No.

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN GOODMAN,
Petitioner,
v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida Fourth District Court of Appeal

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

VOLUME I

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DISTRICT COURT OF APPEAL OF THE STATE
OF FLORIDA
FOURTH DISTRICT

JOHN GOODMAN,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

No. 4D14-4479

[July 26, 2017]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jeffrey J. Colbath, Judge; L.T. Case No. 502010CF005829 AMB.

Margaret Good-Earnest and Cherry Grant of Good-Earnest Law, P.A., Lake Worth, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Richard Valuntas, Assistant Attorney General, West Palm Beach, for appellee.

WARNER, J.

In his appeal of his conviction and sentence for

DUI manslaughter with failure to render aid, and vehicular homicide with failure to render aid, appellant raises thirteen issues. We affirm as to all and write to address three issues. First, appellant contends that the State prematurely released his vehicle after his first trial, thus violating his due process rights and requiring dismissal under *California v. Trombetta*, 467 U.S. 479 (1984). We disagree, concluding that because of the prior testing on the vehicle and the State's agreement not to introduce certain testing by its expert, the vehicle was not "constitutionally material" and any potential prejudice was eliminated. Second, he contends that the jury instructions on the failure to render aid enhancements violated due process by failing to require that appellant knew that the accident resulted in injury or death. The statutes, however, merely require that the person "knew or should have known of the crash," not the injury. The instructions read to the jury went beyond this and required that appellant "knew" of the crash. We therefore reject appellant's challenge to the jury instructions. Third, appellant claims that his blood was drawn without a warrant, violating the

Fourth Amendment Search and Seizure clause. However, the exigent circumstances exception applies, and the failure to obtain a warrant was not error. As to the sentence for the vehicular homicide conviction, which the court held in abeyance, we reverse on double jeopardy grounds.

Following a late-night two-vehicle accident, in which the other driver died after his vehicle was submerged in a canal, appellant was charged with DUI manslaughter with failure to render aid (Count 1) and vehicular homicide with failure to render aid (Count 2). Appellant was convicted and sentenced following his first trial. After juror misconduct came to light, *see DeMartin v. State*, 188 So. 3d 87 (Fla. 4th DCA 2016), appellant's first conviction was vacated and he was granted a new trial.

Prior to his second trial, appellant moved to dismiss the charges against him after he discovered that the State had prematurely released the two vehicles involved in the crash. One of the vehicles, a Bentley driven by appellant, was eventually found in Texas, having been repaired and refurbished.

Appellant argued that the Bentley was materially exculpatory based on his allegation that an issue with the throttle led to a brake malfunction. He admitted that the malfunction had been extensively discussed during his first trial, including codes from the Bentley's electronic control module ("ECM") indicating a throttle malfunction. However, appellant argued that his automotive engineer expert was not allowed to conduct the same physical manipulative inspections of the Bentley's throttle as the State's expert. Following a hearing, the court denied the motion to dismiss, determining that "the Bentley did not rise to the level of materially exculpatory evidence and instead was only potentially useful evidence[.]" Therefore dismissal was "too harsh a sanction in the absence of bad faith on the part of the State." As the State agreed not to call its expert, "there remains no prejudice to Defendant in his ability to present the expert testimony and findings he has collected."

Appellant also sought to suppress the results of his blood alcohol test, arguing that the test constituted a warrantless search in violation of his Fourth Amendment rights. The court held a hearing, during

which the testimony indicated that the crash occurred around 1:00 a.m., but appellant left the scene and called 911 about an hour later. He returned to the scene shortly after 2:00 a.m. At 2:26 a.m., he was transported to the hospital. At 2:31 a.m., the victim's body was discovered. The homicide investigator was called and arrived at the crash site at 3:18 a.m. At 3:33 a.m., the investigator met appellant at the hospital, where he observed signs of intoxication. After appellant refused a voluntary blood draw, a forced blood draw was conducted at 4:00 a.m. The investigator testified that it would have taken two-and-a-half hours that night to obtain a

warrant. On these facts, the court denied the motion to suppress the blood test results, finding that the exigent circumstances exception applied.

At the second trial, the evidence showed that appellant ran a stop sign without braking and "t-boned" the victim. Appellant was going sixty-three miles per hour in a thirty-five miles per hour zone. The force of the impact pushed the victim's Hyundai through the intersection and into a nearby canal, where it came to rest upside down. Appellant did not remain on the scene or assist the victim, who ultimately drowned. The victim did not sustain fatal injuries in the collision itself. Earlier in the evening, appellant had consumed alcohol at several venues, the amount of which was a contested issue at trial.

After the accident, appellant quickly left the scene on foot. He resurfaced a half hour later at a woman's trailer, seeking a phone. He used the woman's phone to call his girlfriend. The woman testified that appellant acted slow and "out of it." He was mumbling and repeating himself, and told her that he was in a really bad accident and hoped no one was hurt. He

admitted he had a few drinks. After appellant spoke with his girlfriend, he asked the woman what to do. When she suggested he call 911, appellant asked whether he should call his lawyer first and turn himself in. Appellant never mentioned stopping elsewhere between the crash and arriving at her trailer.

Appellant called 911 at 1:56 a.m. He told the 911 operator that he stopped at a stop sign, looked, did not see anything, pulled out, and hit something. He did not say his car malfunctioned. He said he walked down the road to a barn, hopped over the gate, and came to the woman's house to get a phone.

A deputy picked up appellant to bring him back to the crash site. When the deputy asked appellant if he was injured, he only mentioned pain in his wrist. He claimed that he stopped at the stop sign, went through the stop sign, hit something, was unaware of what he hit, and left to make a phone call. Appellant was emanating the odor of alcohol and his speech was slurred. Upon returning to the crash site, the deputy escorted appellant to paramedics.

The paramedics who treated appellant at the scene also noted that his speech was a little slurred and he smelled of alcohol. He did not, however, appear to have consumed a large amount of alcohol within the hour prior. Appellant was not dizzy, his head did not hurt, and he denied losing consciousness. Once at the hospital, appellant was alert and did not

complain of head pain, dizziness, or nausea. The doctor's notes indicated that he denied losing consciousness.

Appellant refused a blood test, but had blood drawn at 3:59 a.m., which revealed that his blood alcohol level was 0.177 and 0.178. A toxicologist calculated that appellant's blood alcohol level at the time of the crash was between 0.207 and 0.237, the equivalent of twelve to thirteen drinks.

Appellant's forensic engineer testified that the Bentley did not stop at the stop sign. He opined that the vehicle was going between forty-nine and fifty-eight miles per hour at the time of the crash.

Appellant's automotive engineer testified that he had inspected the Bentley prior to the first trial, before it was released. The ECM report registered a fault code at some point prior to the crash. The code indicated that the vehicle's two throttle valves were unsynchronized due to a mechanical malfunction. One of the two throttles in the vehicle was lagging behind the other, but the expert was unable to determine

whether the lag was in engaging or releasing the accelerator pedal, and he was unable to determine how long the lag was. Regardless, the throttle issue did not affect the braking system, and, due to the vehicle's multiple override systems, upon applying the brakes, "[i]n a worst case scenario, the driver might feel a delay in response[.]" The expert speculated that there could have been some computer malfunction as well, but he had no data reflecting such. He had been unable to conduct certain tests because of the vehicle's release and refurbishment. He admitted he had previously testified during a deposition that further testing would not tell him anything beyond what he already knew based on the vehicle's diagnostic stored data.

The State's electrical engineer also inspected the Bentley after it was found in Texas and opined that the braking system functioned until damaged in the crash. The State's vehicle expert from the first trial did not testify at the second trial.

Appellant testified in his defense and claimed that he was not intoxicated at the time of the accident, but rather that the brakes on his Bentley

malfunctioned when he attempted to stop at the stop sign. He said that he lost consciousness in the crash. After he awoke, he looked around the crash site, which was very dark, but did not see any vehicles. He did not look in the canal. His phone wasn't working, so he decided to go look for a phone to call 911.

Significantly, appellant testified that after he left the crash site to find a phone, he came upon a "man cave" belonging to a member of the polo team he owned. The "man cave" did not have a telephone, but was stocked with liquor. Appellant testified that he drank an unknown quantity of alcohol from a bottle, then headed toward the woman's trailer. Appellant testified that he told one of the deputies that he went into the "man cave" and consumed alcohol after the crash.

Several motions and hearings were held prior to and during trial regarding the jury instructions for the failure to render aid enhancement on both charges. The standard jury instruction for the enhancement on the DUI manslaughter charge provides:

> If you find the defendant guilty of Driving under the Influence Manslaughter, you must further determine whether the State proved beyond a reasonable doubt that:
>
> 4. (Defendant), at the time of the

crash,

a. knew or should have known that the crash occurred and

b. failed to give information as required by law and

c. failed to render aid as required by law.

Fla. Std. Jury Instr. (Crim.) 7.8 (emphasis added). The corresponding instruction for the vehicular homicide charge provides:

If you find the defendant guilty of [vehicular] [vessel] homicide, you must then determine whether the State has further proved beyond a reasonable doubt that:

1. At the time of the accident, (defendant) **knew, or should have known, that the accident occurred;**

and

2. (Defendant) failed to give information and render aid as required by law. (Read applicable portion of § 316.062, Fla. Stat., as charged in information or indictment.)

However, the State is not required to prove (defendant) knew that the accident resulted in injury or death.

Fla. Std. Jury Instr. (Crim.) 7.9 (emphasis added).

Appellant proposed adding a requirement that he "knew that the accident resulted in death or injury[,]" rather than mere knowledge of the accident. The State agreed to include an element regarding knowledge of injury or death, but argued for the lesser "knew or should have known" knowledge requirement. The court agreed with the State. With the State's agreement, the court deleted the last sentence of Instruction 7.9.

During trial, the parties and the court again reviewed the jury instructions, and appellant renewed his request to include actual knowledge of injury or death as an element of Instruction 7.8. The court declined to add a "knew of death" requirement, ruling that the standard should be "knew or should have known." As to knowledge of the accident, the court denied the State's requested inclusion of "should have known," instead requiring actual knowledge. The court granted appellant's request to include a definition of "willfully."

As to Instruction 7.9, appellant did not submit another proposed version. The State objected to

deletion of the "should have known" of accident language. There was no specific discussion of the inclusion of a "knew of death" requirement in Instruction 7.9. The court granted appellant's request to include actual knowledge of accident. Notably, the court ruled that it would include the last sentence in Instruction 7.9 ("However, the State is not required to prove (defendant) knew that the accident resulted in injury or death"), contrary to its previous ruling.

After another conference, a final version of the instructions was submitted. This version of Instructions 7.8 and 7.9 included a willfulness requirement and required actual knowledge of the accident, but did not require any knowledge of injury or death. Instruction 7.9 included the sentence specifying that actual knowledge of injury or death was not required. Appellant stated that he had no new or additional objections to this version of the instructions.

> Instruction 7.8, as read to the jury, provided as follows:

If you find the defendant guilty of driving under the

influence manslaughter, you must further determine whether the State proved beyond a reasonable doubt that John Goodman at the time of the crash A, **knew that the crash had occurred**. And B, willfully failed to give information as required by law. And C, willfully failed to render aid as required by law. Willfully means intentionally, knowingly, and purposely. Florida requires that a driver of any vehicle involved in a crash resulting in injury or death of any person or damage to any

> vehicle or other property which is driven or attended by any person must supply his name, address, and the registration number of the vehicle he is driving, to any person injured in the crash or to the other driver or occupant or other person attending any vehicle or other property damaged in the crash
> . . . .

(Emphasis added). In Instruction 7.9, the court instructed as follows:

> If you find the defendant guilty of vehicular homicide you must then determine whether the State has further proved beyond a reasonable doubt that 1, at the time of the accident John Goodman **knew that an accident occurred**. And two, John Goodman willfully failed to give information and render aid as required by law. Willfully means intentionally,

> knowingly, and purposely. **However the State is not required to prove that John Goodman knew that the accident resulted in injury or death.**

(Emphasis added). Instruction 7.9 followed with the same explanation of the duty to render aid as was given in Instruction 7.8.

The jury found appellant guilty as charged. Appellant was adjudicated guilty and sentenced to sixteen years in prison on Count 1 (DUI manslaughter with failure to render aid). The court took no action on the jury verdict on Count 2 (vehicular homicide with failure to render aid). Although appellant objected and argued that Count 2 should be dismissed, the court agreed with the States request to hold Count 2 in abeyance, so that if appellant prevailed on Count 1 on appeal, the court could still adjudicate and sentence him on Count 2. From this conviction and sentence, appellant has brought this appeal.

Release of the Bentley Was Not a Due Process Violation

In his first issue on appeal, appellant contends that his due process rights were violated when the State prematurely released the Bentley prior to the second trial, despite knowing that it was significant and material to his defense. The State disagrees that the Bentley was constitutionally material. We agree with the State and hold that the court did not err in denying the motion to dismiss due to the loss of the Bentley. Whether a defendant's due process rights have been violated by the State's destruction of or failure to preserve evidence is a legal question and is therefore reviewed de novo. *Patterson v. State*, 199 So. 3d 253, 256 n.2 (Fla. 2016).

When dealing with potentially exculpatory or useful evidence that has been permanently lost, "courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed." *California v. Trombetta*, 467 U.S. 479, 486-87 (1984).

> Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means.

Id. at 488-89 (footnote omitted) (citation omitted).

"Lost or unpreserved evidence is 'material' in this sense 'if the omitted evidence creates a reasonable doubt that did not otherwise exist.'" *State v. Davis*, 14 So. 3d 1130, 1132 (Fla. 4th DCA 2009) (quoting *State v. Sobel*, 363 So. 2d 324, 327 (Fla. 1978)). "Where lost or unpreserved evidence is 'material exculpatory evidence,' the loss of such evidence . . . the good or bad faith of the State is irrelevant." *Id*. However, in cases where the destroyed evidence is merely potentially useful, as opposed to constitutionally material, failure to preserve the evidence does not constitute a due process violation unless there is a showing of bad faith on the part of the state. *Arizona v. Youngblood*, 488 U.S. 51, 57 (1988). In *Youngblood*, the court further explained the difference between the due process implications of the destruction of materially exculpatory evidence and that which is only potentially useful:

> The Due Process Clause of the Fourteenth Amendment, as interpreted in Brady, makes the good or bad faith of the State irrelevant when the State fails

to disclose to the defendant material exculpatory evidence. But we think the **Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.** Part of the reason for the difference in treatment is found in the observation made by the Court in *Trombetta, supra*, 467 U.S., at 486, 104 S.Ct., at 2532, that "[w]henever potentially exculpatory evidence is permanently lost, courts face the treacherous task of divining the import of materials whose contents are unknown and, very

often, disputed." Part of it stems from our unwillingness to read the "fundamental fairness" requirement of the Due Process Clause, *see Lisenba v. California*, 314 U.S. 219, 236, 62 S.Ct. 280, 289, 86 L.Ed. 166 (1941), as imposing on the police an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution. We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. **We therefore hold that unless a criminal defendant can show bad faith on the part of the**

> **police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.**

Id. at 57-8 (emphasis added).

The trial court found, and we agree, that the State did not act in bad faith in releasing the Bentley. Therefore, we must determine whether the Bentley constituted materially exculpatory or only potentially useful evidence. *Trombetta* is instructive. It requires that "[t]o meet th[e] standard of constitutional materiality, evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Trombetta*, 467 U.S. at 489. In Trombetta, the Court considered drunk driving breath test samples (as opposed to the test results themselves) and found that neither condition of materiality was met. *Id.* As to exculpatory value, the Court considered the testing machine's well-established accuracy, which meant that

"preserved breath samples would simply confirm the Intoxilyzer's determination that the defendant had a high level of blood- alcohol concentration at the time of the test. . . . [B]reath samples were much more likely to provide inculpatory than exculpatory evidence." Id. As to comparable evidence, the Court held that the respondents were not without alternative means of demonstrating their innocence. *Id*. at 490. The Court noted that they could address Intoxilyzer malfunction using the machine's weekly calibration results and by inspecting the machine. Id. Respondents could address the possible effect of external factors such as radio waves and operator error through cross-examination. *Id*. The Court therefore found that due process does not require law enforcement to

preserve breath samples, and therefore the Intoxilyzer results should not have been suppressed. *Id.* at 491.

In this case, the trial court held a full hearing on the issue of the exculpatory nature of the Bentley and concluded that it was merely potentially exculpatory. In doing so, it analyzed the evidence and the expert's opinions with regard to Trombetta and Youngblood:

> [Appellant's expert], by his own former testimony, has already formed an opinion of the malfunction and that his opinion on the state of the Bentley as the time of the crash is complete. The "mere possibility of helping the defense" by conducting even more testing on the Bentley which was already subjected to extensive testing by three different experts does not rise to the level of constitutional materiality . . . .
>
> Therefore, any additional evidence which the vehicle[] may have revealed only rises to the level of "potentially useful" evidence . . . .

As to the appropriate remedy, the court held:

> This Court's finding that the Bentley did not rise to the level of materially exculpatory evidence and instead was only potentially useful evidence renders dismissal too harsh a sanction in the absence of bad faith on the part of the State. The Court finds that since the State has conceded it will not call [the expert retained by Bentley] as an expert in the retrial, there remains no prejudice to Defendant in his ability to present the expert testimony and findings he has collected. . . . Furthermore, the Court notes that Defendant is not precluded from sharing with the jury the fact that the Bentley . . . [is] no longer available for inspection since [it was] prematurely released by the State.

Based on this, the court denied appellant's motion to

dismiss.

Subsequently, during his second trial, appellant claimed that his brakes malfunctioned. His expert testified that there was a throttle malfunction that could have momentarily affected appellant's ability to brake and "may have contributed to the crash." The expert admitted that prior to the release of the Bentley, he had stated that further testing would not tell him anything beyond what he already knew based upon the car's diagnostic stored data, the ECMs.

On appeal, appellant essentially argues that had his expert been able to further examine the Bentley, he would have been able to complete additional testing that might have lent additional support to the expert's testimony that the brakes malfunctioned before the accident. However, the mere possibility that the testimony would have bolstered the expert's opinion does not rise to the level of "constitutional materiality." *Trombetta*, 467 U.S. at 488-89. An ECM readout indicating that the car was experiencing a throttle malfunction might have qualified as such, but experts on both sides had already tested the vehicle and obtained that readout. The fact that the car had a malfunction is not the evidence at issue. The expert could, and did, opine that a malfunction existed and that it affected braking. In contrast, the evidence sought to be obtained, if it existed, would have merely fleshed out and bolstered this opinion.

Further, like *Trombetta*, appellant had alternate sources available to elicit testimony to suggest that the throttle malfunctioned. The ECM report specified the malfunction, and his experts could (and did) testify as to some of the mechanics and timing of the

malfunction. This also supports a finding that the Bentley was not materially exculpatory under *Trombetta*.

Finally, the State did not use its expert who performed the additional testing on the vehicle. Thus, appellant's expert was on the same footing as the State's expert concerning the vehicle.

This case is most similar to *State v. Patterson*, 199 So. 3d 253 (Fla. 2016). There, the defendant was charged with arson after a fire in his house and garage, which contained his truck. *Id.* at 254-55. After his insurance company paid him the proceeds of his policy on his truck, the insurer destroyed the truck. *Id.* The defendant was later arrested and charged with arson. *Id.* at 255. The State's expert was able to inspect the truck before it was destroyed. *Id.* The defendant's fire investigation expert had to rely on photographs of the burned truck (although he was able to inspect the house). *Id.* The defendant's expert was able to argue deficiencies in the State's expert's analysis, and he testified that there should have been examination of

several electrical components, which the State had failed to eliminate as a an accidental cause of the fire. *Id*. at 256. The Florida Supreme Court held that the truck

> clearly is not material exculpatory evidence. The most that could be said is that, if the components that Patterson's expert identified as potential causes of the fire had been subjected to additional examination and testing, they might have supplied

> evidence to further support Patterson's theory that the fire was electrical and therefore accidental.

Id. at 257-58. The court then found no due process violation under *Youngblood*. *Id.* at 259

Similarly, in the present case, we agree with the trial court that the additional testing that was precluded by the release of the Bentley was merely potentially exculpatory.

Appellant contends, in the alternative, that the trial court should have given the jury an instruction on spoliation of evidence. However, the court offered to give a curative instruction if the defense proposed one, but the defense maintained that it could not propose one which would not impinge on the appellant's due process rights. Thus, appellant did not preserve this claim. Moreover, defense counsel extensively questioned its expert regarding the fact that he was not able to retest the vehicle after it was located in Texas and regarding what an inspection might reveal. No further request for an instruction was made. We

thus find no abuse of discretion in failing to give an instruction on spoliation of evidence.

Knowledge of Injury or Death Was Not an Element of the Failure to Render Aid Enhancement

Appellant argues that the court erred in instructing the jury that an element of the failure to render aid enhancement was that the defendant "knew or should have known that the accident resulted in injury or death." He argues that actual knowledge is required. The State counters that such knowledge is not required. As noted above, the record does not show that the jury was instructed at all on knowledge of the injury or death. Instead, the court instructed the jury that it must find that appellant "knew that the crash had occurred" (Count I) or "knew that an accident occurred" (Count II), and failed to give information or aid as required by law. Thus, the jury instructions neither tracked the standard instructions, both of which used "knew or should have known" standard, nor did it track the parties' proposed instructions, which added as an element whether the defendant

knew or should have known that the accident resulted in an injury or death.

In this unusual circumstance, although it does not appear that appellant objected to the instructions as given, we nevertheless address whether the instructions were required to include a provision regarding knowledge of an injury or death. If this were an element of the crime, its exclusion would constitute fundamental error. We hold, however, that

knowledge of injury or death is not required for the failure to render aid enhancement to either DUI manslaughter or vehicular manslaughter.

Section 316.193(3), Florida Statutes (2010), provides for the penalty when a person who was driving under the influence fails to render aid:

> Any person:
>
> (a) Who is in violation of subsection (1) [Driving while Intoxicated];
>
> (b) Who operates a vehicle; and
>
> (c) Who, by reason of such operation, causes or contributes to causing . . . .
>
> 3. The death of any human being or unborn child commits DUI manslaughter, and commits . . . .

b. A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

(I) At the time of the crash, the person **knew, or should have known, that the crash occurred**; and

(II) The person failed to give information and render aid as required by s. 316.062.

(Emphasis added). Similarly, section 782.071(1), Florida Statutes (2010), provides for vehicular homicide penalties for a failure to render aid:

Vehicular homicide is:

…..

(b) A felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if:

1. At the time of the accident, the person **knew, or should have known, that the accident occurred**; and

2. The person failed to give information and render aid as required by s. 316.062.

> **This paragraph does not require that the person knew that the accident resulted in injury or death.**

(Emphasis added). Section 316.062(1), Florida Statutes (2010), as referenced in both statutes, sets forth when a person must give information and aid:

> The driver of any vehicle involved in a crash resulting in injury to or death of any person **or damage to any vehicle or other property** which is driven or attended by any person shall give his or her name, address, and the registration number of the vehicle he or she is driving, . . . and shall render to any person injured in the crash reasonable assistance[.]

(Emphasis added). Thus, to enhance the penalty for failing to render aid or give information, these statutes require knowledge only of the crash, not knowledge of any injury or death. As section 316.062(1), Florida Statutes, requires a person to stop and give

information even for property damage, the occurrence of the crash itself, which would at least result in damage to property, would, by itself, require a person to stop and give information (and, if there is an injured person, give aid). There is no requirement that a person know of an injury or death, nor is there even a "should have known" element.[1]

The Florida Legislature enacts criminal laws and can specify the knowledge requirement for criminal acts. Our supreme court most recently addressed this legislative power in State v. Adkins, 96 So. 3d 412 (Fla. 2012):

> "Enacting laws-and especially criminal laws-is quintessentially a legislative function." *Fla. House of Representatives v. Crist*, 999 So. 2d 601, 615 (Fla. 2008). "[T]he Legislature generally has broad authority to determine any requirement

1 However, the failure to render aid enhancements under the DUI manslaughter and vehicular homicide statutes by definition only apply where a death occurs.

for intent or knowledge in the definition of a crime." *State v. Giorgetti*, 868 So. 2d 512, 515 (Fla. 2004). We thus have recognized that generally "[i]t is within the power of the Legislature to declare an act a crime regardless of the intent or knowledge of the violation thereof." *Coleman v. State ex rel. Jackson*, 140 Fla. 772, 193 So. 84, 86 (1939). "The doing of the act inhibited by the statute makes the crime[,] and moral turpitude or purity of motive and the knowledge or

> ignorance of its criminal character are immaterial circumstances on the question of guilt." *Id.*
>
> Given the broad authority of the legislative branch to define the elements of crimes, the requirements of due process ordinarily do not preclude the creation of offenses which lack a guilty knowledge element.

Id. at 417.

In a limited number of situations, "the omission of a mens rea element from the definition of a criminal offense has been held to violate due process." *Id.* at 419. For instance, *Adkins* looked to *Lambert v. California*, 355 U.S. 225 (1957), involving a Los Angeles code provision requiring felons to register within five days of entering the city. *Adkins*, 96 So. 3d at 419. In *Lambert*, the Supreme Court held it to be a violation of due process when applied to a person who had no knowledge of a duty to register. 355 U.S. at

228. The Supreme Court explained that such innocent passive conduct could not be penalized unless the defendant had actual knowledge of the requirement. *Id*. Nevertheless, the Supreme Court noted the narrowness of its ruling:

> *There is wide latitude in the lawmakers to declare an offense and to exclude elements of knowledge and diligence from its definition.* But we deal here with conduct that is wholly passive-mere failure to register. It is unlike the commission of acts, or the failure to act under circumstances that should alert the doer to the consequences of his deed. The rule that "ignorance of the law will not excuse" is deep in our law, as is the principle that of all the powers of local government, the police power is "one of the least limitable."

Id. (emphasis supplied; citations omitted). Our supreme court followed *Lambert* in *Giorgetti* and held

that a failure to register as a sex offender required a mens rea component, invalidating statutes which excluded knowledge of the duty to register as an element of the crime. *Giorgetti*, 868 So. 2d at 517.

Adkins also noted that the lack of a scienter requirement violated due process "if a criminal statute's means is not rationally related to its purposes and, as a result, it criminalizes innocuous conduct." *Adkins*, 96 So. 3d at 420 (quoting *Schmitt v. State*, 590 So. 2d 404, 413 (Fla. 1991) (holding that a statute which criminalized possession of photos depicting

a child's clothed or unclothed genitals would have criminalized entirely innocent conduct such as family photos)).

In sections 316.193 and 782.071, Florida Statutes, the Legislature did not omit a scienter requirement; it specifically provided that a person who drove under the influence and was involved in a crash must have either known or should have known of the crash to receive the enhancement. The Legislature did not require any knowledge of death. It is the Legislature's prerogative to establish the scienter requirement.

The limited categories of statutes in which courts have required a knowledge requirement to satisfy due process are not applicable here. Unlike *Lambert*, where the prohibited conduct was "wholly passive," here, a person must actively fail to render aid by leaving the scene of the crash. *Lambert*, 355 U.S. at 228. And clearly, failing to render aid or give information is not "innocent conduct," but is most definitely rationally related to the Legislative purpose. *Adkins*, 96 So. 3d at 420 (quoting *Giorgetti*, 868 So. 2d

at 517). "One of the main purposes of the statute is to ensure that accident victims receive medical assistance as soon as possible." *State v. Dumas*, 700 So. 2d 1223, 1225 (Fla. 1997). A person should stop, if he or she knows that she has been involved in a crash, for no other reason than to ascertain whether any injury or damage has occurred. To require a person involved in an accident to know of an injury before he or she is required to stop would frustrate the very purpose of sections 316.193 and 782.071, Florida Statutes. There is no due process violation in the statutes' failure to include a requirement that a defendant knew (or should have known) of an injury or death before being required to stop and render aid.

Appellant relies on a series of cases that have required a knowledge of injury element under Florida's hit-and-run statute, section 316.027, Florida Statutes (2010). We, however, conclude that the statutes are sufficiently different that these cases do not apply here.

Section 316.027(2), Florida Statues, provides that a driver involved in a crash resulting in injury or

death must immediately stop and remain at the scene and comply with the duties in section 316.062, Florida Statutes. A person who willfully violates this requirement commits a felony varying degree, depending on the resulting injury or death. § 316.027(2)(a)-(c), Fla. Stat. There is no specific scienter requirement. In contrast, both sections 316.193 and 782.071, Florida Statutes, have specific knowledge elements, requiring that the person committing DUI manslaughter or vehicular homicide knew or should have known of the crash. In fact, the

Legislature specifically excluded knowledge of injury or death as an element in section 782.071(1), Florida Statutes.

As it is within the Legislative prerogative to dispense with such a requirement, see *Adkins*, 96 So. 3d at 417, it is not our function to rewrite the statute to require knowledge of death as an element of the crime. Although section 316.193(3)(c), Florida Statutes, does not have specific language eliminating knowledge of injury or death as an element, it only requires a failure to comply the duties in section 316.062, Florida Statutes, which apply even for damage to property. Knowledge of a vehicular crash would signify at least some damage to property, regardless of whether death occurred.

In *State v. Mancuso*, 652 So. 2d 370 (Fla. 1995), the Florida Supreme Court held that the hit-and-run statute requires that the defendant either knew or should have known of the resulting injury or death. *Id*. at 372. The court based its decision on the weight of the majority of jurisdictions with similarly worded statutes which required actual or constructive

knowledge of injury in order to find criminal liability under hit and run statutes. *Id.* Those similarly-worded statutes did not include a knowledge element. Where, however, a knowledge element has been included in hit-and-run statutes, courts have construed the statutes in accordance with their terms. For instance, where the statute provided "[e]ach person operating a motor vehicle who is knowingly involved in an accident which causes . . . injury or damage to property shall at once stop[,]" the state was required to prove only knowledge of the accident and not the injury. *See State v. Johnson*, 630 A.2d 1059, 1063 (Conn. 1983); see also *N. Olmsted v. Gallagher*, 2 Ohio App. 3d 414, 416, 442 N.E.2d 470 (8th Dist.1981); *State v. Sabetta*, 672 A.2d 451, 452-53 (R.I. 1996). Similarly, as sections 316.193(3)(c) and 782.071(1), Florida Statutes, both have knowledge requirements, cases, such as *Mancus*o, involving statutes with no knowledge requirement, are not dispositive of this issue.[2]

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2 This distinction is further underlined by the legislative history of section 782.071, Florida Statutes. The specification that knowledge of injury or death is not required was initially added in the 1996 session, shortly after *Mancuso* was decided. *See* 1996 Fla.

In sum, we hold that under the DUI manslaughter and vehicular homicide statutes, the enhancements for failure to render aid and provide information require that the person knew or should have known of the crash or accident, but do not require the State to prove that the defendant

Sess. Law Serv. Ch. 96-330 (West). Section 316.193, Florida Statutes, which does not contain a similar provision, was initially enacted in 1999.

knew or should have known of the death or injury of the victim. To require such proof would defeat the purpose as noted in Dumas:

> This result-driven sanction implicitly recognizes the possibility that a fleeing driver's failure to stop and render aid may be the reason that an injured person dies. Moreover, requiring proof that a driver had knowledge of death would lead to an absurd result: a driver who callously leaves the scene of a serious accident can avoid a [first]-degree felony conviction by disavowing knowledge of death.

Dumas, 700 So. 2d at 1226. Additionally, to the extent that the jury instruction, as given, deviated from the standard instruction in stating that appellant had to "know" that the accident occurred, the instruction was erroneous. But as the state was held to a higher level of proof, there is no error. Moreover, there is no dispute in the record that appellant clearly knew that he had just hit a vehicle and was in a "bad" accident. Thus,

the knowledge of the accident component was uncontested at trial. No reversible error occurred.

The Blood Draw Was Not an Unlawful Search and Seizure, Based on Exigent Circumstances

Appellant argues that the blood draw obtained from him in the early morning hours after the accident was made without a warrant and violated the Fourth Amendment prohibition against unreasonable searches and seizures. The State counters that exigent circumstances permitted the warrantless blood draw. We agree with the State.

Warrantless searches are "per se" unreasonable unless they fall within a recognized exception to the warrant requirement. *Katz v. United States*, 389 U.S. 347, 357 (1967). A blood draw conducted under police direction is considered a search and seizure under the Fourth Amendment. *Schmerber v. California*, 384 U.S. 757, 767 (1966). However, an exception to the warrant requirement exists "when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively

reasonable under the Fourth Amendment." *Missouri v. McNeely*, 133 S.Ct. 1552, 1558 (2013) (quoting Kentucky v. King, 563 U.S. 452, 460 (2011)).

> A variety of circumstances may give rise to an exigency sufficient to justify a warrantless search . . . . As is relevant here, we have also recognized that in some circumstances law enforcement officers may conduct a search without a warrant

> to prevent the imminent destruction of evidence. While these contexts do not necessarily involve equivalent dangers, in each a warrantless search is potentially reasonable because "there is compelling need for official action and no time to secure a warrant."

Id. at 1558-59 (citations omitted) (quoting *Michigan v. Tyler*, 436 U.S. 499, 509-10 (1978)). Thus, "[t]o determine whether a law enforcement officer faced an emergency that justified acting without a warrant, this Court looks to the totality of circumstances." *Id.* at 1559.

In *McNeely*, the defendant was stopped for speeding, declined a breath test, and was taken to a nearby hospital for blood testing. *Id.* at 1556-57. The defendant did not consent, and the officer never attempted to secure a warrant. *Id.* at 1557. The United States Supreme Court held that the officer violated the Fourth Amendment, as the test was a routine intoxicated driver case where no factors, apart from the

natural dissipation of blood alcohol, suggested an emergency. *Id*. at 1568. The Court held that "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." *Id*. However, "the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence" are relevant in determining whether a warrantless search is reasonable. *Id.*

McNeely discussed *Schmerber v. California*, 384 U.S. 757 (1966), as fitting within the type of cases in which exigent circumstances would allow a warrantless search. *McNeely*, 133 S.Ct. at 1559-60. In *Schmerber*, a driver who had suffered injuries in a car crash was taken to the hospital. *Schmerber*, 384 U.S. at 758. While at the hospital receiving treatment, police arrested him for driving while under the influence and, over his objection, ordered a blood test. *Id*. at 758-59. The Court held that the warrantless blood test was permissible because the police "might reasonably have believed that he was confronted with

an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence.'" *Id*. at 770 (quoting Preston v. United States, 376 U.S. 364, 367 (1964)). In addition to the natural dissipation of blood alcohol, "time had to be taken to bring the accused to a hospital and to investigate the scene of the accident," and thus "there was no time to seek out a magistrate and secure a warrant." Id. at 770- 71.

In this case, the court found that, based upon the timeline, exigent circumstances were present. Appellant absented himself from the scene

for over an hour and then returned but went to the hospital for treatment of his own injuries before the investigators found the vehicle and body. By the time the homicide investigator arrived and then went to the hospital, nearly four hours had passed since the time of the crash, but less than two hours from the time the body was discovered. The investigator testified that it would have taken an additional two hours to obtain a search warrant. Although a local police officer testified on behalf of appellant that it would not have taken much time to get a warrant, it was for the trial court to judge the credibility of the witnesses.

This was not a "routine DUI" once the victim's body was discovered. Although the Supreme Court noted that "the natural dissipation of alcohol in the bloodstream does not constitute an exigency in *every* case" *McNeely*, 133 S.Ct. at 1554 (emphasis added), the Court clearly signaled that in some cases the destruction of evidence by the natural dissipation of alcohol could constitute an exigent circumstance. If the circumstances in *Schmerber* constituted exigent circumstances to justify a warrantless blood draw, then the circumstances of this case present a far more

compelling reason to obtain a blood draw as soon as possible so as to prevent the dissipation of alcohol in appellant's system. We thus find no Fourth Amendment violation. The court correctly denied the motion to suppress.

As to the remaining issues, we affirm without further discussion. We note, however, that appellant challenges the admission of his blood draw results on the basis that FDLE rules are insufficient to ensure scientific reliability. We decided this issue adverse to appellant's position in a prior appeal. *Goodman v. Fla. Dep't of Law Enf't*, 203 So. 3d 909, 912 (Fla. 4th DCA 2016). We certified a question to the Florida Supreme Court, which has taken jurisdiction. *Goodman v. Fla. Dep't of Law Enf't*, 41 Fla. L. Weekly D1247b (Fla. Oct. 14, 2016). We therefore do not address this issue in this appeal.

Sentencing

Finally, appellant contends that double jeopardy precludes his conviction for both DUI manslaughter with failure to render aid and vehicular homicide with

failure to render aid. Although the court withheld adjudication on the vehicular homicide charge, we have held that the withholding of adjudication on an offense constitutes a "conviction" for double jeopardy purposes. *Griffin v. State*, 69 So. 3d 344, 346 (Fla. 4th DCA 2011) (adopting the reasoning of *Bolding v. State*, 28 So. 3d 956, 957 (Fla. 1st DCA 2010)). A conviction for DUI manslaughter and for vehicular homicide involving a single victim violates double jeopardy. *See Ivey v.*

State, 47 So. 3d 908 (Fla. 3d DCA 2010). Therefore, we direct that the trial court vacate the conviction for vehicular homicide on remand.[3]

For the foregoing reasons, we affirm appellant's conviction and sentence for DUI manslaughter with failure to render aid but remand to vacate his conviction for vehicular homicide.

TAYLOR and LEVINE, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

3 We recognize that the trial court withheld adjudication and sentencing on vehicular homicide at the State's request to hold it in abeyance pending the results of the appeal of appellant's conviction and sentence on DUI manslaughter. We recognize the dilemma both the court and the State face in such a circumstance. Resolving a double jeopardy issue on appeal where there are substantial issues as to the other conviction may be a reasonable solution.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOHN GOODMAN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D14-4479

[October 25, 2017]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Jeffrey J. Colbath, Judge; L.T. Case No. 502010CF005829 AMB.

Margaret Good-Earnest and Cherry Grant of Good-Earnest Law, P.A., Lake Worth, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Richard Valuntas, Assistant Attorney General, West Palm Beach, for appellee.

ON MOTION FOR REHEARING

WARNER, J.

In his motion for rehearing, appellant contends that we did not apply the analysis of *California v. Trombetta*, 467 U.S. 479 (1984), correctly. He contends the Bentley should have been considered as

"possess[ing] an exculpatory value that was apparent before [the evidence] was destroyed," in that his expert had already developed opinions regarding the malfunction of the vehicle to which he testified in the first trial. *Id.* at 489. Instead, he asserts that we addressed the Bentley as only potentially exculpatory evidence if subject to additional tests which could exonerate the defendant. *Arizona v. Youngblood*, 488 U.S. 51, 57 (1988).

Addressing appellant's contention that the Bentley had exculpatory value when it was destroyed, we still do not find that it meets the *Trombetta*

test. Even if the Bentley had exculpatory value before it was destroyed,[1] it was not of "such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." *Trombetta*, 467 U.S. at 489. The useful evidence from the Bentley had already been obtained from the vehicle and used by the expert as the foundation of his opinion regarding the malfunction of the vehicle. He was able to give his opinion in the second trial, just as he did in the first trial. Thus, it was the expert's opinion, not the presence of the Bentley, which furnished the materially exculpatory evidence.

Although the initial brief focused exclusively on the malfunction of the Bentley in addressing its exculpatory value, in the last paragraph of the reply brief appellant also maintained that the physical condition of the vehicle was exculpatory and thus required the presence of the vehicle in the second trial. In the motion for rehearing, appellant makes this a feature of his argument. However, there were a multitude of photos of the vehicle used by witnesses

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[1] One could question whether the Bentley had exculpatory value, as the jury found appellant guilty beyond a reasonable doubt at the first trial when all of the expert's testimony and the Bentley were presented. No other case has this unique circumstance of having a first trial at which the defendant was convicted even with the presentation of the evidence now alleged to be materially exculpatory.

and experts.[2] Appellant has not shown that the vehicle was of such a nature that the defendant would be "unable to obtain comparable evidence by other reasonably available means." *Id.* Therefore, we still find that *Trombetta* does not compel dismissal of the charge.

We deny the motion for rehearing on all issues, although we note that in discussing the motion to suppress the blood draw we did erroneously state that four hours, rather than three, passed between the accident and the blood draw. That factual error does not change our analysis or conclusions.

TAYLOR and LEVINE, JJ., concur.

[2] The record shows that the court admitted at least fifty-four pictures of the Bentley and its parts.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA, CRIMINAL DIVISION "W"
CASE NO. 502010CF005829AXXXMB

vs.

JOHN B. GOODMAN,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS BLOOD EVIDENCE

THIS CAUSE came before the Court on Defendant's Motion to Suppress Blood Evidence, filed on November 19, 2013 pursuant to Florida Rule of Criminal Procedure 3.190(h) and (i). After reviewing the Motion, hearing the argument of counsel at the hearing held on January 3, 2014, and considering relevant case law, it is hereby **ORDERED ADJUDGED** as follows:

A. Findings of Fact

Defendant was involved in a motor vehicle crash at the intersection of 120 Ave South and Lake Worth Road in Wellington at approximately 1:00 a.m. on February 12, 2010. There were multiple 911 calls

placed for assistance by passersby who saw Defendant's damaged vehicle in the area. Defendant was not present at the scene and he did not call 911 until approximately 1:55 a.m. to indicate he was the driver and give his location. Once back at the scene, Defendant advised that he was the driver of the Bentley and that he hit something that he did not see after he entered the intersection. Paramedics at the scene treated Defendant for his injuries and he was eventually transported to Wellington Regional Hospital at 2:26 a.m. At 2:31 a.m., authorities on the scene confirmed there was a fatality to the crash. One minute later, two DUI officers, who were also trained in DUI homicide, were dispatched to the scene.

Investigator Troy Snelgrove of Palm Beach County Sherriff's Office was not called out to the scene until approximately 3:10 a.m., more than two hours after the crash occurred, and arrived there at 3:18 a.m. After speaking with the other DUI officers on the scene and conducting his own investigation, Investigator Snelgrove left the scene at approximately 3:33 a.m., and drove to Wellington Regional Hospital to see

Defendant. When Investigator Snelgrove first arrived at the hospital, Defendant was in the radiology department receiving x-rays. Upon meeting Defendant, Investigator Snelgrove observed, among other things, the strong odor of alcohol on Defendant's breath, his eyes were red and glassy, and that the square-toed cowboy boots matched those found leading away from the Bentley. At approximately 3:58 a.m., Investigator Snelgrove requested a sample of Defendant's blood after he explained he had probable cause to believe Defendant was driving intoxicated at the time of the crash. After Defendant refused to provide a blood sample, Investigator Snelgrove directed a nurse to perform the blood draw.

In detailing the process to obtain a warrant, Investigator Snelgrove first explained that it takes between thirty to forty-five minutes to write the narrative and need to include facts and make an application. He also stated that it is hard to get someone on the phone at that hour and then once the warrant is sent to the State Attorney's Office for a review of legal sufficiency, then the duty judge must be contacted and the officer must travel to the duty judge's residence. Investigator Snelgrove estimated it

would have taken him between two to two-and-a-half hours to obtain a warrant at night in these circumstances.

Defendant's witness, Officer Melinda Hanton of Palm Beach Gardens Police Department, has worked as a DUI traffic enforcement officer since 2008. Officer Hanton explained she successfully obtained a search warrant for a nonconsensual blood draw while participating in DUI Saturation Patrol in February 2009. On that occasion, she was provided with a blank search

warrant which she filled out before the saturation patrol with her personal information and later added the facts of the case for the assistant state attorney at the mobile command post to review. By the time Officer Hanton finished her report and took it to the mobile command post, the duty judge was already anticipating the arrival of the warrant which was then promptly signed and returned via fax. Officer Hanton estimated that it took her an hour to obtain the warrant from start to finish

B. Discussion

Defendant argues that the results of the warrantless blood draw performed at the direction of Investigator Snelgrove should be suppressed based on the recent decision of the Supreme Court of the United States in *Missouri v. McNeely*, 133 S. Ct. 1552 (20.13) ("McNeely"). The State counters that even in light of the decision in *McNeely*, Defendant's blood was drawn lawfully without a warrant due to exigent circumstances. The State alternatively posits that the blood draw was lawful because Investigator Snelgrove complied with Florida's Implied Consent Law, section 316.1933, Florida Statutes, the constitutionality of which has not been called into question by *McNeely*.

1. *Missouri v. McNeelv*, 133 S. Ct. 1552 (U.S. 2013)

Defendant contends that the United States Supreme Court's recent decision in *Missouri v. McNeely*, 133 S. Ct. 1552 (U.S. 2013), renders his warrantless blood draw unlawful. In *McNeely*, the Supreme Court addressed the sole question of "whether the natural metabolization of alcohol in the bloodstream presents a per se exigency that justifies

an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." 133 S. Ct. at 1556. In brief, the Court declined to establish a per se rule permitting warrantless blood draws in all drunk-driving cases and stated "'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." *Id*. at 1568.

The facts of *McNeely* involved the arrest of an individual who performed poorly on field- sobriety tests after he was initially stopped for speeding and crossing the center line. *Id.* at 1556-57. The individual refused to use a portable breath-test device to measure his blood alcohol concentration. *Id*. at 1557. During the transport of the individual to the station by the arresting officer, he again indicated he would refuse to provide a breath sample and thus the officer took him to a nearby hospital for blood testing. *Id.* The officer did not obtain a warrant for the blood draw. *Id.* After the officer explained the implied consent law, the

individual still refused to submit to the blood test. *Id.* The trial court suppressed the results of the blood test since apart from mere metabolization of alcohol, "there were no other circumstances suggesting the officer faced an emergency in which he could not practicably obtain a warrant." *Id.* (citation omitted) The Missouri Supreme Court affirmed and concluded that *Schmerber v. California*, 384 U.S. 757 (1966) required more than the dissipation of blood-alcohol evidence to support a warrantless blood draw and that an exigency depended on the existence of additional special facts. *Id.*

The Court began its analysis by pointing to its precedent established by *Schmerber* where the Court upheld a warrantless blood test of an individual arrested for driving under the influence of alcohol because the officer might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence. *Id.* at 1575 (internal quotation marks and citation omitted). The Court noted that the *Schmerber* decision applied the totality of the circumstances principle to determine when a law enforcement officer faces an

emergency that justified acting without a warrant. *Id*. at 1569. Thus, in holding that the natural dissipation of alcohol in the blood does not create a per se exigency, the Court reaffirmed the principle that "where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly

undermining the efficacy of the search, the Fourth Amendment mandates that they do so." *Id.* at 1561.

2. Exigent Circumstances

Defendant contends that applying *McNeely* to the facts of the instant case there is nothing in the record to show exigent circumstances existed to support a finding that the blood draw was constitutional. (Mot. at 3.) As reaffirmed in *McNeely*, however, the totality of the circumstances approach used in other Fourth Amendment contexts is proper to determine "[w]hether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case by case based on the totality of the

circumstances."[1] 133 S. Ct. at 1564. "The relevant factors in determining in determining whether a warrantless search is reasonable, including the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence, will no doubt vary depending upon the circumstances in the case." *Id.* at 1568. In reviewing the applicable case law and standards, the *McNeely* court identified certain factors that would establish whether an exigent circumstance existed, including the natural dissipation of alcohol from the body, the time to seek out a magistrate to review a warrant, a DUI involving a crash where an investigation must be conducted, and the availability of electronic or. telephonic warrants. *See* 133 S. Ct. at 1560-62.

The Court believes that its order is consistent

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1 The McNeely decision solely addressed whether the dissipation of alcohol established a per se exigency since Missouri in its Petition for Certiorari to the Court "did not separately contend that the warrantless blood test was reasonable regardless of whether the natural dissipation of alcohol in a suspect's blood categorically justifies dispensing with the warrant requirement." 133 S.Ct. at 1568.

with the only two other Courts to address the applicability of the recent *McNeely* decision and Florida's Implied Consent Law. *See also, State v. Aguilar*, 20 Fla. L. Weekly Supp. 658a (Fla. 11th Cir. Ct. May 16, 2013) (holding nonconsensual blood draw admissible since *McNeely* did not change the totality of the

circumstances test to determine whether an exigent circumstance existed); *State v. Finnegan*, Case Number 432010CF000349A (Fla. 19th Cir. Ct. October 28, 2013) (same). Other state courts addressing challenges to their respective implied consent laws have also distinguished *McNeely*. *See State v. Brooks*, 838 N.W. 2d 563, 572 (Minn. 2013) (noting *McNeely* recognized that implied consent laws "are 'legal tools' states continue to have to enforce their drunk driving laws"); *In re Hart*, 835 N.W. 2d 292 (Wis. 2013) (stating a defendant's reliance on *McNeely* to challenge the lawfulness of the blood draw taken after he refused to provide a sample is "misplaced");

Here, the State has proven that the blood draw

complies with the exigent circumstances exception to the warrant requirement of the Fourth Amendment. The crash occurred sometime around 1:00 a.m. and 911 ca1ls were received shortly thereafter. Upon arriving at the scene, first responders only saw Defendant's Bentley, without a driver, and nothing else. It was not until approximately one hour later that Defendant made contact with authorities and alerted them that he was involved in the crash. Even at this point, no one was aware of another victim to the crash.[2] Investigator Snelgrove did not begin his DUI homicide investigation until after 3:00 a.m. and the blood draw was not performed until minutes before 4:00 a.m. The Court credits Investigator Snelgrove's assertions that it would have taken him a substantial amount of time to prepare a warrant for the blood draw and have it reviewed, approved, and executed. The testimony of Defendant's witness, Officer Hanton, is not helpful to

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2 During his testimony at the hearing, Investigator Snelgrove admitted that at that point in time, there was nothing to indicate the crash was anything other than a "routine" DUI misdemeanor and that he would have been without probable cause to take a nonconsensual blood sample.

Defendant's position that it is in fact possible to obtain a warrant for a blood draw. Strikingly, the episode where Officer Hanton obtained a search warrant for a blood draw was on the night of a DUI saturation patrol where there are mobile units ready and the State Attorney's Office and duty judge are on notice

and ready to assist officers. Lastly, Officer Hanton's search warrant was already in "template" form having been reviewed by an assistant state attorney in advance of the DUI saturation patrol date. The Court therefore finds that the totality of the circumstances indicate that there was an exigency which justified taking Defendant's blood without first obtaining a warrant.

3. Florida's Implied Consent Law

Alternatively, this Court finds *McNeely* did not invalidate Section 316.1933, Florida Statutes, commonly referred to as Florida's Implied Consent Law, and that the draw of Defendant's blood was

lawful pursuant to that statute.[3] Florida's Implied Consent Law, reads in relevant part:

> If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if

3 The State argues Defendant is implicitly requesting the Court declare the section 316.1933 unconstitutional.

> necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

§ 316.1933(l)(a), Fla. Stat. (2010). The Court's finding is bolstered by the fact that the *McNeely* court did not directly invalidate implied consent laws used in the majority of states, but instead narrowly focused its holding to the issue of whether the natural dissipation of blood is a per se exigency.

In the absence of an opinion on point from the Supreme Court of the United States or the Florida Supreme Court, Florida's trial courts are bound to follow the authority of the District

Courts of Appeal. *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). Florida's appellate courts have upheld the Implied Consent Law against constitutional challenge on Fourth Amendment grounds and have found it to be even more protective of an individual's rights than

Fourth Amendment. *State v. Langsford*, 816 So. 2d 136 (Fla. 4th DCA 2002); *State v. Slaney*, 653 So. 2d 422 (Fla. 3d DCA 1995); *Jackson v. State*, 456 So. 2d 916 (Fla. 1st DCA 1984). Therefore, the Court concludes that Defendant's blood draw was also lawful pursuant to section 316.1933.

Accordingly, Defendant's Motion to Suppress Blood Evidence is hereby **DENIED.**

DONE AND ORDERED, in Chambers at West Palm Beach, Palm Beach County, Florida this 10 day of January, 2014.

JEFFREY COLBATH
CIRCUIT JUDGE

Copy provided to:

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, STATE OF FLORIDA CRIMINAL DIVISION "W"

CASE NO.2010CF005829AMB
BOOKING NO. 2010024704

STATE OF FLORIDA

vs.

JOHN GOODMAN, W/M, 09/18/1963

_____/

INFORMATION FOR:

1) DUI MANSLAUGHTER
AND FAILURE TO RENDER
AID
2) VEHICULAR HOMICIDE-

FAIL TO GIVE AID/INFORMATION

In the Name and by Authority of the State of Florida:

MICHAEL F. McAULIFFE, State Attorney for the Fifteenth Judicial Circuit, Palm Beach County, Florida, by and through his undersigned Assistant State Attorney, charges that:

COUNT 1: JOHN GOODMAN on or about February

12, 2010, in the County of Palm Beach and State of Florida, unlawfully did drive or be in actual physical control of a vehicle while under the influence of alcoholic beverages, chemicals or any substance controlled under Chapter 893 or any combination thereof, to the extent that his normal faculties were impaired, or did have a blood alcohol level of .08 or higher, and during the course of driving a vehicle while under the influence of alcoholic beverages, chemical or any substance controlled under Chapter 893 or any combination thereof, did cause or contribute to the cause of the death of SCOTT PATRICK WILSON, a human being, and did willfully fail to remain at the scene of the accident and give information and render aid as required by F.S. Section 316.062, contrary to Florida Statute 316.193(3)(a),(b),(c)3b(i)(ii). (1 DEG FEL)

COUNT 2: JOHN GOODMAN on or about February 12, 2010, in the County of Palm Beach and State of Florida, did unlawfully, by operating a motor vehicle in a reckless manner, likely to cause the death of, or great bodily harm to another, kill SCOTT PATRICK WILSON, a human being, and did fail to give information and render aid as required by Florida Statute 316.062, even though JOHN GOODMAN at the time of the accident knew or should have known that the accident occurred, contrary to Florida Statute 782.07l(l)b. (1 DEG FEL)

MICHAEL F. McAULIFFE
STATE ATTORNEY

By: ELLEN D. ROBERTS
FL BAR NO. 0607827

Assistant State Attorney
Fifteenth Judicial Circuit

SA2010WA002403AMB

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STATE OF FLORIDA
COUNTY OF PALM BEACH

Appeared before me, ELLEN D. ROBERTS, Assistant State Attorney for Palm Beach County, Florida, personally known to me, who, being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged, that this prosecution is instituted in good faith, and certifies that testimony under oath has been received from the material witness or witnesses for the offense.

Sworn to and subscribed to before me this 19th day of May, 2010.

NOTARY PUBLIC

Citation Nos: 1902-DWQ 2, 1903-DWQ 3

FCIC REFERENCE NUMBERS:
1) DUI MANSLAUGHTER AND FAILURE TO RENDER AID 0909
2) VEHICULAR HOMICIDE-FAIL TO GIVE AID/INFORMATION 0909

SA 2010WA002403AMB

000008

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA, CRIMINAL DIVISION "W"
CASE NO. 502010CF00582
v. 9AXXXMB

FILED
Circuit Criminal Department
NOV 21 2014
SHARON A. BOCK
Clerk & Comptroller
Palm Beach County

JOHN B. GOODMAN,
Defendant.
_____/

SENTENCE ORDER AS TO COURT ONE

THIS CAUSE came before the Court on November 21, 2014 in the matter of sentencing John B. Goodman ("Defendant"), whom has been adjudicated guilty of Count One, DUI Manslaughter and Failure to Render Aid, as charged in the Information. The Defendant appeared personally

before this Court, accompanied by his attorneys Douglas Duncan, Tama Kudman, Elizabeth Parker, and Scott Richardson. At a sentencing hearing on November 19, 2014, the Defendant was given an opportunity to be heard and to offer matters in mitigation of sentence and to show cause why he should not be sentenced as provided by law. At the sentencing hearing, the Court took judicial notice of all evidence offered at the previous sentencing hearing as well as the relevant documents and letters filed in the court file. No cause having been shown why the Defendant should not be sentenced as provided by law,

IT IS THE SENTENCE OF THE COURT that:

1. The Defendant is hereby committed to the custody of the Department of Corrections to be imprisoned for a term of sixteen (16) years.

2. The four (4) year minimum provisions of section 316.193(3)(c)3, Florida Statutes, are hereby imposed.

3. The Defendant shall be allowed a total of one hundred fifty-four (154) days as credit

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for time incarcerated prior to imposition of this sentence.

4. The Defendant shall not be allowed any credit for time spent on house arrest. The Court finds that it does not have the discretion to allow credit for time spent on house arrest pursuant to *Fernandez v. State*, 627 So. 2d 1 (Fla. 3d DCA 1993). *See also Bailey v. State*, 126 So. 3d 1170, 1171 (Fla. 4th DCA 2012); *Licata v. State*, 788 So. 2d 1063 (Fla. 4th DCA 2001); *Myers v. State*, 761 So. 2d 485, 486 (Fla. 5th DCA 2000) (holding that "a criminal defendant is not entitled to credit for time served on house arrest"), *McCarthy v. State*, 689 So. 2d 1095, 1097 (Fla. 5th

DCA 1997), *as clarified on denial of reh'g (Mar. 21, 1997)* ("There is simply no statutory authority for crediting such time."). If the Court had the discretion to do so, it would decline to exercise it in favor of granting credit for the time spent on house arrest.

5. The Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of the Judgment and Sentence, and any other documents specified by Florida Statute.

6. Pursuant to section 947.16(4), Florida Statutes, the Court retained jurisdiction over the Defendant.

7. Pursuant to sections 322.055, 322.056, 322.26, and 322.274, Florida Statutes, the Department of Highway Safety and Motor Vehicles is directed to revoke the Defendant's privilege to drive. The Clerk of Court is ordered to report the conviction and revocation to the Department of Highway Safety and

Motor Vehicles.

8. The Defendant is fined ten thousand dollars ($10,000.00). § 775.083(1)(b), Fla. Stat. (2014).

9. The Defendant's fine shall also include a statutorily mandated five percent (5%)

surcharge/cost on the fine described in paragraph 9 in the amount of five hundred dollars ($500.00), pursuant to section 938.04, Florida Statutes.

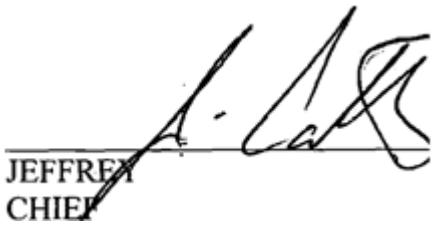
10. The Defendant is also fined an additional twenty dollars ($20.00) pursuant to section 938.06(1), Florida Statutes.

11. All charges, costs, and fines shall be assessed against the Defendant in a separate order.

The Defendant was advised in open court of the right to appeal from this sentence by filing Notice of Appeal with the Clerk of Court within thirty (30) days from

this date. The Defendant was also advised of the right to the assistance of counsel in taking said appeal at the expense of the State upon a showing of indegency.

DONE AND ORDERED this _____ day of November 2014.



JEFFREY
CHIEF

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IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA. CRIMINAL DIVISION

STATE OF FLORIDA, CASE NO. 50-2010-CF-005829 AMB

vs.

JOHN GOODMAN,

Defendant.

MOTION TO SUPPRESS BLOOD EVIDENCE

COMES NOW the Defendant, JOHN B. GOODMAN, by and through his undersigned attorneys, pursuant to Fla.R.Crim.P. 3.190(h) and (i), files this Motion to Suppress the Blood Evidence obtained from the Defendant in this cause and as grounds therefore would state the following:

STATEMENT OF THE FACTS

The Defendant was involved in a motor vehicle accident at approximately 1:00 a.m. on February 12, 2010 in Wellington, located in Palm Beach County Florida. The Defendant was transported to Wellington Regional Hospital. Investigator Troy Snelgrove arrived at the hospital. The Defendant was being treated for

injuries and he was asked for a sample of his blood to determine the alcohol content. The Defendant refused to voluntarily provide Investigator Snelgrove a sample of his blood. The Defendant was told by Investigator Snelgrove that he had no right to refuse, and if samples were not voluntarily given, his blood would be taken by force. According to Investigator Snelgrove, the samples were obtained from the Defendant by Nurse Cecilia Betts at 4:00 a.m.

FOURTH AMENDMENT VIOLATION

The Fourth Amendment to the U.S. Constitution provides "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Florida's Constitution, Article I, § 12 repeats the same language from the U.S. Constitution but also informs the citizenry of the State of Florida that "[t]his right shall be construed in conformity with the Fourth Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the Fourth Amendment to the United

States Constitution."

In Schmerber v. California, 384 U.S. 757, 766-772 (1966), the Supreme Court of the United States recognized that the drawing of an individual's blood for evidentiary purposes implicates the Fourth Amendment, requiring that a warrant be obtained. Over the years, the Supreme Court has carved out exceptions to the Fourth Amendment's warrant requirement, finding that in certain circumstances, a search and/or seizure is reasonable even when conducted without a warrant. Arguably, two of these exceptions would apply to this case.

1. Consent

The valid consent of an individual to a search is a well-recognized exception to the Fourth Amendment's warrant requirements. Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

In accordance with United States v. Mendenhall, 446 U.S. 544, 557 (1980), the court must determine, based upon the totality of the circumstances, whether consent was knowing and voluntary. Voluntariness is assessed from the totality of the circumstances. Schneckloth, at 226- 27, 229. The Defendant only agreed to allow a blood sample to be taken because. Investigator Snelgrove told him that he didn't have the right to refuse and that the blood would be taken by force. Clearly, therefore the warrantless blood draw cannot be upheld under the consent exception.

2. Exigent Circumstances

Over the years the Supreme Court has recognized an "exigent circumstances exception" to the Fourth Amendment's warrant requirement which applies 'when the exigencies of the situation' make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. Kentucky v. King, 131 S. Ct. 1849 (201 l) *citing* Mincey v. Arizona 437 U.S. 385, 394

(1978). This exception evolved from officers entering a home without a warrant to render aid, protect an injured occupant, enter a burning building, and entering a home with an armed robber inside. *See,* Brigham City v. Stuart, 436 U.S. 499 (2006); Michigan v. Tyler, 436 U.S. 499 (1978) and Warden v. Hayden, 87 S. Ct. 1642 (1967).

Additionally, the Supreme Court has also applied the exigent circumstances exception to cases in which law enforcement acted without a warrant to prevent the imminent destruction of evidence. *See* Ker v. California, 374 U.S. 23 (1963).

The analysis of the exigent circumstance exception as it relates to blood draws begins with the Supreme Court decision in Schmerber. In Schmerber v. California, 384 U.S. 757(1966),

the Defendant was charged with driving an automobile while under the influence of intoxicating liquor. He was involved in a traffic accident and was transported to a hospital where he was being treated for injuries sustained in the accident. At the direction of the police officer, a physician at the hospital took a sample of the Defendant's blood to determine the alcohol content. A chemical analysis of the blood sample revealed an amount of alcohol in the blood that indicated intoxication. At trial, the Defendant objected to the admission of the blood test results on the ground that the blood had been taken despite his refusal to consent to the test. The Defendant's argument was rejected by the trial court and the Appellate Department of the California Superior Court which affirmed his conviction.

The United States Supreme Court also affirmed Schmerber's conviction. Justice Brennan wrote the opinion for the majority and noted that a search warrant would ordinarily be required for an intrusion

into the human body, such as a withdrawal of a person's blood. Id. at 769. He carved out an exception, however, where the police officer might reasonably believe he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened the destruction of evidence. Id. citing Preston v. United States, 376 U.S. 364 (1964). Justice Brennan cautioned that "we reach this judgment only on the facts of the present record." Id. at 772.

The Court permitted the withdrawal based on the existence of probable cause, exigent circumstances of dissipating blood alcohol evidence, the difficulty of timely obtaining a warrant, the reasonableness of the test and reasonable manner under which the blood was withdrawn. However, the Court carefully limited its decision and cautioned:

> We thus conclude that the present record shows no violation of petitioner's right under the Fourth and Fourteenth Amendments to be free of unreasonable searches and seizures. It bears repeating, however, that we reach this judgment only on the facts of the present record. The integrity of an individual's person is a cherished value of our society. That we today hold that the Constitution does not forbid the States minor intrusions into an individual's body under stringently limited conditions in no way indicates that it permits more substantial intrusions under other conditions. Schmerber, 384 U.S. at 772.

It should be clear from the above that the Supreme Court did not in 1966 give carte blanch to law enforcement to take blood in every DUI case without attempting to obtain a warrant. In the over forty years

since Schmerber was decided, communications technology has vastly improved, allowing oral warrants, telephonic warrants, fax warrants, e-mail warrants, and other innovations.

The United States Supreme Court resolved the 46 year varied interpretations by courts of the holding in Schmerber by granting certiorari in Missouri v. McNeely, 133 S. Ct. 1552. (2013). In Missouri v. McNeely, after a police officer arrested McNeely for DUI, and after McNeely refused to submit to an alcohol breath test, the officer transported him to a hospital for a blood test without first attempting to get a warrant. The trial court granted McNeely's motion to suppress and the Missouri Supreme Court affirmed. Missouri argued in the Supreme Court for an expansion of the rule of Schmerber v. California, that in DUI cases exigent circumstances *always* exist, such that a warrant is *never* required before obtaining a nonconsensual blood test. The Supreme Court rejected this argument and stated:

> Our cases have held that a warrantless search of the person is reasonable only if it falls with a recognized exception [to the warrant requirement]. *See, e.g.* United

> U.S. 218, 224 (1973). That principle applies to the type of search at issue in this case, which involved a compelled physical intrusion beneath McNeely's skin and into his veins to obtain a sample of his blood for use as evidence in a criminal investigation. Such an invasion of bodily integrity implicates an individual's "most personal and deep-rooted expectations of privacy." Winston v. Lee, 470 U.S. 753, 760 (1985); see also Skinner v. Railway Labor Executives' Assn., 489 U.S. 602, 616 (1989).

In McNeely, the Supreme Court held that the natural dissipation of alcohol from a person's bloodstream does not constitute a per se exigency. In those drunk-driving investigations where police officers can reasonably obtain a warrant before a blood sample can be drawn without significantly undermining the

efficacy of the search, the Fourth Amendment mandates that they do so. *See* McDonald v. United States, 335 U.S. 451, 456 (1948) ("We cannot... excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made [the search] imperative")

After careful, thorough and thoughtful analysis, Justice Sotomayor, speaking for the court stated: "We hold 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 issue in McNeely was stated by Justice Sotomayor as follows:

> The question presented here is whether the natural metabolization of alcohol in the bloodstream presents a per se exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk driving cases. We conclude that it does not, and we hold consistent with general/Fourth

Amendment principles, that exigency in this context must be determined case by case based on the totality of the circumstances.

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Therefore, McNeely requires, exigent circumstances have to be proven by other means before the blood test can be declared admissible in the absence of a warrant. McNeely affirmed Schmerber and relied upon it for its holding. In doing so, the Supreme Court disapproved of any bright line rule suggesting that venipuncture in all DUI arrest cases simply because (a) the blood sample is withdrawn in a medically approved manner; (b) probable cause exists to believe the suspect has been driving under the influence; and (c) chemical analysis of the blood sample will yield evanescent evidence of that crime.

Applying McNeely to the facts of the instant case, there is .nothing contained in the record to show that sufficient exigent circumstances existed to support a finding that the blood draw was constitutional under the Fourth and Fourteenth Amendment to the United States Constitution. There is no evidence shown that a warrant could not have been promptly sought. In State v. Banoub, 700 So. 2d 44 (2nd DCA 1997) the Court concluded that the delay of approximately four

hours between the driving and a blood alcohol test is not unreasonable. They supported this conclusion by relying on the manner in which alcohol is metabolized by the body, as explained in State v. Haas, 597 So. 2d 770, 772 (Fla. 1992):

> [A] person's blood-alcohol content increases for a period of time after consumption and then begins to decrease as the alcohol is eliminated, principally through metabolism. See 2 Donald H. Nichols, Drinking/Driving Litigation § 23:03 (1985). Therefore if a driver ingested alcohol shortly before he was arrested, it is at least possible that his blood-alcohol level might not yet have reached the prohibited level [when he was driving] even though it registered above that level when tested some time thereafter.

Furthermore, the Defendant did not consent to the blood draw. The burden rests with the State to justify the warrantless taking of the Defendant's blood. Hilton v. State, 961 So.2d 284,

296 (Fla.2007) ("When a search or seizure is conducted without a warrant, the government bears the burden of demonstrating that the search or seizure was reasonable."); Kilburn v. State, 54 So.3d 625, 627 (Fla. 1st DCA 2011) ("A warrantless search is per se unreasonable under the Fourth Amendment subject to a few well-defined exceptions.... The State has the burden to prove that an exception to the warrant requirement applies.") (citation omitted). Powell v. State, 2013 WL 2232319 (1st DCA May 22, 2013)

3. The "Good Faith" Exception

The State may try to argue that although a warrant was not obtained, Investigator Snelgrove was acting in good-faith relying on F. S. 316.1933. The most recent pronouncement of the Supreme Court on applicability of the exclusionary rule to Fourth Amendment violations and most relevant to the instant case is Davis v. United States, 131 S. Ct. 2419, 2426 (2011). In that case the Court discussed the purpose of the exclusionary rule, to deter illegal police

conduct. The Court stated that:

> The basic insight of the Leon (*United States v. Leon,* 468 U.S. 897 906, (1984) line of cases is that the deterrence benefits of exclusion 'var[y] with the culpability of the law enforcement conduct" at issue. Herring, *(Herring v. United States*, 555 U.S. 135, (2009). When the police exhibit "deliberate," "reckless," or "grossly negligent" disregard for Fourth Amendment rights, the deterrent value of exclusion is strong and tends to outweigh the resulting costs. *Id.*, at 144. But when the police act with an objectively "reasonable good-faith belief" that their conduct is lawful, Leon, supra, at 909 (internal quotations marks omitted), or when their conduct involves only simple, "isolated" negligence, Herring, supra, at 137, the "'deterrence rationale loses much of its force,'" and exclusion cannot "pay its way." *See* Leon, *supra*, at 919, 908, n. 6.

(*quoting* United States *v. Peltier*, 422 U.S. 531, 539, (1975)).

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However, this statement should not be read apart from its application to factual circumstances where the Court actually held that exclusionary rule should not be applied. They are extremely limited. The Court noted that in previous cases it had found the exclusionary rule should not be applied where there was objectively reasonable reliance by police: on a warrant later held invalid United States v. Leon, 468 U.S. 897, 906, (1984); on a statute later held unconstitutional, Illinois v. Krull. 480 U.S. 340, 348 (1987); on a judicial database, Arizona v. Evans, 514 U.S. 1, 13, (1995); or on an isolated police record keeping error, Herring v. United States, 555 U.S. 135, 137 (2009).

The "good faith" exception in Davis does not control. Davis v. United States, 131 S. Ct. 2419 (2011) held that evidence obtained from a vehicle search conducted prior to Arizona v. Gant, 556 U.S. 332 (2009) was not subject to suppression under the exclusionary rule because the officer acted in good-faith reliance on

the then-binding U.S. Supreme Court decision of New York v. Belton, 453 U.S. 454 (1981). Overruled by Gant, supra. Belton was accepted for review by the Supreme Court of the United States to clarify an unsettled area of the law for which there was a lack of uniformity of opinion, to wit: Whether police may search a motor vehicle under the authority of Chimel v California 385 U.S. 752 (1969) (allowing search within the suspect's immediate control) once the vehicle's occupant has been placed under lawful arrest and is away from the vehicle? Belton held they could, establishing what a majority of the justices in Gant agreed was a bright line rule authoring a warrantless search of vehicles even when the arrestee is secured in a police vehicle.

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The Davis majority emphasized that the Gant holding was a "new rule" contrary to the prevailing interpretation of Belton that police officers and the courts, including the Eleventh Circuit had followed for many years.

The Supreme Court has never extended the good-faith exception to misinterpretations of its prior Fourth Amendment holdings, nor has it permitted law enforcement officers to circumvent Fourth Amendment guarantees by claiming reliance on state court interpretations of the Fourth Amendment. In fact, "a decision by a state court contrary to a holding of [a federal court] cannot unsettle or 'de-establish' the c1arity of federal law." Hopkins v Bovicino, 573 F. 3d 752, 771 (9th Cir. 2009). "It is the federal courts that are the final arbiters of federal constitutional rights, not the state courts." Id.

State courts and legislators are not allowed to circumvent Supreme Court rulings and precedents interpreting the Fourth Amendment. Obtaining the

Defendant's blood without a warrant was not the exception to the rule - Investigator Snelgrove's actions were business as usual.

4. The State's reliance on § 316.1933(1)

The "implied consent" doctrine does not translate into a "consent" exception to Fourth Amendment Warrant requirement. The State relies upon F.S. 316.1933 and may argue that Florida has imposed higher standards on its police officers when obtaining an involuntary blood withdrawal from a person lawfully arrested for DUI than those required by the Fourth Amendment when they enacted Sections 316.1932(1)(c),316.1933(1), Florida Statutes (1991).[1]

1 At the time of this motion there is only one published appellate case in the State of Florida, State v. Aguilar, 20 Fla. L. Weekly Supp.658a (II th Circuit Ct. 2013)

Fla. Stat. § 316.1932(1)(c) and 316.1933(1) (1991) carve out two exceptions under which a blood sample may be taken from a person lawfully arrested for DUL An involuntary blood withdrawal arguably represents a greater intrusion into an arrestee's personal privacy than breath and urine withdrawals and, consequently, is not permitted if these two exceptions are inapplicable.

Florida's implied consent law is very specific about when an officer can request a breath or urine test, it must be pursuant to a lawful arrest. When death or serious bodily injury is not a factor, a blood test can only be requested if: 1) a person appears for treatment at a medical facility, 2) breath or urine is impractical or impossible. If an officer wants to ask a driver for blood instead of urine, they have to inform the driver that they are only entitled to a breath or urine sample but that they are requesting blood instead. Chu v State, 521 So. 2d 330 (41 DCA 1998) There are greater protections afforded to a person who

commits a misdemeanor DUI in terms of obtaining a breath, urine or blood test.

§ 316.1933 Florida Statutes is titled "**Blood test for impairment or intoxication in cases of death or serious bodily injury; right to use reasonable force**." It goes on to say that if probable cause to believe the driver was DUI and caused the crash that law enforcement "**shall require the person to submit**" to testing. It further states that law enforcement "**may use reasonable force if necessary to require such person to submit to the administration of the blood test**." Nothing in the section says that law enforcement is required to draw blood or that they are allowed to circumvent the Constitutional protections afforded to each citizen. The presence of an implied consent statute does not relieve police officials from the need to comply

with the constraints of the Fourth Amendment and Schmerber." United States v. Pond, (1994) 36 M.J. 1050. A compelled blood test, even when administered pursuant to the state's implied consent laws is a search subject to Fourth Amendment protections. Missouri v. McNeely, supra; State v. Butler, 303 P.3d 609, 2013 (Ariz.)

RETRO ACTIVITY OF MCNEELY

As a general rule, a decision of the Supreme Court construing the Fourth Amendment is to be applied retroactively to all convictions that were not yet final at the time the decision was rendered. United States v. Johnson, 457 U.S. 537, 561, 102 S. Ct. 2579, 73 L.Ed.2d 202 (1982); *see also* Griffith v. Kentucky, 479 U.S. 314, 107 S. Ct. 708, 93 L.Ed.2d 649 (1987). In Johnson, the Supreme Court held that the Fourth Amendment ruling announced in Payton v. New York, 100 S. Ct. 1371 (1980), prohibiting police from making a warrantless, nonconsensual entry into a suspect's home for the purpose of making a routine felony arrest,

applied retroactively to a case pending on direct appeal. 457 U.S. 554-555. Recently in Davis v. United States, 131 S. Ct. 2419 (2011), the Supreme Court applied its decision in Arizona v. Gant, 129 S. Ct. 1710 (2009), governing the warrantless search of an automobile incident to the arrest of its occupants, retroactively to a case pending on direct appeal. The present case was on direct appeal to the Fourth District Court of Appeal and falls in line with this Supreme Court precedent and therefore, the decision in McNeely from April 17, 2013 applies retroactively to the present case.

CONCLUSION

The Defendant's blood was taken without his consent. The State cannot establish exigent circumstances which would justify the taking of the Defendant's blood without a warrant. McNeely dictates that the blood test results, obtained in violation of the Fourth Amendment,

must be suppressed.

WHEREFORE, this Court is respectfully requested to grant the instant Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Alan Johnson, Esquire, Sherri Collins, Esquire, Office of the State Attorney, 401 N. Dixie Highway, West Palm Beach, FL 33401.

ELIZABETH PARKER

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA, CASE NO.: 50-201O-CF-005829 AMB
Plaintiff,

v.

JOHN GOODMAN,

Defendant.
_____/

MOTION TO PROHIBIT STATE'S USE OF THE "FAILURE TO RENDER AID" ENHANCEMENT FOR THE DUI MANSLAUGHTER AND VEHICULAR HOMICIDE CHARGES OR ALTERNATIVELY TO REQUIRE JURY INSTRUCTIONS THAT SAID ENHANCEMENT REQUIRES WILLFUL CRIMINAL INTENT

COMES NOW the Defendant, JOHN GOODMAN, by and through his undersigned attorneys, and respectfully requests this Court to prohibit the State's use of the "Failure to Render Aid" enhancement to the DUI Manslaughter and Vehicular Homicide charges as said enhancement applies an unconstitutional strict liability standard in violation of Mr. Goodman's due process rights. Alternatively, if the

Court permits use of the enhancement instructions, then the standard jury enhancement instructions must be corrected and/or amended to include the constitutional requirement that the Defendant knew or should have known he was involved in an accident, knew or should have known a person was injured or dead, and willfully [eft the scene. As grounds in support of this Motion, the following is shown:

1. That the Defendant has been charged in the above-styled cause by Information in Count 1, DUI Manslaughter. Failure to Render Aid, and Count 2, Vehicular Homicide, Failure to Give Aid/Information. (Exhibit "A").[1]

1 The Defendant flied a Motion to Preclude Count 2, Vehicular Homicide being re-instituted. The Court denied said Motion on October 23, 2013.

Pursuant to the Information, the State alleges in Count 1 that the Defendant committed the offense of DUI Manslaughter and "did willfully fail to remain at the scene of the accident and give information and render aid as required by F.S., §316.062..."

Likewise, in Count 2, it alleges the Defendant committed the offense of Vehicular Homicide and "did fail to give information and render aid as required by F.S., § 316.062, even though the Defendant at the time of the accident knew or should have known that the accident occurred..."

By adding the failure to render aid enhancement to both Counts 1 and 2, the 15 year second degree felony charges are each enhanced to 30 year first degree felonies, i.e., an increase of 15 years for each count.

2. That because the Information charges the Defendant acted "willfully" in Count 1, the jury must be given an instruction on "willfully," per the charging document. See, Zwick v. State, 730 So.2d 759 (Fla. 5th

DCA 1999). See, also, United States v. Cancelliere, 69 F.3d 1 116, 112021 (11th Cir. l995)(where the Indictment unnecessarily alleged that the defendant "willfully" committed money laundering, the trial court nonetheless committed reversible error in redacting that term, and later refusing to instruct the jury that "willfulness" was required in order to find the defendant guilty).

3. That the "enhancement instructions" as set forth in Florida Standard Jurv Instructions (Crim. 7.8 and 7.9) are patterned after F.S., §316.062, a non-criminal traffic infraction. Section 316.062 requires a driver involved in a crash resulting in injury or death of any person or damage to any vehicle to provide identifying information and aid. A driver

is held strictly liable to perform these duties as the statute does not require proof that the driver knew he was in an accident and knew that someone was injured or dead. While strict liability may be constitutionally permissible for a traffic infraction offense which subjects a driver to a civil fine, it is constitutionally impermissible as applied in the instant case subjecting Mr. Goodman to an extra 15 year sentence.

4. That under both Federal and State law, the criminalization of conduct without requiring any criminal intent is constitutionally limited to minor infractions such as parking violations or other regulatory offenses. See, Carter v. State, 710 So.2d 110, 111 (Fla. 4th DCA 1998); Morissette v. United States, 342 U.S. 246, 264, 72 S.Ct. 240 (1952).

Recently, in State v. Atkins, 96 So.3d 412 (Fla. 2012), the Florida Supreme Court surveyed Florida and Federal laws imposing strict liability. The Court held that strict liability is generally permissible for a statute prohibiting affirmative acts such as selling

narcotics or witness tampering, but strict liability violates due process where a statute seeks to criminalize an individual's "inaction." Id., at 420.

The failure to render aid enhancement herein seeks to severely punish Mr. Goodman's "inaction," i.e., his alleged failure to render aid, remain at the scene and provide information to law enforcement without requiring any proof that he did so knowingly and willfully.[2] Furthermore, as discussed below, using the strict liability standard of Section

2 The Defendant maintains that he did not knowingly, wilfully fail to give identifying information and at the appropriate stage of the trial proceedings, the Defendant will argue that the enhancements be dismissed or grant a judgment of acquittal on the enhancement elements of each count.

316.062, Mr. Goodman is prohibited from raising any affirmative defenses. . .

Due process as guaranteed under the Fourteenth Amendment to the United States Constitution, and Article 1 §12 of the Florida Constitution, constitutionally prohibits a criminal conviction for "inaction'" without proof of an accompanying criminal intent.

In State v. Dumas, 700 So.2d 1223, 1225-26 (Fla. 1997), the Florida Supreme Court held that "a driver must be aware of the facts giving rise to the affirmative duties imposed by the statute [remain at scene, render aid, provide information] in order to be held liable for not performing these duties" because otherwise, "the failure to act otherwise amounts to essentially innocent conduct."

During the first trial, this Court denied Mr. Goodman's objections to instruct the jury on the enhancement. The Court also denied his request for an affirmative defense jury instruction which would have

required the jury to acquit him of the enhancement if Mr. Goodman's conduct was found to be "a result of being disoriented or confused because of a head injury sustained during the accident," relying on Martin v. State, 323 So.2d 666, 667 (Fla. 3d DCA 1976). This Court denied giving the requested instruction, not for lack of evidence to support it, but because in the Court's view the Martin case was "inapplicable" and Mr. Goodman's intent was "completely irrelevant." (Exhibit "B").

In Adkins, supra, at 422, the Florida Supreme Court noted that even in the controlled substance context of not requiring proof of criminal intent, "[a]ny concern that entirely innocent conduct will be punished with a criminal sanction with Chapter 893 is obviated by the statutory provision that allows a defendant to raise the affirmative defense of

an absence of knowledge of the illicit nature of the controlled substance."

Herein, absent this Court reconsidering its previous rulings, Mr. Goodman will be prosecuted for the enhancement of failing to render aid pursuant to an unconstitutional strict liability standard resulting in an increased 15 year sentence. Additionally, Mr. Goodman will not be given any ability to defend against the enhancement with proof and a proper affirmative defense instruction to guide the jury in considering the defense evidence. This all violates Mr. Goodman's right to due process.

In actuality, the State is prosecuting Mr. Goodman for the crime of Leaving Scene of Accident resulting in death, F.S. § 316.02 7, but without having to prove the necessary elements of knowledge of the accident and resulting death. See, Dorsett v. State, 38 Fla. Law Wkly D233A (Fla. 4th DCA 2013), rev., granted, 122 So.3d 869 (Fla. 2013). Instead, they are utilizing the enhancement provision which as

demonstrated is unconstitutional.

5. That alternatively should the Court decide to give the failure to render aid enhancement jury instructions, then the Court is requested to give the Defense Instructions attached (Exhibit "C"), which incorporate the constitutionally necessary elements of knowledge and willfulness. The requested instructions accurately set forth what must be proven by the State for the enhancement to apply. Likewise, Mr. Goodman's affirmative defense instructions must be given.

A trial judge has the responsibility of providing the jury with proper and correct instructions. Kearse v. State, 662 So.2d 677, 682 (Fla. 1995). Simply giving the approved

instructions does not relieve the Court of its duty to correctly instruct the jury. Cruse v. State, 588 So.2d 983 (Fla. 1991), cert. den., 504 U.S. 976 (1992).

Likewise, a defendant is entitled to an instruction on his theory of defense, no matter how weak or improbable the evidence might be. Green v. State, 925 So.2d 470, 473 (Fla. 4th DCA 2006).

WHEREFORE, this Court is respectfully requested to grant the instant Motion.

Respectfully submitted,

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007264

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT

4th DCA NO.: 4D14-4479

CIRCUIT COURT NO.:
50-2010-CF-005829-AXXX-MB

Date: April 07, 2015

JOHN GOODMAN
Appellant
vs
STATE OF FLORIDA
Appellee

APPEAL FROM CIRCUIT COURT - PALM BEACH COUNTY, FL (Criminal Div.)
CORRECTED

****RECORD ON APPEAL****

COUNSEL FOR APPELLANT

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P.O. BOX 1161
WEST PALM BEACH FL 33460

COUNSEL FOR APPELLEE

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NINTH FLOOR
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137 OF 165 VOLUMES
RECORDS ON APPEAL

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, CRIMINAL DIVISION
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 10-CF-005829 AMB

STATE OF FLORIDA,

vs.

JOHN B. GOODMAN,

Defendant.

VOLUME XV OF JURY TRIAL

PRESIDING: HONORABLE JEFFREY COLBATH

ORIGINAL

Saturday, October 1, 2014
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401
8:34 - 11:59 o'clock, a.m .

APPEARANCES:

ON BEHALF OF THE STATE:

DAVE ARONBERG, ESQUIRE
State Attorney
401 North Dixie Highway
West Palm Beach, Florida 33401
BY: SHERRI COLLINS, ESQUIRE and
ALAN JOHNSON, ESQUIRE
Assistant State Attorneys

ON BEHALF OF THE DEFENDANT:
ROTH & DUNCAN
515 North Flagler Drive Suite 325
West Palm Beach, Florida 33401
BY: DOUGLAS DUNCAN, ESQUIRE
and
ELIZABETH PARKER, ESQUIRE

I N D E X

E X H I B I TS

THE COURT: All right. Please call your first witness.

MS. COLLINS: Yes, Your Honor.

The State calls Nicole Ocoro.

THE COURT: Good morning.

If you'll stop right about there and face our Clerk and raise your right hand, she'll administer the oath for you to be a witness.

WHEREUPON:

NICOLE OCORO

having been called as a witness on behalf of the State, and after being first duly sworn by the Clerk of the Court, was examined and testified under the oath as follows:

THE COURT: Come on up to the witness stand,

please.

Good morning.

MS. OCORO: Good morning.

THE COURT: Once you get all settled in, please

tell us your name.

MS. OCORO: My name is Nicole Antoinette Ocoro.

THE COURT: And please spell your name for us.

MS. OCORO: N-i-c-o-1-e, A-n-t-o-i-n-e-t-t-e,

0-c-o-r-o.

THE COURT: Thank you so very much.

If you'll scoot a little closer to the microphone, this is a big courtroom and you've got a soft voice.

Ms. Collins, you may proceed.

MS. COLLINS: Oh, that sounds awful.

DIRECT EXAMINATION

BY MS. COLLINS:

Q Good morning.

How are you feeling?

A All right.

How are you?

Q Okay. Ms. Ocoro, can you tell the ladies and gentlemen of the jury how old you are and what you're presently doing to keep yourself occupied?

A Sure.

I'm twenty-three, I'm a student.

And I also

serve a Chinese restaurant.

Q Back in -- I'm so sorry.

Back in February of 2010 were you living here

in Wellington, Florida?

A Yes.

Q How long had you lived here in Wellington?

A We moved into Wellington around --

Q Do you remember what grade you were in?

A I was in sixth grade, I think.

Q If I showed you something?

A Sure.

MR. DUNCAN: Okay. May I approach?

THE COURT: Yes.

BY MR. DUNCAN:

Q Ms. Ocoro, do you recall being asked this question, and you looked into the canal? And you answered yes.

A Yes.

Q And you didn't see anything in the canal, correct?

A No.

Q Now, you talked about that there's a berm, kind of a raised-up area by the canal?

A I don't recall.

Q Well, when you walked over there

did you --

does it go up, the ground go up a little bit to the edge of the canal here?

A I honestly do not recall.

Q And you said that the Bentley's headlights were on?

A Yes.

Q And so they were shining in this area here?

A I believe so.

MS. COLLINS: I'm sorry, I can't see.

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT

4th DCA NO.: 4D14-4479

CIRCUIT COURT NO.:
50-2010-CF-005829-AXXX-MB

Date: April 07, 2015

JOHN GOODMAN
Appellant
vs
STATE OF FLORIDA
Appellee

APPEAL FROM CIRCUIT COURT - PALM BEACH COUNTY, FL (Criminal Div.)
CORRECTED

****RECORD ON APPEAL****

COUNSEL FOR APPELLANT

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139 OF 165 VOLUMES
RECORDS ON APPEAL

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, CRIMINAL DIVISION
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 10-CF-005829 AMB

STATE OF FLORIDA,

vs.

JOHN B. GOODMAN,

Defendant.

VOLUME XVII OF JURY TRIAL

PRESIDING: HONORABLE JEFFREY COLBATH

ORIGINAL

Monday, October 13, 2014
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401
8:17 - 11:56 o'clock, a.m .

APPEARANCES:

ON BEHALF OF THE STATE:

DAVE ARONBERG, ESQUIRE
State Attorney
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West Palm Beach, Florida 33401
BY: SHERRI COLLINS, ESQUIRE and
ALAN JOHNSON, ESQUIRE
Assistant State Attorneys

ON BEHALF OF THE DEFENDANT:
ROTH & DUNCAN
515 North Flagler Drive Suite 325
West Palm Beach, Florida 33401
BY: DOUGLAS DUNCAN, ESQUIRE
and
ELIZABETH PARKER, ESQUIRE

I N D E X

EXHIBITS

THE COURT: All right. Welcome back.

Please be seated, make yourselves comfortable.

And State, who is your next witness?

MR. JOHNSON: Your Honor, it's Ms. Freel.

THE COURT: Okay.

MS. COLLINS: Your Honor, the State would call Candice Freel.

THE COURT: Thank you.

WHEREUPON:

CANDICE FREEL

having been called as a witness on behalf of the State, and after being first duly sworn by the Clerk of the Court, was examined and testified under the oath as

follows:

THE COURT: Good morning.

MS. FREEL: Good morning.

THE COURT: How are you doing today?

MS. FREEL: Well, how are you?

THE COURT: Good, thank you.

MS. FREEL: Good.

THE COURT: Once you get settled in and get the

microphone adjusted, please tell us your name.

MS. FREEL: Candice Freel.

THE COURT: And how do you spell your first

name?

MS. FREEL: C-a-n-d-i-c-e.

Freel, F-r-e-e-1.

THE COURT: Thank you so very much.

State?

MS. COLLINS: Thank you, Your Honor.

THE COURT: First name again, C-a-n --

MS. FREEL: -- d-i-c-e.

DIRECT EXAMINATION

BY MS. COLLINS

Q Can you please tell the ladies and gentlemen of the jury what you do for a living?

A I work privately for a family as a -- you could say house manager/family coordinator/nanny, in New York.

Q Does the family spend part of the

year here in

Wellington, Florida?

A Yes, ma'am -- well, on and off. Our main

residence is in New York, but on the weekends we come

down.

Q Can you tell us generally where in Wellington

that residence is located, is it off of Lake Worth Road?

A The residence?

Q Yes.

A Well, it's not off of Lake Worth Road, no, it's

more towards -- it's in the polo grounds there.

went over to the canal.

A Uh-huh.

Q And describe for the jury, please, is there a little rise up, a berm, so to speak?

A Like as you walked up, it goes up a little bit. And then straight down. So you have to really get close to see -- I never realized how steep canals were until then. And you have to get -- I saw the car in the canal at the edge.

Q So you had to actually walk up to the top of the canal --

A Yes, sir.

Q -- to look down to see the car?

A Yes, sir.

Q Further back you couldn't see

into the canal

and see the car?

A I believe so.

Q As soon as you saw that car in the canal, you

told the boys call 911, correct?

A Yes.

Q You alerted them to the fact of the car,

correct?

A Yes, sir.

Q You told the jury that shortly thereafter a

police officer arrived?

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA, Recording Type: Audio\Video

Plaintiff, Case No. 2010CF005829AMB

vs.

JOHN B. GOODMAN,

Defendant.

APPEAL ON BEHALF OF THE DEFENDANT
JURY TRIAL

VOLUME XXXII
PAGES
7,016 - 7,215

PRESIDING: HONORABLE JEFFREY COLBATH

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:
MS. SHERRI COLLINS, Esquire,
MR. ALAN JOHNSON, Esquire,
State Attorney's Office,
Assistant State Attorneys

ON BEHALF OF THE DEFENDANT:
MR. DOUGLAS DUNCAN, Esquire
Roth & Duncan, PA

MR. SCOTT N. RICHARDSON, Esquire
MS. ELIZABETH L. PARKER, Esquire,
MS. TAMA B. KUDMAN, Esquire,
Attorneys at Law.

Wednesday
October 22, 2014
Palm Beach County Courthouse
Courtroom 11H
205 North Dixie Highway
West Palm Beach, Florida 33401
Beginning 8:30 at o'clock a.m.
Ending at 2:12 o'clock p.m.

ORIGINAL

CHERI ANNE DEMONICO, CET
Certified Electronic Transcriber

I-N-D-E-X

STATE'S EXHIBITS:	Marked	Received
77 - Transcript Testimony of John B. Goodman	7213	----

CHERI ANNE DEMONICO, CET
Certified Electronic Transcriber

and nothing but the truth?

THE DEFENDANT: Yes.

(witness sworn\takes stand 10:59:06 a.m.)

THE COURT: Good morning, Mr. Goodman.

THE DEFENDANT: Good morning.

THE COURT: Please tell us your name and I've got the

spelling, so --

THE DEFENDANT: John Goodman.

THE COURT: Thank you so very much.

Mr. Duncan.

Thereupon,

JOHN B. GOODMAN

having been first duly sworn, testified upon his oath as

follows:

DIRECT EXAMINATION

BY MR. DUNCAN:

Q Good morning, Mr. Goodman.

A Good morning.

Q Mr. Goodman, how old are you sir?

A 51.

Q And :for purposes of the record, back in February of 2010 how much did you weigh?

A 220 pounds.

Q And height?

A 6'1 ½.

And so I looked down for my emergency brake for a second and then I uh -- went to grab my gearshift then that's the last thing you know that I remember.

Q Are you positive that you tried to stop your car?

A Yes.

Q Did the airbags -- the airbag implode?

A Uh, yes.

Q After the accident Mr. Goodman, what is the first thing that you remember?

A Uhm, I uh -- coming to I'm just trying to -- the first thing I remember is just seeing white -- white everywhere and

Q Stars?

A Yes, and yes, and white and not knowing where I

was and not knowing I was even in my car.

Q Did you know where you were --

A No.

Q -- immediately after the accident?

A No.

Q Had you sustained any injuries during the accident?

A Yes.

Q What were your injuries that you knew --

A Uh

Q immediately?

A I mean immediately I didn't knew I --I had knocked -

- you know that I'm conscious. My wrist was you know hurt --

it was hurting. Uh, my back and my leg was hurting, my chest

was hurting, I was -- I was hurt.

Q Was your head hurting?

A Yes.

Q Did you know that you had hit your head during the

accident?

A I -- not at that moment I don't believe so.

Q But the injury to your head you knew was sustained

during the accident, correct?

A Yes.

MR. JOHNSON: Objection. Objection; leading, Judge.

Move to strike.

THE COURT: Yeah, sustained.

Granted.

BY MR. DUNCAN:

Q Did you know what side of the road you were on?

A I did not know what side of the road I was on.

Q Did you have any understanding that you were close to a canal?

A No, I did not.

Q What was the lighting there at the scene?

A It was dark, it was very dark.

Q Did you see any cars? No.

A No.

Q Did you look to see if there were any cars?

A Yes, I -- yes, absolutely yeah.

Q Did you see any cars?

A No.

Q Did you see any people?

A No.

Q Was there any traffic coming on Lake Worth Road?

A No.

Q Now, Mr. Goodman there's a record of a call from your phone at 12:58 to Carlos Pravaz.

Do you recall making that call?

A No, I don 't.

Q Did you get out of your car and look around?

A Yes, uhm -- I did.

Q What did you decide to do?

A I decided to go look for uh -- help or a phone -- a

phone to call 911.

Q Why couldn't you use your phone?

A The battery didn't work and uh -- having

communication in my car.

Q Now, Mr. Goodman in February -- specifically on

February 11th 2010 did you carry any type of a bag that you used

as a briefcase?

A Yes.

Q What type of a bag did you carry as a briefcase?

A A black backpack.

Q And what direction did you first believe you were walking?

A North.

Q At some point did you realize that you weren't walking north and you were actually southbound on 120th?

A Yeh - yes.

Q *(poster board on easel)* We're going to be referring to State's Exhibit 6A.

A Okay.

Q Do you recall Detective Stephan testifying in regards tri this exhibit of some boot prints?

A Uh, yes.

Q Okay. And do you recall walking by what has been now established as Lala's?

A Yes.

Q *(overhead screen)* State's Exhibit 42. Do you recall Mr. Goodman walking passed this sign James Lala?

A I don't remember walking by James Lala's.

Q Showing you what;s been marked as State's Exhibit 43.

THE COURT: I think the easels in the way for Mr. Goodman to see the screen.

MR. DUNCAN: Sorry.

THE COURT: That's all right.

BY MR. DUNCAN:

Q *(overhead screen)* State's Exhibit 43 has been

identified as the gate of Lala's?

A Uh, yes.

Q Do you recall Mr. Goodman walking as demonstrated in 6A passed Lala's driveway? *(easel board)*

A I do recall yes walking down that road passed it.

Q Did yo ever access that gate?

A No.

Q When you walked in that area was that gate closed or open?

A Closed. Pad and --

Q Your boot prints then were observed coming over here *(indicating)* to the east side of the road and came up to this area here. *(indicating)*

A Yes.

Q Do you know what this area is?

A It -- my uh construction entrance to the church I believe it was not built yet.

Q Why did you cross the road to come over to this area there?

A I believe just to see if there was access there or what it was.

Q All right. And did you continue then walking down

A Yes.

Q And what was the lighting like in that area?

A It was dark, completely dark.

Q Did you then cross to the west side of the road?

A Yes.

Q Showing you what has been marked as Defense 81.

(poster board on easel) Do you recall being in this area as is

depicted in State's 7 *(poster board on easel)* and shown as a

close-up at 4159?

A Yes. I mean, yes.

Q Is this area raised up from --

A Yes.

Q -- the road?

A Yes.

(microphone feedback)

THE BAILIFF:

BY MR. DUNCAN:

Q Did you stand up in this area where these stanchions are marked 36, 49, 47?

A I -- I believe so.

Q Okay. And what was the purpose of going up off the road to stand in that area?

A Well, it was completely dark and then you can see Kampsen's barn right there (indicating) only -- only illuminated place on the road.

Q (poster board on easel) Did you ever walk up this driveway when you were first coming down 120th?

A No.

Q Did the gate light come on there?

A No.

Q Did you even know at the time that when you were in this area *(overhead screen)* that there was a gate there?

A No.

Q You didn't see a gate at all?

A I didn't -- no. I --

Q What was the lighting like?

A It was completely dark, not like that. It was completely dark.

Q So as you were standing in this area by 4159 you said that you looked to the south?

A Yes.

Q And you saw some lights on a

building further south?

A Right.

Q At the time did you know that was Kris Kampsen's barn?

A I did not.

Q Showing you what's been marked as Defense 22.

(overhead screen) Do you now know this to be Kris Kampsen's barn?

A Yes.

Q Do you see the 2 lights up top?

A Yes.

Q As you got closer to Mr. Kampsen's barn, are those the lights that you saw?

A Yes, from a distance yes.

Q As you walked from the area of what we've called the Pembleton driveway *(poster board on easel board)* did you walk south?

A Yes.

Q Towards Mr. Kampsen's barn?

A Yes.

Q How did you walk down 120th?

A I walked down the fence line down 120th until there's a -- to the driveway and then just walked --

Q In through the --

A -- into the --

Q -- driveway?

A Yes

Q So were you on the road or were you up here on the grass?

A I was on the -- I stayed on the grass and --

Q And followed the fence line down?

A followed the fence line right through, right.

Q As you walked -- did you walk into the driveway area to the Kampsen's barn?

A Yes.

Q Where did you go?

A To the center of the barn.

Q Showing you what's been marked into evidence as

Defendant's 23. *(overhead screen)*

What does this picture show, Mr. Goodman?

A It's the entrance to that barn.

Q Showing you what's been marked as Defendant's 24.

(overhead screen)

What is this picture depict?

A Uh, the center of the barn with the stairs leading

upstairs.

Q Showing you what's been marked as Defense 26.

(overhead screen)

What does this depict?

A Uhm, his shed uh -- the shedrow of th stalls kept at

that barn.

Q This area here is that where you come through from the front?

A Yes.

Q What did you do once you were in this area, Mr. Goodman?

A Uhm, in there there were -- there were 2 -- there are tact rooms on either side and I banged on them and opened them up and there was nobody ever nothing in there.

And then I proceeded up the stairs.

Q What were you looking for?

A A phone or someone.

Q Showing you what's been marked as Defense 25.

(overhead screen)

What does this photograph depict, Mr. Goodman?

A Uh, the same barn from a different angle.

Q From the back?

A Yes.

Q You said that you saw some stairs?

A Yes.

Q Showing you what's been marked into evidence as

Defendant's 24. *(overhead screen)*

Are those the stairs that you were referring to?

A Yes.

Q What was the lighting like back

there?

A It was -- it was dark.

Q So how did you negotiate the stairs?

A I negotiated them and I -- I know -- guess there was

enough light to get up the stairs.

Q Did you make it up to the 2nct floor?

A Yes.

Q Showing you what's been marked into evidence as

Defense 27. *(overhead screen)*

What does this photograph show?

A The uhm -- the porch outside of the -- that you land

on the landing or porch that you -- at the top of the stairs.

2nd floor room?

A Yeh -- yes.

Q Showing you again Defendant's Exhibit 27. *(overhead screen)*

Is this the door that you walked outside?

A Yes.

Q And you were out on this patio?

A Yes.

Q When you looked Mr. Goodman outside did you see anything from that location while standing on this patio?

A Yes.

Q What did you see?

A The next thing I saw was the light uh -- to the west and north.

Q Where was the light? Can you

point it out for us?

16 *(poster board on easel)* Well, let me ask you this first.

17 While you were standing on this balcony *(overhead screen)*

18 and looking out showing you what's been marked as Defendant's

19 Exhibit 34 did you see anything over the blue roofline?

20 A I just -- just saw that light.

21 Q Okay. So what did you do when you saw that light?

22 A I uhm -- headed to the light.

23 Q Okay. How did you do that?

24 A I came -- where do you want me to -- uh, I -- I came

25 down the --

MR. DUNCAN: Can he step down?

THE COURT: Sure. Yeah, but just get him a microphone. Oh, there's one up there.

(Defendant stepped down from stand at 1:41:28 p.m.)

THE DEFENDANT: *(indicating)*

BY MR. DUNCAN:

Q Using State's Exhibit 7. *(poster board on easel)*

A So uh -- here's the landing or patio of you know the landing here, and I went down these stairs *(indicating)* and I walked straight down here *(indicating)* and there's an opening and I walked down this fence line *(indicating)* --

Q And where --

A -- and there's --

Q was the light Mr. Goodman that you were looking at?

A Oh. Right here. (indicating)

Q On this barn here?

A Right there. (indicating)

Q All right. So what happened?

A So then I just simply -- I walked down here *(indicating)* and then I climbed over this fence *(indicating)* and walked right here and then just walked to this stable. *(indicating)*

Q Did you fall or injure yourself climbing over that fence?

A No.

Q The injuries that you had to your person weren't caused by you climbing over a fence?

A They were not. Do you want me to go back up?

Q Yes. Thank you.

(Defendant returned to stand at 1:43:35 p.m.)

BY MR. DUNCAN:

Q Showing you what's been marked as Defendant's 3.

(overhead screen)

Do you recognize this photo as a close-up of the barn light?

A Yes.

Q Did you enter into that barn?

A Yes.

Q What did you do in that barn?

A I looked for a telephone.

Q Did you find one?

A Uh, no.

Q Showing you what's been marked as Defendant's 2.

(overhead screen)

Do you recognize this as being the other side of the barn?

A Uh, yes. That looks like it, yes.

Q And so referring to State's Exhibit 7 did you walk

through that barn to this area here*?* *(photo board on easel)*

A Yes.

Q Well, where is the doorway?

A There. *(indicating)*

Q Okay. So once you were inside what if anything did you say?

A I said "hello, is there anybody you know here, hello."

Q Did you get a response?

A Yes

Q Okay. No, I want you to stay there.

A Okay.

Q Did you say anything then after you got a response?

A Yes, I said "I -- uhm -- I've been in an accident. I'm sorry to bother, may I use your phone to call 911."

MR. JOHNSON: Objection;

hearsay, it's self-serving.

THE COURT: Sustained.

MR. JOHNSON: Move to strike.

THE COURT: Granted.

MR. JOHNSON: A curative, Judge.

THE COURT: Please disregard that last question and

that last answer.

MR. DUNCAN: Judge, can we approach then?

THE COURT: Yes.

(Thereupon, the following proceedings were held at the bench at 1:47:09 p.m., outside the hearing of the jury:)

MR. DUNCAN: It's a statement of Mr. Goodman not

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

vs. CASE No: 2010CF005829AMB

JOHN GOODMAN,

Defendant. ORIGINAL

MOTION HEARING

PRESIDING:HONORABLE JEFFREY COLBATH

APPEARANCES:

ON BEHALF OF THE STATE:
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State Attorney
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West Palm Beach, Florida 33401
By: ALAN JOHNSON, ESQUIRE
SHERRI COLLINS, ESQUIRE
Assistant State Attorneys

ON BEHALF OF THE DEFENDANT:
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By: SCOTT RICHARDSON, ESQ

Friday, January 3 , 2014 Courtroom 11-H
Courtroom 11-H
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401
Beginning at 8:27 o'clock a.m.

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WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
Troy Snelgrove	69	87	109	
Melinda Hanton	113	122	129	

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DEFENSE EXHIBIT	IDENTIFICATION	EVIDENCE
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BE IT REMEMBERED that the following proceedings were had in the above-entitled cause before the HONORABLE JEFFREY COLBATH, one of the judges of the aforesaid Court , at the Palm Beach County Courthouse, located in the city of West Palm Beach, State of Florida on the 3rd day of January 2014, beginning at 8:27 o'clock a.m. with appearances as hereinbefore noted, to wit:

THE BAILIFF: All rise, circuit court's now in session, the Honorable Judge Jeff Colbath presiding.

THE COURT: Good morning, please be seated, make yourselves comfortable. Man, you're way out there. I never liked this

courtroom.

MS. COLLINS: Good morning, your Honor.

THE COURT: Good morning.

VOICE: Good morning.

THE COURT: Good morning, good morning. Looks like everyone's here. And let me have the parties announce their appearances, please, for the record.

MR. DUNCAN: Douglas Duncan for Mr. Goodman. Mr. Scott Richardson is here,

and Ms. Parker is also here, they just stepped outside briefly.

THE COURT: Thank you.

Mr. Johnson?

MR. JOHNSON: Alan. Johnson, representing the State of Florida.

MS. COLLINS: Sherri Collins, also representing the State of Florida.

THE COURT: And we're here on, generically, all outstanding motions. I'm guessing the one that's gonna take up the most of our morning is the motion to suppress the blood, but I'll let you all kind of walk me through I'm guessing or, perhaps, through the power of wishful thinking, hoping that many of these other -- I don't want to -- perfunctory

motions are - - probably have been worked out , yes or no.

Mr. Duncan, I'll turn it over to you.

You're the moving party on most of these.

MR. DUNCAN: Thank you, sir.

Judge, the clerk just advised me that you signed yesterday the agreed order for the production of out-of-state witnesses.

THE COURT: That's correct.

MR. DUNCAN: That matter has been handled. We have our copy of the order. Thank you for signing it.

THE COURT: Good. That was -- that was the one that you've listed as number six. I'm working off your notice of hearing wi th all those things.

MR. DUNCAN: Yes, sir.

THE COURT: And thank you very much for -- it creates a nice scorecard for us. Okay, so that's taken care of.

MR. DUNCAN: Judge, the next motion is motion to provide the name of the deputy sheriff who spoke with Mr. and Mrs. Marcos DaSilva. This was added on and this is

number eight.

THE COURT: Oh, I didn't get that one.

MR. DUNCAN: Okay. Can I approach?

THE COURT: Sure.

And did the State have some notice that you were booking to get that?

MR. DUNCAN: They did. They agreed to it.

THE COURT: Okay.

MR. DUNCAN: And, actually, Judge, as to this motion, we're going to ask the Court to take no action on it.

THE COURT: Okay.

MR. DUNCAN: In this motion, we have indicated that the DaSilvas testified, the last time they testified, that a deputy sheriff came to their home the morning of the incident, that we would like the name of that deputy. We have done a public records request for the G.P.S. vehicle tracker information, that's still pending with the Sheriff's Off ice.

Also on the motion, we noted that we have discovered 13 previously unidentified deputy sheriffs. Ms. Collins and

Mr. Johnson have nicely assisted us in getting their names, and they further agreed for us to take their depositions.

THE COURT: Okay.

MR. DUNCAN: So, perhaps, through that process, we're gonna be able to find out who this deputy is. If not, then. we'll come back to the Court on a motion.

THE COURT: Okay. All right. So I'll take no action on the motion to provide name of Deputy Sheriff who spoke with Mr. and Mrs. Dasilva; is that correct?

MR. DUNCAN: Yes.

THE COURT: Okay. All right. Where do you want to go to next?

MR. DUNCAN: Number four.

THE COURT: All right.

MR. DUNCAN: Defendant's motion to produce all evidence relating to the Defendant's driver's license. As set forth in this motion, at the time of this incident, the Sheriff's Office, State, took custody of these vehicles. Contained within that vehicle was a backpack belonging to Mr. Goodman. At the time of

Mr. Goodman's first appearance hearing, upon agreement of the State and the Defense, Investigator Snelgrove went back to the vehicle and obtained Mr. Goodman's passport, which is in evidence in the clerk's vault. We have now learned, of course, that the car has been released as well as all personal contents.

We filed a motion requesting the State to produce what we believe is standard practice of an inventory property receipt, that whenever the Sheriff takes vehicles into evidence, they prepare an inventory property receipt of everything that's in the vehicle, for their protection as well as the right of the accused, to know what property they have. We've been told by the State that no such property receipt was done in this case. The property has now been released, it's gone, we have no idea really what was there other than we firmly believe with the passport was also Mr. Goodman's driver's license .

THE COURT: You're talking about the personal property within the Bentley --

MR. DUNCAN: Within the Bentley automobile, yes, sir.

THE COURT: Okay. So you're saying that none of it , other than the passport, was returned.

MR. DUNCAN: Correct.

THE COURT: I think the pill bottle was taken into evidence. There was a pill

bottle in there, is that gone?

MR. DUNCAN: There was a picture taken, but that also, apparently, has been released.

THE COURT: So whatever -- whatever personal property was inside the Bentley, you're saying there's no inventory of it and that it is gone and you don't know where it is and you'd like to get it.

MR. DUNCAN: Well , we would like to get it or we would like to know and verify that, indeed, Mr. Goodman's driver's license was in the vehicle. As the Court is aware, part of the charges include, failing to remain at the scene, complying with the statutory duty to provide your driver's license information. We believe

that all that information was in the car. We would like to certainly bolster the Defense as to that aspect of the charge, but we don't have a property inventory receipt showing what was in there. And now all that property is gone. We weren't the original attorneys, so we couldn't depose all the witnesses in terms of, you know,

what did you find, what did you see in the car.

THE COURT: I'm -- I'm -- I'm interested in pursuing the issue, but I'm not sure that it's relevant to the prosecution that's going on. If he's missing property that -- a sweater or a book or a -- or personal papers, I don't see how that's related to this case. Not that your client doesn't have some standing to complain about, hey, my stuff's missing, but even the driver's license, I don't think he's being accused of failing to carry a driver's license. I don't think that's part of the deal, but let me hear from Mr. Johnson on this issue and maybe he'll have some further light to shed on

it.

MR. JOHNSON: Well , Judge, Investigator Selgrove is present this morning. I spoke with Investigator Snelgrove. The response by the State is, if it was in the car, it would have been released with the car. Investigator Snelgrove, if I may proffer, does not

remember -- he does remember seeing the license. He either saw the license and returned it to the car or -- at the scene, or he got the license from the Defendant at the hospital and returned it to the Defendant. He does not have it, it' s not in his file, it's not wi thin the State' s and, yes, no inventory was taken of the contents of the car.

THE COURT: Why is that? I mean, isn't that S O P?

MR. JOHNSON: Whether it's Standard Operated Procedure or not, this was an unusual case, and we would have to inquire of Investigator Snelgrove --

THE COURT: It's not unusual that law enforcement, the Sheriff's Office, takes

cars into custody and does inventories on them all the time.

MR. JOHNSON: Upon arrest, there'll be an inventory of a car. There was no arrest on the night of the incident when the car was impounded.

THE COURT: I mean, when the car's impounded, I mean, isn't that standard that

they do an inventory to protec t themselves, if no one else, but certainly the rights of the person who has their car --

MR. JOHNSON: Certainly, it may very well be, Judge. I would have to inquire of Investigator Snelgrove, which I'm happy to do this morning.

THE COURT: Mr. Duncan, let's say that Mr. -- Deputy Snelgrove -- deputy or sergeant?

MR. JOHNSON: Investigator Snelgrove.

THE COURT: Investigator Snelgrove. Let's say Investigator Snelgrove testifies consistently with Mr. Johnson, represents that his testimony would be -- what remedy -- I mean, I agree wi th you that

that's just stuff should have been accounted for, I don't know that it's gonna impact these proceedings, but -- you know.

MR. DUNCAN: Judge, it's actually part of the failure to render aid, includes in the instruction, I believe, failure to comply with 316.062 , which is, produce your driver's license or your driver's license is there. Certainly by leaving it in the

car, all of his identification, hey, it's me, John Goodman, certainly goes to the Defense of , we did not knowingly leave the scene. That's --

THE COURT: What do you want me to do?

MR. DUNCAN: Well, I guess if -- I certainly respect Mr. Johnson's proffer, but if we are permitted to just briefly depose Investigator Snelgrove as to that issue --

THE COURT: Any objection to that, allowing a deposition with the limit ed purpose of -- topic of what happened to the contents of the car?

MR. JOHNSON: Judge, there's one other issue that we' ll be discussing this

morning, and I think that if we add the two and just do it all at one time -- I just don't want to inconvenience Investigator Snelgrove and have him keep returning. So we can identify the issues or we can we can have him testify this morning in lieu of a deposition. Because we know the issue, we can ask him the questions here

and take care of it now.

THE COURT: What's the second issue you're talking about?

MR. JOHNSON: The second issue is and I'll proffer this. When Mr. Black, in the first trial, unveiled the Defense of sudden acceleration, which had not been an issue in deposition, at that point, in terms of his investigation, Investigator Snelgrove went to Braman Honda to -- to ask, what is this, you know, and he talked to a technician. He was gonna talk to a technician. Apparently, when it hit the news that -- that Bentleys were prone to sudden acceleration, a bunch of Bentley owners contacted Bentley and said, what's up with this, we want to return our car,

but there was no actual recall, there was no actual instance reported of a sudden acceleration, it was just people got all excited because of the trial itself.

THE COURT: Okay.

MR. JOHNSON: So with regard to that, and I believe that's with regard to one of the motions, I believe, that Mr. Richardson

had filed, a Brady motion, saying we want the exculpatory evidence. It's not exculpatory, however, we do think it's appropriate for them to ask to examine. Again, we can do that this morning, or we can do that with regard to a limited deposition. So those are the two issues that I'm aware of.

THE COURT: Okay. Well , let me back up. So -- do you have any objection to -- I'll take it topic by topic. Any objection to me allowing Mr. Richardson and Mr. Duncan re-depose Deputy Snelgrove on -- Investigator Snelgrove on those - the one issue that we're talking about, first the driver's license?

MR. JOHNSON: No.

THE COURT: All right. So I'll start that as a remedy on motion number four, Defendant's motion to produce all evidence related to the driver's license. I'll allow the Defense to re-depose Investigator Snelgrove on that topic.

MR. DUNCAN: Thank you.

THE COURT: So it's granted with that

caveat.

All right. Now, do you want to jump to the -- pick up where the State left us off, and, Mr. Richardson, do you want to talk about the sudden acceleration issue?

MR. RICHARDSON: Yes, sir.

THE COURT: All right. Is that motion number two, Defendant's motion for production of exculpatory evidence?

MR. RICHARDSON: Yes.

THE COURT: All right, go.

MR. RICHARDSON: May I hand up to the Court some documents that --

THE COURT: Sure, State's already seen that?

MR. RICHARDSON: They're all part of

the record.

THE COURT: Okay, great. All right.

MR. JOHNSON: And/or.

THE COURT: Yeah, just let Mr. Johnson know what you're going to do.

MR. RICHARDSON: This is the motion and deposition transcripts.

MR. JOHNSON: Okay.

THE COURT: Thank you so much.

Good morning.

MR. RICHARDSON: Good morning. Your Honor, this motion is a motion for production of exculpatory evidence. By way of background, I know the Court is aware of this, but just for the record, the State knew that the Defense had argued during the first trial that the Bentley had malfunctioned just prior to the accident which caused or contributed to causing the accident. They also knew that the Defense was arguing the malfunction was related to the vehicle's throttle mechanism or butterfly valve. They knew that the Defense would argue because they had argued that because they had taken the deposition of the Defense automotive engineering

expert , Mr. Serdar, on February the 3rd of 2012. However, after opening statements, the State asserted that it was surprised as to certain things that Mr. Black said in his opening statement, specifically, they claimed that they were surprised of his words of suddenly surge -- of the Bentley suddenly surging through the intersection.

Regardless of whether or not they were surprised, the Court ultimately allowed Mr. Livernois to testify and that happened.

But the record -- the record is -- in the deposition of Ms. Roberts, which we took, pursuant to an agreed order, she testified, under oath -- it's on page 19 to 20 of the deposition that I've given to the Court, it begins on page 19 , line 8. It says, Question, okay. And so when the trial started and Mr. Black gave his opening, you then wanted to reach out to somebody else, you weren't satisfied wi th what you already had with this Mr. Tuerk. The answer, no, Tuerk was a mechanic. Question, okay. Answer, and he read the error codes without question. He couldn't

explain why we had these three different ones because we didn't realize at that time that every time he powered the car up, turned those error codes on, but he was a mechanic, he wasn't an expert. What Troy and I -- Investigator Snelgrove and I discussed was, I said, go back down to Bentley now -- (phone rings).

VOICE: I apologize, Your Honor.

THE COURT: That happens. Thank you.

MR. RICHARDSON: What Troy and I -- Investigator Snelgrove and I discussed was I said, go back down to Bentley now, and they were quite concerned with the opening statement. Question, who was concerned? Answer, Bentley. And I said, go back down to Bentley now and see if they will cooperate with us in imaging the data, whatever data there is. Question, how did you know Bentley was concerned. Answer , because they told Troy they were. Question, okay. They called him and said -- Answer, no, when he got down there -- no -- now you got to check with

him. When he got down there, they expressed concern, and I think they told him, at some point in time, that they had five or six people that had claimed that, you know, their Bentleys did that, but they never brought the cars in or whatever. That testimony is under oath from Ms. Roberts, and she knew that information during the trial.

It is the exculpatory evidence because it would help lend credence to the Defense argument and defeat the prosecution's repeated arguments that there was no problem with the Bentley, and this was argued throughout the trial and at the end of the trial in closing argument. That information was not provided when it was received, it was not provided during the trial , it wasn't provided after the trial, and it wasn't until October 21st of 2013 that that information became public. And we then filed this motion, and there has not been an official response from the State. There has been an unofficial response, Mr. Johnson and I talked, and he told me what he just told the Court, that

Mr. Snelgrove would say -- in essence, say, Ms. Roberts misheard him, that she misspoke, and that what Bentley actually was told was something different from what Ms. Roberts testified to under oath.

THE COURT: Okay. Well , as a starting point, Mr. Johnson indicated he had no objection to allowing you to

re-depose Investigator Snelgrove on that topic, as a starting point. I don't know that there's gonna -- that that may satisfy your inquiry or it may, you know, open other questions, but as a starting point, do you want me to do something more than that?

MR. RICHARDSON: Yes, your Honor. Because it is exculpatory evidence and because it is under Brady, we would ask the Court to order the State to provide the names of any and all Bentley persons with whom Mr. Snelgrove spoke, perhaps, that comes out through the deposition, but I'm making that request at this point in time and to produce all records of any calls that Bentley received, according to

Ms. Roberts, after the opening statement. That's -- that's not something that we're going to be able to get from Mr. Snelgrove.

THE COURT: Okay. Mr. Johnson, any objection to that proposal?

MR. JOHNSON: Judge, yes. Number one, the motion was filed on the basis of third or, if you're counting, fourth party

hearsay. Many things can get worked out between Defense Counsel and the State if we talk and we do what we can. The State has no phone records. The State has no names, I'll proffer that. As a matter of fact , the statements of Ms. Roberts were inaccurate, so, therefore, we're dealing with what the State believes is an inaccuracy, therefore, not even exculpatory, let alone material.

THE COURT: Okay.

MR. JOHNSON: So Snelgrove knows -- Investigator Snelgrove knows what he knows. I will also proffer, he has absolutely -- because it was benign when it happened, he has no idea who it is he talked to. It would have been the -- the representative

from -- from the service department of Braman Honda. We have what we have, Judge.

THE COURT: Okay.

MR. JOHNSON: And we'll give obviously, we're not hiding anything and we never would.

THE COURT: Well , let me do that. I'll go ahead and order that Investigator

Snelgrove be re-deposed or deposed on the issue of his investigation into the -- that resulted from his conversation with then Assistant State Attorney Roberts, and -- and to the extent that you can identify that person over at Bentley who he spoke with, you know, either by title or I'm sure that there's only so many people that were the service -- in the service department or the service manager at that period of time. I'm sure Braman will have those records.

MR. JOHNSON: If they cooerate.

THE COURT: If they cooperate. And if they don't, I'll give Mr. Richardson, you know, power of subpoena to go, you know, subpoena them and take their

depositions, say, who was your service manager back at this time period, you know, and they can depose them and find out, you know, what he said. So I think that's fair game.

MR. JOHNSON: Well , obviously, Judge, rather than inconvenience the civilians that are peripherally involved in what we,