IN THE SUPERIOR COURT OF DECATUR COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA	Criminal Action
	Case Number 14CR-00168
Versus	
Bryan Lamar Harrell	

BRIEF IN SUPPORT OF *PRO SE* MOTION

SUBMITTED BY DEFENDANT BRYAN LAMAR HARRELL

The Defendant, BRYAN LAMAR HARRELL, has submitted to the Honorable Court *a pro se* motion requesting that his "Guilty" plea previously entered by this Court on October 14, 2014 by vacated. What follows is offered for consideration by the Court in the event that this *pro se* motion is ruled by the Court to be worthy of certiorari and/or an open hearing.

PREAMBLE

The focus of this brief will be exculpatory evidence that was openly available to all relevant parties prior to, during, and subsequent to the plea hearing of October 14, 2014 before the Honorable Judge A. Wallace Cato. It will be shown that this evidence is especially relevant to the first of the following merged counts against Mr. Harrell:

A. 'Homicide by Vehicle in the First degree', on the date of March 6, 2012,
B. 'Reckless Driving' on the date of March 6, 2012.

I will present perspective on the true cause of the tragic death of March 6, 2012. I will review how innumerable prior similar deaths were obscured from the public. I was the first safety expert to contact members of the Georgia State Police (GSP) involved with the accident scene of March 6, 2012. I subsequently telephoned the office of the District Attorney (DA) for the South Georgia Judicial District. In both conversations of March/April 2012 I specified that my purpose was a photographs-only inspection of the vehicle driven by defendant Mr. Harrell, and the 1999 Jeep Grand Cherokee which was the focus of a government defect investigation that I helped initiate. These conversations took place immediately after the Jeep fire-death of Remington Walden on March 6, 2012.

GENERAL PROFESSIONAL BACKGROUND INFORMATION

1. My name is Paul V. Sheridan. I have resided in Dearborn, Michigan for 37 years. The facts and opinions of this brief are known to me personally or professionally and have been formed based upon my experience(s), training, education, observations, knowledge, and review of relevant literature. I base the statements of this brief upon extensive vocational and professional review of automobiles and the automotive industry.

2. I hold a Bachelor's of Science Degree (BS) in Mathematics and Physics conferred in 1978 by the State University of New York. I hold a Master's in Business Administration (MBA) in General Management and Logistics conferred by Cornell University in 1980.

3. After graduation from Cornell University I was hired by Ford Motor Company, where I worked from 1980 until 1984. My responsibilities included program management, vehicle production planning, powertrain planning, and regulatory affairs. I was promoted twice and awarded several substantial salary increases.

4. In July 1984 I accepted an unsolicited offer from Chrysler Corporation, where I worked from July 1984 until December 1994. During my career at Chrysler I worked as a manager in future product planning, and engineering programs management.

5. As an engineering programs manager (EPM) I was responsible for the work of both internal engineers at Chrysler and external engineers at Chrysler suppliers. In 1985 I won the coveted *"Chairman's Award"* from Chairman Lee A. Iacocca; an award bestowed only three times in his career. As an EPM I received recognition in the *Chrysler Times* magazine. To the best of my knowledge I am the only EPM in Chrysler history to receive such recognition. My work as an EPM was recognized numerous times by the Society of Automotive Engineers (SAE), including but not limited to expertise interview reports in their world famous *Automotive Engineering* publication.

6. In late 1992, Chairman Iacocca and his executive staff appointed me to head the internal Safety Leadership Team (SLT), which I chaired from 1992 to 1994. My efforts as chair of the SLT have been recognized by state courts, federal courts, and the United States Supreme Court; the highest court in the land. My efforts as SLT chairman have been featured by innumerable national and international media, including ABC News 20/20, the Wall Street Journal, ABC News Primetime, the British Broadcasting Company, the New York Times, local television news programs, etc.

7. In 2005 I was given the National Champions award from the Civil Justice Foundation (CJF) in Washington DC. I am the only CJF National Champion in history to be awarded for efforts in transportation safety. I was nominated for the CJF award by the president of the American Bar Association.

SPECIFIC PROFESSIONAL BACKGROUND EXPERIENCE : THE JEEP

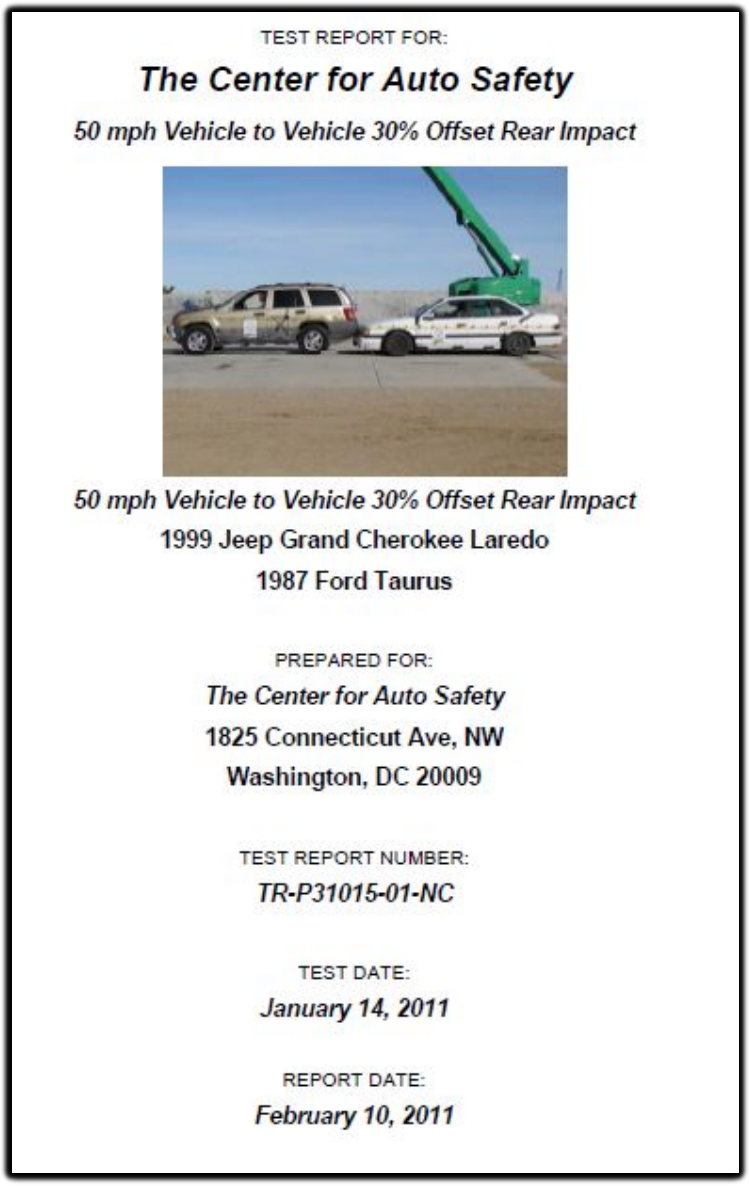
8. I am an expert on the fuel system crashworthiness of the Jeep vehicles. This expertise has been utilized in litigation, government investigations and news reports.

9. I was co-petitioner with the Center for Auto Safety (CAS in Washington DC), wherein we petitioned the Federal Government to conduct a safety defect investigation of the crashworthiness of the Jeep Grand Cherokee fuel tank system. This petition was submitted to the National Highway Safety Administration (NHTSA) on October 2, 2009. Portions of the petition were authored by the undersigned:

a. As a result of the CAS petition, NHTSA opened a formal investigation of the lack of Jeep fuel tank system crashworthiness on August 23, 2010.

10. My work with the CAS dates to 1994; my expertise is well-known to and relied upon by CAS. As part of our petition efforts, I assisted CAS with their Jeep Grand Cherokee fuel tank crash test programs. My roles included vehicle configuration confirmation, test procedure protocol, and post-test inspection and reporting. I represented CAS and was present for the crash testing at the Karco Engineering facility in Adelanto, California (please see sample photographs next page):

11. I personally inspected the vehicles and Jeep components involved in the CAS/Karco crash tests, including that of January 14, 2011:



TEST REPORT FOR:

The Center for Auto Safety

50 mph Vehicle to Vehicle 30% Offset Rear Impact

50 mph Vehicle to Vehicle 30% Offset Rear Impact

1999 Jeep Grand Cherokee Laredo

1987 Ford Taurus

PREPARED FOR:

The Center for Auto Safety

1825 Connecticut Ave, NW

Washington, DC 20009

TEST REPORT NUMBER:

TR-P31015-01-NC

TEST DATE:

January 14, 2011

REPORT DATE:

February 10, 2011

a. The January 14, 2011 CAS/Karco crash test involved the <u>exact</u> model year and vehicle type which caused death on March 6, 2012 in Bainbridge, Georgia,

b. This 1999 Jeep Grand Cherokee crash test was conducted at 50 mph, wherein fuel leakage occurred, and therefore **<u>a fuel tank crashworthiness failure</u>**.

c. These results were shared with Fiat-Chrysler Automobiles (FCA), the defendant in the trial of Walden v FCA, where the jury verdict asserted a safety defect in the1999 Jeep Grand Cherokee wherein Remington Walden was a rear seat passenger (Civil Action 12CV472 of April 2, 2015).

d. Disputed by the plaintiff attorneys and Mr. Harrell as lower, the collision speed of March 6, 2012 was not more than 50 mph. The CAS/Karco crash test failure was shared with defendant FCA more than a year prior to that accident.

FACE-TO-FACE MEETING WITH THE NHTSA ADMINISTRATOR : CONCEALMENT OF THE 1978 BAKER MEMO

12. In May 19, 2010 I was invited to testify at the US Senate *Committee on Commerce, Science, and Transportation*; Senator Jay Rockefeller presiding. The invitation came from Mr. Clarence Ditlow, Director of the Center for Auto Safety (CAS). My role was to assist Mr. Ditlow with rescinding proposed legislation that would have restricted the legal rights of the so-called "whistler-blower." The legislation was shelved as a result of this hearing.

At the conclusion of this hearing I was formally introduced to NHTSA Administrator David Strickland. In the presence of Mr. Ditlow and many others, I voiced a concern with Mr. Strickland that the Jeep fuel tank defect petition (paragraph 9 above) under his purview was not lawfully receiving complete files from Fiat-Chrysler Automobiles (FCA). Having reviewed the NHTSA file in-detail, I explained that a key internal document, *The Baker Memo* of 1978, had not been submitted. I emphasized the second page of that memo:

> Chrysler is investigating fuel tank relocation ahead of the rear wheels for vans and multi-purpose vehicles, but present plans for pickups through 1983 and for MPV's and vans through 1985 have the fuel tank located behind the rear wheels. In vehicles both with and without bumpers there is a concern with vertical height differences that create a mismatch with passenger car bumpers. Where fuel tank location behind the rear axle is all that is feasible, a protective impact deflection structure may have to be provided whether or not a bumper is provided. An investigation whether to relocate the fuel tank or to provide impact deflecting structures is presently underway.

After hearing of its content, and its concealment by FCA from the petition process, Mr. Strickland, in front of many, demanded that he receive a copy (from me).

I came into possession of the Baker Memo as part of my duties at Chrysler. In 1987 I made a formal presentation involving the memo at the Engineering Programs Review (see paragraph 5 above). The Vice President of Jeep and Dodge Truck Engineering (JTE), Mr. Francois J. Castaing, presided over and was present for my presentation(s). Mr. Castaing has been promoted as **The Father of the Jeep.** As such he had overall product and engineering responsibility for the Jeep fuel system design(s), including crashworthiness.

TESTIMONY REGARDING JEEP CRASHWORTHINESS :

FRANCOIS J. CASTAING – *FATHER OF THE JEEP*

13. Perspective on the tragedy of March 6, 2012 is incomplete without knowing the attitudes and capabilities of the key individual responsible for the design philosophy of the 1999 Jeep Grand Cherokee. The *Father of the Jeep*, Mr. Francois Castaing embodies an important portion of that perspective.

On March 14, 1996, while overseeing Jeep design philosophy, development and testing, for the 1999 Jeep Grand Cherokee, Mr. Castaing testified in the Jeep crashworthiness case of *Tenaglia v Chrysler*. In that deposition, by plaintiff attorney Lawrence Coben, the *Father of the Jeep* testified as follows:

Coben: What does the term crashworthiness mean in terms of design of a product?

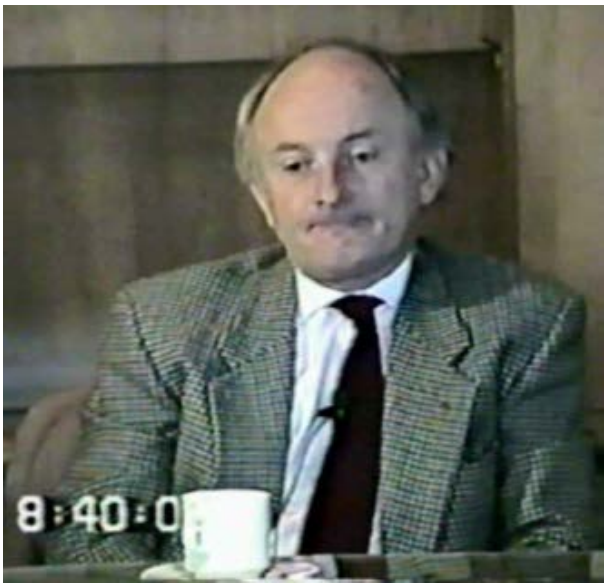
Castaing: ***I don't know. Tell me.***

Coben: You don't know the phrase?!

Castaing: *No.*

Coben: Well, let me make sure I'm clear on this. As the chief engineer of the company, are you at all familiar with the use of the phrase crashworthiness by the engineers of the company?

Castaing: ***Crashworthiness is so vague that you have to tell me what you intend by that.***



In 1987, as an Engineering Programs Manager at JTE, I made a presentation to Castaing that included the **Baker Memo**. I proposed that the upcoming Jeeps, including the Grand Cherokee be based on an alternative design that relocated the fuel tank from its vulnerable unprotected rear-most position, to a location that more easily sustains crashworthiness; a middle position. Mr. Castaing, and executives above him, rejected my recommendation. In the Grand Cherokee death case of *Kline v Chrysler*, in my presence, Castaing admitted that my recommendation had been made, but was rejected (Page 16 below).

SWORN TESTIMONY REGARDING JEEP CRASHWORTHINESS :

THE TESTIMONY OF CHRYSLER EXPERTS

14. I was also present at the deposition of the Chrysler *'fire source and causation'* expert and former Chrysler employee colleague, Mr. Robert D. Banta. After decades of association I can attest to his competence and integrity. I photographed the Jeep Grand Cherokee below, prior to its crash test of May 16, 2011, anticipating a crashworthiness test failure, and defense expert depositions such as that of Mr. Banta.

In the same Jeep fire death case of *Kline v Chrysler*, on September 7, 2012, mere months after the fire-death of Remington Walden on March 6, 2012, when confronted with my photo, Mr. Banta testified to plaintiff attorney Ms. Angel Defilippo as follows:

DeFilippo: Now, in looking at that photo, can you tell me what part of the vehicle protects the part of the tank that we're looking at in that photograph?

Banta: *No. It's covered by the fascia.*

DeFilippo: So if a vehicle were to strike just that yellow piece of the car, whether it be because it's lower or some kind of vehicle that's not even a car, let's say it was a recreational vehicle of some sort, what would protect that portion of the tank that we see here in yellow.

Banta: *Just the tank surface itself.*

DeFilippo: So in other words, whatever the material of the tank is at the time?

Banta: ***The tank's on its own.***

15. The following photographs depict what happens at a mere 40 mph, in a rear crashworthiness test of a Jeep Grand Cherokee; equivalent in all relevant design parameters to the Jeep that caused the tragic death of 4-year-old Remington Walden:

16. In paragraph 13 I discuss the *"design philosophy"* of Mr. Castaing. By enforcing a philosophy that locates the fuel tank in the rear-most position (yellow, page 8), he also projected that location philosophy into future Jeep models such as the 1999 Jeep Grand Cherokee (and the Jeep Liberty model). **ALL** of these have been the cause of horrific injury and death litigation. **ALL** of the associated litigations have been subject-to *"confidentiality agreements,"* making prior knowledge of the technical facts of these Jeep defects and associated tragedies inaccessible to the Walden family . . . or Bryan Harrell.

17. As history has shown, my 1987 recommendation of an alternative vehicle base design philosophy was not enacted until the 2005 Jeep Grand Cherokee . . . a design that moved the fuel tank to the *"mid-ship,"* the exact location recommended by me in 1987, and Leonard Baker in 1978! Since German engineers redesigned the Jeep Grand Cherokee, not one rear collision fuel fed fire injury or death has occurred.

18. On January 23, 2015, in the death case of Walden v FCA, Chrysler expert Mr. Philip Cousino testified that the revised design philosophy of the 2005 Jeep Grand Cherokee, which would have protected Remington Walden, involved the highest levels of German management:

Attorney: Isn't it true that the 2005 model year Grand Cherokee had the gas tank **midships**?

Cousino: *Yes.*

Attorney: All right. Now, you said in one of your answers previously that the architecture of the vehicle starts as an idea. Whose idea was it to put the gas tank in the **midships** location rather than at the rear?

Cousino: *I don't know . . . I think that Dieter Zetsche and Wolfgang Bernhard, who were the CEO and COO of the company, both from Mercedes, were involved in that decision.*

19. But an informed customer need not wait for Germany's redesign of the 2005 Jeep for a layout that eliminated the vulnerable and defective rear-most fuel tank location . . .

On August 5, 2010, two years before defendant Bryan Harrell collided with a defective 1999 Jeep Grand Cherokee, the CAS conducted a rear crash test its primary competitor : the Ford Explorer. I immediately uploaded these test videos to my YouTube account :

This test was not conducted at 10 mph. Not 20 mph. Not 30 mph. Not 40 mph. Or the alleged Bryan Harrell collision speed of 50 mph. This test was not conducted at 60 mph.

The Ford Explorer was hit at 70 mph. The amount of fuel system leakage? **Zero.** The probability of a post-crash fuel tank fire in this Ford Explorer test? **ZERO.**

It is unlikely that the Waldens would have purchased their 1999 Jeep had they been informed of its fuel tank crashworthiness defect, versus the fact that competitive models such as the Ford Explorer have never been part of a government investigation, contain no such defect, and would have protected their son Remington from fire-death.

20. In the context of my professional experience, I ask the following question:

If, on the date of the Bryan Harrell collision of March 6, 2012, Remington Walden been a passenger in a mid-mounted fuel tank vehicle, such as the original Ford Explorer or the 2005 Jeep Grand Cherokee, <u>what would be the likelihood that Remington's autopsy would have declared his death causation as follows (screenshot)</u> ?

Cause of Death:
Thermal Injury In conjunction with a right femur fracture

Pathologic Diagnoses:
Thermal injurywtth predominant charring, 100% body surface area
Right femur fracture

ZERO . . . because other than the fuel tank fire, the accident was survivable . . . and therefore Remington would be alive today.

Dr. Maryanne Gaffney-Craft, Regional Medical Examiner for the South Georgia Judicial Circuit, testifying at the Jeep fire death trial of Walden v FCA.

Summary Opinion - Paragraphs 8 through 20

I. If information regarding the scores of prior death cases, involving defective Jeep fuel tank systems, had not been obscured from public scrutiny via *"confidentiality agreements,"* it is likely that the Walden family would not have purchased their 1999 Jeep Grand Cherokee in the first place.

II. Mr. Bryan Harrell, a tenth grade education roofing laborer had the deep misfortune of colliding with the wrong SUV on March 6, 2012. Had Remington Walden been a passenger in just about any other brand SUV, the accident would not have been catastrophic. An excerpt of March 25, 2015, from the trial testimony of criminal defendant Mr. Harrell, in the Jeep death case civil matter of Walden v FCA:

A I would believe that, yes, sir.
Q Why were you crying, Bryan?
A (Weeping.) Same reason now, I guess.
Q Why is that?
A I feel sorry for the family. Guilty somewhat for the little boy's death.
Q Did you deliberately, on purpose, hit the back of that Jeep?
A Of course not.
Q Did you intend to cause any harm to Remi Walden?
A No, sir.
Q Did you know that that Jeep had a gas tank on the back of the Jeep that was just 11 inches from the back of the Jeep hanging 6 inches below the bottom of the Jeep? Did you know that before this accident happened?
A No, sir.
Q Had you ever noticed where gas tanks were on Jeeps like that?
A No, sir. Never paid any attention.
Q Did you know the gas tank on that Jeep was totally unprotected from rear impact?
A No, sir.
Q You were driving a 1997 Dodge Dakota pickup, were you not?
A Correct.

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THE JEEP FIRE INJURY / DEATH CRISIS:

A HISTORY OF CRIMIAL PROSECUTION AGAINST SECONDARY VICTIMS

21. Hundreds of Jeep fire injury/death cases have been litigated over several decades. In nearly all of these the secondary victim, the offending driver has either been considered for criminal charges or had been formally charged. The following is a very small sampling.

Kenneth Smith versus DaimlerChrysler

On October 6, 2001 Mr. Smith was rear-ended while driving his Jeep Grand Cherokee. The accident geometries and parameters were very similar to that of March 6, 2012. Mr. Smith's Jeep instantaneously burst into flames and, although he survived, he was horribly burned. As an initial, but emotional and uniformed reaction, the local prosecutor considered charging the offending driver . . . until he discovered that the offending driver was a Florida State Police officer:

The Smith v DaimlerChrysler matter was settled under a *"confidentiality order."*

Total time that the offending driver was incarcerated: ZERO.

Jarmon versus DaimlerChrysler

On February 6, 2006, four-year-old Cassidy Jarmon was a Grand Cherokee passenger, positioned in the same location as four-year-old Remington Walden. After being rear-ended the Jeep instantly burst into flames. Both parents, positioned in the front seats barely escaped, but could not save their daughter as the inferno overtook the entire scene.

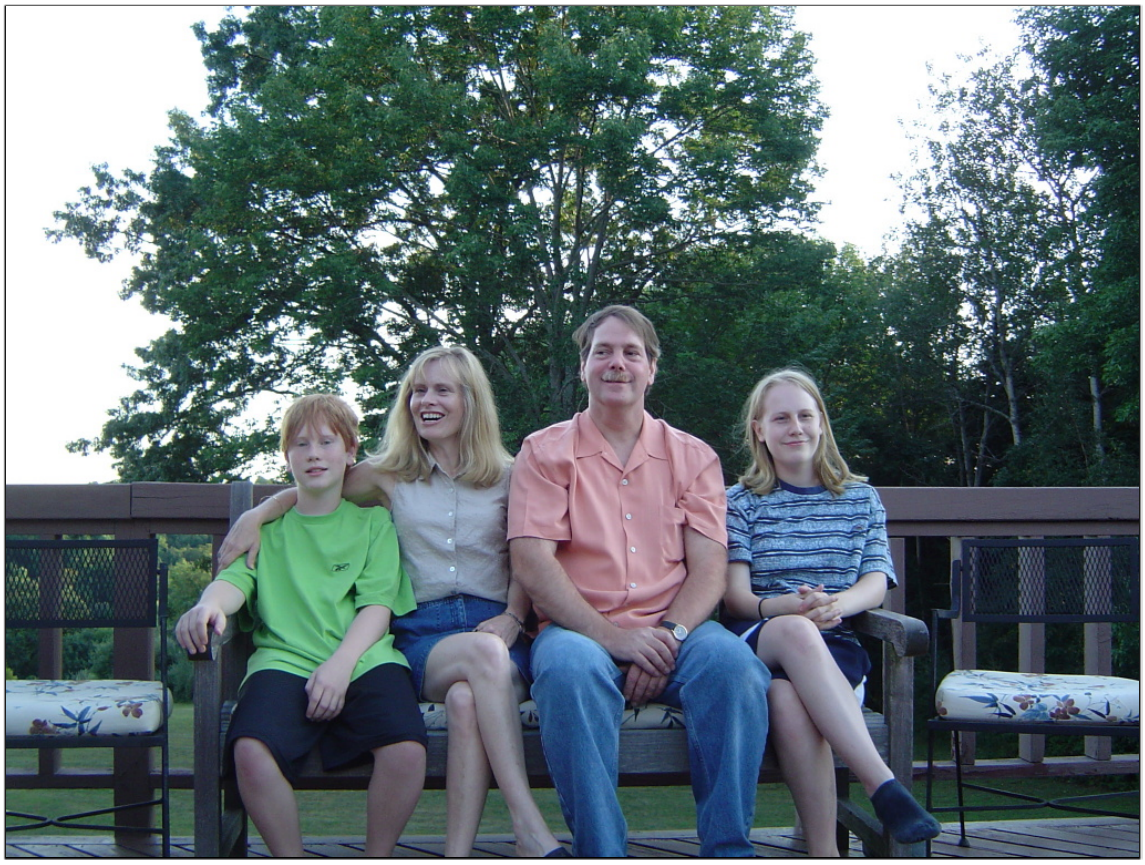
Criminal charges against the offending driver were considered, but never filed when it was revealed that the autopsy report declared that the accident was not the cause of Cassidy's death; that *"fire and smoke inhalation"* was the true cause.

Total time that the offending driver was incarcerated: ZERO.

Kline versus Chrysler Group

The horrific Jeep fire death of wife and mother Susan Kline was a major motivating factor in the Center for Auto Safety (CAS) petition to the federal government to investigate the lack of Jeep fuel system crashworthiness. An attachment, that I authored is dedicated to Mrs. Kline, and was included in the petition of October 2, 2009. I was involved from the very beginning, in all aspects of the Kline litigation.

On February 24, 2007 the Grand Cherokee being driven by Mrs. Kline was rear-ended. Her Jeep instantaneously burst into flames. Pictured here with her family mere weeks before, Mrs. Kline died trying to escape the conflagration:



None of the other persons involved in the accident were injured.

Criminal charges against the offending driver were filed by New Jersey authorities. But as the case against Chrysler proceeded, and the true cause of death, fire, was repeatedly affirmed, all criminal charges were dropped.

Total time that the offending driver was incarcerated: ZERO.

Sanchez versus Chrysler Group

On April 5, 2014 the Sanchez brothers, Magdaleno and Raymundo, able-bodied construction workers, were rear-ended on their way home from work. Upon collision, their Grand Cherokee instantly burst into flames. The doors were characteristically jammed and, just like Mrs. Susan Kline, Magdaleno and Raymundo were trapped.

They suffered no injury from the collision, but the fire immediately reached their front seats, and both brothers are burning; a scene straight from Hell itself. But unlike Mrs. Kline, Magdaleno was very strong, he was able to break his driver's side door glass to escape. Rushing to the passenger side, he smashed that glass, breaking his hand in the process, and removed Raymundo while he was still burning. Both escaped with their lives. But horribly burned, neither will ever work again . . .

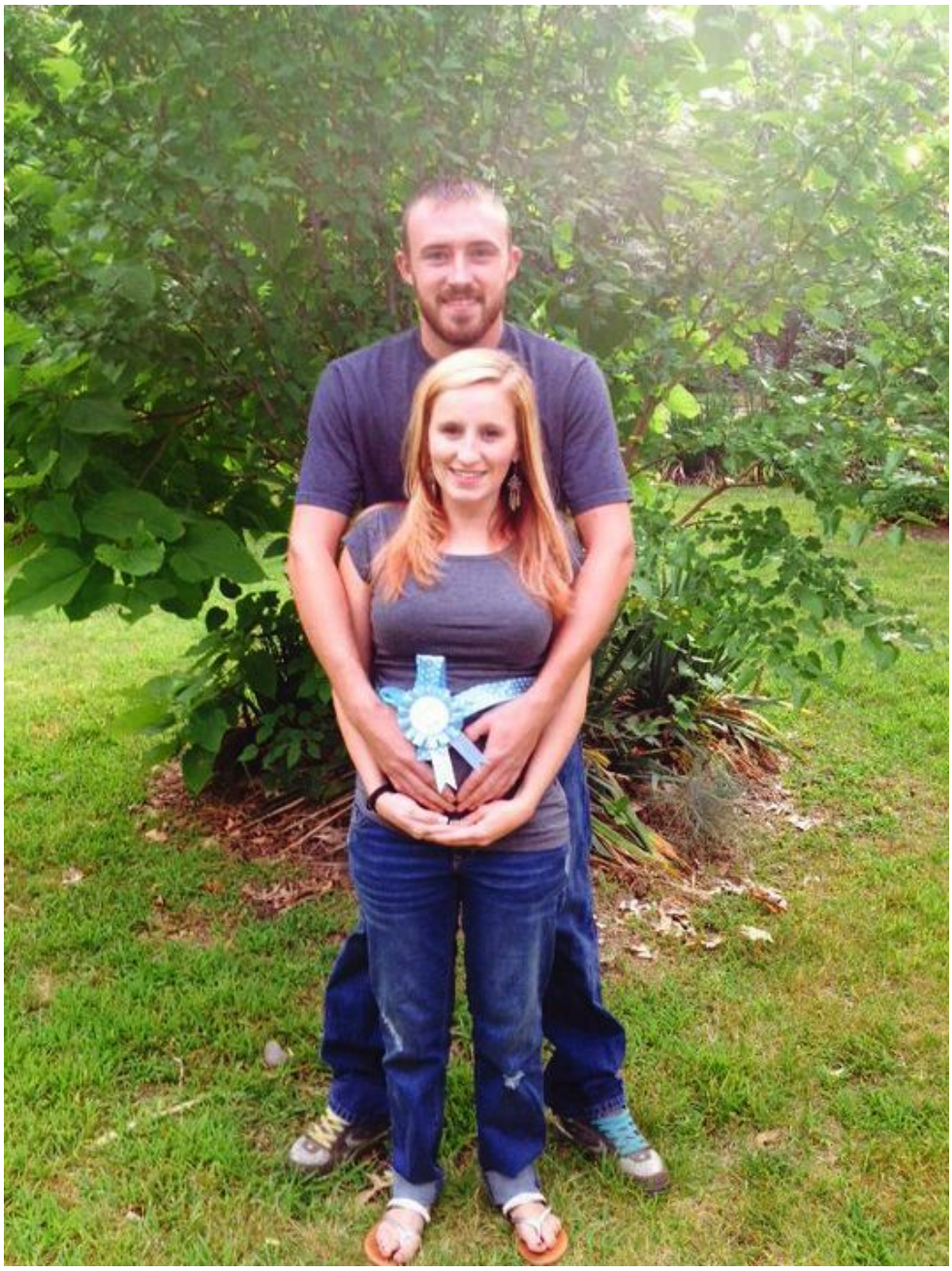
I was involved from the very beginning, in all aspects of the Sanchez litigation. Their Jeep was rear-ended by a little Honda Civic. The offending driver, after impact, simply opened her door and got out. She suffered no injuries, and refused medical attention. Initially she was accused of causing the following scene on a Los Angeles highway :

Criminal charges against the offending driver were filed by California authorities. But as the case against Chrysler affirmed that the true cause of the fire, and the horrible burn injuries to the Sanchez brothers, was a defective Jeep, all criminal charges were dropped.

Total time that the offending driver was incarcerated: ZERO.

White versus FCA

Very few, if any, are more qualified than I to declare the “worst” of the Jeep fire death accidents. But if I were compelled, it would be the horror of November 11, 2014 which took the life of expecting mother Kayla White and her eight-month-term son Braedon:



The Michigan accident scene was so horrific that one paramedic resigned, and another is still undergoing psychiatric assistance.

It is alleged that the offending driver was guilty of distracted driving just before colliding with the rear of Kayla's 2003 Jeep Liberty vehicle. In my professional opinion the Jeep Liberty has a fuel system design that is . . . as astounding as this might seem . . . *more* incompetent, and even *less* crashworthy than the Jeep Grand Cherokee that caused the death of Remington Walden. The Jeep Liberty was added to the NHTSA investigation that was initialized by the CAS petition (paragraph 9 above).

Criminal charges were filed against the offending driver, not felony charges but only a misdemeanor in connection to, not one death but two deaths: Kayla and Braedon.

This Jeep fire death was mere weeks before the Harrell plea of October 14, 2014. Similar to the Harrell plea sequence, the offending driver in Michigan (1) accepted advice of his criminal defense lawyer and, (2) did so **prior** to adjudication of the product defect case:

DATE OF AUTOPSY: November 12, 2014 TIME: 8:50 a.m.

CAUSE OF DEATH: THERMAL INJURY and SMOKE INHALATION

MANNER OF DEATH: ACCIDENT

Total time that the offending driver in Michigan was incarcerated after pleading "Guilty" regarding the death of not one, but two people??

TEN DAYS !

The Commonwealth of Massachusetts versus Joel Cruz

Please note . . . I have revised the title format and context. In the prior samples I have listed Chrysler as the defendant.

The narrative that follows, regarding the Cruz matter, is offered as the most compelling regarding the injustice that continues to afflict Mr. Bryan Harrell of Bainbridge, Georgia.

The Honorable Court may find this context revision deeply indicative.

But the Honorable Court may also see that the reason a civil product case was never even filed in the Jeep fire death case in Massachusetts as even MORE INDICATIVE.

The Massachusetts criminal case against Mr. Cruz, relating to the Jeep fire death of seventeen-year-old Skyler Anderson (pictured), is striking for the following reasons:

A. In stark contrast to Defendant Harrell's behavior post accident, the Cruz behavior post accident in Massachusetts was utterly despicable.

B. Like Bainbridge, the Springfield, Massachusetts community was deeply traumatized by the way Skyler was killed. Springfield was especially animated about the post-accident behavior of Mr. Cruz.

C. The Springfield community, the police, the court, the jury, and their District Attorney were, proverbially speaking, *"out for blood,"* regarding Mr. Cruz.

D. This *"out for blood"* atmosphere was what I encountered when asking to travel to Springfield, to do a photos-only inspection of the affected vehicles.

E. The **adjudication sequence** regarding the offending driver was the same as White and Walden: That is, the criminal case against Cruz was hurriedly orchestrated **prior** to the civil products litigation wherein the issue of a Jeep safety defect as exculpatory evidence, would be fully exposed.

F. Although I never emailed the DA for South Georgia, my telephone calls were not returned. In contrast I received several return calls from the Springfield authorities. The Springfield DA sent an email acknowledging my person, my purpose and, <u>most relevant to this brief</u>, his recognition that a safety issue existed with the Jeep Grand Cherokee that killed young Skyler on the evening of November 10, 2013:

Mr. Sheridan

There is an active criminal investigation in this matter. I must deny your request.

I am aware of the subject matter and your purpose for viewing the vehicle. All requests for access are being denied.

Sent from my Android phone using TouchDown (www.nitrodesk.com)

-----Original Message-----
From: Paul V. Sheridan [pvsheridan@wowway.com]
Received: Friday, 15 Nov 2013, 1:15pm
To: Forsyth, James (WES) [James.Forsyth@MassMail.State.MA.US]
Subject: FW: Jeep Grand Cherokee

Mr. Forsyth:

I just left a voice mail; I would like to schedule a vehicle inspection (photos only) for Monday 25 Nov.

Paul Sheridan
Dearborn, MI
313-277-5095

G. Similar to the death of Remington Walden, once again, the autopsy report for Skyler Anderson does **<u>NOT</u>** list the accident *per se* as the cause of death:

6. The following injuries were sustained by the involved parties during the crash:

Operator #1: No injury.

Operator #2: The cause of death was determined by the Office of the Chief Medical Examiner to be extensive thermal injuries.

Operator #3: No injury.

Passenger #1: No injury.

Passenger #2: No injury.

Passenger #3: No injury.

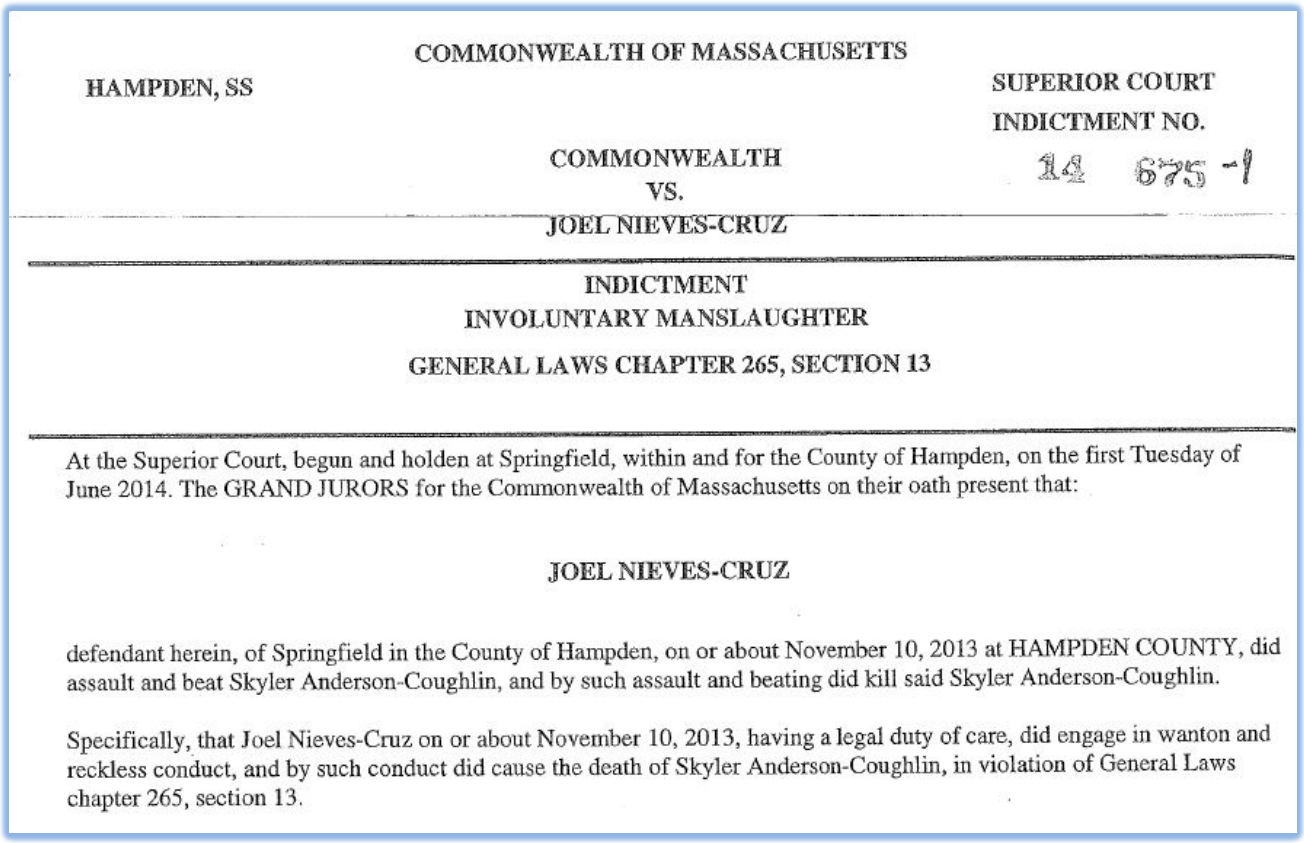
Passenger #4: She was brought to Mercy Hospital approximately two hours after the crash as a precaution related to her pregnancy.

Seeking to obviate the misguided results rendered against prior offending drivers, where the litigation sequence has criminal first, and then the civil lawsuit, defense attorney Joseph Franco retained me in *Commonwealth of Massachusetts versus Joel Cruz*:

I. I testified for an entire day in the Springfield court.

II. It took extensive preparation and personal fortitude to undo the enormous emotional response to the Jeep fire death of young Skyler, an emotion that no reasonable juror would be immune from.

III. Mr. Franco's direct examination was extraordinarily competent. When complete, it was clear to the Springfield DA that the exculpatory evidence I presented had obviated any chance that the twelve jurors (and two alternates, also present) would sustain his charge of 'Involuntary Manslaughter' regarding the death of Skyler :



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

SUPERIOR COURT

INDICTMENT NO. 14 675 -1

COMMONWEALTH
VS.
JOEL NIEVES-CRUZ

INDICTMENT
INVOLUNTARY MANSLAUGHTER
GENERAL LAWS CHAPTER 265, SECTION 13

At the Superior Court, begun and holden at Springfield, within and for the County of Hampden, on the first Tuesday of June 2014. The GRAND JURORS for the Commonwealth of Massachusetts on their oath present that:

JOEL NIEVES-CRUZ

defendant herein, of Springfield in the County of Hampden, on or about November 10, 2013 at HAMPDEN COUNTY, did assault and beat Skyler Anderson-Coughlin, and by such assault and beating did kill said Skyler Anderson-Coughlin.

Specifically, that Joel Nieves-Cruz on or about November 10, 2013, having a legal duty of care, did engage in wanton and reckless conduct, and by such conduct did cause the death of Skyler Anderson-Coughlin, in violation of General Laws chapter 265, section 13.

Mr. Franco's direct examination concluded as follows:

Q. Mr. Sheridan, how long have you been examining and reviewing the Jeep systems, the fuel systems on the Jeep?
A. Well, as to the field failures, I began analyzing in 2007. That's when I first officially began doing the field failure analysis. My analysis of the Jeep itself began in 1987.
Q. And do you have an opinion to a reasonable degree of engineering certainty as to the cause of the fire of Mr. Skyler Anderson-Coughlin's Jeep?
A. Yes. In my opinion the cause of the fire was the defective design of the Jeep Grand Cherokee. The rear of the Jeep Grand Cherokee that Mr. Anderson was in is not crash worthy and it is not road worthy.

The Springfield DA, Mr. Joseph Forsyth, concluded his cross examination as follows:

Q. And for -- that rear-end collision is what caused that fire on the -- on the -- on the Jeep Grand Cherokee contacting the tractor-trailer?

A. The rear-end collision provoked the defect in the Jeep which led to the fire.
Q. And this happened in 2013?
A. November 10, 2013.
Q. Very good, sir.
MR. FORSYTH: Thank you.

A very important point must be emphasized: Aware that I was scheduled to testify in *Commonwealth of Massachusetts versus Joel Cruz,* Chrysler defense lawyers were present throughout, including the reading of the verdict:

(a) It cannot be overestimated; the legal value that Chrysler product defense lawyers place in Jeep fire death cases, upon the *"Guilty"* verdicts of their secondary victim, the offending driver. Chrysler must be viewed by the Honorable Decatur Court as a *'vested interest'* in these criminal matters, benefiting from and later using the *"Guilty"* verdict in defense of their defective products. Indeed, this is exactly what they plan to do in White vs. FCA, and exactly what they **did** in Walden vs. FCA . . . using the hasty plea from criminal defendant Bryan Harrell.

A verdict of **"Not Guilty"** on the charge of 'Involuntary Manslaughter' was rendered by the Springfield jury, as reported in the local news media :

> During testimony this week, the defense presented an expert witness who said Anderson-Coughlin and the defendant were both victims of the Jeep's safety defect.
>
> Safety consultant and former Chrysler manager Paul Sheridan testified that the Jeep's fuel tank placement made it vulnerable, and presented photos of gasoline leaking from a Jeep that had been struck from behind.
>
> Following closing arguments, jurors found Nieves Cruz guilty of leaving the scene of a fatal motor vehicle accident, but cleared him of the more serious charge of manslaughter by wanton or reckless conduct.
>
> In an interview Thursday, Sheridan said no judge or jury has found defendants guilty in similar cases after being presented with evidence of the fuel tank defect.

Earlier I promised that the Honorable Court may determine the reason a civil product case was never filed in Massachusetts as MORE INDICATIVE. Indeed, subsequent to the verdict of **"Not Guilty"** in Cruz, the parties in Anderson vs. FCA settled . . . without even filing a lawsuit! Albeit, under a *"confidentiality agreement."*

Total time that the offending driver in Massachusetts was incarcerated regarding the charge of ' Involuntary Manslaughter ' ? Zero.

THE JEEP FIRE INJURY / DEATH CRISIS:

THE INJUSTICE OF THE CRIMIAL PROSECUTION AND

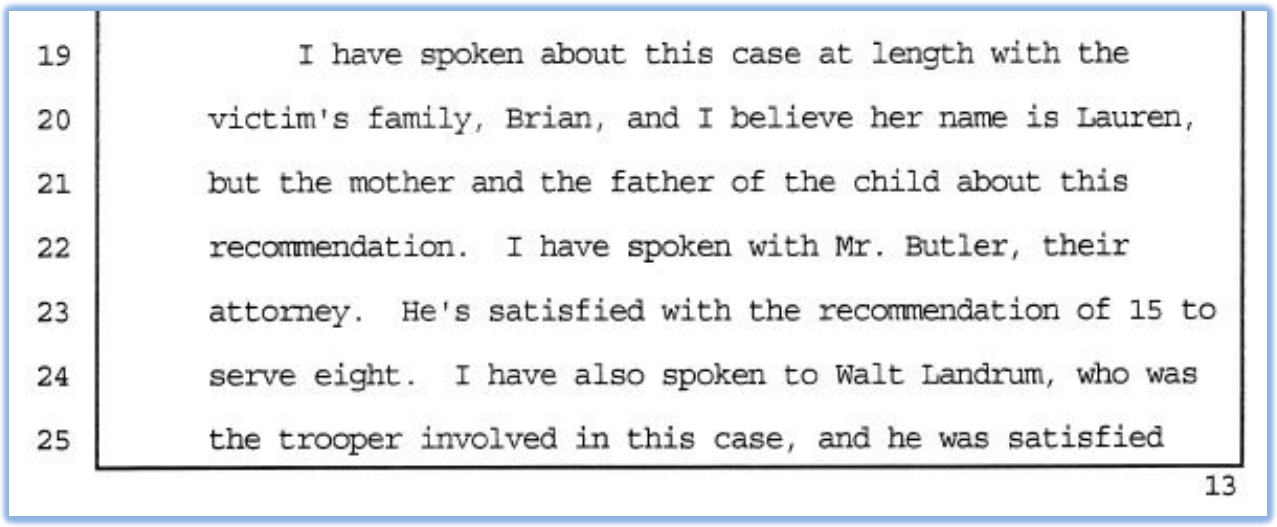
ONGOING INCARERATION OF MR. BRYAN LAMAR HARRELL

22. At criminal defendant Bryan Harrell's plea hearing of October 14, 2014, the following individuals were present:

Mr. Joseph K. Mullholland,
District Attorney
South Georgia Judicial Court
Office of the District Attorney
P.O. Box 1870
Bainbridge, GA 39818
229-246-1823

Mr. Robert R. McLendon, IV, PC
Defense Attorney
Suite C
150 Court Square
Blakely, Georgia 39823
229-723-2635

At the hearing DA Mullholland makes the following declarations:



I have spoken about this case at length with the victim's family, Brian, and I believe her name is Lauren, but the mother and the father of the child about this recommendation. I have spoken with Mr. Butler, their attorney. He's satisfied with the recommendation of 15 to serve eight. I have also spoken to Walt Landrum, who was the trooper involved in this case, and he was satisfied

13

As stated in the Preamble, I telephoned Mr. Mullholland in March/April 2012 regarding the Jeep fire-death of Remington. Two years later, at the Harrell plea hearing, Mr. Mullholland states that he had contact, immediately **prior** to that hearing, with the plaintiff attorney ("Mr. Butler") of the civil case of Walden vs. FCA. That is:

> Mr. Mullholland is ostensibly admitting that he was aware of the portent of that civil matter: That the Jeep Grand Cherokee, that Remington Walden was a passenger in, contained a fuel system defect.

23. Regarding his conversations with “Mr. Butler” . . . the notion that the plaintiff would be “satisfied” or declare ANY positive equity in the counts filed against Mr. Harrell is, on its face, **absurd.** Given the *‘vested interest’* discussion above (Page 25-a), there is no tactical or legal benefit to the plaintiff’s safety defect litigation against FCA/Jeep. It is to the plaintiff’s benefit that no mitigating diversions be present at the accident, and therefore not be available to defendant FCA. For example, the exoneration in the criminal matter of *Massachusetts versus Joel Cruz* obviated that FCA tactic. I emphasize with the Honorable Court how elimination of this diversion, from the defense case in the civil matter of Anderson vs. FCA, resulted in no defect lawsuit even being filed! (Page 25)

I have had contact with both Jeb and Jim Butler. They never claimed to be “satisfied” ala DA Mullholland’s planned fifteen-year sentencing of Mr. Harrell. **In truth, in his closing of April 2, 2015, in Walden vs. FCA, Mr. Butler stated the exact opposite, he declared DISSATISFACTION with Mr. Harrell’s incarceration:**

Chrysler has denied everything and still denies everything and has put up what is, in all candor, a dishonesty defense. Chrysler ought to be in Reidsville instead of Bryan Harrell.

MR. BELL: Your Honor, I have the same objection and the same motion.

THE COURT: Overruled.

MR. JIM BUTLER: Ladies and gentlemen, we asked -- we're going to ask that you do full justice for Remi. Bryan and Lindsay are here, and we are here, and we've been working for three years to let people know about this danger. People do not know. Ms. Kelly, sitting right there -- where did you -- Bertha Walker, that's right, sitting right there where Mr. Jerry Butler is sitting, might have been up one row, see Mr. Butler out there, he

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Prompted by emails that I had sent to him and Jeb Butler, Jim Butler responded to the DA Mullholland declaration regarding being "satisfied." In an email of March 24, 2016, to Bryan Harrell fiancée Ms. Christina Small, Jim Butler states:

Sent from my iPhone

On Mar 24, 2016, at 4:43 PM, Jim Butler <jim@butlerwooten.com> wrote:

> Christina, this case is still pending. It is in the Court of Appeals. We are not at liberty to talk to you or Mr. Harrell. He is represented by counsel.
>
> We have lied to no one.
>
> I can't speak to the drug charge, but we made it very clear to the DA that (1) there was no evidence Mr. Harrell was dui in the wreck, and (2) Mr. Harrell did not cause Remi's death. I suspect that is why Mr. Harrell got a concurrent sentence - he is serving no additional time as a result of the wreck charges.
>
> Jim Butler

As the Honorable Decatur Court can see, Jim Butler ostensibly affirmed my earlier point; that his defendant in "this case" (Walden vs. FCA) is a vested interest and, implicitly, that FCA, as a civil defendant, would benefit from and use a **prior** plea of *"Guilty"* from the offending driver, FCA's secondary victim, criminal defendant Mr. Bryan Harrell.

24. Upon review of the plea transcript I was concerned that DA Mullholland never made any mention of the Jeep defect information. But my review turned to angst when not one word of that defect was offered to the Honorable Court ***by the defense attorney!***

All of the historical information discussed in this Support Brief, and much more, was available prior-to and ***at*** the hearing of October 14, 2014. In fact, in conversations I have had with his fiancée, Ms. Small, she is adamant; she has told me repeatedly that prior-to and ***<u>at</u>*** the hearing she reviewed the Jeep safety defect history with defense attorney Mr. McLendon. Despite this review, he responded to the Honorable Decatur Court as follows:

THE COURT: Do you know of any reason why the Court should not accept the plea?

MR. McLENDON: No, sir.

There most definitely was a reason! It is called exculpatory evidence.

25. In his *Pro Se*, Mr. Harrell derides *"grossly inadequate legal defense representation and advice."* The Honorable Judge Cato repeatedly questioned the validity and legality of the plea. After hearing from Mr. Harrell, detailing the accident of March 6, 2012, and despite having pre-knowledge of the horrific death of Remington, His Honor declares:

> **THE COURT:** So you're telling me it was an accident, then?
>
> **THE DEFENDANT:** Yes, sir, I sure am.
>
> **THE COURT:** That it wasn't homicide by vehicle, it was just an accident?
>
> **THE DEFENDANT:** Yes, sir.
>
> **THE COURT:** Okay. It sounds like to me I can't accept this plea either if he is not guilty.
>
> **THE DEFENDANT:** Sir?
>
> (Discussion off the record between client and counsel.)

I am told that Mr. Harrell will testify that the 'discussion off the record' involved a threat of "30 years!", hence placing him under legal duress (See *Pro Se* Motion paragraph 7).

26. But perhaps the most insidious aspect of the tactics leading up to October 14, 2014, and the hasty *"Guilty"* plea entered by Mr. Harrell, is <u>the possible abusive use of emotion</u>. Again, at that hearing, DA Mullholland declares:

> I have spoken about this case at length with the victim's family, Brian, and I believe her name is Lauren, but the mother and the father of the child about this recommendation.

Not only was the emotional impact of March 6, 2012 deployed against Mr. Harrell, it was apparently evoked by DA Mullholland in discussions with Remington Walden's parents.

Assuming that DA Mullholland did speak to the "victim's family," then the adjudication sequence that I mentioned above must be re-emphasized (Page 21-E and 23). I am told that Remington's parents were repeatedly told that Mr. Harrell was DUI at the accident. I am told that the entire town of Bainbridge was also inundated with that accusation.

But since emotion played a part in the State's case against Mr. Harrell, most especially his ongoing incarceration, then perhaps the most dramatic undermining of that ploy is borne by the *'Request for Clemency'* of January 16, 2017, submitted by Remington's parents, Ms. Lindsay Strickland and Mr. Bryan Walden:

Dear Board Members:

Our son Remington Cole Walden was killed on March 6, 2012 in a wreck in Bainbridge, Georgia. The car in which our son was riding was struck in the rear by a truck driven by Bryan Harrell. The car was a 1999 Jeep Grand Cherokee with a rear-mounted gas tank. Because of the location of the gas tank, the impact caused a gas tank explosion and fire. *That* is what killed our son.

We have always believed and contended that while Mr. Harrell caused the wreck, Chrysler (now "Fiat Chrysler Automobiles" or "FCA") caused our son's death. The gas tank design on that Grand Cherokee was defective and dangerous – and Chrysler knew it. Chrysler's own engineers admitted as much at the trial of our civil case. Mr. Harrell, by contrast, acknowledged his responsibility for the wreck itself from the start.

A jury of twelve Decatur County citizens clearly agreed: at the civil trial, on April 2, 2015 they voted unanimously to apportion 99% of the fault for our son's death to Chrysler, and only 1% of the fault to Mr. Harrell.

We believe Mr. Harrell has been adequately punished, and deserves clemency now. He has a wife and a young child. He was and is filled with remorse: that was obvious both before the civil trial and when he tearfully testified at the trial of our civil case. This tragedy has tormented Mr. Harrell enough. He is punished every day, regardless of whether he is in prison or not.

We would ourselves like closure from this tragic loss. Knowing Mr. Harrell is no longer being punished by the State under these circumstances would be very helpful and meaningful to us both.

We strongly urge that the Board release Mr. Harrell. We urge the Board to do so immediately, rather than waiting until May 17, 2017.

Thank you for your consideration of this request.

Sincerely

Lindsay Strickland & Bryan Walden

Summary Opinion - Paragraphs 21 through 26

I. Again, if Remington Walden been a passenger in just about any other brand SUV, the accident would not have been catastrophic, and he would be alive.

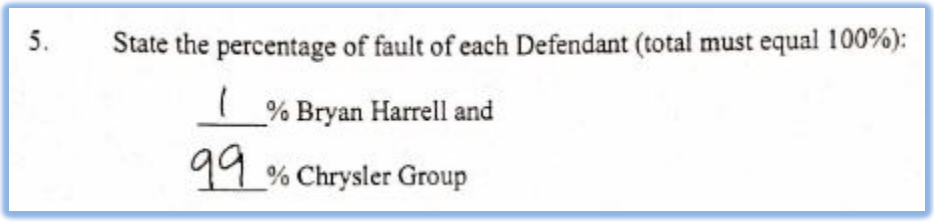
II. I was the first safety expert to contact authorities in the great state of Georgia, including but not limited to the office of District Attorney Joseph K. Mullholland. Other contacts made in the March/April 2012 timeframe included Lieutenant Marc Godby (229-758-3070) and Troop G Secretary Donna Singleton (229-931-2400):

a. Therefore there was awareness, regarding the Bainbridge, Georgia tragedy of March 6, 2012, that exculpatory defect evidence (versus the charge of Homicide by Vehicle) existed and was being sought by a safety expert years before the plea hearing of October 14, 2014.

III. In previous Jeep fire death/injury accidents wherein criminal charges were initially filed against the offending driver, but the prosecutor later became aware of the exculpatory defect evidence, those charges were dropped. In those cases the offending driver was never incarcerated.

IV. In previous Jeep fire death/injury accidents wherein the prosecutor was aware of the exculpatory defect evidence, criminal charges were never filed. In those cases the offending driver was never incarcerated.

V. The defect evidence presented in the civil trial of Walden vs. FCA, which was exculpatory in *The State of Georgia vs. Bryan Lamar Harrell*, resulted in the following jury determination:



5. State the percentage of fault of each Defendant (total must equal 100%):

1 % Bryan Harrell and

99 % Chrysler Group

But given I thru IV above, and in the opinion of the undersigned, this determination is skewed in favor of Chrysler.

VI. In the matter of *Massachusetts versus Joel Cruz*, the jury unanimously found the criminal defendant **"Not Guilty"** on the charge of Involuntary Manslaughter. In fact, in terms of the *death* of Skyler Anderson (pages 20 thru 25 above), the jury agreed that he would have survived were the Jeep not defective. Paraphrasing the Walden jury form, the Cruz jury essentially found:

State the percentage of fault for each defendant in the *death* of Skyler :	
Joel Cruz	0 %
Chrysler Group	100 %

Under Massachusetts law, a person found guilty of leaving the scene can receive a sentence of six to thirty months. Joel Cruz not only left the scene, he showed no remorse. Mr. Cruz (pictured) received the maximum 30-month sentence on February 26, 2016, but is expected to be released on good behavior:

Alternatively, as is well-known to DA Mullholland, defense lawyer McClendon, and accident scene officer W.R. Landrum, the exact opposite occurred with Mr. Harrell. He did not leave the scene, and did everything humanly possible to save Remington from the Jeep inferno. Mr. Harrell has repeatedly shown remorse (Page 13 above).

27. In a recent cordial telephone conversation with DA Mullholland he shared his emotional response to the Bainbridge accident scene. Confirming his lack of experience in these matters, he declared to me, an expert with involvement spanning nearly forty years : ***"It was the most horrible thing I have ever seen."***

But the troubling dynamic that I detected was that the DA allowed his personal emotion to taint his approach; to be subjective in the course of carrying out his duties as a public servant. I detected very similar subjectivities during a recent conversation with a fine member of the Georgia State Police, the reporting Officer W.R. Landrum.

We do not have the luxury to react or behave in such a manner. This is not to say that I do not relate to the motivation to exact justice on who/whom we deem guilty of wrong doing, such a defect related Jeep fire-death horrors. But we must remain professional.

The DA's zeal directed against Mr. Bryan Harrell, a tenth-grade self-employed roofing contractor, is woefully misplaced and, as such, detracts from his oath as a public servant. On that point, let us again paraphrase the Walden jury form:

State the percentage of fault for decisions to design and engineer an automotive product where the fuel tank is ill-placed, unprotected in foreseeable accidents, vulnerable to breach, and becomes the source of fuel that feeds horrific fire-death of occupants; decisions spanning DECADES:	
Bryan Lamar Harrell	0 %
Chrysler Group	100 %

That 100% statistic connects to corporate individuals that enjoy education at all degree levels. Unlike ordinary people like Mr. Harrell, these individuals have legions of defense lawyers that protect their positions in the event that a safety defect is alleged; positions that involve six, seven and eight-figure incomes (Page 7 above).

If DA Mullholland wishes to uphold public servant status, I would be happy to assist him with indictments against the Chrysler Group. Immediately after the $150,000,000 verdict in Walden vs. FCA I wrote to Georgia Attorney General Samuel Olens requesting a properly placed criminal investigation: http://pvsheridan.com/Sheridan2Olens-1-29April2015.pdf

28. As I stated in paragraph 21, those prior death cases represent a small sampling; there are hundreds more. But I ask the Honorable Court's indulgence with the following:

a. What is the total time of incarceration, relating to the Jeep fire-injury or fire-death portion of the accident, for ***ALL*** offending drivers in hundreds of other accidents ?

Total Time of Incarceration for ALL others combined: ***10 days***

b. What is the total time of incarceration, as of this Support Brief, for the offending driver, and Chrysler Group secondary victim, Mr. Bryan Harrell:

Total Time of Incarceration for Mr. Bryan Harrell (plea hearing): 926 days

During this 926 day period, the executives described in the boxed item of paragraph 27 have been enjoying their incomes, their family time . . . and now they too enjoy Jeeps that deploy a safe fuel tank design that the undersigned recommended in 1987.

CONCLUSION

i. There is zero evidence that Bryan Harrell is guilty of a felony charge of *'Homicide by Vehicle in the First degree'* but there was **overwhelming exculpatory evidence** that confirmed a Jeep fuel system defect, **exculpatory evidence** that the following two individuals consciously chose not to share with Judge A. Wallace Cato:

District Attorney Joseph K. Mullholland (Paragraph 22)
Defense Attorney Robert R. McLendon (Paragraph 24)

ii. There is zero evidence that Bryan Harrell is guilty of a felony charge of *'Reckless Driving.'* Stupidity? Inattentiveness? Incompetence? Yes. But that misdemeanor behavior is a far-cry from a felony charge. In fact, if the reckless driving charge were sustainable, why was Mr. Harrell **not** given a formal citation for such, at the scene or at any time thereafter by the Georgia State Police??

iii. Despite the plethora of accusations and innuendos, especially those shared with Remington Walden's parents, there is zero evidence that Bryan Harrell is guilty of DUI on the accident date of March 6, 2012. In truth, Mr. Harrell was not failing to cooperate with law enforcement, refusing their request for a blood sample at the scene; his apparent failure was the result of family legal advice. After receiving nearly $20,000 in retainer from Mr. Harrell's fiancée (Ms. Christina Small, pictured in paragraph 28), defense attorney McClendon managed to assert the lack of DUI evidence at the plea October 14, 2014.

CONCLUSION – con't

iv. There is zero evidence that plaintiff attorneys Jeb and Jim Butler were *"satisfied"* with the DA Mullholland intent to ask for a sentencing of Bryan Harrell for fifteen years to serve eight. In truth, protocol and the evidence clearly affirms the reverse!

v. There is zero evidence that Remington Walden's parents, Ms. Lindsay Strickland and Mr. Bryan Walden, were fully informed regarding all the facts (e.g. Harrell was not DUI) in relation to the fire-death of their son. Despite his claim, that he spoke to them *"at length,"* there is zero evidence that DA Mullholland established their informed agreement with his sentencing *"recommendation."* Clearly the *'Request for Clemency'* letter (page 30 above) makes any rebuttal from Mr. Mullholland moot.

vi. The Parole Board asserted that, based on the 'Request for Clemency' and other positive Harrell behaviors, that he would be released as "early" as September 2017. The Honorable Court should disregard this recommendation, in its deliberations of the Bryan Harrell *pro se* motion; the Board cannot serve to correct the injustice of October 14, 2014.

vii. In response to the Honorable Judge J. Kevin Chason ruling on their motion for retrial (denied), FCA defense lawyers have slandered the citizens of Bainbridge, the jury in Walden v FCA, the plaintiff attorneys, and the judge. As if on-cue these defense lawyers have publically declared them *"irrational."* As I intimated under oath (page 22 above), what is irrational is the prior FCA practice of selling defective products to an innocent public; products that are not crashworthy and, by minimal modern moral standards, not roadworthy. My response to any FCA rebuttal attempts on this point, regarding <u>their irrationality</u>, would be to present <u>their testimony</u>, such as pages 7 and 8 above. In contrast, I am confident that the executives pictured in paragraph 18 above would agree with me; the executives that asserted the alternative design for the Jeep that I presented in 1987.

Personal Observation – Re-Emphasized

Again, the jury form on page 31 above is skewed in favor of Chrysler.

It is clear from the transcript, that had Judge Cato been properly briefed by DA Mullholland and criminal defense attorney McClendon, the Judge would not have accepted the Harrell plea of October 14, 2104.

Therefore, similar to what occurred in Springfield, Massachusetts (pages 18 thru 25 above), in this corrected Bainbridge scenario its civil products jury is never subjected to the routine FCA defense ploy of painting the offending driver as "Guilty."

That is, it is likely that the reason the Walden jury assessed a 1% fault against the offending driver is because they were compelled by "evidence" of his prior (and ill-advised) plea of *"Guilty"* . . . entered by the secondary and ongoing victims of FCA's defective Jeep Grand Cherokee, Mr. Bryan Harrell and his young family.

ACCOMODATION

So it is clear to the Honorable Court, I have not charged and will not accept any monies (perhaps expense reimbursement) from the Harrell/Small family or any of its agents.

If it serves the Honorable Court, I am available for any further inputs or inquiry regarding this Support Brief, and would be honored to appear and be placed under oath. Support documents for this brief can be found here: http://pvsheridan.com/harrell_pro_se/

Respectfully,

Paul V. Sheridan
DDM Consulting
22357 Columbia Street
Dearborn, MI 48124-3431
313-277-5095 / pvs6@Cornell.edu

Attachments

View Previous Versions of the Georgia Code

2015 Georgia Code
Title 40 - MOTOR VEHICLES AND TRAFFIC

2015 Georgia Code
Title 40 - MOTOR VEHICLES AND TRAFFIC
Chapter 6 - UNIFORM RULES OF THE ROAD
Article 15 - SERIOUS TRAFFIC OFFENSES

2015 Georgia Code
Title 40 - MOTOR VEHICLES AND TRAFFIC
Chapter 6 - UNIFORM RULES OF THE ROAD
Article 15 - SERIOUS TRAFFIC OFFENSES
§ 40-6-393 - Homicide by vehicle

Universal Citation: GA Code § 40-6-393 (2015)

(a) Any person who, without malice aforethought, causes the death of another person through the violation of subsection (a) of Code Section 40-6-163, Code Section 40-6-390 or 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.

(b) Any driver of a motor vehicle who, without malice aforethought, causes an accident which causes the death of another person and leaves the scene of the accident in violation of subsection (b) of Code Section 40-6-270 commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than three years nor more than 15 years.

(c) Any person who causes the death of another person, without an intention to do so, by violating any provision of this title other than subsection (a) of Code Section 40-6-163, subsection (b) of Code Section 40-6-270, Code Section 40-6-390 or 40-6-391, or subsection (a) of Code Section 40-6-395 commits the offense of homicide by vehicle in the second degree when such violation is the cause of said death and, upon conviction thereof, shall be punished as provided in Code Section 17-10-3.

(d) Any person who, after being declared a habitual violator as determined under Code Section 40-5-58 and while such person's license is in revocation, causes the death of another person, without malice aforethought, by operation of a motor vehicle, commits the offense of homicide by vehicle in the first degree and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years, and adjudication of guilt or imposition of such sentence for a person so convicted may be suspended, probated, deferred, or withheld but only after such person shall have served at least one year in the penitentiary.

2015 Georgia Code
Title 40 - MOTOR VEHICLES AND TRAFFIC
Chapter 6 - UNIFORM RULES OF THE ROAD
Article 12 - ACCIDENTS
§ 40-6-270 - Hit and run; duty of driver to stop at or return to scene of accident

Universal Citation: GA Code § 40-6-270 (2015)

(a) The driver of any vehicle involved in an accident resulting in injury to or the death of any person or in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of the accident or shall stop as close thereto as possible and forthwith return to the scene of the accident and shall:

(1) Give his or her name and address and the registration number of the vehicle he or she is driving;

(2) Upon request and if it is available, exhibit his or her operator's license to the person struck or the driver or occupant of or person attending any vehicle collided with;

(3) Render to any person injured in such accident reasonable assistance, including the transporting, or the making of arrangements for the transporting, of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such transporting is requested by the injured person; and

(4) Where a person injured in such accident is unconscious, appears deceased, or is

otherwise unable to communicate, make every reasonable effort to ensure that emergency medical services and local law enforcement are contacted for the purpose of reporting the accident and making a request for assistance.

The driver shall in every event remain at the scene of the accident until fulfilling the requirements of this subsection. Every such stop shall be made without obstructing traffic more than is necessary.

(b) If such accident is the proximate cause of death or a serious injury, any person knowingly failing to stop and comply with the requirements of subsection (a) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(c) (1) If such accident is the proximate cause of an injury other than a serious injury or if such accident resulted in damage to a vehicle which is driven or attended by any person, any person knowingly failing to stop or comply with the requirements of this Code section shall be guilty of a misdemeanor and:

(A) Upon conviction shall be fined not less than $300.00 nor more than $1,000.00, which fine shall not be subject to suspension, stay, or probation, or imprisoned for up to 12 months, or both;

(B) Upon the second conviction within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined not less than $600.00 nor more than $1,000.00, which fine shall not be subject to suspension, stay, or probation, or imprisoned for up to 12 months, or both; and for purposes of this subparagraph, previous pleas of nolo contendere accepted within such five-year period shall constitute convictions; and

(C) Upon the third or subsequent conviction within a five-year period of time, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, shall be fined $1,000.00, which fine shall not be subject to suspension, stay, or probation, or imprisoned for up to 12 months, or both; and for purposes of this subparagraph, previous pleas of nolo contendere accepted within such five-year period shall constitute convictions.

(2) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere shall constitute a conviction.

(3) If the payment of the fine required under this subsection will impose an economic hardship on the defendant, the judge, at his sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(d) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the punishments provided for in this Code section upon a conviction of violating this Code section or upon conviction of violating any ordinance adopting the provisions of this Code section.

2015 Georgia Code
Title 40 - MOTOR VEHICLES AND TRAFFIC
Chapter 6 - UNIFORM RULES OF THE ROAD
Article 15 - SERIOUS TRAFFIC OFFENSES
§ 40-6-390 - Reckless driving

Universal Citation: GA Code § 40-6-390 (2015)

(a) Any person who drives any vehicle in reckless disregard for the safety of persons or property commits the offense of reckless driving.

(b) Every person convicted of reckless driving shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $1,000.00 or imprisonment not to exceed 12 months, or by both such fine and imprisonment, provided that no provision of this Code section shall be construed so as to deprive the court imposing the sentence of the power given by law to stay or suspend the execution of such sentence or to place the defendant on probation.

2015 Georgia Code
Title 40 - MOTOR VEHICLES AND TRAFFIC
Chapter 6 - UNIFORM RULES OF THE ROAD
Article 15 - SERIOUS TRAFFIC OFFENSES
§ 40-6-391 - Driving under the influence of alcohol, drugs, or other intoxicating substances; penalties; publication of notice of conviction for persons convicted for second time; endangering a child

Universal Citation: GA Code § 40-6-391 (2015)

(a) A person shall not drive or be in actual physical control of any moving vehicle while:

(1) Under the influence of alcohol to the extent that it is less safe for the person to drive;

(2) Under the influence of any drug to the extent that it is less safe for the person to drive;

(3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to drive;

(4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the

person to drive;

(5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended; or

(6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

(b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section unless such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use.

(c) Every person convicted of violating this Code section shall, upon a first or second conviction thereof, be guilty of a misdemeanor, upon a third conviction thereof, be guilty of a high and aggravated misdemeanor, and upon a fourth or subsequent conviction thereof, be guilty of a felony except as otherwise provided in paragraph (4) of this subsection and shall be punished as follows:

(1) First conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than $300.00 and not more than $1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than ten days nor more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated, except that if the offender's alcohol concentration at the time of the offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24 hours of any term of imprisonment imposed under this subparagraph;

(C) Not fewer than 40 hours of community service, except that for a conviction for violation of subsection (k) of this Code section where the person's alcohol concentration at the time of the offense was less than 0.08 grams, the period of community service shall be not fewer than 20 hours;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; provided, however, that in the court's discretion such evaluation may be waived; and

(F) If the person is sentenced to a period of imprisonment for fewer than 12 months, a period of probation of 12 months less any days during which the person is actually incarcerated;

(2) For the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than $600.00 and not more than $1,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than 90 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 72 hours of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(3) For the third conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than $1,000.00 and not more than $5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A mandatory period of imprisonment of not fewer than 120 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 15 days of actual incarceration;

(C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(4) For the fourth or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than $1,000.00 and not more than $5,000.00, which fine shall not, except as provided in subsection (g) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than one year and not more than five years; provided, however, that the judge may suspend, stay, or probate all but 90 days of any term of imprisonment imposed under this paragraph. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, thereby subjecting the offender to the provisions of Article 7 of Chapter 8 of Title 42 and to such other terms and conditions as the judge may impose;

(C) Not fewer than 60 days of community service; provided, however, that if a defendant is sentenced to serve three years of actual imprisonment, the judge may suspend the community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program within 120 days following his or her conviction; provided, however, that if the defendant is incarcerated and such program cannot be completed within 120 days, it shall be completed within 90 days of his or her release from custody. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of five years less any days during which the person is actually

imprisoned;

provided, however, that if the ten-year period of time as measured in this paragraph commenced prior to July 1, 2008, then such fourth or subsequent conviction shall be a misdemeanor of a high and aggravated nature and punished as provided in paragraph (3) of this subsection;

(5) If a person has been convicted of violating subsection (k) of this Code section premised on a refusal to submit to required testing or where such person's alcohol concentration at the time of the offense was 0.08 grams or more, and such person is subsequently convicted of violating subsection (a) of this Code section, such person shall be punished by applying the applicable level or grade of conviction specified in this subsection such that the previous conviction of violating subsection (k) of this Code section shall be considered a previous conviction of violating subsection (a) of this Code section;

(6) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere based on a violation of this Code section shall constitute a conviction; and

(7) For purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of this subsection, only those offenses for which a conviction is obtained or a plea of nolo contendere is accepted on or after July 1, 2008, shall be considered; provided, however, that nothing in this subsection shall be construed as limiting or modifying in any way administrative proceedings or sentence enhancement provisions under Georgia law, including, but not limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17.

(d) (1) Notwithstanding the limits set forth in any municipal charter, any municipal court of any municipality shall be authorized to impose the misdemeanor or high and aggravated misdemeanor punishments provided for in this Code section upon a conviction of violating this Code section or upon a conviction of violating any ordinance adopting the provisions of this Code section.

(2) Notwithstanding any provision of this Code section to the contrary, any court authorized to hear misdemeanor or high and aggravated misdemeanor cases involving violations of this Code section shall be authorized to exercise the power to probate, suspend, or stay any sentence imposed. Such power shall, however, be limited to the conditions and limitations imposed by subsection (c) of this Code section.

(e) The foregoing limitations on punishment also shall apply when a defendant has been convicted of violating, by a single transaction, more than one of the four provisions of subsection (a) of this Code section.

(f) The provisions of Code Section 17-10-3, relating to general punishment for misdemeanors including traffic offenses, and the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, shall not apply to any person convicted of violating any provision of this Code section.

(g) (1) If the payment of the fine required under subsection (c) of this Code section will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under subsection (c) of this Code section conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1.

(h) For purposes of determining under this chapter prior convictions of or pleas of nolo contendere to violating this Code section, in addition to the offense prohibited by this Code section, a conviction of or plea of nolo contendere to any of the following offenses shall be deemed to be a violation of this Code section:

(1) Any federal law substantially conforming to or parallel with the offense covered under this Code section;

(2) Any local ordinance adopted pursuant to Article 14 of this chapter, which ordinance adopts the provisions of this Code section; or

(3) Any previously or currently existing law of this or any other state, which law was or is substantially conforming to or parallel with this Code section.

(i) A person shall not drive or be in actual physical control of any moving commercial motor vehicle while there is 0.04 percent or more by weight of alcohol in such person's blood, breath, or urine. Every person convicted of violating this subsection shall be guilty of a misdemeanor and, in addition to any disqualification resulting under Article 7 of Chapter 5 of this title, the "Uniform Commercial Driver's License Act," shall be

fined as provided in subsection (c) of this Code section.

(j) (1) The clerk of the court in which a person is convicted a second or subsequent time under subsection (c) of this Code section within five years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted, shall cause to be published a notice of conviction for each such person convicted. Such notices of conviction shall be published in the manner of legal notices in the legal organ of the county in which such person resides or, in the case of nonresidents, in the legal organ of the county in which the person was convicted. Such notice of conviction shall be one column wide by two inches long and shall contain the photograph taken by the arresting law enforcement agency at the time of arrest, the name of the convicted person, the city, county, and zip code of the convicted person's residential address, and the date, time, place of arrest, and disposition of the case and shall be published once in the legal organ of the appropriate county in the second week following such conviction or as soon thereafter as publication may be made.

(2) The convicted person for which a notice of conviction is published pursuant to this subsection shall be assessed $25.00 for the cost of publication of such notice and such assessment shall be imposed at the time of conviction in addition to any other fine imposed pursuant to this Code section.

(3) The clerk of the court, the publisher of any legal organ which publishes a notice of conviction, and any other person involved in the publication of an erroneous notice of conviction shall be immune from civil or criminal liability for such erroneous publication, provided such publication was made in good faith.

(k) (1) A person under the age of 21 shall not drive or be in actual physical control of any moving vehicle while the person's alcohol concentration is 0.02 grams or more at any time within three hours after such driving or being in physical control from alcohol consumed before such driving or being in actual physical control ended.

(2) Every person convicted of violating this subsection shall be guilty of a misdemeanor for the first and second convictions and upon a third or subsequent conviction thereof be guilty of a high and aggravated misdemeanor and shall be punished and fined as provided in subsection (c) of this Code section, provided that any term of imprisonment served shall be subject to the provisions of Code Section 17-10-3.1, and any period of

community service imposed on such person shall be required to be completed within 60 days of the date of sentencing.

(3) No plea of nolo contendere shall be accepted for any person under the age of 21 charged with a violation of this Code section.

(l) A person who violates this Code section while transporting in a motor vehicle a child under the age of 14 years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or drugs. The offense of endangering a child by driving under the influence of alcohol or drugs shall not be merged with the offense of driving under the influence of alcohol or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1.