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Feb 24 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JIOVAANI ARANZA GALLEGOS,

APPELLANT

APPELLATE CASE NO. 2021-000689

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**Motion to Hold Appeal in Abeyance and Remand  
For a Ruling on the Pending Motion to Reconsider Sentence**

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Counsel respectfully requests the Court hold the above referenced appeal in abeyance and remand for a ruling on the pending motion to reconsider sentence. In support of this motion counsel submits the following:

1. In March of 2019, the Beaufort County Grand Jury indicted Appellant for being a habitual traffic offender with death resulting, indictment #2018-07-1487. In April of 2019, the Beaufort County Grand Jury indicted Appellant for hit and run with death resulting, indictment #2018-GS-07-1486. On October 19, 2020, Appellant proceeded to jury trial before the Honorable Carmen T. Mullen. Claire Schulmeister represented Appellant at trial. Jared J. Shedd prosecuted the case.

2. The jury found Appellant guilty. On October 21, 2020, Judge Mullen sentenced Appellant to twenty (20) years concurrent for each charge with a \$10,000 fine for the hit and run and a \$5,000 fine for the habitual traffic offender.

3. On October 30, 2020, counsel for Appellant filed a motion for directed verdict or, alternatively, a new trial. On November 2, 2020, counsel for Appellant filed a motion for reconsideration of sentence. A copy of the motion for reconsideration of sentence is made a part of this motion and attached as Exhibit A.

4. On May 25, 2021, counsel for Appellant filed an amended motion for reconsideration of sentence. A copy of the amended motion for reconsideration of sentence is made a part of this motion and attached as Exhibit B. On that same day, May 25, 2021, Judge Mullen held a hearing on both the motion for directed verdict or, alternatively, a new trial and the motion for reconsideration of sentence. A copy of the transcript of the May 25, 2021, hearing is made a part of this motion and attached as Exhibit C.


5. On June 16, 2021, Judge Mullen issued a written order denying the motion for new trial. A copy of the order is made a part of this motion and attached as Exhibit D. The motion to reconsider sentence was not addressed in the order denying the motion for new trial. The notice of intent to appeal was timely filed on June 25, 2021. The first extension of time to file the initial brief and designation of matter was granted on February 23, 2022.

6. It appears that the motion to reconsider sentence is still pending and has not been ruled upon by the trial judge. Counsel for Appellant seeks abeyance and a remand for the narrow purpose of allowing the trial judge to rule on the motion to reconsider sentence. The written motions for reconsideration of sentence were before the trial judge and a hearing was held. The motions and transcript of the hearing are attached and available for review by the trial judge.

7. Counsel for Appellant contacted opposing counsel, Senior Assistant Deputy Attorney General William M. Blicht, Jr., with regard to this motion and he has no objection to the motion to hold the appeal in abeyance and remand for a ruling on the pending motion to reconsider sentence.

Based on the above showing, undersigned counsel respectfully requests this Court hold the appeal in abeyance and remand to allow Judge Mullen to rule on the pending motion to reconsider sentence. Once Judge Mullen rules on the motion to reconsider sentence, counsel respectfully asks this Court to take the appeal out of abeyance and allow the appeal to continue in normal course. While this motion is pending, counsel respectfully requests this Court hold the timelines for filing the initial brief of appellant and designation of matter in abeyance.

Respectfully submitted,

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

February 24, 2022

# **EXHIBIT A**

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

) IN THE COURT OF GENERAL SESSIONS  
) FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

2020 NOV 22 PM 1:00  
) INDICTMENT NOs: 2018GS0701486,  
) 2018GS0701487

vs.

JERRI A. ROSENEAU  
BEAUFORT COUNTY, SC  
CLERK OF COURT  
) WARRANT Nos.: 2018A0710300385,  
) 2018A0710300387

JIOVAANI ARANZA GALLEGOS,  
DEFENDANT.

) NOTICE OF MOTION FOR  
) RECONSIDERATION OF SENTENCE  
)  
)  
)

To: Solicitor Duffie Stone, Fourteenth Judicial Circuit

PLEASE TAKE NOTICE THAT the Defendant, Mr. Jiovaani Aranza Gallegos, by counsel, moves this Court to reconsider the sentence imposed in the above captioned matters.

PLEASE TAKE FURTHER NOTICE THAT Defendant requests a hearing on the matter, at the discretion and convenience of the Court.



Claire Schulmeister, Bar. No. 104456  
Assistant Public Defender  
Beaufort County Public Defender's Office  
Fourteenth Judicial Circuit

Beaufort, South Carolina  
November 2, 2020



years is too harsh of a punishment here because it does not adequately take into account the individual characteristics of Mr. Aranza Gallegos or consider the sentencing purpose of rehabilitation along with the purposes punishment, deterrence and incapacitation.

Defense counsel could find little guidance in either the South Carolina Code or case law as to the purposes and goals of sentencing in South Carolina. However, the American Bar Association's Sentencing standards<sup>1</sup> are instructive. The American Bar Association lists five purposes of sentencing: (1) deterrence, (2) incapacitation, (3) punishment, (4) restitution and reparation to victims, and (5) rehabilitation. ABA Sentencing Standard 18-2.1. The ABA standards further provide:

The sentence imposed should be no more severe than necessary to achieve the societal purpose or purposes for which it is authorized. The sentence imposed in each case should be **the minimum sanction** that is consistent with the gravity of the offense, the culpability of the offender, the offender's criminal history, and the personal characteristics of an individual offender that may be taken into account.

ABA Sentencing Standard 18-6.1. Here, twenty years of incarceration is more than the minimum sanction necessary to meet the goals of sentencing in this case. Because the maximum possible penalties for both the offenses here are twenty years or more, Mr. Aranza Gallegos will not be eligible for parole. S.C. Code § 24-13-100. This means that he will likely serve 85% of the 20 years, or 17 years. While the loss of life to Mr. Lorenzana is tragic and irreversible, it was never Mr. Aranza Gallegos' intent to cause him any harm at all, let alone cause his death. He is extremely remorseful. Mr. Aranza Gallegos could not move, sleep or eat for days after he learned of the result of his actions and his subsequent arrest, and the Court will remember that he was so overwhelmed by emotion and tears that he could not speak in the sentencing phase of the trial. Mr. Aranza Gallegos is still assimilating the trauma of having unintentionally taken a life; that is a process that will likely never end and this is something that will always be a part of him.

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<sup>1</sup>[https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_sentencing\\_blk/#1.3](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_sentencing_blk/#1.3) (last visited November 2, 2020)

While that is not a part of the sentence imposed, it is certainly important for the Court to consider in fashioning a sentence that addresses the conduct and its result.

The culpable conduct in this case is that Mr. Aranza Gallegos drove when he was not permitted to do so. Were it not for the horrific tragedy of the accident, he would be facing far less severe a sanction for the exact same intentional conduct. This is what makes unintentional death cases so sad and so difficult. A person with no record who drives drunk and kills someone in the process faces years in prison while a first offense DUI that results in no harm to person or property is a misdemeanor with minimal jail time, if any, a fine, probation and alcohol classes. The intentional act is no different, but the consequences are, in cases such as this one, devastatingly different.

While Mr. Aranza Gallegos does have a criminal record that preceded this case, it consisted of misdemeanors, most of which were traffic misdemeanors—DUIs and driving with a suspended license. Prior to this case, Mr. Aranza Gallegos had never before been convicted of a felony, nor had he ever served more than a short jail sentence for his prior misdemeanor convictions. The weight of the pain and suffering he has caused to Mr. Lorenzana and his loved ones, becoming a person who has been convicted of two felonies, and facing prison time is a significantly different class of consequences and punishment than Mr. Aranza Gallegos has ever confronted before in his life. He acknowledges and appreciates the consequences of his actions, and thus understands that he must be punished. He also recognizes that the fact he was not supposed to be driving when this accident occurred is something the Court must consider in determining an appropriate sentence. However, the defense urges the Court to also think of the rehabilitative purpose of sentencing as well.

Mr. Aranza Gallegos is a young, good person, who can be rehabilitated. He is a citizen, a hard worker, and someone who loves, and is loved by, his family very much. He contributes a great deal to the emotional and financial support of his family in Mexico, particularly his mother. He also contributed to the community here, working multiple labor jobs in construction, landscaping and cleaning services. As described in the attached mitigation report (Exhibit 1), previously submitted to the Court during the

sentencing phase of the trial, Mr. Aranza Gallegos has been working "since he could walk." No child should have to do that, but that is what life dealt Mr. Aranza Gallegos.

He grew up in a loving family, but it was a family that suffered, at times severely, from economic insecurity—so much so that there were periods of his life where he, with his family, went hungry. Mr. Aranza Gallegos also lost his father at the young age of eleven, and then, more recently, the loss of his step-father. Mr. Aranza Gallegos simply did not develop appropriate coping skills for the significant stressors of life—such as financial insecurity, separation from family, and loss.

Despite what he has lived through, Mr. Aranza Gallegos still works hard. He worked hard while he was in jail prior to the trial in this case—towards obtaining a GED. He has hopes and dreams of owning and running his own businesses in the fields he is skilled in—landscaping and construction. While Mr. Aranza Gallegos must atone for the devastation and loss caused by his conduct, he is not a person that the community should give up on. He is a person who, with the proper supports and substance abuse treatment, can be not only a law-abiding citizen but a valued member of the community with much to offer.

Mr. Aranza Gallegos never meant to hurt anyone, and he certainly did not mean to hurt or kill Mr. Lorenzana. It simply is not who he is. But, that is what happened. He has learned, in the most difficult possible way, that the consequences of driving when one is not supposed to do not only affect the person who chooses to drive; rather, those decisions affect the entire community. For all of these reasons, Mr. Aranza Gallegos asks this Court to reconsider the sentence and reduce the period of incarceration. His chances of success upon release will be significantly better if the Court reduces the period of incarceration because he will be better able to psychologically handle the trauma of the incarceration knowing that the sentence is one that both punishes his conduct but also sends the message that there is still hope for him.

Turning now to the imposition of the fines in this case, neither 56-1-1105(C) nor 56-5-1201(A)(3) make any reference as to whether or not required fines may be suspended. In this case, the Court imposed

the minimum fines required by Code but did not suspend any portion thereof. At the time of sentencing, it was defense counsel's understanding that all parties were under the impression that the fines were mandatory and could not be suspended. However, because neither statute prohibits the suspension of the fines, Mr. Aranza Gallegos respectfully requests that this Court reconsider the sentence imposed and suspend the fines imposed in their entirety.

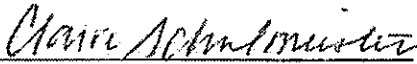
First, Mr. Aranza Gallegos is indigent, has been incarcerated for over two years to date, and is facing up a prison sentence of twenty years, should this Court decline to grant his motion and reconsider the length of the sentence imposed. Second, if the fines are not suspended, then not only will Mr. Aranza Gallegos have to pay \$15,000 in fines, plus his court costs, but he will also have to pay an assessment in the amount of \$16,125, or 107.5% of the unsuspended fine imposed pursuant to Section 14-1-206<sup>2</sup>, for a total amount of \$31,125, plus the court costs. Thus, the amount he will owe will be more than twice the fine actually imposed. Finally, the rule of lenity requires the Court to read the statute in favor of the defendant—that is, because the statute is silent as to whether the fines may be suspended, the Court is required to interpret that suspension of the fines is permissible pursuant to the rule lenity. *See State v. Miles*, 421 S.C. 154, 164 (S.C. App. 2017) (“This rule of lenity applies when a criminal statute is ambiguous, and requires any doubt about a statute’s scope be resolved in the defendant’s favor.”).

Where the legislature has meant for a fine to be imposed and not suspended, it is stated explicitly. For example, Code Section 56-5-2933, which prohibits driving under the influence, provides, in relevant part: “[h]owever, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars.” S.C. Code § 56-5-2933(A)(2). That is not the case in either statute at issue here. Therefore, the fines imposed in this case may be suspended. Because of Mr. Aranza Gallegos’ indigency as well as the facts and circumstances of this particular case, these fines are simply unnecessary as part of the punishment in this case.

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<sup>2</sup> Consider ABA Sentencing Standard 18-2.2(a)(ii), which in relevant part: “The legislature should not authorize imposition of economic sanctions for the purpose of producing revenue.”

For all of the reasons stated above, Mr. Aranza Gallegos respectfully requests that this Court reconsider the sentence imposed in this case. Specifically, he asks that the Court suspend the fines in their entirety and, further, that the Court reduce the period of incarceration to a sentence in the range of five to ten years on each charge, to run concurrently with one another. A reduced sentence that imposes an additional, but not lengthy, period of incarceration, will strike the appropriate balance between all the goals of sentencing.

  
Claire Schulmeister, Bar. No. 104456  
Assistant Public Defender  
Beaufort County Public Defender's Office  
Fourteenth Judicial Circuit

Beaufort, South Carolina  
November 2, 2020

*Office of the Public Defender  
Fourteenth Judicial Circuit*

*Stephanie Smart-Gittings, Circuit Defender*

ALLENDALE, BEAUFORT, COLLETON, HAMPTON & JASPER COUNTIES

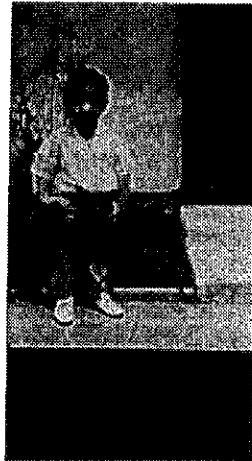
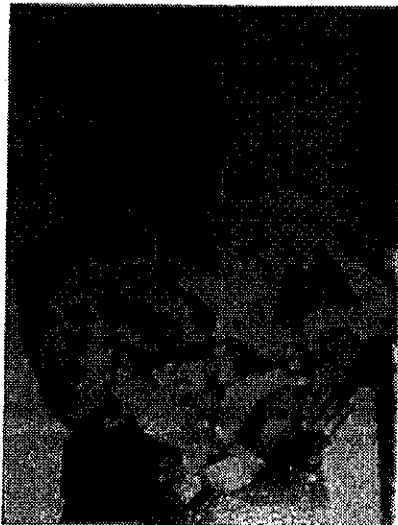
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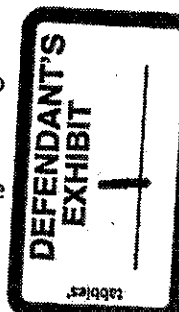
**Mitigation Report for Jiovaani Aranza-Gallegos  
Claire Schulmeister, Attorney**



Mr. Jiovaani Aranza-Gallegos was born in California on August 7, 1990, to his Mexican-born parents. He lived in the United States until he was four years old upon which time his parents moved the family back to Mexico. He hit all of his milestones appropriately during his babyhood and young life. His mother had a normal pregnancy with him and there were no issues.

While living in Mexico, his family moved no less than four times due to his father being sick. His father had diabetes and was not able to get proper care to manage this disease. Mr. Aranza-Gallegos did farm work with his family. In fact, many of the times when Mr. Aranza-Gallegos should have been in school, he had to be pulled out to help with farm duties. At the age of nine, and shortly before finishing fifth grade, his father went blind from diabetes. Therefore, Mr. Aranza-Gallegos did not get to attend sixth grade because he had to help on the farm to support his family; he has worked since he could walk. While he attended school, he enjoyed learning and never had any trouble. He was sad when he had to quit school because he did not get to have the same experiences as other children his age.

Mr. Aranza-Gallegos' family was poor. His home had no walls, no running water, and dirt floors. There was no electricity or running water so for water they collected water that came down from the top of



the mountain that they lived in the valley next to. He enjoyed the animals on the farm but it was hard work. He had a dog to play with sometimes and he did enjoy that as a break from work.

Mr. Aranza-Gallegos' family did not always have enough food. Therefore, to make ends meet, they would take on extra jobs to make more money so the family could eat; yet, they still went hungry sometimes. When asked to describe his childhood, the first word Mr. Aranza-Gallegos thought of was "cold." Despite his family's hardships, he still felt loved and he knew they were trying.

His parents fought sometimes and his father would sometimes be aggressive and angry. He would get scared of him, but he loved his father very much. According to his half-sister, Flor, Mr. Aranza-Gallegos became his father's eyes after he went blind. He was always helping him and caring for him along with his mother and the farm. He worked outside most of the day. He would walk to nearby farms also to try to make extra money for the family.



When Mr. Aranza-Gallegos was 11, his father died. His mother remarried about a year later and ended up having 3 more children. Mr. Aranza-Gallegos took his father's death hard; however, in time he grew quite close to his step- father.



Mr. Aranza-Gallegos worked very hard to help support them, essentially giving up his childhood. His family was quite close and he was a good kid. He didn't get into trouble, but occasionally when he would act like a normal kid, his punishment was with a belt. His family grew up in the Jehovah's Witnesses church. They went to church often as a family.

Mr. Aranza-Gallegos spent his teen years working even harder. He helped support his family but it was still a struggle for them. When he was 17 years old, his cousin, Fidel, offered to allow him to move back to the United States to live with him and work; his parents agreed, as he could make much more money here than in Mexico. So at the age of 17 years, Mr. Aranza-Gallegos moved back to the country he had left when he was four years old and moved in with his cousin, Fidel. He worked with Fidel at his company and lived with Fidel until he was 21-22 years old. According to Fidel, Mr. Aranza-Gallegos was helpful, didn't cause issues and continued to work hard. He would sometimes attend Catholic Services with his half-sister Flor and her husband.

Mr. Aranza-Gallegos worked hard and he discovered that he has a passion for fishing. He loves being outdoors, he loves the sport of it and he loves being near or on the water. He is very good at fishing and he often would share his catch with his friends and family.



After living here for a while, Mr. Aranza-Gallegos met a woman and ended up moving in with her and her four children. He did what he did best, he took care of them. At the time, he was working

construction and later added landscaping and cleaning, for a total of 3 jobs at one point. Working three jobs allowed Mr. Aranza-Gallegos to send money to Mexico to help his family and to support his new family, as well. Mr. Aranza-Gallegos had an acknowledged drinking problem and he had previously been in trouble for driving under the influence, which subsequently led to the suspension of his license. However, his problem was only worsened because his girlfriend was also a heavy drinker. He knew that if his girlfriend were to get in trouble that she would likely lose her children, so he decided to stop drinking. Aside from his desire to prevent himself from getting into more trouble and protecting his new family, he was driven by one thing: his need to provide for his family in Mexico, which is why he continued to drive after his license was suspended.

Mr. Aranza-Gallegos soon found his life spiraling out of control. When his employer discovered that he no longer had a valid driver's license, he was terminated from his landscaping job; his employer needed him to be able to drive the company truck to various job sites. Joe Naughton, Mr. Aranza-Gallegos' supervisor, however, saw his potential and he describes Mr. Aranza-Gallegos as "talented" and "hardworking." In fact, Mr. Naughton is not opposed to rehiring Mr. Aranza-Gallego, "if he can get his life in order." He got along well with his coworkers, as well as, clients on job sites.

Because Mr. Aranza-Gallegos had the responsibility of taking care of his family from a very young age, he was forced to grow up quicker than the average person. As a result, he unfortunately never learned how to cope or how to properly deal with his emotions and admits that he does suffer from depression.

Mr. Aranza-Gallegos' sister, cousin, and his former supervisor all describe him as a "good, honest person." His family finds it hard to believe that he would have knowingly injured someone and not stop to render aid or to seek help; to do so would be completely against his character.

Before the accident occurred, Mr. Aranza-Gallegos' stepfather died and while he has been awaiting trial at Beaufort County Detention Center (BCDC), he has also loss both of his grandmothers. His mother is currently sick with Diabetes and has recently had her gallbladder removed. With his stepfather no longer living, coupled with coupled with his mother's sickness, his family in Mexico is without support.

During his incarceration at BCDC, he has been quiet, yet helpful to other inmates. Mrs. Watson, who is over programs at BCDC, said that Mr. Aranza-Gallegos has never been a problem and he is a model person. She also said that he is working very hard to receive is G.E.D. Mr. Aranza-Gallegos is very proud of himself for taking the step to receive his G.E.D. Mr. Aranza-Gallegos has dreams of owning his cleaning and landscaping company.

When I asked him to describe himself in three words, he told me he was quiet, funny and caring/helpful. Because that is who he is and always has been, since he was a little boy being his fathers eyes when he went blind. He never would have left someone on a dark road and not help. It's not who he is.

Respectfully Submitted,  
Heather N. Price

# **EXHIBIT B**

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF BEAUFORT 2021 MAY 25 AM 11:45 ) FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA ) INDICTMENT NOS: 2018GS0701486,  
BEAUFORT COUNTY, S.C. ) 2018GS0701487  
LINDA ANN ROSENHEAL )  
CLERK OF COURT )

vs. )

WARRANT Nos.: 2018A0710300385,  
2018A0710300387

JIOVAANI ARANZA GALLEGOS,  
DEFENDANT. )

AMENDED MOTION FOR  
RECONSIDERATION OF SENTENCE )

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**MOTION FOR RECONSIDERATION OF SENTENCE**

Comes now, the defendant, Mr. Jiovaani Aranza Gallegos, and respectfully requests that this Court grant his motion and reconsider the sentence imposed in the above captioned matters. In support of his motion, Mr. Aranza Gallegos states the following:

On October 21, 2020, after jury returned verdicts of guilty on both the counts of Hit and Run with Death Resulting and Habitual Traffic Offender with Death Resulting, this Court imposed a sentence of twenty (20) years on each offense, to run concurrent, with the minimum fines of \$10,000 on the Hit and Run with Death Resulting offense and \$5,000 on the Habitual Traffic Offender with Death Resulting Offense. For the reasons discussed below, Mr. Aranza Gallegos respectfully requests that the Court reconsider the sentence and impose a sentence in the five (5) to ten (year) range on each offense, to run concurrent with each other, and further to suspend the fines in their entirety.

The Hit and Run offense is punishable by one (1) to twenty-five (25) years of imprisonment and a fine of \$10,000 to \$25,000, S.C. Code § 56-5-1210. The Habitual Traffic Offender offense is punishable by \$5,000-\$10,000 and up to twenty (20) years of imprisonment. S.C. Code § 56-1-1105(B)(2). Neither offense requires an active period of incarceration, let alone a prison sentence. A period of incarceration in a case involving the loss of a life after a jury returns a guilty verdict is appropriate. However, twenty

years is too harsh of a punishment in this case because it does not adequately take into account the individual characteristics of Mr. Aranza Gallegos or consider rehabilitation along with punishment, deterrence and incapacitation.

Defense counsel could find little guidance in either the South Carolina Code or case law as to the purposes and goals of sentencing in South Carolina. However, the American Bar Association's Sentencing standards<sup>1</sup> are instructive. The American Bar Association lists five purposes of sentencing: (1) deterrence, (2) incapacitation, (3) punishment, (4) restitution and reparation to victims, and (5) rehabilitation. ABA Sentencing Standard 18-2.1. The ABA standards further provide:

The sentence imposed should be no more severe than necessary to achieve the societal purpose or purposes for which it is authorized. The sentence imposed in each case should be the **minimum sanction** that is consistent with the gravity of the offense, the culpability of the offender, the offender's criminal history, and the personal characteristics of an individual offender that may be taken into account.

ABA Sentencing Standard 18-6.1.

Here, twenty years of incarceration is more than the minimum sanction necessary to meet the goals of sentencing in this case. Because the maximum possible penalties for both the offenses here are twenty years or more, Mr. Aranza Gallegos will not be eligible for parole. S.C. Code § 24-13-100. This means that he will likely serve at least 85% of the 20 years, or 17 years. While the loss of life to Mr. Lorenzana is tragic and irreversible, it was never Mr. Aranza Gallegos' intent to cause him any harm at all, let alone cause his death.

Mr. Aranza Gallegos could not move, sleep, or eat for days after he learned of the accusations against him. Indeed, the Court will remember that he was so overwhelmed by emotion and tears that he could not speak in the sentencing phase of the trial. Mr. Aranza Gallegos is still assimilating this trauma; it is a process that will never end, and this will always be a part of him. While this psychological toll is

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<sup>1</sup>[https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_sentencing\\_blk/#1.3](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_sentencing_blk/#1.3) (last visited November 2, 2020)

not a part of the sentence imposed, it is certainly important for the Court to consider in fashioning a sentence that addresses the conduct Mr. Aranza Gallegos was convicted of and its result.

The jury found that Mr. Aranza Gallegos drove when he was not permitted to, that he knew or should have known of the presence of Mr. Lorenzana on the road and caused his death. Were it not for the horrific tragedy of the accident, Mr. Aranza Gallegos would face a far less severe a sanction for the exact same behavior. This is what makes unintentional death cases so sad and so difficult. A person with no record who drives drunk and kills someone faces years in prison while a first offense DUI that results in no harm to person or property is a misdemeanor with minimal jail time, if any, a fine, probation and alcohol classes. The intentional conduct and prohibited act is no different, but the consequences are, in cases such as this one, devastatingly different.

While Mr. Aranza Gallegos does have a criminal record that preceded this case, it consisted of misdemeanors, most of which were traffic misdemeanors—DUIs and driving with a suspended license. Prior to this case, Mr. Aranza Gallegos had never before been convicted of a felony, nor had he ever served more than a short jail sentence for his prior misdemeanor convictions. The weight of the pain and suffering to Mr. Lorenzana and his loved ones, becoming a felon, and facing significant prison time is an entirely different class of consequences and punishment than Mr. Aranza Gallegos has ever confronted before in his life. Mr. Aranza Gallegos understands that having been found guilty, he must be punished. However, the defense urges the Court to also think of the rehabilitative purpose and opportunity of sentencing as well.

Mr. Aranza Gallegos is a young, good person, who can be rehabilitated. He is a citizen, a hard worker, and someone who loves, and is loved by, his family very much. Prior to his incarceration, he contributed a great deal to the emotional and financial support of his family in Mexico, particularly his mother. He also contributed to the community here, working multiple labor jobs in construction, landscaping and cleaning services. As described in the attached mitigation report, previously submitted to

the Court during the sentencing phase of the trial, Mr. Aranza Gallegos has been working “since he could walk.” No child should have to do that, but that is what life dealt Mr. Aranza Gallegos.

He grew up in a loving family, but it was a family that suffered, at times severely, from economic insecurity—so much so that there were periods of his life where he, along with his family, went hungry. Mr. Aranza Gallegos also lost his father at the young age of eleven, and then, more recently, the loss of his step-father. Mr. Aranza Gallegos simply did not develop appropriate coping skills for the significant stressors of life—such as financial insecurity, separation from family, and loss.

Despite what he has lived through, Mr. Aranza Gallegos still works hard. He worked hard while he was in jail prior to the trial in this case—towards obtaining a GED. He has hopes and dreams of owning and running his own businesses in the fields he is skilled in—landscaping and construction. The defense understands and appreciates that atonement is an important aspect of sentencing. But Mr. Aranza Gallegos is not a person that the community should give up on. He is a person who, with the proper supports and substance abuse treatment, can be not only a law-abiding citizen but a valued member of the community with much to offer.

Mr. Aranza Gallegos never meant to hurt anyone, and he certainly did not mean to hurt or kill Mr. Lorenzana. It simply is not who he is. He has learned, in the most difficult possible way, that one’s decisions do not only affect the individual; rather, those decisions can affect the entire community. For all of these reasons, Mr. Aranza Gallegos asks this Court to reconsider the sentence and reduce the period of incarceration. His chances of success upon release will be significantly better if the Court reduces the period of incarceration because he will be better able to psychologically handle the trauma of the incarceration knowing that the sentence is one that both punishes his conduct but also sends the message that there is still hope for him.

Turning now to the imposition of the fines in this case, neither 56-1-1105(C) nor 56-5-1201(A)(3) make any reference as to whether or not required fines may be suspended. In this case, the Court imposed

the minimum fines required by Code but did not suspend any portion thereof. At the time of sentencing, it was defense counsel's understanding that all parties were under the impression that the fines were mandatory and could not be suspended. However, because neither statute prohibits the suspension of the fines, Mr. Aranza Gallegos respectfully requests that this Court reconsider the sentence imposed and suspend the fines imposed in their entirety.


First, Mr. Aranza Gallegos is indigent, has been incarcerated for over two years to date, and is facing up a prison sentence of twenty years, should this Court decline to grant his motion and reconsider the length of the sentence imposed. Second, if the fines are not suspended, then not only will Mr. Aranza Gallegos have to pay \$15,000 in fines, plus his court costs, but he will also have to pay an assessment in the amount of \$16,125, or 107.5% of the unsuspended fine imposed pursuant to Section 14-1-206<sup>2</sup>, for a total amount of \$31,125, plus the court costs. Thus, the amount he will owe will be more than twice the fine actually imposed. Finally, the rule of lenity requires the Court to read the statute in favor of the defendant—that is, because the statute is silent as to whether the fines may be suspended, the Court is required to interpret that suspension of the fines is permissible pursuant to the rule lenity. *See State v. Miles*, 421 S.C. 154, 164 (S.C. App. 2017) (“This rule of lenity applies when a criminal statute is ambiguous, and requires any doubt about a statute’s scope be resolved in the defendant’s favor.”).

Where the legislature has meant for a fine to be imposed and not suspended, it is stated explicitly. For example, Code Section 56-5-2933, which prohibits driving under the influence, provides, in relevant part: “[h]owever, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars.” S.C. Code § 56-5-2933(A)(2). That is not the case in either statute at issue here. Therefore, the fines imposed in this case may be suspended. Because of Mr. Aranza Gallegos’ indigency as well as the facts and circumstances of this particular case, these fines are simply unnecessary as part of the punishment in this case.

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<sup>2</sup> Consider ABA Sentencing Standard 18-2.2(a)(ii), which in relevant part: “The legislature should not authorize imposition of economic sanctions for the purpose of producing revenue.”

For all of the reasons stated above, Mr. Aranza Gallegos respectfully requests that this Court reconsider the sentence imposed in this case. Specifically, he asks that the Court suspend the fines in their entirety and, further, that the Court reduce the period of incarceration to a sentence in the range of five to ten years on each charge, to run concurrently with one another. A reduced sentence that imposes an additional, but not lengthy, period of incarceration, will strike the appropriate balance between all the goals of sentencing.

  
Claire Schulmeister, Bar. No. 104456  
Assistant Public Defender  
Beaufort County Public Defender's Office  
Fourteenth Judicial Circuit

Beaufort, South Carolina  
May 24, 2021

# **EXHIBIT C**

1 STATE OF SOUTH CAROLINA )  
 2 COUNTY OF BEAUFORT ) COURT OF GENERAL SESSIONS

3  
 4 STATE OF SOUTH CAROLINA, ) TRANSCRIPT  
 5 PLAINTIFF, ) OF  
 6 vs. ) RECORD  
 7 JIOVAANI ARANZA GALLEGOS, ) 2018-GS-07-1486  
 8 DEFENDANT. ) 2018-GS-07-1487

9  
 10 May 25<sup>th</sup>, 2021  
 11 Beaufort, South Carolina

12  
 13 B E F O R E :

14 THE HONORABLE CARMEN T. MULLEN, Judge.

15  
 16 A P P E A R A N C E S :

17 JARED J. SHEDD  
 18 ASSISTANT SOLICITOR  
 Attorney for the State

19 CLAIRE SCHULMEISTER  
 20 ASSISTANT PUBLIC DEFENDER  
 Attorney for the Defendant

21  
 22  
 23 Transcribed by Pamela E. Green, from  
 24 DCRP, Digital Courtroom Recorder Project  
 25

I N D E X

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(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

## P R O C E E D I N G S

1  
2  
3 THE COURT: Jennifer, for the record, will you just  
4 swear in Beverly again please?

5 THE CLERK: Yes, Your Honor.

6 (WHEREUPON, the interpreter was placed under oath at  
7 this time.)

8 THE COURT: All right. Thank you. You-all can sit.

9 THE CLERK: Do I need to swear---

10 THE COURT: You don't need to swear him in, no, unless  
11 he testifies and that's fine.

12 okay. We can swear him in then.

13 okay. Yes, this is your motion, Ms. Schulmeister.

14 MS. SCHULMEISTER: Yes, Your Honor. And, Your Honor, I  
15 would like to be brief today.

16 I have filed, you know, extensive, pretty extensive  
17 pleadings on the matter. And so I just want to focus on  
18 what I believe are the most important points.

19 First, just as a housekeeping matter, I did, back in  
20 November, file a Motion for Reconsideration of Sentence.  
21 I'd like to withdraw that motion and strike it from the  
22 record. I submitted an Amended Motion for Reconsideration  
23 of Sentence. It is substantially similar. I just edited  
24 it---

25 THE COURT: Okay.

1 MS. SCHULMEISTER: ---in order to avoid any possibility  
2 that I might of inadvertently made an admission---

3 THE COURT: Okay.

4 MS. SCHULMEISTER: ---in the event that he has a new  
5 trial---

6 THE COURT: I understand.

7 MS. SCHULMEISTER: ---and we are successful on appeal.

8 THE COURT: Okay.

9 MS. SCHULMEISTER: So, the request is still the same,  
10 to reduce the sentence to five to 10 years---

11 THE COURT: Uh-huh. (Affirmative).

12 MS. SCHULMEISTER: ---on each charge and to suspend all  
13 the fines in their entirety. I just edited it to---

14 THE COURT: Okay.

15 MS. SCHULMEISTER: ---protect him from any inadvertent  
16 admission I might have made on his behalf.

17 THE COURT: Okay.

18 MS. SCHULMEISTER: So, I would like to strike the one  
19 I, I filed in, in, in November and have the one that I filed  
20 this morning---

21 THE COURT: Uh-huh. (Affirmative).

22 MS. SCHULMEISTER: ---as the official Motion to  
23 Reconsideration of Sentence.

24 THE COURT: Uh-huh. (Affirmative).

25 MS. SCHULMEISTER: I, I, I won't argue it. I, I

1 believe I laid it out and if the Court has any questions---

2 THE COURT: Okay.

3 MS. SCHULMEISTER: ---I'd be happy to answer them. But  
4 I, I don't want to use the Court's time today to address, to  
5 address that motion.

6 THE COURT: Okay.

7 MS. SCHULMEISTER: I filed a Motion for New Trial---

8 THE COURT: Uh-huh. (Affirmative).

9 MS. SCHULMEISTER: ---back in October and then, today,  
10 I filed a supplemental brief in support of that motion. You  
11 know, I, I believe that all the bases that I, I discussed in  
12 my motion for new trial are valid. However, I -- the issue  
13 we discussed in the supplemental brief I, I submitted today  
14 is, I believe, the most important, the most compelling, and  
15 the one that requires a new trial in this case.

16 If it would refresh the Court's recollection, Your  
17 Honor will recall that, at the end of the pretrial motions,  
18 we had substantial proffering and back and forth about the  
19 importance of the timing of the issuing of the search  
20 warrant in this case.

21 well, there were two search warrants, the September  
22 1<sup>st</sup>, 2018, search warrant and then a subsequent -- and then  
23 there was a subsequent warrant issued on September 4<sup>th</sup>. The  
24 one at issue here is September 1<sup>st</sup>.

25 THE COURT: Uh-huh. (Affirmative).

1 MS. SCHULMEISTER: The State -- as I laid out in my  
2 brief, the State proffered that Sergeant Reynolds conducted  
3 a search pursuant to that search warrant. I believe I've  
4 laid out pretty clearly in my brief and in the attached  
5 exhibits that it's quite simply impossible for that to be  
6 true.

7 Multiple witnesses, including Sergeant Reynolds, as  
8 well as the CAD Report, all have him processing the vehicle  
9 prior to noon which is when Judge Magistrate -- Magistrate  
10 Judge Vaux issued the search warrant.

11 THE COURT: Uh-huh. (Affirmative).

12 MS. SCHULMEISTER: I've raised -- I raised this before  
13 trial. We litigated it. I did not have the magistrate  
14 record at that time and the CAD Report that helps establish  
15 the timeline had not been provided in discovery --

16 THE COURT: Uh-huh. (Affirmative).

17 MS. SCHULMEISTER: -- and I did discover that evidence  
18 after trial.

19 This is not a motion for a new trial based on after  
20 acquired evidence. This is a motion for new trial filed  
21 within 10 days of his conviction, and the Court has brought  
22 authority to grant a new trial.

23 Code Section 17-23-110 provides that---

24 THE INTERPRETER: You're going too fast.

25 MS. SCHULMEISTER: Okay. That all the Circuit Courts

1 of this state shall have power to grant new trials in cases  
2 in which there has been a trial by jury for reasons which  
3 new trials have been usually granted in Courts of Law of the  
4 United States.

5 It's incredibly broad that -- I think, essentially,  
6 Your Honor, you have the authority to grant a new trial,  
7 trial where fairness and justice require it, and, in this  
8 case, they do.

9 Sergeant Reynolds gave false and misleading testimony.  
10 That testimony was offered to this Court by the State.  
11 Whether or not the State knew it at the time is, is -- I  
12 don't believe they did. I think this was something that  
13 they did not know. But now we do know and, you know,  
14 criminal trials have to be fair, and whether or not it was  
15 an intentional versus a, a mistake or an inadvertent Brady  
16 violation, it was a Brady violation cause this is  
17 information that was in the possession of the State, and  
18 possession of the prosecution team, which includes law  
19 enforcement, and because of this failure to provide  
20 discovery, and failure to provide favorable, favorable  
21 information to the defense prior to trial, we had a really  
22 serious miscarriage of justice here.

23 There was a warrantless search performed on his car, a  
24 subsequent search obtained that flew -- that, you know,  
25 close on the initial search, and all this evidence from the

1 car came in, and, and that's what connected Mr. Aranza  
2 Gallegos to this accident, and that evidence should of never  
3 been admitted at trial.

4         Additionally, there's the issue of -- that when  
5 Sergeant Reynolds gave Ms. Lempesis testimony, that became  
6 impeachment testimony, which is also covered under Brady.  
7 Case law provides that Brady material is favorable  
8 information. It's any information that the defense can use  
9 either authentically or defensively. That includes  
10 impeachment evidence and it also includes favorable  
11 information for the Defendant all of it to be having  
12 admissibility of evidence. And Federal Courts of Appeals,  
13 the, the Ninth, Tenth, and Fifth Circuits, have all called  
14 that.

15         I, I don't believe that Mr. Shedd or Ms. Lempesis did  
16 this intentionally. But I, at this time, it is abundantly,  
17 abundantly clear that a, a warrantless search and seizure  
18 occurred in this case in violation of Mr. Gallegos's rights  
19 under the Fourth Amendment. This was not a fair trial.

20         I would be happy to---

21         THE COURT: Ms. Schulmeister, just really quickly. I'm  
22 just looking through Reynolds testimony, and from what I'm  
23 comparing that we didn't have before, which was Magistrate  
24 Erin Vaux's notes which states that it was right around noon  
25 on September 1<sup>st</sup> of 2018 that this was signed, and we have

1 Reynolds testimony at trial that says he arrived there at  
2 roughly 10:46. He said he waited around for about 30  
3 minutes before he processed the vehicle, and that would of  
4 taken him to 11:15. And, as you indicated, that would be  
5 before the search warrant was ordered.

6 Correct?

7 MS. SCHULMEISTER: Issued, Your Honor.

8 THE COURT: As far as timing.

9 Okay. Issued. Sorry.

10 MS. SCHULMEISTER: Yeah.

11 THE COURT: Okay.

12 MS. SCHULMEISTER: You know, it would be one thing if  
13 it was issued and on the way.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. SCHULMEISTER: And I, I believe that would of been  
16 legal, but---

17 THE COURT: Yes.

18 MS. SCHULMEISTER: ---I think the timeline is pretty  
19 complicity established by what I've submitted.

20 And for all of these reasons, Your Honor, you know, due  
21 process, fundamental fairness, and Brady, and its progeny,  
22 require a new trial in this case.

23 I'm happy to answer any additional questions that the  
24 Court has about my brief, about the motion for new trial, or  
25 the state's opposition to our motion. I would just ask that

1 everything I filed and every exhibit that I've attached to  
2 my posttrial pleadings be made a part of the record  
3 including the exhibits made -- Court's Exhibits or Defense  
4 Exhibits so that they're all a part of the record.

5 THE COURT: Absolutely.

6 One other question.

7 So, the pretrial that we did suppressing this, the  
8 motion you made, did you get that transcribed as well or  
9 not?

10 MS. SCHULMEISTER: Yes. Yes.

11 THE COURT: And just---

12 MS. SCHULMEISTER: I did---

13 THE COURT: Can you show me where it is in relation --  
14 do I have it in front of me or not?

15 MS. SCHULMEISTER: It's not -- I attached a portion of  
16 it.

17 Okay. So, we got -- we didn't request all of the  
18 pretrial transcript because that was going to be quite  
19 expensive.

20 THE COURT: And that's fine.

21 MS. SCHULMEISTER: So we---

22 THE COURT: I just want to know if this specific  
23 parts---

24 MS. SCHULMEISTER: Judge, we filed transcripts that we  
25 got other than -- Your Honor will recall that we did a, a

1 motion to suppress his statements as well as a motion to  
2 suppress his, his -- and there was the, the statements  
3 issue, which was a Miranda and a Jackson---

4 THE COURT: Right.

5 MS. SCHULMEISTER: ---Versus Denno issue, and then  
6 there was also the Fourth Amendment issue. I have a  
7 transcript but it has both.

8 So, what I attached to my motion -- may I cross---

9 THE COURT: Sure. Please.

10 MS. SCHULMEISTER: ---this to---

11 THE COURT: Please.

12 MS. SCHULMEISTER: what I attached to my motion are  
13 Pages 80 to 112 --

14 THE COURT: Okay.

15 MS. SCHULMEISTER: -- of the transcript, which are the,  
16 the pages that cover the, the, the Fourth Amendment issue,  
17 and I can hand up the entire transcript to the Court if you  
18 would like. Is there any other---

19 THE COURT: Okay. I apologize. I just can't put my  
20 hand on that portion of it. I'm seeing, obviously, Seth  
21 Reynolds testimony is all attached here. I've got that.

22 Is it -- was it after that?

23 MS. SCHULMEISTER: It should be the first -- I'm sorry.  
24 I know that's pretty voluminous. It, it should be at the  
25 back---

1 THE COURT: Oh, no. I think I found it. I think I  
2 found it. I'm sorry. Hang on. Give me one second to see  
3 if this is what I'm looking, looking for.

4 Here's your CAD Report. Hang on. Give me one second.  
5 (Pause.)

6 THE COURT: Okay. Thank you. I just wanted to go back  
7 and reread your pretrial motion, and what Mr. Shedd's  
8 response was.

9 You can continue if you want to or let him go ahead and  
10 respond.

11 MS. SCHULMEISTER: Your Honor, I, I, I think I've made  
12 my most important point, and, again, happy to entertain any,  
13 any additional questions. Otherwise I'd rely on the briefs  
14 I filed.

15 THE COURT: Okay.

16 MS. SCHULMEISTER: Thank you.

17 THE COURT: Yes, sir.

18 SOLICITOR SHEDD: Yes, Judge.

19 So, just a couple of brief points.

20 To, to start with, I, I do understand that Ms.  
21 Schulmeister just said that this is not a motion for new  
22 trial based on newly discovered evidence. And so, for that  
23 reason, I, I do think it's in -- it wouldn't be proper to  
24 consider the material from Judge Vaux, her personal notes  
25 from the search warrant, as well as the CAD Report for, for

1 two separate and distinct reasons.

2 First, the CAD Report, while we did not have that in  
3 discovery, it's -- Lance Corporal Crowley, at the very  
4 least, and I don't want to misspeak as far as any of the  
5 other testimony, but I know that Lance Corporal Crowley  
6 referenced that specific report as he was testifying, and  
7 asked if that was okay as far as when Ms. Schulmeister was  
8 asking him what time did you get there, what time did you  
9 leave. He was reading it off of the CAD Report.

10 THE COURT: Okay.

11 SOLICITOR SHEDD: So, the information that's pertinent  
12 to her position was certainly not only -- it, it was  
13 available at trial and came out in trial. But the---

14 THE COURT: Did you have that in your evidence?

15 SOLICITOR SHEDD: I did not, Judge.

16 THE COURT: Did you have the CAD Report?

17 SOLICITOR SHEDD: I did not.

18 THE COURT: Okay.

19 SOLICITOR SHEDD: The CAD Report that we had was from  
20 that we -- was provided in evidence was from the original  
21 scene, and the other, the other CAD Report just didn't make  
22 it over.

23 So -- but that -- that's as it relates to the CAD  
24 Report. But then as for Judge Vaux's notes, certainly I, I  
25 understand that there's -- Judge Vaux is of a completely

1 set -- you know, being a judge, she is of a completely  
2 separate branch of government. So, certainly materials in  
3 her possession or in the Magistrate Court's possession  
4 should not be viewed to -- as our office as having been in  
5 our possession.

6 So, the first time I'm seeing anything of Judge Vaux's  
7 notes was today at -- this was clocked at 11:46. Somewhere  
8 within 30 minutes after that was the first I was told that  
9 that was even being sought, that that might need to be  
10 authenticated, that that's why Judge Vaux was up here under  
11 subpoena because certainly if the issue was the authenticity  
12 of those records, that's something that could of been  
13 handled far and away well before now with a phone call to  
14 Judge Vaux by me.

15 THE COURT: Right.

16 SOLICITOR SHEDD: So, I, I -- certainly I, I hate that  
17 it got to that point, but that's all beside the point to say  
18 that that evidence, and I don't -- I'm, I'm happy to do that  
19 if you want, Your Honor, but I -- get into the test for  
20 newly discovered evidence if that's how this is more  
21 appropriately captioned because there is evidence that's now  
22 been provided to the Court and is now been asked to be made  
23 a part of the record that is not in the record from the  
24 trial.

25 THE COURT: Uh-huh. (Affirmative).

1           SOLICITOR SHEDD: And so to the extent that it is newly  
2 discovered evidence, I don't think it's, I don't think it's  
3 proper. I don't think it is after-discovered evidence. It  
4 fails that test, and to the extent that it's not, I don't  
5 think it's proper to consider it.

6           THE COURT: Remind me. The evidence in the car was --  
7 is that you could see that, and correct me if I'm wrong, it  
8 was -- I can't remember which side of the car. But it was  
9 the exterior of the car where it was found that there were  
10 hair pieces and skin pieces I guess and maybe some blood  
11 evidence.

12           Am I correct in remembering that?

13           SOLICITOR SHEDD: That's correct, Judge.

14           THE COURT: And was -- and the windshield was broken,  
15 correct?

16           SOLICITOR SHEDD: That's correct, Judge.

17           THE COURT: And was there also hair in the windshield  
18 as well?

19           SOLICITOR SHEDD: There was -- so there was hair on the  
20 hood of the car, and there was hair -- well, the testimony  
21 at trial was that it was consistent with hair was on the  
22 rear -- the display dash inside of the car---

23           THE COURT: Inside the car.

24           SOLICITOR SHEDD: ---underneath the hole in the  
25 windshield.

1 THE COURT: Okay.

2 SOLICITOR SHEDD: But, of course, that, that hair  
3 wasn't -- there was no roots or anything. That hair was not  
4 tested.

5 THE COURT: Okay.

6 SOLICITOR SHEDD: So -- and, and I just briefly would  
7 like to make the point that for multiple -- I mean I argued  
8 it in my, in my response to the Defendant's motion. But  
9 certainly I -- this, this vehicle, there's ample evidence in  
10 the record to support that the vehicle was not parked in the  
11 curtilage of the home. There -- both Crowley and, and  
12 Harris, and I referenced this in my motion, both testified  
13 that it was split right between these two trailers.

14 THE COURT: Uh-huh. (Affirmative).

15 SOLICITOR SHEDD: Didn't know -- matter of fact, they  
16 actually said the reason they didn't go knock on the door  
17 was they didn't know which house it belonged to. There's  
18 two trailers. It's smack dead in the middle. There's no  
19 fencing. There's no -- there's nothing to shield it from  
20 view.

21 So, I don't believe that the Fourth Amendment would  
22 apply and that's argued more fully in my brief.

23 THE COURT: Okay.

24 SOLICITOR SHEDD: But to the extent that it is,  
25 certainly plain view applies because Lance Corporal Harris

1 does go over to John Ross's house, which is the location  
2 from which John Ross saw the car and called the police from  
3 the -- in the first place. So, certainly, at that point,  
4 when you see that extensive damage, and the blood evidence  
5 that you can see---

6 THE COURT: On the exterior of the car?

7 SOLICITOR SHEDD: On the exterior of the car, that  
8 would of been sufficient, and, therefore, we get into  
9 inevitable discovery, which is also argued more fully in my  
10 brief.

11 THE COURT: Uh-huh. (Affirmative).

12 SOLICITOR SHEDD: The other thing, Judge -- and, and  
13 I'm happy, again, to answer any further questions you may  
14 have on this Fourth Amendment suppression issue. I  
15 certainly think there's ample evidence to support Your  
16 Honor's ruling at the time of trial that it was admissible.

17 I would like to specifically point -- I understand that  
18 Ms. Schulmeister doesn't want to emphasize it at this point,  
19 but I would like to just mention the portion about  
20 Corporal -- Lance, or excuse me, Corporal Jessie James from  
21 Highway Patrol and his expert testimony.

22 THE COURT: Uh-huh. (Affirmative).

23 SOLICITOR SHEDD: And the reason I'm pointing that out,  
24 Judge, is I argued in my briefs, certainly I think there is  
25 certainly case law and the, and the record supports that the

1 objection that was raised at the time was not sufficiently  
2 specific. It certainly seemed to Your Honor, based on the  
3 transcripts, as, as well as to myself, that any objections  
4 that she had towards Lance, or excuse me, Corporal James was  
5 to his qualifications. Not to the reliability of the  
6 testimony.

7 So, as such, I don't think that that is preserved. But  
8 in full candor, there is a portion where Ms. Schulmeister  
9 does say that I should be allowed to get into what's  
10 reliable. But that is the extent to which she mentions  
11 anything regarding the reliability of the underlying  
12 science.

13 THE COURT: Uh-huh. (Affirmative).

14 SOLICITOR SHEDD: So, to the extent that Your Honor  
15 finds that it was adequately raised and not ruled upon---

16 THE COURT: Uh-huh. (Affirmative).

17 SOLICITOR SHEDD: ---then I do think it's not only  
18 proper, it would be helpful to have a ruling on the  
19 reliability of the science at this point. I have been in,  
20 in preparation for this. I have talked to some folks in  
21 criminal appeals at the Attorney General's Office --

22 THE COURT: Uh-huh. (Affirmative).

23 SOLICITOR SHEDD: -- and certainly that has -- I don't  
24 know what's the word I'm looking -- that, that has guided  
25 certain portions of the way my brief is laid out. It's not

1 entirely on that specific issue. It certainly would be okay  
2 if Your Honor makes a determination that it was adequately  
3 raised, but just never ruled upon, then a posttrial motion  
4 would be a proper time to do it.

5 THE COURT: Okay.

6 SOLICITOR SHEDD: But it's just not a place, as the  
7 case law makes clear---

8 THE COURT: Okay.

9 SOLICITOR SHEDD: ---to raise things not raised at  
10 trial.

11 THE COURT: Okay.

12 MS. SCHULMEISTER: May I respond?

13 THE COURT: Yeah. I think it, it benefits you,  
14 obviously your client, for me to find that you raised it and  
15 I didn't rule on it, rule on it now so you preserve the  
16 issue, correct, and I think that's what you need, Ms.  
17 Schulmeister?

18 MS. SCHULMEISTER: Yes.

19 THE COURT: Correct?

20 MS. SCHULMEISTER: Yes. I believe, Your Honor, what  
21 happened---

22 THE COURT: Okay.

23 MS. SCHULMEISTER: I understand what Mr. Shedd is  
24 saying. But on the Council issue, we, we had a Council  
25 hearing and we talked, we talked first about qualification.

1 THE COURT: Uh-huh. (Affirmative).

2 MS. SCHULMEISTER: And then when we moved into the  
3 actual substance of his report, I believe Your Honor's  
4 ruling was that, that he was qualified. And so -- and that  
5 we didn't need to get into the substance of his report. And  
6 so my objection is that I should of been allowed to -- the  
7 defense should of been allowed to cross-examine him on the  
8 reliability and the methods used in his report, and  
9 analysis, and expert opinion in this specific case.

10 THE COURT: Do you mean on the proffer or do you mean  
11 at trial?

12 MS. SCHULMEISTER: I mean before he was allowed to  
13 testify at trial is that we should of been able -- I should  
14 of been able to voir dire him on the methods used in this  
15 particular case. So Your Honor found him qualified.

16 THE COURT: Right.

17 MS. SCHULMEISTER: And then, when I began to ask  
18 questions about the methods used---

19 THE COURT: This -- okay. This specific case?

20 MS. SCHULMEISTER: Right. The report that he did in  
21 this case.

22 THE COURT: Okay.

23 MS. SCHULMEISTER: Then the, the writing was on the  
24 wall. I think Your Honor---

25 THE COURT: Okay. So, I can say this.

1           So, yes, so Corporal Jessie James with -- is with the  
2 M.A.I.T. squad obviously, the Multi Disciplinary Accident  
3 Investigation Team. He investigated this case. I can tell  
4 you that I have, a number of times, qualified him as an  
5 expert in accident reconstruction. Countless times in this  
6 courtroom.

7           So, I, I think I may be -- and I hope I didn't do this.  
8 But maybe I said yes, I know who he is. I know his  
9 experience. I know his background. I probably let them put  
10 on the record the background and then said we're gonna go  
11 ahead and qualify him as an expert.

12           So, you felt like that you didn't get an opportunity to  
13 challenge how he did this report?

14           MS. SCHULMEISTER: Exactly.

15           THE COURT: Correct?

16           Okay. The problem I have with that is, is that if we  
17 did proffers on every expert testimony in every single case,  
18 we'd never try the case. I -- I'm not sure it's required to  
19 do that. But I will say this.

20           I will absolutely preserve that objection for the  
21 record and, again, I've heard the testimony in its entirety,  
22 and I know it's, you know, Monday morning quarterbacking,  
23 but I think it was based on good science. So, that would be  
24 my ruling then.

25           So, I want to go ahead and note that obviously, for the

1 record, I think -- it was good science. I think what he  
2 used was based on, and it was right, and I will also note  
3 for the record that you adequately objected  
4 contemporaneously to it. So, it's preserved for appeals  
5 purposes.

6 MS. SCHULMEISTER: Thank you, Your Honor.

7 THE COURT: Okay.

8 MS. SCHULMEISTER: If I may address some other issues  
9 that went to this case?

10 THE COURT: Sure.

11 MS. SCHULMEISTER: So, there are two types of motions  
12 for new trial. One is -- and so I'm looking at the South  
13 Carolina Rules of Criminal Procedure 29.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. SCHULMEISTER: So subsection A is generally, and  
16 that is the section under which I filed this motion, and  
17 those posttrial motions shall be made within 10 days after  
18 the imposition of sentence, and then it's that statute that  
19 I cited. Your Honor has brought authority to get a new  
20 trial, and fairness and the Brady violation in this case, in  
21 addition to the other (indiscernible) known issues that I've  
22 raised, do require a new trial.

23 The reason why I, I specified that this is not a new  
24 trial based on after-discovered evidence---

25 THE COURT: Uh-huh. (Affirmative).

1 MS. SCHULMEISTER: ---is because I agree with  
2 Mr. Shedd. This is not a Rule 29 Subsection B new trial  
3 based on after-discovered evidence.

4 The standard there is you have a year to file that, not  
5 10 days, and, in that case, it has to have been evidence  
6 that could not have been discovered in due diligence. But  
7 the point is, Your Honor, is that it wasn't my -- the  
8 defense's job to exercise due diligence to get this  
9 information.

10 This was Brady material favorable to the defense that  
11 the State had an obligation to provide to the defense prior  
12 to or during trial.

13 THE COURT: Uh-huh. (Affirmative).

14 MS. SCHULMEISTER: And, for that reason, Mr. Aranza  
15 Gallegos had a fundamentally unfair trial because an illegal  
16 search was conducted that then led to a subsequent search,  
17 and then all this evidence came in linking his car to the  
18 decedent and the accident in this case.

19 And so it's not a question of whether or not I needed  
20 to find it. They needed to provide it to me---

21 THE COURT: Uh-huh. (Affirmative).

22 MS. SCHULMEISTER: ---and that is why a new trial is,  
23 is appropriate in this case.

24 THE COURT: Ms. Schulmeister, let me ask you.

25 So, if we could back up a second?

1 MS. SCHULMEISTER: Yes.

2 THE COURT: So, putting the -- whether or not the  
3 search warrant was appropriate behind for the car. They  
4 come on this car. They see that there is damage to the car.  
5 They see that there is blood, hair fibers, or look like hair  
6 fibers, and damage to the car. That's in plain view. So  
7 that goes under the Plain View Doctrine.

8 At that point, do the police officers have a right to  
9 go into the car if they see that the windshield is broken  
10 open and they see other evidence of either hair on the  
11 outside, and then -- I know you're talking specifically  
12 about the hair or what appeared to be hair. It was, it was  
13 on the inside dash. I'm -- I remember that's kind of what  
14 the issue was.

15 Doesn't that, because they could see it in plain view,  
16 doesn't it take it outside of the search warrant?

17 MS. SCHULMEISTER: So I have a few quick points in  
18 response to that.

19 THE COURT: Okay.

20 MS. SCHULMEISTER: I would like to show Your Honor a  
21 picture, but I need to approach---

22 THE COURT: Sure.

23 MS. SCHULMEISTER: ---Mr. Shedd but---

24 THE COURT: Yeah. No, I would like you to respond to  
25 what my question was.

1 MS. SCHULMEISTER: I think the picture will help.

2 THE COURT: Okay.

3 MS. SCHULMEISTER: So, one of the cases that I cited in  
4 my motion for new trial -- Your Honor, may I approach?

5 THE COURT: Please.

6 MS. SCHULMEISTER: Which side?

7 This way?

8 THE COURT: Yeah. Sorry. A lot of room around here.

9 MS. SCHULMEISTER: I believe it's the Florida versus  
10 Jardines case.

11 THE COURT: Okay.

12 MS. SCHULMEISTER: So, you know, just because Mr.  
13 Aranza Gallegos lived in a trailer where his house wasn't  
14 separated by fences and fenced in areas doesn't mean that he  
15 had less of an inference issue on privacy. You can see in  
16 that picture, that while there is a trailer close by, his  
17 car was parked within feet of his front door and an awning  
18 that covered the entrance.

19 But to argue that it wasn't clearly within the  
20 curtilage of that awning is I think (indiscernible) issues  
21 on that I think and contradicted by the photographic  
22 evidence that was provided to me from discovery provided to  
23 me. It's also clear that that picture was taken from the  
24 road --

25 THE COURT: Uh-huh. (Affirmative).

1 MS. SCHULMEISTER: -- that you can't see the damage to  
2 the vehicle from that point---

3 THE COURT: You can tell though that the windshield is  
4 shattered just by this picture. I can see that it's  
5 shattered.

6 MS. SCHULMEISTER: Okay. Well, the -- even if you  
7 think---

8 THE COURT: Oh, sorry. I'm sorry.

9 MS. SCHULMEISTER: ---that the windshield is  
10 shattered---

11 THE COURT: Yes.

12 MS. SCHULMEISTER: ---and even if you could see from a  
13 neighbor's house that the windshield was shattered, you can  
14 not see blood and you could not see human hair---

15 THE COURT: Uh-huh. (Affirmative).

16 MS. SCHULMEISTER: ---until he entered the curtilage---

17 THE COURT: Okay.

18 MS. SCHULMEISTER: ---and looked closely at the car.

19 So, while there may have been, you know, plain view  
20 that there was an accident, I don't believe that it's enough  
21 to say there was an accident involving that, you know, was a  
22 crime.

23 THE COURT: Let me ask you.

24 So, is it your position that he went on the property  
25 first?

1           He went and looked at the car first, then he went and  
2           knocked on the trailer door, and they were trying to get him  
3           out, and I think he was just getting dressed or something  
4           maybe is what I recall, and then he came out?

5           I remember body cam footage in the case. Help me or  
6           remind me. I remember body cam footage, footage in the case  
7           that he didn't directly, and correct me if I'm wrong, he  
8           didn't immediately start searching the car at that point?

9           SOLICITOR SHEDD: No.

10          THE COURT: It was -- I knew he was waiting.

11          But my question is, is that -- what did the officer  
12          learn from Mr. Gallegos in that intermediate time?

13          I, I guess I'm trying to find out is whether or not he  
14          had probable cause or an idea that there would be some kind  
15          of discovery in there.

16          I know your original via -- objection is, is that he  
17          couldn't step on his property without having some type of  
18          I'm assuming idea.

19          SOLICITOR SHEDD: Yes, Judge.

20          THE COURT: Something was happening.

21          SOLICITOR SHEDD: So, during that interview, Mr.  
22          Gallegos did admit that there was -- and, and obviously this  
23          interview wasn't introduced at trial---

24          THE COURT: Uh-huh. (Affirmative).

25          SOLICITOR SHEDD: ---based on a violation of Miranda

1 but---

2 THE COURT: Right.

3 SOLICITOR SHEDD: ---he did mention that there was --  
4 that he was driving the car, that he thought he struck a  
5 deer I believe.

6 THE COURT: Right.

7 SOLICITOR SHEDD: So, he admitted that he was in a, a  
8 collision in that car.

9 THE COURT: And, the neighbor, what exactly did he  
10 report to the police, and I, I don't know if it was -- he  
11 said he was washing it off?

12 Am I correct on that?

13 And I'm sorry. This is a hundred percent from memory.

14 SOLICITOR SHEDD: Yes, Judge.

15 THE COURT: So -- and a lot of cases have gone on and  
16 Mr.---

17 SOLICITOR SHEDD: He---

18 THE COURT: So---

19 SOLICITOR SHEDD: He reported that he saw his neighbor  
20 washing what appeared to be blood off of the car. And that  
21 was his testimony at trial.

22 THE COURT: Okay.

23 SOLICITOR SHEDD: So, the fact that he saw blood I  
24 think is the crux of the entire point of plain view---

25 THE COURT: Okay.

1           SOLICITOR SHEDD: ---that, that Lance Corporal Harris  
2 went to John Ross's house to speak with him as the  
3 complainant, and, from that location, would of been able to  
4 see exactly what John Ross saw, which was, at that time, the  
5 Defendant's not standing there anymore, but the vehicle that  
6 the blood was visible to John Ross.

7           THE COURT: Uh-huh. (Affirmative).

8           SOLICITOR SHEDD: So---

9           THE COURT: And did John -- his name is Ross. Last  
10 name is Ross.

11          SOLICITOR SHEDD: Yes, ma'am.

12          THE COURT: Did he, did he describe the vehicle for the  
13 police --

14          SOLICITOR SHEDD: He did. It was a---

15          THE COURT: -- in, in the phone call?

16          SOLICITOR SHEDD: It was a blue van.

17          THE COURT: Okay.

18          SOLICITOR SHEDD: Ms. -- I, I think---

19          THE COURT: Okay.

20          SOLICITOR SHEDD: He did.

21           And, and, Judge, I don't know if this is the  
22 appropriate time, but I meant to mention it earlier as far  
23 as to the extent that you are -- that you, that you do take  
24 into consideration this additional documentation that,  
25 that's not in the record at trial --

1 THE COURT: Uh-huh. (Affirmative).

2 SOLICITOR SHEDD: -- I would like to point out that  
3 Judge Vaux's notes say that the search warrant was issued at  
4 approximately 12:00, and certainly -- I mean we're talking  
5 about at -- it may be 45 minutes, even if that's not  
6 approximate, that that's the exact same time, and she is  
7 indicating in her notes, don't need testimony, that she's  
8 guessing, that it's around that time.

9 THE COURT: Well, I think around that time means  
10 anywhere from about 10 till 12:00 till 10 after. So --  
11 okay. Okay.

12 MS. SCHULMEISTER: Very briefly, Your Honor.

13 THE COURT: Yes.

14 MS. SCHULMEISTER: I disagree with Mr. Shedd's  
15 recollection. I believe that the neighbors took Mr.  
16 Gallegos testimony where he sought -- cause it was at about  
17 four o'clock in the morning.

18 THE COURT: Uh-huh. (Affirmative).

19 MS. SCHULMEISTER: So it was dark when he saw Mr.  
20 Aranza Gallegos wiping off the car, and he also testified  
21 that it looked to him like he thought that Mr. Aranza  
22 Gallegos might of hit a deer --

23 THE COURT: Uh-huh. (Affirmative).

24 MS. SCHULMEISTER: -- and that that was quite common.  
25 And so I, I, I -- we're just going off of memory here

1 unfortunately---

2 THE COURT: Uh-huh. (Affirmative).

3 MS. SCHULMEISTER: ---and because of the -- it was cost  
4 prohibitive that requests the entire transcript.

5 THE COURT: Uh-huh. (Affirmative).

6 MS. SCHULMEISTER: And so I, I, I just -- that's not  
7 how I remember the testimony. I don't remember, I don't  
8 remember -- I'm trying to look up his statement to police.  
9 I think that would be the most accurate if we could find it.

10 THE COURT: Uh-huh. (Affirmative).

11 MS. SCHULMEISTER: But I don't think he could see blood  
12 from where -- from his vantage point. Just that there was  
13 damage, and that he was wiping it off, and that he  
14 thought -- his initial thought was that it was suspicious  
15 and he thought that maybe Mr. Aranza Gallegos had probably  
16 hit a deer, which is common in this area.

17 THE COURT: Uh-huh. (Affirmative).

18 MS. SCHULMEISTER: Even if something is in plain view  
19 within the curtilage---

20 THE COURT: Uh-huh. (Affirmative).

21 MS. SCHULMEISTER: ---officers still need to get a  
22 search warrant in order to enter. There were no exigent  
23 circumstances here. No one was trying to hide the car.  
24 Nobody was doing anything. Mr. Aranza Gallegos was in his  
25 house. The police, they only could of stood in the public

1 road and walked -- you know, watching it and waiting for---

2 THE COURT: I don't think they even would of had to  
3 stand in the public road as long as they just maintained the  
4 integrity of the evidence and then waited --

5 MS. SCHULMEISTER: Right.

6 THE COURT: -- until they got a search warrant.

7 MS. SCHULMEISTER: Right. But they -- I -- they  
8 just -- I don't -- it was illegal for them to enter and  
9 search and process the vehicle. There were no exigent  
10 circumstances in this case. Even, you know, if something is  
11 in plain view, unless there's -- if -- you can't just go  
12 into somebody's house. You can't look in their window. You  
13 still need to go get a search warrant unless you -- there's  
14 some kind of risk of---

15 THE COURT: Potential of destruction of evidence or---

16 MS. SCHULMEISTER: Exactly.

17 THE COURT: ---something along those lines.

18 MS. SCHULMEISTER: Exactly.

19 THE COURT: Like washing off blood and hair off the  
20 outside of a car.

21 MS. SCHULMEISTER: Which was not happening when the  
22 police arrived. It certainly---

23 THE COURT: It was what Mr. Ross said he had done  
24 though. That's when -- he said he saw him washing something  
25 off the car. That's what he found on it -- on the morning.

1 I think that's probably what sparked it all.

2 SOLICITOR SHEDD: And, Judge, just on that one specific  
3 point, I, I do know that Mr. Ross's testimony, there were  
4 two separate incidents---

5 THE COURT: Uh-huh. (Affirmative).

6 SOLICITOR SHEDD: ---where he saw the Defendant. One  
7 was at 4:00AM when the headlights were coming through---

8 THE COURT: Right.

9 SOLICITOR SHEDD: ---and he didn't see who got out of  
10 the car. As the sun was coming up, he was out on the porch.  
11 That's when he saw the smashed in windshield, the blood on  
12 the car, and the Defendant wiping it down.

13 THE COURT: And that's at the time he called?

14 SOLICITOR SHEDD: That's the time he called.

15 THE COURT: And what time was that?

16 Do you remember?

17 SOLICITOR SHEDD: That was -- I'm trying -- I  
18 believe -- I mean I know -- the one thing I can say for  
19 sure -- I would hate to, to guess about this. But the one  
20 thing that I do know for sure is that Lance Corporal---

21 THE COURT: I want to say it was 8:30.

22 SOLICITOR SHEDD: Yeah, they, they had---

23 THE COURT: I don't know why I think 8:30.

24 SOLICITOR SHEDD: They, they---

25 THE COURT: But that's what I recall.

1 SOLICITOR SHEDD: That's correct. They---

2 MS. SCHULMEISTER: And then the police arrived. Your  
3 Honor, I would ask, Mr. Shedd, do you have his written  
4 statement?

5 SOLICITOR SHEDD: I can, I can try to find it, yeah. I  
6 mean certainly I have it somewhere.

7 THE COURT: It's in evidence.com, right?

8 MS. SCHULMEISTER: well, it's a little bit complicated  
9 because Mr. Stephens had this case, and then if there's  
10 discovery sent to his matrix, and then my evidence. And so  
11 there was---

12 THE COURT: Got it.

13 SOLICITOR SHEDD: Just for the record, everything that  
14 was sent to Jeff Stephens was also sent to Ms. Schulmeister.

15 THE COURT: Okay.

16 SOLICITOR SHEDD: There were -- it was because Mr.  
17 Stephens was never deleted out as a lawyer. So every time  
18 we supplemented something to her, it also went to Jeff  
19 Stephens.

20 THE COURT: Okay. Okay.

21 MS. SCHULMEISTER: Okay. We've got it.

22 THE COURT: Okay.

23 MS. SCHULMEISTER: May I read it to the Court?

24 THE COURT: Please.

25 MS. SCHULMEISTER: This is the statement of John Ross

1 from September 1, 2018. At approximately 4:00AM I noticed  
2 headlights flashing into my home. I looked out. It was my  
3 neighbor at 18 Outlaw Road.

4 At approximately 7:15AM I looked out my window and  
5 noticed the male's girlfriend looking at a car -- at the  
6 car. About 8:00AM I noticed the male outside wiping off the  
7 hooded windshield with a light rag. When he finished, he  
8 threw it on the side of the porch. That made me even more  
9 suspicious when, after talking with my brother, we agreed  
10 that I should call it in. It was too suspicious. They are  
11 very heavy drinkers and I hope he gets what he deserves.  
12 And then he came to Court and he testified that he thought  
13 he might of hit a deer.

14 THE COURT: Uh-huh. (Affirmative).

15 MS. SCHULMEISTER: He didn't say anything about blood  
16 in that statement.

17 THE COURT: Okay. Okay. And, of course, that wasn't  
18 his trial testimony. But okay.

19 okay. What else?

20 MS. SCHULMEISTER: Your Honor, I don't have anything  
21 else to add---

22 THE COURT: Okay.

23 MS. SCHULMEISTER: ---unless Your Honor has any  
24 questions for me.

25 THE COURT: I want to go through and read the

1 transcripts because, again, I, I can tell you I haven't look  
2 at those yet.

3 Anything else, Shedd -- Mr. Shedd, from you?

4 SOLICITOR SHEDD: Judge, I mean I just -- I would like  
5 to reiterate that a lot of, a lot of what's come out here in  
6 this posttrial motion is in regards to stuff that's not in  
7 the record. There's testimony -- you know, when we get into  
8 the credibility of testimony, that's been sort of the theme  
9 from the briefing all the way through this that, that, for  
10 some reason, Sergeant, Sergeant Reynolds and Lance Corporal  
11 Harris that, that they're not -- or particularly Sergeant  
12 Reynolds, is not credible. But certainly this testimony,  
13 they were on the stand, they testified. That is the  
14 testimony in the record.

15 THE COURT: Uh-huh. (Affirmative).

16 SOLICITOR SHEDD: And, and it certainly, at the, at the  
17 pretrial stage where Your Honor heard the proffer---

18 THE COURT: Uh-huh. (Affirmative).

19 SOLICITOR SHEDD: ---then it is, of course, in yours --  
20 your -- within your discretion to determine reliability of  
21 that testimony.

22 THE COURT: Uh-huh. (Affirmative).

23 SOLICITOR SHEDD: And then certainly, at trial, it, it  
24 is within the province of the jury to determine if that --  
25 credibility of the testimony.

1           So, I don't believe that, at this stage, it is  
2 appropriate to delve into how credible or not one side  
3 believes certain testimony to be. I think the testimony is  
4 what it is, and the jury made a determination based on the  
5 evidence presented at trial, and, and certainly we think  
6 that at -- all, all of the, all of the issues raised by the  
7 Defendant in this posttrial motion, they were certainly  
8 properly ruled on in trial, and we would ask that you deny  
9 the motion.

10           THE COURT: Okay. All right. Well, let me take it  
11 under advisement. Let me go through and read the  
12 transcripts again. I'd like to read everything in full  
13 again, and I will let you know something.

14           As far as your Motion to Reconsider the Sentence, when  
15 are you hoping to do that or want to do that?

16           MS. SCHULMEISTER: I would leave it to the Court's  
17 discretion.

18           THE COURT: And you're not prepared to go forward now?

19           MS. SCHULMEISTER: I can, Your Honor. I just -- I  
20 don't have anything to add except I think I laid it all out  
21 in my motion. Like I said---

22           THE COURT: There's nothing else you need to add?

23           MS. SCHULMEISTER: No, unless you want me to say what  
24 I've already said.

25           THE COURT: No.

1 MS. SCHULMEISTER: We're asking for 10 years---

2 THE COURT: I---

3 MS. SCHULMEISTER: ---instead of 15.

4 THE COURT: I understand.

5 MS. SCHULMEISTER: Yes.

6 THE COURT: So, it -- my question, I guess, then to you  
7 is, is was there anything you didn't present at sentencing  
8 that you needed to now?

9 MS. SCHULMEISTER: No.

10 THE COURT: If that makes sense.

11 MS. SCHULMEISTER: No, Your Honor. I just ask that,  
12 that you reconsider based on, you know, sending a message  
13 that you believe that he can be rehabilitated, and I think  
14 10 years is, is enough to sentence someone for an accident  
15 like this.

16 THE COURT: Okay. I got to tell you -- I know I  
17 shouldn't say this on the record. I don't like sending a  
18 message. I don't think it's fair to punish someone to send  
19 a message to someone else. I think -- I sentence by the  
20 people that are in front of me, and I think it's individual  
21 to them, and they're the ones doing the time. It's not what  
22 everyone else sees, thinks, or hears.

23 So, I try really hard to remember that, and I don't --  
24 I know. I'm, I'm just telling you that that's just -- and I  
25 can tell you it is a basis for some judges and it's -- we're

1 able to do that. But me, personally, I don't like that. I  
2 just -- I don't think it's -- I don't think it's right.

3 I think you, you know, sentence people on themselves  
4 and their individual case.

5 I can tell you, Mr. Schulmeister, in this case what,  
6 for me, I considered, in addition to everything, was my  
7 concern that I believe he had at least one prior DUI and  
8 maybe it was more than that.

9 Am I correct?

10 SOLICITOR SHEDD: He had four prior DUIs.

11 THE COURT: He had four prior DUIs, and that, to me, I  
12 think was what, what made an, an impact. I understood he  
13 had no other records other than the DUIs. I understood he  
14 was incredibly hardworking. That, that I can tell you is  
15 what I recall was significant to me.

16 So, for the record, that's -- that, that, that was  
17 something that, that I took into account. So---

18 MS. SCHULMEISTER: I certainly understand that. I  
19 misspoke the message---

20 THE COURT: Yeah.

21 MS. SCHULMEISTER: ---I was asking Your Honor to  
22 send---

23 THE COURT: Right.

24 MS. SCHULMEISTER: ---was to Jiovaani.

25 THE COURT: Right. Okay.

1 MS. SCHULMEISTER: Not to the whole (indiscernible).

2 THE COURT: Right. Exactly. But you heard -- people  
3 say that all the time.

4 MS. SCHULMEISTER: Right.

5 THE COURT: You know, you need to show others and  
6 judges are allowed to use that. Judges are allowed to send  
7 a message. I just don't think that's fair to the actual  
8 individual because he's the only one doing the time.

9 MS. SCHULMEISTER: I agree.

10 THE COURT: So -- and that's just -- that's something  
11 I've been very careful about and I've actually, you know,  
12 stated that in public before. So, I don't think it's really  
13 probably any news. But certainly judges are permitted to do  
14 that.

15 MS. SCHULMEISTER: Okay.

16 THE COURT: But I don't.

17 okay. All right. So let me read everything again.  
18 I'll just feel better once I've gone through everything one  
19 more time, and then I will let y'all know. I may ask for a  
20 proposed order. I may not. I don't know. We'll see.

21 okay. So, we'll just go from there.

22 All right. I appreciate it, y'all. Thank you.

23 SOLICITOR SHEDD: Thank you, Your Honor.

24 MS. SCHULMEISTER: Thank you, Your Honor.

25 THE COURT: Thank you, everyone.

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\* \* \*END OF REQUESTED TRANSCRIPT OF RECORD\* \* \*

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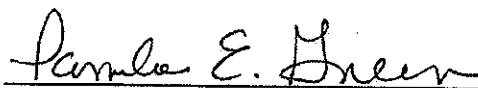
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## C E R T I F I C A T E

1  
2  
3 I, Pamela E. Green, Official Court Reporter for the  
4 State of South Carolina, do hereby certify that the  
5 foregoing is a true, accurate and complete Transcript of  
6 Record of the proceedings had and evidence introduced in the  
7 trial of the captioned case, relative to appeal, in the  
8 Court of General Sessions for Beaufort County, South  
9 Carolina, on the 25<sup>th</sup> day of May, 2021.

10 I do further certify that I am neither of kin, counsel  
11 nor interest to any party hereto.  
12  
13  
14

15 August 10<sup>th</sup>, 2021  
16  
17

18   
19 \_\_\_\_\_

20 PAMELA E. GREEN, Court Reporter  
21  
22  
23  
24  
25

# **EXHIBIT D**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )  
 )  
STATE OF SOUTH CAROLINA )  
 )  
vs. )  
 )  
Jiovaani Aranza Gallegos, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT NO: 2018GS0701486 – 01487

ORDER DENYING DEFENDANT'S  
MOTION FOR A NEW TRIAL

**RECEIVED**

JUN 29 2021

**PROCEDURAL HISTORY**

**SC Court of Appeals**

A hit and run involving a vehicle versus a bicyclist occurred in the early morning hours of September 1, 2018, on New Orleans Road on Hilton Head Island, South Carolina. The victim died at the scene. Jiovaani Aranza Gallegos ("Defendant") was arrested later that day for Habitual Traffic Offender with Death Resulting ("HTO") and Hit and Run with Death Resulting ("Hit and Run"). Defendant was indicted on March 21, 2019, for the HTO and on April 18, 2019, for the Hit and Run. Defendant was tried and convicted on both counts on October 21, 2020, by a Beaufort County jury. He was sentenced to twenty (20) years on each count to run concurrently. Defendant filed a Motion for Directed Verdict or, alternatively, a New Trial on October 30, 2020. A hearing was conducted on May 25, 2021. The State, represented by Assistant Solicitor Jared Shedd, and the Defendant, represented by Claire Schulmeister, were present at the hearing. Having heard the arguments of counsel, the Court hereby DENIES the Defendant's Motion for a New Trial.

**FINDINGS OF FACT & CONCLUSIONS OF LAW**

**I. Directed Verdict**

The Court finds that Defendant's Motion for Directed Verdict was properly denied because there was sufficient evidence from which the jury could infer Defendant's guilt.

As it relates to the HTO<sup>1</sup> charge, competent evidence exists from which a jury could infer that Defendant failed to maintain a safe distance from a bicycle. Corporal Jessea James ("Cpl. James") of the Multi-Disciplinary Accident Investigation Team ("MAIT") testified that Defendant struck the victim while the victim was riding his bicycle. Cpl. James opined that the victim's bicycle was struck from behind. A reasonable inference from this testimony is that the victim was within the headlight output of Defendant's vehicle. A jury could infer from this evidence that the Defendant saw the victim prior to impact.

As it relates to the Hit and Run charge, the location of the victim's body, as depicted in the photographs in evidence, shows that the victim's body was almost entirely in the lane of travel. Multiple witnesses testified regarding the debris field left in the road after the collision. Among the debris, law enforcement located a hat, multiple packs of cigarettes, and some miscellaneous paperwork. Additionally, Cpl. James testified that, in his expert opinion, the victim's body slid off the front of the hood and did not tumble over the car. Instead, the victim's head was inside the "fracture" of the windshield for a period of time before sliding off the front of the hood after Defendant applied the brakes. Furthermore, Dr. Nicholas Batalis, the pathologist, testified that the victim's body did not show signs of tire marks or having been dragged. This evidence, when viewed together, constitutes sufficient evidence from which a jury could infer that Defendant actually saw or reasonably should have seen the victim's body and drove around it.

Therefore, because competent evidence exists from which the jury could infer Defendant's guilt of these offenses, Defendant's Motions for Directed Verdict on both counts were properly denied at trial.

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<sup>1</sup> Habitual Traffic Offender with Death Resulting requires proof that: 1) Defendant was a Habitual Traffic Offender whose driver's license was suspended; 2) Defendant was driving a motor vehicle on a public highway; 3) Defendant did an act forbidden by law or neglected a duty imposed by law; and 4) that act or neglect proximately caused death to another person.

## II. Motion to Suppress

The Court finds that Defendant's Motion to Suppress all evidence obtained from the vehicle was properly denied at trial. The van was not located within the curtilage of Defendant's home. Lance Corporal Lyle Harris ("LCpl. Harris") and Lance Corporal Wallace Crowley ("LCpl. Crowley") testified at the suppression hearing that the van was located in between two trailers. The testimony indicates that the van was parked between two residences, rather than in a traditional driveway or in some other location that was clearly part of the property of one trailer or the other. The location of the van was not so intimately tied to the activities of the home that it should be considered within its curtilage. Instead, the location was an "open field." See Oliver v. United States, 466 U.S. 170, 180, 104 S. Ct. 1735, 1742 (1984) (explaining that "[t]he distinction [between curtilage and open fields] implies that only the curtilage, not the neighboring open fields, warrants the Fourth Amendment protections that attach to the home"). As such, it was not subject to the protections provided by the Fourth Amendment.

Additionally, LCpl. Crowley testified that as he and LCpl. Harris walked up beside the van, they saw streak marks of what appeared to be blood as well as significant damage to the vehicle, both of which were in plain view. "[P]olice officers need not 'shield their eyes' when passing by a home." State v. Robinson, 410 S.C. 519, 527, 765 S.E.2d 564, 568 (2014) (quoting California v. Ciraolo, 476 U.S. 207, 213, 106 S. Ct. 1809, 1812 (1986)). Therefore, there was no unconstitutional search because the observations that led to probable cause to obtain a search warrant were in plain view.

Nevertheless, the Court finds that the preponderance of the evidence shows that the discovery of the evidence was inevitable through lawful means. See State v. Spears, 393 S.C. 466, 481, 713 S.E.2d 324, 332 (Ct. App. 2011) (explaining that if the State "can establish by a preponderance of the evidence that the information ultimately or inevitably would have been

discovered by lawful means, the information is admissible despite the fact it was illegally obtained"). LCpl. Harris testified that he made contact with the complainant, John Ross, at his residence. The incriminating evidence on the van was clearly visible from Mr. Ross's home because that is where Mr. Ross was when he observed the van before calling police.

Therefore, the Court finds that Defendant's Motion to Suppress all of the evidence obtained from the van was properly denied at trial.

### III. Expert Testimony

The Court finds that Defendant's objection to Cpl. James's qualifications as an expert in accident reconstruction was properly overruled. Cpl. James testified that he had been with South Carolina Highway Patrol since 2011 and a member of MAIT since 2013. Cpl. James also testified to the extensive training courses that he has taken in the field of accident reconstruction. Importantly, Cpl. James also received training for automobile versus bicycle collision reconstruction – training which is given by outside experts and includes a class on how to use a program to create reconstruction drawings. Additionally, Cpl. James has extensive experience in investigating collisions, testifying that he has participated in ninety (90) investigations per year since 2013. Therefore, Cpl. James was qualified to testify as an expert in the field of accident reconstruction. See State v. Goode, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991) (holding that it was not an abuse of discretion to qualify a trooper as an expert in the field lane of impact based on his 12 weeks of training at the police academy, a one week "on the road training," and less than six months of experience as a trooper).

In addition, the Court finds that Defendant sufficiently raised an objection as to the reliability of the methods used, as well as the reliability of how the methods were used, in this case. After hearing the testimony of Cpl. James, the Court now expressly finds that the underlying

methods used in forming opinions are reliable and that they were reliably applied to the facts of this case. Therefore, the Court finds that Cpl. James was properly qualified as an expert in accident reconstruction.

#### **IV. Closing Argument**

The Court properly sustained the State's objection during Defendant's closing argument when Defendant misstated the law and suggested the only important factor was the knowledge of the Defendant at the time of the offense. The law does not require proof of actual knowledge to convict the Defendant of both counts.

#### **V. After Discovered Evidence**

To the extent that Defendant's Motion for New Trial is based on the documents attached to his supplemental briefing, the Court finds that the documents do not meet the standard for after discovered evidence under Rule 29(b). To be granted a new trial based on after discovered evidence, the Defendant must show that the evidence "(1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching." State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999). Here, the material is merely impeaching and could have been discovered through the exercise of due diligence. Therefore, the Defendant's Motion for New Trial based on this after discovered evidence is denied.

#### **VI. Brady Material**

The Court finds that the CAD report from the scene at Outlaw Road is material that should have been turned over in discovery. However, this report was specifically referred to and used to answer questions by LCpl. Crowley during the suppression hearing. This information was


therefore known by the Defendant prior to the start of trial. The Court finds that there was no resulting prejudice to the Defendant because it does not undermine the confidence in the result of the proceeding. As such, no finding is required regarding whether the material was potentially exculpatory under Brady.

On the other hand, the worksheet notes prepared by Magistrate Judge Erin Vaux regarding the September 1, 2018, search warrant are not materials that should have been turned over in discovery. These documents were never requested by the Defendant, and the State was not aware of their existence. The Court further finds that knowledge of the document's existence is not imputed under the standard pronounced in Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555, 1567 (1995). Under this standard, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Id. The Magistrate Court is a part of the judicial branch of government and as such, no duty is imposed on the prosecutor to learn of this information.

#### CONCLUSION

For the reasons stated herein, Defendant's motions for directed verdict, or alternatively, for a new trial are DENIED.

IT IS SO ORDERED.



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The Honorable Carmen T. Mullen  
Presiding Judge  
Fourteenth Judicial Circuit

June 16, 2021  
Beaufort, South Carolina

**RECEIVED**

**Feb 24 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JIOVAANI ARANZA GALLEGOS,

APPELLANT

APPELLATE CASE NO. 2021-000689

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the motion to hold appeal in abeyance and remand for a ruling on the pending motion to reconsider sentence in the above referenced case has been served on William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 24<sup>th</sup> day of February, 2022.

  
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Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT