South Carolina Bar
Continuing Legal Education Division

2019 SC BAR CONVENTION

Criminal Law Section (Part 1)

"Fundamentals for
Criminal Law Practitioners"

Friday, January 18

SC Supreme Court Commission on CLE Course No. 190397

South Carolina Bar
Continuing Legal Education Division

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From Both Sides of the Coin

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CASE LAW ON DRIVING CASES IN SOUTH CAROLINA

September 1, 2018

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Driving Case Law in South Carolina

By Barry Barnette

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ACCIDENT RECONSTRUCTION

1. State v. Goode, 305 S.C. 176, 406 S.E.2d 391, (1991): Qualification of a witness as an expert rests in the sound discretion of the trial judge. Troopers who had received 12-week training at S.C. Highway Department Academy including specific "point of impact accident investigation" training and who had four and five weeks on the job experience were qualified to give expert opinion concerning the line of impact.

2. State v. Sheldon, 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001): Defendant, a State Trooper, was indicted on two counts of reckless homicide resulting from a collision in which his vehicle collided with another vehicle. Section 56-5-765 (Supp. 2000) requires collisions involving a vehicle of the Department of Public Safety (including the Highway Patrol) must be investigated by the Sheriff's Office of the county in which the accident occurred. The Highway Patrol's Multi-disciplinary Accident Investigation Team (MAIT) assisted in the investigation of the accident by reconstructing the accident and submitting a report. The defendant moved to suppress the accident reconstruction report citing that the evidence was obtained in violation of the statute.

   The Court of Appeals held that although the MAIT team's investigation was a violation of Section 56-5-765 (Supp. 2000), stating that the Orangeburg County Sheriff's Office should have sought assistance elsewhere if it did not have the necessary resources to perform the speed tests. However, the Court found that the admission of the report did not require the application of the exclusionary rule, citing the Supreme Court's holding that the "exclusion of evidence should be limited to violations of constitutional rights and not to statutory violations, at least where the appellant cannot demonstrate prejudice at trial resulting from the failure to follow statutory procedures." The court reversed and remanded the case back to the circuit court to make findings on whether the defendant would be prejudiced by the MAIT's investigation of the collision.

BLOOD CHAIN AND ADMISSIBILITY OF BLOOD TEST CASES

1. State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989): Chain of custody of Defendant's blood sample used for blood alcohol test was sufficiently established, though nurse who drew blood did not testify through introduction of initialed form which complied with hospital protocol and testing nurse's testimony. Proof of chain of custody need not negate all possibility of tampering but must establish a complete chain of evidence as far as practicable.

2. State v. Williams, 301 S.C. 369, 392 S.E.2d 181 (1990): Because of cumulative breakdowns in the chain of custody of the defendant's blood at the hospital, the Court ruled the admissibility of blood alcohol test results was error. Citing ruling

in State v. David Williams, 376 S.E.2d 773 (1989), but found chain in question to be defective.

3. State v. Tanner, 299 S.C. 459, 385 S.E.2d 832, (SC 1989): A formal arrest prior to the withdrawal of blood is not necessary. A blood sample taken from a DUI defendant shortly after an automobile accident was not inadmissible on the ground that the defendant had not been formally arrested prior to the withdrawal of his blood, since formal arrest is not a prerequisite to a warrantless seizure of a blood sample in a DUI situation. Instead the focus is on whether probable cause to withdraw the blood existed.

4. State v. Sarvis, 265 S.C. 144, 217 S.E.2d 38 (1975): Where a blood sample was withdrawn by a doctor at the hospital, with the consent of the defendant not then under arrest, admission of the results of an alcohol level test in a prosecution for DWI violated none of the defendant's constitutional rights.

5. State v. Pipkin, 294 S.C. 336, 364 S.E.2d 464 (1988) and State v. Wilson, 296 S.C. 73, 370 S.E.2d 715 (1988): Where a defendant does submit to a breathalyzer test, the State is not allowed by the implied consent statute, in the absence those exceptions found in the statute, to a blood test, even if the defendant requests and receives a blood test.

6. Cupp v. Murphy, 412 U.S. 291 (1973): The U.S. Supreme Court held that a full arrest is not required for police to conduct a search necessary to preserve highly evanescent evidence if there is probable cause for arrest. Here the Appellant had not been arrested until one month later when a uniform traffic ticket was issued. Under Murphy the warrantless seizure of Appellant's blood did not violate his Fourth Amendment right if there was probable cause to arrest at the time of the accident. Used in State v. Williams, 376 S.E.2d 773, (SC 1989).

7. State v. Kinner, 301 S.C. 209, 391 S.E.2d 251 (SC 1990): Felony DUI conviction affirmed. The Defendant had a blood test. He was never given a breathalyzer test. The judge instructed the inference levels under section 56-5-2950(b), which at the time of the offense provided for a chemical analysis of the defendant's breath. The appellant objected. Supreme Court finds that the instructions were violative of the holding in Carrigan. However, the error was harmless beyond a reasonable doubt. There was expert testimony about the blood level. There was eyewitness testimony.

8. State v. Priester, 301 S.C. 165, 391 S.E.2d 227 (1990): Felony DUI reversed. Chain of Custody sufficient. Lab technician at SLED not qualified to testify that a person with .10 blood alcohol is intoxicated. Blood test results need appropriate expert since at time presumptions only applied to breathalyzer. Witness admitted he had no training on effect of alcohol.

9. State v. Hunter, 305 S.C. 560, 410 S.E.2d 243 (1991): The Supreme Court held any procedural safeguards given to operators of motor vehicles by the implied consent statute are inapplicable in this case because the blood-alcohol test at issue here was not based on implied consent but was conducted for purposes of medical diagnosis and treatment. Accordingly, the implied consent statute had no relevance and the trial judge properly admitted the test results.

10. State v. Cribb, 426 S.E.2d 306 (1992): The Court held that the trial judge was correct in ruling that section 56-5-2950 is inapplicable to pre-arrest DUI investigations and that reckless driving is not a lesser included offense of Felony DUI. However, the trial judge abused his discretion in admitting the blood alcohol test into evidence because the chain of custody for the blood sample was not established. The court stated that it is an abuse of discretion to admit the results of a blood alcohol test where the identity of those who sealed, labeled, and transported the blood sample is not established. Also, the Court overruled State v. King, 289 S.C. 371, 346 S.E.2d 323 (1986) and held that reckless homicide and involuntary manslaughter are not lesser included offenses of Felony DUI.

11. State v. Baker, 427 S.E.2d 670 (1993): The South Carolina Supreme Court held that the Legislature intended for arresting officers to direct the administration of "any test" at their discretion, with the limitation that a person charged with driving under the influence of alcohol cannot be subjected to a blood test unless he has an injured mouth, is unconscious, dead, or for any other reason considered acceptable by licensed medical personnel, is unable to take a breath test. There is no indication from the plain language of the statute that the Legislature intended to encumber arresting officers with an affirmative duty to offer breath tests to all persons arrested with driving under the influence who physically are capable of providing a breath sample.

12. Town of Fairfax v. Smith, 285 S.C. 458, 330 S.E.2d 290 (1985): The Court found that the defendant was arrested for DUI and consented to the breathalyzer test pursuant to the implied consent statute. He also requested an independent blood sample test. The request was granted, and he was taken to the Allendale County Hospital. Over his objection, the police officer took possession of the blood sample and refused to allow the hospital to analyze it. Instead, the sample was sent to the State Law Enforcement Division (SLED) which made an analysis and returned the result back to the Town of Fairfax.

    The Court held that the implied consent statute was violated in this case because the accused was denied his right to have an analysis made by a physician, qualified technician, chemist, registered nurse or other qualified person of his choosing of the independent blood sample. The State should not have been permitted to introduce the results of either the breathalyzer test or the blood sample examination made by SLED. The statute clearly gives to an accused person the right to a reasonable opportunity to contact an independent qualified person to conduct a blood test. State v. Lewis, 266 S.C. 45, 221 S.E.2d 524

(1976) held that the statute mandates assistance by the police officer in securing an independent analysis.

13. State v. Stacy, 431 S.E.2d 640 (1993): The Court held that the implied consent statute requires a licensed physician, licensed registered nurse, or other medical personnel trained to take blood samples in a licensed medical facility, who is directed by an officer to take a blood sample, to determine whether an acceptable reason exists for finding that a person is unable to provide an acceptable breath test.

    In this case, Mrs. York, who drew the blood sample, testified that she was a medical person trained to take blood samples. She was working at the Greenville Memorial Hospital emergency room, and the defendant had not complained that it is not a licensed medical facility. York also testified that it was not possible for the officers to take the defendant to the Law Enforcement Center for a breath test because the defendant had not been treated for his injuries by an emergency room physician. It is clear that York felt this was an acceptable reason for determining that the defendant could not give an acceptable breath sample. The statute thus permitted York to take the blood sample without the arresting officer first offering the defendant a breath test.

14. City of Columbia v. Moore, 457 S.E.2d 346 (1995): The South Carolina Court of Appeals held that the reason a blood test was ordered in lieu of a breath sample by the officer must be a reason found acceptable by licensed medical personnel not by the arresting officer.

15. State v. Smith, 482 S.E.2d 777 (1997): The South Carolina Supreme Court reversed the South Carolina Court of Appeals in this case (467 S.E.2d 110 (1996)) concerning their ruling that the chain of custody in this case was insufficient and the blood alcohol results should not have been admitted. The Supreme Court found that the Defendant was arrested for DUI. The Defendant refused the breathalyzer and requested a blood alcohol test. Trooper Bullard, the arresting officer, transported him to the Lexington Medical Center where two vials of blood were drawn. Trooper Bullard left one vial with the County Jail inventory clerk and took the other vial home and placed it in his refrigerator. Two days later, Trooper Bullard took the vial to SLED for testing. The testing showed the Defendant's blood alcohol to be .0149%. The Supreme Court held that the proof of the chain of custody need not negate all possibility of tampering but must establish a chain as far as practicable. State v. Williams, 297 S.C. 290, 376 S.E.2d 773 (1989). Trooper Bullard testified when he submitted the sample to SLED for testing, it was in the same condition as when he received it. The Supreme Court ruled the blood alcohol result was properly admitted.

16. City of Columbia v. Wilson, 478 S.E.2d 88 (1996): The Court held that the State had to enter the Datamaster form with the language of Section 56-5-2950(a) concerning the right to additional independent blood tests because the Defendant

did not stipulate that the test was performed pursuant to SLED procedures or that he was advised of his statutory rights. The City had to lay a proper foundation for admitting the results of the test.

17. State v. Kimbrell, 481 S.E.2d 456 (Ct. App.1997): The Court held that the plain meaning of 56-5-2950 requires the arresting officer to offer a breath test, absent a valid determination that the defendant is physically unable to give an acceptable breath sample. Blood test results are admissible where the evidence shows a person is dead, unconscious, or physically unable to provide an acceptable breath sample as determined by authorized medical personnel. Blood tests are also admissible where the accused is offered a breath test, but agree to the officer's request for a blood test in lieu thereof. Where the evidence establishes the accused has an obvious injury to the mouth that the arresting officer reasonably believes will interfere with providing an acceptable breath sample, the officer may order a blood test to be taken. Whether or not the officer's belief is reasonable will depend upon the circumstances of each case.

18. State v. Carter, 344 S.C. 419 (SC 2001): The Supreme Court held that where all custodians of the blood testified that he or she did not alter the evidence in any way, and where the petitioner had the opportunity to cross-examine each custodian, there is no missing link in the chain of custody. The evidence regarding the missing saliva sample contradicted the State's evidence negating tampering, thereby creating a factual issue. The Court found that the evidence of a discrepancy in the contents of the kit did not render the blood sample inadmissible but went only to its weight as credible evidence. Thus, the Court found that inadmissible but went only to its weight as credible evidence. Thus, the Court found that there was no missing link in the chain of custody and affirmed the convictions.

19. State v. Henderson, 347 S.C. 148, 553 S.E.2d 462 (2001): The Court of Appeals found that the defendant can stipulate that they were properly given their implied consent rights by law enforcement for datamaster testing. Once the defendant stipulates, the prosecution cannot state the part of the implied consent warning that states, "You have the right to additional independent tests. Whether you take this breath test or not you will be given reasonable assistance in contacting a qualified person of your own choosing to conduct any additional tests."

20. State v. Frey, 362 S.C. 511, 608 S.E.2d 874 (2005 S.C. App.): The South Carolina Court of Appeals held that the mere appearance of a person in a hospital wearing generic hospital attire was not evidence of medical training, and a mere signature on a SLED form was not sufficient to establish compliance with the implied consent statute (Section 56-5-2950 of the South Carolina Code of Laws), which required that samples be drawn by a doctor, nurse, or other qualified medical personnel.

21. Peake v. S.C.D.M.V., 375 S.C. 589, 654 S.E.2d 284 (Ct. App. 2007): The Court ruled that Section 56-5-2950 (known as the Implied Consent Statute) states, "At the direction of the arresting officer, the person first must be offered a breath test to determine the person's alcohol concentration (*in regular DUI cases)*. If the person is physically unable to provide an acceptable breath sample because he has an injured mouth, is unconscious, or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken. The trooper did not follow the statutory provisions by not checking with medical personnel before requesting the blood sample.

DATAMASTER AND BREATHALYZER CASES

1. State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978): 1) Machine was in proper working order at time of test; 2) correct chemicals were used; 3) accused was not allowed to put anything in his mouth for 20 minutes prior to the test; 4) that test was administered by qualified person certified by SLED in the proper manner. Once this testimony is introduced by the state, a prima facie case for admission of the results of the BA test has been made.

2. State v. Sawyer, 283 S.C. 127, 322 S.E.2d 449 (1984): Test is admissible despite the fact that officer did not see defendant drive. Defendant admitted he was the driver.

3. City of Cayce v. Graves, 279 S.C. 54, 301 S.E.2d 755 (1983): Breathalyzer test results are admissible in criminal prosecution for DUI intoxicants, even though test is conducted with machine which is not manufactured by manufacturer approved by SLED under Code section 56-5-2950(a), where approved manufacturer has been acquired by another manufacturer and machine used is the same machine previously approved under different name.

4. State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980): Our implied consent law does not require that the arresting officer actually see the person driving the vehicle. The mere fact that the breathalyzer was not made at the direction of an officer who actually viewed a defendant's vehicle in motion does not render the test illegal. Consent to the test arose by virtue of the arrest for DUI and not from the provision that the test made at the direction of the officer who apprehends the defendant charged.

5. California v. Trombetta, 467 U.S. 479 (1984): The defendants seek to suppress the test results in a breathalyzer drunk driving prosecution on the ground that the State had failed to preserve the breath samples used in a test. The Supreme Court rejects this argument on the following reasons: (1) the officers here were acting in good faith and in accord with their normal practice, (2) in light of the procedures actually used the chances that preserved samples would have exculpated the defendants were slim, and (3) even if the samples might have

shown inaccuracy in the test, the defendants had alternate means of demonstrating their innocence.

6. State v. Adams, 304 S.C. 302, 403 S.E.2d 678 (1991): Defendant appeals DUI conviction on grounds that state never produced the original record of the results of a B/A test and because the Magistrate lost copies of the test reports and other items. Defendant did not show any apparent exculpatory value under Trombetta, nor did the defendant show any prejudice. State did not offer the test. Defendant argued point of starting needle off – speculation.

7. State v. Jansen, 305 S.C. 320, 408 S.E.2d 235 (1991): DUI conviction affirmed. Precautions enumerated in Parker need not be complied with before a B/A test is offered, if there is a refusal, only if one takes test. Validity of test not an issue if not taken. Refusal testimony allowed. Should not be suppressed.

8. Town of Mount Pleasant v. Shaw, 432 S.E.2d 450 (1993): The Court held under Section 56-5-2950(a) a person must be informed that he does not have to take a breathalyzer test. The Defendant was read an advisory which informed him that if he did not take the test his license would be suspended for ninety days, and if he did take the test, he could have an independent test conducted at his own expense. A common sense reading of the advisory read to the defendant makes clear the consequences of both taking and refusing to take the test. It was found that the defendant had adequate notice.

9. State v. Squires, 426 S.E.2d 738 (1992): The South Carolina Supreme Court held that they join the courts that have construed infrared spectrography to be a "chemical test" or "chemical analysis" for the purpose of testing persons charged with DUI for the presence of alcohol in their breath. The Court also took judicial notice that the infrared spectrography process utilized by the Datamaster has gained general acceptance in the scientific community.

10. State v. Baker, 427 S.E.2d 670 (1993): The South Carolina Supreme Court held that the Legislature intended for arresting officers to direct the administration of "any test" at their discretion, with the limitation that a person charged with driving under the influence of alcohol cannot be subjected to a blood test unless he has an injured mouth, is unconscious, dead, or for any other reason considered acceptable by licensed medical personnel, is unable to take a breath test. There is no indication from the plain language of the statute that the Legislature intended to encumber arresting officers with an affirmative duty to offer breath tests to all persons arrested for driving under the influence who physically are capable of providing a breath sample.

    In addition, Section 56-6-2950(b) provides that "the provisions of this section must not be construed as limiting the introduction of any other competent evidence…." Clearly, the Legislature intended for evidence collected under the implied consent statute to augment, not replace, existing methods of establishing

intoxication in criminal prosecutions of persons charged with DUI. According to State v. Barry, 183 Kan. 792, 332 P.2d 549 (1958): see also State v. Squires, 426 S.E.2d 738 (1992) (the public purpose underlying Section 56-5-2950(a) is to facilitate the compilation of reliable evidence in drunk driving prosecutions). Forcing the State to withdraw from prosecuting DUI cases which are based, as here, on evidence different from that which could have been gleaned from breath tests would undermine the Legislature's goal of curbing the danger to society posed by drunk drivers.

The Court held that arresting officers are not required to offer breath tests to persons charged with driving under the influence of alcohol as a prerequisite to prosecution. This result uniformly has been reached by other courts addressing this issue. (See Annot., 95 A.L.R.3d 710 (1979)).

11. State v. Franklin, 443 S.E.2d 386 (1994): The South Carolina Supreme Court held that Section 56-5-2950 gives the South Carolina Law Enforcement Division (SLED) the right to make regulations concerning breath testing, but regulations are not the only means by which SLED can approve a specific breathalyzer machine model.

12. State v. Huntley, 349 S.C. 1, 562 S.E.2d 472 (2002): Our Supreme Court held that evidence that the breath-test machine operator did not use the correct alcohol concentration in the simulator test solution went to weight of, rather than admissibility of, defendant's breath test result.

13. State v. Landon, 370 S.C. 103, 634 S.E.2d 660 (2006): The South Carolina Supreme Court ruled that internet records from SLED that was maintained on a computer at the breath testing area met the requirement for test records at the site as required by S.C. Code Ann. Section 56-5-2954. The Court also stated that SLED Datamaster records did not have enough "detail" about specific problems with the Datamaster as required by the statute. Once an accused made a prima facie showing of prejudice, either by providing records to show the machine was working properly at the time of testing or by some other contemporaneous evidence. The records from the datamaster machine that tested the defendant indicated that repairs were made to that machine only eight days after the defendant was tested. This evidence was sufficient as a prima facie showing of prejudice which the State had the burden of rebutting.

DIRECTED VERDICT CASE LAW

1. State v. Goode, 305 S.C. 176, 406 S.E.2d 391 (1991) and State v. Hicks, 305 S.C. 277, 407 S.E.2d 907 (1991): The Court held that in reviewing the denial of a motion for directed verdict, we must determine whether there is any evidence tending to prove the guilt of the accused or from which his guilt may be fairly and

logically deduced. If such evidence exists, the denial of the motion must be upheld.

2. State v. Williams, 468 S.E.2d 656 (S.C. 1996): The South Carolina Supreme Court held that the only time a judge should consider a defendant's motion for a directed verdict is after the state has presented all of its testimony and evidence and has rested its case.

3. State v. Dantonio, 376 S.C. 594, 658 S.E.2d 337 (Ct. App. 2008): The South Carolina Court Appeals held that a case should be submitted to the jury if there is any direct or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the state. The Court also held that a defendant's act may be regarded as the proximate cause of the victim's death, and thus sustain a conviction for felony driving under the influence, if it is a contributing cause of the death. The defendant's act does need to be sole cause of a victim's death for felony DUI, provided it is a proximate cause actually contributing to the death. One who inflicts an injury on another is deemed by law to be guilty of homicide where the injury contributes immediately or immediately to the death of the other; the fact that other causes also contribute to the death does not relieve the actor from responsibility.

DISCOVERY AND RULE FIVE ISSUES

1. State v. Newell, 303 S.C. 471, 401 S.E.2d 420 (1991): The South Carolina Supreme Court ruled that it did not find any fault with the trial judge's ruling regarding the defendant's motion to suppress made pursuant to Rule 5(a)(1)(A) of the South Carolina Rules of Criminal Procedure in which the defendant stated that the state failed to make a disclosure of oral statements required by the defendant's rule five (5) discovery motion request. The trial judge found that under the "open file policy" of the solicitor's office, the prosecution substantially, if not totally, satisfied Rule 5(a)(1)(A)'s requirement that it "permit the defendant to inspect and copy … the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant…."

   Even assuming the prosecution failed to respond to the defendant's request for discovery before trial, the trial judge did not abuse his discretion in not suppressing the statement for failure to respond. The court has a broad discretion in deciding what should be done where material that should have been produced in response to an earlier request does not become known until during or just before the trial. The sanction the trial judge chose here, recessing the trial and affording Newell's counsel an opportunity to interview the officer to whom Newell allegedly made the incriminating oral statements, was an appropriate sanction under the circumstances.

2. Fradella v. Town of Mount Pleasant, 482 S.E.2d 53 (1997): In this case, the defendant made a Rule 5 request on the City Prosecutor. The prosecution turned over the first page of the booking report prepared by the Town's officers, but it did not turn over the second page of the booking report prepared by a Charleston County Sheriff's Deputy when the defendant was transported to the County Jail. Under the line marked "Condition at Time of Admission," The sheriff's deputy wrote "appears OK." The second page also included photographs taken of the defendant. The prosecutor claimed that the Town had neither knowledge nor possession of the second page. In fact the city judge stated that he knew from his experience that the second page of these reports always remained in the custody of the Charleston County Sheriff's Department. Consequently, the city judge denied the defendant's request for dismissal or sanctions. On appeal, the circuit judge ruled that the failure to turn over the report "materially hindered Fradella's defense," and he found "that the only appropriate remedy" was dismissal of the charge against Fradella. The South Carolina Court of Appeals held that the photograph of the defendant and notation "appears OK" on the second page of the booking report do not meet the test for materiality. This notation is minor evidence when compared to the other evidence of Fradella's guilt. That Fradella "appeared OK" more than two hours after arrest might have helped the defense, but the notation does not create a reasonable doubt in the verdict. For similar reasons, we hold that these items were not "material to the preparation of the defense" as required by Rule 5 (a)(1)(C) SCRCrimP.

DOUBLE JEOPARDY CASES

1. State v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986): Double jeopardy will bar conviction where the State attempts to prove felony driving under the influence with proof of a violation of the same law under which the defendant has already been convicted in magistrate's court. (*Abrogated by State v. Easler*, 327 S.C. 121, 489 S.E.2d 617 (1997)).

2. State v. Carter, 291 S.C. 385, 353 S.E.2d 875 (1987): Defendant's substantial claim of double jeopardy prohibited his prosecution for reckless homicide after his conviction for DUI. Both prosecution arose out of the same happening, where the state relied on and proved the same facts of the adjudicated DUI offense to establish the reckless act necessary to prove reckless homicide. (*Abrogated by State v. Easler*, 327 S.C. 121, 489 S.E.2d 617 (1997)).

3. State v. Johnson, 299 S.C. 130, 382 S.E.2d 909 (1989): In Grampus and Carter, we interpreted Vitale as providing an alternative to the traditional Blockburger test for determining double jeopardy claims in successive prosecution cases. The Vitale test, focusing upon the actual proof at trial, provides that if in the second prosecution, the State relies solely upon the identical proof as in the first, a substantial claim of double jeopardy is raised. Under Vitale no double jeopardy

violation is present in the current case. Proof of Driving Under Suspension (DUS), for which Johnson forfeited bond, involves the operating of a motor vehicle while one's driver's license has been canceled, suspended or revoked by the Highway Department. Proof of Habitual Traffic Offender (HTO) involved operating a vehicle while a judgment of a court prohibiting operation remains in effect. The State would not rely upon the same proof for each charge. Therefore, there is no double jeopardy when DUS and HTO are charged at the same time. (*Grampus and Carter has subsequently been overruled).*

4. State v. Moyd, 468 S.E.2d 7 (1996): The South Carolina Court of Appeals held that Driving Under Suspension (DUS) and driving while being declared a habitual traffic offender (HTO) by the highway department are separate offenses with separate elements. When the States tries a defendant on both charges for DUS and HTO, this prosecution does not constitute double jeopardy.

5. State v. Easler, 471 S.E.2d 745 (Ct. App.1996): The Court held that when the Defendant was found guilty of Felony DUI (Death) and Reckless Homicide for the death of the child, and Felony DUI (GBI) and ABHAN for the injuries suffered by the child's mother that no double jeopardy violation occurred because none of these violations satisfy the "same elements" test under Blockburger. The South Carolina Supreme Court overruled part of Easler in State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018) in which the Court held only "one homicide, one homicide punishment rule" in which only one sentence per one homicide.

6. State v. Kerr, 498 S.E.2d 212 (Ct. App. 1998): The Court made several rulings in this case. First, the Court held that they found no error in the trial judge refusing to accept an alleged plea agreement between the State and the Defendant. The Court stated that the Accused has no constitutional right to a plea only to the right to a trial by an impartial jury. Second, the Court ruled that Miranda warnings are not required for statements made at the scene of a traffic accident if the Defendant is not in custody or significantly deprived of his freedom. Third, the Court held that the 90-day license suspension for failure to submit to a breathalyzer test is not a double jeopardy violation for the subsequent prosecution for driving under the influence offense. Fourth, the Court ruled that under Rule 5 (d)(2) SCR Crim. P., where a party fails to comply with Rule 5, the Court may order the noncomplying party to permit inspection, grant a continuance, prohibit introduction of the nondisclosed evidence, or enter such order as it deems just under the circumstances. Sanctions for non-compliance with disclosure rules are within the discretion of the trial judge and will not be distributed absent an abuse of discretion. Fifth, the Court held a Defendant's constitutional rights are not violated by the admission of testimony of the Defendant's failure to submit to a chemical test designed to measure the alcoholic content of his blood. The trial judge correctly instructed the jury on the Defendant's right to take the test and allowing the jury to consider the Defendant's refusal of the breathalyzer test.

7. State v. Bacote, 503 S.E.2d 161 (1998): The Court held that collateral estoppel does not apply to issues decided at administrative hearings held pursuant to Section 56-5-2950. The State does not have a full and fair opportunity to litigate issues during a license revocation proceeding, and it would be unfair to preclude the state from litigation of such issues during a subsequent criminal trial. The summary nature of the typical license revocation hearing makes determinations from such a hearing inappropriate for the application of collateral estoppel.

8. State v. Thomason, 341 S.C. 524, 534 S.E.2d 708 (2000): The Court of Appeals ruled that the Defendant waived all double jeopardy claims by pleading guilty. The Court found that the Defendant waived his right to a double jeopardy claim after the trial judge advised the Defendant that a guilty plea would bar a later claim of double jeopardy. The Court stated that a guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses.

9. State v. Rowlands 539 S.E.2d 717, 343 S.C. 454 (2000): The Court of Appeals held that where a motion for a continuance is based upon grounds that exist prior trial, it must ordinarily be made before the jury is sworn. Under double jeopardy clause, a defendant may not be prosecuted for the same offense after an acquittal, a conviction, or an improvidently granted mistrial under the U.S. Constitution. Had the State timely requested a continuance, the magistrate would likely have granted the motion. Once, however, the court swore the jury, the State's predicament shifted from the need for a continuance to a failure of proof concerning an absence witness. Under the circumstances of this case, a mistrial was not dictated by necessity or by the ends of public justice. The mistrial was, therefore, improvidently granted and the magistrate's court correctly dismissed the charges against the defendant on the ground of double jeopardy.

10. State v. Rearick, 417 S.C. 790 S.E.2d 192 (2016): The Supreme Court held in a Felony DUI (Death) case that the denial of a motion to dismiss on double jeopardy grounds in not immediately appealable and any appeal on this issue would be dismissed as interlocutory.

DRIVING REQUIREMENT (CORPUS DELICTI) CASES

1. State v. Graves, 269 S.C. 356, 237 S.E.2d 584 (1977): Term "driving" is given stricter construction than term "operating"; to be guilty of driving vehicle while intoxicated defendant must have had vehicle in motion at time in question, while operating has been more liberally construed to include starting engine or manipulating mechanical or electrical agencies of vehicle.

2. State v. Sawyer, 283 S.C. 127, 322 S.E.2d 449 (1984): In prosecution for DUI, results of a breathalyzer test given to the defendant were properly admitted, since, even though the defendant was not seen operating his vehicle by the arresting officer, he admitted to the officer that he had been driving and his

admission constituted part of the officer's sensory awareness of the commission of the offense, which satisfied the presence requirement of section 56-6-2950.

3. State v. Gilliam, 270 S.C. 345, 242 S.E.2d 410 (1978 SC): The Circumstantial DUI Case. The South Carolina Supreme Court upheld a DUI conviction, where the defendant was found on the passenger side of a wrecked vehicle, which had gone down an embankment. An operator of a tow truck arrived approximately fifteen (15) minutes after the wreck, saw an open container in the vehicle, smelled alcohol on the defendant's person, and heard the defendant admit to driving the vehicle. The evidence amply supported the submission of the case to the jury.

4. State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980): The South Carolina Supreme Court approved of a warrantless arrest by a highway patrolman who arrived at the scene of an accident, where the defendant was intoxicated and made an admission as to driving the wrecked vehicle. The Court stated that the facts observed by the patrolman allowed for the finding of probable cause that a crime had been freshly committed. Additionally, the Court recognized the special circumstances surrounding the arrest of a person, who is intoxicated and has access to a operable vehicle, presents a clear and present danger to the community. Another special circumstance is the evanescent nature of alcohol in the blood, which will dissipate over a short period of time unless the subject is submitted to a test.

5. State v. Allen, 431 S.E.2d 563 (1993): The Court held that Section 56-5-2930 makes it unlawful for a person under the influence of an intoxicating liquor to drive any vehicle within this State. It may also apply to other areas within the State. (Section 56-5-20). Section 56-5-6310 (Uniform Act Regulating Traffic) does not affect the enforcement of 56-5-2930 through the State including private roads.

6. State v. Townsend, 467 S.E.2d 138 (1996): The South Carolina Court of Appeals reinstated the DUI conviction in this case. The Court stated that the State must produce proof of the corpus delicti of the crime aside from the defendant's extra-judicial confession. It stated that the corpus delicti in a particular case must be established by the best proof attainable, direct evidence is not essential. The corpus delicti may be sufficiently proved by presumptive or circumstantial evidence when that is the best obtainable. The corpus delicti of DUI is (1) driving a vehicle; (2) within this state; and (3) while under the influence of intoxicating liquors, drugs, or any other substance of like character. The Court held that where the Defendant was at the scene where his car had been involved in a wreck, smelled like alcohol; failed field sobriety tests; appears to be intoxicated; and a breathalyzer test showed his blood alcohol to be .21. This is enough evidence, albeit circumstantial evidence, to submit this case to the jury along with the defendant's admissions.

7. State v. Osborne, 516 S.E.2d 201 (1999): The South Carolina Supreme Court reversed a decision of the Court of Appeals which affirmed the circuit court's reversing Osborne's magistrate's court conviction for driving under the influence. The South Carolina Supreme Court stated that the corroboration rule should apply whether a statement amounts to a confession or merely constitutes an admission. The Court cited the case of Opper v. United States, 348 U.S. 84, 90, 75 S.Ct. 158, 163, 99 L.Ed. 101, 107 (1954). It stated that "We think that an accused's admissions of essential facts or elements of the crime, subsequent to the crime, are of the same character as confessions and that corroboration should be required. The need for corroboration extends beyond complete and conscious admission of guilt – a strict confession. Facts admitted that are immaterial as to guilt or innocence need no discussion. But statements of the accused out of court that show essential elements of the crime…stand differently. Such admissions have the same possibilities for error as confessions. They, too, must be corroborated."

The Court held that "We clarify the law in this State that, consistently with Opper and its progeny, the corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, together with such statements, permits a reasonable belief that the crime occurred." The Court found that the independent evidence, taken together with the statements, allowed a reasonable inference that the crime of driving under the influence was committed. The Court also stated that if there is any evidence tending to establish the *corpus delicti*, then it is the trial court's duty to pass that question on to the jury.

8. Fradella v. Town of Mount Pleasant, 482 S.E.2d 53 (1997): The South Carolina Court of Appeals held that as long as the facts and circumstances observed or perceived by an officer justify the conclusion that a crime has been freshly committed, then the "requirement that a misdemeanor be committed in an officer's presence in order to justify a warrantless arrest as in State v. Martin" has been satisfied. The Court also held that Fradella was not in custody when he made the statements before his arrest as the police was investigating the circumstances of the accident, a possible crime and any subsequent statements were admissible because Fradella waived his Miranda rights.

9. City of Easley v. Portman, 490 S.E.2d 613 (1997): The South Carolina Court of Appeals held that evidence showing the accused in a DUI case to be the driver of the vehicle is unnecessary to the determination of whether the State sufficiently proved the corpus delicti. In sum, then, the corpus delicti of DUI consists of evidence that someone operated a motor vehicle in South Carolina while under the influence of intoxicating liquors, drugs, or like substances. If there is any evidence tending to establish the corpus delicti, the trial judge has a duty to submit the question to the jury. The question as to whether there is any proof of the corpus delicti is one for the court; whereas, the sufficiently of the evidence is a question for the jury. In Justice Anderson's opinion, had the defendant been

the only person at the scene of the accident, it is clear from South Carolina precedent, e.g. State v. Townsend, 321 S.C. 55, 467 S.E.2d 138 (Ct. App. 1996), that there would be sufficient proof of the corpus delicti. He did not believe this proof is extinguished merely because another person was at the scene who could have been the driver. Rather, based on State v. White, 311 S.C. 289, 428 S.E.2d 740 (Ct. App. 1993), wherein this Court held the question whether the defendant or another person was the driver is a matter for the jury to determine as the factfinder.

10. State v. Lowery, 503 S.E.2d 794, 332 S.C. 261 (1998): The Court held that if there is any evidence tending to establish the corpus delicti, then it is the duty of the trial judge to pass that question on to the jury. In this case, the State presented evidence that the truck's skid marks showed it was being driven erratically before the accident, the Defendant was seen near the truck right after the accident, he had permission to drive the truck, he returned to the scene, he appeared intoxicated, he had an odor of alcohol about him, he appeared disheveled, he had cuts on his face and body, and he had glass in his hair. His breathalyzer result was .11%. Although circumstantial, this evidence is sufficient to establish a jury issue as to corpus delicti.

11. State v. McCombs, 515 S.E.2d 547, 335 S.C. 123 (S.C. App. 1999): The South Carolina Court of Appeals stated that when the Defendant was discovered at the scene of an accident in an apparent intoxicated state; was the owner of the truck wrecked at the scene; was standing outside the driver's door and two injured passengers were in the truck; and the driver's seat was vacant. The State presented enough circumstantial evidence against the defendant to create an issue of fact for the jury.

    The Court reinstated that, "if there is any evidence tending to establish the *corpus delicti* of the offense charged against the accused, then it is the duty of the trial judge to submit the question of whether the offense occurred to the jury. The Court also held that proof of *corpus delicti* is not a prerequisite to the admission of an extra-judicial confession of a defendant. The Court also ruled that it is not within a trial court's discretion to send to the jury a case where the *corpus delicti* is not proven *aliunde* of the Defendant's extra-judicial confession. The issue is a question of law for the court, not a question of fact for the jury.

12. State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001): A defendant's statements coupled with testimony from police officers on the scene may satisfy the State's requirement of *corpus delicti*. The Court held that the testimony that the defendant could not stand on one leg, could not walk a straight line, could not recite the alphabet, and continuously leaned against his truck while speaking to the officers could provide enough circumstantial evidence to allow a reasonable belief of guilt. In reaching this conclusion, the Court also considered testimony that the defendant had bloodshot eyes and smelled of alcohol (beverage), as well

as the defendant's statement from the scene of the arrest. The Court held that there was sufficient direct evidence establishing the elements of DUI and the identity of the defendant such that the circumstantial evidence was merely corroborative. The *corpus delicti* of DUI in South Carolina requires the State to prove (1) the defendant's ability to drive was materially and appreciably impaired, and (2) this impairment was caused by the use of drugs or alcohol. The Court held that the officers' personal observations of the defendant on the night in question, and their professional opinion that the defendant was impaired was direct evidence because it was "based on the officers' actual knowledge of the situation and required no inference by the jury: The Court held that the officers' personal observations of the defendant on the night in question, and their professional opinion that the defendant was impaired was direct evidence because it was "based on the officers' actual knowledge of the situation and required no inference by the jury."

13. State v. Russell, 564 S.E.2d 202 (2001): The Court of Appeals ruled that a Defendant's extrajudicial statements cannot result in a conviction unless those statements are corroborated by proof of the *corpus delicti*, regardless of whether those statements are confessions or admissions. The corroboration rule is satisfied if the State provides sufficient evidence to corroborate the defendant's statements and allows a reasonable belief that the crime occurred. The State may satisfy the requirements of *corpus delicti* by providing circumstantial evidence that may combine with the defendant's statements to permit a reasonable belief of guilt. Evidence that the car belonged to the defendant, together with evidence showing that the defendant was the only occupant present at the scene, that the keys to the car were in the defendant's pocket, and that the hood of the car was warm were enough circumstantial evidence to allow the jury to infer that the defendant had driven the car.

14. State v. Abraham, 408 S.C. 589, 759 S.E.2d 440 (Ct. App. 2014): The Court of Appeals held the State had presented enough evidence at trial to establish the *corpus deliciti* of DUI in this case where the Defendant admitted that he was driving after leaving the country club after drinking wine and was heading to his brother's house in Keowee Key. The Defendant was the only one at the scene and was from Chicago. The officer believed that the vehicle's license plate was traced to a rental car company.

DRIVING UNDER INFLUENCE CASES

1. State v. Sheppard, 248 S.C. 464, 150 S.E.2d 916 (1966): One is considered under the influence in South Carolina when his or her facilities are impaired from the ingestion of one or more substances listed within the statute.

2. State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001): A defendant's statements coupled with testimony from police officers on the scene may satisfy

the State's requirement of *corpus delicti* . The Court held that the testimony that the defendant could not stand on one leg, could not walk a straight line, could not recite the alphabet, and continuously leaned against his truck while speaking to the officers could provide enough circumstantial evidence to allow a reasonable belief of guilt. In reaching this conclusion, the Court also considered testimony that the defendant had bloodshot eyes and smelled of alcohol (beverage), as well as the defendant's statement from the scene of the arrest. The Court held that there was sufficient direct evidence establishing the elements of DUI and the identity of the defendant such that the circumstantial evidence was merely corroborative. The *corpus delicti* of DUI in South Carolina requires the State to prove (1) the defendant's ability to drive was materially and appreciably impaired, and (2) this impairment was caused by the use of drugs or alcohol. The Court held that the officers' personal observations of the defendant on the night in question, and their professional opinion that the defendant was impaired were direct evidence because it was "based on the officers' actual knowledge of the situation and required no inference by the jury."

DUS – LICENSE IN ANOTHER STATE DEFENSE

1. State v. Venters, 300 S.C. 260, 387 S.E.2d 270 (1990): The court ruled a person who has moved to another state and obtained a valid driver's license in such state may lawfully operate a motor vehicle in South Carolina after the expiration of the suspension time on the South Carolina license.

DUS – NECESSITY DEFENSE

1. State v. Cole, 304 S.C. 47, 403 S.E.2d 117 (1991): To prove the defense of necessity, one must show (a) there is a present and imminent emergency arising without fault on the part of the actor concerned; (b) the emergency is such as to induce a well-grounded apprehension of death on serious bodily harm if the act is not done; and (c) there is no other reasonable alternative, other than committing the crime, to avoid the threat of harm. Necessity is an affirmative defense to be established by a preponderance of the evidence. (State v. Worley, 265 S.C. 551, 220 S.E.2d 242 (1975)).

DUS-DUI-DRIVING OFFENSE SUSPENSION PERIODS

1. Bumgardner v. South Carolina Department of Highways, 286 S.C. 46, 331 S.E.2d 787 (1985): The South Carolina Court of Appeals held that the DUS law clearly required the Department to suspend his driver's license after receiving notice of the DUS convictions. Sections 56-1-460 and 56-9-500 of the code of Laws of South Carolina, 1976, clearly provides that a license suspended "under any law of this State" shall "remain suspended…and shall not be any time thereafter be renewed nor shall any license be thereafter issued to that

person…until he shall give and thereafter maintain proof of financial responsibility."

2. State v. Fowler, 298 S.C. 294, 379 S.E.2d 899 (1989): The enhanced punishment provision of the DUS (DUI-related) violation cannot be used against a defendant when the suspension for which he was charged for driving under suspension 2nd did not result from a conviction of DUI but, rather, from a DUS 1st.

3. Przybula v. SCDHPT, 437 S.E.2d 70 (1993): The South Carolina Supreme Court held that any violation of any statute which prohibits driving while under any impairment from alcohol or drugs in a Compact state is of substantially similar nature to South Carolina's DUI statute. Also Section 56-1-650 authorizes suspension of a license based on out-of-state convictions.

4. Dept. of Highways and Public Transportation v. Sanford, 455 S.E.2d 710 (1995): The South Carolina Court of Appeals held that although a defendant's record may not show a suspension for refusing to take a breathalyzer test may be shown on any of his records because of the dismissal of the DUI charges, the Defendant's conviction for driving during the suspension period must stand. To hold otherwise would undermine the implied consent law.

5. Bay v. South Carolina Highway Department, 266 S.C. 9, 221 S.E.2d 106 (1975): The South Carolina Supreme Court held that the suspension of a person's license is no part of the punishment or sentence for a driving offense. The Court cited Parker v. State Highway Department, 224 S.C. 263, 78 S.E.2d 382 (1953). The Court also held a pardon for a conviction for a driving offense may relieve a person of his punishment, it did not operate to restore his driver's license, which his conviction forfeited. The suspension of the defendant's license was a civil consequence of his convictions of reckless homicide and leaving the scene of an accident, not a criminal consequence.

6. Parker v. State Highway Department, 224 S.C. 263, 78 S.E.2d 382 (1953): The South Carolina Supreme Court stated that the suspension for a DUI conviction follows as a consequence and effect of the offense. It is a forfeiture of the privilege to drive, due to the failure of the licensee to observe certain conditions under which the license was issued. The suspension constitutes no part of the punishment for the offense committed. It is civil and not criminal in its nature.

7. State v. Ballen, 510 S.E.2d 226 (Ct. App. 1998): The South Carolina Court of Appeals held that testimony about a suspended driver from a dispatcher to a police officer was hearsay, but the error was harmless because of the other evidence properly admitted. The State entered into evidence a certified letter, with a return receipt signed by Ballen informing him of the suspension of his license as well as a certified copy of Ballen's driving record showing that his license had never been reinstated to establish their case for Driving Under Suspension.

8. Thompson v. South Carolina Dept. of Public Safety, 515 S.E.2d 761 (1999) and Davis v. South Carolina Dept. of Public Safety, 328 S.C. 578, 493 S.E.2d 871 (1999): The South Carolina Supreme Court held that "Term of Imprisonment" as used in portion of the Felony Driving under the Influence (Felony DUI) statute which provides that a driver's license of any person convicted thereunder shall be suspended for a period to include any term of imprisonment plus three years, means non-fine part of the criminal sentence, and includes suspended portions, probation or parole periods, and supervised furlough; it is not limited to period of actual incarceration. The Court overruled Davis v. South Carolina Dept. of Public Safety, 328 S.C. 578, 493 S.E.2d 871 (1999).

   The Court also ruled that three convictions for Felony DUI arising out of the single accident subjected the defendant to three separate and consecutive three-year driver's license suspensions, rather than one three-year suspension.

9. State v. Taylor, 527 S.E.2d 395 (Ct. App. 2000): The South Carolina Court of Appeals held once a driver's license is suspended, it remains suspended until the requirements to have it restored have been met.

10. Dismuke v. S.C.D.M.V., 639 S.E.2d 151 (2006 S.C. App.): The Court agreed that the defendant's suspension of his license had run following his plea of guilty to DUAC (Driving with an unlawful alcohol concentration) over two year before satisfied the requirement of Section 56-5-2990(F) and absent a finding that the court clerk willfully failed to forward the license to the SCDMV under Section 56-1-365(c), the suspension period for respondent's driver's license, the suspension period for the defendant's driver's license began on the date he received sentence upon a plea of guilty. Therefore, the two year suspension period had ended, and the defendant was entitled to reinstatement of his license.

11. State v. Collins, 253 S.C. 358, 170 S.E.2d 667 (1969): The Court held that the privileges that a beginner's permit that allows someone to drive without a driver's license can be cancelled, suspended, or revoked under state law.

12. Hipp v. S.C.D.M.V., 381 S.C. 323, 673 S.E.2d 416 (2009): The South Carolina Supreme Court held that the attempted suspension of the respondent's driver's license of 12 years after conviction from out of state was unique circumstances and constituted a denial of fundamental fairness. The Court denied the suspension of the respondent's driver's license under these facts.

13. S.C.D.M.V. v. Holzclaw, 382 S.C. 344, 675 S.E.2d 756 (Ct. App. 2009): The South Carolina Court of Appeals stated that the reopening of a third conviction for DUS that was used to declare this defendant a HTO offender by a city court judge would stay the HTO status until the matter was settled in the city court.

14. S.C.D.M.V. v. Brown, 753 S.E.2d 524, 406 S.C. 626 (2014): The Supreme Court held that breath-test results cannot be excluded from administrative hearing on license suspension simply because the arresting officer fails to testify that a specific provision was followed and the subject waived his opportunity to challenge whether the breath test was administered in accordance with statutory provisions by first raising that challenge during closing arguments.

15. Wilson v. S.C. Department of Motor Vehicles, 2017 WL 105019 (Ct. App. 1/11/2017): The Court held that under the facts of this particular case, the imposition of a suspension after a five-year delay is a denial of fundamental fairness in violation of due process when sufficient evidence of prejudice exists in the record and neither party is at fault for the delay.

ENHANCEMENT OF PENALTY AND SENTENCING CASES

1. State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981): Prior uncounseled convictions for DUI may be used to enhance sentence for subsequent conviction of same offense where defendant forfeited bond for two previous convictions of DUI voluntarily waiving right to counsel.

2. Ex parte Sarvis, 266 S.C. 15, 221 S.E.2d 108 (1975): No prejudice, requiring dismissal of charge of DUI resulted from delay in trial on second violation while appeal of conviction on first violation was pending; fact that lack of speedy trial resulted in absolute determination that second violation constituted second offense, involving more severe punishment, was result contemplated by law.

3. State v. McAbee, 220 S.C. 272, 67 S.E.2d 417 (1951): The Court held that a conviction as second offender not a prerequisite to conviction as third offender. This section does not require that a defendant shall be convicted and sentenced as a second offender before he can be sentenced as a third offender. It merely requires that there should be two previous convictions. Thus a defendant may be sentenced as a third offender under this section of this law although his second conviction was before a magistrate and he was only tried in that court as a first offender.

4. State v. Rush, 305 S.C. 113, 406 S.E.2d 369 (1991): The change from five year period to ten year period for sentencing period of DUI cases does not violate the ex post facto and due process clauses. The Court also found no equal protection violation, as the US Supreme court does not forbid statutory changes that discriminate between the rights of an earlier and later time (California v. Webster, 430 U.S. 313 (1977)).

5. State v. Edwards, 302 S.C. 492, 397 S.E.2d 88 (1990): The unambiguous language of the amendment indicates that the new ten year period is to be used in any DUI committed on or after January 1, 1989. The statute may be applied retroactively. The ex post facto argument is without merit.

6. State v. Dabney, 301 S.C. 271, 391 S.E.2d 563 (1990): The DUI law which imposes additional punishment at the time the offense was committed is prohibited. However, it is not a violation of the ex post facto clause for the legislature to enhance punishment for an offense based on a prior conviction of the Defendant, even if the enhancement provision was not in effect at the time of the previous offense (Gryger v. Burke, 334 U.S. 728 (1947)).

7. State v. Chance, 304 S.C. 406, 405 S.E.2d 375 (1991) cert. denied, 112 S. Ct. 1241, 117 L.Ed.2d 474 (1992): The Court held that "An uncounseled conviction constitutionally valid under Scott is valid for all purposes and, therefore, may be used to increase the term of imprisonment for a subsequent offense under an enhanced penalty statute." The Court recognized Scott v. Illinois, 440 U.S. 367 (1979) where the U.S. Supreme Court held that an uncounseled misdemeanor conviction was constitutionally valid if the offender was not actually incarcerated. The Court held the Scott decision valid, and since, the Defendant was not incarcerated for the prior offense, his enhanced punishment was not in error.

8. State v. Wickenhauser, 423 S.E.2d 344 (1992): The Court held that Wickenhauser's prior uncounseled DUI convictions were appropriately considered in determining his enhanced punishment for the subsequent conviction under State v. Chance, 304 S.C. 406, 405 S.E.2d 375 (1991) cert. denied, 112 S.Ct. 1241, 117 L.Ed.2d 474 (1992) (citing Scott v. Illinois, 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979)). The Court also held that the statute (Section 56-5-2940) as limiting offenses to those which result in a conviction, entry of a plea of guilty, nolo contendere, or forfeiture of bail as offenses to be considered, not redefining the date of the offense to mean the date of the conviction, entry of a plea of guilty, nolo contendere, or forfeiture of bond. Accordingly, the date of the offense remains the date on which the violation occurred. Thus, any violations which result in a conviction, entry of a plea of guilty, nolo contendere, or forfeiture of bail which occur within ten years of the date of the current offense are properly considered prior offenses.

9. Section 56-5-2940 of the South Carolina Code: This section states that an entry of a plea of guilty or of nolo contendere or forfeiture of bail, for the violation of any law or ordinance of this or any other state or any municipality of this or any other state that prohibits any person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics shall constitute a prior offense for the purpose of any prosecution for any subsequent violation hereof. Only those offenses which occurred within a period of ten years including and immediately preceding the date of the last offense shall constitute prior offense within the meaning of this section. This section was amended in 1992 to correct the problem of not allowing out-of-state DUI convictions to be used to constitute a prior offense created by the holding of State v. Breech, 308 S.C. 356, 417 S.E.2d 873 (1992).

10. State v. Tennyson, 445 S.E.2d 630 (1994): The Court held that in State v. Breech, 308 S.C. 356, 417 S.E.2d 873 (1992), this Court held that Section 56-5-2940 did not authorize enhanced penalties for out-of-state DUI convictions. However, the legislature amended Section 56-5-2940, effective on June 30, 1992, providing for enhanced penalties when prior convictions were from another state. Here, the DUI which led Appellant to plead guilty occurred on December 31, 1992. Thus, the circuit court had jurisdiction to accept the plea.

11. Nichols v. United States, 114 S.Ct. 1921 (1994): The United States Supreme Court held that a sentencing court may consider a defendant's previous uncounseled misdemeanor conviction in sentencing him for a subsequent offense so long as the previous uncounseled misdemeanor conviction did not result in a sentence of imprisonment. In this case, the Court overruled Baldasar v. Illinois, 446 U.S. 222, 100 S.Ct. 1585, 64 L.Ed.2d 169 (1980).

12. State v. Tisdale, 467 S.E.2d 270 (1996): The South Carolina Court of Appeals held that a trial court may not give a lower sentence than the mandatory sentence mandated by the South Carolina Legislature for a criminal offense.

13. State v. Cox, 492 S.E.2d 399, 328 S.C. 371 (1997): In this case, the Department of Probation, Parole, and Pardon Services appealed a DUI 4th sentence of 5 years plus $5,000 fine suspended to 1 year plus $3,500 fine plus 3 years probation with the 1 year jail sentence to be served under house arrest and a DUS 2nd sentence of 60 days of house arrest to run concurrent. The S.C. Court of Appeals held that, since the State did not object at the time that the sentences were imposed, the issue of whether the Defendant's placement on house arrest with electronic monitoring violated the State's Constitution was not preserved for appellant review.

14. City of Sumter Police Dept. v. One 1992 Blue Mazda Truck, 498 S.E.2d 894 (1998 S.C. App.): The Court held that Section 56-5-6240 provides for forfeiture where the Defendant has four or more convictions for DUI within a ten (10) year period.

15. State v. Payne, 504 S.E.2d 335, 332 S.C. 266 (1998): The Court held that the Defendant has the burden of proof when the Defendant collaterally attacks a prior conviction which the State seeks to use under a sentence enhancement statute.

16. State v. Baucom, 513 S.E.2d 112, 334 S.C. 371 (S.C. App. 1999): The South Carolina Supreme Court held that a pardoned conviction **cannot** be considered as a prior offense under the statute for enhancing punishment for subsequent convictions.

17. State v. Martin, 534 S.E.2d 292 (2000): The Court of Appeals held the law cited by the Supreme Court in In re Sons, 335 S.C. 343, 517 S.E.2d 214 (1999) and

restated that a designee may sign a uniform traffic ticket but only if the designee under the "direct supervision and control by the judge and that the signature is affixed in the judge's presence." In this case, the defendant could not have been convicted of DUI as no magistrate held a duly-constituted trial and the designee incorrectly noting the conviction on the ticket and ruled that the DUI conviction could not be reinstated.

18. State v. Christopher Thomas, 372 S.C. 466, 642 S.E.2d 724 (2007): The South Carolina Supreme Court ruled that when a statute did not specifically prohibit the suspension of a sentence that the trial judge had the authority under S.C. Code Ann. Section 24-21-410 to suspend the minimum sentence.

EXPERT TESTIMONY

1. State v. White, 428 S.E.2d 740 (1993): The Court held that the trial court correctly allowed the state's forensic toxicologist, who qualified as an expert witness, to give an opinion concerning the rate at which a 150-pound man would eliminate alcohol and in allowing him to testify as to the effects of benzodiazepine when used in combination with alcohol after he admitted that different "benzos" have different effects and he did not know which benzodiazepine White had taken. White's complaints about the toxicologist's testimony go to the weight of the evidence and not to its admissibility. See State v. Nathari, 303 S.C. 188, 399 S.E.2d 597 (Ct. App. 1990) (once a witness is qualified as an expert, any question regarding the adequacy of the expert's knowledge goes to the weight of the testimony and not to its admissibility).

2. State v. Goode, 305 S.C. 176, 406 S.E.2d 391, (1991): Qualification of a witness as an expert rests in the sound discretion of the trial judge. Troopers who had received 12-week training at S.C. Highway Department Academy including specific "point of impact accident investigation" training and who had four and five weeks on the job experience were qualified to give expert opinion concerning the line of impact.

3. State v. Nathari, 303 S.C. 188, 399 S.E.2d 597 (1990): The Court held that the testimony from the State's forensic toxicologist was properly admitted. This witness's name appeared on a witness list from the first trial on this matter and, the State called her as an expert in response to Nathari's objection to the testimony of a lay witness on the same subject. This witness's testimony came after her unchallenged qualification as an expert in the field of forensic toxicology. She testified as an expert in the field of forensic toxicology. She testified that the field of forensic toxicology deals with interpreting the results of the study of body fluids "for the presence of alcohol and/or other poisons." This testimony combined with her educational background constituted a sufficient foundation for the disputed testimony. Her testimony was also clearly relevant to explain what a urine test might show and, consequently, why one was sought by

the State. In any case, adequacy of an expert's knowledge, once qualified, goes to the weight of the testimony, not to its admissibility.

4. State v. Evans, 450 S.E.2d 47 (1994): The Court ruled that a person other than the declarant may not testify regarding a hypnotic exam when the testimony is offered for the truth of the matter asserted as stated in State v. Pierce, 263 S.C. 23, 207 S.E.2d 414 (1974). However, Pierce does not prohibit a declarant from testifying according to his own recollection. The Court held that, in the future, any determination as to the admissibility of post-hypnotic testimony should be made in camera. Here, the Grandfather's post-hypnotic recollection of the accident differed from his pre-hypnotic recollection only in that he was able to recall the color of the driver's hair and more accurately recall the color of the truck after hypnosis. The Court found no error in the admission of this testimony. The Court also ruled that the trial court properly allowed an expert to answer a hypothetical question regarding the Defendant's alleged ingestion of cocaine and alcohol prior to the accident.

5. Kranchick v. State, 793 S.E.2d 314 (Ct. App. 2016): The Court of Appeals reversed a granted PCR because the overwhelming evidence that the Defendant was impaired at the time of the accident and failure to the Defendant's attorney to object to the Forensic Toxicologist testimony did not prejudiced the outcome of the trial.

FELONY DUI CASE LAW

1. State v. Grampus, 288 S.C. 395, 343 S.E.2d 26 (1986): Court stated the following: 1) The actor drives a vehicle while under the influence of alcohol or drugs, 2) The actor does an act forbidden by law or neglects a duty imposed by law, 3) The act or neglect proximately causes great bodily harm or death to another person. The indictment must state with particularity the act forbidden by law or duty imposed by law which will be relied on by the State to support the felony driving under the influence charge.

   A common duty neglected or acts forbidden:

   a. Restrictions on speeding (Art. 11, Sect. 56).
   b. Driving left of center (56-5-1810 & 56-5-1880)
   c. Passing zone restrictions (56-5-1890)
   d. Following too closely (56-5-1930)
   e. Right of way restrictions (Art 17, Sec. 56)
   f. Reckless driving (56-5-2920)
   g. Drivers to exercise due care (56-5-3230)

2. State v. Webb, 301 S.C. 66, 389 S.E.2d 664 (1990): The enactment of section 56-5-2945, creating the offense of Felony DUI, did not repeal by implication the offense of murder caused by the operation of a motor vehicle. Felony DUI

requires proof that the vehicle was operated by a person who was under the influence; malice is not an element of Felony DUI. Murder, on the other hand, requires a showing of malice. While evidence of intoxication may be used to establish malice, murder arising out of the operation of a motor vehicle does not require proof that the driver was under the influence. Since these offenses require different elements, they are distinct offenses and, therefore, Felony DUI does not supplant the offense of murder caused by the use of a motor vehicle.

3. State v. Cribb, 426 S.E.2d 306 (1992): The Court held that the trial judge was correct in ruling that section 56-5-2950 is inapplicable to pre-arrest DUI investigations and that reckless driving is not a lesser included offense of Felony DUI. Also, the Court overruled State v. King, 289 S.C. 371, 346 S.E.2d 323 (1986) and held that reckless homicide and involuntary manslaughter are not lesser included offenses of Felony DUI.

4. Davis v. South Carolina Dept. of Public Safety, 328 S.C. 578, 493 S.E.2d 871 (1999): The South Carolina Supreme Court held that "Term of Imprisonment" as used in portion of the Felony driving under the influence (Felony DUI) statute which provides that a driver's license of any person convicted thereunder shall be suspended for a period to include any term of imprisonment plus three years, means non-fine part of the criminal sentence, and includes suspended portions, probation or parole periods, and supervised furlough; it is not limited to period of actual incarceration.

5. State v. Long, 363 S.C. 360, 610 S.E.2d 809 (2005): The South Carolina Supreme Court ruled that a law enforcement officer, under S.C. Code Ann. Section 56-5-2946, order a Felony DUI suspect to submit to a blood-alcohol test without first offering a breath test.

6. State v. Cuevas, 365 S.C. 198, 616 S.E.2d 718 (2005 S.C. App.): The South Carolina Court of Appeals held under S.C. Code Ann. Section 56-5-2946 that a defendant charged with Felony DUI does not have a right to refuse a breath test along with a blood-alcohol test and/or urine test.

7. State v. Rikard, 371 S.C. 295, 638 S.E.2d 72 (2006 S.C. App.): The defendant argued that the trial judge erred by refusing to allow her to withdraw her guilty plea because she did not admit to the facts presented by the State at her plea hearing. She also argued that the State indicated on the sentencing sheet that it would not make any recommendation about her sentence, but the State did request the maximum sentence at the hearing. The Court found that the judge did not err by not allowing her to withdraw her guilty plea. The Solicitor provided a sufficient factual basis to support each of the charges. The defendant did not raise any objection to the facts given by the Solicitor. As to the sentencing sheet, either party was free to request a favorable sentence. The judge did not abuse his discretion when he declined to impose the maximum sentence on each charge to run concurrently.

8. State v. Batchelor, 377 S.C. 341, 661 S.E.2d 58 (2008): The South Carolina Supreme Court ruled that Felony driving under the influence (FDUI) is subject to accomplice liability based on a factual scenario that includes evidence of aiding and abetting. Indictments charging defendant as a principal for Felony DUI, when there was no evidence that defendant was the driver of the vehicle, did not result in a material variance in proof; Felony DUI was subject to accomplice liability based on evidence of defendant's aiding and abetting, and an accomplice could be indicted as a principal.

9. State v. William Martin, 391 S.C. 508, 706 S.E.2d 40 (Ct. App. 2011): The S.C. Court of Appeals held that the victim's decision to forgo further use of an artificial respirator cannot be intervening cause of death to relieve defendant Martin of liability under these facts. Because direct evidence exists reasonably tending to prove Martin proximately caused the victim's death, the trial judge properly denied defendant's motion for a directed verdict.

HABITUAL TRAFFIC OFFENDER CASES

1. State v. Goodman, 304 S.C. 170, 403 S.E.2d 320 (1991): The South Carolina Court of Appeals held that there is no indication that the Legislature intended to require an administrative determination of habitual traffic offender status where there was a prior judicial determination in this case.

2. State v. Johnson, 299 S.C. 130, 382 S.E.2d 909 (1989): In Grampus and Carter, we interpreted Vitale as providing an alternative to the traditional Blockburger test for determining double jeopardy claims in successive prosecution cases. The Vitale test, focusing upon the actual proof at trial, provides that if in the second prosecution, the State relies solely upon the identical proof as in the first, a substantial claim of double jeopardy is raised. Under Vitale no double jeopardy violation is present in the current case. Proof of Driving under Suspension (DUS), for which Johnson forfeited bond, involves the operating of a motor vehicle while one's driver's license has been canceled, suspended or revoked by the Highway Department. Proof of Habitual Traffic Offender (HTO) involves operating a vehicle while a judgment of a court prohibiting operation remains in effect. The State would not rely upon the same proof for each charge. Therefore, there is no double jeopardy when DUS and HTO are charged at the same time.

3. S.C.D.M.V. v. Blackwell, 698 S.E.2d 770 (2010): The South Carolina Supreme Court held that Driving with an Unlawful Alcohol Concentration (DUAC) constitutes a major violation under the Habitual Traffic Offender (HTO) statute.

4. Davis v. S.C.D.M.V., 420 S.C. 98, 800 S.E.2d (Ct. App. 2018): The South Carolina Court of Appeals held that six-year delay between driver's third

conviction for driving under suspension, and imposition of five-year suspension by DMV, violated driver's right to due process and was fundamentally unfair.

5. S.C.D.M.V. v. Dover, 423 S.C. 153, 813 S.E.2d 532 (Ct. App. 2018): The South Carolina Court of Appeals ruled that a motorist's out-of-state reckless driving conviction did not constitute a major violation requiring motorist's driver's license to be suspended under the habitual offender statute.

HORIZONTAL GAZE NYSTAGMUS CASES

1. State v. Bresson, 554 N.E.2d 1330, 47 Cr.L 1257 (1990 Ohio): The Ohio Supreme Court ruled that the test results can be introduced by a properly trained police officer who administered the test in a generally accepted manner. If this is done to the satisfaction of the trial court there is no need for expert testimony on the scientific basis for the procedure. The Court stated: "the HGN test has been shown to be a reliable indicator of BAC (blood-alcohol concentration) levels. Accordingly, results of this test are admissible so long as the proper foundation has been shown both as to the officer's training and ability to administer the test and as to the actual technique used by the officer in administering the test." The test results, however, are only admissible, the Court's cautioned, on the issue of probable cause for the defendant's arrest and as evidence of being under the influence, not for the defendant's alleged actual blood-alcohol concentration. This is because the test—like all field sobriety tests—is a qualitative test (presence of alcohol impairment), not a quantitative test (specific BAC).

2. State v. Murphy, 451 N.W.2d 154, Cr.L 1427 (1990 Iowa): The Court ruled that a police officer who has been properly trained on the use of the field sobriety test called "horizontal gaze nystagmus" (HGN), which measures the movement of a subject's eyes and relates this to degrees of intoxication, may testify to the test results without the need for scientific evidence on the reliability of the test. The Court declared that HGN is the same as any other field sobriety test as evidence and, therefore, requires no scientific foundation for the test results. The test measures "objective signs of intoxication" and is not inherently susceptible to yielding erroneous data. The Court considered the simplicity of the test, the ease with which the test is administered by officers, and the ease with which the test results are evaluated by the officer.

3. State v. Sullivan, 426 S.E.2d 766 (1993): The Court held that evidence resulting from HGN tests, as from other field sobriety tests, is admissible when the HGN test was used to elicit objective manifestations of soberness or insobriety. We hold that evidence arising from HGN tests is not conclusive proof of DUI. A positive HGN test result is to be regarded as merely circumstantial evidence of DUI. Furthermore, HGN tests shall not be constituting evidence to establish a specific degree of blood alcohol content.

ID CASES

1. State v. Moore, 308 S.C. 349, 417 S.E.2d 869 (1992): The South Carolina Supreme Court held that they agreed with those cases which hold that the constitutional provision that no person shall be compelled to be a witness against himself, is not violated by compelling the defendant to stand up for the purpose of identification. . . It is the right of the prosecution to have the defendant in the view of the presiding judge and jury, and the counsel engaged at trial. State v. O'Neal, 210 S.C. 305, 310-311, 42 S.E.2d 523, 525 (1947). Constitutional safeguards are invaded only when the defendant is required to give testimonial evidence against himself. They do not extend to the refusal by a defendant to reveal those physical traits that may be made by ordinary observation. Accordingly, under the facts of this case, we hold that Moore did not have a right not to be present at trial in order to preclude any in-court identification of him by the State's witnesses.

2. State v. Johnson, 427 S.E.2d 718 (1993): The court held that the conduct of trial, including the admission and rejection of testimony, is largely within the trial judge's sound discretion, the exercise of which will not be disturbed on appeal absent and abuse of such discretion or the commission of legal error which results in prejudice for appellant. State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). A criminal defendant may be deprived of due process of law by an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification. Stovall v. Denno, 388 U.S. 293 (1967). Furthermore, single person showups are particularly disfavored in the law. Id. An identification, however, may be reliable even when the procedure is suggestive, depending on the totality of the circumstances. Neil v. Biggers, 409 U.S. 188 (1972); State v. Gambrell, 274 S.C. 587, 266 S.E.2d 78 (1980). The factors to be considered in evaluating the totality of the circumstances include: The opportunity of the witness to view the criminal at the time of the crime, the witness's degree of attention, the accuracy of the witness's prior description of the criminal, the level of certainty demonstrated by the witness at that confrontation, and the length of time between the crime and the confrontation. Neil, 409 U.S. at 199; State v. Stewart, 275 S.C. 447, 272 S.E.2d 628 (1980). The trial judge found, and the Court agreed, that the short time between the two events supports the reliability of the identification. See State v. Stewart, 275 S.C. 447, 272 S.E.2d 628 (1980) (The Supreme Court held in-court identification reliable based on testimony of witness who viewed perpetrator for 5 to 7 seconds and identified defendant in a photo line-up two weeks later). The Court held "that the evidence supports the factual finding of the judge on the suggestiveness of the show-up and, therefore, the trial judge did not err or abuse his discretion in admitting the testimony." citing State v. Dixon, 284 S.C. 526, 328 S.E.2d 89 (Ct. App. 1985).

3. State v. Dyer, 431 S.E.2d 576 (1993): The Court held that the State properly established the identity of the offender based on the following facts of the case.

Appellant had no co-defendants and was present at trial. The witnesses for the State were the officer who stopped appellant, administered field sobriety tests, and arrested her, and the officer who administered the breathalyzer test. Appellant was not physically identified by either witness as the person who was apprehended and tested. She argues that the State failed to prove the identity of the perpetrator, an essential element of the offense.

The Court held that during the testimony, neither witness actually pointed to appellant and stated she was the offender. Nevertheless, both officers repeatedly referred to appellant by name as they described the incident. One officer also spoke of his observation of "the defendant's" condition. Appellant did not argue that she is not in fact Robin Dyer or that she was not the defendant in this case. Therefore, it was a question of the weight of the evidence. In spite of the fact that the weight would have been greater had appellant been physically identified in court as the offender, the Court held there was sufficient evidence of her identity to support the conviction. Preston v. State, 259 Ind. 353, 287 N.E.2d 347 (1972); State v. Russell, 135 N.J.S. 154, 342 A.2d 884 (1975).

IMPLIED CONSENT CASES

1. State v. Martin, 275 S.C. 141, 268 S.E.2d 105 (1980): Defendant is lawfully arrested and impliedly gives consent to breathalyzer test where officer arriving at scene of accident finds two cars, each damaged by other, and defendant, the admitted driver of one car, is highly intoxicated.

2. Summersell v. South Carolina Dept. of Public Safety, 522 S.E.2d 144, 337 S.C. 19 (1999). In the case of Summersell v. South Carolina Dept. of Public Safety, 522 S.E.2d 144, 337 S.C. 19 (1999) The South Carolina Court of Appeals held that hearsay evidence can be presented during an administrative hearing concerning the Department of Public Safety's suspension of a defendant's driving privileges based upon the defendant's refusal to submit to the breathalyzer test. The Court also held that the administrative hearing must be limited to the issues of whether the person was placed under arrest, whether the person had been informed that he did not have to take the test but that his privilege to drive would be suspended or denied if he refused to submit to the test, and whether he refused to submit to the test upon the request of the officer. The South Carolina Supreme Court heard the case on writ of certiorari and denied the Defendant's writ of certiorari except the issue on the admissibility of hearsay testimony in an administrative proceeding. The Supreme Court vacated the Court of Appeals ruling on allowing hearsay testimony to be presented in administrative hearings. The issue was not addressed in the appeal to the circuit court, therefore, the Supreme Court held that the Court of Appeals should not have addressed this issue.

3. Starnes v. S.C.D.P.S., 342 S.C. 216, 535 S.E.2d 665 (2000): The South Carolina Court of Appeals ruled that the S.C.D.P.S. must follow the ten-day

requirements to hold administrative hearings on breath tests and issue written orders on the decisions of the hearing officers within thirty-days.

4. State v. Henderson, 347 S.C. 148, 553 S.E.2d 462 (2001): The Court of Appeals found that the defendant can stipulate that they were properly given their implied consent rights by law enforcement for datamaster testing. Once the defendant stipulates, the prosecution cannot state the part of the implied consent warning that states, "You have the right to additional independent tests. Whether you take this breath test or not you will be given reasonable assistance in contacting a qualified person of your own choosing to conduct any additional tests."

5. State v. Bull, 350 S.C. 58, 564 S.E.2d 351 (Ct. App. 2002): Our Court of Appeals held that the State complied with the notice provision of Implied Consent statute governing testing for alcohol and drugs, even though the written report the State provided during discovery failed to disclose the time defendant's blood sample was actually tested; the purpose of the statute was to provide for reciprocal discovery between the State and defendant as to the time and results of alcohol and drug tests, the time the statute was concerned with was the time of the administration of the test to the defendant rather than the time the sample was tested in the lab, and the report provided to the defendant stated the time the test was administrated to the defendant.

6. Sponar v. S.C.D.P.S., 361 S.C. 35, 603 S.E.2d 412 (Ct. App. 2004): In this case, the driver was arrest for DUI and he asked the officer if he would still go to jail if he took the breath test. The officer stated that it did not matter because he would be jailed either was. The driver refused to take the test. The Court of Appeals held that the officer's statement was not incorrect, as a driver could have an blood alcohol concentration or .05 percent or lower yet still be held for being under the influence of some other intoxicant. Further, the officer's statement that he would jail the driver whether or not he took the test was true, regardless of whether such detention would have been legal, and he did not attempt to trick the driver.

7. City of Florence v. Jordan, 607 S.E.2d 86 (S.C. App. 2004): The South Carolina Court of Appeals held that the advising officer's failure to circle the word "breath" on a pre-printed advisement of implied consent rights from before a datamaster test was given to a defendant did not violate the implied consent statute or render the breath test results inadmissible.

8. State v. Haase, 367 S.C. 264, 625 S.E.2d 634 (2006): The South Carolina Supreme Court ruled that law enforcement by giving a defendant her implied consent warnings prior to her refusal of the breath test, though the warnings were not given at the arrest site, complied with the requirements of South Carolina Code Ann. Section 56-4-2934 and would not be a violation.

8. Taylor v. SCDMV, 382 S.C. 567, 677 S.E.2d 588 (2009): The South Carolina Supreme Court review a decision of the Court of Appeals (Taylor v. SCDMV, 368 S.C. 33, 627 S.E.2d 751 (2006 Ct. App)) and affirmed their ruling. The Court stated that a police officer read the implied consent form aloud to the driver. However, the officer did not provide the driver with a written copy of the form. The driver refused to give a blood sample and refused to sign the implied consent form. His license was suspended for 90 days. The Court held that the DMV may use a prejudice analysis. The Court held that it is undisputed that Taylor was advised of the implied consent warning and there was no prejudice from the officer's lack of written notice.

9. Carroll v. S.C.D.M.V., 388 S.C. 39, 693 S.E.2d 430 (Ct. App. 2010) The Court followed the holding in Taylor v. SCDMV, 382 S.C. 567, 677 S.E.2d 588 (2009) set by our Supreme Court and stated that "our (SC)Supreme Court held the "in writing" requirement was merely one of four factors to examine "with an eye toward prejudice" pursuant to section 56-5-2951(F). *Taylor II*, 382 S.C. at 571, 677 S.E.2d at 590. They further noted "[I]f the Legislature had intended the lack of written notice (or any other factor) to be a fatal defect, it could have said so in the statute." *Id.* at 570, 677 S.E.2d at 590 (citation omitted). The Supreme Court found this court "properly applied a prejudice analysis" and correctly found no prejudice resulted from the lack of written notice when Taylor was verbally advised of the implied consent warning. *Id.* at 571, 677 S.E.2d at 590"

10. S.C.D.M.V. v. McCarson, 391 S.C. 136, 705 S.E.2d 425 (2011)- The South Carolina Supreme Court held that an officer may not present hearsay testimony to circumvent the well-established rules against hearsay in a driver's license suspension hearing.

11. Chisolm v. S.C.D.M.V., 402 S.C. 593, 741 S.E.2d 42 (Ct. App. 2013): The arresting officer testified that the defendant blew for 1 minute and 53 seconds and the datamaster indicted that a steady tone was produced by the breath of the defendant. The arresting officer testified at the administrative hearing that he had "no clue" why the instrument would not register her sample that the datamaster "just didn't read it." The datamaster didn't come up with any errors and the arresting officer when ahead and marked the defendant refused the test. The South Carolina Court of Appeals stated that the record and the videotape showed that the defendant wanted to take the breath test and offered to take a second test. The Court ruled that the evidence was insufficient to support a finding that the licensee (defendant) refused to take an alcohol breath test.

12. Birchfield v. North Dakota, 136 S.Ct. 2160 (2016): The United State Supreme Court held that The Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving but not warrantless blood tests.

INDICTMENTS

1. Hopkins v. State, 451 S.E.2d 389 (1994): The Court held that an indictment may be amended provided the nature of the offense charged is not changed. In this case, the change of the charge from Felony DUI (Great Bodily Injury) to Felony DUI (Death) elevated the offense from one carrying a maximum of ten (10) years imprisonment to twenty-five (25) years imprisonment. The nature of the offense was changed because of the increased punishment of the Felony DUI (Death) charge. Therefore, the trial court did not have jurisdiction to hear the plea unless there was a new indictment, a waiver of presentment, or unless the charge was a lesser included offense of the crime charged in the indictment. None of these three things were done in this case.

2. State v. White (Charlie Lee), 338 S.C. 561, 525 S.E.2d 261 (Ct. App. 1999): The Defendant was tried for Driving Under the Influence Second Offense and was convicted. The indictment on this case was given to the jury during deliberations without redacting the phrase "such not being the first offense within a period of ten years including and immediately preceding the foregoing date." The State and the Defendant had stipulated to the matter of jurisdiction during the trial. The Court of Appeals held that the issue was not properly preserved for review because the Defendant failed to raise it to the trial court in any way. The Court also stated that although the statute (Section 56-5-2980) forbids including language within an indictment of an accused's conviction of a prior offense when the accused and the solicitor stipulate "that the charge constitutes a second or further offense," nothing within the statute divests the court of subject matter jurisdiction to determine the issues involved in the case if the language is not removed from the indictment. We, of course, must take the statute as we find it, giving effect to the legislative intent as expressed in its language. We cannot under our power of construction supply an omission in the statute. At most, the stipulation rendered the language in question unnecessary language. The Court upheld the conviction.

3. State v. Knuckles, 354 S.C. 626, 583 S.E.2d 51 (2003): Our Supreme Court reversed the Court of Appeals and held that the *corpus delicti* of DUI is defined as (1) driving a vehicle; (2) within this state; and (3) while under the influence of intoxicating liquors or drugs. The statutory inclusion of "materially and appreciably impaired" does not change the corpus delicti of the crime. The Court found the indictment to be sufficient to confer jurisdiction on the circuit court. **Overruled partially by State v. Gentry**, 363 S.C.93, 610 S.E.2d 494 (2005).

4. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005): The South Carolina Supreme Court held that the indictment is a notice document. A challenge to the indictment on the ground of insufficiency must be made before the jury is sworn as provided by Section 17-19-90 of the South Carolina Code of Laws. If the objection is timely made, the circuit court should judge the sufficiency of the

indictment by determining whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon; and (2) whether it apprises the defendant of the elements of the offense that is intended to be charged. In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances. Further, whether the indictment could be more definite or certain is irrelevant.

JURISDICTION CASES

1. Tyler v. State, 247 S.C. 34, 145 S.E.2d 434 (1965): The Court of General Sessions is without jurisdiction of a prosecution for a first violation of a DUI offense, because of the punishment which is prescribed. Therefore, the allegation of the indictment that crime charged was a second or subsequent offense is necessary to show the jurisdiction of the court.

2. State v. Mitchell, 220 S.C. 433, 658 S.E.2d 350 (1951) and Tyler v. State, 247 S.C. 34, 145 S.E.2d 434 (1965): The allegation in the indictment of prior offenses, does not constitute prejudice which permits a motion to quash an indictment because it puts the defendant's character in issue. Section 56-5-2980 of the Code provides for the stipulation with the solicitor that the charge constitutes a second or subsequent offense, in which event, that allegation shall be removed from the indictment. Where a defendant fails to avail himself of the provisions of the statute, a solicitor must introduce evidence of prior convictions.

3. State v. Anderson, 458 S.E.2d 56 (1995): The South Carolina Court of Appeals held that DUI, DUS, and Violation of the Habitual Traffic Offender charges against the same defendant can be tried together.

4. City of Camden v. Brassell, 486 S.E.2d 492 (1997): The South Carolina Court of Appeals held that DUI, first offense, under Section 56-5-2930 of the South Carolina Code of Laws is a "traffic violation" pursuant to Section 20-7-410. Thus, here, the municipal court had concurrent jurisdiction with the family court to hear the DUI case.

5. State v. McAteer, 340 S.C. 664, 532 S.E.2d 865 (S.C. 2000): The South Carolina Supreme Court reversed the decision of the South Carolina Court of Appeals and ruled that there is no common law right to make warrantless citizen's arrests of any kind and that such rights as exist are created by statute in South Carolina. The Court held a DUI arrest made by a police officer outside of his jurisdiction unlawful.

6. State v. Alexander, Op. No.: 27832 (8/22/18): The South Carolina Supreme Court stated that Where a law enforcement officer receives a call through his

dispatch center from 911 communications regarding an incident believed to be within or immediately adjacent to his jurisdiction, the officer has the statutory authority to respond, assess the situation, and, if necessary, detain the subject where the incident location lies outside of the responding officer's jurisdiction. S.C. Code Ann. § 17-13-45.

KIND OF VEHICLES IN DUI CASES

1. State v. Singleton, 460 S.E.2d 573 (1995): The Supreme Court ruled that the General Assembly intended to include a moped as a vehicle subject to the DUI statute under Section 56-5-2930).

PERSONAL OPINION ON INTOXICATION CASES

1. State v. Ramey, 221 S.C. 10, 68 S.E.2d 634, (1952) and State v. Stockman, 82 S.C. 388, 64 S.E. 595 (1909): It is well settled law in South Carolina that a lay witness may testify whether or not in his opinion a person was drunk or sober on a given occasion when he observed that person, and the weight of such testimony is for determination by the jury.

2. State v. Petit, 142 S.E. 725 (1928): A witness, in a position to know, may give his opinion as to sobriety or intoxication of a person at a given time, if the evidence is otherwise competent.

3. State v. Nathari, 303 S.C. 188, 399 S.E.2d 597 (1990): The Court held that "zombie" testimony was elicited from a lay witness whom Nathari ran off the road prior to striking the victims. The witness observed Nathari's face and noted his eyes were "like slits." This witness set forth a factual basis for her opinion. The trial judge committed no error. See State v. Stockman, 82 S.C. 388, 64 S.E.2d 595 (1909). This testimony is clearly relevant as it is circumstantial evidence from which the jury could infer that the defendant was under the influence of alcohol, other drugs, or a combination of the two.

PROBABLE CAUSE CASES

1. State v. Parker, 271 S.C. 159, 245 S.E.2d 904 (1978): Failure to drive on right side of roadway as probable cause for arrest in a prosecution for driving a motor vehicle while under the influence of intoxicating liquor; the fact that the arresting officer personally observed defendant driving across the middle of a two-lane road was itself sufficient to justify stopping and arresting him.

2. State v. Gilliam, 270 S.C. 345, 242 S.E.2d 410 (1978): Evidence was sufficient to support submission of case to jury where (1) defendant, charged with DUI, was discovered alone on passenger side of wrecked automobile, (2) tow truck operator testified defendant appeared to be under influence, (3) defendant

admitted driving automobile when interviewed at hospital, and (4) open bottle of alcoholic beverage was found in automobile.

3. State v. Douglas, 245 S.C. 83, 138 S.E.2d 845 (1964): Evidence justified refusal to direct verdict of not guilty. The testimony of the arresting officer that he observed the defendant operating his automobile from one side of the road to the other; that at the time of the arrest the defendant had a strong odor of alcohol about him and could not stand or walk without assistance; and that his speech, both as to clarity and coherence, was affected, was sufficient to justify the refusal of the trial court to direct a verdict of not guilty.

4. State v. Sawyer, 283 S.C. 127, 322 S.E.2d 449 (1984): Test is admissible despite the fact that officer did not see defendant drive. Defendant admitted he was the driver.

5. State v. Goodstein, 278 S.C. 125, 292 S.E.2d 791 (1982): The Court held that an arresting officer had probable cause to stop a defendant for speeding and, upon observing the defendant's physical condition, to arrest him for driving his automobile while under the influence of intoxications.

6. City of Orangeburg v. Carter, 303 S.C. 290, 400 S.E.2d 140 (1990): The Court held that when an officer observed a defendant make an improper left turn within the city limits of Orangeburg that probable cause was established to make a traffic stop.

7. State v. White, 428 S.E.2d 740 (1993): The Court held that White's assertion that the trial judge erred in not granting him a directed verdict based on his contention that there was no proof of the corpus delicti of the Felony DUI offense other than his own inculpatory statements had no merit. The Court ruled that separate and apart from White's inculpatory statements, the evidence of the case, when viewed in the light most favorable to the State [State v. Butler, 277 S.C. 543, 290 S.E.2d 420 (1982)], established proof aliunde of the corpus delicti, albeit circumstantially for the most part. The precise questions of whether White drove the motor vehicle in question while under the influence of alcohol or drugs; whether he either did an act forbidden by law or neglected a duty imposed by law; and whether either his act or neglect caused Terry's death, were matters properly left to the jury. State v. Morgan, 282 S.C. 409, 319 S.E.2d 335 (1984) (in a prosecution for driving a motor vehicle while under the influence of alcohol or drugs, the questions of whether a defendant was under the influence and whether he was the driver of the vehicle in question presented issues for the jury.)

8. State v. Weaver, 265 S.C. 130, 217 S.E.2d 31 (1975): The South Carolina Supreme Court held that an officer does have the power and authority to arrest without a warrant those who have committed a violation of the criminal laws of this State within the view of such officer. When an officer has a right to make an

arrest, he may use whatever force is reasonably necessary to apprehend the offender or effect the arrest.

9. Town of Mount Pleasant v. Jones, 516 S.E.2d 468 (S.C. App. 1999): The South Carolina Court of Appeals stated that our Supreme Court has repeatedly held that an illegal arrest does not preclude the subsequent prosecution or conviction of a defendant for the offense charged. In this case where a volunteer fireman and private detective made an illegal citizen's arrest does not impose any jurisdictional bar to the subsequent prosecution of the Defendant for DUI. The Court held that the Defendant's charge for driving under the influence should not have been dismissed because of an illegal citizen's arrest.

   The Defendant argued on appeal that the illegal citizen's arrest should have caused any evidence found by the State's agents or officers inadmissible because of the exclusionary rule of evidence (fruit of the poison tree). The Court ruled that the Fourth Amendment protection only apply to the action of the responding officer and not to a private citizen such as the volunteer fireman. Therefore, the volunteer fireman's action was that of a purely private citizen and, as a result, the exclusionary rule is inapplicable. Thus, any evidence obtained as a result of the volunteer fireman's arrest should not be excluded at the Defendant's trial.

10. State v. Nelson, 519 S.E.2d 786 (1999): The South Carolina Court of Appeals held that a traffic stop is a limited seizure more like an investigative detention than a custodial arrest. In this case, the Defendant was visiting a client in the Myrtle Beach area. He was in his jeep speaking to the client and his dog jumped out of his jeep. The dog went on a neighbor's yard and the neighbor asked the defendant to catch his dog and to leave. The neighbor stated that the Defendant yelled at him and possibly "cussed" him. The neighbor called the police. The defendant captured his dog and drove away.

    Officer Hadden arrived shortly at the scene and talked to the neighbor. Officer Hadden also wanted to hear the defendant's side of the story and went to find the defendant. Officer Hadden found the Defendant at a stop sign and pulled up behind him and "hit his high beams several times." Officer Hadden stated that the Defendant rolled through the stop sign without coming to a complete stop and turned right at a high rate of speed. The Defendant was also probably driving at a speed of 35 m.p.h. in a 25 m.p.h. speed zone. Officer Hadden turned on his blue lights to make a traffic stop. The Defendant initially refused to stop.

    The Defendant finally made a "hard" stop. The Officer approached the jeep and asked the Defendant to hang up his car phone, turn off his vehicle, and step to the rear of the vehicle. The Defendant refused. Officer Hadden took the phone out of the Defendant's hand and escorted him to the rear of the vehicle. The Officer smelled the odor of alcohol and asked the Defendant to participate in a field sobriety test. The Defendant refused. The Officer placed the Defendant

under arrest for DUI due to his driving and the odor of alcohol (alcoholic beverage). The Defendant later refused a breathalyzer test. The BA operator also confirmed the odor of alcohol (alcoholic beverage).

The Myrtle Beach City Court gave notice to the Defendant to appear on August 21, 1996 for trial. The Defendant or his attorney did not appear and the Defendant's bond was subsequently forfeited, and he was convicted without a jury for DUI. On August 28, 1996, the Defendant made a motion to have his conviction reopened based on confusion between his attorney and the Court. The conviction was reversed and remanded for a new trial. The Defendant moved for a directed verdict of not guilty at the beginning of the second trial because the second trial subjected him to Double Jeopardy. The Defendant also made a motion to dismiss based on the argument that the officer did not have probable cause or reasonable suspicion to initiate the traffic stop. The Court denied both motions and the Defendant was later convicted of DUI.

The Court held that in this case, even assuming Officer Hadden's initial attempt to stop the Defendant was unlawful, the Defendant's acts of running the stop sign and speeding through the neighborhood constituted new and distinct crimes for which Officer Hadden had probable cause to stop the Defendant. Thus, any evidence lawfully obtained as a result of the stop was admissible at the Defendant's trial.

The Court also ruled that it is well established that where a verdict is set aside by a defendant's own motion and a new trial granted, the defendant may be again tried for the offense. In this case, the first conviction was not reversed or vacated because the evidence was insufficient to support the conviction. Rather, the reversal was sought and granted on Defendant's own arguments that his attorneys were confused about when to appear before the municipal court. Therefore, the Defendant's retrial did not violate Double Jeopardy.

11. Lapp v. S.C.D.M.V., 692 S.E.d 2d 565 (Ct. App. 2010): The court of appeals held that the officer had probable cause to arrest the driver for DUI. The driver, who smelled strongly of alcohol, admitted to the officer that she had struck two vehicles, and she refused to take a field sobriety test. Because the driver was still sitting in her vehicle at the scene of the accident, it was reasonable for the officer to conclude that the accident had recently occurred and that the driver had freshly committed the crime of DUI. The officer did not violate § 56-5-6170 by arresting the driver for DUI. He arrested the driver based on his reasonable belief that she had committed the offense of DUI, which constituted a violation of the law under S.C. Code Ann. § 56-5-2930(A) (Supp. 2009).

REASONABLE ASSISTANCE FOR ADDITIONAL TESTS CASES

1. State v. Wickenhauser, 423 S.E.2d 344 (1992): The Court held that Wickenhauser underwent an independent blood alcohol test in compliance with

the statute and it was undisputed that he took custody of a blood sample. It was concluded that Wickenhauser received aid sufficient to constitute reasonable assistance under Section 56-5-2950(a). Whether this assistance was subsequently negated by the acts of the law enforcement personnel presented an issue of fact for the determination of the jury. State v. Bullock, 235 S.C. 356, 111 S.E.2d 657 (1959) overruled on other grounds, State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

2. State v. Pipkin, 294 S.C. 336, 364 S.E.2d 464 (1988): The Court held the failure to provide reasonable assistance requires a suppression of both the breathalyzer and the blood test results.

3. State v. Sullivan, 426 S.E.2d 766 (1993): The Court held that an officer does not have a duty to affirmatively assist persons in obtaining any independent tests when the accused refuses the breathalyzer test. State v. Lewis, 266 S.C. 45, 221 S.E.2d 524 (1976), only requires that a reasonable opportunity to obtain an independent blood test be afforded a person who refuses a breathalyzer test. (State v. Degnan, 305 S.C. 369, 409 S.E.2d 346 (1991)). The records reflect that the respondent was permitted the use of a telephone during the period of observation. The Court concluded that the "reasonable opportunity" requirement enunciated in Lewis and Degnan was met in that the respondent was afforded ample time and the means by which to make arrangements for independent testing.

4. State v. Masters, 308 S.C. 433, 418 S.E.2d 552 (1992): The Court held that under unique facts such as these, where the officer transports the defendant to two different locations in aborted efforts to administer the breathalyzer test; and where the officer affirmatively undertakes to procure a blood test for the defendant; then the officer terminates that affirmative undertaking without any explanation or excuse, the officer has effectively denied the defendant the reasonable opportunity to obtain a blood test. Thus, the trial court should have dismissed the charges against the defendant.

5. State v. Lewis, 266 S.C. 45, 221 S.E.2d 524 (1976): The Court held that they do not construe the statute as depriving a person arrested for DUI of a reasonable opportunity to obtain a blood test, who refuses to take a breathalyzer test. However, the Court did not agree that Lewis was not afforded a reasonable opportunity because the Trooper refused to affirmatively assist him. What is reasonable will, of course, depends on the circumstances of each case. The facts in this case were not in dispute. Lewis was given the opportunity to use the telephone before and after he refused to take the breathalyzer test. He was able, in the opinion of the arresting officer, to locate the name of a doctor in the telephone book. On one occasion Lewis did make a telephone call but made no arrangements for a blood test. The law enforcement officers did nothing to prevent Lewis from obtaining a blood test. The Court held that Lewis was afforded a reasonable opportunity to obtain a blood test but failed to use it.

6. State v. Bunton, 220 S.E.2d 354 (NC 1975): The N.C. Court held that all the arresting officer had to do was to assist the defendant in contacting a doctor concerning an additional test after administering a breathalyzer test, but the officer was not required, in addition, to transport the defendant to the doctor.

7. State v. Degnan, 305 S.C. 369, 409 S.E.2d 346 (1991): The South Carolina Supreme Court held that the administration of a breathalyzer test is not a critical stage at which an accused is entitled to counsel. The Court also held that the Implied Consent Statute requires law enforcement officers to lend assistance in obtaining additional blood tests "only to a person who has taken the breathalyzer test." State v. Lewis, 221 S.E.2d at 524. Although it was noted that persons who refuse the test are entitled to a reasonable opportunity to obtain an independent blood test, it was held that affirmative assistance is not required.

   Here, there is no evidence that Degnan ever requested an independent test, or inquired whether one was available. Further, after refusing the breathalyzer, she was permitted to use the telephone, which afforded her the opportunity to call an attorney or physician to obtain independent testing.

8. State v. Harris, 427 S.E.2d 909 (1993): The Court held under Section 56-5-2950, a DUI suspect is entitled to a reasonable opportunity to obtain a blood test although he refuses to take a breath test. A person who takes a breath test is entitled to affirmative assistance from police in obtaining a blood test. State v. Lewis, 221 S.E.2d 524 (1976). Here, the cross-examination of Officer Brooks centered on any affirmative assistance the officer could have rendered Harris. This line of inquiry was irrelevant under Lewis because the defendant refused the breath test. Harris did not request that the judge charge the law of reasonable opportunity; rather, he objected to the lack of the charge on affirmative assistance by the officer. Since this assistance was irrelevant, no such charge was needed. No error.

9. Town of Fairfax v. Smith, 285 S.C. 458, 330 S.E.2d 290 (1985): The Court found that the defendant was arrested for DUI and consented to the breathalyzer test pursuant to the implied consent statute. He also requested an independent blood sample test. The request was granted, and he was taken to the Allendale County Hospital. Over his objection, the police officer took possession of the blood sample and refused to allow the hospital to analyze it. Instead, the sample was sent to the State Law Enforcement Division (SLED) which made an analysis and returned the result back to the Town of Fairfax.

   The Court held that the implied consent statute was violated in this case because the accused was denied his right to have an analysis made by a physician, qualified technician, chemist, registered nurse or other qualified person of his choosing, of the independent blood sample. The State should not have been permitted to introduce the results of either the breathalyzer test or the blood

sample examination made by SLED. The statute clearly gives to an accused person the right to a reasonable opportunity to contact an independent qualified person to conduct a blood test. State v. Lewis, 266 S.C. 45, 221 S.E.2d 524 (1976), held that the statute mandates assistance by the police officer in securing an independent analysis.

10. City of Columbia v. Ervin, 500 S.E.2d 483, 330 S.C. 516 (1998) the South Carolina Supreme Court affirmed the South Carolina Court of Appeals decision in 482 S.E.2d 781, 325 S.C. 644 (1997): The Court held that the arresting officer does not have duty to affirmatively assist defendant who refuses to take breath test to measure level of alcohol in blood with obtaining independent tests; instead, defendant who refuses to take the breath test is only entitled to reasonable opportunity to obtain independent blood test. The Court also held that the police officer provided defendant, who had refused to take breath test to measure level of alcohol in his blood, with reasonable opportunity to obtain independent blood test by transporting defendant to hospital for test, and officer was not required to either request blood test for defendant at hospital or transport defendant to second hospital after first hospital refused to administer test. The Court also stated that the police officer does not automatically provide defendant with reasonable opportunity for independent test of blood-alcohol level by complying with terms of suspect's request for independent blood test and will depend on the circumstances of each case.

11. State v. Knighton, 512 S.E.2d 117, 334 S.C. 125 (S.C. App. 1999): The S.C. Court of Appeals held that an officer in a DUI case cannot be held responsible for a denial of "affirmative assistance" when a defendant does not have the money or a doctor's authorization for a blood test in accordance with hospital policy.

RECKLESS HOMICIDE CASES

1. State v. Hicks, 305 S.C. 277, 407 S.E.2d 907 (1991): The Court held that the evidence was sufficient to establish that the defendant acted recklessly when his vehicle struck and killed a pedestrian, as an element of reckless homicide; evidence indicated that defendant had been drinking on the night of the accident, had driven off roadway when he struck pedestrian, did not stop at scene, and did not report incident to authorities. The Court found this case was distinguishable from In re Stacy Ray A., 400 S.E.2d 141 (1991) and concluded Stacy A. was not controlling in this case.

2. In re Stacy Ray A., 303 S.C. 291, 400 S.E.2d 141 (1991): The Court held that there was insufficient evidence to support a conviction for reckless homicide where a car driven by Stacy collided with a car driven by Cynthia Ellenburg which resulted in Mrs. Ellenburg's death. The state trooper found Stacy's automobile in Ellenburg's lane, but there was no evidence of speeding, no witnesses, and no positive evidence showing that the defendant was under the influence of alcohol or drugs at the time of the accident. Mr. Stacy did not remember the accident.

The Court stated that the State must prove beyond a reasonable doubt that Stacy had reckless disregard for the safety of others and held that the State has left too many unanswered questions and did not do this in this Family Court case.

3. State v. McConnell, 449 S.E.2d 778 (1994): The defendant, McConnell, was charged with Felony DUI and was convicted of Reckless Homicide. The defendant was seen driving a motorcycle with a female passenger leaving a party from his home. The motorcycle crashed approximately 600 feet from the home after it had traveled through a stop sign; went 79 feet and struck a curb; crashed through a garage door. The defendant's blood alcohol level was .133. No one identified the driver at the time of the accident but witnesses testified that the two people were gone from 1 to 5 minutes before the accident and they heard the motorcycle the entire time. An expert also testified that on the matters of operation of a motorcycle. The defendant argues that there was not enough evidence to prove that he was the driver of the motorcycle and that the court was wrong in not allowing the expert to testify that, in his opinion, the defendant was not the driver of the motorcycle at the time of the accident. The Court held that there was sufficient evidence to conclude that the defendant was the driver of the motorcycle at the time of the accident and the question of who was driving at the time of the accident was one of ultimate fact for the jury to determine and did not require an expert opinion.

4. State v. Rowell, 467 S.E.2d 247 (1996) reversed on writ in 487 S.E.2d 185 (1997): The South Carolina Supreme Court reversed the Court of Appeals decision and reinstated the verdicts. The State's evidence showed that Rowell's vehicle crossed the center line and then accelerated; pedestrians walking on the side of the road observed these events; they had sufficient time to move further away from the road before Rowell's car ran off the road; Rowell never applied her brakes nor corrected her car's path; she struck four people including two children who were killed. The people were four feet from the road when they were struck. The Court held the evidence was sufficient to show the car was operated in reckless disregard of the safety of others. The Court also stated that the State cannot rely on civil concepts of negligence and recklessness, that is, statutory violations, to meet its burden of proving the Defendant's state of mind.

5. State v. Watson, 563 S.E.2d 336, 349 S.C. 372 (2002): The Supreme Court held that reckless homicide was not a lesser included offense of murder, because the elements of murder did not include all the elements of reckless homicide, as murder did not require the operation of an automobile, overruling State v. Reid, 324 S.C. 74, 476 S.E.2d 695 (1996).

6. State v. Christopher Horton, 359 S.C. 555, 598 S.E.2d 279 (2004 S.C. App.): The Court of Appeals ruled that the trial judge did err in denying the defendant's motion for a directed verdict because the State presented sufficient evidence to submit the reckless homicide charge to the jury. The evidence included testimony by eyewitnesses that the defendant's car came upon the victim very

quickly, testimony from an SCHP trooper that he believed the defendant was under the influence and the results of an urine test indicating the presence of illegal substances and a datamaster test showing a blood alcohol of .03%. The Court also ruled that the urine test were properly admitted because there was no missing link in the chain of custody and the nurse involved in the collection of it was in "immediate proximity" of the test according to procedures required by Section 56-5-2950 of the S.C. Code of Laws. The Court also stated that an officer's testimony that the defendant was unemotional at the scene was properly admitted as relevant to whether the defendant was under the influence of alcohol and/or drugs and was not improperly admitted as evidence of lack of remorse or as a comment of the defendant's silence.

REFUSAL CASE LAW

1. State v. Jansen, 305 S.C. 320, 408 S.E.2d 235 (1991): The South Carolina Supreme Court ruled that the BA operator does not have to follow the precautions in preparing for a BA test if the Defendant refuses to take the BA test. The refusal can be admitted into evidence, even if the precautions are not taken by the BA operator, according to Parker.

2. Ex parte Horne in re: SCDHPT v. Horne, 397 S.E.2d 788 (1990): S.C. App. Ct. stated the question of validity of test methods employed by a breath test operator does not arise until a test is given and it's results are offered as evidence.

3. State v. Miller, 257 S.C. 213, 185 S.E.2d 359 (1971): Evidence that the Defendant refused to take a breathalyzer test is not inadmissible and may be used against the Defendant at trial. Where a defendant has failed and refused to submit to a breathalyzer test, it is permissible for the state to argue in its closing that only a drunk man would refuse a breathalyzer test, and such argument does not violate the defendant's fifth amendment right against self-incrimination, or exceed fair comment.

4. State v. Sawyer, 283 S.C. 127, 322 S.E.2d 449 (1984): Test is admissible despite the fact that officer did not see defendant drive. Defendant admitted he was the driver.

5. Percy v. SCDHPT, 434 S.E.2d 264 (1993): The South Carolina Supreme Court held that section 56-5-2950 requires only that an accused be advised that his privilege to drive will be suspended for ninety (90) days if he refuses the breathalyzer. It would be unreasonable to require officers to advise out-of-state motorists of the consequences, in their respective states, of refusing the breathalyzer.

6. Leviner v. SCDHPT, 438 S.E.2d 246 (1993): The South Carolina Supreme Court held that they followed the majority of courts by accepting a bright line rule which states that the initial refusal to submit to breath testing cannot be cured or

nullified by a subsequent agreement to be tested. This ruling eliminates the concern that because the reliability of the test diminishes with the passage of time, allowing arrestees to delay their consent would enable them to manipulate their test results. In a footnote on this case, the court stated that law enforcement officers may be flexible and disregard a refusal which is promptly withdrawn. See Mossak v. Commissioner of Public Safety, 435 N.W.2d 578 (Minn. Ct. App. 1989). However, they still found no basis to mandate such flexibility.

7. Yeargin v. SCDHPT, 438 S.E.2d 234 (1993): The South Carolina Supreme Court held that the administrative revocation of a driver's license without an administrative hearing does not violate due process of law where there has been a prior hearing and conviction on the underlying criminal charge (like on DUI and DUS charges). The Court also held that the cruel and unusual punishment clause is not violated when repeated violations result in higher fines since that is the fault of the defendant, not the statute. There is no error in the Highway Department running the periods of suspension consecutively.

8. SCDMV v. Nelson, 364 S.C. 514, 613 S.E.2d 544 (2005 S.C. App.): The South Carolina Court of Appeals stated that a defendant does not have a right in an implied consent hearing with the SCDMV to contest a violation of the three-hour videotape requirement of S.C. Code Ann. Section 56-5-2953 when he refuses to take the breath test. The implied consent hearing is limited to three things if the defendant refuses to take the test: (1) if the driver was lawfully arrested; (2) if the defendant was advised of his implied consent rights; and (3) if he refused the breath test.

9. State v. Elwell, Op.No.: 2012-209726- decided 5/20/13 The South Carolina Supreme Court affirmed the decision of the South Carolina Court of Appeals in 369 S.C. 330, 712 S.E.2d 451 (Ct. App. 2011)- The Both Courts held that defendant's refusal to take a breath test rendered the 20-minute waiting period inapplicable, such that it did not need to be videotaped

RIGHT TO COUNSEL CASES

1. State v. Degnan, 305 S.C. 369, 409 S.E.2d 346 (1991): An accused is entitled to assistance of counsel only at critical stages of the proceedings. (State v. Williams, 263 S.C. 290, 210 S.E.2d 298 (1974)). We hold the administration of a breathalyzer test is not a critical stage at which an accused is entitled to counsel.

2. State v. Zaremba, 300 S.C. 81, 386 S.E.2d 459 (1989): DUI conviction affirmed. The videotape of defendant was properly admitted into evidence over Fifth and Sixth Amendment objections where the defendant was allowed to consult with his attorney who told him to "go with the flow." Here, counsel was made available and the defendant was advised to proceed with the interrogation. Therefore no Fifth and Sixth Amendment violations occurred.

ROADBLOCK CASES

1. Michigan Dept. of State Police v. Sitz, 110 S.Ct. 2481 (1990): The US Supreme Court ruled that roadblocks for DUI drivers are legal as long as all motorists are stopped and the procedures are conducted pursuant to standardized guidelines adopted by the law enforcement agency, covering site selection, detailed operating procedures and notice to the public that the roadblock is an official law enforcement activity.

2. State v. Forrester, 343 S.C. 637, 541 S.E. 2d 837 (2001): The South Carolina Supreme Court rejected the defense that police officers at a roadblock must affirmatively inform persons of their right to refuse consent to a search of their possessions. The Court held that such a right did not exist. The drug conviction was reversed on other grounds because the officer exceeded the scope of defendant's consent when he proceeded beyond a visual examination of the defendant's purse and engaged in an intense physical examination of the purse. The Court ruled that the evidence recovered from this physical search of the purse was inadmissible.

3. State v. Gates, Unpublished Opinion No.: 2005-UP-144 (3/1/2005 S.C. App.): The Court of Appeals found that the checkpoint was established for the legitimate purpose of decreasing DUI and speeding in an area specifically targeted because of prior incidents. The checkpoint was operated pursuant to guidelines, which took into consideration all of the concerns expressed, by the United States Supreme Court in Prouse and Sitz. The checkpoint did not entail random stops, nor were drivers detained for an unreasonable amount of time. Drivers were warned of the approaching checkpoint and afforded the opportunity to turn around. The Court also ruled that the differences among the officers as to their questions or specific actions after the stop were not an unreasonable intrusion into the occupant's privacy. The officers did not have "unbridled discretion," nor did they have "standardless and unconstrained discretion" in making the stops. Accordingly, the Court ruled that the checkpoint was utilized to stop and detain the defendant was appropriate and did not violate the Fourth Amendment.

4. State v. Groome, 378 S.C. 615, 664 S.E.2d 460 (2008): The South Carolina Supreme Court held that a roadblock held for the priminary purpose for general crime control such as narcotics interdiction is unreasonable under the Fourth Amendment and referred to City of Indianapolis v. Edmond, 531 U.S. 32 (2000) as the controlling case on this issue. Only roadblocks held for license (traffic) checkpoints are allowed under Edmond, but must still follow the three requirements for a traffic checkpoint. The three requirements are: 1. the gravity of the public interest served by the seizure; 2. the degree to which the seizure serves the public interest; and 3. the severity of the interference with individual liberty. The State will need to provide evidence to satisfy these three requirements with possible statistics to prove its position.

5. State v. Williams, 417 S.C. 209, 789 S.E.2d 582 (Ct. App. 2016): The South Carolina of Appeals held that in a DUI case that State did not have to establish the constitutionality of driver's license checkpoint since defendant turned around before he got to the checkpoint and, thus, was never actually stopped by the checkpoint; analysis for determining if a checkpoint was constitutional only applies when a vehicle was stopped at the checkpoint and does not apply when the vehicle does not actually make it to the checkpoint. The Court also stated that the SCHP trooper had probable cause to believe defendant had violated the U-turn statute or had a reasonable suspicion that criminal activity was afoot due to the U-turn before the checkpoint.

SEARCH WARRANT ISSUES

1. Missouri v. McNeeley, 133 S.Ct. 1552 (2013) : The United States Supreme Court ruled that concluding that in drunk-driving investigations, the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant. The Court that natural metabolization of alcohol in the bloodstream does not present a per se exigency that justifies an exception to the Fourth Amendment's search warrant requirement for nonconsensual blood testing in all drunk-driving cases, and instead, exigency in this context must be determined case by case based on the totality of the circumstances, abrogating State v. Shriner, 751 N.W.2d 538, State v. Bohling, 173 Wis.2d 529, 494 N.W.2d 399, and State v. Woolery, 116 Idaho 368, 775 P.2d 1210.

2. Birchfield v. North Dakota, 136 S.Ct. 2160 (2016): The United State Supreme Court held that The Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving but not warrantless blood tests.

STATEMENT OF DEFENDANT ON ROADSIDE

1. Pennsylvania v. Bruder, 109 S.Ct. 205 (1988) Ordinary traffic stops do not involve “custody” for the purposes of Miranda.

2. State v. Peele, 298 S.C. 63, 378 S.E.2d 254 (1989): The admission of field sobriety test testimony despite no Miranda warnings being administered was not error. The Court cited Pennsylvania v. Bruder, 109 S.Ct. 205 (1988). The Court follows the rule set forth by the US Supreme Court in Berkemer v. McCarty, 468 US 420 (1984) that ordinary traffic stops do not involve custody for purposes of Miranda. **However, Section 56-5-2953 of the South Carolina Code, now does not requires Miranda warning prior to administration of field sobriety tests after Noon on February 10, 2009.**

3. Berkemer v. McCarty, 104 S.Ct. 3138 (1984): Roadside questioning of a motorist detained pursuant to a traffic stop does not constitute "custodial interrogation" for purposes of Miranda.

4. State v. Morgan, 282 S.C. 409, 319 S.E.2d 335 (1984): Miranda warnings are not required for statements made at the scene of a traffic accident to be admissible. The defendant admitted to officers that he had been drinking and using marijuana while driving the vehicle that was wrecked. However, because the defendant failed to show that he had been taken in custody or significantly deprived of his freedom, Miranda warnings were not required.

5. Pennsylvania v. Muniz, 110 S.Ct. 2638, 496 U.S. 582, 110 L.E.2d 528 (1990): Evidence of slurred speech and lack of muscular coordination exhibited by drunk driving arrestee during administration of sobriety tests, which were conducted and videotaped at police booking facility without prior administration of Miranda warnings, amounts to non-testimonial information and falls outside the scope of the Fifth Amendment's privilege against compelled self-incrimination. Incriminating statements made by arrestee during police officer's routine recitation of instructions for sobriety and breath tests were not prompted by interrogation with meaning of Miranda and, therefore, need not be suppressed. However, answer to questioning which required suspect/arrestee to make express assertion of fact or belief was testimonial in nature and inadmissible absent Miranda warnings being administered. **Section 56-5-2953 of the South Carolina Code, now does not requires Miranda prior to the administration of the field sobriety tests and datamaster tests after Noon on February 10, 2009.**

6. State v. White, 428 S.E.2d 740 (1993): The Court ruled on several points:

   (1) White had retained a nurse anesthetist to testify. However, the nurse was on vacation when the Solicitor called the case for trial. He moved the Court for a continuance so that he could try to get the nurse anesthetist's partner to testify instead. The Court held that White did not comply with Rule 7(b), SCRCrimP. In particular, neither White nor his counsel, as the rule requires, offered his oath that the testimony of the absent witness was material to White's defense, that the motion for a continuance was not intended for delay but was being made because White could not go safely to trial without the absent witness's testimony, and that White had made use of due diligence to procure the testimony of the absent witness. Moreover, White failed to set forth under oath what fact or facts he believed the absent witness would have testified to and the grounds for his belief.

   (2) The Court held that a confession is not admissible unless it was voluntarily made. State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989). A determination of whether a confession was given voluntarily requires an examination of the totality of the circumstances. Schneckloth v.

Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989). The two statements given by White were held admissible. The first statement that was given by White to Trooper Austin was admissible because the evidence showed that even though White was under medical restraint when they talked, White seemed alert, spoke coherently, and cooperated with the Trooper. Also, White was not in custody at that time, talked freely and voluntarily with Trooper Austin; and neither Trooper Austin nor anyone else applied any kind of pressure on White to get him to talk. The second statement given by White was admissible because the Troopers questioned White only after they had been given authority to talk with him by the charge nurse. Also, they did not question him until after they had given him the Miranda warnings. There is no evidence the questioning was either extended or coercive. White appeared to the troopers to understand what he said to them and seemed to be aware of why the troopers were there. The fact that he had been under medication and was strapped to his bed was, at best, only a circumstance the trial court was to consider in determining voluntariness. See Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) (holding coercive police activity is a necessary predicate to a finding that a confession is not voluntary and a defendant's mental condition by itself and apart from official coercion does not dispose of the issue of voluntariness).

(3) The Court held that the trial court correctly allowed the state's forensic toxicologist, who qualified as an expert witness, to give an opinion concerning the rate at which a 150-pound man would eliminate alcohol and in allowing him to testify as to the effects of benzodiazepine when used in combination with alcohol after he admitted that different "benzos" have different effects and he did not know which benzodiazepine White had taken. White's complaints about the toxicologist's testimony go to the weight of the evidence and not to its admissibility. See State v. Nathari, 303 S.C. 188, 399 S.E.2d 597 (Ct. App. 1990) (once a witness is qualified as an expert, any question regarding the adequacy of the expert's knowledge goes to the weight of the testimony and not to its admissibility).

(4) The Court held that White's assertion that there was no proof of the corpus delicti of the Felony DUI offense, other than his own inculpatory statements, had no merit. The Court ruled that separate and apart from White's inculpatory statements, the evidence of the case, when viewed in the light most favorable to the State [State v. Butler, 277 S.C. 543, 290 S.E.2d 420 (1982)], established proof aliunde of the corpus delicti, albeit circumstantially for the most part. The precise questions of whether White drove the motor vehicle in question while under the influence of alcohol or drugs; whether he either did an act forbidden by law or neglected a duty imposed by law; and whether either his act or neglect caused Terry's death, were matters properly left to the jury, See State v. Morgan, 282 S.C. 409, 319 S.E.2d 335 (1984) (in a prosecution for driving a motor vehicle while

under the influence of alcohol or drugs, the questions of whether a defendant was under the influence and whether he was the driver of the vehicle in question presented issues for the jury.)

(5) The Court held that when the victim's niece prepared to make her statement to the trial court, White's counsel objected generally "for the record . . . [to] testimony or remarks from the victim's family in this case." He made no specific objection on any of the grounds he now asserts on appeal; therefore, they are not preserved. 15 S.C. Juris. Appeal and Error, section 79, at 141 (1992); State v. Meyers, 262 S.C. 222, 203 S.E.2d 678 (1974).

7. State v. Silver, 431 S.E.2d 250 (1993): The Court held that there is a distinction between an in-camera hearing to determine if an individual was in custody and entitled to Miranda warnings, and a Jackson v. Denno hearing to determine whether a confession or statement was voluntary. The Court of Appeals (State v. Silver, 414 S.E.2d 813 (1992)) held a defendant does not have a right to a Jackson v. Denno hearing when he was not in custody and did not raise another basis for such a hearing. Although custody is a factor to be considered in determining voluntariness, a defendant need not show he was in custody when he challenges the voluntariness of a statement. It is only when a defendant objects to the alleged failure to apprise him of his Miranda warnings that he must show he was in custody.

At trial, Silver moved for an in-camera hearing on the issue of custody and whether he received Miranda warnings. He did not object on the basis of the voluntariness of his statement. The Court of Appeals erred in treating Silver's objection as a motion for a Jackson v. Denno hearing. On the issue of custody, the Court agreed with the trial judge that ordinary traffic stops do not involve custody for the purposes of Miranda. A trial court is not required to hold an in-camera hearing on the issue of whether a defendant was in custody for the purposes of Miranda. A defendant should make a proffer to preserve any error on appeal. Silver failed to proffer any evidence showing prejudice.

8. State v. Newell, 303 S.C. 471, 401 S.E.2d 420 (1991): The South Carolina Supreme Court ruled that it did not find any fault with the trial judge's ruling regarding the defendant's motion to suppress made pursuant to Rule 5(a)(1)(A) of the South Carolina Rules of Criminal Procedure in which the defendant stated that the state failed to make a disclosure of oral statements required by the defendant's rule five (5) discovery motion request. The trial judge found that under the "open file policy" of the solicitor's office, the prosecution substantially, if not totally, satisfied Rule 5(a)(1)(A)'s requirement that it "permit the defendant to inspect and copy . . . the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant…."

Even assuming the prosecution failed to respond to the defendant's request for discovery before trial, the trial judge did not abuse his discretion in not

suppressing the statement for failure to respond. The Court has a broad discretion in deciding what should be done where material that should have been produced in response to an earlier request does not become known until during or just before the trial. The sanction the trial judge chose here, recessing the trial and affording Newell's counsel an opportunity to interview the officer to whom Newell allegedly made the incriminating oral statements, was an appropriate sanction under the circumstances.

9. State v. Clute, 480 S.E.2d 85 (1996): The Court held that the Defendant was not "in custody" for purposes of Miranda during the administration of field sobriety tests. **Section 56-5-2953 of the South Carolina Code, now does not requires Miranda prior to the administration of the field sobriety tests and datamaster tests after Noon on February 10, 2009.**

10. State v. Simmons, 494 S.E.2d 460 (1997): The South Carolina Court of Appeals held that Miranda warnings are not required for field sobriety tests. The mere giving of Miranda warnings does not convert an otherwise non-custodial situation into a custodial interrogation. **Section 56-5-2953 of the South Carolina Code, now does not requires Miranda prior to the administration of the field sobriety tests and datamaster tests after Noon on February 10, 2009.**

11. Florida v. Powell, 130 S.Ct. 1195 (2010): The United States Supreme Court held that The United States Supreme Court reversed the Florida Supreme Court and held in 7-2 decision that "that while Miranda requires that a suspect "be warned prior to any questioning" and "that he has the right to the presence of an attorney, "it does not dictate the words in which the essential information must be conveyed. Rather, to determine whether police warnings are satisfactory, the inquiry is simply whether the warnings reasonably conveyed to a suspect his rights as required by Miranda.

12. Berghuis v. Thompkins, 130 S.Ct. 2250, 176 L.Ed.2d 1098 petition for rehearing denied 7/26/10- 2010 U.S. LEXIS 5593: The United States Supreme Court held that if a suspect wants to assert either his right to counsel or his right to silence, *it is up to him to do so*, unequivocally and unambiguously. If the suspect responds to the warnings by saying something such as, "I don't want to talk," or "I want a lawyer," he has unambiguously invoked his rights. But if he makes a statement about the crime, or answers your questions, or even remains silent initially and then responds to questions (as Thompkins did), he has given an implied waiver, which is sufficient to make his statements admissible under Miranda.

13. State v. Hoyle, 397 S.C. 622, 725 S.E.2d 720 (Ct. App. 2012): The South Carolina Court of Appeals held to give force to the Constitution's protection against compelled self-incrimination, the United States Supreme Court established in Miranda certain procedural safeguards that require police to advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation: the suspect must be

warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desire. Miranda did not require arresting officer to inform defendant that he had right to terminate questions at any time; rather, right to terminate interrogation arose after Miranda warning was given. The right to terminate the interrogation at any time and to not answer any further questions is not a required Miranda warning.

14. State v. Medley, 417 S.C. 18, 787 S.E.2d 847 (Ct. App. 2016): The Court of Appeals held that the Defendant was subject to custodial interrogation at the time he made the initial incriminating statement concerning the amount of alcohol that he drank prior to Miranda warning being given and should not been admitted, but the Court found that the trial court did not abuse its discretion in admitting the Defendant's post-Miranda statements at trial. The Court of Appeals stated that the that Defendant's incriminating statements after Miranda was given were not a direct product of the impermissible tactic of "question first, give Miranda rights later" that was expressly forbidden by the U.S. Supreme Court in Missouri v.Siebert, 542 U.S. 600 (2004) and by our S.C. Supreme Court in State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). The Court also held that any error in their admission was harmless beyond a reasonable doubt based on the overwhelming evidence in this case.

TRIAL ISSUES IN DUI CASES

1. State v. Weaver, 265 S.C. 130, 217 S.E.2d 31 (1975): The Court held that the State is not required to produce and place upon the stand every witness who has knowledge of some facts connected with the crime charged. The Court went on to hold that no instruction should be given by the trial judge, at the request of the defendant, which tenders an issue which is not presented or supported by the evidence. It also held that it is well settled that the extent of cross-examination of a witness is within the sound discretion of the trial judge.

2. State v. Evans, 450 S.E.2d 47 (1994): The Court held that the admission of an inferentially incriminating codefendant's confession which redacted any reference to the Defendant did not violate the Confrontation Clause if a proper limiting instruction was given as stated by the United States Supreme Court in Richardson v. Marsh, 481 U.S. 200 (1987). The Court also held that a person other than the declarant may not testify regarding a hypnotic exam when the testimony is offered for the truth of the matter asserted as stated in State v. Pierce, 263 S.C. 23, 207 S.E.2d 414 (1974). However, Pierce does not prohibit a declarant from testifying according to his own recollection. The Court held that, in the future, any determination as to the admissibility of post-hypnotic testimony should be made in-camera. Here, the Grandfather's post-hypnotic recollection of the accident differed from his pre-hypnotic recollection only in that he was able to

recall the color of the driver's hair and more accurately recall the color of the truck after hypnosis. The Court found no error in the admission of this testimony.

3. State v. Smith, 469 S.E.2d 57 (1996): The South Carolina Court of Appeals agreed with the Magistrate and the Circuit Court that no Batson violation occurred because of the prosecuting officer's personal contact with the veirepersons or their family members on previous occasions. The reason was that the arresting officer's obvious belief that they may be biased against law enforcement or otherwise partial to the defendant were legitimate and racially neutral, and were related to his views concerning the outcome of the case to be tried.

4. State v. Crim, 489 S.E.2d 478 (1997): The South Carolina Supreme Court held that testimony involving a larceny of a vehicle just prior to an accident was relevant to a Felony DUI offense stemming from the Defendant's use of the stolen car. The Court held that the larceny was part of res gestae and was admissible because the Defendant showed no prejudice from references to the larceny.

5. State v. Smith, 493 S.E.2d 506 (1997): The South Carolina Court of Appeals held that there was ample evidence establishing that Smith (the defendant) was intoxicated. Thus, if there was evidence, other than Smith's own statements, that Smith was driving the car, then the corpus delicti was adequately established. Trooper Page testified *without objection* that, outside the presence of Smith, Graham, and McCray both identified Smith as the driver at the time the wreck occurred. While it may be that this testimony would not have been admitted had an objection been made, no such objection was made, and we therefore cannot ignore the testimony. The State presented sufficient evidence other than Smith's own statements establishing the corpus delicti of the crime of DUI.

6. State v. Salisbury, 498 S.E.2d 655 (Ct. App. 1998) and 541 S.E.2d 247, 343 S.C. 520 (Sup. Ct. 2001): The Court held where the State submitted some direct evidence of DUI such as in this case where (1) that the Defendant was driving the vehicle; (2) within the State of South Carolina; (3) that the Defendant was under the influence of an alcoholic beverage. Where, as here, the direct evidence is presented to establish the elements of the crime and the identity of the perpetrator, even though some of the circumstances introduced are merely corroborative, the trial judge may, in his or her discretion, deny a request for a circumstantial evidence instruction. Accordingly, because the State presented some direct evidence and did not rely solely upon circumstantial evidence to prove the Defendant's guilt, the court was not required to charge the law of circumstantial evidence.

   The Supreme Court affirmed the Court of Appeals decision based on the fact that the case was heard prior to State v. Grippon, 327 S.C. 79, 489 S.E.2d 462 (1997) case and the trial judge prior to Grippon had the discretion to determine if

the identity were established by direct evidence and the circumstances introduced were merely corroborative as in this case.

7. State v. Potts, 554 S.E.2d 38 (SC 2001): The Supreme Court held that Section 22-2-80 of the South Carolina Code of Law does not require that the jurors be brought face to face with the accused prior to the accused's exercise of peremptory challenges in Magistrate Court. Potts did not show that the procedure used at his trial violated the provisions of that statute or did not make any claims that the jury empanelled in his trial was not impartial and deprived him of any rights granted by the Constitution of our state or the United States.

8. State v. Ledford, 351 S.C. 83, 567 S.E.2d 904 (Ct. App. 2002): Our Court of Appeals held that a Defendant, who was drifting in and out of consciousness during time he allegedly told the police officer that he did not consume alcohol after an automobile accident, was entitled to voluntariness hearing pursuant to Jackson v. Denno regarding his statement to the officer, ***where the defendant objected prior to the trial to the admission of the statement***, and there was great potential for prejudice in the admission of the statement in light of the defendant's testimony at trial that he drank two beers and took two anti-anxiety pills after the accident.

9. State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (Ct. App. 2002) affirmed as modified in State v. Hook, No.: 25752 (2003): Our Court of Appeals ruled that the Defendant's statement to a probation officer regarding drug use was not voluntary, and thus was inadmissible in a driving under the influence (third offense) trial, even though there was no evidence that the officer expressly threatened to revoke probation if the defendant failed to answer inquiries truthfully, where the defendant was in jail at the time of the probation interview, he was not given Miranda warnings. When he initially denied using drugs, officer ordered a drug test. The agent who administed the test testified that the defendant was aware that the refusal to take the test would constitute violation of probation. The defendant was suffering from an undiagnosed ruptured spleen at the time of the interrogation, and other attendant circumstances unquestionably raised implication that revocation would result from refusal to cooperate. The Court also ruled that an involuntary incriminating statement may not be used for any purpose, including impeachment. The Court also discussed that the statute that provides that information received by probation agents is privileged, and not receivable as evidence in a court except in a probation revocation hearing, creates an exclusionary privilege. However, the Court did not discuss this point because of the ruling of the statement being involuntary. The Supreme Court held that the statute relating to privileged nature of information received by a probation officer in his official capacity prohibits admission in court for any purpose, including impeachment, of a probationer's statement to probation agent, regardless of whether statement is voluntarily or involuntarily given. Section 24-21-290 of South Carolina Code of Law. A defendant's statement to a probation

officer in his official capacity is not allowed to be admitted simply because the judge orders it.

10. State v. Belviso, 360 S.C. 112, 600 S.E.2d 68 (2004 S.C. App.): The South Carolina Court of Appeals stated that the State was correct in it's argument that the Circuit Court in it's appellate review of a pre-trial ruling of a Magistrate Court had subject matter jurisdiction over such an appeal. The Appellant Court had jurisdiction to entertain State's Appeal of pre-trial rulings that significantly impaired the prosecution of a charge.

11. State v. Swafford, 375 S.E.2d 637, 654 S.E.2d 297 (S.C. App. 2007): The Defendant Swafford attempted to introduce third-party guilt evidence in his Felony DUI (Death) and Leaving the Scene of an Accident (Death) indicating Gillespie was driving the truck at the time of the accident. Carol Johnson testified in camera that she is a school bus driver for Pickens County. Johnson alleges she knows Swafford and saw him about 12:30 p.m. the day of the accident in the passenger side of the truck at a stop sign. She described the driver as "a person that had long dirty blonde hair." She identified Gillespie in court as the driver. Brian Bobo also testified in camera alleging Gillespie was his best friend and told him the evening of the accident that he had been driving Swafford's truck and had been involved in a bad accident. Gillespie allegedly drove the truck away from the scene and then fled on foot. Robert Nealy, an investigator with the solicitor's office, testified in camera that a third witness, Greg Townsend, also claimed Gillespie admitted driving the truck at the time of the accident. Townsend later told Nealy he was not sure who told him Gillespie was driving. Townsend failed to appear in court the day of trial.

    The Court correctly ruled that At best, Johnson's testimony raises the mere suspicion that Gillespie may have been driving an hour prior to the accident, but offers no reliable proof that he was driving at the time of the accident. In like vein, Townsend's alleged statements to Nealy were so inconsistent they raised merely a bare suspicion of Gillespie's guilt.

    Under the case law in the State of South Carolina, Evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have no other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible. Before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party as stated in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941) and State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999).

The Court stated that you must look at the strength of the defense and not the strength of the State's case. The Court held that the trial judge in this case considered *Cooper*, reiterated the rule in *Gregory*, and considered the weakness of the proffered evidence rather than improperly focusing on the strength of the State's case. We recognize this is a close case. However, based on our limited standard of review, we find no reversible error by the trial judge in excluding the proffered evidence.

12. State v. Dantonio, 376 S.C. 594, 658 S.E.2d 337 (Ct. App. 2008): The Court discussed that a defendant's act may be regarded as the proximate cause of Felony DUI (Death) if it is a contributing cause of the death. The defendant's act need not be the sole cause of the death, provided it is a proximate cause actually contributing to the death of the deceased. One who inflicts an injury on another is deemed by law to be guilty of homicide where the injury contributes mediately or immediately to the death of the other. The fact that other causes also contribute to the death does not relieve the actor from responsibility.

13. State v. Rainwater, 376 S.C. 256, 657 S.E.2d 449 (2008): The Court ruled that it is improper for a Magistrate to grant a "directed verdict" based on the insufficiency of the evidence when no evidence has been presented. The Court also stated that prosecution of misdemeanor traffic violations in the Magistrate's Court by either an arresting officer or a supervisory officer assisting the arresting officer is not the unlawful practice of law even when an officer of one agency may assist another agency in the prosecution of the case.

14. State v. Batchelor, 377 S.C. 341, 661 S.E.2d 58 (2008): The Court stated that our Felony DUI law allows for accomplice liability in vehicular crimes such as Felony DUI. The Court held that Felony DUI is subject to accomplice liability based on a factual scenario that includes evidence of aiding and abetting as in this case. *The facts: a Father gave alcohol to his three sons- started driving to buy Marijuana- stopped because he was too drunk to drive- made his 15 year old son drive- his son wrecked into another car killing two people.*

15. State v. Moore, 377 S.C. 299, 659 S.E.2d 256 (Ct. App. 2008): The Court found under the circumstances presented, the record herein does not support a violation of any reasonable expectation of privacy assertion by Moore to warrant suppression of the evidence and we also conclude that Moore failed to particularize any specific injury suffered. Moreover, even if the officers exceeded the scope of consent, their search of the vehicle was still lawful under the automobile exception to the warrant requirement and the evidence was appropriately admitted into Moore's trial. The Defendant's vehicle was damaged during the search of it and the Defendant tried to use it to suppress the evidence from it in his criminal trial- the civil issue should be address in a civil case by the Defendant's brother- who was the owner of the vehicle.

16. State v. Parris, 692 S.E.2d 207, 387 S.C. 207(Ct. App. 2010): The South Carolina Court of Appeals held that testimony from the arresting officer was presented for the purpose of illustrating Parris's actions and attitudes after the accident and how Parris's unemotional response was one factor that led Officer Manley to believe Parris was under the influence not to show lack of remorse or comment on his lack of remorse. The Court cited State v. Horton, 359 S.C. 555, 571-72, 598 S.E.2d 279, 288 (Ct. App. 2004). The Court also held when a curative instruction was given concerning the defendant's right to remain silent and prior bad acts of the defendant, the defense accepted the trial court's ruling and did not contemporaneously object to the sufficiency of the curative charge. In order for the defense to preserve their issue for appeal. If the defense does not object to curative charge, no issue is preserved for appellate review.

17. State v. Galimore, 396 S.C. 471, 721 S.E.2d 475 (Ct. App. 2012): The Court of Appeals held that evidence of failing to drive on the right side of the road was sufficient to support finding that defendant committed an act prohibited by law or failed to observe a duty imposed by the law, and the granting of three week continuance to state after the quashing of the Felony DUI indictment was within discretion of trial court.

18. State v. Mimms, 2014-UP-489: The Court of Appeals stated that is no criminal intent required for the crime of DUI and veering off a roadway on one occasion was sufficient to show impaired driving.

19. State v. Looper (Andrew), 421 S.C. 384, 807 S.E.2d 203 (2017): The South Carolina Supreme Court stated that a party may appeal from a decision not amounting to a final judgment only where provided by statute.

20. State v. Morgan, 417 S.C. 338, 790 S.E.2d 27 (Ct. App. 2016): The Court of Appeals held that South Carolina's restitution statutes, which permit, but do not require, a sentencing judge to consider factors such as the defendant's resources, the victim's resources, rehabilitative effect, and the hardship on the victim under *S.C. Code § 17–25–322(B).* In contrast, upon the finding of a defendant's simple negligence, a civil judgment concerns only the victim's damages and is not limited to pecuniary loss. Thus, the Court ruled that the constructs of restitution and civil damages are separate and distinct and that a victim's signing of a covenant not to execute bars restitution as a condition of Appellant's probationary sentence.

VIDEOTAPE CASES

1. Pennsylvania v. Muniz, 110 S.Ct. 2638, 496 U.S. 582, 110 L.E.2d 528 (1990): Evidence of slurred speech and lack of muscular coordination exhibited by drunk driving arrestee during administration of sobriety tests, which were conducted and videotaped at police booking facility without prior administration of Miranda warnings, amounts to non-testimonial information and falls outside the scope of

the Fifth Amendment's privilege against compelled self-incrimination. Incriminating statements made by arrestee during police officer's routine recitation of instructions for sobriety and breath tests were not prompted by interrogation with meaning of Miranda and, therefore, need not be suppressed. However, answers to questioning which required suspect/arrestee to make express assertion of fact or belief was testimonial in nature and inadmissible absent Miranda warnings being administered.

2. State v. Peele, 298 S.C. 63, 378 S.E.2d 254 (1989): The Court followed the rule set forth by the U.S. Supreme Court in Berkemer v. McCarty, 468 U.S. 420 (1984), that ordinary traffic stops do not involve custody for purposes of Miranda.

3. State v. Jackson, 302 S.C. 313, 396 S.E.2d 101 (1990): Defendant arrested for DUI. He was videotaped and given a B/A test. The Solicitor viewed the tape and nol prossed the charges. The tape was erased and the original B/A report were lost. Defendant was later indicted. Judge ruled the trial could go on. Under Brady, Agurs, Trombetta, and Youngblood, the videotape was material. The Solicitor dropped the charges. The value of tape could not be replaced. The defendant had no other evidence. Reversed with no showing of bad faith.

4. State v. Landis, 362 S.C. 97, 606 S.E.2d 503 (S.C. App. 2004): The South Carolina Court of Appeals held that a state trooper who performed field sobriety tests on a defendant and arrested the defendant for DUI, after a state transport officer initiated the traffic stop of the defendant, was the arresting officer for the purpose of compliance with the videotaping statute. (Section 56-5-2953 of the South Carolina Code of Laws)

5. City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007): At the incident site, the arresting officer did not videotape the entire arrest as required by Section 56-5-2953 of the South Carolina Code of Laws because the officer's camera ran out of tape. The videotaping began upon activation of the officer's blue lights and recorded two field sobriety tests and the Miranda warnings, but the tape stopped before the officer administered a third field sobriety test and before respondent was arrested.

   At trial, respondent moved to dismiss the charges due to the officer's failure to provide a complete videotape from the incident site. The officer testified that a tape had never ended during an arrest before and that he turned on his blue lights and assumed the videotape was running as usual. The officer stated he did not know the tape was about to expire. The municipal court denied the motion pursuant to the statute on the grounds of exigent circumstances. The municipal court also cited State v. Huntley, 349 S.C. 1, 562 S.E.2d 472 (2002) and State v. Mabe, 306 S.C. 355, 412 S.E.2d 306 (1991), in support of its denial of respondent's motion to dismiss. The Defendant is found guilty by the jury of DUAC.

The case was tried before a jury, and respondent was found guilty. Respondent appealed her conviction, and the circuit court reversed, holding that respondent's motion to dismiss should have been granted. The circuit court distinguished Huntley and Mabe, the two cases relied upon by the municipal court in denying respondent's motion to dismiss. However, the circuit court did not address the finding of the municipal court that exigent circumstances excused compliance with the statute and simply held that the City violated the videotaping statute.

On appeal to the circuit court, the City reiterated its position that noncompliance was excused pursuant to Section 56-5-2953 (B). However, the circuit court's order did not address or even mention the exceptions in Section 56-5-2953 (B). The circuit court simply concluded, "Here, the legislature has established a procedure that must be followed in the making of a DUI arrest. Here, the procedure was not followed." While the circuit court correctly applied Section 56-5-2953 (B) of the statute, it omitted any mention of subsection 56-5-2953 (B).

The City did not seek a post-judgment ruling from the circuit court on the potential applicability of Section 56-5-2953 (B). This precludes our review of the applicability of the subsection (B) exceptions, as we may only review the circuit court's order for errors of law. **We cannot determine error regarding an issue not addressed by the circuit court.**

The statute at issue in Huntley was the implied consent statute which required a simulator test before administration of a breath test. That statute, Section 56-5-2950 (2006), is silent as to the remedy for noncompliance, whereas the statute in this case provides for dismissal of charges when the statute is inexcusably violated.

6. State v. Woodard, 2011-UP-113 (3/22/2011): The S.C. Court of Appeals held that the videotape in this case recorded only the audio of the first eight minutes of the video because the camera was focused on the inside of the car. Included in the first eight minutes of the video are Woodard's voice and the arresting officer's voice administering the Miranda warnings. Thereafter, the arresting officer realized the error in the focus of the camera, corrected the camera to focus outside the car, and captured Woodard's conduct, including three field sobriety tests, on video. The Court held that the videotape met the statutory requirements of section 56-5-2953(A).

7. State v. Branham, 392 S.C. 225, 708 S.E.2d 806 (Ct. App. 2011): The S.C. Court of Appeals ruled that the Magistrate's refusal to dismiss driving under influence cases on basis of State's failure to provide defendant with videotape of his datamaster test under S.C. Code Section 56-5-2953(B) (2006) was properly upheld. State met its obligation to produce, and datamaster ticket in record showed video was online and the defendant had access.

8. Murphy v. State, 392 S.C. 626, 709 S.E.2d 685 (Ct. App. 2011): The S.C. Court of Appeals held that the circuit court did not err when it denied defendant's motion to suppress the incident site videotape because it failed to record most of the field sobriety tests. Under the plain language of S.C. Code Section 56-5-2953(A)(1)(a)-(b), the video needed only to record the accused's conduct. The Court also held that the statute did not require the video be terminated upon the accused being placed in the police cruiser. The Court also found the datamaster records in line with the law. The Court used the law prior to 2009 amendment in the law- the court in a footnote stated that the current version of Section 56-5-2953 expressly requires the recording of field sobriety tests.

9. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 346, 713 S.E.2d 278, 285 (2011): The South Carolina Supreme Court held that the Legislature specifically provided for the dismissal of a DUI charge unless the law enforcement agency can justify its failure to produce a videotape of a DUI arrest. The Court held that under the specific facts of this case, we find the Town failed to satisfy any of the above-outlined statutory exceptions. The Court stated the statutory exceptions as: Subsection (B) of section 56-5-2953 outlines several statutory exceptions that excuse noncompliance with the mandatory videotaping requirements. Noncompliance is excusable: (1) if the arresting officer submits a sworn affidavit certifying the video equipment was inoperable despite efforts to maintain it; (2) if the arresting officer submits a sworn affidavit that it was impossible to produce the videotape because the defendant either (a) needed emergency medical treatment or (b) exigent circumstances existed; (3) in circumstances including, but not limited to, road blocks, traffic accidents, and citizens' arrests; or (4) for any other valid reason for the failure to produce the videotape based upon the totality of the circumstances. Significantly, the Town conceded in municipal court and before the circuit court that the initial three exceptions did not apply and could not justify its failure to videotape Roberts's DUI arrest. The Court held that dismissal is the appropriate sanction in the instant case as this was clearly intended by the Legislature and previously decided by this Court in City of Rock Hill v. Suchenski, 374 S.C. 12, 646 S.E.2d 879 (2007).

The Court also stated that their decision should in no way be construed as eradicating subsection (G) of section 56-5-2953. Instead, we emphasize that subsection (G) is still viable and must be read in conjunction with subsection (B) as these exceptions, under the appropriate factual circumstances, could operate to excuse a law enforcement agency's noncompliance due to the failure to equip a patrol vehicle with a video camera. The Court stated for example it could conceive of a scenario where a law enforcement agency establishes a "valid reason" for failing to create a video of the incident site by offering documentation that, despite concerted efforts to request video cameras, it has not been supplied with the cameras from DPS.

10. State v. Johnson (Bruce), 396 S.C. 182, 720 S.E.2d 516 (Ct. App. 2011): The South Carolina Court of Appeals held that the arresting officer violated statute

requiring videotaping of administration of breath tests by failure to videotape 2 ½ minutes of the scene video and the breath test itself. The state presented no valid reason for failure to comply statutory requirement under the videotape statute and did not supply any affidavits on either videotape at the scene or the breath testing site concerning any issues with them. The failure to comply with statutory requirement warranted dismissal by the Court.

11. State v. Johnson (John), 396 S.C. 424, 721 S.E.2d 786 (Ct. App. 2012): The Court held that presence of 33 prospective jurors in prosecution for driving under the influence (DUI) was sufficient to select a qualified jury panel from the jury pool to serve for a one week term; while jury selection statute required that a person selected by the presiding magistrate draw a minimum of 40 jurors, it did not require that 40 jurors be present and available in the jury pool before jury selection could proceed for a trial, and considering maximum number of potential peremptory challenges to primary jurors and alternate jurors, even 30 jurors would have been sufficient to select jury panel. Code 1976, §§ 22–2–90, 22–2–100.

12. State v. Manning, 400 S.C. 257, 734 S.E.2d 314 (Ct. App. 2012): The Court of Appeals looked at four issues:

1. The State was not required to provide an affidavit under Section 56-5-2953 because of the facts of this case. The defendant was already taken to hospital from the scene prior to the arresting officers arriving at the scene. It was impossible for the officer to videotape the defendant at the scene. The video recording was not required because the arresting officers were conducting an investigation of a traffic accident and the defendant was arrested at the hospital. The Court can look at the totality of the circumstances in which the trial court did and made the correct ruling.
2. The defendant argued that probable cause for his arrest did not exist under Section 56-5-2946. The Court held that under the facts of this case, the arresting officers did have probable cause for the arrest. Cpl. Hallman knew that the accident occurred at 5am and was so violent that the car drifted off the road over 500 feet. He smelled alcohol in and around the vehicle and saw a beer bottle in the accident scene. He spoke to fire service personnel and EMS at the scene that was present with the defendant shortly after the accident. The defendant told Trooper Baker that he was the driver. Trooper Baker smelled alcohol on the defendant and saw injuries on the defendant that showed that he was in an accident.
3. The trial started with the defendant being tried for Felony DUI and possession of drug charges. The defendant made a motion to sever the charges after the indictments were read to the jury. The Court ruled to sever after finding out that the drugs were not present in the defendant's blood from the SLED report. The defendant asked for a mistrial because the jury heard about the drugs. The Court refused the motion because the defendant did not make the motion before the jury was qualified. The Court of Appeals found that Manning waived this

issue on appeal by waiting to make the motion after the jury had been read the indictments.

4. The defendant argued that under Section 56-5-2950 (A) where the statute begins with "a person who drives" which is a statement on the facts and the ID of the driver was the primary issue at trial. The Court held that the circuit court is required to charge only the current and correct law of South Carolina

13. City of Greer v. Humble, 402 S.C. 600, 742 S.E.2d 15 (Ct. App. 2013): The Greer City Court dismissed the DUI charge against the Defendant after a motion to dismiss because the arresting officer's affidavit was deficient on its fact, and that the supplemental testimony did not cure the deficiency. The Court also ruled that the City of Greer failed to maintain its video recording equipment mandated dismissal of this DUI charge. : The arresting officer's video recording equipment was inoperable at the time of this arrest. He submitted an affidavit stating, "at the time of the defendant's arrest, or probable cause determination, the video equipment in the vehicle I was operating was in an inoperable condition and reasonable efforts had been made to maintain the equipment in an operable condition." The arresting officer also testified about persistent issues in their vehicles with this equipment by Digital Ally making of the equipment. The City Court granted the defendant's motion to dismiss finding that the arresting officer's affidavit "was deficient on its face, and that the supplemental testimony did not cure the deficiency." Specifically, the municipal court determined the arresting officer's testimony demonstrated that the City reacts quickly to each malfunction, but that "the City only reacts." The Court also found that there was no evidence showing any steps taken by the City to keep the video recording equipment operable. The log submitted by the officer indicated that the City did not wish to pay for the on-site visit after the manufacturer offered to fix it. The visit did not occur. The Court also stated that City may not have known the precise cause of the problem, but the City knew of an on-going problem, specifically with the camera in the vehicle at the incident site. The City Judge found that to be unreasonable and dismissed the case. The City appealed and the Circuit Court Judge reversed the City Judge because the City Judge as a matter of law narrowly construed the statute and erred in dismissing the case. The Court of Appeals reversed the Circuit Judge and reinstated the City Judge's original ruling and ordered the DUI case to be dismissed and agreed with the City Judge's original ruling.

14. State v. Henkel, 746 S.E.2d 347, 404 S.C. 626 (2013): The Supreme Court reversed the Court of Appeal and reinstated the defendant's DUI conviction. The Supreme Court held that Section 56-5-2953(A) was videotaping was intended to capture the interactions and field sobriety testing between the subject and the officer in a typical DUI traffic stop where there are no other witnesses. In this case, numerous officers and emergency personnel observed the defendant's conduct and the legislative concerns with videotaping one-on-one traffic stops are not present. The Court ruled that the phrase "as soon as videotaping is practicable in these circumstances," applies to both when videotaping must

"began" and when videotaping must "conform to the provisions of this section." The Court also held that when an individual's conduct is videotaped during a situation provided for in subsection (B), compliance with subsection (A) must begin at the time videotaping becomes practicable and continue until the arrest is complete. Subsection (A) of the statute as it existed at the time of respondent's arrest only required respondent's conduct be videotaped and Miranda warnings be given prior to field sobriety tests. We find the audio recording of respondent's field sobriety tests adequately captured his conduct at the scene of the traffic accident investigation. Additionally, because respondent was given Miranda warnings prior to the time videotaping became practicable, we hold the videotape complies with subsection (A) because the videotape need only begin complying with subsection (A) from the time videotaping became practicable.

15. State v. Gordon, 414 S.C. 94, 777 S.E.2d 376 (2015): The Supreme Court affirmed the Court of Appeals in affirming the Circuit Court ruling in part and remanding it back to the Circuit Court. The Supreme Court ruled that Section 56-5-2953(A)(1)(a)(ii) statute requiring video recording of arrest for driving under influence (DUI), including any field sobriety tests administered at arrest site, required that defendant's head be visible in recording during administration of horizontal gaze nystagmus test. However, the Court went on to state that even if the video of a field sobriety test is of such poor quality that is admission is more prejudice than probative, the remedy is not be to dismiss the DUI charge, but instead, the remedy is to redact the field sobriety test from the video and exclude testimony about the test. If there was still sufficient evidence to present the DUI case such as the breath alcohol analysis report, video of other field sobriety tests, and the defendant's statement that he had consumed four beers, the case can be given to the jury for resolution.

16. State v. Christopher Johnson, 408 S.C. 544, 758 S.E.2d 911 (Ct. App. 2014): The Court stated that a police department's noncompliance with the statute requiring video recording of traffic stop was excused as the a DUI arrest when the police cruiser of the arresting officer had not been equipped with a recording device. The police department had undertaken extensive efforts to obtain recording devices from DPS (Dept. of Public Safety). The department had expended its own funds to purchase additional camera systems after DPS provided department with limited number of camera systems and informed the department that it could not receive requested number of camera systems at one time, as of the date of the defendant's trial, the department had spent $463,463.99 to purchase 89 digital-based camera systems, statute was enacted so that law enforcement agencies would not have to spend their own money on camera systems, and an employee from DPS testified that it would take 15 years to fulfill number of camera systems requested statewide in single year.

17. State v. Sawyer, 409 S.C. 475, 763 S.E. 2d 183 (2014): The SC Supreme Court ruled that a silent video recording of breath test, breath test results, and related testimony and evidence in prosecution of defendant for DUI recording, in which

the video lacked audio portion due to then-unknown device malfunction, did not strictly comply with statutory requirements that video recording at the site of the breath test of a person charged with DUI "must include the reading of *Miranda* rights" and "the person being informed that he is being videotaped, and that he has the right to refuse the test," The State did not show that any statutory exception applied to allow admission of recording, results, and related evidence despite recording's noncompliance.

18. State v. Taylor, 411 S.C. 294, 768 S.E.2d 71 (Ct. App. 2014): The Court of Appeals held that Section 56-5-2953 of the South Carolina Code of Laws was not violated even though the video of the state trooper omitted Taylor from its view during the repositioning of the trooper's patrol vehicle, none of the field sobriety tests administered and none of the other statutory requirements occurred while the defendant was out of the camera's view. The Court stated that *State v. Suchenski, Murphy v. State, State v. Gordon* demonstrate the plain language of the statute does not require the video to encompass every action of the defendant, but requires video of each event listed in the statute. Significantly, in each of these cases, the propriety of dismissal of the charges depended on whether the officer complied with the mandatory provisions of the statute. In this case, the officer complied with mandatory provisions of the statute The Court also stated that because the statute was not violated in this situation, submitting an affidavit was unnecessary.

19. State v. Walters, 418 S.C. 303, 792 S.E.2d 251 (Ct. App. 2016): The Court of Appeals ruled that the video recording at issue in this case properly included the recording of any field sobriety tests administered as required by section 56–5–2953(A). Walters's head is visible during the entire recording of the HGN test. In addition, SCHP trooper's arm is visible as he administers the test, and his instructions are audible. While Trooper's finger disappears at times during the test as his hand moves in front of Walters's face, the statute does not require video recordings of the HGN test include views of all angles of the test. Such a requirement would be unreasonable given the limitations of dashboard cameras.

20. Teamer v. State,416 S.C. 171, 786 S.E.2d 109 (2016)- The South Carolina Supreme Court reversed the PCR Court and reinstated the Defendant's convictions for Murder, Assault and Battery with Intent to Kill, Burglary First, Felony DUI (GBI), and Failure to Stop with GBI. The Court held that the PCR Court misinterpreted Section 56-5-2953 of the South Carolina Code. The Court Stated that it had previously interpreted the exceptions in subsection (B) to not require a sworn affidavit in all circumstances: Subsection (B) of section 56-5-2953 outlines several statutory exceptions that excuse noncompliance with the mandatory videotaping requirements. Noncompliance is excusable: (1) if the arresting officer submits a sworn affidavit certifying the video equipment were inoperable despite efforts to maintain it; (2) if the arresting officer submits a sworn affidavit that it was impossible to produce the videotape because the defendant either (a) needed emergency medical treatment or (b) exigent

circumstances existed; (3) in circumstances including, but not limited to, road blocks, traffic accidents, and citizen's arrests; or (4) for any other valid reason for the failure to produce the videotape based upon the totality of the circumstances.

The Court stated that based on its interpretation of the statute in Town of Mount Pleasant v. Roberts, 393 S.C. 332, 346, 713 S.E.2d 278, 285 (2011), an affidavit is not needed to qualify for the third and fourth exceptions. As the Defendant in this case was arrested for Failure to Stop in connection with a traffic accident, this case falls within the third exception. The Court has recently interpreted the third exception, regarding traffic accidents, to excuse the videotaping requirement only up to the point where videotaping becomes practicable under State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015). In this case, the Defendant's vehicle headlights were off, the Spartanburg County Sheriff's Deputy could not see the Defendant's vehicle until it collided with the other vehicle. Once the accident occurred, the urgency of the situation (calling for back-up, assessing injuries, and securing Defendant who was attempting to flee), became the Deputy's concerns. The Court also noted that the Defendant was not suspected of DUI until the SCHP trooper spoke with the Defendant at the hospital. The failure to initiate videotaping in this case could also be excused under the totality of the circumstances, which is the fourth exception. As this Court recognized in Henkel, Subsection (A) was intended to capture the interactions and field sobriety testing between the subject and the officer in a typical DUI traffic stop where there are no other witnesses. This situation, created solely by the Defendant's dangerous and evasive driving, does not resemble a typical traffic stop. The legislative concerns with videotaping one-on-one traffic stops are not implicated under the facts of this case, and under the totality of the circumstances, the Deputy's failure to produce a videotape was reasonable and excusable.

APPEAL ISSUES

State v. Looper (Andrew), 421 S.C. 384, 807 S.E.2d 203 (2017): The South Carolina Supreme Court stated that a party may appeal from a decision not amounting to a final judgment only where provided by statute.

Spalt v. S.C.D.M.V., 816 S.E.2d 579 (2018): The South Carolina Supreme Court ruled that the Administrative Procedures Act permits an appeal only from a final decision of the Administrative Law Judge (ALJ). The Court also stated that an order of the ALC remanding to the agency is not an immediately appealable order. Because the order of the ALC in this case remanded the case to the South Carolina Office Motor Vehicle Hearings (OMVH) for further proceedings, the court of appeals was correct to dismiss the Department's appeal.

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A View from the U.S. Attorney's Office: Combatting Violent Crime

Alyssa Leigh Richardson

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Introduction

Rod J. Rosenstein
Deputy Attorney General of the United States

The fundamental duty of government is to keep its people safe, which is why one of the Department of Justice's primary goals is reducing crime in America. As each of you know, we do this best by working with our state, local, and tribal law enforcement partners. Each and every day, federal agents and prosecutors share information and coordinate strategies with our state, local, and tribal partners to find violent criminals, bring them to justice, and protect innocent people from harm.

That is why Attorney General Sessions renewed and reinvigorated the Project Safe Neighborhoods program—or PSN. PSN is founded on a set of core principles, each of which encourages United States Attorneys' Offices to work with federal, state, local, and tribal law enforcement; community partners; researchers; and other stakeholders to develop customized strategies to reduce violent crime in our communities.

We know PSN works. In some areas, case studies showed violent crime reductions of over 40%.[1] Your work results in lives saved, families left intact, and communities able to grow and flourish.

PSN is not a Washington-centered program. It empowers you to work with local stakeholders to determine what works in your district. Every city and town faces different circumstances and unique challenges, and your crime reduction plan should fit those particular details.

This issue of the *Department of Justice Journal of Federal Law and Practice* highlights effective strategies that PSN programs across the country are using and provides valuable information about strategies for you to consider integrating into your PSN crime reduction efforts. I hope that you use it. By learning from our colleagues' experiences, I am confident that we can make our Department more effective and make our country safer.

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[1] *Summary of PSN Research Findings* (Mich. State Univ. 2013), http://www.psnmsu.com/wordpress/wp-content/uploads/2017/10/MSU-Summary_Key_PSN-Findings-2.pdf.

What is PSN?

Project Safe Neighborhoods is a nationwide initiative that brings together federal, state, local and tribal law enforcement officials, prosecutors, and community leaders to identify the most pressing violent crime problems in a community and develop comprehensive solutions to address them.

"[O]ur goal is not to fill up the courts or fill up the prisons. Our goal is not to manage crime or merely to punish crime. Our goal is to reduce crime, just as President Trump directed us to do. Our goal is to make every community safer—especially the most vulnerable." - ***Attorney General Sessions***

FOUNDATIONS OF THE STRATEGY

- **Community-Based** –Each local program is contoured to fit the specific violent crime problem in that district.
- **Targeted** – Utilizes law enforcement and community intelligence, along with cutting-edge technology, to identify and target the most violent offenders for enforcement action.
- **Comprehensive** – Directs United States Attorneys to marry enforcement efforts with support of prevention and reentry strategies to truly combat violent crime in a lasting way.

PSN WORKS

Independent research shows that PSN works. Michigan State University's School of Criminal Justice found that:

PROJECT SAFE NEIGHBORHOODS RESULTS (2000-2006)

Non-PSN locations	PSN Program Sites
0.9%	**4%-20%**
Reduction in violent crime	*Reduction in violent crime*

- More active PSN program = larger, more sustained reduction
- PSN case studies showed program reduced targeted crimes up to **42%**

Every United States Attorney is implementing a PSN program that incorporates these standard features:

1. **Leadership** by the United States Attorney to convene all partners;
2. **Partnerships** at all levels of law enforcement and with the community;
3. **Targeted enforcement efforts** that:
   - utilize the full range of available data, methods, and technologies to identify the offenders that are driving violent crime rates in the most violent locations in the district; and
   - ensure prosecution of those offenders in the federal, state, local, or tribal system – whichever provides the most certain and appropriate sanction;
4. **Prevention** of additional violence by prioritizing efforts such as:
   - ensuring public awareness of the violent crime reduction strategy and enforcement results;
   - communicating directly to offenders about the consequences of continuing violent behaviors;
   - supporting locally based prevention and reentry efforts; and
5. **Accountability** for results based on outcome (reduction in violent crime), not merely output (numbers of investigations or prosecutions).

SUPPORT FOR PSN

"The level of the violence in America is tearing families apart, stealing opportunities for future successes, and destroying lives. Our communities deserve the attention of police, prosecutors, community members, and the faith-based community working together. I have been intimately involved with Project Safe Neighborhood in Indianapolis for over ten years. I know PSN is not just an enforcement program but one that leverages these joint outreach efforts to make our most violence neighborhoods safer. I am proud to be part of the PSN team."

Reverend Mel Jackson
Pastor Christian Missionary Baptist Church, Indianapolis, IN

"Major Cities Chiefs believe that effectively reducing crime requires partnerships between local, state, and federal law enforcement and prosecutors, with support from the community. That is why the largest police agencies in the Nation strongly support the Project Safe Neighborhoods program. Working together, we identify the most serious violent criminals and ensure they are taken off the streets, so they can do no more harm. PSN also recognizes that engaging the community is key, because we are all in this together. We are proud to partner with the Department of Justice in this work."

Tom Manger
Chief of Police, Montgomery County, MD
President, Major Cities Chiefs – Largest Police Departments in the Nation

Research Foundations and Implications for Practice

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As the original Project Safe Neighborhoods (PSN) initiative was being planned in the early 2000s, there was a very limited research foundation for believing that a national initiative focused on gun and gang violence could reduce violent crime in communities throughout the United States. PSN demonstrated that highly focused enforcement strategies, built on local, state, tribal, and federal partnerships, complemented with prevention and re-entry efforts, could reduce violent crime and enhance public safety. Since that time, additional research has emerged that supports the PSN core design element of targeted and prioritized enforcement. This article reviews the research conducted from the early years of PSN as well as relevant criminological research that has emerged since the launch of PSN in the 2001–2002 period. The focus then shifts to the implications for practice as PSN once again serves as a cornerstone of the nation's efforts to reduce violent crime and foster neighborhood safety.

I. PSN 1.0 research findings

At the outset of PSN, experiential knowledge of police and prosecution leaders, as well as classic criminological research demonstrating that a very small percentage of the population committed the bulk of violent crime, suggested that prioritized and targeted enforcement aimed at chronic, repeat offenders held promise.[1] Additionally, a series of studies emerged in the mid-to-late 1990s which suggested that highly focused enforcement strategies had the potential to reduce levels of violence. Specifically, a series of studies conducted in Kansas City, Indianapolis, and Pittsburgh found that police patrols directed towards violent crime hotspots, with a focus on illegal gun carrying and use, were associated with significant

[1] MARVIN WOLFGANG ET AL., DELINQUENCY IN A BIRTH COHORT (Univ. of Chi. Press 1972).

declines in violent crime.[2] Boston Ceasefire employed what became known as a focused deterrence strategy and demonstrated significant declines in youth homicide and shootings.[3] The focused deterrence model was directed at violence associated with gangs and violent street crews, and included direct communication of a deterrence message to high risk gang members. Richmond's Project Exile suggested that federal prosecution of illegal gun carrying and use held violence reduction potential.[4] These studies formed the basis of the United States Department of Justice's Strategic Approaches to Community Safety Initiative. Evaluations in Indianapolis[5] and Los Angeles,[6] as well as a national evaluation, found that this data-driven, focused approach to violence reduction was associated with declines in violent crime.[7]

This series of initiatives and the associated evaluations provided support for the focused enforcement strategy embodied in PSN. Additionally, experience in federal, state, and local task forces, as well as the High Intensity Drug Trafficking Areas program, demonstrated the value of enforcement partnerships. Similarly, community policing initiatives and programs like Weed and Seed demonstrated the value of partnerships with the community. The elements of focused enforcement, data-driven processes, and partnerships thus became foundations of PSN.

---

[2] Lawrence W. Sherman & Dennis P. Rogan, *Effects of Gun Seizures on Gun Violence: 'Hot Spots' Patrol in Kansas City*, 12 JUST. Q. 673 (1995); Edmund F. McGarrell et al., *Reducing Firearms Violence through Directed Police Patrol*, 1 CRIMINOLOGY & PUB. POL'Y 119 (2001); JACQUELINE COHEN & JENS LUDWIG, POLICING CRIME GUNS, IN EVALUATING GUN POL'Y 217 (2003).

[3] Anthony A. Braga et al., *Problem-oriented Policing, Deterrence, and Youth Violence: an Evaluation of Boston's Operation Ceasefire*, 38 J. OF RES. CRIME & DELINQ. 195, 207 (2001).

[4] Richard Rosenfeld et al., *Did Ceasefire, Compstat, and Exile Reduce Homicide?,* 4 CRIMINOLOGY PUB. POL'Y 419 (2005).

[5] Edmund F. McGarrell et al., *Reducing Homicide through a "Lever-Pulling" Strategy*, 23 JUST. Q. 214, 218 (2006).

[6] George Tita et al., *Reducing Gun Violence: Results from an Intervention in East Los Angeles (*RAND Corp. 2003).

[7] Jan Roehl et al., *Strategic Approaches to Community Safety Initiative (SACSI) in 10 U.S. Cities: The Building Blocks for Project Safe Neighborhoods* (U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, NAT'L INST. OF JUSTICE Oct. 2005).

PSN was launched in late 2001–2002. During the initial five years of PSN, a series of evaluations were conducted that demonstrated the PSN approach could result in reduced violent crime. A series of case studies were conducted by PSN research partners as well as a national team of researchers at Michigan State University. These studies revealed consistent declines in violent crime ranging from single digits to over 40% declines.[8]

Complementing the case studies, a national evaluation of PSN was conducted. An initial finding was very suggestive that federal prosecution of gun crimes was associated with declines in violent crime with lower rates of federal prosecution for gun crimes with districts with high rates of federal prosecution indicated that high rate districts experienced significant declines in violent crime.

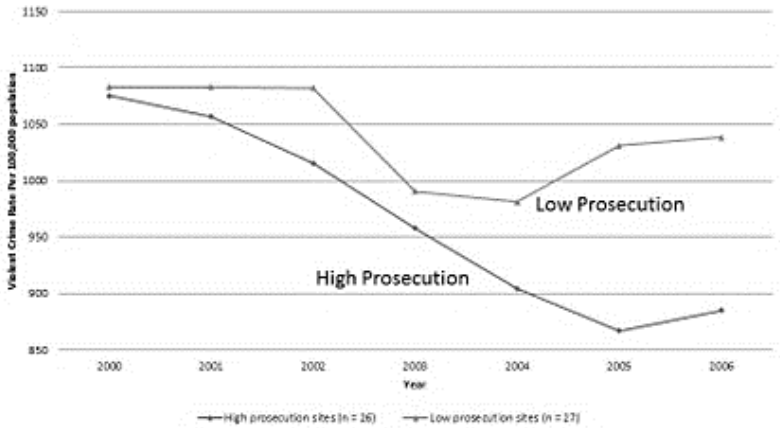

Figure 1. Violent Crime Trends in PSN Target Cities by Level Federal Gun Crime Prosecution, 2000–2006

The full evaluation included levels of prosecution as one of several indicators of implementation of PSN. The evaluation focused on cities with populations of 100,000 and above and compared PSN target cities with non-target cities. A central finding was that PSN target cities experienced a near 9% decline in violent crime during a period when non-target cities experienced no meaningful change in violent crime. More telling, PSN target cities in districts with high levels of

[8] *Summary of PSN Research Findings* (Mich. State Univ. 2013), http://www.psnmsu.com/wordpress/wp-content/uploads/2017/10/MSU-Summary_Key_PSN-Findings-2.pdf.

implementation experienced a 13% decline in violent crime compared to non-target cities in low implementation districts that experienced an 8% increase in violent crime.[9] This difference reflected a greater than 20% decline in PSN target cities in high implementation districts (see Table 1). The research team conducted additional analyses that factored in a variety of other potential explanations for the reductions in violent crime such as levels of economic disadvantage, levels of police resources, and levels of incarceration. With these factors considered, PSN was conservatively estimated to have accounted for at least a 4% decline in violent crime.[10] Supplemental analyses that focused on firearms homicides specifically, found that PSN target cities in high implementation districts had over a 10% decline in firearm homicides, target cities in medium implementation districts experienced no change in firearm homicides, and target cities in low implementation districts had over a 10% increase in firearm homicides. Non-PSN target cities also had over a 10% increase in firearms homicides.[11]

Level of PSN Dosage	PSN Target Cities	Non-target Cities
Low	-5.3%	**+7.8%**
Medium	-3.1%	<-1.0%
High	**-13.1%**	-4.9%
	-8.89% ⟷	**-0.25%**

Table 1. Violent Crime Trends by PSN Target and Non-Target Cities and Levels of Implementation, 2000–2006

[9] *Id.*

[10] Edmund McGarrell, et al., *Project Safe Neighborhoods and Violent Crime Trends in U.S. Cities: Assessing Violent Crime Impact*, 26 J. QUANTITATIVE CRIMINOLOGY 165 (2010).

[11] *Summary of PSN Research Findings*, *supra* note 8.

Whether the case studies, national evaluation, or supplemental analyses, the research associated with PSN 1.0 was consistent with an interpretation that PSN reduced violent crime and victimization. The level of magnitude was dependent on the intensity of implementation of PSN. Further, the leadership of the United States Attorney and the United States Attorney's PSN team; the leadership of other key local and state leaders (for example, Chief of Police, local prosecutor); the local, state, tribal, and federal partnerships; and the integration of research and analysis were associated with higher levels of implementation. Since these early days of PSN, additional criminological research has emerged that further supports the design elements of PSN.

[12] Wesley Jennings et al., *On the overlap between victimization and offending: A review of the literature*, 17 AGGRESSION & VIOLENT BEHAV. 16 (2012).
[13] Andrew Papachristos et al., *Social Networks and the Risk of Gunshot Injury*, 89 J. URB. HEALTH 992 (2012).
[14] DAVID WEISBURD ET AL., PLACE MATTERS: CRIMINOLOGY FOR THE TWENTY-FIRST CENTURY (Cambridge Univ. Press 2016).

Domestic Violence Related Gun Prosecutions

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I. Introduction

In April of 2015, in a small rural town in Eastern Utah, a man shot and killed his wife and then took his own life with the same gun. Due to the man's prior record of domestic violence, he was restricted from possessing a firearm pursuant to 18 U.S.C. § 922(g)(9). The fact that the man had illegally obtained a firearm remained unknown to law enforcement until the time of the murder-suicide. Tragically, similar domestic homicides occur frequently in Utah and in communities all throughout the United States.

Violence against women in the United States occurs all too often at the hands of a current or former spouse or partner. When domestic violence escalates to the level of homicide, the abusing hand is usually holding a gun. The Supreme Court has recognized that "[f]irearms and domestic strife are a potentially deadly combination nationwide." *United States v. Hayes*, 555 U.S. 415, 427 (2009).

Congress has provided federal prosecutors the means to divest domestic abusers of firearms—the preferred killing tool within abusive American homes. Nearly 20 years ago, Congress recognized that the existing federal firearms restrictions were insufficient to dispossess perpetrators of domestic violence of their firearms. In an effort to protect victims of domestic violence, Congress passed the Lautenberg Amendment, codified in 18 U.S.C. § 922(g)(9). This provision amended the Federal Gun Control Act of 1968 by criminalizing the possession of firearms by individuals convicted of a misdemeanor crime of domestic violence. The bill passed with near unanimous support and plainly demonstrates Congressional recognition that "anyone who attempts or threatens violence against a loved one has demonstrated that he or she poses an unacceptable risk, and should be prohibited from possessing firearms." 142 Cong. Rec. S11877 (Sept. 30, 1997) (statement of Sen. Lautenberg).

The firearms restriction delineated in § 922(g)(9) is supported by empirical data that demonstrates that domestic violence abusers are at increased risk for committing future violence and that their access to firearms gravely increases the potential for serious physical harm within the home. For instance, domestic violence offenders that possess a firearm are more likely to threaten use of firearms against their intimate partners. Emily F. Rothman et al., *Batterers' Use of Guns to Threaten Intimate Partners*, J. AM. MED. WOMEN'S ASS'N, 60, 62–68 (2005). Domestic abusers who possess guns also tend to inflict the most severe abuse on their partners. *Id*. Strong evidence links the presence of guns in a domestic violence situation with an increased probability of homicide. Alison J. Nathan, *At the Intersection of Domestic Violence and Guns: The Public Interest Exception and the Lautenberg Amendment*, 85 CORNELL L. REV. 822, 824 (2000). A 2003 study found that access to firearms increased the risk of an intimate

partner homicide by more than five times when compared to situations without weapons. Jacquelyn C. Campbell et al., *Risk Factors For Femicide in Abusive Relationships: Results From A Multi-Site Case Control Study*, 93 AM. J. PUB. HEALTH 1089, 1092 (2003). Nationally, more than two-thirds of spouse and ex-spouse homicide victims are killed with a firearm. ALEXIA COOPER AND ERICA L. SMITH, DEP'T OF JUSTICE, HOMICIDE TRENDS IN THE UNITED STATES, 1980–2008, 20 (2000).

Removing guns from the homes of convicted abusers will "materially alleviate the danger of intimate homicide." *United States v. Booker*, 644 F.3d 12, 26 (1st Cir. 2011). For this reason, the goal of § 922(g)(9) in "preventing armed mayhem" is an "important governmental objective." *United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010). Federal prosecutors can advance Senator Lautenberg's vision of reducing domestic gun crimes and save American lives by aggressively prosecuting armed perpetrators of domestic violence.

II. So you want to charge § 922(g)(9)?

Consistent enforcement of § 922(g)(9) would undoubtedly go a long way toward curbing domestic violence homicides in this country, but the charge is rarely used compared to § 922(g)(1), which prohibits felons from possessing firearms. Given the abundant evidence showing that domestic violence misdemeanants are at least as dangerous as the average felon, one may wonder why we see this striking disparity. It seems more likely a product of expediency than judiciousness: prosecutors typically know what a felony conviction is, and are frequently called to prove such convictions in court. The statutory definition of a "misdemeanor crime of domestic violence," however, has often been the subject of debate in appellate courts:

> [T]he term "misdemeanor crime of domestic violence" means an offense that: (i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

18 U.S.C. § 921(a)(33)(A) (2015).

As federal prosecutors and courts have attempted to map a myriad of state domestic violence statutes onto this somewhat narrow definition, they have rarely found a one-to-one match. Even a defendant with a seemingly straightforward conviction for a misdemeanor domestic violence assault may turn out not to be restricted under § 922(g)(9), if the specific elements under which he was convicted do not match the federal definition. This can make the prospect of charging § 922(g)(9) somewhat daunting, which likely explains why prosecutors prefer to bring felony charges against an individual.

Thankfully, recent court decisions have significantly narrowed the issues attorneys must consider when prosecuting a § 922(g)(9) case. While some questions remain unresolved, prosecutors are more readily able to determine, with some certainty, when a prior domestic violence conviction will restrict an individual under federal law. The screening process will often require more legwork than the average firearms case, and close cases may still generate appellate litigation. However, we owe it to domestic violence victims to find ways to prosecute this dangerous crime.

A. Domestic violence relationship

The definition of a "misdemeanor crime of domestic violence" in § 921(a)(33)(A) specifically defines the relationship the defendant must have to the victim in the prior case in order for the conviction

to restrict him under § 922(g)(9). The offense, as quoted above, must be "committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." Many states, however, use general assault statutes to prosecute domestic violence crimes, making it impossible to determine the relationship of the parties from the elements of the offense itself.

Courts that have considered this issue have uniformly held that the relationship between the parties need not be an element of the prior offense in order to qualify the prior conviction as a "misdemeanor crime of domestic violence." *See United States v. Hayes*, 555 U.S. 415, 426 (2009); *see also United States v. Heckenliable*, 446 F.3d 1048, 1051–52 (10th Cir. 2006) ("[T]he use of the singular noun 'element' is indicative that the misdemeanor offense requires one element, namely, the use of force."); *United States v. Belless*, 338 F.3d 1063, 1066 (9th Cir. 2003); *United States v. Barnes*, 295 F.3d 1354, 1364 (D.C. Cir. 2002); *United States v. Meade*, 175 F.3d 215, 218–19 (1st Cir. 1999); *United States v. Smith*, 171 F.3d 617, 620 (8th Cir. 1999).

This is not to say that the relationship between the parties is irrelevant. In order to succeed under § 922(g)(9), the prosecution must prove that the prior conviction involved one of the listed relationships, "but the relationship need not be an element of the underlying statute." *See United States v. Vinson*, 794 F.3d 418, 420–21 (4th Cir. 2015) (quoting *Hayes*, 555 U.S. at 426). This will be easily done in most cases, as even states that use a general assault statute for domestic violence cases require that an intimate relationship be shown in order to add the "domestic violence" moniker.

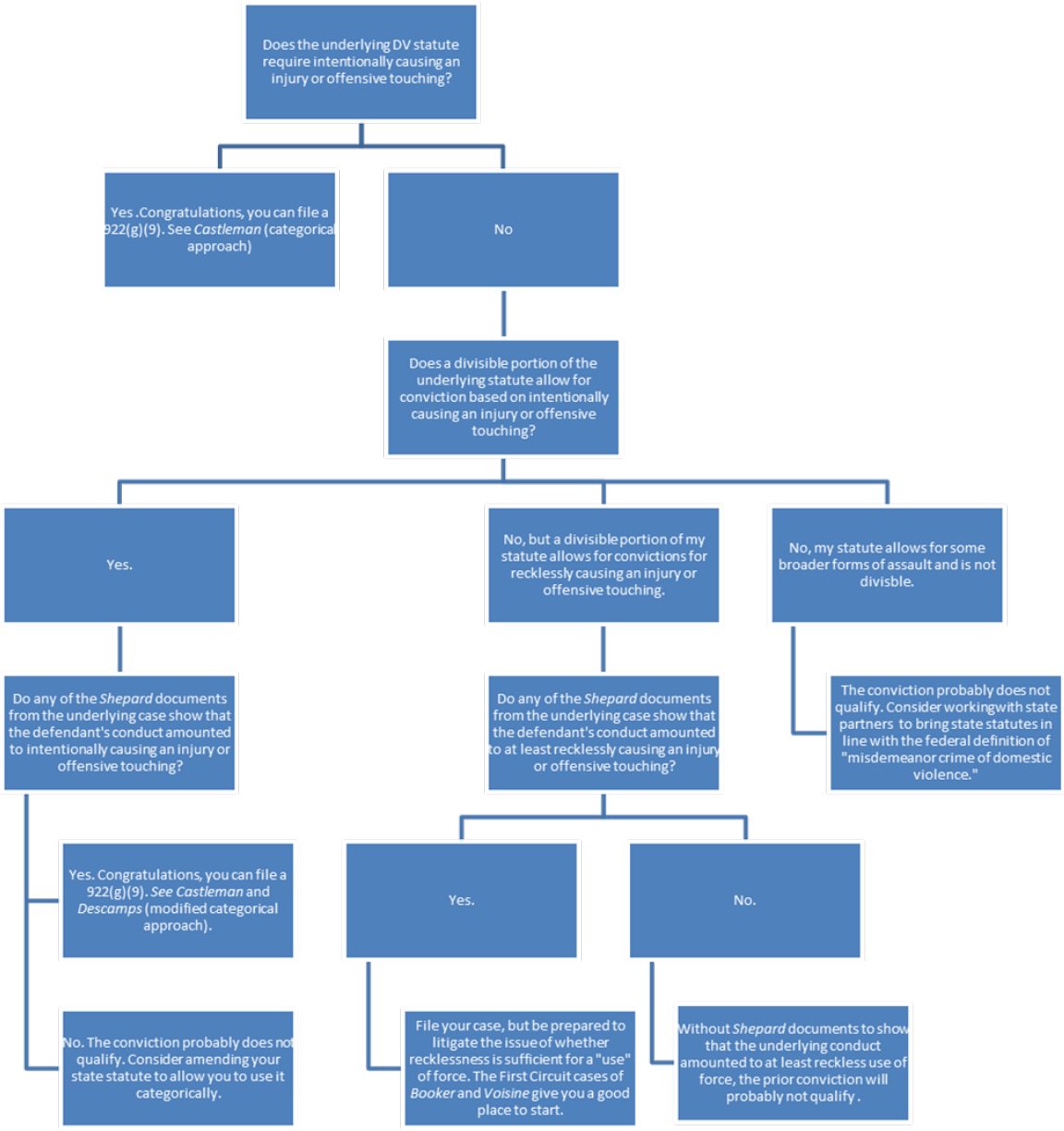
B. Physical force

The only necessary element for a prior offense to qualify under § 922(g)(9), then, is "the use or attempted use of physical force, or the threatened use of a deadly weapon." 18 U.S.C. § 921(a)(33)(A) (2015). But what qualifies as "physical force" for purposes of this section? Would a misdemeanor assault statute that penalizes causing injury necessarily require use of force as an element? What about a battery statute that referred only to offensive touching? Courts struggled over questions like these for years, but the recent Supreme Court decision in *United States v. Castleman* finally gave a clear answer: "Section 922(g)(9)'s 'physical force' requirement is satisfied by the degree of force that supports a common-law battery conviction—namely, offensive touching." *United States v. Castleman*, 134 S.Ct. 1405, 1410 (2014).

Prior to the *Castleman* decision, some courts had held that misdemeanor assault statutes punishing causation of injury, but silent as to force, would not require using force "as an element," because it is possible to cause injury through indirect means. The Court dismissed these arguments as facetious, noting that "[t]he common-law concept of 'force' encompasses even its indirect application, making it impossible to cause bodily injury without applying force in the common law sense." *See id* at 1414. Therefore, any misdemeanor domestic violence statute requiring causation or attempted causation of injury would necessarily meet the "physical force" element of § 922(g)(9).

With those two clarifications, the Supreme Court has vastly simplified what was once the most complicated aspect of screening a misdemeanor domestic violence conviction for a § 922(g)(9) case. The Model Penal Code definition of assault ("purposely, knowingly, or recklessly causing bodily injury to another") and the common law definition of battery ("harmful or offensive contact") both meet the "physical force" element to qualify as a "misdemeanor crime of domestic violence" under § 922(g)(9). As many state codes are modeled after those sources, the *Castleman* decision should help attorneys successfully prosecute § 922(g)(9) cases.

Figure 1: Flowchart



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III. *United States v. Dylann Storm Roof* [58]

Clockwise, from upper left: Suzie Jackson, Ethel Lance, Rev. Dan Simmons Sr., Cynthia Hurd, Rev. Clementa Pinckney, Rev. Sharonda Coleman Singleton, Rev. Myra Thompson, Rev. Depayne Middleton, Tywanza Sanders.

In the early evening of June 17, 2015, Dylann Roof walked into a Bible study at "Mother" Emanuel African Methodist Episcopal (A.M.E.) Church in Charleston. Roof had planned for months to murder African-American parishioners, yet Roof's victims welcomed him, and he joined the Bible study for more than half an hour. As the group, with Bibles still open, stood to close in prayer, Roof began methodically executing one after the other. Having fired more than seventy rounds from his Glock .45 pistol, Roof's attack left nine victims dead, five survivors traumatized, and an array of family members, loved ones, and community members devastated.

A. Roof's Attack

Roof entered through a side door that leads to the fellowship hall of Mother Emanuel. The fellowship hall is on the ground floor below an elevated sanctuary. The church sits just blocks from the busy tourist section of Charleston, South Carolina, though the current location is not the church's first.[59] After Mother Emanuel's founding in the early 1800s, it was shut down and outlawed from 1834 until the end of the Civil War in 1865, and an earthquake destroyed a prior building in 1886.[60] The church played a vital role during Reconstruction, served as a focal point during the Civil Rights movement for the Charleston and South Carolina African-American communities, and hosted many important figures during its history, including Booker T. Washington and Dr. Martin Luther King Jr.[61] The church is called "Mother" Emanuel due to its important historical role as well as its status as the oldest A.M.E. congregation in the southern United States and one of the oldest predominantly black congregations in the South.[62]

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[58] United States v. Roof, Criminal No.: 2:15–472–RMG, 2016 WL 8116892 (D.S.C. July 19, 2016).
[59] *Overview of Emanuel AME Church*, SCIWAY (last visited June 9, 2017).
[60] *See id.*
[61] *See* Bill Chappell, *'Mother Emanuel' Church Suffers a New Loss in Charleston*, NPR: THE TWO-WAY (June 18, 2015).
[62] *See id.*

The church's video surveillance system captured Roof walking into Mother Emanuel's fellowship hall around 8:16 PM. The video shows Roof casually get out of his car and walk to a set of heavy wooden double doors. He checks the door handles once to see if they are locked, then swinging the doors open, he calmly goes inside. At twenty-one years old, Roof could easily pass as a college student from the nearby College of Charleston—except for the unusual bag buckled around Roof's waist. Too big to be a "fanny pack," one can hardly tell what it is from a quick glance. Agents would later find it lying just inside the doorway of the fellowship hall and learn it was a tactical pouch Roof had purchased to carry his Glock .45 pistol and eight magazines. Each magazine was loaded with eleven rounds, totaling eighty-eight hollow-point rounds. For Roof, these eighty-eight bullets symbolized the letters "H.H." ("H" being the eighth letter of the alphabet) for "Heil Hitler," just one expression of the virulent, violent, racist beliefs Roof brought with him to Mother Emanuel.

Dylann Roof enters Mother Emanuel AME church on June 17, 2015.

Roof had been developing his racist hatred for years, accessing racist websites and chat rooms. In the months preceding his crime, he had researched several potential targets and had physically scouted Mother Emanuel for six months in advance of the attack. For Roof, Mother Emanuel was an ideal target because it was a place where he knew he would likely find African Americans, yet he did not have much concern that white people would be present. He knew the folks at the church would be good, innocent people, and Roof believed that killing that type of men and women would bring greater notoriety to his crimes and his message of white supremacy. He also believed that the people at Mother Emanuel were less likely to be armed; therefore, he would be able to kill them without subjecting himself to much harm.

That evening as Roof drove from Columbia to Charleston, parishioners entered the fellowship hall through the same doors Roof would later walk through. During a business meeting that evening, several members received their certificates to preach, a step on the path to becoming ordained A.M.E. ministers. One of these members was Myra Thompson, who had received her certificate that night and was scheduled to lead the Bible study, set to begin immediately after the business meeting. Other pastors attended the Bible study as well. Rev. Daniel Simmons Sr. was a long-time A.M.E. minister and served as the Bible study's weekly leader. Rev. Depayne Middleton was a dedicated ordained Baptist minister and vocalist, but she was an even more dedicated mother of four daughters and a loving sister and daughter. Rev. Sharonda Coleman Singleton was a powerful preacher whose pride and joy were her three children. Other Bible study regulars also attended. Ethel Lance was a loving mother and grandmother and served as the church's sexton. Susie Jackson was an Emanuel matriarch and beloved member of the choir. Felecia Sanders, who was Suzy Jackson's friend and niece, served the church and others as an involved member of the congregation and community. Felecia brought her eleven-year-old granddaughter and her son, twenty-six-year-old Tywanza, with her to church that night. Cynthia Hurd, a hard working librarian, and Polly Sheppard, a retired nurse, mother of four boys, and devoted member of the group that made Mother Emanuel operate, also attended, both hoping to support Myra as she led her first Bible study. Finally, Mother Emanuel's pastor and state senator, Rev. Clemente Pinckney, also attended the Bible study that evening. Rev. Pinckney's wife Jennifer and six-year-old daughter joined him that night, waiting for him in an office separated by a thin wall from the fellowship hall in which the Bible study took place.

The group of twelve studied the Gospel of Mark that night, specifically the Parable of the Sower.[63] The parable tells of seeds being scattered upon the earth and only the seeds that fell on good soil

[63] *Mark* 4:1-20.

grew.[64] When Roof walked in, the parishioners welcomed him. Rev. Pinckney pulled out a chair for Roof and gave him a Bible and the handout that Myra had prepared. For the next forty minutes, Roof studied with the group. Rev. Middleton told a story, and Roof laughed along with the rest of the parishioners at the story. As the study closed, the group stood and gathered hands for a final prayer. Their tradition was to recite the "Mizpah" benediction at the end of the study.[65] Taken from Genesis 31:49, the prayer reads, "May the Lord watch between me and thee when we are absent one from the other."[66] As they stood with their eyes closed, reciting this prayer, Roof opened fire on them with his Glock .45.

Roof fired his first shots while still seated in the chair Rev. Pickney had pulled out for him. Roof first shot and killed Rev. Pinckney, who was just feet away. Rev. Simmons ran toward Roof and the fallen pastor before being shot. The other Bible study members dove under tables, taking cover. Roof then walked down the row of tables, shooting Myra, Cynthia, Depayne, Sharonda, and Ethel as they lay face down under the tables. Reaching the end of the tables, he stood a few feet away from seventy-six-year-old matriarch Suzie Jackson, who had also taken cover under a table. He shot her eleven times, going through an entire clip of hollow-point bullets.

As Roof rounded the end of the tables and headed to the other side, he stood over Polly Sheppard, who was praying aloud. This caught Roof's attention, and he told Polly to "shut up." He then asked if he had shot her yet. She said no. Roof told her he would let her live to tell his story. Next to Polly was Felecia, her son Tywanza, and Felecia's eleven-year-old granddaughter; Tywanza, injured by the earlier gunfire, was bleeding. Felecia wiped some of her son's blood on her, held her granddaughter tight to her body, and lay still, hoping Roof would think they were already dead. Felecia would later testify that as Roof walked through the room, she and Tywanza were communicating under the table, so Tywanza knew she was still alive. As Roof spoke with Polly Sheppard, Tywanza Sanders, injured and bleeding, rose up onto his elbow. He asked Roof why he had to do this. Roof said, "You all are raping our women" and "You all are taking over the world." Tywanza Sanders told Roof that Roof did not have to do this, assuring him, "[W]e mean you no harm." Roof then shot Tywanza several more times, killing him.

Roof did not go any farther toward Felecia or her granddaughter. The two of them, along with Polly Sheppard, survived. Bullets struck and pierced the room behind Rev. Pinckney where his wife and daughter were hiding, unharmed, under a desk. The other nine members of the Bible study lay dead or dying below the tables.

Dylann Roof exits Mother Emanuel AME church.

Roof fired seventy-four rounds from his .45 caliber handgun. The heavy walls and doors muffled the sound of the gunshots, so they went unnoticed. At 9:07 PM, just about fifty minutes after he had entered the church, Roof stepped over the body of Rev. Simmons, who lay dying in the fellowship hall's vestibule, then slowly peeked out the same heavy wooden doors he had entered. Seeing the parking lot empty, Roof calmly walked back to his car, .45 in hand, and drove off.

B. Manhunt and Arrest

Panicked 911 calls came in to dispatch from Polly Sheppard and Jennifer Pinckney. Polly Sheppard was able to give a description of Roof to 911 operators and later to the first responders

[64] *See id.*
[65] *See Genesis* 31:49.
[66] *See id.* (King James).

who began to flood the church and the surrounding area. Charleston City Police Department (CPD) detectives soon accessed the surveillance footage showing Roof enter and leave the church, giving them their first look at their suspect.

Charleston has a tight-knit law enforcement community. Agencies routinely work with each other, even on the most mundane cases. Within hours of the shooting, the CPD reached out to the local FBI office for assistance. The agencies paired up, with each CPD Detective working hand-in-hand with an FBI Special Agent. They accepted assistance offered from other state and federal agencies and collectively began the manhunt for Roof. In the early morning hours of Thursday, June 18, 2015, investigators released still shots from the video showing Roof enter the church. Within an hour of the release, phone calls began coming in to the FBI tip line, several of which identified Dylann Roof. Around 10:00 AM, a woman in Shelby, North Carolina, just west of Charlotte, reported seeing Roof driving through the area. Shelby Police Department officers followed up on the call and arrested Roof around 10:30 AM. The gun Roof used was on the backseat of the car. When asked if he was involved with what happened in Charleston, Roof confirmed that he was.

C. Roof Explains His Racist Hatred

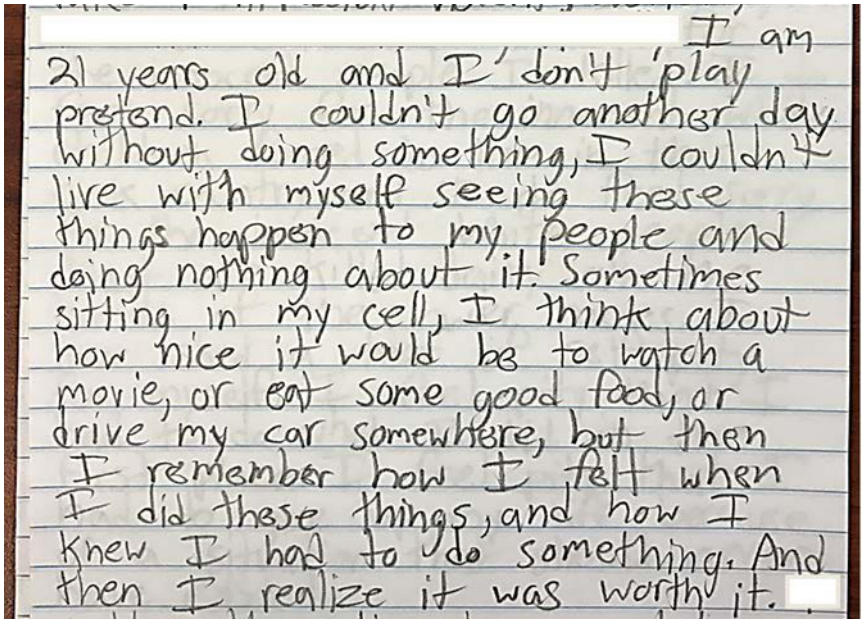
Soon after his arrest, two FBI agents interviewed Roof. Roof not only admitted to what he did, but was eager to explain why. Roof told the interviewing agents that he "had to do it" and explained:

> Um, well, I had to do it because somebody had to do something. Because, you know, black people are killing white people every day on the streets[,] and they rape[;] they rape white women, a hundred white women a day. . . . I had to do it because nobody else is going to do it. Nobody else is brave enough to do anything about it, you know. Back in the late [80s] and early [90s], you know we had skinheads and stuff like that. There's [sic] no skinheads left, there's no KKK. The KKK never did anything anyway.

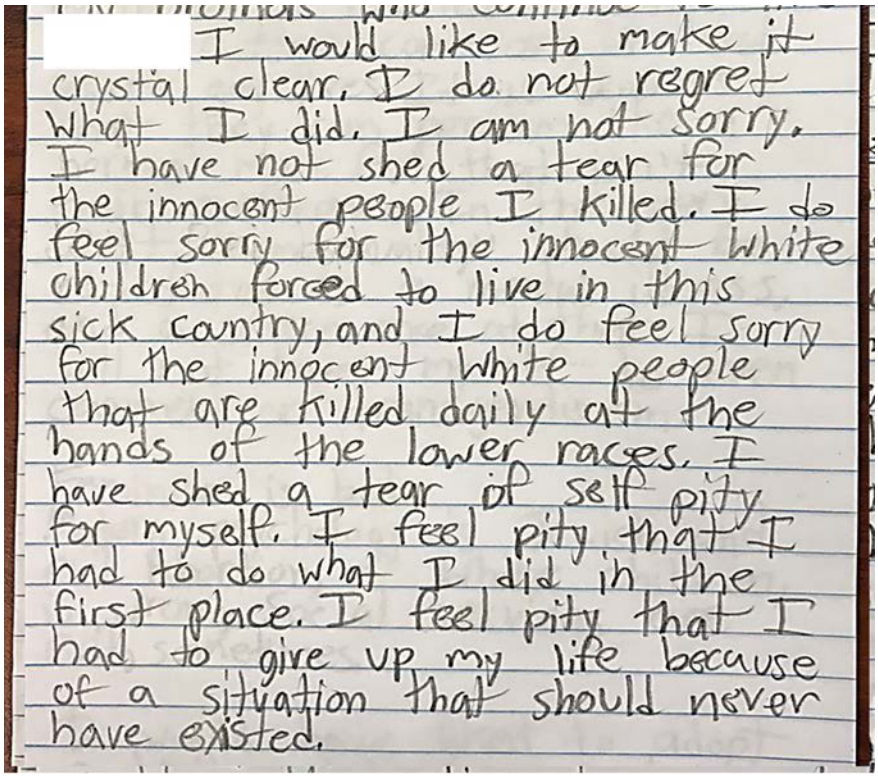
When asked why he chose a church attended predominantly by African Americans, Roof explained: "Right, well, you know, obviously I realize that these people, you know, they're, they're at church[;] you know, they're not criminals or anything[,] but that's not the point. What is, is that criminal black people kill innocent white people every day."

In Roof's car, investigators later discovered a journal containing a racist manifesto, which was repeated on a website that showed race-related photographs. This manifesto and these photographs were consistent with Roof's statements to the FBI. Through his statements and writings, Roof detailed his racial hatred and desire to agitate race relations.

Roof did not stop espousing his racial beliefs and motivations after his arrest. Located in his jail cell six weeks after his arrest was a new manifesto in which Roof had written:


I am
21 years old and I don't play
pretend. I couldn't go another day
without doing something, I couldn't
live with myself seeing these
things happen to my people and
doing nothing about it. Sometimes
sitting in my cell, I think about
how nice it would be to watch a
movie, or eat some good food, or
drive my car somewhere, but then
I remember how I felt when
I did these things, and how I
knew I had to do something. And
then I realize it was worth it.

Regarding the innocent people he killed, Roof wrote:


I would like to make it
crystal clear. I do not regret
what I did. I am not sorry.
I have not shed a tear for
the innocent people I killed. I do
feel sorry for the innocent White
children forced to live in this
sick country, and I do feel sorry
for the innocent White people
that are killed daily at the
hands of the lower races. I
have shed a tear of self pity
for myself. I feel pity that I
had to do what I did in the
first place. I feel pity that I
had to give up my life because
of a situation that should never
have existed.

Roof maintained these same views throughout trial, at times wearing jail-issued canvas shoes upon which he had drawn white supremacy symbols. In a brief penalty phase closing argument, Roof told jurors, "I felt like I had to do it[,] and I still feel like I had to do it."

D. USAO Role

The USAO in Charleston is a branch office with eight criminal AUSAs and three civil AUSAs. The office's approach to cases is fairly traditional and likely typical of most small offices. Charleston AUSAs develop relationships with agents by working directly with them, and most agents contact AUSAs directly with case referrals. Working relationships with local police agencies are similar, with AUSAs consistently handling adopted cases. Many AUSAs also have prior experience working in the local prosecutor's office, where they developed working relationships with local police and state prosecutors. As a result, the Charleston branch of the USAO has a longstanding working relationship with Charleston-area state and federal agencies and has earned the trust of these agencies. However, nothing like the *Roof* case had ever occurred in Charleston. When traditional approaches met with a nontraditional case, adjustments had to be made, and the office developed a case-specific prosecution approach. That approach, and the lessons learned through that process, could readily apply to other prosecutors and offices faced with a mass shooting or similar crisis.

1. Reliance on Victim Witness Coordinator

In a mass shooting, or other similar crisis, a Victim Witness Coordinator's (VWC's) responsibilities increase exponentially. Clarissa Whaley, a VWC who works out of the Charleston office, is normally responsible for half of the district's cases, covering the eastern part of the state.

In the immediate aftermath of the Mother Emanuel shooting, one could see that the District's victim assistance resources would be overwhelmed. In the hours following the shooting, VWC Whaley joined with other local advocates, forming a collaborative team that could serve the immediate needs of victims and be involved in later prosecutions, whether in state or federal court. Early on, the FBI's Rapid Deployment Victim Services Team led this group. Immediately after the group was established, they set up a Family Assistance Center (FAC), located in a hotel near Mother Emanuel. The FAC served as a consistent gathering place for survivors and victims' families where they could obtain information about the case and services.

VWC Whaley's extraordinary efforts highlight the need to have a plan in place before a mass shooting or crisis occurs. This plan should include coordinating with local resources and personnel. Worth noting is that AUSAs, often traditional points of contact in victim cases, will likely be unavailable because of the increased demands of such a case. Having other points of contact to turn to, such as a Criminal Chief, First Assistant, or U.S. Attorney, works as an alternative when AUSAs are wrapped up in case work. Coordinating victim resources is vital. In the *Roof* case, Whaley relied on guidance from the Criminal Chief, First Assistant, and U.S. Attorney as well as the experienced victim service personnel she teamed up with. Likewise, Whaley turned to that team to pool much-needed early resources. A particularly helpful immediate resource was the FBI's victim response team. Almost without delay, the FBI surged resources to Charleston and sent a team to work with victims and local advocates for days. This support gave Whaley and others time to organize and put victim resources in place.

Once the FBI's Rapid Deployment Team put immediate services in place, Whaley turned to a tremendous resource in EOUSA's Office of Legal and Victim Programs (OLVP). Through a series of weekly conference calls and emails, EOUSA was able to connect her with colleagues who had worked the Boston bombing and the Oklahoma City bombing. Whaley also reached out to national NGOs whose work focused on helping survivors of mass casualties. Based upon the experiences and best practices shared, Whaley put together a collaborative team that consisted of a fifty-five member Victim Services Team (VST), reflecting the specific needs of the church shooting victims. Thirty of the members were victim advocates, who revolved in and out of the case as needed. The advocates came from a well-established statewide network of victim services, as well as from EOUSA's victim services response team. In addition to the advocates, the team included fourteen clinical support personnel who provided counseling. Finally, and perhaps most unique to the *Roof* case, the team included a Spiritual Support

Team (SST) of eleven, led by the South Carolina State Law Enforcement Division's Emergency Assistance Program (SCLEAP) and its State Chaplaincy Program. Together with local ecumenical leaders, the SST provided survivors and victims with assistance, consolation, reassurance, and inspiration throughout the trial. Like those killed in the church shooting, their families and the survivors were deeply religious. The SST not only understood the trial process and what the victims and survivors were going through each day, but it also had spent years dealing with situations where crime and religion intersect. Therefore, the SST was always able to provide an appropriate religious context for the difficulties faced by the victims' families and the survivors, resulting in providing a comfort unique to the group.

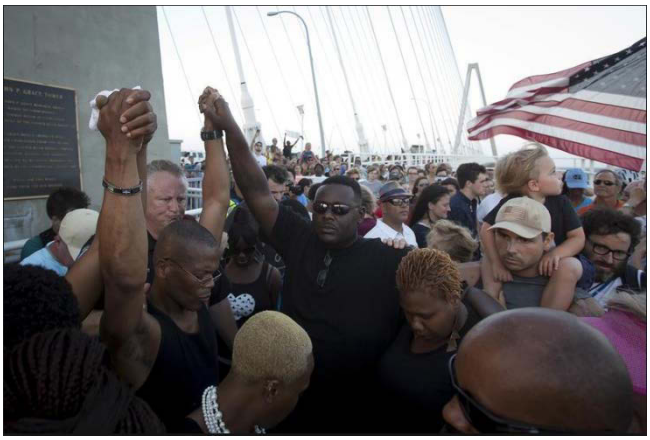
As the *Roof* case moved toward trial, the pool of victims (survivors, families, and their support) grew from an expected 98 to 151. In addition to numerous meetings with prosecutors, agents, and the VWC, communications with victims throughout the case went through a website that contained case updates and links to helpful resources. The website also gave access to an email group for immediate case updates and offered a dedicated conference line, when needed, for victim input and questions. VWC Whaley obtained access to the courthouse's jury assembly room and turned it into a Family Gathering Room. In the weeks before trial, court personnel vetted and cleared all members of the VST for access to the victim gathering and viewing areas established by the Court. The Family Gathering Room became a "home base" for victims at trial. It served as a "family support center" and was reserved for victims and support only. Because of the number of victims who attended court daily, not all could (or wanted to) observe the trial in the courtroom. The Family Gathering Room had a live feed of the trial, which allowed victims to see as much or as little of the trial as they wanted. Just outside the Family Gathering Room were smaller respite rooms where individuals could find privacy and where they could meet one-on-one with prosecutors, spiritual support, or clinical support. VWC Whaley also made sure that prosecutors gave daily briefings, both at the start and end of each trial day. These briefings ensured that victims could ask questions about the proceedings and prepare for whatever evidence was scheduled to be heard. Finally, Whaley managed all of the logistics associated with getting the victims to and from the courthouse. This effort included securing off-site parking, transporting victims to and from the parking area to the courthouse, and giving them unique identification cards allowing secured access around the courthouse, away from the media.

One major resource that made all of these accommodations possible was a grant provided through the Office for Victims of Crime's (OVC) Anti-Terrorism and Emergency Assistance Program. This money funded assistance from mental health professionals throughout the case and continues today to fund the Mother Emanuel Empowerment Center (MEEC). The MEEC provides daily assistance to the victim community and is conveniently located on the grounds of Mother Emanuel. Other funding came from OVC's Federal Crime Victim Assistance Fund, administered through EOUSA's Office of Victims and Legal Programs (OVLP) on behalf of OVC. Those funds helped provide for travel, lodging, transportation, and parking for all victims who attended the trial.

Whaley found that a team-oriented approach became the most critical factor in her success. She identified and then fully relied upon a team of professionals who understood how important the judicial process was to the victims. Her approach and efforts made it clear that, although the trial often focused on the acts of the defendant, the case was ultimately about the victims and those they lost.

2. Attorneys Working with Victims in a Death Penalty Case

In the days following the church shooting a community response began to take shape. Most expected a reaction of sadness and outrage, but an extraordinary response of unity, grace, and forgiveness emerged that rightfully garnered national attention and commendation. Three days after the shootings, an estimated 10,000 to 15,000 Charleston residents formed a "unity chain" over the Ravenel Bridge, a local landmark that spans around 2.5 miles. There, residents joined hands, waved flags, and held a five-minute moment of silence in honor of those killed. Charlestonians continually gathered at the front gates of Mother Emanuel, leaving flowers and forming improvised prayer circles outside the church. In defiance of Roof's hatred and plan to divide, Charleston showed unity and love. A message set forth by some victims' families and survivors certainly influenced this response. At the initial bond hearing, two days after the shooting, several members of the victims' families addressed the defendant. Some told Roof they forgave him. Some said that they had no room for hate, so they had to forgive. Some said that love would conquer hate, telling Roof that "hate won't win."



Unity March, June 20, 2015

As one might imagine with such a large group of victims and surviving family members, the victims' views on the death penalty were diverse. Many of the victims believed strongly that Roof should receive the death penalty; others strongly opposed the death penalty on religious grounds. And many, if not most, simply and understandably, were not ready to think about forgiveness, the death penalty, or anything apart from how to get through each day after such a profound loss.

Eleven months after the shooting, Attorney General Lynch directed the prosecution team to seek the death penalty. AUSA Jay Richardson worked closely with Clarissa Whaley and Civil Rights Division (CRT) Trial Attorney Mary Hahn to prepare the victims' testimony during the penalty phase of Roof's trial. While their preferences on the appropriate punishment varied significantly, the personal views of the survivors and victims regarding the death penalty ultimately did not become a substantial factor in the *Roof* trial. Instead, having the opportunity to express the loss they suffered was far more important to the survivors and victims than any views they might hold about punishment. While much of the trial focused on the defendant's hateful thoughts, words, and actions, the victim testimony provided a window into these extraordinary victims and their legacy of love, faith, and engagement.

Of course, as a prosecutor, fully understanding the story and important aspects of a victim's life is not easy. Richardson found that nothing could replace spending significant time with each survivor and member of a victim's family. Getting to know the individuals affected, separate from their relationship with their loved one, was both an important trial foundation and the most rewarding and enjoyable work of his career. This investment of time with each survivor and victim's family member allowed Richardson to really understand who each victim was as a person.

In learning about the victims, Richardson and the trial team sought out information—pictures, videos, recordings, stories, birthday cards, letters, etc.—from everyone they could locate and every source they could find. Doing so not only helped them appreciate who the victims were, but also allowed witnesses to use the aids in testifying about the victims. For instance, when Myra Thompson's daughter testified about how her mother called her every day, she was able to play one of the last voicemail messages her mother had left. When DePayne Middleton's family spoke of her deep faith and tremendous singing voice, Richardson played a moving recording of DePayne's singing "Great is Thy Faithfulness."

And when Ethel Lance's granddaughter described a memorable day spent with her grandmother, she was able to show photographs of their time together. While this information-gathering took a lot of time, and only a fraction of the information ended up in court, the effort allowed the testifying witnesses to more fully tell their stories.

Getting close to survivors and victims is sure to take an emotional toll on a prosecutor. Standard advice to prosecutors is to avoid getting close to victims because that closeness can affect a prosecutor's ability to focus on the case. How a prosecutor handles the emotional aspects of a case depends largely upon that individual prosecutor. Richardson believed prosecutors should "be themselves" with victims. Authenticity builds trust and gives a prosecutor credibility, which they often need to rely upon later. Richardson's emotional attachment to the victims was apparent; however, he did rely on the rest of the trial team to make sure that his emotions did not improperly impact any decisions. Moreover, he was open about his own limitations, recognizing the role emotion played as he worked through the case. In looking back on the *Roof* case, he realized that having some emotional involvement in the case served to build a better, more invested prosecution team.

3. Utilizing Department Resources

Another unique aspect of the *Roof* case was the short time frame between the offense and the trial. Guilt phase opening statements were presented about eighteen months after the day of the shootings, and jury selection took place about five months after authorization to seek the death penalty. The six months between filing the death penalty notice and trial was twelve to eighteen months shorter than normal.

This quick turnaround time required extensive cooperation. In the immediate aftermath of the church shootings, trial attorneys with the Criminal Section of the Civil Rights Division began working with South Carolina AUSAs. Anticipating potential hate crime charges, CRT attorneys gave early advice about specific focuses to take and issues that might arise in the civil rights context. Similarly, attorneys from the Criminal Division's Capital Case Section (CCS) became involved early, anticipating a potential death penalty. Accordingly, working relationships between South Carolina AUSAs, CRT trial attorneys, and CCS trial attorneys started early.

Most AUSAs and Department attorneys are familiar with this type of intra-Departmental cooperation. The quick timeline in the *Roof* case highlighted what makes these relationships succeed. For CCS Deputy Chief Rich Burns and CRT attorneys Steve Curran and Mary Hahn, getting their offices involved early in the case was essential. As was true in the *Roof* case, few AUSAs have had significant experience in complex civil rights cases or capital cases—the very experience which specialized Department attorneys can provide. Obtaining help from these attorneys is especially beneficial early in the case, when AUSAs may not have time to fully research the many specific, highly detailed issues that specialized attorneys deal with regularly. For instance, a CCS attorney can help with issues such as grand jury special findings or developing specific evidence that will later be needed to support aggravating factors or rebut mitigating factors in the penalty phase of trial. In the *Roof* case, CRT attorneys were involved early and provided needed assistance during the investigation of specific civil rights statutes. For instance, knowing the types of evidence needed to support civil rights charges was important as early as the day after the shootings occurred, when the interviewing agents sought specific lines of questions prior to interviewing Roof. Also, specialized attorney assistance can be helpful later in a case to avoid "reinventing the wheel" in handling certain issues or even contradicting the Department's existing positions on those issues.

Some AUSAs may resist outside help, avoiding working with attorneys with whom their office has little firsthand knowledge, or fearing that Department attorneys might attempt to push

them off a case. In *Roof*, the opposite occurred. CRT and CCS played a vital and needed role in the case and complemented the USAO. This is certainly a credit to the individual attorneys and their approach to cases. But as Burns explained, CCS attorneys are always willing to play whatever role is needed in a case. In cases with only one assigned AUSA, a CCS attorney could be more involved. In others, a CCS attorney may focus on death penalty-specific areas, allowing other prosecutors to handle areas where they have some specialization. The same is true of a CRT attorney. As Curran and Hahn explained, CRT attorneys routinely work side-by-side with AUSAs across the country and understand the value of forging strong teamworking relationships.

Especially in high profile cases, USAOs often need the help Department attorneys provide. The *Roof* case strained the resources of the South Carolina USAO, even with significant help from EOUSA, FBI's Rapid Deployment Team, CRT, and CCS. In facing an accelerated timeline and the coordinated efforts of Roof's federal and state defense teams, the five-attorney prosecution team worked around-the-clock to be ready for trial. Because the Charleston office had only eight criminal AUSAs, the assistance from CRT and CCS was not just appreciated, it was necessary. Also, these offices provided more than just attorney support. CRT dedicated a paralegal to both coordinate discovery and provide litigation support at trial. CCS provided resources to locate and obtain expert witnesses and jury consultants. Likewise, when projects were facing a deadline, the number of available attorneys functionally tripled. Although an AUSA may have some initial resistance to outside help, the *Roof* case shows that Department help can be necessary in a mass shooting or other complex case.

Apart from the critical help Department attorneys can provide, their involvement can also demonstrate the prosecution team's commitment to the case. Early in the *Roof* case, the support from CRT and CCS visibly demonstrated the Department's commitment. Likewise, the relocation of CRT and CCS attorneys to Charleston months before the scheduled start of trial demonstrated these attorneys' commitment and proved to be a sacrifice greatly appreciated by the victims. The varying attorney backgrounds in the *Roof* case also made generating assignments easier—a benefit usually lacking when AUSAs from the same office work on a case. Finally, Department attorneys assigned to high profile cases generally have extensive experience working "in the field" and working with other attorneys, thereby helping to ensure good working relationships. As seen in the *Roof* case, CCS and CRT attorneys were accustomed to working side by side with AUSAs, and, in turn, the AUSA office enjoyed working with them.

IV. Conclusion

Ultimately, the evidence in the *Tsarnaev* and *Roof* cases persuaded the juries to recommend multiple death sentences. Those victims whom the prosecution elected not to call at trial still had the opportunity to provide statements during the defendants' formal judicial sentencing. Regardless of the jury's decisions, the survivors and families of victims took part in telling two stories that needed to be told fully. Both prosecutions owe much of their success to those who overcame and bravely bore witness to horrific tragedy.

ABOUT THE AUTHORS

❑ **Jeff Kahan** is a graduate of Oberlin College, Oberlin Conservatory, and the University of Southern California Gould School of Law. He joined the Department of Justice's Capital Case Section in 2005 after ten years of service as a California deputy attorney general in the Criminal Appeals, Writs, and Trials Section.

❑ **Nathan S. Williams** is a Supervisory Assistant U.S. Attorney in the District of South Carolina, serving as the Branch Manager of the office in Charleston, South Carolina. He has been an Assistant U.S. Attorney since 2009 and was a state prosecutor for ten years in Charleston, South Carolina, and Lansing, Michigan, prior to joining the U.S. Attorney's office. He is a graduate of the University of Detroit Mercy School of Law.

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❑ **Steven Mellin** is currently an Assistant U.S. Attorney prosecuting capital cases and terrorism matters in the Southern District of Texas. Previously, he worked as a Trial Attorney in the Capital Case section, prosecuting federal capital cases throughout the United States. He also worked in the U.S. Attorney's Offices in the Eastern District of Virginia and the District of Columbia.

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Thursday, December 7, 2017

Former North Charleston, South Carolina, Police Officer Michael Slager Sentenced to 20 Years in Prison for Federal Civil Rights Offense

Former North Charleston, South Carolina, Police Department (NCPD) Officer Michael Slager, 36, was sentenced to 20 years in prison today for his commission of a federal civil rights offense during his fatal shooting of Walter Scott, Jr. on April 4, 2015. This sentence resulted from the Court's determinations that Slager's actions in shooting Mr. Scott constituted second-degree murder, and his subsequent conduct constituted obstruction of justice as defined by federal sentencing guidelines.

Attorney General Jeff Sessions, Acting Assistant Attorney General John Gore of the Justice Department's Civil Rights Division, U.S. Attorney Beth Drake of the District of South Carolina, Special Agent in Charge Alphonse "Jody" Norris of the FBI's Columbia Division, Solicitor Scarlett A. Wilson of the Ninth Judicial Circuit, and Chief Mark Keel of the South Carolina Law Enforcement Division (SLED) announced today's sentence by U.S. District Judge David C. Norton.

According to documents filed in connection with the guilty plea entered on May 2, 2017, Michael Slager, while acting as an NCPD Officer, willfully used deadly force on Walter Scott even though it was objectively unreasonable under the circumstances. Slager had stopped Scott's vehicle after observing that a brake light was not working. During the stop, Scott fled on foot and Slager pursued him. During the foot chase, Slager deployed his Taser and Scott fell to the ground. Scott managed to get off of the ground and again run away. Scott was unarmed and running away when Scott fired eight shots at him from his department-issued firearm. Five shots hit Scott, with all of the bullets entering from behind. Scott died as a result of the injuries from Slager's gunshots.

"Law enforcement officers have the noble calling to serve and protect," Attorney General Sessions said. "Officers who violate anyone's rights also violate their oaths of honor, and they tarnish the names of the vast majority of officers, who do incredible work. Those who enforce

our laws must also abide by them—and this Department of Justice will hold accountable anyone who violates the civil rights of our fellow Americans. On behalf of the Department of Justice, I want to offer my condolences to the Scott family and loved ones."

"This state, this nation, owe a tremendous thanks to the Scott family for their commitment to see this case through," said U.S. Attorney Drake. "Their grace, their commitment are a lesson for us all. The South Carolina Law Enforcement Division, with the support of the FBI, conducted a thorough investigation that enabled us to build an excessive force case against former officer Michael Slager. I am so proud of the work put into this case by the dedicated law enforcement, victim advocates and trial teams at the state and federal level."

"When a law enforcement officer—who swears an oath to protect and serve—violates the civil rights of an individual, it erodes the public's trust in the entire law enforcement community," said Special Agent in Charge Norris. "The FBI will always respond to these acts and support our state and local partners, like the South Carolina Law Enforcement Division (SLED), as we all strive to ensure the perpetrator meets justice. The excellent work of SLED, the United States Attorney's Office, and the Civil Rights Division of the Department of Justice in bringing this matter to a close is to be commended."

The federal case was prosecuted by Assistant U.S. Attorneys Nathan Williams and Alyssa Richardson of the District of South Carolina, Special Litigation Counsel Jared Fishman, and Trial Attorney Rose Gibson of the Civil Rights Division of the Department of Justice. The case was investigated by the FBI's Columbia Division and the South Carolina Law Enforcement Division. The state case is being prosecuted by Scarlett A. Wilson and the Office of the Solicitor of the Ninth Judicial Circuit.

Component(s):
Civil Rights Division
Civil Rights - Criminal Section

Press Release Number:
17-1382

Updated December 7, 2017

South Carolina Bar
Continuing Legal Education Division

2019 SC BAR CONVENTION

Criminal Law Section (Part 1)

Friday, January 18

Legislative Update

Senator Gerald Malloy
Rep. G. Murrell Smith, Jr.

2019 SOUTH CAROLINA BAR CONVENTION

CRIMINAL LAW LEGISLATIVE UPDATE

Senator Gerald Malloy, Hartsville, SC

Representative G. Murrell Smith, Jr., Sumter, SC

Disturbing Schools
Act. 182, (S.131), Effective May 17, 2018

- The Act redefines the offense of disturbing schools.
- Only a non-student or student who is suspended or expelled may now be charged with disturbing schools.
- The statute defines activity that can result in a charge of disturbing schools including unlawful loitering, willful disruption or interference, initiating an assault or threatening physical harm, and threatening serious bodily injury or death with a present ability to carry out the threat.

Human Trafficking
Act. 238, (H. 3329), Effective May 17, 2018

- The bill eliminates the definition of trafficking in persons. The definition previously differed from the elements of the offense.
- The act also clarifies, without increasing, the penalty for trafficking in persons under the age of 18.
- Under previous law, first offense trafficking in persons was up to 15 years with a sentence enhancement of an additional 15 years if the victim was under the age of 18.
- The act changes first offense in trafficking in persons under 18 to not more than 30 years which makes the offense a non-parole offense.

Expungements
Act. 254, (H. 3209), Effective December 27, 2018

- The act provides any charge that carries 30 days or less or a fine of $1,000.00 or less can be expunged after threes years. The act removes the limitation that only first offense charges can be expunged.
- Multiple charges under this provision may be expunged if the convictions were adjudicated in a single sentencing proceeding.
- The act also provides that a charge of 3rd degree domestic violence can be expunged after 5 years.
- First offense simple possession can now be expunged three years after conviction, including probation and parole.
- First offense possession with intent to distribute can now be expunged after 20 years of conviction.

Child Fatality Review Teams
Act. 183, (S. 170), Effective May 17, 2018

- The bill requires the county coroner to form a child fatality review team to investigate the death of a person under the age of 18.
- The team must consist of the county coroner or designee, a local law enforcement agent, a SLED agent, a child abuse physician and a forensic pathologist.
- The coroner must contact local DSS and request their involvement to include services for persons responsible for the child.
- The information is confidential and not subject to subpoena, discovery or FOIA.

Law Enforcement Misconduct Hearings Act. 215, (H. 4479), Effective May 18, 2018

- The act defines officer misconduct and mandates the appropriate law enforcement agency to report the misconduct to the criminal justice academy with 15 days of the agency's final action.
- The charged officer can request the Criminal Justice Academy to hold a hearing within 60 days to address the charges.
- An accusation of excessive force must be sent to the academy within 30 days of the finding and the records are maintained by the Criminal Justice Academy for personnel background checks.
- The academy must expunge the records of an officer who was found not at-fault for misconduct.

Graffiti Vandalism
A. 204, (S. 959), Effective May 17, 2018

- The act removes the mandatory minimum sentence for a conviction of graffiti vandalism.
- A first offense charge under the act is not more than 30 days or not more than a fine of $1,000.00.

South Carolina Bar
Continuing Legal Education Division

2019 SC BAR CONVENTION

Criminal Law Section (Part 1)

Friday, January 18

Youthful Offender Act Sentencing

Ginny Barr
Christina C. Bigelow
Bryan P. Stirling

YOUTHFUL OFFENDER SENTENCING

Bryan P. Stirling, Director, SCDC

Christina C. Bigelow, Deputy General Counsel, SCDC

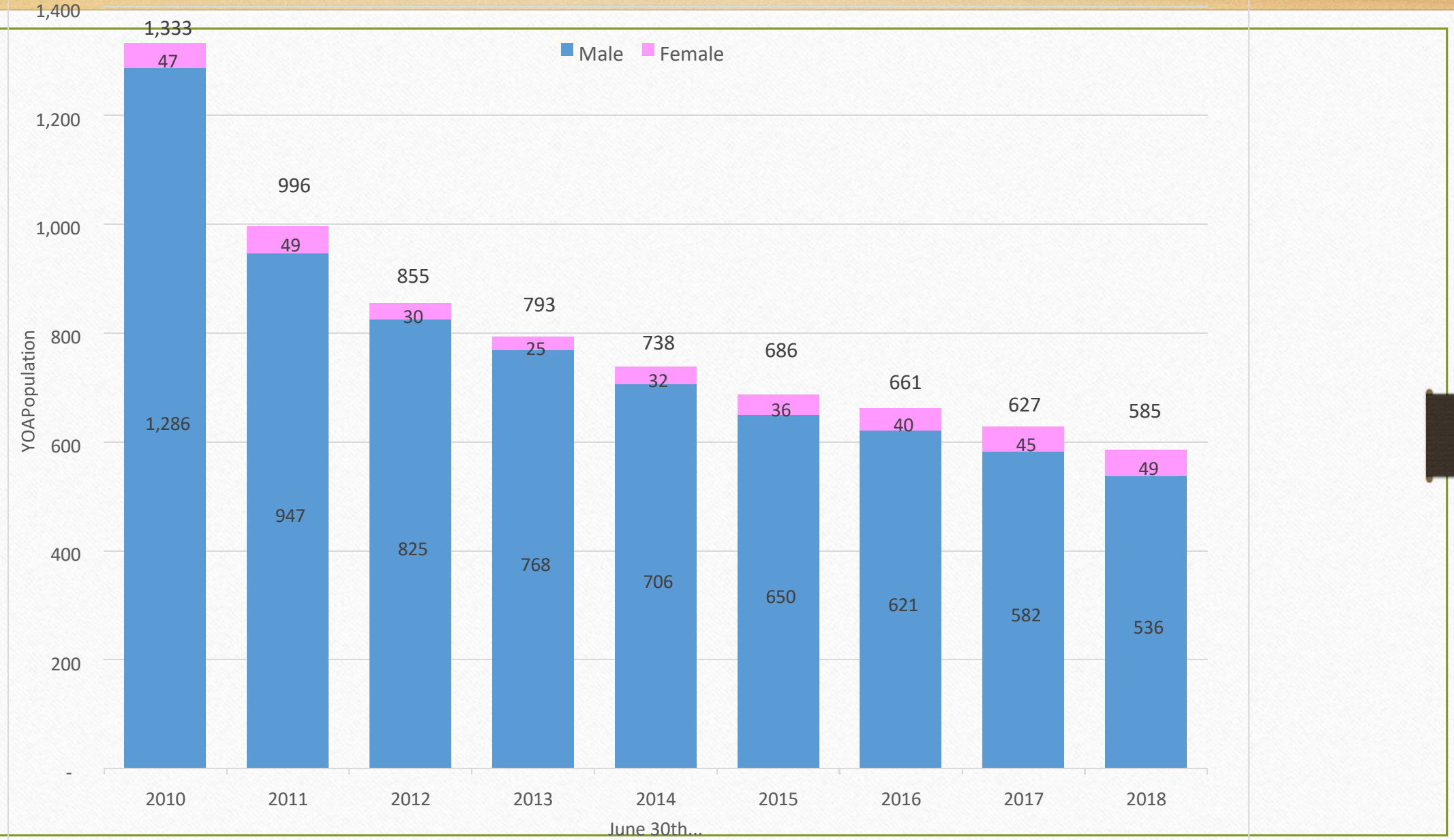
Ginny Barr, Division Director for Young Adult Services, SCDC

MISSION OF SCDC'S YOUTHFUL OFFENDER PROGRAM

- To reduce recidivism of youthful offenders by utilizing evidence-based principles and practices that teach accountability, enhance skill development, and promote public safety.

Institutions Currently Serving Youthful Offenders

- Turbeville Correctional Institution (males)
- Trenton Correctional Institution (males)
- Allendale Correctional Institution (males)
- Camille Graham Correctional Institution (females)


YOA Offenders in SCDC Jurisdiction on June 30th...
Male
Female
YOAPopulation
June 30th...
1,400
1,200
1,000
800
600
400
200
-
2010
2011
2012
2013
2014
2015
2016
2017
2018
1,333
47
1,286
996
49
947
855
30
825
793
25
768
738
32
706
686
36
650
661
40
621
627
45
582
585
49
536

Strategies to Reduce Recidivism for YOAs; A Seamless System of Services

- Implement Intensive Supervision Services (ISS)
- Design/implement new release & revocation process
- Implement new Risk/Needs Assessment & Asset Inventory
- Enhance/develop programming for institutions serving Youthful Offenders based upon EBP
- Merge community supervision and institutional programming/counseling into unified, seamless system of services
- Implement Restoring Promise Initiative

Restoring Promise:
Young Adult Reform Initiative

- Supported by Vera Institute of Justice
- Aimed at transforming conditions of confinement for sentenced young adults 18-25 years-of-age
- Creates a normalized, community environment focused on achieving rehabilitation through accountability, skill building and community safety
- Incorporates a strong compliment of adult mentors and community volunteers

Youthful Offender
Institutional Programming Options

- Criminal Thinking
- Impact of Crime Classes
- Individual/Group Counseling
- Community Meetings
- Family Focus
- Parenting/Fatherhood
- Substance Abuse Education/Addictions Treatment
- GED Preparation/Testing
- Employability/Vocational Training
- "Gateway Character Dorm" Living Unit (Incentive-based)
- "Second Chance Program" Living Unit (incorporates adult mentors and community volunteers)

ELIGIBILITY

S.C. Code 24-19-10, *et. seq.*

- Generally for offenders age 17 **but <u>less than</u>** 25 at time of conviction (not at time of offense)
- No violent crimes, with 2 exceptions:
  - burglary second degree violent
  - CSC with a minor in the 3rd degree (where the victim was over age 14 and the act was consensual)
- No 85% offenses allowed
- Youthful offenders only get one bite at the YOA apple

Powers of the Court Upon Conviction of a Youthful Offender – S.C. Code 24-19-50

- Suspend the sentence and place the offender on probation (regular adult probation under supervision of the Department of Probation, Pardon & Parole Services);
- Send the offender to SCDC for observation and evaluation for not more than 60 days, at which point the offender is returned to court with findings and recommendations for sentencing;
- Send the offender to SCDC for an indeterminate YOA sentence not to exceed 6 years; or
  - One exception to the 6 years: if adult maximum penalty for the underlying offense is less than 6 years (for example, possession of heroin carries a maximum of only 2 years), the maximum time the Youthful Offender Division would have jurisdiction over the offender would be 2 years. See Craft v. State, 281 S.C. 205, 314 S.E.2d 330 (1984).
  - Also, per the Craft v. State case, if the adult maximum sentence is 6 years or more, but a judge tries to limit the sentence to a period of less than 6 years, SCDC can consider it a non-binding recommendation.
- Decline to sentence the offender under the Youthful Offender Act and sentence the offender as an adult.

Reception and Evaluation ("Intake")

- SCDC staff are required to make a "complete study" of each youthful offender upon intake
- Intake should be completed in 30 days unless there are "exceptional circumstances"
- Males – go through intake at Kirkland R&E and then assigned to Trenton, Turbeville, or Allendale
- Females – go through intake at Camille Graham and then placed in the YOA population at Camille Graham

Treatment of Youthful Offenders

- The law gives SCDC broad discretion regarding appropriate custody and treatment of youthful offenders. This includes the amount of time we keep these offenders in custody and the amount of time we supervise them in the community.
- While incarcerated, youthful offenders are generally required to be kept separate from adult offenders. Also, classes of youthful offenders are kept separated according to their particular needs. (Example: ATU)

After Intake is Complete

- SCDC's youthful offender division uses internal mandatory minimum guidelines to assign a youthful offender to a term of programming.
- Generally 6 months, 9 months, 18 months, or 3-year mandatory minimum for certain burglary second degree offenses

Burglary Second Degree and the April 21, 2016 Amendment

- Prior to April 21, 2016, both violent and non-violent second degree burglary offenses carried a three-year day-for-day sentence under the Youthful Offender Act.
- On April 21, 2016, S.C. Code 24-19-10 (d) was changed to state that only second degree burglary violent carries a three-year day-for-day sentence.
- Savings Clause in the Act: because there was a Savings Clause in the Act that amended the statute, SCDC is required to look at the offense date to determine whether the three-year day-for-day sentence applies to a non-violent burglary second degree YOA sentence.

Conditional Release

- Conditional release refers to release of a youthful offender to intensive supervision (also called "YOA parole") in the community.
- The offenders are supervised by SCDC's own "Intensive Supervision Officers" ("ISOs").
- The law gives SCDC the authority to conditionally release a youthful offender at any time, except for those offenders required to serve a three-year mandatory minimum for burglary second degree.
- However, we are required to conditionally release a youthful offender 4 years from the date of his or her conviction.
- Typically, for compliant offenders, SCDC's conditional release is for a period of 1 year.

Steps Required at Conditional Release

- Generally, offenders must agree in writing to warrantless searches and seizures (there is an exception for certain low-level misdemeanors).
  - If such a search became necessary, outside law enforcement would conduct it. SCDC's Intensive Supervision Officers are not law enforcement officers.
- Any victims must be notified that the offender is going to be conditionally released back into the community.

Violations of Conditional Release

- An offender who violates the terms of conditional release (again, also called "YOA parole" or "intensive supervision") can be returned to SCDC custody any time before expiration of the statutory period we have jurisdiction over the offender
- An offender accused of a violation of conditional release has a review with appropriate staff member(s). Staff then makes a recommendation to a panel. The panel makes the final determination regarding whether to revoke the conditional release and return the offender to custody or continue the offender on conditional release.
- First revocation: 6 months (if firearm involved, 9 months). Second revocation: 9 months. Third revocation: 18 months. If there is a fourth revocation, we may keep the offender in custody until our jurisdiction over him ends.

Unconditional Discharge

- This means complete release from our custody and supervision in the community
- Usually occurs well before the 6-year statutory period for compliant offenders
- Just like with conditional discharge, any victims must be notified when a youthful offender is being unconditionally discharged.
  - A youthful offender CAN be unconditionally discharged one year after being conditionally released.
  - A youthful offender MUST be unconditionally discharged six years from the sentence start date.

Expungement of YOA Sentences

- If a youthful offender has no other convictions in the five-year period following unconditional discharge, the offender can apply for expungement of the YOA sentence.
  - NOTE: S.C. Code § 22-5-920 (B)(2)(b) specifically prohibits violent offenses from being expunged, so it is unclear whether a YOA sentence for burglary second violent is eligible for expungement.

The "Non-Conforming" YOA Sentence

- Non-conforming means the offender was not eligible for a YOA sentence pursuant to the YOA statutes.
- We typically keep nonconforming offenders for a minimum of 3 years.
- Non-conforming offenders are a great challenge for SCDC because these offenders are often violent and pose a threat the well-being of our conforming youthful offender population.

The Shock Incarceration Program

- The Shock Incarceration Program is **not** just for youthful offenders, but is often used in conjunction with YOA sentences.
- Per S.C. Code 24-13-1310 *et seq*., Shock is for any offender with a non-violent, non-85% sentence who is under the age of 30 at the time of admission to SCDC and is eligible for parole in two years or less. The offender cannot have any prior SCDC commitments.
- Shock is a 90-day program designed as an alternative to traditional incarceration. It has a focus on personal accountability, discipline, skill development, community service, and character development. Daily physical activity is required, and education is mandatory. Within a month of release, Shock inmates participate in programs designed to promote their reintegration into the community.
- Upon completion of the Shock program, offenders are released to parole supervision by PPP.

Intensive Supervision Services (ISS)

An evidenced-based community supervision service provided by SCDC for Youthful Offenders designed to reduce recidivism using evidence-based principles/practices that teach accountability, enhance skill development, and promote public safety.

Intensive Supervision Services Basics

- Intensive Supervision Officer (ISO) is a case manager/service provider – not law enforcement
- Services are cost free to offender
- ISO supervises case load of 20-25
- ISO meets with offender within 30 days of assignment to institution and begins reentry planning
- ISO meets with offender at least monthly throughout incarceration
- ISO maintains a 24/7 schedule

Intensive Supervision Services Basics (cont.)

- ISO completes Risk/Needs Assessment and Asset Inventory (GRAD-90)
- ISO meets with offender's family as needed throughout incarceration
- Upon reentry, offenders are entered in NCIC
- Absconders are extradited when apprehended
- Upon reentry, ISO meets with offender at least weekly in the community
- Cases are staffed with community partners (Community Reentry Teams) monthly to develop resources and problem solve

Intensive Supervision Administrative Release Authority (ISARA)

- Three-member panel of Corrections administrators
- Panel considers release recommendations from the institution, community and victim to approve/disapprove release
- Panel approves/disapproves parole revocations

Considerations for Release:

- Severity of crime (offense category) as measured by SCDC Release Matrix
- Release Recommendations from community, victim(s) and institution
- Risk Assessment Score as measured by Global Risk Assessment Device (GRAD-90)

Data/Outcome Sample on November 1, 2018

1,108 Youthful Offenders assigned to ISS

- 740 (67%) supervised in the community
- 368 (33%) in institution preparing for reentry

65% of Youthful Offenders gainfully employed

20% of Youthful Offenders enrolled in education program

(GED, higher ed., alternative ed.)

69% of Youthful Offenders passed random drug testing

13.7% of paroled Youthful Offenders returned to SCDC for technical violations (over life of program)

10.8% of paroled Youthful Offenders returned to SCDC for new convictions (over life of program)