Mr. Jamison was
25 inspecting when you approached?

RANDALL FITZGERALD -- DIRECT -- MR. BURN

702

1 A He was around on the passenger front side.

2 MR. BURN: If I may approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. BURN:

5 Q Is the passenger front side where that damage is?

6 A Yes.

7 MR. BURN: Once again, I was showing the
8 witness State's Exhibit Number 45.

9 Q Was there anything else about Mr. Jamison's
10 demeanor that you noticed?

11 A Not especially. I mean, he seemed intoxicated to
12 the point where he was unsure what had actually
13 happened. It seemed he could tell that something
14 happened but not exactly what.

15 Q And then what did you do with Mr. Jamison?

16 A I asked him if he would come back up to where the
17 victim was laying in the road and wait for law
18 enforcement to arrive.

19 Q And what happened when law enforcement did arrive?

20 A I directed one of the first officers who arrived on
21 scene that Mr. Jamison -- he was seated on the
22 sidewalk at the time. I informed them that he was
23 the driver of the vehicle that was further down the
24 road, and I believed him to be the one that had
25 struck the victim.

RANDALL FITZGERALD -- CROSS -- MR. WILLIAMS

703

1 Q Did you inform them as to Mr. Jamison's demeanor?

2 A Yes, I said he seemed intoxicated to me.

3 Q What happened at that point?

4 A At that point I waited around. I figured that I
5 would be asked to write a statement. I just kind
6 of stepped off to the side and watched. E.M.S.
7 came and tended to him, took him away. Photos were
8 taken obviously.

9 Q Did you in fact give a statement?

10 A I did.

11 MR. BURN: No further questions, Your Honor.

12 THE COURT: Thank you, Solicitor.

13 Mr. Williams.

14 MR. WILLIAMS: May it please the Court.

15 **CROSS EXAMINATION**

16 BY MR. WILLIAMS:

17 Q Mr. Fitzgerald, what do you do with the Columbia
18 Police Department?

19 A I am a patrol officer.

20 Q And when did you become a patrol officer with the
21 City of Columbia Police Department?

22 A I finished the academy at the end of May.

23 Q Before May. This wreck occurred when?

24 A In June or July of 2008, I believe.

25 Q And when you talk about May, you are talking about

RANDALL FITZGERALD -- CROSS -- MR. WILLIAMS

704

1 2009?

2 A 2009.

3 Q So where were you working in July of 2008 and
4 August?

5 A At the Colonial Center, the concert, sport venue in
6 Columbia.

7 Q Tell me that again.

8 A The Colonial Center at Green and Lincoln.

9 Q What did you do for them?

10 A I sold tickets in the box office.

11 Q But you weren't working that night; is that right?

12 A Correct.

13 Q You had been at your girlfriend's house?

14 A Yes.

15 Q Where did your girlfriend live?

16 A She lived at where I believe now is called
17 Riverside estates, just over the bridge.

18 Q You were on the way home?

19 A Yes, sir.

20 Q When you were driving home, what did you observe?

21 A I observed, like I said, first a shoe in the
22 roadway. I was in the outside lane. That caught
23 my attention, a shoe being in the roadway. I then
24 noticed a bicycle which was mangled and then the
25 victim's body lying in the road further down.

RANDALL FITZGERALD -- CROSS -- MR. WILLIAMS

705

1 Q You didn't notice the sock as being there in front
2 of the shoe?

3 A No, sir.

4 Q And when you noticed the victim laying there, do
5 you recall whether or not the victim had his shoes
6 and socks on or off?

7 A I do not recall thinking that was important to
8 know.

9 Q You said someone stopped and called?

10 A Correct.

11 Q Do you know who stopped and called 9-1-1?

12 A I didn't think to gather names, sir.

13 Q Do you know what they looked like?

14 A No, sir.

15 Q When you got to the area where the van was, what
16 did Mr. Jamison have on?

17 A I couldn't tell you to be perfectly honest. His
18 clothing was not a matter of interest to me at that
19 point.

20 Q And do you know how long it had been since this
21 collision had occurred?

22 A I assumed it had been mere moments. The pool of
23 blood was not very long coming from the victim. So
24 I assumed that he had not been in the road for very
25 long.

RANDALL FITZGERALD -- CROSS -- MR. WILLIAMS

706

1 Q Was there another vehicle which was in front of you
2 when you were driving down the road?

3 A Not directly in front of me. There were other
4 vehicles in the inside lane, the same direction I
5 was going. I believe that were ahead of me, but
6 none that were ahead of me in my lane.

7 Q Were you headed into Columbia or into Cayce?

8 A Into Columbia.

9 Q You were in the hammer lane or the number two lane,
10 right?

11 A Correct.

12 Q There were vehicles in the number one lane, the
13 slow lane; is that right?

14 A The number one being the slow lane?

15 Q Yes. Closest to the --

16 A To the double yellow line?

17 Q No, no.

18 A I was in the number two lane, the outside lane.

19 Q We need to get established where you were first. I
20 am talking about the lane closest to the ground and
21 the sidewalk. What do you call that?

22 A The number two lane.

23 Q You call that the number two lane. What's the
24 number one lane?

25 A That would be the lane closet to the double yellow

RANDALL FITZGERALD -- CROSS -- MR. WILLIAMS

707

1 line.

2 Q Which lane were you in?

3 A I was in number two.

4 Q So you were in the slow lane?

5 A Correct.

6 Q You saw other vehicles in the number one lane in
7 front of you; is that correct?

8 A That's correct.

9 Q How many other vehicles did you see in front of
10 you?

11 A Just the one, the one on the bridge.

12 Q Are you saying just Mr. Jamison's?

13 A Yes, that was the only vehicle in my lane ahead of
14 me on the road.

15 Q Mr. Jamison was in the right-hand lane, right?

16 A Correct.

17 Q Were there any other vehicles in the other lane,
18 the left lane?

19 A I did not see any.

20 Q So you are saying that there were not; is that
21 right?

22 A Yes.

23 Q When did you first observe the shoe in the road?

24 A I was driving. I couldn't give you a G.P.S.
25 location.

RANDALL FITZGERALD -- CROSS -- MR. WILLIAMS

708

1 Q Were you on the bridge?

2 A I was not on the bridge. It was before the bridge.

3 Q And how far down was Mr. Jamison?

4 A From where I stopped, he was possibly 60 yards. I
5 stopped well back before the first shoe because,
6 like I said, when I noticed the shoe, that struck
7 me as odd. I looked further down the road and saw
8 the victim and the bicycle, and I stopped almost
9 immediately.

10 Q Was Mr. Jamison simply pulled over in the
11 right-hand lane parked?

12 A Essentially. He had pulled -- I believe he was up
13 with his two passenger side tires up on the
14 sidewalk.

15 Q Pulled over?

16 A More or less.

17 Q And I believe it's your testimony that he was
18 unsteady on his feet, had bloodshot eyes, and
19 slurred speech?

20 A I said he had glassy eyes, his speech was slurred,
21 and he was unsteady on his feet.

22 Q Are you taught when you are police officer the
23 magic words to say about a person who has been
24 charged with D.U.I.?

25 A We are told what to look for in a person who is

RANDALL FITZGERALD -- CROSS -- MR. WILLIAMS

709

1 intoxicated.

2 Q Well, let me ask you this. Did you see any beer
3 containers there?

4 A I did not look inside of his vehicle?

5 Q Did you see any beer containers out next to his
6 vehicle?

7 A I did not.

8 Q You did not see the collision occur; is that right?

9 A That's correct.

10 Q So you don't know where the bicycle was, do you,
11 other than where it ended up?

12 A Correct.

13 Q Could you understand what Mr. Jamison was saying?

14 A Yes.

15 Q You didn't have any problem understanding. He
16 didn't appear -- his speech was not unintelligible?

17 A No.

18 MR. WILLIAMS: That's all I have, Your Honor.

19 THE COURT: Redirect?

20 MR. BURN: Nothing Your Honor.

21 THE COURT: Thank you very much,

22 Mr. Fitzgerald. You may step down. May this witness be
23 excused? Any objection from the State?

24 MR. BURN: None, Your Honor.

25 THE COURT: Mr. Williams?

SHONDA CHEEKS -- DIRECT -- MR. BURN

710

1 MR. WILLIAMS: None, Your Honor.

2 THE COURT: Thank you, Mr. Fitzgerald. You
3 may be excused.

4 (Witness leaves the witness stand.)

5 THE COURT: You may call your next witness.

6 MR. BURN: Your Honor, the State calls Shonda
7 Cheeks.

8 SHONDA CHEEKS, being
9 first duly sworn, testifies as follows:

10 CLERK: State your full name, spelling your
11 last name.

12 THE WITNESS: My name is Shonda Cheeks,
13 C-H-E-E-K-S.

14 THE COURT: Solicitor.

15 MR. BURN: Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 BY MR. BURN:

18 Q Ms. Cheeks, where do you work?

19 A The State Credit Union on Huger Street in Columbia.

20 Q What is your level of education?

21 A High school graduate.

22 Q What were you doing on the night of July 31, 2008?

23 A I had been out with some friends after work at Wild
24 Wing Cafe in the Vista.

25 Q When did you leave Wild Wing Cafe?

SHONDA CHEEKS -- DIRECT -- MR. BURN

711

1 A About 11:20 or so.

2 Q And while you were there at Wild Wing Cafe, what
3 did you have?

4 A We had dinner, had a few drinks, water, soda.

5 Q When you have a few drinks, what kind of drinks are
6 we talking about and how many?

7 A Two martinis.

8 Q And other than that, you say you ate dinner and
9 then you said drank soda?

10 A Yes, and water.

11 Q So at this time was your -- were your perceptions
12 at all impaired?

13 A No, sir.

14 Q And where were you going from Wild Wing Cafe?

15 A I was heading home to West Columbia.

16 Q And where did this take you?

17 A I was coming across the Blossom Street Bridge.

18 Q Was anybody with you?

19 A No, I was alone.

20 Q And what were the conditions that night?

21 A It was clear, dark.

22 Q What was the weather?

23 A It was warm out. It wasn't raining or anything.

24 Q Now, what did you observe while you were on the
25 Blossom Street Bridge?

SHONDA CHEEKS -- DIRECT -- MR. BURN

712

1 A I was coming across the bridge, probably about
2 halfway down. I just noticed off to my left a
3 vehicle hitting something. I didn't know what was
4 being hit at the time.

5 Q This vehicle was it traveling straight through its
6 lane of travel?

7 A No, it wasn't. It looked like it was off to the
8 right. So it wasn't all the way in the lane.

9 Q When you say off to the right, are you talking
10 about your right?

11 A The vehicle's right. I was traveling in the
12 opposite direction?

13 MR. BURN: With the Court's permission, I
14 would ask Ms. Cheeks to step down.

15 THE COURT: Yes, ma'am. You may step down.
16 Keep your voice up for us please when you are away from
17 the microphone.

18 (Witness leaves the witness stand.)

19 BY MR. BURN:

20 Q Ms. Cheeks, I show you what has been labeled
21 State's Exhibit 76. It depicts the point of impact
22 of this particular accident. Is this -- first of
23 all, does this fairly and accurately represent the
24 layout of the bridge as you viewed it on that
25 night?

SHONDA CHEEKS -- DIRECT -- MR. BURN

713

1 A Yes, sir, it does.

2 Q And is this approximately --

3 MR. WILLIAMS: Objection to leading. He is
4 pointing instructing, Your Honor.

5 THE COURT: He can point and ask her if she
6 knows what it is or isn't. I can't see. Y'all never
7 show me any evidence. I can't see what she is doing.
8 Go right ahead, Solicitor.

9 MR. BURN: Thank you, Your Honor.

10 BY MR. BURN:

11 Q At the point where this diagram depicts the
12 collision is that where you remember the collision
13 taking place?

14 A Yes, sir.

15 Q If you will be seated?

16 A (Witness resumes the witness stand.)

17 MR. BURN: Your Honor, if I may approach.

18 THE COURT: Yes.

19 BY MR. BURN:

20 Q Showing the witness State's Exhibit Number 19, was
21 this the van --

22 A Yes, sir.

23 Q -- that you saw in the accident. Now, you are
24 sure -- you are sure -- that this vehicle drifted
25 to the right, to its right?

SHONDA CHEEKS -- DIRECT -- MR. BURN

714

1 A Yes, I'm positive.

2 Q It was not in its own lane of travel?

3 A No.

4 Q Could you tell me anything about the acceleration
5 or deceleration of the vehicle?

6 A After it hit I noticed -- or I was watching the
7 vehicle in my rear view mirror. At first I didn't
8 realize what had been hit. So as I got closer, I
9 realized it was actually a person.

10 So I was looking in the rear-view mirror to
11 see if the car was stopping. It kept going. I
12 believe it slowed down, but it didn't stop for
13 while.

14 Q But it didn't slow down prior to impact?

15 A The car was still going, so I don't believe that it
16 slowed down a ton if it had slowed down.

17 Q When you first saw it you said you didn't think it
18 was a person that was struck?

19 A That's right.

20 Q What did you think it was?

21 A In my mind I thought it was a herbie-curbie or a
22 trash can that was sitting on the side of the road.

23 Q What did you see as you initially pulled up to the
24 actual scene of the collision?

25 A As I was driving by and saw that it was -- I saw

SHONDA CHEEKS -- DIRECT -- MR. BURN

715

1 that there was a person lying in the road and the
2 bicycle. That was really about it.

3 MR. BURN: Your Honor, if I may approach?

4 THE COURT: Yes, sir.

5 MR. BURN: I am showing Ms. Cheeks State's
6 Exhibit Number 23.

7 Q Is that the individual that you saw lying in the
8 road?

9 A Yes, sir.

10 Q Ms. Cheeks, what did you do at that point?

11 A As I said I realized it was a person. I became
12 very upset. I took my foot off the gas and kind
13 of coasted along. I grabbed my cell phone and
14 called my husband.

15 Q Did the van eventually stop?

16 A It did.

17 MR. BURN: Once again with the Court's
18 permission.

19 THE COURT: You may step back down,
20 Ms. Cheeks.

21 (Witness leaves the witness stand.)

22 BY MR. BURN:

23 Q Ms. Cheeks, with the understanding that it's hard
24 because it's not labeled --

25 THE COURT: I can't hear. If you would keep

SHONDA CHEEKS -- DIRECT -- MR. BURN

716

1 your voice up, please.

2 MR. BURN: I'm sorry, Your Honor.

3 BY MR. BURN:

4 Q Unfortunately not everything on here is labeled.

5 With the understanding that this (indicating)

6 depicts the bike and this (indicating) depicts the

7 body of Jesse Gamble, and the third point of

8 interest being the van headed up toward Columbia

9 and stopped at this point (indicating), does this

10 diagram -- and I'm showing Ms. Cheeks State's

11 Exhibit Number 75 -- does this diagram depict the

12 scene as it appeared on that night?

13 A Yes, sir.

14 Q You may be seated.

15 A (Witness resumes the witness stand.)

16 Q You said you called your husband. What happened
17 then?

18 A He was able to calm me down. I eventually stopped
19 about at the Monterrey's on Knox Abbott Drive in
20 the median. I don't know how much time had passed,
21 but I eventually got out of the car and walked back
22 down to the bridge and then, of course, stood
23 around and waited to do my statement.

24 Q You say you waited to do your statement. You were
25 there when law enforcement arrived?

SHONDA CHEEKS -- CROSS -- MR. WILLIAMS

717

1 A Yes, they were actually there by the time I got
2 down to the bridge.

3 Q Did you interact with any of the witnesses there?

4 A Not really.

5 Q Did you interact at all with the Defendant,
6 Mr. Jamison?

7 A No, sir, I did not.

8 Q Did you observe anything about his demeanor or
9 overhear him saying anything?

10 A Just one statement. He did ask if he had hurt
11 somebody.

12 Q And you said you waited to give a statement. Did
13 you in fact give a statement?

14 A Yes, sir, I did.

15 MR. BURN: No further questions at this time.

16 THE COURT: Thank you, Solicitor.

17 Mr. Williams.

18 MR. WILLIAMS: May it please the Court.

19 CROSS EXAMINATION

20 BY MR. WILLIAMS:

21 Q Ms. Cheeks, as I understand you are married?

22 A Yes, sir.

23 Q Were you married then?

24 A Yes, sir.

25 Q And you and a bunch of girlfriends had been where?

SHONDA CHEEKS -- CROSS -- MR. WILLIAMS

718

1 A Wild Wing Cafe in the Vista.

2 Q And how long had you been at Wild Wings Cafe?

3 A I got there around 6, 6:30 maybe.

4 Q What time was it that this collision occurred on
5 the bridge?

6 A Maybe 11:30-ish.

7 Q Five and a half hours later; is that right?

8 A Yes, sir, that sounds about right.

9 Q And is it your testimony that you only had two
10 martinis?

11 A Yes, sir.

12 Q How is it that you happened to know exactly how
13 many martinis you had?

14 A Because I knew I had to work the next day and drive
15 home. So I made sure I did not have too much to
16 drink.

17 Q So you were counting?

18 A Yes.

19 Q And as I understand your testimony, when you were
20 coming down the -- coming across the bridge, you
21 observed something strike something, and you told
22 the police officer you thought that was a garbage
23 can that was hit?

24 A That's correct.

25 Q You didn't identify it as a person, correct?

SHONDA CHEEKS -- CROSS -- MR. WILLIAMS

719

1 A I wrote in my statement that initially that's what
2 I had thought, yes.

3 Q And you didn't identify it as a bicycle?

4 A No.

5 Q And which lane was it that Mr. Jamison was in when
6 this occurred?

7 A He was in the far right lane.

8 Q And did you observe the person on the bicycle
9 before the collision occurred?

10 A No, I did not.

11 Q So it's your testimony that you saw the van swerve
12 to the right, hit something that you first thought
13 was a garbage can, but you never saw the person on
14 the bicycle that would have been in front of the
15 van?

16 A That's correct.

17 Q I assume you are going in the opposite direction,
18 correct?

19 A That is correct.

20 Q Do you know of any reason why you wouldn't have
21 seen the person on the bicycle?

22 A I believe when my attention was drawn over there,
23 it was already taking place. So I didn't see the
24 bicycle going and the car coming up behind it. I'm
25 not really sure.

SHONDA CHEEKS -- CROSS -- MR. WILLIAMS

720

1 Q The collision had already occurred when your
2 attention was called to that side?

3 A It was occurring at that moment, yes.

4 Q What do you mean that it was occurring?

5 A It was happening. I seen the commotion from the
6 vehicle while it was hitting the bicycle.

7 Q So you just happened to look to the left and see
8 the vehicle move to the right, but you never saw
9 the bicycle. Then you saw something that looks
10 like a garbage can that was hit?

11 A No, I never saw a garbage can. I didn't know what
12 was being hit. I just saw something being hurt. I
13 just registered it myself as being a garbage can.

14 Q How far on the bridge was this that this occurred?

15 A How far was I on the bridge?

16 Q How far was this collision on the bridge when it
17 occurred?

18 A From what I could tell it was taking place before
19 the bridge. It wasn't on the bridge at that time.

20 Q Where were you on the bridge?

21 A I was about halfway, about midway down the bridge.

22 Q And after this occurred, did you see any other
23 vehicles pull up coming the opposite direction from
24 you?

25 A No, sir, I did not.

SHONDA CHEEKS -- CROSS -- MR. WILLIAMS

721

1 Q Now, as I understand it, you called your husband as
2 you were crossing the bridge?

3 A Yes, sir.

4 Q Telling him that you saw somebody just get hit and
5 you were upset. You had a conversation, then you
6 stopped, and then you walked back?

7 A That's correct.

8 Q Now, you are halfway on the bridge when you observe
9 this occur; correct?

10 A Yes, sir.

11 Q Where was your cell phone?

12 A It was laying in the console between the seats.

13 Q And did you have to dial his number or did you hit
14 speed dial?

15 A To be honest I don't remember.

16 Q But you had to dial your husband?

17 A Yes.

18 Q How fast were you going down the road?

19 A I don't recall that either.

20 Q Normal speed?

21 A Normally I obey the speed limit, yes, sir.

22 Q Did the van look like it was speeding?

23 A I don't know.

24 Q How long did you and your husband talk on the phone
25 before you pulled over?

SHONDA CHEEKS -- CROSS -- MR. WILLIAMS

722

- 1 A Again, I honestly don't know.
- 2 Q How far is Monterrey's from the bridge?
- 3 A It's a pretty good distance.
- 4 Q It's not the first place on the left after you
- 5 cross the bridge?
- 6 A Actually there is a hotel, I believe.
- 7 Q The old Tremont and then Monterrey?
- 8 A Then Monterrey's.
- 9 Q Then you park in the median and then you walked
- 10 back?
- 11 A That's correct.
- 12 Q When you walked back, did you see any other
- 13 vehicles stopped?
- 14 A Yes, there were other vehicles there then.
- 15 Q But there was nobody there immediately prior to the
- 16 collision or immediately after the collision as far
- 17 as you could tell?
- 18 A I didn't see any vehicles traveling behind the van.
- 19 I think afterwards there were vehicles that did
- 20 come up.
- 21 Q The police were already there when you walked back;
- 22 isn't that correct?
- 23 A Yes.
- 24 Q And how much time elapsed from the time which you
- 25 saw it until the time you walked back?

SHONDA CHEEKS -- CROSS -- MR. WILLIAMS

723

1 A I honestly don't know.

2 Q Now, when you gave your statement to the police
3 officer, did you tell the police officer that the
4 van kept going and put that in your statement?

5 A I don't recall if I wrote it in the statement or
6 not.

7 Q Let me ask you to look at this and tell me if you
8 can identify that.

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

10 Q Is that your statement?

11 A Yes, sir, it is.

12 Q Did you include in your statement anything about
13 the van kept going?

14 A The only thing I see was I continued past the
15 bridge and saw the vehicle stop.

16 Q Did you include anything in your statement about
17 the van kept going?

18 A No, sir, not those exact words.

19 Q Did you include anything in your statement close to
20 those exact words?

21 A Just that I continued down the bridge and then I
22 saw the vehicle stopped?

23 Q You are referring to yourself going. You didn't
24 refer to the van as driving or not driving, did
25 you?

SHONDA CHEEKS -- REDIRECT -- MR. BURN

724

1 A No, sir, I guess I didn't.

2 Q Did you put anything in your statement about
3 Mr. Jamison making a comment about did I hurt
4 somebody?

5 A No, sir, I did not.

6 Q How many times have you met to go over your
7 testimony before today?

8 A Two times.

9 Q Who did you meet with?

10 A Mr. Burn and Mr. Mobley.

11 MR. WILLIAMS: That's all the questions I
12 have, Your Honor.

13 THE COURT: Redirect, Solicitor?

14 MR. BURN: Only one issue, Your Honor.

15 **REDIRECT EXAMINATION**

16 BY MR. BURN:

17 Q Shonda, do you have a copy of your statement up
18 there?

19 A No, sir, I don't.

20 MR. BURN: If I may approach, Your Honor.

21 THE COURT: Yes, sir.

22 BY MR. BURN:

23 Q Do you recognize this document?

24 A Yes, sir.

25 Q Would you explain what that document is.

SHONDA CHEEKS -- RECROSS -- MR. WILLIAMS

725

1 A This was the statement I gave that night.

2 Q Signed by you?

3 A Yes, sir, signed by me.

4 Q Would you read the sentence starting after halfway
5 down and almost to the end of that line.

6 A The vehicle that I saw hit this individual
7 continued up the bridge. The vehicle was a dark
8 color and looked like a van. I continued past the
9 bridge and saw the vehicle stop. I parked my
10 vehicle on the median and walk down to the accident
11 scene.

12 Q That's good, Ms. Cheeks. Thank you. The vehicle
13 that you are talking there that continued up the
14 bridge, that is the van; is that correct?

15 A Yes, sir, that's correct.

16 MR. BURN: No further questions, Your Honor.

17 THE COURT: Recross, Mr. Williams?

18 MR. WILLIAMS: Yes, Your Honor.

19 **RECROSS EXAMINATION**

20 BY MR. WILLIAMS:

21 Q Where is it in the statement that you talk about
22 being at Wild Wing Cafe drinking martinis?

23 A No, sir, I did not put that in the statement.

24 MR. WILLIAMS: That's all I have.

25 THE COURT: Thank you. Thank you very much

1 for being with us, Ms. Cheeks. You may step down. May
2 this witness be excused? Any objection from the State.

3 MR. BURN: None, Your Honor.

4 THE COURT: From the defense.

5 MR. WILLIAMS: None from the defense, Your
6 Honor.

7 THE COURT: Thank you. Thank you very much.

8 (Witness leaves the witness stand.)

9 THE COURT: Thank you. Solicitor, you may
10 call your next witness.

11 MR. MOBLEY: Your Honor, beg the Court's
12 indulgence for a moment to speak with the court reporter
13 and look at the evidence.

14 THE COURT: Let me let the jury take a recess.

15 Mr. Foreman, and ladies and gentlemen of the
16 jury, I will allow y'all to take a late afternoon
17 recess. I am going to try to complete the testimony
18 this evening if at all possible.

19 If anyone has any commitments during this
20 brief recess, if you will let me know. I will make
21 other arrangements quite frankly, but I will try to
22 complete the testimony this afternoon as far as that is
23 concerned.

24 But why don't y'all take about a 15-minute
25 recess. Let them look at the evidence, we will see

1 where we are, and I will get you right back out. Do not
2 discuss the case during this brief recess.

3 (The jury retires to the jury room.)

4 THE COURT: Solicitor, get the court reporter
5 and look at the evidence and see if you can do that in
6 about five minutes so our court reporter can have a
7 recess also and start back at ten till.

8 MR. MOBLEY: Yes, sir, thank you.

9 (Whereupon there is a recess.)

10 THE COURT: Anything before we bring in the
11 jury, Solicitor?

12 MR. MOBLEY: Nothing at this time, Your Honor.
13 I just want to release Sergeant Breland from the recall.

14 THE COURT: He is so released. How many more
15 witnesses do you have?

16 MR. MOBLEY: Your Honor, we are going to rest
17 before the jury.

18 THE COURT: Any objections to me hearing the
19 motions now?

20 MR. WILLIAMS: No, Your Honor. Your Honor,
21 for the Court's edification, we will not call any
22 witnesses to testify.

23 THE COURT: I have a couple of things I need
24 to do. First, let me hear your motions, Mr. Williams.

25 MR. WILLIAMS: Your Honor, my first motion

1 deals with the indictment.

2 THE COURT: I have the indictment
3 09-GS-32-5283.

4 MR. WILLIAMS: Your Honor, we would move for a
5 directed verdict of not guilty in reference to the
6 felony D.U.I. charge, felony D.U.I. death on the basis
7 that in the body of the indictment, it alleges that my
8 client committed a crime on August the 1st, 2008, and
9 it's clear from the testimony that the felony D.U.I.
10 part would have occurred on July 31, 2008.

11 THE COURT: Solicitor.

12 MR. MOBLEY: Your Honor, the State would
13 oppose that for obvious reasons here. The reason why we
14 drafted this indictment the way it was drafted which
15 says on or about August 1st, 2008, is simply because of
16 the fact the crime began late night July 31, 2008, and
17 was not completed until the death of Mr. Gamble, which
18 was on the date of August the 1st, 2008. That's why we
19 included the on or about August 1st to include that date
20 in the ending date of the crime itself.

21 THE COURT: I am going to deny the motion.
22 The indictment actually reads on or about 1 August,
23 2008. As I understand that language, it's very
24 different than if it was said on August 1st of 2008, and
25 the Defendant, for example, was wanting to or attempting

1 to present an alibi defense, that he was somewhere else
2 on that particular date.

3 That is also given the fact that the
4 indictment is a notice document. It is not evidence of
5 any of the allegations that it contains. So I will deny
6 your motion, Mr. Williams.

7 Solicitor, do you have any motions in
8 regard -- I am coming back to your other motions. Do
9 you have any motions in regard to the indictment itself,
10 Solicitor? If you don't, that's fine.

11 MR. MOBLEY: No, Your Honor.

12 THE COURT: Mr. Williams, you have other
13 motions?

14 MR. WILLIAMS: Yes, Your Honor.

15 THE COURT: All right.

16 MR. WILLIAMS: We would move for a directed
17 verdict of not guilty. Taking the evidence as a whole,
18 it's insufficient as a matter of law for this jury to
19 return a verdict of guilty.

20 THE COURT: Did you have a part B. to that
21 motion? You were still standing. I was waiting.

22 MR. WILLIAMS: I was simply thinking. That's
23 all of that motion, Your Honor.

24 THE COURT: As to the directed verdict, as you
25 are both very well aware, the case should be submitted

1 to the jury if there is any direct or any substantial
2 circumstantial evidence that reasonably tends to prove
3 the guilt of the accused or from which guilt may fairly
4 and logically be deduced, citing State versus Weston,
5 625 S.E.2d 648; State versus Al-Amin, 578 S.E.2d 32.

6 Further, it directs that a defendant is
7 entitled to a directed verdict if the State fails to
8 produce evidence of the offense charged. In ruling on a
9 motion for directed verdict, the trial court is
10 concerned only with the existence or non-existence of
11 evidence, not its weight.

12 In looking at the evidence that has been
13 presented and extracting some of the testimony of some
14 of the witnesses, of course, I am not concerned with the
15 credibility of the witnesses -- that's a jury issue --
16 only whether there is or is direct and/or circumstantial
17 evidence.

18 Taking the testimony of Ms. Cheeks and
19 Mr. Fitzgerald, Ms. Cheeks testified the van, the
20 vehicle that was outgoing from Cayce on Knox Abbott
21 Drive, drifted to the right and was not in its own lane
22 of travel.

23 Mr. Fitzgerald also testified to the condition
24 of the Defendant as he observed the Defendant prior to
25 law enforcement arriving. His observations were that

1 the Defendant appeared confused, disoriented.

2 Mr. Fitzgerald stated he had a conversation with the
3 Defendant about: Did he hit the man? The Defendant
4 responded, Hit who?

5 Mr. Fitzgerald said, The man lying in the
6 road. He responded, Did I hit him? He appeared
7 intoxicated. He had a staggering gait, glassy eyes,
8 odor of alcohol. Again, this was prior to the arrival
9 of law enforcement and E.M.S.

10 Upon the arrival of E.M.S., one of the
11 officers from E.M.S., Boyce, testified as to the
12 condition of the Defendant, as did Sergeant Stone,
13 Sergeant Marzol. I do not believe Detective Reese had
14 any personal contact. There were various conversations
15 that were related to the Court in the presence of the
16 jury between the Defendant, Officer Stone, and Sergeant
17 Marzol.

18 Coupling that with the testimony of two expert
19 witnesses, which is Sergeant Coats and Corporal Breland,
20 their opinion is the point of impact was in the bicycle
21 lane. The lane of traffic which is dedicated to
22 bicyclists. I paraphrase. Therefore, that would be
23 improper use of lane further.

24 Their testimony is, or at least Corporal
25 Breland's, was the vehicle was going a minimum of

1 47 miles an hour up to 57 miles an hour in a
2 35-mile-an-hour zone. The victim went from the point of
3 impact to 165 feet to where -- I don't know that I would
4 say came to rest -- but where he landed.

5 Also, there was testimony of the
6 unresponsiveness, unconsciousness of the victim, and the
7 physical condition of the victim at the scene upon the
8 arrival of E.M.S.: Eyes fixed and dilated, posturing.
9 He was taken to the hospital. He has severe brain
10 injury from which he never, of course, recovers.

11 I say that for purposes of the record in
12 looking at the elements of felony D.U.I. First, that
13 the actor drives a vehicle while under the influence of
14 alcohol or drugs. I think it's clear he was operating a
15 vehicle, if I take the testimony of Agent Landrum, that
16 his blood alcohol level was .225 upon testing. There
17 was a sample taken at approximately 2:00 a.m.

18 The second element is the actor does an act
19 forbidden by law or neglects a duty imposed by law. One
20 act, of course, could be improper use of lane, driving
21 in the improper lane, exceeding the posted speed limit,
22 and the act of negligence proximately causes great
23 bodily harm or death to another. This clearly occurred
24 in this case.

25 Again, taking the standard that I must apply

1 in this case on a directed verdict and all cases, I
2 would respectfully deny your motion. Do you have other
3 motions?

4 MR. WILLIAMS: I do not, Your Honor.

5 THE COURT: Any specific -- well, before I get
6 to that, Mr. Jamison, would you please stand for me.

7 Madame Clerk, would you place Mr. Jamison
8 under oath for me.

9 ANDRA BYRON JAMISON is first
10 duly sworn

11 THE COURT: Mr. Jamison, I need to go over a
12 few things with you. I have to do this with everyone
13 who is on trial. And when I do so, I require that they
14 must be under oath. Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: We have reached the stage of the
17 trial where the State has rested. Your side, the
18 defense, now has the opportunity to present evidence for
19 the jury to consider. Do you understand where we are at
20 in the trial?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In that regard you may call
23 witnesses to testify. If you choose to testify
24 yourself, you may do so. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: No one can force you to testify.
2 You have an absolute right to remain silent. And if you
3 choose not to testify, I will tell this jury that they
4 cannot hold your silence against you in any way. I will
5 tell the jury that they are not to even discuss that in
6 the jury room. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has there been any evidence at
9 all, documentary evidence, photographs, offered by the
10 defense?

11 COURT REPORTER: Yes, sir.

12 MR. WILLIAMS: I think the introduction of
13 Defendant's Exhibit 2 and 1 or State's 1, which I
14 introduced.

15 THE COURT: I do not believe Defense 1 ever
16 came into evidence, which was the multipage blood test
17 from Richland Memorial.

18 MR. WILLIAMS: Yes, sir, you are right.

19 THE COURT: I think Defense 2 -- and I can't
20 recall off the top of my head what Defense 2 was.

21 MR. WILLIAMS: The booking sheet and the
22 receipts.

23 THE COURT: I let those be marked as State's
24 exhibits. Defense 2 was the medical records from the
25 jail.

1 MR. WILLIAMS: You may have let them be marked
2 that way, Your Honor, but I think I was the one that
3 technically moved to place them into evidence.

4 THE COURT: You did. The only reason I am
5 asking is as far as closing argument.

6 MR. WILLIAMS: Yes, sir, I know.
7 Unfortunately I do know the answer to that.

8 THE COURT: Solicitor, Mr. Williams, does the
9 Defendant have a prior criminal history that would
10 subject him to impeachment under Rule 609?

11 MR. MOBLEY: Not that the State is aware of,
12 Your Honor.

13 MR. WILLIAMS: He does not, Your Honor.

14 THE COURT: That would not be a concern.
15 Mr. Jamison, the decision about whether you testify or
16 not is your decision to make and yours alone. I expect
17 that you have conferred with your attorney and perhaps
18 with others whose opinions you value on important
19 decisions. But the decision about whether you testify
20 or not is your decision. It's your call. Do you
21 understand?

22 THE DEFENDANT: I do.

23 THE COURT: Has anyone exercised any undue
24 influence over you to get you to choose to testify or
25 not to testify?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Today are you under the influence
3 of any medication, drugs, alcohol or anything that
4 negatively affects your thinking ability?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you suffer from any physical or
7 mental or emotional problems that affect your thinking
8 today?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you have any questions you
11 would like to ask me about your right to testify or not
12 to testify?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you feel like you have had an
15 adequate opportunity to talk with your attorney
16 concerning your right to testify or not to testify?

17 THE DEFENDANT: Yes, I think so.

18 THE COURT: Do you need anymore time to talk
19 with your attorney about that issue?

20 THE DEFENDANT: No, sir.

21 THE COURT: Sir?

22 THE DEFENDANT: No, sir.

23 THE COURT: Whatever decision you have made
24 about whether to testify or not to testify, is it a
25 decision made of your own free will and accord?

1 THE DEFENDANT: Yes, sir, it is.

2 THE COURT: I find that -- let me ask you
3 this, Mr. Jamison. How old are you?

4 THE DEFENDANT: Forty-two.

5 THE COURT: How much education do you have?

6 THE DEFENDANT: I have been to college. I
7 have been to the Maritime Academy, ongoing education.

8 THE COURT: So you are a high school graduate,
9 you have some college, and you have been to the merchant
10 marine institute; is that correct?

11 THE DEFENDANT: Right.

12 THE COURT: And as I recall from your in
13 camera testimony outside the presence of the jury, you
14 served in the United States Navy for a period of four
15 years?

16 THE DEFENDANT: Yes, sir, I did.

17 THE COURT: And you have been employed in your
18 current employment for approximately 20 years; is that
19 correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I find that Mr. Jamison is an
22 intelligent individual, that he understands his right to
23 testify or not to testify.

24 What is your decision, Mr. Jamison? Are you
25 going to testify or not testify?

1 THE DEFENDANT: I'm not going to testify, sir.

2 THE COURT: Thank you very much. I make a
3 finding that that decision is made of his own free will
4 and accord, knowingly, voluntarily, and freely. You may
5 be seated, Mr. Jamison.

6 Anything further before we bring the jury in?

7 MR. MOBLEY: I do have one matter, Your Honor,
8 I did overlook. The State would move on the indictment,
9 the C.D.R. code that is displayed, is 2975. I have
10 checked that on the South Carolina Courts website.

11 That is a retired C.D.R. code, but it does
12 attach to the felony D.U.I. with the death. The new
13 C.D.R. code should be 395. However, in the body of the
14 indictment, we list the correct statutory code, which is
15 56-5-2945.

16 In addition, we have included the correct
17 language that accompanies that particular statutory code
18 for felony D.U.I. death. We are just asking for an
19 administrative changing of the C.D.R. code.

20 THE COURT: Do you have any objection to that?
21 It appears administerial.

22 MR. WILLIAMS: It does.

23 THE COURT: We will take care of our jury and
24 then I will ask that question. Nothing further before
25 we bring in our jury?

1 MR. MOBLEY: Nothing Your Honor.

2 THE COURT: You will have to formally rest in
3 front of the jury. I will then note that your motions
4 have been made, Mr. Williams.

5 MR. WILLIAMS: Yes, sir, Your Honor.

6 THE COURT: I will then give you the
7 opportunity to present any evidence or testimony you so
8 choose. You would either call a witness or you can
9 formally rest in front of the jury. All right.

10 (The jury returns to the courtroom.)

11 THE COURT: Our jury is back present in the
12 courtroom.

13 Solicitor, you may call your next witness.

14 MR. MOBLEY: Your Honor, at this time the
15 State rests.

16 THE COURT: The State has now rested. I have
17 heard the motions of the defense, and motions are noted
18 and my rulings reaffirmed.

19 What that means, ladies and gentlemen, at this
20 point the State has rested. The defense now may present
21 evidence if the defense chooses to do so. A person
22 never is required to prove himself or herself innocent
23 in South Carolina. That person is presumed to be
24 innocent.

25 The State has the burden of proving its case

1 beyond a reasonable doubt. However, if an individual
2 charged chooses to present evidence, they may certainly
3 do so. Now we will give that opportunity.

4 Mr. Williams?

5 MR. WILLIAMS: Your Honor, we are presented to
6 argue to the jury.

7 THE COURT: So the defense rests, correct?

8 MR. WILLIAMS: We do, Your Honor.

9 THE COURT: Ladies and gentlemen, you have now
10 heard all the evidence all the testimony -- your motions
11 are reaffirmed also.

12 MR. WILLIAMS: Thank you so much, Your Honor.

13 THE COURT: You have now heard all the
14 evidence, all the testimony that you are going to hear
15 from either of the parties in the trial of this case.
16 Given the lateness of the hour, I haven't talked with
17 the attorneys about how long they may need to argue.

18 But generally we would be looking at perhaps
19 several more hours. They somewhat frown on us for
20 starting closing arguments and charges after
21 4:00 o'clock in the afternoon.

22 So momentarily I will release you from your
23 jury service for the remainder of the evening. We will
24 start back fresh in the morning. We have been here
25 since 8:30 this morning. It's an important case. It's

1 important to the State of South Carolina. It's
2 important to Mr. Jamison, the Defendant.

3 So I will release you and advise you again, do
4 not discuss the case with anyone, including your fellow
5 jurors, your family, friends or anyone else. If anyone
6 tries to talk with you about the case, please let me
7 know.

8 Remember do not do any investigation on your
9 own or on the internet in any manner. Do not listen to
10 any news reports or read any news reports about the
11 case, should there be any. The procedure we will follow
12 tomorrow -- is the State going to open?

13 MR. MOBLEY: No, we will waive opening, Your
14 Honor.

15 THE COURT: The procedure we follow tomorrow
16 is Mr. Williams would present the closing argument on
17 behalf of his client, Mr. Jamison, first to you.
18 Thereafter the State, being the party with the burden of
19 proof, would represent its closing argument last.

20 Closing arguments different from opening
21 statements. The attorneys may comment on the law. They
22 are real arguments. They can comment on the law. They
23 can comment on the facts and the reasonable inferences
24 to be drawn from those facts and how the facts tie in
25 with the law.

1 After the closing arguments, I will, as we
2 say, charge you or instruct you on the law in South
3 Carolina as it applies to felony D.U.I. with a death
4 involved. The case would then be submitted to you for
5 your deliberations. That process -- how much time do
6 you think you need to argue, Solicitor?

7 MR. MOBLEY: I would say around about 20,
8 maybe 25 minutes, if that.

9 THE COURT: Mr. Williams? I am just trying to
10 get an idea. I know good lawyers can't estimate time.

11 MR. WILLIAMS: I will try to be honest and
12 take a shot at it. I think it will probably take a good
13 30 minutes.

14 THE COURT: So you are looking at closings
15 that make take a total of an hour, hour and 15 minutes,
16 something like that that you will be sitting out here.
17 We will probably take a break. My instructions could be
18 30, 35 minutes. Then it would be submitted to you for
19 your deliberations.

20 Just do what you have done all week, relax.
21 Give the parties your complete and undivided attention
22 and use your good common sense and your good judgment.
23 Listen and reach a verdict that speaks the truth.

24 I have one other issue. I cannot start early
25 in the morning because of a prior commitment I have that

1 I must attend to. So I will start at 10:00 o'clock.
2 That should still get the case to you by the lunch hour,
3 if not before.

4 So we will start at 10:00 o'clock in the
5 morning. Thank y'all for your participation in this
6 process. You are now excused. I hope y'all have a
7 pleasant evening, and see you at 10:00 o'clock in the
8 morning. Thank you very much.

9 (The jury is excused for the day at 5:17 p.m.)

10 THE COURT: Any requests to charge, Solicitor?

11 MR. MOBLEY: I do not have any at this moment,
12 Your Honor.

13 THE COURT: I will be hard pressed to look at
14 them in the morning now.

15 MR. MOBLEY: I don't have any.

16 THE COURT: If you have any, you can e-mail
17 them to me and Mr. Williams tonight, provided you e-mail
18 them to both of us.

19 MR. MOBLEY: That's fine, Your Honor. The
20 only thing I am looking for is if we can get a copy of
21 your charge for reasonable doubt.

22 THE COURT: I charge -- I generally charge
23 Victor versus Nebraska. If someone wants State versus
24 Manning, I add that language also.

25 MR. MOBLEY: Is that the firm belief?

1 THE COURT: Firm belief is Victor versus
2 Nebraska. Hesitate to act is State versus Manning. Do
3 you want both, Mr. Williams?

4 MR. WILLIAMS: Your Honor, I know you were the
5 trial judge on State v. Martin. I was satisfied with
6 your charge on that. I think you tried that case. It's
7 an identical felony D.U.I. That is your standard charge
8 on felony D.U.I. So I am content with that charge.

9 THE COURT: I tell you what. I had printed
10 out the charge on felony D.U.I. Then I also printed out
11 some more language on proximate cause out of Burton. I
12 will give you copies of this tonight.

13 This is the specific -- goes to the specific
14 charge in this case. I haven't studied back through it.
15 I am either going to charge this or substantially this.
16 I will give y'all that tonight. Anything further?

17 MR. MOBLEY: Nothing further.

18 MR. WILLIAMS: Nothing further from me. Can
19 we approach a second.

20 THE COURT: Yes, sir.

21 (Whereupon there is a bench conference off the
22 record.)

23 THE COURT: Court will be in recess until
24 10:00 o'clock.

25 (Whereupon the proceedings were concluded for

1 October 14, 2009.)

2 (The following proceedings were reported on
3 October 15, 2009.)

4 THE COURT: Anything from the State before we
5 bring in our jury?

6 MR. MOBLEY: Nothing, Your Honor.

7 THE COURT: From the defense?

8 MR. WILLIAMS: Your Honor, there is one thing
9 from the defense when we were talking about charges
10 yesterday.

11 THE COURT: All right.

12 MR. WILLIAMS: I am comfortable with what the
13 Court is going to charge. There is one additional
14 charge that I don't know if the Court has picked up and
15 will charge. Your Honor, that is 56-5-3470.

16 THE COURT: Any objection, Solicitor, at least
17 to number one, paragraph number one, of 56-5-3470?

18 MR. MOBLEY: Your Honor, I would object to
19 that. We have not heard any testimony in regards to the
20 lack of lighting equipment on Mr. Gamble's bicycle, and
21 it was not said during the trial itself, Your Honor. So
22 we would object to it.

23 THE COURT: Is there a light on it?

24 MR. WILLIAMS: No, sir, and we put that in
25 evidence.

1 THE COURT: It's in evidence. If the evidence
2 is in evidence, it's part of the testimony.

3 MR. MOBLEY: In addition, Your Honor, we would
4 object to the reading of 56-5-3500.

5 THE COURT: I'm not going to read that.

6 MR. MOBLEY: Okay.

7 THE COURT: I will not read that. As far as
8 the charged acts forbidden by law or neglected duty
9 alleged by the State, I was going to charge improper use
10 of lane, failure to maintain a proper lane, and
11 speeding. Any others, Solicitor?

12 MR. MOBLEY: No, that's it, Your Honor.

13 THE COURT: All right. Bring us our jury,
14 please.

15 (The jury returns to the courtroom at
16 10:03 a.m.)

17 THE COURT: Our jury is present in the
18 courtroom.

19 Good morning, Mr. Foreman, ladies and
20 gentlemen of the jury. As I stated yesterday, we are
21 now at the point of the closing arguments by the
22 attorneys to you.

23 The procedure we will follow is Mr. Williams
24 will be first, followed by the solicitor, the State
25 being the party that has the burden of proving the case,

1 each and every element, beyond a reasonable doubt.

2 After that I will charge you the law, and the
3 case will be submitted to you for your deliberations and
4 your verdict. Please give the parties your complete and
5 undivided attention as you have done throughout the
6 course of these proceedings.

7 Mr. Williams.

8 **CLOSING ARGUMENT**

9 MR. WILLIAMS: May it please the Court.

10 THE COURT: Yes, sir.

11 MR. WILLIAMS: Mr. Solicitor. I will move
12 this podium out here where I can stand still in front of
13 you. If I can keep the bike standing up. It's bad to
14 get old and weak. I have a tendency to pace. It's a
15 nervous habit. My children have. They get on the phone
16 and walk back and forth. It's probably distracting.

17 The first thing I want to do is thank you for
18 being here. You know, that is something that lawyers
19 always say when they talk to jurors. Sometimes people
20 say, Well, you shouldn't have to thank them because it's
21 a duty.

22 But, you know, a lot of people try to get out
23 of jury duty. They come up with excuses. Next week
24 would be better. You know, something happened to my
25 cousin. I don't think I can be there or something like

1 that.

2 I used to think that -- well, when I was
3 young, I used to think that those were just people who
4 were thinking of themselves, didn't want to take the
5 time away from their work, didn't want to take the time
6 to spend on doing something that was important in the
7 court system.

8 But as I got older, I realized that really
9 wasn't what the situation was. Jurors know that when
10 they sit on a jury that, it's not just about taking time
11 away from their work.

12 At the end of the case, they have to sit down
13 and make a decision, and it's always hard to make
14 decisions about somebody else's fate. I guess we make
15 decisions about our children, but it's really hard to
16 make a decision about somebody else's fate to sit in
17 judgment. I won't even go into any Biblical things
18 here, but it's just hard.

19 Because you know whatever you decide is going
20 to affect people. It's going to affect my client, Andra
21 Jamison. It will affect his family. And it's hard to
22 make those decisions about what happens to somebody
23 else.

24 But, you know, through it all, I saw all of
25 you jurors stand up here and not wince. You came up

1 here and you were sworn in, and you said that you would
2 take on that decision and you would make a decision.

3 One of the other things -- being old gives
4 you -- I consider myself older. It's comforting. I
5 don't know how, I guess the older you get, the better
6 you feel about things. Most people say when you get
7 older, you start worrying about dying.

8 I don't really do that. I am thankful for
9 what I have learned. I remember, as a young lawyer, I
10 remember judges charging -- they have a litany of things
11 which they always say. I guess if you are a lawyer, you
12 could get tired of it.

13 One of the things, one phrase insofar as it
14 concerns jurors which has always hit me as being
15 important, and as you get older, you appreciate it
16 better. You have no friends to reward -- no friends to
17 reward -- and you have no enemies to punish.

18 What a great, great charge is that. Because
19 that's what you do. It's particularly true in cases
20 like this. Because what you are dealing with is you are
21 dealing with a felony D.U.I.

22 It's not an armed robbery. It's not a rape.
23 It's not a murder. It's a different type of crime that
24 you are being asked to sit in judgment for. Because you
25 are asked to sit on judgment on essentially what is an

1 accident which has been termed criminal based on certain
2 circumstances.

3 I'm sure in your lifetime you may have known
4 people who went out drinking and driving and things like
5 that. I'm not saying that to indicate that's what
6 happened here, but it's a tough type of case. It's not
7 something like shooting somebody. Having said that I
8 thought I would talk to you a little bit more about the
9 decisions you make.

10 The other thing about the jury system is that
11 it's not a majority vote situation. You don't all go
12 back out, and it's seven to five, one way, or it's six
13 and six or it's four-three. Everybody has their own
14 decision. You don't get to escape responsibility.
15 That's why it's tough. You don't get to say, Well,
16 everybody else said that, so I have to vote that way.

17 That's why it's tough. You have go to go
18 inside and vote your conscience. Having said all that,
19 I think you know why I want to thank you because this is
20 a tough job.

21 Let's talk about the law. The law is it's a
22 felony D.U.I. trial. To prove a felony D.U.I., it's
23 fairly simple in terms of what you have to understand.
24 It's against the law for someone who is under the
25 influence to drive a vehicle on the highways of the

1 State of South Carolina and either commit a violation of
2 the law or omit to do a duty which is required, and as a
3 proximate result of that caused the death of someone.

4 That's pretty simple to understand. You have
5 to break it down. The State of South Carolina, that's
6 easy. Drive a vehicle, that's easy. That means to
7 operate a vehicle. Under the influence gets a little
8 more complicated. Under the influence means that you
9 have drunk so much alcohol that your ability to operate
10 an vehicle is materially and appreciably impaired.

11 Now, proximate cause. Proximate cause is the
12 direct cause. It is the cause but for that action that
13 led to the death of the person that you are dealing
14 with. There may be many causes, but it is the direct
15 cause. You must find that Andra Jamison was drunk and
16 directly caused the death of the decedent, Mr. Gamble.
17 It's fairly simple still. That's as far as the
18 simplicity gets.

19 You know, it being a criminal case, the State
20 has to prove my client's guilt beyond a reasonable
21 doubt. You say that's nothing. It's a reasonable
22 doubt. A reasonable doubt is a doubt -- the judge will
23 basically charge you on this -- but you have to be
24 firmly convinced that my client is guilty. No question
25 about that.

1 The easy way for me to go through things in
2 terms of doubt is to take each and every witness that
3 has testified. I apologize. I might be a little long
4 winded. You heard me yesterday when I stood up, I said
5 30 minutes. I don't want to lie. I might have to
6 smidge a little bit. Because it's too important.

7 It's too important for me to not cover
8 everything, to sit down, and then say, You know, I
9 forgot to say that. Because his stupid lawyer forgot to
10 say something, he will be convicted. We can't do it
11 that way.

12 What you see and I hope you appreciate this is
13 I have to go first. If I were last, I would be in a
14 much better position because I could hear what the other
15 side is going to say, and I could have my argument all
16 lined up about what I was going to say.

17 It's always easier once you hear what the
18 other side is saying to come with an argument.
19 Remember, when I get through and the solicitor stands up
20 here and starts arguing, I have a response to it. I
21 can't go back and tell you what it is, but I have one
22 for it.

23 Let talk about the witnesses who testified.
24 The first witness who testified was the police officer
25 on scene, Michael Ryan Stone. He was the Cayce police

1 officer. He had been at work for, what, two months?

2 He arrived on scene. You heard a little bit
3 of questions about whose responsibility is it to
4 maintain the scene. It's the first responder. He is
5 the guy who is supposed to do it. We heard Sergeant
6 Marzol. He came along and assisted him. Let's go
7 through the observations of Michael Ryan Stone.

8 He says he doesn't know whether or not the
9 bike was before the body or after the body. He didn't
10 know originally that the body was in the left lane or
11 the right lane. Because if you remember when he first
12 testified, he said the body was in the left lane, which
13 is the hammer lane, which is the fast lane?

14 The solicitor stands up and shows him a
15 picture. He said, Oh, no, it must be in the right lane.
16 He says everything was on the bridge. All the evidence
17 was on the bridge. He couldn't say if the bike was in
18 the first lane or the second lane.

19 He said the Defendant, when he saw him, was
20 standing on the sidewalk, not sitting down. He
21 essentially appeared to not remember the scene very
22 well. He presented an affidavit of why he didn't have a
23 video.

24 The one thing he said which will ring in this
25 case is that another officer showed up with a video.

1 You remember the officer that showed up with the video?

2 I think it was Smith who had the car with the video.

3 When the blue lights came on, if you remember
4 what Smith said, the camera started running. He arrived
5 on scene with the blue lights. Well, this (indicating)
6 is it or this is part of it. You saw what is on this
7 disk. You remember the five-minute video when Andra
8 Jamison is standing in front of the patrol car?

9 That's all you saw. I hope if you are on a
10 jury, you would be asking: Where is the rest of that
11 video that shows him pulling up, showing all the cars in
12 front, showing the evidence, showing everybody there?

13 I think y'all picked up on that when I was
14 asking the officer about that. It's not here. When you
15 make decisions, you don't just base it on the evidence.
16 You base it on the lack of evidence, too.

17 Selective evidence, to create an inference in
18 your mind of guilt, is not what you are supposed to do.
19 You are supposed to be fair. You have no friends to
20 reward, no enemies to punish. You are to come up with
21 the justice and what happened in this case.

22 Well, Officer Smith, as we know -- Stone, I'm
23 sorry. I get them confused -- Stone, the first officer,
24 the arresting officer, he is involved in going to the
25 Datamaster room with Marzol.

1 He also in charge of going to the hospital
2 where he drew the blood. He didn't draw the blood. The
3 doctor had the phlebotomist draw blood. He takes -- I
4 assume he takes it -- I think the phlebotomist testified
5 he gave the two vials to Stone, and supposedly he puts
6 one vial in the inmate's pocket.

7 I know you have already figured out one of the
8 biggest problems in this case already, and that's the
9 blood. Now, I asked Stone an embarrassing question. I
10 asked him if he had ever been in trouble dealing with
11 maintaining evidence and the destruction of evidence.
12 Do you remember what his first answer was? No, no.

13 Yet when I showed him a disciplinary report
14 and I asked him, I said, Would you like to change that
15 answer? He said yes. You know, if I hadn't had that
16 piece of paper to confront him on the stand, you 12
17 jurors wouldn't know it -- I'm sorry -- and alternates.
18 You wouldn't know it.

19 As jurors you determine credibility. You
20 determine believability of the witnesses based on how
21 they respond to questions, whether or not their
22 statements are consistent with other witnesses. Clearly
23 he didn't tell the truth the first time.

24 The next witness I had listed was Dr. Sweet.
25 Again, I'm terrible. I shouldn't admit it to my client.

1 When you try a case, you can't always write down all
2 your notes like you want to. If you have got two
3 lawyers, then you have the other guy writing down the
4 notes.

5 I went home and tried to look at my notes. Of
6 course, I couldn't read half of them. The second
7 witness I had was Dr. Sweet who was the neurosurgeon.
8 Essentially what he testified to was this young man,
9 Mr. Gamble, was in a coma. He had severe injuries.
10 Later on he was pronounced brain dead.

11 Again, remember the missing video. I want to
12 know where that emergency room doctor was. I want to
13 know where those medical records are. I want to know
14 what the results were from the blood work analysis on
15 the victim.

16 Why? Why wasn't it presented? Do you think
17 it couldn't have been presented? They simply called the
18 neurosurgeon to tell you if he was in a coma and he died
19 as a result of that. There is not much issue in regard
20 to that.

21 The poor young man suffered a severe injury
22 and died, but you are entitled to know the surrounding
23 facts about that individual. Because a fact by itself
24 may not be important unless you connect that fact to
25 other facts, and you will understand what I'm talking

1 about as we continue.

2 Adam Smith -- and I don't mean the
3 economist -- was the next witness who testified. He
4 worked with Cayce Police Department. He was the one who
5 had the camera, had the camera running. He didn't know
6 where the bike was.

7 And essentially I get the impression he was
8 like the person in charge. He had more qualifications
9 dealing with the scene. But he said he didn't search
10 the book bag.

11 He didn't search the kid -- the kid. He is 19
12 years old, young man, had no wallet on him. Why is that
13 important? Wouldn't you like to know what he had on
14 him? Again, another fact that means nothing unless you
15 connect them to another facts.

16 Sergeant Robert Marzol, the arresting officer,
17 the supervisor of the other officer. Not only was he
18 the supervisor, but he wanted to take credit for being
19 the arresting officer.

20 One of the items you will have here will be
21 the Datamaster slip where it says that he is also the
22 arresting officer. He didn't know where the bicycle
23 was. Nobody knew who the guy was in the picture sitting
24 next to the body.

25 The first thing Sergeant Marzol does is he

1 arrives and starts taking pictures. Maybe that's
2 protocol, but that's probably not the first thing I
3 would have done. I might have gone over to check on
4 things.

5 He is essentially in there to establish the
6 chain for the blood, and he is also in there to say that
7 he went to the hospital and had blood drawn. But he is
8 also in there because of the video and the reading of
9 the Datamaster rights.

10 I will give you this. I will give the
11 solicitor this. Andra Jamison acted like a piece of
12 work, if I can phrase it that way, in the Datamaster
13 room.

14 Because he bugged him. He kept asking him,
15 Marzol, do I get a lawyer? Why don't I get a lawyer?
16 It's like a child harassing you a little bit. But, you
17 know, I don't blame Andra for all that. He is not a
18 lawyer. He doesn't understand the law.

19 What would you think when someone read you
20 your Miranda rights and said, You have the right to an
21 attorney. You have the right for an attorney to be
22 present during and after all questioning. You have a
23 right to stop answering questions.

24 When you tell a man who is not a lawyer that,
25 shoot, I want an attorney. I want an attorney here. So

1 you are telling him one thing, yet you are preventing
2 him from doing something. Sure he gets tense.

3 The one thing he did -- maybe he should have
4 done it a little differently -- he wanted to make sure
5 that you knew if this case ever came to trial that he
6 was in there saying: I want an attorney. I want an
7 attorney. I want an attorney. Feeble, not the best way
8 to handle it, but he did it.

9 Now, evidence either proves something or it
10 doesn't prove anything, and that's going to be important
11 when you start remembering how he appeared in the
12 Datamaster room. I want you to keep in the back of your
13 head these videos.

14 Remember, the Defendant doesn't have to prove
15 anything, doesn't have to take the stand, doesn't have
16 to testify to anything. You have got him right here on
17 these videos. It's him. This is how he was. This is
18 how he sounded. This is how he appeared. Does he have
19 glassy eyes? Does he have slurred speech? Does he have
20 speech which is unintelligible? Unintelligible?

21 Is this a man who shows a .225 on a blood
22 alcohol level. You have got two versions of him.
23 You've got the one where he is out there on the scene.
24 You've got the one after Marzol tells him: You have the
25 right to have an attorney. You make the call.

1 The next witness that testified was Detective
2 Reese, the taker of the pictures. He starts doing sock,
3 shoe, lens. He does everything. He makes a point about
4 the socks and shoes were not flat like something had run
5 over them. He takes a picture of the bottle.

6 You know, we have spent a lot of time taking
7 pictures for exhibits because that's what jurors want to
8 see. When I first started practicing law, you notice
9 I'm a little -- I'm not real up to date with turning
10 things on and that kind of thing.

11 We used to have charts. You go to the drug
12 store and get you a piece of paper and draw on it and
13 show the jury that. Well, we have become high tech. We
14 want to show you movies. We want to show you
15 everything. We went to blow it up.

16 When you do that, sometimes, sure, it's there
17 for effect, but it also tends to show inconsistencies.
18 I think you know where we are going with this. Right
19 there (indicating), right there, you've got a shoe and
20 you've got a sock.

21 Now, somebody took that off the victim.
22 That's how it got off, even though all the paramedics
23 said that they didn't take his shoes and socks off.
24 Well, I wonder if that sock (indicating) is this sock
25 (indicating). Of course, it's not that sock. You know

1 how I know it's not that sock? Because it's not on the
2 lane. It's not on the line. Different socks, two
3 different socks.

4 Well, could it be that sock (indicating)?
5 Well, it more than likely would be that sock because
6 it's closest to the line, right, closest to the line?
7 There you go. We have solved the puzzle. We have got
8 the sock, two different pictures of it. It's closest to
9 the line. So obviously it's not the other sock.

10 I'm sorry, this one has got a shoe. If y'all
11 can solve this puzzle, I will be dazzled because I can't
12 solve it. It's got a shoe. A sock, not close to the
13 line, a sock close to the line, sock close to the line
14 but with a shoe.

15 Evidence. The importance of how the scene is,
16 how the wreck occurred is all decided on evidence. My
17 daughter is a lovely cook but I know if she puts the
18 wrong ingredients in that cake, it doesn't taste the
19 same.

20 Well, what else do we have? Besides being the
21 person who kept up with the information, he is the one
22 that got the bottle. Remember the magic bottle
23 underneath the tire. He took a picture of that and then
24 took a picture inside the van.

25 It doesn't take a mental midget to figure out

1 that if you are dealing with a felony D.U.I., you secure
2 the alcohol bottles. You put them in evidence. You
3 secure the bottle next to the van. You put it in
4 evidence, if they were cold, if they were open.

5 He went to the trouble of using a pencil --
6 that's what we heard -- to get it out. Well, do you
7 test it to see if my client maybe was drinking or maybe
8 you can't do that. It seems as though there is a lot of
9 stuff that you can't do until recently. I think you
10 know where I was going with that.

11 Dr. Steven Hayes. The doctor was told to
12 order the blood withdrawal. It's not very important, is
13 it? He signed a piece of paper ordering a blood
14 withdrawal. When you come in from the back end, you
15 start to figure out other importances of witnesses.

16 Well, that wouldn't be very important. You
17 got the impression all he did was walked in the
18 emergency room, signed a piece of paper -- walked in the
19 room and signed a piece of paper. The phlebotomist
20 wasn't even there at the time. The phlebotomist comes
21 in. He got an order from a doctor. So he draws the
22 blood.

23 Well, that doesn't fit with this; does it?
24 Defense Exhibit Number 2, it doesn't fit with that.
25 What is this? It's a chart for a doxycycline, which is

1 an antibiotic, which allegedly was prescribed by the
2 doctor.

3 The doctor, at least Cheryl Smith says, the
4 doctor ordered it. Remember the little sheet of paper
5 that has the evidence of the vial in the refrigerator?
6 It seems as though it might have been missing here. You
7 will have it. I promise you. I will find it before it
8 goes back. It was in there at one time. It should be
9 with you in the jury room.

10 So her little note verifies that there was a
11 vial of blood in the refrigerator at the Sheriff's
12 Department. It also talks about the doxycycline saying
13 it was ordered P.I.D., I think and that it had to be
14 ordered by the doctor. He was released from the
15 hospital.

16 One of two things has happened here. Either
17 the doctor doesn't remember that he treated him or it
18 didn't happen. Either way, if this doctor treated him
19 and he is checking him for bronchitis and he's hacking
20 and coughing, and he's putting his stethoscope on his
21 back and he is checking his chest, he is opening his
22 mouth, he is checking his throat, do you think he might
23 have noticed alcohol?

24 It's inconsistent, isn't it? Unless he didn't
25 check him, unless he had not been drinking, unless the

1 chart over here was a made-up chart. I can't make the
2 facts. The facts are either there or not there or
3 supplemented or changed.

4 Detective Jason Merrill was a chain person.
5 All he did was deliver things. Ms. Marzol, her
6 importance cannot be overstated. What are the odds that
7 where the main issue in a case is alcohol and the
8 drawing of the blood, that the arresting officer has his
9 wife in charge of all the blood at the jail, and
10 somehow, somehow, the blood disappears?

11 If you believe that Cheryl Smith was there,
12 the missing witnesses -- we've got a lot of missing
13 witnesses here. I don't know if the second coming has
14 come, but there are a lot of people who are missing
15 here. Her notes says the blood vial was in the
16 refrigerator.

17 You remember Ms. Marzol saying that if we
18 destroy the blood, two nurses sign off saying they have
19 destroyed the blood. She couldn't find that. If you
20 give the blood to someone, someone signs off on it.

21 You remember all of the stuff which I handed
22 in to you. Trust me on this, you will have all this
23 stuff. These are the receipts, the documents that we
24 were introducing, was a document taken by the booking
25 officer showing what was taken off my client.

1 The other two documents are documents
2 indicating what Mr. Jamison received when he was
3 released from jail and what his wife received before he
4 was released from jail.

5 You will note that there is no blood on there.
6 Not to say there was ever any blood delivered to the
7 jail because it wasn't noted, at least at the booking
8 office.

9 One of the interesting things you find out,
10 and we can go through -- I'm sure, I'm sure, that the
11 solicitor is going to come up here and say, Everybody
12 smelled alcohol. Everybody talked about slurred speech.
13 Everybody did that.

14 An innocuous piece of paper comes into
15 evidence called a booking sheet. Normally, a lawyer
16 doesn't want his booking sheet to come in because it
17 makes his client look like a criminal. He is standing
18 there up against the wall. They took his picture. It
19 makes him look guilty.

20 But, you know, it's the interesting stuff that
21 you find on here. It gives the time he was arrested,
22 August the 1st, 2008. His arrest time was 3:30. His
23 booking time was 4:24, approximately an hour later. And
24 it lists things about him.

25 It says local checked. Did they check to see

1 if he had any outstanding warrants? N.C.I.C. checked.

2 They check to see if there was anything on N.C.I.C.

3 Both are checked Y. for yes.

4 But you know what the most important thing on

5 here is? Alcohol, alcohol, alcohol, none. N., none.

6 Do you think my client was working in the booking office

7 and typed this up for himself? Well, I don't know. I

8 don't know the answer.

9 I wasn't working at the jail. I wasn't

10 working with the blood. I wasn't working on the scene.

11 But I know the booking officer an hour after he was

12 arrested said he had not had any alcohol.

13 We have got a built-in excuse for that, and I

14 hope you figure out where that is coming from. I might

15 as well skip to that because it was amusing -- not

16 amusing, ha, ha -- it was amusing. We get the

17 toxicologist on the stand, a very nice young man.

18 He was testifying about what he does. We

19 probably bored you to death talking about how much blood

20 was used, four drops of blood, which is a very small

21 amount, four drops of blood.

22 The concern was obvious. Normally when you

23 draw a vial of blood, you get a significant amount. But

24 then, of course, the answer is, It depends on the size

25 of the vial of the blood.

1 We talked about how the machine worked. I
2 said, Okay, I will give you that, whatever. Some of the
3 things that came out that should concern you was I asked
4 him was it a gray top on the blood tube or a red top on
5 the blood tube.

6 He said, I don't know, must have been a gray
7 top or I wouldn't done it, but I can check. I can
8 check. And he went throughout to describe the
9 differences. The gray top has the anticoagulants in it
10 which prevents the blood from separating. If it's not
11 that type, the blood will separate, and you have to
12 check the alcohol by dealing with the serum. You have
13 to use different calculations for that.

14 That's probably just a little too broad, but
15 those are things which I hope concern you. Even if you
16 believe -- see, here is the key. Either the blood was
17 tampered with, messed with, screwed up, something
18 happened to it before it got to the analysis or the
19 blood belonged to somebody else or Andra Jamison should
20 be a movie actor. You say why is that?

21 A .225, look at it. The solicitor quickly --
22 what I was doing and I don't know if you figured out why
23 I went to 4:00 o'clock in the morning. But he talked
24 about the fact you dissipate alcohol.

25 I went through the next hour and I went to the

1 next hour, and I stopped at 4:00 o'clock. I did that on
2 purpose. Because I asked him, What would he have shown
3 at 4:00 o'clock in the morning? Over a 20.

4 Well, at 4:00 o'clock in the morning, he was
5 being booked in the jail and somebody was looking at
6 him. So he must have put a mask on. He must have been
7 able to cover that up.

8 You remember, that's what it was. He was
9 covering it up. If you get so drunk, you start coming
10 down, you can't tell. But we asked him about what types
11 of things would you see at over 20. He would be passing
12 out, he would be lethargic, he would be stumbling
13 around.

14 To get to a 22, do you remember what he said
15 you had to do? You had to drink ten beers in one hour
16 and then drink one beer per hour to maintain that.
17 Well, you believe what you believe.

18 Almost everybody else that was involved,
19 Selena, Amy Stephens, and Brandon Williams were all
20 chain people. They are there to prove to you that once
21 it got to S.L.E.D., they kept up with it. That's all.
22 Sergeant Weaver, the same thing. He kept up with it.
23 What I'm concerned about is what happened to the blood
24 before it got to S.L.E.D.

25 We had two E.M.T. people who testified. Both

1 of them testified no one took his shoes and socks off.
2 The only person to testify to intoxication of my client
3 was David Boyce, the one who is no longer working if you
4 remember which one that he was. His said his speech was
5 incomprehensible.

6 Sergeant Breland. He was the M.A.I.T. team
7 guy. He comes in with a lot of credentials. That's how
8 you win a case. You come in with a lot of stuff. You
9 come in with pictures, videotapes, handy-dandy bikes to
10 get your attention, to draw your sympathy, to keep you
11 from focusing on the facts.

12 He talks about the rubber mark, the mark on
13 the road, the mark where the vehicle was. Yet he admits
14 there were marks all along there, marks all along there.
15 I randomly choose these two marks because it looked
16 consistent with what it is was going to be. I have made
17 up my mind. I have decided what happened. Now I am
18 going back to make it work.

19 I asked him, Did you compare those marks to
20 the rubber on the tires or the rubber on the bicycle
21 tires or the rubber on the van? No, we weren't able to.
22 We are just now able to do that. We couldn't call
23 anybody to see if they could do that.

24 Officer Coats. He wasn't even there. He
25 comes out there and he takes this chart that somebody

1 else has drawn, and he formulates something about speed
2 based on where the van is, based on where the body is,
3 based on where the other officer says the wreck began.

4 You heard the questions I asked. I asked him,
5 Does it matter if he was drug? Does it matter if he was
6 thrown? Does it matter what was the speed of the bike?
7 It doesn't matter. None of that matters.

8 You are entitled to believe what you want to
9 believe. Simply because you call somebody an expert
10 doesn't mean anything. You can judge whatever you want
11 to judge.

12 There was a lawyer in Columbia 25 years ago
13 who -- he is still alive as a matter of fact -- on a med
14 mal case, and he was defending the insurance company.
15 There was an expert on behalf of the Plaintiff. He came
16 in and testified.

17 He argued in closing argument -- I will never
18 forget it. It's probably been 30 years ago. He called
19 him a piccolo player. You put your nickel in and you
20 get whatever you want him to spit out. I should
21 probably give him credit for that. Expert doesn't mean
22 anything except you have an education. You determine
23 what the truth is.

24 We have two last witnesses. They were saved
25 for last for a purpose. You build this case and then we

1 want to have something to get you. We have Fitzgerald,
2 who was the police officer who said the guy had glassy
3 eyes, odor of alcohol, unsteady on his feet.

4 He was a police officer in the City of
5 Columbia. He had been over at his girlfriend's house
6 that night. You notice the solicitor asked one witness
7 if she had been drinking. He didn't ask the other
8 witnesses if they had been drinking. Selective
9 questioning? I don't know. He didn't see the wreck
10 happen. I will tell you that.

11 Shonda Cheeks, a very nice young lady, visibly
12 upset with being here, was visibly upset that night.
13 Who wouldn't be? Who would not be upset if they saw
14 someone dead on the highway or dying on the highway?
15 She was a very nice young lady.

16 She said she and her girlfriends had been out
17 drinking. She had had two martinis. I would like to
18 give you a nickel for every client in my office who
19 comes in and said he had couple of drinks. She had two
20 martinis. And what she saw was she saw a vehicle hit
21 something. In her statement she said she thought it was
22 a trash can.

23 But I saw the vehicle go to the right. She's
24 going the opposite direction. I saw the vehicle go to
25 the right. I asked her, I said, Why didn't you see the

1 bicycle if you saw this? Well, I didn't see the
2 bicycle.

3 Well, either she didn't see it exactly happen
4 that way or she saw the tail end of it or she was wrong
5 about the lane. He was in the other lane. This bicycle
6 obviously is bent up, but you can look at the pictures
7 and you can look at the bicycle, and there is one thing
8 this bicycle does not have.

9 And the judge will charge you at the
10 conclusion of this case that you have a responsibility
11 when you are on the road on a bicycle to have a light on
12 your bicycle that shines for 500 feet. Maybe she didn't
13 see it because he didn't have a light on it. Maybe
14 Andra Jamison didn't see it because he didn't have a
15 light on it.

16 Well, that's basically all I have got. There
17 is a bunch of stuff I guess I could talk to you about,
18 but I will have to sit down. I don't really have a lot
19 more to say. I want you to think about all those people
20 who are not here, all the evidence that wasn't
21 presented.

22 Let's talk about what makes sense. I want you
23 to think and remember what the testimony is. Because
24 the testimony revealed that the decedent, who didn't
25 have a wallet on him, that subsequently it was

1 determined that he lived in Lexington County.

2 What is important about that? At 11:30,
3 12:00 o'clock at night. He lived in Lexington County.
4 Why was he going towards Columbia? Well, that little
5 question has kept me up for a while. I don't know the
6 answer. Perhaps somebody else knows the answer. They
7 weren't called to testify.

8 So I started trying to figure out what did I
9 think might have happened. Because that's all the
10 solicitor has done here today, yesterday, and the day
11 before, what might have happened. Well, what might have
12 happened is that he was turning around and was going
13 back to his house.

14 You say, that's a far stretch. That doesn't
15 make any sense. Let's see. He lived in Lexington.
16 Either he was going to Columbia or he was turning
17 around. He was going across the highway turning left in
18 front of Andra Jamison.

19 You got to have something to back that up,
20 don't you? Well, you do. It's the thing that clearly
21 proves that my client struck the bike. It's right
22 there, the red paint. It's the red paint on my client's
23 car.

24 You will note that this type of bike is not
25 like the old-fashioned bike that used to have the little

1 fenders on the front and fenders on the back that used
2 to keep the mud from splashing up to you hit it, one of
3 those speed bikes.

4 If he were hit from behind, you look at the
5 tire. Look how this is bent in. Why don't we call
6 those M.A.I.T. guys back. I'm sure they have some
7 expertise in that.

8 I want to thank you for everything you have
9 done, how you have looked at it. I want to remind you
10 it's not a rush to judgment. Before you decide what you
11 are going to do, I want you to remember that what you
12 decide is going to affect my client and all these other
13 people.

14 I will not be able to get up here and yell and
15 rant and scream and try to get your attention, try to
16 draw your emotion. You have no friends to reward or
17 enemies to punish.

18 Sometimes an accident is just an accident.
19 Sometimes when you go looking for India, you don't
20 arrive at India. What it is is not always what it is
21 unless you have all the facts. Thank you.

22 THE COURT: Thank you. Thank you,
23 Mr. Williams. Solicitor.

24 **CLOSING ARGUMENT**

25 MR. MOBLEY: Thank you, Your Honor, jury,

1 counsel. July 31, 2008, Jesse gets off work and begins
2 to ride his bicycle. He is going towards Columbia.
3 It's a little after 11. He proceeds towards Columbia.
4 He gears over into the bike lane. He pedals, he pedals,
5 he pedals. He's still in the bike lane.

6 He continues to get closer and closer to that
7 bridge. Everyone knows Blossom Street Bridge. He
8 pedals. He sees the bright lights down there at
9 Columbia. You can see them from over there in Cayce.
10 He continues to pedal. He gets a little closer.

11 Out of the blue -- (indicating sound) -- a van
12 hits the back of his tire, throws him against the
13 windshield, and somehow knocks him 165 feet onto the
14 bridge. He was not even hit on that bridge.

15 He lays there motionlessly. He gasps for air,
16 can't do it. He's got blood coming out his mouth. It
17 fills his lungs. It's coming out his nose. Two
18 witnesses approach. They almost come instantly. They
19 are coming around about the same time.

20 One of them stops. Two of them stop. They go
21 and get closer. Shonda Cheeks, she is frantic on the
22 phone with her husband. Someone just got hit. He's
23 laying out in the middle of the highway.

24 All the time Andra Jamison, he rides several
25 hundred feet down the highway on that bridge. Emergency

1 medical arrives. They do everything they can on the
2 scene for him, do everything they can.

3 He is still gasping for air. His leg is
4 mangled. His head is surrounded by his own blood. They
5 rush him to the hospital. The doctors do everything
6 they can at the hospital. Several hours pass, beep,
7 flatline. That was Jesse. He was not just a body that
8 was in the street.

9 Those were Jesse's last moments on this earth.
10 They did not have to end that way. All because of the
11 fact that this guy decided to get behind the wheel of a
12 car, a van, filled with two 12-packs of Killian's Red
13 alcohol in his van.

14 He got behind that wheel of his van, swerved
15 over into the bike lane, hit Jesse's bike and knocks him
16 165 feet. Not only that, he was not only drunk driving,
17 he was speeding and drunk driving.

18 He goes into a bike lane where you are not
19 supposed to be with a van. That is reserved for a
20 cyclist. That lane was specifically built for cyclists
21 to go across that bridge.

22 When Jesse got off of work that day, he knew
23 he had a safe haven in between those lines. This guy
24 decides to take it away from him. This guy right here
25 (indicating). This one.

1 Now, the defense here, all they wanted to do
2 the entire trial is talk about this evidence. A light
3 fixture not circled with orange paint. It doesn't
4 matter.

5 They want to talk about where is the other
6 side of the video. It doesn't matter. If it was
7 important, you know who would have entered it into
8 evidence? That guy over there. If it would have helped
9 him, that's who would have entered it into evidence.

10 They want to talk about Officer Stone saying
11 that he mishandled evidence, but it was in another case.
12 It was not this case. They want to spend and try to
13 impeach anyone they can on the stand that does not have
14 to do with the facts themselves.

15 That's what this case is about. It's about
16 justice for Jesse, justice for Jesse. You all are going
17 to get all the evidence. We have nothing to hide. We
18 want you to see any and everything you can.

19 That's why we presented all this evidence that
20 seemed so meaningless to this side. We wanted you all
21 to get the full picture. So it's not about what we
22 don't have. Let me tell you what we do have.

23 We have two eyewitnesses. One, Shonda Cheeks.
24 She is coming home. She went downtown on Thursday
25 night, and she was coming back home after having drinks,

1 going out with her girlfriends after work. Two
2 martinis, she said she had two martinis. She also had
3 water, she had soda, she ate that night. She was going
4 home to her husband.

5 She was crossing the Blossom Street Bridge.
6 She sees the van swerve, goes towards the shoulder of
7 the lane, sees something go up in the air. The next
8 thing she knows Jesse is laying there in a pool of his
9 own blood.

10 We have Mr. Fitzgerald. He was not an officer
11 at the time. He has now become an officer of the law,
12 but he was the second witness that was there that night,
13 and he was able to go and also try to see if he could
14 assist Jesse in any way.

15 But what he also did, which was very
16 important, he went down and walked several hundred yards
17 to get to Mr. Jamison because he was so dazed and
18 confused he did not know what was going on.

19 He even asked Mr. Fitzgerald, What did I do?
20 Did I do something wrong? I hope we have the answer for
21 Mr. Jamison today. Yes, you did do something wrong.
22 Mr. Fitzgerald had to walk him back to the scene.

23 He smelled the odor of alcohol on him. Even
24 though he was coming down off his high. He was coming
25 down off his high. He still smelled the odor of

1 alcohol. He was unsteady on his feet. He had slurred
2 speech.

3 This is coming from a guy who was not in law
4 enforcement at the time, and it's consistent with the
5 statement that he provided at the time. If you notice
6 when the defense counsel had Mr. Fitzgerald up there, he
7 asked him about those questions.

8 He began to fumble over here for some
9 statements, some papers, some things of that nature. He
10 was looking to see if what he was testifying to up there
11 was consistent with his statement and it was.

12 That's why he put it back down and slowly
13 walked back and tried to go to another subject. I'm
14 sure you all picked up on that. Y'all have been very,
15 very attentive to what has been going on.

16 What we have are the bike marks in the bike
17 lane. What we have is the tire scuff mark on the curb
18 itself. What we have is the van with the bumper with
19 red paint on it, a broken busted windshield, the hood of
20 the van almost totally compressed down because of
21 Jesse's body.

22 What we have is an estimation of speed, which
23 ranges from 47 miles per hour to 57 miles per hour in a
24 35-mile-per-hour zone. That zone is 35 miles per hour
25 for a reason. Because we have individuals utilizing the

1 bike lane, the sidewalk, and going to the actual river
2 over there. It needs to be safe.

3 It didn't matter to this guy. He was too
4 confused. He was too intoxicated at the time to realize
5 that he should not be going -- first, being behind the
6 wheel of a car and, secondly, speeding.

7 We had the testimony saying that basically
8 when you have that much alcohol, your vision is
9 impaired, your reaction time is slowed. Maybe he could
10 have been drifting off. We don't know.

11 Some kind of way he starting swerving over
12 into that bicycle lane. What we have is a 0.225 blood
13 alcohol level. They want to point out saying we don't
14 have the second vial of blood.

15 We don't. We don't know where that is
16 located. We did not try to hide from that. We wanted
17 you all to know that. But if they had had it, what
18 would it have come back as? 0.225 blood alcohol level,
19 even if they had got their own independent testing.

20 That's what would have happened. It was drawn
21 at the same time. They want to focus on what we don't
22 have, but the facts can't be disputed what we have is
23 this bike.

24 They want to talk about an angle of how an old
25 bike or something of that nature is different than this

1 one, and it would have hit him in the back. This looks
2 like this is in the back. This is the back tire right
3 here. This looks like the indenture of his van. That's
4 what this is. This is Jesse's bike.

5 We have the pictures of the two 12-packs in
6 the back of that van itself. They want to attack all
7 the things that are meaningless. It doesn't even matter
8 what they are trying to attack about a light fixture not
9 being circled here, about mishandling of evidence by
10 Officer Stone in another case.

11 But they never would talk about, did anyone
12 move Jesse? They never did touch upon from the point of
13 impact to where Jesse came to lay before he went to the
14 hospital, did not say it was 165 feet.

15 They did not want to talk about that. They
16 want to give you smoke and mirrors. The C.S.I. moment
17 is over. Now we are talking about facts. That's what
18 we have. We have facts and that's how we wanted to
19 present it to you.

20 We have some questions that the Defendant he
21 asked on the roadside. You saw the video yourself. You
22 heard the actual officers testify to it as well. What
23 did I do wrong? Let me show you what you did wrong.

24 That's what you did wrong. You left your lane
25 of travel speeding while you was drunk, .225, almost

1 three times the legal limit and went into Jesse's lane
2 of travel, his safe haven. It's only on about three or
3 four feet. That's what you did wrong.

4 You had another question. Mr. Jamison had
5 another question. What did I hit? If you don't know,
6 this is what you hit, and here's the evidence to prove
7 it, as well as the photos of the actual van itself with
8 the actual -- the color of red on it. Your windshield
9 is also an indicator of that also.

10 And the last thing, one of the last statements
11 that I recall from Mr. Jamison that kind of struck me
12 and perturbed me at the time, when we made the statement
13 to one of the two first eyewitnesses: I thought I hit a
14 trash can.

15 Well, Mr. Jamison, does that look like a trash
16 can to you? I don't think that looks like trash at all.
17 That is a young man, 19 years old, lost his life
18 tragically when he did not have to lose his life the way
19 he did.

20 He was simply coming from work, doesn't matter
21 where he was going, whether he was going home or going
22 downtown or going to a friend's house. He was where he
23 needed to be. He was in his safe line in his safe
24 haven.

25 It was only three or four feet, but that was

1 his safe haven to get across that bridge. But
2 Mr. Jamison, due to his drunken stupor could not control
3 his vehicle and veered over and swerved over into the
4 lane of Jesse's travel.

5 Ladies and gentlemen, we presented a lot of
6 evidence to you, and I want to thank you for being as
7 attentive as you were. We are going to give it to you,
8 and you will go back there and make a decision on your
9 own.

10 What I ask of you is just review it
11 objectively. But when you look at that evidence and you
12 make that decision that Mr. Jamison was drunk, he hit
13 Jesse, Jesse died as a result of his injuries, come back
14 with a verdict of guilty on felony D.U.I. That will be
15 justice for Jesse. Thank you.

16 THE COURT: Thank you. Thank you very much,
17 Solicitor. Solicitor, would you mind taking down the
18 diagram.

19 (Pause.)

20 (Whereupon the Court charged the jury as
21 follows.)

22 THE COURT: Ladies and gentlemen of the jury,
23 I am now going to charge you or instruct you the law
24 that applies to this case. The procedure that I follow
25 in instructing the jury is I cover the general law that

1 applies to all criminal cases in South Carolina. I
2 cover that first.

3 Then I will go to the specific charge in the
4 indictment, which is felony D.U.I. with a death
5 involved, and then finally I will cover the form of
6 verdict.

7 I would ask you to please give me your
8 complete and undivided attention. When I go from one
9 paragraph or section to another paragraph or section, I
10 will give you the highlight of what I'm fixing to cover.

11 Charge, arrest, indictment, not evidence. The
12 indictment charges the Defendant with felony driving
13 under the influence with a death involved. I remind you
14 that the fact the Defendant was arrested, charged, and
15 indicted in this case is not evidence in the case and
16 cannot considered by you as evidence of guilt in this
17 case, nor does it create any presumption or inference of
18 guilt.

19 The indictment is a document which is simply
20 the formal written instrument which contains the charge
21 made against the Defendant. It is the formal document
22 by which the case is brought into court.

23 Presumption of innocence. The Defendant has
24 pled not guilty to the indictment, and that plea puts
25 the burden on the State to prove the Defendant guilty.

1 A person charged with committing a criminal offense in
2 South Carolina is never required to prove himself
3 innocent.

4 I charge you that it is an important rule of
5 the law that the Defendant in a criminal trial, no
6 matter what the seriousness of the charge may be, will
7 always be presumed to be innocent of the crime for which
8 the indictment was issued unless guilt has been proven
9 by evidence satisfying you of that guilt beyond a
10 reasonable doubt.

11 This presumption of innocence does not end
12 when you begin your deliberations, but it accompanies
13 the Defendant throughout the trial until you reach a
14 verdict of guilt based on evidence satisfying you of
15 that guilt beyond a reasonable doubt.

16 The presumption of innocence is like a robe of
17 righteousness placed about the shoulders of the
18 Defendant which remains with the Defendant until it has
19 been stripped from the Defendant by evidence satisfying
20 you of the Defendant's guilt beyond a reasonable doubt.

21 The presumption of innocence is not a mere
22 legal theory. It is not just a legal phrase. It is a
23 substantial right to which every defendant is entitled
24 unless you the jury are satisfied from the evidence of
25 the Defendant's guilt beyond a reasonable doubt.

1 Reasonable doubt. What is a reasonable doubt
2 in the law? A reasonable doubt is the kind of doubt
3 that would cause a reasonable person to hesitate to act.
4 The State has the burden of proving the Defendant guilty
5 beyond a reasonable doubt.

6 Some of you may in the past have served as
7 jurors in civil cases where you were told that it is
8 only necessary to prove that a fact is more likely true
9 than not true, such as by the greater weight or the
10 preponderance of the evidence.

11 In criminal cases the State's proof must be
12 more powerful than that. It must be beyond a reasonable
13 doubt. Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the Defendant's guilt.

15 There are very few things in this world that
16 we know with absolute certainty, and in criminal cases
17 the law does not require proof that overcomes every
18 possible doubt.

19 If based on your consideration of the evidence
20 you are firmly convinced that the Defendant is guilty of
21 the crime charged, you must find the Defendant guilty.
22 If on the other hand, you think there is a real
23 possibility that the Defendant is not guilty, you must
24 give the Defendant the benefit of that doubt and find
25 him not guilty.

1 Duties of jury and trial judge. I remind you
2 that during this trial, you and I have certain duties to
3 perform. As the trial judge, it is my responsibility to
4 preside over the trial in this case, and I also have the
5 duty to rule on the evidence offered during the trial.

6 You are to consider only the competent
7 evidence before you. If there was any testimony ordered
8 stricken from the record in this case during the trial,
9 you must disregard that testimony.

10 You are to consider only the testimony which
11 has been presented from this witness stand and any
12 exhibits which have been made part of the record in this
13 case.

14 I have the additional duty to charge you the
15 law that applies in this case. As the presiding judge,
16 I am the sole judge of the law of this case, and it is
17 your duty as jurors to accept and apply the law as I now
18 state it to you.

19 If you already have any idea as to what the
20 law is or what the law ought to be and it does not agree
21 with what I now tell you the law is, you must abandon
22 your idea. Because you are sworn, you have taken an
23 oath, to accept the law and apply the law exactly as I
24 state it to you.

25 In every case tried in this court before a

1 jury, the jury becomes the sole and exclusive judge of
2 the facts of the case. A trial judge cannot intimate,
3 state, comment on or make any statement to a trial jury
4 about the facts in a case.

5 Since you the jury are the sole judges of the
6 facts in this case, you are not to infer from what I
7 have said during the progress of the trial in ruling
8 upon the admissibility of evidence or otherwise or
9 anything that I say now during the course of this
10 instruction to you that I have any opinion about the
11 facts in this case.

12 The law does not allow me to have an opinion
13 about the facts in this case. This is solely a matter
14 for you the jury to determine. As jurors it is your
15 duty to determine the effect, the value, the weight, and
16 the truth of the evidence that has been presented during
17 this trial.

18 Direct and circumstantial evidence. There are
19 two types of evidence which are generally presented
20 during a trial, direct evidence and circumstantial
21 evidence.

22 Direct evidence is the testimony of a person
23 who claims to have actual knowledge of a fact, such as
24 an eye witness or an ear witness, something we perceive
25 through one of our human senses. It is evidence which

1 immediately establishes the main fact to be proved.

2 Circumstantial evidence is proof of a chain of
3 facts and circumstances indicating the existence of a
4 fact. It is evidence which immediately establishes a
5 collateral fact from which the main fact may be
6 inferred. Circumstantial evidence is based on inference
7 and not on personal knowledge or objection.

8 The law, our law, makes absolutely no
9 distinction between the weight or value to be given to
10 either direct or circumstantial evidence, nor is there a
11 greater degree of certainty required of circumstantial
12 evidence than of direct evidence.

13 You should weigh all of the evidence in this
14 case. After weighing all of the evidence if you are not
15 convinced of the guilt of the Defendant beyond a
16 reasonable doubt, you must find the Defendant not
17 guilty.

18 If after weighing all of the evidence in the
19 case you are convinced of the guilt of the Defendant
20 beyond a reasonable doubt, you must find the Defendant
21 guilty.

22 Credibility of witnesses. Necessarily you
23 must determine the credibility of the witnesses who have
24 testified in this case. Credibility simply means
25 believability. It becomes your duty as jurors to

1 analyze and to evaluate the evidence and determine which
2 evidence convinces you of its truth.

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

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

17 Expert witnesses. Normally a person -- and
18 you heard me say this during the course of the trial --
19 normally a person cannot give opinion testimony.
20 Normally when a person testifies, they must testify as
21 to what they either saw, heard or sensed by smell or
22 something of that nature.

23 However, there is an exception when someone is
24 qualified because of education, experience or background
25 or training. They are permitted to give their opinion

1 in certain areas if the Court qualifies them that way.
2 That does not mean that you must accept the opinion, but
3 it is evidence for you the jury to use in any way you
4 see fit.

5 I instruct you and emphasize that the fact
6 that the Defendant did not testify is not a factor to be
7 considered by you in any way in your deliberation and in
8 your consideration on the question of the guilt or
9 innocence of the Defendant. It must not be considered
10 by you in any manner whatsoever.

11 A defendant has the constitutional right to
12 remain silent, and the assertion of this right must not
13 be considered by you in your deliberations. I repeat,
14 under your oath you are to draw no conclusions
15 whatsoever from the fact that the Defendant in this case
16 did not testify. The fact that this Defendant did not
17 testify should not even be discussed in the jury room.

18 The burden of proof, as I have stated to you,
19 is on the State. The Defendant is not required to prove
20 his innocence. The burden of proof remains on the State
21 to prove guilt beyond a reasonable doubt.

22 Ladies and gentlemen, that concludes the
23 general criminal charge. I am now going to charge the
24 specific statute and law relating to felony driving
25 under the influence.

1 A felony driving under the influence charge
2 requires proof of three elements. First, the actor
3 drives a vehicle while under the influence of alcohol or
4 drugs. Second, the actor does an act forbidden by law
5 or neglects a duty imposed by law. And, third, the act
6 or neglect proximately causes death to another person.

7 I am going to break that down a little for
8 you. The Defendant is charged with felony driving under
9 the influence. The State must first prove beyond a
10 reasonable doubt that the Defendant drove a vehicle
11 while under the influence of alcohol and/or drugs.
12 Driving a motor vehicle means that the vehicle was in
13 motion. This may be proved by direct or circumstantial
14 evidence.

15 The State must prove beyond a reasonable doubt
16 that the Defendant was sufficiently under the influence
17 to impair his ability to drive with reasonable care,
18 with due regard for others and himself or as a
19 reasonably prudent person would drive.

20 It is not necessary to show that the Defendant
21 was in a helpless condition, passed out or even
22 intoxicated. On the other hand, the fact that a
23 defendant, at sometime prior to the incident drank an
24 alcoholic beverage or took a drug, does not prove that
25 the Defendant was driving under the influence.

1 Next, the State must prove beyond a reasonable
2 doubt that while driving the Defendant did an act
3 forbidden by law or neglected a duty imposed by law.
4 The driver of a vehicle is required to maintain a proper
5 lookout to operate the vehicle in a safe manner.

6 Also, I will charge you under 56-5-1520, a
7 person shall not drive a vehicle on a highway at a speed
8 greater than is reasonable and prudent under the
9 conditions and having regard to the actual and potential
10 hazards then existing.

11 Speed must be so controlled to avoid colliding
12 with a person, vehicle or other conveyance on or
13 entering the highway in compliance with the legal
14 requirements and the duty of a person to use care.

15 I would also charge you under 56-5-1900,
16 driving on roadways laned for traffic. Whenever any
17 roadway has been divided in two or more clearly marked
18 lanes for traffic, the following rules, in addition to
19 all other consistent herewith, shall apply.

20 A vehicle shall be driven as nearly as
21 practical entirely within a single lane and shall not be
22 moved from the lane until the driver has first
23 ascertained that such moment can be made with safety.

24 Finally, the State must prove beyond a
25 reasonable doubt that the act or neglect of the

1 Defendant proximately caused the death of another
2 person.

3 Proximate cause. The law recognizes there may
4 be more than one proximate cause. The acts of two or
5 more persons may combine and concur together as an
6 efficient or proximate cause of the death of a person.

7 The Defendant's act may be regarded as the
8 proximate cause if it is a contributing cause of the
9 death of the deceased. The Defendant's act need not be
10 the sole cause of the death, provided that it be a
11 proximate cause actually and contributing to the death
12 of the deceased.

13 One who inflicts an injury on another is
14 deemed by the law to be guilty of the homicide if the
15 injury contributes mediately or immediately to the death
16 of the deceased. The fact that other causes also
17 contribute to the death of the deceased does not relieve
18 the Defendant from responsibility.

19 You have to be convinced beyond a reasonable
20 doubt that the Defendant was the cause of the victim's
21 death. A person who inflicts a fatal injury upon a
22 person and that person dies at later time, you have to
23 be convinced beyond a reasonable doubt that the
24 infliction of the first injury was the cause of death,
25 that it was the proximate cause, that there was a chain

1 of causation from the time it happened until the time of
2 the death. The fact that other things contributed to or
3 speeded up the death, things of that sort, is not a
4 defense.

5 Right to refuse a test. A defendant has the
6 right to refuse to take a blood alcohol concentration
7 test. Inferences from the results of a test,
8 56-5-2950(b): The amount of alcohol in the Defendant's
9 blood at the time of the alleged violation as shown by
10 chemical analysis of the Defendant's breath or other
11 bodily fluids may be considered by you in deciding
12 whether the Defendant was under the influence.

13 If the alcohol concentration was .08 of
14 1 percent or more -- that would be 0.08 -- if the
15 alcohol concentration was .08 of 1 percent or more, it
16 may be inferred that the Defendant was under the
17 influence.

18 This inference is simply an evidentiary fact
19 to be considered by you the jury, along with the other
20 evidence in the case, and you may give it the weight and
21 the value that you decide it should receive.

22 I charge you there is a statute in South
23 Carolina, 56-5-3470. Every bicycle when in use at
24 nighttime shall be equipped with a lamp on the front
25 which shall emit a bright light visible from a distance

1 of at least 500 feet to the front and with a red
2 reflector on the rear which shall be visible from all
3 distances, from 50 feet to 300 feet to the rear, when
4 directly in front of the lawful upper beams of headlight
5 lamps on a motor vehicle. A lamp emitting a red light
6 visible from a distance of 500 feet to the rear may be
7 used in addition to the red reflector.

8 Ladies and gentlemen, that is the charge on
9 the specific offense charged in this case, felony
10 driving under the influence where a death is involved.
11 Finally, if y'all will continue to give me your complete
12 and undivided attention, I am going to cover the form of
13 the verdict.

14 There are two possible verdicts which you may
15 find in this case, guilty or not guilty. There is
16 absolutely no significance whatsoever in the order in
17 which I have stated those possible verdicts. It's
18 simply that one must be stated first.

19 Ladies and gentlemen, your verdict must be
20 unanimous. All 12 of you must agree on the verdict.
21 Your verdict cannot be based on sympathy, passion,
22 prejudice, emotion or any other consideration not in
23 evidence in this case.

24 Mr. Foreman, you will have in the jury room
25 with you I have typed out -- let me correct that -- my

1 fine law clerk has prepared a form of verdict, a verdict
2 form in this case.

3 It has the caption of the case, the indictment
4 number. Please mark the appropriate verdict below and
5 follow the accompanying instructions carefully.

6 Indictment -- and it's got the number -- as to felony
7 driving under the influence:

8 We the jury unanimously find the Defendant --
9 and it has got guilty or not guilty. Again, the
10 significance in which they are listed is insignificant,
11 has no meaning whatsoever. One must be listed first and
12 one must be listed second.

13 After the jury has determined the facts in the
14 case, the reasonable inferences to be drawn from the
15 facts in the case, if you find that the State has met
16 its burden of proof beyond a reasonable doubt, you would
17 find the Defendant guilty. Check to the left of guilty
18 and please circle both the word guilty and your
19 checkmark and sign as presiding juror and date the date.

20 If, on the other hand, after your
21 determination of the fact and the inferences to be drawn
22 from the facts, you find that the State has failed to
23 meet its burden of proof beyond a reasonable doubt, you
24 would then check to the left of not guilty. If that is
25 your unanimous verdict, check to the left of not guilty,

1 circle the two words not guilty, and your checkmark,
2 then sign your name as the presiding juror and the
3 date.

4 Once you have reached your verdict, if you
5 would knock on the jury room door and inform your
6 bailiff that you have reached a verdict. At that time
7 we will receive you back into the courtroom.

8 Mr. Foreman, if during the course of your
9 deliberations you have any questions of the Court, if
10 you would just write out a note, knock on the jury room
11 door. A bailiff will be posted outside.

12 The law requires I meet with the attorneys one
13 final time outside of your presence. So momentarily I
14 will ask you to step to your jury room with the
15 bailiffs.

16 What will happen is I will either bring you
17 back out here for further or additional instructions.
18 If not, they will check the evidence and make sure all
19 the exhibits are accounted for. I'm sure they are with
20 our fine court reporter. We will make sure all the
21 exhibits are accounted for.

22 Then you will be delivered the exhibits, the
23 verdict form and told to begin your deliberations by the
24 bailiff or the clerk. At that time all 12 of the
25 primary jury, everybody looks fine and well, the

1 alternates would come of the jury room, and you would
2 begin your deliberations. Thank you very much. If you
3 would now go with the bailiff.

4 (The jury retires to the jury room.)

5 THE COURT: Any exceptions or additions,
6 Solicitor?

7 MR. MOBLEY: None, Your Honor.

8 THE COURT: Mr. Williams?

9 MR. WILLIAMS: None, Your Honor.

10 THE COURT: If y'all would check the exhibits,
11 please, and also check the verdict form.

12 (Pause.)

13 THE COURT: Did y'all check the exhibits,
14 Solicitor?

15 MR. MOBLEY: Yes, Your Honor.

16 THE COURT: And you checked them,
17 Mr. Williams?

18 MR. WILLIAMS: I did, Your Honor.

19 THE COURT: How many exhibits are there? What
20 are the numbers?

21 COURT REPORTER: The State had 1 through 76,
22 minus 61. The defense has Number 2, minus Number 1.

23 THE COURT: It will be delivered to the jury.
24 Our alternates will come out of the jury room, and they
25 will be instructed to begin their deliberations.

1 Anything further?

2 MR. MOBLEY: Nothing, Your Honor.

3 MR. WILLIAMS: Nothing from the Defendant,
4 Your Honor.

5 THE COURT: We will be awaiting our jury
6 verdict.

7 (The jury commences its deliberation at
8 11:45 a.m.)

9 (The following occurred at 12:35 p.m.)

10 THE COURT: If you would bring our jury,
11 please.

12 (The jury returns to the courtroom.)

13 THE COURT: Mr. Foreman, I don't have the note
14 right here in front of me, but it's my understanding you
15 wanted to hear, rehear the testimony of Ms. Cheeks; is
16 that correct?

17 FOREMAN: Yes, Your Honor.

18 THE COURT: Our court reporter has it keyed
19 up; is that correct?

20 COURT REPORTER: Yes, sir.

21 THE COURT: We don't have a transcript
22 available at this time, but she will play it for you at
23 this time.

24 (The testimony of Shonda Cheeks is played for
25 the jury.)

1 THE COURT: That's all, Mr. Foreman, and
2 ladies and gentlemen. If you have any other questions
3 send me a note. Thank you very much. You may resume
4 your deliberations.

5 (The jury retires to continue its deliberation
6 at 1:00 p.m.)

7 THE COURT: Anything from the State?

8 MR. MOBLEY: Nothing, Your Honor.

9 THE COURT: Defense?

10 MR. WILLIAMS: Nothing from the defense, Your
11 Honor.

12 THE COURT: Madame Court Reporter, I found the
13 note from the jury.

14 (Court's Exhibit Number 1 is marked for
15 purposes of the record).

16 THE COURT: We will be awaiting the verdict.

17 (Whereupon there is a recess.)

18 (The following occurred at 3:25 p.m.)

19 THE COURT: I understand that we have a
20 verdict. Before we bring in the jury, I would advise
21 all the parties in the courtroom, spectators and
22 otherwise, that many times in cases like this, of this
23 nature, the return of the verdict can be very emotional.
24 It can bring up different emotions depending on which
25 side of the case you are on and what the jury's verdict

1 is.

2 If you feel like you cannot control your
3 emotions, I would ask you to please leave at this time.
4 I do not tolerate any signs of -- it's hard to say
5 celebration in a situation like this -- but I do not
6 tolerate outbursts of any nature. The sheriffs know
7 that.

8 Sheriff, if you see such occurring, if you
9 would please take those persons into custody, and I will
10 deal with that after the verdict.

11 If you would bring us our jury, please,
12 Mr. Bailiff.

13 (The jury returns to open court to report its
14 verdict.)

15 THE COURT: Our jury is back present in the
16 courtroom. Madame Clerk.

17 CLERK: Mr. Foreman, have you reached your
18 verdict?

19 FOREMAN: Yes, ma'am, we have.

20 CLERK: Please pass it up by the bailiff.

21 (Hands to Court.)

22 THE COURT: The verdict appears to be in the
23 proper form signed by the presiding juror and dated
24 today's date. Madame Clerk, you may publish the
25 verdict.

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

3 CLERK: Indictment 2009-GS-32-5283, the State
4 versus Andra Byron Jamison, as to felony driving under
5 the influence, we the jury unanimously find the
6 Defendant guilty, and it is so signed by the foreperson.

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

10 (All jurors so indicate.)

11 CLERK: All hands are raised, Your Honor.

12 THE COURT: Anything for the jury from the
13 State?

14 MR. MOBLEY: Nothing, Your Honor.

15 THE COURT: From the defense?

16 MR. WILLIAMS: Yes, Your Honor, individual
17 polling, please.

18 THE COURT: All right. Madame Clerk, if you
19 will explain that procedure to our jury, and poll the

20 CLERK: Yes, sir. As I call your name, if you
21 will hold up your hand for me to recognize you. I will
22 ask you the question: As to the verdict, was this your
23 verdict? Is it still your verdict? At that time please
24 give me your response.

25 Thomas Trent, As to the verdict, was this your

1 verdict? Is it still your verdict?

2 JUROR: Yes, ma'am.

3 CLERK: Thank you, sir. Marvin Bull, As to
4 the verdict, was this your verdict? Is it still your
5 verdict?

6 JUROR: Yes, it is.

7 CLERK: Dianne Larose, As to the verdict, was
8 this your verdict? Is it still your verdict?

9 JUROR: Yes.

10 CLERK: Rhonda Kelly, As to the verdict, was
11 this your verdict? Is it still your verdict?

12 JUROR: Yes.

13 CLERK: Cynthia Johnson, As to the verdict,
14 was this your verdict? Is it still your verdict?

15 JUROR: Yes, it is.

16 CLERK: William Beaver, As to the verdict, was
17 this your verdict? Is it still your verdict?

18 JUROR: Yes, ma'am.

19 CLERK: James Johnson, As to the verdict, was
20 this your verdict? Is it still your verdict?

21 JUROR: Yes.

22 CLERK: Natalie Umbarger, As to the verdict,
23 was this your verdict? Is it still your verdict?

24 JUROR: Yes.

25 CLERK: Meredith Cleland, As to the verdict,

1 was this your verdict? Is it still your verdict?

2 JUROR: Yes, ma'am.

3 CLERK: Faye Hightower, As to the verdict, was
4 this your verdict? Is it still your verdict?

5 JUROR: Yes.

6 CLERK: Norman Wilson, As to the verdict, was
7 this your verdict? Is it still your verdict?

8 JUROR: Yes, ma'am.

9 CLERK: Mary Teal, As to the verdict, was this
10 your verdict? Is it still your verdict?

11 JUROR: Yes.

12 CLERK: Thank you, ma'am. All jurors are
13 polled.

14 THE COURT: All jurors have been polled and
15 have answered in the affirmative. Anything further for
16 the jury, Mr. Williams?

17 MR. WILLIAMS: No, Your Honor.

18 THE COURT: Thank you. Thank you very much.

19 Mr. Foreman, ladies and gentlemen of the jury,
20 I never commend nor criticize a jury for its verdict,
21 but I will say this. I hope in the future you never
22 find yourself part of the system again. I know perhaps
23 one of you may find part of the system more so than
24 others.

25 But if you ever do, I hope the jury that is

1 impaneled for the trial of that case, if you are a
2 witness or otherwise, is as hard working, as focused, as
3 dedicated, and as patient as y'all have been throughout
4 the week.

5 I have watched the jury, watched the
6 attentiveness that you have shown to both the witnesses
7 and the attorneys and the Court. I appreciate that.
8 Our system would not be able to work without citizens
9 such as yourselves, although I realize you did not
10 volunteer for this, but still citizens such as yourself
11 willing to serve on jury duty.

12 This is the way that criminal cases are
13 resolved between the State and its citizens and also the
14 way civil cases are resolved between individuals.
15 Again, it has been my pleasure and privilege to serve
16 with y'all this week.

17 I am going to release you from your jury
18 service for the remainder of the day and the remainder
19 of the week. You are welcome to stay if you want to.
20 You certainly do not have to.

21 Mr. Foreman, the clerk would need to see you
22 outside in the hallway only to conform the indictment to
23 the jury's verdict. With that being said, you are now
24 excused. Thank you very much.

25 (The jury is excused.)

1 THE COURT: Mr. Williams, do you have any
2 motions?

3 MR. WILLIAMS: Yes, Your Honor. We would move
4 for a motion that is customary post-trial, for an arrest
5 of judgment granting the Defendant a new trial and
6 renewing all other prior motions that the evidence,
7 taken as a whole, should not have allowed this verdict
8 of guilty. There was ample evidence that perhaps he
9 might not be guilty.

10 THE COURT: Mr. Solicitor, do you care to
11 respond?

12 MR. MOBLEY: Your Honor, I think the evidence
13 speaks for itself. It's sufficient to satisfy the
14 elements of felony D.U.I. beyond a reasonable doubt. So
15 we respectfully ask that you deny such motions.

16 THE COURT: Thank you. Thank you, Solicitor.
17 Yes, I think there is and was sufficient evidence for
18 the verdict which was rendered by the jury. I would
19 further reaffirm all my previous trial rulings, both
20 evidentiary and otherwise. Any other motions,
21 Mr. Williams?

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: Any reason sentence cannot be
24 imposed at this time, Mr. Williams?

25 MR. WILLIAMS: No, Your Honor.

1 THE COURT: Thank you. Is there a sentencing
2 sheet, Solicitor?

3 MR. MOBLEY: Your Honor, if I may get three
4 minutes to actually print it out. I did not want to
5 print it out beforehand.

6 THE COURT: Solicitor, I will take about ten
7 minutes. If you will get all the paperwork ready and
8 let me know when it's ready.

9 MR. MOBLEY: Yes, Your Honor. Thank you very
10 much.

11 (Whereupon there is a recess.)

12 THE COURT: Mr. Williams, if you would have
13 your client come around, please.

14 (Pause.)

15 THE COURT: Anything additional from the
16 State, Solicitor?

17 MR. MOBLEY: Yes, Your Honor. We do have a
18 number of individuals that would like to speak to the
19 Court before sentencing is imposed. We would appreciate
20 any assistance with this.

21 THE COURT: I would be glad to hear from them.
22 Mr. Williams, y'all just want to have a seat until I
23 hear from these parties?

24 MR. WILLIAMS: Yes, sir.

25 THE COURT: I will have you back up here.

1 Yes, sir, your name, please.

2 MR. GAMBLE: My name is Joseph Gamble, Jr.

3 THE COURT: All right. I would be glad to
4 hear from you, Mr. Gamble.

5 MR. GAMBLE: Yes, sir. Thank you, Your Honor.
6 I'm Jesse's father. This has been a long journey today.
7 It has ended hopefully. It began the day that we buried
8 Jesse.

9 Jesse was a special individual. Not to take
10 away from anyone else in this world, but he was my son
11 and my baby. And for him to be taken so young in his
12 life was absolutely the most tragic thing that has ever
13 happened to me or my family. This young man had his
14 whole life ahead of him, God willing.

15 He was a very talented individual. He never
16 met a stranger, and he never met anyone to my knowledge
17 that ever disliked him. I would ask today -- I have
18 been made aware I believe the sentence is somewhat of 25
19 years, I think.

20 To me that is nowhere near the loss my family
21 and I have incurred. Jesse, to be 19 years of age, like
22 I said, God willing would have had plenty of years left.
23 Not only was my son taken, the possibility of
24 grandchildren were taken, the possibility of a beautiful
25 daughter-in-law. Such things are treasures in life.

1 Children are a gift from a God, and they are
2 not to be taken lightly. I never wish this on any other
3 parent in this world to have happen to them. I just ask
4 in your judgment to the best of your ability that you
5 see fit to give the maximum sentence, please. Thank
6 you.

7 THE COURT: Thank you. Thank you very much,
8 Mr. Gamble.

9 Your name, please?

10 MS. FINLEY: Hi, Your Honor. I'm Lynn Finley,
11 Jesse's mother. The first statement I would like to
12 read was written by my father, Jesse's grandfather, and
13 for my grandmother who is not able to be with us today
14 for medical reasons.

15 It states: One of the happiest days in the
16 life of parents is to become grandparents. Jesse was
17 our first grandchild and what a blessing he was. To
18 hold that baby boy after he was born is an indescribable
19 feeling.

20 I had just turned 50 years old and my wife was
21 48. It was like a new lease on life for us to have a
22 child again in our family. We could not wait to spoil
23 him and watch him grow up and become an adult.

24 I took him to the fair when he was 17 months
25 old and spent the day letting him ride rides over and

1 over. Thinking he had enough for the day, we started to
2 leave, and boy did he scream. As we left out of the
3 gate, he laid his head on my shoulder and fell fast
4 asleep.

5 To watch him take his first steps and smile
6 was wonderful, playing T-ball and soccer and growing up
7 as a child. I got Jesse interested in music and took
8 him to a lot of concerts. It went from me driving him
9 to concerts to him driving me home from a show in
10 Greenville, South Carolina, only months before he was
11 taken from us.

12 My wife and I have been retired for the last
13 ten years so we were able to be Jesse's chauffeur,
14 picking him up from school, taking him to Baptist camp,
15 taking him to his first job, and wherever he needed to
16 go. We had so many good times on vacation together,
17 holidays, birthdays, graduation, and on and on. He will
18 be missed terribly.

19 Jesse was a very gifted artist, and we will
20 always wonder what he would have accomplished in this
21 endeavor. On his last birthday when he turned 19, I
22 reminded him, In a year you won't be a teenager no more,
23 and he just gave me that smile of his that I won't ever
24 forget. That year never came and we miss him so much.

25 The last time I saw Jesse was on Sunday, July

1 27, 2008. He had only moved out from his home the week
2 before, and he came by to pick up some groceries that I
3 had bought for him to get started in his new life as an
4 adult.

5 His last words to me was, Thanks for
6 everything, and I love you, Grandpa. I just wish our
7 grandson could have experienced all the dreams he had
8 and could have shared them with his family and friends.

9 He has so many friends and touched so many
10 lives in his short time here. I have imagined so many
11 times what we might be doing today. In closing Jesse
12 was our special gift from God, and we are thankful for
13 the years he wad him with us.

14 This second statement is mine. Again, I am
15 Lynn Finley and I am Jesse's mom. Since Jesse was my
16 only child, I haven't been called mom since around 2:30
17 the afternoon of Thursday, July 31st, of last year.
18 That was the last time I talked with my son, who was
19 only 19.

20 For me all the emotions that come along with
21 being a mom have been replaced with a sorrow and
22 emptiness that cuts right through to my heart, a feeling
23 that no one should have to endure.

24 The emotion of pride like I felt when Jesse
25 had a phone interview with the Art Institute in

1 Portland, Oregon, last year on his 19th birthday when he
2 sounded so grown up and knew exactly what he wanted out
3 of life has been replaced with knowing he'll never get
4 to go away to college.

5 The emotion of pure happiness like he and I
6 both felt when he got accepted in the Governor's School
7 for the Arts his junior year in high school has been
8 replaced with the knowledge that I'll never feel that
9 kind of joy again or see it in my son's eyes.

10 The emotion of explosive laughter like I had
11 when Jesse would come running down the stairs in some
12 unusual outfit he had purchased at Goodwill has been
13 replaced with the sadness I feel when I stand in his
14 closet and hold onto and smell the clothes he left
15 hanging there.

16 The emotion of worry like when Jesse and his
17 best friends would go out of town for a concert and
18 didn't call me as soon as they got there has been
19 replaced with not having any worry at all.

20 No mother of a teenager is left without worry.
21 It's her job. There was the emotion of relief when I
22 finally got the call that they were okay. I'll never
23 get to feel that kind of wonderful relief again.

24 The feeling of awe when he would show me one
25 of his new drawings and explain what he was thinking

1 when he created it has been replaced with the sadness
2 that the world may be missing out on the next Salvador
3 Dali or Gustav Klimt.

4 For people who were fortunate enough to have
5 met my son, they will understand exactly what I'm going
6 to say about how he affected ones around him. If you
7 have ever glanced at the sun and then when you look
8 away, you can still see the burst of orange in your
9 eyesight for a while, that was how my Jesse left you.
10 Even if you only meet him for a moment, his presence
11 stayed with you for a long, long time afterwards. I
12 just miss my son.

13 THE COURT: Thank you.

14 MS. FINLEY: I have a few articles of Jesse's
15 art I would like to show to you.

16 MR. MOBLEY: Your Honor, if I may approach,
17 they would like for you to see these. This is a picture
18 of Jesse and some of his art work, if I may. That is a
19 statue that Jesse actually composed himself. This is
20 some art work that he actually did, very gifted and
21 artistic individual. That is Jesse himself.

22 THE COURT: When was this picture taken?

23 MS. FINLEY: That was taken in August or
24 July of 2006.

25 THE COURT: Thank you, Solicitor.

1 MR. MOBLEY: Your Honor, I have one last
2 statement that Jesse's maternal grandmother wanted me to
3 read to the Court. She did not feel like she was going
4 to be strong enough to read it. So she asked me to read
5 it, Your Honor.

6 THE COURT: Yes, sir.

7 MR. MOBLEY: It states in part: My name is
8 Sharon Gamble. Jesse was my grandson. His life was a
9 gift of love, happiness, and a lot of laughter into my
10 life.

11 Jesse was one who gave so much of himself
12 while asking for so little from others. He never met
13 anyone that he didn't see good in them. No matter
14 whether he was having a good day or a bad day, Jesse
15 kept on smiling, thankful for the gift of life.

16 I believe that is why he decided to become an
17 organ donor. Today seven people have extended life
18 because of this unselfish act by the young man I love so
19 much.

20 That's from his paternal grandmother, Sharon
21 Gamble. Your Honor, I think at this time we have
22 nothing else further to say.

23 THE COURT: Solicitor, does Mr. Jamison have
24 any prior criminal history?

25 MR. MOBLEY: Your Honor, he does not have any

1 prior criminal convictions.

2 THE COURT: And there is nothing further from
3 the State?

4 MR. MOBLEY: Nothing at this time.

5 THE COURT: Thank you, Solicitor.

6 MR. MOBLEY: Thank you, Your Honor.

7 THE COURT: Mr. Williams, Mr. Jamison.

8 Mr. Williams I would be glad to hear from you.

9 MR. WILLIAMS: Your Honor is, I guess,
10 semi-familiar with Mr. Jamison in that there have been,
11 I guess, little hearings and things like that. You know
12 that he is in early 40s. He is married, has four
13 children.

14 He has had the same job for the last 20 years
15 where he works on a tanker ship or actually he is the
16 pilot for the tanker ship. It goes up through the
17 Antarctic and delivers fuel oil for those persons who
18 need fuel oil in the arctic.

19 He has behind him or with him his brother, his
20 sister, his momma. He also has family. You know, I
21 mentioned kind in of closing and maybe in opening that
22 this is the type of crime which is really tough for
23 juries.

24 It's tough for victims, it's tough for
25 defendants, it's tough for judges, it's tough for

1 everybody because there is no sense for this type of
2 crime because it's caused by persons not being
3 responsible.

4 There is no maliciousness, there is no
5 evilness, there is no intentionally bad or meanness in
6 the person. It happens because that person is not
7 responsible.

8 There is nothing I can say -- Your Honor knows
9 I have three children -- and there is nothing I could
10 ever say to make the family of the victim feel better.
11 I know some of them and they probably don't understand
12 why I was involved in this trial, but I have a job to do
13 sometimes in representing people. They are good people.

14 There is nothing we can do to bring this young
15 man back. Unfortunately, the people who are going to
16 suffer the most is going to be the families of the
17 victim and the families of the Defendant, to include
18 those four children. So there are no winners here
19 today. Thank you, Your Honor.

20 THE COURT: Thank you. Does anyone else want
21 to address the Court? Mr. Jamison, I would be glad to
22 hear from you.

23 THE DEFENDANT: Yes, sir. I'm not a speaker,
24 never claimed to be, and by looking as these people back
25 here, they all look like fine, fine people. There is

1 nothing, nothing that I could say to ease your pain.

2 I have four kids. I have a daughter in
3 college that's not but a year younger than your son. I
4 would never, ever intentionally hurt anyone, and I am so
5 sorry for what happened that night.

6 I have prayed for your son from that night
7 until I stepped up here. I have a son as well, and I
8 don't know what I would do if a travesty or tragedy ever
9 happened like that night.

10 So I understand how you feel and I don't
11 condemn you. There is nothing I can do, but you better
12 believe if there is one thing I could change in this
13 world with my life it would be that night. I have --
14 I'm sorry.

15 THE COURT: Sheriff, will you help this young
16 lady.

17 (Pause.)

18 THE DEFENDANT: Again, I'm sorry.

19 MR. WILLIAMS: Your Honor, I think that's all.

20 (Pause.)

21 THE COURT: Anything further, Mr. Williams?

22 MR. WILLIAMS: No, sir.

23 THE COURT: One thread that kind of goes
24 through many cases, both in criminal court and down in
25 family court, is people want to protect their children.

1 You want to protect them when they are in single digits,
2 three or four years old, or teenagers or when they are
3 adults. I talked to my mother today. She is 93 years
4 old and she still wants to protect me.

5 I'm sure it's so difficult for both families.
6 There are differences of course. The Gambles and the
7 Finleys, they go visit a tombstone. Your family will be
8 able to visit you.

9 I have been impressed with both families. I
10 have looked over your support. The solicitor can tell
11 you, Mr. Williams can tell you how often individuals are
12 tried in this courtroom for serious, very serious,
13 crimes, and no one is here on their behalf.

14 If they didn't have a lawyer or a deputy
15 perhaps to talk with back there in the holding cell,
16 there wouldn't be a soul on that side of the courtroom.
17 That is important. It's important now and it's
18 important in the future.

19 These are difficult cases to sentence. A life
20 has been lost by which seven lives have been extended.
21 Your children, your wife are going to lose your presence
22 for an extended number of years.

23 Generally, these cases generally don't start
24 out with any maliciousness. You didn't know Jesse
25 Gamble. You didn't set out to hurt Jesse Gamble in your

1 plan, but those decisions were made well before you got
2 behind that wheel.

3 They are made when you take a drink, a second
4 drink or beer or whatever, a third drink or how many,
5 and it's the connection. That's the choice. That's the
6 lack of personal responsibility. It ends up here on the
7 steps of the courthouse and in the courtroom. That's a
8 choice you made.

9 They talk very highly of Jesse. It appears he
10 was very talented and very loved, just like you are very
11 talented, perhaps not in an artistic way, but I dare say
12 that there is probably not another person in this
13 courtroom that could do the type of job and occupation
14 that you do.

15 It's probably a rarity in this part of the
16 country quite frankly. As I recall your testimony, you
17 served in the United States Navy for four years; is that
18 right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I don't know what Jesse would want
21 me to do. Of course, he is not available for comment.
22 I'm not going to give you the maximum for several
23 reasons.

24 I look at cases and I put what the minimum
25 down is of one and the maximum of 25 years. I get to

1 thinking about the offense that occurred and about the
2 individual that committed it.

3 There is no mitigation as far as the offense.
4 You were under the influence, you hit the young man, and
5 he lost his life way too early. But there is
6 mitigation. You have no prior criminal history. You
7 have served our country.

8 You appear to be very remorseful. I think I
9 can judge -- I hope I can judge that appropriately,
10 Mr. Jamison. I hope that is not crocodile tears. I do
11 not believe it is.

12 With that being said, 09-GS-32-5283, Andra
13 Byron Jamison, felony driving under the influence, death
14 results, the Defendant is committed to the State
15 Department of Corrections for a determinate term of 18
16 years and pay a fine of \$10,000. Good luck to you,
17 Mr. Jamison.

18 MR. WILLIAMS: Thank you, Your Honor.

19 THE COURT: Thank you y'all very much for your
20 demeanor, both families during the trial and during this
21 sentencing proceeding. Good luck to all of you. Court
22 will be in recess.

23 The Cayce Police Department, do you have any
24 objections, Solicitor, Mr. Williams, to photographs of
25 the bicycle going into evidence and the bicycle going

1 back to Cayce Police Department?

2 MR. WILLIAMS: No objection, Your Honor.

3 MR. MOBLEY: None from the State, Your Honor.

4 CLERK: Thank you, Your Honor.

5 THE COURT: Thank you very much.

6 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 12th through the 15th days of October, 2009.

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

March 5, 2010

L Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDRA BYRON JAMISON,

APPELLANT

FINAL BRIEF OF APPELLANT

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

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U.S. Const. Amend XIV	11

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion to suppress the state's blood test results because the vial of appellant's blood that was given to him at the hospital and later placed in the custody of the detention center where he was jailed was subsequently mysteriously unavailable when appellant requested his vial of blood three days later. The nonexistence of this vial of blood denied appellant his statutory right to obtain an independent blood test in the case and also prejudiced his case because sans the state's blood test results there was no forensic corroborative evidence that could be presented by the state, which in turn meant that there was insufficient evidence of proof beyond a reasonable doubt of appellant's guilt on the felony DUI charge.

STATEMENT OF THE CASE

Appellant Andra Byron Jamison was convicted of felony driving under the influence causing death during the October 2009 term of the Lexington County General Sessions Court before the Honorable R. Knox McMahon, Judge. Appellant was sentenced to imprisonment for a period of eighteen years. Appellant appeals. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion to suppress the state's blood test results because the vial of appellant's blood that was given to him at the hospital and later placed in the custody of the detention center where he was jailed was subsequently mysteriously unavailable when appellant requested his vial of blood three days later. The nonexistence of this vial of blood denied appellant his statutory right to obtain an independent blood test in the case and prejudiced the case because sans the state's blood test results there was no forensic corroborative evidence that could be presented by the state, which in turn meant there was insufficient proof beyond a reasonable doubt of appellant's guilt on the felony DUI charge.

The state alleged that appellant's van collided with bicyclist Jessie Gamble on Knox Abbot Drive in Lexington County around 11:30 pm on the night of July 31, 2008. Gamble died of head injuries from the collision.

State's witness Randall Todd Fitzgerald testified that on the night of July 31, 2008, he was driving on Knox Abbott Drive en route to the Columbia via the Blossom Street Bridge when he saw a bicycle on the road and then he saw an individual lying on the road. Immediately thereafter, he saw a vehicle nearby and the apparent driver (appellant) of the vehicle. R. p. 633, line 14 – p. 637, line 12. State's witness Shanda Cheeks testified that on July 31, 2008, she was also traveling on the Blossom Street Bridge when she saw a vehicle to her left drift across to the right and hit something. Cheeks stated that she saw person lying on the road soon after the collision. R. p. 646, line 8 – p. 651, line 16.

Officer Michael Ryan Stone testified that he arrived on the scene at 11:25 pm on the night in question and found a male lying in the roadway. Officer Stone stated that witnesses

in the area were pointing to the appellant as the driver of the vehicle that struck the bicyclist. Stone stated that he approached appellant and noticed that appellant was unsteady on his feet, had slurred speech, and that his breath reeked of alcohol. Thereafter, Officer Stone placed appellant under investigative detention. Minutes later, patrol supervisor Robert Marzol arrived on the scene. R. p. 123, line 13 – p. 135, line 5.

Patrol Sergeant Robert Marzol testified that he was dispatched to the crime scene regarding the accident in question at 100 block of Knox Abbot Drive. Officer Marzol testified that after arriving on the scene he read appellant his rights under Miranda v. Arizona 384 U.S. 436 (1966), and offered him field sobriety tests, because he was allegedly unsteady on his feet. Appellant did not take these tests. Marzol then placed appellant under arrest for felony DUI and transported him the detention center in order to administer a breathalyzer test at 12:30 a.m. on August 1, 2008. Appellant did not blow into the machine in a timely manner and as a result, a ticket was produced indicating that he refused to take the breathalyzer test. Next, appellant was transported to the Lexington Medical Center where two vials of his blood were extracted from him: one vial was given to police for SLED testing and another vial was given to appellant (placed in his shirt pocket). R. p. 241, line 15 – p. 261, line 3; R. p. 267, line 4 – p. 279, line 14; R. p. 136, line 8 – p. 142, line 24. Afterwards, appellant was taken to the police station, booked, and jailed. R. p. 142, line 23 – p. 152, line 9. R. p. 164, lines 12 – 22. When booked, appellant's vial of blood was placed in the custody of the Lexington County jail. R. p. 167, lines 1 – 5.

SLED testing revealed that appellant's blood alcohol level was .225 percent on that night. R. p. 497, lines 10 – 15; R. p. 499, lines 18 – 22.

Prior to trial, defense counsel moved to suppress the chemical analysis and results received on the blood sample submitted by the state in the case because the appellant never obtained his vial of blood for independent testing upon his release on bond. R. p. 3, lines 17 – 20; R. p. 6, line 10 – p. 7, line 4; R. p. 10, line 24. R. p. 11, line 3 – p. 12, line 2. The defense argued to suppress the state's blood alcohol level test results because the state did not provide the reasonable opportunity for appellant's additional and independent testing on the second vial of his blood per his request in violation of S.C. Code Ann. §56-6-2950 and S.C. Code Ann. §56-5-2946. R. p. 11, line 13 – p. 15, line 15. Also, the defense argued that there was no honoring of appellant's request for an opportunity to have other blood drawn per his request. An in camera hearing into the matter followed.

During the in camera hearing, Officer Stone testified that the defendant received his vial of blood for his own personal use, but that appellant did not request that independent blood testing be conducted on his vial of blood. R. p. 22, line 14 – p. 23, line 10. Officer Stone testified he did not hear appellant request independent testing on the vial of blood given to him or for an additional vial of blood. R. p. 25, lines 1 – 8. Officer Stone admitted that he never told appellant that he had an opportunity to have another doctor draw his blood. R. p. 27, lines 9 – 13. Officer Marzol testified that appellant was given his vial of blood for his own use and that he did not recall appellant asking for drawing of additional blood or for independent blood testing on his own vial of blood. R. p. 38, line 18 – p. 39, line 23; R. p. 44, lines 7 – 10; R. p. 44, lines 22 – 25. Officer Marzol admitted that he did not recall informing appellant that he would have an opportunity to examine the blood or have his own testing done. R. 41, l. 19-22.

Officer Marzol's wife Kristen Marzol, who was the clinic coordinator at the Lexington County Detention Center, testified that her nurse put appellant's blood in the refrigerator on August 1, 2008, when he was booked and jailed. Marzol testified that she did not know what happened to the blood thereafter and that there were no subsequent notes on the blood. R. p. 52, lines 4 – 15. Marzol stated that blood cannot be released to anyone other than the defendant. R. p. 53, line 25 – p. 54, line 13. Note that during the booking procedure, appellant signed paperwork granting his wife the authority to collect all of his belongings. R. p. 57, lines 13 – 20.

Appellant testified during the in camera hearing. Appellant explained that he was never offered the opportunity to go to a different hospital or to have an additional blood sample drawn or for provisions to have independent testing conducted on his own vial of blood. R. p. 63, lines 11 – 22. Appellant stated he signed paperwork requesting that his property be released to his wife, but that jail officials would not give his wife his vial of blood when she went to the jail within twenty-four hours after his arrest requesting his vial of blood. R. p. 65, line 15 – p. 66, line 1. R. p. 64, line 17 – 19. Then, when appellant was released three days after he was jailed and asked jail officials for his vial of blood, he was told that they did not have his blood. Appellant learned that his blood was no longer available and no longer in existence. R. p. 72, line 25 – p. 73, line 14; R. p. 66, lines 12 – 17. On the night in question, appellant indeed requested that independent testing be performed on his blood. R. p. 67, lines 13 – 22; R. p. 68, lines 14 – 23.

Appellant's wife Kristy Jamison testified that on Friday morning August 1, 2008 she went to jail to collect appellant's blood, but she was not given the blood and then told that her husband's blood was not there. R. p. 76, line 11 – p. 86, line 21.

Defense counsel argued that error occurred when appellant did not receive reasonable opportunity to have independent blood testing requests honored because he was denied access to his blood since it was no longer present at the detention center where it was refrigerated when he was booked. This violated appellant's statutory right to independent/additional blood chemical testing under S.C. Code Ann. §56-5-2950. See also S.C. Code Ann. § 56-5-2946. R. p. 88, line 4 – p. 94, line 13; R. p. 95, line 11 – p. 96, line 4. The court denied appellant's motion to suppress the admission of the state's forensic blood test results into evidence. R. p. 103, line 20 – p. 104, line 3.

As a rule, if a suspect refuses to take a breathalyzer test, then he must be afforded a "reasonable opportunity" to obtain an independent blood test. S.C. Code Ann. § 56-5-2950(a). State v. Harris, 311 S.C. 162, 427 S.E.2d 909 (1993). The definition of reasonable opportunity depends on the circumstances of each case. City of Columbia v. Ervin, 350 S.C. 516, 500 S.E.2d 483 (1998). In City of Columbia v. Ervin, the suspect refused to take a breathalyzer test, and thereafter the police officer transported the suspect to one hospital, but did not agree to request a blood test for the suspect via that hospital's procedure. The court in City of Columbia v. Ervin, supra held that had the officer known of the hospital policy, i.e., that he (officer) had to actually request the blood test for the suspect, then the officer's conduct would not have fallen within the parameters of having provided the suspect with the reasonable opportunity to obtain an independent blood test. The defense argued in City of Columbia v. Ervin, supra, that taking the defendant to the hospital and then not requesting the blood sample per hospital protocol made the "reasonable opportunity" an "illusory" opportunity. Clearly, the reasonable opportunity must be in good faith. See also State v. Masters, 308 S.C. 433, 418 S.E.2d 552 (1992),

where the court held that the police officer did not offer a reasonable opportunity for a suspect's blood test where he took on the undertaking of assisting with the blood test once the breathalyzer malfunctioned, but then terminated the endeavor after receiving a call on a police radio and went elsewhere.

Here, the fact that the blood was no longer unavailable meant that appellant was denied a reasonable opportunity by police officials to obtain independent testing of his own blood, especially in light of the fact that he requested independent testing on the morning of his arrest and because he specifically authorized his wife access to all of his personal belongings while he was jailed so that she could obtain his blood and submit the same to independent testing. This case is different from State v. Wilson, 296 S.C. 73, 370 S.E.2d 715 (1988), where the defendant received his vial of blood upon his release, but failed to follow up on having his independent blood analysis performed. See reversals in Town of Fairfax v. Smith, 285 S.C. 458, 330 S.E.2d 290 (1985), and State v. Pipkin, 294 S.C. 336, 365 S.E.2d 464 (1988), where the court reversed where the state presented blood sample test results and breathalyzer test results, when the blood samples should have been given to the defendants for their independent testing needs.

S.C. Code Ann. §56-6-2950 provides that an arrested individual testing or giving samples may have additional blood tests or other tests performed by a specialist of his own choosing and that an officer must provide assistance for additional testing. In appellant's case, the officers did not provide him with a reasonable opportunity for additional and/or independent testing of his vial of blood because the vial of blood was supposed to be kept in the detention center, but was ultimately unavailable and not in existence at the detention center within a twenty four hour period and three days later

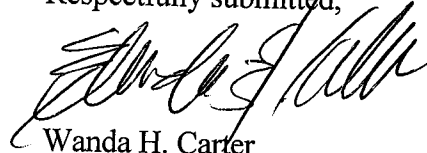
when appellant was released and requested for his vial of blood. The jail officials' inability to retain the vial of blood for a time period as short as twenty four hours to three days, and the fact that appellant desired independent testing, meant that he was denied his statutory right to a reasonable opportunity to have his blood tested by an independent qualified person.

Note that this case is distinguishable from State v. Wickenhauser, 309 S.C. 377, 423 S.E.2d 344 (1992), to the extent that the DUI defendant there who was released on bond on the next day failed to ask for his blood at the time of his release. Wickenhauser then returned to the jail two days later to retrieve the blood only to find that the blood was unavailable. Note also that in Wickenhauser there was a question as to whether his vial of blood was actually received by the jail personnel when he was booked. Nonetheless, the Wickenhauser court found that the officer provided reasonable assistance to him for this purpose. To the contrary, appellant asked for his blood on the same day of his release, and his wife also asked for the blood well within 24 hours of the arrest, and there was no question regarding whether appellant's blood was received by jail officials at his booking. Appellant's own vial of blood was received as property at the detention center at the time of booking. Finally, see the case of State v. Harris, where the court entertained the question of whether the DUI suspect had a right to be assisted in order to obtain an independent chemical test, and where the Court reiterated the rule in California v. Trombetta, 467 U.S. 479 (1984), where the Court held that the Fourteenth Amendment due process requires a criminal defendant a reasonable opportunity to present a complete defense.

CONCLUSION

The trial judge erred in denying appellant's motion to suppress the state's blood evidence because he was denied a reasonable opportunity and assistance in obtaining independent blood testing in violation of S. C. Code Ann. §56-5-2950, which left the state's case without forensic corroboration and thus no proof of guilt beyond a reasonable doubt of appellant's guilt of felony DUI.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter

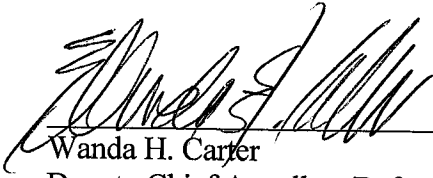
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT.

This 23rd day of December, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 1st, 2008


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

THE STATE,

RESPONDENT,

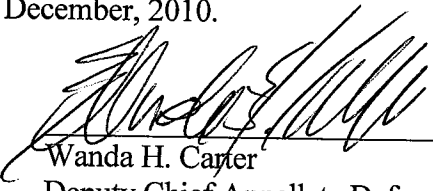
V.

ANDRA BYRON JAMISON,

APPELLANT

CERTIFICATE OF SERVICE

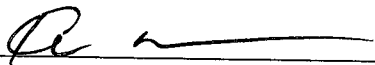
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer A. Kinzeler, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 23rd day of December, 2010.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 23rd day of December, 2010.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013 .



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December 23, 2010

Jennifer A. Kinzeler, Esquire
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Office of the Attorney General
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Columbia, SC 29211

Re: The State v. Andra Byron Jamison

Dear Jennifer:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Wanda H. Carter".

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/mwl

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

vs.

ANDRA BYRON JAMISON,

Appellant.

FINAL BRIEF OF RESPONDENT

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S.C. Code Ann. § 56-5-2950(E) (Supp. 2009). 14

STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's suppression motion because Appellant was provided with a reasonable opportunity to obtain independent chemical testing after his arrest for felony driving under the influence and his refusal to submit to a breathalyzer test. Regardless, any error was harmless in light of the overwhelming evidence of his guilt.

STATEMENT OF THE CASE

Appellant Andra Byron Jamison was arrested following an investigation into a traffic accident resulting in a fatality. In January of 2009, the Lexington County grand jury indicted Appellant for one count of felony driving under the influence resulting in a death. On October 12, 2009, a jury trial was commenced in the Lexington County court of general sessions with the Honorable R. Knox McMahon, circuit court judge, presiding. At the conclusion of trial, Appellant was convicted as indicted. Appellant was sentenced to a term of imprisonment of eighteen years and a \$10,000 fine. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

Late on the evening of July 31, 2008, Shonda Cheeks was driving across the Blossom Street Bridge on her way home to West Columbia when she observed a vehicle on the other side of the road hit something. (R. pp. 646-648). The vehicle was veering to the right and drifted outside of its lane of travel.¹ (R. p. 648; pp. 649-650). Cheeks then observed someone in the roadway and realized the vehicle struck a person. (R. pp. 650-651).

Shortly thereafter, Todd Fitzgerald was driving down Knox Abbott Drive while returning to his apartment in Columbia. (R. p. 634). As he approached the Blossom Street Bridge, he noticed a shoe, then a bicycle, and then a person laying in the roadway. (R. p. 634). He immediately stopped his vehicle to attempt to offer assistance. (R. p. 634). Several other vehicles also stopped to help, and one of those individuals called 911. (R. p. 635). Fitzgerald surveyed the scene to see if there were any other vehicles or witnesses in the vicinity and observed a vehicle stopped fifty yards down the bridge. (R. p. 635). Appellant Andra Byron Jamison was outside of the stopped vehicle and appeared to be checking the front passenger side for damage. (R. p. 635; pp. 637-638).

Fitzgerald approached Appellant and asked him if he hit the victim laying in the roadway. (R. p. 635). Appellant responded, "Who?" (R. pp. 635-636). Fitzgerald pointed towards the victim, and Appellant asked, "Did I hit him?" (R. pp. 636-637). Fitzgerald noted Appellant was very disoriented and appeared intoxicated. (R. p. 637). Appellant was confused, smelled of alcohol, was staggering, and had glassy eyes. (R. p.

¹During trial, Cheeks testified she was "positive" Appellant's vehicle drifted to the right and was not in its own lane of travel. (R. pp. 649-650).

637). Fitzgerald believed Appellant was too intoxicated to tell what happened, and he directed law enforcement to Appellant after they arrived on the scene. (R. p. 638).

Officer Michael Stone of the Cayce Police Department was on patrol around 11:25 p.m. when he noticed traffic backing up on the Blossom Street Bridge. (R. p. 123; pp. 126-127). As he approached the scene, he observed a person laying in the roadway with a large quantity of blood coming from his head. (R. pp. 127-128). Officer Stone then cleared the crowd and radioed in for assistance. (R. p. 128). Several other officers and medical personnel arrived on the scene within minutes. (R. p. 128; p. 530). Officer Stone discovered Appellant was the driver of the vehicle that struck the victim, who was later identified as nineteen-year-old Jesse Gamble. (R. p. 128; p. 185; p. 198). Officer Stone then approached Appellant and asked him what occurred. (R. p. 128). Appellant responded he did not know what happened and did not mean to hurt anyone. (R. p. 128). Officer Stone noticed Appellant was unsteady on his feet, had slurred speech, and had the smell of alcohol on his breath and about his person. (R. pp. 129-130). He then placed Appellant under investigative detention. (R. p. 130).

Meanwhile, paramedics Barrett Raymond and Daniel Boyce responded to the accident scene. (R. p. 530; p. 541). They observed Gamble laying in the roadway and attended to him. (R. p. 530; p. 541). Gamble was unresponsive, had a broken leg, and his pupils were fixed, but he was breathing and had a pulse. (R. pp. 531-532). Boyce also checked on Appellant and spoke with him to gather information about the accident. (R. pp. 542-543). He observed Appellant sitting on the curb in a sulking position. (R. p. 543). He noticed Appellant appeared intoxicated and smelled of alcohol. (R. p. 544). Appellant's speech was slurred and Boyce had difficulty understanding him. (R. p. 543).

Appellant told Boyce he thought he hit a garbage can. (R. p. 543). The paramedics then quickly transported Gamble to the hospital. (R. p. 533; p. 545).

Officer Adam Smith and Detective John Reese also responded to the scene. (R. p. 215; pp. 319-320). Officer Smith observed Gamble in the roadway with very severe injuries. (R. pp. 216-217). While on the scene, he heard Appellant asking several witnesses if he hurt someone or did something wrong. (R. p. 220). Officer Smith noticed Appellant's vehicle was damaged, his speech was slurred, he had a strong odor of alcohol on his breath and person, and he was unsteady on his feet. (R. p. 224). Detective Reese observed Gamble, bicycle parts, a shoe, and a sock laying in the roadway. (R. pp. 319-320; p. 321). He inspected Appellant's van, located farther down the bridge, and noticed significant damage. (R. p. 323). The hood of the vehicle was dented in, the windshield was cracked and damaged, a front lens was damaged, and there was a long scratch on the passenger side.² (R. pp. 323-324). He also discovered Gamble's bicycle was severely damaged, and he found a sock, a shoe, and some hair in the roadway. (R. pp. 324-325). While examining Appellant's vehicle, Detective Reese located a Killian's Red beer bottle underneath the van next to a tire. (R. p. 362; p. 369). Inside of the vehicle, Detective Reese found two twelve-packs of Killian's Red beer, with one package open and missing several bottles. (R. pp. 371-372).

Sergeant Robert Marzol arrived on the scene and spoke to Appellant with Officer Stone. (R. p. 131; p. 244; p. 253). Sergeant Marzol informed Appellant of his rights. (R. p. 131; p. 134; pp. 253-254; p. 258). He noticed Appellant was calm, unsteady on his

²The damage suggested Gamble's head may have been knocked into the windshield. (R. p. 323).

feet, and had a strong odor of alcohol. (R. p. 257). Sergeant Marzol then offered Appellant an opportunity to perform field sobriety tests, and Appellant refused, stating he would not do anything without speaking to an attorney.³ (R. p. 131; p. 134; pp. 256-257). Appellant was then arrested and transported to the Cayce Police Department. (R. p. 135; pp. 257-259).

On the way to the police department, Appellant stated he did not know what was going on and did not mean to hurt anyone, and he asked why he was under arrest. (R. p. 135). Once they arrived, Appellant was taken to the breathalyzer testing room, and Sergeant Marzol began administering the test around 12:30 a.m. (R. p. 136; pp. 264-265). He informed Appellant of his rights, entered his information into the testing machine, and reviewed an implied consent form with Appellant. (R. p. 137; p. 265). Relying on the implied consent form, Sergeant Marzol informed Appellant he was required to submit to some form of chemical testing, his refusal or obstruction of testing could be used against him, and he had "the right to have a qualified person of [his] own choosing to conduct additional independent tests at [his] own expense, and the officer upon request must provide affirmative assistance." (R. pp. 267-268). Appellant then refused to sign the implied consent form, insisting he did not know what was going on and wanted an attorney. (R. p. 137; pp. 268). The officers then observed Appellant for a required period of twenty minutes before allowing him an opportunity to blow into the breathalyzer testing machine. (R. p. 137; p. 274). During this period, Appellant continued to slur his speech, smelled of alcohol, and was unsteady while walking or

³The officers recorded their interaction with Appellant using the in-dash camera from another officer's vehicle, and the recording was introduced during the trial. (R. p. 134; p. 223; State's Ex. #49).

standing. (R. p. 270). After the observation period expired, Appellant continued to state he did not know what was going on and did not take the breathalyzer test.⁴ (R. pp. 138-139). The testing machine registered a refusal after two minutes, and Appellant did not sign the refusal ticket. (R. p. 139; pp. 274-276).

Appellant was then transported to Lexington Medical Center for the drawing of blood samples, and they arrived around 1:30 a.m. (R. pp. 142-143; pp. 277-278). The officers directed a doctor to withdraw blood samples from Appellant, and two vials of Appellant's blood were drawn by a phlebotomist. (R. pp. 143-144; p. 278; p. 387). The phlebotomist explained to Appellant and the officers he was going to draw two vials and give one to the officers and one to Appellant for his own personal testing. (R. p. 387). The vials were properly drawn, sealed, and labeled. (R. p. 390). The officers took one sample into evidence, and Officer Stone placed the other sample into Appellant's shirt pocket. (R. pp. 145-146; pp. 278-279).

Appellant was then transported to the Lexington County Detention Center. (R. p. 146). A corrections officer booked Appellant into the jail, and Officer Stone then transported the vial of blood taken into evidence to the police department. (R. pp. 146-147). Records at the detention center indicated the other blood sample, which had been given to Appellant, was collected by a nurse and placed in a locked refrigerator. (R. pp. 421-422). However, Appellant's booking sheet did not indicate a blood sample was taken from him, and the blood sample was subsequently lost. (R. p. 422; p. 430).

⁴The observation period was recorded, and the recording was introduced during trial. (R. pp. 264-265; State's Ex. #50).

Meanwhile, Gamble was transported to Palmetto Richland Hospital and admitted shortly after midnight. (R. p. 185). Dr. Raymond Sweet, a neurosurgeon at the University of South Carolina School of Medicine, examined Gamble and discovered he was in a deep coma with a severe brain injury and spinal fractures. (R. p. 185; pp. 186-188). Due to the severity and extensiveness of the injuries, there were no available treatment options. (R. p. 190). Gamble was pronounced brain dead at 3:20 p.m. on August 1, 2008. (R. p. 193). Dr. Sweet determined the cause of death was severe traumatic blunt injury to the brain. (R. p. 193).

Subsequently, Sergeant Steven Breland and Corporal Charles Coats, who were members of the South Carolina Highway Patrol collision reconstruction team and experts in accident reconstruction, investigated the accident scene. (R. p. 552; p. 558; p. 561; p. 601; p. 607; p. 609). They discovered tire scuff marks on the curb and noted the damage to Gamble's bicycle indicated a significant impact. (R. pp. 571-572; p. 576). They also discovered red paint on the bumper of Appellant's van, which was consistent with the red paint on the bicycle, and scuff marks on the front tire consistent with the scuff marks on the curb. (R. p. 412; p. 577; p. 580). Sergeant Breland concluded Appellant's van struck Gamble in the bicycle lane on Knox Abbott Drive, continued driving on, and drove into the curb, leaving scuff marks. (R. p. 579). He noted Gamble was discovered approximately 164 feet from the point of impact, and his bicycle was located 150 feet from the point of impact. (R. p. 596). The officers noted the road was clear and straight with no visibility obstructions, and the posted speed limit was 35 miles per hour. (R. p. 581; p. 685). Corporal Coats estimated Appellant's speed was between 47 and 57 miles per hour at the time of the accident. (R. pp. 621-622). Based on Gamble's location, he

concluded Gamble was either thrown to that position or carried there by Appellant's van. (R. p. 624).

Subsequently, Appellant was indicted for felony driving under the influence and proceeded to trial. Prior to trial, Appellant moved to suppress the admission of the test results from the blood alcohol concentration analysis, and the trial judge conducted a pre-trial hearing. (R. pp. 12-14). Officer Stone testified Appellant was arrested after refusing a field sobriety test and was taken to the police department for a breathalyzer test. (R. pp. 18-20). He indicated Appellant did not take the breathalyzer test in the allotted time and was then taken to Lexington Medical Center for the drawing of blood samples. (R. pp. 21-22). He testified a lab technician drew two vials of Appellant's blood and one vial was placed in Appellant's shirt pocket. (R. p. 22). Officer Stone stated Appellant did not request an independent blood test to his knowledge. (R. p. 23). He noted he then took Appellant to the detention center, advised the commanding officer about the blood sample, and left. (R. pp. 23-24). He testified Appellant did not request additional testing on the way to the detention center or during booking. (R. pp. 23-24; p. 25). He further indicated he explained to Appellant he would receive a blood sample for testing while at the hospital. (R. p. 26).

Sergeant Marzol confirmed Appellant did not take a breathalyzer test and was then transported to the hospital. (R. pp. 34-36). He noted the implied consent form presented to Appellant in the breathalyzer testing room notified Appellant of the availability of additional testing. (R. pp. 33-34). Sergeant Marzol testified he witnessed the drawing of two vials of blood from Appellant and observed one vial being given to

him. (R. p. 38). He indicated he could not recall Appellant requesting additional testing at any time he was in contact with him. (R. pp. 38-39).

Kristen Marzol, the clinic coordinator at the Lexington County Detention Center, also testified during the suppression hearing. (R. p. 46). She noted Cheryl Smith, a former nurse, was working in the detention center clinic on August 1, 2008. (R. p. 48). Consistent with the policies in place, Smith made a notation indicating she placed Appellant's blood sample in a locked refrigerator. (R. pp. 49-51). Marzol testified she was subsequently unable to locate the blood sample and had no idea what happened to it. (R. p. 52). She indicated inmates must specifically request blood samples or medications when they are released and those items cannot be released to anyone but the inmate under medical privacy rules. (R. pp. 52-54). She further testified nurses were the only people with access to the blood sample. (R. pp. 87-88).

Appellant testified in his own defense during the hearing. (R. p. 62). He testified he was notified of the availability of an independent test by Officer Stone and requested testing from him. (R. pp. 62-63). He stated Officer Stone gave his blood sample to a jailor, and he was never given an opportunity to go to a different hospital or doctor. (R. pp. 63-64). He claimed he asked for his blood sample the day he was released and the staff informed him they had no idea what he was talking about. (R. p. 66). He indicated he asked Officer Stone for independent testing multiple times and was ignored. (R. pp. 68-69). He also testified he requested his blood sample on three separate occasions, including at the time of his release, and did not receive the blood sample. (R. pp. 72-73).

Appellant's wife, Kristy Jamison, also testified during the hearing. (R. p. 76). She stated she went to the jail to pick up Appellant's blood sample and never received it.

(R. pp. 79-80). She indicated she was informed there was no blood. (R. p. 81). She further testified Appellant asked for his blood sample on multiple occasions and was told there was no blood. (R. p. 82; p. 86).

At the conclusion of the hearing, Appellant argued the blood test results should be suppressed because he was denied affirmative assistance in acquiring independent testing and was denied an opportunity to obtain testing when the jail staff lost his blood sample. (R. pp. 88-96). After hearing argument from both sides, the trial judge denied the motion. (R. pp. 103-105).

Subsequently, during trial, the officers and multiple witnesses testified regarding the circumstances of the incident, Appellant's condition, and Appellant's refusal to submit to a field sobriety test or a breathalyzer test. Additionally, Brandon Landrum, an analyst at SLED and an expert in forensic toxicology, testified regarding his analysis of Appellant's blood sample over Appellant's objection. (R. p. 473; p. 481; pp. 486-487). Landrum indicated he performed a blood alcohol analysis on Appellant's blood specimen. (R. p. 488). The testing revealed Appellant's blood sample had a 0.225 percent weight per volume of ethanol. (R. p. 491). Landrum testified an average male would be required to drink approximately ten beers in an hour to reach the level of blood alcohol concentration present in Appellant's blood sample. (R. p. 495). He further indicated Appellant would have experienced significant impairment based on the test results. (R. pp. 496-497).

At the conclusion of trial, Appellant was convicted as charged. (R. p. 739). During sentencing, Appellant apologized to Gamble's family, stating:

I would never, ever intentionally hurt anyone, and I am so sorry for what happened that night. . . . I have a son as well, and I don't know what I would do if a travesty or tragedy ever happened like that night. . . . There is nothing I can do, but you better believe if there is one thing I could change in this world with my life it would be that night. I have - I'm sorry.

(R. p. 742). The trial judge then sentenced Appellant to a term of imprisonment of eighteen years and fined him \$10,000. (R. p. 745).

ARGUMENT

The trial judge properly denied Appellant's suppression motion because Appellant was provided with a reasonable opportunity to obtain independent chemical testing after his arrest for felony driving under the influence and his refusal to submit to a breathalyzer test. Regardless, any error was harmless in light of the overwhelming evidence of his guilt.

Appellant contends the trial judge erred in denying his motion to suppress the State's blood alcohol concentration test results. Appellant asserts he was denied his right to obtain independent testing after his blood sample was lost at the detention center. Appellant was provided with a reasonable opportunity to obtain independent testing when the officers transported him to a medical facility and had blood samples drawn. The fact his blood sample was subsequently lost did not render the State's test results inadmissible. The trial judge properly denied Appellant's suppression motion, and no abuse of discretion occurred. However, even if the trial judge did err, any error was harmless in light of the overwhelming evidence of Appellant's guilt. Appellant's conviction should be affirmed.

A. Admissibility of Blood Alcohol Analysis Results

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission or exclusion of evidence falls within the trial judge's discretion and will not be disturbed on appeal without an abuse of discretion or an error of law. State v. Govan, 373 S.C. 552, 556, 643 S.E.2d 92, 94 (Cl. App. 2007).

Under S.C. Code Ann. § 56-5-2946 (2006), a person suspected of felony driving under the influence “must submit to either one or a combination of chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol. . . .” If the suspect is tested or provides samples, he is permitted to have a qualified person of his own choosing conduct additional testing and must be notified of that right. *Id.* “The failure or inability of the person tested to obtain additional tests does not preclude the admission of the evidence relating to the tests or samples obtained at the direction of the law enforcement officer.”⁵ S.C. Code Ann. § 56-5-2950(a) (2006).

If a suspect submits to a breathalyzer test, he is entitled to affirmative assistance from law enforcement officers in obtaining an independent blood test. *State v. Knighton*, 334 S.C. 125, 131, 512 S.E.2d 117 (Cl. App. 1999). “Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which provides blood tests to determine a person’s alcohol concentration.”⁶ S.C. Code Ann. § 56-5-2950(a) (2006).

However, “[a]n arresting officer does not have a duty to affirmatively assist a defendant who refuses to take a breathalyzer test with obtaining independent tests.” *City of Columbia v. Ervin*, 330 S.C. 516, 520, 500 S.E.2d 483, 485 (1998). Instead, the officer only has a duty to provide a reasonable opportunity to obtain an independent blood test. *State v. Masters*, 308 S.C. 433, 435, 418 S.E.2d 552, 553 (1992); see *State v. Harris*,

⁵This statutory provision has been amended subsequent to the date of the offense. Under the current version of the statute, which became effective February 10, 2009, the statutory language is identical to the pre-amended statute’s language, but the new statute is now broken down into additional sub-sections. This quoted portion is now codified under S.C. Code Ann. § 56-5-2950(D) (Supp. 2009).

⁶This quoted language is now codified under S.C. Code Ann. § 56-5-2950(E) (Supp. 2009).

311 S.C. 162, 166, 427 S.E.2d 909, 911-912 (Ct. App. 1993) ("A DUI suspect is entitled to a reasonable opportunity to obtain a blood test although he refuses to take a breathalyzer test."). What constitutes a reasonable opportunity depends on the circumstances of each case. State v. Lewis, 266 S.C. 45, 48, 221 S.E.2d 524, 526 (1976). However, "[a] reasonable opportunity does not include the affirmative duty to procure a blood test for a defendant who has not taken a breathalyzer test." Ervin, 330 S.C. at 521, 500 S.E.2d at 485.

In State v. Wickenhauser, 309 S.C. 377, 379, 423 S.E.2d 344, 346 (1992), the South Carolina Supreme Court considered whether Wickenhauser was provided with reasonable assistance in obtaining independent testing. Wickenhauser was arrested for driving under the influence and took a breathalyzer test. Id. at 378, 423 S.E.2d at 345. After the test, Wickenhauser requested an independent blood test, was taken to Lexington Medical Center, had two blood samples drawn, and was provided with one of the samples. Id. at 378-379, 423 S.E.2d at 345. Subsequently, he was booked into jail. Id. at 379, 423 S.E.2d at 345. The booking receipt did not reflect a blood sample was taken, and the sample could not be located when it was requested two days later. Id. The Court noted Wickenhauser underwent an independent blood test and took possession of a blood sample. Id. at 380, 423 S.E.2d at 346. Therefore, the Court concluded he received aid sufficient to constitute the statutorily-required reasonable assistance in obtaining an independent test. Id. The Court further held: "Whether this assistance was subsequently negated by the acts of the law enforcement [personnel] presented an issue of fact for the determination of the jury." Id.

In the case sub judice, Appellant was not entitled to affirmative assistance in obtaining independent testing because he refused to take a breathalyzer test. Instead, he was only entitled to a reasonable opportunity to obtain independent testing. The officers provided Appellant with that reasonable opportunity when they transported him to a medical facility, placed him in contact with a doctor and a phlebotomist, had two vials of his blood drawn, and provided him with a vial. Appellant was presented with a reasonable opportunity to request testing from the hospital staff and was provided with a blood sample. However, he did not request any independent testing. Instead, he merely received his sample, sought no further action or testing from the independent medical staff, and was transported to the detention center. Subsequently, his blood sample was locked in a refrigerator at the detention center and apparently lost. The fact his blood sample was subsequently lost did not render the testing results from SLED inadmissible. At most, it merely created a jury question as to whether Appellant's reasonable opportunity to obtain independent testing was subsequently negated by the acts of law enforcement.

The officers' actions in transporting Appellant to the Lexington Medical Center and having blood drawn were more than sufficient to constitute a reasonable opportunity to obtain independent testing. See Ervin, 330 S.C. at 521, 500 S.E.2d at 486 ("By transporting Ervin to [Richland Memorial Hospital], the arresting officer provided Ervin with more reasonable assistance than required since Ervin had refused to take the datamaster test."); sec also State v. Sullivan, 310 S.C. 311, 316, 426 S.E.2d 766, 769 (1993) (finding the "reasonable opportunity" requirement can be met if the defendant is "afforded ample time and the means by which to make arrangements for independent

testing"). In fact, the officers' actions were likely sufficient to constitute providing affirmative assistance, which they were not required to provide based on Appellant's refusal to submit to a breathalyzer test. See S.C. Code Ann. § 56-5-2950(a) (2006) ("Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which provides blood tests to determine a person's alcohol concentration."); see also Wickenhauser, 309 S.C. at 380, 423 S.E.2d at 346 ("It is uncontroverted that Wickenhauser underwent an independent blood alcohol test in compliance with the statute and undisputed that he took custody of a blood sample. We conclude that Wickenhauser received aid sufficient to constitute reasonable assistance[.]"). Just as in Wickenhauser, the fact Appellant's blood sample was subsequently lost did not preclude the admissibility of evidence of his blood alcohol concentration. The trial judge properly denied Appellant's suppression motion, and no abuse of discretion occurred. Appellant's conviction should be affirmed.

B. Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). An admission of improper evidence is considered

harmless when it is merely cumulative to other properly admitted evidence. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). When overwhelming evidence of guilt has been established, any trial error may be harmless. State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988).

In the case at bar, even assuming the trial judge erred in admitting the results of the blood alcohol concentration analysis, any error was harmless in the light of the absolutely overwhelming evidence conclusively establishing Appellant’s guilt.⁷ Multiple witnesses, including the responding officers, bystanders, and paramedics, testified Appellant was confused, slurred his speech, smelled of alcohol, was unsteady on his feet, and appeared intoxicated following the accident. Appellant continued to exhibit this impaired condition while later awaiting breathalyzer testing at the police department. Additionally, a witness who observed the collision testified Appellant swerved to the rights and was unable to maintain his vehicle in his lane. Experts in accident reconstruction determined Ganible was struck by Appellant while riding his bicycle in the bicycle lane and was either thrown or carried a significant distance by the van. They further testified they discovered red paint on Appellant’s bumper and tire scuff marks on Appellant’s tire and on the curb. Based on their analysis, they concluded Appellant was going between twelve and twenty-two miles per hour over the speed limit. The accident

⁷In denying Appellant’s motion for a directed verdict, the trial judge listed and summed up the extensive evidence presented during trial demonstrating Appellant’s guilt for the crime. (R. pp. 665-669).

occurred on a clear, straight road with no visibility obstructions. Furthermore, directly after the accident, a witness observed Appellant checking his vehicle for damage fifty yards down the bridge from Gamble's location in the roadway. When questioned about whether he hit the victim, Appellant was confused and appeared to not understand what had occurred. Subsequently, Appellant continued to make comments about not intending to hit anyone and not knowing what was going on, and he indicated to a paramedic that he believed he hit a garbage can. When officers investigated Appellant's damaged vehicle, they discovered a beer bottle hidden underneath the van behind a tire. Inside the van, they discovered two packages of the same brand of beer as the bottle discovered under the vehicle with several bottles missing. Furthermore and critically, Appellant refused field sobriety tests and the breathalyzer test. See State v. Kerr, 330 S.C. 132, 151-152, 498 S.E.2d 212, 222 (Cl. App. 1998) ("It is well established in this State that one who is arrested for DUI impliedly consents to a breathalyzer test, and that the revocation of that consent is constitutionally admissible as prosecutorial evidence at the trial pursuant to that arrest.").

Notwithstanding the test results of Appellant's blood sample which conclusively established Appellant's blood alcohol concentration was alarmingly high, the State presented overwhelming evidence of his guilt independent of the test results. The submitted evidence overwhelmingly established Appellant was guilty of felony driving under the influence and was responsible for Gamble's catastrophic injuries and death. Additionally, Appellant eliminated any remaining doubts about his guilt or innocence when he apologized for his actions to the victim's family during the sentencing proceedings. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981)

("[R]eview of a trial error is unnecessary where a defendant admits in open court after his conviction that he is guilty."); State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) (finding further review was unnecessary where the defendant admitted his guilt in open court after his conviction); State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (finding an alleged trial error to be harmless based on overwhelming evidence of guilt and Wiley's apology in open court during sentencing proceedings). Appellant described the incident as a travesty or tragedy, stated it was the one thing he wished he could change in his life, and apologized to Gamble's family.

Based on the overwhelming evidence of guilt and Appellant's apology during the sentencing proceedings, any error in the admission of the blood test results was harmless regardless of the admissibility of those results. See State v. Wilson, 296 S.C. 73, 76, 370 S.E.2d 715, 716 (1988) (finding any error in the admission of blood test results was harmless because it was cumulative to other evidence of Wilson's intoxication); see also Ervin, 330 S.C. at 522, 500 S.E.2d at 486 ("[I]n light of the overwhelming evidence of his intoxication, Ervin was not prejudiced by the admission of his refusal to take the datamaster test."); State v. Degnan, 305 S.C. 369, 409 S.E.2d 346 (1991) ("In light of the overwhelming evidence of her intoxication, Degnan has shown no prejudice in admission of her refusal to submit to the breathalyzer."). Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

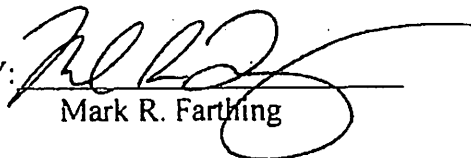
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November 29, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

vs.

ANDRA BYRON JAMISON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2009-GS-32-5283

STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

ANDRA JAMISON,

APPELLANT.

FINAL REPLY BRIEF OF APPELLANT

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**DEFENDANT'S
EXHIBIT**

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ARGUMENT IN REPLY

The right to have a reasonable opportunity to obtain a blood test in a DUI case is rooted in the Due Process Clause of the Fourteenth Amendment to the United States Constitution. State v. Lewis, 266 S.C. 45, 221 S.E.2d 524 (1976); see also State v. Masters, 308 S.C. 433, 438, 418 S.E.2d 552, 555 (1992) (Moore, J., dissenting) (“The Lewis Court made it clear ... that ... the right to a reasonable opportunity comes from the constitutional due process guarantees of the fourteenth amendment”). As was demonstrated below and in the Brief of Appellant, the Appellant’s due process rights were violated in this case.

In response, the Respondent attempts to argue that the Appellant received a reasonable opportunity to obtain a blood test in his case because the “Appellant was presented with a reasonable opportunity to request testing from the hospital staff ... [h]owever, he did not request any independent testing.” Brief of Respondent at 16. This is factually incorrect. The “hospital staff,” in the person of Dr. Stephen Hayes, testified at trial that the Appellant told him that “he was there for a blood test.” ROA p. 377, line 8; Tr. p. 441, line 8. Instead of performing the test, the hospital staff took the Appellant’s blood and gave it to the officer for safekeeping, with specific instructions that the second vial of blood was for the Appellant for his own testing. See ROA p. 395, lines 5-25; Tr. p. 459, lines 5-25. Since the Appellant specifically asked for a “blood test” when he met the doctor who could perform the test, and no test was performed at that time, the Appellant’s presence at the hospital and having his blood drawn cannot constitute a reasonable opportunity to have the blood test performed. Cf. City of Columbia v. Ervin, 330 S.C. 516, 521, 500 S.E.2d 483, 486 (1998) (“By transporting Ervin to [the hospital], the arresting officer provided Ervin with more reasonable assistance than required since Ervin had refused to take the datamaster test”).

The Appellant was not given another opportunity to have his blood tested. There is no evidence that the Appellant was ever provided, for example, "a telephone and telephone book" to contact anyone regarding a blood test at any point in time prior to his incarceration at the Lexington County Detention Center. Ervin, *supra*, at 521, 500 S.E.2d at 485. Instead, the Appellant was taken from the hospital to the detention center, where his blood was unquestionably lost by the jail personnel. The Appellant had no opportunity—reasonable or otherwise—to have a blood test performed. Consequently, the Appellant's constitutional right to a reasonable opportunity for a blood test was violated in this case, and the trial court erred in failing to suppress the blood testing results.

The Appellant would also note that it is the unquestioned loss of blood by the jail personnel that distinguishes this case from State v. Wickenhauser, 309 S.C. 377, 423 S.E.2d 344 (1992). In Wickenhauser, the defendant's vial of blood was given to him at the Lexington Medical Center and he was transported to the detention center. 309 S.C. at 378, 423 S.E.2d at 345. His property was then inventoried and there was no mention of blood taken from the defendant. Id. at 379. The defendant didn't ask for the blood until a couple of days following his release from the jail. Id. The Supreme Court held that since the defendant "took custody of a blood sample," the defendant received reasonable assistance under S.C. Code Ann. §56-5-2950(a).¹ Id. at 380, 423 S.E.2d at 346. Contrarily, in this case, there is documentation that the Appellant's blood was taken at the detention center and lost prior to the Appellant's release from the jail. See ROA p. 66, lines 2-17; Tr. p. 107, lines 2-17; ROA p. 421, line 20-p. 422, line 19; Tr. p. 485, line 20-p. 486, line 19. This Court has made it clear that Wickenhauser applies only

¹ The Appellant would note that the issue in question in Wickenhauser involved "reasonable assistance" under §56-5-2950(a), a provision of the statute which has been removed by subsequent amendments. The Appellant places no reliance on reasonable assistance in this case; instead, the Appellant contends that his due process right to a reasonable opportunity for a blood test was violated.

to those situations where a defendant fails to request that his vial of blood be returned to him upon his release from jail. See State v. Smith, 321 S.C. 13, 16-17, 467 S.E.2d 110, 112 (Ct. App. 1996) (“We think Smith had the burden to inform jail personnel that his sample was turned over to the jailer the night before and to inquire about retrieving the sample”); overruled on other grounds by State v. Smith, 326 S.C. 39, 482 S.E.2d 777 (1997). Inasmuch as the Appellant complied with this Court’s requirements in Smith but never had an opportunity to take custody of his blood sample, Wickenhauser is inapplicable.

The Respondent also contends that the violation of the Appellant’s constitutional rights was harmless error in light of the other evidence at trial admitted against the Appellant. See Brief of Respondent at 17-19. It is important to note that the offense the Appellant was charged with violating—S.C. Code Ann. §56-5-2945—has multiple requirements before a finding of guilt may be imposed:

A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony driving under the influence.

In other words, a felony DUI charge consists of three elements: (1) the actor drives a vehicle while under the influence of alcohol or drugs; (2) the actor does an act forbidden by law or neglects a duty imposed by law; and (3) the act or neglect proximately causes great bodily harm or death to another person. State v. Dantonio, 376 S.C. 594, 604, 658 S.E.2d 337, 342 (Ct. App. 2008). The Appellant submits that the evidence was not overwhelming with regard to any of the elements.

With regard to the DUI element of §56-5-2945, the Respondent notes that witnesses testified that the Appellant slurred his speech, appeared intoxicated, and refused a field sobriety test. See Brief of Respondent at 18-19. However, in State v. Pipkin, 294 S.C. 336, 364 S.E.2d 464 (1988), the Supreme Court was presented with a factual scenario where the officer

[W]as dispatched to the scene of an accident involving Pipkin's truck and another vehicle. During interrogation [the officer] smelled alcohol on Pipkin's breath and noticed a slurring of his speech. After he failed a field sobriety test, Pipkin was placed under arrest and taken to the police station for a breathalyzer test.

294 S.C. at 337, 364 S.E.2d at 465. Despite this evidence, the Supreme Court found that a violation of §56-5-2950 required a new trial. Id. at 338. Since that case involved substantially similar circumstances as this case, and the evidence in Pipkin was not overwhelming, the Appellant would contend that the evidence against him was not overwhelming as well.

With regard to the unlawful act and proximate causation elements of §56-5-2945, the Respondent argued that the M.A.I.T. conclusions demonstrated that the decedent "was struck by Appellant while riding his bicycle in the bicycle lane and was either thrown or carried a significant distance by the van." Brief of Respondent at 18. However, the accident reconstruction experts failed to compare the scuff marks found in the roadway and in the bicycle lane to confirm their measurements, despite the fact that there were numerous such marks on the roadway. See ROA p. 591, line 14-p. 597, line 8; Tr. p. 655, line 14-p. 661, line 8. The State's expert admitted that if his assumption of the location of the tire marks was incorrect, then his conclusions about the accident would be incorrect as well. ROA p. 597, lines 9-13; Tr. p. 661, lines 9-13. Therefore, the State did not overwhelmingly demonstrate that the Appellant committed an unlawful act and that the unlawful act proximately caused the decedent's death.

As a final effort to defeat the Appellant's claims, the Respondent argues that the Appellant's apology during sentencing amounted to an admission of guilt. See Brief of Respondent at 19-20. This contention is meritless. The Appellant's apology reads in full as follows:

THE DEFENDANT: Yes, sir. I'm not a speaker, never claimed to be, and by looked as [sic] these people back here, they all look like fine, fine people. There is nothing, nothing that I could say to ease your pain.

I have four kids. I have a daughter in college that's not but a year younger than your son. I would never, ever intentionally hurt anyone, and I am so sorry for what happened that night.

I have prayed for your son from that night until I stepped up here. I have a son as well, and I don't know what I would do if a travesty or tragedy happened like that night.

So I understand how you feel and I don't condemn you. There is nothing I can do, but you better believe if there is one thing I could change in this world with my life it would be that night. I have—I'm sorry.

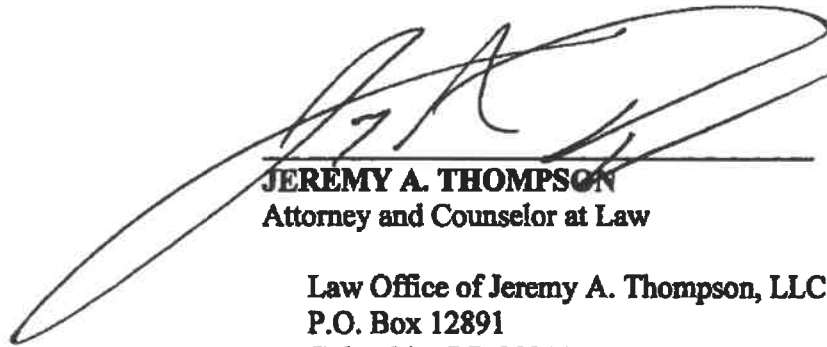
ROA p. 741, line 23-p. 742, line 14; Tr. p. 817, line 23-p. 818, line 14. There is no admission of guilt found anywhere in this apology. The Appellant does not state that he committed a criminal act and does not admit to being the cause of the collision. Instead, the Appellant merely expressed his remorse at the fact that the decedent died that night. Assuming, *arguendo*, that the Appellant's apology amounted to an admission that he was the cause of the accident, the Appellant's apology does not contain anything regarding an admission that he was under the influence of any alcohol or drugs the night of the incident. Since being under the influence of alcohol or drugs is an element of felony DUI resulting in death, the Appellant did not admit to committing the crime in his apology to the decedent's family.

Given all of the above, the Appellant respectfully submits that the State violated the Appellant's constitutional right to due process. Furthermore, the Appellant contends that the evidence against him was not overwhelming. Finally, the Appellant did not admit guilt in his apology to the decedent's family at sentencing. The proper remedy for a violation of §56-5-2950 is reversal of the Appellant's felony DUI conviction. See Town of Fairfax v. Smith, 285 S.C. 458, 330 S.E.2d 290 (1985); State v. Masters, *supra*.

CONCLUSION

The lower court's decision denying suppression of the blood alcohol results was erroneous. The Appellant's conviction for felony driving under the influence resulting in death should be reversed.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. A. Thompson', is written over a horizontal line.

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ATTORNEY FOR APPELLANT.

This 13th day of October, 2011.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

ORIGINAL

RECEIVED

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable R. Knox McMahon, Circuit Court Judge
S.C. Supreme Court

APR 9 2012

THE STATE,

Respondent/Petitioner,

vs.

ANDRA BYRON JAMISON,

Petitioner/Respondent.

RESPONDENT/PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err in holding the trial judge improperly admitted the State's blood test results after the State allegedly denied Jamison a reasonable opportunity to obtain independent testing where Jamison was provided with a reasonable opportunity to obtain independent testing when he was taken to a medical facility, placed in direct contact with medical personnel capable of performing independent testing, and had a blood sample drawn but that blood sample was not tested at the medical facility and was subsequently lost after Jamison was booked into a detention center?

STATEMENT OF THE CASE

Procedural History

Petitioner/Respondent Andra Byron Jamison was arrested following an investigation into a vehicle and bicycle collision resulting in a fatality. In January of 2009, the Lexington County grand jury indicted Jamison for one count of felony driving under the influence resulting in a death. On October 12, 2009, a jury trial was commenced in the Lexington County court of general sessions with the Honorable R. Knox McMahon, circuit court judge, presiding. At the conclusion of trial, the jury convicted Jamison as indicted. The trial judge sentenced Jamison to a term of imprisonment of eighteen years and a \$10,000 fine. Jamison then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals unanimously affirmed Jamison's conviction. State v. Jamison, Op. No. 2012-UP-58 (S.C. Ct. App. filed Feb. 1, 2012). Both Jamison and the State petitioned the Court of Appeals for rehearing, and the petitions were denied. The State then filed this petition for a writ of certiorari in the Supreme Court.

Factual History

Late on the evening of July 31, 2008, Shonda Cheeks was driving across the Blossom Street Bridge on her way home to West Columbia when she observed a vehicle on the other side of the road hit something. (R. pp. 646-648). Cheeks saw the vehicle veer to the right and drift outside of its lane of travel.¹ (R. p. 648; pp. 649-650). Cheeks

¹ During trial, Cheeks testified she was "positive" Petitioner/Respondent Andra Byron Jamison's vehicle drifted to the right and was not in its own lane of travel. (R. pp. 649-650).

then observed someone in the roadway and realized the vehicle struck a person. (R. pp. 650-651).

Shortly thereafter, Todd Fitzgerald was driving down Knox Abbott Drive while returning to his apartment in Columbia. (R. p. 634). As he approached the Blossom Street Bridge, he noticed a shoe, then a bicycle, and then a person lying in the roadway. (R. p. 634). He immediately stopped his vehicle to attempt to offer assistance. (R. p. 634). Several other vehicles also stopped to help, and one of those individuals called 911. (R. p. 635). Fitzgerald surveyed the scene to see if there were any other vehicles or witnesses in the vicinity and observed a vehicle stopped fifty yards down the bridge with its passenger tires resting on the sidewalk. (R. p. 635; p. 644). Petitioner/Respondent Andra Byron Jamison was outside of the stopped vehicle and appeared to be checking the front passenger side for damage. (R. p. 635; pp. 637-638).

Fitzgerald approached Jamison and asked him if he hit the victim lying in the roadway. (R. p. 635). Jamison responded, "Who?" (R. pp. 635-636). Fitzgerald pointed towards the victim, and Jamison asked, "Did I hit him?" (R. pp. 636-637). Fitzgerald noted Jamison was very disoriented and appeared intoxicated. (R. p. 637). Jamison appeared confused, smelled of alcohol, was staggering, and had glassy eyes. (R. p. 637). Fitzgerald believed Jamison was too intoxicated to tell what happened, and he directed law enforcement to Jamison after they arrived on the scene. (R. p. 638).

Officer Michael Stone of the Cayce Police Department was on patrol around 11:25 p.m. when he noticed traffic backing up on the Blossom Street Bridge. (R. p. 123; pp. 126-127). As he approached the scene, he observed a person lying in the roadway with a large quantity of blood coming from his head. (R. pp. 127-128). Officer Stone then cleared the crowd and radioed in for assistance. (R. p. 128). Several other officers

and medical personnel arrived on the scene within minutes. (R. p. 128; p. 530). Officer Stone discovered Jamison was the driver of the vehicle that struck the victim, who was later identified as nineteen-year-old Jesse Gamble. (R. p. 128; p. 185; p. 198). Officer Stone then approached Jamison and asked him what occurred. (R. p. 128). Jamison responded he did not know what happened and did not mean to hurt anyone. (R. p. 128). Officer Stone noticed Jamison was unsteady on his feet, was slurring his speech, and had the smell of alcohol on his breath and about his person. (R. pp. 129-130). He then placed Jamison under investigative detention. (R. p. 130).

Meanwhile, paramedics Barrett Raymond and Daniel Boyce responded to the accident scene. (R. p. 530; p. 541). They observed Gamble lying in the roadway and attended to him. (R. p. 530; p. 541). Gamble was unresponsive, had a broken leg, and his pupils were fixed, but he was breathing and had a pulse. (R. pp. 531-532). Boyce also checked on Jamison and spoke with him to gather information about the accident. (R. pp. 542-543). He observed Jamison sitting on the curb in a sulking position. (R. p. 543). He noticed Jamison appeared intoxicated and smelled of alcohol. (R. p. 544). Jamison's speech was slurred and Boyce had difficulty understanding him. (R. p. 543). Jamison told Boyce he thought he hit a garbage can. (R. p. 543). The paramedics then quickly transported Gamble to the hospital. (R. p. 533; p. 545).

Officer Adam Smith and Detective John Reese also responded to the scene. (R. p. 215; pp. 319-320). Officer Smith observed Gamble in the roadway with very severe injuries. (R. pp. 216-217). While on the scene, he heard Jamison asking several witnesses if he hurt someone or did something wrong. (R. p. 220). Officer Smith noticed Jamison's vehicle was damaged, his speech was slurred, he had a strong odor of alcohol on his breath and person, and he was unsteady on his feet. (R. p. 224). Detective Reese

observed Gamble, bicycle parts, a shoe, and a sock lying in the roadway. (R. pp. 319-320; p. 321). He inspected Jamison's van, which was located farther down the bridge, and noticed significant damage. (R. p. 323). The hood of the vehicle was dented in, the windshield was cracked and damaged, a front lens was damaged, and there was a long scratch on the passenger side.² (R. pp. 323-324). He also discovered Gamble's bicycle was severely damaged, and he found a sock, a shoe, and some hair in the roadway. (R. pp. 324-325). While examining Jamison's vehicle, Detective Reese located a Killian's Red beer bottle underneath the van next to a tire.³ (R. p. 362; p. 369). Inside of the vehicle, Detective Reese found two twelve-packs of Killian's Red beer, with one package open and missing several bottles. (R. pp. 371-372).

Sergeant Robert Marzol arrived on the scene and spoke to Jamison with Officer Stone. (R. p. 131; p. 244; p. 253). Sergeant Marzol informed Jamison of his rights. (R. p. 131; p. 134; pp. 253-254; p. 258). He noticed Jamison was calm, unsteady on his feet, and had a strong odor of alcohol. (R. p. 257). Sergeant Marzol then offered Jamison an opportunity to perform field sobriety tests, and Jamison refused, stating he would not do anything without speaking to an attorney.⁴ (R. p. 131; p. 134; pp. 256-257). Jamison was then arrested and transported to the Cayce Police Department. (R. p. 135; pp. 257-259).

On the way to the police department, Jamison stated he did not know what was going on and did not mean to hurt anyone, and he asked why he was under arrest. (R. p. 135). Once they arrived, Jamison was taken to the breathalyzer testing room, and Sergeant Marzol began administering the test around 12:30 a.m. (R. p. 136; pp. 264-

² The damage suggested Gamble's head may have been knocked into the windshield. (R. p. 323).

³ The beer bottle found underneath Jamison's van had moisture on it. (R. p. 373).

⁴ The officers recorded their interaction with Appellant using the in-dash camera from another officer's vehicle, and the recording was introduced during the trial. (R. p. 134; p. 223; State's Ex. #49).

265). He informed Jamison of his rights, entered his information into the testing machine, and reviewed an implied consent form with Jamison. (R. p. 137; p. 265). Relying on the implied consent form, Sergeant Marzol informed Jamison he was required to submit to some form of chemical testing, his refusal or obstruction of testing could be used against him, and he had “the right to have a qualified person of [his] own choosing to conduct additional independent tests at [his] own expense, and the officer upon request must provide affirmative assistance.” (R. pp. 267-268). Jamison then refused to sign the implied consent form, insisting he did not know what was going on and wanted an attorney. (R. p. 137; pp. 268). The officers then observed Jamison for the statutorily-required period of twenty minutes before allowing him an opportunity to blow into the breathalyzer testing machine. (R. p. 137; p. 274). During this period, Jamison continued to slur his speech, smelled of alcohol, and was unsteady while walking or standing. (R. p. 270). After the observation period expired, Jamison continued to state he did not know what was going on and did not take the breathalyzer test.⁵ (R. pp. 138-139). The testing machine registered a refusal after two minutes, and Jamison refused to sign the refusal ticket. (R. p. 139; pp. 274-276; p. 755).

Jamison was then transported to Lexington Medical Center for the drawing of blood samples, and they arrived around 1:30 a.m. (R. pp. 142-143; pp. 277-278). The officers directed a doctor to withdraw blood samples from Jamison, and two vials of Jamison’s blood were drawn by a phlebotomist. (R. pp. 143-144; p. 278; p. 387). The phlebotomist explained to Jamison and the officers he was going to draw two vials and give one to the officers and one to Jamison for his own personal testing. (R. p. 387). The

⁵ The observation period was recorded, and the recording was introduced during trial. (R. pp. 264-265; State’s Ex. #50).

vials were properly drawn, sealed, and labeled. (R. p. 390). The officers took one sample into evidence, and Officer Stone placed the other sample into Jamison's shirt pocket. (R. pp. 145-146; pp. 278-279).

Jamison was then transported to the Lexington County Detention Center. (R. p. 146). A corrections officer booked Jamison into the jail, and Officer Stone then transported the vial of blood taken into evidence to the police department. (R. pp. 146-147). Records at the detention center indicated the other blood sample, which had been given to Jamison, was collected by a nurse and placed in a locked refrigerator. (R. pp. 421-422). However, Jamison's booking sheet did not indicate a blood sample was taken from him, and the blood sample was subsequently lost. (R. p. 422; p. 430).

Meanwhile, Gamble was transported to Palmetto Richland Hospital and admitted shortly after midnight. (R. p. 185). Dr. Raymond Sweet, a neurosurgeon at the University of South Carolina School of Medicine, examined Gamble and discovered he was in a deep coma with a severe brain injury and spinal fractures. (R. p. 185; pp. 186-188). Due to the severity and extensiveness of the injuries, there were no available treatment options. (R. p. 190). Gamble was pronounced brain dead at 3:20 p.m. on August 1, 2008. (R. p. 193). Dr. Sweet determined the cause of death was severe traumatic blunt injury to the brain. (R. p. 193).

Subsequently, Sergeant Steven Breland and Corporal Charles Coats, who were members of the South Carolina Highway Patrol collision reconstruction team and experts in accident reconstruction, investigated the accident scene. (R. p. 552; p. 558; p. 561; p. 601; p. 607; p. 609). They discovered tire scuff marks on the curb and noted the damage to Gamble's bicycle indicated a significant impact. (R. pp. 571-572; p. 576). They also discovered red paint on the bumper of Jamison's van, which was consistent with the red

paint on the bicycle, and scuff marks on the front tire consistent with the scuff marks on the curb. (R. p. 412; p. 577; p. 580). Sergeant Breland concluded Jamison's van struck Gamble in the bicycle lane on Knox Abbott Drive and continued travelling on before running into the curb, leaving scuff marks. (R. p. 579). He noted Gamble was discovered approximately 164 feet from the point of impact, and his bicycle was located 150 feet from the point of impact. (R. p. 596). The officers noted the road was clear and straight with no visibility obstructions, and the posted speed limit was thirty-five miles per hour. (R. p. 581; p. 685). Corporal Coats estimated Jamison's speed was between forty-seven and fifty-seven miles per hour at the time of the accident. (R. pp. 621-622). Based on Gamble's location, he concluded Gamble was either thrown to that position or carried there by Jamison's van. (R. p. 624).

Subsequently, Jamison was indicted for felony driving under the influence resulting in a death, and he proceeded to trial. (R. pp. 764-765). Prior to trial, Jamison moved to suppress the admission of the test results from the blood alcohol concentration analysis, and the trial judge conducted a pre-trial hearing on Jamison's motion. (R. pp. 12-14). During the hearing, Officer Stone testified Jamison was arrested after refusing a field sobriety test and was taken to the police department for a breathalyzer test. (R. pp. 18-20). He indicated Jamison did not take the breathalyzer test in the allotted time and was then taken to Lexington Medical Center for the drawing of blood samples. (R. pp. 21-22). He testified a lab technician drew two vials of Jamison's blood and one vial was placed in Jamison's shirt pocket. (R. p. 22). Officer Stone stated Jamison did not request an independent blood test to his knowledge. (R. p. 23). He noted he then took Jamison to the detention center, advised the commanding officer about the blood sample, and left. (R. pp. 23-24). He testified Jamison did not request additional testing on the way to the

detention center or during booking. (R. pp. 23-24; p. 25). He further indicated he explained to Jamison he would receive a blood sample for testing while at the hospital. (R. p. 26).

Sergeant Marzol confirmed Jamison refused a breathalyzer test and was then transported to the hospital. (R. pp. 34-36; p. 755). He noted the implied consent form presented to Jamison in the breathalyzer testing room notified Jamison of the availability of additional testing. (R. pp. 33-34). Sergeant Marzol testified he witnessed the drawing of two vials of blood from Jamison and observed one vial being given to him. (R. p. 38). He indicated he could not recall Jamison requesting additional testing at any time he was in contact with him. (R. pp. 38-39).

Kristen Marzol, the clinic coordinator at the Lexington County Detention Center, also testified during the suppression hearing. (R. p. 46). She noted Cheryl Smith, a former nurse, was working in the detention center clinic on August 1, 2008. (R. p. 48). Marzol stated Smith made a notation indicating she placed Jamison's blood sample in a locked refrigerator, which was consistent with the policies in place at the time. (R. pp. 49-51). Marzol testified she was subsequently unable to locate the blood sample and had no idea what happened to it. (R. p. 52). She indicated inmates must specifically request blood samples or medications when they are released and those items cannot be released to anyone but the inmate under medical privacy rules. (R. pp. 52-54). She further testified nurses were the only people with access to the blood sample. (R. pp. 87-88).

Additionally, Jamison testified in his own defense during the hearing. (R. p. 62). He testified he was notified of the availability of an independent test by Officer Stone and requested testing from him. (R. pp. 62-63). He stated Officer Stone gave his blood sample to a jailor, and he was never given an opportunity to go to a different hospital or

doctor. (R. pp. 63-64). He claimed he asked for his blood sample the day he was released and the staff informed him they had no idea what he was talking about. (R. p. 66). He indicated he asked Officer Stone for independent testing multiple times and was ignored. (R. pp. 68-69). He also testified he requested his blood sample on three separate occasions, including at the time of his release, and did not receive the blood sample. (R. pp. 72-73).

Jamison's wife, Kristy Jamison, also testified during the hearing. (R. p. 76). She stated she went to the jail to pick up Jamison's blood sample and never received it. (R. pp. 79-80). She indicated she was informed there was no blood. (R. p. 81). She further testified Jamison asked for his blood sample on multiple occasions and was told there was no blood. (R. p. 82; p. 86).

At the conclusion of the hearing, Jamison argued the blood test results should be suppressed because he was denied affirmative assistance in acquiring independent testing and was denied an opportunity to obtain testing when the jail staff lost his blood sample. (R. pp. 88-96). After hearing argument from both sides, the trial judge denied the motion. (R. pp. 103-105).

Subsequently, during trial, the officers and multiple witnesses testified regarding the circumstances of the incident, the condition Jamison was in at the time, and Jamison's refusal to submit to a field sobriety test or a breathalyzer test. Additionally, Brandon Landrum, an analyst at S.L.E.D. and an expert in forensic toxicology, testified regarding his analysis of Jamison's blood sample over Jamison's objection. (R. p. 473; p. 481; pp. 486-487). Landrum indicated he performed a blood alcohol analysis on Jamison's blood specimen. (R. p. 488). The testing revealed Jamison's blood sample had a 0.225 percent weight per volume of ethanol. (R. p. 491). Landrum testified an average male would be

required to drink approximately ten beers in an hour to reach the level of blood alcohol concentration present in Jamison's blood sample. (R. p. 495). He further indicated Jamison would have experienced significant impairment based on the test results. (R. pp. 496-497).

At the conclusion of trial, the jury convicted Jamison as indicted. (R. p. 739).

During sentencing, Jamison apologized to Gamble's family, stating:

I would never, ever intentionally hurt anyone, and I am so sorry for what happened that night. . . . I have a son as well, and I don't know what I would do if a travesty or tragedy ever happened like that night. . . . There is nothing I can do, but you better believe if there is one thing I could change in this world with my life it would be that night. I have – I'm sorry.

(R. p. 742). The trial judge then sentenced Jamison to a term of imprisonment of eighteen years and fined him \$10,000. (R. p. 745). Jamison subsequently appealed his conviction.

On appeal, the Court of Appeals affirmed Jamison's conviction. State v. Jamison, Op. No. 2012-UP-58 (S.C. Ct. App. filed Feb. 1, 2012). In reaching that decision, the Court of Appeals held: "[T]he State denied Jamison a reasonable opportunity to obtain testing of his own blood sample, and therefore the trial court erred in admitting the results of testing the State performed on its sample of Jamison's blood." Id. However, the Court of Appeals concluded any error was harmless based on the other evidence presented conclusively establishing Jamison's guilt and affirmed Jamison's conviction on that basis. Id.

ARGUMENT

Did the Court of Appeals err in holding the trial judge improperly admitted the State's blood test results after the State allegedly denied Jamison a reasonable opportunity to obtain independent testing where Jamison was provided with a reasonable opportunity to obtain independent testing when he was taken to a medical facility, placed in direct contact with medical personnel capable of performing independent testing, and had a blood sample drawn but that blood sample was not tested at the medical facility and was subsequently lost after Jamison was booked into a detention center?

In affirming Jamison's conviction, the Court of Appeals determined the trial judge erred in admitting the State's test results regarding Jamison's blood alcohol concentration because the State allegedly denied Jamison a reasonable opportunity to obtain independent testing. To the contrary, Jamison was provided with a reasonable opportunity to obtain independent testing after he refused to submit to a breathalyzer test because law enforcement officers transported Jamison to a medical facility where blood tests were performed, placed him in direct contact with medical personnel capable of performing an independent test to determine his blood alcohol concentration, and provided him with his own sample of his blood. The fact that Jamison's blood sample was subsequently lost did not automatically negate his reasonable opportunity and, instead, created a factual question for the jury to resolve as to whether the subsequent actions of law enforcement personnel had the effect of denying Jamison a reasonable opportunity to obtain independent testing. The trial judge properly admitted the State's blood test results, and the Court of Appeals erroneously determined the trial judge erred in admitting that evidence. The State's petition for a writ of certiorari should be granted.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The decision to admit or exclude evidence rests in the sound discretion of the trial judge and will not be reversed on appeal

absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000). “A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.” State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995).

Following an arrest, a person suspected of felony driving under the influence is required to submit to chemical testing for the purpose of determining if alcohol or other substances are present in the suspect’s body. S.C. Code Ann. § 56-5-2946 (2006). Notwithstanding any mandatory testing by the State, a suspect is also permitted to obtain independent testing to separately verify the results of any testing undertaken by the State to determine the suspect’s blood alcohol concentration. Id. However, the duties that law enforcement officers must undertake to aid a suspect in obtaining independent testing are directly linked to the suspect’s decision to submit or not submit to a breathalyzer test. City of Columbia v. Ervin, 330 S.C. 516, 520, 500 S.E.2d 483, 485 (1998).

Critically, if the suspect submits to breathalyzer testing, law enforcement officers are required to provide **affirmative assistance** to the suspect in obtaining an independent blood or chemical test. “Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which provides blood tests to determine a person’s alcohol concentration.” S.C. Code Ann. § 56-5-2950(a) (2006). However, if the suspect refuses to take a breathalyzer test, the arresting officer no longer has any duty to provide affirmative assistance to the suspect and, instead, has the reduced duty to provide a **reasonable opportunity** to obtain independent testing. State v. Masters, 308 S.C. 433, 435, 418 S.E.2d 552, 553 (1992). What constitutes a reasonable

opportunity depends on the individual circumstances of the suspect's case, and this duty can potentially be satisfied by simply providing the suspect with a phone book. Ervin, 330 S.C. at 521, 500 S.E.2d at 485; see also State v. Sullivan, 310 S.C. 311, 316, 426 S.E.2d 766, 769 (1993) (finding the "reasonable opportunity" requirement can be met if the defendant is "afforded ample time and the means by which to make arrangements for independent testing"). Critically though, a reasonable opportunity is **not** equivalent to affirmative assistance and does **not** place upon the arresting officer an "affirmative duty to procure a blood test for a defendant who has not taken a breathalyzer test." Ervin, 330 S.C. at 521, 500 S.E.2d at 485.

Most notably, in State v. Wickenhauser, 309 S.C. 377, 379, 423 S.E.2d 344, 346 (1992), this Court considered whether the actions of law enforcement were sufficient to provide a person suspected of driving under the influence with reasonable assistance in obtaining independent testing.⁶ In that case, Wickenhauser was arrested for driving under the influence and submitted to a breathalyzer test, which meant the arresting officer owed Wickenhauser a higher degree of aid in obtaining independent testing due to Wickenhauser's willing submission to breathalyzer testing. Id. at 378, 423 S.E.2d at 345. After the test was administered, Wickenhauser requested an independent blood test, was taken to Lexington Medical Center, had two blood samples drawn, and was provided with one of the samples. Id. at 378-379, 423 S.E.2d at 345. Subsequently, he was

⁶ At the time Wickenhauser was decided, the relevant statutory provision required the arresting officer in felony driving under the influence cases to "provide **reasonable** assistance to the person to contact a qualified person to conduct additional tests." S.C. Code Ann. §56-5-2950(a) (Supp. 1988) (emphasis added). That statutory provision was subsequently amended to require the arresting officer to "provide **affirmative** assistance to the person to contact a qualified person to conduct and obtain additional tests." S.C. Code Ann. § 56-5-2950(a) (2006) (emphasis added). Although the different versions of the statutory provision contrastingly refer to the assistance required to be provided as reasonable and affirmative, these two terms appear to be interchangeable and have notably been used interchangeably by our courts. See State v. Knighton, 334 S.C.125, 132, 512 S.E.2d 117, 120-121 (Ct. App. 1999) (applying "reasonable assistance" and "affirmative assistance" synonymously).

booked into the detention center. Id. at 379, 423 S.E.2d at 345. However, the booking receipt did not reflect a blood sample was taken from Wickenhauser, and the sample could not be located when it was requested two days later. Id. On appeal, this Court noted Wickenhauser underwent an independent blood test and took possession of a blood sample. Id. at 380, 423 S.E.2d at 346. For that reason, this Court concluded Wickenhauser received aid from the officers sufficient to satisfy their statutorily-required duty of providing reasonable assistance in obtaining an independent test. Id. Most importantly, this Court then further held: “Whether this assistance was subsequently negated by the acts of the law enforcement [personnel] presented an issue of fact for the determination of the jury.” Id. Thus, this Court’s decision in Wickhauser established that once law enforcement officers meet their duty of providing the required level of aid to a D.U.I. suspect in obtaining independent testing, any subsequent actions that potentially negate that aid merely create a question of fact for the jury and do not impact of the admissibility of the State’s test results. Id.

In Jamison’s case, Jamison refused to submit to a breathalyzer test, meaning the officers only owed him a duty to provide a reasonable opportunity to obtain independent testing and not the higher duty to provide affirmative assistance in obtaining that testing. After Jamison refused to submit to breathalyzer testing, the officers transported him to a hospital, placed him in direct contact with medical personnel capable of conducting independent testing of his blood alcohol level, and provided him with a blood sample that he could have had tested by the medical personnel at the hospital. Thus, Jamison was at a location where testing was conducted and in contact with independent parties capable of performing testing for him upon his request, meaning the officers’ actions likely constituted the provision of affirmative assistance to Jamison even though the officers

were not required to do so. See S.C. Code Ann. § 56-5-2950(a) (2006) (“Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which provides blood tests to determine a person’s alcohol concentration.”); see also Ervin, 330 S.C. at 521, 500 S.E.2d at 486 (“By transporting Ervin to [Richland Memorial Hospital], the arresting officer providing Ervin with more reasonable assistance than required since Ervin had refused to take the datamaster test.”).

Under those circumstances, Jamison received a reasonable opportunity to obtain independent testing, but he elected not to avail himself of that particular opportunity at the time and, instead, apparently decided to wait to have his blood sample tested at some future date.⁷ However, based on the reduced duty owed to Jamison by the officers due to Jamison’s failure to submit to a breathalyzer test, the officers had no duty to actually procure a blood test for Jamison or to ensure Jamison received the testing of his choice at a time of his choosing. See State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) (finding Harris was not entitled to be assisted in obtaining an independent test after he refused to submit to a breathalyzer test). Instead, they were only required to provide Jamison with a reasonable opportunity to obtain independent testing and not any specific opportunity that Jamison might have subsequently desired.

Since Jamison was placed in direct contact with independent medical personnel capable of performing an independent test on his blood sample, Jamison unquestionably had an opportunity to obtain independent testing even though he did not take advantage

⁷ Significantly, the legislature did not appear to intend for blood samples to be drawn for the purposes of independent testing and then released into the custody of the suspect for him to test at some later time. Instead, the legislature instructed that S.L.E.D. was required to perform the testing on a suspect’s blood sample in the event the suspect could not obtain independent testing due to the independent tester’s failure or refusal to test a drawn sample. See S.C. Code Ann. § 56-5-2950(a) (2006) (“If the medical facility obtains the blood sample but refuses **or fails** to test the blood sample to determine the person’s alcohol concentration, SLED must test the blood sample and provide the results to the person and to the arresting officer.” (emphasis added)).

of it. Critically, the fact Appellant simply did not avail himself of an available opportunity did not mean an opportunity was not afforded to him, which was all he was entitled to based on his refusal to submit to a breathalyzer test. Cf. State v. Lewis, 266 S.C. 45, 49, 221 S.E.2d 524, 526 (1976) (“Lewis was afforded a reasonable opportunity to obtain a blood test but failed to use it. His due process rights, therefore, were not violated by the actions of the law enforcement officers.”). For this reason, the Court of Appeals erred in concluding Jamison did not have a reasonable opportunity to obtain independent testing.

Furthermore, just as in Wickenhauser, the fact that Jamison’s personal blood sample was subsequently lost did not impact whether he had already been provided with a reasonable opportunity to obtain independent testing. Instead, the fact Jamison’s sample was subsequently lost merely created a factual question for the jury to resolve as to whether the subsequent actions of law enforcement personnel negated Jamison’s reasonable opportunity without having any impact on the admissibility of the State’s test results during trial. See Wickenhauser, 309 S.C. at 380, 423 S.E.2d at 346 (“Whether this assistance was subsequently negated by the acts of the law enforcement [personnel] presented an issue of fact for the determination of the jury.”). However, in reaching its conclusion that the trial judge erred in admitting Jamison’s blood test results, the Court of Appeals ignored this Court’s holding in Wickenhauser. The Court of Appeals’ decision was, therefore, erroneous.

After Jamison refused to submit to breathalyzer testing, officers provided him with a reasonable opportunity to obtain independent testing by taking him to a hospital and placing him in direct contact with medical personnel capable of independently testing his blood alcohol concentration. Because the officers provided Jamison with a

reasonable opportunity to obtain independent testing, the fact Jamison's blood sample was subsequently lost after he was booked into the detention center merely created a factual question for the jury to resolve as to whether the loss of the sample negated Jamison's reasonable opportunity. The trial judge properly admitted the State's test results during trial, and the Court of Appeals erred in concluding otherwise. Because the decision of the Court of Appeals is inconsistent with this Court's decision in State v. Wickenhauser, this Court should grant the State's petition for a writ of certiorari, reverse the erroneous portion of the Court of Appeals' decision, and affirm Jamison's conviction after finding the trial judge did not abuse his discretion in admitting the State's blood test results.⁸

⁸ Notwithstanding the Court of Appeals' findings regarding the admissibility of the State's test results, the Court of Appeals correctly determined any error was harmless in light of the overwhelming evidence of Jamison's guilt independent of the State's blood test results. See State v. Wilson, 296 S.C. 73, 76, 370 S.E.2d 715, 716 (1988) (finding any error in the admission of blood test results was harmless because it was cumulative to other evidence of Wilson's intoxication); see also Ervin, 330 S.C. at 522, 500 S.E.2d at 486 ("[I]n light of the overwhelming evidence of his intoxication, Ervin was not prejudiced by the admission of his refusal to take the datamaster test."); State v. Degnan, 305 S.C. 369, 372, 409 S.E.2d 346, 348 (1991) ("In light of the overwhelming evidence of her intoxication, Degnan has shown no prejudice in admission of her refusal to submit to the breathalyzer.").

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted. In requesting this relief, counsel for Petitioner certifies a petition for rehearing was made and finally ruled upon by the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

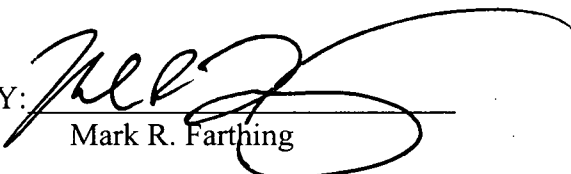
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ATTORNEYS FOR PETITIONER

April 9, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent/Petitioner,

vs.

ANDRA BYRON JAMISON,

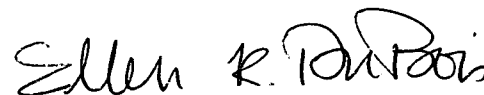
Petitioner/Respondent.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Respondent/Petitioner's Petition for Writ of Certiorari and Appendix on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
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Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 9th day of April, 2012.



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STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2009-GS-32-5283

RECEIVED

MAY - 2 2012

S.C. Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER,

v.

ANDRA JAMISON,

PETITIONER/RESPONDENT.

PETITIONER/RESPONDENT'S PETITION FOR A WRIT OF CERTIORARI

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**DEFENDANT'S
EXHIBIT**

#3 4-20-18
2014CP32-2548

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner/Respondent hereby certifies that a petition for rehearing was made and was finally ruled upon by the South Carolina Court of Appeals.

QUESTION PRESENTED

I.

Whether the Court of Appeals ignored relevant precedent from this Court in determining that the State admitted overwhelming evidence that the Petitioner/Respondent was intoxicated?

STATEMENT OF THE CASE

The Petitioner/Respondent Andra Jamison was indicted in Lexington County for felony driving under the influence resulting in death. On October 12, 2009, the Petitioner/Respondent proceeded to trial by jury on this charge. At the conclusion of the trial, the Petitioner/Respondent was found guilty as charged. The Honorable R. Knox McMahon, presiding circuit judge, sentenced the Petitioner/Respondent to eighteen years' imprisonment.

The Petitioner/Respondent timely filed an appeal to the South Carolina Court of Appeals. In an unpublished opinion, the Court of Appeals affirmed the Petitioner/Respondent's conviction and sentence. State v. Jamison, Op. No. 2012-UP-58 (S.C. Ct. App. filed Feb. 1, 2012). Both the Petitioner/Respondent and the Respondent/Petitioner petitioned the Court of Appeals for rehearing. The Court of Appeals denied both petitions for rehearing.

The Petitioner/Respondent's petition for rehearing was denied by the Court of Appeals. The Petitioner now seeks a writ of certiorari.

ARGUMENT

Standard of Review

“In criminal cases, the appellate court sits to review errors of law only.” State v. Baccus, 67 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “This Court is bound by the trial court’s factual findings unless they are clearly erroneous.” Id.

I. The Court of Appeals ignored relevant decisions of this Court when it found that the evidence that the Petitioner/Respondent was intoxicated was overwhelming.

A. How the Issue Arose Below

In the late evening hours of July 31, 2008, the Petitioner/Respondent’s vehicle collided with a bicycle ridden by the decedent Jessie Gamble. The decedent would not survive the injuries he received from the accident. Several witnesses testified that the Petitioner/Respondent was unsteady on his feet, appeared intoxicated, and slurred his speech. See generally App. p. 134, line 21-p. 135, line 1 (Officer Michael Stone); p. 229, lines 11-24 (Officer Adam Smith); p. 257, lines 4-8 (Sergeant Robert Marzol); p. 553, line 17-p. 554, line 12 (paramedic Daniel Boyce); p. 647, lines 6-12 (Randall Fitzgerald). The Petitioner/Respondent refused to take field sobriety tests at the scene. App. p. 139, lines 12-25. A beer bottle was found outside the Petitioner/Respondent’s vehicle and several unopened beer bottles were found inside the vehicle. App. p. 374, line 6-p. 375, line 7; p. 377, line 15-p. 378, line 3. However, there were no witnesses at trial who testified that they saw the Petitioner/Respondent actually drink any alcohol prior to or after the accident.

The Petitioner/Respondent was then arrested at the scene and taken to the Cayce Police Department for the administration of a breathalyzer test. App. p. 268, lines 14-19. The Petitioner/Respondent did not take the test in the time provided, so his failure to take the test was

written up as a refusal. App. p. 280, lines 8-18. The Petitioner/Respondent was then taken to the Lexington Medical Center so that his blood could be drawn. App. p. 282, line 5-p. 283, line 10. While at the hospital, the Petitioner/Respondent told Doctor Stephen Hayes, who was there to oversee the blood draw, that “he was there for a blood test.” App. p. 382, line 8. Steven Wickers, a phlebotomist, drew two vials of blood from the Petitioner/Respondent and gave them to the arresting officer. App. p. 395, lines 2-11. The Petitioner/Respondent was then transported to the Lexington County Detention Center and the vial of blood that had been provided to him for his own use and testing was lost by the jail prior to his release. App. p. 427, lines 1-13. The State tested the vial of blood that it obtained at the hospital. The Petitioner/Respondent’s blood alcohol content was calculated to be “0.225 percent weight per volume of ethanol.” App. p. 496, line 14.

At trial, the Petitioner/Respondent argued that the loss of his blood by the Lexington County Detention Center resulted in the deprivation of his right to a reasonable opportunity to have his blood tested.¹ App. p. 96, line 11-p. 98, line 20; see also p. 104, line 11-p. 105, line 13. Accordingly, the Petitioner/Respondent argued that the blood test results obtained by the State should be suppressed. The trial court denied the motion. App. p. 108, lines 20-21.

On appeal, the Court of Appeals found that “the State denied Jamison a reasonable opportunity to obtain testing of his own blood sample, and therefore the trial court erred in admitting the results of testing the State performed on its sample of Jamison’s blood.” State v. Jamison, *supra*; App. p. 832. However, the Court of Appeals found that the error was harmless and affirmed the Petitioner/Respondent’s conviction and sentence. Id.; App. p. 832. The Petitioner/Respondent subsequently filed a petition for rehearing arguing that the evidence was

¹ This argument was predicated on S.C. Code Ann. §56-5-2945(a), this Court’s decision in State v. Lewis, 266 S.C. 45, 221 S.E.2d 524 (1976), and Lewis’s progeny.

not overwhelming and requesting factual findings as to what evidence the Court of Appeals found to be overwhelming. App. pp. 841-847. This petition was denied. App. pp. 848-849. The Petitioner/Respondent now contends that the Court of Appeals erred in finding evidence of the Petitioner/Respondent's guilt overwhelming.²

B. Discussion

"To warrant reversal based on the wrongful admission of evidence, the complaining party must prove resulting prejudice." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). "Prejudice occurs when there is a reasonable probability the wrongly admitted evidence influenced the jury's verdict." Id. "[A]n insubstantial error not affecting the result of the trial is harmless where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.'" State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) (quoting State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989)).

As detailed above, the State admitted testimony from several witnesses that the Petitioner/Respondent appeared intoxicated at the scene. On appeal, the Respondent/Petitioner argued, and the Court of Appeals agreed, that this evidence was overwhelming evidence that the Petitioner/Respondent was intoxicated at the time of the accident. Compare App. p. 814 ("Multiple witnesses, including the responding officers, bystanders, and paramedics, testified Appellant was confused, slurred his speech, smelled of alcohol, was unsteady on his feet, and appeared intoxicated following the accident") with Jamison, *supra*; App. p. 832 ("we find the error to be harmless"). Based on this Court's precedents, which will be discussed in detail below, witness testimony that a defendant appeared intoxicated is not overwhelming evidence of

² The Petitioner/Respondent does not challenge the Court of Appeals' finding that the trial court erred in failing to suppress the blood test results. The Respondent/Petitioner, however, has filed a certiorari petition contesting that finding. The Petitioner/Respondent's response to this argument will be made in its Return to the Respondent/Petitioner's certiorari petition.

guilt. Accordingly, the Petitioner/Respondent respectfully requests that this Court grant certiorari to review the Court of Appeals' failure to follow this Court's decisions addressing harmless error in the context of a DUI case.

The charge of felony DUI has several elements:

A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony driving under the influence.

S.C. Code Ann. §56-5-2945(A). Fundamentally, as an element of the crime, the State must prove beyond a reasonable doubt that the defendant drove a vehicle while under the influence of alcohol or drugs. This burden of proof is no different in a felony DUI case than in any other driving under the influence charge. See generally S.C. Code Ann. §56-5-2930(A) (setting forth the requirements for the offense of driving under the influence). Similarly, the Petitioner/Respondent's right to a reasonable opportunity to test his blood under S.C. Code Ann. §56-5-2950(a) in a felony DUI case is the same as a defendant's right to a reasonable opportunity to test his blood who is charged with violating §56-5-2930.

By the Petitioner/Respondent's count, there are five prior decisions by this Court that have addressed an alleged violation of a defendant's to a blood test pursuant to §56-5-2950(a) that either reversed the defendant's conviction and discussed the evidence of intoxication or found there to be overwhelming evidence of intoxication: State v. Wilson, 296 S.C. 73, 370 S.E.2d 715 (1988) (finding overwhelming evidence of intoxication); State v. Degnan, 305 S.C. 369, 409 S.E.2d 346 (1991) (same); City of Columbia v. Ervin, 330 S.C. 516, 500 S.E.2d 483 (1998) (same); State v. Pipkin, 294 S.C. 336, 364 S.E.2d 464 (1988) (reversing a defendant's

conviction); State v. Masters, 308 S.C. 433, 418 S.E.2d 552 (1992) (same). The Petitioner/Respondent submits that a comprehensive review of each of these decisions reveals that witness testimony that a defendant who appears intoxicated is not sufficient to establish overwhelming evidence of intoxication.

In Wilson, this Court found overwhelming evidence of intoxication because the defendant admitted to the police “that he had consumed a half pint of Vodka.” 296 S.C. at 74, 370 S.E.2d 715. Unlike the Petitioner/Respondent, the defendant had also taken a breathalyzer test “which registered a blood alcohol content of .28.” Id. This Court found that the blood test results were clearly “cumulative to the other evidence” of intoxication. Id. at 76, 370 S.E.2d at 716.

In Degnan, this Court found overwhelming evidence of intoxication because the defendant “admitted drinking five or six beers, was unable to complete the alphabet, was dazed, had trouble walking and had to lean on the car.” 305 S.C. at 372, 409 S.E.2d at 348. This Court found that this evidence prevented the defendant from showing “prejudice in admission of her refusal to submit to the breathalyzer.” Id.

In Ervin, the defendant was exceedingly belligerent following his arrest because he “cursed the officers, made verbal threats towards them, and tried to kick the window out of the patrol car.” City of Columbia v. Ervin, 325 S.C. 644, 646, 482 S.E.2d 781, 782 (Ct. App. 1997). Additionally, the defendant continued to be abusive towards the arresting officer when he was transported to the hospital. City of Columbia v. Ervin, 330 S.C. 516, 522, 500 S.E.2d 483, 486 (1998) (footnote 6) (“A RMH nurse testified Ervin was verbally and physically abusive to the arresting officer”). This Court found that this evidence constituted “overwhelming evidence of his intoxication.” Id. at 522, 500 S.E.2d at 486.

Unlike Wilson, Degnan, and Ervin, this Court did not find overwhelming evidence of intoxication in Pipkin even though the State admitted evidence that the defendant “failed a sobriety test” and that the arresting officer “smelled alcohol on Pipkin’s breath and noticed a slurring of his speech.” 294 S.C. at 337, 364 S.E.2d at 465. Despite this evidence, this Court found that the violation of the defendant’s rights “mandate a suppression of both the breathalyzer and blood test results.” Id. at 338, 364 S.E.2d at 465.

In Masters, this Court overturned a conviction even though “the officer observed that Masters was unsteady on his feet and ‘glassy-eyed,’ smelled strongly of alcohol, and spoke in a very slurred and disjointed manner.” 308 S.C. at 436, 418 S.E.2d at 554 (Moore, J., dissenting). Despite this evidence of intoxication, this Court found that the deprivation of the defendant’s right to a blood test required “dismiss[al of] the charges against the defendant.” Id. at 435, 418 S.E.2d at 553.

Consequently, the Petitioner/Respondent submits that this Court has drawn a line of demarcation as to what evidence must be admitted to demonstrate overwhelming evidence of intoxication in DUI cases. This Court’s precedents make it clear that lay witness opinion testimony that a defendant is intoxicated is insufficient to establish overwhelming evidence of guilt; instead, there must be more extensive evidence of intoxication. In the decisions finding overwhelming evidence of intoxication, there is evidence more substantial than witness testimony that the defendant appeared to be intoxicated. In Wilson and Degnan, the defendant admitted to drinking alcohol to the arresting officer. In Ervin, the defendant acted in an extremely belligerent manner.

This Court’s decisions in Pipkin and Masters further establish the demarcation line. In both of those decisions, the arresting officer noticed slurred speech and an odor of alcohol about

the defendant, in addition to the failing of a sobriety test by the defendant in Pipkin and an unsteady gait by the defendant in Masters. In other words, the fact that witnesses, even trained police officers, believe an individual is intoxicated is simply not enough to constitute overwhelming evidence of intoxication.

As a final consideration, the demarcation line is especially prudent in a DUI case. In DUI cases, the blood alcohol content can determine whether or not a defendant can be charged with violating S.C. Code Ann. §56-5-2933.³ Additional penalties are prescribed for defendants who have higher levels of intoxication than other defendants. See S.C. Code Ann. §§56-5-2930(A); 2933(A). The jury is required to make findings of the degree of increased intoxication. See S.C. Code Ann. §§56-5-2930(L); 2933(L). Whether or not an individual is intoxicated is a technical inquiry that cannot reasonably be conclusively established by lay witness opinion testimony. Finding witness testimony that a defendant appears intoxicated to be overwhelming evidence of guilt would be akin to finding witness testimony that a quantity of drugs appeared to be over a certain weight threshold was overwhelming evidence of guilt. This Court would not permit such testimony to serve as overwhelming evidence in a drug case. The Petitioner/Respondent respectfully submits that this Court should not allow the Court of Appeals to do so in a DUI case.

The Petitioner/Respondent's case is on the Pipkin/Masters side of the demarcation line. The Petitioner/Respondent did not admit to drinking alcohol. Furthermore, the Petitioner/Respondent was not belligerent, did not curse at the officers, and appeared to be in complete control of his faculties in the video evidence admitted at trial.⁴ There is no testimony from anyone who actually saw the Petitioner/Respondent drink alcohol. There was no evidence

³ Technically, a violation of §56-5-2933 is termed "driving with an unlawful alcohol concentration," not driving under the influence. However, the provision criminalizes driving a motor vehicle with a blood alcohol content of .08 or greater.

⁴ These videos were filed with the Court of Appeals. See App. p. 5.

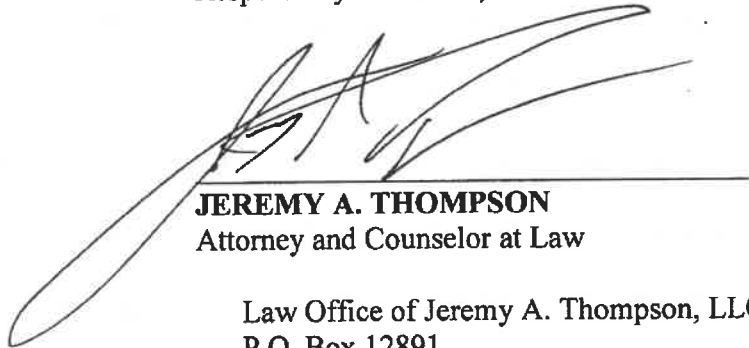
admitted whatsoever that rose to the level of intoxication present in Wilson, Degnan, or Ervin. Stated differently, evidence that a defendant “failed a sobriety test” and that the officer “smelled alcohol on [the defendant’s] breath and noticed a slurring of his speech,” Pipkin, *supra*, at 337, 364 S.E.2d at 465, is indistinguishable from evidence that a defendant “was confused, slurred his speech, smelled of alcohol, was unsteady on his feet, and appeared intoxicated following the accident.” App. p. 814 (Final Brief of Respondent). Since the latter evidence was the only evidence of intoxication, aside from the excluded blood test results, the Court of Appeals’ decision is in clear conflict with Pipkin, Masters, Wilson, Degnan, and Ervin inasmuch as it found that the evidence of intoxication against the Petitioner/Respondent was overwhelming. The State’s lay witness opinion testimony that the Petitioner/Respondent appeared intoxicated did not “conclusively,” Bailey, *supra*, at 5, 377 S.E.2d at 584, establish that the Petitioner/Respondent “while under the influence of alcohol ... [drove] a motor vehicle.” S.C. Code Ann. §56-5-2945(A).⁵ The Court of Appeals’ opinion to the contrary is unmistakably erroneous. The Petitioner/Respondent respectfully submits that certiorari is warranted to review this portion of the Court of Appeals’ decision.

⁵ While an empty beer bottle was found outside the Petitioner/Respondent’s vehicle, no one actually saw the Petitioner/Respondent drink from the bottle. Additionally, assuming that the Petitioner/Respondent drank the beer prior to the collision, this fact would not constitute overwhelming evidence of intoxication.

CONCLUSION

For the reasons stated, the Petitioner/Respondent asks this Court to grant the petition and to allow full briefing on these issues.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. A. Thompson', is written over a horizontal line.

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**ATTORNEY FOR
PETITIONER/RESPONDENT.**

This 2nd day of May, 2012.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2009-GS-32-5283

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MAY - 2 2012

S.C. Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER,

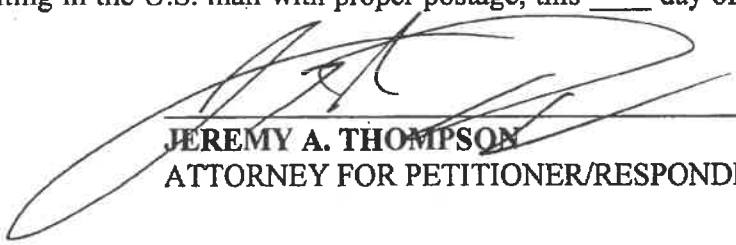
v.

ANDRA JAMISON,

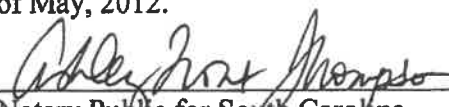
PETITIONER/RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Petitioner/Respondent's Petition for a Writ of Certiorari in the above-entitled case has been served upon opposing counsel, Mark R. Farthing, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 2nd day of May, 2012.


JEREMY A. THOMPSON
ATTORNEY FOR PETITIONER/RESPONDENT

SWORN TO BEFORE me this 2nd day
of May, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 2/22/2018



LAW OFFICE OF
JEREMY A. THOMPSON
LLC

May 2, 2012

VIA HAND-DELIVERY

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S.C. Supreme Court

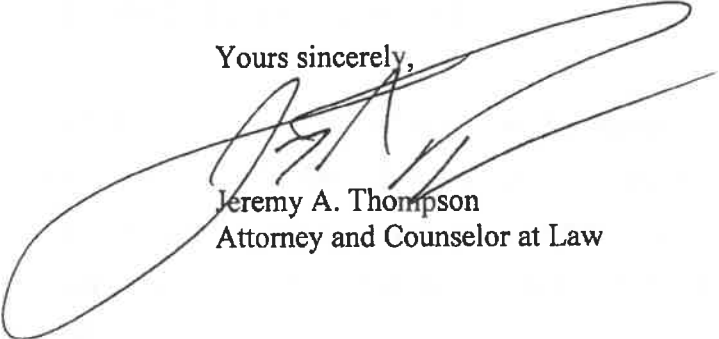
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: State of South Carolina v. Andra Jamison; 09-GS-32-5283

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the Petition for a Writ of Certiorari in the above-captioned matter. I would appreciate your filing the original and six copies, clocking the extra copy, and returning the extra copy to me. The State has already filed the Appendix in this case. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,


Jeremy A. Thompson
Attorney and Counselor at Law

JAT/
Enclosures

cc: The Honorable Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals (w/ enclosure)
Mark Farthing, Assistant Attorney General (w/ enclosure)
Andra Jamison, #337461 (w/ enclosure)
Mary Jamison (w/ enclosure)

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable R. Knox McMahon, Circuit Court Judge

RECEIVED
MAY 14 2012

THE STATE,

S.C. Supreme Court
Respondent/Petitioner,

vs.

ANDRA BYRON JAMISON,

Petitioner/Respondent.

**RETURN TO PETITIONER/RESPONDENT'S
PETITION FOR WRIT OF CERTIORARI**

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STATEMENT OF ISSUE ON CERTIORARI

The Court of Appeals properly determined any error resulting from the admission of the State's blood test results was harmless because the other evidence presented during trial conclusively established Jamison's guilt for the offense of felony driving under the influence resulting in a death.

STATEMENT OF THE CASE

Procedural History

Petitioner/Respondent Andra Byron Jamison was arrested following an investigation into a vehicle and bicycle collision resulting in a fatality. In January of 2009, the Lexington County grand jury indicted Jamison for one count of felony driving under the influence resulting in a death. On October 12, 2009, a jury trial was commenced in the Lexington County court of general sessions with the Honorable R. Knox McMahon, circuit court judge, presiding. At the conclusion of trial, the jury convicted Jamison as indicted. The trial judge sentenced Jamison to a term of imprisonment of eighteen years and a \$10,000 fine. Jamison then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals unanimously affirmed Jamison's conviction. State v. Jamison, Op. No. 2012-UP-58 (S.C. Ct. App. filed Feb. 1, 2012). Both Jamison and the State petitioned the Court of Appeals for rehearing, and the petitions were denied. Following the Court of Appeals' decision, both the State and Jamison filed petitions for a writ of certiorari in the Supreme Court. The State then filed this return to Jamison's petition.

Factual History

Late on the evening of July 31, 2008, Shonda Cheeks was driving across the Blossom Street Bridge on her way home to West Columbia when she observed a vehicle on the other side of the road hit something. (R. pp. 646-648). Cheeks saw the vehicle veer to the right and drift outside of its lane of travel.¹ (R. pp. 648-650). Cheeks then

¹ During trial, Cheeks testified she was "positive" Petitioner/Respondent Andra Byron Jamison's vehicle drifted to the right and was not in its own lane of travel. (R. pp. 649-650).

observed someone in the roadway and realized the vehicle struck a person. (R. pp. 650-651).

Shortly thereafter, Todd Fitzgerald was driving down Knox Abbott Drive while returning to his apartment in Columbia. (R. p. 634). As he approached the Blossom Street Bridge, he noticed a shoe, then a bicycle, and then a person lying in the roadway. (R. p. 634). He immediately stopped his vehicle to attempt to offer assistance. (R. p. 634). Several other vehicles also stopped to help, and one of those individuals called 911. (R. p. 635). Fitzgerald surveyed the scene to see if there were any other vehicles or witnesses in the vicinity and observed a vehicle stopped fifty yards down the bridge with its passenger tires resting on the sidewalk. (R. p. 635; p. 644). Petitioner/Respondent Andra Byron Jamison was outside of the stopped vehicle and appeared to be checking the front passenger side for damage. (R. p. 635; pp. 637-638).

Fitzgerald approached Jamison and asked him if he hit the victim lying in the roadway. (R. p. 635). Jamison responded, "Who?" (R. pp. 635-636). Fitzgerald pointed towards the victim, and Jamison asked, "Did I hit him?" (R. pp. 636-637). Fitzgerald noted Jamison was very disoriented and appeared intoxicated. (R. p. 637). Jamison appeared confused, smelled of alcohol, was staggering, and had glassy eyes. (R. p. 637). Fitzgerald believed Jamison was too intoxicated to tell what happened, and he directed law enforcement to Jamison after they arrived on the scene. (R. p. 638).

Officer Michael Stone of the Cayce Police Department was on patrol around 11:25 p.m. when he noticed traffic backing up on the Blossom Street Bridge. (R. p. 123; pp. 126-127). As he approached the scene, he observed a person lying in the roadway with a large quantity of blood coming from his head. (R. pp. 127-128). Officer Stone then cleared the crowd and radioed in for assistance. (R. p. 128). Several other officers

and medical personnel arrived on the scene within minutes. (R. p. 128; p. 530). Officer Stone discovered Jamison was the driver of the vehicle that struck the victim, who was later identified as nineteen-year-old Jesse Gamble. (R. p. 128; p. 185; p. 198). Officer Stone then approached Jamison and asked him what occurred. (R. p. 128). Jamison responded he did not know what happened and did not mean to hurt anyone. (R. p. 128). Officer Stone noticed Jamison was unsteady on his feet, was slurring his speech, and had the smell of alcohol on his breath and about his person. (R. pp. 129-130). He then placed Jamison under investigative detention. (R. p. 130).

Meanwhile, paramedics Barrett Raymond and Daniel Boyce responded to the scene of the collision. (R. p. 530; p. 541). They observed Gamble lying in the roadway and attended to him. (R. p. 530; p. 541). Gamble was unresponsive, had a broken leg, and his pupils were fixed, but he was breathing and had a pulse. (R. pp. 531-532). Boyce also checked on Jamison, who was sitting on the curb in a sulking position, and spoke with him to gather information about the collision. (R. pp. 542-543). As he spoke with Jamison, Boyce noticed Jamison appeared intoxicated and smelled of alcohol. (R. p. 544). Boyce had difficulty understanding Jamison because Jamison's speech was slurred, but Boyce heard Jamison state he thought he hit a garbage can. (R. p. 543). The paramedics then quickly transported Gamble to the hospital. (R. p. 533; p. 545).

Officer Adam Smith and Detective John Reese also responded to the scene. (R. p. 215; pp. 319-320). Officer Smith observed Gamble in the roadway with very severe injuries. (R. pp. 216-217). While on the scene, he heard Jamison ask several witnesses if he hurt someone or did something wrong. (R. p. 220). Officer Smith noticed Jamison's vehicle was damaged, his speech was slurred, he had a strong odor of alcohol on his breath and person, and he was unsteady on his feet. (R. p. 224). Detective Reese

observed Gamble, bicycle parts, a shoe, and a sock lying in the roadway. (R. pp. 319-321). He inspected Jamison's van, which was located farther down the bridge, and noticed significant damage. (R. p. 323). The hood of the vehicle was dented in, the windshield was cracked and damaged, a front lens was damaged, and there was a long scratch on the passenger side.² (R. pp. 323-324). He also discovered Gamble's bicycle was severely damaged, and he found a sock, a shoe, and some hair in the roadway. (R. pp. 324-325). While examining Jamison's vehicle, Detective Reese located a Killian's Red beer bottle underneath the van next to a tire.³ (R. p. 362; p. 369). Inside of the vehicle, Detective Reese found two twelve-packs of Killian's Red beer, with one package open and missing several bottles. (R. pp. 371-372).

Sergeant Robert Marzol arrived on the scene and spoke to Jamison with Officer Stone. (R. p. 131; p. 244; p. 253). Sergeant Marzol informed Jamison of his rights. (R. p. 131; p. 134; pp. 253-254; p. 258). He noticed Jamison was calm, was unsteady on his feet, and smelled strongly of alcohol. (R. p. 257). Sergeant Marzol offered Jamison an opportunity to perform field sobriety tests, and Jamison refused, stating he would not do anything without speaking to an attorney.⁴ (R. p. 131; p. 134; pp. 256-257). Jamison was then arrested and transported to the Cayce Police Department. (R. p. 135; pp. 257-259).

On the way to the police department, Jamison stated he did not know what was going on and did not mean to hurt anyone, and he asked why he was under arrest. (R. p. 135). Once they arrived, Jamison was taken to the breathalyzer testing room, and Sergeant Marzol began administering the test around 12:30 a.m. (R. p. 136; pp. 264-

² The damage suggested Gamble's head may have been knocked into the windshield. (R. p. 323).

³ The beer bottle found underneath Jamison's van had moisture on it. (R. p. 373).

⁴ The officers recorded their interaction with Appellant using the in-dash camera from another officer's vehicle, and the recording was introduced during the trial. (R. p. 134; p. 223; State's Ex. #49).

265). He informed Jamison of his rights, entered his information into the testing machine, and reviewed an implied consent form with Jamison. (R. p. 137; p. 265). Relying on the implied consent form, Sergeant Marzol informed Jamison he was required to submit to some form of chemical testing, his refusal or obstruction of testing could be used against him, and he had “the right to have a qualified person of [his] own choosing to conduct additional independent tests at [his] own expense, and the officer upon request must provide affirmative assistance.” (R. pp. 267-268). Jamison then refused to sign the implied consent form, insisting he did not know what was going on and wanted an attorney. (R. p. 137; pp. 268). The officers then observed Jamison for the statutorily-required period of twenty minutes before allowing him an opportunity to blow into the breathalyzer testing machine. (R. p. 137; p. 274). During this period, Jamison continued to slur his speech, smelled of alcohol, and was unsteady while walking or standing. (R. p. 270). After the observation period expired, Jamison continued to state he did not know what was going on and did not take the breathalyzer test.⁵ (R. pp. 138-139). The testing machine registered a refusal after two minutes, and Jamison refused to sign the refusal ticket. (R. p. 139; pp. 274-276; p. 755).

Jamison was then transported to Lexington Medical Center for the drawing of blood samples, and they arrived around 1:30 a.m. (R. pp. 142-143; pp. 277-278). The officers directed a doctor to withdraw blood samples from Jamison, and two vials of Jamison’s blood were drawn by a phlebotomist. (R. pp. 143-144; p. 278; p. 387). The phlebotomist explained to Jamison and the officers he was going to draw two vials and give one to the officers and one to Jamison for his own personal testing. (R. p. 387). The

⁵ The observation period was recorded, and the recording was introduced during trial. (R. pp. 264-265; State’s Ex. #50).

vials were properly drawn, sealed, and labeled. (R. p. 390). The officers took one sample into evidence, and Officer Stone placed the other sample into Jamison's shirt pocket. (R. pp. 145-146; pp. 278-279).

Jamison was then transported to the Lexington County Detention Center. (R. p. 146). A corrections officer booked Jamison into the jail, and Officer Stone then transported the vial of blood taken into evidence to the police department. (R. pp. 146-147). Records at the detention center indicated the other blood sample, which had been given to Jamison, was collected by a nurse and placed in a locked refrigerator. (R. pp. 421-422). However, Jamison's booking sheet did not indicate a blood sample was taken from him, and the blood sample was subsequently lost. (R. p. 422; p. 430).

Meanwhile, Gamble was transported to Palmetto Richland Hospital and admitted shortly after midnight. (R. p. 185). Dr. Raymond Sweet, a neurosurgeon at the University of South Carolina School of Medicine, examined Gamble and discovered he was in a deep coma with a severe brain injury and spinal fractures. (R. p. 185; pp. 186-188). Due to the severity and extensiveness of the injuries, there were no available treatment options. (R. p. 190). Gamble was pronounced brain dead at 3:20 p.m. on August 1, 2008. (R. p. 193). Dr. Sweet determined the cause of death was severe traumatic blunt injury to the brain. (R. p. 193).

Subsequently, Sergeant Steven Breland and Corporal Charles Coats, who were members of the South Carolina Highway Patrol collision reconstruction team and experts in accident reconstruction, investigated the scene of the collision. (R. p. 552; p. 558; p. 561; p. 601; p. 607; p. 609). They discovered tire scuff marks on the curb and noted the damage to Gamble's bicycle indicated a significant impact. (R. pp. 571-572; p. 576). They also discovered red paint on the bumper of Jamison's van, which was consistent

with the red paint on the bicycle, and scuff marks on the front tire consistent with the scuff marks on the curb. (R. p. 412; p. 577; p. 580). Sergeant Breland concluded Jamison's van struck Gamble in the bicycle lane on Knox Abbott Drive and continued travelling on before running into the curb, leaving scuff marks. (R. p. 579). He noted Gamble was discovered approximately 164 feet from the point of impact, and his bicycle was located 150 feet from the point of impact. (R. p. 596). The officers noted the road was clear and straight with no visibility obstructions, and the posted speed limit was thirty-five miles per hour. (R. p. 581; p. 685). Corporal Coats estimated Jamison's speed was between forty-seven and fifty-seven miles per hour at the time of the collision. (R. pp. 621-622). Based on Gamble's location, he concluded Gamble was either thrown to that position or carried there by Jamison's van. (R. p. 624).

Subsequently, Jamison was indicted for felony driving under the influence resulting in a death, and he proceeded to trial. (R. pp. 764-765). Prior to trial, Jamison moved to suppress the admission of the test results from the blood alcohol concentration analysis, and the trial judge conducted a pre-trial hearing on Jamison's motion. (R. pp. 12-14). At the conclusion of the hearing, Jamison argued the blood test results should be suppressed because he was denied affirmative assistance in acquiring independent testing and was denied an opportunity to obtain testing when the jail staff lost his blood sample. (R. pp. 88-96). After hearing argument from both sides, the trial judge denied the motion. (R. pp. 103-105).

Subsequently, during trial, the officers and multiple witnesses testified regarding the circumstances of the incident, the condition Jamison was in at the time, and Jamison's refusal to submit to field sobriety tests or a breathalyzer test. Additionally, Brandon Landrum, an analyst at S.L.E.D. and an expert in forensic toxicology, testified regarding

his analysis of Jamison's blood sample over Jamison's objection. (R. p. 473; p. 481; pp. 486-487). Landrum indicated he performed a blood alcohol analysis on Jamison's blood specimen. (R. p. 488). The testing revealed Jamison's blood sample had a 0.225 percent weight per volume of ethanol. (R. p. 491). Landrum testified an average male would be required to drink approximately ten beers in an hour to reach the level of blood alcohol concentration present in Jamison's blood sample. (R. p. 495). He further stated Jamison would have experienced significant impairment based on those results. (R. pp. 496-497).

At the conclusion of trial, the jury convicted Jamison as indicted. (R. p. 739).

During sentencing, Jamison apologized to Gamble's family, stating:

I would never, ever intentionally hurt anyone, and I am so sorry for what happened that night. . . . I have a son as well, and I don't know what I would do if a travesty or tragedy ever happened like that night. . . . There is nothing I can do, but you better believe if there is one thing I could change in this world with my life it would be that night. I have – I'm sorry.

(R. p. 742). The trial judge then sentenced Jamison to an eighteen-year term of imprisonment along with a \$10,000 fine. (R. p. 745). Jamison subsequently appealed his conviction.

On appeal, the Court of Appeals affirmed Jamison's conviction. State v. Jamison, Op. No. 2012-UP-58 (S.C. Ct. App. filed Feb. 1, 2012). In reaching that decision, the Court of Appeals held: "[T]he State denied Jamison a reasonable opportunity to obtain testing of his own blood sample, and therefore the trial court erred in admitting the results of testing the State performed on its sample of Jamison's blood." Id. However, the Court of Appeals concluded any error was harmless based on the other evidence presented conclusively establishing Jamison's guilt and affirmed Jamison's conviction on that basis. Id.

ARGUMENT

The Court of Appeals properly determined any error resulting from the admission of the State's blood test results was harmless because the other evidence presented during trial conclusively established Jamison's guilt for the offense of felony driving under the influence resulting in a death.

Jamison contends the Court of Appeals erred in finding any error in the admission of the State's blood tests results was harmless. Jamison maintains the other evidence presented during trial did not conclusively establish he was under the influence of alcohol at the time of the fatal collision. To the contrary, the evidence and testimony presented during trial other than the State's blood test results conclusively established Jamison's guilt for each element of felony driving under the influence resulting in a death, including that Jamison was operating a motor vehicle under the influence of alcohol when he struck the victim. Thus, the testimony and evidence presented during trial, which included testimony of multiple witnesses on Jamison's impaired condition and demeanor, testimony on Jamison's refusal to submit to field sobriety tests or a breathalyzer test, testimony regarding the circumstances of the collision, and testimony regarding the discovery of beer bottles both inside and outside of Jamison's vehicle, rendered any error in the admission of the State's blood test results entirely harmless. The Court of Appeals properly affirmed Jamison's conviction, and Jamison's petition for a writ of certiorari should be denied.

After an error is discovered, the appellate court must then determine whether the error was harmless. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result.

State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”). In order to evaluate the materiality of an error, an appellate court must review the other evidence considered at trial besides the erroneously-admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). “When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.” State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

Pursuant to S.C. Code Ann. § 56-5-2945(A), “[a] person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony driving under the influence[.]” Thus, in order for a jury to convict a defendant of felony driving under the influence resulting in a death, the jury must determine the defendant: (1) drove a vehicle while under the influence of alcohol, drugs, or both; (2) committed an unlawful act or neglected a lawful duty; and (3) caused the death of another as a result of the act or neglect. State v. Dantonio, 376 S.C. 594, 604, 658 S.E.2d 337, 342 (Ct. App. 2008).

In the case sub judice, the trial judge properly admitted the test results demonstrating Jamison's exceedingly high level of blood alcohol concentration following the fatal collision. See State v. Wickenhauser, 309 S.C. 377, 380, 423 S.E.2d 344, 346 (1992) (finding the subsequent loss of a suspect's blood sample at a detention center did not require suppression of the State's test results of another blood sample but, instead, created a question of fact for the jury to resolve regarding whether the loss of the suspect's blood sample by law enforcement personnel negated the suspect's reasonable opportunity to obtain independent testing); see also City of Columbia v. Ervin, 330 S.C. 516, 521, 500 S.E.2d 483, 486 (1998) ("By transporting Ervin to [Richland Memorial Hospital], the arresting officer providing Ervin with more reasonable assistance than required since Ervin had refused to take the datamaster test."). However, even assuming the trial judge erred in admitting the results of the testing of Jamison's blood sample, any error was harmless in the light of the other overwhelming evidence of intoxication conclusively establishing Jamison's guilt.⁶

During trial, multiple witnesses, including law enforcement officers, random bystanders, and paramedics, testified Jamison was confused, slurred his speech, smelled of alcohol, was unsteady on his feet, and appeared intoxicated following the collision. Notably, directly after the collision, a witness observed Jamison checking his vehicle for damage fifty yards down the bridge from the fatally-injured victim's location in the roadway. When questioned about whether he hit the victim, Jamison was confused and disoriented and seemed not to understand what had occurred. Thereafter, Jamison

⁶ In denying Jamison's motion for a directed verdict, the trial judge listed and summed up the extensive evidence presented during trial demonstrating Jamison's guilt. (R. pp. 665-669).

repeatedly commented he did not intend to hit anyone and did not know what was going on, and Jamison informed a paramedic he believed he hit a garbage can.⁷

In addition to the witnesses' testimony regarding Jamison's condition and demeanor following the collision, officers inspected Jamison's damaged van at the scene. When they did so, they discovered significant damage to the hood and windshield of the van and found the van parked with its passenger side tires resting on the sidewalk instead of on the roadway. Most significantly, officers discovered a still-moist bottle of Killian's Red Beer that someone had been drinking hidden behind a tire underneath Jamison's van. Inside the van, they discovered two packages of the same brand of beer with several bottles missing from the packages.

Furthermore, officers asked Jamison to perform field sobriety tests at the scene of the collision. However, Jamison refused to perform the field sobriety tests. Thereafter, Jamison was transported to the police department for breathalyzer testing. While awaiting the testing, Jamison continued to exhibit the signs of impairment he displayed at the scene of the collision along with belligerent behavior towards the officers in the testing room.⁸ Jamison then also refused to submit to a breathalyzer test. See State v.

⁷ The paramedic noted Jamison was barely comprehensible because Jamison was slurring his speech. (R. p. 543).

⁸ Throughout the twenty-minute waiting period before the breathalyzer test could be taken, Jamison exhibited belligerent behavior towards the officers and appeared confused. At the outset of the waiting period, Jamison stated: "I would never hurt anybody. I don't know if you're trying to trick me into hurting somebody. I would never hurt anybody, and if I hurt anybody tonight, it wasn't on purpose." Additionally, when asked if he had any dentures, Jamison responded: "Not unless I need a lawyer." Thereafter, he repeatedly asked if the waiting period was being recorded, and the officers affirmed it was on several occasions, including at the beginning of the waiting period. Despite the fact the officers informed Jamison the waiting period was being recorded multiple times, he again asked one of the officers if the waiting period was being recorded, and another officer once again affirmed that it was. Jamison responded by telling that officer he was not talking to him before asking the other officer if the waiting period was being recorded several more times. Jamison then stated: "I guess not." Furthermore, Jamison repeatedly insisted he was "really confused" and did not understand anything the officers explained to him, including what having a right to remain silent means. At one point, Jamison asked one of the officers if he did something wrong that night and then appeared to state: "Cause I don't seriously know." At another point, he again

Kerr, 330 S.C. 132, 151-152, 498 S.E.2d 212, 222 (Ct. App. 1998) (“It is well established in this State that one who is arrested for DUI impliedly consents to a breathalyzer test, and that the revocation of that consent is constitutionally admissible as prosecutorial evidence at the trial pursuant to that arrest.”).

Regarding the collision itself, a witness who observed Jamison strike the victim testified Jamison swerved to the right and was unable to maintain his vehicle in his lane of travel. Additionally, experts in accident reconstruction determined the victim was struck by Jamison while riding his bicycle in the bicycle lane and was either thrown or carried a significant distance by the van. The experts further testified they discovered red paint matching the paint from the victim’s bicycle on Jamison’s bumper and tire scuff marks on Jamison’s tire and on the curb. Based on their analysis, they concluded Jamison was going between twelve and twenty-two miles per hour over the speed limit when he struck the victim on a clear, straight road with no visibility obstructions.

Notwithstanding the results of the testing of Jamison’s blood sample, which demonstrated Jamison’s blood alcohol concentration was alarmingly high, the State

insisted he did not understand what was going on, and one of the officers attempted to re-explain the implied consent form to Jamison. Jamison interrupted the officer and insisted he was not very smart. He then accused the officer of not being smart enough to explain it to him. At various points during the waiting period, Jamison raised his voice with the officers. He also repeatedly insisted he had not refused and was not refusing anything. Additionally, he accused the officers of “trickery” and stated to one of the officers: “You really don’t know who you fucking with right now.” He also repeatedly asked the officers for their names, which they provided to him on several occasions. Then, he persisted in asking for the officers’ names even after those names were provided to him and stated he did not trust what was going on because one of the officers would not give him his identification. As the waiting period continued, he repeatedly asked for a lawyer even though he was told he could not yet have one and continued to insist he was not refusing anything. See State v. Degnan, 305 S.C. 369, 371, 409 S.E.2d 346, 348 (1991) (“Although some jurisdictions allow a ‘reasonable attempt’ to consult with counsel, we reject this view. To hold otherwise would interfere with proper administration of the breathalyzer test as required by State v. Parker. Accordingly, we hold that administration of a breathalyzer test is not a critical stage at which an accused is entitled to counsel.” (footnotes omitted)). At the conclusion of the waiting period, one of the officers attempted to explain to Jamison that he had a limited amount of time to take the breathalyzer test. Jamison did not take the test but insisted he was not refusing to do so. After the breathalyzer machine registered Jamison’s refusal and while the officers signed the breathalyzer ticket, Jamison stated “Before you sign, you understand that I’m not anywhere – anyway impaired – my judgment is not impaired.” Thereafter, he would not sign the breathalyzer ticket. (State’s Ex. #50).

presented overwhelming evidence of Jamison's guilt independent of the test results. The other evidence presented during trial, including the testimony of multiple witnesses on Jamison's impaired condition and demeanor, the testimony on Jamison's refusal to submit to field sobriety tests or a breathalyzer test, the testimony regarding the circumstances of the collision, and the testimony regarding the discovery of beer bottles both inside and outside of Jamison's vehicle, overwhelmingly established Jamison was guilty of felony driving under the influence and was responsible for the victim's catastrophic injuries and death. Therefore, any error in the admission of the blood test results was harmless and did not warrant a reversal of Jamison's conviction. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt).

On appeal, Jamison maintains lay witness opinion testimony that a defendant is intoxicated is insufficient to constitute overwhelming evidence of guilt in a driving under the influence case. Specifically, relying on the Supreme Court's decisions in State v. Pipkin, 294 S.C. 336, 364 S.E.2d 464 (1988), and State v. Masters, 308 S.C. 433, 418 S.E.2d 552 (1992), Jamison contends an officer's testimony that the suspect smelled of alcohol, slurred his speech, and failed a field sobriety test is not sufficient to constitute overwhelming evidence of intoxication in light of the fact the defendants' convictions in Pipkins and Masters were reversed on appeal. However, notably, the Supreme Court did not conduct a harmless error analysis in either case, and there is nothing to suggest the State argued the errors in those cases were harmless. See Masters, 308 S.C. at 435, 418 S.E.2d at 553 (reversing Masters' driving under the influence conviction under the "unique facts" of Master's case without addressing the issue of the harmlessness of any

error); Pipkin, 294 S.C. at 338, 364 S.E.2d at 465 (reversing Pipkin's driving under the influence conviction without addressing the issue of the harmlessness of any error).

Accordingly, those cases do not stand for the proposition that an officer's testimony on a suspect's condition cannot constitute overwhelming evidence of intoxication based on the fact neither case actually addressed that particular issue. See Hutto v. S. Farm Bureau Life Ins. Co., 259 S.C. 170, 173, 191 S.E.2d 7, 8-9 (1972) ("It is, of course, settled law that 'a case cannot be considered as a binding precedent on a legal point that was not argued in the case and not mentioned in the opinion.' " (citations omitted)).

Regardless, the evidence establishing Jamison was under the influence of alcohol at the time of the fatal collision consisted of much more than lay witness opinion testimony regarding his condition. In addition to the testimony of multiple police officers and other witnesses unaffiliated with law enforcement regarding Jamison's impaired condition, confused demeanor, slurred speech, and incriminating smell, testimony and evidence was presented during trial establishing Jamison was unable to operate his motor vehicle in his lane of travel on a straight road, Jamison was confused and belligerent with law enforcement officers while awaiting a breathalyzer test, Jamison had a still-moist bottle of the same brand of beer found inside his van concealed underneath his van on the middle of a bridge, and Jamison refused to submit to field sobriety tests or a breathalyzer test after he collided with the victim. In light of that overwhelming evidence collectively and conclusively establishing Jamison was under the influence of alcohol at the time he fatally struck the victim, any error in the admission of the State's blood test results was harmless. See Ervin, 330 S.C. at 522, 500 S.E.2d at 486 (finding no prejudice resulted from the admission of Ervin's refusal to submit to a breathalyzer test where testimony was presented establishing Ervin was unsteady on his feet, smelled of alcohol, exhibited

slurred speech, cursed and threatened police officers, and tried to kick the window of a police vehicle); see also State v. Degnan, 305 S.C. 369, 372, 409 S.E.2d 346, 348 (1991) (finding no prejudice resulted from the admission of Degnan's refusal to submit to a breathalyzer test where the other evidence presented during trial established Degnan had a strong odor of alcohol on her breath, had difficulty walking, slurred her speech, and admitted she drank five or six beers); State v. Wilson, 296 S.C. 73, 76, 370 S.E.2d 715, 716 (1988) (finding any error in the admission of blood test results was harmless because it was cumulative to other evidence of Wilson's intoxication, which included properly-admitted breathalyzer test results and testimony that Wilson admitted to drinking a half pint of Vodka).

Furthermore, Jamison contends the evidence of his intoxication cannot be considered overwhelming because the level of a suspect's blood alcohol concentration can determine whether the suspect can be charged with driving with an unlawful alcohol concentration in violation of S.C. Code Ann. § 56-5-2933. However, Jamison was not charged with driving with an unlawful alcohol concentration but, instead, was charged with felony driving under the influence resulting in a death. In order to convict Jamison of felony driving under the influence resulting in a death, the jury was not required to specifically determine the level of Jamison's blood alcohol concentration.⁹ Compare S.C. Code Ann. § 56-5-2933(A) ("It is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one-hundredths of one percent or

⁹ Notably, just as with felony driving under the influence, a jury is not required to specifically determine a defendant's blood alcohol concentration in order to convict the defendant of the offense of driving under the influence. See S.C. Code Ann. §29-5-2930(A) ("It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired.").

more.”) with S.C. Code Ann. § 56-5-2945(A) (“A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony driving under the influence[.]”). Instead, the jury was only required to find Jamison caused the victim’s death through the commission of an unlawful act or by neglecting a lawful duty while driving a motor vehicle “while under the influence of alcohol, drugs, or the combination of alcohol and drugs[.]” S.C. Code Ann. § 56-5-2945(A). Notwithstanding the blood test results establishing Jamison’s extremely high level of blood alcohol concentration at the time of the collision, the testimony and evidence regarding Jamison’s impaired condition and demeanor coupled with the other evidence presented during trial conclusively established Jamison was under the influence of alcohol when he unlawfully veered outside of his lane of travel and fatally struck the victim. Thus, Jamison’s guilt for felony driving under the influence resulting in a death was conclusively established regardless of the admission of the blood test results.

Based on the overwhelming evidence of Jamison’s guilt, any error in the admission of the blood test results was harmless regardless of the admissibility of those results.¹⁰ See Ervin, 330 S.C. at 522, 500 S.E.2d at 486 (“[I]n light of the overwhelming

¹⁰ Notably, notwithstanding the overwhelming evidence of intoxication, Jamison eliminated any remaining doubts about his guilt or innocence when he apologized for his actions to the victim’s family during the sentencing proceedings. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (“[R]eview of a trial error is unnecessary where a defendant admits in open court after his conviction that he is guilty.”); State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) (finding further review was unnecessary where the defendant admitted his guilt in open court after his conviction); Wiley, 387 S.C. at 497, 692 S.E.2d at 564 (finding an alleged trial error to be harmless based on overwhelming evidence of guilt and Wiley’s apology in open court during sentencing proceedings). Significantly, after he was convicted, Jamison described the incident as a travesty or tragedy, stated it was the one thing he wished he could change in his life, and apologized to the victim’s family.

evidence of his intoxication, Ervin was not prejudiced by the admission of his refusal to take the datamaster test.”); see also Degnan, 305 S.C. at 372, 409 S.E.2d at 348 (“In light of the overwhelming evidence of her intoxication, Degnan has shown no prejudice in admission of her refusal to submit to the breathalyzer.”); Wilson, 296 S.C. at 76, 370 S.E.2d at 716 (finding any error in the admission of blood test results was harmless because it was cumulative to other evidence of Wilson’s intoxication). Regardless of the correctness of its decision on the admissibility of the blood test results, the Court of Appeals correctly determined any error in the admission of those test results was harmless. Accordingly, Jamison’s petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that Jamison's petition for a writ of certiorari should be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT/PETITIONER

May 14, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Lexington County
Honorable R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent/Petitioner,

vs.

ANDRA BYRON JAMISON,

Petitioner/Respondent.

PROOF OF SERVICE

RECEIVED
MAY 14 2012
S.C. Supreme Court

I, Ellen R. DuBois, certify that I have served the within Return to
Petitioner/Respondent's Petition for Writ of Certiorari on Petitioner/Respondent by
depositing two copies of the same in the United States mail, postage prepaid, addressed
to:

Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
Post Office Box 12891
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 14th day of May, 2012.

Ellen R. DuBois
ELLEN R. DuBOIS
Legal Assistant

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ALAN WILSON
ATTORNEY GENERAL

May 14, 2012

Jeremy A. Thompson, Esquire
Law Office of Jeremy A. Thompson, LLC
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Columbia, SC 29211

RECEIVED

MAY 14 2012

RE: State v. Andra Byron Jamison

S.C. Supreme Court

Dear Mr. Thompson:

I am enclosing two (2) copies of the Return to Petitioner/Respondent's Petition for Writ of Certiorari, along with proof of service, in the above-referenced case.

Sincerely,


Mark R. Farthing
Assistant Attorney General

MRF/erd
Enclosures

cc: (Honorable Daniel E. Shearouse (original and six copies enclosed))
Honorable Jenny A. Kitchings (one copy enclosed)
Victim Services

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

RECEIVED

JUN - 8 2012

R. Knox McMahon, Circuit Court Judge

S.C. Supreme Court

Case No. 2009-GS-32-5283

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER,

v.

ANDRA JAMISON,

PETITIONER/RESPONDENT.

REPLY TO RETURN TO PETITIONER/RESPONDENT'S PETITION FOR A WRIT OF
CERTIORARI

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ARGUMENT IN REPLY

In its Return, the Respondent/Petitioner makes a number of arguments as to how the evidence of the Petitioner/Respondent's guilt was overwhelming. These arguments are wholly without merit.

As an initial line of attack, the Respondent/Petitioner contends that this Court should not rely upon this Court's decisions in State v. Pipkin, 294 S.C. 336, 364 S.E.2d 464 (1988), and State v. Masters, 308 S.C. 433, 418 S.E.2d 552 (1992), because this Court "did not conduct a harmless error analysis in either case." Return at 15. Although this Court will obviously be the ultimate judge of what was and what was not considered in those decisions, the Respondent/Petitioner's argument is belied by the fact that this Court engages in a harmless error analysis in virtually every criminal appeal by virtue of its nature of review. If the Court did not do so, this Court "would mandate reversals in every case where any erroneous evidentiary ruling is made by the trial judge." State v. Smith, 309 S.C. 442, 454, 424 S.E.2d 496, 503 (1992) (Toal, J., dissenting). The Petitioner/Respondent respectfully submits that there is no explicit harmless error analysis conducted in Pipkin or Masters because the prejudice is clear: lay witness opinion testimony cannot constitute overwhelming evidence of intoxication.¹

The Respondent/Petitioner also contends that the evidence of the Petitioner/Respondent's level of intoxication was overwhelming because

[T]he evidence establishing Jamison was under the influence of alcohol at the time of the fatal collision consisted of much more than lay witness opinion testimony regarding his condition. In addition to the testimony ... regarding Jamison's impaired condition ... testimony and evidence was presented during trial establishing Jamison was unable to operate his motor vehicle in his lane of travel on a straight road, Jamison was confused and

¹ Notably, the Respondent/Petitioner does not challenge the result reached by the Court in either Pipkin or Masters and does not argue that the Court should have found the evidence of guilt overwhelming. In other words, the Respondent/Petitioner implicitly concedes that the evidence in Pipkin and Masters was not overwhelming.

belligerent with law enforcement officers while awaiting a breathalyzer test, Jamison had a still-moist bottle of the same brand of beer found inside his van concealed underneath his van on the middle of a bridge, and Jamison refused to submit to field sobriety tests or a breathalyzer test after he collided with the victim.

Return at 16. These arguments are unavailing.

With regard to the Respondent/Petitioner's contention that the Petitioner/Respondent was "unable to operate his motor vehicle in his lane of travel on a straight road," the Petitioner/Respondent submits that this is not overwhelming evidence of intoxication. Evidence that the defendant "swerve[d] off the road twice and cross[ed] over the center line into the lane of oncoming traffic" was not held to be overwhelming evidence of guilt in Masters. 308 S.C. at 436, 418 S.E.2d at 554 (Moore, J., dissenting). The Petitioner/Respondent's negligent actions were far less egregious as those taken in Masters.² Accordingly, the Petitioner/Respondent's actions while driving his vehicle do not constitute overwhelming evidence of intoxication.

With regard to the Respondent/Petitioner's contention that the Petitioner/Respondent was "confused and belligerent with law enforcement officers while awaiting a breathalyzer test," the Petitioner/Respondent submits that the video recording of the breathalyzer room speaks for itself. The Petitioner/Respondent does not agree with the characterization of his actions while in the breathalyzer room and does not agree that he is acting belligerently towards the officers. Furthermore, the Petitioner/Respondent submits that the breathalyzer recording directly contradicts the testimony of the witnesses at trial, relied heavily upon by the Respondent/Petitioner, that testified that the Petitioner/Respondent had such slurred speech that

² The Petitioner/Respondent does not concede that there is overwhelming evidence that he violated any traffic laws the night of the incident. The accident reconstruction expert failed to compare the scuff marks found in the road to the tire of the bicycle to confirm that the scuff marks they believed were made by the decedent's bicycle were in fact made by that bicycle. This is important because the State's expert admitted that if his assumption regarding the location of the tire marks was incorrect, then his conclusions regarding the accident would be incorrect as well. See App. p. 601, line 14-p. 607, line 13.

he was difficult to understand. As the Respondent/Petitioner's lengthy recitation of the Petitioner/Respondent's statements in the breathalyzer room makes clear, see Return at 13-14 (footnote 8), the Petitioner/Respondent's speech shortly after the accident was clear and readily able to be understood. Had the witnesses at trial been correct that the Petitioner/Respondent was "barely comprehensible," Return at 13 (footnote 7), then the video recording would reflect this level of impairment. It does not.³ Accordingly, the Petitioner/Respondent submits that the video recording does not constitute overwhelming evidence of intoxication.

With regard to the Respondent/Petitioner's contention that the still-moist bottle of beer, as well as the discovery of "two packages of the same brand of beer with several bottles missing from the packages," see Return at 13, demonstrates the Petitioner/Respondent's intoxication, the Petitioner/Respondent submits that this evidence does not provide overwhelming evidence of intoxication. There were no witnesses who testified at trial who observed the Petitioner/Respondent actually drink an alcoholic beverage. Assuming that the Petitioner/Respondent did drink from the beer that was found underneath the van, the Petitioner/Respondent's decision to drink a portion of one beer is not overwhelming evidence that he was under the influence of alcohol while driving his vehicle. Moreover, the evidentiary value of the unopened bottles of beer found in the vehicle is negligible as no witness testified that open or empty bottles were found in the vehicle or anywhere near the scene. Consequently, the Petitioner/Respondent argues that this evidence does not constitute overwhelming evidence of intoxication.

With regard to the Respondent/Petitioner's contention that the Petitioner/Respondent refused to submit to field sobriety tests or to a breathalyzer test, the Petitioner/Respondent asserts

³ The Petitioner/Respondent would also note that the hospital officials who examined him at the hospital, including a doctor, did not testify that he appeared intoxicated in any way, including belligerent behavior, slurred speech, or unsteadiness on his feet. See App. pp. 380-400.

that the first matter is not overwhelming evidence of intoxication and that the second matter should not be considered in determining overwhelming evidence of intoxication. In Pipkin, *supra*, this Court did not find overwhelming evidence of guilt even though the defendant had failed a field sobriety test. See 294 S.C. at 337, 364 S.E.2d at 465. Therefore, if the failure of a field sobriety test is not overwhelming evidence of intoxication, then the Petitioner/Respondent's refusal of a field sobriety test should not constitute overwhelming evidence of intoxication. Additionally, the Petitioner/Respondent's failure to submit to a breathalyzer should be suppressed along with the blood test results if his right to a reasonable opportunity for independent testing was violated. Cf. City of Columbia v. Ervin, 330 S.C. 516, 522, 500 S.E.2d 483, 486 (1998) ("Ervin was given a reasonable opportunity to obtain a blood test. There was no error in the admission of Ervin's refusal to take the datamaster test"); State v. Degnan, 305 S.C. 369, 372, 409 S.E.2d 346, 348 (1991) ("Degnan asserted that denial of an independent blood test mandated suppression of her refusal to take the breathalyzer. ... In light of the overwhelming evidence of her intoxication, Degnan has shown no prejudice in admission of her refusal to submit to the breathalyzer"). Consequently, the Petitioner/Respondent's refusal to submit to a breathalyzer test should not constitute overwhelming evidence of intoxication either.⁴

Additionally, the Respondent/Petitioner argues that "Jamison contends the evidence of his intoxication cannot be considered overwhelming because the level of a suspect's blood alcohol concentration can determine whether the suspect can be charged with driving with an unlawful alcohol concentration in violation of S.C. Code Ann. §56-5-2933." Return at 17. The

⁴ Assuming, *arguendo*, that evidence of the Petitioner/Respondent's refusal to take a breathalyzer is admissible despite the deprivation of his constitutional right to a reasonable opportunity for a blood test, the Petitioner/Respondent submits that this evidence does not rise to the level of overwhelming evidence of intoxication. As with the refusal to take a field sobriety test, the refusal may give the implication that the Petitioner/Respondent is intoxicated, but this implication does not "prove harmless error beyond a reasonable doubt." State v. Jennings, 394 S.C. 473, 482, 716 S.E.2d 91, 96 (2011) (Kittredge, J., concurring).

Petitioner/Respondent made no such argument and the Respondent/Petitioner's statement is a gross mischaracterization of the point the Petitioner/Respondent made in his certiorari petition. The Petitioner/Respondent cited to §56-5-2933 not to proclaim that he couldn't be found guilty but to highlight the fact that the Legislature has seen fit to provide enhanced penalties for DUAC crimes depending on the defendant's level of intoxication. In so doing, the Legislature recognized the highly technical and scientific nature of evaluating a defendant's level of intoxication. In looking to §56-5-2933, the Petitioner/Respondent merely submits that this Court should recognize the concordant principles of the importance of scientific evidence in DUI cases and the difficulty in conclusively establishing intoxication where no scientific evidence exists.

As a final line of attack, the Respondent/Petitioner, in a footnote, argues that the Petitioner/Respondent "eliminated any remaining doubts about his guilt or innocence when he apologized for his actions to the victim's family during the sentencing proceedings." Return at 18 (footnote 10). Although the Respondent/Petitioner does not appear to argue that this is an additional sustaining ground for affirmance, see Rule 220(c), SCACR, the Petitioner/Respondent would note that this very same argument was presented to the Court of Appeals and was not found persuasive. See App. pp. 815-816. The Petitioner/Respondent submits that the Court of Appeals properly rejected this argument because the Petitioner/Respondent did not admit guilt during sentencing and only expressed his sadness at the fact that the decedent died the night of the incident. See App. p. 751, line 23-p. 752, line 14. The Petitioner/Respondent respectfully contends that this Court should reject the Respondent/Petitioner's argument for the same reasons.

Taken individually or as a whole, the evidence of intoxication presented in this case consisted primarily of lay witness opinion testimony that the Petitioner/Respondent appeared intoxicated. As this Court's precedents make clear, lay witness opinion testimony about a

defendant's level of intoxication does not constitute overwhelming evidence of intoxication. See Pipkin, supra; Masters, supra. Moreover, the testimony regarding the Petitioner/Respondent's slurred speech and incomprehensibility is directly contradicted by the extensive video from the breathalyzer test room.

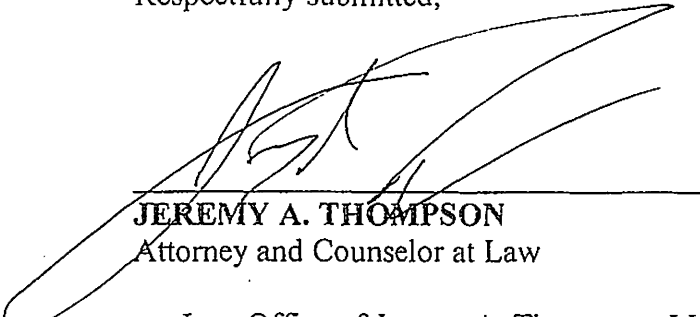
In addition, the other factors cited by the Respondent/Petitioner do not rise to the level of overwhelming evidence of intoxication and are frequently contradicted by this Court's prior decisions in Pipkin and Masters. The Petitioner/Respondent's alleged traffic violation was less egregious than the traffic violations that occurred in Masters. The Petitioner/Respondent's refusal to submit to field sobriety tests is not as inculpatory as evidence that a defendant failed a field sobriety test. See Pipkin, supra. The evidence that the Petitioner/Respondent failed to take a breathalyzer test should not be admissible in light of the Court of Appeals' finding that the Petitioner/Respondent's constitutional rights were violated.

No witness viewed the Petitioner/Respondent actually drink any alcohol and the Petitioner/Respondent did not admit to doing so. The evidence of intoxication presented at trial against the Petitioner/Respondent was not worse than the evidence presented in Pipkin or Masters and, in some cases, is weaker than the evidence of intoxication presented in those cases. Inasmuch as the Court of Appeals' decision clearly ignored these precedents, the Petitioner/Respondent respectfully submits that the Court of Appeals erred in finding that there was overwhelming evidence of the Petitioner/Respondent's level of intoxication and that certiorari should be granted to review the erroneous portion of the decision.

CONCLUSION

For the reasons stated, the Petitioner/Respondent asks this Court to grant the petition and to allow full briefing on these issues.

Respectfully submitted,



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**ATTORNEY FOR
PETITIONER/RESPONDENT.**

This 8th day of June, 2012.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2009-GS-32-5283

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER,

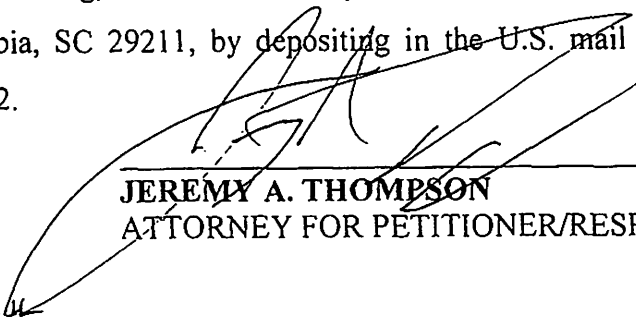
v.

ANDRA JAMISON,

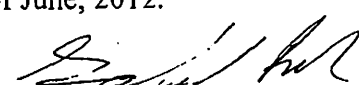
PETITIONER/RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Reply to Return to Petitioner/Respondent's Petition for a Writ of Certiorari in the above-entitled case has been served upon opposing counsel, Mark R. Farthing, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 8th day of June, 2012.


JEREMY A. THOMPSON
ATTORNEY FOR PETITIONER/RESPONDENT

SWORN TO BEFORE me this 8th day
of June, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/14

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Case No. 2009-GS-32-5283

RECEIVED

JUL - 9 2012

S.C. Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER,

v.

ANDRA JAMISON,

PETITIONER/RESPONDENT.

**RETURN TO RESPONDENT/PETITIONER'S PETITION FOR A WRIT OF
CERTIORARI**

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**ATTORNEY FOR
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**DEFENDANT'S
EXHIBIT**
#5 4-20-18
2014CP32-2548

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QUESTION PRESENTED

I.

Whether the Court of Appeals properly found that the Petitioner/Respondent's constitutional right to a reasonable opportunity for a blood test was violated?

STATEMENT OF THE CASE

The Petitioner/Respondent Andra Jamison was indicted in Lexington County for felony driving under the influence resulting in death. On October 12, 2009, the Petitioner/Respondent proceeded to trial by jury on this charge. At the conclusion of the trial, the Petitioner/Respondent was found guilty as charged. The Honorable R. Knox McMahon, presiding circuit judge, sentenced the Petitioner/Respondent to eighteen years' imprisonment.

The Petitioner/Respondent timely filed an appeal to the South Carolina Court of Appeals. In an unpublished opinion, the Court of Appeals affirmed the Petitioner/Respondent's conviction and sentence. State v. Jamison, Op. No. 2012-UP-58 (S.C. Ct. App. filed Feb. 1, 2012). Both the Petitioner/Respondent and the Respondent/Petitioner petitioned the Court of Appeals for rehearing. The Court of Appeals denied both petitions for rehearing.

The Respondent/Petitioner has filed a petition for a writ of certiorari with this Court. This Return follows.

ARGUMENT

Standard of Review

“In criminal cases, the appellate court sits to review errors of law only.” State v. Baccus, 67 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “This Court is bound by the trial court’s factual findings unless they are clearly erroneous.” Id.

- I. **The Court of Appeals properly found that the Petitioner/Respondent’s constitutional right to a reasonable opportunity for a blood test was violated because the arresting officers never afforded the Petitioner/Respondent a reasonable opportunity to obtain a blood test.**

A. How the Issue Arose Below

In the late evening hours of July 31, 2008, the Petitioner/Respondent’s vehicle collided with a bicycle ridden by the decedent Jessie Gamble. The decedent would not survive the injuries he received from the accident. Several witnesses testified that the Petitioner/Respondent was unsteady on his feet, appeared intoxicated, and slurred his speech. See generally App. p. 134, line 21-p. 135, line 1 (Officer Michael Stone); p. 229, lines 11-24 (Officer Adam Smith); p. 257, lines 4-8 (Sergeant Robert Marzol); p. 553, line 17-p. 554, line 12 (paramedic Daniel Boyce); p. 647, lines 6-12 (Randall Fitzgerald). The Petitioner/Respondent refused to take field sobriety tests at the scene. App. p. 139, lines 12-25.

The Petitioner/Respondent was then arrested at the scene and taken to the Cayce Police Department for the administration of a breathalyzer test. App. p. 268, lines 14-19. However, the Petitioner/Respondent did not take the test in the time provided, so his failure to take the test was written up as a refusal. App. p. 280, lines 8-18. The Petitioner/Respondent was then taken to the

Lexington Medical Center so that his blood could be drawn. App. p. 282, line 5-p. 283, line 10.¹ While at the hospital, the Petitioner/Respondent told Doctor Stephen Hayes, who was there to draw his blood, that “he was there for a blood test.” App. p. 382, line 8. Steven Wickers, a phlebotomist, drew two vials of blood from the Petitioner/Respondent and gave them to the arresting officer. App. p. 395, lines 2-11. The Petitioner/Respondent was then transported to the Lexington County Detention Center and the vial of blood that had been provided to him was lost by the jail prior to his release. App. p. 427, lines 1-13. The State tested the vial of blood that it obtained at the hospital. The Petitioner/Respondent’s blood alcohol content was calculated to be “0.225 percent weight per volume of ethanol.” App. p. 496, line 14.

The Petitioner/Respondent took all steps necessary to preserve his blood sample. While he was housed at the Lexington County Detention Center, his wife, Kristy Jamison, who is a phlebotomist, went to the detention center to take possession of the blood sample. App. p. 84, line 22-p. 85, line 22. She was told by jail officials that there was no blood sample. App. p. 85, line 23-p. 86, line 17. When the Petitioner/Respondent was released on bond, he and his wife both went to the jail that day to request his blood; they were again told that there was no blood sample. App. p. 71, lines 2-17; p. 87, lines 6-23.

At trial, the Petitioner/Respondent argued that the loss of his blood by the Lexington County Detention Center resulted in the deprivation of his right to a reasonable opportunity to have his blood tested. App. p. 96, line 11-p. 98, line 20; see also p. 104, line 11-p. 105, line 13. Accordingly, the Petitioner/Respondent argued that the blood test results obtained by the State should be suppressed. The trial court denied the motion. App. p. 108, lines 20-21.

¹ There was some dispute at trial as to whether or not the Petitioner/Respondent requested a blood test from the arresting officers. Sergeant Robert Marzol testified that he did not “recall him stating that he wanted an independent test.” App. p. 44, lines 5-6. Officer Michael Stone also testified that he could not recall the Petitioner/Respondent asking for an independent test. App. p. 28, lines 7-10. The Petitioner/Respondent testified that he did request an independent blood test. App. p. 67, line 23-p. 68, line 3.

On appeal, the Court of Appeals found that “the State denied Jamison a reasonable opportunity to obtain testing of his own blood sample, and therefore the trial court erred in admitting the results of testing the State performed on its sample of Jamison’s blood.” State v. Jamison, *supra*; App. p. 832. However, the Court of Appeals found that the error was harmless and affirmed the Petitioner/Respondent’s conviction and sentence. Id.; App. p. 832. The Petitioner/Respondent subsequently filed a petition for rehearing arguing that the evidence was not overwhelming and requesting factual findings as to what evidence the Court of Appeals found to be overwhelming. App. pp. 841-847. This petition for rehearing was denied, and certiorari has been sought on this issue by the Petitioner/Respondent. App. pp. 848-849. The Respondent/Petitioner also filed a petition for rehearing, arguing that the Petitioner/Respondent’s right to a reasonable opportunity for a blood test was not violated. App. pp. 833-840. This petition for rehearing was denied as well. App. pp. 848-849. The Respondent/Petitioner has now filed a certiorari petition with this Court arguing that the Court of Appeals erred in finding that the Petitioner/Respondent’s rights were violated. The Petitioner/Respondent submits that the Court of Appeals correctly found that his constitutional right to a reasonable opportunity for a blood test was violated and that the Respondent/Petitioner’s certiorari petition should be denied by this Court.

B. Discussion

Pursuant to S.C. Code Ann. §56-5-2950, a defendant who is suspected of driving a motor vehicle under the influence of alcohol and who submits to a breathalyzer examination is entitled to affirmative assistance by the arresting officer to conduct additional testing of the defendant’s blood. “Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which performs blood tests to determine a person’s alcohol

concentration.” §56-5-2950(E). However, if the defendant refuses to take a breathalyzer test, then the Fourteenth Amendment guarantees that defendant a “reasonable opportunity” for a blood test. State v. Lewis, 266 S.C. 45, 48, 221 S.E.2d 524, 526 (1976). This guarantee is rooted in the Fourteenth Amendment’s requirement “that a criminal defendant be given a reasonable opportunity to present a complete defense.” State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) (citing California v. Trombetta, 467 U.S. 479 (1984)). “What is reasonable will ... depend on the circumstances of each case.” Lewis at 48, 221 S.E.2d at 526. The deprivation of this constitutional right by the arresting officer requires suppression of any testing conducted by the State. See State v. Masters, 308 S.C. 433, 418 S.E.2d 552 (1992).

The Court of Appeals found that the Petitioner/Respondent’s constitutional right to a reasonable opportunity for a blood test was violated in this case. State v. Jamison, *supra*; App. p. 832. In its certiorari petition, the Respondent/Petitioner primarily argues that the officers did not violate the Petitioner/Respondent’s right to a reasonable opportunity for a blood test because “the officers transported him to a hospital, placed him in direct contact with medical personnel capable of conducting independent testing of his blood alcohol level, and provided him with a blood sample that he could have had tested by the medical personnel at the hospital.” Certiorari Petition at 15.² This argument—that the Petitioner/Respondent had a reasonable opportunity to test his blood because he was placed in contact with hospital authorities who could have tested his blood that night—forms the crux of the Respondent/Petitioner’s argument and is repeated numerous times throughout the certiorari petition. See Certiorari Petition at 16 (“Under those circumstances, Jamison received a reasonable opportunity to obtain independent testing, but he elected not to avail himself of that particular opportunity at that time”); at 16-17 (“Since Jamison

² Since there are two certiorari petitions that have been filed in this case, one by the Petitioner/Respondent and one by the Respondent/Petitioner, the citations to “Certiorari Petition” in this Return are to the Respondent/Petitioner’s petition.

was placed in direct contact with independent medical personnel ... Jamison unquestionably had an opportunity to obtain independent testing even though he did not take advantage of it"); at 17 ("[O]fficers provided him with a reasonable opportunity to obtain independent testing by taking him to a hospital and placing him in direct contact with medical personnel capable of independently testing his blood alcohol concentration").

The Respondent/Petitioner's argument fails due to its oversight of one critical fact: the Petitioner/Respondent *asked* for a blood test from the medical personnel when he arrived at the hospital. Doctor Stephen Hayes, who was the doctor who examined the Petitioner/Respondent the night of the incident, testified that

I went in to see him. I asked why he was there. *He said he was there for a blood test.* I asked basically if there was any accident or trauma. I asked him if he was sick in any other way and that was it.

App. p. 382, lines 7-11 (emphasis added). Thus, contrary to the Respondent/Petitioner's entire basis for petitioning this Court for certiorari, the Petitioner/Respondent actually attempted to get his blood tested by asking for a blood test from the doctor who examined him. Since the hospital personnel did not test his blood there, but instead gave the extra vial of blood to the police officer present for the Petitioner/Respondent's "own personal ... testing," the Petitioner/Respondent did not receive his reasonable opportunity for a blood test when he was taken to the hospital by the officers. App. p. 392, line 17-p. 393, line 7.

The Respondent/Petitioner does not advance any other arguments as to how the police officers afforded the Petitioner/Respondent a reasonable opportunity for a blood test. This is because no other opportunities existed. The Petitioner/Respondent was arrested at the scene, was taken straight to the breathalyzer room, was told numerous times while there that he could not

contact anyone,³ was then taken immediately to the hospital where he asked for a blood test, and was then taken immediately to the detention center where his blood sample was lost. In essence, it is as if the Petitioner/Respondent was taken straight from the scene to the detention center. See Masters, supra, 308 S.C. at 435, 418 S.E.2d at 553 (finding that the defendant was denied the reasonable opportunity for a blood test because the officer “affirmatively under[t]ook to procure a blood test” but “terminate[d] that affirmative undertaking without any explanation or excuse”). Under these circumstances, the arresting officer denied the Petitioner/Respondent a reasonable opportunity for a blood test.

In conclusion, since the arresting officers denied the Petitioner/Respondent his reasonable opportunity for a blood test, the Court of Appeals’ opinion is not in conflict with State v. Wickenhauser, 309 S.C. 377, 423 S.E.2d 344 (1992). Cf. Certiorari Petition at 18 (arguing that “the decision of the Court of Appeals is inconsistent with this Court’s decision in State v. Wickenhauser”). Moreover, Wickenhauser is clearly distinguishable because this Court found in Wickenhauser that it was “undisputed that [Wickenhauser] took custody of a blood sample.” 309 S.C. at 380, 423 S.E.2d at 346. See also State v. Smith, 321 S.C. 13, 16-17, 467 S.E.2d 110, 112 (Ct. App. 1996) (interpreting Wickenhauser and denying relief because “Smith had the burden to inform jail personnel that his sample was turned over to the jailer the night before and to inquire about retrieving the sample”), reversed on other grounds by State v. Smith, 326 S.C. 39, 482 S.E.2d 777 (1997). Here, the Petitioner/Respondent did everything in his power to obtain custody of his blood sample but was unable to do so because of the detention center’s failure to maintain custody of his blood. Wickenhauser, therefore, is inapplicable.

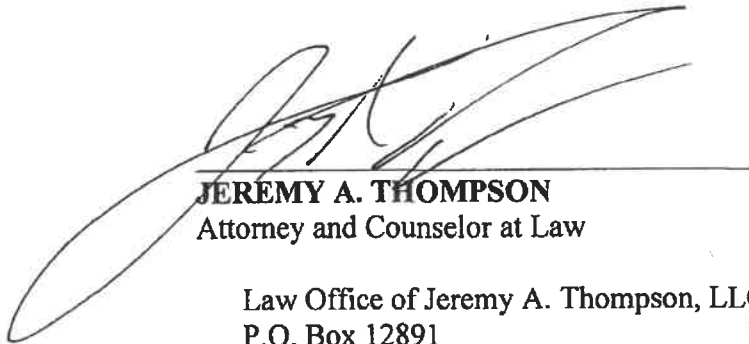
³ Cf. Lewis, supra, 266 S.C. at 49, 221 S.E.2d at 526 (finding that the defendant was afforded a reasonable opportunity for a blood test because he “was given the opportunity to use the telephone before and after he refused to take the breathalyzer test”).

The Court of Appeals correctly concluded that “the trial court erred in admitting the results of testing the State performed on its sample of Jamison’s blood.” State v. Jamison, *supra*; App. p. 832. The Petitioner/Respondent respectfully submits that this Court should deny the Respondent/Petitioner’s petition for a writ of certiorari.

CONCLUSION

For the reasons stated, the Petitioner/Respondent asks this Court to deny the Respondent/Petitioner's petition for a writ of certiorari.

Respectfully submitted,



JEREMY A. THOMPSON
Attorney and Counselor at Law

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803-779-2556 FAX
jeremyatlaw@yahoo.com

**ATTORNEY FOR
PETITIONER/RESPONDENT.**

This 9th day of July, 2012.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

RECEIVED

Case No. 2009-GS-32-5283

JUL - 9 2012

S.C. Supreme Court

STATE OF SOUTH CAROLINA,

RESPONDENT/PETITIONER,

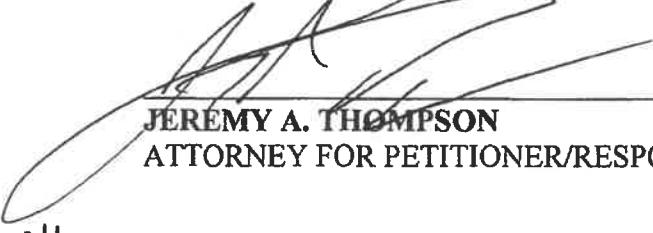
v.

ANDRA JAMISON,

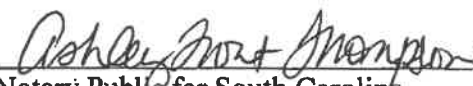
PETITIONER/RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Return to Respondent/Petitioner's Petition for a Writ of Certiorari in the above-entitled case has been served upon opposing counsel, Mark R. Farthing, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211, by depositing in the U.S. mail with proper postage, this 9th day of July, 2012.


JEREMY A. THOMPSON
ATTORNEY FOR PETITIONER/RESPONDENT

SWORN TO BEFORE me this 9th day
of July, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/22/18



LAW OFFICE OF
JEREMY A. THOMPSON
LLC

July 9, 2012

VIA HAND-DELIVERY

RECEIVED

JUL - 9 2012

S.C. Supreme Court

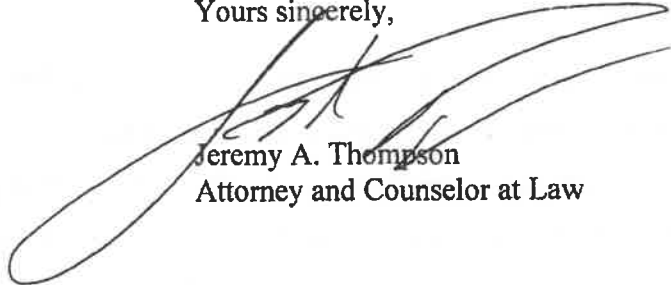
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211-1330

RE: State of South Carolina v. Andra Jamison; 09-GS-32-5283
Appellate Case No.: 2012-210589

Dear Mr. Shearouse:

Enclosed please find the original and seven copies of the Return to Respondent/Petitioner's Petition for a Writ of Certiorari in the above-captioned matter. I would appreciate your filing the original and six copies, clocking the extra copy, and returning the extra copy to me. With my thanks for the Court's assistance in this matter, and my best regards, I am,

Yours sincerely,


Jeremy A. Thompson
Attorney and Counselor at Law

JAT/

cc: Mark Farthing, Assistant Attorney General (via U.S. mail)
Andra Jamison, #337461 (via U.S. mail)
Mary Jamison (via U.S. mail)

The Supreme Court of South Carolina

The State, Respondent/Petitioner,

v.

Andra Byron Jamison, Petitioner/Respondent.

Appellate Case No. 2012-210589

Lower Court No. 2009GS325283

ORDER

Petitioner/Respondent and the State each seek a writ of certiorari to review the Court of Appeals' decision in *State v. Jamison*, Op. No. 2012-UP-058 (S.C. Ct. App. filed Feb. 1, 2012). The petitions are denied.



FOR THE COURT

J.

Columbia, South Carolina

August 23, 2013

cc:

The Honorable Jenny Abbott Kitchings

Mark Reynolds Farthing

Jeremy Adam Thompson

Donald V. Myers

The Honorable Beth Carrigg

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

ANDRA BYRON JAMISON,
SCDC NO. 337461

v.

STATE OF SOUTH CAROLINA

FILED2014 JUL 10 PM 3:05
IN THE COURT OF COMMON PLEASBETH A. CARRIG
CLERK OF COURT
LEXINGTON SC**ORIGINAL**

APPLICATION FOR

POST-CONVICTION RELIEF

2014CP3202548

1. Place of Detention: Broad River Correctional Institute
2. Name and location of the court, which imposed sentence:
Lexington County General Sessions, 205 East Main Street, Lexington, SC 29072
3. Name of co-defendants: NONE
4. The indictment number or numbers upon which and the offenses for which
sentence imposed: 2009-GS-32-5283 Felony DUI Death
5. The date upon which sentence was imposed and the terms of the sentence:
October 15, 2009 18 years and a fine of \$10,000
6. The jury made a finding of guilty upon Mr. Jamison's plea of not guilty.
7. A direct appeal was made.
8. (a) the name of each Court to which you appealed:
 - i. SC Court of Appeals, Case No. 2009-143466.
 - ii. SC Supreme Court, Case No. 2012-210589.
 - iii. The State and Mr. Jamison **EACH** filed petitions for a writ of certiorari.
- (b) the result in each such Court to which you appealed:
 - i. The SC Court of Appeals held that the trial court erred in admitting the results of the State's blood testing but found the error to be harmless error and affirmed.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

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CLERK OF COURT
LEXINGTON SC

- ii. The SC Supreme Court denied both petitions.
 - (c) the date of each such result:
 - i. The SC Court of Appeals made the decision on 02/01/2012 in an unpublished Opinion No. 2012-UP-058.
 - ii. The SC Supreme Court made the decision to deny both of the Petitions on **08/23/2013** in SC Supreme Court Order Appellate Case No. 2012-210589.
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. The SC Court of Appeals entered an unpublished Opinion No. 2012-UP-058.
9. If you answered "no" to (7), state your reasons for not so appealing:
Not Applicable
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Applicant was denied the right to effective assistance of counsel—guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §3, and §14 of the South Carolina Constitution during the trial **AND** during his direct appeal by his first appointed appellate counsel. *This PCR application presents questions of law or issues of fact requiring a hearing.*
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective Assistance of Trial Counsel

Trial Counsel's performance during the trial was both unreasonable and prejudicial. Trial Counsel's investigation was inadequate and incomplete. His trial strategic choices were limited, due to his overreliance in having Mr. Jamison's blood test results suppressed.

This all or nothing approach was unreasonable, and even more so when the trial judge erred in holding that the blood test could be admitted. Defense Counsel conducted no investigation on guilt, failed to consider whether a plea was

appropriate, and conducted no independent discovery, relying instead only on the state's open file policy. Counsel was deficient in failing to meet and develop a working relationship with his client. Counsel had not reviewed available videotapes, and had not himself interviewed any of the witnesses. Counsel failed to disclose potential conflicts of interest.

Counsel failed to investigate, develop, and present all available, relevant, and admissible mitigating evidence. See Wiggins v. Smith, 539 U.S. 510 (2003). Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the prosecution.

The trial transcript shows that Trial Counsel inadequately prepared for trial. See Ard v. Catoe, (at a minimum, counsel has the duty to interview potential witnesses). Trial Counsel failed to interview any potential witnesses. Trial Counsel failed to object and seemed to act more "for the benefit of the State," rather than as an advocate for Mr. Jamison. Defense Counsel's stipulations prejudiced Mr. Jamison and affected the outcome of the trial.

No reasonably competent attorney would have adopted Trial Counsel's strategy in this case, or at the very least, decided not to abandon the strategy once it was patently clear that it would not be fruitful, and very likely harmful.

Defense Counsel knew that the bicycle was important evidence and at a minimum should have examined it prior to trial. Likewise, Trial Counsel, rather than consult with independent experts, made a strategic decision to use cross-examination of the State's experts. Mr. Jamison asked Defense Counsel about

getting independent experts and told Defense Counsel that he could afford to retain these experts.

The Trial Transcript offers examples that Trial Counsel did not adequately prepare for the trial and the defense of the charge. For example, on Page 478 the following discussion transpired:

Mr. Williams: It's very simple, Your Honor. The defense was not notified that there was a bicycle that we would be able to look at prior to its being introduced here this morning. My simple request is that we be allowed to look at the bicycle if we haven't been able to see it yet.

Defense Counsel knew that the bicycle was important evidence, and at a minimum, should have examined it prior to trial. The felony DUI was based on a collision between a bicycle and Mr. Jamison's car. Therefore, a reasonable attorney would have known that the bicycle would have been offered as evidence at trial. His failure to investigate the facts is apparent in that rather than going to the police station to examine the bicycle before trial, he waited until during the trial to see it.

Likewise, Trial Counsel, rather than consult with independent experts, made a strategic decision to use cross-examination of the State's experts. Mr. Jamison asked Defense Counsel about getting independent experts and told Defense Counsel that he could afford to retain these experts. Mr. Jamison retained Trial Counsel soon after the date of his arrest and Trial Counsel had many opportunities to investigate the facts, interview witnesses, and develop a robust trial strategy.

- i. Trial Counsel put on no defense and, as a result, should have been entitled to the final closing argument to the jury.

However, Trial Counsel introduced document evidence, and thereby 188
his right to give the final closing argument to the jury. Inexplicably, the document
he introduced had already been introduced by the State under a different name.
Trial Counsel introduced it as "Medication Record," but it was the exact same
document previously introduced by the State as "Progress Note." It was clearly
unreasonable to introduce a document that produced no benefit and ended up
denying his right to close.

Counsel offered ineffective assistance in his strategic choice of not putting
on a defense. In addition, he was ineffective when he forfeited the right to close
by duplicating the State's evidence. For several reasons, counsel's decision was
not reasonable and any strategic reason asserted would not excuse the deficient
conduct. Defense Counsel in his closing lamented to the jury the following:

Closing Argument by Defense Counsel (Transcript p. 752):
What you see and I hope you appreciate this is I have to go
first. If I were last, I would be in a much better position
because I could hear what the other side is going to say,
and I could have my argument all lined up about what I was
going to say. It's always easier once you hear what the
other side is saying to come with an argument. Remember,
when I get through and the solicitor stands up here and
starts arguing, I have a response to it. I can't go back and
tell you what it is, but I have one for it.

- ii. Trial Counsel did not disclose to Mr. Jamison that Trial Counsel knew the family
of the victim and that the family would wonder why he was taking the case.

Trial Transcript Page 817, Lines 8-13: There is nothing I can say -- Your Honor knows I have three children -- and there is nothing I could ever say to make the family of the victim feel better. I know some of them and they probably don't understand why I was involved in this trial, but I have a job to do sometimes representing people. They are good people.

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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Before he retained counsel, Mr. Jamison had a right to know that Counsel knew the victim's family, and counsel's failure to inform violated his right to have a zealous advocate. See Jones v. Barnes, 463 U.S. 745, 758 (1983) (BRENNAN, J., dissenting) ("To satisfy the Constitution, counsel must function as an advocate for the defendant, as opposed to a friend of the court"); Ferri v. Ackerman, 444 U.S. 193, 204 (1979) ("Indeed, an indispensable element of the effective performance of [defense counsel's] responsibilities is the ability to act independently of the Government and to oppose it in adversary litigation"). The Sixth Amendment requires that a defendant may not be represented by counsel who might be tempted to dampen the ardor of his defense.

Mr. Jamison was not aware that his Defense Counsel knew the family of Mr. Gamble until he heard Mr. Williams tell the judge, during the sentencing part of his trial, that he knew Mr. Gamble's family. Mr. Jamison states for the Record that he never would have retained Mr. Williams as his attorney if Mr. Williams had disclosed this information to him.

This failure to disclose and inform Mr. Jamison of this potential conflict is neither merely speculative nor is it harmless error. Defense Counsel's lack of mitigation and his failure to suggest a recommended sentence are indicative of a less than zealous advocacy.

- iii. Even though Trial Counsel knew that trial Judge McMahon was required to disclose that he had a daughter employed with the Lexington County Solicitor's Office, neither Trial Counsel nor the presiding judge ever disclosed this to Mr. Jamison. Mr. Jamison states for the Record that he would have required Judge McMahon to recuse himself if either his Defense Counsel or the judge had disclosed this information to him.

The Trial Transcript of Mr. Jamison's Felony DUI trial did not reflect any record of discussions regarding the required disclosure. This failure to disclose and inform is neither merely speculative nor is it harmless error. A different trial judge may have ruled correctly that Mr. Jamison's blood test results were not admissible. A different trial judge may have ruled that curative instructions were not sufficient in curing the State's improper and inflammatory question of why Mr. Jamison was smiling on the on-site video. A different trial judge may have ruled that the proper action was to grant a mistrial as Mr. Williams requested. This failure to disclose meets both prongs of the Strickland Standard.

- iv. Trial Counsel failed to object to the jury instructions regarding an erroneous reading of the following jury instruction:

Inferences from the results of a test, 56-5-2950(b):

The amount of alcohol in the Defendant's blood at the time of the **alleged violation** as shown by chemical analysis of the Defendant's breath or other bodily fluids may be considered by you in deciding whether the Defendant was under the influence. If the alcohol concentration was .08 of 1 percent or more -- that would be 0.08 -- if the alcohol concentration was .08 of 1 percent or more, it may be inferred that the Defendant was under the influence.

The correct version of the Statute that the Judge should have read is as follows:

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LEXINGTON

See S. C. Code Ann. § 56-5-2950(G)(3) (Supp.2009) (providing that in a criminal prosecution for felony DUI, a blood alcohol concentration of greater than 0.08 gives rise to an inference the defendant was under the influence of alcohol)

(G) In the criminal prosecution for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 the alcohol concentration at the time of the test, as shown by chemical analysis of the person's breath or other body fluids, gives rise to the following:

(1) if the alcohol concentration was at that time five one-hundredths of one percent or less, it is conclusively presumed that the person was not under the influence of alcohol; (2) if the alcohol concentration was at that time in excess of five one-hundredths of one percent but less than eight one-hundredths of one percent, this fact does not give rise to any inference that the person was or was not under the influence of alcohol, but this fact may be considered with other evidence in determining the guilt or innocence of the person; or (3) if the alcohol concentration was at that time eight one-hundredths of one percent or more, it may be inferred that the person was under the influence of alcohol.

Mr. Jamison alleges that it is prejudicial and not a harmless error that arises from the reading of the incorrect and out-of-date statute to the jury as part of the jury instructions. The references in the incorrect statute to the amount of alcohol in the Defendant's blood **at the time of the alleged violation** rather than to the correct statute that references the alcohol concentration **at the time of the test** is an incorrect error of law that the judge never withdrew or properly corrected.

The prejudice also is expressed in Trial Counsel's failure to object. An objection would have strengthened Mr. Jamison's direct appeal argument regarding the admission of the Mr. Jamison's blood test.

- v. Trial Counsel made a strategic decision to stipulate to the admission of the DUI on-site video, the breath test video, and the affidavit. For several reasons,

counsel's decision was not reasonable and any strategic reason asserted would not excuse the deficient conduct.

The stipulation allowed the State to introduce evidence against Mr. Jamison, without having any challenge made as to its admission or in part. The stipulation voided any need for the State to have the Jackson v. Denno Hearing as the State had planned.

Trial Transcript, Page 39, Mr. Mobley: "Additionally, Your Honor, we will have to review the roadside, as well as the B.A. room video... There are statements that are made within those two videos that we want to make sure we get in under Jackson v. Denno and things of that nature."

Moreover, the statements on the videos may have been subject to a Jackson v. Denno Hearing from Defense Counsel. If Defense Counsel had objected rather than stipulating, then this issue would have been preserved for Mr. Jamison's direct appeal.

Trial Counsel combined his failure to advocate his client's cause with additional suspect stipulations such as allowing over 40 photographs to come in as State's evidence. State's Exhibit No. 23 is a photo of the victim's body in the street. It is generally recognized that the prosecution and the defense should be afforded wide discretion in the selection and presentation of evidence. Trial Counsel cannot claim that there was any strategic benefit in his decisions as there was in State v. Henderson, 556 S.E.2d 691, 347 S.C. 455 (S.C.App. 2001).

Transcript Page 45, Lines 20-22, Mr. Williams: Your Honor, I will start off with all the stuff that we can agree, too. **That might shorten this trial a good little bit.**

Transcript, Page 47 Lines 2-4, Mr. Williams: We have also agreed to the introduction of two videos, one, which was taken at the scene, one which was in the DataMaster room.

Transcript, Page 48 Lines 9-25, Mr. Williams: Your Honor, one other stipulation that the solicitor wants to place on the record. Back when this wreck occurred, there was a videotaping requirement for all D.U.I.s. The patrol car which arrived at the scene did not have a camera. The solicitor has shown us a copy of an affidavit which is filled out by that officer saying he was not equipped with videotape. A responding officer came to the scene after that particular officer, and he did show or execute a video camera or show a videotape. **For the solicitor's benefit**, we are not contesting the issue about the videotaping by the second police car which appeared.

Mr. Mobley: And that the affidavit cures any requirement under 56-5-2953, Subsection (b), any lack thereof of a video by the arresting officer. Because he did not have -- his car was not equipped with a video at

Mr. Williams: That is correct, Your Honor.

The effect was to provide Mr. Jamison, not with a Defense Counsel, but with a second prosecutor. There was no rational explanation for not objecting and there was absolutely no risk in doing so. It seems clear that Defense Counsel did not think he had to put on a defense, because he was certain that the results of the blood test could not come in as substantive evidence. Trial Counsel failed to have the blood test results suppression hearing as a pre-trial motion and waited until the date of trial. Trial Counsel's strategic decision resulted in his having no time to construct other trial strategies when the trial judge ruled, in error, that the blood test results could come in as evidence.

- vi. Defense Counsel failed to request a Jackson v. Denno hearing in regards to statements made by Mr. Jamison on both DUI videos and to the statements Mr. Jamison made to the police and paramedics.

Defense Counsel made strategic decisions that the statements would come in and thus voided any need for the State to prove the admissibility of the statements. This allowed the statements to be admitted in violation of Mr. Jamison's Fifth Amendment right not to incriminate himself. The failure of Defense Counsel not to subject these statements to a Jackson V. Denno Hearing is an impermissible burden shifting error that meets both the Cronic and the Strickland Standards.

Defense Counsel should have objected to the admissibility of these statements, and if he were overruled, should have safeguarded the issues in the record for appeal. However, Trial Counsel failed to object to the admission of these prejudicial and improper statements. These statements prejudiced Mr. Jamison because saving criminal defendants from prejudice is the whole rationale behind the exclusionary rules. At a minimum, attempting to suppress may have prevented the State from asking the question on Page 322 Lines 1-5 of Sergeant Marzol of: "Do you know why the actual Defendant was smiling at the time?" This question was asked right after the State played the roadside video to the jury. Additionally, stipulating and failing to challenge the legality of the videos allowed the State to use the videos in the light most favorable to the State for the purpose of Section 56-5-2953, which is to create direct evidence of a DUI arrest.

- vii. Defense Counsel failed to require the state to play the remainder of the on-scene roadside video to the jury after the state played only a 5-minute portion of the estimated 30-minute video to the jury.

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The Trial Transcript on Page 353-354 is evidence that Defense Counsel knew that the State played only a portion of the video. Moreover, Defense Counsel, in his Closing on Page 754, asked the jury to consider why the State did not show the whole video.

The Transcript on Page 777 is evidence that Mr. Jamison was prejudiced and that the outcome of the trial was affected by Defense Counsel's strategy of not requiring the showing of the whole video. On Page 777, the Solicitor, in his Closing, tells the jury that if the whole video was important, that the Defense Counsel would have entered it into evidence.

Moreover, well before the start of the trial, Mr. Jamison asked Mr. Williams and Mr. Stitely to show him all of the roadside video, but his Defense Counsel never showed it to him.

- viii. The judge issued a curative instruction on the issue of mistrial in Mr. Jamison's felony DUI trial. Defense Counsel accepted the judge's ruling and did not contemporaneously make an additional objection to the sufficiency of the curative charge. Defense Counsel thereby made this issue unpreserved for review on direct appeal.

Transcript Page 326, The Court: My question specifically, Mr. Williams, do you want me to inform the jury that question has been struck? That's my point.

Mr. Williams: I would ask the Court to instruct the jury as to that.

The Court: Ladies and gentlemen, the last question that was asked by the solicitor was such that he asked if the officer knew why the Defendant was smiling at the time in regards to the tape that was previously published to you. I have ruled that that is not a proper question. I further rule that that question should be stricken from the record. There was no response by this officer to that question. So obviously, I'm not striking a response that does not exist.

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Defense Counsel did not contemporaneously make an additional objection to the sufficiency of the curative charge in order to preserve the denial of the Request for Mistrial as an issue for Mr. Jamison's direct appeal. Moreover, Defense Counsel failed to consult with the judge on the wording of the curative charge and of the striking of the question.

Further, Defense Counsel failed to object and ask for another mistrial on the grounds the judge improperly worded his curative charge such that it caused the jury to focus on the improper question previously asked by the State. This ineffective assistance of counsel meets the Strickland Standard because Mr. Jamison's direct appeal counsel could not argue this issue. His direct appeal lacked this issue. This missing mistrial issue likely affected the outcome of his appeal.

- ix. Defense Counsel's investigation and preparation for trial were inadequate and incomplete.
 - 1. Defense Counsel failed to discuss trial strategy with Mr. Jamison including, but not limited to, what defenses other than the blood-test suppression would be available.

2. Mr. Jamison alleges that Defense Counsel did not properly explain to him whether he should or should not testify at trial. The trial judge's discussion with Mr. Jamison in the Transcript on Page 736 is less than persuasive when you consider that Mr. Jamison had no prior criminal convictions.

Mr. Jamison relied totally on his Defense Counsel's knowledge of the criminal justice system.

It is poignant to recall the force of Justice Sutherland's opinion for the Court in Powell v. Alabama, 287 U.S. 45 (1932) The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him.

As held in United States v. Stevens, 129 F.3d 1261 (4th Cir.1997), Trial Counsel's deficiency deprived applicant of his right and ability to communicate his story to the jury.

This lack of personal communication surely made it less likely for the jury to believe Defense Counsel's claims that the death of Mr. Gamble was a tragic accident because they were presented through his attorney rather than from his own mouth.

3. Mr. Jamison told Defense Counsel that he did not want just Mr. Stitely working on his case. Mr. Jamison understood that both Mr. Williams and Mr. Stitely would be his defense team. However, Defense Counsel never informed Mr. Jamison as to what roles and duties his defense team would have regarding trial investigations, trial preparations and during the actual trial.

Defense Counsel's Closing Argument in the Trial Transcript on Pages 755-756 provides the following:

I shouldn't admit it to my client. When you try a case, you can't always write down all your notes like you want to. If you have got two lawyers, then you have the other guy writing down the notes. I went home and tried to look at my notes. Of course, I couldn't read half of them.

Mr. Jamison was prejudiced and the outcome of the trial may have been different had Mr. Jamison received his 2 person defense team rather than just having Mr. Williams. The Trial Transcript reflects that Mr. Stitely only presented the In-Camera Breath-Test Suppression Hearing.

- x. Neither Mr. Williams nor Mr. Stitely advised Mr. Jamison about whether they or the State had discussed plea negotiations and never discussed the advisability of taking a plea.

In State v. Cross, 240 S.E.2d 514, 270 S.C. 44 (S.C. 1977), the Court holds that (1) In General. The attorney for the government and the attorney for the defendant ... may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty...

Moreover, plea bargaining has been approved by the United States Supreme Court in the case of Brady v. United States, 397 U.S. 833, 30 L.Ed.2d 747. 2011 JUL 30 3:05 PM FILED BETH A. CARRIGG CLERK OF COURT LEXINGTON SC

Mr. Jamison states for the record that **had** his Defense Counsel discussed with him the strengths of the State's case, as well as Defense Counsel's other defense strategies should the judge allow the blood test to come in, and that if his Defense Counsel had ever discussed the risks of going to trial as opposed to pleading guilty, he would have strongly considered and directed his Defense Counsel to explore plea bargaining. However, Defense Counsel never advised him as to these matters.

- xi. Neither Mr. Williams nor Mr. Stitely advised Mr. Jamison about the need to consult with and retain independent expert witnesses to oppose the findings of the state's M.A.I.T. expert witnesses.

In Ake v. Oklahoma, 470 U.S. 68, 71 (1985), the Supreme Court recognized that ... independent experts ... "may well be crucial to the defendant's ability to marshal a defense." The Court conducted a Fourteenth Amendment due process analysis and held that without independent experts defendants could be denied "meaningful access to justice." *Id.* at 76-77. This was because, while jurors may disregard a defendant's testimony or a lawyer's argument, experts "assist lay jurors, who generally have no training in" scientific or medical matters "to make a sensible and educated determination about" the contested issues. *Id.*, 470 U.S. at 81. "By organizing ...[data], interpreting it in light of their expertise, and then laying out their investigative and analytic process to the jury, the [expert] for each party enable[s] the jury to make its most accurate determination of the issue before them . Because jurors do listen to, are influenced by, and will rely upon the testimony of such

experts, a trial may be fundamentally unfair when a party is left without expert assistance.

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LEXINGTON

Mr. Jamison had the ability to retain experts if his Defense Counsel had informed him that these independent experts could challenge the findings of the State's M.A.I.T. accident reconstruction experts.

Defense Counsel, in his opening and in his closing, alleged that among other things this was not a case of Felony DUI but rather a tragic and terrible accident. The Transcript shows that Defense Counsel used only cross-examination of the State's M.A.I.T. accident reconstruction experts to rebut the State's argument that this was a Felony DUI. However, without some evidence to refute the State's accident reconstruction experts it was an unreasonable defense theory. At a minimum, consulting with independent accident reconstruction experts would have given Defense Counsel an opportunity to test his accident defense theory.

- xii. Defense Counsel laid no foundation and introduced no evidence to the jury that Mr. Gamble died of a tragic accident or through some action of Mr. Gamble in causing the accident.

Defense Counsel's lack of trial investigation and preparation are evidenced in his failure to call any witnesses, as well as his failure to call the proper witnesses that had both personal knowledge and the ability to lay the foundation for the evidence to be admitted. Moreover, Defense Counsel failed in his duty to investigate the relevance of Mr. Gamble's driving records and of his

medical records that indicated that at the time of his death, marijuana was in his system.

In the Transcript on Pages 250-271, Defense Counsel attempted to have Mr. Gamble's medical records admitted into evidence but was denied due to lack of foundation because the author of the records was not available and because of Defense Counsel's inability to prove relevance. On Page 258, Defense Counsel admits that the State's Witness is not qualified to pursue any defense of the case.

The medical records proved that, marijuana was in his system at the time of Mr. Gamble's death. The fact remains that Defense Counsel was unable to develop this information through cross-examination.

Defense Counsel failed to investigate the facts and circumstances surrounding the finding of marijuana in Mr. Gamble. In its discovery, the State gave Mr. Gamble's medical records to the Defense. Counsel's failure to conduct such an investigation deprived the jury of critical information relevant to an accurate assessment of applicant's guilt or innocence. See Wiggins v. Smith, 539 U.S. 510 (2003).

In the Transcript Defense Counsel's Closing on Page 756 reflects the following:

Again, remember the missing video. I want to know where that emergency room doctor was. I want to know where those medical records are. I want to know what the results were from the blood work analysis on the victim. Why? Why wasn't it presented? Do you think it couldn't have been presented? They simply called the neurosurgeon to tell you if he was in a coma and he died as a result of that.

Defense Counsel's failure to investigate and prepare for trial caused him to ask the above questions to the jury rather than providing the jury with the answers to these questions.

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 LEXINGTON SC

- xii. Defense Counsel failed to request a jury view of the crime scene.

Mr. Jamison's Trial Transcript has sufficient examples proving that he was prejudiced and that the outcome of the trial would be different had Defense counsel requested a jury view of the crime scene.

The evidence the State presented consisted of diagrams and photographs, as well as testimonial references to this demonstrative evidence. This evidence was confusing as to the jury's understanding of the perspectives of the crime scene. Had the jury actually viewed scene, their understanding of the layout of the road and the bicycle lane would have been enhanced. The evidence admitted at trial did not help the jury appreciate the proximity and the distances that were the foundations of the assumptions of the State's M.A.I.T. accident reconstruction experts.

Defense Counsel's failure to request a jury view was most troubling regarding the critical testimony of State's Witness, Ms. Shonda Cheeks. A jury viewing of the crime scene would show the difficulty in seeing what she saw from her position as she was driving down the road.

- xiii. Defense Counsel made a strategic decision not to present any significant mitigating evidence, failed to provide the Judge with a plea for mercy or a

sentencing recommendation, and did not object to the introduction of emotional and inflammatory victim impact statements and testimony from the victim's family.

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Defense Counsel's mitigation presentation consisted solely of the following:

Transcript Pages 816-818:

MR. WILLIAMS: Your Honor is, I guess, semi-familiar with Mr. Jamison in that there have been, I guess, little hearings and things like that. You know that he is in early 40s. He is married, has four children. He has had the same job for the last 20 years where he works on a tanker ship or actually, he is the pilot for the tanker ship. It goes up through the Antarctic and delivers fuel oil for those persons who need fuel oil in the arctic. He has behind him or with him his brother, his sister, his momma. He also has family.

You know, I mentioned kind in of closing and maybe in opening that this is the type of crime which is really tough for juries. It's tough for victims, it's tough for defendants, it's tough for judges, it's tough for everybody, because there is no sense for this type of crime because it's caused by persons not being responsible. There is no maliciousness, there is no evilness, there is no intentionally bad or meanness in the person. It happens because that person is not responsible.

There is nothing I can say -- Your Honor knows I have three children -- and there is nothing I could ever say to make the family of the victim feel better.

I know some of them and they probably don't understand why I was involved in this trial, but I have a job to do sometimes in representing people. They are good people.

There is nothing we can do to bring this young man back.

Unfortunately, the people who are going to suffer the most is going to be the families of the victim and the families of the Defendant, to include those four children. So there are no winners here today.

THE COURT: Thank you. Does anyone else want to address the Court? Mr. Jamison, I would be glad to hear from you.

THE DEFENDANT: Yes, sir. I'm not a speaker never claimed to be, and by looking at these people back here, they all look like fine, fine people. There is nothing, nothing that I could say to ease your pain. I have four kids. I have a daughter in college that's not but a year younger than your son. I would never, ever intentionally hurt anyone, and I am so sorry for what happened that night. I have prayed for your son from that night until I stepped up here. I have a son as well, and I don't know what I would do if a travesty or tragedy ever happened like that night. So I understand how you feel and I don't condemn you. There is nothing I can do, but you better believe if there is one thing I could change in this world with my life it would be that night. I have -- I'm sorry.

THE DEFENDANT: Again, I'm sorry.

MR. WILLIAMS: Your Honor, I think that's all. (Pause.)

THE COURT: Anything further, Mr. Williams?

MR. WILLIAMS: No, sir. Thank you, Your Honor.

Defense Counsel failed to object to the introduction of prejudicial and inflammatory statements from the family of Mr. Gamble.

For example in the Transcript on Pages 808-810, the Solicitor provides:

THE COURT: Mr. Williams, if you would have your client come around, please.

THE COURT: Anything additional from the State, Solicitor?

MR. MOBLEY: Yes, Your Honor. We do have a number of individuals that would like to speak to the Court before sentencing is imposed. We would appreciate any assistance with this.

THE COURT: I would be glad to hear from them. Mr. Williams, y'all just want to have a seat until I hear from these parties?

The most prejudicial and inflammatory statements from the family of Mr. Gamble is that of that of the victim's father Mr. Joseph Gamble, Jr. His testimony is as follows:

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LEXINGTON SC

I would ask today -- I have been made aware I believe the sentence is somewhat of 25 years, I think. To me that is nowhere near the loss my family and I have incurred. Jesse, to be 19 years of age, like I said, God willing would have had plenty of years left. Not only was my son taken, the possibility of grandchildren were taken, the possibility of a beautiful daughter-in-law. Such things are treasures in life. Children are a gift from God, and they are not to be taken lightly. I never wish this on any other parent in this world to have happen to them. I just ask in your judgment to the best of your ability that you see fit to give the maximum sentence, please.

Defense Counsel failed to object for the record to this testimony and he made no specific objection on any of the grounds and failed to preserve the issue for Mr. Jamison's direct appeal.

- (b) Ineffective Assistance Of Appellate Counsel Ms. Wanda H. Carter
 - i. Appellate Counsel Ms. Wanda H. Carter, in her initial brief of appellant Jamison, failed to argue the issue of prejudice, failed to show how the outcome of Mr. Jamison's trial was affected, and failed to argue that harmless error did not apply in the issue of did the trial judge commit reversible error in admitting the blood test results in the felony DUI trial of State versus Andra Byron Jamison.

These failures meet the ineffective assistance standards as expressed in Strickland.

- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? No.

- (b) any petition in State or Federal Courts for habeas corpus or post-conviction relief?
No.
- (c) Any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) Any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: Omitted Not Applicable
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No
If you answered "yes" to (14) identify: Omitted Not Applicable
15. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) The reason Mr. Jamison did not previously present any of his PCR allegations to the Courts of South Carolina is that these allegations were not preserved for direct appeal.
16. Were you represented by an attorney at any time during the course of:
- (a) Your arraignment and plea? Yes.
- (b) Your trial, if any? Yes.
- (c) Your sentencing? Yes.
- (d) Your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
- (e) Preparation, presentation, or consideration of any petitions, motions, or applications with respect to this conviction, which you filed? Yes.
17. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Mr. Robert T. Williams, Sr. and Benjamin A. Stitely, PO BOX 849 Lexington, SC 29071
- ii. Wanda H. Carter, SC Commission on Indigent Defense, PO BOX 11589, Columbia, SC 29211-1589, and

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iii. Mr. Jeremy Adam Thompson, PO BOX 12891 Columbia, SC 29911

(b) the proceedings at which each such attorney represented you:

- i. Trial and Sentencing
- ii. Direct Appeal
- iii. Direct Appeal

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18. State clearly the relief you seek in filing this application:

A new trial or any other relief allowed under statutes and case law for the vacating, setting aside or correcting the conviction and sentence. As Mr. Jamison's PCR Attorney, I have discussed the dangers and benefits of a PCR Application, and he understands and wants to file this PCR Application.

19. Are you now under sentence from any other court that you have not challenged?

Mr. Jamison is not under sentence from any other court. He had no criminal record prior to this unlawful conviction.

STATE OF SOUTH CAROLINA

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VERIFICATION

County of Lexington

2014 JUL 10 P 3:06

I, Joel Stroud, Attorney for Mr. ~~Paul A. Harrison~~, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

2014CP3202548

Joel Stroud *Joel Stroud*

07-09-2014

Printed Name

Signature

Date

SWORN to and subscribed before me this 9 day of July, 2014.

Ad Smith III

(L.S.)

Notary Public

My Commission Expires: February 12, 2023

(SEAL)

FILED

APPLICATION FOR POST-CONVICTION RELIEF

2014 JUL 10 P 3:05

APPLICANT: ANDRA BYRON JAMISON

BETH A. CARRIGG

CLERK OF COURT LEXINGTON COUNTY
LEXINGTON SC

ORIGINAL

POST-CONVICTION RELIEF ATTORNEY FOR ANDRA BYRON JAMISON:

Joel Stroud

Joel F. Stroud, Attorney, PLLC

PO Box 516

Chesterfield, SC 29709

2014CP3202548

Trial Judge: R. Knox McMahon Trial Dates: October 12-15, 2009



ATTORNEY JOEL STROUD
JOEL F. STROUD, ATTORNEY, PLLC
PO Box 516 Chesterfield, SC 29709

stroudlaw@shtc.net
(843) 623-5757

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BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

Lexington County Clerk of Court
Attention: Ms. Beth Carrigg
205 East Main Street
Lexington, S.C. 29072

July 9, 2014

2014CP3202548

Re: PCR Application: Andra Byron Jamison

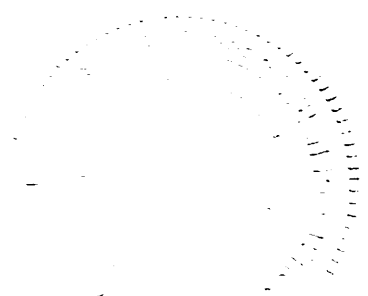
Dear Ms. Carrigg:

I am enclosing two copies of the referenced PCR Application for filing. Please return one copy in the enclosed self-addressed and postage paid envelope to my law office. If you have any questions, please call or e-mail.

Sincerely,

Joel Stroud

Enclosures: two copies PCR Application
Self-addressed envelope



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Andra Jamison,	)	C.A. No. 2014-CP-32-2548
S.C.D.C. No. 337461,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed July 10, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. In January 2009, the Lexington County Grand Jury indicted Applicant for Felony D.U.I. (2009-GS-32-5283). Robert T. Williams, Sr., Esq., ('Theo') represented Applicant. On October 15, 2009, Applicant proceeded to a trial before the Honorable R. Knox McMahon and a jury, which found Applicant guilty as indicted. Judge McMahon sentenced Applicant to a term of twenty eighteen (18) years imprisonment.

A timely notice of appeal was filed on October 23, 2009, and perfected on Applicant's behalf by Theo Williams, Esq. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Jamison, Op. No. 2012-UP-058 (S.C. Ct. App. filed February 1, 2012). Both Applicant and Respondent petitioned the Court of Appeals for Rehearing. The

Court of Appeals denied both Petitions and Applicant then petitioned for Writ of Certiorari. The Supreme Court denied the petition and the Remittitur was issued on August 27, 2013.

II.

In his current Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Trial Counsel's investigation was both inadequate and incomplete."
- b. "Trial counsel failed to interview any potential witnesses."
- c. "Trial Counsel did not disclose that Counsel knew the family of the victim."
- d. "Trial Counsel failed to disclose to the defendant that Judge McMahon had a daughter working for the Lexington County Solicitor's Office."
- e. "Trial Counsel failed to object to the jury instructions regarding an erroneous reading."
- f. "Counsel's decision [to stipulate to the admission of the DUI on-site video, the breath test video, and the affidavit] was not reasonable."
- g. "Defense Counsel failed to request a Jackson v. Denno hearing in regards to statements made by Mr. Janison on both DUI videos and to the statements Mr. Janison made to the police and paramedics."
- h. Defense Counsel failed to require the state to play the remainder of the on scene roadside video"
- i. "Defense Counsel accepted the judge's ruling and did not contemporaneously make an additional objection to the sufficiency of the curative charge."
- j. "Neither Mr. Williams nor Mr. Stitely advised Mr. Jamison about whether they or the State had discussed plea negotiations and never discussed the availability of taking a plea."
- k. "Neither Mr. Williams nor Mr. Stitely advised Mr. Jamison about the need to consult with and retain independent expert witnesses to oppose the findings of the state's M.A.I.T. expert witnesses."
- l. "Defense Counsel laid no foundation and introduced no evidence to the jury that Mr. Gamble died of a tragic accident or through some action of Mr. Gramble in causing the accident."
- m. "Defense Counsel failed to request a jury view of the crime scene."

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCF.

Attached to this return and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), Trial Transcript, Applicant's records from the South Carolina Department of Corrections, and the Record on Appeal. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of trial counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland,

466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove plea counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

(SIGNATURE BLOCK ON NEXT PAGE)

V.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

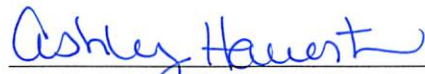
June 24th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2014-CP-32-2548
ANDRA B. JAMISON, #337461,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Joel Flake Stroud, Esquire
Joel F. Stroud, Attorney, PLLC
PO Box 516
Chesterfield, SC 29709

DATED this 25th day of June, 2015.



 Ashley Haworth, Legal Assistant
 For Respondent

COUNTY OF LEXINGTON
ELEVENTH JUDICIAL CIRCUIT

January 27, 2016

Beth A. Carrigg
Clerk of Court
205 E. Main Street, Suite 128
Lexington, S.C. 29072

JAN 28 16 12 13

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SCIn re: Jamison v. State
Case No. (2014-CP-32-02548)

Dear Clerk;

I caused to be filed in January 2016, the "amending issues" which needed to be filed in my PCR case. This office responded or someone did without authenticity, affirming such response was actually authentic. (i.e. no stamp filing date)

The subject-matter concerns filing the amendments through hired counsel. However, that method at the present has proved to be "ineffective and inadequate" to preserve this Petitioner's allegations for a hearing.

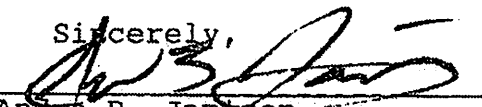
Thus, if I had received a authenticated "stamped filed response" from this Clerk's Office. At minimum, I would be held to have exercised due diligence in at least attempting to get my amendments heard.

Therefore, along with a Certificate of Service to all concerned parties, including counsel of record. I am re-sending the amendments for proper filing procedures in this court.

Again, I am respectfully requesting an official stamped filed response or please explain to the satisfaction of a court why such cannot be achieved. When in fact, there is no guaranteed right to counsel on PCR.

Sincerely,

/s/


Andra B. Jamison
BRCI-Montecello Unit
4460 Broad River Rd.
Columbia, S.C. 29210cc: filed
1/28/2016

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON

FILED IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2016 FEB 16 P 1:32

Andra Byron Jamison, #337461

Petitioner,

Vs.

Case No.: 2014-CR-32-02548

State of South Carolina,
Respondent. /

REQUESTING LEAVE TO AMEND PRO-SE ISSUES FOR PCR.

Comes now, Petitioner Jamison, to hereby respectfully request in furtherance of the statutory objectives under the Uniform Post-Conviction Act, for South Carolina. To include the following amendments and controlling authority relating specifically to the State's admission of "blood evidence" in a felony DUI case. While simultaneously, either inadvertently or intentionally, "causing the defendant to be deprived his right under due process of law", to have an independent testing done.

Such created the very atmosphere that the guarantees under the Constitution's Fifth, Sixth and Fourteenth Amendment are designed to prevent. For these reasons and perceived difficulty in raising these issues through counsel of record. Does the Petitioner move for leave to incorporate them himself.